



**MEETING AGENDA**  
**City Council**  
**REGULAR SESSION CITY COUNCIL**  
**October 25, 2022**

**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 25, 2022 at 6:00 p.m.**

**City Council will hold its regularly scheduled meeting at 6:00 p.m., Tuesday, October 25, 2022, 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 Davis)**

**Presentations:**

Dudley Wait-20 Year Service Pin

Richard Kunz-20 Year Service Pin

**City Events and Announcements**

- Announcements of upcoming City Events (B. James/S. Gonzalez)
- Announcements and recognitions by the City Manager (M. Browne)
- Announcements and recognitions by the Mayor (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.     **Resolution No. 22-R-112** - A Resolution by the City Council of the City of Schertz, Texas authorizing a Memorandum of Understanding between the City of Schertz Economic Development Corporation and the City of Schertz Texas. (M. Browne/ A. Perez)
2.     **Resolution No. 22-R-113** - A Resolution by the City Council of the City of Schertz, Texas authorizing a Funding Agreement between the City of Schertz Economic Development Corporation and the City of Schertz Texas for Signalization on Schertz Parkway. (M. Browne/ A. Perez)
3.     **Resolution No. 22-R-114** - A Resolution by the City Council of the City of Schertz, Texas authorizing a Funding Agreement between the City of Schertz Economic Development Corporation and the City of Schertz Texas for Redevelopment of Lookout Road. (M. Browne/A. Perez)
4.     **Resolution No. 22-R-116** - A Resolution by The City of Schertz City Council authorizing an Interlocal Agreement between the City of Schertz, Texas and the City of Selma, Texas Regarding Funding of Design and Construction of Signalization of the Intersection of Lookout Rd. and Schertz Parkway. (M. Browne / A. Perez)
5.     **Resolution No. 22-R-117** - Consideration and/or action approving a Resolution by the City Council of the City of Schertz, Texas, authorizing expenditures associated with the FY 22-23 Vehicle/Equipment Replacement Program and other matters in connection therewith. (B. James/S. McClelland/C. Hernandez)

6. **Resolution No. 22-R-125-** Consideration and/or action approving a Resolution authorizing the City of Schertz to enter into Service Agreements with C3 Environmental and AR6 General Contracting for on-call concrete repair, replacement, and related matters. (B. James/S.McClelland/D. Letbetter)
7. **Resolution No. 22-R-115-** Consideration and/or action approving a Resolution authorizing the City of Schertz to enter into a contract with Brauntex Materials and Vulcan Construction Materials for asphalt, hot mix, and related materials and other matters in connection therewith (B. James/S. McClelland/D. Letbetter)
8. **Resolution No. 22-R-98 -** Consideration and/or action approving a Resolution by the City Council of the City of Schertz, Texas creating Neighborhood Empowerment Zones along FM 78. (M. Browne/B. James)
9. **Resolution No. 22-R-121 -** Consideration and/or action approving a Resolution by the City Council of the City of Schertz, Texas authorizing a Wastewater Pump and Haul Agreement with Meritage Homes of Texas, LLC. (M. Browne/B. James)

#### **Discussion and Action Items**

10. **Ordinance No. 22-S-41-** Consideration and/or action on a request to rezone approximately 15 acres of land from Pre-Development District (PRE) to Planned Development District (PDD), generally located approximately 2,200 feet southeast of the intersection of Lower Seguin Road and FM 1518, also known as Bexar County Property Identification Number 309997 and 309999, City of Schertz, Bexar County, Texas. ***Final Reading*** (B. James / L. Wood / E. Delgado)
11. **Resolution No. 22-R-123 -** Consideration and/or action approving a Resolution by the City Council of the City of Schertz, Texas authorizing a Subdivision Improvement Agreement with 1518 Apartments, Ltd. (M. Browne/B. James)

#### **Roll Call Vote Confirmation**

#### **Closed Session**

12. The City Council will convene in closed session pursuant to Texas Government Code Section 551.072, deliberation regarding real property, to discuss the purchase, exchange, lease, or value of real property within the City of Schertz, for a public facility.
13. The City Council will meet in Closed Session in accordance with Section 551.074 of the Texas Government Code, Personnel Matters, to discuss the direction on an appointment of a new City Manager.
14. The City Council will meet in Closed Session under Section 551.074 of the Texas Government Code, Personnel Matters, to discuss the vacancy of the City Secretary position.

15. Take any action based on discussions held in Closed Session under Agenda Item 12.
16. Take any action based on discussions held in Closed Session under Agenda Item 13.
17. Take any action based on discussions held in Closed Session under Agenda Item 14.

### **Reconvene into Regular Session**

### **Roll Call Vote Confirmation**

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

### **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, SHEILA EDMONDSON, DEPUTY 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 21ST DAY OF OCTOBER 2022 AT 5:15 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.

SHEILA EDMONDSON

**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 \_\_\_\_\_, 2022. 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

<b>Mayor Gutierrez</b> Audit Committee Board of Adjustments Investment Advisory Committee Main Street Committee	<b>Councilmember Scagliola – Place 5</b> Animal Advisory Commission - Alternate Cibolo Valley Local Government Corporation - Alternate Hal Baldwin Scholarship Committee Interview Committee for Boards and Commissions - Alternate Schertz-Seguin Local Government Corporation
<b>Councilmember Davis– Place 1</b> Interview Committee for Boards and Commissions Main Street Committee - Chair Parks & Recreation Advisory Board Schertz Housing Authority Board Transportation Safety Advisory Commission TIRZ II Board	<b>Councilmember – Place 2 (VACANT)</b>
<b>Councilmember Whittaker – Place 3</b> Audit Committee Historical Preservation Committee Interview Committee for Boards and Commissions Library Advisory Board TIRZ II Board	<b>Councilmember Dahle – Place 4</b> Cibolo Valley Local Government Corporation Interview Committee for Boards and Commissions Planning & Zoning Commission TIRZ II Board
<b>Councilmember Heyward – Place 6</b> Animal Advisory Commission Audit Committee Building and Standards Commission Economic Development Corporation - Alternate Investment Advisory Committee Main Street Committee	<b>Councilmember Brown – Place 7</b> Economic Development Corporation Main Street Committee Schertz-Seguin Local Government Corporation - Alternate

**CITY COUNCIL MEMORANDUM**

**City Council Meeting:** October 25, 2022  
**Department:** City Secretary  
**Subject:** Resolution No. 22-R-112 - A Resolution by the City Council of the City of Schertz, Texas authorizing a Memorandum of Understanding between the City of Schertz Economic Development Corporation and the City of Schertz Texas. (M. Browne/ A. Perez)

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**BACKGROUND**

The Schertz Economic Development Corporation (SEDC) is a Type B Economic Development Corporation that may recommend to City Council funding of projects authorized by Texas Local Government Code, Sections 501 and 505, in accordance with the current Mission of the SEDC.

The current Mission of the SEDC focuses on two of nine funding authorities.

1. Create or retain Primary Jobs (Section 501.101 & 505.155)
2. Infrastructure improvements that promote new or expanded business enterprises (Section 501.103)

Primary Job projects and infrastructure improvements related to new industrial/commercial investment are currently executed through performance agreements recommend by the SEDC Board of Directors and approved for funding by City Council.

Additionally, the (SEDC) has partnered with the City of Schertz to prioritize funding from the SEDC Reserve Fund for infrastructure projects that fall within the mission and authority of the SEDC as a Type B Economic Development Corporation as permitted under Texas Local Government Code Section 501.103. The SEDC has in recent years worked with the City on projects such as investments in Main Street and Tri County Parkway improvements.

In partnership with the City of Schertz, the SEDC Board of Directors continue to plan deployment of the SEDC Reserve fund for additional infrastructure projects over multiple fiscal years and may leverage dollars from multiple sources. The SEDC Board of Directors are charged with budgeting, projection, and recommending allocation of funds, as well as ensuring dollars are expended according to allowable uses as described in Section 501 and 505 of the Texas Local Government Code.

**GOAL**

This action supports the administration of SEDC Reserve Fund allocations for current and future infrastructure projects permitted under Section 501.103. The annual adoption of an MOU provides the opportunity to continuously improve how projects under this authority are executed in partnership with the City of Schertz. Furthermore, it supports the City and SEDC Board of Directors in planning and managing multiple infrastructure projects, across multiple fiscal years, while potentially leveraging multiple funding sources (Private/State/Federal grants, etc.).

**COMMUNITY BENEFIT**

The majority of City of Schertz general fund revenue is supported by industrial and commercial investment in the community. This action supports efficient and transparent planning and management of infrastructure investments in an increasingly competitive commercial development market.

#### **SUMMARY OF RECOMMENDED ACTION**

This action adopts an MOU that establishes a process for project development, project updates and reporting on sources and uses of funds, timing of encumbrances, and project closing processes. This MOU will be updated and proposed for adoption annually. It provides support to the City and SEDC Board of Directors to plan and manage multiple infrastructure projects, across multiple fiscal years, while potentially leveraging multiple funding sources (Private/State/Federal grants, etc.).

#### **FISCAL IMPACT**

None. This action formalizes an MOU for the development of project-specific Funding Agreements that will be budgeted each fiscal year or allocated from the SEDC Reserve Fund through SEDC Board of Directors and City Council action.

#### **RECOMMENDATION**

Staff recommends approval of the attached City Council Resolution 22-R-112 and associated Memorandum of Understanding for FY 2022-2023. Attached please find SEDC Resolution 2022-12 which was approved by the SEDC Board of Directors on September 29, 2022 in support of such.

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#### **Attachments**

CC Resolution 22-R-112  
SEDC Resolution 2022-12  
City of Schertz MOU

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## **RESOLUTION NO. 22-R-112**

### **A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF SCHERTZ, TEXAS AUTHORIZING A MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF SCHERTZ ECONOMIC DEVELOPMENT CORPORATION AND THE CITY OF SCHERTZ TEXAS; AND OTHER MATTERS IN CONNECTION THEREWITH**

WHEREAS, the Development Corporation Act of 1979, as amended (Section 501.001 et seq, Texas Local Government Code, formerly the Development Corporation Act of 1979) (the "Act") authorizes a development corporation to fund certain projects as defined by the Act and requires development corporation to enter into performance agreements to establish and provide for the direct incentive or make an expenditure on behalf of a business enterprise under a project; and

WHEREAS, Section 501.103 authorizes expenditures for certain infrastructure improvement projects that are found by the board of directors to be required or suitable for infrastructure necessary to promote or develop new or expanded business enterprises; and

WHEREAS, Section 501.159 of the Act requires that a corporation hold at least one public hearing on the proposed project before spending money to undertake the project; and

WHEREAS, the SEDC Board of Directors approved SEDC Resolution 2022-12 which, subject to the authorization of funds by the City of Schertz City Council, approved the Memorandum of Understanding for Infrastructure Funding attached hereto as Exhibit A between the SEDC, and the City at the SEDC's Board of Directors meeting on September 29, 2022; and

WHEREAS, Section 501.073 of the Act requires that the corporation's authorizing unit to approve all programs and expenditures of a corporation; and

WHEREAS, the SEDC has recommended that the City authorize the program and expenditures associated therewith; and

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

Section 1. The City Council hereby authorizes the program and expenditures as provided for in the Memorandum of Understanding for Infrastructure Funding between the SEDC and City as set forth in Exhibit A.

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

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

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

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

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

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

PASSED AND ADOPTED, this \_\_\_\_ day of \_\_\_\_\_, 2022.

CITY OF SCHERTZ, TEXAS

\_\_\_\_\_  
Ralph Gutierrez, Mayor

ATTEST:

\_\_\_\_\_  
Brenda Dennis, City Secretary

(CITY SEAL)

## EXHIBIT A

**SEDC RESOLUTION NO. 2022-12**

**A RESOLUTION BY THE CITY OF SCHERTZ ECONOMIC DEVELOPMENT CORPORATION, TEXAS AUTHORIZING A MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF SCHERTZ ECONOMIC DEVELOPMENT CORPORATION AND THE CITY OF SCHERTZ TEXAS; AND OTHER MATTERS IN CONNECTION THEREWITH**

WHEREAS, the City of Schertz Economic Development Corporation (“SEDC”) is a non-profit industrial development corporation duly established under the Development Corporation Act of 1979, as amended (Section 501.001 et seq. Texas Local Government Code, formerly the Development Corporation Act of 1979) (the “Act”);

WHEREAS, all of the powers of the corporation are vested in the SEDC Board of Directors (the “Board”) appointed by the governing body of the corporation’s authorizing unity; and

WHEREAS, the Act authorizes a development corporation to fund certain projects as defined by the Act and request development corporations to enter into performance agreements to establish and provide for the direct incentive or make an expenditure on behalf of a business enterprise under a project; and

WHEREAS, Section 501.101 authorizes expenditures for land, buildings, equipment, facilities, expenditures, targeted infrastructure and improvements that are for the creation or retention of primary jobs and found by the board of directors to be required or suitable for the development, retention, or expansion of manufacturing and industrial facilities; and

WHEREAS, Section 505.159 of the Act requires that a corporation hold at least one public hearing on the proposed project before spending money to undertake the project; and

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE CITY OF SCHERTZ ECONOMIC DEVELOPMENT CORPORATION THAT:

Section 1. The Board hereby recommends the approval of the Memorandum of Understanding for Infrastructure Funding between the SEDC and City and requests authorization by the City of Schertz City Council for the expenditures associated with the Memorandum of Understanding attached hereto as Exhibit A.

Section 2. Subject to the authorization of funds by the City of Schertz City Council, the Board hereby authorizes the President to execute the Memorandum of Understanding.

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 Board.

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 board 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 29th day of September, 2022.

CITY OF SCHERTZ ECONOMIC  
DEVELOPMENT CORPORATION

  
\_\_\_\_\_  
Paul Macaluso, SEDC Board President

ATTEST:

  
\_\_\_\_\_  
Sammi Morrill, SEDC Board Secretary

**MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF SCHERTZ TEXAS AND THE SCHERTZ ECONOMIC DEVELOPMENT CORPORATION FOR THE FUNDING AND COORDINATION OF TARGETED INFRASTRUCTURE IMPROVEMENTS NECESSARY TO PROMOTE OR DEVELOP NEW OR EXPANDED BUSINESS ENTERPRISES**

This Memorandum of Understanding between the City of Schertz Texas (City) and the Schertz Economic Development Corporation (SEDC), collectively (Parties), is entered into for the funding and coordination of targeted infrastructure improvements necessary to promote or develop new or expanded business enterprises.

**WHEREAS**, the City of Schertz Economic Development Corporation (“SEDC”) is a non-profit industrial development corporation duly established under the Development Corporation Act of 1979, as amended (Section 501.001 et seq. Texas Local Government Code, formerly the Development Corporation Act of 1979) (the “Act”); and,

**WHEREAS**, the City of Schertz is a Texas home rule municipality of the State of Texas and the SEDC's authorizing unit required to approve all programs and expenditures of the corporation and annually review any financial statements of the corporation; and,

**WHEREAS**, the SEDC has consistently partnered with the City of Schertz to prioritize funding for projects that fall within the scope and mission of the SEDC as a Type B Economic Development Corporation, such as expenditures that are found by the board of directors to be required or suitable for infrastructure necessary to promote or develop new or expanded business enterprises, including streets and roads, rail spurs, water and sewer utilities, electric utilities, or gas utilities, drainage, site improvements, and related improvements; and,

**WHEREAS**, SEDC has shared with Schertz City Council the priorities for use of the SEDC Reserve Fund and has recently worked with the City Manager’s Office on projects such as investments in Main Street and Tri County Parkway improvements; and,

**WHEREAS**, in order to ensure the SEDC Board is provided all necessary information to prioritize and budget for current and future infrastructure funding requests, SEDC staff has coordinated with the City Manager’s Office to formalize a process for requesting funding from the SEDC, providing status reports, and project closing; and

**WHEREAS**, the formalization of these processes is to support administration of the SEDC Reserve Fund and prioritize mutually beneficial projects of the Parties.

**NOW THEREFORE THE PARTIES HERETO AGREE TO THE FOLLOWING PROTOCOLS IN FURTHERANCE OF THE SHARED GOALS AND OBJECTIVES EXPRESSED HEREIN**

**I. SEDC Funding in Partnership with the City of Schertz**

1.1 In coordination with the SEDC Board of Directors, SEDC staff may request of City prioritized capital improvement projects based on the mission of the SEDC through this process.

1.2 City/SEDC staff will provide a project overview to secure SEDC Board conceptual approval of project. SEDC will consider and act on funding for design of the project through allocation from existing budget or through a budget amendment taken before City Council.

1.3 Once design of the project is finalized the SEDC will review the final project scope and consider encumbrance of total project cost and consider adopting an Infrastructure Funding Agreement for approval by City Council for funding allocation. This agreement will be in substantially the same form as the attached Exhibit A.

1.4 Important considerations for the SEDC Board include that the City may request additional funding for any and all projects due to unforeseen costs, expanded scope, or other reasons.

1.5 Only those requested projects that are comprised of an expenditure that is required or suitable for the infrastructure necessary to promote or develop new or expanded business enterprise, limited to streets and roads, rail spurs, water and sewer utilities, electric utilities, or gas utilities, drainage, site improvements, and related improvements, or telecommunications and internet improvements.

## **II. Funded Project Status Updates**

2.1 SEDC will be provided information for status updates on the project no less than twice a year regarding allocated funds and more frequently if the project is delayed significantly, project costs or scope are significantly altered. In addition to a status narrative, this should include:

2.1.1 Total sources and uses of funds for the project to include balances of SEDC funding encumbered and drawn down for the project.

2.1.2 If project is over \$2,000,000 and City chooses to transfer a lump sum in this amount to City accounts, City will report and transfer any interest earned on those balances.

2.1.3 If project is delayed more than two years from the date the project is funded for design, the SEDC may act to unencumber dollars for other uses.

## **III. Project Closing**

3.1 City will provide a memo from the City Manager providing a final project description and total costs with supporting documentation on proof of payment for all costs and final total sources and uses of funds.

3.1.1 This memo will affirm that all uses of funds fall within allowed uses under Section 505.152 of the Texas Local Government Code if the project results in a combination of qualifying and non-qualifying costs.

3.1.2 This memo will also indicate when any unexpended funds and or interest was or will be returned.


#### IV. Miscellaneous

- 4.1 Term; Timeliness. The initial term of this MOU shall begin on the Effective Date and shall continue until the end of the 2022-2023 fiscal year. Thereafter, provided that the Parties agree, the MOU shall renew on a fiscal year basis unless terminated by either party by providing written notice 60 days prior to the end of the fiscal year.
- 4.2 Severability. If any provision of this MOU is held to be invalid for any reason by a court or agency of competent jurisdiction, the remainder of this MOU shall not be affected thereby, and this MOU shall be construed as if such invalid provision had never been contained herein, and the remaining enforceable provisions of this MOU are expressly deemed severable for this purpose.
- 4.3 Cooperation. The Parties hereto agree to cooperate at all times in good faith to effectuate the purposes and intent of this MOU.
- 4.4 Entire Agreement. This MOU contains the entire agreement of the Parties and supersedes all prior or contemporaneous understandings or representations, whether oral or written, respecting the subject matter hereof.
- 4.5 Amendments. Any amendment to this MOU must be in writing and shall be effective only if signed by the authorized representatives of each Party to this MOU.
- 4.6 No Third-Party Beneficiaries. This MOU shall inure only to the benefit of the Parties and their successors and assigns as permitted by this MOU. No person or entity that is not a Party to this MOU shall be considered a third-party beneficiary of this MOU.
- 4.7 Effective Date. Effective this the \_\_\_\_ day of \_\_\_\_\_, 2022.

CITY:

CITY OF SCHERTZ ECONOMIC  
DEVELOPMENT CORPORATION:

By: \_\_\_\_\_  
Name: Dr. Mark Browne

By:  \_\_\_\_\_  
Name: Paul Macaluso

Title: City Manager

Title: SEDC Board President

Attest:

By: \_\_\_\_\_

Name: Brenda Dennis

Title: City Secretary

By: \_\_\_\_\_

Name: Sammi Morrill

Title: SEDC Board Secretary

**EXHIBIT A:**  
**FUNDING AGREEMENT**

This **FUNDING AGREEMENT** by and between the **SCHERTZ ECONOMIC DEVELOPMENT CORPORATION**, a Texas non-profit corporation (hereinafter referred to as the "SEDC"), and the **CITY OF SCHERTZ, TEXAS**, a Texas home-rule municipality (hereinafter referred to as the "City"), is made and executed on the following recitals, terms and conditions.

**WHEREAS**, the SEDC is a Type B economic development corporation, created pursuant to Chapter 505 of the Texas Local Government Code, as amended; and

**WHEREAS**, Section 501.103 authorizes expenditures that are found by the board of directors to be required or suitable for infrastructure necessary to promote or develop new or expanded business enterprises, such as streets and roads, rail spurs, water and sewer utilities, electric utilities, or gas utilities, drainage, site improvements, and related improvements; and

**WHEREAS**, the SEDC and City of Schertz are partnering to fund

\_\_\_\_\_ (hereinafter referred to as the "Project"); and

**WHEREAS**, the SEDC's Board of Directors have determined the financial assistance provided to City is consistent and meets the definition of "project" as that term is defined in Section \_\_\_\_\_ of the Texas Local Government Code; and the definition of "cost" as that term is defined by Section 501.152 of the Texas Local Government Code; and

**WHEREAS**, City agrees and understands that Section 501.073(a) of the Texas Local Government Code requires the City Council of the City of Schertz, Texas, to approve all programs and expenditures of the SEDC, and accordingly this Agreement is not effective until City Council has approved this project at a City Council meeting called and held for that purpose.

**NOW, THEREFORE**, for and in consideration of the agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the SEDC and City agree as follows:

#### **SECTION 1. FINDINGS INCORPORATED.**

The foregoing recitals are hereby incorporated into the body of this Agreement and shall be considered part of the mutual covenants, consideration and promises that bind the parties.

#### **SECTION 2. TERM.**

This Agreement shall be effective as of the Effective Date, as defined herein, and shall continue thereafter until \_\_\_\_\_, unless terminated sooner under the provisions hereof.

### SECTION 3. DEFINITIONS.

The following words shall have the following meanings when used in this Agreement.

- (a) **Act.** The word "Act" means Chapters 501 to 505 of the Texas Local Government Code, as amended.
- (b) **Agreement.** The word "Agreement" means this Performance Agreement, together with all exhibits and schedules attached to this Agreement from time to time, if any.
- (c) **City.** The words "City" means the City of Schertz, Texas, a Texas home-rule municipality, whose address for the purposes of this Agreement is 1400 Schertz Parkway Schertz, Texas 78154.
- (d) **Effective Date.** The words "Effective Date" mean the date of the latter to execute this Agreement by and between the City and the SEDC.
- (e) **Event of Default.** The words "Event of Default" mean and include any of the Events of Default set forth below in the section entitled "Events of Default."
- (f) **SEDC.** The term "SEDC" means the Schertz Economic Development Corporation, a Texas non-profit corporation, its successors and assigns, whose corporate address for the purposes of this Agreement is 1400 Schertz Parkway Schertz, Texas 78154.
- (g) **Project.** The word "Property" means \_\_\_\_\_.
- (h) **Qualified Expenditures.** The words "Qualified Expenditures" mean those costs associated with \_\_\_\_\_, and which meet the definition of "project" as that term is defined in Section 505.152 of the Act, and meet the definition of "cost" as that term is defined in Section 501.152 of the Act.
- (i) **Term.** The word "Term" means the term of this Agreement as specified in Section 2 of this Agreement.

### SECTION 4. AFFIRMATIVE COVENANTS OF THE CITY.

City covenants and agrees with SEDC that, while this Agreement is in effect, it shall comply with the following terms and conditions:

- (a) **Funding.** The City shall be entitled to funding from SEDC in the amount not to exceed \_\_\_\_\_ for Qualified Expenditures. City covenants and agrees to submit to the SEDC invoices, receipts, or other documentation of the Qualified Expenditures in a form acceptable to the SEDC prior to Project acceptance.
- (b) **Public Purpose.** City agrees that the Project contemplated herein represents a public

purpose for which the propose funds are authorized to be used.

- (c) **Performance Conditions.** City agrees to provide, make, execute and deliver to SEDC such other documents and other agreements as SEDC or its attorneys may reasonably request to evidence the use of the funds for the Project.
- (d) **Performance.** City agrees to perform and comply with all terms, conditions, and provisions set forth in this Agreement and in all other instruments and agreements between City and SEDC.

## **SECTION 5. AFFIRMATIVE COVENANTS OF SEDC.**

SEDC covenants and agrees with City that, while this Agreement is in effect, it shall comply with the following terms and conditions:

- (a) **Financial Assistance for Qualified Expenditures.** SEDC covenants and agrees to provide funding in advance or by reimbursement for Qualified Expenditures made by the City pursuant to Section 4(a) of this Agreement, in an amount not to exceed the lesser of \_\_\_\_\_ or the aggregate amount of said invoices, receipts, or other documentation submitted by the City to SEDC within thirty (30) days of receipt of said documentation.
- (b) **Performance.** SEDC agrees to perform and comply with all terms, conditions, and provisions set forth in this Agreement and in all other instruments and agreements by and between the City and SEDC.

## **SECTION 6. EVENTS OF DEFAULT.**

Each of the following shall constitute an Event of Default under this Agreement:

- (a) **General Event of Default.** Failure of City or SEDC to comply with or to perform any other term, obligation, covenant or condition contained in this Agreement, or failure of City or SEDC to comply with or to perform any other term, obligation, covenant or condition contained in any other agreement by and between City and SEDC is an Event of Default.
- (b) **False Statements.** Any warranty, representation, or statement made or furnished to SEDC by or on behalf of City under this Agreement that is false or misleading in any material respect, either now or at the time made or furnished is an Event of Default.

## **SECTION 7. EFFECT OF AN EVENT OF DEFAULT.**

In the event of default under Section 6 of this Agreement, the non-defaulting party shall give written notice to the other party of any default, and the defaulting party shall have thirty (30) days to cure said default. Should said default remain uncured as of the last day of the applicable cure period, and the non-defaulting party is not otherwise in default, the non-defaulting party shall have the right to immediately terminate this Agreement. In the event, City

defaults and is unable or unwilling to cure said default within the prescribed time period, the amounts provided by the SEDC to City pursuant to Section 5(a) of this Agreement shall become immediately due and payable by City to the SEDC.

## **SECTION 8. MISCELLANEOUS PROVISIONS.**

The following miscellaneous provisions are a part of this Agreement:

- (a) **Amendments.** This Agreement constitutes the entire understanding and agreement of the parties as to the matters set forth in this Agreement. No alteration of or amendment to this Agreement shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.
- (b) **Applicable Law and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Guadalupe County, Texas. Venue for any action arising under this Agreement shall lie in the state district courts of Guadalupe County, Texas.
- (c) **Assignment.** This Agreement may not be assigned without the express written consent of the other party.
- (d) **Binding Obligation.** This Agreement shall become a binding obligation on the signatories upon execution by all signatories hereto. City warrants and represents that the individual or individuals executing this Agreement on behalf of City has full authority to execute this Agreement and bind City to the same. SEDC warrants and represents that the individual executing this Agreement on its behalf has full authority to execute this Agreement and bind it to the same.
- (e) **Caption Headings.** Caption headings in this Agreement are for convenience purposes only and are not to be used to interpret or define the provisions of the Agreement.
- (f) **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall constitute one and the same document.
- (g) **Notices.** All notices required to be given under this Agreement shall be given in writing and shall be effective when actually delivered or when deposited in the United States mail, first class, postage prepaid, addressed to the party to whom the notice is to be given at the address shown in Section 3 of this Agreement. Any party may change its address for notices under this Agreement by giving formal written notice to the other parties, specifying that the purpose of the notice is to change the party's address. For notice purposes, City agrees to keep SEDC informed at all times of City's current address.
- (h) **Severability.** If a court of competent jurisdiction finds any provision of this Agreement to be invalid or unenforceable as to any person or circumstance, such finding shall not render that provision invalid or unenforceable as to any other persons or circumstances. If

feasible, any such offending provision shall be deemed to be modified to be within the limits of enforceability or validity; however, if the offending provision cannot be so modified, it shall be stricken and all other provisions of this Agreement in all other respects shall remain valid and enforceable.

- (i) **Time is of the Essence.** Time is of the essence in the performance of this Agreement.

**[The Remainder of this Page Intentionally Left Blank]**

**THE PARTIES ACKNOWLEDGE HAVING READ ALL THE PROVISIONS OF THIS PERFORMANCE AGREEMENT, AND THE PARTIES AGREE TO ITS TERMS. THIS AGREEMENT IS EFFECTIVE AS OF THE EFFECTIVE DATE AS IS PROVIDED HEREIN.**

**CITY:**

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

By: \_\_\_\_\_  
City Manager  
Date Signed: \_\_\_\_\_

**ATTEST:**

\_\_\_\_\_  
City Secretary

**SEDC:**

**SCHERTZ ECONOMIC DEVELOPMENT CORPORATION,**  
a Texas non-profit corporation

By: \_\_\_\_\_  
SEDC Board President  
Date Signed: \_\_\_\_\_

**ATTEST:**

\_\_\_\_\_  
SEDC Board Secretary

## CITY COUNCIL MEMORANDUM

**City Council Meeting:** October 25, 2022  
**Department:** City Secretary  
**Subject:** Resolution No. 22-R-113 - A Resolution by the City Council of the City of Schertz, Texas authorizing a Funding Agreement between the City of Schertz Economic Development Corporation and the City of Schertz Texas for Signalization on Schertz Parkway. (M. Browne/ A. Perez)

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### BACKGROUND

The City of Schertz and City of Selma have partnered to accelerate the development of signalization of Lookout Road and Schertz Parkway. The Schertz Economic Development Corporation (SECD) Board of Directors and City Council have allocated funding for the redevelopment of Lookout Rd and associated improvements in the SEDC FY 2022-2023 Annual Budget. The attached SEDC Resolution 2022-13 recommends approval of funds for the design of signalization of the intersection of Schertz Parkway and Lookout Rd. in support of Interlocal Agreement with Selma (Resolution 22-R-116).

The attached funding agreement outlines the partnership with the City of Schertz in support of its Interlocal Agreement with the City of Selma and in general accordance with the MOU adopted on by the SEDC Board of Directors on September 29, 2022 and forward for City Council consideration as Resolution No. 22-R-112.

The City of Schertz is designating the SEDC as its fiscal agent for the performance-related elements of this Interlocal Agreement. The SEDC is not a governmental entity and cannot be a direct party to an interlocal agreement and is acting only as fiscal agent for receipt of Selma's contribution for the project.

### GOAL

Authorize funding for design of the Project from the SEDC FY 2023 Annual Adopted Budget and in accordance with the MOU between the SEDC and the City of Schertz. The SEDC will consider a final funding agreement for this project once full design and estimated costs, or bid costs are available depending on which is most efficient with respect to the timely completion of the project.

### COMMUNITY BENEFIT

This agreement enhances the traffic safety in the industrial park and funds a cost-sharing partnership between the City of Schertz and the City of Selma through the allocation of funding from the SEDC FY 2022-2023 Budget.

### SUMMARY OF RECOMMENDED ACTION

This action authorizes funding allocated in the annual SEDC FY 2022-2023 Annual Budget for the design of signalization at the intersection of Schertz Parkway and Lookout Road in an amount not to exceed \$90,000.

### FISCAL IMPACT

This funding agreement will authorize an amount not to exceed \$90,000 for scoping costs associated with the signalization of Schertz Parkway and Lookout Road budgeted in the SEDC FY 2022-2023 Adopted Annual Budget.

**RECOMMENDATION**

Staff recommends approval of City Council Resolution 22-R-113.

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**Attachments**

CC Resolution 22-R-113

SEDC Resolution 2022-13

Funding Agreement Schertz Pkwy Signalization

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## **RESOLUTION NO. 22-R-113**

### **A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF SCHERTZ, TEXAS AUTHORIZING A FUNDING AGREEMENT BETWEEN THE CITY OF SCHERTZ ECONOMIC DEVELOPMENT CORPORATION AND THE CITY OF SCHERTZ TEXAS FOR SIGNALIZATION ON SCHERTZ PARKWAY; AND OTHER MATTERS IN CONNECTION THEREWITH**

WHEREAS, the Development Corporation Act of 1979, as amended (Section 501.001 et seq, Texas Local Government Code, formerly the Development Corporation Act of 1979) (the "Act") authorizes a development corporation to fund certain projects as defined by the Act and requires development corporation to enter into performance agreements to establish and provide for the direct incentive or make an expenditure on behalf of a business enterprise under a project; and

WHEREAS, Section 501.103 authorizes expenditures for certain infrastructure improvement projects that are found by the board of directors to be required or suitable for infrastructure necessary to promote or develop new or expanded business enterprises; and

WHEREAS, Section 501.159 of the Act requires that a corporation hold at least one public hearing on the proposed project before spending money to undertake the project; and

WHEREAS, the SEDC and City have entered into a Memorandum of Understanding for Infrastructure Funding when such infrastructure meets the statutory eligibility requirements for funding by the SEDC; and

WHEREAS, the contemplated infrastructure improvements are hereby found to meet any statutory eligibility requirements for funding by the SEDC; and

WHEREAS, the SEDC Board of Directors approved SEDC Resolution 2022-13 which, subject to the authorization of funds by the City of Schertz City Council, approved the Funding Agreement attached hereto as Exhibit A between the SEDC, and the City at the SEDC's Board of Directors meeting on September 29, 2022; and

WHEREAS, Section 501.073 of the Act requires that the corporation's authorizing unit to approve all programs and expenditures of a corporation; and

WHEREAS, the SEDC has recommended that the City authorize the program and expenditures associated therewith; and

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

Section 1. The City Council hereby authorizes the program and expenditures as provided for in the Funding Agreement between the SEDC and City as set forth in Exhibit A.

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

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

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

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

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

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

PASSED AND ADOPTED, this \_\_\_\_ day of \_\_\_\_\_, 2022.

CITY OF SCHERTZ, TEXAS

\_\_\_\_\_  
Ralph Gutierrez, Mayor

ATTEST:

\_\_\_\_\_  
Brenda Dennis, City Secretary

(CITY SEAL)

## **EXHIBIT A**

**SEDC RESOLUTION NO. 2022-13**

**A RESOLUTION BY THE CITY OF SCHERTZ ECONOMIC DEVELOPMENT CORPORATION, TEXAS AUTHORIZING A FUNDING AGREEMENT BETWEEN THE CITY OF SCHERTZ ECONOMIC DEVELOPMENT CORPORATION AND THE CITY OF SCHERTZ TEXAS FOR SIGNALIZATION OF A SCHERTZ PARKWAY INTERSECTION; AND OTHER MATTERS IN CONNECTION THEREWITH**

WHEREAS, the City of Schertz Economic Development Corporation (“SEDC”) is a non-profit industrial development corporation duly established under the Development Corporation Act of 1979, as amended (Section 501.001 et seq. Texas Local Government Code, formerly the Development Corporation Act of 1979) (the “Act”);

WHEREAS, all of the powers of the corporation are vested in the SEDC Board of Directors (the “Board”) appointed by the governing body of the corporation’s authorizing unit; and

WHEREAS, the Act authorizes a development corporation to fund certain projects as defined by the Act and request development corporations to enter into performance agreements to establish and provide for the direct incentive or make an expenditure on behalf of a business enterprise under a project; and

WHEREAS, Section 501.101 authorizes expenditures for land, buildings, equipment, facilities, expenditures, targeted infrastructure and improvements that are for the creation or retention of primary jobs and found by the board of directors to be required or suitable for the development, retention, or expansion of manufacturing and industrial facilities; and

WHEREAS, the SEDC and City have entered into a Memorandum of Understanding for Infrastructure Funding when such infrastructure meets the statutory eligibility requirements for funding by the SEDC; and

WHEREAS, the contemplated infrastructure improvements are hereby found to meet any statutory eligibility requirements for funding by the SEDC; and

WHEREAS, Section 505.159 of the Act requires that a corporation hold at least one public hearing on the proposed project before spending money to undertake the project; and

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE CITY OF SCHERTZ ECONOMIC DEVELOPMENT CORPORATION THAT:

Section 1. The Board hereby recommends the approval of the Funding Agreement between the SEDC and City and requests authorization by the City of Schertz City Council for the expenditures associated with the Funding Agreement attached hereto as Exhibit A.

Section 2. Subject to the authorization of funds by the City of Schertz City Council, the Board hereby authorizes the President to execute the Memorandum of Understanding.

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 Board.

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.

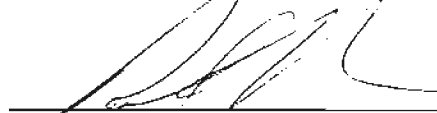
Section 6. If any provision of this Resolution or the application thereof to any person or circumstance shall be held to be invalid, the remainder of this Resolution and the application of such provision to other persons and circumstances shall nevertheless be valid, and the board hereby declares that 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 29th day of September, 2022.

CITY OF SCHERTZ ECONOMIC  
DEVELOPMENT CORPORATION



Paul Macaluso, SEDC Board President

ATTEST:



Sammi Morrill, SEDC Board Secretary

This **FUNDING AGREEMENT** by and between the **SCHERTZ ECONOMIC DEVELOPMENT CORPORATION**, a Texas non-profit corporation (hereinafter referred to as the "SEDC"), and the **CITY OF SCHERTZ, TEXAS**, a Texas home-rule municipality (hereinafter referred to as the "City"), is made and executed on the following recitals, terms and conditions.

**WHEREAS**, the SEDC is a Type B economic development corporation, created pursuant to Chapter 505 of the Texas Local Government Code, as amended; and

**WHEREAS**, Section 501.103 authorizes expenditures that are found by the board of directors to be required or suitable for infrastructure necessary to promote or develop new or expanded business enterprises, such as streets and roads, rail spurs, water and sewer utilities, electric utilities, or gas utilities, drainage, site improvements, and related improvements; and

**WHEREAS**, the SEDC and City of Schertz are partnering to fund the signalization of the intersection of Schertz Parkway and Lookout Road (hereinafter referred to as the "Project"); and

**WHEREAS**, the SEDC's Board of Directors have determined the financial assistance provided to City is consistent and meets the definition of "project" as that term is defined in Section 501.103 of the Texas Local Government Code; and the definition of "cost" as that term is defined by Section 501.152 of the Texas Local Government Code; and

**WHEREAS**, City agrees and understands that Section 501.073(a) of the Texas Local Government Code requires the City Council of the City of Schertz, Texas, to approve all programs and expenditures of the SEDC, and accordingly this Agreement is not effective until City Council has approved this project at a City Council meeting called and held for that purpose.

**NOW, THEREFORE**, for and in consideration of the agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the SEDC and City agree as follows:

#### **SECTION 1. FINDINGS INCORPORATED.**

The foregoing recitals are hereby incorporated into the body of this Agreement and shall be considered part of the mutual covenants, consideration and promises that bind the parties.

#### **SECTION 2. TERM.**

This Agreement shall be effective as of the Effective Date, as defined herein, and shall continue thereafter until September 30, 2023, unless terminated sooner under the provisions hereof.

#### **SECTION 3. DEFINITIONS.**

The following words shall have the following meanings when used in this Agreement.

- (a) **Act.** The word “Act” means Chapters 501 to 505 of the Texas Local Government Code, as amended.
- (b) **Agreement.** The word “Agreement” means this Performance Agreement, together with all exhibits and schedules attached to this Agreement from time to time, if any.
- (c) **City.** The words “City” means the City of Schertz, Texas, a Texas home-rule municipality, whose address for the purposes of this Agreement is 1400 Schertz Parkway Schertz, Texas 78154.
- (d) **Effective Date.** The words “Effective Date” mean the date of the latter to execute this Agreement by and between the City and the SEDC.
- (e) **Event of Default.** The words “Event of Default” mean and include any of the Events of Default set forth below in the section entitled “Events of Default.”
- (f) **SEDC.** The term “SEDC” means the Schertz Economic Development Corporation, a Texas non-profit corporation, its successors and assigns, whose corporate address for the purposes of this Agreement is 1400 Schertz Parkway Schertz, Texas 78154.
- (g) **Project.** The word “Project” means the design and construction of signalization of the intersection of the Schertz Parkway and Lookout Road.
- (h) **Qualified Expenditures.** The words “Qualified Expenditures” mean those costs associated with the design and engineering of the Project, and which meet the definition of “project” as that term is defined in Section 505.152 of the Act, and meet the definition of “cost” as that term is defined in Section 501.152 of the Act.
- (i) **Term.** The word “Term” means the term of this Agreement as specified in Section 2 of this Agreement.

#### **SECTION 4. AFFIRMATIVE COVENANTS OF THE CITY.**

City covenants and agrees with SEDC that, while this Agreement is in effect, it shall comply with the following terms and conditions:

- (a) **Funding.** The City shall be entitled to funding from SEDC in the amount not to exceed NINETY THOUSAND DOLLARS AND NO CENTS (\$90,000) for Qualified Expenditures. City covenants and agrees to submit to the SEDC invoices, receipts, or other documentation of the Qualified Expenditures in a form acceptable to the SEDC.
- (b) **Public Purpose.** City agrees that the Project contemplated herein represents a public purpose for which the proposed funds are authorized to be used.
- (c) **Performance Conditions.** City agrees to provide, make, execute and deliver to SEDC such other documents and other agreements as SEDC or its attorneys may reasonably request to evidence the use of the funds for the Project.

- (d) **Performance.** City agrees to perform and comply with all terms, conditions, and provisions set forth in this Agreement and in all other instruments and agreements between City and SEDC.

## **SECTION 5. AFFIRMATIVE COVENANTS OF SEDC.**

SEDC covenants and agrees with City that, while this Agreement is in effect, it shall comply with the following terms and conditions:

- (a) **Financial Assistance for Qualified Expenditures.** SEDC covenants and agrees to provide funding in advance or by reimbursement for Qualified Expenditures made by the City pursuant to Section 4(a) of this Agreement, in an amount not to exceed the lesser of NINETY THOUSAND DOLLARS AND NO CENTS (\$90,000) or the aggregate amount of said invoices, receipts, or other documentation submitted by the City to SEDC within thirty (30) days of receipt of said documentation.
- (b) **Performance.** SEDC agrees to perform and comply with all terms, conditions, and provisions set forth in this Agreement and in all other instruments and agreements by and between the City and SEDC.

## **SECTION 6. EVENTS OF DEFAULT.**

Each of the following shall constitute an Event of Default under this Agreement:

- (a) **General Event of Default.** Failure of City or SEDC to comply with or to perform any other term, obligation, covenant or condition contained in this Agreement, or failure of City or SEDC to comply with or to perform any other term, obligation, covenant or condition contained in any other agreement by and between City and SEDC is an Event of Default.
- (b) **False Statements.** Any warranty, representation, or statement made or furnished to SEDC by or on behalf of City under this Agreement that is false or misleading in any material respect, either now or at the time made or furnished is an Event of Default.

## **SECTION 7. EFFECT OF AN EVENT OF DEFAULT.**

In the event of default under Section 6 of this Agreement, the non-defaulting party shall give written notice to the other party of any default, and the defaulting party shall have thirty (30) days to cure said default. Should said default remain uncured as of the last day of the applicable cure period, and the non-defaulting party is not otherwise in default, the non-defaulting party shall have the right to immediately terminate this Agreement. In the event, City defaults and is unable or unwilling to cure said default within the prescribed time period, the amounts provided by the SEDC to City pursuant to Section 5(a) of this Agreement shall become immediately due and payable by City to the SEDC.

## **SECTION 8. MISCELLANEOUS PROVISIONS.**

The following miscellaneous provisions are a part of this Agreement:

- (a) **Amendments.** This Agreement constitutes the entire understanding and agreement of the parties as to the matters set forth in this Agreement. No alteration of or amendment to this Agreement shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.
- (b) **Applicable Law and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Guadalupe County, Texas. Venue for any action arising under this Agreement shall lie in the state district courts of Guadalupe County, Texas.
- (c) **Assignment.** This Agreement may not be assigned without the express written consent of the other party.
- (d) **Binding Obligation.** This Agreement shall become a binding obligation on the signatories upon execution by all signatories hereto. City warrants and represents that the individual or individuals executing this Agreement on behalf of City has full authority to execute this Agreement and bind City to the same. SEDC warrants and represents that the individual executing this Agreement on its behalf has full authority to execute this Agreement and bind it to the same.
- (e) **Caption Headings.** Caption headings in this Agreement are for convenience purposes only and are not to be used to interpret or define the provisions of the Agreement.
- (f) **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall constitute one and the same document.
- (g) **Notices.** All notices required to be given under this Agreement shall be given in writing and shall be effective when actually delivered or when deposited in the United States mail, first class, postage prepaid, addressed to the party to whom the notice is to be given at the address shown in Section 3 of this Agreement. Any party may change its address for notices under this Agreement by giving formal written notice to the other parties, specifying that the purpose of the notice is to change the party's address. For notice purposes, City agrees to keep SEDC informed at all times of City's current address.
- (h) **Severability.** If a court of competent jurisdiction finds any provision of this Agreement to be invalid or unenforceable as to any person or circumstance, such finding shall not render that provision invalid or unenforceable as to any other persons or circumstances. If feasible, any such offending provision shall be deemed to be modified to be within the limits of enforceability or validity; however, if the offending provision cannot be so modified, it shall be stricken and all other provisions of this Agreement in all other respects shall remain valid and enforceable.
- (i) **Time is of the Essence.** Time is of the essence in the performance of this Agreement.

**[The Remainder of this Page Intentionally Left Blank]**

**THE PARTIES ACKNOWLEDGE HAVING READ ALL THE PROVISIONS OF THIS PERFORMANCE AGREEMENT, AND THE PARTIES AGREE TO ITS TERMS. THIS AGREEMENT IS EFFECTIVE AS OF THE EFFECTIVE DATE AS IS PROVIDED HEREIN.**

**CITY:**

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

By: \_\_\_\_\_  
City Manager  
Date Signed: \_\_\_\_\_

**ATTEST:**

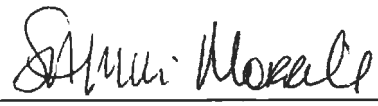
\_\_\_\_\_  
City Secretary

**SEDC:**

**SCHERTZ ECONOMIC DEVELOPMENT CORPORATION,**  
a Texas non-profit corporation

By: \_\_\_\_\_  
SEDC Board President  
Date Signed: 9/22/22

**ATTEST:**

  
SEDC Board Secretary

**CITY COUNCIL MEMORANDUM**

**City Council Meeting:** October 25, 2022  
**Department:** City Secretary  
**Subject:** Resolution No. 22-R-114 - A Resolution by the City Council of the City of Schertz, Texas authorizing a Funding Agreement between the City of Schertz Economic Development Corporation and the City of Schertz Texas for Redevelopment of Lookout Road. (M. Browne/A. Perez)

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**BACKGROUND**

The Schertz Economic Development Corporation (SEDC) and the City of Schertz partner on infrastructure projects that fall within the Mission and authority provided to the SEDC under Texas Local Government Code 501.103. The redevelopment of Tri County Parkway is a recent example of a project that enhances the competitiveness of the Schertz industrial park and helps to secure, retain, and expand commercial and industrial investment within our community.

City Council Resolution 22-R-114 funds the next phase of continued investment in the competitiveness of the Schertz industrial park.

This action funds the design of the redevelopment of Lookout Rd and upsizing of wastewater facilities from approximately Tri County Parkway (just past Doerr Lane) to the intersection of Schertz Parkway. The attached funding agreement outlines the partnership with the City of Schertz. The SEDC will provide funding for design of the redevelopment of Lookout Rd. The SEDC will consider a final funding agreement for this project once project bids have been received in accordance with the SEDC/City of Schertz MOU (Resolution No. 22-R-112).

**GOAL**

Authorizes funding from the approved FY 2022-2023 SEDC Annual Budget for the design of redevelopment of Lookout Road and upsizing of wastewater facilities from approximately the intersection of Tri County Parkway to the intersection of Schertz Parkway. This action approves up to \$770,000 for the design of this project. The SEDC will consider a final funding agreement for this project once full design and estimated costs, or bid costs are available depending on which is most efficient with respect to the timely completion of the project.

**COMMUNITY BENEFIT**

The majority of City of Schertz general fund revenue is supported by industrial and commercial investment in the community. This action supports the design of the redevelopment of Lookout Road, from approximately Tri County Parkway to Schertz Parkway. This redevelopment helps to demonstrate the provision of infrastructure enhancements within the industrial park in an increasingly competitive commercial development market.

**SUMMARY OF RECOMMENDED ACTION**

City Council Resolution 22-R-114 recommends Schertz City Council allocate an amount not to exceed \$770,000 for the design of the redevelopment Lookout Rd and upsizing of wastewater facilities from approximately Tri County Parkway to the intersection of Schertz Parkway.

**FISCAL IMPACT**

This funding agreement will provide an amount not to exceed \$770,000 for design costs associated with the redevelopment of Lookout Road allocated from the SEDC FY 2022-2023 Adopted Annual Budget.

**RECOMMENDATION**

Staff recommends approval of City Council Resolution 22-R-114.

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**Attachments**

CC Resolution 22-R-114

SEDC Resolution No. 2022-7

Funding Agreement Lookout RD

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## **RESOLUTION NO. 22-R-114**

### **A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF SCHERTZ, TEXAS AUTHORIZING A FUNDING AGREEMENT BETWEEN THE CITY OF SCHERTZ ECONOMIC DEVELOPMENT CORPORATION AND THE CITY OF SCHERTZ TEXAS FOR REDEVELOPMENT OF LOOKOUT ROAD; AND OTHER MATTERS IN CONNECTION THEREWITH**

WHEREAS, the Development Corporation Act of 1979, as amended (Section 501.001 et seq, Texas Local Government Code, formerly the Development Corporation Act of 1979) (the "Act") authorizes a development corporation to fund certain projects as defined by the Act and requires development corporation to enter into performance agreements to establish and provide for the direct incentive or make an expenditure on behalf of a business enterprise under a project; and

WHEREAS, Section 501.103 authorizes expenditures for certain infrastructure improvement projects that are found by the board of directors to be required or suitable for infrastructure necessary to promote or develop new or expanded business enterprises; and

WHEREAS, Section 501.159 of the Act requires that a corporation hold at least one public hearing on the proposed project before spending money to undertake the project; and

WHEREAS, the SEDC and City have entered into a Memorandum of Understanding for Infrastructure Funding when such infrastructure meets the statutory eligibility requirements for funding by the SEDC; and

WHEREAS, the contemplated infrastructure improvements are hereby found to meet any statutory eligibility requirements for funding by the SEDC; and

WHEREAS, the SEDC Board of Directors approved SEDC Resolution 2022-7 which, subject to the authorization of funds by the City of Schertz City Council, approved the Funding Agreement attached hereto as Exhibit A between the SEDC, and the City at the SEDC's Board of Directors meeting on September 29, 2022; and

WHEREAS, Section 501.073 of the Act requires that the corporation's authorizing unit to approve all programs and expenditures of a corporation; and

WHEREAS, the SEDC has recommended that the City authorize the program and expenditures associated therewith; and

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

Section 1. The City Council hereby authorizes the program and expenditures as provided for in the Funding Agreement between the SEDC and City as set forth in Exhibit A.

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

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

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

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

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

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

PASSED AND ADOPTED, this \_\_\_\_ day of \_\_\_\_\_, 2022.

CITY OF SCHERTZ, TEXAS

\_\_\_\_\_  
Ralph Gutierrez, Mayor

ATTEST:

\_\_\_\_\_  
Brenda Dennis, City Secretary

(CITY SEAL)

## **EXHIBIT A**

**SEDC RESOLUTION NO. 2022-7**

**A RESOLUTION BY THE CITY OF SCHERTZ ECONOMIC DEVELOPMENT CORPORATION, TEXAS AUTHORIZING A FUNDING AGREEMENT BETWEEN THE CITY OF SCHERTZ ECONOMIC DEVELOPMENT CORPORATION AND THE CITY OF SCHERTZ TEXAS FOR REDEVELOPMENT OF LOOKOUT ROAD; AND OTHER MATTERS IN CONNECTION THEREWITH**

WHEREAS, the City of Schertz Economic Development Corporation (“SEDC”) is a non-profit industrial development corporation duly established under the Development Corporation Act of 1979, as amended (Section 501.001 et seq. Texas Local Government Code, formerly the Development Corporation Act of 1979) (the “Act”);

WHEREAS, all of the powers of the corporation are vested in the SEDC Board of Directors (the “Board”) appointed by the governing body of the corporation’s authorizing unit; and

WHEREAS, the Act authorizes a development corporation to fund certain projects as defined by the Act and request development corporations to enter into performance agreements to establish and provide for the direct incentive or make an expenditure on behalf of a business enterprise under a project; and

WHEREAS, Section 501.101 authorizes expenditures for land, buildings, equipment, facilities, expenditures, targeted infrastructure and improvements that are for the creation or retention of primary jobs and found by the board of directors to be required or suitable for the development, retention, or expansion of manufacturing and industrial facilities; and

WHEREAS, the SEDC and City have entered into a Memorandum of Understanding for Infrastructure Funding when such infrastructure meets the statutory eligibility requirements for funding by the SEDC; and

WHEREAS, the contemplated infrastructure improvements are hereby found to meet any statutory eligibility requirements for funding by the SEDC; and

WHEREAS, Section 505.159 of the Act requires that a corporation hold at least one public hearing on the proposed project before spending money to undertake the project; and

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE CITY OF SCHERTZ ECONOMIC DEVELOPMENT CORPORATION THAT:

Section 1. The Board hereby recommends the approval of the Funding Agreement between the SEDC and City and requests authorization by the City of Schertz City Council for the expenditures associated with the Funding Agreement attached hereto as Exhibit A.

Section 2. Subject to the authorization of funds by the City of Schertz City Council, the Board hereby authorizes the President to execute the Memorandum of Understanding.

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 Board.

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 board 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 29th day of September, 2022.

CITY OF SCHERTZ ECONOMIC  
DEVELOPMENT CORPORATION

  
\_\_\_\_\_  
Paul Macaluso, SEDC Board President

ATTEST:

  
\_\_\_\_\_  
Sammi Morrill, SEDC Board Secretary

This **FUNDING AGREEMENT** by and between the **SCHERTZ ECONOMIC DEVELOPMENT CORPORATION**, a Texas non-profit corporation (hereinafter referred to as the “SEDC”), and the **CITY OF SCHERTZ, TEXAS**, a Texas home-rule municipality (hereinafter referred to as the “City”), is made and executed on the following recitals, terms and conditions.

**WHEREAS**, the SEDC is a Type B economic development corporation, created pursuant to Chapter 505 of the Texas Local Government Code, as amended; and

**WHEREAS**, Section 501.103 authorizes expenditures that are found by the board of directors to be required or suitable for infrastructure necessary to promote or develop new or expanded business enterprises, such as streets and roads, rail spurs, water and sewer utilities, electric utilities, or gas utilities, drainage, site improvements, and related improvements; and

**WHEREAS**, the SEDC and City of Schertz are partnering to fund the redevelopment of Lookout Road and upsizing of wastewater facilities from Tri County Parkway to Schertz Parkway (hereinafter referred to as the “Project”); and

**WHEREAS**, the SEDC’s Board of Directors have determined the financial assistance provided to City is consistent and meets the definition of “project” as that term is defined in Section 501.103 of the Texas Local Government Code; and the definition of “cost” as that term is defined by Section 501.152 of the Texas Local Government Code; and

**WHEREAS**, City agrees and understands that Section 501.073(a) of the Texas Local Government Code requires the City Council of the City of Schertz, Texas, to approve all programs and expenditures of the SEDC, and accordingly this Agreement is not effective until City Council has approved this project at a City Council meeting called and held for that purpose.

**NOW, THEREFORE**, for and in consideration of the agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the SEDC and City agree as follows:

#### **SECTION 1. FINDINGS INCORPORATED.**

The foregoing recitals are hereby incorporated into the body of this Agreement and shall be considered part of the mutual covenants, consideration and promises that bind the parties.

#### **SECTION 2. TERM.**

This Agreement shall be effective as of the Effective Date, as defined herein, and shall continue thereafter until September 30, 2022 unless terminated sooner under the provisions hereof.

#### **SECTION 3. DEFINITIONS.**

The following words shall have the following meanings when used in this Agreement.

- (a) **Act.** The word “Act” means Chapters 501 to 505 of the Texas Local Government Code, as amended.
- (b) **Agreement.** The word “Agreement” means this Performance Agreement, together with all exhibits and schedules attached to this Agreement from time to time, if any.
- (c) **City.** The words “City” means the City of Schertz, Texas, a Texas home-rule municipality, whose address for the purposes of this Agreement is 1400 Schertz Parkway Schertz, Texas 78154.
- (d) **Effective Date.** The words “Effective Date” mean the date of the latter to execute this Agreement by and between the City and the SEDC.
- (e) **Event of Default.** The words “Event of Default” mean and include any of the Events of Default set forth below in the section entitled “Events of Default.”
- (f) **SEDC.** The term “SEDC” means the Schertz Economic Development Corporation, a Texas non-profit corporation, its successors and assigns, whose corporate address for the purposes of this Agreement is 1400 Schertz Parkway Schertz, Texas 78154.
- (g) **Project.** The word “Project” means the design and construction of the redevelopment of Lookout Road and upsizing of wastewater facilities from Tri County Parkway to Schertz Parkway.
- (h) **Qualified Expenditures.** The words “Qualified Expenditures” mean those costs associated with the design and engineering of the Project, and which meet the definition of “project” as that term is defined in Section 505.152 of the Act, and meet the definition of “cost” as that term is defined in Section 501.152 of the Act.
- (i) **Term.** The word “Term” means the term of this Agreement as specified in Section 2 of this Agreement.

#### **SECTION 4. AFFIRMATIVE COVENANTS OF THE CITY.**

City covenants and agrees with SEDC that, while this Agreement is in effect, it shall comply with the following terms and conditions:

- (a) **Funding.** The City shall be entitled to funding from SEDC in the amount not to exceed SEVEN HUNDRED AND SEVENTY THOUSAND DOLLARS AND NO CENTS (\$770,000) for Qualified Expenditures. City covenants and agrees to submit to the SEDC invoices, receipts, or other documentation of the Qualified Expenditures in a form acceptable to the SEDC.

- (b) **Public Purpose.** City agrees that the Project contemplated herein represents a public purpose for which the proposed funds are authorized to be used.
- (c) **Performance Conditions.** City agrees to provide, make, execute and deliver to SEDC such other documents and other agreements as SEDC or its attorneys may reasonably request to evidence the use of the funds for the Project.
- (d) **Performance.** City agrees to perform and comply with all terms, conditions, and provisions set forth in this Agreement and in all other instruments and agreements between City and SEDC.

## **SECTION 5. AFFIRMATIVE COVENANTS OF SEDC.**

SEDC covenants and agrees with City that, while this Agreement is in effect, it shall comply with the following terms and conditions:

- (a) **Financial Assistance for Qualified Expenditures.** SEDC covenants and agrees to provide funding in advance or by reimbursement for Qualified Expenditures made by the City pursuant to Section 4(a) of this Agreement, in an amount not to exceed the lesser of SEVEN HUNDRED AND SEVENTY THOUSAND DOLLARS AND NO CENTS (\$770,000) or the aggregate amount of said invoices, receipts, or other documentation submitted by the City to SEDC within thirty (30) days of receipt of said documentation.
- (b) **Performance.** SEDC agrees to perform and comply with all terms, conditions, and provisions set forth in this Agreement and in all other instruments and agreements by and between the City and SEDC.

## **SECTION 6. EVENTS OF DEFAULT.**

Each of the following shall constitute an Event of Default under this Agreement:

- (a) **General Event of Default.** Failure of City or SEDC to comply with or to perform any other term, obligation, covenant or condition contained in this Agreement, or failure of City or SEDC to comply with or to perform any other term, obligation, covenant or condition contained in any other agreement by and between City and SEDC is an Event of Default.
- (b) **False Statements.** Any warranty, representation, or statement made or furnished to SEDC by or on behalf of City under this Agreement that is false or misleading in any material respect, either now or at the time made or furnished is an Event of Default.

## **SECTION 7. EFFECT OF AN EVENT OF DEFAULT.**

In the event of default under Section 6 of this Agreement, the non-defaulting party shall give written notice to the other party of any default, and the defaulting party shall have thirty (30) days to cure said default. Should said default remain uncured as of the last day of the applicable cure period, and the non-defaulting party is not otherwise in default, the non-

defaulting party shall have the right to immediately terminate this Agreement. In the event, City defaults and is unable or unwilling to cure said default within the prescribed time period, the amounts provided by the SEDC to City pursuant to Section 5(a) of this Agreement shall become immediately due and payable by City to the SEDC.

## **SECTION 8. MISCELLANEOUS PROVISIONS.**

The following miscellaneous provisions are a part of this Agreement:

- (a) **Amendments.** This Agreement constitutes the entire understanding and agreement of the parties as to the matters set forth in this Agreement. No alteration of or amendment to this Agreement shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.
- (b) **Applicable Law and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Guadalupe County, Texas. Venue for any action arising under this Agreement shall lie in the state district courts of Guadalupe County, Texas.
- (c) **Assignment.** This Agreement may not be assigned without the express written consent of the other party.
- (d) **Binding Obligation.** This Agreement shall become a binding obligation on the signatories upon execution by all signatories hereto. City warrants and represents that the individual or individuals executing this Agreement on behalf of City has full authority to execute this Agreement and bind City to the same. SEDC warrants and represents that the individual executing this Agreement on its behalf has full authority to execute this Agreement and bind it to the same.
- (e) **Caption Headings.** Caption headings in this Agreement are for convenience purposes only and are not to be used to interpret or define the provisions of the Agreement.
- (f) **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall constitute one and the same document.
- (g) **Notices.** All notices required to be given under this Agreement shall be given in writing and shall be effective when actually delivered or when deposited in the United States mail, first class, postage prepaid, addressed to the party to whom the notice is to be given at the address shown in Section 3 of this Agreement. Any party may change its address for notices under this Agreement by giving formal written notice to the other parties, specifying that the purpose of the notice is to change the party's address. For notice purposes, City agrees to keep SEDC informed at all times of City's current address.
- (h) **Severability.** If a court of competent jurisdiction finds any provision of this Agreement to be invalid or unenforceable as to any person or circumstance, such finding shall not render

that provision invalid or unenforceable as to any other persons or circumstances. If feasible, any such offending provision shall be deemed to be modified to be within the limits of enforceability or validity; however, if the offending provision cannot be so modified, it shall be stricken and all other provisions of this Agreement in all other respects shall remain valid and enforceable.

- (i) **Time is of the Essence.** Time is of the essence in the performance of this Agreement.

**[The Remainder of this Page Intentionally Left Blank]**

**THE PARTIES ACKNOWLEDGE HAVING READ ALL THE PROVISIONS OF THIS PERFORMANCE AGREEMENT, AND THE PARTIES AGREE TO ITS TERMS. THIS AGREEMENT IS EFFECTIVE AS OF THE EFFECTIVE DATE AS IS PROVIDED HEREIN.**

**CITY:**

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

By: \_\_\_\_\_  
City Manager  
Date Signed: \_\_\_\_\_

**ATTEST:**

\_\_\_\_\_  
City Secretary

**SEDC:**

**SCHERTZ ECONOMIC DEVELOPMENT  
CORPORATION,**  
a Texas non-profit corporation

By: \_\_\_\_\_  
SEDC Board President  
Date Signed: 9/29/22

**ATTEST:**

Sammi Marshall  
SEDC Board Secretary

**CITY COUNCIL MEMORANDUM**

**City Council Meeting:** October 25, 2022  
**Department:** City Secretary  
**Subject:** Resolution No. 22-R-116 - A Resolution by The City of Schertz City Council authorizing an Interlocal Agreement between the City of Schertz, Texas and the City of Selma, Texas Regarding Funding of Design and Construction of Signalization of the Intersection of Lookout Rd. and Schertz Parkway. (M. Browne / A. Perez)

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**BACKGROUND**

Resolution 22-R-116 authorizes an Interlocal Agreement with the City of Selma for the design and construction of signalization at the intersection of Schertz Parkway and Lookout Road.

The City of Schertz is designating the SEDC as its fiscal agent for the performance-related elements of this Interlocal Agreement. The SEDC is not a governmental entity and cannot be a direct party to an interlocal agreement and is acting only as fiscal agent to fund the project and to receive the City of Selma's contribution at the conclusion of the project.

The funding process for this project will include SEDC provision of Project funding, the City of Schertz leading design and cost estimates for the Project to secure approval for cost share from the City of Selma for estimated costs, Project management to completion by Schertz and submission of total Project costs to the City of Selma, and payment of 1/3 of the documented Project cost from Selma to the SEDC. Should the City of Selma decide to terminate the ILA before the project has been released for bid by the City of Schertz the City of Selma has agreed to cover 1/3 of the design cost.

**GOAL**

Increase traffic safety through design and construction of the signalization at the intersection of Schertz Parkway and Lookout Road, and to accelerate the development of such while reducing financial impact to the City of Schertz through a 1/3 cost share partnership with the City of Selma.

**COMMUNITY BENEFIT**

Increase traffic safety through design and construction of the signalization at the intersection of Schertz Parkway and Lookout Road, and to accelerate the development of such while reducing financial impact to the City of Schertz through a 1/3 cost share partnership with the City of Selma.

**SUMMARY OF RECOMMENDED ACTION**

This action authorizes an Interlocal Agreement with the City of Selma for the design and construction of signalization at the intersection of Schertz Parkway and Lookout Road. The ILA secures 1/3 of documented Project costs from the City of Selma. This action also supports allocation of funding from the SEDC through the associated funding agreement and in accordance with the associated MOU with the SEDC governing projects allowed under Texas Local Government Code Section 501.103.

**FISCAL IMPACT**

There is no impact to the City of Schertz General Fund. Up to \$90,000 has been allocated through in the Schertz Economic Development Corporation (SEDC) FY 2022-2023 Adopted Annual Budget in support of this Interlocal Agreement through Resolution 22-R-113 (SEDC Funding Agreement-Signalization). This amount is allocated for design of the project and full project costs will be allocated at the completion of Project design or bid.

**RECOMMENDATION**

Staff recommends approval of City Council Resolution No. 22-R-116.

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**Attachments**

CC Res 22-R-116\_Selma ILA

Selma ILA

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## **RESOLUTION NO. 22-R-116**

### **A RESOLUTION BY THE CITY OF SCHERTZ CITY COUNCIL AUTHORIZING AN INTERLOCAL AGREEMENT BETWEEN THE CITY OF SCHERTZ, TEXAS AND THE CITY OF SELMA, TEXAS REGARDING FUNDING OF DESIGN AND CONSTRUCTION OF SIGNALIZATION OF THE INTERSECTION OF LOOKOUT RD. AND SCHERTZ PARKWAY; AND OTHER MATTERS IN CONNECTION THEREWITH**

**WHEREAS**, Chapter 791 of the Texas Government Code, as amended, titled Interlocal Cooperation Contracts, authorizes contracts between political subdivisions for the performance of governmental functions and services; and,

**WHEREAS**, the cities of Schertz and Selma have identified the intersection of Lookout Road and Schertz Parkway as an opportunity to share in the funding of design and construction costs associated with signalization of the intersection; and,

**WHEREAS**, such signalization would represent a traffic safety improvement that would be beneficial to both cities, as well as an improvement beneficial to existing and future business enterprise within the sector; and,

**WHEREAS**, Schertz has created the Schertz Economic Development Corporation, a Texas non-profit economic development corporation pursuant to Chapters 501, 502 and 505 of the Texas Local Government Code (“SEDC”); and,

**WHEREAS**, SEDC has allocated funding for redevelopment of Lookout Rd. in the FY 2023 Budget adopted by City Council on September 13, 2022: and,

**WHEREAS**, the City of Schertz, the City of Selma and the SEDC wish to expedite the design and construction of the signalization of the intersection of Schertz Parkway and Lookout Road to facilitate the safe and orderly flow of traffic through the (“Project”); and,

**WHEREAS**, Selma has requested Schertz act as the entity responsible for the design and construction of the Project.

**WHEREAS**, Schertz has worked with the SEDC to budget from the SEDC Reserve Fund additional dollars to the Lookout Rd. reconstruction project slated for FY2023; and,

**WHEREAS**, Selma seeks to expedite the development of signalization through sharing of up to one-third (1/3) of the cost of the Project.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE OF  
THE CITY OF SCHERTZ TEXAS:**

Section 1. The City Council hereby approves the Interlocal Agreement between the City of Schertz, Texas and the City of Selma, Texas for the funding of design and construction costs associated with signalization of the intersection of Lookout Road and Schertz Parkway attached hereto as Exhibit A.

Section 2. The City Council hereby authorizes the City Manager to execute the Interlocal Agreement.

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 \_\_\_\_\_ day of \_\_\_\_\_, 2022.

CITY OF SCHERTZ

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Ralph Gutierrez, Mayor

ATTEST:

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Brenda Dennis, City Secretary

**INTERLOCAL COOPERATION AGREEMENT BETWEEN THE SCHERTZ  
ECONOMIC DEVELOPMENT CORPORATION, AND CITIES OF SCHERTZ AND  
SELMA, TEXAS, REGARDING FUNDING OF DESIGN AND CONSTRUCTION OF  
SIGNALIZATION OF THE INTERSECTION OF LOOKOUT RD. AND SCHERTZ  
PARKWAY**

This Interlocal Agreement regarding the shared costs of design and construction of signalization of the intersection of Lookout Rd and Schertz Parkway (the “Agreement”), is entered into between the **Schertz Economic Development Corporation (“SEDC”)** a Texas non-profit development corporation, and the **Cities of Schertz (“Schertz”)** and **Selma (“Selma”), Texas**, each a Texas municipal corporation acting by and through its respective City Council, pursuant to authority granted under the Interlocal Cooperation Act, Chapter 791, Texas Government Code, as the same may be amended from time to time, to be effective as of the date on which the last Party signs this Agreement (the “Effective Date”). The SEDC and Cities are collectively referred to herein as the “Parties” and are each a “Party”.

**WITNESSETH:**

**WHEREAS**, Chapter 791 of the Texas Government Code, as amended, titled Interlocal Cooperation Contracts, authorizes contracts between political subdivisions for the performance of governmental functions and services; and,

**WHEREAS**, Schertz has created the Schertz Economic Development Corporation, a Texas non-profit economic development corporation pursuant to Chapters 501, 502 and 505 of the Texas Local Government Code (“SEDC”); and,

**WHEREAS**, SEDC has allocated funding for redevelopment of Lookout Rd. in the FY 2023 Budget adopted by City Council on September 13, 2022: and,

**WHEREAS**, the City of Schertz, the City of Selma and the SEDC wish to expedite the design and construction of the signalization of the intersection of Schertz Parkway and Lookout Road to facilitate the safe and orderly flow of traffic through the (“Project”); and,

**WHEREAS**, Selma has requested Schertz act as the entity responsible for the design and construction of the Project.

**WHEREAS**, Schertz has worked with the SEDC to budget from the SEDC Reserve Fund additional dollars to the Lookout Rd. reconstruction project slated for FY2023; and,

**WHEREAS**, Selma seeks to expedite the development of signalization through sharing of up to one-third (1/3) of the cost of the Project; and,

**NOW THEREFORE**, in consideration of the mutual covenants and agreements herein contained, the sufficiency of which are acknowledged, and subject to the terms and conditions hereinafter set forth, the Parties agree as follows:

## **I. Purpose and Scope**

1.1 To ensure adequate traffic flow to protect the health, safety, and welfare of the citizens of the Parties, new traffic signalization is believed to be necessary at the approximate boundary between the City of Schertz and the City of Selma at the intersection of the Lookout Rd. and Schertz Parkway.

1.2 The process will include SEDC provision of Project funding, Schertz leading design and cost estimates for the Project to secure approval for cost share from the City of Selma for estimated costs, Project management to completion by Schertz and submission of total Project costs to the City of Selma, and payment of 1/3 of documented Project total cost from Selma to the SEDC.

1.3 The City of Schertz is designating the SEDC as its fiscal agent for the performance related elements of this Interlocal Agreement, and it is understood by the Parties that the SEDC is not a governmental entity and cannot be a direct party to an interlocal agreement.

## **II. Term of the Agreement**

2.1 The term of this Agreement shall begin upon approval by the governing bodies of the Parties and full execution by the designated officials.

2.2 This Agreement shall terminate when the Project is completed, and 1/3 of all documented Project costs reimbursed to the SEDC by the City of Selma, or 18 months, whichever is sooner. This Agreement may be extended if additional time is necessary to complete the Project and as agreed upon by the Parties.

2.3 Any Party may terminate this Agreement upon thirty (30) days written notice to the other Parties. Notice must be received no less than 30 days before the release of the formal solicitation for the Project construction. If Selma terminates this Agreement all documented Project design costs accrued on the date of communication to the other Parties shall be submitted to Selma and will be due from Selma to the SEDC. If Schertz or SEDC terminate the agreement the SEDC will allocate funding to reimburse Schertz for any design costs accrued on the date of communication to the other Parties.

## **III. Responsibilities of Schertz**

3.1 Act as the entity responsible for all aspects of project management, including contracting for the design and construction of signalization as well as vendor management and payment through Project completion.

3.2 Act as the recipient of SEDC funding for costs associated with construction through the adoption of an MOU and funding agreement with the SEDC.

3.3 Provide design and preliminary Project cost estimates for review by SEDC and Selma.

3.4 Upon receipt of responsive bids, provide update to Selma and SEDC on Project Bid Costs.

- 3.5 Provide to the City of Selma evidence of paid invoices for all documented Project costs for which 1/3 will be due by Selma to the SEDC.
- 3.6 Upon request, provide SEDC and/or Selma Project updates via email.

#### **V. Responsibilities of the SEDC**

- 4.1 Coordinate consideration of funding agreement and authorization of project funds through the SEDC Board of Directors and the City of Schertz.
- 4.2 Accept reimbursement from the City of Selma.

#### **IV. Responsibilities of Selma**

- 5.1 Provide approval of initial Project design and preliminary Project cost based on design of project through written communication from Selma City Administrator.
- 5.2 If the approval per 5.1 is not given, provide the City of Schertz notice of termination of the project and reimburse the SEDC for 1/3 of all documented Project cost associated with design with of the project.
- 5.3 Upon Project completion and submission of a request for payment from SEDC, reimburse the SEDC for 1/3 of total documented Project costs within 90 calendar days.

#### **VI. Binding Effect; Benefiting Parties**

- 6.1 This Agreement shall bind and benefit the respective Parties and their legal successors, but shall not otherwise be assignable, in whole or in part, by any Party without first obtaining the written consent of the other Parties.
- 6.2 This Agreement inures to the benefit of and obligates only the Parties. No term or provision of this Agreement shall benefit or obligate any person or entity not a Party to the Agreement. The Parties shall cooperate fully in opposing any attempt by any third person or entity to claim any benefit, protection, release, or other consideration under this Agreement.

#### **VII. Governmental Functions; Liability; No Waiver of Immunity or Defenses**

- 7.1 Notwithstanding any provision to the contrary herein, this Agreement is a contract for and with respect to the performance of governmental functions by governmental entities.
- 7.1.1 The services provided for herein are governmental functions, and the Cities shall be engaged in the conduct of a governmental function while providing and/or performing any service pursuant to this Agreement.

7.1.2 The relationship of the Cities shall, with respect to that part of any service or function undertaken as a result of or pursuant to this Agreement, be that of independent contractors.

7.1.3 Nothing contained herein shall be deemed or construed by the Parties, or by any third party, as creating the relationship of principal and agent, partners, joint ventures, or any other similar such relationship between the Parties.

7.2 Each Party reserves and does not waive any defense available to it at law or in equity as to any claim or cause of action whatsoever that may arise or result from or in connection with this Agreement. This Agreement shall not be interpreted nor construed to give to any third party the right to any claim or cause of action, and no Party shall be held legally liable for any claim or cause of action arising pursuant to or in connection with this Agreement except as specifically provided herein or by law.

7.3 No Party waives or relinquishes any immunity or defense on behalf of itself, its Councilmembers, officers, employees, and agents as a result of the execution of this Agreement and the performance of the covenants and agreements contained herein.

7.4 Any party paying for the performance of governmental functions or services will make those payments from current revenues available to the paying party.

## **VIII. Notices**

8.1 All correspondence and communications concerning this Agreement shall be directed to:

SCHERTZ:                      City of Schertz  
                                     1400 Schertz Parkway  
                                     Schertz, Texas 78154  
                                     Attention: City Manager

Schertz EDC:                City of Schertz  
                                     1400 Schertz Parkway  
                                     Schertz, Texas 78154  
                                     Attention: SEDC Executive Director

With a copy to:             Denton, Navarro, Rocha, Bernal, & Zech, P.C.  
                                     2517 N. Main Avenue  
                                     San Antonio, Texas 78212  
                                     Attention: Daniel Santee

SELMA: City of Selma  
9375 Corporate Drive  
Selma, Texas 78154  
Attention: City Administrator Johnny Casias

With a copy to: Langley & Banack, Inc.  
745 E. Mulberry Ave, Ste 700  
San Antonio, Texas 78212  
Attention: Marc J. Schnall

Notices required hereunder shall be hand-delivered or sent by prepaid certified mail, return receipt requested.

### **IX. Severability**

9.1 If any provision of this Agreement shall be deemed void or invalid, such provision shall be severed from the remainder of this Agreement, which shall remain in force and effect to the extent that it does not destroy the benefit of the bargain.

### **X. Entire Agreement**

10.1 This Agreement is the entire agreement between the Parties as to the subject matter hereof and supersedes any prior understanding or written or oral agreement relative to the subject matter hereof. This Agreement may be amended only by written instrument duly approved and executed by both Parties in accordance with the formalities of this Agreement. Any funds necessary for the completion of this Agreement have been or will be allocated in a manner authorized by law and in compliance with municipal budgeting principles.

### **XI. Governing Law; Venue**

11.1 All Parties agree that this Agreement shall be construed under the laws of the State of Texas, and obligations under the Agreement shall be performed in Comal County, Texas. In the event that any legal proceeding is brought to enforce this Agreement or any provision hereof, the same shall be brought in the State Courts of Comal County, Texas. The Parties agree to submit to the jurisdiction of said court.

*[ Signatures and acknowledgements on the following pages ]*

**SIGNATURE PAGE TO  
INTERLOCAL COOPERATION AGREEMENT BETWEEN THE SCHERTZ  
ECONOMIC DEVELOPMENT CORPORATION, AND CITIES OF SCHERTZ AND  
SELMA, TEXAS, REGARDING FUNDING OF DESIGN AND CONSTRUCTION OF  
SIGNALIZATION OF THE INTERSECTION OF LOOKOUT RD. AND SCHERTZ  
PARKWAY**

The Parties hereto have executed this Agreement as of the dates set forth below to be effective as of the Effective Date.

**CITY OF SCHERTZ, TEXAS**

By: \_\_\_\_\_  
Dr. Mark Browne,  
City Manager

THE STATE OF TEXAS           §  
  §  
COUNTY OF GUADALUPE       §

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2022, by Dr. Mark Browne, the City Manager of the City of Schertz, Texas, a Texas municipal corporation, on behalf of said City.

[ Seal ]

\_\_\_\_\_  
Notary Public in and for the State of Texas

**SIGNATURE PAGE TO  
INTERLOCAL COOPERATION AGREEMENT BETWEEN THE SCHERTZ  
ECONOMIC DEVELOPMENT CORPORATION, AND CITIES OF SCHERTZ AND  
SELMA, TEXAS, REGARDING FUNDING OF DESIGN AND CONSTRUCTION OF  
SIGNALIZATION OF THE INTERSECTION OF LOOKOUT RD. AND SCHERTZ  
PARKWAY**

**SCHERTZ ECONOMIC DEVELOPMENT CORPORATION**

By: \_\_\_\_\_  
Paul Macaluso,  
Chair  
SEDC Board of Directors

THE STATE OF TEXAS           §  
  §  
COUNTY OF GUADALUPE       §

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_,  
2022.

**SIGNATURE PAGE TO  
INTERLOCAL COOPERATION AGREEMENT BETWEEN THE CITIES OF  
SCHERTZ, SELMA AND GARDEN RIDGE, TEXAS REGARDING THE CLOSURE  
AND OPENING OF PUBLIC RAILROAD CROSSINGS**

**CITY OF SELMA**

By: \_\_\_\_\_  
Johnny Casias,  
City Administrator

THE STATE OF TEXAS           §  
  §  
COUNTY OF BEXAR           §

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2022, by Johnny Casias, City Administrator of Selma, a political subdivision of the State of Texas, on behalf of said entity.

[ Seal ]

\_\_\_\_\_  
Notary Public in and for the State of Texas

**CITY COUNCIL MEMORANDUM**

**City Council Meeting:** October 25, 2022  
**Department:** Facility & Fleet  
**Subject:** Resolution No. 22-R-117 - Consideration and/or action approving a Resolution by the City Council of the City of Schertz, Texas, authorizing expenditures associated with the FY 22-23 Vehicle/Equipment Replacement Program and other matters in connection therewith. (B. James/S. McClelland/C. Hernandez)

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**BACKGROUND**

Within each fiscal budget year, the Fleet Department request to purchase vehicles/equipment to add to or replace aging vehicles to maintain a reliable working fleet of City owned vehicles/equipment for the 2022-2023 budget year and in accordance with the Vehicle/Equipment Acquisition/Replacement Plan previously approved by Council. The following vehicles/equipment listed were not included in the previous Resolution 22-R-100 that was approved by Council on September 14, 2022, due to Fleet not receiving the quotes needed as well as the strict timeline that needed to followed in order for the City to purchase the vehicles/equipment. The City's 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 quotes to ensure the best overall value for the City.

**GOAL**

To authorize the City Manager to execute the purchase orders for the purchases of the vehicles/equipment listed in Exhibit A as part of the Vehicle/Equipment Replacement Program.

**COMMUNITY BENEFIT**

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.

**SUMMARY OF RECOMMENDED ACTION**

Approval of this resolution will allow the purchase of the vehicles/equipment listed in Exhibit A as part of the Vehicle/Equipment Replacement Program.

**FISCAL IMPACT**

The purchase of the vehicles/equipment listed in Exhibit A will be funded through the City's general fund and emergency services fund. The fiscal impact of this project will be approximately four hundred sixty-seven thousand dollars (\$464,000.00).

**RECOMMENDATION**

Staff recommends approval of 22-R-117.



## **RESOLUTION NO. 22-R-117**

### **A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF SCHERTZ, TEXAS AUTHORIZING EXPENDITURES ASSOCIATED WITH THE FY22-23 VEHICLE/EQUIPMENT REPLACEMENT PROGRAM AND OTHER MATTERS IN CONNECTION THEREWITH**

WHEREAS, Schertz Fleet Department has an established Vehicle/Equipment Replacement Program; and

WHEREAS the first set of purchases in the 22-23 program were approved on Resolution 22-R-100 and

WHEREAS there remains a need to purchase Two (2) Ford Rangers, One (1) Ambulance, and One (1) Skid Steer with Mulch Head as part of the 22-23 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, for the purchase the vehicles as further detailed in Exhibit A; 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 of up to: \$62,000.00 with Silsbee Ford, \$262,000.00 with Southwest Ambulance Sales and \$140,000.00 with Tellus Equipment Solutions for a total amount not to exceed FOUR-HUNDRED SIXTY-FOUR THOUSAND DOLLARS (\$464,000.00) 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 October 25, 2022

CITY OF SCHERTZ, TEXAS

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Ralph Gutierrez, Mayor

ATTEST:

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Sheila Edmonson, Deputy City Secretary

(CITY SEAL)

# EXHIBIT A

## SUPPORTING DOCUMENTATION

SILSBEE FORD			CO-OP	TELLUS EQUIPMENT				CO-OP
FORD RANGER		\$31,000.00	GoodBuy	SKID STEER W/MULCH HEAD		\$140,000.00		Sourcewell
FORD RANGER		\$31,000.00	GoodBuy					
TOTAL		\$62,000.00		TOTAL		\$140,000.00		
SOUTHWEST AMBULANCE SALES			CO-OP					
NEW AMBULANCE		\$262,000.00	HGAC					
TOTAL		\$262,000.00						
TOTAL EXPENDITURES		\$464,000.00						

**CITY COUNCIL MEMORANDUM**

**City Council Meeting:** October 25, 2022  
**Department:** Public Works  
**Subject:** Resolution No. 22-R-125- Consideration and/or action approving a Resolution authorizing the City of Schertz to enter into Service Agreements with C3 Environmental and AR6 General Contracting for on-call concrete repair, replacement, and related matters. (B. James/S.McClelland/D. Letbetter)

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**BACKGROUND**

The City of Schertz requested bids for a concrete contractor and pricing for items, such as sidewalks, curbs, rip rap, etc. The solicitation was posted to the City website, Public Purchase.com and notice posted in the newspaper. Six contractors provided bids in response to the solicitation. Upon evaluation of the pricing and qualifications, City staff is recommending award to C3 Environmental and AR 6 Construction based upon cost-effectiveness and quality of work. These contractors will be available for use city-wide by various departments in accordance with the price list outlined in the agreement. This will be for individual projects that are under \$50k and within the approved budget. All individual projects exceeding \$50k will be presented to council separately per City Policy. If approved, The Agreement shall become effective upon the date of the final signature and shall remain in effect through September 30, 2023, with the option to renew for two (2) additional terms of one (1) year each unless terminated as provided for in the Agreement.

**GOAL**

The goal of Resolution 22-R-125 is to authorize the City Manager to execute agreements with C3 Environmental and AR 6 Construction for on-call concrete repair, replacement, and related matters.

**COMMUNITY BENEFIT**

The City will be able to contact either vendor for any project within the scope of the contract without going through the RFP process each time. This will result in an effective and efficient operational process.

**SUMMARY OF RECOMMENDED ACTION**

It is recommended the City Council approve Resolution 22-R-125, granting authorization and approval for the two concrete contractors for on-call services.

**FISCAL IMPACT**

Fiscal impact will vary depending on the specific project. The fee schedule is included in the Professional Service Agreements. Funds required for projected projects are identified within the current budget.

**RECOMMENDATION**

Staff recommends approval of Resolution 22-R-125.

AR6 DRAFT AGREEMENT

C3 DRAFT AGREEMENT

Res 22 R 125

Bid Tab

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# **CITY OF SCHERTZ**

## **SERVICE AGREEMENT**

THE STATE OF TEXAS   §  
  §  
GUADALUPE COUNTY   §

This Service Agreement (“Agreement”) is made and entered by and between the City of Schertz, Texas, (the “City”) a Texas municipality, and C-3 Environmental Specialties (“Contractor”).

### **Section 1.     Duration**

This Agreement shall become effective upon the date of the final signature affixed hereto and shall remain in effect through September 30, 2023 with the option to renew for two (2) additional terms of one (1) year each unless terminated as provided for in this Agreement.

### **Section 2.     Scope of Work**

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

### **Section 3.     Compensation**

- (A) The Contractor shall be paid in the manner set forth in Exhibit “A” and as provided herein.
- (B) *Billing Period.* The Contractor may submit an invoice for payment upon completion of the described tasks. Subject to Chapter 2251, Texas Government Code (the “Prompt Payment Act”), payment is due within thirty (30) days of the City’s receipt of the Contractor’s invoice. Interest on overdue payments shall be calculated in accordance with the Prompt Payment Act.
- (C) *Reimbursable Expenses.* Any and all reimbursable expenses related to the Project shall be included in the scope of Work (Exhibit A) and accounted for in the total contract amount.
- (D) *Not to Exceed Contract Amount.* Expenditures for this contract shall not exceed ONE HUNDRED THOUSAND AND NO/100 DOLLARS (\$100,000.00) per fiscal year. The fiscal year is defined as October 1<sup>st</sup> through September 30<sup>th</sup>.

(E) *Payments Subject to Future Appropriation.* This Agreement shall not be construed as a commitment, issue, pledge or obligation of any specific taxes or tax revenues for payment to Contractor.

- (1) All payments or expenditures made by the City under this Agreement are subject to the City's appropriation of funds for such payments or expenditures to be paid in the budget year for which they are made.
- (2) The payments to be made to Contractor, or other expenditures under this Agreement, if paid, shall be made solely from annual appropriations of the City as may be legally set aside for the implementation of Article III, Section 52-a of the Texas Constitution or Chapter 380 of the Texas Local Government Code or any other economic development or financing program authorized by statute or home rule powers of the City under applicable Texas law, subject to any applicable limitations or procedural requirements.
- (3) In the event the City does not appropriate funds in any fiscal year for payments due or expenditures under this Agreement, the City shall not be liable to Contractor for such payments or expenditures unless and until appropriation of said funds is made; provided, however, that Contractor, in its sole discretion, shall have the right but not the obligation to terminate this Agreement and shall have no obligations under this Agreement for the year in respect to which said unappropriated funds relate.
- (4) To the extent there is a conflict of this Section and any other language or covenants in this Agreement, this Section 3 shall control.

#### **Section 4. Time of Completion**

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

#### **Section 5. Insurance**

Before commencing work under this Agreement, Contractor shall obtain and maintain the liability insurance provided for below throughout the term of the Project plus an additional two years. Contractor shall provide evidence of such insurance to the City. Such documentation shall meet the requirements noted in Exhibit B.

Contractor shall maintain the following limits and types of insurance:

**Workers Compensation Insurance:** Contractor shall carry and maintain during the term of this Agreement, workers compensation and employers liability insurance meeting the requirements of the State of Texas on all the Contractor's employees carrying out the work involved in this contract.

**General Liability Insurance:** Contractor shall carry and maintain during the term of this Agreement, general liability insurance on a per occurrence basis with limits of liability not less than \$1,000,000 for each occurrence and for fire damage. For Bodily Injury and Property Damage, coverage shall be no less than \$1,000,000. As a minimum, coverage for Premises, Operations,

Products and Completed Operations shall be \$2,000,000. This coverage shall protect the public or any person from injury or property damages sustained by reason of the Contractor or its employees carrying out the work involved in this Agreement. The general aggregate shall be no less than \$2,000,000.

Automobile Liability Insurance: Contractor shall carry and maintain during the term of this Agreement, automobile liability insurance with either a combined limit of at least \$1,000,000 per occurrence for bodily injury and property damage or split limits of at least \$1,000,000 for bodily injury per person per occurrence and \$1,000,000 for property damage per occurrence. Coverage shall include all owned, hired, and non-owned motor vehicles used in the performance of this contract by the Contractor or its employees.

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

Qualifying Insurance: The insurance required by this Agreement shall be written by non-assessable insurance company licensed to do business in the State of Texas and currently rated "B+" or better by the A.M. Best Companies. All policies shall be written on a "per occurrence basis" and not a "claims made" form.

Evidence of such insurance shall be attached as Exhibit "C".

Failure of Certificate Holder to demand a certificate or other evidence of full compliance with these insurance requirements or failure of Certificate Holder to identify a deficiency from evidence that is provided will not be construed as a waiver of Insured's obligation to maintain such insurance.

## **Section 6. Miscellaneous Provisions**

- (A) *Subletting.* The Contractor shall not sublet or transfer any portion of the work under this Agreement or any Scope of Work issued pursuant to this Agreement unless specifically approved in writing by the City, which approval shall not be unreasonably withheld. Subcontractors shall comply with all provisions of this Agreement and the applicable Scope of Work. The approval or acquiescence of the City in the subletting of any work shall not relieve the Contractor of any responsibility for work done by such subcontractor.
- (B) *Compliance with Laws.* The Contractor shall comply with all federal, state and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts, administrative, or regulatory bodies in any matter affecting the performance of this Agreement, including, without limitation, worker's compensation laws, minimum and maximum salary and wage statutes and regulations, and licensing laws and regulations. When required, the Contractor shall furnish the City with satisfactory proof of compliance.
- (C) *Independent Contractor.* Contractor acknowledges that Contractor is an independent contractor of the City and is not an employee, agent, official or representative of the City. Contractor shall not represent, either expressly or through implication, that Contractor is an employee, agent, official or representative of the City. Income taxes, self-employment taxes, social security taxes and the like are the sole responsibility of the Contractor.
- (D) *Non-Collusion.* Contractor represents and warrants that Contractor has not given, made,

promised or paid, nor offered to give, make, promise or pay any gift, bonus, commission, money or other consideration to any person as an inducement to or in order to obtain the work to be provided to the City under this Agreement. Contractor further agrees that Contractor shall not accept any gift, bonus, commission, money, or other consideration from any person (other than from the City pursuant to this Agreement) for any of the Work performed by Contractor under or related to this Agreement. If any such gift, bonus, commission, money, or other consideration is received by or offered to Contractor, Contractor shall immediately report that fact to the City and, at the sole option of the City, the City may elect to accept the consideration for itself or to take the value of such consideration as a credit against the compensation otherwise owing to Contractor under or pursuant to this Agreement.

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

- (F) *Conflict of Terms*.

*Scope of work:*

In the case of any conflicts between the terms of this Agreement within the Scope of Work, this Agreement shall govern. The Scope of Work is intended to detail the technical scope of Work, fee schedule, and contract time only and shall not dictate Agreement terms.

*Other Agreements between parties:*

In the case of any conflicts between the terms of this Agreement and wording contained within any other attachment, amendment, and agreement executed between the parties in conjunction with this Agreement, this Agreement shall govern.

- (G) *Non-Boycott of Israel*. Pursuant to Section 2270.002 of the Texas Government Code, Contractor certifies that either (i) it meets an exemption criterion under Section 2270.002; or (ii) it does not boycott Israel and will not boycott Israel during the term of the contract resulting from this solicitation. Contractor shall state any facts that make it exempt from the boycott certification as an attachment to this agreement.

Relevant definitions from the bill:

"Company" means a for-profit sole proprietorship, organization, association, corporation,

partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations that exists to make a profit.

"Boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.

## **Section 7. Termination**

(A) This Agreement may be terminated:

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

## **Section 8. Indemnification**

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

**WORK OR GOODS PERFORMED OR PROVIDED BY CONTRACTOR – EXPRESSLY INCLUDING THOSE ARISING THROUGH STRICT LIABILITY OR UNDER THE CONSTITUTIONS OF THE UNITED STATES.**

**Section 9.     Notices**

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

**Section 10.   No Assignment**

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

**Section 11. Severability**

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

**Section 12. Waiver**

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

**Section 13. Governing Law; Venue**

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

**Section 14. Paragraph Headings; Construction**

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

**Section 15. Binding Effect**

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

**Section 16. Gender**

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

**Section 17. Counterparts**

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

**Section 18. Exhibits & Attachments**

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

**Section 19. Entire Agreement**

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

**Section 20. Relationship of Parties**

Nothing contained in this Agreement shall be deemed or construed by the parties hereto or by any third party to create the relationship of principal and agent or of partnership or of joint venture or of any association whatsoever between the parties, it being expressly understood and agreed that no provision contained in this Agreement nor any act or acts of the parties hereto shall be deemed to create any relationship between the parties other than the relationship of independent parties contracting with each other solely for the purpose of effecting the provisions of this Agreement.

**Section 21. Right To Audit**

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

**Section 22. Dispute Resolution**

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

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

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

**Certificate of Interested Parties**

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

Contractors are required to complete and file electronically with the Texas Ethics Commission using the online filing application.

Please visit the State of Texas Ethics Commission website, [https://www.ethics.state.tx.us/whatsnew/elf\\_info\\_form1295.htm](https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm) and <https://www.ethics.state.tx.us/tec/1295-Info.htm> for more information.

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

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

**EXECUTED** on this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**CITY:**

**CONTRACTOR:**

By: \_\_\_\_\_  
Name: Dr. Mark Browne  
Title: City Manager

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**ADDRESS FOR NOTICE:**

**CITY:**

**CONTRACTOR:**

City of Schertz  
Attn: Dr. Mark Brown, City Manager  
1400 Schertz Parkway  
Schertz, Texas 78154

AR6 Construction & Engineering LLC  
26726 Rockwall Parkway  
New Braunfels, Texas 78132  
esrypple@ar6ce.com

# Exhibit “A”

## SCOPE OF WORK

### Scope of Work

Contractor shall perform each job, in accordance with the scope of work for that specific job, the City of Schertz Standards (published and available at [www.schertz.com](http://www.schertz.com)), and the City of Schertz Public Works Technical Specifications.

Each individual project will be detailed by City of Schertz staff and agreed upon prior to work starting.

Pricing for all jobs shall be invoiced according to the following pricing schedule:

### **PRICING SCHEDULE:**

Item #	Item Description	Estimated Quantity	Unit of Measure	Bid Price Per Unit
02221.1	Removal of Curb and Gutter	200	LF	\$10.40
02221.2	Removal of Miscellaneous Concrete	800	SY	\$27.60
02754	Concrete Driveway (5’')	100	SY	\$96.00
02771.1	Concrete Curb & Gutter (7’')	200	LF	\$30.00
02771.2	Concrete Valley Gutter (7’')	200	SY	\$92.40
02771.3	Flush Curb (Ribbon Curb)	100	SY	\$28.80
02775.1	Concrete Sidewalk (4’')	780	SY	\$68.40
02775.2	Combination Concrete Retaining Wall (6’')	300	SF	\$84.00
02922	Block Sod	20	SY	\$30.00
03300	Riprap (Concrete) (5’')	300	SY	\$94.80
	Pump Truck	5	HR	\$528.00
02741	Asphalt Patch/Repair (Type B)	1	TON	\$3000.00

# Exhibit “B”

## 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: [purchasing@schertz.com](mailto:purchasing@schertz.com)  
Faxed to: 210-619-1169



# CERTIFICATE OF LIABILITY INSURANCE

A

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

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 <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: 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-OWN AUTOS HIRED AUTOS	<input type="checkbox"/> Y <input type="checkbox"/> Y	123456789	01/01/1000	01/01/1000	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
<input checked="" type="checkbox"/> UMBRELLA LIAB EXCESS LIAB DED RETENTION \$	<input type="checkbox"/> Y <input type="checkbox"/> Y				EACH OCCURRENCE \$ AGGREGATE \$
WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICEMEMBER EXCLUDED? (Mandatory in flt) If yes, describe under DESCRIPTION OF OPERATIONS below	<input type="checkbox"/> Y <input type="checkbox"/> N	01234	01/01/1000	01/01/1000	<input checked="" type="checkbox"/> NO STATUTORY LIMITS E.L. EACH ACCIDENT \$ 500,000 E.L. DISEASE - EA EMPLOYEE \$ 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 1811, Tex. Ins. Code (SB 425 enacted by Texas Legislature 82(R) 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
--	---

***(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.

## **Exhibit “C”**

### **EVIDENCE OF INSURANCE**

# **CITY OF SCHERTZ**

## **SERVICE AGREEMENT**

**THE STATE OF TEXAS   §**  
**§**  
**GUADALUPE COUNTY   §**

This Service Agreement (“Agreement”) is made and entered by and between the City of Schertz, Texas, (the “City”) a Texas municipality, and C-3 Environmental Specialties (“Contractor”).

### **Section 1.     Duration**

This Agreement shall become effective upon the date of the final signature affixed hereto and shall remain in effect through September 30, 2023 with the option to renew for two (2) additional terms of one (1) year each unless terminated as provided for in this Agreement.

### **Section 2.     Scope of Work**

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

### **Section 3.     Compensation**

- (A) The Contractor shall be paid in the manner set forth in Exhibit “A” and as provided herein.
- (B) *Billing Period.* The Contractor may submit an invoice for payment upon completion of the described tasks. Subject to Chapter 2251, Texas Government Code (the “Prompt Payment Act”), payment is due within thirty (30) days of the City’s receipt of the Contractor’s invoice. Interest on overdue payments shall be calculated in accordance with the Prompt Payment Act.
- (C) *Reimbursable Expenses.* Any and all reimbursable expenses related to the Project shall be included in the scope of Work (Exhibit A) and accounted for in the total contract amount.
- (D) *Not to Exceed Contract Amount.* Expenditures for this contract shall not exceed ONE HUNDRED THOUSAND AND NO/100 DOLLARS (\$100,000.00) per fiscal year. The fiscal year is defined as October 1<sup>st</sup> through September 30<sup>th</sup>.

(E) *Payments Subject to Future Appropriation.* This Agreement shall not be construed as a commitment, issue, pledge or obligation of any specific taxes or tax revenues for payment to Contractor.

- (1) All payments or expenditures made by the City under this Agreement are subject to the City's appropriation of funds for such payments or expenditures to be paid in the budget year for which they are made.
- (2) The payments to be made to Contractor, or other expenditures under this Agreement, if paid, shall be made solely from annual appropriations of the City as may be legally set aside for the implementation of Article III, Section 52-a of the Texas Constitution or Chapter 380 of the Texas Local Government Code or any other economic development or financing program authorized by statute or home rule powers of the City under applicable Texas law, subject to any applicable limitations or procedural requirements.
- (3) In the event the City does not appropriate funds in any fiscal year for payments due or expenditures under this Agreement, the City shall not be liable to Contractor for such payments or expenditures unless and until appropriation of said funds is made; provided, however, that Contractor, in its sole discretion, shall have the right but not the obligation to terminate this Agreement and shall have no obligations under this Agreement for the year in respect to which said unappropriated funds relate.
- (4) To the extent there is a conflict of this Section and any other language or covenants in this Agreement, this Section 3 shall control.

#### **Section 4. Time of Completion**

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

#### **Section 5. Insurance**

Before commencing work under this Agreement, Contractor shall obtain and maintain the liability insurance provided for below throughout the term of the Project plus an additional two years. Contractor shall provide evidence of such insurance to the City. Such documentation shall meet the requirements noted in Exhibit B.

Contractor shall maintain the following limits and types of insurance:

**Workers Compensation Insurance:** Contractor shall carry and maintain during the term of this Agreement, workers compensation and employers liability insurance meeting the requirements of the State of Texas on all the Contractor's employees carrying out the work involved in this contract.

**General Liability Insurance:** Contractor shall carry and maintain during the term of this Agreement, general liability insurance on a per occurrence basis with limits of liability not less than \$1,000,000 for each occurrence and for fire damage. For Bodily Injury and Property Damage, coverage shall be no less than \$1,000,000. As a minimum, coverage for Premises, Operations,

Products and Completed Operations shall be \$2,000,000. This coverage shall protect the public or any person from injury or property damages sustained by reason of the Contractor or its employees carrying out the work involved in this Agreement. The general aggregate shall be no less than \$2,000,000.

Automobile Liability Insurance: Contractor shall carry and maintain during the term of this Agreement, automobile liability insurance with either a combined limit of at least \$1,000,000 per occurrence for bodily injury and property damage or split limits of at least \$1,000,000 for bodily injury per person per occurrence and \$1,000,000 for property damage per occurrence. Coverage shall include all owned, hired, and non-owned motor vehicles used in the performance of this contract by the Contractor or its employees.

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

Qualifying Insurance: The insurance required by this Agreement shall be written by non-assessable insurance company licensed to do business in the State of Texas and currently rated "B+" or better by the A.M. Best Companies. All policies shall be written on a "per occurrence basis" and not a "claims made" form.

Evidence of such insurance shall be attached as Exhibit "C".

Failure of Certificate Holder to demand a certificate or other evidence of full compliance with these insurance requirements or failure of Certificate Holder to identify a deficiency from evidence that is provided will not be construed as a waiver of Insured's obligation to maintain such insurance.

## **Section 6. Miscellaneous Provisions**

- (A) *Subletting.* The Contractor shall not sublet or transfer any portion of the work under this Agreement or any Scope of Work issued pursuant to this Agreement unless specifically approved in writing by the City, which approval shall not be unreasonably withheld. Subcontractors shall comply with all provisions of this Agreement and the applicable Scope of Work. The approval or acquiescence of the City in the subletting of any work shall not relieve the Contractor of any responsibility for work done by such subcontractor.
- (B) *Compliance with Laws.* The Contractor shall comply with all federal, state and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts, administrative, or regulatory bodies in any matter affecting the performance of this Agreement, including, without limitation, worker's compensation laws, minimum and maximum salary and wage statutes and regulations, and licensing laws and regulations. When required, the Contractor shall furnish the City with satisfactory proof of compliance.
- (C) *Independent Contractor.* Contractor acknowledges that Contractor is an independent contractor of the City and is not an employee, agent, official or representative of the City. Contractor shall not represent, either expressly or through implication, that Contractor is an employee, agent, official or representative of the City. Income taxes, self-employment taxes, social security taxes and the like are the sole responsibility of the Contractor.
- (D) *Non-Collusion.* Contractor represents and warrants that Contractor has not given, made,

promised or paid, nor offered to give, make, promise or pay any gift, bonus, commission, money or other consideration to any person as an inducement to or in order to obtain the work to be provided to the City under this Agreement. Contractor further agrees that Contractor shall not accept any gift, bonus, commission, money, or other consideration from any person (other than from the City pursuant to this Agreement) for any of the Work performed by Contractor under or related to this Agreement. If any such gift, bonus, commission, money, or other consideration is received by or offered to Contractor, Contractor shall immediately report that fact to the City and, at the sole option of the City, the City may elect to accept the consideration for itself or to take the value of such consideration as a credit against the compensation otherwise owing to Contractor under or pursuant to this Agreement.

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

- (F) *Conflict of Terms.*

*Scope of work:*

In the case of any conflicts between the terms of this Agreement within the Scope of Work, this Agreement shall govern. The Scope of Work is intended to detail the technical scope of Work, fee schedule, and contract time only and shall not dictate Agreement terms.

*Other Agreements between parties:*

In the case of any conflicts between the terms of this Agreement and wording contained within any other attachment, amendment, and agreement executed between the parties in conjunction with this Agreement, this Agreement shall govern.

- (G) *Non-Boycott of Israel.* Pursuant to Section 2270.002 of the Texas Government Code, Contractor certifies that either (i) it meets an exemption criterion under Section 2270.002; or (ii) it does not boycott Israel and will not boycott Israel during the term of the contract resulting from this solicitation. Contractor shall state any facts that make it exempt from the boycott certification as an attachment to this agreement.

Relevant definitions from the bill:

"Company" means a for-profit sole proprietorship, organization, association, corporation,

partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations that exists to make a profit.

"Boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.

## **Section 7. Termination**

(A) This Agreement may be terminated:

- (1) By the mutual agreement and consent of both Contractor and City;
- (2) By either party, upon the failure of the other party to fulfill its obligations as set forth in either this Agreement or a Scope of Work issued under this Agreement;
- (3) By the City, immediately upon notice in writing to the Contractor, as consequence of the failure of Contractor to perform the Work contemplated by this Agreement in a timely or satisfactory manner;
- (4) By the City, at will and without cause upon not less than five (5) days written notice to the Contractor.

(B) If the City terminates this Agreement pursuant to subsection 7(A)(2) or (3), above, the Contractor shall not be entitled to any fees or reimbursable expenses other than the fees and reimbursable expenses then due and payable as of the time of termination and only then for those Work that have been timely and adequately performed by the Contractor considering the actual costs incurred by the Contractor in performing work to date of termination, the value of the work that is nonetheless usable to the City, the cost to the City of employing another Contractor to complete the work required and the time required to do so, and other factors that affect the value to the City of the work performed at time of termination. In the event of termination not the fault of the Contractor, the Contractor shall be compensated for all basic, special, and additional Work actually performed prior to termination, together with any reimbursable expenses then due.

## **Section 8. Indemnification**

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

**WORK OR GOODS PERFORMED OR PROVIDED BY CONTRACTOR – EXPRESSLY INCLUDING THOSE ARISING THROUGH STRICT LIABILITY OR UNDER THE CONSTITUTIONS OF THE UNITED STATES.**

**Section 9.     Notices**

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

**Section 10.   No Assignment**

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

**Section 11. Severability**

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

**Section 12. Waiver**

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

**Section 13. Governing Law; Venue**

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

**Section 14. Paragraph Headings; Construction**

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

**Section 15. Binding Effect**

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

**Section 16. Gender**

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

**Section 17. Counterparts**

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

**Section 18. Exhibits & Attachments**

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

**Section 19. Entire Agreement**

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

**Section 20. Relationship of Parties**

Nothing contained in this Agreement shall be deemed or construed by the parties hereto or by any third party to create the relationship of principal and agent or of partnership or of joint venture or of any association whatsoever between the parties, it being expressly understood and agreed that no provision contained in this Agreement nor any act or acts of the parties hereto shall be deemed to create any relationship between the parties other than the relationship of independent parties contracting with each other solely for the purpose of effecting the provisions of this Agreement.

**Section 21. Right To Audit**

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

**Section 22. Dispute Resolution**

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

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

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

**Certificate of Interested Parties**

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

Contractors are required to complete and file electronically with the Texas Ethics Commission using the online filing application.

Please visit the State of Texas Ethics Commission website, [https://www.ethics.state.tx.us/whatsnew/elf\\_info\\_form1295.htm](https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm) and <https://www.ethics.state.tx.us/tec/1295-Info.htm> for more information.

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

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

**EXECUTED** on this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**CITY:**

**CONTRACTOR:**

By: \_\_\_\_\_  
Name: Dr. Mark Browne  
Title: City Manager

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**ADDRESS FOR NOTICE:**

**CITY:**

**CONTRACTOR:**

City of Schertz  
Attn: Dr. Mark Brown, City Manager  
1400 Schertz Parkway  
Schertz, Texas 78154

C-3 Environmental Specialties  
132 Nell Deane Boulevard  
Schertz, Texas 78154  
randy@c3environmental.com

# Exhibit “A”

## SCOPE OF WORK

### Scope of Work

Contractor shall perform each job, in accordance with the scope of work for that specific job, the City of Schertz Standards (published and available at [www.schertz.com](http://www.schertz.com)), and the City of Schertz Public Works Technical Specifications.

Each individual project will be detailed by City of Schertz staff and agreed upon prior to work starting.

Pricing for all jobs shall be invoiced according to the following pricing schedule:

### **PRICING SCHEDULE:**

Item #	Item Description	Estimated Quantity	Unit of Measure	Bid Price Per Unit
02221.1	Removal of Curb and Gutter	200	LF	\$11.25
02221.2	Removal of Miscellaneous Concrete	800	SY	\$25.00
02754	Concrete Driveway (5’)	100	SY	\$100.00
02771.1	Concrete Curb & Gutter (7’)	200	LF	\$34.00
02771.2	Concrete Valley Gutter (7’)	200	SY	\$105.00
02771.3	Flush Curb (Ribbon Curb)	100	SY	16.75
02775.1	Concrete Sidewalk (4’)	780	SY	\$61.25
02775.2	Combination Concrete Retaining Wall (6’)	300	SF	\$31.00
02922	Block Sod	20	SY	\$39.00
03300	Riprap (Concrete) (5’)	300	SY	\$103.00
	Pump Truck	5	HR	\$400.00
02741	Asphalt Patch/Repair (Type B)	1	TON	\$250.00

# Exhibit “B”

## 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: [purchasing@schertz.com](mailto:purchasing@schertz.com)  
Faxed to: 210-619-1169



# CERTIFICATE OF LIABILITY INSURANCE

A

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 655 Main Street Tampa, FL 33333-0000	CONTACT NAME: PHONE (Add No. Ext): FAX 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	TAX No. Rel. NAIC # 00000 00000 00000 00000 00000 00000
INSURED  XYZ Company 123 Apple Street Tampa, FL 22222-0000	D E	

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.

VER	TYPE OF INSURANCE	ADDITIONAL	POLICY NO.	POLICY EFF.	POLICY EXP.	LIMITS
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR	Y 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) \$ 6,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMMOP AGG \$ 1,000,000
B	GEN'L AGGREGATE LIMIT APPLIES PER: POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC					
C	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO ALL OWNED AUTOS SCHEDULED AUTOS NON-OWN AUTOS HIRED AUTOS	Y Y	123456789	01/01/1000	01/01/1000	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
D	UMBRELLA LIAB EXCESS LIAB DED RETENTION \$	Y Y				EACH OCCURRENCE \$ AGGREGATE \$
E	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICEMEMBER EXCLUDED? (Mandatory in TX) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N N/A 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 EMPLOYEE \$ 500,000 E.L. DISEASE - POLICY LIMIT \$ 500,000
F	Builder's Risk Professional Services	Y 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 1811, Tex. Ins. Code (SB 426 enacted by Texas Legislature 82(R) 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
--	---

***(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.

## **Exhibit “C”**

### **EVIDENCE OF INSURANCE**

## **RESOLUTION NO. 22-R-125**

### **A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF SCHERTZ, TEXAS AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH C-3 CONSTRUCTION AND AR 6 CONSTRUCTION FOR THE REMOVAL/INSTALLATION OF CONCRETE INFRASTRUCTURE AND OTHER MATTERS IN CONNECTION THEREWITH**

WHEREAS, the City of Schertz (the “City”) has completed an indefinite quantity – indefinite delivery (“IDIQ”) procurement for concrete removal/Installation; and

WHEREAS, City staff has determined that C-3 Construction and AR 6 Construction are qualified to provide this type of work for the the City; and

WHEREAS, the City staff has negotiated a unit rate for these labor and materials; and

WHEREAS, City staff has determined it is in the best interest of the City and its Citizens to contract these services on as-needed basis; and

WHEREAS, C-3 Construction and AR 6 Construction have a reputation of consistently providing a quality work for best value to the City; and

WHEREAS, the City desires to allow the City Manager to approve and execute an IDIQ contract with C-3 Construction and AR 6 Construction.

### **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 C-3 Environmental and AR6 Construction in substantially the same form set forth on Exhibit A.

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

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

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

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

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

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

PASSED AND ADOPTED, this 25th day of October 2022.

CITY OF SCHERTZ, TEXAS

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Ralph Gutierrez, Mayor

ATTEST:

---

Brenda Dennis, City Secretary

(CITY SEAL)

## EXHIBIT A

### Service Agreements

BID TABULATION

BID/RFP#	2022-009	BID/RFP NAME:	CONCRETE REPAIR AND REPLACEMENT	BUYER:	JULIE GONHE										
				VENDOR ONE (1)	VENDOR TWO (2)	VENDOR THREE (3)	VENDOR FOUR (4)	VENDOR FIVE (5)	VENDOR SIX (6)						
Company Name				ALBRITE CONSTRUCTORS OF TEXAS DBA ALBRITE CONSTRUCTION	360 TAC, LLC	MIRRES CONCRETE CONSTRUCTION	ARI6 CONSTRUCTION & ENGINEERING LLC	C3 ENVIRONMENTAL SPECIALTIES LP	ALAMO CITY CONSTRUCTORS						
Point of Contact				PATRICK YATES	TONY LESTER	CHASE BOWEN	ERIC TIPPPE	DUSTIN PRATT	GREG ALEXANDER						
Phone Number				210-490-6495 X100	877-738-3476	511-847-8001	210-314-9740	210-653-7801	210-738-3100						
Email Address				NGARC@ALBRITECONSTRUCTION.COM	24572@B360TAC.COM	CHASE@MIRRESCONCRETE.COM	ERICTIPPPE@ARI6.COM	DPRAATT@C3ENVIRONMENTAL.COM	ARI6@ALAMOCITYCONSTRUCTORS.COM						
HUB Status															
Item#		QTY	UOM	Item Price	Extended Price	Item Price	Extended Price	Item Price	Extended Price	Item Price	Extended Price	Item Price	Extended Price	Item Price	Extended Price
1	REMOVAL OF CURB AND GUTTER	200.00	LF	\$31.05	\$6,210.00	\$70.38	\$14,076.00	\$25.00	\$5,000.00	\$10.40	\$2,080.00	\$11.25	\$2,250.00	\$20.00	\$4,000.00
2	REMOVAL OF MISC CONCRETE	800.00	SY	\$61.09	\$48,875.00	\$116.22	\$92,976.00	\$60.00	\$48,000.00	\$27.60	\$22,080.00	\$25.00	\$20,000.00	\$39.00	\$31,200.00
3	CONCRETE DRIVEWAY (5")	100.00	SY	\$178.25	\$17,825.00	\$383.82	\$38,382.00	\$250.00	\$25,000.00	\$96.00	\$9,600.00	\$100.00	\$10,000.00	\$140.00	\$14,000.00
4	CONCRETE CURB & GUTTER (7")	200.00	LF	\$44.85	\$8,970.00	\$180.65	\$36,130.00	\$100.00	\$20,000.00	\$30.00	\$6,000.00	\$34.00	\$6,800.00	\$73.00	\$14,600.00
5	CONCRETE VALLEY GUTTER (7")	200.00	SY	\$106.38	\$21,275.00	\$395.77	\$79,154.00	\$220.00	\$44,000.00	\$92.40	\$18,480.00	\$105.50	\$21,100.00	\$113.00	\$22,600.00
6	FLUSH CURB (RIBBON CURB)	100.00	LF	\$32.20	\$3,220.00	\$46.62	\$4,662.00	\$75.00	\$7,500.00	\$28.80	\$2,880.00	\$16.75	\$1,675.00	\$64.00	\$6,400.00
7	CONCRETE SIDEWALK (4")	780.00	SY	\$112.05	\$87,400.00	\$315.20	\$245,856.00	\$200.00	\$156,000.00	\$68.40	\$53,352.00	\$31.25	\$24,375.00	\$127.00	\$99,060.00
8	COMBINATION CONCRETE RETAINING WALL (6")	300.00	SF	\$35.27	\$10,580.00	\$176.32	\$52,896.00	\$150.00	\$45,000.00	\$84.00	\$25,200.00	\$31.00	\$9,300.00	\$68.00	\$20,400.00
9	BLOCK SOD	20.00	SY	\$86.25	\$1,725.00	\$65.83	\$1,316.60	\$20.00	\$400.00	\$30.00	\$600.00	\$39.00	\$780.00	\$22.00	\$440.00
10	RIPRAP CONCRETE (5")	300.00	SY	\$82.80	\$24,840.00	\$446.30	\$133,890.00	\$180.00	\$54,000.00	\$94.80	\$28,440.00	\$103.00	\$30,900.00	\$116.00	\$34,800.00
11	PUMP TRUCK	5.00	HR	\$460.00	\$2,300.00	\$258.06	\$1,290.30	\$400.00	\$2,000.00	\$528.00	\$2,640.00	\$400.00	\$2,000.00	\$259.00	\$1,295.00
12	ASPHALT PATCH/REPAIR (TYPE B)	1.00	TON	\$719.00	\$719.00	\$2,430.89	\$2,430.89	\$385.00	\$385.00	\$3,000.00	\$3,000.00	\$250.00	\$250.00	\$1,228.00	\$1,228.00
TOTALS				VENDOR 1 TOTAL	\$233,939.00	VENDOR 2 TOTAL	\$703,059.79	VENDOR 3 TOTAL	\$407,285.00	VENDOR 4 TOTAL	\$174,352.00	VENDOR 5 TOTAL	\$129,430.00	VENDOR 6 TOTAL	\$250,023.00

AWARD:	
NOTES:	

## CITY COUNCIL MEMORANDUM

**City Council Meeting:** October 25, 2022  
**Department:** Public Works  
**Subject:** Resolution No. 22-R-115- Consideration and/or action approving a Resolution authorizing the City of Schertz to enter into a contract with Brauntex Materials and Vulcan Construction Materials for asphalt, hot mix, and related materials and other matters in connection therewith (B. James/S. McClelland/D. Letbetter)

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### BACKGROUND

The City of Schertz requested bids for street materials and pricing for items, such as Type "D" Hot mix Asphalt, HMCL Type "D", and Type "B" Hot Mix. The solicitation was posted to the City website, PublicPurchase.com and notice posted in the newspaper. Two contractors provided bids in response to the solicitation. Upon evaluation of the pricing and qualifications, City staff is recommending award to Brauntex Materials and Vulcan Construction Materials based upon cost-effectiveness and quality of material.

These companies will be available for use city-wide by various departments for items listed in the pricing schedule at the contracted price.

If approved, The Agreement shall become effective upon the date of the final signature and shall remain in effect through September 30, 2023, with the option to renew for two (2) additional terms of one (1) year each unless terminated as provided for in the Agreement.

This contract will be an indefinite quantity and indefinite delivery agreement used within the confines of the approved budget. Individual purchases exceeding \$50k will be taken to council in accordance with City Policy.

### GOAL

The goal of Resolution 22-R-115 is to authorize the City Manager to execute agreements with Brauntex Materials and Vulcan Construction Materials for all street related materials.

### COMMUNITY BENEFIT

The City will be able to contact either vendor for any project within the scope of the contract without going through the RFP process each time. This will result in an effective and efficient operational process.

### SUMMARY OF RECOMMENDED ACTION

It is recommended the City Council approve Resolution 22-R-115, granting authorization and approval for the two streets materials contractors for on-call services.

### FISCAL IMPACT

Fiscal impact will vary depending on the specific project. The fee schedule is included in the Professional Service Agreements. Funds required for projected projects are identified within the current budget.

**RECOMMENDATION**

Staff recommends approval of Resolution 22-R-115.

---

**Attachments**

Brauntex Draft Agreement

Vulcan Draft Agreement

Res 22 R 115

Street Material Bid Tabulation

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# **CITY OF SCHERTZ**

## **SERVICE AGREEMENT**

THE STATE OF TEXAS   §  
  §  
GUADALUPE COUNTY   §

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

### **Section 1.     Duration**

This Agreement shall become effective upon the date of the final signature affixed hereto and shall remain in effect through September 30, 2023 with the option to renew for two (2) additional terms of one (1) year each unless terminated as provided for in this Agreement.

### **Section 2.     Scope of Work**

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

### **Section 3.     Compensation**

- (A) The Contractor shall be paid in the manner set forth in Exhibit “A” and as provided herein.
- (B) *Billing Period.* The Contractor may submit an invoice for payment upon completion of the described tasks. Subject to Chapter 2251, Texas Government Code (the “Prompt Payment Act”), payment is due within thirty (30) days of the City’s receipt of the Contractor’s invoice. Interest on overdue payments shall be calculated in accordance with the Prompt Payment Act.
- (C) *Reimbursable Expenses.* Any and all reimbursable expenses related to the Project shall be included in the scope of Work (Exhibit A) and accounted for in the total contract amount.
- (D) *Payments Subject to Future Appropriation.* This Agreement shall not be construed as a commitment, issue, pledge or obligation of any specific taxes or tax revenues for payment to Contractor.

- (1) All payments or expenditures made by the City under this Agreement are subject to the City's appropriation of funds for such payments or expenditures to be paid in the budget year for which they are made.
- (2) The payments to be made to Contractor, or other expenditures under this Agreement, if paid, shall be made solely from annual appropriations of the City as may be legally set aside for the implementation of Article III, Section 52-a of the Texas Constitution or Chapter 380 of the Texas Local Government Code or any other economic development or financing program authorized by statute or home rule powers of the City under applicable Texas law, subject to any applicable limitations or procedural requirements.
- (3) In the event the City does not appropriate funds in any fiscal year for payments due or expenditures under this Agreement, the City shall not be liable to Contractor for such payments or expenditures unless and until appropriation of said funds is made; provided, however, that Contractor, in its sole discretion, shall have the right but not the obligation to terminate this Agreement and shall have no obligations under this Agreement for the year in respect to which said unappropriated funds relate.
- (4) To the extent there is a conflict of this Section and any other language or covenants in this Agreement, this Section 3 shall control.

#### **Section 4. Time of Completion**

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

#### **Section 5. Insurance**

Before commencing work under this Agreement, Contractor shall obtain and maintain the liability insurance provided for below throughout the term of the Project plus an additional two years. Contractor shall provide evidence of such insurance to the City. Such documentation shall meet the requirements noted in Exhibit B.

Contractor shall maintain the following limits and types of insurance:

**Workers Compensation Insurance:** Contractor shall carry and maintain during the term of this Agreement, workers compensation and employers liability insurance meeting the requirements of the State of Texas on all the Contractor's employees carrying out the work involved in this contract.

**General Liability Insurance:** Contractor shall carry and maintain during the term of this Agreement, general liability insurance on a per occurrence basis with limits of liability not less than \$1,000,000 for each occurrence and for fire damage. For Bodily Injury and Property Damage, coverage shall be no less than \$1,000,000. As a minimum, coverage for Premises, Operations, Products and Completed Operations shall be \$2,000,000. This coverage shall protect the public or any person from injury or property damages sustained by reason of the Contractor or its employees carrying out the work involved in this Agreement. The general aggregate shall be no less than \$2,000,000.

Automobile Liability Insurance: Contractor shall carry and maintain during the term of this Agreement, automobile liability insurance with either a combined limit of at least \$1,000,000 per occurrence for bodily injury and property damage or split limits of at least \$1,000,000 for bodily injury per person per occurrence and \$1,000,000 for property damage per occurrence. Coverage shall include all owned, hired, and non-owned motor vehicles used in the performance of this contract by the Contractor or its employees.

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

Qualifying Insurance: The insurance required by this Agreement shall be written by non-assessable insurance company licensed to do business in the State of Texas and currently rated "B+" or better by the A.M. Best Companies. All policies shall be written on a "per occurrence basis" and not a "claims made" form.

Evidence of such insurance shall be attached as Exhibit "C".

Failure of Certificate Holder to demand a certificate or other evidence of full compliance with these insurance requirements or failure of Certificate Holder to identify a deficiency from evidence that is provided will not be construed as a waiver of Insured's obligation to maintain such insurance.

#### **Section 6. Miscellaneous Provisions**

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

(other than from the City pursuant to this Agreement) for any of the Work performed by Contractor under or related to this Agreement. If any such gift, bonus, commission, money, or other consideration is received by or offered to Contractor, Contractor shall immediately report that fact to the City and, at the sole option of the City, the City may elect to accept the consideration for itself or to take the value of such consideration as a credit against the compensation otherwise owing to Contractor under or pursuant to this Agreement.

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

- (F) *Conflict of Terms.*

*Scope of work:*

In the case of any conflicts between the terms of this Agreement within the Scope of Work, this Agreement shall govern. The Scope of Work is intended to detail the technical scope of Work, fee schedule, and contract time only and shall not dictate Agreement terms.

*Other Agreements between parties:*

In the case of any conflicts between the terms of this Agreement and wording contained within any other attachment, amendment, and agreement executed between the parties in conjunction with this Agreement, this Agreement shall govern.

- (G) *Non-Boycott of Israel.* Pursuant to Section 2270.002 of the Texas Government Code, Contractor certifies that either (i) it meets an exemption criterion under Section 2270.002; or (ii) it does not boycott Israel and will not boycott Israel during the term of the contract resulting from this solicitation. Contractor shall state any facts that make it exempt from the boycott certification as an attachment to this agreement.

Relevant definitions from the bill:

"Company" means a for-profit sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations that exists to make a profit.

"Boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.

## **Section 7. Termination**

(A) This Agreement may be terminated:

- (1) By the mutual agreement and consent of both Contractor and City;
- (2) By either party, upon the failure of the other party to fulfill its obligations as set forth in either this Agreement or a Scope of Work issued under this Agreement;
- (3) By the City, immediately upon notice in writing to the Contractor, as consequence of the failure of Contractor to perform the Work contemplated by this Agreement in a timely or satisfactory manner;
- (4) By the City, at will and without cause upon not less than five (5) days written notice to the Contractor.

(B) If the City terminates this Agreement pursuant to subsection 7(A)(2) or (3), above, the Contractor shall not be entitled to any fees or reimbursable expenses other than the fees and reimbursable expenses then due and payable as of the time of termination and only then for those Work that have been timely and adequately performed by the Contractor considering the actual costs incurred by the Contractor in performing work to date of termination, the value of the work that is nonetheless usable to the City, the cost to the City of employing another Contractor to complete the work required and the time required to do so, and other factors that affect the value to the City of the work performed at time of termination. In the event of termination not the fault of the Contractor, the Contractor shall be compensated for all basic, special, and additional Work actually performed prior to termination, together with any reimbursable expenses then due.

## **Section 8. Indemnification**

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

## **Section 9. Notices**

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

**Section 10. No Assignment**

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

**Section 11. Severability**

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

**Section 12. Waiver**

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

**Section 13. Governing Law; Venue**

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

**Section 14. Paragraph Headings; Construction**

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

**Section 15. Binding Effect**

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

**Section 16. Gender**

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

**Section 17. Counterparts**

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

**Section 18. Exhibits & Attachments**

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

**Section 19. Entire Agreement**

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

**Section 20. Relationship of Parties**

Nothing contained in this Agreement shall be deemed or construed by the parties hereto or by any third party to create the relationship of principal and agent or of partnership or of joint venture or of any association whatsoever between the parties, it being expressly understood and agreed that no provision contained in this Agreement nor any act or acts of the parties hereto shall be deemed to create any relationship between the parties other than the relationship of independent parties contracting with each other solely for the purpose of effecting the provisions of this Agreement.

**Section 21. Right To Audit**

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

**Section 22. Dispute Resolution**

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

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

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

**Certificate of Interested Parties**

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

Contractors are required to complete and file electronically with the Texas Ethics Commission using the online filing application.

Please visit the State of Texas Ethics Commission website, [https://www.ethics.state.tx.us/whatsnew/elf\\_info\\_form1295.htm](https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm) and <https://www.ethics.state.tx.us/tec/1295-Info.htm> for more information.

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

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

**EXECUTED** on this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**CITY:**

**CONTRACTOR:**

By: \_\_\_\_\_  
Name: Dr. Mark Browne  
Title: City Manager

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**ADDRESS FOR NOTICE:**

**CITY:**

**CONTRACTOR:**

City of Schertz  
Attn: Dr. Mark Brown, City Manager  
1400 Schertz Parkway  
Schertz, Texas 78154

Brauntex Materials, Inc  
1504 Wald Road  
New Braunfels, Tx 78132

# Exhibit “A”

## SCOPE OF WORK

### **Scope of Work**

Contractor agrees to supply City with the materials on an as-needed basis at the rates provided in the fee schedule.

### **Fee Schedule**

Prices listed below are valid through September 30, 2021. Increases for future contract years must be submitted in writing to the City no later than September 1 of each year.

<b>PRODUCT ID</b>	<b>PRODUCT DESCRIPTION</b>	<b>UNIT OF MEASURE</b>	<b>MATERIAL RATE</b>
014	HMCL TYPE D	TONS	\$69.00
041	TYPE D HOTMIX PG64-22	TONS	\$59.00
046	TYPE B HOTMIX	TONS	\$59.00

# Exhibit “B”

## 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: [purchasing@schertz.com](mailto:purchasing@schertz.com)  
Faxed to: 210-619-1169



# CERTIFICATE OF LIABILITY INSURANCE

A

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

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
GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR	Y 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
GEN'L AGGREGATE LIMIT APPLIES PER: POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC					
AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO ALL OWNED AUTOS SCHEDULED AUTOS NON-OWN AUTOS HIRED AUTOS	Y Y	123456789	01/01/1000	01/01/1000	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
UMBRELLA LIAB EXCESS LIAB DED RETENTION \$	Y Y				EACH OCCURRENCE \$ AGGREGATE \$
WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICEMEMBER EXCLUDED? (Mandatory in flt) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N N/A 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 EMPLOYEE \$ 500,000 E.L. DISEASE - POLICY LIMIT \$ 500,000
Builder's Risk Professional Services	Y 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 1811, Tex. Ins. Code (SB 425 enacted by Texas Legislature 82(R) 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
--	---

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.

## **Exhibit “C”**

### **EVIDENCE OF INSURANCE**

# **CITY OF SCHERTZ**

## **SERVICE AGREEMENT**

THE STATE OF TEXAS   §  
  §  
GUADALUPE COUNTY   §

This Service Agreement (“Agreement”) is made and entered by and between the City of Schertz, Texas, (the “City”) a Texas municipality, and Vulcan Construction Materials, LLC (“Contractor”).

### **Section 1.     Duration**

This Agreement shall become effective upon the date of the final signature affixed hereto and shall remain in effect through September 30, 2023 with the option to renew for two (2) additional terms of one (1) year each unless terminated as provided for in this Agreement.

### **Section 2.     Scope of Work**

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

### **Section 3.     Compensation**

- (A) The Contractor shall be paid in the manner set forth in Exhibit “A” and as provided herein.
- (B) *Billing Period.* The Contractor may submit an invoice for payment upon completion of the described tasks. Subject to Chapter 2251, Texas Government Code (the “Prompt Payment Act”), payment is due within thirty (30) days of the City’s receipt of the Contractor’s invoice. Interest on overdue payments shall be calculated in accordance with the Prompt Payment Act.
- (C) *Reimbursable Expenses.* Any and all reimbursable expenses related to the Project shall be included in the scope of Work (Exhibit A) and accounted for in the total contract amount.
- (D) *Payments Subject to Future Appropriation.* This Agreement shall not be construed as a commitment, issue, pledge or obligation of any specific taxes or tax revenues for payment to Contractor.

- (1) All payments or expenditures made by the City under this Agreement are subject to the City's appropriation of funds for such payments or expenditures to be paid in the budget year for which they are made.
- (2) The payments to be made to Contractor, or other expenditures under this Agreement, if paid, shall be made solely from annual appropriations of the City as may be legally set aside for the implementation of Article III, Section 52-a of the Texas Constitution or Chapter 380 of the Texas Local Government Code or any other economic development or financing program authorized by statute or home rule powers of the City under applicable Texas law, subject to any applicable limitations or procedural requirements.
- (3) In the event the City does not appropriate funds in any fiscal year for payments due or expenditures under this Agreement, the City shall not be liable to Contractor for such payments or expenditures unless and until appropriation of said funds is made; provided, however, that Contractor, in its sole discretion, shall have the right but not the obligation to terminate this Agreement and shall have no obligations under this Agreement for the year in respect to which said unappropriated funds relate.
- (4) To the extent there is a conflict of this Section and any other language or covenants in this Agreement, this Section 3 shall control.

#### **Section 4. Time of Completion**

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

#### **Section 5. Insurance**

Before commencing work under this Agreement, Contractor shall obtain and maintain the liability insurance provided for below throughout the term of the Project plus an additional two years. Contractor shall provide evidence of such insurance to the City. Such documentation shall meet the requirements noted in Exhibit B.

Contractor shall maintain the following limits and types of insurance:

**Workers Compensation Insurance:** Contractor shall carry and maintain during the term of this Agreement, workers compensation and employers liability insurance meeting the requirements of the State of Texas on all the Contractor's employees carrying out the work involved in this contract.

**General Liability Insurance:** Contractor shall carry and maintain during the term of this Agreement, general liability insurance on a per occurrence basis with limits of liability not less than \$1,000,000 for each occurrence and for fire damage. For Bodily Injury and Property Damage, coverage shall be no less than \$1,000,000. As a minimum, coverage for Premises, Operations, Products and Completed Operations shall be \$2,000,000. This coverage shall protect the public or any person from injury or property damages sustained by reason of the Contractor or its employees carrying out the work involved in this Agreement. The general aggregate shall be no less than \$2,000,000.

Automobile Liability Insurance: Contractor shall carry and maintain during the term of this Agreement, automobile liability insurance with either a combined limit of at least \$1,000,000 per occurrence for bodily injury and property damage or split limits of at least \$1,000,000 for bodily injury per person per occurrence and \$1,000,000 for property damage per occurrence. Coverage shall include all owned, hired, and non-owned motor vehicles used in the performance of this contract by the Contractor or its employees.

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

Qualifying Insurance: The insurance required by this Agreement shall be written by non-assessable insurance company licensed to do business in the State of Texas and currently rated "B+" or better by the A.M. Best Companies. All policies shall be written on a "per occurrence basis" and not a "claims made" form.

Evidence of such insurance shall be attached as Exhibit "C".

Failure of Certificate Holder to demand a certificate or other evidence of full compliance with these insurance requirements or failure of Certificate Holder to identify a deficiency from evidence that is provided will not be construed as a waiver of Insured's obligation to maintain such insurance.

#### **Section 6. Miscellaneous Provisions**

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

(other than from the City pursuant to this Agreement) for any of the Work performed by Contractor under or related to this Agreement. If any such gift, bonus, commission, money, or other consideration is received by or offered to Contractor, Contractor shall immediately report that fact to the City and, at the sole option of the City, the City may elect to accept the consideration for itself or to take the value of such consideration as a credit against the compensation otherwise owing to Contractor under or pursuant to this Agreement.

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

- (F) *Conflict of Terms.*

*Scope of work:*

In the case of any conflicts between the terms of this Agreement within the Scope of Work, this Agreement shall govern. The Scope of Work is intended to detail the technical scope of Work, fee schedule, and contract time only and shall not dictate Agreement terms.

*Other Agreements between parties:*

In the case of any conflicts between the terms of this Agreement and wording contained within any other attachment, amendment, and agreement executed between the parties in conjunction with this Agreement, this Agreement shall govern.

- (G) *Non-Boycott of Israel.* Pursuant to Section 2270.002 of the Texas Government Code, Contractor certifies that either (i) it meets an exemption criterion under Section 2270.002; or (ii) it does not boycott Israel and will not boycott Israel during the term of the contract resulting from this solicitation. Contractor shall state any facts that make it exempt from the boycott certification as an attachment to this agreement.

Relevant definitions from the bill:

"Company" means a for-profit sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations that exists to make a profit.

"Boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.

## **Section 7. Termination**

(A) This Agreement may be terminated:

- (1) By the mutual agreement and consent of both Contractor and City;
- (2) By either party, upon the failure of the other party to fulfill its obligations as set forth in either this Agreement or a Scope of Work issued under this Agreement;
- (3) By the City, immediately upon notice in writing to the Contractor, as consequence of the failure of Contractor to perform the Work contemplated by this Agreement in a timely or satisfactory manner;
- (4) By the City, at will and without cause upon not less than five (5) days written notice to the Contractor.

(B) If the City terminates this Agreement pursuant to subsection 7(A)(2) or (3), above, the Contractor shall not be entitled to any fees or reimbursable expenses other than the fees and reimbursable expenses then due and payable as of the time of termination and only then for those Work that have been timely and adequately performed by the Contractor considering the actual costs incurred by the Contractor in performing work to date of termination, the value of the work that is nonetheless usable to the City, the cost to the City of employing another Contractor to complete the work required and the time required to do so, and other factors that affect the value to the City of the work performed at time of termination. In the event of termination not the fault of the Contractor, the Contractor shall be compensated for all basic, special, and additional Work actually performed prior to termination, together with any reimbursable expenses then due.

## **Section 8. Indemnification**

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

## **Section 9. Notices**

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

**Section 10. No Assignment**

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

**Section 11. Severability**

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

**Section 12. Waiver**

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

**Section 13. Governing Law; Venue**

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

**Section 14. Paragraph Headings; Construction**

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

**Section 15. Binding Effect**

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

**Section 16. Gender**

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

**Section 17. Counterparts**

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

**Section 18. Exhibits & Attachments**

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

**Section 19. Entire Agreement**

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

**Section 20. Relationship of Parties**

Nothing contained in this Agreement shall be deemed or construed by the parties hereto or by any third party to create the relationship of principal and agent or of partnership or of joint venture or of any association whatsoever between the parties, it being expressly understood and agreed that no provision contained in this Agreement nor any act or acts of the parties hereto shall be deemed to create any relationship between the parties other than the relationship of independent parties contracting with each other solely for the purpose of effecting the provisions of this Agreement.

**Section 21. Right To Audit**

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

**Section 22. Dispute Resolution**

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

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

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

**Certificate of Interested Parties**

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

Contractors are required to complete and file electronically with the Texas Ethics Commission using the online filing application.

Please visit the State of Texas Ethics Commission website, [https://www.ethics.state.tx.us/whatsnew/elf\\_info\\_form1295.htm](https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm) and <https://www.ethics.state.tx.us/tec/1295-Info.htm> for more information.

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

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

**EXECUTED** on this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**CITY:**

**CONTRACTOR:**

By: \_\_\_\_\_

Name: Dr. Mark Browne

Title: City Manager

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**ADDRESS FOR NOTICE:**

**CITY:**

**CONTRACTOR:**

City of Schertz  
Attn: Dr. Mark Brown, City Manager  
1400 Schertz Parkway  
Schertz, Texas 78154

Vulcan Construction Materials LLC  
10101 Reunion Place Ste 500  
San Antonio, Texas 78216  
farrarj@vmcmail.com

# Exhibit “A”

## SCOPE OF WORK

### **Scope of Work**

Contractor agrees to supply City with the materials on an as-needed basis at the rates provided in the fee schedule.

### **Fee Schedule**

Prices listed below are valid through September 30, 2021. Increases for future contract years must be submitted in writing to the City no later than September 1 of each year.

<b>PRODUCT ID</b>	<b>PRODUCT DESCRIPTION</b>	<b>UNIT OF MEASURE</b>	<b>MATERIAL RATE</b>
014	HMCL TYPE D	TONS	\$82.00
041	TYPE D HOTMIX PG64-22	TONS	\$68.00
046	TYPE B HOTMIX	TONS	\$66.00

# Exhibit “B”

## 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: [purchasing@schertz.com](mailto:purchasing@schertz.com)  
Faxed to: 210-619-1169



# CERTIFICATE OF LIABILITY INSURANCE

A

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

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
GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR	Y 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) \$ 6,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMMOD AGG \$ 1,000,000
GEN'L AGGREGATE LIMIT APPLIES PER: POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC					
AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO ALL OWNED AUTOS SCHEDULED AUTOS NON-OWN AUTOS HIRED AUTOS	Y Y	123456789	01/01/1000	01/01/1000	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
UMBRELLA LIAB EXCESS LIAB DED RETENTION \$	Y Y				EACH OCCURRENCE \$ AGGREGATE \$
WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICEMEMBER EXCLUDED? (Mandatory in flt) If yes, describe under DESCRIPTION OF OPERATIONS below	Y N	01234	01/01/1000	01/01/1000	<input checked="" type="checkbox"/> NO STATUTORY LIMITS E.L. EACH ACCIDENT \$ 500,000 E.L. DISEASE - EA EMPLOYEE \$ 500,000 E.L. DISEASE - POLICY LIMIT \$ 500,000
Builder's Risk Professional Services	Y 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 1811, Tex. Ins. Code (SB 426 enacted by Texas Legislature 82(R) 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
--	---

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.

## **Exhibit “C”**

### **EVIDENCE OF INSURANCE**

## **RESOLUTION NO. 22-R-115**

### **A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF SCHERTZ, TEXAS AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH BRAUNTEX MATERIALS AND VULCAN CONSTRUCTION MATERIALS FOR ASPHALT, HOT MIX AND RELATED MATERIALS AND OTHER MATTERS IN CONNECTION THEREWITH**

WHEREAS, the City of Schertz (the “City”) has completed an indefinite quantity – indefinite delivery (“IDIQ”) procurement for asphalt, hot mix, and other related materials; and

WHEREAS, City staff has determined that Brauntex Materials and Vulcan Construction Materials are qualified to provide these materials to the City; and

WHEREAS, the City staff has negotiated a fixed rate for these materials; and

WHEREAS, City staff has determined it is in the best interest of the City and its Citizens to contract these materials on an as-needed basis; and

WHEREAS, Brauntex Materials and Vulcan Construction Materials have a reputation of consistently providing a quality material for best value to the City; and

WHEREAS, the City desires to allow the City Manager to approve and execute an IDIQ contract with Brauntex Materials and Vulcan Construction Materials.

### **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 Brauntex Materials and Vulcan Construction Materials in substantially the same form set forth on Exhibit A.

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

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

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

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

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

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

PASSED AND ADOPTED, this 25th day of October 2022.

CITY OF SCHERTZ, TEXAS

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Ralph Gutierrez, Mayor

ATTEST:

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Brenda Dennis, City Secretary

(CITY SEAL)

## EXHIBIT A

### Service Agreements

# Street Materials

## Tabulation

### Brauntex Materials

HMCL Type D: \$69.00 per ton

Type D Hot Mix: \$59.00 per ton

Type B Hot Mix: \$59.00 per ton

### Vulcan Construction Materials

HMCL Type D: \$82.00 per ton

Type D Hot Mix: \$68.00 per ton

Type B Hot Mix: \$66.00 per ton

**CITY COUNCIL MEMORANDUM**

**City Council Meeting:** October 25, 2022  
**Department:** Executive Team  
**Subject:** Resolution No. 22-R-98 - Consideration and/or action approving a Resolution by the City Council of the City of Schertz, Texas creating Neighborhood Empowerment Zones along FM 78. (M. Browne/B. James)

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**BACKGROUND**

At the August 23, 2022 City Council meeting, during consideration of the resolution to discuss approval of the empowerment zone for Main Street, staff was asked about designating the area along the south side of FM 78 as an empowerment zone. There are similarities between the area south of FM 78 and Main Street that warrant these designations as an appropriate tool.

Neighborhood Empowerment Zones are covered under Chapter 378 of the Local Government Code. They are a tool to create affordable housing, including manufactured housing, increase economic development in the zone, increase the quality of social services, education, or public safety provided to residents of the zone, and aid in the rehabilitation of affordable housing in the zone.

In the case of FM 78, like Main Street, the primary focus would be on increasing economic development. It does this by authorizing the City to waive or adopt fees related to the construction of buildings in the zone, including fees related to the inspection of buildings and impact fees, enter into agreements, for a period of not more than 10 years, for the purpose of benefiting the zone, for refunds of municipal sales tax on sales made in the zone, enter into agreements abating municipal property taxes on property in the zone subject to the duration limits of Section 312.204, Tax Code, and set baseline performance standards, such as the Energy Star Program as developed by the Department of Energy, to encourage the use of alternative building materials that address concerns relating to the environment or to the building costs, maintenance, or energy consumption.

**GOAL**

Promote and enhance commercial activity along FM 78 to promote the economic, cultural and general welfare of the public. The area around Main Street and FM 78 in Schertz once served as the commercial and social hub of the community. The City seeks to improve the image of the area around FM 78 through the inducement of public money to promote local economic development and stimulate business and commercial activities in the City.

**COMMUNITY BENEFIT**

Encourage the attraction of small businesses that will create local charm and help develop a sense of place in and around FM 78. Promote commercial development. Stabilize and improve property values. Foster civic pride. Strengthen the economy of the City by protecting and enhancing the attractiveness of the FM 78 area to residents and visitors, as well as provide support of local businesses.

**SUMMARY OF RECOMMENDED ACTION**

Staff recommends approval of Resolution 22-R-98 approving FM 78 East Empowerment Zone and FM 78 West Empowerment Zone.

**FISCAL IMPACT**

There is no fiscal impact tied directly to the creation of the Neighborhood Empowerment Zones. If the City chooses to waive additional fees or provide other incentives through separate action, the fiscal impact of those decisions will be provided at that time.

**RECOMMENDATION**

Approve Resolution 22-R-98

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**Attachments**

Res 22 R 98

Exhibit A

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## **RESOLUTION NO. 22-R-98**

### **A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF SCHERTZ, TEXAS CREATING THE SCHERTZ FM 78 NEIGHBORHOOD EMPOWERMENT ZONE EAST AND THE SCHERTZ FM 78 NEIGHBORHOOD EMPOWERMENT ZONE WEST OF SCHERTZ, TEXAS, AND RELATED MATTERS IN CONNECTION THEREWITH**

**WHEREAS**, The City of Schertz desires to increase the public health, safety, and welfare of the persons in the municipality; and

**WHEREAS**, The City of Schertz City Council finds that the creation of the Schertz FM 78 Neighborhood Empowerment Zone East and FM 78 Neighborhood Empowerment Zone West would promote the creation of affordable housing, including manufactured housing, in the zones; increase in economic development in the zones; increase in the quality of social services, education, or public safety provided to residents of the zones; or the rehabilitation of affordable housing in the zones.

**WHEREAS**, The City of Schertz City Council finds that the FM 78 Neighborhood Empowerment Zone East and FM 78 Neighborhood Empowerment Zone West should be created in the areas show on Exhibit “A”; and

**WHEREAS**, The City of Schertz City Council finds that the creation of the FM 78 Neighborhood Empowerment Zone East and FM 78 Neighborhood Empowerment Zone West sbenefits and is for the public purpose of increasing the public health, safety, and welfare of the persons in the municipality; and

**WHEREAS**, The City of Schertz City Council finds that the creation of the zones satisfies the requirements of Section 312.202, Tax Code as a combination of factors including the predominance of defective or inadequate sidewalks and streets, faulty size and usefulness of lots, and the deterioration of site and other improvements such as water and sewer lines; and

**WHEREAS**, The program is intended to stabilize and improve property values; and

**WHEREAS**, Foster civic pride in the beauty and accomplishments of the past, and to promote the use of the historic structures for the culture, education, and general welfare of residents; and

**WHEREAS**, Strengthen the economy of the city by protecting and enhancing the attractiveness of the FM 78 area to residents and visitors, as well as provide support and stimulus to businesses; and

**WHEREAS**, given the aims of the Comprehensive Plan as it relates to FM 78 and in particular the desire to foster commercial development that residents; and

**NOW THEREFORE, BE IT RESOLVED**, THAT THE CITY COUNCIL OF THE CITY OF SCHERTZ, TEXAS THAT:

Section 1. The City Council hereby establishes the FM 78 Neighborhood Empowerment Zone East and FM 78 Neighborhood Empowerment Zone West as shown in Exhibit "A".

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

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

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

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

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

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

PASSED AND ADOPTED, this 25<sup>th</sup> day of October, 2022.

CITY OF SCHERTZ, TEXAS

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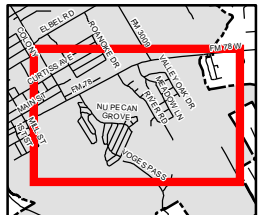
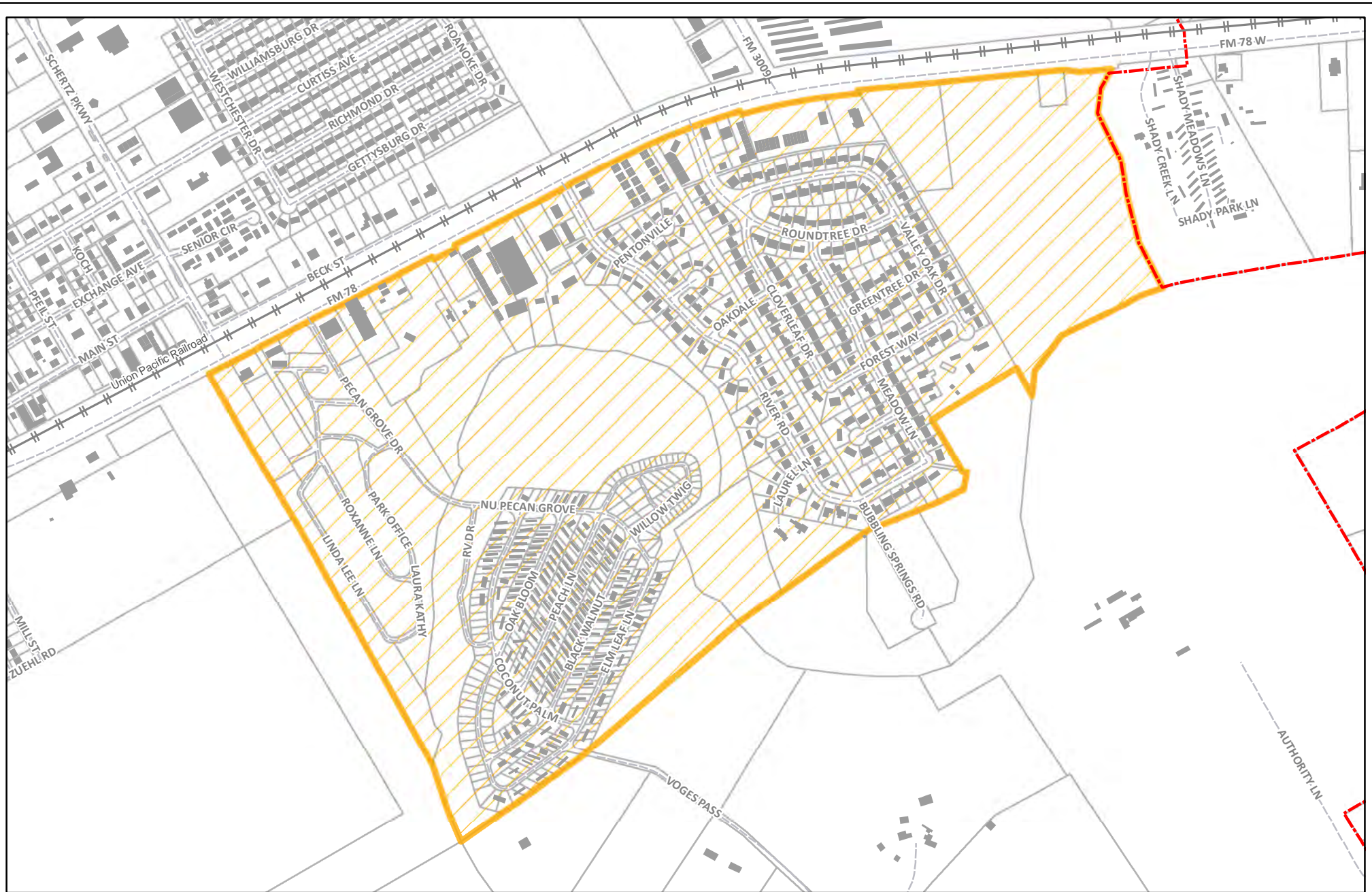
Ralph Gutierrez, Mayor

ATTEST:

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Sheila Edmondson, Deputy City Secretary

(CITY SEAL)



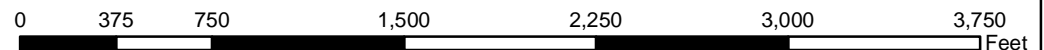
# City of Schertz

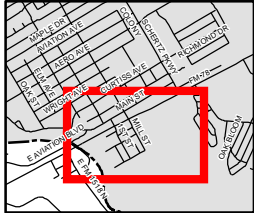
## FM 78 Empowerment Zone Project



FM 78 Empowerment Zone East



Schertz Municipal Boundary

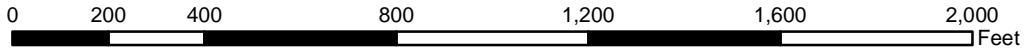




# City of Schertz

## FM 78 Empowerment Zone Project

-  FM 78 Empowerment Zone West
-  Schertz Municipal Boundary



**CITY COUNCIL MEMORANDUM**

**City Council Meeting:** October 25, 2022  
**Department:** Executive Team  
**Subject:** Resolution No. 22-R-121 - Consideration and/or action approving a Resolution by the City Council of the City of Schertz, Texas authorizing a Wastewater Pump and Haul Agreement with Meritage Homes of Texas, LLC. (M. Browne/B. James)

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**BACKGROUND**

Meritage Homes of Texas, LLC is requesting a Subdivision Improvement Agreement associated with the Carmel Ranch Development. Carmel Ranch is 127 residential lots on approximately 40 acres of land. It is located on the south side of Lower Seguin Road, approximately 3,800 feet east of the intersection with FM 1518.

Meritage Homes is requesting the Subdivision Improvement Agreement to be able to file the plat, prior to connecting their development to the City's sanitary sewer system. They are proposing to build the sanitary sewer lines within their project, but not to make the offset connection to sewer. The nearest connection to sewer is through the Corbett Lift Station. There is no available capacity at the Corbett Lift Station. The developer of the planned subdivision to the north of Carmel Ranch is Saddlebrook. That developer had proposed to construct an additional lift station on their property to handle their sewer needs. They have proposed to oversize the new lift station to provide additional capacity but are also exploring the option of constructing the future Cibolo Creek West Trunk line to CCMA's South Schertz Sewer Treatment Plant. At this point in time the developer has not begun construction on either option, and while staff has not heard they do not plan to proceed, there is no guarantee they will. Meritage Homes will need a waiver associated with the final plat to not be required to construct the offsite sewer connection.

Meritage is requesting to be able to pull building permits for 20 residences and 1 model home and receive Certificates of Occupancy for those structures. Meritage will enter into a pump and haul agreement and put up a performance bond to cover the estimated cost of pump and haul.

**GOAL**

Provide for the orderly development of infrastructure within the City of Schertz.

**COMMUNITY BENEFIT**

Provide for development of infrastructure in a timely, cost-effective manner.

**SUMMARY OF RECOMMENDED ACTION**

Approval of Resolution 22-R-121 authorizing a Wastewater Pump and Haul Agreement with Meritage Homes of Texas, LLC. for the Carmel Ranch development.

**FISCAL IMPACT**

None

**RECOMMENDATION**

Approval of Resolution 22-R-121.

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**Attachments**

Res 22 R 121

Pump and Haul Agreement Carmel Ranch

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## **RESOLUTION 22-R-121**

### **A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF SCHERTZ, TEXAS AUTHORIZING AN AGREEMENT WITH THE DEVELOPER OF THE CARMEL RANCH SUBDIVISION PROJECT FOR SEWER PUMP AND HAUL.**

WHEREAS, there not sewer service in the vicinity to serve an area of southern Schertz.

WHEREAS, another developer has submitted plans to construct a sewer lift station with capacity to serve Carmel Ranch,

WHEREAS, the Developer of the Carmel Ranch Subdivision agrees to provide pump and haul services for sewer until connection to sewer services,

WHEREAS, there is a benefit in not having two developers constructing lift station in this area,

WHEREAS, the City Council finds that it is in the best interest of the City to enter into the Agreement with Developer for Pump and Haul services for Carmel Ranch.

WHEREAS the Unified Development Code of the City of Schertz provides for developers to enter into agreements to defer the construction of required improvements until after the plat is filed.

**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 the agreement for Pump and Haul Services for Carmel Ranch with Meritage Homes of Texas, LLC. generally in the form attached as Exhibit "A", subject to changes approved by the City Manager and City Attorney.

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 25th day of October 2022.

CITY OF SCHERTZ, TEXAS

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Ralph Gutierrez, Mayor

ATTEST:

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Sheila Edmondson, Deputy City Secretary

(CITY SEAL)

## Exhibit “A”

## WASTEWATER PUMP AND HAUL AGREEMENT FOR CARMEL RANCH

This Pump and Haul Agreement (this "Agreement") is made and entered into as of the \_\_\_\_ day of, \_\_\_\_\_ 2022 (the "Effective Date") by and between the CITY OF SCHERTZ, TEXAS, a Texas home rule municipal corporation ("City"), and MERITAGE HOMES OF TEXAS, LLC, or its successors and assigns ("Developer"). City and Developer are sometimes referred to herein as the "Parties."

### RECITALS:

Whereas, Developer is the owner of certain real property, which is more particularly described herein on Exhibit "A" attached hereto and made a part hereof (the "Property"), and, which is located within the Sewer CCN and the (city limits) of the City; and

Whereas, Developer desires to develop the Property as a residential subdivision known as Carmel Ranch (the "Project"); and

Whereas, the offsite wastewater infrastructure necessary to collect and treat the Development (OWI) is not completed; and

Whereas, Construction and acceptance of OWI is required by the Unified Development Code of the City of Schertz in order to record the plats for the "Development"; and

Whereas, Developer desires to allow up to 20 residential homes and 1 model home to be constructed and be eligible to obtain certificates of occupancy while the aforementioned OWI is being completed; and

Whereas, Before the OWI is completed Developer is requesting to use a licensed contractor to "pump and haul" the wastewater from the Development; and

Whereas, Developer will be responsible for onsite wastewater infrastructure in the Development until the City accepts it; and

Whereas, Developer and City also desire to memorialize certain terms with respect to the testing on onsite wastewater infrastructure and operation of pump and haul service from the Development; and

Whereas, Developer agrees to enter into a contract with a company licensed to provide pump and haul services; and

Whereas, Developer and City have contemporaneously herewith also executed an Escrow Agreement associated with pump and haul service from the Development; and

Whereas, City is amenable to the proposed interim solution as long as Developer provides financial security guaranteeing the continuity of pump and haul services until connection to the

“OWI” is completed and accepted by City for public maintenance;

NOW, THEREFORE, in consideration of the mutual promises contained herein along with other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and confessed, the parties hereto agree as follows:

### **Article I. Terms**

1. Term. This Agreement shall be effective on the Effective Date. The term of this Agreement shall be from the Effective Date until the Project is connected to the OWI and the “pump and haul” service is no longer necessary.

2. Testing of Onsite Wastewater Infrastructure. All onsite wastewater infrastructure will be pressure tested prior to plat recordation. In the event additional dry utility work is completed after construction of wastewater collection system within the Project, the onsite wastewater infrastructure, including lateral service lines will be tested again and any necessary repairs will be made prior to the issuance of any certificates of occupancy by City.

3. Collection Tanks. Prior to completion of connection to the OWI, Developer will install adequate facilities for the collection of onsite wastewater, which shall serve the first 20 single family main structures (“houses”) and 1 model home to be constructed on separate lots within the Project. Developer shall be responsible for the maintenance, operation and removal, and disposal, of the collection facilities and pumping system during the term of this Agreement. Although permission to “Pump and Haul” shall expire as provided in Article I. Section 1, above, Developer’s obligation to safely remove and dispose of the collection facilities and pumping system, shall survive the expiration of this Agreement, until the collection tanks and pumping system are safely removed.

4. Alarm System. Developer will install an alarm system to monitor the wastewater collection system within sixty (60) days after the recordation of the plat for the Project.

5. Monitoring/Pumping. Developer or its contractor shall monitor the level of the wastewater collection tank(s) on at least a weekly basis and will pump the tank(s) at least weekly or prior to them reaching 75 percent capacity, whichever is more frequent. The monitoring and pumping frequency may be required to be increased, at the sole discretion of the City Engineer, as warranted by increased flow.

6. Maintenance of Onsite Water System. Developer will maintain the onsite wastewater system within the Project until the Term of this Agreement has expired.

### **Article II. Building Permits and Certificates of Occupancy**

1. Issuance of Building Permits and Certificates of Occupancy. The issuance of any building permit or certificate of occupancy for any improvement within the Project area prior to completion of connection to the OWI, subject to the terms and conditions that follow:

- (a) Inspections. All facilities necessary to provide pump and haul service to the lot for which a building permit or a certificate of occupancy is to be issued have been completed and

passed inspection by City, and wastewater service by pump and haul under this Agreement is otherwise available to the lot.

- (b) Fiscal Security to Assure Continuation of Pump and Haul. Fiscal security shall be provided and maintained in accordance with the Escrow Agreement a copy of which is attached hereto as Exhibit C. Developer has estimated the cost to use the Pump and Haul contractor until the OWI is completed will not exceed \$XXX,000.00, and such amount shall be deposited with the Escrow Agreement. Upon the reasonable determination by City that additional fiscal security must be deposited with the Escrow Agent; Developer shall promptly deposit the required amount with the Escrow Agent.
- (c) Compliance with Agreement. Developer shall at all times during its term remain in compliance with all material terms and conditions of this Agreement.
- (d) Compliance with Development and Building Regulations. Except as expressly provided herein, this Agreement in no way negates or diminishes the regulatory requirements, which must be addressed for the approval of subdivision plats, or issuance of a building permit, or certificate of occupancy, as set forth in applicable local state, or federal regulations have been met.
- (e) This Agreement is not effective until Developer demonstrates to the City that the Developer has a current contract with a pump and haul provider that meets the requirements of this Agreement.
- (f) Until the OWI is completed an accepted, the City will issue no more than 21 building permits for lots within the Project.

2. Suspension on Issuance of Permits. In the event that at any time the conditions in Section 1 of this Article, or any other provision of this Agreement are not met, it is specifically agreed that City may suspend development approvals for the Project, and may suspend the issuance of building permits and certificates of occupancy for the Subdivision until Developer comes into compliance with this Agreement.

### **Article III. Pump and Haul Services**

1. Service Provided. In consideration for the City authorizing the issuance of building permits and certificates of occupancy as provided herein, the Developer, at its sole cost and expense, shall cause wastewater from the Project to be pumped and hauled and disposed of in a manner that is compliant with applicable local, state, and federal regulations, and that does not result in any spills, leaks, or detriment to the public health, safety or welfare. The pump and haul shall continue until such time that connection to the OWI is completed and accepted by City for service and maintenance. The Developer shall at all times, during the term of this Agreement, maintain all facilities related to the pump and haul service in good repair and working condition and all wastewater effluent in compliance with applicable law. The Developer shall promptly report any spills or leaks to the City. The Developer shall cooperate with the City to provide any information to and file any reports with the Texas Commission on Environmental Quality (the TCEQ) as required by law; and shall promptly, sooner than 30 days after demand, reimburse the City for any expenses the City may incur under this Agreement.

2. Pump and Haul Provider. The Developer shall contract with a reputable company that holds all licenses required by the “TCEQ” to pump and haul wastewater from the Project area and to maintain all pump and haul facilities, including wastewater manholes, pumps, piping, tanks, secondary containment, alarm systems, and any other appurtenances as shown on approved Construction Plans, in good repair and working condition. Immediately upon completion of pump and haul operation Developer is required to clear and restore the site of the pump and storage system.

3. Pump and Haul Operations. Prior to starting the pump and haul operation the Pump and Haul Operator and Developer must comply with the following:

(a) Plans. Texas Licensed Professional Engineer must provide certification to the City Engineer that the wastewater collection, storage, pumping, and alarm systems have been tested as required in 30 TAC 213.5(c)(3)(A) and (D) and City requirements. The plans shall include, but not be limited to:

(i) All weather access road to final collection site;

(ii) Secondary containment provision;

(iii) Pump specifications

(iv) Alarm system specifications.

(b) Installation of a watertight wet well/holding tank as per TCEQ requirements.

No discharge shall be allowed until installation of the tank, pump, and monitoring/alarm system is complete and verified by Developer’s engineer.

4. Insurance. The Pump and Haul Provider shall maintain worker comp insurance in at least the minimum coverage required by statute; liability insurance covering death, injury or property loss with a minimum coverage amount of \$100,000.00 per occurrence unless the Pump and Haul Provider is the San Antonio River Authority.

5. Contact information. Developer shall maintain with the City at all times the company’s current contact information and designated representatives who are available twenty-four hours a day to respond to complaints or issues related to wastewater disposal.

6. Records. The Developer shall cause the company to maintain complete records of the pump and haul service provided, and the Developer shall maintain with the City a copy of any reports required by applicable state and federal regulations, related to providing pump and haul services. Specifically Developer shall provide reports as follows:

(a) A monthly report of the pump-and-haul operation shall be provided to the City by the 10th day of each following month. The report must include the following:

(i) The volume of wastewater pumped each day

(ii) The total volume of wastewater pumped each month

(iii) Verification of proper disposal

(b) A final report totaling the items above is due within 10 days of the final inspection.

7. Transition of Services. The City and Developer shall reasonably cooperate to smoothly transition wastewater service from the Developer to the City upon connection to the OWI.

#### **Article IV. Wastewater Service to be provided by City**

1. The Parties agree that upon final acceptance of the connection to the OWI by the City and placement of the Wastewater Infrastructure into service, the City will provide wastewater utility service to all customers within the Subdivision on same terms and conditions as similarly situated customers and property.

#### **Article V. Insurance and Indemnification**

1. Insurance. If the Pump and Haul provider is a party other than the San Antonio River Authority, the company selected by Developer to provide pump and haul services under this Agreement shall procure and maintain at its sole cost and expense for the duration of this Agreement insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the services as required by this Agreement. The Developer shall procure and maintain at its sole cost and expense for the duration of this Agreement insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the services as required by this Agreement. All Certificates of Insurance and endorsements shall be furnished to the City's at the time of execution of this Agreement.

(a) Insurance policies required:

(i) General Commercial Liability Coverage – Minimum of \$1,000,000.00 per occurrence for bodily injury and property damage; \$2,000,000.00 aggregate.

(ii) Business Automobile Liability Coverage. – Minimum Combined Single Limit of \$1,000,000.00 per occurrence for bodily injury and property damage.

(iii) Umbrella/Excess Liability Coverage -- Minimum of not less than \$1,000,000.00.

(b) General Requirements Applicable to Policies.

(i) Only insurance carriers licensed and admitted to do business in the State of Texas will be accepted.

(ii) Each insurance policy shall be endorsed to state that coverage shall not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been

given to the City of Schertz, Texas.

- (iii) Upon request, certified copies of all insurance policies shall be furnished to the City of Schertz, Texas.
- (iv) The City of Schertz, Texas, its officials, employees, and volunteers, are to be added as “Additional Insured” to the General Commercial Liability Policy and the Umbrella/Excess Liability Policy. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officials, employees, or volunteers.
- (v) Each insurance policy shall comply with such other requirements as set forth in Exhibit “D” (entitled “Requirements For All Insurance Documents”).

2. Developer acknowledges and agrees that City is providing this Agreement as an accommodation to Developer so that Developer may receive building permits and certificate of occupancies before the OWI is complete; and, therefore, as part of the consideration offered to City for its agreement to allow the pump and hall activities authorized hereunder, is Developer’s promise and agreement, after consultation with its attorney, to the provisions that follow:

**DEVELOPER, SHALL ON BEHALF OF ITSELF ITS, SUCCESSORS, ASSIGNS, EMPLOYEES, OR AGENTS, INCLUDING BUT NOT LIMITED TO ANY PUMP AND HAUL CONTRACTOR ENGAGED BY OR FOR DEVELOPER, (COLLECTIVELY “DEVELOPER”), IN THE EXECUTION OR PERFORMANCE OF ITS RIGHTS, DUTIES, OBLIGATIONS, ACTS OR OMISSIONS UNDER THIS WASTEWATER PUMP AND HAUL AGREEMENT FOR THE HALLIE’S COVE SUBDIVISION UNITS 1 AND 2 (THE “AGREEMENT”) SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS THE CITY AND ITS ELECTED OFFICIALS, AGENTS, OFFICERS AND EMPLOYEES (COLLECTIVELY, THE “CITY INDEMNITEES”) FROM AND AGAINST ANY AND ALL DEMANDS, LOSSES, JUDGMENTS, DAMAGES, SUITS, CLAIMS, ACTIONS, LIABILITIES AND EXPENSES, INCLUDING, WITHOUT LIMITATION, ALL ATTORNEYS’ FEES AND EXPENSES, IN LAW OR IN EQUITY, OF EVERY KIND AND NATURE WHATSOEVER, FOR BODILY INJURY, DEATH OR DAMAGE TO PROPERTY, WHICH ANY CITY INDEMNITEES MAY SUFFER OR SUSTAIN OR WHICH MAY BE ASSERTED OR INSTITUTED AGAINST ANY OF THE CITY INDEMNITEES RESULTING FROM, ARISING OUT OF OR IN CONNECTION WITH INJURY TO OR DEATH TO ANY INDIVIDUAL PERSON OR DAMAGE TO OR DESTRUCTION OF PROPERTY CAUSED BY DEVELOPER’S INTENTIONAL, RECKLESS, GROSSLY NEGLIGENT OR NEGLIGENT ACTS OR OMISSION UNDER THE AGREEMENT OR UNDER COLOR OF THE AGREEMENT, INCLUDING WITHOUT LIMITATION:**

- (i) **THE BREACH BY DEVELOPER OF ANY WARRANTY, REPRESENTATION OR COVENANT MADE IN THE AGREEMENT, OR**
- (ii) **THE VIOLATION OF ANY STATUTE, ADMINISTRATIVE RULE OR REGULATION BY DEVELOPER, WHICH CAUSES ANY REGULATORY AUTHORITY OF THIS STATE, OR A SUBDIVISION OF THIS STATE, OR THE FEDERAL GOVERNMENT, TO ASSESS A FINE OR TAKE OTHER ACTION ADVERSE TO THE CITY.**

**DEVELOPER FURTHER EXPRESSLY AGREES THIS INDEMNITY AND HOLD HARMLESS PROVISION SHALL EXTEND TO PROTECT THE CITY INDEMNITIES FROM CITY INDEMNITIES' OWN NEGLIGENCE IN THE PERFORMANCE OF THEIR RIGHTS, DUTIES, OBLIGATIONS, ACTS OR OMISSIONS UNDER THIS AGREEMENT AND THAT THESE INDEMNITY AND HOLD HARMLESS PROVISION SHALL ONLY BE LIMITED TO THE EXTENT THE CITY INDEMNITIES' GROSS NEGLIGENCE OR WILLFUL MISCONDUCT IS THE SOLE CAUSE OF ANY INJURY TO OR DEATH OF ANY INDIVIDUAL PERSON OR ANY DAMAGE TO OR DESTRUCTION OF PROPERTY, BUT NOT OTHERWISE. DEVELOPER FURTHER EXPRESSLY AGREES THIS INDEMNIFY AND HOLD HARMLESS PROVISION SHALL SURVIVE AND CONTINUE TO BE IN FULL FORCE AND EFFECT FOR FOUR YEARS FROM THE DATE OF TERMINATION OF THE AGREEMENT.**

3. Enforcement Actions. In the event that the EPA or the TCEQ issues any form or order or penalty for violations of applicable law resulting from the pump and haul services provided under this Agreement, the Developer shall be responsible for payment of said penalties within the time required under the order or applicable law.

#### **Article VI. Notice of Agreement**

1. Notice of Agreement and Pump and Haul Services. Developer shall record a memorandum of this agreement in the Official Public Records of Bexar County, Texas that places prospective property owners on notice that wastewater service may be provided by pump and haul service. The Developer shall further give written notice to purchasers of lots within the Project that wastewater service will be provided by pump and haul until completion of the Wastewater Infrastructure and shall cause anyone who purchases lots within the Project to give such notice to subsequent purchasers.

#### **Article VII. Default and Related Provisions**

1. Default. If one Party believes that the other Party is in Default (herein so called) of any other provision of this Agreement, the non-defaulting Party will give written notice to the other Party, specifying the event of Default and extending the defaulting Party 30 days to cure the Default or, if the curative action cannot reasonably be completed within 30 days, 30 days to commence the curative action and thereafter to diligently pursue the curative action to

completion. This 30-day period for notice and opportunity to cure must pass before the non-defaulting Party may initiate any remedies available to the non-defaulting Party due to an alleged Default. The non-defaulting Party must mitigate any direct or consequential damages arising from any Default to the extent reasonably possible under the circumstances. The Parties agree that they will use good faith, reasonable efforts to resolve any dispute by agreement, including engaging in non-binding mediation or other alternative dispute resolution methods as recommended by the laws of the State of Texas, before initiating any lawsuit to enforce their respective rights under this Agreement. If the Default is not cured within the 30-day period, or if curative action is not commenced or diligently pursued in the case of curative action that cannot reasonably be completed in 30 days, the non-defaulting Party may pursue all remedies, at law or in equity, that it deems appropriate to redress such Default. Either Party may seek specific performance or mandamus to enforce the terms of this Agreement.

### **Article VIII. Miscellaneous**

The following miscellaneous provisions are made part of this Agreement:

1. Additional Instruments. City and Developer agree and covenant to cooperate, negotiate in good faith, and to execute such other and further instruments and documents as may be reasonably required to fulfill the public purposes provided for and included within this Agreement.
2. Amendments. This Agreement constitutes the entire understanding and agreement of the parties as to the matters set forth in this Agreement. No alteration of or amendment to this Agreement shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.
3. Applicable Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Bexar County, Texas. Venue for any action arising under this Agreement shall lie in the state district courts of Bexar County, Texas.
4. Assignment. Developer understands and agrees that the City expressly prohibits Developer from selling, transferring, assigning or conveying in any way any rights to receive under this Agreement without the City's prior written consent.
5. Binding Obligation. This Agreement shall become a binding obligation on the signatories upon execution by all signatories hereto. The City warrants and represents that the individual executing this Agreement on behalf of the City has full authority to execute this Agreement and bind the City to the same. Developer warrants and represents that the individual executing this Agreement on its behalf has full authority to execute this Agreement and bind it to the same.
6. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall constitute one and the same document.
7. Legal Construction. The Parties acknowledge that the Parties and their counsel have

reviewed and revised the Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of the Agreement.

8.      **Enforcement.** The City Attorney or his or her designee may enforce all legal rights and obligations under this Agreement without further authorization. Developer shall provide to the City Attorney all documents and records that the City Attorney requests to assist in determining Developer's compliance with this Agreement.

9.      **Entire Agreement.** This Agreement, along with the Escrow Agreement, contains the entire agreement between the parties. This Agreement may only be amended, altered or revoked by written instrument signed by the City and Developer.

10.     **Exhibits and Attachments.** All Exhibits and Attachments referenced in this Agreement are attached hereto and incorporated herein for all purposes.

11.     **Force Majeure.** It is expressly understood and agreed by the parties to this Agreement that if the performance of any obligations hereunder is delayed by reason of war, civil commotion, acts of God, inclement weather, fire or other casualty, or court injunction, inability to obtain labor or materials or reasonable substitutes therefore, governmental restrictions, governmental regulations, governmental controls, governmental action, delay in issuance of permits or approvals (including, without limitation, fire marshal approvals), enemy or hostile governmental action, civil commotion, fire or other casualty, and other causes beyond the reasonable control of the obligated party and delays caused by the other party, the party so obligated or permitted shall be excused from doing or performing the same during such period of delay, so that the time period applicable to such obligation or requirement shall be extended for a period of time equal to the period such party was delayed.

12.     **Immunities and defenses.**

- a) It is expressly understood and agreed by all Parties hereto that in the exercise of their rights, and the performance of their obligations, hereunder, Developers at no time will be acting as agents of the City and that all consultants or contractors engaged by Developers respectively will be independent contractors of the Developers; and nothing contained in this Agreement is intended by the Parties to create a partnership or joint venture between the Parties and any implication to the contrary is hereby expressly disavowed. The Parties hereto understand and agree that City will not be liable for any claims that may be asserted by any third party occurring in connection with the pump and hall services performed by, or on behalf of Developer under this Agreement.
- b) By entering into this Agreement, the PARTIES do not waive, and shall not be deemed to have waived, any rights, immunities, or defenses either may have, including the defense of parties, and nothing contained herein shall ever be construed as a waiver of sovereign, statutory or official immunity by the CITY with such rights being expressly reserved to the fullest extent authorized by law and to the same extent which existed prior to the execution

hereof.

- c) No employee of City, or any councilmember or agent of City, shall be personally responsible for any liability arising under or growing out of this Agreement.

13. Mutual Assistance. City and Developer will do all things reasonably necessary or appropriate to carry out the terms and provisions of this Agreement and to aid and assist each other in carrying out such terms and provisions.

14. Notices. Any notice, statement and/or communication required and/or permitted to be delivered hereunder shall be in writing and shall be mailed by first-class mail, postage prepaid, or delivered by hand, by messenger, by facsimile, or by reputable overnight carrier, and shall be deemed delivered when received at the addresses of the Parties set forth below, or at such other address furnished in writing to the other Parties thereto:

DEVELOPER: Meritage Homes of Texas, LLC  
2722 W. Bitters, Road, Suite 200  
San Antonio, Texas 78248  
Attention: Brian Otto

CITY: City of Schertz, Texas  
1400 Schertz Parkway  
Schertz, Texas 78154  
Attention: City Manager

WITH COPY TO: Denton Navarro Rocha Bernal & Zech, P.C.  
2517 N. Main Avenue  
San Antonio, Texas 78212  
Attention: T. Daniel Santee

15. Ordinance Applicability. The signatories hereto shall be subject to all ordinances of the City, whether now existing or in the future arising provided however no ordinance shall reduce or diminish the contractual obligations contained herein. This Agreement shall confer no vested rights on the Project unless specifically enumerated herein.

16. Severability. In the event any provision of this Agreement is illegal, invalid, or unenforceable under the present or future laws, then, and in that event, it is the intention of the Parties hereto that the remainder of this Agreement shall not be affected thereby, and it is also the intention of the Parties to this Agreement that in lieu of each clause or provision that is found to be illegal, invalid, or unenforceable a provision be added to this Agreement which is legal, valid and enforceability and is a similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

17. Survival of Covenants. Any of the representations, warranties, covenants, and obligations of the Parties, as well as any rights and benefits of the Parties, pertaining to a period of time following the termination of this Agreement shall survive termination.

[Signature pages to follow]

Owner:

**MERITAGE HOMES OF TEXAS, LLC,**  
a Texas limited liability company

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

THE STATE OF TEXAS           §  
  §  
COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2022 by \_\_\_\_\_, the \_\_\_\_\_ of Meritage Homes of Texas, LLC, a Texas limited liability company, on behalf of said limited liability company.

(SEAL)

\_\_\_\_\_  
Notary Public in and for  
The State of Texas

My Commission Expires:\_\_\_\_\_

City:

CITY OF SCHERTZ,  
a Texas municipal corporation

By: \_\_\_\_\_

Name: Dr. Mark Browne, City Manager

Date: \_\_\_\_\_

THE STATE OF TEXAS                   §

  §  
COUNTY OF \_\_\_\_\_           §

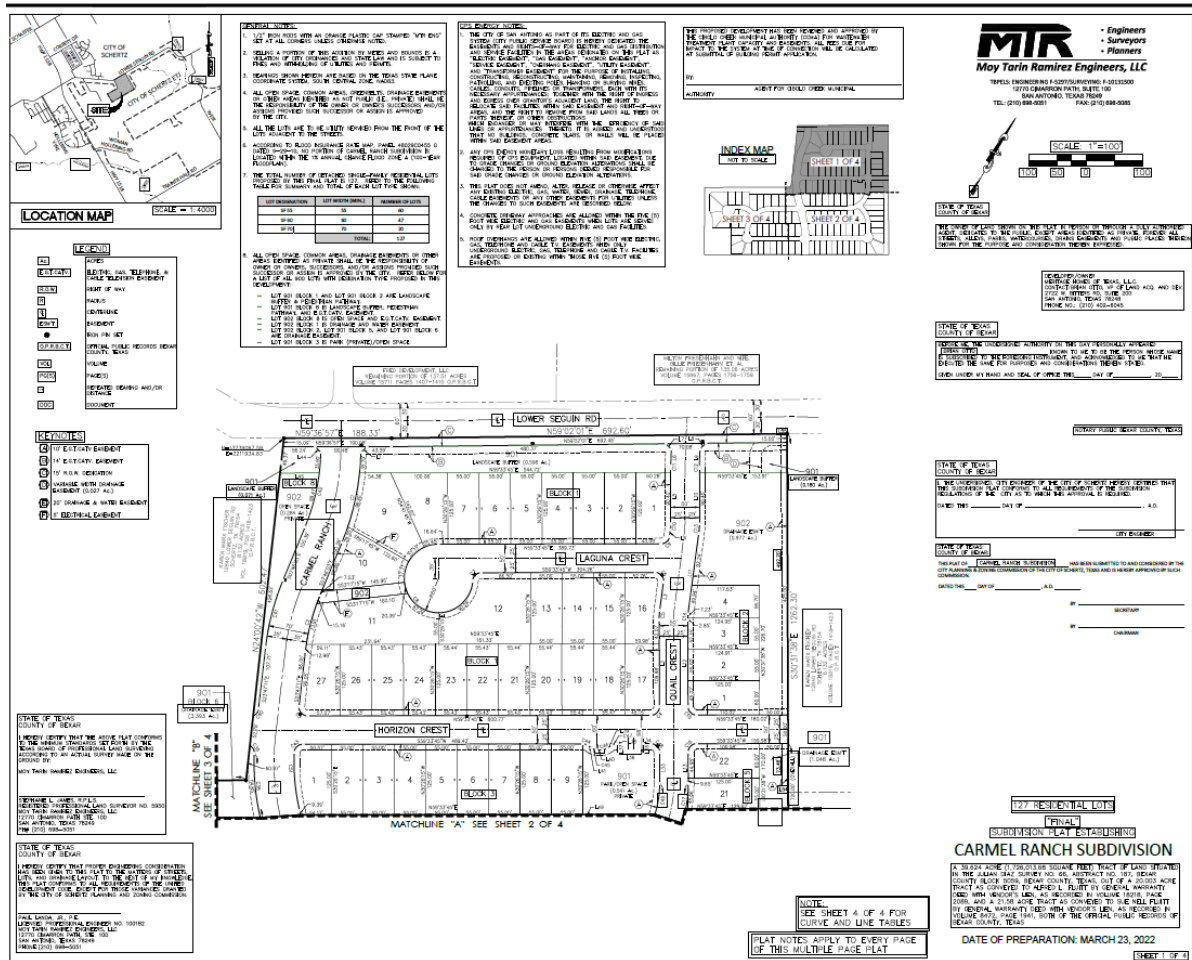
This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2022 by Dr. Mark Browne, City Manager of the City of Schertz, Texas, a Texas municipal corporation, on behalf of said City.

(SEAL)

\_\_\_\_\_  
Notary Public in and for  
The State of Texas

My Commission Expires: \_\_\_\_\_

## {00276459 4}







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  - (2) RAILROAD
  - (3) HIGHWAY
  - (4) AIRPORT
  - (5) WATER
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  - (7) TELEPHONE
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**CITY COUNCIL MEMORANDUM**

**City Council Meeting:** **October 25, 2022**

**Department:** **Planning & Community Development**

**Subject:** **Ordinance No. 22-S-41- Consideration and/or action on a request to rezone approximately 15 acres of land from Pre-Development District (PRE) to Planned Development District (PDD), generally located approximately 2,200 feet southeast of the intersection of Lower Seguin Road and FM 1518, also known as Bexar County Property Identification Number 309997 and 309999, City of Schertz, Bexar County, Texas. *Final Reading* (B. James / L. Wood / E. Delgado)**

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**BACKGROUND**

Owner: Karen Dahle

Applicant: Ashley Farrimond/ Killen, Griffen & Farrimond

The applicant has requested to rezone approximately 15 acres of land from Pre-Development District (PRE) to Planned Development District (PDD) with a base zoning of Apartment/Multi-Family Residential (R4).

The proposed development will include approximately 300 multi-family apartment units and will consist of eight (8) three (3) story buildings with options ranging from 1 bedroom to 4 bedroom units. The applicant will be working to preserve the natural landscape as there are several large existing trees on site. The proposed development will also include outdoor/indoor recreational space, a resort style pool, clubhouse with a fitness center, business center, and children's activity room.

Twenty-three (23) public hearing notices were mailed to the surrounding property owners on September 2, 2022, with a public hearing notice published in the "San Antonio Express", on September 21, 2022, prior to the City Council public hearing. At the time of this report, staff has received twenty-nine (29) responses opposed, two (2) responses in favor, and one (1) response who did not indicate in favor or opposed of the requested rezoning.

If a proposed zoning change is protested in writing and signed by the owners of at least twenty percent (20%) of the area of the lots or land immediately adjoining the area covered by the proposed zoning change or zoning map amendment and extending 200 feet from that area, the proposed change must receive, in order to take effect, the affirmative vote of at least three-fourths ( $\frac{3}{4}$ ) of all members of the City Council according to LGC, Local Government Code § 211.006(d). The opposition responses received accounts for 32.2% of the property within 200-feet and triggers the  $\frac{3}{4}$  vote of the City Council. While staff notifies all property owner within 200 feet of a case, per the UDC, only those properties within the city are counted as part of the protest.

**GOAL**

The goal is to rezone approximately 15 acres of land to Planned Development District (PDD).

**COMMUNITY BENEFIT**

The community benefit is to promote safe, orderly, efficient development and bring about the City's vision of future growth.

#### **SUMMARY OF RECOMMENDED ACTION**

The applicant is proposing to zone change approximately 15 acres of land from Pre-Development District (PRE) to Planned Development District (PDD), with a base zoning of Apartment/Multi-Family Residential (R4).

The development will be striving to maintain the natural landscape and preserve as many of the existing trees on the property. The site will include 300 units with 1 bedroom to 4 bedroom options. The site will be providing amenities to the residents living there such as outdoor/indoor recreational spaces, pool, fitness center and a children's activity room. Also, the property will be providing a 20-foot landscape buffer around the entire development with 1 tree per 20 linear feet and will be providing a 6-foot tall metal fence around the perimeter of the entire property.

The table below illustrates the dimensional requirements for the development which are also viewable in the Planned Development District narrative.

Code	Classification	Minimum Lot Size			Minimum, Yard Setback			Min. Off-Street Parking	Misc. Requirements	
		Area sf	Width ft	Depth ft	Front ft	Side ft	Rear ft	Parking	Max. Height	Max. Cover
R-4	Apartment / Multi-Family	10,000	100	100	25	10	20	1.6 spaces per unit & measured at 10' by 18'	45	75%

The Comprehensive Land Use Plan (CLUP), through the Future Land Use Plan and the South Schertz Sector Plan, designates this subject property as Mixed Use Neighborhood Center.

- Comprehensive Plan Goals and Objectives: The land use designation of Mixed Use Neighborhood Center is intended to accommodate a mixture of retail, restaurant, office, and multi-family residential uses.
- Impact of Infrastructure: The property will be serviced by the City of Schertz for water and sewer through 8-inch lines.
- Impact of Public Facilities/Services: The proposed zone change would have minimal impact to the public services, such as schools, fire, police and parks.
- Compatibility with Existing and Potential Adjacent Land Uses: This property is surrounded by residential neighborhoods and the Comprehensive Land Use Plan designates the property as Mixed Use Neighborhood Center to provide a mixture of housing and neighborhood commercial services. The proposed rezoning to Planned Development District (PDD) with a base zoning of Apartment/Multi-Family (R4) is compatible with the existing and potential land uses surrounding the subject tract.

#### **FISCAL IMPACT**

None.

#### **RECOMMENDATION**

The property has the land use designation under the Schertz Sector Plan for Southern Schertz as Mixed Use Neighborhood Center. The Mixed Use Neighborhood Center land use designation encourages the mixture of commercial and residential type developments. This would include retail, restaurant, office and multi-family residential uses. The proposed rezoning to Planned Development District (PDD), with a base zoning of Apartment/Multi-Family Residential District (R4) conforms to the Comprehensive Land Use Plan designation. Given that the adjacent properties to the north, east and south are all residentially used, the proposed rezoning would act as a buffer to these properties from FM 1518. The property will be working to maintain the natural landscape and existing trees that are on site as well as providing amenities to the residents/guest that will live here. Staff is recommending approval of the FM 1518 Apartments Planned Development District as presented.

The Planning and Zoning Commission held a public hearing on September 14, 2022, where they made a recommendation to the City Council with a vote of 6-0 to approve the requested rezoning.

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### **Attachments**

Ordinance No. 22-S-41

Exhibit A: Metes and Bounds

Exhibit B: Zoning Exhibit

Exhibit C: PDD Narrative

Aerial Map

Public Hearing Notice Map

Public Hearing Notice Responses

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## **ORDINANCE NO. 22-S-41**

**AN ORDINANCE BY THE CITY COUNCIL OF THE CITY OF SCHERTZ, TEXAS AMENDING THE OFFICIAL ZONING MAP BY REZONING APPROXIMATELY 15 ACRES OF LAND TO PLANNED DEVELOPMENT DISTRICT (PDD), GENERALLY LOCATED 2,200 FEET SOUTHEAST OF THE INTERSECTION OF LOWER SEGUIN ROAD AND FM 1518, ALSO KNOWN AS BEXAR COUNTY PROPERTY IDENTIFICATION NUMBERS 309997 AND 309999, BEXAR COUNTY, TEXAS.**

**WHEREAS**, an application to rezone approximately 15 acres of land to Planned Development District (PDD), generally located approximately 2,200 feet southeast of the intersection of Lower Seguin Road and FM 1518, also known as Bexar County Property Identification Number 309997 and 309999, 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 14, 2022, 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 11, 2022, 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 and Exhibit B, is hereby zoned Planned Development District (PDD).

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 11<sup>th</sup> day of October 2022.

PASSED, APPROVED AND ADOPTED on final reading the 25<sup>th</sup> day of October 2022.

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Ralph Gutierrez, Mayor

ATTEST:

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Brenda Dennis, City Secretary  
(SEAL OF THE CITY)

Field Notes for a Tract of Land  
Containing 14.687 acres (639,766.78 square feet)

A 14.687 acre (639,766.78 square feet) tract of land in the City of Schertz, Bexar County, Texas, situated in the Julian Diaz Survey No. 66, Abstract 187, County Block No. 5059, being a portion of a 10.000 acre tract as conveyed to Karen L. Dahle and spouse, Michael H. Dahle by Warranty Deed with Vendor's Lien as recorded in Volume 10257, Page 210 and a portion of a 5.095 acre tract as conveyed to Karen L. Dahle, a married person, by Warranty Deed with Vendor's Lien as recorded in Volume 10337, Page 840, both of the Official Public Records of Bexar County, Texas. Said 14.687 acre (639,766.78 square feet) tract of land being more particularly described as follows:

**Beginning** at a found 1/2" iron rod with a yellow plastic cap stamped "PAPE DAWSON", having Texas State Plane Coordinates of N:13,736,183.57, E:2,209,469.56, on the northeasterly right of way line of East F.M. 1518 North, an 80-foot wide right of way, being the west corner of a 0.7227 of an acre tract as conveyed to Joe Pawlik, Jr. and wife, Beverly L. Pawlik by Warranty Deed with Vendor's Lien as recorded in Volume 7461, Page 94, of the Official Public Records of Bexar County, Texas, being a south corner of the herein described tract;

**Thence**, with the northeasterly right of way line of said East F.M. 1518 North, being a southwesterly boundary of the remainder of said 5.095 acre tract and said 10.000 acre tract, North 30 degrees 27 minutes 18 seconds West, a distance of 872.37 feet to a found 5/8" iron rod, being the south corner of Lot 1, as shown on plat of Fey Subdivision as recorded in Volume 9539, Page 43, as conveyed to Hector Peterson by General Warranty Gift Deed as recorded in Document Number 20170091718, both of the Official Public Records of Bexar County, Texas, and being both the west corner of said 10.000 acre tract and of the herein described tract;

**Thence**, leaving the northeasterly right of way line of said East F.M. 1518 North, with the southeasterly boundary of said Lot 1, being the northwesterly boundary of said 10.000 acre tract, North 59 degrees 47 minutes 23 seconds East, a distance of 670.55 feet to a found 5/8" iron rod on the southwesterly boundary of a 40.556 acre tract as conveyed to Lloyd R. Fairley by Warranty Deed with Vendor's Lien as recorded in Volume 8666, Page 492, of the Official Public Records of Bexar County, Texas, being the east corner of said Lot 1, being both the north corner of said 10.000 acre tract and of the herein described tract;

**Thence**, with the southwesterly boundary of said 40.556 acre tract, being the northeasterly boundary of said 10.00 acre tract, the following two (2) courses:

South 30 degrees 32 minutes 03 seconds East, a distance of 69.89 feet to a set 1/2" iron with an orange plastic cap stamped "MTR ENG", being an angle point in the herein described tract;

South 30 degrees 26 minutes 11 seconds East, a distance of 938.61 feet to a set 1/2" iron with an orange plastic cap stamped "MTR ENG", being the north corner of a 3.245 acre tract as conveyed to Brandon McGarrell, a married man, by General Warranty Deed as recorded in Document Number 20180075657 of the Official Public Records of Bexar County, Texas, being both the east corner of said 10.000 acre tract and of the herein described tract;

**Thence**, leaving the southwesterly boundary of said 40.556 acre tract, with the northwesterly boundary of said 3.245 acre tract, South 61 degrees 37 minutes 43 seconds West, passing the most southerly south corner of said 10.000 acre tract, being the east corner of said 5.095 acre tract, and continuing said course for a total distance of 415.77 feet to a found 5/8" iron rod, being the east corner of said 0.7227 acre tract, being both the most southerly south corner of said 5.095 acre tract and of the herein described tract;

**Thence**, leaving the northwesterly boundary of said 3.245 acre tract, with the northeasterly and northwesterly boundary of said 0.7227 acre tract, being a southwesterly and a southeasterly boundary of said 5.095 acre tract, the following two (2) courses:

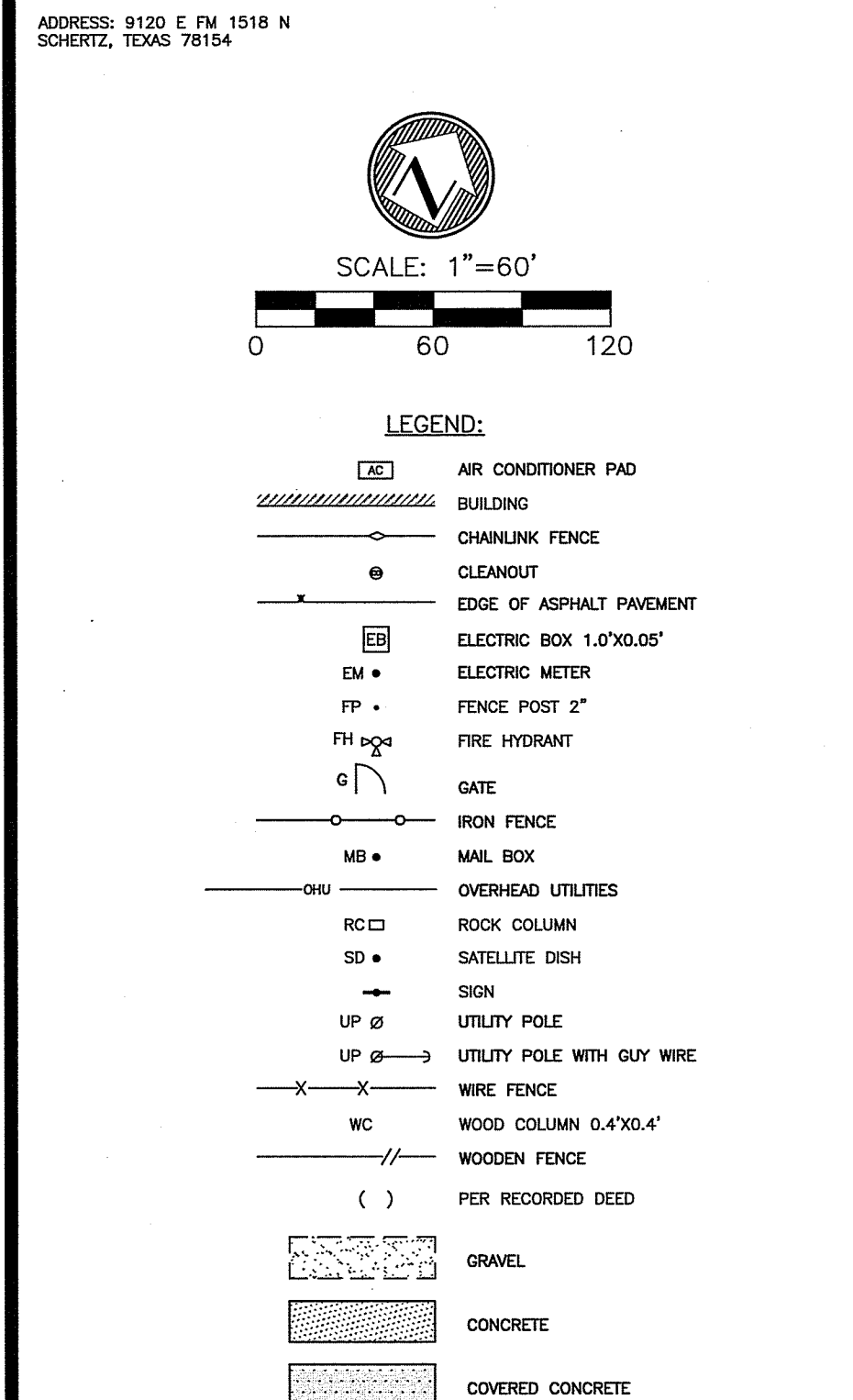
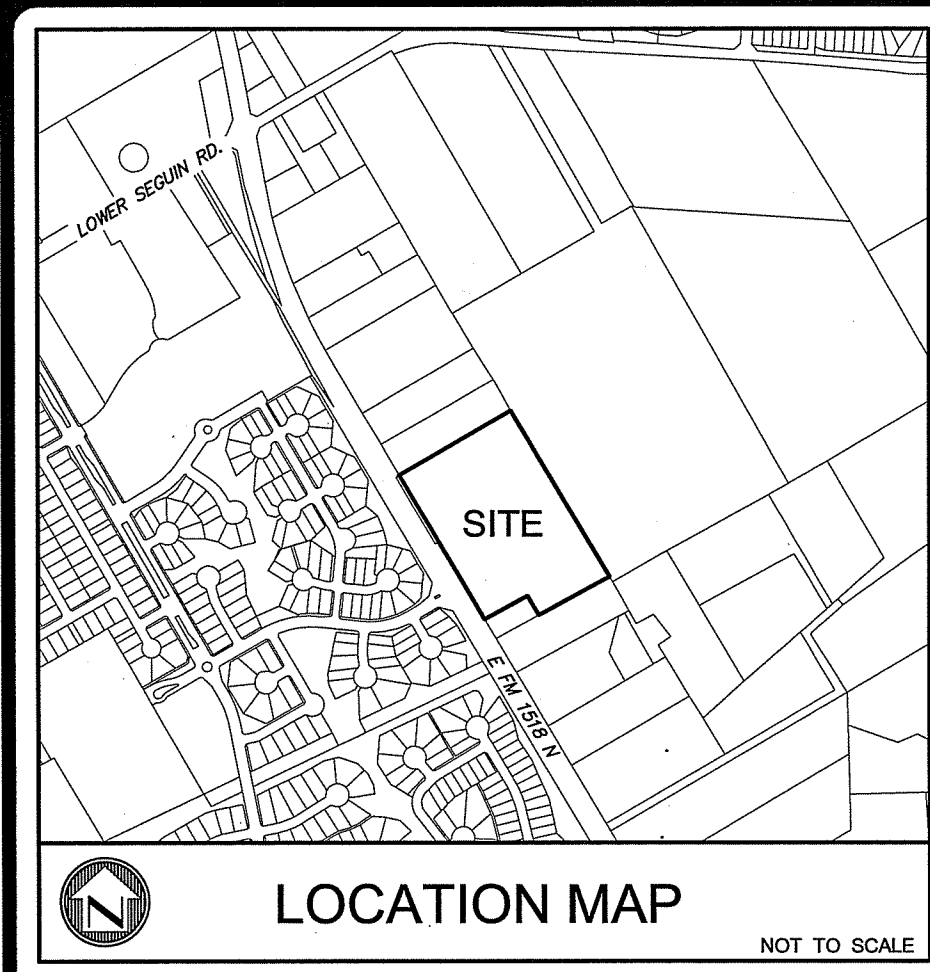
North 31 degrees 14 minutes 27 seconds West, a distance of 115.42 feet to a found 3/8" iron rod, being the north corner of said 0.7227 acre tract, being both an interior corner of said 5.095 acre tract and of the herein described tract;

South 61 degrees 27 minutes 38 seconds West, a distance of 253.39 feet to the **Point of Beginning**, containing 14.687 acres (639,766.78 square feet) of land.

**Note:** Basis of bearings and coordinates cited were established from the State Plane Coordinate System, North American Datum of 1983, Texas South Central Zone. A Survey of even date was prepared for this description.



Stephanie L. James, R.P.L.S.  
Registered Professional Land Surveyor  
No. 5950  
Date: 2021-12-16      Job No. 21213  
VB



FIELD NOTES FOR A TRACT OF LAND  
CONTAINING 14.687 ACRES (639,766.78 SQUARE FEET)

A 14.687 ACRE (639,766.78 SQUARE FEET) TRACT OF LAND IN THE CITY OF SCHERTZ, BEXAR COUNTY, TEXAS, SITUATED IN THE JULIAN DIAZ SURVEY NO. 66, ABSTRACT 187, COUNTY BLOCK NO. 5059, BEING A PORTION OF A 10.000 ACRE TRACT AS CONVEYED TO KAREN L. DAHLE AND SPOUSE, MICHAEL H. DAHLE BY WARRANTY DEED WITH VENDOR'S LIEN AS RECORDED IN VOLUME 10257, PAGE 210 AND A PORTION OF A 5.095 ACRE TRACT AS CONVEYED TO KAREN L. DAHLE, A MARRIED PERSON, BY WARRANTY DEED WITH VENDOR'S LIEN AS RECORDED IN VOLUME 10337, PAGE 840, BOTH OF THE OFFICIAL PUBLIC RECORDS OF BEXAR COUNTY, TEXAS, SAID 14.687 ACRE (639,766.78 SQUARE FEET) TRACT OF LAND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A FOUND 1/2" IRON ROD WITH A YELLOW PLASTIC CAP STAMPED "PAPE DAWSON", HAVING TEXAS STATE PLANE COORDINATES OF N:13,736,183.57, E:2,209,469.56, ON THE NORTHEASTERLY RIGHT OF WAY LINE OF EAST F.M. 1518 NORTH, AN 80-FOOT WIDE RIGHT OF WAY, BEING THE WEST CORNER OF A 0.7227 OF AN ACRE TRACT AS CONVEYED TO JOE PAWLK, JR. AND WIFE, BEVERLY L. PAWLK BY WARRANTY DEED WITH VENDOR'S LIEN AS RECORDED IN VOLUME 7461, PAGE 84, OF THE OFFICIAL PUBLIC RECORDS OF BEXAR COUNTY, TEXAS, BEING A SOUTH CORNER OF THE HEREIN DESCRIBED TRACT;

THENCE, WITH THE NORTHEASTERLY RIGHT OF WAY LINE OF SAID EAST F.M. 1518 NORTH, BEING A SOUTHWESTERLY BOUNDARY OF THE REMAINDER OF SAID 5.095 ACRE TRACT AND SAID 10.000 ACRE TRACT, NORTH 30 DEGREES 27 MINUTES 18 SECONDS WEST, A DISTANCE OF 872.37 FEET TO A FOUND 5/8" IRON ROD, BEING THE SOUTH CORNER OF LOT 1, AS SHOWN ON PLAT OF FEY SUBDIVISION AS RECORDED IN VOLUME 9539, PAGE 43, AS CONVEYED TO HECTOR PETERSON BY GENERAL WARRANTY DEED AS RECORDED IN DOCUMENT NUMBER 20170091718, BOTH OF THE OFFICIAL PUBLIC RECORDS OF BEXAR COUNTY, TEXAS, AND BEING BOTH THE WEST CORNER OF SAID 10.000 ACRE TRACT AND OF THE HEREIN DESCRIBED TRACT;

THENCE, LEAVING THE NORTHEASTERLY RIGHT OF WAY LINE OF SAID EAST F.M. 1518 NORTH, WITH THE SOUTHWESTERLY BOUNDARY OF SAID LOT 1, BEING THE NORTHEASTERLY BOUNDARY OF SAID 10.000 ACRE TRACT, NORTH 30 DEGREES 27 MINUTES 18 SECONDS WEST, A DISTANCE OF 872.37 FEET TO A FOUND 5/8" IRON ROD ON THE SOUTHWESTERLY BOUNDARY OF A 40.556 ACRE TRACT AS CONVEYED TO LLOYD R. FAIRLEY BY WARRANTY DEED WITH VENDOR'S LIEN AS RECORDED IN VOLUME 8666, PAGE 492, OF THE OFFICIAL PUBLIC RECORDS OF BEXAR COUNTY, TEXAS, BEING THE EAST CORNER OF SAID LOT 1, BEING BOTH THE NORTH CORNER OF SAID 10.000 ACRE TRACT AND OF THE HEREIN DESCRIBED TRACT;

THENCE, WITH THE SOUTHWESTERLY BOUNDARY OF SAID 40.556 ACRE TRACT, BEING THE NORTHEASTERLY BOUNDARY OF SAID 10.000 ACRE TRACT, THE FOLLOWING TWO (2) COURSES:

SOUTH 30 DEGREES 32 MINUTES 03 SECONDS EAST, A DISTANCE OF 68.89 FEET TO A SET 1/2" IRON WITH AN ORANGE PLASTIC CAP STAMPED "MTR ENG", BEING AN ANGLE POINT IN THE HEREIN DESCRIBED TRACT;

SOUTH 30 DEGREES 28 MINUTES 11 SECONDS EAST, A DISTANCE OF 938.61 FEET TO A SET 1/2" IRON WITH AN ORANGE PLASTIC CAP STAMPED "MTR ENG", BEING THE NORTH CORNER OF A 3.245 ACRE TRACT AS CONVEYED TO BRANDON MCGARRELL, A MARRIED MAN, BY GENERAL WARRANTY DEED AS RECORDED IN DOCUMENT NUMBER 20180075657 OF THE OFFICIAL PUBLIC RECORDS OF BEXAR COUNTY, TEXAS, BEING BOTH THE EAST CORNER OF SAID 10.000 ACRE TRACT AND OF THE HEREIN DESCRIBED TRACT;

THENCE, LEAVING THE SOUTHWESTERLY BOUNDARY OF SAID 40.556 ACRE TRACT, WITH THE NORTHEASTERLY BOUNDARY OF SAID 3.245 ACRE TRACT, SOUTH 61 DEGREES 37 MINUTES 43 SECONDS WEST, PASSING THE MOST SOUTHERLY SOUTH CORNER OF SAID 10.000 ACRE TRACT, BEING THE EAST CORNER OF SAID 5.095 ACRE TRACT, AND CONTINUING SAID COURSE FOR A TOTAL DISTANCE OF 415.77 FEET TO A FOUND 5/8" IRON ROD, BEING THE EAST CORNER OF SAID 0.7227 ACRE TRACT, BEING BOTH THE MOST SOUTHERLY SOUTH CORNER OF SAID 5.095 ACRE TRACT AND OF THE HEREIN DESCRIBED TRACT;

THENCE, LEAVING THE NORTHEASTERLY BOUNDARY OF SAID 3.245 ACRE TRACT, WITH THE NORTHEASTERLY AND NORTHEASTERLY BOUNDARY OF SAID 0.7227 ACRE TRACT, BEING A SOUTHWESTERLY AND A SOUTHEASTERLY BOUNDARY OF SAID 5.095 ACRE TRACT, THE FOLLOWING TWO (2) COURSES:

NORTH 31 DEGREES 14 MINUTES 27 SECONDS WEST, A DISTANCE OF 115.42 FEET TO A FOUND 3/8" IRON ROD, BEING THE NORTH CORNER OF SAID 0.7227 ACRE TRACT, BEING BOTH AN INTERIOR CORNER OF SAID 5.095 ACRE TRACT AND OF THE HEREIN DESCRIBED TRACT;

SOUTH 61 DEGREES 27 MINUTES 38 SECONDS WEST, A DISTANCE OF 253.39 FEET TO THE POINT OF BEGINNING, CONTAINING 14.687 ACRES (639,766.78 SQUARE FEET) OF LAND.

TITLE COMMITMENT

THIS SURVEY WAS PREPARED IN CONJUNCTION WITH THE TITLE COMMITMENT PREPARED BY STEWART TITLE GUARANTY COMPANY FILE NO. 2100230034, EFFECTIVE DATE: APRIL 21, 2021, ISSUED APRIL 30, 2021 AND IS SUBJECT ONLY TO THE STATEMENT OF FACTS CONTAINED THEREIN AND RELATED BELOW.

RESTRICTIVE COVENANTS:

ITEM 1, SCHEDULE B IS HEREBY DELETED.

SCHEDULE "B"

10. THE FOLLOWING MATTERS AND ALL TERMS OF THE DOCUMENTS CREATING OR OFFERING EVIDENCE OF THE MATTERS (WE MUST INSERT MATTERS OR DELETE THIS EXCEPTION):

a. RIGHT OF WAY EASEMENT GRANTED TO GRAYBURG PIPE LINE COMPANY BY INSTRUMENT RECORDED IN VOLUME 787, PAGE 608, OF THE DEED RECORDS, BEXAR COUNTY, TEXAS. (SURVEYOR'S NOTE: VAGUE DESCRIPTION, UNABLE TO PLOT.)

b. EASEMENT GRANTED TO HUMBLE PIPE LINE COMPANY BY INSTRUMENT RECORDED IN VOLUME 4697, PAGE 14, OF THE DEED RECORDS, BEXAR COUNTY, TEXAS. (SURVEYOR'S NOTE: DOES NOT APPLY TO SUBJECT PROPERTY.)

c. AN OIL, GAS AND MINERAL LEASE DATED MARCH 17, 1964, EXECUTED BY GILBERT FEY AND WIFE, VERNELL FEY, LESSOR, IN FAVOR OF EDGAR A. ROGERS, JR., LESSEE, RECORDED IN VOLUME 5147, PAGE 261, OF THE DEED RECORDS, BEXAR COUNTY, TEXAS. (SURVEYOR'S NOTE: NOT A SURVEY ITEM.)

d. ALL LEASES, GRANTS, EXCEPTIONS OR RESERVATIONS OF COAL, LIGNITE, OIL, GAS AND OTHER MINERALS, TOGETHER WITH ALL RIGHTS, PRIVILEGES, AND IMMUNITIES RELATING THERETO, APPEARING IN THE PUBLIC RECORDS WHETHER LISTED IN SCHEDULE B OR NOT. THERE MAY BE LEASES, GRANTS, EXCEPTIONS OR RESERVATIONS OF MINERAL INTEREST THAT ARE NOT LISTED. (SURVEYOR'S NOTE: NOT A SURVEY ITEM.)

GENERAL NOTES:

1) BASIS OF BEARINGS AND COORDINATES CITED WERE ESTABLISHED FROM THE STATE PLANE COORDINATE SYSTEM, NORTH AMERICAN DATUM OF 1983, TEXAS SOUTH CENTRAL ZONE.

2) ONLY THOSE COPIES WHICH BEAR AN ORIGINAL INK IMPRESSION SEAL AND AN ORIGINAL SIGNATURE OF THE SURVEYOR WILL BE CONSIDERED A "VALID" COPY. MOY TARIN RAMIREZ ENGINEERS, L.L.C., WILL NOT BE RESPONSIBLE FOR THE CONTENT OF ANYTHING OTHER THAN A VALID COPY OF THIS SURVEY.

3) BASED ON NATIONAL FLOOD HAZARD LAYER WEBSITE (LAST ACCESSED 2021-12-15), THE SUBJECT PROPERTY HEREON IS SHOWN TO BE LOCATED IN FLOOD ZONE "X", DESIGNATED AS AREAS DETERMINED TO BE OUTSIDE THE 0.2% ANNUAL CHANCE FLOODPLAIN AS SHOWN ON COMMUNITY PANEL NUMBER 4802802315F, HAVING AN EFFECTIVE DATE OF SEPTEMBER 29, 2010. THIS FLOOD STATEMENT DOES NOT IMPLY THAT THE PROPERTY AND/OR THE STRUCTURES THEREON WILL BE FREE FROM FLOODING OR FLOOD DAMAGE. THIS FLOOD STATEMENT SHALL NOT CREATE LIABILITY ON THE PART OF THE SURVEYOR.

4) ALL BOUNDARY CORNERS ARE A SET 1/2" IRON RODS WITH AN ORANGE PLASTIC CAP STAMPED "MTR ENG" UNLESS OTHERWISE NOTED.

5) EXCEPT AS SHOWN HEREON, THERE IS NO EVIDENCE OF APPARENT EASEMENTS, INTRUSIONS, OR PROTRUSIONS OF IMPROVEMENTS ON ADJOINING PROPERTY.

6) NO MARKED PARKING SPACES ON SUBJECT PROPERTY.

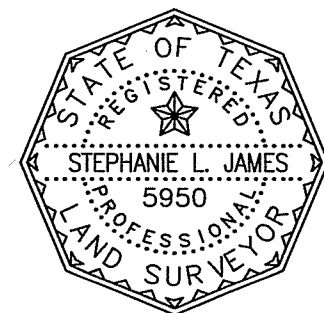
SURVEYORS CERTIFICATE

TO: KAREN L. DAHLE AND MICHAEL H. DAHLE, NRP PROPERTIES LLC, AN OHIO LIMITED LIABILITY COMPANY, AND OR ASSIGNS AND STEWART TITLE GUARANTY COMPANY.

THIS IS TO CERTIFY THAT THIS MAP OR PLAT AND THE SURVEY ON WHICH IT IS BASED WERE MADE IN ACCORDANCE WITH THE 2021 MINIMUM STANDARD DETAIL REQUIREMENTS FOR ALTA/NSPS LAND TITLE SURVEYS, JOINTLY ESTABLISHED AND ADOPTED BY ALTA AND NSPS, AND INCLUDES ITEMS, 1, 2, 3, 4, 6, 11, [VISIBLE EVIDENCE ONLY] AND 14 OF TABLE A THEREOF. THE FIELD WORK WAS COMPLETED ON DECEMBER 06, 2021.

DATE OF MAP: DECEMBER 16, 2021

STEPHANIE L. JAMES, R.P.L.S.  
REGISTERED PROFESSIONAL LAND SURVEYOR NO. 5950  
MOY TARIN RAMIREZ ENGINEERS, L.L.C.  
12770 CIMARRON PATH, SUITE 100  
SAN ANTONIO, TEXAS 78249  
sjames@mtrengineers.com



SHEET

1

## ALTA/NSPS LAND TITLE SURVEY

A 14.687 ACRE (639,766.78 SQUARE FEET) TRACT OF LAND IN THE CITY OF SCHERTZ, BEXAR COUNTY, TEXAS, SITUATED IN THE JULIAN DIAZ SURVEY NO. 66, ABSTRACT 187, COUNTY BLOCK NO. 5059, BEING A PORTION OF A 10.000 ACRE TRACT AS CONVEYED TO KAREN L. DAHLE AND SPOUSE, MICHAEL H. DAHLE BY WARRANTY DEED WITH VENDOR'S LIEN AS RECORDED IN VOLUME 10257, PAGE 210 AND A PORTION OF A 5.095 ACRE TRACT AS CONVEYED TO KAREN L. DAHLE, A MARRIED PERSON, BY WARRANTY DEED WITH VENDOR'S LIEN AS RECORDED IN VOLUME 10337, PAGE 840, BOTH OF THE OFFICIAL PUBLIC RECORDS OF BEXAR COUNTY, TEXAS.

**MTR**

**Moy Tarin Ramirez Engineers, LLC**

12770 CIMARRON PATH, SUITE 100  
SAN ANTONIO, TEXAS 78249

• Engineers  
• Surveyors  
• Planners

TEL: (210) 698-5051  
FAX: (210) 698-5085

### REVISIONS

NO.	DATE	DESCRIPTION	BY
0	12/20/21	ISSUED FOR REVIEW	VB
PROJ. #	DGN. BY:	DWN. BY:	CHKD. BY:
21213		VB	SLJ
DATE:	12/16/21		

- *Engineers*
- *Surveyors*
- *Planners*

**1518 Apartments**

Planned Development District  
Schertz, Texas

# **1518 Apartments Planned Development District**

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# **1518 Apartments Planned Development District**

As population in the Schertz area continues to grow, the demand for housing in the Schertz community continues to rise. It is critical to have alternative housing options to traditional single-family development for existing and future City residents. The 1518 Apartments will provide much needed housing in the Schertz community. The project location is further described in the attached Exhibit “A”.

## **I. Planned Development District (“PDD”)**

The City of Schertz (“City”) has adopted zoning and site design requirements for specific zoning classifications and uses, as set forth in the Schertz Unified Development Code (“UDC”). Recognizing that not all development may be able to adhere to the strict regulations and design standards set forth in a particular zoning classification, the City created the Planned Development District (“PDD”) as an alternative approach to conventional land development.

PDD zoning encourages and promotes creative and innovative project design that would otherwise not be possible under the regulations of typical Schertz zoning districts. In exchange for allowing flexibility under the PDD, the City is granted more control and certainty over what is actually constructed on a site. Through the PDD, permitted uses and design standards can be better defined.

The PDD Plan (attached as Exhibit “B”) and this written document define the use and project design for the 1518 Apartments PDD. This document outlines the specific UDC articles and sections that are to be amended or modified pursuant to the City ordinance specific to this PDD. Development within the Property is subject to general development plan review and approval by the City, as required by the UDC.

## **II. 1518 Apartments**

### **a. The Property**

The PDD project area includes approximately 14.69 acres (the “Property”) located on FM 1518 within the City of Schertz municipal boundaries. The Property is further described in the attached Exhibit “A”.

### **b. The Project**

The Project will consist of approximately 300 units (20.4 units per acre), as further shown on the PDD Plan in Exhibit “B”. The development includes eight (8), three (3) story buildings varying in the number of units, as well as amenities to serve the apartment community. There will be one (1), two (2), three (3), and four (4) bedroom units, creating housing opportunities for a wide variety of individuals at varying stages of life.

The natural landscape is an amenity to the Project. The site has been designed thoughtfully to preserve existing trees on the Property. The Project also includes outdoor open/recreational space for the tenants to enjoy, as well as a resort-style pool. The community will include a club house with a fitness center, business center, children's activity room, laundry facilities, and other common areas for the community to use. A multi-use path designed in accordance with City and TxDOT standards will be constructed on FM 1518, pending coordination and approval from TxDOT, and there will be significant landscaping throughout the Property.

### **III. PDD Standards**

The Project will be developed in accordance with the standards set forth in this PDD and on the attached PDD Plan. If this document and the PDD Plan are silent, then UDC standards shall control. In the event of a conflict between the PDD and the UDC, the PDD and PDD Plan shall control.

- A. Zoning Districts (UDC Article 5)** – Unless excepted from herein, the Project shall comply with the City's "R-4" Apartment/Multi-Family Residential District standards. The following Table shall replace Table 21.5.7.A as it applies to the Project:

**Table One – Dimensional Requirements**

		Minimum Lot Size			Minimum, Yard Setback			Minimum Off-Street Parking Spaces	Misc. Requirements	
Code	Classification	Area sf	Width ft	Depth ft	Front ft	Side ft	Rear ft	Parking	Max . Ht.	Max. Cover
<b>R-4</b>	Apartment/Multi-Family	10,000	100	100	25	10	20	(see parking standards in the PDD)	45	<b>75%</b>

The following standards are applicable to the PDD:

- A. The Project will be developed in one (1) phase.
- B. Project unit count is approximately 300 (20.4 units per acre), however this unit count may increase by up to 10% for a maximum of 22.4 units per acre.
- C. Minimum of 1.6 parking spaces per unit.
- D. Site Plan approval required.
- E. Swimming pools count toward the maximum impervious cover limitations, unless the swimming pool is equipped with a water overflow device appropriate for such pool, and only if it drains into any pervious surface, in which case the water surface shall be excluded.
- F. No variances may be permitted to exceed the maximum impervious cover limitations.
- G. The Project shall comply with the standards of UDC 21.14.3, except for:
  - The front building setback shall be a minimum of 25 feet
  - The Project does not include any head-on parking facing public right-of-way and therefore a land berm wall or vegetative hedge barrier is not required. The Project will provide a minimum 20-foot-wide landscape buffer adjacent to FM 1518, as well as the side and rear Property lines. Plantings within the buffer will comply with UDC Section 21.9.3 standards (1 tree per 20 feet).
- H. The PDD includes buildings fronting on FM 1518, and therefore no masonry screening wall is required.

## **B. Design Standards (UDC Article 9)**

### **1) Lot (Section 21.9.3)**

The lot size and dimensions will conform to the minimum requirements recognized in “Table One – Dimensional Requirements” of this PDD.

### **2) Fence (Section 21.9.8)**

The PDD will include a six-foot (6') metal fence around the perimeter of the entire Property.

## **C. Parking (UDC Article 10)**

### **1) Size of Parking Spaces (Section 21.10.3)**

- A. Each standard off-street surface parking space shall measure not less than ten (10) feet by eighteen (18) feet (10'x18'), exclusive of access drives and aisles, and shall be of usable shape and condition.
- B. *Wheel stops.* Wheel stops shall be required where a parking space is adjacent to a sidewalk/pedestrian area. They are not required adjacent to landscaped areas.

**2) Schedule of Off-Street Parking Requirements (Section 21.10.4)**

- A. Off-street parking shall be provided in sufficient quantities to provide the following ratio of vehicle spaces for the uses specified in the districts designated:

<b>Table Two – Schedule of Off-Street Parking Requirements</b>	
<i>Use Type</i>	<i>Parking Requirement</i>
Multi-Family	1.6 parking spaces per unit (minimum)

**D. Signs (UDC Article 11)**

**1) Monument Signs (Section 21.11.11)**

- A. *General.* Unless otherwise specifically provided, the regulations set forth in this section shall be applicable to all monument signs that are allowed under this Article.
- B. *Maximum Height.* The maximum height of a monument sign shall be six feet (6').
- C. *Maximum Area.* The maximum area of a monument sign shall not exceed fifty (50) square feet.
- D. *Number of Signs.* The maximum number of monument signs shall be limited to two (2) per lot per street frontage.
- E. *Minimum Setback.* The minimum setback of all monument signs shall be fifteen feet (15') from any property line.
- F. *Material Requirements.* All monument sign bases shall be constructed of masonry material consisting of brick, stone or split face concrete block. The monument sign structure must be constructed or covered with the same masonry material as the principal building or shall be constructed of brick, stone or split face concrete block. Sculpted aluminum sign panels will be allowed. All sign text and graphic elements shall be limited to a minimum of six inches (6") from the outer limits of the sign structure.
- G. *Illumination.* Monument signs shall only be illuminated utilizing internal lighting for sculpted aluminum panels or a ground lighting source where the light itself

and supporting sign structure are not visible from public right-of-way.

- H. *Driveway Entrances.* Freestanding non-residential street address signs at driveway entrances are limited to one (1) monument sign per driveway entrance not to exceed twelve (12) square feet in area, and three feet in height.

## **2) Subdivision Entry Signs (UDC Section 21.11.15)**

For clarity, this UDC Section 21.11.15 shall not apply to the Project. Signage for the Project will conform to the monument signage requirements in this PDD.

## **E. Adjustments to Planned Development District (PDD) Plan (UDC Section 21.5.10)**

Per UDC Section 21.5.10, the City Manager or his/her designee may permit an applicant to make minor amendments to the PDD Plan without the necessity of amending the ordinance that established the PDD. As the Project design and engineering is refined, there it may be necessary to alter building orientation or shift buildings in location. The list of minor amendments included in Section 21.5.10 is further defined to allow buildings to shift in location up to twenty feet (20'). Building sizes can increase or decrease up to fifteen percent (15%) of what is shown on the PDD Plan, provided that the setbacks shown on the PDD Plan and the requirements of Table One – Dimensional Standards are satisfied.

Field Notes for a Tract of Land  
Containing 14.687 acres (639,766.78 square feet)

A 14.687 acre (639,766.78 square feet) tract of land in the City of Schertz, Bexar County, Texas, situated in the Julian Diaz Survey No. 66, Abstract 187, County Block No. 5059, being a portion of a 10.000 acre tract as conveyed to Karen L. Dahle and spouse, Michael H. Dahle by Warranty Deed with Vendor's Lien as recorded in Volume 10257, Page 210 and a portion of a 5.095 acre tract as conveyed to Karen L. Dahle, a married person, by Warranty Deed with Vendor's Lien as recorded in Volume 10337, Page 840, both of the Official Public Records of Bexar County, Texas. Said 14.687 acre (639,766.78 square feet) tract of land being more particularly described as follows:

**Beginning** at a found 1/2" iron rod with a yellow plastic cap stamped "PAPE DAWSON", having Texas State Plane Coordinates of N:13,736,183.57, E:2,209,469.56, on the northeasterly right of way line of East F.M. 1518 North, an 80-foot wide right of way, being the west corner of a 0.7227 of an acre tract as conveyed to Joe Pawlik, Jr. and wife, Beverly L. Pawlik by Warranty Deed with Vendor's Lien as recorded in Volume 7461, Page 94, of the Official Public Records of Bexar County, Texas, being a south corner of the herein described tract;

**Thence**, with the northeasterly right of way line of said East F.M. 1518 North, being a southwesterly boundary of the remainder of said 5.095 acre tract and said 10.000 acre tract, North 30 degrees 27 minutes 18 seconds West, a distance of 872.37 feet to a found 5/8" iron rod, being the south corner of Lot 1, as shown on plat of Fey Subdivision as recorded in Volume 9539, Page 43, as conveyed to Hector Peterson by General Warranty Gift Deed as recorded in Document Number 20170091718, both of the Official Public Records of Bexar County, Texas, and being both the west corner of said 10.000 acre tract and of the herein described tract;

**Thence**, leaving the northeasterly right of way line of said East F.M. 1518 North, with the southeasterly boundary of said Lot 1, being the northwesterly boundary of said 10.000 acre tract, North 59 degrees 47 minutes 23 seconds East, a distance of 670.55 feet to a found 5/8" iron rod on the southwesterly boundary of a 40.556 acre tract as conveyed to Lloyd R. Fairley by Warranty Deed with Vendor's Lien as recorded in Volume 8666, Page 492, of the Official Public Records of Bexar County, Texas, being the east corner of said Lot 1, being both the north corner of said 10.000 acre tract and of the herein described tract;

**Thence**, with the southwesterly boundary of said 40.556 acre tract, being the northeasterly boundary of said 10.00 acre tract, the following two (2) courses:

South 30 degrees 32 minutes 03 seconds East, a distance of 69.89 feet to a set 1/2" iron with an orange plastic cap stamped "MTR ENG", being an angle point in the herein described tract;

South 30 degrees 26 minutes 11 seconds East, a distance of 938.61 feet to a set 1/2" iron with an orange plastic cap stamped "MTR ENG", being the north corner of a 3.245 acre tract as conveyed to Brandon McGarrell, a married man, by General Warranty Deed as recorded in Document Number 20180075657 of the Official Public Records of Bexar County, Texas, being both the east corner of said 10.000 acre tract and of the herein described tract;

**Thence**, leaving the southwesterly boundary of said 40.556 acre tract, with the northwesterly boundary of said 3.245 acre tract, South 61 degrees 37 minutes 43 seconds West, passing the most southerly south corner of said 10.000 acre tract, being the east corner of said 5.095 acre tract, and continuing said course for a total distance of 415.77 feet to a found 5/8" iron rod, being the east corner of said 0.7227 acre tract, being both the most southerly south corner of said 5.095 acre tract and of the herein described tract;


**Thence**, leaving the northwesterly boundary of said 3.245 acre tract, with the northeasterly and northwesterly boundary of said 0.7227 acre tract, being a southwesterly and a southeasterly boundary of said 5.095 acre tract, the following two (2) courses:

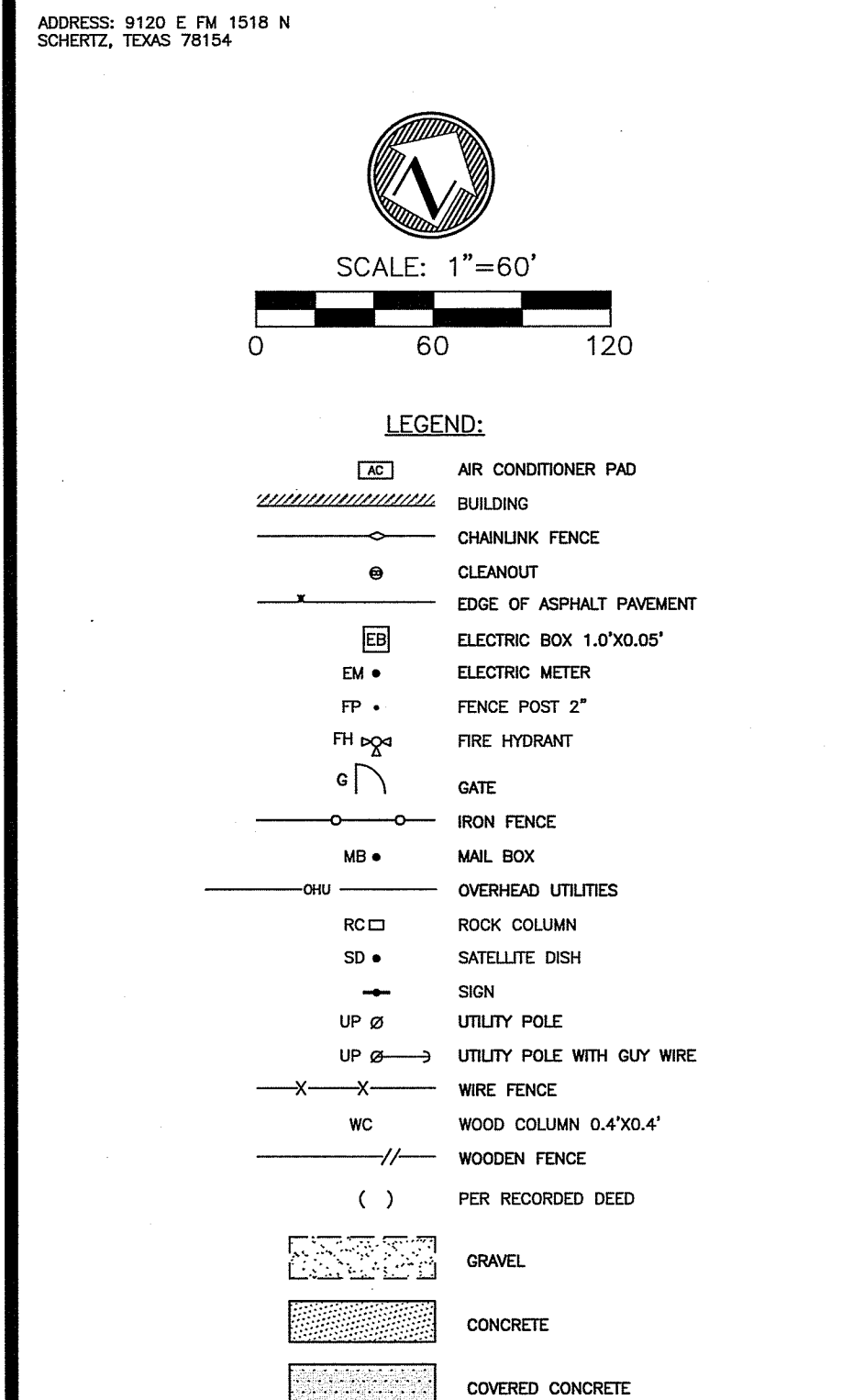
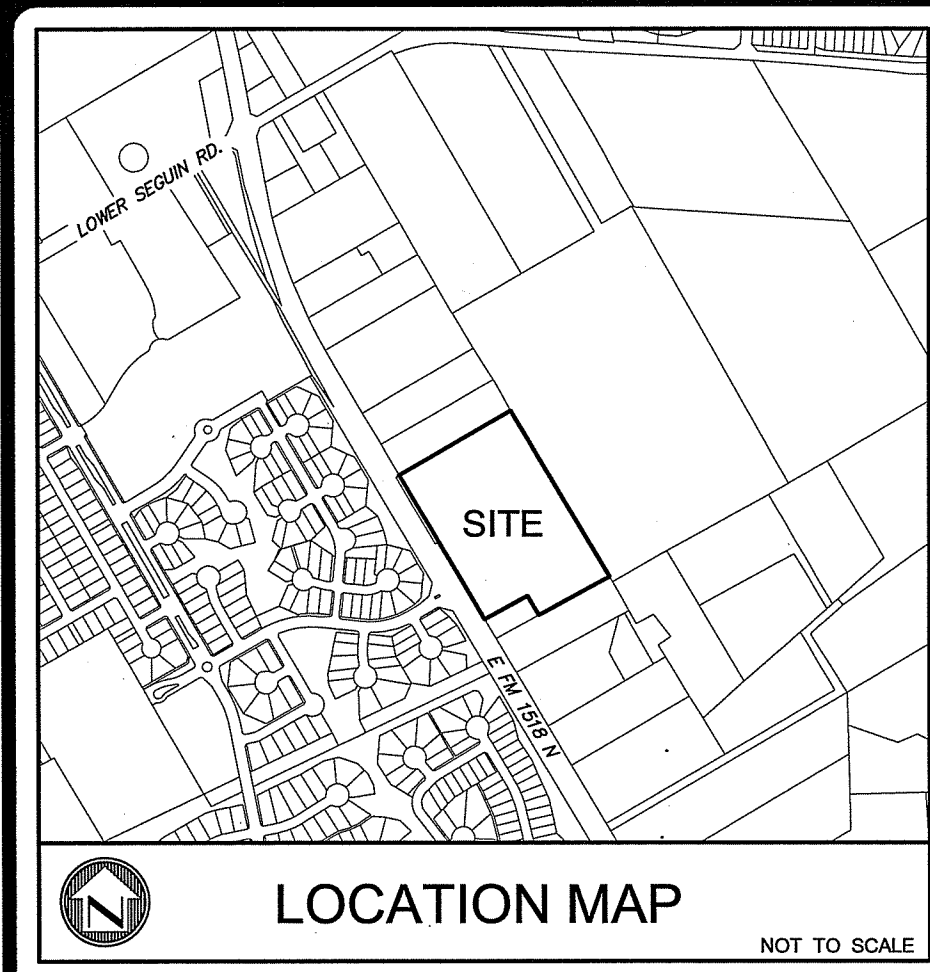
North 31 degrees 14 minutes 27 seconds West, a distance of 115.42 feet to a found 3/8" iron rod, being the north corner of said 0.7227 acre tract, being both an interior corner of said 5.095 acre tract and of the herein described tract;

South 61 degrees 27 minutes 38 seconds West, a distance of 253.39 feet to the **Point of Beginning**, containing 14.687 acres (639,766.78 square feet) of land.

**Note:** Basis of bearings and coordinates cited were established from the State Plane Coordinate System, North American Datum of 1983, Texas South Central Zone. A Survey of even date was prepared for this description.



  
Stephanie L. James, R.P.L.S.  
Registered Professional Land Surveyor  
No. 5950  
Date: 2021-12-16      Job No. 21213  
VB



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CONTAINING 14.687 ACRES (639,766.78 SQUARE FEET)

A 14.687 ACRE (639,766.78 SQUARE FEET) TRACT OF LAND IN THE CITY OF SCHERTZ, BEXAR COUNTY, TEXAS, SITUATED IN THE JULIAN DIAZ SURVEY NO. 66, ABSTRACT 187, COUNTY BLOCK NO. 5059, BEING A PORTION OF A 10.000 ACRE TRACT AS CONVEYED TO KAREN L. DAHLE AND SPOUSE, MICHAEL H. DAHLE BY WARRANTY DEED WITH VENDOR'S LIEN AS RECORDED IN VOLUME 10257, PAGE 210 AND A PORTION OF A 5.095 ACRE TRACT AS CONVEYED TO KAREN L. DAHLE, A MARRIED PERSON, BY WARRANTY DEED WITH VENDOR'S LIEN AS RECORDED IN VOLUME 10337, PAGE 840, BOTH OF THE OFFICIAL PUBLIC RECORDS OF BEXAR COUNTY, TEXAS, SAID 14.687 ACRE (639,766.78 SQUARE FEET) TRACT OF LAND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A FOUND 1/2" IRON ROD WITH A YELLOW PLASTIC CAP STAMPED "PAPE DAWSON", HAVING TEXAS STATE PLANE COORDINATES OF N:13,736,183.57, E:2,209,469.56, ON THE NORTHEASTERLY RIGHT OF WAY LINE OF EAST F.M. 1518 NORTH, AN 80-FOOT WIDE RIGHT OF WAY, BEING THE WEST CORNER OF A 0.7227 OF AN ACRE TRACT AS CONVEYED TO JOE PAWLK, JR. AND WIFE, BEVERLY L. PAWLK BY WARRANTY DEED WITH VENDOR'S LIEN AS RECORDED IN VOLUME 7461, PAGE 84, OF THE OFFICIAL PUBLIC RECORDS OF BEXAR COUNTY, TEXAS, BEING A SOUTH CORNER OF THE HEREIN DESCRIBED TRACT;

THENCE, WITH THE NORTHEASTERLY RIGHT OF WAY LINE OF SAID EAST F.M. 1518 NORTH, BEING A SOUTHWESTERLY BOUNDARY OF THE REMAINDER OF SAID 5.095 ACRE TRACT AND SAID 10.000 ACRE TRACT, NORTH 30 DEGREES 27 MINUTES 18 SECONDS WEST, A DISTANCE OF 872.37 FEET TO A FOUND 5/8" IRON ROD, BEING THE SOUTH CORNER OF LOT 1, AS SHOWN ON PLAT OF FEY SUBDIVISION AS RECORDED IN VOLUME 9539, PAGE 43, AS CONVEYED TO HECTOR PETERSON BY GENERAL WARRANTY DEED AS RECORDED IN DOCUMENT NUMBER 20170091718, BOTH OF THE OFFICIAL PUBLIC RECORDS OF BEXAR COUNTY, TEXAS, AND BEING BOTH THE WEST CORNER OF SAID 10.000 ACRE TRACT AND OF THE HEREIN DESCRIBED TRACT;

THENCE, LEAVING THE NORTHEASTERLY RIGHT OF WAY LINE OF SAID EAST F.M. 1518 NORTH, WITH THE SOUTHWESTERLY BOUNDARY OF SAID LOT 1, BEING THE NORTHEASTERLY BOUNDARY OF SAID 10.000 ACRE TRACT, NORTH 30 DEGREES 27 MINUTES 18 SECONDS WEST, A DISTANCE OF 872.37 FEET TO A FOUND 5/8" IRON ROD ON THE SOUTHWESTERLY BOUNDARY OF A 40.556 ACRE TRACT AS CONVEYED TO LLOYD R. FAIRLEY BY WARRANTY DEED WITH VENDOR'S LIEN AS RECORDED IN VOLUME 8666, PAGE 492, OF THE OFFICIAL PUBLIC RECORDS OF BEXAR COUNTY, TEXAS, BEING THE EAST CORNER OF SAID LOT 1, BEING BOTH THE NORTH CORNER OF SAID 10.000 ACRE TRACT AND OF THE HEREIN DESCRIBED TRACT;

THENCE, WITH THE SOUTHWESTERLY BOUNDARY OF SAID 40.556 ACRE TRACT, BEING THE NORTHEASTERLY BOUNDARY OF SAID 10.000 ACRE TRACT, THE FOLLOWING TWO (2) COURSES:

SOUTH 30 DEGREES 32 MINUTES 03 SECONDS EAST, A DISTANCE OF 68.89 FEET TO A SET 1/2" IRON WITH AN ORANGE PLASTIC CAP STAMPED "MTR ENG", BEING AN ANGLE POINT IN THE HEREIN DESCRIBED TRACT;

SOUTH 30 DEGREES 28 MINUTES 11 SECONDS EAST, A DISTANCE OF 938.61 FEET TO A SET 1/2" IRON WITH AN ORANGE PLASTIC CAP STAMPED "MTR ENG", BEING THE NORTH CORNER OF A 3.245 ACRE TRACT AS CONVEYED TO BRANDON MCGARRELL, A MARRIED MAN, BY GENERAL WARRANTY DEED AS RECORDED IN DOCUMENT NUMBER 20180075657 OF THE OFFICIAL PUBLIC RECORDS OF BEXAR COUNTY, TEXAS, BEING BOTH THE EAST CORNER OF SAID 10.000 ACRE TRACT AND OF THE HEREIN DESCRIBED TRACT;

THENCE, LEAVING THE SOUTHWESTERLY BOUNDARY OF SAID 40.556 ACRE TRACT, WITH THE NORTHEASTERLY BOUNDARY OF SAID 3.245 ACRE TRACT, SOUTH 61 DEGREES 37 MINUTES 43 SECONDS WEST, PASSING THE MOST SOUTHERLY SOUTH CORNER OF SAID 10.000 ACRE TRACT, BEING THE EAST CORNER OF SAID 5.095 ACRE TRACT, AND CONTINUING SAID COURSE FOR A TOTAL DISTANCE OF 415.77 FEET TO A FOUND 5/8" IRON ROD, BEING THE EAST CORNER OF SAID 0.7227 ACRE TRACT, BEING BOTH THE MOST SOUTHERLY SOUTH CORNER OF SAID 5.095 ACRE TRACT AND OF THE HEREIN DESCRIBED TRACT;

THENCE, LEAVING THE NORTHEASTERLY BOUNDARY OF SAID 3.245 ACRE TRACT, WITH THE NORTHEASTERLY AND NORTHEASTERLY BOUNDARY OF SAID 0.7227 ACRE TRACT, BEING A SOUTHWESTERLY AND A SOUTHEASTERLY BOUNDARY OF SAID 5.095 ACRE TRACT, THE FOLLOWING TWO (2) COURSES:

NORTH 31 DEGREES 14 MINUTES 27 SECONDS WEST, A DISTANCE OF 115.42 FEET TO A FOUND 3/8" IRON ROD, BEING THE NORTH CORNER OF SAID 0.7227 ACRE TRACT, BEING BOTH AN INTERIOR CORNER OF SAID 5.095 ACRE TRACT AND OF THE HEREIN DESCRIBED TRACT;

SOUTH 61 DEGREES 27 MINUTES 38 SECONDS WEST, A DISTANCE OF 253.39 FEET TO THE POINT OF BEGINNING, CONTAINING 14.687 ACRES (639,766.78 SQUARE FEET) OF LAND.

TITLE COMMITMENT

THIS SURVEY WAS PREPARED IN CONJUNCTION WITH THE TITLE COMMITMENT PREPARED BY STEWART TITLE GUARANTY COMPANY FILE NO. 2100230034, EFFECTIVE DATE: APRIL 21, 2021, ISSUED APRIL 30, 2021 AND IS SUBJECT ONLY TO THE STATEMENT OF FACTS CONTAINED THEREIN AND RELISTED BELOW.

RESTRICTIVE COVENANTS:

ITEM 1, SCHEDULE B IS HEREBY DELETED.

SCHEDULE "B"

10. THE FOLLOWING MATTERS AND ALL TERMS OF THE DOCUMENTS CREATING OR OFFERING EVIDENCE OF THE MATTERS (WE MUST INSERT MATTERS OR DELETE THIS EXCEPTION):

a. RIGHT OF WAY EASEMENT GRANTED TO GRAYBURG PIPE LINE COMPANY BY INSTRUMENT RECORDED IN VOLUME 787, PAGE 608, OF THE DEED RECORDS, BEXAR COUNTY, TEXAS. (SURVEYOR'S NOTE: VAGUE DESCRIPTION, UNABLE TO PLOT.)

b. EASEMENT GRANTED TO HUMBLE PIPE LINE COMPANY BY INSTRUMENT RECORDED IN VOLUME 4697, PAGE 14, OF THE DEED RECORDS, BEXAR COUNTY, TEXAS. (SURVEYOR'S NOTE: DOES NOT APPLY TO SUBJECT PROPERTY.)

c. AN OIL, GAS AND MINERAL LEASE DATED MARCH 17, 1964, EXECUTED BY GILBERT FEY AND WIFE, VERNELL FEY, LESSOR, IN FAVOR OF EDGAR A. ROGERS, JR., LESSEE, RECORDED IN VOLUME 5147, PAGE 261, OF THE DEED RECORDS, BEXAR COUNTY, TEXAS. (SURVEYOR'S NOTE: NOT A SURVEY ITEM.)

d. ALL LEASES, GRANTS, EXCEPTIONS OR RESERVATIONS OF COAL, LIGNITE, OIL, GAS AND OTHER MINERALS, TOGETHER WITH ALL RIGHTS, PRIVILEGES, AND IMMUNITIES RELATING THERETO, APPEARING IN THE PUBLIC RECORDS WHETHER LISTED IN SCHEDULE B OR NOT. THERE MAY BE LEASES, GRANTS, EXCEPTIONS OR RESERVATIONS OF MINERAL INTEREST THAT ARE NOT LISTED. (SURVEYOR'S NOTE: NOT A SURVEY ITEM.)

GENERAL NOTES:

1) BASIS OF BEARINGS AND COORDINATES CITED WERE ESTABLISHED FROM THE STATE PLANE COORDINATE SYSTEM, NORTH AMERICAN DATUM OF 1983, TEXAS SOUTH CENTRAL ZONE.

2) ONLY THOSE COPIES WHICH BEAR AN ORIGINAL INK IMPRESSION SEAL AND AN ORIGINAL SIGNATURE OF THE SURVEYOR WILL BE CONSIDERED A "VALID" COPY. MOY TARIN RAMIREZ ENGINEERS, L.L.C., WILL NOT BE RESPONSIBLE FOR THE CONTENT OF ANYTHING OTHER THAN A VALID COPY OF THIS SURVEY.

3) BASED ON NATIONAL FLOOD HAZARD LAYER WEBSITE (LAST ACCESSED 2021-12-15), THE SUBJECT PROPERTY HEREON IS SHOWN TO BE LOCATED IN FLOOD ZONE "X", DESIGNATED AS AREAS DETERMINED TO BE OUTSIDE THE 0.2% ANNUAL CHANCE FLOODPLAIN AS SHOWN ON COMMUNITY PANEL NUMBER 4802802315F, HAVING AN EFFECTIVE DATE OF SEPTEMBER 29, 2010. THIS FLOOD STATEMENT DOES NOT IMPLY THAT THE PROPERTY AND/OR THE STRUCTURES THEREON WILL BE FREE FROM FLOODING OR FLOOD DAMAGE. THIS FLOOD STATEMENT SHALL NOT CREATE LIABILITY ON THE PART OF THE SURVEYOR.

4) ALL BOUNDARY CORNERS ARE A SET 1/2" IRON RODS WITH AN ORANGE PLASTIC CAP STAMPED "MTR ENG" UNLESS OTHERWISE NOTED.

5) EXCEPT AS SHOWN HEREON, THERE IS NO EVIDENCE OF APPARENT EASEMENTS, INTRUSIONS, OR PROTRUSIONS OF IMPROVEMENTS ON ADJOINING PROPERTY.

6) NO MARKED PARKING SPACES ON SUBJECT PROPERTY.

SURVEYORS CERTIFICATE

TO: KAREN L. DAHLE AND MICHAEL H. DAHLE, NRP PROPERTIES LLC, AN OHIO LIMITED LIABILITY COMPANY, AND OR ASSIGNS AND STEWART TITLE GUARANTY COMPANY.

THIS IS TO CERTIFY THAT THIS MAP OR PLAT AND THE SURVEY ON WHICH IT IS BASED WERE MADE IN ACCORDANCE WITH THE 2021 MINIMUM STANDARD DETAIL REQUIREMENTS FOR ALTA/NSPS LAND TITLE SURVEYS, JOINTLY ESTABLISHED AND ADOPTED BY ALTA AND NSPS, AND INCLUDES ITEMS, 1, 2, 3, 4, 6, 11, [VISIBLE EVIDENCE ONLY] AND 14 OF TABLE A THEREOF. THE FIELD WORK WAS COMPLETED ON DECEMBER 06, 2021.

DATE OF MAP: DECEMBER 16, 2021

STEPHANIE L. JAMES, R.P.L.S.  
REGISTERED PROFESSIONAL LAND SURVEYOR NO. 5950  
MOY TARIN RAMIREZ ENGINEERS, L.L.C.  
12770 CIMARRON PATH, SUITE 100  
SAN ANTONIO, TEXAS 78249  
sjames@mtrengineers.com



SHEET

1

## ALTA/NSPS LAND TITLE SURVEY

A 14.687 ACRE (639,766.78 SQUARE FEET) TRACT OF LAND IN THE CITY OF SCHERTZ, BEXAR COUNTY, TEXAS, SITUATED IN THE JULIAN DIAZ SURVEY NO. 66, ABSTRACT 187, COUNTY BLOCK NO. 5059, BEING A PORTION OF A 10.000 ACRE TRACT AS CONVEYED TO KAREN L. DAHLE AND SPOUSE, MICHAEL H. DAHLE BY WARRANTY DEED WITH VENDOR'S LIEN AS RECORDED IN VOLUME 10257, PAGE 210 AND A PORTION OF A 5.095 ACRE TRACT AS CONVEYED TO KAREN L. DAHLE, A MARRIED PERSON, BY WARRANTY DEED WITH VENDOR'S LIEN AS RECORDED IN VOLUME 10337, PAGE 840, BOTH OF THE OFFICIAL PUBLIC RECORDS OF BEXAR COUNTY, TEXAS.

**MTR**

**Moy Tarin Ramirez Engineers, LLC**

12770 CIMARRON PATH, SUITE 100  
SAN ANTONIO, TEXAS 78249

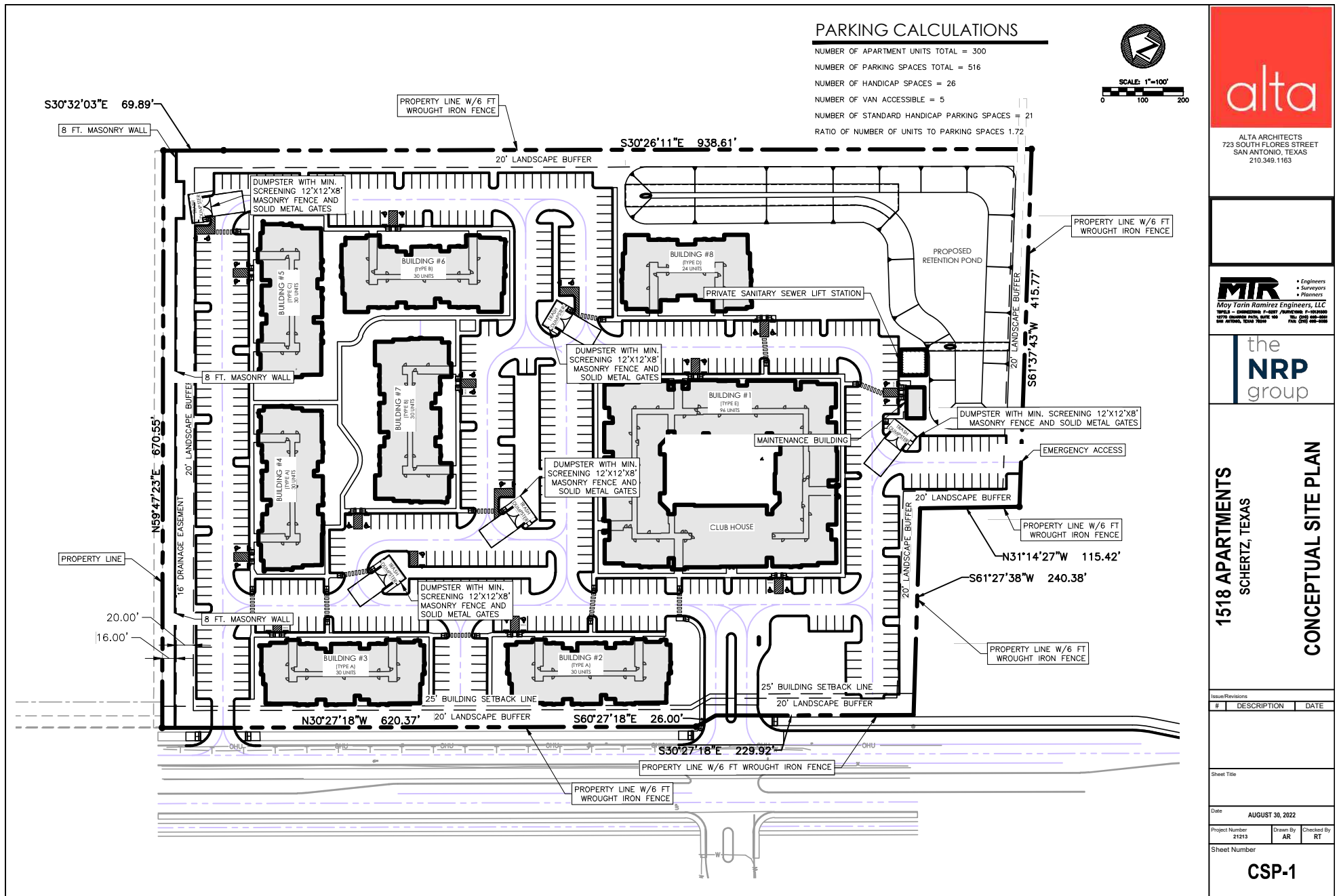
• Engineers  
• Surveyors  
• Planners

TEL: (210) 698-5051  
FAX: (210) 698-5085

### REVISIONS

NO.	DATE	DESCRIPTION	BY
0	12/20/21	ISSUED FOR REVIEW	VB
PROJ. #	DGN. BY:	DWN. BY:	CHKD. BY:
21213		VB	SLJ
DATE:	12/16/21		

## Exhibit B: PDD Plan





Source: Esri, Maxar, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community



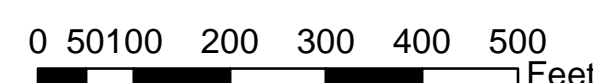
F.M. 1518 SCHERTZ MULTIFAMILY  
CB 5059 P-3 (13.617 AC) &  
P-36 (1.077 AC) ABS 187

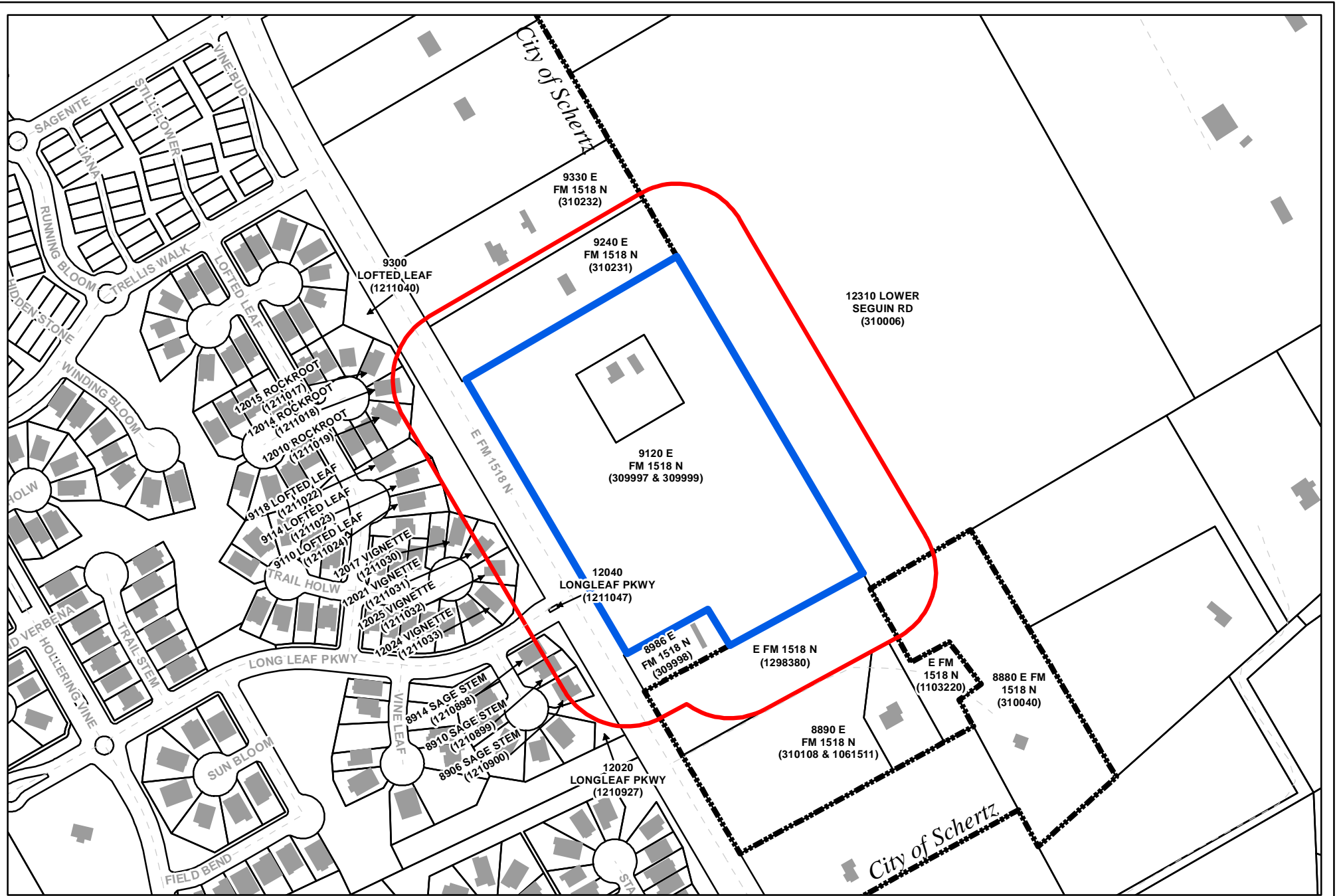
- |                    |                            |                                  |                                |
|--------------------|----------------------------|----------------------------------|--------------------------------|
| <all other values> | <all other values>         | Planned Secondary Arterial       | Commercial Collector B         |
| Highways           | Freeway                    | Secondary Rural Arterial         | Planned Commercial Collector B |
| Major Roads        | Principal Arterial         | Planned Secondary Rural Arterial | Commercial Collector A         |
| Minor Roads        | Planned Principal Arterial | Residential Collector            | Planned Commercial Collector A |
| Other Cities       | Secondary Arterial         | Planned Residential Collector    |                                |

- |    |     |     |                     |
|----|-----|-----|---------------------|
| 1" | 8"  | 20" | Schertz Gravity     |
| 2" | 10" | 24" | Schertz Pressure    |
| 3" | 12" | 30" | Neighboring Gravity |
| 4" | 16" | 36" | Private Pressure    |
| 6" | 18" |     |                     |

- |          |                            |
|----------|----------------------------|
| Hydrant  | 200' Buffer                |
| Manholes | Schertz Municipal Boundary |
|          | County Boundaries          |

1 Inch = 200 Feet





Last Update: June 7, 2022

City of Schertz, GIS Specialist: Bill Gardner, gis@schertz.com (210) 619-1185

"The City of Schertz provides this Geographic Information System product 'as is' without any express or implied warranty of any kind including but not limited to the implied warranties of merchantability and fitness for a particular purpose. In no event shall The City of Schertz be liable for any special, indirect or consequential damages or any damages whatsoever arising out of or in connection with the use of or performance of these materials. Information published in this product could include technical inaccuracies or typographical errors. Periodical changes may be made and information may be added to the information herein. The City of Schertz may make improvements and/or changes in the product(s) described herein at any time."

# City of Schertz

## FM 1518 Schertz Multifamily (PLPDD20220056)



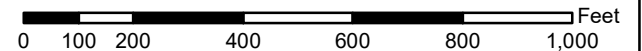
Project Area



City Limit Boundary



200' Buffer



**Megan Harrison**

---

**From:** Karen Dahle  
**Sent:** Wednesday, September 7, 2022 6:14 PM  
**To:** Megan Harrison  
**Subject:** PLPDD20220056

Megan,

Please mark my notice of hearing as IN FAVOR for this request to rezone.

Thank you.

Karen Dahle - electronic signature

Schertz, Texas 78154

Date signed 09/07/2022

Sent from Yahoo Mail on Android

NOTICE OF PUBLIC HEARING

September 2, 2022

Dear Property Owner,

The Schertz Planning and Zoning Commission will conduct a public hearing on **Wednesday, September 14, 2022**, 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:

**PLPDD20220056** – A request to rezone approximately 15 acres of land from Pre-Development District (PRE) to Planned Development District (PDD), generally located approximately 2,200 feet southeast of the intersection of Lower Seguin Road and FM 1518, also known as Bexar County Property Identification Number 309997 and 309999, 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 1400 Schertz Parkway, Building #1, or email [mharrison@schertz.com](mailto: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 **PLPDD20220056**

COMMENTS: There is a need for this and the proposed location is a good one.

NAME: Chris Domingue  
(PLEASE PRINT)

SIGNATURE



STREET ADDRESS: 8710 Luckside Schertz Tx 78154

DATE: Sept 14, 2022

NOTICE OF PUBLIC HEARING

September 2, 2022

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Sincerely,



Megan Harrison  
Planner

Reply Form

I am: in favor of ☐ opposed to ☐ neutral to ☐ the request for PLPDD20220056

COMMENTS: Traffic is dangerous

NAME: Gary Dester Jr SIGNATURE   
(PLEASE PRINT)

STREET ADDRESS: 8516 Vinepost Schertz, TX 78154

DATE: 9/8/2022

## NOTICE OF PUBLIC HEARING

September 2, 2022

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Sincerely,

Megan Harrison  
Planner

## Reply Form

I am: in favor of ☐ opposed to ☒ neutral to ☐ the request for PLPDD20220056COMMENTS: I am opposed to this land grab for multi-unit housing. Extra traffic and lower housing values.NAME: Joshua Patterson  
(PLEASE PRINT)

SIGNATURE

STREET ADDRESS: 11972 Trailing Creek, Schertz, TX 78154DATE: 9/14/2022

## NOTICE OF PUBLIC HEARING

September 2, 2022

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Sincerely,

  
Megan Harrison  
Planner

## Reply Form

I am: in favor of ☐ opposed to ☒ neutral to ☐ the request for **PLPDD20220056**

COMMENTS: \_\_\_\_\_

NAME: Belia Burnett

(PLEASE PRINT)

SIGNATURE STREET ADDRESS: 8748 StackstoneDATE: 14 SEPT 2022

## NOTICE OF PUBLIC HEARING

September 2, 2022

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Sincerely,

Megan Harrison  
Planner

## Reply Form

I am in favor of ☐ opposed to ☒ neutral to ☐ the request for **PLPDD20220056**COMMENTS High Density Community → wrong time, wrong place  
overwhelm infrastructure, schools, etcNAME Dusty + Linda Cole SIGNATURE [Signature]  
(PLEASE PRINT)STREET ADDRESS 11931 Hollering Pass. Schertz TX 78154DATE 14 Sept 2022

NOTICE OF PUBLIC HEARING

September 2, 2022

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Sincerely,

Megan Harrison  
Planner

Reply Form

I am: in favor of ☐ opposed to ☒ neutral to ☐ the request for **PLPDD20220056**

COMMENTS:

NAME: FRANCES MARTINEZ SIGNATURE:   
(PLEASE PRINT)

STREET ADDRESS: 8406 CREEK POCKET

DATE: 14 SEPT 22

## NOTICE OF PUBLIC HEARING

September 2, 2022

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Sincerely,

Megan Harrison  
Planner

## Reply Form

I am: in favor of ☐ opposed to ☒ neutral to ☐ the request for PLPDD20220056COMMENTS: See belowNAME: Beth Schumacher SIGNATURE   
(PLEASE PRINT)STREET ADDRESS: 3142 Turquoise, Shertz  
TX 78154DATE: 9/14/2022

This change does not serve the neighboring communities, not the community who would be living in the planned development. I am strongly opposed to this.

Pugh, David L. & Jennifer

SCHERTZ

COMMUNITY  
SERVICE  
OPPORTUNITY

PLANNING & COMMUNITY  
DEVELOPMENT

NOTICE OF PUBLIC HEARING

September 2, 2022

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Sincerely,

Megan Harrison  
Planner

Reply Form

I am: in favor of ☐ opposed to ☒ neutral to ☐ the request for PLPDD20220056

COMMENTS: Too close to hwy and could effect home values

NAME: Jennifer Pugh SIGNATURE Jennifer Pugh  
(PLEASE PRINT)

STREET ADDRESS: 8914 Sage Stem, Schertz, TX 78154

DATE: 7 Sep 2022

NOTICE OF PUBLIC HEARING

September 2, 2022

Dear Property Owner,

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**PLPDD20220056** – A request to rezone approximately 15 acres of land from Pre-Development District (PRE) to Planned Development District (PDD), generally located approximately 2,200 feet southeast of the intersection of Lower Seguin Road and FM 1518, also known as Bexar County Property Identification Number 309997 and 309999, City of Schertz, Bexar County, Texas.

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Sincerely,



Megan Harrison  
Planner

Reply Form

I am: in favor of ☐ opposed to ☒ neutral to ☐ the request for **PLPDD20220056**

COMMENTS: \_\_\_\_\_

NAME: Adrian A. Perez SIGNATURE   
(PLEASE PRINT)

STREET ADDRESS: 12015 Rockroot, Schertz TX 78154

DATE: 09/14/2022

## NOTICE OF PUBLIC HEARING

September 2, 2022

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Sincerely,

  
Megan Harrison  
Planner

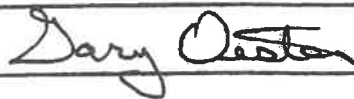
## Reply Form

I am: in favor of ☐ opposed to ☒ neutral to ☐ the request for **PLPDD20220056**

COMMENTS: \_\_\_\_\_

NAME: Gary Oester SR.  
(PLEASE PRINT)

SIGNATURE



STREET ADDRESS: 5900 Vine Leaf Schertz TX 78154

DATE: 9/9/22

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Sincerely,



Megan Harrison  
Planner

Reply Form

I am: in favor of ☐ opposed to ☒ neutral to ☐ the request for PLPDD20220056

COMMENTS: \_\_\_\_\_

NAME: LEA DESTEN SIGNATURE Lea Desten  
(PLEASE PRINT)

STREET ADDRESS: 8900 VINE LEAF, SCHERTZ TX 78154

DATE: 9/9/22

**NOTICE OF PUBLIC HEARING**

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Sincerely,

  
Megan Harrison  
Planner

**Reply Form**

I am: In favor of ☐ opposed to ☒ neutral to ☐ the request for PLPDD20220056

COMMENTS: Allows non-property owners to vote for laws that affect property taxes.

NAME: Derek Messer SIGNATURE:   
(PLEASE PRINT)

STREET ADDRESS: 11705 Hollersing Pass, Schertz TX, 78154

DATE: 9/12/2022

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Megan Harrison  
Planner

## Reply Form

I am: in favor of ☐ opposed to ☒ neutral to ☐ the request for PLPDD20220056

COMMENTS: Traffic is already hard exiting at Hollering Vine / 1518

NAME: Jackie DeStor SIGNATURE Jackie DeStor  
(PLEASE PRINT)

STREET ADDRESS: 8516 Vine post Schertz TX 78154

DATE: 9/9/2022



COMMUNITY  
SERVICE  
OPPORTUNITY

PLANNING & COMMUNITY  
DEVELOPMENT

NOTICE OF PUBLIC HEARING

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Sincerely,

Megan Harrison  
Planner

Reply Form

I am: in favor of ☐ opposed to ☒ neutral to ☐ the request for PLPDD20220056

COMMENTS: Inadequate infrastructure (roads, lack of public transportation, schools, etc), violation of right to quiet enjoyment (lack of garages in complex), tenants who don't pay property tax directly so shouldn't have say in property tax related issues (as opposed to home owners)

NAME: Nicole Oester  
(PLEASE PRINT)

SIGNATURE Nicole

STREET ADDRESS: 11705 Hollering Pass Schertz, TX 78154

DATE: 09/12/2022

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Sincerely,

Megan Harrison  
Planner

## Reply Form

I am: in favor of ☐ opposed to ☒ neutral to ☐ the request for PLPDD20220056

COMMENTS: Does not support increase in traffic

NAME: Ronna & Eric Poole SIGNATURE [Signature]  
(PLEASE PRINT)

STREET ADDRESS: 12035 Vignette

DATE: 9-7-22



COMMUNITY  
SERVICE  
OPPORTUNITY

PLANNING & COMMUNITY  
DEVELOPMENT

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Sincerely,

Megan Harrison  
Planner

Reply Form

I am: in favor of ☐ opposed to ☒ neutral to ☐ the request for **PLPDD20220056**

COMMENTS: This will impact value of houses for crossvine

NAME: Josh Imhoff SIGNATURE   
(PLEASE PRINT)

STREET ADDRESS: 9110 Cofed Leaf

DATE: 09-09-22

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Megan Harrison  
Planner

Reply Form

I am: in favor of ☐ opposed to ☒ neutral to ☐ the request for PLPDD20220056

COMMENTS: See Attached

NAME: Lloyd Fairley SIGNATURE:   
(PLEASE PRINT)

STREET ADDRESS: 4085 Weil Rd Marion TX 78124

DATE: 9-13-2022

September 13, 2022

To: Planning and Zoning Commission of Schertz

From: Lloyd Fairley 12290 Lower Seguin Rd

RE: PLPDD20220056

I have owned and operated the property at 12290 Lower Seguin for over 20 years as a high-quality horse hay producing farm. My property borders the East side of the properties that are in consideration of a zoning change.

I responded to this survey in January of this year with a favorable vote of this rezoning. I have since changed my position to **not** be in favor of this zoning change.

I do not believe that transitioning a small portion of the area into Planned Development District is appropriate for the surrounding properties. Development almost always relates to an increase in activity and usage that impacts other neighboring properties with noise, runoff, garbage, and privacy.

Plats seldom take into consideration how the project will interact with the surrounding property uses unless the city already has policy in place that requires the developer to include solutions.

It has been my experience and observation that the city of Schertz does not look out for the indigenous property owners, especially with respect to runoff and drainage, property setbacks, and barriers for noise and garbage. These are all major concerns for me and my crop.

Garbage blowing in from neighboring properties will contaminate the hay crop and even a small piece of plastic or balloon can kill livestock from ingestion.

Drainage seems to be an assumed right-of-way that always puts the farmer at a disadvantage to development. In a recent case, drainage from a new subdivision is expected to go through my dad's property based on some inadequate information used by engineers. In reality the drainage has not passed through that area for over 20 years. Unplanned drainage routing damages crops and jeopardizes harvesting.

Drainage retention design is not good enough for areas with flat topography and requires a thorough design from source to waterway extending through all affected properties.

Drainage in this area of the city is a development constraint identified by the Schertz Sector Plan of 2013. (See Attached)

Runoff is another big concern that I have for future development around my property. Runoff from developed properties, especially residential complexes will contain a variety of chemicals that will contaminate or destroy my hay crop. Parking lot and dumpster effluent are always big sources for toxic runoff. Pesticides used in landscaping and pest control are hazardous to the crop and potentially deadly to the livestock that consume my product.

For example: Atrazine is a chemical used for residential and commercial landscaping without restriction. A small plot of grass at an apartment complex will typically have as much as 400% more Atrazine applied than what I am allowed to use by the state on 40 acres! In addition, Atrazine has not been used on our farms for the last 18 years due to its proven developmental and reproductive toxicity. For this reason, countries all over the world have banned Atrazine.

90% of the hay grown on my property is consumed by horses and it is a fact that horses exposed to trace amounts of Atrazine have miscarriages.

I would like to see that Schertz require audits of sewer and runoff effluents in accordance with TCEQ standards.

I do not support this zoning change primarily on the basis that Schertz is not prepared to transition these properties into a Planned Development District and conserve the agricultural and property rights of the surrounding residents. More Planning is needed.

Respectfully,

Lloyd Fairley

Planning and Zoning Chairman for Santa Clara TX

## Attachment

### **B. Constraints**

The constraints for South Schertz are derived from its relative development infancy compared to the other areas of Schertz. Without a history of development, South Schertz has a significant lack of infrastructure including sewer, water and streets. It also is constrained by the relatively flat topography that could lead to flooding of property including limiting transportation access at low water crossings during flood events. These constraints will be alleviated and addressed to some degree through capital improvements as development occurs. South Schertz's current lack of connectivity with the rest of the city is a constraint that will need to be addressed at a city-wide and regional scale. Currently, FM 78 railroad tracks and Cibolo Creek are all major barriers to much needed connectivity between South Schertz and the rest of Schertz. FM 1518 is the only current accessible route into South Schertz, and better connectivity across the above barriers can only happen at a significant cost.

## Megan Harrison

---

**From:** Emily Lawson  
**Sent:** Wednesday, September 14, 2022 4:41 PM  
**To:** Megan Harrison  
**Subject:** 1518 apartments

Hello,

I am a resident of The Crossvine neighborhood and wanted my voice to be heard in regards to the proposed apartments being discussed in tonight's meeting.

Myself and my family vehemently OPPOSE these apartments for many reasons, but will name a few:

- The road cannot handle existing traffic and the project to widen it has not even started.
- 18 wheelers are often getting stuck in the ditch at the lower seguin intersection (it just happened on September 12), which causes school traffic to be a nightmare (there are three schools on 1518 and very few traffic lights, which already creates massive traffic problems), adding high density housing will only add to this problem.
- apartments are already planned for in the crossvine, why is another complex needed?
- low income apartments are incredibly stupid in this part of schertz where there is NOTHING within walking distance (i.e. grocery stores, public transportation, doctors, etc).
- the city needs more single family properties - where residents are paying property taxes, not more corporations getting tax breaks to build hud apartments that will be dilapidated in 5 years.

I hope you consider my input, these apartments are a terrible idea. Re-zoning is a terrible idea, and the change in land use was a terrible idea. This property should be sold as-is, without changing anything.

Thank you,  
Whaley & Emily Lawson  
11812 field bend

Sent from my iPad

## **Megan Harrison**

---

**From:** April Johnson  
**Sent:** Wednesday, September 14, 2022 4:33 PM  
**To:** Megan Harrison  
**Subject:** 9/14 Council Meeting

Hello,

I am writing in regards to the proposal of low income apartments being built across from The Crossive and the meeting tonight. Unfortunately I am unable to attend to voice my concerns but as a resident I wanted to make it clear that I am opposed to this and I do hope the council takes into consideration that many other residents in our community are also opposed.

Thank you,  
April Johnson  
12041 Garden Shoot  
Schertz, TX 78154

## **Megan Harrison**

---

**From:** Clirissa  
**Sent:** Wednesday, September 14, 2022 4:35 PM  
**To:** Megan Harrison  
**Subject:** Planning Request PLPDD20220056

Good Evening Megan,

I am Clirissa Hughes, a new homeowner in The Crossvine community and unable to make the meeting tonight. I did not receive a notice in the mail but the information was provided to the community. I would like to say that I am opposed to the proposed apartments being built on 1518. I literally would be able to see them out my back window and I feel there is another location that should be considered for this plan. My address is 8920 Vine Leaf. Thank you for your time and have a good evening.

## **Megan Harrison**

---

**From:** daniel garner  
**Sent:** Monday, September 12, 2022 8:33 AM  
**To:** Megan Harrison  
**Subject:** Re: Lower seguin

12020 Garden Shoot, Schertz, TX 78154. Thank you.

On Mon, Sep 12, 2022, 8:31 AM Megan Harrison <[MHarrison@schertz.com](mailto:MHarrison@schertz.com)> wrote:

Mr. Garner,

Please keep this email as confirmation that I have received your email. Could you please provide your address for the record?

Thank you,

**Megan Harrison**

**Planner**

City of Schertz

1400 Schertz Parkway

Schertz, TX 78154

Office: 210-619-1781

[Schertz.com](http://Schertz.com)

**From:** daniel garner  
**Sent:** Saturday, September 10, 2022 4:19 PM  
**To:** Megan Harrison <[MHarrison@schertz.com](mailto:MHarrison@schertz.com)>  
**Subject:** Lower seguin

Please fix the road and make it wider. The road as it can not handle the traffic as is let alone if we plan to attract business or ad apartments. Apartments to me make no sense in this location. Apartments are normally near highly dense areas close to food and services. Another key factor for fixing the road is it location next to a military institution. The amount of large vehicles going in and out and the blind turn from the base has caused more accidents than I could count. It could potentially cause a back up in the need of an emergency where military needs to quickly enter or exit the base. Thank you for your time. Have a great day.

## **Megan Harrison**

---

**From:** Jennifer Cooper  
**Sent:** Wednesday, September 14, 2022 2:13 PM  
**To:** Megan Harrison  
**Subject:** Crossvine Resident- 1518 Housing Project

Good afternoon. We are emailing you in regards to our concerns of the possibility of low income housing apartments being built across our Subdivision. We are submitting are opposition in writing of the proposed housing.

Our first concern is the crime that we all know what comes with low income housing and this alone is a huge concern of our safety. The safety of my family and neighbors.

The second concern is traffic,. Our roads are not equipped to handle the amount of traffic this would bring to our area. In the event of an emergency, we would all be stuck with no where to evacuate to.

We are all in favor for commercial retail/shops that would greatly benefit the convenience and need that this will bring to our community.

Why would low income housing be considered for a remote area like ours? They is no transportation offered out here, minimal opportunities for employment, no access to immediate needs for commodities i.e..grocery stores, gas stations etc.

We strongly believe that this development would not benefit anyone and strongly opposed!

Thank you for your time,

Chris and Jennifer Cooper  
Crossvine Resident

Sent from my T-Mobile 5G Device

## **Megan Harrison**

---

**From:** Todd Welch  
**Sent:** Wednesday, September 14, 2022 12:26 PM  
**To:** Megan Harrison  
**Subject:** PLPDD20220056 opposed

Good afternoon. I appreciate you answering questions this morning. We wanted to put in writing ,via email, our opposition to the proposition as well as some of our concerns for the Commission to consider. We are concerned with many aspects of the land across 1518 being used for an apartment complex. The first concern is the amount of traffic on 1518. It isn't only the delay in getting to places, but if there were an emergency that required citizens to evacuate we could easily be locked in place. The second concern is safety. We do not have a police station close by. In researching what happens in areas with affordable housing, crime does increase. We have had a recent increase in crime in our neighborhood as it is. Why would an affordable housing complex be put out this way when there are minimal opportunities for employment and/or places to have immediate needs (i.e. grocery stores) met in this immediate area. The property values in this neighborhood are high. The safety of this neighborhood was one of the main things that attracted us to building our home. What will these apartments do to the value of our home and the crime rate? It doesn't feel like the concerns of this community have been heard at all. We can't be there tonight to voice our concerns or I would be. We don't think this development is good for our community at all and are highly opposed! I also know many neighbors who feel this way.

Sincerely,  
Todd & Stephanie Welch

Crossvine Resident  
8520 Vinepost

## Megan Harrison

---

**From:** Josh  
**Sent:** Friday, September 9, 2022 4:41 PM  
**To:** Megan Harrison  
**Subject:** Opposing PLPDD20220056

Hello Megan,

I am responding to the notice of public hearing for PLPDD20220056 – the request to rezone approximately 15 acres of land from Pre-Development District (PRE) to Planned Development District (PDD) Generally located approximately 2,200 feet southeast of the intersection of Lower Seguin Road and FM 1518, also known as Bexar County Property Identification Number 309997 and 309999, City of Schertz, Bexar County, Texas.

**I am opposed to the request of PLPDD20220056.**

When the property was rezoned for mixed use in early 2021 we were informed the intention of the rezoning was for The NRP Group to construct an apartment complex across the street from our community. I do not believe that a 300 unit apartment complex in the area identified will be a positive addition to our community. My main concerns are the impact to my property value, increased traffic congestion, light pollution, and additional noise from increased traffic and goings on at the apartment complex.

We already intend on moving away from Crossvine when new home finishes in Garden Ridge due to wanting more land but the expansion coming to this area was another reason. Although certainly would want to avoid a major decrease in value when its time to sell our house. If a apartment building goes in across the street, I think you'll see mass exodus of people wanting to leave here to where there is somewhere quieter like this area use to be, or the value will have to drop because it just won't be worth the headache of being so close to Garden homes, crossvines apartments, and this other monster apartment complex across the street.

I hope this isnt passed for the sake of value of our home before moving and for the folks that consider Crossvine their forever home.

Thanks,

Josh

## Megan Harrison

---

**From:** THOMAS ECKHOFF  
**Sent:** Tuesday, September 13, 2022 9:21 AM  
**To:** Megan Harrison  
**Subject:** PLPDD20220056

Planning and Zoning Commission, We opposed this rezoning just like last time you sent this out. We move out here for peace and quite now you are hiding 1518 and wants to add even more to our backyard. Thanks for your time

The Eckhoff  
12014 Rockroot

Imholte, Nancy & Joshua

**Megan Harrison**

---

**From:** Nancy Imholte  
**Sent:** Thursday, September 8, 2022 9:39 PM  
**To:** Megan Harrison  
**Subject:** PLPDD20220056

Ms. Harrison,

I am responding to the notice of public hearing for PLPDD20220056 – the request to rezone approximately 15 acres of land from Pre-Development District (PRE) to Planned Development District (PDD) Generally located approximately 2,200 feet southeast of the intersection of Lower Seguin Road and FM 1518, also known as Bexar County Property Identification Number 309997 and 309999, City of Schertz, Bexar County, Texas.

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My house is located across from where the secondary exit from the apartment complex is drawn. People who move this far of 1604 typically are not wanting to look at an apartment complex from their back yard. This will directly impact the aesthetic and value of my home because it is so close to the apartments.

Cross traffic to get on to 1518 in the morning from the Crossvine Community is already overcrowded and prone to backups. Even with the road upgrades to convert 1518 to a divided highway there will still be traffic delays trying to exit or enter the Crossvine or the apartment complex. The Crossvine Community is still adding houses and another subdivision is being added up 1518 toward 10, therefore I believe the infrastructure will struggle to support the intended growth.

The lighting for safety reasons around the apartment complex will also diminish the tranquility of our neighborhood. The path and street lights in the Crossvine are very sparse and it adds to the country feel and calm of our neighborhood. If the complex is built I would hope they would have dark sky limitations as well.

We already have increased traffic; the road noise from an additional 300 units across the street will be constant. Also there is inherently more noise from an apartment complex with the increased number in a smaller space.

There was a lot of opposition on the community FaceBook page which I believe Jill Whitaker tried to address when the property was merely being rezoned. I would prefer another subdivision go in across the street before an apartment complex. This mainly being because I know the people in my neighborhood treat their properties as homes. Apartments are often temporary stops and easily given up for lower rent or a shorter commute, so the way you care for those places that you have no sense of permanency for or ownership of is very different. **If this was your property, your neighborhood, would you want this to be constructed across from your home?**

It is my sincere hope that this does not pass and another use for the property is determined.

Sincerely,

Nancy Imholte

CORTEZ, JUAN M II

Megan Harrison

---

**From:** Johnny Cortez  
**Sent:** Friday, September 9, 2022 10:23 AM  
**To:** Megan Harrison  
**Subject:** PLPDD20220056

Good morning,

My name is Juan Cortez and I am a resident of the cross one community. I wanted to reach out to you this morning to express my opposition to rezoning Property Identification Number 309997 and 309999, City of Schertz, Bexar County, Texas. Please let me know if anything else is needed for my vote to be taken into consideration. Thanks

Johnny Cortez

## Megan Harrison

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**From:** Christi  
**Sent:** Wednesday, September 14, 2022 5:50 PM  
**To:** Megan Harrison  
**Subject:** PPD on 1518

I am currently living on the property at 9240 E FM 1518. This proposed development will directly, and negatively affect me and my family. We oppose. I'm worried for my children's safety. How will child predators be screened and prevented from living a whopping 200' from my small children? The Dahls have never liked us, ever. It's been bad blood since they moved in. They had issues with my in laws who no longer live here. I feel like this is a personal attack on my family. And I'm sure that's exactly what it is because no true "rancher" would sell land to build 300 apartments. 1518 is already a nightmare with high speed passing and traffic. There is no need to add 300 more cars on this road. We already have garden homes going across the street by Crossvine and more apartments going by Woman Hollering. We're killing this small town that most of us have lived our entire life. It's sad that the country roads are turning into subdivisions. We fully oppose this proposal. We cannot make it to the meeting due to work so hopefully this falls in the right hands at the right time.

Thank you

Sent from the all new AOL app for Android

## Megan Harrison

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**From:** Carla Hall  
**Sent:** Wednesday, September 14, 2022 5:06 PM  
**To:** Megan Harrison  
**Subject:** Proposed apartments in Crossvine neighborhood

Good evening,

My name is Carla Hall and I live in the Crossvine/Sedona community. I just recently heard about the proposed apartments that are to be voted on and wanted to express my concern at the lack of infrastructure in place to handle 100s more families. Especially at the light of Lower Seguin and 1518.

This intersection already has massive back-ups due to no designated turn lanes, semi-trucks that get wedged into the ditch trying to get to I-10 and massive pot holes that constantly need to be filled in.

Just recently, on a school day, it took my family and I 5 light rotations to get through the intersection. Even if every apartment had only 1 vehicle, that is 100s of additional vehicles going through the intersection on a daily basis, at peak times. This concern is valid for the patio homes that are already planned and going under contract in the same area.

Please consider this before voting to approve. If after 1518 can get widened, and Lower Seguin fixed with proper lanes to accommodate semi-trucks, then it might be an appropriate place and time for additional housing.

Thank you kindly,

Carla Hall

my Verizon, Samsung Galaxy smartphone  
Get [Outlook for Android](#)

## Megan Harrison

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**From:** Amy Watson  
**Sent:** Wednesday, September 14, 2022 5:07 PM  
**To:** Megan Harrison  
**Subject:** 9/14 Public Hearing - Resident Form

Hi Megan,

My family lives at 8740 Stackstone, located in the Crossvine neighborhood. We are unable to attend tonight's public hearing regarding item #PLPDD20220056. Please find our completed form opposing this request below.

Thank you so much,  
Amy Watson  
8740 Stackstone

## Megan Harrison

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**From:** The Vicians  
**Sent:** Wednesday, September 14, 2022 4:59 PM  
**To:** planning@schertz.com; Megan Harrison  
**Subject:** PLPDD20220056 comment -- opposed

We are opposed to the proposed apartment project as it will bring congestion to the area and add multi-family units under the flight path from Randolph.

Todd and Susan Vician  
8926 Green Grant  
Schertz, TX 78154

Sent from [Mail](#) for Windows

**CITY COUNCIL MEMORANDUM**

**City Council Meeting:** October 25, 2022  
**Department:** Executive Team  
**Subject:** Resolution No. 22-R-123 - Consideration and/or action approving a Resolution by the City Council of the City of Schertz, Texas authorizing a Subdivision Improvement Agreement with 1518 Apartments, Ltd. (M. Browne/B. James)

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**BACKGROUND**

FM 1518 Apartments, Ltd. is proposing to construct a 300 unit apartment complex located approximately 2,200 feet southeast of the intersection of Lower Seguin Road and FM 1518. The developer is requesting a Subdivision Improvement Agreement in order to be allowed to file the plat prior to constructing all required public improvements. While this sort of agreement is not uncommon, given that the developer cannot tie into the Woman Hollering Creek Trunk line until construction by the City is completed, the developer is requesting to be able to obtain a Certificate of Occupancy and provide pump and haul services, at their expense, within 12 months of filing the plat for their property. The City anticipates completion of the Woman Hollering Creek Trunk line within approximately 8 months.

FM 1518 Apartments, Ltd. is proposing to partner with the Schertz Housing Authority on the project, with the Schertz Housing Authority being the future owner. As the property has not been purchased yet, the current owner is also a signatory to the agreement.

**GOAL**

Provide for the orderly development of infrastructure within the City of Schertz.

**COMMUNITY BENEFIT**

Provide for development of infrastructure in a timely, cost-effective manner.

**SUMMARY OF RECOMMENDED ACTION**

Approval of Resolution 22-R-123 authorizing the Subdivision Improvement Agreement with the FM 1518 Apartments, Ltd.

**FISCAL IMPACT**

There is no fiscal impact to the City as the developer is required to bear the cost for pump and haul services until they make the connection to the Woman Hollering Creek Trunk Line once construction by the City is completed.

**RECOMMENDATION**

Approval of Resolution 22-R-123.

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**Attachments**



**RESOLUTION NO. 22-R-123**

**A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF SCHERTZ, TEXAS  
AUTHORIZING A SUBDIVISION IMPROVEMENT AGREEMENT WITH SCHERTZ  
1518 APARTMENTS, LTD. AND OTHER MATTERS IN CONNECTION THEREWITH**

**WHEREAS**, the Landowner desires to defer certain dedication and improvement obligation for FM 1518 Schertz Multifamily Apartments; and

**WHEREAS**, pursuant to Section 21.4.15 of the City's Unified Development Code, the obligation to dedicate and construct improvements for the Subdivision may be deferred if an Improvement Agreement is executed and if sufficient surety is provided to secure the obligation to construct the improvements; and

**WHEREAS**, the City staff of the City of Schertz has recommended that the City enter into a Subdivision Improvement Agreement; and

**WHEREAS**, the City of Schertz is in process of making certain sewer improvements associated with the Woman Hollering Creek Sewer Line; and

**WHEREAS**, the developer is obligated to make certain improvements, and

**WHEREAS**, the City Council has determined that it is in the best interest of the City to authorize the City Manager to enter into Agreements.

**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 a Subdivision Improvement Agreement for the FM 1518 Schertz Multifamily Project generally as attached in Exhibit "A".

Section 2. The recitals contained in the preamble hereof are hereby found to be true, and such recitals are hereby made a part of this Resolution for all purposes and are adopted as a part of the judgment and findings of the 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. 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 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. 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 25<sup>th</sup> day of October, 2022.

---

Ralph Gutierrez, Mayor

ATTEST:

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Sheila Edmondson, Deputy City

Secretary (SEAL OF THE CITY)

**Exhibit “A”**  
**Subdivision Improvement Agreement FM**  
**1518 Schertz Multifamily Apartments**



subdivision improvement agreement is executed and if sufficient surety is provided to secure the obligation to construct the public improvements; and

WHEREAS, the Developer seeks to defer the construction of the Improvements to a future date as set forth hereinafter after the recording of the final plat for the Subdivision (the “Final Plat Recordation”) pursuant to this Agreement and Section 21.4.15 of the City’s Unified Development Code; and

WHEREAS, the City is currently constructing sewer improvements more specifically identified in Section 2(b) that the Developer is planning to tie into; and

WHEREAS, if necessary the Developer is requesting to be able to obtain a certificate of occupancy for the Project prior to completion of the sanitary sewer improvements outlined in Section 2, through the use a licensed contractor to “pump and haul” the wastewater from the Project.

NOW THEREFORE, in consideration of the agreements set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and stipulated, the Developer and the City agree as follows:

1. Development of the Property. Karen L. Dahle hereby represents and warrants that, as of the Effective Date, she is the owner of the Property. SHA PFC it is under contract to purchase the Property, and it will be developed in partnership with Developer. Karen L. Dahle, SHA PFC and Developer understand that this agreement is for the benefit of Developer and the SHA PFC, and does not extend to other parties, unless provided for otherwise herein.

2. Scope of Improvements. The public Improvements addressed and contemplated by this Agreement to be completed subsequent to Final Plat Recordation include (i) Improvements to be undertaken by the owner on its own behalf, and (ii) improvements being undertaken by the City on behalf of the City.

(a) The Improvements to be completed by the Developer are those improvements identified on construction plans which are to be approved by the City and are more specifically identified as FM 1518 Multifamily Apartments Construction Plan Improvements prepared by Moy Tarin Ramirez Engineers, LLC.

(b) The Improvements to be completed by City are those improvements identified on construction plans which have been approved by the City and are more specifically identified as the “Woman Hollering Creek Wastewater Lines” (herein so called) prepared by Cobb Findley.

3. Construction of Improvements; Covenants. The Developer and the City covenant and agree to the following:

(a) The Developer is obligated by Section 21.12.10 of the City’s Unified Development Code to construct, or cause to be constructed, all Improvements shown on the FM 1518 Multifamily Apartments Construction Plan Improvements referenced in Section 2(a) which must be approved and will be included as part of

the application for plat approval for the subdivision titled FM 1518 Multifamily Apartments Plat.

(b) Section 21.12.10 of the City's Unified Development Code requires the completion of the Woman Hollering Creek Wastewater Lines more particularly shown on those certain Woman Hollering Creek Wastewater Lines referenced in Section 2(b) above.

(c) The completion of the Woman Hollering Creek Wastewater Lines is required in order for the Developer to complete the FM 1518 Multifamily Apartments Construction Plan Improvements.

(d) The City has undertaken the construction of the Improvements represented by the Woman Hollering Creek Wastewater Lines and shall prosecute the completion thereof in a prompt and workmanlike fashion and the date of completion and acceptance thereof shall be the "Woman Hollering Creek Wastewater Lines Completion Date".

(e) The FM 1518 Multifamily Apartments Construction Plan Improvements shall be built and completed in accordance with City design standards by Developer within twelve months (12 months) of filing the plat of the Subdivision in the Bexar County Real Property Records.

(f) The cost of the FM 1518 Multifamily Apartments Construction Plan Improvements is estimated to be **COST and NO/100 (\$XXX,000.00)** (the "Cost Estimate-Improvements"). The Developer and the City agree that the amount of the Cost Estimate-Improvements set forth herein is a commercially reasonable estimate of the cost of the FM 1518 Multifamily Apartments Construction Plan Improvements.

(g) In lieu of the (i) Developer's obligation to construct, or cause to be constructed, the FM 1518 Multifamily Apartments Construction Plan Improvements at or before the Final Plat Recordation, Developer shall provide to the City, concurrent with the execution of this Agreement, surety in the form attached hereto as Exhibit "C" (the "Surety") in an aggregate amount equal to 120% of the Cost Estimate-Improvements (the "Improvement Funds") and which Surety shall provide that it automatically renews in the event that it has not been released at the time of its expiration.

(h) City agrees to not withhold a Certificate of Occupancy for the FM 1518 multi-family apartment complex until construction of the FM 1518 Multi-Family Apartments Construction Plan Improvements and the Woman Hollering Creek Wastewater Lines if the Developer utilizes a licensed contractor to "pump and haul" the wastewater until completion of the FM 1518 Multi-Family Apartments Construction Plan Improvements and the Woman Hollering Creek Wastewater.

(i) For the purpose of clarification, and in no way limiting Developer's obligations under Section 21.4.15, the Parties agree that full completion of

construction of the FM 1518 Multi-Family Apartments Construction Plan Improvements shall not be deemed to have occurred until the City accepts such Improvements in the manner prescribed in Section 21.4.15. D of the City's Unified Development Code.

(j) In the event Developer fails to fully complete construction of the FM 1518 Apartments Construction Plan Improvements as required per 3 (e), the City may declare this Agreement to be in default and at the City's sole discretion:

- (i) require that all FM 1518 Multifamily Apartments Construction Plan Improvements as required per 3 (e) be installed by Developer regardless of the extent of completion of the improvements on the Property at the time this Agreement is declared to be in default;
- (ii) unilaterally draw from the Improvement Funds sufficient amount to complete the FM 1518 Multifamily Apartments Construction Plan Improvements itself or through a third party; or
- (iii) assign the Improvement Funds to any third party, including a subsequent owner of the Property, provided that such Improvements Funds shall only be assigned for the purpose of causing the construction of the FM 1518 Multifamily Apartments Construction Plan Improvements by such third party and for no other purpose and in exchange for the subsequent owner's agreement and posting of security to complete the FM 1518 Multifamily Apartments Construction Plan Improvements.

(k) Within 30 days of the City's acceptance of the FM 1518 Apartments Improvements, the City shall release the Surety to Developer and the Parties shall have no further obligation to each other under this Agreement.

4. Wastewater Pump and Haul. The City and Developer have entered into the Wastewater Pump and Haul Agreement for the FM 1518 Apartments attached hereto as **Exhibit "D"**.

5. Approval of Agreement. The City has approved the execution and delivery of this Agreement pursuant to Section 21.4.15(E.)(2.) of the City's Unified Development Code, and the Developer represents and warrants that it has taken all necessary action to authorize its execution and delivery of this Agreement.

6. Governmental Immunity. The City does not waive or relinquish any immunity or defense on behalf of itself, its officers, employees, Councilmembers, and agents as a result of the execution of this Agreement and the performance of the covenants and actions contained herein.

7. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, representatives, successors, and assigns, and the terms hereof shall run with the Property. Any Owner obligations, benefits, or requirements of this Agreement shall automatically be assigned to subsequent owners of the Property following

conveyance. As of the Effective Date, the subsequent Owner is anticipated to be the Schertz Housing Authority Public Facilities Corporation.

8. 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 shall be construed together and shall constitute one and the same Agreement.

9. Integration. This Agreement is the complete agreement between the parties as to the subject matter hereof and cannot be varied except by the written agreement of the Developer and the City. The Developer and the City each agrees that there are no oral agreements, understandings, representations or warranties which are not expressly set forth herein.

10. Notices. Any notice or communication required or permitted hereunder shall be deemed to be delivered three (3) days after such notice is deposited in the United States mail, postage fully prepaid, registered or certified mail return receipt requested, and addressed to the intended recipient at the address shown herein. Any address for notice may be changed by written notice delivered as provided herein. All notices hereunder shall be in writing and served as follows:

If to the Owner:

Karen L. Dahle  
9120 E. FM 1518 N  
Schertz, TX 78154

Schertz Housing Authority Public Facilities Corporation

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If to the Developer:

1518 Apartments Ltd.  
c/o The NRP Group  
200 Concord Plaza Drive, Suite 900  
San Antonio, Texas 78216  
Attn: Jason Arechiga

With copy to:

Killen, Griffin & Farrimond  
10101 Reunion Place, Suite 250  
San Antonio, Texas 78216  
Attn: Ashley Farrimond

If to the City:

CITY OF SCHERTZ  
1400 Schertz Parkway  
Schertz, Texas 78154  
Attention: City Manager

With copy to:

Denton Navarro Rocha Bernal Hyde & Zech, P.C.  
2517 N. Main Avenue  
San Antonio, Texas 78212  
Attention: T. Daniel Santee

11. Legal Construction. If 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, such 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 this Agreement. Whenever the 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.

12. Recitals; Exhibits. Any recitals in this Agreement are represented by the parties hereto to be accurate, constitute a part of the parties' substantive agreement, and are fully incorporated herein as matters of contract and not mere recitals. Further, any exhibits to this Agreement are incorporated herein as matters of contract and not mere exhibits.

13. No Joint Venture. It is acknowledged and agreed by the parties that the terms hereof are not intended to, and shall not be deemed to, create a partnership or joint venture among the parties.

14. 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 shall be in the State District Courts of Guadalupe County, Texas with respect to any lawsuit arising out of or construing the terms and provisions of this Agreement. No provision of this Agreement shall constitute a consent by suit by any party.

*[Signatures and acknowledgments on the following pages]*

**Signature Page to**  
**Subdivision Improvement Agreement**

This Subdivision Improvement Agreement has been executed by the parties as of the dates of the Acknowledgments to be effective as of the Effective Date.

Owner:

**Karen L. Dahle**

\_\_\_\_\_

Date: \_\_\_\_\_

THE STATE OF TEXAS           §  
  §  
COUNTY OF BEXAR           §

This instrument was acknowledged before me on the \_\_\_\_ day of October, 2022 by Karen L. Dahle.

(SEAL)

\_\_\_\_\_  
Notary Public in and for  
The State of Texas

My Commission Expires: \_\_\_\_\_

**Signature Page to**  
**Subdivision Improvement Agreement**

This Subdivision Improvement Agreement has been executed by the parties as of the dates of the Acknowledgments to be effective as of the Effective Date.

**Schertz Housing Authority Public Facilities  
Corporation**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

THE STATE OF TEXAS                   §

  §  
COUNTY OF \_\_\_\_\_           §

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2022 by \_\_\_\_\_, \_\_\_\_\_, Schertz Housing Authority Public Facilities Corporation.

(SEAL)

\_\_\_\_\_  
Notary Public in and for  
The State of Texas

My Commission Expires: \_\_\_\_\_

**Signature Page to**  
**Subdivision Improvement Agreement**

This Subdivision Improvement Agreement has been executed by the parties as of the dates of the Acknowledgments to be effective as of the Effective Date.

Developer:

**1518 Apartments Ltd.**

a Texas limited liability partnership

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

THE STATE OF TEXAS           §  
   §  
COUNTY OF BEXAR           §

This instrument was acknowledged before me on the \_\_\_\_ day of October, 2022 by \_\_\_\_\_, \_\_\_\_\_, 1518 Apartments Ltd., a Texas limited liability partnership.

(SEAL)

\_\_\_\_\_  
Notary Public in and for  
The State of Texas

My Commission Expires: \_\_\_\_\_

**Signature Page to**  
**Subdivision Improvement Agreement**

This Subdivision Improvement Agreement has been executed by the parties as of the dates of the Acknowledgments to be effective as of the Effective Date.

City:

**CITY OF SCHERTZ,**  
a Texas municipal corporation

By: \_\_\_\_\_  
Name: Dr. Mark Browne, its City Manager  
Date: \_\_\_\_\_

THE STATE OF TEXAS           §  
  §  
COUNTY OF GUADALUPE       §

This instrument was acknowledged before me on the \_\_\_\_ day of October, 2022 by Mark Browne, City Manager of the City of Schertz, Texas, a Texas municipal corporation, on behalf of said City.

(SEAL)

\_\_\_\_\_  
Notary Public in and for  
The State of Texas

My Commission Expires: \_\_\_\_\_

**EXHIBIT “A”**

Legal Description - The Property

[Plat Name]

*[ See attached ]*

**EXHIBIT “B”**

Submitted Preliminary Plat

[Plat Name]

*[ See attached ]*

## **EXHIBIT "C"**

### **Improvement Funds Surety**

IRREVOCABLE STANDBY LETTER OF CREDIT NO. \_\_\_\_\_

Date: \_\_\_\_\_

Expiration Date: (+ one year)

Beneficiary: City of Schertz  
1400 Schertz Parkway, Building #1  
Schertz, Texas 78154  
Attn: City Manager

Applicant: 1518 Apartments Ltd.  
c/o The NRP Group  
200 Concord Plaza Drive, Suite 900  
San Antonio, Texas 78216

Gentlemen:

We hereby issue our Irrevocable Standby Letter of Credit No. \_\_\_\_\_ in your favor up to the aggregate amount of US\$\_\_\_\_\_.00 (\_\_\_\_\_ Thousand \_\_\_\_ Hundred and No/100 United States Dollars) ("Stated Amount") available by draft(s) drawn on us at sight, marked "Drawn under Irrevocable Standby Letter of Credit No. \_\_\_\_\_ of \_\_\_\_\_ Bank, \_\_\_\_\_, Texas" accompanied by the following:

1. Beneficiary's written statement signed by its authorized representative reading as follows: "The undersigned is an authorized representative of the City of Schertz, Texas (hereinafter "Beneficiary") and has the authority to make any one of the following statements. 1) 1518 Apartments Ltd. (hereinafter "Applicant") has provided security for the Subdivision Improvement Agreement for The Crossvine, Module 3A, Unit 1 as entered into by and between 1518 Apartments Ltd. and the City of Schertz, Texas, a Texas Municipal Corporation (hereinafter the "Agreement"); 2) 1518 Apartments Ltd. has failed to perform in accordance with the terms and conditions of the Agreement; and 3) Beneficiary is entitled to the amount of [insert amount] under \_\_\_\_\_ Bank Irrevocable Standby Letter of Credit No. \_\_\_\_\_."

OR

"The undersigned is an authorized representative of the City of Schertz, Texas (hereinafter "Beneficiary") and has the authority to make any one of the following statements. 1) Beneficiary has received notice from \_\_\_\_\_ Bank that Standby Letter of Credit No. \_\_\_\_\_ will not be extended beyond its current expiration date and Beneficiary has not received an acceptable replacement Letter of Credit or suitable Security from Applicant and 2) Beneficiary is therefore entitled to the amount of [insert amount] under \_\_\_\_\_ Bank Irrevocable Standby Letter of Credit No. \_\_\_\_\_."

2. This original Letter of Credit and any amendments thereto (if any).

**Special Conditions:**

1. Partial and multiple drawings are permitted however the aggregate amount of all drawings may not exceed the Stated Amount. In the event of a partial drawing, the original Letter of Credit will be endorsed and returned to you, unless the Letter of Credit has expired or the amount available has been reduced to zero.
2. It is a condition of this Letter of Credit that it shall be automatically extended without amendment for an additional period of one year from the current expiration date and each future expiration date, unless and until you have been notified by us in writing by registered mail or overnight courier, not less than one hundred eighty (180) days before the expiration date, with a copy to Denton Navarro Rocha Bernal & Zech, P.C., 2517 N. Main Avenue, San Antonio, Texas 78212, Attention: T. Daniel Santee, that we elect not to extend this Letter of Credit.
3. This Letter of Credit sets forth in full the terms of our undertaking and such undertaking shall not in any way be modified, amended or amplified by reference to any document, instrument or agreement referred to herein or to which this letter of credit relates, and any such reference shall not be deemed to incorporate herein by reference any document, instrument or agreement, it being understood that any reference to any such document, instrument or agreement is for informational purposes only.
4. Except as expressly stated herein, this undertaking is not subject to any agreement, condition or qualification. The obligation of \_\_\_\_\_ Bank under this Letter of Credit is the individual obligation of \_\_\_\_\_ Bank, and is in no way contingent upon reimbursement with respect thereto.
5. If, prior to the expiration date, the Applicant's obligation to you has been fulfilled and you no longer require this Letter of Credit, we kindly request that you return the original Letter of Credit and all original amendments (if any), together with your signed letter, giving us your consent to close the Letter of Credit. The Letter of Credit and your letter should be returned to \_\_\_\_\_ Bank at the address listed below.
6. All issuing bank fees shall be for the account of the Applicant.

We hereby engage with you that documents drawn under and in compliance with the terms of this Irrevocable Standby Letter of Credit will be duly honored if presented for payment to \_\_\_\_\_ Bank, \_\_\_\_\_, \_\_\_\_\_, Texas \_\_\_\_\_, Attention: \_\_\_\_\_, prior to \_\_\_\_:00 p.m. Central Time on or before the expiration date of this Letter of Credit.

This Letter of Credit is subject to the International Standby Practices 1998, International Chamber of Commerce Publication No. 590 ("ISP98"), in effect on the date this Letter of Credit is issued, and as to matters not addressed by ISP98 is subject to and governed by Texas State Law and applicable U.S. Federal Law.

\_\_\_\_\_ Bank

\_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT “D”**

**Wastewater Pump and Haul Agreement for the FM 1518 Apartments**