



MEETING AGENDA
City Council
REGULAR SESSION CITY COUNCIL
April 16, 2024

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, APRIL 16, 2024 at 6:00 p.m.

Call to Order

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

Special Announcements

- Hal Baldwin Scholarship

Proclamations

- Public Safety Telecommunicators Appreciation Week April 14-20, 2024 (Councilmember Watson)
- Work Zone Safety April 15-19, 2024 (Mayor Pro-Tem Macaluso)
- Animal Care and Control Week-April 14-20, 2024 (Councilmember Heyward)
- Administrative Professionals Week April 21-27, 2024 (Councilmember Gibson)
- Small Business Week-April 28-May 4, 2024 (Councilmember Brown)
- Building Safety Month-May 2024 (Councilmember Westbrook)

Presentations

- Milestone Service Pin Presentation: Fire Department- Lt. Chris King (S.Williams)

City Events and Announcements

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

Hearing of Residents

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

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

Discussion by the Council of any item not on the agenda shall be limited to statements of specific factual information given in response to any inquiry, a recitation of existing policy in response to an inquiry, and/or a proposal to place the item on a future agenda. The presiding officer, during the Hearing of Residents portion of the agenda, will call on those persons who have signed up to speak in the order they have registered.

Consent Agenda Items

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

1. **Minutes** - Consideration and/or action regarding the approval of the regular meeting minutes of April 2, 2024. (S.Edmondson/S.Courney)
2. **Ordinance 24-S-11** - Approving a request to rezone approximately 3.6 acres of land from Single-Family Residential District (R-1) to Neighborhood Services District (NS), known as Guadalupe County Property Identification Number 42797, more specifically described as 3517 FM 3009, City of Schertz, Guadalupe County, Texas. ***Final Reading*** (B.James/L.Wood/D.Marquez)
3. **Ordinance 24-S-15** - Approving amendments to Part III of the Schertz Code of Ordinances, Unified Development Code (UDC) to Article 5 - Zoning District and Article 9 - Site Design Standards. ***Final Reading***.(B.James/L.Wood/E.Delgado)
4. **Ordinance 24-S-16** - Approving amendments to Part III of the Schertz Code of Ordinances, Unified Development Code (UDC) to Article 5 - Zoning District and Article 16 - Definitions. ***Final Reading*** (B.James/L.Wood/E.Delgado)

5. **Ordinance 24-S-14** - Approving amendments to Part III of the Schertz Code of Ordinances, Unified Development Code (UDC) to Article 1 - General Provisions, Article 4 - Procedures and Applications, and Article 14 - Transportation. ***Final Reading*** (B.James/K.Woodlee/J.Nowak)
6. **Resolution 24-R-44** - Authorizing a Schertz/Seguin Local Government Corporation (SSLGC) Midyear Budget Amendment for Fiscal Year 2023-24. (B. James/L. Busch)
7. **Resolution 24-R-46** - Amendment of contract with AG|CM, Inc., for Owner's Representative Services related to the Woman Hollering Creek Wastewater Project. (B. James/K. Woodlee)
8. **Resolution 24-R-45** - Authorizing the City Manager to issue a purchase order for the purchase of a replacement fire apparatus as part of the FY27 Vehicle/Equipment Replacement/Acquisition program. (S. Williams/G Rodgers)
9. **Resolution 24-R-47** - Acceptance of a Water and Sewer Easement from Schertz Bank and Trust. (S.Williams/B.James)
10. **Resolution No. 24-R-48** - Declare a public necessity for the acquisition of a certain water pipeline easement and temporary construction easement in connection with a future waterline. (S.Williams/B.James)

Discussion and Action Items

11. **Resolution 24-R-41-** Authorizing a resolution accepting a petition for voluntary annexation of approximately 507-acres, known as Comal County Property Identification Numbers 75449, 75463, 79012, 75462, 78923, 374148, 79018, 79017, 75468, 374146, 374145, 374144, 374147, 78218, 78957, 78960, 78976, 79001, 78945, 78946, 75480, 78247, 79009, 79006, 79004, and approximately 387- acres, known as Guadalupe County Property Identifications Numbers 63992, 61614, 68378, 68377, 68382, 68381, 68380, 68374, 61615, 68384, 68385, 68383, 61511, 61609 (B.James/L.Wood/E.Delgado).
12. **Resolution 24-R-42-** Authorizing a resolution accepting a petition for voluntary annexation of approximately 2,200 -acres, known as Bexar County Property Identification Numbers 310064, 1141730, 339772, 339773, 339362, 339744, 1050203, 340030, 339348, 339359, 339341, 339353, 339778, 310012, 309842, 310125, 339293, 339295, 340059, 1178479, 339276, 310059, 309418, 309421, 339325, 339284, 309837, 1103093, 310111, 310040, 310004, 310225, 339274, 339275, 339328, 1013798, 310222, 310026, 1274920, 339286, 339285, 310019, 1139530, 1056967, 339331, 1178480, 309427, 309425, 310006, 1056966, 312023, 310002, 310048, 1311565, 310022, 312015, 312017, 310126, 339290, 339288, 339790, 339334, 339329, 1140481, 310007, 312008, 309429, 1190132, 310032, 310039, 310090, 310107, 1103091, 1207560, 1103092 (B.James/L.Wood/E.Delgado).

13. **Ordinance 24-A-10** - Approving an ordinance on a petition for voluntary annexation of approximately 7-acres, a portion of Bexar County Property Identification Number 339286, also known as 8215 Trainer Hale Road, City of Schertz, Bexar County, Texas. ***Final Reading*** (B.James/L.Wood/D.Marquez)
14. **Ordinance 24-S-09**- Approving a request to rezone approximately 7.7 acres of land, a portion of Bexar County Property Identification Number 339286, to Single-Family Residential District (R-1), also known as 8215 Trainer Hale Road, City of Schertz, Bexar County, Texas. ***Final Reading*** (B.James/L.Wood/D.Marquez)
15. **Resolution 24-R-40** - Authorizing a Pro-Rata Agreement, Cost Sharing Agreement and Roadway Impact Fee Credit Agreement for the Saddlebrook Development.(S.Williams/B.James)
16. **Resolution 24-R-29** - Authorizing the City Manager to execute an agreement with Marksmen General Contractors for Construction Manager at Risk services related to the design and construction of Fire Station #4. (S.Williams/G.Rodgers)

Closed Session

17. The City Council will meet in closed session under Section 551.087 of the Texas Government Code, Deliberation Regarding Economic Development Negotiations; Closed Meeting. The governmental body is not required to conduct an open meeting (1) to discuss or deliberate regarding commercial or financial information that the governmental body has received from a business prospect that the governmental body seeks to have locate, stay, or expand in or near the territory of the governmental body and with which the governmental body is conducting economic development negotiations; or (2) to deliberate the offer of a financial or other incentive to a business prospect.
 - Project:E-86

Reconvene into Regular Session

18. Take any action based on discussion held in Closed Session under Agenda Item #17.

Information available in City Council Packets - NO DISCUSSION TO OCCUR

19. Monthly Update - Major Projects in Progress/CIP (B.James/K.Woodlee)

Requests and Announcements

- 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
- City and Community Events attended and to be attended (Council)

Adjournment

CERTIFICATION

I, SHEILA EDMONDSON, 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 12TH DAY OF APRIL 2024 AT 5:30 P.M., WHICH IS A PLACE READILY ACCESSIBLE TO THE PUBLIC AT ALL TIMES AND THAT SAID NOTICE WAS POSTED IN ACCORDANCE WITH CHAPTER 551, TEXAS GOVERNMENT CODE.

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 _____, 2024.

TITLE: _____

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

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

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

COUNCIL COMMITTEE AND LIAISON ASSIGNMENTS

Mayor Gutierrez Member Audit Committee Investment Advisory Committee Main Street Committee Liaison Board of Adjustments Senior Center Advisory Board-Alternate	Councilmember Davis– Place 1 Member Interview Committee Main Street Committee - Chair TIRZ II Board Liaison Parks & Recreation Advisory Board Schertz Housing Authority Board Transportation Safety Advisory Board
Councilmember Watson-Place 2 Member Audit Committee Interview Committee-Alternate Liaison Library Advisory Board Senior Center Advisory Board Cibolo Valley Local Government Corporation-Ex-Officio	Councilmember Macaluso – Place 3 Member Interview Committee Hal Baldwin Scholarship Committee Liaison TIRZ II Board Animal Services Advisory Committee
Councilmember Gibson – Place 4 Member Interview Committee Hal Baldwin Scholarship Committee Investment Advisory Committee Liaison Schertz Historical Preservation Society	Councilmember Westbrook – Place 5 Liaison Schertz-Seguin Local Government Corporation (SSLGC) Planning and Zoning Commission Schertz Historical Preservation Society Cibolo Valley Local Government Corporation (CVLGC)-Alternate

Councilmember Heyward – Place 6 Member Audit Committee Interview Committee-Chair Investment Advisory Committee Main Street Committee Animal Services Advisory Committee Liaison Building and Standards Commission Economic Development Corporation - Alternate Senior Center Advisory Board	Councilmember Brown – Place 7 Member Main Street Committee Schertz-Seguin Local Government Corporation (SSLGC) Liaison Economic Development Corporation
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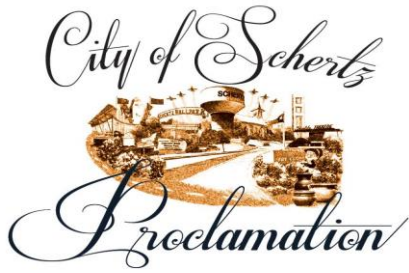
CITY COUNCIL MEMORANDUM

City Council Meeting: April 16, 2024
Department: City Secretary
Subject: Proclamations

- **Public Safety Telecommunicators Appreciation Week April 14-20, 2024 (Councilmember Watson)**
- **Work Zone Safety April 15-19, 2024 (Mayor Pro-Tem Macaluso)**
- **Animal Care and Control Week-April 14-20, 2024 (Councilmember Heyward)**
- **Administrative Professionals Week April 21-27, 2024 (Councilmember Gibson)**
- **Small Business Week-April 28-May 4, 2024 (Councilmember Brown)**
- **Building Safety Month-May 2024 (Councilmember Westbrook)**

Attachments

Public Safety Telecommunicators Week
Work Zone Safety Week
Animal Care and Control Week
Administrative Professionals Week
Small Business Week
Building Safety Month



National Public Safety Telecommunications Week

April 14-20, 2024

Whereas, emergencies can occur at any time that require police, fire, or emergency medical services; and,

Whereas, when an emergency occurs the prompt response of police officers, firefighters and paramedics is critical to the protection of life and preservation of property; and,

Whereas, the safety of our police officers and firefighters is dependent upon the quality and accuracy of information obtained from citizens who telephone the City of Schertz emergency communications center; and,

Whereas, Public Safety Telecommunicators are the first and most critical contact our citizens have with emergency services; and,

Whereas, the Public Safety Telecommunicators Department has 17 employees: 1-Communications Manager with 19.5 years of experience, 4-Shift Supervisors with a combined 53 years of experience and, 12-Communication Officers with a combined total of 28 years of experience; and

Whereas, the Public Safety Telecommunicators for the City of Schertz answered approximately 102,000 calls in 2023, from which 77,000 calls were for service for Schertz and Cibolo Police Department; Schertz EMS Department and Schertz and Cibolo Fire Department; and

Whereas, Public Safety Telecommunicators are the single vital link for our police officers and firefighters by monitoring their activities by radio, providing them information, and ensuring their safety; and,

Whereas, Public Safety Telecommunicators of the City of Schertz have contributed substantially to the apprehension of criminals, suppression of fires and treatment of patients; and,

Whereas, each dispatcher has exhibited compassion, understanding and professionalism during the performance of their job in the past year.

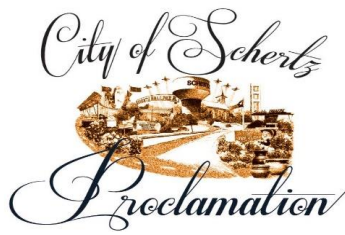
Now Therefore, Be It Resolved that I, Ralph Gutierrez, Mayor of the City of Schertz proclaims.

National Public Safety Telecommunicators Week, April 14-20, 2024

I encourage all citizens to join us in honoring the men and women whose diligence and professionalism keep our city and citizens safe.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the SEAL of the City of Schertz to be affixed to this on the 16th day of April 2024.

Ralph Gutierrez, Mayor



NATIONAL WORK ZONE AWARENESS WEEK

“Work zones are temporary. Actions behind the wheel can last forever.”

APRIL 15-19, 2024

WHEREAS, National Work Zone Awareness Week (NWZAW) is an annual spring campaign held at the start of construction season to encourage safe driving through streets, roads, and highway work zones; and

WHEREAS, National Work Zone Awareness Week is a way to raise public awareness for work zones and those who work in them and that motorists are encouraged to slow to posted speed limits, eliminate distractions while driving and be watchful for roadway workers, their equipment, and vehicles on the side of the road in work zones; and

WHEREAS, according to the National Work Zone Safety Information Clearinghouse, in 2021 there were 874 fatal crashes in U.S. work zones, up from 780 in 2020; and

WHEREAS, on average, more than two persons per day were killed in work zones in 2020 and fatalities in work zone crashes increased from 845 in 2019 to 956 in 2021; and

WHEREAS, the percentage of work zone fatal crashes from all fatal crashes increased from 1.8% in 2012 to 2.2% in 2023 and the estimates of injuries from work zone crashes increased in that same period from 31,000 to 42,000; and

WHEREAS, during National Work Zone Awareness Week national organizations such as the United States Department of Transportation Federal Highway Administration, the National Highway Traffic Safety Administration, the American Traffic Safety Services Association, the American Association of State Highway Transportation Officials the Association of General Contractors of America, the National Safety Council and a wide variety of partners work collaboratively and partner on work zone and roadway safety continually raising awareness of work zone safety; and

WHEREAS, the City of Schertz Public Works Department focuses on safe roads and work zones; and the TxDOT-Texas Department of Transportation, across the state strives to keep employees and the public safe during road and street repairs in work zones; and

WHEREAS, Go Orange Day takes place on Wednesday, April 17, 2024 and provides an opportunity to unite in wearing orange to show support for the men and women who work tirelessly to keep our roads safe; and

WHEREAS, a moment of silence will be held Friday, April 19 to honor the lives lost in work zones; and

WHEREAS, solutions to keeping everyone safe in work zones and on our roadways is our collective responsibility; and

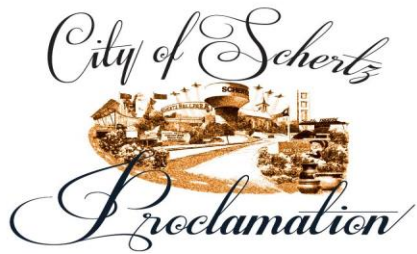
NOW THEREFORE BE IT FURTHER RESOLVED that I, Ralph Gutierrez, Mayor of the City of Schertz declare

April 15-19, 2024 National Work Zone Awareness Week

with the theme **“Work zones are temporary. Actions behind the wheel can last forever.”**

IN TESTIMONY WHEREOF, I have
hereunto set my hand and caused the
SEAL of the City of Schertz to be affixed
on this 16th day of April 2024.

Ralph Gutierrez, Mayor



NATIONAL ANIMAL CARE AND CONTROL APPRECIATION WEEK

April 14-20, 2024

WHEREAS, the National Animal Care and Control Association has designated the second full week in April as Animal Care and Control Appreciation Week; and

WHEREAS, various federal, state, and local government officials throughout the country take this time to recognize, thank and commend all Animal Control Officers and Animal Services Staff for the dedicated service they provide to the citizens, public safety, and domestic animals and livestock across the nation; and

WHEREAS, the City of Schertz recognizes and commends the Schertz Animal Services personnel who answer calls for assistance, capture roaming and potentially dangerous animals, rescue animals, investigate reports of animal abuse, educate pet owners about responsible care, and mediate disputes between neighbors regarding pets; and

WHEREAS, in 2023, the City of Schertz Animal Services responded to 2,124 calls for service and handled 1,214 animals for intake; and

WHEREAS, the City of Schertz has a staff that includes: 1-Animal Services Manager with 7.5 years' experience; 4-Animal Services Officers with a combined 10 years' experience and 4-Animal Services Technicians with a combined 12 years' experience; and

WHEREAS, in 2023, the Schertz Animal Services has developed partnerships with San Antonio Humane Society and other animal rescue organizations for the placement of scared or ill animals.

WHEREAS, in 2023, the Schertz Animal Services department continues their vision to have a special unit where they can care for neonatal animals, both domestic and wild. They have an entire room in full service dedicated to the care of infant animals; and,

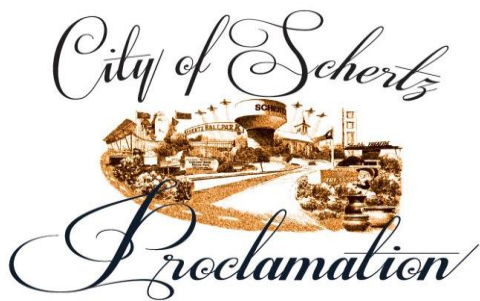
WHEREAS, Animal Control Officers provide essential community functions including the enforcement of animal control laws, protecting the public from diseases such as rabies, and educating the public on the proper care of the community's pets; and

NOW, THEREFORE be it resolved that I, Ralph Gutierrez, Mayor of the City of Schertz proclaim
National Animal Care and Control Appreciation Week - April 14-20, 2024

I encourage all citizens to join me in thanking our City of Schertz Animal Services for the dedication and exceptional service they provide to all citizens and animals in our great community

IN TESTIMONY WHEREOF, I
hereunto set my hand and caused the
Seal of City of Schertz to be affixed on
this the 16th day of April 2024.

Ralph Gutierrez, Mayor



NATIONAL ADMINISTRATIVE PROFESSIONALS' WEEK

April 21st - April 27th, 2024

NATIONAL ADMINISTRATIVE PROFESSIONALS' DAY

April 24th, 2024

WHEREAS, National Secretaries Week was organized in 1955 by the U.S. Department of Commerce, renamed to Professional Secretaries Week and in the year 2000 became Administrative Professionals Week; and

WHEREAS, Administrative Professionals Week 2024 focuses on honoring the Office Professionals who make offices work, reflecting the integral and significant role that office professionals play in modern business; and

WHEREAS, Administrative Professionals play an essential role in coordinating the office operations of businesses, government, educational institutions, and other organizations; and

WHEREAS, Administrative Professionals Week is observed annually, and in our nation, there are approximately 3.6 million Administrative Professionals who make important contributions at their workplace; and

WHEREAS, the City of Schertz Administrative Professionals have a combined total of over 100 years' experience; and

WHEREAS, the work of administrative professionals today requires advanced knowledge and expertise in communications, computer software, office technology, project management, organization, customer service and other vital office management responsibilities, and most importantly, have the willingness to learn and accept new challenges; and

WHEREAS, Administrative Professionals serve as information hubs, managing and cataloging information, organizing the office space, and mastering office technology; and

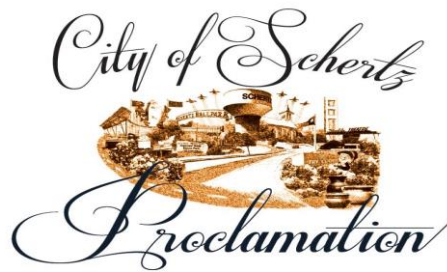
WHEREAS, Administrative professionals are employed in public and private sectors, including business, government, and academic settings; and

NOW THEREFORE be it resolved that I, Ralph Gutierrez, Mayor of the City of Schertz proclaim
National Administrative Professionals Week-April 21st-April 27th, 2024
and National Administrative Professionals Day-April 24th, 2024

in the City of Schertz, and I urge all citizens to thank the City of Schertz Administrative Professionals for providing beneficial services to our workplaces, our community and our economy.

IN TESTIMONY WHEREOF, I have
hereunto set my hand and caused the
Seal of the City of Schertz to be affixed
on this the 16th day of April 2024.

Ralph Gutierrez, Mayor



National Small Business Week

April 28th – May 4th, 2024

WHEREAS, There are 31 million small businesses in the U.S., which roughly make up around 99% of all the businesses in the country; and

WHEREAS, Small Businesses are the backbone and life blood of local economies in communities throughout the United States and serve as job creators and place-makers in our downtowns; and

WHEREAS, shopping locally allows area residents to invest in their own neighborhoods and grow the vibrancy of their communities, making our cities a wonderful place to live, work and play; and

WHEREAS, Small businesses have contributed significantly to the U.S. economy by generating wealth and creating approximately 1.5 million jobs every year; and

WHEREAS, In 1963, after the proclamation from President John F. Kennedy, the first National Small Business Week was celebrated to honor the top entrepreneurs in every state and the week became an annual practice to encourage other small business owners and enable them to learn from the success stories of the top performers; and

WHEREAS, Small businesses and small business support organizations like Chambers of Commerce, small business associations and other nonprofit service organizations are key collaborators in advancing our agenda for equitable economic growth; and

WHEREAS, the contributions of our small business sector should be recognized and celebrated by our cities; and

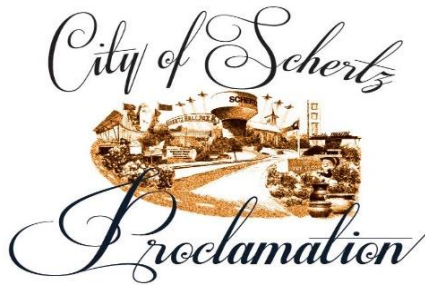
NOW, THEREFORE, be it resolved that I, Ralph Gutierrez, Mayor of the City of Schertz do hereby proclaim the week of April 28th – May 4th, 2024, as

National Small Business Week

and urge all the citizens of our city to take cognizance of this event and participate fittingly in its observance.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the SEAL of the City of Schertz to be affixed to this on the 16th day of April 2024.

Ralph Gutierrez, Mayor



Building Safety Month May 2024

WHEREAS, the City of Schertz is committed to recognizing that our growth and strength depends on the safety and essential role our homes, buildings, and infrastructure play, both in everyday life and when disasters strike, and;

WHEREAS, our confidence in the resilience of these buildings that make up our community is achieved through the devotion of vigilant guardians—building safety and fire prevention officials, architects, engineers, builders, tradespeople, design professionals, laborers, plumbers, and others in the construction industry—who work year-round to ensure the safe construction of buildings, and;

WHEREAS, these guardians are dedicated members of the International Code Council, a nonprofit that brings together local, state, territorial, tribal and federal officials who are experts in the built environment to create and implement the highest-quality codes to protect us in the buildings where we live, learn, work and play, and;

WHEREAS, these modern building codes include safeguards to protect the public from hazards such as hurricanes, snowstorms, tornadoes, wildland fires, floods, and earthquakes, and;

WHEREAS, Building Safety Month is sponsored by the International Code Council to remind the public about the critical role of our communities' largely unknown protectors of public safety—our local code officials—who assure us of safe, sustainable, and affordable buildings that are essential to our prosperity, and;

WHEREAS, “Mission Possible,” the theme for Building Safety Month 2024, encourages us all to raise awareness about building safety on a personal, local, and global scale, and;

WHEREAS, each year, in observance of Building Safety Month, people all over the world are asked to consider the commitment to improve building safety, resilience and economic investment at home and in the community, and to acknowledge the essential service provided to all of us by local and state building departments and federal agencies in protecting lives and property.

NOW, THEREFORE BE IT RESOLVED, , I, Ralph Gutierrez, Mayor of the City of Schertz, do hereby proclaim the month of **May 2024 as Building Safety Month**.

Accordingly, I encourage our citizens to join us as we participate in Building Safety Month activities.

IN TESTIMONY WHEREOF, I have
hereunto set my hand and caused the
SEAL of the City of Schertz to be affixed
on this 16th day of April 2024.

Ralph Gutierrez, Mayor

CITY COUNCIL MEMORANDUM

City Council Meeting: April 16, 2024
Department: City Secretary
Subject: Minutes - Consideration and/or action regarding the approval of the regular meeting minutes of April 2, 2024. (S.Edmondson/S.Courney)

Attachments

Draft minutes 04-02-2024

DRAFT

MINUTES REGULAR MEETING April 2, 2024

A Regular Meeting was held by the Schertz City Council of the City of Schertz, Texas, on April 2, 2024, at 6:00 p.m. in the Hal Baldwin Municipal Complex Council Chambers, 1400 Schertz Parkway, Building #4, Schertz, Texas. The following members present to-wit:

Present: Mayor Ralph Gutierrez; Mayor Pro-Tem Paul Macaluso; Councilmember Mark Davis; Councilmember Michelle Watson; Councilmember Tiffany Gibson; Councilmember Robert Westbrook; Councilmember Allison Heyward; Councilmember Tim Brown

Staff present: City Manager Steve Williams; Deputy City Manager Brian James; Assistant City Manager Sarah Gonzalez; City Attorney Daniel Santee; City Secretary Sheila Edmondson; Deputy City Secretary Sheree Courney

Call to Order

Mayor Gutierrez called the meeting to order at 6:00 p.m.

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

Mayor Gutierrez recognized Councilmember Gibson who provided the opening prayer and led the Pledges of Allegiance to the Flags of the United States and State of Texas.

Special Announcements

● Hal Baldwin Scholarship

Mayor Gutierrez instructed students in attendance for the Hal Baldwin Scholarship to sign in. Anyone with questions regarding the Hal Baldwin Scholarship should contact Assistant City Manager Sarah Gonzalez via email at sgonzalez@schertz.com.

Presentations

● TMLI Award of Leadership-City of Schertz (presented by Councilmember Heyward)

Mayor Gutierrez recognized Councilmember Heyward who presented the Texas Municipal League Institute (TMLI) Award of Leadership to Mayor Gutierrez and City Manager Steve Williams. This award was presented to the City of Schertz for recognizing the importance of continuing education to the enhancement of local

governance by investing in training of elected leaders through TMLI 2023 for the 5 years of certified municipal officer training received by Councilmember Heyward.

Proclamations

- **National Library Week**-April 7-13, 2024 (Mayor Gutierrez)
Mayor Gutierrez presented the National Library Week - April 7-13, 2024 Proclamation to Library Director Melissa Uhlhorn.
- **Crime Victims' Rights Week**-April 21-27, 2024 (Councilmember Westbrook)
Councilmember Westbrook presented the Crime Victims' Rights Week - April 21-27, 2024 Proclamation to Michele Meehan of Guadalupe County Children's Advocacy Center; Reghan Thibodeaux, Ashton Story, and Dianne Chambers of Thriving Hearts Crisis Center; Crime Victims' Liaison Heather Davis of the Schertz Police Department; and Crime Victims' Liaison Krista Taylor of the Cibolo Police Department.
- **Sexual Assault Awareness Month**-April 2024 (Councilmember Heyward)
Councilmember Heyward presented the Sexual Assault Awareness Month - April 2024 Proclamation to Michele Meehan of Guadalupe County Children's Advocacy Center; Reghan Thibodeaux, Ashton Story, and Dianne Chambers of Thriving Hearts Crisis Center; Crime Victims' Liaison Heather Davis of the Schertz Police Department; and Crime Victims' Liaison Krista Taylor of the Cibolo Police Department.
- **Child Abuse Prevention & Awareness Month**-April 2024 (Councilmember Brown)
Councilmember Brown presented the Child Abuse Prevention & Awareness Month - April 2024 Proclamation to Michele Meehan of Guadalupe County Children's Advocacy Center; Reghan Thibodeaux, Ashton Story, and Dianne Chambers of Thriving Hearts Crisis Center; Crime Victims' Liaison Heather Davis of the Schertz Police Department; and Crime Victims' Liaison Krista Taylor of the Cibolo Police Department.
- **Military Child Month**-April 2024 (Councilmember Gibson)
Councilmember Gibson presented the Military Child Month - April 2024 to Ms. Andrea Seelbinder (retired Army) and her son Parker.

Employee Recognition

Mayor Gutierrez recognized City Department Heads who introduced new staff:

- Engineering: Robert Walker-Associate Engineer
- Police: Maria Hartman-Public Safety Communications Officer

The following staff will be introduced at the first Regular City Council Meeting in May:

- Municipal Court-Samantha Caballero-Deputy Court Clerk
- Public Works-Streets: Harris Atilano-Street Maintenance Worker I

City Events and Announcements

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

Mayor Gutierrez recognized Deputy City Manager Brian James who provided the following:

Saturday, April 6 and Sunday, April 7

2024 Great Texas Air Show

JBSA-Randolph

Gates open at 9:00 a.m.

Performances begin at 11:00 a.m.

U.S. Air Force Thunderbirds scheduled to perform at 3:00 p.m.

Saturday, April 13

Nature Discovery Series - Discover Impressive Insects

Crescent Bend Nature Park

9:30 a.m. - 10:30 a.m.

Sunday, April 14

Movin' on Main

Main Street

12:00 p.m. - 4:00 p.m.

Tuesday, April 16

Next Regularly Scheduled City Council Meeting

Council Chambers

● Announcements and recognitions by the City Manager (S. Williams)

Mayor Gutierrez recognized City Manager Steve Williams, who provided the following:

Employee Promotions:

- Coyle French promoted to Drainage Worker II
- Jessica Dycus to Assistant Finance Director
- Jennifer Villarreal to F/T Paramedic

As part of the Classification and Compensation Study, several departments were recommended for Level II or Senior positions to create development paths in specific career areas. As a result, Human Resources has worked with these departments to finalize a Job Progression Program for those identified positions. Below are the individuals promoted as part of this progression program:

- Lizzi Bertoia, April Toman, and Stephanie Barbosa to Senior Librarian
- Jessica Wheless to Library Assistant
- Eric Schulze to Senior Engineer
- John Nowak to Assistant City Engineer
- Dylan Sandberg to Journeyman Plumber
- Oscar Medina and Bryan Jackson to Senior IT Support Specialist

- Stephen Gillard to Fleet Mechanic II
- Mike Walkden to Senior Financial Analyst
- Cole Moody and Ian King to Park Maintenance Technician II

Other notable recognitions:

Congratulations to Cole Moody and Larry May from Parks and Recreation Department, who placed 4th in the Truck and Trailer competition at the Texas Recreation & Parks Society (TRAPS) State Maintenance Rodeo in Galveston on February 27th. 53 teams participated in this year's event. Ian King competed in the Backhoe competition, but fell short of the podium. Great job representing Schertz!

Congratulations to three Schertz employees who were recently appointed to leadership positions in the Texas Recreation & Parks Society (TRAPS)! Parks Director Lauren Shrum was sworn in as the Central Region Director for the TRAPS Board of Directors, Recreation Manager Cassie Paddock was sworn in as the Chair of the Future & Young Professionals Branch of TRAPS, and Recreation Coordinator Sydney Paredes was sworn in as Central Region Representative of the Future & Young Professionals Branch.

Happening in the City:

The Schertz-Cibolo-Selma Lions Club, in partnership with the City and HEB, hosted the 12th annual Easter in the Park event on Saturday, March 30th. There were 376 children registered for the age-appropriate egg hunts as well as food, vendors, and other activities for kids of all ages. Total attendance at the event was estimated at 1,000.

● Announcements and Recognitions by the Mayor (R.Gutierrez)

Mayor Gutierrez congratulated City staff on their promotions and new positions.

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.

Mayor Pro-Tem Macaluso recognized the following residents:

Taurean Washington, 1029 Silvertree Blvd., who introduced himself as a new resident and business. He's a visual artist and entrepreneur. He will be showcasing his art and business at the Schertz Library, Movin' on Main, JB SA-Randolph for the Air Show, JB SA base exchanges, and doing classes for K-12 through Schertz Parks and Rec.

Maggie Titterington, 1730 Schertz Parkway, who serves as Chair of the Schertz Historical Preservation Committee (SHPC) provided an update on news and upcoming events:

- There are two new committee members and one that will be interviewed next week.

- The Committee has created a brief strategy plan for things they'd like to do.
- July 26 at 7:00 p.m. - SHPC is partnering with Schertz Parks and Rec for the Movies in the Park at Cypress Point Park. They will be doing a historical trivia night (facts about Schertz) with prizes donated by Whataburger in Schertz.
- October - Historical Scavenger Hunt. Using a map of Schertz, 15 areas with buildings that have historical value and are adding to the history of Schertz. Maps will be available at the Visitors Center. More information will be printed in the Schertz Magazine in the months to come.
- SHPC is still seeking more committee members, as well as old Schertz photos or people that want to share video memories. SHPC wants to preserve the history of the city by possibly creating a video montage to play at an event. More information is available at Schertz.com.

Mayor Pro-Tem Macaluso recognized the following residents who spoke in opposition to Ordinance 24-S-08, a request to rezone approximately 44.3 acres of land from Single-Family Residential District (R-2) to Planned Development District (PDD), known as Guadalupe County Property Identification Number 6460, located approximately 78 feet south of the intersection of Savannah Drive and Irish Creek Road, City of Schertz, Guadalupe County, Texas:

- Mark Rivera, 220 Stampede Ranch
- Phil Jackson, 3410 Wimbledon Drive
- Heather Jackson, 3410 Wimbledon Drive
- John P. Clark, 347 Rustic Willow
- Carol Davis, 3337 Wimbledon Drive
- Sheila Jolly, 3001 Casillero Street
- Brenda Rich, 3609 Lazy Diamond
- Richard Maus, 3434 Wimbledon Drive
- Stephanie Hayes, 3625 Sunglade Ranch
- Richard Horne, 427 Rustic Willow
- James Price, 3509 Big Horn Trail
- Kip Holmstead, 3560 Irish Creek Road
- Brad Parker, 323 Rustic Willow
- David Estrada, 3557 Irish Creek Road
- Barbara Wargo, 3513 Blue Moon Spur
- Amy Cappiello, 368 Silver River

Reasons for opposition included traffic, detract from value of single-family homes, developer misrepresentation in the application, lessens quality of life, density, infrastructure at capacity, low water pressure will get worse, and safety of children.

Consent Agenda Items

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

1. **Minutes** - Consideration and/or action regarding the approval of the regular meeting minutes of March 19, 2024. (S.Edmondson/S.Courney)
2. **Appointment/Reappointment For Boards/Commissions/Committees (S.Edmondson)**
 - **Reappointments**
 - Mark Penshorn - Capital Improvement Advisory Committee
 - Bryan L. Jones - Capital Improvement Advisory Committee
3. **Resolution 24-R-33** - Accepting the semi-annual report on the progress of the Capital Recovery Capital Improvements Plan (B.James/K.Woodlee)
4. **Resolution 24-R-37** - Authorizing the City Manager to execute the application for Firehouse Subs Public Safety Foundation grant program for lifesaving equipment. (S.Williams/G.Rodgers)
5. **Resolution 24-R-38** - Authorizing the City Manager to execute the application for Urban Area Security Initiative - Regular Projects (UASI-R) grant program for eligible activities. (S.Williams/G.Rodgers)
6. **Ordinance 24-S-06** - Approving amendments to the City of Schertz Comprehensive Plan. *Final Reading* (B.James/L.Wood/S.Haas)
7. **Resolution No. 24-R-39** - A resolution authorizing the lease of property at 11958 Schaefer Road to SER Construction Partners, LLC (B.James/K.Woodlee/E.Schulze)
8. **Resolution 24-R-30** - Authorizing the approval of a GVEC Utility Cooperative Agreement for the Main Street Improvements Project (B.James/K.Woodlee/J.Nowak)

Mayor Gutierrez asked Council if any items needed to be removed from Consent for further discussion. No items were removed. Mayor Gutierrez asked for a motion to approve Consent Agenda Items #1 - 8.

Moved by Councilmember Allison Heyward, seconded by Mayor Pro-Tem Paul Macaluso

AYE: Mayor Pro-Tem Paul Macaluso, Councilmember Mark Davis,
Councilmember Michelle Watson, Councilmember Tiffany Gibson,
Councilmember Robert Westbrook, Councilmember Allison Heyward,
Councilmember Tim Brown

Passed

Public Hearings

9. **Ordinance 24-A-10** - Conduct a public hearing and consider an ordinance on a petition for voluntary annexation of approximately 7-acres, a portion of Bexar County Property Identification Number 339286, also known as 8215 Trainer Hale Road, City of Schertz, Bexar County, Texas. ***First Reading*** (B.James/L.Wood/D.Marquez)

Mayor Gutierrez recognized Planner Daisy Marquez who explained Ordinance 24-A-10 is a petition for voluntary annexation of approximately 7.7 acres and provided the location of the subject property. HLH Development is requesting voluntary annexation because they desire to be located within the Schertz city limits, and they desire to develop the subject property in accordance with Single-Family Residential District (R-1) for approximately 19 residential lots. She stated that City Council accepted Resolution 24-R-07 on February 20, 2024, which initiated the annexation process. The accompanying zone change application was heard at the March 6, 2024 Planning and Zoning Commission Meeting. A Public Hearing Notice was published in the San Antonio Express News on March 13, 2024. Staff recommends approval of Ordinance 24-A-10 accepting the petition for voluntary annexation of approximately 7.7 acres.

Mayor Gutierrez opened the Public Hearing at 7:34 p.m.

No residents came forward to speak.

Mayor Gutierrez closed the Public Hearing at 7:35 p.m.

Mayor Gutierrez opened the floor to Council for discussion. No discussion occurred.

Mayor Gutierrez asked for a motion to approve Ordinance 24-A-10.

Moved by Councilmember Mark Davis, seconded by Councilmember Michelle Watson

AYE: Mayor Pro-Tem Paul Macaluso, Councilmember Mark Davis,
Councilmember Michelle Watson, Councilmember Tiffany Gibson,
Councilmember Robert Westbrook, Councilmember Tim Brown

Other: Councilmember Allison Heyward (ABSENT)

Passed

10. **Ordinance 24-S-09**- Conduct a public hearing and consider a request to rezone approximately 7.7 acres of land, a portion of Bexar County Property Identification Number 339286, to Single-Family Residential District (R-1), also known as 8215 Trainer Hale Road, City of Schertz, Bexar County, Texas. ***First Reading*** (B.James/L.Wood/D.Marquez)

Mayor Gutierrez recognized Planner Daisy Marquez who provided a briefing regarding the request to rezone approximately 7.7 acres of land to Single-Family Residential District (R-1): Hallies Court at Hallies Cove. She provided the location of the subject property, that the property is currently under development agreement

Delayed Annexation (DVL), 23 public hearing notices were sent February 21, 2024, a public hearing notice sign was posted on the property, a public hearing notice was published in the San Antonio Express-News on March 13, 2024, and 8 responses have been received all in opposition of the proposed rezone. The Planning and Zoning Committee held a public hearing on March 6, 2024, and made a recommendation for approval with a 4-2 vote. As of March 27, 2024, at 12:00 p.m., 16.42% of the landowners within the 200' notice area have sent written opposition. Therefore, only a simple majority is required for Council to approve this request.

Mayor Gutierrez opened the Public Hearing at 7:44 p.m.

No residents came forward to speak.

Mayor Gutierrez closed the Public Hearing at 7:44 p.m.

Mayor Gutierrez opened the floor to Council for discussion. No discussion occurred.

Moved by Councilmember Tiffany Gibson, seconded by Councilmember Allison Heyward

AYE: Mayor Pro-Tem Paul Macaluso, Councilmember Mark Davis,
Councilmember Michelle Watson, Councilmember Tiffany Gibson,
Councilmember Robert Westbrook, Councilmember Allison Heyward,
Councilmember Tim Brown

Passed

- 11. Ordinance 24-S-11** - Conduct a public hearing and consider a request to rezone approximately 3.6 acres of land from Single-Family Residential District (R-1) to Neighborhood Services District (NS), known as Guadalupe County Property Identification Number 42797, more specifically described as 3517 FM 3009, City of Schertz, Guadalupe County, Texas. ***First Reading*** (B.James/L.Wood/D.Marquez)

Mayor Gutierrez recognized Planner Daisy Marquez who provided a briefing regarding the request to rezone approximately 3.6 acres of land from Single-Family Residential District (R-1) to Neighborhood Services (NS). She provided the location of the subject property, 44 public hearing notices were sent February 21, 2024, a public hearing notice sign was posted on the property, and 13 responses have been received - 9-Opposition, 3-In Favor, and 1-Neutral. The Planning and Zoning Committee held a public hearing on March 6, 2024, and made a recommendation for approval with a 6-0 vote. As of March 27, 2024, at 12:00 p.m., 11.75% of the landowners within the 200' notice area have sent written opposition. Therefore, only a simple majority is required for Council to approve this request. The proposed zone change to NS per the letter of intent is to expand the Kellum Development.

Mayor Gutierrez recognized Patrick Christensen, 315 East Commerce, attorney representing the applicant, who stated that the Single-Family Residential zoning on FM 3009 is not appropriate for the subject property. NS designation will allow for the expansion of the existing medical offices.

Mayor Gutierrez opened the Public Hearing at 7:52 p.m.

No residents came forward to speak.

Mayor Gutierrez closed the Public Hearing at 7:53 p.m.

Mayor Gutierrez opened the floor to Council for discussion. No discussion occurred.

Mayor Gutierrez asked for a motion to approve Ordinance 24-S-11.

Moved by Councilmember Michelle Watson, seconded by Councilmember Allison Heyward

AYE: Mayor Pro-Tem Paul Macaluso, Councilmember Mark Davis,
Councilmember Michelle Watson, Councilmember Tiffany Gibson,
Councilmember Robert Westbrook, Councilmember Allison Heyward,
Councilmember Tim Brown

Passed

- 12. Ordinance 24-S-15** - Conduct a public hearing and consider amendments to Part III of the Schertz Code of Ordinances, Unified Development Code (UDC) to Article 5 - Zoning District and Article 9 - Site Design Standards. ***First Reading.*** (B.James/L.Wood/E.Delgado)

Mayor Gutierrez recognized Planning Manager Emily Delgado who provided a briefing outlining the proposed amendments to Part III of the Schertz Code of Ordinances Unified Development Code (UDC) to Article 5 - Zoning District and Article 9 - Site Design Standards. She stated this amendment is specifically for the Public Use District or PUB height requirements. She explained that the Resurrection Baptist Church located at 1002 Live Oak Road is zoned Public Use District (PUB) and they want to do a remodel expansion. As part of the expansion, they want to add a church steeple, but the maximum height permitted in the PUB zoning district is 35', which is not sufficient for the steeple. Other property owners, including the City of Schertz, have run into the same maximum height issue. There are 70 parcels in the city with PUB, 64 - Government/Civic Use, 5 places of worship, and 1 private citizen in Crescent Bend Park. On March 27, 2017, the Board of Adjustments granted a variance to the PUB height requirements for Samuel Clemens High School to build a new auditorium to reach 56', and on May 21, 2018, they granted a variance to build the Ray Corbett Elevated Water Storage Tank to reach 225'. Staff is proposing to eliminate the maximum height requirement for the PUB and to add 'e' to all of the commercial zoning districts which states approval of a specific use may be conditioned upon modifications to the dimensional requirements. Two other sections that are proposed to be modified under Article 9 for clean up. Under Section 21.9.3 - Lots, the current UDC states that we want front and side building setback lines to be shown on all plats, when in practice, we actually ask for those to be removed as building setback lines are memorialized by the zoning district and shouldn't be on a recorded plat document. In Section 21.9.12 - Site Plan Process cleanup is based on the specific use permit change that happened a couple of months ago, eliminating the site plan requirement. This section was missed when that UDC amendment happened.

Staff recommends approval of Ordinance 24-S-15. Article 9 clean up is necessary for

UDC consistency and the PUB height requirement elimination will align with previous adopted policies and make municipal/civic functions easier.

Mayor Gutierrez opened the Public Hearing at 7:57 p.m.

No residents came forward to speak.

Mayor Gutierrez closed the Public Hearing at 7:57 p.m.

Mayor Gutierrez opened the floor to Council for discussion. No discussion occurred.

Mayor Gutierrez asked for a motion to approve Ordinance 24-S-15.

Moved by Councilmember Allison Heyward, seconded by Councilmember Michelle Watson

AYE: Mayor Pro-Tem Paul Macaluso, Councilmember Mark Davis,
Councilmember Michelle Watson, Councilmember Tiffany Gibson,
Councilmember Robert Westbrook, Councilmember Allison Heyward,
Councilmember Tim Brown

Passed

- 13. Ordinance 24-S-16** - Conduct a public hearing and consider amendments Part III of the Schertz Code of Ordinances, Unified Development Code (UDC) to Article 5 - Zoning District and Article 16 - Definitions. ***First Reading*** (B.James/L.Wood/E.Delgado)

Mayor Gutierrez recognized Planning Manager Emily Delgado who provided a briefing outlining the proposed amendments to Part III of the Schertz Code of Ordinances Unified Development Code (UDC) to Article 5 - Zoning District and Article 16 - Definitions. She stated this amendment is specifically in relation to mini warehouse public storage and land use. She explained that the City has received a growing interest for self-storage facilities located within the General Business District across the city. So, staff is proposing a new use to control the style and nature of these developments. Currently, the UDC has a land use called mini warehouse public storage with a definition of buildings containing separate individual self-storage units for rent or lease. The conduct of sales, business, or any activity other than storage shall be prohibited within any individual storage unit. However, there is a trend in the self-storage industry which offers a product of greater architectural and construction standards and in some cases offers a mixture of uses. Schertz has seen a similar product at 21586 IH 35 N, in the Hubertus Retail Subdivision, the current CubeSmart self-storage facility. As there is demand for self-storage in the real estate market, and Schertz has been amenable to mixed-use storage facilities in the past, staff is proposing to amend the UDC to create a new mixed-use self-storage land use. Mixed-Use Self-Storage will be a climate-controlled building(s) containing ground floor retail, service, or office space with separate, individual self-storage units for rent or lease. The conduct of sales, business, or any activity other than storage shall be prohibited within the individual storage units. Such building(s) shall be a minimum of 45-feet. Staff recommends approval of Ordinance 24-S-16.

The Planning and Zoning Committee met on March 6, 2024, and recommended

approval with a 6-0 vote.

Mayor Gutierrez opened the Public Hearing at 8:02 p.m.

No residents came forward to speak.

Mayor Gutierrez closed the Public Hearing at 8:02 p.m.

Mayor Gutierrez opened the floor to Council for discussion. No discussion occurred.

Mayor Gutierrez asked for a motion to approve Ordinance 24-S-16.

Moved by Councilmember Allison Heyward, seconded by Councilmember Michelle Watson

AYE: Mayor Pro-Tem Paul Macaluso, Councilmember Mark Davis,
Councilmember Michelle Watson, Councilmember Tiffany Gibson,
Councilmember Robert Westbrook, Councilmember Allison Heyward,
Councilmember Tim Brown

Passed

14. Councilmember Gibson requested a Point of Privilege.

Mayor Gutierrez granted a recess at 8:04 p.m.

Mayor Gutierrez reconvened the meeting at 8:11 p.m.

Ordinance 24-S-17 - Conduct a public hearing and consider amendments to Part III of the Schertz Code of Ordinances, Unified Development Code (UDC) to Article 5 - Zoning District. ***First Reading*** (B.James/L.Wood/E.Delgado)

Mayor Gutierrez recognized Planning Manager Emily Delgado who provided a briefing outlining the proposed amendments to Part III of the Schertz Code of Ordinances Unified Development Code (UDC) to Article 5 - Zoning District. She stated this amendment is specifically for automobile sales. The proposal is for automobile sales new or used to be permitted by right in M-1, M-2, and GB-2. Moving GB-2 from requiring the SUP to permitting by right, and allowing for someone to request an SUP for automobile sales within the General Business (GB) district with some caveats there would be limited uses added into the Unified Development Code which would state automobile sales within the City of Schertz shall have the following limited uses: (1) no automobile sales within three miles of another automobile sales (property line to property line); (2) no automobile sales shall be within 250' of any single-family residential zoning or use; and (3) automobile sales uses are required to have automobile repair major as an accessory use. Staff feels current UDC regulations are sufficient for automobile sales. The proposed amendments do not align with city policies and goals. The amendments open the possibility for automobile sales to be closer to residential uses, which staff believe to be counter to healthful development. General Business districts (GB) tend to be high value-high visibility, commercial real estate. Automobile sales are prevalent in the wider regional market and permitting them would not be an efficient use of land in Schertz. Staff drafted these amendments as a path forward in the event Council is open to the idea of allowing greater potential for automobile sales. However, staff recommends denial of Ordinance 24-S-17.

The Planning and Zoning Commission met on March 6, 2024, and recommended approval with a 6-0 vote with the condition that one limited use be "250 feet from single-family residential zoning or use". Staff originally proposed all residential zoning or use. This requested change by Planning and Zoning allows for automobile sales to be adjacent to multi-family zoning districts.

Mayor Gutierrez recognized Ken Brown, 100 NE Loop 410, Suite 1385, attorney for the applicant. Mr. Brown reminded Council of his previous appearance in September 2023 whereby the applicant requested the change to General Business-2 and to approve the SUP for an automobile dealership, and there was concern that changing the base district to GB-2 with a vacant piece of property and the applicant didn't follow through with their intended plan for the property would allow certain industrial uses that were inconsistent with the surrounding uses and was not favored by the council. He stated that at that time they agreed that they didn't feel like an automobile dealership is an industrial use and they were supportive of working with staff to come up with an amendment such as this. His client, North Park, still has the property which is 5 acres right on the boundary of Schertz city limits and Selma, which is a unique situation. They still want to build a luxury dealership on this site and he asked Council to support this ordinance.

Mayor Gutierrez opened the Public Hearing at 8:19 p.m.

No residents came forward to speak.

Mayor Gutierrez closed the Public Hearing at 8:19 p.m.

Mayor Gutierrez opened the floor to Council for discussion.

Councilmember Heyward is not amenable to having an automobile dealership in this location. She would prefer a restaurant. The things that Schertz needs, such as new roads or road repairs, require revenue, and the City doesn't receive any revenue from automobile sales. She was also concerned with having an automobile dealership in close proximity to any residential zoning district.

Mayor Gutierrez stated Schertz has about six miles of property along I-35. This property is prime real estate for the City and revenue-generating businesses are a priority for this council for the frontage road.

Councilmember Brown concurs with Councilmember Heyward. He does not want an automobile dealership at the entrance of the city.

Mayor Gutierrez asked for a motion to approve Ordinance 24-S-17.

Moved by Councilmember Michelle Watson, seconded by Councilmember Mark Davis

AYE: Councilmember Mark Davis, Councilmember Michelle Watson,
Councilmember Tim Brown

NAY: Mayor Pro-Tem Paul Macaluso, Councilmember Tiffany Gibson,
Councilmember Robert Westbrook, Councilmember Allison Heyward
Failed

15. **Ordinance 24-S-14** - Conduct a public hearing and consider amendments to Part III of the Schertz Code of Ordinances, Unified Development Code (UDC) to Article 1 - General Provisions, Article 4 - Procedures and Applications, and Article 14 - Transportation. ***First Reading*** (B.James/K.Woodlee/J.Nowak)

Mayor Gutierrez recognized City Engineer Kathy Woodlee who provided a briefing outlining the proposed amendments to Part III of the Schertz Code of Ordinances Unified Development Code (UDC) to Article 1 - General Provisions, Article 4 - Procedures and Applications, and Article 14 - Transportation. Ms. Woodlee stated that some sections of the UDC conflict with other documents, such as the Master Thoroughfare Plan; the Public Works Design Guide; and Local Government Code. Some of the language is ambiguous, making it difficult to apply to different situations. Some sections have not been updated and are out of date with current practices and/or with Local Government Code. This Ordinance addresses amendments for 15 sections of the UDC.

- Section 21.1.10 - Development Manual: this amendment adds language required by the new Local Government Code regulations related to posting of the manual.
- Section 21.1.11 - Public Works Specifications Manual: this amendment adds language required by new local Government Code regulations related to Council approval of amendments.
- Section 21.4.2 - Initiation of Application: this amendment removes Public Works as a separate certifying department and matches language that conflicted with another UDC section.
- Section 21.4.11 - Utility Service Extension: this amendment removes City's authority to require annexation as a condition of approval of utility service to a property already within the City's CCN (where the City is already obligated to provide service); explicitly adds a requirement for a formal request for Utility Service Extension if project is not required to plat; and adds requirement for applicant to process CCN transfer, update service area map, and amend the CIP.
- Section 21.4.14 - Appeals: this amendment updates time frames to comply with Local Government Code limitations.
- Section 21.4.15 - Public Infrastructure Improvements, Construction Plans, and Improvements Agreements: this amendment adds limitation of extensions of construction plan approvals to no longer than plat extension; adds a requirement for electric utilities to be installed prior to plat recordation; and adds reference to Public Works Specifications Manual.

Assistant City Engineer John Nowak addressed the following amendments:

- Section 21.14.1 - Streets: these amendments will increase clarity, reduce intended exclusions based on interpretatins, and correctly identify some documents.
 - 21.14.1 (e): this paragraph was changed to remove an internal conflict and update the cul-de-sac requirements to accommodate emergency vehicles.

- 21.14.1 (f): this paragraph was changed as the information is contained in other documents incorporated by reference.
- 21.14.1 (h): this paragraph was changed to reflect the current procedure for street naming and addressing.
- 21.14.1 (n - p): these paragraphs were changed, so they do not conflict with other documents and to clarify the difference between "islands" and "medians."
- 21.14.1 (s): this paragraph was changed to improve the lighting requirements.
- 21.14.1 (t): this paragraph was changed to reflect current practice.
- Section 21.14.3 - Additional Design Requirements: this amendment removed some paragraphs that are not transportation items and are contained elsewhere in the UDC, and provides clarification on which roadways this section applies to.
- Section 21.14.5 - Driveways: this amendment removes conflicts with other documents and specifies driveways on state facilities need to meet TXDOT requirements.
- Section 21.14.6 - Sidewalks and Hike and Bike Trails: this amendment clarifies the minimum sidewalk width, removes conflicts with other documents, and references other documents where the standards are.
- Section 21.14.7 - Traffic Impact Analysis: this amendment explicitly states some additional analysis items the City can request be included in the TIA, closes some "loopholes" in the current requirements, makes mitigation efforts more "roughly proportional" in some situations, and makes our requirements more consistent with other City requirements.
- Section 21.14.8 - Precedence: new section recommended by our legal team to address conflicts between UDC and other documents.

Mr. Nowak explained the difference between "islands" and "medians". "Islands" are more scenic with no designated function related to traffic control, whereas "medians" have a designated function in the control of traffic.

The proposed amendments promote the health, safety, and/or general welfare of the City and the safe, orderly, efficient and healthful development of the City. Well-organized infrastructure systems are essential in promoting health, safety, and welfare. The UDC functions more effectively and efficiently when it more closely aligns with State laws (the Local Government Code). Staff recommends approval of these amendments because they remove conflicts between the UDC and other documents, update some standards to be current with common engineering practices, and improve some of the technical requirements to better fit our community. They would also help align the UDC better with the Local Government Code.

Mayor Gutierrez opened the Public Hearing at 8:42 p.m.

The following resident spoke:

Richard Maus, 3434 Wimbledon Drive, stated this ordinance addresses many of the items that have been discussed. Having the developer pay for the cost of increased traffic for all these different issues.

No other residents spoke.

Mayor Gutierrez closed the Public Hearing at 8:43 p.m.

Mayor Gutierrez requested clarification on "islands" vs "medians" as a standard vs a preference. Mr. Nowak explained that islands are usually brought forward by the developer because they want to have a certain look to the entrance to their development. There is no technical need or reason for it. From City Staff perspective, they don't recommend islands. They are only concerned with medians to ensure safe arterials for traffic especially in high traffic volume areas.

Mayor Gutierrez opened the floor to Council for discussion.

No discussion occurred.

Mayor Gutierrez asked for a motion to approve Ordinance 24-S-14.

Moved by Mayor Pro-Tem Paul Macaluso, seconded by Councilmember Michelle Watson

AYE: Mayor Pro-Tem Paul Macaluso, Councilmember Mark Davis,
Councilmember Michelle Watson, Councilmember Tiffany Gibson,
Councilmember Robert Westbrook, Councilmember Allison Heyward,
Councilmember Tim Brown

Passed

- 16. Ordinance 24-S-12** - Conduct a public hearing and consider a request to rezone approximately 11.7 acres of land from General Business District (GB) to General Business District -2 (GB-2), known as Comal County Property Identification Numbers 78053 and 116266, Guadalupe County Property Identification Numbers 68327, 68329, 114080, and 114082 generally located 500 feet west of the intersection of FM 2252 and IH-35 Frontage Road, City of Schertz, Guadalupe and Comal County, Texas. ***First Reading*** (B.James/L.Wood/D.Marquez)

Mayor Gutierrez recognized Planner Daisy Marquez who provided the location of the subject property, that 7 public notices were sent February 21, 2024, two public hearing notice signs were posted on the property, a public hearing notice was published in the San Antonio Express-News on March 13, 2024, and no responses have been received at this time.

The applicant is proposing to rezone approximately 11.7 acres from General Business District (GB) to General Business District-2 (GB-2). Approximately 4 acres of the property have been used as some type of storage use since prior to 1995. The rest of the 7.8 acres was not in use in 1995 and neither staff nor the applicant have a record that authorized the expansion of that area. Although the land use would no longer be nonconforming if the zone change and Specific Use Permit (SUP) are approved, the applicant would still need to plat their property, provide improvements, submit a site

plan, demonstrate compliance with the UDC, and receive a certificate of occupancy and utilize the property in a manner generally as they would like. If the zoning case and/or the SUP are not approved, staff would work with the applicant, providing reasonable time to bring the site into compliance.

The proposed change to GB-2 would allow more intense uses that are not compatible with the surrounding development and is incompatible with the Comprehensive Plan Land Use designations. The existing General Business District (GB) and the permitted uses within GB are more compatible with the surrounding adjacent land uses and the Comprehensive Plan land use designation. Therefore, Staff recommends denial of Ordinance 24-S-12. The Planning and Zoning Commission met on March 6, 2024, held a public hearing, and recommended denial by a 4-2 vote.

Ken Brown, Brown & McDonald, 100 NE Loop 410, attorney representing the applicant stated that the staff provided an accurate summary of the situation regarding the business and their expansion. They have been operating in this location since prior to 1995 and have had continuous operations through today. When they started their operations on the original tract it was zoned General Business and there wasn't the requirement for the SUP. The SUP requirement was added in 2006, so at that point they weren't entitled to expand to the adjacent tract. The business was unaware of the requirement for the SUP, so continued to expand on the adjacent tract. Attorney claims they have non-conforming rights on the original tract. They did not have authorization to expand on the adjacent track, but business has been good, so they expanded. As soon as it was brought to their attention by Staff they took action to submit an application for the rezoning. Their only option was GB-2 with an SUP for portable building storage and sales. Applicant respectfully requested consideration for this matter.

Ashley Farrimond, of Killen, Griffin, and Farrimond, 10101 Reunion Place, attorney for Mobile Mini, who is the long-term (approximately 24 year) tenant on this property. They are a global company with locations all over the world, and they provide secure onsite storage units mostly for job sites, plus climate-controlled offices, for construction-based companies. As the area has grown and continues to grow, so has their business. Currently, they have about 2600 units that are out for lease, 20 employees that office here, so it's an ongoing and thriving business at this location. They understand there are concerns with the GB-2, particularly on IH-35, unfortunately there are no better options in terms of zoning. Although they do have the non-conforming rights on the original tract, they do need the GB-2 with the SUP on the remaining tract. The business wishes to remain in Schertz and asks the Council for consideration on this matter.

Mayor Gutierrez opened the Public Hearing at 9:02 p.m.

No residents came forward to speak.

Mayor Gutierrez closed the Public Hearing at 9:02 p.m.

Mayor Gutierrez asked Ms. Marquez to bring up the slide with the GB-2 permitted uses. He pointed out that automobile sales was listed under the permitted uses and that Council had just denied another ordinance requesting the same zoning on IH-35. He

stated that what makes this difficult is that the property owner has been in this location for 20 plus years. IH-35 is a jewel for the City of Schertz because of the amount of traffic to and within our city. We want to see the businesses flourish here. He then opened the floor to Council for discussion.

Mayor Pro-Tem Macaluso stated it is a difficult decision because you have someone that has had a small business here for quite a while. However, opening it up to GB-2 would be a mistake and, obviously, if he were to sell the land and that zoning is in place, you have all these different options that could come in there that are not desirable for our community. He stated he supported the staff recommendation.

Councilmember Heyward asked if the business is working with Neighborhood Services since they don't have the impervious surface for parking. Deputy City Manager Brian James responded that Neighborhood Services went out due to the expansion of the use which prompted the action by the applicant. He furthered his comment to say that staff would not be out there tomorrow issuing citations if the ordinance did not pass. Staff recognizes the business has been there awhile and they will work with them. Their goal is to get compliance and find a win-win solution for both the business, the property owner, and the City. Councilmember Heyward also mentioned the height of the stacked units, which Mr. James stated he believed that is what caught everyone's eye and eventually led to the expansion. Councilmember Heyward concurred with Mayor Pro-Tem Macaluso voicing her concern with possibilities of future development based on the other permitted uses for the GB-2 zoning.

Mayor Gutierrez asked Deputy City Manager James using KFC as an example what options were available to the applicant if the ordinance is denied. Where KFC is located the first 300-350 feet is zoned GB, but the property directly behind it is zoned GB-2. What does the applicant need to do to allow the first 400 feet off the frontage to be GB, and provide him the opportunity to do his regular business with the Mini Storage units. Mr. James responded that traditionally the City of Schertz Comprehensive Plan Future Land Use has the north side of IH-35 with commercial office, service uses, generally the frontage for various distances and then industrial behind that. Conversely, we have typically maintained the south side of IH-35 as retail service type uses, and then residential use, so industrial would be problematic. The business can do anything in the GB District. Mayor Gutierrez stated that he is suggesting the business be permitted to use the frontage as GB and allow him GB-2 on the backside of it. This would probably require re-platting and Council's approval. The owner has been there for over 20 years and we don't want to run him out of business. However, they understand the requirements associated with the zoning issue. Mr. James restated that the concern for staff is opening this side of IH-35 to GB-2. They don't want to create a precedence for future requests nor do they want to allow business to ignore zoning changes as they expand.

City Manager Steve Williams asked Mr. James to explain how staff would help the applicant if the Ordinance were denied. Mr. James restated that the issue was the expansion of the business without approval. There is a development process all businesses must follow during an expansion.

Councilmember Gibson stated it's a matter of doing something and asking for forgiveness later. Unfortunately, the business owner didn't properly plan out or discuss anything with the city. Even if the Council approves the ordinance, the landowner is still going to have to make a tremendous amount of improvements. Either way, there will be significant costs. Mr. James responded, "true, however, if the ordinance is approved, the property owner will be the one to make that decision."

Councilmember Brown said that by allowing GB-2 we would be reducing the value in that area. He told staff to work with them.

Councilmember Westbrook asked what is the best outcome for the applicant. Mr. James responded as follows:

- if the zoning and SUP are approved, the applicant can then go through the development process and while that may be expensive that's their choice. They have that path forward. They control their own destiny.
- if the zoning is denied, then you can't approve the SUP. At that point, staff meets with the property owner, the business owner, and their attorneys to discuss a pathway forward. The goal is to get compliance, not give them citations, and find a win-win-win solution.

Councilmember Davis made the motion to disapprove Ordinance 24-S-12; seconded by Councilmember Gibson.

AYE: Mayor Pro-Tem Paul Macaluso, Councilmember Mark Davis, Councilmember Michelle Watson, Councilmember Tiffany Gibson, Councilmember Robert Westbrook, Councilmember Allison Heyward, Councilmember Tim Brown

Ordinance 24-S-12 was denied.

17. **Ordinance 24-S-13** - Conduct a public hearing and consider a request for a Specific Use Permit to allow Portable Building Sales in General Business District-2 (GB-2) on approximately 11.7 acres of land known as Comal County Property Identification Numbers 78053 and 116266, Guadalupe County Property Identification Numbers 68327, 68329, 114080, and 114082, generally located 500 feet west of the intersection of FM 2252 and IH-35 Frontage Road, City of Schertz, Guadalupe and Comal County, Texas. ***First Reading*** (B.James/L.Wood/D.Marquez)

Mayor Gutierrez stated that this is a Special Use Permit associated with Ordinance 24-S-12. Since Ordinance 24-S-12 did not pass, there is no vote required on Ordinance 24-S-13.

18. Mayor Gutierrez called Point of Privilege for a short recess.
Mayor Gutierrez recessed the meeting at 9:21 p.m.
Mayor Gutierrez reconvened the meeting at 9:31 p.m.

Ordinance 24-S-08 - Conduct a public hearing and consider a request to rezone

approximately 44.3 acres of land from Single-Family Residential District (R-2) to Planned Development District (PDD), known as Guadalupe County Property Identification Number 6460, located approximately 78 feet south of the intersection of Savannah Drive and Irish Creek Road, City of Schertz, Guadalupe County, Texas.
First Reading (B.James/L.Wood/D.Marquez)

Mayor Gutierrez recognized Planner Daisy Marquez who provided a briefing regarding the request to rezone approximately 44.3 acres from Single-Family Residential District (R-2) to Planned Development District (PDD). She provided the location of the subject property, that 65 public hearing notices were sent February 23, 2024, and as of March 27, 2024 (12:00 p.m.) 545 responses had been received - 543-Opposition, 2-In Favor, and 0-Neutral, and two public hearing notice signs were posted on the property. The Planning and Zoning Committee held a public hearing on March 6, 2024, and made a recommendation of denial with a 5-1 vote. 28.79% of the landowners within the 200' notice area have sent written opposition. Therefore, super majority is required for Council to approve this request.

Following the Planning and Zoning Commission meeting, the developer made modifications to the proposed Planned Development District. In an effort to address some concerns of the public, the developer is proposing to reduce the proposed density and building style from what was presented to the Planning and Zoning Commission. The modification will reduce the maximum density from 11 dwelling units per acre for a maximum allowed total of 486 units to be built in Area II and allowed for single-family attached, single-family detached, and garden style apartments to 6.7 dwelling units per acre for a maximum allowed total of 297 units to be built within Area II with only single-family detached units.

Due to the proposed Planned Development District's preservation of the APZII, reduced density, and compatibility with the Comprehensive Land Use Plan land use designation, Staff recommends approval of Ordinance 24-S-08.

Ken Brown of Brown and McDonald, attorney for the applicant, presented the modified PDD to Council. He stated that the developer heard the residents' concerns regarding density and traffic and immediately made modifications. Schertz requires JBSA approval for development in certain areas. The applicant met with JBSA and secured a positive recommendation for development.

Mayor Gutierrez presented slides to the public outlining the zoning notification requirement, FM 1518 is not a City road, concerns for traffic on FM 1518 need to be addressed to TXDOT, the number of units has been reduced from 465 to 297, PDD was modified to show no homes in the APZ II, developer is not building an apartment complex they are building single-family detached rentals, they are considered multi-family because they have one owner with common spaces and amenities, it is a gated community, JBSA supports the development, Texas Government Code requires a 3/4 vote when 20% of landowners adjacent to subject property submit written opposition.

Mayor Gutierrez opened the Public Hearing at 10:11 p.m.

The following twenty-four residents spoke in opposition to Ordinance 24-S-08:

- Richard Maus, 3434 Wimbledon Drive, opposes the PDD process. PDD requires accurate site plans and demonstrate community benefit, this application does not.
- Kip Holmstead, 3560 Irish Creek Road, residents are not afraid of change, property can be developed as is. Developer should build in accordance with the current zoning and not change the zoning to meet his needs.
- Robert Hobbs, 101 Hawks Meadows, the PDD modifications do not address the necessary infrastructure improvements this development will require
- Kristy Duffett, 3400 Woodlawn Farms, traffic is already out of control. Adding 300 more homes will only make this worse.
- Jill Moore, 3534 Woodlawn Farms, traffic is already bad. A light is needed, but the intersection is on a blind curve so was told it's not possible. Very concerned for the safety of the children.
- Kyra Spenrath, 101 Hawks Meadows, grew up in a multi-family area that is now Crescent Bend Park. Concerned with corners being cut, ecological impact, and traffic.
- Robert Druckman, 3520 Enchanted Farm, still 297 families which means more traffic, rental is not the same as pride in home ownership, and as a veteran he takes exception with the mention of the developer being a Westpoint graduate, he should have some honor. He sees this as just a means to make money.
- Brad Parker, 323 Rustic Willow, urged Council to look at the previous ordinances that were heard and voted upon this evening. 24-S-09 and 24-S-12 didn't fit so Council voted against them. Everything in this area is zoned R-2 and a PDD does not fit with the R-2. Market is being flooded with rental property development now. Not against development, just want the development to be consistent with what is there now.
- Len Bauer, 3604 Sunglade Ranch, uses Irish Creek to access his residence. The area cannot absorb additional traffic.
- Amy Cappiello, 368 Silver River, at the Commissioners Meeting they were unable to get market rates, but those were available tonight. There are plenty of rental properties now. Renters do not have the same pride in their residence as homeowners. Please consider the environmental impact - future greenspace.
- Barbara Wargo, 3513 Blue Moon Spur, the applicant is deceptive in their statistics. There is 3 times the density of homes in their development plan than are currently in Kensington Ranch.
- Michelle York 3601 Sunglade Ranch, the Traffic Impact Analysis appears to be done over one day with peak hours between 7:00 a.m. - 9:00 a.m. and 4:00 p.m. - 6:00 p.m. In this neighborhood a lot of people leave before 7:00 a.m. and a lot of kids have to be at school at 7:00 a.m. so it really wasn't indicative of some of the higher traffic volumes and the kids moving around during these hours. For the afternoon hours, school has already let out by 4:00 so its not a good measure of peak traffic. The reference to no pedestrian traffic is erroneous. There is a lot of pedestrian traffic and all hours of the day.
- Rick Perez, 340 Lonestar Gate, just because the developer went to West Point doesn't mean his ideas are any better or he is any smarter than anyone else. This is not safe and healthy growth for this area. As far as esthetics, and Council not

wanting car dealerships because they don't like how they look. Well, what about how these rental homes are going to look in residential areas.

- Leticia Blacksher (Barnes), 3508 Irish Creek, provided an account of the dangerous traffic due to the blind curves and speed. She has to use Irish Creek and its already horrendous. Take care of that before adding more homes.
- David Estrada, 3557 Irish Creek Road, felt that the comments from the developer were belittling. If they were really listening to the residents they would be addressing the traffic concerns.
- Jimmy Heer, 3501 Willows Ranch, 17 homes on the opposite side of Irish Creek traffic is a major concern. Savannah is not safe for drivers much less kids on bicycles due to speed and blind curves,
- George Molina, 3509 Willows Ranch, issue with comment that crime and traffic won't be issue. As a former San Antonio police officer he experienced issues with rental properties, both the owners and the renters. Blind spots on Savannah are an issue. Adding more vehicles is just going to make it worse.
- Gary Livingston, 3517 Mesquite Chase, attended the planning meeting and heard the same lawyer speak there and it was just misinformation after misinformation. Doesn't believe that what was presented at the planning meeting and then how quickly they changed tonight that there wasn't some plan in place for that to happen. Fully believes they gave a bad proposal at first knowing residents would be up in arms so that they could then present what they did tonight and think they would be ok with the new shiny toy.
- Charlotte Barr, 3632 Drivewood Ranch, also doesn't buy that the PDD modification wasn't orchestrated. Traffic is a major concern. Change is good but it has to make sense. Focus on the kids. Drive down Irish Creek Road and you will see how difficult it already is.
- Donna Cobur, 3504 Willows Ranch, this is not a good fit for where they are trying to put this. She looked up a three mile radius of how many apartment complexes there were and stopped counting at 40. They're not at full occupancy. The information in the packet indicates the PDD would allow them to build a standard apartment complex so it doesn't sound like their plan is genuine. It also states maximum height 35 feet. She stated she is opposed.
- Jason Witherspoon, 3505 Willows Ranch, stated everyone knows that theory doesn't translate to reality when traffic or interseptions are involved. You can have a great theory, say there are ways to mitigate this area but until those 300 homes are developed and people are on the road you don't really know what's going to happen. That's just a fact of life. Also, if the lawyer was really listening and interested in what they were saying he doesn't see why they're not developing 160 single-family homes on the 33 acres. They comply with JBSA rules, and they would meet the needs of people in the area. We have voiced our concerns and the best they can say is we're going to reduce the number of rental units. Lastly, his understanding of the PDD is that once Council approves it, the only thing they have to comply with is the maximum number of units, the type of units they dont have to comply. They can make the building multi-story.
- Carolina Olson, 435 Harvest Point, reiterated that even if they reduced the number by 60 units, that could still mean anywhere from 120 to 300 more cars. She would like to see the developer reduce that number by another half. The community has a number of young families with children. All of these children

will be driving in the next couple of years, that's already going to increase traffic that is already at capacity, not just for Kensington Ranch but also Orchard Park. She doesn't understand how they can have one exit from that apartment complex. What happens in an emergency? She shared the TIA with her uncle, a 30 year veteran of TXDOT, and he told her it is missing a lot of information.

- Tom Troutner, 3612 Sharp Hill, suggested putting the apartments where the car lot was to be, then spoke to the Traffic Impact Study. The hard numbers listed on pages 11-15 are astounding. If you have rentals, what about public transportation? Is there an account for that? There is no mitigating factors for traffic, you can't expand Savannah; you can't expand Schertz Parkway. Restriping it for a left-hand turn lane that's already there mitigates nothing. Putting roundabouts to slow down traffic doesn't decrease traffic, it just slows it down and its going to be slow enough already. If they really wanted to make this happen they would have done a comprehensive TIA instead of this cursory one for two hours in the morning and two hours at night on a Thursday. The numbers are misleading. 300 units was the magic number from the start. They put 486 out there so they could reduce it to make it look like they were doing someone a big favor and their not. The drainage and the other TIA, they are staying away purposely from 1518 because there's no way they can fix that. That's TxDot's deal so its not going to happen and until somebody gets killed or emergency services can't get through.
- Dennis Wheeler, 401 Ron Creek, stated he had two main objectives. Today he counted the cars, 63 cars from Paschal Elementary School to about 400 meters from Irish Creek to the last car. One car leaves, one car comes so could be more than 63. His wife waited 5 minutes trying to make a left turn, plus there are kids always walking and riding bikes up and down the street. Safety and traffic are the biggest concerns.

Mayor Gutierrez closed the Public Hearing at 11:07 p.m.

Mayor Gutierrez thanked the residents for being respectful of the process and assured residents that Council does listen to their concerns regarding this development. It's important to know that we listen to what you say and will take all of these factors into consideration. City staff and Council, both past and present, play a crucial role in protecting this City. They must ensure that development is sustainable and beneficial to our city as a whole. They have done an excellent job because our city has grown and continues to grow. Development can bring improvements which enhance the quality of life for everyone in our community, making it a more desirable place for people to live and work. Development stimulates economic growth by attracting new businesses. This HEB would not exist if we didn't have the rooftops. Manufacturers, restaurants, and other businesses all lead to the prosperity of our city and this council has a difficult decision to make that involves careful consideration of various factors, and the potential outcome, but most important, the long-term impact of our city.

Mayor Gutierrez opened the floor to Council for discussion.

Councilmember Heyward asked if there was any way to mitigate the dark streets and areas with no sidewalks. Brian James responded that Schertz could fund these on the

Schertz city limit side. He added that the Transportation Safety Advisory Committee reviewed speed and sight issues and solutions need to be addressed in the budget process. She also asked about the issue with water pressure mentioned by several residents. Mr. James stated this was the first he had this and would look into it,

Councilmember Macaluso stated he had seen the traffic issue firsthand on Savannah. It is a legitimate concern for the welfare of the kids. He also asked how much the city was willing to absorb in multi-family units. Doesn't believe they bring crime or devaluation of single-family residences. He asked how this PDD fit the requirement of innovation. Ms. Marquez explained the PDD was the only option to keep the AZII Area free from development.

Councilmember Brown stated that all the arguments heard this evening were made when their subdivision was being developed. He provided the background regarding the building of two subdivisions in the area. Same concerns for safety and traffic due to density were voiced then. Residents were saying Savannah Drive would become a racetrack into FM 1518, so the developer put in the big curve. Now residents are complaining about the curve. He stated that he's been in the real estate business for 21 years so he watches this very closely. He hears the concerns, but he believes it's more an issue of "not in my backyard." The issues expressed about the rental aspect, according to tax records your subdivision has 52 non-owner occupied homes. That means about 27% of the homes in your neighborhood are rentals now. He doesn't believe the people renting those homes are all criminals or trashy and stated that they should exercise caution with that kind of perspective. As for the PDD itself, he asked is there any transportation option to go out through the south from the developer's standpoint? Mr. James said no, they don't control the property south of them, so they can't guarantee access. He reminded Council that the State Legislature doesn't allow the City to require Right-of-Way dedication if the developer doesn't want to dedicate it unless its on the CIP and it's funded. So there's no way to mandate connectivity down to the South.

Councilmember Davis asked what the maximum number of dwelling units allowed is for multi-family. Mr. James responded 24 units per acre. He stated that zoning is never easy. Every time a zoning case is brought forward, surrounding property owners don't want it and property owners that are trying to make effective use of their property. We hear it from South Schertz all the time. But, he has an issue with the PDD process. He appreciates the thought of protecting JB SA-Randolph, and the concerns for APZ I and II, but asked if that wasn't a moot point at this time. Our surrounding communities have not cared about zoning restrictions or limiting development in APZ II. That's clearly evident by the units built by the City of Selma. A comment was made earlier about why we did not notify Selma or University City regarding this zoning case. In all the years I have served on Council, and before when I would come to the meetings faithfully, I don't recall either City notifying Schertz of their development plans. So, I believe any discussion regarding the APZ on that side of town is a moot point. The damage is already done. So, to say we have a proposal that includes preserving 11 acres adjacent to an area that is already overdeveloped by Air Force recommended standards for an aircraft potential incident zone is comical. There is an issue with the math, which has been pointed out

several times, where it says 6.9 units per acres because we're taking credit for what we could possibly build on 11 acres and we're just going to roll that over onto the 32 acres. There is still a density issue that we do not have enough information on as it rolls into Savannah Drive. That's the biggest impact. We can't account for the schools. Schools build schools based on the need. There's no impact on grocery stores. Our HEB used to be packed, but now there's a new store in Cibolo. There are a lot of things we can't account for, but the density and having a good plan from the get-go is important. This is why he has an issue with PDDs. This was proposed one way and went to Planning and Zoning Commission who made a recommendation to Council based on what was presented to them, and then it comes to Council and its a different package. He has a hard time accepting the PDD process when it's an ever changing process.

Councilmember Heyward stated that when Universal City decided to do Orchard that our mayor talked to their mayor and it didn't matter. She doesn't think that just because Selma or Universal City did something doesn't mean Schertz should do it. We don't have to be the City that doesn't care about the APZ because it doesn't matter. She stated she understands what it means when houses encroach upon some of the bases and some of the missions can't be done. Being associated with that and seeing how some communities suffered when missions went away, then a lot of houses went up for sale because some of those people followed where the mission went and some cities have a hard time recuperating from that. She went on to state that she is all about making sure, because of her connection and being connected, that Randolph is okay and we're not messing up Randolph just because Universal City and Selma did. She wants to say 'okay residents I hear you, but it's about Randolph and the neighborhood.' She went on to state that she thinks about the mission and the affect it would have on Schertz if Randolph went away. She won't do anything to jeopardize the JBSA mission. She also stated that the PDD process is not the greatest but she always wants to take people at their word until they prove they are not honest. She told the residents that she hears them, but she cautioned them on labeling people.

Mayor Gutierrez asked Mr. James if the PDD states single-family detached homes. Mr. James confirmed that it does. It's only called multi-family because it's one lot, one property owner, with multiple homes. Not multiple lots with individual ownership. He also stated that they have to stay within the confines of the PDD, only one family per unit/building, but the design is up to the developer. Council can limit the number of stories through the PDD process.

Councilmember Davis wanted to go on the record to counter the comments regarding the JBSA mission stating he would do anything in his power to protect the mission of Randolph Air Force Base. Regardless of what Schertz does in this situation, from his perspective the damage in APZ II has already been done with development by two other communities. He is intimately familiar with the base realignment and closure process as part of a closure team for an Air Force base. He suggested that Staff and Council look at the last DoD report that talked about base realignment and closure because the general purpose of realignment and closure is to rid the Department of Defense of excess capacity. They do a study and look at the installations that have excess capacity. The question would be where Randolph fits into that scheme, or

Lackland, or anybody else of excess capacity. If you read the report you might have a slightly enhanced perspective of our environment in this area. He added that he couldn't stress this any harder, base realignment and closure is a political decision that is made in Washington, D.C.

Councilmember Heyward asked if there is any traffic mitigation that can be done for Irish Creek Road. Mr. James responded that the Right-of-Way that's been dedicated is directly opposite Irish Creek. Typically, they line roads up, you don't want to offset. When roads are aligned you can better mitigate, for that. For the current Right-of-Way to shift, the HOA that controls property on either side would have to agree for that shift or in theory Council would have to use the power of eminent domain to get Right-of-Way to make that shift. For the purposes of a zoning case, they don't get into individual solutions, that is done during the platting process.

Councilmember Westbrook asked if the site plan is required for the PDD. If so, do we have a copy? Mr. James responded that the developer has provided one, but they have not locked it in. We do not always require them to lock them into a certain layout. Councilmember Westbrook added that we often take these issues into silos as opposed to a holistic approach. Saying that a multi-family development is fine area by area, without taking into consideration that at some point there is a cumulative effect on the "feel", the quality of life, of the City of Schertz. Mr. James responded that they look broadly in terms of wanting this to be a sustainable community, and we don't want too much of one type of use. Some communities struggle because they are predominantly residential, so they lack commercial development to help support that tax base. Councilmember Westbrook then asked for clarification on the fundamental reason for this PDD being to address the flight zone. Mr. James affirmed and added that Council had told Staff they didn't want to see another PDD simply to modify development standards, and they didn't want staff to recommend it. The PDD needed to be unique and innovative. Councilmember Westbrook asked why they needed the PDD in this case if they could build on the AZII area anyway, as was previously stated. Mr. James responded that City Council cannot approve a zoning case in the APZs unless JBSA submits written approval. Councilmember Westbrook closed with when the developer purchased the property it was zoned R-2, so they knew the risk and they will make money if it stays zoned R-2.

Mayor Gutierrez added that Schertz has problem with certain properties because of development around it. For instance, a decision has been made to extend FM 3009 which did not exist when Saddlebrook was developed. Mr. James reminded Council that part of the reason they went with the lot sizes they did in Saddlebrook was because through the middle they would have this major arterial roadway. For that development to happen with that impact they had to get more lots out of it. Mayor Gutierrez closed his comment with housing is expensive. To afford a \$300,000 home, an individual needs about an \$80,000 per year salary. Most homes in Schertz are in the \$400,000 range. There is a lot of multi-family coming into Schertz because of affordability and most young Americans aren't interested in mowing the lawn. They are more interested in playing their games and being on their little machines. That's why we see the shift in what's being built. This Council works with developers to fill the needs of what previous Council have said, for instance, keeping a car dealership off

of IH-35. Each parcel of land is very challenging. Each development is going to bring traffic. IH-35, I-10, and FM 1103 are all being worked on. People will find a way to get home during a traffic jam because we live here we know the back roads.

Mayor Pro-Tem Macaluso made a motion to deny the request to rezone. Seconded by Councilmember Westbrook. Mayor Gutierrez clarified that two 'YES' votes would disallow the rezone. City Attorney Dan Santee indicated that the problem is that the motion made is a negative motion. So, if you cast a 'Yes' vote you are denying the zone; two 'NO' votes means the negative motion fails because a super majority is required to pass it. Having the motion in the affirmative is preferable. A motion in the affirmative would have to have a super majority to pass.

Councilmember Davis requested the motion be withdrawn and resubmitted in the affirmative. Mayor Gutierrez asked Mayor Pro-Tem Macaluso if he would consider withdrawing his motion. Motion was withdrawn.

Mayor Gutierrez requested the motion be restated to approve Ordinance 24-S-08.

Moved by Mayor Pro-Tem Paul Macaluso, seconded by Councilmember Tiffany Gibson

AYE: Councilmember Michelle Watson, Councilmember Allison Heyward

NAY: Mayor Pro-Tem Paul Macaluso, Councilmember Mark Davis,
Councilmember Tiffany Gibson, Councilmember Robert Westbrook,
Councilmember Tim Brown

Failed

Mayor Gutierrez recessed to Closed Session at 12:16 a.m.

Closed Session

19. Closed session pursuant to Texas Government Code Section 551.071 to receive legal advice and counsel from the City Attorney regarding:

1. Post Oak Landfill Administrative Appeal
2. Issues relating to Schertz Police Department policies and procedures regarding the creation and retention of department documents.

Mayor Gutierrez convened Closed Session at 12:16 a.m.

Mayor Gutierrez recessed Closed Session at 12:33 a.m.

Mayor Gutierrez reconvened to Regular Session at 12:35 a.m.

Reconvene into Regular Session

20. Take any action based on discussion held in Closed Session under Agenda Item #19.

Mayor Gutierrez made a motion not to move forward on the Post Oak Landfill litigation; seconded by Councilmember Heyward.

AYE: Mayor Pro-Tem Paul Macaluso, Councilmember Mark Davis,
Councilmember Michelle Watson, Councilmember Tiffany Gibson,
Councilmember Robert Westbrook, Councilmember Allison Heyward,
Councilmember Tim Brown

Passed

Information available in City Council Packets - NO DISCUSSION TO OCCUR

21. December 2023 and January 2024 Financial Statements (S.Gonzalez/J.Walters)

Requests and Announcements

- Requests by Mayor and Councilmembers for updates or information from Staff
A request from Mayor Pro-Tem Macaluso to add a discussion of the second phase of the Skate Park area on the next Workshop agenda.
- Requests by Mayor and Councilmembers that items or presentations be placed on a future City Council agenda
No requests were made by Mayor or Council for updates or information from Staff.
- City and Community Events attended and to be attended (Council)

Councilmember Watson attended the BVYA Opening and the Lions Club Easter in Pickrell Park.

Councilmember Gibson attended the Pre-Budget Meeting, the Lions Club Easter in the Park, and the Schertz Historical Preservation Committee meeting.

Councilmember Westbrook attended the Pre-Budget Meeting and the Schertz Historical Preservation Committee meeting.

Councilmember Heyward attended the Employee Remembrance, the Pre-Budget Meeting, the EDC meeting and the Lion's Club Easter in the Park.

Councilmember Brown attended the Employee Remembrance.

Adjournment

Mayor Gutierrez adjourned the meeting at 12:39 a.m.

Ralph Gutierrez, Mayor

ATTEST:

Sheila Edmondson, City Secretary

CITY COUNCIL MEMORANDUM

City Council Meeting: April 16, 2024

Department: Planning & Community Development

Subject: Ordinance 24-S-11 - Approving a request to rezone approximately 3.6 acres of land from Single-Family Residential District (R-1) to Neighborhood Services District (NS), known as Guadalupe County Property Identification Number 42797, more specifically described as 3517 FM 3009, City of Schertz, Guadalupe County, Texas. *Final Reading* (B.James/L.Wood/D.Marquez)

BACKGROUND

The applicant is requesting to rezone approximately 3.6 acres of land from Single-Family Residential District (R-1) to Neighborhood Services District (NS). The subject property currently has a vacant residential dwelling unit on the property.

On February 21, 2024, forty-four (44) public hearing notices were mailed to the surrounding property owners within a 200-foot boundary of the subject property. At the time of the staff report, three (3) responses in favor, one (1) response neutral, and nine (9) responses in opposition have been received. A public hearing notice was published in the "San Antonio Express" on March 13, 2024. Additionally, one sign was placed on the property. As of noon on Wednesday, March 27, 2024 the owners of 11.75% of the land within the City within the City have submitted written opposition, this is less than the 20% that would trigger the requirement that 3/4ths of Councilmembers vote to approve this rezoning. As such a simple majority is all that is needed for approval.

The Planning and Zoning Commission held a public hearing on March 6, 2024. The Planning and Zoning Commission meeting can be viewed on the City's YouTube site.

GOAL

The proposed zone change is for approximately 3.6 acres of land to Neighborhood Services District (NS). Per the letter of intent submitted with the application, the applicant desires to develop the land for a medical building.

COMMUNITY BENEFIT

It is the City's desire to promote safe, orderly, efficient development and ensure compliance with the City's vision of future growth.

SUMMARY OF RECOMMENDED ACTION

To the north of the subject property, there are single-family residential dwelling units zoned Planned Development District (PDD), and to the west are single family residential dwelling units zoned Single-Family Residential District (R-6). Additionally, to the north east of the subject property, the properties are zoned Neighborhood Services District (NS) and consist of Medical Offices. To the south of the subject property, there are single-family dwelling units and medical offices that are all zoned Neighborhood Services District (NS).

When evaluating the zone changes, staff uses criteria listed in UDC Section 21.5.4.D. The criteria are

listed below.

1. Whether the proposed zoning change or zoning map amendment implements the policies of the adopted Comprehensive Land Plan, including the land use classification of the property on the Future Land Use Map.

The proposed zone change to Neighborhood Services District (NS) does implement the policies of the adopted Comprehensive Plan. The Comprehensive Land Use Plan designates the subject property as Single Family Residential. The Single Family land use designation is intended for a mix of residential with some commercial activities that support the daily activity of development. The new Comprehensive Land Use Plan, that is not yet adopted, identifies the subject property as Local Corridor. The Local Corridor land use designation is intended for locally oriented commercial and entertainment areas that are of a scale and intensity compatible with the surrounding neighborhood.

The requested Neighborhood Services District (NS), is compatible with the existing and proposed Comprehensive Land Use Plan land use designations as per its statement of purpose and intent from UDC Section 21.5.6. The intention of Neighborhood Services District (NS) is to provide suitable areas of development of certain limited service and retail uses in proximity to residential neighborhoods in order to accommodate the basic everyday retail and service needs of nearby residents.

2. Whether the proposed zoning change or zoning map amendments promotes the health, safety, or general welfare of the City and the safe, orderly, efficient and healthful development of the City;

As part of promoting health, safety, and welfare, the City should encourage development compatible with surrounding uses utilizing standards and transitional uses to alleviate negative impacts. As stated in UDC Section 21.57.6.B. Neighborhood Services District (NS) uses occur most often at the periphery of established neighborhoods at the intersection of collectors and minor arterials, and have generous landscaping and contain non-residential uses, but require appropriate buffering from residential uses. The subject property's access point is on FM 3009, and FM 3009 is classified as a Principal Arterial at 120'-130' of right-of-way.

3. Whether the uses permitted by the proposed zone change in the zoning district classification and the standards applicable to such uses will be appropriate in the immediate area of the land to be reclassified;

Yes, the proposed permitted uses in Neighborhood Services District (NS) are meant to be near established neighborhoods and at the intersection of collectors and minor arterials. The subject property is located on FM 3009, which is a principal arterial, and is located on the other side of two established neighborhoods. The proposed development will need to meet UDC Article 9 design requirements, which will require additional screening, buffering, and increased building setback requirements adjacent to residential use and residential zoned properties.

4. Whether the proposed change is in accord with any existing or proposed plans for providing public schools, streets, water supply, sanitary sewers or other public services and utilities to the area;

The proposed development is located on FM 3009. The developer has already communicated with TXDOT and has come to the agreement that the existing signalized T intersection on FM 3009 and Green Valley Road will be modified to a full signalized intersection so that the main access point for the development is at the FM 3009 and Green Valley Road intersection. There is existing water and

sewer for the proposed development with water being serviced from the Schertz and SSLGC dual CCN and sewer from the Schertz and CCMA dual CCN.

5. Whether there have been environmental and/or economical changes which warrant the requested change.

FM 3009, also known as Roy Richard, has been developing as a corridor within the City of Schertz that provides local services and local commercial uses for residents. With continuing improvements on FM 3009, and increasing commercial development directly adjacent to FM 3009, the applicant's request for a zone change from Single-Family Residential District (R-1) to Neighborhood Services District (NS) is warranted to expand the existing and continuing medical office development that corresponds with what is existing on FM 3009.

6. Whether there is an error in the original zoning of the property for which a change is requested.

There was no error in the original zoning of the property for which the change is requested.

7. Whether all of the applicant's back taxes owed to the City have been paid in full.

This does not impact the first reading of City Council.

8. Whether other criteria are met, which, at the discretion of the Planning and Zoning Commission and the City Council, are deemed relevant and important in the consideration of the amendment.

Staff has ensured all UDC requirements have been met for the proposed zone change, and at this time have not received any special considerations from the Planning and Zoning Commission or the City Council.

RECOMMENDATION

Due to the location of the proposed development on FM 3009, compatibility with the Comprehensive Land Use Plan, and the minimal adverse impact on the surrounding neighborhoods, Staff recommends approval of Ordinance 24-S-11.

The Planning and Zoning Commission met on March 6, 2024 and made a recommendation of approval with a 6-0 vote.

The Schertz City Council met on April 2, 2024 and approved Ordinance 24-S-11 as presented with a 7-0 vote.

Attachments

Ord 24-S-11 Kellum With Attachments

Aerial Exhibit

Public Hearing Notice Map

Public Hearing Responses

Kellum 200' opposition map

City Council Presentation Slides

ORDINANCE NO. 24-S-11

AN ORDINANCE BY THE CITY COUNCIL OF THE CITY OF SCHERTZ, TEXAS AUTHORIZING THE OFFICIAL ZONING MAP BY REZONING APPROXIMATELY 3.6 ACRES OF LAND FROM SINGLE FAMILY RESIDENTIAL DISTRICT (R-1) TO NEIGHBORHOOD SERVICES DISTRICT (NS), KNOWN AS GUADALUPE COUNTY PROPERTY IDENTIFICATION NUMBER 42797, MORE SPECIFICALLY KNOWN AS 3517 FM 3009, SCHERTZ, GUADALUPE COUNTY, TEXAS.

WHEREAS, an application to rezone approximately 3.6 acres of land from Single-Family Residential District (R-1) to Neighborhood Services District (NS), known as Guadalupe County Property Identification Number 42797, more specifically described as 3517 FM 3009, and more specifically described in the Exhibit A and Exhibit B attached herein (herein, the “Property”) has been filed with the City; and

WHEREAS, the City’s Unified Development Code Section 21.5.4.D. provides for certain criteria to be considered by the Planning and Zoning Commission in making recommendations to City Council and by City Council in considering final action on a requested zone change (the “Criteria”); and

WHEREAS, on March 6, 2024, the Planning and Zoning Commission conducted a public hearing and, after considering the Criteria, made a recommendation to City Council of approval; and

WHEREAS, on April 2, 2024, 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.

NOW THEREFORE, BE IT RESOLVED 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 Neighborhood Services District (NS)

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.

PASSED ON FIRST READING, the _____ of _____ 2024.

PASSED, APPROVED and ADOPTED ON SECOND READING, the _____ of _____, 2024.

CITY OF SCHERTZ, TEXAS

Ralph Gutierrez, Mayor

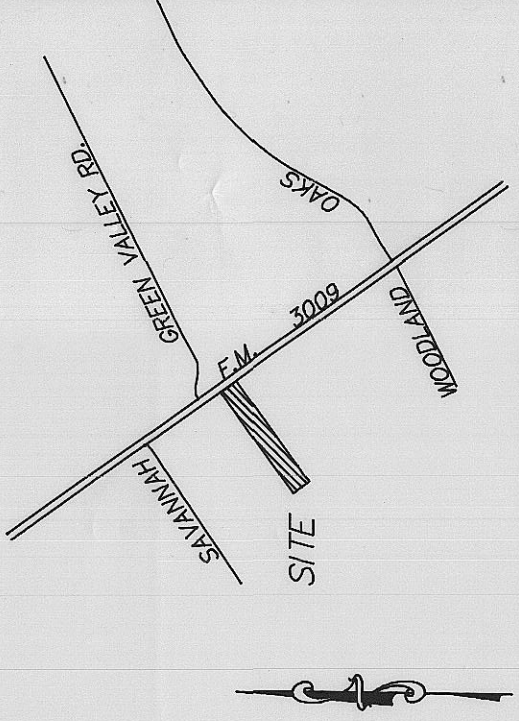
ATTEST:

Sheila Edmondson, City Secretary

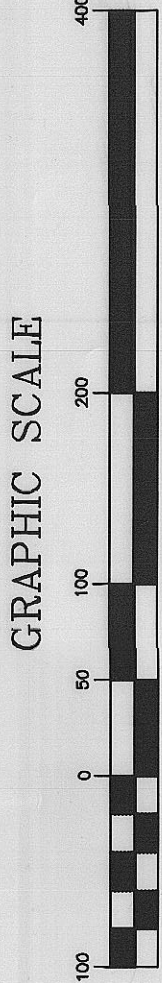
(city seal)

Exhibit "A"
Property Description - Survey

PREPARED: JUNE, 1992



LOCATION MAP



(IN FEET)
1 inch = 100 ft.

NOTE: IRON PINS WITH A BAKER SURVEYING PLASTIC CAP ARE SET AT ALL PROPERTY CORNERS UNLESS OTHER MONUMENTATION WAS FOUND.

NOTE: ELEVATION DATUM BASED ON TEXAS HIGHWAY
DEPARTMENT BENCHMARK AT F.M. 3009 AND
I.H. 35.

NO PORTION OF THIS PROPERTY LIES WITHIN A
100 YEAR FLOOD PRONE AREA AS PER
F.E.M.A MAP COMMUNITY 480269B PANEL H & I-03
DATED SEPTEMBER 15, 1977.

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS 6th DAY OF
August, A.D. 1992.

NOTARY PUBLIC
BEXAR COUNTY, TEXAS

ELEANOR J. WEBB
Notary Public, State of Texas
My Commission Expires
AUGUST 16, 1994

STATE OF TEXAS:
COUNTY OF BEXAR:

BEFORE ME, THE UNDERSIGNED AUTHORITY ON THIS DAY PERSONALLY APPEARED C.E. STONE KNOWN TO ME TO BE THE PERSON WHOSE NAME IS SUBSCRIBED TO THE FOREGOING INSTRUMENT, AND ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME PURPOSES AND CONSIDERATIONS THEREIN EXPRESSED AND IN THE CAPACITY THEREIN STATED.

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS 6th DAY OF August, A.D. 1992.

Charm J. Webb
 NOTARY PUBLIC
 BEXAR COUNTY, TEXAS

ELEANOR J. WEBB
Notary Public, State of Texas
My Commission Expires
AUGUST 16, 1994

CAL STONE SUBDIVISION
BEING LOTS 1 AND 2, BLOCK 1,
CAL STONE SUBDIVISION, CITY OF
SCHERTZ, GUADALUPE COUNTY,
TEXAS.

THIS PLAT OF CAL STONE SUBDIVISION
HAS BEEN SUBMITTED TO AND CONSIDERED BY THE PLANNING COMMISSION
OF THE CITY OF SCHERTZ, TEXAS, AND IS HEREBY APPROVED
BY SUCH COMMISSION.

DATED THIS 11 DAY OF August A.D. 1992.

TALLEY REALTY DEV. INC.
2800 N. 44th ST., SUITE 1000
ATTN: CHARLES FREERICKS
PHOENIX, ARIZONA 85008

ZONED PUD

STATE OF TEXAS:
COUNTY OF BEXAR:

THE UNDERSIGNED, A REGISTERED PROFESSIONAL LAND SURVEYOR, IN THE STATE OF TEXAS, HEREBY CERTIFY THAT THIS PLAT IS TRUE AND CORRECT AND WAS PREPARED FROM AN ACTUAL SURVEY OF THE PROPERTY MADE UNDER MY SUPERVISION ON THE GROUND.

106 Da GAMA
UNIVERSAL CITY, TEXAS 78148
ZONED R-4

TYPICAL UTILITY EASEMENT AND BUILDING SETBACK LINES

STREET

SIREET

14' ELEC., GAS, TEL & CA. T.V. ESW'T.

10' ELEC., GAS, TEL & CA.T.V. ESM'T.

5' ELEC., GAS, TEL. & C.A.T.V. ESM'T.

BAKER

SURVEYING, INC.

11003 WYE DRIVE
SAN ANTONIO, TEXAS 78217
PH. 653-7270; FAX 653-2942

NOTE:

THIS SUBDIVISION WILL BE SERVED BY A POTABLE WATER SUPPLY SYSTEM AND ON A CITY APPROVED SEPTIC SYSTEM.

LIZZIE M. LORENZ COUNTY CLERK OF SAID COUNTY,
HEREBY CERTIFY THAT THIS PLAT WAS FILED FOR RECORD IN MY OFFICE ON
17 DAY OF AUG AD. 189 AT 2:01 P. M. AND

RECORDED THE 17 DAY OF AUGUST A.D. 1992
2:01 P. M. IN THE RECORDS OF GUADALUPE
 SAID COUNTY IN BOOK VOLUME 5 ON PAGE 1643

IS 17 DAY OF AUGUST A.D. 1992.

LIZZIE M. LORENZ

Kunze Publishing

Ginger Busby

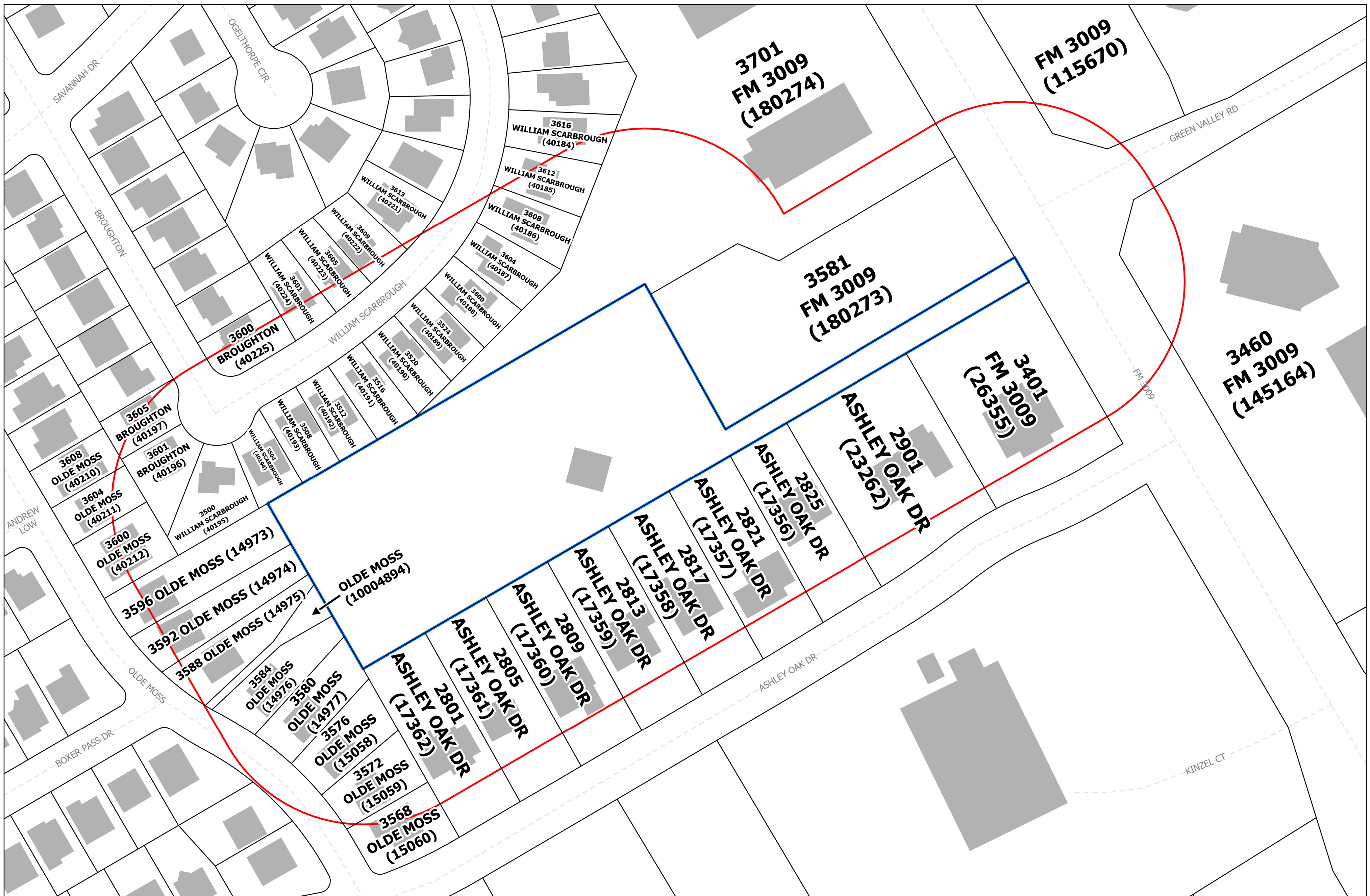
LIZZIE M. LORENZ

Signature: Ginger Busler

Ginger Busby

Exhibit “B”
Zone Change Exhibit



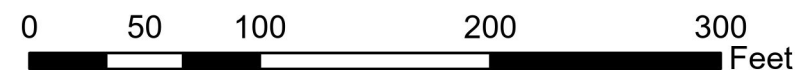
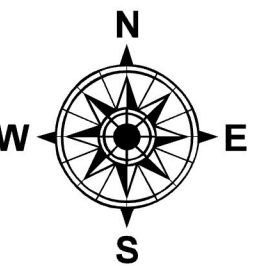


City of Schertz

3517 FM 3009
(PLZC20230207)

○ 200' Buffer

▬ Project Area



NOTICE OF PUBLIC HEARING

February 21, 2024

Dear Property Owner,

The Schertz Planning and Zoning Commission will conduct a public hearing on **Wednesday, March 6th, 2023 at 6:00 p.m.** located at the Municipal Complex Council Chambers, 1400 Schertz Parkway, Building #4, Schertz, Texas to consider and make a recommendation on the following item:

PLZC20230207 – A request to rezone approximately 3.6 acres of land from Single-Family Residential District (R-1) to Neighborhood Services District (NS), known as Guadalupe County Property Identification Number 42797, more specifically described as 3517 FM 3009, City of Schertz, Guadalupe 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. You may return the reply form below by mail or personal delivery to Daisy Marquez, Planner, 1400 Schertz Parkway, Schertz, Texas 78154, or by e-mail: planning@schertz.com. If you have any questions, please feel free to call Daisy Marquez, Planner at (210) 619-1782.

Sincerely,



Daisy Marquez, AICP
Planner

Reply Form:

City Council will have two readings on the request after the recommendation from the Planning and Zoning Commission. This form is used to calculate the protest in accordance with LGC, Local Government Code 211.006(d). **The written protest must be received by City no later than noon (central time) on the Friday before each reading by the City Council.** If the name of the person signing this form does not match the name listed as the owner on the appraisal district website, proof of ownership is required in order for this to count towards the protest.

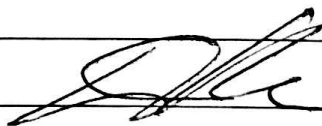
I am: in favor of ☒ opposed to ☐ neutral to ☐ the request for **PLZC20230207**

COMMENTS:

NAME:

Darrell Keller
(PLEASE PRINT)

SIGNATURE



STREET ADDRESS:

3521 Fm 3009 Schertz, TX 78154

DATE:

2-27-24

February 21, 2024

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I am: in favor of ☒ opposed to ☐ neutral to ☐ the request for PLZC20230207

COMMENTS: _____

NAME: Danell Keller (Owners Rep) SIGNATURE: 
(PLEASE PRINT)

STREET ADDRESS: 3701 Fm 3009 Bldg A Schertz, Tx 78154

DATE: 2/27/24

NOTICE OF PUBLIC HEARING

February 21, 2024

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I am: in favor of ☒ opposed to ☐ neutral to ☐ the request for **PLZC20230207**

COMMENTS: _____

NAME: Darrell Keller SIGNATURE: 
(PLEASE PRINT)

STREET ADDRESS: 3795 FM 3009 BLDG B Schertz, Tx 78154

DATE: 2/26/24

NOTICE OF PUBLIC HEARING

February 21, 2024

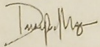
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I am: ☒ in favor of ☐

☐ opposed to ☒ ^{see my concern} ☐ neutral to ☐

the request for **PLZC20230207**

COMMENTS: my concerns are for the owls, hawks, & other animals in
NAME: Myron Meckel SIGNATURE Myron Meckel isn't there anything in
(PLEASE PRINT) place to protect their
habitats?

STREET ADDRESS: 3504 William Scarbrough Schertz

DATE: 2-28-24

NOTICE OF PUBLIC HEARING

February 21, 2024

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I am: in favor of ☐ opposed to ☒ neutral to ☐ the request for **PLZC20230207**COMMENTS: We are opposed of any construction on this land due to wild life that lives on the property, Also the risk of our property value going down.NAME: Cody Robertson SIGNATURE: 
(PLEASE PRINT)STREET ADDRESS: 3584 Olde MossDATE: 2/27/24

Reply Form:

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I am: in favor of ☐ opposed to ☒ neutral to ☐ the request for PLZC20230207

COMMENTS: We do not need or want anything built behind my house. Schertz does not need any more zone changes in our area, have the land for the wild animals.
NAME: Jean Curtie SIGNATURE [Signature] (PLEASE PRINT)

STREET ADDRESS: 2817 Ashley Oak Dr Schertz TX 78154

DATE: 26th Feb 2024

protest in accordance with LGC, Local Government Code 211.006(d). The written protest must be received by City no later than noon (central time) on the Friday before each reading by the City Council. If the name of the person signing this form does not match the name listed as the owner on the appraisal district website, proof of ownership is required in order for this to count towards the protest.

I am: in favor of ☐ opposed to ☒ neutral to ☐ the request for **PLZC20230207**

COMMENTS: We bought this house because there was no commercial development behind it.

NAME: Jonathan Mohler SIGNATURE [Signature]
(PLEASE PRINT)

STREET ADDRESS: 3600 William Scarbrough

DATE: Feb 27th, 2024

1400 Schertz Parkway

Schertz, Texas 78154

210.619.1000

schertz.com

NOTICE OF PUBLIC HEARING

February 21, 2024

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I am: in favor of ☐ opposed to ☒ neutral to ☐ the request for PLZC20230207

COMMENTS: _____

NAME: Nicole Griffin / BEAR GRIFIN SIGNATURE: Nicole Griffin / Bear M. Griffin
(PLEASE PRINT)

STREET ADDRESS: 3516 William Scarborough Schertz TX 78154

DATE: 2-29-2024

protest in accordance with LGC, Local Government Code 211.006(a). The written protest must be received by City no later than noon (central time) on the Friday before each reading by the City Council. If the name of the person signing this form does not match the name listed as the owner on the appraisal district website, proof of ownership is required in order for this to count towards the protest.

I am: in favor of ☐

opposed to ☐

neutral to ☒

the request for PLZC20230207

COMMENTS: When completed I request A 10 ft. Barrier be placed. 8 ft. NOT Enough

NAME: Kenneth A. HAYS

SIGNATURE Kenneth A. Hays

(PLEASE PRINT)

STREET ADDRESS: 2821 AshLey OAK DR.

DATE: 2-27-2024

If the plan is to have Anything built that is 2 stories or Higher I ask that the City require A 10 or 12 ft. Barrier be placed separating my or our Residences from their Business.

T.Y. Hays

1400 Schertz Parkway

Schertz, Texas 78154

210.619.1000

schertz.com

NOTICE OF PUBLIC HEARING

February 21, 2024

Dear Property Owner,

The Schertz Planning and Zoning Commission will conduct a public hearing on **Wednesday, March 6th, 2023 at 6:00 p.m.** located at the Municipal Complex Council Chambers, 1400 Schertz Parkway, Building #4, Schertz, Texas to consider and make a recommendation on the following item:

PLZC20230207 – A request to rezone approximately 3.6 acres of land from Single-Family Residential District (R-1) to Neighborhood Services District (NS), known as Guadalupe County Property Identification Number 42797, more specifically described as 3517 FM 3009, City of Schertz, Guadalupe 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. You may return the reply form below by mail or personal delivery to Daisy Marquez, Planner, 1400 Schertz Parkway, Schertz, Texas 78154, or by e-mail: planning@schertz.com. If you have any questions, please feel free to call Daisy Marquez, Planner at (210) 619-1782.

Sincerely,



Daisy Marquez, AICP
Planner

Reply Form:

City Council will have two readings on the request after the recommendation from the Planning and Zoning Commission. This form is used to calculate the protest in accordance with LGC, Local Government Code 211.006(d). **The written protest must be received by City no later than noon (central time) on the Friday before each reading by the City Council.** If the name of the person signing this form does not match the name listed as the owner on the appraisal district website, proof of ownership is required in order for this to count towards the protest.

I am: in favor of ☐ opposed to ☒ neutral to ☐ the request for PLZC20230207

COMMENTS: It could devalue property (homes)

NAME: Charlotte J. Roberts (Stoss) SIGNATURE: Charlotte J. Roberts Stoss
(PLEASE PRINT)

STREET ADDRESS: 3588 Olde Moss Schertz

DATE: 3/2/2024

From: Barbara Mansfield Gonzales ·
Sent: Tuesday, March 5, 2024 12:14 AM
To: Daisy Marquez
Cc: Samuel Haas
Subject: Thank you for your answer on 3/4/2024 Re: Correction: about March 6, 2024. PLZC20230207

Follow Up Flag: Follow up
Flag Status: Flagged

I appreciate your detailed answer today, especially the link to the agenda for Planning and Zoning on March 6, 2024.

1- However, last week the same information available on the 'Notice of Public Hearings at the Planning and Zoning Commission (for March 6, 2024)' for the 44 acre tract on Savannah was NOT available for the 3.6 acre tract. That notice site says February 28, 2024 was the date that site was updated (or finished.)

2- Last week the ownership information for the 3.6 acre tract was NOT available, which would give residents— whose long-term , single-family homes surround the 3.6 acres tract on 3 sides—somewhat of a hint as to NS possible use of the property. Research on other sites showed that Keller-Williams real estate company was the owner. Any person would WORRY that that real estate company could sell or lease to any NS business.

3- Keller Williams probably manages the property, but it is more accurate to know Kellum is the owner.

4- The Kellum buildings there are multistory buildings close to FM 3009. No residential owners want multistory buildings looming over their back yard fences. For that matter, no one wants 24/7 noise of possible NS businesses. Neither do residential owners want people driving around or hanging out at night behind the back of their houses.

5- The link that you sent me today showed that Kellum is the owner of the 3.6 acre tract. This information was likely posted on the agenda on March 1, 2024 at 5:00 pm for a meeting to take place at 6:00 pm on March 6, 2024. It does seem to be a notice of barely 72 hours for residents to have the complete ownership information to be able to plan to deal with the meeting. That does not give the needed appearance of transparency for this important ownership detail for residents.

6- Kellum has a good reputation in the community. The residents bought those homes years ago, expecting peaceful enjoyment of their residential property.

THEREFORE, due to the LACK of TRANSPARENCY AS TO the OWNER, further time should be considered to be given to all nearby and affected residents of this property. Height

restrictions, tree coverage, protection of wildlife, safety, and excessive noise could be talked about between the owner and residents.

7– There is no traffic plan for handling the Green Valley intersection with the proposed Kellum development.

IMPORTANT: You also referenced a Comprehensive Land Use Plan map that has not been formally adopted yet. In fact that interactive map has not been publicly available in any form on the Schertz City website since it was removed November 28, 2023. Therefore the reference to this Local Corridor is disturbing to residents of other long-term established neighborhoods along FM 3009.

Thank you for your time. I will try to put this on Next Door so families can know that more information is on the Agenda section of the March 6, 2024 meeting.

What I Sent from my iPhone

On Mar 4, 2024, at 4:38 PM, Daisy Marquez <dmarquez@schertz.com> wrote:

Good Afternoon Ms. Gonzales,

The property that is requesting the rezoning to Neighborhood Services is the one in the image below that is an orange color with the pink star.

<image001.png>

The white map that was in the mailer and is online is meant to outline the property that is being rezoned in blue and all the properties within the 200-foot notification buffer, which is that red line.

<image002.png>

Here is a link to the Agenda Item in the Posted Agenda:

https://agendaquick.schertz.com/agenda_publish.cfm?id=0&mt=ALL&get_month=

[3&get_year=2024&dsp=agm&seq=2913&rev=0&ag=635&ln=15311&nseq=2916&nrev=0&pseq=2914&prev=0#ReturnTo15311](https://library.municode.com/tx/schertz/codes/unified_development_code?nodeId=SCUNDECO_ART5ZODI_S21.5.8PEUSTA)

This property is part of the Cal Stone subdivision more specifically known as block 1, lot 2 and is approximately 3.5 acres. The people requesting the rezone are the same people that run the current Kellum Medical Development. The applicant wants to rezone the property for future expansion of the Kellum Development but there is no plan nor a site plan application in for a structure now.

Here is the link to the permitted use table :

https://library.municode.com/tx/schertz/codes/unified_development_code?nodeId=SCUNDECO_ART5ZODI_S21.5.8PEUSTA. In the table you can search for what is allowed in the Neighborhood Services District (NS). Some permitted uses include an art gallery, alcohol package sales, bakery, book store, bank, beauty salon, community center, etc.

Best,

Daisy Marquez, AICP

Planner

Planning & Community Development

City of Schertz

1400 Schertz Parkway

Schertz, Tx 78154

Office: 210.619.1782

[Schertz.com](https://www.schertz.com)

From: Samuel Haas <shaas@schertz.com>

Sent: Monday, March 4, 2024 4:09 PM

To: Barbara Mansfield Gonzales ·

Cc: Daisy Marquez <dmarquez@schertz.com>

Subject: RE: Correction: Fwd: March 6, 2024. PLZC20230207

Good Afternoon,

I am CC'ing Daisy Marquez in our Planning Department. This is her project, and she may be better equipped to help you with this matter.

Thanks,

Samuel Haas

Senior Planner

Planning & Community Development

City of Schertz

1400 Schertz Parkway

Schertz, TX 78154

Office: 210-619-1783

Schertz.com

From: Barbara Mansfield Gonzales
Sent: Saturday, March 2, 2024 2:50 PM
To: Samuel Haas <shaas@schertz.com>
Subject: Correction: Fwd: March 6, 2024. PLZC20230207

I need to correct the part of my message Friday that mentioned that this tract might be a Beck property linked to Deerhaven.

There is another similar property right next to Deerhaven that is shaped just like this one, that we believe belonged to Rubin and Sylvia Beck. Rubin Beck had the deed restrictions put on the Deerhaven subdivision. I visited this property years ago, and it had similar placement of the house and trees.

However, I hope that there will be more added to the March 6, 2024 meeting information for the proposed tract use for the 3.6 acre tract. Without that information on Schertz.com, neighbors are completely blind sighted as to effects of NZ zoning close to long-term, established homes under R-1 zoning. No one wants a dense or noisy, 24-hour establishment over their back fence.

As of Saturday, there's only the lined map and the lined map.

Thank you for your patience.

Sent from my iPhone

Begin forwarded message:

From: Barbara Mansfield Gonzales
Date: March 1, 2024 at 4:23:34 PM CST
To: shaas@schertz.com
Subject: March 6, 2024. PLZC20230207

Dear Mr. Haas,

On Next Door, a resident mentioned that she is trying to call Planning & Zoning but is not able to get through to talk to a planner for this matter. On Schertz.com nothing appears but a colored-in picture of the neighborhood and a line drawing showing the entrance to this rear lot is opposite Green Valley Drive.

The change proposed is R-1 to NZ.

In others words, there is no planning explanation about what kind of building or business is proposed on this Beck single-family home property. Nothing about proposed noise levels in this lot at least half-surrounded by R-1 homes.

This Beck family is the same family that put the deed restrictions for residential-only on the Deerhaven property.

Are there planning documents to inform residents? They are concerned about noise. Traffic at that corner across from the Methodist church would be horrific. There may be other concerns not mentioned on Next Door.

The “unavailable” property looks like a driveway planned to enter from the Savannah development. That looks residential-only.

I cannot find the thread of Next Door with the poster again, so I can’t help you with her name.

Thank you.

Sent from my iPhone

NOTICE OF PUBLIC HEARING

February 21, 2024

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PLZC20230207 – A request to rezone approximately 3.6 acres of land from Single-Family Residential District (R-1) to Neighborhood Services District (NS), known as Guadalupe County Property Identification Number 42797, more specifically described as 3517 FM 3009, City of Schertz, Guadalupe County, Texas.

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Sincerely,

Daisy Marquez, AICP
Planner

Reply Form:

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I am: ☐ in favor of ☒ opposed to ☐ neutral to ☐ the request for **PLZC20230207**

COMMENTS: "Neighborhood Services" is NOT remotely accurate.

NAME: Rosemary Kay Scott SIGNATURE: R. Scott This is Commercial!
(PLEASE PRINT)

STREET ADDRESS: 3576 Orde Moss

DATE: 3/2/24

Reply Form:

City Council will have two readings on the request after the recommendation from the Planning and Zoning Commission. This form is used to calculate the protest in accordance with LGC, Local Government Code 211.006(d). **The written protest must be received by City no later than noon (central time) on the Friday before each reading by the City Council.** If the name of the person signing this form does not match the name listed as the owner on the appraisal district website, proof of ownership is required in order for this to count towards the protest.

I am: in favor of ☐ opposed to ☒ neutral to ☐ the request for **PLZC20230207**

COMMENTS: Decrease in Property Value, Traffic Congestion, Crime

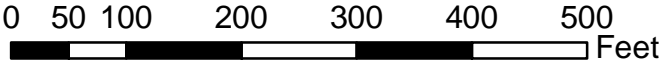
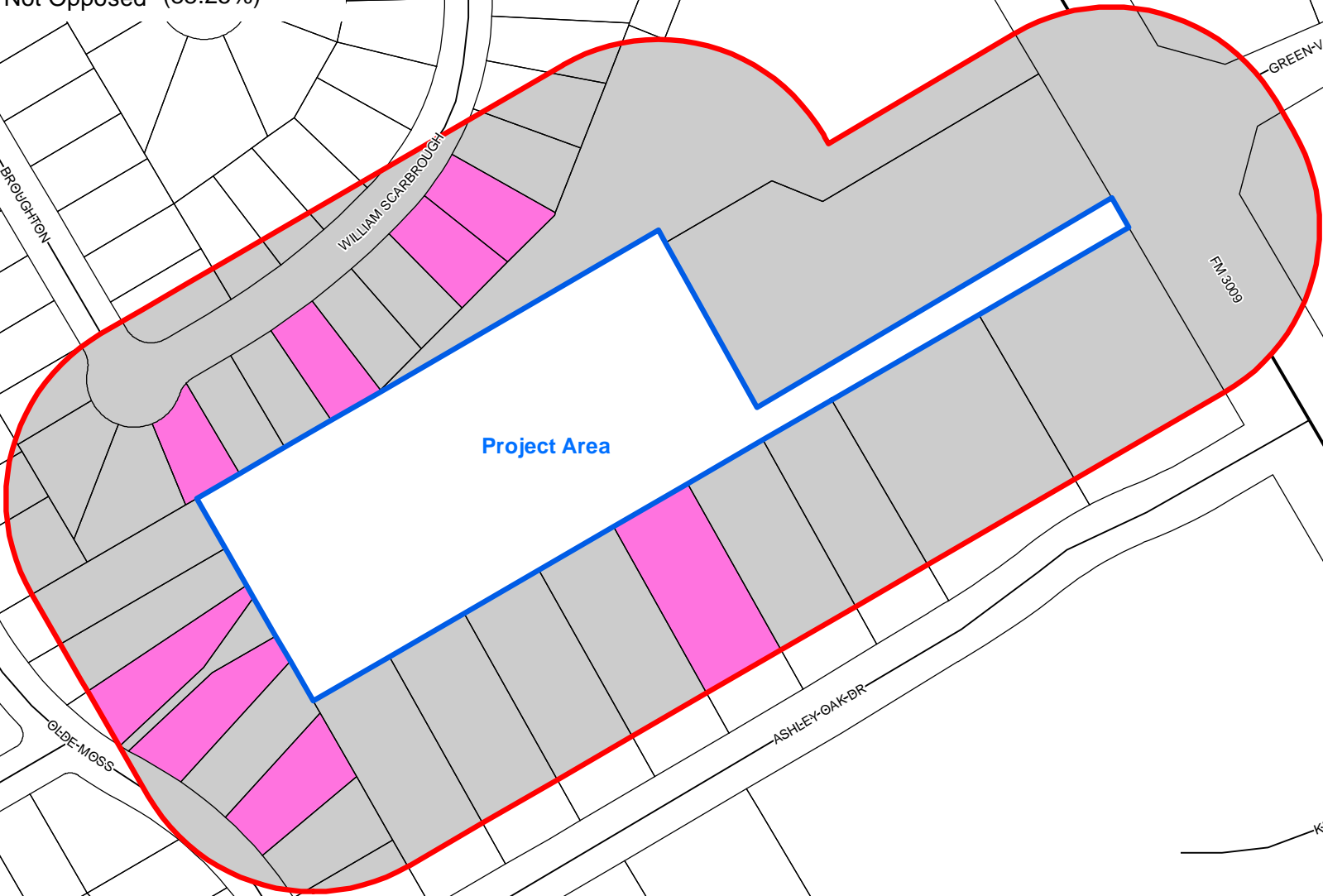
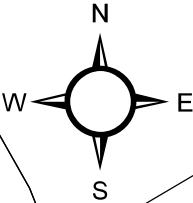
NAME: GARY LASKOWSKI (PLEASE PRINT) SIGNATURE [Signature] Wildlife Disturbed

STREET ADDRESS: 3604 William Scarborough

DATE: 3-21-24

Protested Parcel Acentage (%)

- Opposed (11.75%)
- Not Opposed (88.25%)



Ordinance 24-S-11

Zone Change from Single-Family Residential District (R-1) to Neighborhood Services District (NS) 3.6 acres

Daisy Marquez | PLANNER

- Existing: *Single Family Residential District (R-1)*
- Proposed: *Neighborhood Services District (NS)*





SCHERTZ
COMMUNITY • SERVICE • OPPORTUNITY

3517 FM 3009
(PLZC20230207)

Highways
Major Roads
Minor Roads

Proposed
Principal Arterial
Planned Principal Arterial
Secondary Arterial
Planned Secondary Arterial
Secondary Rural Arterial

Planned Boundary Road
Planned Residential Collector
Planned Residential Collector B
Planned Commercial Collector A
Planned Commercial Collector B

1" 12"
2" 18"
3" 24"
4" 30"
6" 48"
8" 96"

10" 120"
12" 144"
15" 180"
18" 216"
24" 288"
30" 360"

Unknown

Schertz Gravity
Schertz Pressure
Neighboring Gravity
Private Pressure

Industrial
Residential
Commercial
Public Use

Schertz Gravity
Schertz Pressure
Neighboring Gravity
Private Pressure

Project Boundary
County Boundary
City Boundary
Schertz Water Main

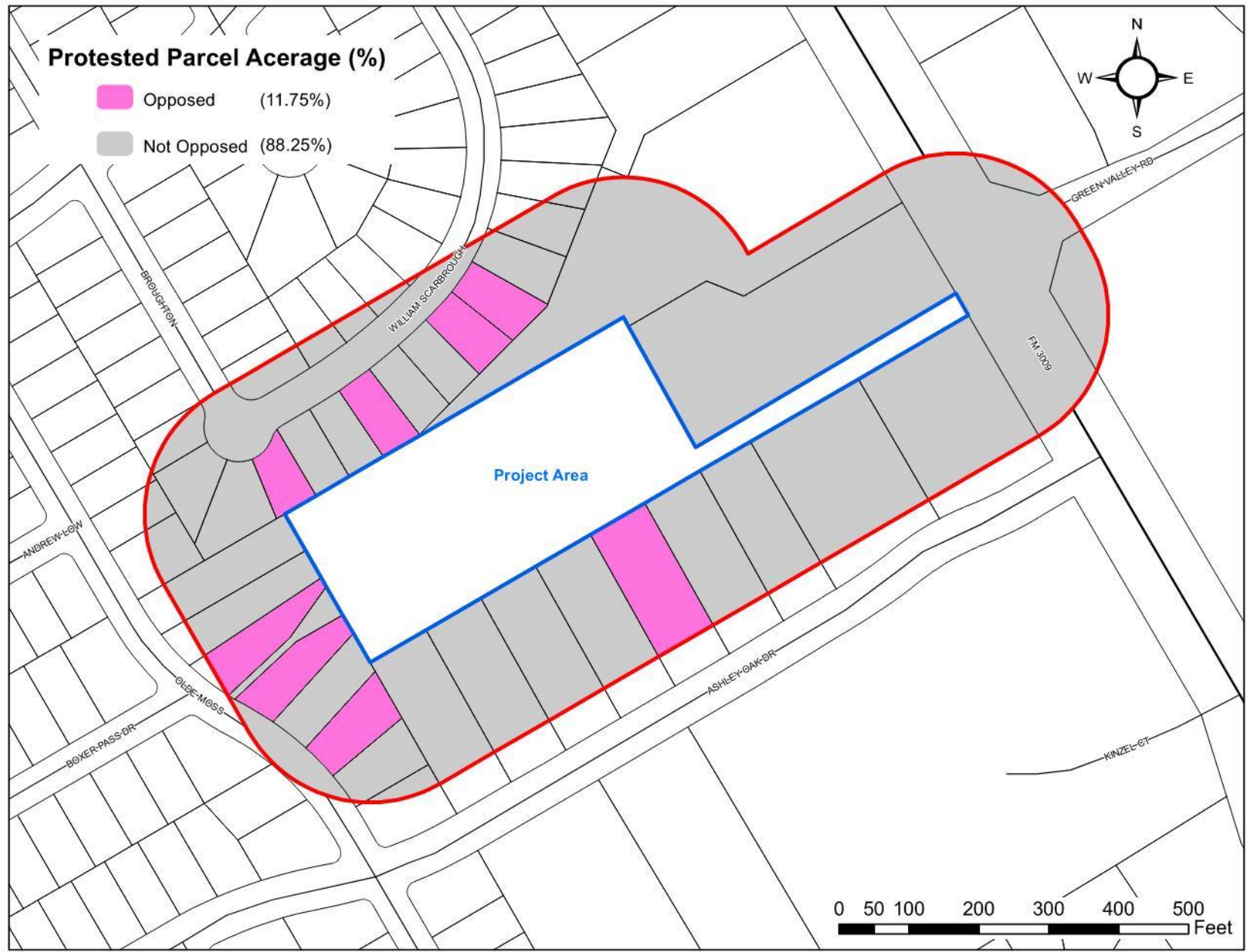
0 25 50 100 150
Feet



	Existing Zoning	Land Use
North	Planned Development District (PDD) and Neighborhood Services District (NS)	Single Family Residential (Savannah Square) and Medical Office (Kellum Medical)
South	Neighborhood Services District (NS)	Single Family Residential and Medical Office
East	Right-of-Way	FM 3009/ Roy Richard
West	Single-Family Residential District (R-6)	Single Family Residential (Ashley Place)



- SCHIERTZ**
COMMUNITY. SERVICE. OPPORTUNITY.



As of March 27, 2024, 12:00pm, the owners within 11.75% of the land within the City have submitted written opposition.

Only a simple majority is required for approval of the requested zone change.

Proposed Zone Change

- UDC Section 21.5.4 states that a Zone Change is required to establish the use of land and the development associated with the proposed zoning classification for the purpose of establishing and maintaining sound, stable, and desirable development.
- The proposed zone change to Neighborhood Services District (NS) per the letter of intent, is being requested in order to expand the Kellum Development

UDC Section 21.5.4.D Criteria for Approval

1. Whether the proposed zoning change or zoning map amendment implements the policies of the adopted Comprehensive Land Plan, including the land use classification of the property on the Future Land Use Map.
- The proposed zone change to Neighborhood Services District (NS) does implement the policies of the adopted Comprehensive Plan.
 - The Comprehensive Land Use Plan designates the subject property as Single Family Residential. The Single Family land use designation is intended for a mix of residential with some commercial activities that support the daily activity of development.



Single Family Residential

UDC Section 21.5.4.D Criteria for Approval

1. *(Cont.)*

- The requested Neighborhood Services District (NS), is compatible with the existing and proposed Comprehensive Land Use Plan land use designations as per its statement of purpose and intent from UDC Section 21.5.6.
- The intention of Neighborhood Services District (NS) is to provide suitable areas of development of certain limited service and retail uses in proximity to residential neighborhoods in order to accommodate the basic everyday retail and service needs of nearby residents.

UDC Section 21.5.4.D Criteria for Approval

2. Whether the proposed zoning change or zoning map amendment promotes the health, safety, or general welfare of the City and the safe, orderly, efficient and healthful development of the City.

- As part of promoting health, safety, and welfare, the City should encourage development compatible with surrounding uses utilizing standards and transitional uses to alleviate negative impacts.
- As stated in UDC Section 21.5.6.B. Neighborhood Services District (NS) uses occur most often at the periphery of established neighborhoods at the intersection of collectors and minor arterials, and have generous landscaping and contain non-residential uses, but require appropriate buffering from residential uses.
- The subject property's access point is on FM 3009, and FM 3009 is classified as a Principal Arterial at 120'-130' of right-of-way.

UDC Section 21.5.4.D Criteria for Approval

3. Whether the uses permitted by the proposed change in zoning district classification and the standards applicable to such uses will be appropriate in the immediate area of the land to be reclassified;

- Yes, the proposed permitted uses in Neighborhood Services District (NS) are meant to be near established neighborhoods and at the intersection of collectors and minor arterials.
- The subject property is located on FM 3009, which is a principal arterial, and is located on the other side of two established neighborhoods.
- The proposed development will need to meet UDC Article 9 design requirements, which will require additional screening, buffering, and increased building setback requirements adjacent to residential use and residential zoned properties.

UDC Section 21.5.4.D Criteria for Approval

4. Whether the proposed change is in accord with any existing or proposed plans for providing public schools, streets, water supply, sanitary sewers or other public services and utilities to the area;

- The proposed development is located on FM 3009. The developer has already communicated with TXDOT and has come to the agreement that the existing signalized T intersection on FM 3009 and Green Valley Road will be modified to a full signalized intersection so that the main access point for the development is at the FM 3009 and Green Valley Road intersection.
- There is existing water and sewer for the proposed development with water being serviced from the Schertz and SSLGC dual CCN and sewer from the Schertz and CCMA dual CCN.

UDC Section 21.5.4.D Criteria for Approval

5. Whether there have been environmental and/or economical changes which warrant the requested change;

- FM 3009, also known as Roy Richard, has been developing as a corridor within the City of Schertz that provides local services and local commercial uses for residents.
- With continuing improvements on FM 3009, and increasing commercial development directly adjacent to FM 3009, the applicant's request for a zone change from Single-Family Residential District (R-2) to Neighborhood Services District (NS) is warranted to expand the existing and continuing medical office development that corresponds with what is existing on FM 3009.

UDC Section 21.5.4.D Criteria for Approval

6. Whether there is an error in the original zoning of the property for which a change is requested;

- There was no error in the original zoning of this property.

7. Whether all of the applicant's back taxes owed to the City have been paid in full (no application will receive final approval until all back taxes are paid in full)

- This does not impact the first reading at City Council.

UDC Section 21.5.11.D Criteria for Approval

8. Whether other criteria are met, which, at the discretion of the Planning and Zoning Commission and the City Council, are deemed relevant and important in the consideration of the amendment.

- Staff has ensured all UDC requirements have been met for the proposed zone change, and at this time have not received any special considerations from the Planning and Zoning Commission or the City Council.

Recommendation

Staff Recommendation

- Due to the location of the proposed development on FM 3009, compatibility with the Comprehensive Land Use Plan, and the minimal adverse impact on the surrounding neighborhoods, Staff recommends approval of Ordinance 24-S-11.

Planning and Zoning Commission Recommendation

- The Planning and Zoning Commission held a public hearing on March 6, 2024 and made a recommendation for approval with a 6-0 vote.

City Council

- The Schertz City Council met on April 2, 2024 and voted to approve Ordinance 24-S-11 as presented with a 7-0 vote.

COMMENTS & QUESTIONS

CITY COUNCIL MEMORANDUM

City Council Meeting: April 16, 2024
Department: Planning & Community Development
Subject: Ordinance 24-S-15 - Approving amendments to Part III of the Schertz Code of Ordinances, Unified Development Code (UDC) to Article 5 - Zoning District and Article 9 - Site Design Standards. *Final Reading.*(B.James/L.Wood/E.Delgado)

BACKGROUND

The Resurrection Baptist Church owns a property at 1002 Live Oak Road that is zoned Public Use District (PUB). The church is attempting to modify their existing building by adding improvements to its frontage. It is common for places of worship to have prominent architectural features and Resurrection Baptist Church is hindered from having such a feature due to the current height limitations of 35-feet set by the district.

The issue with Resurrection Baptist Church sparked a wider conversation about the PUB district and the height requirements, as other applicants and the city itself have had issues with the 35-foot height limitation. Staff researched how these parcels are used/owned, what uses are permitted in the PUB district, and how other cities treat their Civic/Public Use District.

First, staff compiled an inventory of ownership for the parcels in the city's PUB district. There are 70 total parcels, and the ownership is as follows:

PUB District Parcels	
<i>Ownership/Use</i>	<i>Number of Parcels</i>
Government/School/Civic	64
Places of Worship	5
Private Citizen	1 (parcel in Crecent Bend Nature Park)

Second, staff compiled a list of uses from Unified Development Code Section 21.5.8, that are permitted by right or permitted through a Specific Use Permit in the PUB district. Those uses are as follows:

PUB District Uses	
Permitted by Right	<ul style="list-style-type: none"> • Athletic Stadium, Public • Cemetery or Mausoleum • Church, Temple, Synagogue, Mosque, or Other Place of Worship • Civic/Convention Center • Governmental Facilities • Municipal Uses Operated by the City of Schertz • Post Office • Recycling Collection Point • School, Public or Private • Welding/Machine Shop

Specific Use Permit	<ul style="list-style-type: none"> • Antenna and/or Antenna Support Structure, Commercial • Athletic Stadium, Private
---------------------	---

Lastly, staff researched seven target cities to determine the height requirements of their similar districts. Of the seven cities researched, only three had such districts (civic/public use), and in each of them they had no height requirements. Simply put, there was no limitation on height for similar districts in other cities.

Proposed Amendments:

When analyzing the ownership of PUB parcels, the permitted uses, and what other cities do, staff is proposing the following:

Proposed Amendments to 21.5.7.B		
	Existing	Proposed
Height Requirement in PUB	<ul style="list-style-type: none"> • 35 feet 	<ul style="list-style-type: none"> • None
Table Key	<ul style="list-style-type: none"> • key "a" - parking standards • key "c" - no exceeding imp. coverage • key "d" - additional design requirements 	<ul style="list-style-type: none"> • adding key "b" to the PUB districts which require JBSA AICUZ adherence, all other districts have this except PUB currently • adding key "e" to all districts which clarify that some uses may require an SUP and such districts may have different design requirements

The key additions are critical as they ensure the mission of JBSA-Randolph is considered, and they also highlight that uses with SUP requirements may require different standards. These are items that the city already practices.

In addition to these amendments, staff has identified two subsections in the UDC that need clean-up based on previous amendments. Section 21.9.12.2.e states that Site Plans are required for Specific Use Permits. This requirement was removed from Section 21.5.11 in 2023 and needs to be removed from this section to make the UDC more consistent.

The other section is 21.9.3.K which states:

"Minimum front and side building setback lines at streets and crosswalks shall be shown on all plats and shall conform to the restrictions, if any, imposed on the subdivision by the subdivider, but in no event shall such setback lines be less than those required by the applicable zoning district."

In practice, the city actually requests applicants not put setback lines on the plat. Plats are recorded at the county and, for all intents and purposes, are permanent. Setbacks are subject to change with amendments to the city's zoning requirements in the UDC and there is potential for conflict if a legally recorded plat stipulates different setback requirements than our UDC. Staff is proposing to remove this line from the UDC as well. The second sentence in 21.9.3.K will remain.

GOAL

To amend the UDC to review and update the development regulations due to changing conditions and community goals in order to establish and maintain sound, stable and desirable development.

COMMUNITY BENEFIT

It is the City's desire to promote safe, orderly, efficient development and ensure compliance with the City's vision of future growth.

SUMMARY OF RECOMMENDED ACTION

When evaluating UDC amendments, staff uses the Criteria of Approval found in 21.4.7.D.

1. The proposed amendment promotes the health, safety, or general welfare of the City and the safe, orderly, efficient and healthful development of the City.

In order to promote orderly and efficient development, the UDC functions better when there is continuity throughout the code. The Article 9 amendments make the UDC more consistent.

Additionally, municipal uses have exceeded the height requirements of the PUB district before, and it is feasible to assume that future proposals will as well, whether they are a school, a place of worship, or a governmental function. It is neither efficient nor orderly to require every applicant to request variances to the UDC for such projects.

2. An amendment to the text is consistent with other policies of this UDC and the City.

On March 27, 2017, the Board of Adjustment granted a variance to the PUB height requirements for Samuel Clemens High School to build a new auditorium to reach 56 feet.

On May 21, 2018, the Board of Adjustment granted a variance to the PUB height requirements to build the Ray Corbett Elevated Water Storage Tank to reach 225 feet.

These amendments are consistent with adopted policies regarding height variances in the PUB district. Also, requiring that the PUB district adhere to the JB SA AICUZ study protects the mission of Randolph Air Force Base, an explicit desire for the city.

3. Any proposed amendment is consistent with the goals and objectives of this UDC and the City.

The UDC has a clear goal to "facilitate the adequate and efficient provision of transportation, water, wastewater, schools, parks, public safety and recreational facilities, and other public facilities and services". Having overly restrictive height requirements works against this goal of the UDC. These amendments would help alleviate that.

In The City of Schertz Strategic Plan's Policy Values, the city strives to provide essential services with "functions that address basic community needs such as security, life safety and infrastructure", and attempts to achieve a high quality of life through a "well planned community" and by "having good schools and access to higher education". These amendments would help align Schertz with our peer cities, make providing municipal functions easier, and allow our schools to have more developmental flexibility.

Also, The City of Schertz Strategic Plan has clear stated goals for the Operational Values of the city. Among these is the goal to be proactive; "Proactive means initiating change by anticipating future situations in order to make things happen". It is very likely that a school, a utility provider, or the city itself will need to exceed this height requirement in the future. Staff is anticipating this situation and proactively trying to prevent conflicts and unnecessary developmental hurdles.

4. Other criteria which, at the discretion of the Planning and Zoning Commission and the City Council, are deemed relevant and important in the consideration of the amendment.

The scheduled public hearing provides the opportunity for City Council to determine this.

For these reasons, staff is recommending approval of Ordinance 24-S-15.

The Planning and Zoning met on March 6, 2024, and made a recommendation of approval with a 6-0 vote.

The Schertz City Council met on April 2, 2024 and approved Ordinance 24-S-15 as presented with a 7-0 vote.

RECOMMENDATION

Approval of Ordinance 24-S-15.

Attachments

Ord. 24-S-15 with Exhibits
UDC Article 5 - PUB Height redlines
UDC Article 9 redlines
City Council Presentation Slides

ORDINANCE NO. 24-S-15

AN ORDINANCE BY THE CITY COUNCIL OF THE CITY OF SCHERTZ, TEXAS TO AMEND PART III, SCHERTZ CODE OF ORDINANCES, THE UNIFIED DEVELOPMENT CODE (UDC) ARTICLE 5 – ZONING DISTRICTS AND ARTICLE 9 – SITE DESIGN STANDARDS

WHEREAS, pursuant to Ordinance No. 10-S-06, the City of Schertz (the “City”) adopted and Amended and Restated Unified Development Code on April 13, 2010, as further amended (the “Current UDC”); and

WHEREAS, City Staff has reviewed the Current UDC and have recommended certain revision and updates to, and reorganization of, the Current UDC;

WHEREAS, on March 6, 2024, the Planning and Zoning Commission conducted a public hearing and, thereafter recommended approval; and

WHEREAS, on April 2, 2024, the City Council conducted a public hearing and after considering the Criteria and recommendation by the Planning and Zoning Commission, determined that the proposed amendments are appropriate and in the interest of the public safety, health, and welfare.

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

Section 1. The current UDC is hereby amended as set forth on Exhibit A and Exhibit B hereto.

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

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

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

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

Section 6. 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 7. This Ordinance shall be effective upon the date of final adoption hereof and any publication required by law.

PASSED ON FIRST READING, the ____ day of _____ 2024.

PASSED, APPROVED and ADOPTED ON SECOND READING, the ____ day of _____, 2024.

CITY OF SCHERTZ, TEXAS

Ralph Gutierrez, Mayor

ATTEST:

Sheila Edmondson, City Secretary

(city seal)

Exhibit “A”

Proposed Unified Development Code (UDC) Amendments

Article 5 – Zoning Districts

Sec. 21.5.7. Dimensional and Developmental Standards.

- A. *General.* All projects or developments shall comply with all of the applicable dimensional and development standards of this Article. Additional requirements may also apply as required in other sections of this UDC. All area requirements and lot sizes shall be calculated based on gross acres.

Table 21.5.7.A DIMENSIONAL REQUIREMENTS RESIDENTIAL ZONING DISTRICTS											
		Minimum Lot Size And Dimensions			Minimum Yard Setback (Ft)				Miscellaneous Lot Requirements		
Code	Zoning District	Area Sq. Ft.	Width Ft.	Depth Ft.	Front Ft.	Side Ft.	Rear Ft.	Minimum Off-Street Parking Spaces	Max Height Ft.	Max Imperv Cover	Key
R-1	Single-Family Residential District-1	9,600	80	120	25	10	20	2	35	50%	h,j,k,l,m,o
R-2	Single-Family Residential District-2	8,400	70	120	25	10	20	2	35	50%	h,j,k,l,m,o
R-3	Two-Family Residential District	9,000	75	120	25	10	20	2	35	60%	h,j,k,l,m,o
R-4	Apartment/Multi-Family Residential District	10,000	100	100	25	10	20	2	35	75%	a,b,j,k,l,m
R-5	Middle Density Residential District	2,500	25	100	25	10	20	2	35	75%	c,h,j,k,l,m
R-6	Single-Family Residential District-6	7,200	60	120	25	10	20	2	35	50%	h,k,l,m,n,o
R-7	Single-Family Residential District-7	6,600	60	110	25	10	20	2	35	50%	h,k,l,m,n,o
R-A	Single-Family-Residential/Agriculture	21,780	-	-	25	25	25	2	35	50%	h,k,l,m,n
GH	Garden Home Residential District	5,000	50	100	10	10	10	2	35	75%	c,d,e,f,g,k,l,m
MHS	Manufactured Home Subdivision District	6,600	60	110	25	10	20	2	35	50%	j,k,l,m,o
MHP	Manufactured Home Park District	43,560	-	-	25	12.5	25	-	35	50%	j,k,l,m
AD	Agricultural District	217,800	100	100	25	25	25	2	35	30%	h,k,o
MSMU	Main Street Mixed Use	5,000	50	100	10	5	10	2	35	80%	h,j,k,m,n,p
MSMU-ND	Main Street Mixed Use-New Development	5,000	50	100	10	5	10	2	35	80%	j,k,m,p

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(Supp. No. 7)

Key:	
a.	Add 1,800 square feet of area for each unit after the first 3 units. Maximum density shall not exceed 24 units per acre.
b.	2 parking spaces per unit plus 5%.
c.	Zero side lot line for Garden Homes and attached R-5 units.
d.	20-foot paved alley for ingress/egress to all rear garages.
e.	5-foot shall be designated maintenance easement.
f.	Corner lot shall have 10-foot side yard setback from street right-of-way.
g.	25-foot set back to property line adjoining public street.
h.	Corner lot shall have minimum 15-foot side yard setback from street right-of-way. For properties on Main Street, the City Engineer may authorize a reduction to no less than 10' if there are no sight distance issues.
i.	Minimum lot area for each unit.
j.	Site Plan approval required.
k.	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.
l.	No variances may be permitted to exceed the maximum impervious cover limitations
m.	Refer to Article 14, section 21.14.3 for additional design requirements
n.	All single family residential dwelling units constructed within this district shall be constructed with an enclosed garage.
o.	Side yard setback of 7.5 ft. for R-1, R-2, R-3, R-6, R-7, and MHS continues in effect for all subdivisions vested on the date of adoption of Ordinance No. 11-S-15.
p.	Not subject to the requirements in section 21.10.4

Table 21.5.7.B DIMENSIONAL REQUIREMENTS NON-RESIDENTIAL ZONING DISTRICTS (d)												
		Minimum Lot Size And Dimensions			Minimum Yard Setback (Ft)					Miscellaneous Lot Requirements		
Code	Zoning District	Area Sq. Ft.	Width Ft.	Depth Ft.	Front Ft.	Rear Adj Non- Res Zone	Rear Adj. Res Zone	Side Adj Non- Res Zone	Side Adj Res Zone	Max Ht. Ft.	Max Imperv Cover	Key
OP	Office/ Professional	6,000	60	100	25	0	25	0	25	35	70%	a, b, c, d

NS	Neighborhood Services	10,000	100	100	25a	0	25	0	25	35	80%	a, b, c, d, e
GB	General Business	10,000	100	100	25	0	25	0	25	120	80%	a, b, c, d, e
GB-2	General Business-2	10,000	100	100	25	0	25	0	25	120	80%	a, b, c, d, e
M-1	Light Manufacturing	10,000	100	100	25	0	50c	0	25b	120	80%	a, b, c, d, e
M-2	Heavy Manufacturing	10,000	100	100	25	0	50c	0	25b	120	80%	a, b, c, d, e
PUB	Public Use District	10,000	100	100	25	0	15	0	25	N/A	70%	a, b, c, d, e
Key:												
a.	See Article 10 for parking requirements.											
b.	The City of Schertz will follow the guidelines outlined in the Air Installation Compatible Use Zone (AICUZ) study for Randolph Air Force Base.											
c.	No variances may be permitted to exceed the maximum impervious cover limitations.											
d.	Refer to Article 14, Sec. 21.14.3 for additional design requirements.											
e.	Approval of a Specific Use Permit may be conditioned upon modifications to the dimensional requirements.											

B. *Additional Dimensional and Development Standards.*

1. All lots developed for residential purposes shall comply with the lot area, minimum setbacks and height requirements established in table 21.5.7A for the zoning district(s) in which the lot(s) is/are located. All lots developed for allowed non-residential purposes, within residential zoning districts, shall comply with lot, area and height requirements established in table 21.5.7A for the zoning district(s) in which the lot(s) is/are located.
2. All lots developed for non-residential purposes shall comply with lot, area, minimum setbacks, and maximum height requirements established for the zoning district(s) in which the lot(s) is located, as established in table 21.5.7B.
3. All lots shall have at least the minimum area, width and depth as indicated in the tables 21.5.7A and 21.5.7B in this section.
4. Platted subdivisions established by a duly approved plat filed prior to adoption of this UDC shall be exempt from meeting any new lot width, depth, and/or square footage requirements.
5. No lot existing at the time of passage of this UDC shall be reduced in size below the minimum area requirements set forth in tables 21.5.7A and 21.5.7B.
6. Minimum lot size requirements shall not apply to previously platted lots that are annexed into the City, but shall apply in the event of a vacation and replat of such property. All other requirements of this UDC shall nevertheless apply.
7. No portion of any building on a residential lot may be located on any lot closer to any lot line or to the street right-of-way line than is authorized in table 21.5.7A set forth in this section unless otherwise listed below:
 - a. Where the frontage on one (1) side of a street is divided by two (2) or more zoning districts, the front yard setback shall comply with the requirements of most restrictive district for the entire frontage between the nearest intersecting streets.
 - b. Where the building setback line has been established by plat and exceeds the requirements of this UDC, the more restrictive setback line shall apply.
 - c. The front yard setback shall be measured from the property line to the front face of the building, covered porch, covered terrace, or attached accessory building. Eaves and roof extensions may project into the required front yard, not to exceed two (2) feet.
 - d. *Side Yards:* Every part of a required side yard shall be open and unobstructed except for accessory buildings as permitted herein and the ordinary projections of window sills, belt courses, cornices and other architectural features projecting not to exceed twelve (12) inches into the required side yard, and roof eaves projecting not to exceed twenty-four (24) inches into the required side yard.
 - e. *Rear Yards:* Every part of a required rear yard shall be open and unobstructed, except for accessory buildings, uses and structures as permitted and the ordinary projections of window sills, belt courses, cornices and roof overhangs and other architectural features projecting not to exceed twenty-four (24) inches into the required rear yard.
 - f. Where lots have double frontage, running from one street to another, a required front yard setback shall be provided on both streets.
 - g. *Mixed Use Building:* In a building serving dwelling and other uses, in any district, the height and area regulations applicable to non-residential buildings shall apply.

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- h. There shall not be more than one (1) residential dwelling on a platted lot of a duly recorded plat of a single-family residential use.

(Ord. No. 13-S-22 , § 3, 7-16-2013; Ord. No. 14-S-47 , § 3, 11-18-2014; Ord. No. 21-S-26 , § 1(Exh. A), 7-6-2021)

Exhibit “B”

Proposed Unified Development Code (UDC) Amendments

Article 9 – Site Design Standards

Sec. 21.9.3. Lots.

- A. Lot sizes and dimensions shall conform to the minimum requirements of the appropriate zoning district. The lot area shall be computed including all easements. Changes in the required lot sizes and dimensions may only be allowed through rezoning or through the granting of a variance by the BOA. No lot shall be approved which does not meet the minimum requirements of the appropriate zoning district.
- B. In residential subdivisions not served by public sewer, the Planning and Zoning Commission shall require the developer to cause a percolation test to be made. In no case will the lot size in such subdivision be less than one-half acre (21,780 square feet). This is the responsibility of the County Health Inspector.
- C. Depth and width of properties laid out for commercial or industrial purposes shall be adequate to provide for the off-street service and parking facilities required by the type of use and development contemplated.
- D. Corner lots shall have sufficient width to permit the required building setback and proper orientation to both streets. Lots abutting crosswalks shall be treated as corner lots.
- E. Where a residential lot backs up to a railroad right-of-way, high pressure gas line, industrial area or any other land use which may have a dangerous effect on residential property, and where no marginal access street or other street is provided at the rear of such lot, an additional depth of 25 feet shall be required. Where a lot sides to any of the above, an additional width of 15 feet shall be required. A planting screen or non-access easement of at least ten feet shall be provided along the line of lots abutting a railroad right-of-way, high pressure gas line, industrial area or any other land use which may have a dangerous effect on residential property.
- F. Residential lots located on a cul-de-sac shall be at least fifty feet (50') wide at the building line.
- G. Residential lots shall be oriented to take advantage of topography; the best relationship to the overall design of the neighborhood; and to minimize the effects of any surrounding depreciating land uses.
- H. There shall be no residential lots facing directly upon a major street.
- I. All side lines of lots shall be perpendicular to straight street lines and radial to curved street lines except where a waiver to this rule will provide a better street and lot layout.
- J. Every lot shall be provided with adequate access to a public street, either by direct frontage on such street, or by public access easement approved by the Planning and Zoning Commission. Rear and/or side driveway access to major streets shall be prohibited.
- K. The front line setback shall be measured from the point where the public right-of-way ends to the front face to the building, covered porch, covered terrace or attached accessory building.

Sec. 21.9.12. Site plan process.

A. Purpose and Applicability.

1. *Purpose.* This section establishes a Site Plan review process for certain proposed residential, nonresidential, and mixed-use developments. The purpose of Site Plan approval is to:
 - a. ensure compliance with the requirements of this UDC;
 - b. promote better site design;
 - c. integrate projects more effectively into their surrounding environment;
 - d. prevent the impairment or depreciation of property values;
 - e. improve internal vehicular and pedestrian circulation;
 - f. encourage quality and innovative site planning techniques;
 - g. project and enhance the overall general public health, safety and welfare;
 - h. ensure efficient and safe land development;
 - i. ensure harmonious use of land;
 - j. ensure compliance with the Comprehensive Land Plan and other appropriate design standards; and
 - k. ensure adequate parking and loading, water supply, drainage and storm water management, sanitary sewer facilities, and other utilities and services.
2. *Applicability.* Site Plan review and approval shall be required as follows:
 - a. for any development that contains two (2) or more residential dwelling units on a single tract, lot, or parcel of land;
 - b. for any development that contains single-family attached dwelling units;
 - c. for any non-residential development;
 - d. any increase in an existing non-residential structure or a residential structure that contains two (2) or more residential dwelling units that is greater than twenty-five percent (25%) of the existing building square footage;
 - e. for any PDD;
 - f. for any single-family residential development that includes a private amenity or facility or a golf course; and
 - g. no building permit shall be issued for any of the above developments until a Site Plan and all other required engineering/construction plans are first approved by the City. No certificate of occupancy shall be issued until all construction and development conforms to the approved Site Plan and associated engineering/construction plans. The Site Plan review process shall include, but not be limited to, the following steps:
 - i. pre-application conference;
 - ii. site Plan review and approval; and
 - iii. construction of project (after City approval of required Site Plan and other associated plans, including platting and engineering plans).

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3. *Exempted Uses.* The following land use activities are exempted from the requirements of this Article:
- a. construction of one- or two-family dwellings, ordinary accessory structures and related land use activities;
 - b. ordinary repair and maintenance of existing structures or uses;
 - c. agricultural land use;
 - d. incidental landscaping or grading;
 - e. individual manufactured homes; and
 - f. interior alterations that do not substantially change the nature or use of the structure.
- B. *Application Requirements.* Any request for Site Plan approval shall be accompanied by an application prepared in accordance with the Development Manual.
- C. *Processing of Application and Decision.*
1. *Submittal.* An application for a Site Plan shall be submitted to the City Manager or his/her designee. The City Manager or his/her designee shall review the application for completeness in accordance with section 21.4.2. The City Manager or his/her designee shall forward a copy of the proposed plan to the other appropriate departments for review and recommendation.
 2. *Site Plan Approval.* The City Manager or his/her designee may approve a site plan. The City Manager or his/her designee may, for any reason, elect to present the site plan for approval to the Planning and Zoning Commission. The City Manager or his/her designee shall not approve with conditions or disapprove a site plan and shall be required to refer any site plan for which approval is refused to the Planning and Zoning Commission. The City Manager or his/her designee or the Planning and Zoning Commission shall act on the plan within thirty (30) days after the date a complete application is filed.
 3. *Conditional Approval and Denial.* If the Commission conditionally approves or denies the plan, a written statement must be provided to the applicant clearly articulating each specific condition for the conditional approval or reason for denial. Each condition or reason specified in the written statement may not be arbitrary and must include a citation to the regulation, ordinance, or law that is the basis for the conditional approval or denial.
 4. *Applicant Response to Conditional Approval or Denial.* After the conditional approval or denial of a plan, the applicant may submit a written response that satisfies each condition for the conditional approval or remedies each reason for denial provided. The City Manager or his/her designee is authorized to approve revisions required for conditional approval of the site plan. The Planning and Zoning Commission shall determine whether to approve or deny the applicant's previously denied plan or conditionally approved plan, if forwarded to the commission by the City Manager or his/her designee, no later than the fifteenth (15th) day after the date the response was submitted.
- D. *Criteria for Approval.* The City Manager or his/her designee in considering final action on a Site Plan, should consider the following criteria:
1. the Site Plan is consistent with the general purpose and intent of the applicable zoning district regulations;
 2. the Site Plan is compatible with adjacent developments and neighborhoods and includes improvements to mitigate development related adverse impacts;
 3. the Site Plan does not generate pedestrian or vehicular traffic which will be hazardous or conflict with the existing traffic patterns in the area;
 4. the Site Plan incorporates features to minimize adverse effects on adjacent properties;

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5. adequate capacity of public or private facilities for water, sewer, electricity and transportation to and through the development are provided to the site;
 6. the proposed use and associated Site Plan promote the health, safety or general welfare of the City and the safe, orderly, efficient and healthful development of the City.
- E. *Revisions to Approved Site Plan.* Changes to an approved Site Plan shall be processed in the same manner as the original approved Site Plan; however, changes of details within a Site Plan which do not alter the basic physical relationship of the property to adjacent property, do not alter the use permitted, increase the density, floor area, height, or reduce the yards provided at the boundary of the site as indicated on the approved Site Plan, may be authorized by the City Manager or his/her designee.
- F. *Expiration of Site Plan.* A Site Plan shall expire if any of the following occurs:
1. a building permit has not been approved within two (2) years for the construction of any building on the property for which the Site Plan was approved; and
 2. a building permit that was approved as a result of an approved Site Plan expires within two (2) years after approval of the Site Plan.

(Ord. No. 17-S-40 , § 1(Exh. A), 10-24-2017; Ord. No. 18-S-04 , § 1(Exh. A), 1-23-2018; Ord. No. 19-S-22 , § 1(Exh. A), 9-3-2019)

Sec. 21.5.7. Dimensional and Developmental Standards.

- A. *General.* All projects or developments shall comply with all of the applicable dimensional and development standards of this Article. Additional requirements may also apply as required in other sections of this UDC. All area requirements and lot sizes shall be calculated based on gross acres.

Table 21.5.7.A DIMENSIONAL REQUIREMENTS RESIDENTIAL ZONING DISTRICTS											
		Minimum Lot Size And Dimensions			Minimum Yard Setback (Ft)				Miscellaneous Lot Requirements		
Code	Zoning District	Area Sq. Ft.	Width Ft.	Depth Ft.	Front Ft.	Side Ft.	Rear Ft.	Minimum Off-Street Parking Spaces	Max Height Ft.	Max Imperv Cover	Key
R-1	Single-Family Residential District-1	9,600	80	120	25	10	20	2	35	50%	h,j,k,l,m,o
R-2	Single-Family Residential District-2	8,400	70	120	25	10	20	2	35	50%	h,j,k,l,m,o
R-3	Two-Family Residential District	9,000	75	120	25	10	20	2	35	60%	h,j,k,l,m,o
R-4	Apartment/Multi-Family Residential District	10,000	100	100	25	10	20	2	35	75%	a,b,j,k,l,m
R-5	Middle Density Residential District	2,500	25	100	25	10	20	2	35	75%	c,h,j,k,l,m
R-6	Single-Family Residential District-6	7,200	60	120	25	10	20	2	35	50%	h,k,l,m,n,o
R-7	Single-Family Residential District-7	6,600	60	110	25	10	20	2	35	50%	h,k,l,m,n,o
R-A	Single-Family-Residential/Agriculture	21,780	-	-	25	25	25	2	35	50%	h,k,l,m,n
GH	Garden Home Residential District	5,000	50	100	10	10	10	2	35	75%	c,d,e,f,g,k,l,m
MHS	Manufactured Home Subdivision District	6,600	60	110	25	10	20	2	35	50%	j,k,l,m,o
MHP	Manufactured Home Park District	43,560	-	-	25	12.5	25	-	35	50%	j,k,l,m
AD	Agricultural District	217,800	100	100	25	25	25	2	35	30%	h,k,o
MSMU	Main Street Mixed Use	5,000	50	100	10	5	10	2	35	80%	h,j,k,m,n,p
MSMU-ND	Main Street Mixed Use-New Development	5,000	50	100	10	5	10	2	35	80%	j,k,m,p

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Key:	
a.	Add 1,800 square feet of area for each unit after the first 3 units. Maximum density shall not exceed 24 units per acre.
b.	2 parking spaces per unit plus 5%.
c.	Zero side lot line for Garden Homes and attached R-5 units.
d.	20-foot paved alley for ingress/egress to all rear garages.
e.	5-foot shall be designated maintenance easement.
f.	Corner lot shall have 10-foot side yard setback from street right-of-way.
g.	25-foot set back to property line adjoining public street.
h.	Corner lot shall have minimum 15-foot side yard setback from street right-of-way. For properties on Main Street, the City Engineer may authorize a reduction to no less than 10' if there are no sight distance issues.
i.	Minimum lot area for each unit.
j.	Site Plan approval required.
k.	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.
l.	No variances may be permitted to exceed the maximum impervious cover limitations
m.	Refer to Article 14, section 21.14.3 for additional design requirements
n.	All single family residential dwelling units constructed within this district shall be constructed with an enclosed garage.
o.	Side yard setback of 7.5 ft. for R-1, R-2, R-3, R-6, R-7, and MHS continues in effect for all subdivisions vested on the date of adoption of Ordinance No. 11-S-15.
p.	Not subject to the requirements in section 21.10.4

Table 21.5.7.B DIMENSIONAL REQUIREMENTS NON-RESIDENTIAL ZONING DISTRICTS (d)												
		Minimum Lot Size And Dimensions			Minimum Yard Setback (Ft)					Miscellaneous Lot Requirements		
Code	Zoning District	Area Sq. Ft.	Width Ft.	Depth Ft.	Front Ft.	Rear Adj Non- Res Zone	Rear Adj. Res Zone	Side Adj Non- Res Zone	Side Adj Res Zone	Max Ht. Ft.	Max Imperv Cover	Key
OP	Office/ Professional	6,000	60	100	25	0	25	0	25	35	70%	a, b, c, d

NS	Neighborhood Services	10,000	100	100	25a	0	25	0	25	35	80%	a, b, c, d, <u>e</u>
GB	General Business	10,000	100	100	25	0	25	0	25	120	80%	a, b, c, d, <u>e</u>
GB-2	General Business-2	10,000	100	100	25	0	25	0	25	120	80%	a, b, c, d, <u>e</u>
M-1	Light Manufacturing	10,000	100	100	25	0	50c	0	25b	120	80%	a, b, c, d, <u>e</u>
M-2	Heavy Manufacturing	10,000	100	100	25	0	50c	0	25b	120	80%	a, b, c, d, <u>e</u>
PUB	Public Use District	10,000	100	100	25	0	15	0	25	35 N/A	70%	a, <u>b</u> , c, d, <u>e</u>
Key:												
a.	See Article 10 for parking requirements.											
b.	Uses may require a Specific Use Permit. The City of Schertz will follow the guidelines outlined in the Air Installation Compatible Use Zone (AICUZ) study for Randolph Air Force Base.											
c.	No variances may be permitted to exceed the maximum impervious cover limitations.											
d.	Refer to Article 14, Sec. 21.14.3 for additional design requirements.											
e.	<u>Approval of a Specific Use Permit may be conditioned upon modifications to the dimensional requirements.</u>											

B. *Additional Dimensional and Development Standards.*

1. All lots developed for residential purposes shall comply with the lot area, minimum setbacks and height requirements established in table 21.5.7A for the zoning district(s) in which the lot(s) is/are located. All lots developed for allowed non-residential purposes, within residential zoning districts, shall comply with lot, area and height requirements established in table 21.5.7A for the zoning district(s) in which the lot(s) is/are located.
2. All lots developed for non-residential purposes shall comply with lot, area, minimum setbacks, and maximum height requirements established for the zoning district(s) in which the lot(s) is located, as established in table 21.5.7B.
3. All lots shall have at least the minimum area, width and depth as indicated in the tables 21.5.7A and 21.5.7B in this section.
4. Platted subdivisions established by a duly approved plat filed prior to adoption of this UDC shall be exempt from meeting any new lot width, depth, and/or square footage requirements.
5. No lot existing at the time of passage of this UDC shall be reduced in size below the minimum area requirements set forth in tables 21.5.7A and 21.5.7B.
6. Minimum lot size requirements shall not apply to previously platted lots that are annexed into the City, but shall apply in the event of a vacation and replat of such property. All other requirements of this UDC shall nevertheless apply.
7. No portion of any building on a residential lot may be located on any lot closer to any lot line or to the street right-of-way line than is authorized in table 21.5.7A set forth in this section unless otherwise listed below:
 - a. Where the frontage on one (1) side of a street is divided by two (2) or more zoning districts, the front yard setback shall comply with the requirements of most restrictive district for the entire frontage between the nearest intersecting streets.
 - b. Where the building setback line has been established by plat and exceeds the requirements of this UDC, the more restrictive setback line shall apply.
 - c. The front yard setback shall be measured from the property line to the front face of the building, covered porch, covered terrace, or attached accessory building. Eaves and roof extensions may project into the required front yard, not to exceed two (2) feet.
 - d. *Side Yards:* Every part of a required side yard shall be open and unobstructed except for accessory buildings as permitted herein and the ordinary projections of window sills, belt courses, cornices and other architectural features projecting not to exceed twelve (12) inches into the required side yard, and roof eaves projecting not to exceed twenty-four (24) inches into the required side yard.
 - e. *Rear Yards:* Every part of a required rear yard shall be open and unobstructed, except for accessory buildings, uses and structures as permitted and the ordinary projections of window sills, belt courses, cornices and roof overhangs and other architectural features projecting not to exceed twenty-four (24) inches into the required rear yard.
 - f. Where lots have double frontage, running from one street to another, a required front yard setback shall be provided on both streets.
 - g. *Mixed Use Building:* In a building serving dwelling and other uses, in any district, the height and area regulations applicable to non-residential buildings shall apply.

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- h. There shall not be more than one (1) residential dwelling on a platted lot of a duly recorded plat of a single-family residential use.

(Ord. No. 13-S-22 , § 3, 7-16-2013; Ord. No. 14-S-47 , § 3, 11-18-2014; Ord. No. 21-S-26 , § 1(Exh. A), 7-6-2021)

Sec. 21.9.3. Lots.

- A. Lot sizes and dimensions shall conform to the minimum requirements of the appropriate zoning district. The lot area shall be computed including all easements. Changes in the required lot sizes and dimensions may only be allowed through rezoning or through the granting of a variance by the BOA. No lot shall be approved which does not meet the minimum requirements of the appropriate zoning district.
- B. In residential subdivisions not served by public sewer, the Planning and Zoning Commission shall require the developer to cause a percolation test to be made. In no case will the lot size in such subdivision be less than one-half acre (21,780 square feet). This is the responsibility of the County Health Inspector.
- C. Depth and width of properties laid out for commercial or industrial purposes shall be adequate to provide for the off-street service and parking facilities required by the type of use and development contemplated.
- D. Corner lots shall have sufficient width to permit the required building setback and proper orientation to both streets. Lots abutting crosswalks shall be treated as corner lots.
- E. Where a residential lot backs up to a railroad right-of-way, high pressure gas line, industrial area or any other land use which may have a dangerous effect on residential property, and where no marginal access street or other street is provided at the rear of such lot, an additional depth of 25 feet shall be required. Where a lot sides to any of the above, an additional width of 15 feet shall be required. A planting screen or non-access easement of at least ten feet shall be provided along the line of lots abutting a railroad right-of-way, high pressure gas line, industrial area or any other land use which may have a dangerous effect on residential property.
- F. Residential lots located on a cul-de-sac shall be at least fifty feet (50') wide at the building line.
- G. Residential lots shall be oriented to take advantage of topography; the best relationship to the overall design of the neighborhood; and to minimize the effects of any surrounding depreciating land uses.
- H. There shall be no residential lots facing directly upon a major street.
- I. All side lines of lots shall be perpendicular to straight street lines and radial to curved street lines except where a waiver to this rule will provide a better street and lot layout.
- J. Every lot shall be provided with adequate access to a public street, either by direct frontage on such street, or by public access easement approved by the Planning and Zoning Commission. Rear and/or side driveway access to major streets shall be prohibited.
- K. ~~Minimum front and side building setback lines at streets and crosswalks shall be shown on all plats and shall conform to the restrictions, if any, imposed on the subdivision by the subdivider, but in no event shall such setback lines be less than those required by the applicable zoning district.~~ The front line setback shall be measured from the point where the public right-of-way ends to the front face to the building, covered porch, covered terrace or attached accessory building.

Sec. 21.9.12. Site plan process.

A. *Purpose and Applicability.*

1. *Purpose.* This section establishes a Site Plan review process for certain proposed residential, nonresidential, and mixed-use developments. The purpose of Site Plan approval is to:
 - a. ensure compliance with the requirements of this UDC;
 - b. promote better site design;
 - c. integrate projects more effectively into their surrounding environment;
 - d. prevent the impairment or depreciation of property values;
 - e. improve internal vehicular and pedestrian circulation;
 - f. encourage quality and innovative site planning techniques;
 - g. project and enhance the overall general public health, safety and welfare;
 - h. ensure efficient and safe land development;
 - i. ensure harmonious use of land;
 - j. ensure compliance with the Comprehensive Land Plan and other appropriate design standards; and
 - k. ensure adequate parking and loading, water supply, drainage and storm water management, sanitary sewer facilities, and other utilities and services.
2. *Applicability.* Site Plan review and approval shall be required as follows:
 - a. for any development that contains two (2) or more residential dwelling units on a single tract, lot, or parcel of land;
 - b. for any development that contains single-family attached dwelling units;
 - c. for any non-residential development;
 - d. any increase in an existing non-residential structure or a residential structure that contains two (2) or more residential dwelling units that is greater than twenty-five percent (25%) of the existing building square footage;
 - e. for any PDD ~~or SUP~~;
 - f. for any single-family residential development that includes a private amenity or facility or a golf course; and
 - g. no building permit shall be issued for any of the above developments until a Site Plan and all other required engineering/construction plans are first approved by the City. No certificate of occupancy shall be issued until all construction and development conforms to the approved Site Plan and associated engineering/construction plans. The Site Plan review process shall include, but not be limited to, the following steps:
 - i. pre-application conference;
 - ii. site Plan review and approval; and
 - iii. construction of project (after City approval of required Site Plan and other associated plans, including platting and engineering plans).

-
3. *Exempted Uses.* The following land use activities are exempted from the requirements of this Article:
- a. construction of one- or two-family dwellings, ordinary accessory structures and related land use activities;
 - b. ordinary repair and maintenance of existing structures or uses;
 - c. agricultural land use;
 - d. incidental landscaping or grading;
 - e. individual manufactured homes; and
 - f. interior alterations that do not substantially change the nature or use of the structure.
- B. *Application Requirements.* Any request for Site Plan approval shall be accompanied by an application prepared in accordance with the Development Manual.
- C. *Processing of Application and Decision.*
1. *Submittal.* An application for a Site Plan shall be submitted to the City Manager or his/her designee. The City Manager or his/her designee shall review the application for completeness in accordance with section 21.4.2. The City Manager or his/her designee shall forward a copy of the proposed plan to the other appropriate departments for review and recommendation.
 2. *Site Plan Approval.* The City Manager or his/her designee may approve a site plan. The City Manager or his/her designee may, for any reason, elect to present the site plan for approval to the Planning and Zoning Commission. The City Manager or his/her designee shall not approve with conditions or disapprove a site plan and shall be required to refer any site plan for which approval is refused to the Planning and Zoning Commission. The City Manager or his/her designee or the Planning and Zoning Commission shall act on the plan within thirty (30) days after the date a complete application is filed.
 3. *Conditional Approval and Denial.* If the Commission conditionally approves or denies the plan, a written statement must be provided to the applicant clearly articulating each specific condition for the conditional approval or reason for denial. Each condition or reason specified in the written statement may not be arbitrary and must include a citation to the regulation, ordinance, or law that is the basis for the conditional approval or denial.
 4. *Applicant Response to Conditional Approval or Denial.* After the conditional approval or denial of a plan, the applicant may submit a written response that satisfies each condition for the conditional approval or remedies each reason for denial provided. The City Manager or his/her designee is authorized to approve revisions required for conditional approval of the site plan. The Planning and Zoning Commission shall determine whether to approve or deny the applicant's previously denied plan or conditionally approved plan, if forwarded to the commission by the City Manager or his/her designee, no later than the fifteenth (15th) day after the date the response was submitted.
- D. *Criteria for Approval.* The City Manager or his/her designee in considering final action on a Site Plan, should consider the following criteria:
1. the Site Plan is consistent with the general purpose and intent of the applicable zoning district regulations;
 2. the Site Plan is compatible with adjacent developments and neighborhoods and includes improvements to mitigate development related adverse impacts;
 3. the Site Plan does not generate pedestrian or vehicular traffic which will be hazardous or conflict with the existing traffic patterns in the area;
 4. the Site Plan incorporates features to minimize adverse effects on adjacent properties;

-
5. adequate capacity of public or private facilities for water, sewer, electricity and transportation to and through the development are provided to the site;
 6. the proposed use and associated Site Plan promote the health, safety or general welfare of the City and the safe, orderly, efficient and healthful development of the City.
- E. *Revisions to Approved Site Plan.* Changes to an approved Site Plan shall be processed in the same manner as the original approved Site Plan; however, changes of details within a Site Plan which do not alter the basic physical relationship of the property to adjacent property, do not alter the use permitted, increase the density, floor area, height, or reduce the yards provided at the boundary of the site as indicated on the approved Site Plan, may be authorized by the City Manager or his/her designee.
- F. *Expiration of Site Plan.* A Site Plan shall expire if any of the following occurs:
1. a building permit has not been approved within two (2) years for the construction of any building on the property for which the Site Plan was approved; and
 2. a building permit that was approved as a result of an approved Site Plan expires within two (2) years after approval of the Site Plan.

(Ord. No. 17-S-40 , § 1(Exh. A), 10-24-2017; Ord. No. 18-S-04 , § 1(Exh. A), 1-23-2018; Ord. No. 19-S-22 , § 1(Exh. A), 9-3-2019)



Ordinance 24-S-15

UDC Amendments to Article 5 & Article 9

Emily Delgado | PLANNING MANAGER

Background

- **The Resurrection Baptist Church**
 - 1002 Live Oak Road
 - Zoned Public Use District (PUB)
- **Other applicants have run into this issue before.**
- **Value of 35-foot height restriction in PUB?**
- **7 Target Cities were researched**
 - **Either no height restrictions or;**
 - **No similar Zoning District**

PUB District Profile

- **70 Parcels in city with PUB**
 - **64 – Government/Civic Use**
 - **5 – Places of Worship**
 - **1 – Private Citizen (in Crecent Bend Nature Park)**
- **Permitted Uses**

Permitted by Right	SUP
<ul style="list-style-type: none">• Athletic Stadium, Public• Cemetery or Mausoleum• Church, Temple, Synagogue, Mosque, or Other Place of Worship• Civic/Convention Center• Governmental Facilities• Municipal Uses Operated by the City of Schertz• Post Office• Recycling Collection Point• School, Public or Private• Welding/Machine Shop	<ul style="list-style-type: none">• Antenna and/or Antenna Support Structure, Commercial• Athletic Stadium, Private

Past Variances

- March 27, 2017 – BOA granted a variance to the PUB height requirements for Samuel Clemens High School to build a new auditorium to reach 56 feet.
- May 21, 2018 – BOA granted a variance to the PUB height requirements to build the Ray Corbett Elevated Water Storage Tank to reach 225 feet.

Proposal

- Eliminating Height Requirements
- Adjusting “keys”

NS	Neighborhood Services	10,000	100	100	25a	0	25	0	25	35	80%	a, b, c, d, <u>e</u>
GB	General Business	10,000	100	100	25	0	25	0	25	120	80%	a, b, c, d, <u>e</u>
GB-2	General Business-2	10,000	100	100	25	0	25	0	25	120	80%	a, b, c, d, <u>e</u>
M-1	Light Manufacturing	10,000	100	100	25	0	50c	0	25b	120	80%	a, b, c, d, <u>e</u>
M-2	Heavy Manufacturing	10,000	100	100	25	0	50c	0	25b	120	80%	a, b, c, d, <u>e</u>
PUB	Public Use District	10,000	100	100	25	0	15	0	25	35 N/A	70%	a, <u>b</u> , c, d, <u>e</u>

Key:

a.	See Article 10 for parking requirements.
b.	Uses may require a Specific Use Permit. The City of Schertz will follow the guidelines outlined in the Air Installation Compatible Use Zone (AICUZ) study for Randolph Air Force Base.
c.	No variances may be permitted to exceed the maximum impervious cover limitations.
d.	Refer to Article 14, Sec. 21.14.3 for additional design requirements.
<u>e.</u>	<u>Approval of a Specific Use Permit may be conditioned upon modifications to the dimensional requirements.</u>

Article 9 clean-up

- 21.9.3 Lots

- K. ~~Minimum front and side building setback lines at streets and crosswalks shall be shown on all plats and shall conform to the restrictions, if any, imposed on the subdivision by the subdivider, but in no event shall such setback lines be less than those required by the applicable zoning district.~~ The front line setback shall be measured from the point where the public right-of-way ends to the front face to the building, covered porch, covered terrace or attached accessory building.

- 21.9.12 Site Plan Process

2. *Applicability.* Site Plan review and approval shall be required as follows:
- a. for any development that contains two (2) or more residential dwelling units on a single tract, lot, or parcel of land;
 - b. for any development that contains single-family attached dwelling units;
 - c. for any non-residential development;
 - d. any increase in an existing non-residential structure or a residential structure that contains two (2) or more residential dwelling units that is greater than twenty-five percent (25%) of the existing building square footage;
 - e. for any PDD ~~or SUP~~;

Staff Recommendation

- Article 9 clean-up necessary for UDC consistency.
- PUB height requirement eliminations will align with previous adopted policies and make municipal/civic functions easier.
- Staff recommends approval of the amendments to the Unified Development Code (UDC) as proposed and discussed.
- The Planning and Zoning Commission met on March 6, 2024, and made a recommendation of approval with a 6-0 vote.
- The Schertz City Council met on April 2, 2024 and voted to approve Ordinance 24-S-11 as presented with a 7-0 vote.

COMMENTS & QUESTIONS

CITY COUNCIL MEMORANDUM

City Council Meeting: April 16, 2024

Department: Planning & Community Development

Subject: Ordinance 24-S-16 - Approving amendments to Part III of the Schertz Code of Ordinances, Unified Development Code (UDC) to Article 5 - Zoning District and Article 16 - Definitions. *Final Reading* (B.James/L.Wood/E.Delgado)

BACKGROUND

The Schertz Unified Development Code (UDC) defines self-storage facilities in Article 16 as the following:

"Mini-Warehouse/Public Storage: A building(s) containing separate, individual self-storage units for rent or lease. The conduct of sales, business, or any activity other than storage shall be prohibited within any individual storage unit".

In UDC Article 5 Section 21.5.8, the UDC permits Mini-Warehouse/Public Storage in the following districts:

Mini-Warehouse/Public Storage	
Permitted by Right	<ul style="list-style-type: none"> • Manufacturing - Light (M-1) • Manufacturing - Heavy (M-2)
Permitted with a Specific Use Permit	<ul style="list-style-type: none"> • General Business - 2 (GB-2)

Schertz has received repeated interest in self-storage projects in the city specifically in the General Business (GB) zoning district. The City's current Unified Development Code restricts the location of these developments. The rationale for these restrictions is based on the character of the existing Mini-Warehouse/Public Storage in Schertz like the two Lockaway Storage complexes on FM 78 and FM 1518. The City has determined, through the UDC, that the single-story metal construction of these complexes is more appropriate in the more intense commercial zoning districts.

However, a trend in the self-storage industry offers a product that has greater architectural and construction standards and in some cases offers a mixture of uses. Schertz has seen a similar product recently at 21586 IH 35 N, in the Hubertus Retail Subdivision. This is the current CubeSmart self-storage facility, and this project was approved in 2013 by Ord. 13-S-20 under a Planned Development District (PDD). Their PDD states that 3.8% of the ground floor of the building be leased as office space.

As there is demand for self-storage in the real estate market, and Schertz has been amenable to mixed-use storage facilities in the past, staff is proposing to amend the UDC to create a new mixed-use self-storage land use.

Proposed Amendments:

Mixed-Use Self-Storage

Article 5, Section 21.5.8 Permitted Use Table	
Permitted by Right	<ul style="list-style-type: none"> • General Business - 2 District (GB-2) • Manufacturing - Light District (M-1) • Manufacturing - Heavy (M-2)
Permitted with Specific Use Permit	<ul style="list-style-type: none"> • General Business (GB)
Article 16 - Definitions	
<p><i>Mixed-Use Self-Storage:</i> A climate-controlled building(s) containing ground floor retail, service, or office space with separate, individual self-storage units for rent or lease. The conduct of sales, business, or any activity other than storage shall be prohibited within the individual storage units. Such building(s) shall be a minimum of 45-feet.</p>	

GOAL

To amend the UDC to review and update the development regulations due to changing conditions and community goals in order to establish and maintain sound, stable and desirable development.

COMMUNITY BENEFIT

It is the City's desire to promote safe, orderly, efficient development and ensure compliance with the City's vision of future growth.

SUMMARY OF RECOMMENDED ACTION

When evaluating UDC amendments, staff uses the Criteria of Approval found in 21.4.7.D.

1. The proposed amendment promotes the health, safety, or general welfare of the City and the safe, orderly, efficient and healthful development of the City.

These amendments would help promote orderly and healthful development, by offering the opportunity for property owners and self-storage developers to provide an enhanced and more thoughtful product. Also, having a mixture of uses in a self-storage building is a more efficient use of land.

2. An amendment to the text is consistent with other policies of this UDC and the City.

These amendments would codify a space in the UDC where a mixed-use self-storage is possible, which is consistent with City's the adopted policy of Ord. 13-S-20. Also, the City's existing self-storage policy permits this use in higher intensity zoning districts. The new proposed permitted use would allow for self-storage in lower intensity zoning districts with a Specific Use Permit, allowing Planning and Zoning and City Council more discretion on each specific proposal. This would align with the UDC policy to "minimize the conflicts among the uses of land and buildings".

3. Any proposed amendment is consistent with the goals and objectives of this UDC and the City.

The City of Schertz Strategic Plan has clear stated goals for the Quality of Life of the city. Among these is the goal to have an attractive community by having a "well planned, well landscaped, well-built and well maintained community". Also, it is the responsibility of staff to be "continuously improving and evolving", "forward thinking", and have "the ability to forecast and meet needs even before the customer identifies them". These amendments would help Schertz capture the economic demand for self storage while also creating a quality built environment. Thus, achieving the goals laid out in the Strategic Plan.

4. Other criteria which, at the discretion of the Planning and Zoning Commission and the City Council, are deemed relevant and important in the consideration of the amendment.

The scheduled public hearing provides the opportunity for City Council to determine this.

Therefore, staff recommend approval of Ordinance 24-S-16.

The Planning and Zoning met on March 6, 2024, and made a recommendation of approval with a 6-0 vote.

The Schertz City Council met on April 2, 2024 and approved Ordinance 24-S-16 as presented with a 7-0 vote.

RECOMMENDATION

Approval of Ordinance 24-S-16.

Attachments

Ord. 24-S-16 with Exhibits
UDC Proposed - Mixed-Use Self-Storage
City Council Presentation Slides

ORDINANCE NO. 24-S-16

AN ORDINANCE BY THE CITY COUNCIL OF THE CITY OF SCHERTZ, TEXAS TO AMEND PART III, SCHERTZ CODE OF ORDINANCES, THE UNIFIED DEVELOPMENT CODE (UDC) ARTICLE 5 – ZONING DISTRICTS AND ARTICLE 16 - DEFINITIONS

WHEREAS, pursuant to Ordinance No. 10-S-06, the City of Schertz (the “City”) adopted and Amended and Restated Unified Development Code on April 13, 2010, as further amended (the “Current UDC”); and

WHEREAS, City Staff has reviewed the Current UDC and have recommended certain revision and updates to, and reorganization of, the Current UDC;

WHEREAS, on March 6, 2024, the Planning and Zoning Commission conducted a public hearing and, thereafter recommended approval; and

WHEREAS, on April 2, 2024, the City Council conducted a public hearing and after considering the Criteria and recommendation by the Planning and Zoning Commission, determined that the proposed amendments are appropriate and in the interest of the public safety, health, and welfare.

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

Section 1. The current UDC is hereby amended as set forth on Exhibit A and Exhibit B hereto.

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

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

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

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

Section 6. 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 7. This Ordinance shall be effective upon the date of final adoption hereof and any publication required by law.

PASSED ON FIRST READING, the ____ day of _____ 2024.

PASSED, APPROVED and ADOPTED ON SECOND READING, the ____ day of _____, 2024.

CITY OF SCHERTZ, TEXAS

Ralph Gutierrez, Mayor

ATTEST:

Sheila Edmondson, City Secretary

(city seal)

Exhibit “A”

Proposed Unified Development Code (UDC) Amendments

Article 5 – Zoning Districts

Proposed UDC Amendment

Article 5 – Permitted Use Table

Proposed changes to Article 5 – Permitted Use Table to add Mixed-Use Self-Storage

Zoning District	P=Permitted/ S= Specific Use Permit	Permitted Uses
Manufacturing – Light District (M-1)	P	Mixed-Use Self-Storage
Manufacturing – Heavy District (M-2)	P	Mixed-Use Self-Storage
General Business – 2 District (GB -2)	P	Mixed-Use Self-Storage
General Business District (GB)	S	Mixed-Use Self-Storage

No other changes are proposed.

Exhibit “B”

Proposed Unified Development Code (UDC) Amendments

Article 16 – Definitions

Proposed UDC Amendment

Article 16 - Definitions

Proposed changes to Article 16 - Definitions to add Mixed-Use Self Storage.

Mixed-Use Self-Storage: A climate-controlled building(s) containing ground floor retail, service, or office space with separate, individual self-storage units for rent or lease. The conduct of sales, business, or any activity other than storage shall be prohibited within the individual storage units. Such building(s) shall be a minimum of 45-feet.

No other changes are proposed.

Proposed UDC Amendment

Article 16 - Definitions

Proposed changes to Article 16 - Definitions to add Mixed-Use Self Storage.

Mixed-Use Self-Storage: A climate-controlled building(s) containing ground floor retail, service, or office space with separate, individual self-storage units for rent or lease. The conduct of sales, business, or any activity other than storage shall be prohibited within the individual storage units. Such building(s) shall be a minimum of 45-feet.

No other changes are proposed.

Proposed UDC Amendment

Article 5 – Permitted Use Table

Proposed changes to Article 5 – Permitted Use Table to add Mixed-Use Self-Storage

Zoning District	P=Permitted/ S= Specific Use Permit	Permitted Uses
Manufacturing – Light District (M-1)	P	Mixed-Use Self-Storage
Manufacturing – Heavy District (M-2)	P	Mixed-Use Self-Storage
General Business – 2 District (GB -2)	P	Mixed-Use Self-Storage
General Business District (GB)	S	Mixed-Use Self-Storage

No other changes are proposed.



Ordinance 24-S-16

UDC Amendments to Article 5 & Article 16

Emily Delgado | PLANNING MANAGER

Background

- Interest in the City for Self Storage in General Business District (GB)
- Staff is proposing new Use to control style and nature of these developments.

Current UDC

Mini-Warehouse/Public Storage:

- A building(s) containing separate, individual self-storage units for rent or lease. The conduct of sales, business, or any activity other than storage shall be prohibited within any individual storage unit".
- Permitted Uses

Permitted by Right	SUP
<ul style="list-style-type: none">• Manufacturing - Light (M-1)• Manufacturing - Heavy (M-2)	<ul style="list-style-type: none">• General Business - 2 (GB-2)

Current UDC

- Schertz has received repeated interest in self-storage projects in the city specifically in the General Business (GB) zoning district. The City's current UDC restricts the location of these developments.
- The rationale for these restrictions is based on the character of the existing Mini-Warehouse/Public Storage in Schertz.
- The City has determined, through the UDC, that the single-story metal construction of these complexes is more appropriate in the more intense commercial zoning districts



Self Storage Trends

- However, a trend in the self-storage industry offers a product that has greater architectural and construction standards and in some cases offers a mixture of uses.
- Schertz has seen a similar product at 21586 IH 35 N, in the Hubertus Retail Subdivision, the current CubeSmart self-storage facility, which was approved in 2013 by Ord. 13-S-20 under a Planned Development District (PDD). Their PDD states that 3.8% of the ground floor of the building be leased as office space.
- As there is demand for self-storage in the real estate market, and Schertz has been amenable to mixed-use storage facilities in the past, staff is proposing to amend the UDC to create a new mixed-use self-storage land use



Proposal

Mixed-Use Self-Storage:

A climate-controlled building(s) containing ground floor retail, service, or office space with separate, individual self-storage units for rent or lease. The conduct of sales, business, or any activity other than storage shall be prohibited within the individual storage units. Such building(s) shall be a minimum of 45-feet.

Permitted by Right	SUP
<ul style="list-style-type: none">• General Business - 2 (GB-2)• Manufacturing - Light (M-1)• Manufacturing - Heavy (M-2)	<ul style="list-style-type: none">• General Business - (GB)

Staff Recommendation

- New use would help Schertz guide self-storage demand to match community vision by minimizing conflicts and maintaining an attractive community.
- Therefore, Staff recommends approval of the amendments to the Unified Development Code (UDC) as proposed and discussed.
- The Planning and Zoning Commission met on March 6, 2024, and made a recommendation of approval with a 6-0 vote.
- The Schertz City Council met on April 2, 2024 and voted to approve Ordinance 24-S-11 as presented with a 7-0 vote.

COMMENTS & QUESTIONS

CITY COUNCIL MEMORANDUM

City Council Meeting: April 16, 2024
Department: Planning & Community Development
Subject: Ordinance 24-S-14 - Approving amendments to Part III of the Schertz Code of Ordinances, Unified Development Code (UDC) to Article 1 - General Provisions, Article 4 - Procedures and Applications, and Article 14 - Transportation. *Final Reading* (B.James/K.Woodlee/J.Nowak)

BACKGROUND

Background:

Over time, sections in the Unified Development Code (UDC) relating to Utilities and Transportation require updates and revisions. This can be warranted by changes in state law or by the City changing its procedures, standards, and practices.

The Texas Local Government Code (LGC) has specific requirements for Development Manuals and Public Works Specification Manuals. While the city is currently in conformance with these requirements in practice, staff with counsel from the legal team felt it necessary to explicitly state these requirements in the Unified Development Code (UDC). This is considered best practice and is consistently done throughout other sections in the UDC. Similarly, several other proposed UDC edits within these amendments will help the UDC align with other parts of the LGC, including recent legislative changes to the LGC.

Some sections of the UDC are in conflict with other documents, such as the Master Thoroughfare Plan and the Public Works Specifications Manual, and some proposed changes are to remove the conflicts. The legal team also advised that language should be added to identify which standard/document takes precedence in case of a conflict. Similarly, language is being added to many sections to make the UDC more consistent. For example, certain subsections explicitly state requirements for planning applications, but forget to mention these same applications when dealing with resubmittals/appeals/etc. While some may think these requirements are implied, it is best practice to have redundant language, and thus provide more consistency throughout the UDC.

Amendment of the Utility Service Extension section of the UDC (Section 4.11) is proposed to correct the current code's authorization for the City to require annexation as a condition of granting approval of service to a property already within the City's utility CCN.

These amendments propose many changes to the Transportation section of the UDC (Article 14). These changes include clarifying terms and classifications, better detailing the City's procedures, and providing more requirements or standards for subsections that are too broad. Also, conditions in the community change and changes to some standards are appropriate. For example, our current fire apparatus needs more room to safely turn around in cul-de-sacs. In other cases, standards are not consistent with other city requirements and/or are outdated and do not reflect current practices.

The purpose of PLUDC20230221 is to make the development process more streamlined and easier to understand for applicants. Also, these amendments will bring the UDC into better alignment with the

LGC.

Proposed Amendments:

Article 1	
Section 21.1.10 - Development Manual	<ul style="list-style-type: none">• Adding language detailing a city process with the Development Manual to align with Texas Local Government Code (LGC) requirements.
Section 21.1.11 - Public Works Specification Manual	<ul style="list-style-type: none">• Adding language detailing a city process with the Public Works Specification Manual to align with Texas Local Government Code (LGC) requirements.
Article 4	
Section 21.4.2. - Initiation of Application	<ul style="list-style-type: none">• Staff is proposing to remove the requirement for official Public Works certification.• Staff is matching language of subsection C.6 to C.1. This is in relation to certification letters, making the UDC more consistent.
Section 21.4.6 - Comprehensive Land Plan Amendment	<ul style="list-style-type: none">• Adding the "City Manager or his/her designee" term in this section to match the rest of the UDC.
Section 21.4.11 - Utility Service Extension	<ul style="list-style-type: none">• Removing City's authority to annex property within City's CCN for which utility service extension is requested. Explicitly requiring application for Utility Service Extensions for property for which platting is not required (such as property outside the City Limits).• Changing the accompaniment of application for voluntary annexation from "shall" to "may".• Adding requirement for approved CCN transfer, Service Area map update, and CIP amendment.• Adding the "City Manager or his/her designee" term in this section to match the rest of the UDC.
Section 21.4.14 - Appeals	<ul style="list-style-type: none">• Staff is updating time-frames and language in the Appeals section to align with the LGC.
Section 21.4.15 - Public Infrastructure Improvements, Construction Plans, and Improvements Agreements	<ul style="list-style-type: none">• Adding language clarifying that construction plan extensions cannot exceed plat extensions.• Adding the stipulation that electric utilities need to be installed prior to plat recordation. This matches the requirements for other public improvements.• Adding reference to Public Works Specification Manual.
Section 21.4.16 - Building Permits	<ul style="list-style-type: none">• Adding the "City Manager or his/her designee" term in this section to match the rest of the UDC.
Article 14	

Section 21.14.1 - Streets	<ul style="list-style-type: none"> • Adding language to stipulate or clarify adherence to the Public Works Specification Manual, Comprehensive Plan, and Master Thoroughfare Plan. • Revising section on dead-end streets and cul-de-sacs to remove conflict with Public Works Specification Manual; remove conflicting language in the section; and establish new standards based on minimum size of cul-de-sac needed to accommodate large emergency service vehicles. • Clarifying street name approval process. • Revising street classifications and construction standards to make consistent with Master Thoroughfare Plan and Public works Specification Manual. Also adding clarification between "island" and "median" and establishing approval process for each. • Adding or clarifying terms • Revising street light language to better account for differeng equipment of different electrical providers and adding new requirements to improve lighting to better serve the public.
Section 21.14.3 - Additional Design Requirements	<ul style="list-style-type: none"> • Adding simplifying language to stipulate adherence Master Thoroughfare Plan • Removing subsection C and D, the landscape buffer and off-street parking additional requirements as these requirements are included in another section of the UDC.
Section 21.14.4 - Alleys	<ul style="list-style-type: none"> • Clarifying commercial and industrial alleys • Removing subsection G, a section on drainage that is unnecessary and potentially confusing for applicants as Stormwater Management Plans address this issue.
Section 21.14.5 - Driveways	<ul style="list-style-type: none"> • Adding language for TxDOT requirements • Revising sections to eliminate conflicts with Public Works Specifications Manual.
Section 21.14.6 - Sidewalks and Hike and Bike Trails	<ul style="list-style-type: none"> • Revisions to subsection C and H, the sections on sidewalk width and Hike and Bike Trails.
Section 21.14.7 - Traffic Impact Analysis (TIA)	<ul style="list-style-type: none"> • Clarifying TIA requirements • Adding the "City Manager or his/her designee" term in this section to match the rest of the UDC. • Revisions to subsection E, the contents of a TIA. • Revising submission requirements in subsection F for better customer service • Revising subsection E to close loopholes in current regulation, improve clarity of requirements, and help ensure that what is being required is "roughly proportional".
Section 21.14.8 - Conflicts	<ul style="list-style-type: none"> • New section in UDC to address any potential conflicts between Master Thoroughfare Plan and Public Works Specification Manual.

GOAL

To amend the UDC to review and update the development regulations due to changing conditions and community goals in order to establish and maintain sound, stable and desirable development.

COMMUNITY BENEFIT

It is the City's desire to promote safe, orderly, efficient development and ensure compliance with the City's vision of future growth.

SUMMARY OF RECOMMENDED ACTION

When evaluating UDC amendments, staff uses the Criteria of Approval found in 21.4.7.D.

1. The proposed amendment promotes the health, safety, or general welfare of the City and the safe, orderly, efficient and healthful development of the City.

In order to promote orderly and efficient development, the UDC functions better when there is continuity throughout the code and when the code more closely aligns with state laws i.e. the LGC. Also, to promote health and general welfare, establishing clear and well organized infrastructure systems is essential.

2. An amendment to the text is consistent with other policies of this UDC and the City.

These amendments will help align the UDC with other plans in the city, such as the Master Thoroughfare Plan, and the Public Works Specification manual. Also, one of the stated goals in the UDC is to "facilitate the adequate and efficient provision of transportation, water, wastewater, schools, parks, public safety and recreational facilities, and other public facilities and services". These amendments will help achieve this goal.

3. Any proposed amendment is consistent with the goals and objectives of this UDC and the City.

The City of Schertz Strategic Plan has clear stated policy values. Among these is establishing a safe community with "proper planning, design and construction" as well as "adequately investing in and maintaining the built community". Providing essential services that "function to address basic community needs such as security, life safety and infrastructure".

The Strategic Plan also highlights the city's operational values. Among these is the goal to be proactive; "proactive means initiating change by anticipating future situations in order to make things happen". Within this framework, it is the responsibility of staff to be "continuously improving and evolving", "forward-thinking", and have "the ability to forecast and meet needs even before the customer identifies them".

These amendments would achieve these goals and policy values in the Strategic Plan.

4. Other criteria which, at the discretion of the Planning and Zoning Commission and the City Council, are deemed relevant and important in the consideration of the amendment.

The scheduled public hearing provides the opportunity for the Planning and Zoning commission to determine this.

For these reasons, staff is recommending approval of Ord. 24-S-14.

The Planning and Zoning Commission met on March 6, 2024 and made a recommendation of approval with a 6-0 vote.

The Schertz City Council met on April 2, 2024 and approved Ordinance 24-S-14 as presented with a 7-0 vote.

RECOMMENDATION

Approval of Ord. 24-S-14

Attachments

Ord. 24-S-14 with Exhibits

Ord. 24-S-14 UDC Redlines

UDC Amendment Powerpoint

ORDINANCE NO. 24-S-14

AN ORDINANCE BY THE CITY COUNCIL OF THE CITY OF SCHERTZ, TEXAS TO AMEND PART III, SCHERTZ CODE OF ORDINANCES, THE UNIFIED DEVELOPMENT CODE (UDC) ARTICLE 1 – GENERAL PROVISIONS, ARTICLE 4 – PROCEDURES AND APPLICATIONS, AND ARTICLE 14 – TRANSPORTATION

WHEREAS, pursuant to Ordinance No. 10-S-06, the City of Schertz (the “City”) adopted and Amended and Restated Unified Development Code on April 13, 2010, as further amended (the “Current UDC”); and

WHEREAS, City Staff has reviewed the Current UDC and have recommended certain revision and updates to, and reorganization of, the Current UDC;

WHEREAS, on March 6, 2024, the Planning and Zoning Commission conducted a public hearing and thereafter recommended approval; and

WHEREAS, on April 2, 2024, the City Council conducted a public hearing and after considering the Criteria and recommendation by the Planning and Zoning Commission, determined that the proposed amendments are appropriate and in the interest of the public safety, health, and welfare.

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

Section 1. The current UDC is hereby amended as set forth in Exhibit A, Exhibit B, and Exhibit C hereto.

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

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

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

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

Section 6. 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 7. This Ordinance shall be effective upon the date of final adoption hereof and any publication required by law.

PASSED ON FIRST READING, the ____ day of _____ 2024.

PASSED, APPROVED and ADOPTED ON SECOND READING, the ____ day of _____, 2024.

CITY OF SCHERTZ, TEXAS

Ralph Gutierrez, Mayor

ATTEST:

Sheila Edmondson, City Secretary

(city seal)

Exhibit “A”

Proposed Unified Development Code (UDC) Amendments

Article 1 – General Provisions

Sec. 21.1.10. Development manual.

The Development Manual is prepared by the City of Schertz Planning and Community Development Department - Planning Division and is hereby adopted by reference as if set forth in full. The Development Manual shall contain application forms, required application materials, fees, and application submittal deadlines. The Development Manual may be amended by the City Manager or his/her designee from time to time. A copy of the current Development Manual shall be posted to the City's website. Any amendment to the Development Manual shall be published to the City's website within 30 calendar days from when the amendment is made in accordance with LGC Section 212.0081 or its successor statute.

(Ord. No. 17-S-39 , § 1(Exh. A), 10-24-2017)

Sec. 21.1.11. Public works specification manual.

The Public Works Specification Manual prepared by the City of Schertz Public Works Division is hereby adopted by reference as if set forth in full. The Public Works Specification Manual shall contain specifications necessary to complete public projects. The Public Works Specification Manual may be adopted and updated from time to time by ordinance approved by the City Council. In accordance with LGC Section 212.002 & .0021 a public hearing is required and notice of the public hearing shall be published in a newspaper of general circulation in the city.

(Ord. No. 17-S-39 , § 1(Exh. A), 10-24-2017)

Exhibit “B”

Proposed Unified Development Code (UDC) Amendments

Article 4 – Procedures and Applications

ARTICLE 4. PROCEDURES AND APPLICATIONS

Sec. 21.4.1. Purpose and Intent.

The purpose of this Article is to establish application procedures, internal review procedures, public notice and hearing procedures, and review criteria for the processing of applications and actions that affect the development and use of property subject to the jurisdiction of the City of Schertz.

Sec. 21.4.2. Initiation of Application.

- A. *Application Submittal.* All development applications to be considered by any Board, Commission or Committee, or by the City Council shall be initiated by the filing of the application by the owner of the property on which the permit is applicable or by the owner's designated agent. In the event an application is submitted by a designated agent, the application must be accompanied by a written statement, signed by the owner, authorizing the agent to file the application on the owner's behalf.
- B. *Determination of Application Completeness.*
 - 1. All development applications shall be subject to a determination of completeness by the City Manager or his/her designee.
 - 2. No application shall be deemed complete and accepted for processing unless it is accompanied by all documents required by and prepared in accordance with the requirements of this UDC and the Development Manual.
 - 3. The City Manager or his/her designee may from time to time identify additional requirements for a complete application that are not contained within but are consistent with the application contents and standards set forth in this UDC.
 - 4. A determination of completeness shall not constitute a determination of compliance with the substantive requirements of this UDC.
 - 5. Not later than the tenth (10th) business day after the date an application is submitted, the City Manager or his/her designee shall make a written determination whether the application constitutes a complete application. This shall include a determination that all information and documents required by this UDC and the Development Manual for the type of permit being requested or other requirements have been submitted. A determination that the application is incomplete shall be sent to the applicant within such time period by email to the address listed on the application or by United States mail at the address listed on the application. The determination shall specify the documents or other information needed to complete the application and shall state that the application will expire if the documents or other information are not submitted within forty-five (45) days after the date the application was submitted.
 - 6. An application filed on or after the effective date of this amended and restated UDC shall be deemed complete on the eleventh (11th) business day after the application has been received, if the applicant has not otherwise been notified that the application is incomplete. For purposes of this section, the applicant shall be deemed to have been notified if the City has emailed or mailed a copy of the determination as provided in subsection B.5 above.

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7. The processing of an application by any City employee prior to the time the application is determined to be complete shall not be binding on the City as the official acceptance of the application for filing. However, this application may be denied for incompleteness within the forty-five (45) day period.
 8. A Development Application shall be deemed to expire on the forty-fifty (45th) day after the application is submitted to the City Manager or his/her designee for processing if the applicant fails to provide documents or other information necessary to meet the requirements of this UDC, the Development Manual or other requirements as specified in the determination provided to the applicant. Upon expiration, the application will be discarded and a new application must be submitted.
 9. No vested rights accrue solely from the filing of an application that has expired pursuant to this section, or from the filing of a complete application that is subsequently denied.

C. *Application for Letters of Certification*

1. *Certifying Departments.* - Prior to filing an application for Subdivision Plat, Master Development Plan, or Site Plan approval the applicant shall secure letters of certification as required by this UDC. A request for letters of certification and required items shall be filed by the applicant with the following entities as required by the Development Manual:
 - a. Planning and Community Development Department
 - b. Engineering Department
 - c. Fire Department
 - d. Parks and Recreation
2. *Application Requirements.* Any request for a Letter of Certification shall be accompanied by an application prepared in accordance with the Development Manual.
3. *Completeness Review.* Upon receipt of a request for letters of certification, the City Manager or his/her designee shall preform a determination of application completeness pursuant to Section 21.4.2.B.
4. *Decision.* The following procedures shall apply to the issuance of a letter of certification:
 - a. After the City Manager or his/her designee has determined whether the request for letters of certification and required technical data is complete, each certifying department shall issue or deny a letter of certification within ninety (90) days. When a certifying department determines that the proposed plan, plat or any of the required accompanying data does not conform with the requirements of this UDC or other applicable regulations, ordinances or laws, the applicant may at his/her option revise any nonconforming aspects. If any data is revised and resubmitted, the certifying department/agency shall have up to thirty days (30) days from the latest date of submission to issue or deny a letter of certification.
 - b. Failure to Submit Letter of Certification. If a letter of certification is not issued or denied within the time periods prescribed in subsection C.4.a. above, the same shall be deemed issued and the applicant may submit an application for master development plan, subdivision plat, or site plan approval, without submitting the letter of certification.
5. *Issuance Criteria.* The letter of certification request is a process for compiling a complete application for master development plan, subdivision, or site plan review. The City Manager or his/her designee, in considering action on a Letter of Certification request should consider the following criteria:
 - a. the certification request complies with all applicable regulations, ordinances and laws including but not limited to the Unified Development Code, Code of Ordinances, Development Manual, Public Works Technical Specifications, and Public Works Design Guide.

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- b. A letter of certification does not authorize any subdivision or development activity, and any action by the certifying department shall constitute only a recommendation as to whether the activities subject to the request for letters of certification would comply with the applicable development requirements.
 - 6. *Scope of Issuance.* A letter of certification does not authorize the development or subdivision of land. Upon receipt of all letters of certification, the applicant may submit an application for master development plan, subdivision plat, or site plan approval. Letters of certification shall remain valid for one (1) year from the date of issuance by the certifying department/agency. After that time period, new or updated letters of certification shall be required. Each new master development plan, subdivision plat, or site plan to be filed will be required to obtain new letters of certification prior to application submittal.
 - 7. *Amendments.* A letter of certification may be amended prior to filing an application for subdivision approval if the proposed amendment:
 - a. Does not increase the number of lots subject to the application.
 - b. Does not increase by more than five percent (5%) the lineal footage of roadways or the areas within the paved surface of the street right-of-way.
 - c. Does not reduce the amount of open space within the proposed subdivision.
 - 8. *Recording Procedures.* A letter of certification is not recorded. A letter of certification shall be maintained by the applicant and presented with the proposed application for master development plan, subdivision plat, or site plan approval.
 - D. *Application Withdrawal.* Any request for withdrawal of an application must be submitted in writing to the City Manager or his/her designee. If notification is required for the application and has been properly given via publication in the newspaper and/or written notification to surrounding property owners, such application must be placed on the agenda. The staff representative shall notify the Board, Commission, Committee or the City Council of the request for withdrawal. The Board, Commission, Committee or the City Council may, at its discretion, accept the request for withdrawal of the application by general consent of the members. Application fees are not refundable unless reimbursement is otherwise authorized by the City Manager or his/her designee.

(Ord. No. 19-S-22 , § 1(Exh. A), 9-3-2019)

Sec. 21.4.3. Notice Requirements.

- A. *Published Notice.* Whenever published notice of a public hearing before a Board, Commission, Committee or the City Council is required, the City Manager or his/her designee shall cause notice to be published in an official newspaper or a newspaper of general circulation in the City before the fifteenth (15th) day before the date set for the required hearing. Said notice shall set forth the date, time, place and purpose of the hearing as required under LGC section 211.006(a).
- B. *Written Notice.* Whenever written notice of a public hearing before a Board, Commission, Committee or the City Council is required, before the tenth (10th) day before the hearing date, the City Manager or his/her designee shall cause written notice to be sent to each owner, as indicated by the most recently approved municipal tax roll, of real property within 200 feet of the exterior boundary of the property in question. Said notice shall set forth the date, time, place and purpose of the hearing as required under LGC section 211.007(c). The notice may be served by its deposit, properly addressed with postage paid, in the United States mail. If the property within 200 feet of the property in question is located in territory within the City and is not included on the most recently approved municipal tax roll, notice to such owners shall be given by

one (1) publication in an official newspaper or a newspaper of general circulation in the municipality at least fifteen (15) days before the date of the hearing. Failure of owners to receive notice of hearing shall in no way affect the validity of the action taken.

- C. *Posted Notice.* Whenever posted notice of a public hearing is required, notification signs shall be posted by the applicant a minimum of eleven (11) days prior to the scheduled public hearing and shall remain posted during the course of the public hearings, until such time that final action has been taken on the permit application. Signs shall be posted on the subject property and/or along public right-of-way in a format approved by the City Manager or his/her designee. The number of signs, size of signs and content to be placed on the signs shall be in accordance with the Development Manual.

It shall be the responsibility of the applicant to periodically check sign locations to verify that signs remain in place and have not been vandalized or removed. The applicant shall replace any missing or defective signs within one (1) business day from the time that a City official notifies the applicant that the signs are missing. It is unlawful for a person to alter any notification signs, or to remove it while the case is pending. Removal or alteration that is beyond the control of the applicant shall not constitute a failure to meet notification requirements of this section.

(Ord. No. 17-S-42 , § 1(Exh. A), 10-24-2017)

Sec. 21.4.4. Public hearings.

- A. *Public Hearing Required.* Whenever a public hearing is required, the City Manager or his/her designee shall establish the date, time and place of the public hearing and shall cause any notice required under section 21.4.3 of this Article to be prepared and made accordingly.
- B. *Conduct of Hearing.* Any person may appear at the public hearing and submit evidence, either individually or as a representative of an organization. Each person who appears at a public hearing shall state his or her name, address, and if appearing on behalf of an organization, state the name and mailing address of the organization for the record. Subject to the chairperson's inherent authority to conduct meetings, public hearings shall generally be conducted as follows.
1. The City staff may present a description of the proposed project and a written or oral recommendation, if required. Any written recommendation shall be available to the public at the time that the agenda packet for the body conducting the hearing is compiled.
 2. The applicant may present any information it deems appropriate.
 3. Testimony in support of the application may be presented by any individual who expresses an interest in the proposed project.
 4. Testimony in opposition to the application may be presented by any individual who expresses an interest in the proposed project.
 5. At the discretion of the chairperson, the City staff and the applicant may respond to any statement by the public.
 6. The body conducting the hearing may exclude testimony or evidence that it finds to be irrelevant, immaterial or unduly repetitious.
 7. At the sole discretion of the chairperson of the body conducting the hearing, an individual may be permitted to pose relevant questions to staff, the applicant or the body conducting the hearing, as directed by the chairperson.
 8. The public hearing shall be closed.
 9. The advisory body (i.e. Board, Commission or Committee) shall make a recommendation.

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10. The advisory body (i.e. Board, Commission or Committee) shall prepare a written report with its recommendations to the City Council.
- C. *Continuance of Hearing.* The body conducting the hearing may, on its own motion or at the request of any person, for good cause, continue the hearing to a fixed date, time and place. Except as required by the Texas Open Meetings Act or other applicable law, no notice shall be required if a hearing is continued. If a public hearing is closed, no further public testimony shall be taken.
 - D. *Additional Rules.* The body conducting the hearing may adopt additional rules of procedure and may apply such additional rules to govern the public hearing which are not inconsistent with this section.
 - E. *Joint Public Hearing.* Unless otherwise prescribed in this UDC, whenever an application must be preceded by a public hearing both before an advisory body (i.e. Board, Commission and/or Committee) and before the City Council, the advisory body and the Council may conduct a joint public hearing and take action on the application in the following manner.
 1. The City Council shall establish the date of the joint public hearing by motion at a regular or special meeting.
 2. The City Council shall cause notice of the joint public hearing to be provided as required by this UDC and the Texas Open Meetings Act and, by a vote of two-thirds of its members, may prescribe the type of notice for the joint public hearing.
 3. The advisory body (i.e. Board, Commission and/or Committee) and the City Council shall be convened for the hearing and for any action to be taken on the petition or application.
 4. The advisory body (i.e. Board, Commission and/or Committee) and the City Council may take action on the application at the same meeting, provided that the City Council shall not take action until the written report and recommendation of the advisory body (i.e. Board, Commission and/or Committee) has been received.

Sec. 21.4.5. Post-Decision Procedures.

- A. *Notification Required.* Within ten (10) business days following final action on any Development Application, the appropriate City department shall provide written notification to the applicant of the decision of the Board, Commission, Committee or the City Council considering the request. If an application has been denied, the notification should include the reasons for denial as well as any information relating to reapplication procedures for the appropriate application.
- B. *Reapplication Following Denial.* Whenever any Development Application, with the exception of any plat application, is denied, a Development Application for all or a part of the same property shall not be accepted for filing for a period of six (6) months after the date of denial unless the subsequent application involves a proposal that is substantially different from the previously denied proposal. For the purpose of this section, a request may be considered substantially different if the change is to a different zoning classification, there is a change in conditions relating to zoning principles of the property or surrounding properties or there is a change in the nature of the development of the property or surrounding properties. The City Manager or his/her designee shall resolve any questions concerning the similarity of the reapplication. The final decision-maker may, at its option, waive the six (6) month waiting period if, after due consideration of the matter at a scheduled and posted meeting, it is determined that denial of the request was based upon erroneous or omitted information, or if substantial new information pertaining to the request is discovered.
- C. *Amendments and Revisions to Approved Application.* Unless otherwise expressly provided by this UDC, any request to amend or revise an approved Development Application shall be considered a new application, which must be decided in accordance with the procedures governing the original application and the standards in effect at the time such new application is filed with the City.

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- D. *Amendments Required.* Whenever a subsequent Development Application differs substantially from a previously approved Development Application to which the subsequent application must conform, the applicant shall submit an amended Development Application for the initial Development Application, which shall be decided prior to the subsequent application. The applicant's failure to comply with this section shall result in denial of the subsequent application

Sec. 21.4.6. Comprehensive Land Plan Amendment.

- A. *Applicability.* The Comprehensive Land Plan of the City reflects the long-term plan for growth and development of the City. The City Council may, from time to time, on its own motion, by request of the City Manager or his/her designee or by application from a property owner, amend, supplement, change, modify or repeal the text of the Comprehensive Land Plan or may amend the boundaries shown on the Future Land Use Map, Master Thoroughfare Plan or any other applicable maps contained in the Comprehensive Land Plan. Approved amendments to the Comprehensive Land Plan authorize a property owner to submit subsequent development applications consistent with the amendment.
- B. *Application Requirements.*
1. *Application Required.* Any request for an amendment to the Comprehensive Land Plan shall be accompanied by a completed Planning Department Development Application.
 2. *Accompanying Applications.* Any request for amendment of the Future Land Use Map submitted by a property owner may be accompanied by an application for a zoning change consistent with requested Future Land Use Map amendment for land within the City limits, or by a Subdivision Master Plan, for land within the ETJ. Approval of an amendment to the Comprehensive Land Plan shall require all subsequent development applications to be consistent with the approved amendments.
- C. *Processing of Application and Decision.*
1. *Submittal.* An application for an amendment to the Comprehensive Land Plan shall be submitted to the City Manager or his/her designee. The City Manager or his/her designee shall review the application for completeness in accordance with section 21.4.2 of this Article. The City Manager or his/her designee may, at its option, request a recommendation from any other City department or consultant. The City Manager or his/her designee shall notify the applicant of items requiring correction or attention before providing a recommendation on the application. After appropriate review, the City Manager or his/her designee shall forward a written recommendation to the Planning and Zoning Commission for consideration.
 2. *Notification Requirements.* An application for an amendment to the Comprehensive Land Plan requires the following notification in accordance with section 21.4.3 of this Article:
 - a. Written notice prior to consideration by the Planning and Zoning Commission; and
 - b. Published notice prior to consideration by the City Council.
 3. *Commission recommendation.* The Planning and Zoning Commission shall hold a public hearing in accordance with the Texas Open Meetings Act and section 21.4.4 of this Article and make a written recommendation regarding a proposed amendment to the Comprehensive Land Plan to the City Council. The Planning and Zoning Commission may recommend approval, approval with conditions, or denial of the amendment.
 4. *Decision by City Council.* The City Council shall receive the written recommendation of the Planning and Zoning Commission regarding a proposed amendment to the Comprehensive Land Plan and shall hold a public hearing in accordance with the Texas Open Meetings Act and section 21.4.4 of this Article. The City Council may vote to approve, approve with conditions, or deny the amendment.

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- D. *Criteria for Approval.* The Planning and Zoning Commission, in making its recommendation, and the City Council, in considering final action on an amendment to the Comprehensive Land Plan, should consider the following criteria:
1. The proposed amendment promotes the health, safety, or general welfare of the City and the safe, orderly, efficient and healthful development of the City;
 2. An amendment to the text is consistent with other policies of the Comprehensive Land Plan, taking into account the nature of any proposed map amendment associated with the text amendment;
 3. An amendment to the Future Land Use Map, Master Thoroughfare Plan or any other applicable maps contained in the Comprehensive Land Plan is consistent with the policies of the Comprehensive Land Plan that apply to the map being amended, taking into account the nature of any proposed land use associated with the map amendment;
 4. Any proposed amendment is consistent with the goals and objectives of the Comprehensive Land Plan;
 5. Any proposed amendment addresses circumstances that have changed since the last time the plan map or text was considered, implements plan policies better than the current plan map or text corrects a mapping error or addresses a deficiency in the plan; and
 6. Other criteria which, at the discretion of the Planning and Zoning Commission and City Council, are deemed relevant and important in the consideration of the amendment.

Sec. 21.4.7. Unified Development Code Amendment.

- A. *Applicability.* The provisions of this section apply to any request for an amendment to the text of this UDC. The City Council may, from time to time, on its own motion, or at the request of the City Manager or his/her designee, amend, supplement, change, modify or repeal the text of any portion of this UDC in order to establish and maintain sound, stable and desirable development within the jurisdiction of the City. The provisions of this section shall exclude amendments to any appendix which may be amended by general consent of the City Council.
- B. *Application Requirements.* Requests for amendments to the text of this UDC may be initiated by the request of the Planning and Zoning Commission, the City Council or the City Manager on his/her own initiative. A request for an amendment to the text of this UDC shall be accompanied by a completed Development Application.
- C. *Processing of Application and Decision.*
1. *Submittal.* An application for an amendment to the text of this UDC shall be submitted to the City Manager or his/her designee. The City Manager or his/her designee shall review the application and may direct the proposed amendment to any other City departments or consultant for review and recommendation. After appropriate review, the City Manager or his/her designee shall forward a recommendation to the Planning and Zoning Commission for consideration.
 2. *Notification Requirements.* An application for an amendment to the text of this UDC requires published notice prior to consideration by the City Council.
 3. *Commission recommendation.* The Planning and Zoning Commission shall hold a public hearing in accordance with the Texas Open Meetings Act and section 21.4.4 of this Article and make a written recommendation regarding a proposed amendment to the text of this UDC to the City Council. The Planning and Zoning Commission may recommend approval, approval with conditions, or denial of the amendment.

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4. *Decision by City Council.* The City Council shall receive the written recommendation of the Planning and Zoning Commission regarding a proposed amendment to the text of this UDC and shall hold a public hearing in accordance with the Texas Open Meetings Act and section 21.4.4 of this Article. The City Council may vote to approve, approve with conditions, or deny the amendment. Such amendment shall be by ordinance, and the identifying number of any such ordinance shall be noted on the cover of this UDC.
- D. *Criteria for Approval.* The Planning and Zoning Commission, in making its written recommendation, and the City Council, in considering final action on an amendment to the text of this UDC, should consider the following criteria:
 1. The proposed amendment promotes the health, safety, or general welfare of the City and the safe, orderly, efficient and healthful development of the City;
 2. An amendment to the text is consistent with other policies of this UDC and the City;
 3. Any proposed amendment is consistent with the goals and objectives of this UDC and the City; and
 4. Other criteria which, at the discretion of the Planning and Zoning Commission and the City Council, are deemed relevant and important in the consideration of the amendment.
 - E. *Non-Substantive Amendments.* Notwithstanding the other provisions of this section, the City Council may by resolution correct spelling or punctuation errors, cross-reference errors, and other matters herein determined by the City Attorney to be non-substantive without complying with the foregoing provisions of this section. The number of any such resolution shall be noted on the cover of this UDC.

Sec. 21.4.8. Annexation.

- A. *Applicability.* Annexation may be voluntary or involuntary and shall be required to meet all requirements of the LGC, Local Government Code for each type of annexation.

The provisions of this section apply to any request for voluntary annexation by a property owner wishing to extend the corporate limits of the City to incorporate property adjacent to the City's existing municipal boundaries.

- B. *Application Requirements.*
 1. *Application Required.* A request for annexation shall be accompanied by an application prepared in accordance with the Development Manual.
 2. *Accompanying Applications.* Any request for annexation shall be accompanied by an application to establish the initial zoning on the property. An application to establish the zoning may be considered at the same meeting as the annexation request so long as the ordinance providing for annexation is acted on prior to any action on the zoning request. In the event that an application for annexation is considered concurrently with the application for zoning, the Planning and Zoning Commission may consider the zoning request and provide a written recommendation to the City Council so long as the City Council has adopted the annexation ordinance.
- C. *Processing of Application and Decision.*
 1. *Submittal.* An application for annexation shall be submitted to the City Manager or his/her designee. The City Manager or his/her designee shall review the application for completeness in accordance with section 21.4.2 of this Article. The City Manager or his/her designee may, at its option, request a recommendation from any other City department or consultant. The City Manager or his/her designee shall notify the applicant of items requiring correction or attention before providing a recommendation on the application. After appropriate review, the City Manager or his/her designee shall forward a written recommendation to the City Council for consideration.

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2. *Development Agreement.* The City Manager or his/her designee shall comply with the approval. The City Council shall comply with LGC, Local Government Code § 43.035.
 3. *Notification requirements.* The City Manager or his/her designee shall provide notification in accordance with LGC, Local Government Code § 43.062.
 4. *Service plan required.* The City Manager or his/her designee shall prepare an annexation service plan in accordance with LGC, Local Government Code § 43.056.
 5. *Decision by City Council.* The City Council shall hold two public hearings in accordance with LGC, Local Government Code § 43.063 and shall take final action as required in LGC, Local Government Code.
 6. *Other Procedures Applicable.* A request for annexation is subject to all applicable rules and procedures required by State law. In the event of a conflict between the requirements of this UDC and State law, the requirements of State law shall apply.
- D. *Criteria for Approval.* When considering a request for voluntary annexation, the City Council should consider the following criteria:
1. The application is consistent with the requirements of State law and this UDC;
 2. The annexation promotes the health, safety, or general welfare of the City and the safe, orderly, efficient and healthful development of the City;
 3. The property owners and residents of the area consent to the annexation;
 4. The application includes a service plan as required by subsection 21.4.8.C.4 above;
 5. The annexation is consistent with the goals and objectives of the Comprehensive Land Plan; and
 6. Other criteria which, at the discretion of the Planning and Zoning Commission and the City Council, are deemed relevant and important in the consideration of the amendment.

(Ord. No. 18-S-04 , § 1(Exh. A), 1-23-2018)

Sec. 21.4.9. Reserved.

Editor's note(s)—Ord. No. 19-S-02 , § 2, adopted Feb. 5, 2019, repealed § 21.4.9, which pertained to the designation of landmark properties and heritage neighborhoods and derived from Ord. No. 13-S-58 , § 1, adopted Dec. 10, 2013.

Sec. 21.4.10. Development Agreements.

- A. *Applicability.* The purpose of a Development Agreement is to determine whether the City wishes to authorize a plan of development for land located within its ETJ, to prescribe land uses, environmental standards, development standards and public facilities standards governing development of the land for the term of the agreement, to provide for the delivery of public facilities to the property and to provide for annexation of the property to the City. A Development Agreement may be approved for land located in the ETJ of the City in accordance with LGC, Local Government Code § 212.172.
- B. *Application Requirements.*
1. *Application Required.* Any application for a Development Agreement shall be accompanied by an application prepared in accordance with the Development Manual.
 2. *Accompanying Applications.* An application for a Development Agreement shall be accompanied by a preliminary plat prepared in accordance with section 21.12.7 of this UDC. Approval of a preliminary

plat as part of a Development Agreement shall meet the requirements for preliminary plat approval under section 21.12.7.

C. *Processing of Application and Decision.*

1. *Submittal.* An application for a Development Agreement shall be submitted to the City Manager or his/her designee. The City Manager or his/her designee shall review the application for completeness in accordance with section 21.4.2.
2. *Preparation and Negotiation of Development Agreement.* An application for a Development Agreement shall be prepared in accordance with LGC, Local Government Code § 212.172. After review by the City staff, the application and accompanying plans shall be transmitted to the office of the City Attorney for review. After appropriate review by all parties, a recommendation shall be forwarded to the Planning and Zoning Commission for review and recommendation. The City Council shall have the final authority for approval of a Development Agreement.
3. *Commission Recommendation.* The Planning and Zoning Commission shall hold a public hearing in accordance with the Texas Open Meetings Act and section 21.4.4 and make a written recommendation regarding a proposed Development Agreement to the City Council. The Planning and Zoning Commission may recommend approval, approval with conditions, or denial of the agreement. The Planning and Zoning Commission may, on its own motion or by request of the property owner, postpone consideration of the request to a certain date that is not more than thirty (30) calendar days after the date of the current consideration in order to review additional information or modifications which may have a direct bearing on the recommendation to the City Council.
4. *Decision by City Council.* The City Council shall receive the written recommendation of the Planning and Zoning Commission regarding a proposed Development Agreement and shall hold a public hearing in accordance with the Texas Open Meetings Act and section 21.4.4. The City Council may vote to approve, approve with conditions, or deny the Development Agreement. The City Council may, on its own motion or by request of the property owner, postpone consideration of the request to a certain date that is not more than thirty (30) calendar days after the date of the current consideration in order to review additional information or modifications which may have a direct bearing on the final decision. If the City Council approves the Development Agreement, it shall approve the agreement by appropriate action that authorizes the City Manager to execute the agreement on behalf of the City following execution by the property owner. Unless otherwise specified by the City Council, the property owner shall accept the Development Agreement and accompanying preliminary plat within ten (10) working days after the date the City Council's action is adopted. If not executed by the property owner within such period, the Council's approval shall be deemed void.
5. *Recording Development Agreement.* The approved Development Agreement shall be recorded in the real property records of each county in which land subject to the agreement is located.

(Ord. No. 18-S-04 , § 1(Exh. A), 1-23-2018)

Sec. 21.4.11. Utility service extension.

A. *Applicability.*

- a. An application for a Utility Service Extension shall be required when a property owner seeks water or wastewater services from the City for a proposed project that is located within the City's service area(s), that is not required to plat or for which the platting requirement falls under a different jurisdiction than the City at the time of the proposed Utility Service Extension. Approval of an application for a Utility Service Extension authorizes the property owner to submit development applications consistent with the capacity of the utility facilities to be extended and,

upon approval of the development applications, to construct extensions of the utility facilities in accordance with the terms of the approved Utility Service Extension application, as long as the City is allowed to make approvals consistent with agreements executed with other utility service providers.

- b. An application for a Utility Service Extension shall be required when a property owner seeks water or wastewater services from the City for a proposed project that is located outside the City's service area(s) that is not required to plat or for which the platting requirement falls under a different jurisdiction than the City at the time of the proposed extension and subsequent development. Approval of an application for a Utility Service Extension authorizes the property owner to submit development applications consistent with the capacity of the utility facilities to be extended and, upon approval of the development applications, to construct extensions of the utility facilities in accordance with the terms of the approved Utility Service Extension application, as long as the City is allowed to make approvals consistent with agreements executed with other utility service providers.

B. *Application Requirements.*

1. *Application Required.* Any application for Utility Service Extension shall be accompanied by a completed Development Application.
2. *Accompanying Applications.*
 - a. An application for Utility Service Extension for a proposed project that is not located within the City Limits may be accompanied by a request for voluntary annexation. The City may, at its option, elect to annex the property upon request or may delay the annexation until such time the City deems necessary to promote the health, safety or general welfare of the City and the safe, orderly, efficient and healthful development of the City.
 - b. An application for Utility Service Extension may be accompanied by an application for a Subdivision Master Plan prepared in accordance with section 21.12.5. A Subdivision Master Plan may not be approved until final approval of the Utility Service Extension by the City Council.
 - c. An application for Utility Service Extension for a proposed project that is not located within the City's service areas shall be accompanied by an approval for a Certificate of Convenience and Necessity (CCN) transfer through the Public Utility Commission (PUC) or appropriate Commission, as well as an updated Service Area Map and Capital Improvement Plan amendment for the proposed development and areas to be served in the future by the proposed utility service extension.

C. *Processing of Application and Decision.*

1. *Submittal.* An application for Utility Service Extension shall be submitted to the City Manager or his/her designee. The City Manager or his/her designee shall review the application for completeness in accordance with section 21.4.2.
2. *Review and Processing of Request.* The City Manager or his/her designee shall circulate the application among applicable City departments for review and recommendation. The City Manager or his/her designee shall evaluate the request for consistency with the approval criteria and shall prepare a written recommendation to be forwarded to the City Council. The recommendation should include any comments received from other departments including, but not limited to, an analysis of the financial feasibility of extending services and any fiscal impacts on existing utilities from the extension.
3. *Decision by City Council.* The City Council shall receive the written recommendation of the City Manager or his/her designee and shall decide whether to approve, approve with conditions, or deny the request for Utility Service Extension.

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- D. *Criteria for Approval.* The City Council, in considering final action on a request for Utility Service Extension, should consider the following criteria:
1. Whether the proposed development to be served by the extension is consistent with the Comprehensive Land Plan;
 2. Whether the extension is proposed to be constructed in accordance with all applicable City ordinances, resolutions, regulations and standards;
 3. For applications for service to property outside the City's service area(s) - Whether it is feasible to annex the property, and any intervening property which is needed for utility rights-of-way, into the City;
 4. Whether the utility extension would compromise the City's ability to timely provide adequate water or wastewater facilities to property inside the City;
 5. Whether the utility extension will lead to premature development that cannot be served efficiently and timely by roadway, drainage or park facilities;
 6. Whether the utility extension is financially feasible given the proposed means of financing the extension;
 7. Whether the utility extension will lead to significant degradation of water quality or other environmental resources, either from construction of the water or wastewater improvements, development of the property owner's land, or development of other land that may be served through the extended facilities;
 8. Whether the property owner proposes to extend wastewater facilities without utilizing City water facilities; and
 9. The extent to which the proposed agreement promotes the health, safety or general welfare of the City and the safe, orderly, efficient and healthful development of the City.

Sec. 21.4.12. Variances.

- A. *Applicability.*
1. The BOA shall have the ability to authorize, in specific cases, a variance from the zoning regulations of this UDC if the variance is not contrary to the public interest and, due to special conditions, a literal enforcement of this UDC would result in unnecessary hardship, so that the spirit of this UDC is observed and substantial justice is done. A variance shall not be granted to relieve a self-created or personal hardship, nor shall it be based solely on economic gain or loss, nor shall it permit any person a privilege in developing a parcel of land not permitted by this UDC to other parcels of land in the district.
 2. Approval of a variance authorizes a property owner to submit subsequent development applications consistent with the approved variance.
- B. *Application Requirements.* Any request for a variance shall be accompanied by an application prepared in accordance with the Development Manual.
- C. *Processing of Application and Decision.*
1. *Submittal.* An application for a variance shall be submitted to the City Manager or his/her designee. The City Manager or his/her designee shall review the application for completeness in accordance with section 21.4.2. The City Manager or his/her designee may, at its option, request a recommendation from any other appropriate City department or consultant. The City Manager or his/her designee shall notify the applicant of items requiring correction or attention before providing a recommendation on

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- the application. After appropriate review, the City Manager or his/her designee shall forward a written recommendation to the BOA for consideration.
2. *Notification requirements.* An application for a variance requires the following notification in accordance with section 21.4.3:
 - a. Written notice; and
 - b. Published notice.
 3. *Decision by the BOA.*
 - a. The BOA shall receive the recommendation of the City Manager or his/her designee and shall hold a public hearing in accordance with section 21.4.4. The Board may vote to approve, approve with conditions, or deny the variance.
 - b. The Board may, on its own motion or by request of the property owner, postpone consideration of the variance to a certain date that is not more than thirty (30) calendar days after the date of the current consideration in order to review additional information or modifications which may have a direct bearing on the final decision.
 - c. The approval shall be effective for a period of 180 days after the date of such approval. If no application for building permit is submitted within that time, the variance shall become null and void.
 - d. The disapproval of a variance shall require compliance by the applicant, if applicable, within fifteen (15) days after the date of disapproval and upon written notification by staff.
- D. *Criteria for approval.* In order to make a finding of hardship and grant a variance from the zoning regulations of this UDC, the Board must determine the following:
1. The requested variance does not violate the intent of this UDC or its amendments;
 2. Special conditions of restricted area, topography or physical features exist that are peculiar to the subject parcel of land and are not applicable to other parcels of land in the same zoning district;
 3. The hardship is in no way the result of the applicant's own actions; and
 4. The interpretation of the provisions in this UDC or any amendments thereto would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district that comply with the same provisions.
5. In considering a variance as applied to a structure, the board may consider the following as grounds to determine whether an unnecessary hardship would result from compliance with the ordinance:
- a. The financial cost of compliance is greater than 50 percent of the appraised value of the structure as shown on the most recent appraisal roll certified to the assessor for the municipality under Section 26.01, Tax Code;
 - b. Compliance would result in a loss to the lot on which the structure is located of at least 25 percent of the area on which development may physically occur;
 - c. Compliance would result in the structure not being in compliance with a requirement of a municipal ordinance, building code, or other requirement;
 - d. Compliance would result in the unreasonable encroachment on an adjacent property or easement; or
 - e. The municipality considers the structure to be a nonconforming structure.

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- E. *Appeals of BOA Decisions.* Any person or persons aggrieved by any decision of the BOA, or any taxpayer or any officer, department, board of the City may appeal a decision of the BOA regarding any variance request in accordance with section 21.3.4 of this UDC.
- F. *Finding of fact.* The board shall complete a finding of fact for variance or appeal to support its conclusion for each variance or appeal presented to it.

(Ord. No. 18-S-04 , § 1(Exh. A), 1-23-2018)

Sec. 21.4.13. Reserved.

Sec. 21.4.14. Appeals.

- A. *Purpose and Applicability.* The purpose of an appeal is to contest an initial decision on a Development Application based upon alleged misapplication of the regulations contained within this UDC and the criteria for approval of the Development Application. An appeal may not be used to amend, vary or otherwise modify the standards of this UDC that apply to the Development Application. Any decision on a Development Application required by this UDC may be appealed to the Board, Commission or the City Council indicated within the procedures for each Development Application. The granting of an appeal supersedes the decision from which the appeal was taken and results in approval, conditional approval or denial of the Development Application for which the approval was sought.
- B. *Appeal Requirements.* Any person or persons aggrieved by any decision on a Development Application, or any marshal, officer, department, or board of the City may appeal a decision on a Development Application to the Board, Commission or the City Council responsible for consideration of the appeal as indicated in this UDC. An appeal shall contain a written statement of the reasons why the decision is erroneous, and shall be accompanied by a fee established by the City Council. An appeal by an applicant shall be accompanied by a copy of the Development Application on which the initial decision was rendered. An appeal may include any other documents that support the position of the appellant. A written appeal must be filed with the City Manager or his/her designee no later than twenty (20) days after the date of the decision on the Development Application.
- C. *Processing of Appeal and Decision.*
1. *Submittal.* An appeal shall be submitted to the City Manager or his/her designee for processing of the Development Application being appealed. Upon receipt of a written appeal, the City Manager or his/her designee shall compile all documents constituting the record of the decision subject to appeal and transmit the record to the Board, Commission or the City Council responsible for considering the appeal.
 2. *Stay of Proceedings.* Receipt of a written appeal of a decision on a Development Application stays all proceedings of the City in furtherance of the decision from which appeal is taken, including without limitation acceptance, processing or issuance of any subsequent development applications, and any development activities authorized by initial approval of the Development Application. The stay shall be lifted only if the City Manager or his/her designee certifies in writing to the Board, Commission or the City Council responsible for consideration of the appeal that a stay would cause imminent peril to life or property. Thereafter, the stay may be reinstated only by order of the Board, Commission or the City Council responsible for consideration of the appeal or a court of record, on application, after notice to the City Manager or his/her designee, for due cause shown.
 3. *Notification Requirements.* An appeal requires the following notification in accordance with section 21.4.3:

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- a. Written notice; and
 - b. Published notice.
- 4. *Decision on Appeal.* The Board, Commission or the City Council responsible for consideration of the appeal shall hold a public hearing and decide the appeal not later than the next meeting for which notice can be provided and not later than the 60th day after the date the appeal is filed. The Board, Commission or the City Council responsible for consideration of the appeal shall affirm, reverse or modify the decision from which the appeal was taken.
 - 5. *Notification of Decision on Appeal.* The property owner and the applicant for the Development Application under appeal shall be notified of the decision on the appeal in accordance with section 21.4.5.
- D. *Criteria for Approval.* In deciding the appeal, the Board, Commission or the City Council responsible for consideration of the appeal shall apply the same criteria that govern the initial decision on the Development Application under the provisions of this Article.
 - E. *Expiration and Extension.* For purposes of determining expiration or extension periods under this UDC, the date the Board, Commission or the City Council responsible for consideration of the appeal grants relief on the appeal is the date on which the Development Application is deemed approved.
 - 1. Once the Board, Commission or the City Council grants relief on the appeal, a new Development Application or permit application shall be submitted within 180 days after the date of such approval or the appeal shall become null and void.
 - 2. The disapproval of an appeal shall require compliance by the applicant, if applicable, within fifteen (15) days after the date of disapproval and upon written notification by staff.

Sec. 21.4.15. Public infrastructure improvements, construction plans, and improvement agreements.

- A. *Applicability.* The provisions of this section applies to the construction of any public infrastructure improvements.
- B. *Processing of Construction Plans and Decision.*
 - 1. *Submittal.* Construction plans shall be submitted to the City Manager or his/her designee prior to construction of public infrastructure improvements. Submittal of construction plans shall be in accordance with the Engineering Department's permitting requirements.
 - 2. *Decision by the City Manager.* The City Manager or his/her designee may approve, approve with conditions, or deny the construction plans.
 - 3. *Criteria for Approval.* The City Manager or his/her designee, or the City Council on appeal, shall apply the following criteria in making a decision on the construction plans:
 - a. The construction plans are consistent with the approved preliminary plat or the proposed final plat in the event that the public infrastructure improvements are in relation to a plat; and
 - b. The construction plans conform to all applicable regulations pertaining to the construction and installation of public infrastructure improvements.
 - 4. *Expiration.* The approval of construction plans shall remain in effect for two years after the date the construction plans were approved by the City Manager or his/her designee. If construction of the project has not commenced during the two year period, approval of the construction plans shall expire. For public infrastructure improvements that are associated with a final plat, approval of the

construction plans shall remain in effect for the time that approval of the final plat is in effect and shall expire when approval of the final plat expires, unless an extension is granted, pursuant to Section 21.4.15.B.5, Extension.

5. *Extension.* At the written request of the property owner or their representative, the expiration date for the approval of construction plans may be extended by the City Manager or his/her designee for a period not to exceed six (6) months. In no case shall the construction plan extension be later than the final plat expiration.

C. *Timing of Public Infrastructure Improvements.*

1. *Completion Prior to Final Plat Recordation.* For public infrastructure improvements associated with a proposed subdivision or development, except as provided below, completion of the improvements shall be in accordance with the approved construction plans and shall occur before an approved final plat is recorded, unless the obligation to construct public infrastructure improvements has been deferred and an improvement agreement is executed. Other infrastructure including all electric utility services necessary to serve the development shall be installed within the development prior to plat recordation.
2. *Installation after Final Plat Recordation.* The property owner or applicant may request to defer the obligation to construct and install one (1) or more public improvements to serve the associated subdivision until after final plat recordation. The request shall be submitted in writing and specify what is being requested for deferral. Deferral of the obligation to install public improvements shall be conditioned on execution of an improvement agreement and provision of sufficient security. The City Manager or his/her designee may approve or deny the request to defer installation of public infrastructure improvements.
3. *Off-Site Easements.* All necessary off-site easements required for installation of off-site public improvements to serve the subdivision or development shall be acquired by the subdivider or developer and conveyed solely to the City by an instrument approved by the City.

D. *Inspection and Acceptance of Public Infrastructure Improvements.*

1. *Inspections.* Inspection of the public infrastructure improvements shall be conducted by the Engineering Department. Construction shall be in accordance with the approved construction plans. Any significant change in design required during construction shall be subject to approval by the City Manager or his/her designee.
2. *Submission of As-Built Plans or Record Drawings.* The City shall not accept dedication of required public improvements until the applicant has submitted detailed "as-built" record drawings in accordance with Engineering Department's requirements and the Public Works Specification Manual.
3. *Acceptance of Improvements.* When the City Manager or his/her designee has determined that the public infrastructure improvements have been installed in accordance with the approved Construction Plans, the City Manager or his/her designee shall accept such improvements on behalf of the City. Acceptance of the improvements shall mean that the property owner has transferred all rights to all the public improvements to the City for use and maintenance. Upon acceptance of the required public improvements, the City Manager or his/her designee shall have a certificate issued to the property owner stating that all required public improvements have been satisfactorily completed.

E. *Maintenance and Warranty of Improvements.*

1. *Maintenance During Construction.* The developer shall maintain all required public improvements during construction of the development.
2. *Bond.* The developer or owner shall covenant to warranty the required public improvements for a period of two (2) years following acceptance by the City of all required public improvements or

following the date of plat recordation, whichever occurs later. A warranty bond shall be provided in the amount of 20% of the costs of the improvements for such period. All public improvements shall be bonded.

F. *Improvement Agreements.*

1. *Obligations Under Agreement.* Whenever public improvements to serve development are deferred until after recordation of the final plat, the property owner shall enter into an Improvement Agreement and provide adequate security as determined by the City Manager or his/her designee.

The Improvement Agreement shall be subject to review and approval by the City Manager or his/her designee and the City Attorney. The agreement shall contain the following provisions:

- a. covenants to complete the improvements be no later than two (2) years after approval of the final plat, unless otherwise stipulated in the terms and conditions of the Improvement Agreement;
 - b. covenants to warranty the required public improvements for a period of two (2) years following acceptance by the City of all required public improvements, unless stated otherwise in the Improvement Agreement;
 - c. covenants to provide a warranty bond in the amount of 20% of the costs of the improvements for such period, unless stated otherwise in the Improvement Agreement;
 - d. provisions for participation in the costs of the improvements by the City, if authorization has been obtained from the City Council, and a performance bond for such improvements from the contractor;
 - e. provisions for securing the obligations of the agreement consistent with subsection G below; and
 - f. such other terms and conditions as are agreed to by the City and the property owner, or as may be required by this UDC.
2. *Covenants to Run with the Land.* The Improvement Agreement shall provide that the covenants contained in the Agreement run with the land and bind all successors, heirs and assignees of the property owner. All existing owners and lienholders shall be required to execute the Agreement or provide written consent to the covenants contained in the Agreement.

G. *Security for Completion of Improvements.*

1. *Security.* Whenever the property owner has entered into an Improvement Agreement to defer installation of public improvements, the property owner shall provide sufficient security for completion of the required public improvements. The security shall be in the form of a cash escrow, a performance bond or surety bond provided by a licensed surety company, or other security as approved by the City Manager or his/her designee.
2. *Amount and Acceptability.* The security shall be issued in the amount of 125% of the estimated cost of completion that is approved by the City Manager or his/her designee for the required public infrastructure improvements. The terms of the security agreement shall be subject to the approval of the City Manager or his/her designee and the City Attorney.
3. *Remedies.* Where an Improvement Agreement has been executed and security has been posted and required public improvements have not been installed in accordance with the terms of the agreement, the City may:
 - a. declare the Agreement to be in default and require that all the public improvements be installed regardless of the extent of completion of the development at the time the Agreement is declared to be in default;

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- b. obtain funds under the security and complete the improvements itself or through a third party; or
 - c. assign its right to receive funds under the security to any third party, including a subsequent owner of the development in exchange for the subsequent owner's agreement and posting of security to complete the public infrastructure improvements.

(Ord. No. 17-S-41 , § 1(Exh. A), 10-24-2017)

Editor's note(s)—Ord. No. 17-S-41 , § 1(Exh. A), adopted Oct. 24, 2017, amended § 21.4.15, and in so doing changed the title of said section from "Public infrastructure improvement, construction plans and community facilities agreements" to "Public infrastructure improvements, construction plans, and improvement agreements," as set out herein.

Sec. 21.4.16. Building permits.

- A. *Applicability.* An application for a building permit is required within the City corporate limits, or where provided for in a Development Agreement, in the City's ETJ, prior to the placement, construction or alteration of a building or structure. Approval of an application for a building permit authorizes the property owner to construct, alter or place a structure on the lot, tract or parcel. Approval of an application for a building permit also authorizes the property owner, upon completion of a structure intended for human occupancy, to make application for a certificate of occupancy.
- B. *Application Requirements.* Any request for a building permit shall be accompanied by an application prepared in accordance with requirements of the building inspections division. The City Manager or his/her designee shall be responsible for determining the form and content of the building permit application.
- C. *Processing of Application and Decision.*
 - 1. *Submittal.* An application for a building permit shall be submitted to the The City Manager or his/her designee. The City Manager or his/her designee shall review the application for completeness in accordance with section 21.4.2. The City Manager or his/her designee shall review the permit for compliance with all adopted building codes and regulations and shall provide written notification of any items requiring correction or attention within forty-five (45) days after submittal of a complete application.
 - 2. *Decision by the City Manager.* The City Manager or his/her designee may approve, approve with conditions, or deny the building permit.
 - 3. *Appeals.* Any person or persons aggrieved by any decision of the City Manager or his/her designee, or any taxpayer or any officer, department, or board of the City may appeal the decision of the City Manager or his/her designee to the Building and Standards Commission.
- D. *Criteria for Approval.* The City Manager or his/her designee shall apply the following criteria in deciding the application for a building permit:
 - 1. The application generally conforms to all prior approved development applications for the property and any variance petition authorizing variation from the standards otherwise applicable to the permit;
 - 2. The location of the structure on the property is in accordance with all prior approved development applications;
 - 3. The proposed plan for construction or alteration conforms to the Building Code and other applicable construction codes adopted by the City;
 - 4. All applicable fees, including impact fees, have been paid;

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5. A final plat of the property has been recorded in the appropriate County plat records; and
 6. All public infrastructure required has been installed and accepted by the City and all electric, gas, telephone and cable utility services necessary to serve the development have been installed within the development.
- E. *Issuance.* No building permit shall be issued on property that is not a lot of record with the following exceptions:
1. Additions to existing structures not exceeding twenty-five percent(25%) of the building at the time of the adoption of this UDC; and
 2. Interior finish out or improvements to existing structures.

(Ord. No. 17-S-40 , § 1(Exh. A), 10-24-2017; Ord. No. 18-S-04 , § 1(Exh. A), 1-23-2018)

Exhibit “C”

Proposed Unified Development Code (UDC) Amendments

Article 14 – Transportation

ARTICLE 14. TRANSPORTATION

Sec. 21.14.1. Streets.

- A. *Street Layout.* The arrangement, extent, character, width, grade and location of all streets shall conform to the Master Thoroughfare Plan, the Public Works Specification Manual, and the City's adopted Comprehensive Plan. Collector streets shall provide adequate circulation within the neighborhood and yet discourage through traffic. The street layout shall be arranged to achieve the most desirable development of the entire neighborhood unit with appropriate consideration of creeks, drainage channels, wooded areas and other topographical features, which lend themselves to special treatment. Permits must be obtained from TxDOT for driveways and streets accessing any state roadway. The proposed location of driveways must comply with all applicable City and State requirements.
- B. *Relation to Adjoining Streets.* Adjoining areas shall be continued and tied into the street layout.
- C. *Projection of Streets.* When adjoining properties are not yet subdivided, the arrangement of streets shall provide for the proper projection of streets into the adjoining unsubdivided areas and shall generally conform to the Comprehensive Plan and the Master Thoroughfare Plan.
- D. *Private Streets.*
1. Private streets within the City may be authorized providing all the following conditions are met:
 - a. A homeowner's association is established to maintain and upkeep all streets in a subdivision in accordance with the City's public street standards, to include the mowing of shoulders and rights-of-way, removal of weeds and unclogging of culverts.
 - b. Private streets are constructed in accordance with the City's standards for public streets.
 - c. The following "maintenance agreement" note will appear on the subdivision plat:

"Streets within this subdivision shall be constructed in accordance with the City of Schertz public streets standards. The upkeep and maintenance to include the mowing of shoulders and rights-of-way, removal of weeds and unclogging of culverts shall be the responsibility of the homeowner's association. The City of Schertz is released from any liability for these streets. Periodic inspection by a public official who is authorized to enforce complaints about poor maintenance is permitted."
 - d. Provide access for fire protection, ambulance, police, school bus, garbage service and other utility agencies.
 2. *One Residence.* A private street or road serving only one (1) residence is exempt from construction and maintenance standards for public streets.
 3. *Ingress/Egress.* Private streets shall connect directly to a public street or road.
- E. *Dead-End Streets and Cul-De-Sacs.*
1. Dead-end streets greater than five hundred (500') feet in length as measured from the center of the intersection to the end of the pavement or center of the cul-de-sac, shall be prohibited. Short stubs projected to be continued in future subdivisions in conformance with Paragraph C of this section and not having any lots fronting the short stub are not required to have a cul-de-sac or temporary turn around at the end. All other dead-end streets shall end in a cul-de-sac or temporary turnaround meeting the requirements of paragraph E.2 below.

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2. Cul-de-sac streets shall have a turnaround of not less than one hundred forty (140') feet in diameter of ROW and one hundred twenty (120') feet in diameter of pavement in single-family residential areas, one hundred sixty (160') feet in diameter of ROW and not less than one hundred (130') feet in diameter of pavement in multi-family, commercial, and industrial areas. This provision may be modified upon approval of the Fire Chief and City Engineer or his/her designee.
- F. *Alignment.* The alignment of all arterial and collector streets shall generally conform to the Master Thoroughfare Plan and the requirements of the Public Works Specifications Manual.
 - G. *Intersections.* The curb radius at street intersections shall conform to the specifications in the Public Works Specifications Manual.
 - H. *Street Names and Street Numbers.* Names of all new streets shall be subject to the approval by the Planning and Zoning Commission and be coordinated regionally. Street names shall have prior approval of the regional E911 authority and meet all City and County guidelines relevant to location. Upon request, the City will coordinate new street numbers with existing addresses and provide subdivider with an approved addressing document.
 - I. *Construction Standards.* All streets shall be constructed with reference to base, surfacing, curbs, grades, horizontal curves and intersection curve radius in accordance with the standards prescribed in the Public Works Specifications Manual and any other applicable specifications of the City.
 - J. *Reserve Areas are Prohibited.* There shall be no reserve areas controlling access to land dedicated or intended to be dedicated to public use.
 - K. *Half Streets or Adjacent Streets.*
 1. No new half streets shall be platted that do not conform to the Master Thoroughfare Plan and the Comprehensive Land Plan. Where the proposed subdivision abuts upon an existing street or half street not conforming to the Comprehensive Land Plan requirements or the requirements of this UDC, the subdivider shall be required to dedicate any additional right-of-way to meet the street width required to the extent permitted by State Law.
 2. If new development of property abuts City maintained roads that do not meet the width standards in this UDC, the Developer shall be required to make the necessary dedication and improvements in conformance with this UDC or any other applicable code of the City to the extent permitted by State Law.
 3. The minimum dedication and construction costs shall be equal to one-half (½) of the minimum right-of-way (ROW) and construction costs associated with the proposed street.
 4. Improvements shall include right-of-way dedication, paving, curb and guttering, shoulder improvements, sidewalk, multi-use paths and/or hike/bike trails as determined by the City.
 5. Should any pavement be laid to widen existing pavement, the existing pavement shall be saw-cut back a minimum of two feet (2') to assure an adequate sub-base and pavement joint.
 - L. *Public Accesses.* All residential subdivisions shall have a minimum of two (2) locations accessing existing public streets. Access may be provided through the construction of a public street. The extent and location of all accesses is subject to review and approval by the City. The Planning and Zoning Commission shall not permit "island" subdivisions, lots or streets that would be surrounded by the flood water of a one hundred (100) year flood unless the area is accessible to high ground by at least one dedicated street elevated above the one hundred (100) year flood level.
 - M. *Safety Lanes (Fire Lanes).*
 1. Manufactured home parks, recreational vehicle parks, apartments, multi-family residences, malls, commercial and business areas shall have driving surfaces within the site designated and clearly

identified as safety lanes or fire lanes for fire protection, EMS, etc. These areas must be paved with concrete or asphalt and be maintained by the owners. Exits from these sites shall be a minimum of thirty feet (30') in width and must exit into a dedicated street. The pavement width for interior safety lanes will be a minimum of twenty-four feet (24'). Additional width will be required when adequate off-street parking is not provided.

2. Exits from single family residential areas shall be a minimum pavement width of twenty-four (24') feet.
 3. All roadways that serve emergency vehicles are required to have a minimum clearance of fifteen feet (15') to any overhead obstructions including, but not limited to, bridges, trees, canopies, awnings and signs.
- N. *Access to Arterial Streets and Freeways.* Access to arterial streets and freeways should be limited to protect the flow of traffic from the lots. Along arterial streets and freeways, lots that have access to another public right-of-way shall not take access from the arterial street or freeway.
- O. *Street and Traffic Control Signs.*
1. All street signs in a new subdivision within the City limits, including street name, speed limit, stop and yield signs, etc. shall be paid for by the developer, and shall be provided by and installed by the City's Public Works Department in accordance with the Public Works Specifications Manual. Traffic control devices required within the subdivision shall be installed in accordance with the latest revision of the Texas Manual on Uniform Traffic Control Devices for Streets and Highways.
 2. Any installation of speed control devices, such as speed bumps or humps, must also be approved by the fire department to determine potential impact to emergency response vehicles.
 3. A required traffic control device must be fitted with traffic preemption compatible devices for activation by emergency vehicles.
- P. *Street Improvements.*
1. All street improvements shall meet the current requirements of the Comprehensive Plan, the Master Thoroughfare Plan, and this Article, but in no case shall be less than the following to the extent allowed by State Law:

Table 21.14.1 Street Improvement Standards				
Classification	ROW	Pavement **	Drainage Width	Sidewalk and Multi-Use Path Width
Six Lane Principal Arterial	130 feet*	74 feet with 16-foot median*	Curb and Gutter	10 feet both sides
Four Lane Principal Arterial	120 feet	54 feet with 10-foot median	Curb and Gutter	5 feet one side, 10 feet one side
Secondary Arterial	90 feet	54 feet with 10-foot median	Curb and Gutter	5 feet one side, 10 feet one side
Commercial Collector	70 feet	42 feet	Curb and Gutter	5 feet one side, 10 feet one side
Local Street - Residential	50 feet	30 feet	Curb and Gutter	5 feet both sides

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Local Street - Commercial/Industrial	60 feet	42 feet	Curb and Gutter	5 feet both sides
Paved Alley	24 feet	24 feet	Curb or Curb and Gutter	None

* Schwab Road north of IH-35 has a ROW width of 200 feet and wider pavement section as determined by the City Engineer.

** Pavement width is measured from the face of curb to face of curb on curb and gutter roadways.

2. Typical sections identified in the Master Thoroughfare Plan may be modified by the City Manager or his/her designee based on drainage needs, traffic needs, site specific conditions, and other factors as part of the development review and approval process.

3. *Islands in Roadways.* Islands in road rights-of-way will be considered on a case-by-case basis. The street right-of-way will be engineered to accommodate all emergency and utility vehicles and two-way traffic. At a minimum, all islands shall provide at least twenty-four feet (24') of pavement on each side of the island. All islands provided within street ROW shall be designated on the plat and shall be dedicated by the developer or its successors and/or assigns. A plat note shall be provided which identifies maintenance of islands as the responsibility of the developer or its successors and/or assigns. Any islands that are not maintained in accordance with this section may be removed by the City and shall be removed at the expense of the developer or its successors and/or assigns, after due notice and the written recommendation by the City Manager or his/her designee.

4. *Medians.* Medians are typically located at the approximate center of a city street or state right-of-way that is used to separate the directional flow of traffic.

Q. *Drainage.* The storm drainage for all streets shall be designed per the most current edition of the Public Works Specification Manual and shall comply with the City's Stormwater Pollution Prevention and Drainage Plan requirements.

R. *Curb and Gutter.* Curbs and gutters shall be installed by the subdivider on both sides of all streets within or forming part of the boundary of the subdivision. Curb and gutter shall be constructed in accordance with the Public Works Specifications Manual. The City Engineer or his/her designee may waive the requirements for construction of curb and gutter or may approve an alternative curb and gutter construction where developments result in an overall density of less than one (1) unit per one-half (½) acre.

S. *Streetlights.*

1. Developers shall furnish satisfactory easements for installation of services to street lights as required by the City and any applicable electric utility provider.

2. Street light number, type and size shall be determined by the City and any applicable electric utility provider and shall conform to the requirements of the Public Works Specification Manual. Street lights shall be designed to maximize the light directed toward the ground.

3. The developer shall pay the cost of purchasing and installing all street lighting equipment and the cost of all street lighting services for a period of two (2) years or until such time as seventy percent (70%) of the buildings for which building permits have been issued are completed, whichever is sooner.

4. A lighting plan shall be submitted with the Public Infrastructure Improvement Plans for review and approval by the City and any applicable electric utility provider. The lighting plan shall include:

a. Streetlight locations;

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- b. A description of lighting fixtures, including lamps, poles or other supports and shielding devices, which may be provided as catalog illustrations from the manufacturer;
 - c. Additional information as may be required by the City Manager or his/her designee;
 - d. Streetlights shall be located every 300 feet (maximum) for local and collector roadways; every two hundred fifty (250') feet (maximum) on arterial roadways; placed at every street intersection; in all cul-de-sacs greater than two hundred (200') feet in length, and at neighborhood mailbox unit locations.

Sec. 21.14.2. Criteria and Design.

The criteria and specific design standards for transportation related development as described in this Article are set by the City's Public Works Specification Manual.

Sec. 21.14.3. Additional Design Requirements.

A. *Purpose and Applicability.*

1. The purpose of this Section is to establish additional development standards applicable to certain streets within the City to ensure uniform and quality development resulting in an attractive environment compatible with businesses and residential dwellings which does the following:
 - a. Provides an environment and living conditions favorable to the public;
 - b. Provides a creative approach to land use and related physical development;
 - c. Creates a pattern of development which preserves trees and outstanding natural topography and prevents soil erosion and pollution;
 - d. Encourages mixed use development through innovative uses of modern development concepts; and;
 - e. Produces open space and recreation areas.
2. The requirements of this section shall be applicable to IH-35, IH-10, and all roadways classified as Principal Arterials or Secondary Arterials in the Master Thoroughfare Plan.

B. *Permitted Uses.* Buildings, structures and land shall be used in accordance with the uses permitted in the applicable zoning district and shall comply with the dimensional requirements of that district in accordance with Article 5 of this UDC.

C. *Building Setback Line.* A minimum fifty-foot (50') building setback shall be required adjacent to all rights-of-way. A waiver may be granted by the Planning and Zoning Commission which would allow for a reduction in the minimum required setback when an alternative site layout and design provides for additional open space or landscaping and off-street parking will be located entirely at the rear of the building or lot. In no case shall the minimum building setback be reduced less than the minimum required setback for the applicable zoning district in. The requirements of this section are not applicable to properties zoned Main Street Mixed-Use - New Development (MSMU-ND).

D. *Driveways and Access (Connectivity).* Access shall be limited to provide for safe traffic flow and the design shall provide interior drives to limit the number of accesses to the public right-of-way. Access easement should be utilized to limit the number of driveway accesses. Accesses should be planned to match existing driveways or street intersections on the opposite side of the street. All driveways shall have a minimum sight distance of two hundred forty (240') feet.

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- E. *Screening.* A masonry screening wall a minimum of eight foot (8') in height shall be provided where the rear yard of any residential or nonresidential lot abuts a Principal or Secondary Arterial. Any masonry screening wall constructed as part of a new residential subdivision shall be constructed of a like and similar material and color as screening walls in adjacent subdivisions to provide a consistent streetscape.

(Ord. No. 16-S-27, § 9, 8-30-2016; Ord. No. 17-S-40, § 1(Exh. A), 10-24-2017; Ord. No. 21-S-26, § 1(Exh. A), 7-6-2021)

Sec. 21.14.4. Alleys.

- A. *Commercial and Industrial Districts.* Alleys provided within commercial and industrial districts shall be privately owned and maintained and not less than twenty-four feet (24') paved width.
- B. *Garden Home (GH) Zoning Districts.* Where garden home districts are designated by the developer to require rear ingress/egress, twenty-four feet (24') paved alley shall be provided.
- C. *Intersections and Turns.* Alley intersections and sharp changes in alignment shall be avoided, but where two (2) alleys intersect, or an alley turns at an angle sharper than one hundred degrees (100°), a cut off not less than ten (10') feet from the normal intersection of the property lines shall be provided and shall be designed in accordance with the adopted Fire Code.
- D. *Dead End Alleys.* Dead end alleys are prohibited.
- E. *Construction Standards.* All alleys shall be constructed in accordance with the standards prescribed in the Public Works Specifications Manual.
- F. *Limitations.* Construction of alleys is limited to commercial and industrial districts and prohibited in residential areas except in garden home zoning districts.

Sec. 21.14.5. Driveways.

The arrangement, placement, spacing, width and return radii of all driveways connecting to a street, roadway or alley shall be constructed, provided, altered or repaired in accordance with requirements of the Public Works Specifications Manual. For all driveways connecting to a state roadway facility, the arrangement, placement, spacing, width, etc. shall be in accordance with TxDOT requirements.

- A. *Commercial Property.*
1. Curb cuts for commercial driveway aprons shall not exceed forty feet (40') in width as measured at the ROW line, and the aggregate width of all curb cuts shall not exceed fifty percent (50%) of the parcel frontage.
 2. Where multiple driveway aprons are used for commercial property, the curb cuts shall be at least two hundred feet (200') apart on collector streets and four hundred feet (400') apart on arterial streets provided a minimum of fifty feet (50') of spacing as measured along the curb is available between all approaches, including curb cuts on adjacent properties.
 4. For parcels of commercial property, no curb cut will be permitted for any parking facility which requires vehicles to enter a street in reverse.
- B. *Curb Cuts in Curb Returns.* No curb cut in curb returns will be permitted in the City.
- C. *Waivers.* Where the City Manager or his/her designee finds that extraordinary hardship may result from strict compliance with the regulations prescribed in this Article, the City Manager or his/her designee may vary the regulations so that substantial justice may be done and the public interest secured, provided that such waiver will not have the effect of nullifying the intent and purpose of this Article. In granting waivers and

modifications, the City Manager or his/her designee may require such conditions as will, in his/her judgment, secure substantially the objective of the standards or requirements so varied or modified. In the event the City Manager or his/her designee should disapprove a request for a waiver, the applicant may request an appeal to the Planning and Zoning Commission.

(Ord. No. 17-S-40, § 1(Exh. A), 10-24-2017)

Sec. 21.14.6. Sidewalks and Hike and Bike Trails.

- A. *Requirement.* Sidewalks shall be required along both sides of all streets throughout the City as required in section 21.14.1. All lots must have access to sidewalks.
- B. *Curb Ramps.* Curb ramps shall be provided at all street intersections at the time of construction or reconstruction and shall comply with the provisions in the Federal Register 28, CFR part 36 (Americans with Disabilities Act or ADA) and Texas Accessibility Standards as amended from time to time.
- C. *Location and Width.* Where sidewalks are required, they shall be installed in accordance with the Public Works Specifications Manual and shall be a minimum of five feet (5') in width. Sidewalks placed directly against curbs shall be six feet (6') minimum width.
- D. *Timing of Construction.* Sidewalks shall generally be installed concurrently with the construction of the primary structure on a lot except on primary or secondary arterials where they shall be installed concurrently with street construction.
- E. *Construction Concurrent with Street Construction.* If a street is constructed which shall have no residential lot access points, then sidewalks shall be installed concurrently with street construction.
- F. *Corner Lot.* Where sidewalks are installed on corner lots, sidewalks shall be installed along both street frontages and shall be extended to the curb with handicapped access ramps in accordance with current ADA and Texas Accessibility standards.
- G. *Waiver or Deferment of Sidewalk Installation.* The City Manager or the City Engineer may waive the requirements of this section where he/she finds that topographical conditions or other unique conditions exist which would preclude the construction of sidewalks. The Planning and Zoning Commission may defer the installation of sidewalks to a time deemed more appropriate. If the installation of sidewalks is deferred, the developer shall provide a subdivision improvement agreement in accordance with section 21.4.15 guaranteeing the installation of sidewalks.
- H. *Hike and Bike Trails.* The City recognizes the need for connectivity and adequate access to and from public parkland areas and to provide for safe bicycling and pedestrian transportation. Hike and bike trails shall be installed in accordance with the Public Works Specification Manual. Additionally, hike and bike trails shall conform to the requirements as set forth in the City's Parks Master Plan and the Master Thoroughfare Plan.

In-lieu of construction of sidewalks in accordance with this Article, the City may, at its option, require construction of a hike and bike path adjacent to the street right-of-way. Any required hike and bike path shall be constructed in-lieu of the minimum sidewalk along one (1) side of the street, unless under the requirements of subsection 21.14.3.D. above.

(Ord. No. 17-S-43, § 1(Exh. A), 10-24-2017)

Sec. 21.14.7. Traffic Impact Analysis.

- A. *Application Requirements.* Every application for development within the City or its ETJ shall be accompanied by a Traffic Impact Analysis (TIA) Determination Form provided in the Development Manual. The TIA

Determination Form shall be utilized to determine the level of TIA required or if the development is eligible for a TIA waiver.

- B. *TIA Required.* The threshold requirement for a TIA and the level of TIA required shall be based on a land use or combination of land uses that results in peak hour trips in accordance with Table 21.14.7A. If the proposed land use does not exceed the peak hour trip threshold, a TIA waiver shall be noted on the TIA Determination Form. Peak hour trips shall be based on the most current edition of the Institute of Traffic Engineers (ITE) Trip Generation Manual.

Table 21.14.7A TIA Requirements	
Peak Hour Trips Generated	TIA Level Required
1,001 or more	Level 3 TIA
501—1,000	Level 2 TIA
101—500	Level 1 TIA
100 or less	None Required

- C. *TIA Scope.* If a TIA is required, the applicant shall meet with the City Manager or his/her designee to determine the scope for the study prior to beginning work on the TIA. The applicant shall be prepared, prior to the meeting with the City Manager or his/her designee, to discuss potential intersections, streets, and driveways to be evaluated, data assumptions or any other information required by the City Engineer.
- D. *TIA Study Area.* The study area required for the TIA shall be based on the level of the TIA required in Paragraph B. above. The City Manager or his/her designee may, at his/her discretion, require additional area to be included in the study area if deemed necessary to provide adequate review of the transportation network. The following Table 21.14.7B identifies the minimum acceptable study area:

Table 21.14.7B TIA Study Areas	
TIA Level	Study Area
Level 1 or 2 TIA	The site area and the area within a one quarter ($\frac{1}{4}$) mile radius from the boundary of the site.
Level 2 TIA	At the discretion of the City Manager or his/her designee, the study area may be extended up to a maximum of one (1) mile from boundary of the site.
Level 3 TIA	The site area and the area within a one (1) mile radius from the boundary of the site.

- E. *TIA contents.* The TIA shall conform to accepted industry standards and shall include a detailed description of the area street network, a description of proposed land uses, the anticipated stages of construction, the anticipated completion date of the various phases of land development, and the trigger points requiring implementation of necessary improvements. The City Engineer may require any additional information necessary to ensure adequate review. Additional information required may include, but not be limited to, analysis of weekend trip generation and traffic, traffic signal warrant analysis, gap analysis, queue length analysis, stopping sight distances, and pedestrian counts. The TIA shall contain, at a minimum, the following information:

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1. Trip generation rates for both the A.M. and P.M. peak periods using the ITE Trip Generation Manual linear trip generation rates, except where the ITE Trip Generation Manual clearly indicates the use of regression equations better captures the trip generation estimates, for all the land uses specified;
 2. Trip distribution;
 3. Adequacy determination for existing and proposed street cross-sections by phase of development based on the Transportation Research Board's Highway Capacity Manual (HCM);
 4. Intersection Level of Service (LOS) analysis for each phase of development, driveway sizes, locations, and adequacy based on the HCM;
 5. Layout showing lane usage (pavement marking layout) for all boundary streets including driveway locations and roadway geometry within the site;
 6. Driveways and intersecting streets connecting to boundary streets including all lane widths, traffic islands, medians, sidewalks, curbs, and traffic control devices;
 7. Existing and proposed turning movement counts for the site;
 8. Identification of and timing for transportation improvements both on-site and off-site within the study area, if any, needed to mitigate the effects of the additional traffic generated by the development. The development is responsible for the full costs of implementation of the improvements including costs of right-of-way acquisition, utility relocation, design and construction;
 9. Traffic Impact Analysis Elements
 - a. Establish the baseline traffic conditions and peak hour operations prior to development of the subdivision or site. This baseline shall be used to establish the existing Level of Service (LOS) of the key intersections, and street segments where appropriate.
 - b. LOS analysis for the future opening date of the development. This analysis shall be based on the baseline traffic conditions described above, plus the estimated traffic growth from the baseline to the future opening date.
 - c. LOS analysis at the future opening date including the development traffic. This analysis shall be based on the traffic conditions described in Section 21.14.E.9.b above plus the development traffic distributed onto the roadway network. Special analysis may be required to determine signal warrants, gap analysis, minimum safe sight distances, drive approach locations, turning lane length, or similar requirements.
 - d. Mitigation improvements shall be identified to either maintain a minimum LOS of C, or when the projected traffic delay values measured in seconds per vehicle is already below a LOS C to maintain the delay value to within ten (10) percent of the traffic delay identified in Section 21.14.6.E.9.b above for unsignalized intersections and to within twenty (20%) percent of the traffic delay identified in Part B above for signalized intersections.
 - e. For intersections functioning below a LOS of C as described in paragraph b above (Sec. 21.14.6.E.9(b)), the City may participate in the costs of improvements to achieve proportionality between the traffic impacts created by the proposed developments and the City's obligation to provide adequate streets and intersections. The percentage of development traffic added to the intersection to the intersection traffic as described in Section 21.14.6.E.9.b above will be used as the basis for determining the development's proportionate cost of improvements. Such agreement and timing of collection of those costs shall be determined by the execution of an Escrow Agreement for the development's proportionate share of the improvements.

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- f. Comply with the Public Works Specification Manual requirements.
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- 10. For projects adjacent to a TxDOT ROW, the TIA shall be accompanied by a letter from TxDOT which outlines any agreements between the developer and TxDOT for planned improvements; and
 - 11. The TIA shall be certified by a Texas Licensed Engineer with experience in the field of traffic engineering.
- F. *TIA Submittal.* Upon completion of the TIA, the applicant shall submit a digital copy of the report to the City Engineer or his/her designee. The applicant shall be responsible for submitting copies of the report to TxDOT, or any other entities, as required.
- G. *TIA Review.* The TIA shall be reviewed by the City Engineer or his/her designee and any other necessary review authorities. Review comments shall be provided to the applicant for response. Response by the applicant shall be in electronic format. The applicant shall submit a final copy of the TIA to the City Engineer containing all modifications prior to final approval of the application for which the TIA was conducted.
- H. *City Assistance in Development.* While providing for improvements, the City may cooperate with the developer in the use of its governmental powers to assist in the timely and cost-effective implementation of improvements. Assistance shall not mean financial aid in actual easement acquisition, construction or engineering costs. Specifically, the City agrees to:
- 1. Assist in the acquisition of necessary right-of-way and easements;
 - 2. Assist in the relocation of utilities;
 - 3. Assist in obtaining approvals from applicable county entities;
 - 4. Assist in obtaining approvals from TxDOT; and
 - 5. Assist in securing financial participation for major street improvements from applicable county entities, TxDOT or the Metropolitan Planning Organization.
- I. *TIA Revisions.* It is recognized that the scope of the developer's plans may change from time to time. The monitoring reports may also demonstrate changes in the area street conditions and travel patterns within and around the City. Periodic updates to the TIA may be required to address these issues and identify changes to the level of service at study intersections and streets. When a development change occurs that deviates from the activity on which the previous TIA was submitted and accepted, and the new activity places the project in a different TIA level as defined by Table 21.14.7A from that of the previous TIA or generates an increase of at least 100 peak hour trips relative to the previous TIA, the property owner or its agent shall perform and submit to the City an updated TIA. These updates shall address modifications to the magnitude and timing of improvements recommended by the original TIA. Any TIA amendments must be acceptable to the City.

(Ord. No. 18-S-04, § 1(Exh. A), 1-23-2018)

Section 21.14.8 Conflicts.

- A. If any provisions of this section are in conflict or inconsistent with provisions in any other City regulations, the order of precedence shall be
 - a. Master Thoroughfare Plan
 - b. Public Works Specification Manual

Sec. 21.1.10. Development manual.

The Development Manual is prepared by the City of Schertz Planning and Community Development Department - Planning Division and is hereby adopted by reference as if set forth in full. The Development Manual shall contain application forms, required application materials, fees, and application submittal deadlines. The Development Manual may be amended by the City Manager or his/her designee from time to time. A copy of the current Development Manual shall be posted to the City's website. Any amendment to the Development Manual shall be published to the City's website within 30 calendar days from when the amendment is made in accordance with LGC Section 212.0081 or its successor statute.

(Ord. No. 17-S-39 , § 1(Exh. A), 10-24-2017)

Sec. 21.1.11. Public works specification manual.

The Public Works Specification Manual prepared by the City of Schertz Public Works Division is hereby adopted by reference as if set forth in full. The Public Works Specification Manual shall contain specifications necessary to complete public projects. ~~The Public Works Specification Manual may be amended by the City Manager or his/her designee from time to time.~~The Public Works Specification Manual may be adopted and updated from time to time by ordinance approved by the City Council. In accordance with LGC Section 212.002 & .0021 a public hearing is required and notice of the public hearing shall be published in a newspaper of general circulation in the city.

(Ord. No. 17-S-39 , § 1(Exh. A), 10-24-2017)

ARTICLE 4. PROCEDURES AND APPLICATIONS

Sec. 21.4.1. Purpose and Intent.

The purpose of this Article is to establish application procedures, internal review procedures, public notice and hearing procedures, and review criteria for the processing of applications and actions that affect the development and use of property subject to the jurisdiction of the City of Schertz.

Sec. 21.4.2. Initiation of Application.

- A. *Application Submittal.* All development applications to be considered by any Board, Commission or Committee, or by the City Council shall be initiated by the filing of the application by the owner of the property on which the permit is applicable or by the owner's designated agent. In the event an application is submitted by a designated agent, the application must be accompanied by a written statement, signed by the owner, authorizing the agent to file the application on the owner's behalf.
- B. *Determination of Application Completeness.*
1. All development applications shall be subject to a determination of completeness by the City Manager or his/her designee.
 2. No application shall be deemed complete and accepted for processing unless it is accompanied by all documents required by and prepared in accordance with the requirements of this UDC and the Development Manual.
 3. The City Manager or his/her designee may from time to time identify additional requirements for a complete application that are not contained within but are consistent with the application contents and standards set forth in this UDC.
 4. A determination of completeness shall not constitute a determination of compliance with the substantive requirements of this UDC.
 5. Not later than the tenth (10th) business day after the date an application is submitted, the City Manager or his/her designee shall make a written determination whether the application constitutes a complete application. This shall include a determination that all information and documents required by this UDC and the Development Manual for the type of permit being requested or other requirements have been submitted. A determination that the application is incomplete shall be sent to the applicant within such time period by email to the address listed on the application or by United States mail at the address listed on the application. The determination shall specify the documents or other information needed to complete the application and shall state that the application will expire if the documents or other information are not submitted within forty-five (45) days after the date the application was submitted.
 6. An application filed on or after the effective date of this amended and restated UDC shall be deemed complete on the eleventh (11th) business day after the application has been received, if the applicant has not otherwise been notified that the application is incomplete. For purposes of this section, the applicant shall be deemed to have been notified if the City has emailed or mailed a copy of the determination as provided in subsection B.5 above.

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7. The processing of an application by any City employee prior to the time the application is determined to be complete shall not be binding on the City as the official acceptance of the application for filing. However, this application may be denied for incompleteness within the forty-five (45) day period.
 8. A Development Application shall be deemed to expire on the forty-fifty (45th) day after the application is submitted to the City Manager or his/her designee for processing if the applicant fails to provide documents or other information necessary to meet the requirements of this UDC, the Development Manual or other requirements as specified in the determination provided to the applicant. Upon expiration, the application will be discarded and a new application must be submitted.
 9. No vested rights accrue solely from the filing of an application that has expired pursuant to this section, or from the filing of a complete application that is subsequently denied.

C. *Application for Letters of Certification*

1. *Certifying Departments.* - Prior to filing an application for Subdivision Plat, Master Development Plan, or Site Plan approval the applicant shall secure letters of certification as required by this UDC. A request for letters of certification and required items shall be filed by the applicant with the following entities as required by the Development Manual:
 - a. Planning and Community Development Department
 - b. Engineering Department
 - c. Fire Department
 - d. Parks and Recreation
 - e. ~~Public Works Department~~
2. *Application Requirements.* Any request for a Letter of Certification shall be accompanied by an application prepared in accordance with the Development Manual.
3. *Completeness Review.* Upon receipt of a request for letters of certification, the City Manager or his/her designee shall preform a determination of application completeness pursuant to Section 21.4.2.B.
4. *Decision.* The following procedures shall apply to the issuance of a letter of certification:
 - a. After the City Manager or his/her designee has determined whether the request for letters of certification and required technical data is complete, each certifying department shall issue or deny a letter of certification within ninety (90) days. When a certifying department determines that the proposed plan, plat or any of the required accompanying data does not conform with the requirements of this UDC or other applicable regulations, ordinances or laws, the applicant may at his/her option revise any nonconforming aspects. If any data is revised and resubmitted, the certifying department/agency shall have up to thirty days (30) days from the latest date of submission to issue or deny a letter of certification.
 - b. Failure to Submit Letter of Certification. If a letter of certification is not issued or denied within the time periods prescribed in subsection C.4.a. above, the same shall be deemed issued and the applicant may submit an application for master development plan, subdivision plat, or site plan approval, without submitting the letter of certification.
5. *Issuance Criteria.* The letter of certification request is a process for compiling a complete application for master development plan, subdivision, or site plan review. The City Manager or his/her designee, in considering action on a Letter of Certification request should consider the following criteria:
 - a. the certification request complies with all applicable regulations, ordinances and laws including but not limited to the Unified Development Code, Code of Ordinances, Development Manual, Public Works Technical Specifications, and Public Works Design Guide.

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- b. A letter of certification does not authorize any subdivision or development activity, and any action by the certifying department shall constitute only a recommendation as to whether the activities subject to the request for letters of certification would comply with the applicable development requirements.
6. *Scope of Issuance.* A letter of certification does not authorize the development or subdivision of land. Upon receipt of all letters of certification, the applicant may submit an application for master development plan, subdivision plat, or site plan approval. Letters of certification shall remain valid for one (1) year from the date of issuance by the certifying department/agency. After that time period, new or updated letters of certification shall be required. ~~to file a proposed plat with the planning commission.~~ Each new proposed plat, master development plan, subdivision plat, or site plan to be filed will be required to obtain new letters of certification prior to application submittal.
7. *Amendments.* A letter of certification may be amended prior to filing an application for subdivision approval if the proposed amendment:
- Does not increase the number of lots subject to the application.
 - Does not increase by more than five percent (5%) the lineal footage of roadways or the areas within the paved surface of the street right-of-way.
 - Does not reduce the amount of open space within the proposed subdivision.
8. *Recording Procedures.* A letter of certification is not recorded. A letter of certification shall be maintained by the applicant and presented with the proposed application for master development plan, subdivision plat, or site plan approval.
- D. *Application Withdrawal.* Any request for withdrawal of an application must be submitted in writing to the City Manager or his/her designee. If notification is required for the application and has been properly given via publication in the newspaper and/or written notification to surrounding property owners, such application must be placed on the agenda. The staff representative shall notify the Board, Commission, Committee or the City Council of the request for withdrawal. The Board, Commission, Committee or the City Council may, at its discretion, accept the request for withdrawal of the application by general consent of the members. Application fees are not refundable unless reimbursement is otherwise authorized by the City Manager or his/her designee.

(Ord. No. 19-S-22 , § 1(Exh. A), 9-3-2019)

Sec. 21.4.3. Notice Requirements.

- A. *Published Notice.* Whenever published notice of a public hearing before a Board, Commission, Committee or the City Council is required, the City Manager or his/her designee shall cause notice to be published in an official newspaper or a newspaper of general circulation in the City before the fifteenth (15th) day before the date set for the required hearing. Said notice shall set forth the date, time, place and purpose of the hearing as required under LGC section 211.006(a).
- B. *Written Notice.* Whenever written notice of a public hearing before a Board, Commission, Committee or the City Council is required, before the tenth (10th) day before the hearing date, the City Manager or his/her designee shall cause written notice to be sent to each owner, as indicated by the most recently approved municipal tax roll, of real property within 200 feet of the exterior boundary of the property in question. Said notice shall set forth the date, time, place and purpose of the hearing as required under LGC section 211.007(c). The notice may be served by its deposit, properly addressed with postage paid, in the United States mail. If the property within 200 feet of the property in question is located in territory within the City and is not included on the most recently approved municipal tax roll, notice to such owners shall be given by

one (1) publication in an official newspaper or a newspaper of general circulation in the municipality at least fifteen (15) days before the date of the hearing. Failure of owners to receive notice of hearing shall in no way affect the validity of the action taken.

- C. *Posted Notice.* Whenever posted notice of a public hearing is required, notification signs shall be posted by the applicant a minimum of eleven (11) days prior to the scheduled public hearing and shall remain posted during the course of the public hearings, until such time that final action has been taken on the permit application. Signs shall be posted on the subject property and/or along public right-of-way in a format approved by the City Manager or his/her designee. The number of signs, size of signs and content to be placed on the signs shall be in accordance with the Development Manual.

It shall be the responsibility of the applicant to periodically check sign locations to verify that signs remain in place and have not been vandalized or removed. The applicant shall replace any missing or defective signs within one (1) business day from the time that a City official notifies the applicant that the signs are missing. It is unlawful for a person to alter any notification signs, or to remove it while the case is pending. Removal or alteration that is beyond the control of the applicant shall not constitute a failure to meet notification requirements of this section.

(Ord. No. 17-S-42 , § 1(Exh. A), 10-24-2017)

Sec. 21.4.4. Public hearings.

- A. *Public Hearing Required.* Whenever a public hearing is required, the City Manager or his/her designee shall establish the date, time and place of the public hearing and shall cause any notice required under section 21.4.3 of this Article to be prepared and made accordingly.
- B. *Conduct of Hearing.* Any person may appear at the public hearing and submit evidence, either individually or as a representative of an organization. Each person who appears at a public hearing shall state his or her name, address, and if appearing on behalf of an organization, state the name and mailing address of the organization for the record. Subject to the chairperson's inherent authority to conduct meetings, public hearings shall generally be conducted as follows.
1. The City staff may present a description of the proposed project and a written or oral recommendation, if required. Any written recommendation shall be available to the public at the time that the agenda packet for the body conducting the hearing is compiled.
 2. The applicant may present any information it deems appropriate.
 3. Testimony in support of the application may be presented by any individual who expresses an interest in the proposed project.
 4. Testimony in opposition to the application may be presented by any individual who expresses an interest in the proposed project.
 5. At the discretion of the chairperson, the City staff and the applicant may respond to any statement by the public.
 6. The body conducting the hearing may exclude testimony or evidence that it finds to be irrelevant, immaterial or unduly repetitious.
 7. At the sole discretion of the chairperson of the body conducting the hearing, an individual may be permitted to pose relevant questions to staff, the applicant or the body conducting the hearing, as directed by the chairperson.
 8. The public hearing shall be closed.
 9. The advisory body (i.e. Board, Commission or Committee) shall make a recommendation.

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10. The advisory body (i.e. Board, Commission or Committee) shall prepare a written report with its recommendations to the City Council.
- C. *Continuance of Hearing.* The body conducting the hearing may, on its own motion or at the request of any person, for good cause, continue the hearing to a fixed date, time and place. Except as required by the Texas Open Meetings Act or other applicable law, no notice shall be required if a hearing is continued. If a public hearing is closed, no further public testimony shall be taken.
 - D. *Additional Rules.* The body conducting the hearing may adopt additional rules of procedure and may apply such additional rules to govern the public hearing which are not inconsistent with this section.
 - E. *Joint Public Hearing.* Unless otherwise prescribed in this UDC, whenever an application must be preceded by a public hearing both before an advisory body (i.e. Board, Commission and/or Committee) and before the City Council, the advisory body and the Council may conduct a joint public hearing and take action on the application in the following manner.
 1. The City Council shall establish the date of the joint public hearing by motion at a regular or special meeting.
 2. The City Council shall cause notice of the joint public hearing to be provided as required by this UDC and the Texas Open Meetings Act and, by a vote of two-thirds of its members, may prescribe the type of notice for the joint public hearing.
 3. The advisory body (i.e. Board, Commission and/or Committee) and the City Council shall be convened for the hearing and for any action to be taken on the petition or application.
 4. The advisory body (i.e. Board, Commission and/or Committee) and the City Council may take action on the application at the same meeting, provided that the City Council shall not take action until the written report and recommendation of the advisory body (i.e. Board, Commission and/or Committee) has been received.

Sec. 21.4.5. Post-Decision Procedures.

- A. *Notification Required.* Within ten (10) business days following final action on any Development Application, the appropriate City department shall provide written notification to the applicant of the decision of the Board, Commission, Committee or the City Council considering the request. If an application has been denied, the notification should include the reasons for denial as well as any information relating to reapplication procedures for the appropriate application.
- B. *Reapplication Following Denial.* Whenever any Development Application, with the exception of any plat application, is denied, a Development Application for all or a part of the same property shall not be accepted for filing for a period of six (6) months after the date of denial unless the subsequent application involves a proposal that is substantially different from the previously denied proposal. For the purpose of this section, a request may be considered substantially different if the change is to a different zoning classification, there is a change in conditions relating to zoning principles of the property or surrounding properties or there is a change in the nature of the development of the property or surrounding properties. The City Manager or his/her designee shall resolve any questions concerning the similarity of the reapplication. The final decision-maker may, at its option, waive the six (6) month waiting period if, after due consideration of the matter at a scheduled and posted meeting, it is determined that denial of the request was based upon erroneous or omitted information, or if substantial new information pertaining to the request is discovered.
- C. *Amendments and Revisions to Approved Application.* Unless otherwise expressly provided by this UDC, any request to amend or revise an approved Development Application shall be considered a new application, which must be decided in accordance with the procedures governing the original application and the standards in effect at the time such new application is filed with the City.

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- D. *Amendments Required.* Whenever a subsequent Development Application differs substantially from a previously approved Development Application to which the subsequent application must conform, the applicant shall submit an amended Development Application for the initial Development Application, which shall be decided prior to the subsequent application. The applicant's failure to comply with this section shall result in denial of the subsequent application

Sec. 21.4.6. Comprehensive Land Plan Amendment.

- A. *Applicability.* The Comprehensive Land Plan of the City reflects the long-term plan for growth and development of the City. The City Council may, from time to time, on its own motion, by request of the City Manager or his/her designee or by application from a property owner, amend, supplement, change, modify or repeal the text of the Comprehensive Land Plan or may amend the boundaries shown on the Future Land Use Map, Master Thoroughfare Plan or any other applicable maps contained in the Comprehensive Land Plan. Approved amendments to the Comprehensive Land Plan authorize a property owner to submit subsequent development applications consistent with the amendment.
- B. *Application Requirements.*
1. *Application Required.* Any request for an amendment to the Comprehensive Land Plan shall be accompanied by a completed Planning Department Development Application.
 2. *Accompanying Applications.* Any request for amendment of the Future Land Use Map submitted by a property owner may be accompanied by an application for a zoning change consistent with requested Future Land Use Map amendment for land within the City limits, or by a Subdivision Master Plan, for land within the ETJ. Approval of an amendment to the Comprehensive Land Plan shall require all subsequent development applications to be consistent with the approved amendments.
- C. *Processing of Application and Decision.*
1. *Submittal.* An application for an amendment to the Comprehensive Land Plan shall be submitted to the ~~Planning Department~~ City Manager or his/her designee. The City Manager or his/her designee shall review the application for completeness in accordance with section 21.4.2 of this Article. The City Manager or his/her designee may, at its option, request a recommendation from any other City department or consultant. The City Manager or his/her designee shall notify the applicant of items requiring correction or attention before providing a recommendation on the application. After appropriate review, the City Manager or his/her designee shall forward a written recommendation to the Planning and Zoning Commission for consideration.
 2. *Notification Requirements.* An application for an amendment to the Comprehensive Land Plan requires the following notification in accordance with section 21.4.3 of this Article:
 - a. Written notice prior to consideration by the Planning and Zoning Commission; and
 - b. Published notice prior to consideration by the City Council.
 3. *Commission recommendation.* The Planning and Zoning Commission shall hold a public hearing in accordance with the Texas Open Meetings Act and section 21.4.4 of this Article and make a written recommendation regarding a proposed amendment to the Comprehensive Land Plan to the City Council. The Planning and Zoning Commission may recommend approval, approval with conditions, or denial of the amendment.
 4. *Decision by City Council.* The City Council shall receive the written recommendation of the Planning and Zoning Commission regarding a proposed amendment to the Comprehensive Land Plan and shall hold a public hearing in accordance with the Texas Open Meetings Act and section 21.4.4 of this Article. The City Council may vote to approve, approve with conditions, or deny the amendment.

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- D. *Criteria for Approval.* The Planning and Zoning Commission, in making its recommendation, and the City Council, in considering final action on an amendment to the Comprehensive Land Plan, should consider the following criteria:
1. The proposed amendment promotes the health, safety, or general welfare of the City and the safe, orderly, efficient and healthful development of the City;
 2. An amendment to the text is consistent with other policies of the Comprehensive Land Plan, taking into account the nature of any proposed map amendment associated with the text amendment;
 3. An amendment to the Future Land Use Map, Master Thoroughfare Plan or any other applicable maps contained in the Comprehensive Land Plan is consistent with the policies of the Comprehensive Land Plan that apply to the map being amended, taking into account the nature of any proposed land use associated with the map amendment;
 4. Any proposed amendment is consistent with the goals and objectives of the Comprehensive Land Plan;
 5. Any proposed amendment addresses circumstances that have changed since the last time the plan map or text was considered, implements plan policies better than the current plan map or text corrects a mapping error or addresses a deficiency in the plan; and
 6. Other criteria which, at the discretion of the Planning and Zoning Commission and City Council, are deemed relevant and important in the consideration of the amendment.

Sec. 21.4.7. Unified Development Code Amendment.

- A. *Applicability.* The provisions of this section apply to any request for an amendment to the text of this UDC. The City Council may, from time to time, on its own motion, or at the request of the City Manager or his/her designee, amend, supplement, change, modify or repeal the text of any portion of this UDC in order to establish and maintain sound, stable and desirable development within the jurisdiction of the City. The provisions of this section shall exclude amendments to any appendix which may be amended by general consent of the City Council.
- B. *Application Requirements.* Requests for amendments to the text of this UDC may be initiated by the request of the Planning and Zoning Commission, the City Council or the City Manager on his/her own initiative. A request for an amendment to the text of this UDC shall be accompanied by a completed Development Application.
- C. *Processing of Application and Decision.*
1. *Submittal.* An application for an amendment to the text of this UDC shall be submitted to the City Manager or his/her designee. The City Manager or his/her designee shall review the application and may direct the proposed amendment to any other City departments or consultant for review and recommendation. After appropriate review, the City Manager or his/her designee shall forward a recommendation to the Planning and Zoning Commission for consideration.
 2. *Notification Requirements.* An application for an amendment to the text of this UDC requires published notice prior to consideration by the City Council.
 3. *Commission recommendation.* The Planning and Zoning Commission shall hold a public hearing in accordance with the Texas Open Meetings Act and section 21.4.4 of this Article and make a written recommendation regarding a proposed amendment to the text of this UDC to the City Council. The Planning and Zoning Commission may recommend approval, approval with conditions, or denial of the amendment.

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4. *Decision by City Council.* The City Council shall receive the written recommendation of the Planning and Zoning Commission regarding a proposed amendment to the text of this UDC and shall hold a public hearing in accordance with the Texas Open Meetings Act and section 21.4.4 of this Article. The City Council may vote to approve, approve with conditions, or deny the amendment. Such amendment shall be by ordinance, and the identifying number of any such ordinance shall be noted on the cover of this UDC.
- D. *Criteria for Approval.* The Planning and Zoning Commission, in making its written recommendation, and the City Council, in considering final action on an amendment to the text of this UDC, should consider the following criteria:
 1. The proposed amendment promotes the health, safety, or general welfare of the City and the safe, orderly, efficient and healthful development of the City;
 2. An amendment to the text is consistent with other policies of this UDC and the City;
 3. Any proposed amendment is consistent with the goals and objectives of this UDC and the City; and
 4. Other criteria which, at the discretion of the Planning and Zoning Commission and the City Council, are deemed relevant and important in the consideration of the amendment.
 - E. *Non-Substantive Amendments.* Notwithstanding the other provisions of this section, the City Council may by resolution correct spelling or punctuation errors, cross-reference errors, and other matters herein determined by the City Attorney to be non-substantive without complying with the foregoing provisions of this section. The number of any such resolution shall be noted on the cover of this UDC.

Sec. 21.4.8. Annexation.

- A. *Applicability.* Annexation may be voluntary or involuntary and shall be required to meet all requirements of the LGC, Local Government Code for each type of annexation.

The provisions of this section apply to any request for voluntary annexation by a property owner wishing to extend the corporate limits of the City to incorporate property adjacent to the City's existing municipal boundaries.

- B. *Application Requirements.*
 1. *Application Required.* A request for annexation shall be accompanied by an application prepared in accordance with the Development Manual.
 2. *Accompanying Applications.* Any request for annexation shall be accompanied by an application to establish the initial zoning on the property. An application to establish the zoning may be considered at the same meeting as the annexation request so long as the ordinance providing for annexation is acted on prior to any action on the zoning request. In the event that an application for annexation is considered concurrently with the application for zoning, the Planning and Zoning Commission may consider the zoning request and provide a written recommendation to the City Council so long as the City Council has adopted the annexation ordinance.
- C. *Processing of Application and Decision.*
 1. *Submittal.* An application for annexation shall be submitted to the City Manager or his/her designee. The City Manager or his/her designee shall review the application for completeness in accordance with section 21.4.2 of this Article. The City Manager or his/her designee may, at its option, request a recommendation from any other City department or consultant. The City Manager or his/her designee shall notify the applicant of items requiring correction or attention before providing a recommendation on the application. After appropriate review, the City Manager or his/her designee shall forward a written recommendation to the City Council for consideration.

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2. *Development Agreement.* The City Manager or his/her designee shall comply with the approval. The City Council shall comply with LGC, Local Government Code § 43.035.
 3. *Notification requirements.* The City Manager or his/her designee shall provide notification in accordance with LGC, Local Government Code § 43.062.
 4. *Service plan required.* The City Manager or his/her designee shall prepare an annexation service plan in accordance with LGC, Local Government Code § 43.056.
 5. *Decision by City Council.* The City Council shall hold two public hearings in accordance with LGC, Local Government Code § 43.063 and shall take final action as required in LGC, Local Government Code.
 6. *Other Procedures Applicable.* A request for annexation is subject to all applicable rules and procedures required by State law. In the event of a conflict between the requirements of this UDC and State law, the requirements of State law shall apply.
- D. *Criteria for Approval.* When considering a request for voluntary annexation, the City Council should consider the following criteria:
1. The application is consistent with the requirements of State law and this UDC;
 2. The annexation promotes the health, safety, or general welfare of the City and the safe, orderly, efficient and healthful development of the City;
 3. The property owners and residents of the area consent to the annexation;
 4. The application includes a service plan as required by subsection 21.4.8.C.4 above;
 5. The annexation is consistent with the goals and objectives of the Comprehensive Land Plan; and
 6. Other criteria which, at the discretion of the Planning and Zoning Commission and the City Council, are deemed relevant and important in the consideration of the amendment.

(Ord. No. 18-S-04 , § 1(Exh. A), 1-23-2018)

Sec. 21.4.9. Reserved.

Editor's note(s)—Ord. No. 19-S-02 , § 2, adopted Feb. 5, 2019, repealed § 21.4.9, which pertained to the designation of landmark properties and heritage neighborhoods and derived from Ord. No. 13-S-58 , § 1, adopted Dec. 10, 2013.

Sec. 21.4.10. Development Agreements.

- A. *Applicability.* The purpose of a Development Agreement is to determine whether the City wishes to authorize a plan of development for land located within its ETJ, to prescribe land uses, environmental standards, development standards and public facilities standards governing development of the land for the term of the agreement, to provide for the delivery of public facilities to the property and to provide for annexation of the property to the City. A Development Agreement may be approved for land located in the ETJ of the City in accordance with LGC, Local Government Code § 212.172.
- B. *Application Requirements.*
1. *Application Required.* Any application for a Development Agreement shall be accompanied by an application prepared in accordance with the Development Manual.
 2. *Accompanying Applications.* An application for a Development Agreement shall be accompanied by a preliminary plat prepared in accordance with section 21.12.7 of this UDC. Approval of a preliminary

plat as part of a Development Agreement shall meet the requirements for preliminary plat approval under section 21.12.7.

C. *Processing of Application and Decision.*

1. *Submittal.* An application for a Development Agreement shall be submitted to the City Manager or his/her designee. The City Manager or his/her designee shall review the application for completeness in accordance with section 21.4.2.
2. *Preparation and Negotiation of Development Agreement.* An application for a Development Agreement shall be prepared in accordance with LGC, Local Government Code § 212.172. After review by the City staff, the application and accompanying plans shall be transmitted to the office of the City Attorney for review. After appropriate review by all parties, a recommendation shall be forwarded to the Planning and Zoning Commission for review and recommendation. The City Council shall have the final authority for approval of a Development Agreement.
3. *Commission Recommendation.* The Planning and Zoning Commission shall hold a public hearing in accordance with the Texas Open Meetings Act and section 21.4.4 and make a written recommendation regarding a proposed Development Agreement to the City Council. The Planning and Zoning Commission may recommend approval, approval with conditions, or denial of the agreement. The Planning and Zoning Commission may, on its own motion or by request of the property owner, postpone consideration of the request to a certain date that is not more than thirty (30) calendar days after the date of the current consideration in order to review additional information or modifications which may have a direct bearing on the recommendation to the City Council.
4. *Decision by City Council.* The City Council shall receive the written recommendation of the Planning and Zoning Commission regarding a proposed Development Agreement and shall hold a public hearing in accordance with the Texas Open Meetings Act and section 21.4.4. The City Council may vote to approve, approve with conditions, or deny the Development Agreement. The City Council may, on its own motion or by request of the property owner, postpone consideration of the request to a certain date that is not more than thirty (30) calendar days after the date of the current consideration in order to review additional information or modifications which may have a direct bearing on the final decision. If the City Council approves the Development Agreement, it shall approve the agreement by appropriate action that authorizes the City Manager to execute the agreement on behalf of the City following execution by the property owner. Unless otherwise specified by the City Council, the property owner shall accept the Development Agreement and accompanying preliminary plat within ten (10) working days after the date the City Council's action is adopted. If not executed by the property owner within such period, the Council's approval shall be deemed void.
5. *Recording Development Agreement.* The approved Development Agreement shall be recorded in the real property records of each county in which land subject to the agreement is located.

(Ord. No. 18-S-04 , § 1(Exh. A), 1-23-2018)

Sec. 21.4.11. Utility service extension.

A. ~~A.~~ *Applicability.*

- a. ~~An application for request for approval of a~~ Utility Service eExtension shall be required ~~whenever~~ a property owner seeks water or wastewater services from the City for a proposed project that ~~will be~~ located within the City's service area(s), ~~CCN that is~~ not required to plat ~~or for which the platting requirement falls under a different jurisdiction than the City ETJ or~~ service areas outside the City limits or ETJ at the time of the proposed Utility Service eExtension ~~and subsequent development~~. Approval of an application request for a Utility Service

~~e~~Extension ~~authorizes the City to annex the property, and~~ authorizes the property owner to submit development applications consistent with the capacity of the utility facilities to be extended, and, upon approval of the development applications, to construct extensions of the utility facilities in accordance with the terms of the approved ~~Utility Service e~~Extension ~~application request, as long as the City is warranted~~ application, as long as the City is allowed to make approvals consistent with agreements executed with other utility service providers.

b. ~~An application for a Utility Service Extension shall be required when a property owner seeks water or wastewater services from the City for a proposed project that is located outside the City's service area(s) that is not required to plat or for which the platting requirement falls under a different jurisdiction than the City at the time of the proposed extension and subsequent development. Approval of an application for a Utility Service Extension authorizes the property owner to submit development applications consistent with the capacity of the utility facilities to be extended and, upon approval of the development applications, to construct extensions of the utility facilities in accordance with the terms of the approved Utility Service Extension application, as long as the City is allowed to make approvals consistent with agreements executed with other utility service providers.~~

B. *Application Requirements.*

1. *Application Required.* Any application for Utility Service Extension shall be accompanied by a completed Development Application.
2. *Accompanying Applications.*
 - a. An application for Utility Service Extension ~~for a proposed project that is not located within the City Limits may~~ shall be accompanied by a request for voluntary annexation. The City may, at its option, elect to annex the property upon request or may delay the annexation until such time the City deems necessary to promote the health, safety or general welfare of the City and the safe, orderly, efficient and healthful development of the City.
 - b. An application for Utility Service Extension may be accompanied by an application for a Subdivision Master Plan prepared in accordance with section 21.12.5. A Subdivision Master Plan may not be approved until final approval of the Utility Service Extension by the City Council.
 - c. An application for Utility Service Extension for a proposed project that is not located within the City's service areas shall be accompanied by an approval for a Certificate of Convenience and Necessity (CCN) transfer through the Public Utility Commission (PUC) or appropriate Commission, as well as an updated Service Area Map and Capital Improvement Plan amendment for the proposed development and areas to be served in the future by the proposed utility service extension.

C. *Processing of Application and Decision.*

1. *Submittal.* ~~An application request~~ for Utility Service Extension shall be submitted to the City ~~Engineer~~ Manager or his/her designee. The City ~~Engineer~~ Manager or his/her designee shall review the application for completeness in accordance with section 21.4.2.
2. *Review and Processing of Request.* The City ~~Manager or his/her designee~~ Engineer shall circulate the application among applicable City departments for review and recommendation. The City ~~Manager or his/her designee~~ Engineer shall evaluate the request for consistency with the approval criteria and shall prepare a written recommendation to be forwarded to the City Council. The recommendation should include any comments received from other departments including, but not limited to, an analysis of

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- the financial feasibility of extending services and any fiscal impacts on existing utilities from the extension.
3. *Decision by City Council.* The City Council shall receive the written recommendation of the City ~~Manager or his/her designee~~Engineer and shall decide whether to approve, approve with conditions, or deny the request for Utility Service Extension.
- D. *Criteria for Approval.* The City Council, in considering final action on a request for Utility Service Extension, should consider the following criteria:
1. Whether the proposed development to be served by the extension is consistent with the Comprehensive Land Plan;
 2. Whether the extension is proposed to be constructed in accordance with all applicable City ordinances, resolutions, regulations and standards;
 3. For applications for service to property outside the City's service area(s) - Whether it is feasible to annex the property, and any intervening property which is needed for utility rights-of-way, into the City;
 4. Whether the utility extension would compromise the City's ability to timely provide adequate water or wastewater facilities to property inside the City;
 5. Whether the utility extension will lead to premature development that cannot be served efficiently and timely by roadway, drainage or park facilities;
 6. Whether the utility extension is financially feasible given the proposed means of financing the extension;
 7. Whether the utility extension will lead to significant degradation of water quality or other environmental resources, either from construction of the water or wastewater improvements, development of the property owner's land, or development of other land that may be served through the extended facilities;
 8. Whether the property owner proposes to extend wastewater facilities without utilizing City water facilities; and
 9. The extent to which the proposed agreement promotes the health, safety or general welfare of the City and the safe, orderly, efficient and healthful development of the City.

Sec. 21.4.12. Variances.

- A. *Applicability.*
1. The BOA shall have the ability to authorize, in specific cases, a variance from the zoning regulations of this UDC if the variance is not contrary to the public interest and, due to special conditions, a literal enforcement of this UDC would result in unnecessary hardship, so that the spirit of this UDC is observed and substantial justice is done. A variance shall not be granted to relieve a self-created or personal hardship, nor shall it be based solely on economic gain or loss, nor shall it permit any person a privilege in developing a parcel of land not permitted by this UDC to other parcels of land in the district.
 2. Approval of a variance authorizes a property owner to submit subsequent development applications consistent with the approved variance.
- B. *Application Requirements.* Any request for a variance shall be accompanied by an application prepared in accordance with the Development Manual.

C. *Processing of Application and Decision.*

1. *Submittal.* An application for a variance shall be submitted to the City Manager or his/her designee. The City Manager or his/her designee shall review the application for completeness in accordance with section 21.4.2. The City Manager or his/her designee may, at its option, request a recommendation from any other appropriate City department or consultant. The City Manager or his/her designee shall notify the applicant of items requiring correction or attention before providing a recommendation on the application. After appropriate review, the City Manager or his/her designee shall forward a written recommendation to the BOA for consideration.
2. *Notification requirements.* An application for a variance requires the following notification in accordance with section 21.4.3:
 - a. Written notice; and
 - b. Published notice.
3. *Decision by the BOA.*
 - a. The BOA shall receive the recommendation of the City Manager or his/her designee and shall hold a public hearing in accordance with section 21.4.4. The Board may vote to approve, approve with conditions, or deny the variance.
 - b. The Board may, on its own motion or by request of the property owner, postpone consideration of the variance to a certain date that is not more than thirty (30) calendar days after the date of the current consideration in order to review additional information or modifications which may have a direct bearing on the final decision.
 - c. The approval shall be effective for a period of 180 days after the date of such approval. If no application for building permit is submitted within that time, the variance shall become null and void.
 - d. The disapproval of a variance shall require compliance by the applicant, if applicable, within fifteen (15) days after the date of disapproval and upon written notification by staff.

D. *Criteria for approval.* In order to make a finding of hardship and grant a variance from the zoning regulations of this UDC, the Board must determine the following:

1. The requested variance does not violate the intent of this UDC or its amendments;
 2. Special conditions of restricted area, topography or physical features exist that are peculiar to the subject parcel of land and are not applicable to other parcels of land in the same zoning district;
 3. The hardship is in no way the result of the applicant's own actions; and
 4. The interpretation of the provisions in this UDC or any amendments thereto would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district that comply with the same provisions.
5. In considering a variance as applied to a structure, the board may consider the following as grounds to determine whether an unnecessary hardship would result from compliance with the ordinance:
- a. The financial cost of compliance is greater than 50 percent of the appraised value of the structure as shown on the most recent appraisal roll certified to the assessor for the municipality under Section 26.01, Tax Code;
 - b. Compliance would result in a loss to the lot on which the structure is located of at least 25 percent of the area on which development may physically occur;

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- c. Compliance would result in the structure not being in compliance with a requirement of a municipal ordinance, building code, or other requirement;
 - d. Compliance would result in the unreasonable encroachment on an adjacent property or easement; or
 - e. The municipality considers the structure to be a nonconforming structure.
- E. *Appeals of BOA Decisions.* Any person or persons aggrieved by any decision of the BOA, or any taxpayer or any officer, department, board of the City may appeal a decision of the BOA regarding any variance request in accordance with section 21.3.4 of this UDC.
- F. *Finding of fact.* The board shall complete a finding of fact for variance or appeal to support its conclusion for each variance or appeal presented to it.

(Ord. No. 18-S-04 , § 1(Exh. A), 1-23-2018)

Sec. 21.4.13. Reserved.

Sec. 21.4.14. Appeals.

- A. *Purpose and Applicability.* The purpose of an appeal is to contest an initial decision on a Development Application based upon alleged misapplication of the regulations contained within this UDC and the criteria for approval of the Development Application. An appeal may not be used to amend, vary or otherwise modify the standards of this UDC that apply to the Development Application. Any decision on a Development Application required by this UDC may be appealed to the Board, Commission or the City Council indicated within the procedures for each Development Application. The granting of an appeal supersedes the decision from which the appeal was taken and results in approval, conditional approval or denial of the Development Application for which the approval was sought.
- B. *Appeal Requirements.* Any person or persons aggrieved by any decision on a Development Application, or any marshal, officer, department, or board of the City may appeal a decision on a Development Application to the Board, Commission or the City Council responsible for consideration of the appeal as indicated in this UDC. An appeal shall contain a written statement of the reasons why the decision is erroneous, and shall be accompanied by a fee established by the City Council. An appeal by an applicant shall be accompanied by a copy of the Development Application on which the initial decision was rendered. An appeal may include any other documents that support the position of the appellant. A written appeal must be filed with the City Manager or his/her designee ~~within no later than twentyten (1020) working~~ days after the date of ~~notification~~ of the decision on the Development Application.
- C. *Processing of Appeal and Decision.*
1. *Submittal.* An appeal shall be submitted to the City Manager or his/her designee for processing of the Development Application being appealed. Upon receipt of a written appeal, the City Manager or his/her designee shall compile all documents constituting the record of the decision subject to appeal and transmit the record to the Board, Commission or the City Council responsible for considering the appeal.
 2. *Stay of Proceedings.* Receipt of a written appeal of a decision on a Development Application stays all proceedings of the City in furtherance of the decision from which appeal is taken, including without limitation acceptance, processing or issuance of any subsequent development applications, and any development activities authorized by initial approval of the Development Application. The stay shall be

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- lifted only if the City Manager or his/her designee certifies in writing to the Board, Commission or the City Council responsible for consideration of the appeal that a stay would cause imminent peril to life or property. Thereafter, the stay may be reinstated only by order of the Board, Commission or the City Council responsible for consideration of the appeal or a court of record, on application, after notice to the City Manager or his/her designee, for due cause shown.
3. *Notification Requirements.* An appeal requires the following notification in accordance with section 21.4.3:
 - a. Written notice; and
 - b. Published notice.
 4. *Decision on Appeal.* The Board, Commission or the City Council responsible for consideration of the appeal shall hold a public hearing and decide the appeal ~~within not later than the next meeting for which notice can be provided and not later than the 60th day~~ thirty (30) days after the date the appeal is filed ~~written receipt of the request for the appeal.~~ The Board, Commission or the City Council responsible for consideration of the appeal shall affirm, reverse or modify the decision from which the appeal was taken.
 5. *Notification of Decision on Appeal.* The property owner and the applicant for the Development Application under appeal shall be notified of the decision on the appeal in accordance with section 21.4.5.
- D. *Criteria for Approval.* In deciding the appeal, the Board, Commission or the City Council responsible for consideration of the appeal shall apply the same criteria that govern the initial decision on the Development Application under the provisions of this Article.
- E. *Expiration and Extension.* For purposes of determining expiration or extension periods under this UDC, the date the Board, Commission or the City Council responsible for consideration of the appeal grants relief on the appeal is the date on which the Development Application is deemed approved.
1. Once the Board, Commission or the City Council grants relief on the appeal, a new Development Application or permit application shall be submitted within 180 days after the date of such approval or the appeal shall become null and void.
 2. The disapproval of an appeal shall require compliance by the applicant, if applicable, within fifteen (15) days after the date of disapproval and upon written notification by staff.

Sec. 21.4.15. Public infrastructure improvements, construction plans, and improvement agreements.

- A. *Applicability.* The provisions of this section applies to the construction of any public infrastructure improvements.
- B. *Processing of Construction Plans and Decision.*
 1. *Submittal.* Construction plans shall be submitted to the City Manager or his/her designee prior to construction of public infrastructure improvements. Submittal of construction plans shall be in accordance with the Engineering Department's permitting requirements.
 2. *Decision by the City Manager.* The City Manager or his/her designee may approve, approve with conditions, or deny the construction plans.
 3. *Criteria for Approval.* The City Manager or his/her designee, or the City Council on appeal, shall apply the following criteria in making a decision on the construction plans:

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- a. The construction plans are consistent with the approved preliminary plat or the proposed final plat in the event that the public infrastructure improvements are in relation to a plat; and
 - b. The construction plans conform to all applicable regulations pertaining to the construction and installation of public infrastructure improvements.
4. *Expiration.* The approval of construction plans shall remain in effect for two years after the date the construction plans were approved by the City Manager or his/her designee. If construction of the project has not commenced during the two year period, approval of the construction plans shall expire. For public infrastructure improvements that are associated with a final plat, approval of the construction plans shall remain in effect for the time that approval of the final plat is in effect and shall expire when approval of the final plat expires, unless an extension is granted, pursuant to Section 21.4.15.B.5, Extension.
 5. *Extension.* At the written request of the property owner or their representative, the expiration date for the approval of construction plans may be extended by the City Manager or his/her designee for a period not to exceed six (6) months. In no case shall the construction plan extension be later than the final plat expiration.
- C. *Timing of Public Infrastructure Improvements.*
1. *Completion Prior to Final Plat Recordation.* For public infrastructure improvements associated with a proposed subdivision or development, except as provided below, completion of the improvements shall be in accordance with the approved construction plans and shall occur before an approved final plat is recorded, unless the obligation to construct public infrastructure improvements has been deferred and an improvement agreement is executed. Other infrastructure including all electric utility services necessary to serve the development shall be installed within the development prior to plat recordation.
 2. *Installation after Final Plat Recordation.* The property owner or applicant may request to defer the obligation to construct and install one (1) or more public improvements to serve the associated subdivision until after final plat recordation. The request shall be submitted in writing and specify what is being requested for deferral. Deferral of the obligation to install public improvements shall be conditioned on execution of an improvement agreement and provision of sufficient security. The City Manager or his/her designee may approve or deny the request to defer installation of public infrastructure improvements.
 3. *Off-Site Easements.* All necessary off-site easements required for installation of off-site public improvements to serve the subdivision or development shall be acquired by the subdivider or developer and conveyed solely to the City by an instrument approved by the City.
- D. *Inspection and Acceptance of Public Infrastructure Improvements.*
1. *Inspections.* Inspection of the public infrastructure improvements shall be conducted by the Engineering Department. Construction shall be in accordance with the approved construction plans. Any significant change in design required during construction shall be subject to approval by the City Manager or his/her designee.
 2. *Submission of As-Built Plans or Record Drawings.* The City shall not accept dedication of required public improvements until the applicant has submitted detailed "as-built" record drawings in accordance with Engineering Department's requirements and the Public Works Specification Manual.
 3. *Acceptance of Improvements.* When the City Manager or his/her designee has determined that the public infrastructure improvements have been installed in accordance with the approved Construction Plans, the City Manager or his/her designee shall accept such improvements on behalf of the City. Acceptance of the improvements shall mean that the property owner has transferred all rights to all

the public improvements to the City for use and maintenance. Upon acceptance of the required public improvements, the City Manager or his/her designee shall have a certificate issued to the property owner stating that all required public improvements have been satisfactorily completed.

E. *Maintenance and Warranty of Improvements.*

1. *Maintenance During Construction.* The developer shall maintain all required public improvements during construction of the development.
2. *Bond.* The developer or owner shall covenant to warranty the required public improvements for a period of two (2) years following acceptance by the City of all required public improvements or following the date of plat recordation, whichever occurs later. A warranty bond shall be provided in the amount of 20% of the costs of the improvements for such period. All public improvements shall be bonded.

F. *Improvement Agreements.*

1. *Obligations Under Agreement.* Whenever public improvements to serve development are deferred until after recordation of the final plat, the property owner shall enter into an Improvement Agreement and provide adequate security as determined by the City Manager or his/her designee.
The Improvement Agreement shall be subject to review and approval by the City Manager or his/her designee and the City Attorney. The agreement shall contain the following provisions:
 - a. covenants to complete the improvements be no later than two (2) years after approval of the final plat, unless otherwise stipulated in the terms and conditions of the Improvement Agreement;
 - b. covenants to warranty the required public improvements for a period of two (2) years following acceptance by the City of all required public improvements, unless stated otherwise in the Improvement Agreement;
 - c. covenants to provide a warranty bond in the amount of 20% of the costs of the improvements for such period, unless stated otherwise in the Improvement Agreement;
 - d. provisions for participation in the costs of the improvements by the City, if authorization has been obtained from the City Council, and a performance bond for such improvements from the contractor;
 - e. provisions for securing the obligations of the agreement consistent with subsection G below; and
 - f. such other terms and conditions as are agreed to by the City and the property owner, or as may be required by this UDC.
2. *Covenants to Run with the Land.* The Improvement Agreement shall provide that the covenants contained in the Agreement run with the land and bind all successors, heirs and assignees of the property owner. All existing owners and lienholders shall be required to execute the Agreement or provide written consent to the covenants contained in the Agreement.

G. *Security for Completion of Improvements.*

1. *Security.* Whenever the property owner has entered into an Improvement Agreement to defer installation of public improvements, the property owner shall provide sufficient security for completion of the required public improvements. The security shall be in the form of a cash escrow, a performance bond or surety bond provided by a licensed surety company, or other security as approved by the City Manager or his/her designee.
2. *Amount and Acceptability.* The security shall be issued in the amount of 125% of the estimated cost of completion that is approved by the City Manager or his/her designee for the required public

infrastructure improvements. The terms of the security agreement shall be subject to the approval of the City Manager or his/her designee and the City Attorney.

3. *Remedies.* Where an Improvement Agreement has been executed and security has been posted and required public improvements have not been installed in accordance with the terms of the agreement, the City may:
- a. declare the Agreement to be in default and require that all the public improvements be installed regardless of the extent of completion of the development at the time the Agreement is declared to be in default;
 - b. obtain funds under the security and complete the improvements itself or through a third party; or
 - c. assign its right to receive funds under the security to any third party, including a subsequent owner of the development in exchange for the subsequent owner's agreement and posting of security to complete the public infrastructure improvements.

(Ord. No. 17-S-41 , § 1(Exh. A), 10-24-2017)

Editor's note(s)—Ord. No. 17-S-41 , § 1(Exh. A), adopted Oct. 24, 2017, amended § 21.4.15, and in so doing changed the title of said section from "Public infrastructure improvement, construction plans and community facilities agreements" to "Public infrastructure improvements, construction plans, and improvement agreements," as set out herein.

Sec. 21.4.16. Building permits.

- A. *Applicability.* An application for a building permit is required within the City corporate limits, or where provided for in a Development Agreement, in the City's ETJ, prior to the placement, construction or alteration of a building or structure. Approval of an application for a building permit authorizes the property owner to construct, alter or place a structure on the lot, tract or parcel. Approval of an application for a building permit also authorizes the property owner, upon completion of a structure intended for human occupancy, to make application for a certificate of occupancy.
- B. *Application Requirements.* Any request for a building permit shall be accompanied by an application prepared in accordance with requirements of the building inspections division. The City Manager or his/her designee shall be responsible for determining the form and content of the building permit application.
- C. *Processing of Application and Decision.*
1. *Submittal.* An application for a building permit shall be submitted to the ~~Building Inspections Division~~ The City Manager or his/her designee. The City Manager or his/her designee shall review the application for completeness in accordance with section 21.4.2. The City Manager or his/her designee shall review the permit for compliance with all adopted building codes and regulations and shall provide written notification of any items requiring correction or attention within forty-five (45) days after submittal of a complete application.
 2. *Decision by the City Manager.* The City Manager or his/her designee may approve, approve with conditions, or deny the building permit.
 3. *Appeals.* Any person or persons aggrieved by any decision of the City Manager or his/her designee, or any taxpayer or any officer, department, or board of the City may appeal the decision of the City Manager or his/her designee to the Building and Standards Commission.
- D. *Criteria for Approval.* The City Manager or his/her designee shall apply the following criteria in deciding the application for a building permit:

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1. The application generally conforms to all prior approved development applications for the property and any variance petition authorizing variation from the standards otherwise applicable to the permit;
 2. The location of the structure on the property is in accordance with all prior approved development applications;
 3. The proposed plan for construction or alteration conforms to the Building Code and other applicable construction codes adopted by the City;
 4. All applicable fees, including impact fees, have been paid;
 5. A final plat of the property has been recorded in the appropriate County plat records; and
 6. All public infrastructure required has been installed and accepted by the City and all electric, gas, telephone and cable utility services necessary to serve the development have been installed within the development.
- E. *Issuance.* No building permit shall be issued on property that is not a lot of record with the following exceptions:
1. Additions to existing structures not exceeding twenty-five percent(25%) of the building at the time of the adoption of this UDC; and
 2. Interior finish out or improvements to existing structures.
- (Ord. No. 17-S-40 , § 1(Exh. A), 10-24-2017; Ord. No. 18-S-04 , § 1(Exh. A), 1-23-2018)

ARTICLE 14. TRANSPORTATION

Sec. 21.14.1. Streets.

- A. *Street Layout.* The arrangement, extent, character, width, grade and location of all streets shall conform to the Master Thoroughfare Plan, the Public Works Specification Manual, and the City's adopted Comprehensive Land Plan. Collector streets shall provide adequate circulation within the neighborhood and yet discourage through traffic. The street layout shall be arranged to achieve the most desirable development of the entire neighborhood unit with appropriate consideration of creeks, drainage channels, wooded areas and other topographical features, which lend themselves to special treatment. Permits must be obtained from TxDOT for driveways and streets accessing any state highway/roadway. The proposed location of driveways must comply with all applicable City and State safety requirements.
- B. *Relation to Adjoining Streets.* Adjoining areas shall be continued and tied into the street layout.
- C. *Projection of Streets.* When adjoining properties are not yet subdivided, the arrangement of streets shall provide for the proper projection of streets into the adjoining unsubdivided areas, and shall generally will be required to comply with the neighborhood pattern or conform to the Comprehensive Land Plan and the Master Thoroughfare Plan.
- D. *Private Streets.*
1. Private streets within the City may be authorized providing all of the following conditions are met:
 - a. A homeowners association is established to maintain and upkeep all streets in a subdivision in accordance with the City's public street standards, to include the mowing of shoulders and rights-of-way, removal of weeds and unclogging of culverts.
 - b. Private streets are constructed in accordance with the City's standards for public streets.
 - c. The following "maintenance agreement" note will appear on the subdivision plat:

"Streets within this subdivision shall be constructed in accordance with the City of Schertz public streets standards. The upkeep and maintenance to include the mowing of shoulders and rights-of-way, removal of weeds and unclogging of culverts shall be the responsibility of the homeowners association. The City of Schertz is released from any liability for these streets. Periodic inspection by a public official who is authorized to enforce complaints about poor maintenance is permitted."
 - d. Provide access for fire protection, ambulance, police, school bus, garbage service and other utility agencies.
 2. *One Residence.* A private street or road serving only one (1) residence is exempt from construction and maintenance standards for public streets.
 3. *Ingress/Egress.* Private streets shall connect directly to a public street or road.
- E. *Dead-End Streets and Cul-De-Sacs.*
1. Dead-end streets greater than 500 feet in length as measured from the center of the intersection to the end of the pavement or center of the cul-de-sac, shall be prohibited, except as short stubs projected to be continued in future subdivisions in conformance with Paragraph C of this section and not having any lots fronting the short stub are not required to have a cul-de-sac or temporary turn around at the end, when designed as cul-de-sacs. Temporary turnarounds shall be provided on

- ~~projected streets until such time as they are extended. Short stub dead end streets are defined as roadways with no lots fronting the street. Short stub dead end streets do not require temporary or permanent turnarounds. All other dead-end streets shall end in a cul-de-sac or temporary turnaround meeting the requirements of paragraph E.2 below.~~
2. Cul-de-sac streets shall ~~not exceed 500 feet in length and shall have a turnaround of not less than 150~~ 140 feet in diameter of ROW and 120 feet in diameter of pavement in single-family residential areas, ~~150-160 feet in diameter of ROW and not less than 130 feet in diameter of pavement~~ in multi-family areas ~~and not less than 200 feet in diameter of ROW in commercial, and industrial areas.~~ This provision may be modified upon approval of the Fire Chief and City Engineer.
- F. **Alignment.** The alignment of all arterial and collector streets shall generally conform to the Comprehensive Land Plan Master Thoroughfare Plan and the requirements of the Public Works Specifications Manual. ~~Collector street alignment shall meet the requirements of the Public Works Specifications Manual and in no case shall street jogs be offset less than 150 feet on centerline.~~
- G. **Intersections.** The curb radius at street intersections shall conform to the specifications in the Public Works Specifications Manual.
- H. **Street Names and Street Numbers.** ~~Names of new streets shall not duplicate the names of existing streets within the City and its ETJ unless the new street is a continuation of or part of a future continuation of such existing street. Street names shall be chosen to avoid similarity or confusion with existing street names. A new street name shall not differ from an existing street name solely by the addition of a different auxiliary designation such as "avenue", "way", "boulevard", etc. Names of all new streets shall be subject to approval by the Planning and Zoning Commission and be coordinated on an area wide basis regionally. Street names shall have prior approval of the United States Postal Service, Bexar Metro 911, and the applicable County Clerk's Office regional E911 authority and meet all County and City guidelines relevant to location. Street addresses should also be coordinated with present existing addresses. The City will determine street numbers and advise the subdivider as to the street numbers. Upon request, The City will coordinate new street numbers with existing addresses and provide the subdivider with an approved addressing document. Names of all new streets shall be subject to the approval by the Planning and Zoning Commission and be coordinated regionally. Street names shall have prior approval of the regional E911 authority and meet all City and County guidelines relevant to location. Upon request, the City will coordinate new street numbers with existing addresses and provide subdivider with an approved addressing document.~~
- I. **Construction Standards.** All streets shall be constructed with reference to base, surfacing, curbs, grades, horizontal curves and intersection curve radius in accordance with the standards prescribed in the Public Works Specifications Manual and any other applicable specifications of the City.
- J. **Reserve Areas are Prohibited.** There shall be no reserve areas controlling access to land dedicated or intended to be dedicated to public use.
- K. **Half Streets or Adjacent Streets.**
1. No new half streets shall be platted that do not conform to the Master Thoroughfare Plan and the Comprehensive Land Plan. Where the proposed subdivision abuts upon an existing street or half street not conforming to the Comprehensive Land Plan requirements or the requirements of this UDC, the subdivider shall be required to dedicate any additional right-of-way to meet the street width required to the extent permitted by State Law.
 2. If new development of property ~~that~~ abuts City maintained roads ~~that do -does-~~ not meet the ~~design-or~~ width standards in this UDC, the Developer shall be required to make the necessary dedication and improvements in conformance with this UDC or any other applicable code of the City to the extent permitted by State Law.

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3. The minimum dedication and construction costs shall be equal to one-half (½) of the minimum right-of-way (ROW) and construction costs associated with the proposed street.
 4. Improvements shall include right-of-way dedication, paving, curb and guttering, shoulder improvements, ~~and sidewalk~~, multi-use paths and/or hike/bike trails as determined by the City.
 5. Should any pavement be laid to widen existing pavement, the existing pavement shall be saw-cut back a minimum of two feet (2') to assure an adequate sub-base and pavement joint.
- L. *Public Accesses.* All residential subdivisions shall have a minimum of two (2) locations accessing existing public streets. Access may be provided through the construction of a public street. The extent and location of all accesses is subject to review and approval by the City. The Planning and Zoning Commission shall not permit "island" subdivisions, lots or streets that would be surrounded by the flood water of a one hundred (100) year flood unless the area is accessible to high ground by at least one dedicated street elevated above the one hundred (100) year flood level.
- M. *Safety Lanes (Fire Lanes).*
1. Manufactured home parks, recreational vehicle parks, apartments, multi-family residences, malls, commercial and business areas shall have driving surfaces within the site designated and clearly identified as safety lanes or fire lanes for fire protection, EMS, etc. These areas must be paved with concrete or asphalt and be maintained by the owners. Exits from these sites shall be a minimum of thirty feet (30') in width and must exit into a dedicated street. The pavement width for interior safety lanes will be a minimum of twenty-four feet (24'). Additional width will be required when adequate off-street parking is not provided.
 2. Exits from single family residential areas shall be a minimum pavement width of twenty four feet (24').
 - ~~23.~~ All roadways that serve emergency vehicles are required to have a minimum clearance of ~~fourteen~~ fifteen feet (14'15') to any overhead obstructions including, but not limited to, bridges, trees, canopies, awnings and signs.
- N. *Access to ~~Principal and Secondary Arterial Streets~~ and Freeways.* Access to ~~principal and secondary~~ arterial streets and freeways should be limited to protect the flow of traffic from the lots ~~. A one foot (1') non-access easement shall be provided along~~ Along principal and secondary arterial streets and freeways, when lots ~~lots that have access to another public right-of-way shall not take access from the arterial street or freeway.~~
- O. *Street and Traffic Control Signs.*
1. All street signs in a new subdivision within the City limits, including street name, speed limit, stop and yield signs, etc. shall be paid for by the developer, and shall be provided by and installed by the City's Public Works Department in accordance with the Public Works Specifications Manual. Traffic control devices required within the subdivision shall be installed in accordance with the latest revision of the Texas Manual on Uniform Traffic Control Devices for Streets and Highways.
 2. Any installation of speed control devices, such as speed bumps or humps, must also be approved by the fire department to determine potential impact to emergency response vehicles.
 3. A required traffic control device must be fitted with traffic preemption compatible devices for activation by emergency vehicles.
- P. *Street Improvements.*
1. All street improvements shall meet the current requirements of the Comprehensive ~~Land Plan~~, the Master Thoroughfare Plan, and this Article, but in no case shall be less than the following to the extent allowed by State Law:

Table 21.14.1 Street Improvement Standards				
Classification	ROW	Pavement **	Drainage Width	Sidewalk and Multi-Use Path Width
<u>Six Lane Principal Arterial</u>	<u>130 feet*</u>	<u>74 feet with 16 foot median*</u>	<u>Curb and Gutter</u>	<u>10 feet both sides</u>
<u>Four Lane Principal Arterial</u>	120 feet	<u>48-54 feet with 12-10 foot median</u>	<u>Curb or Curb and Gutter</u>	5 feet one side, <u>10 feet one side</u>
Secondary Arterial	<u>86-90 feet</u>	<u>48-54 feet with 10 foot median</u>	<u>Curb or Curb and Gutter</u>	5 feet one side, <u>10 feet one side</u>
<u>Commercial Collector</u>	<u>60-70 feet</u>	<u>42-42 feet</u>	<u>Curb or Curb and Gutter</u>	5 feet <u>one side, 10 feet one side both sides</u>
Local Street - Residential	50 feet	30 feet	<u>Curb or Curb and Gutter</u>	5 feet both sides
Local Street - Commercial/Industrial	60 feet	<u>42-42 feet</u>	Curb and Gutter	5 feet both sides
Paved Alley	<u>20-24 feet</u>	<u>20-24 feet</u>	Curb or Curb and Gutter	None

* Schwab Road north of IH-35 has a ROW width of 200 feet and wider pavement section as determined by the City Manager or his/her designee Engineer.

** Pavement width is measured from face of curb to face of curb on curb and gutter roadways.

2. Typical sections identified in the Master Thoroughfare Plan may be modified by the City Manager or his/her designee based on drainage needs, traffic needs, site specific conditions, and other factors as part of the development review and approval process.

23. Islands in Roadways. Islands in road rights-of-way will be considered on a case-by-case basis. The street right-of-way will be engineered to accommodate all emergency and utility vehicles and two-way, traffic, after coordination by City Staff, to include a review and recommendation from the City of Schertz Transportation Safety Advisory Commission. At a minimum, all islands shall provide at least twenty-four feet (24') of pavement on each side of the island. All islands provided within street ROW shall be designated on the plat and shall be dedicated by the developer or its successors and/or assigns. A plat note shall be provided which identifies maintenance of islands as the responsibility of the developer or its successors and/or assigns. Any islands that are not maintained in accordance with this section may be removed by the City and shall be removed at the expense of the developer or its successors and/or assigns, after due notice and the written recommendation by the City Engineer and Fire Department Manager or his/her designee.

4. Medians. Medians are typically located at the approximate center of a city street or state right-of-way that is used to separate the directional flow of traffic.

Q. Drainage. The storm drainage for all streets shall be designed on a twenty-five (25)-year flood frequency. Runoff rates shall be computed in all cases on the basis of ultimate development of the entire watershed

~~contributing runoff water to the proposed subdivision, on the basis of concrete lined channels and streets carrying storm water in the contributing area. All necessary storm drainage improvements shall be in accordance with the Public Works Specifications Manual per the most current edition of the Public Works Specification Manual and shall comply with the City's Stormwater Pollution Prevention and Drainage Plan requirements.~~

- R. ***Curb and Gutter.*** Curbs and gutters shall be installed by the subdivider on both sides of all streets within or forming part of the boundary of the subdivision. Curb and gutter shall be constructed in accordance with the Public Works Specifications Manual. The City Engineer may waive the requirements for construction of curb and gutter or may approve an alternative curb and gutter construction where developments result in an overall density of less than one (1) unit per one-half (½) acre.

S. ***Street Lights.***

1. Developers shall furnish satisfactory easements for installation of services to street lights as required by the City and any applicable electric utility provider.
2. Street light number, type and size shall be determined by the City and any applicable electric utility provider and shall conform to the requirements of the Public Works Specification Manual, and Street lights shall be designed to maximize the light directed toward the ground.
3. The developer shall pay the cost of purchasing and installing all street lighting equipment and the cost of all street lighting services for a period of two (2) years or until such time as seventy percent (70%) of the buildings for which building permits have been issued are completed, whichever is sooner.
4. A ~~detailed~~ lighting plan shall be submitted with the Public Infrastructure Improvement Plans for review and approval by the City and any applicable electric utility provider. The detailed lighting plan shall include:

a. Streetlight locations:

a. A description of lighting fixtures, including lamps, poles or other supports and shielding devices, which may be provided as catalog illustrations from the manufacturer;

d. Additional information as may be required by the City Manager or his/her designee.

5. Streetlights shall be located every 300 feet (maximum) for local and collector roadways; every 250 feet (maximum) on arterial roadways; placed at every street intersection; in all cul-de-sacs greater than 200 feet in length, and at neighborhood mail-box unit locations.

- T. ~~Street Markers (Signs).~~ Street name, stop and speed limit signs having the following specifications shall be erected at all street intersections in such subdivisions for street markers:

1. ~~The material of the street name signs, the method of attaching the sign to the post, the details of lettering, painting, and method of installation, as well as the location of the sign at the intersection shall be in accordance with the specifications in the Public Works Specifications Manual.~~
2. ~~The street name signs shall be of the crossarm type, and shall be reflectorized on extruded aluminum metal blanks.~~
3. ~~Street markers are to be provided by the developer.~~

Sec. 21.14.2. Criteria and Design.

The criteria and specific design standards for transportation related development as described in this Article are set by the City's Public Works Specification Manual.

Sec. 21.14.3. Additional Design Requirements.

A. Purpose and Applicability.

1. The purpose of this Section is to establish additional development standards applicable to certain streets within the City to ensure uniform and quality development resulting in an attractive environment compatible with businesses and residential dwellings which does the following:
 - a. provides an environment and living conditions favorable to the public;
 - b. provides a creative approach to land use and related physical development;
 - c. creates a pattern of development which preserves trees and outstanding natural topography and prevents soil erosion and pollution;
 - d. encourages mixed use development through innovative uses of modern development concepts; and
 - e. produces open space and recreation areas.
2. The requirements of this section shall be applicable to IH-35, IH-10, and all roadways classified as Principal Arterials or Secondary Arterials in accordance with section 21.14.1 including, but not limited to, Schertz Parkway, FM 3009, Old Wiederstein Road, Country Club Blvd, FM 78, FM 1518, FM 482, and Wiederstein Road the Master Thoroughfare Plan.

B. Permitted Uses. Buildings, structures and land shall be used in accordance with the uses permitted in the applicable zoning district and shall comply with the dimensional requirements of that district in accordance with Article 5 of this UDC.

~~C. Landscape Buffer. In addition to the requirements of section 21.9.7 of this UDC for landscaping, a minimum twenty foot (20') wide landscape buffer shall be provided adjacent to any public right-of-way. Trees shall be planted at an average density of one (1) tree per twenty linear feet (20') of street frontage except for public schools. The landscape buffer shall require an irrigation system and shall be maintained by the property owner. The requirements of this section are not applicable to properties zoned Main Street Mixed Use - New Development (MSMU-ND).~~

~~D. Off Street Parking. Off street parking is permitted adjacent to the landscape buffer along the right-of-way. Parking and vehicular use areas adjacent to the right-of-way shall have land berm walls or a vegetative hedge barrier to reduce vehicular reflections to the right-of-way. A waiver may be granted by the Planning and Zoning Commission which would allow a reduction in the minimum required landscape buffer when off-street parking is located entirely along the side or rear of the building or lot. The requirements of this section are not applicable to properties zoned Main Street Mixed Use - New Development (MSMU-ND).~~

~~E. Building Setback Line. A minimum fifty foot (50') building setback shall be required adjacent to all rights-of-way. A waiver may be granted by the Planning and Zoning Commission which would allow for a reduction in the minimum required setback when an alternative site layout and design provides for additional open space or landscaping and off-street parking will be located entirely at the rear of the building or lot. In no case shall the minimum building setback be reduced less than the minimum required setback for the applicable zoning district in. The requirements of this section are not applicable to properties zoned Main Street Mixed-Use - New Development (MSMU-ND).~~

F. Driveways and Access (Connectivity). Access shall be limited to provide for safe traffic flow and the design shall provide interior drives to limit the number of accesses to the public right-of-way. Access easement should be utilized to limit the number of driveway accesses. Accesses should be planned to match existing driveways or street intersections on the opposite side of the street. All driveways shall have a minimum sight distance of 240 feet.

~~GE.~~ *Screening.* A masonry screening wall a minimum of eight foot (8') in height shall be provided where the rear yard of any residential or nonresidential lot abuts a Principal or Secondary Arterial. Any masonry screening wall constructed as part of a new residential subdivision shall be constructed of a like and similar material and color as screening walls in adjacent subdivisions to provide a consistent streetscape.

(Ord. No. 16-S-27 , § 9, 8-30-2016; Ord. No. 17-S-40 , § 1(Exh. A), 10-24-2017; Ord. No. 21-S-26 , § 1(Exh. A), 7-6-2021)

Sec. 21.14.4. Alleys.

- A. *Commercial and Industrial Districts.* ~~Where provided, paved alleys not less than twenty-four feet (24') wide shall be provided in all commercial or industrial districts to assure adequate provision is made for service access, such as off street loading, unloading and parking consistent with an adequate plan for the uses proposed.~~ Alleys provided within commercial and industrial districts shall be privately owned and maintained and not less than twenty-four feet (24') paved width.
- B. *Garden Home (GH) Zoning Districts.* Where garden home districts are designated by the developer to require rear ingress/egress, a twenty-four feet (24') paved alley shall be provided.
- C. *Intersections and Turns.* Alley intersections and sharp changes in alignment shall be avoided, but where two (2) alleys intersect, or an alley turns at an angle sharper than one hundred degrees (100°), a cut off of not less than ten (10') feet from the normal intersection of the property lines shall be provided and shall be designed in accordance with the adopted Fire Code.
- D. *Dead End Alleys.* Dead end alleys are prohibited.
- E. *Construction Standards.* All alleys shall be constructed in accordance with the standards prescribed in the Public Works Design Guide and the Public Works Specifications Manual.
- F. *Limitations.* Construction of alleys is limited to commercial and industrial districts and prohibited in residential areas except in garden home zoning districts.
- ~~G. *Drainage.* Drainage design of alleys shall be designed on the basis of twenty-five (25)-year frequency to carry storm water from only the lots within the block abutting the alleys.~~

Sec. 21.14.5. Driveways.

The arrangement, placement, spacing, width and return radii of all driveways connecting to a street, roadway or alley shall be constructed, provided, altered or repaired in accordance with requirements of the Public Works Specifications Manual. For all driveways connecting to a state roadway facility, the arrangement, placement, spacing, width, etc. shall be in accordance with TxDOT requirements.

- A. *Commercial Property.*
 - 1. Curb cuts for commercial driveway aprons shall not exceed thirty-four feet (30'40') in width as measured at the ROW line, and the aggregate width of all curb cuts shall not exceed fifty percent (50%) of the parcel frontage.
 - 2. Where multiple driveway aprons are used for commercial property, the curb cuts shall be at least twenty-two hundred feet (200') apart on collector streets and four hundred feet (400') apart on arterial streets provided a minimum of fifty feet (50') of spacing as measured along the curb is available between all approaches, including curb cuts on adjacent properties.

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3. ~~For parcels of commercial property with less than one hundred feet (100') of frontage, a maximum of two (2) curb cuts will be permitted.~~
 4. For parcels of commercial property, no curb cut will be permitted for any parking facility which requires vehicles to enter a street in reverse.
- B. *Curb Cuts in Curb Returns.* No curb cut in curb returns will be permitted in the City.
- C. *Waivers.* Where the City Manager or his/her designee finds that extraordinary hardship may result from strict compliance with the regulations prescribed in this Article, the City Manager or his/her designee may vary the regulations so that substantial justice may be done and the public interest secured, provided that such waiver will not have the effect of nullifying the intent and purpose of this Article. In granting waivers and modifications, the City Manager or his/her designee may require such conditions as will, in his/her judgment, secure substantially the objective of the standards or requirements so varied or modified. In the event the City Manager or his/her designee should disapprove a request for a waiver, the applicant may request an appeal to the Planning and Zoning Commission.

(Ord. No. 17-S-40 , § 1(Exh. A), 10-24-2017)

Sec. 21.14.6. Sidewalks and Hike and Bike Trails.

- A. *Requirement.* Sidewalks shall be required along both sides of all streets throughout the City as required in section 21.14.1. All lots must have access to sidewalks.
- B. *Curb Ramps.* Curb ramps shall be provided at all street intersections at the time of construction or reconstruction and shall comply with the provisions in the Federal Register 28, CFR part 36 (Americans with Disabilities Act or ADA) and Texas Accessibility Standards as amended from time to time.
- C. *Location and Width.* Where sidewalks are required, they shall be installed in accordance with the Public Works Specifications Manual and shall be a minimum of five feet (5') in width. ~~Sidewalks shall be placed parallel to the street for the entire frontage(s) of the lot and shall be located a minimum of two feet (2') behind the curb.~~ Sidewalks placed directly against curbs shall be six feet (6') minimum width.
- D. *Timing of Construction.* Sidewalks shall generally be installed concurrently with the construction of the primary structure on a lot except on primary or secondary arterials where they shall be installed concurrently with street construction.
- E. *Construction Concurrent with Street Construction.* If a street is constructed which shall have no residential lot access points, then sidewalks shall be installed concurrently with street construction.
- F. *Corner Lot.* Where sidewalks are installed on corner lots, sidewalks shall be installed along both street frontages and shall be extended to the curb with handicapped access ramps in accordance with current ADA and Texas Accessibility standards.
- G. *Waiver or Deferment of Sidewalk Installation.* The City Manager or the City Engineer may waive the requirements of this section where he/she finds that topographical conditions or other unique conditions exist which would preclude the construction of sidewalks. The Planning and Zoning Commission may defer the installation of sidewalks to a time deemed more appropriate. In the event that the installation of sidewalks is deferred, the developer shall provide a subdivision improvement agreement in accordance with section 21.4.15 guaranteeing the installation of sidewalks.
- H. *Hike and Bike Trails.* The City recognizes the need for connectivity and adequate access to and from public parkland areas and to provide for safe bicycling and pedestrian transportation. Hike and bike trails shall be installed in accordance with the Public Works Specification Manual. All streets subject to this Article with at least an eighty-six inch (86") ROW shall be required to construct a minimum eight foot (8') wide hike and bike

~~path located within the ROW five foot (5') behind the curb. This hike and bike path is required in-lieu of construction of a sidewalk along one (1) side of the street.~~ Additionally, hike and bike trails shall conform to the requirements as set forth in the City's Parks Master Plan and the Master Thoroughfare Plan.

In-lieu of construction of sidewalks in accordance with this Article, the City may, at its option, require construction of a hike and bike path adjacent to the street right-of-way. Any required hike and bike path shall be constructed in-lieu of the minimum sidewalk along one (1) side of the street, unless under the requirements of subsection 21.14.3.D. above.

(Ord. No. 17-S-43 , § 1(Exh. A), 10-24-2017)

Sec. 21.14.7. Traffic Impact Analysis.

- A. *Application Requirements.* Every application for development within the City or its ETJ shall be accompanied by a Traffic Impact Analysis (TIA) Determination Form provided in the Development Manual. The TIA Determination Form shall be utilized to determine the level of TIA required or if the development is eligible for a TIA waiver if a TIA is required.
- B. *TIA Required.* The threshold requirement for a TIA and the level of TIA required shall be based on a land use or combination of land uses that results in peak hour trips in accordance with Table 21.14.7A. If the proposed land use does not exceed the peak hour trip threshold, a TIA waiver shall be noted on the TIA Determination Form. Peak hour trips shall be based on the most current edition of the Institute of Traffic Engineers (ITE) Trip Generation Manual.

Table 21.14.7A TIA Requirements	
Peak Hour Trips Generated	TIA Level Required
1,001 or more	Level 3 TIA
501—1,000	Level 2 TIA
101—500	Level 1 TIA
100 or less	None Required

- C. *TIA Scope.* If a TIA is required, the applicant shall meet with the City ~~Engineer Manager or his/her designee~~ to determine the scope for the study prior to beginning work on the TIA. The applicant shall be prepared, prior to the meeting with the City ~~Engineer Manager or his/her designee~~, to discuss potential intersections, streets, and driveways to be evaluated, data assumptions or any other information required by the City Engineer.
- D. *TIA Study Area.* The study area required for the TIA shall be based on the level of the TIA required in Paragraph B. above. The City ~~Engineer Manager or his/her designee~~ may, at his/her discretion, require additional area to be included in the study area if deemed necessary to provide adequate review of the transportation network. The following Table 21.14.7B identifies the minimum acceptable study area:

Table 21.14.7B TIA Study Areas	
TIA Level	Study Area
Level 1 or 2 TIA	The site area and the area within a one quarter (¼) mile radius from the boundary of the site.
Level 2 TIA	At the discretion of the City's engineer <u>the City Engineer Manager or his/her designee</u> , the study area

	may be extended up to a maximum of one (1) mile from boundary of the site.
Level 3 TIA	The site area and the area within a one (1) mile radius from the boundary of the site.

E. *TIA contents.* The TIA shall conform to accepted industry standards and shall include a detailed description of the area street network, a description of proposed land uses, the anticipated stages of construction, the anticipated completion date of the various phases of land development, and the trigger points requiring implementation of necessary improvements. The City Engineer may require any additional information necessary to ensure adequate review. Additional information required may include, but not be limited to, analysis of weekend trip generation and traffic, traffic signal warrant analysis, gap analysis, queue length analysis, stopping sight distances, and pedestrian counts. The TIA shall contain, at a minimum, the following information:

1. trip generation rates for both the A.M. and P.M. peak periods using the Institute of Transportation EngineersITE, Trip Generation Manual linear trip generation rates, except where the ITE Trip Generation Manual clearly indicates the use of regression equations better captures the trip generation estimates, for all of the land uses specified;
2. trip distribution;
3. adequacy determination for existing and proposed street cross-sections by phase of development based on the Transportation Research Board's Highway Capacity Manual (HCM);
4. intersection Level of Service (LOS) level-of-service analysis for each phase of development, driveway sizes, locations, and adequacy based on the HCM;
5. layout showing lane usage (pavement marking layout) for all boundary streets including driveway locations and roadway geometry within the site;
6. driveways and intersecting streets connecting to boundary streets including all lane widths, traffic islands, medians, sidewalks, curbs, and traffic control devices; ~~and existing pavement conditions;~~
7. existing and proposed turning movement counts for the site;
8. identification of and timing for transportation improvements both on-site and off-site within the study area, if any, needed to mitigate the effects of the additional traffic generated by the development. The development is responsible for the full costs of implementation of the improvements maintain the same or higher level of service than exists prior to development during each phase of land development and the costs of those improvements, including costs of right-of-way acquisition, utility relocation, design and construction;
9. ~~The TIA shall~~ Traffic Impact Analysis Elements
 - a. ~~establish~~ Establish the baseline traffic conditions and peak hour operations prior to development of the subdivision or site; This which baseline shall be used to establish the existing ~~level of service~~ Level of Service (LOS) that is to be maintained or bettered as the owners develop the subdivision or site over time; and of the key intersections, and street segments where appropriate.
 - b. ~~address streets and street intersections, and driveways on commercial sites;~~ LOS analysis for the future opening date of the development. This analysis shall be based on the baseline traffic

conditions described above, plus the estimated traffic growth from the baseline to the future opening date.

- c. LOS analysis at the future opening date including the development traffic. This analysis shall be based on the traffic conditions described in Section 21.14.E.9.b above plus the development traffic distributed onto the roadway network. Special analysis may be required to determine signal warrants, gap analysis, minimum safe sight distances, drive approach locations, turning lane length, or similar requirements.
- d. Mitigation improvements shall be identified to either maintain a minimum LOS of C, or when the projected traffic delay values measured in seconds per vehicle is already below a LOS C to maintain the delay value to within ten (10) percent of the traffic delay identified in Section 21.14.6.E.9.b above for unsignalized intersections and to within twenty (20) percent of the traffic delay identified in Part B above for signalized intersections.
- e. For intersections functioning below a LOS of C as described in paragraph b above (Sec. 21.14.6.E.9(b)), the City may participate in the costs of improvements in order to achieve proportionality between the traffic impacts created by the proposed developments and the City's obligation to provide adequate streets and intersections. The percentage of development traffic added to the intersection to the intersection traffic as described in Section 21.14.6.E.9.b above will be used as the basis for determining the development's proportionate cost of improvements. Such agreement and timing of collection of those costs shall be determined by the execution of an Escrow Agreement for the development's proportionate share of the improvements.
- f. Comply with the Public Works Specification Manual requirements.

10. for projects adjacent to a TxDOT ROW, the TIA shall be accompanied by a letter from TxDOT which outlines any agreements between the developer and TxDOT for planned improvements; and

11. the TIA shall be certified by a Texas Licensed Engineer ~~registered engineer~~ with experience in the field of traffic engineering.

F. *TIA Submittal.* Upon completion of the TIA, the applicant shall submit a ~~minimum of three (3) copies~~ digital copy of the report to the City Engineer. ~~The applicant shall be responsible for submitting copies of the report to TxDOT, or any other entities, as required. -who will distribute the report to the appropriate review authorities including TxDOT.~~

G. *TIA Review.* The TIA shall be reviewed by the City Engineer and any other necessary review authorities. Review comments shall be provided to the applicant for response. Response by the applicant shall be in ~~the form of a letter, technical memorandum, or other appropriate document~~ electronic format. The applicant shall submit a final copy of the TIA to the City Engineer containing all modifications prior to final approval of the application for which the TIA was conducted.

H. *City Assistance in Development.* During the course of providing for improvements, the City may cooperate with the developer in the use of its governmental powers to assist in the timely and cost effective implementation of improvements. Assistance shall not mean financial aid in actual easement acquisition, construction or engineering costs. Specifically, the City agrees to:

1. assist in the acquisition of necessary right-of-way and easements;
2. assist in the relocation of utilities;
3. assist in obtaining approvals from applicable county entities;
4. assist in obtaining approvals from TxDOT; and

-
5. assist in securing financial participation for major street improvements from applicable county entities, TxDOT or the Metropolitan Planning Organization.
- I. *TIA Revisions.* It is recognized that the scope of the developer's plans may change from time to time. The monitoring reports may also demonstrate changes in the area street conditions and travel patterns within and around the City. Periodic updates to the TIA may be required to address these issues and identify changes to the level of service at study intersections and streets. When a development change occurs that deviates from the activity on which the previous TIA was submitted and accepted, and the new activity places the project in a different TIA level as defined by Table 21.14.7A from that of the previous TIA or generates an increase of at least 100 peak hour trips relative to the previous TIA, the property owner or its agent shall perform and submit to the City an updated TIA. These updates shall address modifications to the magnitude and timing of improvements recommended by the original TIA. Any TIA amendments must be acceptable to the City.

(Ord. No. 18-S-04 , § 1(Exh. A), 1-23-2018)

Section 21.14.8 Conflicts.

- A. If any provisions of this section are in conflict or inconsistent with provisions in any other City regulations, the order of precedence shall be
- a. Master Thoroughfare Plan
 - b. Public Works Specification Manual

PLUDC20230221

UDC ARTICLES 1, 4, AND 14 AMENDMENTS

April 2, 2024 City Council Meeting

Kathy Woodlee and John Nowak | Engineering

BACKGROUND

- Some sections of the UDC contain conflicts with other documents, such as the Master Thoroughfare Plan; the Public Works Design Guide; and Local Government Code.
- Some of the language in the UDC is ambiguous, making it difficult to apply to different situations.
- Some sections have not been updated in some time and are out of date with current practices or conditions.
- Some sections require updates to comply with recent changes to Local Government Code
- 15 total sections being amended with this proposal

PROPOSED AMENDMENTS

Section 21.1.10 – Development Manual

- Adds language required by new Local Government Code regulations related to posting of manual

Section 21.1.11 – Public Works Specifications Manual

- Adds language required by new Local Government Code regulations related to Council approval of amendments

PROPOSED AMENDMENTS

Section 21.4.2 – Initiation of Application

- Removes Public Works as a separate certifying department
- Matches language that conflicted with another UDC section

PROPOSED AMENDMENTS

Section 21.4.11 – Utility Service Extension

- Removes City's authority to require annexation as a condition of approval of utility service to property already within the City's CCN (where City is already obligated to provide service)
- Explicitly adds requirement for a formal request for Utility Service Extension if project is not required to plat
- Adds requirement for applicant to process CCN transfer, update service area map, and amend the CIP

PROPOSED AMENDMENTS

Section 21.4.14 – Appeals

- Updates time frames to comply with Local Government Code limitations

Section 21.4.15 – Public Infrastructure Improvements, Construction Plans, and Improvements Agreements

- Adds limitation of extensions of construction plan approvals to no longer than plat extension
- Adds requirement for electric utilities to be installed prior to plat recordation
- Adds reference to Public Works Specifications Manual

PROPOSED AMENDMENTS

Sec. 21.14.1

- Some of the proposed changes increase clarity, reduce intended exclusions based on interpretations, and correctly identify some documents
- Paragraph E: changed to remove an internal conflict and update the cul-de-sac requirements to accommodate emergency vehicles.
- Paragraph F: changed as the information is contained in other documents incorporated by reference.
- Paragraph H: changed to reflect the current procedure for street naming and addressing.
- Paragraphs N through P: changed so they do not conflict with other documents and to clarify the difference between “islands” and “medians.”
- Paragraph S: changed to improve lighting requirements.
- Paragraph T: changed to current practice.

PROPOSED AMENDMENTS

Section 21.14.3

- Removed some paragraphs that are not transportation items and contained elsewhere in the UDC.
- Provides clarification on which roadways this section applies to.

Sec. 21.14.5

- Removes conflicts with other documents.
- Specifies driveways on state facilities need to meet TXDOT requirements.

Sec. 21.14.6

- Clarifies the minimum sidewalk width.
- Removes conflicts with other documents.
- References other documents where the standards are.

PROPOSED AMENDMENTS

Section 21.14.7

- Explicitly states some additional analysis items the City can request be included in the TIA.
- Closes some “loopholes” in the current requirements.
- Makes mitigation efforts more “roughly proportional” in some situations.
- Makes our requirements more consistent with other City’s requirements.

Section 21.14.8

- New section recommended by our legal team to address conflicts between the UDC and other documents.

APPROVAL CRITERIA

- The proposed amendment promotes the health, safety, or general welfare of the City and the safe, orderly, efficient and healthful development of the City.
 - Well organized infrastructure systems are essential in promoting health, safety and welfare. The UDC functions more effectively and efficiently when it more closely aligns with State Laws (the LGC).
- An amendment to the text is consistent with other policies of this UDC and the City.
 - Proposed amendments align the UDC with other plans and current policies of the City.
- Any proposed amendment is consistent with the goals and objectives of this UDC and the City.
 - Proposed amendments comply with Strategic Plan goals to establish a safe community by facilitating efficient and adequate infrastructure, by being proactive, and by continuously improving and evolving.
- Other criteria which, at the discretion of the Planning and Zoning Commission and the City Council, are deemed relevant and important in the consideration of the amendment.

STAFF RECOMMENDATION

- These amendments would remove conflicts between the UDC and other documents; update some standards to be current with common Engineering practices; and improve some of the technical requirements to better fit our community.
- They would also help align the Unified Development Code (UDC) better with the Local Government Code.
- Staff recommends approval of the amendments to the Unified Development Code (UDC) as proposed and discussed.

COMMENTS AND QUESTIONS

CONTACT US

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CITY COUNCIL MEMORANDUM

City Council Meeting: April 16, 2024
Department: Public Works
Subject: Resolution 24-R-44 - Authorizing a Schertz/Seguin Local Government Corporation (SSLGC) Midyear Budget Amendment for Fiscal Year 2023-24. (B. James/L. Busch)

BACKGROUND

SSLGC Staff is recommending a transfer of \$700,000 from Operating fund to Repair/Replacement fund; \$355,000 for future repair and replacement project expenditures, \$35,000 for the design phase of the Nockenut Erosion Mitigation Project, \$60,000 for replacement of the booster pump station valve and vault, and \$250,000 for pump and motors repairs and replacement.

SSLGC Staff is recommending a transfer of \$60,000 from Retained Earnings to Impact Fee/CIP Update to increase appropriation due to higher cost than budgeted and a transfer of \$135,000 from Retained Earnings to appropriate funds for a Water Supply Plan study.

SSLGC Staff is recommending a transfer to appropriate bond funds received from the FY2024 Improvement Bonds; \$2,000,000 for the Gonzales Wells, \$1,000,000 for the Rehabilitate Pressure Filter Vessel, \$1,100,000 for the Condition Assessment of Original Pipeline, \$300,000 for the Nockenut Erosion Mitigation Project and \$455,433 for the Cowey/Elm Creek Pipeline Project.

The SSLGC Board approved this action at their regularly scheduled board meeting on March 21, 2024.

GOAL

Approve the SSLGC FY2023-2024 Midyear Budget Amendment.

COMMUNITY BENEFIT

The City of Schertz is a member of the SSLGC. It is through the SSLGC that the City provides water to its citizens. Approval of the budget amendment will ensure that the citizens of Schertz will continue to receive this vital resource and service.

SUMMARY OF RECOMMENDED ACTION

Staff recommends approval of the Resolution for the Midyear Budget Amendment to the FY2023-2024 Annual Budget.

FISCAL IMPACT

This budget amendment is based on reallocated SSLGC funds.

RECOMMENDATION

Approval of Resolution 24-R-44.

Attachments

Resolution 24-R-44 with attachment

RESOLUTION NO. 24-R-44

A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF SCHERTZ, TEXAS AUTHORIZING THE SCHERTZ SEGUIN LOCAL GOVERNMENT CORPORATION (SSLGC) MIDYEAR BUDGET AMENDMENT FOR FISCAL YEAR 2023-2024.

WHEREAS, the Schertz Seguin Local Government Corporation (SSLGC) is a corporation for the provision of and transportation of water wholly owned by both the City of Schertz and the City of Seguin; and

WHEREAS, SSLGC by-laws require that the corporation establish an annual budget and said annual budget must be approved by the SSLGC Board of Directors and both the City of Schertz and the City of Seguin; and

WHEREAS, the SSLGC's FY2023-2024 Annual Budget was approved by City Council; and

WHEREAS, the proposed budget amendment for FY 2023-2024 has been approved by the SSLGC Board of Directors at their regularly scheduled Board Meeting on March 21, 2024 as depicted in Exhibit A ("Resolution # SSLGC R24-08") and attached hereto; and

WHEREAS, the City staff of the City of Schertz (the "City") recommends that the City Council approve the Schertz Seguin Local Government Corporation Fiscal Year 2023-2024 Midyear Budget Amendment; and

WHEREAS, the City Council has determined that it is in the best interest of the City to approve the budget amendment to ensure that the citizens and businesses of Schertz continue to receive excellent and vital water service.

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

Section 1. The City Council hereby authorizes the approval of the Schertz Seguin Local Government Corporation Fiscal Year 2023-2024 Amended Annual Budget as per 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 _____, 2024.

CITY OF SCHERTZ, TEXAS

Ralph Gutierrez, Mayor

ATTEST:

Sheila Edmondson, City Secretary

“Exhibit A”

SSLGC Resolution # R24-08

A RESOLUTION AMENDING THE FISCAL YEAR 2024 SCHERTZ SEGUIN LOCAL GOVERNMENT CORPORATION BUDGET.

NOW, THEREFORE, BE IT RESOLVED THAT THE FISCAL YEAR 2024 SCHERTZ SEGUIN LOCAL GOVERNMENT CORPORATION BUDGET IS AMENDED AS FOLLOWS:

Schertz-Seguin Local Government Corporation Operating Fund

Amount	Increase:	Increase:
\$ 700,000	SSLGC-Operating Fund Intragovernmental Transfers Transfers to Repair/Replacement Fund 058-5500-8261000	SSLGC-Operating Fund Non-Departmental Use of Retained Earnings 058-9800-960000
Reason requested:	To appropriate additional funds to be transferred to the Repair and Replacement fund to be utilized for repair and replacement project expenditures for pumps and wells and future repairs.	

Schertz-Seguin Local Government Corporation Repair/Replacement Fund

Amount	Increase:	Increase:
\$ 355,000	SSLGC-Repair/Replacement Fund Intragovernmental Transfers Transfers from Operating Fund 061-391058	SSLGC-Repair/Replacement Fund Retained Earnings 061-297000
Reason requested:	To appropriate additional funds to be transferred to the Repair and Replacement fund to be utilized for future repair and replacement project expenditures.	

Amount	Increase:	Increase:
\$ 35,000	SSLGC-Repair/Replacement Fund Intragovernmental Transfers Transfers from Operating Fund 061-391058	SSLGC-Repair/Replacement Fund Improvements other than Buildings Nockenut Erosion Mitigation 061-9000-703000
Reason requested:	To appropriate funds to be transferred to the Repair and Replacement Fund for the design phase of the Nockenut Erosion Mitigation Project.	

Amount	Increase:	Increase:
\$ 60,000	SSLGC-Repair/Replacement Fund Intragovernmental Transfers Transfers from Operating Fund 061-391058	SSLGC-Repair/Replacement Fund Improvements other than Buildings Booster Pump Station Valve & Vault 061-9000-703000
Reason requested:	To appropriate additional funds to be transferred to the Repair and Replacement Fund for replacement of the booster pump station valve and vault.	

Amount	Increase:	Increase:
\$ 250,000	SSLGC-Repair/Replacement Fund Intragovernmental Transfers Transfers from Operating Fund 061-391058	SSLGC-Repair/Replacement Fund Improvements other than Buildings Pump & Motors Repair/Replacment 061-9000-703000
Reason requested:	To appropriate additional funds to be transferred to the Repair and Replacement Fund for pumps and motors repairs and replacements.	

Schertz-Seguin Local Government Corporation Impact Fund

Amount	Increase:	Increase:
\$ 60,000	SSLGC Impact Fund Professional Services Impact Fee/CIP Update 065-9000-320500	SSLGC Impact Fund Non-Departmental Use of Retained Earnings 065-9800-960000
Reason requested:	To increase appropriation for the Impact Fee/CIP update due to higher cost than anticipated.	

Amount	Increase:	Increase:
\$ 135,000	SSLGC Impact Fund Professional Services Water Supply Plan 065-9000-320500	SSLGC Impact Fund Non-Departmental Use of Retained Earnings 065-9800-960000

Reason requested: To appropriate funds for a Water Supply Plan study.

Schertz-Seguin Local Government Corporation 2023 Bond Fund

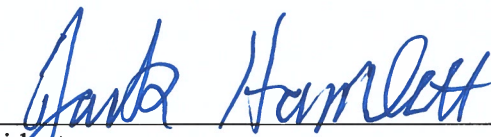
Amount	Increase:	Increase:
\$2,000,000	SSLGC 2023 Bond Fund Improvements other than Buildings Gonzales Wells 150-9000-703000	SSLGC 2023 Bond Fund Long Term Debt Proceeds Bond Proceeds 150-393000
\$1,000,000	SSLGC 2023 Bond Fund Improvements other than Buildings Rehab Pressure Filter Vessel 150-9000-703000	SSLGC 2023 Bond Fund Long Term Debt Proceeds Bond Proceeds 150-393000
\$1,100,000	SSLGC 2023 Bond Fund Improvements other than Buildings Condition Assessment of Original Pipeline 150-9000-703000	SSLGC 2023 Bond Fund Long Term Debt Proceeds Bond Proceeds 150-393000

RESOLUTION # SSLGC R24-08

\$ 300,000	SSLGC 2023 Bond Fund Improvements other than Buildings Nockenut Erosion Mitigation 150-9000-703000	SSLGC 2023 Bond Fund Long Term Debt Proceeds Bond Proceeds 150-393000
\$ 455,433	SSLGC 2023 Bond Fund Improvements other than Buildings Cowey/Elm Creek Pipeline Project 150-9000-703000	SSLGC 2023 Bond Fund Long Term Debt Proceeds Bond Proceeds 150-393000

Reason requested: To appropriate bonds funds received from the 2023 Improvement Bonds.

PASSED AND ADOPTED BY THE BOARD OF DIRECTORS OF THE SCHERTZ-SEGUIN LOCAL GOVERNMENT CORPORATION, on this the 21st day of March, 2024.



President
Schertz-Seguin Local Government Corporation

ATTEST:



Secretary

Or

Assistant Secretary

CITY COUNCIL MEMORANDUM

City Council Meeting: April 16, 2024
Department: Engineering
Subject: Resolution 24-R-46 - Amendment of contract with AG|CM, Inc., for Owner's Representative Services related to the Woman Hollering Creek Wastewater Project. (B. James/K. Woodlee)

BACKGROUND

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

It was initially expected that construction of the WHC WW Project would take 12 to 15 months to be fully complete. Unexpected significant delays over the course of construction that began in early 2022 have continued to occur, and the project is currently expected to be fully complete this spring/summer. In order to continue to ensure that construction is managed appropriately and that it is done in compliance with City and other applicable standards, and considering current workload, City staff must continue to be augmented by the qualified professional contractual assistance that has been provided throughout the project by AG|CM.

GOAL

The goal of the owner's representative contract is to provide the appropriate level of construction management and quality assurance through installation of the Woman Hollering Creek Wastewater trunk main, lift station, and forcemain (WHC Project). Management and inspection of the WHC Project will demand significantly more time than current city staff has available. By providing for contracted owner's rep services, the project can be managed more thoroughly and properly. AG|CM personnel will continue to function on the WHC Project as an extension of staff resources during the construction period.

COMMUNITY BENEFIT

The community benefits from having well run projects that result in quality infrastructure products and to ensure that taxpayer funds are used responsibly. AG|CM will work for the city to accomplish those goals.

SUMMARY OF RECOMMENDED ACTION

Staff recommends Council approve Resolution 24-R-46.

FISCAL IMPACT

The previously adopted contract fee of \$380,850 will be increased by \$68,800 for a total revised contract amount of \$449,650. \$68,800 will fund the Owner's Representative services through July 2024 if needed. That amount is available under the total funding for construction and ancillary tasks associated with the WHC WW Project. Funding for the current construction effort comes from a combination of 2013 Bond Sales and Wastewater Capital Recovery Funds.

RECOMMENDATION

Approve Resolution 24-R-46.

Attachments

Resolution 24-R-46

RESOLUTION NO. 24-R-46

A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF SCHERTZ, TEXAS, AUTHORIZING AN AMENDMENT TO THE AGREEMENT WITH AG|CM, FOR OWNER'S REPRESENTATIVE SERVICES ON THE WOMAN HOLLERING CREEK WASTEWATER PROJECT, AND OTHER MATTERS IN CONNECTION THEREWITH

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

WHEREAS, AG|CM, Inc., is an approved project management firm with the City and is qualified to provide such owner's representative services for the City; and

WHEREAS, AG|CM has been acting acceptably as the City's Owner's Representative to this point on the project; and

WHEREAS, the City Council has determined that it is in the best interest of the City to amend its Agreement with AG|CM, Inc., to continue its services related to the project for an additional base amount of \$68,800, pursuant to the proposal attached hereto as Exhibit A ("Agreement").

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

Section 1. The City Council hereby authorizes an amendment to the agreement with AG|CM, Inc., in substantially the form set forth on Exhibit A and in accordance with the "Owners Rep Professional Services Agreement" in place between the City and AG|CM, Inc., for an additional amount of \$68,800.

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 _____, 2024.

CITY OF SCHERTZ, TEXAS

Ralph Gutierrez, Mayor

ATTEST:

Sheila Edmondson, City Secretary

(city seal)

EXHIBIT A

February 1, 2024

Mrs. Kathryn Woodlee
City Engineer
City of Schertz

SUBJECT: Woman Hollering Wastewater Project - Amendment #2

Mrs. Woodlee:

AG|CM, Inc. is pleased to provide an Amendment for Project Management Services, in relation to the Woman Hollering Wastewater Project, as follows:

- Project Management Proposal, Amendment #1, will be amended as follows:
 - Previously Adopted “Not to Exceed” fee of Three Hundred and Eighty Thousand, Eight Hundred and Fifty Dollars (\$380,850) will be increased by Sixty Eight Thousand, Eight Hundred (\$68,800) for a Total Revised Not To Exceed of Three Hundred Eighty Thousand and Eight Hundred Fifty Dollars (\$449,650). This not to exceed amount will be based on assumed completion of construction in June of 2024, as shown on attached “Exhibit B – Rates and Labor Schedule Amendment #2”. Completion dates were provided to AG|CM, Inc. for assumption. AG|CM does not control the assumed schedule.

Please indicate your acceptance of this proposal by signing below. Let me know of any questions, and thank you again for the opportunity to once again work with the City of Schertz. We very much value our relationship with The City, and look forward to aiding in delivering this most important project.

Respectfully,



Ryan Rosborough, CCM
Vice President – Central Texas
AG|CM, Inc.

Approved By:

Signature _____

Print Name _____

Date _____

Attachments: Exhibit B – Rates and Labor Schedule Amendment #2

			Woman Hollering Extension 2024												
<div><div>AGCM</div><div>INC</div></div>			Labor Schedule												
			Schedule	F	M	A	M	J	J	A	S	O	N	D	
			Construction												
2024	Total Hours	Fee	Staff Proposed												
\$ 140.00	430	\$ 60,200.00	QA Inspector		86	86	86	86	86						
\$ 215.00	40	\$ 8,600.00	Project Exec		8	8	8	8	8						
	470	\$ 68,800			94	94	94	94	94	0	0	0	0	0	0

CITY COUNCIL MEMORANDUM

City Council Meeting: April 16, 2024
Department: Fire Department
Subject: Resolution 24-R-45 - Authorizing the City Manager to issue a purchase order for the purchase of a replacement fire apparatus as part of the FY27 Vehicle/Equipment Replacement/Acquisition program. (S. Williams/G Rodgers)

BACKGROUND

Within the referenced fiscal budget year, the Fleet and Fire Departments review the need to purchase vehicles/equipment to add to or replace aging vehicles to maintain a good working fleet of City Owned apparatus and equipment. In accordance with the Vehicle Replacement Plan for FY27 previously approved by Council. Please see below the apparatus to be replaced for the fire department in FY27.

Pierce Velocity Fire Engine (231)

This apparatus will be purchased from Siddons Martin Emergency Group via HGAC purchasing cooperative. Each group purchasing cooperative contract was competitively bid by the awarding entity. In addition to that level of competition,

GOAL

To authorize the City Manager to execute the purchase order for the purchase of the apparatus listed in 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 the vehicle replacement program.

FISCAL IMPACT

The purchase of the vehicles and equipment will be funded through the city's general fund. The fiscal impact of this project will be approximately \$1,270,596.00 . These funds would thus be approved and awarded for purchase in the FY27 fiscal budget.

RECOMMENDATION

Staff recommends approval of Resolution No. 24-R-45.

Attachments

Fire Replacement Vehicle

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



April 8, 2024

Greg Rodgers, Fire Chief
Schertz Fire & Rescue
1400 Schertz Parkway, Building 8
Schertz, TX 78154

Proposal For: One (1) Pierce Velocity PUC Pumper

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

Description	Amount
Bid 1043: One (1) Pierce Velocity PUC Pumper	
(Unit Price - \$1,292,183.00)	
Delivery within 46-48.5 months of order date	
QUOTE # - SMEG-0007535-1	
	Vehicle Price \$1,292,183.00
	Pricing Level Discount (\$23,587.00)
	Bid 1043: UNIT TOTAL \$1,268,596.00
	SUB TOTAL \$1,268,596.00
	HGAC FS12-23 (FIRE) \$2,000.00
	TOTAL \$1,270,596.00

Price guaranteed until 5/2/2024

Additional: This proposal is valid for Pierce Manufacturing Bid 1043. Pricing Level Discount requires purchase by Singed Proposal Letter and / or Purchase Order prior to May 3, 2024. One (1) Approval Visit and one (1) Final Inspection are included for four (4) Schertz personnel. In addition, four (4) consecutive days of apparatus training are provided by Siddons-Martin Emergency Group at Schertz, Texas.

Due to global supply chain constraints, any delivery date contained herein is a good faith estimate as of the date of this order/contract, and merely an approximation based on current information. Delivery updates will be made available, and a final firm delivery date will be provided as soon as possible.

Persistent Inflationary Environment Notification: If the Producer Price Index of Components for Manufacturing [www.bls.gov Series ID: WPUID6112] (the "PPI") has increased at a compounded annual growth rate greater than 5.0% from the date of acceptance of this proposal letter (the "Order Month") and 14 months prior to the anticipated Ready for Pickup Date (the "Evaluation Month"), then the proposal price may be increased by an amount equal to any increase exceeding 5.0% for the time period between the Order Month and the Evaluation Month. Siddons Martin and Pierce will provide documentation of such increase and the updated price for the customer's approval before proceeding with completion of the order along with an option to cancel the order.

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

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

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

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

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

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

Sincerely,

Jordan Johnson

Jordan Johnson

I, _____, the authorized representative of Schertz Fire & Rescue, agree to purchase the proposed and agree to the terms of this proposal and the specifications attached hereto.

Signature & Date

RESOLUTION 24-R-25

A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF SCHERTZ, TEXAS AUTHORIZING EXPENDITURES ASSOICATED WITH THE FY27 VEHICLE/EQUIPMENT REPLACEMENT/ACQUISITION PROGRAM

WHEREAS, the Schertz Fleet Department has a need to purchase a Fire Department vehicle(s), as part of the Vehicle/Equipment Replacement/Acquisition Program; and

WHEREAS, the Schertz Fleet Department has done due diligence in researching what vehicle best fits the needs of the departments, to obtain the best pricing/availability, and to provide the best quality of vehicles/equipment; and

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

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

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

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

Section 1. The City Council hereby authorizes expenditures with Siddons Martin Emergency Group for NINETY-EIGHT THOUSAND EIGHT-HUNDRED DOLLARS (\$1,270,596) with an amount not to exceed ONE MILLION TWO HUNDRED SEVENTY THOUSAND FIVE-HUNDRED NINETY-SIX DOLLARS (\$1,270,596.00) for the 2027 Fiscal Year

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 _____, 2024.

CITY OF SCHERTZ, TEXAS

Ralph Gutierrez, Mayor

ATTEST:

Sheila Edmondson, City Secretary

CITY COUNCIL MEMORANDUM

City Council Meeting: April 16, 2024
Department: Executive Team
Subject: Resolution 24-R-47 - Acceptance of a Water and Sewer Easement from Schertz Bank and Trust. (S.Williams/B.James)

BACKGROUND

As part of the proposed development of a Las Palapas restaurant on the property on the northbound IH-35 frontage road between Legacy Oaks and Schertz Parkway (between the Valero Pic-N-Pac and Schertz Bank and Trust) the applicant is required to construct a waterline across the front of their property and across the front of the Pic-N-Pac property and Schertz Bank and Trust, as the line across those other properties was not constructed the line as it should have been when they were platted. As part of the City's longstanding policy, the City funds the cost of construction of public improvements that should have been constructed previously by a different property owner. As part of this, the owner of the property where the Las Palapas restaurant is to be built sought easements from the adjacent property owners, Pic-N-Pac and Schertz Bank and Trust.

Schertz Bank and Trust has agreed to dedicate the easement in the form generally attached to the resolution. Schertz Bank and Trust initially wanted to include their right to simply tie into any line to be constructed in the easement at their discretion. After negotiations, City Staff modified the language and agreed instead to waive any pro-rata from the owner of the Schertz Bank and Trust property if they do tie into the line in the future. Staff is seeking approval from Council to accept the easement from Schertz Bank and Trust with the easement language as attached to the resolution.

GOAL

Provide for the orderly development of the community.

COMMUNITY BENEFIT

The acquisition of the easement and construction of the line provides a benefit to the property owners and the City by providing for a looped waterline. This helps reduce the likelihood that those properties would be without water in the event of a line break.

SUMMARY OF RECOMMENDED ACTION

Approval of Resolution 24-R-47 authorizing the acceptance of the easement.

FISCAL IMPACT

It is not likely that the Schertz Bank and Trust would tie into the line to be built in the easement as they already have water service. But if they did tie in within the next 10 years (the standard length for which pro-rata is generally a condition of tying into a line), the estimated amount of pro-rata that would have been due is estimated to be approximately \$25,000. Actual pro-rata cost is based on final approved construction costs.

RECOMMENDATION

Approval of Resolution 24-R-47.

Attachments

Resolution 24-R-47 with Attachment

RESOLUTION NO. 24-R-47

A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF SCHERTZ, TEXAS, APPROVING AND AUTHORIZING A WATER AND WASTEWATER EASEMENT AGREEMENT WITH SCHERTZ BANK & TRUST, ON LOT 1, BLOCK 1 OF THE SCHERTZ BANK & TRUST SUBDIVISION, AND OTHER MATTERS IN CONNECTION THEREWITH

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

WHEREAS, the City needs the Waterline Easement in connection with the construction, operation, and maintenance of a water main situated on Lot 1, Block 1, Schertz Bank & Trust Subdivision located on the northbound frontage road of IH-35; and

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

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

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

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

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

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

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

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

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

PASSED AND ADOPTED, this ____th day of _____, 2024.

CITY OF SCHERTZ, TEXAS

Ralph Gutierrez, Mayor

ATTEST:

Sheila Edmondson, City Secretary

EXHIBIT A

WATER AND WASTEWATER EASEMENT AGREEMENT

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

WATER AND WASTEWATER EASEMENT AGREEMENT

THE STATE OF TEXAS §
 §
COUNTY OF _____ §

GRANT OF EASEMENT:

SCHERTZ BANK & TRUST, 519 Main Street, Schertz, Texas 78154 ("Grantor"), for the sum of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and confessed, does hereby grant, sell and convey unto **THE CITY OF SCHERTZ, TEXAS**, a Texas home-rule city, with offices located at 1400 Schertz Parkway, Schertz, Texas 78154 ("Grantee"), a non-exclusive easement ("Easement") upon and across the property of Grantor which is more particularly described on **Exhibit "A"**, attached hereto and incorporated herein by reference ("Easement Tract") for the Easement Purpose, TO HAVE AND TO HOLD the same perpetually to Grantee and its successors and assigns, together with the rights, and privileges and on the terms and conditions set forth below.

WARRANTY: This conveyance is made without express or implied warranty. All warranties which might arise by common law or by statute, including but not limited to § 5.023 of the Texas Property Code (or its successor) are excluded.

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

1. *Definitions.* For the purposes of this grant of Easement certain terms shall have the meanings that follow:
 - (a) "Holder" shall mean Grantee and Grantee's heirs, successors and assigns who at any time own any interest in the Easement Tract.
 - (b) "Grantor" shall mean Grantor and Grantor's successors and assigns who at any time own any interest in the Easement Tract.
 - (c) "Facilities" shall mean one public water line and one public wastewater line.
 - (d) "Grantor's Property" shall mean Lot 1, Block 1, Subdivision Plat of Schertz Bank & Trust recorded in Volume 5, Page 358A of the Plat Records of Guadalupe County, Texas.

2. *Character of Easement.* The Easement granted herein is “in gross,” in that there is no “Benefitted Property.” Nevertheless, the Easement rights herein granted shall pass to Grantee’s successors and assigns, subject to all of the terms hereof. The Easement rights of use granted herein are nonexclusive and irrevocable. The Easement is for the benefit of Holder.
3. *Purpose of Easement.* The Easement shall be used for placement, construction, installation, replacement, repair, maintenance, relocation, removal, and operation of the Facilities, and making connections thereto. The Easement shall also be used for the purpose of providing access to the Facilities. The Facilities shall be located entirely underground. Other than set forth above the Easement shall be used for no other purpose.
4. *Term.* Easement shall be in perpetuity unless relinquished or abandoned by ordinance or resolution by Grantee.
5. *Reservation of Rights.* Holder’s right to use the Easement Property is nonexclusive, and Grantor and Grantor’s heirs, successors, and assigns retain the right to use all or part of the Easement Property in conjunction with Holder as long as such use by Grantor and Grantor’s heirs, successors, and assigns does not
(i) interfere with the use of the Easement Property by Holder for the Easement Purpose, nor (ii) may Grantor construct any new building, structure or obstruction on the Easement Property. The right to convey to others the right to use all or part of the Easement Property in conjunction with Holder, as long as such further conveyance is subject to the terms of this agreement. Written approval of Holder must be obtained prior to any new use or new improvement of Easement Property. Notwithstanding the foregoing, Grantor and Grantor’s successors and assigns may without Holder’s approval, use, maintain, repair, and replace the pylon sign(s), sidewalk, driveways, entryways, parking lots, landscaping, and improvements located on the Easement Property as of the date of execution of this agreement (“Current Easement Improvements”). The right to replace includes replacing the Current Easement Improvements with like improvements having width, depth, height, and footprint substantially similar to the Current Easement Improvements. Grantor shall not be required to pay a pro-rat fee to connect to the future water line located in the Easement. For avoidance of doubt, Grantor shall never be required to remove or relocate any Current Easement Improvements, including but not limited to its sign.
6. *Temporary Construction Easement.* Holder has the right (the “Temporary Construction Easement”) to use the surface of the 20-foot wide area adjacent to the Easement Property, to assist in the initial installation and as may be reasonably necessary to maintain, repair, and replace the Facilities within the Easement Property. However, Holder must promptly restore the area of the Temporary Construction Easement to its previous physical condition if changed by use of the rights granted by this Temporary Construction Easement.

7. *Improvement and Maintenance of Easement Property.* Subject to the provisions of Section 8., immediately below, improvement and maintenance of the Easement Property and the Facilities will be at the sole expense of Holder. Holder has the right to eliminate any encroachments into the Easement Property other than Current Easement Improvements. Holder has the right to construct, install, maintain, replace, and remove the Facilities under or across any portion of the Easement Property. All matters concerning the Facilities and their configuration, construction, installation, maintenance, replacement, and removal are at Holder's sole discretion, subject to performance of Holder's obligations under this agreement. Holder has the right to remove or relocate any fences or other encroachments within the Easement Property or along or near its boundary lines, other than the Current Easement Improvements (but excluding landscaping) if reasonably necessary to construct, install, maintain, replace, or remove the Facilities. Holder will also replace to their original condition any Current Easement Improvements that are damaged in connection with the work.
8. *Maintenance of Surface Easement Property/Permitted Improvements.* Notwithstanding any contrary provision, Grantor shall retain the obligation to maintain the surface of the Easement Property, including the obligation to regularly mow or cut back vegetation and to keep the surface of the Easement Property free of litter, debris, or trash. Any permitted improvement made by Grantor must comply with applicable ordinances, development codes and engineering guidelines of the City of Schertz, and must not conflict with use of the easement for its intended purpose as described herein.
9. *Equitable Rights of Enforcement.* This Easement may be enforced by restraining orders and injunctions (temporary or permanent) prohibiting interference and commanding compliance. Restraining orders and injunctions will be obtainable on proof of the existence of interference or threatened interference, without the necessity of proof of inadequacy of legal remedies or irreparable harm, and will be obtainable only by the parties to or those benefited by this agreement; provided, however, that the act of obtaining an injunction or restraining order will not be deemed to be an election of remedies or a waiver of any other rights or remedies available at law or in equity.
10. *Attorney's Fees.* If either party retains an attorney to enforce this agreement, the party prevailing in litigation is entitled to recover reasonable attorney's fees and court and other costs.
11. *Binding Effect.* This agreement binds and inures to the benefit of the parties and their respective heirs, successors, and permitted assigns.
12. *Choice of Law.* This agreement will be construed under the laws of the state of Texas, without regard to choice-of-law rules of any jurisdiction. Venue is in the county or counties in which the Easement Property is located.

13. *Counterparts.* This agreement may be executed in any number of counterparts with the same effect as if all signatory parties had signed the same document. All counterparts will be construed together and will constitute one and the same instrument.
14. *Waiver of Default.* It is not a waiver of or consent to default if the non-defaulting party fails to declare immediately default or delays in taking any action. Pursuit of any remedies set forth in this agreement does not preclude pursuit of other remedies in this agreement or provided by law.
15. *Further Assurances.* Each signatory party agrees to execute and deliver any additional documents and instruments and to perform any additional acts necessary or appropriate to perform the terms, provisions, and conditions of this agreement and all transactions contemplated by this agreement.
16. *Integration.* This agreement contains the complete agreement of the parties and cannot be varied except by written agreement of the parties. The parties agree that there are no oral agreements, representations, or warranties that are not expressly set forth in this agreement.
17. *Exceptions to Warranty.* This conveyance is made by Grantor and accepted by Grantee subject to any and all existing easements, covenants, rights-of-way, conditions, restrictions, outstanding mineral interests and royalty interests, if any, relating to the Easement Property, to the extent, and only to the extent, that the same may still be in force and effect, and either shown of record in the office of the County Clerk of the County in which any part of the Easement Property is located, or that may be apparent on the Easement Property.
18. *Legal Construction.* Any provision in this agreement is for any reason unenforceable, to the extent the unenforceability does not destroy the basis of the bargain among the parties, the unenforceability will not affect any other provision hereof, and this agreement will be construed as if the unenforceable provision had never been a part of the agreement. Whenever context requires, the singular will include the plural and neuter include the masculine or feminine gender, and vice versa. Article and section headings in this agreement are for reference only and are not intended to restrict or define the text of any section. This agreement will not be construed more or less favorably between the parties by reason of authorship or origin of language.
19. *Notices.* Any notice required or permitted under this agreement must be in writing. Any notice required by this agreement will be deemed to be delivered (whether actually received or not) when deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the intended recipient at the address shown in this agreement. Notice may also be given by regular mail, personal delivery, courier delivery, facsimile transmission, or other commercially reasonable means and will be effective when actually

received. Any address for notice may be changed by written notice delivered as provided herein.

20. *Recitals/Exhibits.* Any recitals in this agreement are represented by the parties to be accurate, and constitute a part of the substantive agreement. All exhibits referenced herein are attached hereto and incorporated by reference herein for all purposes.
21. *Entire Agreement.* This instrument contains the entire agreement between the parties relating to the rights herein granted and the obligations herein assumed. Any oral representation or modification concerning this instrument shall be of no force and effect except for any subsequent modification in writing, signed by the party to be charged.
22. *Governmental Responsibility.* To the extent allowed by the Constitution and the laws of the State of Texas, Grantee assumes the entire responsibility for the construction and maintenance of the Facilities to be constructed in the Easement Property, and nothing contained herein shall ever be construed to place upon Grantor any manner of liability for injury to or death of persons or for damage to or loss of property arising from or in any manner connected with the acts, conduct, or negligence of Grantee in the exercise of its rights or performance (or non-performance) of its duties under this agreement.
23. *Insurance by Contractor.* Grantee agrees to name Grantor as an additional insured on all liability or other insurance policies to be provided to Grantee by its contractors for the construction of the Facilities contemplated to be constructed in the Easement Property, and to furnish Grantor a copy of all such policies.
24. *Enforcement by Owners of Grantor's Property.* The obligations of Grantee under the terms of this agreement are covenants running with the land of Grantor's Property, and shall inure to the benefit of, and be enforceable by, Grantor and Grantor's successors and assigns; and the owners of all or any part of Grantor's Property.

IN WITNESS WHEREOF, this instrument is executed this _____ day of _____, 2024.

GRANTOR:

(Grantor's Name)

By: _____
(Grantor's Signature)

THE STATE OF TEXAS §
 §
COUNTY OF _____§

This instrument was acknowledged before me on _____, 20____, by _____, an individual residing in _____ County, Texas.

Notary Public Signature

(seal)

GRANTEE:

AGREED AND ACCEPTED:

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

By: _____
Mr. Steve Williams, City Manager

THE STATE OF TEXAS §
 §
COUNTY OF GUADALUPE §

This instrument was acknowledged before me on _____, 20 , by
Mr. Steve Williams, City Manager of the City of Schertz, Texas, a Texas home-rule municipality,
on behalf of said municipality.

(seal)

Notary Public Signature

EXHIBIT "A"

EASEMENT TRACT

CITY COUNCIL MEMORANDUM

City Council Meeting: April 16, 2024
Department: Executive Team
Subject: Resolution No. 24-R-48 - Declare a public necessity for the acquisition of a certain water pipeline easement and temporary construction easement in connection with a future waterline. (S.Williams/B.James)

BACKGROUND

The developer of the Ackerman residential subdivision, which will have about 145 lots on about 45 acres is located generally at the northwest corner Green Valley Road and Eckhardt Road, is required to provide a loop to the existing waterline that will serve their development and that serves others in the area (Cypress Pointe and Parklands). The loop waterline will need to come from the west to connect to the existing line in Homestead. They have been trying to acquire the necessary easement with the adjacent property owner to no avail. As this line connection is being required by the City and serves multiple properties, staff agreed to take responsibility for the acquisition going forward.

The permanent waterline easement is estimated to be 15' wide in order to accommodate a 12" waterline. A temporary construction easement will be needed during construction. The easement will cross the Schwab Credit Trust Property as shown on the attached exhibit. The easement is about 1,300' in length.

As mentioned, the developer has provided a timeline of their efforts to acquire the easement. City Staff is seeking authorization to purchase the easement after conducting an appraisal. Prior to committing to a price, staff will come back to Council. If those discussions prove unsuccessful, staff would have to come back to Council to seek approval to use eminent domain.

GOAL

This Resolution will allow the City to acquire a needed waterline easement and temporary construction easements for the future city waterline.

COMMUNITY BENEFIT

Acquisition of the easement allows for construction of the planned waterline that provides a looped system to serve multiple properties/developments along Eckhardt Road.

SUMMARY OF RECOMMENDED ACTION

Staff recommends approval of Resolution 24-R-28 authorizing the acquisition of easements associated with the waterline.

FISCAL IMPACT

Staff will have an appraisal conducted that will serve as the basis of the offer for the easement. Staff will come back to Council prior to finalizing the price to be paid.

RECOMMENDATION

Approval of Resolution 24-R-48.

Attachments

Resolution 24-R-48 with attachment

RESOLUTION NO. 24-R-48

A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF SCHERTZ, TEXAS AUTHORIZING THE ACQUISITION OF EASEMENTS ASSOCIATED WITH THE WATERLINE EXTENSION BETWEEN HOMESTEAD AND THE ACKERMAN TRACT IN THE CITY OF SCHERTZ, TEXAS, AND RELATED MATTERS IN CONNECTION THEREWITH

WHEREAS, the City of Schertz there is a need for construction of a waterline in order to provide a looped water system to ensure multiple pathways for delivering water to existing developments generally along Eckhardt Road and that this need only increase over time as additional development continues; and

WHEREAS, City Council of Schertz, Texas finds and determines that public necessity requires the City to acquire certain waterline easements and temporary construction easements in connection therewith in Guadalupe County, Texas from landowners for the public purpose of construction, operation, and maintenance of a water pipeline system to be constructed for public water supply for the City of Schertz, and that the City of Schertz, acquire the rights of ingress and egress over and across such lands

WHEREAS, the City staff of the City of Schertz (the "City") has recommended that the City acquire easements for a waterline as shown in Exhibit "A"; and

WHEREAS, the City of Schertz will engage an appraiser to provide an appraisal of the value of the needed easement; and

WHEREAS, the City Council has determined that it is in the best interest of the City to acquire the easements.

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

Section 1. The City Council hereby authorizes the City Manager to begin the process of acquiring the necessary easements as shown 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 ____ day of _____, 2024.

CITY OF SCHERTZ, TEXAS

Ralph Gutierrez, Mayor

ATTEST:

Sheila Edmondson, City Secretary

Exhibit "A"

Proposed Easement Location



THIS DOCUMENT HAS BEEN PRODUCED FROM A SOURCE THAT HAS STORED INFORMATION ELECTRONICALLY AND MAY HAVE BEEN MANIPULATED IN A MANNER THAT COULD CAUSE INACCURACIES IN THE DATA. THE USER SHALL VERIFY THE DATA BEFORE USING IT FOR ANY PURPOSE.

DRAWN: JTS/SLH
 DATE: 08/16/23
 SHEET NUMBER: 1

ACKERMANN TRACT OFF SITE 12" WATER PLAN
 CITY OF SHERTZ / GUADALUPE COUNTY

REVISIONS
 ISSUE DATE

CITY COUNCIL MEMORANDUM

City Council
Meeting: April 16, 2024

Department: Planning & Community Development

Subject: Resolution 24-R-41- Authorizing a resolution accepting a petition for voluntary annexation of approximately 507-acres, known as Comal County Property Identification Numbers 75449, 75463, 79012, 75462, 78923, 374148, 79018, 79017, 75468, 374146, 374145, 374144, 374147, 78218, 78957, 78960, 78976, 79001, 78945, 78946, 75480, 78247, 79009, 79006, 79004, and approximately 387- acres, known as Guadalupe County Property Identifications Numbers 63992, 61614, 68378, 68377, 68382, 68381, 68380, 68374, 61615, 68384, 68385, 68383, 61511, 61609 (B.James/L.Wood/E.Delgado).

BACKGROUND

Annexation of land into the City's corporate limits may be voluntary or involuntary. The Texas Local Government Code (LGC) provides requirements and outlines the process based on the annexation type. The proposed annexations are voluntary based on the Delayed Annexation Development Agreements that were originally entered into in 2010 and 2011 and the extensions that were offered in 2020 and 2021 thus Chapter 43, Subchapter C-3 of the Texas Local Government Code applies. The City's Unified Development Code (UDC) Section 21.4.8 includes provisions for processing of voluntary annexation requests.

In 2010 and 2011 the City of Schertz entered into Delayed Annexation Development Agreements with property owners based on Texas Local Government Code Section 43.035 (b)(1) and 212.172 in order to (i) guarantee the continuation of the extraterritorial status of the Land for the term of the agreement and (ii) authorize the enforcement of all regulations and planning authority of the City that did not interfere with the use of the land for agriculture or wildlife manage or as timber land. Per the agreements that were signed and executed in, specifically Section 5. Term; Annexation at End of Term, stipulates that ten (10) years after the effective date of the agreement the property is to be annexed into the City of Schertz.

In 2020 and 2021 the City of Schertz City Council authorized the City Manager and staff to offer Development Agreement Extensions based on the nationwide and statewide declaration of public health emergency in relation to COVID -19 in addition to the Development Agreement Extensions would allow City staff to complete the Comprehensive Land Use Plan update which would be utilized when zoning the annexed properties. These extensions would provide the same rights as previously established in the original agreements but would delay the annexation of the properties to a later date. Specifically, the extension would be in effect until January 1, 2024, at which time the City of Schertz would begin annexation proceedings and conclude them no later than December 31, 2024.

At this time, the first date identified in the agreement (January 1, 2024) has passed and, with the approval of Ordinance 24-S-06, the Comprehensive Land Use Plan has officially been adopted and can be utilized for zoning cases moving forward. Per the Development Agreement Extensions, City staff has started the annexation and zoning process in accordance with the extensions.

Resolution 24-R-41 is the first City Council step in the annexation process for these parcels. Specifically, 24-R-41 would accept a petition for voluntary annexation of 25 properties, approximately 507-acres within Comal County and 14 properties, approximately 387- acres within Guadalupe County which are identified within the attachment.

In an effort to provide the property owners within the annexation areas with information about this process, a letter was mailed to each property owner providing the below tentative calendar for the annexation and zoning process. In addition to the calendar, staff also provided information on the history of the original agreements, the extensions, and what staff will be proposing for the zoning designation for the property, which will be based on the newly adopted Comprehensive Land Use Plan designations.

Date	Meeting / Action:
April 16, 2024	City Council Meeting Resolution accepting the petition for voluntary annexation
May 8, 2024	Planning and Zoning Commission Meeting Public Hearing and recommendation to City Council for the zoning classification
June 4, 2024	City Council Meeting Public Hearing for the first reading of the Annexation Ordinance Public Hearing for the first reading of the Zoning Ordinance
June 18, 2024	City Council Meeting Final Reading for the Annexation Ordinance Final Reading for the Zoning Ordinance <i>*If approved on first reading on June 4, 2024*</i>

Upon City Council accepting Resolution 24-R-41, the petition for voluntary annexation, the process to annex and zone the properties would begin. The adoption of resolution 24-R-41 does not annex the subject properties, but allows City Council to annex the properties by ordinance in the future. An ordinance for annexation of the subject properties must be approved by City Council to annex the properties, which is tentatively scheduled for the June 4, 2024, City Council meeting. The annexation ordinance will be accompanied by service agreements to meet the requirements of UDC Section 21.4.8 and LGC § 43.0672. These service agreements were included with the letter sent to the property owners providing them with information on the process. The zoning application to accompany the annexation is tentatively scheduled for the May 8, 2024 Planning and Zoning Commission meeting.

GOAL

To initiate the voluntary annexation process in accordance with the Delayed Annexation Development Agreements and the Development Agreement Extensions.

COMMUNITY BENEFIT

Promote the safe, orderly, efficient development and ensure compliance with the City's vision of future growth.

SUMMARY OF RECOMMENDED ACTION

Staff recommends approval of Resolution 24-R-41, accepting a petition for voluntary annexation for approximately 507-acres within Comal County and approximately 387- acres within Guadalupe County.

FISCAL IMPACT

The approval of Resolution 24-R-41 accepting a petition for voluntary annexation does not have a financial impact on the City; however, the end annexation of the properties will. In accordance with Texas Local Government Code (LGC) Chapter 43, the City must provide services to the land on the effective date of the annexation. The subject properties have been proposed to be annexed into the City of Schertz since 2010 and 2011. The Development Agreement Extensions explicitly state that the properties will be annexed into the City of Schertz before December 31, 2024.

RECOMMENDATION

Approval of Resolution 24-R-41.

Attachments

Resolution 24-R-41 with attachments
City Council Presentation Slides

RESOLUTION NO. 24-R-41

A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF SCHERTZ, TEXAS ACCEPTING A PETITION FOR VOLUNTARY ANNEXATION WITHIN THE EXTRATERRITORIAL JURISDICTION OF THE CITY OF SCHERTZ

WHEREAS, a petition for annexation of approximately 507-acres, known as Comal County Property Identification Numbers 75449, 75463, 79012, 75462, 78923, 374148, 79018, 79017, 75468, 374146, 374145, 374144, 374147, 78218, 78957, 78960, 78976, 79001, 78945, 78946, 75480, 78247, 79009, 79006, 79004, and approximately 387- acres, known as Guadalupe County Property Identifications Numbers 63992, 61614, 68378, 68377, 68382, 68381, 68380, 68374, 61615, 68384, 68385, 68383, 61511, 61609 and more specifically described in the Exhibit A attached herein (herein, the “Property”) has been filed with the City in accordance with ; and

WHEREAS, in 2010 and 2011 the City of Schertz offered Development Agreements to property owners for a period of 10 years at which time the agreement was set to expire with groups expiring in July 2020, November 2020, April 2021 and August 2021; and

WHEREAS, in 2020 and 2021 the City of Schertz offered Development Agreement Extensions to the property owners with existing Development Agreements in order to delay the annexation of their properties for a term not to exceed January 1, 2024 with the City concluding all annexation proceedings commenced under these Development Agreement Extensions before December 31, 2024; and

WHEREAS, per the Development Agreement and Development Agreement Extensions the City of Schertz is proceeding forward with Annexation per the terms of the agreements; and

WHEREAS, Texas Local Government Code Section 43.0671 authorizes the City of Schertz to extend its City Limit boundaries through the voluntary annexation of area adjacent to those boundaries upon petition of a landowner; and

WHEREAS, the City Staff has recommended that the petition for annexation be accepted; and

WHEREAS, upon accepting the petition for voluntary annexation of the subject properties, the City may annex the properties by adoption of an ordinance.

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

Section 1. The City Council hereby accepts the Petition for Voluntary Annexation.

Section 2. The City Council shall act upon the Petition for Voluntary Annexation and annex the subject properties by ordinance at a future meeting of the City Council at such time the City Council deems to be in the best interest of the City.

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 _____, 2024.

CITY OF SCHERTZ, TEXAS

Ralph Gutierrez, Mayor

ATTEST:

Sheila Edmondson, City Secretary

Proposed Annexations - Comal County

- Proposed Tracts
- Municipal Boundary

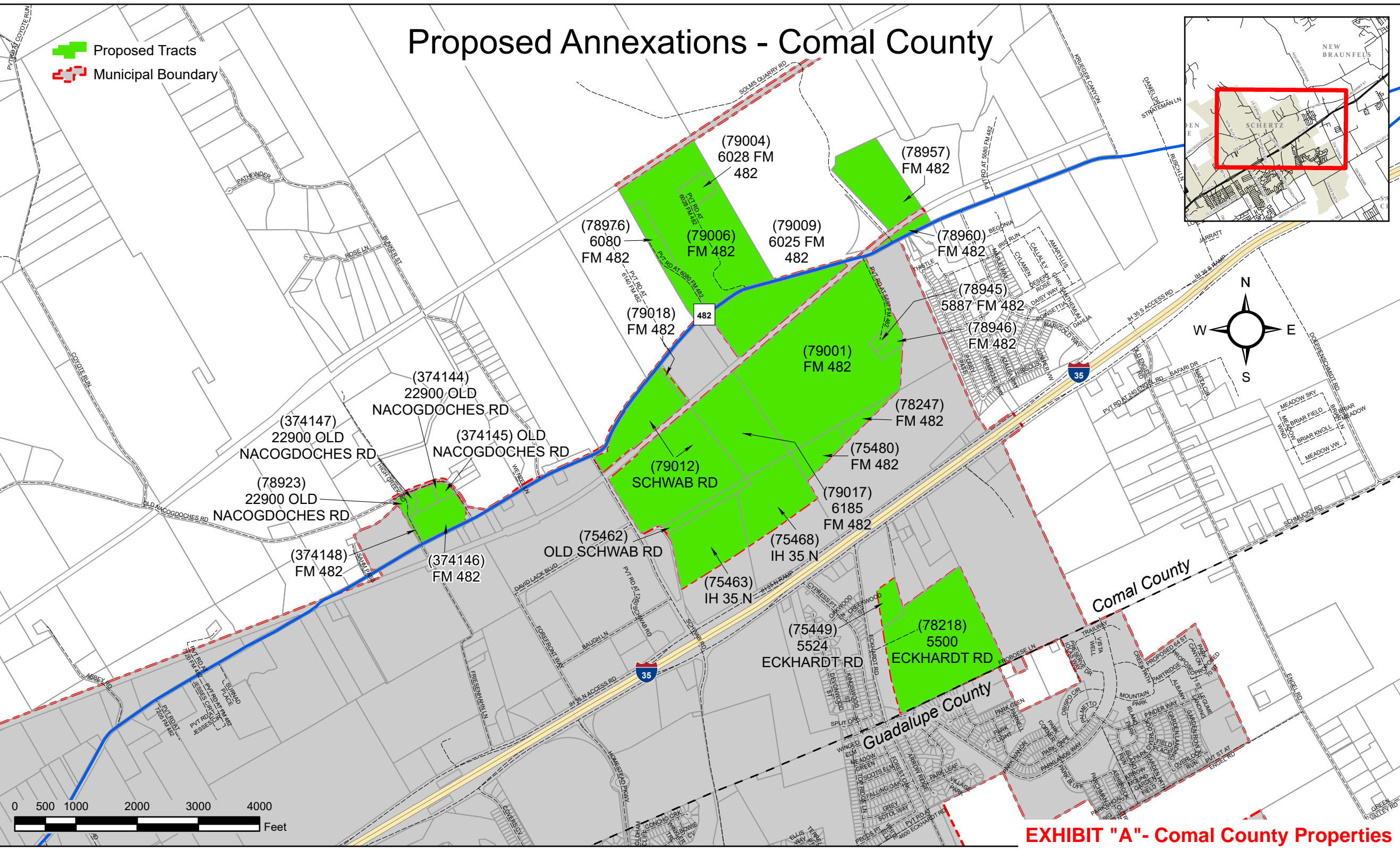
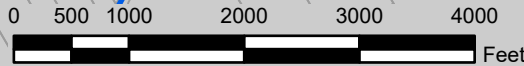
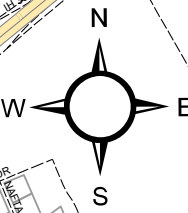
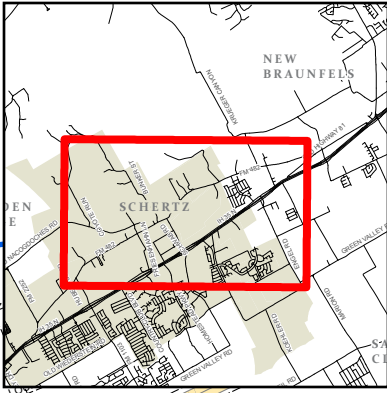


EXHIBIT "A"- Comal County Properties

RESOLUTION 24-R-41

Accepting a Petition of Annexation- Comal County and Guadalupe County

EMILY DELGADO | PLANNING MANAGER

SCHERTZ
COMMUNITY. SERVICE. OPPORTUNITY.

Background

Annexation of land into the City's corporate limits may be voluntary or involuntary. The Texas Local Government Code (LGC) provides requirements and outlines the process based on the annexation type. The proposed annexations are voluntary based on the Delayed Annexation Development Agreements that were originally entered into in 2010 and 2011 and the extensions that were offered in 2020 and 2021 thus Chapter 43, Subchapter C-3 of the Texas Local Government Code applies. The City's Unified Development Code (UDC) Section 21.4.8 includes provisions for processing of voluntary annexation requests.

In 2010 and 2011 the City of Schertz entered into Delayed Annexation Development Agreements with property owners based on Texas Local Government Code Section 43.035 (b)(1) and 212.172 in order to (i) guarantee the continuation of the extraterritorial status of the Land for the term of the agreement and (ii) authorize the enforcement of all regulations and planning authority of the City that did not interfere with the use of the land for agriculture or wildlife manage or as timber land. Per the agreements that were signed and executed in, specifically Section 5. Term; Annexation at End of Term, stipulates that ten (10) years after the effective date of the agreement the property is to be annexed into the City of Schertz.

Background Continued

In 2020 and 2021 the City of Schertz City Council authorized the City Manager and staff to offer Development Agreement Extensions based on the nationwide and statewide declaration of public health emergency in relation to COVID -19 in addition the Development Agreement Extensions would allow City staff to complete the Comprehensive Land Use Plan update which would be utilized when zoning the annexed properties.

These extensions would provide the same rights as previously established in the original agreements but would delay the annexation of the properties to a later date. Specifically, the extension would be in effect until January 1, 2024, at which time the City of Schertz would begin annexation proceedings and conclude them no later than December 31, 2024.

Background Continued

At this time, the first date identified in the agreement (January 1, 2024) has passed and, with the approval of Ordinance 24-S-06, the Comprehensive Land Use Plan has officially been adopted and can be utilized for zoning cases moving forward. Per the Development Agreement Extensions, City staff has started the annexation and zoning process in accordance with the extensions.

Resolution 24-R-41 is the first City Council step in the annexation process for these parcels. Specifically, 24-R-41 would accept a petition for voluntary annexation of 25 properties, approximately 507-acres within Comal County and 14 properties, approximately 387- acres within Guadalupe County.

Annexation Process and Tentative Calendar

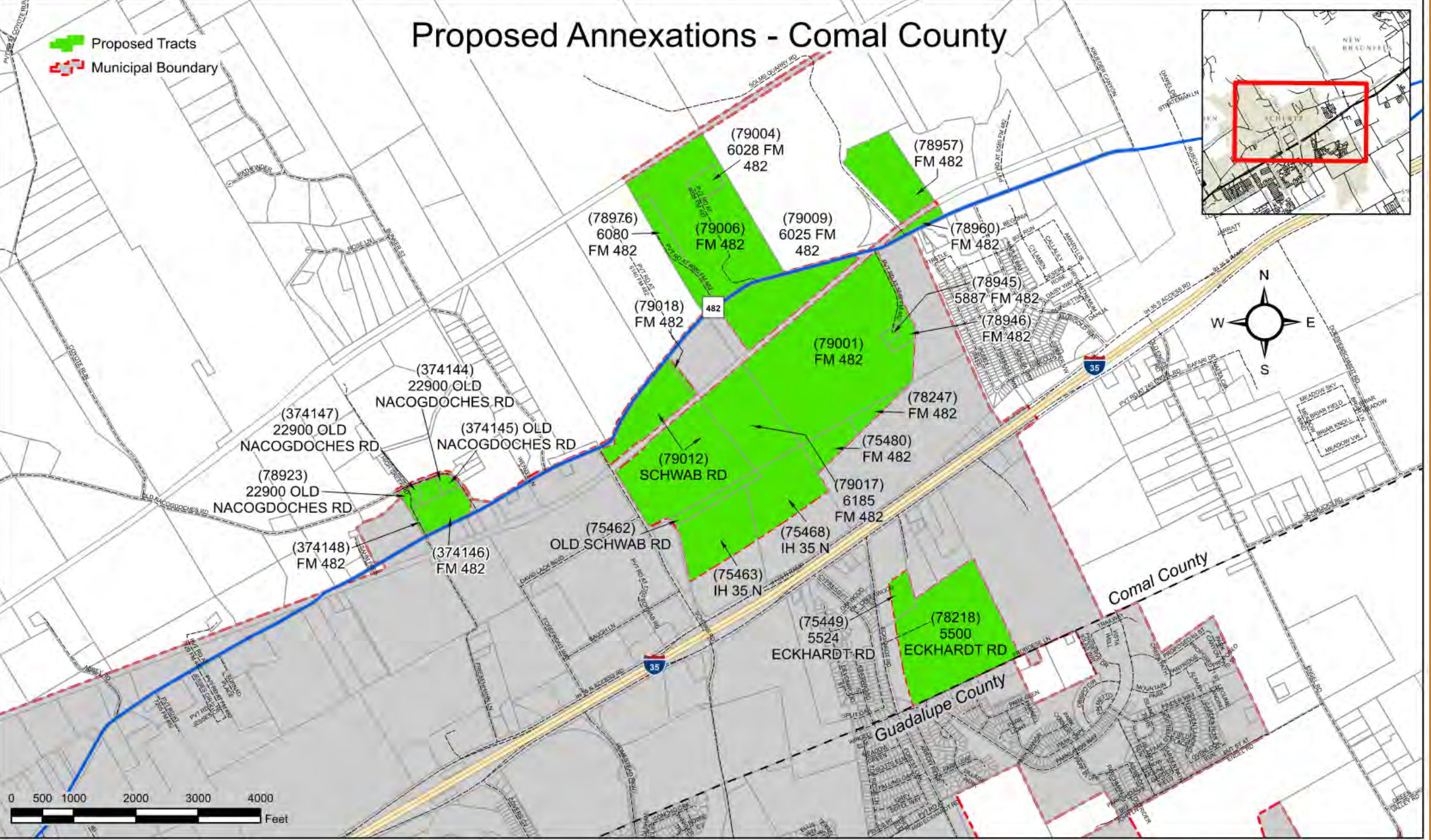
In an effort to provide the property owners within the annexation areas with information about this process, a letter was mailed to each property owner providing the below tentative calendar for the annexation and zoning process. In addition to the calendar, staff also provided information on the history of the original agreements, the extensions, and what staff will be proposing for the zoning designation for the property, which will be based on the newly adopted Comprehensive Land Use Plan designations.

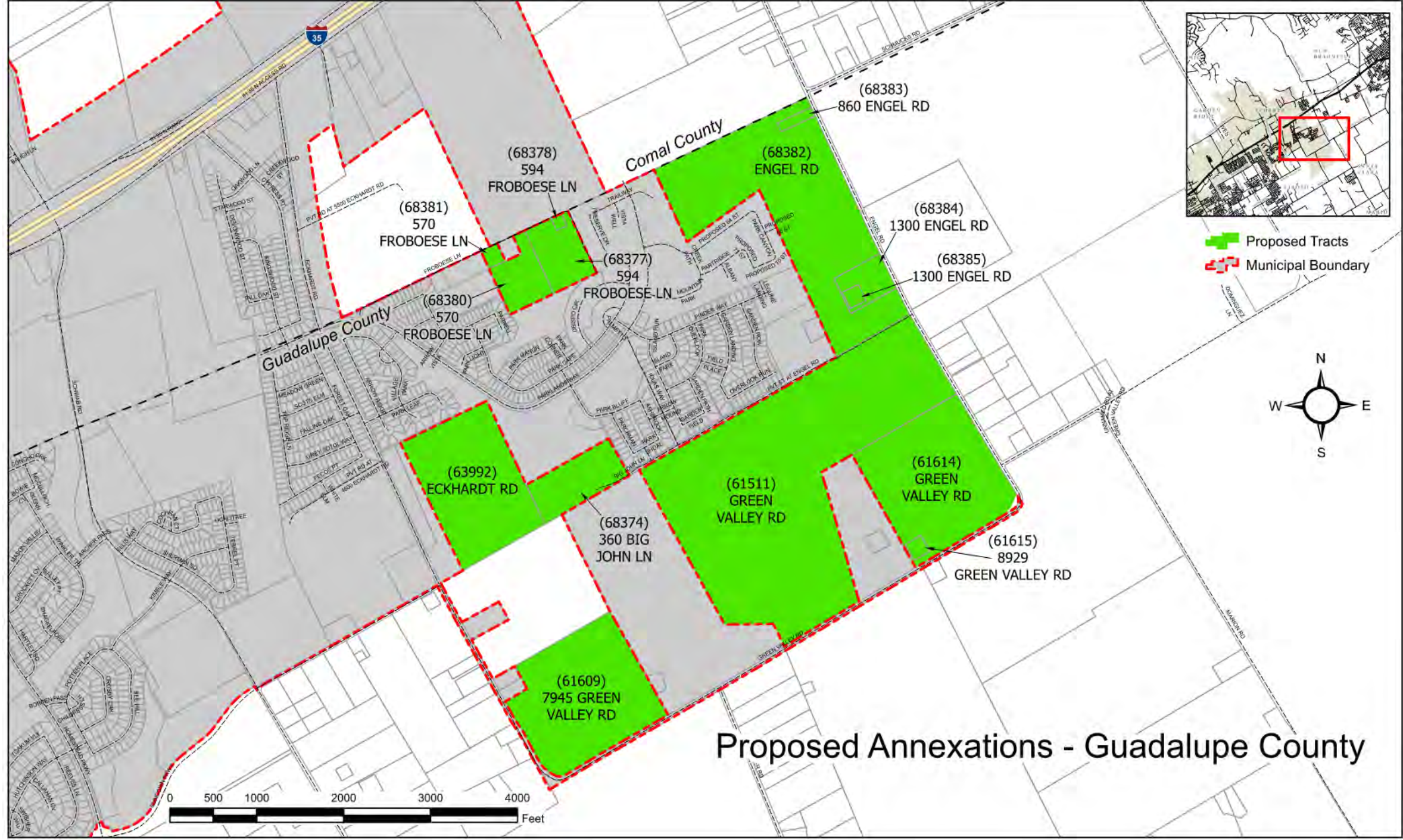
Upon City Council accepting Resolution 24-R-41, the petition for voluntary annexation, the process to annex and zone the properties would begin. The adoption of resolution 24-R-41 does not annex the subject properties but allows City Council to annex the properties by ordinance in the future.

An ordinance for annexation of the subject properties must be approved by City Council to annex the properties, which is tentatively scheduled for the June 4, 2024, City Council meeting. The zoning application to accompany the annexation is tentatively scheduled for the May 8, 2024 Planning and Zoning Commission meeting.

Proposed Annexations - Comal County

Proposed Tracts
Municipal Boundary







Recommendation

Staff recommends approval of Resolution 24-R-41, accepting a petition for voluntary annexation for approximately 507-acres within Comal County and approximately 387-acres within Guadalupe County.

COMMENTS AND QUESTIONS

CITY COUNCIL MEMORANDUM

City Council Meeting: April 16, 2024

Department: Planning & Community Development

Subject: Resolution 24-R-42- Authorizing a resolution accepting a petition for voluntary annexation of approximately 2,200 -acres, known as Bexar County Property Identification Numbers 310064, 1141730, 339772, 339773, 339362, 339744, 1050203, 340030, 339348, 339359, 339341, 339353, 339778, 310012, 309842, 310125, 339293, 339295, 340059, 1178479, 339276, 310059, 309418, 309421, 339325, 339284, 309837, 1103093, 310111, 310040, 310004, 310225, 339274, 339275, 339328, 1013798, 310222, 310026, 1274920, 339286, 339285, 310019, 1139530, 1056967, 339331, 1178480, 309427, 309425, 310006, 1056966, 312023, 310002, 310048, 1311565, 310022, 312015, 312017, 310126, 339290, 339288, 339790, 339334, 339329, 1140481, 310007, 312008, 309429, 1190132, 310032, 310039, 310090, 310107, 1103091, 1207560, 1103092 (B.James/L.Wood/E.Delgado).

BACKGROUND

Annexation of land into the City's corporate limits may be voluntary or involuntary. The Texas Local Government Code (LGC) provides requirements and outlines the process based on the annexation type. The proposed annexations are voluntary based on the Delayed Annexation Development Agreements that were originally entered into in 2010 and 2011 and the extensions that were offered in 2020 and 2021 thus Chapter 43, Subchapter C-3 of the Texas Local Government Code applies. The City's Unified Development Code (UDC) Section 21.4.8 includes provisions for processing of voluntary annexation requests.

In 2010 and 2011 the City of Schertz entered into Delayed Annexation Development Agreements with property owners based on Texas Local Government Code Section 43.035 (b)(1) and 212.172 in order to (i) guarantee the continuation of the extraterritorial status of the Land for the term of the agreement and (ii) authorize the enforcement of all regulations and planning authority of the City that did not interfere with the use of the land for agriculture or wildlife manage or as timber land. Per the agreements that were signed and executed, specifically Section 5. Term; Annexation at End of Term, stipulates that ten (10) years after the effective date of the agreement the property is to be annexed into the City of Schertz.

In 2020 and 2021 the City of Schertz City Council authorized the City Manager and staff to offer Development Agreement Extensions based on the nationwide and statewide declaration of public health emergency in relation to COVID -19 additionally the Development Agreement Extensions would allow City staff to complete the Comprehensive Land Use Plan update which would be utilized when zoning the annexed properties. These extensions would provide the same rights as previously established in the original agreements but would delay the annexation of the properties to a later date. Specifically, the extension would be in effect until January 1, 2024, at which time the City of Schertz would begin annexation proceedings and conclude them no later than December 31, 2024.

At this time, the first date identified in the agreement (January 1, 2024) has passed and, with the approval of Ordinance 24-S-06, the Comprehensive Land Use Plan has officially been adopted and can

be utilized for zoning cases moving forward. Per the Development Agreement Extensions, City staff has started the annexation and zoning process in accordance with the extensions.

Resolution 24-R-42 is the first City Council step in the annexation process for these parcels. Specifically, 24-R-42 would accept a petition for voluntary annexation of 75 properties, approximately 2,200-acres within Bexar County which are identified within the attachment.

In an effort to provide the property owners within the annexation areas with information about this process, a letter was mailed to each property owner providing the below tentative calendar for the annexation and zoning process. In addition to the calendar, staff also provided information on the history of the original agreements, the extensions, and what staff will be proposing for the zoning designation for the property, which will be based on the newly adopted Comprehensive Land Use Plan designations.

Date	Meeting / Action:
April 16, 2024	City Council Meeting Resolution accepting the petition for voluntary annexation
May 8, 2024	Planning and Zoning Commission Meeting Public Hearing and recommendation to City Council for the zoning classification
June 4, 2024	City Council Meeting Public Hearing for the first reading of the Annexation Ordinance Public Hearing for the first reading of the Zoning Ordinance
June 18, 2024	City Council Meeting Final Reading for the Annexation Ordinance Final Reading for the Zoning Ordinance <i>*If approved on first reading on June 4, 2024*</i>

Upon City Council accepting Resolution 24-R-42, the petition for voluntary annexation, the process to annex and zone the properties would begin. The adoption of resolution 24-R-42 does not annex the subject properties, but allows City Council to annex the properties by ordinance in the future. An ordinance for annexation of the subject properties must be approved by City Council to annex the properties, which is tentatively scheduled for the June 4, 2024, City Council meeting. The annexation ordinance will be accompanied by service agreements to meet the requirements of UDC Section 21.4.8 and LGC § 43.0672. These service agreements were included with the letter sent to the property owners providing them with information on the process. The zoning application to accompany the annexation is tentatively scheduled for the May 8, 2024 Planning and Zoning Commission meeting.

GOAL

To initiate the voluntary annexation process in accordance with the Delayed Annexation Development Agreements and the Development Agreement Extensions.

COMMUNITY BENEFIT

Promote the safe, orderly, efficient development and ensure compliance with the City's vision of future growth.

SUMMARY OF RECOMMENDED ACTION

Staff recommends approval of Resolution 24-R-42, accepting a petition for voluntary annexation for approximately 2,200-acres within Bexar County.

FISCAL IMPACT

The approval of Resolution 24-R-42 accepting a petition for voluntary annexation does not have a financial impact on the City; however, the end annexation of the properties will. In accordance with Texas Local Government Code (LGC) Chapter 43, the City must provide services to the land on the effective date of the annexation. The subject properties have been proposed to be annexed into the City of Schertz since 2010 and 2011. The Development Agreement Extensions explicitly state that the properties will be annexed into the City of Schertz before December 31, 2024.

RECOMMENDATION

Approval of Resolution 24-R-42.

Attachments

City Council Presentation Slides
Resolution 24-R-42 with Attachments



RESOLUTION 24-R-42

Accepting a Petition of Annexation- Bexar County

EMILY DELGADO | PLANNING MANAGER

SCHERTZ
COMMUNITY. SERVICE. OPPORTUNITY.

Background

Annexation of land into the City's corporate limits may be voluntary or involuntary. The Texas Local Government Code (LGC) provides requirements and outlines the process based on the annexation type. The proposed annexations are voluntary based on the Delayed Annexation Development Agreements that were originally entered into in 2010 and 2011 and the extensions that were offered in 2020 and 2021 thus Chapter 43, Subchapter C-3 of the Texas Local Government Code applies. The City's Unified Development Code (UDC) Section 21.4.8 includes provisions for processing of voluntary annexation requests.

In 2010 and 2011 the City of Schertz entered into Delayed Annexation Development Agreements with property owners based on Texas Local Government Code Section 43.035 (b)(1) and 212.172 in order to (i) guarantee the continuation of the extraterritorial status of the Land for the term of the agreement and (ii) authorize the enforcement of all regulations and planning authority of the City that did not interfere with the use of the land for agriculture or wildlife manage or as timber land. Per the agreements that were signed and executed in, specifically Section 5. Term; Annexation at End of Term, stipulates that ten (10) years after the effective date of the agreement the property is to be annexed into the City of Schertz.

Background Continued

In 2020 and 2021 the City of Schertz City Council authorized the City Manager and staff to offer Development Agreement Extensions based on the nationwide and statewide declaration of public health emergency in relation to COVID -19 in addition the Development Agreement Extensions would allow City staff to complete the Comprehensive Land Use Plan update which would be utilized when zoning the annexed properties.

These extensions would provide the same rights as previously established in the original agreements but would delay the annexation of the properties to a later date. Specifically, the extension would be in effect until January 1, 2024, at which time the City of Schertz would begin annexation proceedings and conclude them no later than December 31, 2024.

Background Continued

At this time, the first date identified in the agreement (January 1, 2024) has passed and, with the approval of Ordinance 24-S-06, the Comprehensive Land Use Plan has officially been adopted and can be utilized for zoning cases moving forward. Per the Development Agreement Extensions, City staff has started the annexation and zoning process in accordance with the extensions.

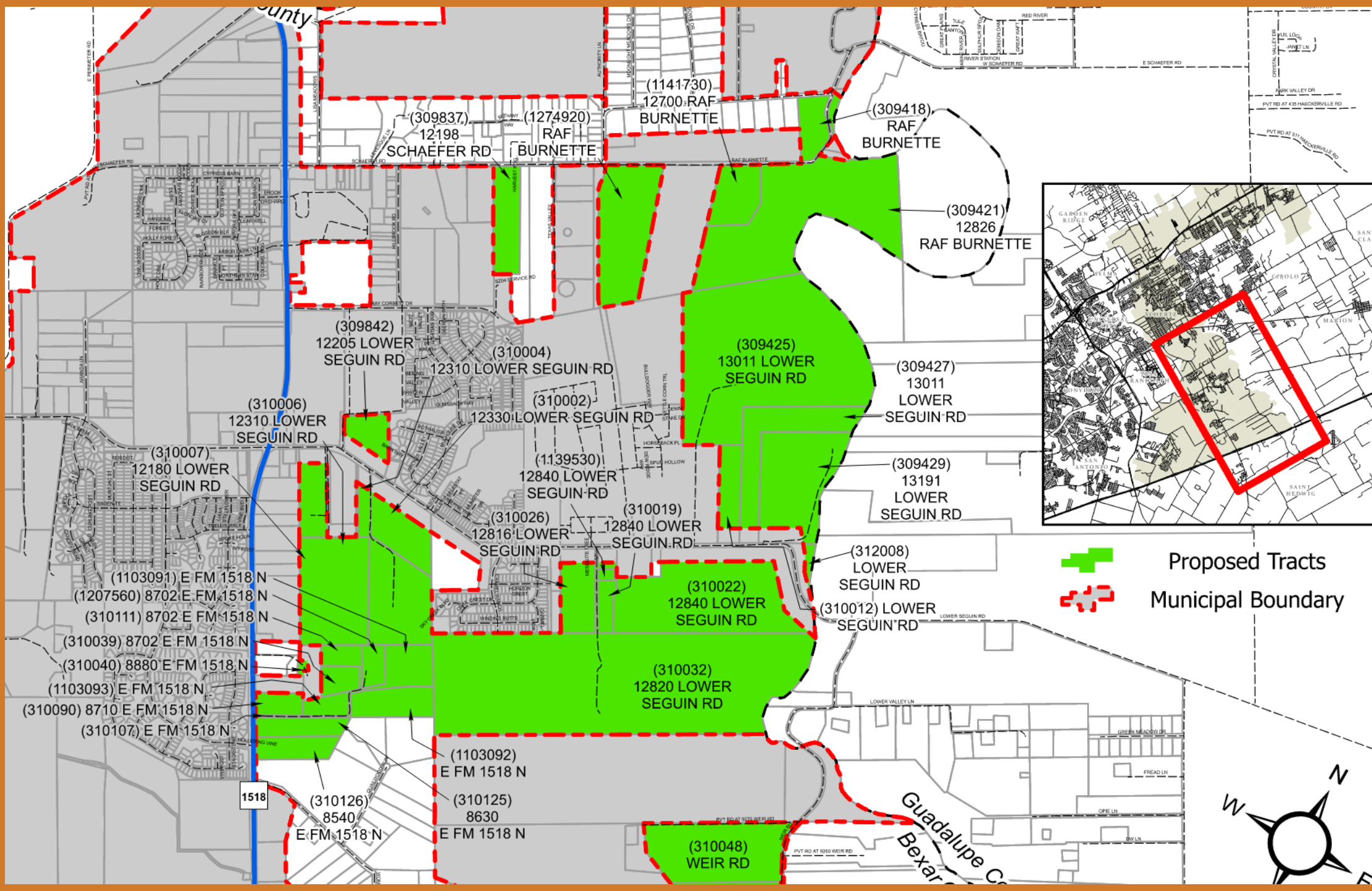
Resolution 24-R-42 is the first City Council step in the annexation process for these parcels. Specifically, 24-R-42 would accept a petition for voluntary annexation of 75 properties, approximately 2,200 acres within Bexar County.

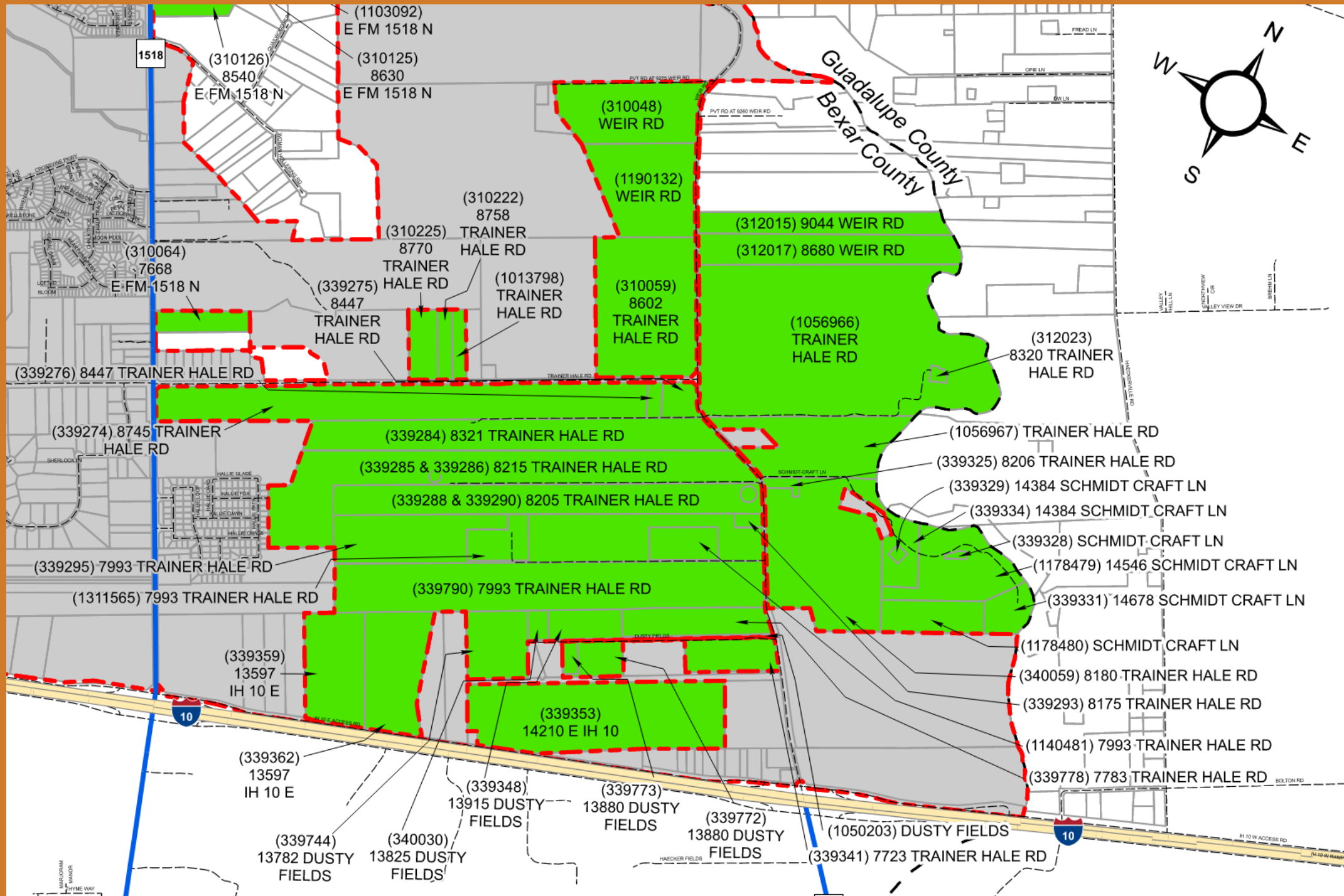
Annexation Process and Tentative Calendar

In an effort to provide the property owners within the annexation areas with information about this process, a letter was mailed to each property owner providing the below tentative calendar for the annexation and zoning process. In addition to the calendar, staff also provided information on the history of the original agreements, the extensions, and what staff will be proposing for the zoning designation for the property, which will be based on the newly adopted Comprehensive Land Use Plan designations.

Upon City Council accepting Resolution 24-R-42, the petition for voluntary annexation, the process to annex and zone the properties would begin. The adoption of resolution 24-R-42 does not annex the subject properties but allows City Council to annex the properties by ordinance in the future.

An ordinance for annexation of the subject properties must be approved by City Council to annex the properties, which is tentatively scheduled for the June 4, 2024, City Council meeting. The zoning application to accompany the annexation is tentatively scheduled for the May 8, 2024 Planning and Zoning Commission meeting.







Recommendation

Staff recommends approval of Resolution 24-R-42, accepting a petition for voluntary annexation for approximately 2,200 acres within Bexar County.

COMMENTS AND QUESTIONS

RESOLUTION NO. 24-R-42

A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF SCHERTZ, TEXAS ACCEPTING A PETITION FOR VOLUNTARY ANNEXATION WITHIN THE EXTRATERRITORIAL JURISDICTION OF THE CITY OF SCHERTZ

WHEREAS, a petition for annexation of approximately 2,200-acres, known as Bexar County Property Identification Numbers 310064, 1141730, 339772, 339773, 339362, 339744, 1050203, 340030, 339348, 339359, 339341, 339353, 339778, 310012, 309842, 310125, 339293, 339295, 340059, 1178479, 339276, 310059, 309418, 309421, 339325, 339284, 309837, 1103093, 310111, 310040, 310004, 310225, 339274, 339275, 339328, 1013798, 310222, 310026, 1274920, 339286, 339285, 310019, 1139530, 1056967, 339331, 1178480, 309427, 309425, 310006, 1056966, 312023, 310002, 310048, 1311565, 310022, 312015, 312017, 310126, 339290, 339288, 339790, 339334, 339329, 1140481, 310007, 312008, 309429, 1190132, 310032, 310039, 310090, 310107, 1103091, 1207560, 1103092 and more specifically described in the Exhibit A attached herein (herein, the “Property”) has been filed with the City in accordance with ; and

WHEREAS, in 2010 and 2011 the City of Schertz offered Development Agreements to property owners for a period of 10 years at which time the agreement was set to expire with groups expiring in July 2020, November 2020, April 2021 and August 2021; and

WHEREAS, in 2020 and 2021 the City of Schertz offered Development Agreement Extensions to the property owners with existing Development Agreements in order to delay the annexation of their properties for a term not to exceed January 1, 2024 with the City concluding all annexation proceedings commenced under these Development Agreement Extensions before December 31, 2024; and

WHEREAS, per the Development Agreement and Development Agreement Extensions the City of Schertz is proceeding forward with Annexation per the terms of the agreements; and

WHEREAS, Texas Local Government Code Section 43.0671 authorizes the City of Schertz to extend its City Limit boundaries through the voluntary annexation of area adjacent to those boundaries upon petition of a landowner; and

WHEREAS, the City Staff has recommended that the petition for annexation be accepted; and

WHEREAS, upon accepting the petition for voluntary annexation of the subject properties, the City may annex the properties by adoption of an ordinance.

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

Section 1. The City Council hereby accepts the Petition for Voluntary Annexation.

Section 2. The City Council shall act upon the Petition for Voluntary Annexation and annex the subject properties by ordinance at a future meeting of the City Council at such time the City Council deems to be in the best interest of the City.

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 judgement 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 _____, 2024.

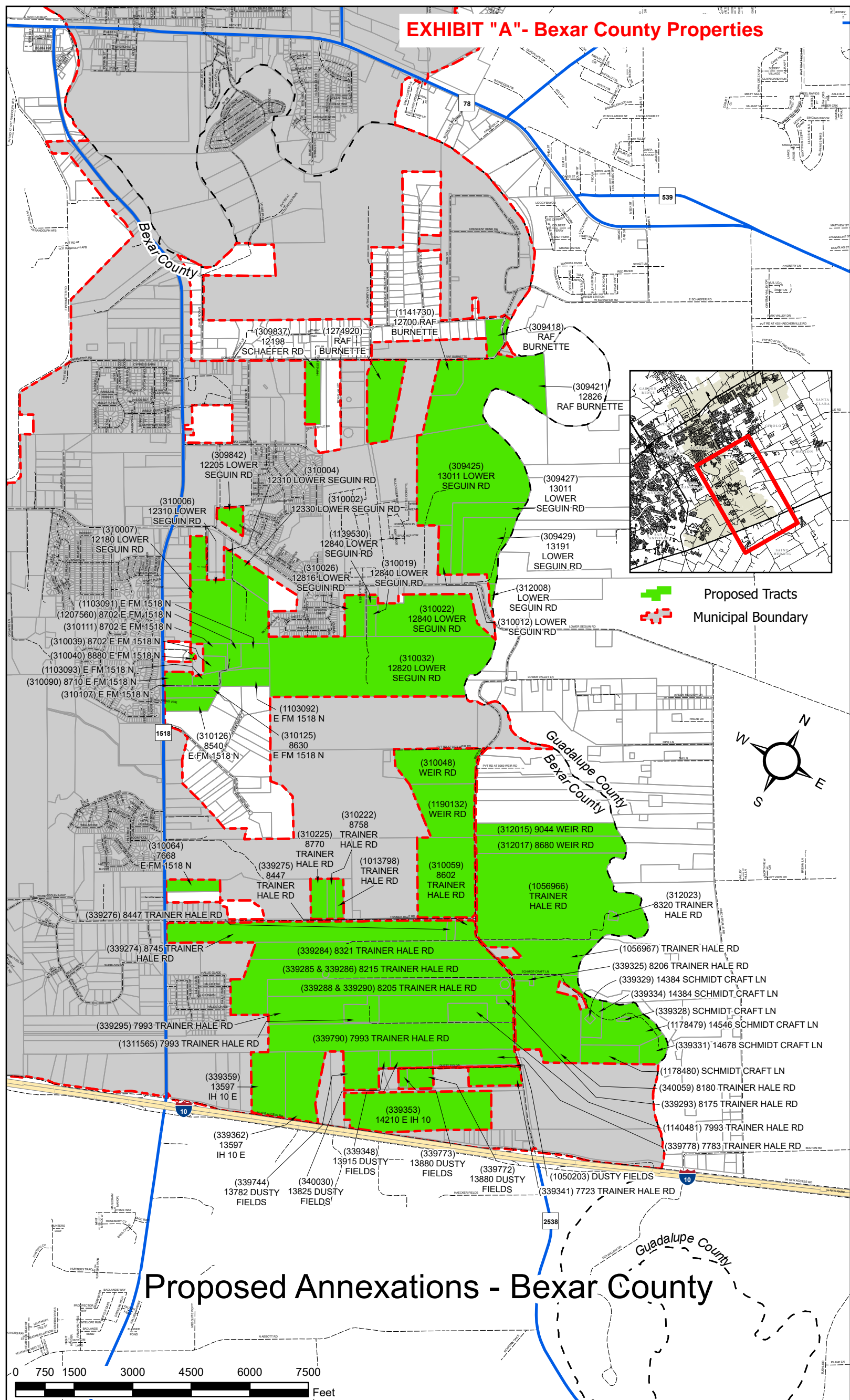
CITY OF SCHERTZ, TEXAS

Ralph Gutierrez, Mayor

ATTEST:

Sheila Edmondson, City Secretary

EXHIBIT "A"- Bexar County Properties



CITY COUNCIL MEMORANDUM

City Council Meeting: April 16, 2024
Department: Planning & Community Development
Subject: Ordinance 24-A-10 - Approving an ordinance on a petition for voluntary annexation of approximately 7-acres, a portion of Bexar County Property Identification Number 339286, also known as 8215 Trainer Hale Road, City of Schertz, Bexar County, Texas. *Final Reading* (B.James/L.Wood/D.Marquez)

BACKGROUND

Annexation of land into the City's corporate limits may be voluntary or involuntary. The Texas Local Government Code (LGC) provides requirements and outlines the process based on the annexation type. The proposed annexation is voluntary and on request of the owner HLH Development LLC, thus Chapter 43, Subchapter C-3 of the Texas Local Government Code applies. The City's Unified Development Code (UDC) Section 21.4.8 includes provisions for processing of voluntary annexation requests.

HLH Development, LLC has submitted a petition for voluntary annexation to the City of Schertz for approximately 7.7 acres of land, a portion of Bexar County Property Identification Number 339286, also known as 8215 Trainer Hale Road, City of Schertz, Bexar County.

City Council accepted HLH Development, LLC's current petition for voluntary annexation of the approximately 7.7 acres, to initiate the process to annex and zone the property with Resolution 24-R-07. The adoption of resolution 24-R-07 on February 20, 2024 initiated the process to annex and zone the property and Ordinance 24-A-10 is the ordinance to annex the approximately 7.7 acres. The annexation ordinance is accompanied by a service agreement to meet the requirements of UDC Section 21.4.8 and LGC § 43.0672.

The applicant has also requested to zone the subject property, upon annexation, Single Family Residential District (R-1). The Planning and Zoning Commission held a public hearing for the zoning application, Ordinance 24-S-09, on March 6, 2024. The Planning and Zoning Commission meeting can be viewed on the City's YouTube site.

A public hearing notice was published on January 31, 2024, in the "San Antonio Express" for Resolution 24-R-07. A public hearing notice was published on March 13, 2024, in the "San Antonio Express."

GOAL

HLH Development, LLC is requesting voluntary annexation into the City of Schertz because of their desire to be located within the Schertz City limits and their desire to develop the property in accordance with the requested Single Family Residential District (R-1) zoning district.

COMMUNITY BENEFIT

Promote the safe, orderly, efficient development and ensure compliance with the City's vision of future growth.

SUMMARY OF RECOMMENDED ACTION

Staff recommends approval of Resolution 24-A-10 accepting a petition for voluntary annexation.

FISCAL IMPACT

In accordance with Texas Local Government Code (LGC) Chapter 43, the City must provide services to the land on the effective date of the annexation. While some services are provided to the subject property through an interlocal agreement, the City of Schertz must provide police protection, fire protection, emergency medical services, operation and maintenance of streets, solid waste collection, sewer service, and water.

RECOMMENDATION

Staff recommends approval of annexation Ordinance 24-A-10.

The Schertz City Council met on April 2, 2024 and approved Ordinance 24-A-10 as presented with a 6-0 vote.

Attachments

Ordinance 24-A-10 With Attachments

Aerial Exhibit

City Council Presentation Slides

ORDINANCE NO. 24-A-10

AN ORDINANCE BY THE CITY COUNCIL OF THE CITY OF SCHERTZ, TEXAS PROVIDING FOR THE EXTENSION OF THE BOUNDARY LINES OF THE CITY OF SCHERTZ, TEXAS BY THE ANNEXATION OF APPROXIMATELY 7.7 ACRES OF LAND, A PORTION OF BEXAR COUNTY PROPERTY IDENTIFICATION NUMBER 339286, ALSO KNOWN AS 8215 TRAINER HALE ROAD, SCHERTZ, BEXAR COUNTY, TEXAS.

WHEREAS, the City Council of the City of Schertz (the “City”) has determined that it should annex the territory described on Exhibit A attached hereto and made a part hereof (the “Annexed Land”); and

WHEREAS, the Annexed Land is located entirely within the extraterritorial jurisdiction of the City, is contiguous to the corporate boundaries of the City (or is deemed to be contiguous, pursuant to Section 43.035(c) of the Texas Local Government Code, as amended), and may be annexed pursuant to Chapter 43 of the Texas Local Government Code, as amended; and

WHEREAS, Texas Local Government Code Section 43.028 authorizes the City of Schertz to extend its City limit boundaries through the voluntary annexation of area adjacent to those boundaries upon petition of a landowner; and

WHEREAS, a public hearing notice was published in the San Antonio Express News on January 31, 2024 for the hearing held on February 20, 2024, and notice was published in the San Antonio Express News on March 13, 2024 for the hearing on April 2, 2024; and

WHEREAS, on February 20, 2024 the City Council conducted a public hearing and after considering the request for voluntary annexation, adopted Resolution 24-R-07 accepting a petition for voluntary annexation; and

WHEREAS; the City Council finds that the Annexed Land is suitable, and it is in the best interest of the City and the citizens and inhabitants thereof that the Annexed Land be annexed to and made a part of the City.

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

Section 1. The City hereby annexes the Land described in Exhibit A.

Section 2. The Annexed Land shall be included within the City’s corporate limits effective on the effective date of this Ordinance, and all taxable property in the Annexed

Land shall hereafter bear its pro rata part of the taxes levied by the City, subject to allowable exemptions.

Section 3. The land and territory more particularly described as that portion of the tract of land described in Exhibit A, attached hereto and incorporated herein by reference shall be part of the City of Schertz, Texas and inhabitants thereof shall be entitled to all of the rights and privileges as citizens and shall be bound by the acts, ordinances, resolutions, and regulations of the City of Schertz, Texas.

Section 4. A service plan outlining the provisions of necessary municipal service to the property described in Exhibit A is hereby approved and the implementation of said plan is hereby authorized. Such plan is attached hereto and incorporated herein as Exhibit B.

Section 5. The City manager is hereby authorized and directed to take appropriate action to have the official map of the City revised to reflect the additions to the City's Corporate Limits and the City Secretary is hereby authorized and directed to provide appropriate notice to the State of Texas and the County of Guadalupe of this annexation.

Section 6. 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 7. 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 8. This Ordinance shall be construed and enforced in accordance with the laws of the State of Texas and the United States of America.

Section 9. 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 10. 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 11. This Ordinance shall be effective upon the date of final adoption hereof and any publication required by law.

Section 12. 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.

PASSED ON FIRST READING, the _____ of _____2024.

PASSED, APPROVED and ADOPTED ON SECOND READING, the _____ of _____, 2024.

CITY OF SCHERTZ, TEXAS

Ralph Gutierrez, Mayor

ATTEST:

Sheila Edmondson, City Secretary

(city seal)

Exhibit "A"

Property Description- Metes and Bounds

Exhibit "A" Property Description - Metes and Bounds



Field Notes for a Tract of Land Containing 7.678 acres (334,447.73 square feet) of land

A 7.678 acre (334,447.73 square feet) tract of land, situated in the Eligio Gortari Survey Number 2, Abstract Number 5, Bexar County, Texas, being all of a 6.496 acre tract as conveyed to HLH Properties, LLC, by Warranty Deed with Vendor's Lien as recorded in Document Number 20230226067, and all of a 1.182 acre tract as conveyed to HLH Properties, LLC, by Warranty Deed as recorded in Document Number 20230226071, both of the Official Public Records of Bexar County, Texas, said 7.678 acre (334,447.73 square feet) tract of land being more particularly described as follows:

Commencing at a found iron rod with a red plastic cap, having Texas State Plane Coordinates of N:13,729,126.04, E:2,016,609.51, being an interior corner on the southwesterly boundary of a 100.939 acre tract as conveyed to Allen Wiederstein, by Warranty Deed as recorded in Volume 7849, Page 1552, and being the north corner of Lot 23, Block 4, designated as a 13.662 acre Park/Open Space, as shown on plat of Hallies Cove Subdivision Unit 3, as recorded in Volume 20001, Pages 1525-1526, as conveyed to City of Schertz, Texas, by Special Warranty Deed as recorded in Document Number 20210200624, all of the Official Public Records of Bexar County, Texas;

Thence, with a southeast boundary of said 100.939 acre tract, being the northwest boundary of said Lot 23, Block 4, South 59 degrees 41 minutes 15 seconds West, passing a southwesterly corner of said 100.939 acre tract, being the east corner of the remainder of a 20 acre tract as conveyed to Joylene Schmoekel Herrera, by Executrix's Deed as recorded in Volume 6795, Page 1896, of the Official Public Records of Bexar County, Texas, and continuing said course with the southeast boundary of the remainder of said 20 acre tract, being the northwest boundary of said Lot 23, Block 4, for a total distance of 498.01 feet to the **Point of Beginning**, having Texas State Plane Coordinates of N:13,728,874.68, E:2,216,179.58, being the south corner of the remainder of said 20 acre tract, and being the east corner of both said 1.182 acre tract and of the herein described tract;

Thence, continuing with the northwest boundary of said Lot 23, being the southeast boundary of said 1.182 acre tract, South 59 degrees 41 minutes 15 seconds West, passing the south corner of said 1.182 acre tract, being the east corner of said 6.496 acre tract, and continuing said course with the northwest boundary of said Lot 23, being the southeast boundary of said 6.496 acre tract, for a total distance of 470.01 feet to a point, being an interior corner of said Hallies Cove Subdivision Unit 3, and being the south corner of both said 6.496 acre tract and of the herein described tract;

Thence, with the southwest boundary of said 6.496 acre tract, being the northeast boundary of said Hallies Cove Subdivision Unit 3, North 30 degrees 18 minutes 35 seconds West, passing the north corner of Lot 29, Block 4 as shown on said Hallies Cove Subdivision Unit 3, being the east corner of Lot 30, Block 4, as shown on plat of Hallies Cove Subdivision Unit 5, as recorded in Volume 20002, Pages 76-79, of the Official Public Records of Bexar County, Texas, and continuing said course with the northwest boundary of said Hallies Cove Subdivision Unit 5, being the southwest boundary of said 6.496 acre tract, for a total distance of 912.72 feet to a point, being an interior corner of said Hallies Cove Subdivision Unit 5, and being the west corner of both said 6.496 acre tract and of the herein described tract;

Thence, with a southeast boundary of said Hallies Cove Subdivision Unit 5, being the northwest boundary of said 6.496 acre tract, North 59 degrees 41 minutes 00 seconds East, passing the north corner of said 6.496 acre tract, being the west corner of said 1.182 acre tract, and continuing said course with a southeast boundary of said

Exhibit "A" Property Description - Metes and Bounds

Hallies Cove Subdivision Unit 5, being the northwest boundary of said 1.182 acre tract, for a total distance of 323.00 feet to a point, being the south corner of a 69.4 acre tract as conveyed to Joylene Schmoekel Herrera, by said Executrix's Deed as recorded in Volume 6795, Page 1896, being the southeast corner of said Lot 4, Block 10, and being an angle point in the northwest boundary of both said 1.182 acre tract and of the herein described tract;

Thence, with the southeast boundary of said 69.4 acre tract, being the northwest boundary of said 1.182 acre tract, North 59 degrees 43 minutes 43 seconds East, a distance of 22.00 feet to a point, being the west corner of the remainder of said 20 acre tract, and being the north corner of both said 1.182 acre tract and of the herein described tract;

Thence, leaving the southeast boundary of said 69.4 acre tract, with the southwesterly boundary of the remainder of said 20 acre tract, being the northeasterly boundary of said 1.182 acre tract, the following two (2) courses:

South 30 degrees 18 minutes 35 seconds East, a distance of 599.85 feet to a point, being an angle point in the herein described tract;

South 52 degrees 05 minutes 24 seconds East, a distance of 336.92 feet to the **Point of Beginning**, containing 7.678 acres (334,447.73 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. An exhibit of even date was prepared for this description.




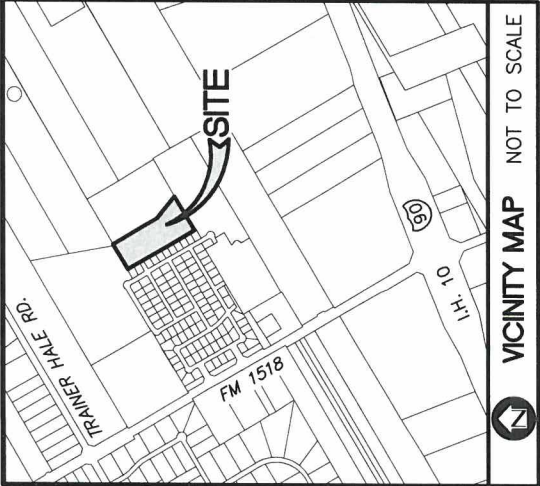

Stephanie L. James, R.P.L.S.
Registered Professional Land Surveyor
No. 5950
Date: 2024-01-23 Job No. 23164
ZDI

Exhibit "A" Property Description - Metes and Bounds



LEGEND:

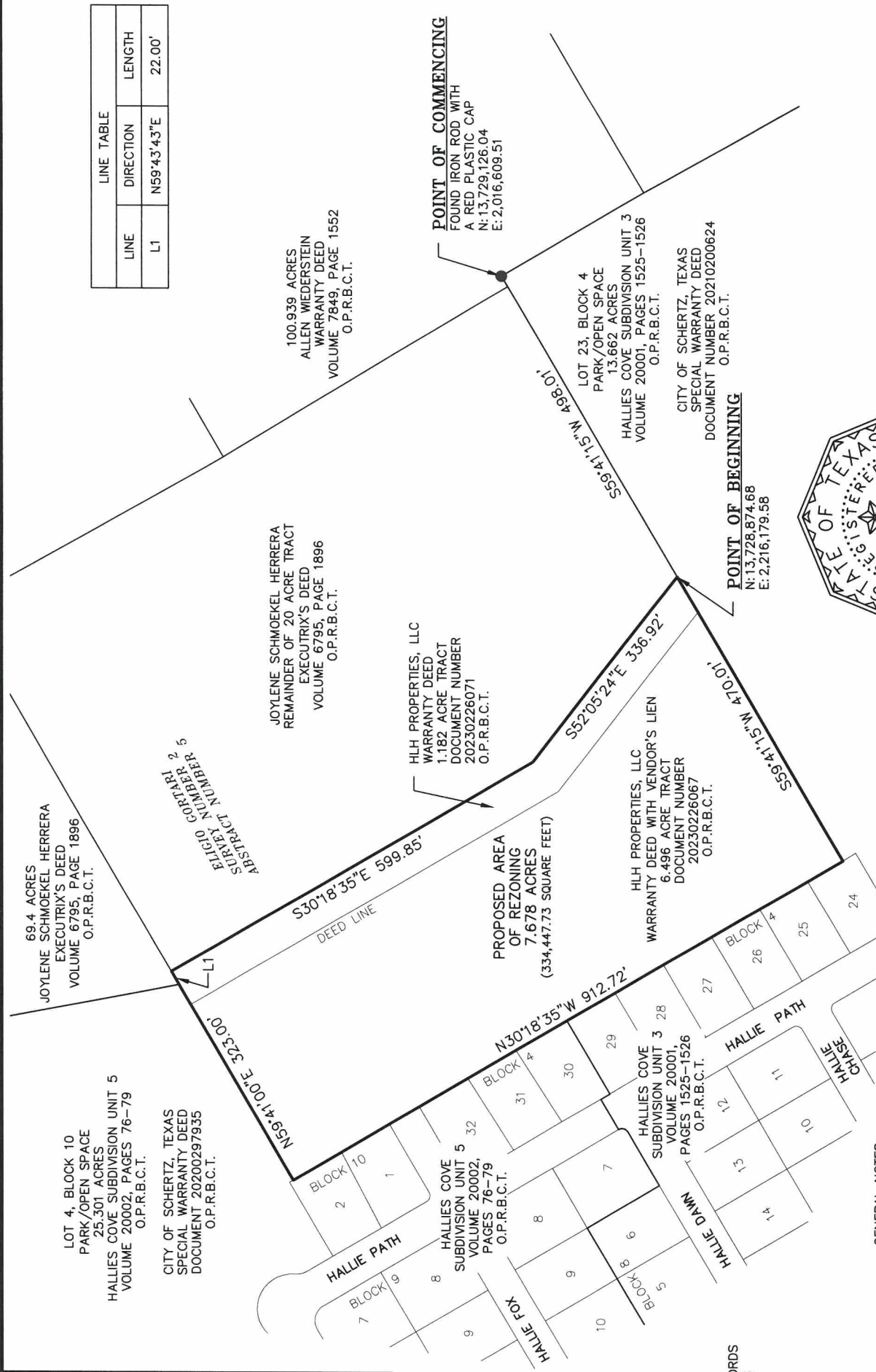
O.P.R.B.C.T. OFFICIAL PUBLIC RECORDS
BEXAR COUNTY TEXAS



- Engineers
- Surveyors
- Planners

Moy Tarin Ramirez Engineers, LLC

TBPELS ENGINEERING F-5297/SURVEYING NO. 10131500
12770 CIMARRON PATH, SUITE 100 TEL: (210) 698-5051
SAN ANTONIO, TEXAS 78249 FAX: (210) 698-5085



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, LLC., WILL NOT BE RESPONSIBLE FOR THE CONTENT OF ANYTHING OTHER THAN A VALID COPY OF THIS SURVEY.
- 3) A FIELD NOTE DESCRIPTION OF EVEN DATE WAS PREPARED FOR THIS EXHIBIT.



Stephanie L. James

ZONING EXHIBIT OF

A 7.678 ACRE (334,447.73 SQUARE FEET) TRACT OF LAND, SITUATED IN THE ELIGIO GORTARI SURVEY NUMBER 2, ABSTRACT NUMBER 5, BEXAR COUNTY, TEXAS, BEING ALL OF A 6.496 ACRE TRACT AS CONVEYED TO HLH PROPERTIES, LLC, BY WARRANTY DEED WITH VENDOR'S LIEN AS RECORDED IN DOCUMENT NUMBER 20230226067, AND ALL OF A 1.182 ACRE TRACT AS CONVEYED TO HLH PROPERTIES, LLC, BY WARRANTY DEED AS RECORDED IN DOCUMENT NUMBER 20230226071, BOTH OF THE OFFICIAL PUBLIC RECORDS OF BEXAR COUNTY, TEXAS.

DATE: 2024-01-23

JOB NO. 23164

Exhibit "B"
Service Plan- To be Executed Prior to Final
Reading

CITY OF SCHERTZ, TEXAS

ANNEXATION SERVICE PLAN

AREA ANNEXED

An approximately 7.7 acre (334,447.73 square feet) tract of land, situated in the Eligion Gortari Survey Number 2, Abstract Number 5, Bexar County, Texas, being all of a 6.496 acres tract as conveyed to HLH Properties, LLC, by Warranty Deed with Vendor's Lien as recorded in Document Number 20230226067, and all of a 1.182 acre tract as conveyed to HLH Properties, LLC, by Warranty Deed as recorded in Document Number 20230226071, both of the Official Public Records of Bexar County, Texas.

See Exhibit A, "*Metes and Bounds Description*", attached hereto for a complete description of the property.

INTRODUCTION

This service plan has been prepared in accordance with Local Government Code Section 43.056. Municipal facilities and services to the annexed area described above will be provided or made available on behalf of the city at the following levels and in accordance with the following schedule:

POLICE PROTECTION

Patrolling, responses to calls, and other police services will be provided on the effective date of the annexation at the same level as provided throughout the city.

FIRE PROTECTION AND FIRE PREVENTION

Fire protection and fire prevention services will be provided on the effective date of the annexation at the same level as provided throughout the city.

EMERGENCY MEDICAL SERVICES

Emergency medical services will be provided on the effective date of the annexation on the same basis and at the same level as provided throughout the city.

SOLID WASTE COLLECTION AND DISPOSAL

Solid waste collection and disposal services will be provided on the effective date of the annexation on the same basis and at the same level as provided throughout the city. However, no obligation exists for the city to provide solid waste collection services to a person who continues to use the services of a privately owned solid waste management service provider.

OPERATION AND MAINTENANCE OF WATER AND WASTEWATER FACILITIES THAT ARE NOT WITHIN THE SERVICE AREA OF ANOTHER WATER OR WASTEWATER UTILITY

Operation and maintenance of water and wastewater facilities that are not within the service area of another water or wastewater utility will be provided on the effective date of the annexation on the same basis and at the same level as provided throughout the city.

Development within the annexed property will pay a fee equal to the sewer capital recovery fee that would be assessed and collected per CHAPTER 90, Article V WATER AND WASTEWATER CAPITAL RECOVER FEES and as amended, as if the property was in the established service area City of Schertz.

OPERATION AND MAINTENANCE OF ROADS AND STREETS

Operation and maintenance of roads and streets will be provided on the effective date of the annexation on the same basis and at the same level as provided throughout the city.

STREET LIGHTING

Street lighting will be made available on the effective date of the annexation on the same basis and at the same level in comparable areas as provided throughout the city.

OPERATION AND MAINTENANCE OF PUBLIC PARKS AND OTHER PUBLICLY OWNED FACILITIES

If any public park, playground, swimming pool, or any other publicly owned facility, building or service is located within the annexed area, it will be maintained on the effective date of the annexation on the same basis and at the same level as similar facilities are maintained throughout the city.

OTHER SERVICES

Other services that may be provided by the city such as planning, code enforcement, animal control, library, park and recreation, court, and general administration will be made available on the effective date of the annexation on the same basis and at the same level as provided throughout the city.

CAPITAL IMPROVEMENTS

The city will make available to the annexed area any necessary water, sewer, street, and drainage facilities within two and one-half (2-1/2) years of the effective date of the annexation unless the construction of the necessary facilities is interrupted by circumstances beyond the control of the city, or unless this period is extended by an arbitration decision. No impact fees will be charged to any developer or landowner within the annexed area except in conformity with Local Government Code Ch. 395. Construction of other capital improvements shall be considered by the city in the future as the needs dictate on the same basis as such capital improvements are considered throughout the city.

UNIFORM LEVEL OF SERVICES MAY NOT BE REQUIRED

Nothing in this plan shall require the city to provide a uniform level of full municipal services to each area of the city, including the annexed area, if different characteristics of topography, land use, and population density are considered a sufficient basis for providing different levels of service.

TERM

This service plan shall be valid for a term of ten (10) years.

AMENDMENTS

The plan shall not be amended unless public hearings are held in accordance with Local Government Code Section 43.0561.

AGREEMENT

I desire to enter into this written agreement for municipal services with the City of Schertz pursuant to Section 43.0672 of the Local Government Code. I certify that I was offered a development agreement pursuant to Section 43.016 of the Local Government Code and still requested annexation. I certify that this petition is signed and duly acknowledged by each and every person, corporation, or entity having an ownership interest in said Property.

OWNER(S): (add additional signature lines for each owner)

Signature: [Signature] Print Name: Harry Hausman

NOTARY ACKNOWLEDGEMENT

STATE OF TEXAS §

COUNTY OF Bexar §

BEFORE ME, the undersigned authority, on this day personally appeared Harry Hausman, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed on behalf of the Owner.

Given under my hand and seal of office this 4 day of April, 2024.

(SEAL)

Mary Magdalen Hoyt
NOTARY PUBLIC in and for the
STATE OF TEXAS



Mary Magdalen Hoyt
Printed Name
My commission expires: 11/21/2027

ATTEST:

City Secretary

SIGNED:

City Manager

Exhibit "B" Service Plan- To be executed prior to final reading

Exhibit A

Metes and Bounds Description

APPROXIMATELY 7.7 acres

Field Notes for a Tract of Land
Containing 7.678 acres (334,447.73 square feet) of land

A 7.678 acre (334,447.73 square feet) tract of land, situated in the Eligio Gortari Survey Number 2, Abstract Number 5, Bexar County, Texas, being all of a 6.496 acre tract as conveyed to HLH Properties, LLC, by Warranty Deed with Vendor's Lien as recorded in Document Number 20230226067, and all of a 1.182 acre tract as conveyed to HLH Properties, LLC, by Warranty Deed as recorded in Document Number 20230226071, both of the Official Public Records of Bexar County, Texas, said 7.678 acre (334,447.73 square feet) tract of land being more particularly described as follows:

Commencing at a found iron rod with a red plastic cap, having Texas State Plane Coordinates of N:13,729,126.04, E:2,016,609.51, being an interior corner on the southwesterly boundary of a 100.939 acre tract as conveyed to Allen Wiederstein, by Warranty Deed as recorded in Volume 7849, Page 1552, and being the north corner of Lot 23, Block 4, designated as a 13.662 acre Park/Open Space, as shown on plat of Hallies Cove Subdivision Unit 3, as recorded in Volume 20001, Pages 1525-1526, as conveyed to City of Schertz, Texas, by Special Warranty Deed as recorded in Document Number 20210200624, all of the Official Public Records of Bexar County, Texas;

Thence, with a southeast boundary of said 100.939 acre tract, being the northwest boundary of said Lot 23, Block 4, South 59 degrees 41 minutes 15 seconds West, passing a southwesterly corner of said 100.939 acre tract, being the east corner of the remainder of a 20 acre tract as conveyed to Joylene Schmoekel Herrera, by Executrix's Deed as recorded in Volume 6795, Page 1896, of the Official Public Records of Bexar County, Texas, and continuing said course with the southeast boundary of the remainder of said 20 acre tract, being the northwest boundary of said Lot 23, Block 4, for a total distance of 498.01 feet to the **Point of Beginning**, having Texas State Plane Coordinates of N:13,728,874.68, E:2,216,179.58, being the south corner of the remainder of said 20 acre tract, and being the east corner of both said 1.182 acre tract and of the herein described tract;

Thence, continuing with the northwest boundary of said Lot 23, being the southeast boundary of said 1.182 acre tract, South 59 degrees 41 minutes 15 seconds West, passing the south corner of said 1.182 acre tract, being the east corner of said 6.496 acre tract, and continuing said course with the northwest boundary of said Lot 23, being the southeast boundary of said 6.496 acre tract, for a total distance of 470.01 feet to a point, being an interior corner of said Hallies Cove Subdivision Unit 3, and being the south corner of both said 6.496 acre tract and of the herein described tract;

Thence, with the southwest boundary of said 6.496 acre tract, being the northeast boundary of said Hallies Cove Subdivision Unit 3, North 30 degrees 18 minutes 35 seconds West, passing the north corner of Lot 29, Block 4 as shown on said Hallies Cove Subdivision Unit 3, being the east corner of Lot 30, Block 4, as shown on plat of Hallies Cove Subdivision Unit 5, as recorded in Volume 20002, Pages 76-79, of the Official Public Records of Bexar County, Texas, and continuing said course with the northwest boundary of said Hallies Cove Subdivision Unit 5, being the southwest boundary of said 6.496 acre tract, for a total distance of 912.72 feet to a point, being an interior corner of said Hallies Cove Subdivision Unit 5, and being the west corner of both said 6.496 acre tract and of the herein described tract;

Thence, with a southeast boundary of said Hallies Cove Subdivision Unit 5, being the northwest boundary of said 6.496 acre tract, North 59 degrees 41 minutes 00 seconds East, passing the north corner of said 6.496 acre tract, being the west corner of said 1.182 acre tract, and continuing said course with a southeast boundary of said

Exhibit "A" Metes and Bounds Description

Hallies Cove Subdivision Unit 5, being the northwest boundary of said 1.182 acre tract, for a total distance of 323.00 feet to a point, being the south corner of a 69.4 acre tract as conveyed to Joylene Schmoekel Herrera, by said Executrix's Deed as recorded in Volume 6795, Page 1896, being the southeast corner of said Lot 4, Block 10, and being an angle point in the northwest boundary of both said 1.182 acre tract and of the herein described tract;

Thence, with the southeast boundary of said 69.4 acre tract, being the northwest boundary of said 1.182 acre tract, North 59 degrees 43 minutes 43 seconds East, a distance of 22.00 feet to a point, being the west corner of the remainder of said 20 acre tract, and being the north corner of both said 1.182 acre tract and of the herein described tract;

Thence, leaving the southeast boundary of said 69.4 acre tract, with the southwesterly boundary of the remainder of said 20 acre tract, being the northeasterly boundary of said 1.182 acre tract, the following two (2) courses:

South 30 degrees 18 minutes 35 seconds East, a distance of 599.85 feet to a point, being an angle point in the herein described tract;

South 52 degrees 05 minutes 24 seconds East, a distance of 336.92 feet to the **Point of Beginning**, containing 7.678 acres (334,447.73 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. An exhibit of even date was prepared for this description.




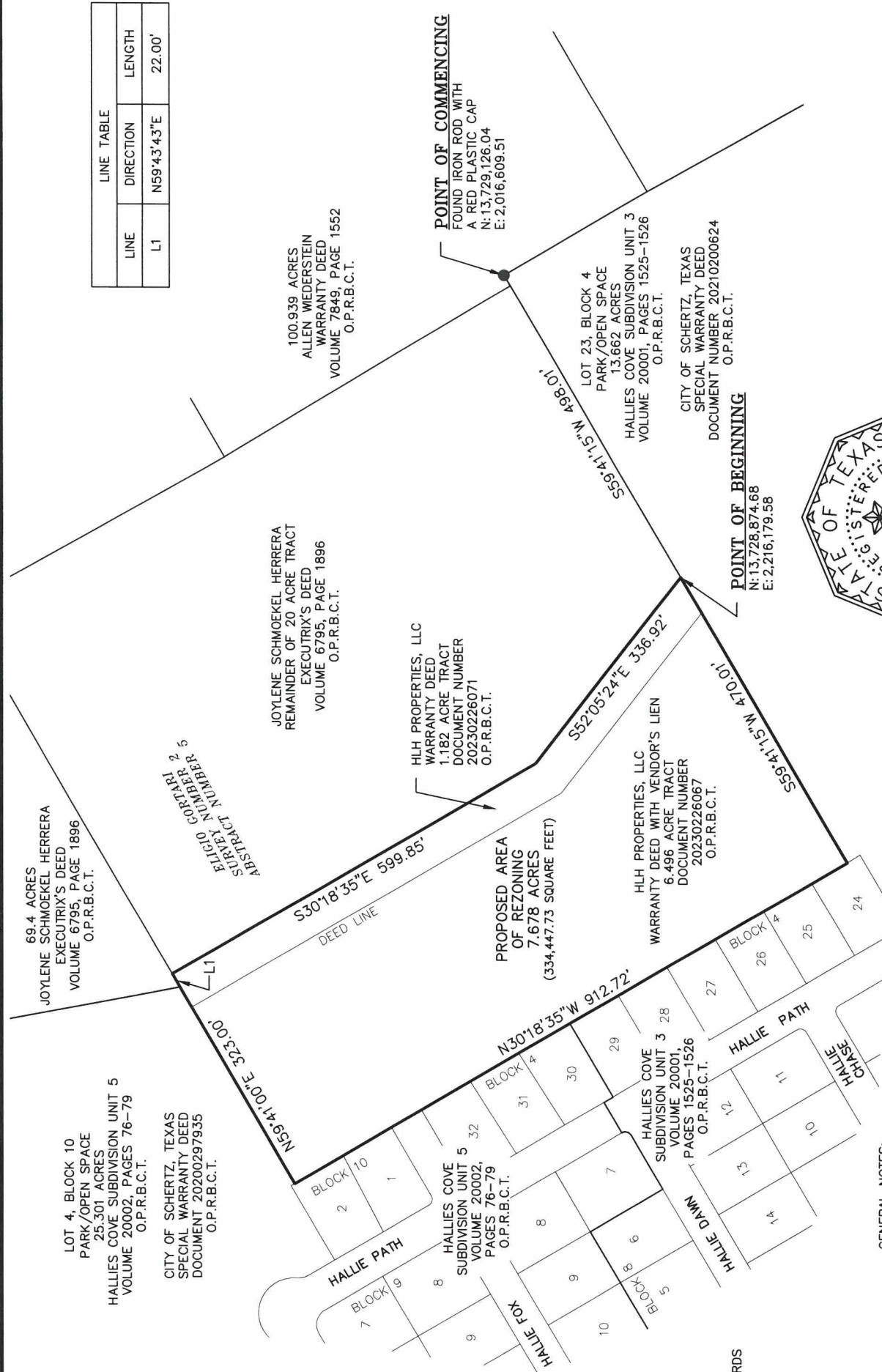
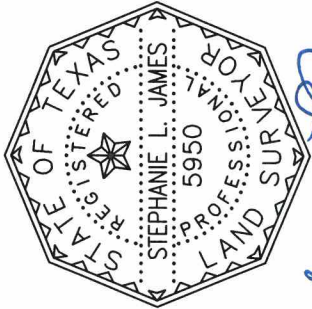

Stephanie L. James, R.P.L.S.
Registered Professional Land Surveyor
No. 5950
Date: 2024-01-23 Job No. 23164
ZDI

Exhibit "A" Metes and Bounds Description



LINE TABLE		
LINE	DIRECTION	LENGTH
L1	N59°43'43"E	22.00'

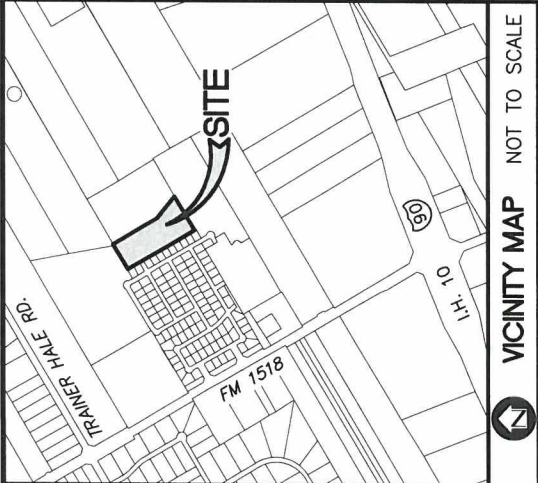


Stephanie L. James

ZONING EXHIBIT OF

A 7.678 ACRE (334,447.73 SQUARE FEET) TRACT OF LAND, SITUATED IN THE ELIGIO GORTARI SURVEY NUMBER 2, ABSTRACT NUMBER 5, BEXAR COUNTY, TEXAS, BEING ALL OF A 6.496 ACRE TRACT AS CONVEYED TO HLH PROPERTIES, LLC, BY WARRANTY DEED WITH VENDOR'S LIEN AS RECORDED IN DOCUMENT NUMBER 20230226067, AND ALL OF A 1.182 ACRE TRACT AS CONVEYED TO HLH PROPERTIES, LLC, BY WARRANTY DEED AS RECORDED IN DOCUMENT NUMBER 20230226071, BOTH OF THE OFFICIAL PUBLIC RECORDS OF BEXAR COUNTY, TEXAS.

DATE: 2024-01-23
JOB NO. 23164



VICINITY MAP NOT TO SCALE



LEGEND:

O.P.R.B.C.T. OFFICIAL PUBLIC RECORDS
BEXAR COUNTY TEXAS



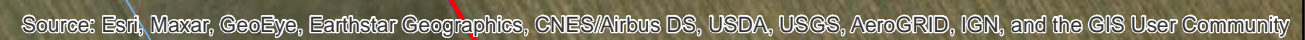
Moy Tarin Ramirez Engineers, LLC

TBPELS ENGINEERING F-5297/SURVEYING NO. 10131500
12770 CIMARRON PATH, SUITE 100
SAN ANTONIO, TEXAS 78249
TEL: (210) 698-5051
FAX: (210) 698-5085

- Engineers
- Surveyors
- Planners

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, LLC., WILL NOT BE RESPONSIBLE FOR THE CONTENT OF ANYTHING OTHER THAN A VALID COPY OF THIS SURVEY.
- 3) A FIELD NOTE DESCRIPTION OF EVEN DATE WAS PREPARED FOR THIS EXHIBIT.

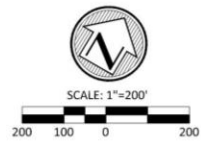




Ordinance 24-A-10

Accepting a Petition of Annexation for 7.7 acres

Daisy Marquez | PLANNER



SCHERTZ ETJ
CITY OF SCHERTZ

LEGEND

- PROPERTY BOUNDARY
- 200' NOTIFICATION LINE
- SCHERTZ CITY LIMITS
- 100-YR FEMA FLOODPLAIN
- O.P.R.B.C.T.
- AC.
- OFFICIAL PUBLIC RECORDS OF BEXAR COUNTY, TEXAS
- ACRES

PROPERTY INFORMATION AND LAND USE

- Owner Name and Address:**
PROPERTY ID: 1337490
LUEBA JOEL ORLANDO & RUANA
EVANGELISTA
7034 HALLIE PATH & SHERRI L
SCHERTZ, TX 78154
DEED NUMBER: 20210329542
- Owner Name and Address:**
PROPERTY ID: 1337489
SMITH STEVEN MCKINLEY & SMITH
AMANDA MALONSON
7028 HALLIE PATH
SCHERTZ, TX 78154
DEED NUMBER: 202102099856
- Owner Name and Address:**
PROPERTY ID: 1337466
JONES VALLERIE
7016 HALLIE PATH
SCHERTZ, TX 78154
DEED NUMBER: 20210325954
- Owner Name and Address:**
PROPERTY ID: 1337465
COOPER DEBRA LLAINE
7010 HALLIE PATH
SCHERTZ, TX 78154
DEED NUMBER: 20210266101
- Owner Name and Address:**
PROPERTY ID: 1337464
MORRIS KEITH & KIMBERLY
LYNETTE
7004 HALLIE PATH
SCHERTZ, TX 78154
DEED NUMBER: 20210325849
- Owner Name and Address:**
PROPERTY ID: 1314101
ROBINSON DARYL STEPHEN JR &
LAURA MAY
6998 HALLIE PATH
SCHERTZ, TX 78154
DEED NUMBER: 20200291508
- Owner Name and Address:**
PROPERTY ID: 1314100
MEDINA JACQUELYN DUMLAO &
CRUZ JONATHAN
6992 HALLIE PATH
SCHERTZ, TX 78154
DEED NUMBER: 20200250386
- Owner Name and Address:**
PROPERTY ID: 1314099
PRATT LESLIE LYNN
6996 HALLIE PATH
SCHERTZ, TX 78154
DEED NUMBER: 20200096467
- Owner Name and Address:**
PROPERTY ID: 1314098
NEDOROSCIK JASON MICHAEL &
ALLISON NATASHA
6990 HALLIE PATH
SCHERTZ, TX 78154-2882
DEED NUMBER: 20200283336
- Owner Name and Address:**
PROPERTY ID: 1314097
PADILLA BENJAMIN & AMANDA
6974 HALLIE PATH
SCHERTZ, TX 78154
DEED NUMBER: 20200163604
- Owner Name and Address:**
PROPERTY ID: 1314096
GREER WILL STACY & LORETTA ANN
6968 HALLIE PATH
SCHERTZ, TX 78154
DEED NUMBER: 20200145274
- Owner Name and Address:**
PROPERTY ID: 1337481
BAUCUM DWAYNE & AUTUMN
13236 HALLIE GLADE
SCHERTZ, TX 78154
DEED NUMBER: 20210319900
- Owner Name and Address:**
PROPERTY ID: 1337482
THOMPSON AMAL & DANIELLE
13239 HALLIE FOX
SCHERTZ, TX 78154
DEED NUMBER: 2020032891
- Owner Name and Address:**
PROPERTY ID: 1337468
JOHNSON JOHNNIE FRANKLIN JR &
ELLA M
13238 HALLIE FOX
SCHERTZ, TX 78154
DEED NUMBER: 20210161531
- Owner Name and Address:**
PROPERTY ID: 1337467
MATTIS BOBBY LEE
13177 HALLIE DAWN
SCHERTZ, TX 78154
DEED NUMBER: 20210174502
- Owner Name and Address:**
PROPERTY ID: 1314107
FRISON TINA MARIE
13178 HALLIE DAWN
SCHERTZ, TX 78154
DEED NUMBER: 20200256737
- Owner Name and Address:**
PROPERTY ID: 1314106
HAMILTON HAROLD W JR &
MARQUITA
13181 HALLIE CHASE
SCHERTZ, TX 78154
DEED NUMBER: 20200255426
- Owner Name and Address:**
PROPERTY ID: 1314121
PARKMAN DAMON JEROME & TERESA
ALVARADO
13180 HALLIE CHASE
SCHERTZ, TX 78154
DEED NUMBER: 20200089342
- Owner Name and Address:**
PROPERTY ID: 1314122
ANDREWS EZEKIEL J & CHELSI C
13197 HALLIE CREST
SCHERTZ, TX 78154
DEED NUMBER: 20200232564
- Owner Name and Address:**
PROPERTY ID: 139286
HERRERA JOYLENE S
8215 TRAINER HALE RD
SCHERTZ, TX 78154
VOL. 6795, PG. 1896, O.P.R.B.C.T.
- Owner Name:**
CITY OF SCHERTZ
1400 SCHERTZ PKWY
SCHERTZ, TX 78154
DEED NUMBER: 20210200624
- Owner Name:**
CITY OF SCHERTZ
1400 SCHERTZ PKWY
SCHERTZ, TX 78154
DEED NUMBER: 20200297935
- Owner Name:**
CITY OF SCHERTZ
1400 SCHERTZ PKWY
SCHERTZ, TX 78154
DEED NUMBER: 20200297935



DRAWN
HARRY HANSMAN
H.M. DEVELOPMENT, LLC
13435 BANGORA RD.
HELOTES, TEXAS 78249
PH: (210) 695-5051

APPLICANT
PAUL LANGA, JR., P.E., CFM
MOY TARI RAMIREZ ENGINEERS, LLC
12770 OMBRON PATH, SUITE 100
SAN ANTONIO, TEXAS 78249
PH: (210) 695-5051

SURVEYOR
STEPHEN L. JONES, RPLS
MOY TARI RAMIREZ ENGINEERS, LLC
12770 OMBRON PATH, SUITE 100
SAN ANTONIO, TEXAS 78249
PH: (210) 695-5051



• Engineers
• Surveyors
• Planners

DRAWING NAME:
ANNEXATION EXHIBIT

PROJECT NAME:
**THE COURT AT HALLIES COVE
27.678 AC. TO BE ANNEXED
INTO THE CITY OF SCHERTZ**

PROJECT No.:
23164

PREPARATION DATE:
February 2, 2024

SCALE:
1"=200'

A 7.678 ACRE (334,453.68 SQUARE FEET) TRACT OF LAND, SITUATED IN THE ELIGIO CORTARI SURVEY NUMBER 2, ABSTRACT NUMBER 5, BEXAR COUNTY, TEXAS, BEING OUT OF A 20 ACRE TRACT AS CONVEYED TO JOYLENE SCHMOCKEL, HERRERA, BY EXECUTRIX'S DEED AS RECORDED IN VOLUME 6795, PAGE 1896, OF THE OFFICIAL PUBLIC RECORDS OF BEXAR COUNTY, TEXAS.

HLH PROPERTIES, LLC
13438 Bandera Rd, Suite 104
Helotes, Texas, 78023
Phone (210) 695 – 5490/Fax (210) 695 - 6580

February 2, 2024

City of Schertz
Community Development Department
1400 Schertz Pkwy., Building #1
Schertz, Texas 78154

Re: The Court at Hallies Cove (7.678 Acres)
Letter of Intent – Annexation

To whom it may concern,

The purpose of this letter is to provide context for the intent of developing a 7.678-acre tract into a single-family residential subdivision, which is to be annexed by the City of Schertz. The tract is located approximately 2700' northeast of the intersection of Interstate Highway 10 E and E FM 1518 N and adjacent to existing Hallies Cove Subdivision Unit 3 and Unit 5.

The proposed subdivision is located outside the City of Schertz but within the Schertz Extraterritorial Jurisdiction (ETJ). The current zoning for the entire development is Development Agreement (DVL). Upon annexation, the development will rezone to an R-1 zoning district (Single-Family Residential) for the entire tract. Development of the 7.678 acres will occur in 1 phase in which will consist of 19 residential lots with minimum square footage of (9600 sqft). Lot sizes and setbacks within the Court at Hallies Cove will vary based on the proposed housing but will be compliant with the approved development standards for an R-1 Zoning District and will meet dimensional requirements defined in the UDC for an R-1 Zoning District.

Sincerely,
HLH Properties, LLC
13438 Bandera Rd, Suite 104
Helotes, Texas, 78023



Harry Hausman,
Owner

12770 Cimarron Path, Suite 100, San Antonio, TX 78249
TBPELS: Engineering F-5297 / Surveying F-10131500
Ph. 210.698.5051 Fx. 210.698.5085

GOAL

HLH Development, LLC is requesting voluntary annexation because of their desire to be located within the Schertz city limits and their desire to develop the subject property in accordance with Single Family Residential District (R-1) for approximately 19 residential lots.

SCHERTZ
COMMUNITY. SERVICE. OPPORTUNITY.

Annexation Process

- City Council accepted Resolution 24-R-07 on February 20, 2024, which initiated the annexation process.
- The accompanying zone change application was heard at the March 6, 2024 Planning and Zoning Commission Meeting.
- A public hearing notice was published in the "San Antonio Express," on March 13, 2024.

Recommendation

Staff recommends approval of Ordinance 24-A-10, accepting the petition for voluntary annexation of approximately 7.7 acres.

The Schertz City Council met on April 2, 2024 and approved Ordinance 24-A-10 as presented with a 6-0 vote.

COMMENTS & QUESTIONS

CITY COUNCIL MEMORANDUM

City Council Meeting: April 16, 2024
Department: Planning & Community Development
Subject: Ordinance 24-S-09- Approving a request to rezone approximately 7.7 acres of land, a portion of Bexar County Property Identification Number 339286, to Single-Family Residential District (R-1), also known as 8215 Trainer Hale Road, City of Schertz, Bexar County, Texas. *Final Reading* (B.James/L.Wood/D.Marquez)

BACKGROUND

The applicant is requesting to rezone approximately 7.7 acres of land to Single-Family Residential District (R-1). The subject property has no assigned zoning district as it has a Development Agreement (Delayed Annexation) (DVL) and is currently undeveloped. The subject property started the annexation process with Resolution 24-R-07, which was accepted by City Council on February 20, 2024.

On February 21, 2024, twenty three (23) public hearing notices were mailed to the surrounding property owners within a 200-foot notification boundary of the subject property and the Schertz-Cibolo-Universal City Independent School District. At the time of the staff report, zero (0) responses in favor, zero (0) responses neutral, and seven (7) responses in opposition have been received. A public hearing notice was published in the "San Antonio Express" on March 13, 2024. Additionally, one sign was placed on the property. As of noon on Wednesday, March 27, 2024 staff has received written opposition from the owners of 16.42% of the land within the City that is within the 200' notice areas. Since this does not reach the 20% threshold to trigger a 3/4ths majority requirement, only a simple majority of council is needed to approve this zoning request.

The Planning and Zoning Commission held a public hearing on March 6, 2024. Members of the public voiced concerns that the builder sold them their lots at a premium due to the promised greenbelt behind their property. The Planning and Zoning Commission Meeting can be viewed on the City's YouTube Site. The concerns are also outlined in the attached Public Hearing Responses.

GOAL

The proposed zone change is for approximately 7.7 acres of land to Single-Family Residential District (R-1). Per the letter of intent submitted with the application, the applicant desires to develop the property into nineteen (19) single family homes, as an extension of the existing Hallies Cove Subdivision, but with the development standards for the Single-Family Residential District (R-1).

COMMUNITY BENEFIT

It is the City's desire to promote safe, orderly, efficient development and ensure compliance with the City's vision of future growth.

SUMMARY OF RECOMMENDED ACTION

The subject property started the annexation process with Resolution 24-R-07, has no assigned zoning district, but has a Development Agreement (Delayed Annexation) (DVL). To the east, the property is designated Development Agreement (Delayed Annexation) (DVL) and is currently used for agriculture. The properties to the north and south of the subject property are zoned Planned Development District (PDD) and are currently undeveloped, but are designated for parks/open space. To the west of the subject property, the properties are zoned Planned Development District (PDD), are part of the Hallies Cove Subdivision, and are single family residential homes.

When evaluating the zone changes, staff uses criteria listed in UDC Section 21.5.4.D. The criteria are listed below.

1. Whether the proposed zoning change or zoning map amendment implements the policies of the adopted Comprehensive Land Plan, including the land use classification of the property on the Future Land Use Map.

The Comprehensive Land Use Plan designates the subject property as Estate Neighborhood. The intent of Estate Neighborhood is to address residential development patterns within Southern Schertz with large lots and incentivizing quality open space and neighborhood design.

The new Comprehensive Land Use Plan, that is yet to be adopted, proposes to designate this area as Complete Neighborhood. The intent of Complete Neighborhood is to provide a mixture of housing options with supporting land uses.

The proposed Single-Family Residential District (R-1) is defined as single-family detached residential dwellings with a minimum lot size of 9,600 square feet, together with the schools, churches, and parks necessary to create basic neighborhood units. The zone change to Single-Family Residential District (R-1) would meet the intent of the land use designations in the Comprehensive Plan by providing more residential dwellings of a similar density to the Hallies Cove Subdivision development and the adjacent agricultural land.

2. Whether the proposed zoning change or zoning map amendments promotes the health, safety, or general welfare of the City and the safe, orderly, efficient and healthful development of the City.

As part of promoting health, safety, and welfare, the City should encourage development compatible with surrounding uses utilizing standards and transitional uses to alleviate negative impacts. The chosen Single-Family Residential District (R-1) dimensional and development standards as stated in Section 21.5.7 of the Unified Development Code, are compatible with the existing Hallies Cove Subdivision.

Table 21.5.7.A Dimensional Requirements Residential Zoning Districts										
		Minimum Lot Size Dimensions			Minimum Yard Setback (Ft)				Miscellaneous Lot Requirements	
Code	Zoning District	Area Sq.Ft.	Width Ft.	Depth Ft.	Front Ft.	Side Ft.	Rear Ft.	Minimum Off-Street Parking Requirements	Max Height Ft.	Max Impervious Coverage

R-1	Single-Family Residential District-1	9,600	80	120	25	10	20	2	35	50%
------------	--------------------------------------	-------	----	-----	----	----	----	---	----	-----

3. Whether the uses permitted by the proposed zone change in the zoning district classification and the standards applicable to such uses will be appropriate in the immediate area of the land to be reclassified;

The proposed Single Family Residential District (R-1) is appropriate in the immediate area of the land to be reclassified because to the west of the subject property, the Hallie's Cove Planned Development District (PDD) is built on the Single Family Residential District (R-1) zoning district.

4. Whether the proposed change is in accord with any existing or proposed plans for providing public schools, streets, water supply, sanitary sewers or other public services and utilities to the area;

The proposed development is approximately 117 feet from the intersection of Hallies Path and Hallies Fox and will construct a public road to serve their development. Additionally, the Texas Department of Transportation and the City of Schertz have worked together to provide funding for the reconstruction of FM 1518, which the development will have access to from the existing Hallies Cove Subdivision. After construction, FM 1518 will have two lanes in each direction plus a center median. Additionally, there will be a median opening lined up with the Hallies Cove Subdivision entrance at Hallie Brook.

A public hearing notice was mailed to Schertz-Cibolo-Universal City Independent School District to notify them of the potential addition of 19 residential homes. Included as attachments are the most recent Demographic Report 3Q23 for SCUCISD as well as the most recent 10-Year Campus Forecasting Presentation.

The proposed development has available water and sewer, but the developer will need to reconcile the water service areas during platting so that either the City of Schertz and SSLGC dual service area service the property or Green Valley Special Utility District.

At the December 5, 2023 City Council Meeting, Resolution 23-R-128 was approved. The approved resolution authorized an agreement to dedicate right-of-way in existing parkland for secondary access, in exchange for public park improvements. A 55-foot greenbelt will be given to the City of Schertz during the platting process to the east of the subject property where the City of Schertz is proposing a trail expansion, and the developer agreed to give the City of Schertz \$30,000 that will be used for a small playscape, to be installed by the City of Schertz, on the northern parkland property.

The City of Schertz Police, Fire and EMS Departments have indicated they do not have any concerns regarding the proposed rezoning requests or their ability to provide services.

5. Whether there have been environmental and/or economical changes which warrant the requested change.

No, there have been no environmental or economical changes that warrant the requested zone change.

6. Whether there is an error in the original zoning of the property for which a change is requested.

There was no error in the original zoning of the property for which the change is requested. Additionally, the property has no existing zoning as the property is in the Extra-Territorial Jurisdiction (ETJ) and under a delayed annexation agreement.

7. Whether all of the applicant's back taxes owed to the City have been paid in full.

This does not impact City Council's first reading.

8. Whether other criteria are met, which, at the discretion of the Planning and Zoning Commission and the City Council, are deemed relevant and important in the consideration of the amendment.

Staff has ensured all UDC requirements have been met for the proposed zone change, and at this time have not received any special considerations from the Planning and Zoning Commission or the City Council.

RECOMMENDATION

Given the location of the proposed development and compatibility with the surrounding land uses and the Comprehensive Land Use Plan land use designations, Staff recommends approval of Ordinance 24-S-09.

The Planning and Zoning Commission met on March 6, 2024 and made a recommendation of approval with a 4-2 vote with Commissioner Brown and Commissioner Hector voting nay.

The Schertz City Council met on April 2, 2024 and approved Ordinance 24-S-09 as presented with a 7-0 vote.

Attachments

Ord 24-S-09 Hallies With Attachments

Aerial Exhibit

Public Hearing Notice Map

Public Hearing Responses

SCUCISD 10 Year Campus Forecasting

SCUCISD Demographic Report

Hallies Court 200' opposition map

City Council Presentation Slides

ORDINANCE NO. 24-S-09

AN ORDINANCE BY THE CITY COUNCIL OF THE CITY OF SCHERTZ, TEXAS AUTHORIZING THE OFFICIAL ZONING MAP BY REZONING APPROXIMATELY 7.7 ACRES OF LAND, A PORTION OF BEXAR COUNTY PROPERTY IDENTIFICATION NUMBER 339286, TO SINGLE-FAMILY RESIDENTIAL DISTRICT (R-1), ALSO KNOWN AS 8215 TRAINER HALE ROAD, SCHERTZ, BEXAR COUNTY, TEXAS.

WHEREAS, an application to rezone approximately 7.7 acres of land, a portion of Bexar County Property Identification Number 339286, to Single-Family Residential District (R-1), also known as 8215 Trainer Hale Road, and more specifically described in the Exhibit A and Exhibit B attached herein (herein, the “Property”) has been filed with the City; and

WHEREAS, the City’s Unified Development Code Section 21.5.4.D. provides for certain criteria to be considered by the Planning and Zoning Commission in making recommendations to City Council and by City Council in considering final action on a requested zone change (the “Criteria”); and

WHEREAS, on March 6, 2024, the Planning and Zoning Commission conducted a public hearing and, after considering the Criteria, made a recommendation to City Council to approve; and

WHEREAS, on April 2, 2024, 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.

NOW THEREFORE, BE IT RESOLVED 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 Single-Family Residential District (R-1)

Section 2. The Official Zoning Map of the City of Schertz, described and referred to in Article 2 of the Unified Development Code, shall be revised to reflect the above amendment.

Section 3. The recitals contained in the preamble hereof are hereby found to be true, and such recitals are hereby made a part of this Ordinance for all purposes and are adopted as a part of the judgment and findings of the Council.

Section 4. All ordinances and codes, or parts thereof, which are in conflict or inconsistent with any provision of this Ordinance are hereby repealed to the extent of such conflict, and the provisions of this Ordinance shall be and remain controlling as to the matters resolved herein.

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

Section 6. If any provision of this Ordinance or the application thereof to any person or circumstance shall be held to be invalid, the remainder of this Ordinance and the application

of such provision to other persons and circumstances shall nevertheless be valid, and the City hereby declares that this Ordinance would have been enacted without such invalid provision.

Section 7. It is officially found, determined, and declared that the meeting at which this Ordinance is adopted was open to the public and public notice of the time, place, and subject matter of the public business to be considered at such meeting, including this Ordinance, was given, all as required by Chapter 551, as amended, Texas Government Code.

Section 8. This Ordinance shall be effective upon the date of final adoption hereof and any publication required by law.

Section 9. This Ordinance shall be cumulative of all other ordinances of the City of Schertz, and this Ordinance shall not operate to repeal or affect any other ordinances of the City of Schertz except insofar as the provisions thereof might be inconsistent or in conflict with the provisions of this Ordinance, in which event such conflicting provisions, if any, are hereby repealed.

PASSED ON FIRST READING, the _____ of _____ 2024.

PASSED, APPROVED and ADOPTED ON SECOND READING, the _____ of _____, 2024.

CITY OF SCHERTZ, TEXAS

Ralph Gutierrez, Mayor

ATTEST:

Sheila Edmondson, City Secretary

(city seal)

Exhibit "A"
Property Description- Metes and Bounds

Exhibit "A" Property Description - Metes and Bounds



Field Notes for a Tract of Land Containing 7.678 acres (334,447.73 square feet) of land

A 7.678 acre (334,447.73 square feet) tract of land, situated in the Eligio Gortari Survey Number 2, Abstract Number 5, Bexar County, Texas, being all of a 6.496 acre tract as conveyed to HLH Properties, LLC, by Warranty Deed with Vendor's Lien as recorded in Document Number 20230226067, and all of a 1.182 acre tract as conveyed to HLH Properties, LLC, by Warranty Deed as recorded in Document Number 20230226071, both of the Official Public Records of Bexar County, Texas, said 7.678 acre (334,447.73 square feet) tract of land being more particularly described as follows:

Commencing at a found iron rod with a red plastic cap, having Texas State Plane Coordinates of N:13,729,126.04, E:2,016,609.51, being an interior corner on the southwesterly boundary of a 100.939 acre tract as conveyed to Allen Wiederstein, by Warranty Deed as recorded in Volume 7849, Page 1552, and being the north corner of Lot 23, Block 4, designated as a 13.662 acre Park/Open Space, as shown on plat of Hallies Cove Subdivision Unit 3, as recorded in Volume 20001, Pages 1525-1526, as conveyed to City of Schertz, Texas, by Special Warranty Deed as recorded in Document Number 20210200624, all of the Official Public Records of Bexar County, Texas;

Thence, with a southeast boundary of said 100.939 acre tract, being the northwest boundary of said Lot 23, Block 4, South 59 degrees 41 minutes 15 seconds West, passing a southwesterly corner of said 100.939 acre tract, being the east corner of the remainder of a 20 acre tract as conveyed to Joylene Schmoekel Herrera, by Executrix's Deed as recorded in Volume 6795, Page 1896, of the Official Public Records of Bexar County, Texas, and continuing said course with the southeast boundary of the remainder of said 20 acre tract, being the northwest boundary of said Lot 23, Block 4, for a total distance of 498.01 feet to the **Point of Beginning**, having Texas State Plane Coordinates of N:13,728,874.68, E:2,216,179.58, being the south corner of the remainder of said 20 acre tract, and being the east corner of both said 1.182 acre tract and of the herein described tract;

Thence, continuing with the northwest boundary of said Lot 23, being the southeast boundary of said 1.182 acre tract, South 59 degrees 41 minutes 15 seconds West, passing the south corner of said 1.182 acre tract, being the east corner of said 6.496 acre tract, and continuing said course with the northwest boundary of said Lot 23, being the southeast boundary of said 6.496 acre tract, for a total distance of 470.01 feet to a point, being an interior corner of said Hallies Cove Subdivision Unit 3, and being the south corner of both said 6.496 acre tract and of the herein described tract;

Thence, with the southwest boundary of said 6.496 acre tract, being the northeast boundary of said Hallies Cove Subdivision Unit 3, North 30 degrees 18 minutes 35 seconds West, passing the north corner of Lot 29, Block 4 as shown on said Hallies Cove Subdivision Unit 3, being the east corner of Lot 30, Block 4, as shown on plat of Hallies Cove Subdivision Unit 5, as recorded in Volume 20002, Pages 76-79, of the Official Public Records of Bexar County, Texas, and continuing said course with the northwest boundary of said Hallies Cove Subdivision Unit 5, being the southwest boundary of said 6.496 acre tract, for a total distance of 912.72 feet to a point, being an interior corner of said Hallies Cove Subdivision Unit 5, and being the west corner of both said 6.496 acre tract and of the herein described tract;

Thence, with a southeast boundary of said Hallies Cove Subdivision Unit 5, being the northwest boundary of said 6.496 acre tract, North 59 degrees 41 minutes 00 seconds East, passing the north corner of said 6.496 acre tract, being the west corner of said 1.182 acre tract, and continuing said course with a southeast boundary of said

Exhibit "A" Property Description - Metes and Bounds

Hallies Cove Subdivision Unit 5, being the northwest boundary of said 1.182 acre tract, for a total distance of 323.00 feet to a point, being the south corner of a 69.4 acre tract as conveyed to Joylene Schmoekel Herrera, by said Executrix's Deed as recorded in Volume 6795, Page 1896, being the southeast corner of said Lot 4, Block 10, and being an angle point in the northwest boundary of both said 1.182 acre tract and of the herein described tract;

Thence, with the southeast boundary of said 69.4 acre tract, being the northwest boundary of said 1.182 acre tract, North 59 degrees 43 minutes 43 seconds East, a distance of 22.00 feet to a point, being the west corner of the remainder of said 20 acre tract, and being the north corner of both said 1.182 acre tract and of the herein described tract;

Thence, leaving the southeast boundary of said 69.4 acre tract, with the southwesterly boundary of the remainder of said 20 acre tract, being the northeasterly boundary of said 1.182 acre tract, the following two (2) courses:

South 30 degrees 18 minutes 35 seconds East, a distance of 599.85 feet to a point, being an angle point in the herein described tract;

South 52 degrees 05 minutes 24 seconds East, a distance of 336.92 feet to the **Point of Beginning**, containing 7.678 acres (334,447.73 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. An exhibit of even date was prepared for this description.




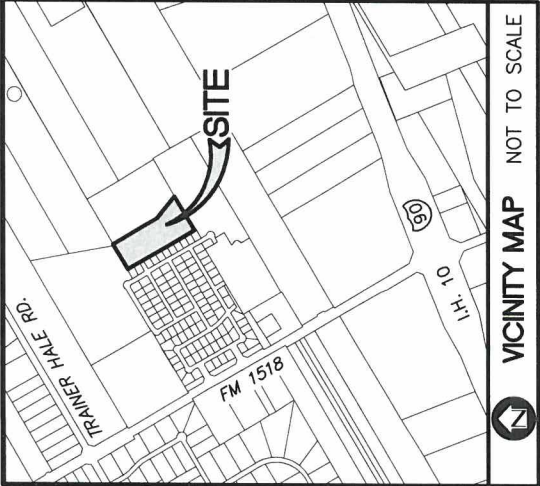

Stephanie L. James, R.P.L.S.
Registered Professional Land Surveyor
No. 5950
Date: 2024-01-23 Job No. 23164
ZDI

Exhibit "A" Property Description - Metes and Bounds



VICINITY MAP NOT TO SCALE



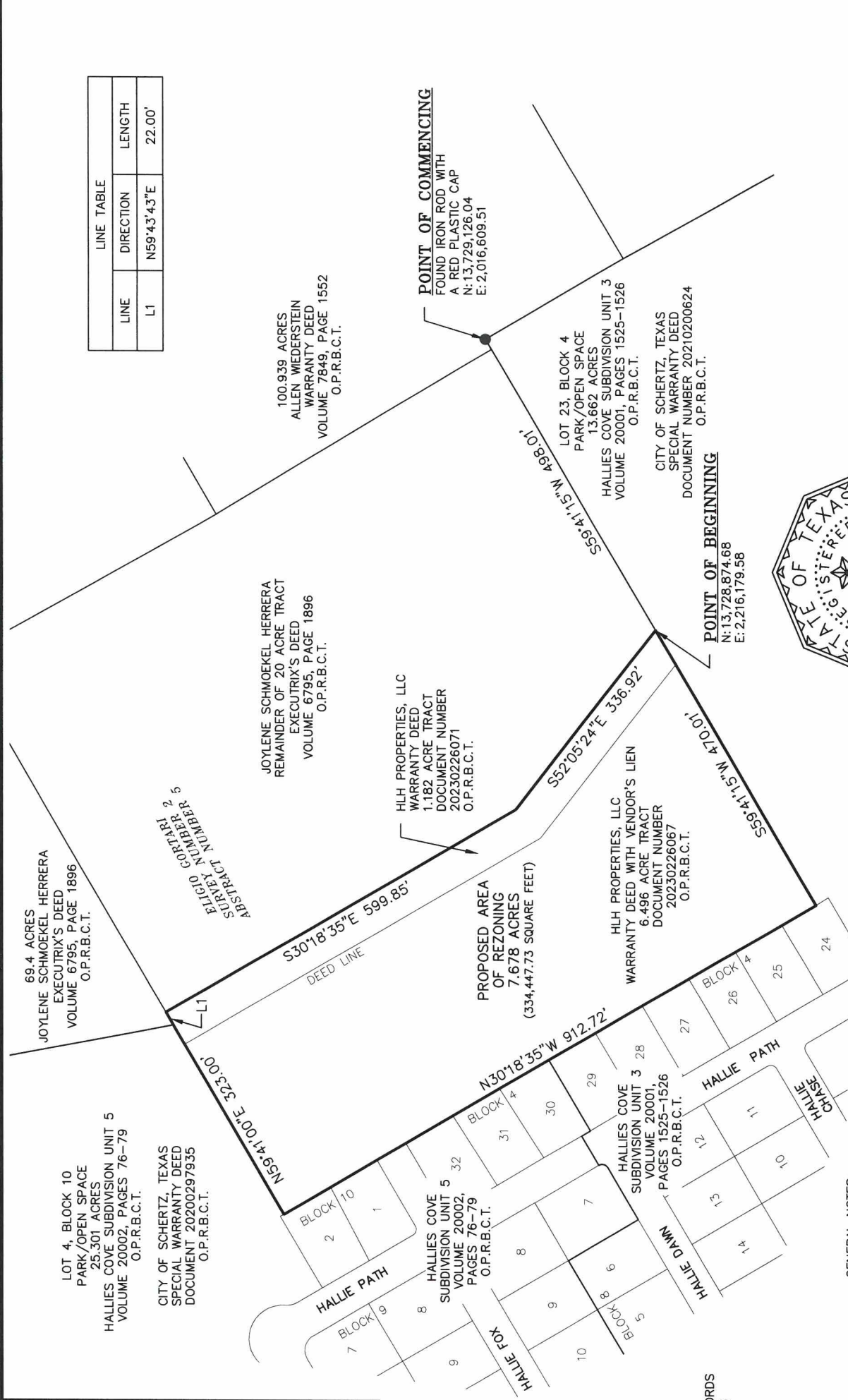
LEGEND:

O.P.R.B.C.T. OFFICIAL PUBLIC RECORDS
BEXAR COUNTY TEXAS



Moy Tarin Ramirez Engineers, LLC
TBPCLS ENGINEERING F-5297/SURVEYING NO. 10131500
12770 CIMARRON PATH, SUITE 100
SAN ANTONIO, TEXAS 78249
TEL: (210) 698-5051
FAX: (210) 698-5085

- Engineers
- Surveyors
- Planners



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, LLC., WILL NOT BE RESPONSIBLE FOR THE CONTENT OF ANYTHING OTHER THAN A VALID COPY OF THIS SURVEY.
- 3) A FIELD NOTE DESCRIPTION OF EVEN DATE WAS PREPARED FOR THIS EXHIBIT.



Stephanie L. James

LINE TABLE		
LINE	DIRECTION	LENGTH
L1	N59°43'43"E	22.00'

ZONING EXHIBIT OF

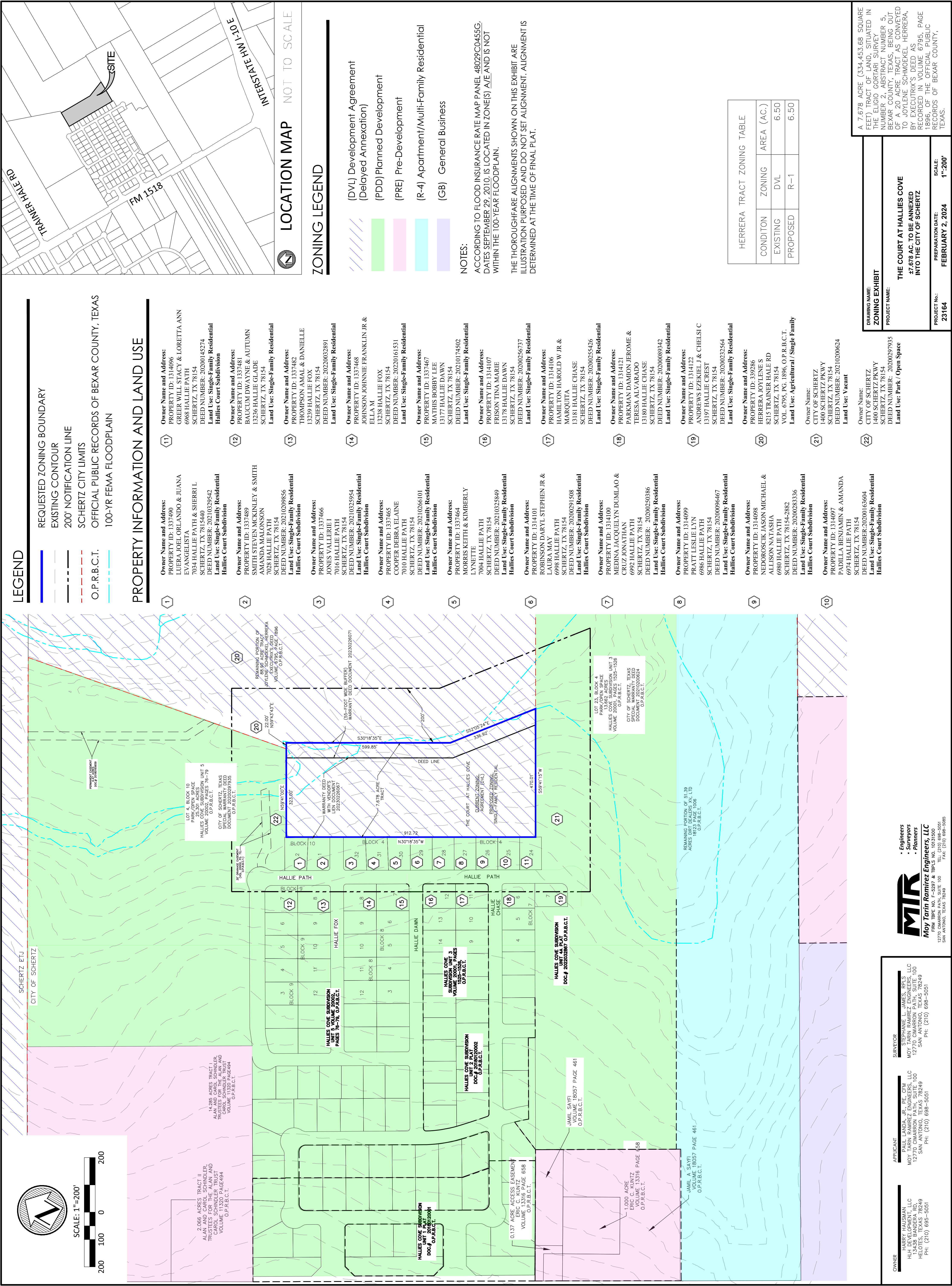
A 7.678 ACRE (334,447.73 SQUARE FEET) TRACT OF LAND, SITUATED IN THE ELIGIO GORTARI SURVEY NUMBER 2, ABSTRACT NUMBER 5, BEXAR COUNTY, TEXAS, BEING ALL OF A 6.496 ACRE TRACT AS CONVEYED TO HLH PROPERTIES, LLC, BY WARRANTY DEED WITH VENDOR'S LIEN AS RECORDED IN DOCUMENT NUMBER 20230226067, AND ALL OF A 1.182 ACRE TRACT AS CONVEYED TO HLH PROPERTIES, LLC, BY WARRANTY DEED AS RECORDED IN DOCUMENT NUMBER 20230226071, BOTH OF THE OFFICIAL PUBLIC RECORDS OF BEXAR COUNTY, TEXAS.

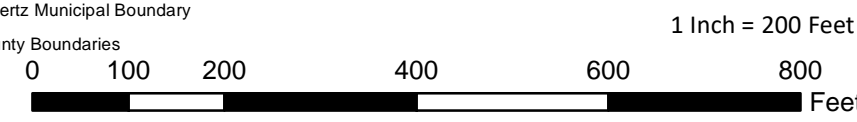
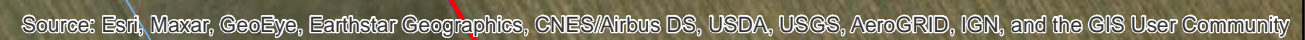
DATE: 2024-01-23

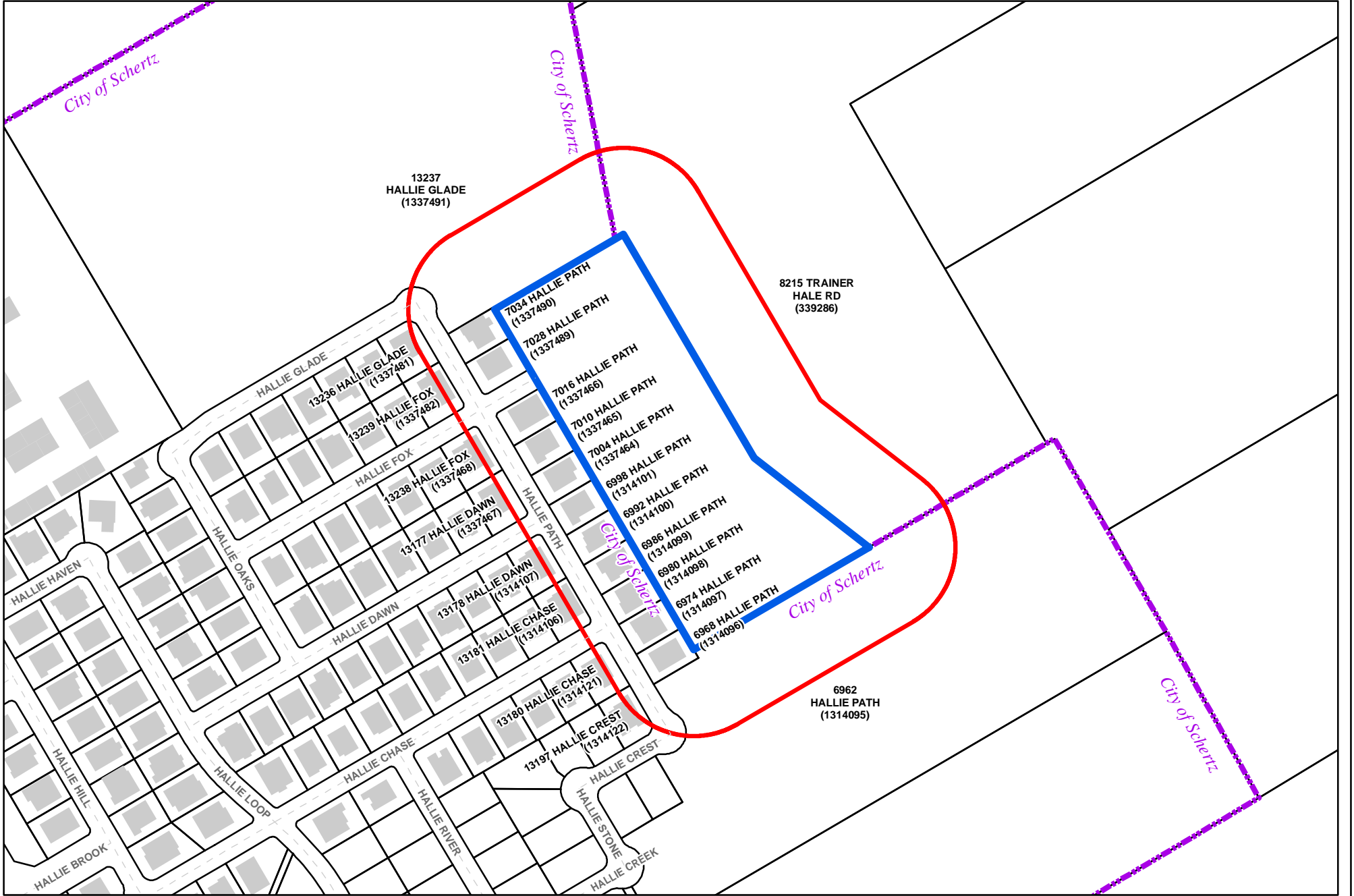
JOB NO. 23164

Exhibit “B”
Zone Change Exhibit

Exhibit "B" Zone Change Exhibit







City of Schertz
The Court at Hallies Cove
(PLANX20230280)



Project Area  200' Buffer



NOTICE OF PUBLIC HEARING

February 21, 2024

Dear Property Owner,

The Schertz Planning and Zoning Commission will conduct a public hearing on **Wednesday, March 6, 2024 at 6:00 p.m.** located at the Municipal Complex Council Chambers, 1400 Schertz Parkway, Building #4, Schertz, Texas to consider and make a recommendation on the following item:

PLZC20230283 – A request to rezone approximately 7.7 acres of land, a portion of Bexar County Property Identification Number 339286, to Single-Family Residential District (R-1), also known as 8215 Trainer Hale Road, 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. You may return the reply form below by mail or personal delivery to Daisy Marquez, Planner, 1400 Schertz Parkway, Schertz, Texas 78154, or by e-mail: planning@schertz.com. If you have any questions, please feel free to call Daisy Marquez, Planner at (210) 619-1782.

Sincerely,




Daisy Marquez, AICP
Planner

Reply Form:

City Council will have two readings on the request after the recommendation from the Planning and Zoning Commission. This form is used to calculate the protest in accordance with LGC, Local Government Code 211.006(d). **The written protest must be received by City no later than noon (central time) on the Friday before each reading by the City Council.** If the name of the person signing this form does not match the name listed as the owner on the appraisal district website, proof of ownership is required in order for this to count towards the protest.

I am: in favor of ☐ opposed to ☒ neutral to ☐ the request for **PLZC20230283**

COMMENTS: Strongly opposed. We were sold this property with the promise nothing would be built behind us.

NAME: DARYL ROBINSON SIGNATURE: 
(PLEASE PRINT)

STREET ADDRESS: 6998 HALLIE PATH, SCHERTZ, TX 78154

DATE: 02/25/2024

From: Vallerie Jones
Sent: Wednesday, February 28, 2024 12:38 PM
To: planning@schertz.com
Subject: PLZC202300283 Reply Form
Attachments: [attachment 1.pdf](#)

Follow Up Flag: Follow up
Flag Status: Flagged

I'm submitting my response to vote No regarding rezoning of approximately 7.7 acres of land for Single-Family Residential District R-1 (8215 Trainer Hale Road.

I selected my home based on the fact there's no neighbors or traffic directly behind my house.

I have enclosed my reply form. I will also mail in my reply form for record.

Thank you

Vallerie Jones

NOTICE OF PUBLIC HEARING

February 21, 2024

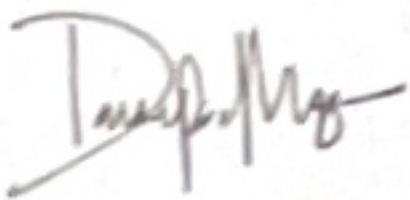
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PLZC20230283 – A request to rezone approximately 7.7 acres of land, a portion of Bexar County Property Identification Number 339286, to Single-Family Residential District (R-1), also known as 8215 Trainer Hale Road, City of Schertz, Bexar County, Texas.

The Planning and Zoning Commission would like to hear how you feel about this request and invites you to attend the public hearing. You may return the reply form below by mail or personal delivery to Daisy Marquez, Planner, 1400 Schertz Parkway, Schertz, Texas 78154, or by e-mail: planning@schertz.com. If you have any questions, please feel free to call Daisy Marquez, Planner at (210) 619-1782.

Sincerely,



Daisy Marquez, AICP
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I am: in favor of ☐ opposed to ☒ neutral to ☐ the request for **PLZC20230283**

COMMENTS: I selected my lot for the privacy. I do not want neighbors on traffic behind my house

NAME: Vallerie Jones SIGNATURE Vallerie Jones
(PLEASE PRINT)

STREET ADDRESS: 7016 Hallie Path Schertz TX 78154

DATE: 2/22/2024

NOTICE OF PUBLIC HEARING

February 21, 2024

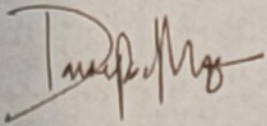
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PLZC20230283 – A request to rezone approximately 7.7 acres of land, a portion of Bexar County Property Identification Number 339286, to Single-Family Residential District (R-1), also known as 8215 Trainer Hale Road, City of Schertz, Bexar County, Texas.

The Planning and Zoning Commission would like to hear how you feel about this request and invites you to attend the public hearing. You may return the reply form below by mail or personal delivery to Daisy Marquez, Planner, 1400 Schertz Parkway, Schertz, Texas 78154, or by e-mail: planning@schertz.com. If you have any questions, please feel free to call Daisy Marquez, Planner at (210) 619-1782.

Sincerely,



Daisy Marquez, AICP
Planner

Reply Form:

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I am: in favor of ☐ opposed to ☒ neutral to ☐ the request for PLZC20230283

COMMENTS: _____

NAME: Bobby Mathis (PLEASE PRINT) SIGNATURE Bobby Mathis

STREET ADDRESS: 13177 Hallie Dawn

DATE: 28 Feb. 2024

Reply Form:

City Council will have two readings on the request after the recommendation from the Planning and Zoning Commission. This form is used to calculate the protest in accordance with LGC, Local Government Code 211.006(d). **The written protest must be received by City no later than noon (central time) on the Friday before each reading by the City Council.** If the name of the person signing this form does not match the name listed as the owner on the appraisal district website, proof of ownership is required in order for this to count towards the protest.

I am: in favor of ☐ opposed to ☒ neutral to ☐ the request for PLZC20230283

COMMENTS: _____

NAME: _____

Joel Luera

(PLEASE PRINT)

SIGNATURE _____

Joel Luera

STREET ADDRESS: _____

7034 Hallie Path

DATE: _____

26 Feb 2024

1400 Schertz Parkway

★

Schertz, Texas 78154

★

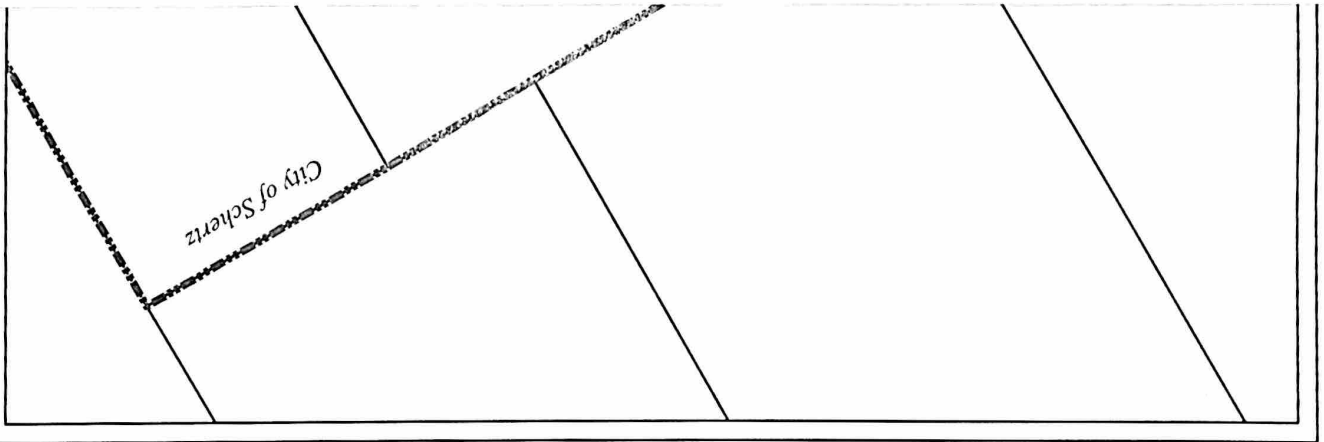
210.619.1000

★

schertz.com

200' Buffer

100 200 400 600 Feet



NOTICE OF PUBLIC HEARING

February 21, 2024

Dear Property Owner,

The Schertz Planning and Zoning Commission will conduct a public hearing on **Wednesday, March 6, 2024 at 6:00 p.m.**, located at the Municipal Complex Council Chambers, 1400 Schertz Parkway, Building 44, Schertz, Texas to consider and make a recommendation on the following item:

PLZC20230283 – A request to rezone approximately 7.7 acres of land, a portion of Bexar County Property Identification Number 308286, to Single-Family Residential District (R-1), also known as 5215 Trainer Male Road, 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. You may return the reply form below by mail or personal delivery to Daisy Marquez, Planner, 1400 Schertz Parkway, Schertz, Texas 78154, or by e-mail: planning@schertz.com. If you have any questions, please feel free to call Daisy Marquez, Planner at (210) 619-1762.

Sincerely,



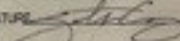
Daisy Marquez, AICP
Planner

Reply Form:

City Council will have two meetings on the request after the recommendation from the Planning and Zoning Commission. This form is used to calculate the protest in accordance with C.D.C. Local Government Code 211.006. The written protest must be received by City no later than noon (central time) on the Friday before each meeting by the City Council. If the name of the person signing this form does not match the name listed on the parcel on the appraisal district website, proof of ownership is required in order for this to count towards the protest.

I am: ☒ interested ☐ not interested ☐ The request for PLZC20230283

COMMENTS: We paid a large site premium to have green space behind us.

NAME: Jonathan Cree SIGNATURE: 
(PLEASE PRINT)

STREET ADDRESS: 6992 Hallie Path

DATE: 2/24/24

Reply Form:
City Council will have two readings on the request after the recommendation from the Planning and Zoning Commission. This form is used to calculate the protest in accordance with LGC, Local Government Code 211.006(d). **The written protest must be received by City no later than noon (central time) on the Friday before each reading by the City Council.** If the name of the person signing this form does not match the name listed as the owner on the appraisal district website, proof of ownership is required in order for this to count towards the protest.

I am: in favor of ☐

opposed to ☒

neutral to ☐

the request for PLZC20230283

COMMENTS: _____

NAME: Keith Morris

(PLEASE PRINT)

SIGNATURE Keith Morris

STREET ADDRESS: 7004 Hallie Path, Schertz, TX 78154

DATE: 2/26/24

1400 Schertz Parkway



Schertz, Texas 78154



210.619.1000



schertz.com

Reply Form:

City Council will have two readings on the request after the recommendation from the Planning and Zoning Commission. This form is used to calculate the protest in accordance with LGC, Local Government Code 211.006(d). **The written protest must be received by City no later than noon (central time) on the Friday before each reading by the City Council.** If the name of the person signing this form does not match the name listed as the owner on the appraisal district website, proof of ownership is required in order for this to count towards the protest.

I am: ☐ in favor of

☒ opposed to

☐ neutral to

the request for PLZC20230283

COMMENTS:

NAME:

(PLEASE PRINT)

SIGNATURE

behind us.

STREET ADDRESS:

DATE:

But we're also told there would be a walking trail back there. Please leave us some green space!

1400 Schertz Parkway

Schertz, Texas 78154

210.619.1000

schertz.com

NOTICE OF PUBLIC HEARING

February 21, 2024

Dear Property Owner,

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PLZC20230283 – A request to rezone approximately 7.7 acres of land, a portion of Bexar County Property Identification Number 339286, to Single-Family Residential District (R-1), also known as 8215 Trainer Hale Road, 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. You may return the reply form below by mail or personal delivery to Daisy Marquez, Planner, 1400 Schertz Parkway, Schertz, Texas 78154, or by e-mail: planning@schertz.com. If you have any questions, please feel free to call Daisy Marquez, Planner at (210) 619-1782.

Sincerely,



Daisy Marquez, AICP
Planner

Reply Form:

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I am: in favor of ☐ opposed to ☒ neutral to ☐ the request for **PLZC20230283**

COMMENTS: _____

NAME: STEVEN M. Smith SIGNATURE: 
(PLEASE PRINT)

STREET ADDRESS: 7028 Hallie Path

DATE: 27 Feb 2024



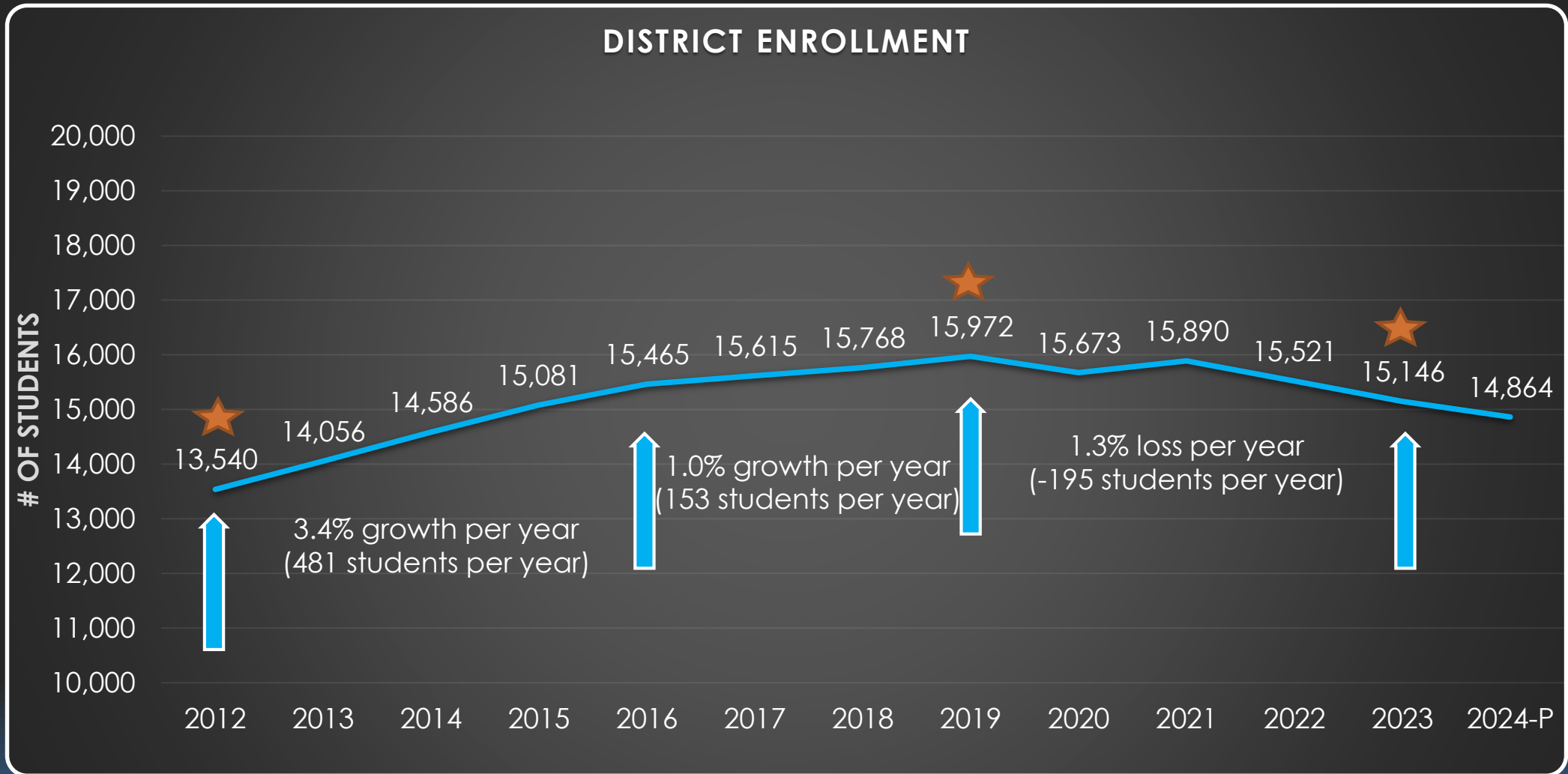
SCHERTZ - CIBOLO - UNIVERSAL CITY ISD

10 YEAR CAMPUS FORECASTING

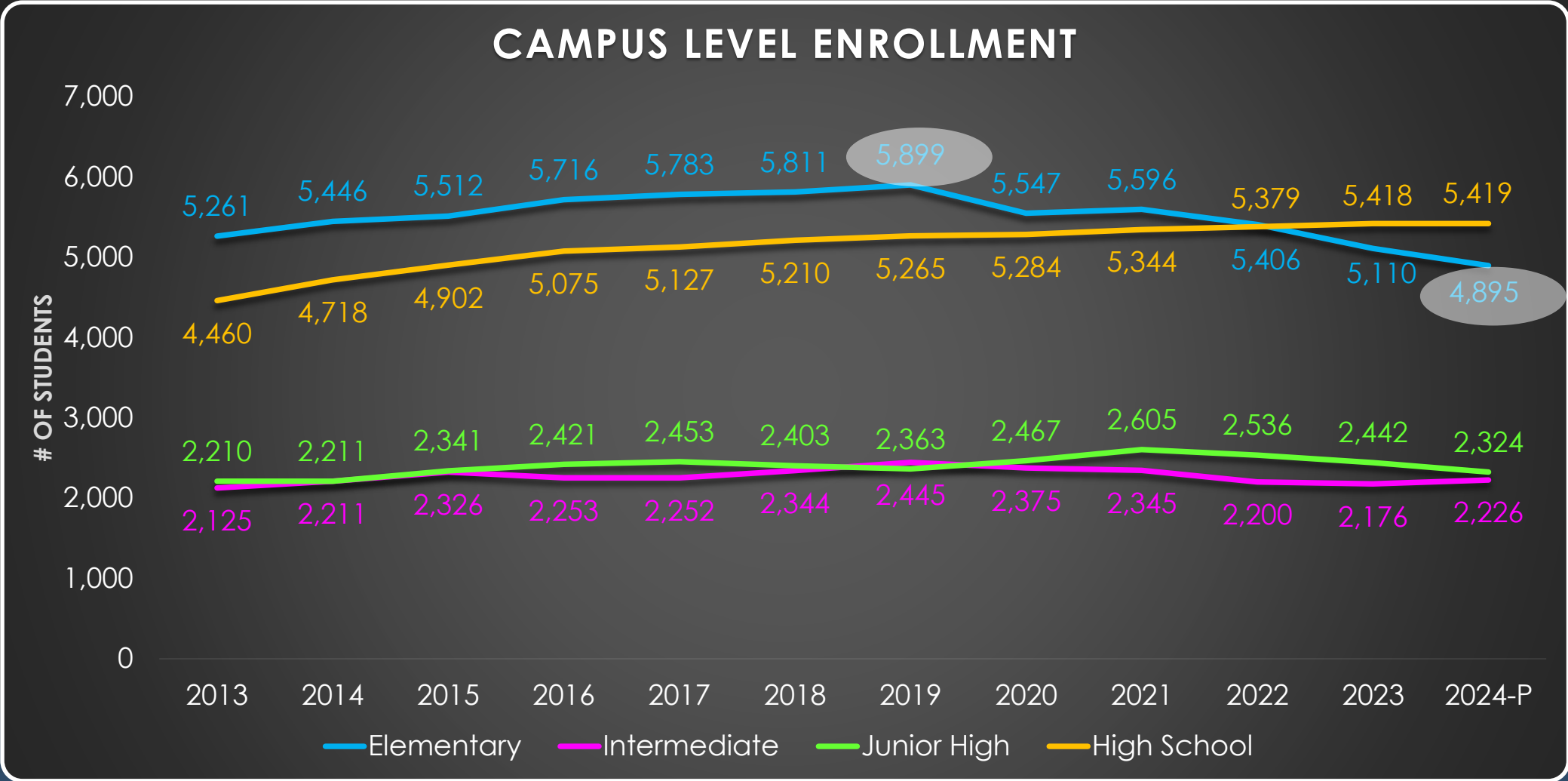
FORECASTING CONSIDERATIONS

- ENROLLMENT
 - HISTORICAL TRENDS
 - PROJECTIONS
 - TRANSFERS TO CHARTERS AND OTHER ISDs
- CAMPUS CAPACITY
- BONDING CAPACITY

HISTORICAL ENROLLMENT



HISTORICAL ENROLLMENT BY CAMPUS LEVEL



ENROLLMENT HISTORY BY LEVEL – OCTOBER

- 2019 TO 2023 ENROLLMENT DECREASE
 - HIGH SCHOOL ENROLLMENT HAS REMAINED STRONG
 - WE HAVE ADDED 154 HIGH SCHOOL STUDENTS SINCE 2019
 - AND JUNIOR HIGH HAS ONLY LOST 39 STUDENTS SINCE 2019
- ELEMENTARY IS WHERE WE HAVE FELT THE LARGEST DROP IN ENROLLMENT
 - SPECIFICALLY, 918 STUDENTS LOST SINCE 2019
 - AND 219 STUDENTS LOST AT THE INTERMEDIATE LEVEL.

STUDENT TRANSFERS

PEIMS YEAR	TRANSFER IN	TRANSFER OUT	DIFFERENCE
2012	216	681	-465
2013	212	704	-492
2014	244	647	-403
2015	302	702	-400
2016	297	907	-610
2017	290	1061	-771
2018	304	1079	-775
2019	296	1283	-987
2020	300	1591	-1291
2021	317	1981	-1664
2022	308	2695	-2387
2023	Data available in March		

First Year of Founders Charter School



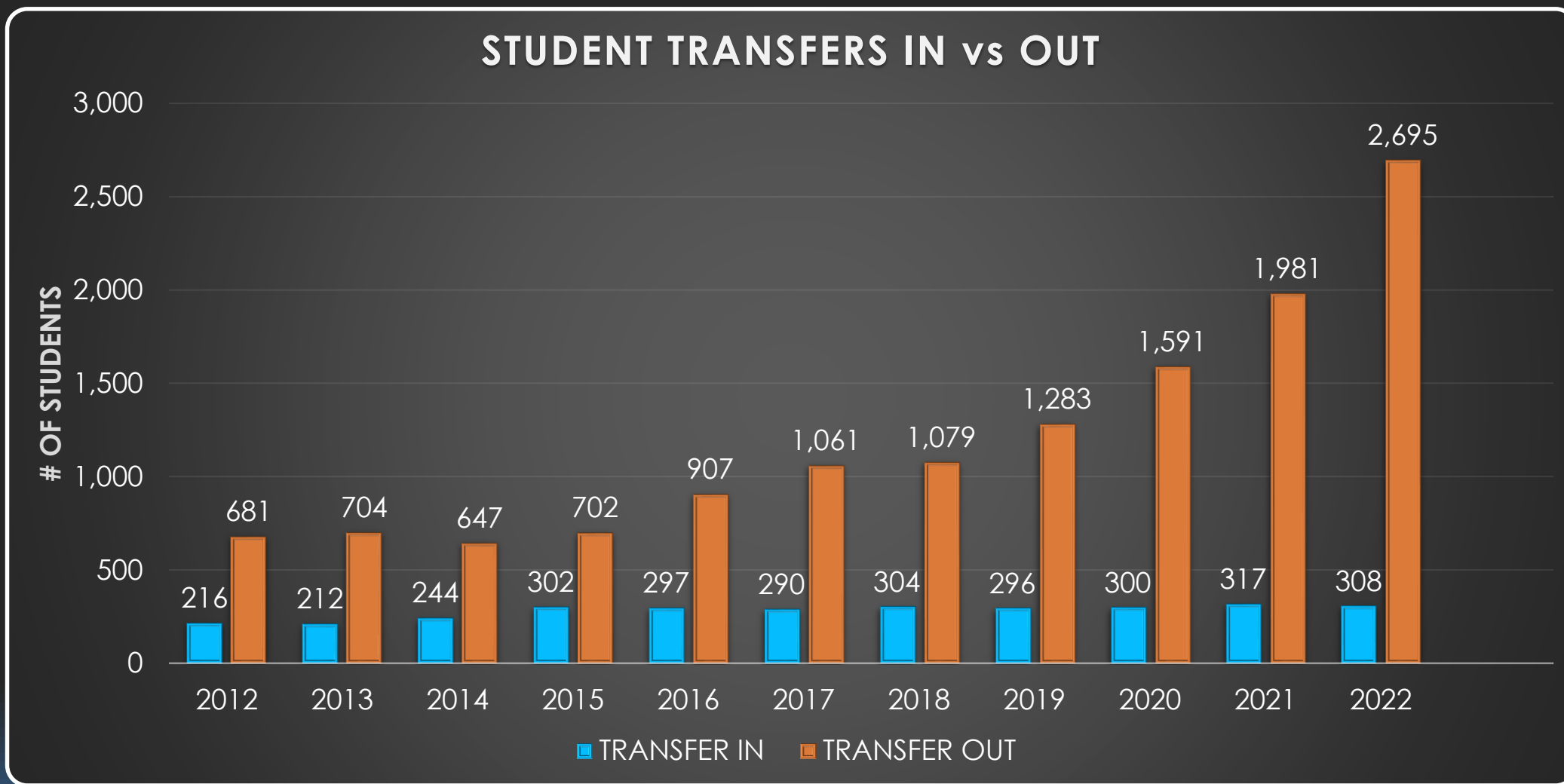
First Year of School of Science and Technology



First Year of Legacy Traditional School



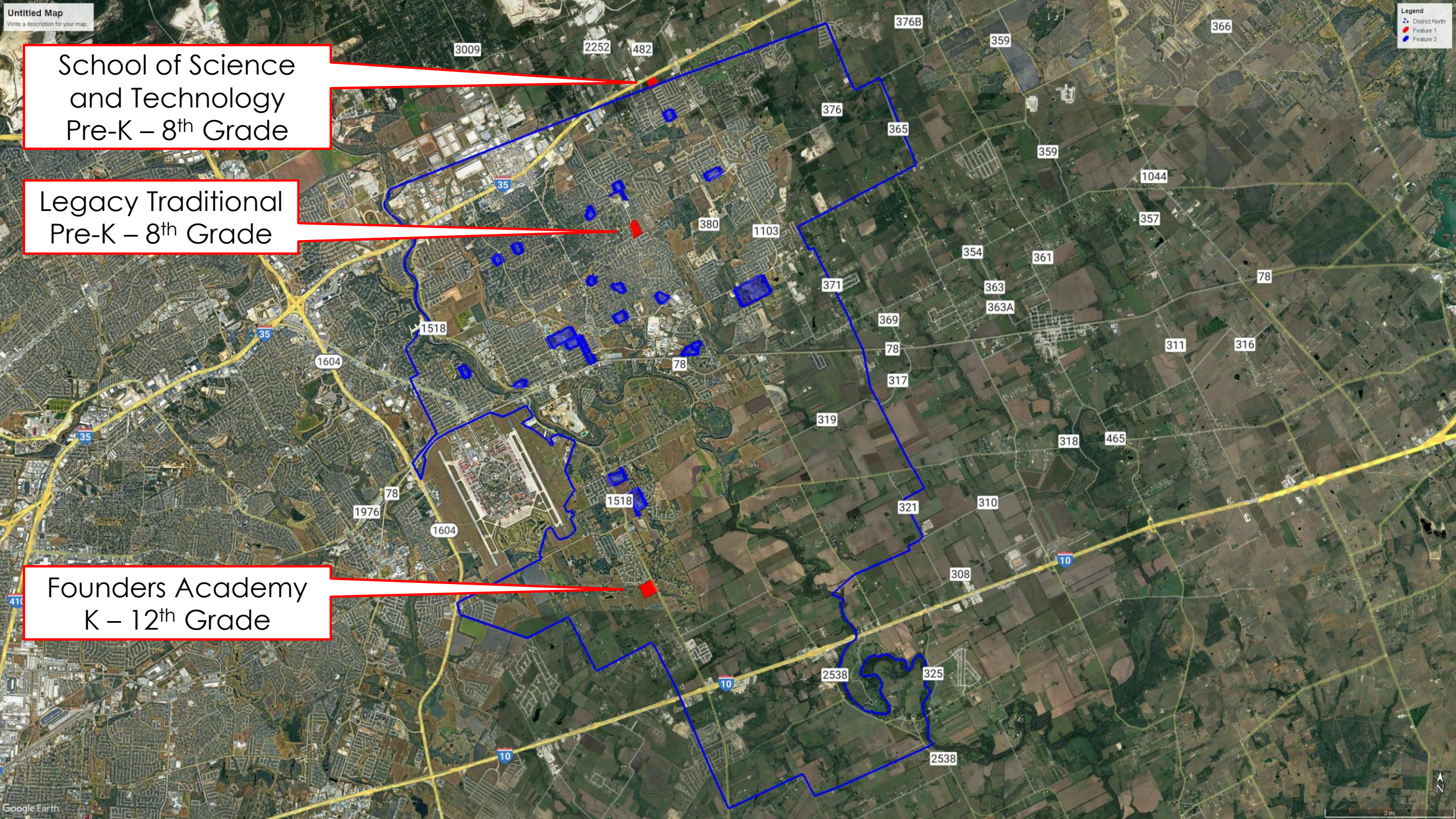
STUDENT TRANSFERS IN VS. OUT



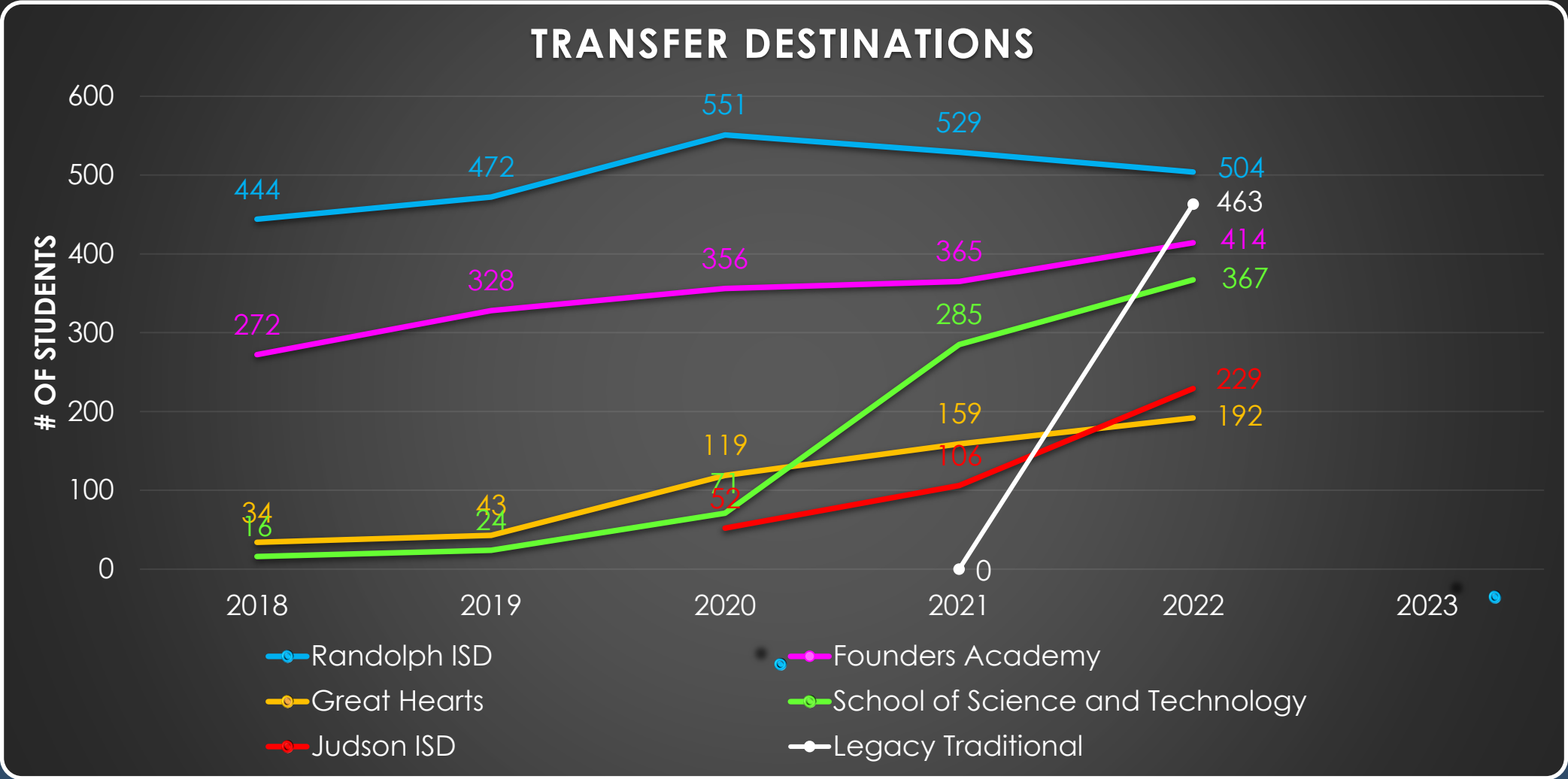
School of Science
and Technology
Pre-K – 8th Grade

Legacy Traditional
Pre-K – 8th Grade

Founders Academy
K – 12th Grade

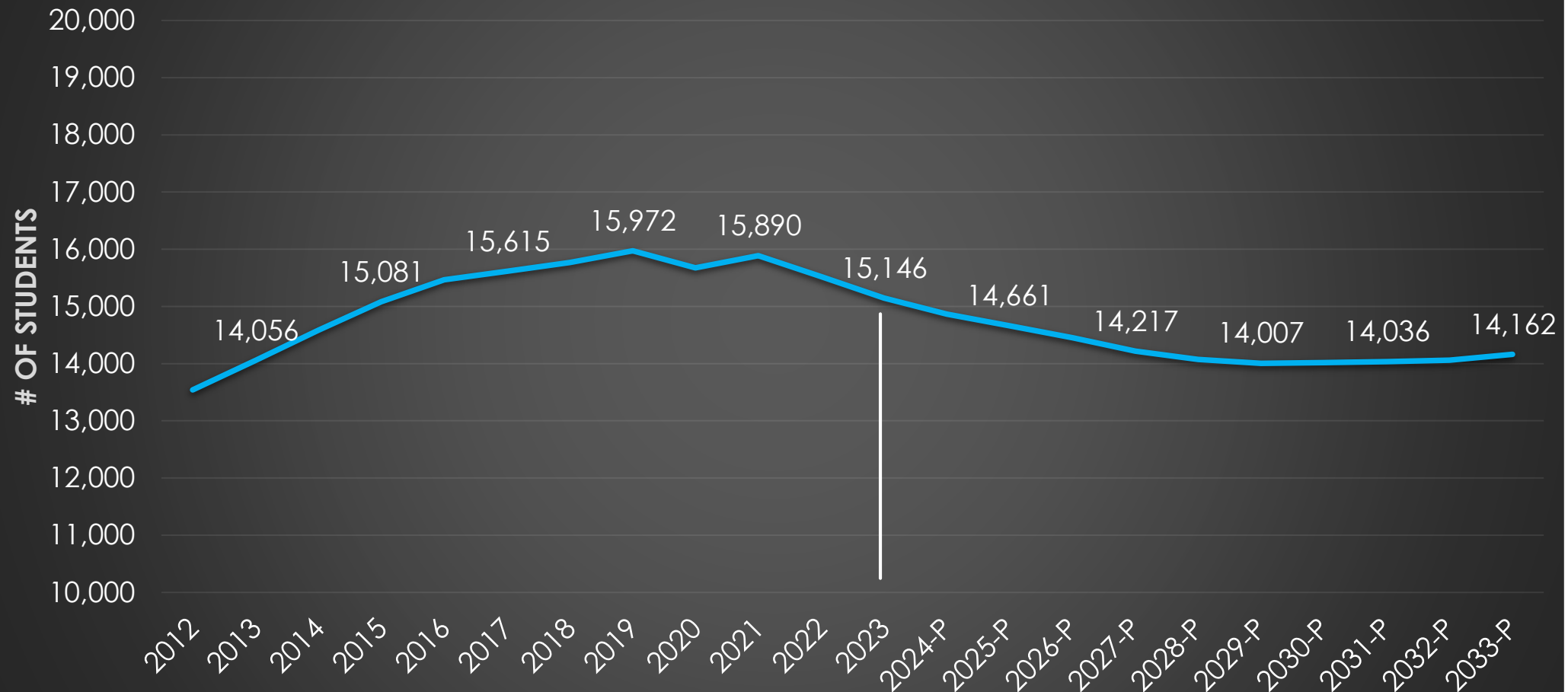


MAIN DESTINATIONS FOR TRANSFERS OUT



SO, HOW MANY STUDENTS WILL WE HAVE IN THE FUTURE?

DISTRICT HISTORICAL ENROLLMENT AND PROJECTIONS



ENROLLMENT PROJECTIONS

- OVER THE NEXT 6 YEARS OUR DISTRICT IS PROJECTED TO LOSE ON AVERAGE 1.3% OF OUR ENROLLMENT ANNUALLY.
 - RESULTING IN THE POTENTIAL DECLINE IN ENROLLMENT OF ANOTHER 1,139 STUDENTS OVER THE SAME PERIOD
 - LARGER GRADUATING CLASSES CONTINUE TO BE REPLACED WITH SMALLER PRE-K AND KINDER
 - GROWTH IN CHARTER ENROLLMENT IS LIKELY TO CONTRIBUTE TO THE SMALLER ELEMENTARY CLASS SIZES

PEIMS YEAR	PROJECTED ENROLLMENT	GROWTH (DECLINE)	PERCENTAGE CHANGE
2023	15,146	-375	-2.42%
2024-P	14,864	-282	-1.86%
2025-P	14,661	-203	-1.37%
2026-P	14,451	-210	-1.43%
2027-P	14,217	-234	-1.62%
2028-P	14,073	-144	-1.01%
2029-P	14,007	-66	-0.47%
2030-P	14,017	10	0.07%
2031-P	14,036	19	0.14%
2032-P	14,059	22	0.16%
2033-P	14,162	103	0.73%

ENROLLMENT PROJECTIONS

- BEGINNING IN 2030 THE DISTRICT IS EXPECTED TO BEGIN ADDING STUDENTS
 - INCOMING ELEMENTARY ENROLLMENT AND GRADUATING CLASSES BEGIN TO REACH A BALANCE
 - IN 2033 WE ARE PROJECTED TO RETURN TO THE ENROLLMENT WE HAD IN 2013

PEIMS YEAR	PROJECTED ENROLLMENT	GROWTH (DECLINE)	PERCENTAGE CHANGE
2023	15,146	-375	-2.44%
2024-P	14,864	-282	-1.86%
2025-P	14,661	-203	-1.37%
2026-P	14,451	-210	-1.43%
2027-P	14,217	-234	-1.62%
2028-P	14,073	-144	-1.01%
2029-P	14,007	-66	-0.47%
2030-P	14,017	10	0.07%
2031-P	14,036	19	0.14%
2032-P	14,059	22	0.16%
2033-P	14,162	103	0.73%

WHY HAS IT BECOME SO HARD TO PROJECT ENROLLMENT?

- PRIOR TO COVID AND AREA CHARTER SCHOOLS, SCUC WAS ESSENTIALLY THE ONLY OPTION FOR PARENTS MOVING INTO OUR GROWING COMMUNITY.
 - WHEN PROJECTING GROWTH, BIRTH RATES AND HOUSING GROWTH WERE THE ONLY TWO MAJOR VARIABLES WE HAD TO CONSIDER.
- BEGINNING 2017 WITH THE FIRST AREA CHARTER SCHOOL, PARENTS BEGAN TO EXERCISE THEIR CHOICE.
 - WITH COVID WE SAW VIRTUAL LEARNING ENTER THE GAME AND HOMESCHOOLING BECAME MORE PREVALENT
 - OUR COMMUNITY ALSO CONTINUED TO EXPERIENCE AGING IN PLACE
- PROJECTING ENROLLMENT IS MUCH MORE DIFFICULT WITH THESE ADDED VARIABLES.

FORECASTING CONSIDERATIONS

- ENROLLMENT
 - HISTORICAL TRENDS
 - PROJECTIONS
 - TRANSFERS TO CHARTERS AND OTHER ISDs
- CAMPUS CAPACITY

UNDERSTANDING CAMPUS CAPACITY

- DESIGN CAPACITY

- CAPACITY OF A CAMPUS AS ARCHITECTURALLY DESIGNED WITH EVERY FULL-SIZE CLASSROOM AT FULL CAPACITY
- EX. SIPPEL ELEMENTARY HAS A DESIGN CAPACITY OF 750 STUDENTS

- FUNCTIONAL CAPACITY

- DESIGN CAPACITY OF A CAMPUS MINUS 10% TO ACCOUNT FOR SPECIAL PROGRAMS ON A CAMPUS THAT REDUCE THE CAPACITY OF A FULL-SIZE CLASSROOM
- EX. SIPPEL ELEMENTARY HAS A FUNCTIONAL CAPACITY OF 675 STUDENTS

- MAXIMUM CAPACITY

- CAMPUS CAPACITY CONSIDERING THE ADDITION OF PORTABLE CLASSROOM BUILDINGS TO THE DESIGN CAPACITY AND THE NUMBER OF STUDENTS THE COMMON AREAS OF THE CAMPUS CAN SUPPORT
- EX. SIPPEL ELEMENTARY HAS A MAXIMUM CAPACITY OF 1058 STUDENTS

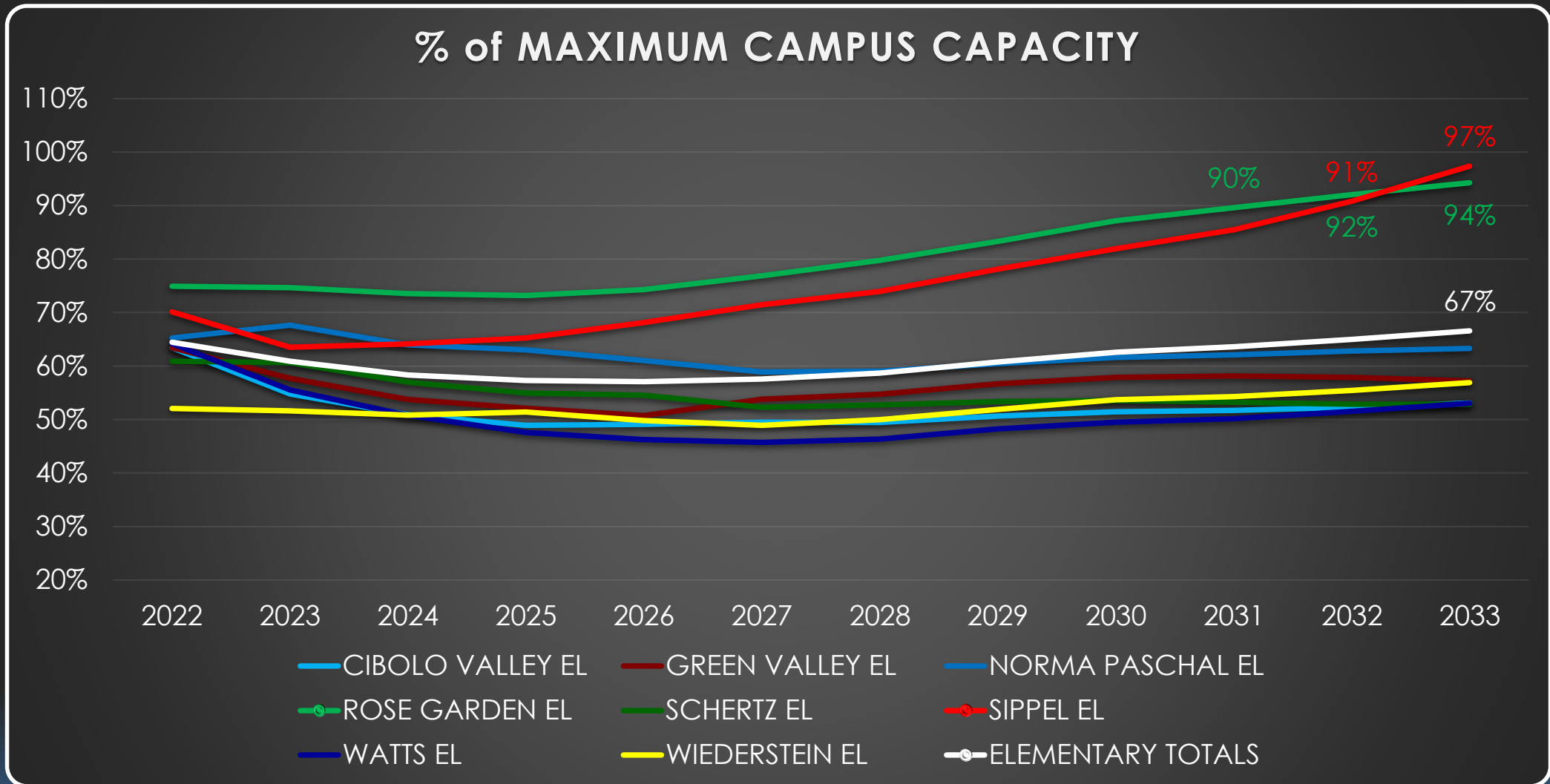
PLANNING USING OUR MAXIMUM CAPACITY

- WE BEGIN CONSIDERING THE USE OF **CAPACITY RELIEF TOOLS** WHEN A CAMPUS REACHES **90%** OF ITS MAXIMUM CAPACITY. THE DISTRICT HAS SEVERAL TOOLS AT OUR DISPOSAL
- TOOLS TO REDUCE/MAINTAIN THE ENROLLMENT OF A CAMPUS INCLUDE:
 - CAPPING ENROLLMENT OF THE CAMPUS TO NEW STUDENTS
 - MOVING SPECIAL PROGRAMS TO CAMPUSES WITH LOWER ENROLLMENTS
- TOOLS TO BALANCE THE ENROLLMENT AT CAMPUSES INCLUDE:
 - REZONING THE ATTENDANCE BOUNDARIES
- TOOLS TO INCREASE THE CAPACITY OF THE CAMPUS/DISTRICT INCLUDE:
 - ADDING PORTABLE CLASSROOM BUILDINGS
 - ADDING TO OR RENOVATING THE EXISTING BUILDING
 - BUILDING A NEW CAMPUS TO THE DISTRICT

ELEMENTARY CAPACITIES

Campus	Functional Capacity	Max Capacity	Previous Year	Current PEIMS	ENROLLMENT PROJECTIONS									
			2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033
CIBOLO VALLEY EL	891	1,200	761	657	611	587	589	594	594	608	617	620	627	637
% Max Capacity			63%	55%	51%	49%	49%	49%	49%	51%	51%	52%	52%	53%
GREEN VALLEY EL	673	924	586	533	497	482	469	497	506	524	535	537	535	529
% Max Capacity			63%	58%	54%	52%	51%	54%	55%	57%	58%	58%	58%	57%
NORMA PASCHAL EL	673	924	603	625	591	582	564	544	546	559	569	574	580	585
% Max Capacity			65%	68%	64%	63%	61%	59%	59%	60%	62%	62%	63%	63%
ROSE GARDEN EL	891	1,200	899	896	882	878	891	923	957	999	1,046	1,075	1,104	1,131
% Max Capacity			75%	75%	74%	73%	74%	77%	80%	83%	87%	90%	92%	94%
SCHERTZ EL	675	1,102	671	668	628	605	601	576	581	588	591	586	582	582
% Max Capacity			61%	61%	57%	55%	55%	52%	53%	53%	54%	53%	53%	53%
SIPPEL EL	675	1,058	742	672	679	690	721	756	782	827	867	904	961	1,030
% Max Capacity			70%	64%	64%	65%	68%	71%	74%	78%	82%	85%	91%	97%
WATTS EL	673	924	593	513	469	440	428	423	428	446	457	463	476	490
% Max Capacity			64%	56%	51%	48%	46%	46%	46%	48%	49%	50%	52%	53%
WIEDERSTEIN EL	675	1,058	551	546	538	544	527	517	529	549	568	574	587	602
% Max Capacity			52%	52%	51%	51%	50%	49%	50%	52%	54%	54%	55%	57%
ELEMENTARY TOTALS	5,826	8,390	5,406	5,110	4,895	4,808	4,790	4,830	4,922	5,099	5,250	5,335	5,453	5,587
% Max Capacity			64%	61%	58%	57%	57%	58%	59%	61%	63%	64%	65%	67%
Elementary Percent Change			-3.40%	-5.48%	-4.21%	-1.78%	-0.37%	0.83%	1.91%	3.59%	2.96%	1.63%	2.20%	2.46%
Elementary Absolute Change			-190	-296	-215	-87	-18	40	92	177	151	85	117	134

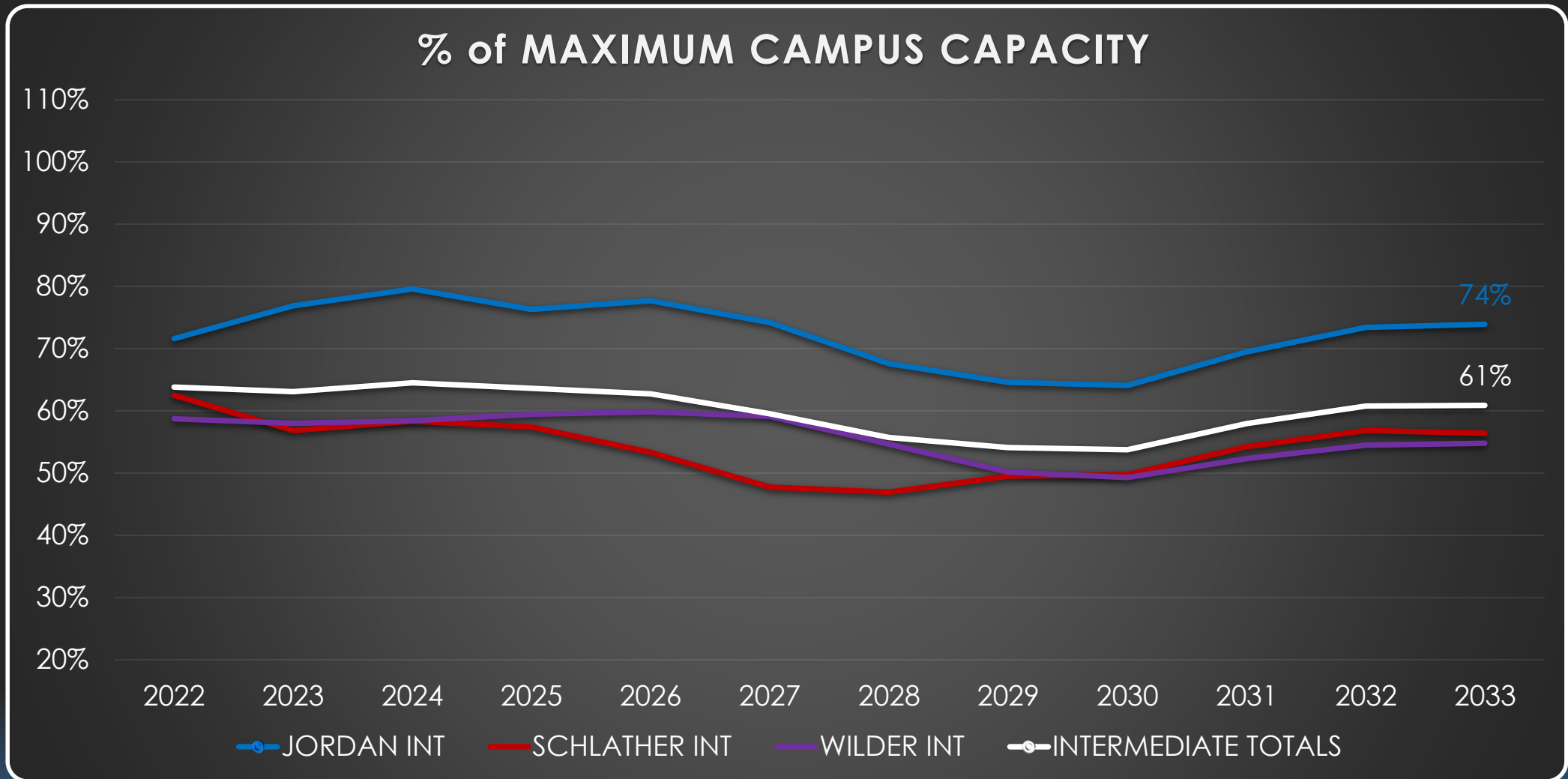
ELEMENTARY CAPACITIES



INTERMEDIATE CAPACITIES

Campus	Functional Capacity	Max Capacity	Previous Year	Current PEIMS	ENROLLMENT PROJECTIONS									
			2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033
JORDAN INT	810	1,000	716	769	796	763	777	742	676	646	641	695	734	739
% Max Capacity			72%	77%	80%	76%	78%	74%	68%	65%	64%	70%	73%	74%
SCHLATHER INT	810	1,200	750	682	700	689	640	573	563	594	597	651	682	677
% Max Capacity			63%	57%	58%	57%	53%	48%	47%	50%	50%	54%	57%	56%
WILDER INT	810	1,250	734	725	730	743	748	739	683	627	616	654	681	685
% Max Capacity			59%	58%	58%	59%	60%	59%	55%	50%	49%	52%	54%	55%
INTERMEDIATE TOTALS		3,450	2,201	2,176	2,226	2,195	2,165	2,054	1,922	1,867	1,854	2,000	2,097	2,101
% Max Capacity			64%	63%	65%	64%	63%	60%	56%	54%	54%	58%	61%	61%
Intermediate Percent Change			-6.13%	-1.09%	2.30%	-1.39%	-1.37%	-5.13%	-6.43%	-2.86%	-0.70%	7.87%	4.85%	0.19%
Intermediate Absolute Change			-144	-24	50	-31	-30	-111	-132	-55	-13	146	97	4

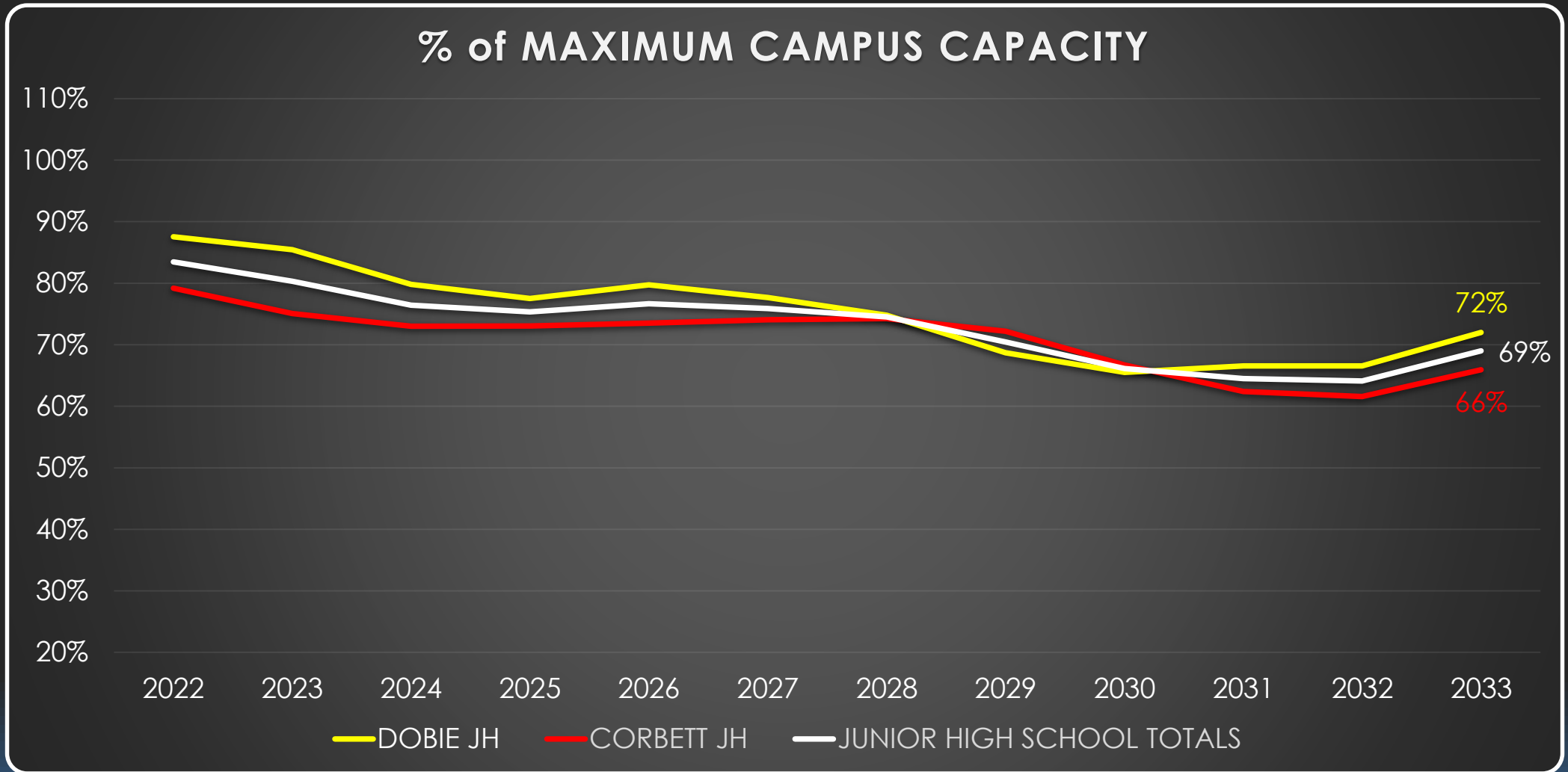
INTERMEDIATE CAPACITIES



JUNIOR HIGH CAPACITIES

Campus	Functional Capacity	Max Capacity	Previous Year	Current PEIMS	ENROLLMENT PROJECTIONS									
			2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033
DOBIE JH	1,300	1,540	1,348	1,316	1,229	1,194	1,228	1,196	1,152	1,058	1,009	1,025	1,025	1,109
% Max Capacity			88%	85%	80%	78%	80%	78%	75%	69%	66%	67%	67%	72%
CORBETT JH	1,080	1,500	1,188	1,126	1,095	1,096	1,103	1,111	1,114	1,083	1,001	936	924	989
% Max Capacity			79%	75%	73%	73%	74%	74%	74%	72%	67%	62%	62%	66%
JUNIOR HIGH SCHOOL TOTALS		3,040	2,537	2,442	2,324	2,290	2,331	2,307	2,266	2,141	2,010	1,961	1,949	2,098
% Max Capacity			83%	80%	76%	75%	77%	76%	75%	70%	66%	65%	64%	69%
Junior High School Percent Change			-2.62%	-3.71%	-4.83%	-1.46%	1.79%	-1.03%	-1.78%	-5.52%	-6.12%	-2.44%	-0.61%	7.64%
Junior High School Absolute Change			-68	-94	-118	-34	41	-24	-41	-125	-131	-49	-12	149

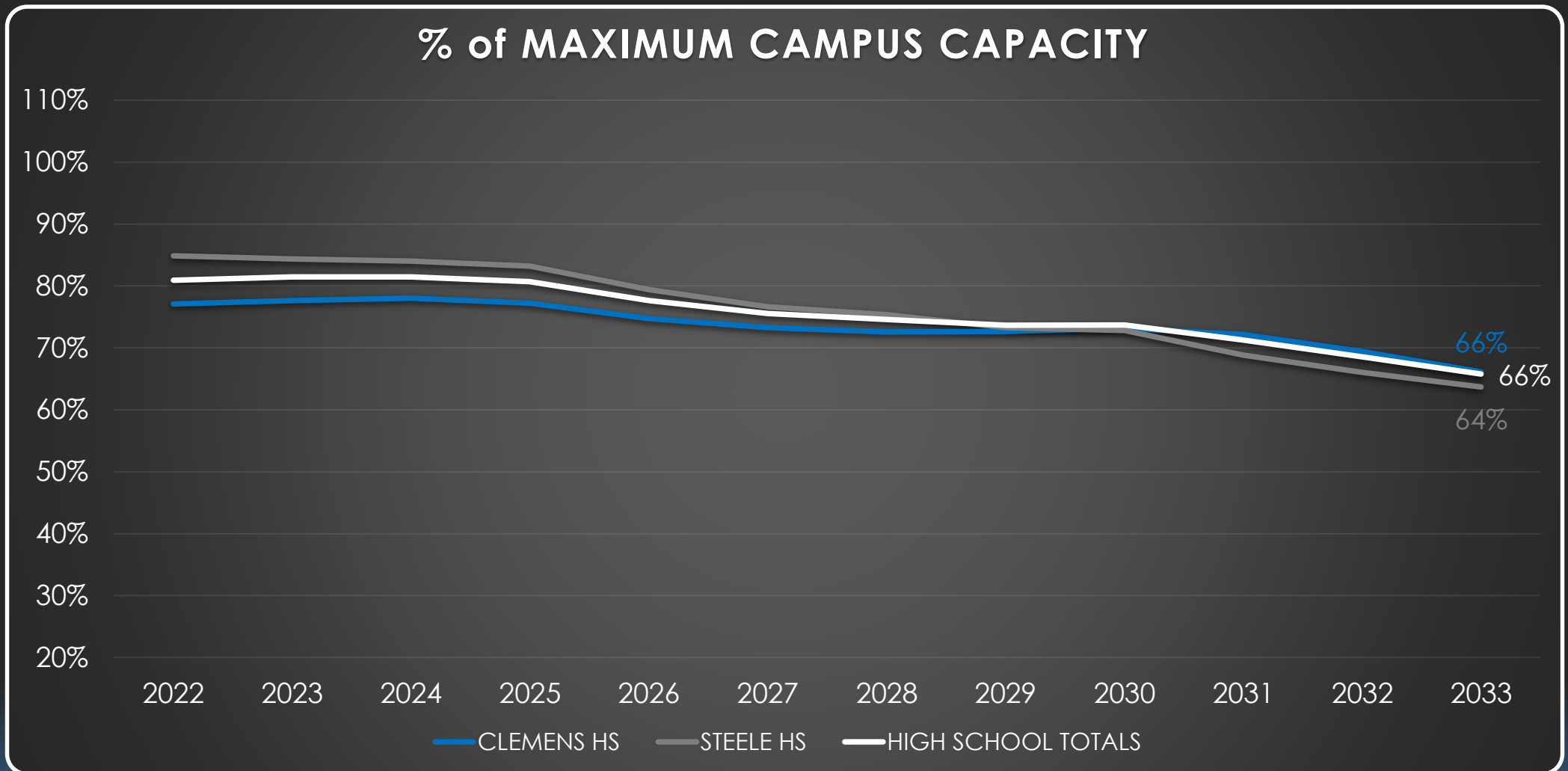
JUNIOR HIGH CAPACITIES



HIGH SCHOOL CAPACITIES

Campus	Functional Capacity	Max Capacity	Previous Year	Current PEIMS	ENROLLMENT PROJECTIONS									
			2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033
CLEMENS HS	2,700	3,300	2,544	2,563	2,576	2,550	2,469	2,419	2,397	2,400	2,418	2,383	2,292	2,183
% Max Capacity			77%	78%	78%	77%	75%	73%	73%	73%	73%	72%	69%	66%
STEELE HS	2,160	3,200	2,716	2,700	2,688	2,663	2,541	2,452	2,411	2,345	2,330	2,202	2,113	2,038
% Max Capacity			85%	84%	84%	83%	79%	77%	75%	73%	73%	69%	66%	64%
HIGH SCHOOL TOTALS		6,650	5,381	5,418	5,419	5,368	5,165	5,026	4,963	4,900	4,903	4,740	4,560	4,376
% Max Capacity			81%	81%	81%	81%	78%	76%	75%	74%	74%	71%	69%	66%
High School Percent Change			0.69%	0.71%	0.02%	-0.94%	-3.78%	-2.69%	-1.25%	-1.27%	0.06%	-3.32%	-3.80%	-4.04%
High School Absolute Change			37	38	1	-52	-204	-137	-64	-63	3	-163	-180	-183

HIGH SCHOOL CAPACITIES



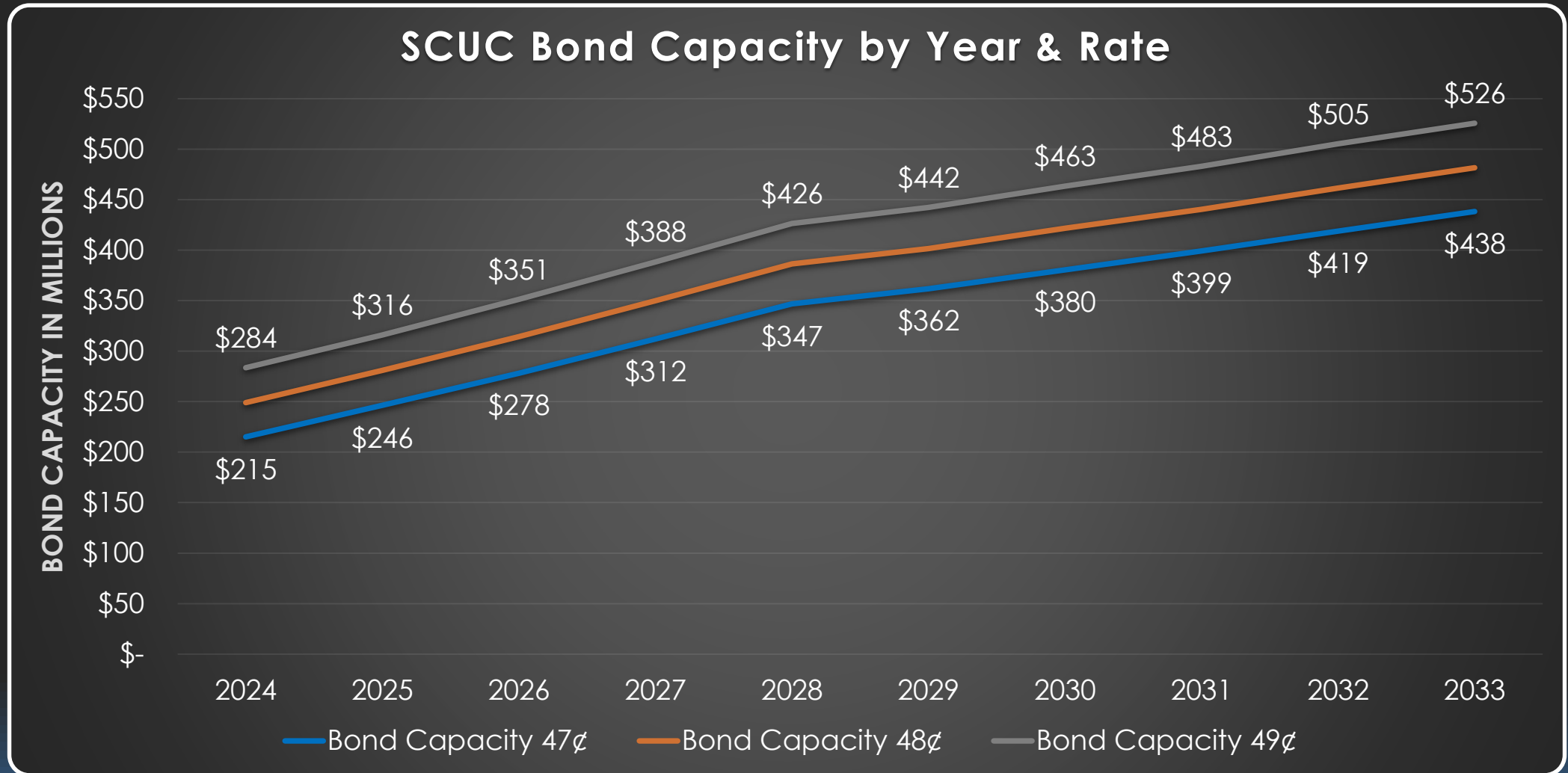
FORECASTING CONSIDERATIONS

- ENROLLMENT
 - HISTORICAL TRENDS
 - PROJECTIONS
 - TRANSFERS TO CHARTERS AND OTHER ISDs
- CAMPUS CAPACITY
- BONDING CAPACITY

PROJECTING BONDING CAPACITY - SCUC

- PROJECTING TAX REVENUE
 - ASSUMES NO REFINANCING FOR BOND SAVINGS
 - DEFEASING PRINCIPAL
 - MODEST PROPERTY VALUE GROWTH
 - 4.0% ANNUAL INCREASE FOR 2024-2028
 - 2.0% ANNUAL INCREASE FOR 2029-2033
- AS DEBT IS RESTRUCTURED AND PROPERTY VALUES INCREASE, WE BEGIN TO HAVE SOME BONDING CAPACITY
 - CAPACITY FOR ADDITIONAL DEBT IS LOWER AT FIRST, MORE IN LATER YEARS
- FORECASTING USING THREE OPTIONS FOR I&S TAX RATE
 - **\$0.47** PER \$100 OF VALUATION (CURRENT), **\$0.48** PER \$100 VALUATION, AND **\$0.49** PER \$100 VALUATION

PROJECTED AVAILABLE BOND DOLLARS



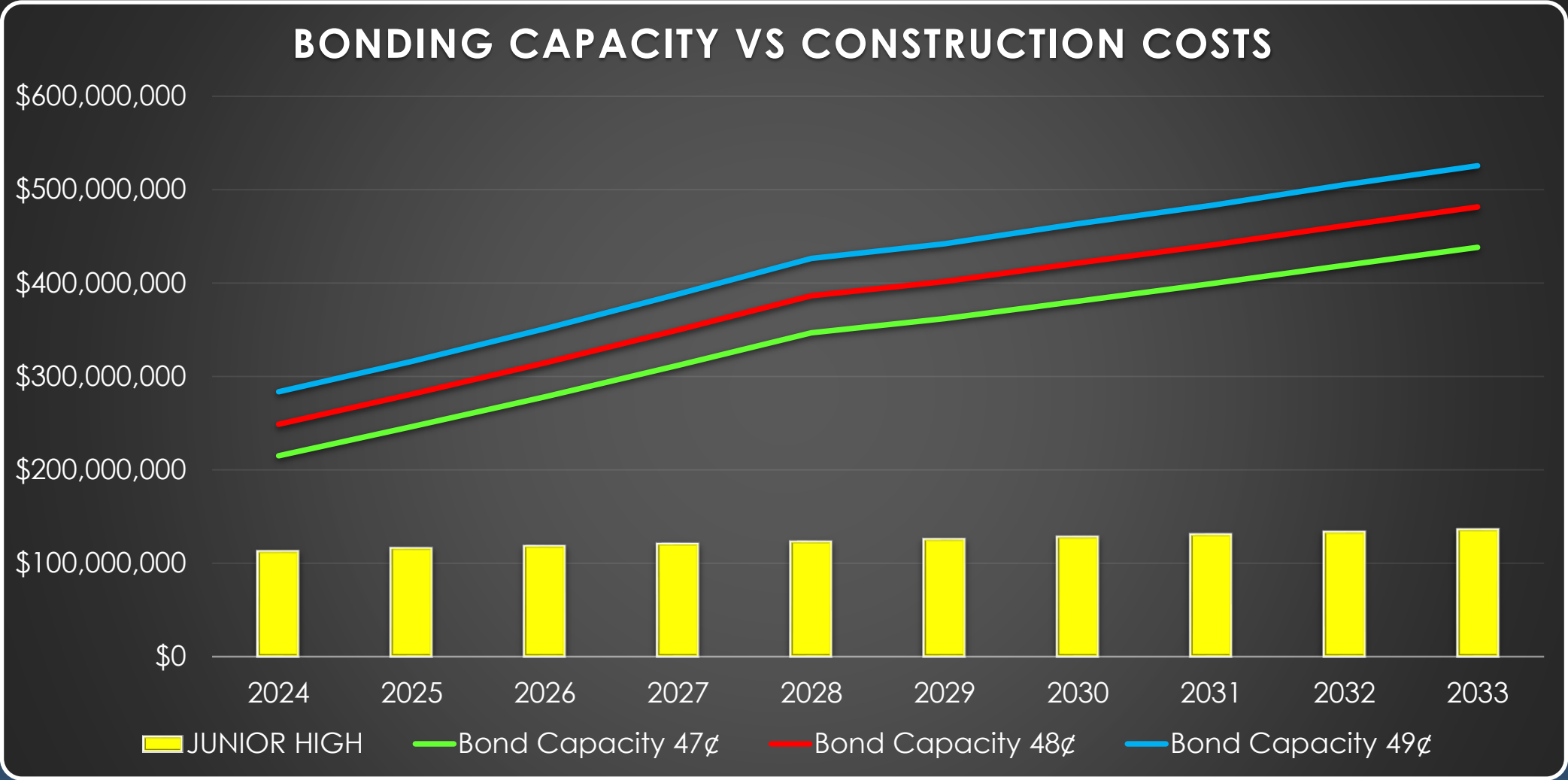
PROJECTING FACILITY COSTS - SCUC

- PROJECTING FUTURE COSTS OF NEW FACILITIES
 - FLUCTUATING MATERIALS AND LABOR COSTS MAKE LONG-TERM PROJECTIONS DIFFICULT
 - THE MARKET HAS SEEN HUGE INFLATION OVER THE LAST SEVERAL YEARS, BUT SEEMS TO HAVE STABILIZED DURING 2023
 - 2020-2023 WE EXPERIENCED 7-15% INFLATION ANNUALLY
 - PROJECTING PAST 2024
 - 3% ANNUAL INFLATION FOR 2024
 - 2% ANNUAL INFLATION FOR 2025 AND BEYOND
- CONSTRUCTION ESTIMATE RULES OF THUMB – 2024 DOLLARS
 - HIGH SCHOOL - \$235 MILLION
 - JUNIOR HIGH SCHOOL - \$113 MILLION
 - INTERMEDIATE/ELEMENTARY - \$72 MILLION

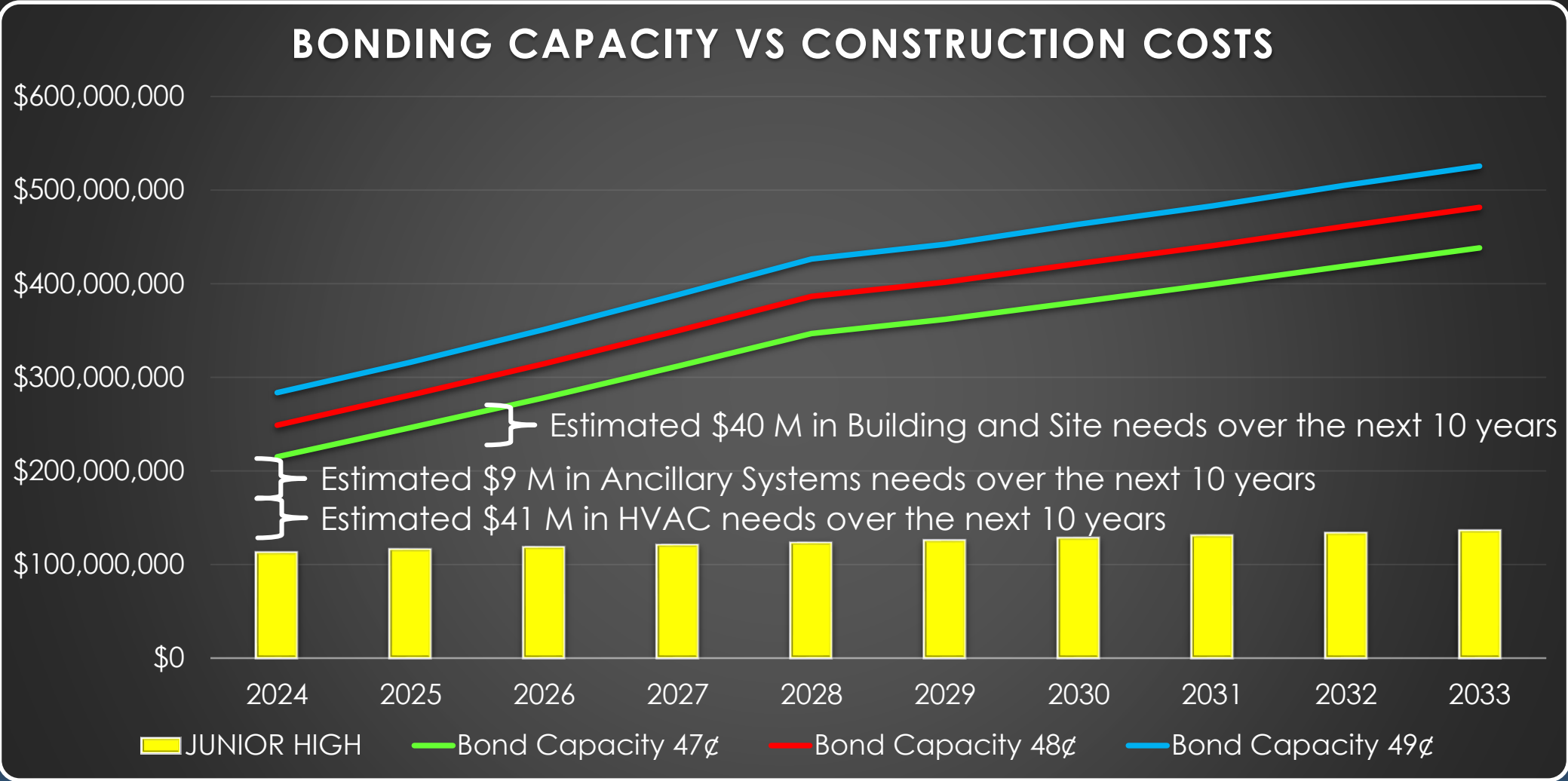
PROJECTING FACILITY COSTS - SCUC

YEAR	High School	Junior High	Elementary/ Intermediate
2024	\$ 235,000,000	\$ 113,000,000	\$ 72,000,000
2025-P	\$ 242,050,000	\$ 116,390,000	\$ 74,160,000
2026-P	\$ 246,891,000	\$ 118,717,800	\$ 75,643,200
2027-P	\$ 251,828,820	\$ 121,092,156	\$ 77,156,064
2028-P	\$ 256,865,396	\$ 123,513,999	\$ 78,699,185
2029-P	\$ 262,002,704	\$ 125,984,279	\$ 80,273,169
2030-P	\$ 267,242,758	\$ 128,503,965	\$ 81,878,632
2031-P	\$ 272,587,614	\$ 131,074,044	\$ 83,516,205
2032-P	\$ 278,039,366	\$ 133,695,525	\$ 85,186,529
2033-P	\$ 283,600,153	\$ 136,369,435	\$ 86,890,260
2034-P	\$ 289,272,156	\$ 139,096,824	\$ 88,628,065

PROJECTED BOND CAPACITIES VS. CONSTRUCTION COSTS



PROJECTED BOND CAPACITIES VS. CONSTRUCTION COSTS



TAKE AWAYS....

- STUDENT ENROLLMENT/PROJECTIONS
 - PRIOR TO COVID-19 SCUC ISD'S ENROLLMENT GROWTH HAD SLOWED TO 1% PER YEAR
 - COVID AND THE OPENING OF CHARTER SCHOOLS HAS IMPACTED DISTRICT ENROLLMENT, ESPECIALLY AT THE YOUNGER GRADES
 - THIS MULTI-YEAR IMPACT IS REDUCING OUR ENROLLMENT EVEN WITH NEW HOUSING
 - AN AVERAGE 1% ANNUAL DECLINE IN ENROLLMENT IS FORECASTED FOR THE NEXT SIX YEARS
- CAPACITY RELIEF TOOLS
 - WE HAVE MULTIPLE TOOLS TO HELP RELIEVE OUR CAMPUSES ONCE THEY SURPASS 90% OF THEIR MAX CAPACITY AND MOVE CLOSER TO 100%
- WITH OUR PROJECTED ENROLLMENT DECLINING, OUR ATTENTION MUST BE FOCUSED ON MAINTAINING THE INFRASTRUCTURE OF OUR EXISTING BUILDINGS AND IDENTIFYING FUTURE PROGRAMMATIC NEEDS FOR OUR STUDENTS
- WE ALSO NEED TO CONSIDER IF 2 JUNIOR HIGHS CONTINUE TO MEET THE NEEDS OF OUR DISTRICT

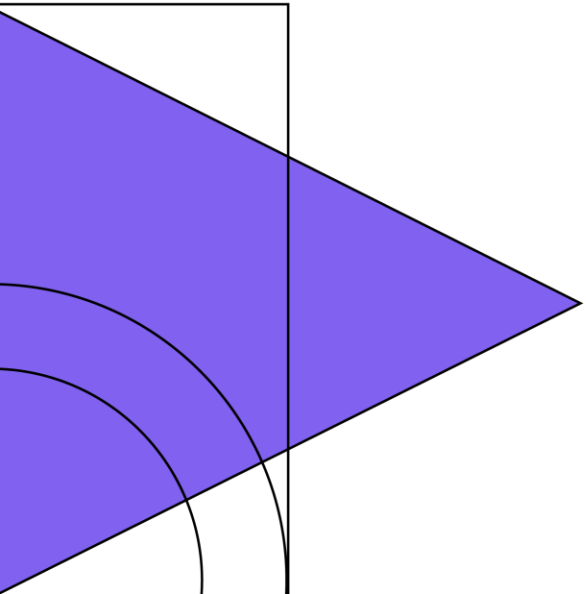
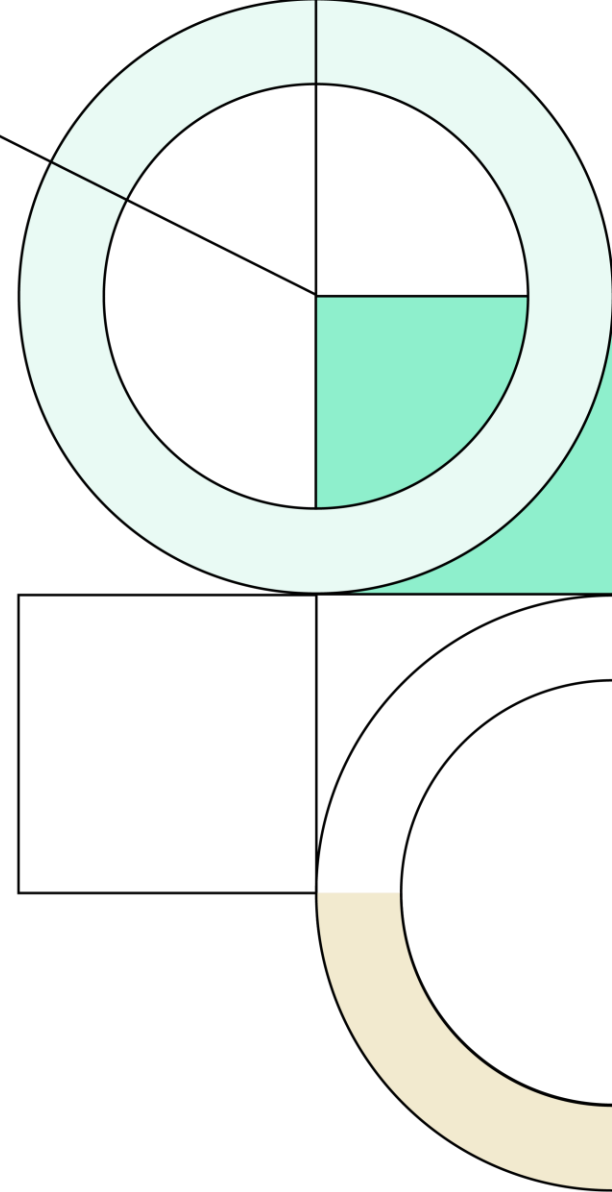
QUESTIONS/COMMENTS

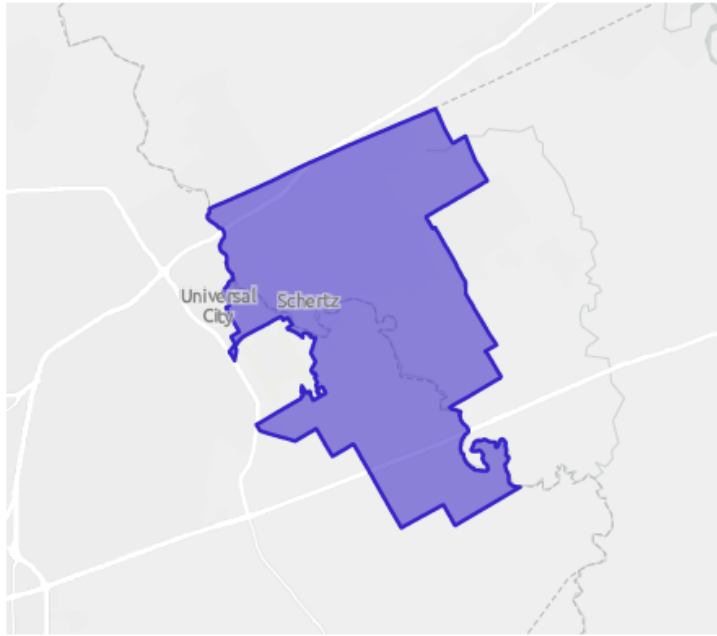




3Q23

Demographic Report





POPULATION TRENDS AND KEY INDICATORS

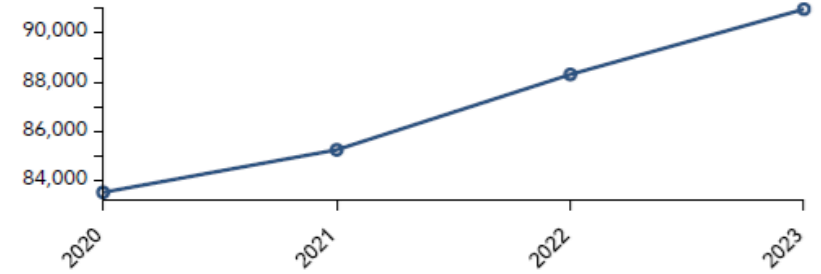
SCHERTZ CIBOLO ISD
Area: 60.01 square miles

90,971	30,960	2.93	36.4	\$97,350	\$267,439	109	128	80
Population	Households	Avg Size Household	Median Age	Median Household Income	Median Home Value	Wealth Index	Housing Affordability	Diversity Index

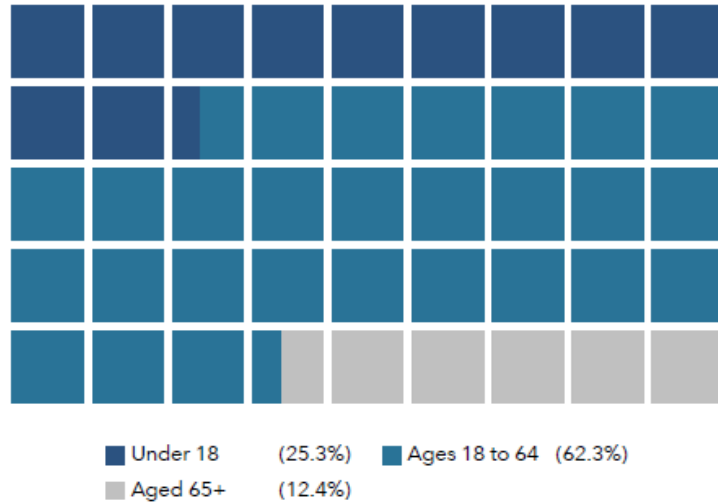
MORTGAGE INDICATORS



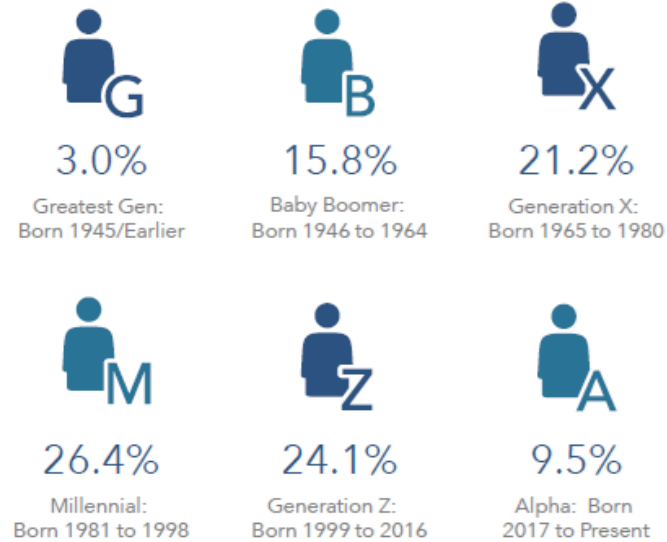
Historical Trends: Population



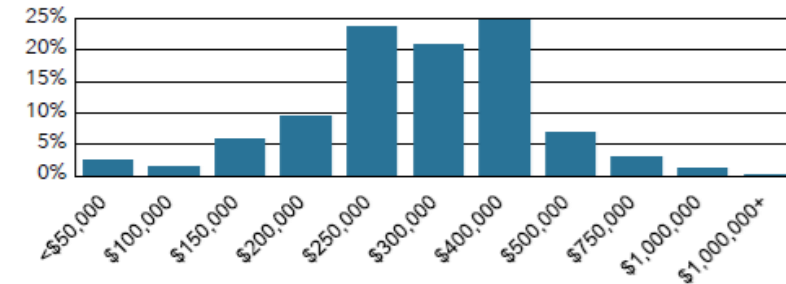
POPULATION BY AGE



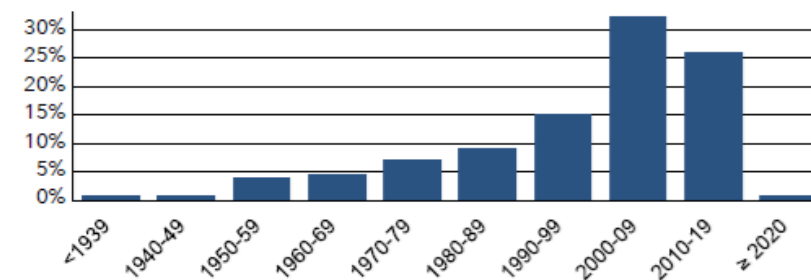
POPULATION BY GENERATION



Home Value



Housing: Year Built

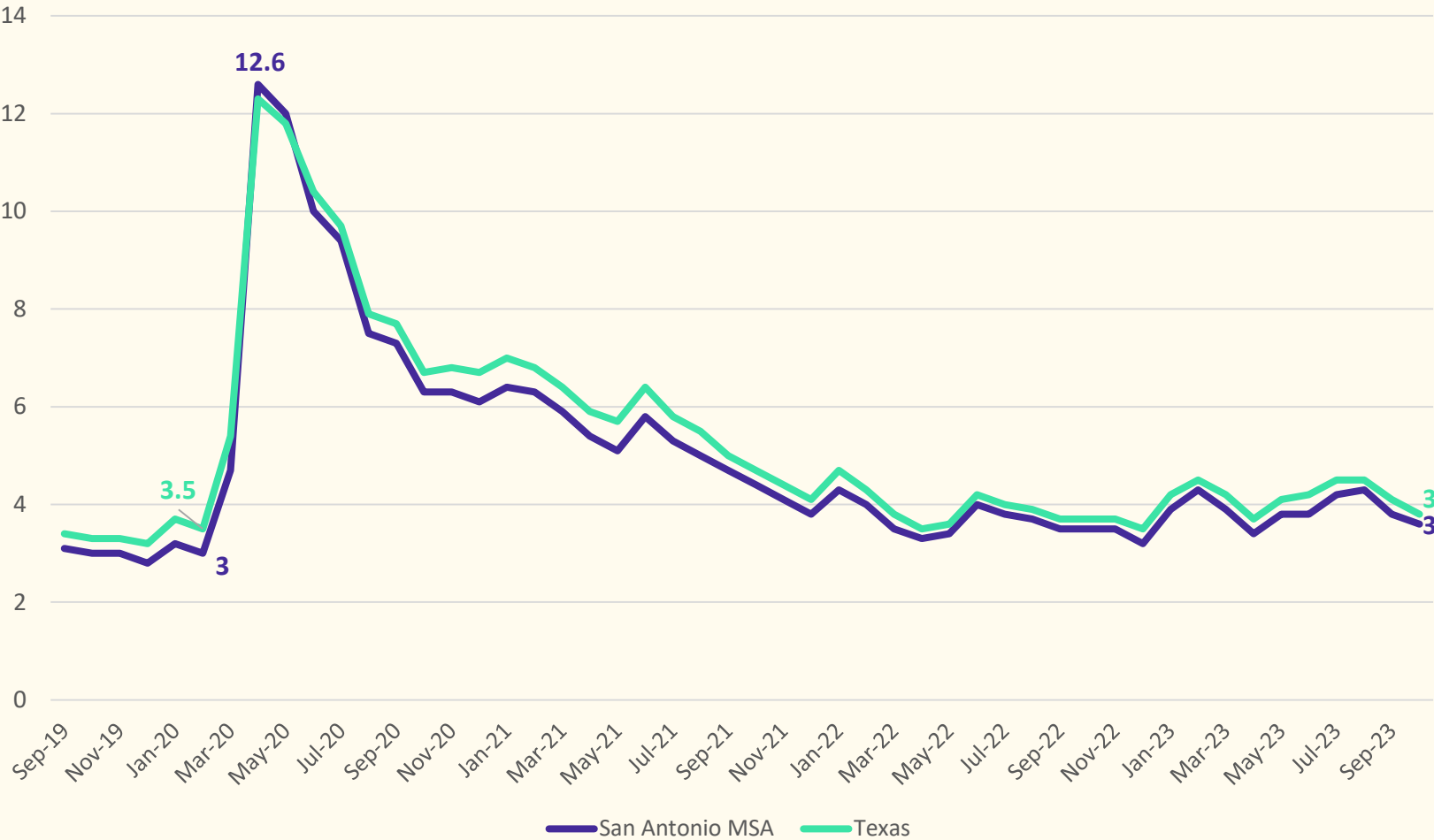


Source: This infographic contains data provided by Esri (2023, 2028), Esri-U.S. BLS (2023), ACS (2017-2021).
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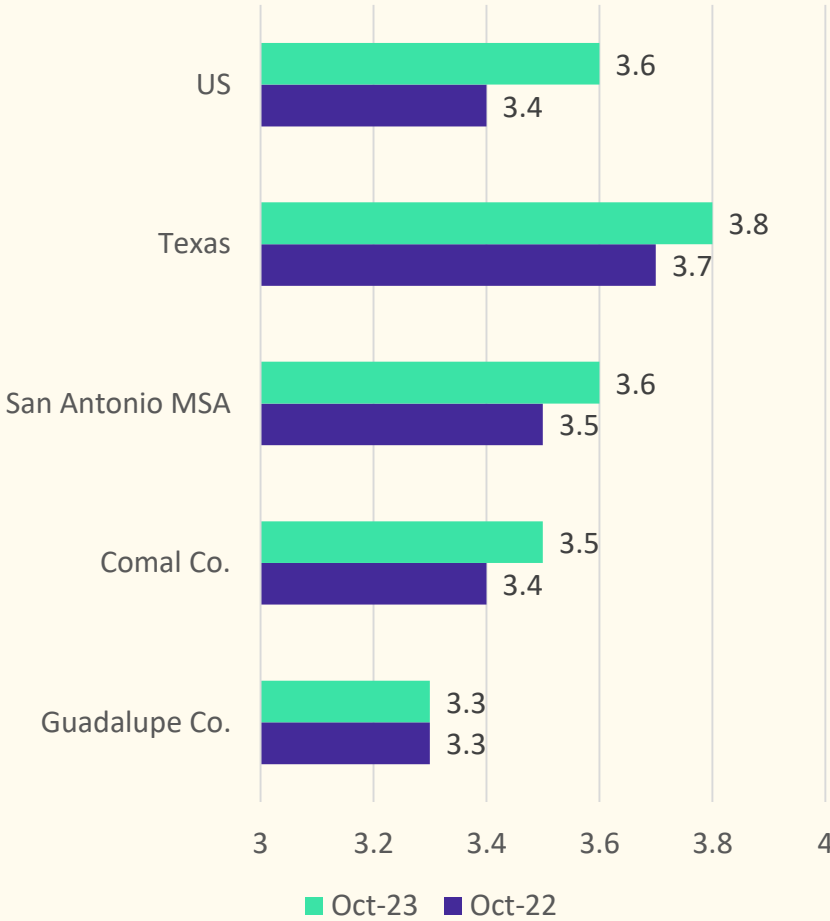


Local Economic Conditions

Unemployment Rate, Sept 2019 – Oct 2023



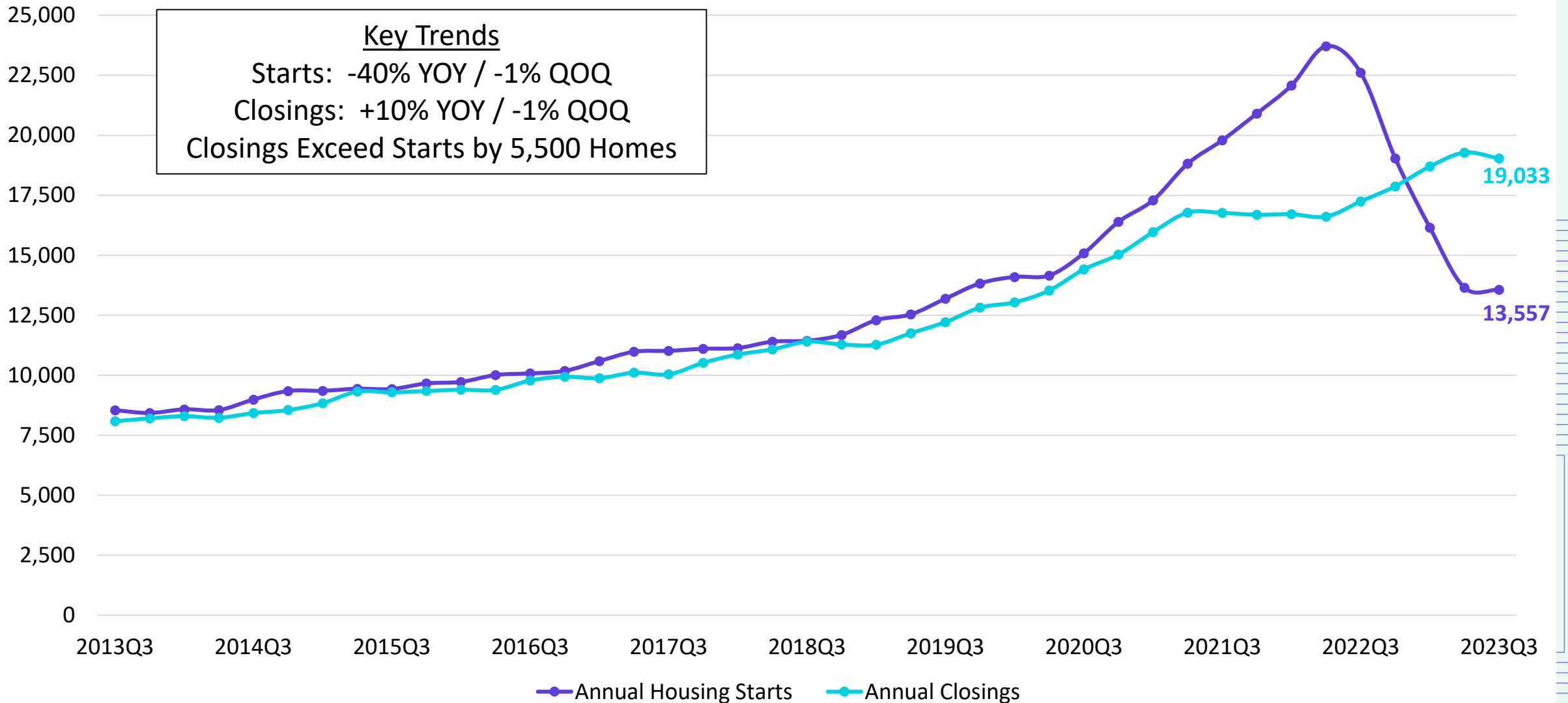
Unemployment Rate, Year Over Year





San Antonio New Home Starts & Closings

Annual Housing Starts vs. Annual Closings



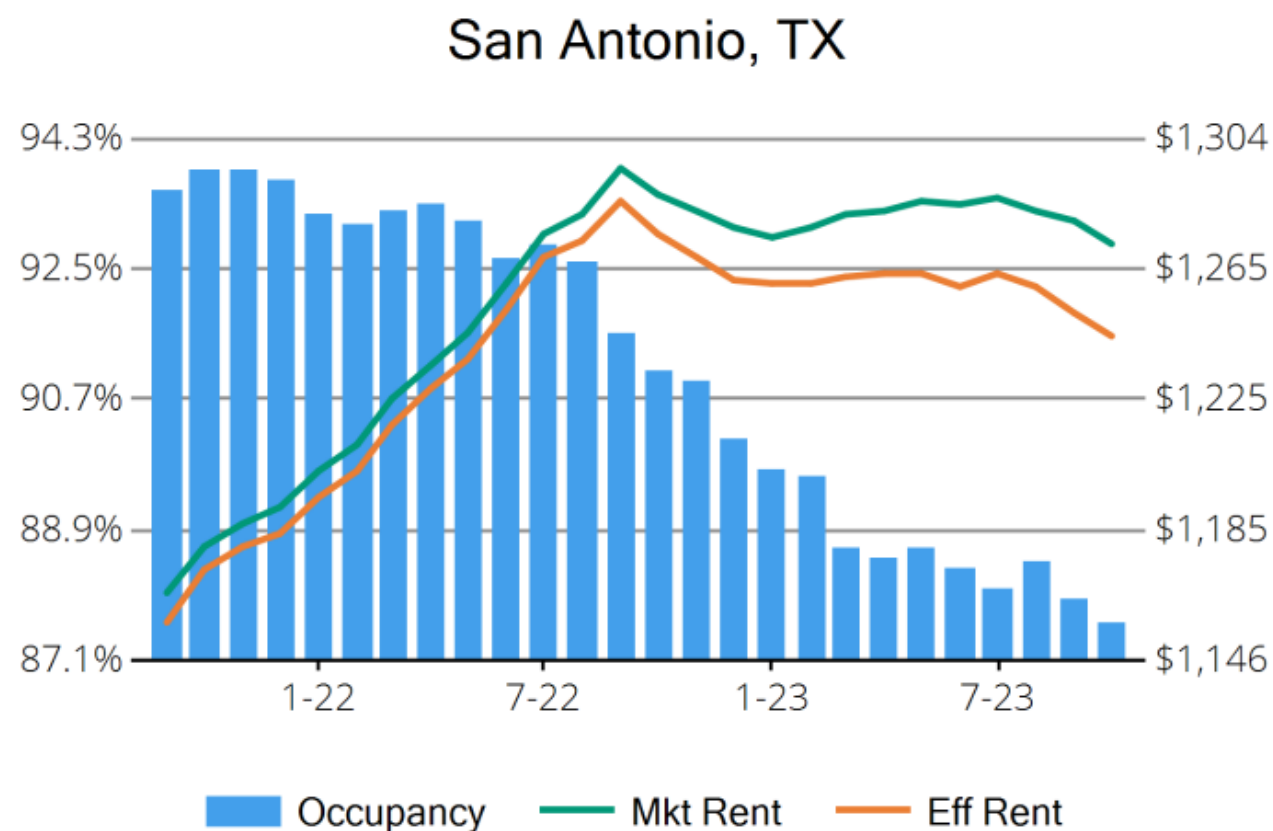


Housing Market Trends: Multi-family Market- Oct. 2023



Stabilized and Lease-up Properties

Conventional Properties	Oct 2023	Annual Change
Occupancy	87.6	-3.8%
Unit Change	6,465	
Units Absorbed (Annual)	-1,119	
Average Size (SF)	858	+0.5%
Asking Rent	\$1,272	-1.2%
Asking Rent per SF	\$1.48	-1.8%
Effective Rent	\$1,244	-2.5%
Effective Rent per SF	\$1.45	-3.0%
% Offering Concessions	34%	+94.7%
Avg. Concession Package	5.8%	+30.6%





San Antonio New Home Ranking Report

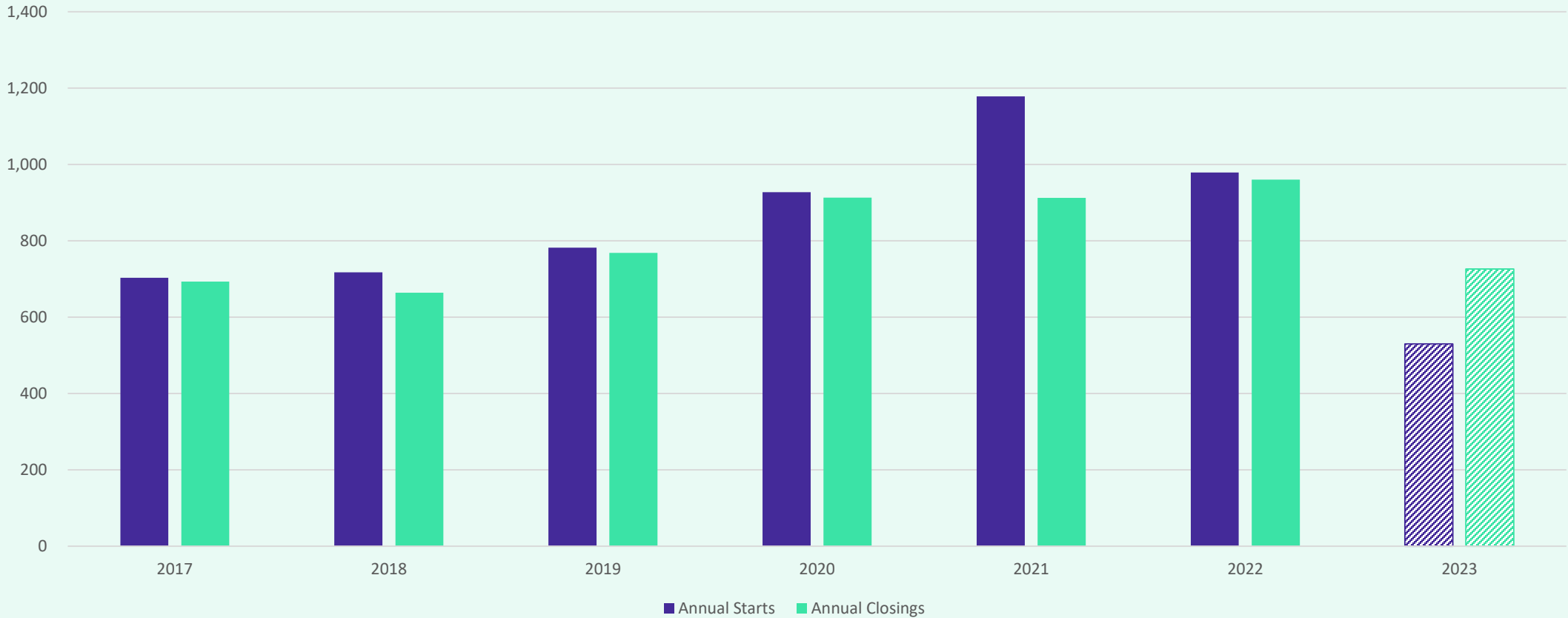
ISD Ranked by Annual Closings – 3Q23

Rank	District Name	Annual Starts	Annual Closings	Inventory	VDL	Future
1	NORTHSIDE ISD	2,762	4,009	2,287	7,237	24,003
2	COMAL ISD	1,960	2,971	1,982	4,390	22,269
3	EAST CENTRAL ISD	1,469	2,282	1,036	4,414	26,268
4	MEDINA VALLEY ISD	1,859	2,139	1,351	4,375	25,751
5	JUDSON ISD	783	1,322	583	774	1,228
6	SOUTHWEST ISD	890	1,106	673	2,704	9,156
7	SCHERTZ-CIBOLO-U CITY ISD	593	1,060	550	1,819	6,914
8	NEW BRAUNFELS ISD	510	762	406	1,203	6,767
9	NAVARRO ISD	636	692	458	1,457	4,461
10	BOERNE ISD	569	623	534	1,263	10,547
11	SEGUIN ISD	327	471	253	681	5,280
12	NORTH EAST ISD	368	463	223	701	5,711
13	SOUTHSIDE ISD	419	460	327	1,082	10,948
14	SAN ANTONIO ISD	94	240	166	347	794
15	SOUTH SAN ANTONIO ISD	129	219	137	250	539
16	LYTLE ISD	51	73	35	157	1,306
17	HARLANDALE ISD	5	41	0	14	43
18	ALAMO HEIGHTS ISD	27	33	58	20	19
19	EDGEWOOD ISD	0	28	0	0	42
20	MARION ISD	62	24	62	283	4,388

* Based on additional housing research by Zonda Education



District New Home Starts and Closings by Quarter

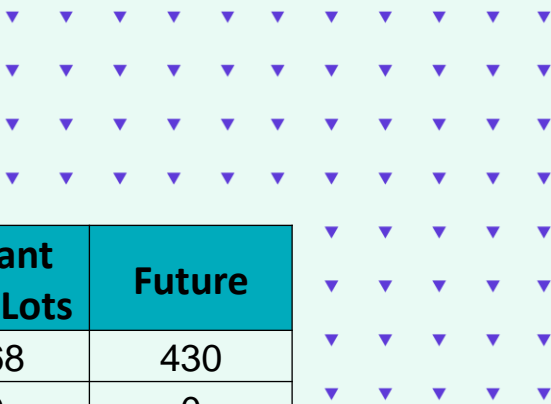


Starts	2017	2018	2019	2020	2021	2022	2023
1Q	196	175	201	237	294	349	103
2Q	168	180	176	197	300	393	186
3Q	167	177	207	261	265	174	241
4Q	172	185	198	232	319	63	
Total	703	717	782	927	1,178	979	530

Closings	2017	2018	2019	2020	2021	2022	2023
1Q	194	133	138	165	190	181	280
2Q	172	185	211	249	258	227	247
3Q	179	185	240	286	268	218	199
4Q	148	161	179	213	196	334	
Total	693	664	768	913	912	960	726

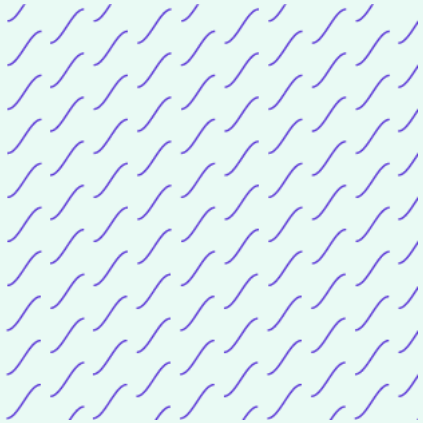


District Housing Overview by Elementary Zone



Elementary	Annual Starts	Quarter Starts	Annual Closings	Quarter Closings	Under Const.	Inventory	Vacant Dev. Lots	Future
CIBOLO VALLEY	73	22	58	23	39	77	168	430
GREEN VALLEY	0	0	0	0	0	0	0	0
PASCHAL	1	0	3	1	0	1	45	242
ROSE GARDEN	146	44	307	41	94	147	590	3,017
SCHERTZ	32	6	103	12	15	24	0	60
SIPPEL	80	42	130	33	46	90	639	1,743
WATTS	61	26	152	25	24	68	76	580
WIEDERSTEIN	200	101	307	64	96	143	301	842
Grand Total	593	241	1,060	199	314	550	1,819	6,914

- Highest activity in the category
- Second highest activity in the category
- Third highest activity in the category






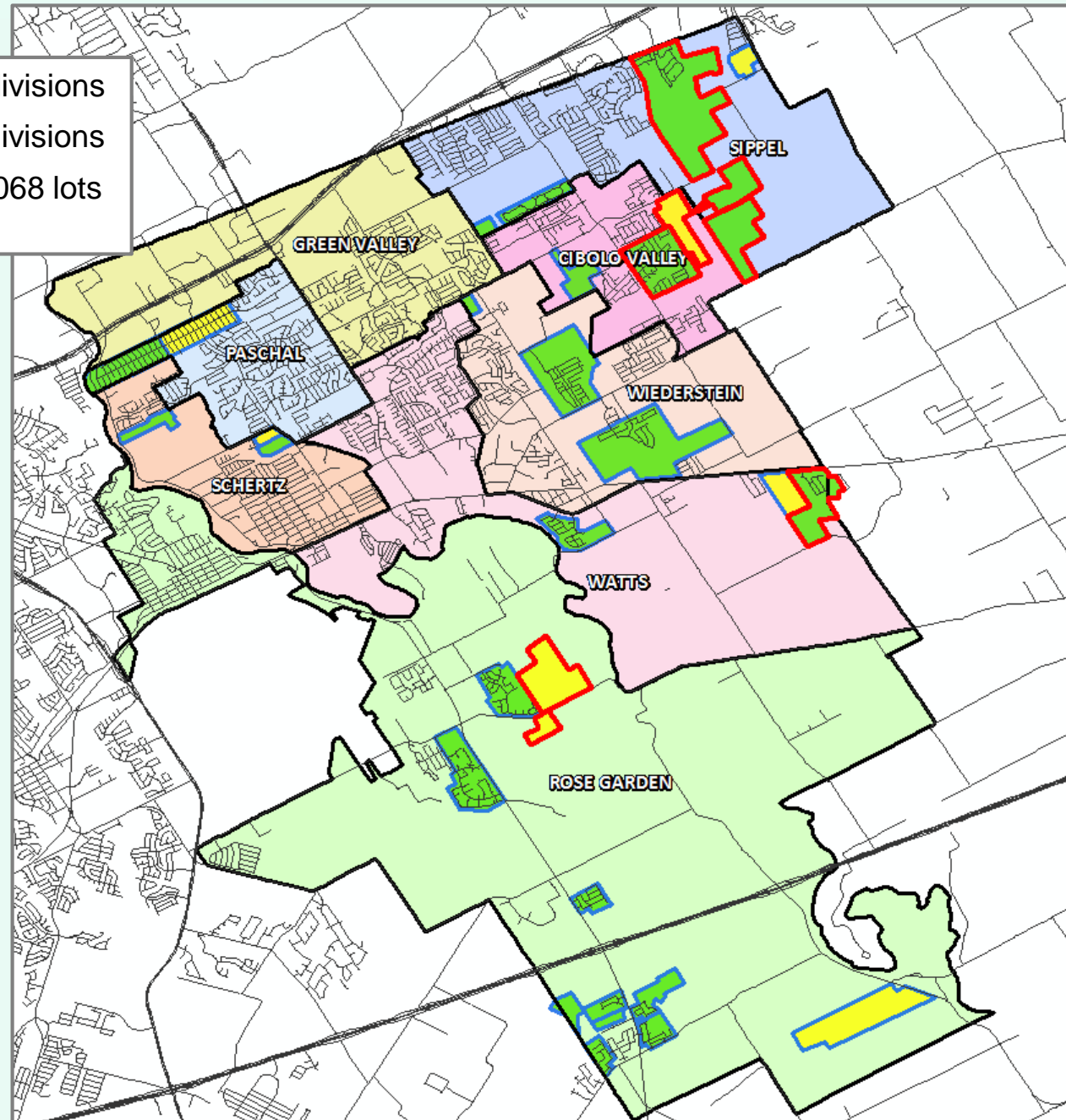


District Housing Overview

- The district has 24 actively building subdivisions
- Within SCUCISD there are 8 future subdivisions
- Of these, groundwork is underway on 1,068 lots within 8 subdivisions

Subdivisions

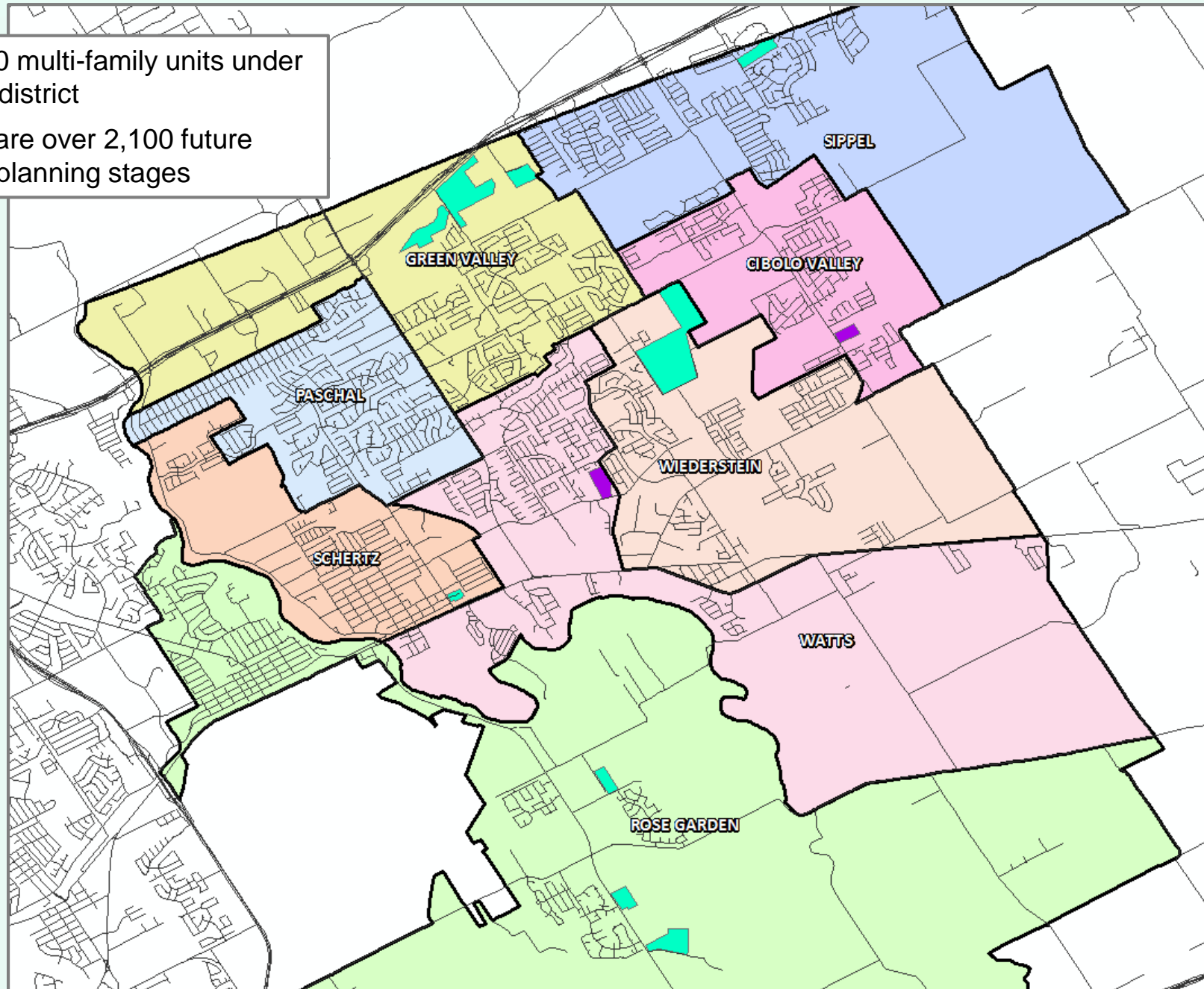
-  ACTIVE
-  FUTURE
-  Groundwork Underway







District Multi-Family Overview

- The district has over 550 multi-family units under construction across the district
- Within SCUCISD there are over 2,100 future multi-family units in the planning stages



Multi-Family Developments

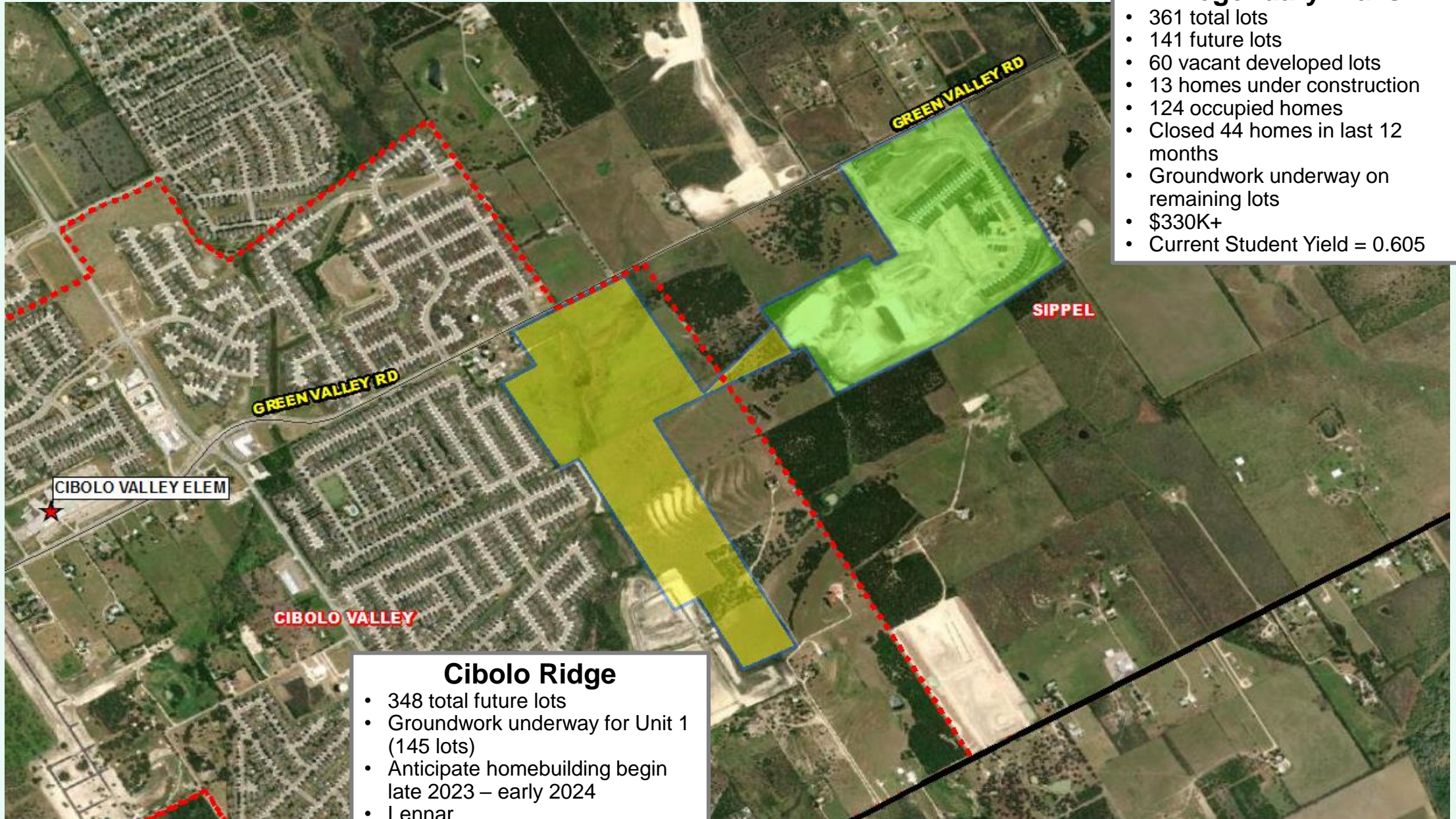
-  MF Under construction
-  Future Multi-Family



Residential Activity

Legendary Trails

- 361 total lots
- 141 future lots
- 60 vacant developed lots
- 13 homes under construction
- 124 occupied homes
- Closed 44 homes in last 12 months
- Groundwork underway on remaining lots
- \$330K+
- Current Student Yield = 0.605

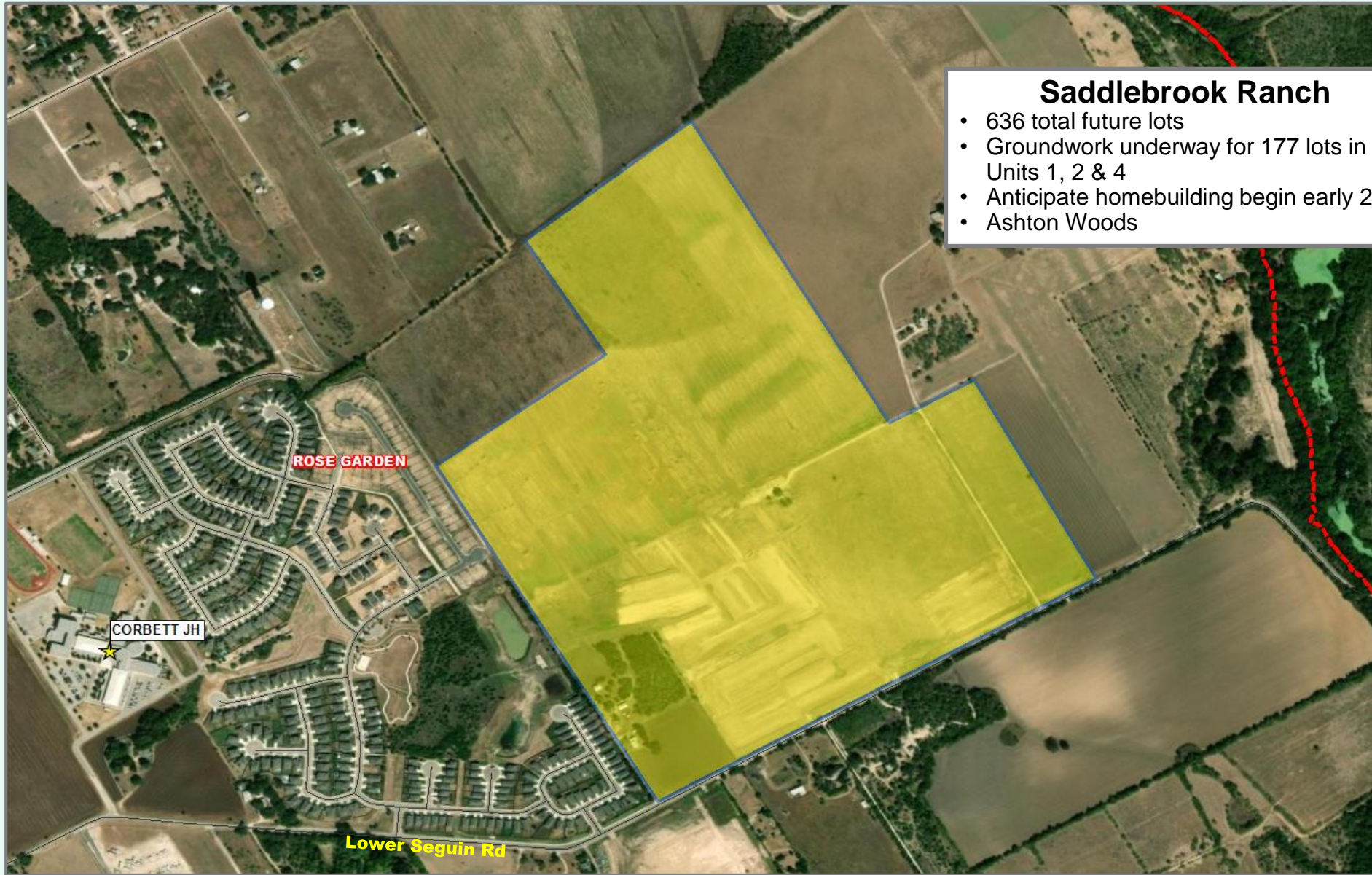


Cibolo Ridge

- 348 total future lots
- Groundwork underway for Unit 1 (145 lots)
- Anticipate homebuilding begin late 2023 – early 2024
- Lennar



Residential Activity

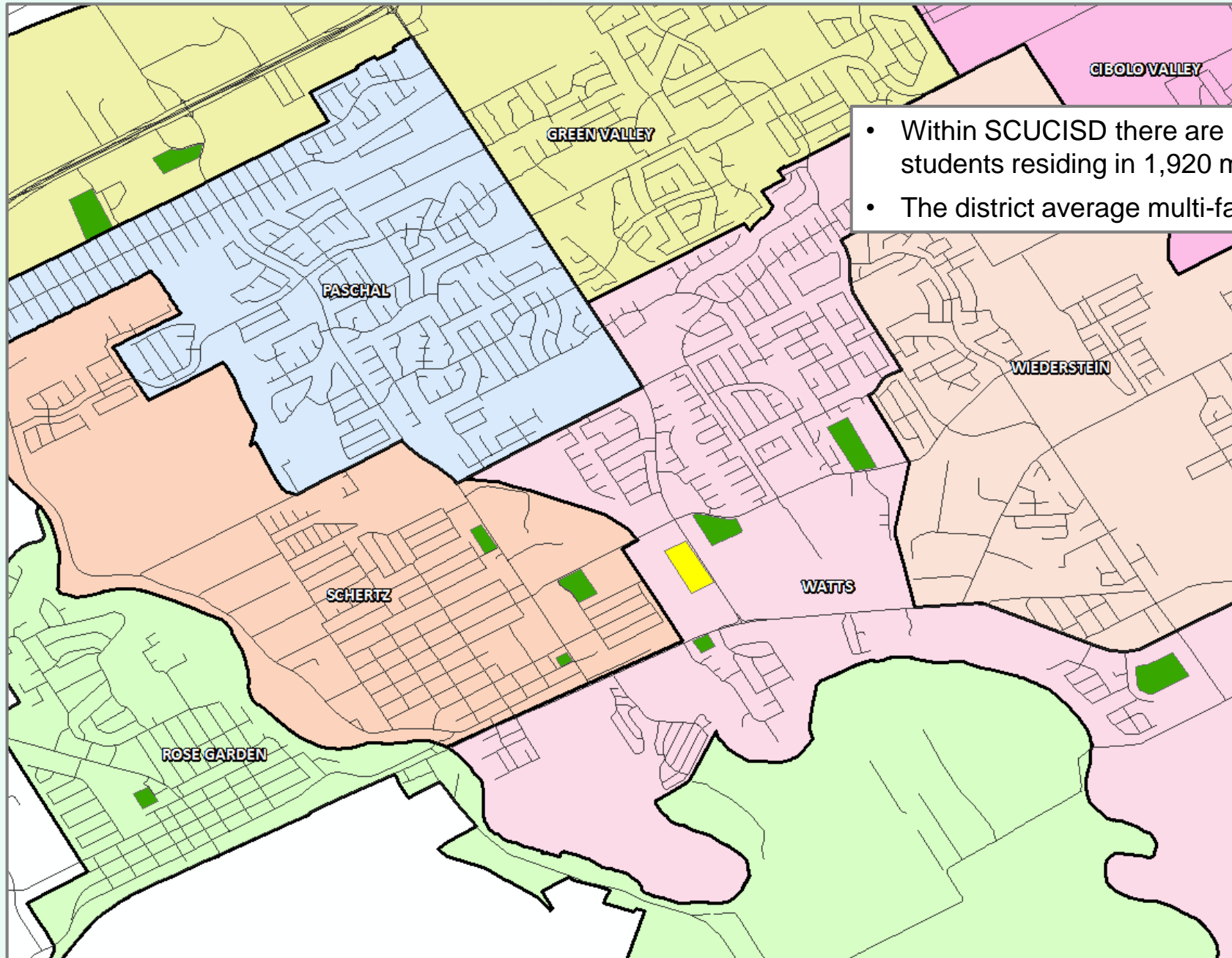


Saddlebrook Ranch

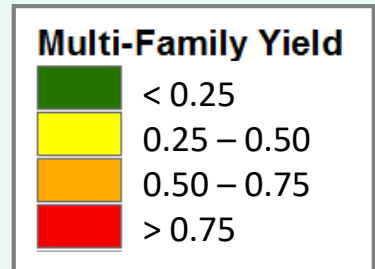
- 636 total future lots
- Groundwork underway for 177 lots in Units 1, 2 & 4
- Anticipate homebuilding begin early 2024
- Ashton Woods



Multi-Family Yield



- Within SCUCISD there are currently 287 students residing in 1,920 multi-family units
- The district average multi-family yield is 0.149





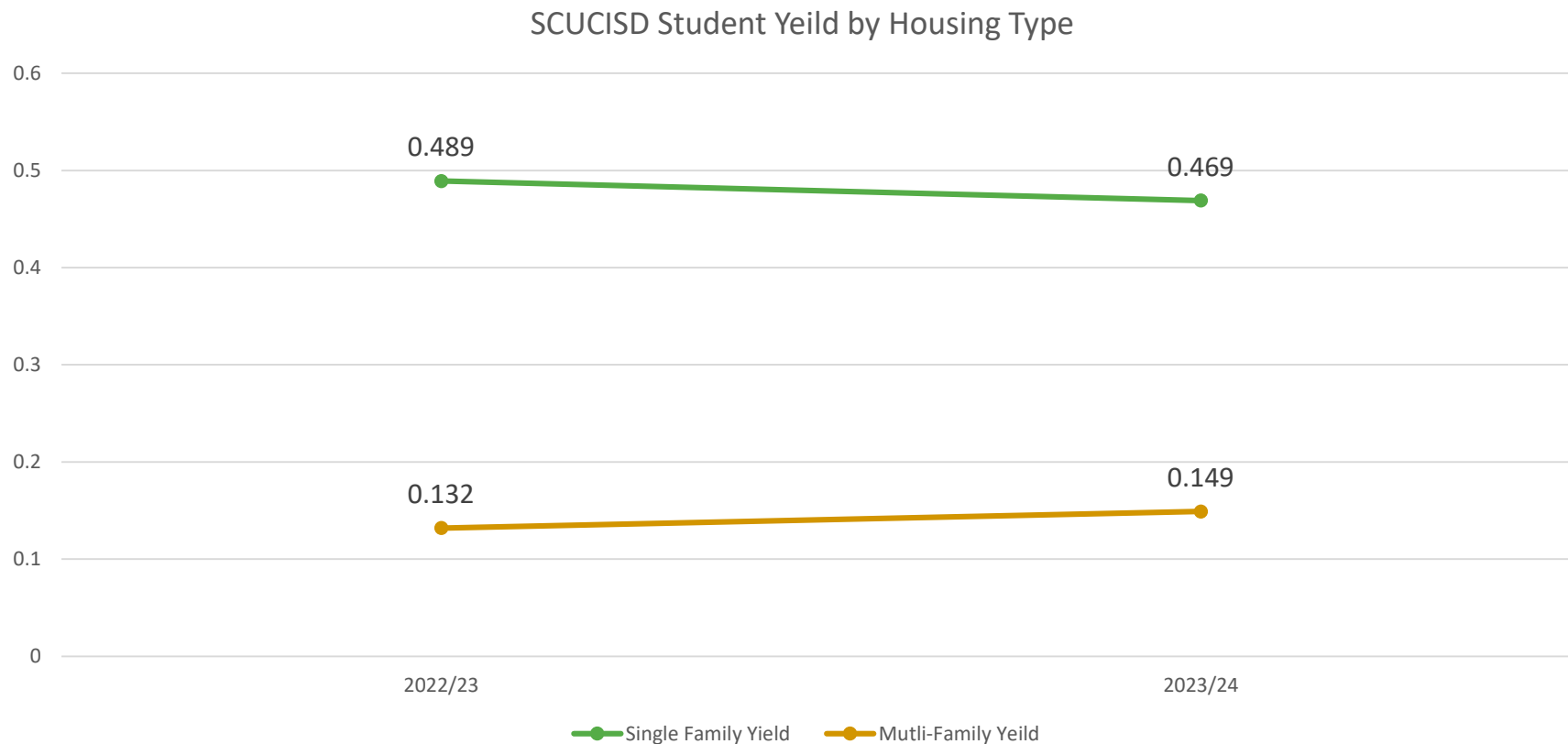
Student Yield by Housing Type



Single Family Yield
0.469



Multi-Family Yield
0.149





Student Density

SCUCISD currently has 308 residing out of district

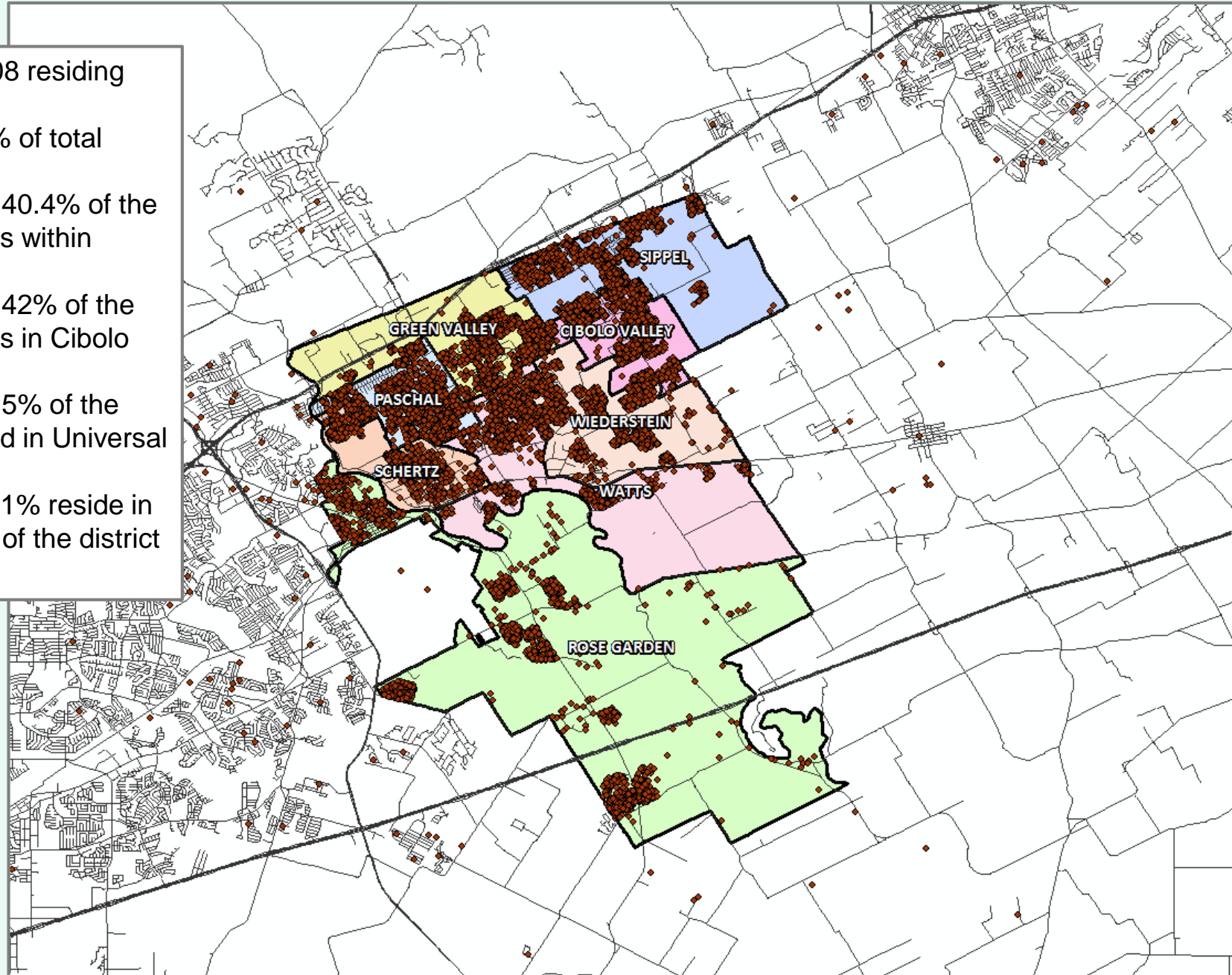
This represents roughly 2% of total SCUCISD students

6,124 students, or roughly 40.4% of the district population resides within Schertz city limits

6,372 students, or roughly 42% of the district population resides in Cibolo city limits

687 students, or roughly 4.5% of the district population resided in Universal City city limits

1,665 students roughly 11.1% reside in the unincorporated area of the district





Ten Year Forecast by Grade Level

Year (Oct.)	EE/PK	K	1st	2nd	3rd	4th	5th	6th	7th	8th	9th	10th	11th	12th	Total	Total Growth	% Growth
2019/20	413	1,048	1,036	1,093	1,125	1,184	1,211	1,234	1,183	1,180	1,419	1,340	1,282	1,224	15,972	154	1.0%
2020/21	325	951	1,019	1,040	1,077	1,135	1,143	1,232	1,248	1,219	1,293	1,394	1,305	1,292	15,673	-299	-1.9%
2021/22	455	935	997	1,019	1,074	1,116	1,124	1,221	1,287	1,318	1,428	1,347	1,305	1,264	15,890	217	1.4%
2022/23	436	819	962	998	1,077	1,114	1,067	1,133	1,230	1,306	1,478	1,371	1,247	1,283	15,521	-369	-2.3%
2023/24	430	788	838	967	997	1,090	1,079	1,097	1,178	1,264	1,435	1,459	1,238	1,286	15,146	-375	-2.4%
2024/25	384	747	849	866	1,006	1,043	1,108	1,118	1,126	1,198	1,413	1,427	1,354	1,225	14,864	-282	-1.9%
2025/26	406	789	795	870	896	1,052	1,061	1,134	1,145	1,145	1,328	1,387	1,321	1,332	14,661	-203	-1.4%
2026/27	443	861	840	816	897	933	1,072	1,093	1,167	1,164	1,269	1,316	1,274	1,306	14,451	-210	-1.4%
2027/28	438	850	918	851	841	932	950	1,104	1,120	1,187	1,294	1,256	1,218	1,258	14,217	-234	-1.6%
2028/29	446	866	907	945	879	879	947	975	1,128	1,138	1,318	1,278	1,161	1,206	14,073	-144	-1.0%
2029/30	456	886	919	941	978	919	893	974	994	1,147	1,265	1,304	1,180	1,151	14,007	-66	-0.5%
2030/31	465	904	940	951	970	1,020	935	919	1,000	1,010	1,277	1,251	1,205	1,170	14,017	10	0.1%
2031/32	477	931	960	973	982	1,012	1,038	962	944	1,017	1,128	1,263	1,156	1,193	14,036	19	0.1%
2032/33	489	954	984	995	1,006	1,025	1,029	1,068	989	960	1,130	1,117	1,167	1,146	14,059	22	0.2%
2033/34	500	976	1,011	1,021	1,028	1,051	1,042	1,059	1,099	999	1,066	1,120	1,034	1,156	14,162	103	0.7%

Yellow box = largest grade per year
Green box = second largest grade per year



Ten Year Forecast by Elementary Campus

			Fall	ENROLLMENT PROJECTIONS									
Campus	Functional Capacity	Max Capacity	2023/24	2024/25	2025/26	2026/27	2027/28	2028/29	2029/30	2030/31	2031/32	2032/33	2033/34
CIBOLO VALLEY EL	891	1,200	657	611	587	589	594	594	608	617	620	627	637
GREEN VALLEY EL	673	924	533	497	482	469	497	506	524	535	537	535	529
NORMA PASCHAL EL	673	924	625	591	582	564	544	546	559	569	574	580	585
ROSE GARDEN EL	891	1,200	896	882	878	891	923	957	999	1,046	1,075	1,104	1,131
SCHERTZ EL	675	1,102	668	628	605	601	576	581	588	591	586	582	582
SIPPEL EL	675	1,058	672	679	690	721	756	782	827	867	904	961	1,030
WATTS EL	673	924	513	469	440	428	423	428	446	457	463	476	490
WIEDERSTEIN EL	675	1,058	546	538	544	527	517	529	549	568	574	587	602
ELEMENTARY TOTALS			5,110	4,895	4,808	4,790	4,830	4,922	5,099	5,250	5,335	5,453	5,587
Elementary Percent Change			-5.48%	-4.21%	-1.78%	-0.37%	0.83%	1.91%	3.59%	2.96%	1.63%	2.20%	2.46%
Elementary Absolute Change			-296	-215	-87	-18	40	92	177	151	85	117	134
JORDAN INT	810	1,000	769	796	763	777	742	676	646	641	695	734	739
SCHLATHER INT	810	1,200	682	700	689	640	573	563	594	597	651	682	677
WILDER INT	810	1,250	725	730	743	748	739	683	627	616	654	681	685
INTERMEDIATE TOTALS			2,176	2,226	2,195	2,165	2,054	1,922	1,867	1,854	2,000	2,097	2,101
Intermediate Percent Change			-1.09%	2.30%	-1.39%	-1.37%	-5.13%	-6.43%	-2.86%	-0.70%	7.87%	4.85%	0.19%
Intermediate Absolute Change			-24	50	-31	-30	-111	-132	-55	-13	146	97	4

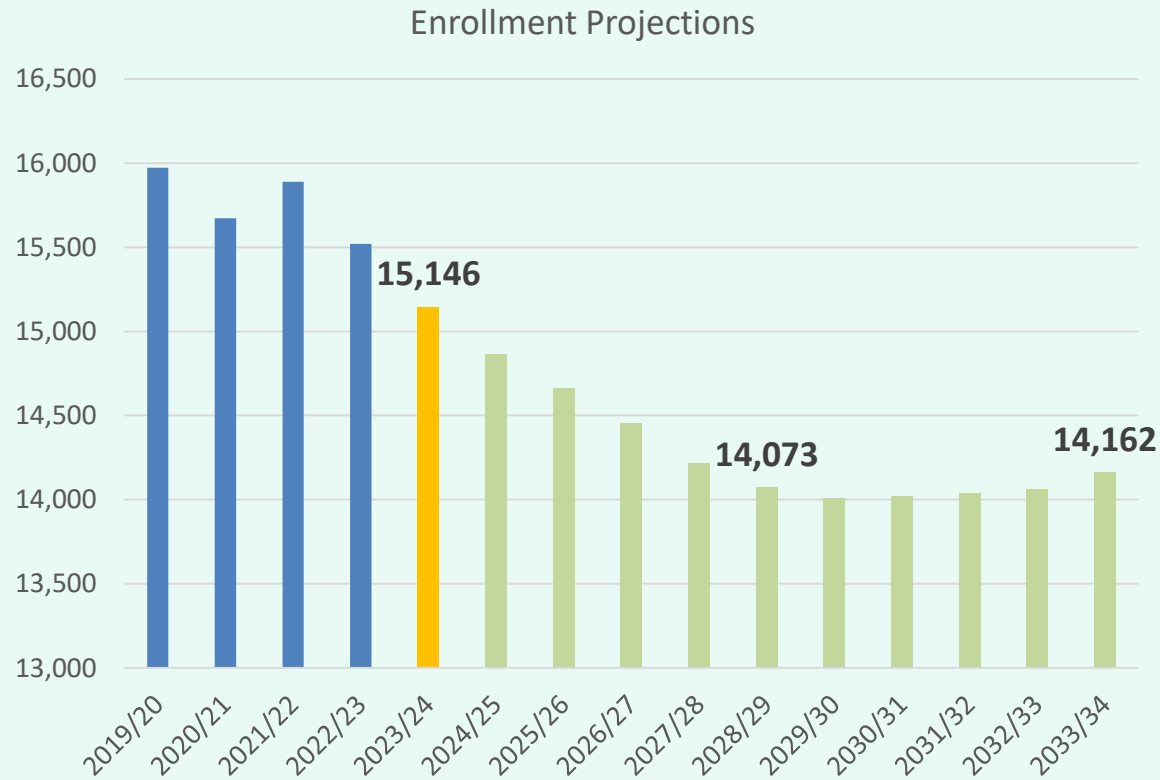


Ten Year Forecast by Secondary Campus

			Fall	ENROLLMENT PROJECTIONS									
Campus	Functional Capacity	Max Capacity	2023/24	2024/25	2025/26	2026/27	2027/28	2028/29	2029/30	2030/31	2031/32	2032/33	2033/34
DOBIE JH	1,300	1,540	1,316	1,229	1,194	1,228	1,196	1,152	1,058	1,009	1,025	1,025	1,109
CORBETT JH	1,080	1,500	1,126	1,095	1,096	1,103	1,111	1,114	1,083	1,001	936	924	989
JUNIOR HIGH SCHOOL TOTALS			2,442	2,324	2,290	2,331	2,307	2,266	2,141	2,010	1,961	1,949	2,098
Junior High School Percent Change			-3.71%	-4.83%	-1.46%	1.79%	-1.03%	-1.78%	-5.52%	-6.12%	-2.44%	-0.61%	7.64%
Junior High School Absolute Change			-94	-118	-34	41	-24	-41	-125	-131	-49	-12	149
CLEMENS HS	2,700	3,300	2,563	2,576	2,550	2,469	2,419	2,397	2,400	2,418	2,383	2,292	2,183
STEELE HS	2,160	3,200	2,700	2,688	2,663	2,541	2,452	2,411	2,345	2,330	2,202	2,113	2,038
ALSELC			155	155	155	155	155	155	155	155	155	155	155
HIGH SCHOOL TOTALS			5,418	5,419	5,368	5,165	5,026	4,963	4,900	4,903	4,740	4,560	4,376
High School Percent Change			0.73%	0.02%	-0.94%	-3.78%	-2.69%	-1.25%	-1.27%	0.06%	-3.32%	-3.80%	-4.04%
High School Absolute Change			39	1	-51	-203	-139	-63	-63	3	-163	-180	-184
DISTRICT TOTALS			15,146	14,864	14,661	14,451	14,217	14,073	14,007	14,017	14,036	14,059	14,162
District Percent Change			-2.42%	-1.86%	-1.37%	-1.43%	-1.62%	-1.01%	-0.47%	0.07%	0.14%	0.16%	0.73%
District Absolute Change			-375	-282	-203	-210	-234	-144	-66	10	19	22	103



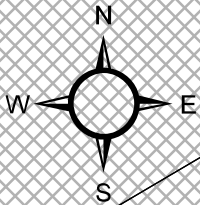
Key Takeaways



- Enrollment in Schertz Cibolo ISD decreased by -2.4% since 2022/23
- Enrollment declines related to Charter expansions and lower Kindergarten enrollments
- 3rd quarter new home starts bounce back to 241 starts highest in the past year
- The district has 24 actively building subdivisions with more than 1,800 lots available to build on
- SCUCISD has 8 future subdivisions with over 6,900 lots in the planning stages
- Groundwork is underway on more than 1,000 lots across the district
- Larger graduating classes verses smaller Kindergarten classes leading to decrease in overall enrollment
- District enrollment near 14,000 students in 2028/29 school year

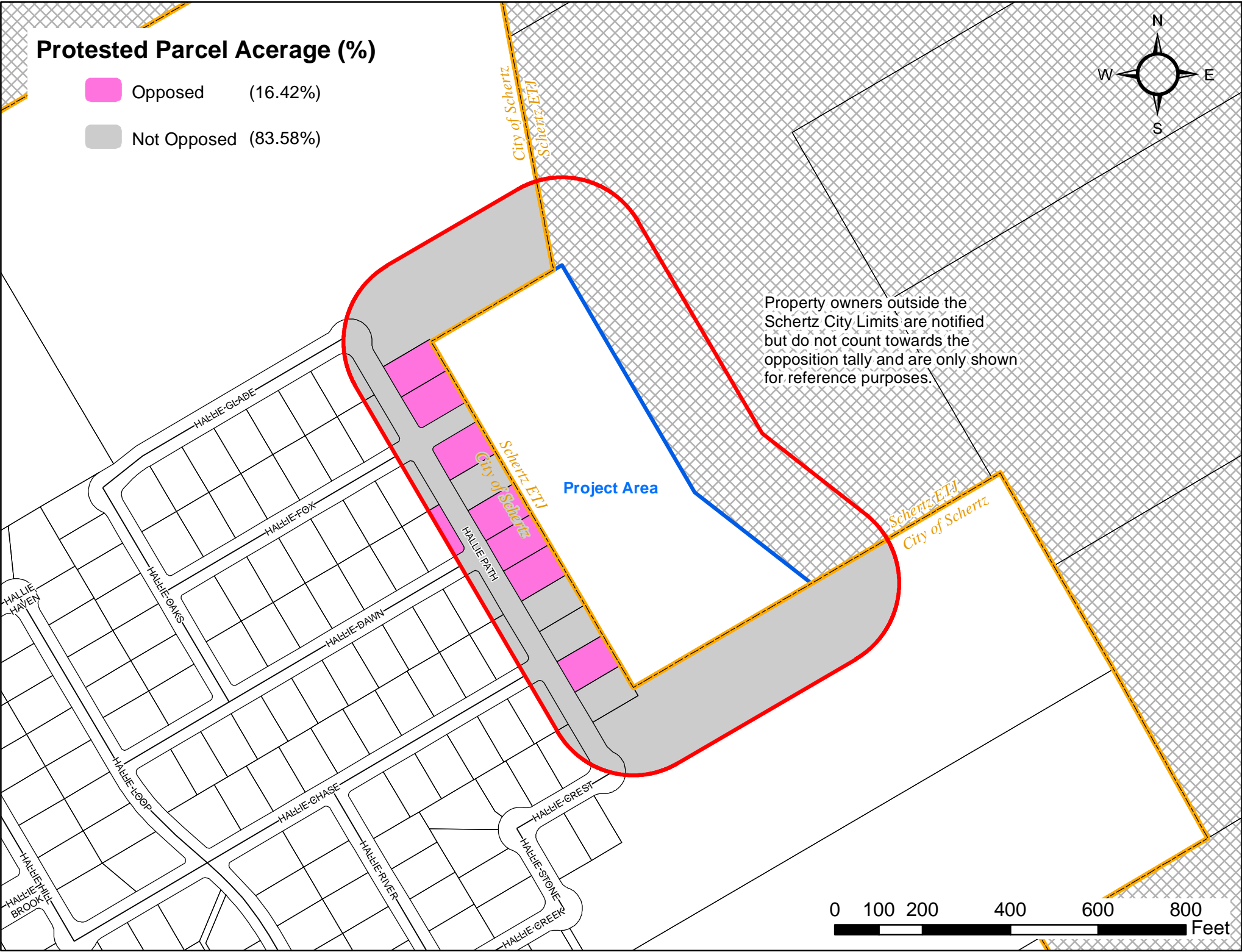
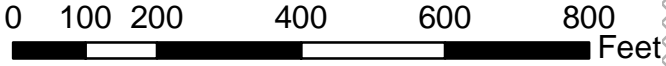
Protested Parcel Acentage (%)

- Opposed (16.42%)
- Not Opposed (83.58%)



Property owners outside the Schertz City Limits are notified but do not count towards the opposition tally and are only shown for reference purposes.

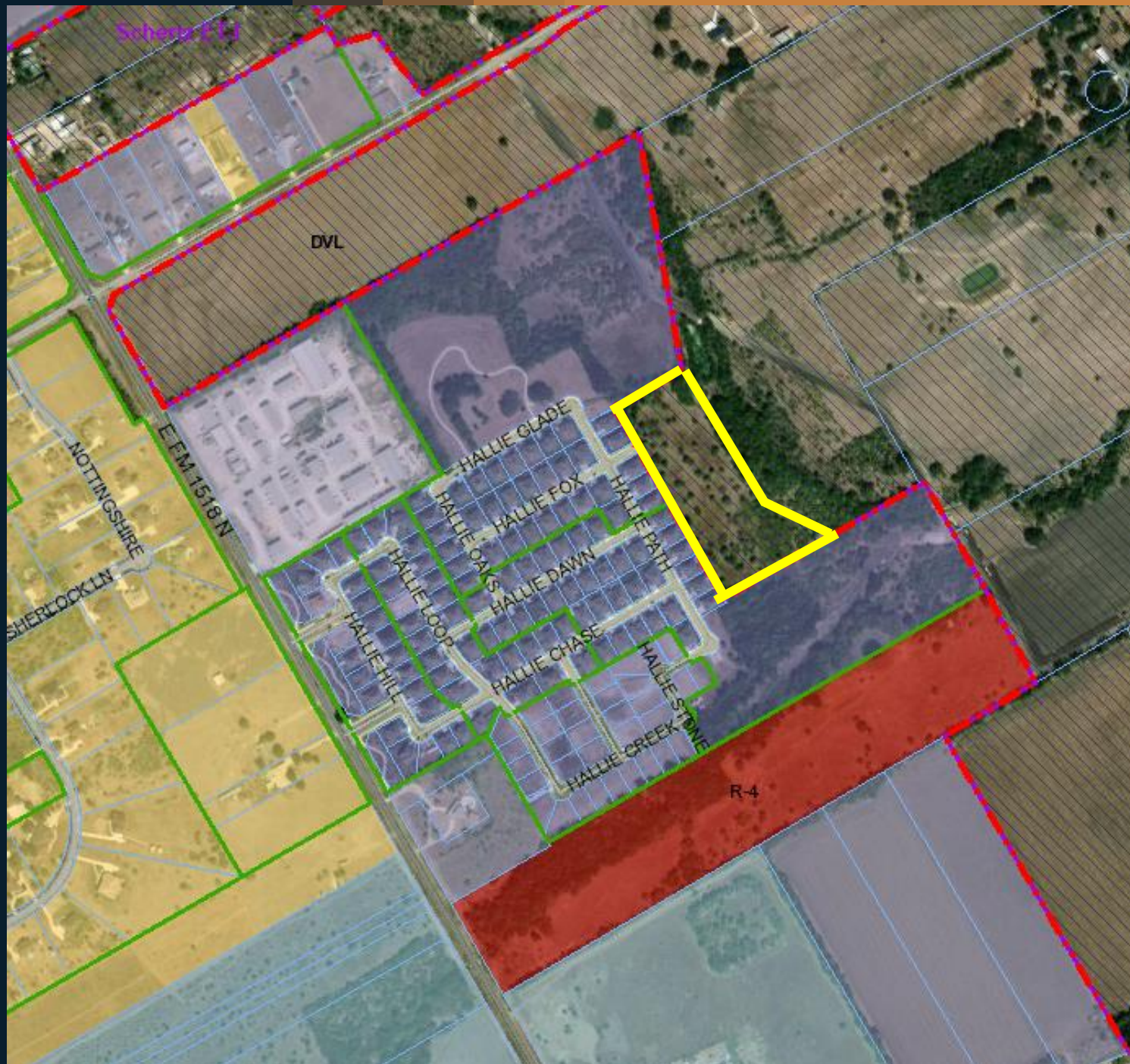
Project Area



Ordinance 24-S-09

Zone Change on 7.7 acres of land to Single-Family
Residential District (R-1): Hallies Court at Hallies Cove

Daisy Marquez | PLANNER

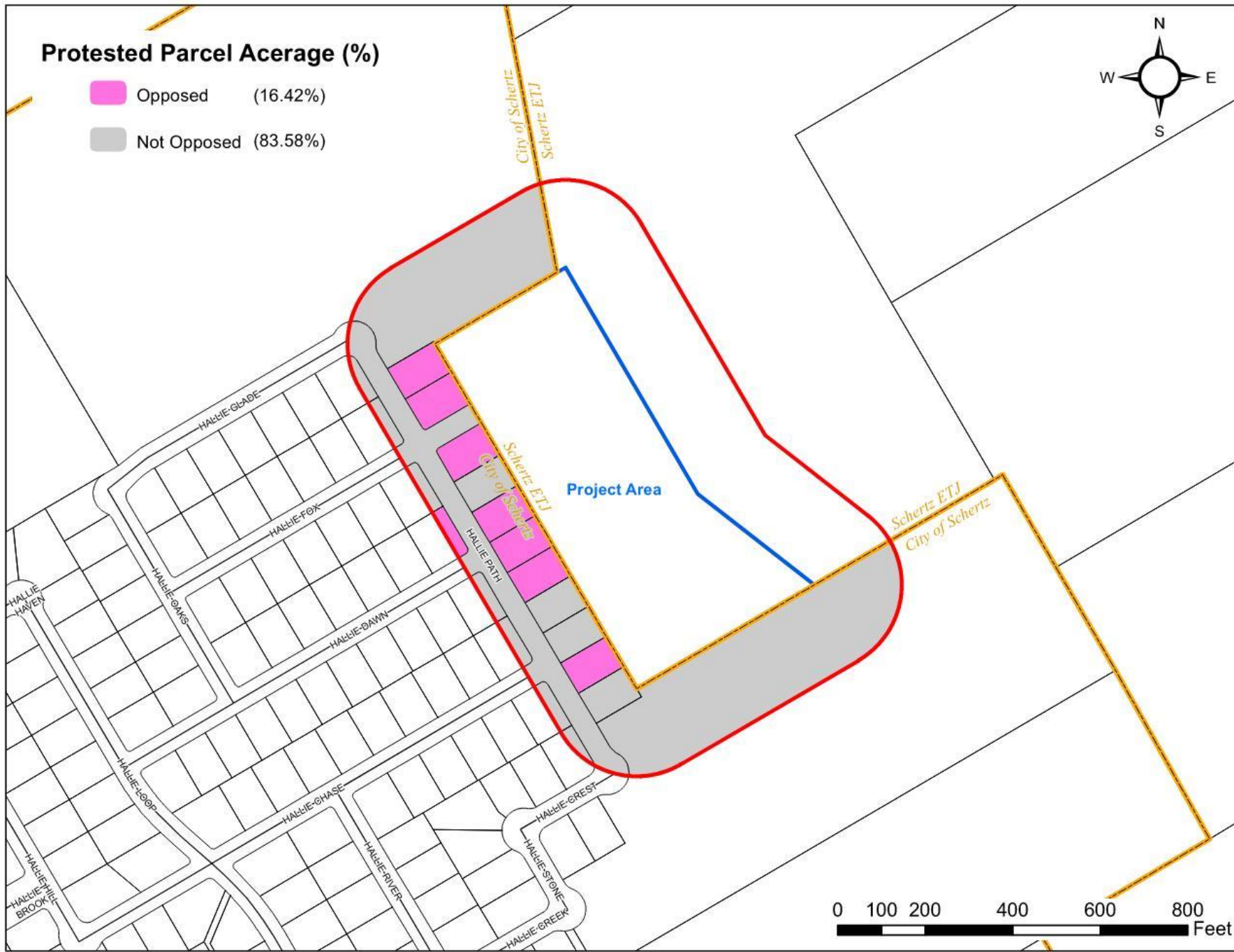


	Existing Zoning	Land Use
North	Planned Development District (PDD)	Open Space
South	Planned Development District (PDD)	Open Space
East	Development Agreement (Delayed Annexation) (DVL)	Agricultural
West	Planned Development District (PDD)	Single Family Residential



SCHIERTZ
COMMUNITY. SERVICE. OPPORTUNITY.

- February 21, 2024 a total of 23 Public Hearing Notices were sent out.
- March 13, 2024, posted in the "San Antonio Express"
- Responses Received:
 - 8- Opposition
 - 0- In Favor
 - 0- Neutral
- 1 sign was posted on the property
- March 6, 2024 Planning and Zoning Commission held a public hearing.



- As of March 27, 2024 12:00pm, 16.42% of the land within the City that is within the 200' notice areas has sent in written opposition.
- Only a simple majority is required of City Council is needed to approve this request.

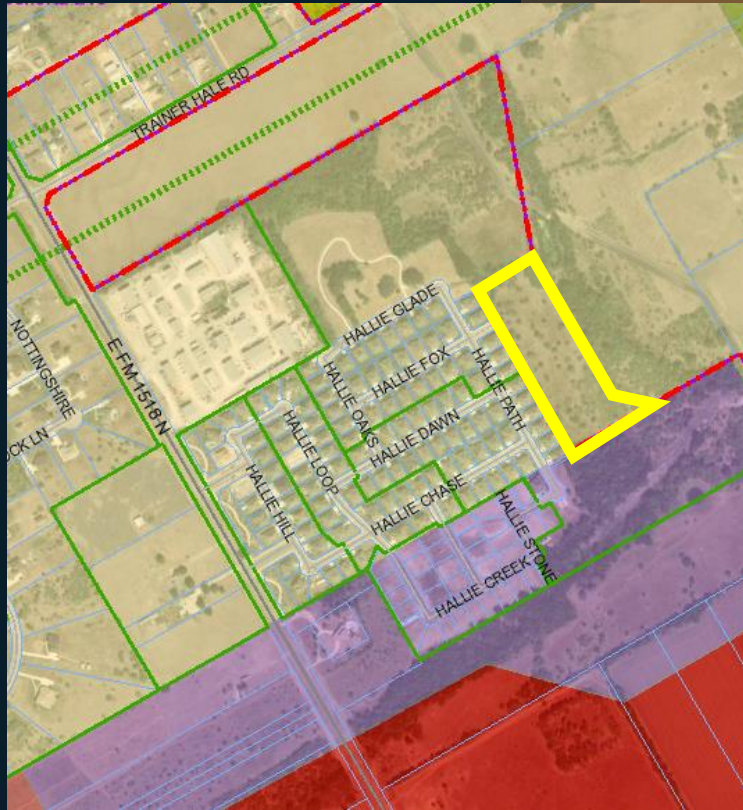
Proposed Zone Change

- UDC Section 21.5.4 states that a Zone Change is required to establish the use of land and the development associated with the proposed zoning classification for the purpose of establishing and maintaining sound, stable, and desirable development.
- The proposed zone change to Single-Family Residential District (R-1) per the letter of intent, is being requested in order to develop approximately 19 single family homes.

UDC Section 21.5.4.D Criteria for Approval

1. Whether the proposed zoning change or zoning map amendment implements the policies of the adopted Comprehensive Land Plan, including the land use classification of the property on the Future Land Use Map.

- The Comprehensive Land Use Plan designates the subject property as Estate Neighborhood. The intent of Estate Neighborhood is to address residential development patterns within Southern Schertz with large lots and incentivizing quality open space and neighborhood design.
- The proposed Single-Family Residential District (R-1) is defined as single-family detached residential dwellings with a minimum lot size of 9,600 square feet, together with the schools, churches, and parks necessary to create basic neighborhood units.
- The zone change to Single-Family Residential District (R-1) would meet the intent of the land use designations in the Comprehensive Plan by providing more residential dwellings of a similar density to the Hallies Cove Subdivision development and the adjacent agricultural land.



Estate Neighborhood

UDC Section 21.5.4.D Criteria for Approval

2. Whether the proposed zoning change or zoning map amendment promotes the health, safety, or general welfare of the City and the safe, orderly, efficient and healthful development of the City.

As part of promoting health, safety, and welfare, the City should encourage development compatible with surrounding uses utilizing standards and transitional uses to alleviate negative impacts. The chosen Single-Family Residential District (R-1) dimensional and development standards as stated in Section 21.5.7 of the Unified Development Code, are compatible with the existing Hallies Cove Subdivision.

Table 21.5.7.A Dimensional Requirements Residential Zoning Districts										
		Minimum Lot Size Dimensions			Minimum Yard Setback (Ft)				Miscellaneous Lot Requirements	
Code	Zoning District	Area Sq. Ft.	Width Ft.	Depth Ft.	Front Ft.	Side Ft.	Rear Ft.	Minimum Off-Street Parking Spaces	Max Height Ft.	Max Impervious Coverage
R-1	Single- Family Residential District-1	9,600	80	120	25	10	20	2	35	50%

UDC Section 21.5.4.D Criteria for Approval

3. Whether the uses permitted by the proposed change in zoning district classification and the standards applicable to such uses will be appropriate in the immediate area of the land to be reclassified;

- The proposed Single Family Residential District (R-1) is appropriate in the immediate area of the land to be reclassified because to the west of the subject property, the Hallie's Cove Planned Development District (PDD) is built on the Single Family Residential District (R-1) zoning district.

UDC Section 21.5.4.D Criteria for Approval

4. Whether the proposed change is in accord with any existing or proposed plans for providing public schools, streets, water supply, sanitary sewers or other public services and utilities to the area;

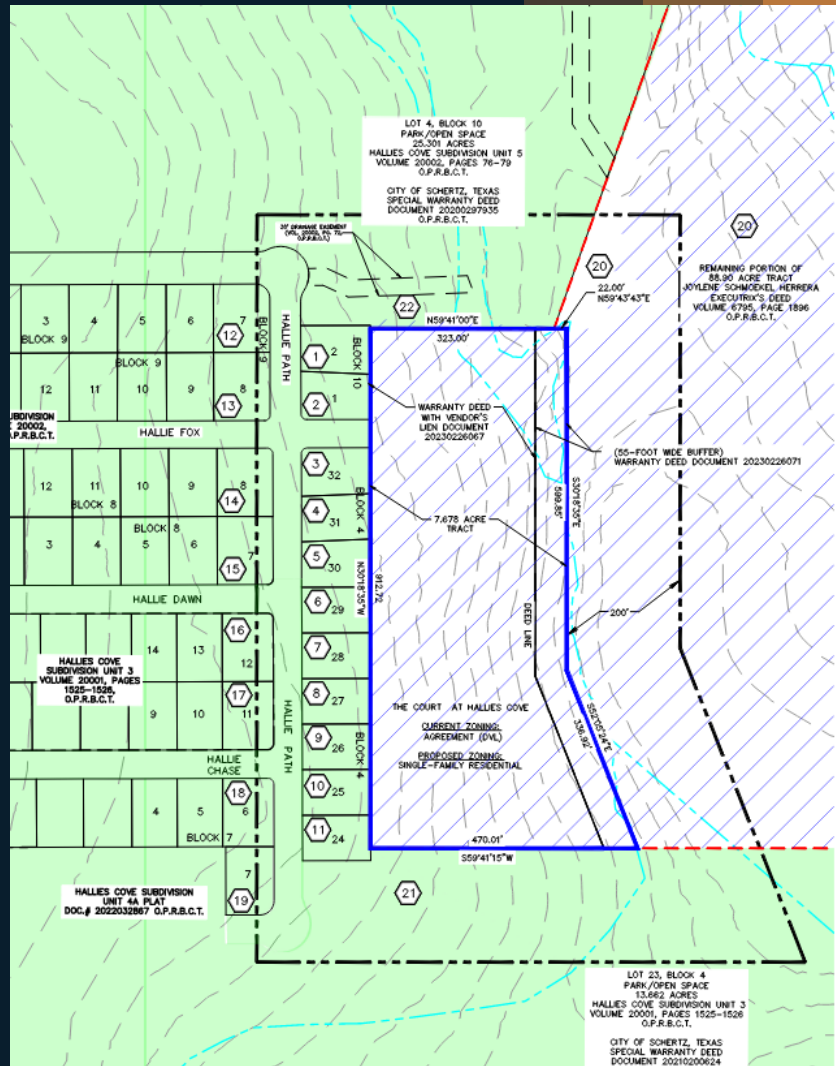
- The proposed development is approximately 117 feet from the intersection of Hallies Path and Hallies Fox and will construct a road to serve their development.
- Additionally, the Texas Department of Transportation and the City of Schertz have worked together to provide funding for the reconstruction of FM 1518, which the development will have access to from the existing Hallies Cove Subdivision.
- After construction, FM 1518 will have two lanes in each direction plus a center median. Additionally, there will be a median opening lined up with the Hallies Cove Subdivision entrance at Hallie Brook.
- A public hearing notice was mailed to Schertz-Cibolo-Universal City Independent School District to notify them of the potential addition of 19 residential homes. Attachments of the most recent Demographic Report 3Q23 for SCUCISD as well as the most recent 10-Year Campus Forecasting Presentation were included with the City Council Agenda Item.
- The City of Schertz Police, Fire and EMS Departments have indicated that they do not have any concerns regarding the proposed rezoning requests or their ability to provide services.



UDC Section 21.5.4.D Criteria for Approval

4. Whether the proposed change is in accord with any existing or proposed plans for providing public schools, streets, water supply, sanitary sewers or other public services and utilities to the area; (continued)

- The proposed development has available water and sewer, but the developer will need to reconcile the water service areas during platting so that either the City of Schertz and SSLGC dual service area or Green Valley Special Utility District service the property.
- At the December 5, 2023 City Council Meeting, Resolution 23-R-128 was approved. The approved resolution authorized an agreement to dedicate right-of-way in existing parkland for secondary access, in exchange for public park improvements. A 55-foot greenbelt will be given to the City of Schertz during the platting process to the east of the subject property where the City of Schertz is proposing a trail expansion, and the developer agreed to give the City of Schertz \$30,000 that will be used for a small playscape, to be installed by the City of Schertz, on the northern parkland property.



UDC Section 21.5.4.D Criteria for Approval

5. Whether there have been environmental and/or economical changes which warrant the requested change;

- No, there have been no environmental or economical changes that warrant the requested zone change.

UDC Section 21.5.4.D Criteria for Approval

6. Whether there is an error in the original zoning of the property for which a change is requested;

- There was no error in the original zoning of the property for which the change is requested.
- Additionally, the property has no existing zoning as the property is in the Extra-Territorial Jurisdiction (ETJ) and under a delayed annexation agreement.

7. Whether all of the applicant's back taxes owed to the City have been paid in full (no application will receive final approval until all back taxes are paid in full)

- This does not impact the first reading at City Council.

UDC Section 21.5.11.D Criteria for Approval

8. Whether other criteria are met, which, at the discretion of the Planning and Zoning Commission and the City Council, are deemed relevant and important in the consideration of the amendment.

- Staff has ensured all UDC requirements have been met for the proposed zone change, and at this time have not received any special considerations from the Planning and Zoning Commission or the City Council.

Staff Recommendation

Staff Recommendation

- Given the location of the proposed development and compatibility with the surrounding land uses and the Comprehensive Land Use Plan land use designations, Staff recommends approval of Ordinance 24-S-09.

Planning and Zoning Commission

- The Planning and Zoning Commission held a public hearing on March 6, 2024 and made a recommendation for approval with a 4-2 vote.

City Council

- The Schertz City Council met on April 2, 2024, and approved Ordinance 24-A-10 as presented with a 7-0 vote.

COMMENTS & QUESTIONS

CITY COUNCIL MEMORANDUM

City Council Meeting: April 16, 2024
Department: Executive Team
Subject: Resolution 24-R-40 - Authorizing a Pro-Rata Agreement, Cost Sharing Agreement and Roadway Impact Fee Credit Agreement for the Saddlebrook Development.(S.Williams/B.James)

BACKGROUND

Ashton San Antonio Residential, LLC is the developer of the Saddlebrook Residential Development located on the north side of Lower Seguin Road approximately 4,800 feet east of FM 1518. The developer is seeking approval of multiple agreements with the City.

The developer is also requesting a Reimbursement Agreement associated with the construction of Public Improvements. The developer is constructing water, drainage and conduit improvements not required by Code, but are beneficial to the City to be constructed at this time. The City would reimburse them for the cost of those improvements above what is required.

The developer is seeking a Roadway Capital Recovery Offset Agreement to receive credit for constructing Redbud Canyon, the extension of FM 3009 as allowed per the City's Roadway Impact Fee Ordinance.

Finally, the developer is constructing a lift station with excess capacity beyond what is needed by the developer. The agreement assigns the excess capacity to the City and obligates the City to pay the pro-rata cost for them. The cost associated with the Pro-Rata Agreement is \$1,387,149.75. The developer of the Carmel Ranch Subdivision had their plats approved in anticipation of utilizing some of this capacity for their project which is approximately 127 lots. It is assumed the City will sell 127 equivalent development units (EDUs) to them at a total cost of \$242,990.37. Should the City not need the remaining excess EDUs some of those could be sold in the future and cover the cost of the lift station.

The developer has also asked to be able to enter into a subdivision improvement agreement to allow two of their plats to be filed prior to acceptance of public improvements. One is the lot for the future lift station but the other has lots for residential homes. Generally, past direction from Council was not to allow platting of residential lots prior to acceptance of all public improvements so as to not potentially impact future home buyers. The developer has indicated they would be willing to only allow transfer of lots prior to acceptance of the public improvements to the builder (a different related corporation is the property owner). If staff is willing to allow this, an amendment to the motion would need to be added as part of approval. The developer would also be required to post a surety for the cost of the improvements not yet accepted.

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 24-R-40 authorizing the City Manager to enter into agreements for Saddlebrook - Roadway Capital Recovery Offset Agreement, Reimbursement Agreement for Construction of Public Improvements and a Pro-Rata Agreement for the lift station with Ashton San Antonio Residential, LLC.

FISCAL IMPACT

The Reimbursement Agreement for improvements would be \$109,769.36 from City fund balance.

The Roadway Impact Fee Credit Agreement would waive roadway impact fees of \$2,153,430 for constructing the FM3009 extension.

The Pro-Rata Agreement for the lift station would cost \$1,387,149.75 up front but the City would get paid back from the Carmel Ranch development and other developers over the next 5 years. This would come from Water & Sewer construction reserves initially before its repaid.

RECOMMENDATION

Approval of Resolution 24-R-40.

Attachments

Resolution 24-R-40 with attachment

**RESOLUTION NO.
24-R-40**

A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF SCHERTZ, TEXAS AUTHORIZING AGREEMENTS WITH ASHTON SAN ANTONIO RESIDENTIAL LLC FOR A PRO-RATA AGREEMENT, A ROADWAY CAPITAL RECOVERY OFFSET AGREEMENT AND A REIMBURSEMENT AGREEMENT FOR CONSTRUCTION OF PUBLIC IMPROVEMENTS IN THE CITY OF SCHERTZ, TEXAS, AND RELATED MATTERS IN CONNECTION THEREWITH

WHEREAS, Developer intends to develop public roadways that are system facilities;
and

WHEREAS, in accordance with Ordinance 18-M-13 Roadway Capital Recovery Fees, the City shall offset the reasonable value of system facilities through an offset agreement;
and

WHEREAS, the Developer of Saddlebrook is constructing public improvements and the City desires for additional public improvements related to those improvements to be constructed at this time; and

WHEREAS the Developer has agreed to construct the additional improvements if the City agrees to participate by paying for the cost of those additional improvements; and

WHEREAS, the Developer is constructing as sewer lift station to serve their development; and

WHEREAS, the Developer of the Homestead Subdivision agrees to construct sewer lift station and associated infrastructure of which the capacity is more than is required by the Homestead property; and

WHEREAS, there is a benefit to oversizing the lift station and associated sewer infrastructure to serve other properties, and

WHEREAS, the City has agreed to acquire the excess capacity from the lift station and associated sewer infrastructure; and

WHEREAS, the City Council finds that it is in the best interest of the City to enter into the Pro-Rata Agreement, Roadway Impact Fee Credit Agreement and Reimbursement Agreement with the Developer of the Saddlebrook development.

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

Section 1. The City Council hereby authorizes the City Manager to execute the agreements generally in the form attached subject to approval of minor changes approved

by the City Attorney as shown 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 ____th day of _____, 2024.

CITY OF SCHERTZ, TEXAS

Ralph Gutierrez, Mayor

ATTEST:

Sheila Edmondson, City

Exhibit A

THE STATE OF TEXAS §

§

BEXAR COUNTY §

SADDLEBROOK ROADWAY CAPITAL RECOVERY OFFSET AGREEMENT

This agreement (“**AGREEMENT**”) is made by and between the City of Schertz, (hereinafter “**CITY**”) a Texas Home Rule municipality and Ashton San Antonio Residential, LLC (hereinafter “**DEVELOPER**”) a Limited Partnership created under the laws of Texas, collectively, the “**PARTIES**”.

RECITALS

WHEREAS, pursuant to City of Schertz Code of Municipal Ordinances Chapter 78, Article VII, the City of Schertz has adopted Roadway Capital Recovery Fees (sometimes hereinafter referred to as “capital recovery fee”); and,

WHEREAS, pursuant to City of Schertz Code of Municipal Ordinances Section 78-178, where, in order to serve new development, a developer is required to construct, contribute to, or dedicate, a capital improvement or facility expansion identified in the capital improvements plan the CITY and DEVELOPER may enter into this AGREEMENT whereby the developer is: (1) credited for the reasonable and necessary costs of the capital improvement or facility expansion against the impact fees otherwise due from the new development; or (2) reimbursed for all or a portion of the reasonable and necessary costs of the capital improvement or facility expansion from impact fees as received from other new developments that use the capital improvement or facility expansion; and,

WHEREAS, CITY and DEVELOPER desire to enter into this AGREEMENT in order to memorialize Roadway Capital Recovery Fee Credits (sometimes hereinafter referred to as the “Credits”) achieved by DEVELOPER for reasonable and necessary costs of the capital improvement or facility expansion it incurred.

NOW THEREFORE, in consideration of the foregoing recitals and the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the PARTIES hereto, intending to be legally bound, hereby agree as follows:

Article I.

PROJECT DESCRIPTION

- A. Project. The project is The Saddlebrook Development.
- B. Location. The Project is located in Roadway Impact Fee Service Area 3, between Raf Burnette and Lower Seguin Road, approximately 1 mile east of Lower Seguin Road, as more precisely described in *Exhibit "A"*.

Article II.

ROADWAY CAPITAL RECOVERY FEES

- A. Roadway Capital Recovery Fees. The Maximum Roadway Capital Recovery Fees per service unit for Service Area 3 are \$1,061.26 and are currently assessed as \$1,000.00 per service unit for residential development and \$175.00 per service unit for non-residential development.

Article III.

CAPITAL IMPROVEMENT PLAN IMPROVEMENTS MADE BY DEVELOPER

- A. Rough Proportionality. The PARTIES acknowledge that as provided in Texas Local Government Code Section 212.904, the CITY may require DEVELOPER to contribute a portion of the costs of municipal infrastructure improvements by the making of dedications, the payment of fees, or the payment of construction costs (collectively the “**Infrastructure Costs**”), provided DEVELOPER’S portion of Infrastructure Costs do not exceed the amount required for infrastructure improvements that are roughly proportionate to the PROJECT impact (the “**Proportionate Costs**”).

Article IV.

ROADWAY CAPITAL RECOVERY FEE OFFSET CREDIT

- A. Roadway Capital Recovery Fee Offset Credit Calculation. As shown on *Exhibit "B"*, to this AGREEMENT, the PARTIES agree to the following:
 - i. The total number of service unit equivalents of capacity supplied by the system facility contributed by the DEVELOPER is estimated to be 2,488 service units, and shall be reduced by:

- (a) The number of service units (Vehicle Miles of Travel) developed within the plat since the contribution of the system facility, which as of the effective date hereof, using the LUVMET is 0; and
 - (b) The amount of the City's participation in the excess costs of the system facility (expressed in service unit equivalents), which as of the effective date hereof is 0; and
 - (c) The amount of any payments received from other new developments utilizing the system facility (expressed in service unit equivalents) which as of the effective date hereof is 0.
- ii. The Roadway Capital Recovery Fee Offset Credit that DEVELOPER is eligible to receive is 2,488 service units which equates to calculated at 738 Residential Lots.
- iii. The Roadway Capital Recovery Fee Offset Credits that the DEVELOPER shall receive may be used to offset the roadway impact fees due within the Saddlebrook Development as shown on *Exhibit "A"*. The City shall assign Credits to the unit when a final plat is filed in accordance with this AGREEMENT
- iv. DEVELOPER shall receive the Roadway Capital Recovery Fee Offset Credit upon completion of the public improvements shown on *Exhibit "C"*, and the City's acceptance of same for public maintenance in accordance with the terms of applicable provisions of the City's Code of Ordinances.

Article V.

REIMBURSEMENT OF EXCESS OFFSETS

- A. DEVELOPER may apply for reimbursement of excess offsets following either completion of all development subject to the plat with which the excess offsets are associated or after ten years following execution of the AGREEMENT.
 - i. The DEVELOPER must apply for reimbursement within six months following either:
 - a. Completion of all development subject to the plat with which the excess offsets are associated; or
 - b. Ten years after the date of execution of this AGREEMENT.
 - ii. The excess reimbursement shall be enforced in accordance with the following terms:

- a. The excess offset amount to be reimbursed shall be equal to the number of excess offsets (expressed as a number of service units) multiplied by a fraction equal to the capital recovery fee per service unit to be collected, as set forth herein in effect on the date of execution of this AGREEMENT, divided by the maximum assessable capital recovery fee per service unit, as set forth in the capital recovery plan, established in accordance with the City of Schertz Code of Municipal Ordinances Chapter 78, Article VII, in effect on the date of execution of this AGREEMENT;
- b. The amount to be reimbursed for excess offsets may be further equitably reduced, if fewer than 50 percent of the number of service units in the plat with which the system facility giving rise to the excess offset have been developed on the date of application for excess offsets;
- c. Repayment of excess offsets shall be made within five years from the date of execution of a reimbursement agreement between the parties hereto pertaining to the applicable excess offsets from roadway capital recovery fees collected within the same roadway service area in which the property in question is located, subject to the availability of such funds;
- d. Termination or reduction of the CITY's authority under state law to impose capital recovery fees for roadway facilities shall terminate or correspondingly reduce any obligation of the City to make payments under this AGREEMENT or any reimbursement agreement; and
- e. In converting the excess offsets from service unit equivalents to a dollar value, the number of service unit equivalents shall be multiplied by the value of a service unit expressed in dollars using the rates in effect at the time this AGREEMENT was executed.

B. Execution of an excess offset reimbursement agreement with respect to a plat as provided for in above pursuant to City of Schertz Code of Municipal Ordinances Section 78-178 shall automatically terminate any excess offsets associated with that plat pursuant to this AGREEMENT. Any new development within the area subject to such plat shall pay roadway capital recovery fees then in effect under said Municipal Ordinance.

Article VI.

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 Guadalupe County, Texas. Venue for any action arising under this AGREEMENT shall lie in the state district courts of Guadalupe County, Texas.
4. **Assignment.** The DEVELOPER may assign this AGREEMENT with the CITY's consent (such consent not to be unreasonably conditioned, withheld or delayed, but in no event shall the offsets provided for in the AGREEMENT be transferred to any development not subject to the plat associated with such offsets).
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. **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.
9. **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.
10. **Entire Agreement.** This AGREEMENT constitutes the entire agreement between the Parties with respect to the subject matter covered in this AGREEMENT. There is no other collateral oral or written agreement between the Parties that, in any

manner, relates to the subject matter of this AGREEMENT, except as provided for in any Exhibits attached hereto or duly approved amendments to this AGREEMENT, as approved by the City Council of the City of Schertz, Texas.

11. Exhibits and Attachments. All Exhibits and Attachments referenced in this AGREEMENT are attached hereto and incorporated herein for all purposes.
12. 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.
13. Gender. The gender of the wording throughout this AGREEMENT shall always be interpreted to mean either sex, and where the context requires, the plural of any word shall include the singular.
14. Governmental Records. All invoices, records and other documents required for submission to the CITY pursuant to the terms of this AGREEMENT are Governmental Records for the purposes of Texas Penal Code Section 37.10.
15. Immunities and defenses.
 - a) 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.
 - b) 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.

16. 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.
17. 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: Ashton San Antonio Residential, LLC
Attn: Kyle Lents, PE
17319 San Pedro Avenue, Suite 140
San Antonio, TX 78232
Kyle.lents@ashtonwoods.com

WITH COPY TO LEGAL COUNSEL:

Barton Benson Jones PLLC.
Attn: Buck Benson
2000 Broadway
San Antonio, TX 78215
Phone: (210) 610-5335

City: City Manager
City of Schertz
1400 Schertz Parkway
Schertz, TX 78154
Phone: (210) 619-1000
Fax: (210) 619-1029

WITH COPY TO: Denton Navarro Rocha Bernal & Zech
A Professional Corporation
Attn. T. Daniel Santee
2517 N. Main Avenue
San Antonio, Texas 78212
Phone: (210) 227-3243
Fax: (210) 225-4481

19. 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.
20. 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.
21. 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.

[Page Ends Here – Signature Pages Follow]

Signature Page to
Improvement Agreement

This Agreement has been executed by the Parties as of the dates of the Acknowledgments to be effective as of the Effective Date.

Owner:

ASHTON SAN ANTONIO RESIDENTIAL, LLC

By: Kyle Lents

Name: Kyle Lents

Title: Director - Land

Date: 7/6/2023

THE STATE OF TEXAS

§
§
§

COUNTY OF Bexar

This instrument was acknowledged before me on the 6th day of July, 2023 by Kyle Lents, the Director-Land of ASHTON SAN ANTONIO RESIDENTIAL, LLC, on behalf of said limited liability company.

(SEAL)



Paige Herzog
Notary Public in and for
The State of Texas

My Commission Expires: 11/22/2026

Signature Page to
Improvement Agreement

This 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: Steve Williams, its City Manager

Date: _____

THE STATE OF TEXAS §
 §
COUNTY OF GUADALUPE §

This instrument was acknowledged before me on the ____ day of _____, 2023 by Steve Williams, 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: _____

The Saddlebrook Development

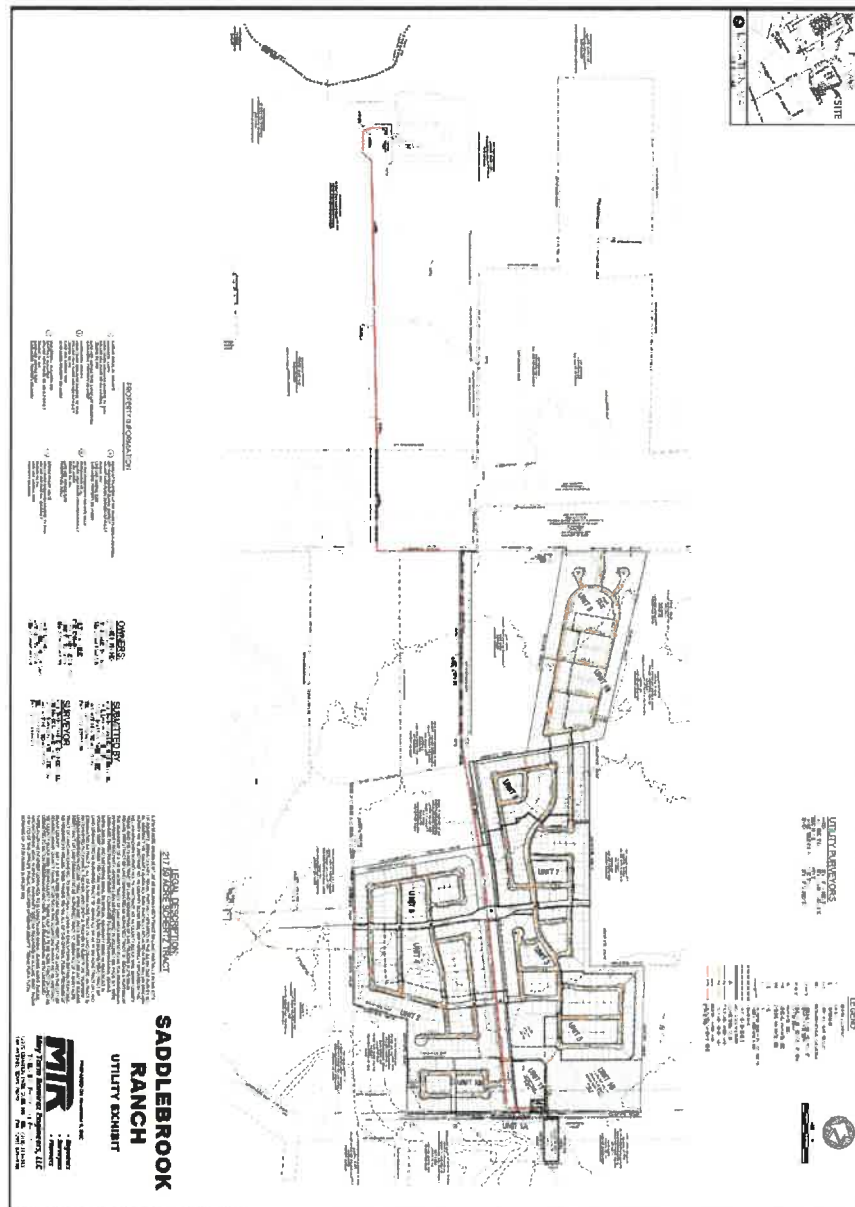


Exhibit "B"

Roadway Capital Recovery Fee Offset Credit Calculation

Saddlebrook Roadway Impact Estimate

Adjacent to Service Area 3

639 Single Family Lots

4.2 acres of Commercial land (GB Zoning)

Road construction of Redbud Canyon, Lower Seguin Road and Raf-Burnette

Traffic Contributed

639 Single Family Lots

3.37 vehicle miles per development unit

$639 \times 3.37 = 2,154$ vehicle miles of traffic

4.2 acres of commercial land proposed to be zoned GB

Based on likely development estimate 25,200 sq. ft. of office or 28,000 sq. ft. of retail

Office – 5.69 vehicle miles per development unit per 1,000 sq. ft. $\times 25,200$ sq. ft. = 144

Retail - 4.47 vehicle miles per development unit per 1,000 sq. ft. $\times 28,000$ sq. ft. = 125

Averaging the two come to about 135 vehicle miles of traffic

Total estimated traffic contributed to the system is 2,289 vehicle miles

Capacity added via road construction

Redbud Canyon	Principal Arterial	4 lanes Divided Arterial	675 vehicle miles per lane mile
Lower Seguin Road	Secondary Arterial	4 lanes Divided Arterial	675 vehicle miles per lane mile
Raf-Burnette	Secondary Arterial	4 Lanes Divided Arterial	675 vehicle miles per lane mile

675 vehicle miles per lane mile equal 0.1278 vehicle miles per lane foot (VMPLF)

RC 4 lanes $\times 2,800' = 11,200$ lane feet $\times 0.1278$ VMPLF = 1,432 vehicle miles of capacity created

RC 2 lanes $\times 858' = 1,716$ lane feet $\times 0.1278$ VMPLF = 219 vehicle miles of capacity created

LSR 2 lanes $\times 2,400' = 4,800$ lane feet $\times 0.1278$ VMPLF = 614 vehicle miles of capacity created

RB 2 lanes $\times 870' = 1,740$ lane feet $\times 0.1278$ VMPLF = 223 vehicle miles of capacity created

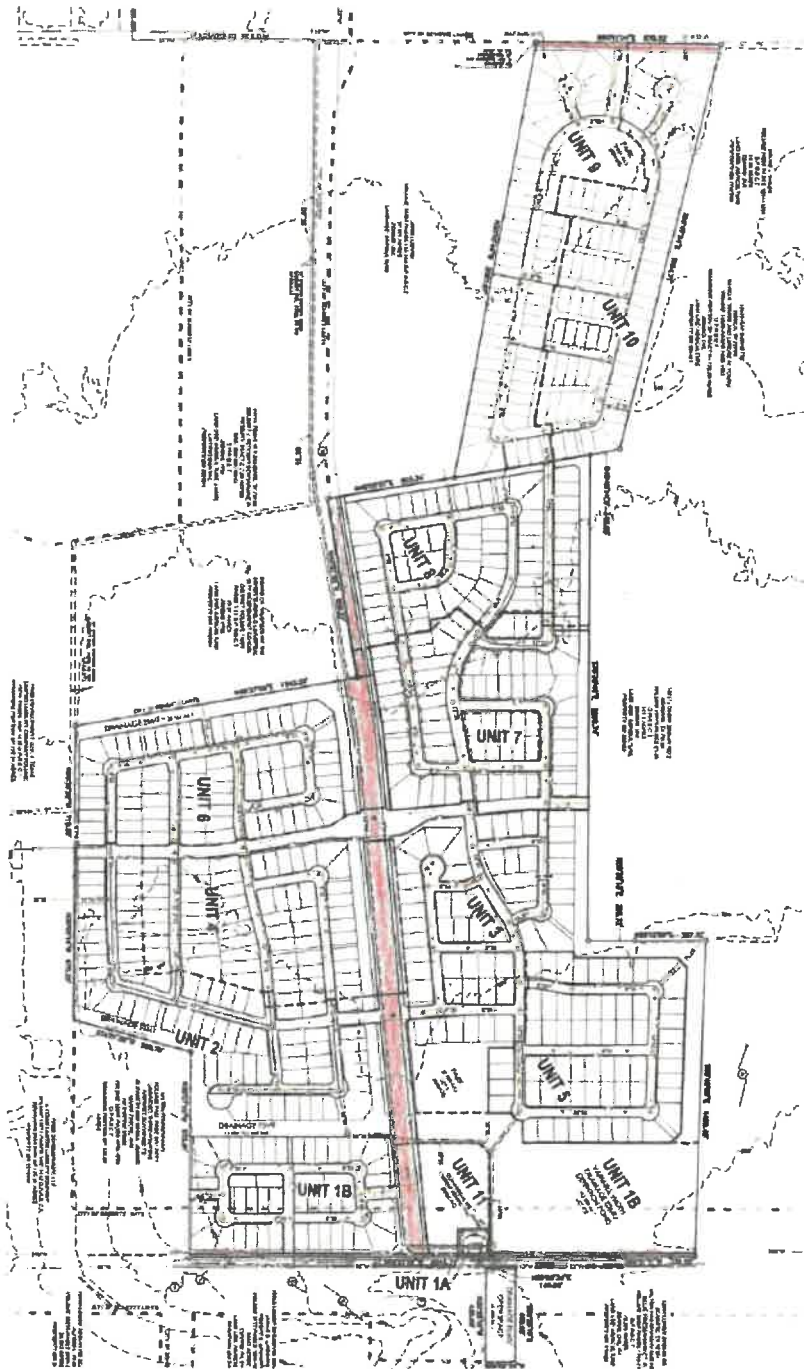
$1,432 + 219 + 614 + 223 = 2,488$ vehicle miles of capacity created

2,488 vehicle miles of capacity created vs 2,289 vehicle miles of traffic added to the system

Providing 199 excess vehicle miles of capacity which equates to 8.7% more capacity than traffic

Exhibit "C"

Roadway CIP Roadways to be Constructed



**REIMBURSEMENT AGREEMENT WITH SADDLEBROOK DEVELOPER FOR
CONSTRUCTION OF PUBLIC IMPROVEMENTS**

THE STATE OF TEXAS §
 § KNOW ALL PERSONS BY THESE PRESENTS:
COUNTY OF GUADALUPE §

This REIMBURSEMENT AGREEMENT (the "Agreement") is by and between ASHTON SAN ANTONIO RESIDENTIAL, LLC. (the "Owner" or "Developer") and the CITY OF SCHERTZ, a Texas municipal corporation (the "City"), (sometimes collectively referred to as the "Parties") and is effective upon the execution of this Agreement by the Developer and the City (the "Effective Date").

WHEREAS, the Owner is the owner of that certain real property located in the City of Schertz, Bexar County, Texas, more specifically described on Exhibit "A", attached hereto and made a part hereof for all purposes (the "Property" or "Saddlebrook"); and

WHEREAS, the Owner seeks to develop a residential subdivision on the Property that requires the construction of certain public improvements; and

WHEREAS, during the development planning stage for the Property, the Developer submitted to the City a request that the City participate in the completion of some of the Improvements (the "Improvements"), which will benefit portions of the City beyond the Saddlebrook property; and

WHEREAS, Developer has requested that it be allowed to construct the Improvements to serve the Property, which will also benefit portions of the City beyond the Saddlebrook property and share the costs with the City; and

WHEREAS, Developer has commenced construction or will commence construction of the remainder of the Improvements; and

WHEREAS, the City and Developer find it to be to their mutual advantage to enter into this Agreement for the construction of appropriate and necessary public facilities; and

WHEREAS, Section 212.071, et. seq. of the Texas Local Government Code authorizes municipalities to enter into a contract with a developer of a subdivision or land in the municipality to construct public improvements related to the development without complying with the competitive sealed bidding procedures of Chapter 252 of the Texas Local Government Code; and,

WHEREAS, Section 212.071, et. seq. of the Texas Local Government Code limits the participation by the municipality at a level not to exceed 30 percent of the total contract price.

NOW THEREFORE, in consideration of the agreements set forth herein and for other

reciprocal good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and stipulated by the Parties, the Owner and the City agree as follows:

1. Definitions: The following terms and phrases used in this Agreement shall have the meanings ascribed hereto:
 - 1.1. "Agreement" means this agreement, including any amendments hereto, between the City and Developer.
 - 1.2. "Contractor" shall mean each person, firm, corporation, partnership, association, or other entity awarded a contract by Developer for the construction and installation of the Improvements (or portion thereof).
 - 1.3. "Improvements" shall mean the improvements described on Exhibit "B"
 - 1.4. "City's Participation Costs" shall mean costs associated with the construction of the Improvements, as designated on Exhibit "C" as City of Schertz responsibility.
2. Ownership of the Property: The Owner hereby represents and warrants that, as of the Effective Date, it has not conveyed, assigned, or transferred all or any portion of its interest in the Property to any other person or entity.
3. Construction of Improvements; Covenants: The Owner and the City covenant and agree to the following:
 - 3.1. Construction of Improvements. Developer agrees to construct the Improvements in accordance with the plans and specifications for units 1B, 2, & 3 as approved by the City Engineer on June 13, 2023, June 15, 2023 and April 21, 2023, respectively, as illustrated in Exhibit "B" attached hereto. No change in the shall be made by Developer without the prior written consent of the City Engineer, which consent shall be unreasonably conditioned, withheld or delayed. The entire cost of the construction of the Improvements shall be the responsibility and obligation of Developer, except as herein provided.
 - 3.2. Contracts for Construction. Developer shall utilize the competitive sealed bidding procedure as defined in Local Government Code Sec.252 Subchapter C to select a qualified Contractor to construct the Improvements in accordance with the approved plans and specifications if required per Local Government Code Sec. 212 Subchapter C. The contract may be awarded via one or more contracts to either to the lowest responsible bidder(s) or to the bidder(s) who provides goods and services at the best value for the municipality. The City Engineer shall review all bid documents, contract documents, and costs estimates. Developer shall be solely responsible for payment of the work as it is completed and shall make all payments in a timely manner to the Contractor, and any other parties under contract with the Developer in connection with the construction of the Improvements.

- 3.3. Performance, Payment and Warranty Bonds. Developer's Contractor shall post within the City faithful performance, payment, and warranty bonds for construction of the Improvements to ensure completion of the project. The bond must be executed by a corporate surety in accordance with Chapter 2253, Texas Government Code. The Developer shall covenant to warrant the public improvements for a period of two (2) years following acceptance by the City of all Improvements. A warranty bond shall be provided in the amount of 20% of the costs of the Improvements for such period.
- 3.4. Inspection. The City Engineer or designee shall periodically inspect the construction of the Improvements in the same manner, and shall possess the same authority, as is provided during the construction of subdivision improvements pursuant to the City of Schertz Subdivision Ordinance, as amended.
- 3.5. Insurance. The Contractor awarded the contract to construct the Improvements shall be required to carry Worker's Compensation Insurance on his employees and public liability and property damage insurance on his equipment and employees. The public liability insurance shall be not less than five hundred thousand dollars (\$500,000.00) per person and one million dollars (\$1,000,000.00) per occurrence, with property damage insurance of not less than five hundred thousand dollars (\$500,000.00). In addition, City shall be furnished with Certificates of Insurance and shall be named an additional named insured on such Certificates, and City shall be notified within thirty calendar days of any cancellation of such insurance.
- 3.6. Accounting. Developer shall submit to City a complete accounting of all costs incurred by Developer in the construction of the Improvements. City will not contribute or pay for any costs incurred by Developer which were not approved by City prior to it being incurred. Developer shall maintain the accounting of the Improvements for a period of two years from the date of acceptance by the City, and the City may inspect the Developer's books and records related to the Improvements at any time with reasonable notice.
- 3.7. Indemnity. Developer agrees to protect, indemnify and save City harmless from and against all claims, demands and causes of action of every kind and character arising in favor of any third party on account of, or resulting from, the performance of this Agreement by Developer or Developer's agents, representatives, employees, contractors, or subcontractors.
4. Obligations and Payments: The Owner and the City covenant and agree to the following:
- 4.1. City Obligations. The City agrees to pay to Developer City's Participation Costs which shall equate to the actual costs for the City's responsibility as illustrated on Exhibit "C". Notwithstanding any provision of this Agreement to contrary, City's Obligation shall only be for the reimbursement of costs incurred by Developer and shall not in any event exceed **One Hundred Nine Thousand Seven Hundred Sixty-Nine Dollars and Thirty-Six Cents**

(\$109,769.36) (hereinafter the “City’s Share”).

- 4.2. Payment Procedures. City shall deliver to Developer full payment of the City’s Share as provided in this this section.
- 4.3. Submittal and review. Developer shall submit and the City Engineer shall review documentation, as may be reasonably required by City Engineer, showing final, actual construction costs paid by the Developer.
- 4.4. Upon the City Engineer’s review and approval of the documents, a final inspection on the Improvements shall be conducted, noting any required corrections or repairs. Once corrections or repairs are made and deemed acceptable, the City will accept the Improvements.
- 4.5. Within 30 days of both the acceptance of the Improvements and the dedication of all necessary utility easements, the City will pay to Developer the City’s Participation Costs (**Exhibit “C”**).

5. Assignments, Modifications and Waiver.

- 5.1. Assignment. This Agreement shall bind and benefit the respective Parties and their legal successors and shall not be assignable, in whole or in part, by any party without first obtaining written consent of the other party.
- 5.2. Amendment or Modification. Except as otherwise provided in this Agreement, this Agreement shall be subject to change, amendment or modification only in writing, and by the signatures and mutual consent of the Parties.
- 5.3. Parties in Interest. This Agreement shall be for the sole and exclusive benefit of the Parties hereto and shall not be construed to confer any rights upon any third party.
- 5.4. Remedies Not Exclusive. The rights and remedies contained in this Agreement shall not be exclusive, but shall be cumulative of all rights and remedies now or hereinafter existing, by law or in equity.
- 5.5. Waiver. The failure of any party to insist in any one or more instances on the performance of any of the terms, covenants or conditions of this Agreement, or to exercise any of its rights, shall not be construed as a waiver or relinquishment of such term, covenant, or condition, or right with respect to further performance.
- 5.6. Entire Agreement. This Agreement constitutes the entire agreement between the Parties related to the subject matter of this Agreement and supersedes any and all prior agreements, whether oral or written, dealing with the subject matter of this Agreement.

- 5.7. Venue. This Agreement shall be performable and enforceable in Guadalupe County, Texas, and shall be construed in accordance with the laws of the State of Texas.
- 5.8. Severability. If any term or provision of this Agreement is held to be invalid, void or unenforceable by a court of competent jurisdiction, the remainder of the terms and provisions of this Agreement shall remain in full force and effect and shall not in any way be invalidated, impaired or affected.
- 5.9. Notices. Any notice provided or permitted to be given under this Agreement must be in writing and may be served by (i) depositing the same in the United States mail, addressed to the party to be notified, postage prepaid, registered or certified mail, return receipt requested; or (ii) by delivering the same in person to such party; or (iii) by overnight or messenger delivery service that retains regular records of delivery and receipt; or (iv) by facsimile; provided a copy of such notice is sent within one (1) day thereafter by another method provided above. The initial addresses of the parties for the purpose of notice under this Agreement shall be as follows: No Joint Venture.

If to the Owner:

ASHTON SAN ANTONIO RESIDENTIAL, LLC
17319 San Pedro Avenue, Suite 140
San Antonio, TX 78232
Attention: Blake Harrington

If to the City:

CITY OF SCHERTZ
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

- 5.10. No Joint Venture. 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. It is understood and agreed that this Agreement does not create a joint enterprise, nor does it appoint either Party as an agent of the other for any purpose whatsoever. Except, as

otherwise specifically provided herein, neither Party shall in any way assume any of the liability of the other for acts of the other or obligations of the other.

- 5.11. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be considered an original, but all of which constitute one instrument.
- 5.12. Approval of Agreement. The City has approved the execution and delivery of this Agreement pursuant to Section 21.4.15(C.) (2.) of the City's Unified Development Code, and the Owner represents and warrants that it has taken all necessary action to authorize its execution and delivery of this Agreement.
- 5.13. 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.
- 5.14. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns.
- 5.15. 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 Owner and the City. The Owner and the City each agrees that there are no oral agreements, understandings, representations or warranties which are not expressly set forth herein.
- 5.16. 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.
- 5.17. 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.
- 5.18. 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.

[Signatures and acknowledgments on the following pages]

Signature Page to
Agreement with Developer for Construction of Public Improvement

This Agreement has been executed by the Parties as of the dates of the Acknowledgments to be effective as of the Effective Date.

Owner:

ASHTON SAN ANTONIO RESIDENTIAL,
LLC

By: Kyle Lents

Name: Kyle Lents

Title: Director - Land

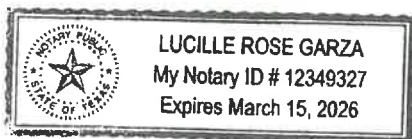
Date: 1/11/2024

THE STATE OF TEXAS

COUNTY OF Brewer

§
§
§

This instrument was acknowledged before me on the 11 day of January, 2024 by Kyle Lents, the Director of ASHTON SAN ANTONIO RESIDENTIAL, LLC, on behalf of said limited liability company.
(SEAL)



Lucille Rose Garza
Notary Public in and for
The State of Texas

My Commission Expires: 3/15/26

Signature Page to
Agreement with Developer for Construction of Public Improvement

This Community Facilities 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: Steve Williams, its City Manager

THE STATE OF TEXAS §
 §
COUNTY OF GUADALUPE §

This instrument was acknowledged before me on the ____ day of _____, 2024 by Steve Williams, 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

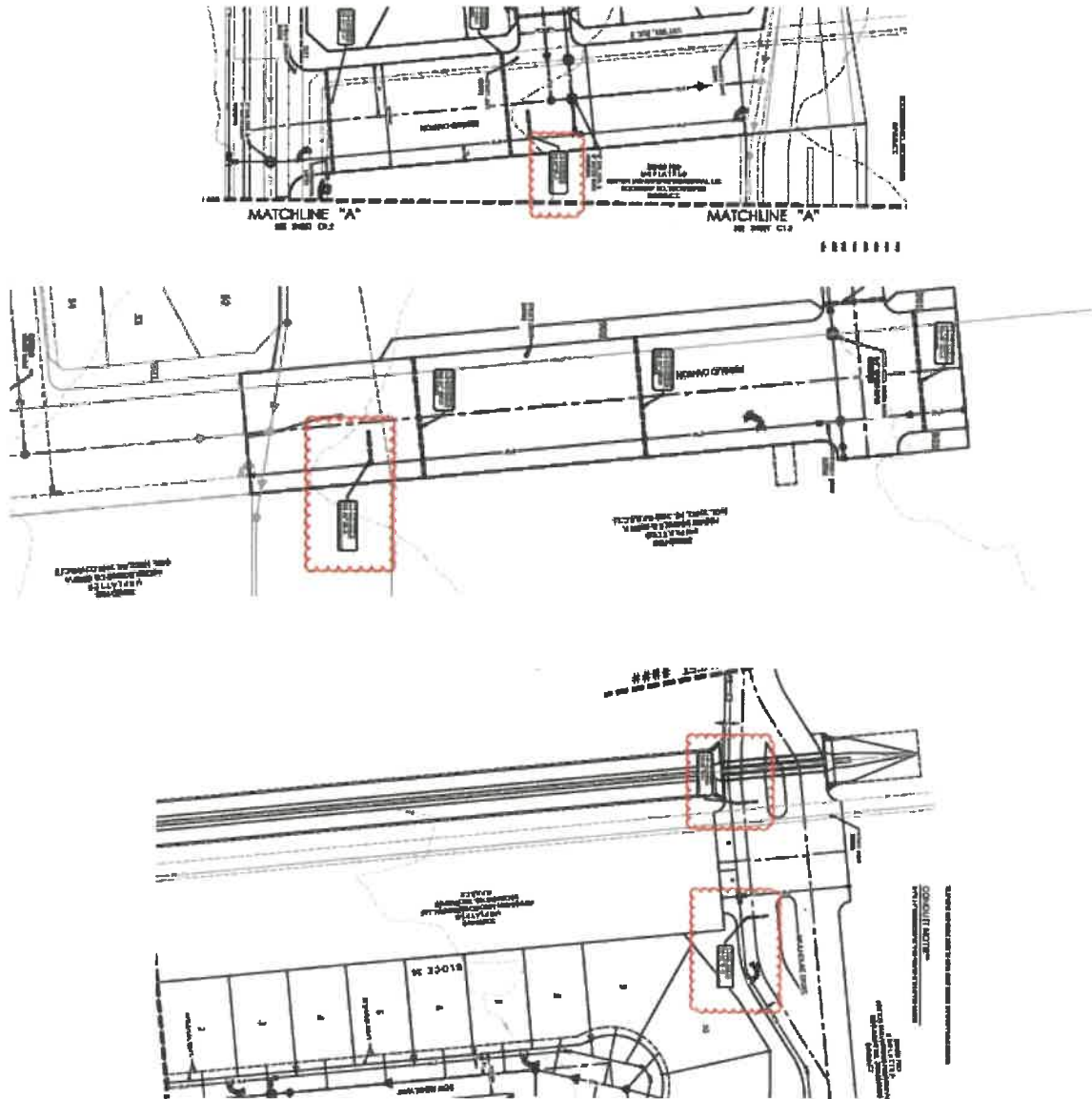
My Commission Expires: _____

[illegible]

Water Main Upsizing



Irrigation Conduits



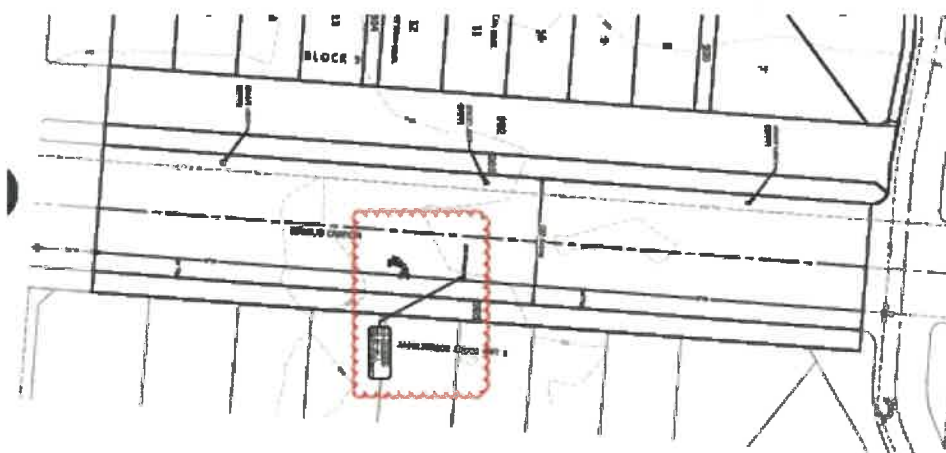
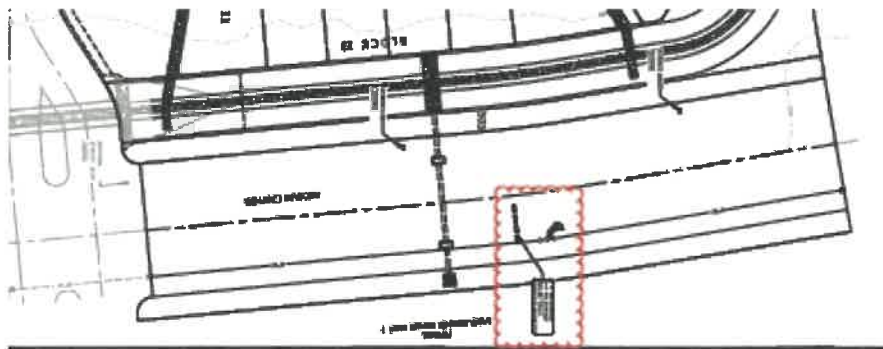


EXHIBIT C **CITY'S PARTICIPATION COSTS**

City of Schertz Oversizing Estimate

WATER IMPROVEMENTS - LOWER SEGUIN RD.

ITEM	DESCRIPTION	UNIT	EST/QTY	\$/UNIT	AMOUNT
1	8" Pipe DR 14 PVC	LF	1,695	\$ 55.71	\$ (94,428.45)
2	8" Pipe DI Pipe	LF	80	\$ 92.11	\$ (7,368.80)
3	8" Gate Valve	EA	4	\$ 1,957.93	\$ (7,831.72)
4	8" Pipe DR 14 PVC	LF	160	\$ 55.71	\$ 8,913.60
5	12" Pipe DR 14 PVC	LF	1,615	\$ 96.93	\$ 156,541.95
6	12" Pipe DI Pipe	LF	80	\$ 96.93	\$ 7,754.40
7	12" Gate Valve	EA	4	4000	\$ 16,000.00
TOTAL CONSTRUCTION COST					\$ 79,580.98

Drain A- Offsite & Lower Seguin Rd Crossing

ITEM	DESCRIPTION	UNIT	EST/QTY	\$/UNIT	AMOUNT
1	Additional 8' x 4' MBC	LF	113	\$ 838.72	\$ 94,775.36

Conduits

ITEM	DESCRIPTION	UNIT	EST/QTY	\$/UNIT	AMOUNT
1	Irrigation - 1-6"/1-4" PVC Bundle	LF	200	\$ 74.97	\$ 14,994.00
TOTAL CONSTRUCTION COST					\$ 109,769.36

\$109,769.36 Total City's Participation Costs

STATE OF TEXAS §
 § KNOW ALL PERSONS BY THESE
PRESENTS:
COUNTY OF BEXAR §

This PRO-RATA AGREEMENT (this “Agreement”) is by and between ASHTON SAN ANTONIO RESIDENTIAL, LLC (the “Owner”), and the CITY OF SCHERTZ, a Texas municipal corporation (the “City”) (sometimes collectively referred to as the “Parties”) and is effective upon the execution of this Agreement by the Owner and the City (the “Effective Date”).

WHEREAS, the Owner seeks to develop a residential subdivision on the Property that requires the construction of certain public improvements: and

WHEREAS, an existing sewer lift station and force main, the Croton Lift Station (the “Croton Lift Station”), is located near the Property and connects to the CCMA OJR Regional Water Reclamation Plant (the “Plant”); and

WHEREAS, rights-of-first refusal to capacity (the “Allocated Capacity”) in the Croton Lift Station have been granted to property owners per the Third Agreement Regarding Sewer Facilities; and

WHEREAS, the Plant does not have the ability for an additional sewer force main to connect the Plant; and

1

WHEREAS, the Owner seeks to construct more capacity in the Saddlebrook Lift Station Improvements than is required to accommodate the Croton Ultimate Flows and anticipated flows from the development of the Property; and

WHEREAS, the Owner seeks to be reimbursed for a portion of the cost of designing and constructing the Saddlebrook Lift Station Improvements (the “Saddlebrook Lift Station Improvement Costs”) from landowners seeking to utilize this excess capacity.

NOW THEREFORE, in consideration of the agreements set forth herein and for other reciprocal good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and stipulated by the Parties, the Owner and the City agree as follows:

1. Definitions: The following terms and phrases used in this Agreement shall have the meanings ascribed hereto:

- a) “Agreement” means this agreement, including any amendments hereto, between the City and Developer.
- b) “Contractor” shall mean a person, firm, corporation, partnership, association, or other entity awarded the contact by Developer for the construction and installation of the Improvements.
- c) “EDU Sewer Facility Reimbursement Fee” shall mean the cost per EDU of Pro-rata due to the Owner for utilizing one of the remaining 725 EDUs of capacity in the Saddlebrook Lift Station.
- d) “Excess EDUs of Capacity shall mean the 725 EDUs of capacity of the Saddlebrook Lift Station Improvements out of the 2,700 EDUs of total capacity minus the capacity reserved for the Owner of the Property and the Croton Ultimate Flows.
- e) “Saddlebrook Lift Station Improvement Costs” shall mean the verified costs to construct the Saddlebrook Lift Station Improvements. improvements described on Exhibit “B” and Section 3(a) below.
- f) “Saddlebrook Lift Station Improvements” shall mean the improvements described on Exhibit “C” and Section 3 (a) below.

2. Ownership of the Property. The Owner hereby represents and warrants that, as of the Effective Date, it has not conveyed, assigned, or transferred all or any portion of its interest in the Property to any other person or entity.

3. Construction of Improvements; Covenants. The Owner and the City covenant and agree to the following:

- a) The Owner is obligated by Section 21.12.10 of the City’s Unified Development Code to construct, or cause to be constructed, sanitary sewer

improvements more particularly described as the Saddlebrook Lift Station Improvements shown on the Construction Plans approved June 2, 2023 (the “Construction Plans”) and that are included as part of the application for final plat approval for the subdivision titled Saddlebrook Subdivision Unit 1B.

- b) The cost of the Saddlebrook Lift Station Improvements is estimated to be **Five Million One Hundred Sixty-Five Thousand Nine Hundred Thirty-Nine Dollars and Thirty-Five Cents (\$5,165,939.35)** (the “Saddlebrook Lift Station Improvements Cost Estimate”), as more particularly shown on **Exhibit “C”** attached hereto and made a part hereof for all purposes. The Owner and the City agree that the amount of the Saddlebrook Lift Station Improvement Cost Estimate set forth herein is a commercially reasonable estimate of the cost to complete the Improvements.

4. Allocation of the Rights to the EDUs in the Saddlebrook Lift Station Improvements. The Parties hereby allocate rights to the EDUs of capacity in the Saddlebrook Lift Station Improvements, which are proposed to have 2,700 EDUs of capacity, as follows:

- a) The right to utilize up to Six Hundred Seventy-Five (675) EDUs of capacity in the Saddlebrook Lift Station Improvements is hereby assigned to the Owner for the Property (the Saddlebrook Subdivision) (the “Saddlebrook Property EDUs”).
- b) One Thousand Three Hundred (1,300) EDUs shall be used to accommodate the Croton Ultimate Flows (the “Croton Lift Station EDUs”).
- c) The Remaining EDUs of Capacity in the Saddlebrook Lift Station Improvements (the “Excess EDUs of Capacity”), which are estimated to be approximately Seven Hundred Twenty-Five (725) EDUs of capacity, are allocated to the City of Schertz. Schertz can choose to allocated these EDUs as they choose.
- d) Rights Run with the Land. The Parties agree that the allocation right to the Saddlebrook Property EDUs shall run with title of the Property and shall not be assignable by the Owner without the prior written consent of the City.

5. EDU Sewer Facility Reimbursement Fee. A sewer facility reimbursement fee (the “SFR Fee”) of **One Thousand Nine Hundred Thirteen Dollars and Thirty-One Cents (\$1,913.31)** per EDU of capacity in the Saddlebrook Lift Station Improvements, which number was calculated by dividing the approved cost to construct the Saddlebrook Lift Station Improvements, as documented in **Exhibit “C”** by the estimated Two Thousand Seven Hundred (2,700) EDUs of capacity in the Saddlebrook Lift Station Improvements,

shall be due and payable upon conveyance of any of the Excess EDUs of Capacity in the Saddlebrook Lift Station Improvements to a property owner. The Owner is exempt from paying the SFR Fee for the Saddlebrook Property EDUs. No SFR Fee shall be due for the Croton Lift Station EDUs.

- a) The City agrees to pay for the 725 EDUs of Capacity within 90 days of acceptance of the Saddlebrook Lift Station Improvements.

6. Approval of Agreement. The City has approved the execution and delivery of this Agreement pursuant to Section 21.4.15(C.) (2.) of the City's Unified Development Code, and the Owner represents and warrants that it has taken all necessary action to authorize its execution and delivery of this Agreement.

7. 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.

8. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns.

9. 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.

10. 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 Owner and the City. The Owner and the City each agrees that there are no oral agreements, understandings, representations or warranties which are not expressly set forth herein.

11. Notices. Any notice or communication required or permitted hereunder shall be deemed to be delivered (i) upon receipt, if hand delivered or delivered by express delivery service or (ii) 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:

ASHTON SAN ANTONIO RESIDENTIAL, LLC
17319 San Pedro Avenue, Suite 140
San Antonio, TX 78232
Attention: Blake Harrington

If to the City:

CITY OF SCHERTZ
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

12. 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.

13. 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.

14. 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.

15. 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 consent by suit by any Party.

[Signatures and acknowledgments on the following pages]

Signature Page to
Improvement Agreement

This Agreement has been executed by the Parties as of the dates of the Acknowledgments to be effective as of the Effective Date.

Owner:

ASHTON SAN ANTONIO
RESIDENTIAL, LLC

By: _____

Name: _____

Title: _____

Date: _____

THE STATE OF TEXAS §
 §
COUNTY OF _____ §

This instrument was acknowledged before me on the ____ day of _____, 2024 by _____, the _____ of ASHTON SAN ANTONIO RESIDENTIAL, LLC, on behalf of said limited liability company.

(SEAL)

Notary Public in and for
The State of Texas

My Commission Expires: _____

Signature Page to
Improvement Agreement

This 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: Steve Williams, its City Manager

Date: _____

THE STATE OF TEXAS §
 §
COUNTY OF GUADALUPE §

This instrument was acknowledged before me on the ____ day of _____, 2024 by Steve Williams, 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: _____

The Property



EXHIBIT “B”

The Saddleborok Lift Station Improvement Costs

SADDLEBROOK SEWER LIFT STATION OPCS						
<u>SANITARY SEWER IMPROVEMENTS</u>						
ITEM	DESCRIPTION	UNIT	EST/QTY	\$/UNIT	AMOUNT	
1	Lift Station	L.S.	1	\$ 3,419,977.02	\$	3,419,977.02
2	Force Main	L.S.	1	\$ 1,576,002.53	\$	1,576,002.53
				TOTAL CONSTRUCTION COST	\$	4,995,979.55
				Estimated Permit Fees	\$	49,959.80
				Engineering	\$	120,000.00
				TOTAL COST	\$	5,165,939.35
				TOTAL CAPACITY (EDUs):		2,700
				COST PER EDU	\$	1,913.31

EXHIBIT “C”

The Saddlebrook Lift Station Improvements

[See attached]

CITY COUNCIL MEMORANDUM

City Council Meeting: April 16, 2024
Department: Fire Department
Subject: Resolution 24-R-29 - Authorizing the City Manager to execute an agreement with Marksmen General Contractors for Construction Manager at Risk services related to the design and construction of Fire Station #4. (S.Williams/G.Rodgers)

BACKGROUND

An agreement with Eikon Architects for the design of Fire Station #4 has previously been approved by City Council and initial design efforts are under way. The project is now at the stage that the expected cost of the proposed project needs to be determined by a qualified Construction Manager before the project design can proceed.

In accordance with TX Local Government Code 2269.251, the “construction manager-at-risk method” is a delivery method by which a governmental entity contracts with an architect or engineer for design and construction phase services and contracts separately with a construction manager-at-risk to serve as the general contractor and to provide consultation during the design and construction, rehabilitation, alteration, or repair of a facility. A construction manager-at-risk assumes the risk for construction, rehabilitation, alteration, or repair of a facility at the contracted price as a general contractor and provides consultation to the governmental entity regarding construction during and after the design of the facility. The contracted price may be a guaranteed maximum price.

On November 29, 2023, a Request for Qualifications (RFQ) for Fire Station #4 using the two-step selection process under Section 2269 et seq. of the Texas Local Government Code (LGC) for a Construction Manager at Risk (CMAR) was issued by the City. Four responses to this RFQ were received on January 4, 2024. The responding firms were evaluated by the committee and ranked solely on the basis of their qualifications in the first step as required by LGC. As part of step two, the top three ranked firms were invited to submit a cost proposal and participated in an interview with the selection committee on February 9, 2024.

Per LGC 2269.254, the governmental entity shall select the offeror that submits the proposal that offers the best value for the governmental entity based on the published selection criteria and on its ranking evaluation. Marksmen General Contractors was identified as the best qualified finalist, and the City has successfully negotiated an agreement with Marksmen.

GOAL

To authorize the City Manager to execute the approve and execute and agreement for Construction Manager at Risk services with Marksman Construction.

COMMUNITY BENEFIT

The benefit of the Construction Manager at Risk delivery method is that this contract type reduces the City's overall potential risks because the contract will include a Guaranteed Maximum Price (GMP). This provides for a predictable project budget, and anything over the GMP is covered by the construction manager. Retaining a highly qualified construction management firm, such as Marksmen General Contractors, will help to ensure that the City receives a quality fire station in order to provide superior service and response times to our residents and visitors. In addition, this will help the City move toward an ISO 1 rating in our next evaluation.

SUMMARY OF RECOMMENDED ACTION

Authorize the City Manager to execute an agreement with Marksmen General Contractors for Construction Manager at Risk services related to the design and construction of Fire Station #4.

FISCAL IMPACT

The amount payable under this Agreement shall be in accordance with Marksmen's proposal of 12.15% of construction costs, estimated at \$10,000,000, and \$42,000 in Pre-construction Services (only payable if construction does not begin), for an estimated total of \$1,257,000. The approval of these services comes from within the bond approved for the building of fire station 4 that is under way.

Marksmen Proposal:

8.15% General Conditions

4.00% Contractor Fee

\$42,000 Preconstruction Services (only payable if construction does not begin)

RECOMMENDATION

Staff recommends approval of Resolution No. 24-R-29

Attachments

Resolution 24-R-29

Service Evals 2023-014

RESOLUTION NO. 24-R-29

A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF SCHERTZ, TEXAS AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT FOR CONSTRUCTION MANAGER AT RISK SERVICES RELATED TO THE DESIGN AND CONSTRUCTION OF FIRE STATION NUMBER 4 AND OTHER MATTERS IN CONNECTION THEREWITH

WHEREAS, the City of Schertz (the “City”) solicited Requests for Qualifications (RFQ) for Construction Manager at Risk services related to the design and construction of Fire Station #4, and

WHEREAS, after completing a two-step selection process in accordance with TX Local Government Code 2269.253, to include extensive analysis of the responses and interviews with the short-listed firms, City staff determined that Marksmen General Contractors is well qualified to provide the required services, and

WHEREAS, the City Council has determined that it is in the best interest of the City to enter into an agreement with Marksmen General Construction.

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

Section 1. The City Council hereby approves resolution 24-R-29 authorizing the City Manager to execute an agreement (Exhibit A) with Marksmen General Contractors for Construction Manager at Risk services related to the design and construction of Fire Station #4. The amount payable under this Agreement shall be in accordance with Marksmen’s proposal of 12.15% of construction costs, estimated at \$10,000,000, and \$42,000 in Preconstruction Services (only payable if construction does not begin), for an estimated total of \$1,257,000.

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

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

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

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

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

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

PASSED AND ADOPTED, this _____ day of _____, 2024.

CITY OF SCHERTZ, TEXAS

Mayor, Ralph Gutierrez

ATTEST:

City Secretary, Sheila Edmondson

(CITY SEAL)

EXHIBIT A

DRAFT AIA® Document A133® – 2019

Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price

AGREEMENT made as of the «16th» day of «April» in the year «2024»
(In words, indicate day, month, and year.)

BETWEEN the Owner:
(Name, legal status, address, and other information)

« City of Schertz »« »
« 1400 Schertz Parkway »
« Admin Building 2 »
« Schertz, TX 78154 »

and the Construction Manager:
(Name, legal status, address, and other information)

« Marksmen General Contractors, LLC »« »
« 11550 West Interstate 10, Ste 375 »
« San Antonio, TX 78230 »
« 210-858-3125 »

for the following Project:
(Name, location, and detailed description)

« Schertz Fire Station No 4 »
« Wiederstein Rd »
« The scope of this project is to develop construction documents and construct a new Fire Station No 4 to be located on approximately 10 acres located on Wiederstein Road near the intersection of Schertz Parkway, Texas. The fire station will be designed with a landscaped buffer between the rest of the property. Initial estimated size of the building with the project understanding at this point is approximately 15,000 square feet and one story. It is desired to have an auxiliary storage building (PEMB) on the site with a fire hydrant and large paved area if the project budget allows. It is EIKON's understanding that the building program includes a new fire station to accommodate eight vehicle drive-thru bays which may be accomplished by double stacking four (4) 100' deep apparatus bay spaces. The apparatus bays will include heaters (radiant or unit), trench drains, planned training prop areas (utilizing mezzanine spaces etc.) and HVLS fans. Support spaces such as Decontamination area, SCBA, bunker gear room, extractor and tool/work room etc. will be determined in the programming phase. The station will include a full kitchen with individual pantries for the shifts, dining room, sleeping quarters, officer's quarters, day room, laundry facilities, locker rooms and showers. There will be a public lobby and restroom space, planning and accommodations for an EOC with limited dispatch capabilities, Community/training room, two (2) offices and a study area, fitness room, outdoor cooking/dining area, mezzanine storage/training and IT/server room. Other areas may be identified during the programming phase to include items such as electrical rooms, janitorial area and storage spaces. The entire station will be on a generator with a desire to operate and function for a longer period of time than the code minimum. The appropriate length of time will be determined during the programming phase. »

ADDITIONS AND DELETIONS:

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

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

AIA Document A201™-2017, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

ELECTRONIC COPYING of any portion of this AIA® Document to another electronic file is prohibited and constitutes a violation of copyright laws as set forth in the footer of this document.

The Architect:

(Name, legal status, address, and other information)

« EIKON Consulting Group, LLC »« »
«1405 West Chapman Street »
«Sanger, TX 76266 »
«940-458-7503 »

The Owner and Construction Manager agree as follows.



TABLE OF ARTICLES

1	INITIAL INFORMATION
2	GENERAL PROVISIONS
3	CONSTRUCTION MANAGER'S RESPONSIBILITIES
4	OWNER'S RESPONSIBILITIES
5	COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES
6	COMPENSATION FOR CONSTRUCTION PHASE SERVICES
7	COST OF THE WORK FOR CONSTRUCTION PHASE
8	DISCOUNTS, REBATES, AND REFUNDS
9	SUBCONTRACTS AND OTHER AGREEMENTS
10	ACCOUNTING RECORDS
11	PAYMENTS FOR CONSTRUCTION PHASE SERVICES
12	DISPUTE RESOLUTION
13	TERMINATION OR SUSPENSION
14	MISCELLANEOUS PROVISIONS
15	SCOPE OF THE AGREEMENT

EXHIBIT A GUARANTEED MAXIMUM PRICE AMENDMENT

EXHIBIT B INSURANCE AND BONDS

ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Section 1.1.

(For each item in this section, insert the information or a statement such as "not applicable" or "unknown at time of execution.")

§ 1.1.1 The Owner's program for the Project, as described in Section 4.1.1:

(Insert the Owner's program, identify documentation that establishes the Owner's program, or state the manner in which the program will be developed.)

« »

§ 1.1.2 The Project's physical characteristics:

(Identify or describe pertinent information about the Project's physical characteristics, such as size; location; dimensions; geotechnical reports; site boundaries; topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site, etc.)

«~15,000sf one-story, Boundary and Topo Survey »

§ 1.1.3 The Owner's budget for the Guaranteed Maximum Price, as defined in Article 6:

(Provide total and, if known, a line item breakdown.)

«Approximately \$10,000,000 »

§ 1.1.4 The Owner's anticipated design and construction milestone dates:

- .1 Design phase milestone dates, if any:

« »

- .2 Construction commencement date:

« »

- .3 Substantial Completion date or dates:

«14 Months from Notice to Proceed with Construction, Post Design Phase, and after execution of the GMP Amendment and Receipt of all Building Permits. »

- .4 Other milestone dates:

« »

§ 1.1.5 The Owner's requirements for accelerated or fast-track scheduling, or phased construction, are set forth below:
(Identify any requirements for fast-track scheduling or phased construction.)

« »

§ 1.1.6 The Owner's anticipated Sustainable Objective for the Project:
(Identify and describe the Owner's Sustainable Objective for the Project, if any.)

« »

§ 1.1.6.1 If the Owner identifies a Sustainable Objective, the Owner and Construction Manager shall complete and incorporate AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, into this Agreement to define the terms, conditions and services related to the Owner's Sustainable Objective. If E234–2019 is incorporated into this agreement, the Owner and Construction Manager shall incorporate the completed E234–2019 into the agreements with the consultants and contractors performing services or Work in any way associated with the Sustainable Objective.

§ 1.1.7 Other Project information:
(Identify special characteristics or needs of the Project not provided elsewhere.)

« N/A »

§ 1.1.8 The Owner identifies the following representative in accordance with Section 4.2:
(List name, address, and other contact information.)

«City Of Schertz
Greg Rodgers
Fire Chief
groddgers@schertz.com

« »

§ 1.1.9 The persons or entities, in addition to the Owner's representative, who are required to review the Construction Manager's submittals to the Owner are as follows:
(List name, address and other contact information.)

« AGCM »
« Derek Bird »

« Field Operations Manager »
« 210-592-3110 »
« dbird@agcm.com »
»

§ 1.1.10 The Owner shall retain the following consultants and contractors:
(List name, legal status, address, and other contact information.)

.1 Geotechnical Engineer:

« TBD »« »
« »
« »
« »
« »

.2 Civil Engineer:

« EIKON Consulting Group, LLC »« »
« 1405 West Chapman Street »
« Sanger, TX 76266 »
« 940-458-7503 »
« »

.3 Other, if any:

(List any other consultants retained by the Owner, such as a Project or Program Manager.)

« »

§ 1.1.11 The Architect's representative:
(List name, address, and other contact information.)

« Helena Jenkins »
« 1405 West Chapman Street »
« Sanger, TX 76266 »
« 940-458-7503 »
« »
« »

§ 1.1.12 The Construction Manager identifies the following representative in accordance with Article 3:
(List name, address, and other contact information.)

« Ryan Zwicke »
« 11550 West Interstate 10, Ste 375 »
« San Antonio, TX 78230 »
« 210-858-3125 »
« »
« »

§ 1.1.13 The Owner's requirements for the Construction Manager's staffing plan for Preconstruction Services, as required under Section 3.1.9:
(List any Owner-specific requirements to be included in the staffing plan.)

« »

§ 1.1.14 The Owner's requirements for subcontractor procurement for the performance of the Work:
(List any Owner-specific requirements for subcontractor procurement.)

§ 1.1.15 Other Initial Information on which this Agreement is based:

§ 1.2 The Owner and Construction Manager may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Construction Manager shall appropriately adjust the Project schedule, the Construction Manager's services, and the Construction Manager's compensation. The Owner shall adjust the Owner's budget for the Guaranteed Maximum Price and the Owner's anticipated design and construction milestones, as necessary, to accommodate material changes in the Initial Information.

§ 1.3 Neither the Owner's nor the Construction Manager's representative shall be changed without ten days' prior notice to the other party.

ARTICLE 2 GENERAL PROVISIONS

§ 2.1 The Contract Documents

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 3.2.3 and identified in the Guaranteed Maximum Price Amendment and revisions prepared by the Architect and furnished by the Owner as described in Section 3.2.8. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern. An enumeration of the Contract Documents, other than a Modification, appears in Article 15.

§ 2.2 Relationship of the Parties

The Construction Manager accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Construction Manager's skill and judgment in furthering the interests of the Owner to furnish efficient construction administration, management services, and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish or approve, in a timely manner, information required by the Construction Manager and to make payments to the Construction Manager in accordance with the requirements of the Contract Documents.

§ 2.3 General Conditions

§ 2.3.1 For the Preconstruction Phase, AIA Document A201™-2017, General Conditions of the Contract for Construction, shall apply as follows: Section 1.5, Ownership and Use of Documents; Section 1.7, Digital Data Use and Transmission; Section 2.2.4, Confidential Information; Section 3.12.10, Professional Services; Section 10.3, Hazardous Materials; Section 13.1, Governing Law. The term "Contractor" as used in A201-2017 shall mean the Construction Manager.

§ 2.3.2 For the Construction Phase, the general conditions of the contract shall be as set forth in A201-2017, which document is incorporated herein by reference. The term "Contractor" as used in A201-2017 shall mean the Construction Manager.

ARTICLE 3 CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 3.1 and 3.2, and in the applicable provisions of A201-2017 referenced in Section 2.3.1. The Construction Manager's Construction Phase responsibilities are set forth in Section 3.3. The Owner and Construction Manager may agree, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.

§ 3.1 Preconstruction Phase

§ 3.1.1 Extent of Responsibility

The Construction Manager shall exercise reasonable care in performing its Preconstruction Services. The Owner and Architect shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of services and information furnished by the Construction Manager. The Construction Manager, however, does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The Construction Manager is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Construction Manager shall promptly report to the Architect and Owner any nonconformity discovered by or made known to the Construction Manager as a request for information in such form as the Architect may require.

§ 3.1.2 The Construction Manager shall provide a preliminary evaluation of the Owner's program, schedule and construction budget requirements, each in terms of the other.

§ 3.1.2.2 The Construction Manager shall provide direct support to the Architect in the development of the Project's plans and specifications, by meeting a minimum of twice per month to review projects, to review project's budget with the Architect/Design Team throughout the design process and provide field observations of existing conditions to support the Architect/Design Team. Through this process, the Construction Manager shall identify, report, and work with the Architect to identify and resolve building system conflicts, constructability issues, as well as cost and scheduling issues.

§ 3.1.2.3 The Construction Manager shall participate in all Owner scheduled design review meetings and provide constructability reviews for the Project plans and specifications. For each meeting, the Construction Manager shall work with the Owner and Architect to develop an agenda that tracks each Project, take meeting notes for pre-construction items related to estimates, value analysis and constructability and distribute them to all parties. Participation in meetings and consultation shall include requirement for preparation of comprehensive notes for each meeting, as well as final reports to the Owner at the end of each phase that addressed the construction schedules, project costs, and constructability.

§ 3.1.3 Consultation

§ 3.1.3.1 The Construction Manager shall schedule and conduct meetings with the Architect and Owner to discuss such matters as procedures, progress, coordination, and scheduling of the Work.

§ 3.1.3.2 The Construction Manager shall advise the Owner and Architect on proposed site use and improvements, selection of materials, building systems, and equipment. The Construction Manager shall also provide recommendations to the Owner and Architect, consistent with the Project requirements, on constructability; availability of materials and labor; time requirements for procurement, installation and construction; prefabrication; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions. The Construction Manager shall consult with the Architect regarding professional services to be provided by the Construction Manager during the Construction Phase.

§ 3.1.3.4 During the Construction Documents Phase the Construction Manager shall review the contract documents, in its capacity as a contractor and not a design professional, to ascertain whether the components of the mechanical, electrical, and plumbing systems may be constructed without interference with each other, or with the structural or architectural components of the Project. In the event conflicts between such systems are discovered, the Construction Manager shall promptly notify the Owner and the Architect in writing. Constructability reviews shall be performed in conjunction with preparation of preliminary cost estimates as provided below.

§ 3.1.4 Project Schedule

When Project requirements in Section 4.1.1 have been sufficiently identified, the Construction Manager shall prepare and periodically update a Project schedule for the Architect's review and the Owner's acceptance. The Construction Manager shall obtain the Architect's approval for the portion of the Project schedule relating to the performance of the Architect's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities; and identify items that affect the Project's timely completion. The updated Project schedule shall include the following: submission of the Guaranteed Maximum Price proposal; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered in advance of construction; and the occupancy requirements of the Owner.

§ 3.1.5 Phased Construction

The Construction Manager, in consultation with the Architect, shall provide recommendations with regard to accelerated or fast-track scheduling, procurement, and sequencing for phased construction. The Construction Manager shall take into consideration cost reductions, cost information, constructability, provisions for temporary facilities, and procurement and construction scheduling issues.

§ 3.1.6 Cost Estimates

§ 3.1.6.1 Based on the preliminary design and other design criteria prepared by the Architect, the Construction Manager shall prepare, for the Architect's review and the Owner's approval, preliminary estimates of the Cost of the Work or the cost of program requirements using area, volume, or similar conceptual estimating techniques. If the Architect or Construction Manager suggests alternative materials and systems, the Construction Manager shall provide cost evaluations of those alternative materials and systems.

§ 3.1.6.2 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager and Architect, an estimate of the Cost of the Work with increasing detail and refinement. The Construction Manager shall include in the estimate those costs to allow for the further development of the design, price escalation, and market conditions, until such time as the Owner and Construction Manager agree on a Guaranteed Maximum Price for the Work. The estimate shall be provided for the Architect's review and the Owner's approval. The Construction Manager shall inform the Owner and Architect in the event that the estimate of the Cost of the Work exceeds the latest approved Project budget, and make recommendations for corrective action. The proposed estimate deliverables are:

- SD (Baseline Control Estimate)
- 100% DD
- 50% CD
- GMP at Completion of the CDs.

§ 3.1.6.3 If the Architect is providing cost estimating services as a Supplemental Service, and a discrepancy exists between the Construction Manager's cost estimates and the Architect's cost estimates, the Construction Manager and the Architect shall work together to reconcile the cost estimates.

§ 3.1.7 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall consult with the Owner and Architect and make recommendations regarding constructability and schedules, for the Architect's review and the Owner's approval.

§ 3.1.8 The Construction Manager shall provide recommendations and information to the Owner and Architect regarding equipment, materials, services, and temporary Project facilities.

§ 3.1.9 The Construction Manager shall provide a staffing plan for Preconstruction Phase services for the Owner's review and approval.

§ 3.1.10 If the Owner identified a Sustainable Objective in Article 1, the Construction Manager shall fulfill its Preconstruction Phase responsibilities as required in AIA Document E234™-2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, attached to this Agreement.

§ 3.1.11 Subcontractors and Suppliers

§ 3.1.11.1 If the Owner has provided requirements for subcontractor procurement in section 1.1.14, the Construction Manager shall provide a subcontracting plan, addressing the Owner's requirements, for the Owner's review and approval.

§ 3.1.11.2 The Construction Manager shall develop bidders' interest in the Project.

§ 3.1.11.3 The processes described in Article 9 shall apply if bid packages will be issued during the Preconstruction Phase.

§ 3.1.12 Procurement

The Construction Manager shall prepare, for the Architect's review and the Owner's acceptance, a procurement schedule for items that must be ordered in advance of construction. The Construction Manager shall expedite and coordinate the ordering and delivery of materials that must be ordered in advance of construction. If the Owner agrees to procure any items prior to the establishment of the Guaranteed Maximum Price, the Owner shall procure the items on terms and conditions acceptable to the Construction Manager. Upon the establishment of the Guaranteed Maximum Price, the Owner shall assign all contracts for these items to the Construction Manager and the Construction Manager shall thereafter accept responsibility for them.

§ 3.1.13 Compliance with Laws

The Construction Manager shall comply with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to its performance under this Contract, and with equal employment opportunity programs, and other programs as may be required by governmental and quasi-governmental authorities.

§ 3.1.14 Other Preconstruction Services

Insert a description of any other Preconstruction Phase services to be provided by the Construction Manager, or reference an exhibit attached to this document

(Describe any other Preconstruction Phase services, such as providing cash flow projections, development of a project information management system, early selection or procurement of subcontractors, etc.)

« »

§ 3.2 Guaranteed Maximum Price Proposal

§ 3.2.1 At completion of the Construction Documents (100% CDs), the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's and Architect's review, and the Owner's acceptance. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work, the Construction Manager's contingency described in Section 3.2.4, and the Construction Manager's Fee described in Section 6.1.2.

§ 3.2.2 To the extent that the Contract Documents are anticipated to require further development, the Guaranteed Maximum Price includes the costs attributable to such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include changes in scope, systems, kinds and quality of materials, finishes, or equipment, all of which, if required, shall be incorporated by Change Order.

§ 3.2.3 The Construction Manager shall include with the Guaranteed Maximum Price proposal a written statement of its basis, which shall include the following:

- .1 A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;
- .2 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal, including assumptions under Section 3.2.2;
- .3 A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, including allowances; the Construction Manager's contingency set forth in Section 3.2.4; and the Construction Manager's Fee;
- .4 The anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based; and
- .5 A date by which the Owner must accept the Guaranteed Maximum Price.

§ 3.2.4 In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include a contingency of not more than four percent (4%) for the Construction Manager's exclusive use to cover those costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order.

§ 3.2.5 The Construction Manager shall meet with the Owner and Architect to review the Guaranteed Maximum Price proposal. In the event that the Owner or Architect discover any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both.

§ 3.2.6 If the Owner notifies the Construction Manager that the Owner has accepted the Guaranteed Maximum Price proposal in writing before the date specified in the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price proposal shall be deemed effective without further acceptance from the Construction Manager. Following acceptance of a Guaranteed Maximum Price, the Owner and Construction Manager shall execute the Guaranteed Maximum Price Amendment amending this Agreement, a copy of which the Owner shall provide to the Architect. The Guaranteed Maximum Price Amendment shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based.

§ 3.2.7 The Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work prior to the execution of the Guaranteed Maximum Price Amendment, unless the Owner provides prior written authorization for such costs.

§ 3.2.8 The Owner shall authorize preparation of revisions to the Contract Documents that incorporate the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment. The Owner shall promptly furnish such revised Contract Documents to the Construction Manager. The Construction Manager shall notify the Owner and Architect of any inconsistencies between the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment and the revised Contract Documents.

§ 3.2.9 The Construction Manager shall include in the Guaranteed Maximum Price all sales, consumer, use and similar taxes for the Work provided by the Construction Manager that are legally enacted, whether or not yet effective, at the time the Guaranteed Maximum Price Amendment is executed.

§ 3.3 Construction Phase

§ 3.3.1 General

§ 3.3.1.1 For purposes of Section 8.1.2 of A201–2017, the date of commencement of the Work shall mean the date of commencement of the Construction Phase.

§ 3.3.1.2 The Construction Phase shall commence upon receipt of all Building Permits & Regulatory Agency Approvals and upon the Owner's execution of the Guaranteed Maximum Price Amendment or, prior to acceptance of the Guaranteed Maximum Price proposal, by written agreement of the parties. The written agreement shall set forth a description of the Work to be performed by the Construction Manager, and any insurance and bond requirements for Work performed prior to execution of the Guaranteed Maximum Price Amendment.

§ 3.3.2 Administration

§ 3.3.2.1 The Construction Manager shall schedule and conduct meetings to discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. The Construction Manager shall prepare and promptly distribute minutes of the meetings to the Owner and Architect.

§ 3.3.2.2 Upon the execution of the Guaranteed Maximum Price Amendment, the Construction Manager shall prepare and submit to the Owner and Architect a construction schedule for the Work and a submittal schedule in accordance with Section 3.10 of A201–2017.

§ 3.3.2.3 Monthly Report

The Construction Manager shall record the progress of the Project. On a monthly basis, or otherwise as agreed to by the Owner, the Construction Manager shall submit written progress reports to the Owner and Architect, showing percentages of completion and other information required by the Owner.

§ 3.3.2.4 Daily Logs

The Construction Manager shall keep, and make available to the Owner and Architect, a daily log containing a record for each day of weather, portions of the Work in progress, number of workers on site, identification of equipment on site, problems that might affect progress of the work, accidents, injuries, and other information required by the Owner.

§ 3.3.2.5 Cost Control

The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and Architect, and

shall provide this information in its monthly reports to the Owner and Architect, in accordance with Section 3.3.2.3 above.

§ 3.3.2.6 Administrative Handling of Buyout

□ **3.3.2.6.1** Within a reasonable time following execution of the Guaranteed Maximum Price Amendment and as required by the schedule, Construction Manager shall complete procurement of all of the Work on the Project and shall provide to the Owner a written accounting of any difference between the estimated Cost of the Work allocated to the work covered by each Contract bought out, and the difference if any, in the amounts actually contracted for in connection with the same work, whether positive or negative ("Buy-Out Difference"). As the various divisions of work are bought out, if the Contract for any category of work on buyout is less than the amount estimated for that same work in the Guaranteed Maximum Price Proposal, the amount of the Buy-Out Difference shall be accounted for in a Buyout Report, to be delivered to the Architect monthly with the Construction Manager's monthly payment applications.

§ **3.3.2.6.2** The buyout report will be provided upon completion of the project to reconcile any unutilized funds to the Owner. If at any of the major key project milestones there is risk mitigated to where the Construction Manager feels there are buyout funds available to release back to the owner for utilization on the project, a buyout report may be provided, but at the sole option of the Construction Manager at Risk. These key milestone options would be when:

- the structural phase is completed
- the facilities are dried in and MEP has been started up for conditioned air
 - the structural phase is completed
 - the facilities are dried in and MEP has been started up for conditioned air

ARTICLE 4 OWNER'S RESPONSIBILITIES

§ 4.1 Information and Services Required of the Owner

§ **4.1.1** The Owner shall provide information with reasonable promptness, regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, constraints, and criteria, including schedule, space requirements and relationships, flexibility and expandability, special equipment, systems, sustainability and site requirements.

§ **4.1.2** Prior to the execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. After execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request such information as set forth in A201-2017 Section 2.2.

§ **4.1.3** The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Article 7, (2) the Owner's other costs, and (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Construction Manager and Architect. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project's scope and quality.

§ **4.1.4 Structural and Environmental Tests, Surveys and Reports.** During the Preconstruction Phase, the Owner shall furnish the following information or services with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services. The Construction Manager shall be entitled to rely on the accuracy of information and services furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ **4.1.4.1** The Owner shall furnish tests, inspections, and reports, required by law and as otherwise agreed to by the parties, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ **4.1.4.2** The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as

applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and other necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 4.1.4.3 The Owner, when such services are requested, shall furnish services of geotechnical engineers, which may include test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 4.1.5 During the Construction Phase, the Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services.

§ 4.1.6 If the Owner identified a Sustainable Objective in Article 1, the Owner shall fulfill its responsibilities as required in AIA Document E234™-2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, attached to this Agreement.

§ 4.2 Owner's Designated Representative

The Owner shall identify a representative authorized to act on behalf of the Owner with respect to the Project. The Owner's representative shall render decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in Section 4.2.1 of A201-2017, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 4.2.1 Legal Requirements. The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

§ 4.3 Architect

The Owner shall retain an Architect to provide services, duties and responsibilities as described in AIA Document B133™-2019, Standard Form of Agreement Between Owner and Architect, Construction Manager as Constructor Edition, including any additional services requested by the Construction Manager that are necessary for the Preconstruction and Construction Phase services under this Agreement. The Owner shall provide the Construction Manager with a copy of the scope of services in the executed agreement between the Owner and the Architect, and any further modifications to the Architect's scope of services in the agreement.

ARTICLE 5 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

§ 5.1 Compensation

§ 5.1.1 For the Construction Manager's Preconstruction Phase services described in Sections 3.1 and 3.2, the Owner shall compensate the Construction Manager as follows:

(Insert amount of, or basis for, compensation and include a list of reimbursable cost items, as applicable.)

«\$42,000 Preconstruction Services Fee will be billed and paid incrementally and/or monthly throughout the precon and design phase as the required preconstruction services scope of work is performed by the Construction Manager. At completion of the Precon phase and establishment of the GMP, any outstanding balance of the Precon Fee will be paid, regardless of acceptance or rejection of the GMP. Once the GMP is established and final fee determined, the \$42,000 will be deducted from the contractors overall fee and shown as pre-paid.

§ 5.1.2 The hourly billing rates for Preconstruction Phase services of the Construction Manager and the Construction Manager's Consultants and Subcontractors, if any, are set forth below.

(If applicable, attach an exhibit of hourly billing rates or insert them below.)

« »

Individual or Position**Rate**

§ 5.1.2.1 Hourly billing rates for Preconstruction Phase services include all costs to be paid or incurred by the Construction Manager, as required by law or collective bargaining agreements, for taxes, insurance, contributions, assessments and benefits and, for personnel not covered by collective bargaining agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, and shall remain unchanged unless the parties execute a Modification.

§ 5.1.3 If the Preconstruction Phase services covered by this Agreement have not been completed within «» («») months of the date of this Agreement, through no fault of the Construction Manager, the Construction Manager's compensation for Preconstruction Phase services shall be equitably adjusted.

§ 5.2 Payments

§ 5.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed.

§ 5.2.2 Payments are due and payable upon presentation of the Construction Manager's invoice. Amounts unpaid « » (« ») days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Construction Manager.
(Insert rate of monthly or annual interest agreed upon.)

« » % « »

ARTICLE 6 COMPENSATION FOR CONSTRUCTION PHASE SERVICES**§ 6.1 Contract Sum**

§ 6.1.1 The Owner shall pay the Construction Manager the Contract Sum in current funds for the Construction Manager's performance of the Contract after execution of the Guaranteed Maximum Price Amendment. The Contract Sum is the Cost of the Work as defined in Article 7 plus the Construction Manager's Fee.

§ 6.1.2 The Construction Manager's Fee:

(State a lump sum, percentage of Cost of the Work or other provision for determining the Construction Manager's Fee.)

The Construction Manager's Fee shall be Four Percent (4%) of the actual Cost of Work as defined in Article 7. For the purposes of clarity, the Construction Manager's fee shall **not** be calculated as a percentage of the Contract Sum, the Guaranteed Maximum Price of the Construction Budget. No Construction Manager's Fee shall be paid on the Construction Contingency until funds are allocated from the contingency to the Cost of the Work. \$42,000 of the Construction managers fee is to be paid for Pre-Construction services prior to establishment of GMP and shown as such. »

§ 6.1.3 The method of adjustment of the Construction Manager's Fee for changes in the Work:

« by written change order subject to the approval of the Owner »

§ 6.1.4 Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work:

«Not to exceed 15% separately, not to exceed 10% overhead and 5% profit »

§ 6.1.5 Rental rates for Construction Manager-owned equipment shall not exceed « Ninety Five» percent («95 » %) of the standard rental rate paid at the place of the Project.

§ 6.1.6 Liquidated damages, if any:

(Insert terms and conditions for liquidated damages, if any.)

« Seven Hundred Fifty Dollars (\$750) per day past contractual completion date. »

§ 6.1.7 Other:

(Insert provisions for bonus, cost savings or other incentives, if any, that might result in a change to the Contract Sum.)

« All cost savings on the project shall be returned to the owner..»

§ 6.2 Guaranteed Maximum Price

The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price Amendment, subject to additions and deductions by Change Order as provided in the Contract Documents. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Construction Manager without reimbursement by the Owner.

§ 6.3 Changes in the Work

§ 6.3.1 The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The Construction Manager may be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work.

§ 6.3.1.1 The Architect may order minor changes in the Work as provided in Article 7 of AIA Document A201–2017, General Conditions of the Contract for Construction.

§ 6.3.2 Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of the Guaranteed Maximum Price Amendment may be determined by any of the methods listed in Article 7 of AIA Document A201–2017, General Conditions of the Contract for Construction.

§ 6.3.3 Adjustments to subcontracts awarded on the basis of a stipulated sum shall be determined in accordance with Article 7 of A201–2017, as they refer to “cost” and “fee,” and not by Articles 6 and 7 of this Agreement. Adjustments to subcontracts awarded with the Owner’s prior written consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

§ 6.3.4 In calculating adjustments to the Guaranteed Maximum Price, the terms “cost” and “costs” as used in Article 7 of AIA Document A201–2017 shall mean the Cost of the Work as defined in Article 7 of this Agreement and the term “fee” shall mean the Construction Manager’s Fee as defined in Section 6.1.2 of this Agreement.

§ 6.3.5 If no specific provision is made in Section 6.1.3 for adjustment of the Construction Manager’s Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Section 6.1.3 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager’s Fee shall be equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.

ARTICLE 7 COST OF THE WORK FOR CONSTRUCTION PHASE

§ 7.1 Costs to Be Reimbursed

§ 7.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. The Cost of the Work shall include only the items set forth in Sections 7.1 through 7.7.

§ 7.1.2 Where, pursuant to the Contract Documents, any cost is subject to the Owner’s prior approval, the Construction Manager shall obtain such approval in writing prior to incurring the cost.

§ 7.1.3 Costs shall be at rates not higher than the standard rates paid at the place of the Project, except with prior approval of the Owner.

§ 7.2 Labor Costs

§ 7.2.1 Wages or salaries of construction workers directly employed by the Construction Manager to perform the construction of the Work at the site or, with the Owner’s prior approval, at off-site workshops.

§ 7.2.2 Wages or salaries of the Construction Manager’s supervisory and administrative personnel when stationed at the site and performing Work, with the Owner’s prior approval.

§ 7.2.2.1 Wages or salaries of the Construction Manager's supervisory and administrative personnel when performing Work and stationed at a location other than the site, but only for that portion of time required for the Work, and limited to the personnel and activities listed below:
(Identify the personnel, type of activity and, if applicable, any agreed upon percentage of time to be devoted to the Work.)

« »

§ 7.2.3

§ 7.2.4

§ 7.2.5 If agreed rates for labor costs, in lieu of actual costs, are provided in this Agreement, the rates shall remain unchanged throughout the duration of this Agreement, unless the parties execute a Modification.

§ 7.3 Subcontract Costs

Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts and this Agreement.

§ 7.4 Costs of Materials and Equipment Incorporated in the Completed Construction

§ 7.4.1 Costs, including transportation and storage at the site, of materials and equipment incorporated, or to be incorporated, in the completed construction.

§ 7.4.2 Costs of materials described in the preceding Section 7.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Construction Manager. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

§ 7.5 Costs of Other Materials and Equipment, Temporary Facilities and Related Items

§ 7.5.1 Costs of transportation, storage, installation, dismantling, maintenance, and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment, and tools, that are not fully consumed, shall be based on the cost or value of the item at the time it is first used on the Project

§ 7.5.2 Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site, and the costs of transportation, installation, dismantling, minor repairs, and removal of such temporary facilities, machinery, equipment, and hand tools. Rates and quantities of equipment owned by the Construction Manager, or a related party as defined in Section 7.8, shall be subject to the Owner's prior approval. The total rental cost of any such equipment may not exceed the purchase price of any comparable item.

§ 7.5.3 Costs of removal of debris from the site of the Work and its proper and legal disposal.

§ 7.5.4 Costs of the Construction Manager's site office, including general office equipment and supplies.

§ 7.5.5 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the Owner's prior approval.

§ 7.6 Miscellaneous Costs

§ 7.6.1 Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract.

§ 7.6.1.1 Costs for self-insurance, for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior approval.

§ 7.6.1.2 Costs for insurance through a captive insurer owned or controlled by the Construction Manager, with the Owner's prior approval.

§ 7.6.2 Sales, use, or similar taxes, imposed by a governmental authority, that are related to the Work and for which the Construction Manager is liable and the owner is not exempt. Construction Manager shall be obligated to take reasonable care to obtain all applicable tax exemptions

§ 7.6.3 Fees and assessments for the building permit, and for other permits, licenses, and inspections, for which the Construction Manager is required by the Contract Documents to pay.

§ 7.6.4 Fees of laboratories for tests required by the Contract Documents; except those related to defective or nonconforming Work for which reimbursement is excluded under Article 13 of AIA Document A201–2017 or by other provisions of the Contract Documents, and which do not fall within the scope of Section 7.7.3.

§ 7.6.5 Royalties and license fees paid for the use of a particular design, process, or product, required by the Contract Documents.

§ 7.6.5.1

§ 7.6.6 Costs for software calculated at a rate of 0.5%.

§ 7.6.7

§ 7.6.8 Deposits lost for causes other than the Construction Manager's negligence or failure to fulfill a specific responsibility in the Contract Documents.

§ 7.6.9 Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Construction Manager, reasonably incurred by the Construction Manager after the execution of this Agreement in the performance of the Work and with the Owner's prior approval, which shall not be unreasonably withheld.

§ 7.6.10

§ 7.6.11

§ 7.7 Other Costs and Emergencies

§ 7.7.1 Other costs incurred in the performance of the Work, with the Owner's prior approval.

§ 7.7.2 Costs incurred in taking action to prevent threatened damage, injury, or loss, in case of an emergency affecting the safety of persons and property, as provided in Article 10 of AIA Document A201–2017.

§ 7.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Construction Manager, Subcontractors, or suppliers, provided that such damaged or nonconforming Work was not caused by the negligence of, or failure to fulfill a specific responsibility by, the Construction Manager, and only to the extent that the cost of repair or correction is not recovered by the Construction Manager from insurance, sureties, Subcontractors, suppliers, or others.

§ 7.7.4 The costs described in Sections 7.1 through 7.7 shall be included in the Cost of the Work, notwithstanding any provision of AIA Document A201–2017 or other Conditions of the Contract which may require the Construction Manager to pay such costs, unless such costs are excluded by the provisions of Section 7.9.

§ 7.8 Related Party Transactions

§ 7.8.1 For purposes of this Section 7.8, the term "related party" shall mean (1) a parent, subsidiary, affiliate, or other entity having common ownership of, or sharing common management with, the Construction Manager; (2) any entity in which any stockholder in, or management employee of, the Construction Manager holds an equity interest in excess of ten percent in the aggregate; (3) any entity which has the right to control the business or affairs of the Construction Manager; or (4) any person, or any member of the immediate family of any person, who has the right to control the business or affairs of the Construction Manager.

§ 7.8.2 If any of the costs to be reimbursed arise from a transaction between the Construction Manager and a related party, the Construction Manager shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction in writing, then the cost incurred shall be included as a cost to be reimbursed, and the Construction Manager shall procure the Work, equipment, goods, or service, from the related party, as a Subcontractor, according to the terms of Article 9. If the Owner fails to authorize the transaction in writing, the Construction Manager shall procure the Work, equipment, goods, or service from some person or entity other than a related party according to the terms of Article 9.

§ 7.9 Costs Not To Be Reimbursed

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

- .1 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in Section 7.2, or as may be provided in Article 14;
- .2 Bonuses, profit sharing, incentive compensation, and any other discretionary payments, paid to anyone hired by the Construction Manager or paid to any Subcontractor or vendor, unless the Owner has provided prior approval;
- .3 Expenses of the Construction Manager's principal office and offices other than the site office;
- .4 Overhead and general expenses, except as may be expressly included in Sections 7.1 to 7.7;
- .5 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;
- .6 Except as provided in Section 7.7.3 of this Agreement, costs due to the negligence of, or failure to fulfill a specific responsibility of the Contract by, the Construction Manager, Subcontractors, and suppliers, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable;
- .7 Any cost not specifically and expressly described in Sections 7.1 to 7.7;
- .8 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded; and
- .9 Costs for services incurred during the Preconstruction Phase.
- .10 Costs that are otherwise collectable from insurance or bonds.

ARTICLE 8 DISCOUNTS, REBATES, AND REFUNDS

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

§ 8.2 Amounts that accrue to the Owner in accordance with the provisions of Section 8.1 shall be credited to the Owner as a deduction from the Cost of the Work.

ARTICLE 9 SUBCONTRACTS AND OTHER AGREEMENTS

§ 9.1 Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or other appropriate agreements with the Construction Manager. The Owner may designate specific persons from whom, or entities from which, the Construction Manager shall obtain bids. The Construction Manager shall obtain bids from Subcontractors, and from suppliers of materials or equipment fabricated especially for the Work, who are qualified to perform that portion of the Work in accordance with the requirements of the Contract Documents. The Construction Manager shall deliver such bids to the Architect and Owner with an indication as to which bids the Construction Manager intends to accept. The Owner then has the right to review the Construction Manager's list of proposed subcontractors and suppliers in consultation with the Architect and, subject to Section 9.1.1, to object to any subcontractor or supplier. Any advice of the Architect, or approval or objection by the Owner, shall not relieve the Construction Manager of its responsibility to perform the Work in accordance with the Contract Documents. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.

§ 9.1.1 When a specific subcontractor or supplier (1) is recommended to the Owner by the Construction Manager; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid that conforms to the requirements of the

Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Construction Manager may require that a Change Order be issued to adjust the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Construction Manager and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ 9.2 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the Owner's prior written approval. If a subcontract is awarded on the basis of cost plus a fee, the Construction Manager shall provide in the subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Construction Manager in Article 10.

§ 9.3 Pursuant to Texas Government Code Chapter 2269, Subchapter F, the Construction Manager shall publicly advertise and obtain proposals from Subcontractors for the performance of all major elements of the Work. To the extent an element of the Work is included in the General Conditions Costs, it is not considered a major element of the Work and shall not be procured under this Section 9.3. All bids or proposals shall be sent directly to Construction Manager.

§9.3.1 The Construction Manager the Owner Representative, and Project Manager, if any, shall receive and open all subcontractor proposals in a manner that does not disclose the contents of the proposals during the selection process to a person not employed by the Construction Manager, Architect, Engineer or Owner. The Construction Manager shall review and evaluate all bids or proposals, and shall recommend to the Owner a list of bidders to which the Construction Manager proposes to award subcontracts for the Project Work.

□9.3.2 In the event that the Owner requires that the Construction Manager to award any portion of the work to a subcontractor not proposed as best value by the Construction Manager, the Owner shall compensate the Construction Manager by a change in price, time, or Guaranteed Maximum Price for any additional cost or risk that the Construction Manager may incur by reason of the Owner's requirements. Construction Manager shall state the additional cost and/or risk in writing and shall provide written proof of same before Owner compensates Construction Manager.

§ 9.3.3 The Construction Manager shall deliver a copy of all advertising, solicitation documents, proposals, evaluations of proposals and all documents relevant to the Guaranteed Maximum Price proposal to the Owner with the Guaranteed Maximum Price proposal.

§ 9.3.4 The Construction Manager shall make all bids and proposals available for public inspection within seven (7) days following final selection of the subcontractors.

§ 9.4 Self-Performed Work

§ 9.4.1 The Construction Manager may seek to perform portions of the Work itself; provided however, the Construction Manager must submit its proposal for those portions of the Work it seeks to self-perform to the Owner, at the office of the Owner's Representative, not later than twenty-four (24) hours in advance of the scheduled receipt of proposals from third-party subcontractors.

§ 9.4.2 The Construction Manager's proposal for those portions of the Work it seeks to self-perform shall be submitted the same form and in the same manner as proposals are required from all other third-party subcontractors or trade contractors, and shall be for the same scope of work which the competing trade contractors or subcontractors have submitted proposals, as if the Construction Manager itself were proposing as a third-party subcontractor or trade contractor.

§ 9.4.3 Following receipt of all third-party and self-performance proposals the Owner shall decide, in its sole discretion, whether or not Construction Manager's proposal for self-performing portions of the Work offers the best value to Owner.

§ 9.4.4 In order for the Construction Manager's self-performed proposal to be considered the best value proposal by the Owner, the Owner must be able to evaluate the Construction Manager's Proposal against at least one other bona fide competitive proposal. If at least one other proposal is received for the same scope of Work as the Construction Manager, and the Owner, in its sole discretion, determines the scope of Work to have been competitively procured then the Owner

may accept performance of the work by the Construction Manager. In such event, the Owner must accept the Construction Manager's proposal to self-perform a specific scope of work, as the best value for the Owner, in writing.

§ 9.4.5 If selected to self-perform a specific scope of work, the Construction Manager will be permitted to be paid for the self-performed work pursuant to progress payments, as if Construction Manager were a subcontractor; and like any third-party subcontractor, the Construction Manager shall be required to submit a "subcontractor" Payment Application each month for its self-performed work in the same manner and in the same form as the third-party subcontractors on the Project. The "subcontractor" Payment Application submitted by the Construction Manager shall be attached to its Construction Manager's Payment Application as documentation of the work completed that month and the associated costs. Payments to the Construction Manager on account of self-performed work shall be included in the Cost of the Work, but the Construction Manager shall not receive an additional Construction Manager's Fee for self-performed work.

§ 9.4.6 If the Owner reasonably determines in its sole discretion, that the scope of work sought to be self-performed was not subject to bona fide competition, it may accept the Construction Manager's proposal in writing, as the best value for the Owner and allow the Construction Manager to be paid as described in Section 9.4.5, or may reject all proposals (including those of third parties) and require the Construction Manager to repeat the procurement for that scope of work.

ARTICLE 10 ACCOUNTING RECORDS

The Construction Manager shall keep full and detailed records and accounts related to the Cost of the Work, and exercise such controls, as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Construction Manager's records and accounts, including complete documentation supporting accounting entries, books, job cost reports, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, Subcontractor's invoices, purchase orders, vouchers, memoranda, and other data relating to this Contract. The Construction Manager shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law.

ARTICLE 11 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

§ 11.1 Progress Payments

§ 11.1.1 Based upon Applications for Payment submitted to the Architect by the Construction Manager, and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum, to the Construction Manager, as provided below and elsewhere in the Contract Documents.

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

« »

§ 11.1.3 Provided that an Application for Payment is received by the Architect not later than the «25th » day of a month, the Owner shall make payment of the amount certified to the Construction Manager not later than the «30th » day of the « following » month. If an Application for Payment is received by the Architect after the application date fixed above, payment of the amount certified shall be made by the Owner not later than « forty-five » (« 45 ») days after the Architect receives the Application for Payment.

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

§ 11.1.4 With each Application for Payment, the Construction Manager shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Architect to demonstrate that payments already made by the Construction Manager on account of the Cost of the Work equal or exceed progress payments already received by the Construction Manager, plus payrolls for the period covered by the present Application for Payment, less that portion of the progress payments attributable to the Construction Manager's Fee.

§ 11.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among: (1) the various portions of the Work; (2) any contingency for costs that are

included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order; and (3) the Construction Manager's Fee.

§ 11.1.5.1 The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. The schedule of values shall be used as a basis for reviewing the Construction Manager's Applications for Payment.

§ 11.1.5.2 The allocation of the Guaranteed Maximum Price under this Section 11.1.5 shall not constitute a separate guaranteed maximum price for the Cost of the Work of each individual line item in the schedule of values.

§ 11.1.5.3 When the Construction Manager allocates costs from a contingency to another line item in the schedule of values, the Construction Manager shall submit supporting documentation to the Architect.

§ 11.1.6 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed, or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Construction Manager on account of that portion of the Work and for which the Construction Manager has made payment or intends to make payment prior to the next Application for Payment, by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

§ 11.1.7 In accordance with AIA Document A201–2017 and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

§ 11.1.7.1 The amount of each progress payment shall first include:

- .1 That portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the most recent schedule of values;
- .2 That portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction or, if approved in writing in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- .3 That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified; and
- .4 The Construction Manager's Fee, computed upon the Cost of the Work described in the preceding Sections 11.1.7.1.1 and 11.1.7.1.2 at the rate stated in Section 6.1.2 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work included in Sections 11.1.7.1.1 and 11.1.7.1.2 bears to a reasonable estimate of the probable Cost of the Work upon its completion.

§ 11.1.7.2 The amount of each progress payment shall then be reduced by:

- .1 The aggregate of any amounts previously paid by the Owner;
- .2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201–2017;
- .3 Any amount for which the Construction Manager does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Construction Manager intends to pay;
- .4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201–2017;
- .5 The shortfall, if any, indicated by the Construction Manager in the documentation required by Section 11.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .6 Retainage withheld pursuant to Section 11.1.8.

§ 11.1.8 Retainage

§ 11.1.8.1 For each progress payment made prior to Substantial Completion of the Work, the Owner may withhold the following amount, as retainage, from the payment otherwise due:

(Insert a percentage or amount to be withheld as retainage from each Application for Payment. The amount of retainage may be limited by governing law.)

« Five Percent (5%) »

§ 11.1.8.1.1 The following items are not subject to retainage:

(Insert any items not subject to the withholding of retainage, such as general conditions, insurance, etc.)

«N/A – All items subject to Retainage »

§ 11.1.8.2 Reduction or limitation of retainage, if any, shall be as follows:

(If the retainage established in Section 11.1.8.1 is to be modified prior to Substantial Completion of the entire Work, insert provisions for such modification.)

« There shall be no reduction or limitation or modification of retainage prior to Final Completion »

§ 11.1.8.3 Except as set forth in this Section 11.1.8.3, upon Substantial Completion of the Work, the Construction Manager may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 11.1.8. The Application for Payment submitted at Substantial Completion shall not include retainage as follows:

(Insert any other conditions for release of retainage, such as upon completion of the Owner's audit and reconciliation, upon Substantial Completion.)

« »

§ 11.1.9 If final completion of the Work is materially delayed through no fault of the Construction Manager, the Owner shall pay the Construction Manager any additional amounts in accordance with Article 9 of AIA Document A201–2017.

§ 11.1.10 Except with the Owner's prior written approval, the Construction Manager shall not make advance payments to suppliers for materials or equipment which have not been delivered and suitably stored at the site or offsite within appropriately insured and bonded facility. Owner or owners representative will be allowed to verify all offsite stored materials.

§ 11.1.11 The Owner and the Construction Manager shall agree upon a mutually acceptable procedure for review and approval of payments to Subcontractors, and the percentage of retainage held on Subcontracts, and the Construction Manager shall execute subcontracts in accordance with those agreements.

§ 11.1.12 In taking action on the Construction Manager's Applications for Payment the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager, and such action shall not be deemed to be a representation that (1) the Architect has made a detailed examination, audit, or arithmetic verification, of the documentation submitted in accordance with Section 11.1.4 or other supporting data; (2) that the Architect has made exhaustive or continuous on-site inspections; or (3) that the Architect has made examinations to ascertain how or for what purposes the Construction Manager has used amounts previously paid on account of the Contract. Such examinations, audits, and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

§ 11.2 Final Payment

§ 11.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Construction Manager when

- .1 the Construction Manager has fully performed the Contract, except for the Construction Manager's responsibility to correct Work as provided in Article 12 of AIA Document A201–2017, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment; and
- .3 a final Certificate for Payment has been issued by the Architect in accordance with Section 11.2.2.2.

§ 11.2.2 Within 30 days of the Owner's receipt of the Construction Manager's final accounting for the Cost of the Work, the Owner shall conduct an audit of the Cost of the Work or notify the Architect that it will not conduct an audit.

§ 11.2.2.1 If the Owner conducts an audit of the Cost of the Work, the Owner shall, within 10 days after completion of the audit, submit a written report based upon the auditors' findings to the Architect.

§ 11.2.2.2 Within seven days after receipt of the written report described in Section 11.2.2.1, or receipt of notice that the Owner will not conduct an audit, and provided that the other conditions of Section 11.2.1 have been met, the Architect will either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding a certificate as provided in Article 9 of AIA Document A201–2017. The time periods stated in this Section 11.2.2 supersede those stated in Article 9 of AIA Document A201–2017. The Architect is not responsible for verifying the accuracy of the Construction Manager's final accounting.

§ 11.2.2.3 If the Owner's auditors' report concludes that the Cost of the Work, as substantiated by the Construction Manager's final accounting, is less than claimed by the Construction Manager, the Construction Manager shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Article 15 of AIA Document A201–2017. A request for mediation shall be made by the Construction Manager within 30 days after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect's final Certificate for Payment.

§ 11.2.3 The Owner's final payment to the Construction Manager shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows:

« »

§ 11.2.4 If, subsequent to final payment, and at the Owner's request, the Construction Manager incurs costs, described in Sections 7.1 through 7.7, and not excluded by Section 7.9, to correct defective or nonconforming Work, the Owner shall reimburse the Construction Manager for such costs, and the Construction Manager's Fee applicable thereto, on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If adjustments to the Contract Sum are provided for in Section 6.1.7, the amount of those adjustments shall be recalculated, taking into account any reimbursements made pursuant to this Section 11.2.4 in determining the net amount to be paid by the Owner to the Construction Manager.

§ 11.3 Interest

Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

(Insert rate of interest agreed upon, if any.)

« 0 » % « 0 »

ARTICLE 12 DISPUTE RESOLUTION

§ 12.1 Initial Decision Maker

§ 12.1.1 Any Claim between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 12 and Article 15 of A201–2017. However, for Claims arising from or relating to the Construction Manager's Preconstruction Phase services, no decision by the Initial Decision Maker shall be required as a condition precedent to mediation or binding dispute resolution, and Section 12.1.2 of this Agreement shall not apply.

§ 12.1.2 The Architect will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document A201–2017 for Claims arising from or relating to the Construction Manager's Construction Phase services, unless the parties appoint below another individual, not a party to the Agreement, to serve as the Initial Decision Maker.

(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)

« N/A »

§ 12.2 Binding Dispute Resolution

For any Claim subject to, but not resolved by mediation pursuant to Article 15 of AIA Document A201–2017, the method of binding dispute resolution shall be as follows:

(Check the appropriate box.)

[☐] Arbitration pursuant to Article 15 of AIA Document A201–2017

[☒] Litigation in a court of competent jurisdiction within Guadalupe County, Texas

[☐] Other: (Specify)

<< >>

If the Owner and Construction Manager do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.

ARTICLE 13 TERMINATION OR SUSPENSION

§ 13.1 Termination Prior to Execution of the Guaranteed Maximum Price Amendment

§ 13.1.1 If the Owner and the Construction Manager do not reach an agreement on the Guaranteed Maximum Price, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner.

§ 13.1.2 In the event of termination of this Agreement pursuant to Section 13.1.1, the Construction Manager shall be compensated for Preconstruction Phase services and Work performed prior to receipt of a notice of termination, in accordance with the terms of this Agreement. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 5.1.

§ 13.1.3 Prior to the execution of the Guaranteed Maximum Price Amendment, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager for the Owner's convenience and without cause, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner, for the reasons set forth in Article 14 of A201–2017.

§ 13.1.4 In the event of termination of this Agreement pursuant to Section 13.1.3, the Construction Manager shall be equitably compensated for Preconstruction Phase services and Work performed prior to receipt of a notice of termination. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 5.1.

§ 13.1.5 If the Owner terminates the Contract pursuant to Section 13.1.3 after the commencement of the Construction Phase but prior to the execution of the Guaranteed Maximum Price Amendment, the Owner shall pay to the Construction Manager an amount calculated as follows, which amount shall be in addition to any compensation paid to the Construction Manager under Section 13.1.4:

- .1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;
- .2 Add the Construction Manager's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 6.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and
- .3 Subtract the aggregate of previous payments made by the Owner for Construction Phase services.

§ 13.1.6 The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 13.1.5.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a

condition of receiving the payments referred to in this Article 13, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders. All Subcontracts, purchase orders and rental agreements entered into by the Construction Manager will contain provisions allowing for assignment to the Owner as described above.

§ 13.1.6.1 If the Owner accepts assignment of subcontracts, purchase orders or rental agreements as described above, the Owner will reimburse or indemnify the Construction Manager for all costs arising under the subcontract, purchase order or rental agreement, if those costs would have been reimbursable as Cost of the Work if the contract had not been terminated. If the Owner chooses not to accept assignment of any subcontract, purchase order or rental agreement that would have constituted a Cost of the Work had this agreement not been terminated, the Construction Manager will terminate the subcontract, purchase order or rental agreement and the Owner will pay the Construction Manager the costs necessarily incurred by the Construction Manager because of such termination.

§ 13.2 Termination or Suspension Following Execution of the Guaranteed Maximum Price Amendment

§ 13.2.1 Termination

The Contract may be terminated by the Owner or the Construction Manager as provided in Article 14 of AIA Document A201–2017.

§ 13.2.2 Termination by the Owner for Cause

§ 13.2.2.1 If the Owner terminates the Contract for cause as provided in Article 14 of AIA Document A201–2017, the amount, if any, to be paid to the Construction Manager under Article 14 of AIA Document A201–2017 shall not cause the Guaranteed Maximum Price to be exceeded, nor shall it exceed an amount calculated as follows:

- .1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;
- .2 Add the Construction Manager's Fee, computed upon the Cost of the Work to the date of termination at the rate stated in Section 6.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .3 Subtract the aggregate of previous payments made by the Owner; and
- .4 Subtract the costs and damages incurred, or to be incurred, by the Owner under Article 14 of AIA Document A201–2017.

§ 13.2.2.2 The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 13.2.2.1.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 13, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders.

§ 13.2.3 Termination by the Owner for Convenience

If the Owner terminates the Contract for convenience in accordance with Article 14 of AIA Document A201–2017, then the Owner shall pay the Construction Manager a termination fee as follows:

(Insert the amount of or method for determining the fee, if any, payable to the Construction Manager following a termination for the Owner's convenience.)

<< >>

§ 13.3 Suspension

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2017; in such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Article 14 of AIA Document A201–2017, except that the term “profit” shall be understood to mean the Construction Manager's Fee as described in Sections 6.1 and 6.3.5 of this Agreement.

ARTICLE 14 MISCELLANEOUS PROVISIONS

§ 14.1 Terms in this Agreement shall have the same meaning as those in A201–2017. Where reference is made in this Agreement to a provision of AIA Document A201–2017 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 14.2 Successors and Assigns

§ 14.2.1 The Owner and Construction Manager, respectively, bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 14.2.2 of this Agreement, and in Section 13.2.2 of A201–2017, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 14.2.2 The Owner may, without consent of the Construction Manager, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Construction Manager shall execute all consents reasonably required to facilitate the assignment.

§ 14.3 Insurance and Bonds

§ 14.3.1 Preconstruction Phase

The Construction Manager shall maintain the following insurance for the duration of the Preconstruction Services performed under this Agreement. If any of the requirements set forth below exceed the types and limits the Construction Manager normally maintains, the Owner shall reimburse the Construction Manager for any additional cost.

§ 14.3.1.1 Commercial General Liability with policy limits of not less than «one million » (\$ «1,000,000 ») for each occurrence and « one million » (\$ «1,000,000 ») in the aggregate for bodily injury and property damage.

§ 14.3.1.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Construction Manager with policy limits of not less than «one million » (\$ «1,000,000 ») per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage.

§ 14.3.1.3 The Construction Manager may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided that such primary and excess or umbrella liability insurance policies result in the same or greater coverage as the coverages required under Sections 14.3.1.1 and 14.3.1.2, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ 14.3.1.4 Workers' Compensation at statutory limits and Employers Liability with policy limits not less than « one hundred thousand » (\$ «100,000 ») each accident, «one hundred thousand » (\$ «100,000 ») each employee, and «five hundred thousand » (\$ 500,000) policy limit.

§ 14.3.1.5 Professional Liability covering negligent acts, errors and omissions in the performance of professional services, with policy limits of not less than «one million » (\$ «1,000,000 ») per claim and «two million » (\$ «2,000,000 ») in the aggregate.

§ 14.3.1.6 Other Insurance

(List below any other insurance coverage to be provided by the Construction Manager and any applicable limits.)

Coverage	Limits

§ 14.3.1.7 **Additional Insured Obligations.** To the fullest extent permitted by law, the Construction Manager shall cause the primary and excess or umbrella policies for Commercial General Liability and Automobile Liability to include the Owner as an additional insured for claims caused in whole or in part by the Construction Manager's negligent acts or omissions. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies and shall apply to both ongoing and completed operations.

§ 14.3.1.8 The Construction Manager shall provide certificates of insurance to the Owner that evidence compliance with the requirements in this Section 14.3.1.

§ 14.3.2 Construction Phase

After execution of the Guaranteed Maximum Price Amendment, the Owner and the Construction Manager shall purchase and maintain insurance as set forth in AIA Document A133™–2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, Exhibit B, Insurance and Bonds, and elsewhere in the Contract Documents.

§ 14.3.2.1 The Construction Manager shall provide bonds as set forth in AIA Document A133™–2019 Exhibit B, and elsewhere in the Contract Documents.

§

§ 14.5 Other provisions:

<< >>

ARTICLE 15 SCOPE OF THE AGREEMENT

§ 15.1 This Agreement represents the entire and integrated agreement between the Owner and the Construction Manager and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Construction Manager.

§ 15.2 The following documents comprise the Agreement:

- .1 AIA Document A133™–2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price
- .2 AIA Document A133™–2019, Exhibit A, Guaranteed Maximum Price Amendment, if executed
- .3 AIA Document A133™–2019, Exhibit B, Insurance and Bonds
- .4 AIA Document A201™–2017, General Conditions of the Contract for Construction
- .5

<< >>

- .6 Other Exhibits:
(Check all boxes that apply.)

[<< >>] AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, dated as indicated below:
(Insert the date of the E234-2019 incorporated into this Agreement.)

<< >>

[<< >>] Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
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- .7 Other documents, if any, listed below:
(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201–2017 provides that the advertisement or invitation to bid, Instructions to Bidders, sample forms, the Construction Manager’s bid or proposal, portions of Addenda relating to bidding or proposal requirements, and other information furnished by the Owner in anticipation of receiving bids or proposals, are not part of the Contract Documents unless enumerated in this Agreement. Any such documents should be listed here only if intended to be part of the Contract Documents.)

<< >>

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

OWNER *(Signature)*

«Steve Williams »«Schertz City Manager »
(Printed name and title)

CONSTRUCTION MANAGER *(Signature)*

«Mark W. Baublitz»«President / CEO »
(Printed name and title)

FILED

DRAFT AIA® Document A201® – 2017

General Conditions of the Contract for Construction

for the following PROJECT:

(Name and location or address)

«Schertz Fire Station No 4 »
« TBD Wiederstein Rd
Schertz, TX 78154 »

THE OWNER:

(Name, legal status and address)

«City of Schertz »« »
«1400 Schertz Parkway
Admin Building 2
Schertz, TX 78154 »

THE ARCHITECT:

(Name, legal status and address)

« EIKON Consulting Group, LLC »« »
« 1405 West Chapman Street
Sanger, TX 76266 »

TABLE OF ARTICLES

- | | |
|----|--|
| 1 | GENERAL PROVISIONS |
| 2 | OWNER |
| 3 | CONTRACTOR |
| 4 | ARCHITECT |
| 5 | SUBCONTRACTORS |
| 6 | CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS |
| 7 | CHANGES IN THE WORK |
| 8 | TIME |
| 9 | PAYMENTS AND COMPLETION |
| 10 | PROTECTION OF PERSONS AND PROPERTY |
| 11 | INSURANCE AND BONDS |
| 12 | UNCOVERING AND CORRECTION OF WORK |
| 13 | MISCELLANEOUS PROVISIONS |

ADDITIONS AND DELETIONS:

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

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

For guidance in modifying this document to include supplementary conditions, see AIA Document A503™, Guide for Supplementary Conditions.

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- 14 TERMINATION OR SUSPENSION OF THE CONTRACT
- 15 CLAIMS AND DISPUTES



INDEX

(Topics and numbers in bold are Section headings.)

Acceptance of Nonconforming Work

9.6.6, 9.9.3, **12.3**

Acceptance of Work

9.6.6, 9.8.2, 9.9.3, 9.10.1, 9.10.3, 12.3

Access to Work

3.16, 6.2.1, 12.1

Accident Prevention

10

Acts and Omissions

3.2, 3.3.2, 3.12.8, 3.18, 4.2.3, 8.3.1, 9.5.1, 10.2.5,
10.2.8, 13.3.2, 14.1, 15.1.2, 15.2

Addenda

1.1.1

Additional Costs, Claims for

3.7.4, 3.7.5, 10.3.2, 15.1.5

Additional Inspections and Testing

9.4.2, 9.8.3, 12.2.1, **13.4**

Additional Time, Claims for

3.2.4, 3.7.4, 3.7.5, 3.10.2, 8.3.2, **15.1.6**

Administration of the Contract

3.1.3, **4.2**, 9.4, 9.5

Advertisement or Invitation to Bid

1.1.1

Aesthetic Effect

4.2.13

Allowances

3.8

Applications for Payment

4.2.5, 7.3.9, 9.2, **9.3**, 9.4, 9.5.1, 9.5.4, 9.6.3, 9.7, 9.10

Approvals

2.1.1, 2.3.1, 2.5, 3.1.3, 3.10.2, 3.12.8, 3.12.9,
3.12.10.1, 4.2.7, 9.3.2, 13.4.1

Arbitration

8.3.1, 15.3.2, **15.4**

ARCHITECT

4

Architect, Definition of

4.1.1

Architect, Extent of Authority

2.5, 3.12.7, 4.1.2, 4.2, 5.2, 6.3, 7.1.2, 7.3.4, 7.4, 9.2,
9.3.1, 9.4, 9.5, 9.6.3, 9.8, 9.10.1, 9.10.3, 12.1, 12.2.1,
13.4.1, 13.4.2, 14.2.2, 14.2.4, 15.1.4, 15.2.1

Architect, Limitations of Authority and
Responsibility

2.1.1, 3.12.4, 3.12.8, 3.12.10, 4.1.2, 4.2.1, 4.2.2,
4.2.3, 4.2.6, 4.2.7, 4.2.10, 4.2.12, 4.2.13, 5.2.1, 7.4,
9.4.2, 9.5.4, 9.6.4, 15.1.4, 15.2

Architect's Additional Services and Expenses

2.5, 12.2.1, 13.4.2, 13.4.3, 14.2.4

Architect's Administration of the Contract

3.1.3, 3.7.4, 15.2, 9.4.1, 9.5

Architect's Approvals

2.5, 3.1.3, 3.5, 3.10.2, 4.2.7

Architect's Authority to Reject Work

3.5, 4.2.6, 12.1.2, 12.2.1

Architect's Copyright

1.1.7, 1.5

Architect's Decisions

3.7.4, 4.2.6, 4.2.7, 4.2.11, 4.2.12, 4.2.13, 4.2.14, 6.3,
7.3.4, 7.3.9, 8.1.3, 8.3.1, 9.2, 9.4.1, 9.5, 9.8.4, 9.9.1,
13.4.2, 15.2

Architect's Inspections

3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.8.3, 9.9.2, 9.10.1, 13.4

Architect's Instructions

3.2.4, 3.3.1, 4.2.6, 4.2.7, 13.4.2

Architect's Interpretations

4.2.11, 4.2.12

Architect's Project Representative

4.2.10

Architect's Relationship with Contractor

1.1.2, 1.5, 2.3.3, 3.1.3, 3.2.2, 3.2.3, 3.2.4, 3.3.1, 3.4.2,
3.5, 3.7.4, 3.7.5, 3.9.2, 3.9.3, 3.10, 3.11, 3.12, 3.16,
3.18, 4.1.2, 4.2, 5.2, 6.2.2, 7, 8.3.1, 9.2, 9.3, 9.4, 9.5,
9.7, 9.8, 9.9, 10.2.6, 10.3, 11.3, 12, 13.3.2, 13.4, 15.2

Architect's Relationship with Subcontractors

1.1.2, 4.2.3, 4.2.4, 4.2.6, 9.6.3, 9.6.4, 11.3

Architect's Representations

9.4.2, 9.5.1, 9.10.1

Architect's Site Visits

3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.5.1, 9.9.2, 9.10.1, 13.4

Asbestos

10.3.1

Attorneys' Fees

3.18.1, 9.6.8, 9.10.2, 10.3.3

Award of Separate Contracts

6.1.1, 6.1.2

**Award of Subcontracts and Other Contracts for
Portions of the Work**

5.2

Basic Definitions

1.1

Bidding Requirements

1.1.1

Binding Dispute Resolution

8.3.1, 9.7, 11.5, 13.1, 15.1.2, 15.1.3, 15.2.1, 15.2.5,
15.2.6.1, 15.3.1, 15.3.2, 15.3.3, 15.4.1

Bonds, Lien

7.3.4.4, 9.6.8, 9.10.2, 9.10.3

Bonds, Performance, and Payment

7.3.4.4, 9.6.7, 9.10.3, **11.1.2**, 11.1.3, **11.5**

Building Information Models Use and Reliance
1.8

Building Permit

3.7.1

Capitalization

1.3

Certificate of Substantial Completion

9.8.3, 9.8.4, 9.8.5

Certificates for Payment

4.2.1, 4.2.5, 4.2.9, 9.3.3, **9.4**, 9.5, 9.6.1, 9.6.6, 9.7, 9.10.1, 9.10.3, 14.1.1.3, 14.2.4, 15.1.4

Certificates of Inspection, Testing or Approval
13.4.4

Certificates of Insurance
9.10.2

Change Orders

1.1.1, 3.4.2, 3.7.4, 3.8.2.3, 3.11, 3.12.8, 4.2.8, 5.2.3, 7.1.2, 7.1.3, **7.2**, 7.3.2, 7.3.7, 7.3.9, 7.3.10, 8.3.1, 9.3.1.1, 9.10.3, 10.3.2, 11.2, 11.5, 12.1.2

Change Orders, Definition of

7.2.1

CHANGES IN THE WORK

2.2.2, 3.11, 4.2.8, **7**, 7.2.1, 7.3.1, 7.4, 8.3.1, 9.3.1.1, 11.5

Claims, Definition of

15.1.1

Claims, Notice of
1.6.2, 15.1.3

CLAIMS AND DISPUTES

3.2.4, 6.1.1, 6.3, 7.3.9, 9.3.3, 9.10.4, 10.3.3, **15**, 15.4
Claims and Timely Assertion of Claims
15.4.1

Claims for Additional Cost

3.2.4, 3.3.1, 3.7.4, 7.3.9, 9.5.2, 10.2.5, 10.3.2, **15.1.5**

Claims for Additional Time

3.2.4, 3.3.1, 3.7.4, 6.1.1, 8.3.2, 9.5.2, 10.3.2, **15.1.6**

Concealed or Unknown Conditions, Claims for 3.7.4

Claims for Damages

3.2.4, 3.18, 8.3.3, 9.5.1, 9.6.7, 10.2.5, 10.3.3, 11.3, 11.3.2, 14.2.4, 15.1.7

Claims Subject to Arbitration
15.4.1

Cleaning Up

3.15, 6.3

Commencement of the Work, Conditions Relating to
2.2.1, 3.2.2, 3.4.1, 3.7.1, 3.10.1, 3.12.6, 5.2.1, 5.2.3, 6.2.2, 8.1.2, 8.2.2, 8.3.1, 11.1, 11.2, **15.1.5**

Commencement of the Work, Definition of
8.1.2

Communications

3.9.1, **4.2.4**

Completion, Conditions Relating to

3.4.1, 3.11, 3.15, 4.2.2, 4.2.9, 8.2, 9.4.2, 9.8, 9.9.1, 9.10, 12.2, 14.1.2, 15.1.2

COMPLETION, PAYMENTS AND 9

Completion, Substantial

3.10.1, 4.2.9, 8.1.1, 8.1.3, 8.2.3, 9.4.2, 9.8, 9.9.1, 9.10.3, 12.2, 15.1.2

Compliance with Laws

2.3.2, 3.2.3, 3.6, 3.7, 3.12.10, 3.13, 9.6.4, 10.2.2, 13.1, 13.3, 13.4.1, 13.4.2, 13.5, 14.1.1, 14.2.1.3, 15.2.8, 15.4.2, 15.4.3

Concealed or Unknown Conditions

3.7.4, 4.2.8, 8.3.1, 10.3

Conditions of the Contract

1.1.1, 6.1.1, 6.1.4

Consent, Written

3.4.2, 3.14.2, 4.1.2, 9.8.5, 9.9.1, 9.10.2, 9.10.3, 13.2, 15.4.4.2

Consolidation or Joinder

15.4.4

CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

1.1.4, **6**

Construction Change Directive, Definition of
7.3.1

Construction Change Directives

1.1.1, 3.4.2, 3.11, 3.12.8, 4.2.8, 7.1.1, 7.1.2, 7.1.3, **7.3**, 9.3.1.1

Construction Schedules, Contractor's

3.10, 3.11, 3.12.1, 3.12.2, 6.1.3, 15.1.6.2

Contingent Assignment of Subcontracts

5.4, 14.2.2.2

Continuing Contract Performance

15.1.4

Contract, Definition of

1.1.2

CONTRACT, TERMINATION OR SUSPENSION OF THE

5.4.1.1, 5.4.2, 11.5, **14**

Contract Administration

3.1.3, 4, 9.4, 9.5

Contract Award and Execution, Conditions Relating to

3.7.1, 3.10, 5.2, 6.1

Contract Documents, Copies Furnished and Use of
1.5.2, 2.3.6, 5.3

Contract Documents, Definition of

1.1.1

Contract Sum

2.2.2, 2.2.4, 3.7.4, 3.7.5, 3.8, 3.10.2, 5.2.3, 7.3, 7.4, **9.1**, 9.2, 9.4.2, 9.5.1.4, 9.6.7, 9.7, 10.3.2, 11.5, 12.1.2, 12.3, 14.2.4, 14.3.2, 15.1.4.2, **15.1.5**, **15.2.5**

Contract Sum, Definition of

9.1

Contract Time

1.1.4, 2.2.1, 2.2.2, 3.7.4, 3.7.5, 3.10.2, 5.2.3, 6.1.5, 7.2.1.3, 7.3.1, 7.3.5, 7.3.6, 7, 7, 7.3.10, 7.4, 8.1.1, 8.2.1, 8.2.3, 8.3.1, 9.5.1, 9.7, 10.3.2, 12.1.1, 12.1.2, 14.3.2, 15.1.4.2, 15.1.6.1, 15.2.5

Contract Time, Definition of

8.1.1

CONTRACTOR

3

Contractor, Definition of

3.1, **6.1.2**

Contractor's Construction and Submittal Schedules

3.10, 3.12.1, 3.12.2, 4.2.3, 6.1.3, 15.1.6.2

Contractor's Employees
2.2.4, 3.3.2, 3.4.3, 3.8.1, 3.9, 3.18.2, 4.2.3, 4.2.6,
10.2, 10.3, 11.3, 14.1, 14.2.1.1

Contractor's Liability Insurance
11.1
Contractor's Relationship with Separate Contractors
and Owner's Forces
3.12.5, 3.14.2, 4.2.4, 6, 11.3, 12.2.4
Contractor's Relationship with Subcontractors
1.2.2, 2.2.4, 3.3.2, 3.18.1, 3.18.2, 4.2.4, 5, 9.6.2,
9.6.7, 9.10.2, 11.2, 11.3, 11.4
Contractor's Relationship with the Architect
1.1.2, 1.5, 2.3.3, 3.1.3, 3.2.2, 3.2.3, 3.2.4, 3.3.1, 3.4.2,
3.5.1, 3.7.4, 3.10, 3.11, 3.12, 3.16, 3.18, 4.2, 5.2,
6.2.2, 7, 8.3.1, 9.2, 9.3, 9.4, 9.5, 9.7, 9.8, 9.9, 10.2.6,
10.3, 11.3, 12, 13.4, 15.1.3, 15.2.1
Contractor's Representations
3.2.1, 3.2.2, 3.5, 3.12.6, 6.2.2, 8.2.1, 9.3.3, 9.8.2
Contractor's Responsibility for Those Performing the
Work
3.3.2, 3.18, 5.3, 6.1.3, 6.2, 9.5.1, 10.2.8
Contractor's Review of Contract Documents
3.2
Contractor's Right to Stop the Work
2.2.2, 9.7
Contractor's Right to Terminate the Contract
14.1
Contractor's Submittals
3.10, 3.11, 3.12, 4.2.7, 5.2.1, 5.2.3, 9.2, 9.3, 9.8.2,
9.8.3, 9.9.1, 9.10.2, 9.10.3
Contractor's Superintendent
3.9, 10.2.6
Contractor's Supervision and Construction
Procedures
1.2.2, 3.3, 3.4, 3.12.10, 4.2.2, 4.2.7, 6.1.3, 6.2.4,
7.1.3, 7.3.4, 7.3.6, 8.2, 10, 12, 14, 15.1.4
Coordination and Correlation
1.2, 3.2.1, 3.3.1, 3.10, 3.12.6, 6.1.3, 6.2.1
Copies Furnished of Drawings and Specifications
1.5, 2.3.6, 3.11
Copyrights
1.5, **3.17**
Correction of Work
2.5, 3.7.3, 9.4.2, 9.8.2, 9.8.3, 9.9.1, 12.1.2, **12.2**, 12.3,
15.1.3.1, 15.1.3.2, 15.2.1

Correlation and Intent of the Contract Documents
1.2
Cost, Definition of
7.3.4
Costs
2.5, 3.2.4, 3.7.3, 3.8.2, 3.15.2, 5.4.2, 6.1.1, 6.2.3,
7.3.3.3, 7.3.4, 7.3.8, 7.3.9, 9.10.2, 10.3.2, 10.3.6,
11.2, 12.1.2, 12.2.1, 12.2.4, 13.4, 14

Cutting and Patching
3.14, 6.2.5

Damage to Construction of Owner or Separate
Contractors
3.14.2, 6.2.4, 10.2.1.2, 10.2.5, 10.4, 12.2.4
Damage to the Work
3.14.2, 9.9.1, 10.2.1.2, 10.2.5, 10.4, 12.2.4
Damages, Claims for
3.2.4, 3.18, 6.1.1, 8.3.3, 9.5.1, 9.6.7, 10.3.3, 11.3.2,
11.3, 14.2.4, 15.1.7
Damages for Delay
6.2.3, 8.3.3, 9.5.1.6, 9.7, 10.3.2, 14.3.2

Date of Commencement of the Work, Definition of
8.1.2
Date of Substantial Completion, Definition of
8.1.3
Day, Definition of
8.1.4
Decisions of the Architect
3.7.4, 4.2.6, 4.2.7, 4.2.11, 4.2.12, 4.2.13, 6.3, 7.3.4,
7.3.9, 8.1.3, 8.3.1, 9.2, 9.4, 9.5.1, 9.8.4, 9.9.1, 13.4.2,
14.2.2, 14.2.4, 15.1, 15.2

Decisions to Withhold Certification
9.4.1, **9.5**, 9.7, 14.1.1.3
Defective or Nonconforming Work, Acceptance,
Rejection and Correction of
2.5, 3.5, 4.2.6, 6.2.3, 9.5.1, 9.5.3, 9.6.6, 9.8.2, 9.9.3,
9.10.4, 12.2.1
Definitions
1.1, 2.1.1, 3.1.1, 3.5, 3.12.1, 3.12.2, 3.12.3, 4.1.1, 5.1,
6.1.2, 7.2.1, 7.3.1, 8.1, 9.1, 9.8.1, 15.1.1

Delays and Extensions of Time
3.2, **3.7.4**, 5.2.3, 7.2.1, 7.3.1, **7.4**, **8.3**, 9.5.1, **9.7**,
10.3.2, **10.4**, 14.3.2, **15.1.6**, 15.2.5

Digital Data Use and Transmission
1.7
Disputes
6.3, 7.3.9, 15.1, 15.2

Documents and Samples at the Site
3.11
Drawings, Definition of
1.1.5
Drawings and Specifications, Use and Ownership of
3.11
Effective Date of Insurance
8.2.2

Emergencies
10.4, 14.1.1.2, **15.1.5**
Employees, Contractor's
3.3.2, 3.4.3, 3.8.1, 3.9, 3.18.2, 4.2.3, 4.2.6, 10.2,
10.3.3, 11.3, 14.1, 14.2.1.1
Equipment, Labor, or Materials
1.1.3, 1.1.6, 3.4, 3.5, 3.8.2, 3.8.3, 3.12, 3.13, 3.15.1,
4.2.6, 4.2.7, 5.2.1, 6.2.1, 7.3.4, 9.3.2, 9.3.3, 9.5.1.3,
9.10.2, 10.2.1, 10.2.4, 14.2.1.1, 14.2.1.2
Execution and Progress of the Work
1.1.3, 1.2.1, 1.2.2, 2.3.4, 2.3.6, 3.1, 3.3.1, 3.4.1, 3.7.1,
3.10.1, 3.12, 3.14, 4.2, 6.2.2, 7.1.3, 7.3.6, 8.2, 9.5.1,
9.9.1, 10.2, 10.3, 12.1, 12.2, 14.2, 14.3.1, 15.1.4

Extensions of Time
3.2.4, 3.7.4, 5.2.3, 7.2.1, 7.3, 7.4, 9.5.1, 9.7, 10.3.2, 10.4, 14.3, 15.1.6, **15.2.5**

Failure of Payment
9.5.1.3, **9.7**, 9.10.2, 13.5, 14.1.1.3, 14.2.1.2

Faulty Work
(See Defective or Nonconforming Work)

Final Completion and Final Payment
4.2.1, 4.2.9, 9.8.2, **9.10**, 12.3, 14.2.4, 14.4.3

Financial Arrangements, Owner's
2.2.1, 13.2.2, 14.1.1.4

GENERAL PROVISIONS

1

Governing Law

13.1
Guarantees (See Warranty)

Hazardous Materials and Substances
10.2.4, **10.3**
Identification of Subcontractors and Suppliers
5.2.1

Indemnification
3.17, **3.18**, 9.6.8, 9.10.2, 10.3.3, 11.3

Information and Services Required of the Owner
2.1.2, **2.2**, 2.3, 3.2.2, 3.12.10.1, 6.1.3, 6.1.4, 6.2.5, 9.6.1, 9.9.2, 9.10.3, 10.3.3, 11.2, 13.4.1, 13.4.2, 14.1.1.4, 14.1.4, 15.1.4

Initial Decision
15.2
Initial Decision Maker, Definition of
1.1.8
Initial Decision Maker, Decisions
14.2.4, 15.1.4.2, 15.2.1, 15.2.2, 15.2.3, 15.2.4, 15.2.5
Initial Decision Maker, Extent of Authority
14.2.4, 15.1.4.2, 15.2.1, 15.2.2, 15.2.3, 15.2.4, 15.2.5

Injury or Damage to Person or Property
10.2.8, 10.4
Inspections
3.1.3, 3.3.3, 3.7.1, 4.2.2, 4.2.6, 4.2.9, 9.4.2, 9.8.3, 9.9.2, 9.10.1, 12.2.1, 13.4

Instructions to Bidders
1.1.1

Instructions to the Contractor
3.2.4, 3.3.1, 3.8.1, 5.2.1, 7, 8.2.2, 12, 13.4.2

Instruments of Service, Definition of
1.1.7
Insurance
6.1.1, 7.3.4, 8.2.2, 9.3.2, 9.8.4, 9.9.1, 9.10.2, 10.2.5, **11**
Insurance, Notice of Cancellation or Expiration
11.1.4, 11.2.3

Insurance, Contractor's Liability
11.1
Insurance, Effective Date of
8.2.2, 14.4.2

Insurance, Owner's Liability
11.2

Insurance, Property
10.2.5, 11.2, 11.4, 11.5
Insurance, Stored Materials
9.3.2

INSURANCE AND BONDS
11
Insurance Companies, Consent to Partial Occupancy
9.9.1
Insured loss, Adjustment and Settlement of
11.5
Intent of the Contract Documents
1.2.1, 4.2.7, 4.2.12, 4.2.13

Interest
13.5

Interpretation
1.1.8, 1.2.3, **1.4**, 4.1.1, 5.1, 6.1.2, 15.1.1
Interpretations, Written
4.2.11, 4.2.12
Judgment on Final Award
15.4.2

Labor and Materials, Equipment
1.1.3, 1.1.6, **3.4**, 3.5, 3.8.2, 3.8.3, 3.12, 3.13, 3.15.1, 5.2.1, 6.2.1, 7.3.4, 9.3.2, 9.3.3, 9.5.1.3, 9.10.2, 10.2.1, 10.2.4, 14.2.1.1, 14.2.1.2
Labor Disputes
8.3.1
Laws and Regulations
1.5, 2.3.2, 3.2.3, 3.2.4, 3.6, 3.7, 3.12.10, 3.13, 9.6.4, 9.9.1, 10.2.2, 13.1, 13.3.1, 13.4.2, 13.5, 14, 15.2.8, 15.4
Liens
2.1.2, 9.3.1, 9.3.3, 9.6.8, 9.10.2, 9.10.4, 15.2.8
Limitations, Statutes of
12.2.5, 15.1.2, 15.4.1.1
Limitations of Liability
3.2.2, 3.5, 3.12.10, 3.12.10.1, 3.17, 3.18.1, 4.2.6, 4.2.7, 6.2.2, 9.4.2, 9.6.4, 9.6.7, 9.6.8, 10.2.5, 10.3.3, 11.3, 12.2.5, 13.3.1
Limitations of Time
2.1.2, 2.2, 2.5, 3.2.2, 3.10, 3.11, 3.12.5, 3.15.1, 4.2.7, 5.2, 5.3, 5.4.1, 6.2.4, 7.3, 7.4, 8.2, 9.2, 9.3.1, 9.3.3, 9.4.1, 9.5, 9.6, 9.7, 9.8, 9.9, 9.10, 12.2, 13.4, 14, 15, 15.1.2, 15.1.3, 15.1.5

Materials, Hazardous
10.2.4, **10.3**
Materials, Labor, Equipment and
1.1.3, 1.1.6, 3.4.1, 3.5, 3.8.2, 3.8.3, 3.12, 3.13, 3.15.1, 5.2.1, 6.2.1, 7.3.4, 9.3.2, 9.3.3, 9.5.1.3, 9.10.2, 10.2.1.2, 10.2.4, 14.2.1.1, 14.2.1.2
Means, Methods, Techniques, Sequences and Procedures of Construction
3.3.1, 3.12.10, 4.2.2, 4.2.7, 9.4.2
Mechanic's Lien
2.1.2, 9.3.1, 9.3.3, 9.6.8, 9.10.2, 9.10.4, 15.2.8

Mediation
8.3.1, 15.1.3.2, 15.2.1, 15.2.5, 15.2.6, **15.3**, 15.4.1, 15.4.1.1

Minor Changes in the Work

1.1.1, 3.4.2, 3.12.8, 4.2.8, 7.1, **7.4**

MISCELLANEOUS PROVISIONS

13

Modifications, Definition of

1.1.1

Modifications to the Contract

1.1.1, 1.1.2, 2.5, 3.11, 4.1.2, 4.2.1, 5.2.3, 7, 8.3.1, 9.7, 10.3.2

Mutual Responsibility

6.2

Nonconforming Work, Acceptance of

9.6.6, 9.9.3, **12.3**

Nonconforming Work, Rejection and Correction of
2.4, 2.5, 3.5, 4.2.6, 6.2.4, 9.5.1, 9.8.2, 9.9.3, 9.10.4, 12.2

Notice

1.6, 1.6.1, 1.6.2, 2.1.2, 2.2.2, 2.2.3, 2.2.4, 2.5, 3.2.4, 3.3.1, 3.7.4, 3.7.5, 3.9.2, 3.12.9, 3.12.10, 5.2.1, 7.4, 8.2.2, 9.6.8, 9.7, 9.10.1, 10.2.8, 10.3.2, 11.5, 12.2.2.1, 13.4.1, 13.4.2, 14.1, 14.2.2, 14.4.2, 15.1.3, 15.1.5, 15.1.6, 15.4.1

Notice of Cancellation or Expiration of Insurance
11.1.4, 11.2.3

Notice of Claims

1.6.2, 2.1.2, 3.7.4, 9.6.8, 10.2.8, **15.1.3**, 15.1.5, 15.1.6, 15.2.8, 15.3.2, 15.4.1

Notice of Testing and Inspections
13.4.1, 13.4.2

Observations, Contractor's
3.2, 3.7.4

Occupancy

2.3.1, 9.6.6, 9.8

Orders, Written

1.1.1, 2.4, 3.9.2, 7, 8.2.2, 11.5, 12.1, 12.2.2.1, 13.4.2, 14.3.1

OWNER

2

Owner, Definition of

2.1.1

Owner, Evidence of Financial Arrangements

2.2, 13.2.2, 14.1.1.4

Owner, Information and Services Required of the

2.1.2, **2.2**, 2.3, 3.2.2, 3.12.10, 6.1.3, 6.1.4, 6.2.5, 9.3.2, 9.6.1, 9.6.4, 9.9.2, 9.10.3, 10.3.3, 11.2, 13.4.1, 13.4.2, 14.1.1.4, 14.1.4, 15.1.4

Owner's Authority

1.5, 2.1.1, 2.3.32.4, 2.5, 3.4.2, 3.8.1, 3.12.10, 3.14.2, 4.1.2, 4.2.4, 4.2.9, 5.2.1, 5.2.4, 5.4.1, 6.1, 6.3, 7.2.1, 7.3.1, 8.2.2, 8.3.1, 9.3.2, 9.5.1, 9.6.4, 9.9.1, 9.10.2, 10.3.2, 11.4, 11.5, 12.2.2, 12.3, 13.2.2, 14.3, 14.4, 15.2.7

Owner's Insurance

11.2

Owner's Relationship with Subcontractors

1.1.2, 5.2, 5.3, 5.4, 9.6.4, 9.10.2, 14.2.2

Owner's Right to Carry Out the Work

2.5, 14.2.2

Owner's Right to Clean Up

6.3

Owner's Right to Perform Construction and to Award Separate Contracts

6.1

Owner's Right to Stop the Work

2.4

Owner's Right to Suspend the Work

14.3

Owner's Right to Terminate the Contract

14.2, 14.4

Ownership and Use of Drawings, Specifications and Other Instruments of Service

1.1.1, 1.1.6, 1.1.7, **1.5**, 2.3.6, 3.2.2, 3.11, 3.17, 4.2.12, 5.3

Partial Occupancy or Use

9.6.6, **9.9**

Patching, Cutting and

3.14, 6.2.5

Patents

3.17

Payment, Applications for

4.2.5, 7.3.9, 9.2, **9.3**, 9.4, 9.5, 9.6.3, 9.7, 9.8.5, 9.10.1, 14.2.3, 14.2.4, 14.4.3

Payment, Certificates for

4.2.5, 4.2.9, 9.3.3, **9.4**, 9.5, 9.6.1, 9.6.6, 9.7, 9.10.1, 9.10.3, 14.1.1.3, 14.2.4

Payment, Failure of

9.5.1.3, **9.7**, 9.10.2, 13.5, 14.1.1.3, 14.2.1.2

Payment, Final

4.2.1, 4.2.9, **9.10**, 12.3, 14.2.4, 14.4.3

Payment Bond, Performance Bond and

7.3.4.4, 9.6.7, 9.10.3, **11.1.2**

Payments, Progress

9.3, **9.6**, 9.8.5, 9.10.3, 14.2.3, 15.1.4

PAYMENTS AND COMPLETION

9

Payments to Subcontractors

5.4.2, 9.5.1.3, 9.6.2, 9.6.3, 9.6.4, 9.6.7, 14.2.1.2

PCB

10.3.1

Performance Bond and Payment Bond

7.3.4.4, 9.6.7, 9.10.3, **11.1.2**

Permits, Fees, Notices and Compliance with Laws

2.3.1, **3.7**, 3.13, 7.3.4.4, 10.2.2

PERSONS AND PROPERTY, PROTECTION OF

10

Polychlorinated Biphenyl

10.3.1

Product Data, Definition of

3.12.2

Product Data and Samples, Shop Drawings

3.11, **3.12**, 4.2.7

Progress and Completion

4.2.2, **8.2**, 9.8, 9.9.1, 14.1.4, 15.1.4

Progress Payments

9.3, **9.6**, 9.8.5, 9.10.3, 14.2.3, 15.1.4

Project, Definition of

1.1.4

Project Representatives

4.2.10

Property Insurance

10.2.5, **11.2**

Proposal Requirements

1.1.1

PROTECTION OF PERSONS AND PROPERTY 10

Regulations and Laws

1.5, 2.3.2, 3.2.3, 3.6, 3.7, 3.12.10, 3.13, 9.6.4, 9.9.1, 10.2.2, 13.1, 13.3, 13.4.1, 13.4.2, 13.5, 14, 15.2.8, 15.4

Rejection of Work

4.2.6, 12.2.1

Releases and Waivers of Liens

9.3.1, 9.10.2

Representations

3.2.1, 3.5, 3.12.6, 8.2.1, 9.3.3, 9.4.2, 9.5.1, 9.10.1

Representatives

2.1.1, 3.1.1, 3.9, 4.1.1, 4.2.10, 13.2.1

Responsibility for Those Performing the Work

3.3.2, 3.18, 4.2.2, 4.2.3, 5.3, 6.1.3, 6.2, 6.3, 9.5.1, 10

Retainage

9.3.1, 9.6.2, 9.8.5, 9.9.1, 9.10.2, 9.10.3

Review of Contract Documents and Field

Conditions by Contractor

3.2, 3.12.7, 6.1.3

Review of Contractor's Submittals by Owner and Architect

3.10.1, 3.10.2, 3.11, 3.12, 4.2, 5.2, 6.1.3, 9.2, 9.8.2

Review of Shop Drawings, Product Data and

Samples by Contractor

3.12

Rights and Remedies

1.1.2, 2.4, 2.5, 3.5, 3.7.4, 3.15.2, 4.2.6, 5.3, 5.4, 6.1, 6.3, 7.3.1, 8.3, 9.5.1, 9.7, 10.2.5, 10.3, 12.2.1, 12.2.2, 12.2.4, **13.3**, 14, 15.4

Royalties, Patents and Copyrights

3.17

Rules and Notices for Arbitration

15.4.1

Safety of Persons and Property

10.2, 10.4

Safety Precautions and Programs

3.3.1, 4.2.2, 4.2.7, 5.3, **10.1**, 10.2, 10.4

Samples, Definition of

3.12.3

Samples, Shop Drawings, Product Data and

3.11, **3.12**, 4.2.7

Samples at the Site, Documents and

3.11

Schedule of Values

9.2, 9.3.1

Schedules, Construction

3.10, 3.12.1, 3.12.2, 6.1.3, 15.1.6.2

Separate Contracts and Contractors

1.1.4, 3.12.5, 3.14.2, 4.2.4, 4.2.7, 6, 8.3.1, 12.1.2

Separate Contractors, Definition of

6.1.1

Shop Drawings, Definition of

3.12.1

Shop Drawings, Product Data and Samples

3.11, **3.12**, 4.2.7

Site, Use of

3.13, 6.1.1, 6.2.1

Site Inspections

3.2.2, 3.3.3, 3.7.1, 3.7.4, 4.2, 9.9.2, 9.4.2, 9.10.1, 13.4

Site Visits, Architect's

3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.5.1, 9.9.2, 9.10.1, 13.4

Special Inspections and Testing

4.2.6, 12.2.1, 13.4

Specifications, Definition of

1.1.6

Specifications

1.1.1, **1.1.6**, 1.2.2, 1.5, 3.12.10, 3.17, 4.2.14

Statute of Limitations

15.1.2, 15.4.1.1

Stopping the Work

2.2.2, 2.4, 9.7, 10.3, 14.1

Stored Materials

6.2.1, 9.3.2, 10.2.1.2, 10.2.4

Subcontractor, Definition of

5.1.1

SUBCONTRACTORS

5

Subcontractors, Work by

1.2.2, 3.3.2, 3.12.1, 3.18, 4.2.3, 5.2.3, 5.3, 5.4, 9.3.1.2, 9.6.7

Subcontractual Relations

5.3, 5.4, 9.3.1.2, 9.6, 9.10, 10.2.1, 14.1, 14.2.1

Submittals

3.10, 3.11, 3.12, 4.2.7, 5.2.1, 5.2.3, 7.3.4, 9.2, 9.3, 9.8, 9.9.1, 9.10.2, 9.10.3

Submittal Schedule

3.10.2, 3.12.5, 4.2.7

Subrogation, Waivers of

6.1.1, **11.3**

Substances, Hazardous

10.3

Substantial Completion

4.2.9, 8.1.1, 8.1.3, 8.2.3, 9.4.2, **9.8**, 9.9.1, 9.10.3, 12.2, 15.1.2

Substantial Completion, Definition of

9.8.1

Substitution of Subcontractors

5.2.3, 5.2.4

Substitution of Architect

2.3.3

Substitutions of Materials

3.4.2, 3.5, 7.3.8

Sub-subcontractor, Definition of

5.1.2

Subsurface Conditions

3.7.4

Successors and Assigns

13.2

Superintendent

3.9, 10.2.6

Supervision and Construction Procedures

1.2.2, **3.3**, 3.4, 3.12.10, 4.2.2, 4.2.7, 6.1.3, 6.2.4,

7.1.3, 7.3.4, 8.2, 8.3.1, 9.4.2, 10, 12, 14, 15.1.4

Suppliers

1.5, 3.12.1, 4.2.4, 4.2.6, 5.2.1, 9.3, 9.4.2, 9.5.4, 9.6,
9.10.5, 14.2.1

Surety

5.4.1.2, 9.6.8, 9.8.5, 9.10.2, 9.10.3, 11.1.2, 14.2.2,
15.2.7

Surety, Consent of

9.8.5, 9.10.2, 9.10.3

Surveys

1.1.7, 2.3.4

Suspension by the Owner for Convenience

14.3

Suspension of the Work

3.7.5, 5.4.2, 14.3

Suspension or Termination of the Contract

5.4.1.1, 14

Taxes

3.6, 3.8.2.1, 7.3.4.4

Termination by the Contractor

14.1, 15.1.7

Termination by the Owner for Cause

5.4.1.1, **14.2**, 15.1.7

Termination by the Owner for Convenience

14.4

Termination of the Architect

2.3.3

Termination of the Contractor Employment

14.2.2

TERMINATION OR SUSPENSION OF THE CONTRACT

14

Tests and Inspections

3.1.3, 3.3.3, 3.7.1, 4.2.2, 4.2.6, 4.2.9, 9.4.2, 9.8.3,
9.9.2, 9.10.1, 10.3.2, 12.2.1, **13.4**

TIME

8

Time, Delays and Extensions of

3.2.4, 3.7.4, 5.2.3, 7.2.1, 7.3.1, 7.4, **8.3**, 9.5.1, 9.7,
10.3.2, 10.4, 14.3.2, 15.1.6, 15.2.5

Time Limits

2.1.2, 2.2, 2.5, 3.2.2, 3.10, 3.11, 3.12.5, 3.15.1, 4.2,
5.2, 5.3, 5.4, 6.2.4, 7.3, 7.4, 8.2, 9.2, 9.3.1, 9.3.3,
9.4.1, 9.5, 9.6, 9.7, 9.8, 9.9, 9.10, 12.2, 13.4, 14,
15.1.2, 15.1.3, 15.4

Time Limits on Claims

3.7.4, 10.2.8, 15.1.2, 15.1.3

Title to Work

9.3.2, 9.3.3

UNCOVERING AND CORRECTION OF WORK

12

Uncovering of Work

12.1

Unforeseen Conditions, Concealed or Unknown

3.7.4, 8.3.1, 10.3

Unit Prices

7.3.3.2, 9.1.2

Use of Documents

1.1.1, 1.5, 2.3.6, 3.12.6, 5.3

Use of Site

3.13, 6.1.1, 6.2.1

Values, Schedule of

9.2, 9.3.1

Waiver of Claims by the Architect

13.3.2

Waiver of Claims by the Contractor

9.10.5, 13.3.2, **15.1.7**

Waiver of Claims by the Owner

9.9.3, 9.10.3, 9.10.4, 12.2.2.1, 13.3.2, 14.2.4, **15.1.7**

Waiver of Consequential Damages

14.2.4, 15.1.7

Waiver of Liens

9.3, 9.10.2, 9.10.4

Waivers of Subrogation

6.1.1, **11.3**

Warranty

3.5, 4.2.9, 9.3.3, 9.8.4, 9.9.1, 9.10.2, 9.10.4, 12.2.2,
15.1.2

Weather Delays

8.3, 15.1.6.2

Work, Definition of

1.1.3

Written Consent

1.5.2, 3.4.2, 3.7.4, 3.12.8, 3.14.2, 4.1.2, 9.3.2, 9.10.3,
13.2, 13.3.2, 15.4.4.2

Written Interpretations

4.2.11, 4.2.12

Written Orders

1.1.1, 2.4, 3.9, 7, 8.2.2, 12.1, 12.2, 13.4.2, 14.3.1

ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Basic Definitions

§ 1.1.1 The Contract Documents

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement, and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive, or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding or proposal requirements.

§ 1.1.2 The Contract

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants, or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

§ 1.1.3 The Work

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment, and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

§ 1.1.4 The Project

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner and by Separate Contractors.

§ 1.1.5 The Drawings

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules, and diagrams.

§ 1.1.6 The Specifications

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

§ 1.1.7 Instruments of Service

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

§ 1.1.8 Initial Decision Maker

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2. The Initial Decision Maker shall not show partiality to the Owner or Contractor and shall not be liable for results of interpretations or decisions rendered in good faith.

§ 1.2 Correlation and Intent of the Contract Documents

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

§ 1.2.1.1 The invalidity of any provision of the Contract Documents shall not invalidate the Contract or its remaining provisions. If it is determined that any provision of the Contract Documents violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Contract Documents shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Contract.

§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

§ 1.2.3 Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

§ 1.3 Capitalization

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles, or (3) the titles of other documents published by the American Institute of Architects.

§ 1.4 Interpretation

In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

§ 1.5 Ownership and Use of Drawings, Specifications, and Other Instruments of Service

§ 1.5.1 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and retain all common law, statutory, and other reserved rights in their Instruments of Service, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors, and suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to any protocols established pursuant to Sections 1.7 and 1.8, solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and suppliers may not use the Instruments of Service on other projects or for additions to the Project outside the scope of the Work without the specific written consent of the Owner, Architect, and the Architect's consultants.

§ 1.6 Notice

§ 1.6.1 Except as otherwise provided in Section 1.6.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic transmission if a method for electronic transmission is set forth in the Agreement.

§ 1.6.2 Notice of Claims as provided in Section 15.1.3 shall be provided in writing and shall be deemed to have been duly served only if delivered to the designated representative of the party to whom the notice is addressed by certified or registered mail, or by courier providing proof of delivery.

§ 1.7 Digital Data Use and Transmission

The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties will use AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

ARTICLE 2 OWNER

§ 2.1 General

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 2.1.2 The Owner shall furnish to the Contractor, within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of, or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

§ 2.2 Evidence of the Owner's Financial Arrangements

§ 2.2.1 Prior to commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. The Contractor shall have no obligation to commence the Work until the Owner provides such evidence. If commencement of the Work is delayed under this Section 2.2.1, the Contract Time shall be extended appropriately.

§ 2.2.2 Following commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract only if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due; or (3) a change in the Work materially changes the Contract Sum. If the Owner fails to provide such evidence, as required, within fourteen days of the Contractor's request, the Contractor may immediately stop the Work and, in that event, shall notify the Owner that the Work has stopped. However, if the request is made because a change in the Work materially changes the Contract Sum under (3) above, the Contractor may immediately stop only that portion of the Work affected by the change until reasonable evidence is provided. If the Work is stopped under this Section 2.2.2, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided in the Contract Documents.

§ 2.2.3 After the Owner furnishes evidence of financial arrangements under this Section 2.2, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.

§ 2.2.4 Where the Owner has designated information furnished under this Section 2.2 as "confidential," the Contractor shall keep the information confidential and shall not disclose it to any other person. However, the Contractor may disclose "confidential" information, after seven (7) days' notice to the Owner, where disclosure is required by law, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or by court or arbitrator(s) order. The Contractor may also disclose "confidential" information to its employees, consultants, sureties, Subcontractors and their employees, Sub-subcontractors, and others who need to know the content of such information solely and exclusively for the Project and who agree to maintain the confidentiality of such information.

§ 2.3 Information and Services Required of the Owner

§ 2.3.1 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

§ 2.3.2 The Owner shall retain an architect lawfully licensed to practice architecture, or an entity lawfully practicing architecture, in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.

§ 2.3.3 If the employment of the Architect terminates, the Owner shall employ a successor to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Architect.

§ 2.3.4 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 2.3.5 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services.

§ 2.3.6 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.

§ 2.4 Owner's Right to Stop the Work

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

§ 2.5 Owner's Right to Carry Out the Work

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such default or neglect. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect and the Architect may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

ARTICLE 3 CONTRACTOR

§ 3.1 General

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents.

§ 3.1.3 The Contractor shall not be relieved of its obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

§ 3.2 Review of Contract Documents and Field Conditions by Contractor

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed, and correlated personal observations with requirements of the Contract Documents.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.3.4, shall take field measurements of any existing

conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

§ 3.2.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require.

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall submit Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner, subject to Section 15.1.7, as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

§ 3.3 Supervision and Construction Procedures

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely notice to the Owner and Architect, and shall propose alternative means, methods, techniques, sequences, or procedures. The Architect shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. Unless the Architect objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures.

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.

§ 3.3.3 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

§ 3.4 Labor and Materials

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

§ 3.4.2 Except in the case of minor changes in the Work approved by the Architect in accordance with Section 3.12.8 or ordered by the Architect in accordance with Section 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive.

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

§ 3.5 Warranty

§ 3.5.1 The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 3.5.2 All material, equipment, or other special warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 9.8.4.

§ 3.6 Taxes

The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

§ 3.7 Permits, Fees, Notices and Compliance with Laws

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.

§ 3.7.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work.

3.7.2.1 Certificate of Interested Parties (TEC Form 1295). For contracts needing City Council approval, the City may not accept or enter into a contract until it has received from the Contractor a completed, and signed TEC Form 1295 complete with a certificate number assigned by the Texas Ethics Commission ("TEC"), pursuant to Texas Government Code § 2252.908 and the rules promulgated thereunder by the TEC. The Contractor understands that failure to provide said form complete with a certificate number assigned by the TEC may prohibit the City from entering the Contract.

Pursuant to the rules prescribed by the TEC, the TEC Form 1295 must be completed online through the TEC's website, assigned a certificate number, printed, signed and notarized, and provided to the City. The TEC Form 1295 may accompany the bid or may be submitted separately but must be provided to the City prior to the award of the contract. Neither the City nor its consultants can verify the information included in a TEC Form 1295, and neither have an obligation nor undertake responsibility for advising any bidder with respect to the proper completion of the TEC Form 1295.

3.7.2.2 Texas Government Code Mandatory Provisions. The City may not enter into a contract with a company for goods and services unless the contract contains a written verification from the company that it: (i) does not boycott Israel; (ii) will not boycott Israel during the term of the contract; (iii) does not boycott energy companies; (iv) will not boycott energy companies during the term of the contract; (v) does not have a practice, policy, guidance or directive that discriminates against a firearm entity or firearm trade association; and (vi) will not discriminate during the term of the contract against a firearm entity or firearm trade association (Texas Government Code, Chapter 2271.002; 2274.002).

Company hereby verifies that it does not boycott Israel, and agrees that, during the term of this agreement, will not boycott Israel as this term is defined in the Texas Government Code, Section 808.001, as amended. Company hereby verifies that it does not boycott energy companies, and agrees that, during the term of this agreement, will not boycott energy companies as this term is defined in Texas Government Code, Section 809.001, as amended. Company hereby verifies that it does not have a practice, policy, guidance or directive that discriminates against a firearm entity or firearm trade association, and agrees that, during the term of this agreement, will not discriminate against a firearm entity or firearm trade association as those terms are defined in Texas Government Code, Section 2274.001, as amended.

Further, Company hereby certifies that it is not a company identified under Texas Government Code, Section 2252.152 as a company engaged in business with Iran, Sudan, or Foreign Terrorist Organizations.

§ 3.7.3 If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

§ 3.7.4 Concealed or Unknown Conditions

If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 14 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may submit a Claim as provided in Article 15.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

§ 3.8 Allowances

§ 3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

§ 3.8.2 Unless otherwise provided in the Contract Documents,

- .1 allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- .3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

§ 3.9 Superintendent

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor.

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the name and qualifications of a proposed superintendent. Within 14 days of receipt of the information, the Architect may notify the Contractor, stating whether the Owner or the Architect (1) has reasonable objection to the proposed superintendent or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.

§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.

§ 3.10 Contractor's Construction and Submittal Schedules

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall contain detail appropriate for the Project, including (1) the date of commencement of the Work, interim schedule milestone dates, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion of the Work. The schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents. The schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project.

§ 3.10.2 The Contractor, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, shall submit a submittal schedule for the Architect's approval. The Architect's approval shall not be unreasonably delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, or fails to provide submittals in accordance with the approved submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect.

§ 3.11 Documents and Samples at the Site

The Contractor shall make available, at the Project site, the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and the approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form or paper copy, available to the Architect and Owner, and delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

§ 3.12 Shop Drawings, Product Data and Samples

§ 3.12.1 Shop Drawings are drawings, diagrams, schedules, and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier, or distributor to illustrate some portion of the Work.

§ 3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

§ 3.12.3 Samples are physical examples that illustrate materials, equipment, or workmanship, and establish standards by which the Work will be judged.

§ 3.12.4 Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. Their purpose is to demonstrate how the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve, and submit to the Architect, Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents, in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of Separate Contractors.

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

§ 3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples, or similar submittals, until the respective submittal has been approved by the Architect.

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from the requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples, or similar submittals, unless the Contractor has specifically notified the Architect of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals, by the Architect's approval thereof.

§ 3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples, or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such notice, the Architect's approval of a resubmission shall not apply to such revisions.

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences, and procedures. The Contractor shall not be required to provide professional services in violation of applicable law.

§ 3.12.10.1 If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall be entitled to rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop Drawings, and other submittals related to the Work, designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor the performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review and approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

§ 3.12.10.2 If the Contract Documents require the Contractor's design professional to certify that the Work has been performed in accordance with the design criteria, the Contractor shall furnish such certifications to the Architect at the time and in the form specified by the Architect.

§ 3.13 Use of Site

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

§ 3.14 Cutting and Patching

§ 3.14.1 The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting, or patching shall be restored to the condition existing prior to the cutting, fitting, or patching, unless otherwise required by the Contract Documents.

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or Separate Contractors by cutting, patching, or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter construction by the Owner or a Separate Contractor except with written consent of the Owner and of the Separate Contractor. Consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold, from the Owner or a Separate Contractor, its consent to cutting or otherwise altering the Work.

§ 3.15 Cleaning Up

§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials and rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery, and surplus materials from and about the Project.

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the Owner shall be entitled to reimbursement from the Contractor.

§ 3.16 Access to Work

The Contractor shall provide the Owner and Architect with access to the Work in preparation and progress wherever located.

§ 3.17 Royalties, Patents and Copyrights

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for defense or loss when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications, or other documents prepared by the Owner or Architect. However, if an infringement of a copyright or patent is discovered by, or made known to, the Contractor, the Contractor shall be responsible for the loss unless the information is promptly furnished to the Architect.

§ 3.18 Indemnification

§ 3.18.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.

§ 3.18.2 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts.

ARTICLE 4 ARCHITECT

§ 4.1 General

§ 4.1.1 The Architect is the person or entity retained by the Owner pursuant to Section 2.3.2 and identified as such in the Agreement.

§ 4.1.2 Duties, responsibilities, and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified, or extended without written consent of the Owner, Contractor, and Architect. Consent shall not be unreasonably withheld.

§ 4.2 Administration of the Contract

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the Architect issues the final Certificate for Payment. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

§ 4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

§ 4.2.3 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of, and will not be responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

§ 4.2.4 Communications

The Owner and Contractor shall include the Architect in all communications that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Contractor otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and suppliers shall be through the Contractor. Communications by and with Separate Contractors shall be through the Owner. The Contract Documents may specify other communication protocols.

§ 4.2.5 Based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

§ 4.2.6 The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5, and 3.12. The Architect's review shall not constitute approval

of safety precautions or of any construction means, methods, techniques, sequences, or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.2.8 The Architect will prepare Change Orders and Construction Change Directives, and may order minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more Project representatives to assist in carrying out the Architect's responsibilities at the site. The Owner shall notify the Contractor of any change in the duties, responsibilities and limitations of authority of the Project representatives.

§ 4.2.11 The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 4.2.12 Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either, and will not be liable for results of interpretations or decisions rendered in good faith.

§ 4.2.13 The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

ARTICLE 5 SUBCONTRACTORS

§ 5.1 Definitions

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a Separate Contractor or the subcontractors of a Separate Contractor.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

§ 5.2 Award of Subcontracts and Other Contracts for Portions of the Work

§ 5.2.1 Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the persons or entities proposed for each principal portion of the Work, including those who are to furnish materials or equipment fabricated to a special design. Within 14 days of receipt of the information, the Architect may notify the Contractor whether the Owner or the Architect (1) has reasonable objection to any such proposed person or entity or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person, or entity for one previously selected if the Owner or Architect makes reasonable objection to such substitution.

§ 5.3 Subcontractual Relations

By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work that the Contractor, by these Contract Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies, and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

§ 5.4 Contingent Assignment of Subcontracts

§ 5.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that

- .1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

§ 5.4.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

§ 5.4.3 Upon assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 6.1 Owner's Right to Perform Construction and to Award Separate Contracts

§ 6.1.1 The term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and with Separate Contractors retained under Conditions of the Contract substantially similar to those of this Contract, including those provisions of the Conditions of the Contract related to insurance and waiver of subrogation.

§ 6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term “Contractor” in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner’s own forces and of each Separate Contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with any Separate Contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to its construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, Separate Contractors, and the Owner until subsequently revised.

§ 6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner’s own forces or with Separate Contractors, the Owner or its Separate Contractors shall have the same obligations and rights that the Contractor has under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6, and Articles 10, 11, and 12.

§ 6.2 Mutual Responsibility

§ 6.2.1 The Contractor shall afford the Owner and Separate Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor’s construction and operations with theirs as required by the Contract Documents.

§ 6.2.2 If part of the Contractor’s Work depends for proper execution or results upon construction or operations by the Owner or a Separate Contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly notify the Architect of apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor that would render it unsuitable for proper execution and results of the Contractor’s Work. Failure of the Contractor to notify the Architect of apparent discrepancies or defects prior to proceeding with the Work shall constitute an acknowledgment that the Owner’s or Separate Contractor’s completed or partially completed construction is fit and proper to receive the Contractor’s Work. The Contractor shall not be responsible for discrepancies or defects in the construction or operations by the Owner or Separate Contractor that are not apparent.

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a Separate Contractor because of the Contractor’s delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a Separate Contractor’s delays, improperly timed activities, damage to the Work or defective construction.

§ 6.2.4 The Contractor shall promptly remedy damage that the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or Separate Contractor as provided in Section 10.2.5.

§ 6.2.5 The Owner and each Separate Contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

§ 6.3 Owner’s Right to Clean Up

If a dispute arises among the Contractor, Separate Contractors, and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Architect will allocate the cost among those responsible.

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 General

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor, and Architect. A Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor. An order for a minor change in the Work may be issued by the Architect alone.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents. The Contractor shall proceed promptly with changes in the Work, unless otherwise provided in the Change Order, Construction Change Directive, or order for a minor change in the Work.

§ 7.2 Change Orders

§ 7.2.1 A Change Order is a written instrument prepared by the Architect and signed by the Owner, Contractor, and Architect stating their agreement upon all of the following:

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Contract Sum; and
- .3 The extent of the adjustment, if any, in the Contract Time.

§ 7.3 Construction Change Directives

§ 7.3.1 A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

§ 7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 7.3.4.

§ 7.3.4 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.4 shall be limited to the following:

- .1 Costs of labor, including applicable payroll taxes, fringe benefits required by agreement or custom, workers' compensation insurance, and other employee costs approved by the Architect;
- .2 Costs of materials, supplies, and equipment, including cost of transportation, whether incorporated or consumed;
- .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .4 Costs of premiums for all bonds and insurance, permit fees, and sales, use, or similar taxes, directly related to the change; and
- .5 Costs of supervision and field office personnel directly attributable to the change.

§ 7.3.5 If the Contractor disagrees with the adjustment in the Contract Time, the Contractor may make a Claim in accordance with applicable provisions of Article 15.

§ 7.3.6 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

§ 7.3.7 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

§ 7.3.10 When the Owner and Contractor agree with a determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Architect will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

§ 7.4 Minor Changes in the Work

The Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The Architect's order for minor changes shall be in writing. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Architect and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the Architect's order for a minor change without prior notice to the Architect that such change will affect the Contract Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time.

ARTICLE 8 TIME

§ 8.1 Definitions

§ 8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

§ 8.1.2 The date of commencement of the Work is the date established in the Agreement.

§ 8.1.3 The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8.

§ 8.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

§ 8.2 Progress and Completion

§ 8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement, the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, commence the Work prior to the effective date of insurance required to be furnished by the Contractor and Owner.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

§ 8.3 Delays and Extensions of Time

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the Owner or Architect, of an employee of either, or of a Separate Contractor; (2) by changes ordered in the Work; (3) by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor's control; (4) by delay

authorized by the Owner pending mediation and binding dispute resolution; or (5) by other causes that the Contractor asserts, and the Architect determines, justify delay, then the Contract Time shall be extended for such reasonable time as the Architect may determine.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15.

§ 8.3.3 This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 Contract Sum

§ 9.1.1 The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

§ 9.1.2 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed so that application of such unit prices to the actual quantities causes substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

§ 9.2 Schedule of Values

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit a schedule of values to the Architect before the first Application for Payment, allocating the entire Contract Sum to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the Architect. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. Any changes to the schedule of values shall be submitted to the Architect and supported by such data to substantiate its accuracy as the Architect may require, and unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment.

§ 9.3 Applications for Payment

§ 9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. The application shall be notarized, if required, and supported by all data substantiating the Contractor's right to payment that the Owner or Architect require, such as copies of requisitions, and releases and waivers of liens from Subcontractors and suppliers, and shall reflect retainage if provided for in the Contract Documents.

§ 9.3.1.1 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or supplier, unless such Work has been performed by others whom the Contractor intends to pay.

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage, and transportation to the site, for such materials and equipment stored off the site.

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information, and belief, be free and clear of liens, claims,

security interests, or encumbrances, in favor of the Contractor, Subcontractors, suppliers, or other persons or entities that provided labor, materials, and equipment relating to the Work.

§ 9.4 Certificates for Payment

§ 9.4.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either (1) issue to the Owner a Certificate for Payment in the full amount of the Application for Payment, with a copy to the Contractor; or (2) issue to the Owner a Certificate for Payment for such amount as the Architect determines is properly due, and notify the Contractor and Owner of the Architect's reasons for withholding certification in part as provided in Section 9.5.1; or (3) withhold certification of the entire Application for Payment, and notify the Contractor and Owner of the Architect's reason for withholding certification in whole as provided in Section 9.5.1.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data in the Application for Payment, that, to the best of the Architect's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion, and to specific qualifications expressed by the Architect. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences, or procedures; (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment; or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 9.5 Decisions to Withhold Certification

§ 9.5.1 The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims, unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a Separate Contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated failure to carry out the Work in accordance with the Contract Documents.

§ 9.5.2 When either party disputes the Architect's decision regarding a Certificate for Payment under Section 9.5.1, in whole or in part, that party may submit a Claim in accordance with Article 15.

§ 9.5.3 When the reasons for withholding certification are removed, certification will be made for amounts previously withheld.

§ 9.5.4 If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or supplier to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by

joint check, the Owner shall notify the Architect and the Contractor shall reflect such payment on its next Application for Payment.

§ 9.6 Progress Payments

§ 9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect.

§ 9.6.2 The Contractor shall pay each Subcontractor, no later than seven days after receipt of payment from the Owner, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

§ 9.6.3 The Architect will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor.

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors and suppliers to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay, or to see to the payment of money to, a Subcontractor or supplier, except as may otherwise be required by law.

§ 9.6.5 The Contractor's payments to suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

§ 9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors or provided by suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, create any fiduciary liability or tort liability on the part of the Contractor for breach of trust, or entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

§ 9.6.8 Provided the Owner has fulfilled its payment obligations under the Contract Documents, the Contractor shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Contractor. If approved by the applicable court, when required, the Contractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.

§ 9.7 Failure of Payment

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents, the amount certified by the Architect or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Contract Documents.

§ 9.8 Substantial Completion

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 9.8.3 Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate. Upon such acceptance, and consent of surety if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

§ 9.9 Partial Occupancy or Use

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner, Contractor, and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

§ 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

§ 9.10 Final Completion and Final Payment

§ 9.10.1 Upon receipt of the Contractor's notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection. When the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the Contractor and noted in the final

Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect, (3) a written statement that the Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, (5) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, and (6) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed, corrected, and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of the surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

§ 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

- .1 liens, Claims, security interests, or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents;
- .3 terms of special warranties required by the Contract Documents; or
- .4 audits performed by the Owner, if permitted by the Contract Documents, after final payment.

§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor, or a supplier, shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 Safety Precautions and Programs

The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract.

§ 10.2 Safety of Persons and Property

§ 10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury, or loss to

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody, or control of the Contractor, a Subcontractor, or a Sub-subcontractor; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.

§ 10.2.2 The Contractor shall comply with, and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, bearing on safety of persons or property or their protection from damage, injury, or loss.

§ 10.2.3 The Contractor shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards; promulgating safety regulations; and notifying the owners and users of adjacent sites and utilities of the safeguards.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment, or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3. The Contractor may make a Claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

§ 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

§ 10.2.7 The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

§ 10.2.8 Injury or Damage to Person or Property

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 10.3 Hazardous Materials and Substances

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and notify the Owner and Architect of the condition.

§ 10.3.2 Upon receipt of the Contractor's notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up.

§ 10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss, or expense is due to the fault or negligence of the party seeking indemnity.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for hazardous materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for hazardous materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

§ 10.3.5 The Contractor shall reimburse the Owner for the cost and expense the Owner incurs (1) for remediation of hazardous materials or substances the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

§ 10.3.6 If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall reimburse the Contractor for all cost and expense thereby incurred.

§ 10.4 Emergencies

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury, or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 Contractor's Insurance and Bonds

§ 11.1.1 The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Owner, Architect, and Architect's consultants shall be named as additional insureds under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents.

§ 11.1.2 The Contractor shall provide surety bonds of the types, for such penal sums, and subject to such terms and conditions as required by the Contract Documents. The Contractor shall purchase and maintain the required bonds from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located.

§ 11.1.3 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

§ 11.1.4 Notice of Cancellation or Expiration of Contractor's Required Insurance. Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Contract Documents, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

§ 11.2 Owner's Insurance

§ 11.2.1 The Owner shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Owner shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located.

§ 11.2.2 Failure to Purchase Required Property Insurance. If the Owner fails to purchase and maintain the required property insurance, with all of the coverages and in the amounts described in the Agreement or elsewhere in the Contract Documents, the Owner shall inform the Contractor in writing prior to commencement of the Work. Upon receipt of notice from the Owner, the Contractor may delay commencement of the Work and may obtain insurance that will protect the interests of the Contractor, Subcontractors, and Sub-Subcontractors in the Work. When the failure to provide coverage has been cured or resolved, the Contract Sum and Contract Time shall be equitably adjusted. In the event the Owner fails to procure coverage, the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent the loss to the Owner would have been covered by the insurance to have been procured by the Owner. The cost of the insurance shall be charged to the Owner by a Change Order. If the Owner does not provide written notice, and the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain the required insurance, the Owner shall reimburse the Contractor for all reasonable costs and damages attributable thereto.

§ 11.2.3 Notice of Cancellation or Expiration of Owner's Required Property Insurance. Within three (3) business days of the date the Owner becomes aware of an impending or actual cancellation or expiration of any property insurance required by the Contract Documents, the Owner shall provide notice to the Contractor of such impending or actual cancellation or expiration. Unless the lapse in coverage arises from an act or omission of the Contractor: (1) the Contractor, upon receipt of notice from the Owner, shall have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by either the Owner or the Contractor; (2) the Contract Time and Contract Sum shall be equitably adjusted; and (3) the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent any loss to the Owner would have been covered by the insurance had it not expired or been cancelled. If the Contractor purchases replacement coverage, the cost of the insurance shall be charged to the Owner by an appropriate Change Order. The furnishing of notice by the Owner shall not relieve the Owner of any contractual obligation to provide required insurance.

§ 11.3 Waivers of Subrogation

§ 11.3.1 The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other; (2) the Architect and Architect's consultants; and (3) Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire, or other causes of loss, to the extent those losses are covered by property insurance required by the Agreement or other property insurance applicable to the Project, except such rights as they have to proceeds of such insurance. The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Architect, Architect's consultants, Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this section 11.3.1 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property.

§ 11.3.2 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, to the extent permissible by such policies, the Owner waives all rights in accordance with the terms of Section 11.3.1 for damages caused by fire or other causes of loss covered by this separate property insurance.

§ 11.4 Loss of Use, Business Interruption, and Delay in Completion Insurance

The Owner, at the Owner's option, may purchase and maintain insurance that will protect the Owner against loss of use of the Owner's property, or the inability to conduct normal operations, due to fire or other causes of loss. The

Owner waives all rights of action against the Contractor and Architect for loss of use of the Owner's property, due to fire or other hazards however caused.

§11.5 Adjustment and Settlement of Insured Loss

§ 11.5.1 A loss insured under the property insurance required by the Agreement shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.5.2. The Owner shall pay the Architect and Contractor their just shares of insurance proceeds received by the Owner, and by appropriate agreements the Architect and Contractor shall make payments to their consultants and Subcontractors in similar manner.

§ 11.5.2 Prior to settlement of an insured loss, the Owner shall notify the Contractor of the terms of the proposed settlement as well as the proposed allocation of the insurance proceeds. The Contractor shall have 14 days from receipt of notice to object to the proposed settlement or allocation of the proceeds. If the Contractor does not object, the Owner shall settle the loss and the Contractor shall be bound by the settlement and allocation. Upon receipt, the Owner shall deposit the insurance proceeds in a separate account and make the appropriate distributions. Thereafter, if no other agreement is made or the Owner does not terminate the Contract for convenience, the Owner and Contractor shall execute a Change Order for reconstruction of the damaged or destroyed Work in the amount allocated for that purpose. If the Contractor timely objects to either the terms of the proposed settlement or the allocation of the proceeds, the Owner may proceed to settle the insured loss, and any dispute between the Owner and Contractor arising out of the settlement or allocation of the proceeds shall be resolved pursuant to Article 15. Pending resolution of any dispute, the Owner may issue a Construction Change Directive for the reconstruction of the damaged or destroyed Work.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 Uncovering of Work

§ 12.1.1 If a portion of the Work is covered contrary to the Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect, be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time.

§ 12.1.2 If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, the Contractor shall be entitled to an equitable adjustment to the Contract Sum and Contract Time as may be appropriate. If such Work is not in accordance with the Contract Documents, the costs of uncovering the Work, and the cost of correction, shall be at the Contractor's expense.

§ 12.2 Correction of Work

§ 12.2.1 Before Substantial Completion

The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, discovered before Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

§ 12.2.2 After Substantial Completion

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.5.

§ 12.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ 12.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

§ 12.2.3 The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction of the Owner or Separate Contractors, whether completed or partially completed, caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

§ 12.3 Acceptance of Nonconforming Work

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 Governing Law

The Contract shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.

§ 13.2 Successors and Assigns

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate the assignment.

§ 13.3 Rights and Remedies

§ 13.3.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law.

§ 13.3.2 No action or failure to act by the Owner, Architect, or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed upon in writing.

§ 13.4 Tests and Inspections

§ 13.4.1 Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public

authority, and shall bear all related costs of tests, inspections, and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

§ 13.4.2 If the Architect, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.4.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection, or approval, by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.4.3, shall be at the Owner's expense.

§ 13.4.3 If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures and compensation for the Architect's services and expenses, shall be at the Contractor's expense.

§ 13.4.4 Required certificates of testing, inspection, or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect.

§ 13.4.5 If the Architect is to observe tests, inspections, or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

§ 13.4.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

§ 13.5 Interest

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at the rate the parties agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 Termination by the Contractor

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency, that requires all Work to be stopped;
- .3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
- .4 The Owner has failed to furnish to the Contractor reasonable evidence as required by Section 2.2.

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, repeated suspensions, delays, or interruptions of the entire Work by the Owner as described in Section 14.3, constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, as well as reasonable overhead and profit on Work not executed, and costs incurred by reason of such termination.

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees or any other persons or entities performing portions of the Work because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

§ 14.2 Termination by the Owner for Cause

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors or suppliers;
- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

§ 14.2.2 When any of the reasons described in Section 14.2.1 exist, and upon certification by the Architect that sufficient cause exists to justify such action, the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

- .1 Exclude the Contractor from the site and take possession of all materials.
- .2 Accept assignment of subcontracts pursuant to Section 5.4; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.

§ 14.3 Suspension by the Owner for Convenience

§ 14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work, in whole or in part for such period of time as the Owner may determine.

§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay, or interruption under Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

- .1 that performance is, was, or would have been, so suspended, delayed, or interrupted, by another cause for which the Contractor is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Contract.

§ 14.4 Termination by the Owner for Convenience

§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

§ 14.4.2 Upon receipt of notice from the Owner of such termination for the Owner's convenience, the Contractor shall

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and

- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

§ 14.4.3 In case of such termination for the Owner's convenience, the Owner shall pay the Contractor for Work properly executed; costs incurred by reason of the termination, including costs attributable to termination of Subcontracts; and the termination fee, if any, set forth in the Agreement.

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 Claims

§ 15.1.1 Definition

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, a change in the Contract Time, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim.

§ 15.1.2 Time Limits on Claims

The Owner and Contractor shall commence all Claims and causes of action against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of the binding dispute resolution method selected in the Agreement and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all Claims and causes of action not commenced in accordance with this Section 15.1.2.

§ 15.1.3 Notice of Claims

§ 15.1.3.1 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party under this Section 15.1.3.1 shall be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

§ 15.1.3.2 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party. In such event, no decision by the Initial Decision Maker is required.

§ 15.1.4 Continuing Contract Performance

§ 15.1.4.1 Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

§ 15.1.4.2 The Contract Sum and Contract Time shall be adjusted in accordance with the Initial Decision Maker's decision, subject to the right of either party to proceed in accordance with this Article 15. The Architect will issue Certificates for Payment in accordance with the decision of the Initial Decision Maker.

§ 15.1.5 Claims for Additional Cost

If the Contractor wishes to make a Claim for an increase in the Contract Sum, notice as provided in Section 15.1.3 shall be given before proceeding to execute the portion of the Work that is the subject of the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 15.1.6 Claims for Additional Time

§ 15.1.6.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, notice as provided in Section 15.1.3 shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ 15.1.6.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and had an adverse effect on the scheduled construction.

§ 15.1.7 Waiver of Claims for Consequential Damages

The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

- .1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- .2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit, except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14.

§ 15.2 Initial Decision

§ 15.2.1 Claims, excluding those where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2 or arising under Sections 10.3, 10.4, and 11.5, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim. If an initial decision has not been rendered within 30 days after the Claim has been referred to the Initial Decision Maker, the party asserting the Claim may demand mediation and binding dispute resolution without a decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

§ 15.2.2 The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

§ 15.2.3 In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.

§ 15.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of the request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished, or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

§ 15.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.

§ 15.2.6.1 Either party may, within 30 days from the date of receipt of an initial decision, demand in writing that the other party file for mediation. If such a demand is made and the party receiving the demand fails to file for

mediation within 30 days after receipt thereof, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

§ 15.2.7 In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 15.2.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

§ 15.3 Mediation

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract, except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.7, shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 15.3.3 Either party may, within 30 days from the date that mediation has been concluded without resolution of the dispute or 60 days after mediation has been demanded without resolution of the dispute, demand in writing that the other party file for binding dispute resolution. If such a demand is made and the party receiving the demand fails to file for binding dispute resolution within 60 days after receipt thereof, then both parties waive their rights to binding dispute resolution proceedings with respect to the initial decision.

§ 15.3.4 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 15.4 Arbitration

§ 15.4.1 If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. The Arbitration shall be conducted in the place where the Project is located, unless another location is mutually agreed upon. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

§ 15.4.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.

§ 15.4.2 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

§ 15.4.3 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement, shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

§ 15.4.4 Consolidation or Joinder

§ 15.4.4.1 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 15.4.4.2 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 15.4.4.3 The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as those of the Owner and Contractor under this Agreement.

PROJECT # 2023-014
 Project Name: CM@R - Fire Station #4

QUALIFICATIONS
EVALUATION SUMMARY

Date: 1/4/2024

INSTRUCTIONS: Enter a number 0 through 4 for each category for each proposer. You may use 0.25 increments if necessary.

0 = Not Compliant, 1 = Poor, 2 = Fair, 3 = Good, 4 = Excellent

You may NOT enter a number higher than 4.0. An explanation is required for a score of 0

Criteria	Points	BYRNE CONSTRUCTION SERVICES	D. WILSON CONSTRUCTION	KOEHLER COMPANY	MARKSMEN GENERAL CONTRACTORS
Firm's Experience and Staff as a CM@R	15	3.50	2.88	3.31	3.50
		13.13	10.78	12.42	13.13
Firm's Experience with Pre-Construction Estimating Accuracy	20	3.38	3.00	3.44	3.50
		16.88	15.00	17.19	17.50
Firm's Experience on Projects of Similar Size and Scope	40	3.75	2.75	3.69	3.19
		37.50	27.50	36.88	31.88
Project Personnel Experience and Experience with Municipalities	15	3.81	3.13	3.56	3.06
		14.30	11.72	13.36	11.48
Proposed Schedule	10	3.50	2.69	3.50	2.63
		8.75	6.72	8.75	6.56
Average Total %	100	53.05	44.22	51.72	48.67
Rank		1.00	4.00	2.00	3.00

Project: Schertz Fire Station #4

Date: 2/1/2024

BID TABULATION								
	General Contractor	Construction Estimate	Pre Construction Services	General Conditions	Contractor Fee	Total Fees based upon 10 Mil Const Costs	Acknowledgement of Addenda	Contract Time
1	Byrne	\$10,000,000.00	\$35,000.00	9.06%	3.20%	\$1,261,000.00	n/a	13.10 Months
2	Marksmen	\$10,000,000.00	\$42,000.00	8.15%	4.00%	\$1,257,000.00		
3	Koehler (GC's Does not Include Bonds or Insurance)	\$10,000,000.00	\$15,000.00	3.80%	3.00%	\$695,000.00		
4						\$0.00		
5						\$0.00		
6						\$0.00		
7						\$0.00		
8						\$0.00		
9						\$0.00		

**City Of Schertz
Fire Station #4 CMAR Interviews
February 9, 2024**

Evaluator	Byrne Construction Marksmen GC Koehler Company		
	1	2	3
	2	1	3
	2	1	3
	2	1	3
	1 / 2 (either order)		3
	7	5	12
Overall Ranking	2	1	3

NOTES:	<p>Bryne - well qualified, previous experience with City projects. PM on-site estimated 50% time. Highest price.</p> <p>Marksmen - well qualified, highly regarded references, team cohesion, PM on-site estimated 90%+ time. 2nd highest price.</p> <p>Koehler - Small company, less resources, excellent reputation, past fire station experience not in line with type of product City is seeking, did not include all costs in General conditions.</p>
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Award Recommendation:	Marksmen GC
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CITY COUNCIL MEMORANDUM

City Council Meeting: April 16, 2024
Department: Engineering
Subject: Monthly Update - Major Projects in Progress/CIP (B.James/K.Woodlee)

Attachments

Monthly Update- April 16, 2024

CITY COUNCIL MEMORANDUM

City Council Meeting: April 16, 2024
Department: City Manager
Subject: Update on Major Projects in Progress

Background

This is the monthly update on large projects that are in progress or in the planning process. This update is being provided so Council will be up to date on the progress of these large projects. If Council desires more information on any project or on projects not on this list, please reach out to staff and that information will be provided.

Facilities Projects:

1. Demolish/Remove Unoccupied City Buildings Project

Project Description – Demolish existing structures

- Project Status: Researching contractors
- Projected Completion: Unknown
- Project Cost: Estimated

Project Update: City staff is actively researching different vendors that provide abatement survey services. Next step is finding funding and a contractor to demolish the structures.

2. Building 10 Parks Renovation

Project Description – Improve the conditions of Building 10 Parks for city staff to work comfortably and provide more storage, correct code compliance and ADA accessibility issues, and build an adequate IT communication closet to provide internet services to all the city buildings located on Commercial Place.

- Project Status: Design
- Projected Completion: Unknown
- Project Cost: estimated \$750,000
- Consultant: M&S Engineering

Project Update: No new updates. City staff are currently reviewing the scope of work provided by M&S. The next step is finding funding and a contractor.

3. Kramer House Deck Replacement

Project Description – Replace and repair the deck, install a new staircase leading to the front of the building, extend the stone walk path, and landscape.

- Project Status: Partially Completed
- Projected Completion: Spring 2024
- Project Cost: \$5,000-\$10,000

Project Update: The contractor is working on phase II of the landscaping around the complex. The project fell behind due to weather delays.

4. Fleet Building Parking Lot

Project Description – Pave the open grassy area located at 27 Commercial Place

- Project Status: Replat phase
- Projected Completion: Unknown
- Consultant: M&S Engineering/Unitech Consulting Engineers, Inc.
- Contractor: To be determined

Project Update: No new updates. Unitech Consulting Engineers, Inc., is still actively preparing the replat of the property in preparation for site planning, design, and construction of paved parking and storage space at 27 Commercial Place, the replat process can take up to 30+ days.

Drainage Projects:

1. FM 78 South Channel Silt Removal

Project Description – Silt removal for the existing FM 78 South Drainage channel to include permitting, easement acquisition and construction.

- Project Status: Easement Acquisition and Construction
- Projected Completion: Fall of 2024
- Project Cost: Design \$32,100, Drainage Report \$4,600, Construction \$172,587 base bid, \$268,545 alternate in lieu
- Consultant: Unitech Consulting Engineers, Inc.
- Contractor: Contract has not yet been awarded

Project Update: No new updates. Staff is working with Unitech to coordinate easement acquisition services.

Water and Wastewater Projects:

1. Woman Hollering Creek Wastewater Interceptor Main and Lift Station

- Project Description – Design and construction of a sanitary sewer system to collect and convey wastewater to the future CCMA water reclamation plant off Trainer Hale Road in Southern Schertz. The system will consist of approximately 19,000 linear feet of 30” gravity wastewater line running generally along Woman Hollering Creek from the existing Sedona lift station on FM 1518 to a new lift station on IH 10 and approximately 6,000 feet of force main from the lift station to CCMA plant. It will also include an additional 18” gravity line approximately 1,500 feet in length that will first serve the Hallie’s Cove Subdivision. The system is necessary for the new CCMA plant to begin operation and to allow the existing Woman Hollering Lift Station at Sedona to be taken out of service.
- Project Status: Construction
- Projected Completion: Spring 2024
- Project Cost: Engineering/Design \$1,087,594, Land purchases, ROW, legal and advertising \$700,810, Construction \$11,100,000, totaling \$12,888,404
- Design Engineer: Cobb Fendley & Associates, Inc.
- Owner’s Representative: AGCM, Inc.
- Contractor: Thalle Construction Co, Inc.

Project Update: Wastewater gravity and force mains are 98 percent complete. Final work on the new lift station is nearing completion. Unexpected delays have occurred throughout the project, but final testing and startup is expected in April or May 2024.

2. 24" Dedicated Transmission Main Design Phase II

Project Description – Construction of a 24" dedicated water transmission main to connect the Live Oak water storage facility to the IH 35 storage tank.

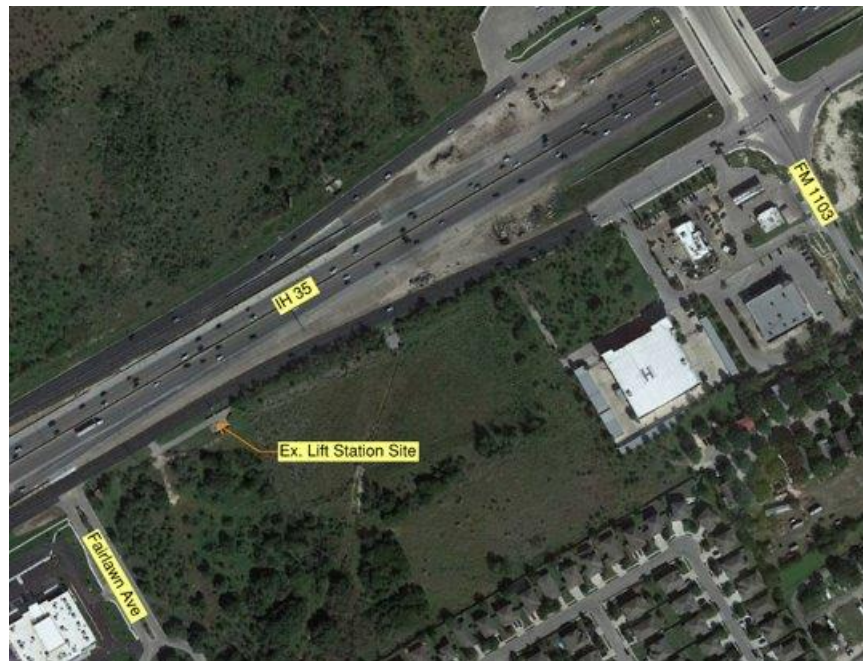
- Project Status: Design 90% complete, moving into Easement Acquisition
- Projected Completion: to be determined
- Project Cost: Design \$1,508,876, Easement Acquisition Estimate \$900,000, Construction estimate \$11,350,000
- Consultant: Kimley-Horn & Associates

Project Update: Project is on hold while Staff works to finalize the comprehensive capital improvement plan and confirm project priorities, funding levels, and timeframes. Project will be removed from this list of updates on active projects and will be added back once efforts are resumed.

3. Riata Lift Station Relocation (Design Phase)

Project Description – Relocation of the Riata Lift Station ahead of TxDOT's IH 35 NEX project to remove it from conflict with the proposed highway improvements. The design phase included identification of a new site for the lift station, design of new lift station and design of the abandonment of the existing lift station. Property and easement acquisitions were required. The new lift station is needed to maintain sewer services.

- Project Status: In January 2024, the City completed the acquisition of necessary easements and the existing lift station.
- Projected Completion: Spring 2025
- Project Cost: Design & Acquisition of easements and existing lift station \$478,000; Construction Estimate \$2,388,705 (to be reimbursed by TxDOT)
- Consultant: Utility Engineering Group, PLLC
- Contractor: This project has not yet been bid
- Project Update: Staff is reviewing the bid package that UEG has prepared. We plan to start advertising mid-April to bid by the end of the month or first of May.



4. FM 1518 Utility Relocations

Project Description – Relocation of water and sewer utilities to avoid conflicts as part of the TxDOT FM 1518 Improvement Project.

- Project Status: Design/Bid and Construction
- Projected Completion: The City's utility relocation portion of the project is expected to be complete the summer of 2025.
- Project Cost: Design NTE \$980,000, Construction \$8,986,837
- Consultant: Halff Associates
- Contractor: SER Construction Partners (TxDOT's General Contractor)

Project Update: The TxDOT contractor is beginning to mobilize equipment and material this month. Staff have started to receive material submittals on the joint-bid work. Bid documents are being finalized on the non-joint bid portion of the project. We plan to advertise mid-April to bid near the end of the month or first of May.

5. Corbett Ground Storage Tank

Project Description – Construction of a new 3-million-gallon Ground Storage Tank (GST). The GST will be used to fill the existing Corbett Elevated Storage Tank and provide additional water storage capacity. This new GST will receive water directly from the Schertz Seguin Local Government Corporation.

- Project Status: Construction Phase
- Projected Completion: May 2025
- Project Cost: Design \$466,265, Construction \$7,360,054
- Consultant: Unintech Consulting Engineers
- Contractor: Pesado Construction Co.

Project Update: Construction of the tank is progressing as expected. Concrete wall panels are being poured on site. Staff continue to work with Unintech to complete tasks needed to secure a final award of the allocation from the congressional grant funding.

6. Water Loop Lines

Project Description – Install 12" water main lines to provide a looped distribution system from Ware Seguin to Lower Seguin and Pfeil Road to N Graytown Road.

- Project Status: Design
- Projected Completion: Spring 2025
- Project Cost: Design NTE \$200,000, Construction \$4,400,000

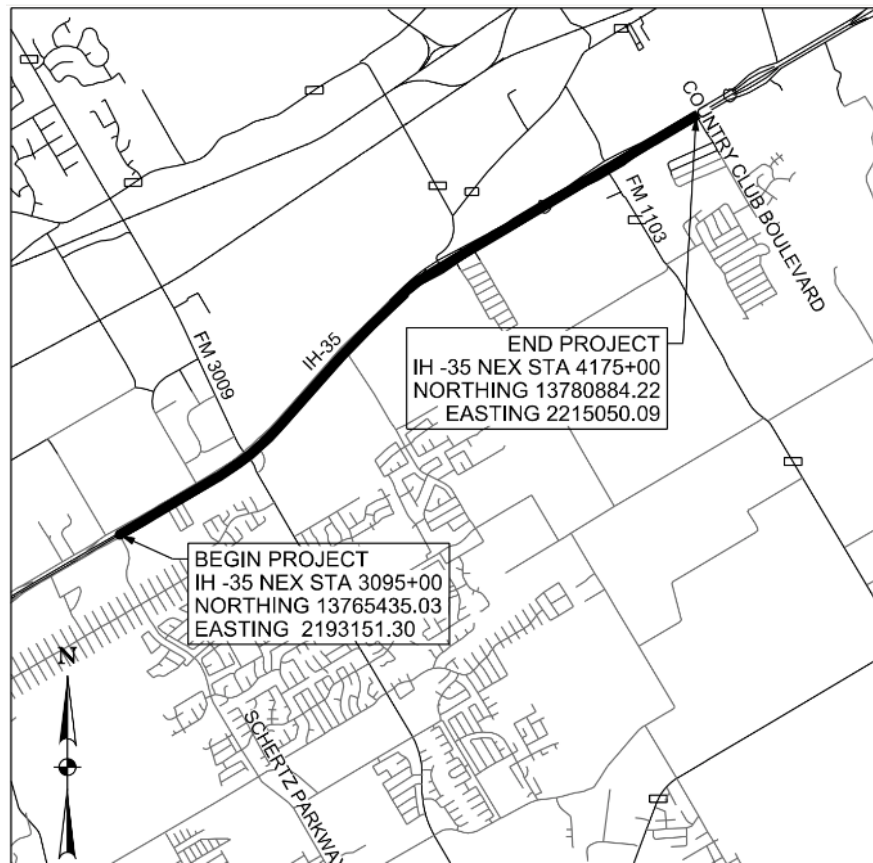
Project Update: No new updates. Staff is working with Unintech to coordinate easement acquisition services.

7. IH 35 NEX-North Utility Relocations

Project Description – Relocation of water and sewer utilities to avoid conflicts as part of the TxDOT IH 35 NEX project.

- Project Status: Design
- Projected Completion: Joint Bid Construction is planned for End of 2026
- Project Cost: Design & Easement Acquisition Services - \$1,250,000
- Consultant: Halff Associates

Project Update: Staff are reviewing the 90% design that Halff has provided. TxDOT has identified additional water lines that are in conflict due to revisions in TxDOT's drainage design. These segments are being added to the City's utility relocation design. Halff is continuing the easement acquisitions for the project.



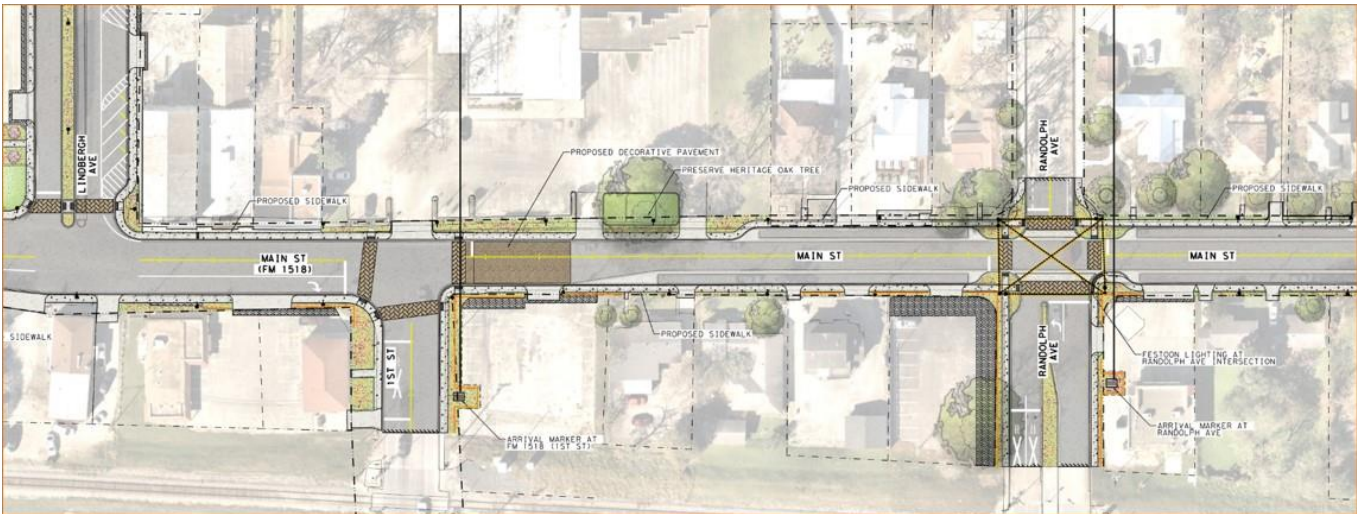
Street Projects:

1. Main Street Improvements Project

Project Description – The project will improve sidewalks, provide street lighting, way-finding signage, landscaping, utility relocations, and architectural elements such as decorative concrete, decorative lighting, screening, and area signage. This project will also replace aging water and sanitary sewer mains and reconstruct the street with a new, stronger pavement section. Additionally, Lindbergh between Main and Exchange will be reconstructed.

- Project Status: Design
- Projected Completion: Fall 2026
- Project Cost: Design NTE \$2,173,905, Construction \$24,360,000
- Consultant: Kimley- Horn Associates

Project Update: With Council approval of the GVEC utility relocation agreement, GVEC will complete their relocation design. With GVEC's design complete, the other utility companies will be able to begin their relocation designs. Staff will begin working on acquiring the needed easements for the relocation. The first open house for the project has been set for May 24th from 2 – 6 pm at Hidden Grove on Main Street. This will mark the beginning of the public outreach effort for the project. Staff is coordinating with Public Affairs to get project information in upcoming magazine issues and other means.



2. Lookout Road Reconstruction

Project Description – The project involves reconstruction of Lookout Road from Schertz Parkway to Doerr Lane. A traffic signal at the Lookout Road/Schertz Parkway intersection will also be installed. The project also includes the replacement and upsizing the existing sanitary sewer main in Lookout Road from Doerr Lane to Schertz Parkway.

- Project Status: Design
- Projected Completion: Fall 2024
- Project Cost: Design \$571,000 (\$20,000 from Selma), Construction estimate \$6,738,092 (\$100,000 from Selma)
- Design Consultant: Halff Associates

Project Update: Nothing new to report on this project.

3. Lower Seguin Road Reconstruction

Project Description – The project includes the development of a preliminary design and secure environmental clearance for a 2.9-mile segment of Lower Seguin Road to widen and improve the street to the section identified in the Master Thoroughfare Plan. The results of this project will be used to acquire needed right-of-way; develop final construction plans; and secure federal funding to assist with construction costs.

- Project Status: Design
- Projected Completion: Fall 2024
- Project Cost: Preliminary Design \$985,000
- Consultant: Halff & Associates

Project Update: Our consultant is still waiting on some right of entry forms to come in so survey work outside the right-of-way can be completed. Staff has provided copies of some TIAs from developments in the area to the consultant. The consultant will use this data to help refine the traffic model for Lower Seguin Rd. The model will be used to forecast traffic needs into the future and help refine the future roadway section. This modeling is part of the federal process to secure environmental clearance for the project.

4. 2024 SPAM Resurfacing and Rehabilitation

Project Description – The project includes the performance of prep work (base repairs, crack sealing, level up, etc.) and application of a slurry seal to the surface of various streets in the City. Work on other streets includes removal of existing asphalt surface; cement stabilization of base material; and application of a new layer of asphalt on street surface for other various City streets. PCI data was used to select the streets in the project.

- Project Status: Design
- Projected Completion: Fall 2024
- Project Cost: \$3,220,000 (estimated total)
- Design Consultant: Kimley-Horn Associates

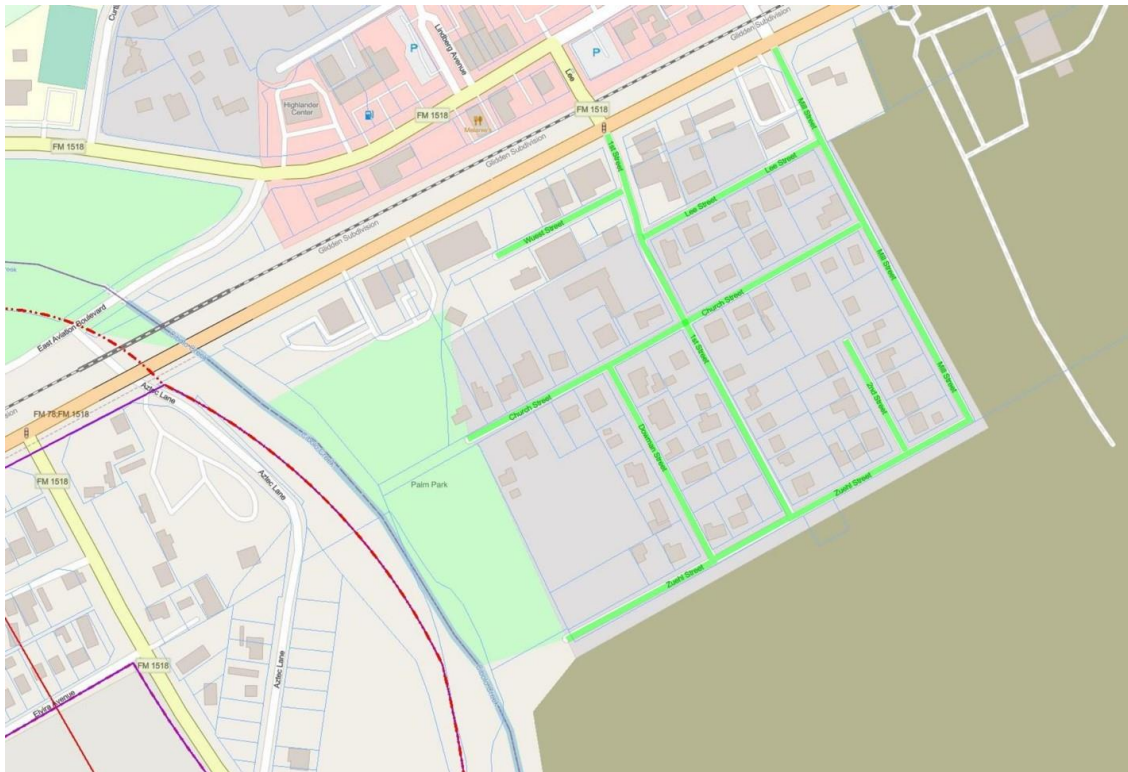
Project Update: The fieldwork has been completed and project design is almost complete. The consultant will have project plans submitted to Staff for review the week of April 15th. Staff anticipates bidding to start on the project towards the end of the month.

5. Buffalo Valley South Resurfacing and Rehabilitation

Project Description – Water and sanitary sewer main replacements and street rehabilitation of Buffalo Valley South, specifically Mill Street, 1st St, 2nd St, Bowman St, Lee St, Church St, Zuehl St, and Wuest. PCI data was used to select the streets in the project. Project will be funded with a combination of SPAM funding (for the street rehabilitation) and ARP funding for the utility replacement.

- Project Status: Design
- Projected Completion: Design Summer 2024; Construction Fall 2025
- Project Cost: \$5,978,268 (estimated total)
- Design Consultant: Unintech Consulting Engineering

Project Update: The geotechnical sampling and data collection has been completed. The sewer lines have been cleaned and videoed. Final topo survey work for the project is underway. Staff expects to have preliminary plans for review mid-Summer.



Parks & Recreation Projects:

1. Wendy Swan Memorial Park Splashpad

Project Description – Demolition of existing residential sized pool and construction of a new splash pad.

- Project Status: Warranty Work
- Projected Completion: March 8, 2024
- Project Cost: \$297,350
- Contractor: T.F. Harper & Associates

Project Update: The contractor repainted the splashpad surface and the system has been recharged in preparation for the season. Staff replaced the UV bulbs, and the system was operational and opened for the season. The system is still having periodic issues that cause the splash pad to be closed for a few days. We have the manufacturer of the filtration system arriving on 4/10/24 to troubleshoot the issue and make warranty repairs. Staff also discovered what appears to be a leak under the concrete pad but were able to isolate it to one feature and turned that off. We are investigating next steps with the contractor.

2. Schertz Soccer Complex Irrigation Water Storage Project

Project Description – Upgrading electrical components, upsizing well pump and piping, and adding storage capacity for irrigation of the Schertz Soccer Complex.

- Project Status: Bidding Phase III
- Projected Completion: Summer 2024
- Project Cost: \$107,036.90
- Consultant: Unintech Engineering
- Contractor: TBD

Project Update: No new updates. Phase III is replacing the well pump and piping and bids have been received but because of delays staff is currently revising bids to begin Phase III. There is a new concern raised by the well contractor that the casing may be undersized to accommodate the new upsized pipe and pump. Next steps are to camera the well casing to verify casing width.

TxDOT Roadway Projects:

- 1. FM 1103 Improvement Project:** Construction officially began in November 2022, and was originally expected to be complete in fall 2026. Some progress is being made on the roadway while utility relocation continues. General project updates are available by signing up at this link: [FM 1103 Construction Newsletter](#)
- 2. FM 1518 Improvement Project:** SER Construction, LLC, formally began construction on the project is currently on April 9, 2024. The contractor has leased property owned by the City on Schaefer Road to stage construction activities. The first few months of the project will be mainly underground utility construction and will mostly take place outside travel lanes. While there may be some delays, major traffic disruptions should not be experienced much during this phase of the project. TxDOT and its consultant will be creating media update options that will be passed along by Staff once available.

3. **IH-35 NEX (I-410 South to FM 1103):** The central segment of the I-35 Northeast Expansion project continues with Alamo NEX Construction handling the design-build project. The central section runs from 410 N to FM 3009. Utility coordination work for the northern segment of the project is underway. TxDOT consultants have met with Public Works and Engineering Staff to begin establishing relocation needs. The City will be reimbursed for the costs of all needed relocations except for any upsizing or improvements above current conditions. Updates about the project can be obtained by signing up at the following link: [I 35 NEX Project Updates](#)
4. **IH-10 Graytown Road to Guadalupe County Line:** Work for the widening of the main lanes and utility relocations continues. Work on the FM 1518 bridge over IH 10 continues and will involve numerous episodes of the rerouting of traffic including shifting lanes and detours as necessary. Updates regarding the IH 10 project are available by signing up at the following link: [IH 10 Expansion Information](#)

Note: If links do not work, please contact engineering@schertz.com.

Studies and Plans:

1. Water and Wastewater Master Plan Update and Impact Fee Study

Project Description – Collect, review data from the City and provide updated data for the Land Use Plan, Water and Wastewater System Model, Master Plan, CIP, Water/Wastewater Impact Fees, and Flow monitoring.

- Project Status: Study
- Projected Completion: Summer 2024
- Project Cost: \$500,000
- Consultant: Lockwood, Andrews & Newnam
- Project Update: The City is reviewing the final list and costs of the capital improvement projects identified in the master plans. The consultant is in the process of calculation of maximum updated impact fees. Statutorily required meetings and hearings regarding the adoption of updated impact fees are expected to begin in spring/summer 2024.

2. PCI Data Collection Study

Project Description – Perform pavement condition inspection on all City streets and place inspection data into the City's PAVER software. Help create a new GIS map layer for the revised PCI scores for all City streets.

- Project Status: 97% complete
- Projected Completion: March 2024
- Project Cost: \$130,000
- Consultant: Fugro, inc.

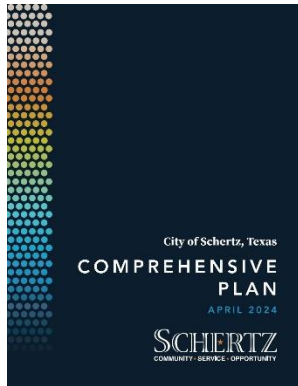
Project Update: IT met with the consultant to get the new PCI data synched up with GIS so a new GIS layer can be created. This project is now fully complete.

Planning and Community Development Projects:

1. Comprehensive Land Use Plan Update

Project Description – The update to the Comprehensive Land Plan includes goals, policies, and identifies issues in the following development related categories: Land Use, Transportation, Community Enhancement, and Growth Capacity.

- Project Status: Complete.
- Projected Completion: April 2, 2024.
- Project Cost: \$240,000
- Consultant: Freese and Nichols



Project Update: The plan was presented to City Council for the first reading on March 19, 2024, and was approved with a unanimous 7-0 vote. City Council then approved the item on Consent Agenda on April 2, 2024. In the coming weeks, Freese and Nichols will be working on project deliverables and staff will be updating all applicable maps and websites. The Public Affairs Department is working on marketing for the new plan.