

# **AGENDA FOR THE KERRVILLE CITY COUNCIL MEETING**

**TUESDAY, JANUARY 24, 2023, 6:00 P.M.**

**CITY HALL COUNCIL CHAMBERS**

**701 MAIN STREET, KERRVILLE, TEXAS**

## **The Community Vision**

*Kerrville will be a vibrant, welcoming and inclusive community that:*

- *Respects and protects the natural environment that surrounds it;*
- *Seeks to attract economic growth and development;*
- *Provides opportunities for prosperity, personal enrichment and intellectual growth for people of all ages; and*
- *Does so while preserving the small-town charm, heritage, arts and culture of the community.*



Kerrville2050



**CITY COUNCIL MEETING AGENDA**  
**JANUARY 24, 2023, 6:00 PM**  
**CITY HALL COUNCIL CHAMBERS**  
**701 MAIN STREET, KERRVILLE, TEXAS**



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***Council Meeting Procedures, City Council and City Staff Safety Measures, and Citizen Participation Guidelines***

COVID-19 (Coronavirus) provides a unique concern in that gathering members of the public, City Council, and City staff within a physical setting constitutes a public health risk. Taking this into account, standard safety protocols will be observed by City Council, City staff, and citizens/visitors attending the meeting. Masks are voluntary and highly encouraged. Visitor seating will be designated.

Citizens may view and hear City Council meetings on Spectrum Channel 2 or by live-streaming via the City's website ([www.kerrvilletx.gov](http://www.kerrvilletx.gov)). City Council meetings are recorded and the recordings are posted on the City's website.

Citizens wishing to speak during a meeting shall submit a completed "speaker request form" to the City Secretary before the item is introduced, but are encouraged to submit the form before the meetings begin. Each speaker is limited to four minutes. Thank you for your participation!

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**CALL TO ORDER:** *By Mayor Judy Eychner*

**INVOCATION AND PLEDGE OF ALLEGIANCE:** *Led by Councilmember Brenda Hughes*

1. **ANNOUNCEMENTS OF COMMUNITY INTEREST:** *Announcement of items of community interest, including expressions of thanks, congratulations, or condolences; information regarding holiday schedules; honorary recognitions of city officials, employees, or other citizens; reminders about upcoming events sponsored by the city or other entity that is scheduled to be attended by city officials or employees; and announcements involving imminent threats to the public health and safety of the city. No action will be taken.*
2. **VISITORS/CITIZENS FORUM:** *Any citizen with business not scheduled on the agenda may speak to the City Council. Prior to speaking, each speaker must fill out the speaker request form and give it to the City Secretary. The speaker request form must be submitted to the City Secretary before the item is called or read into record. City Council may not discuss or take any action on an item but may place the issue on a future agenda. Each speaker is limited to four minutes.*
3. **CONSENT AGENDA:** *These items are considered routine and can be approved in one motion unless a Councilmember asks for separate consideration of an item. It is recommended that the City Council approve the following items which will grant the Mayor or City Manager the authority to take all actions necessary for each approval:*



- 3.A Resolution No. 03-2023. A Resolution expressing the City's support for the development of the Upper Guadalupe River Center.  
[Attachments: 20230124 Reso 03-2023 Support Guadalupe River Center.pdf](#)  
[20230124 Presentation GRC.pdf](#)



- 3.B Resolution No. 05-2023. A Resolution authorizing the acceptance of grant funding from the Office of the Governor and its SH-Bullet Resistant Shield Grant Program for funding to purchase Ballistic Shields for the Kerrville Police Department.  
[Attachments: 20230124 Reso 05-2023 Accept Governor Grant -Ballistic Shields KPD.pdf](#)  
[20230124 Grant Statement award OOG.pdf](#)



- 3.C Purchase of Ballistic Shields for the Kerrville Police Department in the amount of \$76,581.64.  
[Attachments: 20230124 Purchase Agreement\\_Galls Ballistic Shields KPD.pdf](#)  
[20230124\\_Quote -GallsTexas\\_buyboard.pdf](#)



- 3.D Grant Agreement with the Hal & Charlie Peterson Foundation accepting a Public Safety Equipment Grant in the amount of \$106,002.00.  
[Attachment: 20230124\\_Agreement\\_Peterson Foundation KPD Grant Agreement.pdf](#)

- 3.E Project Funding Agreement between the City of Kerrville, Texas, Economic Improvement Corporation and the City of Kerrville, Texas, for a concept feasibility study for an extension of the River Trail around Nimitz Lake; and the corresponding Professional Services Agreement between Hewitt Engineering and the City of Kerrville for the study in the amount of \$182,800.  
[Attachments: 20230124 Funding Agreement EIC -River Trail ext Nimitz Lake.pdf](#)  
[20221213\\_Proposal RiverTrailWestConcept.pdf](#)  
[20230124\\_PSA Hewitt -Concept Study River Trail ext Nimitz Lake.pdf](#)
- 3.F Amendment to Agreement Regarding Water Utility Service to Designated Areas with Aqua Texas, to be submitted to the Public Utility Commission (PUC), said agreement which will act to revise the City's certificate of convenience and necessity for water service.  
[Attachments: 20230124 Aqua Texas amend 1 -Service Area CCN.pdf](#)  
[20230124 Original Agreement Aqua TX CCN 083122.pdf](#)
- 3.G City Council workshop minutes, January 10, 2023.  
[Attachment: 20230124 Minutes CC workshop 1-10-23 4pm.pdf](#)
- 3.H City Council meeting minutes, January 10, 2023.  
[Attachment: 20230124 Minutes CC meeting 1-10-23 6pm.pdf](#)
- 3.I City Council workshop minutes, January 17, 2023.  
[Attachment: 20230124 Minutes CC workshop 1-17-23 10am.pdf](#)

#### **END OF CONSENT AGENDA.**

#### **4. PUBLIC HEARING AND ORDINANCES, FIRST READING:**

- 4.A Ordinance No. 2023-06. An Ordinance amending Chapter 60 of the Code of Ordinances, City of Kerrville, Texas; by changing the zoning for properties known as 402, 405, 406, 407, 409, 410, 411, 413, 414, and 415 W. Water; consisting of the Westland Addition; from a Single Family Residential with Accessory Dwelling Unit Zoning District (R-1A) to a Residential Transition Zoning District (RT); and providing other matters relating to the subject.  
[Attachments: 20230124\\_Ord 2023-06 Zone to RT West Water Street.pdf](#)  
[20230124\\_Letter opposed Pena.pdf](#)
- 4.B Ordinance No. 2023-07. An Ordinance amending Chapter 60 of the Code of Ordinances, City of Kerrville, Texas; by changing the zoning of a property known as 3800 Loop 534; consisting of Lot 1, Block 5 of the Legion Hills Phase Four Subdivision, being approximately 3.56 acres, and within the City of Kerrville, Kerr County, Texas; from a Medium Density Residential Zoning District (R2) to a Light Commercial Zoning District (C-2); and providing other matters relating to the subject.  
[Attachment: 20230124 Ord 2023-07 Zoning change 3800 Loop 534.pdf](#)
- 4.C Ordinance No. 2023-08. An Ordinance annexing a tract of land into the Corporate Limits of the City of Kerrville, Texas; such property making up approximately 0.08 acres and generally located adjacent to and south of Lehmann Drive in the area that Lehmann Drive intersects with Lenard Lane; such property more specifically described in this Ordinance and being located within the extraterritorial jurisdiction of and adjacent to the City Limits; adopting a service agreement; establishing the zoning for the annexed property as a Public and Institutional (PU) Zoning District; and providing other matters relating to the subject.  
[Attachment: 20230124 Ord 2023-08 Annex-zone Lehmann and Lenard.pdf](#)

#### **5. ORDINANCES, SECOND READING:**

- 5.A Ordinance No. 2023-03, second reading. An Ordinance amending Chapter 26 of the Code of Ordinances, City of Kerrville, Texas, titled "Buildings and Building Regulations"; by adding a new Article X titled "Outdoor Lighting", to create standards for outdoor lighting to minimize light pollution, glare, and light trespass caused by inappropriate or misaligned light fixtures, while improving nighttime public safety, utility, and security; providing an effective date; and providing other matters related to the subject.  
[Attachment: 20230124 Ord 2023-03 Outdoor Lighting-Night Sky 2nd.pdf](#)
- 5.B Ordinance No. 2023-04, second reading. An Ordinance closing, abandoning, and vacating all right, title, and interest in a public right-of-way, consisting of an unimproved, unopened portion of West St. that exists between the properties addressed as 620 and 704 Junction Highway (SH 27); said right-

of-way out of the Westland Place Addition, a Subdivision within the City of Kerrville, Kerr County, Texas, pursuant to the plat recorded in Volume 1, Page 26 of the Plat Records of Kerr County, Texas and corresponding filed notes; and, located within the City of Kerrville, Texas; finding that said portion is not required for future use as a public street; ordering recording; providing an effective date; and providing other matters related to this subject.

[Attachment: 20230124 Ord 2023-04 Vacating portion of West St 2nd.pdf](#)

- 5.C Ordinance No. 2023-05, second reading. An Ordinance amending Ordinance No. 2022-26 and the Ad Valorem Tax for the use and support of the municipal government for the City of Kerrville, Texas, for Fiscal Year 2023.

[Attachment: 20230124 Ord 2023-05 Amend Ad Valorem Tax FY23 2nd.pdf](#)

**6. CONSIDERATION AND POSSIBLE ACTION:**

- 6.A Resolution No. 06-2023. A Resolution expressing official intent to reimburse certain project costs from obligations to be issued by the City of Kerrville, Texas, authorizing certain consultants to prepare documents and take actions necessary in relation to the issuance of such obligations; and authorizing other matters related thereto.

[Attachment: 20230124 Reso 06-2023 Obligation Bonds - PW infrastructure.pdf](#)

- 6.B Construction Agreement with M&C Fonseca Construction Co., Inc. for Water Street Water Main Replacement project in the amount of \$314,667.50.

[Attachment: 20230124\\_Water Street Waterline\\_bid\\_summary.pdf](#)

- 6.C Construction Agreement with M&C Fonseca Construction Co., Inc. for the Knapp Lift Station Force and Gravity Main project in the amount of \$4,895,585.00.

[Attachment: 20220124\\_Knapp LS Force and Gravity Main\\_Bid Summary.pdf](#)

- 6.D Professional Services Agreement with Hewitt Engineering for the River Trail Downtown Extension in the amount of \$154,500.

[Attachment: 20230124\\_PSA\\_Hewitt\\_River Trail Design\\_Downtown\\_Final\\_012023.pdf](#)

**7. INFORMATION & DISCUSSION:**

- 7.A Financial report for December 2022.

8. **EXECUTIVE SESSION:** *City Council may, as permitted by law, adjourn into executive session at any time to discuss any matter listed above if they meet the qualifications in Sections 551.071 (consultation with attorney), 551.072 (deliberation regarding real property), 551.073 (deliberation regarding gifts), 551.074 (personnel/officers), 551.076 (deliberation regarding security devices), and 551.087 (deliberation regarding economic development negotiations) of Chapter 551 of the Texas Government Code.*

**9. ACTION ON ITEMS DISCUSSED IN EXECUTIVE SESSION, IF ANY.**

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

**ADJOURN.**



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

**SUBJECT:** Resolution No. 03-2023. A Resolution expressing the City's support for the development of the Upper Guadalupe River Center.

**AGENDA DATE OF:** January 24, 2023      **DATE SUBMITTED:** January 13, 2023

**SUBMITTED BY:** Ashlea Boyle, Director Parks & Recreation

**EXHIBITS:**

<b>Expenditure Required:</b>	<b>Remaining Budget Balance in Account:</b>	<b>Amount Budgeted:</b>	<b>Account Number:</b>
N/A	N/A	N/A	N/A

**PAYMENT TO BE MADE TO:** N/A

<b>Kerrville 2050 Item?</b>	Yes
<b>Key Priority Area</b>	P - Parks / Open Space / River Corridor
<b>Guiding Principle</b>	N/A
<b>Action Item</b>	N/A

**SUMMARY STATEMENT:**

At the City Council workshop held on January 10, 2023, the Council received a presentation from Chair John Anderson and Vice Chair Layng Guerriero from the Upper Guadalupe River Center Non-Profit Organization (GRC).

The vision of the GRC is "something transformative", a unique Guadalupe riverfront park gathering place in Kerrville, a recreational, civic, and education destination for all to enjoy. The mission is to develop and manage facilities on Nimitz Lake, open year-round to the general public, create community partnerships, and offer a wide range of programs, with a focus on:

- Maximizing utilization of Nimitz Lake through expansive outdoor recreation opportunities, including sailing, paddleboarding, kayaking, and open water swimming.
- A community living room and gathering spaces for fellowship and events.
- Weekly and daily camps for all children in the Hill Country with a particular focus on underprivileged youth.
- River accessibility for mobility-challenged seniors and veterans.
- Vocational certifications and STEM education opportunities.
- Environmental science and watershed stewardship education.

The proposed location for the GRC would be Granger MacDonald Park and the surrounding area located at The Landing on Nimitz Lake. It is proposed to operate as a public private partnership with the GRC operating the center. If this project comes to fruition, it would be a

positive economic impact on the community through the variety of programming opportunities. Plans also include future potential River Trail extension connectivity. The GRC is currently in the capital campaign phase to raise project funds. The campaign is estimated at \$13.5 million, with a starting goal of approximately \$10 million, by August 31, 2023. The GRC has requested a resolution to support this privately-funded community center and river park project on Nimitz Lake. The resolution is attached for consideration.

### **Kerrville 2050 Support**

#### **Key Priority Area:**

- P - Parks, Open Space, and the River Corridor

#### **Guiding Principle:**

- P1 - Enhance the aesthetics and mitigate the ecological impacts of development on the River corridor while preserving scenic views and the natural beauty of the area.
- P3 - Preserve and protect the natural riparian buffer (natural vegetation surrounding river) and ensure that development prioritizes environmental responsibility and a respect for natural areas.
- P5 - Focus on enhancing / investing in existing parks, their purpose or repurpose and improving accessibility before acquiring land for new parks.
- P6 - Focus on connecting businesses, neighborhoods, major destinations and other amenities with parks, open spaces, and the River corridor.
- P7 - Promote and market all City parks and recreation amenities, including the Guadalupe River.
- P8 - Provide recreational opportunities for people of all ages and abilities, both residents and tourists.

#### **Action Item:**

- P1.1 - Raise public awareness regarding the value of Kerrville's natural beauty to the community.
- P1.2 - Encourage new businesses to connect and embrace a connection to the River.
- P3.3 - Educate the public about the importance and function of riparian buffers along the river and creeks.
- P5.1 - Plan for more recreational amenities along the river.
- P5.6 - Improve access to Lake Nimitz as a recreational amenity.
- P7.2 - Develop a well-planned specific media campaign to promote the River to locals and tourists.
- P8.1 - Identify and promote areas of the river for tubing, floating, zip line, kayak, paddle boats, etc., by providing maps and signage.
- P8.3 - Enhance park programming for public gatherings / events.
- P8.5 - Facilitate or expand more City activities around the river, especially during cooler times of the year.
- P8.9 - Expand paddle boat operations and provide them at all other river parks.

### **RECOMMENDED ACTION:**

Adopt Resolution No. 03-2023.

### **ATTACHMENTS:**

[20230124 Reso 03-2023 Support Guadalupe River Center.pdf](#)

[20230124 Presentation GRC.pdf](#)

**CITY OF KERRVILLE, TEXAS  
RESOLUTION NO. 03-2023**

**A RESOLUTION EXPRESSING THE CITY'S SUPPORT  
FOR THE DEVELOPMENT OF THE UPPER GUADALUPE  
RIVER CENTER**

**WHEREAS**, City Council recognizes the importance of its location along the Guadalupe River and the resulting rich cultural heritage and breathtaking beauty; and

**WHEREAS**, in 1980 the Upper Guadalupe River Authority built a dam across the river to create a reservoir within the City limits, such reservoir now known as Nimitz Lake; and

**WHEREAS**, Nimitz Lake has been historically underutilized due to lack of public access; and

**WHEREAS**, in late 2022, a group of local community and business leaders formed the Upper Guadalupe River Center, Inc., a non-profit corporation, to fund, develop, and operate a community gathering place on Nimitz Lake for recreational, civic, and educational purposes, using, in part, land donated to the City (the "Project"); and

**WHEREAS**, it is Upper Guadalupe River Center, Inc.'s intent to fund, develop, and operate the Project primarily in reliance on private funding and grants; and

**WHEREAS**, the City of Kerrville's Comprehensive Plan (*Kerrville 2050*) recognizes the significance of access to the Guadalupe River and Nimitz Lake with respect to education about the river and enjoyment of the river by residents and visitors; and

**WHEREAS**, the City remains a significant destination for tourism, which is important to many community members and the Project will enhance the City's attraction and appeal as a destination for tourism and materially impact the City's economic development; and

**WHEREAS**, City Council is committed to supporting ventures such as the Project, which will allow for the full benefit and use of Nimitz Lake; and

**WHEREAS**, public support of the Project, including the City's in-kind support, will significantly assist Upper Guadalupe River Center, Inc. with its private philanthropic fundraising efforts for the Project; and

**WHEREAS**, by adopting this Resolution, City Council expresses its support for the Project and its intent to cooperate with Upper Guadalupe River Center, Inc. in its efforts to make the Project a success;

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

**SECTION ONE.** City Council expresses its support for the Upper Guadalupe River Center Inc.'s efforts to fund, develop, and operate a community gathering place on Nimitz Lake for recreational, civic, and educational purposes, with the intent of utilizing, in part, undeveloped land previously donated to the City (Granger MacDonald Park).

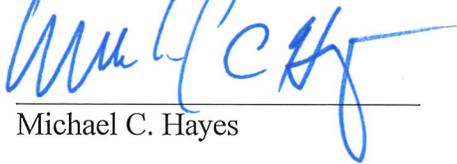
**SECTION TWO.** City Council directs the City Manager to cooperate with and assist, where possible, the Upper Guadalupe River Center Inc.'s efforts described above.

**PASSED AND APPROVED ON this the \_\_\_ day of January, 2023.**

\_\_\_\_\_  
Judy Eychner, Mayor

APPROVED AS TO FORM:

ATTEST:

  
\_\_\_\_\_  
Michael C. Hayes

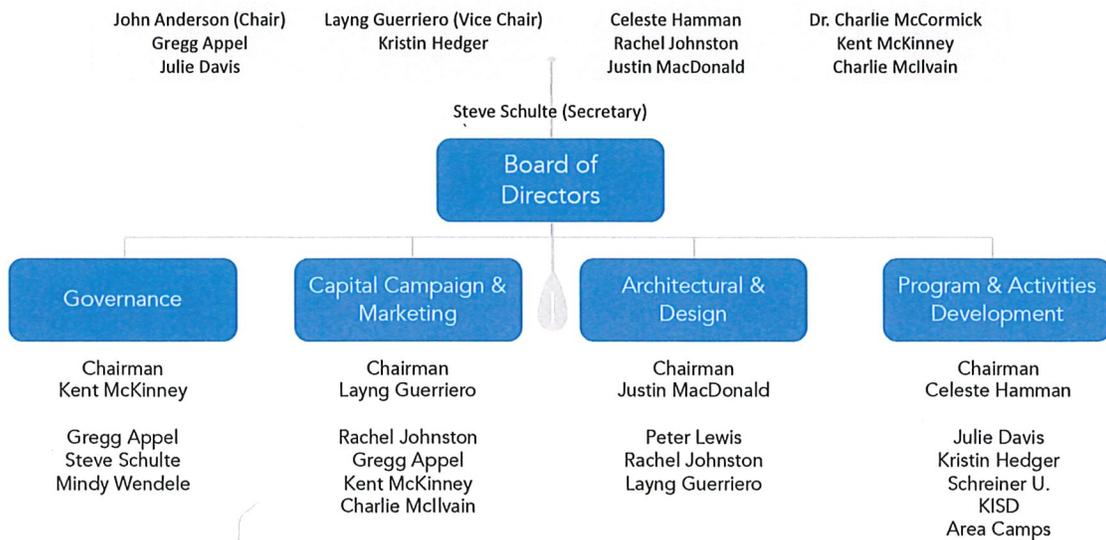
\_\_\_\_\_  
Shelley McElhannon



## A New River Park & Community Center in Kerrville, Texas



## Upper Guadalupe River Center - Non-Profit Organization





## Guadalupe River Center Vision



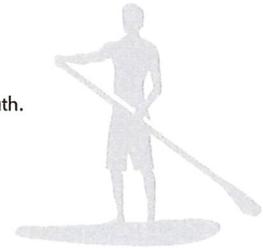
### *Our Vision of Something Transformative*

The Guadalupe River Center (GRC) is a unique Guadalupe riverfront park and gathering place in Kerrville a recreational, civic, and educational destination FOR ALL to enjoy.

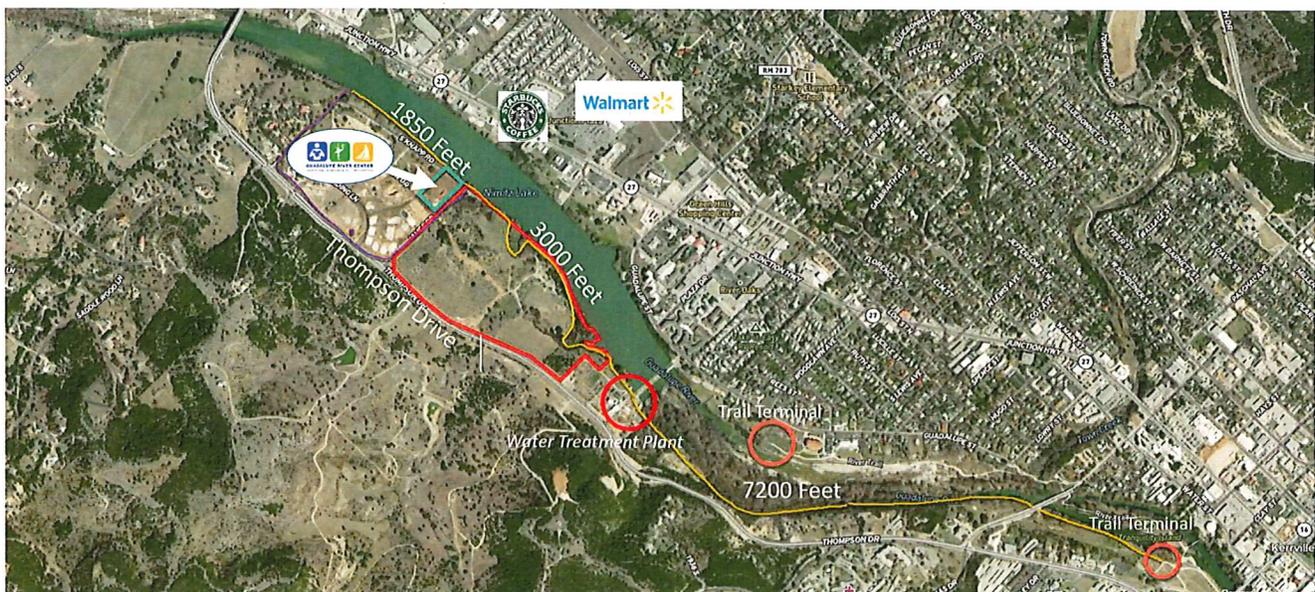
### *Our Mission*

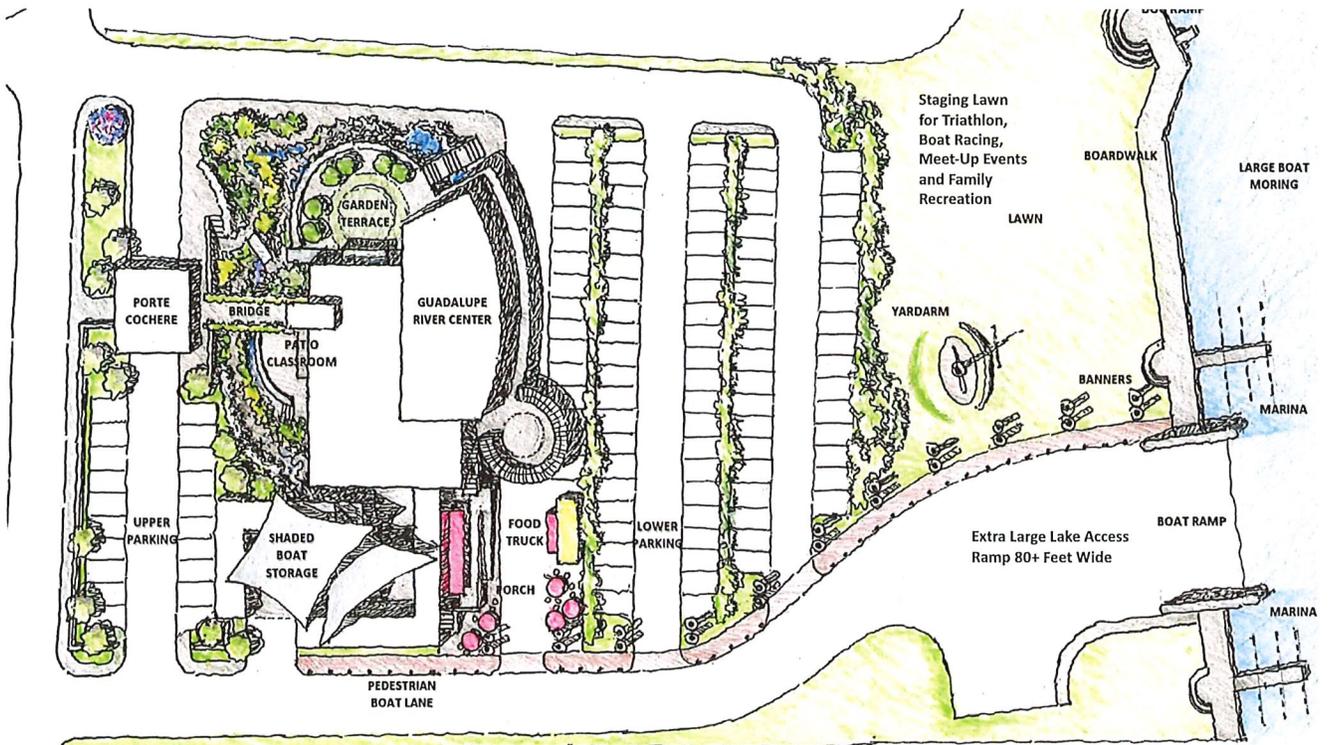
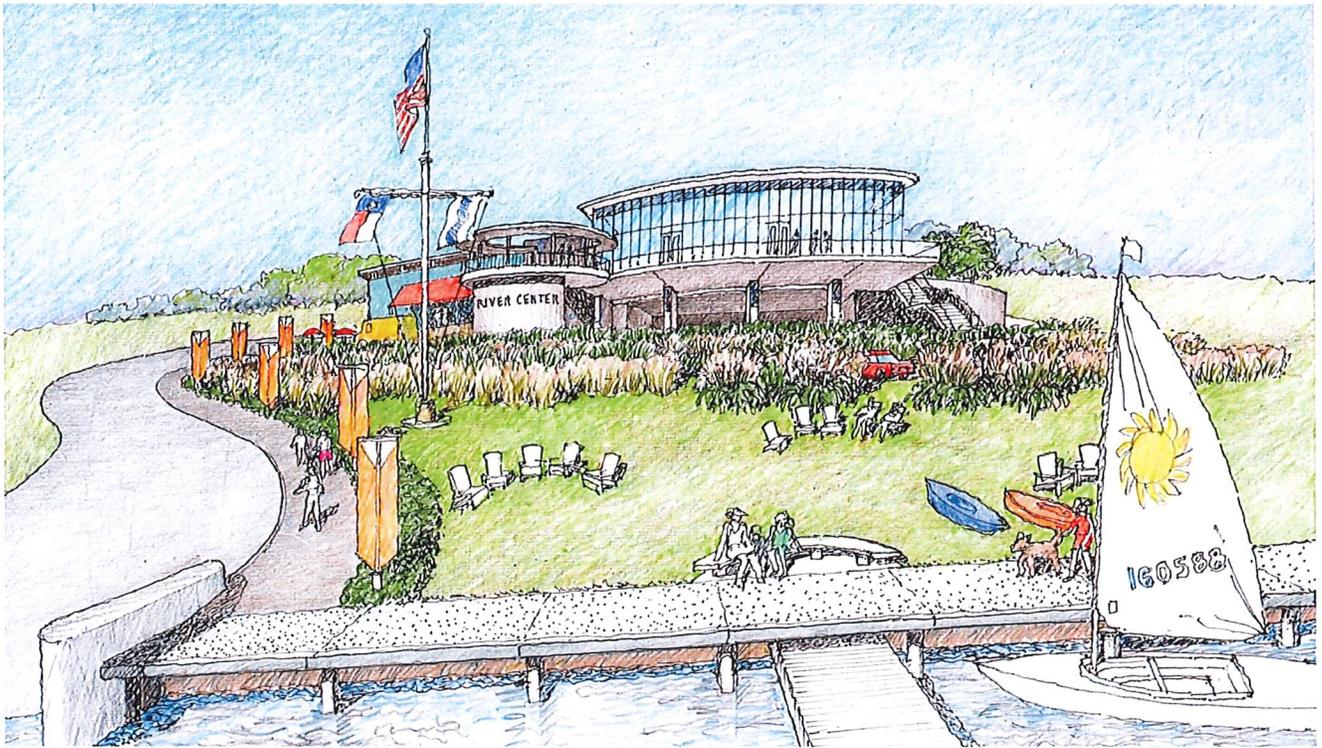
Guadalupe River Center's purpose is to develop and manage facilities on Nimitz Lake, open year-round to the general public, create community partnerships, and offer a wide range of programs, with a focus on:

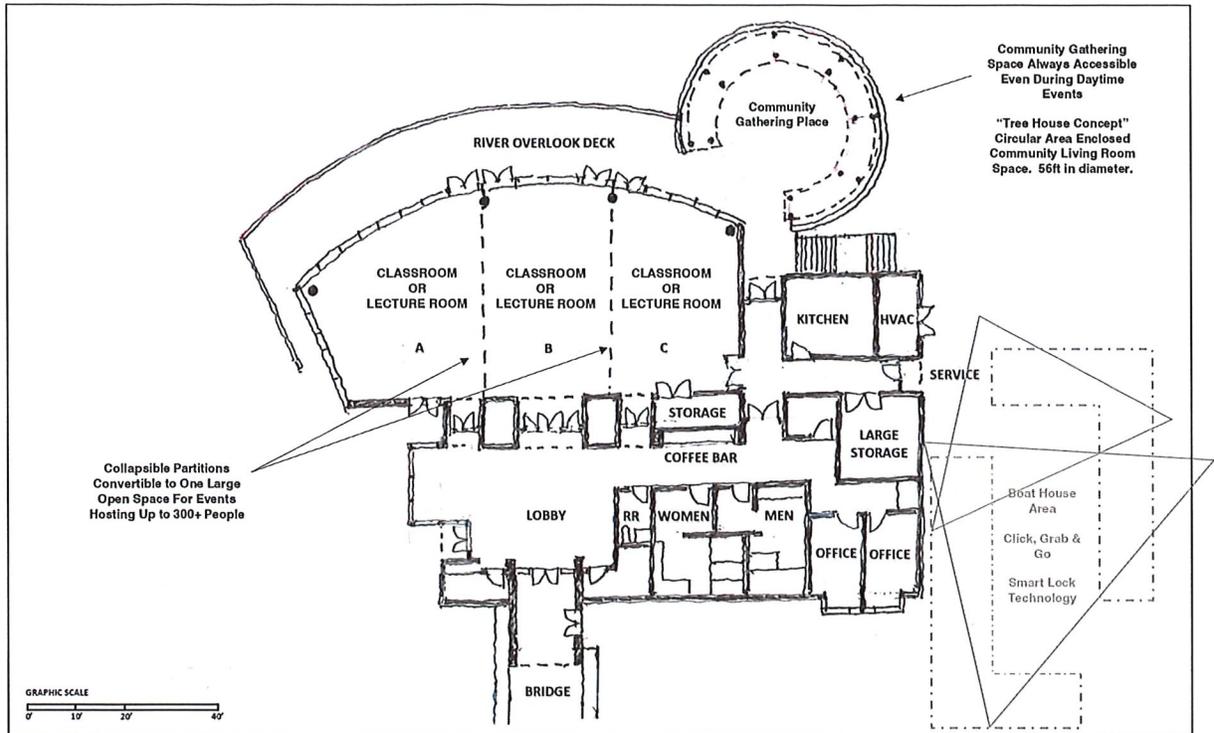
- Maximizing Utilization of the Nimitz Lake Through Expansive Outdoor Recreation Opportunities, Including Sailing, Paddleboarding, Kayaking, and Open Water Swimming.
- A Community Living Room and Gathering Spaces for Fellowship & Events.
- Weekly & Daily Camps for all children in the Hill Country with a particular focus on underprivileged youth.
- River Accessibility for Mobility Challenged Seniors and Veterans.
- Vocational Certifications and STEM Education Opportunities.
- Environmental Science and Watershed Stewardship Education.



## Guadalupe River Center Location







"Quality of Place"

### Kerrville's Living Room on the River

The GRC will also include a beautiful facility overlooking the river providing ample educational classroom spaces that allow complete education and lecture opportunities. The facility will also offer spaces for the community where citizens can gather together in an inviting "community living room" to enjoy fellowship or quiet reflection..





### Community Education Possibilities

- STEM Education Classes
- River & Lake Safety and Rescue Training
- US Sailing Teacher Certifications
- Boating Captain's License
- Texas Parks and Wildlife Certifications
- Water Treatment Plant Certifications
- Scuba Diving Certification
- Wildlife Management Classes and Certifications
- Marine Biology Classes
- Hill Country Geology Classes
- Upper Guadalupe River History
- Sustainable River Management Classes
- Environmental Sciences

### Potential Community Partnerships

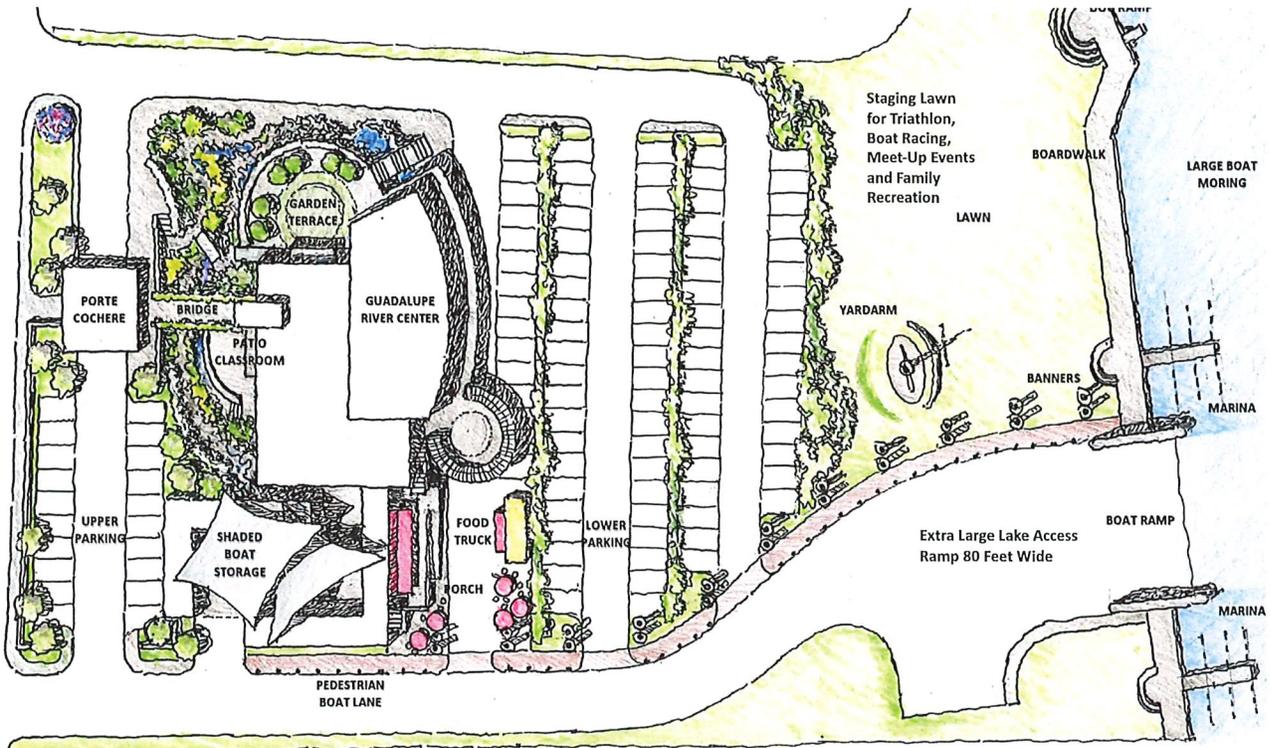
- All Local Camps – White Labeled Camp Opportunities
- Kerrville Independent School District
- Schreiner University
- Upper Guadalupe River Authority
- Peterson Regional Medical Center
- Doyle Community Center
- YMCA / Hill Country Youth Ranch/Sea Scout Ship (Troop)



### Community & Visitor Events

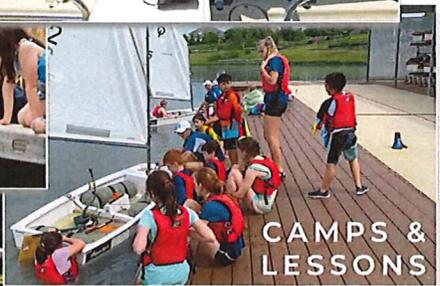
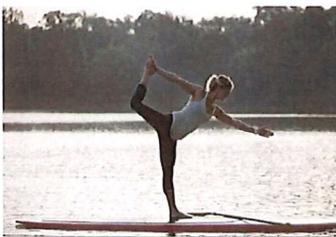
- Open Water Swim Meets
- Triathlons 2000+ People Each Year – And Growing!
- Sailing Regattas
- RC Boats Racing
- Car Shows
- Cycling Events
- Sculling Events
- Dragon Boat Racing
- Sea Scout Racing
- Holiday Boat Parades
- Outdoor Concerts





### Community & Well-Being Programs

- Free Family Fun Days
- Disabled Veteran Programs
- Sailing and Explorer Camps for Underprivileged Children
- K-12 School Field Trips (Integrated w/ KISD)
- Physical Rehab Programs
- Child Disability Programs
- SUP Yoga & Adult Fitness Classes





## Quality Places - Positive Economic Impact for Our Town

### Social and Business Events

- Galas, Weddings, Banquets
- Expos, Lectures, Off-Site Workshops
- Board Meetings, Interview Spaces
- Community Club Meetings
- Continuing Education Classes
- Team Building Events



## Capital Campaign Summary and Naming Rights

Your donation commitment will be placed in escrow until the capital campaign has reached its first goal of \$10M. If the campaign drive fails to reach that amount by August 31<sup>st</sup>, 2023, our escrow agent will return your funds to you with accrued interest.

- \$6M for the Naming of the River Center.
- \$3M for the Naming of the Three Classrooms / Event Hall.
- \$2M for the Naming of the Handicap Accessible Marina Complex.
- \$1.5M for the Naming of the Community (Tree House) Gathering Space Overlooking the River.
- \$500k for the Naming of the Coffee Shop.
- \$500k for the Naming of the Boathouse.

GRC COSTS	Start 2023
Building	\$8,703,055
Boats & Handicap Accessible Piers	\$434,267
Land Above Park & Flood Plain	\$675,000
One Year of Projected Operating Expenses	\$565,875 =====

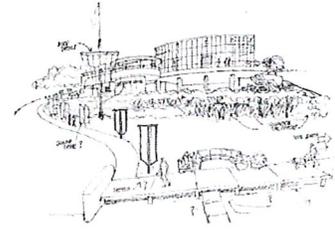
**Cost \$10,378,197**

**\$13.5M Total Campaign / Start @ \$10M**

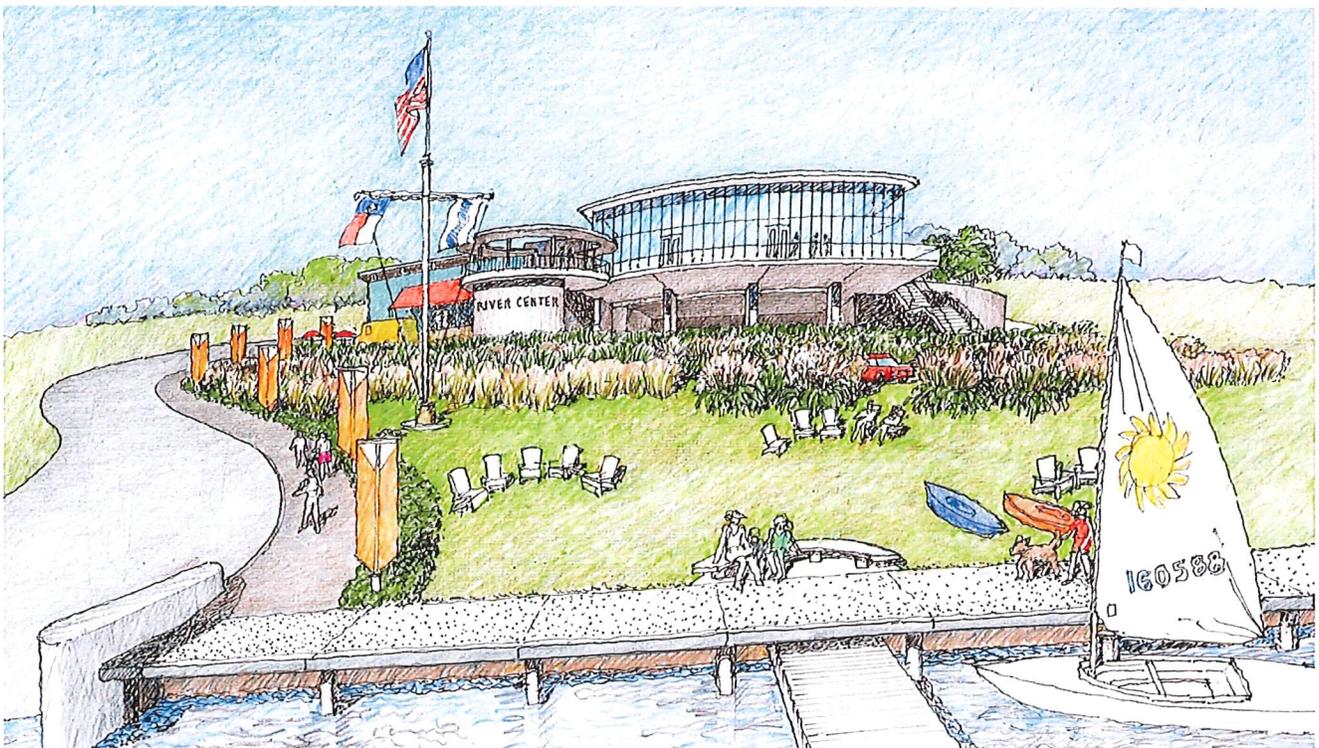




## Why Are We Here?



*We are requesting a resolution from the City of Kerrville in support of this privately-funded community center and river park project on Nimitz Lake.*





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

**SUBJECT:** Resolution No. 05-2023. A Resolution authorizing the acceptance of grant funding from the Office of the Governor and its SH-Bullet Resistant Shield Grant Program for funding to purchase Ballistic Shields for the Kerrville Police Department.

**AGENDA DATE OF:** January 24, 2023      **DATE SUBMITTED:** January 9, 2023

**SUBMITTED BY:** Chris McCall, Police Chief

**EXHIBITS:**

<b>Expenditure Required:</b>	<b>Remaining Budget Balance in Account:</b>	<b>Amount Budgeted:</b>	<b>Account Number:</b>
N/A	N/A	N/A	N/A

**PAYMENT TO BE MADE TO:** N/A

<b>Kerrville 2050 Item?</b>	Yes
<b>Key Priority Area</b>	F - Public Facilities and Services
<b>Guiding Principle</b>	N/A
<b>Action Item</b>	N/A

**SUMMARY STATEMENT:**

The Kerrville Police Department made application for grant funding in the amount of \$76,476.00 from the Office of the Governor Criminal Justice Division for the purchase of ballistic shields. In December of 2022 KPD was notified of the award of Grant Number 4591301 for the fully requested amount of \$76,476 to be utilized to purchase ballistic shields. This resolution approves KPD to accept the awarded grant funding.

**RECOMMENDED ACTION:**

Approve Resolution No. 05-2023 and accepting grant funding from the Office of the Governor in the amount of \$76,476.00 for the purchase of Ballistic Shields for the Kerrville Police Department.

**ATTACHMENTS:**

- [20230124 Reso 05-2023 Accept Governor Grant -Ballistic Shields KPD.pdf](#)
- [20230124 Grant Statement award OOG.pdf](#)

**CITY OF KERRVILLE, TEXAS  
RESOLUTION NO. 05-2023**

**A RESOLUTION AUTHORIZING THE ACCEPTANCE OF  
GRANT FUNDING FROM THE OFFICE OF THE GOVERNOR  
AND ITS SH-BULLET RESISTANT SHIELD GRANT PROGRAM  
FOR FUNDING TO PURCHASE BALLISTIC SHIELDS FOR THE  
KERRVILLE POLICE DEPARTMENT**

**WHEREAS**, the City, through its Police Department (“KPD”), seeks authorization from City Council to accept grant funding from the Office of the Governor and its SH-Bullet Resistant Shield Grant Program for funding to purchase ballistic shields for KPD, such funding in an amount not to exceed \$76,476.00; and

**WHEREAS**, KPD will use the grant funding for the purchase of ballistic shields to protect law enforcement officers at risk of being shot, thereby enhancing officer safety; and

**WHEREAS**, City Council finds it to be in the public interest to authorize the City to accept grant funding from the Office of the Governor for the purpose expressed above;

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

**SECTION ONE.** City Council authorizes the acceptance of grant funding from the Office of the Governor for funding in an amount not to exceed \$76,476.00, for the purpose of purchasing ballistic shields for KPD.

**SECTION TWO.** Pursuant to the grant, the City agrees to return grant funds to the Office of the Governor, in the event of loss or misuse of any grant funds.

**SECTION THREE.** The City designates the City Manager or his designee as the City’s authorized official who is given the authority to reject, alter, or terminate the grant on behalf of the City and take all other action in furtherance of the grant process.

PASSED AND APPROVED ON this the \_\_\_\_\_ day of \_\_\_\_\_ A.D.,  
2023.

\_\_\_\_\_  
Judy Eychner, Mayor

APPROVED AS TO FORM:

ATTEST:



\_\_\_\_\_  
William L. Tatsch, Asst. City Attorney

\_\_\_\_\_  
Shelley McElhannon, City Secretary

## Statement of Grant Award (SOGA)

The Statement of Grant Award is the official notice of award from the Office of the Governor (OOG). This Grant Agreement and all terms, conditions, provisions and obligations set forth herein shall be binding upon and shall inure to the benefit of the Parties and their respective successors and assigns and all other State of Texas agencies and any other agencies, departments, divisions, governmental entities, public corporations, and other entities which shall be successors to each of the Parties or which shall succeed to or become obligated to perform or become bound by any of the covenants, agreements or obligations hereunder of each of the Parties hereto.

The approved project narrative and budget for this award are reflected in eGrants on the 'Narrative' and 'Budget/Details' tabs. By accepting the Grant Award in eGrants, the Grantee agrees to strictly comply with the requirements and obligations of this Grant Agreement including any and all applicable federal and state statutes, regulations, policies, guidelines and requirements. In instances where conflicting requirements apply to a Grantee, the more restrictive requirement applies.

The Grant Agreement includes the Statement of Grant Award; the OOG Grantee Conditions and Responsibilities; the Grant Application in eGrants; and the other identified documents in the Grant Application and Grant Award, including but not limited to: 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards; Chapter 783 of the Texas Government Code, Title 34, Part 1, Chapter 20, Subchapter E, Division 4 of the Texas Administrative Code, and the Uniform Grant Management Standards (UGMS) developed by the Comptroller of Public Accounts; the state Funding Announcement or Solicitation under which the grant application was made, and for federal funding, the Funding Announcement or Solicitation under which the OOG was awarded funds; and any applicable documents referenced in the documents listed above. For grants awarded from the U.S. Department of Justice, the current applicable version of the Department of Justice Grants Financial Guide and any applicable provisions in Title 28 of the CFR apply. For grants awarded from the Federal Emergency Management Agency (FEMA), all Information Bulletins and Policies published by the FEMA Grants Program Directorate apply. The OOG reserves the right to add additional responsibilities and requirements, with or without advance notice to the Grantee.

By clicking on the 'Accept' button within the 'Accept Award' tab, the Grantee accepts the responsibility for the grant project, agrees and certifies compliance with the requirements outlined in the Grant Agreement, including all provisions incorporated herein, and agrees with the following conditions of grant funding. The grantee's funds will not be released until the grantee has satisfied the requirements of the following Condition(s) of Funding and Other Fund-Specific Requirement(s), if any, cited below:

<b>Grant Number:</b>	4591301	<b>Award Amount:</b>	\$76,476.00
<b>Date Awarded:</b>	12/20/2022	<b>Grantee Cash Match:</b>	\$0.00
<b>Grant Period:</b>	09/01/2022 - 08/31/2023	<b>Grantee In Kind Match:</b>	\$0.00
<b>Liquidation Date:</b>	11/29/2023	<b>Grantee GPI:</b>	\$0.00
<b>Program Fund:</b>	SH-Bullet-Resistant Shield Grant Program	<b>Total Project Cost:</b>	\$76,476.00
<b>Grantee Name:</b>	Kerrville, City of		
<b>Project Title:</b>	Ballistic Shield Initiative		
<b>Grant Manager:</b>	Tammy Golden		
<b>Unique Entity Identifier (UEI):</b>	FUELCWMZPJJ5		
<b>CFDA:</b>	N/A		
<b>Federal Awarding Agency:</b>	NA		
<b>Federal Award Date:</b>	N/A - State Funds		
<b>Federal/State Award ID Number:</b>	2023-SH-ST-0000		
<b>Total Federal Award/State Funds Appropriated:</b>	\$50,000,000.00		
<b>Pass Thru Entity Name:</b>	Texas Office of the Governor – Criminal Justice Division (CJD)		
<b>Is the Award R&amp;D:</b>	No		
<b>Federal/State Award Description:</b>	This purpose of this funding is to equip peace officers with bullet-resistant shields.		



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

**SUBJECT:** Purchase of Ballistic Shields for the Kerrville Police Department in the amount of \$76,581.64.

**AGENDA DATE OF:** January 24, 2023      **DATE SUBMITTED:** January 9, 2023

**SUBMITTED BY:** Chris McCall, Police Chief

**EXHIBITS:**

<b>Expenditure Required:</b>	<b>Remaining Budget Balance in Account:</b>	<b>Amount Budgeted:</b>	<b>Account Number:</b>
\$76,581.64	N/A	\$76,581.64	N/A

**PAYMENT TO BE MADE TO:** Galls

<b>Kerrville 2050 Item?</b>	Yes
<b>Key Priority Area</b>	F - Public Facilities and Services
<b>Guiding Principle</b>	N/A
<b>Action Item</b>	N/A

**SUMMARY STATEMENT:**

The Kerrville Police Department has been awarded funding in the amount of \$76,476.00 from the Office of the Governor Criminal Justice Division through the Bullet Resistant Shield Grant Program for the purchase of 12 Ballistic Shields. The grant funding is a reimbursement grant for funds spent up to \$76,476.00. This item is for the approval of the expenditure of those funds for the intended purpose. Based on a price increase of the shields since the submission of the grant, the actual purchase price is \$105.64 more than the grant funding, or \$76,581.64. The additional cost will be covered through KPD's current operating budget. The items will be purchased through Galls on a Texas Buyboard (#603-20) purchasing agreement.

**RECOMMENDED ACTION:**

Approve the purchase of 12 ballistic shields for the Kerrville Police Department in the amount of \$76,581.64.

**ATTACHMENTS:**

- [20230124 Purchase Agreement\\_Galls Ballistic Shields KPD.pdf](#)
- [20230124\\_Quote -GallsTexas\\_buyboard.pdf](#)

## PURCHASE AGREEMENT

This PURCHASE AGREEMENT ("Agreement") is made this \_\_\_ day of \_\_\_\_\_ 20\_\_ ("Effective Date") by and between the City of Kerrville, Texas, a Texas municipality, whose address is 701 Main Street, Kerrville, Texas 78028 ("Customer"), and Galls, LLC, a Delaware limited liability company with offices at 1340 Russell Cave Road, Lexington, Kentucky 40505 ("Company").

**1. Purchases.** Subject to the terms and conditions of this Agreement, Company agrees to sell and Customer agrees to purchase, upon purchase orders submitted from time to time during the Term, as defined herein, the merchandise listed on the Quote ("Merchandise") at the prices listed on the Quote attached hereto ("Prices").

**2. Term.** The term of this Agreement shall be for one year from the Effective Date ("Term").

**3. Shipping and Returns.** The Prices are exclusive of shipping costs, and the Company will include a line item on its invoice for shipping charges. Customer shall inspect all Merchandise promptly upon receipt and will notify the Company of any defective Merchandise, including custom or specifically manufactured, personalized, modified, or altered Merchandise, within 72 hours after receipt. Customer will either hold such defective Merchandise for the Company's pick-up or return such Merchandise to Company within 30 days, at Company's election with responsibility for the cost of return shipments of defective Merchandise to be borne by Company.

Returns will be accepted on Merchandise in resalable condition for 30 days after shipment. Customer is responsible for the cost of such return shipments. Custom or specifically manufactured, personalized, modified, or altered Merchandise is not subject to exchange or return unless Customer notifies Company that such Merchandise is defective and follows the procedures set forth in the previous paragraph.

**4. Payment and Taxes.** For every order of Merchandise, the Company will date and send an invoice to Customer (either by mail or electronic transmission, including email or other electronic means acceptable to the Company) on or after the date the Merchandise is shipped to Customer. Payment terms are net 30 days from the date of invoice. Invoices will cover only Merchandise ordered by Customer's representatives in accordance with this Agreement. Any sales tax on purchases by Customer pursuant to this Agreement shall be paid by Customer. Tax deferred certificates are to be provided by Customer for tax payment purposes, if applicable.

Undisputed amounts outstanding more than 30 days from the date of invoice will incur a late payment penalty of 1% per month (compounded monthly) calculated from the invoice date. Disputed amounts must be provided in writing (electronic submission accepted) detailing the item disputed, the invoice the item is on, the amount disputed and a reason for the disputed amount. Amounts not disputed prior to the invoice due date (30 days from the invoice date) will be deemed accepted and due to be paid with the appropriate payment penalty applied.

5. **Price Increases.** The parties agree that the Prices shall be adjusted to reflect changes in the Company's costs of raw materials and/or overhead.

6. **Termination.** Either party may terminate the agreement:

(A) Immediately upon written notice if the other party files a petition for bankruptcy or is otherwise adjudicated bankrupt, or a petition for bankruptcy is filed against the other party and such petition is not dismissed within 60 days, or the other party becomes insolvent, discontinues its business, or voluntarily submits to, or is ordered by the bankruptcy court to undergo, liquidation pursuant to Chapter 7 of the Bankruptcy Code.

(B) Upon 45 days' prior written notice in the event of the other party's material breach of this Agreement. Customer's failure to timely pay any undisputed invoice submitted by the Company hereunder is a material breach of this Agreement.

(C) In the event Customer seeks to terminate this Agreement for material deficiencies in service and/or quality of Merchandise provided, Company is afforded 45 days from the date on which Company receives written notification of the deficiency(ies) to correct or begin to take reasonable steps to correct any deficiencies complained of.

(D) Either party may at any time and for any reason terminate this contract at the party's convenience upon providing written notice to the other party specifying the extent of termination and the effective date. Upon receipt of such notice, Company shall, unless the notice directs otherwise, immediately discontinue service in connection with the performance of this Agreement, and Customer shall cease any payments for any goods and services not yet provided. Company shall be entitled to compensation for any work in progress at the time of notice.

7. **Title and Risk of Loss.** Title and risk of loss with respect to the Merchandise shall pass to Customer when the Merchandise is loaded for shipment onto a truck at the Company's dock.

8. **Purchase of Merchandise.** Customer acknowledges that Company will make an investment in Merchandise that is unique to Customer and not part of Company's standard product line. Notwithstanding anything to the contrary contained herein, upon (i) any termination of this Agreement in whole or in part, by either party and for any reason, (ii) the final expiration of this Agreement, or (iii) the Customer's change in the specifications of any Merchandise, Customer shall purchase from Company: all Merchandise (or the applicable Merchandise in the case of a specification change) in stock or committed by Company to Customer (whether shelf inventory, manufacturers' supplies ordered by Company, or otherwise); all work in process (once completed); and all raw materials purchased by Company (or its suppliers) for the production of such Merchandise. The purchase price for such Merchandise shall be the Prices then in effect under this Agreement. The purchase price for such raw materials will be at Company's (or its suppliers') cost as evidenced by supplier invoices. Notwithstanding the foregoing, Customer shall only be required to purchase Merchandise that is of first quality and salable as new. Customer shall be responsible for payment of freight with respect to all Merchandise and raw materials purchased pursuant to this Paragraph 8.

**9. Purchase of Other Requested Merchandise.** In the event Customer desires to order merchandise that is not listed on Schedule 1, the Company shall provide Customer with prices for such merchandise, and Schedule 1 shall be amended by mutual agreement of the parties. To the extent such merchandise is not a standard product regularly stocked by Company, Customer hereby agrees to purchase all such merchandise in the ordinary course of business; *provided that* should Customer cease making regular purchases of any such merchandise for a period of 6 months, or upon any termination or expiration of this Agreement, Customer hereby agrees to purchase all such merchandise pursuant to Paragraph 8.

**10. Company's Representations and Warranties.** Company represents and warrants that all items manufactured by Company and delivered hereunder (i) are manufactured and sold in compliance with all government laws, rules, and regulations applicable to Company, and (ii) will be manufactured in full compliance with all applicable import regulations established by the US Customs Service and the FTC. THE COMPANY MAKES NO OTHER WARRANTIES WITH RESPECT TO THE MERCHANDISE AND ALL OTHER WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, ARE EXPRESSLY AND SPECIFICALLY EXCLUDED. Customer further acknowledges that no standards or minimum performance requirements have been established for the Merchandise, that it has independently investigated merchandise available to satisfy its needs, and that it has relied on its own investigation and not upon any representations, expressed or implied, by Company.

**11. Insurance.** Company agrees to procure before the execution of this Agreement, and maintain during the term of this Agreement, the following insurance: statutory worker's compensation insurance, employer's liability insurance, and general liability insurance (to include coverage for public liability and property damage liability) with limits not less than \$5 million combined single limit per occurrence for loss or damage (which may be met through the use of excess/umbrella coverage).

**12. Miscellaneous.**

**12.1. Damages.** Under no circumstances shall either party be liable to the other party for any consequential, incidental, special, exemplary, punitive, or other similar damages, however denominated.

**12.2 Force Majeure.** Neither party shall be liable to the other for any delay or failure to perform hereunder (excluding payment obligations) due to circumstances beyond such party's reasonable control, including acts of God, acts of government, flood, fire, earthquakes, hurricane, tornado, civil unrest, acts of terror, strikes or other labor problems (excluding those involving a party's employees), or service disruptions involving hardware, software, or power systems not within a party's possession or reasonable control.

**12.3 Choice of Law and Jurisdiction.** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas. Each party irrevocably submits to the exclusive jurisdiction of the state courts in Kerrville, Texas and federal courts located in San Antonio, Texas in connection with any dispute arising out of this Agreement.

**12.4 Non-Waiver.** No failure by either party to take any action or assert any right hereunder shall be deemed to be a waiver of such right in the event of the continuation of repetition of the circumstances giving rise to such right.

**12.5 Power to Bind.** Customer has read the forgoing in its entirety, understands all of its terms and conditions, and warrants to Company that the person signing on its behalf has the authority and power to execute this Agreement.

**12.6 Entire Agreement.** This Agreement, including the attached Schedule 1, constitutes the final, entire, and complete agreement of the parties with respect to the subject matter hereof and supersedes any prior agreement or understanding between or represented by the parties relating to the subject matter. This Agreement shall not be deemed or construed to be modified, amended, rescinded, canceled, or waived, in whole or in part, except by written amendment signed by the parties hereto.

**12.7 Assignment of Agreement.** This Agreement and all of the provisions hereof shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns, but neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned by any of the parties hereto without the prior written consent of the other parties. .

**12.8 Execution of Agreement.** This Agreement may be executed in two or more counterparts, and each such counterpart shall be deemed an original hereof.

**[REST OF PAGE INTENTIONALLY LEFT BLANK; SIGNATURES TO FOLLOW]**

IN WITNESS WHEREOF, the undersigned by their duly authorized representatives have executed this Agreement as of the day and year first above written.

**GALLS, LLC**

**CITY OF KERRVILLE, TEXAS**

By: 

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

Name: Mike Fadden

Name: E.A. Hoppe

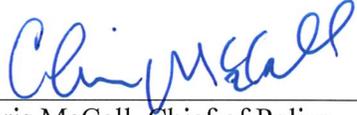
Title: Chief Executive Officer

Title: City Manager

ATTEST:

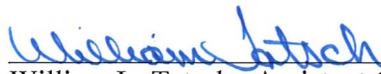
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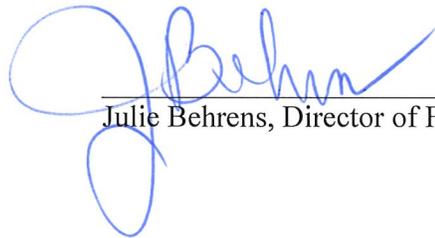
\_\_\_\_\_  
Shelley McElhannon, City Secretary

  
Chris McCall, Chief of Police

APPROVED AS TO FORM:

APPROVED AS TO FUNDING:

  
William L. Tatsch, Assistant City Attorney

  
Julie Behrens, Director of Finance



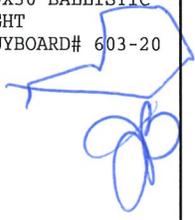
# Quote

Customer: (1002239932) KERRVILLE POLICE DEPARTMENT  
Date: 01/05/2023  
Sales Rep: MA TEAM CENTRAL

Page 1 of 1  
Quote Number: 21282083  
Quote Expiration: 02/04/2023

Sold To:  
KERRVILLE POLICE DEPARTMENT  
701 MAIN ST  
KERRVILLE, TX 78028  
JENNETTE DENNIS

Ship To:  
KERRVILLE POLICE DEPT  
429 SIDNEY BAKER ST  
KERRVILLE, TX 78028  
JENNETTE DENNIS

Line	Item	Description	Qty	Retail	Your Price	Ext Total
1	BP3768 BLK	PBE VANGUARD LEVEL III 20X30 BALLISTIC SHIELD W/VIEWPORT AND LIGHT PRICING REFLECTS TEXAS BUYBOARD# 603-20 	12		6,373.47	76,481.64

Quote is valid for 30 days

Galls is required to collect sales tax on shipments to certain states. Sales tax will be added where applicable. For tax exempt customers, state laws require us to have signed tax exemption or resale certificates on file at our office. If you are tax exempt, please email or fax this information, (including your Galls account number) to Tax@galls.com or fax 859-268-5946.

SUBTOTAL: 76,481.64  
SHIPPING: 100.00  
TAX.....  
TOTAL.... 76,581.64

Export Restrictions - This may contain commodities restricted in the United States International Trade Regulations.

1340 Russell Cave Rd  
Lexington, KY 40505  
Tel: 800-876-4242 Fax:877-914-2557

Galls, LLC Invoice Credit Terms and Conditions of Sale

Payment - Invoices for items delivered pursuant to any sales order are payable only in United States currency. You, your business, and/or your agency (the "Buyer") understand that Galls, LLC (the "Seller") may impose and charge a finance charge that is the greater of 1.5% per month or the highest rate allowed by law on any amount which becomes past due and delinquent. Returned checks may be assessed a \$25.00 service fee. Additionally, Buyer shall be responsible for all collection costs, court costs, and reasonable attorney's fees in connection with the recovery of delinquent amounts.

All sales are made pursuant to these Credit Terms and Conditions of Sale, and Seller objects to any different or additional terms or conditions contained in Buyer's purchase order or any other document submitted by Seller. Payments may be applied against open balances at the sole discretion of Seller and may be applied across accounts if Buyer has more than one account with Seller. Credit memos are non-refundable and may be applied to open invoices at Seller's sole discretion.

Credit Terms - Any extension of credit is based upon all amounts payable on or before the due date on any written, quoted, or agreed terms, and shall be paid in accordance with such terms. If not paid on or before such date, accounts shall be considered delinquent and subject to the additional finance charges as set forth herein.

Buyer agrees to provide Seller, upon request, with an updated credit application as a condition to the continued extension of credit. Buyer acknowledges and agrees that Seller may utilize outside credit reporting services and financial institutions to obtain information on the Buyer as a condition precedent to or for continued extension of credit. Seller may terminate any credit availability within its sole discretion and without prior notice. Buyer's continued solvency is a precondition to any sale made by Seller.

Delays - Where a specific shipping date is not designated on the face hereof or in a subsequent writing signed by the Seller, the Seller shall not be responsible for any delays, nor shall Seller be liable for any loss or damages resulting from such delays. Seller shall not be liable for any delays in filling this order caused by accidents to machinery, differences with employees, strikes, labor shortage, fire, floods, priorities requested or required by an instrumentality of the United States Government or the government of any state, delays in transportation, restrictions imposed by any federal, state or municipal law or regulation, whether valid or invalid, or causes beyond the control of the Seller.

Warranty - Seller shall pass through to Buyer all manufacturer warranties and return policies applicable to Buyer's order. Seller shall take all reasonable actions to ensure that Buyer receives the benefit of such pass through warranties and return policies. Buyer's sole remedies for any goods sold hereunder shall be as provided in such warranties and return policies and shall be solely against the applicable manufacturer. SELLER, ON BEHALF OF ITSELF, DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, OR STATUTORY, RELATING TO SUCH GOODS.

Restocking - If a cancellation of an order or a return by Buyer is accepted or initiated by Seller and/or the manufacturer, it may be subject to a restocking charge at the discretion of Seller.

Delivery and Transportation - Products sold herein are sold FOB at the place indicated on the face of this sales order unless otherwise agreed to in writing by Seller and Buyer. The method and agency of transportation and the routing will be designated by the Seller. In the event the Buyer requests alternative shipment or routing, all extra packing, shipping and transportation charges thereby resulting will be for the Buyer's account.

Waiver - No provision herein shall be deemed a waiver by reason of any previous waiver, and no breach of any provision shall be deemed a waiver by reason of any previous breach.

Governing Law - The sole jurisdiction and venue shall be the courts of the Commonwealth of Kentucky.

Export Restrictions - This transaction may contain commodities restricted in the United States International Trade Regulations. If at a later date the Buyer decides these commodities will be exported from the United States please reference the United States Department of Commerce Bureau of Industry and Security Export Administration Regulations (15 CFR 730-774), the United States Department of State International Traffic in Arms Regulations (22 CFR 120-130) as well as any other applicable laws. These laws apply to private, commercial, and government agency export transactions. As an exporter, the Buyer will be responsible for compliance with all U.S. laws relating to the export of these items.

\*Designates this item is on the Galls GSA Contract (47QSWA21D008H) all other items are OPEN MARKET.



# Quote

Customer: (1002239932) KERRVILLE POLICE DEPARTMENT  
 Date: 12/29/2022  
 Sales Rep: MA TEAM CENTRAL

Page 1 of 1  
 Quote Number: 21282083  
 Quote Expiration: 01/28/2023

Sold To:  
 KERRVILLE POLICE DEPARTMENT  
 701 MAIN ST  
 KERRVILLE, TX 78028  
 JENNETTE DENNIS

Ship To:  
 KERRVILLE POLICE DEPT  
 429 SIDNEY BAKER ST  
 KERRVILLE, TX 78028  
 JENNETTE DENNIS

Line	Item	Description	Qty	Retail	Your Price	Ext Total
1	BP3768 BLK	PBE VANGUARD LEVEL III 20X30 BALLISTIC SHIELD W/VIEWPORT AND LIGHT PRICING REFLECTS TEXAS BUYBOARD# 603-20	12		6,373.47	76,481.64

Quote is valid for 30 days

SUBTOTAL: 76,481.64  
 SHIPPING: 100.00  
 TAX.....  
 TOTAL...: 76,581.64

Galls is required to collect sales tax on shipments to certain states. Sales tax will be added where applicable. For tax exempt customers, state laws require us to have signed tax exemption or resale certificates on file at our office. If you are tax exempt, please email or fax this information, (including your Galls account number) to Tax@galls.com or fax 859-268-5946.

Export Restrictions - This may contain commodities restricted in the United States International Trade Regulations.

1340 Russell Cave Rd  
 Lexington, KY 40505  
 Tel: 800-876-4242 Fax:877-914-2557

## Galls, LLC Invoice Credit Terms and Conditions of Sale

Payment - Invoices for items delivered pursuant to any sales order are payable only in United States currency. You, your business, and/or your agency (the "Buyer") understand that Galls, LLC (the "Seller") may impose and charge a finance charge that is the greater of 1.5% per month or the highest rate allowed by law on any amount which becomes past due and delinquent. Returned checks may be assessed a \$25.00 service fee. Additionally, Buyer shall be responsible for all collection costs, court costs, and reasonable attorney's fees in connection with the recovery of delinquent amounts.

All sales are made pursuant to these Credit Terms and Conditions of Sale, and Seller objects to any different or additional terms or conditions contained in Buyer's purchase order or any other document submitted by Seller. Payments may be applied against open balances at the sole discretion of Seller and may be applied across accounts if Buyer has more than one account with Seller. Credit memos are non-refundable and may be applied to open invoices at Seller's sole discretion.

Credit Terms - Any extension of credit is based upon all amounts payable on or before the due date on any written, quoted, or agreed terms, and shall be paid in accordance with such terms. If not paid on or before such date, accounts shall be considered delinquent and subject to the additional finance charges as set forth herein.

Buyer agrees to provide Seller, upon request, with an updated credit application as a condition to the continued extension of credit. Buyer acknowledges and agrees that Seller may utilize outside credit reporting services and financial institutions to obtain information on the Buyer as a condition precedent to or for continued extension of credit. Seller may terminate any credit availability within its sole discretion and without prior notice. Buyer's continued solvency is a precondition to any sale made by Seller.

Delays - Where a specific shipping date is not designated on the face hereof or in a subsequent writing signed by the Seller, the Seller shall not be responsible for any delays, nor shall Seller be liable for any loss or damages resulting from such delays. Seller shall not be liable for any delays in filling this order caused by accidents to machinery, differences with employees, strikes, labor shortage, fire, floods, priorities requested or required by an instrumentality of the United States Government or the government of any state, delays in transportation, restrictions imposed by any federal, state or municipal law or regulation, whether valid or invalid, or causes beyond the control of the Seller.

Warranty - Seller shall pass through to Buyer all manufacturer warranties and return policies applicable to Buyer's order. Seller shall take all reasonable actions to ensure that Buyer receives the benefit of such pass through warranties and return policies. Buyer's sole remedies for any goods sold hereunder shall be as provided in such warranties and return policies and shall be solely against the applicable manufacturer. SELLER, ON BEHALF OF ITSELF, DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, OR STATUTORY, RELATING TO SUCH GOODS.

Restocking - If a cancellation of an order or a return by Buyer is accepted or initiated by Seller and/or the manufacturer, it may be subject to a restocking charge at the discretion of Seller.

Delivery and Transportation - Products sold herein are sold FOB at the place indicated on the face of this sales order unless otherwise agreed to in writing by Seller and Buyer. The method and agency of transportation and the routing will be designated by the Seller. In the event the Buyer requests alternative shipment or routing, all extra packing, shipping and transportation charges thereby resulting will be for the Buyer's account.

Waiver - No provision herein shall be deemed a waiver by reason of any previous waiver, and no breach of any provision shall be deemed a waiver by reason of any previous breach.

Governing Law - The sole jurisdiction and venue shall be the courts of the Commonwealth of Kentucky.

Export Restrictions - This transaction may contain commodities restricted in the United States International Trade Regulations. If at a later date the Buyer decides these commodities will be exported from the United States please reference the United States Department of Commerce Bureau of Industry and Security Export Administration Regulations (15 CFR 730-774), the United States Department of State International Traffic in Arms Regulations (22 CFR 120-130) as well as any other applicable laws. These laws apply to private, commercial, and government agency export transactions. As an exporter, the Buyer will be responsible for compliance with all U.S. laws relating to the export of these items.

\*Designates this item is on the Galls GSA Contract (47QSWA21D008H) all other items are OPEN MARKET.



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

**SUBJECT:** Grant Agreement with the Hal & Charlie Peterson Foundation accepting a Public Safety Equipment Grant in the amount of \$106,002.00.

**AGENDA DATE OF:** January 24, 2023      **DATE SUBMITTED:** January 10, 2023

**SUBMITTED BY:** Chris McCall, Police Chief

**EXHIBITS:**

<b>Expenditure Required:</b>	<b>Remaining Budget Balance in Account:</b>	<b>Amount Budgeted:</b>	<b>Account Number:</b>
N/A	N/A	N/A	N/A

**PAYMENT TO BE MADE TO:** N/A

<b>Kerrville 2050 Item?</b>	Yes
<b>Key Priority Area</b>	F - Public Facilities and Services
<b>Guiding Principle</b>	N/A
<b>Action Item</b>	N/A

**SUMMARY STATEMENT:**

KPD has been awarded a grant in the amount of \$106,002.00 for the purchase of public safety equipment to be utilized at the six KISD campuses and in KPD patrol cars. This equipment includes the purchase of six ballistic shields and six "go bags" to be located on KISD campuses, and six ballistic shields to be deployed in KPD police vehicles. This equipment is intended to improve KPD's response capabilities during active threat situations at our local schools.

**RECOMMENDED ACTION:**

Grant the City Manager authority to accept and carry out any additional action necessary to accept and utilize the Public Safety Equipment Grant from The Hal & Charlie Peterson Foundation in the amount of \$106,002.00.

**ATTACHMENTS:**

[\*20230124\\_Agreement\\_Peterson Foundation KPD Grant Agreement.pdf\*](#)

# The Hal & Charlie Peterson Foundation

P.O. Box 293870 Kerrville, Texas 78029 (830) 896-2262 brian@peterson.foundation

December 21, 2022

Dr. Mark Foust  
Kerrville Independent School District  
1009 Barnett Street  
Kerrville, TX 78028

Chief Chris McCall  
Kerrville Police Department  
429 Sidney Baker  
Kerrville, TX 78028

Dear Dr. Foust and Chief McCall,

The Board of Trustees of the Hal and Charlie Peterson Foundation is pleased to inform you that a grant of \$106,002.00 was approved yesterday to purchase six shields for the Kerrville Police Department and six “go bags” including one additional shield each to be placed at Kerrville Independent School District campuses.

As you know, this grant application was initiated by the Kerrville ISD and originally included a list of items totaling \$17,667.00 for each of six “go bags” to be placed at Kerrville ISD campuses. The list originally called for two shields with an estimated cost of \$6,374.00 each to be placed at each of six campuses. After consideration, our board approved this grant to include one shield in each of the six campus “go bags” and six shields to be held by the Kerrville Police Department in locations they determine to be optimal. In addition, our trustees chose to make this grant to the City of Kerrville/Police Department directly so that all of the included equipment would be owned, monitored, and maintained by the Kerrville Police Department.

Please have an authorized representative of the City of Kerrville/Police Department sign and return the enclosed Grant Agreement to our office. Upon our receipt of the signed Grant Agreement, we will schedule funding of the grant by January 20, 2023. The grant funds and any interest or investment income earned from them are restricted to your functions in Kerr and adjacent counties.

You may publicize this grant if you wish. References to the Foundation should include its full name, the Hal and Charlie Peterson Foundation. Please be accurate with any information

released, verifying the facts with this letter, the Foundation's website, or by contacting me if you have any questions.

If you have any questions concerning your grant award, please feel free to contact me by email at [brian@peterson.foundation](mailto:brian@peterson.foundation) or by phone at (830) 896-2262.

Sincerely,



Brian T. Oehler  
General Manager

BTO/ngr  
Enclosure

cc: Mr. E.A. Hoppe, City Manager  
City of Kerrville  
701 Main  
Kerrville, TX 78028

# Grant Agreement

1. On December 21, 2022, The Board of Trustees of the Hal & Charlie Peterson Foundation approved a grant of \$106,002.00 to the City of Kerrville (Grantee) to fund the purchase of six shields for the Kerrville Police Department and six “go bags” including one additional shield each to be placed at Kerrville Independent School District campuses as described in the Kerrville ISD grant application dated October 12, 2022.
2. Checks funding this grant must be endorsed by Grantee.
3. Any funds not used or committed for the specific purpose of the grant must be reported to the Hal and Charlie Peterson Foundation, which reserves the right to have all remaining grant funds returned.
4. Grantee must provide a written report supported by invoices or related documents as soon as possible after the grant funds are expended which describes conclusions, progress, and/or status of grant objectives.
5. The Hal and Charlie Peterson Foundation desires that all resources of Grantee be dedicated to accomplishing its purpose. Accordingly, Grantee agrees not to provide the Hal and Charlie Peterson Foundation, its trustees or staff, with any items including without limitation complimentary tickets, certificates, plaques, or similar mementos.

ACCEPTED:

City of Kerrville  
Grantee

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

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

Date: \_\_\_\_\_



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

**SUBJECT:** Project Funding Agreement between the City of Kerrville, Texas, Economic Improvement Corporation and the City of Kerrville, Texas, for a concept feasibility study for an extension of the River Trail around Nimitz Lake; and the corresponding Professional Services Agreement between Hewitt Engineering and the City of Kerrville for the study in the amount of \$182,800.

**AGENDA DATE OF:** January 24, 2023      **DATE SUBMITTED:** January 13, 2023

**SUBMITTED BY:** Ashlea Boyle, Director Parks & Recreation

**EXHIBITS:**

<b>Expenditure Required:</b>	<b>Remaining Budget Balance in Account:</b>	<b>Amount Budgeted:</b>	<b>Account Number:</b>
\$182,800	N/A	N/A	N/A

**PAYMENT TO BE MADE TO:** Hewitt Engineering Inc.

<b>Kerrville 2050 Item?</b>	Yes
<b>Key Priority Area</b>	E - Economic Development
<b>Guiding Principle</b>	N/A
<b>Action Item</b>	E3.3 - Seek EIC funding to extend the River Trail further west to the Thompson Drive bridge

**SUMMARY STATEMENT:**

Attached is a quality of life project funding agreement between the City of Kerrville and the Economic Improvement Corporation (EIC) for \$182,800 for a concept feasibility study for an extension of the River Trail around Nimitz Lake. Also attached is the corresponding Professional Services Agreement with Hewitt Engineering for the concept study.

City Council is being asked to approve both Agreements.

This study is broken out into two parts. The first part would include an extension from near the Dietert Center (Palacios del Guadalupe Condominiums) and proceed along the northeast side of the river west to the Spur 98 Bridge (Thompson Drive). The second part would include an extension from Spur 98 Bridge (Thompson Drive) back along the southwest side of the river to Francisco Lemos. It is anticipated that this extension would result in multiple phases due to the length, cost, construction and environmental challenges, private properties, and easements.

Extending the Kerrville River Trail is consistent with several community plans, such as the Kerrville 2050 Comprehensive Plan, the Parks and Recreation Master Plan, the River Trail Master Plan, and the Parks and Recreation Department's goal to encourage the Kerrville

community to "Get Outdoors. Be Active. Play.". An extension west of Louise Hays Park is the second River Trail priority in the Parks Master Plan. The scope, project history, Kerrville 2050 support, and Parks Master Plan support are outlined below.

The concept feasibility study includes:

- Kickoff meeting with City staff to finalize scope and schedule;
- Site visit and data collection;
- Identify ownership along the trail and property easement requirements for this trail extension;
- Evaluate trail alignment alternatives that comply with all building code and TDLR / ADA requirements;
- Evaluate the feasibility of cantilevered trail sections required along a portion of this extension in the limited construction areas, including width, height, framework, guardrail design, pier spacing, and ramp access;
- Determine the locations where site drainage needs to pass under the trail and evaluate bridge and / or elevated trail sections to allow for drainage across the trail;
- Identify constructability and access issues for the construction contractor;
- Perform a natural resources constraints review including wetlands / jurisdiction waters determination and listing state and federal threatened and endangered species;
- Perform a cursory cultural resources evaluation including archaeological literature and records research;
- Review and summary of regulatory issues that will be applicable to this project;
- Lead a public input meeting with local residents to identify concerns and desires for the trail;
- Evaluate and recommend project phasing;
- Determine anticipated design and construction schedule, and estimated costs; and
- Prepare final report.

### **Project History**

- June 26, 2018 - Kerrville 2050 was adopted by Ordinance 2018-13 with strong support of the Kerrville River Trail.
- July 23, 2019 - The Kerrville River Trail Master Plan update was adopted by Resolution No. 27-2019, and includes a Nimitz Lake extension.
- November 14, 2022 - The EIC considered and discussed a potential westward extension of the Kerrville River Trail around Nimitz Lake.
- December 13, 2022 - The Kerrville City Council authorized staff to present a quality of life funding application for \$182,800 to the EIC for the creation of a concept feasibility study for extensions of the Kerrville River Trail around Nimitz Lake.
- January 9, 2023 - The EIC held a public hearing and approved the funding agreement.
- January 24, 2023 - City Council to consider approval of the agreement.

### **Kerrville 2050 Support Relating to the River Trail**

#### **Key Priority Areas:**

- D – Downtown Revitalization
- E – Economic Development
- F – Public Facilities and Services Facilities
- P – Parks, Open Space, and River Corridor

#### **Guiding Principles:**

- D2 – Foster a Downtown that tells the community's history / story / lore by preserving and enhancing historic features and a sense of place, celebrating and connecting Downtown to the Guadalupe River and developing a brand and a unified identity for Downtown.
- D4 – Encourage and program Downtown public events and create more gathering

places that promote and enhance Downtown as an arts, culture and music center.

- D5 – Promote a walkable, useable, uniform and pedestrian-oriented public space linking Downtown to the surrounding neighborhoods through streetscape elements, access, connections and crossings.
- E3 – Continue to focus on quality of life attributes and enhancements as a high priority, balancing growth with community and individual well-being and the need to preserve a healthy / beautiful environment unique to Kerrville.
- F7 – Be thoughtful when considering land uses and provide facilities and services that promote and enhance local parks, green spaces, and the River Trail.
- P5 – Focus on enhancing / investing in existing parks, their purpose or repurpose and improving accessibility before acquiring land for new parks.
- P6 – Focus on connecting businesses, neighborhoods, major destinations and other amenities with parks, open spaces and the River corridor.
- P8 – Provide recreational opportunities for people of all ages and abilities, both residents and tourists.

### **Action Items**

- D2.10 – Encourage businesses to focus on the river by building back patios with access to the River Trail and the potential boardwalk.
- D4.14 – Pursue a lighted display along the River Trail, focusing on Tranquility Island first.
- D5.2 – Improve pedestrian and bicycle connections to and across the river, including access to the River Trail from Downtown and to surrounding neighborhoods.
- D5.20 – Consider direct pedestrian access from the River Trail to the sidewalk on Lemos Street.
- D5.16 – Develop a plan to extend the River Trail beyond its current limits.
- E3.2 – Put in place a mid to long range plan to extend the River Trail and add additional segments.
- E3.3 – Seek EIC funding to extend the River Trail further west to the Thompson Drive bridge.
- F7.1 – Establish a long-term plan for each public facility / site to promote and enhance nearby parks, green spaces or trails.
- P5.2 – Explore a variety of options, including bonds, to fund park facility needs and to enhance River Trail connections.
- P6.2 – Add bike and pedestrian safe routes for better access to the River Trail.
- P6.3 – Create a pedestrian / bike connection from SU to the River Trail.
- P6.5 – Continue developing a vision / plan and identify funding options to extend the River Trail.
- P8.6 Establish lighted Christmas walk along the River Trail.

### **Parks and Recreation Master Plan - Trails Section Priorities**

1. Expand the River Trail from G Street to downtown / Library on the northside of the River.
2. Expand the River Trail to the west of Louise Hays Park on the southside of the river.
3. Improve pedestrian access from downtown to LHP by way of Sidney Baker Bridge.
4. Create hike / bike trail along Town Creek - connect to the River Trail; add a North-South hike / bike trail.
5. Add more dog waste stations near trailheads / along trails.
6. Update master plan for the River Trail and identify funding options to extend.

Staff recommends approval of the agreements as presented.

On January 9, 2023, EIC approved the Project Funding Agreement.

### **RECOMMENDED ACTION:**

Approval of the agreements as presented.

**PROJECT FUNDING AGREEMENT BETWEEN THE CITY OF KERRVILLE, TEXAS, ECONOMIC IMPROVEMENT CORPORATION AND THE CITY OF KERRVILLE, TEXAS FOR A CONCEPT FEASIBILITY STUDY FOR AN EXTENSION OF THE RIVER TRAIL AROUND NIMITZ LAKE**

**THIS PROJECT FUNDING AGREEMENT** is entered into this \_\_\_\_ day of \_\_\_\_\_, 2023, by and between the City of Kerrville, Texas Economic Improvement Corporation (“EIC”), a Texas non-profit corporation established by City pursuant to Section 4B of Tex. Rev. Civ. Stat. Art. 5190.6 and now codified in Chapters 501, 502, and 505 of the Texas Local Government Code (otherwise known as the Development Corporation Act of 1979 and hereafter called “the Act”); and the City of Kerrville, Texas (“City”), a Texas home-rule municipality.

**WITNESSETH:**

**WHEREAS**, pursuant to Chapter 505 of the Act, the EIC is authorized to undertake, or to provide funding to City to undertake, projects which the EIC finds to be encompassed by the definition of “projects” as that word is defined in Chapters 501 and 505 of the Act; and

**WHEREAS**, EIC was formed to administer the sales and use tax approved by the citizens of Kerrville, Texas, in May 1995 and collected for projects as defined by the Act, including:

Projects related to *recreational or community facilities*, to include land, buildings, equipment, facilities, and improvements found by the Board to be required or suitable for use for *professional and amateur sports, including children’s sports, athletic, entertainment, tourist, convention, and public park purposes* and events, including stadiums, ball parks, auditoriums, amphitheaters, concert halls, *parks and park facilities*, open space improvements, museums, exhibition facilities, and related store, restaurant, concession, and automobile parking facilities, related area transportation facilities, and related roads, streets, and water and sewer facilities, *and other related improvements that enhance any of the items described by Section 505.152 of the Act* (emphasis supplied); and

**WHEREAS**, City proposes to enter into an agreement with a professional firm(s) to develop a concept feasibility study for an extension of the City’s River Trail around Nimitz Lake (the “Project”); and

**WHEREAS**, the EIC finds that the Project as described generally above constitutes a “project” as defined by the Act; and

**WHEREAS**, the EIC finds that the Project is required or suitable for the study and consideration of a proposed recreational and community facility; and

**WHEREAS**, the EIC finds that it will be in the public interest to enter into this Agreement with City to provide sales tax revenues collected pursuant to the Act (“4B Revenues”) to City for costs related to the Project; and

**WHEREAS**, on January 9, 2023, in a meeting that was open to the public in accordance with the Texas Open Meetings Act, the EIC held a public hearing pursuant to Section 501.072 of the Act related to the proposed expenditure of 4B Revenues for the Project;

**NOW THEREFORE**, for and in consideration of the recitals set forth above and the promises made herein, the EIC and City agree as follows:

1. **“Project” Defined:** When used in this Agreement, the phrase “Project” means the project summary as described in **Exhibit A** attached hereto and included herein for all purposes. City shall not substantively alter the description of the Project in any respect without the prior approval of the EIC.
2. **Agreement to Fund Project:** the EIC agrees to provide City an amount up to and not to exceed \$182,800.00 in 4B Revenues to be used for the Project. City is authorized to make payments for the herein described purposes directly from funds allocated for Project # 70-23003 in the General Capital Projects Fund.
3. **Eligible Costs:** Payments made by City from 4B Revenues as authorized by Section 2, above, are limited to the payment of “costs” as defined in the Act.
4. **Applicable Law:** This Agreement is governed by and construed in accordance with the laws of the State of Texas. The Agreement is entered into and fully performable within Kerr County, Texas. Accordingly, venue for any cause of action arising pursuant to this Agreement is proper only in Kerr County, Texas.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement in the year and as of the date indicated.

**CITY OF KERRVILLE, TEXAS**

**CITY OF KERRVILLE, TEXAS ECONOMIC  
IMPROVEMENT CORPORATION**

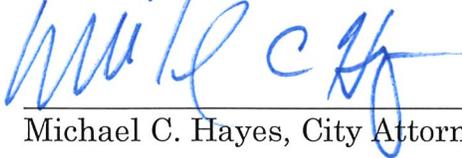
By: \_\_\_\_\_  
Judy Eychner, Mayor

By:  \_\_\_\_\_  
Greg Richards, President

ATTEST:

\_\_\_\_\_  
Shelley McElhannon, City Secretary

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Michael C. Hayes, City Attorney

ATTEST:

  
\_\_\_\_\_  
Kesha Franchina, Secretary for the EIC



Hewitt Engineering, Inc.

Consulting Engineering Services

December 5, 2022

Mr. Michael Hornes  
Deputy City Manager  
City of Kerrville  
701 Main Street  
Kerrville, TX 78028

**Re: River Trail West Segment Improvements–Concept Study Fee Estimate**

Dear Michael,

Per your request, I have prepared a scope and fee schedule for the preparation of a Concept Study for the River Trail West Segment Improvements Project. The project will consist of approximately 12,800 linear feet of 10-foot-wide concrete trail located generally along the northeast side of the Guadalupe River from the Palacios del Guadalupe Condominiums extending northwest to the Spur 98 Bridge, then approximately 13,600 linear feet back along the southeast side of the Guadalupe River to the Francisco Lemos Bridge. The scope of the Concept Study will include the following:

- Kickoff meeting with City staff to finalize scope and schedule
- Site Visit and Data Collection
- Identify ownership along the trail and property easement requirements for this trail segment
- Evaluate trail alignment alternatives that comply with all building code and TDLR/ADA requirements.
- Evaluate feasibility of cantilevered trail sections required along a portion of this segment in the limited construction areas including width, height, framework, guardrail design, pier spacing and ramp access
- Determine the locations where site drainage needs to pass under the trail and evaluate bridge and/or elevated trail sections to allow for drainage across the trail.
- Identify constructability and access issues for the construction contractor
- Perform a natural resources constraints review including wetlands/jurisdictional waters determination and listing state and federal threatened and endangered species
- Perform a cursory cultural resources evaluation including archaeological literature and records research
- Review and summary of regulatory issues that will be applicable to this project
- Lead a Public Input Meeting with local residents to identify concerns and desires for the trail
- Evaluate and recommend project phasing
- Determine anticipated design and construction schedule and estimated costs
- Prepare final Concept Study Report

There are several locations along this segment of the river trail that have limited buildable area for the trail between the steep river bank and the river channel. Sparks Engineering Inc. has been added to the project team in order to provide their expertise on possible cantilevered trail sections or other alternatives in these areas. The structural analysis will include evaluation of alternatives such as supports for a possible boardwalk or the construction of a retaining wall along the steep bank of the

river. The structural scope of work will also include the development of estimated construction costs and a discussion of construction methods in the difficult section of this river trail segment.

SWCA Environmental Consultants will be a part of the project team to provide environmental, cultural resources, and regulatory analysis for this section of the river trail. Their scope of work will include a review of available data and desktop analysis of potential natural and cultural resources constraints in the project review area. SWCA recently completed the environmental, cultural and regulatory studies for the Rivertrail Schreiner University and Downtown Segments for the City.

The final result of this project will be a signed and sealed Concept Study Report that summarizes the results of the evaluation, provides alignment recommendations, construction phasing and estimated total project costs for each phase. The total lump sum fee to perform these tasks including subconsultant fees and all expenses is \$182,800.

**FEE SCHEDULE Palacios del Guadalupe Condominiums along the northeast side of the river west to the Spur 98 (Thompson Drive) Bridge:**

Hewitt Engineering Inc.....	\$74,500.00
Sparks Engineering Inc.....	\$7,500.00
SWCA Environmental Consultants .....	\$3,500.00
 Total Services Fee.....	 \$85,500.00

**FEE SCHEDULE Spur 98 (Thompson Drive) Bridge back along the southwest side of the river to Francisco Lemos:**

Hewitt Engineering Inc.....	\$84,800.00
Sparks Engineering Inc.....	\$8,500.00
SWCA Environmental Consultants .....	\$4,000.00
 Total Services Fee.....	 \$97,300.00

TOTAL FEE \$182,800.00

Please feel free to contact me at 830-315-8800 or by email at [jmhewitt@hewitt-inc.com](mailto:jmhewitt@hewitt-inc.com) if you would like to discuss this proposal in detail or have any questions.

Sincerely,

**HEWITT ENGINEERING INC.**  
Texas Registered Engineering Firm F-10739



John M. Hewitt, P.E., CFM



December 5, 2022

Mr. Michael Hornes  
Deputy City Manager  
City of Kerrville  
701 Main Street  
Kerrville, TX 78028

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Hewitt Engineering Inc.....	\$74,500.00
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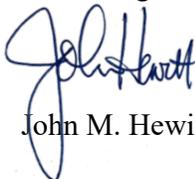
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Hewitt Engineering Inc.....	\$84,800.00
Sparks Engineering Inc.....	\$8,500.00
SWCA Environmental Consultants .....	\$4,000.00
Total Services Fee.....	\$97,300.00

Please feel free to contact me at 830-315-8800 or by email at [jmhewitt@hewitt-inc.com](mailto:jmhewitt@hewitt-inc.com) if you would like to discuss this proposal in detail or have any questions.

Sincerely,

**HEWITT ENGINEERING INC.**  
Texas Registered Engineering Firm F-10739



John M. Hewitt, P.E., CFM

**PROFESSIONAL SERVICES AGREEMENT**

**[FIRM: Hewitt Engineering, Inc. | PROJECT-SERVICES: Concept Study for River Trail Extension around Nimitz Lake]**

**THIS AGREEMENT** is entered into the \_\_\_\_ day of \_\_\_\_\_, 2023 (“Effective Date”), by and between the **CITY OF KERRVILLE, TEXAS** (“CITY”) and **Hewitt Engineering, Inc.** (“CONSULTANT”), and at times, collectively referred to herein as “parties.”

**WHEREAS**, CITY needs to hire CONSULTANT to perform certain work and services set forth in Scope of Services, marked **Exhibit A**, and attached hereto and incorporated herein; and

**WHEREAS**, CONSULTANT agrees to perform said work and services as specified under Article I of this Agreement;

**NOW, THEREFORE**, the parties agree as follows:

**I. CONSULTANT’S SERVICES**

CONSULTANT shall perform and pay for all labor, tools, materials, equipment, supplies, transportation, and management necessary to perform all services set forth in **Exhibit A** and all other professional services reasonably inferable from **Exhibit A** and necessary for complete performance of CONSULTANT’s obligations under this Agreement, collectively referred to herein as “Services.” CITY, at any time, may stop CONSULTANT from performing the Services upon giving CONSULTANT written notice. To the extent of any conflict between the terms of this Agreement and **Exhibit A**, the terms of this Agreement will prevail.

**II. CONSULTANT’S RESPONSIBILITIES**

**A.** CONSULTANT, upon its review of a general description of work required by City, has prepared and provided to CITY the specific Services required to complete such work and the manner in which CONSULTANT will do so, which is attached as **Exhibit A**.

**B.** CONSULTANT shall use skill, judgment, and abilities in performing the Services in an expeditious and timely manner consistent with the applicable professional standards of care. CONSULTANT shall at all times provide sufficient personnel to accomplish the Services in a timely manner. CONSULTANT shall manage the Services and coordinate other professional services as necessary for the complete performance of CONSULTANT’s obligations under this Agreement. CONSULTANT

shall periodically report the status of the Services to CITY as is appropriate to keep CITY informed as to the status of the work.

C. CONSULTANT shall perform the Services in compliance with all applicable federal, state, and municipal laws, to include building codes and accessibility standards (e.g., Americans with Disabilities Act) and with those of any other entity having jurisdiction over the work. In addition, CONSULTANT shall perform the Services in a manner consistent with generally accepted standards for its profession.

D. Plans, drawings, specifications, studies, and/or other reports produced by CONSULTANT (collectively referred to herein as "Design Documents") pursuant to the Services shall be performed in a manner consistent with generally accepted standards for its profession. CONSULTANT shall promptly correct any known or discovered error, omission, or other defect in the Design Documents without any additional cost or expense to CITY and notify of CITY of same; provided CONSULTANT receives written notice from CITY of said deficiencies within twelve (12) months of the date of completion of the CONSULTANT's services.

E. CONSULTANT shall designate a representative primarily responsible for its performance of the Services. The designated representative shall act on behalf of CONSULTANT with respect to all phases of the Services and shall be available as required for the benefit of the CITY. CONSULTANT shall not change the designated representative without prior written approval of CITY, which approval may not be unreasonably withheld.

### **III. CITY'S RESPONSIBILITIES**

A. CITY has provided CONSULTANT with a general description of the work CITY requires.

B. CITY shall furnish surveys, geotechnical reports, or other special investigations or tests, including structural, mechanical, and chemical requested by CONSULTANT and as reasonably necessary for the completion of the Services.

C. CITY shall review the Design Documents and shall notify CONSULTANT of any fault or defect in the Services or Design Documents of which CITY becomes aware.

D. CITY shall furnish required information and other services and shall render approvals and decisions as expeditiously as necessary for the orderly progress of the Services.

E. CITY designates Ashlea Boyle, Director of Parks and Recreation, (830) 258-1153 as its representative authorized to act on its behalf with respect to this Agreement.

#### IV. PAYMENT

CITY shall compensate CONSULTANT for the Services in the amount and manner described and set forth in the Payment Schedule, attached hereto and incorporated herein as **Exhibit A**. The amount will not exceed **\$182,800.00**.

#### V. TIME FOR PERFORMANCE

CONSULTANT shall commence its work immediately upon the parties' execution of this Agreement and proceed diligently with said work, except for delays beyond the reasonable control of CONSULTANT. The Agreement will terminate upon CONSULTANT's completion and City's acceptance of Services, unless sooner terminated as provided herein.

#### VI. DOCUMENTS

A. CONSULTANT shall submit all Design Documents to CITY for approval. All Design Documents must be professionally sealed as required by law or by CITY.

B. CONSULTANT shall deliver the Design Documents, together with any necessary supporting documents, to CITY, and CITY has unlimited rights, for the benefit of CITY, in all Design Documents, including the right to use same on any other work of CITY without additional cost to CITY. If CITY uses the Design Documents on any work of CITY other than that provided by CONSULTANT, then under those circumstances and only to the extent allowed by law, CONSULTANT, its officers, agents, servants, and employees will not be liable for damages or claims arising from any inaccuracy or any use of the Design Documents with respect to such other work, and except where CONSULTANT participates in such other work.

C. Upon receipt of payment by CONSULTANT, CONSULTANT shall grant CITY a royalty-free, perpetual license and right, to survive the termination of this Agreement, to all Design Documents, which CONSULTANT may cover by copyright and to all designs as to which CONSULTANT may assert any rights or establish any claim under the design patent or copyright laws. This license includes CITY's right to use and reproduce these documents as necessary to implement any CITY project, which may require the use of these documents. Further, CONSULTANT acknowledges that CITY is subject to Chapter 552 of the Government Code, commonly known as the "Texas Public Information Act," and hereby waives and releases the CITY from any claims against CITY for providing copies of the Design Documents in compliance with that Act. CONSULTANT, after completion of the Services, shall immediately furnish originals of all Design Documents to CITY.

D. CONSULTANT shall ensure that all text documents supplied to CITY as provided herein are fully compatible with MS Word and that all drawings are fully compatible with Adobe PDF format.

## VII. TERMINATION

A. CITY or CONSULTANT may suspend or terminate this Agreement for cause or without cause at any time by giving written notice to the other party. In the event suspension or termination is without cause, CITY's payment to CONSULTANT, in accordance with this Agreement, will be made on the basis of the Services reasonably determined by CITY to be satisfactorily performed to date of suspension or termination. In addition, CITY's payment is subject to the CONSULTANT's delivery of all documents and reports reasonably required by CITY, to include Design Documents, invoices, statements, and accounts.

B. Should CITY require a modification to this Agreement, and in the event CITY and CONSULTANT fail to agree upon such modification, either CITY or CONSULTANT have the option of immediately terminating this Agreement. Thereafter, CITY shall pay CONSULTANT in accordance with this Agreement for the Services mutually agreed upon by CITY and CONSULTANT to be properly performed by the CONSULTANT prior to such termination date.

## VIII. INSURANCE

CONSULTANT shall provide and maintain in full force and effect during the term of this Agreement the following types of insurance and liability coverage:

A. Workers Compensation Insurance: in an amount meeting statutory requirements of the State of Texas on all CONSULTANTS' employees carrying out the Services.

B. Automobile Liability Insurance: with either a combined limit of \$1,000,000 per occurrence for bodily injury and property damage or split limits of \$1,000,000 for bodily injury per person per occurrence and \$1,000,000 for property damage per occurrence. Coverage must include all owned, hired, and non-owned motor vehicles used in the performance of this Agreement by CONSULTANT or its employees.

C. General Liability Insurance: on a per occurrence basis with limits of \$1,000,000 for each occurrence and for fire damage and for Bodily Injury and Property Damage, \$1,000,000. Coverage for Premises, Operations, Products, and Completed Operations shall be \$2,000,000. This coverage must protect the public or any person from injury or property damages sustained by reason of CONSULTANT or its employees providing the Services. The general aggregate must be \$2,000,000.

D. Professional Liability Errors and Omissions Insurance: with limits of \$1,000,000 per occurrence covering all work performed by CONSULTANT, its employees, subcontractors, or independent contractors. If this coverage may only be obtained on a "claims made" basis, the certificate of insurance must clearly state coverage is on a "claims made" basis and coverage must remain in effect for at least two years after final payment with CONSULTANT continuing to furnish the City certificates of insurance.

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

F. Qualifying Insurance: the insurance required by this Agreement must be written by non-assessable insurance company licensed to do business in the State of Texas and currently rated "B" or better by the A.M. Best Companies. With the exception of Professional Liability Errors and Omissions Insurance, all policies must be written on a "per occurrence basis" and not a "claims made" form.

#### **IX. INDEMNIFICATION FOR INJURY AND PERFORMANCE**

A. CONSULTANT SHALL INDEMNIFY AND HOLD HARMLESS CITY, ITS OFFICERS AND EMPLOYEES, HEREINAFTER INDIVIDUALLY AND COLLECTIVELY REFERRED TO AS "INDEMNITEE(S)," FROM AND AGAINST LOSSES, LIABILITY, OR DAMAGE OF ANY CHARACTER AND FROM AND AGAINST COSTS AND EXPENSES, INCLUDING, IN PART, ATTORNEY FEES INCIDENTAL TO THE DEFENSE OF SUCH LOSSES, DAMAGES, OR LIABILITY ON ACCOUNT OF INJURY, DISEASE, SICKNESS, INCLUDING DEATH, TO ANY PERSON OR DAMAGE TO PROPERTY INCLUDING, IN PART, THE LOSS OF USE RESULTING THEREFROM OF CONSULTANT, ITS OFFICERS, EMPLOYEES, OR ANYONE ELSE UNDER CONSULTANT'S, DIRECTION AND CONTROL, AND ARISING OUT OF, RESULTING FROM, OR CAUSED BY THE PERFORMANCE OR FAILURE OF PERFORMANCE OF THE SERVICES, OR FROM CONDITIONS CREATED BY THE NEGLIGENT PERFORMANCE OR NONPERFORMANCE OF SAID WORK.

B. CONSULTANT is not responsible for the actions of the CITY's contractor to perform the construction of the improvements covered under this Agreement.

C. Acceptance and approval of any work or final plans by CITY neither constitutes nor may be deemed a release of this responsibility and liability of CONSULTANT, its employees, associates, agents, and consultants for the accuracy or competency of their designs, working drawings, and specifications, or other documents and work; nor

shall such approval be deemed to be an assumption of such responsibility by CITY for any defect in the Design Documents, or CONSULTANT's employees, contractor, agents, and consultants.

#### **X. INDEMNIFICATION FOR UNEMPLOYMENT COMPENSATION**

CONSULTANT agrees that it is an independent contractor and not an agent of CITY, and that CONSULTANT is subject, as an employer, to all applicable Unemployment Compensation Statutes, so as to relieve CITY of any responsibility or liability from treating CONSULTANT's employees as employees of CITY for the purpose of keeping records, making reports or payments of Unemployment Compensation taxes or contributions. **CONSULTANT SHALL INDEMNIFY AND HOLD CITY HARMLESS AND REIMBURSE IT FOR ANY EXPENSES OR LIABILITY INCURRED UNDER SAID STATUTES IN CONNECTION WITH EMPLOYEES OF CONSULTANT.**

#### **XI. INDEMNIFICATION FOR PERFORMANCE**

**CONSULTANT SHALL DEFEND AND INDEMNIFY INDEMNITEES AGAINST AND HOLD CITY AND THE PREMISES HARMLESS FROM ANY AND ALL CLAIMS, SUITS, OR LIENS BASED UPON OR ALLEGED TO BE BASED UPON THE NONPAYMENT OF LABOR, TOOLS, MATERIALS, EQUIPMENT, SUPPLIES, TRANSPORTATION, AND MANAGEMENT COSTS INCURRED BY CONSULTANT IN PERFORMING THE SERVICES.**

#### **XII. DEFAULT OF CONSULTANT**

In the event CONSULTANT fails to comply or becomes disabled and unable to comply with this Agreement as to the quality or character of the Services or time of performance, and the failure is not corrected within ten (10) days after written notice from CITY to CONSULTANT, CITY may, at its sole discretion, without prejudice to any other right or remedy, terminate this Agreement and be relieved of the payment of any further consideration to CONSULTANT except for all work determined by CITY to be satisfactorily completed prior to termination. Payment for work satisfactorily completed will equal actual costs, including reasonable salaries and travel expenses of CONSULTANT to and from meetings called by CITY at which CONSULTANT is required to attend, but shall not include any loss of profit of CONSULTANT. In the event of such termination, CITY may complete the services in any manner deemed proper by CITY, either by the use of its own forces or by assigning the work to others. In either event, CONSULTANT is liable for all costs in excess of the total contract price under this Agreement incurred to complete the Services, but in no event shall such expenses exceed 125% of the Contract Price. CITY may deduct the costs CITY incurs out of such monies as may be due or that may thereafter become due to CONSULTANT under this Agreement.

### XIII. MISCELLANEOUS PROVISIONS

A. Entire Agreement. This Agreement supersedes all prior agreements, written or oral, between CITY and CONSULTANT and constitutes the entire and integrated Agreement and understanding between the parties with respect to the subject matter of the Agreement. This Agreement may only be amended by a written instrument signed by both parties.

B. Assignment. This Agreement is a personal service contract for the Services of CONSULTANT and CONSULTANT's interest in this Agreement, duties hereunder, and/or fees due may not be assigned or delegated to a third party without the written consent of CITY. Sale of more than fifty percent (50%) ownership of CONSULTANT will be considered an assignment.

C. Adjustment in Services. CONSULTANT shall not make any claims for extra services, additional services, or changes in the Services without a written agreement with CITY prior to the performance of such services.

D. Applicable Law. This Agreement must be construed, interpreted, and applied in accordance with and governed by and enforced under the laws of the State of Texas without giving effect to principles of conflict of law. Venue will occur in Kerr County, Texas.

E. Waiver. A delay or omission by either party in exercising any right or power under the Agreement may not be construed as a waiver of that right or power. A waiver by either party of any term or condition of the Agreement may not be construed as a waiver of any subsequent breach of that term or condition or of any other term or condition of the Agreement. Further, neither CITY's review, approval, or acceptance of, nor payment for any of the Services may be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement.

F. Severability. If any provision of this Agreement is determined to be invalid or unenforceable in any respect, that determination may not affect any other provision of this Agreement, which will be interpreted as if the invalid or unenforceable provision had not been included.

G. Independent Contractor. CONSULTANT agrees that CONSULTANT is engaged as an independent contractor and that City has no responsibility to provide CONSULTANT or its employees with any benefits associated with employee status.

CONSULTANT shall neither hold itself out as nor claim to be an officer, partner, employee, or agent of CITY.

H. Exhibit(s). The following exhibit(s) is attached to this Agreement and are included herein for all purposes:

### **Exhibit A Scope of Services**

I. Execution Becomes Effective. This Agreement is effective as of the Effective Date.

J. Notices and Authority. CONSULTANT shall send all notices required under this Agreement to the City Manager at City Hall, 701 Main Street, Kerrville, TX 78028. CONSULTANT agrees that only the City Manager, or designee, has the authority to represent CITY or bind CITY under this Agreement. CITY shall send all notices required under this Agreement to the CONSULTANT at:

Hewitt Engineering, Inc.  
John Hewitt, President  
716 Barnett Street  
Kerrville, Texas 78028

K. Prohibition on Contracts with Companies Boycotting Israel. CONSULTANT hereby verifies the following per Section 2271.002, Texas Government Code:

1. CONSULTANT does not boycott Israel; and
2. CONSULTANT will not boycott Israel during the term of the Agreement.

L. Prohibition Against Business with Iran, Sudan, or Foreign Terrorist Organization. CONSULTANT warrants, covenants, and represents that CONSULTANT is not engaged in business with Iran, Sudan, or any company identified on the list referenced in Section 2252.152, Texas Government Code.

M. Prohibition on Contracts with Companies Boycotting Energy Companies. CONSULTANT hereby verifies the following per Section 2274.002, Texas Government Code:

1. CONSULTANT does not boycott energy companies; and
2. CONSULTANT will not boycott energy companies during the term of the Agreement.

N. Written Verification as to Firearm Entities. CONSULTANT hereby verifies the following per Section 2274.002, Texas Government Code:

1. CONSULTANT does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and
2. CONSULTANT will not discriminate against a firearm entity or firearm trade association during the term of the Agreement.

O. Prohibition on Contracts with Companies Related to Certain Countries. Where this Agreement pertains to “critical infrastructure”, as defined by Section 2274.0101, Texas Government Code, CONSULTANT verifies (1) that it is not owned by or the majority of stock or other ownership interest of the company is not held or controlled by: (a) individuals who are citizens of China, Iran, North Korea, Russia, or other designated countries; or (b) a company or other entity, including a governmental entity, that is owned or controlled by citizens of or is directly controlled by the government of China, Iran, North Korea, Russia, or other designated countries; or (2) headquartered in China, Iran, North Korea, Russia, or other designated countries.

M. Dispute Resolution. The Parties shall attempt in good faith to resolve any dispute arising out of or relating to this Agreement promptly by negotiation between executives who have authority to settle the controversy. Any party may give the other party written notice of any dispute not resolved during the normal course of business. Within thirty (30) days after delivery of the initial notice, the executives of both parties shall meet at a mutually acceptable time and place and use good faith efforts to resolve the dispute. In the event that the parties are unable to settle the dispute through direct negotiations as set forth above, all remaining controversies or claims shall then be submitted to mediation within ten (10) days from written notice of concluded negotiations following the Commercial Mediation Rules published by the American Arbitration Association. In the event that the dispute has not been resolved within thirty (30) days following mediation, or such longer period as the parties may agree, either party may initiate formal proceedings against the other party.

N. Consequential Damages Waiver. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, NEITHER CONSULTANT NOR CITY NOR EITHER PARTY'S SUPPLIERS, AGENTS, OFFICERS, AND DIRECTORS SHALL HAVE ANY LIABILITY REGARDLESS OF THE THEORY OF RECOVERY, INCLUDING BREACH OF CONTRACT OR NEGLIGENCE, TO THE OTHER PARTY OR ANY OTHER PERSON OR ENTITY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES, COST OR EXPENSE WHATSOEVER, INCLUDING BUT NOT LIMITED TO LOSS OF REVENUE OR PROFIT, WHETHER ACTUAL OR ANTICIPATED, LOSS OF USE, FAILURE TO REALIZE ANTICIPATED SAVINGS, LOSS OF OR DAMAGE TO DATA OR OTHER

COMMERCIAL OR ECONOMIC LOSS. THIS WAIVER OF CONSEQUENTIAL DAMAGES IS MADE REGARDLESS OF WHETHER (I) EITHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR (II) SUCH DAMAGES MAY BE FORESEEABLE.

O. Limitation of Liability. Notwithstanding any other provision of this Agreement, CITY agrees to limit CONSULTANT's liability to CITY and to all persons having contractual relationships with CITY to the total fee or compensation received by CONSULTANT for the work under which the liability arises

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

**OWNER**  
THE CITY OF KERRVILLE

**CONSULTANT**  
ESA Mechanical & Electrical  
Engineering, Inc.

BY: \_\_\_\_\_  
NAME: E.A. Hoppe  
TITLE: City Manager

BY: \_\_\_\_\_  
NAME: John Hewitt, P.E.  
TITLE: President

ATTEST:

APPROVED AS TO FUNDING:

\_\_\_\_\_  
Shelley McElhannon, City Secretary

\_\_\_\_\_  
Julie Behrens, Director of Finance

APPROVED AS TO FORM:

APPROVED AS TO CONTENT

  
\_\_\_\_\_  
William L. Tatsch, Asst. City Attorney

\_\_\_\_\_  
Ashlea Boyle, Director of Parks and  
Recreation

T:\Legal\PARKS & RECREATION\Contract\PSAs\PSA\_Hewitt\_River Trail Study\_Nimitz Lake\_011823.docx



Hewitt Engineering, Inc.

Consulting Engineering Services

December 5, 2022

Mr. Michael Hornes  
Deputy City Manager  
City of Kerrville  
701 Main Street  
Kerrville, TX 78028

**Re: River Trail West Segment Improvements–Concept Study Fee Estimate**

Dear Michael,

Per your request, I have prepared a scope and fee schedule for the preparation of a Concept Study for the River Trail West Segment Improvements Project. The project will consist of approximately 12,800 linear feet of 10-foot-wide concrete trail located generally along the northeast side of the Guadalupe River from the Palacios del Guadalupe Condominiums extending northwest to the Spur 98 Bridge, then approximately 13,600 linear feet back along the southeast side of the Guadalupe River to the Francisco Lemos Bridge. The scope of the Concept Study will include the following:

- Kickoff meeting with City staff to finalize scope and schedule
- Site Visit and Data Collection
- Identify ownership along the trail and property easement requirements for this trail segment
- Evaluate trail alignment alternatives that comply with all building code and TDLR/ADA requirements.
- Evaluate feasibility of cantilevered trail sections required along a portion of this segment in the limited construction areas including width, height, framework, guardrail design, pier spacing and ramp access
- Determine the locations where site drainage needs to pass under the trail and evaluate bridge and/or elevated trail sections to allow for drainage across the trail.
- Identify constructability and access issues for the construction contractor
- Perform a natural resources constraints review including wetlands/jurisdictional waters determination and listing state and federal threatened and endangered species
- Perform a cursory cultural resources evaluation including archaeological literature and records research
- Review and summary of regulatory issues that will be applicable to this project
- Lead a Public Input Meeting with local residents to identify concerns and desires for the trail
- Evaluate and recommend project phasing
- Determine anticipated design and construction schedule and estimated costs
- Prepare final Concept Study Report

There are several locations along this segment of the river trail that have limited buildable area for the trail between the steep river bank and the river channel. Sparks Engineering Inc. has been added to the project team in order to provide their expertise on possible cantilevered trail sections or other alternatives in these areas. The structural analysis will include evaluation of alternatives such as supports for a possible boardwalk or the construction of a retaining wall along the steep bank of the

river. The structural scope of work will also include the development of estimated construction costs and a discussion of construction methods in the difficult section of this river trail segment.

SWCA Environmental Consultants will be a part of the project team to provide environmental, cultural resources, and regulatory analysis for this section of the river trail. Their scope of work will include a review of available data and desktop analysis of potential natural and cultural resources constraints in the project review area. SWCA recently completed the environmental, cultural and regulatory studies for the Rivertrail Schreiner University and Downtown Segments for the City.

The final result of this project will be a signed and sealed Concept Study Report that summarizes the results of the evaluation, provides alignment recommendations, construction phasing and estimated total project costs for each phase. The total lump sum fee to perform these tasks including subconsultant fees and all expenses is \$182,800.

**FEE SCHEDULE Palacios del Guadalupe Condominiums along the northeast side of the river west to the Spur 98 (Thompson Drive) Bridge:**

Hewitt Engineering Inc.....	\$74,500.00
Sparks Engineering Inc.....	\$7,500.00
SWCA Environmental Consultants .....	\$3,500.00
Total Services Fee.....	\$85,500.00

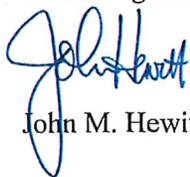
**FEE SCHEDULE Spur 98 (Thompson Drive) Bridge back along the southwest side of the river to Francisco Lemos:**

Hewitt Engineering Inc.....	\$84,800.00
Sparks Engineering Inc.....	\$8,500.00
SWCA Environmental Consultants .....	\$4,000.00
Total Services Fee.....	\$97,300.00

Please feel free to contact me at 830-315-8800 or by email at [jmhewitt@hewitt-inc.com](mailto:jmhewitt@hewitt-inc.com) if you would like to discuss this proposal in detail or have any questions.

Sincerely,

**HEWITT ENGINEERING INC.**  
Texas Registered Engineering Firm F-10739



John M. Hewitt, P.E., CFM



ENVIRONMENTAL CONSULTANTS

Sound Science. Creative Solutions.®

January 19, 2023

John Hewitt, P.E., CFM  
Hewitt Engineering, Inc.  
716 Barnett Street  
Kerrville, Texas 78028

**Re: Kerrville Guadalupe River Trail West Environmental Constraints Review / RFP No. P79030**

Dear Mr. Hewitt:

SWCA Environmental Consultants (SWCA) appreciates the opportunity to provide you with the attached scope and costs to perform environmental services for the City of Kerrville Guadalupe River Trail West Project. We are prepared to begin work upon receipt of a signed contract. For your convenience, an e-mail copy of the signed contract will be accepted as notice to proceed. If you have any questions or need additional information, please do not hesitate to contact me at (210) 361-0297 or [cwesternman@swca.com](mailto:cwesternman@swca.com).

A handwritten signature in blue ink that reads "Christine A. Westerman". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Sincerely,

Christine A. Westerman

Ecologist/Senior Project Manager

## PROJECT BACKGROUND

The City of Kerrville proposes to evaluate construction of the Guadalupe River Trail West Project, Kerrville, Kerr County, Texas (preliminary alignment attached). The purpose of the proposed scope is to perform a review of available data and desktop analysis of potential natural and cultural resources constraints in the proposed project area.

## TASK 1: NATURAL RESOURCES DESKTOP CONSTRAINTS AND PERMITTING REVIEW

SWCA will review recent published maps, aerial photography, Geographic Information System (GIS) data and literature for the proposed trail segment project review area. The review will include the following sources:

- Aerial photography: ESRI® ArcGIS® Online Basemap Map Service;
- U.S. Geological Survey (USGS) digital 7.5-minute topographic quadrangle maps;
- U.S. Fish and Wildlife Service (USFWS) protected species lists;
- USFWS National Wetland Inventory maps;
- Texas Parks and Wildlife Department (TWPD) protected species lists;
- TWPD Ecological Mapping Systems of Texas;
- Natural Resource Conservation Service (NRCS): Soil Data Mart and Web Soil Survey;
- 100-year floodplain mapping.

Using these sources, SWCA will prepare updated information on both state and federally listed threatened and endangered species, habitat, known species occurrences, wetlands, potentially jurisdictional water bodies, and relevant related information such as 100-year floodplain boundaries, riparian vegetation communities and other ecologically sensitive areas. Based on this review, SWCA will identify potentially significant sensitive natural resources in the project review area.

If desired by the client, SWCA's submittal will include ArcGIS shape files depicting any environmental constraints identified in the analysis. Based on the results of the data reviews, SWCA will prepare a summary of relevant regulatory compliance and permitting issues. SWCA will provide a draft natural resources constraints and permitting review report for client review and comment. Responses to client comment will be incorporated into a final report to be submitted in electronic (pdf) format.

## TASK 2: CULTURAL RESOURCES DESKTOP BACKGROUND REVIEW AND CONSTRAINTS ANALYSIS

The proposed project review area is located on lands owned or controlled by City of Kerrville, a political subdivision of the State of Texas, and may be subject to the Antiquities Code of Texas. The document may also be needed for National Historic Preservation Act compliance if a federal Clean Water Act permit is required.

SWCA will perform a background cultural resources literature and records search. A professional archaeologist will search the Texas Archeological Sites Atlas (Atlas) online database for previously conducted surveys and historic or prehistoric archaeological sites recorded in or near the project review area. If needed, a SWCA archaeologist will also physically search site files, records, and maps files housed at the Texas Archeological Research Laboratory and the

Texas Historical Commission (THC) library in Austin. In addition to identifying known archaeological sites and surveys, the Atlas review will include the following types of information: National Register of Historic Places (NRHP) properties, State Antiquities Landmarks (SALs), Official Texas Historical Markers, recorded Texas Historic Landmarks, cemeteries, and local neighborhood surveys.

SWCA will also review Kerr County-specific data sources (historic aerial photography) to review land-use history within the project review area. This task will allow SWCA to identify areas within the property that have the potential to contain significant, undocumented cultural resources. The records review will also have an SWCA archaeologist examine the USGS historic map database (TopoView), a mapping/geographic information system (GIS) database with historic maps covering the United States. Other critical factors that SWCA will assess include the level of previous land disturbances from residential and commercial developments, the types of soils present, and any obvious standing structures greater than 45 years in age which appear on aerial or U.S. Geological Survey (USGS) topographic maps. With this combined information, SWCA will fully identify known resources and archaeological potential within the project review area. This information will be used to determine the scope of field data collection, if required.

Once the formal background review and literature search is complete, SWCA will make professional recommendations for the proposed project for client review. The proposed desktop analysis will provide the client with cultural resource data to aid project planning and identify the potential for significant cultural resources to be present on the property. Should it be determined that significant cultural resources are likely located on the property, recommendations may include an alteration to the project design or an intensive cultural resources survey so the project meets the applicable regulatory requirements.

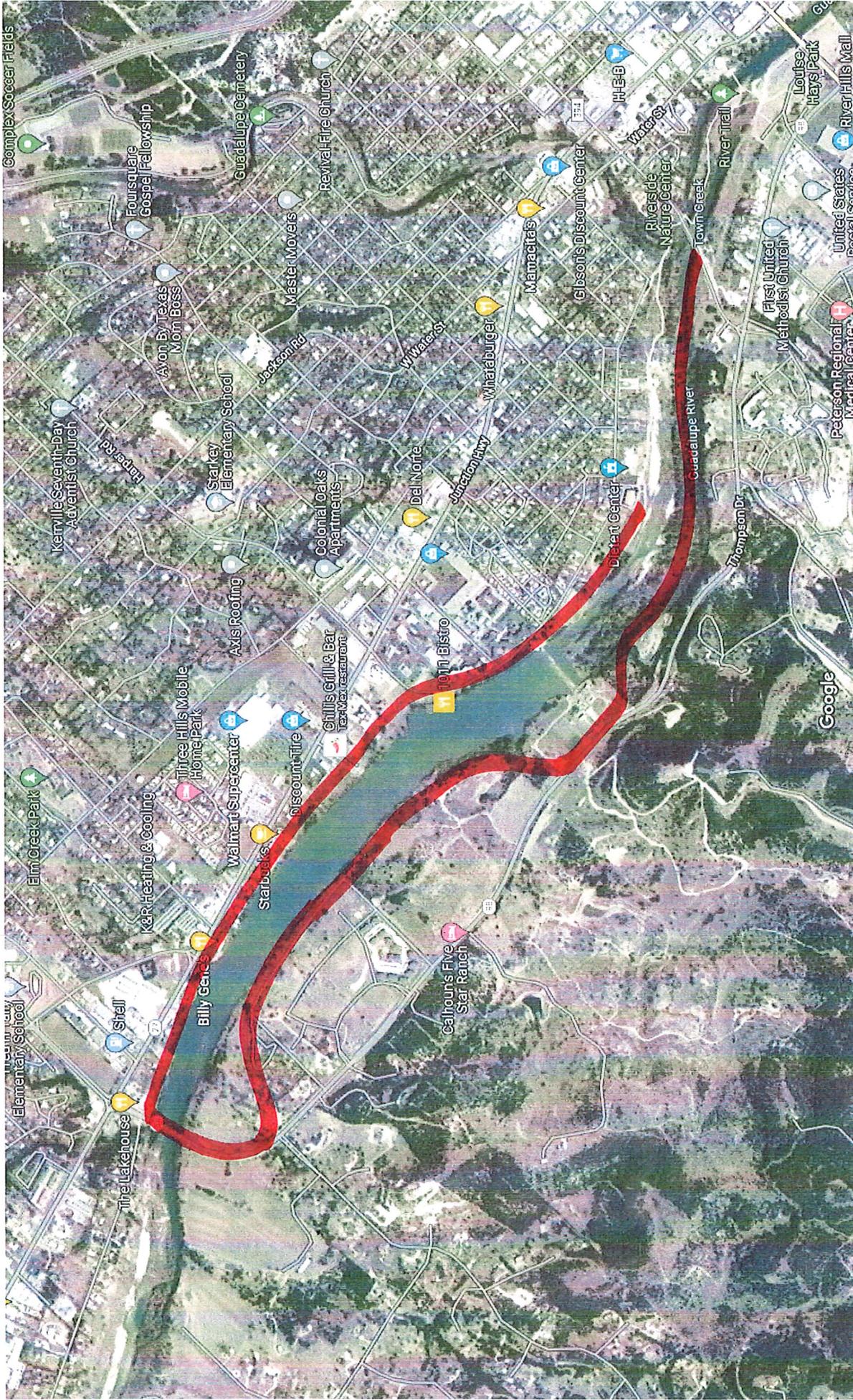
## ASSUMPTIONS

- Based on the information provided, the project could need approval under the Antiquities Code of Texas and/or the Section 404 of the Clean Water Act. Should compliance with other regulations be required, further work may be needed at additional cost to the Client.
- Intensive archival research and review of county records to determine the land-title history, age and significance of historic buildings on the property is not included in this cost estimate.
- Field investigations are not included in this proposal. A separate cost and technical proposal will be submitted if the client or City agency determine field investigations are warranted.

## COST

SWCA will perform the above tasks on a fixed fee basis as summarized below.

Task	Cost
Natural Resources Constraints and Permitting Review	\$3,300
Cultural Resources Background Review and Constraints Analysis	\$3,450
<b>TOTAL</b>	<b>\$6,750</b>



Imagery ©2022 CNES / Airbus, Maxar Technologies, USDA/FPA/C/Geo, Map data ©2022 1000 ft



Hewitt Engineering, Inc.

Consulting Engineering Services

## **FEE SCHEDULE**

Effective Date January 2023

### **PROFESSIONAL SERVICES**

### **HOURLY RATE**

Principal Engineer	\$230
Senior Engineer (PE)	\$165
Technician/Draftsperson	\$110

### **DIRECT PROJECT EXPENSES**

Automobile Use	\$0.62/mile (or current Federal rate)
Internal Copying	\$0.15/Page
Large Scale Graphics Plotting	\$2.40/Sq. Ft.

All other Direct Project Expenses, including sub-consultants are charged at a multiplier of 1.15.



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

**SUBJECT:** Amendment to Agreement Regarding Water Utility Service to Designated Areas with Aqua Texas, to be submitted to the Public Utility Commission (PUC), said agreement which will act to revise the City's certificate of convenience and necessity for water service.

**AGENDA DATE OF:** January 24, 2023      **DATE SUBMITTED:** January 12, 2023

**SUBMITTED BY:** Maya Johnson, Executive Assistant

**EXHIBITS:**

<b>Expenditure Required:</b>	<b>Remaining Budget Balance in Account:</b>	<b>Amount Budgeted:</b>	<b>Account Number:</b>
N/A	N/A	N/A	N/A

**PAYMENT TO BE MADE TO:** N/A

<b>Kerrville 2050 Item?</b>	Yes
<b>Key Priority Area</b>	N/A
<b>Guiding Principle</b>	N/A
<b>Action Item</b>	N/A

**SUMMARY STATEMENT:**

In August 2022, the City of Kerrville, pursuant to previous Council approval, and Aqua Texas, Inc., executed an *Agreement Regarding Water Utility Service to Designated Areas* (the "Agreement"). The Agreement set forth and defined a "Dual CCN (certificate of convenience and necessity) Area" and a "CCN Transfer Area," established new boundaries between the parties' respective service areas and established an area to be dually certificated by both parties, that is, where both parties could, based upon the desire of a service requestor, provide water service. Since that time, the Public Utility Commission ("PUC") has required the parties to provide additional information and maps, such that the parties must now amend the Agreement. The amendment only impacts the maps that were submitted as part of the Agreement, as filed. As a reminder, the parties share an intermingled water service boundary in the Kerrville South area. The boundary starts at Peterson Hospital and extends southeast to Lehmann Dr., continues south along SH 16, and then intersects with Ranchero Road. Per state law, Aqua Texas is not required to provide water service to a level that meets fire protection standards. However, both the City's subdivision regulations and building codes require fire protection from its water service, particularly for new development. This requirement has caused difficulty for owners and developers in this area. The parties

believe that this issue could be resolved by the creation of a Dual Service CCN Area, which would allow an owner/developer to choose its water provider. All existing customers will remain with their current service provider and the Dual Service CCN Area will predominantly be used for new development. In addition, the parties have agreed to exchange portions of their service areas, with Aqua Texas releasing a portion of their service area in Kerrville South and the City releasing a portion of its service area along Goat Creek Road. The City's service area along Goat Creek Road is not connected to the City's limits and there are no plans for extending water service into and/or annexing this area. The process now, for which staff is seeking Council's approval, is for the authority to execute the amendment and to submit it for approval from the PUC. Once the PUC approves, the PUC will issue new service area maps for the newly revised areas. The amendment does not include its exhibits (A and B) as we're waiting to finalize the maps with guidance from the PUC.

In summary – approval of an amendment (*i.e.*, new maps) to the City's *Agreement Regarding Water Utility Service to Designated Areas* which is pending approval at the PUC. Such amendment and the Agreement, to include the issuance of new maps, will help property owners and developers better understand and seek out water service in the relevant areas.

**RECOMMENDED ACTION:**

Authorize City Manager to submit amendment.

**ATTACHMENTS:**

[20230124 Aqua Texas amend 1 -Service Area CCN.pdf](#)  
[20230124 Original Agreement Aqua TX CCN 083122.pdf](#)

**AMENDMENT NO. 1 TO  
AGREEMENT REGARDING WATER UTILITY SERVICE  
TO DESIGNATED AREAS**

This Amendment No. 1 to the original Agreement Regarding Water Utility Service to Designated Areas (“Amendment No. 1”) is entered into by and between the City of Kerrville, a Texas municipality and body politic, and retail public utility (the “City”), and Aqua Texas, Inc., a Texas corporation and investor-owned retail public utility (“Aqua Texas”) (collectively, the “Parties,” and individually depending upon the context, “Party”) and is effective upon execution by the second party to sign the same.

**RECITALS**

**WHEREAS**, the City and Aqua Texas executed the original Agreement Regarding Water Utility Service to Designated Areas (the “Agreement”) on August 19, 2022; and

**WHEREAS**, the Agreement set forth and defined a “Dual CCN Area” and a “CCN Transfer Area,” established new boundaries between the Parties’ respective service areas, and established an area to be dually certificated by both Parties; and

**WHEREAS**, the Section 1.7 of the Agreement provides that “[i]n the event the PUC does not authorize the certificated service area amendments herein defined, or requires additional evidence, documentation, maps, or action from the Parties, the Parties shall promptly and jointly prepare and submit such cures or additional applications as may be necessary to attain PUC Approval”; and

**WHEREAS**, upon jointly filing the Agreement with the PUC pursuant to Texas Water Code § 13.248, along with a written petition as required by 16 Texas Administrative Code § 24.253, it became apparent that certain portions of the originally agreed upon Dual CCN Area and CCN Transfer Area were not eligible to be transferred or dually certificated under § 13.248;

**NOW, THEREFORE**, in consideration of the promises, mutual agreements, and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and Aqua Texas hereby contract and agree to amend the Agreement as follows:

**AMENDMENT NO. 1  
ARTICLE I**

Section 1.3 of the Agreement is hereby repealed in its entirety, and is replaced with the text below, which shall be read as though it originally formed the Agreement.

1.3 Property Subject to the Agreement. The property subject to this Agreement are the properties identified as the “Dual CCN Area” and the “Unbounded Area,” as shown on Exhibit A, and the “CCN Transfer Area,” as shown on **Exhibit B. Exhibit A and Exhibit**

**B** of the original Agreement are hereby repealed, and replaced with **Exhibit A** and **Exhibit B**, attached hereto.

Section 1.9 shall be added to the Agreement, and shall be read as though it originally formed the Agreement.

1.9 Unbounded Areas. The area identified as the “Unbounded Area” on **Exhibit A** has no CCN or CCN rights attached to or overlying the area, provided however that Aqua Texas is the holder of a “Facilities Only CCN” which is identified on **Exhibit A**.

(a) Aqua Texas acknowledges the City’s right to provide retail public water service to the Unbounded Areas, and agrees to not protest, interfere with, or otherwise hinder the City’s provision of retail public water service to the Unbounded Areas, provided however that the City shall not provide retail water service to Aqua Texas’s existing customers or existing Facilities Only CCN without first acquiring Aqua Texas’s express written consent.

(b) The City acknowledges Aqua Texas’s right to provide retail public water service to its Facilities Only CCN and existing customers, and agrees to not protest, interfere with, or otherwise hinder Aqua Texas’s provision of retail public water service to its Facilities Only CCN or the Unbounded Areas, provided however that Aqua Texas shall not provide retail water service to the City’s existing customers without first acquiring the City’s express written consent.

(c) Parties acknowledge the mutual interest to jointly file a separate CCN amendment application, establishing a dual CCN over the Unbounded Areas within a reasonable time following the PUC’s approval of the Agreement as amended, and the successful modification of the Parties respective boundaries and certificate rights as contemplated by the Agreement as amended.

(d) Therefore, the Parties agree that neither Party shall pursue obtaining a single certificate “Bounded Area CCN” over the Unbounded Area without the prior written consent of the other Party. For purposes of this section “Bounded Area CCN” shall mean a water certificated service area with closed boundaries, and shall not mean a “Facilities” or “Facilities Only CCN,” which parties recognize are each distinguishable from Bounded Area CCNs.

## **ARTICLE II** **MISCELLANEOUS**

Sections 2.11 and 2.12 shall be added to the Agreement, and each shall be read as though it originally formed the Agreement.

2.11 Except as set forth by a written amendment signed by both Parties, the Agreement is unaffected and shall continue in full force and effect in accordance with its terms. If there

is conflict between any amendment and the Agreement, or any amendment and the latest executed amendment, the terms of latest executed amendment shall prevail.

2.12 All defined terms of any amendment to the Agreement shall have the same meaning as defined by the Agreement, unless otherwise provided by the amendment.

**EXECUTED to be effective on the date signed by every Party, the latest of which shall be the Effective Date.**

**CITY OF KERRVILLE,  
A MUNICIPALITY**

**AQUA TEXAS, INC.,  
A TEXAS CORPORATION**

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

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

ATTEST:

ATTEST:

\_\_\_\_\_  
Name: \_\_\_\_\_  
Title: Secretary

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

**EXHIBIT "A"**

**Dual CCN Area, Unbounded Area,  
and Aqua Texas's Facility Only CCN**

**EXHIBIT "B"**

**CCN Transfer Area**

**AGREEMENT REGARDING WATER UTILITY SERVICE  
TO DESIGNATED AREAS**

This Agreement is entered into by and between the City of Kerrville, a Texas municipality and body politic, and retail public utility (the “City”), and Aqua Texas, Inc., a Texas corporation and investor-owned retail public utility (“Aqua Texas”) (collectively, the “Parties,” and individually depending upon the context, “Party”) and is effective upon execution by the second party to sign the same.

**RECITALS**

**WHEREAS**, the City is the current holder of the Certificate of Convenience and Necessity (“CCN”) No. 12928, and provides retail public water service to specific areas within Kerr County, Texas; and

**WHEREAS**, Aqua Texas is the holder of CCN No. 13254, and provides retail public water services in Kerr County, Texas, as well as throughout the State of Texas; and

**WHEREAS**, the City and Aqua Texas find it mutually advantageous to amend their respective CCN service area boundaries by agreement pursuant to Texas Water Code § 13.248, in order to achieve and maintain efficient and affordable retail public water service to their respective customers; and

**WHEREAS**, pursuant to Texas Water Code §13.248, contracts between retail public utilities designating areas to be served, when approved by the Public Utility Commission of Texas (“PUC”), are valid and enforceable and are incorporated into the appropriate CCNs; and

**WHEREAS**, no existing customers of the City or Aqua Texas will be transferred between the Parties pursuant to this Agreement; and

**WHEREAS**, the City and Aqua Texas mutually desire to enter this Agreement solidifying their intent to cooperate in designating areas to be served either singularly or dually by each Party as described herein, and to seek PUC approval and incorporation of such designations into their respective CCNs, providing for the orderly development and expansion of their service areas;

**NOW, THEREFORE**, in consideration of the promises, mutual agreements, and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and Aqua Texas hereby contract and agree as follows:

**AGREEMENT**  
**ARTICLE I**

1.1 **Recitals**. The recitals set forth above are incorporated herein, and shall compose together with the terms agreed upon herein, the Agreement.

- 1.2 Term. This Agreement shall remain valid and enforceable until superseded by subsequent written agreement. No other amendments, except those expressly agreed upon herein, shall be made to either Party's existing certificated service area boundaries pursuant to this Agreement.
- 1.3 Property Subject to the Agreement. The property subject to this Agreement are the properties identified as the "Dual CCN Area" and the "CCN Transfer Area" as shown on **Exhibit A** and **Exhibit B**, respectively.
- 1.4 Dual CCN Area. The City and Aqua Texas agree and consent that the area identified on **Exhibit A** as the "Dual CCN Area," attached and incorporated herein by reference, shall constitute a dually certificated water service area, to which the City and Aqua Texas will share equally the undivided authorization and obligation to furnish continuous and adequate retail public water service.
- 1.5 CCN Transfer Area. The City and Aqua Texas agree that the area identified on **Exhibit B** as the "CCN Transfer Area," attached and incorporated herein by reference, shall be removed from the City's CCN No. 12928, and transferred to Aqua Texas's CCN No. 13254.
- 1.6 Fire flow in the Dual CCN Area. Aqua Texas, Inc. is not required to provide fire flow in a Dual CCN Area. However, after the Effective Date within the Dual CCN Area, the developers of any newly platted subdivisions, new commercial developments, or commercial properties seeking to change its use or occupancy pursuant to City regulations, shall install and maintain fire protection in accordance with the City's Fire Code, as it exists at the time such platting, development, or change occurs. While such developers will be required to comply with the City's Fire Code, which requires the provision of fire flow, existing residents, existing residential lots, and existing commercial developments, may continue to be served by their existing retail water utility provider irrespective of Fire Code compliance.
- 1.7 PUC Approval. As soon as practical, but in no event later than ninety (90) days after the Effective Date, the parties agree to jointly file this Agreement with the PUC pursuant to Texas Water Code § 13.248, along with a written petition as required by 16 Texas Administrative Code § 24.253, and such other documents that may be required in order to incorporate this agreement into the respective CCNs of the City and Aqua Texas. In the event the PUC does not authorize the certificated service area amendments herein defined, or requires additional evidence, documentation, maps, or action from the Parties, the Parties shall promptly and jointly prepare and submit such cures or additional applications as may be necessary to attain PUC Approval.
- 1.8 Customers. Parties agree that no customers will be transferred between the Parties as a result of this Agreement or the CCN service area boundary amendments resulting therefrom, provided however, that existing and future customers within the Dual CCN Area shall retain the option of receiving retail water service from the City or Aqua Texas.

**ARTICLE II**  
**MISCELLANEOUS**

- 2.1 No agreements other than this Agreement now exist between the City and Aqua Texas concerning the subject matter of this Agreement.
- 2.3 This Agreement shall be binding on the City and Aqua Texas, and shall be binding on and inure to the benefit of the successors and assigns of the respective Parties to this Agreement.
- 2.4 This Agreement is the entire agreement between the Parties hereto with respect to the subject matter hereof. No modifications of this Agreement shall be of any force or effect, whatsoever, except as by subsequent modification in writing signed by the Parties.
- 2.5 The provisions of this Agreement shall be governed by and construed and entered in accordance with the substantive laws of the State of Texas. Any action at law or in equity brought to enforce any provision of this Agreement shall be brought in a court of competent jurisdiction with venue in Kerr County, Texas, unless otherwise required by law.
- 2.6 The individuals executing this Agreement on behalf of the respective parties below represent that all necessary and appropriate action has been taken to authorize the individual who is executing this Agreement to do so for and on behalf of the party for which his or her signature appears, that there are no other parties or entities required to execute this Agreement in order for the same to be an authorized and binding agreement on the party for whom the individual is signing, and that each individual affixing his or her signature is authorized to do so, and such authorization is valid and effective on the date hereof. If the authority of the individual executing this Agreement is subsequently challenged, the party for which the individual was acting shall take all steps necessary to ratify the authority of the individual.
- 2.7 This Agreement may be executed in multiple originals, either copy of which shall be considered an original.
- 2.8 This Agreement shall be effective on the date of execution below, the latter of which shall be the Effective Date.
- 2.9 No Party will be penalized for alleged authorship of a particular provision on judicial construction of this Agreement.
- 2.10 No Party to this Agreement shall initiate any litigation or arbitration challenging the validity or enforceability of any provision of this Agreement once it has been signed. The Parties reserve only their right to enforce the terms of this Agreement to the extent they are not fully performed by any other Party.

**EXECUTED to be effective on the date signed by every Party, the latest of which shall be the Effective Date.**

**CITY OF KERRVILLE,  
A MUNICIPALITY**

DocuSigned by:  
By: E.H. Hoppe IV  
Name: E.H. Hoppe IV  
Title: City Manager

**AQUA TEXAS, INC.,  
A TEXAS CORPORATION**

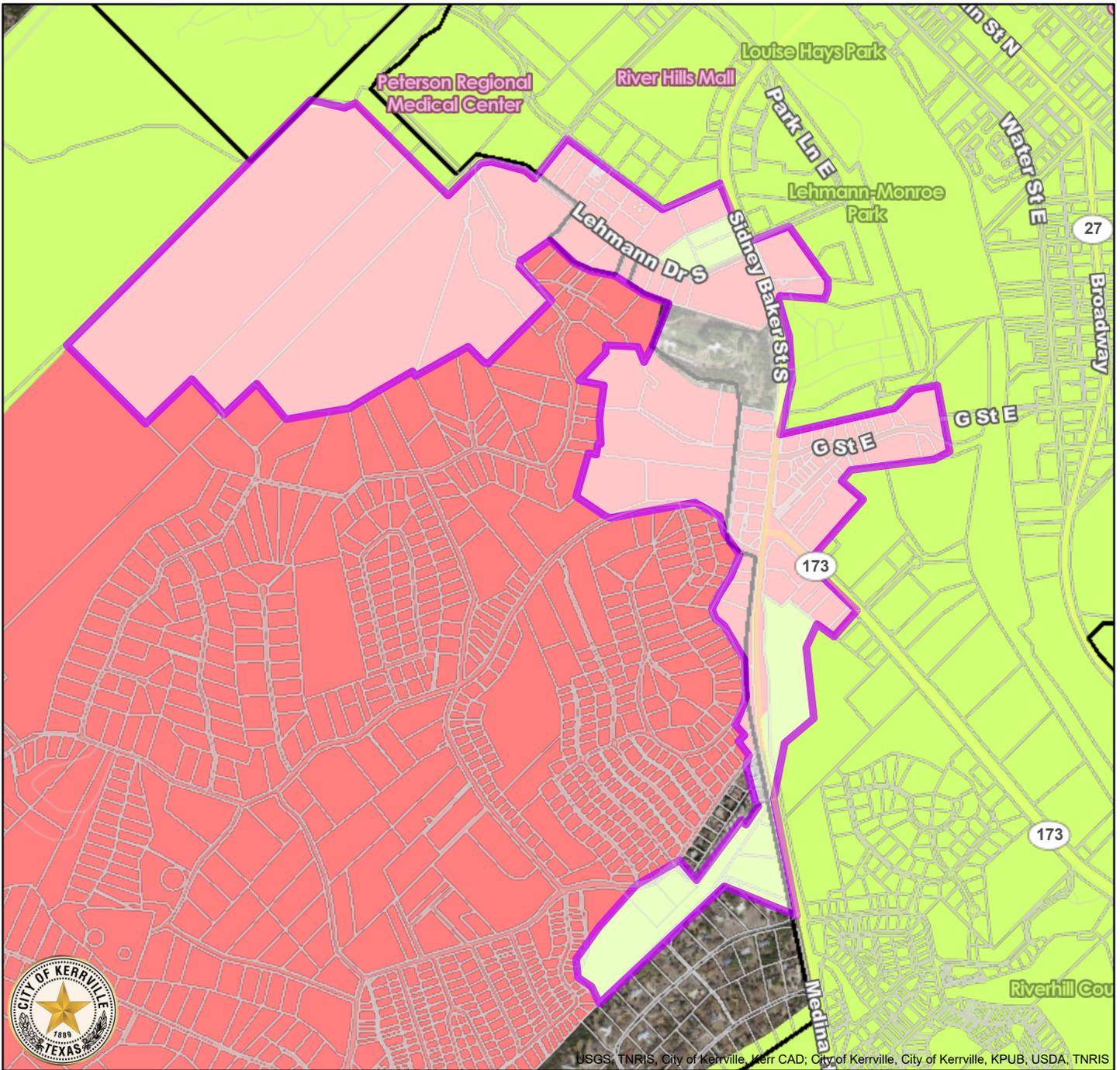
DocuSigned by:  
By: Craig Blanchette  
Name: Craig Blanchette  
Title: President

ATTEST:  
DocuSigned by:  
Shelley McElhannon  
Name: Shelley McElhannon  
Title: Secretary

ATTEST:  
DocuSigned by:  
Laura Schroeter  
Name: Laura Schroeter  
Title: Executive Assistant

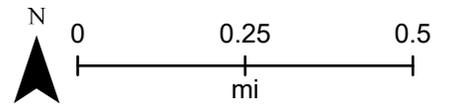
**EXHIBIT "A"**

**Dual CCN Area**



-  Dual CCN Area
-  Municipal Boundary
-  Aqua Texas CCN 13254
-  City Of Kerrville CCN 12928

### Dual CCN Area Map



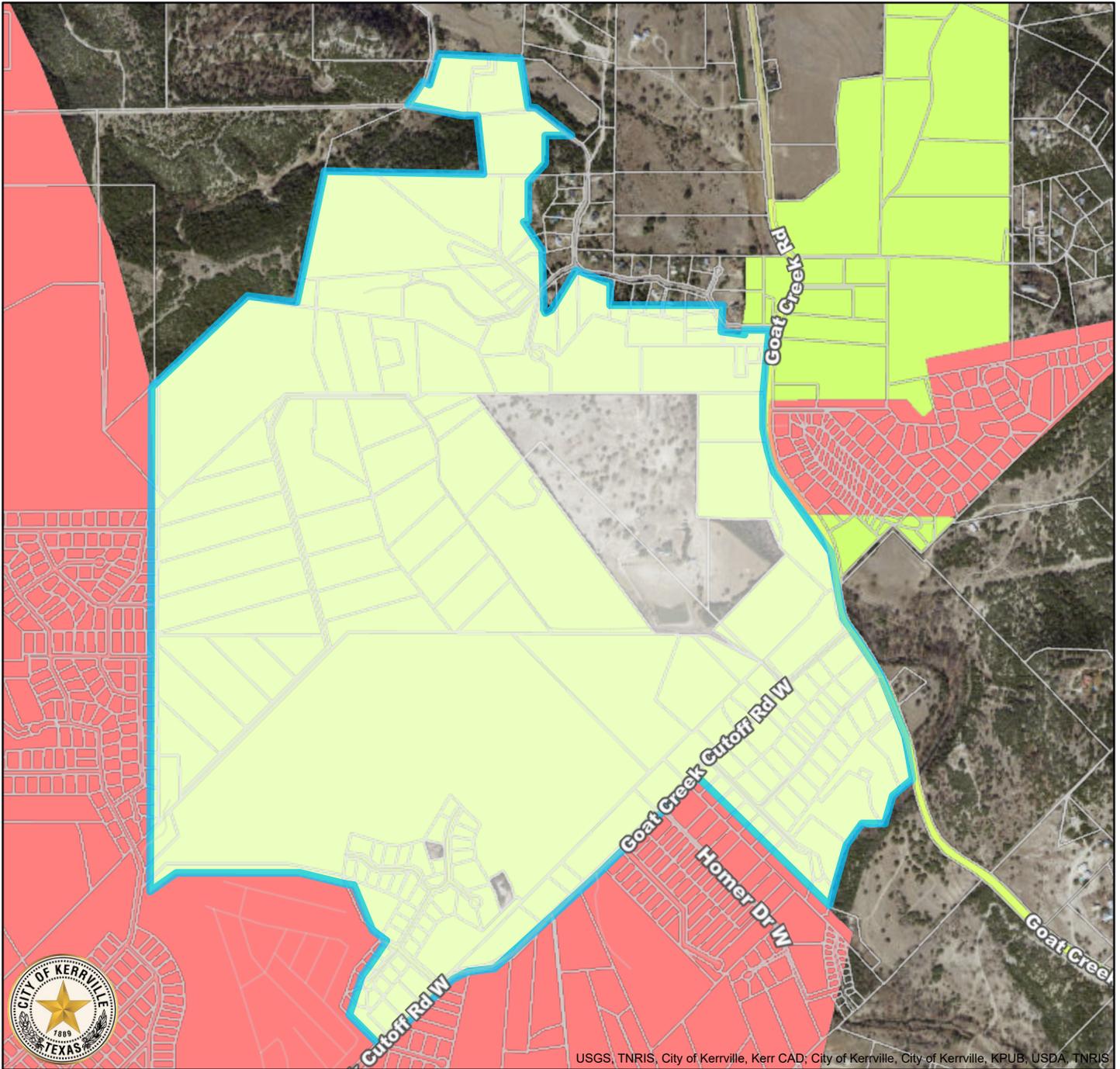
11/29/2021 02:30 PM

Stuart Barron

This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only approximate relative locations.

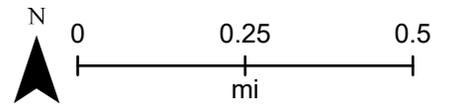
**EXHIBIT "B"**

**CCN Transfer Area**



-  CCN Transfer Area
-  Aqua Texas CCN 13254
-  City Of Kerrville CCN 12982

### CCN Transfer Area Map



11/29/2021 02:34 PM

Stuart Barron

This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only approximate relative locations.



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

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**SUBJECT:** City Council workshop minutes, January 10, 2023.

**AGENDA DATE OF:** January 24, 2023      **DATE SUBMITTED:** January 10, 2023

**SUBMITTED BY:** Shelley McElhannon, City Secretary

**EXHIBITS:**

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<b>Expenditure Required:</b>	<b>Remaining Budget Balance in Account:</b>	<b>Amount Budgeted:</b>	<b>Account Number:</b>
N/A	N/A	N/A	N/A

**PAYMENT TO BE MADE TO:** N/A

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

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**SUMMARY STATEMENT:**

City Council workshop minutes held January 10, 2023 at 4:00 p.m., City Hall Council Chambers.

**RECOMMENDED ACTION:**

Approve minutes as presented.

**ATTACHMENTS:**

[20230124 Minutes CC workshop 1-10-23 4pm.pdf](#)

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

**JANUARY 10, 2023 4:00 PM  
701 MAIN STREET, KERRVILLE, TEXAS**

**CALL TO ORDER:** On January 10, 2023 at 4:00 p.m., the City Council workshop was called to order by Mayor Judy Eychner at the City Hall Council Chambers, 701 Main Street.

**COUNCILMEMBERS PRESENT:**

Judy Eychner, Mayor  
Kim Clarkson, Mayor Pro Tem, Council Place 2  
Roman Garcia, Council Place 1  
Joe Herring Jr, Council Place 3  
Brenda Hughes, Council Place 4

**COUNCILMEMBERS ABSENT:**

None

**CITY STAFF PRESENT:**

E.A. Hoppe, City Manager  
Mike Hayes, City Attorney  
Michael Hornes, Asst City Manager  
Kim Meismer, Asst City Manager  
Shelley McElhannon, City Secretary  
David Barrera, Asst Director Public Works  
Stuart Barron, Executive Director PW & Eng  
Ashlea Boyle, Director Parks & Rec

Kyle Burow, Director Engineering  
Megan Folkerts, Senior Analyst  
Guillermo Garcia, Exec Dir Innovation  
Scott Loveland, Asst Director Public Works  
Yesenia Luna, Court Coordinator  
Eric Maloney, Fire Chief  
Chris McCall, Police Chief  
Drew Paxton, Director of Planning

**VISITOR(S) PRESENT:**

Louis Amestoy, Media	John Anderson	Karen Blaney, CD Reg Mgr Grant Work
Julie Davis, KCVB	Layng Guerriero	Roger Mathews, Media
Charlie McIlvain	Tammy Prout, Media	Shawn Sawyer
Mendy Wendele		

1. **PUBLIC COMMENT:** None

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

2A. Community Improvement Project status update.

Kyle Burow provided information and responded to questions.

2B. Community Development Block Grant (Downtown/Main Street) presentation.

Megan Folkerts provided an update for Downtown/Main Street projects, and introduced both the Community Development Block Grant item and Karen Blaney, the CD Regional Manager for Grant Works, who provided information (including a presentation regarding Section 3). Megan Folkerts, Karen Blaney, and E.A. Hoppe responded to questions.

2C. Guadalupe River Center.

A non-profit, the Guadalupe River Center Group representative John Anderson and Layng Guerriero provided information and status on a capital campaign and vision for the potential project. John Anderson and Layng Guerriero responded to questions, and requested City Council support for the privately funded River Park Community Center project on Nimitz Lake. A Resolution of support will be placed on the January 24, 2023 City Council agenda.

The workshop recessed at 5:17 p.m.

The workshop reconvened at 5:49 p.m.

2D. Presentation honoring Judge M. Patrick Maguire, with reception to follow.

Mayor Eychner honored Judge M. Patrick Maguire, and acknowledged his service to the City of Kerrville's citizens and community. A public reception followed the presentation.

**ADJOURN.** The workshop adjourned at 5:57 p.m.

APPROVED BY COUNCIL: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Judy Eychner, Mayor

\_\_\_\_\_  
Shelley McElhannon, City Secretary



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

---

**SUBJECT:** City Council meeting minutes, January 10, 2023.

**AGENDA DATE OF:** January 24, 2023      **DATE SUBMITTED:** January 10, 2023

**SUBMITTED BY:** Shelley McElhannon, City Secretary

**EXHIBITS:**

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<b>Expenditure Required:</b>	<b>Remaining Budget Balance in Account:</b>	<b>Amount Budgeted:</b>	<b>Account Number:</b>
N/A	N/A	N/A	N/A

**PAYMENT TO BE MADE TO:** N/A

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

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**SUMMARY STATEMENT:**

City Council meeting minutes held January 10, 2023 at 6:00 p.m., City Hall Council Chambers.

**RECOMMENDED ACTION:**

Approve minutes as presented.

**ATTACHMENTS:**

[20230124 Minutes CC meeting 1-10-23 6pm.pdf](#)

**CITY COUNCIL MINUTES  
REGULAR MEETING**

**KERRVILLE, TEXAS  
JANUARY 10, 2023 6:00 PM**

On January 10, 2023 at 6:15 p.m., Mayor Judy Eychner called the Kerrville City Council meeting to order in City Hall Council Chambers, 701 Main Street. Councilmember Joe Herring, Jr. provided the invocation and led the Pledge of Allegiance.

**COUNCILMEMBERS PRESENT:**

Judy Eychner, Mayor  
Kim Clarkson, Mayor Pro Tem/Councilmember Place 2  
Roman Garcia, Councilmember Place 1  
Joe Herring, Jr., Councilmember Place 3  
Brenda Hughes, Councilmember Place 4

**COUNCILMEMBER ABSENT:**

None

**CITY EXECUTIVE STAFF:**

E.A. Hoppe, City Manager  
Mike Hayes, City Attorney  
Michael Hornes, Asst City Manager  
Kim Meismer, Asst City Manager  
Shelley McElhannon, City Secretary  
Stuart Barron, Exec Director Public Works  
Julie Behrens, Director of Finance  
Ashlea Boyle, Director Parks-Recreation

Kyle Burow, Director of Engineering  
Stuart Cunyus, Public Information Officer  
Megan Folkerts, Senior Analyst  
Guillermo Garcia, Exec Dir Innovation  
Scott Loveland, Asst Director Public Works  
Eric Maloney, Fire Chief  
Chris McCall, Police Chief  
Drew Paxton, Planning Director

**VISITORS PRESENT:**

A list of the citizen speakers present during the meeting is on file in the City Secretary's Office for the required retention period.

Bob Reeves, Kerr County Tax Assessor      Mary Rohrer, Airport Manager

Mayor Eychner and Councilmember Herring provided homage to a citizen and family.

**1. ANNOUNCEMENTS OF COMMUNITY INTEREST:**

Announcements of Community Interest provided by Stuart Cunyus.

**2. PRESENTATIONS:**

2A. Kerrville Kindness Award recognizing the Kerrville Professional Firefighters Association, and local businesses.

Mayor Eychner presented the Kerrville Kindness award to the Kerrville Professional Firefighters Association and *Toss It Dumpsters* local business, recognizing good works for a citizen in need.

**3. VISITORS FORUM:**

The following person(s) spoke:

- Glenn Andrew

**4. CONSENT AGENDA:**

Councilmember Roman Garcia made a motion to approve 4A, 4B, 4C, 4D, 4E, and 4F, seconded by Councilmember Brenda Hughes. The motion passed 5-0.

4A. Resolution No. 01-2023. A Resolution authorizing the City Manager to approve a master multiple use agreement with the Texas Department of Transportation to permit the City to install and maintain public art within the state's highway right-of-way within the City limits.

4B. Resolution No. 02-2023. A Resolution supporting the Joint Airport Board's participation in a Statewide Pavement Program to include specific capital improvements at the Kerrville-Kerr County Airport.

4C. Contract with Suez Water Technologies & Solutions in the amount of \$302,105 for the purchase and installation of two membrane filters at the City's Water Production Facility.

4D. Texas Main Street Locally Designated Program 2023 Contract between the Texas Historical Commission and the City of Kerrville.

4E. City Council workshop minutes December 13, 2022.

4F. City Council meeting minutes December 13, 2022.

**END OF CONSENT AGENDA.**

**5. ORDINANCES, FIRST READING:**

5A. Ordinance No. 2023-03. An Ordinance amending Chapter 26 of the Code of Ordinances, City of Kerrville, Texas, titled "Buildings and Building Regulations"; by adding a new Article X titled "Outdoor Lighting", to create standards for outdoor lighting to minimize light pollution, glare, and light trespass caused by inappropriate or misaligned light fixtures, while improving nighttime public safety, utility, and security; providing an effective date; and providing other matters related to the subject.

Shelley McElhannon read Ordinance No. 2023-03 caption into record.

Drew Paxton provided information, and Drew Paxton and E.A. Hoppe responded to questions.

The following person(s) spoke:

- Greg Martin
- William Rector
- Jeremy Walther
- Dawn Davies
- Jeff Stone
- Kevin Wessels
- Charlie McIlvain

Councilmember Kim Clarkson made a motion to approve Ordinance No. 2023-03 on first reading, seconded by Councilmember Hughes. The motion passed 4-1 with Councilmember Clarkson, Mayor Eychner, Councilmember Herring, and Councilmember Hughes voting in favor, and Councilmember Garcia opposed.

5B. Ordinance No. 2023-04. Ordinance No. 2023-04. An Ordinance closing, abandoning, and vacating all right, title, and interest in a public right-of-way, consisting of an unimproved, unopened portion of West St. that extends between Lois Street and adjacent to the properties addressed as 620 and 704 Junction Highway (SH 27); said right-of-way out of the Westland Place Addition, a Subdivision within the City of Kerrville, Kerr County, Texas, pursuant to the plat recorded in Volume 1, Page 26 of the Plat Records of Kerr County, Texas and corresponding filed notes; and, located within the City of Kerrville, Texas; finding that said portion is not required for future use as a public street; ordering recording; providing an effective date; and providing other matters related to this subject.

Shelley McElhannon read Ordinance No. 2023-04 caption into record.

Michael Hornes, E.A. Hoppe, and Mike Hayes provided information and responded to questions.

The following person(s) spoke:

- George Baroody

Councilmember Garcia made a motion to table Ordinance No. 2023-04 pending those further negotiations that both the Mayor and staff have referred to as well as responses from staff. Mayor Eychner called for a second, with no second forthcoming. Motion to table failed due to lack of second.

Councilmember Hughes made a motion to approve Ordinance No. 2023-04 on first reading and authorize the City Manager to complete any and all necessary actions to finalize the property easement exchange, seconded by Councilmember Herring. The motion passed 4-1 with Councilmember Clarkson, Mayor Eychner, Councilmember Herring, and Councilmember Hughes voting in favor, and Councilmember Garcia opposed.

5C. Ordinance No. 2023-05. An Ordinance amending Ordinance No. 2022-26 and the Ad Valorem Tax for the use and support of the municipal government for the City of Kerrville, Texas, for Fiscal Year 2023.

Shelley McElhannon read Ordinance No. 2023-05 caption into record.

Julie Behrens and Mike Hayes provided information and responded to questions.

The following person(s) spoke:

- George Baroody
- Bruce Stracke

At 7:57 p.m., Councilmember Clarkson called for point of order regarding a Councilmember's allotted time to speak. Point of order acknowledged by Mayor Eychner and allowed the Councilmember to continue.

At 7:59 p.m., Councilmember Clarkson called for point of order regarding a Councilmember's allotted time to speak. Point of order acknowledged by Mayor Eychner and allowed the Councilmember to continue.

At 8:00 p.m., Councilmember Clarkson called for point of order regarding a Councilmember's allotted time to speak. Point of order acknowledged by Mayor Eychner and allowed the Councilmember to continue.

Councilmember Clarkson made a motion to approve Ordinance No. 2023-05.

Kerr County Tax Assessor/Collector Bob Reeves spoke.

Councilmember Garcia made a motion to deny Ordinance No. 2023-05.

Councilmember Clarkson made a motion to approve Ordinance No. 2023-05 and that the property tax rate be increased by the adoption of a tax rate of \$0.5752, which is effectively a 12.94% percent increase in the tax rate, seconded by Councilmember Hughes. The motion passed 4-1 by Roll-Call vote with Councilmember Clarkson, Mayor Eychner, Councilmember Herring, and Councilmember Hughes voting in favor, and Councilmember Garcia opposed.

Roll call vote:	In Favor	Opposed
Councilmember Kim Clarkson	<u>  X  </u>	_____
Councilmember Brenda Hughes	<u>  X  </u>	_____
Mayor Judy Eychner	<u>  X  </u>	_____

Councilmember Roman Garcia  
Councilmember Joe Herring, Jr.

\_\_\_\_\_   X    
  X   \_\_\_\_\_

**6. ORDINANCE(S), SECOND READING:**

6A. Ordinance No. 2023-01, second reading. An Ordinance annexing a track of land into the corporate limits of the City of Kerrville, Texas; such property making up approximately 4.45 acres and generally located adjacent to and South of Kerrville Schreiner Park; more commonly known as 2511 State Highway 173 (Bandera Highway); such property more specifically described in this ordinance and being located within the Extraterritorial Jurisdiction of and adjacent to the City Limits; adopting a Service Agreement; establishing the Zoning for the annexed property as a Mixed Use (MU) Zoning District; and providing other matters relating to this subject.

Shelley McElhannon read Ordinance No. 2023-01 caption into record.

Councilmember Hughes made a motion to approve Ordinance No. 2023-01 on second reading, seconded by Councilmember Clarkson. The motion passed 5-0.

6B. Ordinance No. 2023-02, second reading. An Ordinance amending Chapter 60 of the Code of Ordinances, City of Kerrville, Texas; by changing the Zoning of an approximate 0.63 acre property known as 226 and 228 W. Main; from a Planned Development Zoning District (PDD) to a Light Commercial Zoning District (C-2); and providing other matters relating to the subject.

Shelley McElhannon read Ordinance No. 2023-02 caption into record.

Mayor Eychner made a motion to adopt Ordinance No. 2023-02 on second reading, seconded by Councilmember Hughes. The motion passed 5-0.

**7. BOARD APPOINTMENTS:**

7A. Appointment(s) to the Recovery Community Coalition.

Councilmember Garcia made a motion to appoint Deanna Allen, Katelynn Christopher, and Christa Lovett, seconded by Councilmember Herring. The motion passed 5-0.

**8. EXECUTIVE SESSION:** Executive Session not convened.

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

**10. ITEM(S) FOR FUTURE AGENDAS:**

- Councilmember Garcia requested to rearrange configuration of seating for citizens in Chambers, seconded by Councilmember Herring (with a caveat accounting for security).

**ADJOURN.** The meeting adjourned at 8:11 p.m.

**APPROVED BY COUNCIL:** \_\_\_\_\_

APPROVED:

ATTEST:

\_\_\_\_\_  
Judy Eychner, Mayor

\_\_\_\_\_  
Shelley McElhannon, City Secretary



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

---

**SUBJECT:** City Council workshop minutes, January 17, 2023.

**AGENDA DATE OF:** January 24, 2023      **DATE SUBMITTED:** January 10, 2023

**SUBMITTED BY:** Shelley McElhannon, City Secretary

**EXHIBITS:**

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<b>Expenditure Required:</b>	<b>Remaining Budget Balance in Account:</b>	<b>Amount Budgeted:</b>	<b>Account Number:</b>
N/A	N/A	N/A	N/A

**PAYMENT TO BE MADE TO:** N/A

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

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**SUMMARY STATEMENT:**

City Council workshop minutes held January 17, 2023 at 10:00 a.m., City Hall Council Chambers.

**RECOMMENDED ACTION:**

Approve minutes as presented.

**ATTACHMENTS:**

[20230124 Minutes CC workshop 1-17-23 10am.pdf](#)

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

**JANUARY 17, 2023 10:00 AM  
701 MAIN STREET, KERRVILLE, TEXAS**

**CALL TO ORDER:** On January 17, 2023 at 10:00 a.m., the City Council workshop was called to order by Mayor Judy Eychner at the City Hall Council Chambers, 701 Main Street.

**COUNCILMEMBERS PRESENT:**

Judy Eychner, Mayor  
Kim Clarkson, Mayor Pro Tem, Place 2  
Roman Garcia, Place 1  
Joe Herring Jr, Place 3  
Brenda Hughes, Place 4

**COUNCILMEMBERS ABSENT:**

None

**CITY STAFF PRESENT:**

E.A. Hoppe, City Manager  
Mike Hayes, City Attorney  
Michael Hornes, Asst City Manager  
Kim Meismer, Asst City Manager  
Shelley McElhannon, City Secretary

Stuart Barron, Exec Director PW & Eng  
Julie Behrens, Director of Finance  
Chris McCall, Chief of Police  
Trina Rodriguez, Asst Director of Finance

**VISITOR(S) PRESENT:**

Louis Amstoy, Media  
Anne Berger-Entrekin, Hilltop Security Financial Advisor

1. **PUBLIC COMMENT:** None

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

2A. City Water/Wastewater Utility projects prioritization and funding.

E.A. Hoppe introduced item. Stuart Barron, E.A. Hoppe, Julie Behrens, and Anne Berger-Entrekin provided information and responded to questions.

City Council's consensus of agreement provided direction to staff to move forward with creating a Resolution allowing the City Manager to issue Revenue Bonds not to exceed \$12.5 million.

2B. City Hall Building Security/Risk Areas.

Councilmember Brenda Hughes made a motion City Council adjourn into closed executive session under 551.071 (consultation with attorney), 551.076 (deliberation regarding security devices or security audits), and 551.089 (deployment of specific occasions for implementation of security personnel, critical infrastructure, or security devices), seconded by Councilmember Kim Clarkson. The motion passed 5-0.

Mayor Eychner recessed the workshop, and convened closed executive session at 11:04 a.m. in the Upstairs Conference Room.

3. **EXECUTIVE SESSION:**

3A. City Hall Building Security/Risk Areas. (551.071, 551.076, 551.089)

Closed executive session adjourned, and Council returned to workshop open session at 12:10 p.m. No action was taken during executive session.

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

Councilmember Clarkson made a motion to direct the City Manager to take action to post the appropriate signs under state law to prohibit the open or concealed carrying of handguns and other weapons into the meeting area of City Hall, seconded by Councilmember Hughes. The motion passed 4-1 with Mayor Eychner, Councilmember Clarkson, Councilmember Joe Herring, Jr., and Councilmember Hughes voting in favor, and Councilmember Roman Garcia opposed.

**ADJOURN.** The workshop adjourned at 12:10 p.m.

APPROVED BY COUNCIL: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Judy Eychner, Mayor

\_\_\_\_\_  
Shelley McElhannon, City Secretary



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

**SUBJECT:** Ordinance No. 2023-06. An Ordinance amending Chapter 60 of the Code of Ordinances, City of Kerrville, Texas; by changing the zoning for properties known as 402, 405, 406, 407, 409, 410, 411, 413, 414, and 415 W. Water; consisting of the Westland Addition; from a Single Family Residential with Accessory Dwelling Unit Zoning District (R-1A) to a Residential Transition Zoning District (RT); and providing other matters relating to the subject.

**AGENDA DATE OF:** January 24, 2023      **DATE SUBMITTED:** January 13, 2023

**SUBMITTED BY:** Drew Paxton, Planning Director

**EXHIBITS:**

<b>Expenditure Required:</b>	<b>Remaining Budget Balance in Account:</b>	<b>Amount Budgeted:</b>	<b>Account Number:</b>
N/A	N/A	N/A	N/A

**PAYMENT TO BE MADE TO:** N/A

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

**SUMMARY STATEMENT:**

**Proposal:** An ordinance to change the zoning from R-1A Single Family Residential with an Accessory Dwelling Unit to R-T Residential Transitional on Lots 9-14 Block 16 and Lots 1-7 Block 17, Westland; and more commonly known as 402, 405, 406, 407, 409, 410, 411, 413, 414, 415 W Water St N, Kerrville, TX 78028.

**Procedural Requirements:** The City, in accordance with state law, mailed 50 letters on 11/17/2022 to adjacent property owners. The City published a similar notice in the Kerrville Daily Times on 11/10/2022. Informational signs were posted on 11/21/22.

At the time of drafting this agenda bill, Development Services has not received any comments from adjacent property owners. Since drafting of this agenda bill, one comment in opposition has been received. Please see attached.

**Staff Analysis and Recommendation**

**Adjacent Zoning and Land Uses:**

Subject Property

Current Zoning: R-1A

Existing Land Use: single family residences

Direction: **North, East, West**

Current Zoning: R-1A

Existing Land Uses: single family residences

Direction: **South**

Current Zoning: RT and PDD

Existing Land Uses: commercial business and offices

**Consistency with the Kerrville 2050 Comprehensive Plan (“Comp Plan”):**

The subject property is within a Neighborhood Residential area. This place type calls for limited amount of local retail and services in certain locations. This block is on the edge of the neighborhood and adjacent to a non-residential block zoned Residential Transitional (RT). The RT district is designed to be a transition zone between single-family residential areas and commercial properties in certain areas of the city. Based on the intent of the RT Zoning district and location of this block, this request is consistent with the Kerrville 2050 Plan.

**Thoroughfare Plan:** The subject property is located on West Water Street, a local street.

**Traffic Impact:** With the area built out and the requirements for non-residential in the RT district, no addition traffic impact is anticipated.

**Parking:** To be determined with the final design of each future project.

**Case Summary:** The applicant is a combination of the property owners along both sides of this block of West Water Street. They have come together to make a request for rezoning for the entire block, excluding the existing PDD and other adjacent RT zoned lot.

**Recommendation:** Because the request is consistent with the Future Land Use Plan and the objectives of the Kerrville 2050 Plan, staff recommends the zoning request.

On December 1, the Planning and Zoning Commission recommended the case for approval with a unanimous vote.

**RECOMMENDED ACTION:**

Approve Ordinance No. 2023-06 on first reading.

**CITY OF KERRVILLE, TEXAS  
ORDINANCE NO. 2023-06**

**AN ORDINANCE AMENDING CHAPTER 60 OF THE CODE OF ORDINANCES, CITY OF KERRVILLE, TEXAS; BY CHANGING THE ZONING FOR PROPERTIES KNOWN AS 402, 405, 406, 407, 409, 410, 411, 413, 414, AND 415 W. WATER; CONSISTING OF LOTS 9-14, BLOCK 16 AND LOTS 1-7, BLOCK 17 OF THE WESTLAND ADDITION; FROM A SINGLE FAMILY RESIDENTIAL WITH ACCESSORY DWELLING UNIT ZONING DISTRICT (R-1A) TO A RESIDENTIAL TRANSITION ZONING DISTRICT (RT); AND PROVIDING OTHER MATTERS RELATING TO THE SUBJECT**

**WHEREAS**, pursuant to Texas Local Government Code Sections 211.006 and 211.007, notice has been given to all parties in interest and citizens by publication in the official newspaper for the City of Kerrville, Texas (“City”), and otherwise, of a hearing held before the City Council on January 24, 2023, which considered a report of the City’s Planning and Zoning Commission regarding its recommendations on this Ordinance, the adoption of which will result in the change of a zoning district for properties known as 402, 405, 406, 407, 409, 410, 411, 413, 414, and 415 W. Water; such change to result in the removal of the properties from a Single Family Residential with Accessory Dwelling Unit Zoning District (R-1A) to placement within a Residential Transition Zoning District (RT); and

**WHEREAS**, on January 24, 2023, City Council held a public hearing on the zoning change referenced above pursuant to the published notice and has considered the application, comments, reports, and recommendations of the Planning and Zoning Commission and staff, public testimony, and other relevant support materials;

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

**SECTION ONE.** The Zoning Code for the City of Kerrville, Texas, Chapter 60 of the Code of Ordinances of the City of Kerrville, Texas, and the *Official Zoning Map* are hereby amended to designate the following described property zoned as within a Residential Transition Zoning District (RT):

**Legal Description:** Being Lots 9-14, Block 16 and Lots 1-7, Block 17 of the Westland Addition, a subdivision within the City of Kerrville, Kerr County, Texas; said properties depicted at **Exhibit A**, attached hereto and made a part hereof for all purposes, and hereafter referred to as the “Properties.”

**Addresses:** 402, 405, 406, 407, 409, 410, 411, 413, 414, and 415 W. Water, Kerrville, Texas 78028.

**SECTION TWO.** The City Manager or designee is authorized and directed to amend the City's *Official Zoning Map* to reflect the change in districts adopted herein and to take other actions contemplated by and in accordance with the City's Zoning Code.

**SECTION THREE.** The provisions of this Ordinance are cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances inconsistent with or in conflict with any of the provisions of this Ordinance are expressly repealed to the extent of any such inconsistency or conflict.

**SECTION FOUR.** The terms and provisions of this Ordinance shall be deemed to be severable in that if any portion of this Ordinance is declared to be invalid, the same shall not affect the validity of the other provisions of this Ordinance.

**SECTION FIVE.** Pursuant to Texas Local Government Code §52.013(a) and Section 3.07 of the City's Charter, the City Secretary is hereby authorized and directed to publish the descriptive caption of this Ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

**SECTION SIX.** This Ordinance shall become effective immediately upon the expiration of ten days following publication, as provided for by Section 3.07 of the City Charter.

**PASSED AND APPROVED ON FIRST READING, this the \_\_\_\_\_ day of \_\_\_\_\_, A.D., 2023.**

**PASSED AND APPROVED ON SECOND AND FINAL READING, this the \_\_\_\_\_ of \_\_\_\_\_, A.D., 2023.**

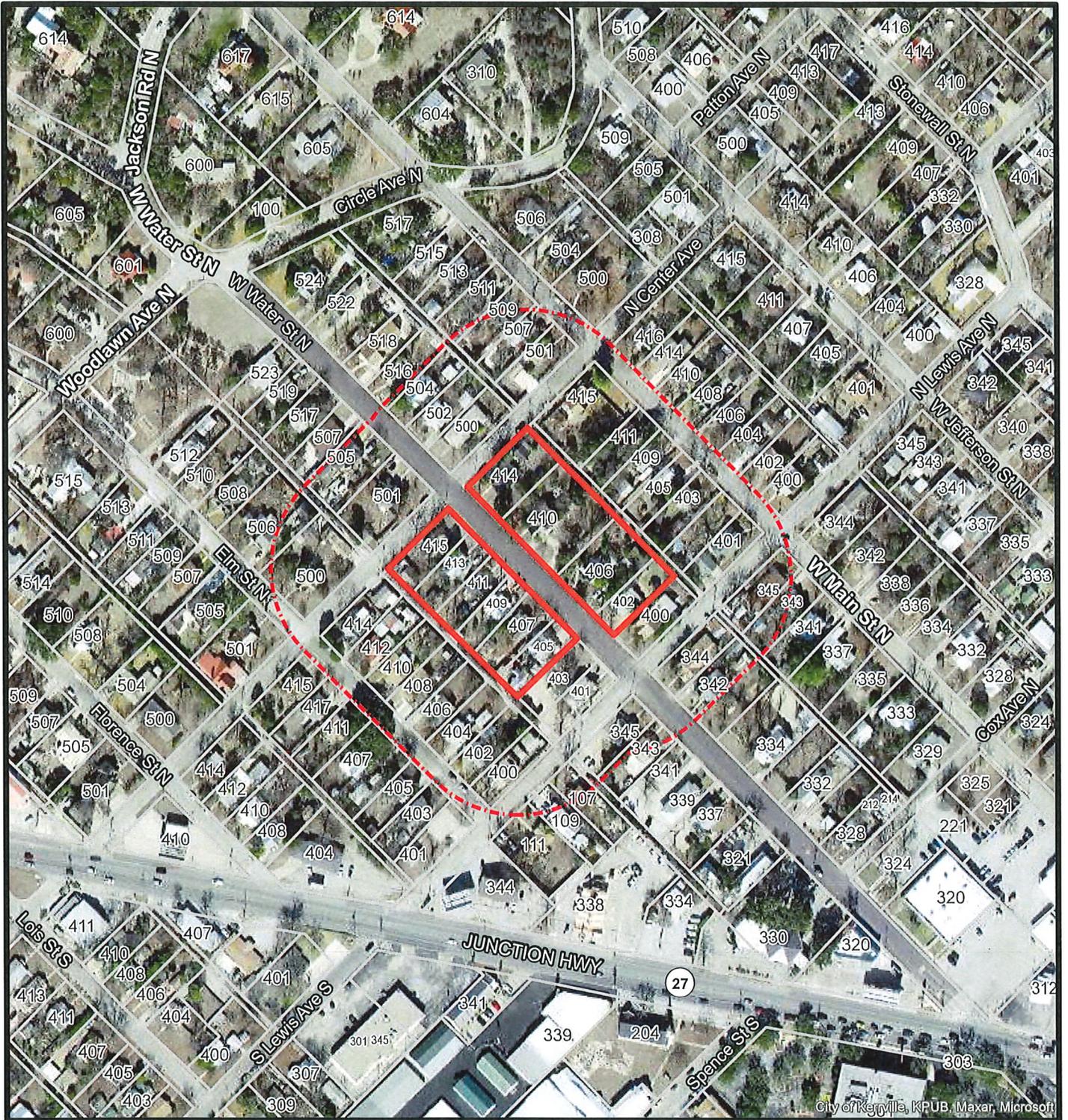
\_\_\_\_\_  
Judy Eychner, Mayor

APPROVED AS TO FORM:

ATTEST:

  
\_\_\_\_\_  
Michael C. Hayes, City Attorney

\_\_\_\_\_  
Shelley McElhannon, City Secretary



City of Kerrville, KPUB, Maxar, Microsoft

# Location Map

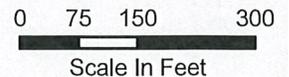
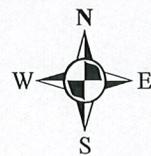
## Case #PZ-2022-70

### Location:

402 W Water St N; 405 W Water St N; 406 W Water St N; 407 W Water St N;  
 409 W Water St N; 410 W Water St N; 411 W Water St N; 413 W Water St N;  
 414 W Water St N; 415 W Water St N

### Legend

-  Subject Properties
-  200 Feet Notification Area



11/10/2022



**From:** [W. C. Peña](#)  
**To:** [Planning Division](#)  
**Cc:** [Isabelle Peña](#)  
**Subject:** NOTICE OF PUBLIC HEARING PLANNING AND ZONING COMMISSION CASE PZ-2022-70  
**Date:** Wednesday, November 30, 2022 10:19:14 AM

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**EXTERNAL EMAIL:** This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Mr. Drew Paxton,

This email is in regards to a notice of public hearing associated with:

CASE PZ-2022-70  
Wilfredo and Isabelle Pena  
509 W. Main Street N, Kerrville, TX 78028

We **oppose** the proposal to change the zoning from R-1A Single Family Residential with an Accessory Dwelling Unit to R-T Residential Transitional.

V/r,  
Wilfredo and Isabelle Pena



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

**SUBJECT:**

Ordinance No. 2023-07. An Ordinance amending Chapter 60 of the Code of Ordinances, City of Kerrville, Texas; by changing the zoning of a property known as 3800 Loop 534; consisting of Lot 1, Block 5 of the Legion Hills Phase Four Subdivision, being approximately 3.56 acres, and within the City of Kerrville, Kerr County, Texas; from a Medium Density Residential Zoning District (R2) to a Light Commercial Zoning District (C-2); and providing other matters relating to the subject.

**AGENDA DATE OF:** January 24, 2023      **DATE SUBMITTED:** January 13, 2023

**SUBMITTED BY:** Drew Paxton, Planning Director

**EXHIBITS:**

<b>Expenditure Required:</b>	<b>Remaining Budget Balance in Account:</b>	<b>Amount Budgeted:</b>	<b>Account Number:</b>
N/A	N/A	N/A	N/A

**PAYMENT TO BE MADE TO:** N/A

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

**SUMMARY STATEMENT:**

**Proposal:** An ordinance to change the zoning from R-2 Medium Density Residential to C-2 Light commercial on Lot 1, Block 5, Legion Hills; located southwest of Fire Station #3 and northwest of Loop 534.

**Procedural Requirements:** The City, in accordance with state law, mailed 23 letters on 11/17/2022 to adjacent property owners. The City published a similar notice in the Kerrville Daily Times on 11/10/2022. An informational sign was posted on the property on 11/21/22.

At the time of drafting this agenda bill, Development Services had not received any comments from adjacent property owners.

**Staff Analysis and Recommendation**

## **Adjacent Zoning and Land Uses:**

Subject Property

Current Zoning: R-2 Medium Density Residential

Existing Land Use: Vacant Land

Direction: **North**

Current Zoning: PI and R-1

Existing Land Uses: Fire Station #3, drainage, and single family neighborhood

Direction: **South**

Current Zoning: PI

Existing Land Uses: VA Hospital

Direction: **East**

Current Zoning: C-2

Existing Land Uses: commercial

Direction: **West**

Current Zoning: PI and R-1

Existing Land Uses: drainage and single family neighborhood

**Consistency with the Kerrville 2050 Comprehensive Plan (“Comp Plan”):** The subject property is within a Transitional Residential area. This place type calls for limited amount of local retail and services in certain locations. With this property being isolated from the neighborhood by the drainage elements and having frontage on Loop 534, it would be appropriate for such non-residential use and is therefore consistent with the Kerrville 2050 Plan.

**Thoroughfare Plan:** The subject property is located on Loop 534, a major arterial.

**Traffic Impact:** To be determined with the final project design.

**Parking:** To be determined with the final project design.

**Case Summary:** The applicant is requesting that the property be rezoned to C-2, Light Commercial. This is consistent with the zoning along Loop 534 in the area.

**Recommendation:** Because the request is consistent with the Future Land Use Plan and the objectives of the Kerrville 2050 Plan, staff recommends the zoning request.

On December 1, the Planning and Zoning Commission recommended the case for approval

with a unanimous vote.

**RECOMMENDED ACTION:**

Approve Ordinance No. 2023-07 on first reading.

**ATTACHMENTS:**

[\*20230124 Ord 2023-07 Zoning change 3800 Loop 534.pdf\*](#)

**CITY OF KERRVILLE, TEXAS  
ORDINANCE NO. 2023-07**

**AN ORDINANCE AMENDING CHAPTER 60 OF THE CODE OF ORDINANCES, CITY OF KERRVILLE, TEXAS; BY CHANGING THE ZONING OF A PROPERTY KNOWN AS 3800 LOOP 534; CONSISTING OF LOT 1, BLOCK 5 OF THE LEGION HILLS PHASE FOUR SUBDIVISION, BEING APPROXIMATELY 3.56 ACRES, AND WITHIN THE CITY OF KERRVILLE, KERR COUNTY, TEXAS; FROM A MEDIUM DENSITY RESIDENTIAL ZONING DISTRICT (R-2) TO A LIGHT COMMERCIAL ZONING DISTRICT (C-2); AND PROVIDING OTHER MATTERS RELATING TO THE SUBJECT**

**WHEREAS**, pursuant to Texas Local Government Code Sections 211.006 and 211.007, notice has been given to all parties in interest and citizens by publication in the official newspaper for the City of Kerrville, Texas (“City”), and otherwise, of a hearing held before the City Council on January 24, 2023, which considered a report of the City’s Planning and Zoning Commission regarding its recommendations on this Ordinance, the adoption of which will result in the change of a zoning district for the property located at 3800 Loop 534; such change to result in the removal of the property from a Medium Density Residential Zoning District (R-2) to placement within a Light Commercial Zoning District (C-2); and

**WHEREAS**, on January 24, 2023, City Council held a public hearing on the zoning change referenced above pursuant to the published notice and has considered the application, comments, reports, and recommendations of the Planning and Zoning Commission and staff, public testimony, and other relevant support materials;

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

**SECTION ONE.** The Zoning Code, Chapter 60 of the Code of Ordinances of the City of Kerrville, Texas, and the *Official Zoning Map* are hereby amended to designate the following described property zoned as within a Light Commercial Zoning District (C-2):

**Legal Description:** Being Lot 1, Block 5 out of the Legion Hills Phase Four Subdivision, consisting of approximately 3.56 acres, and within the City of Kerrville, Kerr County, Texas; said property depicted at **Exhibit A**, attached hereto and made a part hereof for all purposes.

**Address:** 3800 Loop 534, Kerrville, TX 78028.

**SECTION TWO.** The City Manager, or designee, is authorized and directed to amend the City's *Official Zoning Map* to reflect the change in districts adopted herein and to take other actions contemplated by and in accordance with the City's Zoning Code.

**SECTION THREE.** The provisions of this Ordinance are cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances inconsistent with or in conflict with any of the provisions of this Ordinance are expressly repealed to the extent of any such inconsistency or conflict.

**SECTION FOUR.** The terms and provisions of this Ordinance shall be deemed to be severable in that if any portion of this Ordinance is declared to be invalid, the same shall not affect the validity of the other provisions of this Ordinance.

**SECTION FIVE.** Pursuant to Texas Local Government Code §52.013(a) and Section 3.07 of the City's Charter, the City Secretary is hereby authorized and directed to publish the descriptive caption of this Ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

**SECTION SIX.** This Ordinance shall become effective immediately upon the expiration of ten days following publication, as provided for by Section 3.07 of the City Charter.

**PASSED AND APPROVED ON FIRST READING, this the \_\_\_\_ day of \_\_\_\_\_, A.D., 2023.**

**PASSED AND APPROVED ON SECOND AND FINAL READING, this the \_\_\_\_ of \_\_\_\_\_, A.D., 2023.**

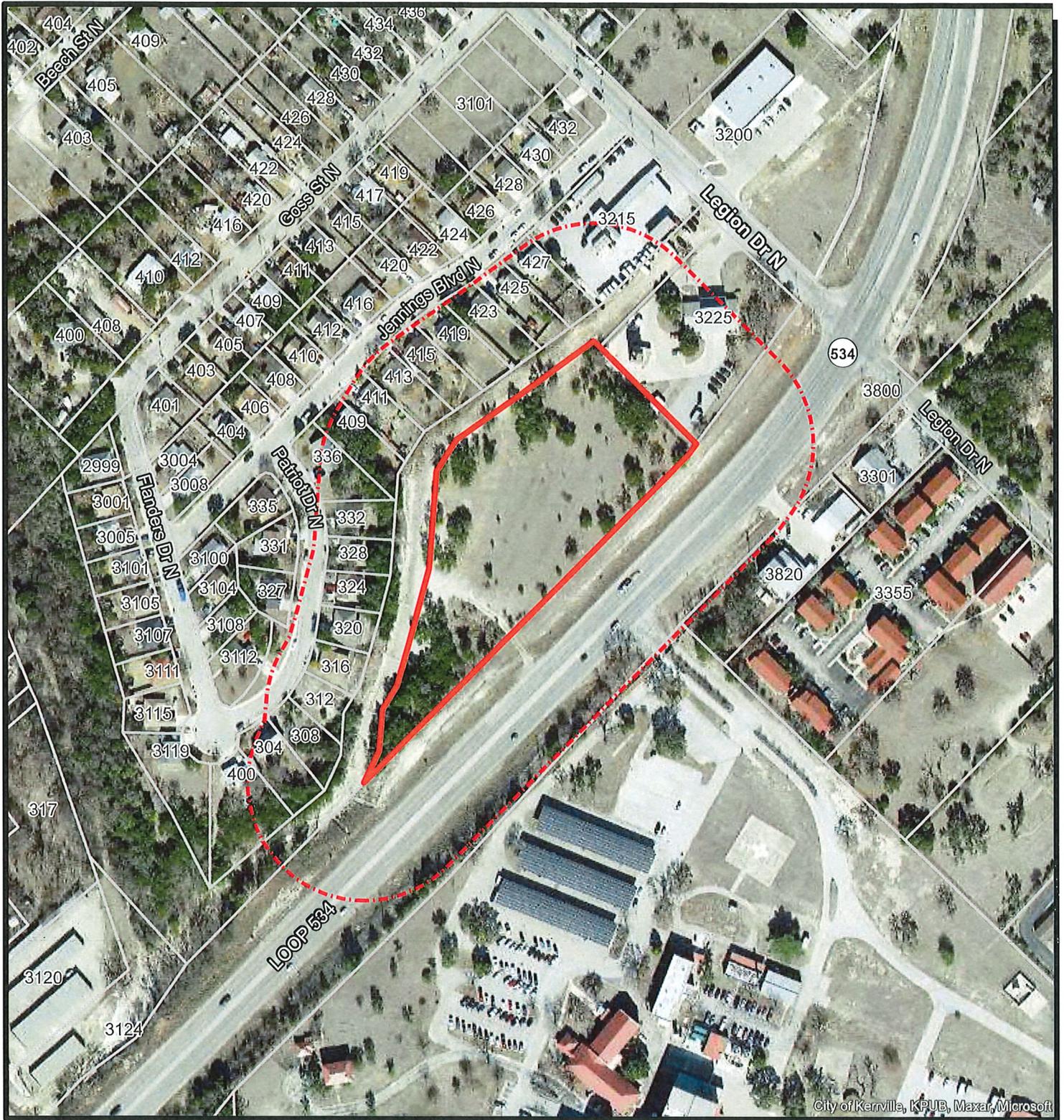
ATTEST:

\_\_\_\_\_  
Judy Eychner, Mayor

\_\_\_\_\_  
Shelley McElhannon, City Secretary

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Michael C. Hayes, City Attorney



City of Kerrville, KPUB, Maxar, Microsoft

# Location Map

## Case #PZ-2022-71

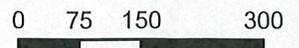
Location:

KCAD ID# 71535

11/10/2022

### Legend

-  Subject Properties
-  200 Feet Notification Area



Scale In Feet

This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only approximate relative locations.



LOOP 534

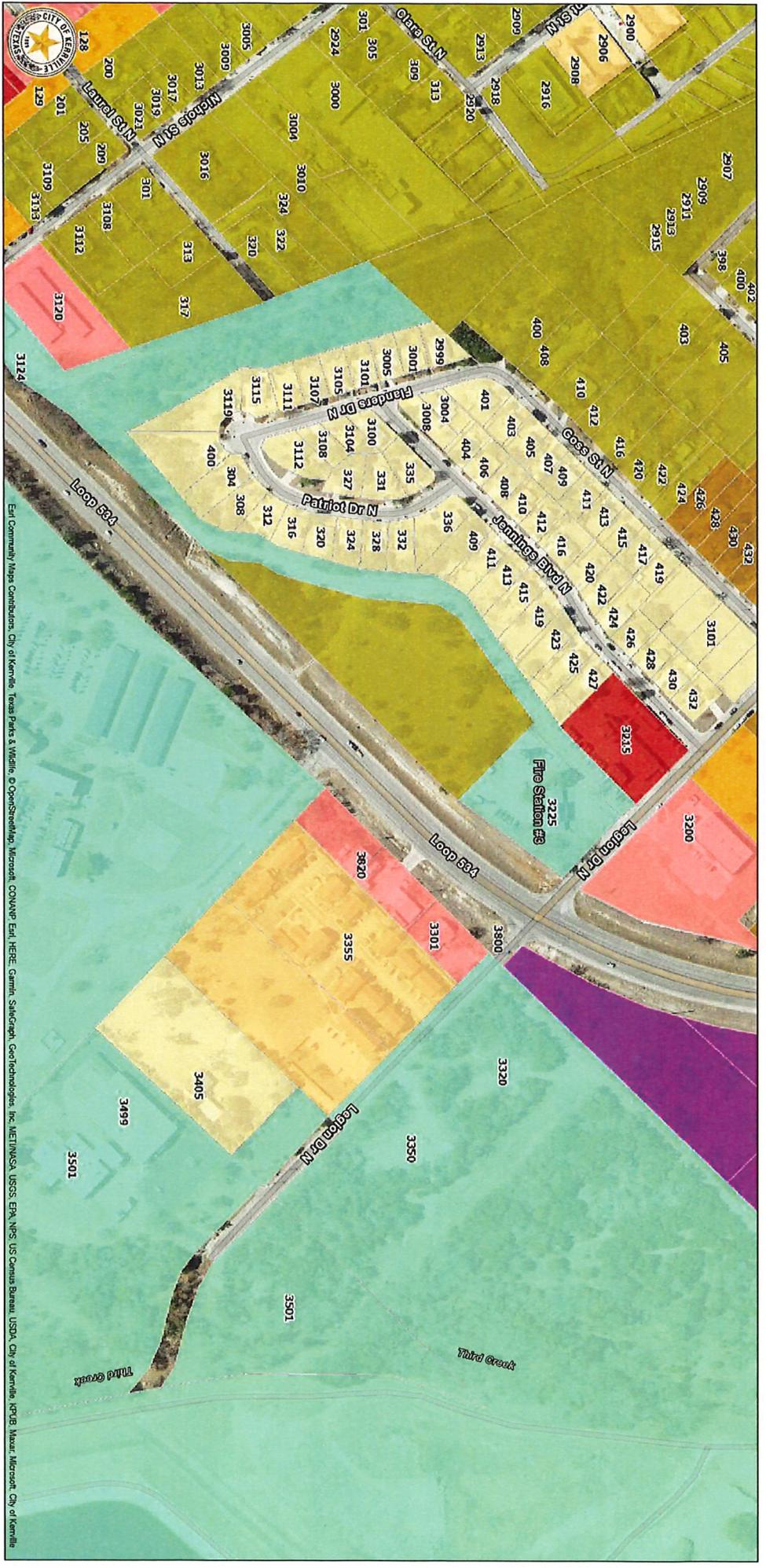


**POOL AREA AND PARKING LAYOUT**  
3625 TEXAS LOOP 534

Revisions:

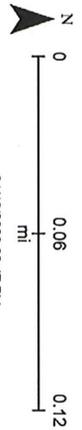
Job No.: \_\_\_\_\_  
 Date: 01/26/2022  
 Drawn By: BTR  
 Sheet: \_\_\_\_\_





- Site Address Point
- Municipal Boundary
  - Tax Parcel 2022
  - R-1 Single-Family Residential
  - R-2 Medium Density Residential
  - R-3 Multifamily Residential
  - RM Residential Mix
  - RT Residential Transition
  - C-2 Light Commercial
  - C-3 General Commercial
  - IM Industrial and Manufacturing
  - PI Public and Institutional

Loop 534 Zoning Map



This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only approximate relative locations.

01/13/2023 03:47 PM  
Development Services



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

---

**SUBJECT:**

Ordinance No. 2023-08. An Ordinance annexing a tract of land into the Corporate Limits of the City of Kerrville, Texas; such property making up approximately 0.08 acres and generally located adjacent to and south of Lehmann Drive in the area that Lehmann Drive intersects with Lenard Lane; such property more specifically described in this Ordinance and being located within the extraterritorial jurisdiction of and adjacent to the City Limits; adopting a service agreement; establishing the zoning for the annexed property as a Public and Institutional (PU) Zoning District; and providing other matters relating to the subject.

**AGENDA DATE OF:** January 24, 2023      **DATE SUBMITTED:** January 13, 2023

**SUBMITTED BY:** Drew Paxton, Planning Director

**EXHIBITS:**

<b>Expenditure Required:</b>	<b>Remaining Budget Balance in Account:</b>	<b>Amount Budgeted:</b>	<b>Account Number:</b>
N/A	N/A	N/A	N/A

**PAYMENT TO BE MADE TO:** N/A

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

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**SUMMARY STATEMENT:**

**Proposal:** An ordinance to annex into the City of Kerrville’s incorporated limits with a zoning classification of PI Public and Institutional Use on 0.08 acres of land out of the James A Cocke Survey No 144, Abstract No 95, Kerr County; near the intersection Lehmann Drive and Lenard Drive.

**Procedural Requirements:** The City, in accordance with state law, mailed 5 letters on 11/17/2022 to adjacent property owners. The City published a similar notice in the Kerrville Daily Times on 11/10/2022. An informational sign was posted on the property on 11/21/22.

At the time of drafting this agenda bill, Development Services had not received any comments from adjacent property owners.

## **Staff Analysis and Recommendation**

### **Adjacent Zoning and Land Uses:**

Subject Property

Current Zoning: N/A County/ETJ

Existing Land Use: Vacant Land

Direction: **North**

Current Zoning: PI

Existing Land Uses: Kerrville Schreiner Park, Guadalupe River

Direction: **South**

Current Zoning: N/A County/ETJ

Existing Land Uses: vacant land and single family residential

Direction: **East**

Current Zoning: N/A County/ETJ

Existing Land Uses: vacant land and single family residential

Direction: **West**

Current Zoning: PI

Existing Land Uses: Kerrville Schreiner Park

### **Consistency with the Kerrville 2050 Comprehensive Plan (“Comp Plan”):**

The subject property is within the Strategic Catalyst Area #2, this area is located around the intersection of Sidney Baker Street and Thompson Drive and is anchored by Peterson Regional Medical Center, its economic engine.

**Thoroughfare Plan:** The subject property is located on Lehmann Drive and through the platting process, will be dedicated as part of the right of way.

**Traffic Impact:** None.

**Parking:** None.

**Case Summary:** The applicant is requesting that the City annex the property with a zoning of PI, Public and Institutional, to match the adjacent property. This property will be dedicated as public right of way with the final plat of the development across Lehmann Drive.

**Recommendation:** Because the request is consistent with the Future Land Use Plan and the objectives of the Kerrville 2050 Plan, staff recommends annexation and the zoning

request.

On December 1, the Planning and Zoning Commission recommended the case for approval with a unanimous vote.

**RECOMMENDED ACTION:**

Approve Ordinance No. 2023-08 on first reading.

**ATTACHMENTS:**

[\*20230124 Ord 2023-08 Annex-zone Lehmann and Lenard.pdf\*](#)

**CITY OF KERRVILLE, TEXAS  
ORDINANCE NO. 2023-08**

**AN ORDINANCE ANNEXING A TRACT OF LAND INTO THE CORPORATE LIMITS OF THE CITY OF KERRVILLE, TEXAS; SUCH PROPERTY MAKING UP APPROXIMATELY 0.08 ACRES AND GENERALLY LOCATED ADJACENT TO AND SOUTH OF LEHMANN DRIVE IN THE AREA THAT LEHMANN DRIVE INTERSECTS WITH LENARD LANE; SUCH PROPERTY MORE SPECIFICALLY DESCRIBED IN THIS ORDINANCE AND BEING LOCATED WITHIN THE EXTRATERRITORIAL JURISDICTION OF AND ADJACENT TO THE CITY LIMITS; ADOPTING A SERVICE AGREEMENT; ESTABLISHING THE ZONING FOR THE ANNEXED PROPERTY AS A PUBLIC AND INSTITUTIONAL (PU) ZONING DISTRICT; AND PROVIDING OTHER MATTERS RELATING TO THIS SUBJECT**

**WHEREAS**, an owner of land has requested annexation by the City of Kerrville, Texas (“City”), pursuant to Local Government Code Section 43.0671; and

**WHEREAS**, the land to be annexed makes up a total of approximately 0.08 acres, as more specifically described below (the “Property”); and

**WHEREAS**, the Property lies within the extraterritorial jurisdiction of the City and adjacent to the City’s limits; and

**WHEREAS**, in conjunction with the approval of this Ordinance, City Council also approves a service agreement for the Property in accordance with Section 43.0672 of the Texas Local Government Code; and

**WHEREAS**, Section 60-37 of the City’s Zoning Code creates procedures for initial zoning of newly annexed areas; and

**WHEREAS**, having provided all required public notices, held all required public hearings at which persons with an interest in the matter were provided an opportunity to be heard, and complying with other requirements in Section 43.0673 of the Texas Local Government Code, City Council finds it to be in the public interest to adopt this Ordinance annexing the Property, to approve a service agreement as required by state law, and to establish zoning regulations for the Property;

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

**SECTION ONE. FINDINGS.** City Council finds and declares the facts and recitations contained in the preamble of this Ordinance true and correct.

**SECTION TWO. ANNEXATION.** The property described and depicted in **Exhibit A** (the “Property”) is annexed and incorporated into the corporate limits of the City of Kerrville, Texas, for all legal purposes.

**SECTION THREE. AMENDMENT TO CITY BOUNDARY.** City Council authorizes and directs the City Manager to amend the City’s official boundary map in accordance with this annexation.

**SECTION FOUR. PETITION FOR ANNEXATION.** The petition for annexation concerning the Property is attached as **Exhibit B**, said petition, which triggered the process specified in Subchapter C-3, Chapter 43, Texas Local Government Code, authorizing the annexation of the Property.

**SECTION FIVE. AGREEMENT REGARDING SERVICES.** Pursuant to Section 43.0672 of the Texas Local Government Code, the City has negotiated and hereby enters into a Service Agreement (the “Agreement”) with the owner of land for the provision of services in the area. The Agreement is attached to this Ordinance as **Exhibit C**. Upon annexation of the Property, the City shall provide the Property with the municipal services set forth in the Agreement pursuant to the schedule set forth therein, such services making up the City’s full municipal services. The City shall have no obligation to provide services to the Property not listed in the Agreement.

**SECTION SIX. ZONING.** Upon the adoption of this Ordinance, and in accordance with Section 60-37 of the City’s Zoning Code, the Property will be zoned as part of a Public and Institutional (PU) Zoning District, which will authorize such property to be used in ways consistent with the land use specified in that district. Such district is depicted at **Exhibit D**.

**SECTION SEVEN. CUMULATIVE CLAUSE.** The provisions of this Ordinance are to be cumulative of all Ordinances or parts of Ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances inconsistent with or in conflict with any of the provisions of this Ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

**SECTION EIGHT. SEVERABILITY CLAUSE.** If any section, subsection, sentence, clause, or phrase of this Ordinance is, for any reason,

held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this Ordinance. City Council hereby declares that it would have passed this Ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

**SECTION NINE. PENALTY.** The penalty for violation of this Ordinance shall be in accordance with the general penalty provisions contained in Article 1-1-7 of the Code of Ordinances of the City of Kerrville, Texas, which provides for a fine not exceeding TWO THOUSAND DOLLARS (\$2,000.00).

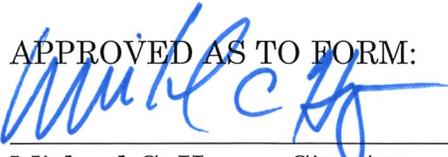
**SECTION TEN. PUBLICATION OF ORDINANCE.** In accordance with Section 3.07 of the City Charter and Texas Local Government Code §52.013(a), the City Secretary is hereby authorized and directed to publish the descriptive caption of this Ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

**SECTION ELEVEN. POST ANNEXATION ACTIONS.** The City Manager shall provide a certified copy of this Ordinance to the Texas Secretary of State, Kerr County, and Kerr Central Appraisal District and any other entity as may be required.

**PASSED AND APPROVED ON FIRST READING, this the \_\_\_\_\_ day of \_\_\_\_\_ A.D., 2022.**

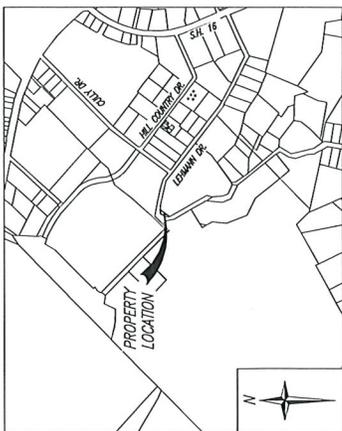
**PASSED AND APPROVED ON SECOND READING, this the \_\_\_\_\_ day of \_\_\_\_\_ A.D., 2023.**

\_\_\_\_\_  
Judy Eychner, Mayor

APPROVED AS TO FORM:  
  
\_\_\_\_\_  
Michael C. Hayes, City Attorney

ATTEST:  
\_\_\_\_\_  
Shelley McElhannon, City Secretary

# EXHIBIT A



1"=1000'

SOURCE: KERRVILLE GIS

- LEGEND**
- FOUND STEEL ROD AS NOTED
  - UNMARKED POINT
  - P.P.A.C.T. = OFFICIAL PUBLIC RECORD KERR COUNTY TEXAS
  - P.A.C.C.T. = PLAT RECORDS KERR COUNTY TEXAS
  - PROPERTY LINE
  - ADJACENT PROPERTY LINE
  - CITY LIMIT LINE

**ANNEXATION EXHIBIT**

**0.08 ACRES**

PORTIONS OF A 9.24 ACRE TRACT RECORDED IN VOL. 1099, PG. 251, OFFICIAL PUBLIC RECORD KERR COUNTY, TEXAS WITHIN KERR COUNTY, TEXAS

*SURVEYOR'S CERTIFICATION*

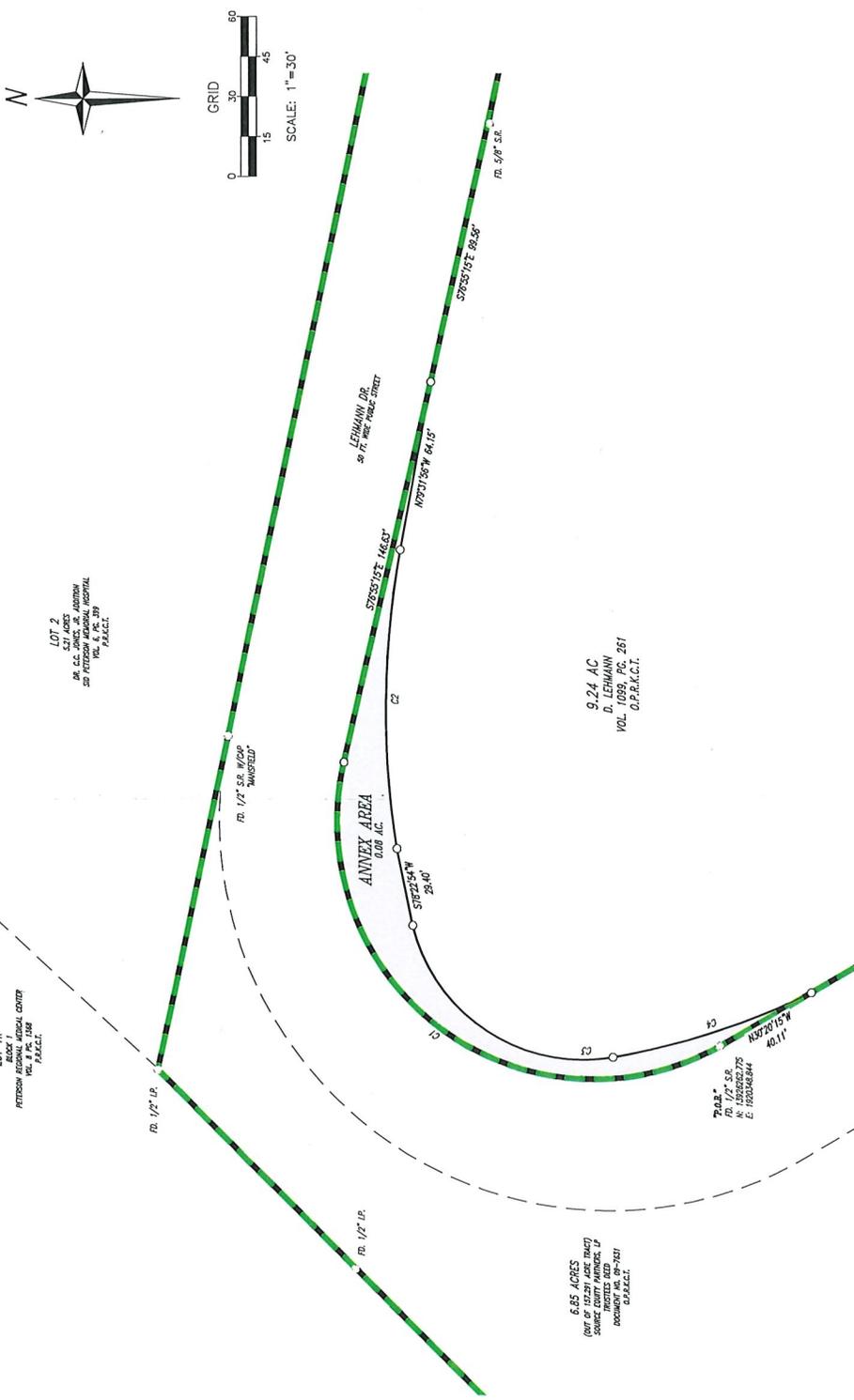
I HEREBY CERTIFY THAT I AM A PROFESSIONAL LAND SURVEYOR, LICENSED AND REGISTERED IN THE STATE OF TEXAS AND THAT THIS PLAN REPRESENTS A CORRECT AND ACCURATE SURVEY OF THE ABOVE DESCRIBED PROPERTY. ALL DIMENSIONAL DETAILS AND RELATIVE BEARINGS ARE CORRECT AS SHOWN. ALL DECISIONS AND RIGHTS OF WAY OF RECORD ARE AS SHOWN, AND THERE ARE NO ENCUMBRANCES OR CLAIMS OF INTERESTS ON THIS TRACT.

DATE: JUNE 23, 2022

R. Scott McClintock, Sr., R.P.L.S.  
Registration No. 5907

821 WATER STREET KERRVILLE, TX 75026 A360-217-100	web@wellborneng.com PHONE 101944110 T.L.P., E.L.S.
PROJECT: 21-1-169	FIELD: 25/04/2021
SCALE: 1"=30'	DRAFTING: BM
LAST FIELD VISIT: 10.21.2021	CHECKED: RSM
LAST DRAFT REVISION: 06.22.2022	SHEET NO. 1 of 1

**WELLBORN**  
ENGINEERING &  
SURVEYING



**Curve Table**

Curve #	Length	Radius	Delta	Chord Direction	Chord Length
C1	224.23	96.90	132°35'05"	N36°54'31"E	177.44
C2	112.66	332.00	019°26'36"	N89°15'14"W	112.12
C3	99.44	66.00	086°19'29"	S33°17'17"W	90.30
C4	79.18	278.00	016°19'08"	S18°02'02"E	78.91

PETITION REQUESTING ANNEXATION BY AREA LANDOWNERS

TO THE MAYOR OF THE GOVERNING BODY OF KERRVILLE, TEXAS:

The undersigned owners of the hereinafter described tract of land, which is vacant and without residents, or on which fewer than three qualified voters reside, hereby waive the requirement to be offered a development agreement pursuant to Section 43.016 of the Texas Local Government Code (where applicable); and petition your honorable Body to extend the present City limits so as to include as part of the City of Kerrville, Texas, the following described territory, to wit:

See Exhibit A

We certify that the above described tract of land is contiguous and adjacent to the City of Kerrville, Texas, and that this petition is signed and duly acknowledged by each and every person having an interest in said land.

Signed: Joseph Piszczor

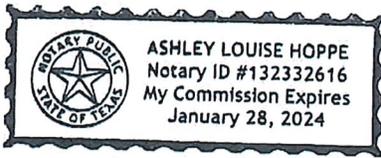
THE STATE OF TEXAS

COUNTY OF KERR

BEFORE ME, the undersigned authority, on this day personally appeared JOSEPH PISZCZOR, known to me to be the person(s) whose name(s) is subscribed to the foregoing instrument and acknowledged to me that he or she executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office, this 26<sup>th</sup> day of OCTOBER, 2022

Ashley Louise Hoppe  
Notary Public in and for  
Kerr County, Texas



**EXHIBIT C**  
**ANNEXATION SERVICE PLAN**

- I. INTRODUCTION:** This Service Plan for the extension of municipal services to the area to be annexed was developed in accordance with state law. Municipal facilities and services to the annexed area will be provided or made available on behalf of the City of Kerrville, Texas (“City”) at the levels and schedule specified below.
- II. UNIFORM LEVEL OF SERVICES:** The City shall provide services by any of the methods by which it extends the services to any other area of the municipality, based upon differing characteristics of topography, land use, and population density, which may be considered a sufficient basis for providing differing levels of service.
- III. SPECIFIC FINDINGS:** City Council finds and determines that this Service Plan, as provided below, will provide full municipal services to the annexed area both adequate to serve the annexed area and commensurate with the levels of services provided in other parts of the City with the same or similar topography, land use, and population density, and it will not provide a lower level of service in the annexed area than were in existence at the time immediately preceding the effective date of annexation.

<b>SERVICE</b>	<b>DETAILS OF SERVICE PROVIDED</b>	<b>TIMETABLE</b>
<b>Code Enforcement</b>	The provisions of Code Enforcement services, including the application and enforcement of building, electrical, plumbing, and other related code requirements adopted by the City shall be made immediately to the area upon annexation. The adoption of zoning plan shall be in accordance with the procedures of the City’s Zoning Code.	Immediately following annexation, zoning to be concurrent with annexation
<b>Fire Protection and Emergency Medical Services (EMS)</b>	Fire protection and emergency medical services will be provided to the annexed area. The City will serve the annexed area from existing fire stations closest to the area of annexation. Emergency dispatch assignment of Fire Services resources to the annexed area would be the same as currently provided in areas of similar land use and population within the City.	Immediately following annexation

SERVICE	DETAILS OF SERVICE PROVIDED	TIMETABLE
<b>Fire Prevention</b>	The services of the City's Fire Marshall shall be provided to the area.	Immediately following annexation.
<b>Library</b>	Residents of the area, if any, will continue to be entitled to utilize the City's Library facilities.	Immediately following annexation.
<b>Parks and Recreation Facilities</b>	The City will maintain park and recreation facilities located within the annexed area, if any, on the effective date of annexation on the same basis and at the same level as similar facilities are maintained throughout the City.	Immediately following annexation
<b>Police Protection</b>	Police Services will provide protection and law enforcement services to the annexed area. The level of service will be at the same level as currently provided in areas of similar land use and population within the City. These services include the following: 1) regular patrol of the area, 2) handling of complaints and incidents, 3) traffic enforcement, and 4) special units, such as criminal investigations, narcotics, crime prevention, neighborhood services, and special weapons and tactics.	Immediately following annexation
<b>Maintenance of Existing Roads &amp; Streets</b>	The City's Public Works Department will maintain existing roads and streets, drainage, and regulatory signs on the effective date of annexation. The same basis and level of services currently provided throughout the City will be adhered to as follows:  1. Emergency maintenance of streets to include repair of hazardous potholes, ice and snow monitoring of major thoroughfares necessary for traffic flow.	Immediately following annexation

SERVICE	DETAILS OF SERVICE PROVIDED	TIMETABLE
	<p>2. Routine maintenance of public streets and rights-of-way performed within the City.</p> <p>3. Street sweeping services may occur based upon need and funding.</p> <p>4. Installation and maintenance of traffic signs, street markings, and other traffic control devices as the need is established by appropriate study and traffic standards. Private streets, including ingress/egress easements, access easements, common areas, common driveways and anything else which has not been specifically dedicated and accepted as public right-of-way, will not be maintained by the City. Public streets will be included in the City's preventive maintenance program. Preventive maintenance projects are prioritized and scheduled based on a variety of factors, including surface condition, transversibility, age, traffic volume, density of dwellings per block, adjacent street conditions and available funding. Any necessary rehabilitation or reconstruction will be considered on a citywide priority basis.</p>	
<b>Solid Waste Collection</b>	Solid Waste collection to the annexed area will be provided on the same basis and at the same level as provided throughout the City, in accordance with applicable law.	Immediately following annexation
<b>Traffic Engineering</b>	Traffic control devices and street markers shall be installed where deemed necessary by the City street department, except as provided by the Texas Department of Transportation.	Immediately following annexation

<b>SERVICE</b>	<b>DETAILS OF SERVICE PROVIDED</b>	<b>TIMETABLE</b>
<b>Water Service</b>	<p>The City will provide for the maintenance of City-owned public water lines within the annexed area provided that the area is within the City's Certificate of Convenience and Necessity area as determined by the Public Utility Commission (PUC) beginning on the effective date of the annexation. Water service is provided at the same level as currently provided in areas of similar topography, land use, and population within the City. The City's policy that water extensions are the responsibility of the developer of property will be applied in this area.</p>	As the property develops
<b>Wastewater Service</b>	<p>The City will provide for the maintenance of sanitary sewer lines within the annexed area provided that the area is within the City's Certificate of Convenience and Necessity area as determined by the Public Utility Commission (PUC) beginning on the effective date of the annexation. Sanitary sewer service is provided at the same level as currently provided in areas of similar topography, land use, and population within the City. The City's policy that sanitary sewer extensions are the responsibility of the developer of property will be applied to this area. Maintenance of all parts of the sewer system will begin as those parts are put into service. The sewer system will be maintained with the same frequency and level of effort as comparable parts of the system in other parts of the City.</p>	As the property develops

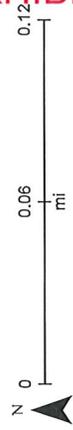
SERVICE	DETAILS OF SERVICE PROVIDED	TIMETABLE
<p><b>Provision for Other City Services</b></p>	<p>Other City services that may be provided by the City such as planning, inspection, animal control, municipal court, and general administration will be made available on the same basis and at the same level as provided throughout the City.</p>	<p>Immediately following annexation</p>

# EXHIBIT D



- C-3 General Commercial
- PI Public and Institutional
- AG Agriculture
- R-2 Medium Density Residential
- R-3 Multifamily Residential
- C-1 Neighborhood Commercial
- C-2 Light Commercial
- Site Address Point
- Municipal Boundary
- Kerrville 1-Mile ETJ
- Tax Parcel 2022

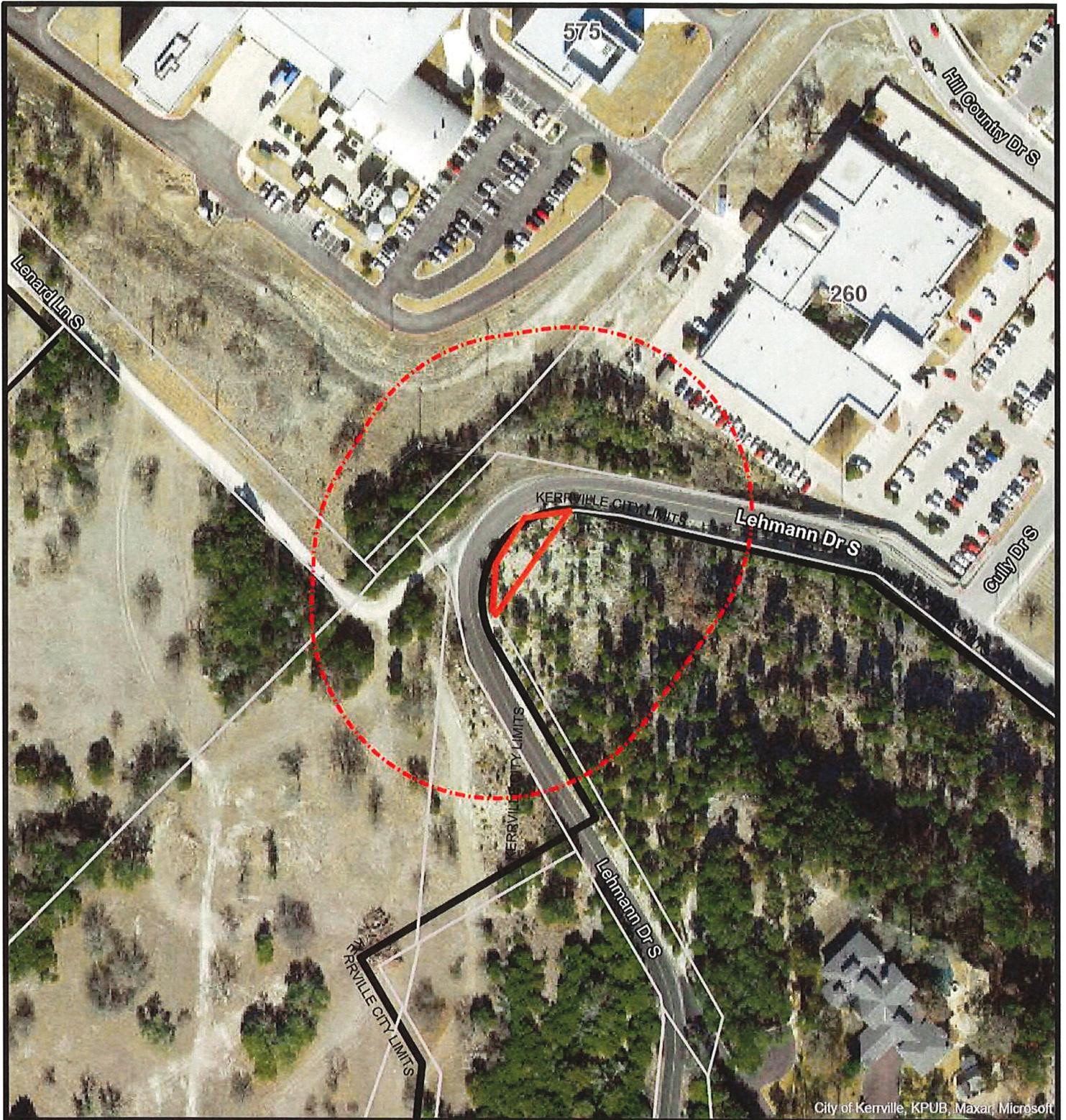
Zoning Map - Lehmann Dr.



01/13/2023 03:50 PM  
Development Services

This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only approximate relative locations.





City of Kerrville, KPUB, Maxar, Microsoft

# Location Map

Case # PZ-2022-72

Location:

KCAD ID# 529291

11/10/2022

### Legend

-  Subject Properties
-  200 Feet Notification Area



0 50 100 200

Scale In Feet

This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only approximate relative locations.



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

**SUBJECT:** Ordinance No. 2023-03, second reading. An Ordinance amending Chapter 26 of the Code of Ordinances, City of Kerrville, Texas, titled "Buildings and Building Regulations"; by adding a new Article X titled "Outdoor Lighting", to create standards for outdoor lighting to minimize light pollution, glare, and light trespass caused by inappropriate or misaligned light fixtures, while improving nighttime public safety, utility, and security; providing an effective date; and providing other matters related to the subject.

**AGENDA DATE OF:** January 24, 2023      **DATE SUBMITTED:** January 11, 2023

**SUBMITTED BY:** Drew Paxton, Planning Director

**EXHIBITS:**

<b>Expenditure Required:</b>	<b>Remaining Budget Balance in Account:</b>	<b>Amount Budgeted:</b>	<b>Account Number:</b>
\$0	\$0	\$0	N/A

**PAYMENT TO BE MADE TO:** N/A

<b>Kerrville 2050 Item?</b>	Yes
<b>Key Priority Area</b>	P - Parks / Open Space / River Corridor
<b>Guiding Principle</b>	N/A
<b>Action Item</b>	P4.8 - Evaluate the desirability of a Night Sky ordinance

**SUMMARY STATEMENT:**

In the Kerrville 2050 Comprehensive Plan, the protection of the night skies was a frequent topic of discussion. Action item P4.8 is to evaluate the desirability of a Night Sky Ordinance. In 2019, the Code Review Committee (CRC) began to discuss the need for a dark sky, or night sky, ordinance. However, at that time they moved their focus of the update to the subdivision code and tabled the dark sky ordinance. In 2022, the CRC picked up that draft as well as the Texas Model Outdoor Lighting Ordinance from the Hill County Alliance. The CRC debated whether or not to recommend guidelines/policy or regulations as an ordinance and ultimately decided to recommend an ordinance to Council.

City Council has presented numerous proclamations celebrating October and Night Sky Month. These regulations will establish rules for outdoor lighting to help protect the night skies that the Texas Hill Country is known for.

This Ordinance, along with the Resolution of Support (adopted by Council in December 2022), is the first steps in applying for International Dark Sky Association's designation as a Dark Sky Community.

On January 10, 2023, City Council approved Ordinance No. 2023-03 on first reading, with a

4-1 vote.

**RECOMMENDED ACTION:**

Approve Ordinance No. 2023-03 on second reading.

**ATTACHMENTS:**

[\*20230124 Ord 2023-03 Outdoor Lighting-Night Sky 2nd.pdf\*](#)

**CITY OF KERRVILLE, TEXAS  
ORDINANCE NO. 2023-03**

**AN ORDINANCE AMENDING CHAPTER 26 OF THE CODE OF ORDINANCES, CITY OF KERRVILLE, TEXAS, TITLED “BUILDINGS AND BUILDING REGULATIONS”; BY ADDING A NEW ARTICLE X TITLED “OUTDOOR LIGHTING”, TO CREATE STANDARDS FOR OUTDOOR LIGHTING TO MINIMIZE LIGHT POLLUTION, GLARE, AND LIGHT TRESPASS CAUSED BY INAPPROPRIATE OR MISALIGNED LIGHT FIXTURES, WHILE IMPROVING NIGHTTIME PUBLIC SAFETY, UTILITY, AND SECURITY; PROVIDING AN EFFECTIVE DATE; AND PROVIDING OTHER MATTERS RELATING TO THE SUBJECT**

**WHEREAS**, City Council of the City of Kerrville (“City Council”) seeks to promote the effective and reasonable artificial exterior illumination within the City; and

**WHEREAS**, City Council finds that improperly designed light fixtures and their components cause glare, light pollution, and wasted resources; and

**WHEREAS**, glare and light pollution can result in the diminishing ability to view the night sky, light trespass, and an unattractive townscape; and

**WHEREAS**, citizens who live in and near the City value the natural environment, including the beauty of the Hill Country and high quality of the night sky; and

**WHEREAS**, City Council desires to protect the health, safety, and welfare of the general public, and to protect the night sky that adds to the quality of life and economic well-being for the City and its citizens; and

**WHEREAS**, the lighting regulations provided herein are not intended to sacrifice the safety of citizens or visitors to the City or the security of property, but instead are intended to result in safer, efficient, and more cost-effective lighting; and

**WHEREAS**, pursuant to Texas Local Government Code Section 51.001, the City has general authority to adopt an ordinance or police regulation that is for the good government, peace, or order of the City and is necessary or proper for carrying out a power granted by law to the City; and

**WHEREAS**, pursuant to Chapter 214 of the Texas Local Government Code, the City has the specific authority to adopt building codes and regulate the construction of buildings and structures; and

**WHEREAS**, pursuant to Chapter 217 of the Texas Local Government Code, the City has the specific authority to define, prohibit, and abate conditions which create or may create public nuisances; and

**WHEREAS**, City Council finds that the regulations provided for by this Ordinance are reasonable, necessary, and for the public benefit;

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

**SECTION ONE.** Chapter 26 “*Buildings and Building Regulations*” of the Code of Ordinances of the City of Kerrville, Texas, is amended by adding a new Article X “*Outdoor Lighting*”, which will add the language that is underlined (added) as follows:

**“ARTICLE X. – OUTDOOR LIGHTING**

**Sec. 26-275. – Purpose and scope.**

(a) The purpose of this article is:

- (1) To reduce glare and improve nighttime visibility which contributes to safer, more secure, and attractive outdoor living spaces;
- (2) To encourage efficient, controlled lighting that conserves energy;
- (3) To make the community a better place to live and work and a more inviting place for tourists to visit;
- (4) To protect properties from light trespass;
- (5) To restore and preserve the City’s heritage of a clear, dark night sky;
- (6) To position the City to apply for the designation of International Dark Sky Community;
- (7) To have lights at night that are directed where light is wanted, are a warm color, and equal the appropriate amount of light;
- (8) To prevent light at night from being wasted offsite, off property, or into the night sky.

(b) The scope of this article is as follows;

(1) This article shall apply within the City limits, hereinafter referred to as “City”.

(2) Nothing herein shall be construed as preventing or limiting the City from applying this article within the surrounding areas where the City asserts powers of extraterritorial jurisdiction (ETJ) through agreements with property owners or where authorized by state law.

### **Sec. 26-276. - Definitions.**

Adaptive controls mean mechanical or electronic devices, when used in the context of outdoor lighting systems, intended to actively regulate the switching, duration, and/or intensity of light emitted by the outdoor lighting system. Examples of adaptive controls include timers, dimmers, and motion-sensing switches.

Beam of a light fixture means the spatial distribution of the emitted light.

City Manager means the City Manager or designee.

Correlated Color Temperature (“CCT”) means a measure of the color properties of light emitted by lamps, being equal to the temperature, expressed in Kelvins (K). CCT values are typically provided on lighting manufacturer packaging or data sheets.

Decorative holiday lighting means low-intensity string lights, whose luminous output does not exceed fifty (50) lumens per linear foot, and fully-shielded floodlights, whose luminous output does not exceed one thousand (1,000) lumens and which are aimed and oriented in such a way as to not create light trespass onto another property nor into the night sky.

Electronic Display means any illuminated sign of an informative or advertising nature, whether on- or off-premise, and operable at night, whose content is made visible to the viewer by means of luminous elements under active electronic control and therefore subject to alteration in order to vary the content of the message. Electronic displays may be either static or dynamic in terms of light color and intensity.

Existing light fixtures means those outdoor light fixtures already installed at the time this article is adopted.

Floodlight means a light fixture having a wide beam.

Fully Shielded means an outdoor luminaire constructed so that in its installed position, all of the light emitted from the light fixture is projected below the horizontal plane passing through the lowest light-emitting part of the fixture.

Glare means visual discomfort or impairment caused by a bright source of light in a direction near one's line of sight.

Greenhouse means any building that is constructed of glass, plastic, or other transparent material in which plants are grown under climate-controlled conditions and includes hoop houses and other similar structures.

Illuminance means the intensity of light in a specified direction measured at a specific point.

Light source means a light emitting portion of the luminaire and any diffusing elements and surfaces intended to reflect or refract light emitted from the lamp individually or collectively, for example, a lamp, bulb, lens, highly reflective surface, or frosted glass.

Light pollution means the unintended, adverse and /or obtrusive effect of the use of outdoor light at night.

Light trespass means light emitted from fixtures designed or installed in a manner that unreasonably causes light to fall on a property other than the one where the light is installed, in a motor vehicle drivers' eyes, or upwards toward the sky. If the light appears star-like from another property or the public roadway, the light is creating light trespass. It is expected that the illumination produced by a light source may be viewed from other properties but the light source itself should not be visible from other properties. **Exhibit A** of Section 26-281 is a sample educational illustration about light trespass.

Lumen means the unit of measurement used to quantify the amount of light produced by a bulb or emitted from a light source. Lumen values are typically provided on lighting manufacturer packaging or data sheets. For the purposes of this article, unless otherwise stated, the lumen output values shall be the initial lumen output ratings as defined by the manufacturer, multiplied by the lamp efficiency. Lamp efficiency of 95% shall be used for all solid-state lamps and 80% for all other lamps, unless an alternate efficiency rating is supplied by the manufacturer.

Lumens per Net Acre means the total outdoor light output, as defined in this article, divided by the number of acres, or part of an acre with outdoor illumination. Undeveloped, non-illuminated portions of the property may not be included in the net acreage calculation.

Luminaire means a complete lighting assembly or lighting fixture, consisting of a lamp, housing, optic(s), and other structural elements, but not including any mounting pole or surface.

Luminance is a measure of light emitted by or from a surface.

Nit is the standard unit of measure of luminance used for internally illuminated signs, digital signs, or electronic displays.

Outdoor Lighting means temporary or permanent lighting that is installed, located, or used in such a manner to cause light rays to shine outdoors. Nonresidential fixtures that are installed indoors that cause light rays to shine outside are considered outdoor lighting for the intent of this article. See Exhibit B of Section 26-281 for an illustration of this type of situation. Residential fixtures installed indoors generating more than 3,800 lumens, approximately equal to a 300-watt incandescent bulb, that cause light to shine outside are also considered outdoor lighting for the intent of this article. All of the lighting that illuminates the translucent portion of a greenhouse or solarium, including roofing material, is considered outdoor lighting for the intent of this article.

Private lighting means outdoor light fixtures that are owned, leased, operated, maintained, or controlled by individual persons, including families, partnerships, corporations, and other entities engaged in the conduct of business or other non-governmental activities.

Public lighting means outdoor light fixtures that are owned, leased, operated, maintained, or controlled by the City or other governmental entity. The light fixtures are normally located on, but are not limited to, streets, highways, alleys, easements, parking lots, parks, playing fields, schools, institutions of higher learning, and meeting places.

Sag-lens or drop-lens fixture means a fixture, typically seen on older streetlights or parking lot lights, where the lens extends below the lowest opaque part of the fixture such that light is scattered above the horizontal plane.

Searchlight means a light fixture having a narrow beam intended to be seen in the sky.

Spotlight means a light fixture having a narrow beam.

Temporary lighting means non-permanent lighting installations installed and operated for a duration not to exceed thirty (30) days.

Total outdoor light output means the total amount of light, measured in lumens, from all outdoor light fixtures within the illuminated area of a property. The lumen value to be used in the calculation is the lumen value as defined in this article. To compute the total, add the lumen outputs attributed to each light fixture together.

**Sec. 26-277. - Nonconforming existing outdoor light fixtures.**

- (a) All existing outdoor lighting legally installed before the adoption of this article that does not conform with the standards specified by this article is considered nonconforming.
- (b) Nonconforming outdoor lighting is allowed to remain until required to be replaced pursuant to the terms of this article.
- (c) Nonconforming outdoor lighting shall be brought into compliance with this article within ten (10) years from the date of adoption of this article.
- (d) If more than fifty percent (50%) of the total appraised value of a structure, as determined from the records of the county's appraisal district, has been destroyed, the nonconforming status expires and the structure's previously nonconforming outdoor lighting shall be removed and shall only be replaced in conformity with the standards of this article.
- (e) Nonconforming outdoor lighting shall be brought into conformance with this article as follows:

  - (1) *Nonresidential Application.* All existing outdoor lighting located on a property used for nonresidential purposes that is part of an application for a conditional use permit or a building permit for a major addition is required to be brought into conformance with this article before final inspection or the issuance of a certificate of occupancy, when applicable. For the following permits issued by the City, the applicant shall have a maximum of 90 days from date of permit issuance to bring the lighting into conformance: sign permit for an externally or internally illuminated outdoor sign.
  - (2) *Residential addition or remodel.* Nothing herein shall be construed to terminate a residential property's nonconforming status as a result of an addition or remodel. However, all outdoor residential lighting that is affixed to a construction project requiring a building permit is required to conform the standards established by this article.
  - (3) *Abandonment of nonconforming.* A nonconforming structure will be deemed abandoned if the structure remains vacant for a continuous period of six (6) months. In that instance, the nonconforming status expires and the structure's previously nonconforming outdoor lighting must be removed and may only be replaced in conformity with the standards of this article. Abandonment of the nonconformity will not occur during the vacancy of the structure while the structure is actively marketed for sale or lease.

- (f) It is unlawful to expand or repair outdoor lighting that was previously nonconforming or replace such lighting with nonconforming lighting where the prior nonconforming status has expired, been forfeited, or otherwise abandoned.
- (g) All new construction and/or new luminaires installed, including replacements for existing fixtures, shall comply with this article.
- (h) Residential property owners may request from the City an amortization extension of up to a maximum of ten (10) years from the date a nonconforming fixture was installed provided that the fixture was compliant with existing City regulations at the time it was installed, and that date of installation can be substantiated via documents, date stamped photographs, or similar evidence, which is then approved by the City Manager.
- (i) Amortization extensions to a date at which outdoor lighting shall conform to this article shall be on a per fixture basis with the following requirements:
  - (1) The light fixture must be documented to cost at least \$100.00 when originally purchased;
  - (2) The fixture cannot be brought into compliance by changing the bulb or lighting element or installing shielding; or
  - (3) If the bulbs or other lighting elements of the fixture require replacement during the amortization period, the replacement bulbs or lighting elements shall not be rated in excess of 3000 Kelvin.

**Sec. 26-278. – General provisions.**

(a) Shielding.

- (1) Unless exempted elsewhere in this article, all outdoor lighting shall be fully shielded.
- (2) New streetlights shall be fully shielded fixtures of approved historical design, utilizing a minimum output consistent with the safety of drivers and pedestrians.
- (3) Mounting height or topography or proximity to other properties may cause public or private outdoor light fixtures to require additional shielding to prevent glare, light trespass, or an unsafe condition on properties other than the one on which it is installed.

(4) All lighting that illuminates the translucent portion of a greenhouse or solarium must be shielded so that no direct light shines outside of the structure and no more than 4% of the reflected or refracted illumination is allowed to escape outside the structure.

(5) Outdoor light fixtures with a maximum output of 200 lumens per fixture, regardless of the number of bulbs, may be left unshielded provided the source of the light is not visible from any other property and the fixture conforms to all other regulations of this article. The output from these fixtures shall not exceed 10% of the lumens per net acre allowed by this article.

(b) *Light trespass.*

(1) Light trespass is prohibited. No luminaire installed within the City, except governmental owned streetlights, may create conditions of light trespass. Governmental owned street lights may only create light trespass below it within one hundred feet (100.0') of its installed location.

(2) All outdoor lighting, except governmental owned streetlights, shall be shielded so that the light source shall not be visible from any other property.

(c) *Outdoor Sports Facilities.* Lighting at public and private outdoor sports facilities, including playing fields, arenas, tracks, and swimming pools, shall:

(1) be shielded to the greatest practical extent to reduce glare, safety hazards, light trespass, and light pollution;

(2) provide levels of illuminance that are adjustable according to task, allowing for illuminating levels not to exceed nationally recognized Illuminating Engineering Society of North America (IESNA) standards according to the appropriate class of play, as well as for lower output during other times, such as when field maintenance is being actively performed;

(3) be provided exclusively for illumination of the surface of play and adjacent viewing stands, and not for any other application, such as lighting a parking lot;

(4) be extinguished by 11:00 p.m. or within one (1) hour of the end of active play. The outdoor sports facility lighting shall be fitted with mechanical or electronic timers to prevent lights from being left on accidentally overnight; and

(5) be exempted from the other regulations of this article if its design and installation, as certified by a professional engineer (PE) licensed in the state of Texas, adheres to the version of the International Dark Sky Association's *Criteria for Community-Friendly Outdoor Sports Lighting Operative* at the time when the construction permit is submitted to the City for review.

(d) *Towers.* No lighting of towers and associated facilities is allowed, except by permit, and except as required by the Federal Aviation Administration or other federal or state agency. In coordination with the applicable federal or state agency, an applicant shall determine the maximum height of the tower that would not require lighting. If a proposed tower would require lighting, the applicant shall demonstrate that a tower height that requires lighting is necessary. Such justification shall include documentation showing:

(1) Coverage limitations;

(2) Type of system (e.g., cellular, radio, television);

(3) Technical and engineering details of the lighting to be installed; and

(4) Requirements of federal, state, and local agencies.

If a tower height that requires lighting is justified, slowly blinking red lights must be used at night. White strobe lights at night are prohibited.

(e) *Color Temperature.*

(1) The correlated color temperature (CCT) of luminaries shall not exceed 3000 Kelvins.

(2) Luminaries rated below 2500 Kelvin are encouraged for better nighttime visibility.

(f) *Service Station Canopies and other building overhangs.* All luminaires mounted on or recessed into the lower surface of service station canopies or other overhangs shall be fully shielded and utilize only flat lenses or windows. Shielding must be provided by the luminaire itself, and not by surrounding structures such as canopy edges. Light directed on service station pumps may be angled to illuminate the pump to the level of federal standards and to shield the light from normal view.

(g) *General curfew.*

(1) For all nonresidential zoning districts:

- a. All privately owned exterior lighting not adaptively controlled shall be extinguished by 11:00 p.m. or within one (1) hour of the end of normal business hours, whichever occurs later.
- b. Exterior lighting with adaptive controls shall reduce lighting to 25% or less of the total outdoor light output allowed by 11:00 p.m. or within one (1) hour of the end of normal business hours, whichever occurs later. Adaptive controls may be used to activate lights and resume normal light output when motion is detected and be reduced back to 25% or less of total outdoor light output allowed within 5 minutes after activation has ceased, and the light shall not be triggered by activity off property.
- c. Businesses whose normal operating hours are (24) twenty-four hours per day are exempt from this provision.

(2) All public lighting not adaptively controlled must be fully extinguished by 11:00 p.m., or within one (1) hour of the end of occupancy of the structure or area to be lit, whichever is later.

(3) All outdoor lighting is encouraged to be turned off when no one is present to use the light.

(h) *Lumen caps.*

(1) The lumen per net acre values are an upper limit and not a design goal; design goals should be the lowest levels that meet the requirement of the task. Lumen per net acre values exclude governmental owned street lights used for illumination of public rights-of-way and outdoor recreation facilities.

(2) The following lumen caps apply:

a. *Nonresidential Property.* Total outdoor light output installed on any nonresidential property shall not exceed 100,000 lumens per net acre in any contiguous illuminated area;

b. *Residential Property.* Total outdoor light output installed on any residential property shall not exceed 25,000 lumens per net acre in any contiguous illuminated area.

(i) *Adaptive controls.* All new public lighting, including streetlights, will incorporate adaptive controls, such as timers, motion-sensors, and light-sensitive switches, to actively regulate the emission of light from light fixtures

such that the lighting of areas is restricted to times, places, and amounts required for safe occupancy.

(j) *Flagpoles.* Property owners are encouraged to not illuminate flagpoles at night, but rather to hoist flags after dawn and lower flags before sunset. If flags are illuminated at night, lighting of up to a total of two (2) flag poles per property is permitted with the following conditions:

(1) Flagpoles with a height greater than twenty feet (20.0') above ground level shall be illuminated only from above. This may be achieved by utilizing a luminaire attached to the top of the flagpole or a luminaire mounted above the top of the flagpole on a structure within fifteen feet (15.0') of the flagpole and must comply with all sections of this article. The total light output from any luminaire mounted on top of or above a flagpole shall not exceed 800 lumens.

(2) Flagpoles with a height equal to or less than twenty feet (20.0') above ground level may be illuminated from below. If ground-level illumination is used, flagpoles may be illuminated with up to two (2) spotlight type luminaires, utilizing shields or diffusers to reduce glare, whose maximum combined lumen output is 75 lumens per linear foot of pole height, measured from the level of the luminaire above grade to the top of the flagpole. Luminaires shall be mounted so that their lenses are perpendicular to the flagpole and the light output points directly toward the flag(s).

(k) *Prohibitions.* The use of the following types of outdoor lighting are prohibited, except as specifically exempted here or elsewhere in this article:

(1) Sag-lens or drop-lens fixtures.

(2) Any luminaire that uses mercury vapor lamps.

(3) Searchlights, sky beams, and similar lighting, except as required by response personnel during emergency conditions.

(4) Any light that dynamically varies its output by intermittently fading, flashing, blinking, or rotating. This type of lighting includes strobe lighting.

(l) *Warranting.* New installations of outdoor lighting will only be installed on public property, including right-of-way, upon determination by the City Manager that a public safety hazard exists in the area to be lit and that the hazard can only be effectively mitigated through the use of outdoor lighting

and not through some other passive means, such as reflectorized roadway paint or markers.

**Sec. 26-279. – Plan submission and compliance review.**

(a) An individual applying for a compliance review or building permit under this article intending to install new outdoor lighting or update existing outdoor lighting shall file a lighting plan with the City. A lighting plan shall be filed at the same time as any other plans required by the City. The applicant may obtain a document from the City that lists all of the items that comprise a proper and complete outdoor lighting submittal. The submittal shall contain, at a minimum, the following:

(1) Plans indicating the number and location on the premises of proposed and existing light fixtures, the type of light fixture, the manufacturer's order number, the lamp type, Kelvin rating, initial lumens produced, the mounting height for each fixture, adaptive controls, building elevations for any structure whose interior lighting is defined as outdoor lighting per this article and the manufacturer's specification sheet for each light fixture.

(2) The number of acres or part of an acre that is to be illuminated contiguously, the square footage of the footprint for each structure within the area to be illuminated; and

(3) Any other evidence that the proposed installation will comply with this article.

(b) The lighting plan shall be reviewed by the City Manager to determine compliance with this article, taking into account all factors, including levels of illuminance, luminance, glare, safety hazards, light trespass, and light pollution. The City Manager shall approve or reject the plan within 30 days of submission, returning it to the applicant with a written explanation. The applicant shall not install any outdoor lighting until receiving approval of the lighting plan. After the lighting plan is approved, no substitutions may be made for approved light fixtures without re-submitting the plan for review with the substitutions.

**Sec. 26-280. – Exemptions, temporary permitting, amendments, and public nuisance.**

(a) Exemptions. This article exempts the following:

(1) Decorative holiday lighting.

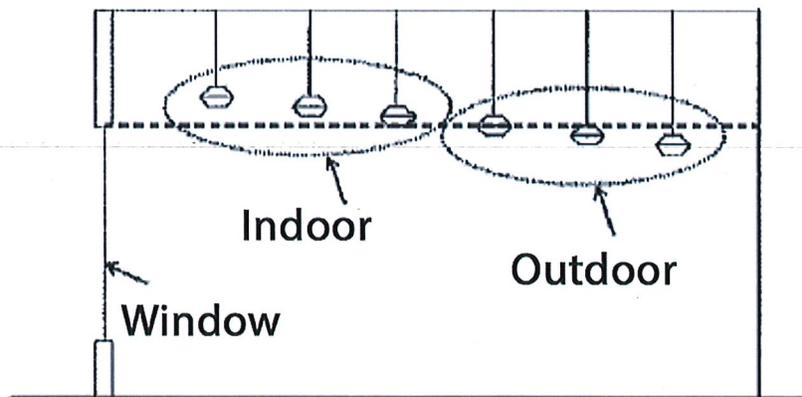
- (2) String, festoon, bistro, and similar lighting, provided that the emission of no individual lamp exceeds fifty (50) lumens. These lights must be rated at or below 3000 Kelvin.
  - (3) Underwater lighting of swimming pools and similar water features.
  - (4) Lighting required by law to be installed on surface vehicles and aircraft;
  - (5) Airport lighting required by law;
  - (6) Lighting required by federal or state laws or regulations;
  - (7) Temporary emergency lighting needed by law enforcement, fire, and other emergency services as well as building egress lighting whose electric power is provided by either battery or generator;
  - (8) Lighting employed during emergency repairs of roads and utilities provided such lighting is deployed, positioned, and aimed such that the resulting glare is not directed toward any roadway or highway or residence;
  - (9) Temporary lighting at construction projects provided such lighting is deployed, positioned and aimed such that the resulting glare is not directed toward any roadway or highway or residence;
  - (10) Temporary lighting for theatrical, television, performance areas, or events provided the lights are positioned safely and do not create issues of light trespass.
- (b) Amendment. City Council may amend this article as local conditions change and as changes occur in the recommendations of nationally recognized organizations such as the Illuminating Engineering Society of North America and the International Dark-Sky Association.
- (c) Public nuisance. Any violation of this article that results in light trespass or an unreasonable interference with the common and usual use of any other property is hereby declared to be a public nuisance.
- (d) Notification. All applicants for building permits will be notified of this article.

Sec. 26-281. – Exhibits.

Exhibit A. Light Trespass



Exhibit B. Outdoor/Indoor Lighting



Elevation view showing an example of a nonresidential application of indoor lighting, labeled "Outdoor", which is will be subject to this article. The example presumes the structure in question is not elevated such that any of the luminaires labeled "Indoor" may be seen from any other property. If the structure is elevated such that the luminaires labeled "Indoor" are visible from another property then, they are actually

“outdoor lighting” and subject to this article. All luminaries under skylights or other translucent roofing materials are subject to this article just as the fixtures behind the window are in this example.

**Sec. 26-282. – Violations; penalty.**

- (a) A person who violates any provision of this article commits an offense.
- (b) An offense under this article is punishable by a fine not to exceed \$2,000.00.
- (c) A separate offense occurs each day or part of a day that the violation is committed, continued, or permitted.
- (d) The remedies and procedures in this section and in other laws are cumulative law, and the use of any particular remedy or procedure does not prevent the application or enforcement of any other law.”

**SECTION TWO.** The City Secretary is authorized and directed to submit this Ordinance to the publisher of the City’s Code of Ordinances and the publisher is authorized to amend said Code to reflect the provisions adopted herein and to correct typographical errors and to index, format, and number and letter paragraphs to the existing Code as appropriate.

**SECTION THREE.** The provisions of this Ordinance are cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances inconsistent with or in conflict with any of the provisions of this Ordinance are expressly repealed to the extent of any such inconsistency or conflict.

**SECTION FOUR.** If any section, subsection, sentence, clause or phrase of this Ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this Ordinance. The City Council declares that it would have passed this Ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

**SECTION FIVE.** Pursuant to Texas Local Government Code §52.013(a) and Section 3.07 of the City’s Charter, the City Secretary is hereby authorized and directed to publish the descriptive caption of this Ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

**SECTION SIX.** This Ordinance shall become effective immediately upon the expiration of ten days following publication, as provided for by Section 3.07 of the

City Charter.

PASSED AND APPROVED ON FIRST READING, this the 10 day of January, A.D., 2023.

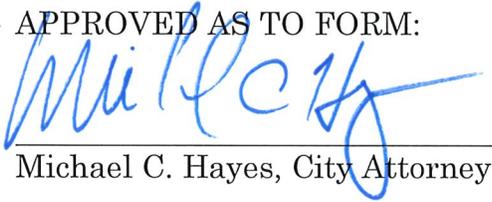
PASSED AND APPROVED ON SECOND AND FINAL READING, this the \_\_\_\_ of \_\_\_\_\_, A.D., 2023.

\_\_\_\_\_  
Judy Eychner, Mayor

ATTEST:

\_\_\_\_\_  
Shelley McElhannon, City Secretary

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Michael C. Hayes, City Attorney



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

**SUBJECT:** Ordinance No. 2023-04, second reading. An Ordinance closing, abandoning, and vacating all right, title, and interest in a public right-of-way, consisting of an unimproved, unopened portion of West St. that exists between the properties addressed as 620 and 704 Junction Highway (SH 27); said right-of-way out of the Westland Place Addition, a Subdivision within the City of Kerrville, Kerr County, Texas, pursuant to the plat recorded in Volume 1, Page 26 of the Plat Records of Kerr County, Texas and corresponding filed notes; and, located within the City of Kerrville, Texas; finding that said portion is not required for future use as a public street; ordering recording; providing an effective date; and providing other matters related to this subject.

**AGENDA DATE OF:** January 24, 2023      **DATE SUBMITTED:** January 11, 2023

**SUBMITTED BY:** Stuart Barron, Director of Public Works

**EXHIBITS:**

<b>Expenditure Required:</b>	<b>Remaining Budget Balance in Account:</b>	<b>Amount Budgeted:</b>	<b>Account Number:</b>
N/A	N/A	N/A	N/A

**PAYMENT TO BE MADE TO:** N/A

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

**SUMMARY STATEMENT:**

As part of the Knapp Road Wastewater Project the City of Kerrville needs to acquire a wastewater easement from Randall Boeselt, the property owner at 704 Junction Hwy. Mr. Boeselt has agreed to an easement exchange. He will dedicate a wastewater easement and expend the drainage easement thought a portion of his property, if the City abandons a portion of West Street right of way.

If the City abandons a portion of West Street ROW Mr. Boeselt could expand the existing driveway around his building. The additional space would allow one full lane of drive through traffic and the necessary space for the mandatory fire lane, helping increase the viability of his commercial property. Future parking would also be allowed in the easement as long as any future improvements do not impede drainage or negatively affect the City's use of our easements.

The properties to be exchanged are similar in size and suspected value.

On January 10, 2023, City Council approved Ordinance No. 2023-04 on first reading, with a 4-1 vote.

**RECOMMENDED ACTION:**

Approve Ordinance No. 2023-04 on second reading, and authorize the City Manager to complete any and all necessary actions to finalize the property/easement exchange.

**ATTACHMENTS:**

[\*20230124 Ord 2023-04 Vacating portion of West St 2nd.pdf\*](#)

**CITY OF KERRVILLE, TEXAS  
ORDINANCE NO. 2023-04**

**AN ORDINANCE CLOSING, ABANDONING, AND VACATING ALL RIGHT, TITLE, AND INTEREST IN A PUBLIC RIGHT-OF-WAY, CONSISTING OF AN UNIMPROVED, UNOPENED PORTION OF WEST ST. THAT EXISTS BETWEEN THE PROPERTIES ADDRESSED AS 620 AND 704 JUNCTION HIGHWAY (SH 27); SAID RIGHT-OF-WAY OUT OF THE WESTLAND PLACE ADDITION, A SUBDIVISION WITHIN THE CITY OF KERRVILLE, KERR COUNTY, TEXAS, PURSUANT TO THE PLAT RECORDED IN VOLUME 1, PAGE 26 OF THE PLAT RECORDS OF KERR COUNTY, TEXAS AND CORRESPONDING FIELD NOTES; AND, LOCATED WITHIN THE CITY OF KERRVILLE, TEXAS; FINDING THAT SAID PORTION IS NOT REQUIRED FOR FUTURE USE AS A PUBLIC STREET; ORDERING RECORDING; PROVIDING AN EFFECTIVE DATE; AND PROVIDING OTHER MATTERS RELATED TO THIS SUBJECT**

**WHEREAS**, West Street, as located within the City of Kerrville, Texas, was created by plat and corresponding field notes on or about March 12, 1926, which documents were then filed within the property records of Kerr County, Texas (Vol. 1, Page 26 and Vol. 45, Page 335); and

**WHEREAS**, an unimproved and unopened portion of West Street exists between Lois Street and Junction Highway (SH 27), which is neither improved nor marked in any way; and

**WHEREAS**, West Street, as it exists in this location, has not been and is no longer required for public use as the City has no plans to improve, open, or maintain it as a public right-of-way; and

**WHEREAS**, a portion of West Street exists between the properties addressed as 704 and 620 Junction Highway (SH 27) (the "Right-of-Way Segment"); and

**WHEREAS**, the adjacent property owner to the west of this Right-of-Way Segment (704 Junction Highway) has plans for the continued use and the additional development of his property ("Owner"), and has asked the City to abandon, vacate, and thereafter convey such segment to him which will enable the additional development; and

**WHEREAS**, the Right-of-Way Segment requested to be abandoned and vacated is unimproved; will not be needed as a future public right-of-way; would require the expenditure of funds to improve; and even if improved, may pose safety hazards as to its use and travel between Lois Street and Junction Highway; and

**WHEREAS**, City staff recommends that the City formally close, abandon, vacate and thereafter convey the Right-of-Way Segment, subject to terms of this Ordinance; and

**WHEREAS**, the City of Kerrville, Texas, is a home-rule city acting under its charter adopted by the electorate pursuant to Article XI, Section 5 of the of the Texas Constitution and Chapter 9 of the Texas Local Government Code; and

**WHEREAS**, Section 311.007 of the Texas Transportation Code authorizes any such city to abandon, vacate, or close any street or alley; and

**WHEREAS**, pursuant to Section 253.001 of the Texas Local Government Code, Council must adopt an ordinance directing the City Manager, upon closure, abandonment, and vacation, to execute a conveyance of the Right-of-Way Segment; and

**WHEREAS**, the Right-of-Way Segment was created by plat and accompanying field notes and as such, the rights vacated, abandoned, and closed by the City pursuant to this Ordinance will allow the City to convey fee ownership of the segment to the adjacent property (lot) owners, as appropriate; and

**WHEREAS**, City Council held an open meeting beginning at approximately 6:00 p.m. on January 10, 2023, as advertised, to consider public comments regarding the issue of closure, abandonment, and vacation of the Right-of-Way Segment; and

**WHEREAS**, pursuant to the actions contemplated to be taken below and in order to avoid any cost to the public required with respect to the future improvement and maintenance of the Right-of-Way Segment, City Council, acting pursuant to state law and to facilitate the additional development and use of property and avoid unnecessary costs and safety issues with respect to improving the Right-of-Way Segment, finds it to be in the public interest and advisable to close, abandon, vacate, and convey the Right-of-Way Segment, subject to the limitations and conditions which follow;

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

**SECTION ONE.** The facts and matters set forth in the preamble to this Ordinance are hereby found to be true and correct.

**SECTION TWO.** City Council finds that the Right-of-Way Segment is no longer essential to the safe and efficient flow of traffic. As an exercise of its discretion, City Council hereby closes, abandons, and vacates all of the City’s right, title, and interest of the public in and to the Right-of-Way Segment, which is identified as follows, subject however, to the conditions and restrictions provided below:

**That portion of an unimproved public right-of-way as it continues southwest from its intersection with the properties addressed as 704 and 620 Junction Highway (SH 27) to its intersection with Junction Highway (SH 27), and being more specifically described and depicted in Exhibit A, attached hereto and incorporated herein by reference.**

The vacation, abandonment, and closure does not extend to any portion of West Street not described in **Exhibit A**.

**SECTION THREE.** The Right-of-Way Segment exists by virtue of a subdivision plat recorded at Volume 1, Page 26 of the Plat Records of Kerr County, Texas; along with corresponding Field Notes recorded at Volume 45, Page 335 of the Real Property Records of Kerr County, Texas. Pursuant to these records, the Right-of-Way Segment exists as a fee simple interest.

**SECTION FOUR.** The property abutting the Right-of-Way Segment is:

**620 Junction Highway, Kerrville, TX 78028**

**704 Junction Highway, Kerrville, TX 78028**

The listing above is made solely to facilitate indexing this Ordinance in the Real Property Records of Kerr County, Texas. If the listing is inaccurate or not comprehensive, it does not affect the validity of this Ordinance or the closure, abandonment, vacation, and conveyance of the Right-of-Way Segment.

**SECTION FIVE.** The City shall convey the Right of Way Segment to the owner(s) of the adjacent property(s) subject to the limitations and conditions found in Sections Six and Seven respectively, and the following:

a) the City shall obtain an appraisal as to the value of the Right-of-Way Segment based upon its fee simple interest. Such appraisal will take into account existing property interests burdening and limiting the use of the segment as referenced in Section Six, such interests depicted in **Exhibit B**.

b) in reviewing the appraisal, City staff shall also take into account the City's request to increase the area and purpose(s) of the existing interests referenced in Section Six, such request to be made to the property owner(s).

c) The City Attorney is authorized to draft the appropriate deed and any other documents for such purposes. The conveyance instrument(s) shall account for the City's reservation and expansion of property interests for its existing and future public utility lines and drainage facility along with restricting above-ground improvements and uses in ways to protect those interests.

d) Prior to the City's closure, abandonment, vacation, and conveyance of the Right-of-Way Segment, City staff shall account for the value of the interest, to include 1) the appraisal and its cost to obtain; 2) the configuration of the segment which is narrow and because of its shape and small area cannot be used independently under current zoning or under applicable subdivision or other development control ordinances; 3) the City's existing utilities which will remain within the segment and which the appraisal may account for; 4) the adjacent owner(s) conveyance of additional property (an easement, to include a property description obtained by the owner(s)) to account for an expansion of that area and use).

e) the conveyance(s) shall comply with state law which may include an appropriate payment from the adjacent property owner(s).

f) City staff will summarize the transaction(s) in writing and provide such summary to Council.

**SECTION SIX.** All presently existing water and wastewater lines and facilities, electric transmission and distribution lines and facilities, gas lines and facilities, communication lines and facilities, or any other public utility lines and facilities within the Right-of-Way Segment may remain in place despite this Ordinance and may continue to be used, repaired, enlarged, and maintained. Any person wanting removal of an existing utility line or facility must negotiate separately with the pertinent utility. Any person building on the Right-of-Way Segment without first reaching an agreement with a utility having a line(s) or facility(s) within the segment does so at its own risk. Upon the effective date of this Ordinance, no utility may add additional utility lines or facilities within the Right-of-Way Segment based on a claim that the Right-of-Way Segment is a public (street or alley) right-of-way. This closure does not give up any right arising other than from the plat and field notes creating the Right-of-Way Segment.

**SECTION SEVEN.** Within 12 months of the adoption of this Ordinance and pursuant to the City's Subdivision Code, any owner(s) adjacent to the Right-of-Way segment who acquires any portion of the segment shall submit, obtain approval, and officially record a subdivision plat(s) absorbing all of the abandoned Right-of-Way Segment or a proportionate amount thereof that the owner(s) has acquired, into the adjacent lot(s) and reconfiguration of said lot(s), meeting all requirements of the City's regulations. No plat will impair the rights retained by City pursuant to Section Six, above, unless in the course of platting, the owner(s), at its own expense, otherwise provides for those rights according to platting rules of general applicability. Further, the plat(s) shall note such previously established rights. Finally, the plat(s) shall reaffirm, convey, or cite the previous reservations and conveyances of a water and wastewater easement and drainage easement to the City to account for the existing main(s) and drainage facilities located within the Right-of-Way Segment, in a width not be less than twenty feet (20.0') and otherwise in compliance with the City's regulations. Such configuration is depicted in **Exhibit C**, but will be located with greater specificity in accordance with state law within the plat(s) or equivalent instrument(s).

**SECTION EIGHT.** The City Secretary is authorized and directed to prepare a certified copy of this Ordinance and furnish the same to abutting property owners, and in addition, record this closure, abandonment, and vacation Ordinance in the Real Property Records of Kerr County, Texas of all the right, title, or interest of the City in and to the Right-of-Way Segment, but only to that interest that City Council may lawfully close, abandon, and vacate, and subject to the limitations and conditions of this Ordinance.

**SECTION NINE.** The City Manager and City Attorney are authorized and directed to execute and deliver any document(s) and to take any action(s) necessary to complete the closure, abandonment, vacation, and conveyance.

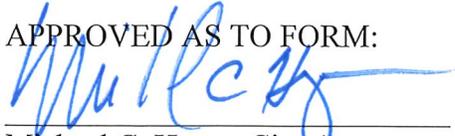
**SECTION TEN.** This Ordinance shall become effective immediately after its second reading and final passage.

PASSED AND APPROVED ON FIRST READING, this the \_\_\_\_\_ day of \_\_\_\_\_, A.D., 2023.

PASSED AND APPROVED ON SECOND AND FINAL READING, this the \_\_\_\_\_ day of \_\_\_\_\_, A.D., 2023.

\_\_\_\_\_  
Judy Eychner, Mayor

APPROVED AS TO FORM:



\_\_\_\_\_  
Michael C. Hayes, City Attorney

ATTEST:

\_\_\_\_\_  
Shelley McElhannon, City Secretary

FIELD NOTES DESCRIPTION FOR 0.21 ACRE OF AN  
UNOPENED SECTION OF WEST STREET IN THE CITY OF  
KERRVILLE, KERR COUNTY, TEXAS

Being all of a certain tract or parcel of land out of Walter Fosgate Survey No. 120, Abstract No. 138, in the City of Kerrville, Kerr County, Texas; comprising part of an unopened section of West Street adjacent to Lot No. 2, Block 49, of Westland Place, a subdivision of record in Volume 1 at Page 26A of the Plat Records of Kerr County, Texas; and being more particularly described by metes and bounds as follows (record calls shown in parentheses):

BEGINNING at a ½" iron stake found at the south corner of said Lot No. 2 at the intersection with the northwest right-of-way line of said West Street, a reentrant corner of Lot No. 2-B of the Del Norte Addition Two, the replat of which is recorded in Volume 7 at Page 253 of the Plat Records of Kerr County, Texas;

THENCE, with the northwest right-of-way line of said West Street, the southeast line of said Lot No. 2, also being the southeast line of said Lot No. 2-B, N.44°53'35"E. 137.18 ft. (N.45°00'00"E. 137.01 ft.) to a ½" iron stake found at the most easterly corner of said Lot No. 2-B for the north corner of the herein described tract;

THENCE, upon, over and across said West Street, S.45°09'31"E. 50.00 ft. to a ½" iron stake set for the east corner of the herein described tract in the southeast right-of-way line of said West Street, the northwest line of Lot No. 1, Block 39, of said Westland Place;

THENCE, with the southeast right-of-way line of said West Street, S.44°53'35"W., with the northwest line of said Lot No. 1, at approximately 137 ft. passing its west corner, the northwesterly terminus of the northeast right-of-way line of an unopened part of Lucile Street, then with the northwest end of said Lucile Street, at approximately 177 ft. passing the northwesterly terminus of the southwest right-of-way line of said Lucile Street, the north corner of Lot No. 11, Block 38, then with the northwest line of said Lot No. 11 for a total distance of 204.38 ft. to a ½" iron stake set for the south corner of the herein described tract in the northeast right-of-way line of State Highway No. 27, Junction Highway;

THENCE, with the northeast right-of-way line of said State Highway No. 27, upon, over and across said West Street, N.60°12'52"W. 32.92 ft. to a ½" iron stake found in the northwest right-of-way line of said West Street, the south corner of said Lot No. 2-B of the Del Norte Addition Two;

THENCE, with the northwest right-of-way line of said West Street, the southeast line of said Lot No. 2-B: N.45°05'03"E. 76.00 ft. (N.45°08'00"E. 75.48 ft.) to a ½" iron stake found at an easterly corner of said Lot No. 2-B; and N.45°54'37"W. 18.47 ft. (N.45°47'04"W. 18.35 ft.) to the PLACE OF BEGINNING containing 0.21 acre of land, more or less, within these metes and bounds. Note: All set ½" iron stakes marked with red plastic cap inscribed with "VOELKEL SURVEYING".

Page 2 – 0.21 Acre of the “Unopened” part of West Street in the  
City of Kerrville, Kerr County, Texas

I hereby certify that these field notes and accompanying plat are  
accurate descriptions of the property contained therein as  
determined by a survey made on the ground under my direction  
and supervision, and that all property corners are marked as  
stated. (Bearing basis = True north based on GPS observations)

Date surveyed: July 3 & September 10, 2019; December 7, 2022

Dated this 7<sup>th</sup> day of December, 2022

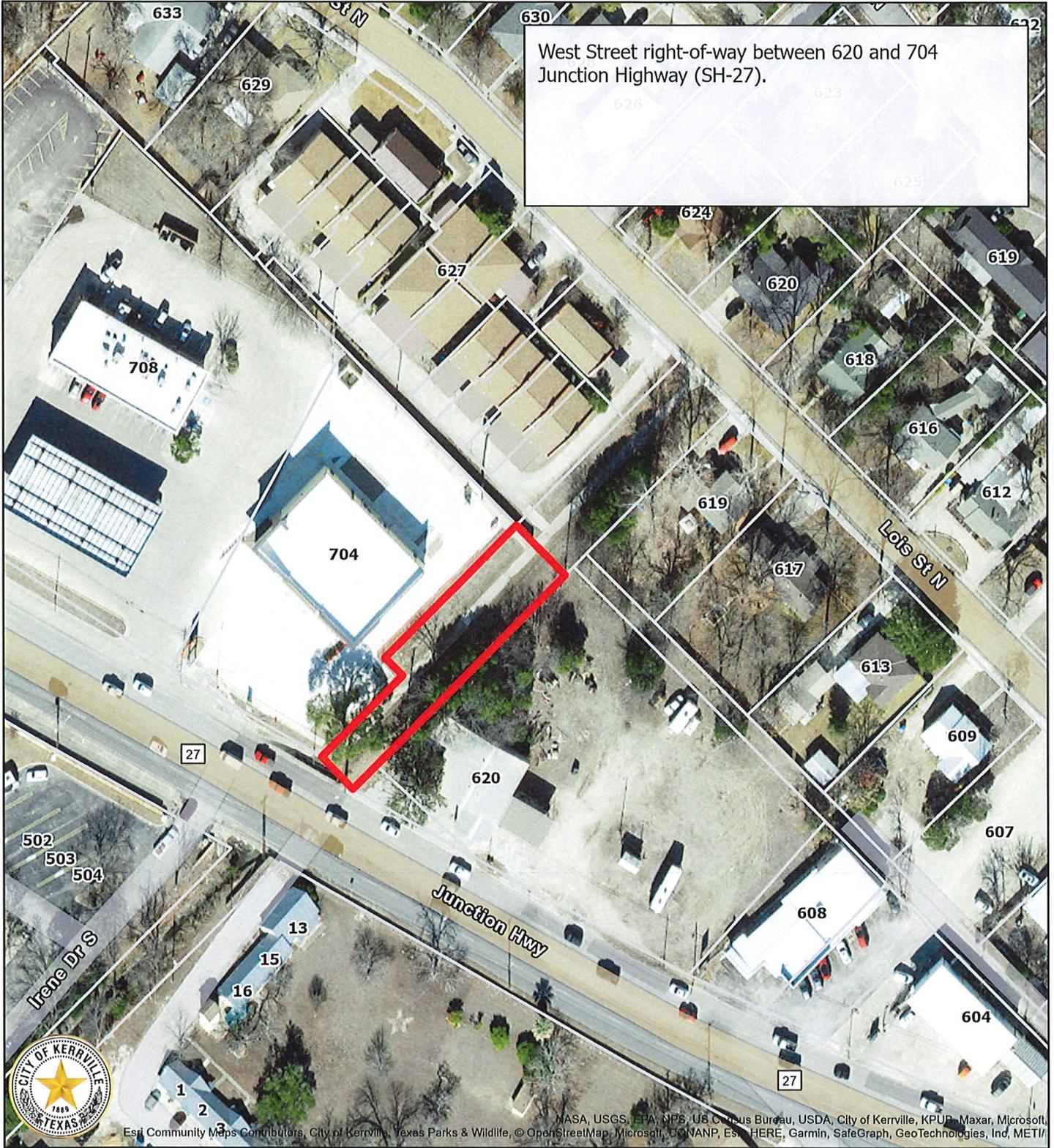


Don W. Voelkel  
Registered Professional Land Surveyor No. 3990

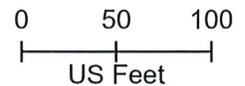




# EXHIBIT A



-  Tax Parcel
-  Site Address Point
-  West Street Right-of-Way



01/18/2023 03:56 PM

joyoung

This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only approximate relative locations.



## Exhibit C



Red area (25.0' width) is the Right-of-Way Segment within which the City will reserve a general utility and drainage easement. The yellow area is property currently owned by the owner of 704 Junction Highway. The owner will grant the City a general utility and drainage easement for this area.



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

**SUBJECT:** Ordinance No. 2023-05, second reading. An Ordinance amending Ordinance No. 2022-26 and the Ad Valorem Tax for the use and support of the municipal government for the City of Kerrville, Texas, for Fiscal Year 2023.

**AGENDA DATE OF:** January 24, 2023      **DATE SUBMITTED:** January 4, 2023

**SUBMITTED BY:** Julie Behrens , Director of Finance

**EXHIBITS:**

<b>Expenditure Required:</b>	<b>Remaining Budget Balance in Account:</b>	<b>Amount Budgeted:</b>	<b>Account Number:</b>
NA	NA	NA	NA

**PAYMENT TO BE MADE TO:** NA

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

**SUMMARY STATEMENT:**

The City published a notice of public hearing on the proposed property tax rate of \$0.5752 per \$100 of taxable property valuation upon filing the FY2023 Proposed Budget.

The FY2023 Proposed Budget that was presented to Council on August 9, 2022, included a proposed rate of \$0.5752. This rate was proposed based on the estimated debt rate of \$0.1411, which increased due to the voter approved bond issuance for the construction of the new Public Safety Facility, plus the M & O rate for the operation of the General Fund. The ordinance included in the council agenda included a property tax rate of \$0.5752.

Sub-sequentially, Council approved the overall property tax rate of \$0.5750, which included the \$0.0002 reduction to the debt portion of the tax rate.

The day of the council meeting, staff received notification that the bond interest rate was *slightly* less than anticipated, which would allow for a \$0.0002 reduction in the debt portion of the tax rate.

Even though the overall impact to the debt fund for FY2023 was very small (on average \$0.56 per homeowner) the intention was to show a good faith effort to collect only what was

needed to pay additional debt.

Staff discovered that the property tax rate ordinance amended to \$0.5750 was not submitted to the Tax Assessor / Collector for billing. Instead, the original ordinance with a rate of \$0.5752 was submitted and the rate of \$0.5752 was used to generate property tax statements, which were issued in late 2022.

The total excess collections to the debt fund using \$0.5752 instead of \$0.5750 (assuming 100% of taxes are collected) will be \$4,156 on a total budget of \$15.2M.

Staff consulted with the City Attorney, the Tax Assessor / Collector's Tax Collection Attorney, an attorney at TML, and Bond Council to determine legal solutions. It was determined that there were two options to correct this error.

**Option #1:** (Staff recommendation) Amend the tax rate to adopt \$0.5752 as originally presented and publicized:

If collections are 100% (City's average collection is 98%), the debt fund would show an excess collection in FY2023 of \$4,156 which would be reported as "excess collections" when calculating the debt rate for FY2024. Each year, as part of the tax rate calculation process, staff provides debt information to the Tax Assessor / Collector, including any excess collections. Excess collections occur for a variety of reasons but typically occur when taxes are collected from prior years. The excess collections are subtracted from the amount needed to pay debt, which can adjust the debt rate (depending on the materiality) in subsequent years. Keep in mind, it is acceptable to retain enough fund balance in the debt fund to pay one year of debt payments as a safeguard in the event the City fails to collect enough tax to cover the debt.

**Option #2:** Adjust the records of the Tax Assessor / Collector to the adopted rate of \$0.5750. If this scenario is used, the following adjustment would be required, by law:

1. New bills generated to taxpayers who have not yet paid their property taxes (as of Feb 1)
2. Issue a refund check to every taxpayer who already paid their taxes who are entitled to a refund.(Note: average homeowner will over pay by \$0.56)
3. Hard costs for this would be approximately \$9,000 (printing, postage, check stock, notices, etc.) as well as the potential for stale date checks, given the small amount of the refund.

**Staff recommends Option 1 based on:**

1. The immateriality of the amount: Total Property Tax Budget: \$15.2M. Impact at 100% collections: \$4,156=0.027%
2. The \$4,156 (if 100% is collected) will all be held in the debt fund (not used for M & O)
3. Excess collections will be reported during the FY2024 debt rate calculation process
4. It would cost twice as much as the amount of excess collections to issue new statements and refunds.
5. Refund for \$100K home value = \$0.20 Refund for \$250K home value = \$0.50
6. This would likely create a large number of uncashed checks that the Tax Assessor would have to hold for 3 years prior to sending to the Comptroller
7. Each refund will cost approximately \$1.00 to process & mail

8. No impact to frozen or exempt owners – approximately 3,400 accounts

On January 10, 2023, City Council approved Ordinance No. 2023-05 on first reading, with a 4-1 vote.

**RECOMMENDED ACTION:**

Approve Ordinance No. 2023-05 on second reading.

**ATTACHMENTS:**

[\*20230124 Ord 2023-05 Amend Ad Valorem Tax FY23 2nd.pdf\*](#)

**CITY OF KERRVILLE, TEXAS  
ORDINANCE NO. 2023-05**

**AN ORDINANCE AMENDING ORDINANCE NO. 2022-26 AND  
THE AD VALOREM TAX FOR THE USE AND THE SUPPORT OF  
THE MUNICIPAL GOVERNMENT FOR THE CITY OF  
KERRVILLE, TEXAS, FOR FISCAL YEAR 2023**

WHEREAS, City Council, through its adoption of Ordinance No. 2022-26, previously adopted the City's tax rate for Fiscal Year 2023;

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

SECTION ONE. Section One of Ordinance No. 2022-26 is amended to increase the City's ad valorem tax rate by 0.0002 so that such rate is now **\$0.5752** for the Fiscal Year 2023.

SECTION TWO. Section Five of Ordinance No. 2022-26 is amended in its entirety to replace its language with the following:

**“SECTION FIVE. THIS TAX RATE WILL RAISE  
MORE TAXES FOR MAINTENANCE AND  
OPERATIONS THAN LAST YEAR'S TAX RATE. THE  
TAX RATE WILL EFFECTIVELY BE RAISED BY 12.94%  
AND WILL RAISE TAXES FOR MAINTENANCE AND  
OPERATIONS ON A \$100,000 HOME BY  
APPROXIMATELY \$65.90. (Tx. Tax Code, Section 26.05)”**

SECTION THREE. Other than the amendments provided here, no other changes are made to Ordinance No. 2022-26.

**FIRST READING:**

**[MOTION TO STATE AS FOLLOWS: *Motion to approve Ordinance No. 2023-\_\_\_ and that the property tax rate be increased by the adoption of a tax rate of \$0.5752, which is effectively a 12.94% percent increase in the tax rate. (Tx. Tax Code, Section 26.05)*]**

City Secretary to take record vote as follows:

	YES	NO
Judy Eychner, Mayor	<u>X</u>	<u>      </u>
Roman Garcia, Place 1	<u>      </u>	<u>X</u>
Kim Clarkson, Place 2	<u>X</u>	<u>      </u>
Joe Herring, Jr., Place 3	<u>X</u>	<u>      </u>
Brenda Hughes, Place 4	<u>X</u>	<u>      </u>

January PASSED AND APPROVED ON FIRST READING, this the 10 day of \_\_\_\_\_, A.D., 2023.

SECOND READING:

[MOTION TO STATE AS FOLLOWS: *Motion to approve Ordinance No. 2023-\_\_ and that the property tax rate be increased by the adoption of a tax rate of \$0.5752, which is effectively a 12.94% percent increase in the tax rate.*]

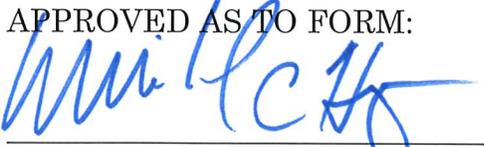
City Secretary to take record vote as follows:

	YES	NO
Judy Eychner, Mayor	<u>      </u>	<u>      </u>
Roman Garcia, Place 1	<u>      </u>	<u>      </u>
Kim Clarkson, Place 2	<u>      </u>	<u>      </u>
Joe Herring, Jr., Place 3	<u>      </u>	<u>      </u>
Brenda Hughes, Place 4	<u>      </u>	<u>      </u>

PASSED AND APPROVED ON SECOND AND FINAL READING, this the \_\_\_\_\_ day of \_\_\_\_\_, A.D., 2023.

\_\_\_\_\_  
Judy Eychner, Mayor

APPROVED AS TO FORM:

  
Michael C. Hayes, City Attorney

ATTEST:

\_\_\_\_\_  
Shelley McElhannon, City Secretary



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

**SUBJECT:** Resolution No. 06-2023. A Resolution expressing official intent to reimburse certain project costs from obligations to be issued by the City of Kerrville, Texas, authorizing certain consultants to prepare documents and take actions necessary in relation to the issuance of such obligations; and authorizing other matters related thereto.

**AGENDA DATE OF:** January 24, 2023      **DATE SUBMITTED:** January 17, 2023

**SUBMITTED BY:** Julie Behrens , Director of Finance

**EXHIBITS:**

<b>Expenditure Required:</b>	<b>Remaining Budget Balance in Account:</b>	<b>Amount Budgeted:</b>	<b>Account Number:</b>
NA	NA	NA	NA

**PAYMENT TO BE MADE TO:**      NA

<b>Kerrville 2050 Item?</b>	Yes
<b>Key Priority Area</b>	W - Water / Waste-Water / Drainage
<b>Guiding Principle</b>	N/A
<b>Action Item</b>	N/A

**SUMMARY STATEMENT:**

The City Council was briefed on January 17, 2023 in regards to the prioritization of near-term Water and Wastewater System utility projects coming out of the recent Water/Wastewater Master Plan. In addition, the City Council was also briefed on the existing utility system debt capacity and the forecast for future debt to be paid off, as well as the potential issuance of Revenue Bonds in Spring 2023 to fund near-term utility system infrastructure projects. Two such projects are on the January 24th, 2023 City Council Agenda immediately after this proposed Resolution.

Per Council direction, staff prepared a resolution authorizing the City to be reimbursed any expenses incurred for Water-Wastewater projects with proceeds from Revenue Bonds, if Council approves the issuance of such funding. This reimbursement would only apply to those projects to be funded by potential Revenue Bonds. The two utility system projects listed as Items 6B and 6C on this Agenda are contingent upon funding from Revenue Bonds, and the intent of the City Council to reimburse any funds utilized to initiate those projects with the eventual funding from Revenue Bonds.

**RECOMMENDED ACTION:**

Approve Resolution No. 06-2023.

**CITY OF KERRVILLE, TEXAS  
RESOLUTION NO. 06-2023**

**A RESOLUTION EXPRESSING OFFICIAL INTENT TO REIMBURSE CERTAIN PROJECT COSTS FROM OBLIGATIONS TO BE ISSUED BY THE CITY OF KERRVILLE, TEXAS, AUTHORIZING CERTAIN CONSULTANTS TO PREPARE DOCUMENTS AND TAKE ACTIONS NECESSARY IN RELATION TO THE ISSUANCE OF SUCH OBLIGATIONS; AND AUTHORIZING OTHER MATTERS RELATED THERETO**

**WHEREAS**, the City Council of the City of Kerrville, Texas (the "City") deems it necessary and appropriate to issue a series of revenue bonds to finance improvements to the City's water and wastewater system (the "Projects"); and

**WHEREAS**, in relation thereto, the City deems it advisable to engage its financial advisor (Hilltop Securities, Inc.) and Bond Counsel (McCall, Parkhurst & Horton, L.L.P.) to advise the City, prepare necessary documentation, and take any other actions deemed necessary in relation to the issuance of said revenue bonds; and

**WHEREAS**, the City expects that it will pay expenditures in connection with the Projects prior to the issuance of obligations to finance the Projects; and

**WHEREAS**, the City finds, considers, and declares that the reimbursement of the City for the payment of such expenditures will be appropriate and consistent with the lawful objectives of the City and, as such, chooses to declare its intention, in accordance with the provisions of Section 1.150-2 of the Treasury Regulations, to reimburse itself for such payments at such time as it issues obligations to finance the Projects; and

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

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

**SECTION ONE. EXPECTATION TO INCUR DEBT.** The City reasonably expects to incur debt, as one or more series of obligations, with an aggregate maximum principal amount not to exceed \$12,500,000, the proceeds of which are expected to be used for the purpose of paying the costs of the Projects.

**SECTION TWO. REIMBURSEMENT OF PRIOR EXPENDITURES.** All costs to be reimbursed pursuant hereto will be capital expenditures within the meaning of Section 1.150-2 of the Treasury Regulations. No tax-exempt obligations will be issued by the City in furtherance of this Resolution after a date which is later than 18 months after the later of (1) the date the expenditures are paid, or (2) the date on which the property, with respect to which such expenditures were made, is placed in service.

**SECTION THREE. THREE-YEAR LIMITATION FOR REIMBURSEMENT.** The foregoing notwithstanding, no tax-exempt obligation will be issued pursuant to this Resolution more than three years after the date any expenditure which is to be reimbursed is paid.

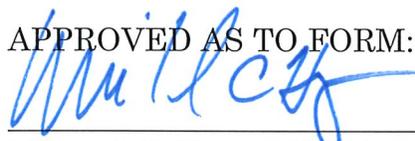
**SECTION FOUR. ENGAGEMENT OF CONSULTANTS.** The City's financial advisor (Hilltop Securities, Inc.) and bond counsel (McCall, Parkhurst & Horton, L.L.P.) are hereby authorized to prepare all documents and take any action necessary in relation to the issuance of the revenue bonds expected to be issued to finance the Projects.

**SECTION FIVE. PUBLIC RECORD.** The City Council directs that this Resolution shall be maintained as a public record available for inspection by all persons in accordance with the provisions of Chapter 552, Texas Government Code.

**PASSED AND APPROVED ON this the \_\_\_\_\_ day of \_\_\_\_\_, A.D., 2023.**

\_\_\_\_\_  
Judy Eychner, Mayor

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Michael C. Hayes, City Attorney

ATTEST:

\_\_\_\_\_  
Shelley McElhannon, City Clerk



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

**SUBJECT:** Construction Agreement with M&C Fonseca Construction Co., Inc. for Water Street Water Main Replacement project in the amount of \$314,667.50.

**AGENDA DATE OF:** January 24, 2023      **DATE SUBMITTED:** January 17, 2023

**SUBMITTED BY:** Kyle Burow, Director Engineering

**EXHIBITS:**

<b>Expenditure Required:</b>	<b>Remaining Budget Balance in Account:</b>	<b>Amount Budgeted:</b>	<b>Account Number:</b>
\$314,667.50	\$	\$	Project #71-21003

**PAYMENT TO BE MADE TO:** M&C Fonseca Construction Co., Inc.

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

**SUMMARY STATEMENT:**

In 2021, the City consulted Freeland Turk Engineering Group, LLC to provide engineered construction documents for the replacement of the old cast iron water main in Water Street from Washington Street to mid block between "C" and "D" Streets. The project was placed for advertisement, the initial bid opening was held in October 2021. Three bids were received and exceeded the City's budget for construction of the project. City Council rejected all bids from the initial opening in 2021 and provided staff an opportunity to re-scope the project with the City's consultant for future bidding.

In June 2021, the City and its consultant elected to split the project into two packages for bidding with the existing economic challenges. The scope of the project was split into a base bid to replace the existing cast iron water main from Washington Street to Tivy Street and an alternate bid for the replacement of existing cast iron main from Tivy to mid block between "C" and "D" Streets. Additionally, this project was placed on hold until the economy stabilized from the effects of the pandemic and the City's other utility projects were released for bidding to provide an economy of scale in hopes of bringing reduced bid prices for several projects. The project was placed for advertisement, the bid opening was held November 30, 2022 and four bids were received, with M&C Fonseca Construction Co., Inc. as the apparent low bid. Staff evaluated the bid and recommend awarding the base bid for a total contract amount of \$314,667.50.

Funding for this project is contingent upon the City Council's policy direction on item 6A in

this Agenda, and the desire to move forward with Water/Wastewater System Revenue Bonds. The City's standard Construction Agreement can be found in hard copy format in the City Secretary's Office. The full plans and specifications for the project can be found with the City Engineer's Office.

**RECOMMENDED ACTION:**

Authorize the City Manager to finalize and execute a construction contract.

**ATTACHMENTS:**

[20230124\\_Water Street Waterline\\_bid\\_summary.pdf](#)

## APPARENT LOW BIDDERS

### City of Kerrville - Water Street Water Main Replacement

ID: 108-102

Bid Summary	
Engineers Estimate	No Estimate
Total Bids	4
AMLT \$	\$120,652.50
AMLT %	38.34%
Average Bid	\$457,151.88

	Bidder	BASE BID	ALTERNATE 1
1	M & C FONSECA CONSTRUCTION CO.INC <i>Submitted: 11/30/2022 9:49:35 AM</i>	\$314,667.50	\$385,490.00
2	JM Pipeline LLC <i>Submitted: 11/30/2022 11:36:46 AM</i>	\$435,320.00	\$517,140.00
3	Tracker Utility Services <i>Submitted: 11/30/2022 1:17:36 PM</i>	\$446,300.00	\$447,990.00
4	Qro Mex Construction Co. Inc. <i>Submitted: 11/30/2022 1:26:55 PM</i>	\$632,320.00	\$650,785.00

Bids opened at: 11/30/2022 3:00:20 PM



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

**SUBJECT:** Construction Agreement with M&C Fonseca Construction Co., Inc. for the Knapp Lift Station Force and Gravity Main project in the amount of \$4,895,585.00.

**AGENDA DATE OF:** January 24, 2023      **DATE SUBMITTED:** January 17, 2023

**SUBMITTED BY:** Kyle Burow, Director Engineering

**EXHIBITS:**

<b>Expenditure Required:</b>	<b>Remaining Budget Balance in Account:</b>	<b>Amount Budgeted:</b>	<b>Account Number:</b>
\$4,895,585.00	\$3,222,852.90	\$5,600,000.00	Project #71-20008

**PAYMENT TO BE MADE TO:** M&C Fonseca Construction Co., Inc.

<b>Kerrville 2050 Item?</b>	Yes
<b>Key Priority Area</b>	W - Water / Waste-Water / Drainage
<b>Guiding Principle</b>	N/A
<b>Action Item</b>	W5.2 - Enhance KLS basin capacity and improve service reliability

**SUMMARY STATEMENT:**

In 2019, the City explored funding options and was approved for funding assistance with the Texas Water Development Board (TWDB) debt-financing program for the Legion Lift Station project. Per the agreement with TWDB, the City was not required to use the full amount of the loan for the Legion Lift Station project should there be savings on that project after completion. In February 2019, the City contracted with Keystone Construction to construct the Legion lift station and force main to replace the old lift station near the Loop 534 and Highway 27 intersection. The project has been fully completed and the closeout of the project was authorized by the TWDB. The balance of the funding for the Legion Lift Station project, which was primarily funded via a loan program with the Texas Water Development Board (TWDB), must be reallocated to other identified wastewater collection system capital projects.

The City evaluated options to provide additional wastewater service to the western limits of Kerrville identified as Strategic Catalyst Area #4 in the recently adopted Kerrville Comprehensive Plan. Strategic Catalyst Area #4 includes the Village West Industrial Park located partially within Kerrville city limits and the Yogi Bear RV Park expansion located entirely within the Kerrville city limits. The proposed development expansions are located in the Knapp Basin and ultimately are conveyed to the Legion Lift Station before being diverted to the City's Wastewater Treatment Plant. In addition to the Legion Lift Station expansion, this projected flow from Strategic Catalyst Area #4 will also require upgrades to the existing

Knapp Lift Station as well as upsizing of the downstream Knapp Force Main and downstream interceptors leaving Knapp Lift Station. Staff met with Freese & Nichols, Inc. to discuss the scope of the initial improvements for the Knapp lift station to include the design of the force main and the gravity line. In January 2021, City Council reviewed and authorized staff to move forward with requesting the unused TWDB Legion lift station funds to be utilized for the design and construction effort to upgrade the interceptor between the Knapp lift station force main and Jefferson lift station. Staff submitted the Request for Unused Funds to the TWDB in January 2021 and received approval for the remaining funds to be used on the Knapp Lift Station gravity main project.

In March 2021, the City consulted Freese & Nichols, Inc. to provide engineered construction documents for the project. The scope of the project will be to install a force main and gravity sewer main from the Knapp Lift Station near Nimitz Lake to the Jefferson Lift Station near Town Creek. The project was placed for advertisement, the bid opening was held November 30, 2022 and five bids were received, with M&C Fonseca Construction Co., Inc. as the apparent low bid. Staff evaluated the bid and recommends awarding the base bid with the Alternate #8 bid (HDPE in lieu of PVC for force main pipe) for a total contract amount of \$4,895,585.00.

As the remaining funding from the TWDB loan will not cover the balance of the project total, additional funds will be needed, as discussed in the City Council Workshop on January 17, 2023. Funding for this project is contingent upon the City Council's policy direction on item 6A in this Agenda, and the desire to move forward with Water/Wastewater System Revenue Bonds. The City's standard Construction Agreement can be found in hard copy format in the City Secretary's Office. The full plans and specifications for the project can be found with the City Engineer's Office.

**RECOMMENDED ACTION:**

Authorize the City Manager to finalize and execute a construction contract.

**ATTACHMENTS:**

[20220124\\_Knapp LS Force and Gravity Main\\_Bid Summary.pdf](#)



### BID OPENING FORM

<b>Owner:</b> <u>City of Kerrville</u>		<b>Project No.:</b> <u>KER21359</u>	
<b>Project:</b> <u>Knapp Lift Station Force Main and Gravity Main</u>		<b>Date:</b> <u>11-30-22</u>	
<b>Engineer:</b> <u>Freese and Nichols, Inc.</u>			

Name of Bidder	Addenda Rec'd	Bid Bond Attached	Project Completion Date	Base Bid Amount	
JM Pipeline LLC	Yes	Yes	N/A	\$5,388,219.90	
M & C Fonseca Construction Co., Inc.	Yes	Yes	N/A	\$4,864,835.00	
Spieß Construction Co., Inc.	Yes	Yes	N/A	\$7,184,940.00	
Miller Bros.	Yes	Yes	N/A	\$7,698,740.00	
Qro Mex Construction Co., Inc.	Yes	Yes	N/A	\$6,080,740.00	



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

**SUBJECT:** Professional Services Agreement with Hewitt Engineering for the River Trail Downtown Extension in the amount of \$154,500.

**AGENDA DATE OF:** January 24, 2023      **DATE SUBMITTED:** January 13, 2023

**SUBMITTED BY:** Ashlea Boyle, Director Parks & Recreation

**EXHIBITS:**

<b>Expenditure Required:</b>	<b>Remaining Budget Balance in Account:</b>	<b>Amount Budgeted:</b>	<b>Account Number:</b>
\$154,500	N/A	\$1,025,280.00	N/A

**PAYMENT TO BE MADE TO:** Hewitt Engineering Inc.

<b>Kerrville 2050 Item?</b>	Yes
<b>Key Priority Area</b>	P - Parks / Open Space / River Corridor
<b>Guiding Principle</b>	N/A
<b>Action Item</b>	P6.5 - Continue developing a vision/plan and identify funding options to extend the River Trail

**SUMMARY STATEMENT:**

Attached is a design scope between the City of Kerrville and Hewitt Engineering for the design of Phase 1 of the River Trail Downtown Extension in the amount of \$154,500. This cost will be included in the EIC project budget. As a reminder, the City Council approved the funding agreement with the Economic Improvement Corporation for Phase 1 of this extension, including studies for Phase 2, on December 13, 2022. The next step in this process is the approval and execution of the design contract.

Extending the Kerrville River Trail is consistent with several community plans, such as the Kerrville 2050 Comprehensive Plan, the Parks and Recreation Master Plan, the River Trail Master Plan, and the Parks and Recreation Department's goal to encourage the Kerrville community to "Get Outdoors. Be Active. Play.". The downtown extension of the River Trail is the first priority in the Parks Master Plan. The scope, project history, Kerrville 2050 support, and Parks Master Plan support are outlined below.

**Scope**

- Easement / boundary survey plats and topographic surveying along proposed alignment;
- Design of trail plans and specifications in compliance with all building code and TDLR / ADA requirements;
- Determine the locations where site drainage needs to pass under the trail and design

- elevated trail sections to keep drainage off the trail;
- Develop details as needed;
- Environmental due diligence services, including wetlands / jurisdictional waters determination and threatened / endangered species habitat evaluation; and
- Cultural Resources Study, including archaeological literature and records research and archeological field survey.

### **Project History**

- June 26, 2018 - Kerrville 2050 was adopted by Ordinance 2018-13 with strong support of the Kerrville River Trail.
- July 23, 2019 - The Kerrville River Trail Master Plan update was adopted by Resolution No. 27-2019, and includes a downtown extension.
- December 14, 2020 - The EIC held a public hearing and funded a conceptual study to extend the Downtown River Trail along the north side of the Guadalupe River from the Tranquility Island Bridge to G Street.
- May 17, 2021 - Hewitt Engineering presented the finalized concept study report to the EIC. The proposal recommended this Downtown River Trail project be separated into two phases. Initial cost estimates for Phase 1 were originally estimated at \$800,538, based on early 2021 cost estimates.
- August 2022 - Updated construction estimates received show this phase now estimated at \$995,280 with an additional \$25,000-\$30,000 for environmental permitting, for a total of \$1,025,280.
- September 13, 2022 - The Kerrville City Council authorized staff to present a quality of life project funding application for \$1,030,000 to the EIC for Phase 1 of the Downtown River Trail extension, from the Tranquility Island Bridge to the below the Scenic Downtown Overlook Pavilion, along with environmental permitting for all phases of the Downtown River Trail to the G Street Bridge.
- September 19, 2022 - Staff presented the application to the EIC and was directed to prepare a funding agreement and hold a public hearing at their next meeting.
- October 17, 2022 - The EIC held a public hearing and considered the funding agreement. The consensus was to bring the agreement back at the November meeting for further discussion and consideration.
- November 14, 2022 - The EIC considered and approved the funding agreement.
- December 13, 2022 - City Council approved the funding agreement.
- January 24, 2023 - City Council to consider approval of the design contract.

### **Kerrville 2050 Support Relating to the River Trail**

#### **Key Priority Area:**

- D – Downtown Revitalization
- E – Economic Development
- F – Public Facilities and Services Facilities
- P – Parks, Open Space, and River Corridor

#### **Guiding Principles:**

- D2 – Foster a Downtown that tells the community's history / story / lore by preserving and enhancing historic features and a sense of place, celebrating and connecting Downtown to the Guadalupe River and developing a brand and a unified identity for Downtown.
- D4 – Encourage and program Downtown public events and create more gathering places that promote and enhance Downtown as an arts, culture and music center.
- D5 – Promote a walkable, useable, uniform and pedestrian-oriented public space linking Downtown to the surrounding neighborhoods through streetscape elements,

access, connections and crossings.

- E3 – Continue to focus on quality of life attributes and enhancements as a high priority balancing growth with community and individual well-being and the need to preserve a healthy / beautiful environment unique to Kerrville.
- F7 – Be thoughtful when considering land uses and provide facilities and services that promote and enhance local parks, green spaces, and the River Trail.
- P5 – Focus on enhancing / investing in existing parks, their purpose or repurpose and improving accessibility before acquiring land for new parks.
- P6 – Focus on connecting businesses, neighborhoods, major destinations and other amenities with parks, open spaces, and the River corridor.
- P8 – Provide recreational opportunities for people of all ages and abilities, both residents and tourists.

**Action Items:**

- D2.10 – Encourage businesses to focus on the river by building back patios with access to the River Trail and the potential boardwalk.
- D4.14 – Pursue a lighted display along the River Trail, focusing on Tranquility Island first.
- D5.2 – Improve pedestrian and bicycle connections to and across the river, including access to the River Trail from Downtown and to surrounding neighborhoods.
- D5.20 – Consider direct pedestrian access from the River Trail to the sidewalk on Lemos Street.
- D5.16 – Develop a plan to extend the River Trail beyond its current limits.
- E3.2 – Put in place a mid to long range plan to extend the River Trail and add additional segments.
- E3.3 – Seek EIC funding to extend the River Trail further west to the Thompson Drive bridge.
- F7.1 – Establish a long-term plan for each public facility / site to promote and enhance nearby parks, green spaces or trails.
- P5.2 – Explore a variety of options, including bonds, to fund park facility needs and to enhance River Trail connections.
- P6.2 – Add bike and pedestrian safe routes for better access to the River Trail.
- P6.3 – Create a pedestrian / bike connection from SU to the River Trail.
- P6.5 – Continue developing a vision / plan and identify funding options to extend the River Trail.
- P8.6 – Establish lighted Christmas walk along the River Trail.

**Parks and Recreation Master Plan - Trails Section Priorities**

1. Expand the River Trail from G Street to downtown / Library on the northside of the River.
2. Expand the River Trail to the west of Louise Hays Park on the southside of the river.
3. Improve pedestrian access from downtown to LHP by way of Sidney Baker Bridge.
4. Create hike / bike trail along Town Creek - connect to the River Trail; add a North-South hike / bike trail.
5. Add more dog waste stations near trailheads / along trails.

Staff recommends authorizing the City Manager to finalize and execute a Professional Services Agreement to complete the scope of work as presented.

**RECOMMENDED ACTION:**

Authorize the City Manager to finalize and execute the Professional Services Agreement.

**PROFESSIONAL SERVICES AGREEMENT**

**[FIRM: Hewitt Engineering, Inc. | PROJECT-SERVICES: River Trail Downtown Extension]**

**THIS AGREEMENT** is entered into the \_\_\_\_ day of \_\_\_\_\_, 2023 (“Effective Date”), by and between the **CITY OF KERRVILLE, TEXAS** (“CITY”) and **Hewitt Engineering, Inc.** (“CONSULTANT”), and at times, collectively referred to herein as “parties.”

**WHEREAS**, CITY needs to hire CONSULTANT to perform certain work and services set forth in Scope of Services, marked **Exhibit A**, and attached hereto and incorporated herein; and

**WHEREAS**, CONSULTANT agrees to perform said work and services as specified under Article I of this Agreement;

**NOW, THEREFORE**, the parties agree as follows:

**I. CONSULTANT’S SERVICES**

CONSULTANT shall perform and pay for all labor, tools, materials, equipment, supplies, transportation, and management necessary to perform all services set forth in **Exhibit A** and all other professional services reasonably inferable from **Exhibit A** and necessary for complete performance of CONSULTANT’s obligations under this Agreement, collectively referred to herein as “Services.” CITY, at any time, may stop CONSULTANT from performing the Services upon giving CONSULTANT written notice. To the extent of any conflict between the terms of this Agreement and **Exhibit A**, the terms of this Agreement will prevail.

**II. CONSULTANT’S RESPONSIBILITIES**

**A.** CONSULTANT, upon its review of a general description of work required by City, has prepared and provided to CITY the specific Services required to complete such work and the manner in which CONSULTANT will do so, which is attached as **Exhibit A**.

**B.** CONSULTANT shall use skill, judgment, and abilities in performing the Services in an expeditious and timely manner consistent with the applicable professional standards of care. CONSULTANT shall at all times provide sufficient personnel to accomplish the Services in a timely manner. CONSULTANT shall manage the Services and coordinate other professional services as necessary for the complete performance of CONSULTANT’s obligations under this Agreement. CONSULTANT

shall periodically report the status of the Services to CITY as is appropriate to keep CITY informed as to the status of the work.

C. CONSULTANT shall perform the Services in compliance with all applicable federal, state, and municipal laws, to include building codes and accessibility standards (e.g., Americans with Disabilities Act) and with those of any other entity having jurisdiction over the work. In addition, CONSULTANT shall perform the Services in a manner consistent with generally accepted standards for its profession.

D. Plans, drawings, specifications, and/or other reports produced by CONSULTANT (collectively referred to herein as "Design Documents") pursuant to the Services shall be performed in a manner consistent with generally accepted standards for its profession. CONSULTANT shall promptly correct any known or discovered error, omission, or other defect in the Design Documents without any additional cost or expense to CITY and notify of CITY of same; provided CONSULTANT receives written notice from CITY of said deficiencies within twelve (12) months of the date of completion of the CONSULTANT's services.

E. CONSULTANT shall designate a representative primarily responsible for its performance of the Services. The designated representative shall act on behalf of CONSULTANT with respect to all phases of the Services and shall be available as required for the benefit of the CITY. CONSULTANT shall not change the designated representative without prior written approval of CITY, which approval may not be unreasonably withheld.

### **III. CITY'S RESPONSIBILITIES**

A. CITY has provided CONSULTANT with a general description of the work CITY requires.

B. CITY shall furnish surveys, geotechnical reports, or other special investigations or tests, including structural, mechanical, and chemical requested by CONSULTANT and as reasonably necessary for the completion of the Services.

C. CITY shall review the Design Documents and shall notify CONSULTANT of any design fault or defect in the Services or Design Documents of which CITY becomes aware.

D. CITY shall furnish required information and other services and shall render approvals and decisions as expeditiously as necessary for the orderly progress of the Services.

E. CITY designates Kyle Burow, Director of Engineering, (830) 258-1410, as its primary representative authorized to act on its behalf with respect to this Agreement.

If CONSULTANT is unable to reach Kyle Burow, the City designates Ashlea Boyle, Director of Parks and Recreation, (830) 258-1153 as a secondary representative authorized to act on its behalf with respect to this Agreement.

#### IV. PAYMENT

CITY shall compensate CONSULTANT for the Services in the amount and manner described and set forth in the Payment Schedule, attached hereto and incorporated herein as **Exhibit A**. The amount will not exceed **\$154,500.00**.

#### V. TIME FOR PERFORMANCE

CONSULTANT shall commence its work immediately upon the parties' execution of this Agreement and proceed diligently with said work, except for delays beyond the reasonable control of CONSULTANT. The Agreement will terminate upon CONSULTANT's completion and City's acceptance of Services, unless sooner terminated as provided herein.

#### VI. DOCUMENTS

A. CONSULTANT shall submit all Design Documents to CITY for approval. All Design Documents must be professionally sealed as required by law or by CITY.

B. CONSULTANT shall deliver the Design Documents, together with any necessary supporting documents, to CITY and CITY has unlimited rights, for the benefit of CITY, in all Design Documents, including the right to use same on any other work of CITY without additional cost to CITY. If CITY uses the Design Documents on any work of CITY other than that provided by CONSULTANT, then under those circumstances and only to the extent allowed by law, CONSULTANT, its officers, agents, servants, and employees will not be liable for damages or claims arising from any inaccuracy or any use of the Design Documents with respect to such other work, and except where CONSULTANT participates in such other work.

C. Upon receipt of payment by CONSULTANT, CONSULTANT shall grant CITY a royalty-free, perpetual license and right, to survive the termination of this Agreement, to all Design Documents, which CONSULTANT may cover by copyright and to all designs as to which CONSULTANT may assert any rights or establish any claim under the design patent or copyright laws. This license includes CITY's right to use and reproduce these documents as necessary to implement any CITY project, which may require the use of these documents. Further, CONSULTANT acknowledges that CITY is subject to Chapter 552 of the Government Code, commonly known as the "Texas Public Information Act," and hereby waives and releases the CITY from any claims against CITY for providing copies of the Design

Documents in compliance with that Act. CONSULTANT, after completion of the Services, shall immediately furnish originals of all Design Documents to CITY.

D. CONSULTANT shall ensure that all text documents supplied to CITY as provided herein are fully compatible with MS Word and that all drawings are fully compatible with Adobe PDF format.

## VII. TERMINATION

A. CITY or CONSULTANT may suspend or terminate this Agreement for cause or without cause at any time by giving written notice to the other party. In the event suspension or termination is without cause, CITY's payment to CONSULTANT, in accordance with this Agreement, will be made on the basis of the Services reasonably determined by CITY to be satisfactorily performed to date of suspension or termination. In addition, CITY's payment is subject to the CONSULTANT's delivery of all documents and reports reasonably required by CITY, to include Design Documents, invoices, statements, and accounts.

B. Should CITY require a modification to this Agreement, and in the event CITY and CONSULTANT fail to agree upon such modification, either CITY or CONSULTANT have the option of immediately terminating this Agreement. Thereafter, CITY shall pay CONSULTANT in accordance with this Agreement for the Services mutually agreed upon by CITY and CONSULTANT to be properly performed by the CONSULTANT prior to such termination date.

## VIII. INSURANCE

CONSULTANT shall provide and maintain in full force and effect during the term of this Agreement the following types of insurance and liability coverage:

A. Workers Compensation Insurance: in an amount meeting statutory requirements of the State of Texas on all CONSULTANTS' employees carrying out the Services.

B. Automobile Liability Insurance: with either a combined limit of \$1,000,000 per occurrence for bodily injury and property damage or split limits of \$1,000,000 for bodily injury per person per occurrence and \$1,000,000 for property damage per occurrence. Coverage must include all owned, hired, and non-owned motor vehicles used in the performance of this Agreement by CONSULTANT or its employees.

C. General Liability Insurance: on a per occurrence basis with limits of \$1,000,000 for each occurrence and for fire damage and for Bodily Injury and Property Damage, \$1,000,000. Coverage for Premises, Operations, Products, and Completed Operations shall be \$2,000,000. This coverage must protect the public or any person

from injury or property damages sustained by reason of CONSULTANT or its employees providing the Services. The general aggregate must be \$2,000,000.

D. Professional Liability Errors and Omissions Insurance: with limits of \$1,000,000 per occurrence covering all work performed by CONSULTANT, its employees, subcontractors, or independent contractors. If this coverage may only be obtained on a “claims made” basis, the certificate of insurance must clearly state coverage is on a “claims made” basis and coverage must remain in effect for at least two years after final payment with CONSULTANT continuing to furnish the City certificates of insurance.

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

F. Qualifying Insurance: the insurance required by this Agreement must be written by non-assessable insurance company licensed to do business in the State of Texas and currently rated “B” or better by the A.M. Best Companies. With the exception of Professional Liability Errors and Omissions Insurance, all policies must be written on a “per occurrence basis” and not a “claims made” form.

## **IX. INDEMNIFICATION FOR INJURY AND PERFORMANCE**

A. CONSULTANT SHALL INDEMNIFY AND HOLD HARMLESS CITY, ITS OFFICERS AND EMPLOYEES, HEREINAFTER INDIVIDUALLY AND COLLECTIVELY REFERRED TO AS “INDEMNITEE(S),” FROM AND AGAINST LOSSES, LIABILITY, OR DAMAGE OF ANY CHARACTER AND FROM AND AGAINST COSTS AND EXPENSES, INCLUDING, IN PART, ATTORNEY FEES INCIDENTAL TO THE DEFENSE OF SUCH LOSSES, DAMAGES, OR LIABILITY ON ACCOUNT OF INJURY, DISEASE, SICKNESS, INCLUDING DEATH, TO ANY PERSON OR DAMAGE TO PROPERTY INCLUDING, IN PART, THE LOSS OF USE RESULTING THEREFROM OF CONSULTANT, ITS OFFICERS, EMPLOYEES, OR ANYONE ELSE UNDER CONSULTANT’S, DIRECTION AND CONTROL, AND ARISING OUT OF, RESULTING FROM, OR CAUSED BY THE PERFORMANCE OR FAILURE OF PERFORMANCE OF THE SERVICES, OR FROM CONDITIONS CREATED BY THE NEGLIGENT PERFORMANCE OR NON-PERFORMANCE OF SAID WORK.

B. CONSULTANT is not responsible for the actions of the CITY’s contractor to perform the construction of the improvements covered under this Agreement.

C. Acceptance and approval of any work or final plans by CITY neither constitutes nor may be deemed a release of this responsibility and liability of CONSULTANT, its employees, associates, agents, and consultants for the accuracy or competency of their designs, working drawings, and specifications, or other documents and work; nor shall such approval be deemed to be an assumption of such responsibility by CITY for any defect in the Design Documents, or CONSULTANT's employees, contractor, agents, and consultants.

#### **X. INDEMNIFICATION FOR UNEMPLOYMENT COMPENSATION**

CONSULTANT agrees that it is an independent contractor and not an agent of CITY, and that CONSULTANT is subject, as an employer, to all applicable Unemployment Compensation Statutes, so as to relieve CITY of any responsibility or liability from treating CONSULTANT's employees as employees of CITY for the purpose of keeping records, making reports or payments of Unemployment Compensation taxes or contributions. **CONSULTANT SHALL INDEMNIFY AND HOLD CITY HARMLESS AND REIMBURSE IT FOR ANY EXPENSES OR LIABILITY INCURRED UNDER SAID STATUTES IN CONNECTION WITH EMPLOYEES OF CONSULTANT.**

#### **XI. INDEMNIFICATION FOR PERFORMANCE**

**CONSULTANT SHALL DEFEND AND INDEMNIFY INDEMNITEES AGAINST AND HOLD CITY AND THE PREMISES HARMLESS FROM ANY AND ALL CLAIMS, SUITS, OR LIENS BASED UPON OR ALLEGED TO BE BASED UPON THE NON-PAYMENT OF LABOR, TOOLS, MATERIALS, EQUIPMENT, SUPPLIES, TRANSPORTATION, AND MANAGEMENT COSTS INCURRED BY CONSULTANT IN PERFORMING THE SERVICES.**

#### **XII. DEFAULT OF CONSULTANT**

In the event CONSULTANT fails to comply or becomes disabled and unable to comply with this Agreement as to the quality or character of the Services or time of performance, and the failure is not corrected within ten (10) days after written notice from CITY to CONSULTANT, CITY may, at its sole discretion, without prejudice to any other right or remedy:

- A. Terminate this Agreement and be relieved of the payment of any further consideration to CONSULTANT except for all work determined by CITY to be satisfactorily completed prior to termination. Payment for work satisfactorily completed will equal actual costs, including reasonable salaries and travel expenses of CONSULTANT to and from meetings called by CITY at which CONSULTANT is required to attend, but shall not include any loss of profit of CONSULTANT. In the event of such termination, CITY may

complete the services in any manner deemed proper by CITY, either by the use of its own forces or by assigning the work to others. In either event, CONSULTANT is liable for all costs in excess of the total contract price under this Agreement incurred to complete the Services, but in no event shall such expenses exceed 125% of the Contract Price. CITY may deduct the costs CITY incurs out of such monies as may be due or that may thereafter become due to CONSULTANT under this Agreement.

- B. CITY may, without terminating this Agreement or taking over the Services, furnish the necessary materials, equipment, supplies, and/or help necessary to remedy the situation, at the expense of CONSULTANT.

### XIII. MISCELLANEOUS PROVISIONS

A. Entire Agreement. This Agreement supersedes all prior agreements, written or oral, between CITY and CONSULTANT and constitutes the entire and integrated Agreement and understanding between the parties with respect to the subject matter of the Agreement. This Agreement may only be amended by a written instrument signed by both parties.

B. Assignment. This Agreement is a personal service contract for the Services of CONSULTANT and CONSULTANT's interest in this Agreement, duties hereunder, and/or fees due may not be assigned or delegated to a third party without the written consent of CITY. Sale of more than fifty percent (50%) ownership of CONSULTANT will be considered an assignment.

C. Adjustment in Services. CONSULTANT shall not make any claims for extra services, additional services, or changes in the Services without a written agreement with CITY prior to the performance of such services.

D. Applicable Law. This Agreement must be construed, interpreted, and applied in accordance with and governed by and enforced under the laws of the State of Texas without giving effect to principles of conflict of law. Venue will occur in Kerr County, Texas.

E. Waiver. A delay or omission by either party in exercising any right or power under the Agreement may not be construed as a waiver of that right or power. A waiver by either party of any term or condition of the Agreement may not be construed as a waiver of any subsequent breach of that term or condition or of any other term or condition of the Agreement. Further, neither CITY's review, approval, or acceptance of, nor payment for any of the Services may be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement.

F. Severability. If any provision of this Agreement is determined to be invalid or unenforceable in any respect, that determination may not affect any other provision of this Agreement, which will be interpreted as if the invalid or unenforceable provision had not been included.

G. Independent Contractor. CONSULTANT agrees that CONSULTANT is engaged as an independent contractor and that City has no responsibility to provide CONSULTANT or its employees with any benefits associated with employee status. CONSULTANT shall neither hold itself out as nor claim to be an officer, partner, employee, or agent of CITY.

H. Exhibit(s). The following exhibit(s) is attached to this Agreement and are included herein for all purposes:

### **Exhibit A Scope of Services**

I. Execution Becomes Effective. This Agreement is effective as of the Effective Date.

J. Notices and Authority. CONSULTANT shall send all notices required under this Agreement to the City Manager at City Hall, 701 Main Street, Kerrville, TX 78028. CONSULTANT agrees that only the City Manager, or designee, has the authority to represent CITY or bind CITY under this Agreement. CITY shall send all notices required under this Agreement to the CONSULTANT at:

Hewitt Engineering, Inc.  
John Hewitt  
716 Barnett Street  
Kerrville, Texas 78028

K. Prohibition on Contracts with Companies Boycotting Israel. CONSULTANT hereby verifies the following per Section 2271.002, Texas Government Code:

1. CONSULTANT does not boycott Israel; and
2. CONSULTANT will not boycott Israel during the term of the Agreement.

L. Prohibition Against Business with Iran, Sudan, or Foreign Terrorist Organization. CONSULTANT warrants, covenants, and represents that CONSULTANT is not engaged in business with Iran, Sudan, or any company identified on the list referenced in Section 2252.152, Texas Government Code.

M. Prohibition on Contracts with Companies Boycotting Energy Companies. CONSULTANT hereby verifies the following per Section 2274.002, Texas Government Code:

1. CONSULTANT does not boycott energy companies; and
2. CONSULTANT will not boycott energy companies during the term of the Agreement.

N. Written Verification as to Firearm Entities. CONSULTANT hereby verifies the following per Section 2274.002, Texas Government Code:

1. CONSULTANT does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and
2. CONSULTANT will not discriminate against a firearm entity or firearm trade association during the term of the Agreement.

O. Prohibition on Contracts with Companies Related to Certain Countries. Where this Agreement pertains to “critical infrastructure”, as defined by Section 2274.0101, Texas Government Code, CONSULTANT verifies (1) that it is not owned by or the majority of stock or other ownership interest of the company is not held or controlled by: (a) individuals who are citizens of China, Iran, North Korea, Russia, or other designated countries; or (b) a company or other entity, including a governmental entity, that is owned or controlled by citizens of or is directly controlled by the government of China, Iran, North Korea, Russia, or other designated countries; or (2) headquartered in China, Iran, North Korea, Russia, or other designated countries.

M. Dispute Resolution. The Parties shall attempt in good faith to resolve any dispute arising out of or relating to this Agreement promptly by negotiation between executives who have authority to settle the controversy. Any party may give the other party written notice of any dispute not resolved during the normal course of business. Within thirty (30) days after delivery of the initial notice, the executives of both parties shall meet at a mutually acceptable time and place and use good faith efforts to resolve the dispute. In the event that the parties are unable to settle the dispute through direct negotiations as set forth above, all remaining controversies or claims shall then be submitted to mediation within ten (10) days from written notice of concluded negotiations following the Commercial Mediation Rules published by the American Arbitration Association. In the event that the dispute has not been resolved within thirty (30) days following mediation, or such longer period as the parties may agree, either party may initiate formal proceedings against the other party.

N. Consequential Damages Waiver. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, NEITHER CONSULTANT NOR CITY NOR EITHER PARTY'S SUPPLIERS, AGENTS, OFFICERS, AND DIRECTORS SHALL HAVE ANY LIABILITY REGARDLESS OF THE THEORY OF RECOVERY, INCLUDING BREACH OF CONTRACT OR NEGLIGENCE, TO THE OTHER PARTY OR ANY OTHER PERSON OR ENTITY FOR ANY INDIRECT,

INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES, COST OR EXPENSE WHATSOEVER, INCLUDING BUT NOT LIMITED TO LOSS OF REVENUE OR PROFIT, WHETHER ACTUAL OR ANTICIPATED, LOSS OF USE, FAILURE TO REALIZE ANTICIPATED SAVINGS, LOSS OF OR DAMAGE TO DATA OR OTHER COMMERCIAL OR ECONOMIC LOSS. THIS WAIVER OF CONSEQUENTIAL DAMAGES IS MADE REGARDLESS OF WHETHER (I) EITHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR (II) SUCH DAMAGES MAY BE FORESEEABLE.

O. Limitation of Liability. Notwithstanding any other provision of this Agreement, CITY agrees to limit CONSULTANT's liability to CITY and to all persons having contractual relationships with CITY to the total fee or compensation received by CONSULTANT for the work under which the liability arises

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

**OWNER**  
THE CITY OF KERRVILLE

**CONSULTANT**  
ESA Mechanical & Electrical  
Engineering, Inc.

BY: \_\_\_\_\_  
NAME: E.A. Hoppe  
TITLE: City Manager

BY: \_\_\_\_\_  
NAME: John Hewitt, P.E.  
TITLE: President

ATTEST:

APPROVED AS TO FUNDING:

\_\_\_\_\_  
Shelley McElhannon, City Secretary

\_\_\_\_\_  
Julie Behrens, Director of Finance

APPROVED AS TO FORM:

APPROVED AS TO CONTENT

  
\_\_\_\_\_  
William L. Tatsch, Asst. City Attorney

\_\_\_\_\_  
Ashlea Boyle, Director of Parks and  
Recreation

T:\Legal PARKS & RECREATION Contract PSAs\PSA\_Hewitt\_River Trail Design\_Downtown\_011723.docx



Hewitt Engineering, Inc.

Consulting Engineering Services

January 12, 2023

Mr. Kyle Burow, P.E., CFM  
Director of Engineering  
City of Kerrville  
701 Main Street  
Kerrville, TX 78028

**Re: River Trail Downtown Phase 1 Segment Improvements  
Final Design Fee Estimate**

Dear Kyle,

Per your request, I have prepared a scope and fee schedule for the preparation of final design plans and specifications associated with the River Trail Downtown Phase 1 Segment Improvements. The project will consist of approximately 1,650 linear feet of 10-foot wide concrete trail extending from the northwest end of the project at the Butt-Holdsworth Memorial Library and extends to the existing pedestrian bridge located downstream of the low water dam across the Guadalupe River. The northern end of this segment ties into the ADA compliant access ramps located behind the library and to the pedestrian bridge that crosses the Guadalupe River to Tranquility Island. The proposed trail alignment will follow an existing foot path located along the northeast bank of the river. The scope of the project will include the following:

- Easement/Boundary survey plats and topographic surveying along proposed alignment
- Design of Trail plans and specifications in compliance with all building code and TDLR/ADA requirements.
- Determine the locations where site drainage needs to pass under the trail and design elevated trail sections to keep drainage off the trail.
- Develop details as needed
- Environmental Due Diligence Services including wetlands/jurisdictional waters determination and Threatened/Endangered Species habitat evaluation
- Cultural Resources Study including archaeological literature and records research and archeological field survey

The proposed services include field surveying by Wellborn Engineering and Surveying, Inc., and environmental and cultural resources studies by SWCA Environmental Consultants. The scope of services includes the following tasks:

1. Prepare Plan & Profile Sheets and Details
2. Prepare Technical Specifications and Bid Documents
3. Submit 60%, 90% and 100% Plans and Specifications to the City
4. Prepare Project Scheduling, Bid Quantities, and Cost Estimates
5. Coordinate with City staff, TxDOT Staff and Subconsultants

6. Attend Prebid conference, post project on Civcast, evaluate bids and prepare contractor recommendation
7. Provide topographic survey and easement/boundary plats
8. Environmental and Cultural Resources Studies

The final result of this project will be one set of signed and sealed original drawings, five sets of full size and five sets of half size drawings, and technical specifications in order to solicit contractor bids. In addition, easement/boundary survey plats will be prepared for approximately seven property owners, and environmental and cultural reports will be prepared for the project. The total lump sum fee to perform these tasks including Basic and Additional Services including all expenses is \$154,500. This fee consists of Basic Design Services of \$85,880, Additional Design Services of \$47,374 which includes \$25,000 for boundary survey and preparation of easement documents and topographic surveying along the alignment, \$11,396 for environmental studies, \$10,978 for cultural resources studies and \$21,426 for Construction and Bid Phase Services. The subconsultant proposals are attached.

Please feel free to contact me at 315-8800 or by email at [jmhewitt@hewitt-inc.com](mailto:jmhewitt@hewitt-inc.com) if you have any questions.

Sincerely,

**HEWITT ENGINEERING INC.**

Texas Registered Engineering Firm F-10739



John M. Hewitt, P.E., CFM

Attachments

**jmhewitt@hewitt-inc.com**

---

**From:** Jared Martin <jaredm@wellbornengineering.com>  
**Sent:** Wednesday, January 11, 2023 11:10 AM  
**To:** jmhewitt@hewitt-inc.com  
**Cc:** Michael Wellborn  
**Subject:** RE: Downtown River Trail

John,

Per our discussion and with the reduction of total properties needed easements to 7, we can reduce the overall fee to \$22,500.00.

Thank you John and we'll wait to hear from you if all is accepted.

Jared Martin, S.I.T.

**WELLBORN Engineering & Surveying – [www.wellbornengineering.com](http://www.wellbornengineering.com)**

Office: 830-217-7100  
Cell: 830-285-3272  
631 Water Street  
Kerrville, TX 78028

**From:** Jared Martin  
**Sent:** Wednesday, January 11, 2023 10:41 AM  
**To:** jmhewitt@hewitt-inc.com  
**Cc:** Michael Wellborn <mikew@wellbornengineering.com>  
**Subject:** RE: Downtown River Trail

John,

Thanks for the phone call yesterday, I've noted below the answers to my questions we discussed in red. I went down to take a closer look at the topography and noticed several storm structures, private underground electric, and several extra-large boulders. I assume you would want all these located. I also estimate at least eight (8) properties needing easements, and as you mentioned the TxDOT research. For Topo and easement preparation our fee would be \$24,000.00. we would be able to start as early as next week and should have no problem hitting the below timelines.

Thank you again and please let me know if you have any questions or thoughts.

Jared Martin, S.I.T.

**WELLBORN Engineering & Surveying – [www.wellbornengineering.com](http://www.wellbornengineering.com)**

Office: 830-217-7100  
Cell: 830-285-3272  
631 Water Street



**SWCA**

ENVIRONMENTAL CONSULTANTS

Sound Science. Creative Solutions.®

San Antonio Office  
4949 N. Loop 1604, Suite 235  
San Antonio, TX 78249  
www.swca.com

January 12, 2023

John Hewitt, P.E., CFM  
Hewitt Engineering  
716 Barnett Street  
Kerrville, Texas 78028

**Re: Guadalupe River Trail Downtown Segment Environmental Services, Project No. 62830**

Dear Mr. Hewitt:

SWCA Environmental Consultants (SWCA) appreciates the opportunity to provide you with the attached scope and costs to conduct environmental services for the Guadalupe River Trail Downtown Segment, Kerrville, Kerr County, Texas.

We are prepared to begin work upon receipt of a signed contract. For your convenience, an email copy of the signed contract will be accepted as notice to proceed. If you have any questions or need additional information, please do not hesitate to contact me at (210) 361-0297 or [cwesterman@swca.com](mailto:cwesterman@swca.com).

Sincerely,



Christine A. Westerman  
Principal Project Manager

## SCOPE OF WORK

### TASK 1: JURISDICTIONAL WATERS DELINEATION

SWCA will review published information and perform a field survey to identify wetlands, ponds, stream channels and other aquatic features that may be considered jurisdictional waters by the USACE under the Clean Water Act. Data collection will be considered in accordance with current federal delineation methodology including the *1987 Corps of Engineers Wetland Delineation Manual* and the *2010 Regional Supplement for the Great Plains Region*. Data will be collected on vegetation, soils, and hydrology (described below) to determine if the areas along the alignment meet criteria for wetlands established by the USACE:

1. Vegetation identification and analysis will be performed for each vegetation stratum (herbs, sapling/shrub, trees and vines) at each sample plot. Hydrophytic vegetation will be considered present if greater than 50 percent of the dominant vegetation is composed of obligate wetland (OBL), facultative wetland (FACW) or facultative (FAC) species.
2. Soil analysis for each sample plot will be determined using the guidelines set forth by the National Technical Committee for Hydric Soils (USDA Soil Conservation Service, 1987). A soil pedon will be excavated and the soil will be inspected for positive indications of hydric soils. The sample pit will be left open for a sufficient time to allow for the stabilization of the apparent high water table, if present.
3. SWCA biologist will determine if positive indications of wetland hydrology, as defined in the 1987 Wetland Manual, are present. Typical hydrological indicators include inundation, saturation, an ordinary high water mark, drainage patterns, oxidized root channels, drift lines and sediment deposits.

SWCA will collect a minimum of one sample point for each area surveyed (additional points may be required along wetland/non-wetland boundaries) and complete the USACE Wetland Determination Data Forms for each sample point. All potential jurisdictional waters of the United States, including wetlands, will be mapped using a Trimble XT or similar global positioning system (GPS) equipment.

Following field data collection, SWCA will prepare a jurisdictional waters report including the following information:

- A narrative description of the methods utilized in conducting the field investigations.
- A results section that describes (1) the vegetation communities observed, (2) the soils observed, (3) the types of wetlands encountered and (4) the water bodies observed,
- A conclusion section where SWCA provides our professional opinion on which waters and/or wetlands we anticipate to be considered by the USACE.
- Maps illustrating locations of all jurisdictional waters in the project area. The maps would be aerial photo-based and prepared using ArcGIS.
- U.S. Army Corps of Engineers Wetland Determination Data Forms for each sample point.

- A photographic log displaying representative photographs for each vegetative stratum and representative photographs of each aquatic feature observed.

The draft report will be provided for review and comments. SWCA will incorporate responses to client comments and prepare a final report.

### **TASK 1 ASSUMPTIONS**

- The client is responsible for obtaining right of entry to private property as required to complete field surveys.
- Proposed cost does not include preparation of permit submittal or pre-construction notification to the USACE.

## **TASK 2: THREATENED/ENDANGERED SPECIES EVALUATION**

The United States Fish and Wildlife Service (USFWS) considers seven federally proposed, threatened, and endangered species as having the potential to occur in Kerr County. These species include: three birds: golden-cheeked warbler (*Setophaga chrysoparia*), piping plover (*Charadrius melodus*), and red knot (*Calidris canutus rufa*); two freshwater mussels: Texas fatmucket (*Lampsilis bracteata*) and Texas pimpleback (*Quadrula petrina*); and two plants: bracted twistflower (*Quadrula petrina*) and Tobusch fishhook cactus (*Sclerocactus brevihamatus ssp. tobuschii*).

SWCA will evaluate published literature and perform a site visit to along the proposed project alignment to describe the structural and compositional elements of the vegetation and other habitat features in and adjacent to the project. Following the field visit, SWCA will prepare a draft a report that provides a description of the vegetation communities and habitat features present and our assessment of the potential for the occurrence of the species listed above along the project area. Following client review and responses to client comments, the report will be finalized and submitted electronically.

### **TASK 2 ASSUMPTIONS**

- The cost for Task 2 assumes that the habitat assessment field survey will be conducted concurrently with Task 1 field survey.
- Cost and scope do not include presence/absence surveys for mussels or other protected species.

## **TASK 3: CULTURAL RESOURCES ASSESSMENT**

It is SWCA's understanding that the proposed project consists of the Guadalupe River Trail Downtown Segment. As a political subdivision of the state of Texas, the City of Kerrville is subject to the Antiquities Code of Texas (ACT) and the accompanying Rules of Practice and Procedure, which protects archaeological sites and historic buildings on public lands. Additionally, as portions of the project may require federal permitting from the U.S. Army Corps of Engineers (USACE) under Section 404 of the Clean Water Act, the project may qualify as a federal undertaking and therefore require compliance with Section 106 of the National Historic Preservation Act (NHPA). Our scope of work is designed to meet all requirements of ACT and Section 106 of the NHPA. Our scope of work includes a background review,

acquisition of an Antiquities Code Permit, an intensive pedestrian survey with shovel testing, and the production of a report of the results for review and concurrence by the reviewing agencies.

### **SUBTASK 3.1 – BACKGROUND REVIEW, AGENCY CONSULTATION, AND ANTIQUITIES PERMIT APPLICATION**

Upon authorization to proceed, SWCA's Principal Investigator will compile information from our previous cultural resources background review and prepare a Texas Antiquities Permit application and submit it to the City of Kerrville for review and signatures. Once all signatures are obtained, SWCA will submit the scope of work and application to the Texas Historical Commission (THC) and USACE, if applicable. The THC has up to 30 days to review and issue a permit for the field work.

### **SUBTASK 3.2 – ARCHAEOLOGICAL FIELDWORK**

Following issuance of the ACT Permit, SWCA will conduct a cultural resources survey of the Project area. SWCA will survey an approximately 60-foot-wide corridor (area of potential effects [APE]). The survey will be of sufficient intensity to determine the nature, extent, and, if possible, potential significance of any cultural resources located within the proposed project area. The survey will meet all THC and Council of Texas Archeologists (CTA) archaeological survey standards. The field survey will consist of two (2) SWCA archaeologists walking the project area with particular focus paid to the drainages and adjacent terraces and slopes, as well as any existing standing structures within the project area. Subsurface investigations will involve shovel testing in settings with the potential to contain buried cultural materials and dependent upon variables such as previous disturbances and the presence of soils. Shovel tests will be approximately 30 centimeters (cm) in diameter and excavated in arbitrary 20-cm levels to 80 cm below surface or culturally sterile deposits, whichever comes first. SWCA archaeologists will screen the matrix from each shovel test through ¼-inch mesh and will plot the location of each excavation using a hand-held Global Positioning System (GPS) receiver. To document the excavations, archaeologists will record each shovel test on a standardized form. For linear projects, the THC/CTA fieldwork standards require a minimum of 16 shovel tests per linear mile of 100-foot-wide corridor; this equates to approximately 16 shovel tests.

If archaeological sites are encountered in the project area during the fieldwork, they will be explored as much as possible with consideration to the boundaries of the project. All discovered sites will be assessed regarding their potential significance so that recommendations can be made for proper management (i.e., avoidance, non-avoidance, or further work) and eligibility. Shovel tests will be excavated per THC/CTA standards to define horizontal and vertical site boundaries (i.e., at least six shovel tests per site). Site delineation shovel tests will be excavated in a cruciform pattern at 50-foot (15-m) intervals or less until two negative shovel tests are encountered in each direction or landform limits are reached. Photographs for sites found within the project area will minimally include: the site setting documented from a minimum of two angles, all cultural features present within the site, a representative sample of non-diagnostic artifacts, all sides of diagnostic artifacts, and other representative natural features and/or disturbances within the site. Locations of sites, relevant features, and photograph locations will be mapped through GPS. SWCA will complete appropriate State of Texas Archeological Site Data Forms for each site discovered and/or revisited during the fieldwork.

Any discovered cultural resources will be defined and recorded following standard federal and state guidelines. All recorded sites will be mapped in detail with a GPS unit and plotted on U.S. Geological Survey 7.5-minute topographic maps and appropriate project maps for planning purposes. SWCA is proposing a non-collection survey. Artifacts will be tabulated, analyzed, and documented in the field, but not collected. Temporally diagnostic artifacts will be described in detail and photographed in the field, then reburied. This policy will minimize curation costs once the fieldwork is concluded.

### ***Built Environment Survey***

If the USACE requires a review of aboveground historic resources within the indirect APE, a Change Order will be required.

## **SUBTASK 3.3 – REPORTING AND CURATION**

Once the fieldwork has been completed, SWCA will prepare a report for review by the City of Kerrville, the THC, and the USACE. The report of the fieldwork will conform to the CTA and THC standards and guidelines. The report will include the results of the background review and the archaeological fieldwork and historic resources survey. Specifically, it will provide the methodology used in the fieldwork, the presence and condition of previously recorded sites located in and around the project area, the history of the property, photographs illustrating the environment and setting, a description of cultural resources encountered during the fieldwork, architectural descriptions of all historic-age aboveground resources, recommendations for management of those cultural resources, and recommendations for additional fieldwork, if warranted. SWCA will submit a draft digital copy of the report to the City of Kerrville for review and comment. SWCA will address one round of comments and concerns, and at the City's request, SWCA will submit the revised draft to the THC and USACE for review. SWCA will address comments or concerns from the THC and USACE and will produce a final report to complete requirements of the Antiquities Permit. As the project will be conducted under an antiquities permit, all relevant field notes and data will be curated at an approved facility. For this project, curation will be done at the Center for Archaeological Research at the University of Texas at San Antonio (CAR-UTSA).

### ***Task 3 Assumptions***

- The scope of work may be subject to change following consultation with the THC and USACE, the archaeological resources background review investigations, and field work. Any additional costs resulting from a change in the scope of work may require a Change Order.
- Task 3 assumes fieldwork would require up to two, 10-hour days for a team of two SWCA archaeologists to complete the shovel test survey.
- SWCA assumes that deeply buried cultural deposits will not be encountered during deep testing efforts. If deeply buried cultural materials are present, a Change Order may be required to delineate and document the deeply buried archaeological site in compliance with THC/CTA standards.
- Based on the known site densities in the area, SWCA assumes that the survey will result in the assessment of no more than one (1) archaeological site encountered during shovel testing, which would be more than 1.0-acre (0.4-hectares) in extent. If SWCA identifies more than one site, or it

is greater than 1 acre in area, SWCA will negotiate a Change Order to complete site documentation and processing.

- Rights-of-entry and unfettered access to the entire property at the time of field investigations will be coordinated by the City of Kerrville. Factors beyond SWCA’s control, such as access restrictions, inclement weather, or unsafe project conditions that result in delays to the project schedule or require additional mobilizations, may require a Change Order.
- Detailed archival research and review of county records to determine the age and significance of historic-age resources in the APE are not included in this cost or proposal.
- SWCA proposes a non-collection survey.
- This scope of work does not include eligibility testing or data recovery levels of effort.
- These costs do not include project-related safety training or expenses (e.g., OSHA, HAZWOPER, company or site-specific safety training).

*Table 1. Cost Summary, fixed fee.*

TASK NUMBER	TASK NAME	COST
1	Jurisdictional Waters Delineation	\$7,960
2	Threatened/Endangered Species Habitat Evaluation	\$2,400
3	Cultural Resources Assessment	<u>\$9,980</u>
<b>TOTAL</b>		<b>\$20,340</b>



**Hewitt Engineering, Inc.**

Consulting Engineering Services

## **FEE SCHEDULE**

**Effective Date January 2023**

### **PROFESSIONAL SERVICES**

### **HOURLY RATE**

Principal Engineer	\$230
Senior Engineer (PE)	\$165
Technician/Draftsperson	\$110

### **DIRECT PROJECT EXPENSES**

Automobile Use	\$0.62/mile (or current Federal rate)
Internal Copying	\$0.15/Page
Large Scale Graphics Plotting	\$2.40/Sq. Ft.

All other Direct Project Expenses, including sub-consultants are charged at a multiplier of 1.15.



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

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**SUBJECT:** Financial report for December 2022.

**AGENDA DATE OF:** January 24, 2023      **DATE SUBMITTED:** December 20, 2022

**SUBMITTED BY:** Julie Behrens , Director of Finance

**EXHIBITS:**

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<b>Expenditure Required:</b>	<b>Remaining Budget Balance in Account:</b>	<b>Amount Budgeted:</b>	<b>Account Number:</b>
N/A	N/A	N/A	N/A

**PAYMENT TO BE MADE TO:**    N/A

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

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**SUMMARY STATEMENT:**

NA

**RECOMMENDED ACTION:**

Report. No action.