

AGENDA FOR THE KERRVILLE CITY COUNCIL MEETING

TUESDAY, FEBRUARY 14, 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

FEBRUARY 14, 2023, 6:00 PM

CITY HALL, 701 MAIN STREET, KERRVILLE, TEXAS



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

Citizens may view and hear City Council meetings on Spectrum Channel 2 or by live-streaming via the City's website (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 meeting begin. Each speaker is limited to four minutes.

"Pursuant to Section 30.06, Penal Code (trespass by license holder with a concealed handgun), a person licensed under Subchapter H, Chapter 411, Government Code (handgun licensing law), may not enter this property with a concealed handgun."

"Pursuant to Section 30.07, Penal Code (trespass by license holder with an openly carried handgun), a person licensed under Subchapter H, Chapter 411, Government Code (handgun licensing law), may not enter this property with a handgun that is carried openly."

"Pursuant to Section 46.03, Penal Code (places weapons prohibited), a person may not carry a firearm or other weapon on this property."

Thank you for your participation!

CALL TO ORDER: Mayor Judy Eychner

INVOCATION AND PLEDGE OF ALLEGIANCE: Led by Mayor Pro Tem Kim Clarkson

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 PRESENTATION(S):

2.A Briefing on Winter Storm 2023 "Mara" - January 31 through February 02, 2023.

3 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.

4 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:

4.A Purchase Case Wheel Loader from Associated Supply Co, Inc. in the amount of \$72,019.22.
Attachment: 20230214_Purchase_Wheel_Loader_Utility_Construction2.pdf

4.B Professional Services Agreement with Hewitt Engineering, Inc. for the Flow Equalization Basin Lift Station project in the amount of \$78,500.00.
Attachment: 20230214_Contract Hewitt Engineering_FEB Lift Station scope.pdf

4.C City Council workshop minutes, January 24, 2023.
Attachment: 20230214 Minutes CC workshop 1-24-23 4pm.pdf

4.D City Council meeting minutes, January 24, 2023.
Attachment: 20230214 Minutes CC meeting 1-24-23 6pm.pdf

END OF CONSENT AGENDA.

5 ORDINANCES, SECOND READING:

5.A Ordinance No. 2023-06, second reading. 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: [20230214 Ord 2023-06 Zone RT W Water Street 2nd reading.pdf](#)
[20230214_Letter opposed Pena zone W Water.pdf](#)

5.B Ordinance No. 2023-07, second reading. 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: [20230214 Ord 2023-07 Zone change 3800 Loop 534 2nd reading.pdf](#)

5.C Ordinance No. 2023-08, second reading. 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: [20230214 Ord 2023-08 Annex-zone Lehmann and Lenard 2nd reading.pdf](#)

6 CONSIDERATION AND POSSIBLE ACTION:

6.A Consider a request for the granting of major waivers pursuant to §82-37 of the City's Code of Ordinances, such waivers concerning 1) the delayed submission of security for public infrastructure; 2) approval to reduce such security following City's acceptance of phased installation; 3) the early termination of an improvement agreement, all waivers applicable to property being a 37.10 acre tract, referenced as Creekside Apartments Phase 1A, to be addressed as 102 Wellborn Way, and generally located near the intersection of State Highway 16.

Attachment: [20230214 Waiver -Request for limited waiver Creekside.pdf](#)

6.B Resolution No. 04-2023. A Resolution authorizing execution of an Advance Funding Agreement (AFA) with the Texas Department of Transportation for a Transportation Alternatives Set-Aside (TASA) Project.

Attachment: [20230214_Reso 04-2023 AFA with TASA.pdf](#)

6.C Construction Agreement with G5 Utilities, Inc. for the Public Safety Facility Wastewater Realignment project in the amount of \$347,777.00.

Attachments: [20230214_Bids_PSF Wastewater Realignment_Bid Summary.pdf](#)
[20230214_Letter_PSF Wastewater Realignment_Recommendation of Award.pdf](#)

7 **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.

8 ACTION ON ITEMS DISCUSSED IN EXECUTIVE SESSION, IF ANY.

9 **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: Briefing on Winter Storm 2023 "Mara" - January 31 through February 02, 2023.

AGENDA DATE OF: February 14, 2023 **DATE SUBMITTED:** January 26, 2023

SUBMITTED BY: Eric Maloney, Fire Chief

EXHIBITS:

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

PAYMENT TO BE MADE TO: N/A

Kerrville 2050 Item? No

Key Priority Area N/A

Guiding Principle N/A

Action Item N/A

SUMMARY STATEMENT:

Departmental responses throughout the City during the ice storm.

RECOMMENDED ACTION:

Report.



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

SUBJECT: Purchase Case Wheel Loader from Associated Supply Co, Inc. in the amount of \$72,019.22.

AGENDA DATE OF: February 14, 2023 **DATE SUBMITTED:** January 30, 2023

SUBMITTED BY: Scott Loveland, Assistant Director of Public Works

EXHIBITS:

Expenditure Required:	Remaining Budget Balance in Account:	Amount Budgeted:	Account Number:
\$72,019.22	\$109,565.54	\$109,565.54	19-1903-5300

PAYMENT TO BE MADE TO: Associated Supply Co, Inc.

Kerrville 2050 Item? No

Key Priority Area N/A

Guiding Principle N/A

Action Item N/A

SUMMARY STATEMENT:

The FY2023 Adopted Budgeted includes the purchase of a new Case Wheel Loader within the Water Asset Replacement Fund. This will replace the aged and irreparable 2001 backhoe.

Because the vendor submitted Buyboard contract pricing (BB Contract #685-22), this purchase complies with purchasing policy. The original budget for this item is \$109,566. The Buyboard contract price is: \$94,019.22. The City will receive a \$22,000 trade in credit for the equipment that this unit will replace making the total expenditure \$72,019.22. Council approval is required because the expenditure exceeds \$50,000.

RECOMMENDED ACTION:

Authorize the City Manager to finalize and execute all necessary measures to purchase the Wheel Loader.

ATTACHMENTS:

20230214_Purchase_Wheel_Loader_Utility_Construction2.pdf



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

SUBJECT: Professional Services Agreement with Hewitt Engineering, Inc. for the Flow Equalization Basin Lift Station project in the amount of \$78,500.00.

AGENDA DATE OF: February 14, 2023 **DATE SUBMITTED:** February 8, 2023

SUBMITTED BY: Kyle Burow, Director Engineering

EXHIBITS:

Expenditure Required:	Remaining Budget Balance in Account:	Amount Budgeted:	Account Number:
\$78,500.00	\$650,000.00	\$650,000.00	71-

PAYMENT TO BE MADE TO: Hewitt Engineering, Inc.

Kerrville 2050 Item? No

Key Priority Area N/A

Guiding Principle N/A

Action Item N/A

SUMMARY STATEMENT:

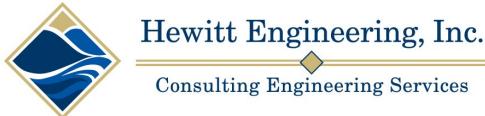
In January 2023, City Council authorized steps to begin the issuance of Revenue Bonds in an amount not to exceed \$12.5 million to be utilized in assisting the City's replacement, reconstruction, and upgrading of existing water and wastewater infrastructure. One of the highest priority projects presented to City Council was the Wastewater Treatment Plant's Flow Equalization Basin (FEB) transfer station due to its emergency status for repair. The FEB was built in 1987 and is currently utilizing temporary bypass pumping performed by continuous manual operation from the Water Reclamation staff. The FEB assists in neutralizing flow from the collection system and treatment plant's headworks by storing flow in the basin during periods of high flow to be equalized during the periods of low influent prior to the treatment process. The scope of this project will consist of the development of construction documents for the replacement of the existing station's wet well, discharge piping, pumps and controls that have become severely corroded and inoperable to return to automated operation within the treatment plant.

RECOMMENDED ACTION:

Authorize the City Manager to finalize and execute the professional services agreement.

ATTACHMENTS:

[20230214_Contract Hewitt Engineering_FEB Lift Station scope.pdf](#)



February 8, 2023

Mr. Donovan Banta
Water Reclamation Superintendent
City of Kerrville
701 Main Street
Kerrville, TX 78028

**Re: WWTP Flow Equalization Lift Station Basin
Engineering Fee Estimate**

Dear Donovan,

Per your request, I have prepared a scope and fee schedule for the preparation of Plans, Specifications and Cost Estimate (PS&E) for the abandonment and replacement of the City's Waste Water Treatment Plant (WWTP) Flow Equalization Basin Lift Station. The existing wet well, discharge piping, pumps and controls are severely corroded and not operable. We will develop a PS&E package to replace the wet well, pumps and associated piping, estimate construction costs, evaluate constructability issues including flow diversion, provide Bid Phase Services and General Representation Services to the City during construction of the WWTP improvements. The scope of the PS&E package is outlined below:

1. 60% Design Phase
 - a. Review and independently verify the Kerrville WWTP Condition Assessment Report (prepared by others).
 - b. Review existing As-Built construction drawings of the Kerrville WWTP.
 - c. Conduct field reconnaissance to become familiar with the project site.
 - d. Use the As-Built drawings to develop a digital base map of the project area (where referenced in this proposal, the project area is assumed as an approximate 50'x50' envelope around the existing lift station site).
 - e. Obtain all available mapping of underground or overhead utilities in the project area and incorporate utility information into the base map. Collect all available information concerning the existing and proposed facilities in the project area, including but not limited to existing water and sewer lines, communications/fiber optics, gas, electric, drainage facilities, traffic signals and petroleum product pipelines.
 - f. Identify project limits of construction.
 - g. Conduct utility coordination and locates in the project area.
 - h. Establish design layout and dimensions of proposed improvements.
 - i. Determine structure layout and section design by determination of critical elevations and dimensions.
 - j. Develop schematic drawings of each structure as required. This includes hydraulic control structures, if applicable to assigned project.
 - k. Identify, design, and draw plan view solution to utility conflicts to be relocated within the project area.
 - l. Preparation of submittal of preliminary plans of the project improvements to include a cover sheet, site plan(s), plan and profiles, structures, utility relocations, pavement replacements, list of standard details, and a list of special details.
 - m. Prepare special specifications and special provisions to standard specifications of City of Kerrville.

- n. Perform 60% internal quality management including control and assurance.
 - o. Prepare 60% Engineer's Cost Estimate.
 - p. Prepare and submit project schedule with 60% deliverables.
- 2. 90% Design Phase
 - a. Finalize 90% design deliverables including final plan and profile documents, structure designs, utility relocations, special details including bidding and contract documents.
 - b. Prepare 90% Engineer's Cost Estimate.
 - c. Prepare and submit to WWTP staff for review of detailed design plans, cost estimates and specifications.
 - d. Perform 90% internal quality management including control and assurance.
 - e. Prepare and submit project schedule with 90% deliverables.
 - f. Prepare for and conduct a 2-hour 90% Design review workshop to solicit feedback from WWTP staff and make the necessary decisions to proceed with the design. Provide and submit meeting minutes within three (3) days.
- 4. 100% Design and Bidding Phase
 - a. Prepare Final Engineer's Cost Estimate.
 - b. Provide bidding documents and plan sets for project advertisement on Civcast.
 - c. Provide an Opinion for Costs for use in the award of construction contract.
 - d. Prepare Meeting Agenda, participate in Pre-Bid and Bid Opening conference. Provide and submit meeting minutes within three (3) days.
 - e. Addenda preparation.
 - f. Review and evaluate bids including performing verification of Contractor's qualifications and references.
 - g. Prepare the Engineer's letter of recommendation for the lowest responsible bidder. Submit a bid analysis of lowest responsible bidder.
 - h. Perform internal quality management including control and assurance.
- 5. Construction Phase
 - a. Participate in pre-construction conference and provide meeting minutes within three (3) days.
 - b. Assist City of Kerrville with change orders including prepare cost estimates for change orders.
 - c. Conduct three (3) periodic monthly site visits to observe the progress and general quality of the work and shall submit a brief report of each site visit to City.
 - d. Review contractor's monthly construction estimates and make recommendations for payment. Shall review changes or alterations to the design, provide recommendations and preparation of change order associated with these changes.
 - e. Review updated construction schedule provided by the contractor on a monthly basis. Compare updated schedule to baseline construction schedule. Identify schedule activities that were added to the schedule or differ in scope, duration, activity name, activity ID, and/or schedule logic from previous versions of the schedule.
 - f. Review and evaluate shop drawings and submittals provided by the contractor for compliance with design concepts.
 - g. Conduct a final inspection of the project limits once completed, keep record of deficiencies and report on the completion of the project.
 - h. Prepare Record Drawings of the constructed project based on change order revisions and as built information provided by the contractor. Provide City with one (1) set of Record Drawings in .pdf electronic format.

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. The total lump sum fee to perform these tasks including Basic and Additional Services including all expenses is \$78,500. This fee consists of Basic Design Services of \$58,350, Additional Design Services of \$3,850 for topographic surveying, and \$16,300 for Construction and Bid Phase Services. The total fees for each phase are shown in Attachment A and the subconsultant proposals are attached.

Please review this proposal and feel free to contact me at 830-315-8800 or by email at jmhewitt@hewitt-inc.com if you have any questions.

Sincerely,

HEWITT ENGINEERING INC.

Texas Registered Engineering Firm F-10739

A handwritten signature in blue ink that reads "John M. Hewitt". The signature is fluid and cursive, with "John" on the first line and "M. Hewitt" on the second line.

John M. Hewitt, P.E., CFM

ATTACHMENT A

BASIC SERVICES		
DESIGN SERVICES		
Hewitt Engineering Inc.	Lift Station Design	\$ 52,250
ESA Electrical	Electrical Design	\$ 3,300
Expenses		\$ 2,800
TOTAL		\$ 58,350
BIDDING & CONSTRUCTION PHASE SERVICES		
Hewitt Engineering Inc.	Lift Station	\$ 12,800
ESA Electrical	Electrical	\$ 1,100
Expenses		\$ 2,400
TOTAL		\$ 16,300
ADDITIONAL SERVICES		
Wellborn Engineering and Surveying	Surveying	\$ 3,850
TOTAL		\$ 78,500



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

SUBJECT: City Council workshop minutes, January 24, 2023.

AGENDA DATE OF: February 14, 2023 **DATE SUBMITTED:** January 26, 2023

SUBMITTED BY: Shelley McElhannon, City Secretary

EXHIBITS:

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

PAYMENT TO BE MADE TO: N/A

Kerrville 2050 Item? No

Key Priority Area N/A

Guiding Principle N/A

Action Item N/A

SUMMARY STATEMENT:

City Council workshop minutes held January 24, 2023 at 4:00 p.m., City Hall Council Chambers.

RECOMMENDED ACTION:

Approve minutes as presented.

ATTACHMENTS:

[*20230214 Minutes CC workshop 1-24-23 4pm.pdf*](#)

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

**JANUARY 24, 2023 4:00 PM
701 MAIN STREET, KERRVILLE, TEXAS**

CALL TO ORDER: On January 24, 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

Ashlea Boyle, Director Parks & Rec
Stuart Cunyus, Public Information Officer
Guillermo Garcia, Exec Dir Innovation
Scott Loveland, Asst Dir Public Works
Eric Maloney, Fire Chief
Chris McCall, Police Chief
Charvy Tork, Director IT

VISITOR(S) PRESENT:

Louis Amestoy, Media Katie Milton Jordan, Kerr Economic Development Corporation
Roger Mathews, Media Gil Salinas, Kerr Economic Development Corporation

1. PUBLIC COMMENT: None

2. DISCUSSION, CONSIDERATION, AND POSSIBLE ACTION:

Item 2B shifted forward: Inclement weather preparedness.

2B. Inclement weather preparedness update.

Chief Eric Maloney, Stuart Cunyus, Charvy Tork, Stuart Barron, E.A. Hoppe, Ashlea Boyle, Guillermo Garcia, and Chief Chris McCall provided information and responded to questions.

2A. Kerrville Economic Development Corporation update.

Gil Salinas and Katie Milton Jordan provided information and responded to questions.

2B. Inclement weather preparedness update. (Item shifted forward, above item 2A.)

3. EXECUTIVE SESSION: N/A. Executive Session was not called nor convened.

3A. Economic Development Projects. (551.071, 551.072, 551.087)

4. ACTION ON ITEMS DISCUSSED IN EXECUTIVE SESSION IF ANY: N/A

ADJOURN. The workshop adjourned at 5:05 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 24, 2023.

AGENDA DATE OF: February 14, 2023 **DATE SUBMITTED:** January 26, 2023

SUBMITTED BY: Shelley McElhannon, City Secretary

EXHIBITS:

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

PAYMENT TO BE MADE TO: N/A

Kerrville 2050 Item? No

Key Priority Area N/A

Guiding Principle N/A

Action Item N/A

SUMMARY STATEMENT:

City Council meeting minutes held January 24, 2023 at 6:00 p.m., City Hall Council Chambers.

RECOMMENDED ACTION:

Approve minutes as presented.

ATTACHMENTS:

[*20230214 Minutes CC meeting 1-24-23 6pm.pdf*](#)

**CITY COUNCIL MINUTES
REGULAR MEETING**

**KERRVILLE, TEXAS
JANUARY 24, 2023 6:00 PM**

On January 24, 2023 at 6:00 p.m., Mayor Judy Eychner called the Kerrville City Council meeting to order in City Hall Council Chambers, 701 Main Street. Councilmember Brenda Hughes 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
Guillermo Garcia, Exec Dir Innovation
Eric Maloney, Fire Chief
Chris McCall, Police Chief
Drew Paxton, Planning Director
Trina Rodriguez, Asst Director Finance

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.

Anne Berger-Entrekin, Hill Top Securities Financial Advisor
Bob Reeves, Kerr County Tax Assessor/Collector

1. ANNOUNCEMENTS OF COMMUNITY INTEREST:

Announcements of Community Interest provided by Stuart Cunyus, Chief Eric Maloney, and Mayor Eychner.

2. VISITORS FORUM:

The following person(s) spoke:

- Delayne Sigerman
- Barbara Dewell Ferguson

3. CONSENT AGENDA:

Three citizens have requested to speak on item 4A. Councilmember Roman Garcia made a motion to approve the rest of the Consent Agenda, seconded by Councilmember Hughes. The motion passed 5-0.

3B. 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.

3C. Purchase of Ballistic Shields for the Kerrville Police Department in the amount of \$76,581.64.

3D. Grant Agreement with the Hal & Charlie Peterson Foundation accepting a Public Safety Equipment Grant in the amount of \$106,002.00.

3E. 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.

3F. 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.

3G. City Council workshop minutes January 10, 2023.

3H. City Council meeting minutes January 10, 2023.

3I. City Council workshop minutes January 17, 2023.

END OF CONSENT AGENDA.

3A. Resolution No. 03-2023. A Resolution expressing the City's support for the development of the Upper Guadalupe River Center.

The following person(s) spoke:

- John Anderson
- George Baroody
- Layng Guerriero

John Anderson provided clarification of Resolution.

Councilmember Garcia made a motion to table the Resolution. Mayor Eychner called for a second, with no second. Motion to table died for lack of second.

Councilmember Joe Herring, Jr. made a motion to adopt Resolution No. 03-2023 expressing our support for the development of the Upper Guadalupe River Center, seconded by Councilmember Kim Clarkson. The motion passed 4-1 with Councilmember Clarkson, Councilmember Hughes, Mayor Eychner, and Councilmember Herring voting in favor, and Councilmember Garcia opposed.

4. PUBLIC HEARING AND ORDINANCES, FIRST READING:

4A. 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.

Shelley McElhannon read Ordinance No. 2023-06 caption into record.

Drew Paxton provided information and responded to questions.

The public hearing opened at 6:26 p.m.

The following person(s) spoke:

- Applicant Russell Nemky

The public hearing closed at 6:29 p.m.

Councilmember Herring made a motion to adopt Ordinance No. 2023-06, seconded by Councilmember Hughes. The motion passed 5-0.

4B. 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

Shelley McElhannon read Ordinance No. 2023-07 caption into record.

Drew Paxton provided information and responded to questions.

The public hearing opened at 6:34 p.m.

The following person(s) spoke:

- Applicant Chris Cawthon spoke.

The public hearing closed at 6:38 p.m.

Councilmember Clarkson made a motion to approve Ordinance No. 2023-07 on first reading, seconded by Councilmember Garcia. The motion passed 5-0.

4C. 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.

Shelley McElhannon read Ordinance No. 2023-08 into record.

Drew Paxton provided information and responded to questions.

The public hearing opened at 6:40 p.m.

No person(s) spoke.

The public hearing closed at 6:40 p.m.

Councilmember Hughes made a motion to approve Ordinance No. 2023-08, seconded by Councilmember Clarkson. The motion passed 5-0.

5. ORDINANCES, SECOND READING:

5A. 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.

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

The following person(s) spoke:

- Greg Martin
- Dawn Davies
- Bruce Barton
- Kevin Wessels
- Kathleen Brinkman

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

5B. 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.

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

Mike Hayes provided information and responded to questions.

The following person(s) spoke:

- George Baroody

Mike Hayes provided clarification.

Councilmember Herring made a motion to adopt Ordinance No. 2023-04 on second reading, seconded by Councilmember Hughes. The motion passed 4-1 with Councilmember Clarkson, Councilmember Hughes, Mayor Eychner, and Councilmember Herring voting in favor, and Councilmember Garcia opposed.

5C. 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.

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

The following person(s) spoke:

- George Baroody

Mike Hayes provided clarification.

Bob Reeves provided clarification.

Councilmember Garcia made a motion to deny Ordinance No. 2023-05. Mayor Eychner called for a second, with no second. Motion to deny died for lack of second.

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, Councilmember Hughes, Mayor Eychner, and Councilmember Herring voting in favor, and Councilmember Garcia opposed.

Roll call vote:

Councilmember Kim Clarkson

In Favor Opposed

X _____

Councilmember Brenda Hughes

X _____

Mayor Judy Eychner

X _____

Councilmember Roman Garcia

_____ X

Councilmember Joe Herring, Jr.

X _____

6. CONSIDERATION AND POSSIBLE ACTION:

6A. 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.

Shelley McElhannon read Resolution No. 06-2023 caption into record.

Julie Behrens provided information and responded to questions.

Councilmember Herring made a motion to adopt Resolution No. 06-2023, seconded by Councilmember Clarkson. The motion passed 5-0.

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

Shelley McElhannon read item 6B caption into record.

Kyle Burow and Stuart Barron provided information and responded to questions.

Councilmember Hughes made a motion to authorize the City Manager to finalize and execute a construction contact, seconded by Councilmember Clarkson. The motion passed 5-0.

6C. 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.

Shelley McElhannon read item 6C caption into record.

Kyle Burow and E.A. Hoppe provided information and responded to questions.

Councilmember Clarkson made a motion to authorize the City Manager to finalize and execute a construction contact, seconded by Councilmember Hughes. The motion passed 5-0.

At 7:42 p.m., Councilmember Herring recused himself from Item 6D citing conflict of interest and departed seat at Council bench.

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

Shelley McElhannon read item 6D caption into record.

Ashlea Boyle provided information and responded to questions.

Councilmember Clarkson made a motion to authorize the City Manager to finalize and execute the professional services agreement, seconded by Councilmember Hughes. The motion passed 4-0.

At 7:44 p.m., Councilmember Herring joined seat at Council bench.

7. INFORMATION AND DISCUSSION:

7A. Financial report for December 2022.

Julie Behrens provided information and responded to questions.

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:

- Mayor Eychner requested to add discussion regarding moving the Visitor/Citizen section to the end of the agenda, seconded by Councilmember Clarkson. The motion passed 4-1 with Councilmember Clarkson, Councilmember Hughes, Mayor Eychner, and Councilmember Herring voting in favor, and Councilmember Garcia opposed.

ADJOURN. The meeting adjourned at 7:59 p.m.

APPROVED BY COUNCIL: _____

APPROVED:

Judy Eychner, Mayor

ATTEST:

Shelley McElhannon, City Secretary



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

SUBJECT: Ordinance No. 2023-06, second reading. 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: February 14, 2023 **DATE SUBMITTED:** January 26, 2023

SUBMITTED BY: Drew Paxton, Planning Director

EXHIBITS:

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

PAYMENT TO BE MADE TO: N/A

Kerrville 2050 Item? No

Key Priority Area N/A

Guiding Principle N/A

Action Item 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.

December 1, 2022, Planning and Zoning Commission recommended the case for approval with a unanimous vote.

~~January 24, 2023, City Council unanimously approved (5-0) Ordinance No. 2023-06 on first reading.~~

RECOMMENDED ACTION:

Approve Ordinance No. 2023-06 on second reading.

ATTACHMENTS:

[20230214 Ord 2023-06 Zone RT W Water Street 2nd reading.pdf](#)

[20230214_Letter opposed Pena zone W Water.pdf](#)

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 24 day of January, A.D., 2023.

PASSED AND APPROVED ON SECOND AND FINAL READING, this the _____ of _____, A.D., 2023.

Judy Eychner, Mayor

APPROVED AS TO FORM:

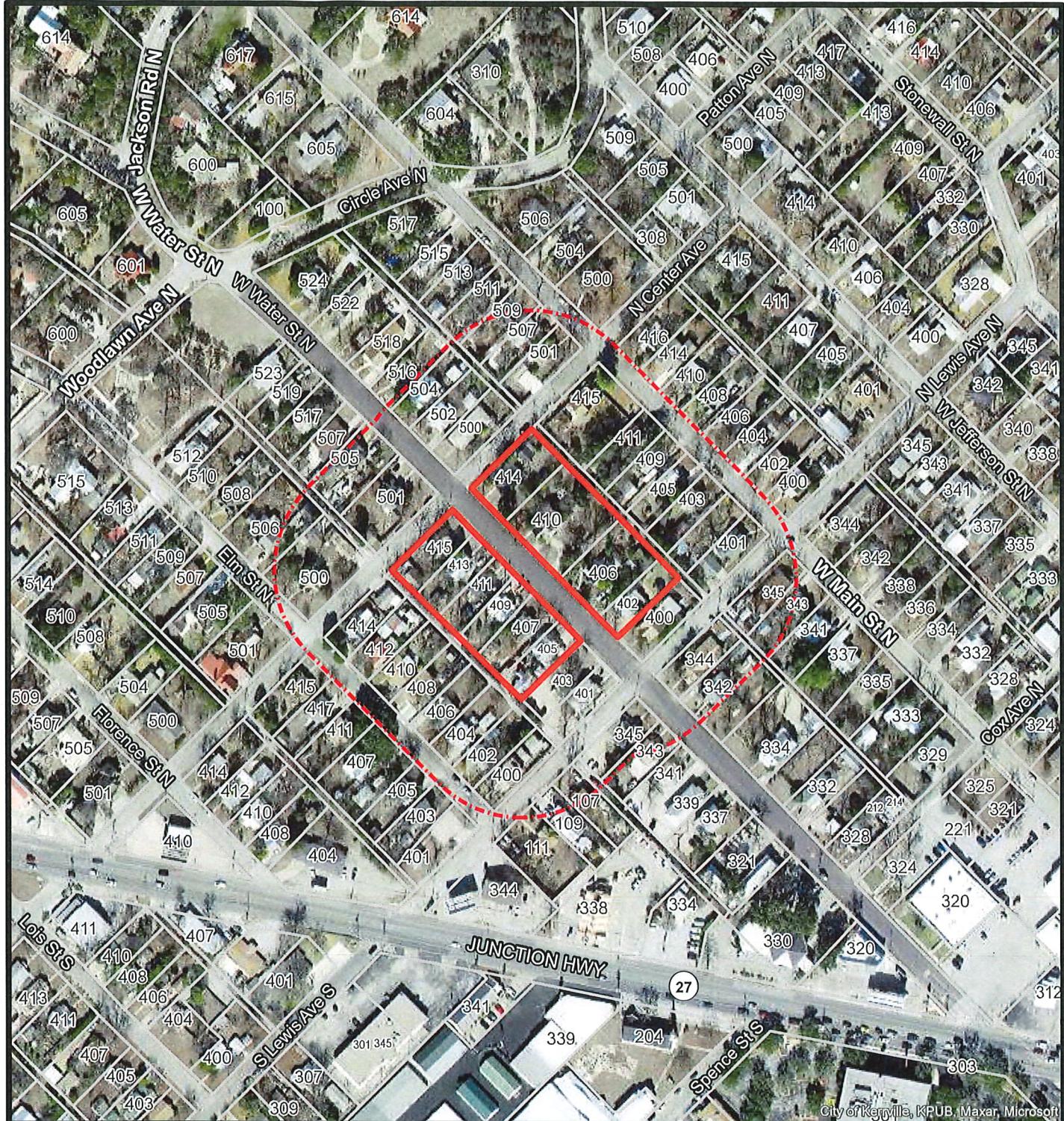


Michael C. Hayes, City Attorney

ATTEST:

Shelley McElhannon, City Secretary

EXHIBIT A



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

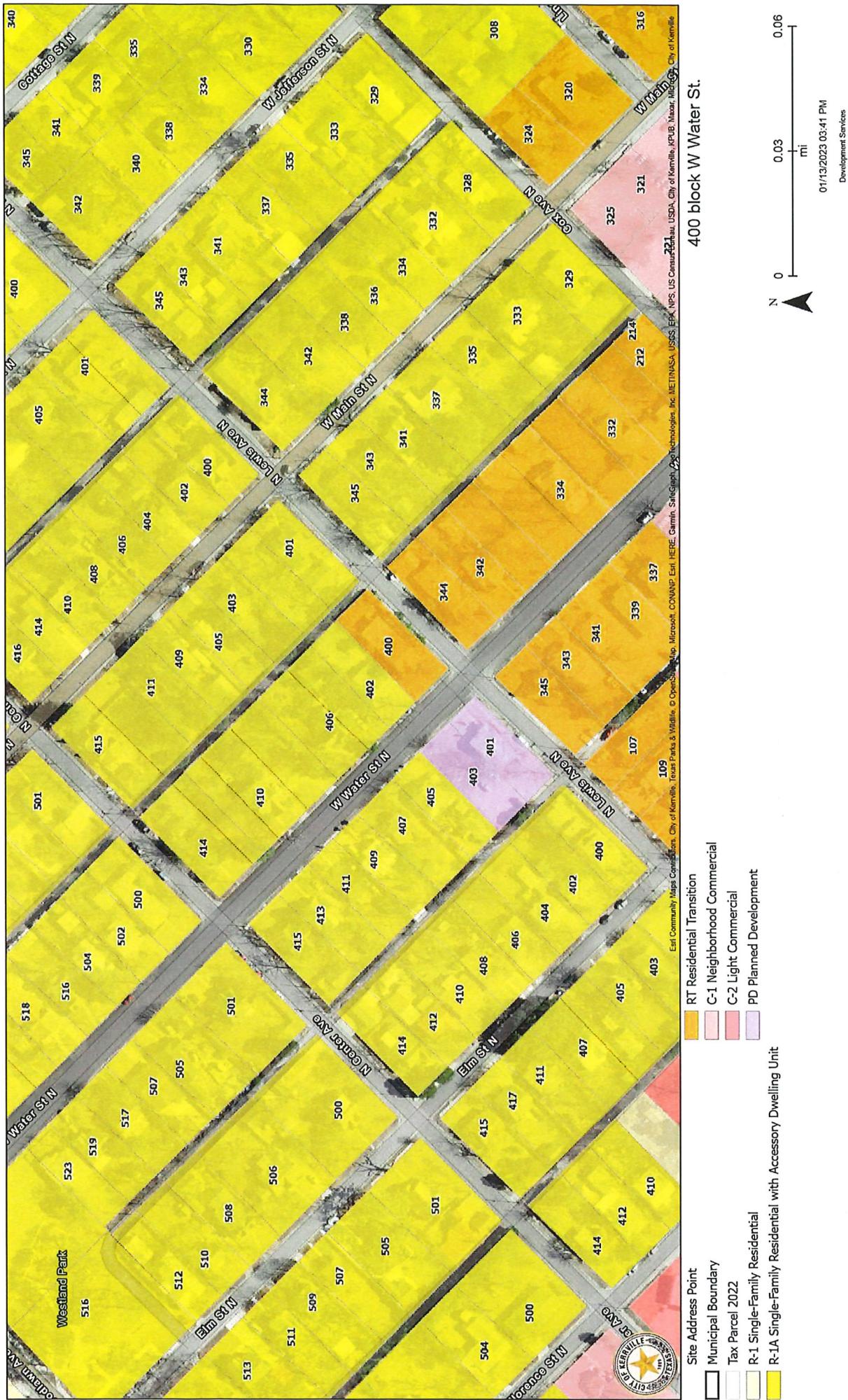


0 75 150 300

Scale In Feet

11/10/2022

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.



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

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, second reading. 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: February 14, 2023 **DATE SUBMITTED:** January 26, 2023

SUBMITTED BY: Drew Paxton, Planning Director

EXHIBITS:

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

PAYMENT TO BE MADE TO: N/A

Kerrville 2050 Item? No

Key Priority Area N/A

Guiding Principle N/A

Action Item 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.

December 1, 2022, Planning and Zoning Commission recommended the case for approval with a unanimous vote.

January 24, 2023, City Council unanimously approved (5-0) Ordinance No. 2023-07 on first reading.

RECOMMENDED ACTION:

Approve Ordinance No. 2023-07 on second reading.

ATTACHMENTS:

[20230214 Ord 2023-07 Zone change 3800 Loop 534 2nd reading.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 24 day of January, A.D., 2023.

PASSED AND APPROVED ON SECOND AND FINAL READING, this the _____ of _____, A.D., 2023.

ATTEST:

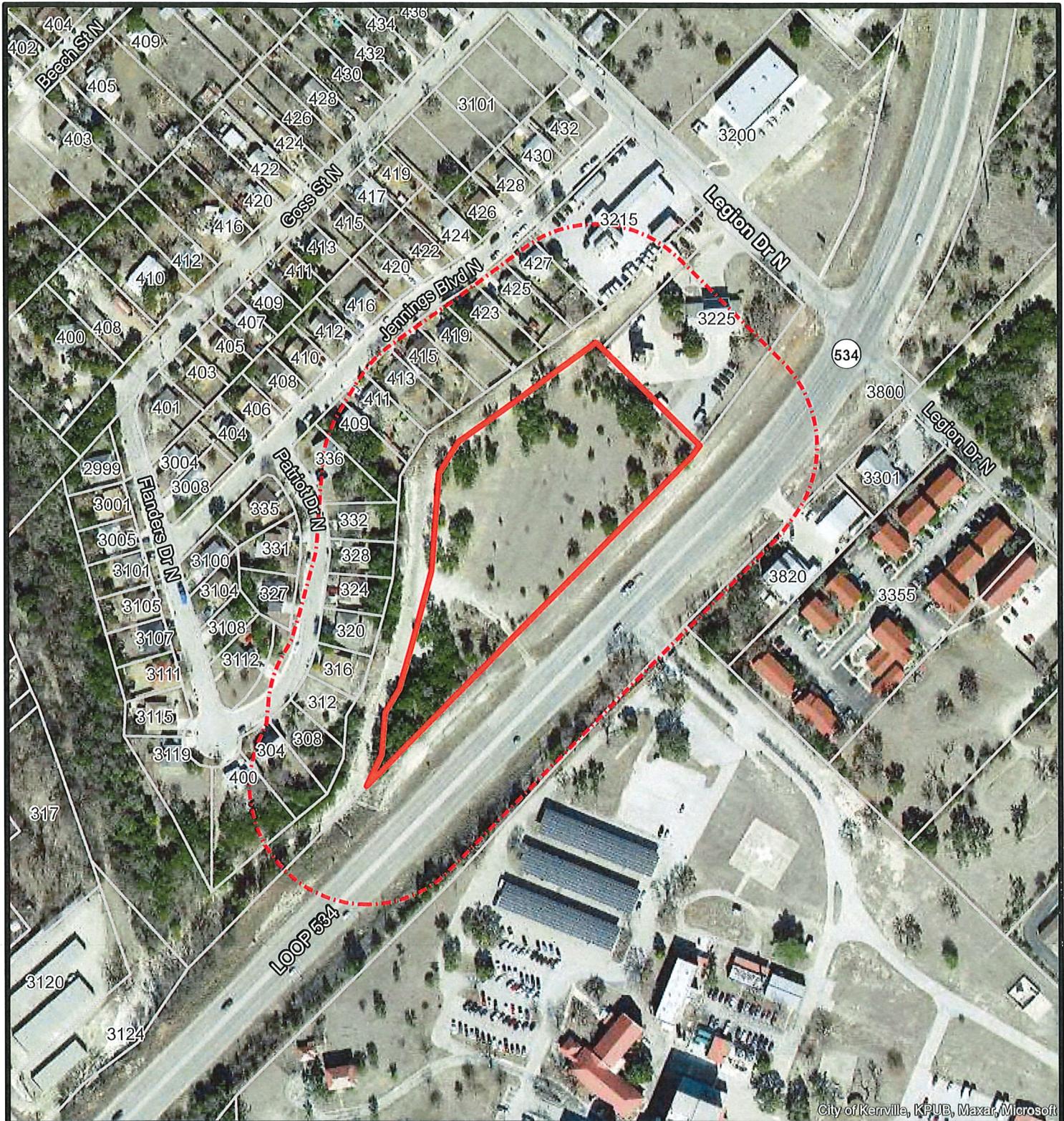
Judy Eychner, Mayor

Shelley McElhannon, City Secretary

APPROVED AS TO FORM:

Michael C. Hayes

Michael C. Hayes, City Attorney



Location Map

Case # PZ-2022-71

Location:

KCAD ID# 71535

Legend

- Subject Properties
- 200 Feet Notification Area



0 75 150 300

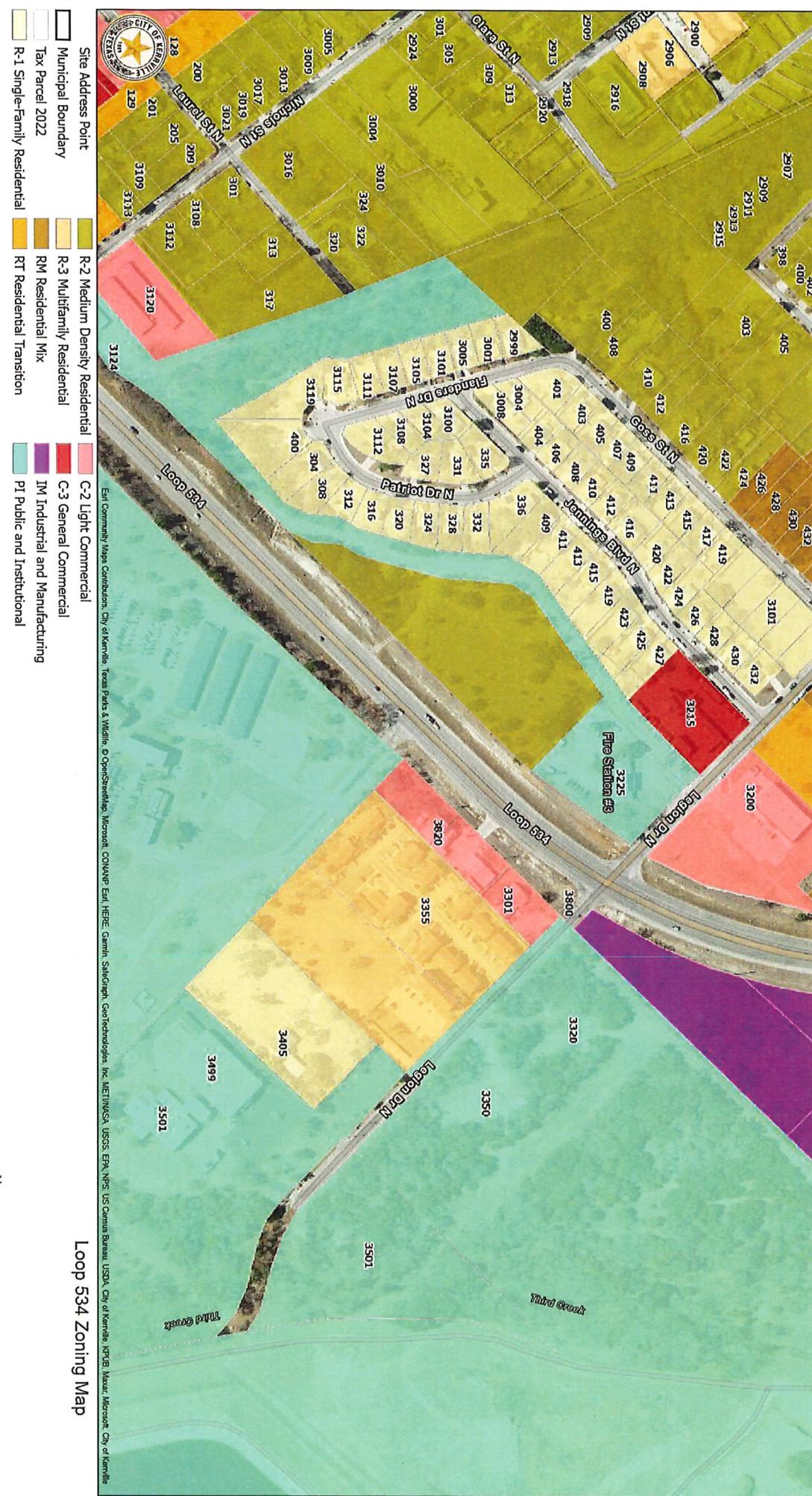
Scale In Feet

11/10/2022



POOL AREA AND PARKING LAYOUT
3625 TEXAS LOOP 534

 Job No.:	 Date: 01/25/2022 Drawn by: BTR Sheet: _____	 SCALE: 1" = 1'	 Revisions: _____
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TO BE CONSIDERED BY THE CITY COUNCIL CITY OF KERRVILLE, TEXAS

SUBJECT:

Ordinance No. 2023-08, second reading. 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: February 14, 2023 **DATE SUBMITTED:** January 26, 2023

SUBMITTED BY: Drew Paxton, Planning Director

EXHIBITS:

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

PAYMENT TO BE MADE TO: N/A

Kerrville 2050 Item? No

Key Priority Area N/A

Guiding Principle N/A

Action Item N/A

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.

December 1, 2022, Planning and Zoning Commission recommended the case for approval with a unanimous vote.

January 24, 2023, City Council unanimously approved (5-0) Ordinance No. 2023-08 on first reading.

RECOMMENDED ACTION:

Approve Ordinance No. 2023-08 on second reading.

ATTACHMENTS:

[20230214 Ord 2023-08 Annex-zone Lehmann and Lenard 2nd reading.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).

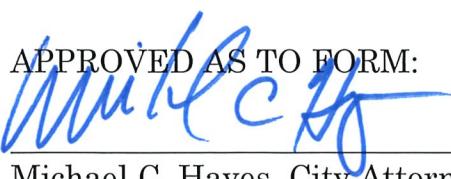
SECTION TEN. PUBLICATION OF ORDINANCE. In accordance with Section 3.07 of the City Charter and Texas Local Government Code §52.013(a), the City Secretary is hereby authorized and directed to publish the descriptive caption of this Ordinance in the manner and for the length of time prescribed by the law 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 24 day of January 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"

**FIELD NOTE DESCRIPTION OF A 0.08 ACRE TRACT
OUT OF THE JAMES A. COCKE SURVEY No. 144,
ABSTRACT No. 95, KERR COUNTY, TEXAS**

A 0.08 acre parcel being a portion of the James A. Cocke Survey No. 144, Abstract No. 95, , being a portion of 9.24 acres according to the conveying Deed filed in Volume 1099, Page 261, Official Public Records of Kerr County, Texas; the whole of which is more particularly described by its metes and bounds as follows:

(NOTE: The following courses are based on an RTK/GNSS survey conducted on the ground, N.A.D.83 datum, Texas State Plane Coordinates, South Central Zone reduced to horizontal ground distances expressed in U.S. Survey feet. Where record or deed courses differ from the surveyed values, the record value is shown in parenthesis)

BEGINNING at a 1/2 inch diameter steel rod found marking the point of curvature to the right in the southeast Right-of-Way line of Lehmann Drive a fifty (50) foot public right-of-way, identical to the westerly most corner of the herein described tract located by Texas State Plane Coordinates at North 13,926,262.775 feet and East 1,920,348.844 feet;

THENCE northwesterly along and with said Right-of-Way line of Lehmann Drive common with said 9.24 acre tract, 224.23 feet along the arc of a curve concave to the southeast through a central angle of 132°35'05", said curve having a radius of 96.90 feet and a chord of N36°54'31"E, 177.44 feet (*N36°48'W. 177.40 feet*) to an unmarked point for at a point of tangency in the southwesterly Right-of-Way line of said Lehmann Drive;

THENCE southeasterly continuing along Lehmann Drive, S76°55'15"E, 156.63 feet to an unmarked point for the easterly most corner of the herein described tract, from which a 5/8 inch diameter steel rod found in the southwest Right-of-Way bears S76°55'15"E, 99.56 feet;

THENCE northwesterly departing Lehmann Drive over and across said 9.24 acre parcel, N79°31'56"W, 64.15 feet to an unmarked point for a point of curvature to the left;

THENCE westerly along the southeast line of the herein described tract, 112.66 feet along the arc of a curve concave to the southeast through a central angle of 19°26'36", said curve having a radius of 332.00 feet and a chord of N89°15'14"W, 112.12 feet to an unmarked point for a point of tangency in the southeast line of the herein described tract;

THENCE southwesterly, S78°22'54"W, 29.40 feet to an unmarked point for a point of curvature to the left;



TBPELS FIRM NO. 10194410
PHONE: 830.217.7100
WWW.WELLBORNENGINEERING.COM

631 WATER STREET
KERRVILLE, TX 78028

EXHIBIT "A"

THENCE southwesterly, 99.44 feet along the arc of a curve concave to the southeast through a central angle of $86^{\circ}19'36''$, said curve having a radius of 66.00 feet and a chord of $S33^{\circ}17'17''W$, 90.30 feet to an unmarked point for a point of curvature to the left;

THENCE southeasterly, 79.18 feet along the arc of a curve concave to the northeast through a central angle of $16^{\circ}19'08''$, said curve having a radius of 278.00 feet and a chord of $S18^{\circ}02'02''E$, 78.91 feet to an unmarked point for a point of tangency in the northeasterly Right-of-Way line of said Lehmann Drive identical to the southerly most point in the herein described tract;

THENCE northwesterly along and with said Right-of-Way line of Lehmann Drive, $N30^{\circ}20'15''W$, 40.11 feet to the **Point of Beginning** the whole of which contains 0.08 acres more or less.

Based upon a survey conducted on the ground
Under my direction and supervision October 21, 2021


R. Scott McClintock, Sr.
Registered Professional Land Surveyor
State of Texas
Registration No. 5907

Dated: 06/22/2022



WELLBORN
ENGINEERING &
SURVEYING

TBPELS FIRM NO. 10194410
PHONE: 830.217.7100
WWW.WELLBORNENGINEERING.COM

631 WATER STREET
KERRVILLE, TX 78028

EXHIBIT B

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 Piszcior

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 26th day of OCTOBER, 2022.

Amelia Hoppe
Notary Public in and for
Kerr County, Texas

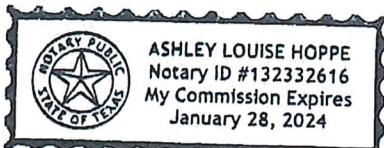


EXHIBIT C
ANNEXATION SERVICE PLAN

- 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.

SERVICE	DETAILS OF SERVICE PROVIDED	TIMETABLE
Code Enforcement	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
Fire Protection and Emergency Medical Services (EMS)	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

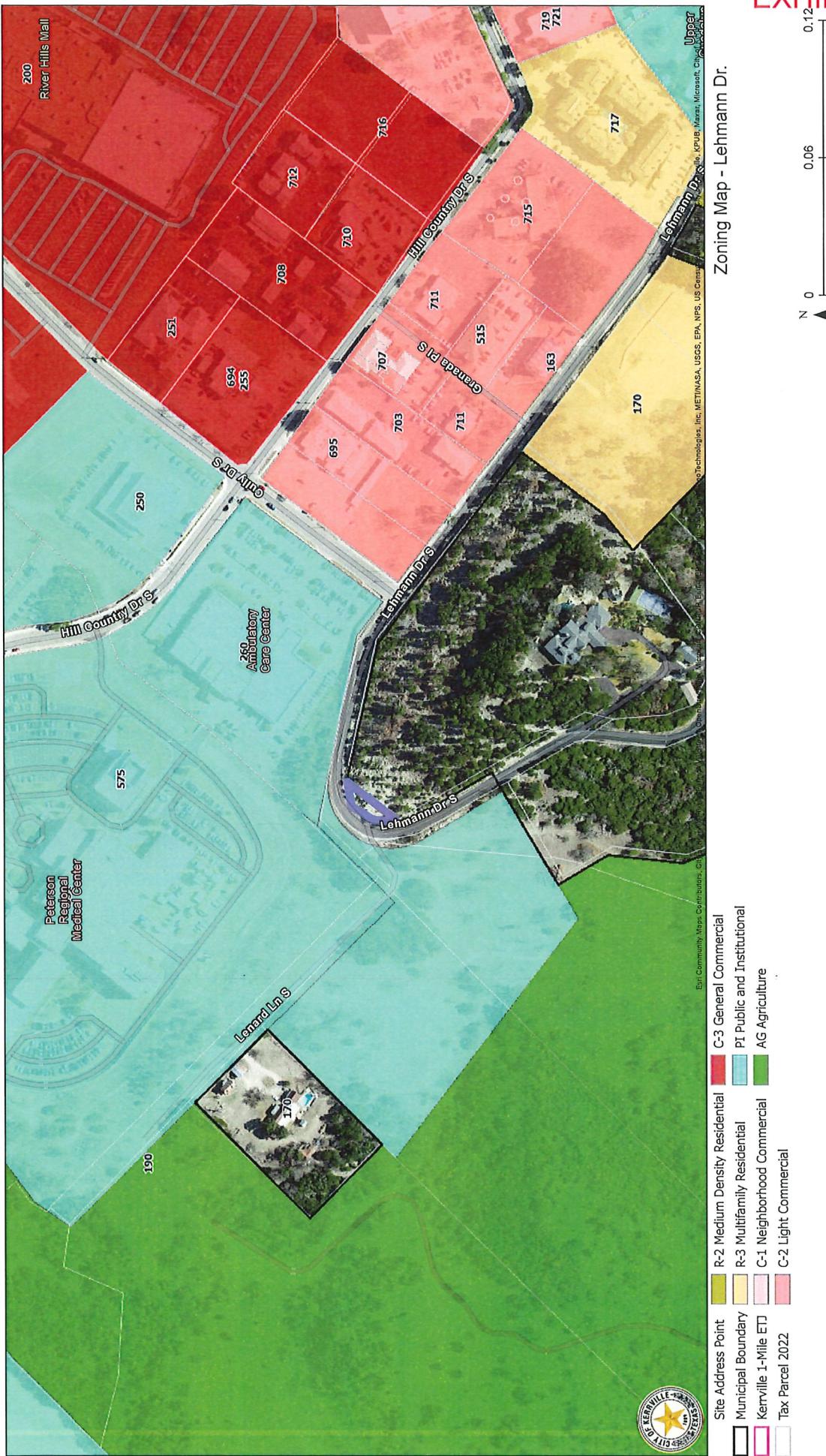
SERVICE	DETAILS OF SERVICE PROVIDED	TIMETABLE
Fire Prevention	The services of the City's Fire Marshall shall be provided to the area.	Immediately following annexation.
Library	Residents of the area, if any, will continue to be entitled to utilize the City's Library facilities.	Immediately following annexation.
Parks and Recreation Facilities	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
Police Protection	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
Maintenance of Existing Roads & Streets	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>	
Solid Waste Collection	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
Traffic Engineering	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

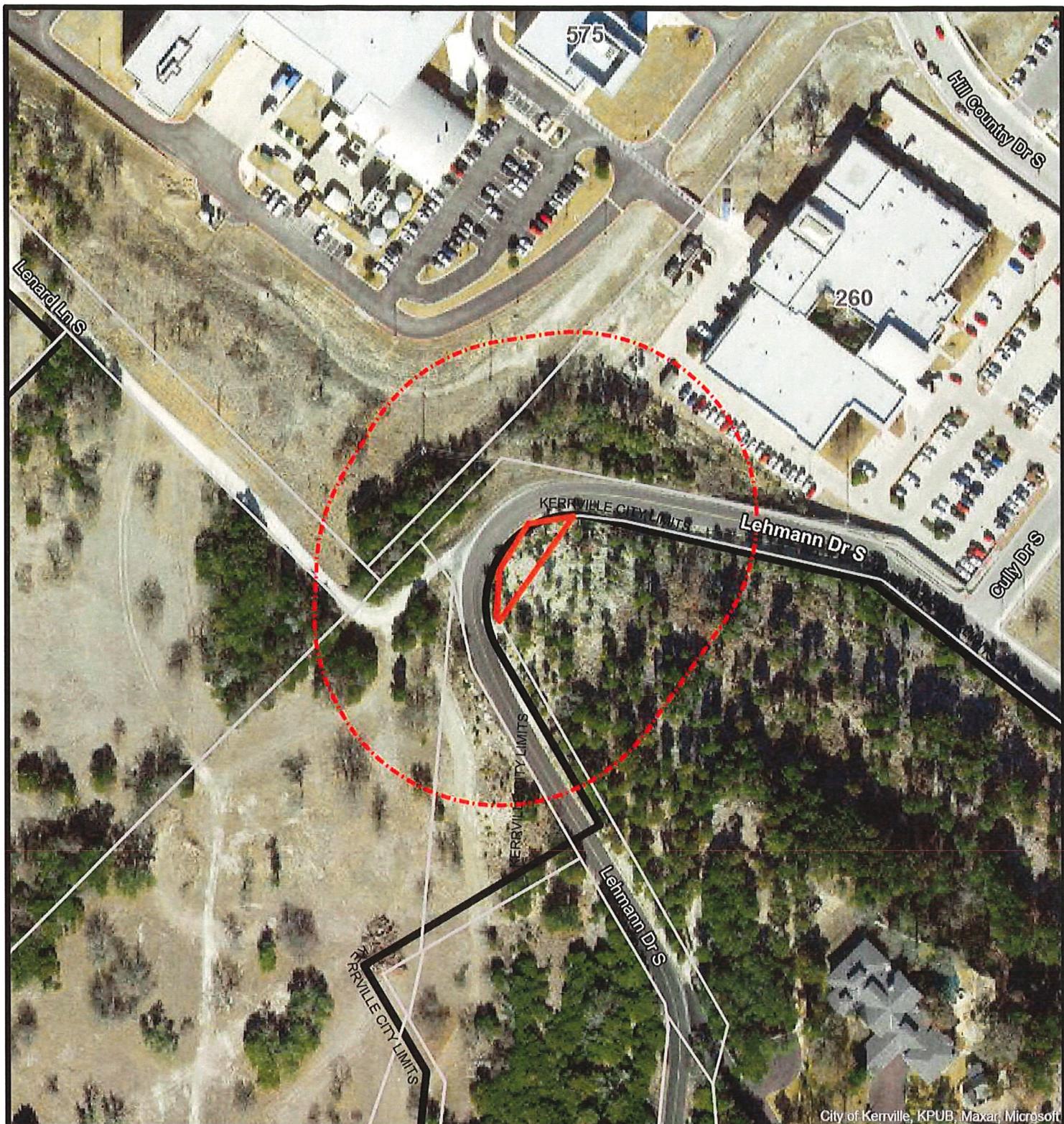
SERVICE	DETAILS OF SERVICE PROVIDED	TIMETABLE
Water Service	<p>The City will provide for the maintenance of City-owned public water lines within the annexed area provided that the area is within the City's Certificate of Convenience and Necessity area as determined by the Public Utility Commission (PUC) 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
Wastewater Service	<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
Provision for Other City Services	<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



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.



Location Map

Case #PZ-2022-72

Location:

KCAD ID# 529291

Legend

- Subject Properties (Red solid rectangle)
- 200 Feet Notification Area (Red dashed circle)



0 50 100 200

Scale In Feet

11/10/2022

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: Consider a request for the granting of major waivers pursuant to §82-37 of the City's Code of Ordinances, such waivers concerning 1) the delayed submission of security for public infrastructure; 2) approval to reduce such security following City's acceptance of phased installation; 3) the early termination of an improvement agreement, all waivers applicable to property being a 37.10 acre tract, referenced as Creekside Apartments Phase 1A, to be addressed as 102 Wellborn Way, and generally located near the intersection of State Highway 16.

AGENDA DATE OF: February 14, 2023 **DATE SUBMITTED:** January 26, 2023

SUBMITTED BY: Drew Paxton, Planning Director

EXHIBITS:

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

PAYMENT TO BE MADE TO: N/A

Kerrville 2050 Item? Yes

Key Priority Area H - Housing

Guiding Principle N/A

Action Item N/A

SUMMARY STATEMENT:

The applicant, RREAF Holdings, has requested three separate major waivers of a provision in the subdivision code.

- Postponement of the requirement of Ordinances Section 82-33(b)(2) to tender/post a bond or the Escrow Fund (as defined below), for the building, installation, construction, and applicable warranty of the required/approved Public Improvements, until the recordation of the approved final plat per the Plat Approval Request.
- Modification/waiver of Ordinances Section 82-32(e)(5) and in lieu thereof that the City, Owner, and a mutually acceptable financial institution enter a tri-party escrow account into which Owner is to deposit funds (the "Escrow Fund") in amount equal to 110% of the estimated cost of the Public Improvements per Ordinances Section 82-32(e)(4)(b), from which Escrow Fund the Owner shall be entitled to reimbursement for the costs of the Public Improvements, as incurred/completed. Draw requests (including supporting

documentation) for withdrawals from the Escrow Fund may be submitted by Owner, not more than once each calendar month, as and when costs of the Public Improvements are incurred by or for Owner (each on a percentage of Public Improvements, or subcomponent thereof, completion basis). Each such request shall be submitted by the Owner to the City for and subject to approval by the City Engineer for Public Improvements work completed and inspected, which City approvals shall not be unreasonably withheld, conditioned or delayed.

- Waiver of Ordinances Section 82-32(e)(2); in lieu thereof Owner's obligations under any development or improvement agreement between the City and Owner with respect to the Public Improvements (yet to be documented and entered by the parties) shall be terminated upon the City's final acceptance of the completed Public Improvements (which City acceptance shall not be unreasonably withheld, conditioned, or delayed), and Owner's posting of required maintenance bonds (2 years).

Staff analysis and recommendations:

The first request (Waiver of Section 82-33(b)(2)) is to delay placement of infrastructure financial guarantee until after the P&Z decision for the final plat (approval). The current code requires the financial guarantee to be in place prior to making an application for the final plat. This places a burden on the applicant to put up the funds prior to any approval process.

- City staff recommend approval of this waiver with a term in the improvement agreement that the financial guarantee will be in place prior to recordation of the final plat. Additionally, consistent with this part of the request, Section 82-33(d)(5) should also be waived. This section is related to the criteria for approval of the final plat also includes the requirement for the financial guarantee to be in place at the time of approval. With the request to delay the placement of said guarantee until after the approval, this section should be waived accordingly.

The second request (Waiver of Section 82-32(e)(5)) is to allow a tri-party escrow account for the financial guarantee (at 110% of the estimated cost of the project as per 82-32(e)(4)b.) allowing withdrawals from the escrow account to fund the construction of related public infrastructure. Withdraws may be requested no more than once per month and shall be submitted by the developer to the City and approved by the City Engineer for work completed and inspected. The standard requirement for a delayed installation of infrastructure is the placement of a financial security, to be fully funded until the time of completion and acceptance of the infrastructure. The applicant is requesting that this tri-party escrow account be in place and to allow the escrow account to fund the on-going construction.

- Staff recommends the approval of this waiver with the inclusion of these terms:
 - An improvement agreement under which funds for the construction of the required improvements are escrowed in Texas with an office of a state or national bank within 75 miles of Kerrville, under which (A) the City has the irrevocable right to withdraw funds, and (B) the developer may be permitted to draw funds to make payments towards the construction of the improvements as progress is verified;

The third request (Waiver of Section 82-32(e)(2)) is that the Improvement Agreement shall be terminated upon the final acceptance of the completed infrastructure and required maintenance bonds (2 years) in place. Section 82-32(e)(2) requires that the Improvement

Agreement run with the land in perpetuity. This condition is not necessary in this case since the related infrastructure is tied to one lot for development.

- Staff recommends approval of this waiver.

With City Council approval of the waiver, the final plat application shall include an improvement agreement with the terms of the waiver. The final plat will then be presented to the Planning and Zoning Commission.

Subdivision Code Summary:

A major waiver is "all other proposed changes that do not meet the criteria to be a minor waiver to the subdivision regulations shall be deemed major amendments that require approval of the major waiver by city council." (Section 82-37(a)(2))

For comparison, a minor waiver is any "waiver that will be considered minor amendments to the subdivision regulations may only include minor adjustments in street or alley alignments, and lengths, and minor adjustments to lot lines that do not result in creation of additional lots or any non-conforming lots, provided that such amendments are consistent with applicable approved prior plats and subdivision plans..." (Section 82-37(a)(1))

When considering a major waiver, as per Section 82-37 (b), "council shall consider the hardship of the applicant in complying with the standards for which the waiver is sought, the nature of the proposed use of land involved and existing uses of the land in the vicinity, and the probable effect of such waivers upon traffic conditions and upon the public health, safety, convenience, and welfare in the vicinity.

No major waiver will be granted unless council finds that:

1. There are special circumstances or conditions affecting the land to be platted such that the strict application of the provisions of these subdivision regulations would result in unnecessary hardship to the applicant and/or the waiver accomplishes one of the following:
2. To preserve environmental features that would be otherwise be affected by a strict application of these regulations, including tree preservation, geologic formations, steep slopes, springs, or similar conditions;
3. To enable more efficient use of the land;
4. To minimize or correct previous adverse effects from placement of drainage courses, transmission lines, or septic systems; or
5. To enable orientation of lots for greater solar advantage; and
6. The granting of the waiver will not be detrimental to the public health, safety, general welfare, or injurious to surrounding properties; and
7. The granting of the waiver will not have the effect of preventing the orderly subdivision of other land in the area in accordance with these subdivision regulations."

RECOMMENDED ACTION:

Approve the waiver with recommended terms.

ATTACHMENTS:

[*20230214 Waiver -Request for limited waiver Creekside.pdf*](#)



RREAF HOLDINGS

January 31, 2023

REQUEST FOR LIMITED WAIVER

City of Kerrville, Texas
Attn: Mr. Drew Paxton
Director of Planning and Development
200 Sidney Baker Street North
Kerrville, TX 78028

[Via Email drew.paxton@kerrvilletx.gov](mailto:drew.paxton@kerrvilletx.gov)

RE: Development of approximately 203 acres off Camp Meeting Road, Kerrville, Texas (the "Property")
by Creekside Crossing Kerrville, LLC (DE limited liability company; the "Owner") (the "Project")

Dear Mr. Paxton:

As you know, the Owner is the present owner and developer of the Project Property. In connection with its development of the Property, the Owner and its adjacent property-owner affiliate have submitted to the City of Kerrville, Texas ("City") a proposed preliminary plat and request for plat approval (the "Plat Approval Request"), together with proposed engineering plans for development of proposed (i) principal subdivision roadway (the "Spine Road"), (ii) Camp Creek crossing/bridge infrastructure improvements ("Crossing Infrastructure"), and (iii) related stormwater and wastewater infrastructure improvements ("In Ground Infrastructure"; collectively, with the Spine Road and Crossing Infrastructure, the "Public Improvements") to support the Project and a portion of the Owner's affiliate development of approximately 190 adjacent/contiguous acres of real property (the "Proposed Engineering Plans"). The City has, in turn, provided various comments to the Plat Approval Request and Proposed Engineering Plans, noting, in part, certain conditions to be met by Owner to obtain the City's approval of the Plat Approval Request. These conditions included, among other things, certain modifications to the Proposed Engineering Plans to meet various requirements of the City's property development and code of ordinances (the "Ordinances"), including without limitation requirements under Chapter 82 of the Ordinances.

In view of the City's response to the Owner's Plat Approval Request and Proposed Engineering Plans, the Owner requests, pursuant to Section 82-37 of the Ordinances, the following waivers to/ modifications of the requirements of the Ordinances applicable to the Project:

- Postponement of the requirement of Ordinances Section 82-33(b)(2) to tender/post a bond or the Escrow Fund (as defined below), for the building, installation, construction, and applicable warranty of the required/approved Public Improvements, until the recordation of the approved final plat per the Plat Approval Request.
- Modification/waiver of Ordinances Section 82-32(e)(5) and in lieu thereof that the City, Owner, and a mutually acceptable financial institution enter a tri-party escrow account into which Owner is to deposit funds (the "Escrow Fund") in amount equal to 110% of the estimated cost of the Public Improvements per Ordinances Section 82-32(e)(4)(b), from which Escrow Fund the Owner shall be entitled to reimbursement for the costs of the Public Improvements, as incurred/completed. Draw



RREAF HOLDINGS

requests (including supporting documentation) for withdrawals from the Escrow Fund may be submitted by Owner, not more than once each calendar month, as and when costs of the Public Improvements are incurred by or for Owner (each on a percentage of Public Improvements, or subcomponent thereof, completion basis). Each such request shall be submitted by the Owner to the City for and subject to approval by the City Engineer for Public Improvements work completed and inspected, which City approvals shall not be unreasonably withheld, conditioned or delayed.

- Waiver of Ordinances Section 82-32(e)(2); in lieu thereof Owner's obligations under any development or improvement agreement between the City and Owner with respect to the Public Improvements (yet to be documented and entered by the parties) shall be terminated upon the City's final acceptance of the completed Public Improvements (which City acceptance shall not be unreasonably withheld, conditioned, or delayed), and Owner's posting of required maintenance bonds (2 years).

Our request for these waivers/modifications is made to permit the Owner to expeditiously pursue the Project on a timely and continuing basis, consistent with both the City's and the Owner's ultimate desire to complete these improvements, increase property values, and provide the community with quality single-family and multifamily property products and related services without further delay. As noted by City P&Z, this waiver request, as permitted by the Ordinances, appears to be the most expeditious path to these ends (see Ordinances Sec. 82-37(b)).

We thank you, in advance, for your timely consideration of this request. In the meantime, should you need anything further from us in processing these requests, please contact us at your earliest convenience.

With Sincere Regards,

Carl Schwab

Carl Schwab, President
RREAF Development Services
RREAF Holdings LLC

Cc: Michael Hornes
Mike Welborn
Mike Hayes, Esq.
David R. Cragle, Esq.
Mariam Morshedi, Esq.



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

SUBJECT: Resolution No. 04-2023. A Resolution authorizing execution of an Advance Funding Agreement (AFA) with the Texas Department of Transportation for a Transportation Alternatives Set-Aside (TASA) Project.

AGENDA DATE OF: February 14, 2023 **DATE SUBMITTED:** January 26, 2023

SUBMITTED BY: Kyle Burow, Director Engineering

EXHIBITS:

Expenditure Required:	Remaining Budget Balance in Account:	Amount Budgeted:	Account Number:
\$263,816	\$269,381	\$343,816	70-7000-5100

PAYMENT TO BE MADE TO: N/A

Kerrville 2050 Item? Yes

Key Priority Area M - Mobility / Transportation

Guiding Principle N/A

Action Item M1.4 - Explore a variety of options, including bonds, to fund the construction of needed transportation improvements

SUMMARY STATEMENT:

On January 15, 2021, the Texas Department of Transportation (TxDOT) opened its 2021 Transportation Alternatives Set-aside (TA) Program Call for Projects for local governments and other project sponsors throughout the state. The TA Program provides funding for a variety of alternative transportation projects, including bicycle infrastructure improvements, shared use paths, sidewalk improvements, and infrastructure-related projects to improve safety for non-motorized transportation. The initial project funding was \$10.5 million to be distributed across the State of Texas in which the Texas Transportation Commission later increased available funding to approximately \$55 million in federal funds distributed throughout the state. In the 2021 Call for Projects for TxDOT's TA Program, the City entered three project applications and was awarded one project for pedestrian infrastructure improvements. The TA funds to be applied to projects require a local match of 20% in which the City is responsible for committing funds in addition to 100% of overruns and non-reimbursable costs, if any, prior to project commencement. The Advanced Funding Agreement (AFA) is required as acknowledgement on the City's behalf to reaffirm support for the project and commit the necessary funding required for the local match.

The scope of work for the project consists of construction of concrete sidewalks, filling gaps, correcting existing sidewalk deficiencies, and installing curb ramps along Wesley Dr, Cully Dr,

and Hill Country Dr. in the Catalyst #2 area. The proposed improvements will improve safety and mobility for pedestrians while enhancing connectivity and providing access to key destinations. The anticipated project cost is approximately \$1.36 million for design and construction phases funded 80% by the TA Program and 20% by the City's local match as required. The estimated City participation of funding for the project is \$263,816, plus 100% of overruns and non-reimbursables.

Upon execution of the resolution, the City will comply with the TA Program requirements for procurement of a design firm to develop construction documents in conformance to TxDOT standards. Construction is anticipated to be complete near the end of 2023 for project closeout in early 2024.

RECOMMENDED ACTION:

Approve Resolution No. 04-2023, and authorize the City Manager and Mayor to finalize and execute any actions necessary to satisfy any TxDOT requirements.

ATTACHMENTS:

[20230214_Reso 04-2023 AFA with TASA.pdf](#)

CITY OF KERRVILLE, TEXAS
RESOLUTION NO. 04-2023

**RESOLUTION AUTHORIZING EXECUTION OF AN
ADVANCE FUNDING AGREEMENT (AFA) WITH THE
TEXAS DEPARTMENT OF TRANSPORTATION FOR A
TRANSPORTATION ALTERNATIVES SET-ASIDE (TASA)
PROJECT**

WHEREAS, on October 28, 2021, via Minute Order 116126, the Texas Transportation Commission authorized the Hill Country Dr., Wesley Dr., and Cully Dr. Pedestrian Improvements project (the “Project) to receive Transportation Alternatives Set-Aside (TASA) funds for project construction and Texas Department of Transportation (TxDOT or the State) oversight; and

WHEREAS, the TASA funds require a local match, the City of Kerrville, TX commits to provide the match. The local match is comprised of cash; and

WHEREAS, the City of Kerrville, TX is responsible for all nonreimbursable costs and 100% of overruns, if any; and

WHEREAS, the City Council of the City of Kerrville, TX desires to reaffirm its support of the Project and approve and authorize the execution of an Advance Funding Agreement (AFA) with TxDOT for the Project;

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

SECTION ONE. The City Manager is authorized to enter into an AFA with TxDOT for the Project, with the AFA attached as **Exhibit A**.

SECTION TWO. This Resolution was duly passed by majority vote of all members of the City Council for the City of Kerrville, TX on the date indicated below.

PASSED AND APPROVED ON this the ___ day of February, 2023.

Judy Eychner, Mayor

APPROVED AS TO FORM:



Michael C. Hayes, City Attorney

ATTEST:

Shelley McElhannon, City Secretary

TxDOT:				Federal Highway Administration:	
CSJ #	0915-15-098			CFDA No.	20.205
District #	SAT (15)	AFA ID	Z00003565	CFDA Title	Highway Planning and Construction
Code Chart 64 #	22150				
Project Name	Hill Country Dr, Wesley Dr, and Cully Dr Pedestrian Improvements				<i>AFA Not Used For Research & Development</i>

STATE OF TEXAS §

COUNTY OF TRAVIS §

**ADVANCE FUNDING AGREEMENT
FOR A TRANSPORTATION ALTERNATIVES
SET-ASIDE (TASA) PROGRAM PROJECT
TxDOT-Selected Off-System**

This Advance Funding Agreement for a Transportation Alternatives Set-Aside (TASA) Program Project ("Agreement") is made between the State of Texas (State), acting through the Texas Department of Transportation, and the City of Kerrville (Local Government), acting through its duly authorized officials.

WITNESSETH

WHEREAS, federal law establishes federally funded programs for transportation improvements to implement its public purposes, and

WHEREAS, the Texas Transportation Code, Section 201.103 establishes that the State shall design, construct and operate a system of highways in cooperation with local governments, and Section 222.052 authorizes the Texas Transportation Commission to accept contributions from political subdivisions for development and construction of public roads and the state highway system within the political subdivision, and

WHEREAS, Federal law, 23 USC §134 and 49 USC §5303, requires that State and Metropolitan Planning Organizations (MPOs) develop transportation plans and programs for urbanized areas of Texas, and

WHEREAS, Federal and state laws require local governments to meet certain contract standards relating to the management and administration of State and federal funds, and

WHEREAS, the Texas Transportation Commission has codified 43 TAC, Rules 15.50-15.56 that describe federal, state, and local responsibilities for cost participation in highway improvement and other transportation projects, and

WHEREAS, the rules and procedures for the Transportation Alternatives Set-Aside Program (TASA) are established in 23 USC §133(h), and 43 Texas Administrative Code, Part 1, Chapter 11, Subchapter G, §§11.400 – 11.418, and

WHEREAS, the Local Government prepared and submitted to the State or Metropolitan Planning Organization (MPO) a project nomination package for TASA funding consideration, which is briefly described as Hill Country Dr, Wesley Dr, and Cully Dr Pedestrian Improvements (Project), and

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WHEREAS, the Texas Transportation Commission (Commission) passed Minute Order Number 116126 (MO) dated October 28, 2021 awarding funding for TASA projects in the TASA Program Call of the State, including Project, and

WHEREAS, the governing body of the Local Government has approved entering into this Agreement by resolution or ordinance dated **02/14/2023**, which is attached to and made a part of this Agreement as Attachment C, Resolution or Ordinance. A map showing the Project location appears in Attachment A, Project Location Map, which is attached to and made a part of this Agreement, and

NOW, THEREFORE, the State and the Local Government agree as follows:

AGREEMENT

1. Period of Agreement and Performance

- A. Period of Agreement. This Agreement becomes effective when signed by the last party whose signing makes the Agreement fully executed. This Agreement shall remain in effect until terminated as provided below.
- B. Period of Performance.
 - 1. The Performance Period for each phase of work begins on the date specified in the Federal Project Authorization and Agreement (FPAA) for that phase of work. Local Government may not begin work until issued the State Letter of Authority (SLOA) for that phase of work.
 - 2. The Performance Period for each phase of work ends on the date specified in the FPAA for that phase of work.

2. Scope of Work and Use of Project

- A. The scope of work for Project consists of construction of concrete sidewalks, filling gaps, correcting existing sidewalk deficiencies, and installing curb ramps along Wesley Dr, Cully Dr, and Hill Country Dr. The proposed improvements will improve safety and mobility for pedestrians while enhancing connectivity and providing access to key destinations.
- B. Any project changes proposed must be submitted in writing by Local Government to State. Substantive changes may also require an amendment to this Agreement and the approval of the FHWA, State, MPO, or the Commission. Any changes undertaken without written approval and amendment of this Agreement may jeopardize not only the federal funding for the changes, but the federal funding of the entire Project.

3. Project Sources and Uses of Funds

The total estimated development cost of the Project is shown in Attachment B, Project Budget Estimate and Source of Funds (Attachment B).

- A. If Local Government will perform any work under this Agreement for which reimbursement will be provided by or through the State, the Local Government must complete training. If federal funds are being used, the training must be completed before federal spending authority is obligated. Training is complete when at least one

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individual who is working actively and directly on the Project successfully completes and receives a certificate for the course entitled "Local Government Project Procedures and Qualification for the Texas Department of Transportation" and retains qualification in accordance with applicable TxDOT procedures. Upon request, Local Government shall provide the certificate of qualification to State. The individual who receives the training certificate may be an employee of Local Government or an employee of a firm that has been contracted by Local Government to perform oversight of the Project. State in its discretion may deny reimbursement if Local Government has not continuously designated in writing a qualified individual to work actively on or to directly oversee the Project.

B. The total estimated project cost as shown in Attachment B includes the Local Government's estimated itemized cost of real property, utilities, environmental assessments, construction, and other construction related costs. To be eligible for reimbursement or as in-kind contribution, costs must have been included in the nomination form approved by the Texas Transportation Commission or MPO in consultation with State. Local Government must submit to State evidence of payment for eligible in-kind costs at least once per calendar quarter using the State's In-Kind Match Reporting form.

C. State and the Federal Government will not reimburse Local Government for any work performed outside the Performance Period. After federal funds have been obligated, State will send to Local Government a copy of the formal documentation showing the obligation of funds including federal award information. Local Government is responsible for 100 percent of the cost of any work performed under its direction or control before the federal spending authority is formally obligated.

D. The Project budget and source of funds estimate based on the budget provided in the application is included in Attachment B. Attachment B shows the percentage and estimated dollar amounts to be contributed to Project by state and local sources, as well as the maximum amount in federal TASA funds assigned by the Commission or MPO in consultation with State. This Agreement may be amended from time to time as required to meet the funding commitments based on revisions to the TASA, FPAA, or other federal documents.

E. State will be responsible for securing the federal share of funding required for the development and construction of Project, in an amount not to exceed 80 percent of the actual cost of the work up to the amount of funds approved for Project by the Texas Transportation Commission or MPO in consultation with State. Federal funds will be reimbursed on a cost basis. Project costs incurred prior to issuance of the SLOA are not eligible for reimbursement.

F. The Local Government will be responsible for all non-federal or non-State participation costs associated with the Project, unless otherwise provided for in this Agreement or approved otherwise in an amendment to this Agreement. For items of work subject to specified percentage funding, the Local Government shall only in those instances be responsible for all Project costs that are greater than the maximum State and federal participation specified in Attachment B and for overruns in excess of the amount specified in Attachment B to be paid by the Local Government. If the Project was State-selected, the State may apply a portion of any excess program funds to cover all or a portion of any overrun based on criteria provided by 43 Tex. Admin. Code §11.411(d).

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- G. The budget in Attachment B will clearly state all items subject to fixed price funding, specified percentage funding, and the periodic payment schedule, when periodic payments have been approved by the State.
- H. When fixed price funding is used, the Local Government is responsible for the fixed price amount specified in Attachment B. Fixed prices are not subject to adjustment unless (1) differing site conditions are encountered; (2) further definition of the Local Government's requested scope of work identifies greatly differing costs from those estimated; (3) work requested by the Local Government is determined to be ineligible for federal participation; or (4) the adjustment is mutually agreed to by the State and the Local Government.
- I. Following execution of this Agreement, but prior to the performance of any plan review work by State, Local Government will pay to State the amount specified in Attachment B for plan review. At least 60 days prior to the date set for receipt of the construction bids, Local Government shall remit its remaining local match as specified in Attachment B for State's estimated construction oversight and construction cost.
- J. In the event State determines that additional funding is required by Local Government at any time during Project, State will notify Local Government in writing. Local Government is responsible for the percentage of the authorized Project cost shown in Attachment B and 100 percent of any overruns above the federally authorized amount. Local Government will make payment to State within 30 days from receipt of State's written notification.
- K. Whenever funds are paid by Local Government to State under this Agreement, Local Government will remit a warrant made payable to the "Texas Department of Transportation". The warrant will be deposited by State and managed by State. Funds may only be applied by State to Project.
- L. Upon completion of Project, State will perform a final accounting of Project costs. Any funds due to Local Government, State, or the Federal Government will be promptly paid by the owing party.
- M. In the event Project is not completed, State may seek reimbursement from Local Government of the expended federal funds. Local Government will remit the required funds to State within 60 days from receipt of State's notification.
- N. If any existing or future local ordinances, commissioners court orders, rules, policies, or other directives, including but not limited to outdoor advertising billboards and storm water drainage facility requirements, are more restrictive than state or federal regulations, or if any other locally proposed changes, including but not limited to plats or re-plats, result in increased costs, then any increased costs associated with the ordinances or changes will be paid by Local Government. The cost of providing right of way acquired by State shall mean the total expenses in acquiring the property interests through negotiations, including, but not limited to, expenses related to relocation, removal, and adjustment of eligible utilities.
- O. The state auditor may conduct an audit or investigation of any entity receiving funds from the State directly under the Agreement or indirectly through a contract or subcontract under the Agreement. Acceptance of funds directly under the Agreement or indirectly through a contract or subcontract under this Agreement acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee,

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to conduct an audit or investigation in connection with those funds. An entity that is the subject of an audit or investigation must provide the state auditor

with access to any information the state auditor considers relevant to the investigation or audit.

- P. State will not pay interest on any funds provided by Local Government.
- Q. State will not execute the contract for the construction of Project until the required funding has been made available by Local Government in accordance with this Agreement.
- R. Local Government is authorized to submit requests for reimbursement by submitting the original of an itemized invoice in a form and containing all items required by State no more frequently than monthly, and no later than 90 days after costs are incurred. If Local Government submits invoices more than 90 days after the costs are incurred, and if federal funding is reduced as a result, State shall have no responsibility to reimburse Local Government for those costs.
- S. If Local government is an Economically Disadvantaged County (EDC) and if State has approved adjustments to the standard financing arrangement, this agreement reflects those adjustments.

4. Termination of the Agreement

- A. This Agreement may be terminated by any of the following conditions:
 - 1. By mutual written consent and agreement of all parties;
 - 2. By any party with 90 days written notice; or
 - 3. By either party, upon the failure of the other party to fulfill the obligations as set forth in this Agreement. Any cost incurred due to such breach of contract shall be paid by the breaching party.
- B. If the potential termination of this Agreement is due to the failure of Local Government to fulfill its contractual obligations, State will notify Local Government that possible breach of contract has occurred. Local Government should make every effort to remedy the breach within a period mutually agreed upon by both parties.
- C. The Agreement may be terminated by the State because the parties are not able to execute a mutually agreeable amendment when the costs for Local Government requested items increase significantly due to differing site conditions, determination that Local government requested work is ineligible for federal or state cost participation, or a more thorough definition of the Local Government's proposed work scope identifies greatly differing costs from those estimated. The State will reimburse Local Government remaining funds to the Local Government within ninety (90) days of termination;
- D. If Local Government withdraws from Project after this Agreement is executed, Local Government shall be responsible for all direct and indirect Project costs as identified by the State's cost accounting system and with 2 CFR Part 200 recapture requirements.
- E. A project may be eliminated from the program as outlined below. If Project is eliminated for any of these reasons, this Agreement will be appropriately terminated. A project may be eliminated from the program, and this Agreement terminated, if:
 - 1. Local Government fails to satisfy any requirements of the program rules cited in 43 Texas Administrative Code, Part 1, Chapter 11, Subchapter G, §§11.400 – 11.418.

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2. The implementation of Project would involve significant deviation from the activities proposed in the nomination form and approved by the Texas Transportation Commission or MPO in consultation with State.
3. Local Government withdraws from participation in Project.
4. State determines that federal funding may be lost due to Project not being implemented and completed.
5. Funds are not appropriated, in which case this Agreement shall be terminated immediately with no liability to either party. Payment under this Agreement beyond the current fiscal biennium is subject to availability of appropriated funds.
6. A construction contract has not been awarded or construction has not been initiated within three years after the date that the Commission or MPO selected the project or by a letting date determined by the state and agreed to by the Local Government.
7. Local Government fails to attend progress meetings at least twice yearly, as scheduled by State.

F. State, at its sole discretion, may terminate this Agreement if State does not receive project invoice from Local Government within 270 days of FPAA.

5. Amendments

This Agreement may be amended due to changes in the work, the amount of funding required to complete Project, or the responsibilities of the parties. Such amendment must be made through a mutually agreed upon, written amendment that is executed by the parties.

6. Remedies

This Agreement shall not be considered as specifying the exclusive remedy for any agreement default, but all remedies existing at law and in equity may be availed of by either party to this Agreement and shall be cumulative.

7. Utilities

Local Government shall be responsible for the adjustment, removal, or relocation of utilities or utility facilities in accordance with applicable State laws, regulations, rules, policies, and procedures, including any cost to State of a delay resulting from Local Government's failure to ensure that utilities or utility facilities are adjusted, removed, or relocated before the scheduled beginning of construction. At the State's discretion, State may reimburse Local Government for minor, incidental utility adjustments that are identified during the preliminary engineering phase if they are eligible for federal reimbursement. Local Government must obtain advance approval for any variance from established procedures. Before a construction contract is let, Local Government shall provide, at State's request, a certification stating that Local Government has completed the adjustment of all utilities that must be adjusted before construction begins. Additional utility work may be required due to unknown conditions discovered during construction. These costs may be eligible for TASA participation if the following conditions are met: (1) the activity is required to complete Project; (2) the cost is incidental to Project; and (3) TASA funding is available. Any change orders must be approved by State prior to incurring any cost for which reimbursement is sought.

8. Environmental Assessment and Mitigation

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Development of Project must comply with the National Environmental Policy Act and the National Historic Preservation Act of 1966, which require environmental clearance of federal-aid projects.

- A. The **Local Government** is responsible for the identification and assessment of any environmental problems associated with the development of Project.
- B. Local Government is responsible for the cost of any environmental problem's mitigation and remediation. These costs will not be reimbursed or credited towards Local Government's financial share of Project unless specified in the nomination form and approved by State or MPO in consultation with State.
- C. Local Government is responsible for providing any public meetings or public hearings required for development of the environmental assessment, including any public hearing requirements that may be necessary when adding a bike lane.
- D. Before the advertisement for bids, Local Government shall provide to State written documentation from the appropriate regulatory agency or agencies that all environmental clearances have been obtained.

9. Compliance with Accessibility Standards

All parties to this Agreement shall ensure that the plans for and the construction of all projects subject to this Agreement are in compliance with standards issued or approved by the Texas Department of Licensing and Regulation (TDLR) as meeting or consistent with minimum accessibility requirements of the Americans with Disabilities Act (P.L. 101-336) (ADA).

10. Architectural and Engineering Services

- A. Architectural and engineering services for preliminary engineering will be provided by the **Local Government**. In procuring professional services, the parties to this Agreement must comply with federal requirements cited in 23 CFR Part 172 if Project is federally funded and Local Government will be seeking reimbursement for these services or if these services will be used as in-kind contributions; and with Texas Government Code Subchapter 2254.A., in all cases. Professional services contracts for federally funded projects must conform to federal requirements.
- B. The architectural contract documents shall be developed in accordance with the standards of the American Institute of Architects, the U.S. Secretary of the Interior's Standards for Historic Preservation Projects, Standards and Guidelines for Archeology and Historic Preservation, the National Register Bulletin Number 36: Guidelines for Evaluating and Registering Historical Archeological Sites and in consultation with the State Historic Preservation Officer, as applicable. The engineering plans shall be developed in accordance with State's applicable Standard Specifications for Construction and Maintenance of Highways, Streets and Bridges and the two American Association of State Highway and Transportation Officials' ("AASHTO") publications, "A Policy on Geometric Design of Highways and Streets" and "Guide for the Development of Bicycle Facilities," as applicable. All design criteria for bicycle and pedestrian bridges must comply with TxDOT's Bridge Design Manual and AASHTO's Load and Resistance Factor Design (LRFD) Guide Specifications for the Design of Pedestrian Bridges (latest edition) as applicable. All contract procurement procedures and documents must adhere to the applicable requirements established in the Standard Specifications for Construction and Maintenance of Highways, Streets and Bridges. The use of other systems of specifications shall be approved by State in writing in advance.

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- C. When architectural and engineering services are provided by or through Local Government, Local Government shall submit any plans it has completed to State for review and approval on an agreed upon schedule. Local Government may also submit the plans to State for review any time prior to completion. Local Government shall make the necessary revisions determined by State. Local Government will not let the construction contract until all required plans have received State approval.
- D. When architectural and engineering services are provided by or through State, then the State is responsible for the delivery and performance of any required architectural or preliminary engineering work. Local Government may review and comment on the work, including any proposed changes to the scope of work, as required to accomplish Project purposes. State will cooperate with Local Government in accomplishing these Project purposes to the degree permitted by state and federal law.

11. Construction Responsibilities

- A. The **Local Government** shall advertise for construction bids, issue bid proposals, receive and tabulate the bids, and award and administer the contract for construction of Project. Administration of the contract includes the responsibility for construction engineering and for issuance of any change orders, supplemental agreements, amendments, or additional work orders that may become necessary subsequent to the award of the construction contract. To ensure federal funding eligibility, projects must be authorized by State prior to advertising for construction.
- B. All contract letting and award procedures must be approved by State prior to letting and award of the construction contract, whether the construction contract is awarded by State or by Local Government.
- C. All contract change order review and approval procedures must be approved by State prior to start of construction.
- D. If the Local Government is the responsible party, the State must review and approve change orders.
- E. Upon completion of Project, the party constructing Project will issue and sign a "Notification of Completion" acknowledging Project's construction completion.
- F. For federally funded contracts, the parties to this Agreement will comply with federal construction requirements provided in 23 CFR Parts 633 and 635, and shall include the latest version of Form "FHWA-1273" in the contract bidding documents. If force account work will be performed, a finding of cost effectiveness shall be made in compliance with 23 CFR Subpart 635.B.
- G. Any field changes, supplemental agreements, or revisions to the design plans that may occur after the construction contract is awarded will be mutually agreed to by State and Local Government prior to authorizing the contractor to perform the work. Prior to completion of Project, the party responsible for construction will notify the other party to this Agreement of the anticipated completion date. All parties will be afforded the opportunity to assist in the final review of the construction services performed by the contractor.

12. Project Maintenance

- A. Upon completion of Project, Local Government will be responsible for maintaining the completed facility for public use. The property shall be maintained and operated for the purpose for which it was approved and funded for a period commensurate with the

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federal investment or State rules, whichever is greater. Should Local Government at any time after Project completion decide it can no longer maintain and operate Project

for its intended purpose, Local Government shall consult with State and the FHWA as to the disposal or alternate uses, consistent with Project's original intent. State may require Local Government to return the federal funds in accordance with 2 CFR Part 200 federal recapture requirements. Should Local Government consider conveying the property, State and FHWA must be notified prior to the sale, transfer, or disposal of any property that received federal funds. Written concurrence of approval for the transaction, detailing any required recapture, must be obtained from FHWA prior to the transaction. Advance notice from Local Government of their intended action must be submitted to State for an FHWA review a minimum of 90 days prior to any action being taken by Local Government. Local Government shall be held responsible for reimbursement of all federal funds used or a portion of those funds based on a pro-rata amount, considering the original percentage of federal funds provided and the time elapsed from Project completion date. This same percentage of reimbursement also applies to any amount of profit that may be derived from the conveyance of the property, as applicable.

- B. Any manufacturer warranties extended to Local Government as a result of Project shall remain in the name of Local Government. State shall not be responsible for honoring any warranties under this Agreement.
- C. Should Local Government derive any income from the development and operation of Project, a portion of the proceeds sufficient for the maintenance and upkeep of the property shall be set aside for future maintenance. A project income report shall be submitted to State on a quarterly basis. Monies set aside according to this provision shall be expended using accounting procedures and with the property management standards established in 2 CFR Part 200.
- D. Should any historic properties be included in or affected by this federally funded Project, the historic integrity of the property and any contributing features must continue to be preserved regardless of any approved changes that may occur throughout the life of Project.

13. Right of Way and Real Property Acquisition

- A. Right of way and real property acquisition shall be the responsibility of Local Government. Title to right of way and other related real property must be acceptable to State before funds may be expended for the improvement of the right of way or real property.
- B. If Local Government is the owner of any part of Project site under this Agreement, Local Government shall permit State or its authorized representative access to occupy the site to perform all activities required to execute the work.
- C. Local Government will comply with and assume the costs for compliance with all the requirements of Title II and Title III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 USC §4601 et seq., including those provisions relating to incidental expenses incurred by the property owners in conveying the real property to Local Government, and benefits applicable to the relocation of any displaced person as defined in 49 CFR §24.2(g). Documentation to support such

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compliance must be maintained and made available to State and its representatives for review and inspection.

D. Local Government shall assume all costs and perform all work necessary to obtain needed evidence of title or right of use to the real property required for development of Project. Evidence of title or right of use shall be acquired in the name of (1) State, if the real property is to be made part of the State Highway System, or (2) Local Government, if the real property is not to be made part of the State Highway System. The evidence of title or rights shall be acceptable to State, and be free and clear of all encroachments. Local Government shall secure and provide easements and any needed rights of entry over any other land needed to develop Project according to the approved Project plans. Local Government shall be responsible for securing any additional real property required for completion of Project.

E. Local Government shall prepare real property maps, property descriptions, and other data as needed to properly describe the real property and submit them to State for approval prior to Local Government acquiring the real property. Tracings of the maps shall be retained by Local Government for a permanent record.

F. Local Government shall determine property values for each real property parcel to be purchased with federal funds using methods acceptable to State and shall submit to State a tabulation of the values so determined, signed by the appropriate Local Government representative. The tabulations must list the parcel numbers, ownership, acreage, and recommended compensation. The tabulation must be accompanied by an explanation to support the estimated values, together with a copy of the documentation and reports used in calculating each parcel's value. Expenses incurred by Local Government in performing this work may be eligible for reimbursement after Local Government has received written authorization by State to proceed with determination of real property values. State will review the data submitted and will base its reimbursement for parcel acquisitions on these in determining the fair market values. Local Government will not be reimbursed for right-of-way costs on state-selected projects.

G. For State-selected TASA projects, Local Government shall not use eminent domain or condemnation to acquire real property for this TASA Project.

H. Reimbursement for real property costs will be made to Local Government for real property purchased in an amount not to exceed 80 percent of the cost of the real property purchased in accordance with the terms and provisions of this Agreement. Reimbursement will be in an amount not to exceed 80 percent of State's predetermined fair market value of each parcel, or the net cost thereof, whichever is less. In addition, reimbursement will be made to Local Government for necessary payments to appraisers for expenses incurred in order to assure good title. Local Government will not be reimbursed for right-of-way costs on state-selected projects.

I. Local Government and current property owner are responsible for any costs associated with the relocation of displaced persons and personal property as well as incidental expenses incurred in acquiring property to implement Project. State will not pay any of these costs.

J. If Project requires the use of real property to which Local Government will not hold title, a separate agreement between the owners of the real property and Local Government must be executed prior to execution of this Agreement. The separate agreement between Local Government and the current property owner must establish that Project

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will be dedicated for public use for a period of time not less than ten years after project completion and commensurate with the federal investment. For State-selected projects, this is outlined in 43 Tex. Admin. Code §11.417. The separate agreement

must define the responsibilities of the parties as to the use of the real property and operation and maintenance of Project after completion. The separate agreement must be approved by State prior to its execution and a copy of the executed separate agreement shall be provided to State.

- K. Local Government shall execute individually or produce a legal document as necessary to provide for Project's continued use from the date of completion, and agrees to cause the same to be recorded in the land records of the appropriate jurisdiction.
- L. Local governments receiving federal funds must comply with 23 CFR Part 710 and 49 CFR Part 24, and with the procedures provided in Chapter 6 of the State's Local Government Project Policy Manual. Local Government agrees to monitor Project to ensure: (1) continued use of the property for approved activities, and (2) the repayment of the Federal funds, as appropriate. Local Government agrees to the review of their Project accounts and site visits by State during the development of Project at any time. Upon Project completion, State will continue to perform periodic visits to confirm Project's continued use and upkeep.
- M. Before the advertisement for bids, Local Government shall provide a certification to State that all real property has been acquired.

14. Insurance

- A. Should this Agreement authorize Local Government or its contractor to perform any work on State right of way, before beginning work, the entity performing the work shall provide State with a fully executed copy of State's Form 1560 Certificate of Insurance verifying the existence of coverage in the amounts and types specified on the Certificate of Insurance for all persons and entities working on State right of way. This coverage shall be maintained until all work on State right of way is complete. If coverage is not maintained, all work on State right of way shall cease immediately, and State may recover damages and all costs of completing the work.
- B. For projects including buildings, Local Government agrees to insure the building according to Department specifications and further agrees to name the Federal Government as a "Loss Payee" should the building be destroyed.

15. Notices, Invoices, Payments, and Project Inquiries

All notices to either party shall be delivered personally or sent by certified or U.S. mail, postage prepaid, addressed to that party at the following address:

Local Government:	State:
City of Kerrville ATTN: Director of Engineering 701 main Street Kerrville, TX, 78028	Texas Department of Transportation ATTN: Director of Contract Services 125 E. 11 th Street Austin, TX 78701

TxDOT:				Federal Highway Administration:	
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Project Name	Hill Country Dr, Wesley Dr, and Cully Dr Pedestrian Improvements		AFA Not Used For Research & Development		

All notices shall be deemed given on the date delivered in person or deposited in the mail, unless otherwise provided by this agreement. Either party may change the above address by sending written notice of the change to the other party. Either party may request in writing that notices shall be delivered personally or by certified U.S. mail, and that request shall be carried out by the other party.

Invoicing, payment, and project inquiries must be sent to the following address, which the State may change by sending written notice of the change to the Local Government:

Texas Department of Transportation
ATTN: District Advanced Transportation Planning Director
4615 NW Loop 410
San Antonio, Texas 78229-5126

All invoicing, payment, and project inquiries must include the following information:

County: Kerr
Local Government: City of Kerrville
CSJ No.: 0915-15-098
Project Name: Hill Country, Wesley & Cully Dr Pedestrian Improvements
Highway or Roadway: Hill Country Dr

16. Legal Construction

In case one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions and this Agreement shall be construed as if it did not contain the invalid, illegal, or unenforceable provision.

17. Responsibilities of the Parties

Neither party is an agent, servant, or employee of the other party and each party is responsible for its individual acts and deeds as well as the acts and deeds of its contractors, employees, representatives, and agents.

18. Ownership of Documents

Upon completion or termination of this Agreement, all documents prepared by State shall remain the property of State. All data prepared under this Agreement shall be made available to State without restriction or limitation on their further use. All documents produced or approved or otherwise created by Local Government shall be transmitted to State in the form of photocopy reproduction on a monthly basis as required by State. The originals shall remain the property of Local Government.

19. Document and Information Exchange

Local Government agrees to electronically deliver to State all general notes, specifications, contract provision requirements, and related documentation in a Microsoft Word or similar format. If requested by State, Local Government will use State's document template. Local Government shall also provide a detailed construction time estimate, including types of activities and month in which the activity will be completed, in the format required by State. This requirement applies whether Local Government creates the documents with its own forces or

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by hiring a consultant or professional provider. At the request of State, Local Government shall submit any information required by State in the format directed by State.

20. Compliance with Laws

The parties shall comply with all federal, state, and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals in any manner affecting the performance of this agreement. When required, Local Government shall furnish State with satisfactory proof of this compliance.

21. Sole Agreement

This Agreement constitutes the sole and only agreement between the parties and supersedes any prior understandings or written or oral agreements respecting the Agreement's subject matter.

22. Cost Principles

In order to be reimbursed with federal funds, the parties shall comply with the Cost Principles established in 2 CFR Part 200 that specify that all reimbursed costs are allowable, reasonable, and allocable to Project.

23. Procurement and Property Management Standards

The parties to this Agreement shall adhere to the procurement and property management standards established in 2 CFR 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, and to the Texas Uniform Grant Management Standards. The State must pre-approve the Local Government's procurement procedures for purchases to be eligible for state or federal funds.

24. Inspection of Books and Records

The parties to this Agreement shall maintain all books, documents, papers, accounting records, and other documentation relating to costs incurred under this Agreement and shall make such materials available to the State, the Local Government, and, if federally funded, the FHWA and the U.S. Office of the Inspector General or their duly authorized representatives for review and inspection at its office during the Agreement period and for seven (7) years from the date of final reimbursement by FHWA under this Agreement or until any impending litigation or claims are resolved. Additionally, the State, the Local Government, and the FHWA and their duly authorized representatives shall have access to all the governmental records that are directly applicable to this Agreement for the purpose of making audits, examinations, excerpts, and transcriptions.

25. Civil Rights Compliance

The parties to this Agreement are responsible for the following:

- A. Compliance with Regulations: Both parties will comply with the Acts and the Regulations relative to Nondiscrimination in Federally-assisted programs of the U.S. Department of Transportation (USDOT), the Federal Highway Administration (FHWA), as they may be amended from time to time, which are herein incorporated by reference and made part of this Agreement.

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B. Nondiscrimination: The Local Government, with regard to the work performed by it during the Agreement, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The Local Government will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the Agreement covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.

C. Solicitations for Subcontracts, Including Procurement of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the Local Government for work to be performed under a subcontract, including procurement of materials or leases of equipment, each potential subcontractor or supplier will be notified by the Local Government of the Local Government's obligations under this Agreement and the Acts and Regulations relative to Nondiscrimination on the grounds of race, color, or national origin.

D. Information and Reports: The Local Government will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information, and facilities as may be determined by the State or the FHWA to be pertinent to ascertain compliance with such Acts, Regulations or directives. Where any information required of the Local Government is in the exclusive possession of another who fails or refuses to furnish this information, the Local Government will so certify to the State or the FHWA, as appropriate, and will set forth what efforts it has made to obtain the information.

E. Sanctions for Noncompliance: In the event of the Local Government's noncompliance with the Nondiscrimination provisions of this Agreement, the State will impose such contract sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:

1. withholding of payments to the Local Government under the Agreement until the Local Government complies and/or
2. cancelling, terminating, or suspending of the Agreement, in whole or in part.

F. Incorporation of Provisions: The Local Government will include the provisions of paragraphs (A) through (F) in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The Local Government will take such action with respect to any subcontract or procurement as the State or the FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Local Government becomes involved in, or is threatened with, litigation with a subcontractor or supplier because of such direction, the Local Government may request the State to enter into such litigation to protect the interests of the State. In addition, the Local Government may request the United States to enter into such litigation to protect the interests of the United States.

26. Pertinent Non-Discrimination Authorities

During the performance of this Agreement, each party, for itself, its assignees, and successors in interest agree to comply with the following nondiscrimination statutes and authorities; including but not limited to:

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- A. Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- B. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of federal or federal-aid programs and projects).
- C. Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), as amended, (prohibits discrimination on the basis of sex).
- D. Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.) as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27.
- E. The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age).
- F. Airport and Airway Improvement Act of 1982, (49 U.S.C. Chapter 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex).
- G. The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the federal-aid recipients, subrecipients and contractors, whether such programs or activities are federally funded or not).
- H. Titles II and III of the Americans with Disabilities Act, which prohibits discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. Parts 37 and 38.
- I. The Federal Aviation Administration's Nondiscrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex).
- J. Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations.
- K. Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, the parties must take reasonable steps to ensure that LEP persons have meaningful access to the programs (70 Fed. Reg. at 74087 to 74100).
- L. Title IX of the Education Amendments of 1972, as amended, which prohibits the parties from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq.).

27. Disadvantaged Business Enterprise Program Requirements

- A. The parties shall comply with the Disadvantaged Business Enterprise ("DBE") Program requirements established in 49 CFR Part 26.
- B. Local Government shall adopt, in its totality, State's federally approved DBE program.
- C. Local Government shall set an appropriate DBE goal consistent with State's DBE guidelines and in consideration of Local market, project size, and nature of the goods or

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services to be acquired. Local Government shall have final decision-making authority regarding the DBE goal and shall be responsible for documenting its actions.

D. Local Government shall follow all other parts of State's DBE program referenced in TxDOT Form 2395, Memorandum of Understanding Regarding the Adoption of the Texas Department of Transportation's Federally-Approved Disadvantaged Business Enterprise by Entity, and attachments found at web address: http://ftp.dot.state.tx.us/pub/txdot-info/bop/dbe/mou/mou_attachments.pdf.

E. Local Government shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-assisted contract or in the administration of its DBE program or the requirements of 49 CFR Part 26. Local Government shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure non-discrimination in award and administration of DOT-assisted contracts. State's DBE program, as required by 49 CFR Part 26 and as approved by DOT, is incorporated by reference in this Agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this Agreement. Upon notification to Local Government of its failure to carry out its approved program, State may impose sanctions as provided for under 49 CFR Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 USC 1001 and the Program Fraud Civil Remedies Act of 1986 (31 USC § 3801 et seq.).

F. Each contract Local Government signs with a contractor (and each subcontract the prime contractor signs with a subcontractor) must include the following assurance: "The contractor, sub-recipient, or sub-contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this agreement, which may result in the termination of this agreement or such other remedy as the recipient deems appropriate."

28. Debarment Certifications

The parties are prohibited from making any award at any tier to any party that is debarred or suspended or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549, "Debarment and Suspension." By executing this Agreement, Local Government certifies that it and its principals are not currently debarred, suspended, or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order

12549, and further certifies that it will not do business with any party, to include principals, that is currently debarred, suspended, or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549. The parties to this Agreement shall require any party to a contract, subcontract, or purchase order awarded under this Agreement to certify its eligibility to receive federal funds and, when requested by State, to furnish a copy of the certification.

If state funds are used, the parties are prohibited from making any award to any party that is debarred under the Texas Administrative Code, Title 34, Part 1, Chapter 20, Subchapter G, Rule §20.585 and the Texas Administrative Code, Title 43, Part 1, Chapter 9, Subchapter G.

29. Lobbying Certification

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In executing this Agreement, each signatory certifies to the best of that signatory's knowledge and belief, that:

- A. No federal appropriated funds have been paid or will be paid by or on behalf of the parties to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- B. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with federal contracts, grants, loans, or cooperative agreements, the signatory for Local Government shall complete and submit the federal Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- C. The parties shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and all sub-recipients shall certify and disclose accordingly. Submission of this certification is a prerequisite imposed by 31 USC §1352 for making or entering into this transaction. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

30. **Federal Funding Accountability and Transparency Act Requirements**

- A. Any recipient of funds under this agreement agrees to comply with the Federal Funding Accountability and Transparency Act (FFATA) and implementing regulations at 2 CFR Part 170, including Appendix A. This agreement is subject to the following award terms: <http://www.gpo.gov/fdsys/pkg/FR-2010-09-14/pdf/2010-22705.pdf> and <http://www.gpo.gov/fdsys/pkg/FR-2010-09-14/pdf/2010-22706.pdf>.
- B. Local Government agrees that it shall:
 - 1. Obtain and provide to State a System for Award Management (SAM) number (Federal Acquisition Regulation (FAR) Subpart 4.11) if this award provides more than \$25,000 in Federal funding. The SAM number may be obtained by visiting the SAM website whose address is: <https://sam.gov/SAM/pages/public/index.jsf>
 - 2. Obtain and provide to State a Data Universal Numbering System (DUNS) number, a unique nine-character number that allows the federal government to track the distribution of federal money. The DUNS number may be requested free of charge for all businesses and entities required to do so by visiting the Dun & Bradstreet on-line registration website <http://fedgov.dnb.com/webform>; and
 - 3. Report the total compensation and names of its top five executives to State if:
 - a. More than 80 percent of annual gross revenues are from the Federal government, and those revenues are greater than \$25,000,000; and
 - b. The compensation information is not already available through reporting to the U.S. Securities and Exchange Commission.

TxDOT:				Federal Highway Administration:	
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31. Single Audit Report

- A. The parties shall comply with the requirements of the Single Audit Act of 1984, P.L. 98-502, ensuring that the single audit report includes the coverage stipulated in 2 CFR Part 200.
- B. If threshold expenditures of \$750,000 or more are met during the fiscal year, the Local Government must submit a Single Audit Report and Management Letter (if applicable) to TxDOT's Compliance Division, 125 East 11th Street, Austin, TX 78701 or contact TxDOT's Compliance Division at singleaudits@txdot.gov.
- C. If expenditures are less than the threshold during Local Government's fiscal year, Local Government must submit a statement to TxDOT's Compliance Division as follows: *We did not meet the \$_____ expenditure threshold and therefore, are not required to have a single audit performed for FY_____.*
- D. For each year Project remains open for federal funding expenditures, Local Government will be responsible for filing a report or statement as described above. The required annual filing shall extend throughout the life of the agreement, unless otherwise amended or Project has been formally closed out and no charges have been incurred within the current fiscal year.

32. Signatory Warranty

Each signatory warrants that the signatory has necessary authority to execute this agreement on behalf of the entity represented.

Each party is signing this agreement on the date stated under that party's signature.

THE STATE OF TEXAS

THE LOCAL GOVERNMENT

Signature

Signature

Kenneth Stewart

Typed or Printed Name

E.A. Hoppe

Typed or Printed Name

Director of Contract Services

Typed or Printed Title

City Manager

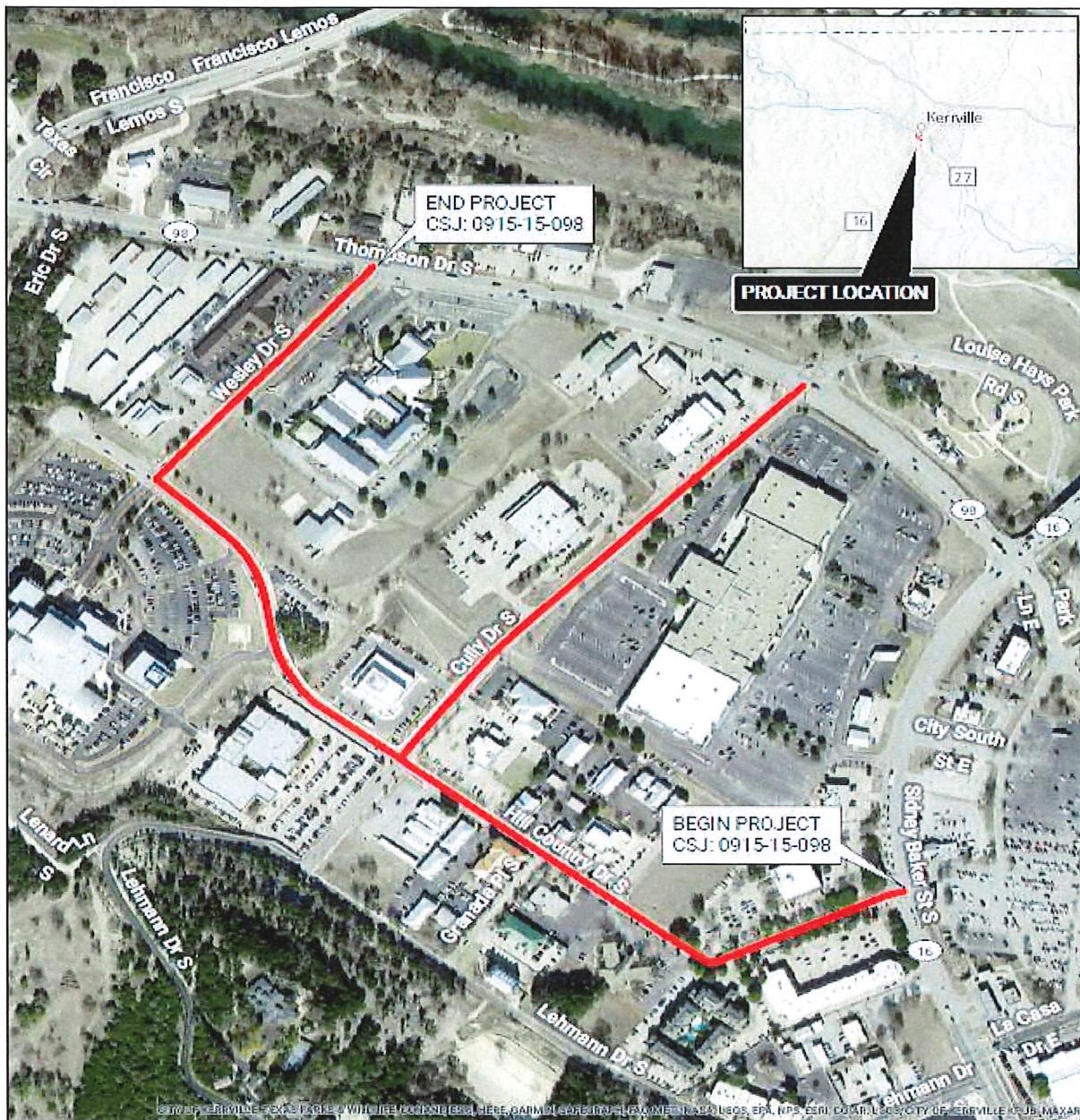
Typed or Printed Title

Date

Date

TxDot:				Federal Highway Administration:	
CSJ #		0915-15-098		CFDA No.	
District #		SAT (15)		CFDA Title	
Code Chart 64 #		Z00003565			
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				AFA Not Used For Research & Development	

ATTACHMENT A
PROJECT LOCATION MAP



TxDOT Transportation Alternatives Program
CSJ: 0915-15-098

1 inch equals 400 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.

CSJ #	0915-15-098	Project Name:	Hill Country Dr, Wesley Dr, and Cully Dr Pedestrian Improvements	AFA ID:	200003365
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ATTACHMENT B
PROJECT ESTIMATE AND SOURCE OF FUNDS
LG Performs PE Work or Hires Consultant / LG Lets Project for Construction

Description of Project Costs to be Incurred	Total Project Cost Estimate	Work Performed by Local Government ("LG")				Local Government Participation
		Includes percentage for TDC apportionment on projects where applicable	Includes authorized EDC amounts	Cost	%	
Planning/Maps/Education/Non-CST	\$0	0%	\$0	0%	\$0	0%
Preliminary Engineering	\$245,000	80%	\$196,000	0%	\$0	20%
Environmental Cost	\$0	0%	\$0	0%	\$0	0%
Right of Way	\$0	0%	\$0	0%	\$0	0%
Utilities	\$0	0%	\$0	0%	\$0	0%
Construction Cost	\$ 888,983					
Construction Engineering Cost	\$ 45,000					
Eligible In-Kind Contribution Value	\$ -					
Total Construction Value (sum of construction cost and in-kind value)	\$ 933,983	80%	\$747,186	0%	\$0	20%
Work by LG Subtotal	\$1,178,983		\$943,186		\$0	
Work Performed by the State (Local Participation paid up front by LG to TxDOT)						
Preliminary Engineering ¹	\$0	0%	\$0	0%	\$0	0%
Environmental Cost ¹	\$0	0%	\$0	0%	\$0	0%
Right of Way ³	\$0	0%	\$0	0%	\$0	0%
Utilities ²	\$0	0%	\$0	0%	\$0	0%
Construction Cost ²	\$ -					
Eligible In-Kind Contribution Value	\$ -					
Total Construction Value (sum of construction cost and in-kind value)	\$ -		\$0	0%	\$0	0%
Work by State Subtotal	\$0		\$0		\$0	

CSJ #	0915-15-098	Project Name:	Hill Country Dr, Wesley Dr, and Cully Dr Pedestrian Improvements	AFA ID:	200003565
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Direct and Indirect State Costs Incurred for Review, Inspection, Administration & Oversight						
Description of Project Costs to be Incurred	Total Project Cost Estimate	Federal Participation		State Participation		Local Government Participation
		Includes percentage for TDC apportionment on projects where applicable	Includes authorized EDC amounts	Includes authorized EDC amounts	Includes authorized EDC reduction	
Preliminary Engineering ¹	\$21,015	80%	\$16,811.69	0%	\$0	20%
Environmental Cost ¹	\$14,010	80%	\$11,207.80	0%	\$0	20%
Right of Way ¹	\$4,203	80%	\$3,362.34	0%	\$0	20%
Utilities ¹	\$2,802	80%	\$2,241.56	0%	\$0	20%
Construction ²	\$98,068	80%	\$78,454.57	0%	\$0	20%
Direct State Costs Subtotal	\$140,097	80%	\$112,078	0%	\$0	20%
Indirect State Cost	\$44,551		\$0	100%	\$44,551	
TOTAL PARTICIPATION	\$1,363,631		\$1,055,264		\$44,551	
In-kind Contribution Credit Applied					0%	\$0
TOTAL REMAINING PARTICIPATION AFTER IN-KIND CONTRIBUTION						\$263,816

- The estimated total participation by Local Government is \$263,816, plus 100% of overruns.
- Total estimated payment by Local Government to State is \$28,019.
- Local Government's first payment of \$8,406 is due to State within 30 days from execution of this contract.
- Local Government's second payment of \$19,614 is due to State within 60 days prior to the Construction contract being advertised for bids.
- ³If ROW is to be acquired by State, Local Government's share of property cost will be due prior to acquisition.
- The local match must be 20% or greater and may include eligible in-kind contributions, EDC adjustments, or TDCs if authorized as part of project selection.
- Transportation Development Credits (TDC) are being utilized in place of the Local Government's participation in the amount of N/A.
- This is an estimate; the final amount of Local Government participation will be based on actual costs.
- Maximum federal TASA funds available for Project are \$1,055,264.



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

SUBJECT: Construction Agreement with G5 Utilities, Inc. for the Public Safety Facility Wastewater Realignment project in the amount of \$347,777.00.

AGENDA DATE OF: February 14, 2023 **DATE SUBMITTED:** January 27, 2023

SUBMITTED BY: Kyle Burow, Director Engineering

EXHIBITS:

Expenditure Required:	Remaining Budget Balance in Account:	Amount Budgeted:	Account Number:
\$347,777.00	\$44,184,676.07	\$45,000,000.00	Project #70-22005

PAYMENT TO BE MADE TO: G5 Utilities, Inc.

Kerrville 2050 Item? Yes

Key Priority Area F - Public Facilities and Services

Guiding Principle N/A

Action Item F2.4 - Consider bond funding for a new public safety building/complex

SUMMARY STATEMENT:

In May 2022, the citizens of Kerrville approved the issuance of bonds through a general election for a new Public Safety Facility. The property at the corner of Rio Monte Drive and Clearwater Paseo was later purchased and City Council authorized the Design-Build method for the construction of the building and appurtenances. During the evaluation of the site, it was determined a large wastewater main running through the middle of the property would need to be rerouted to maximize the usable space of the property and update the aging infrastructure. The City elected to design and construct the reroute of this wastewater main as a separate project during the Design-Build selection process to expedite the completion of the new Public Safety Facility.

The City hired Freese & Nichols, Inc. to provide engineered construction documents for the project. The project was placed for advertisement, the bid opening was held January 24, 2023 and two bids were received, with G5 Utilities, Inc. as the apparent low bid. Staff and Freese & Nichols evaluated the bid and recommend awarding the base bid for a total contract amount of \$347,777.00.

RECOMMENDED ACTION:

Authorize City Manager to finalize and execute contract.

ATTACHMENTS:

[20230214_Bids_PSF Wastewater Realignment_Bid Summary.pdf](#)

[20230214_Letter_PSF Wastewater Realignment_Recommendation of Award.pdf](#)

APPARENT LOW BIDDERS

KER22597 - Public Safety Facility Wastewater Realignment Project

ID: KER22597

Bid Summary	
Engineers Estimate	\$400,000.00
Total Bids	2
AMLT \$	\$29,179.00
AMLT %	8.39%
Average Bid	\$362,366.50

	Bidder	BASE BID
1	G5 Utilities <i>Submitted: 1/24/2023 12:55:01 PM</i>	\$347,777.00
2	M & C FONSECA CONSTRUCTION CO.INC <i>Submitted: 1/24/2023 10:10:25 AM</i>	\$376,956.00

Bids opened at: 1/24/2023 3:00:17 PM



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January 31, 2023

City of Kerrville
701 Main Street
Kerrville, Texas 78028

Attn: Kyle Burrow, P.E.
City Engineer

Re: Public Safety Facility Wastewater Realignment Project
FNI Project No. KER22597
City of Kerrville Project No. 22-014
Recommendation of Award of Contract

Mr. Burrow:

Listed below is the summary of Bids for the City of Kerrville – Public Safety Facility Wastewater Realignment Project. A total of two (2) bids were received on January 26, 2023, via electronic submittal on Civcast.com.

Below is a summary of the base bids:

<u>Bidder</u>	<u>Bid Amount</u>
M&C Fonseca Construction Co. Inc.	\$376,956.00
G5 Utilities	\$347,777.00

Freese and Nichols' estimate for the project was \$423,000.

Based on prior successful projects with the City of Kerrville, G5 Utilities appears to be qualified and capable of performing the work for this project. Based on this information and their low bid amount, Freese and Nichols, Inc. recommends that the City of Kerrville award the construction contract for this project to G5 Utilities for the amount of \$347,777.00.

If you have any questions or concerns, please call me at 210-398-2898.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Ed Mills'.

Erin Mills, P.E.
Project Manager

Attachments: Bid Tabulation