



**AGENDA
CITY COUNCIL MEETING
CITY OF LEANDER, TEXAS**

Pat Bryson Municipal Hall
201 North Brushy Street - Leander, Texas
Thursday - June 15, 2023
Briefing Workshop at 6:00 PM
Regular Meeting at 7:00 PM



Mayor – Christine DeLisle
Place 1 – Kathryn Pantalione-Parker
Place 2 – Esme Mattke Longoria, *Mayor Pro Tem*
Place 3 – David McDonald

Place 4 – Na'Cole Thompson
Place 5 – Chris Czernek
Place 6 – Becki Ross
City Manager – Rick Beverlin

The meeting will also be live-streamed at the following link: <https://www.leandertx.gov/video>.

BRIEFING WORKSHOP - CONVENE AT 6:00 PM

1. Open Meeting.
2. Roll Call.
3. Workshop with the Historic Preservation Committee and representative of the Leander Chamber of Commerce discussing the proposed concept plans for redevelopment of the six (6) acres of the City's property at the Bryson Farmstead (CIP P.47).

REGULAR MEETING – CONVENE AT 7:00 PM

4. Open Meeting, Invocation and Pledges of Allegiance.
5. Roll Call.
6. Public comments on items not listed in the agenda.

Public comments on items listed in the agenda will be heard at the time each item is discussed by Council.

[All comments are limited to no more than 3 minutes (6 minutes if translation is needed) per individual.]

7. Recognitions/Proclamations/Visitors.
 - Leander Public Arts and Culture Commission Juneteenth Planning Committee Certificate of Recognition
 - Juneteenth Proclamation (June 19)
 - Pride Month Proclamation (June)
 - Parks and Recreation Monthly (July)

8. Staff Reports
 - Public Works update
9. Leander History

CONSENT AGENDA: ACTION

10. Approval of the minutes for meeting held on June 1, 2023.
11. Approval of a waiver of Article 8.04, Noise, Section 8.04.001(a) (11) in the hours of construction work to the general contractors for concrete pours to the site located at 541 N. Bagdad Road, from June 16, 2023 through August 31, 2023 (depending on weather conditions) beginning at 3:00 a.m.; and requiring the contractor for the site to post notifications a minimum of forty-eight (48) hours in advance of the activities.
12. Approval of a waiver of Article 8.04, Noise, Section 8.04.001(a) (11) in the hours of construction work to the general contractors for concrete pours to the site located at 13301 Hero Way West, from June 16, 2023 through July 31, 2023 (depending on weather conditions) beginning at 3:00 a.m.; and requiring the contractor for the site to post notifications a minimum of forty-eight (48) hours in advance of the activities.
13. Award of construction contract agreement with DKC Construction Group for the renovation of the existing EMS building behind Pat Bryson Municipal Hall (CIP M.23), to provide office space and conference space for City employees, in the amount of \$577,362.00; and authorize the City Manager to execute any and all necessary documents.
14. Approval of a Resolution accepting the petition for the 800 Riva Ridge Annexation Case A-23-0008 regarding the voluntary annexation of 2.3872 acres $\pm$ in size, more particularly described by Williamson Central Appraisal District Parcel R032108; and commonly known as 800 Riva Ridge Road, Leander, Williamson County, Texas.
15. Approval of Development Agreement Case DA-23-0010 regarding Connie's Commercial Development on a portion of a parcel of land approximately 1.096 acres $\pm$ in size, more particularly described by Williamson Central Appraisal District Parcel R398642; and generally located to the southwest of the intersection of Crystal Falls Parkway and West Drive, Leander, Williamson County, Texas.
16. Approval of the extension of the application expiration for Subdivision Case PICP-21-0044 Northpoint Church construction plan; more particularly described by Williamson Central Appraisal District Parcel R599180; commonly addressed as 10850 E Crystal Falls Parkway; Leander, Williamson County, Texas.
17. Approval of the Second Reading of an ordinance regarding Shady Brew Garden Special Use Permit Case Z-22-0043 to allow for a Food Truck Park including minor waivers to the Composite Zoning Ordinance on one (1) parcel of land approximately 0.9373 acres $\pm$ in size, more particularly described by Williamson Central Appraisal District Parcel R035579; and addressed as 303 W. Broade Street, Leander, Williamson County, Texas.
18. Approval of the Second Reading of an ordinance regarding Ordinance Case OR-23-0004 to amend the Composite Zoning Ordinance to clarify the adoption date and definition of the Transportation Criteria Manual; and to provide for related matters; Williamson and Travis Counties, Texas.
19. Approval of the Wahoo's Fish Tacos License Agreement, Case LA-23-0015, to allow for the installation and maintenance of landscaping and irrigation within portions of the right-of-way of W. Broade Street, Leander, Williamson County, Texas.

20. Approval of Professional Service Agreement for Engineer Single Project, WW49-PSA1-KSA with KSA Engineers, Inc., for design, bid, and construction administration services related to the utility improvements of East Street from Evans Street to South Street, and street improvements of East Street from Evans Street to Broade Street (CIP WW.49) in the amount of \$209,025.00; and authorize the City Manager to execute any and all necessary documents.
21. Approval of a Resolution authorizing participation in a coalition of similarly situated cities in connection with the Statement of Intent to Change Rate CGS (City Gate Service) and Rate PT (Pipeline Transportation) of Atmos Pipeline—Texas, filed on or about May 19, 2023; authorizing participation in related rate proceedings; authorizing the retention of special counsel; requiring the reimbursement of municipal rate case expenses; finding that the meeting complies with the open meetings act; and making other findings and provisions related to the subject.
22. Approval of a Resolution authorizing the City of Leander to apply for the Capital Area Council of Governments (CAPCOG) Solid Waste-Handling Equipment and Community Collection Event Grant.
23. Approval of purchase from Motorola Solutions, Inc. for ten (10) Police Department hand-held radios and ancillary services and equipment in the amount of \$81,300.00 and ten (10) Police Department in-car radios and ancillary services and equipment in the amount of \$69,405.60; rescind prior City Council action taken on April 20, 2023, and authorize the City Manager to execute any and all necessary documents.

REGULAR AGENDA

24. Discuss and consider appointment of Council Director and Citizen Director to the Board of Directors of the Brushy Creek Regional Utility Authority (BCRUA) with terms expiring June 30, 2023.
25. Discuss and consider action on repealing Ordinance No. 20-010-00, which adopted a limited wastewater capacity reservation policy; providing findings of fact; providing a savings, effective date, and open meetings clauses; and providing for related matters.
26. Council Member Future Agenda Items *[Any deliberation of or decision about the subject of the inquiry shall be limited to a proposal to place the subject on the agenda for a subsequent meeting.]*
27. Council Member Closing Statements.
28. Convene into Executive Session pursuant to:
 1. Section 551.087, Texas Government Code Deliberate the purchase, exchange, lease, or value of real property and deliberate proposed economic development incentives for one or more business prospects that the governmental body seeks to have locate, stay, or expand in or near the territory of the governmental body is conducting economic development negotiations along with consideration and possible action on a Chapter 380 Agreement for Project Orange Build; and
 2. Section 551.087, Texas Government Code Deliberate the purchase, exchange, lease, or value of real property and deliberate proposed economic development incentives for one or more business prospects that the governmental body seeks to have locate, stay, or expand in or near the territory of the governmental body is conducting economic development negotiations related to the following project(s): EDA-23-001; and
 3. Section 551.072, Texas Government Code, to deliberate the acquisition of properties located in Elijah D. Harmon Survey Abstract 6 for the purpose of a utility easement and temporary construction easement for the Reclaim Water Project (CIP WW.46).

Reconvene into open session to take action as deemed appropriate in the City Council's discretion regarding:

1. Project Orange Build;and
2. EDA-23-001; and
3. Acquisition of properties for utility easement and temporary construction easement for the Reclaim Water Project (CIP WW.46).

29. Adjournment

CERTIFICATION

This meeting will be conducted pursuant to the Texas Government Code Section 55 1.001 et seq. At any time during the meeting the Council reserves the right to adjourn into Executive Session on any of the above posted agenda for which state law authorizes Executive Session to be held, including but not limited to Sections 55 1.071 [litigation and certain Consultation with attorney], 551.072 [acquisition of interest in real property], 55 1.073 [prospective gift to city], 55 1.074 [certain personnel deliberations], 551.076 [deployment/implementation of security personnel or devices], or 551.087 [Deliberations regarding Economic Development Negotiations]. The City of Leander is committed to compliance with the American with Disabilities Act. Reasonable modifications and equal access to communications will be provided upon request. Please call the City Secretary at (512) 528-2743 for information. Hearing impaired or speech disabled persons equipped with telecommunication devices for the deaf may call (512) 528-2800. I certify that the above agenda for this meeting of the City Council of the City of Leander, Texas, was posted on the bulletin board at City Hall in Leander, Texas, on the 9 day of June 2023 by 5:00 p.m. pursuant to Chapter 551 of the Texas Government Code.



Dara Crabtree, City Secretary, TRMC



EXECUTIVE SUMMARY
06/15/2023

AGENDA SUBJECT:

Approval of the minutes for meeting held on June 1, 2023.

BACKGROUND:

Attached are the minutes for the meeting held on June 1, 2023.

PRESENTER:

Dara Crabtree, City Secretary

Attachments

1. Draft Minutes



**MINUTES
CITY COUNCIL MEETING
CITY OF LEANDER, TEXAS**

Pat Bryson Municipal Hall
201 North Brushy Street - Leander, Texas
Thursday - June 1, 2023



Mayor – Christine DeLisle
Place 1 – Kathryn Pantalion-Parker
Place 2 – Esme Mattke Longoria, *Mayor Pro Tem*
Place 3 – David McDonald

Place 4 – Na'Cole Thompson
Place 5 – Chris Czernek
Place 6 – Becki Ross
City Manager – Rick Beverlin

The meeting will also be live-streamed at the following link: <https://www.leandertx.gov/video>.

BRIEFING WORKSHOP - CONVENE AT 6:00 PM

1. Opened Meeting at 6:01 p.m.
2. Roll Call reflected all present.
3. Convened into Executive Session at 6:01 p.m. pursuant to Section 551.071, Texas Government Code, Section 1.05, Texas Disciplinary Rules of Professional Conduct, to deliberate with legal counsel regarding Meet and Confer.

Reconvened into open session at 6:51 p.m. to take action as deemed appropriate in the City Council's discretion regarding Meet and Confer.

No action.

Briefing workshop adjourned 6:51 p.m.

REGULAR MEETING – CONVENE AT 7:00 PM

4. Opened Meeting at 7:03 p.m., Invocation was provided by Pastor Chris Wimberly with Selah Hills Church and Mayor Christine led the Pledges of Allegiance.
5. Roll Call reflected all present.

6. Public comments on items not listed in the agenda. No one spoke.

Public comments on items listed in the agenda will be heard at the time each item is discussed by Council.

[All comments are limited to no more than 3 minutes (6 minutes if translation is needed) per individual.]

CONSENT AGENDA: ACTION

Mayor Christine stated Item 10 was pulled from the agenda.

Motion by Councilmember Na'Cole Thompson, Seconded by Mayor Pro Tem Esme Mattke Longoria to approve consent agenda items 7 through 9 and 11.

Vote: 7 - 0

7. Approval of the minutes for meeting held on May 18, 2023.
8. Acceptance of the Quarterly Investment Report for the period ending March 31, 2023.
9. Approval of a waiver of Article 8.04, Noise, Section 8.04.001(a) (11) in the hours of construction work to Bennet Paving, Inc. to perform roadway rehabilitation work between the hours of 8:00 p.m. and 6:00 a.m. at the intersection of Lakeline Boulevard and Crystal Falls Parkway; and Lakeline Boulevard and Osage Drive as a part of the Roadway Rehabilitation FY 2023 project, between June 5, 2023 and June 26, 2023 (weather permitting); and Public Works department will notify the commuters, nearby residents, and business owners via message boards, website news, and HOA emails at least forty-eight (48) hours prior to the scheduled work.
10. Approval of a waiver of Article 8.04, Noise, Section 8.04.001(a) (11) in the hours of construction work to Leander Independent School District (LISD) to provide for concrete pours at Elementary #30, located north of San Gabriel Parkway and West of Frontenac Street in Leander, between July 2023 through April 2024 (depending on weather conditions), and requiring LISD to post notifications a minimum of forty-eight (48) hours in advance of the activities on their project site. In some large pour cases, the construction teams will need to start as early as 1:00 am, and in other cases the smaller pours will need to begin by 4:00 am.
11. Approval of the Second Reading of an Ordinance regarding Zoning Case Z-23-0060 to amend the current zoning of SFR-1-B (Interim Single-Family Rural) to SFR-2-B (Single-Family Rural) on one (1) parcel of land approximately 12.396 acres ± in size, more particularly described by Williamson Central Appraisal District Parcel R605507; located to the west of the intersection of CR 281 and N. Bagdad Road, Leander, Williamson County, Texas.

PUBLIC HEARING: ACTION

12. Mayor Christine opened a Public Hearing at 7:06 p.m. regarding Shady Brew Garden Special Use Permit Case Z-22-0043 to allow for a Food Truck Park including minor waivers to the Composite Zoning Ordinance on one (1) parcel of land approximately 0.9373 acres $\pm$ in size, more particularly described by Williamson Central Appraisal District Parcel R035579; and addressed as 303 W. Broade Street, Leander, Williamson County, Texas. No one spoke in favor or opposition of the request. The Public Hearing closed at 7:06 p.m.

- Discuss and consider action regarding Special Use Permit Case Z-22-0043 as described above.

Motion by Councilmember Kathryn Pantalion-Parker, Seconded by Councilmember Chris Czernek to approve Shady Brew Garden Special Use Permit Case Z-22-0043 to allow for a Food Truck Park including minor waivers to the Composite Zoning Ordinance on one (1) parcel of land approximately 0.9373 acres $\pm$ in size, more particularly described by Williamson Central Appraisal District Parcel R035579; and addressed as 303 W. Broade Street, Leander, Williamson County, Texas.

Vote: 7 - 0

13. Mayor Christine opened a Public Hearing at 7:15 p.m. regarding Comprehensive Plan Case CPA-23-0006 to amend the Comprehensive Plan to update the Transportation Master Plan to change Nameless Road to a collector roadway north of the future extension Travisso Parkway to Round Mountain Drive; change CR 267 to a four (4)- lane arterial between Equine Road to Kauffman Loop; change Crystal Falls Parkway to a six (6)- lane arterial roadway between Ronald W. Reagan Boulevard and CR 175; add CR 264 as a collector roadway; add Stamp Iron Avenue as a collector roadway; Leander, Williamson and Travis Counties, Texas. No one spoke in favor or opposition of the request. The Public Hearing closed at 7:15 p.m.

- Discuss and consider action regarding Comprehensive Plan Case CPA-23-0006 as described above.

Motion by Councilmember Kathryn Pantalion-Parker, Seconded by Mayor Christine DeLisle to approve Comprehensive Plan Case CPA-23-0006 to amend the Comprehensive Plan to update the Transportation Master Plan to change Nameless Road to a collector roadway north of the future extension Travisso Parkway to Round Mountain Drive; change CR 267 to a four (4)- lane arterial between Equine Road to Kauffman Loop; change Crystal Falls Parkway to a six (6)- lane arterial roadway between Ronald W. Reagan Boulevard and CR 175; add CR 264 as a collector roadway; add Stamp Iron Avenue as a collector roadway; Leander, Williamson and Travis Counties, Texas.

Vote: 7 - 0

14. Mayor Christine opened a Public Hearing at 7:17 p.m. regarding Ordinance Case OR-23-0003 to amend the Subdivision Ordinance to clarify the adoption date and definition of the Transportation Criteria Manual, update the Preliminary Plat requirements, update the requirements for Water Utility Improvements and Wastewater Utility Improvements; and to provide for related matters; Williamson and Travis Counties, Texas. No one spoke in favor or opposition of the request. The Public Hearing closed at 7:17 p.m.

- Discuss and consider action regarding Ordinance Case OR-23-0003 as described above.

Motion by Councilmember Kathryn Pantalion-Parker, Seconded by Mayor Pro Tem Esme Mattke Longoria to approve Ordinance Case OR-23-0003 to amend the Subdivision Ordinance to clarify the adoption date and definition of the Transportation Criteria Manual, update the Preliminary Plat requirements, update the requirements for Water Utility Improvements and Wastewater Utility Improvements; and to provide for related matters; Williamson and Travis Counties, Texas.

Vote: 7 - 0

15. Mayor Christine opened a Public Hearing at 7:18 p.m. regarding Ordinance Case OR-23-0004 to amend the Composite Zoning Ordinance to clarify the adoption date and definition of the Transportation Criteria Manual; and to provide for related matters; Williamson and Travis Counties, Texas. No one spoke in favor or opposition. The Public Hearing closed at 7:18 p.m.

- Discuss and consider action regarding Ordinance Case OR-23-0004 as described above.

Motion by Councilmember Na'Cole Thompson, Seconded by Councilmember Kathryn Pantalion-Parker to approve Ordinance Case OR-23-0004 to amend the Composite Zoning Ordinance to clarify the adoption date and definition of the Transportation Criteria Manual; and to provide for related matters; Williamson and Travis Counties, Texas.

Vote: 7 - 0

16. Mayor Christine opened a Public Hearing at 7:20 p.m. regarding Subdivision Case CP-23-0020 to adopt the Lone Star Landing Concept Plan on one (1) parcel of land approximately 37.01 acres ± in size, more particularly described by Williamson Central Appraisal District Parcel R031560; generally located north of the intersection of CR 177 and Valley View Drive, Leander, Williamson County, Texas. No one spoke in favor. Rick Kane, 109 Valley View Drive; Markus Lagmanson, 101 Valley View Drive; Alexandra Lagmanson, 101 Valley View Drive; Kathy Hinze, 108 Valley View Drive; Manely Banda Franzetti, 107 Valley View Drive; Josh Freeman, 107 Valley View Drive spoke in opposition.

- Discuss and consider action regarding Subdivision Case CP-23-0020 as described above.

Motion by Councilmember Chris Czernek, Seconded by Councilmember Kathryn Pantalion-Parker to approve Subdivision Case CP-23-0020 to adopt the Lone Star Landing Concept Plan on one (1) parcel of land approximately 37.01 acres ± in size, more particularly described by Williamson Central Appraisal District Parcel R031560; generally located north of the intersection of CR 177 and Valley View Drive, Leander, Williamson County, Texas.

Vote: 7 - 0

REGULAR AGENDA

17. Discuss and consider an Ordinance amending Chapter 12, Traffic and Vehicles, by amending Article 12.02 to add Section 12.02.07 Radar Display Signs; authorizing the erection of radar display signs and devices; requiring that new school zones include the erection of radar display signs in their school zones; making findings of fact; and providing for related matters.

Motion by Councilmember Becki Ross, Seconded by Councilmember Kathryn Pantalion-Parker to approve Ordinance amending Chapter 12, Traffic and Vehicles, by amending Article 12.02 to add Section 12.02.07 Radar Display Signs; authorizing the erection of radar display signs and devices; requiring that new school zones include the erection of radar display signs in their school zones; making findings of fact; and providing for related matters, following a discussion.

Vote: 7 - 0

18. Discuss and consider action on casting the City's vote on the ballot relating to Pedernales Electric Cooperative, Inc. 2023 Board of Directors Election.

Motion by Mayor Christine DeLisle, Seconded by Councilmember Kathryn Pantalion-Parker to cast the City's vote for Emily Pataki to Pedernales Electric Cooperative, Inc. 2023 Board of Directors Election.

Vote: 7 - 0

19. Council Member Future Agenda Items *[Any deliberation of or decision about the subject of the inquiry shall be limited to a proposal to place the subject on the agenda for a subsequent meeting.]* None

20. Council Member Closing Statements.

Kathryn Pantalion-Parker - commented on Old Town Street Festival this Saturday.

Esme Mattke Longoria - commented on Old Town Street Festival; retirement of Allan Jones from the police department; and pickle ball now available Leander Activity Center.

Christine DeLisle - stated dinner was from Domino's tonight; reminded everyone to shop local; and commented on upcoming events.

21. Adjourned 8:03 p.m.

APPROVED:

MAYOR

ATTEST:

CITY SECRETARY



EXECUTIVE SUMMARY
06/15/2023

AGENDA SUBJECT:

Approval of a waiver of Article 8.04, Noise, Section 8.04.001(a) (11) in the hours of construction work to the general contractors for concrete pours to the site located at 541 N. Bagdad Road, from June 16, 2023 through August 31, 2023 (depending on weather conditions) beginning at 3:00 a.m.; and requiring the contractor for the site to post notifications a minimum of forty-eight (48) hours in advance of the activities.

BACKGROUND:

TexStar Cimarron LLC., the general contractor for the McDonald's site, is requesting permission for a variance for construction activities for concrete pours between June 16, 2023, through August 2023 for the McDonald's site (Permit #SD-22-0007) located at 541 N. Bagdad Rd. in Leander, TX. They are requesting that they be granted a variance to be allowed to perform concrete pours beginning at 3:00 a.m. due to the excessive summer heat conditions during the months of July and August, as described in the letter attachment. The general contractor will place temporary signs on their property and will be notifying the citizens in the surrounding area forty-eight (48) hours in advance of any planned early morning concrete pours.

APPLICANT/AGENT:

TexStar Cimarron LLC. (GC)

RECOMMENDATION:

City Staff recommend approving a variance of the City's Noise Ordinance for construction activities as scheduled in the attached request for the McDonald's site in the City of Leander.

PRESENTER:

Emily Truman, P.E., CFM, PMP, City Engineer

Attachments

1. Noise Variance Request - McDonalds

Engineering Department

Temporary Noise Variance ApplicationChapter 8 Offenses and Nuisances – Article 8.04 Noise - **Sec.8.04.001.a11**

(11) The excavation or grading of land, or the erection, construction, demolition or alteration of any building or structure, between the hours of 9:00 p.m. and 7:00 a.m., within six hundred feet (600') of any occupied residential structure, or that generates, produces or results in any noise or sound that may be heard at the property line of any occupied residential structure; provided that this subsection shall not apply to any such work, construction, repairs or alterations that constitute and urgent necessity for the benefit and interest of the public safety, health or general welfare, e.g., repairs and emergency installations by any public utility, or to any excavation, erection, construction, demolition or alteration authorized by the city council to be undertaken between the hours of 9:00 p.m. and 7:00 a.m.

City Council meetings are held on the first and third Thursday each month. Any applications must be received by the City not later than Tuesday the week before the desired meeting date.

1. Reasons for requesting a Temporary Noise Variance from the City of Leander (e.g. Construction Activities, Concrete pours, etc.)

Concrete pours for paving on new McDonald's Restaurant needed due to excessive heat. Will require approximately 6 pours at approximately 2 per week based on concrete availability and weather.

2. List any noise generating equipment that will be operated during the variance window (e.g. Light plants, Generators, Backhoe, concrete saw, vacuum, etc.)

Light Plants, generator, Skid Steer Bobcat, Concrete Pump Truck, Concrete Trucks

3. List any measures that will be taken to reduce the impacts to neighbors. (e.g. No alarms, whistles or sirens will be used, we will notify the neighbors, etc.)

We will post signs giving 48 hr. notice to neighbors and instruct all involved to hold down noise during these hours where possible.

Engineering Department
Temporary Noise Variance Application

Project Address: __541 N Bagdad Rd__ OR Location: _____

Description of Work: **Concrete paving starting at 3am during months of June, July, and August for Completion of New McDonald's Restaurant.**

In the fields below, please enter the start date and time including setup and traffic control. For the stop date use the ending day and time the variance will be needed including clean up.

Start Date: __6-16-23__ Start Time: __3am__

Finish Date: __8-31-23__ Finish Time: __5pm__

Applicant Information:

Name: __David J Ganuchau__ Company __TexStar Cimarron LLC(GC)__

Position: __President__

Address: __13843 Hwy 105, Suite 318, Conroe, TX 77304__ Phone: __281-450-4023__

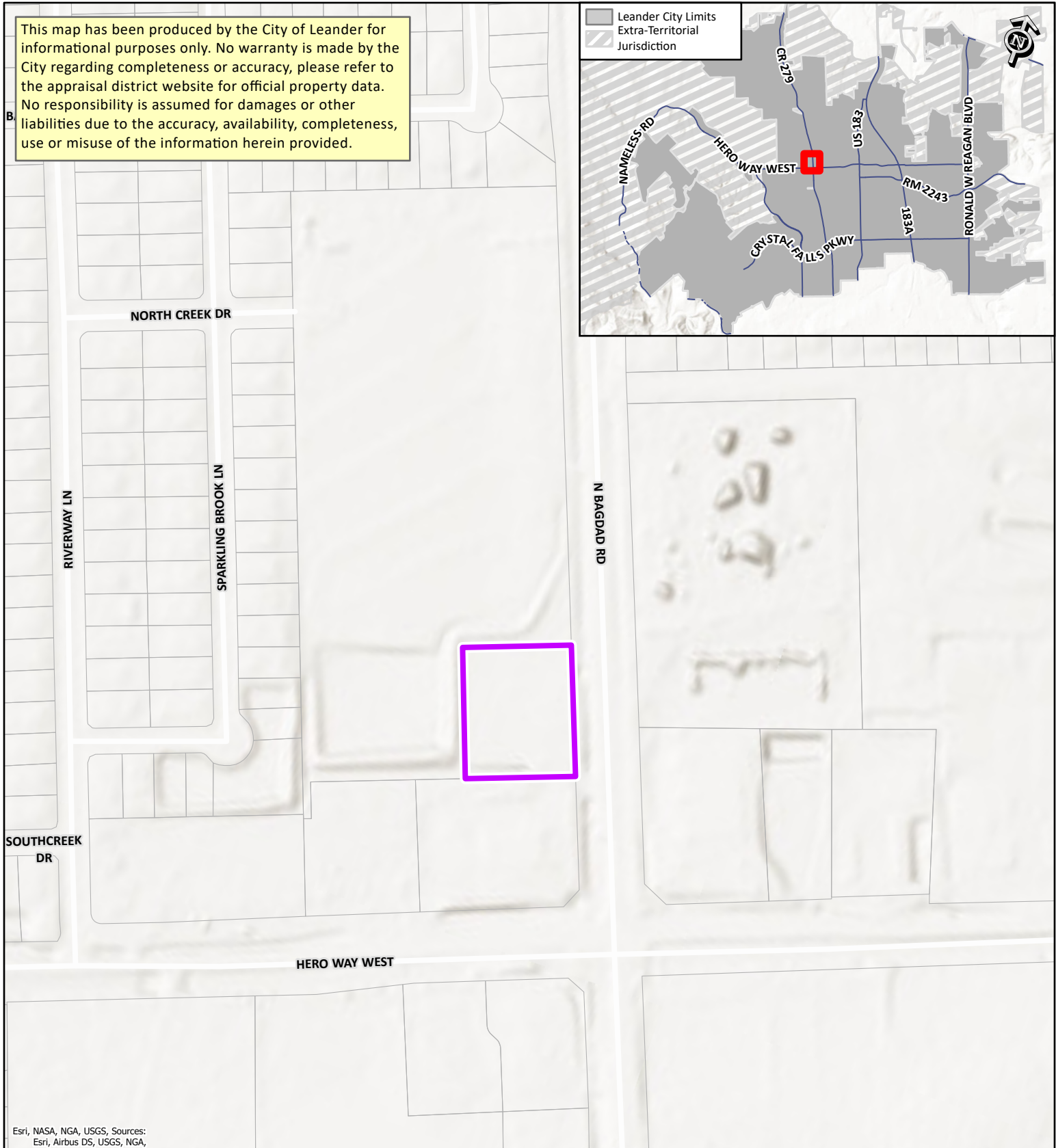
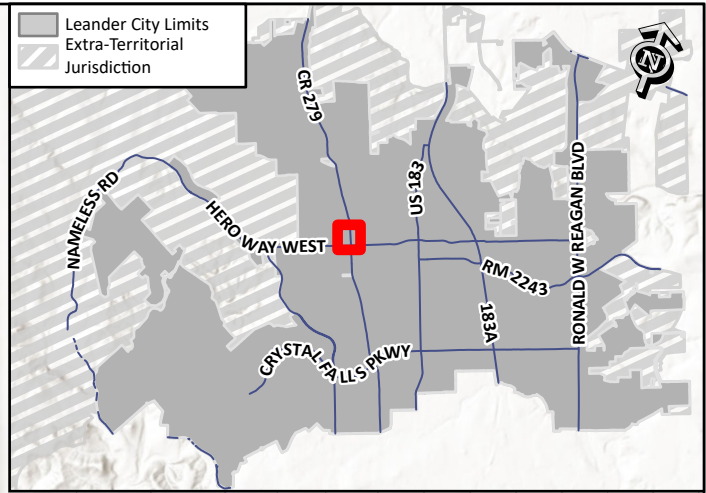
E-mail: __david @texstarcimarron.com__

Contractor Information:

Name: __Same__ Company _____ Position: _____

Address: _____ Phone: _____ E-mail: _____

This map has been produced by the City of Leander for informational purposes only. No warranty is made by the City regarding completeness or accuracy, please refer to the appraisal district website for official property data. No responsibility is assumed for damages or other liabilities due to the accuracy, availability, completeness, use or misuse of the information herein provided.



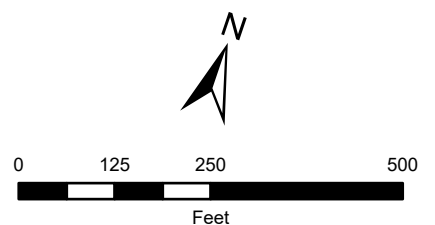
Esri, NASA, NGA, USGS, Sources:
Esri, Airbus DS, USGS, NGA,

NOISE VARIANCE

McDonalds - 22-SD-0007



-  Subject Property
-  City Limits
-  WCAD Parcels





EXECUTIVE SUMMARY
06/15/2023

AGENDA SUBJECT:

Approval of a waiver of Article 8.04, Noise, Section 8.04.001(a) (11) in the hours of construction work to the general contractors for concrete pours to the site located at 13301 Hero Way West, from June 16, 2023 through July 31, 2023 (depending on weather conditions) beginning at 3:00 a.m.; and requiring the contractor for the site to post notifications a minimum of forty-eight (48) hours in advance of the activities.

BACKGROUND:

Legacy MCS is requesting permission for a variance for construction activities for concrete pours between June 16, 2023, through July 2023 for the Urbana at Hero Way site (Permit #SD-22-0006) located at 13301 Hero Way West in Leander, TX. They are requesting that they be granted a variance to be allowed to perform concrete pours beginning at 3:00 a.m., as described in the letter attachment. The general contractor will place temporary signs on their property notifying the citizens in the surrounding area forty-eight (48) hours in advance of any planned early morning concrete pours.

APPLICANT/AGENT:

Legacy MCS

RECOMMENDATION:

City Staff recommend approving a variance of the City's Noise Ordinance for construction activities as scheduled in the attached request for the Urbana at Hero Way project in the City of Leander.

PRESENTER:

Emily Truman, P.E., CFM, PMP, City Engineer

Attachments

1. Noise Variance Request Form Urbana at Hero Way

Engineering Department

Temporary Noise Variance ApplicationChapter 8 Offenses and Nuisances – Article 8.04 Noise - **Sec.8.04.001.a11**

(11) The excavation or grading of land, or the erection, construction, demolition or alteration of any building or structure, between the hours of 9:00 p.m. and 7:00 a.m., within six hundred feet (600') of any occupied residential structure, or that generates, produces or results in any noise or sound that may be heard at the property line of any occupied residential structure; provided that this subsection shall not apply to any such work, construction, repairs or alterations that constitute and urgent necessity for the benefit and interest of the public safety, health or general welfare, e.g., repairs and emergency installations by any public utility, or to any excavation, erection, construction, demolition or alteration authorized by the city council to be undertaken between the hours of 9:00 p.m. and 7:00 a.m.

City Council meetings are held on the first and third Thursday of each month. Any applications must be received by the city not later than Tuesday the week before the desired meeting date.

1. Reasons for requesting a Temporary Noise Variance from the City of Leander (e.g. Construction Activities, Concrete pours, etc.)

Pouring 500 to 1000 yards of concrete on our private road and curbs. Start date 6/16/23-7/31/23. We have a total of 4 pours and we would like to start at 3 AM.

2. List any noise generating equipment that will be operated during the variance window (e.g. Light plants, Generators, Backhoe, concrete saw, vacuum, etc.)

Concrete pump, concrete trucks, generator

3. List any measures that will be taken to reduce the impacts to neighbors. (e.g. No alarms, whistles or sirens will be used, we will notify the neighbors, etc.)

Try to take off backup alarms. Put pump far away from houses. Monitor noise at all times. Notify all residents within 600 ft of work.

Engineering Department
Temporary Noise Variance Application

Project Name: Urbana at Hero Way

Permit Number: SD-22-0006

Project Address: 13301 Hero Way West, Leander, TX 78641

Description of Work: Concrete Work

In the fields below, please enter the start date and time including setup and traffic control. For the stop date use the ending day and time the variance will be needed including clean up.

Start Date: 6/16/2023

Start Time: 3 AM

Finish Date: 7/31/2023

Finish Time: 11 AM

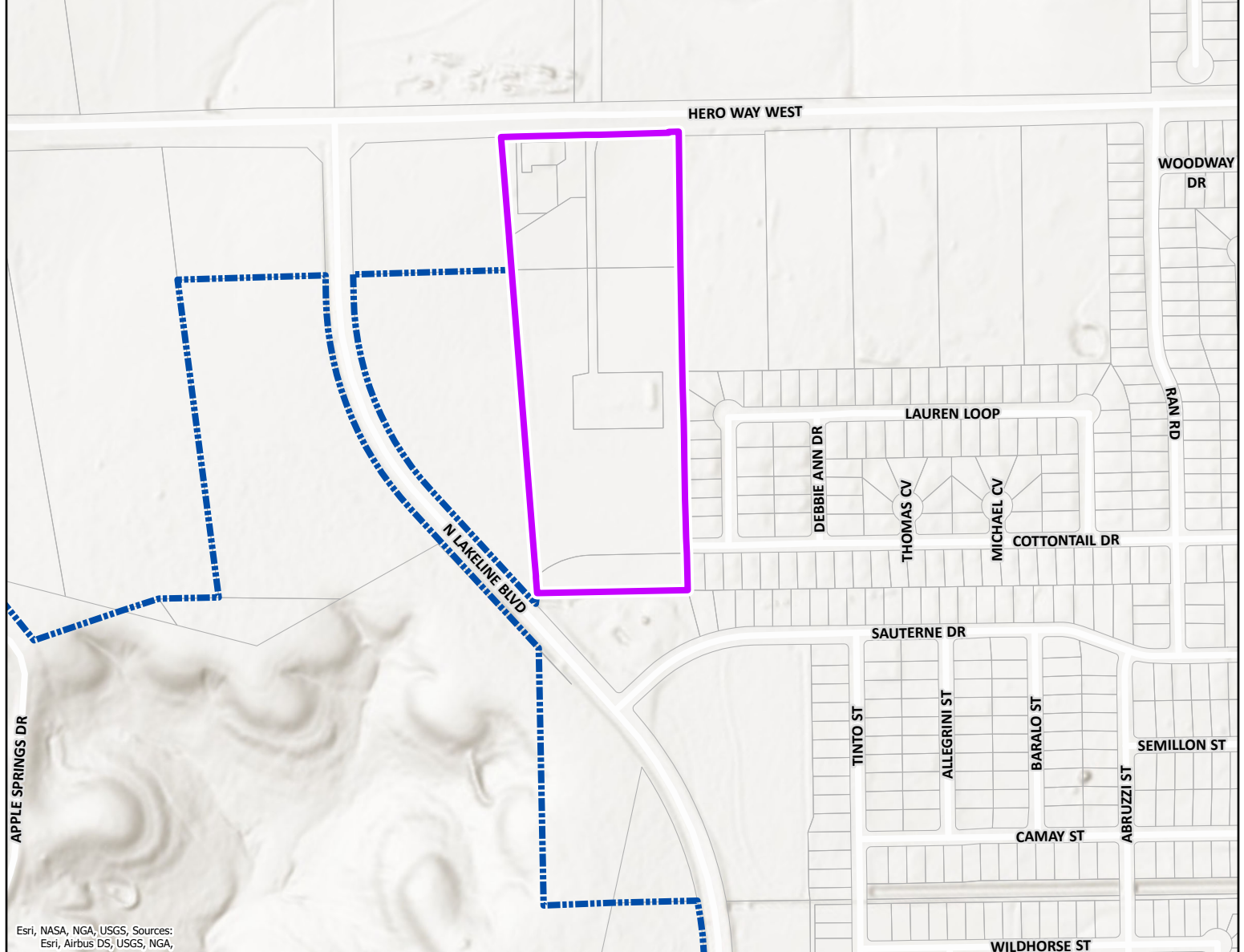
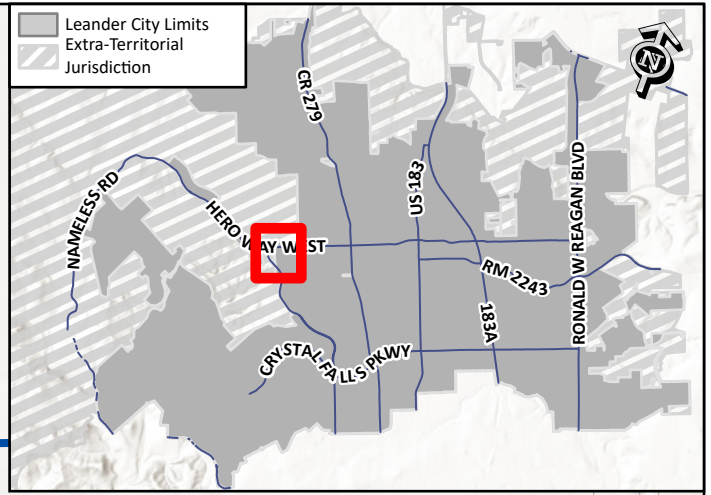
Applicant Information:

Name: Jonathan Adams Company: Legacy MCS Position: Superintendent
Address: 13301 Hero Way West, Leander, TX 78641 Phone: 202-641-6292
E-mail: johna@legacymcs.com

Contractor Information: Same as above

Name: Jonathan Adams Company: Legacy MCS Position: Superintendent
Address: 3101 Bee Cave Rd Ste 305, Austin, TX 78746
Phone: 202-641-6292
E-mail: accounting@legacymcs.com

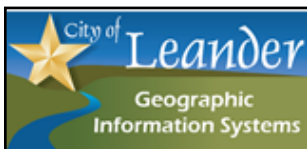
This map has been produced by the City of Leander for informational purposes only. No warranty is made by the City regarding completeness or accuracy, please refer to the appraisal district website for official property data. No responsibility is assumed for damages or other liabilities due to the accuracy, availability, completeness, use or misuse of the information herein provided.



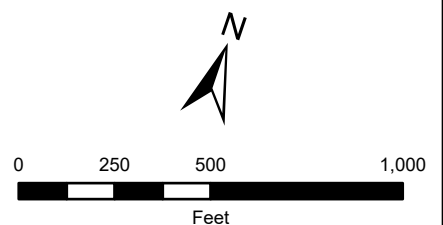
Esri, NASA, NGA, USGS, Sources:
Esri, Airbus DS, USGS, NGA,

NOISE VARIANCE

Urbana at Hero Way - 22-SD-006



- Subject Property
- City Limits
- WCAD Parcels





EXECUTIVE SUMMARY
06/15/2023

AGENDA SUBJECT:

Award of construction contract agreement with DKC Construction Group for the renovation of the existing EMS building behind Pat Bryson Municipal Hall (CIP M.23), to provide office space and conference space for City employees, in the amount of \$577,362.00; and authorize the City Manager to execute any and all necessary documents.

BACKGROUND:

An older pair of buildings behind the Pat Bryson Municipal Building, which had been used to house and office a Williamson County EMS unit, was reviewed and assessed in 2022 to convert into office space, in which the City is in desperate need. The City would like to renovate this EMS building into open-office space for the City's inspectors, and the adjacent apparatus bay into conference space.

HISTORY/TIMELINE:

09/16/21 – City Council approved 2022 Capital Improvements Program projects list, which included M.23.

RECOMMENDATION:

Staff recommends approval of the construction contract agreement for CIP project M.23, in the amount of \$577,362.00 to DKC Construction Group; and authorize the City Manager to execute any and all documentation.

PRESENTER:

Russell Alabastro, CIP Project Manager

Fiscal Impact

<u>Amount requested:</u>	\$577,362.00
<u>Approved in current budget (Yes / No):</u>	Yes
<u>Expenditure (New / Amended):</u>	New
<u>Recurring or one-time:</u>	one-time
<u>Fund source (Operating / Utility / etc.):</u>	CIP 40-04-8326

Attachments

1. Contract Agreement DKC Construction
2. DKC Construction Proposal
3. HZI Recommendation for Award

AGREEMENT BETWEEN OWNER AND CONTRACTOR FOR CONSTRUCTION CONTRACT (STIPULATED PRICE)

This Agreement is by and between **CITY OF LEANDER** ("Owner") and **Gameta Construction, LLC dba DKC Construction Group** ("Contractor").

Terms used in this Agreement have the meanings stated in the General Conditions and the Supplementary Conditions.

Owner and Contractor hereby agree as follows:

ARTICLE 1—WORK

- 1.01 Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

The Work shall include, but is not limited to, Interior renovation of residential space to ADA compliant light commercial including adjacent garage building. renovation includes, re-layout of interior spaces, including accessible work area, restrooms, break room and I.T. room.

ARTICLE 2—THE PROJECT

- 2.01 The Project, of which the Work under the Contract Documents is a part, is generally described as follows: **BLDC-2023-00072 CONSTRUCTION SERVICES FOR RENOVATION OF EMS BUILDING AND APPARATUS BAY**

ARTICLE 3—DESIGN CONSULTANT

- 3.01 The Owner has retained **Huitt-Zollars, Inc.** ("Architect") to act as Owner's representative, assume all duties and responsibilities of Architect, and have the rights and authority assigned to Architect in the Contract. Owner may change the identity of the person or entity assigned as Architect, or otherwise remove any person assigned as Architect, under this agreement at any time by providing written notice to Contractor.
- 3.02 The part of the Project that pertains to the Work has been designed by **Huitt-Zollars, Inc.**

ARTICLE 4—CONTRACT TIMES

- 4.01 *Time is of the Essence*
- A. All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.
- 4.02 *Contract Times: Dates*
- A. The Work will be substantially complete on or before **eighty-four (84) calendar days upon mobilization** and completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions on or before **ninety-eight (98) calendar days**.
- 4.05 *Liquidated Damages*
- A. Contractor and Owner recognize that time is of the essence as stated in Paragraph 4.01 above

and that Owner will suffer financial and other losses if the Work is not completed and Milestones not achieved within the Contract Times, as duly modified. The parties also recognize the delays, expense, and difficulties involved in proving, in a legal or arbitration proceeding, the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty):

1. *Substantial Completion:* Contractor shall pay Owner \$500.00 for each day that expires after the time (as duly adjusted pursuant to the Contract) specified above for Substantial Completion, until the Work is substantially complete. This payment shall be made only in the case that the delay is caused by the sole negligence or willful disregard of Contractor, Contractor's Subcontractors, Vendors, and/or assigns.
 2. *Completion of Remaining Work:* After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Times (as duly adjusted pursuant to the Contract) for completion and readiness for final payment, Contractor shall pay Owner \$500.00 for each day that expires after such time until the Work is completed and ready for final payment.
 3. Liquidated damages for failing to timely attain Milestones, Substantial Completion, and final completion are not additive, and will not be imposed concurrently.
- B. If Owner recovers liquidated damages for a delay in completion by Contractor, then such liquidated damages are Owner's sole and exclusive remedy for such delay, and Owner is precluded from recovering any other damages, whether actual, direct, excess, or consequential, for such delay, except for special damages (if any) specified in this Agreement.

4.06 *Special Damages*

- A. Contractor shall reimburse Owner (1) for any fines or penalties imposed on Owner as a direct result of the Contractor's failure to attain Substantial Completion according to the Contract Times, and (2) for the actual costs reasonably incurred by Owner for engineering, construction observation, inspection, and administrative services needed after the time specified in Paragraph 4.02 for Substantial Completion (as duly adjusted pursuant to the Contract), until the Work is substantially complete.
- B. After Contractor achieves Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Times, Contractor shall reimburse Owner for the actual costs reasonably incurred by Owner for engineering, construction observation, inspection, and administrative services needed after the time specified in Paragraph 4.02 for Work to be completed and ready for final payment (as duly adjusted pursuant to the Contract), until the Work is completed and ready for final payment.
- C. The special damages imposed in this paragraph are supplemental to any liquidated damages for delayed completion established in this Agreement.

ARTICLE 5—CONTRACT PRICE

- 5.01 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents, the amounts that follow, subject to adjustment under the Contract:

A.

EJCDC® C-520, Agreement between Owner and Contractor for Construction Contract (Stipulated Price).
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and American Society of Civil Engineers. All rights reserved.

ITEM #	DESCRIPTION	LINE ITEM TOTAL
1	Selective Demolition	\$ 19,699.00
2	Concrete/Slab	\$ 53,450.00
3	Cold Formed Metal Framing & Structural Wood	In Gypsum Board
4	Miscellaneous Metals	\$ 6,900.00
5	Rough Carpentry	\$ 1,504.00
6	Exterior Sheathing	\$ -
7	Finish Carpentry and Millwork	\$ 7,500.00
8	Solid Surfacing (Re-point & patches allowances)	\$ 25,000.00
9	Insulation	\$ -
10	Thermal & Moisture Protection/ Vapor Barriers	\$ 18,899.00
11	Fiber-Cement Siding	\$ 5,620.00
12	Sheet Metal Flashing & Trim (Fascia)	\$ 9,600.00
13	Doors/Frames/Hardware	\$ 15,900.00
14	Glass/Glazing	\$ 13,500.00
15	Gypsum Board	\$ 28,300.00
16	Porcelain Tile	\$ 10,500.00
17	Acoustical Ceilings	\$ 2,500.00
18	Resilient Flooring, Base, and Accessories	In Porcelain Tile
19	Carpet	\$ -
20	Paint and Coatings	\$ 14,000.00
21	Wood Flooring (Structural w/temp shoring)	\$ 18,000.00
22	Fiber Reinforced Plastic Wall Panels	\$ -
2	Window Coverings	\$ 8,900.00
24	Toilet Accessories	\$ 3,600.00
25	Appliances / General Requirements	\$ -
26	Fire Protection	\$ 2,000.00
27	Potable Water Distribution	In Plumbing Fixtures
28	Sanitary Waste	In Plumbing Fixtures
29	Plumbing Fixtures	\$ 67,000.00
30	HVAC	\$ 45,000.00
31	Electrical Service and Distribution	\$ 84,000.00
32	Lighting and Conductors	In Elec. Service
33	Security	\$ 33,000.00
34	Cabling	In Security
	Subtotal	\$ 494,372
	Permit Fees	\$ -
	Overhead	\$ 82,990.00
	Contingency / Escalation	\$ -
	TOTAL BASE BID	\$ 577,362.00

For all **Work**, a total lump sum amount of **\$577,362.00**.

All specific cash allowances are included in the above price in accordance with Paragraph 13.02 of the General Conditions.

ARTICLE 6—PAYMENT PROCEDURES

6.01 *Submittal and Processing of Payments*

- A. Contractor shall submit Applications for Payment in accordance with Article 15 of the General Conditions. Applications for Payment will be processed by Owner and Engineer as provided in the General Conditions.

6.02 *Progress Payments; Retainage*

- A. Owner shall make progress payments on the basis of Contractor's Applications for Payment on or about the **25th** day from Owner approval of Application for Payment of each month during performance of the Work as provided in Paragraph 6.02.A.1 below, provided that such Applications for Payment have been submitted in a timely manner and otherwise meet the requirements of the Contract. All such payments will be measured by the Schedule of Values established as provided in the General Conditions or, as may be provided elsewhere in the Contract.
 - 1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as Owner may withhold, including but not limited to liquidated damages, in accordance with the Contract.
 - a. **Ninety-Five (95)** percent of the value of the Work completed (with the balance being retainage and
 - b. **Eighty (80)** percent of cost of materials and equipment not incorporated in the Work (with the balance being retainage).
- B. Upon Substantial Completion, Owner shall pay an amount sufficient to increase total payments to Contractor to **Ninety-Five (95)** percent of the Work completed, less such amounts set off by Owner pursuant to Paragraph 15.01.E of the General Conditions, and less **Five (5)** percent of Engineer's estimate of the value of Work to be completed or corrected as shown on the punch list of items to be completed or corrected prior to final payment.

6.03 *Final Payment*

- A. Upon final completion and acceptance of the Work, Owner shall pay the remainder of the Contract Price in accordance with Paragraph 15.06 of the General Conditions.

6.04 *Consent of Surety*

- A. Owner will not make final payment or return or release retainage at Substantial Completion or any other time, unless Contractor submits written consent of the surety to such payment, return, or release.

6.05 *Interest*

- A. All undisputed amounts not paid when due will bear interest at the rate of **4.25%** percent per annum

6.06 *Force Majeure*

- A. Force Majeure Event means an event caused by any of the following conditions: act of God;

EJCDC® C-520, Agreement between Owner and Contractor for Construction Contract (Stipulated Price).
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and American Society of Civil Engineers. All rights reserved.

fire; flood; labor strike; sabotage; material shortages or unavailability or other delay in delivery of services not resulting from the responsible Party's failure to timely provide services therefor; power blackouts; lack of or delay in transportation; changes in government codes, ordinances, laws, rules, regulations, permits, or restrictions; war or civil disorder; or any other cause beyond the reasonable control of such Party. Neither Party shall be liable to the other for any delay or failure in performance of any part of this Contract to the extent that a Force Majeure Event causes such delay or failure. Any party claiming a Force Majeure event has an obligation to attempt to mitigate the impact of the Force Majeure event and find alternate means of performance. The Party additionally must notify the opposing party in writing of the event, the consequence of the event, the impact on performance, steps to mitigate, and the timeframe for resuming compliance.

ARTICLE 7—CONTRACT DOCUMENTS

7.01 Contents

- A. The Contract Documents consist of all of the following:
1. This Agreement.
 2. Bonds:
 - a. Performance bond (together with power of attorney).
 - b. Payment bond (together with power of attorney).
 3. Evidence of Insurance.
 4. City of Leander Standard Definitions, Terms and Conditions (Updated Nov. 2022).
 5. EJCDC® C-700, Standard General Conditions of the Construction Contract (*Edits highlighted*).
 6. Specifications as listed in the table of contents of the project manual (copy of list attached).
 7. Drawings listed on the attached sheet index.
 8. IFB Bid documents.
 9. Addenda No. 1
 10. Form 01-339 Texas Sales and Use Tax Exemption Certification
 11. The following which may be delivered or issued on or after the Effective Date of the Contract and are not attached hereto:
 - a. Notice to Proceed.
 - b. Work Change Directives.
 - c. Change Orders.
 - d. Field Orders.
 - e. Project Schedule.
 - e. Warranty Bond, if any.
- B. The Contract Documents listed in Paragraph 7.01.A are attached to this Agreement (except

as expressly noted otherwise above).

- C. There are no Contract Documents other than those listed above in this Article 7.
- D. The Contract Documents may only be amended, modified, or supplemented as provided in writing as provided in the Contract. Changes in the address required for Notice pursuant to the Contract Documents must also be made in writing and served upon the Notice address then current.

ARTICLE 8—REPRESENTATIONS, CERTIFICATIONS, AND STIPULATIONS

8.01 *Contractor's Representations*

- A. In order to induce Owner to enter into this Contract, Contractor makes the following representations:
 - 1. Contractor has examined and carefully studied the Contract Documents, including Addenda.
 - 2. Contractor has visited the Site, conducted a thorough visual examination of the Site and adjacent areas, and become familiar with the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
 - 3. Contractor is familiar with all Laws and Regulations that may affect cost, progress, and performance of the Work.
 - 4. Contractor has carefully studied the reports of explorations and tests of subsurface conditions at or adjacent to the Site and the drawings of physical conditions relating to existing surface or subsurface structures at the Site that have been identified in the Supplementary Conditions, with respect to the Technical Data in such reports and drawings.
 - 5. Contractor has carefully studied the reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site that have been identified in the Supplementary Conditions, with respect to Technical Data in such reports and drawings.
 - 6. Contractor has considered the information known to Contractor itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Technical Data identified in the Supplementary Conditions or by definition, with respect to the effect of such information, observations, and Technical Data on (a) the cost, progress, and performance of the Work; (b) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor; and (c) Contractor's safety precautions and programs.
 - 7. Based on the information and observations referred to in the preceding paragraph, Contractor agrees that no further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract.
 - 8. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.

9. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and of discrepancies between Site conditions and the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.
10. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
11. Contractor's entry into this Contract constitutes an incontrovertible representation by Contractor that without exception all prices in the Agreement are premised upon performing and furnishing the Work required by the Contract Documents.

8.02 Contractor's Certifications

- A. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 8.02:
 1. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the bidding process or in the Contract execution;
 2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of Owner, (b) to establish Bid or Contract prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;
 3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and
 4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

8.03 Standard General Conditions

- A. Owner stipulates that if the General Conditions that are made a part of this Contract are EJCDC® C-700, Standard General Conditions for the Construction Contract (2018), published by the Engineers Joint Contract Documents Committee, and if Owner is the party that has furnished said General Conditions, then Owner has plainly shown all modifications to the standard wording of such published document to the Contractor, through a process such as highlighting or "track changes" (redline/strikeout), or in the Supplementary Conditions.
- B. Although drawn by Owner, both parties hereto expressly agree and assert that in the event of any dispute over its meaning or application, this Agreement shall be interpreted reasonably and fairly, and neither more strongly for nor against either party.
- C. This Agreement is to be governed by and shall be construed in accordance with the laws of the State of Texas without regard to conflicts of law principles, thereof. Proper venue for any dispute or litigation shall be only in Williamson County, Texas.
- D. This Agreement and all rights and obligations contained herein may not be assigned by Contractor without the prior written approval of the City. However, Contractor shall have the right to employ such assistance as may be required for the performance of the project,

including the use of subcontractors, which employment shall not be deemed an assignment of the Contractors' rights and duties hereunder.

- E. To the extent this Agreement constitutes a contract for goods or services within the meaning of Section 2270.002 of the Texas Government Code, as amended, solely for purposes of compliance with Chapter 2270 of the Texas Government Code, and subject to applicable Federal law, Contractor represents that neither Contractor nor any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of Contractor (i) boycotts Israel or (ii) will boycott Israel through the term of this Agreement. The terms "boycotts Israel" and "boycott Israel" as used in this paragraph have the meanings assigned to the term "boycott Israel" in Section 808.001 of the Texas Government Code, as amended.
- F. To the extent this Agreement constitute a governmental contract within the meaning of Section 2252.151 of the Texas Government Code, as amended, solely for purposes of compliance with Chapter 2252 of the Texas Government Code, and except to the extent otherwise required by applicable federal law, Contractor represents that Contractor nor any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of Contractor is a company listed by the Texas Comptroller of Public Accounts under Sections 2270.0201, or 2252.153 of the Texas Government Code.
- G. Contractor hereby verifies that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not boycott energy companies and will not boycott energy companies during the term of this Agreement. The foregoing verification is made solely to comply with Section 2274.002, Texas Government Code, and to the extent such Section is not inconsistent with a governmental entity's constitutional or statutory duties related to the issuance, incurrence, or management of debt obligations or the deposit, custody, management, borrowing, or investment of funds. As used in the foregoing verification, "boycott energy company" means, without an ordinary business purpose, refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations with a company because the company: (A) engages in the exploration, production, utilization, transportation, sale, or manufacturing of fossil fuel-based energy and does not commit or pledge to meet environmental standards beyond applicable federal and state law; or (B) does business with a company described by the preceding statement in (A).
- H. Contractor hereby verifies that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association during the term of this Agreement. The foregoing verification is made solely to comply with Section 2274.002, Texas Government Code. As used in the foregoing verification, "discriminate against a firearm entity or firearm trade association" means: (i) refuse to engage in the trade of any goods or services with the entity or association based solely on its status as a firearm entity or firearm trade association; (ii) refrain from continuing an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association; or (iii) terminate an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association; but does not include (a) the established policies of a merchant, retail seller, or platform that restrict or prohibit the listing or selling of ammunition, firearms, or firearm accessories; or (b) a company's refusal to engage in the trade of any goods or services,

decision to refrain from continuing an existing business relationship, or decision to terminate an existing business relationship to comply with federal, state, or local law, policy, or regulations or a directive by a regulatory agency; or for any traditional business reason that is specific to the customer or potential customer and not based solely on an entity's or association's status as a firearm entity or firearm trade association.

- I. Texas law requires that business entities, as defined in Texas Government Code, Section 2252.908, who contract with the City complete the on-line of Form 1295 "Certificate of Interested Parties" as promulgated by the Texas Ethics Commission (<https://www.ethics.state.tx.us/filinginfo/1295/>). Form 1295 is also required for any and all contract amendments, extensions or renewals. Prior to any payment to Contractor hereunder, Contractor shall provide proof of submission to the City Secretary that the appropriate Form 1295 documentation has been submitted.

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement.

This Agreement will be effective on June 5, 2023.

Owner:

CITY OF LEANDER

By: _____

(individual's signature)

Date: _____

(date signed)

Name: Richard B. Beverlin III

Title: City Manager

Attest: _____

(individual's signature)

Title: _____

City Secretary

Address for giving notices:

City of Leander

Attn: Kelly Wenzel / Russell Alabastro

105 N. Brushy Street

Leander Texas 78641

Designated Representative:

Name: Paige Saenz

Title: City Attorney

Address: _____

Contractor:

DKE Construction Group

By: _____

(individual's signature)

Date: 6/5/23

(date signed)

Name: Karl Conger

Title: Owner/Operations Manager

(If Contractor is a corporation, a partnership, or a joint venture, attach evidence of authority to sign.)

Attest: _____

(individual's signature)

Title: Controller

(typed or printed)

Address for giving notices:

DKE Construction Group

1205 Sheldon Cir. #1F

Austin, TX 78753

Designated Representative:

Name: Robert Juarez

(typed or printed)

Title: Project Manager & VP

(typed or printed)

Address: _____

The Knight Law Firm, LLC

223 West Anderson Lane, Suite A-105

Austin, Texas 78752

Phone: 512/323-5778

Email: paige@cityattorneytexas.com

DKC Construction Group

1205 Sheldon Cv. #1F

Austin, TX 78753

Phone: 512.937.0788

Email: Robert@dkccgroup.com

License No.: N/A

(where applicable)

State: Texas

ARTICLE 1 – BID RECIPIENT

- 1.01 This Bid is submitted to (via FedEx or in-person delivery):

Kay Johnson
Assistant Purchasing Agent
City of Leander Office
Phone (512) 528-2730
kjohnson@leandertx.gov

- 1.02 The undersigned Bidder proposes and agrees, if this Bid is accepted, to enter into an Agreement with Owner in the form included in the Bidding Documents to perform all Work as specified or indicated in the Bidding Documents for the prices and within the times indicated in this Bid and in accordance with the other terms and conditions of the Bidding Documents.

ARTICLE 2 – BIDDER'S ACKNOWLEDGEMENTS

- 2.01 Bidder accepts all of the terms and conditions of the Instructions to Bidders, including without limitation those dealing with the disposition of Bid security. This Bid will remain subject to acceptance for 60 days after the Bid opening, or for such longer period of time that Bidder may agree to in writing upon request of Owner.

ARTICLE 3 – BIDDER'S REPRESENTATIONS

- 3.01 In submitting this Bid, Bidder represents that:

- A. Bidder has examined and carefully studied the Bidding Documents, the other related data identified in the Bidding Documents, and the following Addenda, receipt of which is hereby acknowledged.

<u>Addendum No.</u>	<u>Addendum Date</u>
<u>1</u>	<u>4-28-23</u>
<u> </u>	<u> </u>
<u> </u>	<u> </u>

- B. Bidder has visited the Site and become familiar with and is satisfied as to the general, local and Site conditions that may affect cost, progress, and performance of the Work.
- C. Bidder is familiar with and is satisfied as to all federal, state and local Laws and Regulations that may affect cost, progress and performance of the Work.
- D. Bidder has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities) which have been identified in Supplementary Conditions 5.03.
- E. Bidder has obtained and carefully studied (or accepts the consequences for not doing so) all additional or supplementary examinations, investigations, explorations, tests, studies and data concerning conditions (surface, subsurface and Underground Facilities) at or contiguous to the Site which may affect cost, progress, or performance of the Work or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by Bidder, including applying the specific means, methods, techniques, sequences, and procedures of construction expressly required by the Bidding Documents to be employed by Bidder, and safety precautions and programs incident thereto.

- F. Bidder does not consider that any further examinations, investigations, explorations, tests, studies, or data are necessary for the determination of this Bid for performance of the Work at the price(s) bid and within the times and in accordance with the other terms and conditions of the Bidding Documents.
- G. Bidder is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Bidding Documents.
- H. Bidder has correlated the information known to Bidder, information and observations obtained from visits to the Site, reports and drawings identified in the Bidding Documents, and all additional examinations, investigations, explorations, tests, studies, and data with the Bidding Documents.
- I. Bidder has given Architect/Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Bidder has discovered in the Bidding Documents, and the written resolution thereof by Architect/Engineer is acceptable to Bidder.
- J. The Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for the performance of the Work for which this Bid is submitted.
- K. Bidder will submit written evidence of its authority to do business in the state where the Project is located not later than the date of its execution of the Agreement.

ARTICLE 4 – FURTHER REPRESENTATIONS

4.01 Bidder further represents that:

- A. this Bid is genuine and not made in the interest of or on behalf of any undisclosed individual or entity and is not submitted in conformity with any agreement or rules of any group, association, organization or corporation;
- B. Bidder has not directly or indirectly induced or solicited any other Bidder to submit a false or sham Bid;
- C. Bidder has not solicited or induced any individual or entity to refrain from bidding; and
- D. Bidder has not sought by collusion to obtain for itself any advantage over any other Bidder or over Owner.

ARTICLE 5 – BASIS OF BID

5.01 Either Base Bid or Alternate Bid (if applicable) may be used in awarding the Contract.

5.02 Base Bid - Bidder will complete the Work in accordance with the Contract Documents for the following price(s):

Renovations of EMS Building and Apparatus Bay

ITEM #	DESCRIPTION	TOTAL
1	Selective Demolition	\$19,699 -
2	Concrete/Slab	\$53,450 -
3	Cold Formed Metal Framing IN PER WALL	\$ -
4	Miscellaneous Metals	\$6,900 -
5	Rough Carpentry	\$1,504 -
6	Exterior Sheathing	\$ -
7	Finish Carpentry and Millwork	\$7,506 -
8	Solid Surfacing RE-POINT + PATCHES ALLOWANCE	\$25,000
9	Insulation	\$ -
10	Thermal & Moisture Protection/ Vapor Barriers	\$18,899 -
11	Fiber-Cement Siding	\$5,620 -
12	Sheet Metal Flashing & Trim FASIA	\$9,600 -
13	Doors/Frames/Hardware	\$15,900 -
14	Glass/Glazing	\$13,500 -
15	Gypsum Board	\$28,300 -
16	Porcelain Tile	\$10,500 -
17	Acoustical Ceilings	\$2,500 -
18	Resilient Flooring, Base, and Accessories	\$ -
19	Carpet	\$ -
20	Paint and Coatings	\$14,000 -
21	Wood Flooring STRUCTURAL w/ TEMP SHORING	\$18,000 -
22	Fiber Reinforced Plastic Wall Panels	\$ -
23	Window Coverings	\$8,900 -
24	Toilet Accessories	\$3,600 -
25	Appliances	\$ -
26	Fire Protection	\$2,000 -
27	Potable Water Distribution IN PLUMBING	\$ -
28	Sanitary Waste IN PLUMBING	\$ -
29	Plumbing Fixtures	\$67,000 -
30	HVAC	\$45,000 -
31	Electrical Service and Distribution	\$84,000 -
32	Lighting and Conductors ↗	\$ -
33	Security	\$33,000 -
34	Cabling ↗	\$ -
	Subtotal	\$494,372
	Permit Fees	\$ -
	Overhead	\$ 24,687
	Contingency	\$ -
	TOTAL	\$577,362

82,990

FIVE HUNDRED SEVENTY-SEVEN THOUSAND THREE HUNDRED SIXTY-TWO

ARTICLE 6 – TIME OF COMPLETION

- 6.01 Bidder agrees that the Work will be substantially complete and will be completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions on or before the dates or within the number of calendar days indicated in the Agreement.
- 6.02 Bidder accepts the provisions of the Agreement as to liquidated damages.

ARTICLE 7 – ATTACHMENTS TO THIS BID

- 7.01 The following documents are attached to and made a condition of this Bid:
- A. Reference Sheet
 - B. Form CIQ
 - C. Bid security;
 - D. Bidder qualifications as required in the Instruction to Bidders;
 - E. complete responses to information required in Bid;
 - F. the entire Bid with all blanks filled in completely.

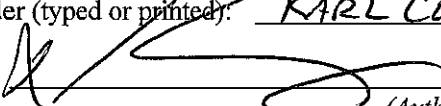
ARTICLE 8 – DEFINED TERMS

- 8.01 Not Used.

ARTICLE 9 – BID SUBMITTAL

- 9.01 This Bid submitted by:

Bidder (typed or printed): KARL CONBER - DKC CONSTRUCTION GROUP

By: 

(Authorized Signature)

Title: PRESIDENT

Date: 5-5-23

Business Address: 1205 SHELLEN CV, STE 1F; AUSTIN TX 78753

Telephone Number: 512 937-0278

Fax Number: _____



AIA Document A310™ – 2010

Bid Bond

CONTRACTOR:

(Name, legal status and address)

Gameta Construction, LLC dba
DKC Construction Group
1205 Sheldon Cove, Austin, TX 78753

SURETY:

(Name, legal status and principal place of business)

Merchants Bonding Company (Mutual)
P.O. Box 14498
Des Moines, IA 50306

OWNER:

(Name, legal status and address)

City of Leander - Purchasing Division
105 N Brushy Street
Leander, TX 78641

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

BOND AMOUNT: Five Percent of the Greatest Amount Bid (\$ 5% G.A.B.)

PROJECT:

(Name, location or address, and Project number, if any)

S23-010 Renovation of EMS Bldg & Apparatus Bay

Project Number, if any:

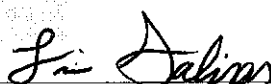
The Contractor and Surety are bound to the Owner in the amount set forth above, for the payment of which the Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, as provided herein. The conditions of this Bond are such that if the Owner accepts the bid of the Contractor within the time specified in the bid documents, or within such time period as may be agreed to by the Owner and Contractor, and the Contractor either (1) enters into a contract with the Owner in accordance with the terms of such bid, and gives such bond or bonds as may be specified in the bidding or Contract Documents, with a surety admitted in the jurisdiction of the Project and otherwise acceptable to the Owner, for the faithful performance of such Contract and for the prompt payment of labor and material furnished in the prosecution thereof; or (2) pays to the Owner the difference, not to exceed the amount of this Bond, between the amount specified in said bid and such larger amount for which the Owner may in good faith contract with another party to perform the work covered by said bid, then this obligation shall be null and void, otherwise to remain in full force and effect. The Surety hereby waives any notice of an agreement between the Owner and Contractor to extend the time in which the Owner may accept the bid. Waiver of notice by the Surety shall not apply to any extension exceeding sixty (60) days in the aggregate beyond the time for acceptance of bids specified in the bid documents, and the Owner and Contractor shall obtain the Surety's consent for an extension beyond sixty (60) days.

If this Bond is issued in connection with a subcontractor's bid to a Contractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

When this Bond has been furnished to comply with a statutory or other legal requirement in the location of the Project, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

Signed and sealed this 5th day of May, 2023


(Witness)


(Witness) Luis Salinas

Gameta Construction, LLC dba DKC Construction Group
(Principal)  (Seal)

(Title) KARL CONLIER PRESIDENT
Merchants Bonding Company (Mutual)

(Surety)  (Seal)

(Title) Yamillee Ramos, Attorney-in-Fact

Init.

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MERCHANTS
BONDING COMPANY™
POWER OF ATTORNEY

Know All Persons By These Presents, that MERCHANTS BONDING COMPANY (MUTUAL) and MERCHANTS NATIONAL BONDING, INC., both being corporations of the State of Iowa, d/b/a Merchants National Indemnity Company (in California only) (herein collectively called the "Companies") do hereby make, constitute and appoint, individually,

Blaine Allen; Brady K Cox; Brent Baldwin; Brock Baldwin; Chandler Nazzari; Cynthia A Alford; John A Aboumrad; Keith Rogers; Kristen Ortiz; Lorena Gutierrez; Michael B Hill; Neira Hernandez; Russ Frenzel; Samuel Freireich; Sylvia Thomas; Veronica Ramos; William D Baldwin; Yamillec Ramos

their true and lawful Attorney(s)-in-Fact, to sign its name as surety(ies) and to execute, seal and acknowledge any and all bonds, undertakings, contracts and other written instruments in the nature thereof, on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

This Power-of-Attorney is granted and is signed and sealed by facsimile under and by authority of the following By-Laws adopted by the Board of Directors of Merchants Bonding Company (Mutual) on April 23, 2011 and amended August 14, 2015 and adopted by the Board of Directors of Merchants National Bonding, Inc., on October 16, 2015.

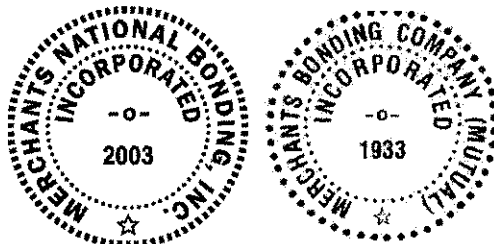
"The President, Secretary, Treasurer, or any Assistant Treasurer or any Assistant Secretary or any Vice President shall have power and authority to appoint Attorneys-in-Fact, and to authorize them to execute on behalf of the Company, and attach the seal of the Company thereto, bonds and undertakings, recognizances, contracts of indemnity and other writings obligatory in the nature thereof."

"The signature of any authorized officer and the seal of the Company may be affixed by facsimile or electronic transmission to any Power of Attorney or Certification thereof authorizing the execution and delivery of any bond, undertaking, recognizance, or other suretyship obligations of the Company, and such signature and seal when so used shall have the same force and effect as though manually fixed."

In connection with obligations in favor of the Florida Department of Transportation only, it is agreed that the power and authority hereby given to the Attorney-in-Fact cannot be modified or revoked unless prior written personal notice of such intent has been given to the Commissioner-Department of Highways of the Commonwealth of Kentucky at least thirty (30) days prior to the modification or revocation. It is fully understood that consenting to the State of Florida Department of Transportation making payment of the final estimate to the Contractor and/or its assignee, shall not relieve this surety company of any of its obligations under its bond.

In connection with obligations in favor of the Kentucky Department of Highways only, it is agreed that the power and authority hereby given to the Attorney-in-Fact cannot be modified or revoked unless prior written personal notice of such intent has been given to the Commissioner-Department of Highways of the Commonwealth of Kentucky at least thirty (30) days prior to the modification or revocation.

In Witness Whereof, the Companies have caused this instrument to be signed and sealed this 23rd day of January, 2023.



MERCHANTS BONDING COMPANY (MUTUAL)
MERCHANTS NATIONAL BONDING, INC.
d/b/a MERCHANTS NATIONAL INDEMNITY COMPANY

By

Larry Taylor
President

STATE OF IOWA
COUNTY OF DALLAS ss.

On this 23rd day of January, 2023, before me appeared Larry Taylor, to me personally known, who being by me duly sworn did say that he is President of MERCHANTS BONDING COMPANY (MUTUAL) and MERCHANTS NATIONAL BONDING, INC.; and that the seals affixed to the foregoing instrument are the Corporate Seals of the Companies; and that the said instrument was signed and sealed in behalf of the Companies by authority of their respective Boards of Directors.

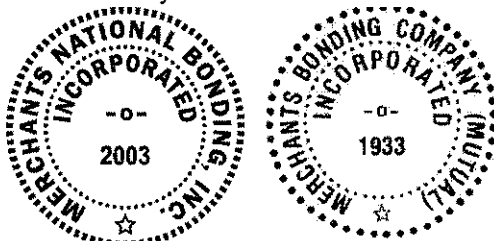


Kim Lee
Notary Public

(Expiration of notary's commission does not invalidate this instrument)

I, William Warner, Jr., Secretary of MERCHANTS BONDING COMPANY (MUTUAL) and MERCHANTS NATIONAL BONDING, INC., do hereby certify that the above and foregoing is a true and correct copy of the POWER-OF-ATTORNEY executed by said Companies, which is still in full force and effect and has not been amended or revoked.

In Witness Whereof, I have hereunto set my hand and affixed the seal of the Companies on this 5th day of May, 2023.



William Warner Jr.
Secretary



MERCHANTS BONDING COMPANY (MUTUAL) • MERCHANTS NATIONAL BONDING, INC.
2100 FLEUR DRIVE • DES MOINES, IOWA 50321-1158 • (800) 678-8171 • (515) 243-3854 FAX

IMPORTANT NOTICE

To obtain information or make a complaint:

You may contact your insurance agent at the telephone number provided by your insurance agent.

You may call Merchants Bonding Company (Mutual) toll-free telephone number for information or to make a complaint at:

1-800-678-8171

You may contact the Texas Department of Insurance to obtain information on companies, coverages, rights or complaints at:

1-800-252-3439

You may write the Texas Department of Insurance at:

P. O. Box 149104
Austin, TX 78714-9104
Fax: (512) 475-1771
Web: <http://www.tdi.state.tx.us>
E-mail: ConsumerProtection@tdi.texas.gov

PREMIUM AND CLAIM DISPUTES: Should you have a dispute concerning your premium or about a claim you should contact the agent first. If the dispute is not resolved, you may contact the Texas Department of Insurance.

ATTACH THIS NOTICE TO YOUR POLICY: This notice is for information only and does not become a part or condition of the attached document.

ATTACHMENT A
RESPONDENT'S REFERENCE SHEET

PLEASE COMPLETE AND RETURN THIS FORM WITH THE SOLICITATION RESPONSE

SOLICITATION NUMBER: 523 -010
RESPONDENT'S NAME: DKC CONSTRUCTION GROUP **DATE:** 5-4-29

Provide the name, address, telephone number and **E-MAIL** of at least three (3) Municipal and/or Government agencies or firms of comparable size that have utilized similar service within the last two (2) years. City of Leander references are not applicable. References may be checked prior to award. Any negative responses received may result in disqualification of submittal.

1. Company's Name PFLUGERVILLE ISD
 Name of Contact CRAIG PRUETT
 Title of Contact PURCHASING OFFICER
 E-Mail Address CRAIG.PRUETT@PFISD.NET
 Present Address 1401 W. PECAN ST.
 City, State, Zip Code PFLUGERVILLE, TX 78660
 Telephone Number (512) 594-0070 Fax Number: ()

2. Company's Name ELGIN ISD
 Name of Contact LAINEY LANN
 Title of Contact EXECUTIVE DIRECTOR OF OPERATIONS
 E-Mail Address LAINEY.LANN@ELGINISD.NET
 Present Address 805 W 10th ST
 City, State, Zip Code ELGIN, TX 78621
 Telephone Number (512) 281-9760 Fax Number: ()

3. Company's Name METIS CAPITOL
 Name of Contact COLIN LAITNER
 Title of Contact PRESIDENT
 E-Mail Address COLIN@DEETERINV.COM
 Present Address 1205 SHELDON CV, STE 1E
 City, State, Zip Code AUSTIN, TX 78753
 Telephone Number (512) 732-2650 Fax Number: ()

FAILURE TO PROVIDE THE REQUIRED INFORMATION WITH THE SOLICITATION RESPONSE MAY AUTOMATICALLY DISQUALIFY THE RESPONSE FROM CONSIDERATION FOR AWARD.



City of Leander

INVITATION FOR BID
RENOVATION OF EMS BUILDING AND APPARATUS BAY
ADDENDUM #1

IFB No. S23-010

Addendum #: 1

Date: April 28, 2023

Please note the **clarification** and/or additional information for the solicitation referenced above.

This Addendum forms a part of Contract and clarifies, corrects or modifies original Bid Documents, dated March and/or April 2023. Acknowledge receipt of this addendum in space provided on bid form. Failure to do so may subject bidder to disqualification.

- A. Invitation For Bid
- B. RFI Response Sheet
- C. Addendum 1
 - 1. Drawing sheet T-1.01
 - 2. Specification sections:
 - a. 27 16 00
 - b. 28 05 13
 - c. 28 10 00

This addendum consists of 45 page(s).

Approved by _____

Kay Johnson, Purchasing Agent

By the signatures affixed below, Addendum No. 1 is hereby incorporated into and made a part of the above referenced solicitation.

ACKNOWLEDGED

DKC CONSTRUCTION
Vendor

Karl Boy
Authorized Signature

5-4-23
Date

RETURN ONE COPY SIGNED COPY OF THIS ADDENDUM TO THE PURCHASING OFFICE WITH YOUR SEALED PROPOSAL. FAILURE TO DO SO MAY AUTOMATICALLY DISQUALIFY YOUR RESPONSE FROM CONSIDERATION FOR AWARD.

CONFLICT OF INTEREST QUESTIONNAIRE**FORM CIQ****For vendor doing business with local governmental entity****OFFICE USE ONLY****This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session.**

This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a).

By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. See Section 176.006(a-1), Local Government Code.

A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.

Date Received

1 Name of vendor who has a business relationship with local governmental entity.

N/A

2 ☐ **Check this box if you are filing an update to a previously filed questionnaire.** (The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)

3 Name of local government officer about whom the information is being disclosed._____
Name of Officer

4 Describe each employment or other business relationship with the local government officer, or a family member of the officer, as described by Section 176.003(a)(2)(A). Also describe any family relationship with the local government officer. Complete subparts A and B for each employment or business relationship described. Attach additional pages to this Form CIQ as necessary.

A. Is the local government officer or a family member of the officer receiving or likely to receive taxable income, other than investment income, from the vendor?

☐ Yes☐ No

B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer or a family member of the officer AND the taxable income is not received from the local governmental entity?

☐ Yes☐ No

5 Describe each employment or business relationship that the vendor named in Section 1 maintains with a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership interest of one percent or more.

6 ☐ **Check this box if the vendor has given the local government officer or a family member of the officer one or more gifts as described in Section 176.003(a)(2)(B), excluding gifts described in Section 176.003(a-1).**

7_____
Signature of vendor doing business with the governmental entity_____
Date

CONFLICT OF INTEREST QUESTIONNAIRE

For vendor doing business with local governmental entity

A complete copy of Chapter 176 of the Local Government Code may be found at <http://www.statutes.legis.state.tx.us/Docs/LG/htm/LG.176.htm>. For easy reference, below are some of the sections cited on this form.

Local Government Code § 176.001(1-a): "Business relationship" means a connection between two or more parties based on commercial activity of one of the parties. The term does not include a connection based on:

- (A) a transaction that is subject to rate or fee regulation by a federal, state, or local governmental entity or an agency of a federal, state, or local governmental entity;
- (B) a transaction conducted at a price and subject to terms available to the public; or
- (C) a purchase or lease of goods or services from a person that is chartered by a state or federal agency and that is subject to regular examination by, and reporting to, that agency.

Local Government Code § 176.003(a)(2)(A) and (B):

(a) A local government officer shall file a conflicts disclosure statement with respect to a vendor if:

(2) the vendor:

(A) has an employment or other business relationship with the local government officer or a family member of the officer that results in the officer or family member receiving taxable income, other than investment income, that exceeds \$2,500 during the 12-month period preceding the date that the officer becomes aware that

(i) a contract between the local governmental entity and vendor has been executed; or

(ii) the local governmental entity is considering entering into a contract with the vendor;

(B) has given to the local government officer or a family member of the officer one or more gifts that have an aggregate value of more than \$100 in the 12-month period preceding the date the officer becomes aware that:

(i) a contract between the local governmental entity and vendor has been executed; or

(ii) the local governmental entity is considering entering into a contract with the vendor.

Local Government Code § 176.006(a) and (a-1)

(a) A vendor shall file a completed conflict of interest questionnaire if the vendor has a business relationship with a local governmental entity and:

(1) has an employment or other business relationship with a local government officer of that local governmental entity, or a family member of the officer, described by Section 176.003(a)(2)(A);

(2) has given a local government officer of that local governmental entity, or a family member of the officer, one or more gifts with the aggregate value specified by Section 176.003(a)(2)(B), excluding any gift described by Section 176.003(a-1); or

(3) has a family relationship with a local government officer of that local governmental entity.

(a-1) The completed conflict of interest questionnaire must be filed with the appropriate records administrator not later than the seventh business day after the later of:

(1) the date that the vendor:

(A) begins discussions or negotiations to enter into a contract with the local governmental entity; or

(B) submits to the local governmental entity an application, response to a request for proposals or bids, correspondence, or another writing related to a potential contract with the local governmental entity; or

(2) the date the vendor becomes aware:

(A) of an employment or other business relationship with a local government officer, or a family member of the officer, described by Subsection (a);

(B) that the vendor has given one or more gifts described by Subsection (a); or

(C) of a family relationship with a local government officer.

5.30.2023

Kay Johnson
Assistant Purchasing Agent
City of Leander
201 N. Brushy Street
Leander, TX 78641
Sent via email: kjohnson@leandertx.gov

Re: Letter of Recommendation to Award EMS Building Renovations (M23)

Dear Ms. Johnson:

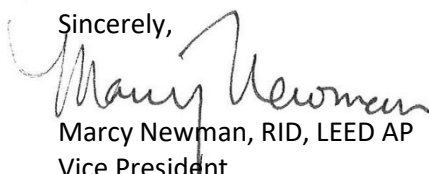
Three sealed bids were received for the above referenced project on May 6, 2023 at 2:00 P.M. The project includes the renovation of the existing EMS Building (1,244 SF) and Garage (415 SF). Below is a listing of the Contractors who bid on the contract and their total bid ordered from lowest to highest:

- | | |
|--------------|--------------|
| 1. DKC | \$577,362.00 |
| 2. SCS | \$722,202.00 |
| 3. Swinteron | \$837,442.00 |

As the lowest bidder, DKC provided an oral presentation to the City of Leander staff and myself on May 25, 2023. Questions were answered satisfactorily during the presentation and all requested follow up information was submitted. Therefore, we recommend that the City of Leander proceed with the award of this construction contract to DKC for their bid amount of \$577,362.00.

Please contact me with any questions.

Sincerely,



Marcy Newman, RID, LEED AP
Vice President
Huitt-Zollars, Inc.

cc: Russell Alabastro, City of Leander
Kelly Wenzel, City of Leander
Ray Gonzales, Huitt-Zollars



EXECUTIVE SUMMARY
06/15/2023

AGENDA SUBJECT:

Approval of a Resolution accepting the petition for the 800 Riva Ridge Annexation Case A-23-0008 regarding the voluntary annexation of 2.3872 acres $\pm$ in size, more particularly described by Williamson Central Appraisal District Parcel R032108; and commonly known as 800 Riva Ridge Road, Leander, Williamson County, Texas.

BACKGROUND:

This resolution commences the voluntary annexation of 2.3872 acres $\pm$ as described above. The resolution sets the public hearing for July 6, 2023 and the readings of the ordinance for July 6, 2023 and July 20, 2023.

This property is subject to a development agreement between the property owner and the City that requires annexation when the land use redevelops and is no longer used for agricultural purposes. Approval of this item does not approve the annexation.

APPLICANT/AGENT:

Milian Consulting, LLC (G. Maximiliano Martinez, PE) on behalf of Brigido Cruces and Miriam Garcia

PRESENTER:

Robin M. Griffin, AICP, Executive Director of Development Services

Attachments

1. Resolution
2. Location Map
3. Annexation Schedule
4. Petition

RESOLUTION NO. _____

A RESOLUTION OF THE CITY OF LEANDER, TEXAS, ACCEPTING THE PETITION FOR ANNEXATION OF 2.3872 ACRES, MORE OR LESS, OF LAND LOCATED IN WILLIAMSON COUNTY, TEXAS; SETTING AN ANNEXATION SCHEDULE; PROVIDING FOR OPEN MEETINGS AND OTHER RELATED MATTERS.

WHEREAS, the owners of certain property located within Williamson County, Texas, have petitioned the City of Leander, Texas, (hereinafter, the “City”), a home-rule City, for annexation of said property, more particularly described in **Exhibit A** attached hereto and incorporated by reference herein (the, “Subject Property”), into the City limits; and

WHEREAS, the Subject Property is contiguous and adjacent to the corporate limits of the City and the owner(s) have made application for annexation; and

WHEREAS, after review and consideration of such requests and petition for annexation from the owners of the Subject Property, the City Council finds that the Subject Property may be annexed pursuant to §43.0671 of the *Local Government Code*; and

WHEREAS, the petitioner has agreed and consented to the annexation of the Subject Property by the City and further agreed to be bound by all acts, ordinances, and all other legal action now in force and effect within the corporate limits of the City and all those which may be hereafter adopted.

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

Section 1. Findings. The foregoing recitals are hereby found to be true and correct and are hereby adopted by the City Council and made a part hereof for all purposes as findings of fact.

Section 2. Proceedings. The petition for annexation of the Subject Property, including the abutting streets, roadways, and rights of way, not previously annexed into the City, and the draft service plan shown in **Exhibit B**, are hereby accepted:

2.3872 Acres, more or less, out of the HENRY GARMS SURVEY, ABSTRACT NO. 269, commonly addressed as 800 Riva Ridge, Williamson County, Texas.

A public hearing has been set for the date of the 6th day of July, 2023. Notice of such hearing shall be posted and the hearing shall be open to the public to accept public comment on the annexation request. In the event of a conflict between the Subject Property description contained herein, **Exhibit A** shall control.

Section 3. Severability. Should any section or part of this Resolution be held unconstitutional, illegal, or invalid, or the application to any person or circumstance thereof ineffective or inapplicable, such unconstitutionality, illegality, invalidity, or ineffectiveness of such section or part shall in no way affect, impair or invalidate the remaining portion or portions

thereof; but as to such remaining portion or portions, the same shall be and remain in full force and effect and to this end the provisions of this Resolution are declared to be severable.

Section 4. Open Meetings. It is hereby officially found and determined that the meeting at which this Resolution is passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act, *Chapt. 551, Tex. Gov't. Code.*

PASSED AND APPROVED this the 6th day of July, 2023.

ATTEST:

THE CITY OF LEANDER, TEXAS

Dara Crabtree, City Secretary

Christine DeLisle, Mayor

Exhibit A

SUBJECT PROPERTY DESCRIPTION

(see attached)

Exhibit B

Service Agreement

AGREEMENT REGARDING POST-ANNEXATION PROVISION OF SERVICES FOR PROPERTY TO BE ANNEXED INTO THE CITY OF LEANDER

This Agreement is entered into by and between the City of Leander, Texas, a municipal corporation (“City”), and Miriam Garcia and Brigido Cruces, (“Landowners”). The City and the Landowners may be referred to herein singularly as “Party” or collectively as the “Parties.”

RECITALS

WHEREAS, upon the request of the Landowners, the City intends to institute annexation proceedings for an area of land described more in **Exhibit A** and attached hereto and incorporated by reference herein, less and except any property previously annexed by the City. (the, “Subject Property”); and

WHEREAS, Section 43.0672, Loc. Gov’t. Code, requires the Parties to enter into a written agreement identifying a list of public services to be provided to the Subject Property and a schedule for the provision of those services that are not otherwise provided on the effective date of the annexation; and

WHEREAS, this Agreement is being entered into by and between the Parties to comply with Texas Local Government Code, Chapter 43, Sub-Chapter C-3, Section 43.0672, prior to the City’s consideration of an ordinance annexing the Subject Property, it being understood, acknowledged and agreed by the Parties that annexation of the Subject Property is a condition precedent to this Agreement becoming effective; and

WHEREAS, this Agreement shall be deemed effective on the effective date of an ordinance approved by the City annexing the Subject Property (hereinafter, the “Effective Date”); and

WHEREAS, the Subject Property is not included in the municipal annexation plan and is exempt from the requirements thereof; and

WHEREAS, the infrastructure provided for herein and that are existing are sufficient to service the Subject Property on the same terms and conditions as other similarly situated properties

currently within the City limits and no capital improvements are required to offer municipal services on the same terms and conditions as other similarly situated properties within the City; and

WHEREAS, it is found that all statutory requirements have been satisfied and the City is authorized by *Chapter 43, Loc. Gov't. Code*, to annex the Subject Property into the City; and

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

The following services and schedule represent the provision of services agreed to between the Landowners of the Subject Property and the City establishing a program under which the City will provide municipal services to the Subject Property, as required by section 43.0672 of the Texas Local Government Code. The services detailed herein will be provided at a level consistent with service levels provided to other similarly situated areas within the City.

The following services will be provided for the Subject Property on the Effective Date of annexation:

- (2) **General Municipal Services.** Pursuant to the requests of the owner and this Agreement, the following services shall be provided immediately from the effective date of the annexation:

2. Police protection as follows:

Routine patrols of areas, radio response to calls for police service and all other police services now being offered to the citizens of the City. Upon annexation, police protection will be provided to the Subject Property at a level consistent with the service to other areas of the City with similar population density and characteristics. The City's police services include neighborhood patrols, criminal investigations, crime prevention, community services and school programs.

B. Fire protection and Emergency Medical Services as follows:

Fire protection by the present personnel and equipment of the City fire fighting force and the volunteer fire fighting force with the limitations of water available. Radio response for Emergency Medical Services with the present personnel and equipment.

C. Solid waste collection services as follows:

Solid waste collection and services as now being offered to the citizens of the City. The City provides residential solid waste collection services within the City limits for a fee under a contract between the City and private refuse collection operator. The residential solid waste collection services include garbage collection, recycling, bulky item collection and yard waste collection. Commercial solid waste collection services are also available. This service will be provided for a fee to any person within the Subject Property requesting the service after the Effective Date of annexation, provided that a privately owned solid waste management service provider is unavailable. If the Subject Property is already receiving service, the City may not prohibit solid waste collection by the privately owned solid waste management service provider, nor may the City offer solid waste collection services for a period of two (2) years following the Effective Date of the annexation unless a privately owned solid waste management service provider is or becomes unavailable, as established by Texas Local Government Code section 43.0661. If a landowner uses the services of a privately owned solid waste management service provider or services are available from a privately owned solid waste management service provider during the two (2) years following annexation, the City will not provide solid waste collection services to that landowner.

D. Animal control as follows:

Service by present personnel, equipment and facilities or by contract with a third party, as provided within the City.

E. Maintenance of City-owned parks and playgrounds within the City.

F. Inspection services in conjunction with building permits and routine City code enforcement services by present personnel, equipment and facilities. Municipal Court and General Administration services will also be available to property owners and residents in the Subject Property on the same basis those facilities are available to current City property owners and residents.

G. Maintenance of other City facilities, buildings, and service.

H. Land use regulation as follows:

On the effective date of annexation, the zoning jurisdiction of the City shall be extended to include the annexed area, and the use of all property therein shall be grandfathered; and shall be temporarily zoned "SFR-1-B" with the intent to rezone the Subject Property upon request of the landowner or staff. The Planning & Zoning Commission and the City Council will consider rezoning the Subject Property at future times in response to requests submitted by the Landowners or authorized city staff. The City will impose and enforce its adopted ordinances, including but not limited to, zoning, subdivision development, site development and building code regulations within the Subject Property upon the Effective Date of the annexation. Enforcement will be in accordance with City ordinances. Development plans and plats for projects within the Subject Property will be reviewed for compliance with City standards.

(2) **Scheduled Municipal Services.** Due to the size and vacancy of the Subject Property, the plans and schedule for the development of the Subject Property, the following municipal services will be provided on a schedule and at increasing levels of service as provided herein:

2. Water service and maintenance of water facilities as follows:

(2) Inspection of water distribution lines as provided by statutes of the State of Texas.

(ii) In accordance with the applicable rules and regulations for the provision of water service, water service will be provided to the Subject Property, or applicable portions thereof, by the utility holding a water certificate of convenience and necessity ("CCN") for the Subject Property, or portions thereof as applicable, or absent a water CCN, by the utility in whose jurisdiction the Subject Property, or portions thereof as applicable, is located, in accordance with all the ordinances, regulations, and policies of the City in effect from time to time for the extension of water service. If connected to the City's water utility system, the Subject Property's owner shall construct the internal water lines and pay the costs of line extension and construction of such facilities necessary to provide water service to the Subject Property as required in City ordinances. Upon acceptance of the water lines within the Subject Property and any off-site improvements, water service will be provided by the City utility department on the same terms, conditions and requirements as are applied to all similarly situated areas and customers of the City; subject to all the ordinances, regulations and policies of the City in effect from time to time. The system will be accepted and maintained by the City in accordance with its usual acceptance and maintenance policies. New water line extensions will be installed and extended upon request under the same costs and terms as with other similarly situated customers of the City. The ordinances of the City in effect at the time a request for service is submitted shall govern the costs and request for service. The continued use of a water well that is in use on the effective date of the annexation and is in compliance with applicable rules and regulations shall be permitted and such use may continue until the Subject Property's owner requests and is able to connect to the City's water utility system.

B. Wastewater service and maintenance of wastewater service as follows:

(2) Inspection of sewer lines as provided by statutes of the State of Texas.

(ii) In accordance with the applicable rules and regulations for the provision of wastewater service, wastewater service will be provided to the subjects property, or applicable portions thereof, by the utility holding a wastewater CCN for the Subject Property, or portions thereof as applicable, or absent a wastewater CCN, by the utility in whose jurisdiction the Subject Property, or portions thereof as applicable, is located, in accordance with all the ordinances, regulations, and policies of the City in effect from time to time for the extension of wastewater service. If connected to the City's wastewater utility system, the Subject Property's owner shall construct the internal wastewater lines and pay the costs of line extension and construction of facilities necessary to provide wastewater service to the Subject Property as required in City ordinances. Upon acceptance of the wastewater lines within the Subject Property and any off-site improvements, wastewater service will be provided by the City utility department on the same terms, conditions and requirements as are applied to all similarly situated areas and customers of the City, subject to all the ordinances, regulations and policies of the City in effect from time to time. The wastewater system will be accepted and maintained by the City in accordance with its usual policies. Requests for new wastewater line extensions will be installed and extended upon request under the same costs and terms as with other similarly situated customers of the City. The ordinances in effect at the time a request for service is submitted shall govern the costs and request for service. The continued use of a septic system that is in use on the effective date of the annexation and is in compliance with all applicable rules and regulations shall be permitted and such use may continue until the Subject Property owner requests and is able to connect to the City's wastewater utility system.

C. Maintenance of streets and rights-of-way as appropriate as follows:

(2) Provide maintenance services on existing public streets within the Subject Property and other streets that are hereafter constructed and finally accepted by the City. The maintenance of the streets and roads will be limited as follows:

(2) Emergency maintenance of streets, repair of hazardous potholes, measures necessary for traffic flow, etc.; and

(B) Routine maintenance as presently performed by the City.

(ii) The City will maintain existing public streets within the Subject Property, and following installation and acceptance of new roadways by the City as provided by city ordinance, including any required traffic signals, traffic signs, street markings, other traffic control devices and street lighting, the City will maintain such newly constructed public streets, roadways and rights-of-way within the boundaries of the Subject Property, as follows:

(2) As provided in C(i)(A)&(B) above;

(B) Reconstruction and resurfacing of streets, installation of drainage facilities, construction of curbs, gutters and other such major improvements as the need therefore is determined by the governing body under City policies;

© Installation and maintenance of traffic signals, traffic signs, street markings and other traffic control devices as the need therefore is established by appropriate study and traffic standards; and

(D) Installation and maintenance of street lighting in accordance with established policies of the City;

(iii) The outer boundaries of the Subject Property abut existing roadways. The Landowners agrees that no improvements are required on such roadways to service the Subject Property.

(3) **Capital Improvements.** Construction of the following capital improvements shall be initiated after the effective date of the annexation: None. Upon development of the Subject Property or redevelopment, the Landowners will be responsible for the development costs the same as a developer in a similarly situated area under the ordinances in effect at the time of development or redevelopment. No additional capital improvements are necessary at this time to service the Subject Property the same as similarly situated properties. When deemed necessary, capital improvement acquisition or construction will occur in accordance with applicable ordinances and regulations and the adopted capital improvement plans of the City, as applicable and amended, which are incorporated herein by reference.

(4) **Term.** If not previously expired, this agreement expires at the end of ten (10) years.

(5) **Property Description.** The legal description of the Subject Property is as set forth in the Annexation Ordinance and exhibits attached to the Annexation Ordinance to which this Agreement is attached.

(6) **Binding Effect/Authority.** This Agreement binds and inures to the benefit of the Parties and their respective heirs, successors, and permitted assigns. Each Party further warrants that each signatory to this Agreement is legally authorized to bind the respective individual or entity for the purposes established herein.

(7) **Choice of Law.** This Agreement will be construed under the laws of the State of Texas, without regard to choice-of-law rules of any jurisdiction. Venue for any dispute shall lie exclusively in Williamson County, Texas.

(8) **Counterparts.** This Agreement may be executed in any number of counterparts with the same effect as if all signatory Parties had signed the same document. All counterparts will be construed together and will constitute one and the same instrument.

(9) **Legal Construction.** If any provision in this Agreement is for any reason found to be unenforceable, to the extent the unenforceability does not destroy the basis of the bargain among the Parties, the unenforceability will not affect any other provision hereof, and this Agreement will be construed as if the unenforceable provision had never been a part of the Agreement. Whenever context requires, the singular will include the plural and neuter include the masculine or feminine gender, and vice versa. Headings in this Agreement are for reference only and are not intended to restrict or define the text of any section. This Agreement will not be construed more or less favorably between the Parties by reason of authorship or origin of language.

(10) **Entire Agreement.** This Agreement contains the entire Agreement between the Parties relating to the rights herein granted and the obligations herein assumed and cannot be varied except by written agreement of the Parties. Any oral representation or modification concerning this instrument shall be of no force and effect except for any subsequent modification in writing, signed by the Party to be charged.

EXECUTED and AGREED to by the Parties this the ____ day of _____, 20__.

ATTEST:

THE CITY OF LEANDER, TEXAS

Dara Crabtree, City Secretary

Richard B. Beverlin, III, City Manager

LANDOWNER(S):

By: _____

Name (print): _____

Title: _____

Date: _____

By: _____

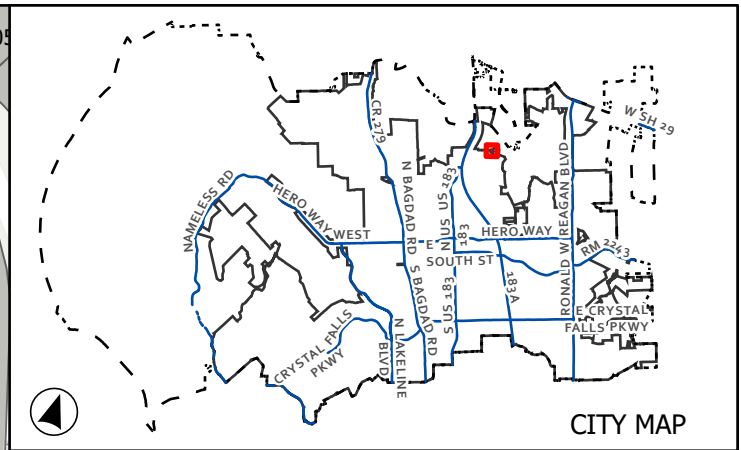
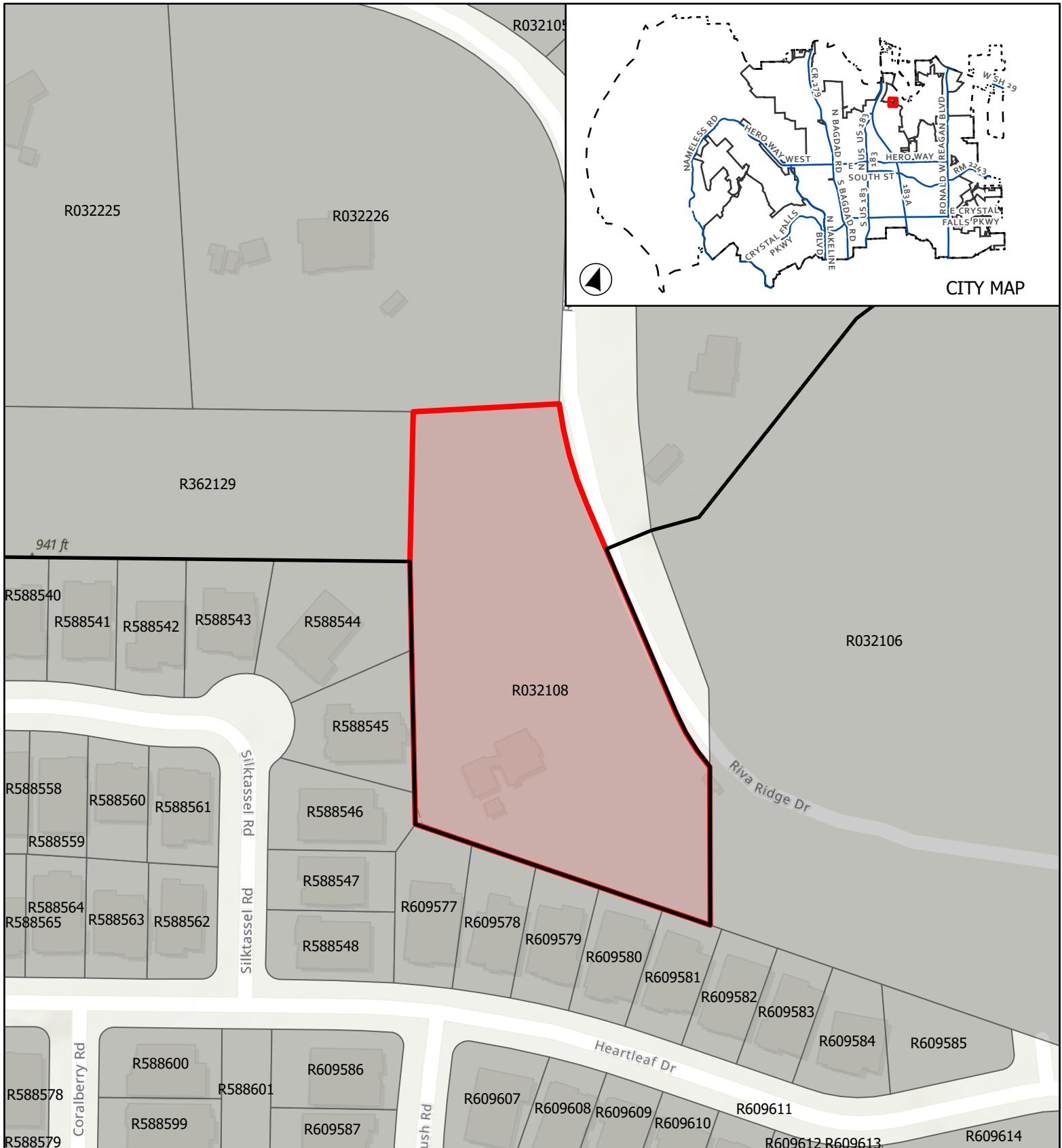
Name (print): _____

Title: _____

Date: _____

Subject Property

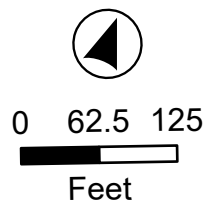
(see attached)



CASE: A-23-0008 ATTACHMENT 2 800 RIVA RIDGE

Location Map

This map has been produced by the City of Leander for informational purposes only. No warranty is made by the City regarding completeness or accuracy. This data should not be construed as a legal description or survey instrument. No responsibility is assumed for damages or other liabilities due to the accuracy, availability, completeness, use or misuse of the information herein provided.



- City Limits
- ETJ Boundary
- Subject Boundary

**Schedule for Voluntary Annexation
2.3872 +/- ACRES IN WILLIAMSON COUNTY**

DATE	ACTION/EVENT	LEGAL AUTHORITY
Thursday, June 15, 2023* Tuesday, June 6, 2023 Council packet deadline	COUNCIL CONSIDERS ACCEPTANCE OF ANNEXATION PETITION REQUEST FROM LANDOWNER(S) AND INITIATION OF ANNEXATION - AND SETS A PUBLIC HEARING FOR Thursday, July 6, 2023	Loc. Gov't Code, §43.0671
Thursday, June 22, 2023 * Publish notice of Public Hearing. & Send notice to school district and to each public entity. [Noon, Friday June 16, 2023– Deadline to send notice to paper]	NEWSPAPER NOTICE RE: PUBLIC HEARING; (Certified Notice to Railroad - if railroad company's right-of-way is in the area proposed for annexation.) POST NOTICE OF HEARING ON CITY'S WEBSITE AND MAINTAIN UNTIL HEARINGS COMPLETE. SCHOOL DISTRICT NOTICE. Notify each school district of possible impact <u>w/in the period prescribed for publishing the notice of the Public Hearing.</u> PUBLIC ENTITY NOTICES. Notify each public entity__that is located in or provides services to the area proposed for annexation. Public Entity includes: a county (Williamson/Travis), a fire protection service provider, including a volunteer fire department, emergency medical services provider, including a volunteer emergency medical services provider, or special district (MUD, WCID, or other district created under Section 52, Article III, or Section 59, Article XVI, Texas Constitution) - of possible impact <u>w/in the period prescribed for publishing the notice of the Public Hearing.</u>	Not less than 10 days nor more than 20 days before public hearing. Loc. Gov't Code, §43.0673 Loc. Gov't Code, §§43.905 & 43.9051 ; send notice to school district and to each public entity not less than 10 days nor more than 20 days before the Public Hearing.
Thursday, July 6, 2023*	PUBLIC HEARING – REGULAR MEETING	The governing body must provide persons interested in the annexation the opportunity to be heard. Loc. Gov't Code, §43.0673
Thursday, July 6, 2023* Tuesday, June 27, 2023 – Council packet deadline	FIRST READING OF ORDINANCE <i>REGULAR MEETING</i>	Loc. Gov't Code, §43.0673
Thursday, July 20, 2023. Or at a special called meeting after the First Reading; Or within 90 days of First Reading.	SECOND & FINAL READING OF ORDINANCE <i>REGULAR MEETING</i>	Second reading of annexation Ordinance – City Charter, Section 4.06(c)
Within 30 days of Second Reading	CITY SENDS COPY OF MAP showing boundary changes to County Voter Registrar in a format that is compatible with mapping format used by registrar	Elec. Code §42.0615
Within 60 days of Second Reading	CITY PROVIDES CERTIFIED COPY OF ORDINANCE AND MAPS TO: 1. County Clerk 2. County Appraisal District 3. County Tax Assessor Collector 4. 911 Addressing 5. Sheriff's Office 6. City Department Heads 7. State Comptroller 8. Franchise Holders ESD - if annexed area located in district and city intends to remove the area from the district and be the sole provider of emergency services; See Health and Safety Code, Section 775.022	Williamson County ESD No. 5 : Notice must be sent to the secretary of the ESD board by certified mail, return receipt requested, as applicable Leander is located in Williamson and Travis Counties. Confirm which ESD needs notice of disannexation.

*Dates in BOLD are MANDATORY dates to follow. Please advise of schedule deviation.

STATE OF TEXAS §
 §
COUNTY OF WILLIAMSON §

REQUEST & PETITION TO THE CITY COUNCIL OF THE CITY OF LEANDER
FOR ANNEXATION OF PROPERTY

WHEREAS, the undersigned is the owner of a certain area of land located within Williamson County, Texas, such property being more particularly described hereinafter by true and correct legal description (the, "Subject Property"); and

WHEREAS, the undersigned has sought the annexation of the Subject Property by the City of Leander, Texas, (hereinafter sometimes referred to as "City"), in order to obtain the benefits of City services to the Subject Property by the City; and

WHEREAS, the Subject Property is contiguous and adjacent to the corporate limits of the City; and

WHEREAS, the City, pursuant to §43.003, *Tex. Loc. Gov't. Code* and the request of the property owner, is authorized to annex the Subject Property; and

WHEREAS, pursuant to §43.0672, *Tex. Loc. Gov't. Code*, the City and the undersigned have negotiated and entered into a written agreement for the provision of services to the Subject Property, said agreement being attached hereto as **Exhibit A** and incorporated by reference herein; and

WHEREAS, the undersigned agrees and consents to the annexation of the Subject Property by the City and further agrees to be bound by all acts, ordinances, and all other legal action now in force and effect within the corporate limits of the City and all those which may be hereafter adopted.

NOW THEREFORE, the undersigned by this Petition and Request:

SECTION ONE: Requests the City Council of the City to commence annexation proceedings and to annex into the corporate limits of the City of Leander, Texas, of all portions of the Subject Property, including the abutting streets, roadways, and rights-of-way, not previously annexed into the City, and further described as follows:

2.3872 Acres, more or less, out of the HENRY GARMES SURVEY, ABSTRACT
NO. 269, Williamson County, Texas.

SECTION TWO: Requests that after annexation the City provide such services as are legally permissible and provided by the City, including sanitation, water and general governmental services as set forth in the written agreement regarding the provision of services attached hereto as **Exhibit A**.

SECTION THREE: Acknowledges executing and entering into the agreement, attached

hereto as **Exhibit A**, and that such agreement is wholly adequate and acceptable to the undersigned who hereby requests the City Council to proceed with the annexation and to publish notice and hold the requisite public hearing thereon, in accordance with the applicable laws of the State of Texas.

SECTION FOUR: Acknowledges that the undersigned understands and agrees that all City services to the Subject Property will be provided by the City on the same terms and conditions as provided to other similarly situated areas of the City and as provided in the written agreement regarding the provision of services attached hereto as **Exhibit A**.

SECTION FIVE: Agrees that a copy of this Request and Petition may be filed of record in the offices of the City of Leander and in the real property records of Williamson County, Texas, and shall be notice to and binding upon all persons or entities now or hereafter having any interest in the Subject Property.

FILED, this ____ day of _____ 20____, with the City Secretary of the City of Leander, Williamson County, Texas.

Petitioners:

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

STATE OF TEXAS §
COUNTY OF _____ §

BEFORE ME, the undersigned authority, a Notary Public in and for said County and State, on this day personally appeared _____, owner of the Subject Property and Petitioner herein, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged that they had authority to bind the entity and that they executed the same for the purposes therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the ____ day of _____ 20__.

(SEAL)

Notary Public - State of Texas

STATE OF TEXAS §
COUNTY OF _____ §

BEFORE ME, the undersigned authority, a Notary Public in and for said County and State, on this day personally appeared _____, owner of the Subject Property and Petitioner herein, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged that they had authority to bind the entity and that they executed the same for the purposes therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the ____ day of _____ 20____.

(SEAL)

Notary Public - State of Texas

Exhibit A
SERVICE AGREEMENT
(SEE ATTACHED)



EXECUTIVE SUMMARY
06/15/2023

AGENDA SUBJECT:

Approval of Development Agreement Case DA-23-0010 regarding Connie's Commercial Development on a portion of a parcel of land approximately 1.096 acres $\pm$ in size, more particularly described by Williamson Central Appraisal District Parcel R398642; and generally located to the southwest of the intersection of Crystal Falls Parkway and West Drive, Leander, Williamson County, Texas.

BACKGROUND:

The purpose of this Development Agreement is to implement masonry standards associated with the project. This agreement will allow for the City to enforce the development standards set forth in the agreement through the building permit, inspection, and certificate of occupancy processes, given that House Bill 2439 adopted in the 86th Legislative Session limits the ability of cities to enforce certain development standards governing building materials by ordinance.

This agreement requires that all structures are comprised of at least one hundred (100%) percent masonry. Masonry includes stone, brick, stucco, or factory tinted split-faced concrete masonry unit.

APPLICANT/AGENT:

RAE Austin Holdings, LLC (Rod Elrifai)

PRESENTER:

Robin M. Griffin, AICP, Executive Director of Development Services

Attachments

1. Development Agreement
2. Location Map

**MASONRY DEVELOPMENT AGREEMENT
ESTABLISHING DEVELOPMENT STANDARDS
FOR THE Connie's Commercial**

This Development Agreement Establishing Development Standards for the **Connie's Commercial** (the "Agreement") is made and entered into, effective as of the ____ day of _____, 20____, by and between the **City of Leander, Texas**, a Texas home rule municipal corporation (the "City"), and **RAE Austin Holdings, LLC** (the "Developer"). The City and the Developer are sometimes referred to herein as the "Parties." The Parties agree as follows.

Section 1. Purpose; Consideration.

- (a) The Developer owns that certain 1.096 acre tract located in Williamson County, Texas, being more particularly described in **Exhibit A** attached hereto and incorporated herein for all purposes (the "Property") and wishes to develop the Property for retail office (the "Development"). The Developer desires that the City be able to enforce the development standards set forth herein through its building permit, inspection, and certificate of occupancy processes by this agreement, given that House Bill 2439 adopted in the 86th Legislative Session limits the ability of cities to enforce certain development standards governing building materials by ordinance.
- (b) The Developer will benefit from the City enforcing the Development Standards as set forth herein because it will be more efficient and cost-effective for compliance to be monitored and enforced through the City's building permit and inspection processes and will help ensure that the Development is built out as planned by the Developer after conveyance to the builder of homes or other buildings and structures authorized by the applicable zoning regulations. The City will benefit from this Agreement by having assurance regarding certain development standards for the Development, having certainty that such Development Standards may be enforced by the City, and preservation of property values within the City.
- (c) The benefits to the Parties set forth in this Article 1, plus the mutual promises expressed herein, are good and valuable consideration for this Agreement, the sufficiency of which is hereby acknowledged by both Parties.

Section 2. Term; Termination.

- (a) The term of this Agreement shall be in full force and effect from the Effective Date hereof, subject to earlier termination as provided in this Agreement. Unless earlier terminated as provided in this Agreement, this Agreement shall terminate upon the issuance of the final certificate of occupancy for the final structure in the Development.
- (b) The Parties further mutually agree that this Agreement shall be in full force and effect upon the date above first written, provided that the City may terminate this Agreement if Developer defaults under the terms of this Agreement, subject to the notice and cure provisions in Section 6.

Section 3. Development Standards.

- (a) **Development Requirements.** The exterior wall standards set forth in this section shall apply to the structures located on the Property. At least one hundred percent (100%) of the combined exterior surface area of all walls, including all stories of buildings / structures, shall consist of stone, brick, painted or tinted stucco, or similar material approved by the Director of Planning.
- (b) **Building Permits.** The Developer acknowledges and agrees that compliance with Section 3(a) will be a condition of issuance of building permits and certificates of occupancy. Developer further agrees that the City may use its building permitting, inspection, and enforcement processes and procedures to enforce the requirements of Section 3(a) above, including but not limited to rejection of applications and plans, stop work orders, and disapproval of inspections for applications and/or work that does not comply with this Agreement. Applications and plans for a building permit must demonstrate compliance with this Agreement in order for a building permit to be issued. Applications for building permits must be in compliance with this Agreement, as well as the Applicable Regulations, in order for such application to be approved and a building permit issued. Plans demonstrating compliance with this Agreement must accompany a building permit application and will become a part of the approved permit. Any structure constructed on the Property must comply with this Agreement and the Applicable Regulations for a certificate of occupancy to be issued for such structure.

Section 4. Development of the Property. Except as modified by this Agreement, the Development and the Property will be developed in accordance with all applicable local, state, and federal regulations, including but not limited to the City's ordinances and the zoning regulations applicable to the Property, and such amendments to City ordinances and regulations that may be applied to the Development and the Property under Chapter 245, Texas Local Government Code, and good engineering practices (the "Applicable Regulations"). If there is a conflict between the Applicable Regulations and the Development Standards, the Development Standards shall control.

Section 5. Assignment of Commitments and Obligations; Covenant Running with the Land.

- (a) Developer's rights and obligations under this Agreement may be assigned by Developer to one (1) or more purchasers of all or part of the Property; provided the City Council must first approve and consent to any such assignment by Developer of this Agreement or of any right or duty of Developer pursuant to this Agreement, which consent shall not be unreasonably withheld or delayed.
- (b) This Agreement shall constitute a covenant that runs with the Property and is binding on future owners of the Property, and a copy of this Agreement shall be recorded in the Official Public Records of Williamson County, Texas. The Developer and the City acknowledge and agree that this Agreement is binding upon the City and the Developer and their respective successors, executors, heirs, and assigns, as applicable, for the term of this Agreement.

Section 6. Default. Notwithstanding anything herein to the contrary, no party shall be deemed to be in default hereunder until the passage of fourteen (14) business days after receipt by such party of written notice of default from the other party. Upon the passage of fourteen (14) business days without cure of the default, such party shall be deemed to have defaulted for purposes of this Agreement; provided that if the nature of the default is that it cannot reasonably be cured within the fourteen (14) business day period, the defaulting party shall have a longer period of time as may be reasonably necessary to cure the default in question; but in no event more than sixty (60) days. In the event of default, the non-defaulting party to this Agreement may pursue the remedy of specific performance or other equitable legal remedy not inconsistent with this Agreement. All remedies will be cumulative and the pursuit of one authorized remedy will not constitute an election of remedies or a waiver of the right to pursue any other authorized remedy. In addition to the other remedies set forth herein, the City may withhold approval of a building permit application or a certificate of occupancy for a structure that does not comply with the Development Standards. All remedies will be cumulative and the pursuit of one authorized remedy will not constitute an election of remedies or a waiver of the right to pursue any other authorized remedy.

Section 7. Reservation of Rights. To the extent not inconsistent with this Agreement, each party reserves all rights, privileges, and immunities under applicable laws, and neither party waives any legal right or defense available under law or in equity.

Section 8. Attorneys Fees. In the event of action pursued in court to enforce rights under this Agreement, the prevailing party shall be entitled to its costs and expenses, including reasonable attorneys' fees, incurred in connection with such action.

Section 9. Waiver. Any failure by a party to insist upon strict performance by the other party of any provision of this Agreement will not, regardless of length of time during which that failure continues, be deemed a waiver of that party's right to insist upon strict compliance with all terms of this Agreement. In order to be effective as to a party, any waiver of default under this Agreement must be in writing, and a written waiver will only be effective as to the specific default and as to the specific period of time set forth in the written waiver. A written waiver will not constitute a waiver of any subsequent default, or of the right to require performance of the same or any other provision of this Agreement in the future.

Section 10. Force Majeure.

- (a) The term "force majeure" as employed herein shall mean and refer to acts of God; strikes, lockouts, or other industrial disturbances; acts of public enemies, orders of any kind of the government of the United States, the State of Texas or any civil or military authority; insurrections; riots; epidemic; landslides; lightning, earthquakes; fires, hurricanes; storms, floods; washouts; droughts; arrests; restraint of government and people; civil disturbances; explosions; breakage or accidents to machinery, pipelines, or canals; or other causes not reasonably within the control of the party claiming such inability.
- (b) If, by reason of force majeure, any party hereto shall be rendered wholly or partially unable to carry out its obligations under this Agreement, then such party shall give written notice of the full particulars of such force majeure to the other party within ten (10) days after the occurrence thereof. The obligations of the party giving such notice, to the extent effected by

the force majeure, shall be suspended during the continuance of the inability claimed, except as hereinafter provided, but for no longer period, and the party shall endeavor to remove or overcome such inability with all reasonable dispatch.

- (c) It is understood and agreed that the settlement of strikes and lockouts shall be entirely within the discretion of the party having the difficulty, and that the above requirement that any Force Majeure shall be remedied with all reasonable dispatch shall not require that the settlement be unfavorable in the judgment of the party having the difficulty.

Section 11. Notices. Any notice to be given hereunder by any party to another party shall be in writing and may be effected by personal delivery or by sending said notices by registered or certified mail, return receipt requested, to the address set forth below. Notice shall be deemed given when deposited with the United States Postal Service with sufficient postage affixed.

Any notice mailed to the City shall be addressed:

City of Leander
Attn: City Manager
P.O. Box 319
Leander, Texas 78641
Williamson County

with copy to:

The Knight Law Firm, LLP
Attn: Paige H. Saenz, Partner
223 West Anderson Lane, Suite A-105
Austin, Texas 78752
Travis County

Any notice mailed to the Developer shall be addressed:

RAE Austin Holdings, LLC
Attn: Rod Elrifai
4025 Saint Francis Ave.
Dallas, Texas 75228
Johnson County

Any party may change the address for notice to it by giving notice of such change in accordance with the provisions of this section.

Section 12. Waiver of Alternative Benefits. The Parties acknowledge the mutual promises and obligations of the Parties expressed herein are good, valuable and sufficient consideration for this Agreement. Therefore, save and except the right to enforce the obligations of the City to perform each and all of the City's duties and obligations under this Agreement, Developer hereby waives any and all claims or causes of action against the City Developer may have for or with respect to any duty or obligation undertaken by Developer pursuant to this Agreement, including any benefits that may have been otherwise available to Developer but for this Agreement.

Section 13. Severability. Should any court declare or determine that any provisions of this Agreement is invalid or unenforceable under present or future laws, that provision shall be fully severable; this Agreement shall be construed and enforced as if the illegal, invalid, or unenforceable provision had never comprised a part of this Agreement and the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance from this Agreement. Furthermore, in place of each such illegal, invalid, or unenforceable provision, there shall be added automatically as a part of this Agreement a provision as similar in terms to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable. Texas law shall govern the validity and interpretation of this Agreement.

Section 14. Agreement and Amendment. This Agreement, together with any exhibits attached hereto, constitutes the entire agreement between Parties and may not be amended except by a writing approved by the City Council of the City that is signed by all Parties and dated subsequent to the date hereof.

Section 15. No Joint Venture. The terms of this Agreement are not intended to and shall not be deemed to create any partnership or joint venture among the parties. The City, its past, present and future officers, elected officials, employees and agents, do not assume any responsibilities or liabilities to any third party in connection with the development of the Property. The City enters into this Agreement in the exercise of its public duties and authority to provide for development of property within the City pursuant to its police powers and for the benefit and protection of the public health, safety, and welfare.

Section 16. No Third Party Beneficiaries. This Agreement is not intended, nor will it be construed, to create any third-party beneficiary rights in any person or entity who is not a party, unless expressly provided otherwise herein, or in a written instrument executed by both the City and the third party. Absent a written agreement between the City and third party providing otherwise, if a default occurs with respect to an obligation of the City under this Agreement, any notice of default or action seeking a remedy for such default must be made by the Owner.

Section 17. Effective Date. The Effective Date of this Agreement is the defined date set forth in the first paragraph.

Section 18. Recordation. This Agreement shall be recorded in the Official Public Records of Williamson County, Texas.

Section 20. Texas Law Governs. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas and shall be performable in Williamson County, Texas. Venue shall lie exclusively in Williamson County, Texas.

Section 21. Anti-Boycott Verification. To the extent this Agreement constitutes a contract for goods or services within the meaning of Section 2270.002 of the Texas Government Code, as amended, solely for purposes of compliance with Chapter 2270 of the Texas Government Code, and subject to applicable Federal law, the Developer represents that neither the Developer nor any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of Developer (i)

boycotts Israel or (ii) will boycott Israel through the term of this Agreement. The terms “boycotts Israel” and “boycott Israel” as used in this paragraph have the meanings assigned to the term “boycott Israel” in Section 808.001 of the Texas Government Code, as amended.

Section 22. Iran, Sudan and Foreign Terrorist Organizations. To the extent this Agreement constitute a governmental contract within the meaning of Section 2252.151 of the Texas Government Code, as amended, solely for purposes of compliance with Chapter 2252 of the Texas Government Code, and except to the extent otherwise required by applicable federal law, Developer represents that Developer nor any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of Developer is a company listed by the Texas Comptroller of Public Accounts under Sections 2270.0201, or 2252.153 of the Texas Government Code.

Section 23. Time is of the Essence. It is acknowledged and agreed by the Parties that time is of the essence in the performance of this Agreement.

Section 24. Exhibits. The following exhibits are attached to this Agreement, and made a part hereof for all purposes:

Exhibit A – Property Description & Sketch

EXECUTED in multiple originals this the ____ day of ____, 20__.

CITY:

City of Leander, Texas

a Texas home-rule municipal corporation

Attest:

By: _____

Name: Dara Crabtree

Title: City Secretary

By: _____

Name: Christine DeLisle

Title: Mayor

THE STATE OF TEXAS §
COUNTY OF _____ §

This instrument was acknowledged before me on this _____ day of _____, 20____, by _____, Mayor of the City of Leander, Texas, a Texas home-rule municipal corporation, on behalf of said corporation.

(SEAL)

Notary Public, State of Texas

DEVELOPER:

RAE Austin Holdings, LLC

By _____

Name: Rod Elrifai

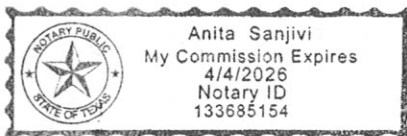
Title: Manager

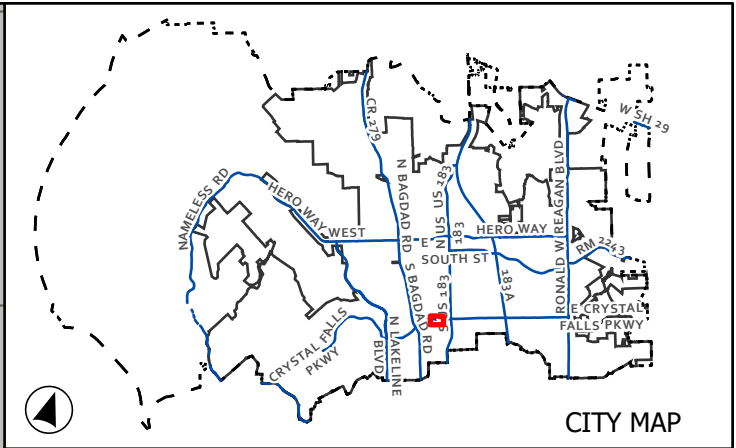
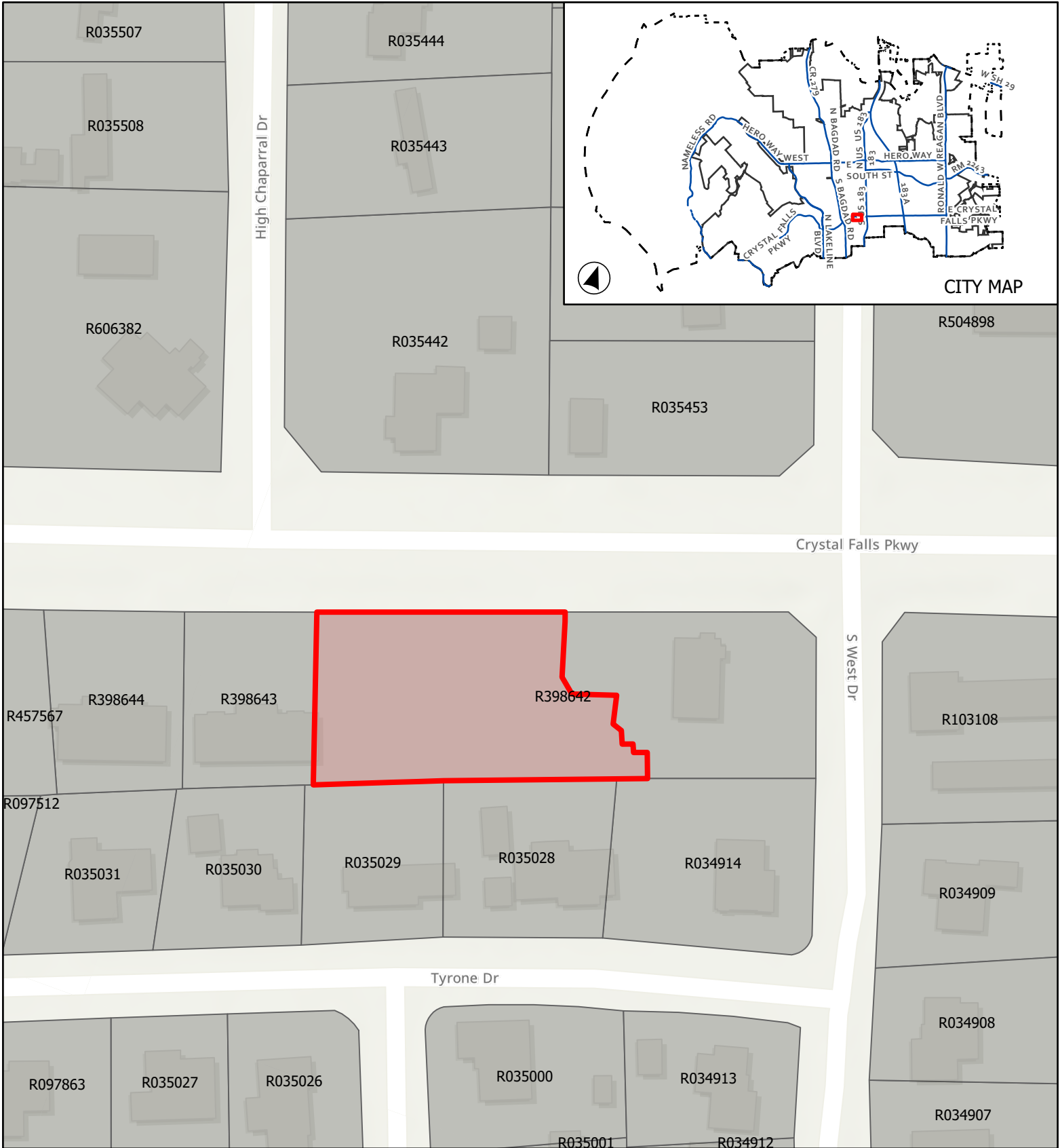
THE STATE OF TEXAS §
COUNTY OF DENTON §

This instrument was acknowledged before me on this 19th day of MAY, 2023, by Rod Elrifai, manager of RAE Austin Holdings LLC a Texas company, on behalf of said company.

(SEAL)

Notary Public, State of Texas





CASE: DA-23-0010 EXHIBIT A CONNIE'S COMMERCIAL

Location Map

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0 45 90

Feet

- City Limits
- ETJ Boundary
- Subject Boundary



EXECUTIVE SUMMARY
06/15/2023

AGENDA SUBJECT:

Approval of the extension of the application expiration for Subdivision Case PICP-21-0044 Northpoint Church construction plan; more particularly described by Williamson Central Appraisal District Parcel R599180; commonly addressed as 10850 E Crystal Falls Parkway; Leander, Williamson County, Texas.

BACKGROUND:

This request is for an extension of the expiration date of the Northpoint Church construction plans. Article II, Section 23(g) includes the following provisions.

g. Application Expiration.

1. The Construction Plans application shall expire nine (9) months after the date that all initial staff review comments from all reviewing departments have been issued on the application if the construction plans are not approved due to the applicant's failure to cause the application to comply with applicable city regulations.
2. The Planning Department may grant one six (6)- month extension if the applicant can show substantial progress in obtaining approval of the construction plans. Substantial progress shall consist of, at a minimum, a resubmission of the construction plans and all relevant materials by the applicant that address all initial staff review comments from all reviewing departments.

HISTORY/TIMELINE:

10/28/2022 - Construction Plan Application Expired, Staff Extension Granted

04/28/2023 - Construction Plan Application Staff Extension Expired

APPLICANT/AGENT:

Garza EMC (Darren Huckert)

RECOMMENDATION:

The Subdivision Ordinance includes timelines for application approvals. The timeline/history section of this summary above includes the key dates for this request. The construction plan application expires nine (9) months after the first review comment letter for the construction plans is sent to the applicant.

Staff recommends approval of an additional six (6)- month extension. Approving this extension would grant an extension to October 28, 2023 and will allow the developer to finalize the construction plans and schedule a pre-construction meeting.

PRESENTER:

Robin M. Griffin, AICP, Executive Director of Development Services

Attachments

1. Extension Request
2. Location Map
3. Ordinance



May 31, 2023

P&Z Commission and City Council
City of Leander
201 N. Brushy Street
Leander, Texas 78641

Re: Project Number: 21-PICP-044
Northpoint Church Waterline
10880 E Crystal Falls Pkwy
Extension Request

Dear P&Z Commission and City Council:

GarzaEMC is requesting on behalf of our client a 6-month extension to project number 21-PICP-044. The construction plan application expired on October 28, 2022, but all signatures and approvals had been obtained. An initial 6-month extension was granted with an expiration date of April 28, 2023.

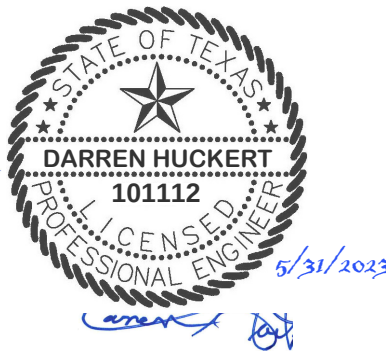
We are requesting additional time as the SWPPP (approved by Patrick Wells) and the preconstruction meeting were the only other requirements, and these were placed on a temporary hold due to site construction costs and economics for the project.

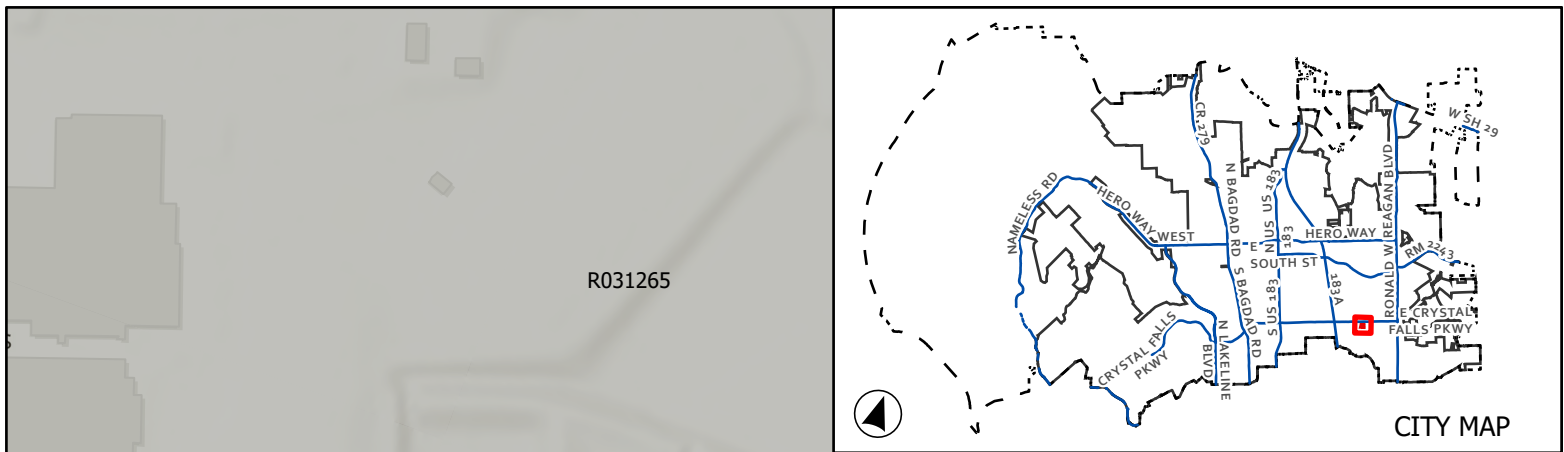
Please let us know if you have any additional comments or concerns.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Darren Huckert', written over a circular professional engineer seal.

Darren Huckert P.E., LEED AP
Vice President
GarzaEMC, LLC





CASE: PICP-21-0044

ATTACHMENT 2

NORTHPOINT PUBLIC WATERLINE

Location Map

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0 115 230

Feet

-  City Limits
 ETJ Boundary
 Subject Boundary

AN ORDINANCE OF THE CITY OF LEANDER, TEXAS

ORDINANCE NO.

**AN ORDINANCE OF THE CITY OF LEANDER, TEXAS GRANTING
AN EXTENSION OF THE EXPIRATION OF THE CONSTRUCTION
PLANS APPLICATION FOR THE NORTHPOINT CHURCH
SUBDIVISION.**

WHEREAS, Section 23 (g) (1) of the City's Subdivision Ordinance provides that the construction plans application expires nine (9) months after the date that all initial staff review comments from all reviewing departments have been issued on the application if the construction plans are not approved due to the applicant's failure to cause the application to comply with applicable city regulations;

WHEREAS, Section 23 (g) (2) of the City's Subdivision Ordinance provides that the Planning Department may grant one six (6) month extension if the applicant can show substantial progress in obtaining approval of the construction plans;

WHEREAS, the Planning Department granted one six (6) month extension for the Northpoint Church construction plan application (the "Construction Plans Application") which expired on or about October 28, 2022;

WHEREAS, the Planning Department granted one six (6) month extension for the Northpoint Church construction plan application (the "Construction Plans Application") which expired on or about April 28, 2023;

WHEREAS, the City Council of the City of Leander, Texas (the "City") finds that there is good reason to grant an extension of the expiration date for the Construction Plans Application because the applicant is actively working with the Planning Department and will be able to address the construction plans comments and move forward with construction within a reasonable timeframe;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LEANDER, TEXAS THAT:

SECTION 1. Findings of Fact. The forgoing recitals are incorporated into this Ordinance as true and correct findings of fact.

SECTION 2. Extension Granted. The City hereby grants an extension of the expiration date for the Construction Plans Application to October 28, 2023. In the event that the Construction Plans Application is not approved by the City Staff on or before October 28, 2023, the Construction Plans Application shall expire.

SECTION 3. Effective Date. This Ordinance shall take effect immediately from and after its passage in accordance with the City Charter.

SECTION 4. Open Meetings. It is hereby officially found and determined that the meeting at which this Ordinance was considered was open to the public as required and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act, Chapter 551 of the Texas Government Code.

PASSED AND APPROVED on this the July 15, 2023.

ATTEST:

THE CITY OF LEANDER, TEXAS

Dara Crabtree, City Secretary

Christine DeLisle, Mayor



EXECUTIVE SUMMARY
06/15/2023

AGENDA SUBJECT:

Approval of the Second Reading of an ordinance regarding Shady Brew Garden Special Use Permit Case Z-22-0043 to allow for a Food Truck Park including minor waivers to the Composite Zoning Ordinance on one (1) parcel of land approximately 0.9373 acres $\pm$ in size, more particularly described by Williamson Central Appraisal District Parcel R035579; and addressed as 303 W. Broade Street, Leander, Williamson County, Texas.

BACKGROUND:

This request is the final step in the Special Use Permit process. Staff recommends approval of the proposed Special Use Permit. The Planning & Zoning Commission unanimously approved the request during the May 11, 2023 meeting.

HISTORY/TIMELINE:

05/11/2023 - Planning & Zoning Commission, 1st Public Hearing
06/01/2023 - City Council, 2nd Public Hearing & 1st Reading of the Ordinance

APPLICANT/AGENT:

John E. Dyess and Omar N. Dyess on behalf of Dyess Investments LLC

RECOMMENDATION:

The City Council unanimously approved the request during the June 1, 2023 meeting.

PRESENTER:

Robin M. Griffin, AICP, Executive Director of Development Services

Attachments

1. Planning Analysis
2. Current Zoning Map
3. Future Land Use Map
4. Public Notification Map
5. Aerial Map
6. Letter of Intent
7. Neighborhood Outreach
8. Ordinance
9. P&Z Minutes



PLANNING ANALYSIS

SPECIAL USE PERMIT CASE Z-22-0043
SHADY BREW GARDEN
303 W. BROADE STREET

GENERAL INFORMATION

Owner/Agent: John E. Dyess and Omar N. Dyess on behalf of Dyess Investments LLC.

Current Zoning: T5 (Smart Code)

Proposed Use: Applicant is requesting a special use permit to allow for a food truck park.

Size and Location: The property is located at 303 W. Broade Street and is approximately 1.85 acres.

Staff Contact: Justin Hunt
Planner

APPLICANT REQUEST

The applicant is requesting a Special Use Permit to allow for a food truck park. This request includes waivers to the ordinance requirements due to the temporary nature of the use.

STAFF CONCLUSIONS

Y N

- ☒ ☐ Does the proposal comply with the intent statements of the Composite Zoning Ordinance? *see page 2*
- ☒ ☐ Does the proposal comply with the goal statements of the Comprehensive Plan? *see page 3*
- ☒ ☐ Does the proposal warrant any other special considerations?

SPECIAL CONSIDERATIONS

Uses permitted in a zoning district are classified in two ways. The first type of use is what is referred to as a use permitted by right. A use permitted by right is allowed in the specified zoning district provided that the property owner complies with specified building and site requirements. The second type of use is what is referred to as a special use. A Special Use Permit allows for certain land uses in a given zoning district and generally requires more review by the Planning and Zoning Commission and City Council in order to ensure the compatibility of the proposed use with the surrounding land uses. In this case, a food truck park is not currently a permitted use. Article IV Section 10 (c) requires a special use permit for Mobile Food Truck Parks. This use is considered temporary, and the applicant is proposing temporary improvements for the development. The following waivers are included:

1. Food trucks and a pavilion are allowed as temporary uses.
2. Allowance of a farmers' market
3. Allowance for live music
4. Allowance for private events
5. Allowance for two temporary restrooms for up to 12 months.

SITE INFORMATION:**ABUTTING ZONING AND LAND USE:**

	ZONING	LAND USE
NORTH	GC-3-C	Drainage Detention Infrastructure
EAST	T5 (Special Use)	Wildfire Food Truck Park
SOUTH	T5	Residential and Commercial Lots
WEST	GC-3-C	Undeveloped

SURROUNDING AREA:

This property is located at 303 W. Broade Street just north of the N West Drive and W Broade Street intersection.

PHYSICAL AND NATURAL FEATURES:

This property is located partially within the floodplain and contains scattered trees across the lot and along the creek.

MAJOR CORRIDORS:

This property has access onto W. Broade Street.

SUBDIVISIONS:

This tract is a part of the city of Leander original plat.

EXISTING UTILITIES:

This site has access to both sewer and water lines off W. Broade Street.

CURRENT LAND USES:

This property is currently vacant with existing primary and accessory structures.

CURRENT ZONING DISTRICT:**T5 URBAN CENTER TRANSECT ZONE**

The T5 Urban Center Zone consists of higher density mixed use development that accommodates retail, offices, townhouses, and apartments. It has a tight network of streets, with wide sidewalks, steady street tree planting, and buildings set close to the sidewalks. The general character of this zone includes shops with apartments and office above; townhouses, larger apartment houses, live-works, and civic buildings; predominantly attached buildings; trees within the public right-of-way; substantial pedestrian activity, frequent retail frontages.

COMPREHENSIVE PLAN:**Applicable Comprehensive Plan goal statements**

- Guide future growth and development following the comprehensive plan to achieve a more balanced, diverse economy.
- Provide new Commercial development opportunity.

Applicable Future Land Use categories**OLD TOWN**

Old Town as a future development category is intended for a mix of uses that keeps Leander historic center interesting and dynamic. New development and redevelopment within Old Town should be designed in harmony with the existing character that acknowledges Leander's heritage. This includes older buildings and historic, contributing structures along with a mix of new and adaptive reuse buildings.

Old Town buildings are to be activated towards the street, encouraging walkability, eating establishments, central gathering spaces, and civic conversation. Old Town is scaled-down urban without on-site parking requirements, high impervious cover yet green space, street tree canopy and safe mix of vehicles and pedestrians. Old Town character includes small businesses, professional office, entertainment, shopping, arts and culture elements, and civic activity, each contributing to daytime and evening buzz. An assortment of residential is suitable and encouraged based on the context, focused on a balance of scale between building, site and streets. In the core, urban lofts and townhouses are appropriate; in the south and east districts, across US 183, attached and detached housing may be appropriate with design context and limitations.

ALLOWED USES: T4, T5

INTERGOVERNMENTAL/INTERDEPARTMENTAL REVIEW:

All applicable departments within the City of Leander reviewed this proposal. If the SUP is approved, the next step in the process would be to acquire a permit from the County Health Department and submit for site development.

SCHEDULE:

DEVELOPMENT MEETING

A development meeting was held with Staff on December 13, 2021. No changes were made to the development proposal prior to the official submittal of the SUP, but we have updated our ordinance to include a section on food trucks 5/5/2022 Ord# 22-042-00.

NOTIFICATION

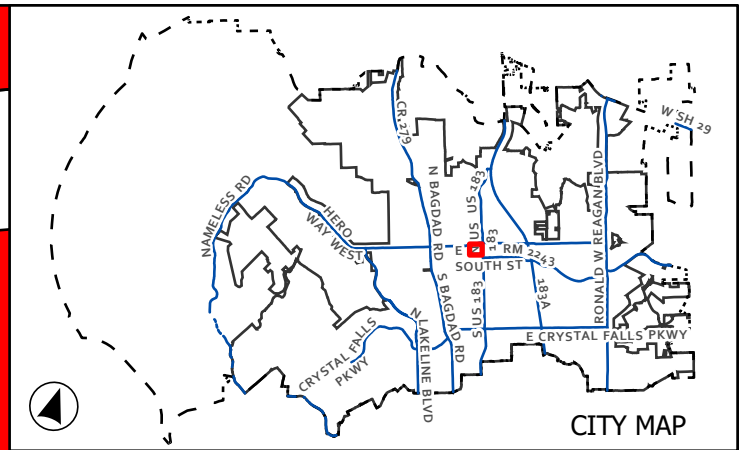
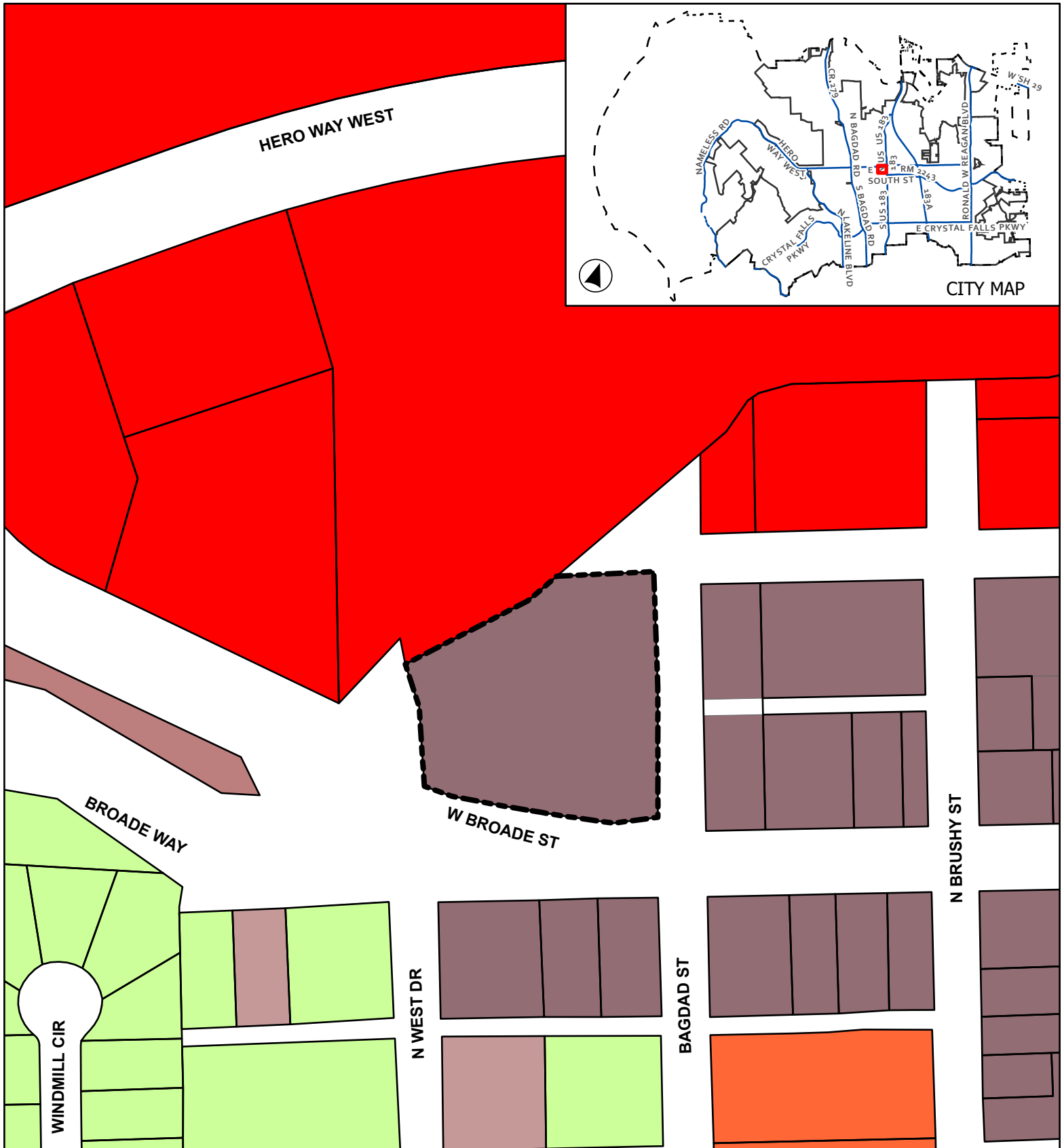
4/20/2023 - Public Notice on Hill Country News
 4/26/2023 - Mail Notification to Property Owners within 200'
 4/26/2023 - Public Hearing Signage Posted on Property
 5/11/2023 - Planning and Zoning Commission Public Hearing
 6/1/2023 - City Council Public Hearing & First Reading of the Ordinance
 6/15/2023 - City Council Second & Final Reading of the Ordinance

PUBLIC NOTIFICATION:

Notices were mailed by City staff to all property owners within 200 feet. Neighborhood outreach information per applicant within packet as attachment 8.

APPROVAL CRITERIA:

This request is consistent with the intent of the future land use map designation of Old Town and the proposed food truck park would be compatible with the surrounding land uses, encourage walkability and add a gathering space for the public.



CASE: Z-22-0043

ATTACHMENT 2

SHADY BREW GARDEN

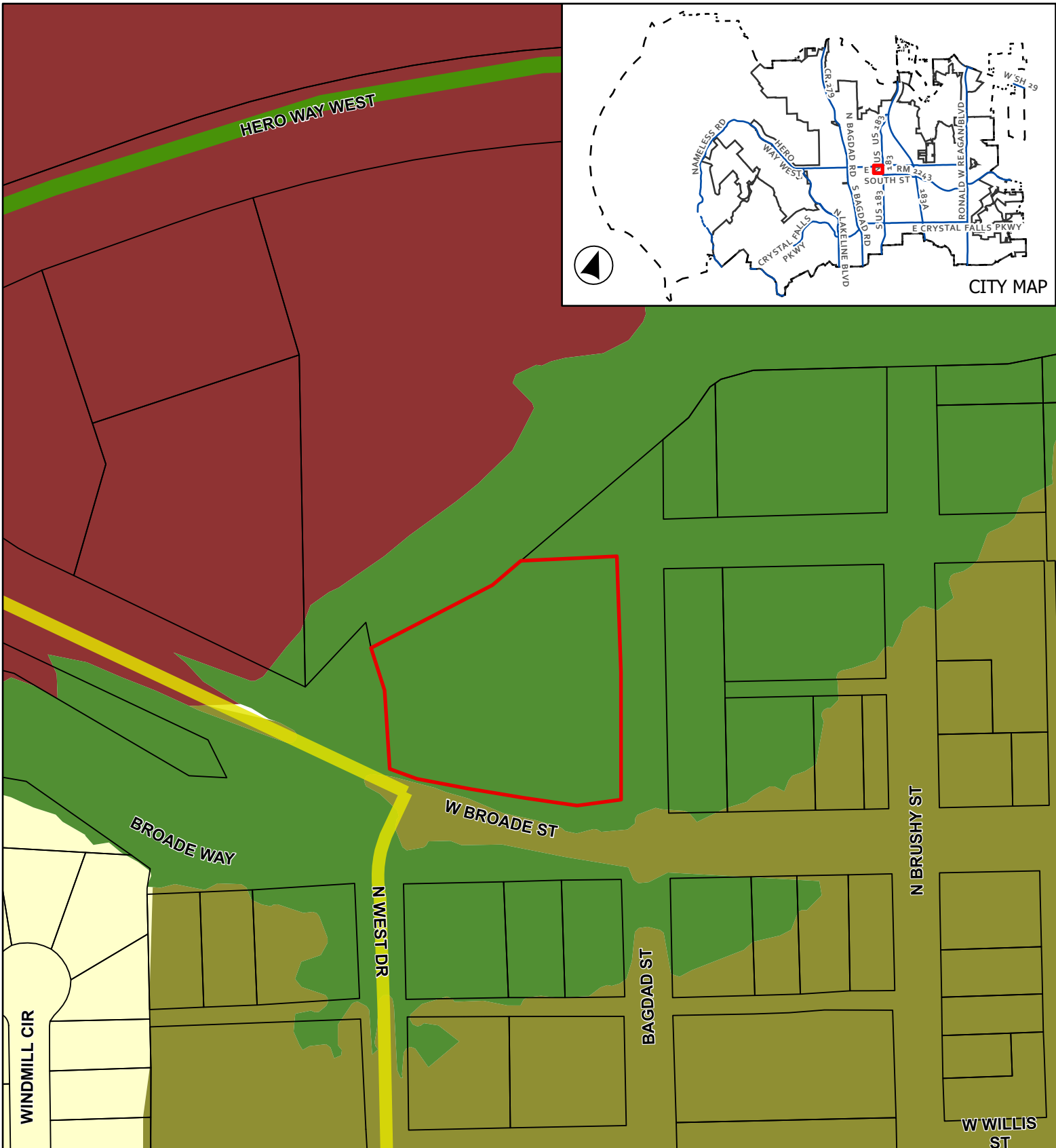
Current Zoning

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- Leander City Limits
- SFU - Single-Family Urban
- LC - Local Commercial
- GC - General Commercial
- Civic Building
- T4 - Genral Urban
- T5 - Urban Center
- Subject Boundary
- Extra-Territorial Jurisdiction



0 55 110
Feet



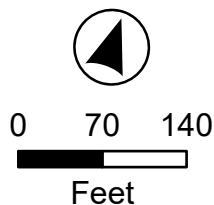
CASE: Z-23-0043

ATTACHMENT 3

SHADY BREW GARDEN

Future Land Use Map

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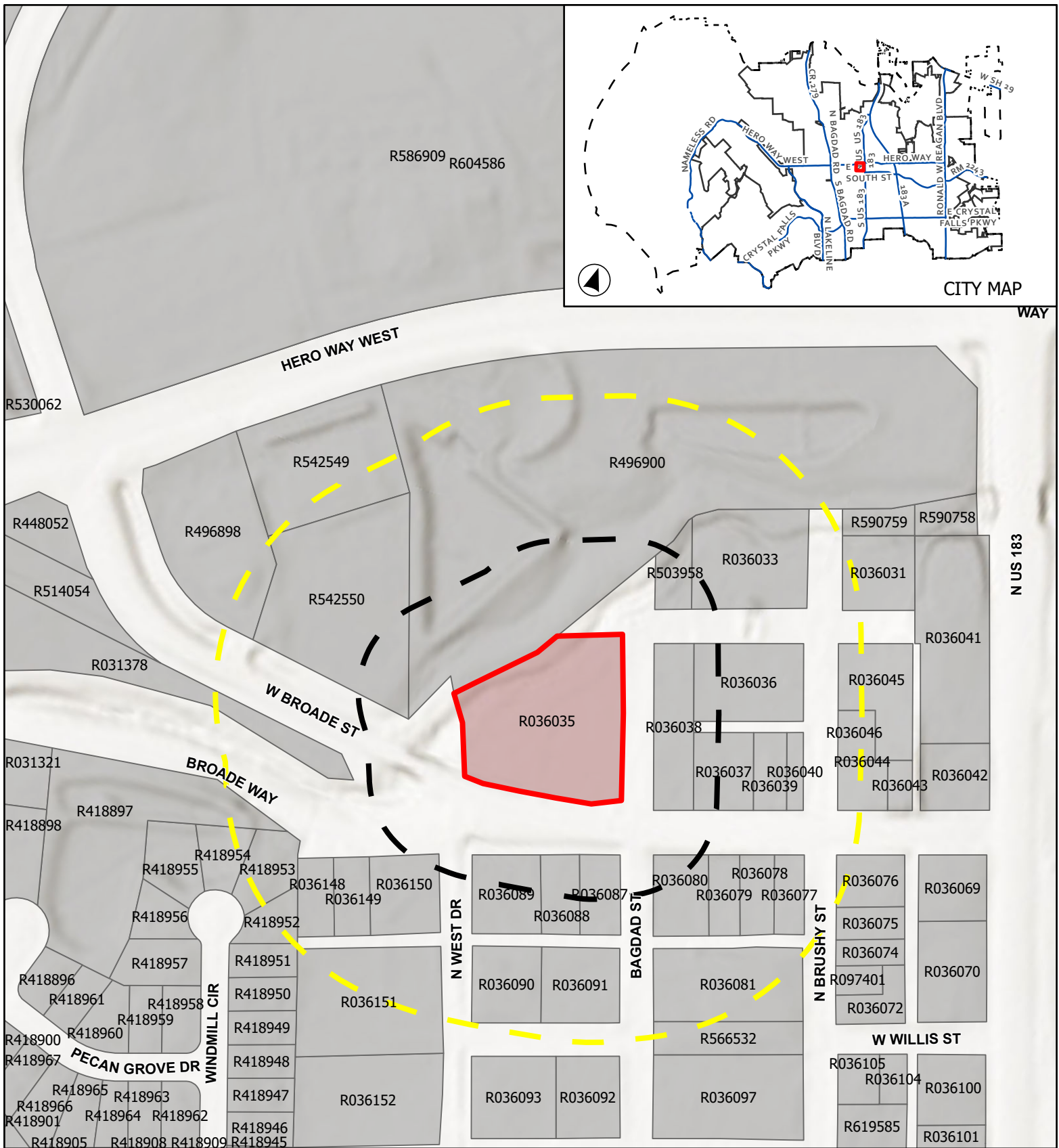
- Leander City Limits
- ETJ Boundary
- Subject Boundary

Thoroughfare Plan

- Arterial 6 Lane, Existing
- Collector, Existing

Future Land Use

- Neighborhood Residential
- Activity Center
- Old Town
- Greenway



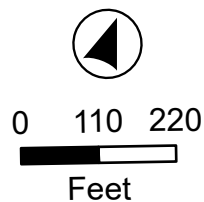
CASE: Z-22-0043

ATTACHMENT 4

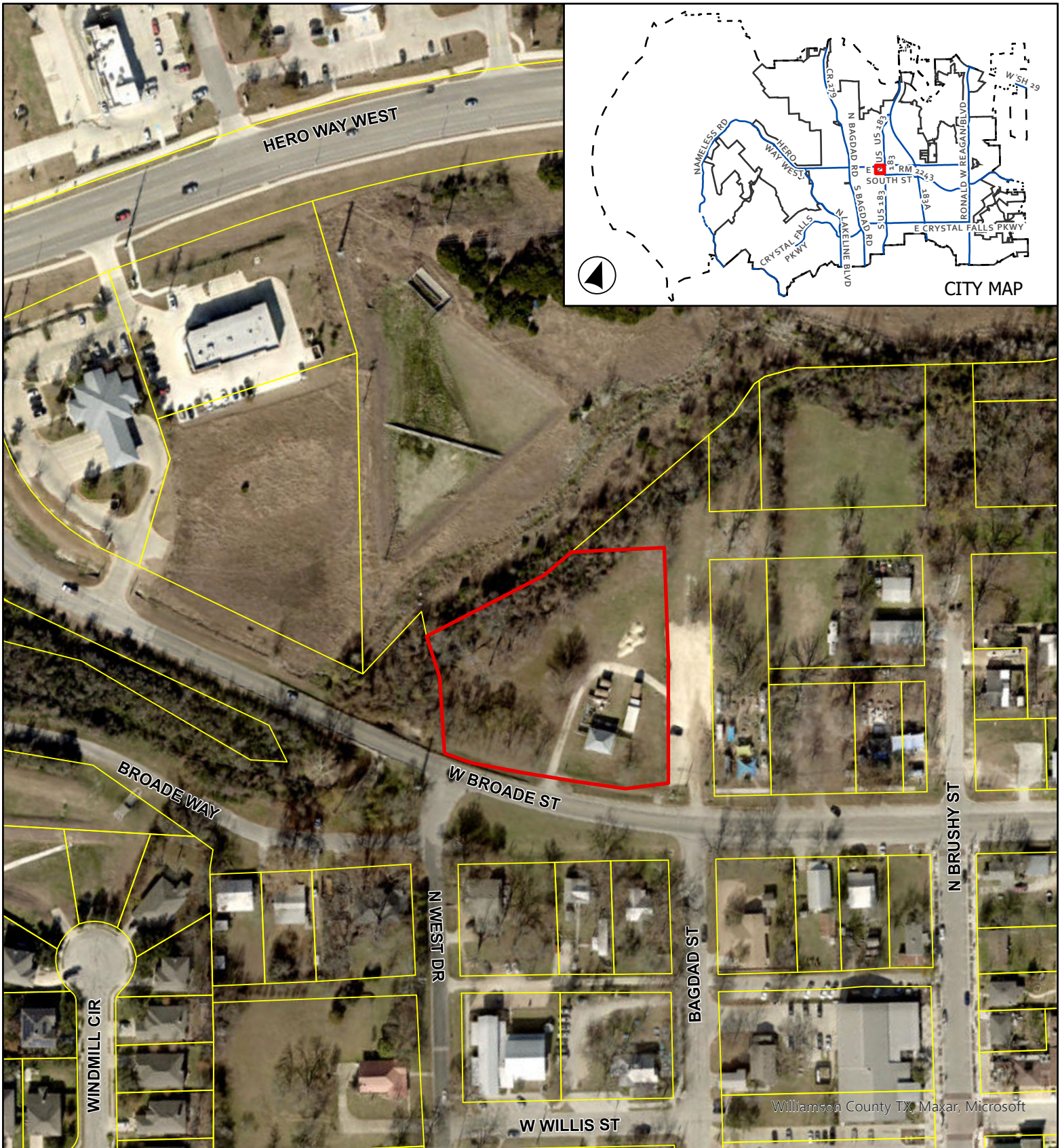
SHADY BREW GARDEN

Public Notification

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- City Limits
- Subject Boundary
- ETJ Boundary
- Notification Buffer**
- 200'
- 500'



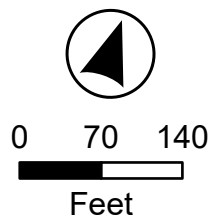
CASE: Z-23-0043

ATTACHMENT 6

SHADY BREW GARDEN

Aerial Map

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- Leander City Limits
- Subject Boundary

DYESS INVESTMENTS LLC

September 26, 2022

LETTER OF INTENT

This letter is to inform **City of Leander** that owner's **Omar N. Dyess & John E. Dyess** of **303 W. Broade in Leander TX** with legal description **LEANDER, BLOCK 6, LOT 1-18, ACRES 1.85, MH R036068** will be applying for a **special use permit**. Our business intent for the property is to sell beer, wine & coffee with up to 4 on-site food trucks/trailers between the hours of 7am to 10pm daily. We would like partner with our neighbors to host vendors during farmer's market on Saturday/Sunday or holidays and offer soft live music evenings/weekends until 9pm Sunday-Thursday and until 10pm Friday and Saturday. Please feel free to contact **Omar Dyess** at 512-762.4228 or OmarDyess@gmail.com.

Regards,

Omar Dyess

Dyess Investments LLC

303 Broade LLC dba SHADY BREW GARDEN

OmarDyess@gmail.com

512.762.4228

APPLICANT'S SUMMARY OF NEIGHBORHOOD COMMUNICATIONS

1. How and when were the surrounding neighborhood and residential property owners within 500' notified, how was information shared, and who was directly involved in the communication process? Please provide the address of the properties notified and the name and contact information of the residents directly involved in the communication process. Attach any materials that were distributed.

Surrounding neighborhood property owners within 500' were notified via mail notice sent out on Nov. 4th, 2022 via post office in Cedar Park. Dyess Investments LLC owned by Omar Dyess & John Dyess were directly involved in communication process. See attached for addresses of residents directly involved, notice with google form link & image of post office receipt.

2. Who was notified (i.e. property owners, HOA, etc)? The HOA and/or a representative if there is no organized HOA must be contacted, if applicable. Provide a separate sheet listing the contact information used including the names and addresses of the individuals.

All property owners, residents, HOA's & businesses were notified within 500' of subject property. See attached list of addresses showing HOA's contacted.

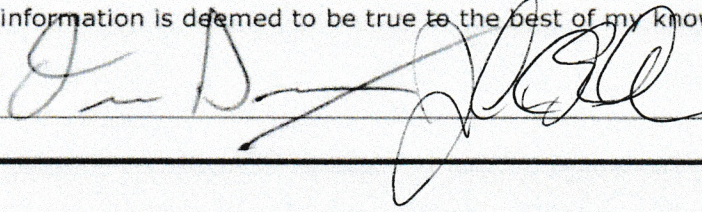
3. What concerns were raised during these communications?

No concerns were raised during communications and we did not have any residents, property owners, HOA's or business owners show up to our community meeting or submit any concerns via email, phone, text or google form link.

4. What specific conditions were added to or modified within the zoning request in response to the concerns raised at the meeting?

N/A

The above information is deemed to be true to the best of my knowledge.

Signature: 

Date

11/16/2022

AN ORDINANCE OF THE CITY OF LEANDER, TEXAS

ORDINANCE NO.

AN ORDINANCE OF THE CITY OF LEANDER, TEXAS, AMENDING THE ZONING ORDINANCE BY APPROVING THE SHADY BREW SPECIAL USE PERMIT TO ALLOW FOR FOOD TRUCKS, FARMER'S MARKETS, OUTDOOR MUSIC, AND ASSOCIATED USES; AND A TIME FRAME OF TEN (10) YEARS; MAKING FINDINGS OF FACT; AND PROVIDING FOR RELATED MATTERS.

Whereas, the owner of the property described herein after (the "Property") has requested that the Property be rezoned; and

Whereas, after giving at least ten (10) days written notice to the owners of land within two hundred (200') feet of the Property, the Planning & Zoning Commission held a public hearing on the proposed rezoning and forwarded its recommendation on the rezoning to the City Council; and

Whereas, after publishing notice of the public hearing at least fifteen (15) days prior to the date of such hearing, the City Council at a public hearing has reviewed the request and the circumstances of the Property and finds that a substantial change in circumstances of the Property, sufficient to warrant a change in the zoning of the Property, has transpired;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LEANDER, TEXAS, THAT:

SECTION 1. Findings. The foregoing recitals are hereby found to be true and correct and are hereby adopted by the City Council and made a part hereof for all purposes as findings of fact.

SECTION 2. Amendment of Zoning Ordinance. Ordinance No. 05-018-00, as amended, the City of Leander Composite Zoning Ordinance (the "Zoning Ordinance" or "Code"), is hereby modified and amended by rezoning the Property as set forth in Section 3.

SECTION 3. Applicability. This ordinance applies to the following parcel of land, which is herein referred to as the "Property." That certain parcel of land being 1.85 acres, more or less, located in Leander, Travis County, being more particularly described in Exhibit "A", and addressed as 303 W Broade Street, more particularly described in Document Number 2023028671, Official Public Records of Williamson County, Texas, and identified by tax identification number R036035.

SECTION 4. Special Use Permit. The Special Use Permit is hereby approved to allow for food trucks, farmer's markets, outdoor music, the use of porta-potties for up to one (1) year, and associated uses as conceptually shown in Exhibit "B". The term of this permit shall be limited to a time frame of ten (10) years. At the end of this term, the applicant has the ability to request an extension.

SECTION 5. Severability. Should any section or part of this ordinance be held unconstitutional,

illegal, or invalid, or the application to any person or circumstance for any reasons thereof ineffective or inapplicable, such unconstitutionality, illegality, invalidity, or ineffectiveness of such section or part shall in no way affect, impair or invalidate the remaining portion or portions thereof; but as to such remaining portion or portions, the same shall be and remain in full force and effect and to this end the provisions of this ordinance are declared to be severable.

SECTION 6. Open Meetings. That it is hereby officially found and determined that the meeting at which this ordinance is passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act, Chapt. 551, Loc. Gov't. Code.

PASSED AND APPROVED on First Reading this the 1st of June, 2023.

FINALLY PASSED AND APPROVED on this the 15th day of June, 2023.

ATTEST:

THE CITY OF LEANDER, TEXAS

Dara Crabtree, City Secretary

Christine Delisle, Mayor



**MINUTES
PLANNING & ZONING COMMISSION
CITY OF LEANDER, TEXAS**

Pat Bryson Municipal Hall
201 North Brushy Street - Leander, Texas

May 11, 2023 at 6:00 PM



Place 1 – Donnie Mahan, *Chair*
Place 2 – John Cosgrove
Place 3 – Ron May
Place 4 – Deirdre Moss

Place 5 – James Oliver
Place 6 – Laura Lantrip, *Vice-Chair*
Place 7 – Rick Carpenter

The meeting will be live-streamed at the following link: <https://www.leandertx.gov/video>.

1. Call to Order at 6:00 p.m.
2. Roll Call.
All commissioners present except Vice-Chair Laura Lantrip and Commissioner Deirdre Moss.
3. Director's report to the Planning & Zoning Commission on actions taken by the City Council at the May 4, 2023 meeting
4. Review of meeting protocol.
5. Citizen Comments: Three (3) minutes allowed per speaker.
No one wished to speak.

CONSENT AGENDA: ACTION

6. Approval of Minutes.

Motion made by Commissioner Ron May to approve the P & Z minutes, seconded by Commissioner James Oliver.

5-0 Pass

PUBLIC HEARING: ACTION

7. Conduct a Public Hearing regarding Subdivision Case CP-23-0020 to adopt the Lone Star Landing Concept Plan on one parcel of land approximately 37.01 acres ± in size, more particularly described by Williamson Central Appraisal District Parcel R031560; generally located north of the intersection of CR 177 and Valley View Dr., Leander, Williamson County, Texas.
- Discuss and consider action regarding Subdivision Case CP-23-0020 as described above.

*** POSTPONED DUE TO POSTING ERROR***

8. Conduct a Public Hearing regarding Special Use Case Z-22-0043 to consider action on the Shady Brew Garden Special Use Permit to allow for a Food Truck Park including minor waivers to the Composite Zoning Ordinance on one parcel of land approximately 0.9373 acres ± in size, more particularly described by Williamson Central Appraisal District Parcel R035579; and addressed as 303 W. Broade St., Leander, Williamson County, Texas.
- Discuss and consider action regarding Zoning Case Z-22-0043 as described above.

Motion made by Commissioner John Cosgrove, seconded by Commissioner James Oliver to approve the zoning request.

AYE: Commissioner John Cosgrove, Commissioner Rick Carpenter, Chair Donnie Mahan, Commissioner James Oliver, Commissioner Ron May

5 - 0 Passed

9. Conduct a Public Hearing and consider action on Subdivision Case SFP-22-0014 and Variance Case VA-22-0006 to approve the Roundmountain Oaks lot 37 Short Form Final Plat and Variance on one parcel of land approximately 3.012 acres ± in size, more particularly described by Travis Central Appraisal District Parcel 354818; more commonly known as 15000 Faubion Trl., Travis County, Texas.

- Discuss and consider action on Subdivision Case SFP-22-0014 and Variance Case VA-22-0006 as described above.

Motion made by Commissioner James Oliver, seconded by Commissioner Ron May to approve the Variance request.

AYE: Commissioner John Cosgrove, Commissioner Rick Carpenter, Chair Donnie Mahan, Commissioner James Oliver, Commissioner Ron May

5 - 0 Passed

10. Conduct a Public Hearing and consider action regarding Comprehensive Plan Case CPA-23-0006 to amend the Comprehensive Plan to update the Transportation Master Plan to change Nameless Road to a collector roadway north of the future extension Travisso Parkway to Round Mountain Dr; change CR 267 to a four lane arterial between Equine Road to Kauffman Loop; change Crystal Falls Parkway to a six lane arterial roadway between Ronald W Reagan Blvd and CR 175; add CR 264 as a collector roadway; add Stamp Iron Avenue as a collector roadway; Leander, Williamson and Travis Counties, Texas.
- Discuss and consider action regarding Comprehensive Plan Case CPA-23-0006 as described above.

Mark Snyder spoke requesting more information.

Motion made by Commissioner Ron May, seconded by Commissioner James Oliver to approve the Comprehensive Plan Amendment.

AYE: Commissioner John Cosgrove, Commissioner Rick Carpenter, Chair Donnie Mahan, Commissioner James Oliver, Commissioner Ron May

5 - 0 Passed

11. Conduct a Public Hearing and consider action regarding Ordinance Case OR-23-0003 to amend the Subdivision Ordinance to clarify the adoption date and definition of the Transportation Criteria Manual, update the Preliminary Plat requirements, update the requirements for Water Utility Improvements and Wastewater Utility Improvements; and to provide for related matters; Williamson & Travis Counties, Texas.

- Discuss and consider action regarding Ordinance Case OR-23-0003 as described above.

Motion made by Commissioner John Cosgrove, seconded by Commissioner Rick Carpenter to approve the Ordinance Amendment.

AYE: Commissioner John Cosgrove, Commissioner Rick Carpenter, Chair Donnie Mahan, Commissioner James Oliver, Commissioner Ron May

5 - 0 Passed

12. Conduct a Public Hearing and consider action regarding Ordinance Case OR-23-0004 to amend the Composite Zoning Ordinance to clarify the adoption date and definition of the Transportation Criteria Manual; and to provide for related matters; Williamson & Travis Counties, Texas.

- Discuss and consider action regarding Ordinance Case OR-23-0004 as described above.

Motion made by Chair Donnie Mahan, seconded by Commissioner James Oliver to approve the Ordinance Amendment.

AYE: Commissioner John Cosgrove, Commissioner Rick Carpenter, Chair Donnie Mahan, Commissioner James Oliver, Commissioner Ron May

5 - 0 Passed

REGULAR AGENDA

13. Discuss and consider action on the adoption of the Old Town Master Plan including the adoption of a future land use plan and map that provides guidance for appropriate land use regulations throughout Old Town, and an action plan for implementation.

Blayne Thompson spoke regarding concerns about Broade St. parking and sidewalks.

The Planning & Zoning Commission had a positive discussion regarding the Old Town Master Plan. No action was taken during the May 11 meeting.

14. Adjournment at 6:57 p.m.

APPROVED:

CHAIRMAN MAHAN

ATTEST:

ELLEN COUFAL
PLANNING & ZONING COMMISSION SECRETARY



EXECUTIVE SUMMARY
06/15/2023

AGENDA SUBJECT:

Approval of the Second Reading of an ordinance regarding Ordinance Case OR-23-0004 to amend the Composite Zoning Ordinance to clarify the adoption date and definition of the Transportation Criteria Manual; and to provide for related matters; Williamson and Travis Counties, Texas.

BACKGROUND:

This request is the final step in the ordinance process. The purpose of this ordinance amendment is to suspend the use of the recently adopted City of Austin Transportation Criteria Manual (TCM) in the Composite Zoning Ordinance. The TCM changes were approved by Austin in December 2021 and went into effect July 2022. The changes that the City of Austin made to the TCM are significant and staff believes a temporary suspension of using the current manual is necessary to give staff the time to review the changes prior to incorporating them into the City's ordinance. During this time, the City will continue to use the TCM dated August 7, 2020 with exceptions noted.

Leander has been using Austin's TCM and amendments since 1998, and it has served well for regulating design and construction of our transportation infrastructure and site development. With the major changes recently made, this suspension will give staff a good opportunity to take a comprehensive look at the current transportation requirements for infrastructure and site development. During this time, staff will evaluate whether to simply adopt Austin's changes to their manual or to develop a Leander TCM to better serve the Leander community.

Staff recommends approval of the ordinance amendments. The Planning & Zoning Commission unanimously recommended approval during the May 11, 2023 meeting.

HISTORY/TIMELINE:

05/11/2023 - Planning & Zoning Commission, 1st Public Hearing

06/01/2023 - City Council, 2nd Public Hearing, & 1st Reading of the Ordinance

APPLICANT/AGENT:

City of Leander

RECOMMENDATION:

The City Council approved this request during the June 1, 2023 meeting.

PRESENTER:

Robin M. Griffin, AICP, Executive Director of Development Services

Attachments

1. Composite Zoning Ordinance Amendment Redline
2. Ordinance
3. P&Z Minutes

COMPOSITE ZONING ORDINANCE

ARTICLE I – GENERAL, SECTION 6: DEFINITIONS

Transportation Criteria Manual means the City of Austin Transportation Criteria Manual, dated August 7, 2020, as adopted and amended by this Ordinance.

ARTICLE VI – SITE STANDARDS, SECTION 2: TRANSPORTATION CRITERIA MANUAL

The City of Austin Transportation Criteria Manual is hereby adopted to provide design criteria for site development. The criteria shall be implemented with reliance on sound engineering and planning judgment and nothing in this manual shall override such sound judgment as determined by the City Engineer and Director of Planning. (For roadway adequacy standards and requirements to prepare a Traffic Impact Analysis, refer to Ordinance No. 02-033-00.)

- (a) The City of Austin Transportation Criteria Manual, [dated August 7, 2020 except such portions as are hereinafter amended, deleted or modified by the City and except for Exhibit B](#), is hereby adopted to provide design criteria for site development [within the city limits and extraterritorial jurisdiction of the City](#). [All references in the Transportation Criteria Manual to the “City of Austin” shall mean the “City of Leander” and all references to the City of Austin Code Chapter 14-11 shall mean Article 4.02 Franchise or Permit for Use of Public Property of this code](#). The criteria shall be implemented with reliance on sound engineering and planning judgment and nothing in this manual shall override such sound judgment as determined by the City Engineer and Director of Planning. (For roadway adequacy standards and requirements to prepare a Traffic Impact Analysis, refer to Ordinance No. 02-033-00 [\[Article 10.03 of the Code of Ordinances\]](#).)

AN ORDINANCE OF THE CITY OF LEANDER, TEXAS

ORDINANCE NO.

AN ORDINANCE OF THE CITY OF LEANDER, TEXAS AMENDING SECTIONS OF ARTICLE 14.02, THE COMPOSITE ZONING ORDINANCE TO CLARIFY THE ADOPTION DATE AND DEFINITION OF THE TRANSPORTATION CRITERIA MANUAL, AND TO PROVIDE FOR RELATED MATTERS; PROVIDING A SEVERABILITY CLAUSE, PROVIDING SAVINGS, EFFECTIVE DATE AND OPEN MEETINGS CLAUSES, AND PROVIDING FOR RELATED MATTERS.

WHEREAS, the Planning & Zoning Commission held a public hearing on the proposed amendments to Section 14.02.001, Article 14.02, Chapter 14, Leander Code of Ordinances (the “Composite Zoning Ordinance”), and forwarded its recommendation on the amendments to the City Council; and

WHEREAS, after publishing notice of the public hearing at least fifteen days prior to the date of such hearing, the City Council at a public hearing has considered the proposed amendments and finds that the amendments are reasonable and necessary to protect the health, safety, and welfare of the present and future residents of the City;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LEANDER, TEXAS, THAT:

SECTION 1. Findings of Fact. The above and foregoing recitals are hereby found to be true and correct and are incorporated herein as findings of fact.

SECTION 2. Amendment of Article I, Section 6. Article I, Section 6 of the Composite Zoning Ordinance is hereby amended by modify the following definition:

Transportation Criteria Manual means the City of Austin Transportation Criteria Manual, dated August 7, 2020, as adopted and amended by this Ordinance.

SECTION 3. Amendment of Article VI, Section 2 (a). Article VI, Section 2 (a) of the Composite Zoning Ordinance is hereby amended in its entirety to read as follows:

- (a) The City of Austin Transportation Criteria Manual, dated August 7, 2020 except such portions as are hereinafter amended, deleted or modified by the City and except for Exhibit B, is hereby adopted to provide design criteria for site development within the city limits and extraterritorial jurisdiction of the City. All references in the Transportation Criteria Manual to the “City of Austin” shall mean the “City of Leander” and all references to the City of Austin Code Chapter 14-11 shall mean Article 4.02 Franchise or Permit for Use of Public Property of this code. The criteria shall be implemented with reliance on sound engineering and planning judgment and

nothing in this manual shall override such sound judgment as determined by the City Engineer and Director of Planning. (For roadway adequacy standards and requirements to prepare a Traffic Impact Analysis, refer to Ordinance No. 02-033-00 [Article **10.03** of the Code of Ordinances]).

SECTION 4. Conflicting Ordinances. Exhibit “A”, Chapter 14, Leander Code of Ordinances is amended as provided herein. All ordinances or parts thereof conflicting or inconsistent with the provisions of this ordinance as adopted herein, are hereby amended to the extent of such conflict. In the event of a conflict or inconsistency between this ordinance and any other code or ordinance of the City, the terms and provisions of this ordinance shall govern.

SECTION 5. Savings Clause. All rights and remedies of the City of Leander are expressly saved as to any and all violations of the provisions of any ordinances affecting subdivision within the City which have accrued at the time of the effective date of this ordinance; and, as to such accrued violations and all pending litigation, both civil and criminal, whether pending in court or not, under such ordinances, same shall not be affected by this ordinance but may be prosecuted until final disposition by the courts.

SECTION 6. Effective Date. This ordinance shall take effect immediately from and after its passage and publication in accordance with the provisions of the Tex. Loc. Gov't. Code and the City Charter.

SECTION 7. Severability. It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses and phrases of this Ordinance are severable and, if any phrase, sentence, paragraph or section of this Ordinance should be declared invalid by the final judgment or decree of any court of competent jurisdiction, such invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Ordinance, since the same would have been enacted by the City Council without the incorporation of this ordinance of any such invalid phrase, clause, sentence, paragraph or section. If any provision of this Ordinance shall be adjudged by a court of competent jurisdiction to be invalid, the invalidity shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision, and to this end the provisions of this Ordinance are declared to be severable.

SECTION 8. Open Meetings. It is hereby officially found and determined that the meeting at which this ordinance is passed was open to the public as required and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act.

PASSED AND APPROVED on First Reading this the 1st day of June, 2023.
FINALLY PASSED AND APPROVED on this the 15th day of June, 2023.

ATTEST:

THE CITY OF LEANDER, TEXAS

Dara Crabtree, City Secretary

Christine DeLisle, Mayor



**MINUTES
PLANNING & ZONING COMMISSION
CITY OF LEANDER, TEXAS**

Pat Bryson Municipal Hall
201 North Brushy Street - Leander, Texas

May 11, 2023 at 6:00 PM



Place 1 – Donnie Mahan, *Chair*
Place 2 – John Cosgrove
Place 3 – Ron May
Place 4 – Deirdre Moss

Place 5 – James Oliver
Place 6 – Laura Lantrip, *Vice-Chair*
Place 7 – Rick Carpenter

The meeting will be live-streamed at the following link: <https://www.leandertx.gov/video>.

1. Call to Order at 6:00 p.m.
2. Roll Call.
All commissioners present except Vice-Chair Laura Lantrip and Commissioner Deirdre Moss.
3. Director's report to the Planning & Zoning Commission on actions taken by the City Council at the May 4, 2023 meeting
4. Review of meeting protocol.
5. Citizen Comments: Three (3) minutes allowed per speaker.
No one wished to speak.

CONSENT AGENDA: ACTION

6. Approval of Minutes.

Motion made by Commissioner Ron May to approve the P & Z minutes, seconded by Commissioner James Oliver.

5-0 Pass

PUBLIC HEARING: ACTION

7. Conduct a Public Hearing regarding Subdivision Case CP-23-0020 to adopt the Lone Star Landing Concept Plan on one parcel of land approximately 37.01 acres ± in size, more particularly described by Williamson Central Appraisal District Parcel R031560; generally located north of the intersection of CR 177 and Valley View Dr., Leander, Williamson County, Texas.
- Discuss and consider action regarding Subdivision Case CP-23-0020 as described above.

*** POSTPONED DUE TO POSTING ERROR***

8. Conduct a Public Hearing regarding Special Use Case Z-22-0043 to consider action on the Shady Brew Garden Special Use Permit to allow for a Food Truck Park including minor waivers to the Composite Zoning Ordinance on one parcel of land approximately 0.9373 acres ± in size, more particularly described by Williamson Central Appraisal District Parcel R035579; and addressed as 303 W. Broade St., Leander, Williamson County, Texas.
- Discuss and consider action regarding Zoning Case Z-22-0043 as described above.

Motion made by Commissioner John Cosgrove, seconded by Commissioner James Oliver to approve the zoning request.

AYE: Commissioner John Cosgrove, Commissioner Rick Carpenter, Chair Donnie Mahan, Commissioner James Oliver, Commissioner Ron May

5 - 0 Passed

9. Conduct a Public Hearing and consider action on Subdivision Case SFP-22-0014 and Variance Case VA-22-0006 to approve the Roundmountain Oaks lot 37 Short Form Final Plat and Variance on one parcel of land approximately 3.012 acres ± in size, more particularly described by Travis Central Appraisal District Parcel 354818; more commonly known as 15000 Faubion Trl., Travis County, Texas.

- Discuss and consider action on Subdivision Case SFP-22-0014 and Variance Case VA-22-0006 as described above.

Motion made by Commissioner James Oliver, seconded by Commissioner Ron May to approve the Variance request.

AYE: Commissioner John Cosgrove, Commissioner Rick Carpenter, Chair Donnie Mahan, Commissioner James Oliver, Commissioner Ron May

5 - 0 Passed

10. Conduct a Public Hearing and consider action regarding Comprehensive Plan Case CPA-23-0006 to amend the Comprehensive Plan to update the Transportation Master Plan to change Nameless Road to a collector roadway north of the future extension Travisso Parkway to Round Mountain Dr; change CR 267 to a four lane arterial between Equine Road to Kauffman Loop; change Crystal Falls Parkway to a six lane arterial roadway between Ronald W Reagan Blvd and CR 175; add CR 264 as a collector roadway; add Stamp Iron Avenue as a collector roadway; Leander, Williamson and Travis Counties, Texas.
- Discuss and consider action regarding Comprehensive Plan Case CPA-23-0006 as described above.

Mark Snyder spoke requesting more information.

Motion made by Commissioner Ron May, seconded by Commissioner James Oliver to approve the Comprehensive Plan Amendment.

AYE: Commissioner John Cosgrove, Commissioner Rick Carpenter, Chair Donnie Mahan, Commissioner James Oliver, Commissioner Ron May

5 - 0 Passed

11. Conduct a Public Hearing and consider action regarding Ordinance Case OR-23-0003 to amend the Subdivision Ordinance to clarify the adoption date and definition of the Transportation Criteria Manual, update the Preliminary Plat requirements, update the requirements for Water Utility Improvements and Wastewater Utility Improvements; and to provide for related matters; Williamson & Travis Counties, Texas.

- Discuss and consider action regarding Ordinance Case OR-23-0003 as described above.

Motion made by Commissioner John Cosgrove, seconded by Commissioner Rick Carpenter to approve the Ordinance Amendment.

AYE: Commissioner John Cosgrove, Commissioner Rick Carpenter, Chair Donnie Mahan, Commissioner James Oliver, Commissioner Ron May

5 - 0 Passed

12. Conduct a Public Hearing and consider action regarding Ordinance Case OR-23-0004 to amend the Composite Zoning Ordinance to clarify the adoption date and definition of the Transportation Criteria Manual; and to provide for related matters; Williamson & Travis Counties, Texas.

- Discuss and consider action regarding Ordinance Case OR-23-0004 as described above.

Motion made by Chair Donnie Mahan, seconded by Commissioner James Oliver to approve the Ordinance Amendment.

AYE: Commissioner John Cosgrove, Commissioner Rick Carpenter, Chair Donnie Mahan, Commissioner James Oliver, Commissioner Ron May

5 - 0 Passed

REGULAR AGENDA

13. Discuss and consider action on the adoption of the Old Town Master Plan including the adoption of a future land use plan and map that provides guidance for appropriate land use regulations throughout Old Town, and an action plan for implementation.

Blayne Thompson spoke regarding concerns about Broade St. parking and sidewalks.

The Planning & Zoning Commission had a positive discussion regarding the Old Town Master Plan. No action was taken during the May 11 meeting.

14. Adjournment at 6:57 p.m.

APPROVED:

CHAIRMAN MAHAN

ATTEST:

ELLEN COUFAL
PLANNING & ZONING COMMISSION SECRETARY



EXECUTIVE SUMMARY
06/15/2023

AGENDA SUBJECT:

Approval of the Wahoo's Fish Tacos License Agreement, Case LA-23-0015, to allow for the installation and maintenance of landscaping and irrigation within portions of the right-of-way of W. Broade Street, Leander, Williamson County, Texas.

BACKGROUND:

License agreements are required when developers propose to place private improvements within the public right-of-way. This agreement grants the developer permission to install the improvements as well as provide conditions that describe the responsibility of maintaining and possible removal of improvements. In addition, the developer is required to indemnify the City against claims and liabilities and carry insurance.

The developer of the Wahoo's Fish Tacos located at 204 W Broade Street is requesting a license agreement to install and maintain landscaping and irrigation within a portion of the right-of-way of West Broade Street.

APPLICANT/AGENT:

Goode Faith Engineering, LLC (Anthony Goode) on behalf of 204 W. Broade St, LLC (Cecelia Fortney).

RECOMMENDATION:

Staff recommends approval of the license agreement.

PRESENTER:

Robin M. Griffin, AICP, Executive Director of Development Services

Attachments

1. License Agreement
2. Location Map
3. Letter of Intent

LICENSE AGREEMENT FOR THE WAHOOS FISH TACOS

The City of Leander, a Texas home-rule municipal corporation and political subdivision of the State of Texas situated in Williamson and Travis Counties, Texas ("the City"), and Cecelia Fortney, a property owner (the "Licensee"), enter into this License Agreement for the Wahoo's Fish Tacos Subdivision ("Agreement") on this the 18th day of May, 2023 upon the terms and conditions set forth below.

I. PURPOSE OF LICENSE AGREEMENT. The City grants to Licensee permission to use the property, located within the right-of-way of W. Broade Street in the Old Town Leander (lots 3 and 4), Leander, Texas (the "Subdivision"), shown in Exhibit "A" attached hereto and incorporated herein for all purposes (the "licensed property"), for the following purposes only:

- (1) the installation of landscaping;
- (2) the installation of an irrigation system for the landscaping; and
- (3) the repair, maintenance and replacement of the Sign, landscaping and irrigation system, within right-of-way of W. Broade Street shown on Exhibit "A" hereto. The landscaping and irrigation are sometimes collectively referred to herein as the "improvements".

The City makes this grant solely to the extent of its right, title and interest in the licensed property, without any express or implied warranties.

Licensee agrees that all construction installation and maintenance permitted by this Agreement shall be done in compliance with plans and specifications approved in writing by the City Engineer and all applicable City, County, State and/or Federal laws, ordinances, regulations and policies now existing or later adopted.

Any provision herein to the contrary notwithstanding, Licensee shall be liable for, and shall indemnify and hold the City harmless from all damages, causes of action, and claims arising out of or in connection with Licensee's installation, operation, maintenance or removal of the improvements permitted under this Agreement.

II. ANNUAL FEE. No annual fee shall be due in connection with this License Agreement.

III. CITY'S RIGHT TO LICENSED PROPERTY. This Agreement is expressly subject and subordinate to the present and future right of the City, its successors, assigns, lessees, grantees, and Licensee, to construct, install, establish, maintain, use, operate, and renew any public utilities facilities, franchised public utilities, rights-of-way, roadways, or streets on, beneath, or above the surface of the licensed property. The uses of the licensed property are subject to the City's right to interfere with or destroy Licensee's use of the licensed property, or any property or the improvements placed thereon or therein by Licensee, if such use or action is determined necessary by the City.

Notwithstanding any provision of this Agreement to the contrary, the City retains the right to enter upon the licensed property, at any time and without notice, and assuming no obligation to Licensee, to remove any of the improvements or alterations thereof whenever such removal is deemed

necessary for: (a) exercising the City's rights or duties with respect to the licensed property; (b) protecting persons or property; or (c) the public health or safety.

IV. INSURANCE. Licensee shall, at its sole expense, provide a commercial general liability insurance policy, written by a company acceptable to the city and licensed to do business in Texas, with a combined single limit of not less than \$600,000.00, which coverage may be provided in the form of a rider and/or endorsement to a previously existing insurance policy. The City may require the Licensee to increase the combined single limit of such coverage from time to time in the discretion of the City. Such insurance coverage shall specifically name the City as an additional-insured. The insurance shall cover all perils arising from the activities of Licensee, its officers, employees, agents, or contractors, relative to this Agreement. Licensee shall be responsible for any deductibles stated in the policy. A true copy of each such policy shall be delivered to the City Manager of City on or before the Licensee's use or occupancy of the licensed property.

Licensee shall not cause any insurance to be canceled nor permit any insurance to lapse. All insurance certificates shall include a clause to the effect that the policy shall not be canceled, reduced, restricted or otherwise limited until forty-five (45) days after the City has received written notice as evidenced by a return receipt of registered or certified mail.

V. INDEMNIFICATION. Licensee shall indemnify, defend, and hold harmless the City and its officers, agents and employees against all claims, suits, demands, judgments, expenses, including attorney's fees, or other liability for personal injury, death, or damage to any person or property which arises from or is in any manner caused by the Licensee's construction, maintenance or use of the licensed property. This indemnification provision, however shall not apply to any claims, suits, damage, costs, losses, or expenses (i) for which the City shall have been compensated by insurance provided under Paragraph IV, above, or (ii) arising solely from the negligent or willful acts of the City; provided that for the purposes of the foregoing, the City's entering into this Agreement shall not be deemed to be a "negligent or willful act."

VI. CONDITIONS.

- A. Licensee's Responsibilities. Licensee will be responsible for any and all damage to or relocation of existing facilities. Further, Licensee shall reimburse the City for all costs of replacing or repairing any property of the City, or of others, that is damaged by or on behalf of Licensee as a result of activities under this Agreement.
- B. Maintenance. Licensee shall maintain the licensed property by keeping the area free of debris and litter. Removal of dead or dying plants shall also be handled by Licensee at its expense. Further, the City may require Licensee to take action to maintain the licensed property including, but not limited to, the removal of dead or dying vegetation. Such removal shall be completed within thirty (30) days following receipt of a written request from the City.
- C. Removal or Modification. Licensee agrees that removal or modification of any of the improvements now existing or to be later placed on the licensed property shall be a Licensee's expense. Provided the City has given prior written approval of the plans and specifications for the improvements, said removal or modification shall be at Licensee's

sole discretion.

- D. Default. In the event that Licensee fails to maintain the licensed property or otherwise comply with the terms or conditions as set forth herein, the City shall give Licensee written notice thereof, by registered or certified mail, return receipt requested, to the address set forth below. Licensee shall have thirty (30) days from the date of receipt of such notice to take action to remedy the failure complained of, and, if Licensee does not satisfactorily remedy the same within the thirty (30) day period, the City may perform the work or contract for the completion of the work. Licensee agrees to pay within thirty (30) days of written demand by the City, all reasonable costs expenses incurred by the City in completing the work.

Licensee Address

Property Owner
Attn: Cecelia Fortney
23296 Nameless Road
Leander, Texas 78641
Travis County

City Address

City of Leander
Attn: City Manager
P.O. Box 319
Leander, Texas 78641
Williamson County

VII. COMMENCEMENT AND TERMINATION BY ABANDONMENT. This Agreement shall begin with the effective date and continue thereafter for so long as the licensed property shall be used for the purposes set forth herein. If Licensee abandons the use of all or any part of the licensed property for the purposes set forth in this Agreement, this Agreement shall expire and terminate, as to the portion or portions abandoned, following thirty (30) days written notice by the City to the Licensee or by Licensee to the City. If all or a part of the licensed property is abandoned by Licensee, the City shall thereafter have the same complete title to the licensed property so abandoned as though this Agreement had never been made, and shall have the right to enter on the licensed property and terminate the rights of Licensee, its successors and assigns hereunder, to the abandoned part of the licensed property. All installations of Licensee on a portion of the licensed property that is abandoned shall be deemed property of the City unless removed with the consent of the City.

VIII. TERMINATION.

- A. Termination by Licensee. This Agreement may be terminated by Licensee by delivering written notice of termination to the City not later than thirty (30) days before the effective date of termination. If Licensee terminates, then it shall remove all installations that it made from the licensed property within the thirty day notice period, at its sole cost and expense. Failure to do so shall constitute a breach of this Agreement.
- B. Termination by City. Notwithstanding any other term, provision or conditions of this Agreement, subject only to prior written notification to Licensee or its successor-in-interest, this Agreement is revocable by the City if:
1. The improvements, or a portion of them, interfere with the City's right-of-way;
 2. Use of the licensed property becomes necessary for a public purpose;

3. The improvements, or a portion of them, constitute a danger to the public which the City deems not be remediable by alteration, repair or maintenance;
4. Despite thirty (30) days written notice to Licensee, maintenance or alteration necessary to alleviate a danger to the public has not been made; or
5. Licensee fails to comply with the terms and conditions of this Agreement including, but not limited to the insurance requirements specified herein.

If Licensee abandons or fails to maintain the licensed property, and the City receives no substantive response within thirty (30) days following written notification to Licensee, then the City may remove and/or replace all of the improvements and collect from Licensee the City's actual expenses incurred in connection therewith.

IX. EMINENT DOMAIN. If eminent domain is exerted on the licensed property the City will, to the extent permitted by law, cooperate with Licensee to effect the removal of Licensee's affected installations and the improvements thereon, at Licensee's sole expense. Licensee shall be entitled to retain all monies paid by the condemning authority to Licensee for Licensee's installations taken, if any.

X. INTERPRETATION. This Agreement shall, in the event of any dispute over its intent, meaning or application, shall be interpreted fairly and reasonably, and neither more strongly for or against either party.

XI. APPLICATION OF LAW. This Agreement shall be governed by the laws of the state of Texas. If the final judgment of a court of competent jurisdiction invalidates any part of this Agreement, then the remaining parts shall be enforced, to the extent possible, consistent with the intent of the parties as evidenced by this Agreement.

XII. VENUE. Venue for all lawsuits concerning this Agreement will be in the Williamson County, Texas.

XIII. COVENANT RUNNING WITH LAND; WAIVER OF DEFAULT. This Agreement and all of the covenants herein shall run with the land; therefore, the conditions set forth herein shall inure to and bind each party's successors and assigns. Either party may waive any default of the other at any time by written instrument, without affecting or impairing any right arising from any subsequent or other default.

XIV. ASSIGNMENT. Licensee shall not assign, sublet or transfer its interest in this Agreement without the written consent of the City, which consent shall not be unreasonably withheld. Subject to the assignee's compliance with the insurance requirements set forth herein, if any, Licensee shall furnish to the City a copy of any such assignment or transfer of any of Licensee's rights in this Agreement, including the name, address, and contact person of the assignee, along with the date of assignment or transfer.

TERMS AND CONDITIONS ACCEPTED, this the 18 day of May, 2023

LICENSOR: CITY OF LEANDER, TEXAS

By: _____
Name: _____
Title: City Manager

LICENSEE: WAHOOS FISH TACOS

By: Cecelia Fortney
Name: Cecelia Fortney
Title: Property Owner of 204 W Broade St.

THE STATE OF TEXAS §
COUNTY OF WILLIAMSON §

This instrument was acknowledged before me on this the _____ day of _____, 20____, by _____, City Manager for the City of Leander, Texas, on behalf of the City.

Notary Public – State of Texas

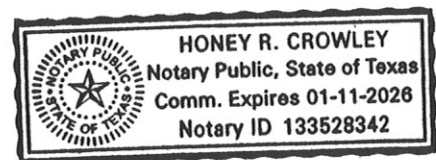
THE STATE OF TEXAS §
COUNTY OF Williamson §

This instrument was acknowledged before me on this the 18 day of May, 2023, by Cecelia Fortney, Owner of the 204 W Broade St, on behalf of said entity.

Honey R. Crowley
Notary Public – State of Texas

AFTER RECORDING RETURN TO:

City of Leander
Attn: City Secretary
P. O. Box 319
Leander, Texas 78646-0319





WAHOO'S FISH TACOS

ROW IMPROVEMENTS EXHIBIT

DATE _____

05-02-2023

PROJECT NO.

22-020.0

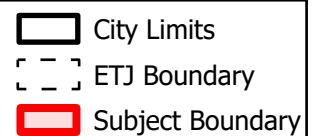
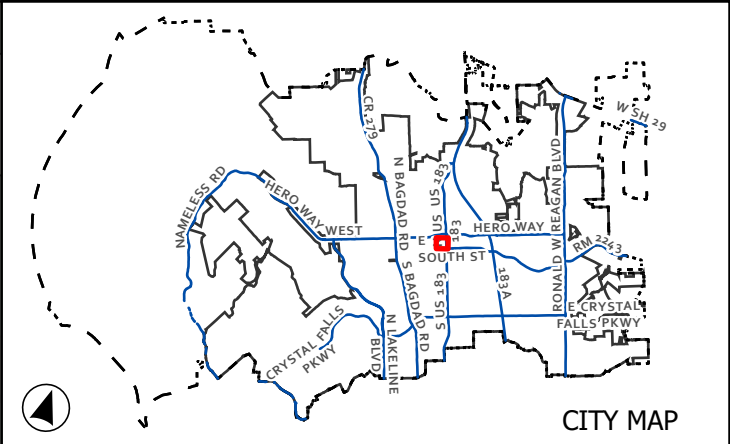
DESIGNED BY

BLB

CHECKED BY

AHG

REVISIONS			ENGINEERED APPROVAL BY	DATE
NO.	DESCRIPTION			
1.				
2.				
3.				
4.				
5.				
6.				





April 10, 2023

City of Leander Planning
201 N Brushy Street
Leander, TX 78641

RE: Wahoo's Fish Tacos (SD-22-0040)
204 W Broade St

Goode Faith Engineering, on behalf of the owner/developer, is requesting a License Agreement to plant trees within the public ROW at 204 W Broade Street in the Leander Subdivision. We are proposing landscaping within the City of Leander ROW including 2 trees, shrubs, and turf. Minimal irrigation will be installed with cut off/isolation valve on the property. Please see the included exhibit.

Sincerely,

Anthony Goode, PE
Goode Faith Engineering, LLC
972.822.1682

**EXECUTIVE SUMMARY**
06/15/2023

AGENDA SUBJECT:

Approval of Professional Service Agreement for Engineer Single Project, WW49-PSA1-KSA with KSA Engineers, Inc., for design, bid, and construction administration services related to the utility improvements of East Street from Evans Street to South Street, and street improvements of East Street from Evans Street to Broade Street (CIP WW.49) in the amount of \$209,025.00; and authorize the City Manager to execute any and all necessary documents.

BACKGROUND:

East Street exists today as a dirt street for only one (1) block between East Evans Street and East Broade Street. This project will add water and wastewater lines and eliminate and replace a very old wastewater lift station with a gravity connection to the South Brushy Creek Interceptor. Since the utility work will damage the existing street, this project will repair and cap the existing dirt street with a two (2)- lane asphalt roadway with open ditch drainage between East Broade Street and Evans Street. Previous plans to construct a curb and gutter street from RM 2243 to Hero Way, with a bridge across Brushy Creek, will be considered in the future. The right-of-way (ROW) for East Street was dedicated with the original 1882 Leander plat, and no further ROW is proposed at this time.

HISTORY/TIMELINE:

10/10/22 – City Council approved 2023 Capital Improvements Program projects list, which includes WW.49.

RECOMMENDATION:

Staff recommends approval of Professional Services Agreement to KSA Engineers, Inc., for the East Street Utilities improvements (WW.49), to KSA Engineers, Inc. in the amount of \$209,025.00 and authorize the City Manager to execute any and all necessary documents.

PRESENTER:

Russell Alabastro, CIP Project Manager

Fiscal Impact

<u>Amount requested:</u>	\$209,025.00
<u>Approved in current budget (Yes / No):</u>	Yes
<u>Expenditure (New / Amended):</u>	New
<u>Recurring or one-time:</u>	one-time
<u>Fund source (Operating / Utility / etc.):</u>	Utility 27-02-8388

Attachments

1. PSA-KSA-Eng Single Project to KSA Engineers

CITY OF LEANDER
PROFESSIONAL SERVICES AGREEMENT – ENGINEER
SINGLE PROJECT
KSA Engineers, Inc.

STATE OF TEXAS §
 §
COUNTY OF WILLIAMSON§

THIS AGREEMENT is made and entered into this day by and between the City of Leander, a home rule municipal corporation, organized and existing under the laws of the State of Texas, acting by and through its duly authorized representative, and hereinafter referred to as the OWNER, and KSA Engineers, Inc., acting by and through its duly authorized representative, hereinafter referred to as the ENGINEER.

WHEREAS, the OWNER has determined the need to undertake the following project WW.49 – East Street Utilities (the “PROJECT”); and

WHEREAS, to address the PROJECT needs, the OWNER requires professional engineering and associated services; and

WHEREAS, the ENGINEER, having professional and technical employees versed in fields of endeavor appropriate for the conduct of the PROJECT including employees duly licensed and registered to practice engineering in the State of Texas, and employees or Subconsultants duly licensed and registered in the State of Texas to provide land surveying and other required professional services, and has the professional abilities and expertise to undertake the required services; and

WHEREAS, the ENGINEER has agreed to provide professional engineering and related services for PROJECT, as is more fully set out in Exhibit “A”;

NOW THEREFORE, the OWNER and the ENGINEER, in consideration of their mutual covenants herein, agree in respect to the performance of the professional services to be furnished or rendered by the ENGINEER and to the payment for these services by the OWNER, as set forth above and hereinafter.

SECTION I
EMPLOYMENT OF THE ENGINEER
AND PERFORMANCE OF SERVICES

A. GENERAL

The OWNER agrees to employ the ENGINEER and the ENGINEER agrees to perform the professional engineering and other professional services as stated in Exhibit “A” and in the Sections to follow; and, in rendering such services, the OWNER agrees to compensate the ENGINEER in an amount not to exceed Two Hundred Nine Thousand Twenty-Five Dollars (\$209,025.00), as further described in Section VI. ENGINEER shall complete the Basic Services

within approximately three hundred forty-five (345) calendar days from when the Owner issues the notice to proceed, in accordance with the schedule, if any, set forth in Exhibit "A". ENGINEER shall report to OWNER'S designated representative for the PROJECT (see Section IV also). To the extent of any conflict between the terms of this AGREEMENT, and the provisions set forth in Exhibit A, the terms of this AGREEMENT shall control.

B. GEOTECHNICAL LABORATORY SERVICES

If geotechnical laboratory services are provided for the PROJECT through this AGREEMENT, either by the ENGINEER or its subconsultant(s), these services shall be performed by a laboratory accredited, in soils or geotechnical testing as appropriate, by the American Association of Laboratory Accreditation or by the American Association of State Highway and Transportation Officials. The ENGINEER agrees to provide evidence to the OWNER of such accreditation on an annual basis for the duration of this AGREEMENT.

**SECTION II
BASIC PROJECT SERVICES OF THE ENGINEER**

The ENGINEER shall serve as the OWNER'S professional consultant in those phases of the PROJECT to which this AGREEMENT applies; and, will give consultation and advice to the OWNER during the performance of its services.

The ENGINEER shall, in the scope of its work, perform the services described in Exhibit "A" which shall be attached hereto and incorporated herein for all purposes as the PROJECT. ENGINEER shall only commence the work described in Exhibit "A" as authorized by the OWNER (in subsequent written authorizations to proceed) as described hereinafter. All work performed in connection with this AGREEMENT shall be performed in accordance with high professional standards, and within the time periods for the completion of the services required by this AGREEMENT. Once ENGINEER is authorized to perform services, ENGINEER shall commence the performance of the services within 10 days following authorization and shall diligently pursue the same to completion in a timely manner. If a time period for performance of the services is not set out herein, OWNER and ENGINEER may hereafter agree upon the time period for the completion of services in writing, which shall be attached to and become a part of and incorporated to this Agreement by reference.

As part of its Basic Services, ENGINEER shall provide OWNER on completion of any design, or any phase of a design, with the number of sets of plans for OWNER's use agreed to by OWNER and ENGINEER, but in no event fewer than five sets (unless otherwise approved in writing by OWNER), and sufficient sets for the use of Contractors and subcontractors in bidding out the PROJECT, if applicable. ENGINEER may establish a fee to Contractors or subcontractors for complete sets of plans to be used by them as part of the bid process in accordance with customary practice within the area in which the PROJECT is located.

All plans provided in connection with this AGREEMENT shall be certified by the ENGINEER as complying with all applicable Federal, State and local laws, and shall be signed and sealed by the ENGINEER. The plans, specifications and data provided by ENGINEER

shall be adequate and sufficient to enable those performing the actual work to perform the work as and within the time contemplated by the OWNER and ENGINEER. All subconsultants that perform a component of the design services required under this AGREEMENT, shall similarly prepare a plan showing their portion of the design work, as appropriate, which is similarly certified to, signed and sealed by the subconsultant.

The OWNER acknowledges that ENGINEER has no control over the methods or means of work nor the costs of labor, materials or equipment. Unless otherwise agreed in writing, any estimates of costs by the ENGINEER are for informational purposes only and are not guarantees.

SECTION III CHANGES IN WORK SCOPE

OWNER, without invalidating this AGREEMENT or the PROJECT, may order changes within the general scope of the PROJECT by altering, adding to and/or deleting or deducting from the PROJECT to be performed. If any changes made under this clause to the PROJECT cause an increase or decrease in the ENGINEER'S cost of, or the time required for, the performance of part of the PROJECT, an equitable adjustment will be made by mutual written agreement and Exhibit "A" and the PROJECT will be modified in writing accordingly. All such changes shall be under the conditions of the original Agreement. Notwithstanding the foregoing, should the PROJECT be changed or amended due to some error on the part of the ENGINEER, the only equitable adjustment that will be made shall be to the benefit of the OWNER.

SECTION IV ADDITIONAL SERVICES OF THE ENGINEER

If ENGINEER determines that services outside the scope of PROJECT ("Additional Services") are required or recommended, or that ENGINEER is being asked by OWNER to perform services not covered by PROJECT, ENGINEER shall notify OWNER that such services are Additional Services, and the cost associated with their performance prior to undertaking them. If changes deduct from the extent of the PROJECT, the contract sum shall be adjusted accordingly. All such changes shall be under the conditions of the original Agreement. Any provision in this Agreement to the contrary notwithstanding, OWNER shall not be liable to ENGINEER for the costs of any Additional Services in connection with the PROJECT unless OWNER has agreed in writing to the performance of the services, which have been identified to OWNER as Additional Services, including the cost for such services, prior to the commencement of such services.

SECTION V THE OWNER'S RESPONSIBILITIES

The OWNER will:

- A. Provide information as to its requirements for the PROJECT to the best of OWNER's knowledge.

B. Designate the OWNER'S REPRESENTATIVE for this PROJECT. ENGINEER understands and agrees that ENGINEER shall obtain instruction and direction of the services to be performed hereunder only from OWNER's designated OWNER'S REPRESENTATIVE or other representative designated by OWNER in writing. ENGINEER shall not perform services directed or requested by any other person, unless approved by OWNER'S REPRESENTATIVE or other designated representative in writing. In the event ENGINEER is uncertain whether or not it is authorized to perform services, ENGINEER shall seek confirmation from OWNER'S REPRESENTATIVE or other designated representative.

C. Assist ENGINEER by placing at its disposal available reports and other data relevant to the development of the PROJECT which OWNER has had performed in connection with the property or the PROJECT by other service providers.

D. Assist ENGINEER in gaining entry to public and private property as may be required by the ENGINEER in the performance of their services under this AGREEMENT.

E. Examine all studies, reports, sketches, estimates, proposals and other documents presented by the ENGINEER and render decisions pertaining thereto within a reasonable time so as not to unreasonably delay the services of the ENGINEER.

F. Furnish, or direct ENGINEER (by way of written Supplemental Amendment to this AGREEMENT (see Section VI) to provide necessary Additional Services as stipulated in Section III of this AGREEMENT or other services as may be required by the OWNER.

SECTION VI PAYMENTS TO THE ENGINEER

A. OWNER agrees to pay the ENGINEER as full compensation for the professional engineering and associated services herein contracted for as follows:

1. Basic Services: The total fee for all tasks identified in Exhibit "A" shall not exceed the amount set out in Exhibit "B" ("Basic Services Fee"). Compensation for Services will be reimbursed on a unit price per unit of work basis in accordance with the defined unit prices detailed in Exhibit "B" and will not exceed the Basic Services Fee. Unless otherwise agreed to by the parties in writing, reimbursable expenses, including, but not limited to copying charges, long-distance phone calls, travel expenses, will be included within the Basic Services Fee. If the parties agree that reimbursable expenses are to be billed separately, they shall also itemize the expenses that will be reimbursed and agree on a not-to-exceed amount for such reimbursable expenses and that such expenses shall be invoiced at direct cost with no overhead mark-up.

2. Additional Services: Compensation will be charged based on the actual hours expended by ENGINEER'S personnel and billed at ENGINEER'S Standard Hourly Rates identified in Exhibit "B" attached hereto and incorporated herein for all purposes.

B. METHOD OF PAYMENT

1. Payments on account of ENGINEER'S work on the PROJECT shall be made to ENGINEER within 30 days after invoice is received and approved by OWNER for payment, subject to the terms of this AGREEMENT.
2. For all services rendered, payment for undisputed amounts is due as provided above, subject to the rights and remedies of OWNER. Invoices for payment of services shall not be submitted to OWNER more frequently than once per month. Billing shall include reasonable documentation of cost of services rendered during the previous month in such form and with such content as OWNER may reasonably require. Interest shall accrue on undisputed amounts which have not been paid in accordance with the provisions of this AGREEMENT and are past due, in accordance with the provisions of Section 2251.021 of the Texas Government Code, as amended, unless delay in payment is due to the fault of ENGINEER including improper, contested or inadequate billing procedures followed by the ENGINEER, or the exercise of any rights or remedies by OWNER under the terms of this AGREEMENT.
3. Invoice amounts in excess of the maximum not-to-exceed amount(s) identified above, incurred prior to OWNER'S written consent shall be at ENGINEER'S risk and OWNER is not obligated to pay such billings or expenses. ENGINEER shall closely monitor the amount of their work and notify OWNER within five (5) working days when expenditures for any phase of work reaches eighty (80) percent of the maximum not-to-exceed amount(s) identified herein. Nothing herein shall be construed to require the OWNER to increase the approved maximum not-to-exceed contract amount(s) established under this AGREEMENT.
4. For all services rendered, ENGINEER'S payment to subconsultants is due within ten calendar days after receipt of payment from the OWNER and, when appropriate, OWNER may issue joint checks to the ENGINEER and subconsultants.
5. Cost of services furnished by subcontractors or subconsultants on shall be reimbursed at invoice cost, unless otherwise agreed to by the parties in writing (see attached Exhibit A).

SECTION VII TERMINATION AND DEFAULT

The OWNER shall have the right to terminate this AGREEMENT at any time after thirty (30) days' notice to the ENGINEER. OWNER shall pay the ENGINEER for services rendered and obligations incurred to date of termination and ENGINEER shall submit to the OWNER all work and documents prepared to that point. Payment to the ENGINEER of lump-sum not-to-exceed amounts shall be proportional to services performed to the date of termination. OWNER will pay a proportionate share for the partially completed work product of any partially completed unit of work through the date of termination. The value of such partially completed unit of work will be determined by OWNER based on actual costs incurred. In no case will the compensation paid to ENGINEER for partial completion of the PROJECT exceed the amount the ENGINEER would have received had the PROJECT been completed.

In the event OWNER, through no fault of ENGINEER, fails to perform one or more of its obligations under the terms of this Agreement, ENGINEER shall provide OWNER with written notice of the default, and a reasonable opportunity to cure the same, but in no event shall such cure opportunity be less than thirty (30) days. If OWNER fails to cure a material default, or to initiate appropriate action to cure a material default, within such cure period, then ENGINEER shall have the right, as its exclusive remedy, to terminate this Agreement, in which event OWNER shall be liable to ENGINEER for all services rendered and obligations incurred to date of termination and ENGINEER shall submit to the OWNER all Work and documents prepared to that point. Payment to the ENGINEER shall be proportional to services performed to the date of termination calculated in accordance with the previous paragraph.

In the event ENGINEER, through no fault of OWNER, fails to perform one or more of its obligations hereunder or defaults under the terms of this AGREEMENT, OWNER shall provide ENGINEER with notice of the default, and a reasonable opportunity, not to exceed thirty (30) days to cure the same. In the event a cure is not effected during such cure period, OWNER, in addition to any other rights and remedies provided by this AGREEMENT, shall have the right to pursue one or more of the following: (a) terminate this AGREEMENT, (b) withhold payments due to ENGINEER until the default is cured to OWNER's satisfaction, or (c) pursue any rights and remedies available at law or equity. The ENGINEER shall not be entitled to any fees or reimbursable expenses other than the fees or reimbursable expenses then due and payable as of the time of termination and then only for those services that have been timely and adequately performed by the ENGINEER considering the actual costs incurred by the ENGINEER in performing the work to date of termination, the value of the work that is nonetheless usable to the OWNER, the cost to the OWNER of employing another ENGINEER to complete the work required and the time required to do so, and other factors that affect the value to the OWNER of the work performed at time of termination. All rights and remedies provided by this AGREEMENT, or available at law or equity shall be cumulative, and not exclusive and may be exercised concurrently or successively.

SECTION VIII SUCCESSOR AND ASSIGNS

This AGREEMENT shall be binding upon and inure to the benefit of the parties hereto and their respective successors, executors and assigns. The foregoing notwithstanding, the ENGINEER shall not assign or transfer its interest in this AGREEMENT without the prior written consent of the OWNER. Any transfer or assignment made without OWNER'S prior written consent shall not be binding upon OWNER unless expressly ratified by OWNER in writing and shall not relieve ENGINEER of its obligations hereunder.

SECTION IX OWNERSHIP AND USE OF DOCUMENTS

The ENGINEER agrees that items such as plans, drawings, photos, designs, studies, specifications, data, computer programs, schedules, technical reports, or other work products, including electronic files and raw data, which prepared under or pursuant to this AGREEMENT (the "Work Product") are subject to the rights of the OWNER in effect on the date of execution of this

AGREEMENT. These rights include the right to use, duplicate and disclose such items, in whole or in part, in any manner and for whatever purpose; and, to have others do so, and to use such items in connection with the PROJECT and any subsequent alterations thereto. Upon completion or termination of this Agreement, the ENGINEER shall deliver all Work Product to the OWNER, and all Work Product shall otherwise be made available, upon request, to the OWNER without restriction or limitation on the further use of such materials, provided, however, that such materials are not intended or represented to be suitable for reuse by the OWNER or others. Any reuse without prior verification or adaptation by the ENGINEER for the specific purpose intended will be at the OWNER's sole risk and without liability to the ENGINEER.

If an item produced by the ENGINEER is copyrightable, the ENGINEER may copyright it, subject to the rights of the OWNER. The ENGINEER grants to OWNER a royalty-free, non-exclusive and irrevocable license to reproduce, publish, modify and use such items and to authorize others to do so. Without limiting the generality of the foregoing, if the services of ENGINEER are terminated under this AGREEMENT, OWNER shall have the right to use the work produced by ENGINEER, and to allow others to do so, in connection with the PROJECT. The ENGINEER shall include in its subconsultant contracts appropriate provisions to achieve the purpose of this Section IX. Any such verification or adaptation requested by the OWNER may entitle the ENGINEER to further compensation at an amount agreed upon between the OWNER and the ENGINEER.

SECTION X ENGINEER'S RESPONSIBILITY AND LIABILITY

All services performed in connection with this AGREEMENT shall be performed in accordance with high professional standards, in a non-negligent manner, free from defects, and in accordance with the terms of this AGREEMENT. Acceptance and approval by the OWNER of the final PROJECT Report or other documents or services produced by ENGINEER, shall not constitute nor be deemed a release of the responsibilities and liability of the ENGINEER for the accuracy and competency of the ENGINEER'S work products, design, or other documents, and services prepared/performed under this AGREEMENT. No approvals or acceptances by or on behalf of the OWNER shall be deemed to be an assumption of such responsibility by the OWNER for any defect, error or omission in said work products, design or other documents and services as prepared/performed by the ENGINEER or its subconsultants.

The ENGINEER further agrees to correct programs or documents or re-execute services as may be required due to the ENGINEER'S development of programs or documents which are found to be in error or contain defects or omissions at no additional cost to the OWNER.

Redesigns required or occasioned for the convenience of the OWNER shall be paid for as provided and prescribed hereinbefore under Additional Services of the ENGINEER, but only if such Additional Services are required in writing by OWNER as required herein.

ENGINEER understands that OWNER may require ENGINEER to temporarily suspend work. OWNER understands that the suspension of work by ENGINEER may cause ENGINEER to incur additional costs to resume work, whether on Basic or Additional Services, and OWNER agrees to

reimburse ENGINEER for such reasonable and unavoidable additional costs in an amount to be agreed upon by ENGINEER and OWNER in writing at time ENGINEER has been given written notice of the suspension.

SECTION XI PERIOD OF SERVICE

This AGREEMENT shall remain in force for a period required for the completion of the PROJECT, including required extensions thereto and any applicable warranty period services, unless terminated by any of the several provisions included elsewhere in this AGREEMENT.

SECTION XII MAINTENANCE OF AND RIGHT OF ACCESS TO RECORDS

The ENGINEER agrees to maintain appropriate accounting records of costs, expenses and payrolls of employees working on the PROJECT together with documentation and evaluations and study results, for a period of five (5) years after final payment for completed services and all other pending matters concerning this AGREEMENT have been closed. The ENGINEER further agrees that the OWNER, or their duly authorized representative(s), shall have access to any and all books, documents, papers and records of the ENGINEER which are directly pertinent to the services to be performed under this AGREEMENT for the purposes of making audit, examination, excerpts and transcriptions.

SECTION XIII VENUE

VENUE AND JURISDICTION OF ANY SUIT, RIGHT OR CAUSE OF ACTION ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT SHALL LIE, AND TO THE EXTENT PERMITTED BY APPLICABLE LAW, THE PARTIES CONSENT TO VENUE EXCLUSIVELY IN, COURTS OF COMPETENT JURISDICTION IN WILLIAMSON COUNTY, TEXAS.

SECTION XIV INSURANCE REQUIREMENTS; INDEMNIFICATION

The ENGINEER agrees to carry and maintain insurance in the following types and amounts for the duration of this AGREEMENT, and furnish certificates of insurance and make available copies of policy declaration pages and policy endorsements as evidence thereof:

1. Workers Compensation Insurance: The ENGINEER shall carry and maintain during the term of this Agreement, workers compensation and employer's liability insurance meeting the requirements of the State of Texas on all the ENGINEER's employees carrying out the work involved in this Agreement.
2. Commercial General Liability with a combined single limit of \$1,000,000 per occurrence for coverages A&B including products/completed operations, where appropriate, with a separate

aggregate of \$1,000,000. The policy shall contain the following provisions:

- a. Blanket contractual liability coverage for liability assumed under the AGREEMENT and all contracts relative to the PROJECT.
 - b. Independent Contractors coverage.
 - c. OWNER listed as an additional insured, endorsement CG 2010.
 - d. Thirty (30) day Notice of Cancellation in favor of the OWNER, endorsement CG 0205.
 - e. Waiver of Transfer of Rights of Recovery Against Others in favor of the OWNER, endorsement CG 2404.
3. Business Automobile Liability Insurance for all owned, non-owned and hired vehicles with a minimum combined single limit of \$1,000,000 per occurrence for bodily injury and property damage. Alternate acceptable limits are \$500,000 bodily injury per person, \$500,000 bodily injury per occurrence and \$500,000 property damage liability per accident. The policy shall contain the following endorsements in favor of the OWNER:
- a. Waiver of Subrogation endorsement TE 2046A.
 - b. Thirty (30)-day Notice of Cancellation, endorsement TE 0202A.
 - c. Additional Insured, endorsement TE 9901B.
4. Professional Liability Insurance: professional errors and omissions liability insurance with limits of liability not less than \$1,000,000 per occurrence covering all work performed by the ENGINEER, its employees, sub-contractors, or independent contractors. If this coverage can only be obtained on a "claims made" basis, the certificate of insurance must clearly state coverage is on a "claims made" basis and coverage must remain in effect for at least two years after final payment with the ENGINEER continuing to furnish the OWNER certificates of insurance.

ENGINEER shall require each Subconsultant to maintain the same insurance with the same endorsements in favor of OWNER, unless otherwise agreed by OWNER in writing.

General Requirements

The ENGINEER shall be responsible for insurance premiums, deductibles and self-insured retentions, if any, stated in policies. All deductibles or self-insured retentions shall be disclosed on the certificates of insurance required above.

Applicable to all insurance policies: If coverage is underwritten on a claims-made basis, the retroactive date shall be coincident with or prior to the date of this AGREEMENT and the certificate of insurance shall state that the coverage is claims made and the retroactive date. The ENGINEER shall maintain continuous coverage for the duration of this AGREEMENT and for not less than twenty-four (24) months following substantial completion of the PROJECT. Coverage, including any renewals, shall have the same retroactive date as the original policy applicable to the PROJECT. The ENGINEER shall, on at least an annual basis, and upon request, provide the OWNER with a certificate of insurance as evidence of such insurance.

If insurance policies are not written for amounts specified above, the ENGINEER shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of the primary coverage.

The ENGINEER shall not commence work under this AGREEMENT until they have obtained the required insurance and until such insurance has been reviewed by the OWNER. The ENGINEER shall not allow any subconsultants to commence work until the required insurance has been obtained and approved. Approval of insurance by the OWNER shall not relieve or decrease the liability of the ENGINEER hereunder.

Insurance shall be written by a company licensed to do business in the State of Texas at the time the policy is issued and shall be written by a company with an A. M. Best rating of B+VII or better.

Certificate of Insurance and all endorsements shall read:

City of Leander
105 N. Brushy
Leander, TX 78646
Attn: City Manager

The "other" insurance clause shall not apply to the OWNER where the OWNER is an additional insured shown on the policy. It is intended that policies required in this AGREEMENT, covering both the OWNER and the ENGINEER, shall be considered primary coverage as applicable.

The OWNER shall be entitled, upon request and without expense, to receive copies of policies and endorsements thereto and may make any reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions except where policy provisions are established by law or regulations binding upon either of the parties hereto or the underwriter on any such policies and if such request for deletions, revisions, or modifications are commercially available.

The ENGINEER shall not cause any insurance required under this AGREEMENT to be canceled nor permit any insurance to lapse during the term of this AGREEMENT.

The OWNER reserves the right to review the insurance requirements of this section during the effective period of the AGREEMENT and to make reasonable adjustments to insurance coverages and their limits when deemed necessary and prudent by the OWNER based upon changes in statutory law, court decisions or the claims history of the industry as well as the ENGINEER (such adjustments shall be commercially available to the ENGINEER). If the implementation of such revised insurance coverages/limits would result in additional costs to the ENGINEER, the ENGINEER may request additional compensation from the OWNER under the provisions of Section III.

Actual losses not covered by insurance as required by this AGREEMENT shall be paid by the ENGINEER.

ENGINEER shall indemnify, defend and hold harmless the OWNER and its officials, employees and agents (collectively referred to as "Indemnitees") and each of them from and against all loss, costs, penalties, fines, damages, claims, expenses (including reasonable attorney's fees) or liabilities (collectively referred to as "Liabilities") by reason of any injury to or death of any person or damage to or destruction or loss of any property arising out of, resulting from, or in connection with (i) the performance or non-performance of Services

contemplated by this Agreement but only to the extent caused by the negligent acts, errors or omissions, intentional torts, intellectual property infringement, or a failure to pay a sub-contractor or supplier committed by ENGINEER or ENGINEER's agent, consultant under contract, or another entity over which ENGINEER exercises control (whether active or passive) of ENGINEER or its employees, agents or sub-contractors (collectively referred to as "ENGINEER") (ii) the failure of ENGINEER to comply with any of the paragraphs herein or the failure of ENGINEER to conform to statutes, ordinances, or other regulations or requirements of any governmental authority, federal, state or local, in connection with the performance of this Agreement. ENGINEER expressly agrees to indemnify and hold harmless the Indemnitees, or any one of them, from and against all liabilities which may be asserted by an employee or former employee of ENGINEER, or any of its sub-contractors, as provided above, for which ENGINEER's liability to such employee or former employee would otherwise be limited to payments under State Workers' Compensation or similar laws. Nothing herein shall require ENGINEER to indemnify, defend, or hold harmless any Indemnitee for the Indemnitee's own negligence or willful misconduct. Any and all indemnity provided for in this Agreement shall survive the expiration of this Agreement and the discharge of all other obligations owed by the parties to each other hereunder and shall apply prospectively not only during the term of this Agreement but thereafter so long as any liability could be asserted in regard to any acts or omissions of ENGINEER in performing Services under this Agreement.

For Professional Liability Claims, ENGINEER shall be liable for reasonable defense costs incurred by Indemnitees but only after final adjudication and to the extent and percent that ENGINEER or ENGINEER's agents are found negligent or otherwise at fault. As used in this Agreement, final adjudication includes any negotiated settlement and release of claims, without limitation as to when a negotiated settlement and release of claims occurs.

OWNER and ENGINEER waive subrogation and hereby release each other, and their respective employees and officers, and representatives from liability for all damages, expenses and costs ("Costs"), to the extent, but only to the extent, that such amounts are covered by insurance proceeds actually paid and applied to the satisfaction of such Costs.

SECTION XV POLLUTANTS AND HAZARDOUS WASTES

It is understood and agreed by both parties that ENGINEER has neither created nor contributed to the creation or existence of any hazardous, radioactive, toxic, irritant, pollutant, or otherwise dangerous substance or condition ("Hazardous Conditions") present at the PROJECT as of commencement of the work on the PROJECT ("Preexisting Hazardous Conditions), if any, and ENGINEER'S compensation hereunder is not commensurate with the potential risk of injury or loss that may be caused by exposure to such Hazardous Conditions. The parties agree that in performing the services required by the PROJECT and this AGREEMENT, ENGINEER does not take possession or control of the subject site and is not therefore responsible for the existence of any pollutant present on or migrating from the site, except for any Hazardous Conditions introduced, caused or created by ENGINEER or its representatives or subcontractors. ENGINEER shall have no responsibility for any Preexisting Hazardous Condition during clean-up, transportation, storage or disposal activities related to those Pre-existing Hazardous Conditions, provided that ENGINEER has not acted in a way that has exacerbated any such Preexisting Hazardous Condition or increased the cost of or difficulty of removing

such Preexisting Hazardous Condition and remediating the site. ENGINEER and its Representative and Subcontractors shall promptly inform OWNER of any Preexisting Hazardous Condition or other Hazardous Condition upon discovery.

SECTION XVI COMPLIANCE WITH ALL LAWS

During the performance of the services provided by this AGREEMENT, the ENGINEER agrees to comply, and to require its Subconsultants to comply, with all Federal, State and local laws and regulations, as well as the City's Charter as applicable to the services or the Project.

SECTION XVII CERTIFICATION OF ENGINEER

The individual(s) signing this AGREEMENT, acting as duly authorized representative(s) of the firm of ENGINEER hereby certify that neither they nor any other members of the ENGINEER'S firm which they represent have:

- A. Agreed, as an expressed or implied condition for obtaining this AGREEMENT, to employ or retain the services of (1) any firm or person in the employ of the OWNER or, (2) an OWNER official, in connection with carrying out the work to be performed under this AGREEMENT.
- B. Paid or agreed to pay as an express or implied condition for obtaining this AGREEMENT (1) any firm or person in the employ of the OWNER or, (2) an OWNER official, any fee, contribution, donation or consideration of any kind for, or in connection with procuring or carrying out the work provided under the AGREEMENT.

The ENGINEER further acknowledges that this certification may be furnished to any Local, State and Federal Governmental Agencies of the United States in connection with this AGREEMENT and for portions of the PROJECT involving participation of Agency Grant funds and is subject to all applicable State and Federal laws, both criminal and civil.

SECTION XVIII ADDITIONAL PROVISIONS

During the performance of the contract, ENGINEER agrees as follows:

- A. The Engineer will not discriminate against any employee or applicant for employment because of race, religion, color, gender, or national origin. The engineer will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, religion, color, gender or national origin.
- B. The Engineer will, in all solicitations or advertisements for employees place by or on behalf of the Engineer, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, or national origin.

SECTION XIX MISCELLANEOUS

A. INDEPENDENT CONTRACTOR.

ENGINEER acknowledges that ENGINEER is an independent contractor of the OWNER and is not an employee, agent, official or representative of the OWNER. ENGINEER shall not represent, either expressly or through implication, that ENGINEER is an employee, agent, official or representative of the OWNER. Income taxes, self-employment taxes, social security taxes and the like are the sole responsibility of the ENGINEER.

B. WAIVER.

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

C. NON-COLLUSION.

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

D. FORCE MAJEURE

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

E. RELATIONSHIP OF PARTIES

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

F. SEVERABILITY

If any word, phrase, clause, sentence or provision of the AGREEMENT, or the application of same to any person or set of circumstances is for any reason held to be unconstitutional, invalid or unenforceable, such finding shall only effect such word, phrase, clause, sentence or provision, and such finding shall not effect the remaining portions of the AGREEMENT, this being the intent of the parties in entering unto this AGREEMENT; and all provisions of this instrument are declared to be severable for this purpose.

G. CONSTRUCTION OF AGREEMENT; GOVERNING LAW

Although the AGREEMENT is substantially drafted by one party, it is the intent of the parties that all provisions be construed in a manner to be fair to both parties, reading no provisions more strictly against one party or the other. This Agreement and all of the transactions contemplated herein shall be governed by and construed in accordance with the laws of the State of Texas.

H. ARBITRATION

This AGREEMENT does not call for the parties to arbitrate any dispute arising out of or related to this AGREEMENT. No arbitration arising out of, or relating to, this AGREEMENT and any PROJECTS involving one party to this AGREEMENT may include the other party to this AGREEMENT without that other party's consent.

I. ENGINEER'S PROJECT PURCHASES

All durable PROJECT equipment, tools, materials, etc., if any, purchased by the ENGINEER and invoiced to the OWNER shall be considered the property of the OWNER and shall be given over to the OWNER at the time of OWNER'S request or at the completion of the PROJECT.

J. FULL AND FINAL AGREEMENT

This AGREEMENT (consisting of this document and, where applicable, OWNER'S Request for Qualifications ("RFQ") which is incorporated herein by reference for all purposes to the extent that such RFQ is not inconsistent with this document and also including ENGINEER'S proposal and submittals, where applicable, to the extent that such proposal and submittals are not inconsistent with this document or the RFQ) constitutes the entire agreement of the parties concerning the subject matter hereof, and may only be amended by a written document signed by both parties. All prior and contemporaneous understandings, whether written or oral, are merged herein.

K. NOTICE

Any notice required or desired to be given from one party to the other party to this Agreement shall be in writing and shall be given and shall be deemed to have been served and received (whether

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

L. STATUTORY VERIFICATIONS

1. To the extent this Agreement constitutes a contract for goods or services within the meaning of Section 2271.002 of the Texas Government Code, as amended, solely for purposes of compliance with Chapter 2270 of the Texas Government Code, and subject to applicable Federal law, the ENGINEER represents that neither the ENGINEER nor any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of Landlord (i) boycotts Israel or (ii) will boycott Israel through the term of this Agreement. The terms "boycotts Israel" and "boycott Israel" as used in this paragraph have the meanings assigned to the term "boycott Israel" in Section 808.001 of the Texas Government Code, as amended.

2. To the extent the Agreement constitutes a governmental contract within the meaning of Section 2252.151 of the Texas Governmental Code, as amended, solely for the purposes of compliance with Chapter 2252 of the Texas Governmental Code, and except to the extent otherwise required by applicable federal law, ENGINEER represents that the ENGINEER nor any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of Landlord is a company listed by the Texas Comptroller Public Accounts under Sections 2270.0201, or 2252.153 of the Texas Government Code.

3. The ENGINEER hereby verifies that it and its parent's company, wholly or majority- owned subsidiaries, and other affiliates, if any, do not boycott energy companies and will not boycott energy companies during the term of the Agreement. The foregoing verification is made solely to comply with Section 2274.002, Texas Government Code, and to the extent such section is not inconsistent with a governmental entity's constitutional or statutory duties related to the issuance, incurrence, or management of debt obligations or the deposit, custody, management, borrowing or investment of funds. As used in the foregoing verification, "boycott energy company" means, without an ordinary business purpose, refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm, or limit commercial relations with a company because the company: (A) engages in the exploration, production, utilization, transportation, sale, or manufacturing of fossil-based energy and does not commit or pledge to meet environmental standards beyond federal and state law; or (B) does business with a company described as by the preceding statement

4. The ENGINEER hereby verifies that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not have a practice, policy, guidance, or

directive that discriminates against a firearm entity or firearm trade association and will not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association during the term of this Agreement. The foregoing verification is made solely to comply with Section 2274.002, Texas Government Code. As used in the foregoing verification, "discriminate against a firearm entity or firearm trade association" means: (i) refuse to engage in the trade of any goods or services with the entity or association based solely on its status as a firearm entity or firearm trade association; (ii) refrain from continuing an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association; or (iii) terminate an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association; but does not include (a) the established policies of a merchant, retail seller, or platform that restrict or prohibit the listing or selling of ammunition, firearms, or firearm accessories; or (b) a company's refusal to engage in the trade of any goods or services, decision to refrain from continuing an existing business relationship, or decision to terminate an existing business relationship to comply with federal, state, or local law, policy, or regulations or a directive by a regulatory agency; or for any traditional business reason that is specific to the customer or potential customer and not based solely on an entity's or association's status as a firearm entity or firearm trade association.

5. ENGINEER represents that it is in compliance with the applicable filing and disclosure requirements of Chapter 176 of the Texas Local Government Code and Chapter 2252 of the Texas Government Code.

Executed to be effective as of the ____ day of _____, 202__.

OWNER: City of Leander

By: _____
Richard B. Beverlin, III

Address for Notice:

Mailing address:

City of Leander
105 N. Brushy Street
Leander, TX 78646

ENGINEER - KSA Engineers, Inc.

By:  5/31/2023
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Name: Joncie H. Young, P.E.
Title: Director of Client Services

Address for Notice:

4833 Spicewood Springs Rd
Suite 204
Austin, TX 78759

List of Exhibits: All exhibits to this Agreement are incorporated herein by reference for all purposes wherever reference is made to the same.

Exhibit “A” -- Scope of Work; Basic Services Fee; Time for Completion; (“PROJECT”)
Exhibit “B” -- Defined Unit Prices, Basic Services Fee, and Schedule of Hourly Rates for
ENGINEER and its Subconsultants.

APPENDIX A. Additional Terms (*add if applicable*)

EXHIBIT A
Scope of Work (“PROJECT”)



February 20, 2023

Russell Alabastro
CIP Project Manager
City of Leander
201 North Brushy Street
Leander, Texas 78641

via email only
ralabastro@leandertx.gov

**RE: City of Leander – East Street Utilities – CIP Project ID WW.49
Proposal for Professional Engineering Services**

Dear Mr. Alabastro,

KSA Engineers, Inc., (KSA) is pleased to present this letter to serve as our proposal to provide professional engineering services associated with the East Street Utilities. KSA and the City of Leander met on January 20, 2023, to review the scope and goals of the project. This meeting, combined with KSA's pre-project due diligence, provides the basis for this scope and fee proposal. The following is a general description of the project scope of work to be performed, and KSA proposes to complete this scope of work at an hourly not-to-exceed fee of \$209,025, which is further detailed below and in the attached.

The proposed project encompasses approximately 1,300 linear feet of N East Street which is currently a local residential dirt road for one block between E Broade Street and E Evans Street, and undeveloped right of way for the remainder of the project length between Brushy Creek and E South Street (FM 2243). The City intends to build out water and sewer utilities along the project length. The proposed sewer will connect to a collector line along Brushy Creek and allow the decommissioning of an existing lift station at the corner of N East Street and E Evans Street along with the existing force main from the lift station to E South Street. The proposed water line will cross E South Street and provide an additional loop in the local distribution system. Only the existing block of dirt road will be reconstructed with bar ditch drainage. The pavement section of the new road will be provided by the City in accordance with the City's standards.

Previous roadway and utility improvements, including a bridge over Brushy Creek, were designed and permitted but not constructed. While the scope of the current project does not exactly match the scope of this previous design, these documents will serve as a general guide for the layout of the scoped work. Right-of-way along N East Street is already acquired and no further acquisition is anticipated by the City.

Scope of Services

KSA proposes to provide the services in accordance with the Professional Services Contract with the City, for the scoped improvement listed above. Specifically, we propose to perform the work under phases identified as Preliminary Engineering Phase, Preliminary Design Phase, Final Design Phase, Bid Phase, Construction Phase, and Post-Construction Phase. The tasks under each of these phases include the following:

Phase A – Preliminary Engineering Phase Services

- Project management and coordination.
- Participate in a kick-off meeting with the City and stakeholders and conduct coordination and update meetings. It is anticipated that these meetings will be a mix of in-person and virtual settings at the City's preference.
- Perform topographic design survey of project area in State Plane coordinate system, NAD83 – Central Zone. The Digital Terrain Model will show 1 foot contours, all improvements within the project limits, and hardwood trees 10 inches in diameter or larger. Only visible above-ground utilities and underground utilities marked by others via One-Call will be depicted on the survey. This task will be performed by the local subconsultant Landesign Services. KSA will coordinate any necessary right of entry documentation to complete this task with the City.
- Provide research and identify all existing utilities within the project area based on existing City records and any documentation that can be acquired from utility owners and adjacent developments. A utility conflict matrix will be prepared and utility stakeholders will be identified for preliminary coordination and notification of the proposed project.

Phase B3 – Other Services – Permitting and Regulatory

- Prepare and submit required permitting documents, including 90% deliverables, and respond to review comments to secure the necessary City permit for CIP projects. Anticipated permitting documents include permit application form, construction plans, H&H technical memorandum, and construction cost estimate.
- Prepare and submit Utility Installation Request to TxDOT using the City's UIR account access to secure the necessary permission for the water line installation across FM 2243.

Phase C – Bid Phase Services

- Conduct one pre-bid conference meeting and attend the bid opening.
- Respond to technical questions from bidders and issue addenda, as needed, to address or clarify the contents of the plans and technical specifications.
- Review bids received, prepare bid tabulation, check contractor references, and provide a summary of the bid results and bid award recommendation for City staff and Council review.

Phase D – Construction Phase Services

- Project management and coordination.
- Conduct one pre-construction conference and attend up to 10 bi-weekly construction progress meetings and site visits with the City, Contractor, Subcontractors, and stakeholders to include a set agenda covering safety and traffic control, status of schedule, two-week work look-ahead, change orders, pay application status, and other relevant items. Periodic site visits will include observation of work during items of major construction including pre-pour inspections, interim phase completion inspections, traffic control changes, paving, and unannounced visits to document contractor resources and prosecution of work in accordance with the construction schedule. KSA will submit an observation report to the City after each site visit.
- Review and provide responses to Contractor RFI's.
- Review of Contractor submittals for conformance with the construction plans and technical specifications utilizing standardized form, numerical tracking, and submission through Newforma project management software.
- Review and negotiate Contractor change order requests as required and provide recommendation for approval to the City.
- Conduct a Final Inspection and prepare a punch list for final acceptance and provide on-site confirmation of punch list completion prior to recommendation for final payment and release of retainage.

Phase E – Post-Construction Phase Services

- Prepare record drawings based on as-builts or red-lines provided by contractor and/or the City's inspector provided in both electronic (PDF, CAD) and printed format.

The following services are excluded from this proposal but can be added to the scope and a fee negotiated if desired:

- Environmental assessment or services. Due to the developed condition of the right-of-way and adjacent properties, and local funding of the project, no environmental assessment is required.
- Right-of-way acquisition services, boundary survey, and metes and bounds survey documents. Right-of-way acquisition is not anticipated to be needed for the proposed project.
- Subsurface utility engineering, identification, coordination. Utilities within the project area will be identified using existing records provided by the City, utilities marked on the project's design survey, and other utility owners where available.
- Geotechnical investigation and pavement recommendation. Due to anticipated future street improvements, no geotechnical investigation will be provided, and the pavement section used for this project will be provided by the City in accordance with City standards.
- Traffic engineering. Traffic counts and traffic modeling are excluded.
- Electrical engineering. Electrical design and photometric analysis for street lighting is not included.
- Construction materials testing. It is understood that the City contracts directly with an independent laboratory to perform construction materials testing during the construction phase.
- Resident Project Representative services. It is understood that the City will provide on-site inspection using in-house staff for this project.
- TDLR Architectural Barriers registration and inspection. No improvements subject to review and inspection by TDLR is included in the scope.
- Landscape architecture. No landscaping or monumentation requiring a landscape architect is anticipated for this project.

Compensation

We propose to perform the services described for the above outlined scope at an hourly not-to-exceed fee of the following:

Phase A – Preliminary Engineering Phase Services	\$ 26,400.00
Phase B1 – Preliminary Design Phase Services (30%, 60%)	\$ 59,485.00
Phase B2 – Final Design Phase Services (90%, 100%)	\$ 52,040.00
Phase B3 – Other Services – Permitting and Regulatory	\$ 11,430.00
Phase C – Bid-Award-Execute Phase Services	\$ 12,450.00
Phase D – Construction Phase Services (5 months assumed)	\$ 43,210.00
Phase E – Post-Construction Phase Services	\$ 4,010.00
Total for All Services	\$ 209,025.00

A Manhour Projection and Fee Calculation for Engineering Services is attached to this proposal.

Schedule

We propose to perform the services described for the above outlined scope in accordance with the following schedule.

• Preliminary Engineering Phase	30 calendar days
• Preliminary Design Phase.....	60 calendar days
• Final Design Phase	60 calendar days
• Bid Phase	45 calendar days
Preliminary, Design, and Bid Phases	195 calendar days
• Construction Phase	150 calendar days (assumed)
Total Project Duration.....	345 calendar days

Note: Project schedule does not include extended times for Owner or stakeholder review – 10 calendar day review times are assumed. Bid Phase schedule is typical based on projects of similar scope and scale and includes the duration from posting the project for bids to construction contract award by Council.

Sub Consultants

Sub consultants to be used by KSA are as follows:

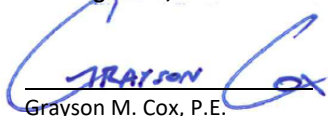
1. Landesign Services – topographic design survey

The fee proposal for Landesign Services is attached for your review and comment. Sub consultant fees have been incorporated into KSA's Manhour Projection and Fee Calculation for Engineering Services. A 15% carrying factor has been included to cover our associated expenses, such as administration costs and additional liability insurance.

Proposal Acceptance

KSA understands that upon completion of the fee negotiation, a Task Order will be offered that takes the project through the completion of the preliminary, design, bid, construction, and closeout phases. As always, KSA appreciates the opportunity to provide professional services for the City of Leander. If you have any questions, please do not hesitate to call.

Respectfully,
KSA Engineers, Inc.



Grayson M. Cox, P.E.
Project Manager

Attachments: Manhour Projection and Fee Calculation
 2022 Schedule of Hourly Fees
 Landesign Services Fee Proposal
 WW.49 Design RFP for East Street Utilities



10090 W Highway 29 | Liberty Hill, Texas 78642
TBPELS Firm No. 10001800 | 512-238-7901 office

26 January 2023

Grayson Cox, P.E.
KSA Engineers, Inc.
4833 Spicewood Springs Road, Suite 204
Austin, Texas 78759

Re: **Proposal for Professional Land Surveying Services**
City of Leander – N East Street (Project No. _____)
Leander, Williamson County, Texas

Dear Grayson:

In Accordance with your email and our understanding of the above referenced project, Landesign Services, Inc. (LSI) is excited to present this cost proposal for Surveying Services for your review. We appreciate the opportunity to offer these services and look forward to working with your firm on this project, and in the future.

Refer to the Scope of Services and attached 'Exhibit B' for Project Limits

I. Scope of Services:

A. Right-of Way Retracement Survey:

This project consists of a right-of-way (boundary) retracement survey of the area shown in **RED** on Exhibit B.

LSI will determine and depict the existing Right-of-Way line of N East Street, using monumentation found in the field, harmonized with existing public records.

➤ **Deliverables:**

LSI will provide Client with one AutoCAD, Civil3D digital file of the existing right-of-way lines of N East Street.

B. Engineering Design Survey:

Unless noted otherwise under Scope of Services (above), LSI will prepare an engineering design survey of the existing right-of-way of N East Street from the intersection of RM 2243 to the centerline of the North Fork Brushy Creek, as shown in **RED** on Exhibit B. Survey will with Digital Terrain Model (DTM) showing 1' contours and all improvements.



Spot elevations, tops, toes, grade breaks, flowlines, and other ground features will be located. All trees measuring 10" and larger will be tagged measured and located. All roadway striping, improvements and visible utilities will be shown and labeled. Accessible manholes found on site will be detailed and labeled with pipe sizes, directions, and flowline elevations. Underground utilities will be located only if previously marked by others.

- LSI will provide Client with one AutoCAD, Civil3D digital file of the engineering design survey showing all improvements and 1' contours.

II. Schedule:

- A. Right-of Way Retracement Survey: Six (6) Weeks
- B. Engineering Design Survey: Six (6) Weeks

III. Fees:

A. Right-of Way Retracement Survey:

Right-of-Way Retracement	Lump Sum	\$ 7,300.00
	<u>Sales Tax</u>	<u>\$ 0.00</u>
	Total	\$ 7,300.00

B. Engineering Design Survey:

<i>ROW to ROW</i>	Total	\$ 8,500.00
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IV. Assumptions:

1. Documents will be signed/sealed and prepared under the supervision of a Registered Professional Land Surveyor licensed to practice in the State of Texas.
2. Vehicular and pedestrian access to the site is possible and granted. The Client or owner will provide Right of Entry to adjacent tracts if required.
3. Some trees may not be identifiable.
4. Sufficient monumentation to determine the boundary exists on the subject tract and/or the adjoining tracts. There are no encroachments, overlaps, or gores that would affect the boundary lines.
5. Substantial boundary conflicts/issues may be subject to additional fees. LSI will communicate any issues upon discovery and coordinate remedies with Client.
6. Client/Owner will furnish the current ownership information and title commitment (if applicable).
7. LSI will not certify the survey to unnamed parties.
8. The client or title company will furnish existing CAD files and survey information for the project.
9. The Client or owner grants permission to clear and/or cut small trees and brush.
10. Survey data will be based on the Texas State Plane Coordinate System, NAD83 – Central Zone; Vertical data will be based on the North American Vertical Datum of 1988 (NAVD88), Geoid12B, unless specified otherwise.
11. Schedule is based on receipt of signed notice to proceed.
12. This proposal is valid for 14 days.

V. Special Conditions:

1. Any service not set forth above in Scope/Intent and Extent of Services shall be done only after Consultant and Client have executed an Agreement for the Provision of Limited Professional Services for such additional services.
2. The project is proposed to be completed by LSI on a Lump Sum Fee Basis. Additional services will be billed on a Time and Materials expended basis in accordance with the attached Rate Schedule (Exhibit "A"). The estimates contained in this cost proposal shall not be exceeded without your written consent.

Again, we appreciate this opportunity to provide our professional services on the referenced project. Should you find this cost proposal substantially acceptable, please contact us. We will then prepare a contract form for your execution in conformance with the proposal. Should you require additional information or clarification, please contact our office.

Sincerely,



Brandy Tabor
President

26 January 2023

Date

Exhibit B



EXHIBIT B

Defined Unit Prices, Basic Services Fee, and Schedule of Hourly Rates for ENGINEER and its Subconsultants.

		Projected Manhours										Subconsultants				Sub 15% Markup	Phase Total
Task ID	Task Description	Principal	Project Manager	Electrical Engineer	Sr. Project Engineer	Project Engineer	Design Engineer	Sr. Design Technician	Sr. CAD Technician	Project Assistant	Reimbursable Expenses	Landesign Services					
A. Preliminary Engineering Phase Services (30 calendar days)																	
A1.01	Conduct 2 Coordination, Progress, and Coordination Meetings (including Kick-off)		3	1	3	2	5	2		2							
A1.02	Conduct Geotechnical Investigation (N/A)																
A1.03	Provide Topographic Design Survey		1			2	2	2	4	2		\$15,800				\$2,370	
A1.04	Provide Boundary Survey, Metes & Bounds Exhibits (N/A)																
A1.05	Prepare, Document, and Summarize all Existing Studies and Data (N/A)																
A1.06	Prepare and Submit Abbreviated Phase I Environmental Report (N/A)																
A1.07	Research, Document, Identify Utility Conflicts, and Engage Stakeholders		2	2	4	8	8		6	2							
A1.08	Prepare Preliminary Construction Schedule & Cost Estimate (N/A)																
Totals		0	6	3	7	12	15	4	10	6	\$ -	\$ 15,800	\$ -	\$ -	\$ -	\$ 2,370	\$ 26,400
B1. Preliminary Design Phase Services - 30% and 60% (60 calendar days)																	
B1.01	Conduct 3 Meetings, Site Visit, and Review Meetings	1	6	2	9	6	6	4		2	\$90						
B1.02	Perform Hydraulic and Hydrology Analysis and Prepare Summary Memo		4		20	4	8	4		2							
B1.03	Prepare 30% Civil Plans (Street, Utilities, Lift Station)		6		12	10	15	28	40	4							
B1.04	Address 30% Review Comments		2		4	2											
B1.05	Prepare 60% Civil Plans (Street, Drainage, Utilities, Lift Station)		8	6	12	20	24	40	60	4							
B1.06	Prepare and Submit 60% Opinion of Probable Construction Cost		2		4	2	2	4									
B1.07	Address 60% Review Comments		2		4	2		4									
B1.08	Utility and Pre-Permitting Agency Coordination		4		2	6	8			2							
B1.09	Perform QA/QC of All Deliverables		8		6			6									
B1.10	Project and Contract Management		4														
B1.11	Written Progress Estimates and Invoicing		2							4							
Totals		1	48	8	73	52	63	90	100	18	\$ 90	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 59,485
B2. Final Design Phase Services - 90%, 100% (60 calendar days)																	
B2.01	Conduct 3 Meetings, Site Visit, and Review Meetings	2	6	1	9	6	6	6		2							
B2.02	Prepare 90% Civil Plans & Technical Specifications		8	4	20	24	40	54	80	8							
B2.03	Prepare Stormwater Pollution Prevention Plan		2		2	4	4		4	2							
B2.04	Prepare and Submit Opinions of Probable Construction Cost		2		2	4	2	4									
B2.05	Address 90% Review Comments		2		4	2		4									
B2.06	Provide 100% Sealed Deliverables for Bidding		4	1	12	8	6	12	6	4							
B2.07	Perform QA/QC of All Deliverables		8		10												
B2.08	Project and Contract Management		4														
B2.09	Written Progress Estimates and Invoicing		2							4							
Totals		2	38	6	59	48	58	80	90	20	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 52,040
B3. Other Services - Permitting and Regulatory																	
B3.01	Prepare & Submit Permitting Information, Respond to Review Comments		4	2	6	8	20	8	10	4	\$120						
B3.02	Prepare & Submit TxDOT UIR Documentation		4		6	2	8		4	2							
Totals		0	8	2	12	10	28	8	14	6	\$ 120	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 11,430
C. Bid-Award-Execution Phase Services (45 calendar days)																	
C1.01	Conduct Pre-Bid Conference and Attend Bid Opening		4		2	8				2	\$50						
C1.02	Address Contractor Questions and Prepare Addenda		8		6	20	10		8	4							
C1.03	Prepare Bid Tabulation and Award Recommendation		2		4	1				3							
C1.04	Written Progress Estimates and Invoicing		2							2							
C1.05	Project Management		2														
Totals		0	18	0	12	29	10	0	8	11	\$ 50.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 12,450
D. Construction Phase Services (5 months assumed)																	
D1.01	Conduct Pre-Construction Conference		3		4		4			2	\$25						
D1.02	Attend Construction Progress Meetings & Site Visits (10 total)		20		28		10			6	\$300						
D1.03	Prepare and Submit Site Visit Observation Reports (10 total)		5		6		5			2							
D1.04	Coordination with City Inspector		3		8		2			2							
D1.05	Review Contractor Submittals		4		12		18			12							
D1.06	Respond to Contractor Requests for Information		6		20		10		8	3							
D1.07	Review and Assist in Negotiation of Change Orders		8		10		8	4	4	2							
D1.08	Review Contractor Progress Payment Applications		4		8		4			2							
D1.09	Conduct Final Inspection and Prepare Punch List		4		4		8			2	\$25						
D1.10	Verify Punch List Items Complete				4		6			2							
D1.11	Project Management and Invoicing		8							5							
Totals		0	65	0	104	0	75	4	12	40	\$ 350.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 43,210
E. Post-Construction Phase Services																	
E1.01	Prepare Record Drawings		2		2		8	2	16	2							
E1.02	Project Management and Invoicing		2							2							
Totals		0	4	0	2	0	8	2	16	4	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 4,010
Total Projected Manhours		1	149	13	210	103	199	108	160	85							
Hourly Rate		\$270.00	\$175.00	\$175.00	\$170.00	\$150.00	\$115.00	\$125.00	\$90.00	\$90.00							
Total Estimated Cost		\$270.00	\$26,075.00	\$2,275.00	\$35,700.00	\$15,450.00	\$22,885.00	\$13,500.00	\$14,400.00	\$7,650.00	\$ 610	\$ 15,800	\$ -	\$ -	\$ -	\$ 2,370	\$ 209,025



2022 SCHEDULE OF HOURLY FEES

Principal	\$270.00/hour
Senior Environmental Planner	\$220.00/hour
Environmental Planner	\$175.00/hour
Senior Aviation Planner	\$220.00/hour
Aviation Planner	\$180.00/hour
Senior Urban Design Planner	\$215.00/hour
Urban Design Planner	\$185.00/hour
Development Services Manager	\$195.00/hour
Electrical Engineer	\$175.00/hour
Electrical Design Engineer	\$145.00/hour
Mechanical Engineer	\$185.00/hour
Senior Project Manager	\$230.00/hour
Project Manager	\$175.00/hour
Senior Project Engineer	\$170.00/hour
Project Engineer	\$150.00/hour
Senior Design Engineer	\$130.00/hour
Design Engineer	\$115.00/hour
Senior Project Architect	\$215.00/hour
Project Architect	\$145.00/hour
Design Architect	\$105.00/hour
GIS Specialist	\$180.00/hour
Senior Engineering Technician	\$195.00/hour
Engineering Technician	\$105.00/hour
Senior Design Technician	\$125.00/hour
Design Technician	\$ 90.00/hour
Safety Manager	\$135.00/hour
Safety Specialist	\$100.00/hour
TCEQ Instructor	\$100.00/hour
Regulation Compliance Specialist	\$100.00/hour
Project Assistant	\$ 90.00/hour
Senior CAD Technician	\$ 90.00/hour
CAD Technician	\$ 85.00/hour
Senior Project Representative	\$110.00/hour
Senior Project Representative - After Hours	\$130.00/hour
Project Representative	\$ 95.00/hour
Project Representative - After Hours	\$115.00/hour
Graphic Designer	\$ 75.00/hour
Administrative Assistant	\$ 75.00/hour
Secretary	\$ 55.00/hour
Three-Man Survey Crew	\$195.00/hour
Two-Man Survey Crew	\$165.00/hour
Senior Registered Surveyor	\$175.00/hour
Registered Surveyor	\$140.00/hour
Senior Survey Technician	\$120.00/hour
Survey Technician	\$100.00/hour
Mileage	\$ 0.56/mile
ATV (4-Wheeler)	\$100.00/day
GPS	\$100.00/day
Reimbursable Expenses (Travel, Lodging, Copies, Printing)	Actual Cost
Outside Consultants	Cost + 15%

NOTE: The Standard Hourly Rates and Reimbursable Expenses Schedule shall be adjusted annually as of January to reflect equitable changes in the compensation payable to Engineer.

LSI Proposal Exhibit

Exhibit "A"

2023 RATE SCHEDULE

Expert Witness	\$175.00 per hour
Registered Professional Land Surveyor	\$80.00 per hour
Surveying Technician	\$ 60.00 per hour
Four Person Field Crew	\$105.00 per hour
Three Person Field Crew	\$95.00 per hour
Two Person Field Crew	\$ 85.00 per hour
One Person Field Crew	\$ 80.00 per hour
Clerical	\$ 45.00 per hour
Delivery	\$ 35.00 per hour

Client will be charged for services provided on a time and material expended basis at the rates set above and for purchased services at the cost of such service plus 10%. Purchased services include reproduction and blueline printing; third party delivery service; document acquisition; telephone; travel and subsistence; miscellaneous fees; and contracted services.



EXECUTIVE SUMMARY

06/15/2023

AGENDA SUBJECT:

Approval of a Resolution authorizing participation in a coalition of similarly situated cities in connection with the Statement of Intent to Change Rate CGS (City Gate Service) and Rate PT (Pipeline Transportation) of Atmos Pipeline—Texas, filed on or about May 19, 2023; authorizing participation in related rate proceedings; authorizing the retention of special counsel; requiring the reimbursement of municipal rate case expenses; finding that the meeting complies with the open meetings act; and making other findings and provisions related to the subject.

BACKGROUND:

Intervention in The Railroad Commission of Texas Proceeding Related To The Statement Of Intent Filed By Atmos Pipeline Texas on or About May 19, 2023 In Case No. 00013758:

The City of Leander is a member of the coalition of cities known as the Atmos Texas Municipalities (ATM). ATM was organized by a number of municipalities served by Atmos Energy Corporation's Mid-Tex Division (Atmos Energy-MidTex) and has been represented by the law firm of Herrera Law & Associates, PLLC to assist in reviewing applications to change rates submitted by Atmos Energy-MidTex.

On about May 19, 2023, Atmos Pipeline Texas (APT or Atmos) submitted a Statement of Intent with the Railroad Commission of Texas to raise Rate CGS (City Gate Service) and Rate PT (Pipeline Transportation). This request represents an increase in revenue of approximately \$119.4 million or a 14.40% increase over current revenues.

The proposed increase directly affects the following firm transportation customers: Atmos Energy Corp., Mid-Tex Division; Co-Serv Gas Ltd.; the City of Rising Star; the City of Navasota; Corix Utilities, Inc.; Terra Gas Supply; Terra Gas Service, Co.; and WTG Marketing, Inc. In addition, there are seventy (70) interruptible customers who take service under Rate PT – Pipeline Transportation and that will be affected by this rate increase request.

It is expected that Atmos MidTex (the distribution gas-utility company) will pass along to its customers APT's proposed increase in rates. Thus, the rates that the City's citizens and businesses, and the City as a consumer of gas-utility services pay Atmos Texas MidTex (the distribution gas-utility company), will likely be affected by APT's proposed rate increase.

On a rate schedule basis, the impact is as follows:

Capacity Charges

Rate Schedule	Current Capacity Charge per MMBtu of MDQ	Proposed Capacity Charge per MMBtu of MDQ	Difference
Rate CGS – Mid-Tex	\$17.96538	\$21.25175	\$3.28637
Rate CGS – Other	\$17.96538	\$21.25175	\$3.28637
Rate PT	\$ 9.80882	\$16.73056	\$6.92174

Rate Schedule	Current Working Gas in Storage Charge	Proposed Working Gas in Storage Charge	Difference
Rate CGS – Mid-Tex	\$0.38317	\$0.54745	\$0.16428

The customer charge in a customer's bill is the "Maximum Daily Quantity" (MDQ), multiplied by the capacity charges shown in the table above.

Usage Charge

	Current Usage	Proposed Usage	
Rate Schedule	Charge per MMBtu	Charge per MMBtu	Difference
Rate CGS – Mid-Tex	\$0.02785	\$0.03253	\$0.00468
Rate CGS – Other	\$0.02785	\$0.03253	\$0.00468
Rate PT	\$0.01325	\$0.01937	\$0.00612

The resulting revenue increase for each class based on the above rates is as follows:

Rate CGS – Mid-Tex - 15.49%;
Rate CGS – Other – 14.92%; and
Rate PT – 64.10%.

APT seeks a Return on Equity (ROE) of 13.5% and a capital structure weighted toward equity – 60.44% Equity and 39.56% Debt, which results in an overall rate of return of 9.73%. More recently, the ROE the Railroad Commission has approved has been materially lower than APT is requesting.

APT also seeks to revise its depreciation rates for its capital assets.

REPRESENTATION

The law firm of Herrera Law & Associates, PLLC (through Mr. Alfred R. Herrera) has previously represented the Atmos Texas Municipalities (ATM) in rate matters involving APT as well as other Texas cities in rate case matters. Thus, the law firm of Herrera Law & Associates, PLLC has substantial experience in rate case matters generally and specifically in dealings with APT and the Railroad Commission of Texas (Commission).

INTERVENTION AT THE RAILROAD COMMISSION OF TEXAS AND COURT PROCEEDINGS, IF ANY

The Railroad Commission of Texas has exclusive jurisdiction over APT's rates. However, cities have a statutory right to intervene in ratemaking proceedings before the Railroad Commission when the rates at issue may have an impact on the City or its residents' rates. APT's increase in rates will be passed on to its "wholesale" customers, including APT's affiliated distribution division, Atmos Energy – MidTex Division. The ATM cities are served by Atmos Energy-MidTex Division. It is important to participate in the Commission's proceedings related to APT's rate application because its final decision will impact rates within the City. Thus, the accompanying Resolution authorizes intervention in proceedings at the Railroad Commission, including any related commission and court proceedings.

RATE CASE EXPENSES

Cities, by statute, are entitled to reimbursement of their reasonable rate case expenses from the utility. Legal counsel and consultants approved by the City will submit monthly invoices to a member ATM City that will be forwarded to APT for reimbursement.

ACTION: INTERVENTION IN THE RAILROAD COMMISSION PROCEEDING PERTAINING TO APT'S RATE CASE

Unlike proceedings brought by gas distribution utilities to increase rates, Texas municipalities do not have jurisdiction over the rates of gas pipeline companies. Under Texas law, the Railroad Commission of Texas has exclusive original jurisdiction over the rates of gas pipeline companies. But cities have a statutory right to intervene in ratemaking proceedings before the Railroad Commission when the rates at issue may have an impact on the City or its residents' rates. Therefore, the City's opportunity to evaluate and affect APT's proposed rate increase is to intervene as a party in the pending APT rate proceeding at the Railroad Commission of Texas.

RECOMMENDATION:

It is recommended that the City authorize intervening in APT's pending rate proceeding at the Railroad Commission as part of the coalition of similarly-situated municipalities known as the Atmos Texas Municipalities (ATM).

It is also recommended that the City retain the law firm of Herrera Law & Associates, PLLC to represent the City's interest in matters related to APT's rate proceeding at the Railroad Commission, including any appeals, and to advise the City with regard to APT's application.

To ensure full participation in the proceedings at the Railroad Commission, it is recommended that the City take action authorizing intervention at its earliest opportunity in order to maximize the benefits of participation as a party in the proceedings at the Railroad Commission. The accompanying Resolution, if adopted:

1. Authorizes intervention in the ratemaking proceedings at the Railroad Commission of Texas and any related proceedings, regarding Atmos Pipeline Texas;
2. Retains the law firm of Herrera Law & Associates, PLLC to represent the City's interest in matters related to APT's rate proceeding; and
3. Directs APT to reimburse ATM's rate-case expenses.

PRESENTER:

Robert G. Powers, Executive Finance Director

Attachments

1. Atmos Rate Case Background
2. Atmos Rate Case Resolution

AGENDA INFORMATION SHEET
ITEM NO. _____

**INTERVENTION IN THE RAILROAD COMMISSION OF TEXAS
PROCEEDING RELATED TO THE STATEMENT OF INTENT FILED
BY ATMOS PIPELINE TEXAS ON OR ABOUT MAY 19, 2023 IN
CAASE NO. 00013758**

BACKGROUND

On about May 19, 2023, Atmos Pipeline Texas (“APT” or “Atmos”) submitted a Statement of Intent with the Railroad Commission of Texas to raise “Rate CGS” (“city gate service”) and Rate PT (“pipeline transportation”). This request represents an increase in revenue of approximately \$119.4 million or a 14.40% increase over current revenues.

The proposed increase directly affects the following firm transportation customers: Atmos Energy Corp., Mid-Tex Division; Co-Serv Gas Ltd.; the City of Rising Star; the City of Navasota; Corix Utilities, Inc.; Terra Gas Supply; Terra Gas Service, Co.; and WTG Marketing, Inc. In addition, there are 70 interruptible customers who take service under “Rate PT – Pipeline Transportation” and that will be affected by this rate increase request.

It is expected that Atmos MidTex (the distribution gas-utility company) will pass along to its customers, APT’s proposed increase in rates. Thus, the rates that the City’s citizens and businesses, and the City as a consumer of gas-utility services pay Atmos Texas MidTex (the distribution gas-utility company), will likely be affected by APT’s proposed rate increase.

On a rate schedule basis, the impact is as follows:

Capacity Charges

Rate Schedule	Current Capacity Charge per MMBtu of MDQ	Proposed Capacity Charge per MMBtu of MDQ	Difference
Rate CGS – Mid-Tex	\$17.96538	\$21.25175	\$3.28637
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The customer charge in a customer's bill is the "Maximum Daily Quantity" ("MDQ"), multiplied by the capacity charges shown in the table above.

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The resulting revenue increase for each class based on the above rates is as follows:

Rate CGS – Mid-Tex - 15.49%;
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Rate PT – 64.10%.

APT seeks a Return on Equity (ROE) of 13.5% and a capital structure weighted toward equity – 60.44% Equity and 39.56% Debt, which results in an overall rate of return of 9.73%. More recently the ROE the Railroad Commission has approved have been materially lower than APT is requesting.

APT also seeks to revise its depreciation rates for its capital assets.

REPRESENTATION

The law firm of Herrera Law & Associates, PLLC (through Mr. Alfred R. Herrera) has previously represented the Atmos Texas Municipalities ("ATM") in rate matters involving APT as well as other Texas cities in rate case matters. Thus, the law firm of Herrera Law & Associates, PLLC has substantial experience in rate case matters generally and specifically in dealings with APT and the Railroad Commission of Texas ("Commission").

INTERVENTION AT THE RAILROAD COMMISSION OF TEXAS AND COURT PROCEEDINGS, IF ANY

The Railroad Commission of Texas has exclusive jurisdiction over APT's rates. However, cities have a statutory right to intervene in ratemaking proceedings before the Railroad Commission when the rates at issue may have an impact on the City or its residents' rates. APT's increase in rates will be passed on to its "wholesale" customers, including APT's affiliated distribution division, Atmos Energy – MidTex Division. The ATM cities are served by Atmos Energy-MidTex Division. It is important to participate in the Commission's proceedings related to APT's rate application because its final decision will impact rates within the City. Thus, the accompanying Resolution authorizes intervention in proceedings at the Railroad Commission including any related commission and court proceedings.

RATE CASE EXPENSES

Cities, by statute, are entitled to reimbursement of their reasonable rate case expenses from the utility. Legal counsel and consultants approved by the City will submit monthly invoices to a member ATM city that will be forwarded to APT for reimbursement.

ACTION: INTERVENTION IN THE RAILROAD COMMISSION PROCEEDING PERTAINING TO APT'S RATE CASE

Unlike proceedings brought by gas distribution utilities to increase rates, Texas municipalities do not have jurisdiction over the rates of gas pipeline companies. Under Texas law, the Railroad Commission of Texas has exclusive original jurisdiction over the rates of gas pipeline companies. But cities have a statutory right to intervene in ratemaking proceedings before the Railroad Commission when the rates at issue may have an impact on the City or its residents' rates. Therefore, the City's opportunity to evaluate and affect APT's proposed rate increase is to intervene as a party in the pending APT rate proceeding at the Railroad Commission of Texas.

RECOMMENDATION

It is recommended that the City authorize intervening in APT's pending rate proceeding at the Railroad Commission as part of the coalition of similarly-situated municipalities known as the Atmos Texas Municipalities (ATM).

It is also recommended that the City retain the law firm of Herrera Law & Associates, PLLC to represent the City's interest in matters related to APT's rate proceeding at the Railroad Commission, including any appeals, and to advise the City with regard to APT's application.

To ensure full participation in the proceedings at the Railroad Commission, it is recommended that the City take action authorizing intervention at its earliest opportunity in order to maximize the benefits of participation as a party in the proceedings at the Railroad Commission.

The accompanying Resolution, if adopted:

1. Authorizes intervention in the ratemaking proceedings at the Railroad Commission of Texas and any related proceedings, regarding Atmos Pipeline Texas;
2. Retains the law firm of Herrera Law & Associates, PLLC to represent the City's interest in matters related to APT's rate proceeding; and
3. Directs APT to reimburse ATM's rate-case expenses.

RESOLUTION NO. _____

**RESOLUTION BY THE CITY OF _____;
AUTHORIZING PARTICIPATION IN A COALITION OF
SIMILARLY SITUATED CITIES IN CONNECTION WITH THE
STATEMENT OF INTENT TO CHANGE RATE CGS AND RATE
PT OF ATMOS PIPELINE—TEXAS FILED ON OR ABOUT MAY
19, 2023; AUTHORIZING PARTICIPATION IN RELATED RATE
PROCEEDINGS; AUTHORIZING THE RETENTION OF
SPECIAL COUNSEL; REQUIRING THE REIMBURSEMENT OF
MUNICIPAL RATE CASE EXPENSES; FINDING THAT THE
MEETING COMPLIES WITH THE OPEN MEETINGS ACT; AND
MAKING OTHER FINDINGS AND PROVISIONS RELATED TO
THE SUBJECT**

WHEREAS, Atmos Pipeline—Texas (“APT”) filed a Statement of Intent with the Railroad Commission of Texas on or about May 19, 2023 to increase Rate CGS and Rate PT; and

WHEREAS, APT plans to increase its revenue requirement by approximately \$119.4 million, representing an increase of approximately 14.40%; and

WHEREAS, the impact on customers, on a rate-schedule basis, is as follows:

Capacity Charges

Rate Schedule	Current Capacity Charge per MMBtu of MDQ	Proposed Capacity Charge per MMBtu of MDQ	Difference	Percentage Increase
Rate CGS (“City Gate Service”) – MidTex	\$9.1275	\$11.24146	\$2.11396	23%
Rate CGS – Other	\$9.1275	\$11.24146	\$2.11396	23%
Rate PT (“Pipeline Transportation”)	\$4.8331	\$7.70001	\$2.86691	59%

The customer charge in a customer’s bill is the “Maximum Daily Quantity” (“MDQ”), multiplied by the capacity charges shown in the table above.

Usage Charge

Rate Schedule	Current Usage Charge per MMBtu	Proposed Usage Charge per MMBtu	Difference	Percentage Increase
Rate CGS – Mid-Tex	\$0.0276	\$0.02785	\$0.00025	1%
Rate CGS – Other	\$0.0276	\$0.02785	\$0.00025	1%
Rate PT	\$0.0163	\$0.01325	(\$0.00305)	-19%

WHEREAS, APT seeks a Return on Equity (ROE) of 13.5%; a capital structure weighted toward equity – 60.44% Equity and 39.56% Debt, which results in an overall rate of return of 9.73%; and

WHEREAS, APT’s rate request consists of a voluminous amount of information including APT’s rate-filing package, exhibits, schedules, and workpapers; and

WHEREAS, in order to maximize the efficient use of resources and expertise in reviewing, analyzing and investigating APT’s rate request and its changes in tariffs it is prudent to coordinate the City’s efforts with a coalition of similarly situated municipalities; and

WHEREAS, the City, in matters regarding applications by APT to change rates, has in the past joined with other local regulatory authorities to form the Atmos Texas Municipalities (“ATM”) and hereby continues its participation in ATM; and

WHEREAS, the City will require the assistance of specialized legal counsel and rate experts to review the merits of APT’s application to increase rates; and

WHEREAS, APT filed a statement of intent to increase rates with the Railroad Commission of Texas, and therefore the decision of the Railroad Commission of Texas will have an impact on the rates paid by the City and its citizens who are customers of APT or of Atmos Energy’s distribution division, MidTex Division, and in order for the

City's participation to be meaningful, it is important that the City promptly intervene in such proceedings at the Railroad Commission of Texas.

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

Section 1. The findings set out in the preamble are in all things approved and incorporated herein as if fully set forth.

Section 2. The City authorizes intervention in proceedings related to APT's Statement of Intent before the Railroad Commission of Texas and related proceedings, including in courts of law, as part of the coalition of cities known as the Atmos Texas Municipalities ("ATM").

Section 3. The City hereby orders APT to reimburse the City's rate case expenses as provided in the Gas Utility Regulatory Act and that APT shall do so on a monthly basis and within 30 days after submission of the City's invoices for the City's reasonable costs associated with the City's activities related to this rate review or to related proceedings involving APT before the Railroad Commission of Texas or any court of law.

Section 4. Subject to the right to terminate employment at any time, the City retains and authorizes the law firm of Herrera Law & Associates, PLLC to act as Special Counsel with regard to rate proceedings involving APT before the Railroad Commission of Texas or any court of law and to retain such experts as may be reasonably necessary for review of APT's rate application subject to approval by the City.

Section 5. The City, or its designee member city in the Atmos Texas Municipalities, shall review the invoices of the lawyers and rate experts for reasonableness before submitting the invoices to APT for reimbursement.

Section 6. A copy of this resolution shall be sent to APT, care of Mr. Jared Geiger, Vice President – Rate & Regulatory Affairs, 5420 LBJ Freeway, Suite 1557, Dallas, Texas, 75240; and to Mr. Alfred R. Herrera, Herrera Law & Associates, PLLC, P.O. Box 302799, Austin, Texas 78703.

Section 7. The meeting at which this resolution was approved was in all things conducted in strict compliance with the Texas Open Meetings Act, Texas Government Code, Chapter 551.

Section 8. This resolution shall become effective from and after its passage.

PASSED AND APPROVED this _____ day of _____, 2023.

Mayor

ATTEST:

City Secretary



EXECUTIVE SUMMARY
06/15/2023

AGENDA SUBJECT:

Approval of a Resolution authorizing the City of Leander to apply for the Capital Area Council of Governments (CAPCOG) Solid Waste-Handling Equipment and Community Collection Event Grant.

BACKGROUND:

The Capital Area Council of Governments (CAPCOG) is requesting applications for solid waste-handling equipment and community collection event projects to support responsible solid waste management in the ten (10)-county CAPCOG region. The projects are intended to support [CAPCOG's Regional Solid Waste Management Plan](#). CAPCOG estimates about \$50,000.00 to \$60,000.00 to be available to local governments through this call for projects. The monies being made available are unallocated funds realized through programmatic savings during the FY 2022-23 biennium (September 1, 2021, to August 31, 2023).

The City of Leander intends to apply for matching CAPCOG grant funds which will be used to purchase a wood chipper for managing vegetative debris consisting of whole trees, tree stumps, tree branches, tree trunks, and other brush material in City parkland areas. When chipped, brush debris can be recycled for use within park trails and landscaped areas managed by the Parks and Recreation Department.

Important deadlines: (1) Applications must be submitted no later than 1:00 p.m. Central Time on Friday, June 16, 2023; (2) All costs must be incurred no later than August 31, 2023; and (3) Vendor payments must be completed no later than September 30, 2023. In addition, each application awarded for funding will require a separate grant contract between CAPCOG and the applicant. The application will constitute the scope of work for the contract, along with any other provisions, such as awarding less than the full amount requested.

Attachments

1. Resolution CAPCOG Grant
2. CAPCOG Call for Projects

A RESOLUTION OF THE CITY OF LEANDER, TEXAS

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING THE CITY OF LEANDER, TEXAS, TO APPLY FOR THE CAPITAL AREA COUNCIL OF GOVERNMENTS (CAPCOG) SOLID WASTE EQUIPMENT AND COLLECTION EVENT GRANT TO SUPPORT RESPONSIBLE SOLID WASTE MANAGEMENT IN THE 10-COUNTY CAPCOG REGION.

WHEREAS, the Capital Area Council of Governments (CAPCOG) is a political subdivision of the State of Texas created under Chapter 391 of the Texas Local Government Code and serves a 10-county region that includes Bastrop, Blanco, Burnet, Caldwell, Fayette, Hays, Lee, Llano, Travis, and Williamson counties; and

WHEREAS, as the state-designated planning agency for solid waste management issues, CAPCOG uses state funds provided by the Texas Commission on Environmental Quality (TCEQ) generated from landfill tipping fees to support eligible solid waste projects that help implement the regional solid waste management plan; and

WHEREAS, CAPCOG is requesting applications from eligible entities to receive Solid Waste-Handling Equipment and Community Collection Event Grant monies made available from unallocated funds realized through programmatic savings during the FY 2022-23 biennium; and

WHEREAS, the City of Leander Parks and Recreation Department manages 400 acres of parkland comprised of 14 city-owned parks, city-owned building and median landscapes, a public library, a public golf course, and a variety of public greenbelt and trail areas throughout the city; and

WHEREAS, the City of Leander intends to apply for matching Grant funds to purchase solid-waste handling equipment, which will be used to manage vegetative debris consisting of whole trees, tree stumps, tree branches, tree trunks, and other brush material.

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

Leander City Council approves of the City's application submission for a CAPCOG Solid Waste-Handling Equipment and Community Collection Event Grant in Fiscal Year 2023.

DULY PASSED AND APPROVED this the 15th day of June, 2023.

CITY OF LEANDER, TEXAS

Christine DeLisle, Mayor

ATTEST:

Dara Crabtree, City Secretary



CAPITAL AREA COUNCIL OF GOVERNMENTS SOLID WASTE EQUIPMENT AND COLLECTION EVENT CALL FOR PROJECTS

June 2, 2023

General

The Capital Area Council of Governments (CAPCOG) is requesting applications from local governmental entities for \$10,000 - \$25,000 in grant funding for solid waste-handling equipment and community collection events to support responsible municipal solid waste management in CAPCOG's 10-County region. CAPCOG is a Regional Planning Commission and a political subdivision of the State of Texas created under Chapter 391 of the Texas Local Government Code and serves a 10-county region that includes Bastrop, Blanco, Burnet, Caldwell, Fayette, Hays, Lee, Llano, Travis, and Williamson counties. CAPCOG receives funding from the Texas Legislature through the Texas Commission on Environmental Quality (TCEQ) to conduct and implement a regional solid waste management plan (RSWMP), which these projects are intended to support. CAPCOG's current RSWMP is available online at: <https://www.capcog.org/divisions/community-economic-development#solid-waste>. CAPCOG estimates that a total of approximately \$50,000 - \$60,000 will be available through this call for projects. Eligible projects not funded through this call for projects may be given priority consideration for CAPCOG Solid Waste funding in the 2024-2025 biennium.

Eligible Projects

The only two types of projects that will be funded under this call for projects are:

1. Equipment that is used exclusively for solid waste related activities that can be ordered by August 31, 2023; and
2. Community collection events that can be completed by August 31, 2023.

Eligible Entities

The following types of entities located in the CAPCOG region are eligible to apply for funding:

1. Municipalities;
2. Counties;

3. Public schools and school districts (not including Universities or post-secondary educational institutions); and
4. Other general and special law districts with the authority and responsibility for water quality protection or municipal solid waste management, including river authorities.

Timeline

The funding for these projects is for the 2022-2023 biennium, which covers September 1, 2021 – August 31, 2023, and under CAPCOG’s grant agreement with TCEQ, there are two important deadlines that will affect eligibility of any projects to be reimbursed with this funding:

1. All costs must be incurred no later than August 31, 2023, and
2. Payment to any vendors must be completed no later than September 30, 2023.

For the purposes of this call for projects, this means that a purchase order for equipment must be issued to a vendor no later than August 31, 2023, or a collection event must occur by August 31, 2023, and the vendor must be paid for any equipment or collection event no later than September 30, 2023.

The following timeline represents the major milestones for this call for projects.

Table 1. Call for Projects Timeline

Milestone	Date(s)
Call for Projects Issued	6/2/2023
Deadline for E-mail Notice of Intent to Apply and Deadline for Questions	6/9/2023, 5:00 pm Central Time
Response to Questions Posted Online	6/12/2023
Application Deadline	6/16/2023, 1:00 pm Central Time
Private Industry Review Window Begins	6/16/2023, 4:00 pm Central Time
Deadline to Submit Resolution (if applicable)	6/22/2023, 5:00 pm Central Time
Private Industry Review Window Closes	6/23/2023, 4:00 pm Central Time
CAPCOG Sends Selected Projects to TCEQ for Review	6/23/2023, 5:00 pm Central Time
Anticipated Completion of TCEQ Approval	6/30/2023
Anticipated Contract Execution Dates	7/10/2023 – 7/21/2023
Due Date for Issuing Equipment Purchase Order or Conducting Collection Event	8/31/2023
Due Date for Paying Vendors	9/30/2023
Due Date for Billing CAPCOG	11/30/2023

Submission of an Intent to Apply E-mail

CAPCOG is requesting that applicants submit an initial e-mail by 5:00 pm on 6/9/2023, indicating an intent to apply. This e-mail should indicate the following information:

1. Entity name;
2. Project type (equipment or collection event);
3. Approximate funding request (between \$10,000 and \$25,000).

While not required, this information will be important for CAPCOG to determine whether we expect to have enough funding requested to fully use the funding we expect to be available. Submit an e-mail of intent to kmay@capcog.org and rpatterson@capcog.org with a subject line “Intent to Apply for Solid Waste Funding.”

Submission of Applications

Applications must be submitted via e-mail to kmay@capcog.org and rpatterson@capcog.org, including all attachments, no later than 1:00 pm Central Time on Friday, June 16, 2023.

Initial Screening

In accordance with the terms of CAPCOG's contract with TCEQ, CAPCOG is required to complete a preliminary screening of applications following the application due date. This screening is intended to ensure the following:

1. The application must be complete, and all application requirements and procedures followed.
2. The proposed project must conform to eligible standards, eligible recipient standards, and allowable expense and funding standards, as established by TCEQ and the COG and under all applicable laws and regulations.
3. The applicant must agree to document the results of the project as required by the COG.
4. The proposed project must be technically feasible, and there must be reasonable expectation that the proposed project can be satisfactorily completed within the required timeframe.
5. The proposed project activities and expenses must be reasonable and necessary to accomplish the goals and objectives of the project. One factor in determining the reasonableness of expenses shall be whether comparable costs are proposed for comparable goods and services.
6. The proposed project must be consistent with CAPCOG's RSWMP and must directly support implementation of the regional plan.

CAPCOG staff will complete an initial screening of all applications as they are received and may provide feedback to the applicant if the application is incomplete or has material errors that would preclude consideration if applications are received prior to the deadline.

Project Selection Criteria

There are four factors that will be used to select eligible projects for funding that will be considered in the following order:

1. The type of project (equipment projects will be prioritized ahead of collection events);
2. Whether the applicant already received CAPCOG solid waste funding this biennium (applicants that have not yet received funding will be prioritized ahead of collection events);
3. How quickly the project can be completed (applicants that can commit to completing projects sooner will be prioritized ahead of projects than applicants that can only commit to meeting the maximum allowable deadlines); and
4. Applicants providing a cash match will be prioritized over applicants that are not.

For example:

- City X did not receive funding this biennium and applies for equipment funding;
- County Y did receive funding this biennium and applies for equipment funding;
- County Z did not receive funding this biennium and applies for collection event funding;
- City X's application would take priority over County Y's application since City X had not already been awarded funding, but County Y's application takes priority over County Z because County Y's project is equipment.

The following entities were awarded funding in the 2023-2024 biennium and would be prioritized below a new grant applicant within each of the project type categories:

- Blanco County;
- Burnet County;
- Caldwell County;
- Lee County;
- Llano County;
- Fayette County;
- City of Buda;
- City of Creedmoor;
- City of Granite Shoals; and
- City of Pflugerville.

CAPCOG plans to award the full amount requested from each grant applicant until the total available has been awarded. Partial or contingent funding may be awarded to any project that would cause the total amount awarded for all projects to exceed the total available. The final amount that project may be eligible to receive will be based on the final remaining amount after CAPCOG completes its accounting for costs as of August 31, 2023, in mid-September. Eligible projects that are not selected for funding this biennium may be given priority consideration for funding in the FY 2024-2025 biennium.

Private Industry Review

In accordance with TCEQ's Administrative Procedures for the FY 2022-2023 Regional Solid Waste Program, CAPCOG is required to notify private industry solid waste service providers in writing at least seven (7) days prior to the beginning of the period that applications will be available for public review. Applicants will be notified of any objections and have an opportunity to resolve any issues. Private industry objections to any applications must be received in writing no later than 4:00 pm, June 23, 2023.

TCEQ Review and CAPCOG Final Approval of Grants

CAPCOG staff will submit the projects recommended for funding to TCEQ for approval. Once complete, CAPCOG's Executive Director will execute grant contracts for each project approved by TCEQ.

Questions and Amendments

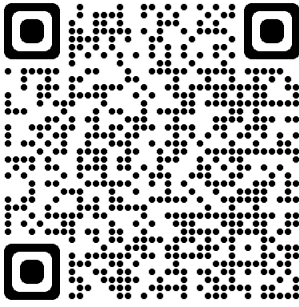
If you have any questions about this call for projects submit your question(s) to Ken May at Kmay@capcog.org no later than Friday, June 9, 2023, at 5:00 pm. CAPCOG will post responses and any amendments on our website at <https://www.capcog.org/what-we-do/funding-grants/solid-waste/> as they are received, with a final response to questions posted by 5:00 pm Monday, June 12, 2023.

Related Documents

The following documents are associated with this call and applicants should review these documents prior to applying for a grant.

- *CAPCOG 582-22-30110-TCEQ-COG-RSWG-Executed.pdf*, the interlocal agreement between TCEQ and CAPCOG, which includes a number of provisions that will pass through to any grant recipients.
- *FY 22-23 Regional Solid Waste Program Administrative Procedures-I.pdf*, TCEQ administrative procedures document for FY 2022-2023 solid waste grants program.
- Results_Follow-Up Report.xlsx – form that will be used to report results to CAPCOG.

All of these files, along with any Q&A documents and addenda, will be posted online at: <https://www.capcog.org/what-we-do/funding-grants/solid-waste/>



GRANT CONTRACTS

Each application awarded funding will require a separate grant contract between CAPCOG and the applicant. The application will constitute the scope of work for the contract, along with any other provisions, such as awarding less than the full amount requested. Among other provisions, the contracts will include the following provisions:

- Grant funding will be provided on a reimbursement basis only, and all requests for reimbursement must be handled through the COG.
- Grant recipients will be required to submit reimbursement requests for reimbursement upon completion of the project.
- Grant recipients must agree to provide data related to the results of the project to the COG and/or the TCEQ. As appropriate to the project, the grant recipient will also be asked to commit to monitoring the results of the project beyond the grant term, and periodically provide the COG and/or the TCEQ additional reports on the status of the project.
- Grant recipients must agree to allow staff of the COG and/or the TCEQ to perform on-site visits to monitor the progress of projects.
- All Terms and Conditions, including compliance with TCEQ's Administrative Procedures, identified in CAPCOG's contract with TCEQ will be fully enforced in all pass-through recipient contracts. A copy of these Terms and Conditions and TCEQ's Administrative Procedures are available on CAPCOG's Solid Waste website.



EXECUTIVE SUMMARY
06/15/2023

AGENDA SUBJECT:

Approval of purchase from Motorola Solutions, Inc. for ten (10) Police Department hand-held radios and ancillary services and equipment in the amount of \$81,300.00 and ten (10) Police Department in-car radios and ancillary services and equipment in the amount of \$69,405.60; rescind prior City Council action taken on April 20, 2023, and authorize the City Manager to execute any and all necessary documents.

BACKGROUND:

On April 20, 2023, City Council approved the purchase of ten (10) hand-held radios and ancillary services and equipment in the amount of \$60,503.50 and nine (9) in-car radios and ancillary services and equipment in the amount of \$53,230.77 from Motorola Solutions, Inc. for the Police Department as provided for in the Adopted FY 22-23 Budget.

Subsequent to City Council approval, the Police Department was recently notified that Combined, Transportation, Emergency Communication Center (CTECC) is upgrading the Greater Austin/ Travis Regional Radio System (GATRRS) system and changing the encryption system-wide by January 2024. This will affect all agencies within Williamson and Travis counties on the system and will require the Police Department to upgrade its radios to the new encryption in order for agencies to talk to each other. The requested change increases the cost by \$36,971.33; from \$113,734.27 to \$150,705.60.

Changing the encryption from ADP (Advanced Digital Privacy) to AES (Advanced Encryption Standard) on Motorola radios can have several important benefits:

1. **Enhanced Security:** AES is considered more secure than ADP encryption. It provides a higher level of encryption, making it harder for unauthorized individuals to intercept and decode sensitive communications. Upgrading to AES can help protect sensitive information and ensure that only authorized personnel can access the encrypted communications.
2. **Compliance with Government Regulations:** In certain industries or government sectors, there may be specific regulations or standards that require the use of AES encryption for secure communications. Upgrading to AES can help ensure compliance with these regulations and avoid potential penalties or legal issues.
3. **Interoperability:** AES encryption is widely adopted and supported across various communication systems and platforms. By transitioning to AES, you can improve interoperability and compatibility with other agencies or organizations that also use AES encryption. This can be particularly crucial in emergency response situations or when collaborating with other jurisdictions.
4. **Future-Proofing:** ADP encryption has been in use for quite some time, and its security may become increasingly vulnerable to new hacking techniques or advancements in technology. Upgrading to AES encryption, which is more robust and widely accepted, can help future-proof your radio communications and provide a higher level of security in the long term.

In addition, the Police Department also learned that its current radio models (APX 6000) are coming to an end of life in 2024. When a Motorola APX 6000 radio reaches its end-of-life (EOL) status, it means that Motorola has discontinued manufacturing and support for that particular model. Here's what it typically entails:

1. Discontinuation of Manufacturing: Motorola ceases the production of new APX 6000 radios. This means that you will no longer be able to purchase brand-new units directly from Motorola or authorized resellers.
2. Limited or No Support: Motorola may reduce or completely end technical support, repairs, and replacement parts for the APX 6000 radios. This can make it challenging to maintain or repair the devices in case of damage or malfunction.
3. Software and Firmware Updates: Motorola may stop releasing software updates, bug fixes, or new features for the APX 6000 radios. This means that you won't receive the latest enhancements or improvements to the device's functionality or security.
4. Transition to Newer Models: Motorola typically encourages users to transition to newer radio models that offer enhanced features, better performance, and ongoing support.

The Police Department believes it to be in the best interest of the City to cancel the order approved at the April 20, 2023 City Council meeting for radios and request City Council approval for the newer model radios with the new AES encryption installed, which has the added benefit of longer Motorola support. The Police Department is requesting approval to purchase ten (10) mobile in-car radios and ten (10) portable (handheld) radios.

RECOMMENDATION:

Request Approval.

PRESENTER:

Greg Minton, Chief of Police

Fiscal Impact

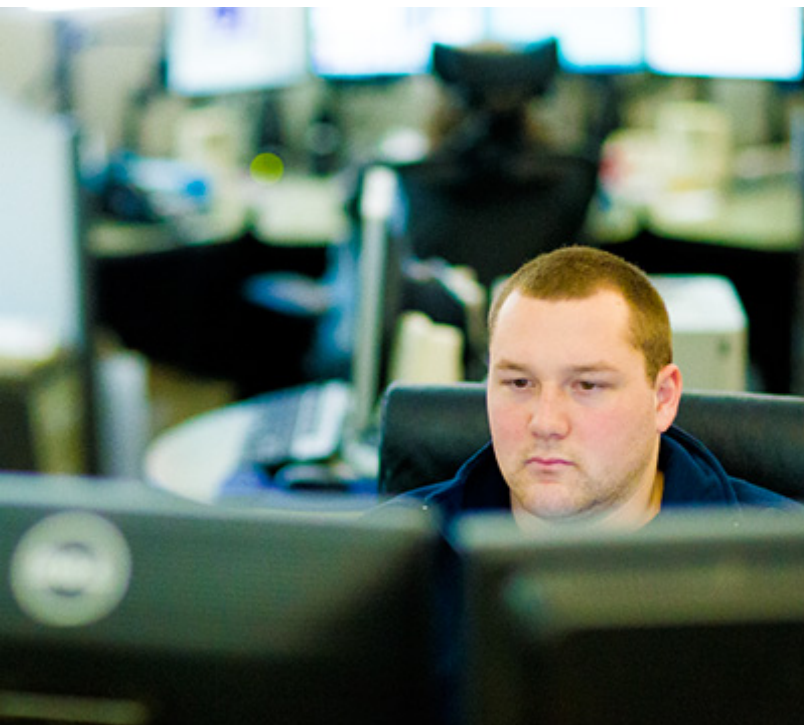
Amount requested: \$81,300.00
Approved in current budget (Yes / No): Yes
Expenditure (New / Amended): Amended
Recurring or one-time: one-time
Fund source (Operating / Utility / etc.): General Fund / Police

Amount requested: \$20,821.68
Approved in current budget (Yes / No): Yes
Expenditure (New / Amended): New
Recurring or one-time: one-time
Fund source (Operating / Utility / etc.): Vehicle Reserve 14-41-7000

Amount requested: \$48,583.92
Approved in current budget (Yes / No): Yes
Expenditure (New / Amended): Amended
Recurring or one-time: one-time
Fund source (Operating / Utility / etc.): General Fund / Police

Attachments

1. Mobile Radios (10)
2. Portable Radios (10)



LEANDER POLICE DEPT

06/07/2023

06/07/2023

LEANDER POLICE DEPT
P O BOX 319
LEANDER, TX 78641

Dear Jackson Mitchell,

Motorola Solutions is pleased to present LEANDER POLICE DEPT with this quote for quality communications equipment and services. The development of this quote provided us the opportunity to evaluate your requirements and propose a solution to best fulfill your communications needs.

This information is provided to assist you in your evaluation process. Our goal is to provide LEANDER POLICE DEPT with the best products and services available in the communications industry. Please direct any questions to Gene Aicher at gene.aicher@bearcom.com.

We thank you for the opportunity to provide you with premier communications and look forward to your review and feedback regarding this quote.

Sincerely,

Gene Aicher
Sr Account Manager

Motorola Solutions Manufacturer's Representative

Billing Address:
LEANDER POLICE DEPT
P O BOX 319
LEANDER, TX 78641
US

Quote Date:06/07/2023
Expiration Date:08/01/2023
Quote Created By:
Gene Aicher
Sr Account Manager
gene.aicher@bearcom.com
5129645510

End Customer:
LEANDER POLICE DEPT
Jackson Mitchell
jmittchell@leandertx.gov
512-528-2804

Line #	Item Number	Description	Qty	Sale Price	Ext. Sale Price
	APX™ 6500 / Enh Series	ENHANCEDAPX6500			
1	M25URS9PW1BN	APX6500 ENHANCED 7/800 MHZ MOBILE	10	\$2,469.68	\$24,696.80
1a	G831AD	ADD: SPKR 15W WATER RESISTANT	10	\$48.18	\$481.80
1b	G996AS	ENH: OVER THE AIR PROVISIONING	10	\$80.30	\$803.00
1c	HA00694AA	ADD: 7Y ESSENTIAL SERVICE HTM	10	\$604.80	\$6,048.00
1d	GA00580AA	ADD: TDMA OPERATION	10	\$361.35	\$3,613.50
1e	G51AU	ENH: SMARTZONE OPERATION APX6500	10	\$963.60	\$9,636.00
1f	G67DT	ADD: REMOTE MOUNT E5 APXM	10	\$238.71	\$2,387.10
1g	G843AH	ADD: AES ENCRYPTION AND ADP	10	\$381.79	\$3,817.90
1h	GA01580AA	ADD: COVERT GNSS GLASSMOUNT LMR100	10	\$56.21	\$562.10
1i	G444AH	ADD: APX CONTROL HEAD SOFTWARE	10	\$0.00	\$0.00
1j	G806BL	ENH: ASTRO DIGITAL CAI OP APX	10	\$413.91	\$4,139.10
1k	GA01767AG	ADD: RADIO AUTHENTICATION	10	\$80.30	\$803.00



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Motorola Solutions, Inc.: 500 West Monroe, United States - 60661 ~ #: 36-1115800

Line #	Item Number	Description	Qty	Sale Price	Ext. Sale Price
1l	GA01670AA	ADD: APX E5 CONTROL HEAD	10	\$523.41	\$5,234.10
1m	W22BA	ADD: STD PALM MICROPHONE APX	10	\$57.67	\$576.70
1n	W969BG	ADD: MULTIKEY OPERATION	10	\$264.99	\$2,649.90
1o	G174AD	ADD: ANT 3DB LOW-PROFILE 762-870	10	\$34.31	\$343.10
1p	G361AH	ENH: P25 TRUNKING SOFTWARE APX	10	\$240.90	\$2,409.00
1q	GA09008AA	ADD: GROUP SERVICES	10	\$120.45	\$1,204.50

Grand Total **\$69,405.60(USD)**

Notes:

- Unless otherwise noted, this quote excludes sales tax or other applicable taxes (such as Goods and Services Tax, sales tax, Value Added Tax and other taxes of a similar nature). Any tax the customer is subject to will be added to invoices.





Purchase Order Checklist

Marked as PO/ Contract/ Notice to Proceed on Company Letterhead
(PO will not be processed without this)

PO Number/ Contract Number

PO Date

Vendor = Motorola Solutions, Inc.

Payment (Billing) Terms/ State Contract Number

Bill-To Name on PO must be equal to the *Legal* Bill-To Name

Bill-To Address

Ship-To Address (If we are shipping to a MR location, it must be documented on PO)

Ultimate Address (If the Ship-To address is the MR location then the Ultimate Destination address must be documented on PO)

PO Amount must be equal to or greater than Order Total

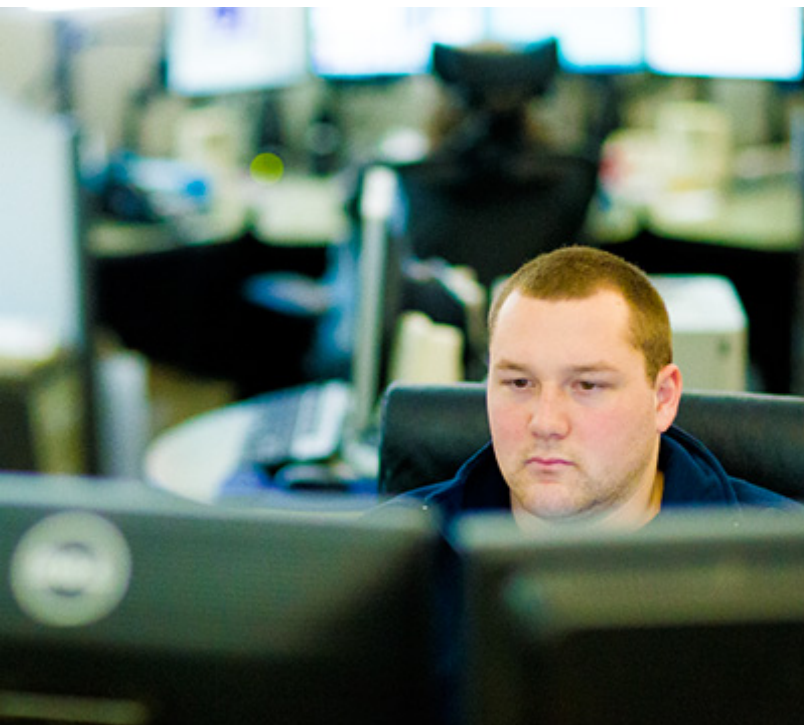
Non-Editable Format (Word/ Excel templates cannot be accepted)

Bill To Contact Name & Phone # and EMAIL for customer accounts payable dept

Ship To Contact Name & Phone #

Tax Exemption Status

Signatures (As required)



LEANDER POLICE DEPT

06/07/2023

06/07/2023

LEANDER POLICE DEPT
P O BOX 319
LEANDER, TX 78641

Dear Jackson Mitchell,

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We thank you for the opportunity to provide you with premier communications and look forward to your review and feedback regarding this quote.

Sincerely,

Gene Aicher
Sr Account Manager

Motorola Solutions Manufacturer's Representative

Billing Address:
LEANDER POLICE DEPT
P O BOX 319
LEANDER, TX 78641
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Quote Date:06/07/2023
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Quote Created By:
Gene Aicher
Sr Account Manager
gene.aicher@bearcom.com
5129645510

End Customer:
LEANDER POLICE DEPT
Jackson Mitchell
jmittchell@leandertx.gov
512-528-2804

Summary:

Any sales transaction resulting from Motorola's quote is based on and subject to the applicable Motorola Standard Terms and Conditions, notwithstanding terms and conditions on purchase orders or other Customer ordering documents. Motorola Standard Terms and Conditions are found at www.motorolasolutions.com/product-terms.

Line #	Item Number	Description	Qty	Term	Sale Price	Ext. Sale Price
	APX™ N70	APX N70				
1	H35UCT9PW8AN	APX N70 7/800 MODEL 4.5 PORTABLE	10		\$3,660.22	\$36,602.20
1a	QA09017AA	ADD: LTE WITH ACTIVE SERVICE AT&T US	10		\$0.00	\$0.00
1b	QA09030AA	ADD: MOTOROLA HOSTED RADIOCENTRAL W CPS*	10		\$0.00	\$0.00
1c	H637AB	ADD: RADIO CENTRAL PROGRAMMING PROMO CARVE OUT+	10		-\$32.04	-\$320.40
1d	H636AA	ADD: APX N70 APPLICATION BUNDLE PROMO+	10		-\$300.00	-\$3,000.00
1e	H638EB	ADD: N70 SMART LOCATE MAPPING TRIAL PROMO+	10		-\$56.00	-\$560.00
1f	BD00001AA	ADD: CORE BUNDLE	10		\$2,267.38	\$22,673.80
1g	H499KC	ENH: SUBMERSIBLE (DELTA T)	10		\$0.00	\$0.00



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Motorola Solutions, Inc.: 500 West Monroe, United States - 60661 ~ #: 36-1115800

Line #	Item Number	Description	Qty	Term	Sale Price	Ext. Sale Price
1h	H38DA	ADD: SMARTZONE OPERATION	10		\$0.00	\$0.00
1i	Q173CA	ADD: SMARTZONE OMNILINK	10		\$0.00	\$0.00
1j	Q361CD	ADD: P25 9600 BAUD TRUNKING	10		\$0.00	\$0.00
1k	Q806CH	ADD: ASTRO DIGITAL CAI OPERATION	10		\$0.00	\$0.00
1l	QA00580BA	ADD: TDMA OPERATION	10		\$0.00	\$0.00
1m	QA09001AM	ADD: WIFI CAPABILITY	10		\$0.00	\$0.00
1n	QA03399AK	ADD: ENHANCED DATA	10		\$0.00	\$0.00
1o	Q387CB	ADD: MULTICAST VOTING SCAN	10		\$0.00	\$0.00
1p	QA09028AA	ADD: VIQI VC RADIO OPERATION	10		\$0.00	\$0.00
1q	BD00010AA	ADD: SECURITY BUNDLE	10		\$746.79	\$7,467.90
1r	H797DW	ENH: DVP-XL ENCRYPTION AND ADP	10		\$0.00	\$0.00
1s	Q15AK	ADD: AES/DES-XL/DES-OFB ENCRYPTION AND ADP	10		\$0.00	\$0.00
1t	QA01767BL	ADD: P25 LINK LAYER AUTHENTICATION	10		\$0.00	\$0.00
1u	Q498BN	ENH: ASTRO 25 OTAR W/ MULTIKEY	10		\$0.00	\$0.00
2	LSV01S03060A	APX N70 DMS ESSENTIAL	10	7 YEARS	\$432.43	\$4,324.30
3	SSV01P01685B	ELIGIBLE FOR PROMO - CC AWARE STARTER+	10	1 YEAR	\$56.00	\$560.00
4	SSV01P01407B	SMARTPROGRAMMING PROMO+	10	1 YEAR	\$75.00	\$750.00
5	SSV01P01406A	SMARTCONNECT PROMO+	10	1 YEAR	\$75.00	\$750.00
6	SSV01P01476A	SMARTLOCATE PROMO+	10	1 YEAR	\$75.00	\$750.00
7	SSV01P01408B	VIQI VIRTUAL PARTNER PROMO+	10	1 YEAR	\$75.00	\$750.00
8	PMNN4816A	BATT IMPRES 2 LIION IP68 3200T	10		\$169.13	\$1,691.30



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Motorola Solutions, Inc.: 500 West Monroe, United States - 60661 ~ #: 36-1115800

Line #	Item Number	Description	Qty	Term	Sale Price	Ext. Sale Price
9	LSV01P03092A	RADIOCENTRAL PROGRAMMING PROMO	10	1 YEAR	\$32.04	\$320.40
10	LSV01S03082A	RADIOCENTRAL PROGRAMMING	10	4 YEARS	\$128.16	\$1,281.60
11	PSV00S01424A	APX NEXT PROVISIONING*	1		\$0.00	\$0.00
12	PSV01S02942A	VIRTUAL PARTNER ENABLEMENT	1		\$0.00	\$0.00
13	PSV01S02940A	SMARTMAPPING ENABLEMENT	1		\$0.00	\$0.00
14	PSV01S02941A	SMARTMESSAGING ENABLEMENT	1		\$0.00	\$0.00
15	SSV01P01902A	SMARTMAPPING PROMO+	10	1 YEAR	\$75.00	\$750.00
16	SSV01P01901A	SMARTMESSAGING PROMO+	10	1 YEAR	\$75.00	\$750.00
17	PMMN4142A	XVP730 REMOTE SPEAKER MICROPHONE NO CHANNEL KNOB, FOR APX N RADIOS	10		\$364.50	\$3,645.00
18	PMPN4604A	CHARGER,CHGR DESKTOP SINGLE UNIT IMPRES 2 EXT US	10		\$155.36	\$1,553.60
19	RLN4941A	REC ONLY EARPIECE W/ TRANSLUCET TUBE	10		\$56.03	\$560.30

Grand Total **\$81,300.00(USD)**



Pricing Summary

	Sale Price	
Upfront Costs for Hardware, Accessories and Implementation (if applicable), plus Subscription Fee	\$76,311.86	\$0.00
Year 2 Subscription Fee	\$938.16	\$0.00
Year 3 Subscription Fee	\$938.16	\$0.00
Year 4 Subscription Fee	\$938.16	\$0.00
Year 5 Subscription Fee	\$938.16	\$0.00
Year 6 Subscription Fee	\$617.76	\$0.00
Year 7 Subscription Fee	\$617.76	\$0.00
Grand Total System Price	\$81,300.00	\$0.00

Notes:

- Additional information is required for one or more items on the quote for an order.

+ Promotional pricing for 1 year Application Service trial.

Motorola's quote (Quote Number: _____ Dated: _____) is based on and subject to the terms and conditions of the valid and executed written contract between Customer and Motorola (the "Underlying Agreement") that authorizes Customer to purchase equipment and/or services or license software (collectively "Products"). If no Underlying Agreement exists between Motorola and Customer, then the following Motorola's Standard Terms of use and Purchase Terms and Conditions govern the purchase of the Products which is found at <http://www.motorolasolutions.com/msi/omterms>.

The Parties hereby enter into this Agreement as of the Effective Date.

Motorola Solutions, Inc.

Customer

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____



- Unless otherwise noted, this quote excludes sales tax or other applicable taxes (such as Goods and Services Tax, sales tax, Value Added Tax and other taxes of a similar nature). Any tax the customer is subject to will be added to invoices.



APX N70 PORTABLE RADIO SOLUTION DESCRIPTION

OVERVIEW

The APX N70 offers affordable, next generation communications for without compromising P25 interoperability or voice and data quality. It offers a durable design with “pick-up-and-go” functionality, optimizing ease-of-use and focused communications in almost all environments.

DURABLE AND EASY TO USE

The APX N70 enhances operations with a full color transfective glass display with touch technology for easy operation with gloves on. The touchscreen includes a high velocity user interface with large touch targets, shallow menu hierarchy, home screen information at a glance, and access to integrated apps. Additionally, the N70 offers extended battery life, a shorter antenna, and Bluetooth compatibility with audio accessories, promoting efficient communications between first responders.

ESSENTIAL AND SECURE P25 COMMUNICATIONS

The APX N70 is certified compliant with P25 standards and supports digital and analog trunking, FDMA and TDMA, and Integrated Voice and Data. P25 communications over the N70 are safe and secure—it offers software and hardware encryption, single- and multi key encryption, and P25 Authentication, protecting communications during daily operations.



Reliable Connectivity

Using the APX N70 lets first responders stay connected across disparate networks. It can be equipped with LTE, Wi-Fi®, Bluetooth®, and GPS features, bringing future-ready applications, services, and best-in-class connectivity to everyday users. APX N70 radios support 7/800 MHz frequency bands across radio systems with minimal intervention by the radio user.

Managing and Provisioning Devices

APN N70 provides users greater awareness and faster radio management through Customer Programming Software (“CPS”), Radio Management (“RM”), or the Radio Central programming. These tools transform accurate data into smarter action by enabling dispatchers and network managers to keep radios in the field, make informed operational decisions, and, above all, protect first responders' focus and safety.

Customer Programming Service

CPS is a proprietary, Windows-based application used to configure APX subscriber radios in offline situations. The CPS application offers drag-and-drop, clone-wizard, and basic import/export functions that allow for the addition of new



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software and feature enhancements. APX N radios can be programmed one-at-a-time on a local PC, via secure USB port connection, with TLS-PSK based encryption. Once loaded, subscriber radios are read, and edited, and copdeplugs and templates can be saved and duplicated to program other fleet radios.

Radio Management

Batch Programming is available through the RM software for simultaneous programming and upgrading throughout the radio fleet. With Batch Programming, up to 16 radios can be programmed at once over a Wi-Fi connection. This reduces programming time and ensures that the radio fleet is always up-to-date and ready-to-use in the field.

Device Management Services

Device Management Services (“DMS”) packages provide programming, management, and maintenance services to maximize the effectiveness of this APX N70 solution, while reducing maintenance risk, workload, and total cost of ownership. DMS tackles a range of customer needs, whether the solution is self-maintained or managed by Motorola Solutions.

Using Motorola Solutions’ cloud-based Radio Central Programming, APX N70 supports faster provisioning and deployment to get devices in the hands of first responders and out into the field. Parameters such as talk groups, interface options, and security keys can be programmed remotely within minutes. The DMS package provides access to batch programming with Radio Central Programming or one-at-a-time basic programming with Customer Programming Service, described below.

Radio Central

Radio Central Programming streamlines the APX N70 out-of-the-box experience with a few simple steps. Users will power on the device and view a boot-up animation. Status bar icons on the front display indicate when a connection is made and an update download is initiated. If the APN N70 device is being started for the first time, a “peek-in” device management notification will indicate that the default configuration is detected. When the update download is complete, the device reboots and installs the update. When the install is complete, the device goes back to the full home screen and notifies the user that the update is complete. From power on to provisioning, the process takes less than a minute. For Encryption and Authentication users, a KVL needs to be connected to the radio to use those services.

APX N70 also features Touchless Key Provisioning (“TKP”), leveraging Radio Central and Key Management Facility to add encryption keys remotely. This streamlined, one-time process reduces the time and effort spent enabling encryption. TKP delivers the initial encryption keys to APN N70 radios. Users can provision encryption on one radio or on batches of radios, further speeding up the encryption process for radio fleets.

The figure below illustrates APX N70's faster provisioning process.



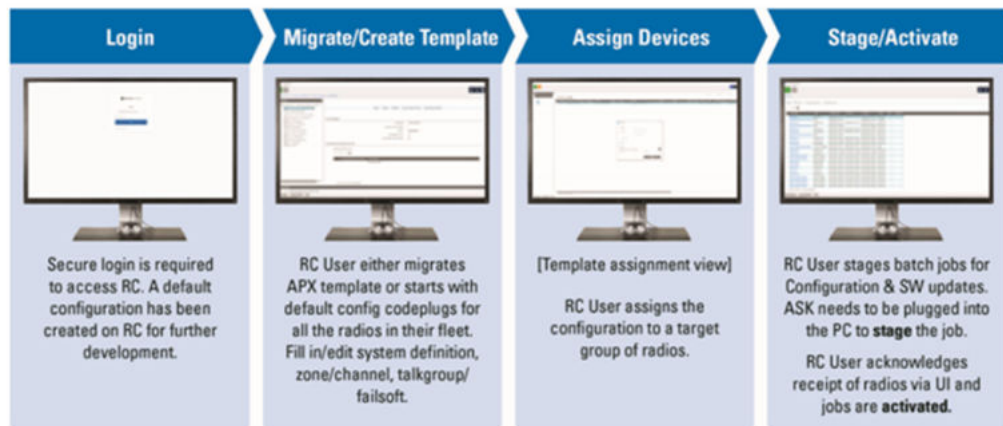


Figure 1: APX N70 Provisioning via Radio Central

EVOLVING WITH APPLICATION SERVICES

APX N70 gives first responders access to mobile features through the following application services described below.

ViQi VIRTUAL PARTNER

APX N70 maintains situational awareness and first responder safety through natural operation. This outcome is achieved through ViQi™ Virtual Partner—a cloud-based service that provides public safety information via voice. With a single button press and audio prompt, first responders can use natural language to access a variety of actions, from changing channels, zones, profiles and device volume, to scanning and canceling commands.

Virtual Partner uses artificial intelligence to interpret voice queries and deliver results in an audible format. This empowers users to submit queries with the radio without the risk of losing situational awareness while typing a manual query. This also allows first responders to receive critical information faster than relaying a query to dispatchers. The APX N70 radio will leverage either Land Mobile Radio (“LMR”) or supported broadband networks to send queries and return responses.

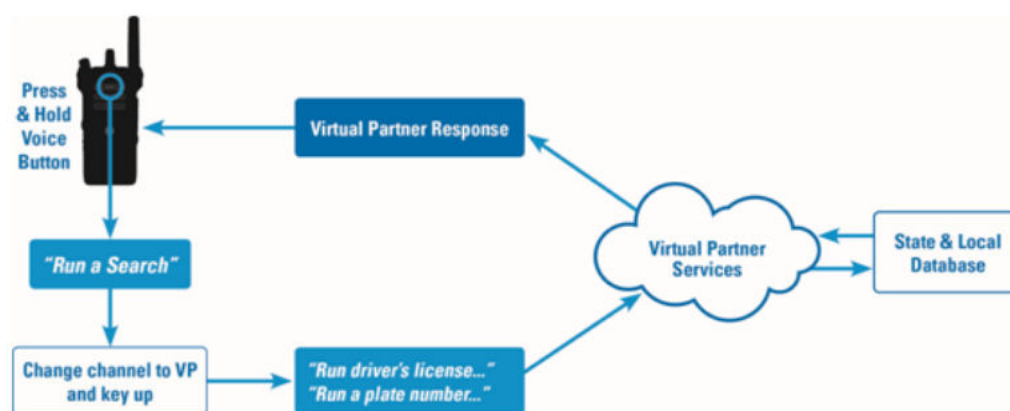


Figure 2: ViQi Virtual Partner Voice Control Process

SMARTCONNECT APPLICATION SERVICES



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SmartConnect allows first responders to access critical intelligence no matter where the mission takes them. It keeps first responders connected and maintains critical LMR features through a broadband connection. By seamlessly switching between P25 LMR and LTE cellular networks, SmartConnect extends reliable Push-to-talk (“PTT”) communications as users roam onto supported broadband networks. Authentication, status, talkgroups, and encryption are all preserved automatically, without interruptions or resets to ensure that first responders continue to have access to the critical features they need in dangerous situations.



Figure 3: APX N70 SmartConnect Network Elements

SMARTLOCATE APPLICATION SERVICES

The SmartLocate application sends GPS location information of first responders over a broadband network. This enables dispatchers to track field units more frequently and improve resource deployment. With Dynamic Mode, SmartLocate can dynamically switch from LTE to P25 to continue sending location reports, without requiring the user to change inputs. This fallback capability provides an extra layer of reliability and enhances location tracking to build an effective operating picture as situations evolve. The use of broadband increases the frequency of location reporting beyond an LMR system to allow for a higher number of users without LMR infrastructure capacity limitations.

SmartLocate also enhances location information accuracy using nearby cell-towers and Wi-Fi access points. This leads to more accurate device tracking and improved location performance when a user moves indoors or enters marginal conditions (such as deep street canyons or forested areas).

SmartLocate integrates with CommandCentral Aware to provide location triggers such as time, distance, PTT, emergency, and accelerated cadence during emergency.

The SmartLocate Application Service is proposed as a subscription-based model that optimizes budget and scales to meet evolving needs. SmartLocate provides enhanced capabilities to existing investments in CommandCentral Aware. Access to CommandCentral Aware is not included with the SmartLocate subscription.

Note - Dynamic Mode requires IMW and a cloud connector on the P25 system.

SMARTPROGRAMMING APPLICATION SERVICES



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Leveraging DMS and Radio Central provisioning capabilities, the SmartProgramming application allows radios to be updated anywhere within an agency's local LTE network coverage area. APX N70 devices do not need to be tied to a computer via USB cable, limited to Wi-Fi network coverage, or gated by LMR bandwidth. SmartProgramming allows the APX N70 device to take advantage of LTE broadband data speeds to pull programming jobs from Radio Central Programming devices in minutes.

The SmartProgramming Application Service is proposed as a subscription-based model to optimize budget and scale to meet evolving needs.

SMARTMAPPING APPLICATION SERVICES

The SmartMapping application provides precise and accessible location information of field units to inform response and improve situational awareness. The application displays this data on the APX N70's modernized map interface. Users can see their own location and the location/status of other crew members at a glance and immediately tap to communicate with them. Users can access SmartMapping directly from the APX N70 home screen, making it easier to leverage the map display in fast-paced situations.

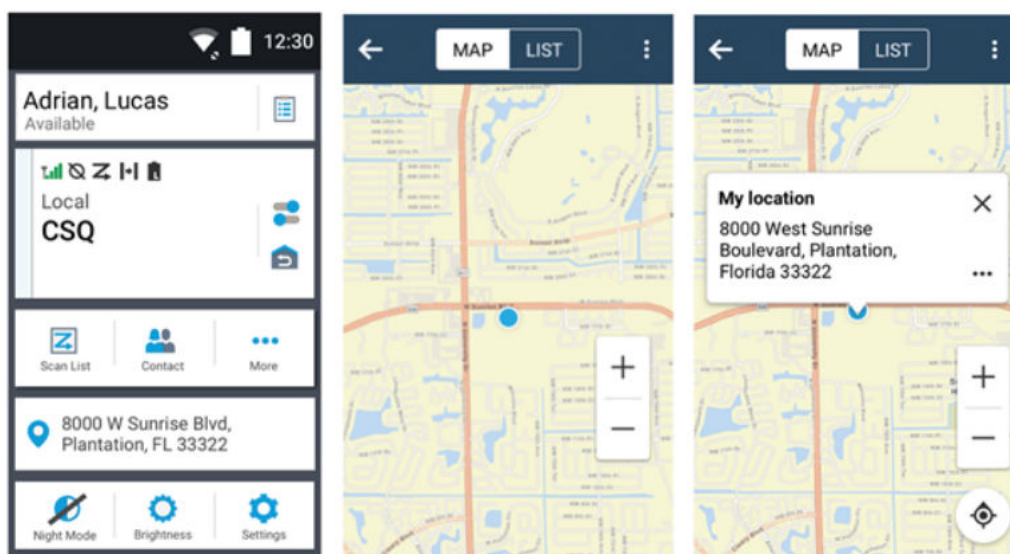


Figure 4: SmartMapping Widget, Map View, and Location Pop-Up Display (Left to Right)

SmartMapping also provides the following capabilities for APX N70 first responders:

- Search for specific users to communicate with using accessible, on-screen navigation and search tools.
- Select map layers to get a different area view, including Street View, Terrain, or Satellite Image.
- Adapt to changing agency needs as new integrations and capabilities are introduced for the SmartMapping application.

SMARTMESSAGING APPLICATION SERVICES

SmartMessaging is an application service that allows APX N70 first responders to seamlessly and discreetly share multimedia communications over a Broadband connection. This helps offload traffic from mission-critical LMR networks while enhancing public safety capabilities. From the APX N70 home screen, users can send more detailed multimedia messages, with image, video, or audio file attachments, to enhance situational awareness and improve response success.



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An enhanced search and history functionality is available for users to easily access previous messages by name, content, and time range, helping them find specific information when needed.

SmartMessaging also supports the following capabilities:

- Receive "Be On the Lookout" ("BOLO") images or first-on-scene images, videos, locations, and audio from a WAVE dispatch application sent to an APX N70 first responders or predefined groups.
- Send text messages to an individual or group of contacts to provide all necessary users with updated intelligence.
- Secure communications with encrypted messaging data from an APX N70 device to the server.
- Adapt to changing agency needs as new integrations and collaboration tools become available for the SmartMessaging application.



APX N-SERIES DEVICE MANAGEMENT SERVICES - ESSENTIAL STATEMENT OF WORK

OVERVIEW

Device Management Services ("DMS") efficiently maintains the Customer's device fleet while helping to keep devices up-to-date and fully operational in the field.

DMS Essential services provide basic hardware and software support.

This Statement of Work ("SOW"), including all of its subsections and attachments is an integral part of the applicable agreement ("Agreement") between Motorola Solutions, Inc. ("Motorola Solutions") and Customer ("Customer").

In the event of a conflict between the terms and conditions of the Agreement and the terms and conditions of this SOW, this SOW will control as to the inconsistency only. The SOW applies to the device specifically named in the Agreement.

HARDWARE REPAIR

Hardware Repair provides repair coverage for internal and external device components that do not work in accordance with published specifications. Repair services are performed at a Motorola Solutions-operated or supervised facility. The device will be repaired to bring it to compliance with its specifications, as published by Motorola Solutions at the time of delivery of the original device.

For malfunctioning devices that must be replaced, Motorola Solutions will attempt to read the codeplugs from those devices. If successful, Motorola Solutions will load the codeplug to any replacement devices. If not, Motorola Solutions will load a factory codeplug, and the Customer will need to load the previous codeplug.

Motorola Solutions will load factory available firmware to any replacement devices, which may not match the Customer's firmware version.

MOTOROLA SOLUTIONS RESPONSIBILITIES

- Repair or replace malfunctioning device, as determined by Motorola Solutions.
- Complete repair or replacement with a turnaround time of five business days in-house, provided the device is delivered to the repair center by 9:00 a.m. (local repair center time). Turnaround time represents the time a product spends in the repair process, and does not include time in transit to and from the Customer's site. Business days do not include US holidays or weekends.
- If applicable, apply periodically-released device updates, in accordance with an Engineering Change Notice.
- Provide two-way air shipping when a supported Motorola Solutions electronic system, such as MyView Portal, is used to initiate a repair. A shipping label will be generated via the electronic system.

CUSTOMER RESPONSIBILITIES

- For non-contiguous renewals, Customer must provide a complete list, preferably in electronic format, of all hardware serial numbers to be covered under the Agreement to Motorola Solutions.
- Initiate device repairs, as needed.
 - When initiating a repair via a supported Motorola Solutions electronic system, label each package correctly with the shipping label and Return Material Authorization ("RMA") number generated by the electronic system.
 - When initiating a repair via paper Return Material Form ("RMF"), the RMF must be completed for each device, included in the package with the device, and shipped to the Motorola Solutions depot specified on the RMF.



- Remove any data or other information from the device that the Customer wishes to destroy or retain prior to sending the device for repair.
- If a malfunctioning device must be replaced and the Customer has loaded information for that device to Motorola Solutions' cloud environment, the Customer will need to remove the information for the malfunctioning device and add information for the replacement device to the applicable cloud environment.

LIMITATIONS AND EXCLUSIONS

The Customer will incur additional charges at the prevailing rates for any activities that are not included or are specifically excluded from this service scope, as described below. Motorola Solutions will notify the Customer and provide a quotation of any incremental charges related to such exclusions prior to completing the repair and said repair will be subject to Customer's acceptance of the quotation.

- Replacement of consumable parts or accessories, as defined by product, including but not limited to batteries, cables, and carrying cases.
- Repair of problems caused by:
 - Natural or manmade disasters, including but not limited to internal or external damage resulting from fire, theft, and floods.
 - Third-party software, accessories, or peripherals not approved in writing by Motorola Solutions for use with the device.
 - Using the device outside of the product's operational and environmental specifications, including improper handling, carelessness, or reckless use.
 - Unauthorized alterations or attempted repair, or repair by a third party.
- Non-remedial work, including but not limited to administration and operator procedures, reprogramming, and operator or user training.
- Problem determination and/or work performed to repair or resolve issues with non-covered products. For example, any hardware or software products not specifically listed on the service order form are excluded from service.
- File backup or restoration.
- Completion and test of incomplete application programming or system integration if not performed by Motorola Solutions and specifically listed as covered.
- Accidental damage, chemical or liquid damage, or other damage caused outside of normal device operating specifications, except if optional Accidental Damage Coverage was purchased.
- Cosmetic imperfections that do not affect the functionality of the device.
- Software support for unauthorized modifications or other misuse of the device software is not covered.

Motorola Solutions is not obligated to provide support for any device that has been subject to the following:

- Repaired, tampered with, altered or modified (including the unauthorized installation of any software) — except by Motorola Solutions authorized service personnel.
- Subjected to unusual physical or electrical stress, abuse, or forces or exposure beyond normal use within the specified operational and environmental parameters set forth in the applicable product specification.
- If the Customer fails to comply with the obligations contained in the Agreement, the applicable software license agreement, and Motorola Solutions terms and conditions of service.

DEVICE TECHNICAL SUPPORT

Motorola Solutions' Device Technical Support service provides telephone consultation for device and accessory issues. Support is delivered through the Motorola Solutions Centralized Managed Support Operations ("CMSO") organization by a staff of technical support specialists.

For Device Technical Support, Motorola Solutions will respond to calls within two (2) hours during the support days. Support hours are 7 a.m. to 7 p.m. CST Monday through Friday, excluding US holidays. In addition, Customers may



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contact the Call Management Center (800-MSI-HELP) at any time (24 hours a day, seven days a week) and a Motorola Solutions representative will log a technical request in Motorola Solutions Case Management System on the Customer's behalf.

MOTOROLA SOLUTIONS RESPONSIBILITIES

- Provide technical support for devices, assessing and troubleshooting reported issues.
- Receive and log Customer support requests, and assign a technical representative to respond to a Customer incident per the defined timeframes.

CUSTOMER RESPONSIBILITIES

- Use the provided methods to contact Motorola Solutions technical support.
- Provide sufficient information to allow Motorola Solutions technical support agents to diagnose and resolve Customer issues.
- Provide contact information for field service technicians in the event that Motorola Solutions has to follow up.

LIMITATIONS AND EXCLUSIONS

- Device support does not include Land Mobile Radio ("LMR") network, Wi-Fi, and LTE network troubleshooting.

Software Maintenance

Motorola Solutions is continually developing new features and functionality for our portfolio of public-safety-grade radios. By purchasing software maintenance, the Customer can take advantage of these firmware releases and future-proof their communications investment.

MOTOROLA SOLUTIONS RESPONSIBILITIES

- Test all firmware releases to minimize software defects.
- Announce new firmware releases and post release notes in a timely manner via MyView Portal.
- Provide firmware updates. Motorola Solutions makes no guarantees as to the frequency or timing of firmware updates.
- Provide upgrade capability through supported Programming Tools.
- Provide programming and service tools and technical support through the firmware support window.
- Provide documentation via MyView Portal with each release detailing new features, bug fixes, and any known issues.

CUSTOMER RESPONSIBILITIES

- Periodically check MyView Portal for firmware update announcements.
- Keep the radio fleet updated with firmware versions within the support window.

MyView Portal Access

MyView Portal is the single location to track the status of subscriptions and service contracts, including start and end dates. This portal includes order, RMA, and technical support ticket status, as well as a consolidated download site for software and documentation.

Outside of pre-announced maintenance periods, MyView Portal will be available on a best effort 24/7 basis. Motorola Solutions cannot guarantee the availability of Internet networks outside of our control.



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MOTOROLA SOLUTIONS RESPONSIBILITIES

- Provide a web accessible, secure portal to view the Customer's data.
- Provide the Customer with login credentials for the site.
- Provide end-user training for the site.
- Provide technical support to answer end user questions between the hours of 8 a.m. to 5 p.m. CST Monday through Friday, excluding US holidays.
- Keep the site updated with the latest Customer information.

CUSTOMER RESPONSIBILITIES

- Provide Motorola Solutions with contact information for administrative users.
- Administer user access.
- Provide Internet access for users to access the site.
- Attend available MyView Portal training.
- Protect login information against unauthorized use.
- Provide Motorola Solutions with updated equipment information, as needed.





Purchase Order Checklist

Marked as PO/ Contract/ Notice to Proceed on Company Letterhead
(PO will not be processed without this)

PO Number/ Contract Number

PO Date

Vendor = Motorola Solutions, Inc.

Payment (Billing) Terms/ State Contract Number

Bill-To Name on PO must be equal to the *Legal* Bill-To Name

Bill-To Address

Ship-To Address (If we are shipping to a MR location, it must be documented on PO)

Ultimate Address (If the Ship-To address is the MR location then the Ultimate Destination address must be documented on PO)

PO Amount must be equal to or greater than Order Total

Non-Editable Format (Word/ Excel templates cannot be accepted)

Bill To Contact Name & Phone # and EMAIL for customer accounts payable dept

Ship To Contact Name & Phone #

Tax Exemption Status

Signatures (As required)



EXECUTIVE SUMMARY
06/15/2023

AGENDA SUBJECT:

Discuss and consider appointment of Council Director and Citizen Director to the Board of Directors of the Brushy Creek Regional Utility Authority (BCRUA) with terms expiring June 30, 2023.

BACKGROUND:

The Bylaws of the Brushy Creek Regional Utility Authority (BCRUA) provide that the term of office of all BCRUA Directors is two (2) years, with all current Directors' terms expiring on July 1, 2021. The Council Director must be the Mayor or a member of the City Council, while the Citizen Director may be the Mayor, a member of the City Council, a City Staff member, a resident of the City, or a water customer of the City.

Councilmember Na'Cole Thompson previously served as the Council Director and Jason Anderson as the Citizen Director.

RECOMMENDATION:

Staff requests the appointment or reappointment of a Council Director and a Citizen Director to represent the City of Leander on the Board of Directors of the BCRUA with their terms expiring on June 30, 2023.

PRESENTER:

Dan Grimsbo, Executive Director of Infrastructure



EXECUTIVE SUMMARY
06/15/2023

AGENDA SUBJECT:

Discuss and consider action on repealing Ordinance No. 20-010-00, which adopted a limited wastewater capacity reservation policy; providing findings of fact; providing a savings, effective date, and open meetings clauses; and providing for related matters.

BACKGROUND:

Ordinance No. 20-010-00, approved by City Council on February 20, 2020, created a policy to allow developers under certain circumstances to secure wastewater capacity for residential and commercial demands. Reservations of capacity by policy have been determined by number of Living Unit Equivalents (LUEs).

On February 24, 2020, Bruce Nakfoor requested a reservation for 200 LUEs and Right-of-First-Refusal of 100 LUEs for the wastewater line accepted by the City in 2019, which extends from San Gabriel Parkway through US 183 near its intersection with Toll 183A to an 11.7-acre property known as the Nak's Crossing PUD. This wastewater line is part of a TIRZ Development and Reimbursement Agreement approved by Council on August 16, 2018. The City Engineer approved an application by Nakfoor for the reservation of 200 LUEs on April 14, 2020, as well as an additional 100 LUEs on March 16, 2021. On June 4, 2021, Nakfoor and Nakfoor FM 276 Investors LLC assigned 177 LUEs to Monarch Residential Developer LLC. Since a plat was recorded on the property, per policy, the 177 reservations remain in effect until June 30, 2025. On February 10, 2023, Nakfoor and Nakfoor FM 276 Investors LLC assigned 30 LUEs to Sweetwater Investments LLC. Since a plat was not recorded on the property, per policy, 23 of the 30 reservations expired April 14, 2023.

Today, several Wastewater Capacity Reservation Policy limitations which require careful monitoring by Staff include the tracking of reservation counts, expirations, and plats of associated properties. If additional property owners choose to participate in this policy in the future, tracking of reservations across new wastewater lines and locations throughout the City's wastewater system could significantly complicate Staff's ability to properly manage it.

It is also unclear why LUEs were used by previous Staff as a basis for the policy. Today, Staff uses a combination of criteria other than LUEs to determine wastewater line sizes and placement in conjunction with Texas Commission on Environmental Quality (TCEQ) and City of Austin standards. These criteria include, but are not limited to, a project's desired location in proximity to existing or anticipated infrastructure, estimated average and peak flows by development type, estimated inflow and infiltration volumes, minimum and maximum slopes, etc.

Like other Texas municipalities, the City of Leander criteria for wastewater system design comply with the standards outlined in Texas Administrative Code, Chapter 217. Sizes and grades for wastewater mains are still determined by the City Engineer, and consideration is made with respect to possible extensions for future development. No wastewater main, other than laterals and force mains, can be less than eight inches (8") in diameter, and in most cases, wastewater mains are sized and extended through the limits of a development to serve adjacent properties.

Staff recommends Ordinance No. 20-010-00 be repealed. As of today, only three entities hold LUE reservations for wastewater line capacity, and all are located near the intersection of US 183 and Toll 183A. Based on recent calculations and assumptions of the existing 8-inch wastewater line affecting all three reservation holders, Staff has determined there is adequate capacity to serve both existing and known anticipated projects seeking wastewater service today. If future developments warrant consideration of additional capacity, the City will review options for infrastructure expansion at that time.

If repealed, Ordinance 20-010-00 remains in effect for persons who deposited with the City a wastewater reservation fee prior to the effective date of this Ordinance only for the number of LUEs reserved by the deposit, provided that no additional reservation fees will be required after the property for which a reservation fee was paid is finally platted and any final plat expiration periods have passed. No additional LUEs may be reserved. If a person fails to post additional reservation fees when required by the Ordinance, the Ordinance shall no longer be in effect after return of the fees.

Attachments

1. Repeal Ordinance
2. Ordinance 20-010-00

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF LEANDER, TEXAS REPEALING ORDINANCE NO. 20-010-00, WHICH ADOPTED A LIMITED WASTEWATER CAPACITY RESERVATION POLICY; PROVIDING FINDINGS OF FACT; PROVIDING A SAVINGS, EFFECTIVE DATE, AND OPEN MEETINGS CLAUSES; AND PROVIDING FOR RELATED MATTERS.

WHEREAS, the City of Leander, Texas ("City) adopted Ordinance No. 20-010-00 to allow for the reservation of capacity in wastewater infrastructure under certain circumstances; and

WHEREAS, the City has determined that the Ordinance is no longer necessary;

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LEANDER:

Section 1. Findings of Fact. All of the above premises and recitations are found to be true and correct and are incorporated into the body of this Ordinance as findings of fact, as if copied herein in their entirety.

Section 2. Ordinance Repealed. Ordinance No. 20-010-00 is hereby repealed.

Section 3. Savings. The Ordinance remains in effect for persons who deposited with the City a wastewater reservation fee prior to the effective date of this Ordinance only for the number of LUE's reserved by the deposit, provided that no additional reservation fees will be required after the property for which a reservation fee was paid is finally platted and any final plat expiration periods have passed. No additional LUE's may be reserved. If a person fails to post additional reservation fees when required by the Ordinance, the Ordinance shall no longer be in effect after return of the fees.

Section 4. Effective Date. This Ordinance shall take effect immediately from and after its passage.

Section 5. Open Meetings. It is hereby officially found and determined that the meeting at which this Ordinance is passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act, Chapt. 551, Tex. Gov't. Code.

PASSED AND APPROVED on this 15th day of June, 2023.

Attest:

THE CITY OF LEANDER, TEXAS

Dara Crabtree City Secretary

Christine DeLisle, Mayor

AN ORDINANCE OF THE CITY OF LEANDER, TEXAS

ORDINANCE NO. 20-010-00

AN ORDINANCE OF THE CITY OF LEANDER, TEXAS,
ADOPTING A LIMITED WASTEWATER CAPACITY
RESERVATION POLICY; PROVIDING A SEVERABILITY
CLAUSE; PROVIDING A SAVINGS CLAUSE; AND
DECLARING AN EFFECTIVE DATE.

WHEREAS, the City of Leander is a home rule municipality incorporated under the authority of Article XI, Section 5 of the Texas Constitution; and

WHEREAS, the City Council has determined that there are circumstances in which it is appropriate to provide a tool to allow developers to secure wastewater capacity for residential and commercial demands; and

WHEREAS, the City Council has determined that adopting wastewater capacity reservation regulations as provided herein in order to ensure the public health and promote growth and development is in the best interest of the City.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LEANDER, TEXAS:

SECTION 1. Findings. The foregoing recitals are hereby found to be true and correct and are hereby adopted by the City Council and made a part hereof for all purposes as findings of fact.

SECTION 2. Adoption of Wastewater Capacity Reservation Policy. The Wastewater Capacity Reservation Policy attached hereto as Exhibit "A" is hereby adopted.

SECTION 3. Severability. Should any section, clause, or provision of the Policy be declared by a court of competent jurisdiction to be invalid, the same shall not affect the validity of this ordinance or any other ordinance of the City as a whole or any part thereof, other than the part so declared to be invalid.

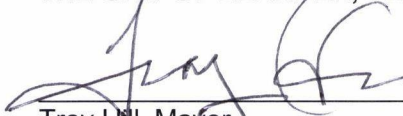
SECTION 4. Effective Date. This Ordinance shall be in force and effect from and after its passage on the date shown below.

SECTION 5. Open Meetings. It is hereby officially found and determined that the meeting at which this ordinance is passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act, *Chapt. 551, Tex. Gov't. Code*.

PASSED AND APPROVED on this 20 day of February, 2020.

THE CITY OF LEANDER, TEXAS

ATTEST:


Troy Hill, Mayor




Dara Crabtree, City Secretary

EXHIBIT A
Wastewater Capacity Reservation Policy

Section 1. Generally.

- (a) The City Manager or designee is authorized and directed to establish and administer a system for reserving capacity in wastewater facilities to serve proposed development. Such system shall include a method of tracking the wastewater facilities subject to an approved reservation application and the property for which capacity is reserved that is accessible to departments that approve building permits, site plans, or other approvals that result in capacity in the wastewater facilities being used.
- (b) A property owner may submit a reservation application to the City Engineer on the forms prescribed by the City. The application must be accompanied by the fee determined in the City's fee schedule and must contain substantially the following information:
 - (1) An adequate legal description of the proposed property and a map or sketch detailing the geographical location of the property.
 - (2) The number of existing buildings. The number of square feet within each of the existing buildings. The usage of each existing building (i.e., multifamily residence, office building, shop building, retail center, etc.).
 - (3) An explanation of the proposed construction projects and type of occupancies contemplated (i.e., number of square feet and types of lease- occupancies, etc.).
 - (4) Copies of all wastewater capacity reservations associated with the property.
 - (5) Copies of any agreements applicable to the property, including development agreements with the City and agreements with third parties that address use of or installation, construction, or extension of wastewater facilities for the property.
 - (6) Identification of wastewater facilities in which the applicant seeks to reserve capacity.
 - (7) Any other information reasonably requested by the City Engineer and necessary or useful to the City Engineer in performing a utility availability determination.

Section 2. Issuance of wastewater capacity reservations.

- (a) Upon receipt of a completed application and the fee set forth in the City's fee schedule, the City Engineer shall determine whether the application meets the requirements for issuance of a wastewater capacity reservation. In order for an applicant to qualify for issuance of a wastewater capacity reservation the City Engineer must determine:

-
- (1) That the applicant has constructed and installed or will construct and install, at the applicant's expense, the wastewater line that is the subject of the wastewater capacity reservation application.
 - (2) That the proposed development will comply with applicable state and federal laws and regulations and written City policies which apply to the proposed development and City utility service.
 - (3) That there is sufficient unused and unreserved capacity available in the wastewater line the applicant has constructed and installed or proposes to construct and install to meet the utility service requirements of the proposed development.
 - (4) That utility service at the level required by the proposed development would not be in excess of any existing restrictions imposed.
 - (5) That the applicant owns the property for which the wastewater capacity reservation is sought.
 - (6) That the capacity reservation will not be contrary to or contradict the terms of any agreements to which the City is a party.
 - (7) That the capacity reservation is consistent with the City's master wastewater plans and plans for the areas to be served by the wastewater facilities that are the subject of the application.
 - (8) That granting the applicant will not interfere with the orderly extension of the City's wastewater system.
- (b) If, upon completion of the determination, the City Engineer concludes that the application meets all the requirements for issuance of a wastewater capacity reservation, then the City Engineer shall then calculate the wastewater capacity fee and issue a wastewater capacity reservation to the applicant conditioned upon payment of those fees prior to the date of issuance. The City Engineer may impose special conditions on the wastewater capacity reservation as provided in Section 5(b) below. In addition to any conditions imposed by the City Engineer, wastewater capacity reservations are subject to the conditions set forth in Section 5(a). If, upon completion of the determination, the City Engineer concludes that the application does not meet one or more of the requirements for issuance of a wastewater capacity reservation, then the City Engineer shall deliver to the applicant a denial notice which shall describe the results of the determination and specifically detail the reasons for the denial.

Section 4. Wastewater capacity reservation fee.

- (a) The applicant shall pay a wastewater capacity reservation fee in the amount of five percent (5%) of the wastewater impact fee in effect at the time of conditional approval of the application. Failure to pay the fee within 30 calendar days shall cause the

application and approval of the application to expire.

- (b) The fee does not constitute assessment of the impact fees for the property or the proposed development. The impact fees shall be assessed at such time set forth in the City's impact fee ordinance and applicable state law.
- (c) The reservation fee shall be credited against the impact fees for the development of the property[PS1].
- (d) If a wastewater capacity reservation expires, the reservation fee shall be returned to the applicant. Applicants shall maintain current contact information on file with the City Secretary's and City Engineer's Office at all times that a wastewater capacity reservation is in effect.

Section 5. Terms, conditions, and limitations of reservations.

- (a) Wastewater capacity reservations are subject to the following terms, conditions, and limitations:
 - (1) A wastewater capacity reservation shall represent a commitment of the City subject to the regulatory actions of the state and federal governments, the applicable rules and regulations of the City and the terms and conditions contained in this policy and in the wastewater capacity reservation itself, to reserve capacity in wastewater facilities to serve a proposed development so that utility service will be available upon completion of the buildings or other structures contained in the proposed development. A wastewater capacity reservation is applicable only to the tracts, lots or subdivisions listed therein. A wastewater capacity reservation which is issued on the basis of an application which contains materially false information shall be void.
 - (2) A wastewater capacity reservation shall remain in effect for a period not to exceed three (3) years in length. At the end of the three (3) year term, the wastewater capacity reservation will expire unless a plat has been recorded with the city and appropriate county. Once a plat has been recorded, the wastewater capacity reservation will remain in effect for an additional three (3) year term. At the end of that additional three year term, the capacity reservation will expire unless building permits have been obtained for the buildings and/or property for which the wastewater capacity reservation was made.
 - (3) Wastewater capacity reservations shall not be transferred to another property or another party.
 - (4) An application filed under this policy does not constitute a permit for the purposes of Chapter 245, Texas Local Government Code.
 - (5) If a property within the gravity only wastewater connection service area of the wastewater line, excluding any force main connection, and in which an applicant has reserved capacity develops more quickly than the applicant's property and there is not sufficient capacity in the line to serve both the applicant and the new

project, the City will give notice to the applicant that the applicant has the option to: (i) release all or a portion of the capacity reservation and have the appropriate amount of reservation fee refunded; or (ii) pay the full amount of the impact fee to continue to hold the reservation. The applicant shall respond to the notice within 30 calendar days. Failure to respond within 30 calendar days shall constitute an election to release the reservation, and the applicant's fees shall be refunded. If the application elects to continue to hold the reservation, the balance of wastewater fees owed shall be paid within 30 calendar days of the City's notice. A new separately owned property project is deemed to develop more quickly than the applicant's property when development applications requesting use of the reserved capacity in the wastewater line are submitted to the City[PS2].

(b) The City Engineer may impose additional conditions on a wastewater capacity reservation as follows:

- (1) Upon the occurrence of some future event if the City Engineer determines that after the occurrence of that event the proposed development would be qualified for issuance of a wastewater capacity reservation. Events upon which a wastewater capacity reservation may be conditioned include, without limitation, the completion and acceptance of an accelerated project in which the applicant is participating in the costs of construction, or the construction of a wastewater line extension by the applicant.
- (2) Completion of certain stages of development within specific timeframes, if the City Engineer determines that the wastewater capacity reservation is necessary for the immediate development or redevelopment of property, but will not overload the City's wastewater collection and transportation system.

Section 6. Severability. Should any section, clause, or provision of the Policy be declared by a court of competent jurisdiction to be invalid, the same shall not affect the validity of this ordinance or any other ordinance of the City as a whole or any part thereof, other than the part so declared to be invalid.