

AGENDA FOR THE KERRVILLE CITY COUNCIL MEETING

TUESDAY, JUNE 11, 2024, 6:00 P.M.

CITY HALL COUNCIL CHAMBERS

701 MAIN STREET, KERRVILLE, TEXAS

The Community Vision

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

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



Kerrville2050



CITY COUNCIL MEETING AGENDA
JUNE 11, 2024 6:00 PM
CITY HALL, 701 MAIN STREET, KERRVILLE, TEXAS



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

Citizens may view and hear City Council meetings on Spectrum Channel 2 or by live-stream via the City's website (www.kerrvilletx.gov). City Council meetings are recorded and the recordings are posted on the City's website. Citizens wishing to speak during a meeting shall submit a completed "speaker request form" to the City Secretary before the item is introduced, but are encouraged to submit the form before the meeting begin. Each speaker is limited to four minutes.

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

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

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

Thank you for your participation!

CALL TO ORDER: By Mayor Joe Herring, Jr.

INVOCATION AND PLEDGE OF ALLEGIANCE: Led by Councilmember Place 3 Kent McKinney

1. **ANNOUNCEMENTS OF COMMUNITY INTEREST:** Announcement of items of community interest, including expressions of thanks, congratulations, or condolences; information regarding holiday schedules; honorary recognitions of city officials, employees, or other citizens; reminders about upcoming events sponsored by the city or other entity that is scheduled to be attended by city officials or employees; and announcements involving imminent threats to the public health and safety of the city. No action will be taken.

2. **PRESENTATIONS:**

- 2.A Proclamation recognizing June 2024 as Great Outdoors Month in Kerrville, Texas. (Mayor J. Herring)
- 2.B Commendation of Recognition: Texas Municipal Clerk Association - Office of Achievement of Excellence award. (Mayor J. Herring)

3. **VISITORS/CITIZENS FORUM:** Any citizen with business not scheduled on the agenda may speak to the City Council. Prior to speaking, each speaker must fill out the speaker request form and give it to the City Secretary. The speaker request form must be submitted to the City Secretary before the item is called or read into record. City Council may not discuss or take any action on an item but may place the issue on a future agenda. Each speaker is limited to four minutes.

4. **CONSENT AGENDA:** These items are considered routine and can be approved in one motion unless a Councilmember asks for separate consideration of an item. It is recommended that the City Council approve the following items which will grant the Mayor or City Manager the authority to take all actions necessary for each approval:

4.A Resolution No. 22-2024. A Resolution authorizing the use of internal combustion engines on Nimitz Lake upstream of the City's impoundment dam for the Kerrville Triathlon and the safety of competitors. (A. Boyle, Director of Parks & Recreation)
Attachment: [20240611_Reso 22-2024 Use of Combustion Engines -Nimitz Lake Triathlon.pdf](#)

4.B General Contract - Small Project; Petrosswift, LLC / Kerrville-Schreiner Park Water Line Replacement Project Phase 4, in the amount of \$76,900. (A. Boyle, Director of Parks & Recreation)
Attachment: [20240611_Contract Petrosswift -KSP waterline phase4.pdf](#)

4.C Agreement between the City of Kerrville, Texas, and Arcadia Live, Inc. for use of Hotel Occupancy Tax Funds. (A. Boyle, Director of Parks & Recreation)
Attachment: [20240611_Agreement Arcadia Live for HOT funds.pdf](#)

4.D City Council workshop minutes May 28, 2024. (S. McElhannon, City Secretary)
Attachment: [20240611_Minutes CC workshop 5-28-24.pdf](#)

4.E City Council meeting minutes May 28, 2024. (S. McElhannon, City Secretary)
Attachment: [20240611_Minutes CC meeting 5-28-24.pdf](#)

END OF CONSENT AGENDA.

5. PUBLIC HEARINGS AND RESOLUTIONS:

5.A Resolution No. 23-2024. A Resolution granting a Conditional Use Permit to authorize an Automobile Service and Repair Shop, Minor, on the property located at 209 Sidney Baker S (HWY 16); the property located within a Light Commercial Zoning District (C-2); and making the permit subject to certain conditions and restrictions. (D. Paxton, Director of Planning & Development)
Attachments: [20240611_Reso 23-2024 CUP auto service 209 Sidney Baker.pdf](#)
[Case PZ-2024-11_Proximity to Floodplain Exhibit.pdf](#)
[PZ-2024-11_Proposed Exterior Elevations.pdf](#)

6. CONSIDERATION AND POSSIBLE ACTION:

6.A Interlocal Agreement for Firefighting and Emergency Medical Services between the City of Kerrville and Kerr County. (Fire Chief E. Maloney)
Attachment: [20240611_ILA wKerrCo KFD srvs.pdf](#)

6.B Authorization to submit a funding application to the City of Kerrville, Texas, Economic Improvement Corporation for the development of Granger McDonald Park in an amount not to exceed \$2,200,000. (M. Hornes, Assistant City Manager)
Attachment: [McDonaldPark-HewittProposal 052024.pdf](#)

6.C Request for variance from distance requirement applicable to the sale of alcoholic beverages per Section 10-3, Code of Ordinances; for the property located at 305 Washington Street and otherwise known as the VK Garage Theater. (D. Paxton, Director of Planning & Development)

7. INFORMATION & DISCUSSION:

7.A Proposed creation of a Public Facility Corporation for the Kerrville Public Utility Board. (Amy Dozier, Kerrville Public Utility Board CFO) (This item is eligible for Executive Session 551.071)
Attachment: [20240611_Presentation KPUB.pdf](#)

8. BOARD APPOINTMENTS:

8.A Removal of member, and appointment of member to Main Street Advisory Board. (S. McElhannon, City Secretary)

8.B Appointment(s) to the Recovery Community Coalition. (S. McElhannon, City Secretary)

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

9.A Proposed creation of a Public Facility Corporation for the Kerrville Public Utility Board. (551.071) (M. Hayes, City Attorney)

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

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

ADJOURN.



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

SUBJECT: Proclamation recognizing June 2024 as Great Outdoors Month in Kerrville, Texas. (*Mayor J. Herring*)

AGENDA DATE OF: June 11, 2024

DATE SUBMITTED: May 30, 2024

SUBMITTED BY: Mayor Joe Herring, Jr.

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

PAYMENT TO BE MADE TO: N/A

Kerrville 2050 Item? Yes

Key Priority Area P - Parks / Open Space / River Corridor

Guiding Principle N/A

Action Item N/A

SUMMARY STATEMENT:

Great Outdoors Month was established in 1998 by the President of the United States, originally as Great Outdoors Week. Over the years, it has grown into a month-long celebration of America's public lands and waters at the national, state, and local levels. Every June, Americans across the country are encouraged to go outdoors during Great Outdoors Month for responsible, healthy outdoor recreation.

The Kerrville Parks and Recreation Department celebrates year-round with the goal of encouraging the community to Get Outdoors, Be Active, and Play. Kerrville is blessed with outstanding outdoor recreation and leisure opportunities for our citizens and visitors to enjoy while participating in safe and healthy fun with their family and friends.

Outdoor activity promotes a healthy body, mind, and spirit and is touted by health organizations and medical professionals as a remedy to the adverse effects caused by lack of physical activity and too much screen time.

Parks and Recreation agencies encourage physical activity by providing spaces such as sports fields, hike / bike trails, lakes and rivers, swimming pools, and many other outdoor areas designed to promote active lifestyles encouraging citizens and visitors to get outdoors and live a healthy lifestyle.

RECOMMENDED ACTION:

Present proclamation.



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

SUBJECT: Commendation of Recognition: Texas Municipal Clerk Association - Office of Achievement of Excellence award. (*Mayor J. Herring*)

AGENDA DATE OF: June 11, 2024

DATE SUBMITTED: May 30, 2024

SUBMITTED BY: Mayor Joe Herring, Jr.

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

PAYMENT TO BE MADE TO: N/A

Kerrville 2050 Item? No

Key Priority Area N/A

Guiding Principle N/A

Action Item N/A

SUMMARY STATEMENT:

The Texas Municipal Clerk Association (TMCA) Achievement of Excellence Award was designed to recognize excellence in the effective and efficient management of resources in a municipal clerk office. The Municipal Clerk's Office Achievement of Excellence is open to all offices of Texas Registered Municipal Clerks and the municipalities they represent. The Achievement of Excellence covers a period of two years, and Texas Registered Municipal Clerks may use the Office of Excellence insignia for those two years.

The City Secretary Office must meet the criteria in nine of twelve standards, demonstrating achievement of each standard. The City of Kerrville City Secretary Office met criteria for all twelve standards.

This is the first time that the City of Kerrville's City Secretary Office has achieved this award.

RECOMMENDED ACTION:

Present award.



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

SUBJECT: Resolution No. 22-2024. A Resolution authorizing the use of internal combustion engines on Nimitz Lake upstream of the City's impoundment dam for the Kerrville Triathlon and the safety of competitors. (*A. Boyle, Director of Parks & Recreation*)

AGENDA DATE OF: June 11, 2024

DATE SUBMITTED: May 30, 2024

SUBMITTED BY: Ashlea Boyle, Director Parks & Recreation

EXHIBITS:

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

PAYMENT TO BE MADE TO: N/A

Kerrville 2050 Item? Yes

Key Priority Area P - Parks / Open Space / River Corridor

Guiding Principle N/A

Action Item P8.5 - Facilitate or expand more City activities around the river, especially during cooler times of the year

SUMMARY STATEMENT:

The 13th annual Kerrville Triathlon Festival, produced by High Five Events of Austin, Texas, will be held September 28-29, 2024. The event will again consist of a sprint, quarter, and half ironman distance triathlon. The swimming portion of the triathlon will be in the Guadalupe River on Nimitz Lake, with the start and finish at the northern end of Guadalupe Street. This will require the use of watercraft equipped with internal combustion engines for course preparation (placement of buoys) as well as monitoring and potential rescue of distressed swimmers.

Chapter 118 Article II Water Impoundment of the Kerrville Code of Ordinances Section 118-34 (4) allows the operation of watercraft equipped with an internal combustion engine when it is engaged in an activity that has been authorized by a resolution of the city council. Staff recommends adopting the attached resolution providing authorization for this purpose as presented.

This is an annually occurring Resolution.

RECOMMENDED ACTION:

Adopt Resolution No. 22-2024.

ATTACHMENTS:

[20240611_Reso 22-2024 Use of Combustion Engines -Nimitz Lake Triathlon.pdf](#)

**CITY OF KERRVILLE, TEXAS
RESOLUTION NO. 22-2024**

**A RESOLUTION AUTHORIZING THE USE OF INTERNAL COMBUSTION
ENGINES ON NIMITZ LAKE UPSTREAM OF THE CITY'S IMPOUNDMENT
DAM FOR THE KERRVILLE TRIATHLON AND THE SAFETY OF
COMPETITORS**

WHEREAS, Chapter 118 of the City Code of Ordinances (the "Code") regulates and prohibits certain activities on Nimitz Lake, the lake upstream of the City's impoundment dam (the "Lake"); and

WHEREAS, one of the prohibited activities is the operation of internal combustion engines on the Lake; and

WHEREAS, under the Code, City Council may authorize an exception to this prohibition by adopting a resolution authorizing an activity that requires the use of an internal combustion engine on the Lake; and

WHEREAS, the organizer of a triathlon to be held in Kerrville and who would like to use the Lake for the swimming portion of its competition, is seeking an exception to the prohibition against combustible engines so that the organizer may use boats with combustion engines to ensure the safety of competitors; and

WHEREAS, pursuant to this request and to promote and expand the recreational uses of the Lake, City Council hereby finds that a public purpose exists to authorize the use of internal combustion engines on the Lake;

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

SECTION ONE. City Council authorizes the use of internal combustion engines on the Lake, such authority subject to the following terms:

- a. the authority is granted to High Five Events, LLC, of Austin Texas, their agents, or representatives and no other person or group;
- b. the authority is valid from September 20, 2024, through September 30, 2024; and
- c. authority is limited to no greater than five (5) boats with such engines.

SECTION TWO. This Resolution and the authority granted hereby shall automatically expire and be revoked on September 30, 2024.

PASSED AND APPROVED ON this the _____ day of _____, A.D., 2024.

Joe Herring Jr., Mayor

APPROVED AS TO FORM:

ATTEST:



William L. Tatsch, Assistant City Attorney

Shelley McElhannon, City Secretary



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

SUBJECT: General Contract - Small Project; Petroswift, LLC / Kerrville-Schreiner Park Water Line Replacement Project Phase 4, in the amount of \$76,900. (A. Boyle, Director of Parks & Recreation)

AGENDA DATE OF: June 11, 2024

DATE SUBMITTED: May 22, 2024

SUBMITTED BY: Ashlea Boyle, Director Parks & Recreation

Expenditure Required:	Remaining Budget Balance in Account:	Amount Budgeted:	Account Number:
\$76,900	N/A	\$200,000	70-22002

PAYMENT TO BE MADE TO: Petroswift, LLC, 109 San Juan, Kerrville, TX, 78028

Kerrville 2050 Item? Yes

Key Priority Area P - Parks / Open Space / River Corridor

Guiding Principle N/A

Action Item P5.7 - Look at potential bond funding for enhancements and improvements to basic infrastructure at Kerrville Schreiner Park

SUMMARY STATEMENT:

The City of Kerrville Parks and Recreation Department is in the process of completing a water line improvement project at Kerrville-Schreiner Park. The infrastructure is old with many leaks resulting in water loss, numerous repairs, and complaints from campers. The scope of the project is to replace the lines and transition from well water to city service. Phases 1-3 have been completed. The attached contract is for the final phase of the project. Pursuant to the purchasing policy, quotes were obtained and Petroswift was the selected vendor. Due to the amount of \$76,900, this contract requires City Council approval.

This project was originally budgeted in FY2022 and was started and planned to be completed in-house by city staff. Because of ongoing staff shortages and the need to complete the project, it was decided to have the remainder of the project outsourced. The cost has increased since FY2022 by \$35,000 because of inflation and the added expense of outsourcing making the total project \$235,000. The additional funds can be covered using undesignated money set aside in the CIP fund. Staff recommends approving this item to complete an in-progress project for efficiency.

This project is consistent with Kerrville 2050 and the Parks and Recreation Master Plan.

RECOMMENDED ACTION:

Authorization for the City Manager to finalize and execute the contract.

ATTACHMENTS:

[20240611_Contract Petroswift -KSP waterline phase4.pdf](#)

GENERAL CONTRACT - SMALL PROJECT
Petroswift, L.L.C./Kerrville-Schreiner Park Water Line Phase 4

THIS CONTRACT, entered into this ____ day of _____, 2024, by and between the **City of Kerrville, Texas**, hereinafter referred to as the "Owner," and **Petroswift LLC**, with its mailing address being 109 San Juan, Kerrville, Texas 78028, hereinafter referred to as the "Contractor," is made for the following considerations:

1. The Contractor shall perform all work described in the proposal attached hereto as **Exhibit A**, and incorporated herein by reference in accordance with plans and specifications provided to Contractor by City. In the event that the attached proposal fails to provide details related to the work to be performed, the work shall be performed in accordance with the directions of the Owner's Representative **in the amount of \$76,900.00**.
2. Whenever the words "Owner's Representative" or "representative" are used in this contract, it shall be understood as referring to Shane Heffernan, Assistant Director of Parks and Recreation, or to such other representative, supervisor, or inspector as may be authorized by the Owner to act in any particular capacity under this agreement.
3. Unless otherwise stipulated, the Contractor shall provide and pay for all materials, supplies, machinery, equipment, tools, superintendence, labor, insurance, and all water, light, power, fuel, transportation and all other facilities necessary for the execution and completion of the work covered by the contract documents. Unless otherwise specified, all materials shall be new and both workmanship and materials shall be of a good quality. The Contractor shall, if required, furnish satisfactory evidence as to the kind and quality of materials. Materials or work described in words that so applied have well known, technical or trade meanings shall be held to refer to such recognized standards.
4. The Contractor shall comply with all laws, ordinances, rules and regulations governing the Contractor's performance of the contract, including the pulling of required permits.
5. All work shall be done and all materials furnished in strict conformity with the contract.
6. The Owner's Representative:
 - a. may make periodic visits to the site to observe the progress and quality of the executed work and to determine, in general, if the work is proceeding in accordance with the contract documents;

- b. will neither be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the work, nor be responsible for the construction means, methods, techniques, sequences or procedures, or the safety precautions incident thereto;
 - c. will not be responsible for the Contractor's failure to perform the work in accordance with the contract;
 - d. will repair roads through which Contractor will have to trench to install the water line; and
 - e. will deliver to the site all pipe, couplings, bedding material, and any other material the Owner has agreed to supply for the installation of the water line. Before the Owner is responsible for delivering any material to the site, the Owner and Contractor shall agree in writing to the specific materials the Owner shall provide.
7. All minor detail of the work not specifically mentioned in the Specifications but obviously necessary for the proper completion of the work, such as the proper connection of new work to existing structures, shall be considered as incidental to and a part of the work for which the prices are named in the contract. The Contractor will not be entitled to any additional compensation therefor unless specifically stated otherwise. Otherwise the term "extra work" as used in this contract shall be understood to mean and include all work that may be required by Owner to be done by the Contractor to accomplish any alteration or addition to the work as shown on the Specifications. It is agreed that the Contractor shall perform all extra work under the direction of the Owner's Representative when presented with a written work order signed by the Owner's Representative, subject, however, to the right of the Contractor to require written confirmation of such extra work order by the Owner. Payment for extra work shall be as agreed in the work order.
8. The Contractor shall at all times exercise reasonable precaution for the safety of employees and others on or near the work and shall comply with all applicable provisions of federal, state and municipal laws and building codes.
9. **THE CONTRACTOR AGREES TO INDEMNIFY, DEFEND, AND HOLD HARMLESS THE CITY OF KERRVILLE, TEXAS AND ALL OF ITS OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, LOSSES, PROPERTY DAMAGES, AND EXPENSES OF ANY CHARACTER WHATSOEVER, INCLUDING ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PROPERTY ON ACCOUNT OF ANY NEGLIGENT ACT OR OMISSION OF THE CONTRACTOR OR ANY OF**

CONTRACTOR'S OFFICERS, EMPLOYEES, AGENTS, REPRESENTATIVES, OR SUBCONTRACTORS IN THE EXECUTION, SUPERVISION, AND OPERATIONS GROWING OUT OF OR IN ANY WAY CONNECTED WITH THEIR PERFORMANCE OF THIS AGREEMENT.

10. CONTRACTOR AGREES THAT IT WILL INDEMNIFY AND SAVE THE OWNER HARMLESS FROM ALL CLAIMS GROWING OUT OF ANY DEMANDS OF SUBCONTRACTORS, LABORERS, WORKMEN, MECHANICS, MATERIALMEN, AND SUPPLIERS OF MACHINERY AND PARTS THEREOF, EQUIPMENT, POWER TOOLS, AND ALL SUPPLIES INCURRED IN THE FURTHERANCE OF THE PERFORMANCE OF THIS CONTRACT. When Owner so requests, Contractor shall furnish satisfactory evidence that all obligations of the nature hereinabove designated have been paid, discharged or waived.
11. Contractor shall carry insurance in the following types and amounts for the duration of this Contract and furnish copies of policy declaration pages and all policy forms and endorsements as evidence thereof to Owner:
- a. To the extent required by Texas Labor Code §406.096, certify to the Owner be executing below that Contractor has in effect workers' compensation insurance to cover Contractor's employees. Contractor shall also require subcontractors and independent contractors working under the direction of the Contractor or a subcontractor to carry and maintain the same workers compensation and liability insurance required of Contractor.
 - b. Commercial General Liability Insurance with a minimum bodily injury and property damage per occurrence limit of \$1,000,000 combined single limit, per occurrence, and \$2,000,000 aggregate. The policy must provide contractual liability coverage for liability assumed under this contract, products and completed operations coverage, independent contractor's coverage, and a waiver of a Transfer of Right of Recovery Against Others in favor of the Owner.
 - c. Automobile Liability Insurance with either a combined limit of \$1,000,000 per occurrence for bodily injury and property damage or split limits of \$1,000,000 for bodily injury per person per occurrence and \$1,000,000 for property damage per occurrence. Coverage must include all owned, hired, and non-owned motor vehicles used in the performance of this Agreement by Contractor or its employees.

The insurance required by this Agreement must be written by non-assessable insurance company licensed to do business in the State of Texas and currently

rated "B" or better by the A.M. Best Companies. All policies must be written on a "per occurrence basis" and not a "claims made" form.

Contractor shall not commence work under this Contract until it has obtained all required insurance. Contractor shall not cause any insurance to be canceled or permit any insurance to lapse during the term of this Agreement. No policy may not be canceled, reduced, restricted, or limited until thirty (30) calendar days after Owner has received written notice of such cancellation or change.

12. With the exception of materials provided to the site by the Owner, Contractor shall promptly remove from Owner's premises all materials condemned by the Owner's Representative on account of failure to conform to the contract, whether actually incorporated in the work or not, and Contractor shall at its own expense promptly replace such condemned materials with other materials conforming to the requirements of the contract. Contractor shall also bear the expense of restoring all work of other contractors damaged by any such removal or replacement. If Contractor does not remove and replace any such condemned materials within a reasonable time after a written notice by the Owner, Owner may remove and replace it at Contractor's expense.
13. Neither the final payment nor any provision in this contract shall relieve the Contractor of responsibility for faulty materials or workmanship, and it shall remedy any defects due thereto and pay for any damage to other work resulting therefrom, which shall appear within a period of one (1) year from the date of substantial completion. The Owner shall give notice of observed defects with reasonable promptness.
14. The Owner may, on account of subsequently discovered evidence, withhold the whole or part of any payment to such extent as may be necessary to protect itself from loss on account of:
 - a. Defective work not remedied.
 - b. Claims filed or reasonable evidence indicating possible filing of claims.
 - c. Failure of the Contractor to make payments promptly to subcontractors or for material or labor, which the Owner may pay as an agent for the Contractor.
 - d. Damages to another contractor or subcontractor.

When the above grounds are removed, or the Contractor provides a surety bond satisfactory to the Owner, which will protect the Owner in the amount withheld because of them, payment will be issued subject to paragraph number 16.

15. This contract may not be assigned in any way without the specific, written consent of the Owner.
16. After all work is completed by the Contractor, and the Owner has inspected and approved that work, the Owner shall not later than thirty (30) days thereafter issue payment to the Contractor the balance of the amount due under the contract as proposed in **Exhibit A**, hereto. The Owner shall be the final judge of when work is completed by the Contractor. The Owner shall not make periodic payments to the Contractor, but shall make payment pursuant to this paragraph only after all work is completed by the Contractor.
17. This Contract shall be governed by and construed in accordance with the Laws of the State of Texas. Venue for any suits arising from or related to this contract shall be in Kerr County, Texas.
18. In the event of conflict between the provisions of any attachments or exhibits to this Contract and the provisions of this Contract, the provisions of this Contract shall prevail.
19. Each person signing below represents that he or she is duly authorized to execute this Agreement on behalf of the party indicated below by his or her name and agrees on behalf of such party that such party will be bound by the terms of this Agreement.
20. Prohibition Against Business with Iran, Sudan, or Foreign Terrorist Organization. Contractor warrants, covenants, and represents that Contractor is not engaged in business with Iran, Sudan, or any company identified on the list referenced in Section 2252.152, Texas Government Code.
21. Prohibition on Contracts with Companies Boycotting Energy Companies. Contractor hereby verifies the following per Section 2276.002, Texas Government Code:
 1. Contractor does not boycott energy companies; and
 2. Contractor will not boycott energy companies during the term of the Agreement.
22. Written Verification as to Firearm Entities. Contractor hereby verifies the following per Section 2274.002, Texas Government Code:
 1. Contractor does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and
 2. Contractor will not discriminate against a firearm entity or firearm trade association during the term of the Agreement.

23. Prohibition Against Boycotting Israel. Contractor hereby verifies the following per Section 2271.02, Texas Government Code:

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

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

OWNER: City of Kerrville, Texas

CONTRACTOR: Petroswift, L.L.C.

By: _____
Dalton Rice, City Manager

By: _____
Travis McRae, Member

By: _____
Chastan McRae, Member

By: _____
Rick McRae, Member

ATTEST:

Shelley McElhannon, City Secretary

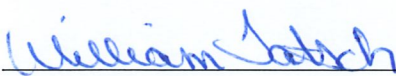
APPROVED AS TO FUNDING:

Julie Behrens, Director of Finance

APPROVED AS TO INSURANCE:

Kimberly Meisner, Asst. City Manager

APPROVED AS TO FORM:



William L. Tatsch
Assistant City Attorney

APPROVED AS TO CONTENT:

Ashlea Boyle
Director of Parks and Recreation

T:\Legal\PARKS & RECREATION\Kerrville Schreiner Park\Contracts\Water Project\Small Project Contract_Petroswift_KSP Water Line Phase 4_052224.docx



EXHIBIT A

5/1/2024

To: City of Kerrville – Parks and Recreation
Attn: Shane Heffernan
2385 Bander Hwy
Kerrville, Texas 78028

From: Petrosswift, LLC
109 San Juan
Kerrville, TX 78028

Re: Schriener Park Water Line – Camp Site Loops

We are pleased to offer a bid for the work listed below:

-Material and labor to install approximately 8700 linear feet of 2" SDR21 slip joint pipe with a depth of 18" bury depth using excavated material for bedding. Includes 2x3/4 tees to respective services at camp sites/cabins. All campsites/cabins will have a 3/4" service with hose bib and anti-siphon vacuum breaker 24"-36" above ground level (match new services installed by park staff)

Camp site water loops constructed for the following:

- Group Mini Cabin
- Mountain View Loop
- Fawn Hide-A-Way
- Mountain View Back-Ins
- Deer Field Loop

-Includes water line connection to restrooms and Park Cabin on far west side of park.

-All permits, fees and inspections provided by City of Kerrville

Total: **\$76,900.00**



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

SUBJECT: Agreement between the City of Kerrville, Texas, and Arcadia Live, Inc. for use of Hotel Occupancy Tax Funds. (*A. Boyle, Director of Parks & Recreation*)

AGENDA DATE OF: June 11, 2024

DATE SUBMITTED: May 30, 2024

SUBMITTED BY: Ashlea Boyle, Director Parks & Recreation

EXHIBITS:

Expenditure Required:	Remaining Budget Balance in Account:	Amount Budgeted:	Account Number:
\$50,000	N/A	N/A	N/A

PAYMENT TO BE MADE TO: Arcadia Live, Inc. 717 Water Street, Kerrville, TX 78028

Kerrville 2050 Item? Yes

Key Priority Area P - Parks / Open Space / River Corridor

Guiding Principle N/A

Action Item P8.3 - Enhance park programming for public gatherings/events

SUMMARY STATEMENT:

Attached is a contract between the City and Arcadia Live for the use of Hotel/Motel Occupancy Tax funds for Kerrville's Fourth on the River for \$50,000. This event has received an allocation from HOT for several years now. Historically, the allocation was \$25,000. In 2023, Arcadia Live requested an increase in funding and received \$35,000. Another increase request was received this year for \$50,000. Arcadia Live has a license agreement with the City to produce the event in Louise Hays Park with support from the City. The City provides in-kind services such as public safety support, street closures, permits, staff support, etc. valued at approximately \$40,000. Due to the increase in funding, the Parks and Recreation Department's level of staffing support will decrease. Arcadia Live will be responsible for event logistics and management such as controlling the gates and trash control, which is their responsibility under the agreement anyway. The City will continue to provide the other levels of support and will manage the fireworks show as usual. The post-event report from 2023 is also attached with event statistics.

Staff recommends approval of the funding allocation for this purpose.

RECOMMENDED ACTION:

Authorization for the City Manager to finalize and execute the contract.

ATTACHMENTS:

[20240611_Agreement Arcadia Live for HOT funds.pdf](#)

**AGREEMENT BETWEEN CITY OF KERRVILLE, TEXAS, AND ARCADIA
LIVE, INC. FOR USE OF HOTEL OCCUPANCY TAX FUNDS**

THIS AGREEMENT made and entered into this ____ day of _____, 2024, between the City of Kerrville, Texas, a home rule municipal corporation ("City"), and Arcadia Live, Inc., a Texas nonprofit corporation, ("Arcadia").

WITNESSETH:

WHEREAS, City levies a tax within the City and its extraterritorial jurisdiction upon the occupancy of any room or space furnished by any hotel or motel and, pursuant to the provisions of Chapter 351 of the Texas Tax Code, disperses the proceeds of said tax to various organizations for their use pursuant to Chapter 351; and

WHEREAS, Arcadia produces and hosts in conjunction with the City's July 4th fireworks display on July 4, 2024, an Independence Day celebration within Louise Hays Park (the "Event"); and

WHEREAS, Arcadia advertises and promotes the Event in an effort to reach interested persons throughout the state; and

WHEREAS, it is the desire of the parties hereto to combine their efforts for the purpose of attracting tourists to the City so as to promote tourism and the hotel industry in the City;

NOW, THEREFORE, in consideration of the covenants and conditions stated herein, and in consideration of the mutual benefits that will accrue to each of the parties hereof, as well as to the citizens of the City of Kerrville, Texas, the parties have agreed and do hereby agree as follows:

ARTICLE I

In consideration of Arcadia promoting the City of Kerrville and conducting the event in an effort to attract tourists to both visit and stay in the City, City agrees to pay Arcadia a total sum of up to FIFTY THOUSAND AND NO/100 DOLLARS (\$50,000.00), which Arcadia may use for the following purposes:

- A. Printing of material and other costs directly relating to the advertising and promotion of the Event; and
- B. Such other purposes as may be authorized by Chapter 351 of the Texas Tax Code and the City.

ARTICLE II

Payment of funds shall be on a reimbursable basis. To receive payment, Arcadia shall submit a written request to the City accompanied by a copy of an invoice issued to Arcadia requesting payment for services rendered in furtherance of the purposes set forth in Article I. Arcadia shall have the discretion to determine how to allocate the funds granted by the City among the permitted uses specified in Chapter 351 of the Texas Tax Code; however, the City's obligation to reimburse Arcadia shall not exceed \$50,000.00.

ARTICLE III

Arcadia understands that the funds paid to Arcadia by the City are derived from tax revenues collected under the City's Hotel Occupancy Tax Ordinance and that the City has estimated the tax revenues to be collected during the term of this Agreement in its budget for the fiscal year 2023-2024. Arcadia further understands, acknowledges, and agrees that if the tax revenues actually collected by the City are less than the estimated tax revenues to be collected during the City's fiscal year 2023-2024, City will be under no obligation to reimburse Arcadia for the full amount set forth in Article I, above.

ARTICLE IV

The term of this Agreement is for a period beginning on June 1, 2024, and ending on August 31, 2024, unless this Agreement is terminated sooner.

ARTICLE V

In conjunction with its request for payment, Arcadia shall provide a written report and full documentation showing the expenditures made pursuant to this Agreement and that the funds provided by City pursuant to this Agreement were used only for the purposes authorized by this Agreement and Texas Tax Code §351.101, as amended. Arcadia shall maintain books of account with correct entries of all expenditures that are made according to the terms of this Agreement and of funds allocated from other sources. Any and all books of account of Arcadia for the event shall be at all times open to inspection by the City or any of its officers or duly authorized agents. Upon such inspection, the City or its officers or agents shall be afforded the opportunity on premises to make photographic copies of any and all documentation of books of account for the event, including but not limited to statements of account relating to the disposition of funds provided by the City under this Agreement and funds allocated from other sources. Arcadia shall maintain these

books of account for a period of three (3) years following the expiration of the term for which they are applicable.

ARTICLE VI

Not later than July 31, 2024, Arcadia shall provide the Director of Finance with Arcadia's financial records and documents related to the services provided for herein, including the effectiveness of its advertising and promotions to cause tourists to attend the Event and the outcome of the Event, as follows:

1. Completed HOT post event form, a copy of which is attached hereto as Exhibit A;
2. Financial statements for the most recent year ended to include a profit loss statement and balance sheet;
3. Approved organization's budget for the current fiscal year;
4. Approved event budget and expenditures, including total revenue and expenses, for the event that are supported by Hotel Occupancy Tax funds;
5. Invoices and proof of payment supporting the organization's use of Hotel Occupancy Tax funds in accordance with this agreement; and
6. Any other information City may notify Arcadia that City requires.

Notwithstanding Article II, above, City shall be under no obligation to make any reimbursements if the reports required by this Article VI have not been delivered to City.

ARTICLE VII

This Agreement does not create any joint venture, partnership, or agency relationship between City and Arcadia, it being the intent of the Parties that Arcadia shall at all times be and operate hereunder as an independent contractor. Arcadia shall have exclusive control of, and the exclusive right to control the details of the work to be performed hereunder and all personnel performing same, and shall be solely responsible for the acts and omissions of its officers, members, agents, servants, employees, subcontractors, program participants, volunteers, licensees, and invitees. In no event shall any person participating in or performing any of Arcadia's duties or responsibilities hereunder be considered an officer, agent, servant, or employee of the City.

ARTICLE VIII

In the event of any default by Arcadia hereunder, including, but not limited to, use of the funds provided herein for purposes other than those stated in Article I, above, City may cease all future payments hereunder and terminate this Agreement.

In addition, Arcadia shall, at City's request, refund to City funds that are not spent in accordance with this Agreement and any unspent and unobligated funds previously paid to Arcadia.

ARTICLE IX

ARCADIA AGREES TO ASSUME AND DOES HEREBY ASSUME ALL RESPONSIBILITY AND LIABILITY FOR DAMAGES SUSTAINED BY PERSONS OR PROPERTY, WHETHER REAL OR ASSERTED, BY OR FROM THE CARRYING ON OF WORK OR IN THE PERFORMANCE OF SERVICES PERFORMED AND TO BE PERFORMED HEREUNDER. ARCADIA COVENANTS AND AGREES TO, AND DOES HEREBY INDEMNIFY, DEFEND, AND HOLD HARMLESS THE CITY AND ALL ITS OFFICERS, AGENTS, AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, AND EXPENSES OF ANY CHARACTER, INCLUDING ATTORNEY'S FEES, BROUGHT FOR OR INCURRED ON ACCOUNT OF ANY INJURIES OR DAMAGES, WHETHER REAL OR ASSERTED, SUSTAINED BY ANY PERSON OR PROPERTY BY OR IN CONSEQUENCE OF ANY INTENTIONAL OR NEGLIGENT ACT, OMISSION, OR CONDUCT OF ARCADIA, ITS AGENTS, SERVANTS OR EMPLOYEES.

ARTICLE X

This Agreement may be amended by the mutual agreement of the parties hereto in writing to be attached to and incorporated into this Agreement.

ARTICLE XI

Arcadia shall adhere to all local, state, and federal laws and regulations that may affect its actions made pursuant to this Agreement, and shall maintain in effect during the term of this Agreement any and all federal, state and local licenses and permits which may be required of Arcadia generally.

ARTICLE XII

Arcadia may not assign this Agreement without the written consent of the City Manager, or his designee.

ARTICLE XIII

The waiver by City of any breach of any term, condition, or covenant herein contained shall not be deemed a waiver of any subsequent breach of the same, or any other term, condition, or covenant.

ARTICLE XIV

The obligations of the parties to this Agreement are performable in Kerr County, Texas, and if legal action is necessary to enforce same, exclusive venue shall lie in Kerr County, Texas.

ARTICLE XV

This Agreement shall be governed by and construed in accordance with the laws and court decisions of the State of Texas.

ARTICLE XVI

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

ARTICLE XVII

Neither City nor Arcadia shall be required to perform any term, condition, or covenant in this Agreement so long as such performance is delayed or prevented by force majeure, which shall mean acts of God, civil riots, floods, and any other cause not reasonably within the control of City or Arcadia except as herein provided, and which by the exercise of due diligence City or Arcadia is unable, wholly or in part, to prevent or overcome.

ARTICLE XVIII

This Agreement embodies the complete agreement of the parties hereto, superseding all oral or written previous and contemporary agreements between the parties, which relate to matters in this Agreement.

ARTICLE XIX

Arcadia hereby verifies the following per Section 2271.002, Texas Government Code:

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

ARTICLE XX

Arcadia warrants, covenants, and represents that Arcadia is not engaged in business with Iran, Sudan, or any company identified on the list referenced in Section 2252.152, Texas Government Code.

ARTICLE XXI

Arcadia hereby verifies the following per Section 2276.002, Texas Government Code:

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

ARTICLE XXII

Arcadia hereby verifies the following per Section 2274.002, Texas Government Code:

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

SIGNED AND AGREED by City and Arcadia on the dates indicated below.

THE CITY OF KERRVILLE

ARCADIA LIVE, INC.

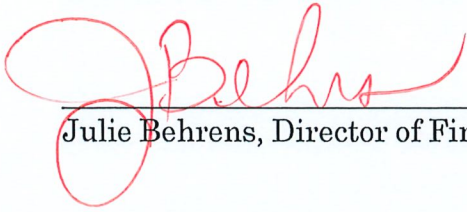
BY: _____
NAME: DALTON RICE
TITLE: CITY MANAGER
DATE: _____

BY: _____
NAME: LARRY HOWARD
TITLE: PRESIDENT
DATE: _____

ATTEST:

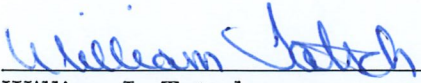
Shelley McElhannon, City Secretary

APPROVED AS TO FUNDING:



Julie Behrens, Director of Finance

APPROVED AS TO FORM:



William L. Tatsch
Assistant City Attorney

APPROVED AS TO CONTENT:



Ashlea Boyle
Director of Parks & Recreation

T:\Legal\PARKS & RECREATION\Special Events\July 4th Events\4th of July 2024\Kerrville Fourth on the River_Use of HOT Funds_052824.docx

City of Kerrville Hotel Occupancy Tax Funding Post Report

Name of Organization: _____

Name of Event /
Program / Project: _____

Event Date: _____

Amount of HOT
Funding: _____

Projected Attendees: _____

#Rooms Blocked: _____

Actual Attendees
(estimate if needed): _____

#Room Blocked: _____

Description of Event/Program/Project:

--

Describe process for determining the total number of rooms for Event/Program/Project:

--

Describe process for determining approximate number of overnight stays:

--

CONTRACT NO. 2023-89

Describe process for determining distance traveled to attend the event:

List all advertising/promotion for this event/program/project:

Please attach the following documents for the HOT report to be considered:

- Copies of Advertising/Promotion
- Detailed listing of expenses/reimbursement request
- Copies of invoices and proof of payment for each line item on summary statement

Please attach documentation supporting an increase in overnight stays, which could include a combination of the following:

- List of zip codes of attendees and/or city/state of residence
- Proof of actual rooms used as part of hotel blocks
- Event survey that includes overnight stays
- Any other documentation showing an increase in overnight stays

Submit report and attachments electronically no later than 60 days following the event/program/project to:

Submit any other documents required by agreement

I/We hereby certify that all information provided in this report and attachments are true and correct.

Name (Print): _____

Title: _____

Signature: _____

Date: _____

CONTRACT NO. 2023-89



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

SUBJECT: City Council workshop minutes May 28, 2024. (*S. McElhannon, City Secretary*)

AGENDA DATE OF: June 11, 2024

DATE SUBMITTED: April 1, 2024

SUBMITTED BY: Shelley McElhannon, City Secretary

EXHIBITS:

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

PAYMENT TO BE MADE TO: N/A

Kerrville 2050 Item? No

Key Priority Area N/A

Guiding Principle N/A

Action Item N/A

SUMMARY STATEMENT:

City Council workshop minutes May 28, 2024 at 4:00 p.m.

RECOMMENDED ACTION:

Approve minutes as presented.

ATTACHMENTS:

[20240611_Minutes CC workshop 5-28-24.pdf](#)

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

**MAY 28, 2024 4:00 PM
701 MAIN STREET, KERRVILLE, TEXAS**

CALL TO ORDER: On May 28, 2024 at 4:00 p.m., the City Council workshop was called to order by Mayor Joe Herring, Jr. at City Hall Council Chambers, 701 Main Street.

COUNCILMEMBERS PRESENT:

Joe Herring, Jr., Mayor
Roman Garcia, Council Place 1
Delayne Sigerman, Council Place 1-Appointee
Jeff Harris, Council Place 2
Kent McKinney, Council Place 3
Brenda Hughes, Council Place 4/Mayor Pro Tem

COUNCILMEMBERS ABSENT:

None

CITY STAFF PRESENT:

Dalton Rice, City Manager
Mike Hayes, City Attorney
Kim Meisner, Asst City Manager

Michael Hornes, Asst City Manager
Stuart Barron, Executive Director
Shelley McElhannon, City Secretary

VISITOR(S) PRESENT:

The Honorable Lucy Pearson, presiding Kerrville Municipal Court Judge
Allison Bueche, Public Information Officer Kerrville Public Utility Board (KPUB)
Amy Dozier, CFO Kerrville Public Utility Board
Larry Howard, Chair of Kerrville Public Utility Board of Directors
Mike Wittler, CEO Kerrville Public Utility Board

1. PUBLIC COMMENT:

The following person(s) spoke:

- Jim Caines
- Sandra Garcia
- Cheryl Fitch
- Mario Garcia
- Nikki Caines

2. CONSIDERATION AND POSSIBLE ACTION:

2A. Statement and Oath of Office given by the Honorable Lucy Pearson, presiding Municipal Court Judge to Councilmember Place 1 appointee Delayne Sigerman.

Statement and Oath of Office given to Councilmember Place 1 Delayne Sigerman by the Honorable Lucy Pearson, presiding Kerrville Municipal Court Judge.

At 4:15 p.m., Councilmember Roman Garcia departed Council bench, and Councilmember Sigerman convened at Council bench.

2B. Certificate of Appointment signed by the Mayor, and Statement provided by the appointed Councilmember.

Mayor Herring issued the official Certificate of Appointment to Councilmember Sigerman.

Councilmember Kent McKinney made a motion to convene Executive Session under 551.071 (consultation with attorney) and 551.085 (certain public power utilities: competitive matters), seconded by Councilmember Jeff Harris. The motion passed 5-0. At 4:32 p.m., the open workshop recessed and Council convened into closed Executive Session.

3. EXECUTIVE SESSION:

3A. Deliberation of competitive matters regarding wholesale market activities of the Kerrville Public Utility Board (KPUB), to include power supply projects (551.086, 551.071).

3B. Update regarding City's discussions with Headwater Groundwater Conservation District (55.071).

3C. Liberty in Action Network, Terri Hall, and Rachel Vickers, Plaintiffs v. City of Kerrville, Texas, Defendant, Civil Action No. 5:24-CV-00403, US court for the Western District of Texas, San Antonio Division. (551.071)

At 6:00 p.m., the closed Executive Session adjourned and open workshop reconvened. No action taken during Executive Session.

4. ACTION ON ITEMS DISCUSSED IN EXECUTIVE SESSION IF ANY: None

ADJOURN. The workshop adjourned at 6:00 p.m.

APPROVED BY COUNCIL: _____ ATTEST:

Joe Herring, Jr., Mayor

Shelley McElhannon, City Secretary



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

SUBJECT: City Council meeting minutes May 28, 2024. *(S. McElhannon, City Secretary)*

AGENDA DATE OF: June 11, 2024

DATE SUBMITTED: April 1, 2024

SUBMITTED BY: Shelley McElhannon, City Secretary

EXHIBITS:

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

PAYMENT TO BE MADE TO: N/A

Kerrville 2050 Item? No

Key Priority Area N/A

Guiding Principle N/A

Action Item N/A

SUMMARY STATEMENT:

City Council meeting minutes May 28, 2024 at 6:00 p.m.

RECOMMENDED ACTION:

Approve minutes as presented.

ATTACHMENTS:

[20240611_Minutes CC meeting 5-28-24.pdf](#)

**CITY COUNCIL MINUTES
REGULAR MEETING**

**KERRVILLE, TEXAS
MAY 28, 2024 6:00 PM**

On May 28, 2024 at 6:00 p.m., Mayor Joe Herring, Jr. called the Kerrville City Council meeting to order in City Hall Council Chambers, 701 Main Street, provided the invocation, and led the Pledge of Allegiance.

COUNCILMEMBERS PRESENT:

Joe Herring, Jr., Mayor
Delayne Sigerman, Councilmember Place 1
Jeff Harris, Councilmember Place 2
Kent McKinney, Councilmember Place 3
Brenda Hughes, Councilmember Place 4/Mayor Pro Tem

COUNCILMEMBER ABSENT:

None

CITY EXECUTIVE STAFF:

Dalton Rice, City Manager
Mike Hayes, City Attorney
Michael Hornes, Asst City Manager
Kim Meismer, Asst City Manager
Shelley McElhannon, City Secretary
David Barrera, Asst Dir Public Works

Stuart Barron, Executive Director
Julie Behrens, Director of Finance
Stuart Cunyus, Public Information Officer
Eric Maloney, Fire Chief
Drew Paxton, Director of Planning
Charvy Tork, Director of Information

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

Shay Beyers and Daniel Wheeler, Owners of J-Street Companies (developer)
Mary Campana, Habitat for Humanity – Kerrville
Dr. Charles McCormick, Schreiner University

1. ANNOUNCEMENTS OF COMMUNITY INTEREST:

Community announcements provided by Stuart Cunyus.

2. PRESENTATION(S):

2A. Proclamation May 2024 as Building Safety month in Kerrville, Texas.

Mayor Herring recognized May 2024 as Building Safety month in Kerrville, Texas, received by Drew Paxton, Aaron Barnes, Russell Hazellett, and Trina Sanchez.

2B. Recognition of the City of Kerrville Human Resources department for receiving the Texas Municipal Human Resources Association (TMHRA) Human Resources Impact Award of Distinction (Population 25,000 and under).

Kim Meismer provided information regarding the Award. Mayor Herring honored the Kerrville Human Resources department for receiving the Texas Municipal Human Resources Association (TMHRA) Human Resources Impact Award of Distinction, represented by Kim Meismer and Human Resource personnel Maya Johnson, Mary Pierce, and Rebecca Priess, along with Director of Information Technology Charvy Tork.

2C. Recognition of the City of Kerrville Citizens' Academy participants.

Mayor Herring presented the first class of the Kerrville Citizens' Academy commendations of recognition, given to Steve Bradshaw, Paul Devin, Beck Gibson, John Ibarra, Nancy Jahnig, Doug Nelson, Roger Palmer, Carrie Speich-Davis, Amy White, Patricia Zohlen, and Paul Zohlen.

2D. Consider a funding request from the Bluewood apartment developers.

Michael Hornes, Shay Beyers, Daniel Wheeler, and Dalton Rice provided information and responded to questions.

City Council provided general consensus for staff to proceed and negotiate details with developers, then bring next stage back to City Council.

3. VISITORS FORUM:

The following person(s) spoke:

- Gary Noller
- Daniel Lowery (Mike Hayes will follow-up with citizen)

4. CONSENT AGENDA:

Councilmember Delayne Sigerman made a motion to approve the consent agenda as presented, seconded by Councilmember Brenda Hughes The motion passed 5-0.

4A. Professional Services Agreement with Schaumburg & Polk, Inc. for the Galbraith Street and Quinlan Street Waterline Replacement project in the amount of \$328,655.00.

4B. Professional Services Contract with FORVIS, LLP for the City's annual audit for FY2024.

4C. City Council special-called meeting minutes for May 14, 2024 (Canvass of the Election).

4D. City Council meeting minutes May 14, 2024.

4E. City Council special-called meeting minutes for May 21, 2024.

END OF CONSENT AGENDA.

5. ORDINANCES, SECOND READING:

5A. Ordinance No. 2024-12, second reading. An Ordinance amending Chapter 60 of the Code of Ordinances, City of Kerrville, Texas, otherwise known as the City's Zoning Code; by changing the zoning of the property known as 601 Lois St. from a Single Family Residential Zoning District (R-1) to a Residential Transition Zoning District (RT); and providing other matters relating to the subject.

Shelley McElhannon read Ordinance No. 2024-12 caption into record.

Councilmember Hughes made a motion to approve Ordinance No. 2024-12 on second reading, seconded by Councilmember Jeff Harris. The motion passed 5-0.

5B. Ordinance No. 2024-13, second reading. An Ordinance amending Chapter 60 of the Code of Ordinances, City of Kerrville, Texas, otherwise known as the City's Zoning Code; by changing the zoning of the property known as 3600 Memorial Blvd (Kerrville VA Medical Center) from a Public and Institutional Zoning District to a Multifamily Residential Zoning District; and providing other matters relating to the subject.

Shelley McElhannon read Ordinance No. 2024-13 caption into record.

The following person(s) spoke:

- Gary Noller, President of Texas Freedom's Path
- Vicki Marsh, project supporter and resident of Freedom's Path

Councilmember Harris made a motion to adopt Ordinance No. 2024-13 on second reading, seconded by Councilmember Kent McKinney. The motion passed 5-0.

5C. Ordinance No. 2024-14, second reading. An Ordinance declaring the adoption of amendments to the City of Kerrville, Texas, Charter in accordance with the adoption of Propositions A, B, C, E, G, H, and I at the Special Election held on May 4, 2024; adopting the Charter, as amended; providing an effective date; and providing other matters related to this subject.

Shelley McElhannon read Ordinance No. 2024-14 caption into record.

Mike Hayes provided information.

The following person(s) spoke:

- George Baroody

Councilmember Hughes made a motion to approve Ordinance No. 2024-14 on second reading to declare the adoption of various amendments to the City Charter and to adopt a newly revised Charter, seconded by Councilmember McKinney. The motion passed 5-0.

6. CONSIDERATION AND POSSIBLE ACTION:

6A. Economic Development Grant Agreement between Habitat for Humanity – Kerr County and the City of Kerrville, Texas Economic Improvement Corporation for installation of Public Infrastructure for the development of the Mariposa Residential.

Shelley McElhannon read 6A caption into record.

Michael Hornes provided information and responded to questions. Mary Campana was in attendance.

Councilmember McKinney made a motion to approve the funding agreement, seconded by Councilmember Harris. The motion passed 5-0.

6B. Economic Development grant funding agreements between the City of Kerrville, Texas, Economic Improvement Corporation and Schreiner University for the initiation of Center for Talent and Workforce Development.

Shelley McElhannon read 6B caption into record.

Michael Hornes and Charlie McCormick provided information and responded to questions.

Councilmember Hughes made a motion to approve funding agreement, seconded by Councilmember Sigerman. The motion passed 5-0.

6C. Economic Development grant funding agreement between the City of Kerrville, Texas, Economic Improvement Corporation and Schreiner University for the expansion of their athletic facilities.

Shelley McElhannon read item 6C caption into record.

Michael Hornes provided information and responded to questions, with Dr. McCormick was in attendance.

Councilmember Harris made a motion to approve the funding agreement, seconded by Councilmember Hughes. The motion passed 5-0.

6D. Contract between the City of Kerrville, Texas, and Kerrville Convention & Visitors Bureau, Inc. for convention and tourism promotion services.

Shelley McElhannon read 6D caption into record.
Julie Behrens provided information and responded to questions.

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

6E. Purchase of Granular Activated Carbon (GAC) from Calgon Carbon Corporation for the filtration system at the Water Treatment Plant, not to exceed \$197,000.

Shelley McElhannon read 6E caption into record.
David Barrera provided information and responded to questions.

Councilmember Harris made a motion to authorize staff to purchase the Granular Activated Carbon (GAC) vessels as per the agreement, seconded by Councilmember McKinney. The motion passed 5-0.

6F. Appointments of Councilmembers as members and liaisons to City Boards and Commissions, to include the Economic Improvement Corporation.

Dalton Rice provided information and responded to questions.
Discussion ensued among City Council. Mayor Herring advised that Councilmember McKinney will be on the Airport Planning Committee, a Councilmember will be appointed to the EIC during item 8A, and Council will hold on Main Street at this time.

7. CONSIDERATION AND POSSIBLE ACTION:

7A. Financial report for month ended April 30, 2024.

Julie Behrens provided information and responded to questions.

8. APPOINTMENT(S):

8A. Appointment to the Economic Improvement Corporation. Eligible for Executive Session 551.074).

Mayor Herring made a motion to reappoint Kyle Bond, reappoint Beck Gipson, appoint Gilberto Paiz as a member, and appoint Councilmember Harris as City Council liaison, seconded by Councilmember Hughes. The motion passed 5-0.

8B. Removal of member, and appointment of member to Main Street Advisory Board.

Per Mayor Herring, item 8B postponed until the June 11, 2024 Council meeting.

9. EXECUTIVE SESSION: Executive Session not called nor convened.

9A. Appointment to the Economic Improvement Corporation. (551.074)

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

11. ITEM(S) FOR FUTURE AGENDAS:

- Mayor Herring – Enhancing the ‘public comments/visitors forum’ to become a more effective communication option.

ADJOURN. The meeting adjourned at 7:30 p.m.

APPROVED BY COUNCIL: _____

APPROVED:

ATTEST:

Joe Herring Jr., Mayor

Shelley McElhannon, City Secretary



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

Resolution No. 23-2024. A Resolution granting a Conditional Use Permit to authorize a Automobile Service and Repair Shop, Minor, on the property located at 209 Sidney Baker Street (HWY 16); the property located within a Light Commercial Zoning District (C-2); and making the permit subject to certain conditions and restrictions. (*D. Paxton, Director of Planning & Development*)

AGENDA DATE OF: June 11, 2024

DATE SUBMITTED: May 31, 2024

SUBMITTED BY: Drew Paxton, Planning Director

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

PAYMENT TO BE MADE TO: N/A

Kerrville 2050 Item? No

Key Priority Area N/A

Guiding Principle N/A

Action Item N/A

SUMMARY STATEMENT:

Proposal: A resolution to allow a Conditional Use Permit for an Automotive & Repair Shop, Minor, located within 500 feet of a floodplain; Lot 1-A (Replat), Block 1, South City; and more commonly known as 209 Sidney Baker Street South. (Case No. PZ-2024-11)

Valvoline Instant Oil Change is proposing to develop a .80 acre site at 209 Sidney Baker Street South with a two bay oil change facility. They are requesting a Conditional Use Permit for this use within a C-2 zoning district because the location is less than 500 feet (approximately 335 feet) from a recognized floodplain. Code requires a CUP for this use at this location. Oil and waste are contained in a basement component of the building. There is an oil and water separator (OWS) which is skimmed once per week and pumped out yearly to minimize onsite oil hazards. In the event of an oil spill, Valvoline employees are continuously trained to handle the spills and mitigate as necessary. A project representative will be at the P&Z meeting to answer any additional questions.

Valvoline Instant Oil Change has a business model where customers remain in their vehicles while minor automotive repair services are performed, usually taking 15-20 minutes per vehicle. Due to this, Valvoline is a low traffic producer. They have included a site plan to show the flow of traffic. No vehicles are left overnight for on-site storage, and parking is typically for employees only. The building will provide two bays and is approximately 1,600 square feet. The proposed development meets all zoning requirements other than the CUP.

Procedural Requirements: The City, in accordance with state law, mailed 15 letters on 4/18/2024 to adjacent property owners. The City published a similar notice in the Kerrville Daily Times on 4/11/2024. An informational sign regarding the public hearing was posted on the property on 4/19/24. At the time of drafting this Agenda Bill, no comments had been received.

Staff Analysis and Recommendation

Consistency with the Kerrville 2050 Comprehensive Plan:

The subject property and surrounding area are designated as Strategic Catalyst Area 2 (SCA 2), the primary land use at this location being a strong focus on commercial development. Since the underlying zoning is not changing and the proposed development remains commercial, the request is consistent with the Kerrville 2050 Comprehensive Plan.

Adjacent Zoning and Land Uses:

Subject Property

Current Zoning: C-2 Light Commercial

Existing Land Use: Vacant Commercial Building

Direction: **North, South**

Current Zoning: C-2, Light Commercial

Existing Land Uses: Various commercial businesses

Direction: **West, East**

Current Zoning: C-3, General Commercial

Existing Land Uses: Various commercial businesses

Thoroughfare Plan: The subject property is located on Hwy 16, a primary arterial.

Traffic Impact: No traffic impact is anticipated.

Parking: The proposed site plan includes the required off-street parking.

Recommendation: Because the Conditional Use Permit request is consistent with the Kerrville 2050 Comprehensive Plan, does not change the existing zoning district, and appears to be a mitigatable risk regarding business operations, staff recommends approval with a condition that the applicant prepare and provide to staff prior to business opening a Spill Prevention Control, Countermeasure and Spill Contingency Plan (SPCC) consistent with industry standards.

On May 2nd, the Planning and Zoning Commission recommended the case for approval with a unanimous vote.

RECOMMENDED ACTION:

Approve Resolution No. 23-2024 with conditions.

ATTACHMENTS:

[*20240611_Reso 23-2024 CUP auto service 209 Sidney Baker.pdf*](#)

[*Case PZ-2024-11_Proximity to Floodplain Exhibit.pdf*](#)

[*PZ-2024-11_Proposed Exterior Elevations.pdf*](#)

**CITY OF KERRVILLE, TEXAS
RESOLUTION NO. 23-2024**

**A RESOLUTION GRANTING A CONDITIONAL USE PERMIT TO
AUTHORIZE AN AUTOMOBILE SERVICE AND REPAIR,
MINOR ON THE PROPERTY LOCATED AT 209 SIDNEY BAKER
S. (HWY 16); THE PROPERTY LOCATED WITHIN A LIGHT
COMMERCIAL ZONING DISTRICT (C-2); AND MAKING THE
PERMIT SUBJECT TO CERTAIN CONDITIONS AND
RESTRICTIONS**

WHEREAS, the owner of the property depicted in the location map in **Exhibit A** (the "Property"), as attached, is requesting approval of a Conditional Use Permit ("CUP") to allow the Property, which is located within a Light Commercial Zoning District (C-2) to be used for an automobile service and repair, minor, as that term is defined in Section 60-17 of the City's Code of Ordinances; and

WHEREAS, an automobile service and repair, minor is normally authorized "by right" within a Light Commercial Zoning District (C-2); however, where such use will be located within 500 feet of the 100-year flood plain, such use must be authorized through the granting of a CUP by City Council; and

WHEREAS, the City Planning and Zoning Commission (the "Commission"), in compliance with state law and the Zoning Code of the City of Kerrville, Texas (Chapter 60, Code of Ordinances) ("Zoning Code"), and in particular, the procedures for obtaining a CUP; having given the requisite notices by United States mail, publication, and otherwise; and after holding a public hearing and affording a full and fair hearing to all property owners generally and particularly to those interested persons situated in the affected area and in the vicinity thereof; has recommended that City Council grant the CUP applied for and referenced herein, subject to the special conditions and restrictions set out hereinafter and applied to the Property; and

WHEREAS, City Council, in compliance with state law and the Zoning Code, and likewise having given the requisite notices and holding a public hearing on June 11, 2024, finds that the health, safety, and general welfare will be best served by the granting of the CUP as recommended by the Commission on the Property;

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

SECTION ONE. A Conditional Use Permit is granted to permit the Property described as follows, and located within a Light Commercial Zoning District (C-2), to be developed and used for an automobile service and repair, minor as that term is defined in the Zoning Code, and such use is subject to the provisions of this Resolution and other City ordinances and regulations:

Legal Description: .80 acres located within the City of Kerrville, Kerr County, Texas, and being Lot 1-A (replat), Block 1, out of the South City subdivision; and being depicted on the location map at **Exhibit A**.

Address: 209 Sidney Baker S. (HWY 16).

SECTION TWO. In addition to the development and use regulations currently applicable to the Property, development and use of the Property is subject to the following additional conditions:

- A. Site Plan:** The development shall be consistent with the proposed site plan for the automobile service and repair, major such site plan attached as **Exhibit B**.
- B. Development Requirements:** the owner or operator shall comply with Section 60-60(4) of the Zoning Code, to include performing all maintenance within the interior bays of the maintenance facility and not storing vehicle parts or supplies, including tires and petroleum products, outside.
- C. Mitigation Plan:** Prior to receiving a certificate of occupancy or equivalent permit from the City to begin operations, the owner or operator of the Property shall submit a spill prevention control, countermeasure, and spill contingency which is consistent with industry standards to the City for its approval.
- D. Other Zoning Regulations:** The regulations set forth in this Resolution are in addition to those set forth in the Zoning Code, as may be amended or superseded. In the event of any irreconcilable conflict between this Resolution and the regulations set forth in the Zoning Code, the provisions of this Resolution will prevail.

SECTION THREE. This Resolution and CUP is subject to termination in accordance with the Zoning Code.

SECTION FOUR. City Council finds and determines that its adoption of this Resolution promotes the health, safety, and general welfare of the public and is a proper valid exercise of the City's police powers.

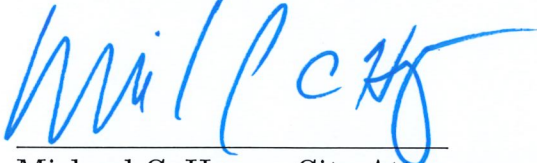
SECTION FIVE. If any section, subsection, sentence, clause, phrase, or portion of this Resolution is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

SECTION SIX. This Resolution is effective upon adoption.

PASSED AND APPROVED ON this the ____ day of _____, A.D., 2024.

Joe Herring Jr., Mayor

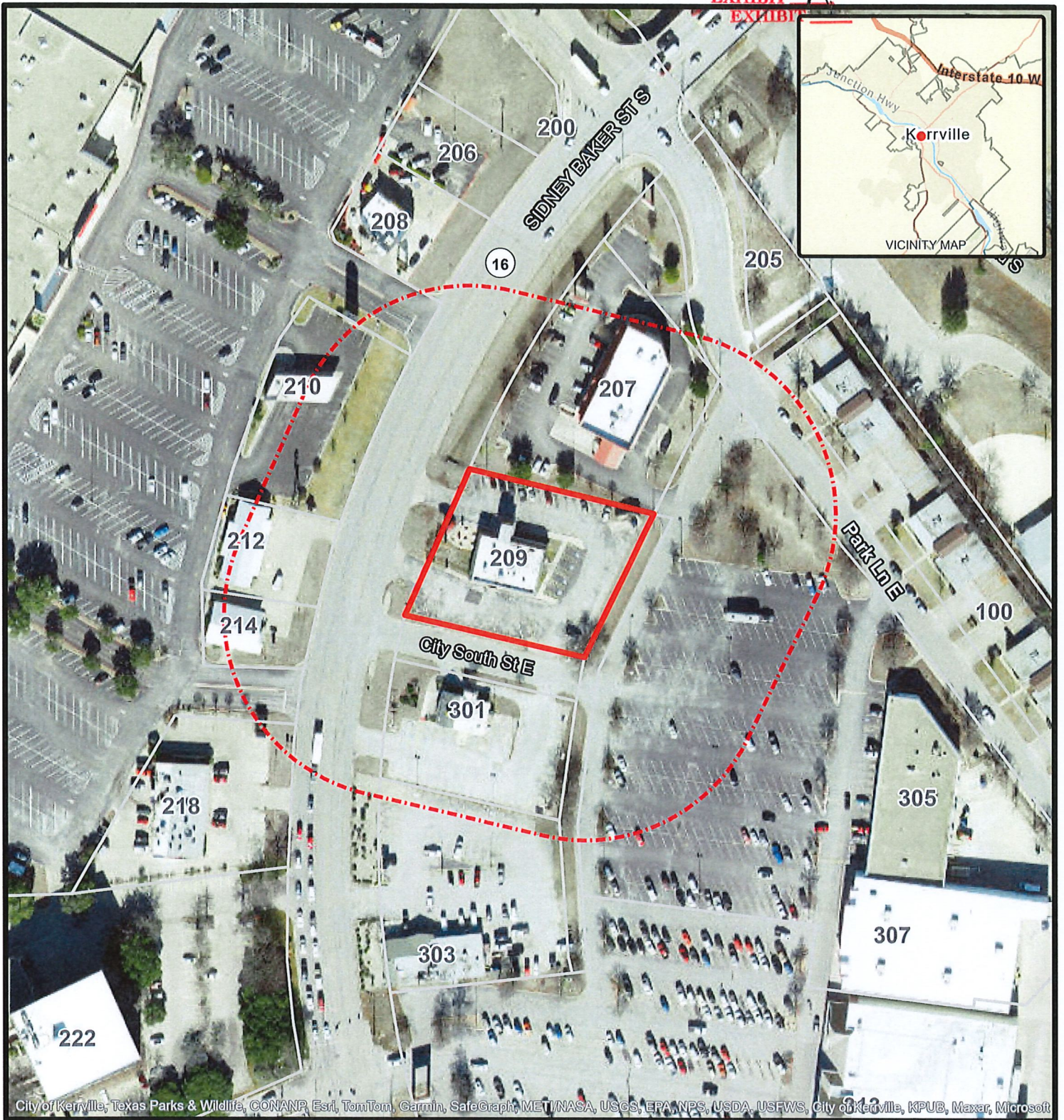
APPROVED AS TO FORM:



Michael C. Hayes, City Attorney

ATTEST:

Shelley McElhannon, City Secretary



Location Map

Case # PZ-2024-11

Location:

209 Sidney Baker St S

Legend

-  Subject Properties
-  200 Feet Notification Area



0 50 100 200

Scale In Feet

04/16/2024



SITE DATA SUMMARY	
VALUATION TRACT	34 ACRES 13.5261 AF
ZONING	CS-2 LIGHT COMMERCIAL
BUILDING ID	LETS #1
MAX HEIGHT	NONE
F.A.R. FLOORAREA RATIO	NONE
REQUIRED SETBACKS	FRONT 25' SIDE 10' REAR 10'
PARKING REQUIRED	27 (APPROX 1% OF GROSS)
PARKING PROVIDED	20 (SEE PARKING REQUIREMENTS)
PARKING PROVIDED	FRONT 25' SIDE 10' REAR 10'
REQUIRED BICYCLE PARKING	10 (APPROX 1% OF GROSS)
PROVIDED BICYCLE PARKING	10 (APPROX 1% OF GROSS)
PROVIDED BICYCLE PARKING	10 (APPROX 1% OF GROSS)



SURVEY PROVIDED BY:

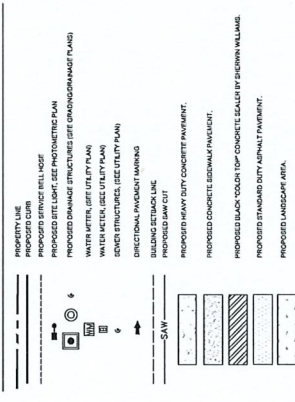
GILES ENGINEERING ASSOCIATES, INC.
2628 LOMBARDY LANE, SUITE 105
DALLAS, TX 75220
(214) 356-6865

DATED: 01-09-2024

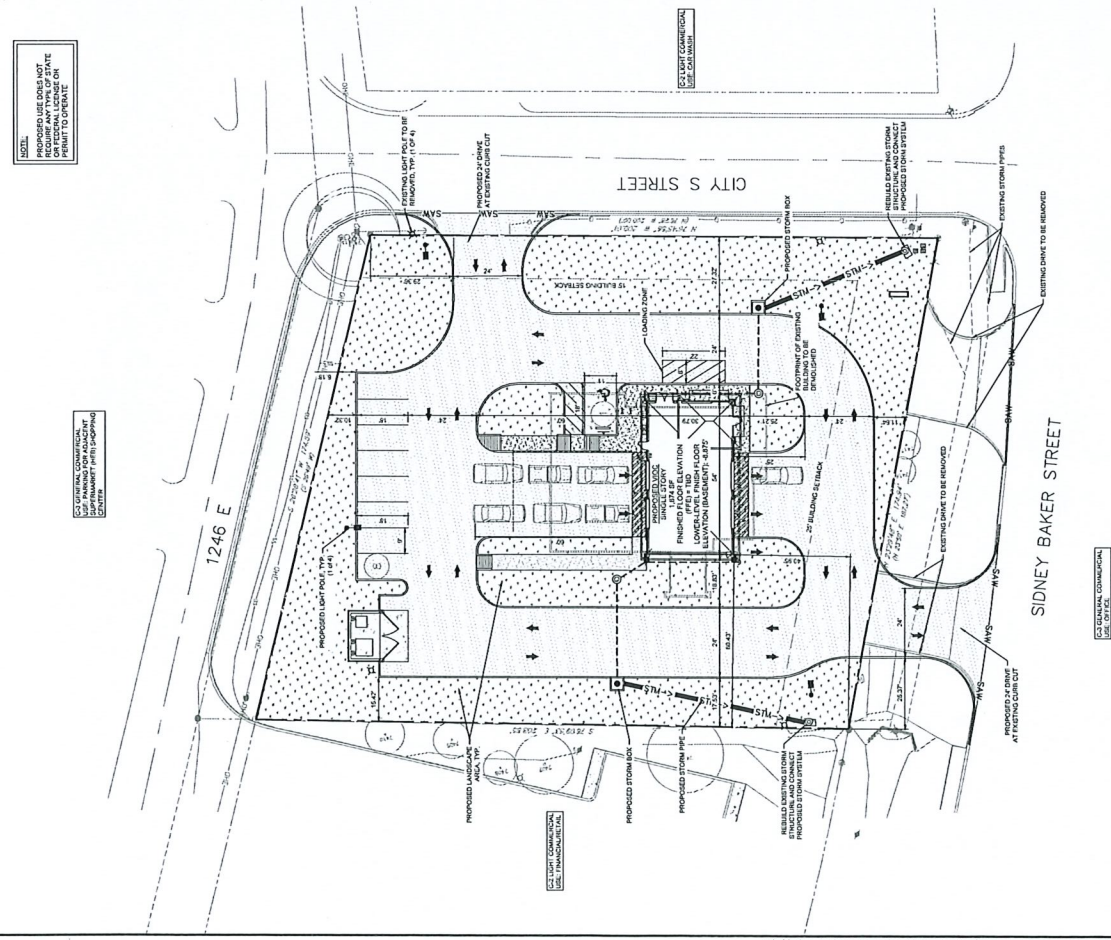
GENERAL SITE NOTES:

1. CONTRACTOR SHALL HAVE ALL NECESSARY PERMITS FROM THE STATE AND LOCAL GOVERNMENT AGENCIES PRIOR TO BEGINNING WORK.
2. IF THE CONTRACTOR, IN THE COURSE OF THE WORK, KNOWS OF ANY DISCREPANCIES BETWEEN THE PLANS AND THE ACTUAL CONDITIONS OF THE SITE, THE CONTRACTOR SHALL IMMEDIATELY ADVISE THE ENGINEER AND THE LOCAL GOVERNMENT AGENCY IN WRITING. THE CONTRACTOR SHALL NOT PROCEED WITH THE WORK UNTIL THE DISCREPANCY IS RESOLVED. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE COSTS OF ANY INVESTIGATION, TESTING, AND CORRECTION REQUIRED.
3. CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND DISCREPANCIES SHOWN ON THE PLANS. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE COSTS OF ANY INVESTIGATION, TESTING, AND CORRECTION REQUIRED.
4. ALL CONSTRUCTION MATERIALS AND WORKMANSHIP SHALL BE IN ACCORDANCE TO THE STATE AND LOCAL GOVERNMENT AGENCY'S WRITTEN CONSTRUCTION SPECIFICATIONS AND DETAILS.
5. ALL HANDMADE FIELD FEATURES SHALL BE CONSTRUCTED TO MEET ALL FEDERAL, STATE AND LOCAL CODES AND STANDARDS. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE COSTS OF ANY INVESTIGATION, TESTING, AND CORRECTION REQUIRED.
6. NOTIFY THE CITY INSPECTOR TWENTY (20) HOURS BEFORE BEGINNING EACH PHASE OF CONSTRUCTION.
7. THE CONTRACTOR SHALL MAINTAIN PROPER RECORDS, INCLUDING, BUT NOT LIMITED TO, DATES, TIMES, AND PLACES OF ALL CONSTRUCTION ACTIVITIES.
8. ARCHITECTURAL PLANS AND WORKMANSHIP SHALL BE IN ACCORDANCE WITH THE CITY AND LOCAL GOVERNMENT AGENCY'S WRITTEN CONSTRUCTION SPECIFICATIONS AND DETAILS.
9. ALL DIMENSIONS ARE FROM FACE OF BUILDING. CURB AND WALL SHALL HAVE DIMENSIONS SPECIFIED ON PLANS.
10. ALL DIMENSIONS ARE FROM FACE OF BUILDING. CURB AND WALL SHALL HAVE DIMENSIONS SPECIFIED ON PLANS.
11. CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND DISCREPANCIES SHOWN ON THE PLANS. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE COSTS OF ANY INVESTIGATION, TESTING, AND CORRECTION REQUIRED.
12. ALL STREET LIGHTS, SIGNAGE, CURB, CURB AND GUTTER, SIDEWALK, SIDEWALK DRIVE, AND SIDEWALK DRIVE SHALL BE CONSTRUCTED TO MEET ALL FEDERAL, STATE AND LOCAL CODES AND STANDARDS. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE COSTS OF ANY INVESTIGATION, TESTING, AND CORRECTION REQUIRED.
13. ALL ROAD WORK SHALL BE PERFORMED IN ACCORDANCE WITH THE STATE AND LOCAL GOVERNMENT AGENCY'S WRITTEN CONSTRUCTION SPECIFICATIONS AND DETAILS.
14. ALL CURB AND GUTTER SHALL BE CONSTRUCTED TO MEET ALL FEDERAL, STATE AND LOCAL GOVERNMENT AGENCY'S WRITTEN CONSTRUCTION SPECIFICATIONS AND DETAILS.
15. ALL CURB AND GUTTER SHALL BE CONSTRUCTED TO MEET ALL FEDERAL, STATE AND LOCAL GOVERNMENT AGENCY'S WRITTEN CONSTRUCTION SPECIFICATIONS AND DETAILS.

PROPOSED LEGEND:



EXISTING LEGEND:



SIDNEY BAKER STREET

C-3 GENERAL COMMERCIAL
USE - OFFICE

NOTE:
PROPOSED USE DOES NOT
REQUIRE ANY TYPE OF STATE
OR FEDERAL LICENSE OR
PERMIT TO OPERATE

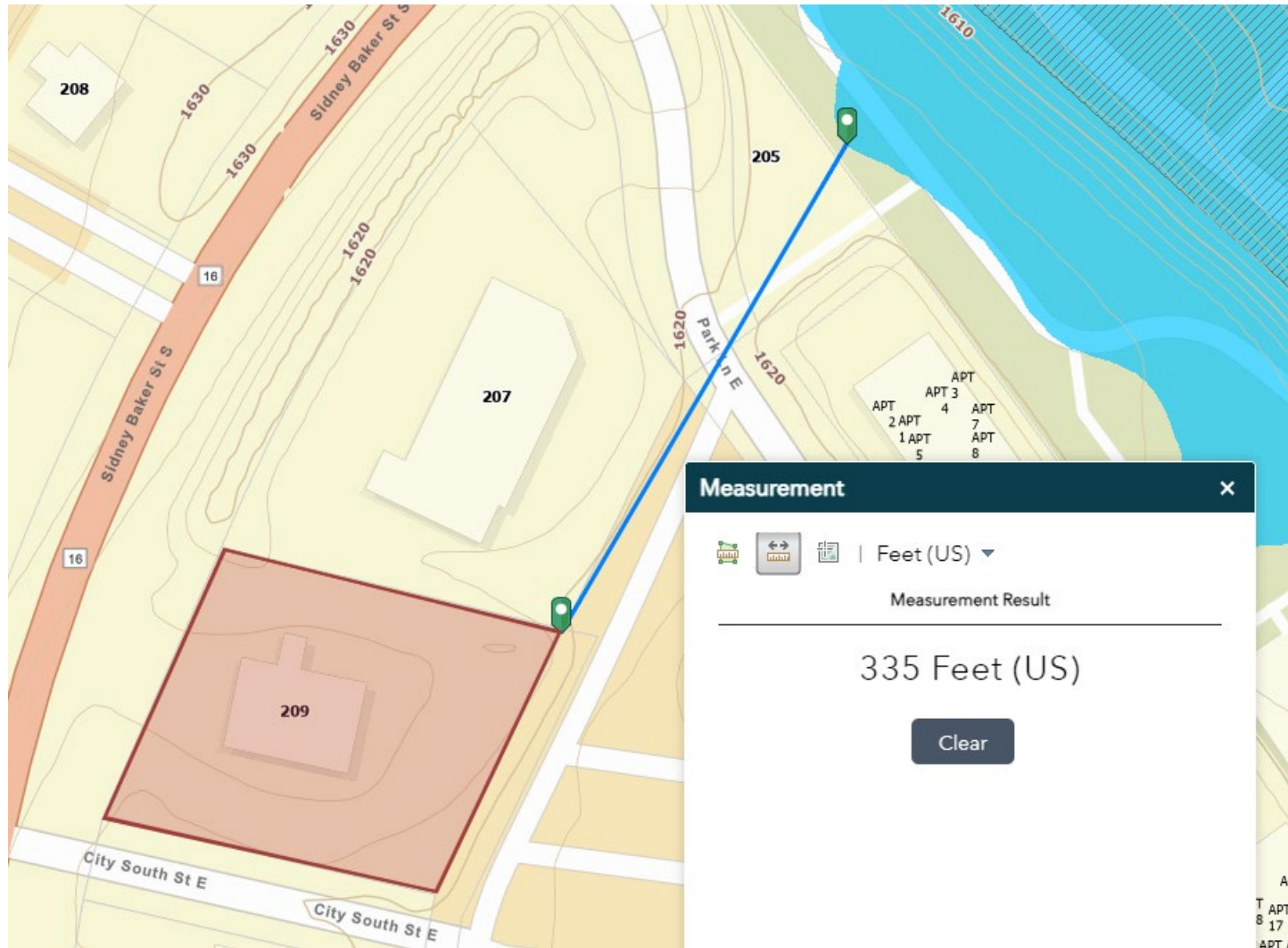
C-3 GENERAL COMMERCIAL
USE: PARKING FOR ADJACENT
SUPERMARKET (HFB) SHOPPING

C-2 LIGHT COMMERCIAL
USE- CAR WASH

G-2 LIGHT COMMERCIAL
USE: FINANCIAL RETAIL

Case PZ-2024-11

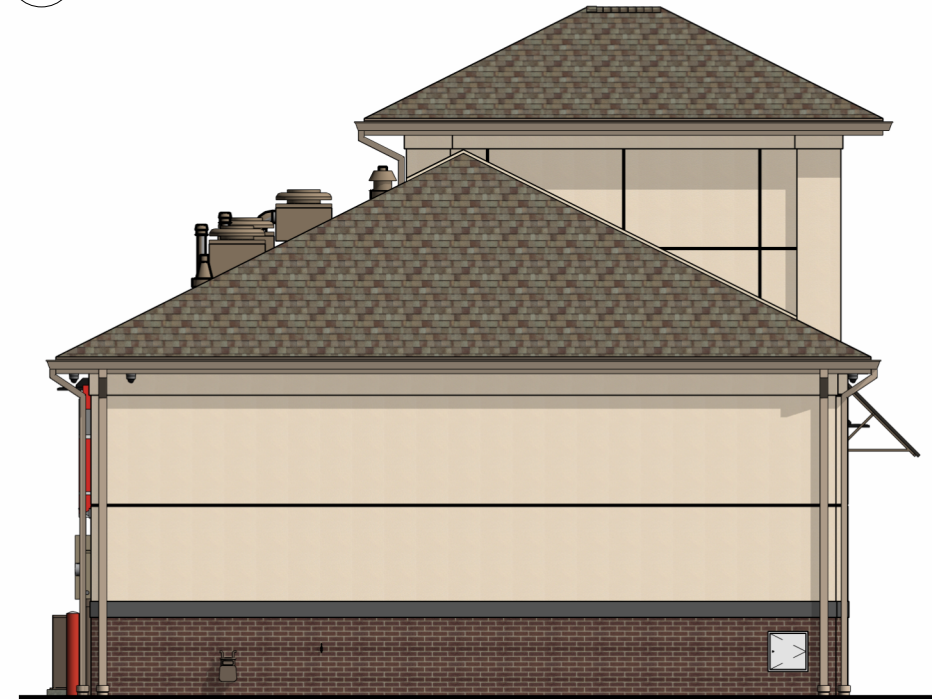
Proximity to Floodplain Exhibit



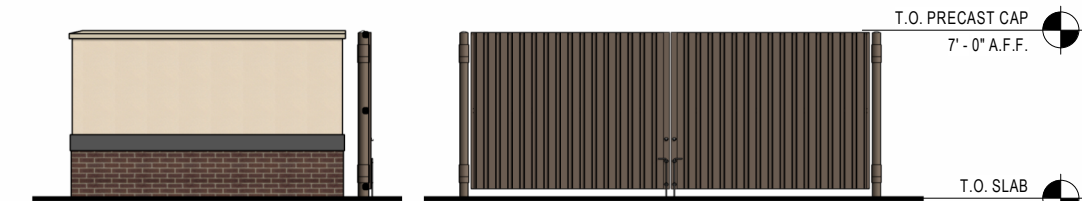
C:\Users\stephanie.kohlberg\Documents\2020 Revit Projects\06-23-20023 Kerrville TX - HFA-2BRH-TX Arch_V20_HFA_Stephanie.Kohlberg.rvt 3/25/2024 3:24:50 PM



2 OVERALL RIGHT SIDE EXTERIOR ELEVATION (RIGHT)
Scale: 1/8" = 1'-0"



4 OVERALL LEFT SIDE EXTERIOR ELEVATION (LEFT)
Scale: 1/8" = 1'-0"



5 OVERALL FRONT & SIDE TRASH ENCLOSURE ELEVATIONS
Scale: 1/8" = 1'-0"



1 OVERALL BACK EXTERIOR ELEVATION
Scale: 1/8" = 1'-0"



3 OVERALL FRONT EXTERIOR ELEVATION
Scale: 1/8" = 1'-0"

EXTERIOR FINISHES - BRICK / EIFS

EXTERIOR INSULATED FINISH SYSTEM:	DRYVIT (SANDPEBBLE FINE) COLOR: E.I.F.S. 1 = #113 AMARILLO WHITE	STANDING SEAM AWNING:	FIRESTONE UNA-CLAD KYNAR 500 / HYLAR METAL 5000 FLUOROCARBON STEEL "CHAMPAGNE METALLIC", UNDERSIDE & FRAME TO BE PAINTED SW 6152 "SUPERIOR BRONZE"	STOREFRONT SYSTEM:	2x4 1/2" KAWNEER TRIFAB VG 451T SERIES CLEAR ANODIZED ALUMINUM STOREFRONT SYSTEM w/ 1" INSULATED GLAZING.
FACE BRICK : (WAINSCOT)	BELDEN - "MODULAR MIDLAND BLEND"	ROOF SHINGLES:	OWENS CORNING DURATION SERIES "DRIFTWOOD"	H.M. DOORS & FRAMES:	FIELD PAINT SHERWIN-WILLIAMS SW-7515 "HOMESTEAD BROWN". PROVIDE MOCK-UP AND VERIFY COLOR W/OWNER.
PRECAST CAP :	CUSTOM CAST STONE - "LIGHT BUFF"	MISC. ROOF VENTS, FANS, ETC.	FIELD PAINT SHERWIN-WILLIAMS SW7046 "ANONYMOUS"	O.H. DOOR FINISH:	CLEAR ANODIZED ALUMINUM
MORTAR:	LEHIGH STANDARD KIT - "BEIGE"	GUTTER, DOWNSPOUTS, FASCIA, EXTERIOR SOFFIT, & EXPOSED TRIM	DIMENSIONAL METALS, INC. - "BEIGE"		
MASONRY SEALER:	ALL MASONRY SURFACES SHALL BE TREATED w/ SEALER.				

ISSUE RECORD	DATE				
HFA HFA-AE, L T D.					
VALVOLINE INSTANT OIL CHANGE SIDNEY BAKER STREET SOUTH & CITY SOUTH STREET KERRVILLE, TX, 78208					
 Project No: 06-23-20023					



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

SUBJECT: Interlocal Agreement for Firefighting and Emergency Medical Services between the City of Kerrville and Kerr County. (*Fire Chief E. Maloney*)

AGENDA DATE OF: June 11, 2024

DATE SUBMITTED: May 31, 2024

SUBMITTED BY: Eric Maloney, Fire Chief

EXHIBITS:

Expenditure Required:	Remaining Budget Balance in Account:	Amount Budgeted:	Account Number:
\$0.00	N/A	N/A	N/A

PAYMENT TO BE MADE TO: N/A

Kerrville 2050 Item? No

Key Priority Area N/A

Guiding Principle N/A

Action Item N/A

SUMMARY STATEMENT:

The City of Kerrville provides Firefighting and Emergency Medical Services for areas of Kerr County beyond the City's limits under an Interlocal Agreement with Kerr County. The interlocal agreement defines the Firefighting Services, Emergency Medical Services, the response areas and the cost for these services. The current 10-year Interlocal Agreement for Firefighting and Emergency Medical Services expires on September 30, 2024. On May 13, 2024, the Kerr County Commissioners Court unanimously agreed to enter into another 10-year Interlocal Agreement for Firefighting and Emergency Medical Services with the same terms and conditions. The Kerrville Fire Department can continue to provide the same service levels for firefighting and Emergency Medical Services as outlined in the interlocal agreement.

RECOMMENDED ACTION:

Authorize the City Manager to negotiate and finalize the Interlocal Agreement.

ATTACHMENTS:

[20240611_ILA wKerrCo KFD srvs.pdf](#)

**INTERLOCAL AGREEMENT FOR
FIREFIGHTING AND EMERGENCY MEDICAL SERVICES BETWEEN THE
CITY OF KERRVILLE, TEXAS AND KERR COUNTY, TEXAS**

AGREEMENT

This *Interlocal Agreement for Firefighting and Emergency Medical Services* (the "Agreement") between the **CITY OF KERRVILLE, TEXAS**, ("City") and **KERR COUNTY, TEXAS**, ("County") shall be effective as of October 1, 2024.

WITNESSED:

City shall provide firefighting and emergency medical services (EMS) for the use and benefit of the citizens of Kerr County, Texas, to areas of Kerr County beyond the City's limits, under the following terms and conditions:

SECTION ONE. Firefighting Services.

A. Kerrville Fire 1st Response Area: It is understood that for the Kerrville Fire 1st Response Area as specifically identified in the service map attached as **Exhibit A**, City will act as the fire department for all types of fire emergencies, including structural, grass/brush, and vehicle fires ("fire emergencies"). City's Fire Chief or designee ("Fire Chief"), at his or her sole discretion, may request the appropriate resources to respond to the scene.

B. Responses Outside City Limits and Kerrville Fire 1st Response Area:

1. *Firefighting:* For areas within Kerr County but outside the City limits and the Kerrville Fire 1st Response Area, in the event of a request for service for fire emergencies and the volunteer fire department for that jurisdiction ("VFD") has not responded to that request within four minutes, the VFD for that jurisdiction or Kerr County Sheriff's Department ("Sheriff") may request that the City respond to the fire emergency. The Fire Chief, at his or her sole discretion, may request the appropriate resources to respond to the scene. Otherwise, City is not obligated to respond unless called for assistance by the VFD or Sheriff. In the event City receives a call for service from someone other than the VFD or Sheriff, City shall relay the call to the Sheriff. From time to time, City may change its protocol for services at its discretion. The area specified by this section includes the city of Ingram, Texas. The VFDs consist of the following: Ingram VFD, Turtle Creek VFD, Tierra Linda VFD (for service limited from City under this Agreement to Kerr County), and Comfort VFD (for service limited from City under this Agreement to Kerr County).

2. *Other Emergencies/Investigations:* For areas within Kerr County but outside the City limits and the Kerrville Fire 1st Response Area and for all other non-fire emergencies, including vehicle accidents, water and other types of rescues, searches, drowning, fuel spills, malicious and accidental false alarms, and smoke instigated responses (not actual fires), City shall respond at the request of the VFD or Sheriff. The Fire Chief, at his or her sole discretion, may request the appropriate resources to respond to the scene. City shall respond to and assist with fire investigations as a courtesy to the Sheriff, the Department of Public Safety, or the Texas Rangers in their determination of arson and the causes of fire. From time to time, City may change its protocol for services at its discretion.

SECTION TWO. Emergency Medical Services.

- A. **EMS.** City shall furnish emergency medical services ("EMS") to areas of Kerr County beyond the City limits ("EMS Service Area") to include responding to calls for emergency medical assistance and providing medical transportation services. The amount and type of equipment and number of personnel actually furnished by City in response to any emergency or other call shall be determined solely by City and its duly appointed agents, officers, directors, employees, or subcontractors.
- B. **First Responder Program.** County shall manage the Kerr County First Responder Program ("First Responder Program") limited to include recruiting volunteers, conducting background checks and fit-for-duty tests, approving and referring volunteers to City, disbursing stipends, and purchasing all appropriate equipment and supplies. City shall administer the medical operation of the First Responder Program under the City's policies and procedures limited to maintaining and ordering appropriate equipment and supplies; requesting and managing budgeted expenditures; training and issuing equipment to volunteers; supervising the continuing education program; and ensuring compliance with the City's EMS medical protocols and standard operating guidelines.
- C. **Response Times.** City shall make reasonable efforts to maintain emergency response times for the EMS Service Area at an average of twelve (12) minutes for all calls. City shall make reasonable efforts to provide at least two (2) ambulances manned 24 hours per day, 365 days per year capable of responding to City and County calls for service. City shall staff the ambulances in accordance with City's EMS medical protocols and standard operating guidelines and shall continuously monitor its compliance with this provision. However, such response times may be waived in times of natural disasters or

other catastrophic events which limits or renders performance standards substantially impossible.

- D. EMS Vehicles.** City shall maintain its EMS vehicles in accordance with the Texas Department of State Health Services EMS provider rules and regulations at all times and shall provide patient care supplies, medical equipment, vehicle maintenance, and regular equipment and vehicle inspections, calibrations, and checks as determined by City to be appropriate.
- E. Reports.** City shall provide quarterly run reports to County regarding the number of EMS responses made into the EMS Service Area. Such report will summarize the response codes obtained from "Emergency Response Report" provided as part of the EMS software used by City. County may request in writing additional reports as needed as long as the information sought does not impinge on required patient confidentiality, violate federal or state law, and County pays the cost of producing such additional reports.
- F. Additional Services.** In carrying out EMS, City shall provide vehicle extrication, additional personnel, and establishment of landing zones for helicopter services as needed and as determined by the incident commander. In furtherance of meeting its obligations under this Agreement, City may enter into contracts and interlocal agreements with local governmental entities and/or private companies as City deems necessary or appropriate.
- G. Non-dedicated Ambulance.** If personnel and equipment are available, City may provide one (1) non-dedicated, stand-by ambulance at community events within City's extraterritorial jurisdiction (ETJ) upon fourteen (14) days written notice of such request by County at no additional cost. County understands that City's ambulance providing such service will remain available to respond to calls for services at other locations and will leave the event when required. City is not obligated to replace the ambulance for the event during the periods when the ambulance is being otherwise utilized.
- H. Dedicated Ambulance.** Should County desire a dedicated ambulance for a community event, County must request such in writing with City a minimum of fourteen (14) days prior to the event. If personnel and equipment are available, City may locate an ambulance at the event for the duration of the event unless or until a transport from the event is needed. It is further understood should another ambulance not be available to transport a patient from the event, the assigned ambulance may be required to depart the event. Upon the departure of the assigned ambulance, no replacement ambulance shall be available until such time as the assigned ambulance returns. In

accordance with City's fee schedule as adopted City Council, County shall pay City the required hourly fee for such service.

- I. Patient and Third-party Billing.** City, including any and all of its agents and subcontractors operating hereunder, is entitled, in its sole discretion, to separately charge the patient/customer for their services based on the prices set by City. Prices charged will be based upon a number of factors, including location of the call, level of service provided, type of care rendered, supplies used, personnel used, and other mitigating or contributing factors to include cost of Medicare disallowance, cost of collection, and other related costs. Any and all costs provided for herein shall survive the expiration of this Agreement.

SECTION THREE. County's Costs. For the first year of this Agreement, County shall pay City \$1,535,667.00 for City's provision of services under this Agreement. County shall make equal monthly payments stemming from the applicable annual fee, each of which is due and payable beginning on or before October 1, 2024 and continuing on or before the first day of each successive month. City is not required to provide an invoice to County prior to payment.

SECTION FOUR. Cost Increase. Following the first year of this Agreement, the total yearly cost to be paid by County shall increase each year of the Agreement by adding an inflationary adjustment equal to the inflation increase/decrease as defined by the Dallas-Ft. Worth, Texas Consumers Price Index- All Urban Consumers (all items), as published by the U.S. Department of Labor, Bureau of Labor Statistics or its successor (C.P.I.). If publication of the C.P.I. is discontinued, any similar index published and recognized by the financial community, as a substitute for the C.P.I. will be used in its place.

SECTION FIVE. Term. This Agreement remains in effect through September 30, 2034.

SECTION SIX. Liability. Pursuant to Texas Government Code ("TGC") Section 791.006, subsection (a-1), the Parties agree to be jointly and severally responsible for civil liability that arises from the furnishing or obtaining services under this Agreement. The assignment of liability provided here is intended to be different than liability otherwise assigned under subsection (a) of 791.006, TGC.

SECTION SEVEN. Right to Terminate and Penalty. Either party may terminate the Agreement for any reason upon the terminating party giving the nonterminating party no less than one-hundred eighty (180) days written notice thereof. In addition, should County fail to pay City pursuant to Section Three, above, City may terminate following delivery of its written notice to the County of this event and its decision to terminate. County shall have thirty (30) days to correct such non-

payment and if payment is made within thirty (30) days of the date County receives notice from City, County shall not be in default. However, where payment is received after the thirtieth (30th) day in which it is due as provided by Section Three, above, County shall pay the outstanding balance plus a penalty calculated at twelve percent (12%) per annum as applied to the outstanding balance. Where either party unilaterally terminates the Agreement or the County fails to pay prior to the end of the full term as provided by Section Five, above, such terminating party shall pay as a penalty to the other party the amount of \$100,000.00 multiplied by the remaining number of years and prorated portions thereof under this Agreement. This provision does not apply to City where City terminates following County's failure to pay.

SECTION EIGHT. City Discretion in Providing Services. City reserves the reasonable discretion to delay, to fail to respond, or to pull away from any call, whether in City or out, in order to respond adequately to other emergencies, as solely determined by City.

SECTION NINE. City's Control. It is expressly understood that in the performance of the obligations taken under this Agreement, City is an independent contractor with the sole right to supervise, manage, control, and direct the provision of its employees and agents. Further, County shall look to the City for performance only and shall have no right at any time to direct or supervise the City, its agents, officers, directors, employees or subcontractors. Nothing in this Agreement shall constitute or be construed to create a partnership or a joint venture by and among the parties.

SECTION TEN. Compliance with Law. City and County shall observe and comply with all federal, state, and local laws, rules, ordinances, and regulations in providing services under this Agreement.

SECTION ELEVEN. Miscellaneous.

- A. For purposes of this Agreement, all notices required hereunder shall be delivered to the following addresses of the respective parties via hand delivery or first class, prepaid mail, with copies of such notices also sent via email:

For the City of Kerrville:

City of Kerrville
c/o City Manager
City Hall, 701 Main Street
Kerrville, TX 78028
dalton.rice@kerrvilletx.gov

with copy to: City of Kerrville
c/o Fire Chief
87 Coronado
Kerrville, TX 78028
eric.maloney@kerrvilletx.gov

For the County:

Kerr County
c/o County Judge
Kerr County Courthouse
700 Main Street
Kerrville, TX 78028
rkelly@co.kerr.tx.us

- B. This Agreement supersedes all written or oral representations of the parties as to the content, obligations, or performance of services by City to County. Any modification to this Agreement is of no force or effect unless in writing and signed by both parties. Each party hereto certifies that the covenants and obligations stated in this Agreement constitute the duly authorized act and agreement of the respective entity and that the persons affixing their signatures below have obtained all requisite approvals for the execution of this Agreement.
- C. The validity of the Agreement and any of its terms or provisions as well as the rights and duties of the parties, is governed by the laws of the State of Texas. Exclusive venue for any action concerning this Agreement is Kerr County, Texas.
- D. Pursuant to Section 791.015 of the Texas Government Code, the parties may agree to submit disputes arising from this Agreement to the alternative dispute resolution procedures authorized by Chapter 2009 of the Texas Government Code.
- E. The parties, or representatives of each party, will meet once annually during July to review and discuss performance rendered under this Agreement.
- F. Notwithstanding any provision to the contrary, it is agreed that none of the obligations contained within this Agreement shall run to or be enforceable by any party other than a party to this Agreement.
- G. In the event either party pursues litigation in order to enforce the provisions of this Agreement, the prevailing party is entitled to recover its reasonable attorney's fees, in addition to any and all other remedies, costs, and damages permitted by law.

EXECUTED this the _____ day of _____, A.D., 2024.

(signatures begin on following page)

CITY OF KERRVILLE, TEXAS

COUNTY OF KERR, TEXAS

Joe Herring Jr., Mayor

Rob Kelly, County Judge

ATTEST:

ATTEST:

Shelley McElhannon, City Secretary

Nadene Alford, County Clerk

APPROVED AS TO FORM:

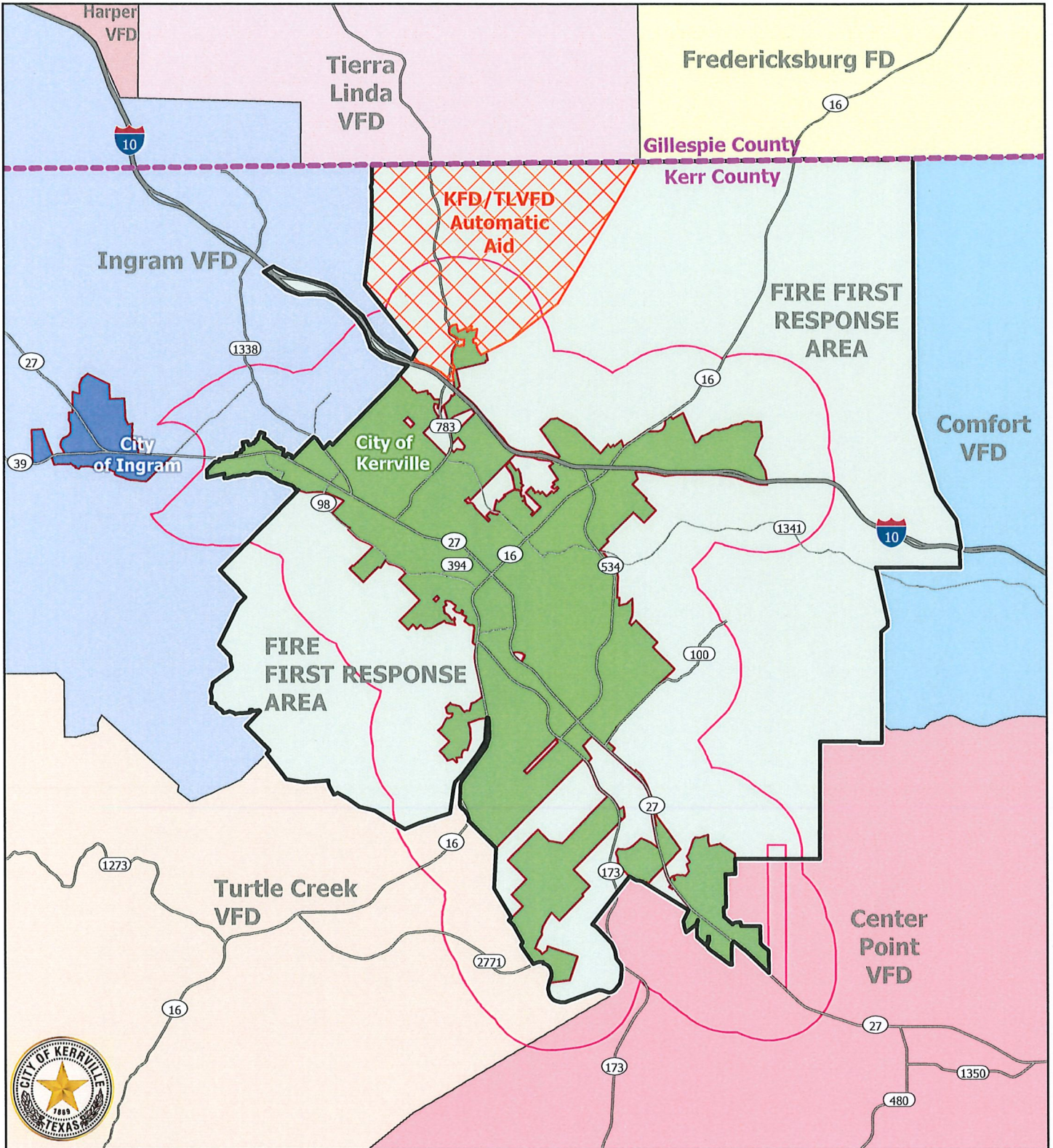


Michael C. Hayes, City Attorney

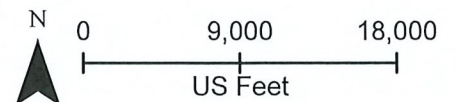
APPROVED AS TO FORM:

Heather Stebbins, County Attorney

EXHIBIT A



- | | | | |
|--|--|---|--|
| City of Ingram | Fire First Response Area | Turtle Creek VFD | KFD/TLVFD Automatic Aid |
| City of Kerrville | Center Point VFD | Tierra Linda VFD | |
| Kerrville ETJ | Comfort VFD | Fredericksburg FD | |
| Ingram VFD | Harper VFD | | |



06/06/2024 11:14 AM

joyoung

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



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

SUBJECT: Authorization to submit a funding application to the City of Kerrville, Texas, Economic Improvement Corporation for the development of Granger McDonald Park in an amount not to exceed \$2,200,000. *(M. Hornes, Assistant City Manager)*

AGENDA DATE OF: June 11, 2024

DATE SUBMITTED: June 4, 2024

SUBMITTED BY: Michael Hornes, Assistant City Manager

EXHIBITS:

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

PAYMENT TO BE MADE TO: N/A

Kerrville 2050 Item? Yes

Key Priority Area P - Parks / Open Space / River Corridor

Guiding Principle N/A

Action Item P5.6 - Improve access to Lake Nimitz as a recreational amenity

SUMMARY STATEMENT:

On November 13, 2023, the Economic Improvement Corporation (EIC) held a public hearing and passed a resolution authorizing the issuance of \$20M of sales tax revenue bonds for several quality-of-life projects, including \$2,200,000 for the creation of Granger McDonald Park. The Kerrville City Council subsequently passed a resolution and approved the bond issuance on November 14, 2023. This bond issuance is a culmination of several months of planning with the EIC and City Council. The Parks and Recreation Advisory Board also participated in the planning process and approved a list of priority projects. As a reminder, payments on this bond package are supported by sales tax and not property taxes.

The expected projects to be included under this funding agreement include a parking lot, a boat ramp, a boardwalk along the water, xeriscape landscaping in line with best practices of the Upper Guadalupe River Authority. The first step in this process, is to fund the engineering of the park space. Attached you will find the proposal from Hewitt Engineering, in the amount of \$219,800.

Staff is requesting authorization to submit a funding application to the EIC for \$2,200,000, which includes the cost of the engineering. If approved, it will be presented at the June EIC meeting.

The initial scope of work includes the following:

- **Civil Site Engineering** including preliminary review of grading and drainage, parking layout, evaluation of permeable paver options, irrigation water line extension and preliminary cost determination.
- **Geotechnical Engineering** including on site bore holes and foundation recommendations for the boardwalk system and boat ramp
- **Structural Engineering** including review of boardwalk alternatives, pier design and bulkhead alternatives
- **Topographic Field Survey** including establishment of datum and benchmarks, location of hardwood trees survey and preparation of site topography map at one foot contour intervals
- **Landscape Architect Services** including schematic drawings and conceptual irrigation study
- **Environmental Due Diligence Services** including wetlands/jurisdictional waters determination and Threatened/Endangered Species habitat evaluation
- **Cultural Resources Services** including archaeological literature and records research and archeological field survey

The Final Design Phase will include the following:

- **Civil Site Engineering** including final paving, grading and drainage plans, dimensional control layout, permeable paver design, storm sewer design, miscellaneous details and stormwater pollution prevention plan.
- **Structural Engineering** including final structural drawings of boardwalk substructure, decking, connections, and railing attachments and specifications as notes on the drawings for structural items of work.
- **Landscape Architect Services** including coordination of the grading with the civil plans at the bioretention areas, layout and detailing of LID features to include bioswales/bioretention, overflow drains and connections to the storm sewer drainage system. The landscape plan will also provide the location and identification of all plant materials to be used and specify mainline routing, extent, and type of irrigation to be utilized.
- **Floodplain Development Permit** includes submittal of plans and a No Rise Analysis to the City of Kerrville Floodplain Administrator documenting no impact to the Guadalupe River 100-year base flood elevation as a result of the proposed improvements
- **Environmental Services** including Freshwater Mussel Survey and Relocation and USACE Pre-construction Notification and Biological Assessment

The Bidding/Construction Administration Phase will include the following:

The Bidding/Construction Phase Services will include a PreBid meeting with contractors, plans posted to CivCast for bidding purposes and review of the bids and recommendation of the Contractor based on the received bids. Construction Phase Services will include

coordination meetings, site visits and review of Requests for Information (RFIs), submittals and pay applications by the Contractor. This task will include a final walk through, preparation of a punch list, acceptance of the work and preparation of as-built drawings.

RECOMMENDED ACTION:

Authorize staff to submit EIC funding application for Granger McDonald Park for \$2,200,000.

ATTACHMENTS:

[*McDonaldPark-HewittProposal 052024.pdf*](#)



Hewitt Engineering, Inc.

Consulting Engineering Services

May 20, 2024

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

**Re: Granger McDonald Park
Engineering Professional Services Design Fee Proposal**

Dear Michael,

Per your request, I have prepared a scope and fee schedule for the preparation of final design plans and specifications associated with the Granger McDonald Park Improvements. The park will be located along Nimitz Lake adjacent to the future Upper Guadalupe River Center near The Landing development. The park will incorporate environmentally sustainable features and include a concrete boardwalk system along the bank, floating piers, permeable pavers in the parking area, terraced landscaping to absorb, filter and slow water runoff to the lake, and an oversized river access ramp that restricts cars and uses dollies to transport watercraft into the lake.

The scope of the project will include a Preliminary Engineering Phase, Final Design Phase and Bidding/Construction Administration Phase. The Preliminary Engineering Phase will include the following:

- **Civil Site Engineering** including preliminary review of grading and drainage, parking layout, evaluation of permeable paver options, irrigation water line extension and preliminary cost determination.
- **Geotechnical Engineering** including on site bore holes and foundation recommendations for the boardwalk system and boat ramp
- **Structural Engineering** including review of boardwalk alternatives, pier design and bulkhead alternatives
- **Topographic Field Survey** including establishment of datum and benchmarks, location of hardwood trees survey and preparation of site topography map at one foot contour intervals
- **Landscape Architect Services** including schematic drawings and conceptual irrigation study
- **Environmental Due Diligence Services** including wetlands/jurisdictional waters determination and Threatened/Endangered Species habitat evaluation
- **Cultural Resources Services** including archaeological literature and records research and archeological field survey

The Final Design Phase will include the following:

- **Civil Site Engineering** including final paving, grading and drainage plans, dimensional control layout, permeable paver design, storm sewer design, miscellaneous details and stormwater pollution prevention plan.
- **Structural Engineering** including final structural drawings of boardwalk substructure, decking, connections, and railing attachments and specifications as notes on the drawings for structural items of work.
- **Landscape Architect Services** including coordination of the grading with the civil plans at the bioretention areas, layout and detailing of LID features to include bioswales/bioretention, overflow drains and connections to the storm sewer drainage system. The landscape plan will also provide the location and identification of all plant materials to be used and specify mainline routing, extent, and type of irrigation to be utilized.
- **Floodplain Development Permit** includes submittal of plans and a No Rise Analysis to the City of Kerrville Floodplain Administrator documenting no impact to the Guadalupe River 100-year base flood elevation as a result of the proposed improvements
- **Environmental Services** including Freshwater Mussel Survey and Relocation and USACE Pre-construction Notification and Biological Assessment

The Bidding/Construction Administration Phase will include the following:

- **The Bidding/Construction Phase Services** will include a PreBid meeting with contractors, plans posted to CivCast for bidding purposes and review of the bids and recommendation of the Contractor based on the received bids. Construction Phase Services will include coordination meetings, site visits and review of Requests for Information (RFIs), submittals and pay applications by the Contractor. This task will include a final walk through, preparation of a punch list, acceptance of the work and preparation of as-built drawings.

The fee schedule for Basic and Additional Services for each of the tasks described above is summarized in the following table:

BASIC SERVICES FEE SCHEDULE:

1. Preliminary Engineering Phase.....	\$12,500.00
2. Final Engineering Phase.....	\$48,214.00
3. Floodplain Development Permit	\$5,000.00
4. Bidding and Construction Administration Phase.....	\$12,600.00
5. Reimbursable Expenses	\$4,800.00
TOTAL BASIC SERVICES FEE.....	\$83,114.00

ADDITIONAL SERVICES FEE SCHEDULE:

1. SWCA Environmental Services	\$83,636.00
2. Searchers LLC (Surveying)	\$4,950.00
3. Rialto Studio Inc. (Landscape Architect)	\$23,900.00
4. Sparks Engineering Inc. (Structural Engineering).....	\$18,920.00
5. UES Rock Engineering (Geotech)	\$5,280.00
TOTAL ADDITIONAL SERVICES FEE	\$136,686.00

TOTAL BASIC AND ADDITIONAL SERVICES FEE PROPOSAL.....\$219,800.00

The final result of this project will be one set of signed and sealed original drawings, five sets of full size and five sets of half size drawings, and technical specifications in order to solicit contractor bids.

The total lump sum fee to perform these tasks including Basic and Additional Services including all expenses is \$219,800. This fee consists of Basic Design Services of \$83,114 and Additional Design Services of \$136,686 which includes \$83,636 for SWCA Environmental Consultant for environmental studies and cultural resources studies, \$23,900 for Landscape Architect services by Rialto Studio Inc., \$18,920 for Sparks Engineering Inc. for structural engineering, \$5,280 for Geotech Services by UES (previously Rock Engineering), and \$4,950 for topographic surveying by Searchers LLC. The subconsultant proposals are attached. Reimbursables will be charged at a multiple of 1.10 times the expenses incurred by the Engineer. All out-of-pocket expenses such as printing & delivery costs, sub-consultant fees, special review, filing, and/or permit fees will be billed as a reimbursable expense. The scope of work does not include any work associated with the Upper Guadalupe River Center site and building.

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

Sincerely,

HEWITT ENGINEERING INC.

Texas Registered Engineering Firm F-10739

A handwritten signature in blue ink, appearing to read "John M. Hewitt", is positioned above the printed name.

John M. Hewitt, P.E., CFM

Attachments



ENVIRONMENTAL CONSULTANTS

Sound Science. Creative Solutions.®

4949 N Loop 1604 W
Bldg 2, Suite 235
San Antonio, Texas 78249
Tel 210.877.2847 Fax 210.877.2848
www.swca.com

May 3, 2024

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

Re: Grainger McDonald Park, Kerr County, Texas (SWCA Proposal No. P89508)

Dear Mr. Hewitt:

SWCA Environmental Consultants (SWCA) appreciates the opportunity to provide this proposal to perform cultural and natural resources investigations in support of the Grainger McDonald Park projects, Kerrville, Kerr County, Texas.

If you find the scope of services, terms, and costs of this proposal to be acceptable, we are prepared to begin work upon receipt of a signed contract. If you have any questions or require any additional information, please do not hesitate to contact me at cwesterman@swca.com or 210.361.0297.

Sincerely,

A handwritten signature in blue ink, reading "Christine Westerman". The signature is fluid and cursive, with a long horizontal line extending from the end of the name.

Christine Westerman
Ecologist/Principal Project Manager
San Antonio

SCOPE OF SERVICES

CULTURAL RESOURCES SERVICES

Projects in Texas can come under the purview of two primary cultural resources regulations, the National Historic Preservation Act of 1966 (NHPA) and the Antiquities Code of Texas (ACT). Both are administered by lead federal agencies and the State Historic Preservation Officer of Texas at the Texas Historical Commission (THC) in Austin, Texas.

If an undertaking is federally permitted, licensed, funded, or partially funded, the project must comply with Section 106 of the NHPA, as amended. Section 106 requires that every federal agency consider the undertaking's effects on historic properties, defined as any property listed on, or eligible for listing on, the National Register of Historic Places (NRHP). The NRHP is a cultural resources inventory maintained by the Secretary of the Interior. This list includes buildings, structures, objects, sites, districts, and archaeological resources, which are stipulated in Section 106 implementing regulations as defined in "Protection of Historic Properties," (36 Code of Federal Regulations 800), this includes the identification and evaluation of historic properties.

Based on the information provided to SWCA, the project may require federal permitting from the U.S. Army Corps of Engineers (USACE) under Section 404 of the Clean Water Act. Therefore, it qualifies as a federal undertaking and requires compliance with Section 106 of the National Historic Preservation Act (NHPA).

The ACT requires state agencies and political subdivisions of the state, including cities, counties, river authorities, municipal utility districts, and school districts, to notify the THC of any action on public land involving 5 or more acres of ground disturbance; 5,000 or more cubic yards of earth moving; or those that have the potential to disturb recorded archaeological sites. It is SWCA's understanding that the project area may exceed 5,000 or more cubic yards and would therefore require an ACT permit.

In addition, all human burials in the state of Texas are protected by law, as per the Texas Health and Safety Code Section 711 General Provisions Relating to Cemeteries (herein referred to as Section 711) and the Texas Administrative Code (TAC) Title 13, THC, Chapter 22 Cemeteries (13 TAC 22.1–22.6). If human burials are encountered during project activities and the remains are determined to be Native American, they will be handled in accordance with procedures established through coordination with the THC, and work in the affected area could only resume per THC authorization.

TASK 1A: CULTURAL RESOURCES ANTIQUITIES PERMIT APPLICATION AND AGENCY COORDINATION

SWCA will begin with a background cultural resources literature and records search. SWCA will review the Texas Archeological Sites Atlas (Atlas) online database for any previously recorded surveys and historic or prehistoric archaeological sites located in, or immediately adjacent to, the project area. If needed, an SWCA archaeologist will physically examine site files, records, and maps files housed at the Texas Archeological Research Laboratory and the THC Library. In addition to identifying previously recorded archaeological sites, the Atlas review will include the following types of information: National Register of Historic Places properties, State Antiquities Landmarks, Official Texas Historical Markers, Recorded Texas Historic Landmarks, cemeteries, and local neighborhood surveys. SWCA will also review available area-specific data sources (historic maps and historic aerial photography) to determine historical land usage within the project area. Other critical factors that SWCA will examine include the level of previous disturbances from residential and commercial development, types of soils present, and any obvious standing structures greater than 45 years in age that appear on U.S. Geological Survey (USGS) topographic maps. Together this

information task will allow SWCA to identify any areas within the property that have the potential to contain significant, undocumented cultural resources and evaluate archaeological potential prior to performing fieldwork.

This background information will be used in creating a research design for review and approval by the THC to obtain an Antiquities Permit. The Antiquities Permit application would also include a form, which requires signatures from the landowner and project sponsor, as well as a topographic map and aerial imagery with the proposed project boundaries superimposed. The Antiquities Permit and associated scope of work would be submitted to the THC, and USACE Fort Worth District concurrently for review; this review can take up to 30 calendar days.

TASK 1B: INTENSIVE CULTURAL RESOURCES SURVEY

Once the THC issues the Antiquities Permit and all agencies have approved the scope of work, SWCA will complete a field investigation of the project area that will be of sufficient intensity to determine the nature, extent, and, if possible, potential significance of cultural resources located within the proposed project area. The survey will meet Section 106, THC, and Council of Texas Archeologists (CTA) archaeological resources survey standards. The field survey will consist of one team of two SWCA archaeologists conducting systematic pedestrian survey across the project area. Subsurface investigations will involve deep mechanical trenching in settings with the potential to contain buried archaeological materials and be dependent upon variables such as previous land disturbances and the presence of soils.

Area projects of this size (approximately 1.5 acres) and nature require a minimum of 2 to 4 shovel tests to adequately explore subsurface deposits according to state minimum survey standards. The THC/CTA standards allow trenches to be deployed at a ratio of 1:2 relative to the shovel test requirements. As the project area is adjacent to the Guadalupe River and based on the constraints analysis for the Guadalupe River Trail West Project recently conducted for Hewitt Engineering, Inc., the project area is adjacent to existing deeply stratified archaeological sites, SWCA recommends trenching in place of shovel tests. Additionally, SWCA geoarchaeologist, Mr. Ken Lawrence (MA, RPA), reviewed the project area and identified a high potential to contain deeply buried archaeological resources. Depending on the location and type of any proposed deep construction impacts (e.g., any location of ground disturbing activities that will extend beyond 31 inches [80 cm] in depth below ground surface), SWCA would propose to assess the presence/absence of these potential deeply buried cultural resources through the excavation of no more than **4 mechanical backhoe trenches**. Depending upon land access, this deep testing would require approximately one (1) day to complete.

Trench placement will be determined by the level of previous disturbance, results of background research, the extent of deep impacts associated with the property development (i.e., piers, boat ramp), and preservation potential for archaeological sites as determined by an SWCA archaeologist. Backhoe trenches will be excavated to a depth sufficient to determine the presence/absence of buried cultural materials and allow the complete recording of features and geomorphic information to depths of project impacts or sediment incapable of containing intact cultural resources. Generally, trenches will be 4 to 5 feet (1.2 to 1.5 m) deep or more, 16 feet (5 m) in length, and 3 feet (1.0 m) wide. All trenching will be monitored by an experienced archaeologist while excavations are underway. A second archaeologist will screen or trowel through sediment samples at a rate of one five-gallon bucket from every third backhoe bucket. Once the trench is excavated, SWCA archaeologists will scrape down both walls of the trench, examining the profiles for artifacts, features, or other cultural manifestations. Each trench will be documented by field notes, stratigraphic descriptions, photographs, and GPS unit. Features encountered during trenching will be mapped and photographed.

Work will be performed in accordance with the U.S. Occupational Safety and Health Administration (OSHA; 29 CFR Part 1926). Once the trenches are excavated, SWCA archaeologists will scrape down trench profile exposures and examine the profiles for artifacts, features, or other cultural manifestations. Each trench will be documented by field notes, stratigraphic descriptions, photographs, and GPS unit. Features encountered during trenching will be mapped

and photographed. Upon completion of excavation, trenches will be backfilled, leveled, and returned, as much as possible, to their original state.

If archaeological sites are encountered in the project area during the fieldwork, they will be explored as much as possible with consideration to the property boundaries. All discovered sites will be assessed regarding their potential NRHP and SAL eligibility and significance so that recommendations can be made for proper management (i.e., avoidance, non-avoidance, or further work) and eligibility. Based on a review of the THC Atlas, SWCA anticipates that no more than one (1) newly recorded archaeological sites is anticipated as a part of this survey effort.

Photographs for sites found within the project area will minimally include: the site setting documented from a minimum of two angles, all cultural features present within the site, a representative sample of non-diagnostic artifacts, all sides of diagnostic artifacts, and other representative natural features and/or disturbances within the site. SWCA archaeologists will use a sub-meter accurate hand-held GPS receiver to map all recorded sites in detail and plot sites on USGS 7.5-minute topographic maps and on appropriate project maps for planning purposes. If intact archaeological materials associated with historic-age resources or a deeply buried prehistoric archaeological site are revealed during the pedestrian survey, the archaeologist will assess the potential significance of the resource. If preliminarily assessed as significant, additional work may be required to mitigate the resource prior to any construction.

TASK 1C: REPORTING AND CURATION

Once the fieldwork has been completed, SWCA will prepare a report for review by Hewitt Engineering, the THC, and the USACE. The report of the fieldwork will conform to the CTA and THC standards and guidelines. The report will include the results of the background review and the archaeological fieldwork. Specifically, it will provide the methodology used in the fieldwork, the presence and condition of previously recorded sites located in and around the project area, the history of the property, photographs illustrating the environment and setting, a description of cultural resources encountered during the fieldwork, architectural descriptions of all historic-age aboveground resources, recommendations for management of those cultural resources, and recommendations for additional fieldwork, if warranted. SWCA will submit a draft digital copy of the report to Hewitt Engineering for review and comment. SWCA will address one round of comments and concerns, and at Hewitt Engineering's request, SWCA will submit the revised draft to the THC and USACE for review.

Once Hewitt Engineering, THC, and USACE-Fort Worth District have reviewed the document and provided comments/concurrence to SWCA, any revisions will be incorporated into the final report. SWCA will then submit a final report to the client, THC, and USACE-Fort Worth District. SWCA will also complete all document curation requirements per the ACT; field records will be curated at the Center for Archaeological Research at the University of Texas at San Antonio.

TASK 1 ASSUMPTIONS

- The cost estimate is based upon complete and unfettered access to the survey area. All land acquisition or right-of-entry to the property will be obtained prior to field investigations commencing. Factors beyond SWCA's control, such as access restrictions, inclement weather, or unsafe project conditions that result in delays to the project schedule or require additional mobilizations, may require a Change Order.
- The scope of work may be subject to change following consultation with the THC, USACE-Fort Worth District, and fieldwork. Any additional costs resulting from a change in the scope of work may require a change order.
- Task 1B assumes fieldwork would require a total of one (1), 10-hour day for a team of two (2) SWCA archaeologists to complete the pedestrian survey and deep testing. This includes the use of a backhoe operator to complete deep testing investigations.

- Based on the known site densities in the area, SWCA assumes that the survey will result in the assessment of no more than one (1) archaeological site encountered during shovel testing, which would be more than 1.0-acre (0.4-hectares) in extent. If SWCA identifies more than one site, or it is greater than 1 acre in area, SWCA will negotiate a Change Order to complete site documentation and processing.
- Rights-of-entry and unfettered access to the entire property at the time of field investigations will be coordinated by Hewitt Engineering. Factors beyond SWCA's control, such as access restrictions, inclement weather, or unsafe project conditions that result in delays to the project schedule or require additional mobilizations, may require a Change Order.
- Detailed archival research and review of county records to determine the age and significance of historic-age resources in the APE are not included in this cost or proposal.
- SWCA proposes a non-collection survey.
- This scope of work does not include eligibility testing or data recovery levels of effort.
- These costs do not include project-related safety training or expenses (e.g., OSHA, HAZWOPER, company or site-specific safety training).
- Task 1B is based on calculations of 0.31-acre project area (area of anticipated affects).

TASK 2: JURISDICTIONAL WATERS DELINEATION

SWCA will review published information and perform a field survey to identify wetlands, ponds, stream channels and other aquatic features that may be considered jurisdictional waters by the USACE under the Clean Water Act. Data collection will be considered in accordance with current federal delineation methodology including the *1987 Corps of Engineers Wetland Delineation Manual* and the *2010 Regional Supplement for the Great Plains Region*. Data will be collected on vegetation, soils, and hydrology (described below) to determine if the areas on the property meet criteria for wetlands established by the USACE:

1. Vegetation identification and analysis will be performed for each vegetation stratum (herbs, sapling/shrub, trees and vines) at each sample plot. Hydrophytic vegetation will be considered present if greater than 50 percent of the dominant vegetation is composed of obligate wetland (OBL), facultative wetland (FACW) or facultative (FAC) species.
2. Soil analysis for each sample plot will be determined using the guidelines set forth by the National Technical Committee for Hydric Soils (USDA Soil Conservation Service, 1987). A soil pit will be excavated and the soil will be inspected for positive indications of hydric soils. The sample pit will be left open for a sufficient time to allow for the stabilization of the apparent high-water table, if present.
3. SWCA biologist will determine if positive indications of wetland hydrology, as defined in the 1987 Wetland Manual, are present. Typical hydrological indicators include inundation, saturation, an ordinary high-water mark, drainage patterns, oxidized root channels, drift lines and sediment deposits.

SWCA will collect a minimum of one sample point for each area surveyed (additional points may be required along wetland/non-wetland boundaries) and complete the USACE Wetland Determination Data Forms for each sample point. All potential jurisdictional waters of the United States, including wetlands, will be mapped using a Trimble XT or similar global positioning system (GPS) equipment with submeter accuracy.

Following field data collection, SWCA will prepare a jurisdictional waters report including the following information:

- A narrative description of the methods utilized in conducting the field investigations.
- A results section that describes (1) the vegetation communities observed, (2) the soils observed, (3) the types of wetlands encountered and (4) the water bodies observed.

- A conclusion section where SWCA provides our professional opinion on which waters and/or wetlands we anticipate to be considered jurisdictional by the USACE.
- Maps illustrating locations of all jurisdictional waters in the project area. The maps would be aerial photo-based and prepared using ArcGIS.
- U.S. Army Corps of Engineers Wetland Determination Data Forms for each sample point.
- A photographic log displaying representative photographs for each vegetative stratum and representative photographs of each aquatic feature observed.

The draft report will be provided for review and comments. SWCA will address one round of comments and incorporate responses to client comments and prepare a final report.

TASK 3: AQUATIC RESOURCES AND PROTECTED SPECIES HABITAT EVALUATION AND SITE RECONNAISSANCE

According to the U.S. Fish and Wildlife Service, the following federally protected threatened or endangered species occur in Kerr County and may be affected by the proposed project: tricolored bat (*Perimyotis subflavus*), golden-cheeked warbler (*Setophaga chrysoparia*), piping plover (*Charadrius melodus*), rufa red knot (*Calidris canutus rufa*), Texas blind salamander (*Eurycea rathbuni*), Guadalupe fatmucket mussel (*Lampsilis bergmanni*), Guadalupe orb mussel (*Cyclonaias necki*), Comal Springs dryopid beetle (*Stygoparnus comalensis*), Comal Springs riffle beetle (*Heterelmis comalensis*), monarch butterfly (*Danaus plexippus*), Peck's cave amphipod (*Stygobromus pecki*), bracted twistflower (*Streptanthus bracteatus*), and Texas wild-rice (*Zizania texana*). SWCA biologists will perform a site visit to evaluate terrestrial and aquatic (Guadalupe River) habitats in the project area to determine the likelihood of occurrence of the above-listed species. Based on available USFWS information, the Guadalupe River in this area is classified as a Group 1 stream for mussels, meaning that it is anticipated to be suitable habitat for freshwater mussels. During the site reconnaissance visit, biologists will examine the mussel habitat in the Guadalupe River. This information will be used to refine the scope for freshwater mussel surveys.

Following the site visit, SWCA will prepare a habitat evaluation report. The report will include the results of the aquatic mussel habitat site reconnaissance. The draft report will be submitted to the client for review and comments. Responses to client comments will be incorporated into the final version of the document. The final habitat report will be delivered within 21 business days after completion of field surveys.

TASK 3 ASSUMPTIONS

- This task assumes boat/kayak access to the Guadalupe River for the aquatic habitat site reconnaissance.
- Field work for Tasks 2 and 3 will be performed concurrently.

TASK 4: FRESHWATER MUSSEL SURVEY AND RELOCATIONS

As required by Texas Parks and Wildlife Department (TPWD), SWCA will develop a written Aquatic Resource Relocation Plan (ARRP) for relocation of native freshwater mussel species and submit it to the appropriate TPWD and USFWS reviewers. The plan should be submitted no less than four weeks before the proposed mussel survey. As the second step of the planning process, SWCA must also complete an "Application for Permit to Introduce Fish, Shellfish, or Aquatic Plants into Public Waters." Because the application is to be received 30 days prior to the activity, TPWD suggests that both the ARRP and this permit application be submitted at the same time.

Following approval of the ARRP and Permit to Introduce, SWCA will conduct freshwater mussel surveys/relocations within the approved survey area in accordance with the ARRP and 2024 TPWD-USFWS Freshwater Mussel Survey Protocols. Three state-listed threatened freshwater mussel species have the potential to occur in the Guadalupe River

basin: Guadalupe orb (*Cyclonaias necki*), false spike (*Fusconaia mitchelli*), and Guadalupe fatmucket (*Lampsilis bergmanni*). All three mussel species are proposed to be listed as federally endangered under the Endangered Species Act (ESA). Table 1 provides a list of all native mussel species with the potential to occur in the Guadalupe River basin.

Table 1. Freshwater Mussel Species with the Potential to Occur within the Guadalupe River Basin.

Species		Status	
Common Name	Scientific Name	Federal	State
Threeridge	<i>Amblema plicata</i>	-	-
Rock pocketbook	<i>Arcidens confragosus</i>	-	-
Guadalupe orb	<i>Cyclonaias necki</i>	PE	T
Pimpleback	<i>Cyclonaias pustulosa</i>	-	-
Tampico pearlymussel	<i>Cyrtonaias tampicoensis</i>	-	-
False spike	<i>Fusconaia mitchelli</i>	PE	T
Round pearlshell	<i>Glebula rotundata</i>	-	-
Guadalupe fatmucket	<i>Lampsilis bergmanni</i>	PE	T
Louisiana fatmucket	<i>Lampsilis hydiana</i>	-	-
Yellow sandshell	<i>Lampsilis teres</i>	-	-
Washboard	<i>Megaloniaias nervosa</i>	-	-
Bleufer	<i>Potamilus purpuratus</i>	-	-
Giant floater	<i>Pyganodon grandis</i>	-	-
Mapleleaf	<i>Quadrula quadrula</i>	-	-
Pondmussel	<i>Sagittunio subrostrata</i>	-	-
Lilliput	<i>Toxolasma parvum</i>	-	-
Texas lilliput	<i>Toxolasma texasiense</i>	-	-
Pistolgrip	<i>Tritogonia verrucosa</i>	-	-
Pondhorn	<i>Uniomerus tetralasmus</i>	-	-
Paper pondshell	<i>Utterbackia imbecillis</i>	-	-

Note: T = threatened; PE = proposed endangered; PT = proposed threatened; --- = no status

The surveys will follow TPWD Guidelines for Aquatic Resources Relocation Plans for Fish and Shellfish, Including Freshwater Mussels (Guidelines) within wadable areas (less than 3 feet deep) waterways. Guideline protocol indicates that Qualitative Surveys should include the entire project footprint, as well as buffers for areas of potential impact that include a minimum of 50 meters upstream and 100 meters downstream of the construction impact footprint, as well as a 10-meter-wide lateral buffer. The survey will potentially entail two survey phases: Phase 1 Qualitative Survey and, depending on the results of the Phase 1 survey, a Phase 2 Quantitative Survey. The Phase 1 survey will require a minimum search time of 52 hours of search time within the survey area. Phase 2 surveys will focus on areas of the survey area where mussels were found during the Phase 1 survey. If state or federally listed species (including federal candidate and proposed species) are found during the survey, the survey will cease and TPWD and USFWS will be notified.

SWCA will provide a memo report of species observed, if any, including exhibits illustrating the survey locations and any mussels observed. Results from the mussel survey will be valid for three years following the survey. SWCA will prepare a brief progress report for submittal (by e-mail) to TPWD at the conclusion of the initial relocation effort. The results of the mussel survey will be used to prepare the Biological Assessment (described in Task 5).

ASSUMPTIONS FOR TASK 4

- The scope and cost for this task are based on a one-time relocation effort. Scope does not include construction phase services that may be required, such as for dewatering (if needed).
- The survey scope assumes SWCA will have access to the Guadalupe River in the project impact area and 50 meters upstream and 100 meters downstream.
- A change order may be required if TPWD and/or USFWS request a change in survey methods should a listed species be found during initial surveys.
- A change order may be required if the species becomes federally listed before the survey is initiated, as this may result in additional permitting requirements.
- The mussel survey scope may need to be adjusted based on site conditions, e.g., requiring SCUBA equipment or other additional safety gear.
- Please note: current TPWD-USFWS typically requires mussel surveys/relocations to be conducted during the months of April through November or when water temperatures are greater than or equal to 50°F.

TASK 5: U.S. ARMY CORPS OF ENGINEERS PRE-CONSTRUCTION NOTIFICATION AND BIOLOGICAL ASSESSMENT REPORT

Assuming that the proposed project would be covered under a USACE Nationwide Permit (NWP), such as NWP 39 for institutional and commercial developments or other applicable NWP(s). SWCA will prepare a USACE NWP application form and applicable attachments as required for proposed activities affecting streams and/or wetlands. Permit application components include the following:

- NWP application form;
- List of property owners;
- Delineation of waters of the U.S., including wetlands (Task 2);
- Color photographs of the project site;
- Summary table of waters of the U.S. impacted by the proposed project;
- Required drawings/figures;
- Threatened and endangered species impacts assessment/Biological Assessment;
- Cultural resources survey report (Task 1).

It is anticipated that the USACE will require a Biological Assessment report as part of the Section 404 Clean Water Act permitting process. The report will cover all species listed for the county but will primarily focus on the freshwater mussel species that are proposed to be federally listed as endangered.

The draft application form and attachments will be provided to the client for review. Upon incorporation of revisions or other changes resulting from the review comments, SWCA will provide the final permitting package to the client. If requested by the client, SWCA will submit the package directly to the USACE.

If the USACE requests clarifications and/or alterations, SWCA will accommodate the requests and provide revised copies suitable for the USACE, excepting those requests that are beyond SWCA's authorized scope of services. The proposed cost is based on responding to two rounds of USACE comments.

ASSUMPTIONS FOR TASK 5

- Cost estimate is based on NWP permit support. An Individual Permit, if required, may result in the need for additional services not included in this scope.
- The scope and cost do not include travel for a USACE meeting. The cost includes a pre-permitting phone conference.
- The scope and cost do not include a site visit with the USACE.
- The Guadalupe River is not included on the USACE Fort Worth District Section 10 Navigable Waters list, therefore, no navigable waters permitting is included in this scope.
- Scope and cost do not include stream/wetlands mitigation plans.

COST ESTIMATE AND TIMELINE

Project Cost by Task (not to exceed). Cost estimate is based on assumptions listed in the scope and is valid for 180 days.

Task	Schedule	Cost
Task 1A: Antiquities Permit Application and Agency Coordination	An antiquities permit application will be provided to client for review within 10 business days.	\$3,475
Task 1B: Mechanical Deep Testing (includes \$3,000 / day for backhoe rental and operator)	Fieldwork would commence within 10 business days of the issued antiquities permit dependent on property access.	\$7,628
Task 1C: Reporting and Curation	A draft report would be issued to client within 15 business days of completing fieldwork. Curation	\$7,855
Task 2: Jurisdictional Waters Delineation	Field visit within 8 business days of NTP (weather depending) and issued draft delineation report 10 business days after field work.	\$6,400
Task 3: Aquatic Resources and Protected Species Habitat Evaluation and Site Reconnaissance	Draft memo issued 10 business days after field work.	\$5,600
Task 4: Freshwater Mussel Survey and Relocations	Draft memo issued 10 business days after field work.	\$25,100
Task 5: USACE Pre-Construction Notification and Biological Assessment	Dependent on USACE schedule.	\$19,975
Total		\$76,033

30 April 2024

John Hewitt
Hewitt Engineering, Inc.
716 Barnett Street
Kerrville, Texas 78028
(Sent via email: jmhewitt@hewitt-inc.com)

Landscape Architectural Fee Proposal for:
Granger MacDonald Park
Kerrville, Texas

Dear Mr. Hewitt,

Thank you for the opportunity to present this proposal/letter of agreement for professional landscape architectural services. When executed, this agreement serves as a contractual agreement between Rialto Studio and Hewitt Engineering. If this agreement is not executed by the Owner/Client or returned to Rialto Studio, but work identified in the agreement is requested, then this proposal shall serve as the contract in which Rialto Studio will provide our services.

PROJECT DESCRIPTION, ASSUMPTIONS, AND UNDERSTANDINGS

We understand that you wish to contract landscape architectural services for the landscape design of a new parking lot and lawn on an approximately 1.5-acre site located adjacent to Nimitz Lake and surrounded by Kerrview Drive, James Road, Mallard Way, and Knapp Road in Kerrville, Texas. Site development for which we will be responsible includes bioretention and a large open lawn. We understand there will be three rows of parking running parallel to the lake edge with water surface draining downhill to vegetated bioretention areas to capture, clean, and slowly release water to the storm sewer system. A large lawn is then downstream of the parking and will sheet drain toward the lake.

We understand the project is within Kerrville Texas and there are no existing Tree preservation, Landscape, or Irrigation ordinances applicable to the site.

We understand that the site will be developed at one time, and not phased. Also, there will only be one City of Kerrville permit submittal.

SCOPE OF SERVICES

Unless otherwise specifically identified in this proposal, we understand the civil engineer will provide the layout, grading, and details for all vehicular paving, fire lane access, subsurface drainage, stormwater detention and filtration areas (if applicable), pedestrian paving, site lighting, other hardscapes, signage, and utility connections (including those required for the irrigation system).

Limited collaboration with the civil engineer to refine the site plan is anticipated. Rialto Studio assumes the site plan is final and only minor adjustments are to be made. Substantial revisions to the site plan will be made and invoiced as an additional service as identified below.

DESIGN AND CONSTRUCTION DOCUMENTS

Rialto Studio will prepare and develop the site design and documentation to include the following scope items:

- Site Grading- Review the grading plans as prepared by the civil engineer. We will coordinate the grading with the civil engineer at the bioretention areas.
- Low Impact Development (LID)- Layout and detailing of LID features to include bioswales/bioretention. All overflow drains and connections to the storm sewer drainage system are to be designed and sized by the civil engineer. Rialto Studio assumes we will be designing to the San Antonio River Authority (SARA) design standards.
- Planting Plan- Provide the location and identification of all plant materials to be used. A plant list, including quantities, sizes, botanical and common names, and any special installation requirements will be provided, as necessary.
- Irrigation Plan- Provide the necessary schedules and information required to obtain a quantifiable bid suitable for construction including mainline routing, extent, and type of irrigation to be utilized (such as turf sprays, shrub drip emitters, and/or tree bubblers). We will coordinate the type of irrigation and limits of the system prior to starting the design of the system and let you know the size of the irrigation meter or water service required. It is understood that the static water pressure available will be provided to us (Fire Flow Test Report). The civil engineer will locate, identify, and detail the water meter for the irrigation system if required by a governing authority.

We anticipate delivering (2) milestone drawing submittals: Schematic Design and Construction Documents. Should other submittals be required, we will evaluate the time necessary to complete the task and advise you if this proposal requires amendment.

Schematic Design

We understand that we will be coordinating with the design team for the site development items listed above. Rialto Studio will prepare a Schematic Design package to identify and document our scope of work. Initial documents will include design concepts for the scope of work identified above. Our instruments of service may include rendered/scaled plans and/or precedent imagery communicating materials and design aesthetics. We will also provide an irrigation study to determine the extent of the irrigation system and to assist in the selection of an appropriate irrigation meter size. These drawings will be conceptual with enough detail to gain approval and confirm the scope for the next phase submittal drawings. These can also be used to solicit order-of-magnitude pricing by a cost estimator or contractor.

Construction Documents

The next phase of work will be Construction Documents. Preparation of Construction Drawings, technical specifications, and supplemental bidding documents for the proposed project will be produced during this phase. These drawings, details, and specifications will include information required for construction.

CONSTRUCTION ADMINISTRATION

The following services will be provided on an as-needed basis at your request and invoiced at our hourly rates for personnel as detailed below, plus reimbursable expenses.

- Attend a pre-bid conference
- Assist the design team in the preparation of Addendum items as they relate to items within our scope of work
- Assist in evaluating Base Bids and Alternates

- Construction Observation:
 - Monitor construction of the site development portions of the project and advise you of the progress of the work
 - Review of submittals
 - Respond to RFIs
 - Periodic site visits to observe the construction of our scope of work, advise you of the progress of the work and prepare a field report documenting our observations
 - Punch list inspection and documentation
 - Final inspection and documentation

DESIGN COORDINATION MEETINGS

Rialto Studio understands the importance of coordination with you and the other consultants on the team. We anticipate participation in (3) design and coordination meetings as required/requested for the benefit of the project. Meetings can be either virtual or in-person (travel and travel time for in-person meetings are to be invoiced as a reimbursable expense.) Additional meetings may be attended as an additional service as described below.

COMPENSATION

Progress billings will be made monthly based on the amount of time/effort completed. Payments are due Thirty (30) days from the date of our invoice.

FEE ALLOCATION BY TASK/PHASE

<u>Basic Services (Lump Sum)</u>	
Schematic Design	\$ 5,000.00
Construction Documents	\$10,000.00
Total	\$15,000.00
 <u>Supplemental / Optional Services (Hourly; Not to Exceed)</u>	
Construction Administration	\$ 5,000.00
 GRAND TOTAL (Basic and Supplemental / Optional Services)	 \$20,000.00

The proposed fees assume no substantial change in scope, target budget, or phasing of various parts of the project or services. In the event of major changes, or changes in the design schedule more than 90 days, Rialto Studio reserves the right to revise the scope of work and associated fee allocations to align with the scope modifications. We will track time spent on scope changes and invoiced according to the Additional Services as outlined below.

Reimbursable expenses incurred by Rialto Studio employees and consultants are not included in the fee above and are estimated to be **\$1,500.00**. Mileage will be reimbursed at the current Federal Government allowable rates. The following costs shall be reimbursed at cost plus 10%:

- Cost of printing and/or reproduction of drawings, specifications, reports, and other project-related documents
- Postage, delivery, and handling services
- Parking
- Travel (mileage and parking)
- Building permit application and review fees
- Fees associated with using the Owner's/Client's payment portal.

- Cost of additional professional liability insurance dedicated for this project or insurance coverage, or limits requested by the Owner / Client that are normally carried by Rialto Studio and its consultant.
- Consultants not specifically identified elsewhere in the proposal.
- Other similar project-related expenses

ADDITIONAL SERVICES

Should Additional Services be required on work not covered by our proposal, that work will be priced and invoiced separately on an hourly or negotiated lump sum basis, plus reimbursable expenses. Hourly rates for personnel are as detailed below. Reimbursable expenses for Additional Services items will be billed at cost plus 10%. We will not proceed with Additional Services work without written approval from the client representative.

RIALTO STUDIO HOURLY RATES

Principal	\$ 175.00
Sr. Associate	\$ 140.00
Associate	\$ 125.00
Project Manager	\$ 115.00
Landscape Architect / Irrigator	\$ 105.00
Designer	\$ 95.00
Clerical	\$ 65.00
Landscape Architect Intern	\$ 60.00

EXCLUSIONS

Services not covered by this proposal might include but are not limited to the following:

- Demolition plans
- Pedestrian paving
- Vehicular Paving
- Fencing and gates
- Landscape walls- freestanding or retaining
- Structural walls- freestanding or retaining
- Shade canopies, trellises, or other overhead structures
- Playground (including equipment selection, surfacing, and fencing)
- Splash pad or water features
- Signage- project signage, regulatory signage, wayfinding signage, trail maps, and/or trail markers
- Signage graphics
- Site amenities/furnishings including, but not limited to seating, benches, bollards, trash/recycling receptacles, bike racks, bike repair stations drinking fountains, etc.
- Site lighting
- Site grading
- Stormwater engineering
- Rainwater harvesting, condensate collection, or other methods of collection or pumping requirements for the irrigation system (will provide separate proposal upon request)
- Cost estimating
- Additional scope items
- Major changes- Any changes requiring more than 25 percent of the original time spent on a drawing, document or task item
- Re-designed/relocated scope items
- Drawing submittals beyond those listed above
- Multiple additive/alternate pricing options



- Multiple value engineering and related drawing revisions
- Value engineering after completion of the construction documents
- Weekly owner/consultant coordination meetings
- Additional meetings not identified above
- Low Impact Development (LID) features and coordination other than those listed elsewhere in this proposal
- Presentation renderings/exhibits, 3D photorealistic renderings
- Preparation or submittal of Variance Requests
- Permitting or jurisdictional reviews
- Compliance or review by any community or neighborhood design review board or committee
- Fees for special consultants retained by Rialto Studio
- Pursuit of indemnification agreements with any utility company
- LEED compliance or other green or energy-efficient accreditation
- As-Built or record drawings

TERMS AND CONDITIONS

- The above fees and reimbursable expense estimates do not include the cost of any consultants (unless otherwise identified elsewhere in this proposal) or any future taxes that might be levied by a government entity.
- All documents prepared for you by Rialto Studio, Inc. are our instruments of service. Ownership of those documents shall remain the property of Rialto Studio, Inc.
- Any documents or products developed by Rialto Studio under this agreement shall only be utilized by the Client or their successors for the project or for services, which have been contracted. The Client or their successors shall not utilize these documents or products on other projects or provide these documents or products to others for use on other projects.
- Rialto Studio reserves the right to utilize any documents or products developed under this agreement for marketing and promotional purposes. The Client may restrict the use of these documents or products upon written notice to Rialto Studio prior to the development of these documents or products.
- Either party may terminate this agreement upon 30 days written notice to the other. In the event of termination or suspension, Rialto Studio shall be paid its compensation up to and including the date of abandonment, suspension, or termination for all incomplete phases, plus other fees that may have been authorized by the Client for Additional Services, reimbursements, and payments provided herein.
- Rialto Studio may stop work on the project if fees are not paid and reserves the right to file liens or utilize other legal methods to secure payment.
- In recognition of the relative risks and benefits of the project to both the Owner and Rialto Studio, the risks have been allocated such that the Owner agrees, to the fullest extent permitted by law, to limit the liability of Rialto Studio and his or her sub-consultants on the project for any and all claims, losses, costs, damages of any nature whatsoever or expenses from any cause or causes, so that the total aggregate liability of Rialto Studio and their sub-consultants to those named shall not exceed Rialto Studio's total fee for services rendered on this project. Such claims and causes include, but are not limited to negligence, professional errors or omissions, strict liability, breach of contract or warranty.

ACCEPTANCE AND AGREEMENT

If the conditions of this contract meet your approval, please indicate by signing below and returning a copy for our files. Please call me with any questions. Thank you for selecting Rialto Studio to assist you with your project.

Cordially,



Danny Watson, ASLA
Principal

Approved by: _____
(Signature)

Date: _____

(Printed Name)

(Title)

The Texas Board of Architectural Examiners has jurisdiction over complaints regarding the professional practice of registered individuals licensed under the Landscape Architects Registration Law, Article 259C, VCTS., Landscape Architects, P.O. Box 12337, Austin, Texas 78701-3942 Telephone 512.350.9000

Consulting Services Agreement

Sent via email to jmhewitt@hewitt-inc.com

Subject: Proposal for Grainger McDonald Boardwalk Design

Sparks Engineering, Inc. (*Consultant*) is an independent consultant and agrees to perform the Scope of Services as described below:

Scope of Services

- 1 Preliminary Engineering Study of the planned boardwalk structure
 - a. Site Visit to observe the site conditions and discuss project objectives
 - b. Review of available documents
 - c. Alternatives analysis to compare performance and costs of up to three decking options
- 2 Construction Documents
 - a. Structural drawings of boardwalk substructure, decking, connections, and railing attachments.
 - b. Specifications as notes on the drawings for structural items of work.
- 3 Construction Phase
 - a. Review of RFIs and submittals for structural items of work
 - b. Minor revisions to the structural drawings
 - c. One site visit during construction

Schedule

We propose to meet the Client's schedule.

Fee

Based on our understanding of the project requirements, we propose the following Lump Sum Fee¹:

Preliminary Engineering Study	\$	4,000
Construction Documents	\$	8,500
Construction Phase Services		
Response to RFIs, submittals and shop drawings	\$	1,500
Minor design revisions	\$	1,800
Site visits (1 x \$900/visit)	\$	900
Close out letter	\$	500
Total Fee	\$	17,200

¹ Our proposed fee includes normal office and travel expenses associated with our proposed scope.

Exclusions

1. Geotechnical studies
2. Surveys
3. Hydrologic calculations

Additional Services

Services not included in the proposed scope are additional services. A proposal for additional services will be provided at your request.

Client Responsibilities

We understand that the *Client* will provide the following to facilitate our services on the project:

1. Entry and access to the site
2. Copies of available prior studies, topographic surveys, soil reports, hydrologic data, etc., as available
3. Topographic and site survey in AutoCAD 2D format
4. Civil and architectural CAD backgrounds

Terms and Conditions

Sparks Engineering, Inc. considers the following Terms & Conditions to be material elements of our proposal. Changes to these Terms & Conditions may necessitate an increase in our fee.

Standard of Care: Consultant's services will be performed using that degree of care and skill ordinarily exercised under similar conditions by reputable members of the engineering profession practicing in the same or similar locality at the time of service. No warranty, express or implied, is made or intended by this proposal or by oral or written reports or designs.

Site Responsibility: Consultant's services do not include supervision or direction of the means, methods or actual work of contractor(s) not retained by Consultant. The presence of Consultant's representatives will not relieve the contractor(s) of its responsibility to perform the work in accordance with the contract documents. Consultant will not be responsible for job or site safety or security, other than for Consultant's employees.

Opinions of Cost: Opinions of Cost for construction prepared by Consultant are intended to provide information on the magnitude of such costs and are not a quotation or guarantee of actual costs. Client understands that the actual cost of construction is beyond Consultant's control and may vary significantly from Consultant's opinion of cost.

Ownership of Documents: The Client acknowledges that all reports, drawings, specifications, computer files, field data, notes and other original documents prepared by Consultant, including electronic files, are instruments of professional service. Nevertheless, the final documents prepared under this Agreement shall become the property of the Client upon completion of the services and payment in full of all monies due to the Consultant. The Client shall not reuse or make any modification to these final documents without the prior written authorization of the Consultant.

The Client agrees, to the fullest extent permitted by law, to indemnify and hold harmless the Consultant, its officers, directors, employees and subconsultants (collectively, Consultant) against any damages, liabilities or costs, including reasonable attorneys' fees and defense costs, arising from or allegedly arising from or in any way connected with the unauthorized reuse or modification of the final documents by the Client or any person or entity that acquires or obtains the final documents from or through the Client without the written authorization of the Consultant.

Priority over Form Agreements: These terms and conditions shall govern over any Form Agreements such as Purchase Orders or Work Orders or other form writings issued by the Client, without altering the terms hereof, regardless of any contrary language appearing in the Form Agreement.

Payment: Invoice terms are monthly based on percent complete for fee based projects and time spent for hourly projects. Invoices are due upon receipt and will accrue interest in the amount of 0.75% per month for every month they are not paid. If payment is not received within 60 days of invoice date, Consultant reserves the right to suspend work efforts until all outstanding invoices are paid in full.

Disputes: If a dispute arises with regard to this agreement, it shall be enforceable in Bexar County, Texas, and the prevailing party shall recover from the non-prevailing party all reasonable attorney's fees and expenses incurred.

SPARKS ENGINEERING, INC.
Texas Registered Engineering Firm F-00515



S. Patrick Sparks, P.E.
President

Insert date

Attachments

2019 Fee Schedule

Authorization

To authorize these services, please sign below and return one signed original.

Client Name _____

Attention _____

Address _____

City _____

State / Zip _____

Email _____

Telephone _____

Signature and Printed Name

Title

Date

SEI 2024 Rate Schedule

Personnel

The following hourly rates (plus expenses²) apply for all time spent in evaluation, field investigation, analysis, design, project management, coordination, consultation or meetings, site visits, travel time, sampling, review and analysis of field and laboratory data, report preparation and review, etc.

A.	Professional	
	Principal Engineer	\$ 285.00/hr
	Expert Witness ³	\$ 427.00/hr
	Senior Engineer	\$ 225.00/hr
	Project Manager	\$ 185.00/hr
	Project Engineer	\$ 160.00/hr
B.	Support Personnel	
	Administrative Assistant	\$ 80.00/hr
	CAD Designer	\$ 100.00/hr
	Technician	\$ 90.00/hr

Minimum labor charge for site visits and in-person meetings is 2 hours per each of SEI's personnel present.

Expenses

A.	Travel Expenses ⁴	
	1. Company or personal vehicle:	per mile at the Current Federal Rate
	2. Airfare or other travel:	at cost
	3. Meals & Incidentals (M&I) ⁵ :	\$46 per day (\$7, \$11, \$23, \$5) lump sum
	4. Lodging ⁶ :	at cost
B.	Special equipment or supplies, permits, shipping charges, printing or other items not customarily provided will be charged at cost.	

Subcontracts

Subcontract services (if required) will be invoiced at cost. Administrative and professional fees for coordination and administration of the subcontract will be included in our proposed fee.

Our hourly billing rates are subject to change on an annual basis. When this occurs, our invoices for hourly projects will reflect our latest billing rates. However, previously established lump-sum fees and not-to-exceed fee amounts will be unaffected by rate changes.

² All fees and expenses are portal to portal.

³ Expert witness fees apply to testimony in trial, arbitration, or deposition.

⁴ Rates apply only to travel within the continental United States. When possible, we will pro-rate travel expenses among active projects involving travel to the same general area. There is no charge for vehicular travel within the metropolitan area of the home office.

⁵ M&I costs apply to project assignments outside the metropolitan area of the home office and of 6 hours duration or more. Partial-day M&I allowance will be adjusted for meals furnished or not taken by deducting the appropriate amount shown in parenthesis (breakfast, lunch, dinner, incidentals). Receipts for M&I will not be provided unless agreed to in writing prior to deployment.

⁶ Applies when required to remain overnight, or on full-time projects outside metropolitan area of the home office.



Surveying Services Agreement

1. This agreement is between:

Client. Hewitt Engineering, Inc. (Hereinafter "Client")

Surveyor. Searchers LLC dba Searchers (Hereinafter "Searchers")

2. Property to be Surveyed. Granger MacDonald Park, City of Kerrville, Kerr County, Texas.

3. Scope of Services (to be performed by Searchers).

- a. Collect on-the-ground topographic data in the area shown in Exhibit "A".
- b. Locate drainage features
- c. Locate visible utilities
- d. Locate edge of asphalt
- e. Establish two benchmarks on or near the project
- f. Locate hardwood trees 6 inches and larger
- g. Prepare topographic survey plat showing improvements and topographic data

4. Fee. The fee for this survey will be **\$4500**.

5. Schedule. The survey will be completed in a timely manner. Searchers is not responsible for delays by others.

6. Timely Payment. Searchers will issue an invoice upon completion of the survey. All invoices are due when delivered to Client. Invoices that are not paid within 30 calendar days of delivery will be considered past due.

7. Fee Adjustment. If project is not completed within 1 year, Searchers may increase rates by up to 5% for services performed after the first year.

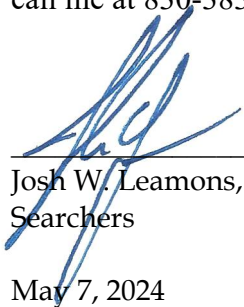
8. Ownership of Documents. All documents, including original drawings, field notes, and data provided or furnished by Searchers pursuant to this Agreement are instruments of service in respect to the Project and Searchers shall retain ownership and property interest therein whether or not the project is completed. The Client may make copies for use on the Project, however, such documents are not intended or suitable for reuse by the Client or others on extensions of the Project or any other Project.

Surveying Services Agreement – Granger MacDonald Park

9. **Standard of Care.** Searchers will endeavor to perform surveying services with the same standard of care and skill as a reasonable Texas surveyor would under the same or similar circumstances.
10. **Limitation of Liability.** Searchers will endeavor to perform surveying services with the same standard of care and skill as a reasonable Texas surveyor would under similar circumstances. In order for Client to obtain the benefit of a fee which includes a lesser allowance for risk funding, Client agrees to limit the liability of Searchers and the Surveyor such that the total aggregate liability shall not exceed double the compensation for services rendered on this project.
11. **Entire Agreement.** This proposal contains the entire and integrated agreement. No modification of this agreement will be binding unless it is in writing and signed by both the Client named above and a representative of Searchers.
12. **Cancel Agreement.** Either party may at any time cancel this contract. Client will pay for any time or expenses that were expended prior to cancelation of this agreement.
13. **Assignment.** This agreement shall not be assigned without the written consent of the other party.
14. **Severability.** Any provision or part of the Agreement held to be void or unenforceable shall be deemed stricken and all remaining provisions shall be valid and binding.
15. **Governing Law and Venue.** This agreement shall be governed by the laws of the State of Texas, and the parties agree that venue shall be proper in Gillespie County, Texas.
16. **Offer Expiration.** This agreement offer expires if not accepted within 30 days. No work will be scheduled until this agreement is signed and returned.

Signing this Agreement for services shall be authorization by the Client for Searchers to proceed with work unless otherwise stated in the Agreement.

Thank you for the opportunity to work with you on this project. If you have any questions please call me at 830-383-1211 or email me at josh@searchers.net.



Josh W. Leamons, for
Searchers

May 7, 2024

John Hewitt, for
Hewitt Engineering Inc.

EXHIBIT “A”



May 13, 2024

Mr. John Hewitt, PE, CFM
Hewitt Engineering, Inc.
716 Barnett Street
Kerrville, Texas 78028

Re: UES Proposal No. P24-0966
Geotechnical Study
Guadalupe River Center
James Road and Kerrview Drive
Kerrville, Texas

Dear Mr. Hewitt:

UES Professional Solutions 45, LLC (UES), is pleased to offer this proposal to perform geotechnical services for the referenced project. We prepared this proposal based on information provided and presented below.

PROJECT INFORMATION

The site is located at the intersection of James Road and Kerrview Drive in Kerrville, Texas.

The project consists of the following proposed improvements:

- Boat ramp
- A new boardwalk along the river
- Boat docks in the river
- Parking and drive areas

Our proposal is based upon the following:

- The site is readily accessible and the boring locations can be accessed by a truck-mounted drilling rig
- The site does not require clearing for boring access
- **UES will contact 811 call to locate public underground utilities prior to drilling work**
- **If requested, a 3rd Party Private Utility Locator may be called in by UES to clear the boring locations prior to drilling work at an additional fee**
- The boring locations are not covered by concrete

Items to be provided by the client include the right-of-entry to conduct the exploration and information regarding the location of any utilities on the subject site. Any restrictions or special project requirements should be brought to our attention before we commence fieldwork. Should weather or other factors result in unforeseen changes in site accessibility, UES will contact the client to discuss accessibility options and associated fees.

FIELD INVESTIGATION

The proposed field investigation includes:

General Location	No. of Borings	Boring Depth (ft)
Proposed boardwalk	1	30
Proposed boat ramp	1	30
Proposed paving	2	10
Total	4	80

UES will stake the borings prior to mobilization of drilling equipment. Locations will be shown on the Boring Location Plan. Field personnel will drill the borings using the equipment stated in our assumptions. Soil samples will be obtained using a three-inch diameter Shelby tube sampler (ASTM D1587) and a two-inch diameter standard split-spoon sampler (ASTM D1586), as appropriate based on the type and strength of the materials encountered. If rock like materials are encountered, grab samples of the cuttings will be collected.

A qualified engineering geologist or soils technician will log the samples in the field and package them for transport to the laboratory for testing. A log of each boring will be prepared to document drilling activities and subsurface conditions. Precise surveying of boring locations and elevations is not included in the scope of services; these services may be provided upon request, at an additional fee. At the completion of drilling operations, bore holes will be backfilled with soil cuttings.

LABORATORY TESTING

Laboratory tests will be required for classification purposes and to determine engineering characteristics of the materials encountered. The following test methods may be performed on selected samples, depending on the actual subsurface conditions encountered:

- Supplementary visual classification (ASTM D2487)
- Moisture content (ASTM D2216)
- Atterberg limits (ASTM D4318)
- Percent material finer than the #200 sieve (ASTM D1140)
- Unconfined compressive strength (ASTM D2166)
- One-dimensional swell (ASTM D4546)

All phases of the laboratory-testing program will be performed in general accordance with applicable ASTM Specifications. All field and laboratory tests results will be included on the boring logs or in the completed report

ENGINEERING SERVICES

The geotechnical report will be signed and sealed by a registered Professional Engineer in the state of Texas and the report will include results of the field and laboratory testing together with our analyses of the results and applicable recommendations. We will provide a digital report in electronic PDF format. The report will include the following:

- soil and groundwater conditions encountered at the boring locations
- earthwork recommendations, including material type and compaction requirements
- construction considerations related to soil and groundwater conditions at the borings
- geotechnical recommendations including:
 - foundation design recommendations for the boardwalk
 - recommendations for horizontal and lateral earth pressures related to buried and retaining structures
 - paving recommendations
- If additional recommendations are needed, please notify us so we can adjust our scope of work accordingly
- Any additional geotechnical engineering/consulting requested after submittal of the report will be billed at a rate of \$185/hour

FEE FOR PROPOSED SERVICES

Our fee for performance of the geotechnical study at the site described will be as noted in the table below.

Geotechnical Study Lump Sum Fee ¹		\$4,800.00
Optional Private Utility Locator ²		\$1,500.00
¹	<i>This pricing assumes the boring locations can be accessed using standard, truck-mounted drilling equipment and drilling will occur during daylight hours Mon – Sat. Sunday or night drilling will incur additional charges. If difficult site conditions are encountered, an All-Terrain Drilling Unit could be provided for an additional fee.</i>	
²	<i>Ground penetrating radar (GPR) services along with other methods will be performed by a third-party contractor to aid in locating below-grade utilities. This service is an increased level of due diligence in conjunction with Texas One-Call clearance; however, it does not guarantee the absence of below-grade utility conflicts. UES is not responsible for damage to below grade utilities.</i>	

This fee will not be exceeded without prior authorization. Items other than those specified above, or changes in drilling requirements, which are revealed by these studies or are necessitated by a change in project scope, may require revised field, laboratory, and engineering services. These services will be discussed and negotiated on an individual basis. The final invoice will be sent to you with our report.

PROJECT SCHEDULE

The geotechnical report will be delivered approximately 3 to 4 weeks after completion of field work. If a delivery time frame other than that presented above is desired, please advise us prior to completing the agreement so that we may make the appropriate adjustments to the proposal fee and our schedule to accommodate the project needs.

Please sign and return a copy of the Geotechnical Proposal Acceptance Form on the next page as authorization to proceed. By execution of this proposal, the undersigned Client acknowledges and agrees that the document entitled "Terms and Conditions" has been provided or made available to Client and Client agrees that such Terms and Conditions shall be applied to the present Proposal and any supplemental services and shall be fully binding upon Client. The Terms and Conditions are fully incorporated into this Proposal by reference as if set forth at length.

Thank you for the opportunity to present this proposal. Please call if there are any questions or suggestions regarding changes to the agreement or the proposed work scope. We look forward to working with you on the project.

Respectfully submitted,

UES Professional Solutions 45, LLC



Kyle D. Hammock, P.E.
Vice President - San Antonio



Garrett R. Ward, Graduate Geologist
Geotechnical Project Manager

Attachments: UES Terms and Conditions

**GEOTECHNICAL
PROPOSAL ACCEPTANCE FORM**

CLIENT: _____

ADDRESS: _____

CITY/STATE/ZIP: _____

ATTENTION: _____ TELEPHONE: _____

EMAIL: _____ FAX: _____

*******REQUIRED INFORMATION******* (Must be completed in order to process)

ACCOUNTS PAYABLE CONTACT: _____

ADDRESS: _____

CITY/STATE/ZIP: _____

EMAIL: _____ TELEPHONE: _____

Land Owner's Name (if applicable): _____

Address: _____

City, St. Zip: _____

The undersigned hereby accepts all the Terms and Conditions set forth in this Proposal and warrants that they have full authority to bind the Client.

PROPOSAL ACCEPTED BY: _____

Signature

Title

Date

PRINTED NAME: _____

UES
GENERAL CONDITIONS – TEXAS

SECTION 1: SCOPE OF SERVICES

1.1 UES will provide to Client the professional services described under the Scope of Services (“Services”) in the Professional Services Agreement (“Agreement”) between UES and Client to which these General Conditions form a part.

1.2 UES shall provide revised or additional services, including changes to the Services necessary due to changed or unforeseen conditions, only in accordance with a written Addendum or Change Order (collectively, “Addendum”) to the Agreement agreed to by UES and Client, and only to the extent set forth in that Addendum. Either UES or Client may communicate in writing any requested changes in the nature and scope of the Project; in either case, the changes shall only be executed upon written approval of the Addendum by UES and Client.

1.3 Unless otherwise provided for in the Agreement, the Services will be provided on a standard work schedule of Monday through Friday 8:00 AM to 5:00 PM (excluding holidays), and samples will be analyzed on a standard five (5) to seven (7) business day laboratory turnaround time.

1.4 UES shall not be responsible for any delays, fees or costs associated with adverse or unusual weather conditions that prevent the Services from being safely conducted.

1.5 UES shall provide the personnel, equipment, Level D personal protective equipment (as defined by the Occupational Safety and Health Administration (“OSHA”), and other materials necessary to provide the Services. UES, at its sole discretion, may retain subcontractors or other third-parties to assist it in the provision of the Services.

1.6 Client will provide UES with written authorization to proceed with the Services and any associated fee (e.g., retainer) prior to UES initiating work on the Services.

1.7 The terms “Project” and “Site” are used interchangeably in these General Conditions refer to the land and/or construction project on which or to which UES is to provide Services under this Agreement.

1.8 UES shall perform all Services hereunder as an independent contractor, and nothing contained herein shall be deemed to create any association, partnership, joint venture, or relationship of principal and agent or master and servant, or employer and employee between the parties hereto or any affiliates or subsidiaries thereof, or to provide either party with the right, power or authority, whether express or implied, to create any such duty or obligation on behalf of the other party. UES also agrees not to be treated, or seek to be treated, as an employee of Client for any purpose, including for the purposes of fringe benefits provided by Client, or for disability income, social security taxes and benefits, Federal unemployment compensation taxes, State unemployment insurance benefits and Federal income tax withholding at sources. UES hereby represents that UES has and at all times will maintain timely payments of all taxes due to the Internal Revenue Service and all other government agencies, including withholding and all other taxes.

SECTION 2: PROFESSIONAL STANDARD OF CARE

2.1 UES will provide its services under this Agreement in a manner consistent with the level of professional care and skill ordinarily exercised by similar professionals practicing contemporaneously under similar conditions in the locality of the Project. NO OTHER WARRANTY CONCERNING THE SERVICES UES PROVIDES UNDER THE AGREEMENT OR ANY ADDENDUM, EXPRESS OR IMPLIED, IS MADE, AND ALL OTHER WARRANTIES, INCLUDING THE WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, ARE HEREBY DISCLAIMED TO THE FULL EXTENT PERMITTED BY APPLICABLE LAW.

2.2 Client understands that subsurface investigations may involve drilling, boring, excavating or sampling through varied subsurface soil and water strata which, consistent with the prevailing standard of professional care, may result in the unavoidable or inadvertent cross-mingling of soil and water and any Hazardous Substances or constituents contained in them, and that this risk cannot be eliminated despite the exercise of professional care. IF SUCH SUBSURFACE INVESTIGATIONS ARE PART OF THE SERVICES, CLIENT WAIVES ANY CLAIM AGAINST UES, AND SHALL INDEMNIFY, DEFEND, AND HOLD UES HARMLESS FROM ANY CLAIM OR LIABILITY FOR INJURY OR LOSS ARISING FROM CROSS-CONTAMINATION RELATED TO SUCH SUBSURFACE EXPLORATIONS INCLUDING, WITHOUT LIMITATION, ANY CLAIM OR LIABILITY ARISING IN WHOLE OR IN PART FROM THE ACTIONS OR INACTIONS OF UES.

2.3 UES will take reasonable precautions to minimize damage to the Site, but it is understood by Client that, in the normal course of the provision of the Services, including sampling or drilling, some damage to or alteration of the Site is possible. The repair of such damage shall not be part of the Services unless explicitly specified in writing in the Agreement.

2.4 The Services provided by UES are not intended to be and shall not be construed as providing legal advice, and UES shall not be responsible for Client’s compliance with any applicable laws.

2.5 Client and Client’s personnel and contractors shall promptly inform UES of any actual or suspected defects in UES’s services, to help UES take those prompt and effective measures that in UES’s opinion will help minimize the consequences of any such defect. Client’s payment in full of the amount owed for services rendered shall be taken to mean that Client is satisfied with and has accepted UES’s services.

SECTION 3: SITE ACCESS, SITE CONDITIONS AND CLIENT RESPONSIBILITIES

3.1 Client will grant or obtain at its expense lawful and safe access to the Site as needed for UES to perform the Services and will notify all affected persons and entities in writing of UES’s presence. The access shall be adequate to allow UES to conduct the Services, including bringing and storing equipment and tools on the Site and any necessary access to exterior and interior areas. UES shall not be responsible for any delays, fees or costs caused by delayed or restricted access that prevents or slows the delivery of the Services by UES.

3.2 If the Site is not owned or operated by Client or the Client does not otherwise have the authority to grant UES lawful access, Client shall be responsible for obtaining, at its own expense, an access agreement for the Site and shall provide UES a copy of such access agreement at least three business days in advance of the date contemplated for the first Site access related to the Project. UES reserves the right to delay, without penalty, any Site visit and the provision of Services under the Agreement if a site access agreement, in UES’ reasonable judgment and discretion, would impose conditions, liabilities or risks on UES in excess of those set forth in these General Conditions or the Agreement. IF THE SITE IS NOT OWNED BY CLIENT, CLIENT AGREES TO DEFEND, INDEMNIFY, RELEASE, AND HOLD UES, INCLUDING ITS OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES, AGENTS, AFFILIATES AND SUCCESSORS (“UES INDEMNITEES”) HARMLESS FOR ANY AND ALL CLAIMS, LOSSES, DAMAGES OR LIABILITIES (INCLUDING ATTORNEY’S FEES) ALLEGED BY THE SITE OWNER OR THE SITE OWNER’S EMPLOYEES, AGENTS, CONTRACTORS OR OTHER PERSONS OR ENTITIES ARISING FROM UES’S PERFORMANCE OF SERVICES UNDER THE AGREEMENT AT SUCH SITE INCLUDING, WITHOUT LIMITATION, ANY CLAIM, LOSS, DAMAGE OR LIABILITY ARISING IN WHOLE OR IN PART FROM THE ACTIONS OR INACTIONS OF UES.

3.3 Unless otherwise expressly provided for in the Agreement, Client will be responsible for communicating and coordinating with the Site owner(s) with respect to access necessary to the provision of the Services, including security procedures, opening gates, providing access to buildings, avoiding conflicts between provision of the Services and any commercial or manufacturing activities on the Site, and moving vehicles or other equipment that may interfere with the agreed upon Site activities and the Site access necessary to conduct such activities, including opening gates to allow equipment to gain access to proposed work areas, areas to store necessary equipment, as well as access to the interiors of any onsite buildings.

3.4 Client shall be responsible for the safety of the Site where the Project is conducted and for providing a safe environment for UES to provide the Services. UES shall be responsible for the safe and compliant conduct of its personnel at the Site and shall also comply with the reasonable and

lawful work rules for the Site. As required by applicable laws, UES will prepare a site-specific Health and Safety Plan (HASP) applicable to its personnel for the Services provided at the Site. UES shall not be responsible for the safety of other personnel at the Site, nor shall it be responsible for ensuring that the Site complies with environmental, health and safety laws, or reporting any unsafe conduct or non-compliance that it may observe. If UES encounters conditions at the Site that are unsafe for its personnel, it reserves the right at its sole discretion to suspend or halt work until such conditions are cured. UES shall not be responsible for any fees, costs or damages associated with any safety-related delays. Unless otherwise provided for in the Agreement, UES shall not work in conditions that require personal protective equipment beyond that classified as Level D by OSHA.

3.5 Client shall inform UES of any reporting or other requirements imposed by any third parties, such as federal, state, or local entities with respect to environmental matters relevant to the Services. Client shall assume responsibility to provide any required notice to any third party, and it shall secure the necessary permits or permissions from any third parties (including governmental authorities) required for UES's provision of the Services. If included in the Agreement, Client may authorize UES to obtain certain permits on Client's behalf, in which case Client shall be responsible for any fees or expenses incurred by UES with respect to obtaining such permits.

3.6 Client shall provide UES with all necessary information to perform its services, including, but not limited to, maps, site plans, reports, surveys, plans and specifications, environmental and hydrogeological investigations and studies, other designs, documents, and any other existing environmental information about the Site. Client assumes all liability for information not provided to UES that could affect the quality or sufficiency of the Services UES provides. If UES encounters undisclosed or unforeseen conditions that may cause material delays or an increase in fees or costs, UES shall inform Client and any changes in schedule, fees or costs shall be addressed in an Addendum. UES shall not be responsible for any delays, fees or costs caused by undisclosed or unforeseen conditions.

3.7 Client is responsible for accurately identifying to UES in writing the existence and location of all subterranean structures and utilities on or affecting the Site (including the type and location of utility lines) and the services to be provided by UES. UES will take reasonable precautions to avoid affecting subterranean structures and utilities disclosed to it in writing by Client. If included in the Agreement, Client may authorize UES to conduct applicable public utility identification and clearance requirements on behalf of Client. CLIENT AGREES TO DEFEND, INDEMNIFY, RELEASE, AND HOLD UES INDEMNITEES HARMLESS FOR ANY CLAIMS, LOSSES, DAMAGES (INCLUDING ATTORNEY'S FEES) OR LIABILITIES ARISING FROM DAMAGE DONE TO ANY SUBTERRANEAN STRUCTURES OR UTILITIES, OR FOR THE RELEASE OF ANY HAZARDOUS SUBSTANCES FROM ANY SUCH STRUCTURES OR UTILITIES, THAT ARE NOT ACCURATELY IDENTIFIED AND LOCATED IN WRITING AND DISCLOSED TO UES BY CLIENT BEFORE UES COMMENCES ITS WORK INCLUDING, WITHOUT LIMITATION, ANY CLAIM, LOSS, DAMAGE OR LIABILITY ARISING IN WHOLE OR IN PART FROM THE ACTIONS OR INACTIONS OF UES.

3.8 Unless otherwise stated in the Agreement, any soil or groundwater monitoring activities that are included in the Services are based on the assumption that soil borings and monitoring wells can be installed using standard truck-mounted drilling equipment, the locations are accessible to such equipment, and that surface conditions at each location consists of non-reinforced asphalt or concrete not exceeding six (6) inches in thickness and no concrete or asphalt cutting will be required. If UES encounters materially different conditions at the Site, UES shall inform Client and an Addendum shall be agreed to that addresses any changes in schedule, fees or costs associated with the changed conditions.

SECTION 4: HAZARDOUS SUBSTANCES AND ENVIRONMENTAL CONDITIONS

4.1 Client represents it has informed UES of all known or suspected Hazardous Substances on, under or near the Site of which it is aware, and that it has provided UES with all studies, reports, investigations, or similar documents in its possession about the environmental conditions at the Site, including any documents and correspondence involving Federal, State or local environmental, health or safety regulatory notifications.

4.2 For purposes of the Agreement and these General Conditions, the term "Hazardous Substances" includes materials defined or regulated as hazardous substances, hazardous materials, hazardous wastes, hazardous constituents, solid wastes, pollutants, or toxic substances under any Federal, State or local environmental, health, safety or natural resources law, statute, regulation or ordinance, including but not limited to petroleum products, polychlorinated biphenyls, per- and polyfluoroalkyl substances, asbestos, and any other material or substance listed or identified by the United States Environmental Protection Agency or any similar State or local agency as presenting a potential danger to health, safety or the environment.

4.3 Except to the extent required by law, UES shall not be responsible for making any disclosures to governmental agencies or the Site owner regarding the presence or release of Hazardous Substances on, under, from or around a Site.

4.4 [FOR INVESTIGATION / REMEDIATION PROJECTS] The discovery of Hazardous Substances or other environmental conditions on, under or near the Site not contemplated within the Services may constitute a changed condition, necessitating an Addendum or Change Order. In the event of the discovery of Hazardous Substances or other environmental conditions not contemplated within the Services, Client agrees to compensate UES for all expenses incurred or caused by the discovery, including but not limited to those related to worker protection and exposure, emergency response actions and equipment decontamination.

[FOR GEOTECH PROJECTS ONLY] Client agrees that the discovery of Hazardous Substances or other environmental conditions on, under or near the Site not contemplated within the Services may constitute a changed condition, necessitating an Addendum or Change Order. Although unlikely, Client acknowledges that such a discovery may make it necessary for UES to take immediate measures to protect the health and safety of its employees and other persons, or to arrange for others to do so, including and up to delaying or terminating work. Client agrees to compensate UES for all expenses incurred or caused by the discovery of unanticipated Hazardous Substances or environmental conditions encountered at the Site, including but not limited to those related to worker protection and exposure, emergency response actions and equipment decontamination.

4.5 [FOR INVESTIGATION / REMEDIATION PROJECTS] All substances on, in, or under Client's site, or obtained from Client's site as samples or as byproducts of the sampling process, shall be Client's property. UES shall not be required to sign or certify a waste manifest, disposal ticket, or similar document relating to the transportation or disposal of wastes or Hazardous Substances. UES may serve as Agent for Client if requested under a separate agreement and authorization. Client shall be considered the "generator" of any hazardous or other wastes, as that term is defined in the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq. and agrees that it shall assume all duties as "generator" of any waste material associated with the Services. Further, Client agrees that UES is not a generator, storer, treater, transporter, arranger, or disposer of wastes or Hazardous Substances and shall not be so identified on any document.

[FOR GEOTECH PROJECTS] All substances on, in, or under Client's site, or obtained from Client's site as samples or as byproducts of the sampling process, shall be Client's property. Unless otherwise expressly specified in the Agreement or the Services, the characterization, management and disposition of substances, including Hazardous Substances, generated during the Services (including, but not limited to, wastes, samples, produced soils or fluids, cuttings, or protective gear or equipment, etc.) is the sole responsibility of Client. Client shall be considered the "generator" of any hazardous or other wastes, as that term is defined in the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq. and agrees that it shall assume all duties as "generator" of any waste material associated with the Services. Further, Client agrees that UES is not and shall not be identified as a generator, storer, treater, transporter, arranger, or disposer of wastes or Hazardous Substances on any document. Unless specifically provided for in the Agreement, UES shall not have any responsibilities with respect to the storage or preservation of samples, and Client agrees that UES is not responsible or liable to Client for any loss of samples that are shipped to a testing facility or retained in storage.

4.6 UES shall not have custody of any monitoring wells or permanent sampling locations installed as part of the Project, and shall not be responsible for proper maintenance, repair, or closure of such wells, unless otherwise provided for in the Agreement.

4.7 CLIENT AGREES TO DEFEND, INDEMNIFY, RELEASE, AND HOLD UES INDEMNITEES HARMLESS FROM ANY AND ALL CLAIMS, LOSSES, DAMAGES OR LIABILITIES (INCLUDING ATTORNEY'S FEES AND CONSULTANTS' FEES, COSTS OF DELAY OF THE SERVICES, AND ANY COSTS ASSOCIATED WITH POSSIBLE REDUCTION TO THE VALUE OF THE PROJECT OR THE SITE IN WHICH IT IS SITUATED) ARISING FROM (I) UES' DISCOVERY OF OR ITS EMPLOYEES' OR SUBCONTRACTORS' EXPOSURE TO HAZARDOUS SUBSTANCES OR SUSPECTED SUBSTANCES RELATED TO THE SERVICES, TO THE EXTENT CAUSED BY CLIENT'S NEGLIGENCE OR WILLFUL MISCONDUCT; (II) ANY DISCLOSURES UES IS REQUIRED TO MAKE BY LAW REGARDING HAZARDOUS SUBSTANCES OR ENVIRONMENTAL CONDITIONS AT A SITE; (III) ANY CLAIMS MADE ALLEGING THAT (A) UES IS AN OWNER OR OPERATOR OF THE SITE AT WHICH THE SERVICES ARE RENDERED; (B) UES IS THE GENERATOR, STORER OR TREATER OF HAZARDOUS SUBSTANCES AT SUCH SITE; OR (C) THAT UES ARRANGED FOR THE TRANSPORTATION OR DISPOSAL OF ANY HAZARDOUS SUBSTANCES FROM THE SITE; (IV) ANY VIOLATION BY CLIENT OF ANY FEDERAL, STATE OR LOCAL LAW, REGULATION, ORDER, DECREE OR ORDINANCE RELATED TO HAZARDOUS SUBSTANCES; OR (V) ANY CLAIMS MADE BY THIRD-PARTIES WITH RESPECT TO ALLEGED EXPOSURES TO OR DAMAGES CAUSED BY HAZARDOUS SUBSTANCES AT OR FROM THE SITE OR DURING OR RELATED TO ANY PROJECT OR THE PROVISION OF SERVICES, TO THE EXTENT CAUSED BY CLIENT'S NEGLIGENCE OR WILLFUL MISCONDUCT.

SECTION 5: BILLING AND PAYMENT

5.1 UES will submit invoices to Client in accordance with the Agreement for the specific Project. If the Agreement includes a retainer, the retainer must be received by UES before it will initiate work on the Project.

5.2 Payment will be due 30 days after presentation of invoice. Client will pay a finance charge of one and one-half percent (1 1/2 %) per month, or the maximum rate allowed by law, on all past due invoices. If UES incurs any expenses to collect overdue invoices, Client will also be liable for all sums incurred for reasonable attorneys' fees, expert witness fees, time of UES's employees, expenses and court costs, and interest.

5.3 Client agrees that UES may refuse to release to Client any reports, findings, data and other work product until it has been paid in full for services rendered. UES reserves, and does not waive, any lien rights it may have for unpaid professional services. Client agrees that all reports and other work furnished to Client or its agents that Client has not timely paid for will be returned upon demand and will not be used by the Client for any purpose.

5.4 UES shall have no obligation under this Agreement or any Addendum to provide expert consultant or expert witness services in litigation, arbitration, or any other dispute resolution proceeding, to produce its work product in discovery, to undertake any further investigation or analysis or prepare a report in connection with any such proceeding, or to make available for testimony its current or former employees or consultants. The Parties will execute a new agreement for any such services. In the absence of a new executed agreement for such services, Client will pay UES 150% of its prevailing rates and expenses for the time spent by UES employees and costs incurred on any such additional tasks.

5.5 Services provided at the Client's request outside normal business hours will be performed for an additional fee to be negotiated and reflected in the Agreement or an executed Addendum, or, if no such fee is negotiated, at 150% of UES standard rates.

5.6 Reimbursable expenses, those outside of the scope of the proposed services, are charged to the Client at cost plus fifteen (15) percent and include the following items:

- (i) Out of scope reproduction of plans, specifications and other documents, including plans and documents necessary for submission to regulatory agencies, but excluding documents reproduced for use by UES and any of its consultants.
- (ii) Out of scope permit application and filing fees advanced by UES. Such fees will be invoiced to Client at cost.
- (iii) The cost of equipment rental including, where applicable, equipment operators and subcontracted services, such as authorized photogrammetry, testing services, laboratory services, archeological services, and other specialized services, excluding those services which are explicitly included in the UES proposal. If the services covered by this Agreement are subject to local or state taxes or fees, such additional costs will be charged to the project and are subject to reimbursement as provided herein.

5.7 Fees and schedule commitments are subject to renegotiations for unreasonable delay caused by Client's failure to provide specified facilities or information, or for delays caused by unpredictable occurrences, or force majeure events such as fires, floods, strikes, riots, unavailability of labor or materials or services, acts of God or of public enemy, or acts or regulations of any governmental agency. Temporary work stoppage caused by any of the above may result in additional costs (reflecting a change in scope) beyond that outlined in the proposed Agreement. UES shall have the right to increase its compensation payable by the Client to UES in the event that UES must modify services, facilities or equipment to comply with laws or regulations that become effective after execution of this Agreement, provided UES gives the Client fifteen (15) days prior notice as to the cause for escalation and the additional amounts involved.

5.8 The fees and charges reflected in UES's proposal for services are exclusive of any sales, use, personal property, value added and goods/services taxes. Where applicable, such taxes shall appear as a separate item on UES's invoice and Client shall be liable for the payment of such taxes to UES. Notwithstanding the foregoing, Client shall not be responsible for any foreign, federal, state or local taxes based on UES's net income or receipts, or such other taxes based on UES doing business in any particular jurisdiction.

SECTION 6: INTELLECTUAL PROPERTY AND CONFIDENTIALITY

6.1 All reports, boring logs, field data, field notes, laboratory test data, calculations, estimates, and other documents prepared by UES during the provision of the Services, are instruments of service, and shall remain the property of UES. Neither Client nor any other entity shall change or modify UES's instruments of service. UES shall retain sole and exclusive ownership of all ideas, concepts, theories, improvements, designs, original works of authorship, formulas, processes, models, software, algorithms, inventions, know-how, techniques, compositions of matter and any other information owned by UES prior to the date of this Agreement or created or modified by UES during the provision of the Services.

6.2 UES will retain final reports generated as part of the Services for a period of at least five years following submission of such reports or completion of the Services, whichever is later. UES will make those records available to the Client in a reasonable time and manner, subject to payment of a reasonable fee for the time of UES employees to assemble and transmit those documents.

6.3 The Services and all deliverables provided as part of the Services (including but not limited to reports, boring logs, field data, field notes, laboratory test data, calculations, estimates, and other documents prepared by UES), are prepared for the sole and exclusive use of Client, and Client is the only entity to which UES owes any duty, in contract or tort, pursuant to any law or under this Agreement. Any information or deliverables generated by UES during the provision of the Services may not be given or disclosed to any other entity, or used or relied upon by any other entity, without the express written consent of UES. Such written consent may take the form of a "reliance letter" which must be agreed to by such other person or entity to whom the Services and Deliverables may be disclosed, and for which a separate fee will be charged. UES shall be entitled to injunctive relief preventing/prohibiting any disclosure, reliance or attribution prohibited hereunder, and Client shall release, indemnify, defend, and hold harmless UES from any losses (including attorney's fees) arising from or related to such unauthorized disclosure, attribution or reliance.

6.4 Each party may disclose to the other party certain information that it considers to be confidential ("Confidential Information") provided such information is disclosed in writing and clearly marked or, if orally disclosed, promptly thereafter reduced to writing and clearly marked "Confidential." In no event shall Confidential Information include information that: (a) is or becomes publicly available other than through a breach of the Agreement; (b) is

known to the party receiving such information prior to disclosure or is independently developed by such party subsequent to such disclosure without reference to Confidential Information provided hereunder; or (c) is subsequently lawfully obtained by the party receiving such information from a third party without obligations of confidentiality. Each party agrees that it (a) will not disclose or divulge the other party's Confidential Information to any person, (b) will not use the other party's Confidential Information for its own benefit or the benefit of others, (c) will employ at least the same degree of care in protecting Confidential Information as it employs in protecting its own confidential information, and (d) will, upon termination of the Agreement, or at any time at the request of the other party, return to the other party or destroy all copies of the other party's Confidential Information. Notwithstanding the foregoing, each party may disclose the other party's Confidential Information to its employees, subcontractors and authorized agents who have a need to know such confidential information to fulfill its obligations under this Agreement. In the event a party receives a subpoena or other validly issued administrative or judicial process requesting the disclosure of the other party's Confidential Information, such party will promptly notify the other party and tender to it the defense of such demand and will cooperate (at the other party's expense) with the defense of such demand. Unless the demand shall have been timely quashed or extended, the party receiving the demand shall thereafter be entitled to comply with such demand when and to the extent required by law.

SECTION 7: RISK ALLOCATION

7.1 CLIENT AGREES WITH RESPECT TO THE SERVICES PROVIDED UNDER THIS AGREEMENT AND ANY ADDENDUM THAT THE AGGREGATE LIABILITY OF UES FOR ANY AND ALL CLAIMS, LOSSES, COSTS, AND DAMAGES OF ANY KIND OR NATURE WHATSOEVER, INCLUDING, BUT NOT LIMITED TO, ATTORNEYS' FEES AND EXPENSES AND EXPERT WITNESS FEES AND EXPENSES, SHALL NOT EXCEED THE GREATER OF \$50,000.00 OR THE FEE ACTUALLY PAID BY CLIENT TO UES FOR THE SERVICES. IN CONSIDERATION FOR PAYMENT BY THE CLIENT OF AN ADDITIONAL SUM OF \$1,000, UES AGREES THAT ITS AGGREGATE LIABILITY WITH RESPECT TO ANY AND ALL CLAIMS, LOSSES, COSTS, AND DAMAGES OF ANY KIND OR NATURE WHATSOEVER, INCLUDING, BUT NOT LIMITED TO, ATTORNEYS' FEES AND EXPENSES AND EXPERT WITNESS FEES AND EXPENSES, ARISING FROM SERVICES PROVIDED UNDER THIS AGREEMENT AND ANY ADDENDUM THERETO SHALL BE THE GREATER OF \$50,000 OR UP TO \$1,000,000 IN COVERAGE BY ITS PROFESSIONAL LIABILITY POLICY (INCLUDING ANY DEDUCTIBLE OR SELF INSURED RETENTION). The terms "claim" or "claims" mean any claim in contract, tort, or statute alleging errors, omissions, strict liability, statutory liability, breach of contract, breach of warranty, negligence, negligent misrepresentation, and any other basis giving rise to liability in law or equity.

7.2 NOTWITHSTANDING ANYTHING TO THE CONTRARY PROVIDED FOR IN THE AGREEMENT OR ANY ADDENDUM, UES SHALL NOT BE LIABLE TO CLIENT FOR ANY INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES (INCLUDING, BUT NOT LIMITED TO REDUCTION IN VALUE OF REAL PROPERTY, PENALTIES ASSOCIATED WITH NON-COMPLIANCE WITH LAW, LOST PROFITS, LOSS OF USE, FINANCING COSTS AND LOST SAVINGS) INCURRED BY CLIENT. ITS EMPLOYEES, CONSULTANTS, AGENTS, CONTRACTORS OR SUBCONTRACTORS.

7.3 Client agrees that it will not seek damages in excess of this contractually agreed-upon limitation against any other person or entity who may in turn join UES as a third-party defendant for such damages, or where such person or entity may seek recovery from UES in a separate proceeding. CLIENT SHALL INDEMNIFY, DEFEND AND HOLD UES INDEMNITEES HARMLESS FOR ANY SUCH DAMAGES (INCLUDING ATTORNEY'S FEES) AWARDED TO ANY OTHER PERSON OR ENTITY AS A RESULT OF ANY LITIGATION, ARBITRATION OR OTHER DISPUTE RESOLUTION PROCEEDING COMMENCED BY CLIENT AGAINST ANY SUCH PERSON OR ENTITY FOR DAMAGES FOR WHICH UES MAY BE IN WHOLE OR PART BE HELD LIABLE INCLUDING, WITHOUT LIMITATION, ANY DAMAGES ARISING IN WHOLE OR IN PART FROM THE ACTIONS OR INACTIONS OF UES.

SECTION 8: INSURANCE

8.1 UES represents it has Worker's Compensation insurance in force, that is has commercial general liability coverage in the amount of \$1,000,000.00 and has professional liability insurance in the amount of \$1,000,000.00.

8.2 Client shall maintain such insurance as is necessary to fully underwrite Client's defense and indemnity obligations set forth herein, and shall, upon request by UES, provide proof to UES to verify such insurance.

SECTION 9: INDEMNITY

9.1 IN ADDITION TO AND NOTWITHSTANDING ANY OTHER PROVISION IN THESE GENERAL CONDITIONS, CLIENT AGREES, TO THE FULLEST EXTENT PROVIDED BY LAW, TO RELEASE, DEFEND (WITH COUNSEL REASONABLY ACCEPTABLE TO UES), INDEMNIFY, AND HOLD UES, INCLUDING ITS OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES, AGENTS, AFFILIATES AND SUCCESSORS ("UES INDEMNITEES") HARMLESS FOR ANY AND ALL CLAIMS, LOSSES, DAMAGES (INCLUDING ATTORNEY'S FEES) OR LIABILITIES FROM OR BY ANY PERSON OR ENTITY ARISING FROM (1) ACTS OR OMISSIONS BY CLIENT, CLIENT'S AGENTS, STAFF, AND OTHERS EMPLOYED BY OR CONTRACTED TO CLIENT, INCLUDING ARCHITECTS, ENGINEERS, CONTRACTORS, SUBCONTRACTORS, AND CONSULTANTS, WHETHER OR NOT UES IS RESPONSIBLE IN WHOLE OR IN PART FOR THE ACTS OR OMISSIONS FOR WHICH CLIENT IS INDEMNIFYING UES AND (2) THE PROVISION OF THE SERVICES BY UES EXCEPT TO THE EXTENT CAUSED BY UES' GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, SUCH EXCEPTION SUBJECT TO THE LIMITS SET FORTH IN SECTION 7. FOR THE AVOIDANCE OF DOUBT, CLIENT'S INDEMNIFICATION OBLIGATIONS SET FORTH IN THIS SECTION 9.1 INCLUDE, WITHOUT LIMITATION, INDEMNIFICATION FOR ANY CLAIMS, LOSSES, DAMAGES OR LIABILITIES ARISING IN WHOLE OR IN PART FROM THE ACTIONS OR INACTIONS OF UES.

9.2 UES AGREES TO INDEMNIFY, AND HOLD CLIENT HARMLESS FOR ANY AND ALL CLAIMS, LOSSES, DAMAGES OR LIABILITIES ARISING TO THE EXTENT SOLELY FROM THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT BY UES IN THE PROVISION OF THE SERVICES, SUBJECT TO THE LIMITS SET FORTH IN SECTION 7.

9.3 To the extent either party's damages are covered by available insurance, Client and UES waive all rights of subrogation against each other and against the contractors, subcontractors, consultants, agents, and employees of the other, except such rights as they may have to the proceeds of such insurance.

SECTION 10: DISPUTE RESOLUTION

10.1 All claims, disputes, and other matters in controversy between UES and Client arising out of or in any way related to this Agreement or any Addendum shall be decided by binding arbitration in accordance with the Construction Industry Rules of the American Arbitration Association then obtaining, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. Notwithstanding the foregoing, UES shall not be required to arbitrate any legal and/or equitable claims (including statutory and equitable liens) for collection of monies due. The successful party in any such action will be entitled to recover its reasonable attorneys' fees, expert witness fees, and other claim-related expenses and court costs incurred, and also the time value at prevailing rates of its employees reasonably incurred in prosecuting or defending the claims, with any claims against UES subject to the limitations in Section 7.

10.2 Notwithstanding the foregoing, all claims, including for negligence or any other cause whatsoever that the Client has or claims to have against UES, shall be deemed waived unless (i) Client notifies UES of the claim or claims within thirty (30) days of discovery thereof, and (ii) if the Client contends that a claim exists against UES for negligence or another violation of a standard of care owed by UES, Client has first provided UES with a written certification executed by an independent design professional currently practicing in the same discipline as UES. The certification shall: a) identify the name of the professional; b) specify each and every act or omission that the certifier contends is a violation of the standard of care identified in the Proposal

Agreement; and c) state in complete detail the basis for the certifier's opinion that each such act or omission constitutes such a violation. This certificate shall be provided to UES not less than thirty (30) calendar days prior to the institution of any arbitration or judicial proceeding.

10.3 NOTWITHSTANDING THE FOREGOING, UES SHALL HAVE NO LIABILITY FOR ANY CLAIM DISCOVERED BY CLIENT MORE THAN ONE YEAR AFTER DELIVERY OF THE LAST ISSUED REPORT BY UES FOR THE SERVICES DESCRIBED IN THE PROPOSAL AGREEMENT.

SECTION 11: TERMINATION

11.1 This Agreement may be terminated by either party for cause upon seven (7) days written notice and opportunity to cure in the event of a material breach by the other party, or in the case of a force majeure event such as terrorism, act of war, riot, insurrection, strike, declared public health emergency, flood, unusual weather condition, or act of God that continues or affects the Site for more than seven (7) calendar days. Such termination shall not be effective if such material breach or force majeure event has been remedied before expiration of the period specified in the written notice. In the event of any termination, UES shall be paid for Services (including any related costs and expenses) performed up to the termination notice date plus reasonable termination expenses.

11.2 UES and Client may terminate this Agreement at any time by mutual written consent.

11.3 In the event of termination or a suspension for more than three months of the Project for which these Services are to be provided, UES may in its sole discretion complete such analyses and records as are necessary to complete its files and may also complete a report on the services performed to the date of notice of termination or suspension. The expenses of termination or suspension shall include all direct costs incurred by UES in completing such analyses, records, and reports.

SECTION 12: REVIEWS, INSPECTIONS, TESTING, AND OBSERVATIONS

12.1 If the Services include oversight, monitoring or observation of work being conducted by third parties (other than UES subcontractors), such services shall be conducted solely to determine that the work being overseen, monitored, or observed is in general conformity to the contractual requirements between Client and such third parties. Client shall have sole responsibility and authority to reject, suspend or stop the work of such third parties, or modify or terminate any agreement between Client and such third parties.

12.2 UES shall not have the responsibility or authority to stop, suspend, or modify the work of such third parties, and does not guarantee that work it inspects conforms in all respects to the design, or to applicable laws, statutes, regulations, rules or codes, and it shall have no liability for design or construction defects, or the failure of Client's designers or contractors to comply with their contractual obligations.

12.3 Neither the activities of UES pursuant to this Agreement, nor the presence of UES or its employees, representatives, or subcontractors on the Project Site, shall be construed to impose upon UES any responsibility for means or methods of work performance, superintendence, sequencing of construction, or safety or environmental conditions or compliance at the Project Site. Client acknowledges that Client or its contractor is solely responsible for Project jobsite safety and compliance with environmental, health and safety laws.

12.4 Client is responsible for scheduling all inspections and construction materials testing ("CMT") activities of UES. UES will not be responsible for tests and inspections that it does not perform due to Client's failure to timely schedule work.

12.5 Client shall at the time of execution of the Agreement provide UES with a proposed schedule for tests and inspections UES shall perform. Client will give reasonable notice of all changes to that schedule. UES shall not be required to conduct any tests or inspections on less than 72 hours written notice, nor after normal business hours or on weekends or holidays.

SECTION 13: SOLICITATION OF EMPLOYEES

Client agrees that during the term of the Agreement, and for a period of one (1) year after the last date on which UES has provided services hereunder, Client shall not, directly or indirectly, solicit or attempt to solicit for employment, or contract directly or indirectly with, any employee of UES except as authorized in writing by UES. Client agrees that its breach of this Section shall cause UES irreparable harm, and that UES may, in addition to recovering any provable damages, enforce this obligation by injunction.

SECTION 14: NO ASSIGNMENT

Neither Client nor UES may delegate, assign or transfer its rights or obligations under the Agreement for any reason without the written consent of the other party. For avoidance of doubt, this provision does not affect UES' right, at its sole discretion, to use contractors or subcontractors in the performance and delivery of the Services.

SECTION 15: GOVERNING LAW

15.1 This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, without giving effect to the conflict of laws provisions of the State of Texas to the extent such principles or rules would require or permit the application of the laws of any other jurisdiction.

15.2 If any of the provisions of this Agreement are held illegal, invalid, or unenforceable, the enforceability of the remaining provisions will not be impaired and will survive. Limitations of liability and indemnities provided for will survive termination of this Agreement for the period of all applicable statutes of limitations to which they relate.

15.3 **WITH RESPECT TO CLIENT'S INDEMNIFICATION OBLIGATIONS HEREUNDER, THESE TERMS AND CONDITIONS COMPLY WITH THE REQUIREMENT, KNOWN AS THE EXPRESS NEGLIGENCE RULE, TO EXPRESSLY STATE IN A CONSPICUOUS MANNER TO AFFORD FAIR AND ADEQUATE NOTICE THAT THESE TERMS AND CONDITIONS CONTAIN PROVISIONS REQUIRING ONE PARTY TO BE RESPONSIBLE FOR THE NEGLIGENCE, STRICT LIABILITY, OR OTHER FAULT OF ANOTHER PARTY.**

SECTION 16: INTEGRATED AGREEMENT

16.1 This Agreement, and any Addendum represent and contain the entire and only agreement and understanding among the parties with respect to the subject matter of their subject matter, and they supersede all prior or contemporaneous oral and written agreements, understandings, representations, inducements, promises, communications, and conditions between the parties. No agreement, understanding, representation, inducement, promise, or condition with respect to the subject matter of this Agreement shall be relied upon by the parties unless expressly incorporated herein.

16.2 In the event any provision of the Agreement or these General Conditions shall be invalid, illegal or unenforceable in any respect, such a provision shall be considered separate and severable from the remaining provisions of this Agreement, and the validity, legality or enforceability of any of the remaining provisions of this Agreement shall not be affected or impaired by such provision in any way.

SECTION 17: NO AMENDMENT

17.1 The Agreement, including these General Conditions, may not be amended, or modified except by a writing signed by both parties.

17.2 Failure by either party at any time to enforce any obligation by the other party, to claim a breach of any term of the Agreement or to exercise any power agreed to hereunder will not be construed as a waiver of any right, power or obligation under the Agreement, will not affect any subsequent breach, and will not prejudice either party as regards any subsequent action.

SECTION 18: WAIVER OF JURY TRIAL

Both Client and UES waive trial by jury in any action arising out of or related to the Agreement, and any Addendum to the Agreement.

SECTION 19: CONTRACTUAL STATUTE OF LIMITATIONS

To the extent that a statute of limitations for any cause of action against UES arising from this Agreement or any Addendum can be modified contractually in accordance with law, and the relevant statute of limitations for any claim arising of or relating to any this Agreement or any Addendum, or the services provided by UES thereunder, is greater than two (2) years, the relevant statute of limitations shall be two (2) years from the date UES last provided services thereunder. The parties agree that this provision is material to the decision of UES to enter into this agreement, that it is a reasonable measure to allocate and insure against risk, and that it does not violate public policy. This section shall not be construed as an agreement to increase the statute of limitations for any causes of action that are otherwise barred by law.

SECTION 20: HEADINGS

The headings in these General Conditions are for reference only and are not intended to form part of the contract between the Parties.

REVISED: 3/7/24



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

SUBJECT: Request for variance from distance requirement applicable to the sale of alcoholic beverages per Section 10-3, Code of Ordinances; for the property located at 305 Washington Street and otherwise known as the VK Garage Theater. (*D. Paxton, Director of Planning & Development*)

AGENDA DATE OF: June 11, 2024

DATE SUBMITTED: May 30, 2024

SUBMITTED BY: Drew Paxton, Planning Director

EXHIBITS:

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

PAYMENT TO BE MADE TO: N/A

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

SUMMARY STATEMENT:

An applicant (VK Garage Theater/Playhouse 2000, 305 Washington St.) seeks a variance to the distance requirement applicable to the sale of alcoholic beverages (see Sec. 10-3, City Code). The applicant seeks to lessen the distance requirement from an existing church, an existing private school, and an existing childcare facility. This property is located within 300 feet of Notre Dame Catholic School which has licensed child-care facilities and private school on their campus. This property is also located within 300 feet of the First Assembly of God. As per section 10-3 of the City of Kerrville's Code of Ordinances, the applicant must obtain a variance from the City Council before the TABC license can be approved.

Section 10-3 (g) Variances to distance requirement.

A property owner may apply to City Council for a variance from the distance limitations provided by this section. The property owner must file a request for variance on a form provided by the city, pay the applicable fee, and specify the grounds supporting the variance as specified below. Upon submission of an administratively complete application, the city manager or designee shall then place the variance application on a meeting agenda. City council may allow a variance to this section if it determines that the enforcement of the regulation in a particular circumstance:

- (1) Is not in the best interests of the public;
- (2) Constitutes waste or inefficient use of land or other resources;
- (3) Creates an undue hardship on the applicant for a permit or license;
- (4) Does not serve its intended purpose;
- (5) Is not effective or necessary; or
- (6) For any other reason the city council, after consideration of the health, safety, and welfare of the public and the equities of the situation, determines is in the best interest of the community.

Section 10-3(i) states "When city council denies an application or when the applicant has withdrawn a request after the giving of public notice, the city will not accept a new application for a variance for a period of 12 months from the date of a denial or withdrawal unless the variance is denied without prejudice."

After a public hearing, the City Council may grant a variance according to the criteria listed above in Section 10-3(g).

RECOMMENDED ACTION:

Approve the variance.



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

SUBJECT: Proposed creation of a Public Facility Corporation for the Kerrville Public Utility Board. (*Amy Dozier, Kerrville Public Utility Board CFO*) (This item is eligible for Executive Session 551.071)

AGENDA DATE OF: June 11, 2024

DATE SUBMITTED: June 5, 2024

SUBMITTED BY: Dalton Rice, City Manager

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

PAYMENT TO BE MADE TO: N/A

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

SUMMARY STATEMENT:

Information regarding the support of a Public Facility Corporation.

RECOMMENDED ACTION:

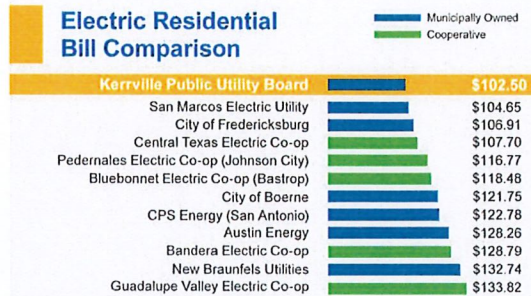
Discussion only.

ATTACHMENTS:

[20240611_Presentation KPUB.pdf](#)

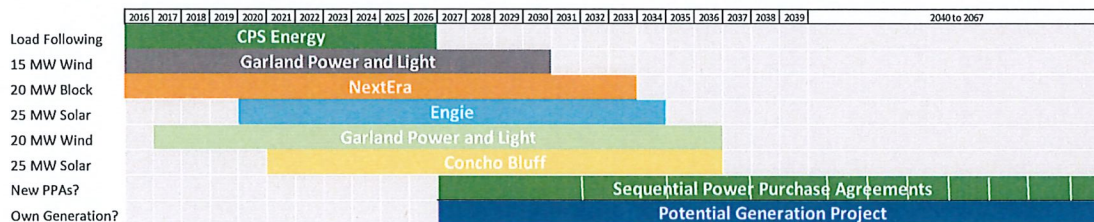
Goal Alignment

- **Kerrville 2050:**
Guiding Principle: Public Facilities and Services
Action Item: Prioritize the delivery of basic services in an efficient and cost-effective way
- **KPUB's Mission:**
To be a responsive and efficient, locally-owned provider of reliable, high-quality utility service at the lowest responsible price



Kerrville Public Utility Board | Safe • Reliable • Yours

Power Portfolio



- KPUB purchases power from a diverse group of power suppliers through power purchase agreements with staggered end dates
- CPS Energy (City of San Antonio) provides approximately 65% of the energy used by KPUB customers through an agreement that ends in 2026
- A load following agreement provides all energy needed above a certain base amount, covering all peaks
- Load following agreements are becoming more expensive and shorter due to increasing price and weather volatility



Kerrville Public Utility Board | Safe • Reliable • Yours

Power Purchase Agreement vs. Ownership

Power Purchase Agreement	
Pros	Cons
Administratively easier	Price risk
No debt	Availability risk
Less liability	Long term contracts not available
	More risk due to ERCOT rule changes
	Effectively paying someone else's interest expense

Owning Generation	
Pros	Cons
Stable supply / availability	Debt issuance
More predictable cost	More complicated
Long term sustainability	Liability associated with project development and capital asset
Less risk due to ERCOT rule changes	
More rate structure options	



Kerrville Public Utility Board | Safe • Reliable • Yours

Texas Energy Fund

- \$5 Billion fund administered by the Public Utilities Commission for:
 - ▶ low interest loans – 3% interest rate, 20 year term, 60% of project cost
 - ▶ dispatchable generation facilities of at least 100 MW
 - ▶ completion bonus grants - \$80K per MW of capacity installed by 2029
- Key Dates:
 - ▶ May 2023 – SB 2627 authorizing Texas Energy Fund passed by Texas Legislature
 - ▶ November 2023: Texas voters approved required constitutional amendment
 - ▶ March 21, 2024: PUC adopts rules for Texas Energy Fund
 - ▶ April 1, 2024: PUC releases submission criteria for Notices of Intent to apply
 - ▶ May 1 – May 31, 2024: Non-Binding Notice of Intent submission period
 - ▶ June 1 – July 27, 2024: Application submission period



Kerrville Public Utility Board | Safe • Reliable • Yours

Public Facility Corporation (PFC)

- Nonprofit corporation created by a sponsoring governmental entity such as the City of Kerrville
- Originally created as a legal structure to be used as an economic development tool to assist in the development of affordable housing, but can be used for any public facility
- PFC's own public facilities and issue debt approved by a sponsoring entity
- Use of a PFC by a sponsoring entity can provide sponsors with more options regarding project financing and project procurement
- The sponsoring entity must approve via resolution a certificate of formation and bylaws that govern the operations of the corporation



Kerrville Public Utility Board | Safe • Reliable • Yours

Public Facility Corporation (PFC)

- The City of Kerrville created the Kerrville Public Facility Corporation in 2022
- The Kerrville Public Facility Corporation is inactive, but the shell is in place for future projects related to affordable housing
- Similarly, KPUB will ask the City to create the Kerrville Public Utility Board Public Facility Corporation on June 25, 2024
- This entity will provide KPUB the option to further investigate ownership of power generation and potentially submit an application to the Texas Energy Fund



Kerrville Public Utility Board | Safe • Reliable • Yours

Next Steps

- ✓ Completed: May 28, 2024 – Kerrville City Council Executive Session briefing
- ✓ Completed: May 30, 2024 – KPUB filed a non-binding Notice of Intent with the Texas Energy Fund
- ✓ Completed: June 11, 2024 – Informational presentation to Kerrville City Council
- June 18, 2024 – KPUB Board will consider a resolution requesting that the City of Kerrville create the Kerrville Public Utility Board Public Facility Corporation
- June 25, 2024 – Kerrville City Council will consider a resolution to establish the Kerrville Public Utility Board Public Facility Corporation





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

SUBJECT: Removal of member, and appointment of member to Main Street Advisory Board. (*S. McElhannon, City Secretary*)

AGENDA DATE OF: June 11, 2024

DATE SUBMITTED: May 30, 2024

SUBMITTED BY: Shelley McElhannon, City Secretary

EXHIBITS:

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

PAYMENT TO BE MADE TO: N/A

Kerrville 2050 Item? No

Key Priority Area N/A

Guiding Principle N/A

Action Item N/A

SUMMARY STATEMENT:

Removal of Board member: In the City Board Rules and Procedures revised 9/26/2017; Section 2. **Appointment/Removal Process.** Item 2.8 **Removal of Member.**

Board members have no vested right or property interest in a board membership and the City Council may at any time remove any member or any board by a majority vote.

Section 3. **Responsibilities of Board Members.** Item 3.2. **Attendance.**

Prior to an appointment to a board, an applicant should familiarize himself/herself with the board's meeting schedule. In order to be fully aware of issues before the board, it is imperative that members are faithful in their attendance at meetings. Any member who is absent from twenty-five percent (25%) of the board's regular meetings during the calendar year, or who is absent from any three (3) consecutive regular meetings, may be considered for removal by the City Council. The staff member must report a member's non-attendance to the City Council in writing, and the City Secretary shall notify the board member in writing that their non-attendance has been reported. However, a member whose absences are directly related to a medical or family emergency may seek consideration from the board upon which they serve to qualify such absences as excused.

Staff liaison Megan Folkerts advises that member Travis Lindner has not attended six of the seven meetings held since being appointed to the board in September 2023, and recommends City Council consider the removal of Travis Lindner from the Main Street Advisory Board.

Through email and USPS, the City Secretary's Office has notified Travis Lindner of board attendance requirements and City Council notification of absences.

Appointment of Board member: If member Travis Lindner is removed, then a vacancy will occur in the MSAB.

Five applications received: George Eychner, Brian Hardin, Maggie Megee, Jimmy Mullins, and William Rector.

The interview team is Councilmember Hughes and Mayor Herring. Megan Folkers is staff liaison.

RECOMMENDED ACTION:

Staff recommends removal of Travis Lindner from the Main Street Advisory Board, and appoint a new member(s).



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

SUBJECT: Appointment(s) to the Recovery Community Coalition. (*S. McElhannon, City Secretary*)

AGENDA DATE OF: June 11, 2024

DATE SUBMITTED: April 30, 2024

SUBMITTED BY: Shelley McElhannon, City Secretary

EXHIBITS:

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

PAYMENT TO BE MADE TO: N/A

Kerrville 2050 Item? No

Key Priority Area N/A

Guiding Principle N/A

Action Item N/A

SUMMARY STATEMENT:

Two vacancies have occurred due to member resignations.
One application has been received: Brian Brannon
Interview Team is Councilmember Place 1 Delayne Sigerman and Councilmember Place 3 Kent McKinney
Staff liaison is Chief Eric Maloney.

RECOMMENDED ACTION:

Appoint member(s).