

**AGENDA**  
**REGULAR CITY COUNCIL MEETING**  
**CITY COUNCIL CHAMBERS**  
**447 North Main Street**  
**Boerne, TX 78006**  
**June 9, 2020 – 6:00 PM**

1. CALL TO ORDER – 6:00 PM

MOMENT OF SILENCE

PLEDGE OF ALLEGIANCE TO THE UNITED STATES FLAG

PLEDGE OF ALLEGIANCE TO THE TEXAS FLAG

(Honor the Texas flag, I pledge allegiance to thee, Texas – one state under God, one  
and indivisible.)

2. CONFLICTS OF INTEREST

3. PUBLIC COMMENTS: This is the opportunity for visitors and guests to address the City Council on any issue, in compliance with LGC Section 551.007. City Council may not discuss any presented issue, nor may any action be taken on any issue at this time. (Attorney General opinion – JC-0169)

4. CONSENT AGENDA: All items listed below within the Consent Agenda are considered to be routine by the City Council and may be enacted with one motion. There will be no separate discussion of items unless a Council Member or citizen so requests, in which event the item may be moved to the general order of business and considered in its normal sequence.

4.A. [2020-380](#) CONSIDER APPROVAL OF THE MINUTES OF THE REGULAR CITY COUNCIL MEETING HELD MAY 26, 2020.

**Attachments:** [Minutes 20.0526](#)

4.B. [2020-373](#) CONSIDER ON FIRST READING ORDINANCE NO. 2020-16; AN ORDINANCE AMENDING THE CITY OF BOERNE SUBDIVISION ORDINANCE NO. 2007-56, DATED NOVEMBER 13, 2007, ARTICLE 6. DRAINAGE AND FLOOD HAZARDS, SECTION 04. DRAINAGE SYSTEM DESIGN STANDARDS; AMENDING TABLE 6-5, BOERNE RAINFALL DEPTHS FOR VARIOUS DURATIONS AND FREQUENCIES.

**Attachments:**    [AIS Drainage Ordinance Changes](#)  
[Ordinance No. 2020-16](#)  
[Atlas14-table compare](#)  
[NOAA tx100y24h](#)

- 4.C.    [2020-230](#)        CONSIDER RESOLUTION NO. 2020-R39; A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BOERNE, TEXAS, AUTHORIZING THE CITY MANAGER TO ENTER INTO AND MANAGE AN INTERLOCAL PARTICIPATION AGREEMENT BETWEEN THE EDUCATION SERVICE CENTER, REGION 20 AND THE CITY OF BOERNE TO DEPLOY FIBER OPTIC CABLE TO THE PATRICK HEATH PUBLIC LIBRARY AND PROVIDE AN E-RATE FOR INTERNET SERVICE.

**Attachments:**    [AIS ESC Region 20 fiber interlocal agreement June 9, 2020](#)  
[Resolution No. 2020-R39](#)  
[Consortium Letter of Agency 2019 2029-PHPL signed](#)  
[Interlocal Agreement ESC 20 Fiber Boerne.EDITED.022020 \(002\) FINAL fr](#)

- 4.D.    [2020-386](#)        CONSIDER RESOLUTION NO. 2020-R40; A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AND MANAGE THE FIRST AMENDMENT OF CHAPTER 43 TEXAS LOCAL GOVERNMENT CODE DEVELOPMENT AGREEMENT (NON-ANNEXATION AGREEMENT) WITH BRAESIDE RANCH LLC ON SAID PROPERTY DESCRIBED IN THE ATTACHED AGREEMENT AND METES AND BOUNDS LEGAL DESCRIPTION.

**Attachments:**    [Summary](#)  
[Resolution No. 2020-R40](#)  
[Att 1 - Contract \(Exhibit A and B\)](#)  
[Att 2 - Location](#)

5.        [2020-374](#)        RECOGNITION OF MILES BUTRY FOR ACTIONS TAKEN DURING A RAIN EVENT.

**Attachments:**    [AIS. Miles Butry recognition](#)  
[Map of storm drain area. Miles Butry recognition](#)

6. PUBLIC HEARING – To Hear Comments On The Following:

- 6.A.    [2020-375](#)        PROPOSED REZONING OF 0.341 ACRES LOCATED AT 602 FREY STREET (KAD NO. 18988) FROM R-1, MEDIUM-DENSITY



SINGLE-FAMILY RESIDENTIAL DISTRICT, TO O, OFFICE DISTRICT.  
(Burton and Joyce Sponhaltz)

**Attachments:**    [Summary - 602 Frey - Public Hearing](#)  
                              [Public Hearing Notice](#)  
                              [Att 1 - Location Map 602 Frey Street](#)  
                              [Att 2 - Aerial Map 602 Frey Street](#)  
                              [Att 3 - Current Zoning](#)  
                              [Att 4 - Proposed Zoning](#)  
                              [Att 5 - Future Land Use Map 602 Frey Street](#)  
                              [Att 7 - R-1 Uses](#)  
                              [Att 8 - Street View](#)

- 6.B.    [2020-377](#)        PROPOSED ZONING OF 5.155 ACRES OF TXDOT RIGHT-OF-WAY  
                              TO B-2, HIGHWAY COMMERCIAL (IH-10 “SURPLUS NORTH”  
                              TRACT THAT ADJOINS THE FUTURE BUC-EES DEVELOPMENT  
                              LOCATED AT 33375 IH-10 WEST. (Stan Beard, Buc-ees for State  
                              of Texas, TxDOT)

**Attachments:**    [Summary - TxDOT - Public Hearing](#)  
                              [Public Hearing Notice](#)  
                              [Att 1 - Location Map](#)  
                              [Att 2 - TxDOT ROW Zoning Map](#)  
                              [Att 3 - Future Land Use Map](#)  
                              [Att 4 - B-2 Uses](#)

7. TAKE ANY NECESSARY ACTION RESULTING FROM THE PUBLIC HEARING:

- 7.A.    [2020-376](#)        CONSIDER ON FIRST READING ORDINANCE NO. 2020-17; AN  
                              ORDINANCE AMENDING THE CITY OF BOERNE ZONING  
                              ORDINANCE NO. 2007-64, CAPTIONED, “ZONING ORDINANCE  
                              OF THE CITY OF BOERNE, TEXAS”, DATED DECEMBER 18, 2007,  
                              BY AMENDING ARTICLE 3, SECTION 14, REZONING 0.341 ACRES  
                              LOCATED AT 602 FREY STREET (KAD NO. 18988) FROM R-1,  
                              MEDIUM-DENSITY SINGLE-FAMILY RESIDENTIAL DISTRICT, TO O,  
                              OFFICE DISTRICT; REPEALING ALL ORDINANCES IN CONFLICT;  
                              CONTAINING A SEVERANCE CLAUSE; AND DECLARING AN  
                              EFFECTIVE DATE. (Burton and Joyce Sponhaltz)

**Attachments:**    [Summary - 602 Frey Street- First Reading](#)  
[Ordinance No. 2020-17](#)  
[Att 1 - Location Map 602 Frey Street](#)  
[Att 2 - Aerial Map 602 Frey Street](#)  
[Att 3 - Current Zoning](#)  
[Att 4 - Proposed Zoning](#)  
[Att 5 - Future Land Use Map 602 Frey Street](#)  
[Att 6 - O Uses](#)  
[Att 7 - R-1 Uses](#)  
[Att 8 - Street View](#)

- 7.B.    [2020-378](#)    CONSIDER ON FIRST READING ORDINANCE NO. 2020-18; AN ORDINANCE AMENDING THE CITY OF BOERNE ZONING ORDINANCE NO. 2007-64, CAPTIONED, "ZONING ORDINANCE OF THE CITY OF BOERNE, TEXAS", DATED DECEMBER 18, 2007, BY AMENDING ARTICLE 3, SECTION 13, PERMANENT ZONING OF 5.155 ACRES OF TXDOT RIGHT-OF-WAY LOCATED AT IH-10 WEST (IH-10 "SURPLUS NORTH" TRACT THAT ADJOINS THE FUTURE BU-CEES DEVELOPMENT LOCATED AT 33375 IH-10 WEST) TO B-2, HIGHWAY COMMERCIAL DISTRICT; REPEALING ALL ORDINANCES IN CONFLICT; CONTAINING A SEVERANCE CLAUSE; AND DECLARING AN EFFECTIVE DATE. (Stan Beard, Buc-ees for State of Texas, TxDOT)

**Attachments:**    [Summary - First Reading](#)  
[Ordinance No. 2020-18](#)  
[Att 1 - Location Map](#)  
[Att 2 - TxDOT ROW Zoning Map](#)  
[Att 3 - Future Land Use Map](#)  
[Att 4 - B-2 Uses](#)  
[Att 5 - TxDOT Proposed Alignment](#)

8.    [2020-389](#)    CONSIDER RESOLUTION NO. 2020-R41; A RESOLUTION OF THE CITY OF BOERNE, TEXAS ESTABLISHING A CHARTER REVIEW COMMISSION AND APPOINTING MEMBERS TO SERVE ON THE COMMISSION; AND ISSUING THE COMMISSIONS CHARGE.

**Attachments:**    [AIS charter commission](#)  
[Resolution No. 2020-R41](#)  
[2012 Home Rule Charter DISCUSSION DRAFT](#)

9.     [2020-388](#)     CONSIDER RESOLUTION NO. 2020-R42; A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AND MANAGE THE FIFTH AMENDMENT TO THE DEVELOPMENT AGREEMENT AND DISTRICT CONSENT AGREEMENT BY AND BETWEEN THE CITY OF BOERNE AND LOOKOUT DEVELOPMENT GROUP, L.P., KENDALL COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT NO. 2, AND KENDALL COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT NO. 2A.

**Attachments:**   [Esperanza AIS 6.09.20](#)  
                          [Resolution No. 2020-R42](#)  
                          [Fifth Amendment with Exhibits 052820](#)  
                          [Attachment 1](#)  
                          [Attachment 2](#)  
                          [Attachment 3](#)  
                          [Attachment 4](#)

10.    [2020-390](#)     CONSIDER RESOLUTION NO. 2020-R43; A RESOLUTION OF THE CITY OF BOERNE, TEXAS CONSENTING TO THE ANNEXATION OF 11.785 ACRES OF LAND INTO KENDALL COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT NO. 2A.

**Attachments:**   [AIS WCID2A CONSENT TO ANNEXATION](#)  
                          [2020-R43 Consent annex WCID No. 2A](#)  
                          [Petition to Consent to Annex 11.785 acres](#)  
                          [Attachment 1](#)

11.    [2020-387](#)     DISCUSSION AND INTRODUCTION OF MEDICAL ADVISORY PANEL FOR COVID-19.

**Attachments:**   [AIS. COVID-19 Medical Advisory Panel](#)

12.    [2020-392](#)     UPDATE ON BOERNE STRONG STIMULUS PROGRAM.

**Attachments:**   [AIS BSSP Update](#)

13.    [2020-379](#)     RECEIVE AND CONSIDER A REQUEST FROM ALAMO SIGN SOLUTIONS FOR A VARIANCE TO THE SIGN ORDINANCE, SECTION 7. CENTRAL AREA (B-3 ZONES) F. CANOPY SIGNS, SIZE OF SIGN. (Methodist Surgery Center, 110 Menger Springs)

**Attachments:**    [Summary - Methodist Ambulatory Surgical Ctr Sign Variance](#)  
                              [Att 1 - Application](#)  
                              [Att 2 - Layout](#)

14.    [2020-391](#)            CALL FOR A PUBLIC HEARING FOR JUNE 23, 2020 AT 6:00 P.M.  
                              TO RECEIVE PUBLIC INPUT REGARDING THE BLANCO ROAD  
                              IMPROVEMENTS/RECONFIGURATION.

**Attachments:**    [AIS Blanco Road Set Public Hearing](#)  
                              [BlancoRoadLaneConfigExhibit](#)

15.    [2020-381](#)            RECEIVE AND ACCEPT RESIGNATION FROM COUNCIL MEMBER  
                              DISTRICT 4, BRIAN FOWLER AND DECLARE A VACANCY AS PER  
                              THE CITY OF BOERNE HOME RULE CHARTER.

**Attachments:**    [AIS vacancy](#)

16.    [2020-382](#)            BOWMAN'S ABBREVIATED REFLECTIONS ON 40 YEARS.

**Attachments:**    [AIS. Bowman's 40 years](#)

17.    [2020-383](#)            RECOGNITION OF RON BOWMAN FOR HIS YEARS OF SERVICE AS  
                              CITY MANAGER.

18. COMMENTS FROM COUNCIL/STAFF – No discussion or action may take place.

19. EXECUTIVE SESSION IN ACCORDANCE WITH THE TEXAS GOVERNMENT CODE:

- 19.A. [2020-385](#)            SECTION 551.087 - DELIBERATION REGARDING ECONOMIC  
                              DEVELOPMENT NEGOTIATIONS. (Ebensberger-Fisher Funeral  
                              Home)

20. RECONVENE INTO OPEN SESSION AND TAKE ANY NECESSARY ACTION RELATING  
TO THE EXECUTIVE SESSION AS DESCRIBED ABOVE.

- 20.A. [2020-384](#)            CONSIDER RESOLUTION NO. 2020-R44; A RESOLUTION OF THE  
                              CITY OF BOERNE, TEXAS AUTHORIZING THE CITY MANAGER TO  
                              ENTER INTO AND MANAGE A CHAPTER 380 ECONOMIC  
                              DEVELOPMENT AGREEMENT BETWEEN THE CITY OF BOERNE AND  
                              EBENSBERGER-FISHER FUNERAL HOME.

**Attachments:**    [Resolution No. 2020-R44](#)

21. EXECUTIVE SESSION IN ACCORDANCE WITH THE TEXAS GOVERNMENT CODE: CITY COUNCIL MAY, AS PERMITTED BY LAW, ADJOURN INTO EXECUTIVE SESSION AT ANY TIME TO DISCUSS ANY MATTER LISTED ABOVE INCLUDING 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 SECTION 551.087 (DELIBERATION REGARDING ECONOMIC DEVELOPMENT NEGOTIATIONS) OF CHAPTER 551 OF THE TEXAS GOVERNMENT CODE.  
(If needed)

22. ADJOURNMENT

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s/s Ronald C. Bowman  
City Manager

**CERTIFICATION**

**I hereby certify that the above notice of meeting was posted on the 5th day of June,  
2020 at 4:40 p.m.**

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s/s Lori A. Carroll  
City Secretary

**NOTICE OF ASSISTANCE AT THE PUBLIC MEETINGS**

**Boerne City Hall is wheelchair accessible. Access to the building and special parking is available at the north entrance of the building. Requests for special services must be received forty-eight (48) hours prior to the meeting time by calling the City Secretary at 830-249-9511.**

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.



**MINUTES**  
**REGULAR CITY COUNCIL MEETING**  
**CITY COUNCIL CHAMBERS**  
**447 North Main Street**  
**Boerne, TX 78006**  
**May 26, 2020 – 6:00 PM**

Minutes of the Regular City Council Meeting of May 26, 2020 at 6:00 p.m.

**Present:**        5 - Mayor Tim Handren, Council Member Ty Wolosin, Mayor Pro Tem Nina Woolard, Council Member Brian Fowler, and Council Member Joseph Macaluso

**Absent:**        1 - Council Member Quinten Scott

**Staff Present:** Ron Bowman, Siria Arreola, Paul Barwick, Tori Bellos, Pam Bransford, Jeff Carroll, Mike Mann, Sandy Mattick, Doug Meckel, Nick Montagno, Steve Perez, Barbara Quirk, Mike Raute, Chris Shadrock, Robin Stauber, Kelly Skovbjerg, Laura Talley, Jeff Thompson, Larry Woods, Mary Woods and Danny Zincke.

**Recognized/ Registered Guests:** Christina Ryrholm, Crystal Henry, Cindy Fowler, and Andrew Pape.

**1. CALL TO ORDER – 6:00 PM**

Mayor Handren called the City Council meeting to order at 6:00 p.m.

He asked everyone to observe a Moment of Silence and led the Pledge of Allegiance to the United States Flag and to the Texas Flag.

**2. CONFLICTS OF INTEREST**

Council Member Wolosin declared a conflict with agenda items 11.B. and 12.A.

**3. PUBLIC COMMENTS:**

No public comments were received.

**4. CONSENT AGENDA:**

- 4.A. [2020-336](#) CONSIDER THE MINUTES OF THE REGULAR CALLED CITY COUNCIL MEETING OF MAY 12, 2020.**

The Minutes were approved.

- 4.B. [2020-339](#) CONSIDER ON SECOND READING ORDINANCE NO. 2020-15; AN ORDINANCE AMENDING ORDINANCE NO. 2019-37, CAPTIONED "AN ORDINANCE ADOPTING THE ANNUAL CAPITAL AND OPERATING BUDGETS FOR THE CITY OF BOERNE, TEXAS FOR THE FISCAL YEAR 2019-2020, BEGINNING OCTOBER 1, 2019 AND ENDING SEPTEMBER 30, 2020."**

Ordinance No. 2020-15 was approved.

A MOTION WAS MADE BY COUNCIL MEMBER WOLOSIN, SECONDED BY COUNCIL MEMBER FOWLER TO APPROVE THE CONSENT AGENDA AS PRESENTED. THE MOTION CARRIED BY THE FOLLOWING VOTE:

**Yeah: 4** - Council Member Wolosin, Mayor Pro Tem Woolard, Council Member Fowler, and Council Member Macaluso.

**Absent: 1** - Council Member Scott

- 5. [2020-337](#) RECOGNITION OF MEMBERS OF THE BOERNE STRONG STIMULUS PROGRAM TASK FORCE, ADVISORY TEAM, AND CITY OF BOERNE WORK TEAM.**

Mayor Handren called on Mr. Jeff Thompson, Deputy City Manager. Mr. Thompson expressed appreciation to the entire group working on this for the past month and acknowledged all that were present.

- 6. [2020-340](#) CONSIDER ANNUAL MAYORAL APPOINTMENTS TO VARIOUS BOARDS AND COMMISSIONS.**

Mayor Handren stated there were not many new applications received in the last six months.



Recommendations are as follows; Official Appointments: Re-appoint Municipal Court Judge Ed Phillips, Alternate Municipal Court Judge Lawrence Morales, Municipal Court Prosecutor Dana Jacobson, Alternate Municipal Court Prosecutor Michael Latimer, Cemetery Sextons Dusty Fisher and William Holt.

Public Housing Authority: Appoint Heather Ontiveroz as Chairman, re-appoint Allen Taha as Vice Chair, and Mary Jelley as a Member.

Planning & Zoning Commission: Appoint Tim Bannwolf as Chairman and Ricky Gleason as a Member.

Zoning Board of Adjustments: Re-appoint Scott Lowry as Chairman and Jim Terrian as Vice Chairman, Members: Blaine Lewis and re-appoint Rich McCormick, Alternates: re-appoint Matt Janysek and appoint Steve Stewart.

Boerne Public Library: Re-appoint Susan Nelson and Richele Poston.

Convention and Visitors Bureau Advisory Board: Re-appoint Mary Kanafani to represent Venues and Cristal Bitar to represent Limited Service Hotels. Guy Sanders to represent the Restaurants.

Ethics Review Commission: Re-appoint Chairman Timothy Costanza, Vice Chairman Ben Walker; Members: Re-appoint Robert Lee.

A MOTION WAS MADE BY MAYOR PRO TEM WOOLARD, SECONDED BY COUNCIL MEMBER WOLOSIN, TO APPROVE THE MAYORAL APPOINTMENTS AS PRESENTED. THE MOTION CARRIED BY THE FOLLOWING VOTE:

**Yeah:** 4 - Council Member Wolosin, Mayor Pro Tem Woolard, Council Member Fowler, and Council Member Macaluso

**Absent:** 1 - Council Member Scott

7. [2020-348](#) **CONSIDER RESOLUTION NO. 2020-R35; A RESOLUTION OF THE CITY OF BOERNE, TEXAS AUTHORIZING SUBMISSION OF A GRANT APPLICATION THROUGH AACOG FOR THE CITY OF BOERNE PUBLIC SAFETY CORONAVIRUS EMERGENCY SUPPLEMENTAL**

**FUNDING PROGRAM GRANT PROJECT TO THE OFFICE OF THE GOVERNOR.**

Ms. Kelly Skovbjerg, Library Director, reviewed the process and funding guidelines for the Coronavirus Emergency Supplemental Funding Program Grant. Staff recommends approval of Resolution No. 2020-R35.

A MOTION WAS MADE BY MAYOR PRO TEM WOOLARD, SECONDED BY COUNCIL MEMBER WOLOSIN, TO APPROVE RESOLUTION NO. 2020-R35; A RESOLUTION OF THE CITY OF BOERNE, TEXAS AUTHORIZING SUBMISSION OF A GRANT APPLICATION THROUGH AACOG FOR THE CITY OF BOERNE PUBLIC SAFETY CORONAVIRUS EMERGENCY SUPPLEMENTAL FUNDING PROGRAM GRANT PROJECT TO THE OFFICE OF THE GOVERNOR. THE MOTION CARRIED BY THE FOLLOWING VOTE:

**Yeah:** 4 - Council Member Wolosin, Mayor Pro Tem Woolard, Council Member Fowler, and Council Member Macaluso

**Absent:** 1 - Council Member Scott

8. [2020-346](#) **CONSIDER RESOLUTION NO. 2020-R36; A RESOLUTION OF THE CITY OF BOERNE, TEXAS AUTHORIZING SUBMISSION OF A GRANT APPLICATION FOR THE CORONAVIRUS RELIEF FUND TO THE TEXAS DIVISION OF EMERGENCY MANAGEMENT.**

Ms. Sandy Mattick, Finance Director, reviewed funding guidelines for the Coronavirus Relief Fund. Discussion ensued over eligible expenses per the CARES Act. The city can receive up to 20% of the allocated \$929,060.00 once City Council authorizes the filing of the application to receive the funds. The remainder of the money is available on a reimbursement basis.

A MOTION WAS MADE BY MAYOR PRO TEM WOOLARD, SECONDED BY COUNCIL MEMBER WOLOSIN, TO APPROVE RESOLUTION NO. 2020-R36; A RESOLUTION OF THE CITY OF BOERNE, TEXAS AUTHORIZING SUBMISSION OF A GRANT APPLICATION FOR THE CORONAVIRUS RELIEF FUND TO THE TEXAS DIVISION OF EMERGENCY MANAGEMENT. THE MOTION CARRIED BY THE FOLLOWING VOTE:

**Yeah:** 4 - Council Member Wolosin, Mayor Pro Tem Woolard, Council Member Fowler, and Council Member Macaluso

**Absent:** 1 - Council Member Scott

**9. [2020-347](#) CITY MANAGER'S REPORT DISCUSSION:**

**A. CITY FACILITIES RE-OPENING PLAN**

**B. UPDATE ON PROJECT DASHBOARD**

Ron Bowman, City Manager, presented the city facilities re-opening plan and an update of city projects.

**10. COMMENTS FROM COUNCIL/STAFF – No discussion or action may take place.**

City Manager Ron Bowman informed Council he received a request by local state senators to lower the local tax rate.

Utilities Director Mike Mann provided information on the recent power outages that have occurred.

Fire Chief Doug Meckel provided an update on calls made by the Fire Department. The Fire Department is working with Jeff Fincke, Kendall County Fire Marshal, to coordinate the possibility of having the fireworks show for the fourth of July.

Community Services Director Danny Zincke provided an update for youth sports. Practices will begin on May 31st and they will be able to play games June 13th.

Ron Bowman stated the only new COVID-19 update is from nursing homes yesterday.

Council Member Ty Wolosin toured Woods of Boerne Apartments off of Shooting Club Road. He recommended other members of Council do the same.

Mayor Tim Handren received a copy of the preliminary property values from the appraisal district. Values are over 7% higher than in 2019. The Transportation Committee has been on hold due to COVID-19, there will be a meeting next week to discuss reconvening and next steps for the committee.

Mayor Handren also stated he had a call last Friday with Governor Abbott. The Governor hopes to open at 75% capacity for most businesses for the next phase.

**11. EXECUTIVE SESSION IN ACCORDANCE WITH THE TEXAS GOVERNMENT CODE:**

Mayor Handren convened the City Council into Executive Session at 6:57 p.m.

**11.A.[2020-342](#) SECTION 551.086 - DELIBERATION REGARDING ELECTRIC PUBLIC POWER SUPPLY COMPETITIVE MATTER AND CONSIDER POSSIBLE ACTION.**

A MOTION WAS MADE BY COUNCIL MEMBER WOLOSIN, SECONDED BY MAYOR PRO TEM WOOLARD TO AUTHORIZE JEFF THOMPSON TO MANAGE AND EXECUTE CRRS. THE MOTION CARRIED BY THE FOLLOWING VOTE:

**Yeah:** 5 - Mayor Handren, Council Member Wolosin, Mayor Pro Tem Woolard, Council Member Fowler, and Council Member Macaluso

**Absent:** 1 - Council Member Scott

**11.B.[2020-338](#) SECTION 551.087 - DELIBERATION REGARDING ECONOMIC DEVELOPMENT NEGOTIATIONS. (Boerne Strong Stimulus Program)**

Council Member Wolosin recused himself and left the room. No action was taken.

**11.C.[2020-345](#) SECTION 551.087 - DELIBERATION REGARDING ECONOMIC DEVELOPMENT NEGOTIATIONS. (Ebensberger-Fisher Funeral Home)**

No action was taken.

**12. RECONVENE INTO OPEN SESSION AND TAKE ANY NECESSARY ACTION RELATING TO THE EXECUTIVE SESSION AS DESCRIBED ABOVE.**

Mayor Handren reconvened the City Council into Open Session at 8:30 p.m.

**12.A.[2020-343](#) CONSIDER RESOLUTION NO. 2020-R37; A RESOLUTION OF THE CITY OF BOERNE, TEXAS, AWARDING AND AUTHORIZING THE DISTRIBUTION OF FUNDS FOR ECONOMIC DEVELOPMENT GRANTS THROUGH THE BOERNE STRONG STIMULUS PROGRAM UNDER CHAPTER 380; AND AUTHORIZING THE CITY MANAGER TO EXECUTE AND MANAGE AGREEMENTS WITH THE GRANT RECIPIENTS.**

Council Member Wolosin recused himself and stepped away from the dais.

Deputy City Manager, Jeff Thompson reviewed the maximum funding for applicants, scoring system used to rate applicants and the funding allocation. 111 applicants qualified for the grant and 26 did not qualify due to variety of reasons. He also recommended an additional \$500 be added to the original grant for a total of \$305,500.00.

A MOTION WAS MADE BY COUNCIL MEMBER FOWLER, SECONDED BY COUNCIL MEMBER MACALUSO, TO APPROVE RESOLUTION NO. 2020-R37; A RESOLUTION OF THE CITY OF BOERNE, TEXAS, AWARDING AND AUTHORIZING THE DISTRIBUTION OF FUNDS FOR ECONOMIC DEVELOPMENT GRANTS THROUGH THE BOERNE STRONG STIMULUS PROGRAM UNDER CHAPTER 380; AND AUTHORIZING THE CITY MANAGER TO EXECUTE AND MANAGE AGREEMENTS WITH THE GRANT RECIPIENTS LISTED ON EXHIBIT A. THE MOTION CARRIED BY THE FOLLOWING VOTE:

**Yeah:** 3 - Mayor Pro Tem Woolard, Council Member Fowler, and Council Member Macaluso

**Absent:** 1 - Council Member Scott

**Recused:** 1 - Council Member Wolosin

**12.B.[2020-344](#) CONSIDER RESOLUTION NO. 2020-R38; A RESOLUTION OF THE CITY OF BOERNE, TEXAS AUTHORIZING THE CITY MANAGER TO ENTER INTO AND MANAGE A CHAPTER 380 ECONOMIC DEVELOPMENT AGREEMENT BETWEEN THE CITY OF BOERNE AND EBENSBERGER-FISHER FUNERAL HOME.**

Item was not considered.

**13. EXECUTIVE SESSION IN ACCORDANCE WITH THE TEXAS GOVERNMENT CODE: CITY COUNCIL MAY, AS PERMITTED BY LAW, ADJOURN INTO EXECUTIVE SESSION AT ANY TIME TO DISCUSS ANY MATTER LISTED ABOVE INCLUDING 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 SECTION 551.087 (DELIBERATION REGARDING ECONOMIC DEVELOPMENT NEGOTIATIONS) OF CHAPTER 551 OF THE TEXAS GOVERNMENT CODE. (If needed)**

No further discussion in Executive Session was necessary.

#### **14. ADJOURNMENT**


Mayor Handren adjourned the City Council Meeting at 8:42 p.m.

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Mayor

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City Secretary

	<div style="text-align: center;"><b>AGENDA ITEM SUMMARY</b></div> <div style="border: 1px dashed purple; padding: 5px; float: right;"> <b>District Impacted</b>  <input type="checkbox"/> 1 = Wolosin  <input type="checkbox"/> 2 = Woolard  <input type="checkbox"/> 3 = Scott  <input type="checkbox"/> 4 = Fowler  <input type="checkbox"/> 5 = Macaluso  <input checked="" type="checkbox"/> All </div>
<b>AGENDA DATE</b>	<i>June 9, 2020</i>
<b>DESCRIPTION</b>	CONSIDER ON FIRST READING ORDINANCE NO. 2020-16; AN ORDINANCE AMENDING THE CITY OF BOERNE SUBDIVISION ORDINANCE NO. 2007-56, DATED NOVEMBER 13, 2007, ARTICLE 6. DRAINAGE AND FLOOD HAZARDS, SECTION 04. DRAINAGE SYSTEM DESIGN STANDARDS; AMENDING TABLE 6-5, BOERNE RAINFALL DEPTHS FOR VARIOUS DURATIONS AND FREQUENCIES.
<b>STAFF'S RECOMMENDED ACTION (be specific)</b>	Approve on first reading ordinance no. 2020-16; amending subdivision ordinance no. 2007-56, article 6, section 4, amending table 6-5, boerne rainfall depths for various durations and frequencies.
<b>CONTACT PERSON</b>	Jeffrey Carroll – Development Services Director
<b>SUMMARY</b>	<p>On October 8, 2019, Council adopted updated rainfall depth values, as published by the National Oceanic and Atmospheric Administration (NOAA) known as Atlas 14. The new values are more accurate than estimates developed 40 to 50 years ago due to decades of additional rainfall data, an increase in the amount of available data, both in the number of stations and their record lengths, and improved methods used in the analysis.</p> <p>It has come to staff's attention that a scrivener's error exists in the adopted rainfall depth table provided from our consultant. Staff has reviewed the published data available from NOAA and suggests that 6 out of the 78 rainfall depth values be revised to match NOAA.</p>
<b>COST</b>	N/A
<b>SOURCE OF FUNDS</b>	N/A
<b>ADDITIONAL INFORMATION</b>	Comparison Table, NOAA Rainfall map

This summary is not meant to be all inclusive. Supporting documentation is attached.

## ORDINANCE NO. 2020-16

### AN ORDINANCE AMENDING THE CITY OF BOERNE SUBDIVISION ORDINANCE NO. 2007-56, DATED NOVEMBER 13, 2007, ARTICLE 6. DRAINAGE AND FLOOD HAZARDS, SECTION 04. DRAINAGE SYSTEM DESIGN STANDARDS; AMENDING TABLE 6-5, BOERNE RAINFALL DEPTHS FOR VARIOUS DURATIONS AND FREQUENCIES

**WHEREAS**, on October 8, 2019 the City Council of Boerne adopted rainfall depth values, as published by the National Oceanic and Atmospheric Administration (NOAA) known as Atlas 14; and

**WHEREAS**, the City Council of Boerne has determined that it is in the best interest of the Boerne community to take into consideration the public health, safety and welfare to adopt the amendments included herein;

**NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BOERNE, TEXAS:**

The following sections of the aforementioned Ordinance are hereby amended to read:

#### ARTICLE 6. DRAINAGE AND FLOOD HAZARDS

##### SECTION 04. DRAINAGE SYSTEM DESIGN STANDARDS

###### 6.04.002 Method of Computing Runoff.

The method of computing runoff shall be the Rational Method for watersheds of 200 acres or less in area and with time of concentration of 60 minutes or less. For watersheds with an area greater than 200 acres or time of concentration greater than 60 minutes, a computer model acceptable to the City Manager or a hydrograph method as shown in the Texas Department of Transportation (TXDOT) Hydraulic Design Manual (HDM) shall be prepared. Also when designing detention facilities or determining downstream impacts, a similar approach shall be used. In all cases, normal antecedent conditions shall be assumed unless otherwise determined by the City Manager.

A. *Rational Method.* The following parameters shall be used for runoff calculations by the Rational Method.

1. The Rational Method shall use the following formula:

$$Q = CC_f IA$$

Where:

Q = The flow at the discharge of the watershed, cubic feet per second (cfs).

C = The runoff coefficient, dimensionless, from Table 6-1 or Table 6-2

C<sub>f</sub> = Runoff coefficient adjustment factor from Table 6-3.

I = Rainfall intensity, inches per hour, from Figure 6-1.

A = Watershed area, acres.

2. Runoff coefficients may be calculated based on specific land use established by the Zoning Districts according to Table 6-1 below, or
3. A composite runoff coefficient based on the percentages of different types of surfaces in the drainage area according to Table 6-2 below.



4. Runoff coefficients given in Table 6-1 and Table 6-2 are valid for storms up to and including the 10-year storm. Use the adjustment factor in Table 6-3 for other storm frequencies.

<b>TABLE6-1: RATIONAL METHOD RUNOFF COEFFICIENTS BY ZONING DISTRICT</b>				
<b>Zoning District</b>	<b>Average Impervious Cover (%)</b>	<b>Slope</b>		
		<b>Up to 2%</b>	<b>Over 2% &amp; Up to 7%</b>	<b>Over 7%</b>
RA Single Family Residential-Agricultural	10	0.31	0.40	0.44
RMA Single Family Residential-Manor Lots	25	0.40	0.47	0.51
RE Single Family Residential – Estate	30	0.42	0.49	0.53
RE1 Low Density Single Family Residential	35	0.45	0.52	0.55
R1 Medium Density Single Family Residential	40	0.48	0.54	0.57
RN1 Neighborhood Residential	45	0.51	0.57	0.59
R2 Moderate Density Residential	50	0.54	0.59	0.62
R3 High Density Residential	60	0.60	0.64	0.66
R-4 Multi-family Residential	65	0.63	0.66	0.68
RMO Modular Residential	55	0.57	0.61	0.64
O Office	70	0.66	0.69	0.70
B1 High Density Residential & Neighborhood Commercial	80	0.71	0.73	0.74
MU1 Mixed Use District	75	0.69	0.71	0.72
B2 Highway Commercial	85	0.74	0.76	0.77
B2R Highway Commercial (Restricted)	80	0.71	0.73	0.74
MU2 Mixed Use District	75	0.69	0.71	0.72
B3 Central Business	92	0.78	0.79	0.80
RC River Corridor	90	0.77	0.78	0.79
I Industrial	95	0.80	0.81	0.81
MHC Manufactured Home Community	55	0.57	0.61	0.64

Note: Average expected impervious cover is indicated, if impervious cover of development will differ because of overlay zoning or other conditions, alternative factors may be used when justified to the satisfaction of the **City Manager** in the drainage report.

<b>TABLE 6-2: RATIONAL METHOD RUNOFF COEFFICIENTS FOR COMPOSITE ANALYSIS</b>	
<b>Character of Surface</b>	<b>C</b>
<b>Developed Areas</b>	
Asphaltic	0.81
Concrete or Roof	0.83
Planted – Poor Condition (grass cover on less than 50% of the area)	
Less than 2% Slope	0.37
2 – 7% Slope	0.43
More than 7% Slope	0.45
Planted – Fair Condition (grass cover on 50% to 75% of the area)	
Less than 2% Slope	0.30
2 – 7% Slope	0.38
More than 7% Slope	0.42
Planted – Good Condition (grass cover on more than 75% of the area)	
Less than 2% Slope	0.25
2 – 7% Slope	0.35
More than 7% Slope	0.40
<b>Undeveloped Areas</b>	
Cultivated Land	
Less than 2% Slope	0.36
2 – 7% Slope	0.41
More than 7% Slope	0.44
Pasture or Range Land	
Less than 2% Slope	0.30
2 – 7% Slope	0.38
More than 7% Slope	0.42
Forest or Wooded Land	
Less than 2% Slope	0.28
2 – 7% Slope	0.36
More than 7% Slope	0.41

<b>TABLE 6-3: RUNOFF COEFFICIENT ADJUSTMENT FACTORS FOR RATIONAL METHOD</b>	
<b>Storm Frequency (years)</b>	<b><math>C_f</math></b>
25	1.1
50	1.2
100	1.25

Note: Use  $C_f = 1$  for 10-year form frequency or less.

- Rainfall intensity shall be calculated as function of the time of concentration. The time of concentration shall be calculated based on its component parts and summed to determine the total time of concentration. Flow shall be assumed to begin as sheet flow, develop into shallow concentrated flow until the flow enters a drainage system where it becomes pipe flow or channel flow. Sheet flow shall not exceed a length of 300 feet. Shallow concentrated flow shall be the total between the end of the sheet flow and the beginning of a drainage system. The

following equations may be used to calculate travel time for sheet flow and shallow concentrated flow, respectively:

$$T_{Sheet} = \frac{Ln}{42S^{0.5}}$$

$$T_{Shallow} = \frac{Ln}{60S^{0.5}}$$

Where:

$T_{Sheet}$  = Sheet flow travel time, minutes.

$T_{Shallow}$  = Shallow concentrated flow travel time, minutes.

$L$  = Flow length, feet, maximum 300 feet for sheet flow.

$N$  = Manning's roughness coefficient from Table 6-4.

$S$  = Slope of ground, ft/ft.

Where hydraulic calculations can be performed to calculate the velocity in the drainage system, the calculated velocity shall be used to determine the time of concentration in the drainage system. In other cases use Manning's equation with the roughness coefficients given below to calculate the velocity in the drainage system.

<b>TABLE 6-4: MANNING'S ROUGHNESS COEFFICIENTS FOR SHEET FLOW AND SHALLOW CONCENTRATED FLOW</b>	
<b>Manning's "n"</b>	<b>Condition</b>
0.016	Concrete (rough or smoothed finish)
0.02	Asphalt
0.1	0-50% vegetated ground cover, remaining bare soil or rock outcrops, minimum brush or tree cover
0.2	50-90% vegetated ground cover, remaining bare soil or rock outcrops, minimum- medium brush or tree cover
0.3	100% vegetated ground cover, medium- dense grasses (lawns, grassy fields etc.) medium brush or tree cover
0.6	100% vegetated ground cover with areas of heavy vegetation (parks, green- belts, riparian areas etc.) dense under- growth with medium to heavy tree growth

Use the total calculated time of concentration as the duration to determine the critical rainfall intensity from Figure 6-1. Use a minimum time of concentration of 5 minutes.

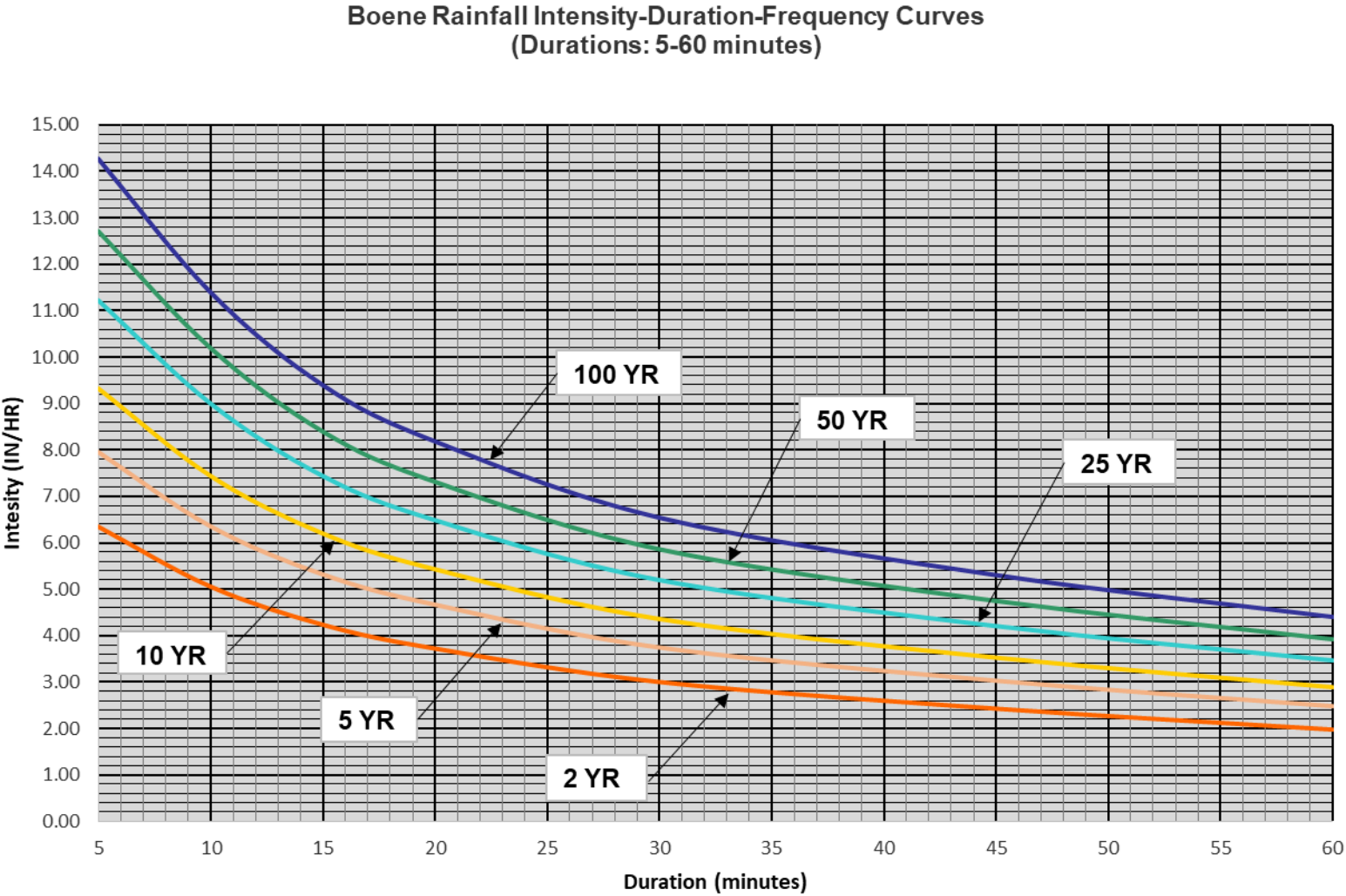


Figure 6-1 – Boerne Rainfall IDF Curves (Duration 5-60 Minutes)

- B. **Computer Models.** Computer models shall be prepared using the HEC-HMS software developed by the US Army Corps of Engineers Hydrologic Engineering Center. Parameters for the model shall be determined as described herein. Rainfall and runoff relationships shall be based on the methodology and parameters provided in TR-55 Urban Hydrology for Small Watersheds (TR-55) published by the Natural Resource Conservation Service (NRCS) except as modified herein. All published Hydrology and Hydraulic models shall be used if available (FEMA, San Antonio River Authority).
- i. **Runoff:** The TR-55 methodology shall be used for runoff calculations in HEC-HMS. Curve numbers shall be determined from the values given in TR-55 or pre-approved references by the City Manager. In addition, impervious cover values shall be estimated from aerial photos for existing conditions. For post-development conditions, the maximum anticipated impervious cover shall be used with the appropriate curve number for the development. An assumption that the initial abstraction is equal to 0.2 times the maximum soil retention per TR-55 shall be used unless calibration data is available to justify other figures to the satisfaction of the City Manager.
- ii. **Rainfall:** Values from Table 6-5 shall be used to calculate the rainfall depth-duration-frequency relationships for the model. Rainfall distribution shall be based on the Type II distribution per TR-55.

<b>TABLE 6-5: BOERNE RAINFALL DEPTHS FOR VARIOUS DURATIONS AND FREQUENCIES.</b>						
<b>Duration (Minutes)</b>	<b>Frequency</b>					
	<b>2-year (Inches)</b>	<b>5-year (Inches)</b>	<b>10-year (Inches)</b>	<b>25-year (Inches)</b>	<b>50-year (Inches)</b>	<b>100-year (Inches)</b>
5	0.53	0.66	0.78	0.94	1.06	1.19
10	0.84	1.06	1.24	<del>1.86</del> 1.50	1.70	1.90
15	1.06	1.33	<del>1.81</del> 1.55	<del>2.16</del> 1.86	<del>2.44</del> 2.10	2.35
20	1.24	1.56	1.81	2.16	2.44	2.73
30	1.50	1.87	2.18	2.60	2.93	3.27
45	1.82	2.27	2.65	3.16	3.56	3.98
60	1.97	2.47	2.89	3.47	3.92	4.40
120	2.43	3.09	3.69	4.56	5.28	6.06
180	2.70	3.48	<del>4.23</del> 4.20	5.28	<del>6.21</del> 6.20	7.23
240	2.91	3.79	4.60	5.85	6.94	8.15
360	3.16	4.14	5.09	6.53	7.79	9.22
720	3.63	4.81	5.95	7.71	9.24	11.00
1440	4.14	5.53	6.88	8.95	10.80	12.80

- iii. Unit hydrograph development shall be based on the Snyder-Clark Synthetic Unit Hydrograph. The following equations and parameters shall be used unless a more precise calibration is provided and approved by the City Manager.

Use the following to compute the duration of the Unit Hydrograph:

$$t_r = \frac{t_p}{5.5}$$

Where:

$t_r$  = Unit hydrograph duration (hours).

$t_p$  = basin lag time (hours).

Use the following to compute the basin lag time developed by the Tulsa District Corps of Engineers and used by the San Antonio River Authority in the hydraulic modeling of the Cibolo Creek Watershed:

$$t_{lag} = C_t \left( \frac{L \cdot L_{ca}}{\sqrt{S}} \right)^{0.39}$$

Where:

$t_p$  = basin lag time (hours).

$L$  = Length of longest flow path in the watershed (miles).

$L_{ca}$  = Length to the centroid along the longest flow path (miles).

$C_t$  = Coefficient, based upon level of watershed development in the watershed.

$S$  = average slope of the longest flow path (ft. /ft.)

The  $C_t$  coefficient is defined based on the percentage of development within the watershed by:

$$C_t = 1.4224 e^{-0.0088x}$$

Where:

$x$  = is the percentage of development (in percent form)

The peak discharge of the unit hydrograph shall be calculated by:

$$q_p = 380 t_{lag}^{-0.92}$$

$$C_p = \frac{q_p t_{lag}}{640} \text{ or } C_p = 0.594 t_{lag}^{0.08}$$

Where:

$q_p$  = peak discharge of the unit hydrograph (cfs).

$C_p$  = Snyder's peaking coefficient.

$A$  = watershed size (sq. mi.).

$t_p$  = basin lag time (hours).

TABLE 6-6: SNYDER'S PEAKING COEFFICIENT		
Watershed Type	Average Watershed Slope	C <sub>P</sub>

Flat	$S \leq 0.5\%$	0.55
Moderate	$0.5\% \leq S \leq 1.5\%$	0.61
Rolling	$1.5\% < S \leq 3.0\%$	0.71
Steep	$S > 3.0\%$	0.80

- iv. Modified Puls methodology shall be used when detailed hydraulic models are available, but Muskingum-Cunge may be used for all other methods.
- 6. For watersheds greater than 10 square miles, the effects of storm centering must be taken into account. Consult with city staff prior to completing the model (TXDOT HDM Chapter 4 Section 13).
- 7. Watershed delineation for hydrologic models must include at a minimum the subareas delineated in the City of Boerne Watershed Map. In addition, subareas shall be added to the model to effectively isolate the subject development.

PASSED and APPROVED on first reading this the \_\_\_\_ day of June, 2020.

PASSED, APPROVED, and ADOPTED on second reading this the \_\_\_\_ day of June, 2020.

APPROVED:

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Secretary

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

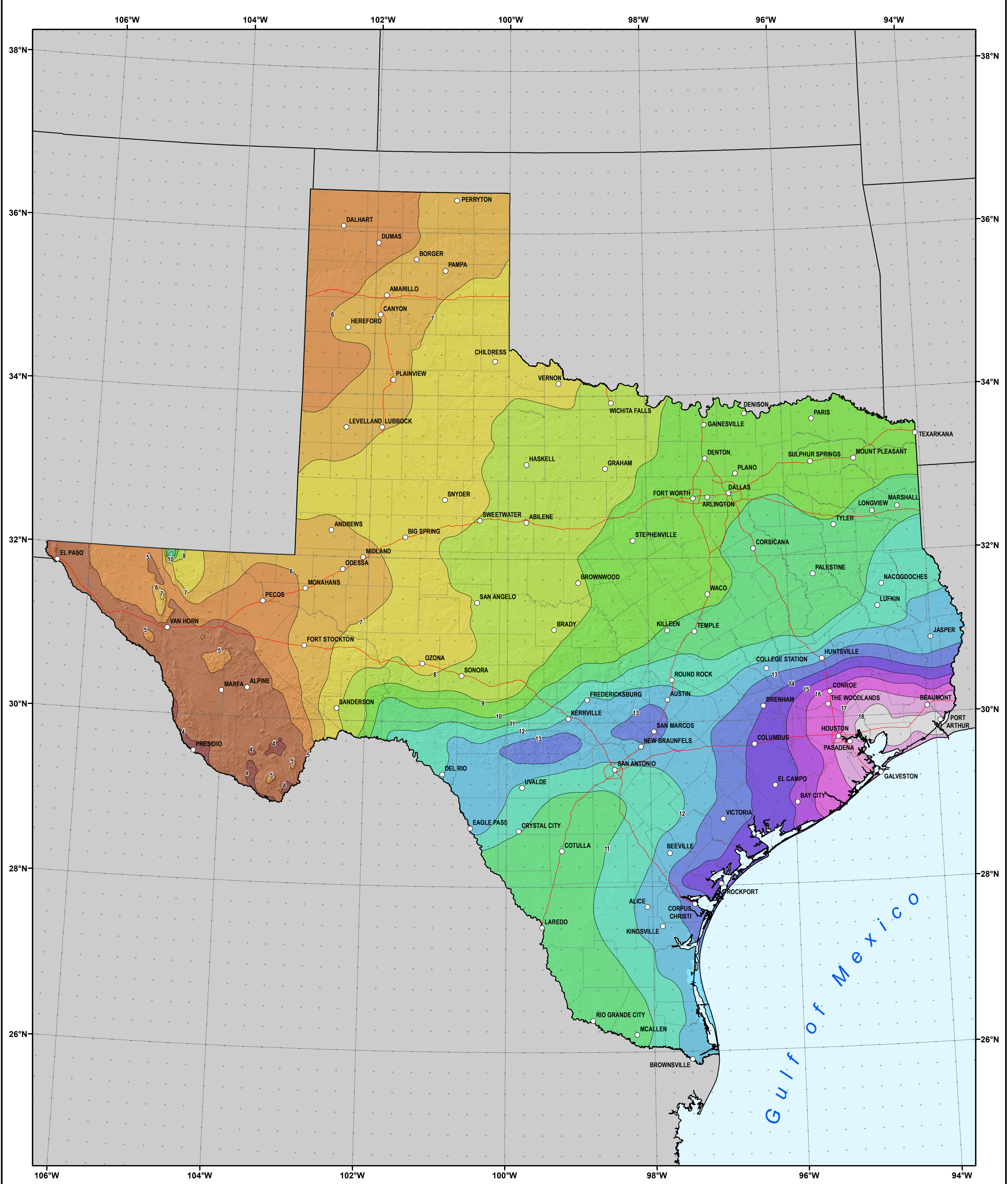
Current Ordinance:

<b>TABLE 6-5: BOERNE RAINFALL DEPTHS FOR VARIOUS DURATIONS AND FREQUENCIES.</b>						
Duration (Minutes)	Frequency					
	2-year (Inches)	5-year (Inches)	10-year (Inches)	25-year (Inches)	50-year (Inches)	100-year (Inches)
5	0.53	0.66	0.78	0.94	1.06	1.19
10	0.84	1.06	1.24	1.86	1.70	1.90
15	1.06	1.33	1.81	2.16	2.44	2.35
20	1.24	1.56	1.81	2.16	2.44	2.73
30	1.50	1.87	2.18	2.60	2.93	3.27
45	1.82	2.27	2.65	3.16	3.56	3.98
60	1.97	2.47	2.89	3.47	3.92	4.40
120	2.43	3.09	3.69	4.56	5.28	6.06
180	2.70	3.48	4.23	5.28	6.21	7.23
240	2.91	3.79	4.60	5.85	6.94	8.15
360	3.16	4.14	5.09	6.53	7.79	9.22
720	3.63	4.81	5.95	7.71	9.24	11.00
1440	4.14	5.53	6.88	8.95	10.80	12.80

Proposed Ordinance:

<b>Table 6-5: Boerne rainfall depths for various durations and frequencies.</b>						
Duration (Minutes)	Frequency					
	2-year (Inches)	5-year (Inches)	10-year (Inches)	25-year (Inches)	50-year (Inches)	100-year (Inches)
5	0.53	0.66	0.78	0.94	1.06	1.19
10	0.84	1.06	1.24	1.50	1.70	1.90
15	1.06	1.33	1.55	1.86	2.10	2.35
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30	1.50	1.87	2.18	2.60	2.93	3.27
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720	3.63	4.81	5.95	7.71	9.24	11.00
1440	4.14	5.53	6.88	8.95	10.80	12.80





NOAA Atlas 14, Volume 11, Version 2  
Texas

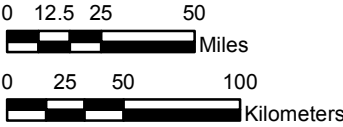
# TEXAS

Isopluvials of 100-year 24-hour precipitation in inches

SCALE 1:3,250,000



Prepared by U.S. DEPARTMENT OF COMMERCE  
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION  
NATIONAL WEATHER SERVICE  
OFFICE OF WATER PREDICTION  
HYDROMETEOROLOGICAL DESIGN STUDIES CENTER  
September 2018




Projection: Lambert Conformal Conic; Datum NAD83; Standard Parallels: 36°N and 41°N; Central Meridian 99.5°W.



3.75 - 4.00	7.01 - 8.00	11.01 - 12.00	15.01 - 16.00
4.01 - 5.00	8.01 - 9.00	12.01 - 13.00	16.01 - 17.00
5.01 - 6.00	9.01 - 10.00	13.01 - 14.00	17.01 - 18.00
6.01 - 7.00	10.01 - 11.00	14.01 - 15.00	18.01 - 18.41



	<div data-bbox="1235 218 1474 457" style="border: 1px dashed purple; padding: 5px;"> <p><b>District Impacted</b></p> <p><input type="checkbox"/> 1 = Wolosin</p> <p><input type="checkbox"/> 2 = Woolard</p> <p><input type="checkbox"/> 3 = Scott</p> <p><input type="checkbox"/> 4 = Fowler</p> <p><input type="checkbox"/> 5 = Macaluso</p> <p><input type="checkbox"/> All</p> </div> <p style="text-align: center;"><b>AGENDA ITEM SUMMARY</b></p>
<b>AGENDA DATE</b>	<i>June 9, 2020</i>
<b>DESCRIPTION</b>	<p>CONSIDER RESOLUTION NO. 2020-R ; A RESOLUTION APPROVING AN INTERLOCAL PARTICIPATION AGREEMENT BETWEEN THE EDUCATION SERVICE CENTER, REGION 20 AND THE CITY OF BOERNE TO DEPLOY FIBER OPTIC CABLE TO THE LIBRARY AND PROVIDE A LOWER-LEVEL TERM E-RATE FOR INTERNET SERVICE AND AUTHORIZING THE CITY MANAGER TO EXECUTE AND MANAGE THIS AGREEMENT.</p>
<b>STAFF'S RECOMMENDED ACTION (be specific)</b>	<p>Approve Resolution No. 2020-R ; authorizing the city manager to execute and manage the interlocal participation agreement between Education Service Center, Region 20 and the City of Boerne for 10GB fiber Internet connection.</p>
<b>CONTACT PERSON</b>	Kelly Skovbjerg
<b>SUMMARY</b>	<p>In 2019, the Texas State Library and Archives Commission (TSLAC) is partnering with Education Service Center, Region 20 (ESC-20) to support significant broadband improvements in the Region 20 service area which directly benefits the Patrick Heath Public Library. The ESC-20 Fiber Consortium is using federal e-Rate funds to construct and implement a large-scale dark fiber network that will provide high-speed Internet connectivity to schools and public libraries in Region 20. Using funds appropriated from the Texas State Legislature, TSLAC will pay the one-time construction costs to connect our library to this network.</p> <p>The library currently has a 1GB per second fiber Internet connection. By joining the ESC-20 Fiber Consortium, the library will have access to 10GB per second fiber Internet connection on a private network that ESC will maintain. The fixed cost for the term of the agreement is \$170 per month (reference Exhibit A on page 15 of the interlocal participation agreement). This cost includes equipment, maintenance, and ISP services. Additionally, we will not have to apply for annual e-Rate discounts as ESC-20 will handle the entire e-Rate process on behalf of the consortium. The initial term is one year and will automatically renew every year for up to six (6) additional one-year terms unless terminated sooner.</p> <p>Our participation in the Fiber 20 Consortium will enable us to provide library users with greater bandwidth speeds at lower cost.</p>

	Staff recommends approval of the attached Interlocal Participation Agreement.
<b>COST</b>	\$170 per month/\$2,040 annually
<b>SOURCE OF FUNDS</b>	Library budget
<b>ADDITIONAL INFORMATION</b>	

This summary is not meant to be all inclusive. Supporting documentation is attached.

**RESOLUTION NO. 2020-R39**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BOERNE, TEXAS, AUTHORIZING THE CITY MANAGER TO ENTER INTO AND MANAGE AN INTERLOCAL PARTICIPATION AGREEMENT BETWEEN THE EDUCATION SERVICE CENTER, REGION 20 AND THE CITY OF BOERNE TO DEPLOY FIBER OPTIC CABLE TO THE PATRICK HEATH PUBLIC LIBRARY AND PROVIDE AN E-RATE FOR INTERNET SERVICE**

**WHEREAS**, the Texas Legislature provided funding for a fiber optic system to be used to provide better internet connectivity to participating schools and public libraries in Education Service Center, Region 20 ("ESC Region 20"); and

**WHEREAS**, the Texas State Library and Archives Commission is partnering with Region 20 to implement a large-scale broadband dark fiber network throughout its area; and

**WHEREAS**, the Patrick Heath Public Library has been offered to participate in this program through the attached Interlocal Participation Agreement; and

**WHEREAS**, as a part of the Interlocal Participation Agreement ESC Region 20 will be handling the e-rate discount for the library; and

**WHEREAS**, the ESC 20 e-rate will be maintained at a fixed rate of \$170.00 per month over the next six years;

**NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BOERNE, TEXAS:**

That the City Council hereby authorizes the City Manager to enter into and manage an Interlocal Participation Agreement with the Education Service Center, Region 20 to deploy fiber optic cable to the Patrick Heath Public Library and provide an e-rate for internet service.

PASSED and APPROVED on this the \_\_\_\_ day of June, 2020.

APPROVED:

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Secretary

ESC Region 20 Fiber Consortium  
 1314 Hines Avenue  
 San Antonio, TX 78208-1899

Re: Letter of Agency for Funding Year 2019 – 2029

This is to confirm our participation in the ESC Region 20 Fiber Consortium, Billed Entity Number 17015391, E-rate Consortium for the procurement of Internet Access Service, Wide Area Network Fiber Services, Category 1 Network Equipment, and Category 1 Internal Connections.

Patrick Heath Public Library authorizes ESC Region 20 Fiber consortium to submit FCC Form 471, FCC Form 470 and other forms to the Schools and Libraries Division of the Universal Service Administrative Company on Patrick Heath Public Library's behalf when filing for consortium funding. Patrick Heath Public Library does not authorize ESC region 20 fiber consortium to submit FCC Form 471, FCC Form 470 and other forms to the Schools and Libraries Division of the Universal Service administrative Company on Patrick Heath Public Library. sole behalf for other e-rate services. Patrick Heath Public Library will continue to file all other FCC Federal e-rate forms utilized solely by Patrick Heath Public Library for any services outside the ESC region fiber consortium.

I understand that, in submitting these forms on our behalf, you are making certifications for Patrick Heath Public Library. By signing this Letter of Agency, I make the following certifications:

a) ONLY FOR SCHOOL-RELATED LOA: I certify that schools in our district are all schools under the statutory definitions of elementary and secondary schools found in the No Child Left Behind Act of 2001, 20 U.S.C. §§ 7801(18) and (38), that do not operate as for-profit businesses and do not have endowments exceeding \$50 million.

b) I certify that our library has/have secured access, separately or through this program, to all of the resources, including computers, training, software, internal connections, maintenance, and electrical capacity, necessary to use the services purchased effectively. I recognize that some of the aforementioned resources are not eligible for support. I certify that to the extent that the billed entity is passing through the non-discounted charges for the services requested under this Letter of Agency, that the entities I represent have secured access to all of the resources to pay the non-discounted charges for eligible services from funds to which access has been secured in the current funding year.

c) I certify that the services the school, library, or district purchases at discounts provided by 47 U.S.C. § 254 will be used solely for educational purposes and will not be sold, resold, or transferred in consideration for money or any other thing of value, except as permitted by the rules of the Federal Communications Commission (Commission or FCC) at 47 C.F.R. § 54.500(et seq.).

d) I certify that our library has complied with all program rules and I acknowledge that failure to do so may result in denial of discount funding and/or cancellation of funding commitments. I acknowledge that failure to comply with program rules could result in civil or criminal prosecution by the appropriate law enforcement authorities.

e) I acknowledge that the discount level used for shared services is conditional, for future years,

upon ensuring that the most disadvantaged schools and libraries that are treated as sharing in the service, receive an appropriate share of benefits from those services.

f) I certify that I will retain required documents for a period of at least ten years after the last day of service delivered. I certify that I will retain all documents necessary to demonstrate compliance with the statute and Commission rules regarding the application for, receipt of, and delivery of services receiving schools and libraries discounts, and that if audited, I will make such records available to the Administrator. I acknowledge that I may be audited pursuant to participation in the Schools and Libraries (E-rate) Program.

g) I certify that I am authorized to procure and/or order telecommunications and other supported services for the eligible entity(ies) covered by this Letter of Agency. I certify that I am authorized to make this request on behalf of the eligible entity(ies) covered by this Letter of Agency, that I have examined this Letter, that all of the information on this Letter is true and correct to the best of my knowledge, that the entities that will be receiving discounted services under this Letter pursuant to this application have complied with the terms, conditions and purposes of the program, that no kickbacks were paid to anyone and that false statements on this form can be punished by fine or forfeiture under the Communications Act, 47 U.S.C. §§ 502, 503(b), or fine or imprisonment under Title 18 of the United States Code, 18 U.S.C. § 1001 and civil violations of the False Claims Act.

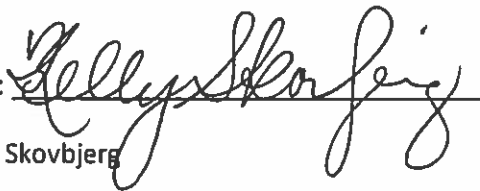
h) I acknowledge that FCC rules provide that persons who have been convicted of criminal violations or held civilly liable for certain acts arising from their participation in the Schools and Libraries support mechanism are subject to suspension and debarment from the program. I will institute reasonable measures to be informed, and will notify USAC should I be informed or become aware that I or any of the entities, or any person associated in any way with my entity and/or the entities, is convicted of a criminal violation or held civilly liable for acts arising from their participation in the Schools and Libraries support mechanism.

i) I certify that, to the best of my knowledge, the non-discount portion of the costs for eligible services will not be paid by the service provider. I acknowledge that the provision, by the provider of a supported service, of free services or products unrelated to the supported service or product constitutes a rebate of some or all of the cost of the supported services.

j) I certify that I am authorized to sign this Letter of Agency and, to the best of my knowledge, information, and belief, all information provided to ESC Region 20 Fiber Consortium for E-rate submission is true.

Name of Entity: Patrick Heath Public Library

Signature:



Date: 3-20-2019

Name: Kelly Skovbjerg



EDUCATION SERVICE CENTER, REGION 20  
INTERLOCAL PARTICIPATION AGREEMENT  
In the  
ESC 20 FIBER CONSORTIUM WITH ADDITIONAL SITE BUILDS

This Interlocal Participation Agreement is made and entered into by and between the EDUCATION SERVICE CENTER, REGION 20 (“Center”) as Administrative Agent and Lead Member of the ESC 20 Fiber Consortium (“Consortium”) and the undersigned Local Education Agency (“LEA”).

## **I. RECITALS**

**WHEREAS**, the Center is established under the authority of Chapter 8, Texas Education Code, for the purpose of: (1) assisting school districts in improving student performance; (2) enabling school districts to operate more efficiently and economically; and (3) implementing initiatives assigned by the legislature or the Commissioner of Education;

**WHEREAS**, Chapter 791, Texas Government Code, the Interlocal Cooperation Act, is for the purpose of increasing the efficiency and effectiveness of local governments by authorizing them to contract, to the greatest possible extent, with one another and with agencies of the state;

**WHEREAS**, Section 791.011(e) of the Interlocal Cooperation Act provides that interlocal contractual payments must be in amounts that fairly compensate the performing party for services or functions performed under an interlocal contract;

**WHEREAS**, expenditures of federal grant and award funds made on or after December 26, 2014 must comply with the requirements of Education Department General Administrative Regulations (“EDGAR”) set out in 2 C.F.R. Part 200;

**WHEREAS**, 2 C.F.R §200.318(e) provides: “To foster greater economy and efficiency, and in accordance with efforts to promote cost-effective use of shared services across the Federal government, the non-Federal entity is encouraged to enter into state and local inter-governmental agreements or inter-entity agreements where appropriated for procurement or use of common or shared goods and services”; and

**WHEREAS**, the purpose of this Agreement is to facilitate compliance with federal EDGAR requirements in addition to state procurement requirements;

**NOW, THEREFORE**, in consideration of the mutual covenants, promises and obligations contained herein the Center and undersigned LEA agree as follows:

## **II. TERMS AND CONDITIONS**

**1. Adoption of Interlocal Cooperation Agreement.** The Contracting LEA by the execution or acceptance of this Agreement hereby formally confirms and approves its Letter of Agency dated March 20, 2019 which is incorporated herein by reference. The Letter of Agency established the authority of the ESC 20 FIBER Consortium (by and through its Lead Member, ESC Region 20) as an administrative agency and representative of its collective participants for purposes of application for E-Rate funding in connection with construction and implementation of large-scale broadband dark fiber network among the LEAs within Region 20 which will provide internet and LEA connectivity to promote educational excellence in instruction, services and resources through a collaborative partnership of LEAs, (“Regional Fiber Network Project”).

**2. Term.**

**2.1 Initial Term.** This Interlocal Participation Agreement shall be effective on the date of execution by an authorized signatory for both Parties. The Initial Agreement Term will be for one year beginning on the Effective Date, and thereafter, shall automatically renew for successive one-year terms, unless the Agreement is sooner terminated in accordance with the provisions herein.

**2.2 Continuing Term.** If this Interlocal Agreement is not terminated during the Initial Term and successive renewals, it shall continue to automatically renew annually on July 1 of each successive year for up to six (6) additional one year terms, unless sooner terminated in accordance with the termination provisions of this Agreement. This Interlocal Agreement shall automatically terminate upon termination of the Service Agreement.

**3. Termination.**

**3.1 Prior to Expiration of Initial Term and Successive Initial Term Renewals.**

**3.1.1 Non-appropriation.** The LEA shall have the continuing right to terminate this agreement without notice at the end of any budget period in which funds for this agreement are not available or appropriated. Provided, however, that neither Party will be entitled to a refund of amounts previously contributed in the event of withdrawal for lack of funding.

**3.1.2 Payment Due Upon Termination.** Service terminated during the Initial Term will be invoiced the balance of the Initial Term LESS any payments made through the date of termination notice to Region 20 by the LEA.

**3.2 Termination Following Expiration of Initial Term.**

**3.2.1** This Agreement may be terminated at any time by either Party for convenience, or because of the other’s failure to fulfill the contract obligations. Notice and an opportunity to cure shall be given in accordance with the provisions contained in this Agreement. Upon receipt of such notice, services shall be immediately discontinued (unless the notice directs otherwise) and all materials as may have been accumulated in performing this contract, whether completed or in progress, delivered to the Center.



3.2.2 If the termination is for convenience and the other Party's obligations have been properly performed prior to the effective date of termination, the Center will be paid for services actually provided prior to notification of termination by the LEA.

3.2.3 If, after notice of termination for failure to fulfill contract obligations after the Initial Term, it is determined that the terminated Party had not so failed, the termination shall be deemed to have been affected for convenience. In such event, payment shall be made by the terminating party as provided in Paragraph 3.2 of this Section.

3.2.4 The rights and remedies provided in this clause are in addition to any other rights and remedies provided by law or under this Agreement.

**3.3 Defaults With Opportunity for Cure.** Should either Party fail, as determined by the other's representative, to satisfactorily comply with or perform the obligations set out herein; or comply with any covenant herein required, such failure shall be considered an Event of Default. In such event, the non-defaulting Party shall deliver written notice of said default, in accordance with the notice provisions contained in this Agreement, specifying the specific Events of Default and the action necessary to cure such default. The defaulting Party shall have thirty (30) calendar days after receipt of the written notice to cure such default. If the defaulting Party fails to cure the default within such cure period, or take steps reasonably calculated to cure such default, the non-defaulting Party shall have the right, without further notice, to terminate this Agreement in whole or in part as it deems appropriate.

**3.4 Termination For Cause.** Upon the occurrence of one (1) or more of the following events, and following written notice to the Center given in accordance with the notice provisions contained in this Agreement, Contracting LEA may immediately terminate this Contract, in whole or in part, "for cause":

3.4.1 Center makes, directly or indirectly through its employees or representatives, any material misrepresentation or provides any materially misleading information to LEA in connection with this Agreement or its performance hereunder; or

3.4.2 Center violates or materially fails to perform any covenant, provision, obligation, term or condition of a material nature contained in this Agreement, except those events of default for which an opportunity to cure is provided herein; or

3.4.3 Center fails to cure, or initiate steps reasonably calculated to cure, a default as required by this Agreement, within the time period required for cure; or

3.4.4 Center violates any rule, regulation or law to which Center is bound or shall be bound under the terms of this Agreement; or

3.4.5 Center attempts the sale, transfer, pledge, conveyance or assignment of this Agreement contrary to the terms of this Agreement.

3.4.6 Center ceases to do business as a going concern; makes an assignment for the benefit of creditors; admits in writing its inability to pay debts as they become due; files a petition in bankruptcy or has an involuntary bankruptcy petition filed against it (except in connection with a reorganization under which the business of such party is continued and performance of all its obligations under this Contract shall continue) and such petition is not dismissed within forty-five (45) days of filing; or if a receiver, trustee or liquidator is

appointed for it, or its joint venture entity, or any substantial part of Center's assets or properties.

**3.5 Termination By Law.** If any state or federal law or regulation is enacted or promulgated which prohibits the performance of any of the duties herein, or, if any law is interpreted to prohibit such performance, this Agreement shall automatically terminate as of the effective date of such prohibition.

**3.6 Orderly Transfer Following Termination.** Regardless of how this Agreement is terminated, Center shall effect an orderly transfer to Contracting LEA or to such person(s) or firm(s) as the Contracting LEA may designate, at a reasonable cost to Contracting LEA. Upon the effective date of expiration or termination of this Agreement, Center shall cease all operations of work being performed by Center, or any of its subcontractors, pursuant to this Agreement. All completed or partially completed documents, papers, records, charts, reports, and any other materials or information produced, or provided to Center, in connection with the services rendered by Center under this Agreement, regardless of storage medium, shall be transferred to Contracting LEA. Such record transfer shall be completed within thirty (30) calendar days of the termination date and shall be completed at the expense of the terminating Party.

#### **4. Center's Obligations**

4.1 Coordination and filing of application for upfront, non-recurring costs of deploying new fiber or upgraded network facilities to eligible LEAs, Category One support, including construction of network facilities, design and engineering and project management costs ("Special Construction E-Rate Funding") for large-scale broadband dark fiber network ("ESC 20 Fiber Consortium") on behalf of Contracting LEAs within Region 20 designed to provide internet and connectivity for Contracting LEAs, including but not limited to:

4.1.1 100 Gigabit backbone network between hub sites;

4.1.2 10 Gigabit network among the connected edge sites;

4.1.3 Center will allow bandwidth flexibility such that a Contracting LEA can exceed their subscribed services within a reasonable limit without penalty;

4.1.4 Center will provide Contracting LEA an opportunity to participate in shared network services (e.g., internet access, disaster recovery, shared application environment, etc.)

4.1.5 Center will provide Contracting LEA with direct connectivity to multiple educational resource data centers.

4.1.6 Center will provide adequate staff necessary for efficient operation of the network.

4.1.7 Provide and guarantee service level objectives as specified in Paragraph 5.4 of this Section.

4.1.8 Implement and provide 24x7x365 support and management via the leased lit service provider of the network to include:

A. Proactively monitor and maintain broadband connections

B. Proactively monitor internet access service from ISP

C. Guarantee the LEA purchased bandwidth to the Internet by monitoring usage.

D. Provide alerts concerning network maintenance and/or unplanned outages.

E. Notification will be given according to the contracted Service Level Agreement terms

F. Affected LEAs will be notified via email of any emergency network impairments within a reasonable time after the problem is determined.

4.1.9 Troubleshoot Service Interruptions via the leased lit service provider to the point of demarcation:

A. For the primary connection, the point of demarcation is inclusive of the leased lit service provider router

4.1.10 Proactively monitor and report the use of services to ensure usage is within the terms of the agreement.

4.1.11 Provide technical assistance to LEAs for connectivity, upon request.

**4.2 Administrative Handling.** Center, by and through ESC 20 FIBER CONSORTIUM, during the Term of this Agreement, will comply with all applicable laws, and the FCC, USAC, and TEA rules, as well as, state and local procurement requirements, throughout each annual E-rate application cycle and will adopt and maintain internal controls and policies to ensure such compliance, including but not limited to the following:

**4.2.1 Goods and Services.** The Center, by and through the ESC 20 FIBER Consortium, provides goods and services to LEAs in accordance with Chapter 8, Texas Education Code. Prices or fees for goods and services may be on a unit-price, per-participant basis, or district average daily attendance basis based upon the total cost to provide the service to all participating LEAs. This agreement is limited to the goods and services as provided herein. Additional goods and services may only be added to this agreement in writing.

**4.2.2 Procurement.** Handle procurement of goods and services on behalf of LEA in strict and consistent compliance with the FCC, USAC, TEA and state and local procurement rules.

A. Enter proposals for tabulation and evaluation, including assuring bidding process occurs with each procurement and that no bidder is given preferential treatment over others at any point in the process accurately evaluating and scoring responsive proposals and maintaining adequate documentation of such procurement for purposes of compliance with e-rate auditor requests for procurement process documentation.

B. Establish an Evaluation Committee to test, evaluate and award proposals, for any required procurement, to include at least six representatives of Region 20 School Districts, the E-Rate Consultant, and Region 20 Purchasing and Technology Representatives.

C. Develop system for gathering evaluation information from members on vendor performance, and product quality and use of products and services.

D. Perform annual critical review of the existing e-rate procedures with particular focus on staff involved, transparency, fairness and checks and balances in the procurement process, evaluation methods, tools and procedures and document retention strategies.

**4.2.3 Confirmation of Certifications.** Maintain a procedure for confirming LEA certifications including LEA's ability to fund the local share of E-rate services and projects, availability of necessary resources to make effective use of the products and services for

which it requests E-rate discounts, certifications regarding LEA compliance with the Children’s Internet Protection Act (CIPA) and adoption of Internet Safety Procedure, if required, and other certifications required by E-Rate which may not be within the personal knowledge of the Consortium Lead Member or E-Rate Consultant as applicant.

**4.2.4 Pre-Funding Commitment Communications.** Timely and accurately respond to any special requests for information from SLD during the application review process and any selective review processes.

**4.2.5 Post Funding Commitment Communications.** Upon issuance of Funding Commitment Decision Letter, file Form 486 or other notification to SLD regarding service or construction start date. Monitor the timeframe for filing all Forms 486 and ensure deadlines are met.

**4.2.6 Service Substitutions Service Start Date Changes and SPIN Changes.** Accurately and timely handle all service substitutions, Service Start Date changes and Service Provider Identification Number (“SPIN”) Changes (corrective and operational), if any, related to the procurement goods and services procured on behalf of the LEAs in strict compliance with FCC rules.

**4.2.7 Disbursement Process.** Timely and accurately handle the Disbursement Process and associated accounting for all funding including receiving and reviewing discounted bills from service providers or seeking reimbursement from USAC or such other processes required as appropriate to access all funds awarded in the Funding Commitment Decision Letters received.

**4.2.8 Billing Accuracy Monitoring.** Confirm accurate billing by the service provider of both the LEA and USAC as required, including preparation of accurate cost sheets and all FCC Forms 472 (BEAR Forms) and complete and timely return any Service Certifications, where applicable, and ensure that only eligible services approved on the correct Form 471 and delivered consistent with the (FCDL) Funding Commitment Letter and contract agreements are billed. Confirmation shall include follow-up with service providers and/or USAC in the event of discovered discrepancy,

**4.2.9 Document Retention.** Comply with current FCC document retention requirements (currently ten years from the last date to receive service or equipment delivery date, whichever is later), including documentation related to pre-commitment, contracting, post-commitment, invoicing, all backup data that supports the certifications made on any E-rate application and documentation regarding equipment funded through E-Rate.

**4.2.10 Audit Compliance.**

A. In the event of an Audit by USAC, (including one conducted by a private contractor) the Center will provide notice to the LEA of the initiation of a USAC Audit not later than three (3) days after receipt of the first notice from USAC or its Contactor; shall collect and provide all documentation requested by auditors at the first notice of an audit and provide any information and documentation by the deadlines established; and accommodate the auditors’ needs for information -- consulting with the individual LEA when required. The LEA shall be entitled, but not required to participate in the Audit.

B. In the event of an Audit finding, Consortium, by and through Center, will implement all corrective actions required by USAC, to verify that it has implemented measures to comply

with the E-Rate Program Rules and will assert any and all defenses legally warranted and appropriate appeal points to USAC and/or the FCC on behalf of the Consortium and at the joint expense of the LEAs. Individual LEAs will have the right, but will not be required, to participate in the appellate process.

#### 4.2.11 E-Rate Consultant.

A. Contract with competent and experienced E-Rate Consultant to provide services to the Consortium and its Contracting LEAs, and to assist Region 20 in meeting the compliance requirements of this Agreement, and applicable the FCC, USAC, and TEA rules, as well as, state and local procurement requirements, throughout each annual E-rate application cycle.

B. Require E-Rate Consultant by contract to:

(i) Provide and maintain in effect during the performance of the Agreement professional errors and omissions insurance coverage of at least One Million Dollars (\$1,000,000.00).

(ii) Indemnify, defend, and hold Contracting LEAs, their respective Boards of Trustees, officers, agents, and employees harmless from any injury (and any resulting or related claim, action, loss, liability, or reasonable expense, including attorney's fees and other fees and court and other costs) arising directly or indirectly, in whole or in part from negligent actions or inactions of the E-Rate Consultant, its agents, employees, and suppliers, or arising, in whole or in part, out of a defective product, negligent operations or services of provider, its agents, employees, and suppliers, under this agreement.

(iii) E-Rate Consultant shall be a "Certified E-Rate Management Professional" as per the E-Rate Management Professionals Association Certification Process.

**4.3 Service Level Objectives.** All Service Level Objectives provided by the Service Provider, shall pass through to each ESC 20 Fiber Consortium LEA as listed in this Section. LEA understands that Service Level Objectives are best estimates, and actual service provision may vary.

#### 4.3.1 Service Availability Objectives for Ethernet and IP Services

Service Element	Description	Measurement Timeframe
Service Availability 99.99%	Time that Service is available (i.e. unaffected by a Service Outage)	One (1) Month

#### 4.3.2 Additional Service Element Objectives for IP and Ethernet Services

Service Element	Measurement	Measurement Timeframe
Packet Loss	<p>Not to exceed the following values, as applicable to the affected QoS Classes, for a sustained period of two (2) or more hours:</p> <p>IP Transit or Basic QoS: 0.50% Enhanced QoS: 0.40% Preferred QoS: 0.30%</p>	Per Incident
Latency	<p>Not to exceed the following values for a one way, sustained period of two (2) or more hours:</p> <p>North America Metro (&lt;300 fiber miles): 15 ms State of Texas, WAN Only (&lt;750 fiber miles): 20 ms North America Intercity (&gt;300 fiber miles): 45 ms Europe: 15 ms</p>	Per Incident
Packet Jitter	Not to exceed 5 milliseconds when averaged over a 20 minute period.	Per Incident
Packet Loss	Across the link from the customer to Zayo: 0.0001%	Minutes not met by the SLA divided by total minutes per month multiplied by the billing cycle charge.
Subscribed Bandwidth SLA	Contracted bandwidth guaranteed through the Vendors network to its Peering Sites to other Tier 1 Providers.	Per Incident
Network Management/ Monitoring SLA	Zayo Tranzact - Network Management available and working 365 days and 24 hours per day.	Minutes not met by the SLA divided by total minutes per month multiplied by the billing cycle charge.

Billing SLA	Provide ESC 20 Consortium an accurate and easy-to-understand invoice within one month of the billing cycle.	One Month of the Billing Cycle
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#### 4.3.3 Response Time and Mean Time to Repair

Service/Repair Response Time
>30 Minutes remote response (email/phone)
>2 hrs. on-site response

Mean Time to Repair
>4 Hours for network equipment failure
>8 Hours for cable degradation/failure, not including fiber cuts

### 5. Contracting LEA Obligations.

5.1 In order to maintain its eligibility to make purchases under this Agreement, the LEA agrees to timely pay any and all membership fees required, if any, of it as a member in accordance with the terms of this Agreement.

5.2 In addition to membership fees, the Contracting LEA will make timely payments for any goods, materials and services received in accordance with the provisions set out in Paragraph 5.3 of this Section and Exhibit A attached.

5.3 ESC 20 Fiber Network pricing is based on student enrollment count per consortium member and flat rate pricing for participating libraries.

A. Contracting LEA further understands:

- (i) Prices are already E-rate discounted as shown in the table below.
- (ii) There is no additional “transport” cost.
- (iii) Pricing shown includes all transmitted and received traffic.

- (iv) Pricing for each additional circuit is the same as the first circuit, or as specified in Exhibit A
- (v) Payments are due within 30 days of receipt of invoice.
- (vi) Payments can be made on an annual or quarterly basis.
- (vii) Each LEA's service shall consist of a minimum of 10 Gbps fiber ethernet connectivity to the Region 20 Network Operations Center
- (viii) Each LEA's service shall include up to 10 Gbps Internet Access service via the 10 Gbps fiber ethernet connectivity as noted in the previous bullet point.

**B. Pricing Details:**

<b>Type of Charge</b>	<b>Cost(s)</b>	<b>Frequency</b>
<b>Special Construction Cost (SCC) (Billed for first 48 months)</b>	<b>Identified in per District in Exhibit A</b>	<b>Monthly/Quarterly/Annual</b>
<b>Monthly Recurring Circuit Charge (MRC)</b>	<b>Identified in Exhibit A</b>	<b>Monthly</b>
<b>Total Monthly cost for circuit/Construction: (Billed for first 48 months)</b>	<b>Identified in per District in Exhibit A</b>	<b>Monthly</b>

**III. GENERAL PROVISIONS**

**1.1 Amendment by Notice.** The Board of the ESC 20 FIBER Consortium may amend this Agreement, provided that prior written notice is sent to the Contracting LEA at least 60 days prior to the effective date of any change described in such amendment and provided that the Contracting LEA does not terminate its participation in the ESC 20 FIBER Consortium before the expiration of said 60 days.

**1.2 Assignment Of Rights Or Duties**

1.2.1 Except as otherwise required herein, Center may not sell, assign, pledge, transfer or convey any interest in this Agreement nor delegate the performance of any duties hereunder, by transfer, by subcontracting or any other means, without the prior written consent of LEA.



1.2.2. Any attempt to assign, transfer, pledge, convey or otherwise dispose of any part of, or all of its right, title, interest or duties to or under this Agreement, without said written approval, shall be void, and shall confer no rights upon any third person. Should Center assign, transfer, convey or otherwise dispose of any part of, or all of its right, title or interest or duties to or under this Agreement, LEA may, at its option, terminate this Agreement as provided herein, and all rights, titles and interest of Consortium shall thereupon cease and terminate, notwithstanding any other remedy available to LEA under this Agreement.

1.2.3 Center agrees to notify LEA's representative of any changes in ownership interest greater than thirty percent (30%), or control of its business entity not less than sixty (60) days in advance of the effective date of such change. Notwithstanding any other remedies that are available to LEA under this Agreement, any such change of ownership interest or control of its business entity may be grounds for termination of this Agreement.

1.2.4 Authorization to Participate and Compliance with Local Policies. The Contracting LEA represents and warrants that its governing body has duly authorized its participation in the ESC 20 FIBER Consortium and that the Contracting LEA will comply with all state and local laws and policies, as well as E-Rate Requirements pertaining to purchasing of goods and services through its membership in the ESC 20 FIBER Consortium.

**1.3 Cooperation and Access.** The Contracting LEA agrees that it will cooperate in compliance with any reasonable requests for information and/or records made by the ESC 20 FIBER Consortium by and through Center.

**1.4 Coordinator.** The Contracting LEA agrees to appoint a program coordinator who shall have express authority to represent and bind the Contracting LEA, and the Center will not be required to contact any other individual regarding program matters. Any notice to or any agreements with the coordinator shall be binding upon the Contracting LEA. The Contracting LEA reserves the right to change the coordinator as needed by giving written notice to the Center.

**1.5 Conflicts Of Interest.** Each party shall comply with the state laws pertaining to conflict of interest. Conflict of interest Questionnaires must be maintained by the Consortium, as required by statute.

**1.6 Current Revenue.** The Contracting LEA hereby warrants that all payments, fees, and disbursements required of it hereunder shall be made from current revenues budgeted and available to the LEA, or required by any other agreements, contracts and documents executed, adopted, or approved pursuant to this Agreement, which shall include any exhibit, attachment, addendum or associated document, shall be paid from current revenues available to the paying Party.

**1.7. Jurisdiction/Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas and, to the extent permitted by law; venue for all disputes arising under this Agreement shall lie in the home county of the LEA.

**1.8 Legal Authority.** The LEA represents and warrants to the ESC 20 FIBER Consortium by and through Center the following:

1.8.1 It meets the definition of “Local Government” or “State Agency” under the Interlocal Cooperation Act (“Act”), Chapter 791 of the Texas Government Code.

1.8.2 The functions and services to be performed under the Agreement will be limited to “Administrative Functions” as defined in the Act, which includes purchasing.

1.8.3 It possesses the legal authority to enter into this Agreement and can allow this Agreement to automatically renew provided that its governing body appropriates funding annually for the renewal.

1.8.4 All state, local or third-party requirements to approve, record or authorize the Agreement have been met.

**1.9 Merger/Entirety.** This Agreement, together with the Consortium’s Bylaws and Organizational Agreement, represents the complete understanding of the ESC 20 FIBER Consortium by and through Center and Contracting LEA. To the extent there exists any conflict between the terms of this Agreement and that of prior agreements, the terms of this Agreement shall control and take precedence over all prior participation agreements.

**1.10. Notice.** Unless otherwise expressly provided elsewhere in the Agreement, any election, notice or communication required or permitted to be given under the Agreement shall be given in writing, at the addresses shown in the signature blocks of the Agreement, and will be deemed to have been duly given if and when delivered, personally (with receipt acknowledged), or on receipt after mailing the same by certified mail, return receipt requested with proper postage prepaid, or three (3) days after mailing the same by first class U.S. mail, postage prepaid (in accordance with the “Mailbox Rule”), or when sent by a national commercial courier service such as Federal Express) for expedited delivery to be confirmed in writing by such courier.

**13.5 No Waiver of Immunity.** No Party hereto waives or relinquishes any immunity or defense on behalf of itself, its trustees, officers, employees, and agents as a result of the execution of this Agreement and the performance of the covenants contained herein. Nothing herein shall be a consent to suit.

**1.11 No Third Party Beneficiary.** This Agreement inures to the benefit of and obligates only the Parties executing it. No term or provision of this Agreement shall benefit or obligate any person or entity not a party to it. The Parties hereto shall cooperate fully in opposing any attempt by any third person or entity to claim any benefit, protection, release or other consideration under this Agreement.

**1.12 Severability.** If any portion of this Agreement shall be declared illegal or held unenforceable for any reason, the remaining portions shall continue in full force and effect.

**1.13 Signatures/Counterparts.** The failure of a party to provide an original, manually executed signature to the other party will not affect the validity, enforceability or binding effect of this Agreement because either party may rely upon a facsimile signature as if it were an original. Furthermore, this Agreement may be executed in several separate counterparts, each of which shall be an original and all of which shall constitute one and the same instrument.

**1.14 Waiver:** No waiver, change, modification or discharge by either party hereto of any provision of this Agreement shall be deemed to have been made, nor shall such change, modification or discharge be effective, unless expressed in writing and signed by both parties. A waiver by either Party of a breach of any of the terms, conditions, covenants or guarantees of this Agreement shall not be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee herein contained. Further, any failure of either Party to insist, in any one or more cases, upon the strict performance of any of the covenants of this Agreement, or to exercise any option herein contained, shall not be construed as a waiver or relinquishment for the future of such obligation. No act or omission by a Party shall in any manner impair or prejudice any right, power, privilege, or remedy available to that Party hereunder or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved hereby.

**1.15 Force Majeure.** If by reason of Force Majeure (i.e. acts of God, strikes, lockouts, or other industrial disturbances, etc.), either Party hereto shall be rendered unable, wholly or in part, to carry out its obligations under this Agreement then such Party shall give notice and full particulars of the Force Majeure event, in writing, to the other Party, within a reasonable time after occurrence of the event or cause relied upon, and the obligation of the Party giving such notice, so far as it is affected by such Force Majeure, shall be suspended during the continuance of the inability then claimed, and such Party shall endeavor to remove or overcome such inability with all reasonable dispatch.

**1.16 Right To Audit:** The LEA, or its authorized representative (including Texas Education Agency and the Comptroller General), shall be given reasonable rights to perform audits by the LEA's own personnel and/or an outside firm of Providers/auditors, in order to investigate the LEA's claims administration and services, and/or evaluate the performance of the Consortium. The Consortium agrees to provide full cooperation during this process. Performance of these functions shall be conducted with proper notification per customary industry standards. Consortium agrees to maintain all required records for five (5) years after the LEA makes final payment and all other pending matters are closed, or such longer period as may be required by applicable law.

**1.17 Attorney's Fees.** In the event that either Party to this Agreement brings an action to enforce or interpret any provision of this Agreement, the prevailing party, will be entitled to recover reasonable attorney's fees, costs, and necessary disbursements, in an amount determined by the trier of fact in such dispute.

1.18 **Warranty.** By the execution and delivery of this Agreement, the undersigned individuals warrant that they have been duly authorized by all requisite administrative action required to enter into and perform the terms of this Agreement.

1.19 No party hereto waives or relinquishes any immunity or defense on behalf of itself, its trustees, officers, employees, and agents as a result of the execution of this Interlocal Agreement and the performance of the covenants contained herein.

1.20 In case any one or more of the provisions contained in this Interlocal Agreement shall for any reason be held by a court of competent jurisdiction to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of the Agreement, and this Agreement shall be construed as if the invalid, illegal, or unenforceable provision had never been included in the Agreement.

1.21 This Agreement may be executed in multiple originals. The parties agree that it is not necessary for each or every party to execute the same physical document. The Agreement binds the Center and each individual LEA upon execution of the Agreement by an authorized representative of the Center and that LEA.

IN WITNESS WHEREOF, the parties, acting through their duly authorized representatives, accept this Agreement

EDUCATION SERVICE CENTER, REGION 20	LEA: _____
By: _____ Dr. Jeff Goldhorn, Executive Director	By: _____ Name: _____ Title: _____
Date: _____	Date: _____
Address: 1314 Hines Avenue San Antonio, Texas 78208	Address: _____ _____

[Exhibit A Follows on Next Page]

**Exhibit A**

**SUBSCRIPTION DETAILS AND SIGNATURES FOR SPECIAL CONSTRUCTION AND LOCAL WAN CIRCUITS**

Subscribed Services and Service Termination Address

Service Building Name PATRICK HEATH PUBLIC LIBRARY

Service Address(es)

PATRICK HEATH PUBLIC LIBRARY	451 N. MAIN ST	BOERNE	TX	78006
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Service Start Date TBD

Number of Internet Access Circuits 1 Circuit

Monthly Recurring Charges \$170

*By signing below, I acknowledge that I have read the Service Agreement, I accept this Agreement, and that I am authorized to sign on behalf of the LEA.*

Authorized LEA Representative

\_\_\_\_\_  
Signature

Printed Name \_\_\_\_\_

\_\_\_\_\_  
Date


\_\_\_\_\_  
Authorized LEA Representative Title

ESC Region 20 Executive Director

\_\_\_\_\_  
Signature

Dr. Jeff Goldhorn

\_\_\_\_\_  
Date

	<div style="text-align: center;"><b>AGENDA ITEM SUMMARY</b></div> <div style="border: 1px dashed purple; padding: 5px; float: right; margin-top: 10px;"> <b>District Impacted</b>  <input checked="" type="checkbox"/> 1 = Wolosin  <input type="checkbox"/> 2 = Woolard  <input type="checkbox"/> 3 = Scott  <input type="checkbox"/> 4 = Fowler  <input type="checkbox"/> 5 = Macaluso  <input type="checkbox"/> All </div>
<b>AGENDA DATE</b>	<i>June 09, 2020</i>
<b>DESCRIPTION</b>	CONSIDER RESOLUTION NO. 2020-R40; A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AND MANAGE THE FIRST AMENDMENT OF CHAPTER 43 TEXAS LOCAL GOVERNMENT CODE DEVELOPMENT AGREEMENT (NON-ANNEXATION AGREEMENT) WITH BRAESIDE RANCH LLC ON SAID PROPERTY DESCRIBED IN THE ATTACHED AGREEMENT AND METES AND BOUNDS LEGAL DESCRIPTION.
<b>STAFF'S RECOMMENDED ACTION (be specific)</b>	Approve Resolution No. 2020-R40; Authorizing The City Manager To Enter Into And Manage The First Amendment To The Chapter 43 Texas Local Government Code Development Agreement (Non-Annexation Agreement) With Braeside Ranch LLC.
<b>CONTACT PERSON</b>	Laura Talley, Planning and Community Development Director
<b>SUMMARY</b>	<p>The document provided is an amendment to the original non-annexation agreement that Council approved in July of 2019. There is one very small edit to a parcel acreage (difference of .06 ac) and the addition of detailed descriptions of each parcel. This is the same information that Council approved in July, but the attorney for the property owner was concerned that the property descriptions were not detailed enough in the actual document. He made those edits; staff and the city attorney have verified them. That detail is now in the amended document, and the Exhibits are the same that Council approved in July.</p> <p>Staff recommends approval.</p>
<b>COST</b>	
<b>SOURCE OF FUNDS</b>	
<b>ADDITIONAL INFORMATION</b>	

This summary is not meant to be all inclusive. Supporting documentation is attached.

## **RESOLUTION NO. 2020-R40**

### **A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AND MANAGE THE FIRST AMENDMENT OF CHAPTER 43 TEXAS LOCAL GOVERNMENT CODE DEVELOPMENT AGREEMENT (NON-ANNEXATION AGREEMENT) WITH BRAESIDE RANCH LLC ON SAID PROPERTY DESCRIBED IN THE ATTACHED AGREEMENT AND METES AND BOUNDS LEGAL DESCRIPTION**

**WHEREAS**, the City Council of the City of Boerne passed Resolution No. 2019-R31 on April 16, 2019 to set public hearings for proposed annexation of certain properties by the City and authorizing the City Manager to prepare the necessary service plans for the areas in the City Extraterritorial Jurisdiction ("ETJ") being considered for annexation into the corporate limits of the City of Boerne;

**WHEREAS**, the City of Boerne, preserved the right to conduct annexation proceeding in accordance with the applicable law as it existed on January 1, 2019, as preserved by House Bill 347 transition provision because the City of Boerne adopted a resolution to direct the City Manager to set public hearings and prepare a service plan for the area considered for annexation prior to the effective date of House Bill 347;

**WHEREAS**, the City held public hearings on May 28, 2019 and June 11, 2019 on properties proposed for annexation;

**WHEREAS**, the City Council passed Resolution No. 2019-R117 to enter into a Chapter 43 Development Agreement on July 9, 2019, with the said property owner(s);

**WHEREAS**, the City and the Property Owner (s) listed in said First Amendment of Chapter 43 Texas Local Government Code Development Agreement attached as Exhibit "A" desire to correct the description of said property by filing this said first amendment of the Original Agreement as a complete replacement of the Original Agreement;

**NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BOERNE, TEXAS:**

Section 1. The facts, findings, recitations contained in the preamble of this resolution hereby found and declared to be true and correct, and are incorporated by reference herein and expressly made part hereof, as it copied herein verbatim.

Section 2. The City Council hereby authorizes the City Manager to enter into and manage the First Amendment of Chapter 43 Development Agreement (non-annexation agreement) between the City of Boerne, and Braeside Ranch LLC, Property Owner(s).

Section 3. The terms of the Agreement are set out in the Agreement attached as Exhibit "A" and incorporated herein for all intents and purposes.

Section 4. The property subject to this Agreement are described in the metes and bounds legal description attached as Exhibit "B."

Section 5. This Agreement shall be recorded in the Real Property Records of Kendall County, Texas.

Section 6. This Resolution shall become effective immediately upon its adoption.

PASSED, APPROVED, and ADOPTED on this the \_\_\_\_ day of June, 2020.

APPROVED:

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Secretary



## HAY, WITTENBURG, DAVIS, CALDWELL &amp; BALE, L.L.P.

A REGISTERED LIMITED LIABILITY PARTNERSHIP  
 ATTORNEYS AT LAW  
 ONE EAST TWOHIG - THIRD FLOOR - ZIP 76903  
 P. O. BOX 271 - ZIP 76902-0271  
 SAN ANGELO, TEXAS

JOHN A. HAY, JR.  
 CHARLES J. WITTENBURG  
 WM. KEITH DAVIS  
 CYNTHIA O'BRYANT CALDWELL  
 LARRY W. BALE

TELEPHONE (325) 658-2728  
 FAX (325) 655-2278

PLEASE REFER TO  
 OUR FILE NO.:

May 15, 2020

9736-1

***Certified Mail, Return Receipt Requested***

***Article No. 9414.7266.9904.2155.662.01***

Mrs. Laura Talley  
 Planning and Community Development  
 447 N. Main Street  
 Boerne, Texas 78006

Re: Subject: First Amendment of Non-Annexation Agreement  
 My Client (property owner): Braeside Ranch LLC  
 Property Location: 47A Upper Cibolo Creek Road

Dear Laura:

In accordance with our prior telephone call, I enclose an "original" of the amended non-annexation agreement which has been signed by my client.

Please call me if you have any questions. If anyone else with the City has questions or needs clarification, please have them call me.

Very truly yours,



Charles J. Wittenburg

CJW:kg

STATE OF TEXAS                    )  
   )  
 COUNTY OF KENDALL            )

**Property Owner:               BRAESIDE RANCH LLC**  
**Property Description:     A10166 - SURVEY 174 N FLORES 139.45 ACRES,**  
**(LAKE EASEMENT), A10166 - SURVEY 174 N FLORES 1.0 ACRES & A10166 -**  
**SURVEY 174 N FLORES 57.55 ACRES**

**FIRST AMENDMENT OF CHAPTER 43 TEXAS LOCAL**  
**GOVERNMENT CODE DEVELOPMENT AGREEMENT**

This First Amendment of Chapter 43 Texas Local Government Code Development Agreement [hereinafter the "Agreement"] is entered into pursuant to Sections 43.016 and 212.172 of the Texas Local Government Code by and between the City of Boerne, Texas (the "City") and Braeside Ranch LLC, whose address is P.O. Box 452, Argyle, Texas 76226 (the "Owner"). The term "Owner" includes all owners of the Property.

**WHEREAS**, the Owner and the City entered into an agreement (the "Original Agreement") recorded as Document # 00332734 at Volume 1702, Page 924 of the Official Records of Kendall County, Texas, which agreement incorrectly described the real property that is the subject of the agreement and the City and the Owner desire to correct the description of said property by filing this first amendment of the Original Agreement as a complete replacement of the Original Agreement. This Agreement shall relate back to the date of the Original Agreement, and thus, the effective date of this Agreement is deemed to be July 2, 2019; and

**WHEREAS**, the Owner owns a parcel of real property in Kendall County, Texas, comprised of three tracts of land, which three tracts are more specifically described below. The three tracts are hereinafter referred to as the "Property."

- Tract One:**     139.51 acres situated in the Nicolas Flores Survey No. 174, Abstract No. 166, Kendall County, Texas, more specifically described on Exhibit A;
- Tract Two:**     1.0 acres situated in the Nicolas Flores Survey No. 174, Abstract No. 166, Kendall County, Texas, more specifically described as Property ID Number 12879 in the Kendall County Central Appraisal District records and further described on the aerial attached as Exhibit B;
- Tract Three:**   57.55 acres situated in the Nicolas Flores Survey No. 174, Abstract N. 166, Kendall County, Texas, more specifically described as Property ID Number 12880 in the Kendall County Central Appraisal District records and further described on the aerial attached as Exhibit C.

For the sole purpose of further describing the three tracts above, the parties attach as Exhibit D hereto a Trustee's Deed recorded as Document No. 00269160 at Volume 1330, Page 21 of the Official Records of Kendall County, Texas, which document describes a 1,405.05 acre tract of land within which the Property lies.

**WHEREAS**, the City has begun the process to institute annexation proceedings on all or portions of Owner's Property and will hold public hearings on May 28, 2019, and June 11, 2019; and

**WHEREAS**, the Owner desires to have the Property remain in the City's extraterritorial jurisdiction, in consideration for which the Owner agrees to enter into this Agreement; and

**WHEREAS**, this Agreement is entered into pursuant to Sections 43.016 and 212.172 of the Texas Local Government Code, in order to address the desires of the Owner and the procedures of the City; and

**WHEREAS**, the Owner and the City acknowledge that this Agreement is binding upon the City and the Owner and their respective successors and assigns for the term (defined below) of this Agreement; and

**WHEREAS**, this Agreement is to be recorded in the Real Property Records of Kendall County.

**NOW, THEREFORE**, in consideration of the mutual covenants contained herein, the parties hereto agree as follows:

**Section 1.** The City guarantees the continuation of the extraterritorial status of the Owner's Property, its immunity from annexation by the City, and its immunity from City property taxes, for the term of this Agreement, subject to the provisions of this Agreement. Except as provided in this Agreement, the City agrees not to annex the Property, agrees not to involuntarily institute proceedings to annex the Property, and further agrees not to include the Property in a statutory annexation plan for the Term of this Agreement.

**Section 2.** The Owner covenants and agrees not to use the Property for any use other than for agriculture, wildlife management, timber land and/or other rural property uses. Owner reserves all rights to full use and enjoyment of the surface, subsurface, mineral, and air space estates in the Property so long as such does not breach this Agreement. The rights reserved to Owner include, but are not limited to, the following: (1) all agricultural, ranching, and farming uses; (2) hunting and any other rural recreational uses; (3) the construction of single-family residences, accessory structures to single-family residences, hunting cabins, cabins, barns, storage sheds, farm and ranch shops, waterings, fences, other buildings, and other improvements necessary and convenient to the use of the property for agriculture, wildlife management, and timber land; (4) all mineral exploration, mining, drilling, development, and production; (5) constructing or laying of pipe, cable, electric lines or other utilities whether buried or overhead; (6) existing and new fencing; and (7) existing and new roads.

**Section 3.** The Owner covenants and agrees that Owner will not file any type of subdivision plat or related development document for the Property with Kendall County or the City, unless Owner has first presented a petition for voluntary annexation to the City at the discretion of the City Council. The Owner acknowledges that if any plat or related development document is filed in violation of this Agreement, or if the Owner commences development of the Property in violation of this Agreement, then in addition to the City's other remedies, such act will constitute a petition for voluntary annexation by the Owner, and the Property will be subject to annexation

at the discretion of the City Council. The Owner agrees that such annexation shall be voluntary and the Owner hereby consents pursuant to Section 212.172(b)(7).

**Section 4.** The Owner acknowledges that 100% ownership of the Property must sign this Agreement in order for the Agreement to take full effect. Owner represents and warrants that Braeside Ranch LLC, a Texas limited liability company, is the Owner of 100% of the property.

**Section 5.** The term of this Agreement (the "Term") shall be 10 years from the date that the City Manager's signature to this Agreement is acknowledged by a public notary. The Term of this Agreement will be automatically extended for successive ten-year terms unless otherwise terminated by mutual agreement of the parties or pursuant to the terms of this Agreement. However, this Agreement may not extend past forty-five (45) years cumulatively.

**Section 6.** Any person who sells or conveys any portion of the Property shall, prior to such sale or conveyance, give written notice of this Agreement to the prospective purchaser or grantee, and shall give written notice of the sale or conveyance to the City. Furthermore, the Owner and the Owner's heirs, successor, and assigns shall give the City written notice within 14 days of any change in the agricultural exemption status of the Property. A copy of either notice required by this section shall be forwarded to the City at the following address:

City of Boerne, Texas  
Attn: City Manager  
P.O. Box 1677  
Boerne, Texas 78006

**Section 7.** This Agreement shall run with the Property and be recorded in the real property records of Kendall County, Texas.

**Section 8.** If a court of competent jurisdiction determines that any covenant of this Agreement is void or unenforceable then the remainder of this Agreement shall remain in full force and effect.

**Section 9.** This Agreement may be enforced by any Owner or the City by any proceeding at law or in equity. Failure to do so shall not be deemed a waiver to enforce the provisions of this Agreement thereafter.

**Section 10.** No subsequent change in the law regarding annexation shall affect the enforceability of this Agreement or the City's ability to annex the properties covered herein pursuant to the terms of this Agreement.

**Section 11.** The state courts of the State of Texas shall have jurisdiction over any lawsuits arising out of or connected with this Agreement; and venue for such lawsuits shall be in the state courts of Kendall County, Texas. All rights to jurisdiction in, or removal to, federal court, are waived. Venue for this Agreement shall be in Kendall County, Texas.

**Section 12.** This Agreement may be separately executed in individual counterparts and, upon execution, shall constitute one and same instrument.

**Section 13.** This Agreement shall survive its termination to the extent necessary to enforce the performance of any accrued, but unperformed, obligations under the Agreement.

Entered into and effective on July 2, 2019.

**BRAESIDE RANCH, LLC**

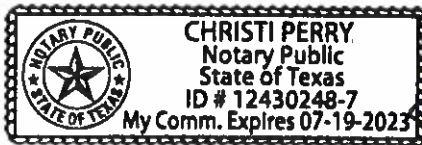
By

  
James Edward Bridges, Jr., President

STATE OF TEXAS            }

COUNTY OF DENTON        }

This instrument was acknowledged before me on May 14, 2020, by James Edward Bridges, Jr., as President of Braeside Ranch LLC.



  
Notary Public, State of Texas

\_\_\_\_\_  
Ronald C. Bowman, City Manager, City of Boerne, Texas

THE STATE OF TEXAS        }

COUNTY OF KENDALL        }

This instrument was acknowledged before me on \_\_\_\_\_, 2020, by Ronald C. Bowman, City Manager, City of Boerne, Texas.

\_\_\_\_\_  
Notary Public, State of Texas

Kendall County Property ID 12876  
Owner: Braeside Ranch LLC

Page 1 of 4

**Field Notes  
For A  
139.51 Acre Tract of Land**

Being 139.51 acres of land; the same 139.447 acres described as an easement situated in the Nicolas Flores Survey No. 174, Abstract No. 166, Kendall County, Texas, recorded in Volume 109, Page 624, Deed Records of Kendall County, Texas; said 139.51 acre tract being more particularly described as follows:

**BEGINNING** at a point being the common most southerly corner of the said 139.51 acre tract and of a 302.271 acre tract recorded in Volume 115, Page 52, Deed Records of Kendall County, Texas;

Thence            The following calls along the lines of the said 139.447 acre tract:

N 77°11'00" W, 824.88 feet to a point (L1);  
N 85°45'00" W, 149.51 feet to a point (L2);  
N 88°56'00" W, 179.76 feet to a point (L3);  
N 88°48'00" W, 285.03 feet to a point (L4);  
N 88°36'00" W, 137.32 feet to a point (L5);  
N 89°01'00" W, 196.37 feet to a point (L6);  
S 01°21'00" W, 421.69 feet to a point (L7);  
S 66°03'00" W, 80.78 feet to a point (L8);  
N 89°11'00" W, 73.37 feet to a point (L9);  
N 82°07'00" W, 187.32 feet to a point (L10);  
N 81°39'00" W, 364.68 feet to a point (L11);  
N 81°17'00" W, 452.89 feet to a point (L12);  
N 82°32'00" W, 100.62 feet to a point (L13);  
N 80°33'00" W, 500.87 feet to a point (L14);  
N 13°03'00" W, 127.92 feet to a point (L15);  
N 36°57'00" W, 191.99 feet to a point (L16);  
N 37°16'00" W, 170.28 feet to a point (L17);  
N 44°48'00" W, 195.11 feet to a point (L18);  
N 52°54'00" W, 84.40 feet to a point (L19);  
N 54°33'00" W, 87.25 feet to a point (L20);  
S 67°43'00" W, 140.35 feet to a point (L21);  
S 05°14'00" W, 276.07 feet to a point (L22);  
S 08°21'00" W, 217.55 feet to a point (L23);  
S 28°21'00" W, 349.81 feet to a point (L24);  
N 89°47'00" W, 401.67 feet to a point (L25);  
N 80°53'00" W, 123.36 feet to a point (L26);  
N 73°11'00" W, 381.42 feet to a point (L27);  
N 63°51'00" W, 88.04 feet to a point (L28);  
N 70°27'00" W, 109.37 feet to a point (L29);  
N 63°01'00" W, 345.73 feet to a point (L30);  
N 77°28'00" W, 266.99 feet to a point (L31);  
N 81°51'00" W, 93.24 feet to a point (L32);  
N 86°47'00" W, 210.00 feet to a point (L33);  
N 89°34'00" W, 236.40 feet to a point (L34);

Kendall County Property ID 12876  
Owner: Braeside Ranch LLC

Page 2 of 4

S 85°19'00" W, 212.71 feet to a point (L35);  
S 87°28'00" W, 91.13 feet to a point (L36);  
S 86°03'00" W, 229.32 feet to a point (L37);  
S 78°31'00" W, 185.91 feet to a point (L38);  
N 02°31'00" E, 125.30 feet to a point (L39);  
N 71°16'00" E, 69.13 feet to a point (L40);  
N 86°50'00" E, 167.66 feet to a point (L41);  
N 83°30'00" E, 135.24 feet to a point (L42);  
N 88°21'00" E, 179.47 feet to a point (L43);  
N 82°57'00" E, 218.65 feet to a point (L44);  
N 85°21'00" E, 293.00 feet to a point (L45);  
N 43°14'00" E, 86.05 feet to a point (L46);  
S 73°46'00" E, 181.82 feet to a point (L47);  
N 86°51'00" E, 136.83 feet to a point (L48);  
N 87°22'00" E, 85.59 feet to a point (L49);  
S 56°46'00" E, 56.11 feet to a point (L50);  
S 61°55'00" E, 148.45 feet to a point (L51);  
S 55°50'00" E, 165.38 feet to a point (L52);  
S 56°52'00" E, 301.19 feet to a point (L53);  
S 77°20'00" E, 246.57 feet to a point (L54);  
N 85°05'00" E, 324.75 feet to a point (L55);  
N 54°36'00" E, 158.17 feet to a point (L56);  
N 10°03'00" E, 612.72 feet to a point (L57);  
N 62°55'00" W, 120.74 feet to a point (L58);  
N 18°17'00" W, 92.32 feet to a point (L59);  
N 08°40'00" W, 121.25 feet to a point (L60);  
N 37°33'00" W, 157.27 feet to a point (L61);  
N 07°08'00" W, 287.76 feet to a point (L62);  
N 59°31'00" E, 348.43 feet to a point (L63);  
N 72°57'00" E, 63.33 feet to a point (L64);  
N 89°30'00" E, 127.14 feet to a point (L65);  
N 85°00'00" E, 66.45 feet to a point (L66);  
N 61°48'00" E, 172.84 feet to a point (L67);  
N 84°48'00" E, 74.36 feet to a point (L68);  
N 34°01'00" E, 148.80 feet to a point (L69);  
N 04°19'00" W, 124.45 feet to a point (L70);  
N 55°25'00" E, 31.30 feet to a point (L71);  
S 10°01'00" E, 120.92 feet to a point (L72);  
S 55°10'00" E, 127.18 feet to a point (L73);  
S 55°21'00" E, 182.92 feet to a point (L74);  
S 38°44'00" E, 106.16 feet to a point (L75);  
S 21°49'00" E, 119.00 feet to a point (L76);  
S 43°25'00" E, 108.04 feet to a point (L77);  
N 73°56'00" E, 134.91 feet to a point (L78);  
N 42°38'00" E, 190.48 feet to a point (L79);  
S 33°09'00" E, 53.90 feet to a point (L80);  
S 29°51'00" E, 125.82 feet to a point (L81);  
S 37°20'00" W, 128.97 feet to a point (L82);  
S 47°36'00" E, 98.72 feet to a point (L83);

EXHIBIT A Page 2 of 4

Kendall County Property ID 12876  
Owner: Braeside Ranch LLC

Page 3 of 4

S 57°56'00" E, 137.88 feet to a point (L84);  
S 36°56'00" E, 155.93 feet to a point (L85);  
S 52°25'00" E, 183.12 feet to a point (L86);  
N 80°00'00" E, 178.45 feet to a point (L87);  
N 37°08'00" E, 94.45 feet to a point (L88);  
N 30°28'00" E, 258.44 feet to a point (L89);  
N 76°30'00" E, 194.99 feet to a point (L90);  
S 86°27'00" E, 234.86 feet to a point (L91);  
S 83°50'00" E, 266.24 feet to a point (L92);  
S 79°30'00" E, 233.43 feet to a point (L93);  
S 60°39'00" E, 244.28 feet to a point (L94);  
S 76°33'00" E, 144.02 feet to a point (L95);  
N 87°48'00" E, 263.25 feet to a point (L96);  
S 81°25'00" E, 230.26 feet to a point (L97);  
S 80°24'00" E, 177.05 feet to a point (L98);  
S 85°58'00" E, 156.07 feet to a point (L99);  
N 86°28'00" E, 197.30 feet to a point (L100);  
S 00°59'00" W, 75.74 feet to a point (L101);  
S 01°34'00" E, 950.80 feet to the **POINT OF BEGINNING** (L102) and containing 139.51 acres of land, more or less.

**This Field Note Description is for Annexation Purposes Only.**

This document was prepared under 22 TAC 663.21, does not reflect the results of an on the ground survey, and is not to be used to convey or establish interests in real property except those rights and interests implied or established by the creation or reconfiguration of the boundary of the political subdivision for which it was prepared. The bearing and distance data described herein reflect those described in the recorded legal documents found for the subject property(s); said data is not intended to represent, nor to imply, that an actual on the ground boundary survey was made.



  
Victor Mendez, Jr.  
Registered Professional Land Surveyor No. 6056  
TBPLS FIRM #100423-00  
June 11, 2019



## EXHIBIT A Page 4 of 4

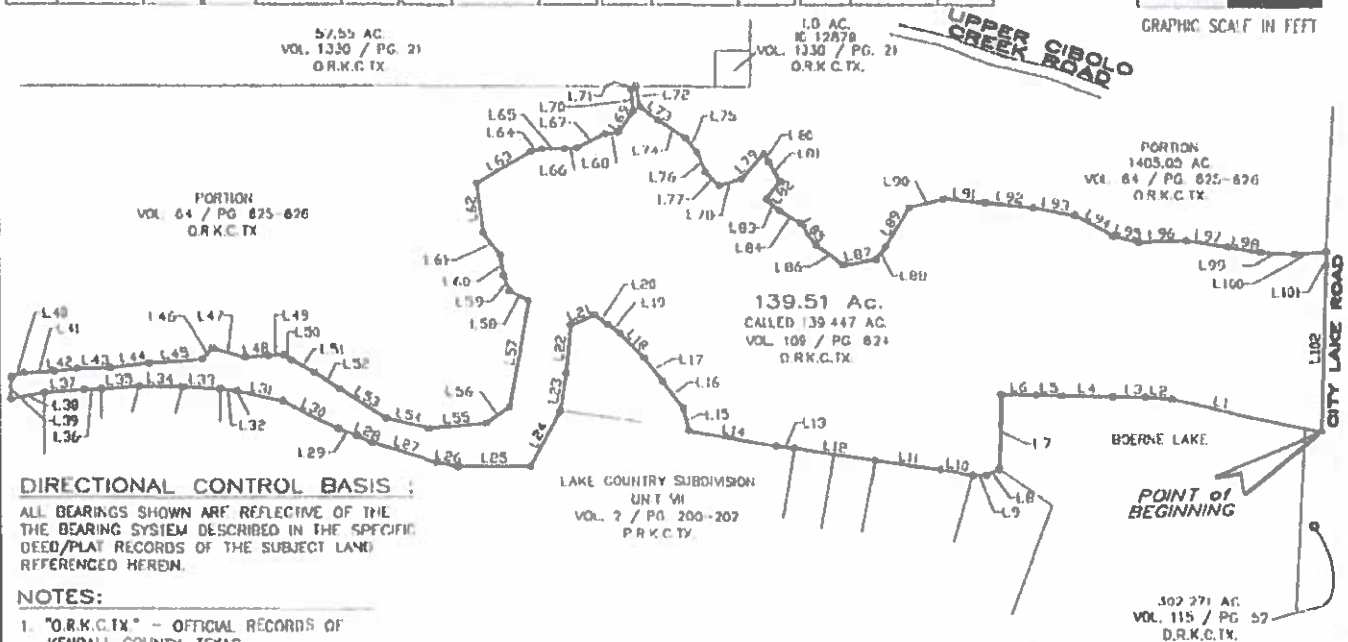
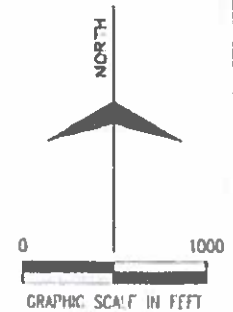
KENDALL COUNTY  
APPRAISAL DISTRICT  
PROPERTY ID  
NO.: 12876

**POZNECKI**  
**AMARILLO**

TSPLS FIRM REGISTRATION #100423-00  
5835 CALLAGHAN RD / SUITE 200  
SAN ANTONIO, TEXAS 78228 210.340.3273

Line #	Direction	Length	Line #	Direction	Length	Line #	Direction	Length	Line #	Direction	Length	Line #	Direction	Length
L1	177°11'00"W	824.88'	L21	S67°43'00"W	140.35'	L41	N85°50'00"E	187.88'	L61	N37°33'00"W	157.27'	L81	S20°51'00"E	125.82'
L2	N85°45'00"W	149.51'	L22	S05°14'00"W	278.07'	L42	N83°30'00"E	135.24'	L62	N07°08'00"W	287.76'	L82	S37°30'00"W	128.87'
L3	N88°56'00"W	178.76'	L23	S08°21'00"W	217.55'	L43	N88°21'00"E	178.47'	L63	N59°31'00"E	348.43'	L83	S47°36'00"E	88.72'
L4	N89°46'00"W	285.03'	L24	S28°21'00"W	348.81'	L44	N87°57'00"E	218.65'	L64	N72°37'00"E	83.33'	L84	S87°08'00"E	137.88'
L5	N86°36'00"W	137.32'	L25	N88°47'00"W	401.87'	L45	N85°21'00"E	293.00'	L65	N89°38'00"E	127.14'	L85	S38°36'00"E	155.83'
L6	N89°01'00"W	194.37'	L26	N80°53'00"W	123.36'	L46	N43°14'00"E	88.05'	L66	N83°00'00"E	86.45'	L86	S52°25'00"E	183.12'
L7	S01°21'00"W	421.68'	L27	N73°11'00"W	381.42'	L47	S73°48'00"E	181.82'	L67	N81°48'00"E	172.84'	L87	N80°00'00"E	178.45'
L8	S68°03'00"W	88.78'	L28	N53°51'00"W	88.04'	L48	N88°11'00"E	136.83'	L68	N84°48'00"E	74.35'	L88	N13°08'00"E	91.45'
L9	N89°11'00"W	73.37'	L29	N70°27'00"W	109.37'	L49	N87°22'00"E	83.89'	L69	N31°01'00"E	148.80'	L89	N30°28'00"E	258.44'
L10	N82°07'00"W	187.37'	L30	N63°01'00"W	345.75'	L50	S58°46'00"E	58.11'	L70	N04°19'00"W	124.45'	L90	N78°30'00"E	184.88'
L11	N81°38'00"W	364.68'	L31	N77°28'00"W	266.92'	L51	S61°55'00"E	148.48'	L71	N55°25'00"E	31.30'	L91	S88°27'00"E	234.88'
L12	N81°17'00"W	452.88'	L32	N81°54'00"W	83.24'	L52	S55°30'00"E	185.38'	L72	S10°04'00"E	130.82'	L92	S83°50'00"E	288.24'
L13	N82°32'00"W	100.62'	L33	N86°47'00"W	218.00'	L53	S58°37'00"E	301.18'	L73	S53°10'00"E	127.18'	L93	S79°30'00"E	233.43'
L14	N80°33'00"W	500.87'	L34	N89°34'00"W	238.48'	L54	S77°02'00"E	248.67'	L74	S55°21'00"E	182.82'	L94	S80°38'00"E	244.28'
L15	N120°30'00"W	127.82'	L35	S85°19'00"W	212.71'	L55	N85°09'00"E	324.75'	L75	S38°44'00"E	108.18'	L95	S78°33'00"E	144.07'
L16	N36°57'00"W	181.88'	L36	S87°28'00"W	81.13'	L56	N34°38'00"E	158.17'	L76	S31°49'00"E	118.00'	L96	N87°48'00"E	283.23'
L17	N37°18'00"W	170.78'	L37	S88°03'00"W	278.32'	L57	N10°03'00"E	812.72'	L77	S43°25'00"E	108.04'	L97	S81°25'00"E	238.28'
L18	N44°48'00"W	185.11'	L38	S78°31'00"W	185.81'	L58	N82°55'00"W	120.74'	L78	N73°38'00"E	134.91'	L98	S80°24'00"E	177.05'
L19	N52°54'00"W	84.40'	L39	N82°31'00"E	125.30'	L59	N18°17'00"W	82.32'	L79	N42°38'00"E	190.48'	L99	S85°58'00"E	158.07'
L20	N54°33'00"W	87.25'	L40	N71°18'00"E	89.13'	L60	N88°40'00"W	121.25'	L80	S33°08'00"E	53.88'	L100	N88°28'00"E	187.30'

Line #	Direction	Length
L101	S00°58'00"W	75.74'
L102	S01°36'20"W	950.80'



### DIRECTIONAL CONTROL BASIS:

ALL BEARINGS SHOWN ARE REFLECTIVE OF THE BEARING SYSTEM DESCRIBED IN THE SPECIFIC DEED/PLAT RECORDS OF THE SUBJECT LAND REFERENCED HEREIN.

### NOTES:

1. "D.R.K.C.T.X." - OFFICIAL RECORDS OF KENDALL COUNTY, TEXAS.
2. "P.R.K.C.T.X." - PLAT RECORDS OF KENDALL COUNTY, TEXAS.
3. THIS EXHIBIT IS FOR ANNEXATION PURPOSES ONLY.
4. ADJOINING PROPERTY INFORMATION DESCRIBED HEREIN IS FOR INFORMATIONAL PURPOSES ONLY.
5. THIS EXHIBIT WAS PREPARED WITHOUT ANY TITLE ABSTRACT/RESEARCH. EXISTING EASEMENTS, BUILDING SETBACK LINES, DEED RESTRICTIONS, OR OTHER PROPERTY CONSIDERATIONS MAY APPLY.
6. THIS DOCUMENT WAS PREPARED UNDER 22 TAC 883.21. DOES NOT REFLECT THE RESULTS OF AN ON THE GROUND SURVEY, AND IS NOT TO BE USED TO CONVEY OR ESTABLISH INTERESTS IN REAL PROPERTY EXCEPT THOSE RIGHTS AND INTERESTS IMPLIED OR ESTABLISHED BY THE CREATION OR RECONFIGURATION OF THE BOUNDARY OF THE POLITICAL SUBDIVISION FOR WHICH IT WAS PREPARED. THE BEARING AND DISTANCE DATA DESCRIBED HEREIN REFLECT THOSE DESCRIBED IN THE RECORDED LEGAL DOCUMENTS FOUND FOR THE SUBJECT PROPERTY(S); SAID DATA IS NOT INTENDED TO REPRESENT, NOR TO IMPLY, THAT AN ACTUAL ON THE GROUND BOUNDARY SURVEY WAS MADE.



BEING 139.51 ACRES OF LAND, THE SAME 139.447 ACRES DESCRIBED AS AN EASEMENT SITUATED IN THE NICOLAS FLORES SURVEY NO. 174, ABSTRACT NO. 186, KENDALL COUNTY, TEXAS, RECORDED IN VOLUME 109, PAGE 624, DEED RECORDS OF KENDALL COUNTY, TEXAS.

THIS 11th DAY OF JUNE 2019, A.D.

VICTOR MENDEZ, JR., R.P.L.S. NO. 6056

SHEET 4 OF 4

JOB NO.: 19045



Property ID: 12879  
Legal Description: A10166 - Survey 174 N Flores 1.0 acres  
Address: 47A Upper Cibolo Creek Road

EXHIBIT B  
Page 1 of 1





Property ID: 12880  
Legal Description: A10166 - Survey 174 N Flores 57.55 acres  
Address: 47A Upper Cibolo Creek Road

EXHIBIT C  
Page 1 of 1

**NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM THIS INSTRUMENT BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.**

**TRUSTEE'S DEED**

STATE OF TEXAS                   §

COUNTY OF KENDALL           §

JAMES EDWARD BRIDGES, JR., as Trustee of the ALFRED McDONALD GILLIAT TRUST, herein called Grantor, for and in consideration of membership interests in BRAESIDE RANCH LLC, a Texas limited liability company, has GRANTED, CONFIRMED, CONVEYED, TRANSFERRED, ASSIGNED and DELIVERED, and by these presents does GRANT, CONFIRM, CONVEY, TRANSFER, ASSIGN and DELIVER unto BRAESIDE RANCH LLC, a Texas limited liability company, all of the interest of the ALFRED McDONALD GILLIAT TRUST in and to the following described real property in Kendall County, Texas, including any improvements thereon, to-wit:

That certain 1405.05 acres of land, more or less, out of Survey 174, Abstract 10166, Nicholas Flores, located in Kendall County, Texas, about 5 miles Northwest of Boerne, Texas, on Upper Cibolo Road, and being the same property described in Inventory and Appraisalment of the Estate in Cause No. 2496 in the County Court of Kendall County, Texas, *Estate of Alfred McDonald Gilliat, Deceased*, said Inventory and Appraisalment of the Estate being also recorded in Probate Minutes 1B, Page 392, Office of the County Clerk of Kendall County, Texas; and being the same property as described in Deed of Distribution dated June 30, 2011, from James (Jim) Edward Bridges, Jr., as Grantor to JAMES EDWARD BRIDGES, JR., Trustee of ALFRED McDONALD GILLIAT TRUST, as Grantee, and recorded as Doc. #00258384 in Vol. 1267, Page 325 of the Official Records of Kendall County, Texas, and any other real property of the Alfred McDonald Gilliat Estate situated in Kendall County, Texas.

This conveyance is made and accepted subject to validly existing easements, rights-of-way, and prescriptive rights, whether of record or not; all presently recorded and validly existing restrictions, reservations, covenants, conditions, oil and gas leases, mineral interests and water interests outstanding in persons other than Grantor, and other instruments, other than conveyances of the surface fee estate, that affect the property; validly existing rights of adjoining owners in any walls and fences situated on a common boundary; any discrepancies, conflicts, or shortages in area or boundary lines; and any encroachments or overlapping of improvements, and ad valorem taxes for the current year, the payment of which Grantee assumes.

TO HAVE AND TO HOLD the above described property, together with all and singular the rights and appurtenances thereto in anywise belonging unto the Grantee, Grantee's successors and assigns forever. Grantor binds Grantor, in Grantor's capacity as Trustee only, and Grantor's successors to warrant and forever defend all and singular the property to Grantee and Grantee's successors and assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof, when the claim is by, through, or under Grantor but not otherwise.

Grantor is acting herein in his capacity as Trustee of the ALFRED McDONALD GILLIAT TRUST. The foregoing covenants and agreements made by Grantor are made solely in his fiduciary capacity as Trustee and in no other capacity whatsoever, and the liability of Grantor under those covenants and agreements is limited to the Grantor acting in that fiduciary capacity and is limited to the assets of the Trust held by the Grantor at the time any such liability may be conclusively established.


As a material part of the consideration for this deed, Grantor and Grantee agree that Grantee is taking the property "AS IS" with any and all latent and patent defects and that there is no warranty by Grantor that the property has a particular financial value or is fit for a particular purpose. By acceptance of this deed, Grantee acknowledges and stipulates that Grantee is not relying on any representation, statement, or other assertion with respect to the property condition but is relying on Grantee's examination of the property. Grantee takes the property with the express understanding and stipulation that there are no express or implied warranties except for limited warranties of title set forth in this deed.

This instrument was prepared based on information furnished by the parties, and no independent title search has been made.

It is the intent of Grantor by this Trustee's Deed to convey and transfer to the Grantee herein all of the interest in such real property in Kendall County, Texas, of the ALFRED McDONALD GILLIAT TRUST.

When the context requires, singular nouns and pronouns include the plural.

EXECUTED September 1, 2012.

  
JAMES EDWARD BRIDGES, JR., as  
Trustee of the ALFRED McDONALD  
GILLIAT TRUST

STATE OF TEXAS §

COUNTY OF Denton §

This instrument was acknowledged before me on <sup>October</sup>~~September~~ 3, 2012, by JAMES EDWARD BRIDGES, JR., as Trustee of the ALFRED McDONALD GILLIAT TRUST.



  
Notary Public, State of Texas

Addresses of Grantee:

Braeside Ranch LLC  
P. O. Box 452  
Argyle, Texas 76226-0452

After recording return to:

John A. Hay, Jr., Attorney  
Hay, Wittenburg, Davis, Caldwell & Bale  
P. O. Box 271  
San Angelo, Texas 76902-0271

Doc # 00269160  
Vol 1330 Pg 23

Filed & Recorded in:

KENDALL COUNTY  
DARLENE HERRIN  
COUNTY CLERK

10/03/2012 2:54PM

Document Number: 00269160  
Total Fees : \$15.00

Receipt Number - 31149  
By Deputy: Sally W Peters

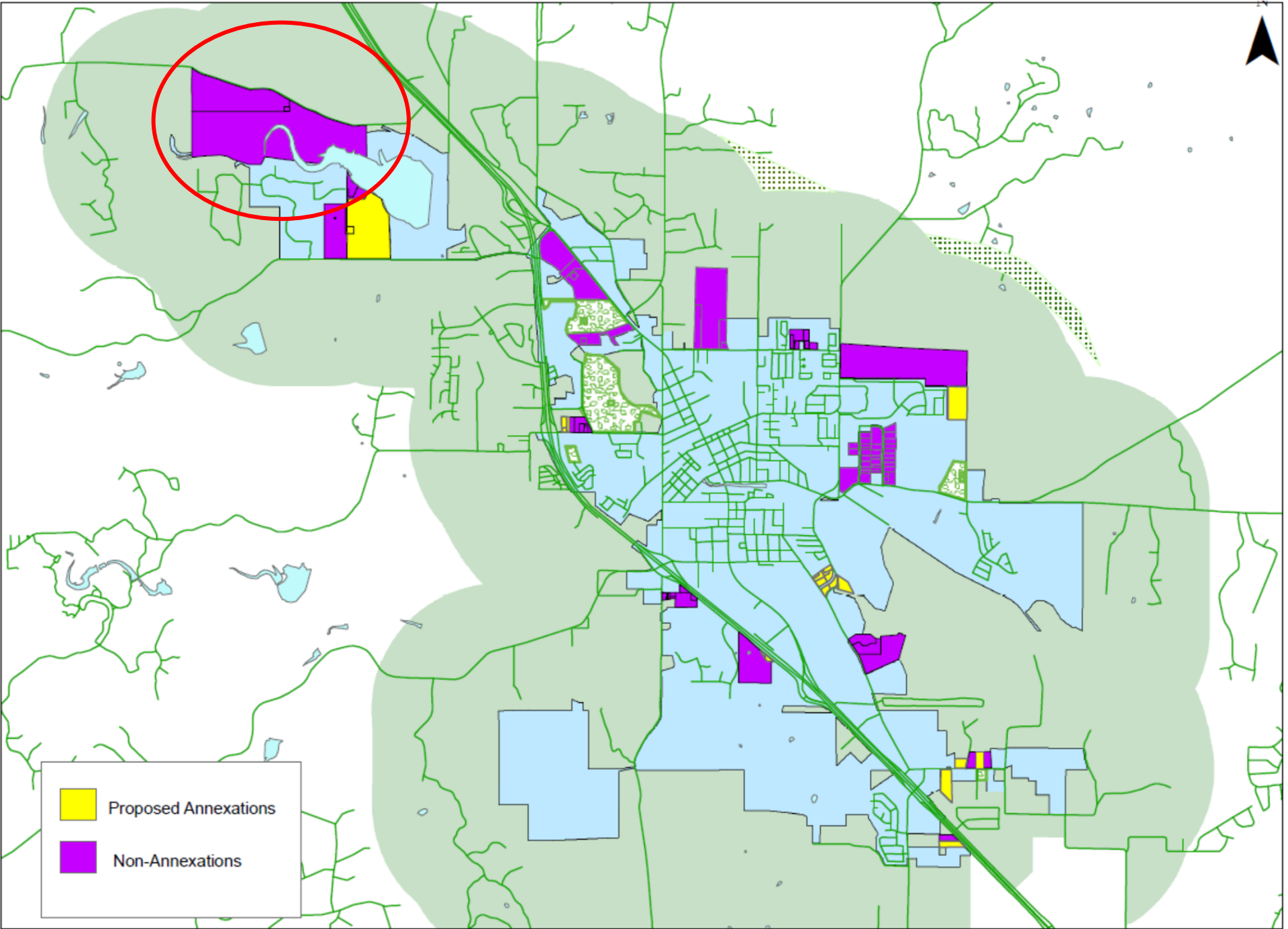
This Document has been received by this Office  
for Recording into the Official Public Records.  
We do hereby swear that we do not discriminate  
due to Race, Creed, Color, Sex or National  
Origin.


STATE OF TEXAS, COUNTY OF KENDALL  
I hereby certify that this instrument was filed  
in File Number Sequence on the date and  
at the time stamped hereon and was duly  
recorded in the OFFICIAL RECORDS Records of  
Kendall County, Texas on

10/03/2012  
DARLENE HERRIN, COUNTY CLERK  
Kendall County, Texas

By: Sep Deputy










	<div style="text-align: center;"><b>AGENDA ITEM SUMMARY</b></div> <div style="border: 1px dashed purple; padding: 5px; float: right;"> <b>District Impacted</b>  <input type="checkbox"/> 1 = Wolosin  <input type="checkbox"/> 2 = Woolard  <input type="checkbox"/> 3 = Scott  <input type="checkbox"/> 4 = Fowler  <input type="checkbox"/> 5 = Macaluso  <input checked="" type="checkbox"/> All </div>
<b>AGENDA DATE</b>	<i>June 9, 2020</i>
<b>DESCRIPTION</b>	RECOGNITION OF ACTIONS TAKEN BY MILES BUTRY
<b>STAFF'S RECOMMENDED ACTION (be specific)</b>	Recognize Miles Butry, age 3, for actions taken during a rain event on May 12, 2020.
<b>CONTACT PERSON</b>	Doug Meckel
<b>SUMMARY</b>	<p>On May 12, 2020 Blake Butry took his daughter Ella and son Miles puddle jumping during a rain event in the cul-de-sac at the end of Windsor Drive in the Woods of Frederick Creek subdivision. Both Ella and Miles were playing the stormwater drainage channel with the water about ankle deep. Miles decided he did not want to be in the water anymore, so Mr. Butry lifted him out. When Mr. Butry turned back around, he saw his daughter Ella was floating down the channel. Mr. Butry began running after Ella, but was unable to catch her before she went into the storm drain, so he followed her in. During this time 3-year-old Miles went on his own, rushing home to notify his mother that Daddy and Ella went into a hole.</p> <p>Even at the young age of 3, Miles was able to identify that his family was in trouble and would need help.</p> <p>Because of Miles quick thinking and brave actions, his mother and a neighbor were able to notify the Fire Department and go looking for Mr. Butry and Ella, who had floated down to the next storm drain connection on Ludwig, where they were able to stand up in a manhole and wait for help.</p> <p>Firefighters were able to safely remove both Mr. Butry and Ella from the manhole with only minor injuries.</p>
<b>COST</b>	N/A
<b>SOURCE OF FUNDS</b>	N/A
<b>ADDITIONAL INFORMATION</b>	See map for the location of the incident.

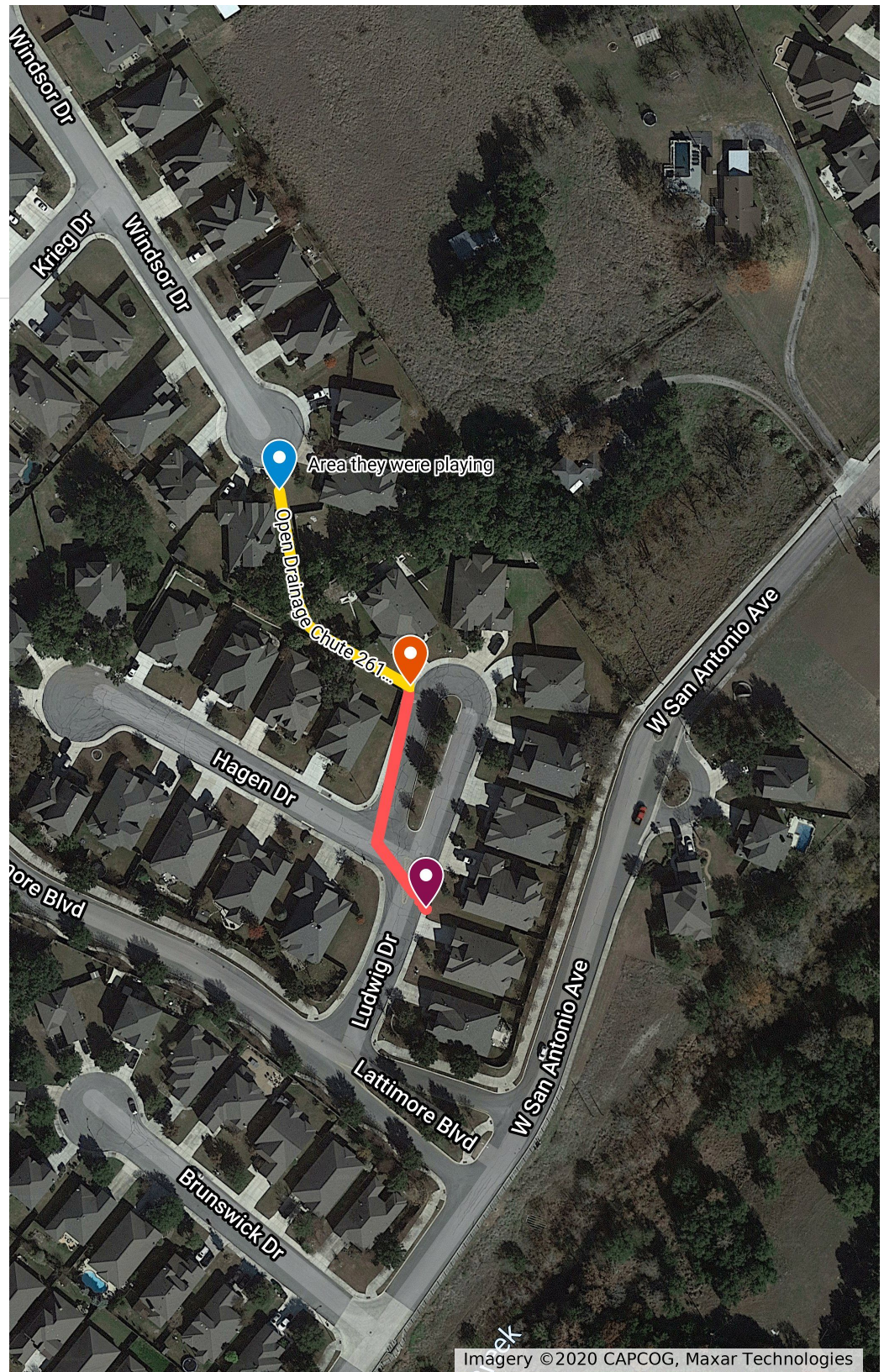
This summary is not meant to be all inclusive. Supporting documentation is attached.




# Storm Sewer Rescue

## Points

-  Area they were playing
-  Entered Storm Sewer
-  Open Drainage Chute 261 ft
-  Rescued Victims
-  Underground System 245ft



	<div data-bbox="1235 218 1474 457"> <p><b>District Impacted</b></p> <p><input type="checkbox"/> 1 = Wolosin</p> <p><input type="checkbox"/> 2 = Woolard</p> <p><input type="checkbox"/> 3 = Scott</p> <p><input type="checkbox"/> 4 = Fowler</p> <p><input checked="" type="checkbox"/> 5 = Macaluso</p> <p><input type="checkbox"/> All</p> </div> <p style="text-align: center;"><b>AGENDA ITEM SUMMARY</b></p>
<b>AGENDA DATE</b>	June 09, 2020
<b>DESCRIPTION</b>	<p>PUBLIC HEARING – To Hear Comments On The Following:</p> <p>A. PROPOSED REZONING OF 0.341 ACRES LOCATED AT 602 FREY STREET (KAD NO. 18988) FROM R-1, MEDIUM-DENSITY SINGLE-FAMILY RESIDENTIAL DISTRICT, TO O, OFFICE DISTRICT. (Burton and Joyce Sponhaltz)</p>
<b>STAFF'S RECOMMENDED ACTION (be specific)</b>	No action – Public Hearing
<b>CONTACT PERSON</b>	Laura Talley, Planning and Community Development Director
<b>SUMMARY</b>	The property is located at 602 Frey Street and currently zoned as R-1, Medium-Density Single-Family Residential District. The owner is requesting O, Office District.
<b>COST</b>	
<b>SOURCE OF FUNDS</b>	
<b>ADDITIONAL INFORMATION</b>	

This summary is not meant to be all inclusive. Supporting documentation is attached.

## NOTICE OF PUBLIC HEARING

Notice is hereby given that the City Council of the City of Boerne, Texas will hold a Public Hearing on June 9, 2020 at 6:00 p.m., in the City Council Chambers, located at Boerne City Hall, 447 N Main Street, Boerne, Texas, to discuss the following:

- A. Proposed rezoning of 0.341 acres located at 602 Frey Street (KAD No. 18988) from R-1, Medium-Density Single-Family Residential District, to O, Office District. (*Burton and Joyce Sponhaltz*)
- B. Proposed zoning of 5.155 acres of TxDOT right-of-way to B-2, Highway Commercial (IH-10 "Surplus North" tract that adjoins the future Buc-ees development located at 33375 IH-10 West). (*Stan Beard, Buc-ees for State of Texas, TxDOT*)

All interested parties are encouraged to attend.

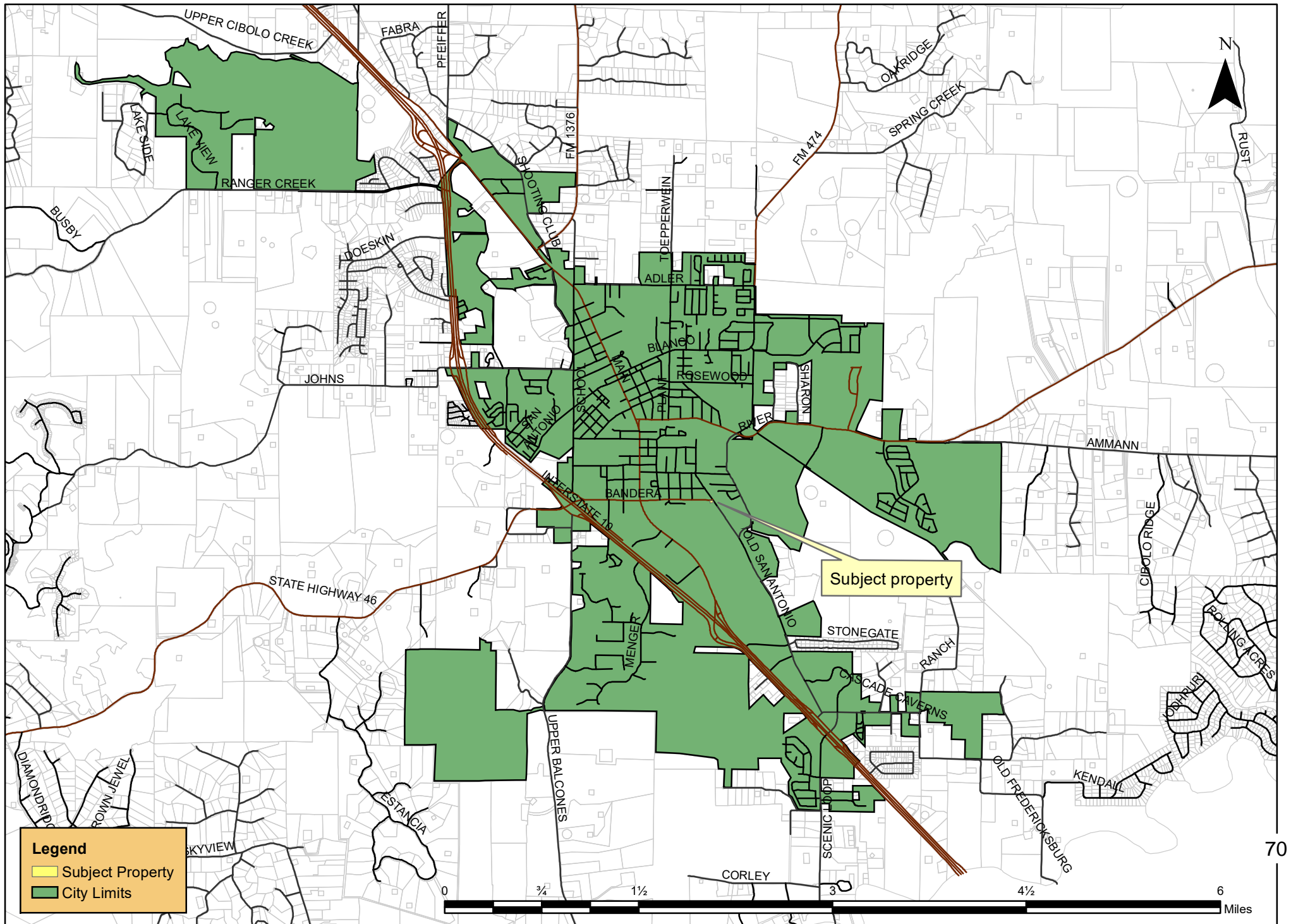
s/s Lori A. Carroll  
City Secretary

### NOTICE OF ASSISTANCE AT THE PUBLIC MEETINGS

The Boerne City Hall is wheelchair accessible. Access to the building and special parking are available at the north entrance of the building. Requests for special services must be received forty-eight (48) hours prior to the meeting time by calling the City Secretary at 830-249-9511.



# 602 FREY STREET





602 FREY STREET - AERIAL MAP



Legend

602 FREY STREET



# 602 FREY STREET - CURRENT ZONING





# 602 FREY STREET - PROPOSED ZONING





# 602 FREY STREET - FUTURE LAND USE MAP






## **R-1 - MEDIUM-DENSITY SINGLE-FAMILY DISTRICT**

- A. **Purposes.** These districts are composed of areas of detached dwellings and open land where similar residential development seems likely to occur. Medium density development of land is encouraged by allowing smaller lot areas, with a maximum density of six dwelling units per acre, exclusive of streets and other public land uses.
- B. **Applicability.** The R-1 district is applicable to areas where a more compact neighborhood development pattern is desired, and specifically the Neighborhood Residential designation in the Boerne Master Plan. Typically this district should be used only in areas that are within 1 mile from any existing or planned Neighborhood or Community Center. While this area may be immediately adjacent to a Center, it is most appropriate for the center or edges of neighborhoods where a mix of larger lot types is desired, and so that more critical mass of smaller lots and higher density can be created within walking distance of the Center. The R-1 district is most appropriate with a Modified Grid Transportation Network using the Neighborhood or Parkway Street Design Types indicated in the Subdivision Regulations.
- C. **Eligible Lot Types.** The following lot types and dimensions specified in Table 5-2 are permitted in the R-1 district:
1. Large Lot
  2. Manor Lot
  3. Estate Lot
  4. Low-density Lot
  5. Standard Lot
- D. **Permitted Uses.** The uses permitted in the R-1 district are specified in Table 5-1 as either “permitted” or “conditional” or “restricted”.
- E. **Restrictions on Particular Uses.** The following “Restricted” uses have the additional requirements specified in this section.
1. Accessory Dwellings shall meet the restrictions in Article 3, Section 06.
  2. Home Occupations shall meet the restrictions in Article 3, Section 04.
  3. Bed and Breakfasts shall meet the restrictions in Article 3, Section 04.
- F. **Specific Site and Building Design Standards.** Due to the more compact development pattern and the close relationship of the smaller lots to the public streetscape, the Neighborhood Design Standards in Article 3, Section 07 of the Zoning Ordinance shall apply in the R-1 district.

602 Frey



	<div style="text-align: center;"><b>AGENDA ITEM SUMMARY</b></div> <div style="border: 1px dashed purple; padding: 5px; float: right; margin-top: 10px;"> <b>District Impacted</b>  <input type="checkbox"/> 1 = Wolosin  <input type="checkbox"/> 2 = Woolard  <input type="checkbox"/> 3 = Scott  <input type="checkbox"/> 4 = Fowler  <input checked="" type="checkbox"/> 5 = Macaluso  <input type="checkbox"/> All </div>
<b>AGENDA DATE</b>	June 09, 2020
<b>DESCRIPTION</b>	PUBLIC HEARING – To Hear Comments On The Following: B. PROPOSED ZONING OF 5.155 ACRES OF TXDOT RIGHT-OF-WAY TO B-2, HIGHWAY COMMERCIAL (IH-10 “SURPLUS NORTH” TRACT THAT ADJOINS THE FUTURE BUC-EES DEVELOPMENT LOCATED AT 33375 IH-10 WEST. <i>(Stan Beard, Buc-ees for State of Texas, TxDOT)</i>
<b>STAFF’S RECOMMENDED ACTION (be specific)</b>	No action – Public Hearing
<b>CONTACT PERSON</b>	Laura Talley, Planning and Community Development Director
<b>SUMMARY</b>	The property is currently TxDOT right-of-way that adjoins the Buc-ee’s development at 33375 IH-10 West. The property is proposed to eventually be part of the Buc-ee’s development once TxDOT has completed the road improvements. Because it is TxDOT right-of-way, they are officially making the request for zoning of B-2, Highway Commercial.
<b>COST</b>	
<b>SOURCE OF FUNDS</b>	
<b>ADDITIONAL INFORMATION</b>	

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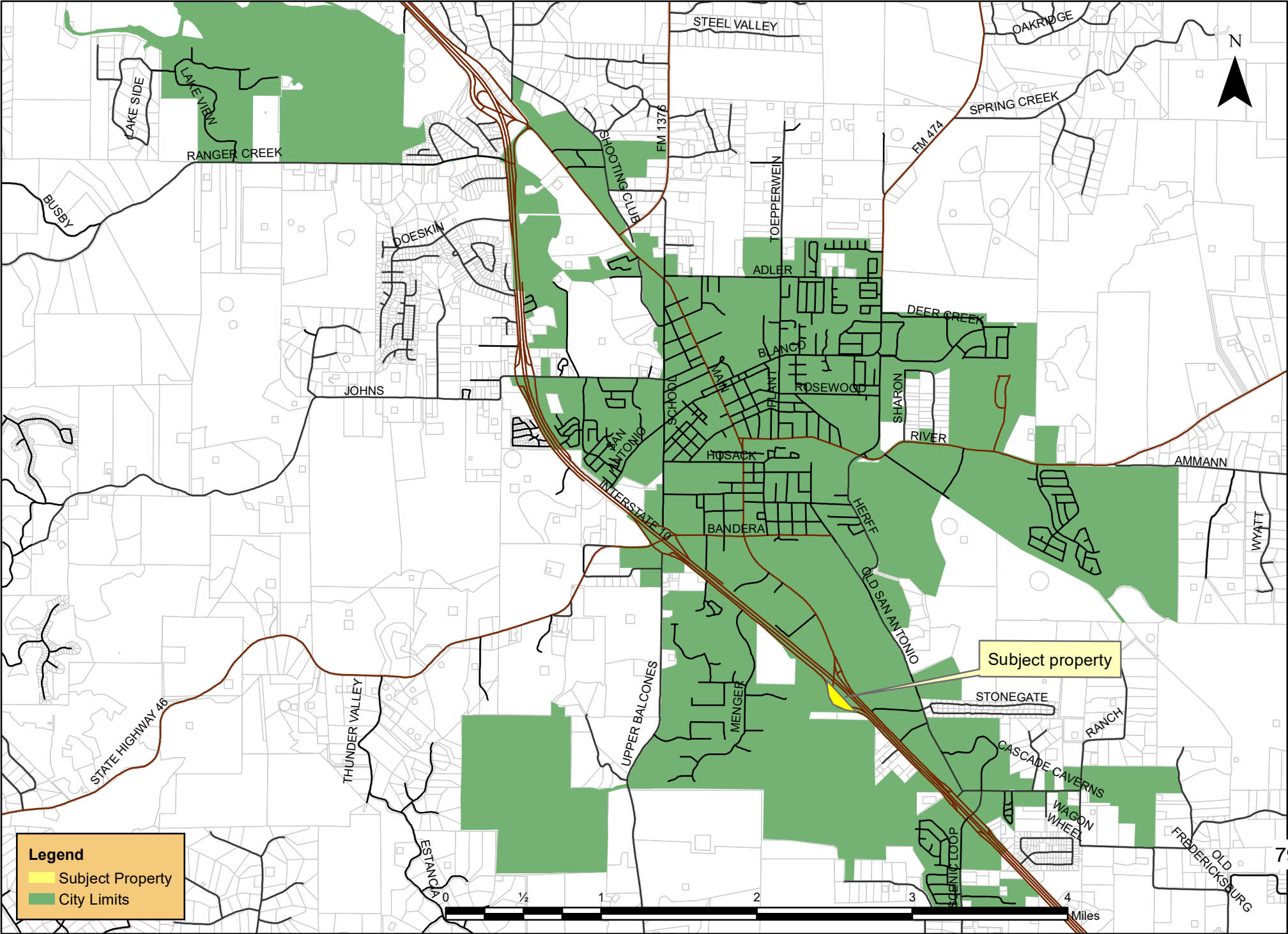
s/s Lori A. Carroll  
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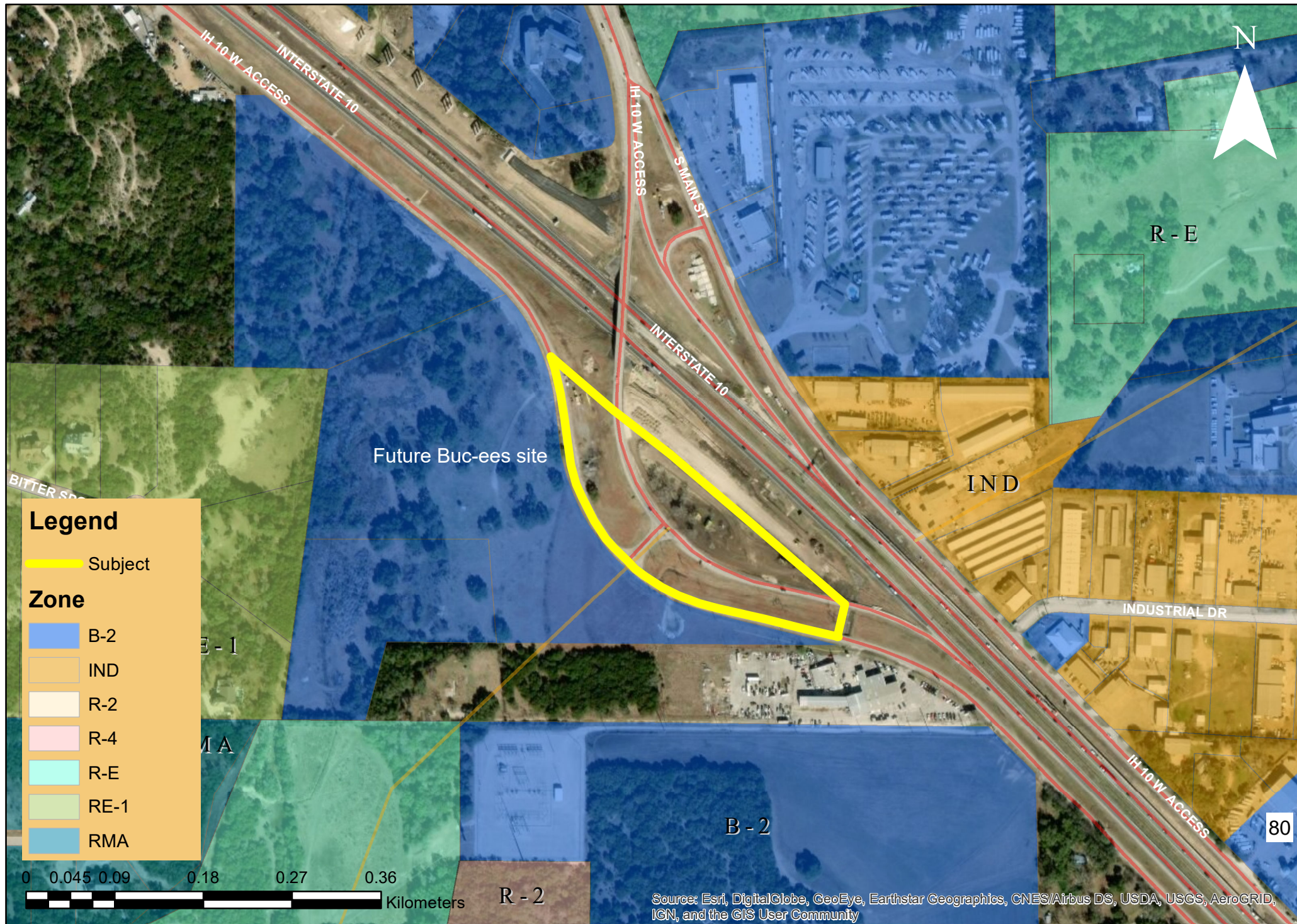


TXDOT - IH-10





# TXDOT - AREA BEING ZONED





# TXDOT AREA - FUTURE LAND USE MAP



## SECTION 17. B-2 - HIGHWAY COMMERCIAL DISTRICT

- A. **Purposes.** The B-2 districts are located along principal arterial streets, adjacent to other non-residential districts. They are areas suitable for general retail trade and a wide variety of other commercial uses. The district regulations are designed to encourage these uses, while also protecting the abutting and nearby areas.
- B. **Applicability.** This district is applicable in areas where large scale and regional businesses are appropriate, and where the impacts on other more walkable development patterns can be minimized, both in terms of physical design and in terms of uses that have a regional draw. Therefore it should be limited in application to areas with good highway access, and away from areas where smaller-scale, and neighborhood oriented businesses are desired.

C. **Required Lot and Building Dimensions.**

MINIMUM LOT AREA	10,000 square feet
MINIMUM LOT WIDTH	60 feet
MINIMUM FRONT YARD	0 - 20 feet
MINIMUM SIDE YARD	0 feet, if party wall; 5' if not party wall;
MINIMUM REAR YARD	0' - See Combined Commercial Design Standards for rear/side location parking requirements
MAXIMUM BUILDING HEIGHT	75' - See 3.05.001 for Height exceptions – City Council may approve a height over 75' (Ord. No. 2017-03, §1, 1-24-2017)

- D. **Permitted Uses.** The uses permitted in the B-2 district are specified in Table 5-1 as either “permitted” or “conditional” or “restricted”.

E. **Restrictions on Particular Uses.**

1. A trailer court must provide water and sewer service for each unit.
2. Mixed-use Dwelling Units must meet the following specific site and building design standards:
  - a. Each unit, residential and commercial, shall have two clearly distinct areas.
  - b. Each area shall separately and independently meet the required building codes applicable to the intended use for that portion of the building.
  - c. Occupational or vocational uses allowed in the non-living portion may be any non-residential use allowed in the zoning district. The use shall not by reason of noise, odor, or physical operation create any impacts on adjacent lots that are adverse to adjacent uses. Uses with a tendency to create external impacts or visible signs of operation may be further limited in terms of site design or hours of operation in order to minimize potential impacts.
  - d. Required parking shall be based on the greater of the parking required for the non-living area or the living area. (Ord. No. 2012-04, §5, 4-24-2012)
3. Bed and Breakfasts shall meet the restrictions in Article 3, Section 04.

F. **Specific Site and Building Design Standards.**

1. Due to the more compact development pattern, and the important relationship between the design of buildings, sites, open spaces and streetscapes in creating a walkable, mixed-use environment integrated into adjacent neighborhoods, the Combined Commercial Design Standards in Article 3, Section 09 of the Zoning Ordinance shall apply to all lots in the B-2 District.
2. All lots in the B-2 District which are located in the Entrance Corridor Overlay as specified in Article 5, Section 25 of the Zoning Ordinance shall meet the standards of that section.




<b>PERMITTED USES BY DISTRICT</b> P= Permitted generally, subject to ordinance standards R= Restricted, subject to specific conditions in this Ordinance CC= Conditional, subject to City Council review and approval L= Limitations as provided in Article 3, Section 18	<b>B-2</b>
<b>Residential Use Category</b>	
<i>Detached Dwelling</i>	P
<i>Duplex Dwelling</i>	
<i>Attached Dwelling</i>	
<i>Multi-Dwelling Structure</i>	CC
<i>Mixed-Use Dwelling</i>	P
<i>Accessory Dwelling</i>	CC
<i>Garden Home</i>	
<i>Community Home</i>	
<i>Personal Care Home</i>	P
<i>Retirement Community</i>	CC
<b>Civic Use Category</b>	
<i>Assembly</i>	CC
<i>Club or Lodge</i>	P
<i>Community Athletic Field</i>	P
<i>Developed Athletic Field or Stadium</i>	CC
<i>Government Facility</i>	CC
<i>Museum or Library</i>	P
<i>School</i>	
<b>Employment Use Category</b>	
<i>Neighborhood Office</i>	P
<i>General Office</i>	P
<i>Major Office or Office Complex</i>	P
<i>Business Park or Campus</i>	CC
<b>Retail Use Category</b>	
<i>Automobile Gas Station</i>	CC
<i>Automobile Gas Station fronting IH-10</i>	P
<i>Automobile Convenience Store</i>	CC
<i>Automobile Convenience Store fronting IH-10</i>	P
<i>Automobile Parts &amp; Parts Sales</i>	P
<i>Automobile Sales</i>	CC
<i>Brew Pub</i>	P
<i>Mobile Food Vendor</i>	P

<b>PERMITTED USES BY DISTRICT</b> P= Permitted generally, subject to ordinance standards R= Restricted, subject to specific conditions in this Ordinance CC= Conditional, subject to City Council review and approval L= Limitations as provided in Article 3, Section 18	<b>B-2</b>
<i>Restaurant (Convenience– non drive-thru)</i>	P
<i>Restaurant (Convenience– drive-thru)</i>	P
<i>Restaurant (Limited)</i>	P
<i>Restaurant (General)</i>	P
<i>Grocery Store</i>	CC
<i>Supermarket Store</i>	CC
<i>Retail (Drive-thru)</i>	P
<i>Retail (Neighborhood)</i>	P
<i>Retail (General)</i>	P
<i>Retail (Major)</i>	CC
<i>Thrift Store (without outside storage/donation bin)</i>	P
<i>Thrift Store (with outside storage/donation bin)</i>	CC
<i>Warehouse Retail</i>	CC
<i>Winery</i>	P
<i>Outdoor Retail Display</i>	P
<i>Outdoor Retail Sales Area</i>	CC
<i>Shopping Center</i>	CC
<b>Service Use Category</b>	
<i>Automobile Rental</i>	P
<i>Automobile Service w/outside storage</i>	CC
<i>Automobile Service w/o outside storage</i>	P
<i>Bank and Financial Institutions</i>	P
<i>Bank Kiosks</i>	P
<i>Bar</i>	P
<i>Barber and Beauty Shop (also see Spa)</i>	P
<i>Bed &amp; Breakfast</i>	R
<i>Bus Terminal</i>	P
<i>Car Wash</i>	P
<i>Day Care Nursery (more than 6 children with or without home occupation)</i>	P
<i>Day Care / Before or After School</i>	P
<i>Day Care / Adult</i>	P
<i>Funeral Home or Mortuary</i>	P
<i>Group Home</i>	L
<i>Gym (Neighborhood)</i>	P

<b>PERMITTED USES BY DISTRICT</b> P= Permitted generally, subject to ordinance standards R= Restricted, subject to specific conditions in this Ordinance CC= Conditional, subject to City Council review and approval L= Limitations as provided in Article 3, Section 18	<b>B-2</b>
<i>Gym (General)</i>	P
<i>Gym (Major)</i>	CC
<i>Health Clinic</i>	P
<i>Hospital</i>	CC
<i>Hotel or Motel</i>	P
<i>Hotel (Boutique)</i>	P
<i>Laundry (Self Service)</i>	P
<i>Long Term Care Facility</i>	P
<i>Medical Office</i>	P
<i>Nightclub</i>	P
<i>Parking Lot or Parking Garage</i>	CC
<i>Pawn Shop</i>	P
<i>Recreational and Entertainment Facility</i>	CC
<i>Spa</i>	P
<i>Theater</i>	P
<i>Trade School</i>	P
<i>Trailer Court</i>	CC
<i>Veterinary Clinic</i>	P
<i>Video or Pinball Arcade</i>	P
<i>Wholesale</i>	CC
<b>Manufacturing and Utility Use Category</b>	
<i>Contractor</i>	CC
<i>Commercial Communication System</i>	CC
<i>Large Vehicle and Machinery Rental, Sales and Service</i>	CC
<i>Manufacturing</i>	CC
<i>Mini-Warehouse.</i>	CC
<i>Utility Station, Sub-station, or Service Center</i>	CC
<b>Agriculture and Natural Resource Use Category</b>	
<i>Plant Nursery</i>	P



	<div style="text-align: center;"><b>AGENDA ITEM SUMMARY</b></div> <div style="border: 1px dashed purple; padding: 5px; float: right; margin-top: 10px;"> <b>District Impacted</b>  <input type="checkbox"/> 1 = Wolosin  <input type="checkbox"/> 2 = Woolard  <input type="checkbox"/> 3 = Scott  <input type="checkbox"/> 4 = Fowler  <input checked="" type="checkbox"/> 5 = Macaluso  <input type="checkbox"/> All </div>
<b>AGENDA DATE</b>	June 09, 2020
<b>DESCRIPTION</b>	<p>CONSIDER ON FIRST READING ORDINANCE NO. 2020-17; AN ORDINANCE AMENDING THE CITY OF BOERNE ZONING ORDINANCE NO. 2007-64, CAPTIONED, "ZONING ORDINANCE OF THE CITY OF BOERNE, TEXAS", DATED DECEMBER 18, 2007, BY AMENDING ARTICLE 3, SECTION 14, REZONING 0.341 ACRES LOCATED AT 602 FREY STREET (KAD NO. 18988) FROM R-1, MEDIUM-DENSITY SINGLE-FAMILY RESIDENTIAL DISTRICT, TO O, OFFICE DISTRICT; REPEALING ALL ORDINANCES IN CONFLICT; CONTAINING A SEVERANCE CLAUSE; AND DECLARING AN EFFECTIVE DATE. <i>(Burton and Joyce Sponhaltz)</i></p>
<b>STAFF'S RECOMMENDED ACTION (be specific)</b>	<p>Approve On First Reading Ordinance No. 2020-17; Amending Zoning Ordinance No. 2007-64, By Amending Article 3, Section 14, Rezoning 0.341 Acres Located At 602 Frey Street (KAD No. 18988) From R-1, Medium-Density Single-Family Residential District, To O, Office District.</p>
<b>CONTACT PERSON</b>	Laura Talley, Planning and Community Development Director
<b>SUMMARY</b>	<p>The property is located at 602 Frey Street and currently zoned as R-1, Medium-Density Single-Family Residential District.</p> <p>The applicant has requested an O, Office zoning for this location. The Land Use Plan identifies this area as Auto Oriented Commercial. It is Staff's opinion that due to the proximity of this site to an established residential neighborhood, that the O district is more appropriate than what the Land Use Plan shows. The uses in an Office district are neighborhood friendly; small office (no more than 3,500 sf), spa, hair salon or B&amp;B.</p> <p><i>MASTER PLAN</i></p> <p><i>The Future Land Use Plan identifies the property as "Auto-Oriented Commercial". The "Auto-Oriented Commercial" future land use category is intended for areas that will be developed to support local and regional nonresidential businesses that rely on higher traffic volumes (e.g., I-10 and portions of SH 46). These areas are typically comprised of nonresidential uses of varying lot sizes and intensities and configured in a manner that predominantly serves the automobile.</i></p> <p><i>The appropriate primary uses allowed in areas designated as</i></p>

	<p><i>“Auto-Oriented Commercial” include assembly uses, automobile sales and services, brew pubs and night clubs, convenience stores, day / adult care, hotels and motels, offices (including medical), parks and recreation, personal care homes, retail sales and services (including heavy retail), restaurants, safety services, and schools.</i></p> <p>The property owner has stated that he would like to turn the existing house into a beauty salon for his wife. They do not live in the house and it is on the market. Regardless if he uses the home or sells it, the uses in the O district are very limited. O district is appropriate when adjoining a residential neighborhood. We received four response letters from neighboring property owners, two in favor, one in opposition and one stating no opinion. The neighboring property owner on Bandera Road is concerned about parking on the street in front of her house. If the use changes, they will be required to provide on-site parking, but Bandera Road and Frey Street are public roadways and people can still park there.</p> <p>We have attached the location map, future land use map, current and requested zoning map, current and requested zoning description.</p> <p>The Planning and Zoning Commission stated that this location is appropriate for a small office or spa and felt that the parking for a small site would unlikely be impactful to the neighborhood. It is located across the street from a church, close to Kronkosky Place and within walking distance to SoBo. The Commission recommended approval by a vote of 7-0. Staff recommends approval of the rezoning request.</p>
<b>COST</b>	
<b>SOURCE OF FUNDS</b>	
<b>ADDITIONAL INFORMATION</b>	

This summary is not meant to be all inclusive. Supporting documentation is attached.

**ORDINANCE NO. 2020-17**

**AN ORDINANCE AMENDING THE CITY OF BOERNE ZONING ORDINANCE NO. 2007-64, CAPTIONED, "ZONING ORDINANCE OF THE CITY OF BOERNE, TEXAS", DATED DECEMBER 18, 2007, BY AMENDING ARTICLE 3, SECTION 14, REZONING 0.341 ACRES LOCATED AT 602 FREY STREET (KAD NO. 18988) FROM R-1, MEDIUM-DENSITY SINGLE-FAMILY RESIDENTIAL DISTRICT TO O, OFFICE DISTRICT; REPEALING ALL ORDINANCES IN CONFLICT; CONTAINING A SEVERANCE CLAUSE; AND DECLARING AN EFFECTIVE DATE**

**WHEREAS**, the City Council of the City of Boerne has complied with all requirements of notice of public hearing as required by the Zoning Ordinance of the City of Boerne; and

**WHEREAS**, the City Council held a public hearing on June 9, 2020 on the proposed rezoning; and

**WHEREAS**, the City Council is required to permanently zone properties that have been annexed into the City; and

**WHEREAS**, it is the intent of the City Council to provide harmony between existing zoning districts and proposed land uses; and

**WHEREAS**, the City Council desires to amend the Zoning Map by rezoning 0.341 acres located at 602 Frey Street (KAD No. 18988) to O, Office District.

**NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BOERNE, TEXAS:**

Section 1.

That Article 3, Section 14, of the Zoning Ordinance of the City of Boerne, Texas, and particularly the Zoning Map of the City of Boerne, is amended by rezoning the following described tract of land:

602 Frey Street (KAD No. 18988) to O, Office District.

Section 2.

That the Zoning Maps of the City of Boerne be amended to indicate the previously described change.



### Section 3.

That all provisions of the Code of Ordinances of the City of Boerne not herein amended or repealed shall remain in full force and effect.

### Section 4.

That all other ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent that they are in conflict.

### Section 5.

That if any provisions of this ordinance shall be held void or unconstitutional, it is hereby provided that all other parts of the same which are not held void or unconstitutional shall remain in full force and effect.

### Section 6.

This ordinance will take effect upon the second and final reading of same.

PASSED AND APPROVED on this the first reading the \_\_\_\_ day of June, 2020.

PASSED, APPROVED AND ADOPTED on this the second reading the \_\_\_\_ day of June, 2020.

APPROVED:

ATTEST:

\_\_\_\_\_  
Mayor

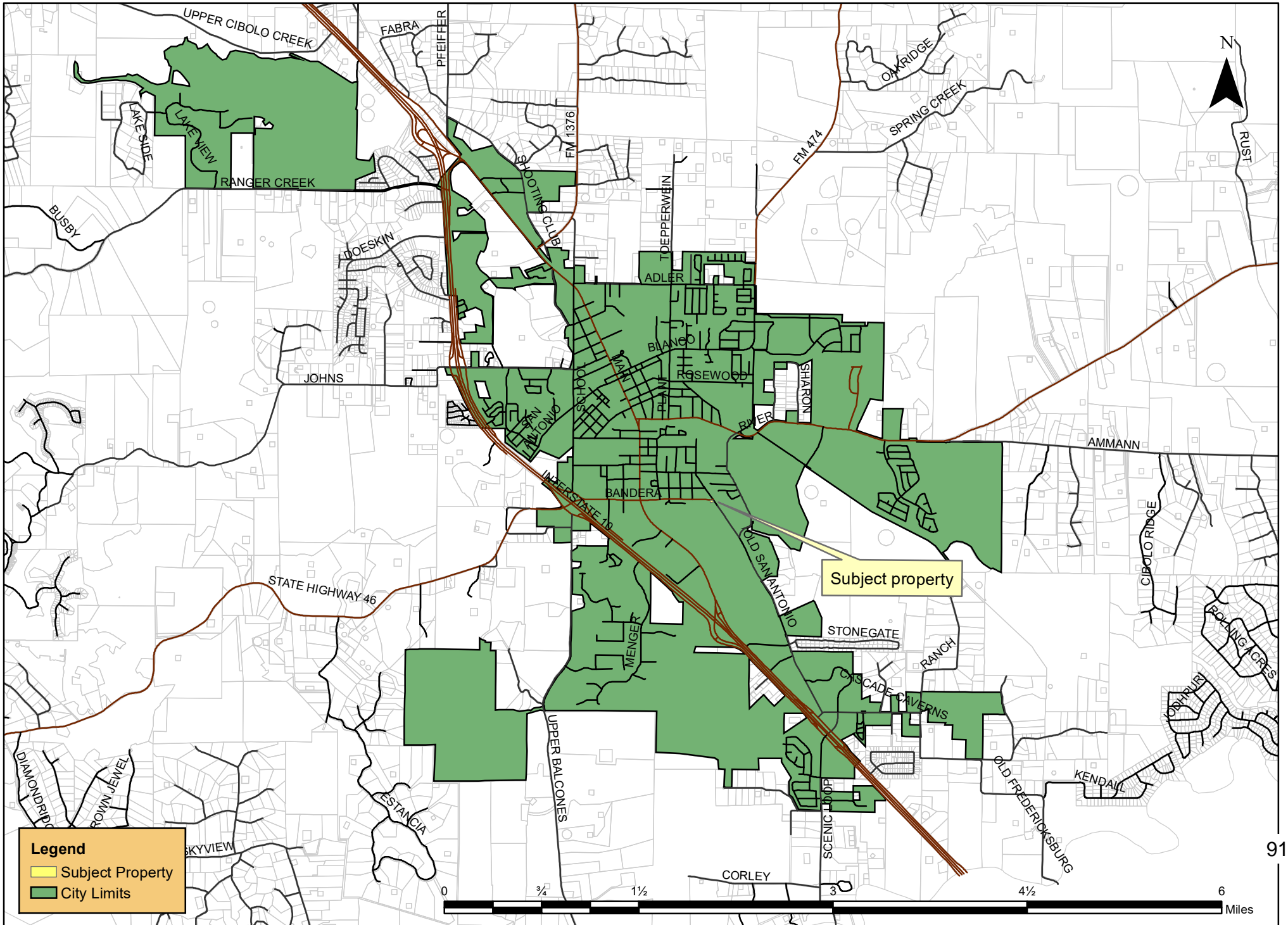
\_\_\_\_\_  
City Secretary

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney



602 FREY STREET





602 FREY STREET - AERIAL MAP



Legend  
602 FREY STREET

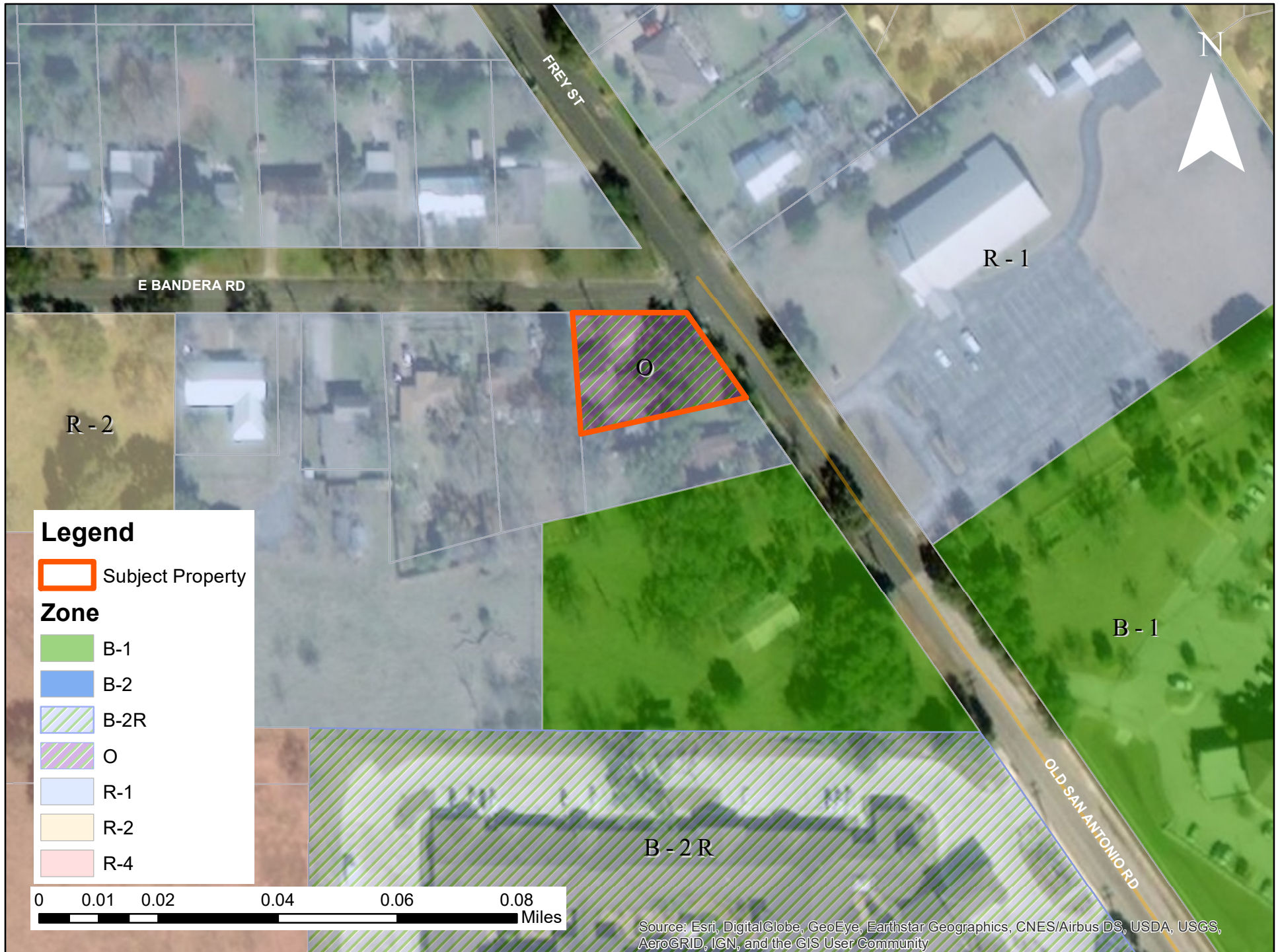


# 602 FREY STREET - CURRENT ZONING



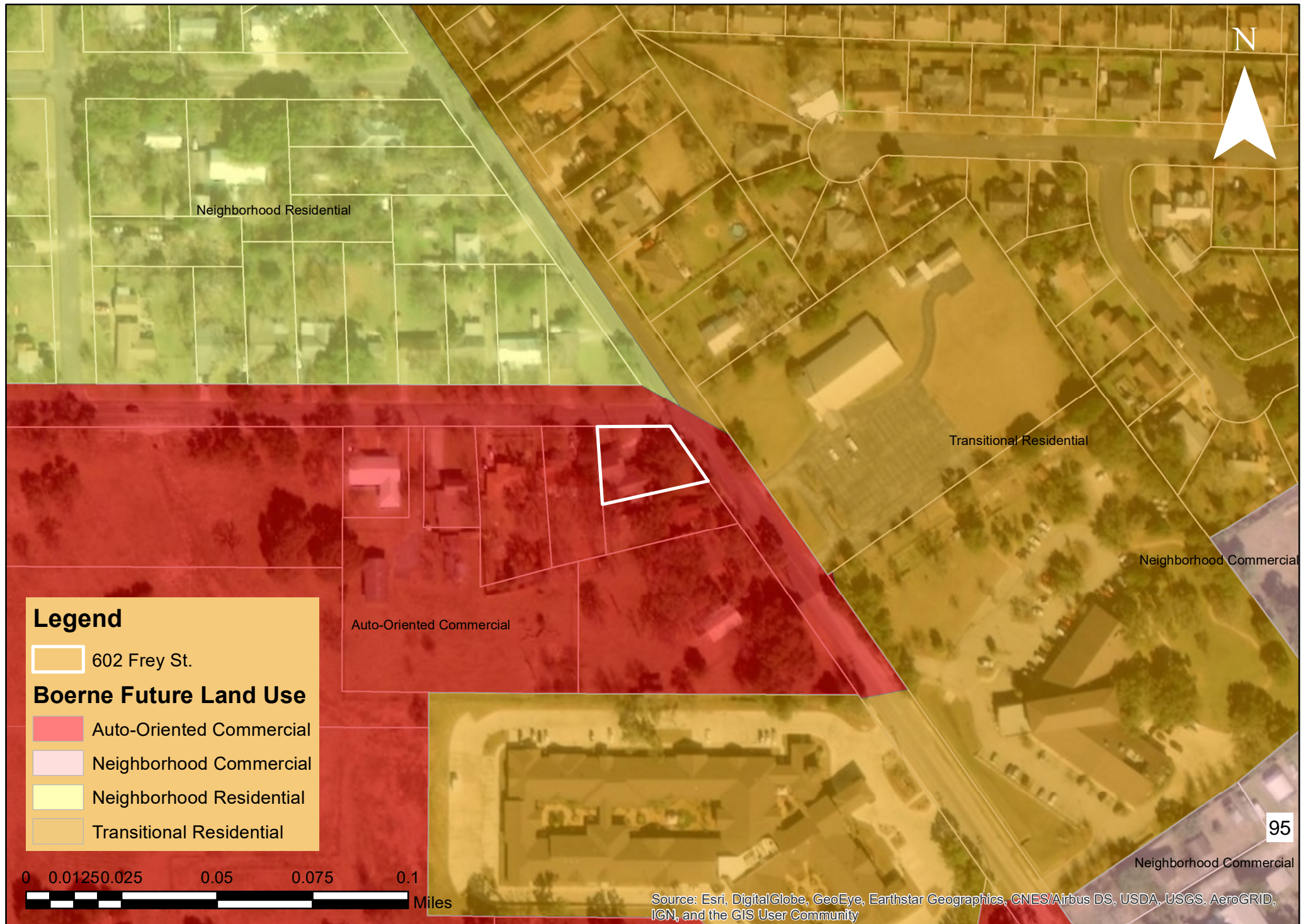


# 602 FREY STREET - PROPOSED ZONING





# 602 FREY STREET - FUTURE LAND USE MAP



## O - OFFICE DISTRICT

- A. **Purposes.** These districts are composed of structures occupied by or suitable for such uses as offices and studios, usually located between residential areas and business areas. The district regulations are designed to protect and encourage the transitional character of the districts by permitting a limited group of uses of a commercial nature while protecting the abutting and surrounding residential areas by requiring minimum yard areas and setbacks comparable to those called for in the residential districts. (Ord. No. 2008-25, §3, 8-12-2008)
- B. **Applicability.** The O district is applicable to any area where commercial zoning is contiguous to or in close proximity to residential zoning classification and the desirability of residential is impacted by traffic volume or surrounding commercial uses.
- C. **Required Lot and Building Dimensions for Non-Residential Uses.**

<b>MINIMUM LOT AREA</b>	5,000 sqft.
<b>MINIMUM LOT WIDTH</b>	50 feet
<b>MINIMUM FRONT YARD</b>	A lot that adjoins a residential district that is not a reverse corner lot – same as that residential district (Ord. No. 2012-38, §5, 11-13-2012) A lot that adjoins a residential district that is a reverse corner lot – 0'-20' A lot that adjoins a commercial district – 0' – 20'
<b>MINIMUM 1 SIDE / MINIMUM COMBINED FRONT AND REAR YARD*</b>	No improvements shall be allowed within 10' on the residentially zoned side and No party wall or adjoining building are permitted between lots 5' feet if on the commercially zoned side
<b>MINIMUM REAR / MINIMUM COMBINED FRONT AND REAR YARD</b>	10' with appropriate shielding from any adjacent residentially zoned lot.
<b>MAXIMUM BUILDING AREA</b>	Limited to 3,500 sqft. for the office area of the structure (Ord. No. 2015-36, §5, 11-10-2015)
<b>MAXIMUM BUILDING HEIGHT</b>	2 story, up to 30 feet

- D. **Permitted Uses.** The uses permitted in the O district are specified in Table 5-1 as either “permitted” or “conditional” or “restricted”.

- E. **Restrictions on Particular Uses.** The following “Restricted” uses have the additional requirements specified in this section. (Ord. No. 2012-04, §5, 4-24-2012)

1. Mixed-use Dwelling Units must meet the following specific site and building design standards:

- Each unit, residential and commercial, shall have two clearly distinct areas.
- Each area shall separately and independently meet the required building codes applicable to the intended use for that portion of the building.
- Occupational or vocational uses allowed in the non-living portion may be any non-residential use allowed in the zoning district. The use shall not by reason of noise, odor, or physical operation create any impacts on adjacent lots that are adverse to adjacent uses. Uses with a signs of operation may be further limited in terms

of site design or hours of operation in order to minimize potential impacts.

## **R-1 - MEDIUM-DENSITY SINGLE-FAMILY DISTRICT**


- A. **Purposes.** These districts are composed of areas of detached dwellings and open land where similar residential development seems likely to occur. Medium density development of land is encouraged by allowing smaller lot areas, with a maximum density of six dwelling units per acre, exclusive of streets and other public land uses.
- B. **Applicability.** The R-1 district is applicable to areas where a more compact neighborhood development pattern is desired, and specifically the Neighborhood Residential designation in the Boerne Master Plan. Typically this district should be used only in areas that are within 1 mile from any existing or planned Neighborhood or Community Center. While this area may be immediately adjacent to a Center, it is most appropriate for the center or edges of neighborhoods where a mix of larger lot types is desired, and so that more critical mass of smaller lots and higher density can be created within walking distance of the Center. The R-1 district is most appropriate with a Modified Grid Transportation Network using the Neighborhood or Parkway Street Design Types indicated in the Subdivision Regulations.
- C. **Eligible Lot Types.** The following lot types and dimensions specified in Table 5-2 are permitted in the R-1 district:
1. Large Lot
  2. Manor Lot
  3. Estate Lot
  4. Low-density Lot
  5. Standard Lot
- D. **Permitted Uses.** The uses permitted in the R-1 district are specified in Table 5-1 as either “permitted” or “conditional” or “restricted”.
- E. **Restrictions on Particular Uses.** The following “Restricted” uses have the additional requirements specified in this section.
1. Accessory Dwellings shall meet the restrictions in Article 3, Section 06.
  2. Home Occupations shall meet the restrictions in Article 3, Section 04.
  3. Bed and Breakfasts shall meet the restrictions in Article 3, Section 04.
- F. **Specific Site and Building Design Standards.** Due to the more compact development pattern and the close relationship of the smaller lots to the public streetscape, the Neighborhood Design Standards in Article 3, Section 07 of the Zoning Ordinance shall apply in the R-1 district.



602 Frey





	<div style="text-align: center;"><b>AGENDA ITEM SUMMARY</b></div> <div style="border: 1px dashed purple; padding: 5px; margin-top: 10px;"> <b>District Impacted</b>  <input type="checkbox"/> 1 = Wolosin  <input type="checkbox"/> 2 = Woolard  <input type="checkbox"/> 3 = Scott  <input type="checkbox"/> 4 = Fowler  <input checked="" type="checkbox"/> 5 = Macaluso  <input type="checkbox"/> All </div>
<b>AGENDA DATE</b>	June 09, 2020
<b>DESCRIPTION</b>	<p>CONSIDER ON FIRST READING ORDINANCE NO. 2020-18; AN ORDINANCE AMENDING THE CITY OF BOERNE ZONING ORDINANCE NO. 2007-64, CAPTIONED, "ZONING ORDINANCE OF THE CITY OF BOERNE, TEXAS", DATED DECEMBER 18, 2007, BY AMENDING ARTICLE 3, SECTION 13, PERMANENT ZONING OF 5.155 ACRES OF TXDOT RIGHT-OF-WAY LOCATED AT IH-10 WEST (IH-10 "SURPLUS NORTH" TRACT THAT ADJOINS THE FUTURE BU-CEES DEVELOPMENT LOCATED AT 33375 IH-10 WEST) TO B-2, HIGHWAY COMMERCIAL DISTRICT; REPEALING ALL ORDINANCES IN CONFLICT; CONTAINING A SEVERANCE CLAUSE; AND DECLARING AN EFFECTIVE DATE. <i>(Stan Beard, Buc-ees for State of Texas, TxDOT)</i></p>
<b>STAFF'S RECOMMENDED ACTION (be specific)</b>	<p>Approve On First Reading Ordinance No. 2020-18; Amending Zoning Ordinance No. 2007-64, By Amending Article 3, Section 13, Permanent Zoning Of 5.155 Acres Of TxDOT Right-Of-Way Located At IH-10 West (IH-10 "Surplus North" Tract That Adjoins The Future Bu-ees Development Located At 33375 IH-10 West) To B-2, Highway Commercial District.</p>
<b>CONTACT PERSON</b>	Laura Talley, Planning and Community Development Director
<b>SUMMARY</b>	<p>The area under consideration for zoning is currently located in the TxDOT right-of-way adjacent to the Buc-ee's development at 33375 IH-10 West. As it is currently roadway, it is not zoned. When TxDOT has completed the improvements in this area and realigned the roadway, this section is proposed to become part of the Buc-ee's development.</p> <p>Buc-ee's is in the process of platting this area. In order to plat according to zoning, the appropriate zoning should be placed on the area that TxDOT is allowing them to plat as part of their development. Attached is the proposed TxDOT alignment at IH-10 and US87 which is the area that is being zoned.</p> <p>The Land Use Plan identifies this area as Auto-Oriented Commercial which is certainly appropriate for frontage along IH-10. Regardless of the Buc-ee's development, this section is in the city limits and does require zoning as it will become developable land.</p>

	<p><b>MASTER PLAN</b></p> <p><i>The Future Land Use Plan identifies the property as “Auto-Oriented Commercial”. The “Auto-Oriented Commercial” future land use category is intended for areas that will be developed to support local and regional nonresidential businesses that rely on higher traffic volumes (e.g., I-10 and portions of SH 46). These areas are typically comprised of nonresidential uses of varying lot sizes and intensities and configured in a manner that predominantly serves the automobile.</i></p> <p><i>The appropriate primary uses allowed in areas designated as “Auto-Oriented Commercial” include assembly uses, automobile sales and services, brew pubs and night clubs, convenience stores, day / adult care, hotels and motels, offices (including medical), parks and recreation, personal care homes, retail sales and services (including heavy retail), restaurants, safety services, and schools. Appropriate secondary uses include such things as local utility services, government facilities, recreation and entertainment facilities, recreational vehicle parks, shopping centers, and transportation uses. All these activities are compatible with a B-2, Highway Commercial District, and B-2R, Highway Commercial-Restricted District.</i></p> <p>We have attached the location map, future land use map, requested zoning map and description and the proposed alignment for the future TxDOT right-of-way.</p> <p>The Planning and Zoning Commissioner recommended approval by a vote of 7-0. Staff recommends approval of the B-2 zoning for this section of right-of-way.</p>
<b>COST</b>	
<b>SOURCE OF FUNDS</b>	
<b>ADDITIONAL INFORMATION</b>	

This summary is not meant to be all inclusive. Supporting documentation is attached.

**ORDINANCE NO. 2020-18**

**AN ORDINANCE AMENDING THE CITY OF BOERNE ZONING ORDINANCE NO. 2007-64, CAPTIONED, "ZONING ORDINANCE OF THE CITY OF BOERNE, TEXAS", DATED DECEMBER 18, 2007, BY AMENDING ARTICLE 3, SECTION 13, PERMANENT ZONING OF 5.155 ACRES OF TXDOT RIGHT-OF-WAY LOCATED AT IH-10 WEST (IH-10 "SURPLUS NORTH" TRACT THAT ADJOINS THE FUTURE BU-CEES DEVELOPMENT LOCATED AT 33375 IH-10 WEST) TO B-2, HIGHWAY COMMERCIAL DISTRICT; REPEALING ALL ORDINANCES IN CONFLICT; CONTAINING A SEVERANCE CLAUSE; AND DECLARING AN EFFECTIVE DATE**

**WHEREAS**, the City Council of the City of Boerne has complied with all requirements of notice of public hearing as required by the Zoning Ordinance of the City of Boerne; and

**WHEREAS**, the TxDOT right-of-way is currently roadway and it is not zoned; and

**WHEREAS**, it is the intent of the City Council to provide harmony between existing zoning districts and proposed land uses; and

**WHEREAS**, the City Council desires to amend the Zoning Map by zoning 5.155 acres of TxDOT right-of-way located at IH-10 West (IH-10 "Surplus North" tract that adjoins the future Buc-ees development located at 33375 IH-10 West) to B-2, Highway Commercial District;

**NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BOERNE, TEXAS:**

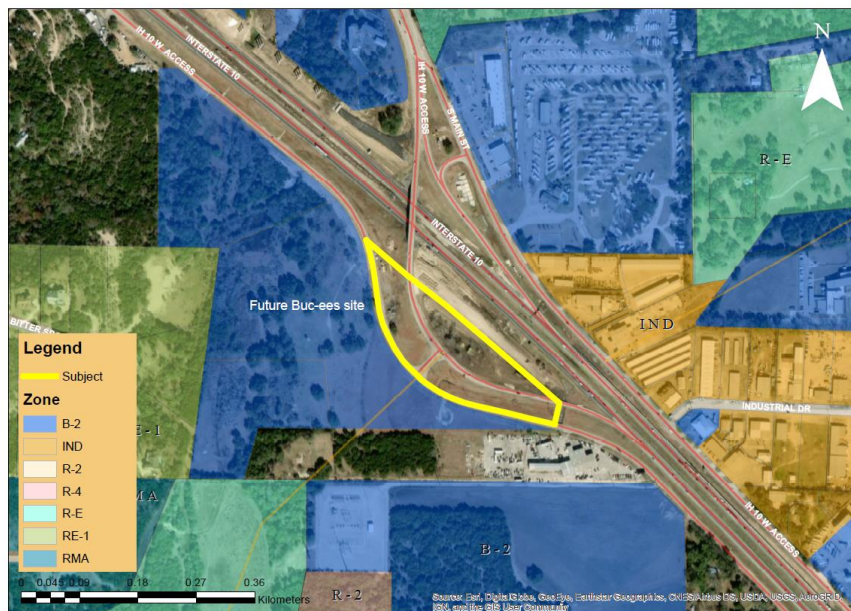
Section 1.

That Article 3, Section 13, of the Zoning Ordinance of the City of Boerne, Texas, and particularly the Zoning Map of the City of Boerne, is amended by zoning the following described tracts of land:

5.155 acres of TxDOT right-of-way located at IH-10 West (IH-10 "Surplus North" tract that adjoins the future Buc-ees development located at 33375 IH-10 West) to B-2, Highway Commercial District.

Section 2.

That the Zoning Maps of the City of Boerne be amended to indicate the previously described change.



### Section 3.

That all provisions of the Code of Ordinances of the City of Boerne not herein amended or repealed shall remain in full force and effect.

### Section 4.

That all other ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent that they are in conflict.

### Section 5.

That if any provisions of this ordinance shall be held void or unconstitutional, it is hereby provided that all other parts of the same which are not held void or unconstitutional shall remain in full force and effect.

### Section 6.

This ordinance will take effect upon the second and final reading of same.

PASSED AND APPROVED on this the first reading the \_\_\_\_ day of June, 2020.

PASSED, APPROVED AND ADOPTED on this the second reading the \_\_\_\_ day of June, 2020.

APPROVED:

\_\_\_\_\_  
Mayor

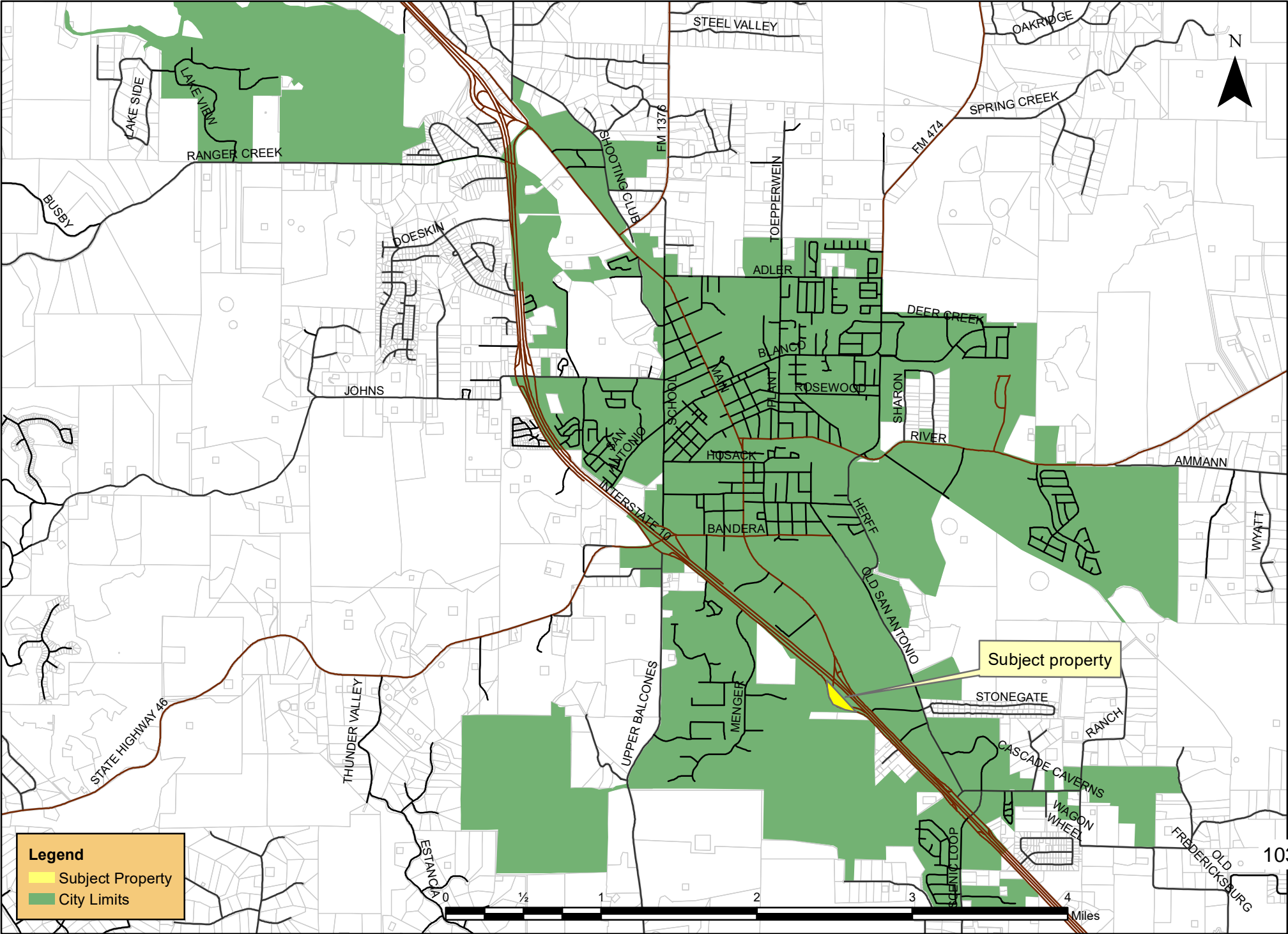
ATTEST:

\_\_\_\_\_  
City Secretary

APPROVED AS TO FORM:

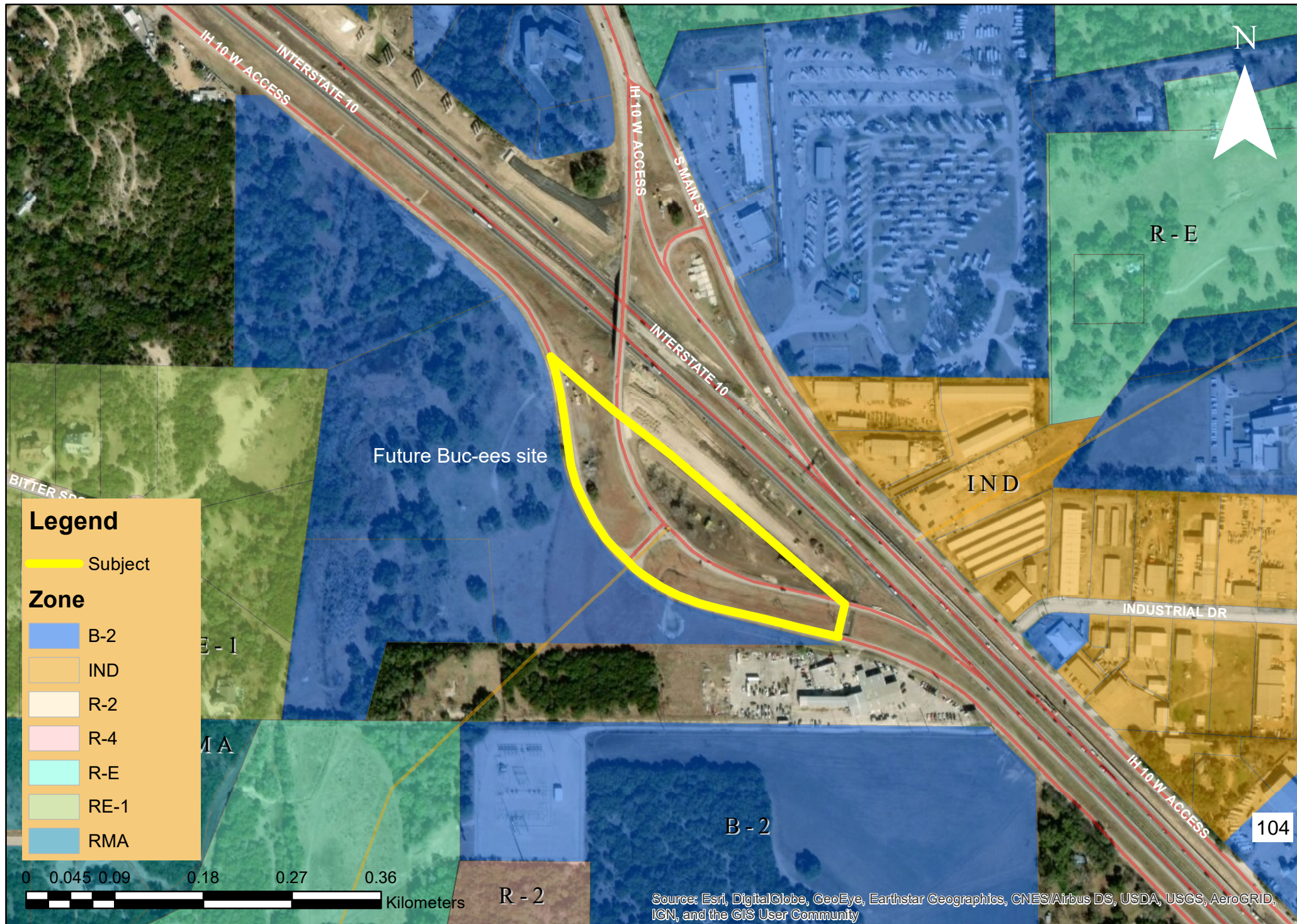
\_\_\_\_\_  
City Attorney

# TXDOT - IH-10





# TXDOT - AREA BEING ZONED





# TXDOT AREA - FUTURE LAND USE MAP



## SECTION 17. B-2 - HIGHWAY COMMERCIAL DISTRICT

- A. **Purposes.** The B-2 districts are located along principal arterial streets, adjacent to other non-residential districts. They are areas suitable for general retail trade and a wide variety of other commercial uses. The district regulations are designed to encourage these uses, while also protecting the abutting and nearby areas.
- B. **Applicability.** This district is applicable in areas where large scale and regional businesses are appropriate, and where the impacts on other more walkable development patterns can be minimized, both in terms of physical design and in terms of uses that have a regional draw. Therefore it should be limited in application to areas with good highway access, and away from areas where smaller-scale, and neighborhood oriented businesses are desired.

C. **Required Lot and Building Dimensions.**

MINIMUM LOT AREA	10,000 square feet
MINIMUM LOT WIDTH	60 feet
MINIMUM FRONT YARD	0 - 20 feet
MINIMUM SIDE YARD	0 feet, if party wall; 5' if not party wall;
MINIMUM REAR YARD	0' - See Combined Commercial Design Standards for rear/side location parking requirements
MAXIMUM BUILDING HEIGHT	75' - See 3.05.001 for Height exceptions – City Council may approve a height over 75' (Ord. No. 2017-03, §1, 1-24-2017)

- D. **Permitted Uses.** The uses permitted in the B-2 district are specified in Table 5-1 as either “permitted” or “conditional” or “restricted”.

E. **Restrictions on Particular Uses.**

1. A trailer court must provide water and sewer service for each unit.
2. Mixed-use Dwelling Units must meet the following specific site and building design standards:
  - a. Each unit, residential and commercial, shall have two clearly distinct areas.
  - b. Each area shall separately and independently meet the required building codes applicable to the intended use for that portion of the building.
  - c. Occupational or vocational uses allowed in the non-living portion may be any non-residential use allowed in the zoning district. The use shall not by reason of noise, odor, or physical operation create any impacts on adjacent lots that are adverse to adjacent uses. Uses with a tendency to create external impacts or visible signs of operation may be further limited in terms of site design or hours of operation in order to minimize potential impacts.
  - d. Required parking shall be based on the greater of the parking required for the non-living area or the living area. (Ord. No. 2012-04, §5, 4-24-2012)
3. Bed and Breakfasts shall meet the restrictions in Article 3, Section 04.

F. **Specific Site and Building Design Standards.**

1. Due to the more compact development pattern, and the important relationship between the design of buildings, sites, open spaces and streetscapes in creating a walkable, mixed-use environment integrated into adjacent neighborhoods, the Combined Commercial Design Standards in Article 3, Section 09 of the Zoning Ordinance shall apply to all lots in the B-2 District.
2. All lots in the B-2 District which are located in the Entrance Corridor Overlay as specified in Article 5, Section 25 of the Zoning Ordinance shall meet the standards of that section.

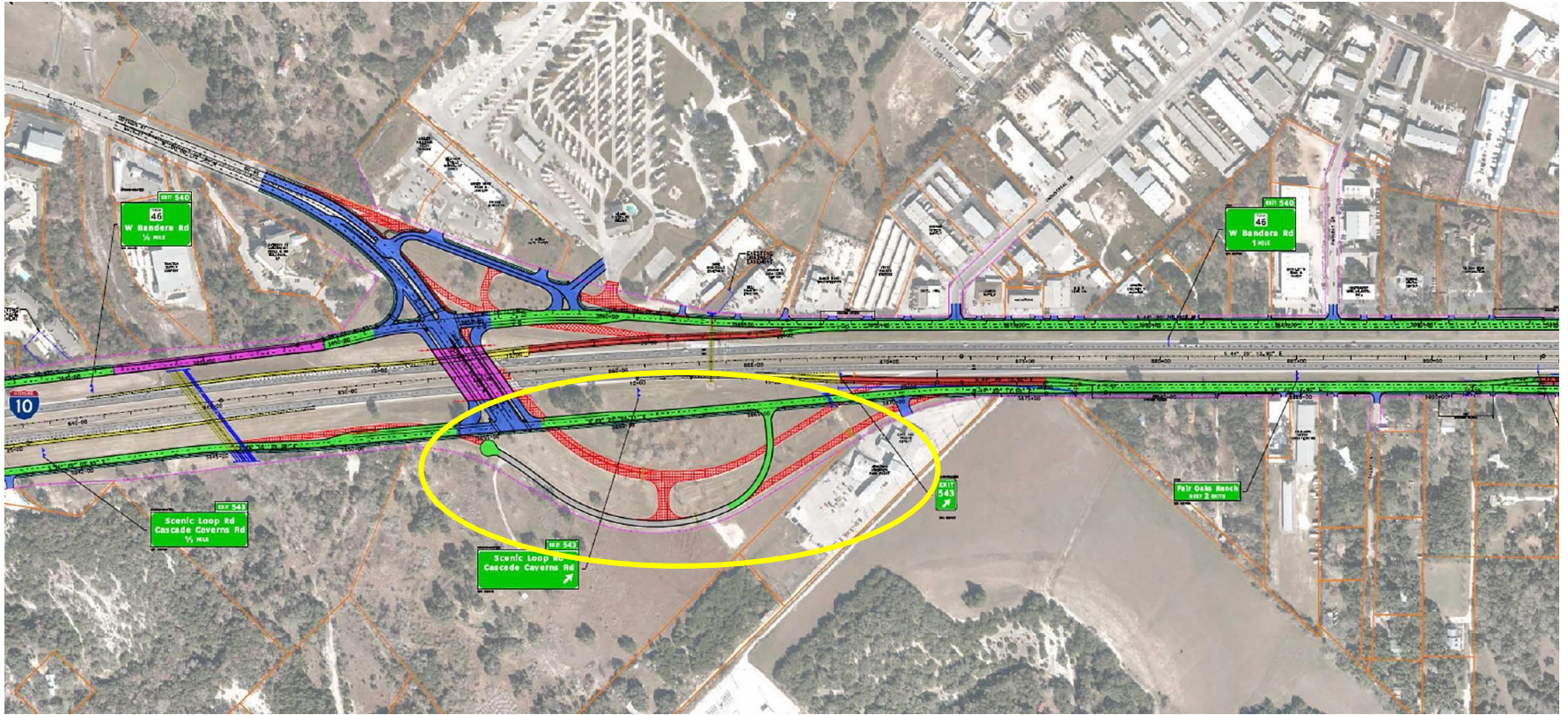


<b>PERMITTED USES BY DISTRICT</b> P= Permitted generally, subject to ordinance standards R= Restricted, subject to specific conditions in this Ordinance CC= Conditional, subject to City Council review and approval L= Limitations as provided in Article 3, Section 18	<b>B-2</b>
<b>Residential Use Category</b>	
<i>Detached Dwelling</i>	P
<i>Duplex Dwelling</i>	
<i>Attached Dwelling</i>	
<i>Multi-Dwelling Structure</i>	CC
<i>Mixed-Use Dwelling</i>	P
<i>Accessory Dwelling</i>	CC
<i>Garden Home</i>	
<i>Community Home</i>	
<i>Personal Care Home</i>	P
<i>Retirement Community</i>	CC
<b>Civic Use Category</b>	
<i>Assembly</i>	CC
<i>Club or Lodge</i>	P
<i>Community Athletic Field</i>	P
<i>Developed Athletic Field or Stadium</i>	CC
<i>Government Facility</i>	CC
<i>Museum or Library</i>	P
<i>School</i>	
<b>Employment Use Category</b>	
<i>Neighborhood Office</i>	P
<i>General Office</i>	P
<i>Major Office or Office Complex</i>	P
<i>Business Park or Campus</i>	CC
<b>Retail Use Category</b>	
<i>Automobile Gas Station</i>	CC
<i>Automobile Gas Station fronting IH-10</i>	P
<i>Automobile Convenience Store</i>	CC
<i>Automobile Convenience Store fronting IH-10</i>	P
<i>Automobile Parts &amp; Parts Sales</i>	P
<i>Automobile Sales</i>	CC
<i>Brew Pub</i>	P
<i>Mobile Food Vendor</i>	P


<b>PERMITTED USES BY DISTRICT</b> P= Permitted generally, subject to ordinance standards R= Restricted, subject to specific conditions in this Ordinance CC= Conditional, subject to City Council review and approval L= Limitations as provided in Article 3, Section 18	<b>B-2</b>
<i>Restaurant (Convenience– non drive-thru)</i>	P
<i>Restaurant (Convenience– drive-thru)</i>	P
<i>Restaurant (Limited)</i>	P
<i>Restaurant (General)</i>	P
<i>Grocery Store</i>	CC
<i>Supermarket Store</i>	CC
<i>Retail (Drive-thru)</i>	P
<i>Retail (Neighborhood)</i>	P
<i>Retail (General)</i>	P
<i>Retail (Major)</i>	CC
<i>Thrift Store (without outside storage/donation bin)</i>	P
<i>Thrift Store (with outside storage/donation bin)</i>	CC
<i>Warehouse Retail</i>	CC
<i>Winery</i>	P
<i>Outdoor Retail Display</i>	P
<i>Outdoor Retail Sales Area</i>	CC
<i>Shopping Center</i>	CC
<b>Service Use Category</b>	
<i>Automobile Rental</i>	P
<i>Automobile Service w/outside storage</i>	CC
<i>Automobile Service w/o outside storage</i>	P
<i>Bank and Financial Institutions</i>	P
<i>Bank Kiosks</i>	P
<i>Bar</i>	P
<i>Barber and Beauty Shop (also see Spa)</i>	P
<i>Bed &amp; Breakfast</i>	R
<i>Bus Terminal</i>	P
<i>Car Wash</i>	P
<i>Day Care Nursery (more than 6 children with or without home occupation)</i>	P
<i>Day Care / Before or After School</i>	P
<i>Day Care / Adult</i>	P
<i>Funeral Home or Mortuary</i>	P
<i>Group Home</i>	L
<i>Gym (Neighborhood)</i>	P

<b>PERMITTED USES BY DISTRICT</b> P= Permitted generally, subject to ordinance standards R= Restricted, subject to specific conditions in this Ordinance CC= Conditional, subject to City Council review and approval L= Limitations as provided in Article 3, Section 18	<b>B-2</b>
<i>Gym (General)</i>	P
<i>Gym (Major)</i>	CC
<i>Health Clinic</i>	P
<i>Hospital</i>	CC
<i>Hotel or Motel</i>	P
<i>Hotel (Boutique)</i>	P
<i>Laundry (Self Service)</i>	P
<i>Long Term Care Facility</i>	P
<i>Medical Office</i>	P
<i>Nightclub</i>	P
<i>Parking Lot or Parking Garage</i>	CC
<i>Pawn Shop</i>	P
<i>Recreational and Entertainment Facility</i>	CC
<i>Spa</i>	P
<i>Theater</i>	P
<i>Trade School</i>	P
<i>Trailer Court</i>	CC
<i>Veterinary Clinic</i>	P
<i>Video or Pinball Arcade</i>	P
<i>Wholesale</i>	CC
<b>Manufacturing and Utility Use Category</b>	
<i>Contractor</i>	CC
<i>Commercial Communication System</i>	CC
<i>Large Vehicle and Machinery Rental, Sales and Service</i>	CC
<i>Manufacturing</i>	CC
<i>Mini-Warehouse.</i>	CC
<i>Utility Station, Sub-station, or Service Center</i>	CC
<b>Agriculture and Natural Resource Use Category</b>	
<i>Plant Nursery</i>	P







	<div style="text-align: center;"><b>AGENDA ITEM SUMMARY</b></div> <div style="border: 1px dashed purple; padding: 5px; float: right;"> <b>District Impacted</b>  <input type="checkbox"/> 1 = Wolosin  <input type="checkbox"/> 2 = Woolard  <input type="checkbox"/> 3 = Scott  <input type="checkbox"/> 4 = Fowler  <input type="checkbox"/> 5 = Macaluso  <input checked="" type="checkbox"/> All </div>
<b>AGENDA DATE</b>	<i>June 9, 2020</i>
<b>DESCRIPTION</b>	CONSIDER RESOLUTION NO. 2020-R41; A RESOLUTION OF THE CITY OF BOERNE, TEXAS ESTABLISHING A CHARTER REVIEW COMMISSION AND APPOINTING MEMBERS TO SERVE ON THE COMMISSION; AND ISSUING THE COMMISSIONS CHARGE.
<b>STAFF'S RECOMMENDED ACTION (be specific)</b>	Approve Resolution No. 2020-R41; Establishing A Charter Review Commission, Appointing Members, And Issuing The Commissions Charge.
<b>CONTACT PERSON</b>	Mayor Tim Handren
<b>SUMMARY</b>	<p>As discussed at a previous City Council meeting, there is a need for the City's Home Rule Charter to be updated. The last update was in 2012 when the City formed Council Districts.</p> <p>It is Mayor Handren's recommendation that a Charter Review Commission be formed to include the following individuals:</p> <p>Lance Pettigrew  Christina Bergmann  Jeff Haberstroh  Stan Leech  Jimmy Locke  Linda Zartler</p> <p>Mayor Handren also is recommending that the commission be given discretion to add two additional members to the commission.</p> <p>The Commission's proposed changes will be on the ballot for the November 3, 2020 election.</p>
<b>COST</b>	na
<b>SOURCE OF FUNDS</b>	na
<b>ADDITIONAL INFORMATION</b>	Current Home Rule Charter with proposed changes; Resolution; City Council Charge to the Commission.

This summary is not meant to be all inclusive. Supporting documentation is attached.

**RESOLUTION NO. 2020-R41**

**A RESOLUTION OF THE CITY OF BOERNE, TEXAS ESTABLISHING A CHARTER REVIEW COMMISSION AND APPOINTING MEMBERS TO SERVE ON THE COMMISSION; AND ISSUING THE COMMISSIONS CHARGE**

**WHEREAS**, it is the desire of City Council to begin the review of the City's Charter to review the operations of city government under the Charter and determine whether revisions should be made; and

**WHEREAS**, it is the desire of the City Council to appoint five (6) citizens to the Charter Review Commission and two (2) additional members to be added at the discretion of the Commission; and

**WHEREAS**, it is the desire of the City Council to issue a Charge to the Charter Review Commission, Exhibit A, to assist the Charter Review Commission in making recommendations to the City Council for consideration by the City Council to be submitted to the voters at an election called for such purpose to be held November 3, 2020;

**NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BOERNE, TEXAS:**

**Section 1.** That the above findings are hereby true and correct and are incorporated herein in their entirety.

**Section 2.** That the Charter Review Commission is charged with the responsibility of reviewing the City Charter and whether revisions should be made for the purpose of making recommendations to the City Council for amendments to be approved by the voters at an election called for such purpose to be held on November 3, 2020.

**Section 3.** That the following shall be appointed to serve on the Charter Review Commission: Lance Pettigrew, Christina Bergmann, Jeff Haberstroh, Stan Leech, Jimmy Locke, Linda Zartler and two additional members to be added at the discretion of the Commission.

**Section 4.** That the City Council requests that the Commission complete their work and present to the City Council a written report on the findings and recommendations by July 14, 2020.

**Section 5.** That this Resolution shall become effective immediately upon approval by the City Council of the City of Boerne, Texas.

PASSED and APPROVED on this the \_\_\_\_ day of June, 2020.

APPROVED:

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Secretary



## City Council Charge to the Charter Review Commission June 9, 2020

**Introduction:** The City Charter is a document prepared by the citizens of the City to provide direction to the City government regarding how the City will function. Periodically, this document must be reviewed to ensure that it is current and that it properly reflects the desires and directions of the community.

**Charge:** The Charter Review Commission is charged as follows:

1. To elect a Chair and Vice-Chair and adopt rules of procedure for the work of the Commission.
2. To establish a schedule and time for meetings, ensuring that the meetings will be open to the public.
3. To review the current City Charter pursuant to the following:
  - a. To bring the Charter into conformance with federal and state law where conflicts or inconsistencies exist.
  - b. To revise the Charter in an effort to clarify sections where confusion or ineffectiveness exists and to condense as necessary or possible.
  - c. To consider all provisions of the Charter as the Charter Review Commission may determine necessary.
  - d. To prepare recommendations, in the form of amendments to the Charter for placement on the November 3, 2020 ballot.
  - e. In order to ensure placement on the November 3, 2020 ballot, the report of recommended amendments should be submitted to the City Council for preparation by the July 14, 2020 City Council Meeting.

**Council and Staff Support:** The Charter Review Commission may call on City Council Members and members of City Staff for advice and expertise as desired. The City Attorney shall provide legal services to the Commission and the City Secretary shall prepare agendas and minutes of the meetings. Once appointed, the Commission will operate independently from Council direction and input.

**Subsequent Council Action:** Following the Charter Review Commission's submission of recommended Charter amendments to the City Council, Council will consider such amendments and will vote to consider which amendments or any others are placed on the ballot for consideration by the electorate.

## **HOME RULE CHARTER**

### **City of Boerne, Texas**

#### Preamble

- I. Form of Government and Powers
- II. Boundaries
- III. The City Council and Mayor
- IV. Elections
- V. Administrative Organization
- VI. Financial Procedures
- VII. Planning and Zoning
- VIII. Public Utilities and Franchises
- IX. Initiative, Referendum, and Recall
- X. General Provisions
- XI. Transitional Provisions



## **PREAMBLE**

We, the citizens of Boerne, Texas, in order to establish a home rule municipal government, provide for the future progress of our City and obtain more fully the benefits of local self-government, do hereby adopt this Home Rule Charter in accordance with the Constitution and statutes of the State of Texas; and do hereby declare the residents of the City of Boerne, in Kendall County, Texas, living within the legally established boundaries of the said City, to be a political subdivision of the State of Texas incorporated forever under the name and style of the "City of Boerne" with such powers, rights and duties as are herein provided.

Definitions?? Council Member, City Official, residence, qualifications, resides, quorum, ....

## **I. FORM OF GOVERNMENT AND POWERS**

### **Section 1.01 Establishment**

The municipal government provided by this Charter shall be known as the "Council-Manager form of Government." Pursuant to its provisions and subject only to the limitations imposed by the State Constitution, the statutes of this State, and this Charter, all powers of the City shall be vested in an elective Council, hereinafter referred to as the "City Council," which shall enact local legislation, adopt budgets, determine policies and appoint the City Manager, who in turn shall be held responsible to the City Council for the execution of the laws and the administration of the government of the City. All powers of the City shall be exercised in the manner prescribed by this Charter, subject to the State Constitution and statutes of the State, or if the manner be not prescribed, then in such manner as may be prescribed by ordinance.

### **Section 1.02 General Powers**

The City shall have all the powers granted to cities by the Constitution and Laws of the State of Texas together with all of the implied powers necessary to carry into execution such granted powers, as fully and completely as though they were specifically enumerated in this Charter; and those express and implied powers necessary for the government, interests, health, welfare and good order of the City and its inhabitants. All such powers, whether express or implied, shall be exercised and enforced in the manner prescribed in this Charter; or when not prescribed herein, in such manner as shall be provided by ordinance of the Council.

### **Section 1.03 Construction of the Charter**

The powers of the City under this Charter shall be construed liberally in favor of the City , and the specific mention of particular powers in the Charter shall not be construed as limiting in any way the general power granted in this article.

#### **Section 1.04 Intergovernmental Relations**

The City of Boerne may exercise any of its powers or perform any of its functions, and may participate in the financing thereof, jointly or in cooperation, by contract or otherwise with the Government of Texas or any agency thereof, or with the Federal Government or any agency thereof, or with the government of any county, city or political subdivision to accomplish any lawful municipal purpose.

#### **Section 1.05 Eminent Domain**

The City shall have the full power and right to exercise the power of eminent domain when necessary or desirable to carry out any of the powers conferred upon it by this Charter or by the Constitution and laws of the State of Texas. The City may exercise the power of eminent domain in any manner authorized or permitted by the Constitution and Laws of this State. The power of eminent domain hereby conferred shall include the right of the City to take the fee in land so condemned and such power and authority shall include the right to condemn public property for such purposes. The City shall have and possess the power of condemnation for any municipal or public purposes even though not specifically enumerated in this Charter.

## **II. BOUNDARIES**

#### **Section 2.01 Boundaries**

The boundaries of the City of Boerne shall be the same as have heretofore been established and as they existed on the day of ratification of this Charter, which boundaries are more fully set out and described by the official city map of the City of Boerne.

#### **Section 2.02 Extension of Boundaries**

Additional territory may be annexed to the City in any manner and by any procedure that may now be provided by law or that may be hereafter provided by law. Same shall be in addition to the following methods:

A. **Annexation by Ordinance.** The Council shall have the power by Ordinance, to annex territory lying adjacent to the City, with ~~or without the consent~~ of the owners or inhabitants

thereof, thereby extending and enlarging the bounds and limits of the City. Such annexation shall be limited and controlled by the Municipal Annexation Act of the State of Texas as the same is now or may hereafter be amended, the same now being Chapters 42 and 43 and Section 212.003 of the Local Government Code (which provide procedures for municipal annexation, for establishment of extraterritorial jurisdiction, notice and hearing for annexation proceedings, limitations on annexation and the extension of the City's subdivision regulations into its extraterritorial jurisdiction).

B. **Annexation by Petition.** The owner or owners of any land contiguous or adjacent to the City may, by petition in writing to the City Council, request the annexation of said land, describing it by metes and bounds. The City Council shall thereafter hear such petition and the arguments for and against the same and grant or refuse such petition as the City Council may see fit. If the City Council grants such petition, it may by proper ordinance, under such procedural rules as may be prescribed by law, receive and annex such territory as a part of the City.

C. **Annexation by Election.** The City Council shall have the power to order an election or elections for the purpose of annexing territory lying adjacent to the City of Boerne. Such order shall include the survey notes of the area sought to be annexed. The City Council shall give notice of the date and place of balloting at such election by publication of the order in the official newspaper of the City at least thirty days prior to the date on which such election is ordered **on uniform election dates, or in accordance with State Law.** The residents of the territory sought to be annexed, who are qualified to vote for members of the State Legislature, shall be qualified to vote at such election. The City Council shall, at its next meeting, canvass the return of such election and if a majority of the votes cast at such election by the residents of said territory being considered for annexation, favor such annexation, the Council may declare the said territory annexed to the City of Boerne and the boundary limits of the City of Boerne shall thereafter be extended and fixed so as to include such territory.

### **Section 2.03 Disannexation**

Any area hereafter annexed under this Charter and the law of this State may be disannexed only under the authority of and by the procedure set out in Section 43.141 et seq. of the Local Government Code.

## **III. THE CITY COUNCIL AND MAYOR**

### **Section 3.01 General Powers and Duties**

All powers of the City shall be vested in the City Council, except as otherwise provided by law or this Charter, and the Council shall provide for the exercise thereof and for the performance of all duties and obligations imposed on the City by law.

### **Section 3.02 Number, Selection, and Term (*as amended by voters, May 12, 2012*)**

The City Council shall be composed of the Mayor and five (5) Council Members each serving ~~two (2)~~ **three (3)** year terms. Each Council Member shall qualify and be elected by District, such Districts being numbered one (1) through five (5). Each Council Member shall be elected only by the voters residing in the area represented by the District to which the candidate seeks to be elected. Every registered voter in the City shall be entitled to vote for one candidate for Council Member for the area represented by the District in which the registered voter resides. Every registered voter in the City shall also be entitled to vote for one candidate for Mayor without regard to the District in which the voter resides.

### **Section 3.03 Qualifications (*as amended by voters, May 12, 2012*)**

The Mayor and each Council Member must, at the time of taking office, have attained the age of 21 years and be a qualified voter. The Mayor must have been a resident of the City for at least twelve (12) consecutive months, and each Council member must have been a resident for at least six (6) consecutive months **of the district sought and must be a qualified voter by last day to file for a place on the ballot per Election Code 141.**

### **Section 3.04 Judge of Qualifications**

The City Council is the final judge of all elections and the qualifications of its members and of any other elected officials of the City.

### **Section 3.05 Compensation**

Members of the City Council shall serve with such compensation as may be determined by the Council. An increase in compensation shall not be effective until the date of commencement of terms of office of the Council members or Mayor elected at the next scheduled regular election. The policy regulating payment of expenses incurred in performance of official duty shall be determined by the Council.

### **Section 3.06 Mayor**

The Mayor shall be the presiding officer of the City Council and shall be recognized as the head of the City government for all ceremonial purposes and by the governor for purposes of military law. **The Mayor is a member of the City Council and is considered as part of the quorum.** The Mayor may debate and discuss any matters before the Council but may vote only in the event of a tie. He shall, when authorized as necessary by the Council, sign all official documents. The Mayor shall appoint, with the advice and consent of the Council, the members of citizen advisory boards and commissions, whose conditions of membership shall have been set previously by ordinance **or resolution.**

The Mayor shall sign all ordinances and resolutions; except that he may veto any such ordinance or resolution by failing to sign it and by filing written objection to it with the City



Secretary not later than the third (3rd) day after the date of passage of the same, excluding Saturday, Sunday and legal holidays provided by national, state or local law. The ordinance or resolution so vetoed must be reconsidered at the next regular meeting of the Council, at which time a four-fifths affirmative vote of the entire Council membership, excluding the Mayor, shall constitute enactment.

### **Section 3.07 Mayor Pro-Tem**

The Mayor Pro-Tem shall be a Council member elected by the Council at the first regular Council meeting **after taking the oath of office**, following each regular City election. The Mayor Pro-Tem shall act as Mayor during the absence or disability of the Mayor and when acting in this capacity he shall retain the right to vote.

### **Section 3.08 Vacancies; Forfeiture of Office; Filling of Vacancies**

A. **Vacancies.** The office of a Council member or Mayor shall become vacant upon the member's death, resignation, removal from office or forfeiture of office in any manner authorized by law.

B. **Forfeiture of Office.** A Council member or the Mayor shall forfeit that office if that person:

1. lacks at any time during the term of office for which elected any qualification for the office prescribed by this Charter or by law,
2. violates any express prohibition of this Charter,
3. is convicted of a crime involving moral turpitude,
4. ceases to be a resident of the city, **or ceases to be a resident of the represented District,**
5. fails to attend three consecutive regular meetings of the Council without being excused by the Council.

C. **Filling of Vacancies.** When a vacancy occurs in the City Council, the remaining members of the Council shall, within thirty (30) days, appoint a qualified person to fill the unexpired term. At no given time shall two (2) appointed Council members serve on the Council. In the case where a vacancy has been filled by the Council prior to a subsequent vacancy or vacancies, the Council shall call a special election ~~within thirty (30) days from the date the last vacancy occurred, to be held within forty-five (45) days thereafter, unless otherwise provided by law,~~ **at the next uniformed election date, or in accordance with state law** for the purpose of

electing the successor or successors to the office or offices vacated.

### **Section 3.09 Prohibitions**

A. **Holding Other Office.** Except where authorized by law, no Council member shall hold any other elected public office during the term for which the member was elected to the Council. No Council member shall hold any other City office or City employment during the term for which the member was elected to the Council. No former Council member shall hold any compensated appointive office, contract or employment with the City until one year after the expiration of the term for which the member was elected to the Council. Nothing in this section shall be construed to prohibit the Council from selecting any current or former Council member to represent the City on the governing board of any regional or other intergovernmental agency.

B. **Appointments and Removals.** Neither the City Council nor any of its members shall in any manner control or demand the appointment or removal of any City administrative officer or employee whom the City Manager or any subordinate of the City Manager is empowered to appoint, but the Council may express its views and fully and freely discuss with the City Manager anything pertaining to appointment and removal of such officers and employees.

C. **Interference with Administration.** Except for the purpose of inquiries and investigations under Section 3.12, the Council or its members shall deal with City officers and employees who are subject to the direction and supervision of the City Manager solely through the City Manager, and neither the Council nor its members shall give orders to any such officer or employee, either publicly or privately.

### **Section 3.10 Meetings and Procedures**

A. **Regular and Special Meetings.** The Council shall meet at least once each month at a time and place which the Council may prescribe by rule. Special meetings may be called by the Mayor on his own motion. On application of three (3) Council members, the Mayor shall call a special meeting. Notice of the date, place, time and subject of each meeting shall be in accordance with State Law.

B. The Council shall by resolution determine its own rules and order of business. Provision shall be made for the taking of minutes, which shall be a public record. Three Council members shall constitute a quorum.

### **Section 3.11 Ordinances**

A. **Passage.** Ordinances shall be introduced to the City Council only in written or printed form. The subject or subjects of all ordinances shall be clearly expressed in the title. Except as may otherwise be prescribed in this Charter, an ordinance shall not be finally passed at the meeting of the Council at which it is first introduced, but it shall then be read, and the Council will determine whether it shall be rejected or further considered at a subsequent meeting of the

Council. If rejected, no further action shall be required. Upon second reading, the ordinance may be adopted and enacted. The affirmative vote of three or more members of the Council is required to enact any ordinance.

During the first reading of an ordinance, the Council may determine that the first reading is sufficient for adequate consideration. A motion for first and only reading of an ordinance may be made and passed upon the affirmative vote of four-fifths (4/5) of the entire Council membership, excluding the Mayor. The Council may then proceed to vote, pass, and adopt the ordinance on the first reading.

B. **Enacting Clause.** The enacting clause of all ordinances shall be "BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BOERNE, TEXAS;" and every ordinance shall be authenticated by the signature of the Mayor or Mayor Pro-Tem and the City Secretary.

C. **Penal and Franchise Ordinances.** Caption or title and penalties of every ordinance imposing any penalty, fine, or forfeiture shall, as soon as practical after passage thereof, be published one (1) time in the official newspaper(s) of the City of Boerne. All ordinances granting, confirming, extending, renewing, or amending a franchise shall be accepted in writing by the grantees and shall be published as otherwise provided in this Charter.

D. **Codification of Ordinances.** The City Council shall have the power to cause the ordinances of the City to be corrected, amended, revised, codified and printed in code form as often as the Council deems advisable, and such printed code, when adopted by the Council, shall have full force and effect without the necessity of publishing the same or any part thereof in a newspaper. All printed ordinances or codes of ordinances shall be admitted as evidence in all courts without proof, and shall have the same force and effect as did the original ordinance.

### **Section 3.12 Council Investigations**

The Council shall have the power to inquire into the official conduct of any department, agency, appointed boards, office, officer, employee or appointed board members of the City. For this purpose, the Council shall have the power to administer oaths, subpoena witnesses, compel the production of books, papers, and other evidence material to the inquiry. The Council shall provide, by ordinance, penalties for contempt in failing or refusing to obey any such subpoena or to produce any such books, papers or other evidence. The Council shall have the power to punish any such contempt in the manner provided by such ordinance.

## **IV. ELECTIONS**

### **Section 4.01 Elections**

The regular City election shall be held annually on the first Saturday in May or at such other times as may be specified by State Law, at which time officers will be elected to fill those offices which become vacant that year. The City Council shall fix the place for holding such election. The City Council may, by ordinance or resolution, order a special election, **upon an available uniformed election date, or in accordance with State law**, fix the date and place for holding same, and provide all means for holding such special election. Notice of the election shall be published in a newspaper of general circulation of the City of Boerne, such publication to follow the requirements of the Election Code and any applicable law.

#### **Section 4.02 Regulation of Elections**

All elections shall be held in accordance with the laws of the State of Texas regulating the holding of municipal elections and in accordance with the ordinances adopted by the City Council for the conduct of elections. ~~The City Council shall appoint the election judges and other election officials.~~ **Judges are appointed by the Election Authority.**

#### **Section 4.03 Filing for Office**

Any person having the qualifications set forth for Council members under Section 3.03 of this Charter shall have the right to file an application to have his name placed on the official ballot as a candidate for any elective office **in accordance with the Election Code**, ~~and such application in writing signed by such candidate, filed with the City Secretary not less than forty five (45) days prior to the date of election, shall entitle such applicant to a place on the official ballot.~~

#### **Section 4.04 Official Ballot**

The names of all candidates for office, except such as may have withdrawn, died or become ineligible, shall be printed on official ballots without party designations in the order determined in a drawing of lots (for each position) conducted by the City Secretary. All official ballots shall be prepared and printed in accordance with the Election Code and any other applicable law. Early voting shall be governed by the general election laws of the State of Texas.

#### **Section 4.05 Candidates Elected (*as amended by voters, May 12, 2012*)**

A. The candidate in the regular City election who receives the greatest number of votes cast for the office of Mayor shall be declared elected. In the event of a tie vote between the candidates receiving the highest number of votes cast for the office of Mayor, the City Council shall **not later than the 5<sup>th</sup> day after canvass** ~~within five (5) days~~ order a special election between the tied candidates to be held not earlier than the 20th day or later than the 30th day after the date the canvass of the main election is completed **or as prescribed by state law**.

B. The candidate for an area represented by District number in the regular City election who received the greatest number of votes cast for the Council place shall be declared elected. In the event there is a tie vote between candidates for the Council district, the City

Council shall within five (5) days order a special election between the tied candidates to be held not earlier than the 20<sup>th</sup> day or later than the 30<sup>th</sup> day after the date the canvass of the main election is completed.

## **V. ADMINISTRATIVE ORGANIZATION**

### **Section 5.01 City Manager ....include wording about contract under B?**

A. **Appointment and Qualifications.** The City Council shall appoint a City Manager who shall be the chief administrative and executive officer of the City and shall be responsible to the City Council for the administration of all the affairs of the City. He shall be chosen by the City Council solely on the basis of his executive and administrative training, experience and ability. No member of the City Council shall, during the term to which he is elected and for one year thereafter, be appointed City Manager.

B. **Term and Compensation.** The City Manager shall not be appointed for a definite term but may be removed at the will and pleasure of the City Council by a four-fifths (4/5) vote of the entire Council, excluding the Mayor. The action of the City Council in suspending or removing the City Manager shall be final, it being the intention of this Charter to vest all authority and fix all responsibility of such suspension or removal in the City Council. The City Manager shall receive compensation as may be fixed by the Council.

C. **Powers and Duties.** The City Manager shall have the following powers and duties:

1. He shall appoint and, when he deems it necessary for the good of the City, suspend or remove all City employees and appointive administrative officers provided for by or under this Charter, except as otherwise provided by law, this Charter, or personnel rules adopted pursuant to this Charter. He may authorize any administrative officer who is subject to his direction and supervision to exercise these powers with respect to subordinates in that officer's department, office or agency.
2. He shall direct and supervise the administration of all departments, officers, and agencies of the City, except as otherwise provided by this Charter or by law.
3. He shall attend all Council meetings, except when excused by the Mayor or Mayor Pro-Tem, and shall have the right to take part in discussion but may not vote.
4. He shall see that all laws, provisions of this Charter and acts of the Council, subject to enforcement by him or by officers subject to his direction and supervision, are faithfully executed.
5. He shall prepare and submit the annual budget and capital program to the Council.



6. He shall ensure that the City Master Plan is maintained and all changes approved by the City Council.
7. He shall submit to the Council and make available to the public a complete report on the finances and administrative activities of the City as of the end of each fiscal year.
8. He shall make such other reports as the Council may require concerning the operations of the City departments, offices and agencies subject to his direction and supervision.
9. He shall keep the Council fully advised as to the financial condition and future needs of the City and make such recommendations to the Council concerning the affairs of the City as he deems desirable.
10. He shall keep a written inventory of all real property and all permanent equipment belonging to the City, said inventory to be subject to annual audit. A system shall be established to control the use and replacement of expendable items.
11. He shall perform such other duties as are specified in this Charter or may be required by the Council.

D. **Acting City Manager.** By letter filed with the City Secretary the City Manager shall designate, subject to approval of the Council, a qualified City Administrative Officer to exercise the powers and perform the duties of City Manager during his temporary absence or disability. The Council may revoke such designation at any time and appoint another officer of the City to serve until the City Manager shall return or his disability shall cease.

## **Section 5.02 Other Departments, Offices, and Agencies**

### **A. General Provisions.**

- (a) **Creation of Departments.** The Council may continue or establish City departments, offices or agencies in addition to those created by this Charter and may prescribe the functions of all departments, offices and agencies, except that no function assigned by this Charter to a particular department, office or agency may be discontinued or, unless this Charter specifically so provides, assigned to another department.
- (b) **Direction by City Manager.** All departments, offices and agencies under the direction and supervision of the City Manager shall be administered by an officer appointed by and subject to the direction and supervision of the City Manager.

With the consent of Council, the City Manager may serve as the head of one or more such departments, offices or agencies or may appoint one person to serve as the head of two or more of them.

B. **City Attorney.** The City Council shall appoint a City Attorney for an indefinite term and fix his compensation. The City Attorney must be a member of the State Bar of Texas. He shall serve as chief legal advisor to the City Council, the City Manager, supervisors of City departments and other City officers and agencies. He shall represent the City in all legal proceedings and shall perform any other duties prescribed by this Charter, ordinance or State Laws. The City Manager with the consent of Council may retain an attorney when the City Attorney is absent or as other circumstances require.

C. **Municipal Court; Judge(s).** The Council shall establish a municipal court and shall appoint a presiding judge(s) of the municipal court of the City of Boerne and any such other associate judge(s) as are deemed necessary and fix the compensation. The person(s) so appointed as the presiding judge shall be a member of the State Bar of Texas. Sessions of the municipal court shall be held at such times as the City Council may determine after considering recommendations as to the times for such sessions submitted by the judge(s) of the municipal court. The dates of such court sessions and each change thereto shall be filed with the City Secretary. The judge(s) of the municipal court shall serve at the will and pleasure of the City Council, unless otherwise provided by law.

D. **City Secretary.** The City Manager shall appoint the City Secretary and such Assistant City Secretaries as needed. The City Secretary, or an Assistant City Secretary, shall give notice of Council meetings, shall keep the minutes of the proceedings of such meetings, shall authenticate by signature and record in full in a book kept and indexed for the purpose, all ordinances and resolutions, and shall perform such other duties as the City Manager shall assign and those elsewhere provided for in this Charter. The City Secretary shall be responsible for responding to any requests for information concerning the Charter and or any State laws or regulations cited herein.

### **Section 5.03 Personnel Rules**

The City Manager shall be responsible for the preparation of personnel rules, which rules shall be submitted by him to the Council. The Council may accept and adopt such rules as proposed or may adopt them with such amendments as the Council deems necessary or may reject them in their entirety and direct the City Manager to further consider the rules and present new proposals at a subsequent meeting.

### **Section 5.04 Freedom From Interference**

It shall be unlawful for the City Council or any of its members to dictate to the City Manager the appointment of any person to office or employment. The City Council or its members will not

interfere in any manner with the City Manager in the performance of the duties of that office or prevent him from exercising his own judgement in the appointment of officers and employees whose employment, appointment, and supervision are reserved by this Charter for the City Manager. Except for the purpose of inquiry, the City Council and its members shall deal with the City Staff solely through the City Manager, and neither the Council nor any member not having administrative or executive functions under this Charter shall give orders to any of the subordinates of the City Manager, either publicly or privately.

## **VI. FINANCIAL PROCEDURES**

### **Section 6.01 Fiscal Year**

The fiscal year of the City shall begin on the first day of October and end on the last day of September.

### **Section 6.02 Preparation and Submission of Budget**

The City Manager shall submit a proposed budget containing a complete financial plan for each fiscal year. Such a budget shall be submitted to the City Council **not more than one hundred twenty (120) days but not less than sixty (60) days prior to the beginning of each fiscal year.** The budget shall contain the following: *(New legal requirement for tax rate may impact this)*

- (a) A brief budget message which shall outline the proposed financial policies of the City for the fiscal year, shall set forth the reasons for any major changes in expenditure and revenue items from the previous fiscal year, and shall explain any major change in financial policies.
- (b) Revenue Summary
- (c) Departmental Expenditure Summary
- (d) Departmental Budget
- (e) Schedule of Outstanding Bonded Debt
- (f) Schedule of Capital Outlays by Department
- (g) Review of Property Valuations
- (h) An Analysis of Tax Rates

- (i) Tax Levies and Tax Collection by Year for the Last Three (3) Years
- (j) A Provision for Financing the Current Capital Improvement Program

In preparing the budget, the City Manager shall place in parallel columns opposite the several items of revenues and expenditures, the actual amount of each item for the last complete fiscal year, the estimated amount for the current fiscal year, and the proposed amount for the ensuing fiscal year.

### **Section 6.03 Council Action on Budget**

A. **Notice of Hearings.** The Council shall have published in the official newspaper(s) of the City a notice stating:

- (1) The time and place where copies of the budget are available for inspection by the public, and
- (2) The time and place, not less than two (2) weeks after such publication, for a public hearing on the budget.

B. **Amendment Before Adoption.** After the public hearing, the Council may adopt the budget with or without amendment. In amending the budget, it may add or increase programs or amounts and may delete or decrease any programs or amounts, except expenditures required by law or for debt service, provided that no amendment to the budget shall increase expenditures to an amount greater than the estimated income.

C. **Adoption.** The Council shall adopt the budget **on or before the 20th day of the last month of the fiscal year currently ending.** If it fails to adopt the budget by this date, the amounts appropriated for current operation for the current fiscal year shall be deemed adopted for the ensuing fiscal year on a month-to-month basis, with all items in it pro-rated accordingly, until such time as the Council adopts a budget for the ensuing fiscal year. Adoption of the budget shall constitute appropriations of the amounts specified therein as expenditures from the funds indicated and shall constitute a levy of the property tax therein proposed. *(see previous note regarding new tax requirement.)*

### **Section 6.04 Budget Amendments after Adoption**

A. **Supplemental Appropriations.** If, during the fiscal year, the City Manager certifies that there are available for appropriation revenues in excess of those estimated in the budget, the Council may make supplemental appropriations for the year up to the amount of such excess.

B. **Emergency Appropriations.** To meet a public emergency affecting life, health, property or the public peace, the Council may make emergency appropriations. To the extent that there are no available unappropriated revenues to meet such appropriations, the Council may by such ordinance authorize the issuance of emergency notes, which may be renewed as necessary.

C. **Reduction of Appropriations.** If at any time during the fiscal year it appears probable to the City Manager that the revenues available will be insufficient to meet the amount appropriated, he shall report to the Council without delay, indicating the estimated amount of the deficit, any remedial action taken by him and his recommendations as to any other steps to be taken. The Council shall then take such further action as it deems necessary to prevent or minimize any deficit and for that purpose it may reduce one or more appropriations.

D. **Transfer of Appropriations.** At any time during the fiscal year the City Manager may transfer part or all of any unencumbered appropriation balance among programs within a fund department, office or agency and, upon written request by the City Manager, the Council may transfer part or all of any unencumbered appropriation balance from one fund department, office or agency to another.

E. **Limitations; Effective date.** No appropriation for debt service may be reduced or transferred, and no appropriation may be reduced below any amount required by law to be appropriated or by more than the amount of the unencumbered balance thereof. The supplemental and emergency appropriations and reduction or transfer of appropriations authorized by this section may be made effective immediately upon adoption.

#### **Section 6.05 Balanced Budget**

The total of proposed expenditures shall not exceed the total of estimated income.

#### **Section 6.06 Lapse of Appropriations**

Every appropriation, except an appropriation for a capital expenditure, shall lapse at the close of the fiscal year to the extent that it has not been expended or encumbered. An appropriation for a capital expenditure shall continue in force until the purpose for which it was made has been accomplished or abandoned; the purpose of any such appropriation shall be deemed abandoned if three (3) years pass without any disbursement from or encumbrance of the appropriation.

#### **Section 6.07 Payments and Obligations Prohibited**

No payment shall be made or obligation incurred against any allotment or appropriation unless the City Manager or his designee first certifies that there is a sufficient unencumbered balance in such allotments or appropriations and that sufficient funds therefrom are or will be available to cover the claim or meet the obligation when it becomes due and payable. Any



authorization of payment or incurring of obligation in violation of the provisions of this Charter shall be void and any payment so made illegal. Such action shall be cause for removal of any officer who knowingly authorized or made such payment or incurred such obligation, and he shall also be liable to the City for any amount so paid. However, except where prohibited by law, nothing in this Charter shall be construed to prevent the making or authorizing of payments or making of contracts for capital improvements to be financed wholly or partly by the issuance of bonds or to prevent the making of any contract or lease providing for payments beyond the end of the fiscal year, provided that such action is made or approved by ordinance.

#### **Section 6.08 Purchase Procedure**

The Council may by ordinance confer upon the City Manager general authority to contract for expenditures without further approval of the Council for all budgeted items **as allowed by state law**, ~~not exceeding fifteen thousand dollars (\$15,000.00)~~. All contracts for expenditures involving **amounts larger than permitted by law** ~~more than fifteen thousand dollars (\$15,000.00)~~ must be expressly approved in advance by the Council.

#### **Section 6.09 General Obligation Debt**

The City shall have the power to borrow money on the credit of the City for any public purpose not prohibited and as provided by the Constitution and Laws of the State of Texas.

#### **Section 6.10 Revenue Bonds**

The City shall have the power to borrow money for the purpose of constructing, purchasing, improving, extending or repairing of public utilities, recreational facilities or any other self-liquidating municipal function as provided and not prohibited by the Constitution and Laws of the State of Texas and to issue bonds to evidence the obligation created thereby. Such bonds shall be a charge upon and payable solely from the properties, or interest therein pledged, or the income therefrom or both. The holders of the revenue bonds shall never have the right to demand payment thereof out of monies raised or to be raised by taxation. All such bonds shall be issued in conformity with the Laws of the State of Texas.

#### **Section 6.11 Audit of City Books and Accounts**

The City Council shall appoint a Certified Public Accountant to make a complete audit of the books and accounts of every City Department at the close of every fiscal year and present his report to the City Council. Such audit report shall be filed with the City Secretary and shall be available for public inspection.

## **VII. PLANNING AND ZONING**

### **Section 7.01 Planning and Zoning Commission**

Consistent with all applicable Federal and State laws with respect to land use, development and environmental protection, the City Council shall:

1. Establish a Planning and Zoning Commission to carry out the planning function and such decision-making responsibilities as may be specified by ordinance;
2. Adopt a comprehensive plan and determine to what extent zoning and other land use control ordinances must be consistent with the plan; and
3. Adopt development regulations, to be specified by ordinance, to implement the plan.

## **VIII. PUBLIC UTILITIES AND FRANCHISES**

### **Section 8.01 Powers of the City**

The City of Boerne shall have the full power, to the extent the same is conferred by the Constitution and Laws of the State of Texas, to own, lease, operate, prohibit, regulate and control any public utility within or without the limits of the City and to provide for the compensation and rental to be paid to the City by any public utility for the use of its streets, highways and public areas.

In addition to the City's power to buy, construct, lease, maintain, operate, and regulate public utilities and to manufacture, distribute, and sell the output of such utility operations, the City shall have such regulatory and other powers as may now or hereafter be granted under the Constitution and Laws of the State of Texas.

### **Section 8.02 Board of Directors**

The City Council shall be and act as the Board of Directors of all utilities owned and operated by the City.

**Section 8.03 Franchises** (Need legal advice, cities no longer carry franchise agreements for utilities.)

The City Council shall have power by ordinance to grant, renew and extend all franchises of public utilities of every character operating within the City and for such purposes is granted full power. The term "public utility" as used herein is construed to mean any person, firm or corporation furnishing to the public any general public service, including, but not limited to heat, light, power, telephone service, communication services, community antenna or cable television service, sewer service and the treatment thereof, water, wrecker service, the carrying of passengers for hire, or any other public service whereby a right to, in part, appropriate or use the streets, highways, or other property of the City, as necessary or proper is granted. ~~Any ordinance granting, renewing or extending franchises shall not take effect until at least thirty (30) days after its passage; and during such thirty (30) day period the descriptive caption of the ordinance shall be published at least twice in the official newspaper(s) of the City, the expense of the publication being borne by the proponents of the franchise.~~ (Need legal advice, cities no longer carry franchise agreements for utilities.)

#### **Section 8.04 Franchise Value Not to be Allowed**

Franchises granted by the City under this Charter shall be considered to be of no value in fixing reasonable rates and charges for utility service within the City, and in determining the just compensation to be paid by the City for public utility property which the City may acquire by condemnation or otherwise.

#### **Section 8.05 Right of Regulation**

All grants, renewals, extensions, or amendments of public utility franchises, whether so provided in the ordinance or not, shall be subject to the right of the City Council:

- (a) To repeal the same by ordinance at any time upon the failure of the grantee to comply with the terms of the franchise, the ordinance, this Charter, any applicable statute of the State of Texas, or the rule of any applicable governmental body, such power to be exercised only after written notice to the franchise holder stating wherein the franchise holder has failed to comply with the terms of the franchise, and if said default is not cured within a reasonable time such power shall be exercised only after the grantee has been given the opportunity for hearing.
- (b) To establish reasonable standards of service and quality of products and prevent unjust discrimination in service or rates.
- (c) To require such expansion, extension, and improvements of plants and facilities as are necessary to provide adequate service to the public; and to require that maintenance of facilities be performed at the highest reasonable standard of efficiency.

- (d) To prescribe the accounts and accounting system to be used by a franchise holder so that they will accurately reflect the value of the property used in rendering its service to the public; and the expenses, receipts, and profits of all kinds of such franchises. (It shall be deemed sufficient compliance with this paragraph if the franchisee keeps its accounts in accordance with the uniform system established by an applicable Federal or State agency for such service.) To examine and audit, at any reasonable time during regular business hours, the accounts and other records of any franchise holder; and to require annual and other reports including reports on operations within the City of Boerne.
- (e) To impose such reasonable regulations and restrictions as may be deemed desirable or conducive to the health, safety, welfare, and accommodation of the public.
- (f) To require such compensation and rental as may be permitted by the Laws of the State of Texas.
- (g) To require that the franchise holder restore to the applicable City standards at that time, at his expense, all public and private property damaged or destroyed by construction, maintenance, or removal by such franchise holder.

#### **Section 8.06 Extensions**

All extensions of public utility service shall become a part of the aggregate property of the public utility, shall be operated as such, and shall be subject to all the obligations and reserved rights contained in this Charter. The extension of any public utility shall be considered as a part of the original grant and shall be terminable at the same time and under the same conditions as the original grant.

#### **Section 8.07 Other Franchise Conditions**

All franchises heretofore granted are recognized as contracts between the City of Boerne and the grantee, and the contractual rights as contained in any such franchise shall not be impaired by the provisions of this Charter, except that the power of the City to exercise the right of eminent domain in the acquisition of any utility property is in all things reserved; and except that the general power of the City, heretofore existing and herein provided for to regulate the rates and services of a grantee, shall include the right to require proper and adequate extension of plant and service and the maintenance of the plant and equipment at the highest reasonable standard of efficiency. All franchises hereafter granted shall be held subject to all terms and conditions contained in the various sections of this article whether or not such terms are specifically mentioned in the franchise.

## **Section 8.08 Regulation of Rates and Service**

The City Council **subject to State and Federal laws** shall have full power, after due notice and hearing, to regulate by ordinance the rates, charges, and fares of every public utility franchise holder operating in the City. Every franchise holder who shall request an increase in rates, charges or fares shall have, at a hearing of the Council called to consider such request, the burden of establishing by clear, competent, and convincing evidence the value of its investment property allocable to service in the City, the amount and character of its expenses and revenues connected with the rendering of such service, and any additional evidence required by the Council. If no agreement between the Council and the franchise holder can be reached on such request for an increase in rates, charges, or fares, the Council may select and employ rate consultants, auditors and attorneys to investigate and, if necessary, litigate such request. The franchise holder shall reimburse the City for its reasonable and necessary expenses so incurred and may be allowed to recover such expenses through its rates during the period of recovery if authorized to do so by the City Council.

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## **Section 8.09 Accounts of City-Owned Utilities**

Accounts shall be kept for each public utility owned or operated by the City in such manner as to show the true and complete financial results of each such City ownership and operation. The accounts shall show the actual capital cost to the City of each public utility owned, the cost of all extensions, additions, and improvements; and the source of the funds expended for such capital purposes. The accounts shall also show all assets and all liabilities of each utility appropriately subdivided by classes, depreciation reserve, other reserves and surplus, and revenues, operating expenses including depreciation, interest payments, rentals, and other disposition of annual income including the cost of any service furnished to any other City department. The City Council shall annually cause an audit report to be made, by a Certified Public Accountant, of such accounts.

## **Section 8.10 Sale of City-Owned Utilities**

Prior to the consideration of a sale of the City's city-owned electric utility, the City Council shall hold a public hearing during which the City's financial advisor shall present a report to the City Council concerning the revenue that has been earned by the City's city-owned electric utility throughout the City's ownership thereof, and an analysis of the revenue to be lost by the City through the proposed sale of the electric utility.

There shall be two (2) Council votes twelve (12) months apart to call a referendum election concerning the sale of the electric utility. The City shall then hold a referendum election which must be favorably passed by a majority of the voters voting at the election.

## **IX. INITIATIVE, REFERENDUM, AND RECALL**



## Section 9.01 General Authority

A. **Initiative.** The registered voters of the City shall have power to propose ordinances to the Council. If the Council fails to adopt an ordinance so proposed without any change in substance, the qualified voters shall have the power to adopt or reject it at a City election, provided that such power shall not extend to the budget or capital program or any ordinance relating to appropriation of money, levy of taxes or salaries of City officers or employees or any ordinance relating to the issuance and sale of bonds.

B. **Referendum.** The registered voters of the City shall have power to require reconsideration by the Council of any adopted ordinance. If the Council fails to repeal an ordinance so reconsidered, the registered voters shall have the power to approve or reject it at a City election, provided that such power shall not extend to the budget or capital program or any emergency ordinance or ordinance relating to appropriation of money or levy of taxes.

C. **Recall.** The registered voters of the City shall have the power to petition for recall of the Mayor or any member of the City Council.

## Section 9.02 Commencement of Proceedings; Petitioners' Committee; Affidavit

Any ~~ten (10) ?~~ registered voters may commence initiative, referendum, or recall proceedings by filing with the City Secretary an affidavit stating they will constitute the petitioners' committee and be responsible for circulating the petition and filing it in proper form, stating their names and addresses and specifying the address to which all notices to the committee are to be sent and setting out in full the proposed initiative ordinance or citing the ordinances sought to be reconsidered, or the name of the Council member or Mayor to be recalled. Within five (5) working days after the affidavit of the petitioners' committee is filed with the City Secretary, he shall issue the appropriate petition blanks to the petitioners' committee.

## Section 9.03 Petitions

A. **Number of Signatures.** Initiative, referendum, or recall petitions shall be signed by registered voters of the City equal in number to at least ~~ten percent (10%) ?~~ of the total number of qualified voters registered to vote at the last regular City election, but in no event less than ~~two hundred fifty (250) ?~~ such petitioners. However, no signatures to any petitions shall remain effective or be counted which do not comply with the provisions of the Election Code.

B. **Form and Content.** All papers of a petition shall be uniform in size and style and shall be assembled as one instrument for filing. Each signature shall be followed by the signer's printed name, the address and voter registration number of the person signing and date of

signature. Petitions shall contain or have attached thereto throughout their circulation the full text of the ordinance proposed or sought to be reconsidered. The contents of the recall petition shall be as specified in Section 9.05.B.

C. **Filing Referendum Petitions.** Referendum petitions must be filed within sixty (60) days after adoption by the Council of the ordinance sought to be reconsidered.

#### **Section 9.04 Procedure After Filing**

A. **Certificate of City Secretary; Amendment.** Within twenty (20) working days after the petition is filed, the City Secretary shall complete a certificate as to its sufficiency, specifying, if it is insufficient, the particulars wherein it is defective and shall within that twenty (20) working day period send a copy of the certificate to the petitioners' committee by registered mail.

A petition certified insufficient for lack of the required number of valid signatures may be amended once if the petitioners' committee files a notice of intention to amend it with the City Secretary within two (2) working days after receiving the copy of his certificate and files a supplementary petition upon additional papers within ten (10) days after receiving the copy of such certificate. Such supplementary petition shall comply with the requirements of Subsection B of Section 9.03, and within five (5) working days after it is filed, the Secretary shall complete a certificate as to the sufficiency of the petition as amended and send a copy of such certificate to the petitioners' committee by registered mail as in the case of an original petition.

If a petition or amended petition is certified insufficient and the petitioners' committee does not elect to amend or request Council review under Subsection B of this Section within the time required, the City Secretary shall at the next regular Council meeting present his certificate to the Council and the certificate shall then be a final determination as to the sufficiency of the petition.

B. **Council Review.** If a petition has been certified insufficient and the petitioner's committee does not file notice of intention to amend it, or if an amended petition has been certified insufficient, the committee may, within two (2) working days after receiving the copy of such certificate, file a request that it be reviewed by the Council. The Council shall review the certificate at its next meeting following the filing of such request and approve or disapprove it, and the Council's determination shall then be a final determination as to the sufficiency of the petition.

C. **Court Review, New Petition.** A final determination as to the sufficiency of a petition shall be subject to court review. A final determination of insufficiency, even if sustained upon court review, shall not prejudice the filing of a new petition for the same purpose.

#### **Section 9.05 Action on Petitions**

A. **Action by Council on Initiative or Referendum.** When an initiative or referendum petition has been fully determined sufficient, the Council shall at their next regular Council meeting consider the proposed initiative ordinance in the manner provided in Article III or reconsider the referred ordinance by voting its repeal. If the Council fails to adopt a proposed initiative ordinance without any change in substance within sixty (60) days or fails to repeal the referred ordinance within thirty (30) days after the date the petition was finally determined sufficient, it shall submit the proposed or referred ordinance to the voters of the City.

B. **Action by Council on Petition for Recall.** The recall petition must be addressed to the City Council of the City of Boerne and must distinctly and specifically point out the ground or grounds upon which such petition for removal is predicated. If there be more than one ground, such as for incompetency, misconduct or malfeasance in office, the petition shall specifically state each ground with such certainty as to give the officer sought to be removed, notice of the matters with which he is charged. The officer whose removal is sought may, within five (5) working days after such recall petition has been presented to the City Council, request that a public hearing be held to permit him to present facts pertinent to the charges specified in the recall petition. In this event, the City Council shall order such public hearing to be held not less than five (5) days nor more than fifteen (15) days after receiving such request for a public hearing. If the officer whose removal is sought does not resign, then it shall become the duty of the City Council to order an election and fix a date for holding such recall election **on the next uniform election date.**

C. **Recall Restrictions.** No recall petition shall be filed against any officer of the City of Boerne within three (3) months after his election nor within three (3) months after an election for such officer's recall.

D. **Submission to Voters.** The vote of the City on a proposed or referred ordinance shall be held not less than thirty (30) days and not later than ninety (90) days from the date that the petition is found to be sufficient. **A recall election shall be held not less than thirty (30) days and not later than sixty (60) days after the last day on which the officer named in the recall petition may properly request a public hearing to present facts pertinent to the charges specified in the recall petition.** If no regular City election is to be held within the period prescribed in this subsection, the Council shall provide for a special election; otherwise, the vote shall be held at the same time as such regular election, except that the Council may in its discretion provide for a special election at an earlier date within the prescribed period. Copies of the proposed or referred ordinance shall be made available at the polls to registered voters.

E. **Withdrawal of Petitions.** An initiative, referendum, or recall petition may be withdrawn at any time prior to the fifteenth (15) day preceding the day scheduled for a vote of the City by filing with the City Secretary a request for withdrawal signed by at least five (5) members of the petitioners' committee. Upon the filing of such request the petition shall have no further force or effect and all proceedings thereon shall be terminated.

## **Section 9.06 Results of Election.**

A. **Initiative.** If a majority of the qualified electors voting on a proposed initiative ordinance vote in its favor, it shall be considered adopted upon certification of the election results and shall be treated in all respects in the same manner as ordinances of the same kind adopted by the Council. If conflicting ordinances are approved at the same election, the one receiving the greatest number of affirmative votes shall prevail to the extent of such conflict.

B. **Referendum.** If a majority of the qualified electors voting on a referred ordinance vote against it, it shall be considered repealed upon certification of the election results.

C. **Recall.** If a majority of the votes cast at a recall election shall be "NO," that is, against the recall of the person named on the ballot, he shall continue in office for the remainder of his unexpired term, subject to recall as before. If a majority of the votes cast at such election be "YES," that is, for the recall of the person named on the ballot, he shall, regardless of any technical defects in the recall petition, be deemed removed from office and the vacancy be filled as vacancies in the City Council are filled, as provided in Section 3.08, Subsection C of this Charter.

## **X. GENERAL PROVISIONS**

### **Section 10.01 Personal Financial Interest**

The City Council and City Officials shall follow the rules and regulations regarding personal financial interests as set out in the Texas Local Government Code, Chapter 171.

### **Section 10.02 Prohibitions**

A. **Activities Prohibited:**

1. No person shall be appointed to or removed from or in any way favored or discriminated against with respect to any City position or appointive City administrative office because of race, national origin, sex, political or religious opinions or affiliations.
2. No person shall willfully make any false statement, certificate, mark, rating or report in regard to any test, certification or appointment under the personnel provisions of this Charter or the rules and regulations made thereunder, or in any manner commit or attempt to commit any fraud preventing the impartial execution of such provision, rules and regulations.

3. No person who seeks appointment or promotion with respect to any City position or appointive City administrative office shall directly or indirectly give, render or pay any money, service or other valuable thing to any person for or in connection with his test, appointment, proposed appointment, promotion or proposed promotion.
4. No person related within the second degree by affinity, or within the third degree by consanguinity to any elected officer of the City, or to the City Manager, shall be appointed to any office, position, or clerkship or other service of the City, but this prohibition shall not apply to officers or employees who have been continuously employed by the City for not less than two (2) years prior to the election or appointment of the officer related in the prohibited degree.

B. **Penalties.** Any person who by himself or with others willfully violates any of the provisions of paragraphs one (1) through four (4) shall be guilty of misconduct and shall be subject to immediate forfeiture of his office or position after hearing by the City Council. An affirmative vote of four (4) Council Members shall be required to compel forfeiture of the office or position.

#### **Section 10.03 Notice of Claim**

The City of Boerne shall have the authority to establish an ordinance which may specify procedures and time limitations during which notice of personal injury or property damage claims against the City must be presented.

#### **Section 10.04 Assignment, Execution, and Garnishment**

The property, real and personal, belonging to the City shall not be liable to be sold or appropriated under any writ of execution or cost bill. The funds belonging to the City, in the hands of any person, firm or corporation, shall not be liable to garnishment, attachment, or sequestration; nor shall the City be liable to garnishment on account of any debt it may owe or funds or property it may have on hand or owing to any person. Neither the City nor any of its officers or agents shall be required to answer any such writ or garnishment on account whatever.

#### **Section 10.05 City Not Required to Give Security or Execute Bond**

It shall not be necessary in any action, suit or proceeding in which the City of Boerne is a party, for any bond, undertaking, or security to be demanded or executed by or on behalf of said City in any of the State Courts, but in all such actions, suits, appeals or proceedings same shall be conducted in the same manner as if such bond, undertaking or security has been given as required by law.



## **Section 10.06 Separability Clause**

If any section or part of a section of this Charter shall be ruled invalid by a Court of competent jurisdiction, such holding shall not affect the remainder of this Charter nor the context in which such section or part of section so held invalid may appear, except to the extent that an entire section or part of section may be inseparably connected in meaning and effect with the section or part to which such holding shall directly apply.

## **Section 10.07 Amendment**

Amendments to this Charter may be framed, proposed, and adopted in the manner provided by the laws of the State of Texas.

# **XI. TRANSITIONAL PROVISIONS**

## **Section 11.01 Existing Ordinances and Resolutions**

At the time of ~~initial~~ adoption of this Charter, all existing ordinances, resolutions, regulations, and other prior actions of the City Council, without exception, shall remain in effect without being subject to the provisions of this Charter for referendum.

## **Section 11.02 Officers and Employees**

**(a) Rights and Privileges Preserved.** Nothing in this Charter except as otherwise specifically provided shall affect or impair the rights or privileges of persons who are City officers or employees at the time of its adoption.

**(b) Continuance of Office or Employment.** Except as specifically provided by this Charter, if at the time this Charter takes full effect, a City administrative officer or employee holds any office or position which is or can be abolished by or under this Charter, he shall continue in such position or office until the taking effect of some specific provision under this Charter directing that he vacate the office or position.

## **Section 11.03 Number and Gender Defined.**

As used in this Charter, whenever the context so indicates, the masculine, feminine or neuter gender, and the singular or plural number, shall each be deemed to include the other.

**Section 11.04 Pending Matters.**

All rights, claims, actions, orders, contracts and legal administrative proceedings shall continue except as modified pursuant to the provisions of this Charter and in each case shall be maintained, carried on or dealt with by the City department, office, or agency appropriate under this Charter.

**Section 11.05 Manner of Submission to Electors.**

In preparing this Charter, the Charter Commission finds and decides that it is impractical to segregate each subject so as to permit a vote of "yes" or "no" on the same, for the reason that the Charter is so constructed that in order to enable it to work and function, it is necessary that it should be adopted in its entirety.

## TRANSMITTAL

Unanimously passed and approved by the Boerne Home Rule Commission and delivered on this the 12th day of September, 1995, to the City Council of Boerne, Texas in open session.

Respectfully submitted,

\_\_\_\_\_ Gordon L. Hollon, Chairman

\_\_\_\_\_ Pat Martin

\_\_\_\_\_ Barry Jackson, Vice Chairman

\_\_\_\_\_ Bonnie Molberg

\_\_\_\_\_ Phillip M. Bell

\_\_\_\_\_ Anna Marie Schoch

\_\_\_\_\_ Chris Bradbury

\_\_\_\_\_ Darren Smith

\_\_\_\_\_ Dr. Rob Bradley

\_\_\_\_\_ Martha Doenges


\_\_\_\_\_ Karen Carlos

\_\_\_\_\_ Dr. Clifford Wendler

\_\_\_\_\_ Jimmy Locke

\_\_\_\_\_ Nancy White

\_\_\_\_\_ Dick Magers

	<div style="text-align: center;"><b>AGENDA ITEM SUMMARY</b></div> <div style="border: 1px dashed purple; padding: 5px; float: right;"> <b>District Impacted</b>  <input type="checkbox"/> 1 = Wolosin  <input type="checkbox"/> 2 = Woolard  <input type="checkbox"/> 3 = Scott  <input type="checkbox"/> 4 = Fowler  <input type="checkbox"/> 5 = Macaluso  <input checked="" type="checkbox"/> All </div>
<b>AGENDA DATE</b>	June 09, 2020
<b>DESCRIPTION</b>	CONSIDER RESOLUTION NO. 2020-R42; A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AND MANAGE THE FIFTH AMENDMENT TO THE DEVELOPMENT AGREEMENT AND DISTRICT CONSENT AGREEMENT BY AND BETWEEN THE CITY OF BOERNE AND LOOKOUT DEVELOPMENT GROUP, L.P., KENDALL COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT NO. 2, AND KENDALL COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT NO. 2A.
<b>STAFF'S RECOMMENDED ACTION (be specific)</b>	Approve Resolution No. 2020-R42; entering into the Fifth Amendment to the Development Agreement and District Consent Agreement between the City of Boerne, Lookout Development Group, L.P., KCWCID No. 2 and KCWCID No. 2A.
<b>CONTACT PERSON</b>	Nick Montagno, Economic Development Director & Jeff Thompson, Deputy City Manager & General Manager of Utilities
<b>SUMMARY</b>	<p>Staff and the Mayor initially met with Lookout Group representatives in October of 2019 to discuss a possible 5<sup>th</sup> amendment to the original Esperanza development agreement that included requests to consider the changing of phasing for the development, adjustment of KCWCID No. 2A boundary line to include an additional 11.785 acres into KCWCID No. 2A, an adjustment to the lot size table located in section 2.2 of the original agreement to include the R-3 High Density Residential zoning category, and an update to the Maximum Number of Single-Family Units table also located in section 2.2 which would allow for the addition of 45' lots and reduce the maximum total number of lots allowed in each lot width category (Please see Attachment 1 for explanation of each item from applicant). Staff and the Mayor were open to discussing an amendment and upon conclusion of that meeting, The Lookout Group went about drafting said amendment.</p> <p>Staff, upon receipt of the draft amendment, set about working with the Lookout Group representatives to ensure that the amendment worked in the best interest of both parties. As stated, the Lookout Group has requested, and staff is in support of the following:</p> <ol style="list-style-type: none"> <li>1) Changing Exhibit D-3 to change Phasing for the development (See Attachments 2 and 3 for comparison of old and new) to allow greater flexibility in future development. The proposed change allows the developer to move forward with</li> </ol>

	<p>construction on several phases of development both to the north and south of where the development ends today. It also eliminates the original Phase V and incorporates that area into the future Phase IV.</p> <ol style="list-style-type: none"> <li>2) Adjustment of KCWCID No. 2A boundary line to include an additional 11.785 acres into KCWCID No. 2A. (See Attachment 1 for applicant commentary). The annexation of the 11.785 acres into WCID 2A (and the corresponding exclusion of same acreage for WCID 2) is a simple adjustment of the Districts' boundaries to include all of the land/lots in Phase 2F within WCID 2A. Without such adjustment, some of the lots would be in WCID 2A and some would be in WCID 2. Pursuant to Chapter 42.0425 of the Texas Local Government Code, as amended, no land within the corporate limits of a city or within the extraterritorial jurisdiction of a city, shall be included within a water control and improvement district unless such city grants it written consent, by resolution or ordinance, to the inclusion of land within the district. This modification will be made by separate action of the Council on this agenda.</li> <li>3) Updating the lot size table, originally introduced in the second amendment to the development agreement and currently located in Section 2.2 of the agreement, to include the R-3 High Density Residential zoning category. As stated in the applicants attached letter (Attachment 1). This table was added to ensure the lots in Esperanza followed the requirements set forth in the City Zoning ordinance, even though the Esperanza development is not actually subject to City Zoning Ordinance requirements. The R-3 zoning category was not originally included in this table. Additionally, the applicant is requesting the agreement be changed to reflect current City ordinances regarding front setbacks (20') and front garage setbacks (25').</li> <li>4) Changing the Maximum Number of Single-Family Units table also located in Section 2.2 to reflect the addition of the R-3 zoning category which allows small lots (the applicant is requesting 45' lot frontages specifically, the zoning category allows 40'-49' lot frontages for small lots). With the addition of the 45' category, the applicant is seeking to put in a maximum total of 250 45' lots. This will reduce the maximum total allowable lots across each of the other categories, but the maximum total of 2480 units remains unchanged. The proposed change allows the developer to react to changing market conditions that have driven the desire for smaller lots.</li> </ol> <p>In return, City staff has negotiated the clarification of specific contract</p>
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	<p>language relating to the addition of a water main loop (See Attachment 4, marked on attachment as “off-site loop”). The developer has agreed to construct referenced “off-site loop” prior to the 1,600<sup>th</sup> residential building permit submittal, or the first water connection in Service Plane #1 located in the approximately 17.70 acres as shown in Attachment 4). This main is estimated to cost \$750,000-\$1,000,000 and provides the looping of the water service to the development as required in our Subdivision ordinance.</p> <p>Attached are the referenced Attachments as well as the proposed 5<sup>th</sup> amendment.</p>
<b>COST</b>	
<b>SOURCE OF FUNDS</b>	
<b>ADDITIONAL INFORMATION</b>	

This summary is not meant to be all inclusive. Supporting documentation is attached.

**RESOLUTION NO. 2020-R42**

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AND MANAGE THE FIFTH AMENDMENT TO THE DEVELOPMENT AGREEMENT AND DISTRICT CONSENT AGREEMENT BY AND BETWEEN THE CITY OF BOERNE AND LOOKOUT DEVELOPMENT GROUP, L.P., KENDALL COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT NO. 2, AND KENDALL COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT NO. 2A**

**WHEREAS**, the City of Boerne finds it necessary to enter into and manage a fifth amendment to the Development Agreement by and between the City of Boerne, Lookout Development Group, L.P., Kendall County Water Control and Improvement District No. 2, and Kendall County Water Control and Improvement District No. 2A.

**NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BOERNE, TEXAS:**

that the City Council hereby authorizes the City Manager to enter into and manage a fifth amendment to the Development Agreement by and between the City of Boerne, Lookout Development Group, L.P., Kendall County Water Control and Improvement District No. 2, and Kendall County Water Control and Improvement District No. 2A.

PASSED and APPROVED on this the \_\_\_\_ day of June, 2020.

APPROVED:

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Secretary

**FIFTH AMENDMENT TO DEVELOPMENT AGREEMENT AND  
DISTRICT CONSENT AGREEMENT**

THE STATE OF TEXAS     §

KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF KENDALL     §

This Fifth Amendment to Development Agreement (the “Fifth Amendment”) modifies amends and ratifies the February 12, 2008 Agreement (as hereinafter defined) as amended by the first Modification, Ratification and Extension Of Development Agreement and District Consent Agreement, dated to be effective on February 5, 2014 (the “First Amendment”), the Second Amendment to Development Agreement and District Consent Agreement (the “Second Amendment”), dated to be effective on September 17, 2014, the Third Amendment to Development Agreement and District Consent Agreement (the “Third Amendment”), dated to be effective on January 27, 2016, and the Fourth Amendment to Development Agreement and District Consent Agreement (the “Fourth Amendment”), dated to be effective on October 17, 2017, in accordance with the terms hereof, is executed by and between LOOKOUT BOERNE HOLDINGS, LP, a Texas limited partnership and LOOKOUT DEVELOPMENT GROUP, L.P., a Texas limited partnership (collectively “Owner”), on behalf of itself and its successors, transferees, and assigns, KENDALL COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT NO. 2 (“District No. 2”), KENDALL COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT NO. 2A (“District No. 2A”) and the CITY OF BOERNE, TEXAS (the “City”) to be effective on the date defined herein (the “Effective Date”).

**ARTICLE I  
RECITALS**

WHEREAS, the City is a home rule municipal corporation of the State of Texas; and

WHEREAS, Owner is a Texas limited partnership; and

WHEREAS District No. 2 and District No. 2A, together with any subsequently created sub-districts permitted pursuant to their enabling legislation (sometimes referred to collectively as the “Districts”) are legislatively created governmental entities created under the authority of Article XVI, Section 59 and Article III, Section 52 of the Texas Constitution, Chapters 49 and 51 of the Texas Water Code, and the District Legislation; and

WHEREAS, Owner, the Districts and the City are sometimes individually referred to as a “Party” and collectively as the “Parties”; and

WHEREAS, Owner is the owner of tracts of real property located in Kendall County, Texas subject to the jurisdiction of the Districts and depicted on attached **Exhibit A** and described by metes and bounds on attached **Exhibit B** (collectively, the “Property”); and

WHEREAS, the Property is located wholly within the extraterritorial jurisdiction (“ETJ”) of the City and not within the ETJ or corporate limits of any other town or city; and

WHEREAS, the City and the prior owner of the Property, MA Boerne Partners, LP (“MA Boerne”) entered into a Development Agreement with an Effective Date of February 12, 2008, (the “2008 Agreement”) regarding the Property, which 2008 Agreement is evidenced in the real property records of Kendall County, Texas by a Memorandum of Development Agreement recorded as Document No. 00274382 in Volume 1361, Page 834 in the real property records of Kendall County, Texas; and

WHEREAS, The City, MA Boerne and District No. 2 entered into a certain Interlocal Agreement Concerning Creation and Operation of District No. 2 regarding the creation and operation of the Districts (the “Consent Agreement”); and

WHEREAS, The City and District No. 2 entered into a certain Strategic Partnership Agreement regarding the annexation of certain commercial use areas of the Property for the sole and exclusive purpose of imposing and collecting sales and use taxes (the “SPA”); and

WHEREAS, The Parties entered into a first Modification, Ratification and Extension of Development Agreement dated to be effective as of February 5, 2014, being the date on which all of the parties to the First Modification had executed that agreement and the Boerne Independent School District had entered into a School Tract Donation Agreement with the Owner; and

WHEREAS, the Parties entered into a Second Amendment to the 2008 Agreement, dated to be effective as of September 17, 2014, the date of its adoption by each of the parties;

WHEREAS, the Parties, entered into a Third Amendment to the 2008 Agreement, dated to be effective as of January 27, 2016, the date of its adoption by each of the parties;

WHEREAS, the Parties, entered into a Fourth Amendment to the 2008 Agreement, dated to be effective as of October 17, 2017, the date of its adoption by each of the parties; and

WHEREAS, the Parties express their desire to further modify, amend, ratify, renew, and extend the various obligations contained in the 2008 Agreement, as amended, in order to obtain mutual benefits.

NOW THEREFORE, for and in consideration of the mutual covenants of the Parties set forth in this Fifth Amendment, and for other good and valuable consideration the receipt and adequacy of which are acknowledged and agreed by the Parties, the Parties agree to modify, ratify, extend and amend the 2008 Agreement, and be bound by both, as follows:

## **ARTICLE II**

### **AMENDMENTS TO THE DEVELOPMENT AGREEMENT**

1. **Exhibits D-3, D-5, D-6, D-8, D-9 and D-14** are deleted and replaced with **Exhibits D-3, D-5, D-6, D-8, D-9 and D-14** attached to this Fifth Amendment. All references to **Exhibits D-3, D-5, D-**

6, D-8, D-9 and D-14 throughout the 2008 Agreement, as amended, refer to the Exhibits D-3, D-5, D-6, D-8, D-9 and D-14 dated May 2020.

2. Section 2.2(a) shall be deleted and replaced with the following:

2.2 Master GDP; Pod GDPs; Phase Infrastructure Plans:

(a) Master GDP. The Master GDP is comprised of the various individual sub-exhibits in **Exhibit D** attached hereto. The Master GDP is the initial master general development plan of the Property and identifies the proposed land uses, Phases (as so designated on the Master GDP and herein so called) and Pods (as so designated on the Master GDP and herein so called), major streets, major drainage ways, utility trunk lines, location of sites for certain parks, schools and other present and proposed land uses. The Master GDP regulates development of non-residential Pods within the Property as shown on **Exhibit D-2A (dated May 30, 2017)** and the tables of land use allocations as shown on **Exhibit D-2B (dated May 30, 2017)**. For the land designated as Commercial on **Exhibit D-2A**, the Permitted Uses are shown on **Exhibit K-1** and the Permitted uses with City Council Approval are shown on **Exhibit K-2**. Notwithstanding this Agreement, the parties recognize that the Boerne Planning and Zoning Commission does not have jurisdiction over the Property and that any exceptions or variances to the uses shown on **Exhibit K-1 and the permitted uses shown on Exhibit K-2** will be reviewed and approved by the City Council or City Manager pursuant to a grant of authority from the City Council.

The Master GDP regulates the residential areas shown on **Exhibit D-2A** by allocating certain numbers of Lots of various sizes to the residential areas within the Property according to the tables below. To the extent of any conflict between these tables and the portions of the City Zoning Ordinance referred to in Section 2.1 (f), the provisions of these tables shall prevail. Each plat within a residential area shall follow the Lot Sizes (Minimums) and Maximum Number of Single-Family Units tables below:

Lot Sizes (Minimums)

Type	Lot Width	Lot Sq. Feet	Side Yard Setback - One Side	Total Side Yard Setback	Garage Front Setback	Front Yard Setback	Back Yard Setback
Garden	45' (a)	4,500	10' (b)	10'	25'	20'	20'
SF	50' (a)	5,500	5' (b)	10'	25'	20'	20'
Garden	55' (a)	6,000	10' (b)	10'	25'	20'	20'
SF	60' (a)	6,500	5' (b)	10'	25'	20'	20'
Garden	65'	7,000	10' (b)	10'	25'	20'	20'
SF	65'/70'	8,000	5'	10'	25'	20'	20'
Garden	75'	9,000	10'	10'	25'	20'	20'
SF	80'	10,800	10'	20'	25'	30'	25'
SF	90'	12,500	10'	20'	25'	30'	25'
SF	100'	20,300	15'	30'	25'	40'	25'

(a) Add 10 additional feet for a corner lot.

(b) Add 10 additional feet on the street side of a corner lot.



## Maximum Number of Single-Family Units

Lot Width Minimums ( <i>feet</i> )	Maximum Number of Lots
45	250
50 and 55	850
60 and 65	800
70 and 75	700
80	400
90	300
100	200
Maximum Residential Units	2,480

In no event shall the total number of Single-Family Units exceed 2,480 for the whole of the Property.

The Owner may adjust the maximum number of Units per Lot Width category by up to 10% if the following requirements are satisfied by the Owner: (i) deliver to the City Manager evidence that is reasonably satisfactory to the City Manager that Owner will exhaust Owner's supply of the requested Lot Width category; (ii) deliver to the City Manager evidence that establishes that the market dictates that the requested Lot Width category be made available; (iii) obtain the written approval of the City Manager for an increase in the requested Lot Width category; and (iv) ensure that the total number of Units does not exceed 2,480 for the whole of the Property. Unit[s] as used throughout the Third Amendment shall refer to a dwelling by one household.

The Master GDP may be revised from time to time with the approval of the City Council, the Owner, and the owners of the portions of the Property within the area of the Master GDP being revised. The Master GDP may also be revised by Owner, without the approval of the City or any other owners, so long as: (i) the total number of Units does not exceed 2,480 for the whole of the Property; and (ii) arterial and collector roadway alignments substantially conform to the roadway alignments shown on the Master GDP approved by the City and located at **Exhibit D-3**. If the Master GDP is revised as provided by this Section 2.2, the revision shall be considered an amendment to this Agreement, and the City shall cause the revised Master GDP to be attached to the official version of this Agreement on file with the City's Secretary's Office. The Master GDP satisfies all City requirements for a Transportation Network Plan, an Open Space Plan, and a Conceptual Master Plan.

Owner shall be required to complete the residential land development for 50% of the developable land area, excluding open space, within a Phase before commencing residential land development within the next sequential Phase. Under no condition may more than three whole Phases of the Property be under residential land development at any one time without prior City Council approval. Commencement of residential land development in the next sequential Phase of the Property prior to completion of the residential land development for 50% of the developable land area, excluding open space, in the prior Phase shall require the approval of the City Manager. For purposes of this paragraph, "complete the residential land development" means the City has accepted the installation of the natural gas, water, reclaimed water, and sewer infrastructure

improvements for the required portion of the developable land area per the City of Boerne Subdivision Ordinance.

For the purposes of this Agreement, the construction of residential lots served by utilities and streets described in an approved subdivision plat and approved construction plans, must be completed and accepted within four years after an administratively complete preliminary plat is submitted to the City. For purposes of this Agreement, Phases 1A and 1B shall be considered one Phase.

3. Section 2.10 is amended as follows:

Multi-family Development. All references to **Exhibit E** are changed to **Exhibit L**.

4. Section 2.12 is amended as follows:

Esperanza – Entrance Corridor Standards. All references to **Exhibit F** are changed to **Exhibit M**.

5. Section 5.1(a)(2)C is amended by adding the following paragraph after the existing paragraph:

Prior to the earlier of: (1) the date on which an application for the 1,600<sup>th</sup> residential building permit is submitted to the City; or (2) the first water connection in Service Plane #1 located in the approximately 17.70 acres as shown on **Exhibit D-5** as the Southeast Pressure Plane 1, design, provide easements for, construct, and tender for dedication to and acceptance by the City or the District, as applicable, a 12-inch diameter water main (the “OFF-SITE LOOP”) as shown on **Exhibit D-5** dated MAY 2020.

### **ARTICLE III** **CONSENT TO ANNEXATION**

1. Districts Boundary Change. The City consents to approximately 11.785 acres being excluded from the boundaries of District No. 2 and annexed into District No. 2A, which consent is effective upon the Effective Date of this Agreement and as evidenced by the Ordinance Consenting to Annexation of Land, attached as Exhibit C hereto.

### **ARTICLE IV** **GENERAL PROVISIONS**

1. Recitals and Exhibits. The recitals and exhibits are incorporated into this Amendment as fully as matters of contract and not mere recitals or references.
2. Ratification. This Fifth Amendment of Development Agreement shall continue in effect until further amended by a similar agreement executed by the Parties, and recorded in the Official Records of Kendall County, Texas. All terms and conditions contained in the 2008 Agreement, the Strategic Partnership Agreement and the Consent Agreement not amended herein, the First Amendment, the Second Amendment, the Third Amendment and Fourth

Amendment remain in full force and effect. For the same considerations stated herein, each of the parties hereby ratifies and confirms the validity of the 2008 Agreement, the Strategic Partnership Agreement and the Consent Agreement, the First Amendment, the Second Amendment, the Third Amendment, the Fourth Amendment and together with the changes made by this Fifth Amendment, and agrees on behalf of the applicable party hereto and their successors and assigns, that the remaining terms and conditions contained in the 2008 Agreement, the Consent Agreement and the SPA are binding, subsisting and in full effect.

3. Recording. This Fifth Amendment shall be recorded in full in the real property records of Kendall County, Texas.
4. Effective Date. This Fifth Amendment shall be effective as of the date that it is approved and executed by all of the parties.

This Fifth Amendment is signed by each Party as of the date of acknowledgment of that Party's signature below, but is effective for all purposes as of the Effective Date stated above.

[Signature Pages Follow]

ATTEST:

**CITY OF BOERNE**

\_\_\_\_\_  
\_\_\_\_\_  
City Secretary

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

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

Its: \_\_\_\_\_

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

STATE OF TEXAS                   §  
  §  
COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me, on the \_\_\_\_ day of \_\_\_\_\_, 2020,  
by \_\_\_\_\_, \_\_\_\_\_ of the City of Boerne, Texas on behalf of said city.

[SEAL]

\_\_\_\_\_  
Notary Public, State of Texas  
Printed Name: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

**LOOKOUT BOERNE HOLDINGS, LP,**  
a Texas limited partnership

By: **Morningside Land & Cattle Company, LLC,**  
a Texas limited liability company, its General Partner

By: \_\_\_\_\_  
William R. Hinckley  
Operating Manager

THE STATE OF TEXAS       §  
  §  
COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2020, by **WILLIAM R. HINCKLEY**, Operating Manager of **MORNINGSIDE LAND & CATTLE CO., LLC**, a Texas limited liability company, General Partner of **LOOKOUT BOERNE HOLDINGS, LP**, a Texas limited partnership, in the capacity herein stated.

\_\_\_\_\_  
Notary Public, State of Texas

\_\_\_\_\_  
Name Printed or Typed  
My Commission Expires: \_\_\_\_\_

**LOOKOUT DEVELOPMENT GROUP, L.P.,**  
a Texas limited partnership

By: **THE LOOKOUT GROUP, INC.,**  
a Texas corporation, its General Partner

By: \_\_\_\_\_  
William R. Hinckley  
President

THE STATE OF TEXAS       §  
  §  
COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2020, by **WILLIAM R. HINCKLEY**, President of **THE LOOKOUT GROUP, INC.**, a Texas corporation, General Partner of **LOOKOUT DEVELOPMENT GROUP, L.P.**, a Texas limited partnership, in the capacity herein stated.

(Seal)

\_\_\_\_\_  
Notary Public, State of Texas

\_\_\_\_\_  
Name Printed or Typed  
My Commission Expires: \_\_\_\_\_



IN WITNESS WHEREOF, THE PARTIES HAVE EXECUTED THIS Agreement as of the date and year first written above.

“DISTRICT”

KENDALL COUNTY WATER CONTROL  
AND IMPROVEMENT DISTRICT NO. 2

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

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

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

ATTEST:

(DISTRICT SEAL)

\_\_\_\_\_  
Secretary, Board of Directors

IN WITNESS WHEREOF, THE PARTIES HAVE EXECUTED THIS Agreement as of the date and year first written above.

“DISTRICT”

KENDALL COUNTY WATER CONTROL  
AND IMPROVEMENT DISTRICT NO. 2A

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

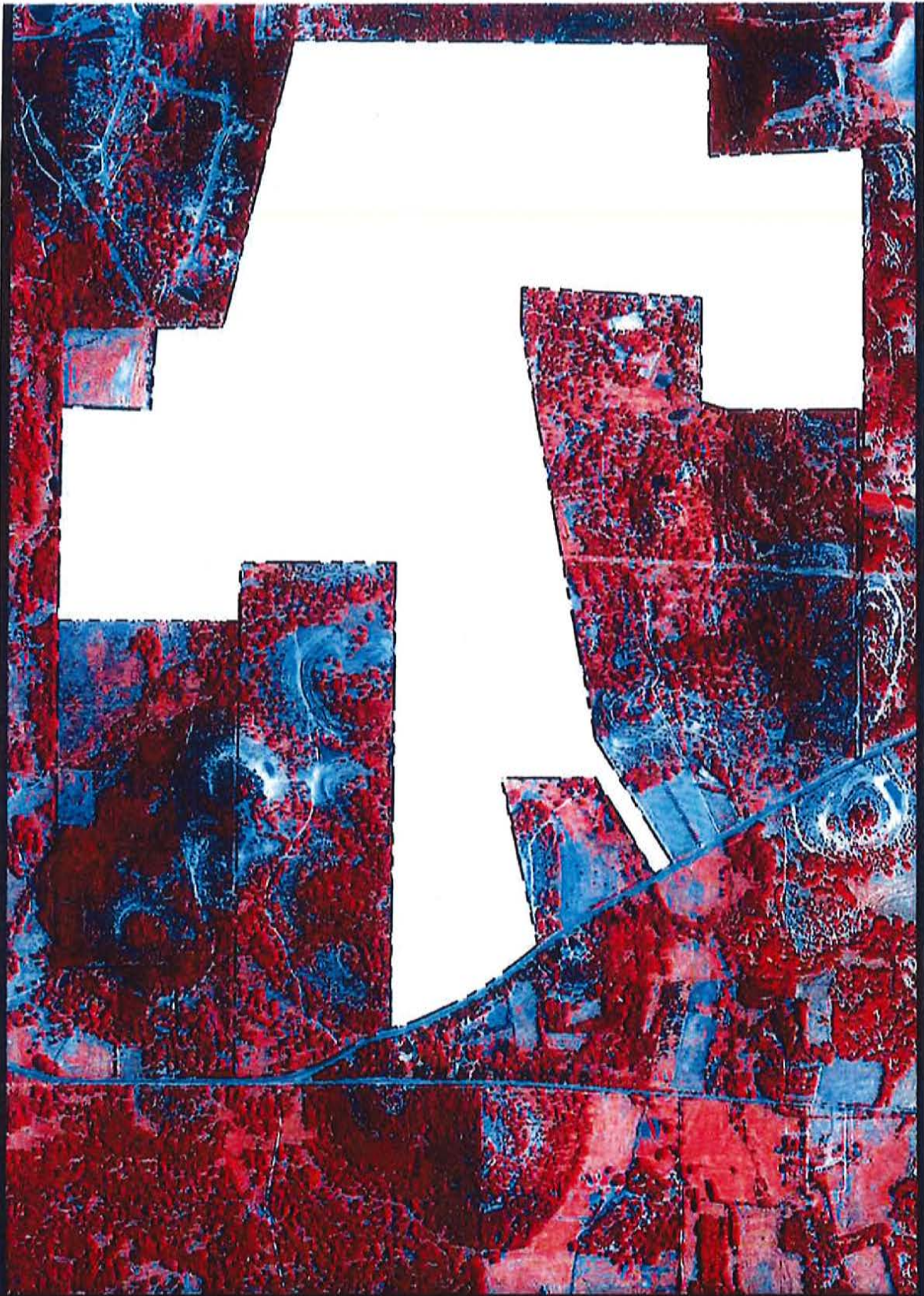
Name: \_\_\_\_\_

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

ATTEST:

(DISTRICT SEAL)

\_\_\_\_\_  
Secretary, Board of Directors



*Esperanza*  
HOUSES & LAND

EXHIBIT A  
DEPICTION OF THE PROPERTY



TERRA DESIGN GROUP



FEBRUARY 12, 2008

## EXHIBIT B

**MDS**

**LAND SURVEYING COMPANY, INC.**  
 boundary | topographic | construction  
 9120 DIETZ ELKHORN ROAD  
 FAIR OAKS RANCH, TEXAS 78015  
 Phone: 830-755-6544 FAX: 830-755-6546

**FIELD NOTES  
 FOR A  
 1243.359 ACRE TRACT**

BEING a 1243.359 acre tract of land out of the Juan Ortiz Survey No. 190, Abstract No. 363, Kendall County, Texas, said 1243.359 acre tract being the same tracts of land conveyed to MA BOERNE PARTNERS, L.P., A Texas Limited Partnership, and being comprised of a 232.965 acre tract, recorded in Volume 1004, Page 441, an 800.258 acre tract recorded in Volume 1016, Page 130 and a 210.136 acre tract recorded in Volume 1016, Page 124, Official Records, Kendall County, Texas, said 1243.359 acre tract being more particularly described by metes and as follows:

BEGINNING at a 1/2" rebar found for a southwest corner of the herein described tract, a southwest corner of the aforesaid 232.965 acre tract, the southeast corner of the David E. & Dafana J. Ebner tract recorded in Volume 582, Page 201, Official Records, Kendall County, Texas, located in the north right-of-way line of State Highway No. 46 (100' right-of-way), from which a found TxDOT concrete right-of-way line marker bears North 89 degrees 35 minutes 23 seconds West for a distance of 27.86 feet (North 89 degrees 14 minutes 15 seconds West, 27.85 feet - record) and from which another found TxDOT concrete right-of-way line marker bears South 89 degrees 35 minutes 23 seconds East for a distance of 856.87 feet;

THENCE departing the north right-of-way line of State Highway No. 46, along the east boundary line of the said David E. & Dafana J. Ebner tract, the following bearings and distances:

North 00 degrees 14 minutes 01 seconds West for a distance of 637.67 feet (North 01 degrees 20 minutes 00 seconds West, 637.70 feet - record) to a 1/2" rebar with plastic cap "MDS SURVEY" set for an angle point;

and North 00 degrees 18 minutes 23 seconds West for a distance of 626.72 feet (North 01 degrees 21 minutes 00 seconds West, 515.00 feet & North 01 degrees 14 minutes 00 seconds West, 112.80 feet - record) to a 1/2" rebar with plastic cap "MDS SURVEY" set for an interior corner next to steel fence post, being the northeast corner of said David E. & Dafana J. Ebner tract;

THENCE along the north boundary fence line of said David E. & Dafana J. Ebner tract, South 89 degrees 53 minutes 22 seconds West for a distance of 359.62 feet (South 89 degrees 42 minutes 39 seconds West, 359.69 feet - record) to a 1/2" rebar found for an angle point at a fence tee, the northwest corner of said David E. & Dafana J. Ebner tract, the northeast corner of the Dennis & Laurie Owens tract recorded in Volume 867, Page 990, Official Records, Kendall County, Texas;

THENCE along the north boundary line of said Dennis & Laurie Owens tract, North 89 degrees 56 minutes 56 seconds West for a distance of 200.01 feet (South 88 degrees 57 minutes West, 200.00 feet - record) to a 1/2" rebar with plastic cap "MDS SURVEY" set for an angle point at a fence tee, the northwest corner of said Dennis & Laurie Owens tract, the northeast corner of the Jerome A. & Shirley A. Rittmann tract recorded in Volume 84, Page 31, Deed Records, Kendall County, Texas;

THENCE along the north boundary line of said Jerome A. & Shirley A. Rittmann tract, South 89 degrees 53 minutes 37 seconds West for a distance of 815.19 feet to a 1/2" rebar with plastic cap "MDS SURVEY" set for a southwest corner of the said 232.965 acre tract, the northwest corner of said Jerome A. & Shirley A. Rittmann tract, located on the east boundary line of the Janette L. Carpenter tract recorded in Volume 228, Page 403, Official Records, Kendall County, Texas;

- THENCE along the east boundary fence line of the said Janette L. Carpenter tract, North 00 degrees 46 minutes 28 seconds East for a distance of 326.92 feet to a 1/2" rebar found for the northeast corner of said Janette L. Carpenter tract, a southeast corner of the L. D. Christianson tract recorded in Volume 603, Page 310, Official Records, Kendall County, Texas;
- THENCE along the east boundary line of the L. D. Christianson tract, North 00 degrees 26 minutes 30 seconds East for a distance of 1781.96 feet to a 1/2" rebar found for the northeast corner of said L. D. Christianson tract, the southeast corner of the John T. & Kay E. Thornton tract recorded in Volume 351, Page 889, Official Records, Kendall County, Texas;
- THENCE along the east boundary line of said John T. & Kay E. Thornton tract, North 00 degrees 41 minutes 07 seconds East for a distance of 1391.18 feet (North 00 degrees 54 minutes East, 1388.15 feet - record) to a 1/2" rebar with plastic cap "MDS SURVEY" set at the northeast corner of said John T. & Kay E. Thornton tract, the southeast corner of the Boerne L. P. tract recorded in Volume 459, Page 754, Official Records, Kendall County, Texas;
- THENCE along the east boundary line of said Boerne L. P. tract, North 00 degrees 43 minutes 31 seconds East at a distance of 426.30 feet passing a 1/2" rebar with plastic cap "MDS SURVEY" found for a southwest corner of the aforesaid 800.258 acre tract, recorded in Volume 1016, Page 130, Official Records, Kendall County, Texas, and continuing for a total distance of 1061.25 feet to a 1/2" rebar found for an angle point of the aforesaid 800.258 acre tract;
- THENCE along the east boundary fence line of said Boerne L.P. tract, the James L. Drought tract recorded in Volume 129, Page 785, Deed Records, and the Carolyn Drought Evans tract recorded in Volume 129, Page 785, Deed Records, North 00 degrees 35 minutes 51 seconds East for a distance of 1759.02 feet (North 00 degrees 55 minutes 10 seconds East, 1760.32 feet - record) to a 1/2" rebar found for a northwest corner of the said 800.258 acre tract, the southwest corner of Lot 22, Spring Creek Estates Subdivision, recorded in Volume 4, Page 59, Plat Records;
- THENCE along the south and east boundary fence lines of said Spring Creek Estates Subdivision, the following bearings and distances:
- South 87 degrees 41 minutes 53 seconds East for a distance of 1002.01 feet (South 87 degrees 40 minutes 07 seconds East, 1002.92 feet - record) to a 1/2" rebar found for corner;
- North 00 degrees 27 minutes 04 seconds East for a distance of 916.09 feet (North 00 degrees 23 minutes 29 seconds East, 916.76 feet - record) to a 1/2" rebar found for corner;
- North 89 degrees 44 minutes 12 seconds East for a distance of 814.56 feet (North 89 degrees 47 minutes 14 seconds East, 815.24 feet - record) to a 1/2" rebar found for corner;
- North 13 degrees 52 minutes 33 seconds East for a distance of 1098.98 feet (North 14 degrees 12 minutes 54 seconds East, 1097.38 feet - record) to a 1/2" rebar with plastic cap "MDS SURVEY" found for angle;
- North 14 degrees 07 minutes 58 seconds East for a distance of 1155.79 feet (North 14 degrees 28 minutes 03 seconds East, 1155.74 feet - record) to a 1/2" rebar with plastic cap "MDS SURVEY" found for angle;
- and North 14 degrees 14 minutes 51 seconds East for a distance of 1085.72 feet (North 14 degrees 38 minutes 21 seconds East, 1087.79 feet - record) to a MAG nail set for the northwest corner of the herein described tract, the northwest corner of the called 800.258 acre tract, the south boundary line of the Betty J. Asher called 91.63 acre tract recorded in Volume 286, Page 734, Official Records;
- THENCE along the north boundary line of the herein described tract, the south boundary fence line of said Betty J. Asher tract, South 89 degrees 38 minutes 28 seconds East for a distance of 620.28 feet (South 89 degrees 21 minutes 26 seconds East, 388.82 feet and South 88 degrees 59 minutes 21 seconds East, 229.97 feet - record) to a 1/2" rebar with plastic cap "SCHWARZ 4760" found for angle on the south boundary line of the Alice Adria Asher 5.008 acre tract;
- THENCE continuing along the north boundary fence line of the herein described tract, the south boundary line of the said Alice Adria Asher called 5.008 acre tract, the Betty J. Asher tract and the Theodore C., Jr. & Doris Eloise Lemm



THENCE continuing along the north boundary fence line of the herein described tract, the south boundary line of the said Alice Adria Asher called 5.008 acre tract, the Betty J. Asher tract and the Theodore C., Jr. & Doris Eloise Lemm Estate called 123.29 acre tract recorded in Volume 76, Page 249, Deed Records, South 89 degrees 21 minutes 42 seconds East for a distance of 2029.17 feet to a 1/2" rebar with plastic cap "MDS SURVEY" set for angle;

THENCE continuing along the north boundary line of the herein described tract, the south boundary line of said Lemm Estate tract, South 89 degrees 27 minutes 16 seconds East for a distance of 751.17 feet (South 89 degrees 26 minutes 26 seconds East, 749.24 feet - record) to a 1/2" rebar with plastic cap "PAPE DAWSON" found for the northeast corner of the called 800.258 acre tract, the northwest corner of the aforesaid 210.136 acre tract, recorded in Volume 1016, Page 124, Official Records, Kendall County, Texas;

THENCE continuing along the north boundary line of the herein described tract, the south boundary line of said Lemm Estate tract, South 89 degrees 19 minutes 35 seconds East for a distance of 844.89 feet (South 89 degrees 20 minutes 08 seconds East, 844.99 feet - record) to a 1/2" rebar with plastic cap "PAPE DAWSON" found for angle;

THENCE continuing along the north boundary fence line of the herein described tract, the south boundary line of said Lemm Estate tract and the Harvey Duennenberg Ranches, Ltd. called 413.68 acre tract, recorded in Volume 179, Page 611 and Volume 173, Page 47, Deed Records, Kendall County, Texas, South 89 degrees 29 minutes 58 seconds East for a distance of 469.33 feet (South 89 degrees 30 minutes 15 seconds East, 469.51 feet - record) to a 1/2" rebar with plastic cap "PAPE DAWSON" found for the northeast corner of the herein described tract, the northeast corner of the called 210.136 acre tract, an interior corner of the said Harvey Duennenberg Ranches, Ltd. tract;

THENCE along the eastern boundary line of the herein described tract, the western boundary fence line of the said Harvey Duennenberg Ranches, Ltd. tract, the following bearings and distances:

South 00 degrees 19 minutes 48 seconds East for a distance of 787.36 feet (South 00 degrees 19 minutes 38 seconds East, 787.52 feet - record) to a 1/2" rebar with plastic cap "PAPE DAWSON" found for angle;

South 00 degrees 38 minutes 29 seconds East for a distance of 485.86 feet (South 00 degrees 38 minutes 34 seconds East, 485.15 feet - record) to a 1/2" rebar with no identification found for an interior corner, a southwest corner of said Harvey Duennenberg Ranches, Ltd. tract;

North 87 degrees 31 minutes 13 seconds East for a distance of 666.88 feet (North 87 degrees 29 minutes 41 seconds East, 666.97 feet - record) to a 1/2" rebar with plastic cap "PAPE DAWSON" found for angle;

North 87 degrees 36 minutes 02 seconds East for a distance of 1105.74 feet (North 87 degrees 33 minutes 14 seconds East, 1103.00 feet - record) to a 1/2" rebar with no identification found for a northeast corner, an interior corner of said Harvey Duennenberg Ranches, Ltd. tract;

South 00 degrees 01 minutes 13 seconds West for a distance of 1502.01 feet (South 00 degrees 05 minutes 37 seconds East, 1503.14 feet - record) to a 1/2" rebar with plastic cap "PAPE DAWSON" found for angle;

South 00 degrees 07 minutes 05 seconds East for a distance of 990.97 feet (South 00 degrees 06 minutes 50 seconds East, 991.12 feet - record) to a 1/2" rebar with plastic cap "PAPE DAWSON" found for angle;

South 00 degrees 09 minutes 39 seconds East for a distance of 780.53 feet (South 00 degrees 09 minutes 25 seconds East, 780.75 feet - record) to a 1/2" rebar with plastic cap "PAPE DAWSON" found for angle;

South 00 degrees 04 minutes 57 seconds West for a distance of 2407.19 feet (South 00 degrees 05 minutes 08 seconds West, 2407.58 feet - record) to a 1/2" rebar with plastic cap "SCHWARZ" found for angle;

and South 00 degrees 16 minutes 14 seconds West for a distance of 1149.03 feet (South 00 degrees 15 minutes 57 seconds West, 1149.16 feet - record) to a 1/2" rebar with plastic cap "SCHWARZ" found for the southeast corner of the herein described tract, the southeast corner of the called 210.136 acre tract, the southwest corner of the said Harvey Duennenberg Ranches, Ltd. tract, the north right-of-way line of State Highway No. 46;



THENCE along the south boundary line of the herein described tract, the north right-of-way line of said State Highway No. 46, southwesterly along a curve to the left (radius = 2914.80 feet, delta =  $01^{\circ}19'27''$ , chord bearing = South 63 degrees 31 minutes 58 seconds West, chord = 67.36 feet - record) for a distance of 67.36 feet (67.24) to a 1/2" rebar with plastic cap "PAPE DAWSON" found for a southwest corner of the herein described tract, the southwest corner of the called 210.136 acre tract, the southeast corner of the J.A. Schmidt Testamentary Trust called 118.001 acre tract, recorded in Volume 340, Page 178, Official Records, Kendall County, Texas, from which a TxDOT concrete right-of-way monument found for reference bears South 61 degrees 34 minutes 32 seconds West a distance of 127.22 feet;

THENCE along an interior west boundary fence line of the herein described tract, the east boundary line of said J.A. Schmidt tract, the following bearings and distances:

North 00 degrees 15 minutes 24 seconds East for a distance of 1178.31 feet (North 00 degrees 15 minutes 21 seconds East, 1178.50 feet - record) to a 1/2" rebar with plastic cap "PAPE DAWSON" found for angle;

North 00 degrees 05 minutes 29 seconds East for a distance of 2407.20 feet (North 00 degrees 05 minutes 26 seconds East, 2407.63 feet - record) to a 1/2" rebar with plastic cap "PAPE DAWSON" found for angle;

and North 00 degrees 08 minutes 41 seconds East for a distance of 352.90 feet (North 00 degrees 08 minutes 37 seconds East, 352.56 feet - record) to a 1/2" rebar with no identification found for an interior corner, the northeast corner of said J.A. Schmidt tract;

THENCE along the interior south boundary fence line of the herein described tract, the north boundary line of said J.A. Schmidt tract, North 89 degrees 53 minutes 15 seconds West for a distance of 1495.54 feet (North 89 degrees 52 minutes 23 seconds West, 1495.87 feet - record) to a 1/2" rebar with no identification found for a northeast corner of the Cliff & Rhonda Wheeler called 118 acre tract, recorded in Volume 625, Page 155, Official Records, Kendall County, Texas;

THENCE along a southwestern boundary line of the herein described tract, the northeastern boundary line of said Cliff & Rhonda Wheeler tract with a high game fence, the following bearings and distances:

North 73 degrees 58 minutes 36 seconds West for a distance of 320.03 feet (North 73 degrees 58 minutes 40 seconds West, 320.00 feet - record) to a 1/2" rebar with no identification found for a southwest corner;

North 00 degrees 05 minutes 56 seconds West for a distance of 1168.00 feet (North 00 degrees 06 minutes 03 seconds West, 1168.25 feet - record) to a 1/2" rebar with plastic cap "PAPE DAWSON" found for an interior corner;

North 86 degrees 44 minutes 51 seconds West for a distance of 1053.11 feet (North 86 degrees 44 minutes 58 seconds West, 1053.23 feet - record) to a 1/2" rebar with plastic cap "PAPE DAWSON" found for a southwest corner of the called 210.136 acre tract, the southeast corner of the called 800.258 acre tract;

and North 86 degrees 44 minutes 40 seconds West for a distance of 991.48 feet (North 86 degrees 43 minutes 46 seconds West, 991.62 feet - record) to a 1/2" rebar with plastic cap "SCHWARZ 4760" found for an interior corner of the herein described tract, the northwest corner of the said Wheeler tract;

THENCE along an interior east boundary fence line of the herein described tract and the west boundary line of the said Wheeler tract, the following bearings and distances:

South 01 degrees 16 minutes 18 seconds West for a distance of 435.03 feet (South 01 degrees 32 minutes 42 seconds West, 453.03 feet - record) to a 1/2" rebar with plastic cap "MDS SURVEY" set for an angle;

South 10 degrees 32 minutes 50 seconds East for a distance of 4710.56 feet (South 10 degrees 16 minutes 26 seconds East, 4712.92 feet - record) to a 1/2" rebar found for an angle;

and South 32 degrees 09 minutes 15 seconds East for a distance of 1695.14 feet (South 31 degrees 57 minutes 19 seconds East, 1695.40 feet - record) to a 1/2" rebar with plastic cap "MDS SURVEY" set for a southeast corner of the herein described tract, the southeast corner of the called 800.258 acre tract, the north right-of-way line of State

Highway No. 46, from which a found TxDOT concrete right-of-way monument bears North 60 degrees 11 minutes 14 seconds East for a distance of 3.17 feet;

THENCE along the south boundary line of the herein described tract, the north right-of-way line of State Highway No. 46, South 60 degrees 13 minutes 33 seconds West for a distance of 197.86 feet (South 60 degrees 34 minutes 00 seconds West, 200.00 feet - record) to a 1/2" rebar found for a southwest corner of the herein described tract, the southeast corner of the Pauline R. Mutchler (Trustee) called 48.12 acre tract, recorded in Volume 691, Page 526, Official Records, Kendall County, Texas;

THENCE departing from the north right-of-way line of State Highway No. 46 and along the east boundary fence line of said Mutchler tract, North 32 degrees 17 minutes 25 seconds West for a distance of 1285.59 feet (North 31 degrees 57 minutes 58 seconds West - 777.22 feet, North 31 degrees 19 minutes 32 seconds West - 118.94 feet and North 32 degrees 07 minutes 34 seconds West, 389.84 feet - record) to a 1/2" rebar found for the northeast corner of said Mutchler tract;

THENCE along the north boundary fence line of said Mutchler tract, North 89 degrees 30 minutes 12 seconds West for a distance of 1127.02 feet (North 89 degrees 10 minutes 00 seconds West, 1128.12 feet - record) to a 1/2" rebar found for the northwest corner of said Mutchler tract;

THENCE along the west boundary fence line of said Mutchler tract, South 12 degrees 53 minutes 22 seconds East for a distance of 1991.10 feet (South 12 degrees 32 minutes 46 seconds East - 1088.61 feet and South 12 degrees 37 minutes 08 seconds East - 903.93 feet - record) to a 1/2" rebar with plastic cap "MDS SURVEY" set at the southwest corner of said Mutchler tract, the north right-of-way line of State Highway No. 46;

THENCE along the south boundary line of the herein described tract, the south boundary line of the called 800.258 acre tract, the north right-of-way line of State Highway No. 46, the following bearings and distances:

South 53 degrees 09 minutes 03 seconds West for a distance of 638.48 feet (South 53 degrees 31 minutes 31 seconds West, 638.31 feet - record) to a TxDOT concrete right-of-way monument found for angle;

Southwesterly along a curve to the right (radius = 2243.32 feet, delta = 11°31'04", chord bearing = South 59 degrees 53 minutes 04 seconds West, chord = 450.20 feet - record) for a distance of 450.96 feet (451.44) to a TxDOT concrete right-of-way monument found for angle;

South 64 degrees 38 minutes 48 seconds West for a distance of 393.24 feet (South 64 degrees 59 minutes 15 seconds West, 393.10 feet - record) to a TxDOT concrete right-of-way monument found for angle;

Southwesterly along a curve to the right (radius = 1860.33 feet, delta = 10°50'04", chord bearing = South 69 degrees 36 minutes 57 seconds West, chord = 351.26 feet - record) for a distance of 351.78 feet (351.75) to a TxDOT concrete right-of-way monument found for angle;

and South 75 degrees 28 minutes 23 seconds West for a distance of 137.14 feet (South 75 degrees 50 minutes 23 seconds West, 137.32 feet - record) to a TxDOT concrete right-of-way monument, a southwest corner of the herein described tract, the southwest corner of the called 800.258 acre tract, the southeast corner of the Leroy & Lula Bell Rittmann et. al. called 229.85 acre tract, recorded in Volume 347, Page 746, Official Records, and Volume 63, Page 300, Deed Records, Kendall County, Texas;

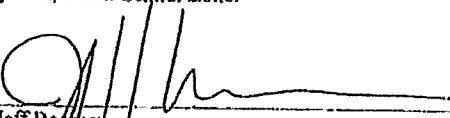
THENCE along an interior west boundary fence line of the herein described tract, the east boundary line of said Rittmann tract, North 00 degrees 34 minutes 51 seconds East for a distance of 5289.20 feet (North 00 degrees 50 minutes 52 seconds East - 1393.92 feet, North 00 degrees 55 minutes 44 seconds East - 3380.40 feet and North 00 degrees 44 minutes 16 seconds East - 516.29 feet - record) to a 1/2" rebar found for the northeast corner of said Rittmann tract;

THENCE along a south boundary fence line of the herein described tract, the north boundary line of said Rittmann tract, North 89 degrees 59 minutes 36 seconds West for a distance of 1750.01 feet to a 1/2" rebar with plastic cap "MDS SURVEY" found for at the northwest corner of said Rittmann tract, an interior corner of the herein described tract, the northeast corner of the called 232.965 acre tract;

THENCE along the west boundary fence line of said Rittmann tract, an interior east boundary line of the herein described tract, same being the east boundary line of the called 232.965 acre tract, South 00 degrees 42 minutes 55 seconds West for a distance of 5826.77 feet (South, 5786.40 feet - record) to a 1/2" rebar with plastic cap "MDS SURVEY" set for a southeast corner of the herein described tract, the southeast corner of the called 232.965 acre tract, the southwest corner of said Rittmann tract, the north right-of-way line of State Highway No. 46;

THENCE along the north right-of-way line of State Highway No. 46, the south boundary fence line of the herein described tract, North 89 degrees 35 minutes 23 seconds West for a distance of 641.95 feet to the PLACE OF BEGINNING and containing 1243.359 acres of land, more or less.

NOTE: This description was prepared from a survey made on the ground under my supervision and a plat was prepared. Bearings are based on Texas State Plane Coordinate System, South Central Zone.

  
 Jeff Boerner  
 RPLS/4939 • Job #Esperanza • October 31, 2007

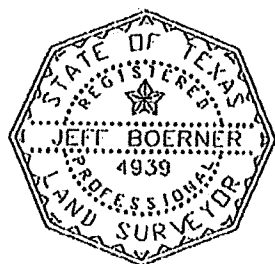


Exhibit "C"ORDINANCE NO. \_\_\_\_\_**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BOERNE, TEXAS, APPROVING THE ANNEXATION BY KENDALL WATER CONTROL AND IMPROVEMENTS DISTRICT NO. 2A OF 11.785**

WHEREAS, Kendall County Water Control and Improvement District No. 2A (the "District") is located within the extraterritorial jurisdiction of the City of Boerne, Texas (the "City"); and

WHEREAS, Texas Water Code, Section 54.016, as amended, provides that no land within the corporate limits of a city or within the extraterritorial jurisdiction of a city, shall be included within a water control and improvement district unless such city grants its written consent, by resolution or ordinance, to the inclusion of the land within the district; now, therefore,

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BOERNE, TEXAS:**

Section 1. All of the matters and facts set forth in the preamble hereof are true and correct.

Section 2. The Petition for Consent to Annex Land into a Water Control and Improvement District (the "Petition") is attached hereto as Exhibit "A" and made a part hereof for all purposes.

Section 3. The City Council of the City hereby specifically gives its written consent to the annexation of the 11.785 acres described in the Petition and exhibit attached thereto, into the District.

Section 4. This Ordinance shall take effect immediately from and after its passage in accordance with the provisions of the Charter of the City and it is accordingly so resolved.

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PASSED and APPROVED on the \_\_\_\_\_ day of \_\_\_\_\_, 2020.

CITY OF BOERNE, TEXAS

ATTEST:

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

\_\_\_\_\_  
CITY SECRETARY

APPROVED AS TO FORM:

\_\_\_\_\_  
CITY ATTORNEY



**Exhibit A To**

**ORDINANCE NO.** \_\_\_\_\_

PETITION FOR CONSENT TO  
ANNEX LAND INTO A WATER CONTROL AND IMPROVEMENT DISTRICT

THE STATE OF TEXAS   §  
COUNTY OF KENDALL   §

TO THE HONORABLE MAYOR AND CITY  
COUNCIL OF THE CITY OF BOERNE, TEXAS:

The undersigned, KENDALL COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT NO. 2A, a political subdivision of the State of Texas (the “District”) and LOOKOUT BOERNE HOLDINGS, LP, a Texas limited partnership (the “Property Owner”), respectfully petition the City of Boerne, Texas for its consent to the addition of land to the District. In support of this Petition, the District would show the following:

I.

The land sought to be added to the District (the “Tract”) is described by metes and bounds in Exhibit “A”, attached hereto, and made a part hereof for all purposes.

## II.

The Tract lies wholly within Kendall County, Texas, and not within the boundaries of any incorporated city or town. The Tract lies wholly within the exclusive extraterritorial jurisdiction of the City of Boerne, Texas, as such term is determined pursuant to Chapter 42 V.T.C.A. Local Government Code.

### III.

Property Owner is the holder of title to the Tract as shown by the Kendall County Tax Rolls and conveyances of record. There are no liens on the Tract.

## IV.

The District was organized, created, and established pursuant to an election held on May 9, 2009 approving the division of Kendall County Water Control and Improvement District No. 2 into Kendall County Water Control and Improvement District No. 2 and the District, operating in accordance with Article XVI, Section 59, and Article III, Section 52, of the

Constitution of the State of Texas and operates pursuant to Chapters 49 and 51, Texas Water Code, as amended, to provide for:

- (1) the control, storage, preservation, and distribution of its storm water and floodwater, the water of its rivers and streams for irrigation, power, and all other useful purposes;
- (2) the reclamation and irrigation of its arid, semiarid, and other land needing irrigation;
- (3) the reclamation and drainage of its overflowed land and other land needing drainage;
- (4) the conservation and development of its forests, water, and hydroelectric power;
- (5) the navigation of its inland and coastal water;
- (6) the control, abatement, and change of any shortage or harmful excess of water;
- (7) the protection, preservation, and restoration of the purity and sanitary condition of water within the state;
- (8) the preservation of all natural resources of the state;
- (9) the collection, transportation, processing, disposal, and control of all domestic, industrial, or communal wastes, whether fluids, solids, or composites,
- (10) to gather, conduct, divert, and control local storm water or other local harmful excesses of water; and
- (11) the construction, acquisition, improvement, operation, or maintenance of macadamized, graveled, or paved roads, or improvements, including storm drainage, in aid of those roads, to the extent authorized by Article III, Section 52, of the Texas Constitution.

The District is empowered and authorized to purchase, construct, acquire, own, operate, maintain, repair, improve, or extend inside and outside its boundaries any and all works, improvements, facilities, plants, equipment, and appliances necessary to accomplish the purposes of its creation.

## V.

The general nature of the work to be done by and within the District at the present time is the (i) construction, maintenance and operation of a waterworks system for residential and commercial purposes; (ii) the construction, maintenance and operation of a sanitary sewer collection system; (iii) the control, abatement and amendment of the harmful excess of waters and the reclamation and drainage of overflowed lands within the District; (iv) the construction, acquisition, improvement, operation, or maintenance of macadamized, graveled, or paved roads,

or improvements, including storm drainage, in aid of those roads, to the extent authorized by Article III, Section 52, of the Texas Constitution; and (v) such other construction, installation, maintenance, purchase and operation of such additional facilities, systems, plants and enterprises as shall be consonant with the purposes for which the District is organized.

#### VI.

There is a necessity for the improvements above described because the Tract is located within an area that is experiencing substantial and sustained residential and commercial growth, is urban in nature and is not supplied with adequate water, sanitary sewer, drainage facilities, road facilities and services. The health and welfare of the future inhabitants of the Tract require the acquisition and installation of an adequate waterworks, sanitary sewer, storm drainage and road system. The purchase, construction, extension, improvement, maintenance and operation of such waterworks, sanitary sewer, storm drainage and road systems will conserve and preserve the natural resources of this State by promoting and protecting the purity and sanitary condition of the State's waters and will promote and protect the public health and welfare of the community; therefore, a public necessity exists for the inclusion of the Tract within the District.

#### VII.

Said proposed improvements are practicable and feasible, in that the terrain of the Tract is of such a nature that a waterworks, sanitary sewer, storm drainage and road systems can be constructed at a reasonable cost; and said land will be rapidly developed for commercial, multi-family and residential purposes.

#### VIII.

A preliminary investigation has been instituted to determine the cost of the project attributable to the Tract, and it is now estimated by those filing this Petition, from such information as they have at this time, that the ultimate cost of the development contemplated will be approximately \$200,000.

WHEREFORE, the undersigned respectfully pray that this Petition be granted in all respects and that the City Council of the City of Boerne, Texas, adopt a resolution giving its written consent to the addition of the Tract to the District.

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RESPECTFULLY SUBMITTED THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2020.

“DISTRICT”

KENDALL COUNTY WATER CONTROL AND  
IMPROVEMENT DISTRICT NO. 2A

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

ADDRESS:

c/o Sanford Kuhl Hagan Kugle Parker Kahn LLP  
1980 Post Oak Boulevard, Suite 1380

Houston, Texas 77056

ATTEST:

\_\_\_\_\_

Secretary, Board of Directors

(DISTRICT SEAL)

THE STATE OF TEXAS §

COUNTY OF KENDALL §

This instrument was acknowledged before me on the day of \_\_\_\_\_, 2020,  
by \_\_\_\_\_, as President of the Board of Directors of Kendall County Water  
Control and Improvement District No. 2A, a political subdivision of the State of Texas, on behalf  
of said political subdivision.

STAMP NAME AND DATE OF

EXPIRATION OF COMMISSION

BELOW:

\_\_\_\_\_  
NOTARY PUBLIC, STATE OF TEXAS

“PROPERTY OWNER”

**LOOKOUT BOERNE HOLDINGS, LP,**  
a Texas limited partnership

By: Morningside Land & Cattle Company, LLC,  
a Texas limited liability company, its General  
Partner

By: \_\_\_\_\_  
William R. Hinckley  
Operating Manager

THE STATE OF TEXAS       §  
  §  
COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2020, by **WILLIAM R. HINCKLEY**, Operating Manager of **MORNINGSIDE LAND & CATTLE CO., LLC**, a Texas limited liability company, General Partner of **LOOKOUT BOERNE HOLDINGS, LP**, a Texas limited partnership, in the capacity herein stated.

STAMP NAME AND DATE OF

EXPIRATION OF COMMISSION

BELOW:

\_\_\_\_\_  
NOTARY PUBLIC, STATE OF TEXAS



**Exhibit "A" To**  
**PETITION FOR CONSENT TO**  
**ANNEX LAND INTO A WATER CONTROL AND IMPROVEMENT DISTRICT**  
**Metes and Bounds Description of Added Land**

**A METES AND BOUNDS  
DESCRIPTION OF AN  
11.785 ACRE TRACT OF LAND**

**BEING** an 11.785 acre (513,336 square feet) tract of land situated in the Juan Ortiz Survey No. 190, Abstract No. 363, Kendall County, Texas; being a portion of a called 800.258 acre Tract 3 described in instrument to Lookout Boerne Holdings, L.P. recorded in Volume 1389, Page 572 of the Official Public Records of Kendall County; and being more particularly described as follows:

**COMMENCING** at a 1/2-inch iron rod found marking the eastern-most corner of Lot 1 and the southern-most corner of Lot 2 of Spring Creek Estates, plat of which is recorded in Volume 4, Pages 59-61 of the Plat Records of Kendall County;

**THENCE**, North 13°52'07" East, 660.38 feet along the easterly line of said Spring Creek Estates to the **POINT OF BEGINNING** of the herein described tract;

**THENCE**, continuing along the easterly line of said Spring Creek Estates the following two (2) courses and distances:

1. North 13°52'07" East, 438.76 feet to a 1/2-inch iron rod found for corner;
2. North 14°08'13" East, 119.47 feet to a point for corner; from which a 1/2-inch iron rod with a plastic cap stamped "MDS" found marking the eastern-most corner of Lot 6 of said Spring Creek Estates bears North 14°08'13" East, 540.64 feet;

**THENCE**, departing the easterly line of said Spring Creek Estates and crossing said Tract 3 the following six (6) courses and distances:

1. South 84°29'16" East, 1414.62 feet to a point for corner;
2. South 2°08'21" West, 49.14 feet to a point of curvature;
3. in a southerly direction, along a tangent curve to the right, a central angle of 1°41'03", a radius of 1057.00 feet, a chord bearing and distance of South 2°58'53" West, 31.07 feet, and a total arc length of 31.07 feet to a point for corner;
4. South 89°52'35" West, 475.52 feet to a point for corner;
5. South 4°12'50" West, 266.57 feet to a point for corner;
6. South 86°46'10" West, 1045.54 feet to the **POINT OF BEGINNING**, and containing 11.785 acres of land in Kendall County, Texas. The basis of bearing for this description is the Texas State Plane Coordinate System Grid, South Central Zone (FIPS 4204) (NAD'83). All distances are on the Grid and shown in U.S. Survey Feet. This document was prepared in the office of Kimley-Horn and Associates, Inc. in San Antonio, Texas.

ABEL P. STENDAHL  
REGISTERED PROFESSIONAL  
LAND SURVEYOR NO. 6754  
601 NW LOOP 410, SUITE 350  
SAN ANTONIO, TEXAS 78216  
PH. 210-541-9166  
abel.stendahl@kimley-horn.com



**11.785 ACRES**  
**JUAN ORTIZ SURVEY NO. 190,**  
**ABSTRACT NO. 363,**  
**KENDALL COUNTY, TEXAS**

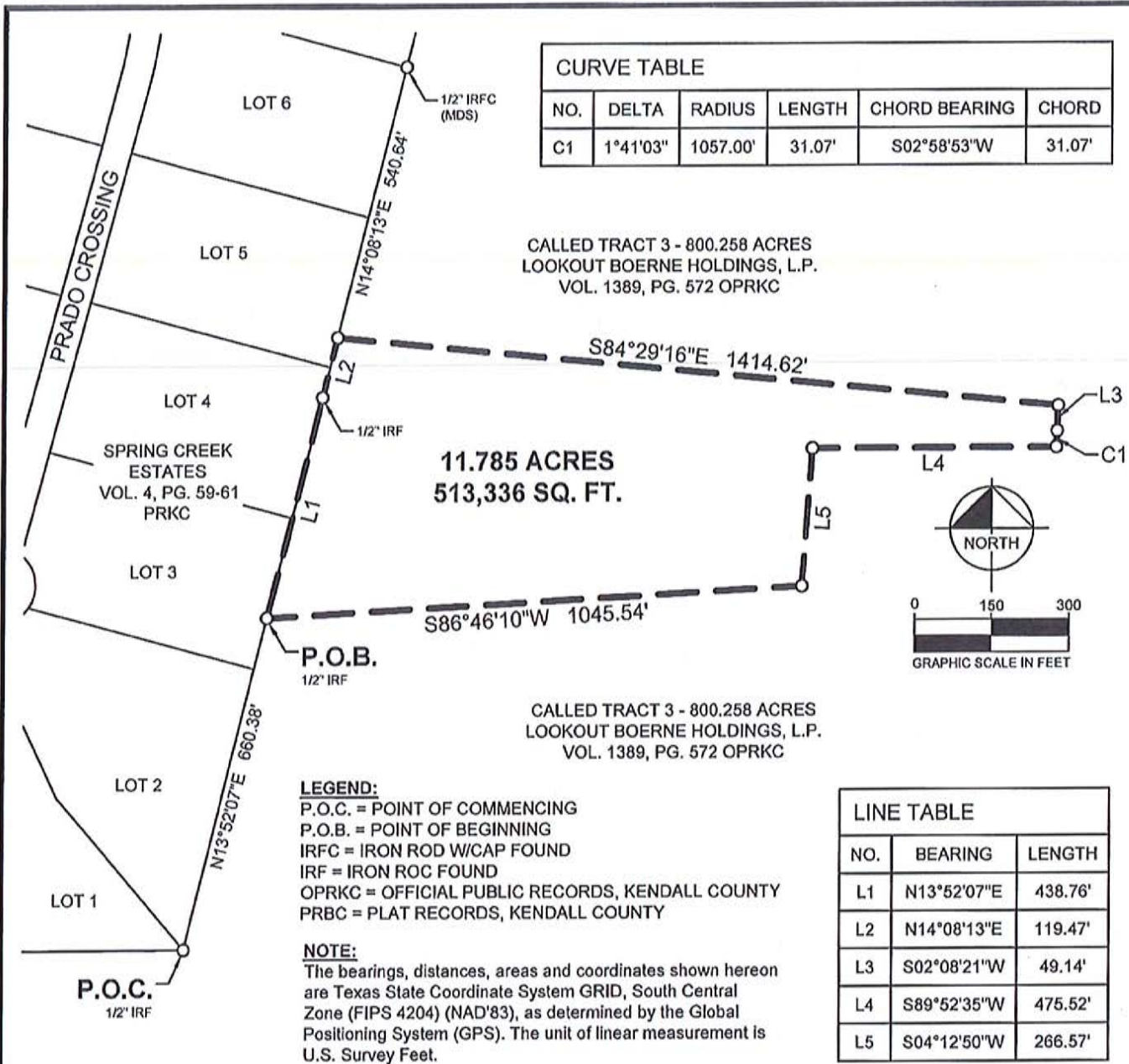
**Kimley»Horn**

601 NW Loop 410, Suite 350  
San Antonio, Texas 78216

FIRM # 10193973

Tel. No. (210) 541-9166  
www.kimley-horn.com

Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
N/A	APS	JGM	11/21/2019	068686320	1 OF 2



ABEL P. STENDAHL  
REGISTERED PROFESSIONAL  
LAND SURVEYOR NO. 6754  
601 NW LOOP 410, SUITE 350  
SAN ANTONIO, TEXAS 78216  
PH. 210-541-9166  
abel.stendahl@kimley-horn.com



**11.785 ACRES**  
**JUAN ORTIZ SURVEY NO. 190,**  
**ABSTRACT NO. 363,**  
**KENDALL COUNTY, TEXAS**

**Kimley»Horn**

601 NW Loop 410, Suite 350  
San Antonio, Texas 78216

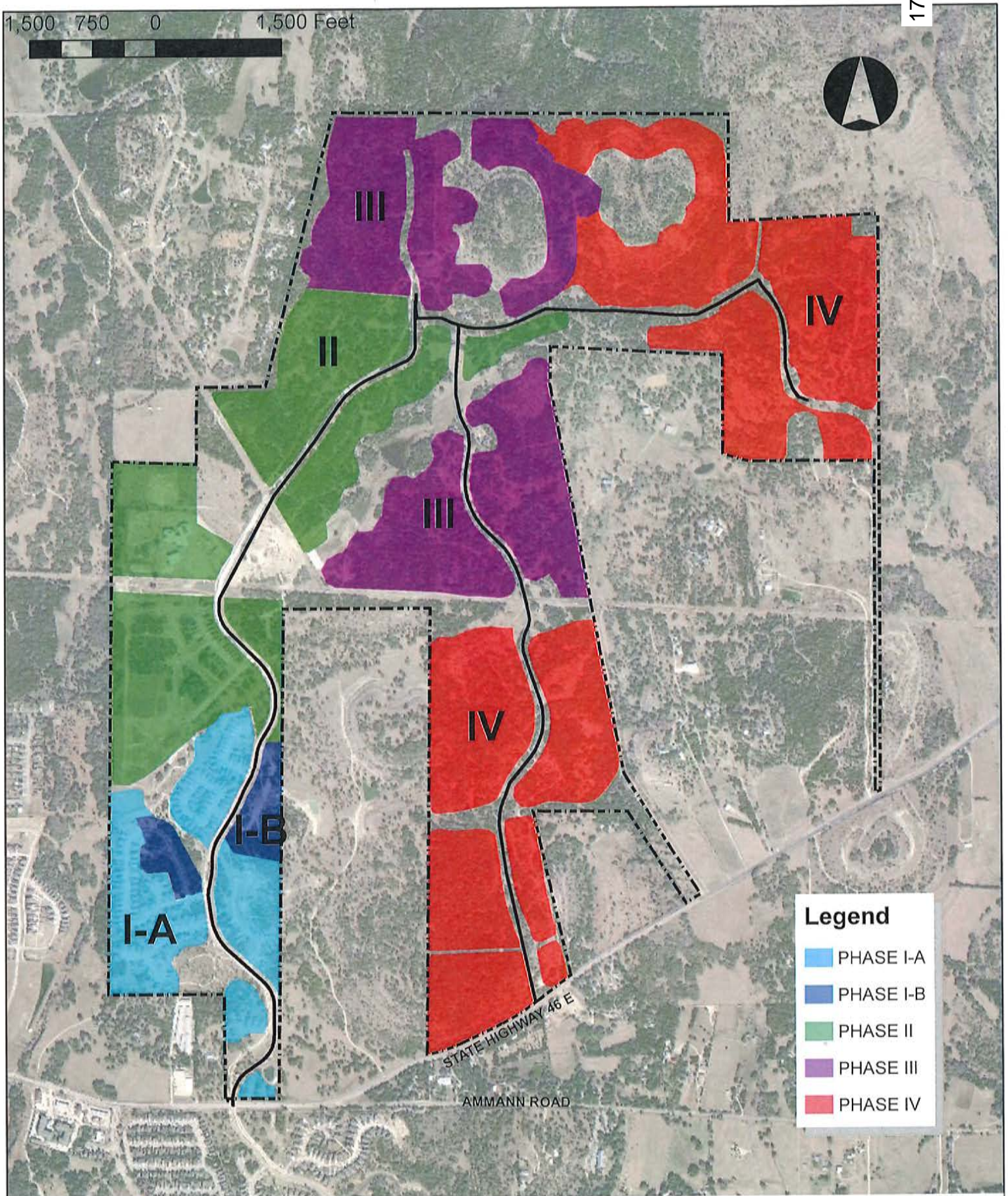
FIRM # 10193973

Tel. No. (210) 541-9166  
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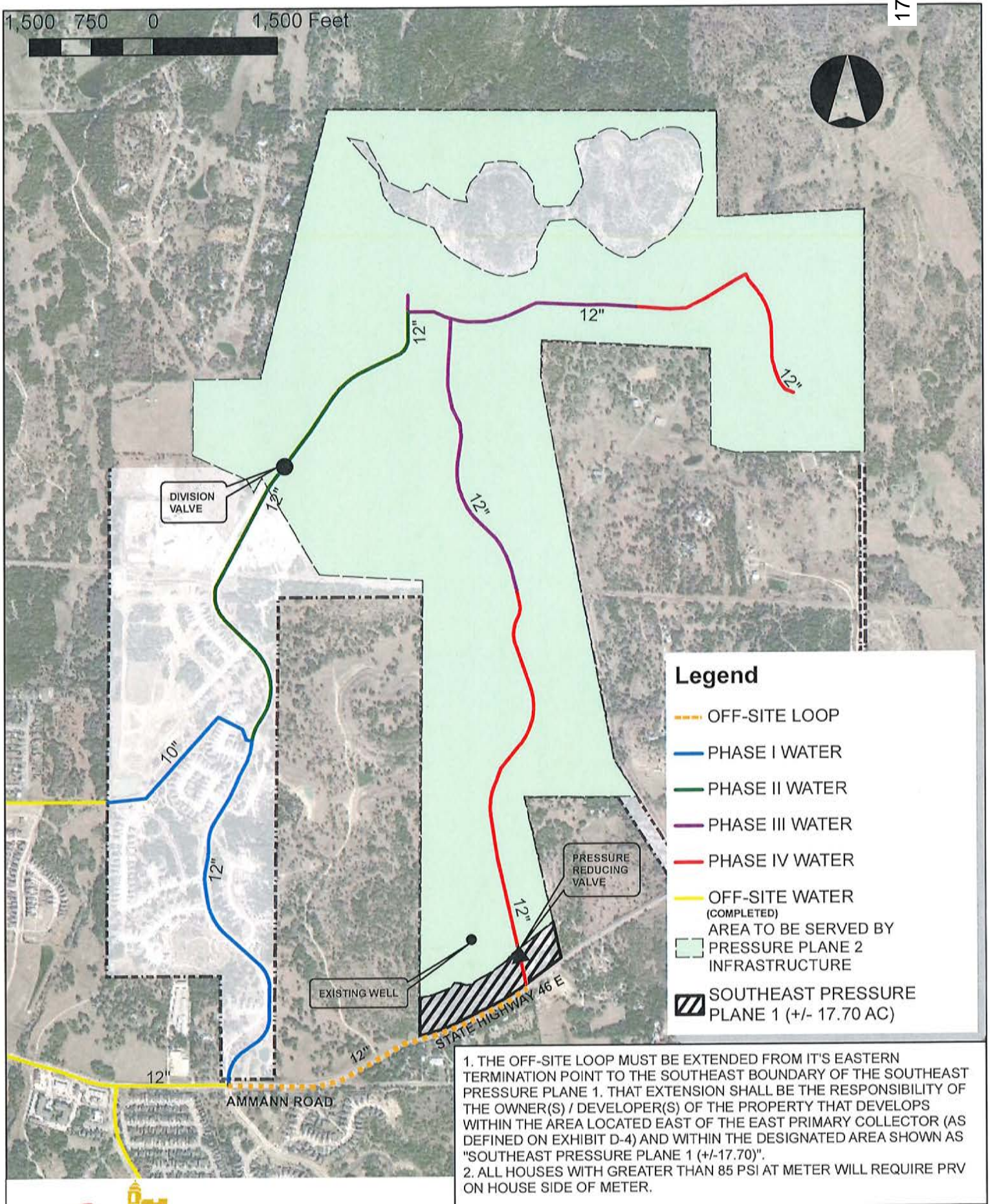


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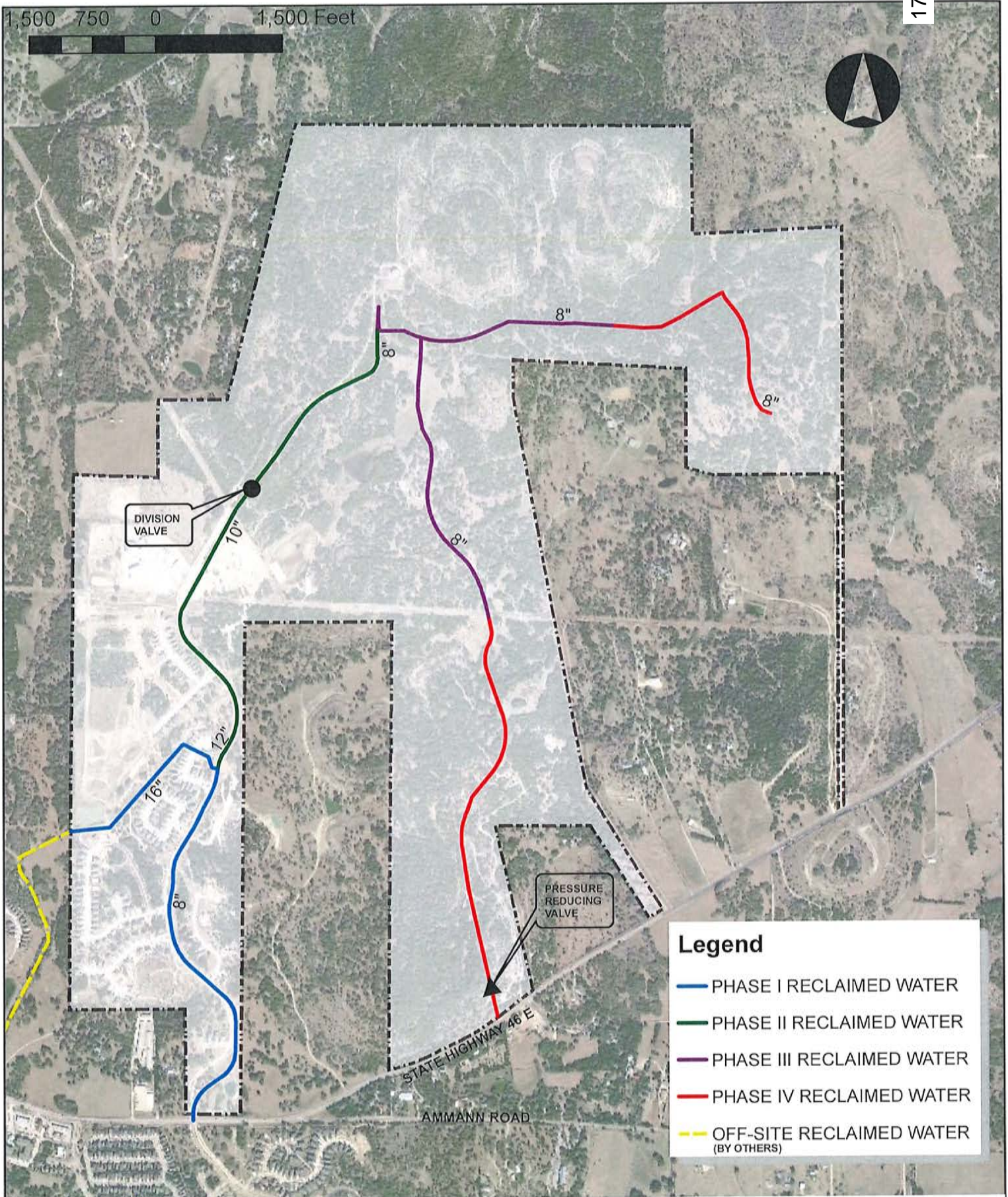


1,500 750 0 1,500 Feet





1,500 750 0 1,500 Feet

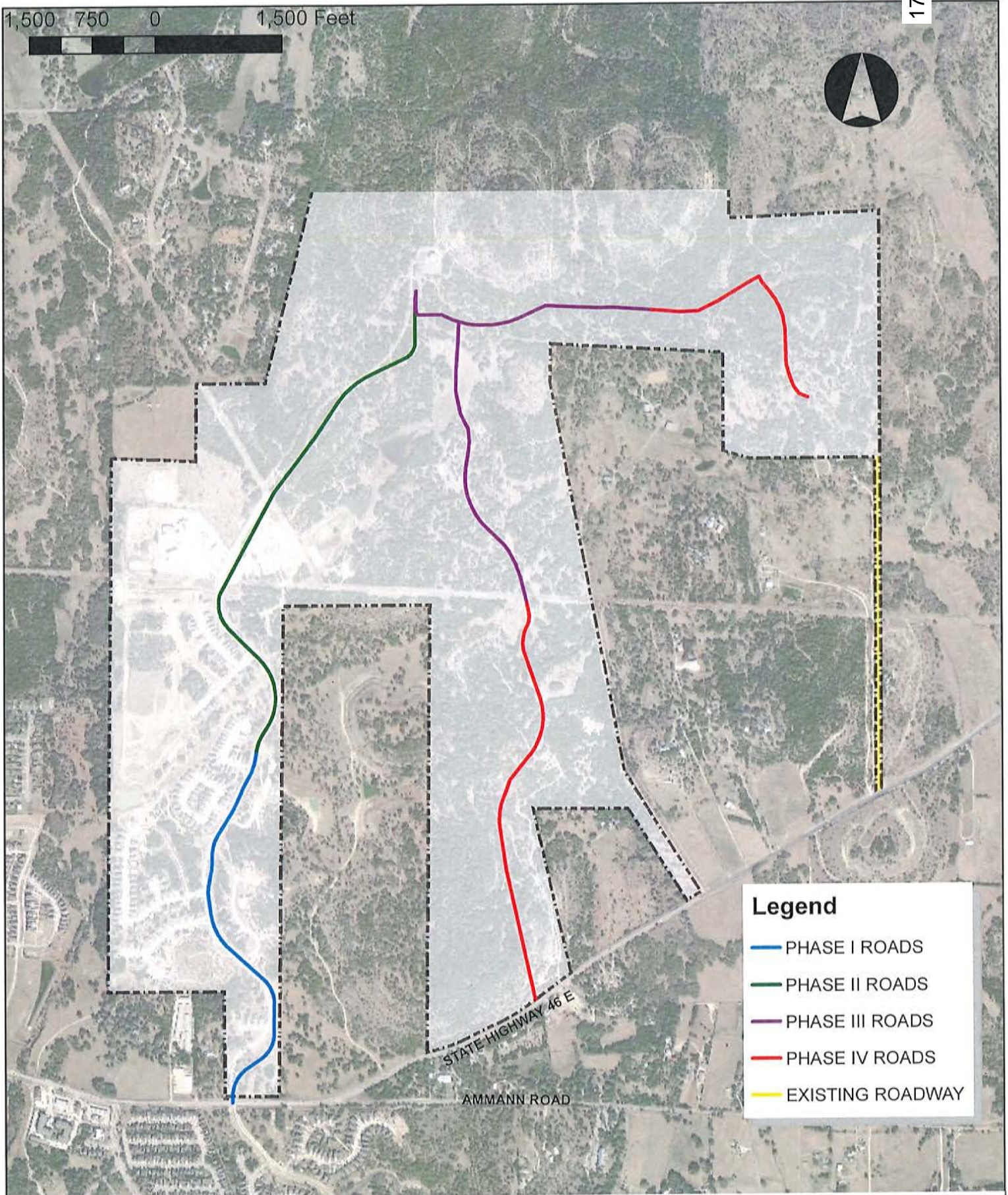








1,500 750 0 1,500 Feet

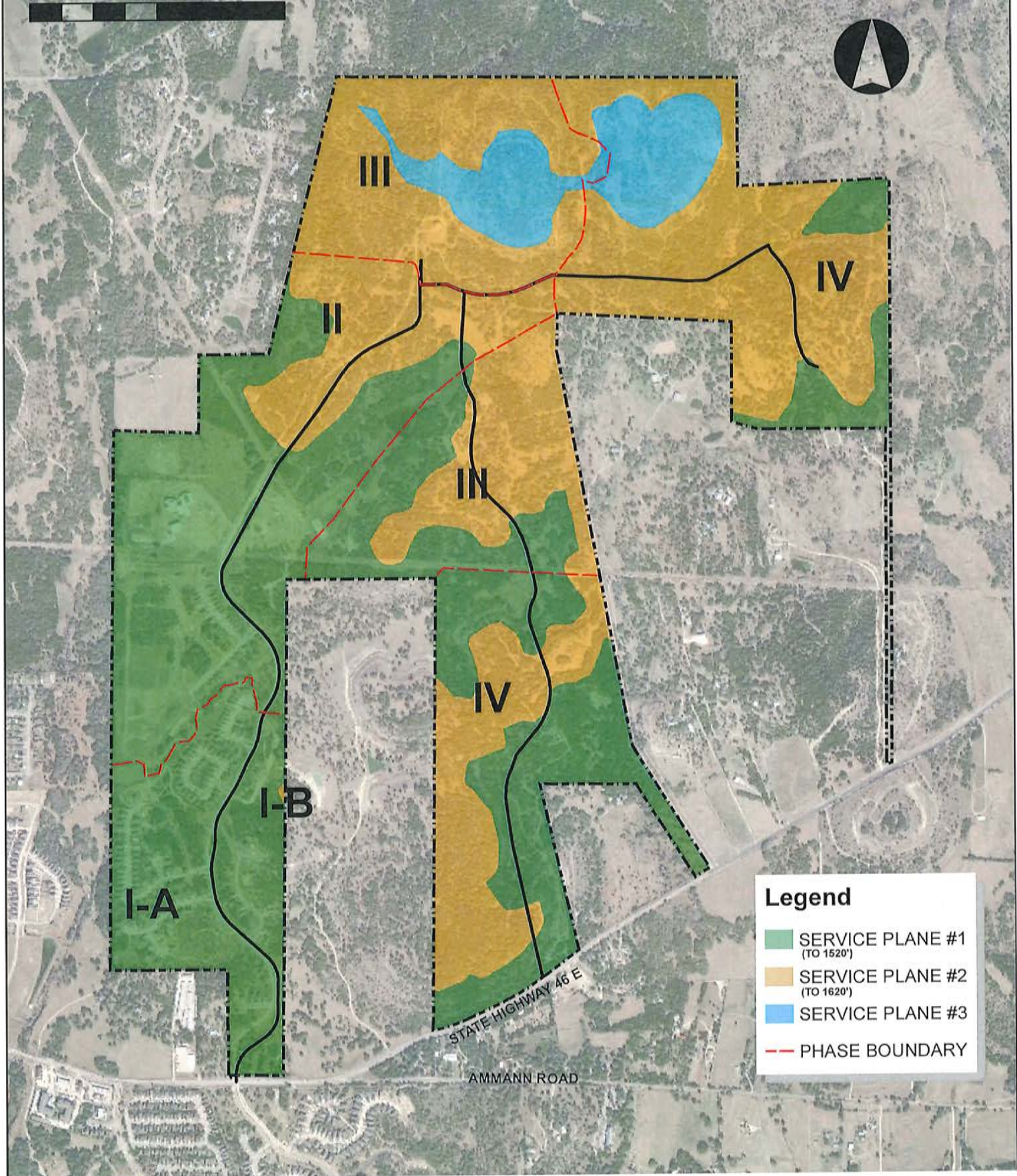


### Legend

- PHASE I ROADS
- PHASE II ROADS
- PHASE III ROADS
- PHASE IV ROADS
- EXISTING ROADWAY



1,500 750 0 1,500 Feet



**Legend**

- SERVICE PLANE #1  
(TO 1520')
- SERVICE PLANE #2  
(TO 1620')
- SERVICE PLANE #3
- PHASE BOUNDARY



EXHIBIT D-14  
MASTER G.D.P. - WATER PRESSURE PLANES

**Kimley»Horn**  
MAY 2020





# THE LOOKOUT GROUP

1789 S. Bagdad Road, Suite 104  
Leander, Texas 78641  
Tel: 512.690.4322  
thelookoutgroup.com

June 3, 2020

Mr. Ron Bowman  
City Manager  
402 E. Blanco Rd.  
Boerne, Texas 78006  
Fax (830) 249-9264

Re: Esperanza Development Agreement- Request for Amendment

Dear Mr. Bowman:

As we progress further with the development of Esperanza, we realize some of the provisions contained in the original Development Agreement need to be amended in order to allow for the most efficient and high-quality development of the community. None of the requested changes are variances or seek relaxation of the City Ordinances that govern Esperanza, nor do any of the changes increase the unit count above the maximum 2,480 units originally approved for Esperanza. We appreciate your consideration of the requested changes and look forward to working with the City on these items.

This letter summarizes the changes that have been requested by The Lookout Group and included in the Final Draft Fifth Amendment to the Esperanza Development Agreement (the "DA") for consideration of approval by the City Council.

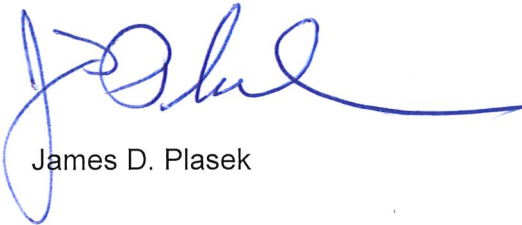
1. **Phasing** - The original DA included a color-coded phasing map for the entire 1,243-acre property dictating the order (phases 1-5) in which the property was to be developed. However, this phasing concept doesn't take into consideration topography, among other things, and as a result is limiting our ability to develop the areas where our larger custom homes and active adult homes need to be located (phases 4 and 5 on the original phasing map). We are requesting the phasing map/concept be revised to provide for 4 total phases as shown on the revised Exhibit D-3, which will allow us the flexibility to quickly respond to market demand and to develop the property efficiently so that the lots can be constructed in the locations that are best suited for each lot size depending on the topography.
2. **Kendall County WCID No. 2A ("KCWCID No. 2A") boundary line** - Almost 14 years ago, the original developer created the boundaries of its first operating water district, KCWCID No. 2A. As we develop the engineering plans for the final phases of the 477-acre KCWCID No. 2A, we have realized the need to adjust the northernmost boundary line so that all of the lots in the final phase are located within the boundaries of KCWCID No. 2A. Therefore, we are requesting City approval to adjust the boundaries of KCWCID No. 2A and to annex an additional 11.8 acres into KCWCID No. 2A.

3. **Lot size table** - In a previous amendment to the DA, a Lot Size (minimum) table was added to ensure the lots in Esperanza followed the requirements set forth in the City zoning even though Esperanza is not subject to City zoning. However, when that table was included, the R-3 High Density Residential zoning category was mistakenly excluded even though the R-3 lot size was included in the original DA. Additionally, we are requesting the front setbacks in Esperanza be adjusted to match the City's requirement of 25' for the front setback of garages for all lots and a 20' front building setback on most lot sizes. The intent is to match the building setbacks that are allowed by the City's current policy. No relief or variances from the City's current setback requirements are being requested.
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We believe these changes place no additional burden on the City, but removes unnecessary constraints to our ability to meet market demand. With this amendment we will be able to more effectively develop Esperanza while remaining compliant with the intent of the original agreement. Thank you for your time and consideration on this and we continue to appreciate the partnership with the City of Boerne.

Please let me know if you have any questions.

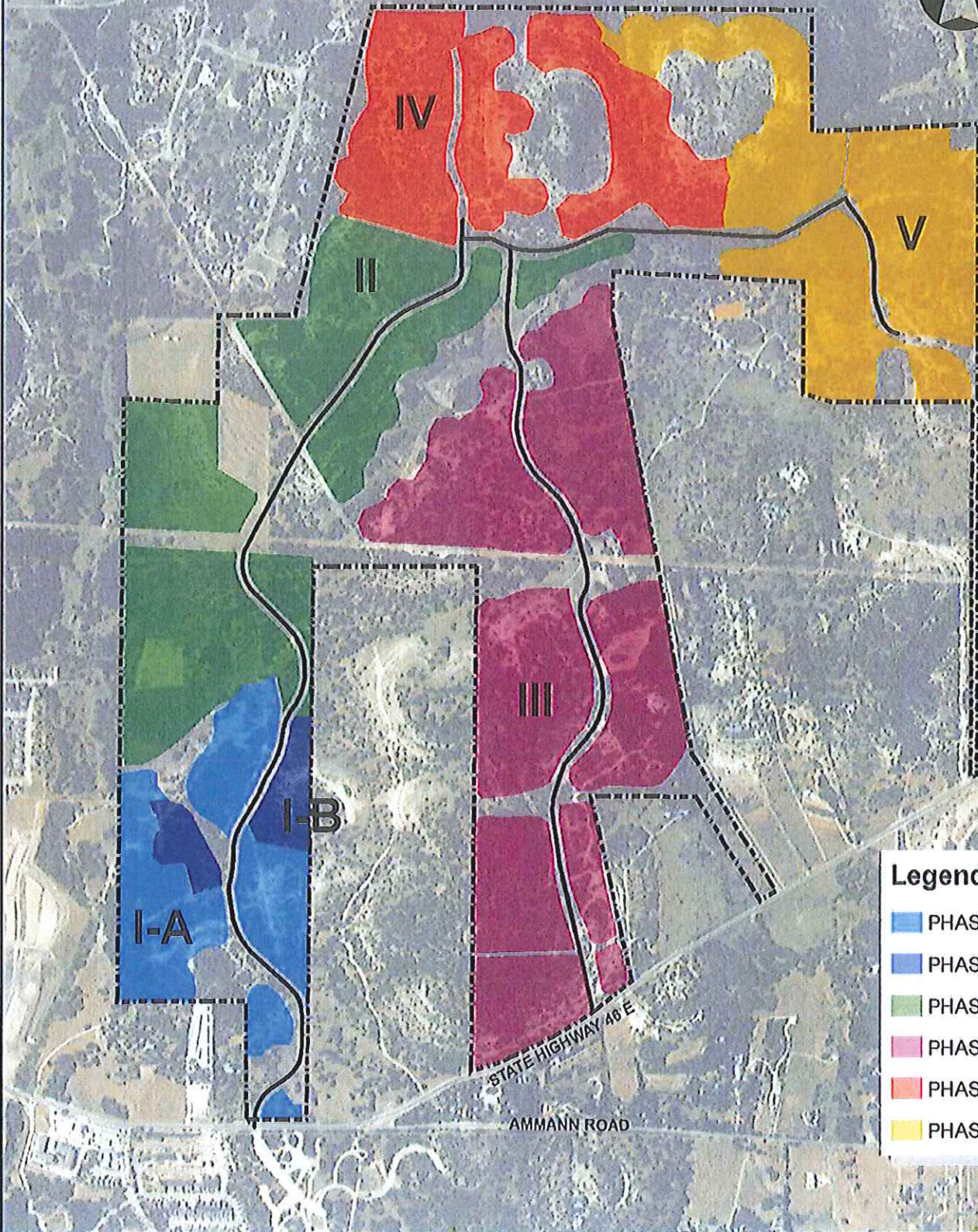
Regards,



James D. Plasek



1,500 750 0 1,500 Feet



**Legend**

- PHASE I-A
- PHASE I-B
- PHASE II
- PHASE III
- PHASE IV
- PHASE V

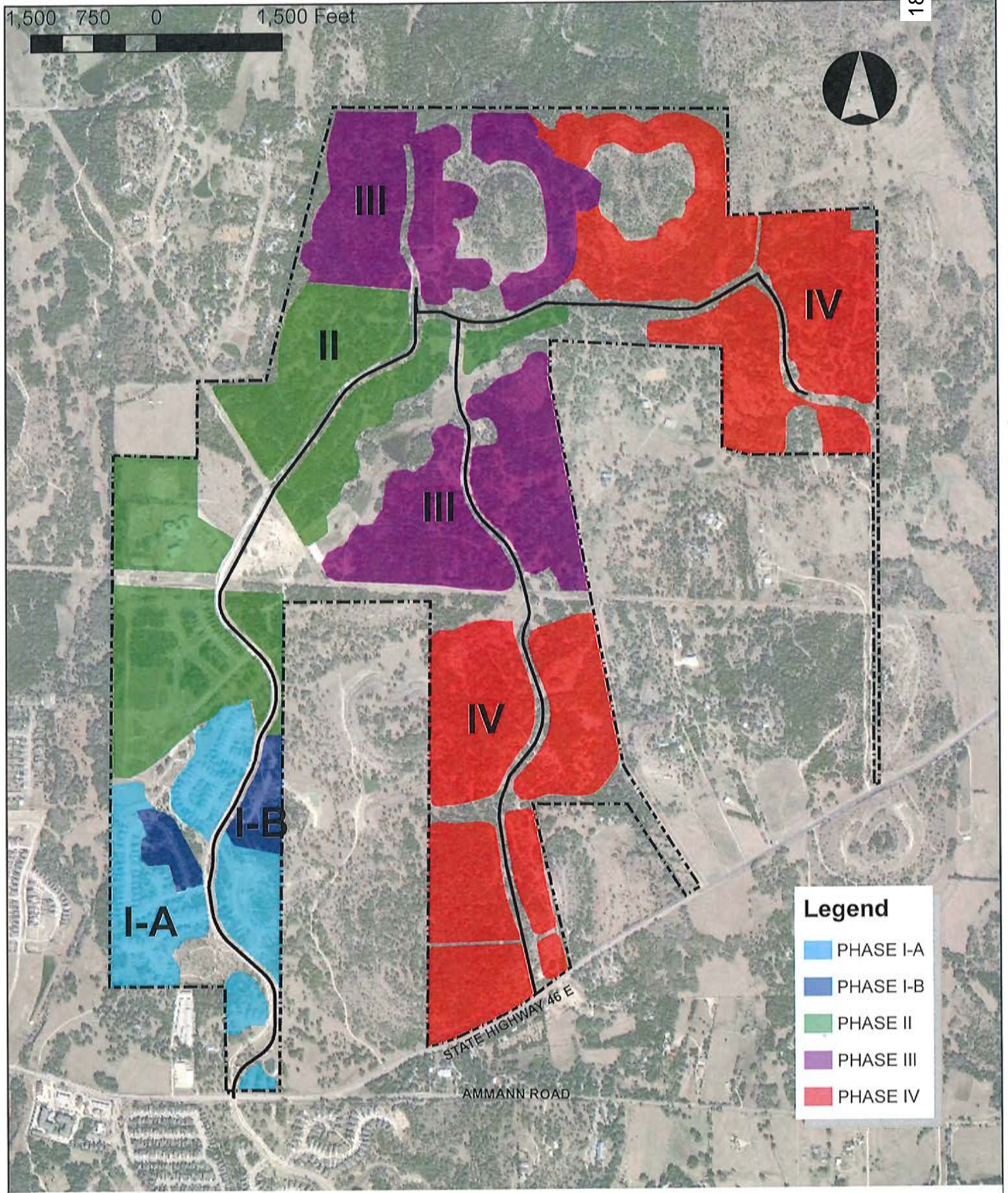
JANUARY 2018



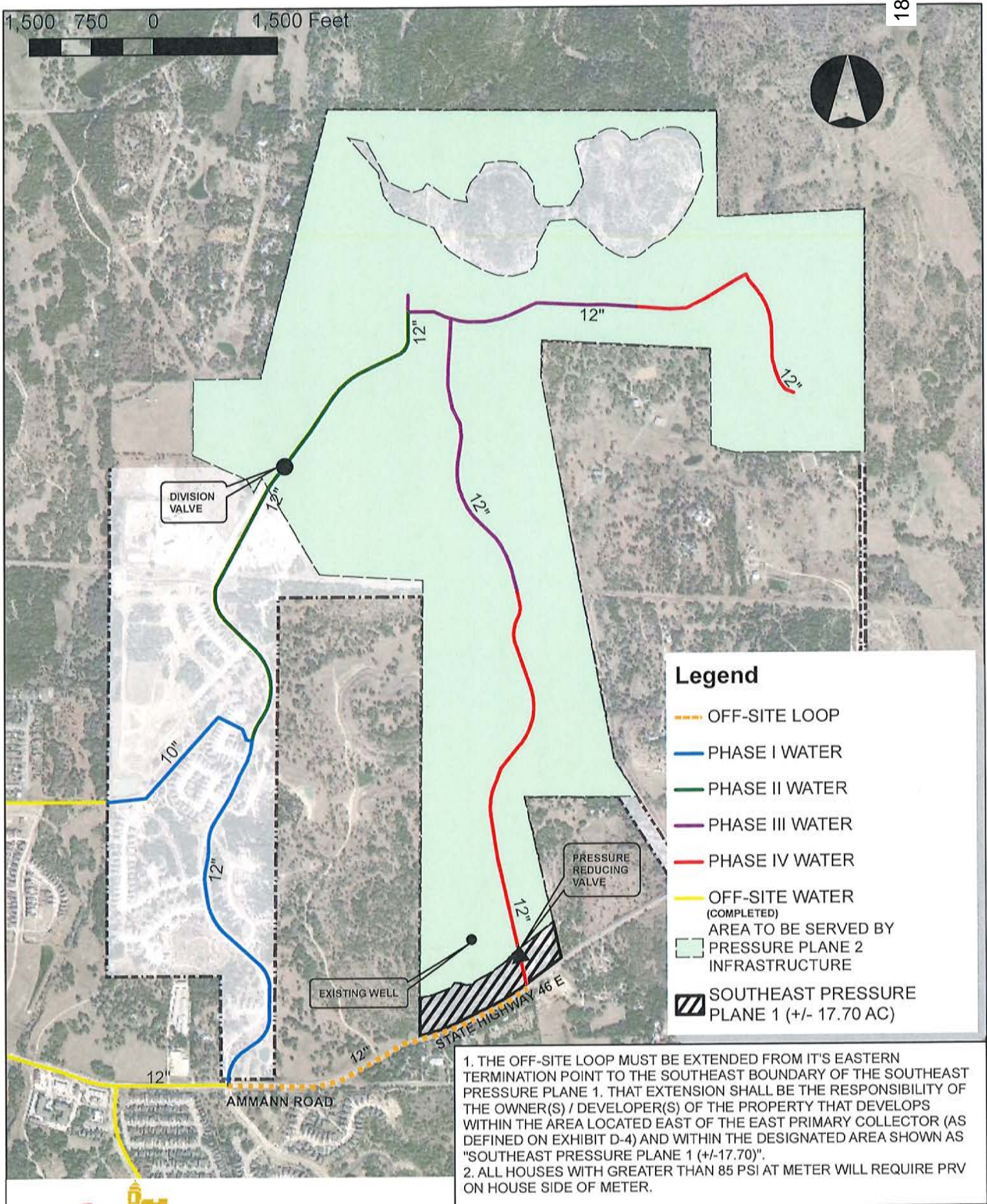
EXHIBIT D-3  
MASTER G.D.P. - DEVELOPMENT PHASING PLAN


**Kimley»Horn**









	<div style="text-align: center;"><b>AGENDA ITEM SUMMARY</b></div> <div style="border: 1px dashed purple; padding: 5px; float: right;"> <b>District Impacted</b>  <input type="checkbox"/> 1 = Wolosin  <input type="checkbox"/> 2 = Woolard  <input type="checkbox"/> 3 = Scott  <input type="checkbox"/> 4 = Fowler  <input type="checkbox"/> 5 = Macaluso  <input checked="" type="checkbox"/> All </div>
<b>AGENDA DATE</b>	June 9, 2020
<b>DESCRIPTION</b>	CONSIDER RESOLUTION NO. 2020-R43; A RESOLUTION OF THE CITY OF BOERNE, TEXAS CONSENTING TO THE ANNEXATION OF 11.785 ACRES OF LAND INTO KENDALL COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT NO. 2A.
<b>STAFF'S RECOMMENDED ACTION (be specific)</b>	Approve Resolution No. 2020-R43; consenting to the annexation of 11.785 acres of land into Kendall County Water Control and Improvement District No. 2A.
<b>CONTACT PERSON</b>	Jeff Thompson, Deputy City Manager & General Manager of Utilities
<b>SUMMARY</b>	As discussed in the previous Agenda Item, this is the adjustment of KCWCID No. 2A boundary line to include an additional 11.785 acres into KCWCID No. 2A. (See Attachment 1 for applicant commentary as well as the Petition for Consent). The annexation of the 11.785 acres into WCID 2A (and the corresponding exclusion of same acreage for WCID 2) is a simple adjustment of the Districts' boundaries to include all of the land/lots in Phase 2F within WCID 2A. Without such adjustment, some of the lots would be in WCID 2A and some would be in WCID 2. Pursuant to Chapter 42.0425 of the Texas Local Government Code, as amended, no land within the corporate limits of a city or within the extraterritorial jurisdiction of a city, shall be included within a water control and improvement district unless such city grants it written consent, by resolution or ordinance, to the inclusion of land within the district.
<b>COST</b>	
<b>SOURCE OF FUNDS</b>	
<b>ADDITIONAL INFORMATION</b>	Resolution, Attachment 1

This summary is not meant to be all inclusive. Supporting documentation is attached.



**RESOLUTION NO. 2020-R43**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BOERNE,  
TEXAS CONSENTING TO THE ANNEXATION OF 11.785 ACRES OF LAND  
BY KENDALL COUNTY WATER CONTROL AND IMPROVEMENT  
DISTRICT NO. 2A**

**WHEREAS**, Kendall County Water Control and Improvement District No. 2A (the "District") is located within the extraterritorial jurisdiction of the City of Boerne, Texas (the "City"); and

**WHEREAS**, Chapter 42.0425 of the Texas Local Government Code, as amended, provides that no land within the corporate limits of a city or within the extraterritorial jurisdiction of a city, shall be included within a water control and improvement district unless such city grants it written consent, by resolution or ordinance, to the inclusion of land within the district.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BOERNE, TEXAS:**

Section 1. All of the matters and facts set forth in the preamble hereof are true and correct.

Section 2. The Petition for Consent to Annex Land into a Water Control and Improvement District (the "Petition") is attached hereto as Exhibit "A" and made a part hereof for all purposes.

Section 3. The City Council of the City hereby specifically gives its written consent to the annexation of the 11.785 acres described in the Petition and exhibit attached hereto, into the District.

Section 4. This Resolution shall take effect immediately from and after its passage in accordance with the provisions of the Charter of the City and it is accordingly so resolved.

PASSED and APPROVED on this the \_\_\_\_ day of June, 2020.

APPROVED:

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Secretary



PETITION FOR CONSENT TO  
ANNEX LAND INTO A WATER CONTROL AND IMPROVEMENT DISTRICT

THE STATE OF TEXAS                   §  
    §  
 COUNTY OF KENDALL                 §

TO THE HONORABLE MAYOR AND CITY  
 COUNCIL OF THE CITY OF BOERNE, TEXAS:

The undersigned, KENDALL COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT NO. 2A, a political subdivision of the State of Texas (the "District") and LOOKOUT BOERNE HOLDINGS, L.P., a Texas limited partnership (the "Property Owner"), respectfully petition the City of Boerne, Texas for its consent to the addition of land to the District. In support of this Petition, the District would show the following:

I.

The land sought to be added to the District (the "Tract") is described by metes and bounds in Exhibit "A", attached hereto and made a part hereof for all purposes.

II.

The Tract lies wholly within Kendall County, Texas, and not within the boundaries of any incorporated city or town. The Tract lies wholly within the exclusive extraterritorial jurisdiction of the City of Boerne, Texas, as such term is determined pursuant to Chapter 42 V.T.C.A. Local Government Code.

III.

Property Owner is the holder of title to the Tract as shown by the Kendall County Tax Rolls and conveyances of record. No person or entity holds a lien on the Tract, except for Prosperity Bank, (as lender to Petitioner, "Lender") pursuant to that certain Deed of Trust dated November 4, 2014, and recorded in Volume 1440, page 99, of the Official Public Records of Kendall County, Texas, as Document No. 00288177.

IV.

The District was organized, created, and established pursuant to an election held on May 9, 2009, approving the division of Kendall County Water Control and Improvement District No. 2 into Kendall County Water Control and Improvement District No. 2A and the District, operating in accordance with Article XVI, Section 59, and Article III, Section 52, of the Constitution of the State of Texas and operates pursuant to Chapters 49 and 51, Texas Water Code, as amended, to provide for:

- (1) the control, storage, preservation, and distribution of its storm water and floodwater, the water of its rivers and streams for irrigation, power and all other useful purposes;
- (2) the reclamation and irrigation of its arid, semiarid, and other land needing irrigation;
- (3) the reclamation and drainage of its overflowed land and other land needing drainage;
- (4) the conservation and development of its forests, water, and hydroelectric power;
- (5) the navigation of its inland and coastal water;
- (6) the control, abatement, and change of any shortage or harmful excess of water;
- (7) the protection, preservation, and restoration of the purity and sanitary condition of water within the state;
- (8) the preservation of all natural resources of the state;
- (9) the collection, transportation, processing, disposal, and control of all domestic, industrial, or communal wastes, whether fluids, solids, or composites,
- (10) to gather, conduct, divert, and control local storm water or other local harmful excesses of water; and
- (11) the construction, acquisition, improvement, operation, or maintenance of macadamized, graveled, or paved roads, or improvements, including storm drainage, in aid of those roads, to the extent authorized by Article III, Section 52, of the Texas Constitution.

The District is empowered and authorized to purchase, construct, acquire, own, operate, maintain, repair, improve, or extend inside and outside its boundaries any and all works, improvements, facilities, plants, equipment, and appliances necessary to accomplish the purposes of its creation.

## V.

The general nature of the work to be done by and within the District at the present time is the (i) construction, maintenance and operation of a waterworks system for residential and commercial purposes; (ii) the construction, maintenance and operation of a sanitary sewer collection system; (iii) the control, abatement and amendment of the harmful excess of waters and the reclamation and drainage of overflowed lands within the District; (iv) the construction, acquisition, improvement, operation, or maintenance of macadamized, graveled, or paved roads, or improvements, including storm drainage, in aid of those roads, to the extent authorized by Article III, Section 52, of the Texas Constitution; and (v) such other construction, installation,

maintenance, purchase and operation of such additional facilities, systems, plants and enterprises as shall be consonant with the purposes for which the District is organized.

VI.

There is a necessity for the improvements above described because the Tract is located within an area that is experiencing substantial and sustained residential and commercial growth, is urban in nature and is not supplied with adequate water, sanitary sewer, drainage facilities, road facilities and services. The health and welfare of the future inhabitants of the Tract require the acquisition and installation of an adequate waterworks, sanitary sewer, storm drainage and road system. The purchase, construction, extension, improvement, maintenance and operation of such waterworks, sanitary sewer, storm drainage and road systems will conserve and preserve the natural resources of this State by promoting and protecting the purity and sanitary condition of the State's waters and will promote and protect the public health and welfare of the community; therefore, a public necessity exists for the inclusion of the Tract within the District.

VII.

Said proposed improvements are practicable and feasible, in that the terrain of the Tract is of such a nature that a waterworks, sanitary sewer, storm drainage and road systems can be constructed at a reasonable cost; and said land will be rapidly developed for commercial, multi-family and residential purposes.

VIII.

A preliminary investigation has been instituted to determine the cost of the project attributable to the Tract, and it is now estimated by those filing this Petition, from such information as they have at this time, that the ultimate cost of the development contemplated will be approximately \$711,000.

WHEREFORE, the undersigned respectfully pray that this Petition be granted in all respects and that the City Council of the City of Boerne, Texas, adopt a resolution giving its written consent to the addition of the Tract to the District.

**[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]**

RESPECTFULLY SUBMITTED THIS 26 DAY OF February, 2020.

"DISTRICT"

KENDALL COUNTY WATER CONTROL AND  
IMPROVEMENT DISTRICT NO. 2A

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

Printed Name: Kurtis Rudkin

Title: President

ADDRESS:

c/o Sanford Kuhl Hagan Kugle Parker Kahn LL.P.  
1980 Post Oak Boulevard, Suite 1380  
Houston, Texas 77056

THE STATE OF TEXAS

§

COUNTY OF KENDALL

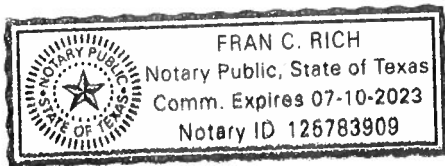
§

§

This instrument was acknowledged before me on the 26<sup>th</sup> day of February, 2020, by Kurtis Rudkin as President of the Board of Directors of Kendall County Water Control and Improvement District No. 2A, a political subdivision of the State of Texas, on behalf of said political subdivision.

STAMP NAME AND DATE OF  
EXPIRATION OF COMMISSION  
BELOW:

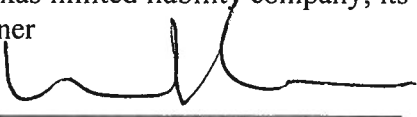
Jean Cluck  
NOTARY PUBLIC, STATE OF TEXAS



"PROPERTY OWNER"

**LOOKOUT BOERNE HOLDINGS, L.P.,**  
a Texas limited partnership

By: Morningside Land & Cattle Company, LLC,  
a Texas limited liability company, its General  
Partner

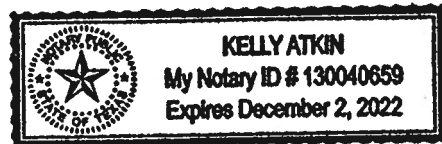
By:   
William R. Hinckley  
Operating Manager

THE STATE OF TEXAS §  
COUNTY OF Williamson §

This instrument was acknowledged before me on the 10 day of February, 2020, by **WILLIAM R. HINCKLEY**, Operating Manager of **MORNINGSIDE LAND & CATTLE CO., LLC**, a Texas limited liability company, General Partner of **LOOKOUT BOERNE HOLDINGS, L.P.**, a Texas limited partnership, in the capacity herein stated.

STAMP NAME AND DATE OF  
EXPIRATION OF COMMISSION  
BELOW:

  
NOTARY PUBLIC, STATE OF TEXAS





**A METES AND BOUNDS  
DESCRIPTION OF AN  
11.785 ACRE TRACT OF LAND**

**BEING** an 11.785 acre (513,336 square feet) tract of land situated in the Juan Ortiz Survey No. 190, Abstract No. 363, Kendall County, Texas; being a portion of a called 800.258 acre Tract 3 described in instrument to Lookout Boerne Holdings, L.P. recorded in Volume 1389, Page 572 of the Official Public Records of Kendall County; and being more particularly described as follows:

**COMMENCING** at a 1/2-inch iron rod found marking the eastern-most corner of Lot 1 and the southern-most corner of Lot 2 of Spring Creek Estates, plat of which is recorded in Volume 4, Pages 59-61 of the Plat Records of Kendall County;

**THENCE**, North 13°52'07" East, 660.38 feet along the easterly line of said Spring Creek Estates to the **POINT OF BEGINNING** of the herein described tract;

**THENCE**, continuing along the easterly line of said Spring Creek Estates the following two (2) courses and distances:

1. North 13°52'07" East, 438.76 feet to a 1/2-inch iron rod found for corner;
2. North 14°08'13" East, 119.47 feet to a point for corner; from which a 1/2-inch iron rod with a plastic cap stamped "MDS" found marking the eastern-most corner of Lot 6 of said Spring Creek Estates bears North 14°08'13" East, 540.64 feet;

**THENCE**, departing the easterly line of said Spring Creek Estates and crossing said Tract 3 the following six (6) courses and distances:

1. South 84°29'16" East, 1414.62 feet to a point for corner;
2. South 2°08'21" West, 49.14 feet to a point of curvature;
3. in a southerly direction, along a tangent curve to the right, a central angle of 1°41'03", a radius of 1057.00 feet, a chord bearing and distance of South 2°58'53" West, 31.07 feet, and a total arc length of 31.07 feet to a point for corner;
4. South 89°52'35" West, 475.52 feet to a point for corner;
5. South 4°12'50" West, 266.57 feet to a point for corner;
6. South 86°46'10" West, 1045.54 feet to the **POINT OF BEGINNING**, and containing 11.785 acres of land in Kendall County, Texas. The basis of bearing for this description is the Texas State Plane Coordinate System Grid, South Central Zone (FIPS 4204) (NAD'83). All distances are on the Grid and shown in U.S. Survey Feet. This document was prepared in the office of Kimley-Horn and Associates, Inc. in San Antonio, Texas.

ABEL P. STENDAHL  
REGISTERED PROFESSIONAL  
LAND SURVEYOR NO. 6754  
601 NW LOOP 410, SUITE 350  
SAN ANTONIO, TEXAS 78216  
PH. 210-541-9166  
abel.stendahl@kimley-horn.com



**11.785 ACRES**  
**JUAN ORTIZ SURVEY NO. 190,**  
**ABSTRACT NO. 363,**  
**KENDALL COUNTY, TEXAS**

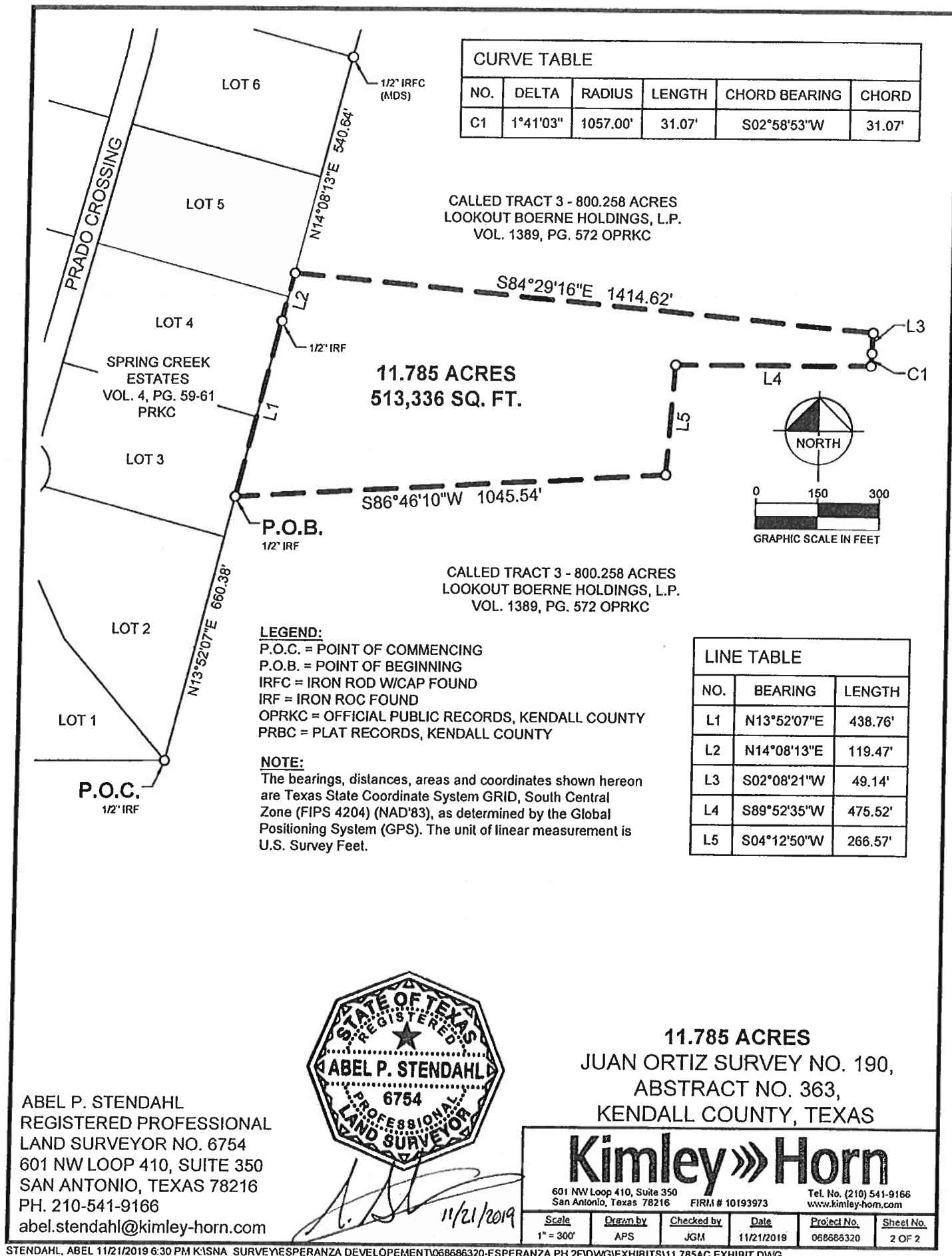
**Kimley»Horn**

601 NW Loop 410, Suite 350  
San Antonio, Texas 78216

FIRM # 10193973

Tel. No. (210) 541-9166  
www.kimley-horn.com

Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
N/A	APS	JGM	11/21/2019	068685320	1 OF 2





# THE LOOKOUT GROUP

1789 S. Bagdad Road, Suite 104  
Leander, Texas 78641  
Tel: 512.690.4322  
thelookoutgroup.com

June 3, 2020

Mr. Ron Bowman  
City Manager  
402 E. Blanco Rd.  
Boerne, Texas 78006  
Fax (830) 249-9264

Re: Esperanza Development Agreement- Request for Amendment

Dear Mr. Bowman:

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We believe these changes place no additional burden on the City, but removes unnecessary constraints to our ability to meet market demand. With this amendment we will be able to more effectively develop Esperanza while remaining compliant with the intent of the original agreement. Thank you for your time and consideration on this and we continue to appreciate the partnership with the City of Boerne.


Please let me know if you have any questions.

Regards,




James D. Plasek




	<div data-bbox="1235 218 1474 457"> <p><b>District Impacted</b></p> <p><input type="checkbox"/> 1 = Wolosin</p> <p><input type="checkbox"/> 2 = Woolard</p> <p><input type="checkbox"/> 3 = Scott</p> <p><input type="checkbox"/> 4 = Fowler</p> <p><input type="checkbox"/> 5 = Macaluso</p> <p><input checked="" type="checkbox"/> All</p> </div> <p style="text-align: center;"><b>AGENDA ITEM SUMMARY</b></p>
<b>AGENDA DATE</b>	<i>June 9, 2020</i>
<b>DESCRIPTION</b>	DISCUSSION AND INTRODUCTION OF MEDICAL ADVISORY PANEL FOR COVID-19.
<b>STAFF'S RECOMMENDED ACTION (be specific)</b>	No action.
<b>CONTACT PERSON</b>	Council Member Brian Fowler
<b>SUMMARY</b>	Introduce the Medical Advisory Panel and discuss the scope and purpose of the panel.
<b>COST</b>	
<b>SOURCE OF FUNDS</b>	
<b>ADDITIONAL INFORMATION</b>	

This summary is not meant to be all inclusive. Supporting documentation is attached.

	<div data-bbox="1235 218 1474 457"> <p><b>District Impacted</b></p> <p><input type="checkbox"/> 1 = Wolosin</p> <p><input type="checkbox"/> 2 = Woolard</p> <p><input type="checkbox"/> 3 = Scott</p> <p><input type="checkbox"/> 4 = Fowler</p> <p><input type="checkbox"/> 5 = Macaluso</p> <p><input checked="" type="checkbox"/> All</p> </div> <p style="text-align: center;"><b>AGENDA ITEM SUMMARY</b></p>
<b>AGENDA DATE</b>	June 9, 2020
<b>DESCRIPTION</b>	UPDATE ON BOERNE STRONG STIMULUS PROGRAM.
<b>STAFF'S RECOMMENDED ACTION (be specific)</b>	No action.
<b>CONTACT PERSON</b>	Jeff Thompson, Deputy City Manager & General Manager of Utilities
<b>SUMMARY</b>	An update will be provided on the Boerne Strong Stimulus Program (BSSP).
<b>COST</b>	
<b>SOURCE OF FUNDS</b>	Economic Development
<b>ADDITIONAL INFORMATION</b>	

This summary is not meant to be all inclusive. Supporting documentation is attached.

	<div style="text-align: center;"><b>AGENDA ITEM SUMMARY</b></div> <div style="border: 1px dashed purple; padding: 5px; float: right; margin-top: 10px;"> <b>District Impacted</b>  <input type="checkbox"/> 1 = Wolosin  <input type="checkbox"/> 2 = Woolard  <input type="checkbox"/> 3 = Scott  <input type="checkbox"/> 4 = Fowler  <input checked="" type="checkbox"/> 5 = Macaluso  <input type="checkbox"/> All </div>
<b>AGENDA DATE</b>	<i>June 09, 2020</i>
<b>DESCRIPTION</b>	RECEIVE AND CONSIDER A REQUEST FROM ALAMO SIGN SOLUTIONS FOR A VARIANCE TO THE SIGN ORDINANCE, SECTION 7. CENTRAL AREA (B-3 ZONES) F. CANOPY SIGNS, SIZE OF SIGN. <i>(Methodist Surgery Center, 110 Menger Springs)</i>
<b>STAFF'S RECOMMENDED ACTION (be specific)</b>	Approve a request from Alamo Sign Solutions for a variance to the Sign Ordinance, Section 7. Central Area (B-3 Zones) F. Canopy Signs, size of sign.
<b>CONTACT PERSON</b>	Laura Talley, Planning and Community Development Director
<b>SUMMARY</b>	<p>The applicant is requesting a wall sign for Methodist Ambulatory Surgical Center located at the corner of IH-10 and Menger Springs. The architecture of the building is unique, having long narrow windows along the longest walls on both the street facing sides, with one long panel wall on the corner where clients drive thru to drop off and pick up patients. This is the only wall that is a solid wall in which to place signage and makes the most sense for visibility.</p> <p>Wall signs may only be 10% of the wall. In this case, the sign is 20% of the panel wall square footage. Due to the unique design the committee recognized that if they'd built a typical structure they could have had a much larger sign on a larger wall area. The sign variance committee recommended approval of the sign as presented.</p> <p>Staff recommends approval.</p>
<b>COST</b>	
<b>SOURCE OF FUNDS</b>	
<b>ADDITIONAL INFORMATION</b>	

This summary is not meant to be all inclusive. Supporting documentation is attached.



**CITY OF BOERNE  
SIGN VARIANCE REQUEST FORM**

**Please attach a copy of the rejected application from Code Compliance**

**NAME:** Alamo Sign Solutions / Ashley Schniedel  
**ADDRESS:** 1731 S. San Marcos St. Bldg. 818 SMTX 78207  
**PHONE #:** 210-239-6777 **EMAIL:** ashley@alamosignsolutions.com

**NAME OF BUSINESS AND ADDRESS WHERE PROPOSED SIGN WILL BE LOCATED:**


Methodist Surgery Center (SIGN A)  
110 Menger Springs

**SECTION / ARTICLE OF ORDINANCE:** Section 7 Article F

**REASON FOR VARIANCE (attach if necessary):** signage exceeds 10%  
of facade square footage (SIGN A)

**Please attach any additional information that might assist your request (i.e. site plan, drawings, photos, etc.)**

**Additional Comments (attach if necessary):** SIGN A

  
**Signature**

5/19/2020  
**Date**

**Fee must accompany variance request Fee Due: \$115.00**  
**Please complete form and return with fee to:**

**City of Boerne**  
**Attn: Lori A. Carroll, City Secretary**  
**447 N. Main Street**  
**Boerne, TX 78006**  
**830/249-9511**



City of  
**Boerne****SIGN PERMIT APPLICATION**

Application date	
Sign approval	

Please print clearly all information. Incomplete applications will not be processed.

1. Submit drawing with this application showing how the sign is to be erected & where it will be placed.
2. Sign drawing must include the dimensions of the sign and lettering. Color is helpful.
3. One application per sign

A

<b>PROPERTY ADDRESS</b>	Street Address <u>110 Menger Springs</u>	Site
	Business owner/ manager U	Phone <b>REJECTED</b>
<b>PROJECT</b>	Name of business <u>Methodist Surgery Center</u>	<b>To large only</b>
<b>SIGN CONTRACTOR</b>	Company Name <u>Adams Sign Solutions</u>	Phone <u>210-239-6777</u>
	Address <u>1731 S. San Marcos St. Bldg. 818</u>	Zip <u>78207</u>
<b>PROPERTY OWNER</b>	Name <u>Methodist Medical Center</u>	Phone
	Address	Zip
<b>SIGN INFORMATION</b>	Sign wording <u>Methodist logo</u> <u>"Methodist Surgery Center Boerne"</u>	
	Sign is (circle one) <u>Permanent</u> or Banner	Is sign electric? (circle one) <u>YES</u> NO
	Type of Sign: <u>channel letters</u>	
	Sign Height <u>55" 4'-7"</u>	Sign Width <u>79" 4'-7"</u>
	Area of sign <u>30' 24'</u>	
	Wall Height (if applicable) <u>20' 18'8"</u>	Wall width (if applicable) <u>7'6.5" 8'-4"</u>
Area of wall (if applicable) <u>140' 141'</u>		
Height above grade	Site Plan: <u>YES</u> NO	Historic Landmark Commission? <u>NO</u>

I, the undersigned, do hereby acknowledge that signage work must comply with all city Ordinance stipulations and requirements and that all improper work is subject to a fine of up to \$1,000.00 per day. Further, I do certify that I am authorized to request this permit by the owner of the real property where the sign will be erected. Banner permits are issued for 30 days each with a maximum of five (5) allowed per year per address with 20 day in between banner posting. Failure to obtain a permit before construction begins will result in the fee being doubled.

Printed name

Ashley Schriedel

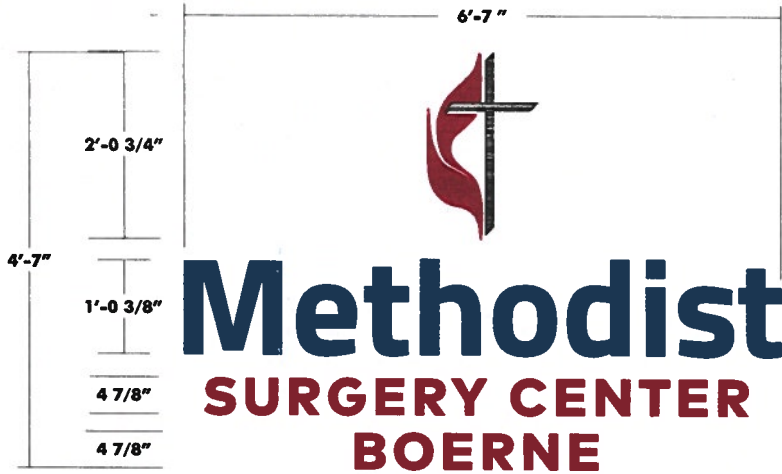
Signature



Code Enforcement Phone: 830-248-1529 Fax 830-249-7202

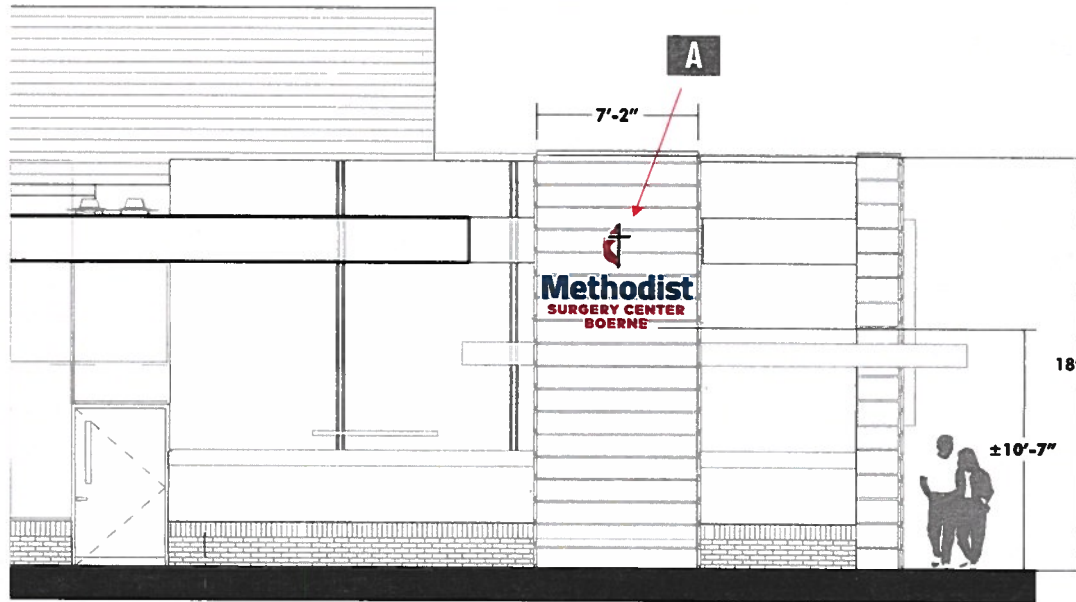
09	01/31/2020
10	02/14/2020
11	02/18/2020
12	02/19/2020
13	02/25/2020
14	02/28/2020 ADDED ADDRESS
15	05/05/2020
16	

PRIMARY RESPONSIBILITY TO SITE LOCATIONS IS TO BE PROVIDED BY  
OWNER. TO AVOID DISCREPANCIES WITH THE SHOWN  
DIMENSIONS AND A CORROBORATION TO THE PROJECT IS REQUIRED  
FOR ALL DISCREPANCIES. COLORS REPRESENTED BY THIS DRAWING  
ARE FOR PRESENTATION PURPOSES ONLY. THEY MAY NOT  
MATCH YOUR EXISTING PRODUCT PERFECTLY. COORDINATE WITH  
YOUR COLOR AND MATCH AS CLOSE AS POSSIBLE. THIS DRAWING  
IS THE SOLE PROPERTY OF BENNU ARCHITECTURAL SIGNAGE. IT  
CANNOT BE REPRODUCED, COPIED OR OTHERWISE IN VIOLATION  
OF THE PATENT RIGHTS OF BENNU ARCHITECTURAL SIGNAGE.  
BENNU ARCHITECTURAL SIGNAGE WILL BE RESPONSIBLE FOR THE  
INSTALLATION OF THE SIGNAGE. BENNU ARCHITECTURAL SIGNAGE  
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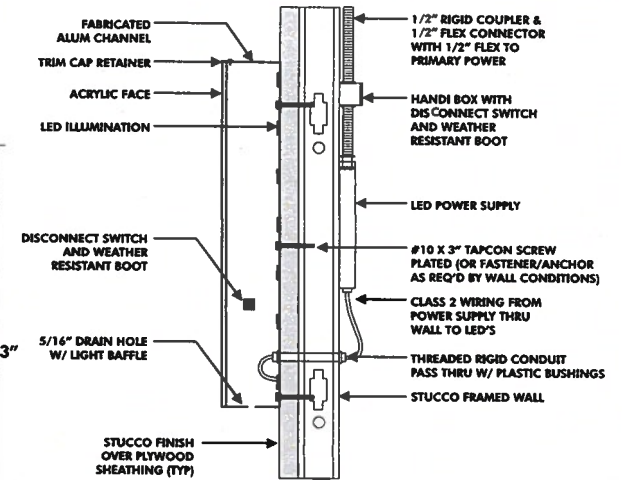


**A** NEW SINGLE FACED INTERNALLY ILLUMINATED WALL DISPLAY  
SCALE 3/4"=1'-0"  
USE STANDARD ALUMINUM CONSTRUCTION WITH MAP SATIN FINISH,  
FACES USE WHITE #7328 ACRYLIC WITH APPLIED VINYL FACES,  
USE 1" TRIM CAP, PAINT 5" RETURNS T/M FACE COLOR,  
ILLUMINATE WITH HIGH OUTPUT WHITE LED'S.

- V4 PERFORATED RED PMS 200C
- J1 1" JEWELITE TRIM CAP PAINT RED PMS 200C
- V4 PERFORATED BLUE PMS 289C
- J2 1" JEWELITE TRIM CAP PAINT BLUE PMS 289C



ELEVATION SCALE 3/16"=1'-0"



SECTION DETAIL  
SIGN TO BE UL APPROVED AND BEAR UL LABEL  
ATTACH WITH FOUR (4) SCREWS MINIMUM



1116 FOWLER STREET,  
OLD HICKORY, TN 37138  
615.226.4577 / bennusigns.com

METHODIST AMBULATORY  
SURGERY CENTER  
C/O HCA

110 MENDER SPRINGS  
BOERNE, TX 78006

TONY HATCHELL

DAVID GREEN

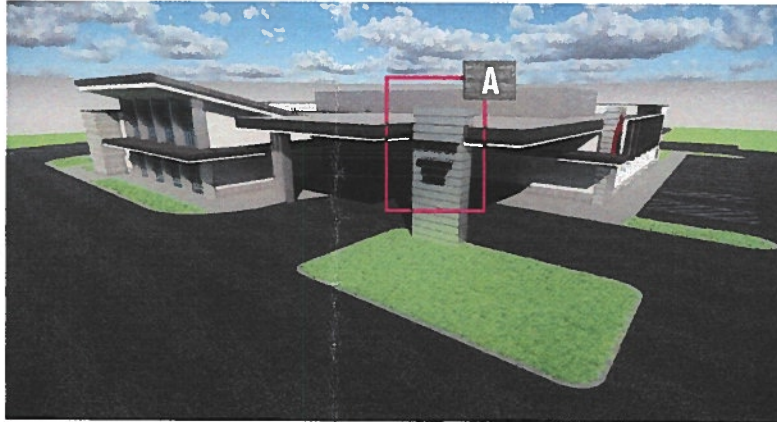
METHODIST  
MEDICAL CENTER  
BOERNE

501220

501220

09	01/31/2020
10	02/14/2020
11	02/18/2020
12	02/19/2020
13	02/25/2020
14	02/28/2020 ADDED ADDITIONAL
15	05/05/2020
16	

PRIMARY ELECTRICAL TO NEW LOCATIONS IS TO BE PROVIDED BY OTHERS. 20 AMP BREAKER CIRCUITS WITH TWO 15-AMP RECEPTACLES AND A GROUND BONDING TO THE PANEL IS ALLOWED FOR ALL INSTALLATIONS. CONEERS REPRESENTED IN THIS DOCUMENT ARE FOR PRESENTATION PURPOSES ONLY. THEY MAY NOT MATCH YOUR EXISTING PRODUCT PERFECTLY. COLOR CALCULATIONS ARE FOR A MATCH AS CLOSE AS POSSIBLE. THIS ORIGINAL DESIGN IS THE SOLE PROPERTY OF BENNU ARCHITECTURAL SIGNAGE. IT CANNOT BE REPRODUCED, COPIED OR OTHERWISE USED IN ANY MANNER WITHOUT FIRST OBTAINING WRITTEN PERMISSION FROM BENNU ARCHITECTURAL SIGNAGE. ELECTRICAL SIGNS ARE ALLOWED TO BE INSTALLED IN ACCORDANCE WITH THE REQUIREMENTS OF ARTICLE 605 OF THE NATIONAL ELECTRICAL CODE AND/OR OTHER APPLICABLE LOCAL CODES. THIS INCLUDES PROPER GROUNDING AND BONDING TO SIGN.



FRONT ENTRANCE PERSPECTIVE



STAFF ENTRANCE PERSPECTIVE



BACK VESTIBULE PERSPECTIVE



MECHANICAL YARD PERSPECTIVE





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BOERNE

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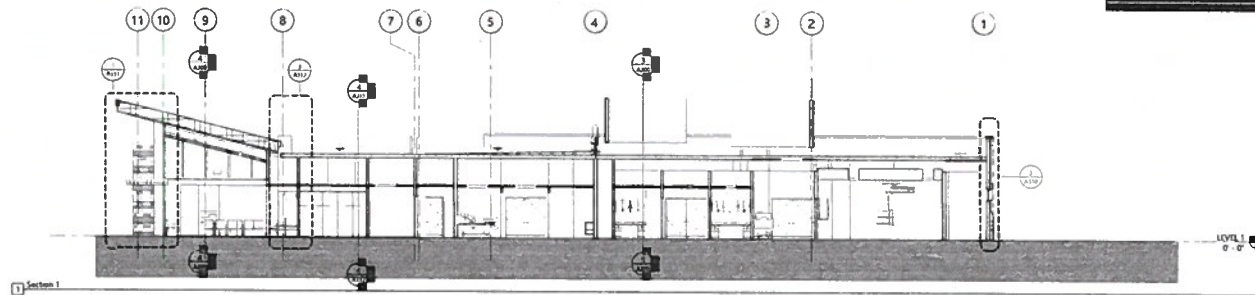
QUOTE #

501220

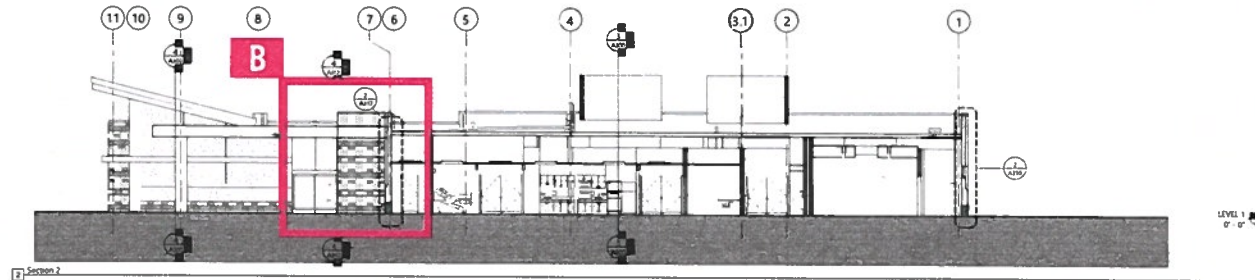
INVOICE #

09	01/31/2020
10	02/14/2020
11	02/18/2020
12	02/19/2020
13	02/25/2020
14	02/28/2020 ADDED ADDRESS
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16	

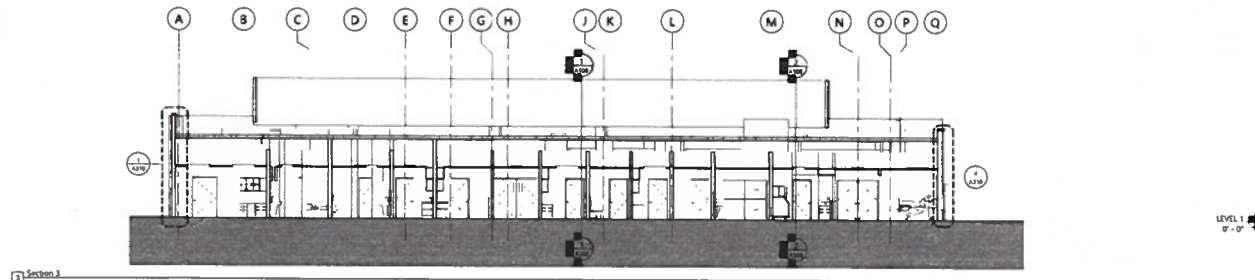
PRIMARY ELECTRICAL TO SIGN LOCATIONS IS TO BE PROVIDED BY OTHERS. ON ANY ELECTRICAL CONNECTION WITH THE BOARD, ELECTRICAL AND A LICENSED ELECTRICIAN TO THE FACT IS REQUIRED FOR ALL INSTALLATIONS. COPIES REPRESENTED IN THIS DRAWING ARE FOR PRESENTATION PURPOSES AND THEY MAY NOT HAVE BEEN REVISED TO REFLECT PERFECT COLOR MATCHES ARE FOR A MATCH AS CLOSE AS POSSIBLE. THIS DRAWING IS THE SOLE PROPERTY OF BENNU ARCHITECTURAL SIGNAGE. IT CANNOT BE REPRODUCED, COPIED OR EXHIBITED TO WHOMEVER, WITHOUT FIRST OBTAINING WRITTEN CONSENT FROM BENNU ARCHITECTURAL SIGNAGE. ELECTRICAL SCHEMATIC AND WIRING TO BE PROVIDED BY OTHERS WITH THE REQUIREMENTS OF ARTICLE 675 OF THE NATIONAL ELECTRICAL CODE AND/OR APPLICABLE LOCAL CODES. THIS EXCLUDES PROPER SCHEDULING AND SCHEDULING OF SIGN



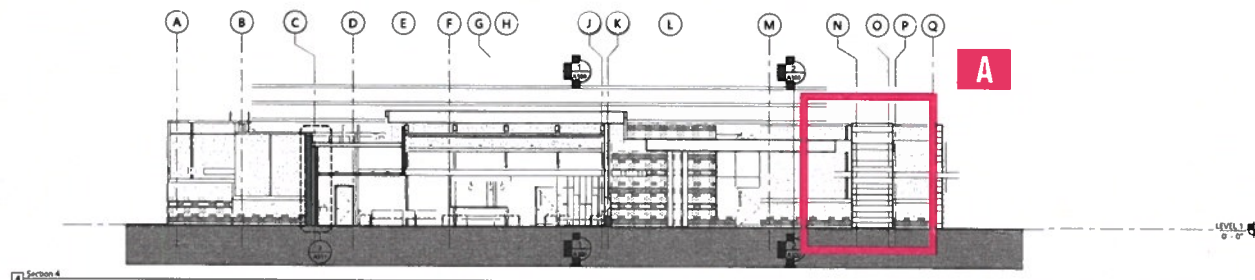
SCALE 3/64"=1'-0"



SCALE 3/64"=1'-0"



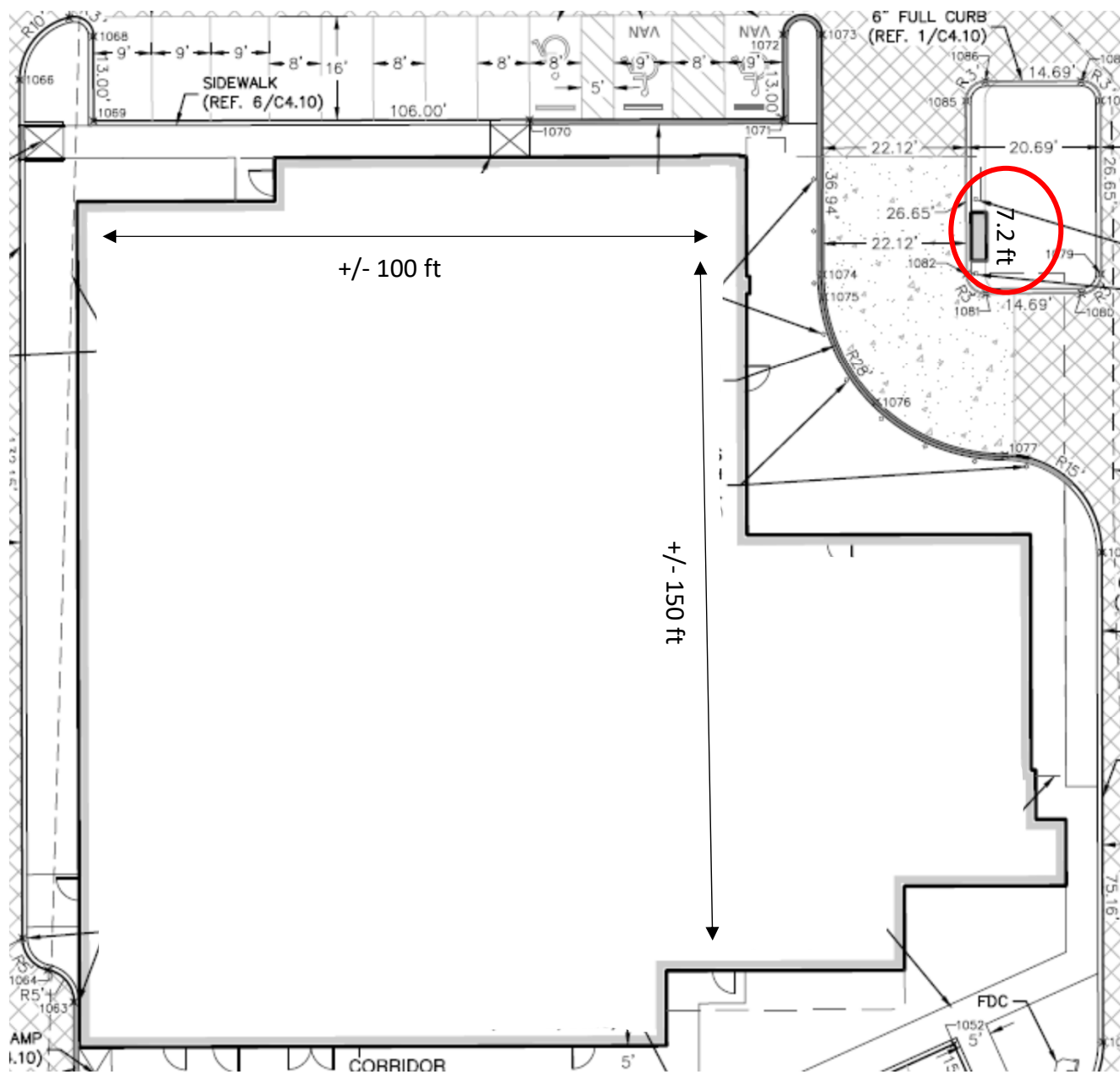
SCALE 3/64"=1'-0"




SCALE 3/64"=1'-0"



*IH-10 West*



## Menger Springs

	<div data-bbox="1235 218 1474 457"> <p><b>District Impacted</b></p> <p><input type="checkbox"/> 1 = Wolosin</p> <p><input type="checkbox"/> 2 = Woolard</p> <p><input type="checkbox"/> 3 = Scott</p> <p><input type="checkbox"/> 4 = Fowler</p> <p><input type="checkbox"/> 5 = Macaluso</p> <p><input checked="" type="checkbox"/> All</p> </div> <p style="text-align: center;"><b>AGENDA ITEM SUMMARY</b></p>
<b>AGENDA DATE</b>	<i>June 9, 2020</i>
<b>DESCRIPTION</b>	CALL FOR A PUBLIC HEARING FOR JUNE 23, 2020 AT 6:00 P.M. TO RECEIVE PUBLIC INPUT REGARDING THE BLANCO ROAD IMPROVEMENTS/RECONFIGURATION.
<b>STAFF'S RECOMMENDED ACTION (be specific)</b>	Set a public hearing for June 23, 2020 at 6:00 p.m. to receive public input regarding the Blanco Road improvements/reconfiguration.
<b>CONTACT PERSON</b>	Jeffrey Carroll – Development Services Director
<b>SUMMARY</b>	Set a public hearing to get public input regarding lane configurations on Blanco Road (FM 474) between Main Street and Esser to add a two way left-turn lane and bike lanes.
<b>COST</b>	N/A
<b>SOURCE OF FUNDS</b>	N/A
<b>ADDITIONAL INFORMATION</b>	Lane Cross section Exhibit

This summary is not meant to be all inclusive. Supporting documentation is attached.

## Blanco Road - Existing




## Blanco Road - Proposed Typical




## Blanco Road - Proposed at #9 Crossing



	<div style="text-align: center;"><b>AGENDA ITEM SUMMARY</b></div> <div style="border: 1px dashed purple; padding: 5px; float: right; margin-top: 10px;"> <b>District Impacted</b>  <input type="checkbox"/> 1 = Wolosin  <input type="checkbox"/> 2 = Woolard  <input type="checkbox"/> 3 = Scott  <input type="checkbox"/> 4 = Fowler  <input type="checkbox"/> 5 = Macaluso  <input checked="" type="checkbox"/> All </div>
<b>AGENDA DATE</b>	<i>June 9, 2020</i>
<b>DESCRIPTION</b>	RECEIVE AND ACCEPT RESIGNATION FROM COUNCIL MEMBER DISTRICT 4 BRIAN FOWLER AND DECLARE A VACANCY AS PER THE CITY OF BOERNE HOME RULE CHARTER.
<b>STAFF'S RECOMMENDED ACTION (be specific)</b>	Receive And Accept Resignation From Council Member District 4 Brian Fowler And Declare A Vacancy As Per The City Of Boerne Home Rule Charter.
<b>CONTACT PERSON</b>	Mayor Tim Handren
<b>SUMMARY</b>	<p>City Council Member Brian Fowler will be moving out of his respective district, therefore will resign his council seat. His resignation will create a vacancy for District 4.</p> <p>The City of Boerne's Home Rule Charter Section 3.08 C. Filling of Vacancies states: <i>When a vacancy occurs in the City Council, the remaining members of the Council shall, within thirty (30) days, appoint a qualified person to fill the unexpired term.</i></p>
<b>COST</b>	na
<b>SOURCE OF FUNDS</b>	na
<b>ADDITIONAL INFORMATION</b>	

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<b>AGENDA DATE</b>	June 9, 2020
<b>DESCRIPTION</b>	BOWMAN'S ABBREVIATED REFLECTIONS ON 40 YEARS.
<b>STAFF'S RECOMMENDED ACTION (be specific)</b>	No Action.
<b>CONTACT PERSON</b>	Ron Bowman, City Manager
<b>SUMMARY</b>	Abbreviated reflections on 40 years at the City of Boerne.
<b>COST</b>	N/A
<b>SOURCE OF FUNDS</b>	N/A
<b>ADDITIONAL INFORMATION</b>	

This summary is not meant to be all inclusive. Supporting documentation is attached.

**RESOLUTION NO. 2020-R44**

**A RESOLUTION OF THE CITY OF BOERNE, TEXAS AUTHORIZING THE CITY  
MANAGER TO ENTER INTO AND MANAGE A CHAPTER 380 ECONOMIC  
DEVELOPMENT AGREEMENT BETWEEN THE CITY OF BOERNE AND  
EBENSBERGER-FISHER FUNERAL HOME**

**WHEREAS**, the City of Boerne finds it necessary to enter into and manage a Chapter 380 Economic Development Agreement with Ebensberger-Fisher Funeral Home;

**NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF  
BOERNE, TEXAS:**

The City Council hereby authorizes the City Manager to enter into and manage a Chapter 380 Economic Development Agreement between the City of Boerne, Texas and Ebensberger-Fisher Funeral Home.

PASSED, APPROVED, and ADOPTED on this the \_\_\_\_ day of June, 2020.

APPROVED:

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Secretary