

AGENDA
REGULAR CITY COUNCIL MEETING
RONALD C. BOWMAN CITY COUNCIL CHAMBERS
447 North Main Street
Boerne, TX 78006
January 25, 2022 – 6:00 PM

A quorum of the City Council will be present during the meeting at: 447 N Main, Boerne, TX 78006.

During the meeting, the City Council may meet in executive session, as to the posted subject matter of this City Council meeting, under these exceptions of Chapter 551 of the Texas Government Code; 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).

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.

- 4A. [2022-195](#) CONSIDER THE MINUTES OF THE SPECIAL CALLED CITY COUNCIL MEETING OF JANUARY 6, 2022 (REDISTRICTING) AND THE REGULAR CALLED CITY COUNCIL MEETING OF JANUARY 11, 2022.

Attachments: [Minutes.22.0106 Special redistrict](#)
[Minutes.22.0111](#)

- 4B. [2022-196](#) CONSIDER ON SECOND READING ORDINANCE NO. 2022-01; AN ORDINANCE AMENDING THE ZONING MAP OF THE CITY OF BOERNE UNIFIED DEVELOPMENT CODE, BY AMENDING CHAPTER 3. ZONING, SECTION 3.2, ZONING MAP, GRANTING A SPECIAL USE PERMIT FOR A SHORT-TERM RENTAL LOCATED AT 428 HERFF STREET (IRONS & GRAHAMS ADDITION LOT 187C, 0.054 ACRES, KAD NO. 46417) IN A O1, NEIGHBORHOOD OFFICE DISTRICT; REPEALING ALL ORDINANCES IN CONFLICT; CONTAINING A SEVERANCE CLAUSE; AND DECLARING AN EFFECTIVE DATE.

Attachments: [AIS 428 Herff St - SUP STR](#)
[Ordinance No. 2022-01](#)
[Att 1 - Location Map](#)
[Att 2 - Aerial Map](#)
[Att 3 - Street View](#)
[Att 4 - 21-1221 BOND Report](#)

- 4C. [2022-126](#) CONSIDER RESOLUTION NO. 2022-R03; A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AND MANAGE AN INTERLOCAL COOPERATION AGREEMENT FOR MUTUAL AID FOR INFORMATION TECHNOLOGY SERVICES BETWEEN THE CITY OF BOERNE AND PARTICIPATING LOCAL GOVERNMENTS OF THE STATE OF TEXAS.

Attachments: [AIS - IT Interlocal 1.25.22](#)
[Resolution No. 2022-R03](#)
[IT Mutual Aid Agreement](#)

- 4D. [2022-193](#) CONSIDER RESOLUTION NO. 2022-R04; A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AND MANAGE AN INTERLOCAL AGREEMENT BETWEEN THE CITY OF BOERNE, TEXAS, AND KENDALL COUNTY, TEXAS, FOR CONSTRUCTION AND FUNDING OF DRAINAGE IMPROVEMENT PROJECTS.

Attachments: [AIS-ARPA Drainage Interlocal](#)
[Resolution No. 2022-R04](#)
[Drainage Interlocal Agreement](#)

- 4E. [2022-194](#) CONSIDER RESOLUTION NO. 2022-R05; A RESOLUTION APPROVING THE FINANCING BY THE NEW HOPE CULTURAL EDUCATION FACILITIES FINANCE CORPORATION ON BEHALF OF MORNINGSIDe MINISTRIES FOR A HEALTH FACILITY LOCATED WITHIN THE CITY OF BOERNE, TEXAS. (1100 Grand Boulevard, Boerne, TX, 78006)

Attachments: [AIS - New Hope Request - Morningside Ministries 1.25.22](#)
[Resolution No. 2022-R05](#)
[New Hope Request - Morningside Ministries](#)

- 4F. [2022-201](#) CONSIDER RESOLUTION NO. 2022-R06; A RESOLUTION OF THE CITY COUNCIL OF BOERNE, TEXAS, AUTHORIZING THE CITY MANAGER TO ENTER INTO AND MANAGE A LEASE AGREEMENT AND ANY OTHER RELATED DOCUMENTS WITH DAS GREENHAUS, INC. FOR THE LEASE OF THE BUILDING LOCATED AT 400 EAST BLANCO ROAD, BOERNE, TEXAS. (Lease former Public Works/Utilities building, incubator concept)

Attachments: [AIS - Incubator 1.25.22](#)
[Resolution No. 2022-R06](#)
[Lease Agreement Old Public Works Bldg](#)

REGULAR AGENDA:

5. RESOLUTIONS

- 5A. [2022-182](#) RECEIVE BIDS FOR CONSTRUCTION OF THE ROSEWOOD SIDEWALK IMPROVEMENTS AND CONSIDER RESOLUTION NO. 2022-R07; A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BOERNE, TEXAS, AWARding THE CONTRACT FOR THE ROSEWOOD AVENUE SIDEWALK IMPROVEMENTS PROJECT TO _____ FOR AN AMOUNT NOT TO EXCEED \$ _____; AND AUTHORIZING THE CITY MANAGER TO MANAGE AND EXECUTE THE RELATED CONTRACT.

Attachments: [AIS-RosewoodSidewalkConstruction](#)
[Recommendation of Award Jones Carter 1.18.2022](#)
[Resolution No. 2022-R07](#)
[Map from Vol04 City of Boerne](#)

6. OTHER:

- 6A. [2022-205](#) CREATION OF A SHORT-TERM RENTAL SUBCOMMITTEE AND APPOINT MEMBERS.

Attachments: [AIS - short term rental committee](#)

7. CITY MANAGER'S REPORT:

- 7A. [2022-192](#) MONTHLY PROJECTS UPDATE.

8. COMMENTS FROM COUNCIL – No discussion or action may take place.

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

- 9A. [2022-197](#) SECTION 551.071 - CONSULTATION WITH CITY'S ATTORNEY REGARDING PENDING OR CONTEMPLATED LITIGATION REGARDING DEVELOPMENT AGREEMENT WITH BOERNEBAK.
- 9B. [2022-198](#) SECTION 551.071 - CONSULTATION WITH CITY'S ATTORNEY REGARDING DEVELOPMENT MORATORIUM.
- 9C. [2022-199](#) SECTION 551.072 - TO DELIBERATE THE PURCHASE, EXCHANGE, LEASE, OR VALUE OF REAL PROPERTY WHERE DELIBERATION IN AN OPEN MEETING WOULD HAVE A DETRIMENTAL EFFECT ON THE POSITION OF THE CITY IN NEGOTIATIONS WITH A THIRD PERSON.

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

11. ADJOURNMENT

CERTIFICATION

**I hereby certify that the above notice of meeting was posted on the 21st day of
January, 2022 at 3:00 p.m.**

s/s Lori A. Carroll
City Secretary

NOTICE OF ASSISTANCE AT THE PUBLIC MEETINGS

The City Hall is wheelchair accessible. Access to the building and special parking is available at the northeast entrance of the building. Requests for auxiliary aides and 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
SPECIAL CALLED CITY COUNCIL MEETING
RONALD C. BOWMAN CITY COUNCIL CHAMBERS
447 North Main Street
Boerne, TX 78006
January 6, 2022 – 5:00 PM

Present: 6 - Mayor Tim Handren, Mayor Pro Tem Ty Wolosin, Council Member Nina Woolard, Council Member Quinten Scott, Council Member Bryce Boddie, and Council Member Joseph Macaluso

Mayor Pro Tem Ty Wolosin and Council Member Bryce Boddie were present electronically.

Staff Present: Ben Thatcher, Siria Arreola, Lori Carroll, Barbara Quirk, Mike Raute, Chris Shadrock, Kristy Stark, and Danny Zincke. Mick McKamie was present electronically.

1. CALL TO ORDER – 5:00 PM

Mayor Handren called the City Council to order at 5:01 p.m.

2. PUBLIC COMMENTS:

No comments were received.

3. CONSIDER THE UN-TABLING OF ORDINANCE NO. 2021-39; AS PERMITTED BY THE CITY OF BOERNE'S HOME RULE CHARTER SECTION 3.11.A. (As described below)

A MOTION WAS MADE BY COUNCIL MEMBER MACALUSO, SECONDED BY COUNCIL MEMBER SCOTT, TO APPROVE THE UN-TABLING OF ORDINANCE NO. 2021-39; AS PERMITTED BY THE CITY OF BOERNE'S HOME RULE CHARTER SECTION 3.11.A. (AS DESCRIBED BELOW). THE MOTION CARRIED BY THE FOLLOWING VOTE:

Yeah: 5 - Mayor Pro Tem Wolosin, Council Member Woolard, Council Member Scott, Council Member Boddie, and Council Member Macaluso

4. CONSIDER A ONE-TIME READING OF ORDINANCE NO. 2021-39; AS PERMITTED BY THE CITY OF BOERNE'S HOME RULE CHARTER SECTION 3.11.A. (As described below)

A MOTION WAS MADE BY COUNCIL MEMBER MACALUSO, SECONDED BY COUNCIL MEMBER SCOTT, TO APPROVE A ONE-TIME READING OF ORDINANCE NO. 2021-39; AS PERMITTED BY THE CITY OF BOERNE'S HOME RULE CHARTER SECTION 3.11.A. (AS DESCRIBED BELOW). THE MOTION CARRIED BY THE FOLLOWING VOTE:

Yeah: 5 - Mayor Pro Tem Wolosin, Council Member Woolard, Council Member Scott, Council Member Boddie, and Council Member Macaluso

5. CONSIDER ORDINANCE NO. 2021-39; AN ORDINANCE AMENDING ORDINANCE NOS. 2011-16 AND 2009-55; CAPTIONED "AN ORDINANCE OF THE CITY OF BOERNE, TEXAS, ADOPTING A REVISED PLAN FOR THE CITY'S COUNCIL MEMBER DISTRICTS; PROVIDING FOR RELATED MATTERS AND AN EFFECTIVE DATE." (Redistricting the City Council Single Member Districts, altering the boundary lines of electoral districts for the City of Boerne)

Mayor Handren introduced Mr. Frank Reilly of Allison, Bass and McGee, LLP the legal firm who assisted the city with the redistricting. Mayor Handren asked Mr. Reilly to review the requirement of redistricting. Council Member Macaluso asked that on Plan 3 that the block in district 3 with 337 population be swapped with the block of 438 population currently in district 5. District 3 Council Member Scott stated he was in support of District 5 Council Member Macaluso's recommendation.

A MOTION WAS MADE BY COUNCIL MEMBER SCOTT, SECONDED BY COUNCIL MEMBER WOOLARD TO APPROVE ORDINANCE 2021-39; AN ORDINANCE AMENDING ORDINANCE NOS. 2011-16 AND 2009-55; CAPTIONED "AN ORDINANCE OF THE CITY OF BOERNE, TEXAS, ADOPTING A REVISED PLAN, PLAN 3 WITH THE AMENDMENT SHOWN FOR THE CITY'S COUNCIL MEMBER DISTRICTS; PROVIDING FOR RELATED MATTERS AND AN EFFECTIVE DATE."

Yeah: 5 - Mayor Pro Tem Wolosin, Council Member Woolard, Council Member Scott, Council Member Boddie, and Council Member Macaluso

6. ADJOURNMENT

Mayor Handren adjourned the City Council meeting at 5:11 p.m.

Approved:

Mayor

Attest:

City Secretary

MINUTES
REGULAR CITY COUNCIL MEETING
RONALD C. BOWMAN CITY COUNCIL CHAMBERS
447 North Main Street
Boerne, TX 78006
January 11, 2022 – 6:00 PM

Minutes of the Regular Called City Council meeting of January 11, 2022.

Present: **4 -** Mayor Pro Tem Ty Wolosin, Council Member Nina Woolard, Council Member Bryce Boddie, and Council Member Joseph Macaluso

Absent: **2 -** Mayor Tim Handren, and Council Member Quinten Scott

Staff Present: Ben Thatcher, Siria Arreola, Sarah Buckelew, Jeff Carroll, Lori Carroll, Mike Mann, Sandy Mattick, Mick McKamie, Nick Montagno, Barbara Quirk, Mike Raute, Chris Shadrock, Sam Singery, Kristy Stark, and Danny Zincke.

Recognized/Registered Guests: Mark Mattick, Nikki Mattick, Kendra Mattick, Jeff Thompson, Wendy Thompson, Lance Kyle, Robert Imler, Jim Phelps, and Andrea Resendez.

1. CALL TO ORDER – 6:00 PM

Mayor Pro Tem Wolosin called the City Council meeting to order at 6:00 p.m.

INVOCATION

Todd Weir of the 1910 Church provided the Invocation.

Mayor Pro Tem Wolosin led the Pledge of Allegiance to the United States Flag and to the Texas Flag.

2. CONFLICTS OF INTEREST

No conflicts were declared.

3. PUBLIC COMMENTS:

Robert Imler, 215 West Bandera Road requested that City Council consider a temporary moratorium on development, not to exceed nine months. He asked that the City Manager report on the sewer plant on Esser Road. He will continue to push for a moratorium.

Andrea Resendez stated that she lives in the Champion Heights subdivision. She asked her daughter how many students are in her class? The daughter answered on average 30 students in each class. Ms. Resendez stated a developer is wanting to build apartments in front of Champion Heights. The public is relying on city council to put a cap on density. She stated that the number one objective of the Master Plan is to manage growth. The development could cause flooding with no where for water to flow. She feels the Master Plan is not being followed and the Thoroughfare Plan needs to be updated. She also expressed concern with the new on-ramp being too short from Hwy 46.

Lance Kyle, 226 Cascade Caverns Road stated that he spoke at the Planning and Zoning (P & Z) Commission meeting. The Chair stated that the city can't control development in the county. The County steers developers to a one acre lot. Why are we giving developers incentives? Commissioners went to Austin to get statute changed.

4. CONSENT AGENDA:

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

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

Absent: 1 - Council Member Scott

4A. CONSIDER THE APPROVAL OF THE MINUTES OF THE REGULAR CALLED CITY COUNCIL MEETING OF DECEMBER 14, 2021.

- 4B. CONSIDER ON SECOND READING ORDINANCE NO. 2021-40; AN ORDINANCE AMENDING THE ZONING MAP OF THE CITY OF BOERNE UNIFIED DEVELOPMENT CODE, BY AMENDING CHAPTER 3. ZONING, SECTION 3.2, ZONING MAP, GRANTING A SPECIAL USE PERMIT FOR A MEDICAL OFFICE LOCATED AT 1002 EAST BLANCO ROAD, HIGHLAND HOMES BLK PT 1, (KAD NO. 298100) IN A O1, NEIGHBORHOOD OFFICE DISTRICT; REPEALING ALL ORDINANCES IN CONFLICT; CONTAINING A SEVERANCE CLAUSE; AND DECLARING AN EFFECTIVE DATE.
- 4C. CONSIDER RESOLUTION NO. 2022-01; ESTABLISHING PROCEDURES FOR A GENERAL ELECTION FOR MAY 7, 2022. (Considerar la resolución número 2022-R01; una resolución que establece los procedimientos para la elección general del 7 de mayo, 2022)
- 4D. ANNUAL REVIEW OF THE CITY OF BOERNE'S INVESTMENT POLICY AND BROKER-DEALER LIST.
- 4E. CONSIDER RESOLUTION NO. 2022-R02; A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AND MANAGE THE SECOND AMENDMENT TO THE INFRASTRUCTURE AND DEVELOPMENT AGREEMENT BETWEEN THE CITY OF BOERNE AND TENOTEX DEVELOPMENT CO. INC. (Regent Park)

5. CITY MANAGER'S REPORT:

Mayor Pro Tem Wolosin called on City Manager Thatcher.

- 5A. RECOGNITION OF SANDY MATTICK FOR HER YEARS OF SERVICE AS FINANCE DIRECTOR WITH THE CITY OF BOERNE.

City Manager Thatcher recognized Ms. Sandy Mattick, Finance Director for her contribution to the City of Boerne and the residents. She was presented with a Key to the City. Ms. Mattick expressed appreciation to her staff and to City Council Members. The Council Members expressed their appreciation and provided her with well wishes. City Manager Thatcher introduced Sam Singer, the City's new Assistant Finance Director.

5B. I-10 TXDOT CONSTRUCTION UPDATE.

City Manager Thatcher asked Mr. Jeff Carroll, Development Services Director to give an update on TxDot construction. Mr. Carroll provided an estimated timeline for the various projects to be completed. He mentioned that the Police Department and Fire Department are aware of the upcoming closures.

6. PRESENTATIONS, PUBLIC HEARINGS, AND ORDINANCES:

6A. CONSIDER THE PROPOSED SPECIAL USE PERMIT FOR A SHORT-TERM RENTAL IN AN R3-A, ATTACHED RESIDENTIAL DISTRICT, LOCATED AT 428 HERFF STREET (IRONS & GRAHAMS ADDITION LOT 187C, .054 ACRES, KAD 46417). (Todd & Elizabeth Hallberg).

I. RECEIVE REPORT FROM THE PLANNING AND ZONING COMMISSION.

Mayor Pro Tem Wolosin called on Assistant City Manager Kristy Stark. Ms. Stark stated that the Planning and Zoning Commission voted 4-0 to approve the request for a Special use Permit.

A MOTION WAS MADE BY COUNCIL MEMBER MACALUSO, SECONDED BY COUNCIL MEMBER WOOLARD, TO RECEIVE THE REPORT FROM THE PLANNING AND ZONING COMMISSION. THE MOTION CARRIED BY THE FOLLOWING VOTE:

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

Absent: 1 - Council Member Scott

II. PUBLIC HEARING (One of one hearing)

Assistant City Manager Stark stated that a BOND meeting was held and only one person attended who spoke positively about the use. This request is from an owner of the townhome who lives in the townhome 30 weeks out of the year. Only six people can stay in the rental at a time and no more than two cars are permitted during their stay. Discussion ensued regarding creating a

committee to set a criteria for short term rentals, concerns with parking, many older neighborhoods don't have HOA's to protect the homeowners, and loss of neighborhood character with too many short term rentals. Ms. Stark stated there are about 59 short term rentals in the city. All short term rentals moving forward will need a Special Use Permit.

Mayor Pro Tem opened the Public Hearing at 6:49 p.m.

No comments were received.

Mayor Pro Tem closed the Public Hearing at 6:50 p.m.

III. CONSIDER ON FIRST READING ORDINANCE NO. 2022-01; AN ORDINANCE AMENDING THE ZONING MAP OF THE CITY OF BOERNE UNIFIED DEVELOPMENT CODE, BY AMENDING CHAPTER 3. ZONING, SECTION 3.2, ZONING MAP, GRANTING A SPECIAL USE PERMIT FOR A SHORT-TERM RENTAL TO 0.054 ACRES LOCATED AT 428 HERFF STREET (IRONS & GRAHAMS ADDITION LOT 187C, KAD NO. 46417) IN AN R3-A, ATTACHED RESIDENTIAL DISTRICT; REPEALING ALL ORDINANCES IN CONFLICT; CONTAINING A SEVERANCE CLAUSE; AND DECLARING AN EFFECTIVE DATE.

A MOTION WAS MADE BY COUNCIL MEMBER BODDIE, SECONDED BY MAYOR PRO TEM WOLOSIN, TO APPROVE ON FIRST READING ORDINANCE NO. 2022-01; AN ORDINANCE AMENDING THE ZONING MAP OF THE CITY OF BOERNE UNIFIED DEVELOPMENT CODE, BY AMENDING CHAPTER 3. ZONING, SECTION 3.2, ZONING MAP, GRANTING A SPECIAL USE PERMIT FOR A SHORT-TERM RENTAL TO 0.054 ACRES LOCATED AT 428 HERFF STREET (IRONS & GRAHAMS ADDITION LOT 187C, KAD NO. 46417) IN AN R3-A, ATTACHED RESIDENTIAL DISTRICT; REPEALING ALL ORDINANCES IN CONFLICT; CONTAINING A SEVERANCE CLAUSE; AND DECLARING AN EFFECTIVE DATE. THE MOTION CARRIED BY THE FOLLOWING VOTE:

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

Absent: 1 - Council Member Scott

6B. CONSIDER A ONE-TIME READING OF ORDINANCE NO. 2022-02; AS PERMITTED BY THE CITY OF BOERNE'S HOME RULE CHARTER SECTION 3.11.A. (As described below)

A MOTION WAS MADE BY COUNCIL MEMBER WOOLARD, SECONDED BY MAYOR PRO TEM WOLOSIN, TO APPROVE A ONE-TIME READING OF ORDINANCE NO. 2022-02; AS PERMITTED BY THE CITY OF BOERNE'S HOME RULE CHARTER SECTION 3.11.A. (AS DESCRIBED BELOW). THE MOTION CARRIED BY THE FOLLOWING VOTE:

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

Absent: 1 - Council Member Scott

6C. CONSIDER ORDINANCE NO. 2022-02; AN ORDINANCE AMENDING ORDINANCE NO. 2020-21, CAPTIONED "AN ORDINANCE ADOPTING THE ANNUAL CAPITAL AND OPERATING BUDGETS FOR THE CITY OF BOERNE, TEXAS FOR THE FISCAL YEAR 2020-2021, BEGINNING OCTOBER 1, 2020 AND ENDING SEPTEMBER 30, 2021"; AND AUTHORIZING THE CITY MANAGER TO TRANSFER PART OR ALL OF ANY ENCUMBERED APPROPRIATION BALANCE AMONG PROGRAMS, WITHIN A FUND DEPARTMENT, OFFICE, OR AGENCY AT ANY TIME DURING THE FISCAL YEAR. (Amend budget for Fiscal Year 20-21)

Mayor Pro Tem Wolosin called on Ms. Sandy Mattick, Finance Director. Ms. Mattick stated that the Finance Department is wrapping up the FY2021 budget amendments. She reviewed the proposed budget amendments.

A MOTION WAS MADE BY COUNCIL MEMBER WOOLARD, SECONDED BY COUNCIL MEMBER BODDIE, TO APPROVE ORDINANCE NO. 2022-02; AN ORDINANCE AMENDING ORDINANCE NO. 2020-21, CAPTIONED "AN ORDINANCE ADOPTING THE ANNUAL CAPITAL AND OPERATING BUDGETS FOR THE CITY OF BOERNE, TEXAS FOR THE FISCAL YEAR 2020-2021, BEGINNING OCTOBER 1, 2020 AND ENDING SEPTEMBER 30, 2021"; AND AUTHORIZING THE CITY MANAGER TO TRANSFER PART OR ALL OF ANY ENCUMBERED APPROPRIATION BALANCE AMONG PROGRAMS, WITHIN A FUND DEPARTMENT, OFFICE, OR AGENCY AT ANY TIME DURING THE FISCAL YEAR. (AMEND BUDGET FOR FISCAL YEAR 20-21). THE MOTION CARRIED BY THE FOLLOWING VOTE:

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

Absent: 1 - Council Member Scott

7. OTHER ITEMS:

7A. RECEIVE AND APPROVE THE FOURTH QUARTER FINANCIAL AND INVESTMENT REPORTS FOR FISCAL YEAR 2021.

Ms. Mattick continued with the review of the 4th quarter financial and investment reports. She stated that the City's financials are very strong and investments continue to earn.

A MOTION WAS MADE BY COUNCIL MEMBER MACALUSO, SECONDED BY COUNCIL MEMBER WOOLARD, TO RECEIVE AND APPROVE THE FOURTH QUARTER FINANCIAL AND INVESTMENT REPORTS FOR FISCAL YEAR 2021. THE MOTION CARRIED BY THE FOLLOWING VOTE:

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

Absent: 1 - Council Member Scott

8. COMMENTS FROM COUNCIL – No discussion or action may take place.

Council Member Macaluso stated that he reviewed the recent Planning and Zoning Commission meeting and is aware of concerns about development. The UDC is designed to address platting issues. There are State officials that do not want to see local government have more control. He welcomed the public to

write to their legislatures. He also wanted the public to know that there is a lot of research done prior to any meeting and the city council is taking concerns seriously.

Mayor Pro Tem Wolosin encouraged people to get vaccinated and receive the booster. The effects of not being vaccinated could result in hospitalization. He reminded everyone to wear a mask if not at home, that everyone should step up to be personally responsible.

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

City Council did not convene into Executive Session.

9A. SECTION 551.071 - CONSULTATION WITH CITY'S ATTORNEY REGARDING PENDING OR CONTEMPLATED LITIGATION REGARDING DEVELOPMENT AGREEMENT WITH BOERNEBAK.

No discussion took place.

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

11. ADJOURNMENT


Mayor Pro Tem Wolosin adjourned the City Council at 7:03 p.m.

Approved:

Mayor

Attest:

City Secretary

	<div style="text-align: center;"> <h2 style="margin: 0;">AGENDA ITEM SUMMARY</h2> </div> <div style="border: 1px dashed purple; padding: 5px; margin-top: 10px;"> <p style="text-align: center; margin: 0;">District Impacted</p> <ul style="list-style-type: none"> <input type="checkbox"/> 1 = Wolosin <input type="checkbox"/> 2 = Woolard <input type="checkbox"/> 3 = Scott <input checked="" type="checkbox"/> 4 = Boddie <input type="checkbox"/> 5 = Macaluso <input type="checkbox"/> All </div>
Agenda Date	<i>January 25, 2022</i>
Requested Action	<p>CONSIDER ON SECOND READING ORDINANCE NO. 2022-01; AN ORDINANCE AMENDING THE ZONING MAP OF THE CITY OF BOERNE UNIFIED DEVELOPMENT CODE, BY AMENDING CHAPTER 3. ZONING, SECTION 3.2, ZONING MAP, GRANTING A SPECIAL USE PERMIT FOR A SHORT-TERM RENTAL LOCATED AT 428 HERFF STREET (IRONS & GRAHAMS ADDITION LOT 187C, 0.054 ACRES, KAD NO. 46417) IN A O1, NEIGHBORHOOD OFFICE DISTRICT; REPEALING ALL ORDINANCES IN CONFLICT; CONTAINING A SEVERANCE CLAUSE; AND DECLARING AN EFFECTIVE DATE</p>
Contact Person	<p>Laura Haning, Director, Planning and Community Development Department</p>
Background Information	<p>Report by the Planning and Zoning Commission: The Planning and Zoning Commission recommend approval of the Special Use Permit by a vote of 4-0.</p> <p>Background: With the adoption of the UDC, Short-term rental requires special use permit in almost all areas outside of the downtown area. This is the first request presented to the Commission. The requirement for a short-term rental to have a special use permit came from the community's concern to preserve the fabric of neighborhoods.</p> <p>The request is for a short-term rental in one of the townhome units located at the corner of Herff Street and Theissen. According to the information provided by the applicant and what was available on the short-term rental website, the property is rented as a whole home. It has three bedrooms, two bathrooms, a two-car garage, and can accommodate 6 people.</p> <p>As stated by the applicant; he occupies the house during the week and rents the townhome on the weekend. Sometimes the rental is for a longer period of time and he stays elsewhere.</p> <p>City staff held an online BOND (Boerne Open Neighborhood Discussion) meeting on November 16, 2021. At that meeting, the applicant</p>

	<p>explained the request. One neighbor was present, and he expressed that the guests that have used the property in the past were pleasant and didn't impact his ability to enjoy his property. The staff has provided a report from the BOND meeting as part of this submittal.</p> <p>The recording of the meeting can be found on the city's YouTube page.</p>
Item Justification	<div style="display: flex; justify-content: space-between;"> <div style="width: 48%;"> <input type="checkbox"/> Legal/Regulatory Obligation <input type="checkbox"/> Reduce Costs <input type="checkbox"/> Increase Revenue <input type="checkbox"/> Drive Down Risk <input type="checkbox"/> Master Plan Recommendation </div> <div style="width: 48%;"> <input type="checkbox"/> Infrastructure Investment <input checked="" type="checkbox"/> Customer Demand <input type="checkbox"/> Service Enhancement <input type="checkbox"/> Process Efficiency <input type="checkbox"/> Other: _____ _____ </div> </div>
Financial Considerations	
Citizen Input/Board Review	<p>Public hearing information was posted in a local newspaper on November 19, and mail notifications were sent to the neighbors with 200 ft of the site. The city also had a BOND meeting on November 16, 2021</p>
Legal Review	
Alternative Options	
Supporting Documents	<p>Attached are maps and plat.</p>

ORDINANCE NO. 2022-01

AN ORDINANCE AMENDING THE ZONING MAP OF THE CITY OF BOERNE UNIFIED DEVELOPMENT CODE, BY AMENDING CHAPTER 3. ZONING, SECTION 3.2, ZONING MAP, GRANTING A SPECIAL USE PERMIT FOR A SHORT-TERM RENTAL TO 0.054 ACRES LOCATED AT 428 HERFF STREET (IRONS & GRAHAMS ADDITION LOT 187C, KAD NO. 46417) IN AN R3-A, ATTACHED RESIDENTIAL DISTRICT; REPEALING ALL ORDINANCES IN CONFLICT; CONTAINING A SEVERANCE CLAUSE; AND DECLARING AN EFFECTIVE DATE

WHEREAS, under the authority of Chapter 211 of the Texas Local Government Code, the City of Boerne adopts regulations and establishes zoning to control the use of land within the corporate limits of the City; and

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

WHEREAS, the subject property located at 428 Herff Street is currently zoned R3-A, Attached Residential District; and

WHEREAS, the City has received an application for a special use permit, to allow the Property to be used as a short-term rental; and

WHEREAS, the Unified Development Code requires a Special Use Permit for the use of a Short-term Rental in an R3-A District; and

WHEREAS, the Planning and Zoning Commission recommended approval of the Special Use Permit by a vote of 4-0; and

WHEREAS, the City Council of the City of Boerne has complied with all requirements of notice of public hearing and such hearing was held on January 11, 2022, at which time interested parties and citizens were given an opportunity to be heard; and

WHEREAS, the City Council finds the proposed special use complies with all applicable requirements and criteria of the Unified Development Code and with adopted plans and policies of the City; and

WHEREAS, the City Council finds that this zoning amendment is designed to and does promote health and the general welfare of the citizens.

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

Section 1.

The foregoing recitals are hereby made a part for all purposes as findings of fact.

Section 2.

That Chapter 3. Zoning, Section 3.2, Zoning Map, of the City of Boerne Unified Development Code is hereby amended by granting a special use permit for a short-term rental located at 428 Herff Street (Irons & Grahams addition Lot 187C, 0.054 acres, KAD No. 46417) in an R3-A, Attached Residential District.

Section 3.

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



Section 4.

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

Section 5.

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

Section 6.

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 7.

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

PASSED AND APPROVED on this the first reading the 11th day of January, 2022.

PASSED, APPROVED AND ADOPTED on this the second reading the ____ day of January, 2022.

APPROVED:

ATTEST:

Mayor

City Secretary

APPROVED AS TO FORM:

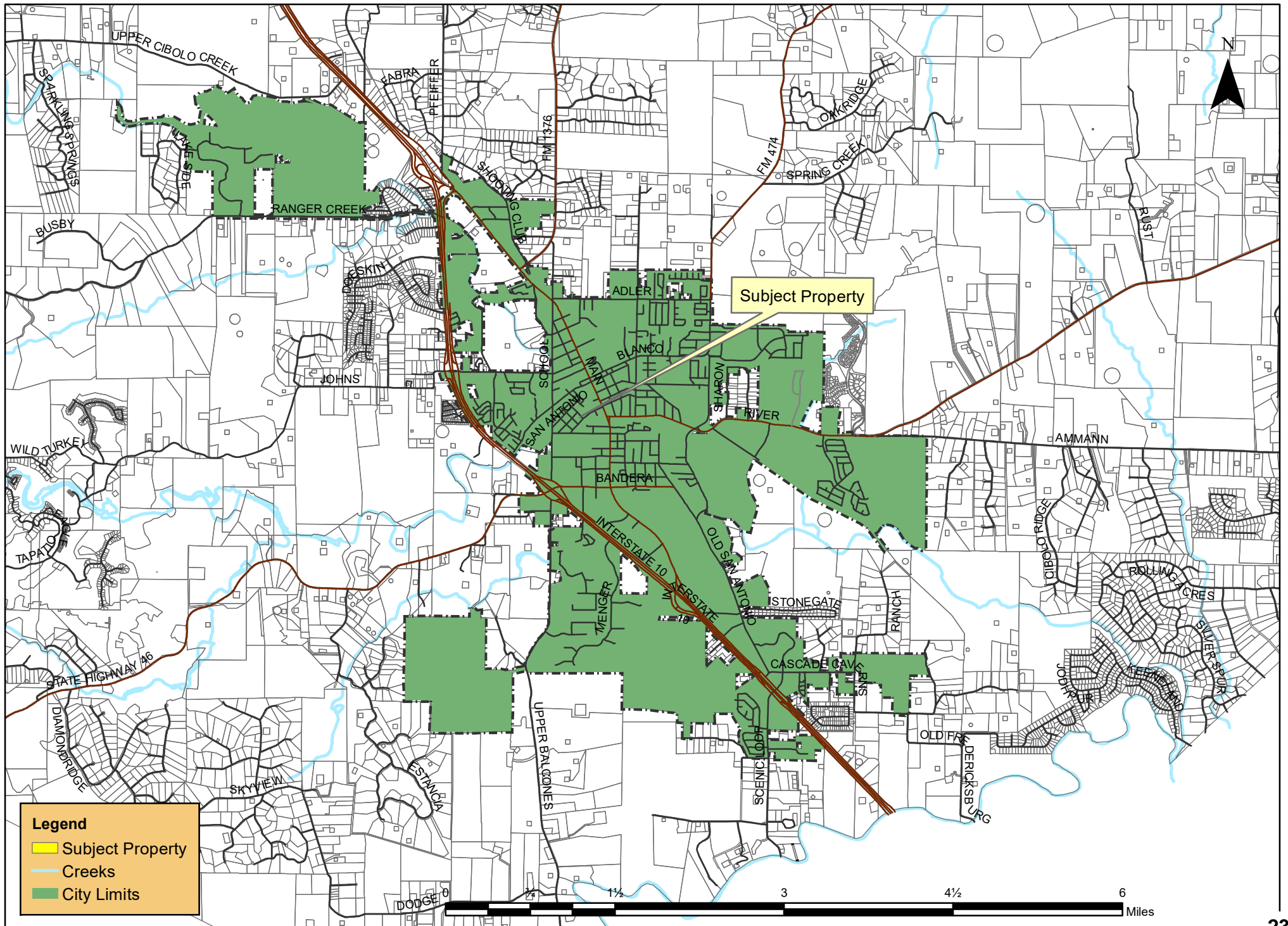
City Attorney

Exhibit A

Site Plan



428 Herff Street (KAD 46417)




SUBJECT PROPERTY

428 Herff Street (KAD 46417)



Street View
428 Herff Street



	<div style="text-align: center;">AGENDA ITEM SUMMARY</div> <div style="border: 1px dashed purple; padding: 5px; float: right; margin-top: 10px;"> District Impacted <input type="checkbox"/> 1 = Wolosin <input type="checkbox"/> 2 = Woolard <input type="checkbox"/> 3 = Scott <input type="checkbox"/> 4 = Boddie <input type="checkbox"/> 5 = Macaluso <input checked="" type="checkbox"/> All </div>										
Agenda Date	January 25, 2022										
Requested Action	CONSIDER RESOLUTION 2022-R03; A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AND MANAGE AN INTERLOCAL COOPERATION AGREEMENT FOR MUTUAL AID FOR INFORMATION TECHNOLOGY SERVICES BETWEEN THE CITY OF BOERNE AND PARTICIPATING LOCAL GOVERNMENTS OF THE STATE OF TEXAS.										
Contact Person	Mike Raute, IT Director										
Background Information	<p>The proposed interlocal agreement formalizes a process for the IT Departments of participating members to request assistance, in the case of emergencies, from other participating members. This is much like Police and Fire have in place with neighboring entities. The agreement would designate the City of Boerne as the Host Agency responsible for maintaining a list of Local Government/Educational entities who have entered into the agreement as participants. Members are not required to respond to emergencies, but may offer assistance in multiple ways, including staffing, hardware loans, software, co-location and other appropriate needs.</p> <p>Many groups of municipalities, counties and school districts that are members of the Texas Association of Governmental IT Managers across the state are putting this in place to leverage resources and be able to help one another in case of an emergency or cyber-attack.</p> <p>We also plan on approaching other entities such as Kendall County, City of Fair Oaks Ranch, Boerne ISD and Comfort ISD technology departments to determine their interest in participating.</p>										
Item Justification	<table border="0" style="width: 100%;"> <tr> <td><input type="checkbox"/> Legal/Regulatory Obligation</td> <td><input type="checkbox"/> Infrastructure Investment</td> </tr> <tr> <td><input type="checkbox"/> Reduce Costs</td> <td><input type="checkbox"/> Customer Pull</td> </tr> <tr> <td><input type="checkbox"/> Increase Revenue</td> <td><input checked="" type="checkbox"/> Service Enhancement</td> </tr> <tr> <td><input checked="" type="checkbox"/> Mitigate Risk</td> <td><input checked="" type="checkbox"/> Process Efficiency</td> </tr> <tr> <td><input type="checkbox"/> Master Plan</td> <td><input checked="" type="checkbox"/> Other: Effective Management</td> </tr> </table>	<input type="checkbox"/> Legal/Regulatory Obligation	<input type="checkbox"/> Infrastructure Investment	<input type="checkbox"/> Reduce Costs	<input type="checkbox"/> Customer Pull	<input type="checkbox"/> Increase Revenue	<input checked="" type="checkbox"/> Service Enhancement	<input checked="" type="checkbox"/> Mitigate Risk	<input checked="" type="checkbox"/> Process Efficiency	<input type="checkbox"/> Master Plan	<input checked="" type="checkbox"/> Other: Effective Management
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<input type="checkbox"/> Increase Revenue	<input checked="" type="checkbox"/> Service Enhancement										
<input checked="" type="checkbox"/> Mitigate Risk	<input checked="" type="checkbox"/> Process Efficiency										
<input type="checkbox"/> Master Plan	<input checked="" type="checkbox"/> Other: Effective Management										

Financial Considerations	None. Any costs incurred by a responding agency are to be paid for by the requesting agency.
Citizen Input/Board Review	N/A
Legal Review	Reviewed by Legal
Alternative Options	N/A
Supporting Documents	N/A

RESOLUTION NO. 2022-R03

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AND
MANAGE AN INTERLOCAL COOPERATION AGREEMENT FOR MUTUAL
AID FOR INFORMATION TECHNOLOGY BETWEEN THE CITY OF BOERNE
AND PARTICIPATING LOCAL GOVERNMENTS OF THE STATE OF TEXAS**

WHEREAS, the Interlocal Cooperation Act, Chapter 791, Texas Government Code gives counties and cities the authority to contract with other governmental entities; and

WHEREAS, the Parties desire to enter into a mutual aid agreement to offer time and expertise of Information Technology Services to assist in the detection, response and short-term remediation of a cyber incident, natural disaster, or other emergency; and

WHEREAS, the City Council of Boerne finds it in the best interest of the citizens of Boerne to enter into and manage an Interlocal Cooperation Agreement for Information Technology to provide mutual aid.

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 Cooperation Agreement for mutual aid for Information Technology between the City of Boerne and participating local governments of the State of Texas.

PASSED and APPROVED on this the ____ day of January, 2022.

APPROVED:

Mayor

ATTEST:

City Secretary

INTERLOCAL COOPERATION AGREEMENT FOR MUTUAL AID FOR INFORMATION TECHNOLOGY SERVICES

This Interlocal Cooperation Agreement (“Agreement”) is by, between, and among the City of Boerne, Texas (the “Host City”) and the undersigned Participating Local Governments of the State of Texas (each a “Participating Entity”), acting by and through their respective authorized representatives (referred to individually as a “Party” and collectively as the “Parties”).

RECITALS:

WHEREAS, this Agreement is authorized by Chapter 791 of the Texas Government Code; and

WHEREAS, each Participating Entity may experience a cyber incident, natural disaster, or other emergency capable of degrading or disrupting information technology services (“IT Services”) beyond the capabilities of the Participating Entity; and

WHEREAS, each Participating Entity acknowledges the importance of prompt restoration of IT Services to allow local governments to function and operate; and

WHEREAS, each Participating Entity has agreed to adopt a formal or informal cyber response plan in the event of a significant cyber incident; and

WHEREAS, each Participating Entity has agreed to adopt a formal or informal response plan in the event of a natural disaster or other emergency; and

WHEREAS, a Participating Entity requesting IT Services (hereinafter referred to as a “Requesting Entity”) receives benefit from a responding Participating Entity (hereinafter referred to as a “Responding Entity”) through the provision of supplemental IT Services personnel or computer hardware for the period of support; and

WHEREAS, the Responding Entity receives the benefit of its IT Services personnel gaining knowledge through the experience of aiding in the restoration of IT Services during a crisis; and

WHEREAS, the Parties desire to enter a mutual aid agreement to offer time and expertise of IT Services personnel to assist in the detection, response and short-term remediation of the cyber incident or assist in the repair and restoration of IT Services due to a natural disaster or other emergency.

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

ARTICLE I DEFINITIONS

Unless the context clearly indicates otherwise, the following words and phrases used in this Agreement shall have the following meaning:

“Host Entity” shall mean the City of Boerne, Texas.

“IT Incident” shall mean an event or set of circumstances resulting from a cyber incident, natural disaster, pandemic, or other emergency (including state or local declared state of disaster pursuant Chapter 418 Texas Government Code) whether natural or manmade, which is capable of degrading or disrupting information technology services beyond the capabilities of the Requesting Entity.

“Mutual Aid” shall mean, but is not limited to, such IT Service resources as facilities, equipment, services, supplies, and personnel.

“Participating Entity” shall mean a participating local government that executes this Agreement.

“Requesting Entity” shall mean the Participating Entity that requests Mutual Aid under this Agreement as result of an IT Incident under the terms of this Agreement.

“Responding Entity” shall mean the Participating Entity providing Mutual Aid to a Requesting Entity in response to a request from a Requesting Entity under this Agreement as a result of an IT Incident.

ARTICLE II PURPOSE

The purpose of this Agreement is to establish a mutual aid agreement between and among the Parties, which will allow each Participating Entity to provide Mutual Aid to a Requesting Entity as a result of, in response to, or during an IT Incident.

ARTICLE II TERM; TERMINATION

3.1 The term of this Agreement shall be for a period of one (1) year commencing on the last date of execution by the Participating Entity (“Effective Date”). Thereafter, this Agreement shall automatically renew for successive periods of one (1) year each under the terms and conditions stated herein, unless sooner terminated as provided herein.

3.2 A Participating Entity may terminate its participation in this Agreement by providing thirty (30) days prior written notice to terminate its participation in this Agreement to the Host Entity. The Host Entity shall provide written notice of any such termination to the designated representative of each Participating Entity.

3.3 A Participating Entity's participation in this Agreement may be terminated by the Host Entity for cause, including, but not limited to, failure to comply with the terms or conditions of this Agreement upon thirty (30) days prior written notice to such Participating Entity.

3.4 Termination by one or more Parties to this Agreement does not affect the Agreement as it applies to the remaining Parties.

ARTICLE IV RESPONSIBILITY OF PARTIES

4.1 Requesting Assistance. The Chief Information Officer ("CIO"), Information Technology Director ("IT Director"), or designee of the Participating Entity that has experienced an IT Incident may request Mutual Aid from the CIO, IT Director, or designee of another Participating Entity verbally or in writing. The determination as to what Mutual Aid may be made available to the Requesting Entity without unduly interfering with the IT Services of the Responding Entity shall be made at the sole discretion of the CIO, IT Director, or designee of the Responding Entity. Each Participating Entity agrees to assess local resources to determine availability of Mutual Aid based on current or anticipated needs of the Responding Entity. Requests for Mutual Aid shall not be requested by a Party unless it is directly related to the IT Incident and resources available from the Requesting Party are inadequate.

4.2 Each Participating Entity recognizes that it may be requested to provide aid and assistance at a time when it is necessary to provide aid and assistance to the Participating Entity's own constituents. This Agreement shall not be construed to impose any obligation on any Participating Entity to provide Mutual Aid to Requesting Entity. Each Participating Entity may choose not to render Mutual Aid at any time for any reason, or to recall such Mutual Aid that has been provided at any time.

4.3 Procurement of Equipment, Software and Services. The Requesting Entity shall be responsible for any incidental costs, equipment, software, or services related to the Mutual Aid response to the IT Incident. If the Responding Entity indicates a need for the acquisition or purchase of equipment, software, or services, the Requesting Entity shall decide if such acquisition or purchase is necessary and will make any required acquisition or purchase.

4.4 Personnel Costs. The Requesting Entity shall pay any overtime costs that occur for personnel of the Responding Entity if requested by the Responding Entity. The Responding Entity shall provide the Requesting Entity with a written invoice for such overtime costs which shall include an itemized list of Responding Entity employees, the date and time of overtime hours worked within sixty (60) days after the provision of such Mutual Aid. The Requesting Entity shall pay such invoice to the Responding Entity within thirty (30) days after receipt of such invoice.

4.5 Use of Computer Hardware. A Requesting Entity in need of computer hardware (e.g. personal computers, laptops, servers, network equipment, etc.), will compile a written list of such computer hardware and the estimated length of time that such equipment is needed which may be sent to the Participating Entities. Any Participating Entity may choose to respond in

whole or part and is under no obligation to provide computer hardware to the Requesting Entity. A Responding Entity which chooses to loan computer hardware will respond back to the Requesting Entity to affirm that such computer hardware or portion thereof is available for temporary use. The Responding Entity makes no claim of the currency or operational use of the computer hardware nor is the Responding Entity liable for any damages resulting from the Requesting Entity's use of any computer hardware so provided. The transportation and delivery of such computer hardware or charges related thereto shall be the responsibility of the Requesting Entity unless otherwise agreed by those Parties. The Requesting Entity shall be responsible for, and pay the Responding Entity for any damages, loss, or destruction of such computer hardware while in the use and possession of the Requesting Entity, including the transport thereof. Any ongoing maintenance, lease or other fees related to such computer hardware shall continue to be paid by the Responding Entity.

4.6 Criminal Justice Information System ("CJIS"). The Requesting Entity shall be responsible for restricting the Responding Entity personnel from access to CJIS information unless the Responding Entity personnel have completed all CJIS background checks and are in current compliance with CJIS training requirements.

4.7 List of Participating Entities. The Host City shall maintain a current list of Participating Entities and provide such list to a Participating Entity upon request

ARTICLE V INSURANCE

5.1 Worker's Compensation Coverage. Each Party shall be responsible for its own actions and those of its employees and is responsible for complying with the Texas Worker's Compensation Act.

5.2 Automobile Liability Coverage. Each Party shall be responsible for its own actions and is responsible for complying with the Texas motor vehicle financial responsibility laws.

5.3 General Liability Insurance. Each Party agrees to obtain general liability and public official's liability insurance, if applicable, or maintain a comparable self-insurance program.

5.4 Liability. To the extent permitted by law and without waiving sovereign immunity, each Party shall be responsible for any and all claims, demands, suits, actions, damages, and causes of action related to or arising out of or in any way connected with its own actions, and the actions of its personnel in providing Mutual Aid rendered or performed pursuant to the terms and conditions of this Agreement. Except as specifically stated in this Agreement, each Party waives all claims against the other Parties hereto for compensation for any loss, damage, personal injury, or death occurring as a consequence of the performance of Mutual Aid pursuant to this Agreement, except those caused in whole or in part by the negligence of an officer, employee, or agent of another Party. It is expressly understood and agreed that in execution of this Agreement, no Party waives, nor shall be deemed to have waived, immunity or

defense that would otherwise be available to it against claims arising in the exercise of governmental powers and functions. By entering into this Agreement, the Parties do not create any obligations, express or implied, other than those set forth herein, and this Agreement shall not create any rights for any third parties not signatories hereto.

ARTICLE VI MISCELLANEOUS

6.1 Expending Funds. Each Party that furnishes Mutual Aid pursuant to this Agreement shall do so with funds available from current revenues of such Party. No Party shall have any liability for the failure to expend funds to provide Mutual Aid.

6.2 Interlocal Cooperation Act. The Parties agree that Mutual Aid in the context contemplated herein is a “governmental function and service” and that the Parties are “local governments” as that term is defined herein and in the Interlocal Cooperation Act, Texas Government Code Chapter 791.

6.3 Severability. If a provision contained in this Agreement is held invalid for any reason, the invalidity does not affect other provisions of the Agreement that can be given effect without the invalid provision, and to this end the provisions of this Agreement are severable.

6.4 Legal Construction. In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect other provisions, and it is the intention of the Parties to this Agreement that in lieu of each provision that is found to be illegal, invalid, or unenforceable, a provision shall be added to this Agreement which is legal, valid and enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

6.5 Amendment. This Agreement may be amended only by the mutual written consent of the Parties.

6.6 Third Parties. This Agreement is intended to inure only to the benefit of the Parties hereto. This Agreement is not intended to create, nor shall be deemed or construed to create any rights in third parties.

6.7 Authorization. Each Party represents that it has full capacity and authority to grant all rights and assume all obligations that are granted and assumed under this Agreement. By execution of this Agreement the Participating Entity consents to be a Party to this Agreement and acknowledges that it is not necessary to receive copies of the Agreement from other local governments that are, or which become, Parties to this Agreement.

6.8 Entire Agreement. This Agreement is the entire agreement between and among the Parties with respect to the subject matter covered in this Agreement. There is no other collateral oral or written Agreement between and among the Parties that in any manner relates to the subject matter of this Agreement.

6.9 Governing Law. This Agreement shall be governed by the laws of the State of Texas; and venue for any action concerning this Agreement shall be in the State District Court of Kendall County, Texas. The Parties agree to submit to the personal and subject matter jurisdiction of said court.

6.10 Recitals. The recitals to this Agreement are incorporated herein.

6.11 Counterparts. This Agreement may be executed in counterparts. Each of the counterparts shall be deemed an original instrument, but all the counterparts shall constitute one and the same instrument.

6.12 Survival of Covenants. Any of the representations, warranties, covenants, and obligations of the Parties, as well as any rights and benefits of the Parties, pertaining to a period following the termination of this Agreement shall survive termination.

6.13 Notice. All notices pertaining to this Agreement shall be in writing and shall be deemed delivered (i) when received at a Party's address if hand delivered or sent via overnight delivery service by way of USPS, UPS, FedEx, or similar carrier, or (ii) on the third (3rd) business day after being deposited in the United States mail, postage prepaid, certified mail, addressed to Participating Entity at the address set forth below the signature of the Party

[Signature Pages to Follow]

EXECUTED this ____ day of _____ 2021.

Host and Participating Entity,

City of Boerne, Texas

By: _____
Ben Thatcher, City Manager

447 N. Main Street
Boerne, Texas 78006

ATTEST:

By: _____
City Secretary

APPROVED AS TO FORM:

By: _____
City Attorney

EXECUTED this ____ day of _____, 2021.

PARTICIPATING ENTITY:

CITY OF _____, TEXAS

By: _____

Name: _____

Title: _____


Address: _____

ATTEST:

By: _____
City Secretary

APPROVED AS TO FORM:

By: _____
City Attorney

	<div style="text-align: center;"> <h2>AGENDA ITEM SUMMARY</h2> </div> <div style="border: 1px dashed purple; padding: 5px; margin-top: 10px;"> <p>District Impacted</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 = Boddie</p> <p><input type="checkbox"/> 5 = Macaluso</p> <p><input checked="" type="checkbox"/> All</p> </div>
Agenda Date	<i>January 25, 2022</i>
Requested Action	<p>APPROVE RESOLUTION NO. 2022-R04; AUTHORIZING THE CITY MANAGER TO ENTER INTO AND MANAGE AN INTERLOCAL AGREEMENT BETWEEN THE CITY OF BOERNE, TEXAS, AND KENDALL COUNTY, TEXAS, FOR CONSTRUCTION AND FUNDING OF DRAINAGE IMPROVEMENT PROJECTS.</p>
Contact Person	<p>Jeffrey Carroll – Development Services Director</p>
Background Information	<p>At the November 9, 2022, City Council Meeting we discussed the American Rescue Plan Act (ARPA) that will provide \$350 billion in emergency funding for eligible local governments.</p> <p>Within the categories of eligible uses, recipients have broad flexibility to decide how best to use this funding to meet the needs of their communities. One of the categories that recipients may use Coronavirus State and Local Fiscal Recovery Funds is to invest in water, sewer, and broadband infrastructure, making necessary investments to improve access to clean drinking water, support vital wastewater and stormwater infrastructure, and to expand access to broadband internet.</p> <p>The City of Boerne was awarded \$4.5 million in ARPA funds with \$2.26 having been received. The remainder will be released to the City in 2022. Per current guidelines, all funds must be obligated by December 31, 2024, and expended by December 31, 2026.</p> <p>Since drainage concerns were a high feedback item from our 2021 citizen survey and staff receives frequent phone calls to City staff from impacted residents, stormwater infrastructure will be our area of investment.</p> <p>City staff had previously identified several drainage projects during the creation of the stormwater utility and the 5-year Capital Improvement Program (CIP).</p>

	<p>More recently, the City has been working with a consultant to finalize a Drainage Masterplan that identified drainage infrastructure projects as well as green infrastructure policies that should be used for design of projects to minimize impact to our natural drainageways. This plan includes budgets for construction cost and design for each project.</p> <p>Three projects that were identified in both the City CIP as well as the Drainage masterplan were low water crossing on Adler Road at Curry Creek, low water crossing on Adler Road at No-Name Creek, and the low water crossing on Old San Antonio Road at Menger Creek. These projects were identified for several reasons as follows:</p> <ul style="list-style-type: none"> • Emergency response during a 100-year flood from City PD/FD as well as County Sheriff & EMS; • Roads identified on our current Major Thoroughfare Plan (MTP); • Existing low water drainage structures that are frequently impacted during rain events; • Previous loss of life during rain events at location; • Opportunity to incorporate Low Impact Development (LID) techniques, green infrastructure best practices, and improve water quality. <p>On September 13, 2021, the Kendall County Commissioners Court discussed using ARPA funds for joint City/County drainage projects. Following that meeting, City and County staff have had several meetings and phone calls discussing a draft Interlocal Agreement between the City and the County for participation.</p> <p>On the 24th of January 2022, the Kendall County Commissioners Court will take action on the interlocal agreement as prepared by City and County staff.</p>
Item Justification	<div> <div> <input type="checkbox"/> Legal/Regulatory Obligation <input checked="" type="checkbox"/> Reduce Costs <input type="checkbox"/> Increase Revenue <input checked="" type="checkbox"/> Mitigate Risk <input type="checkbox"/> Master Plan Recommendation </div> <div> <input checked="" type="checkbox"/> Infrastructure Investment <input type="checkbox"/> Customer Pull <input type="checkbox"/> Service Enhancement <input type="checkbox"/> Process Efficiency <input type="checkbox"/> Other: _____ </div> </div>
Financial Considerations	<p>Federal grant and cost sharing with County reduces the amount Boerne citizens would pay for much needed stormwater projects.</p>

Citizen Input/Board Review	Projects identified and discussed in drainage committee during the drainage masterplan.
Legal Review	The City's Assistant City Attorney prepared and reviewed the interlocal agreement as attached.
Alternative Options	N/A
Supporting Documents	Interlocal Agreement

RESOLUTION NO. 2022-R04

A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AND MANAGE AN INTERLOCAL AGREEMENT BETWEEN THE CITY OF BOERNE, TEXAS, AND KENDALL COUNTY, TEXAS, FOR CONSTRUCTION AND FUNDING OF DRAINAGE IMPROVEMENT PROJECTS

WHEREAS, the Interlocal Cooperation Act, Chapter 791, Texas Government Code gives counties and cities the authority to contract with other governmental entities concerning construction of drainage projects and other related services; and

WHEREAS, the City of Boerne ("the City") and Kendall County ("the County") both received money from the American Rescue Plan Act (ARPA) which may be used for stormwater infrastructure; and

WHEREAS, the City and County desire to work together for the construction and funding of potential stormwater improvement projects; and

WHEREAS, the City Council finds it in the best interest of the citizens to enter into and manage an interlocal agreement with Kendall County for construction and funding of stormwater improvement projects;

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 agreement with Kendall County, Texas for construction and funding of drainage improvement projects.

PASSED, APPROVED and ADOPTED on this the ____ day of January, 2022.

APPROVED:

Mayor

ATTEST:

City Secretary

**INTERLOCAL AGREEMENT BETWEEN
THE CITY OF BOERNE, TEXAS AND KENDALL COUNTY, TEXAS FOR
CONSTRUCTION AND FUNDING OF DRAINAGE IMPROVEMENT PROJECTS**

This Interlocal Agreement (this “Agreement”) is made and entered into by and between Kendall County, a political subdivision of the State of Texas (“the County”), and the City of Boerne, Texas (“the City”), a home-rule municipality situated wholly within the County (collectively referred to as “the Parties”).

For and in consideration of the mutual agreements herein exchanged, the Parties hereby contract as follows:

Article I: Purpose and Legal Authority.

1.1 The purpose of this Agreement is to set forth the agreement of the Parties regarding the construction and funding of potential stormwater improvement projects (hereinafter collectively referred to as “the Projects”) that include the following:

1.1.1 Project 1 - design and construction of stormwater improvements, to convey stormwater in Currey Creek and in No Name Creek under Adler Road.

1.1.2 Project 2 – design and construction of stormwater improvements to convey stormwater in Menger Creek under Old San Antonio Road.

1.2 The Parties, as units of local government, are authorized by §791.011 of the Texas Government Code to contract with each other to perform certain governmental functions and services. As defined in §791.003 of the Texas Government Code, such governmental functions and services include construction of drainage projects.

1.3 The duties and obligations of the Parties under this Agreement shall be performed with funds from the sources listed in Article IV of this Agreement.

1.4 This Agreement has been approved by the Kendall County Commissioner’s Court and

the Boerne City Council.

Article II: Term of Agreement.

- 2.1 The term of this Agreement shall be from the date of execution of this Agreement by the authorized representative of each Party and shall remain in effect until the purposes of this Agreement have been achieved. The Parties agree that the Projects will be substantially complete not later than the later of: July 1, 2026, or six months prior to the deadline for returning any unexpended ARPA funds allocated to the Projects, as that date may be amended from time to time by the federal agencies responsible for ARPA funding,, and the Parties agree to use their best efforts to comply with that deadline.

Article III: Duties and Responsibilities of the Parties.

- 3.1 The County shall cooperate with the City in entering into any further transactions, agreements, documents, or permits needed for the construction of the Projects and shall contribute to the funding and construction of the Projects as mutually agreed upon by the Parties.
- 3.2 The City will manage and coordinate the Projects, shall cooperate with the County in entering into any further transactions, agreements, documents, or permits needed for the construction of the Projects, will lead the design, bidding and construction process, per typical requirements of the City, and shall contribute to the funding and construction of the Projects as mutually agreed upon by the Parties. The Projects may be designed and constructed as separate projects. The Projects will move forward with design in twelve (12) months from the date of execution by the Parties below and construction will follow immediately once any rights-of-way or

easements are acquired.

Article IV: Sources and Uses of Funds.

4.1 A total amount of \$1,500,000 taken exclusively from funds received by the County pursuant to the American Rescue Plan Act (ARPA) will be provided to the City for use in completing the Projects. The County's contribution will not exceed this \$1,500,000 amount. Within thirty (30) days of approval of this Agreement, the County shall provide a minimum of \$_____ in funds to a separate project account maintained by the City. After receipt by the County of the second tranche of American Rescue Plan Act (ARPA) funding, the County will provide the remaining \$_____ in funds to the City within thirty (30) days of receiving the funds. The City will use these funds only for items related to the Projects such as, but not limited to, land/easement acquisition, consultant fees, and contractor invoices. Should the City determine one or both of the Projects are not feasible or otherwise decide not to construct the Project(s), the City shall refund to the County its share of the unexpended funds provided by the County in same proportion as the County funds provided for the Project(s) bears to the Estimated Cost of the Project(s).

4.2 Neither the City nor the County shall have any obligations to each other under this Agreement unless and until such funds exist or become available after a reasonable time and due diligence by the Parties. It is the intention of the Parties that such funds will then become current revenues, and, as required by Section 791.011 of the Government Code, each Party paying for the performance of governmental functions or services under this Agreement must make those payments from current revenues available to the paying party.

Article V: Amendments.

- 5.1. This Agreement may be amended only by written approval of the Kendall County Commissions Court and the Boerne City Council.

Article VI: Authorization to Sign and Notice.

- 6.1 For purposes of this Agreement, the individuals listed below shall be the contact persons for each of the Parties and all communications and notices between the Parties shall be directed to the designated contact person listed and shall be deemed sufficient if in writing and hand delivered or mailed, registered or certified mail, postage prepaid, to the following:

CITY

Ben Thatcher
City Manager
City of Boerne
447 E. Main St.
Boerne, Texas 78006

COUNTY

Hon. Darrell L. Lux
County Judge
Kendall County
201 E. San Antonio Street, Suite 200
Boerne, Texas 78006

- 6.3 Notice of change of the designated contact person and/or the address of such representative by either Party must be made in writing and delivered to the other Party's last known address within five (5) business days of such change.

Article VII: Severability.

- 7.1 If any clause, sentence, paragraph or article of this Agreement is determined by a court of competent jurisdiction to be invalid, illegal, or unenforceable in any respect, such determination shall not be deemed to impair, invalidate, or nullify the remainder of this Agreement if the Agreement can be given effect without the invalid portion. To this extent, the provisions of this Agreement are declared to be severable.

Article VIII: Entire Agreement.

8.1 This Agreement contains the entire agreement between the parties respecting the subject matter hereof and supersedes all prior understandings and agreements between the Parties regarding such matters. This Agreement may not be modified or amended except by written agreement duly executed by the City and the County and approved in the manner provided above.

Article IX: Applicable Law and Venue.

9.1 This Agreement shall be construed in accordance with the laws of the State of Texas. All obligations hereunder are performable in Kendall County, Texas, and venue for any action arising hereunder shall be in Kendall County, Texas.

EXECUTED IN DUPLUICATE ORIGINALS THIS ____ DAY OF _____, 2021.

CITY OF BOERNE, TEXAS
TEXAS

KENDALL COUNTY,

Ben Thatcher
CITY MANAGER

Hon. Darrel L Lux
COUNTY JUDGE

ATTEST:

ATTEST:

Lori A. Carroll
CITY SECRETARY

Darlene Herrin
COUNTY CLERK

APPROVED AS TO FORM:

APPROVED AS TO FORM:


Barbara L. Quirk

Bill Ballard

CITY ATTORNEY

COUNTY ATTORNEY

Final Draft

	<div style="text-align: center;">AGENDA ITEM SUMMARY</div> <div style="float: right; border: 1px dashed purple; padding: 5px; margin-top: 10px;"> District Impacted <input type="checkbox"/> 1 = Wolosin <input type="checkbox"/> 2 = Woolard <input type="checkbox"/> 3 = Scott <input type="checkbox"/> 4 = Boddie <input checked="" type="checkbox"/> 5 = Macaluso <input type="checkbox"/> All </div>	
Agenda Date	January 25, 2022	
Requested Action	CONSIDER RESOLUTION NO. 2022-R05; A RESOLUTION APPROVING THE FINANCING BY THE NEW HOPE CULTURAL EDUCATION FACILITIES FINANCE CORPORATION ON BEHALF OF MORNINGSIDE MINISTRIES FOR A HEALTH FACILITY LOCATED WITHIN THE CITY OF BOERNE, TEXAS.	
Contact Person	Ben Thatcher, City Manager	
Background Information	<p>We have received a request from New Hope Cultural Education Facilities Finance Corporation to provide a resolution of support for their application of tax-exempt bond to finance and refinance Morningside Ministries projects. Specific to Boerne is the Morningside Ministries at Menger Springs Campus. Because a portion of the project is within the city limits, they are required to receive approval from a governmental entity in the area to support the financing request.</p> <p>Council may recall having approved a similar request for this property in 2019.</p>	
Item Justification	<div style="display: flex; justify-content: space-between;"> <div style="width: 48%;"> <input type="checkbox"/> Legal/Regulatory Obligation <input type="checkbox"/> Reduce Costs <input type="checkbox"/> Increase Revenue <input type="checkbox"/> Mitigate Risk <input type="checkbox"/> Master Plan Recommendation </div> <div style="width: 48%;"> <input type="checkbox"/> Infrastructure Investment <input type="checkbox"/> Customer Pull <input type="checkbox"/> Service Enhancement <input type="checkbox"/> Process Efficiency <input checked="" type="checkbox"/> Other: <u>Request from outside entity</u> </div> </div>	
Financial Considerations	No direct financial impact	
Citizen Input/Board Review	N/A	
Legal Review	Staff has consulted the City Attorney and have learned that the City has no liability with approving or denying the resolution request.	

Alternative Options	N/A
Supporting Documents	Request Package and Accompanying Resolution

RESOLUTION NO. 2022-R05

A RESOLUTION APPROVING THE FINANCING BY THE NEW HOPE CULTURAL EDUCATION FACILITIES FINANCE CORPORATION ON BEHALF OF MORNINGSIDE MINISTRIES FOR A HEALTH FACILITY LOCATED WITHIN THE CITY OF BOERNE, TEXAS

WHEREAS, the Cultural Education Facilities Finance Corporation Act, Chapter 337, Texas Local Government Code, as amended (the "Act"), authorizes and empowers New Hope Cultural Education Facilities Finance Corporation (the "Issuer") to issue revenue bonds on behalf of the Town of New Hope, Texas (the "Issuing Unit") to finance the costs of health facilities found by the Board of Directors of the Issuer to be required, necessary or convenient for health care, research and education, any one or more, within the State of Texas and in furtherance of the public purposes of the Act; and

WHEREAS, Morningside Ministries (the "Borrower"), a Texas nonprofit corporation exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986 (the "Code"), proposes to obtain financing from the Issuer from the proceeds of one or more series of the Issuer's bonds or notes in a maximum principal amount not to exceed \$68,000,000 (the "Bonds") and will use a portion of the proceeds of the Bonds to finance and refinance the cost of certain retirement facilities, including the retirement facility known as Morningside at Menger Springs, located at 1100 Grand Boulevard, Boerne, Texas (the "Project"); and

WHEREAS, the Project is located within the City of Boerne, Texas (the "City") and outside the limits of the Issuing Unit; and

WHEREAS, pursuant to section 147(f) of the Internal Revenue Code of 1986, as amended (the "Code") the Issuer has caused to be published a notice of public hearing (the "TEFRA Notice") with respect to the issuance of the Bonds and the financing of the Project, and held such a hearing after reasonable notice on November 29, 2021 (the "TEFRA Hearing"); and

WHEREAS, pursuant to the provisions of section 147(f) of the Code, the City Council of the City of Boerne, Texas, after the TEFRA Hearing, must approve issuance of the Bonds by the Issuer to enable the Bonds to qualify as tax-exempt obligations under the Code;

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

Section 1. The City Council, solely for purposes of section 147(f) of the Code, hereby approves the issuance of the Bonds and the Project; provided that the City shall have no liability in connection with the financing of the Project and shall not be required to take any further action with respect thereto.

Section 2. The foregoing approval is given in accordance with the provisions of section 147(f) of the Code and for no other purposes and is not to be construed as an undertaking by the City of Boerne, Texas. The Bonds shall not constitute a liability, indebtedness, or an obligation of the City of Boerne, Texas nor shall any of the assets of the City of Boerne, Texas be pledged to the payment of the Bonds.

Section 3. This Resolution shall take effect immediately from and after its adoption and it is accordingly so ordered.

PASSED and APPROVED on this the ____ day of January, 2022.

APPROVED:

Mayor

ATTEST:

City Secretary

December 15, 2021

VIA EMAIL DELIVERY (1958.074)

Mr. Ben Thatcher
City Manager
City of Boerne
PO Box 1677
Boerne, Texas 78006

Re: Consent to financing by New Hope Cultural Education Facilities Finance Corporation for
Morningside Ministries

Dear Mr. Thatcher:

New Hope Cultural Education Facilities Finance Corporation (the "Issuer") proposes, on behalf of the Town of New Hope, Texas, to issue its bonds or notes in a maximum principal amount of \$68,000,000 (the "Bonds") pursuant to the Cultural Education Facilities Finance Corporation Act, Chapter 337, Texas Local Government Code, as amended (the "Act") to provide funds to finance certain health facilities for Morningside Ministries (the "Borrower"), a Texas nonprofit corporation exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986. Our firm is acting as bond counsel to the Issuer in connection with the issuance of the Bonds.

The proceeds of the Bonds will be loaned to the Borrower for the purposes of (i) financing and refinancing certain capital expenditures in the maximum amount of \$8,000,000 at retirement facilities known as Morningside at The Meadows, located at the 600 and 700 blocks of Babcock Road, San Antonio, Texas 78201 (the "Meadows Campus"), (ii) financing and refinancing certain capital expenditures in the maximum amount of \$10,000,000 at retirement facilities known as Morningside at Menger Springs, located at 1100 Grand Boulevard, Boerne, Texas 78006 (the "Menger Springs Campus"), (iii) refinancing obligations which were issued for the benefit of the Borrower (the "Prior Obligations"), (iv) establishing a debt service reserve fund and (v) paying costs of issuance. The proceeds of the Prior Obligations were used to finance and refinance retirement facilities for the Borrower located at (a) the Menger Springs Campus in the maximum amount of \$22,500,000; (b) the Meadows Campus in the maximum amount of \$22,500,000; and (c) Morningside at The Chandler Estate located at 1502 and 1510 Howard Street and 135 and 137 West French Place, San Antonio, Texas 78202 in the maximum amount of \$5,000,000 (collectively, the "Projects"). The Projects are owned and operated by the Borrower or affiliated entities.

Section 147(f) of the Internal Revenue Code of 1986, as amended (the "Code") requires that the approval of the City of Boerne (or the highest elected official of the City of Boerne) be obtained to the financing by the Issuer after the holding of a public hearing. A public hearing was held on November 29, 2021 and a copy of the minutes of the public hearing is enclosed as **Exhibit A**.



For your convenience, I have enclosed as **Exhibit B** a proposed form of a consent resolution. This approval is required solely for the purposes of satisfying the requirements of the Code and to enable the Issuer to proceed with the proposed financing of the Project with Bond proceeds. **This approval in no way imposes any payment or other obligations on the City of Boerne in connection with the financing. The City of Boerne will have no liability with respect to the proposed Bonds.**

Therefore, on behalf of the Issuer and the Borrower, we respectfully request that consideration of adoption of the enclosed resolution be placed on the agenda of the City Council of Boerne, Texas at its next available meeting, and that the City Council approve and adopt such resolution. Upon such approval, I would also very much appreciate if you would email a scan or return an original version of the executed resolution to me at the contact information below. Please retain one copy for your file.

Please do not hesitate to contact me at (214) 754-9266 should you have any questions or comments.

Thank you very much for your cooperation and assistance.

Sincerely,

McCall, Parkhurst & Horton L.L.P.

Abraham "Abe" Benavides

AAB:bc
Enclosures

Contact:
Abe Benavides
(214) 754-9266
abenavides@mphlegal.com
McCall, Parkhurst & Horton L.L.P.
717 North Harwood, Suite 900
Dallas, Texas 75201

EXHIBIT A
MINUTES OF PUBLIC HEARING

MINUTES OF PUBLIC HEARING
New Hope Cultural Education Facilities Finance Corporation

Re: New Hope Cultural Education Facilities Finance Corporation Retirement Facility Revenue Bonds (Morningside Ministries Project) Series 2022

The undersigned, Abraham Benavides, designated Hearing Officer of New Hope Cultural Education Facilities Finance Corporation (the "Issuer"), the Issuer of the above referenced Bonds (the "Bonds"), called the Public Hearing of the Issuer held on Monday, November 29, 2021 to order at 10:30 a.m. via teleconference.

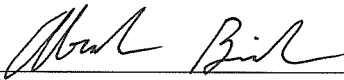
I declared that a Public Hearing, required under section 147(f) of the Internal Revenue Code of 1986 was open for purposes of discussing the Bonds and the project to be financed, refinanced or constructed with the proceeds of the Bonds (the "Project") by Morningside Ministries.

I declared that the required notice of the Public Hearing for the Project was published in the SAN ANTONIO EXPRESS-NEWS, being a newspaper of general circulation in the City of San Antonio and Bexar County, Texas, as evidenced by an Affidavit of Publication attached hereto as Exhibit A.

I proceeded to hold the Public Hearing. No member of the public joined the teleconference for the Public Hearing and thus no comments were made or discussed about the Project or the Bonds.

After sufficient time was given for all present to make their comments with respect to the Bonds and the Project, I declared the Public Hearing closed at 10:45 a.m. via teleconference.

Dated: November 29, 2021



Abraham Benavides, Hearing Officer
New Hope Cultural Education Facilities
Finance Corporation

EXHIBIT A

HEARST

MEDIA SOLUTIONS


San Antonio Express News | ExpressNews.com | mySA.com

SAN ANTONIO EXPRESS - NEWS AFFIDAVIT OF PUBLICATION

STATE OF TEXAS:
COUNTY OF BEXAR

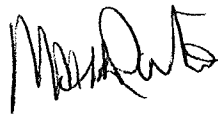
Before me, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared: Geena Garza, who after being duly sworn, says that she is the Bookkeeper of HEARST NEWSPAPERS, LLC - dba: SAN ANTONIO EXPRESS - NEWS, a newspaper published in Bexar County, Texas and that the publication, of which the annexed is a true copy, was published to wit:

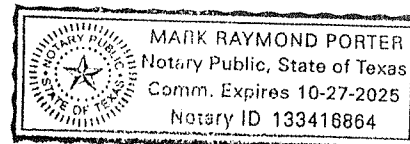
Customer ID	Customer	Order ID	Publication	Pub Date
20000805	MCCALL, PARKHURST & HORTON	34164902	SAE Express-News	11/21/21


Geena Garza
Bookkeeper

Sworn and subscribed to before me, this 23rd day of NOV. A.D. 2021

Notary public in and for the State of Texas





NOTICE OF PUBLIC HEARING NEW HOPE CULTURAL EDUCATION FACILITIES FINANCE CORPORATION

Notice is hereby given of a public hearing to be held by the New Hope Cultural Education Facilities Finance Corporation (the "Issuer") on Monday, November 29, 2021, at 10:30 a.m. via teleconference, with respect to the issuance by the Issuer of its revenue bonds (the "Bonds") in one or more series pursuant to a plan of financing in an aggregate principal amount not to exceed \$68,000,000, the proceeds of which will be loaned to Morningside Ministries, a Texas nonprofit corporation (the "Borrower").

The proceeds of the Bonds will be loaned to the Borrower for the purposes of (i) financing and refinancing certain capital expenditures in the maximum amount of \$8,000,000 at retirement facilities known as Morningside at The Meadows, located at the 600 and 700 blocks of Babcock Road, San Antonio, Texas 78201 (the "Meadows Campus"); (ii) financing and refinancing certain capital expenditures in the maximum amount of \$10,000,000 at retirement facilities known as Morningside at Menger Springs, located at 1100 Grand Boulevard, Boerne, Texas 78006 (the "Menger Springs Campus"); (iii) refinancing obligations which were issued for the benefit of the Borrower (the "Prior Obligations"); (iv) establishing a debt service reserve fund and (v) paying costs of issuance. The proceeds of the Prior Obligations were used to finance and refinance retirement facilities for the Borrower located at (a) the Menger Springs Campus in the maximum amount of \$22,500,000; (b) the Meadows Campus in the maximum amount of \$22,500,000; and (c) Morningside at The Chandler Estate located at 1502 and 1510 Howard Street and 135 and 137 West French Place, San Antonio, Texas 78202 in the maximum amount of \$5,000,000 (collectively, the "Projects"). The Projects are owned and operated by the Borrower or affiliated entities.

All interested parties are invited to express their views with respect to the Projects and the Bonds by attending the public hearing to be held via teleconference, by dialing the following toll-free number: 1-888-557-8511 (Passcode: 3788659#). Any interested persons unable to attend the hearing may submit their views in writing to the Issuer c/o Abraham "Abc" Benavides, McCall, Parkhurst & Horton L.L.P., 717 North Harwood, Suite 900, Dallas, Texas 75201, prior to the date scheduled for the hearing.

This notice is published and the above-described hearing is to be held in satisfaction of the requirements of Section 147(f) of the Internal Revenue Code of 1986, as amended, regarding the public approval prerequisite to the exemption from federal income taxation of interest on the Bonds. The public hearing will be held via teleconference in accordance with Revenue Procedure 2021-39 issued by the Internal Revenue Service due to the COVID-19 pandemic.

EXHIBIT B

FORM OF PROPOSED RESOLUTION

RESOLUTION NO. _____

**A RESOLUTION APPROVING THE FINANCING BY THE NEW HOPE
CULTURAL EDUCATION FACILITIES FINANCE CORPORATION ON
BEHALF OF MORNINGSIDE MINISTRIES FOR A HEALTH FACILITY
LOCATED WITHIN THE CITY OF BOERNE, TEXAS**

WHEREAS, the Cultural Education Facilities Finance Corporation Act, Chapter 337, Texas Local Government Code, as amended (the "Act"), authorizes and empowers New Hope Cultural Education Facilities Finance Corporation (the "Issuer") to issue revenue bonds on behalf of the Town of New Hope, Texas (the "Issuing Unit") to finance the costs of health facilities found by the Board of Directors of the Issuer to be required, necessary or convenient for health care, research and education, any one or more, within the State of Texas and in furtherance of the public purposes of the Act; and

WHEREAS, Morningside Ministries (the "Borrower"), a Texas nonprofit corporation exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986 (the "Code"), proposes to obtain financing from the Issuer from the proceeds of one or more series of the Issuer's bonds or notes in a maximum principal amount not to exceed \$68,000,000 (the "Bonds") and will use a portion of the proceeds of the Bonds to finance and refinance the cost of certain retirement facilities, including the retirement facility known as Morningside at Menger Springs, located at 1100 Grand Boulevard, Boerne, Texas (the "Project"); and

WHEREAS, the Project is located within the City of Boerne, Texas (the "City") and outside the limits of the Issuing Unit; and

WHEREAS, pursuant to section 147(f) of the Internal Revenue Code of 1986, as amended (the "Code") the Issuer has caused to be published a notice of public hearing (the "TEFRA Notice") with respect to the issuance of the Bonds and the financing of the Project, and held such a hearing after reasonable notice on November 29, 2021 (the "TEFRA Hearing"); and

WHEREAS, pursuant to the provisions of section 147(f) of the Code, the City Council of the City of Boerne, Texas, after the TEFRA Hearing, must approve issuance of the Bonds by the Issuer to enable the Bonds to qualify as tax-exempt obligations under the Code;

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

Section 1. The City Council, solely for purposes of section 147(f) of the Code, hereby approves the issuance of the Bonds and the Project; provided that the City shall have no liability in connection with the financing of the Project and shall not be required to take any further action with respect thereto.

Section 2. The foregoing approval is given in accordance with the provisions of section 147(f) of the Code and for no other purposes and is not to be construed as an undertaking by the City of Boerne, Texas. The Bonds shall not constitute a liability, indebtedness, or an obligation of the City of Boerne, Texas nor shall any of the assets of the City of Boerne, Texas be pledged to the payment of the Bonds.

Section 3. This Resolution shall take effect immediately from and after its adoption and it is accordingly so ordered.


PASSED AND APPROVED, this the _____ day of _____, 2022.

APPROVED:

Mayor

ATTEST:

City Secretary

	<div style="text-align: center;">AGENDA ITEM SUMMARY</div> <div style="border: 1px dashed purple; padding: 5px; float: right;"> District Impacted <input type="checkbox"/> 1 = Wolosin <input type="checkbox"/> 2 = Woolard <input type="checkbox"/> 3 = Scott <input type="checkbox"/> 4 = Boddie <input type="checkbox"/> 5 = Macaluso <input checked="" type="checkbox"/> All </div>
Agenda Date	January 25, 2022
Requested Action	<p>CONSIDER RESOLUTION NO. 2022-R06; A RESOLUTION OF THE CITY COUNCIL OF BOERNE, TEXAS, AUTHORIZING THE CITY MANAGER TO ENTER INTO AND MANAGE A LEASE AGREEMENT, AND ANY OTHER RELATED DOCUMENTS WITH GREENHAUS, INC. FOR THE LEASE OF THE BUILDING LOCATED AT 400 EAST BLANCO ROAD, BOERNE, TEXAS. <i>(Lease former Public Works building)</i></p>
Contact Person	Nicholas Montagno- Assistant to the City Manager
Background Information	<p>In August of 2021, staff began working with the Boerne Kendall County Economic Development Corporation (BKCEDC) and Boerne Kendall County Angel Network (BKCAN) to find a way to utilize the former Public Works/Utilities building located at 400 East Blanco for an exciting new economic development entrepreneurial incubator concept. That concept has taken form in a collaborative partnership that sees participation from major community stakeholders including BISD, the City, and the County. The entity formed to facilitate this endeavor, Das Greenhaus (DGH), is a 501(c)3 non-profit business incubator that aims to grow Kendall County's entrepreneurial ecosystem. It will serve as a means of retaining Kendall County talent providing a place to grow their business in their hometown and also offer support for BISD's new entrepreneurial program, incubator.edu Boerne. DGH, as a public-private partnership, is a key element in the strategy for sustainable growth through entrepreneurial-led economic development (ELED).</p> <p>Acting as a conduit for connecting the next generation of entrepreneurs with experienced mentors, DGH is a separate non-profit entity that will partner with local organizations to serve business start-ups in a holistic, sustainable way. DGH is a long-term investment in our community that will serve as a hub for entrepreneurial activity that transforms Kendall County while preserving the historic character of our community.</p> <p>To be housed in the former Public Works building, DGH will include open-concept workspaces, dedicated offices, and conference rooms. In addition to space, support for startup businesses will also include a mentorship program, as well as educational and networking opportunities. Data provided through IC2 through the University of Texas, supports the conclusion that incubators increase start up success rates, and also provide community benefit via increased tax revenue. Incubators are a proven concept that have been successfully launched in both metro and rural communities around the state,</p>

	<p>as well as nationwide.</p> <p>DGH is in alignment with the economic development goals stated in the 5-Year Economic Development Strategy Plan, adopted by City Council in October of 2020, of creating an entrepreneurial ecosystem as a means of a controlled, quality economic development. The launch of DGH will plant a flag that Kendall County is a hub for founders and entrepreneurs to start and grow their businesses.</p> <p>Attached for consideration is a lease agreement for 400 E. Blanco. (Attachment A). Per prior Council discussions, obligations of the agreement include:</p> <ul style="list-style-type: none"> • Term of agreement is initially ten years with three five-year extensions for a total of 25 years. • City will pay the cost of normal utility use for the premise for three years. • Marketing for the project to include the City of Boerne Logo. • Annual performance reporting of project
Item Justification	<div> <div> <input type="checkbox"/> Legal/Regulatory Obligation <input type="checkbox"/> Reduce Costs <input type="checkbox"/> Increase Revenue <input type="checkbox"/> Mitigate Risk <input type="checkbox"/> Master Plan Recommendation </div> <div> <input type="checkbox"/> Infrastructure Investment <input type="checkbox"/> Customer Pull <input type="checkbox"/> Service Enhancement <input type="checkbox"/> Process Efficiency <input checked="" type="checkbox"/> Other: Economic Development Project </div> </div>
Financial Considerations	N/A
Citizen Input/Board Review	N/A
Legal Review	Legal has reviewed and approved the form and content of this lease agreement.
Alternative Options	Continue to hold onto asset or sell asset by approved method
Supporting Documents	Attachment A- Lease Agreement

RESOLUTION NO. 2022-R06

A RESOLUTION OF THE CITY OF BOERNE, TEXAS, AUTHORIZING THE CITY MANAGER TO ENTER INTO AND MANAGE A LEASE AGREEMENT AND ANY OTHER RELATED DOCUMENTS WITH DAS GREENHAUS, INC. FOR THE LEASE OF THE BUILDING LOCATED AT 400 EAST BLANCO ROAD, BOERNE, TEXAS

WHEREAS, the City of Boerne owns the land and building located at 400 East Blanco Road which was formerly used as the City of Boerne Public Works Building; and

WHEREAS, the City of Boerne recognizes the benefit to the community of using this office space for economic development purposes and now wishes to lease out the building to an entity which will utilize it for this public purpose; and

WHEREAS, the Boerne City Council has determined that allowing Das Greenhaus, Inc. to lease the building for the purpose of setting up and operating the Incubator serves the public economic development purpose of increasing future growth in the number and quality of viable small businesses in the city; and

WHEREAS, the City Council finds it in the best interest of the public to enter into a lease agreement with Das Greenhaus, Inc. for the building located at 400 East Blanco Rd, Boerne, Texas.

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 lease agreement with Das Greenhaus, Inc. for the lease of the building located at 400 East Blanco Road, Boerne, Texas.

PASSED and APPROVED on this the ____ day of January, 2022.

APPROVED:

Mayor

ATTEST:

City Secretary

STATE OF TEXAS §
 § CITY OF BOERNE
COUNTY OF KENDALL §

LEASE AGREEMENT

This LEASE AGREEMENT (this "Lease") is made this __day of January 2022, between the **CITY OF BOERNE**, whose address is Post Office Box 1677, Boerne, Texas, 78006-1677("Lessor"), and **DAS GREENHAUS, INC.**, a non-profit corporation incorporated under the laws of the State of Texas, whose address is 1221 S. Main Street, Boerne, Texas 78006 ("Lessee").

WHEREAS, Lessor owns land and a building located at 400 E. Blanco Road. which was formerly used as the City of Boerne Public Works Building; and

WHEREAS, the Boerne City Council recognizes the benefit to the community of using this office space for economic development purposes and now wishes to lease out the building to an entity which will utilize it for this public purpose; and

WHEREAS, the City of Boerne Incentive Policy provides that the City may consider the sale, lease or exchange of land without the necessity of accepting written bids to further economic development purposes; and

WHEREAS, Texas Local Government Code Section 253.011 provides that a city may convey an interest in real property to a Section 501(c)(3) nonprofit organization without complying with notice or bidding requirements, provided that consideration is given in the form of an agreement that requires the nonprofit organization to use the property in a manner that primarily promotes a public purpose of the city and provides for automatic reversion upon failure of this consideration; and

WHEREAS, Lessee is a 501(c)(3) nonprofit organization created to encourage the growth of small businesses in the City of Boerne and Kendall County; and

WHEREAS, Lessee wishes to promote the growth of Boerne Kendall County’s Entrepreneurial Ecosystem in the City of Boerne and Kendall County by providing space for an incubator project where start-up businesses may operate in an environment with innovative, technological, and other support conducive to growth of these businesses (“the Incubator”) and has asked to lease the building for this purpose; and

WHEREAS, the Boerne City Council has determined that allowing Lessee to lease the building for the purpose of setting up and operating the Incubator serves the public economic development purpose of increasing future growth in the number and quality of viable small businesses in the City of Boerne, resulting in significant future increases in ad valorem and sales tax revenues, utility revenues, and quality job opportunities for Boerne citizens; and

WHEREAS, Lessor and Lessee now wish to enter into this Lease for the purpose of setting out the terms under which the building will be leased; **NOW THEREFORE**:

WITNESS, that for the consideration set forth herein, Lessor does by these presents lease and demise unto Lessee a building of approximately 6143 square feet, located at 400 E. Blanco Rd., Boerne, Texas, 78006, commonly known as the Boerne Public Works Building, with the underlying land, including landscaped area and parking immediately connected to the building, and further described in the diagram attached hereto as **Exhibit “A”** which is incorporated herein for all purposes (hereafter, the “Premises”), subject to the following terms:

1. **Initial Term and Rent.** This Lease shall be for a term of ten (10) years (“the Initial Term”), beginning on June 1, 2022 (“the Effective Date”), and ending on May 31, 2032 (“the Termination Date”), unless otherwise renewed or terminated as set forth below, and subject to the provisions of this Lease.
2. **Renewal Terms.** At the end of the Initial Term of this Lease or any renewal term this Lease may be renewed for an additional five (5) years by written agreement of the parties, provided that the total of the Initial Term of this Lease plus all renewal terms shall not exceed twenty-five (25) years. Lessee shall notify Lessor in writing two (2) years prior to the end of the Initial Term and any renewal term of Lessee’s intention to renew this Lease. If Lessor also wishes to renew this Lease, the parties shall enter into negotiations for the renewal of this Lease which shall conclude no later than one (1) year prior to the end of the then current term of this Lease. Lessor’s City Council shall either approve a final proposed renewal agreement or reject the renewal of this Lease within ninety (90) days following the end of negotiations. Lessee shall accept or reject Lessor’s proposed renewal agreement within ninety (90) days of the decision by Lessor’s governing body, the Boerne City Council.
3. **Rent.** Lessee shall pay the sum of Ten and No/100ths Dollars (\$10.00) each year as rental on the Premises (the “Rent”), with the first payment due and payable on the Effective Date in 2022, and with like annual payments due and payable on the same day of each successive year during the term of this Lease at Lessor’s address listed herein
4. **Use of Premises and Automatic Reversion.** As consideration for this Lease, in addition to the Rent and Additional Rent stated herein, Lessee shall use the Premises solely for the public purpose of providing office space, technological, and other assistance for startup entrepreneurial businesses under the Incubator program which is the purpose of this Lease. Further, Lessee’s use of the Premises shall primarily promote the City of Boerne’s public purpose of increasing the number and quality of small businesses expected to remain in the City of Boerne, providing future increases in ad valorem and sales tax revenues, utility revenues, and quality job opportunities for Boerne citizens. As required by Texas Local Government Code Section 253.011, if Lessee fails at any time to use the Premises for these public purposes in the manner stated herein, the leasehold interest conveyed in this Lease

shall automatically revert to the City of Boerne. Nothing herein shall limit the City's right to seek any other remedy available to it at law or in equity.

5. **Performance Measures.** Lessee shall meet the performance measures listed in this Section over the periods of time indicated. Any failure of Lessee to meet any of these performance measures may result in the City's termination of this Lease following notice and a cure period as provided below. For purposes of this Lease "priority start-up business" means a business, other than automotive or fast-food related business, which is expected to remain in the City of Boerne, providing future increases in ad valorem and sales tax revenues, utility revenues, and quality job opportunities for Boerne citizens.
- A. Lessee shall make improvements to the Premises worth at least \$500,000 within 24 months of the Effective Date of this Lease, shall provide documentation of payments made for these improvements to the City within 30 months of the Effective Date of this Lease; and
 - B. Lessee shall have the Premises open and ready for occupancy by at least 2 "priority start-up entrepreneurial businesses" within 24 months of the Effective Date of this Lease and shall provide documentation to the City of same on or before 30 months after the Effective Date of this Lease ("the Occupancy Date"); and Lessee shall have at least 2 "priority start-up entrepreneurial businesses" located in and operating out of the Premises for the majority of each year of this Lease following the Occupancy Date.
 - C. Lessee shall acknowledge the City of Boerne's contribution to the Incubator project in marketing materials and signs in the following manner:
 - a. Use of City of Boerne logo in all marketing materials as well as on interior signage. Use of the City's logo shall be pre-approved by the City Manager or his designee prior to printing or publication of any material or sign containing the logo.
 - D. On or before May 31st of each year of this Lease Lessee shall present a status report to the Boerne City Council reporting:
 - a. The total number and types of priority start-up entrepreneurial businesses located in and utilizing the Premises;
 - b. The support, assistance, and other programs being offered at the Premises;
 - c. A list of any physical improvements made to the Premises during the year;
 - d. The proposed physical improvements and programs for the next year;
 - e. The annual budget for Lessee; and
 - f. Additional information regarding status of compliance with this Lease and the operation of the Premises that may be reasonably necessary for Lessor to perform its fiduciary duties for the citizens of Boerne.
6. **Lessee's Right to Collect Charges.** Lessee shall be entitled to collect use charges for participants in its business incubator program to make use of the Premises, subject to the funds collected being used for the operation and maintenance of the Premises and the business incubator program which are the purpose of this Lease. Lessor, at its sole

discretion, reserves the right to audit the expenditure of funds to verify appropriate uses per the purpose of this Agreement, and, upon request of the City Council or City Manager, Lessee shall make records relating to the revenues and expenditures relevant to this Agreement available for inspection and review.

7. **Utilities.** Lessor will pay the cost of normal utility use for the Premises for three (3) years after the Effective Date of this Lease. This obligation shall not include any costs due to installation of new utility infrastructure, equipment, or lines, unusual or unapproved utility use, or the installation or operation of equipment or appliances with unusually high utility needs or the monthly payment of any and all expenses for utilities for the Premises following the initial three (3) year period paid by Lessor (“Utility Expense”).
8. **Ownership.** Lessor retains ownership of the Premises, including any permanent improvements to and/or fixtures located thereon. Lessor has not delegated its governmental responsibility or authority to Lessee. Nothing herein shall be construed to give Lessee authority to overrule decisions of the City Council or other appropriate authority of the City of Boerne.
9. **Return of Premises.** Upon expiration of the Lease term, Lessee shall deliver the Premises with all improvements and fixtures, whether made by Lessee or Lessor, to Lessor in the same condition as they were received or installed, reasonable wear and tear excepted.
10. **Subleasing.** Lessee shall not sublet the Premises, or any part thereof, to any person or persons whatsoever, without prior written authorization from Lessor. Any lease or attempt to sublet shall be considered null and void, *ab initio*. Lease of space within the Premises to start-up businesses for the Incubator purpose contemplated in this Lease shall not be considered a sublet.
11. **Improvements, Maintenance, and Repair.**
 - Lessee shall have the right to make such improvements to the Premises as it deems necessary and shall be solely responsible for payment of all amounts related to or arising out of such work (“Improvement Expense”). Plans for such improvements shall initially be approved by the City Manager or his designee. Following such initial approval, Lessee shall have no further obligation to seek Lessor’s approval outside of compliance with applicable law. Nothing herein shall waive any permitting requirements of the City of Boerne and Lessee shall follow all requirements of the City of Boerne Unified Development Code and all other City of Boerne requirements applicable to the Improvements. In the event Lessee alters the plans for the Improvements after review by the City Manager or his designee, Lessee shall obtain consent from the City Manager or his designee for any such alterations.

- Lessee shall, at its sole cost and expense, repair and maintain the grounds, building, and all of the Premises in good condition and in clean and sanitary condition at all times during the Initial Term and any renewal term of this Lease (“Maintenance Expense”). In the event the Premises shall fall into a state of disrepair such that Lessor becomes reasonably concerned with the condition or maintenance of the Premises, Lessor may terminate this Lease after first giving Lessee notice, and an opportunity to cure, in accordance with the provisions of paragraph 22 below.

12. Insurance.

- A. Lessee shall procure, at its own expense, liability insurance with a minimum per occurrence limit of one million dollars (\$1,000,000.00) and building contents insurance to cover Lessee's contents and equipment at the Premises. Lessee acknowledges that over the period of this Lease, the liability limit may become inadequate. Lessor may, with good cause, require Lessee to maintain a higher coverage limit. In such event, Lessor shall provide Lessee with written notice of any coverage limit change reasonably required to increase insurance coverage on the Premises. Lessee shall obtain such coverage within thirty (30) days of its receipt of such notice from Lessor. Unless required by applicable law, the coverage limit required will not exceed three million dollars (\$3,000,000). With good cause, Lessor may require additional insurance coverage to protect Lessor's interest. The same notice and execution provisions shall apply. Lessee shall be responsible for insuring its own leasehold interest (collectively, “Insurance Expense”).
- B. Lessor will maintain property insurance through a commercial carrier or self-insurance arrangement on the Premises to secure Lessor’s interest in the Premises. Lessor shall have no obligation to expend funds in excess of the insurance proceeds to repair the Premises. In the event of a loss causing a lack of use of the Premises for its intended purposes, in the parties’ reasonable judgment, for a period exceeding six (6) months, Lessor shall have no obligation to rebuild or repair the Premises and may elect instead to terminate this Lease upon ninety-days written notice to Lessee. Lessor shall have no obligation to Lessee for any loss of use of the building to Lessee or any limitations on performance of Lessor under this Lease resulting from any such property loss.
- C. Liability insurance required hereunder shall name Lessor as an additional insured. In addition, Lessee shall provide Lessor with a copy of each insurance policy required hereunder along with proof that all premiums for each such policy or policies shall have been paid by Lessee.

13. INDEMNIFICATION BY LESSEE. LESSOR SHALL NOT BE LIABLE TO

LESSEE'S EMPLOYEES, AGENTS, INVITEES, LICENSEES OR VISITORS, OR TO ANY OTHER PERSON, FOR ANY INJURY TO SUCH PERSON OR DAMAGE TO PROPERTY ON OR ABOUT THE PREMISES CAUSED BY THE NEGLIGENCE OR MISCONDUCT OF LESSEE, ITS AGENTS, SERVANTS OR EMPLOYEES, OR OF ANY OTHER PERSON ENTERING UPON THE PREMISES UNDER THE EXPRESS OR IMPLIED INVITATION OF LESSEE OR CAUSED BY STRUCTURES, BUILDINGS, SIGNS, ADDITIONS, IMPROVEMENTS, DISPLAYS AND OTHER ITEMS BECOMING OUT OF REPAIR, OR THE FAILURE OR CESSATION OF ANY SERVICE PROVIDED BY LESSOR. LESSEE AGREES TO INDEMNIFY AND HOLD HARMLESS LESSOR OF AND FROM ANY LOSS, EXPENSE OR CLAIM ARISING OUT OF ANY SUCH DAMAGE OR INJURY, INCLUDING LESSOR'S REASONABLE ATTORNEYS' FEES INCURRED THEREBY.

14. **Consent of City Required for Modification of Premises.** Lessee shall not build or add any permanent structure, addition, or item that materially changes the size, accessibility or use of the Premises without the prior written consent of the City Manager or his designee. This provision does not prohibit ordinary and customary maintenance, repair of existing facilities, or addition of internal fixtures otherwise consistent with the parties' intent expressed herein. Rather, it is the parties' intention that Lessee will make many changes and improvements to the Premises to make it more useful and desirable for its intended purposes. Any and all fixtures whether put in by Lessor or Lessee are and become on installation part of the Premises and the property of Lessor and may not be removed from the Premises without prior written agreement from Lessor. Lessee shall have 30 days from the date of termination of this Lease to notify Lessor in writing of its wish to keep any particular fixture which have been installed by Lessee on the Premises. Landlord and Lessee shall engage in good faith negotiations regarding whether any such fixtures may be removed and the terms of any such removal. Any fixtures for which no agreement has been reached with Lessor by the 60th day after termination of this Lease shall remain the property of Lessor and remain with the Premises.
15. **Compliance with UDC and other City Regulations.** Lessee shall comply with the City of Boerne Unified Development Code, environmental laws, and all other City regulations and permit requirements applicable to its use of, modifications to, or occupancy of the Premises. Nothing herein shall be construed as advance approval of or any waiver of any permit requirement of the City.
16. **Lessee Responsible for Investigation, "As Is. Where Is."** Lessor makes no warranty as to the suitability of the Premises for the use to which Lessee wishes to put the Premises nor any other warranty. Lessee acknowledges it has had an opportunity to inspect the Premises and do its own investigation of the status of the Premises with regard to any Historic designation, flood plain, or drainageway location or other factor which would affect the use of the Premises or the regulations applicable to the Premises. Lessee accepts the leased

Premises “As Is. Where Is.”

17. **Compliance with Employment Laws.** Lessee shall be fully responsible for its employees, including meeting all state and federal requirements for minimum wage, income tax withholding, workers' compensation, insurance, and all city, state, and federal requirements governing employer/employee relations. Lessee hereby certifies to Lessor that it is and shall be in compliance with all such regulations, laws and requirements. Failure to comply with this clause, following notice and an opportunity to cure, shall constitute a default on the part of Lessee and shall entitle Lessor to terminate this Lease and take possession of the Premises.
18. **Signs.** Any sign placed on the Premises shall be in conformance with the conditions set out in the ordinances of the City of Boerne.
19. **Lessor's Right of Access.** Lessor shall have the full right of access to the Premises for purposes of insuring compliance with this Lease and the condition of the Premises. Lessor agrees to make reasonable attempts to exercise the right of access to the Premises at such times as are the least disruptive to Lessee's use and enjoyment of the Premises.
20. **Taxes.** Lessee shall be liable for any and all taxes levied against the leasehold interest, the personal property, the trade fixtures, or other improvements placed on the Premises by Lessee, if any (“Tax Expense”).
21. **Additional Rent.** Each Overage Fee, Utility Expense, Improvement Expense, Maintenance Expense, Insurance Expense, Tax Expense, and other amounts payable by Lessee herein are collectively referred to as “Additional Rent.” In the event that Additional Rent of any kind or nature is not timely paid (i.e., monthly as may be owed to Lessor, according to any taxing entity schedule or as is otherwise required) by Lessee shall constitute a material default.
22. **Termination.** Upon Lessee's breach of any covenant set forth in this Lease or upon any material violation by Lessee of any performance measure requirement or regulation or ordinance of the City of Boerne Lessor may terminate this Lease in accordance with Section 18 below. In the event of a material default under this Lease by Lessor, Lessor shall have 30 days to cure such material default and, if such default cannot reasonably be cured in 30 days, Lessor shall have such period as is reasonably necessary under the circumstances so long as it continues to exercise diligence to effect cure of such default. If Lessor elects to pay any amount owed by Lessee herein, Lessee shall within 30 days reimburse Lessor, upon Lessor's written demand, the funds for payments made on Lessee's behalf for losses sustained because of Lessee's failure to pay such amounts, including Lessor's reasonable attorneys' fees incurred thereby.
23. **Remedies.** Following an uncured material default of the Lease, Lessor or its agents, or assigns shall have the option to pursue any one or more of the remedies, without making

notice of demand on Lessee, as follows: (1) to enter upon and take possession of the Premises, by any means whatsoever, without being liable for any claim of damages, (2) to terminate this Lease, in which event Lessee shall immediately surrender the Premises to Lessor, (3) to seek any other remedies at law or in equity, including, but not limited to, the filing of a lawsuit for monetary damages sustained by Lessor occasioned by Lessee's breach of this Lease, (4) to prosecute Lessee for any violation by Lessee or its employees, agents, invitees, licensees, and/or visitors of any applicable ordinance, regulation or statute of any governmental authority. Termination of this Lease, pursuant to the Subsection (2) of this Paragraph, shall be effective upon Lessor's providing written notification of such to Lessee, at Lessee's address listed herein, by certified mail, return receipt requested, and deposited in an official depository in the care and custody of the United States Postal Service. The notice and cure requirements set forth herein shall not apply to an automatic reversion as set forth above.

24. **Governing Law.** The construction and validity of this Lease shall be governed by the laws of the State of Texas without regard to any conflict of laws provisions. Venue for any legal action commenced hereunder shall be in a court of appropriate jurisdiction in Kendall County, Texas.
25. **Severability.** In the event any portion of this Lease is deemed illegal, invalid, or unenforceable, then the remainder of this Lease shall not in any way be affected thereby and may be enforced to the greatest extent permitted by applicable law.
26. **Compliance with Law.** Lessee shall be responsible for complying with all provisions of city, state and federal law in its use of the Premises.
27. **Non-discrimination.** Lessee hereby agrees to refrain from any activity in the performance of this Lease or the use of the Premises that discriminates against any person or persons based upon race, color, creed, national origin, religion, sex in accordance with present federal and state laws.
28. **No Amendment without City Approval.** All of the terms of the agreement between the parties regarding this Lease are contained herein and the parties acknowledge that no verbal promises or agreements modify this Lease. No amendment or modification of this Lease shall be in effect unless it shall be in writing, signed by both parties.
29. **No Assignment by Lessee.** Lessee shall not assign or convey any rights or interest in this Lease or the leasehold interest conveyed herein without the express written consent of Lessor's City Manager.

Agreed and executed in duplicate originals this ____ day of _____, 2022.

LESSOR: CITY OF BOERNE

By: _____
Ben Thatcher
City Manager

ATTEST:

Lori Carroll
City Secretary

LESSEE: DAS GREENHAUS, INC., a Texas non-profit corporation

By: _____

Name: _____

Title: _____

STATE OF TEXAS §

COUNTY OF KENDALL §

BEFORE ME, a Notary Public, on this day personally appeared _____ of **Das Greenhaus, Inc.**, a Texas non-profit corporation, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he/she executed the same for the purposes of consideration therein expressed.

GIVEN under my hand and seal of office this: _____ day of _____, 2022.

Notary Public in and for the State of Texas

EXHIBIT A

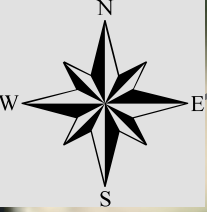
Property description as defined on a survey plat.


Exhibit A
The Premises



Legend

 The Premises



	<div style="text-align: center;">AGENDA ITEM SUMMARY</div> <div style="border: 1px dashed purple; padding: 5px; float: right;"> District Impacted <input type="checkbox"/> 1 = Wolosin <input type="checkbox"/> 2 = Woolard <input type="checkbox"/> 3 = Scott <input type="checkbox"/> 4 = Boddie <input type="checkbox"/> 5 = Macaluso <input checked="" type="checkbox"/> All </div>
Agenda Date	January 25, 2022
Requested Action	RECEIVE BIDS FOR CONSTRUCTION OF THE ROSEWOOD SIDEWALK IMPROVEMENTS AND APPROVE RESOLUTION NO. 2022-R07; AWARDDING THE CONTRACT FOR ROSEWOOD SIDEWALK IMPROVEMENTS PROJECT TO CALTEX INTERIORS, INC. FOR AN AMOUNT NOT TO EXCEED \$238,551.50; AND AUTHORIZING THE CITY MANAGER TO MANAGE AND EXECUTE THE RELATED CONTRACT.
Contact Person	Jeffrey Carroll – Development Services Director
Background Information	<p>In August of 2020, City Council authorized the design of four separate sidewalk projects on Bentwood; Rosewood; Oak Park, Frey, and E. Bandera; and City Park Road. These four projects were based upon previous Alamo Area Metropolitan Planning Organization (AAMPO) pedestrian & bicycle recommendations for the City.</p> <p>Because the construction cost of the project is estimated to be greater than \$50,000, State Law prescribes procurement be done under a competitive bidding process.</p> <p>We bid the project on January 11th and received six (6) bids ranging from \$238,551.50 to \$518,625.00. The engineer’s estimate of probable construction cost was \$231,918.52.</p> <p>The low bid was submitted by Caltex Interiors, Inc. in the amount of \$238,551.50. Jones & Carter, Inc. reviewed the bids, checked references, and provided a recommendation of award to Caltex Interiors, Inc.</p> <p>On the basis of the above, Staff recommends the Council receive the bids and award the construction contract to Caltex Interiors, Inc.</p>
Item Justification	<div style="display: flex; justify-content: space-between;"> <div> <input type="checkbox"/> Legal/Regulatory Obligation <input type="checkbox"/> Reduce Costs <input type="checkbox"/> Increase Revenue </div> <div> <input checked="" type="checkbox"/> Infrastructure Investment <input checked="" type="checkbox"/> Customer Pull <input type="checkbox"/> Service Enhancement </div> </div>

	<input type="checkbox"/> Mitigate Risk <input type="checkbox"/> Process Efficiency <input type="checkbox"/> Master Plan <input type="checkbox"/> Other: _____ Recommendation _____
Financial Considerations	Contract amount is within the Council-approved budget of \$1,592,389 for multiple sidewalk projects.
Citizen Input/Board Review	N/A
Legal Review	N/A
Alternative Options	Defer the sidewalk project leaving existing gap in sidewalk.
Supporting Documents	Consultant Recommendation of Award, AAMPO recommendations



4350 Lockhill Selma Road, Suite 100
San Antonio, Texas 78249
Tel: 210.494.5511
Fax: 210.494.5519
www.jonescarter.com

January 18, 2022

City of Boerne
447 N. Main St.
Boerne, TX 78006

Attention: Mrs. Cheryl Rogers, P.E.

RE: Request for Bids: Rosewood Ave. Sidewalk Improvements Project
City of Boerne
Recommendation of Award

Dear Mrs. Rogers:

The City of Boerne received public bids for the subject project on January 11, 2022. Jones|Carter has reviewed the bids with the following results. A summary of the submitted bids is attached to this letter.

The low bidder was Caltex Interiors Inc., with a bid of \$238,551.50. Caltex Interiors Inc.'s references recommend them for their quality of work and performance. We find Caltex Interiors Inc. to have the lowest and best qualified bid, and we recommend the award of the contract to Caltex Interiors Inc. in the amount of \$238,551.50.

If you have any questions, please contact us at 210.494.5511 or email at ngarcia@jonescarter.com.

Sincerely,

Nicolas Garcia, P.E.
Project Manager



JONES | CARTER

BID TABULATION SHEET

BIDS WERE RECEIVED BY:

Rosewood Ave. Sidewalk Improvement Project

City of Boerne

City of Boerne

Time: 2:00 P.M.

Public Bid

Date: 1/11/2022

	BIDDERS					
	Caltex Interiors Inc.	Futra-Vest Construction, LLC	Lone Star Sitework, LLC	Meyers Concrete Construction	M&C Fonseca Construction Co, Inc	RL Rohde General Construction, Inc.
Acknowledgement of Receipt of Addenda	✓	✓	✓	✓	✓	✓
Bid Form	✓	✓*	✓	✓	✓	✓
Qualifications Statement	✓	✓	✓	✓	✓	✓
Bid Bond	✓	✓	✓	✓	✓	✓
Base Bid	\$238,551.50	\$518,625.00*	\$317,940.05	\$293,361.00	\$356,134.00	\$325,972.00

*Calculation error was found in total bid amount.

RESOLUTION NO. 2022-R07

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BOERNE, TEXAS, AWARDING THE CONTRACT FOR ROSEWOOD AVENUE SIDEWALK IMPROVEMENTS PROJECT TO _____ FOR AN AMOUNT NOT TO EXCEED \$_____; AND AUTHORIZING THE CITY MANAGER TO MANAGE AND EXECUTE THE RELATED CONTRACT

WHEREAS, the City of Boerne received bids for the Rosewood Sidewalk Improvements Project for the construction of approximately 2,600' of 5-foot sidewalk, concrete curb, and concrete driveways to provide a continuous pedestrian route along Rosewood Avenue; and

WHEREAS, Jones & Carter, Inc. reviewed the bids, checked references, and provided a recommendation of award to Caltex Interiors, Inc.; and

WHEREAS, the City Council finds it necessary to award the contract for Rosewood Avenue Sidewalk Improvements Project and authorize the City Manager to manage and execute the related contract and documents;

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

SECTION 1. The above recitals are true and correct and are incorporated herein and made part hereof for all purposes.

SECTION 2. The City Council awards the contract for the Rosewood Avenue Sidewalk Improvements Project to _____ for an amount not to exceed \$_____.

SECTION 3. The City Manager is hereby authorized to manage and execute the related contract and documents thereto on behalf of the City of Boerne, Texas.

PASSED and APPROVED on this the ____ day of January, 2022.

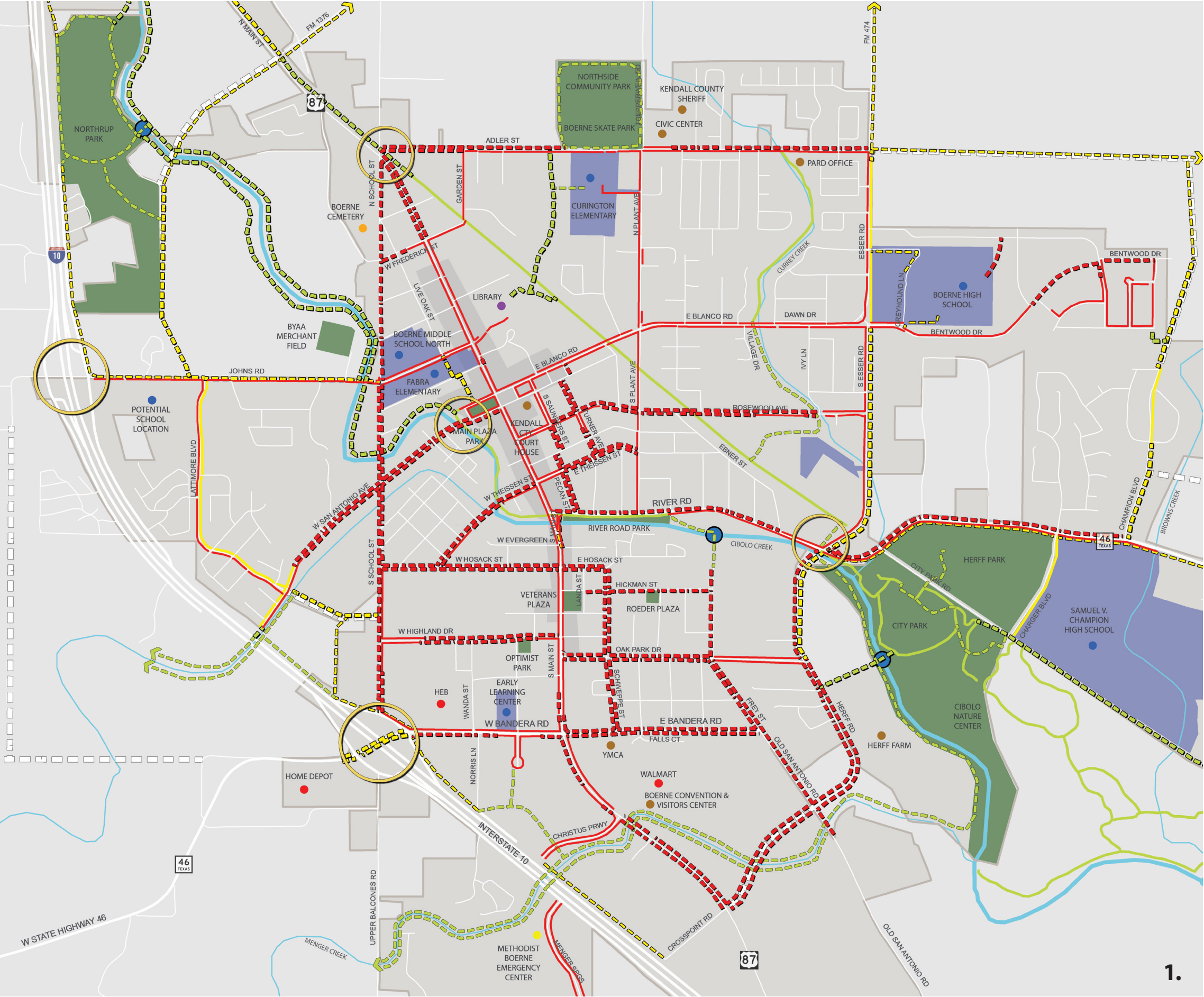
APPROVED:

Mayor

ATTEST:

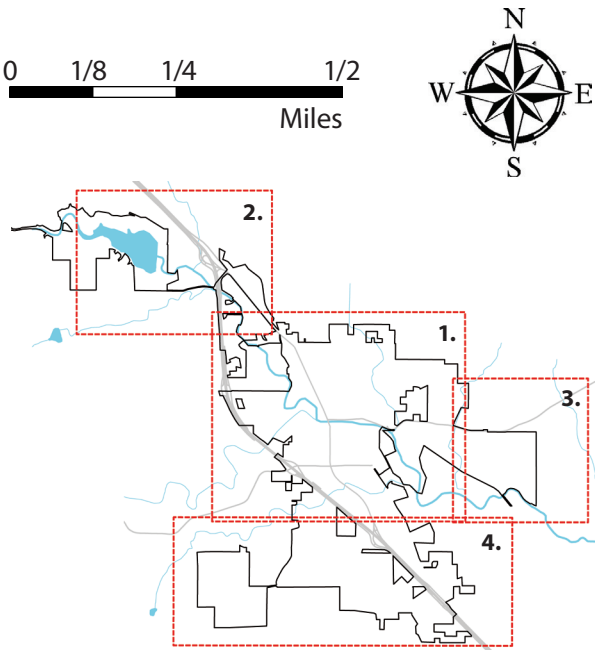
City Secretary


MAP 4.3A: BOERNE PEDESTRIAN FACILITIES (ON-STREET & SHARED USE)



LEGEND

- Proposed Creek Crossing
- Proposed Intersection Enhancement
- Sidewalk, First Priority
- Sidewalk, Existing
- Trail, First Priority
- Trail, Second Priority
- Trail, Existing
- Sidepath, First Priority
- Sidepath, Second Priority
- Sidepath, Existing
- Bike Lane, First Priority
- Bike Lane, Second Priority
- Bike Route, First Priority
- Bike Route, Second Priority
- Historic District
- Boerne ISD Properties
- Parks
- Future Roads
- Waterways
- City Boundary
- Cemetery
- Civic Destination
- Hospital
- Library
- School
- Shopping Destination



	<div style="text-align: center;"> <h2 style="margin: 0;">AGENDA ITEM SUMMARY</h2> </div> <div style="border: 1px dashed purple; padding: 5px; float: right; margin-top: 10px;"> District Impacted <input type="checkbox"/> 1 = Wolosin <input type="checkbox"/> 2 = Woolard <input type="checkbox"/> 3 = Scott <input type="checkbox"/> 4 = Boddie <input type="checkbox"/> 5 = Macaluso <input checked="" type="checkbox"/> All </div>	
Agenda Date	<i>January 25, 2022</i>	
Requested Action	CREATION OF A SHORT-TERM RENTAL SUBCOMMITTEE AND APPOINT MEMBERS.	
Contact Person	Mayor Tim Handren and Lori Carroll, City Secretary	
Background Information	<p>As Council may recall during a recent City Council meeting, it was suggested that a subcommittee be established to review criteria for short-term rentals.</p> <p>Mayor Handren consulted with the Planning and Zoning Commission Chair Tim Bannwolf and the following are their appointment recommendations to the newly formed committee:</p> <p>Council Member Nina Woolard Council Member Bryce Boddie Planning and Zoning Commissioner Susan Friar Planning and Zoning Commissioner Joe Anzollitto Planning and Zoning Commissioner Lucas Hiler</p>	
Item Justification	<div style="display: flex; justify-content: space-between;"> <div style="width: 48%;"> <input type="checkbox"/> Legal/Regulatory Obligation <input type="checkbox"/> Reduce Costs <input type="checkbox"/> Increase Revenue <input type="checkbox"/> Mitigate Risk <input type="checkbox"/> Master Plan <input type="checkbox"/> Recommendation </div> <div style="width: 48%;"> <input type="checkbox"/> Infrastructure Investment <input type="checkbox"/> Customer Pull <input type="checkbox"/> Service Enhancement <input checked="" type="checkbox"/> Process Efficiency <input type="checkbox"/> Other: _____ </div> </div>	
Financial Considerations	na	
Citizen Input/Board Review	na	
Legal Review	na	

Alternative Options	
Supporting Documents	