

**CITY OF FREDERICKSBURG
CITY COUNCIL MEETING**

TUESDAY, SEPTEMBER 3, 2013 ~ 7:00 p.m.

Law Enforcement Center ~ 1601 East Main Street

Jeryl Hoover, Mayor
Tim Dooley, Council Member
Graham Pearson, Council Member

Gary Neffendorf, Council Member
Kathy Sanford, Council Member
Kent Myers, City Manager

(REQUEST ALL PAGERS AND PHONES BE TURNED OFF, EXCEPT EMERGENCY ON-CALL PERSONNEL.)

A G E N D A

CALL TO ORDER.

PLEDGE OF ALLEGIANCE.

Page Ref.

1. Approve minutes of July 2013 meetings. 1-12
2. **CONSENT AGENDA** - All items listed below are considered to be routine and non-controversial by the Council and will be approved by one motion. There will be no separate discussion of these items unless a council member or citizen so requests, in which case the item will be removed from the consent agenda and considered as part of the normal order of business.
 - A. Consider appointees to CVB Board. 13
3. **ORDINANCES - RESOLUTIONS- ACTION ITEMS**
 - A. Consider Revised Transportation Code. 14-29
3. **INDIVIDUAL ITEMS FOR CONSIDERATION AND POSSIBLE ACTION**
 - A. Consider Filming Guidelines. 30-41
 - B. Consider bids for Lady Bird Johnson Park Pool. 42-62
 - C. Consider Wastewater Plant Master Plan. 63-77
4. **CITY MANAGER'S REPORT**
 - A. Budget Update
 - B. October City Council Retreat
 - C. Morning Glory Drive
 - D. TxDOT - Hwy 290 Bridge Project
 - E. Fort Martin Scott
5. **ITEMS FOR FUTURE AGENDAS**
6. **PUBLIC COMMENTS** - This time is for citizens to address the City Council on issues and items of concern not on this agenda. There will be no City Council action at this time.
7. **COUNCIL COMMENTS** - No discussion or action may take place.
8. **ADJOURNMENT**

STATE OF TEXAS
COUNTY OF GILLESPIE
CITY OF FREDERICKSBURG

REGULAR CITY COUNCIL MEETING
JULY 1, 2013
7:00 PM

On this the 1ST day of July, 2013, the City Council of the CITY OF FREDERICKSBURG convened in regular session at the Law Enforcement Center, with the following members present to constitute a quorum:

JERYL HOOVER - MAYOR
TIM DOOLEY - COUNCIL MEMBER
KATHY SANFORD - COUNCIL MEMBER
GRAHAM PEARSON - COUNCIL MEMBER
GARY NEFFENDORF - COUNCIL MEMBER

ABSENT: NONE

ALSO PRESENT: KENT MYERS - CITY MANAGER
SHELLEY BRITTON - CITY SECRETARY
PAT MCGOWAN - CITY ATTORNEY
BRAD KOTT - DIR OF FINANCE
JIMMY ALEXANDER - DIR. OF PARKS & RECREATION
CLINTON BAILEY - D.P.W.U.
BRIAN JORDAN - DIR. DEVELOPMENT SERVICES
STEVE WETZ - CHIEF OF POLICE

The meeting was called to order at 7:00 PM.

The meeting was called to order, followed by the Pledge of Allegiance.

CONSENT AGENDA – It was moved by council Member Dooley, seconded by Council Member Sanford, to approve the Consent Agenda as follows:

1. Taxi Permit – Aaron Morin.

All voted in favor and the motion carried.

RECOMMENDATION ON REQUEST Z-1303 INITIATED BT THE CITY OF FREDERICKSBURG TO (A) CONSIDER A CHANGE IN THE LAND USE PLAN FROM MEDIUM DENSITY RESIDENTIAL TO LOW DENSITY RESIDENTIAL ON PROPERTIES BORDERED BY EAST CREEK STREET ON THE NORTH AND BARON'S CREEK ON THE WEST, SOUTH AND EAST, AND (B) CONSIDER A

CHANGE IN ZONING FROM R-2 MIXED RESIDENTIAL TO R-1 SINGLE FAMILY RESIDENTIAL ON SAID PROPERTIES - Following a lengthy deliberation, it was moved by Council Member Sanford, seconded by Council Member Pearson, to approve the request Z-1303 to change the land use plan from medium density residential to low density residential on properties bordered by East Creek Street on the north and Baron's Creek on the west, south and east. The vote was as follows: AYE: Sanford, Pearson; NAY: Hoover, Neffendorf, and Dooley. Motion failed.

CODE OF ETHICS – No action taken.

COUNCIL RULES OF PROCEDURE – It was moved by Council Member Dooley, seconded by Council Member Neffendorf, to adopt Council Rules of Procedure as presented and amended. The vote was as follows: AYE: Hoover, Sanford, Pearson, Neffendorf, and Dooley. NAY: None. Motion carried.

**City of Fredericksburg
City Council Rules of Procedure**

Section 1 – Rules

These Rules shall govern the procedures followed by the City of Fredericksburg City Council for the conduct of Council meetings and other Council activities pursuant to state law and the City Charter.

Section 2 – Open Public Meetings Act

The Council shall comply with the provisions of the Open Public Meetings Act in the conduct of all meetings to which said Act is applicable.

Section 3 – Executive Sessions

The Council may discuss topics in executive session, which topics are specified in state law or relate to potential or pending litigation and are subject to attorney-client privilege. The City Attorney shall inform the Council whenever any proposed discussion in executive session is not legally allowed.

No member of the City Council, employee of the City or any other person present during executive session of the City Council shall disclose to any person the content or substance of any discussion or action which took place during said executive session.

Consideration of Executive Session items may take place in Open Session, provided they are listed on the agenda for consideration.

Section 4 – Work Sessions and Council Retreats

Special meetings designated as work sessions or Council retreats shall be advertised and conducted in the same manner as regular meetings. Work sessions and retreats are for the purpose of in-depth review and discussion of specified issues. Council actions shall not be taken at designated work sessions or retreats.

Section 5 – Quorum

At all meetings of the Council a majority of the Council members shall constitute a quorum for the transaction of business.

Section 6 – Attendance

Attendance/Excused Absence - Council Members shall forfeit his/her office by failing to attend three consecutive regular meetings of the Council without being excused by the Council. Members of the Council may ask to be excused by following the procedure described in this paragraph. The member shall contact the Mayor prior to the meeting and state the reason for his/her inability to attend the meeting. If the member is unable to contact the Mayor, the member shall contact the City Manager or City Secretary, who shall convey the message to the Mayor. Following the call to order, the Mayor shall inform the Council of the member's absence, state the reason for such absence, and inquire if there is a motion to excuse the member. This motion shall be non-debatable. Upon passage of such motion by a majority of members present, the absent member shall be considered excused and the City Secretary will make an appropriate notation in the minutes.

Attendance via telephone conference call or video conference call – To participate in a meeting, all members of the Council shall be present, except that a meeting held by telephone conference call or video conference may be held if:

1. an emergency or public necessity exists within the meaning of Section 551.045 of the Government Code, and
2. the convening at one location of a quorum of the government body is difficult or impossible, and
3. the other requirements of Section 551.125 are met

Additionally, a member may attend a meeting via videoconference if a quorum of the government body is physically present at one location of the meeting, the proper communication equipment is available, and the other requirements of Section 551.127 of the Government Code are met.

Section 7 – Chair of the Council

The Mayor shall be the Chair of the Council and shall preside at all Council meetings. A Mayor Pro-Tem shall be selected annually at the first regular meeting of a new Council. In the absence of Mayor, the Mayor Pro-Tem shall preside. If neither the Mayor nor the Mayor Pro-Tem is present at a meeting, the presiding officer for that meeting shall be selected by a majority of the vote of those Council Members present, providing there is a quorum.

The Chair of the Council may vote on all matters coming before the Council and may offer seconds to motions.

The Chair of the Council shall state all questions coming before the Council, provide opportunity for discussion from the Council Member, and announce the decisions of the Council on all subjects. Procedural decisions shall be made by the Chair of the Council, who may request advice on such matters from the City Attorney.

Section 8 – Agenda

The City Manager shall prepare the agenda of business for all Council meetings. Topics may be added to the agenda:

1. When deemed appropriate by the City Manager
2. At the direction of the Mayor
3. As directed by at least two City Council Members

Every agenda action item must be supported by a written staff report informing the Council and staff of the issue, background and/or analysis, and recommendation and/or conclusion, unless the item is self-explanatory or unless the City Manager has waived this requirement. All written materials for the agenda shall be delivered to the City Secretary by twelve o'clock noon of the Thursday preceding the Council meeting. Except for announcements, late items that the City Manager does not receive by the stated deadlines shall not be considered by the Council except upon specific authorization of the City Manager.

Agendas will be made available to the public at least 72 hours prior to regular Council Meetings, work sessions or retreats, in the following ways:

1. A copy is placed on the City website at www.fbgtx.org
2. Copies are placed on the front counter at City Hall in the Utility Cashier services area
3. A copy is posted on the front door at City Hall

Section 9 – Order of Business

The Mayor may determine the order of business for a particular City Council meeting. The agenda should be arranged to best serve the needs and/or convenience of the Council and the public. The items of business for regular Council meetings may include the following:

1. Call to Order
2. Pledge of Allegiance
3. Ceremonial Matters/Proclamations/Employee Recognition
4. Consent Agenda
5. Public Hearings
6. Ordinances and Resolutions
7. Other considerations
8. City Manager's Report
9. Council Comments
10. Public Comment: The Mayor will invite citizens to address the Council. All persons wishing to be heard are asked to give their names and addresses and topic. To allow the Council to complete its legislative agenda, comments should be limited to no more than 3 minutes per person. At the discretion of the Mayor, or upon vote of the Council, this time period may be lengthened or shortened. Following any public comment, the Mayor or any member of the City Council may direct staff to research the issue or concern raised by the public and report back to the Council. In addition, this concern can be added to the next Council agenda as specified in Section 8. The Council shall not deliberate or discuss issues raised in Public Comment if it was not listed on the agenda. Written comments may be submitted into the record of a Council meeting by presenting the written document to the City Secretary prior to the meeting, and by making copies of the same available to those in attendance, and a copy of the document will be provided

to each Council Member, but the document will not be read aloud; or a document may be distributed to the City Council, with a copy to the City Secretary, by a speaker, while the speaker is addressing the Council.

11. Executive Session

12. Adjournment

Section 10 – Voting

Each Council Member shall vote on all questions put to the Council unless a conflict of interest or appearance of fairness problem requires a Council Member to excuse him/herself, and the same shall be noted in the minutes.

Section 11 – Reconsideration of Previous Vote

The City Council may at times want to reconsider a vote previously taken. In order to proceed with reconsideration, a motion should be made for reconsideration and such motion should be voted on and passed by a majority of the Council before the agenda item can be discussed or reconsidered.

Section 12 – Decorum and Debate

When a measure is presented for consideration to the Council, the Mayor shall recognize the appropriate individual to present the matter. When two or more members wish to speak, the Mayor shall name the member who is to speak first. No member of the Council shall interrupt another while speaking except to make a point of order or privilege.

No Council Member shall be permitted to indulge in personalities, use language personally offensive, or use language tending to hold a member of the Council up to contempt.

Section 13 – Questions of Parliamentary Procedure

Questions of parliamentary procedure not covered by these Rules shall be governed by the 11th Edition of Robert's Rules of Order, Newly Revised (2011 Edition).

Section 14 – Notice of Public Hearings

Notice of all public hearings to be conducted by the City Council or any of its advisory boards and commissions shall be given by publishing written notice, as required by law, ordinance or other statute, or if there is not particular requirement, then at least once in the City's official newspaper prior to the date of the hearing.

SIDEWALK PROJECT – Following a presentation by Asst. City Engineer Kris Kneese and DPWU Clinton Bailey, it was moved by Council Member Pearson, seconded by Council Member Dooley, to approve the Annual Sidewalk Project as presented. The vote was as follows: AYE: Hoover, Dooley, Pearson, Sanford, and Neffendorf. NAY: None. Motion carried.

APPOINT ALTERNATE TRUCK ROUTE TASK FORCE COMMITTEE – Council Member Dooley moved, seconded by Council Member Neffendorf, to appoint Mayor Hoover, Council Member Sanford, and Kory Keller as the City representatives on the Alternate Truck Route Task Force Committee and to amend the Task Force body to include

a member to the Committee from the CVB. The vote was as follows: AYE: Hoover, Pearson, Neffendorf, Sanford, and Dooley. NAY: None. Motion carried.

UTILITY IMPROVEMENTS PROPOSED FOR BOND FINANCING – Following a presentation by Public Works regarding critical water and wastewater improvements that are needed, along with projected annual debt service costs and how the costs will blend with existing bond payments presented by the City Manager, it was moved by Council Member Dooley, seconded by Council Member Neffendorf, to approve the Utility Improvement Bond Financing as presented and to instruct staff to proceed accordingly. The vote was as follows: AYE: Hoover, Pearson, Neffendorf, Sanford, and Dooley. NAY: None. Motion carried.

CITY MANAGER’S REPORT – City Manager Kent Myers reported on (1) Comprehensive Plan Update, (2) Relocation of Chamber Offices, (3) Special Event Policies and Procedures, and (4) 4th of July Events.

FUTURE AGENDA ITEMS – Park Pool Designs, Board Appointments, and the Petition to amend the Charter.

PUBLIC COMMENTS – No comments.

COUNCIL COMMENTS – No comments.

With no further discussion, Council Member Sanford made a motion to adjourn the meeting at 8:30 PM. Council Member Dooley seconded the motion. Motion carried.

PASSED AND APPROVED this the 3rd day of September, 2013.

SHELLEY BRITTON, CITY SECRETARY	JERYL HOOVER, MAYOR
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STATE OF TEXAS	REGULAR CITY COUNCIL MEETING
COUNTY OF GILLESPIE	JULY 15, 2013
CITY OF FREDERICKSBURG	7:00 PM

On this the 15th day of July, 2013, the City Council of the CITY OF FREDERICKSBURG convened in regular session at the Law Enforcement Center, with the following members present to constitute a quorum:

JERYL HOOVER - MAYOR
GRAHAM PEARSON - COUNCIL MEMBER
TIM DOOLEY - COUNCIL MEMBER
KATHY SANFORD - COUNCIL MEMBER
GARY NEFFENDORF - COUNCIL MEMBER

ABSENT: NONE

ALSO PRESENT: KENT MYERS - CITY MANAGER
SHELLEY BRITTON - CITY SECRETARY
PAT MCGOWAN - CITY ATTORNEY
CLINTON BAILEY - D.P.W.U.
BRAD KOTT - DIR OF FINANCE
JIMMY ALEXANDER - DIR. OF PARKS & RECREATION
BRIAN JORDAN - DIR. DEVELOPMENT SERVICES
STEVE WETZ - CHIEF OF POLICE

The meeting was called to order at 7:00 PM following the Pledge of Allegiance.

MINUTES OF JUNE 2013 MEETINGS – It was moved by Council Member Pearson, seconded by Council Member Neffendorf, to approve the minutes of the June 2013 meetings as presented. All voted in favor and the motion carried.

PUBLIC HEARING ON REQUEST Z-1310 TO REZONE 7.781 ACRES ON FM 2093 FROM R-1 TO M-2– It was moved by Council Member Dooley, seconded by Council Member Sanford, to open the public hearing on Request Z-1313, to rezone 7.781 acres from R-1 to M-2. All voted in favor and the motion carried.

Andy Bray represented the applicant, The Estate of Natalie M. Massey, proposing to rezone the property from R-1 Single Family Residential to M-2 Medium Manufacturing. The property on either side of this tract is zoned M-2 Medium Manufacturing.

With no further comments, it was moved by Council Member Dooley, seconded by Council Member Pearson, to recess the public hearing and reconvene the regular session. All voted in favor and the motion carried.

RECOMMENDATION AND ORDINANCE ON REQUEST Z-1310 TO REZONE 7.781 ACRES ON FM 2093 FROM R-1 TO M-2 – It was moved by Council Member Dooley, seconded by Council Member Pearson, to approve Request Z-1310 as presented and adopt an Ordinance rezoning 7.781 acres on FM 2093 from R-1 to M-2. The vote was as

follows: AYE: Hoover, Pearson, Neffendorf, Sanford, and Dooley. NAY: None. Motion carried.

ORDINANCE NO. 23-010

AN ORDINANCE AMENDING THE ZONING ORDINANCE OF THE CITY OF FREDERICKSBURG AND CHANGING THE ZONING CLASSIFICATION OF 7.781 ACRES OF LAND MORE OR LESS BEING A PART OF OUTLOT NO. 150, SITUATED IN THE CITY OF FREDERICKSBURG, TEXAS, FROM R-1 SINGLE FAMILY RESIDENTIAL TO M-2 MEDIUM MANUFACTURING. (Recorded in Ordinance Book)

APPROVAL OF POOL DESIGN FOR LADY BIRD JOHNSON POOL – Mark Hatchel of Kimley-Horn presented plans for the Lady Bird Park pool project. It was moved by Council Member Dooley, seconded by Council Member Pearson, to approve the design as presented for bids. The vote was as follows: AYE: Hoover, Pearson, Neffendorf, Sanford, and Dooley. NAY: None. Motion carried.

EARLY RETIREMENT INCENTIVE PROGRAM – Director of Finance Brad Kott presented information on an Early Retirement Incentive Program proposed by the city's employee benefits committee. No action was taken.

CITY MANAGERS REPORT – The City Manager reported on (1) Budget Update – Upcoming Budget Meetings, (2) CVB and Chamber Offices, (3) Water & Wastewater System Revenue Bonds, (4) Water Conservation, (5) City/County Dispatch Committee, and (6) Alternate Truck Route Task Force.

FUTURE AGENDA ITEMS – Code of Ethics, Early Retirement Incentive Program, Transportation Code, Special Events Policy, Adoption of ICC Codes, and Banking Services.

PUBLIC COMMENTS – No comments.

COUNCIL COMMENTS – Mayor Hoover commented on his remarks from the last meeting regarding Rezoning Request Z-1303 (Creek and Lee St. neighborhood), and, while he stood by his decision, he apologized for putting the neighborhood on the defensive.

EXECUTIVE SESSION - At 8:00 PM, Council Member Dooley made a motion to recess the regular session and go into Executive Session. Council Member Sanford seconded the motion, and the motion carried. At 8:10 PM, Council Member Dooley made a motion to adjourn the Executive Session and reconvene the regular session. Council Member Pearson seconded, the motion carried.

Following Executive Session:

BOARD APPOINTMENTS - It was moved by Council Member Dooley, seconded by Council Member Pearson, to approve:

HISTORIC REVIEW BOARD

Reappointments: Larry Jackson and Eric Parker
Appointment: David Bullion (from Alternate to Regular)
Karen Oestreich (Alternate Member - from Board of Adjustment)

The vote was as follows: AYE: Hoover, Dooley, Pearson, Neffendorf and Sanford; NAY: None. Motion carried.

It was then moved by Council Member Dooley, seconded by Council Member Pearson, to approve:

BOARD OF ADJUSTMENT:

Reappointments: Cindy Scroggins (from Alternate to Regular), Jim McAfee (Alternate)
Appointment: Gesena Houy (Alternate)

The vote was as follows: AYE: Hoover, Neffendorf, Pearson, Dooley, and Sanford; NAY: None. Motion carried.

It was then moved by Council Member Dooley, seconded by Council Member Pearson, to approve:

PLANNING & ZONING COMMISSION

Reappointments: Janice Menking and Steve Thomas
Appointment: Bill Pipkin - 3 year term

And to accept the resignations of Bjorn Kirchdorfer and Jason Helfrich.

The vote was as follows: AYE: Hoover, Neffendorf, Pearson, Sanford, and Dooley; NAY: None. Motion carried.

PETITION TO AMEND HOME RULE CHARTER - No action taken.

With no further discussion, Council Member Dooley made a motion to adjourn the meeting at 8:16 PM. Council Member Pearson seconded the motion. Motion carried.

PASSED AND APPROVED this the 3rd day of September, 2013.

SHELLEY BRITTON, CITY SECRETARY

JERYL HOOVER, MAYOR

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STATE OF TEXAS
COUNTY OF GILLESPIE
CITY OF FREDERICKSBURG

SPECIAL CITY COUNCIL MEETING
JULY 22, 2013
6:00 PM

On this the 22ND day of July, 2013, the City Council of the CITY OF FREDERICKSBURG convened in special session at City Hall, with the following members present to constitute a quorum:

JERYL HOOVER - MAYOR
TIM DOOLEY - COUNCIL MEMBER
KATHY SANFORD - COUNCIL MEMBER
GRAHAM PEARSON - COUNCIL MEMBER
GARY NEFFENDORF - COUNCIL MEMBER

ABSENT: NONE

ALSO PRESENT: KENT MYERS - CITY MANAGER
BRAD KOTT - DIR OF FINANCE
ALAN WOOLEY - DIR OF GOLF

BUDGET WORK SESSION – GENERAL FUND AND GOLF FUND – Council held a budget work session concerning the General Fund and the Gold Fund. No action was taken.

With no further discussion, Council Member Dooley made a motion to adjourn the meeting at 9:00 PM. Council Member Neffendorf seconded the motion. Motion carried.

PASSED AND APPROVED this the 3rd day of September, 2013.

SHELLEY BRITTON, CITY SECRETARY

JERYL HOOVER, MAYOR

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STATE OF TEXAS
COUNTY OF GILLESPIE
CITY OF FREDERICKSBURG

SPECIAL CITY COUNCIL MEETING
JULY 26, 2013
11:00 AM

On this the 26th day of July, 2013, the City Council of the CITY OF FREDERICKSBURG convened in special session at City Hall – Fire Station Training Room, with the following members present to constitute a quorum:

JERYL HOOVER - MAYOR
KATHY SANFORD - COUNCIL MEMBER
GRAHAM PEARSON - COUNCIL MEMBER
GARY NEFFENDORF - COUNCIL MEMBER

ABSENT: TIM DOOLEY - COUNCIL MEMBER

ALSO PRESENT: KENT MYERS - CITY MANAGER
BRAD KOTT - DIR OF FINANCE
JOHN CULPEPPER - DIR OF EMER SERVICES
DAVE WISNEWSKI - ASST EMER MGMT COOR
DAVID JUNG - EMS ADMINISTRATOR
KYLE KOCH - FIRE MARSHAL
LAURA HOLLENBEAK - SENIOR ACCOUNTANT
HEATHER KOCH - ACCOUNTANT
KELLI OLFERS - SANITARIAN

BUDGET WORK SESSION – JOINT SESSION WITH COUNTY OF GILLESPIE –
Council held a budget work session with the Gillespie County Commissioners Court concerning Shared Services. No action was taken.

With no further discussion, Council Member Neffendorf made a motion to adjourn the meeting at 12:35 PM. Council Member Sanford seconded the motion. Motion carried.

PASSED AND APPROVED this the 3rd day of September, 2013.

SHELLEY BRITTON, CITY SECRETARY

JERYL HOOVER, MAYOR

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STATE OF TEXAS
COUNTY OF GILLESPIE
CITY OF FREDERICKSBURG

SPECIAL CITY COUNCIL MEETING
JULY 31, 2013
NOON

On this the 31st day of July, 2013, the City Council of the CITY OF FREDERICKSBURG convened in special session at City Hall, with the following members present to constitute a quorum:

JERYL HOOVER - MAYOR
TIM DOOLEY - COUNCIL MEMBER
KATHY SANFORD - COUNCIL MEMBER
GRAHAM PEARSON - COUNCIL MEMBER
GARY NEFFENDORF - COUNCIL MEMBER

ABSENT: NONE

ALSO PRESENT: KENT MYERS - CITY MANAGER
BRAD KOTT - DIR OF FINANCE
LAURA HOLLENBEAK - SENIOR ACCOUNTANT
HEATHER KOCH - ACCOUNTANT

BUDGET WORK SESSION – UTILITIES, ENTERPRISE FUND, TOURISM FUND –
Council held a budget work session to discuss Utilities, the Enterprise Funds, and the Tourism Fund. No action was taken.

With no further discussion, Council Member Neffendorf made a motion to adjourn the meeting at 1:30 PM. Council Member Dooley seconded the motion. Motion carried.

PASSED AND APPROVED this the 3rd day of September, 2013.

SHELLEY BRITTON, CITY SECRETARY

JERYL HOOVER, MAYOR



CITY COUNCIL MEMO

DATE: September 3, 2013

TO: Mayor and City Council

FROM: Kent Myers, City Manager

SUBJECT: Appointment of CVB Board Members

Summary:

The City Council is required to appoint the Board members to the Convention and Visitors Bureau Board of Directors.

Recommendation:

It is recommended that the Council appoint Dan Mittel (Gastehaus Schmidt Reservation Service) and Debbie Farquar-Garner (Creative Marketing) to a second 3-year term on the Board. It is also recommended that Donna Herrera (Fredericksburg Inn & Suites) and Ross Burtwell (Cabernet Grill Texas Wine Country Restaurant) to new 3-year terms on the Board.

Background / Analysis:

The names listed above have been recommended by the CVB for approval by the City Council.

(13)

The City of Fredericksburg



CITY COUNCIL MEMO

DATE: September 3, 2013

TO: Mayor and City Council

FROM: Kent Myers, City Manager

SUBJECT: Revised Transportation Code

Summary:

Over the past several years, the City has been experiencing an increase in ground transportation services, such as limousines and tour buses, and our current transportation code adopted in 1992 needs to be updated.

Recommendation:

It is recommended that the attached revised regulations covering ground transportation services be approved.

Background / Analysis:

With the recent increase in the number of wineries and other tourism attractions, the City has been attracting an increase in ground transportation services operating within the City Limits. We also have new types of services such as limousines, tour services and pedicabs that are either now operating or have proposed to operate in the City. While these services provide important support

transportation services to our visitors, there is a need for fair, reasonable and consistent regulations to protect the general public. The current regulations adopted in 1992 are outdated.

The revision of the City's Transportation Code was actually started over a year ago by the previous Police Chief in response to new transportation services wanting to operate in the City Limits such as pedicabs. Over the past several months, the City Attorney has reviewed transportation regulations from other cities such as Austin and San Antonio. In addition, meetings have been held with several transportation providers to solicit their input on these regulations.

Following this research and discussion, the City Attorney prepared a draft revised code for review by City staff including the City Secretary who administers most of the Code and the Police Chief who is responsible for the enforcement of the Code. They made additional comments and suggestions that resulted in the revised Code that is being presented to the Council.

This revised code provides a clear distinction between the various types of transportation providers operating within the City Limits. It provides basic regulations which all transportation providers have to follow. It also provides specific regulations which certain providers such as taxicabs and limousines have to meet. It includes specific information that all transportation providers have to submit to the City Secretary before she issues their annual permit.

These changes will help insure that the transportation providers operating in our community are established businesses with adequate insurance and drivers who meet basic requirements of the City.

Revision date 8/27/13

Chapter 50 GROUND TRANSPORTATION SERVICES

Sec. 50-19. - Definitions.

Sec. 50-20. –Offenses and Penalties.

Sec. 50.21 – General Regulations applicable to all GTS.

Sec. 50.22 – Regulations Applicable to Certain GTS Vehicles.

Sec. 50.23 – GTS Licenses: requirements; Application.

Sec. 50.24 - Insurance.

Sec. 50.25- Issuance of license.

Sec. 50.26 - Posting of license; lettering; nontransferability;

Sec. 50.27- Revocation or suspension of license.

Sec. 50.28. - City GTS driver standards.

Article IV. Pedicabs

Sec 50-81- Definitions

Sec 50-82 -Applicability of Regulations

Sec 50-83 -Failure to Pay

Appendix A. Fee Secheule

Sec. 50.19 - Definitions.

- (a) *Applicant* means any individual, firm or corporation in the process of attaining either a license to operate or a city taxi driver permit.
- (b) *City* means the City of Fredericksburg, Texas.
- (c) *Cruise* or *cruising* means the movement of unoccupied ground transportation service (GST) vehicle over the public streets of the City to be made available to prospective passengers for hire; provided, however, unoccupied, properly permitted GTS vehicles with a properly permitted driver proceeding to answer a telephone call for service from an intending passenger, and GST vehicles returning to the place the same is housed or to the place of discharge of the passenger or passengers, shall not be considered to be cruising.

- (d) *Driver or chauffeur* means every person in actual charge of operation of a GTS vehicle whether as owner or agent, servant or employee of the owner.
- (e) *Ground Transportation Services (GTS) Driver* means a driver of a GTS vehicle meeting the qualifications as described within this Chapter.
- (f) *Ground Transportation Service (GTS) operator or service* means any person who has the control, direction, maintenance and the benefit of revenue derived from the operation of a GTS vehicle on or over the streets of the city, whether as owner or otherwise.
- (g) *Ground Transportation Service (GTS) vehicle* means a transportation service using any taxicab any and every automobile, or motor-propelled vehicle including limousines and all other motor propelled vehicles however classified (whether as a shuttle, airport shuttle, jitney etc,) used for the transportation of passengers for hire over the public streets of the City, irrespective of whether or not the operation extends beyond the City limits, at rates for distance traveled or for waiting time, or for both, or for the trip, or at rates per hour, per day, or per month, which such vehicle is routed to predetermined destinations, regular or irregular routes or destinations under the direction of such passenger or passengers, or such person or persons hiring the same, with the following exceptions:
 - (1) Motor buses transporting to or from school or college;
 - (2) Ambulances or other emergency vehicles operating under permit from this City or another City or governmental entity;
 - (3) Vehicles rented or leased for operation by the person actually driving the same, unless such vehicle is transporting for compensation persons other than the one who actually rented or leased the same;
 - (4) Courtesy vehicles operated to or from the airport to hotels, motels, parking lots, or car dealerships or rental agencies by the owners of such entities for their patrons for no compensation; or
 - (5) Any vehicle being operated pursuant to a franchise or permit legally issued by the Texas Railroad Commission or the Interstate Commerce Commission (example: Greyhound Grey-line busses.)

- (6) Vehicles operated for a funeral home in the performance of funeral services
 - (7) Vehicles used in a ride-share/carpool, operated by individual employees or employers to transport a person or persons on a prearranged basis between their homes and places of employment or other places of common destination if free or if only a fee calculated to reasonably cover expenses is charged.
 - (8) Any person, entity or service not licensed hereunder who or which is duly licensed in another jurisdiction who or which is transporting a passenger from a point outside the City to a point within the City and returning to the point of origin but not picking up a new passenger within the City.
 - (9) Vehicles used by or funded by governmental agencies for transit systems (examples: City bus system or Alamo Area Council of Governments)
 - (10) Horse- drawn transportation services and pedicabs are regulated elsewhere in this code of ordinances.
- (h) *License* means the authority granted by the City to operate a GST vehicle or vehicles and shall authorize such operator of a GST vehicle to engage in the business of transportation as set forth herein .
 - (i) *Limousine Service*: shall mean a passenger ground transportation service (GST) operated for hire that uses motor coaches, stretch limousines, luxury or classic vehicles that are used to transport passengers for a fare based on a one (1) hour or more hiring period and (a) and on a pre-arranged basis only; (b) on irregular routes and schedules.
 - (j) *Overcrowding* means that the driver is transporting a greater number of people in the vehicle than has been recommended by the manufacturer of the vehicle or for whom there is no seat belt, inclusive of the driver if seatbelts are required for the vehicle in question.
 - (k) *Solicit prospective passengers* means any physical activity, typically by word or sign, Including directly or indirectly, by a licensee under this ordinance intended to attract passengers while cruising except for responding to a person hailing a taxi. Advertising through electronic media shall not be considered to be such physical activity.

- (l) *Terminal* means the place the taxicabs shall be housed or parked, and at which place the telephone calls and requests for service may be made, and at which place a dispatcher may control the movements of the taxicabs; that space and area of land and buildings off of the streets of the City, and off public property, which constitutes the main office of the taxicab operator, and where the taxis are located or are to remain when not in actual service.
- (m) *Tour Service* shall mean a GTS service using any type of vehicle for the transportation of persons around the City and its vicinity to shop, visit wineries, view cultural, historic, artistic or other sites for an extended period of time when the tour is the objective of the transportation, and which charges on a per passenger or per hour basis agreed upon in advance.

Sec. 50-20 Offenses and Penalties

- (a) It shall be unlawful for any person or entity to operate a GTS when not in compliance the provisions of this chapter.
- (b) It shall be unlawful for any person or entity to violate any provision of this chapter. A holder of a GTS license may not employ, contract with or otherwise allow a person to drive a GTS vehicle unless such person meets and maintains the requirements for drivers hereinafter set out.
- (c) Each violation of this chapter shall constitute a separate offense and each offense shall be punishable as a Class C misdemeanor. Each day the violation exists shall be considered a separate violation for the purpose of punishment. Punishment is governed by Section 1-6 of this Code of Ordinances.

Sec. 50-21 – General Regulations applicable to all GTS .

- (a) Every GTS service operator shall maintain an off-street terminal of sufficient size to accommodate all of the vehicles utilized in the service. The same shall be located in a zoning district where such commercial activity is permitted.
- (b) Vehicle Standards.

Each GTS vehicle proposed to be operated by a permit holder on the public streets of the City shall be inspected by the City Secretary or his/her designee prior to the issuance of a license or annual renewal of the license. No GTS

vehicle shall be operated on the City streets which does not comply with the following minimum standards:

- (1) Each GTS vehicle must have affixed thereto a valid and current state certificate of inspection and state certificate of registration;
 - (2) Each GTS vehicle shall be equipped with a fire extinguisher that is in good operating order;
 - (3) Each GTS vehicle shall be reasonably free from dirt or rubbish and shall be otherwise clean and sanitary;
 - (4) The GTS vehicle identification number and the license number of each must match the numbers listed for that GTS vehicle on the license application.
- (c) It shall be unlawful for any person engaged in GTS service business to overcrowd the GTS vehicle.
- (d) It shall be unlawful for any driver of any GTS vehicle or for any other person acting for the driver to seek or solicit prospective passengers or patrons for any such GTS vehicle while cruising any road or other public place of the City, or while same is parked on any public street or alley of the City, except for drivers taxicabs in response to calls or hails of prospective passengers.
- (e) It shall be unlawful for any GTS driver to represent himself or herself as any company other than the one with which he or she is employed.
- (f) It shall be unlawful for a GTS driver to receive or discharge a passenger in the roadway of any street within fifty (50') feet of an intersection of roads or within any commercially zoned area of the City.
- (g) It shall be unlawful for any person to drive any GTS vehicle for more than twelve (12) hours in any twenty four (24) hour period.
- (h) It shall be unlawful for any person to refuse to pay the legal fare of any GTS service after having hired the same or to hire the same with intent to defraud the person or entity from whom it is hired of the value of such service.

- (i) It shall be unlawful for the owner or driver of any GTS vehicle to refuse to convey a passenger at the rate posted or contracted for as the case may be, or demand or receive an amount in excess of such rates. Provided, however, unsolicited tips shall not be considered part of the rate or fare.
- (j) It shall be unlawful for the driver of any GTS vehicle, upon receiving full payment of a fare to refuse to give a receipt upon the request of the passenger making such payment.

50-22 Regulations Applicable to certain GTS Vehicles

- (a) Each GTS vehicle shall have the business name and phone number affixed to both front doors, with lettering not less than two and one-half inches in height, with the exception of limousine services or tour services.
- (b) All GTS vehicles shall be required to affix the license permit to the lower left corner of the front windshield above the vehicle inspection and registration stickers.
- (c) It shall be unlawful for a driver of a taxicab or, employed to carry passengers to a definite point to fail to take the most direct route that will carry such passengers safely and expeditiously to their destination unless otherwise requested by the passenger.
- (d) When a taxicab or limousine, or livery service is engaged, the passenger shall have the exclusive right to the full and free use of the passenger compartment and it shall be unlawful for the owner or driver of such vehicle to solicit or carry additional passengers therein, except with the consent of the first passenger.
- (e) Fares.
 - (1) This Section shall not apply to operators of tour services, charter services, livery services, or limousine services which operate on a prearranged appointment basis when such prearrangement is made not less than one hour in advance for service.
 - (2) All persons owning or operating any GST vehicle or taxicab under this section, not exempted under (e) (1) above, in the City shall post, in a

conspicuous place in such vehicle or taxicab, a printed schedule of prices and shall keep the same so posted during the continuance of the license. All rates shall be posted in a conspicuous place on the inside of each taxicab so as to be visible to passengers in the front and back seats.

- (3) No driver, owner, corporation or other entity licensed by the City as a taxicab operator or driver shall fix or charge a greater or lesser rate of fare than that submitted with the application for license. Scheduled rates may encompass the following:

- A. Mileage;
- B. Waiting time;
- C. Charter;
- D. Extra passengers;
- E. Excessive baggage; exclusive of medically necessary devices;
- F. Animals; exclusive of animals specially trained to assist the disabled, when accompanying such persons.

- (4) Changes in any rate schedule shall require notification of the City Secretary at least 30 days prior to changes being enacted.

- (f) Tour services

Operators of Tour services shall require all employees and drivers, and drivers of tour services shall at all times have and maintain a Texas Alcoholic Beverage Commission certificate for drivers.

Sec. 50.23 – GTS License; requirements; application.

- (a) It shall be unlawful for an individual, firm, corporation or other entity to operate or cause to be operated any GTS service or vehicle the transportation for hire of persons upon or over any street in the City unless there has first been obtained for such service, an annual license duly issued by the City as hereinafter provided. Such license shall expire on March 31 of each calendar year regardless of the date of issuance.

- (b) Application. Application for GTS service within the City shall be filed with the City Secretary on a form provided by the department. Applications for renewal for existing permits shall be filed annually prior to expiration of the license. The applicant shall provide the following information on such form:

- (1) Name of the owner, or person by whom such permit is desired;

- (2) Name of company, and any assumed names to be used, and the accompanying substantiating documentation;
- (3) Address of company;
- (4) Telephone number of company;
- (5) If corporation or other entity, name and address of major officers of corporation and major owners/stockholders and the accompanying substantiating documentation;
- (6) If partnership or association, trade, partnership, or association name, name and address of partners and the accompanying substantiating documentation;
- (7) If sole proprietorship, name and address of owner;
- (8) Description of make, horsepower, vehicle identification or factory number, the seating capacity, vehicle owner's name and address, and license number of every vehicle to be used as a service vehicle;
- (9) Information for each driver operating vehicles for the company as is required by Section 50.28 below. Such information shall be kept current during the year. Failure to provide or maintain such information to the City Secretary for each driver operating a GTS service vehicle within the City shall be a violation and/or grounds for revoking the service license;
- (10) Written proof each vehicle has passed the City inspection as required by this chapter;
- (11) A schedule of rates to be charged to passengers if applicable; and
- (12) A statement that the applicant has not been finally convicted of any felony or other offense involving moral turpitude within the past ten (10) years, along with a copy of the applicant's criminal history if the applicant is an individual.
- (13) The location of the terminal to be used.
- (14) A sample of the signage to be placed on the vehicles if required.
- (15) A description of the operations of the proposed GTS. The operations of the GTS will be limited to that described in the application.

- (c) The application shall include a sworn statement by the applicant that all information provided in the application is true and correct and shall further state that the City is authorized to check the driving record and criminal history, if any, of the applicant or any GTS Driver. The police department is authorized investigate the facts stated in the application.
- (d) Each application shall be accompanied by a nonrefundable license fee as set forth in the City's schedule of fees.

Sec. 50.24- Insurance.

- (a) Before a license is issued, each applicant shall deliver to the City Secretary a certificate of insurance reflecting insurance coverage as herein prescribed. The applicant shall keep in full force and effect during the term of the service license a policy of public liability insurance, issued by an insurance company fully authorized to do business in this state and performable in this county, insuring the public against any loss or damage that may result to any person or property from the operation of such vehicle or vehicles. The certificates of insurance shall contain a provision that coverage under such policies shall not be canceled or materially changed until at least 30 days prior written notice has been given to the City. Passenger liability exclusions are expressly prohibited.
- (b) The minimum amounts of public liability and property damage insurance required for the operation of a GTS, shall be the minimum of five hundred thousand (\$500,000.00) per occurrence for each vehicle and must cover the following categories:
 - (1) Damages arising out of bodily injury to or death of one (1) person in any one (1) accident;
 - (2) Damages arising out of bodily injury to or death of two (2) or more persons in any one (1) accident; and
 - (3) Damages arising out of bodily injury to or destruction of property in any one (1) accident.

The coverage required may carry a deductible of no more than five thousand and no/100 (\$5,000,00) dollars.

- (c) Each current driver, and the City must be included as an additional insured on each policy. The licensee is responsible for paying all applicable deductibles.

- (d) In the event that any insurance policy is canceled ~~upon the request of the surety or insured~~, and no other insurance policy is filed by the license holder before the cancellation date, the GTS service license shall be automatically ~~revoked~~ terminated. GTS service may not be operated at any time the insurance required hereby is not on effect. Reinstatement will require a new application and permit to be issued.
- (e) Every policy of insurance issued to comply with the provisions hereof shall be issued by an insurance company with a minimum "A. B. Best" rating of at least B+.

Sec. 50.25. - Issuance of license.

- (a) An application for a license is not complete until all required documentation is submitted and is complete, and the fee paid. In the event the City Secretary determines that the documentation is not complete, that the information provided is not true or that the applicant has been convicted of the offenses described, the license shall not be issued.
- (b) The City Secretary will issue a GTS service license permit to the applicant for each qualified vehicle upon the filing of written proof of insurance as required herein and upon a determination that all requirements of this Chapter have been met. The GTS service license shall be issued for a one-year period subject to expiration on March 31 as described above. The license shall state the year for which it is valid and shall include the make of the vehicle, the vehicle identification number, and the current license number. The City Secretary shall provide a list of current permittees and GTS Drivers to the Police Department.

Sec. 50.26. - Posting of license; lettering; nontransferability; .

- (a) The GTS service license permit and lettering shall be posted by the applicant on the vehicle as set forth in section 50-22 (a) and (b) above, and it shall be unlawful to fail to do so or to maintain the same for the entire licensing period.
- (b) No license shall be transferrable to any other person.

Sec. 50.27. - Revocation or suspension of license.

- (a) The City Secretary is hereby authorized and empowered to revoke or suspend any license issued hereunder upon his/her finding that any GTS service licensee

has violated any of the provisions of this chapter or those set forth in subsection (b) below. Such revocation or suspension shall take effect upon delivery of written notice thereof to the GTS service operator, with such delivery being made in person or by certified mail through the United States Postal Service to the address listed on the application or which has been submitted to the City Secretary; provided, however, that the GTS service operator shall have the right to appeal to the City Manager from any such action of the City Secretary by delivering such appeal to the City Manager, with a copy delivered to the City Secretary, not more than five days after the action appealed from. In the event the GTS service operator shall fail to deliver such notice to the City Manager within the time prescribed, the action of the City Secretary in revoking or suspending the license shall be final. If the GTS service operator timely delivers the notice to the City Manager, the City Manager or his/her designee, shall hear the appeal not more than 20 days after the filing of the notice of appeal.

- (b) A license shall be additionally revoked or suspended by the City Secretary or City Manager upon appeal for any of the following reasons:
- (1) The GTS service operator has been finally convicted of a felony or other offense involving moral turpitude;
 - (2) The license was obtained by an application in which any material fact was intentionally omitted or falsely stated;
 - (3) The GTS service operator has persisted in the operation of motor vehicles that are in violation of any law;
 - (4) The GTS service operator has violated or failed to comply with any of the provisions hereof or any policies or rules set out pursuant to this chapter;
 - (5) The GTS service operator has charged, or allowed to be charged, rates in excess of the rate schedule filed with the City Secretary as applicable;
 - (6) The GTS service operator or any agent thereof has been guilty of operating said service in a negligent manner;
 - (7) The GTS service operator has allowed any of its vehicles or equipment to become damaged, deteriorated or unclean to the extent that it is unsatisfactory for public use;

- (8) The GTS service operator has allowed any driver or attendant to drive taxicabs after final conviction of an offense as described below or if the GTS Driver fails or ceases to otherwise meet the driver requirements set forth below.

Sec. 50.28 – GTS Driver standards.

- (a) Every individual desiring to drive a GTS vehicle in the City, before driving it, shall meet the following standards. Such license shall expire one year from the date of issuance, subject to expiration on March 31 as described above. A GTS service licensee may not cause or otherwise allow a person to drive for hire a GTS vehicle owned, controlled or operated by the licensee unless the driver has met the standards GTS Drivers to the Police Department.
- (b) Every GTS license applicant of license holder shall furnish under oath the following information for each GTS Driver on forms provided by the City Secretary along with its application for a GTS License or an amendment to the same if currently licensed:
- (1) Name, residence address, date of birth, and telephone number;
 - (2) Texas driver's license number, expiration date and three-year driving record and a copy of the GTS Driver's criminal history for the past ten (10) years;
 - (3) A statement that the driver has not been finally convicted of:
 - a. Prostitution or related offenses;
 - b. Driving while intoxicated;
 - c. Violations of the Controlled Substance Act;
 - d. Theft over \$500.00; or
 - e. A felony or other offense involving moral turpitude.
 - f. Three or more moving traffic violations in the preceding 12-month period.
 - (4) Two color photographs of the proposed GTS Driver taken within the three months prior to employment by the GTS Service;
 - (5) Proof that the applicant is over the age of 19.
 - (6) Proof that the proposed GTS Driver is included on the insurance of the GTS Licensee.

- (7) A current copy of TABC training certificates for all drivers if applicable.
- (c) Proof that the GTS Driver has been registered with the City Secretary shall be maintained by a GTS Driver at all times and shall be displayed to any peace officer upon request.

ARTICLE IV. PEDICABS

Sec. 50-81 Definitions

- (a) *Pedicab* shall mean a device with three (3) or four (4) wheels propelled by human power exerted through a belt, chain, or gears capable of carrying a driver and one (1) or more passengers, with a maximum of four (4) on a platform made as part of the device. A pedicab may have an electric assist motor to help the driver move the pedicab.
- (b) *Pedicab service* shall mean a Ground Transportation Service (GTS) operated for hire that uses pedicabs in the operation of the service and includes, but is not limited to, a facility from which the service is operated, pedicabs used in the operation of the service and a person who owns and/or operates said service.

Sec. 50-82 Applicability of regulations

- (a) It shall be unlawful for any person or entity to operate a Pedicab service when not in compliance the provisions of this Article.
- (b) Pedicab services and pedicab drivers, as applicable shall be required to comply with Sections 50-20, 50-21 subsections (a), (b) (3), (c), (e), (f), (g), (h), (i), and (j) 50-22 subsections (a),(b),(c),and (d), 50-23, 50-24, 50-25, 50-27 subsections (a), (b) (1),(b)(2),(b)(4), (b)(6), (b)(7) and (b)(8) and 50-28. Whenever reference is made therein to Ground Transportation Services, or to taxicabs the same shall likewise apply to Pedicabs, Pedicab Drivers or Pedicab services as applicable.

Sec 50-83 Failure to pay

It shall be unlawful for any person to refuse to pay the legal fare of any Pedicab after having hired the same or to hire any Pedicab with intent to defraud the person or entity from whom it is hired of the value of such service.

APPENDIX A FEE SCHEDULE

ARTICLE 10.000 LICENSE FEE FOR GROUND TRANSPORTATION SERVICES and DRIVER PERMIT

The application fee for an original Ground Transportation Service license shall be \$100.00 and \$10.00 for each vehicle. Thereafter, the annual renewal for the same is \$20.00 and \$10.00 for each vehicle.



CITY COUNCIL MEMO

DATE: September 3, 2013

TO: Mayor and City Council

FROM: Kent Myers, City Manager

SUBJECT: Filming Guidelines

Summary:

The attached guidelines have been developed to cover the filming of motion picture productions in the City of Fredericksburg.

Recommendation:

It is recommended that these guidelines be approved by the City Council so that clear guidance can be provided to companies and individuals wanting to film productions in our community.

Background / Analysis:

Over the past several years we have attracted interest from certain movie production companies wanting to film productions in our city. Most of these companies have been referred to the City or CVB from the State Film Office. Other cities in the State have worked closely with the Film Office to develop standards that should be met by film production companies. The attached guidelines follow most of these same standards. These guidelines should help insure that the public safety and other

interests of our citizens are protected without creating a lot of red tape or added costs for film production companies.

These guidelines have been discussed at several meetings over the past two months involving the CVB, Police Chief, City Attorney and City Manager. We are all in agreement with recommending that these guidelines be approved.



The City of Fredericksburg

8/29/13

Guidelines for Filming in Fredericksburg, TX

- I. Purpose
- II. City Control/City Manager Authority
- III. Permit Requirements
- IV. Application Fee
- V. Use of City Equipment and Personnel
- VI. Use of City-Owned Real Estate and Fees
- VII. Vehicles and Equipment
- VIII. Hours of Filming
- IX. Notification of Neighbors
- X. Certificate of Insurance
- XI. Damage to Public or Private Property/ Safety/ Clean Up
- XII. Hold Harmless Agreement

Guidelines for Filming in Fredericksburg, Texas

I. PURPOSE

The Guidelines contained in this policy are intended to create a program for promoting economic development activity within Fredericksburg and the vicinity of the City. The following Guidelines are also intended to protect the personal and property rights of Fredericksburg, Texas residents and businesses, and to promote the public health, safety and welfare. The City Manager may impose additional regulations in the interest of public health, safety and welfare, or if otherwise deemed appropriate by the City Manager.

These Guidelines cover requests for use of City-owned property (including but not limited to streets, rights-of-way, parks, and/or public buildings), use of private property which may affect adjacent public or private property, and the use of City equipment and personnel in all types of motion picture production, including, but not limited to, feature films, television programs, commercials, music videos and corporate films. These guidelines are not meant to cover cases of citizen and public speech activity, news coverage and the like.

II. CITY CONTROL/CITY MANAGER AUTHORITY

The City Manager (or his or her designee, it being understood that whenever reference is made herein to the City Manager, it will include his or her designee) may authorize the use of any street, right-of-way, park, or public building, equipment or personnel for uses in the filming or taping of movies, television programs, commercials, or training films and related activities. In conjunction with these uses, the City Manager may require that any or all of the conditions and/or remuneration herein and as specified on the application be met as a prerequisite to that use.

The Applicant agrees that the City Manager of City of Fredericksburg shall have exclusive authority to grant the Applicant the use of public streets, rights-of-way, parks, public buildings and other resources of the City, as well as authority to regulate the hours of production and the general location of the production. The City Manager shall have the full and absolute right to prohibit all filming or to order cessation of filming in order to promote the public health, safety or welfare, and may revoke a permit in the event that the applicant is not complying with the terms of the permit. Such revocation may be immediate to prevent harm to persons or property.

The Applicant shall allow City departments (e.g., Police, Fire, Building) to inspect all structures, property, devices and equipment to be used in connection with the filming and taping, as deemed appropriate by the City Manager.

III. PERMIT REQUIREMENTS

Before filing an application for filming in Fredericksburg, the Office of the City Manager must be contacted to discuss the production's specific filming requirements and the feasibility of filming in Fredericksburg, TX.

Any producer who desires to undertake a production in Fredericksburg is required to complete and return the attached application for filming to the Office of the City Manager, within the time frames below:

- **Commercials or episodic television:** a minimum of five (5) business days prior to the commencement of filming or any substantial activity related to the project.
- **Feature films:** a minimum of ten (10) business days prior to the commencement of filming or any substantial activity related to the project.

The Applicant shall comply with and obtain all other applicable city permits. For example, the applicant shall also obtain all necessary certifications regarding food service from the Health Department, variance from the noise ordinance, or variance from merchandise or temporary structures regulations.

IV. APPLICATION FEE

An application processing fee of \$25.00, made payable to the City of Fredericksburg, should accompany each application for filming in Fredericksburg.

V. USE OF CITY EQUIPMENT AND PERSONNEL

The Applicant shall pay for all costs of any Police, Fire, Public Works, or other City personnel assigned to the project (whether or not specifically requested by the production). Remuneration rates for the use of any City equipment, including police cars and fire equipment, will be established by the City Manager based upon the City's costs and reasonable overhead. The Applicant shall pay all costs in full within ten (10) days after receipt of an invoice for said costs. The City Manager may, at his/her discretion, require an advance deposit for all costs related to City personnel and/or the use of City equipment.

The City Manager, in consultation with the Chief of Police and/or Fire Chief, shall have the authority to stipulate additional fire or police requirements and level of staffing for same, at any time during a film project if it is determined to be in the best interest of public health, safety and welfare, which cost shall be borne entirely by the Applicant.

Off-duty police officers and firefighters shall be paid by the production company at a rate no less than one and one-half times their hourly rate.

VI. USE OF CITY-OWNED REAL ESTATE AND FEES

The City Manager may authorize the use of any street, right-of-way, park or public building, use of Fredericksburg, Texas name, trademark or logo and/or use of City equipment and/or personnel for uses in motion picture production. In conjunction with these uses, the City Manager may require that any or all of the conditions and/or remuneration as specified herein and on the application be met as a prerequisite to that use. A security or damage deposit may be required within the discretion of the City Manager.

The Applicant shall pay the rental fees approved by the City Council for all City property

(e.g. parks, pavilions and meeting spaces) for which fees are applicable, and in addition thereto shall reimburse the City for inconveniences when using public property according to the following rate schedule:

<u>Activity</u>	<u>Cost per calendar day</u>
Total or disruptive use (regular operating hours) of a public building, park, right-of-way, or public area	\$500
Partial, non-disruptive use of a public building, park, right-of-way, or public area	\$250
Total closure or obstruction of public street or right-of-way, including parking lots and on-street parking	\$50
Partial closure or obstruction of public street or right-of-way, including parking lots and on-street parking	\$50
Use of City parking lots, parking areas, and City streets (for the purpose of parking film trailers, buses, catering trucks, and other large vehicles)	\$50

The Applicant acknowledges and agrees that the City of Fredericksburg, Texas, possesses and retains exclusive authority to grant the Applicant a revocable license for the use of its name, trademark, and logo, public streets, rights-of-way, parks and buildings of the City as well as control over the hours of production and the general location of the production. The City, through the City Manager, reserves the full and absolute right to prohibit all filming or to order cessation of filming activity in order to promote the public health, safety and/or welfare.

VII. VEHICLES AND EQUIPMENT

The Applicant shall provide a report listing the number of vehicles and types of equipment to be used during the filming, including proposed hours of use and proposed parking locations. Such locations will need to be specifically approved by the City Manager. On-street parking or use of public parking lots is subject to City approval.

The use of exterior lighting, power generators, or any other noise- or light-producing equipment requires on-site approval of the City Manager and compliance with City Ordinances.

VIII. HOURS OF FILMING

Unless express written permission has been obtained from the City Manager in advance, and affected property owners, tenants and residents have been notified,

filming will be limited to the following hours:

Monday through Friday: 7:00 a.m. to 9:00 p.m.

Saturday, Sunday and holidays: 8:00 a.m. to 8:00 p.m.

IX. NOTIFICATION OF NEIGHBORS

The Applicant shall provide a short written description, to be approved by the City Manager, of the schedule for the proposed production to the owners, tenants and residents of each property in the affected neighborhood(s). The Applicant, or his or her designee, shall make a good faith effort to notify each owner, tenant and resident of all such property, and shall submit, as part of this application, a report noting owners, tenants and/or residents' comments, along with their signatures, addresses and phone numbers. The City Manager, in his or her discretion, may add requirements based upon community feedback, and other appropriate factors. In the event the City Manager determines that the project will create inordinate physical disruption to the neighborhood, or to the City, city personnel or activities, he or she may deny the filming application or permit.

X. CERTIFICATE OF INSURANCE

The Applicant shall attach a valid certificate of insurance, issued by a company authorized to conduct business in the state of Texas, naming the City of Fredericksburg and its agents, officers, elected officials, employees and assigns, as additional insured, in an amount not less than \$1,000,000 general liability, including bodily injury and property damage with a \$5,000,000 umbrella; and automobile liability (if applicable) in an amount not less than \$1,000,000 including bodily injury and property damage.

XI. DAMAGE TO PUBLIC OR PRIVATE PROPERTY/ SAFETY/ CLEAN UP

The Applicant shall pay in full, within ten (10) days of receipt of an invoice, the costs of repair for any and all damage to public or private property, resulting from or in connection with, the production, and restore the property to its original condition prior to the production, or to better than original condition. Applicant is responsible for keeping the production area clean and safe during production.

XII. HOLD HARMLESS AGREEMENT

The Applicant shall sign the following Hold Harmless Agreement holding the City harmless from any claim that may arise from their use of designated public property, right-of-way, or equipment in conjunction with the permitted use:

HOLD HARMLESS

I certify that I represent the Applicant which will be performing the filming/taping at the locations specified on the attached permit application. I further certify that I and my firm will perform in accordance with the directions and specifications of The City of Fredericksburg, Texas, and that I and the Applicant hereby indemnify and hold harmless the City of Fredericksburg, Texas and its elected officials, officers, servants, employees, successors, agents, departments and assigns from any and all losses, damages, expenses, costs and/or claims of every nature and kind arising out of or in connection with the filming/taping and other related activities engaged in pursuant to this Application.

*I further certify that the information provided on this Application is true and correct to the best of my knowledge, and that I possess the authority to sign this and other contracts and agreements with the City of **Fredericksburg**, Texas on behalf of the Applicant.*

Signed: _____

Title: _____

Date: _____

THE CITY OF FREDERICKSBURG, TX

Application for Commercial Filming

Title of project

Type of production (feature film, television production, commercial, corporate, music video, etc.)

Proposed Filming Locations (attach additional pages if necessary)

Date(s) of prep/filming

Production Office:

Name:

Address:

Phone:

Fax:

Email:

Producer:

Name:

Address:

Phone:

Fax:

Email:

Location Manager:

Name:

Address:

Phone:

Fax:

Email:

Previous Commercial Filming Experience (Most Recent)

1.

2.

3.

Is this production already in contact with the Texas Film Commission? _____

If yes, who is your contact at the Texas Film Commission?

Name:

Phone:

Email:

PRODUCTION (*Attach additional sheets if necessary.*)

1. Production schedule and activities, including stunts, pyrotechnics, special effects, aerial photography, amplified sound or use of animals: (Give dates and times and rain dates. Hours should include set-up, holding of sets and restoration.)

2. Approximate number of persons involved with the production, including cast and crew:

3. Anticipated need of City personnel, equipment or property:

4. Public areas in which public access will be restricted during production:

5. Describe alterations to public property:

6. Number and type of production vehicles to be used and location(s) where vehicles will be parked:

7. Location where crew will be fed, if not at filming location:

8. Location where extras will be held, if not at filming location:

9. Map of anticipated street closure(s) or other public area use.

10. Synopsis of the script or project.

Applicant (production company representative):

_____ Date: _____

Name

Title

Application approved by Fredericksburg representative with the following conditions, if any:

_____ Date: _____

The "Guidelines for Filming in Fredericksburg, Texas" apply to all motion picture production in Fredericksburg.

The Office of the City Manager may require the applicant to acknowledge receipt of the Guidelines prior to approving this application.



CITY COUNCIL MEMO

DATE: August 29, 2013

TO: City Council

FROM: Jimmy Alexander, Director of Parks & Recreation

SUBJECT: Lady Bird Johnson Park Pool

Summary:

The low bid for the Park pool project came in over the amount budgeted. Our pool consultant Mark Hatchel with Kimley-Horn has met with City Staff, Pool Committee, and City Council to develop and present alternative plans.

Recommendation:

It is recommended to use option #4 if the City Council is willing to spend more than the budgeted amount for this project. If the City Council wishes to get the project within the current budget, then option#1 is recommended.

Background / Analysis:

(42)

The City of Fredericksburg

Mark Hatchel presented three pool options to the City Council for consideration at the August 20, 2013 special meeting. After much discussion the City Council asked Mark to design and price an additional option for consideration that would show a scaled down version of the original concept with a smaller competition pool as well as a smaller recreation pool. That option is done as option #4 and is included in your information. The City Council also asked staff to pursue finance options in the case that the decision was made to spend additional funds for the project. City Manager Kent Myers will address the finance questions and Mark Hatchel will be available via conference call to answer pool questions.

New Outdoor Aquatic Facilities

Lady Bird Park Pool Update September 3, 2013



 Kimley-Horn
and Associates, Inc.

 COUNSELLMAN • HUNSAKER

Current Pool Project Schedule

- July 2013
100% Construction Documents
Completed / Advertised for Bids
- August 2013
Opened Bids / VE Options
- September 2013
Award Bid / Begin Construction
- April 2014
Construction 100% Complete
Prepare Final Punch List
- May 2014
Punch List Complete/Open

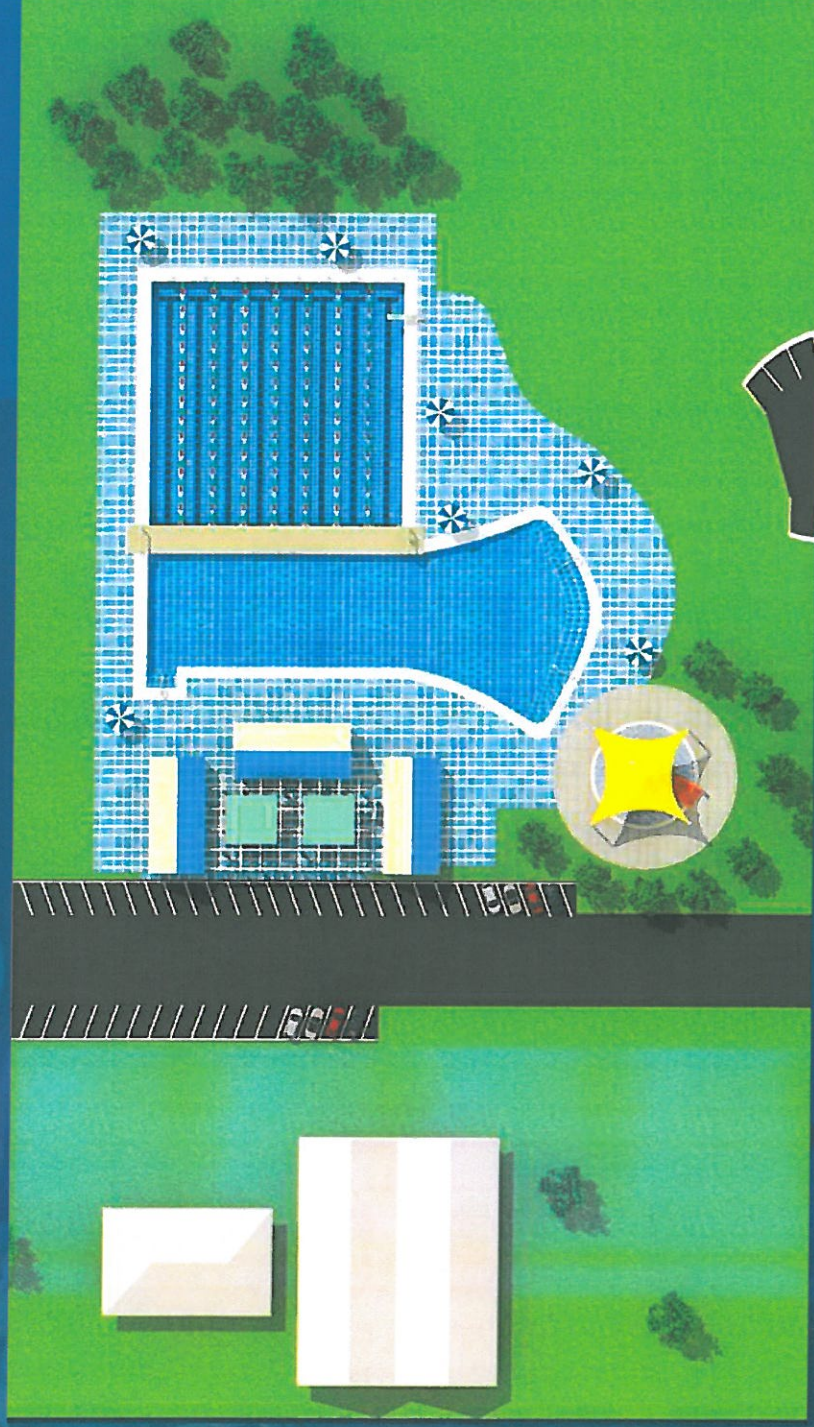
Lady Bird Johnson Park Pool

Highway 16 South



Existing "L" Shaped Pool 6,755 SF

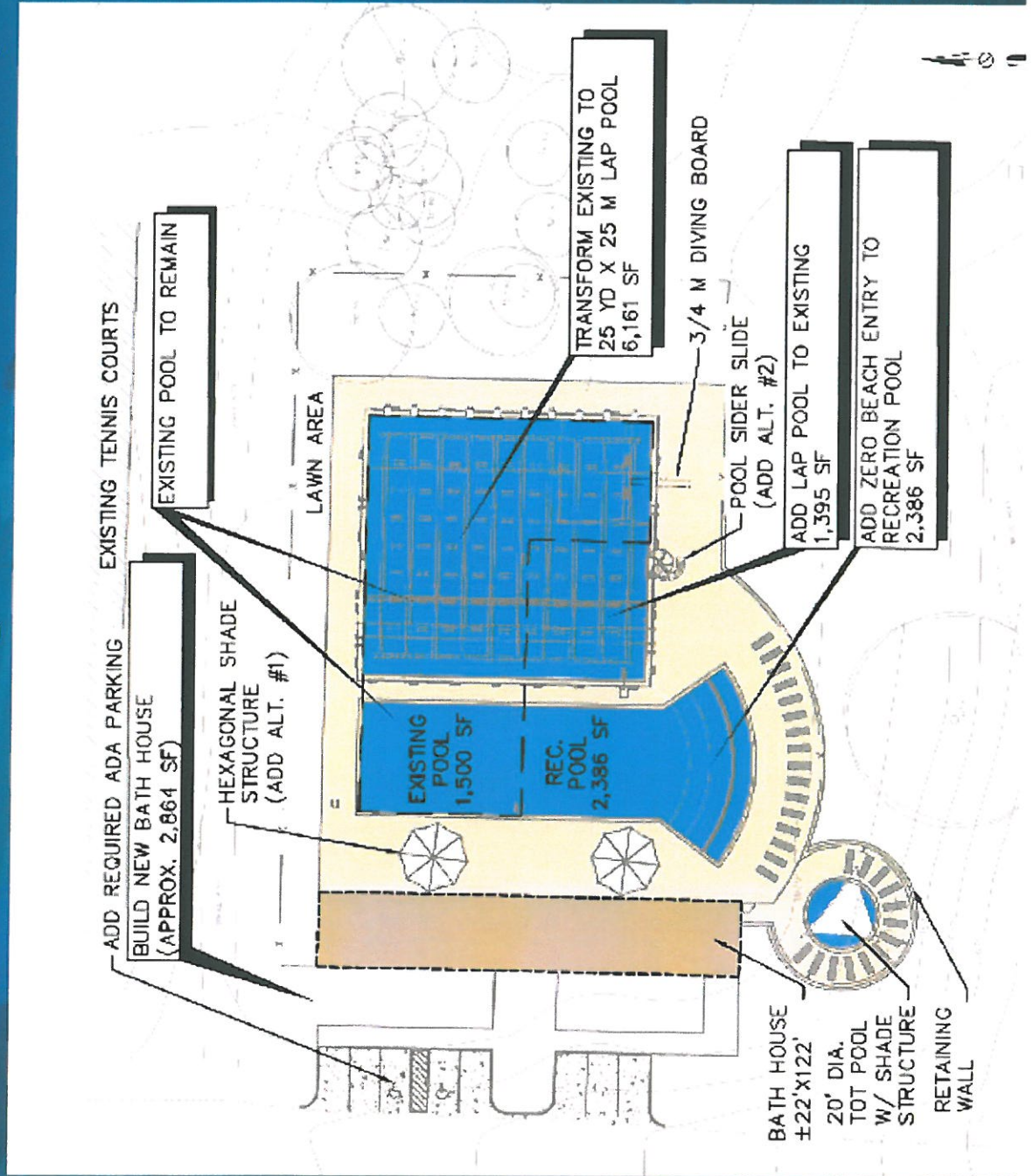
Lady Bird Johnson Park Pool Pool Committee Concept



Proposed Recreation and Competition Pool 10,130 SF

Lady Bird Johnson Park Pool

Est. Cost in July 2013 = \$1.8 - \$2 M



49



PROJECT:
LOCATION:
SID LOCATION:
SID DATE/TIME:

**Lady Bird Johnson Park Pool
Fredericksburg, Texas
City Hall
8/7/13 2:00 PM**



Kimley-Horn
and Associates, Inc.

BID TABULATION FORM

[illegible]

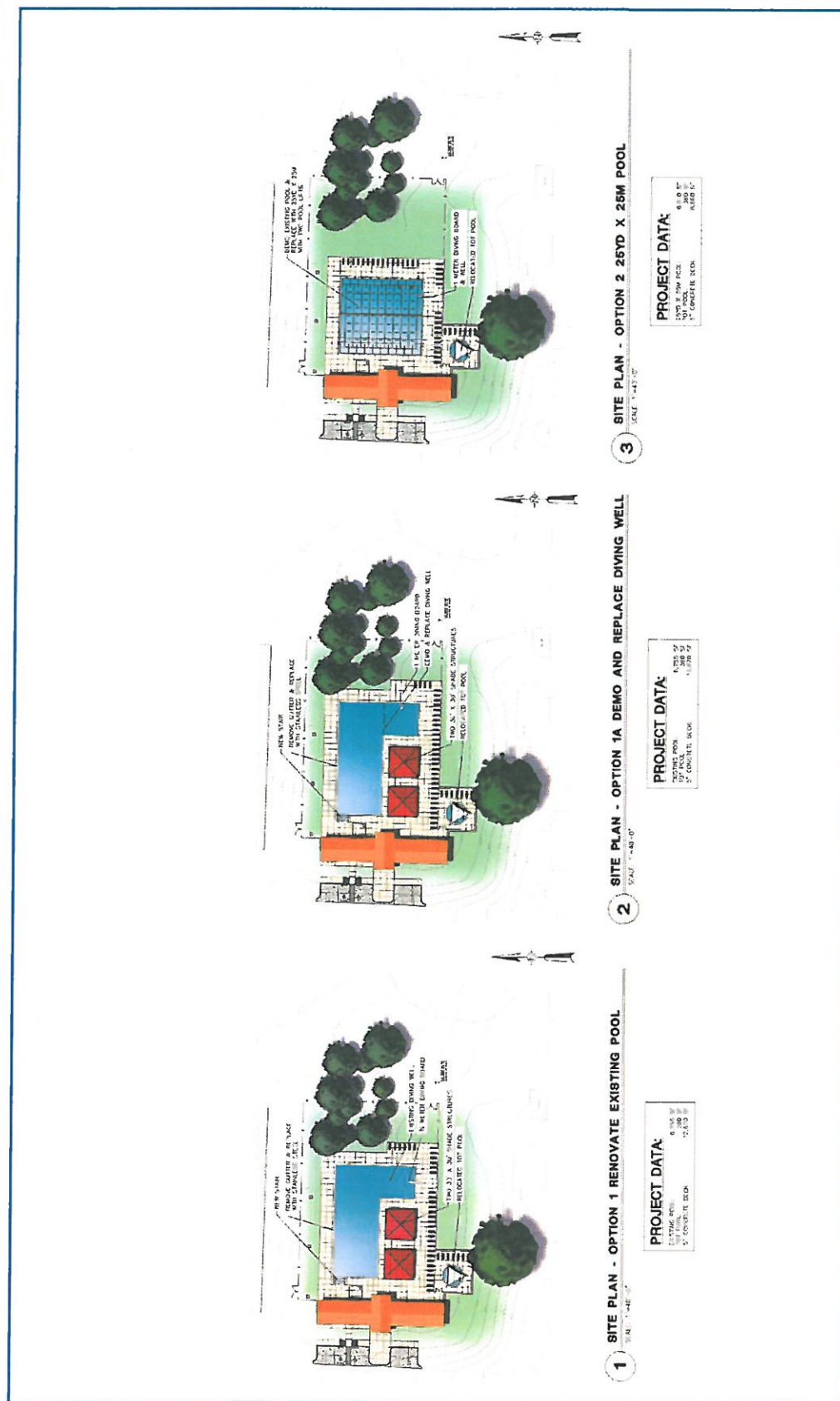
Consultant Comments on Higher Than Expected Bids – August 20, 2013

- A) Bids Have Been Erratic but Trending Up in 2013
- B) Steel Prices are Very High (Added Stainless Steel Gutter to Pools Between Jan and July)
- C) Petroleum Product Prices (Fuel and PVC Pipe) Keep Going Up
- D) Contractors are Busier and More Picky and Favor Higher Profitability Jobs and Jobs Closer to Home
- E) Demolition for Removing Entire Pool Costs are Same as Partial Surgical Demolition
- F) Size of Project Did Not Provide Any Economy (Larger Projects Have Come in On Budget)

Additional Comments on Higher Bids From Contractors

- Bid Prices have escalated at least 10% since early 2013.
- If we had bid Lady Bird Pool when we bid Town Pool it might have come within budget.
- Stainless steel gutter is \$225 to \$275 per linear foot.
- Chinese demand for steel are keeping steel prices high.
- There is three times the amount of work to bid this year vs. last year.
- When there are lots of projects to bid - the ones away from Dallas and Houston become less desirable to chase
- They add 5-10% to projects that are remodels or that reuse part of the old pool shell to cover “unknowns” .
- They said if we rebid it –they will probably not bid again as there are other more profitable projects to bid coming up
- Rebids prices will be Higher into Next Year

Three VE Options (Consultant, Staff, Committee Reps)



Lady Bird Johnson Park Pool
City of Fredericksburg, Texas

Pool Options 8.15.13

KIMLEY-HORN
and Associates, Inc.

Low Bidder Prices for VE Options



**LADY BIRD JOHNSON PARK POOL
FREDERICKSBURG, TX
VALUE ENGINEERING OPTIONS**

Option 1	
Pool	\$ 1,205,569
Bath House	\$ 450,000
Allowances	\$ 41,500
TOTAL BASE	\$ 1,697,069
Option 2	
Pool	\$ 1,337,395
Bath House	\$ 450,000
Allowances	\$ 41,500
TOTAL BASE	\$ 1,828,895
Option 3	
Pool	\$ 1,433,984
Bath House	\$ 450,000
Allowances	\$ 41,500
TOTAL BASE	\$ 1,925,484

Aquatic Committee Comments on August 20, 2013

- A) Requested Bid Breakdown in Similar Format to OPC
- B) Asked Council to Consider Spending More Money if Possible
- C) Zero Beach Entry is Important
- D) Existing Pool Lap Pool Configuration is not efficient
- E) Would Rebidding Help Get Better Prices?

Operations Staff Comments on on August 20, 2013

- A) Existing Pool is liked by the users
- B) Existing Pool Size is Sufficient
- C) Less Deep Water is better for
Learn-to-Swim and Recreation
- D) Tot Pool w/ Shade is Important
- E) Need Shade, Furniture, and Diving
Board (Town Pool is Too Plain)

Council Member Comments on August 20, 2013

- A) Not Happy That Costs are Higher than Estimates of January and July 2013
- B) Noted that a Remodeled Pool will not Last as Long as New Pool
- C) Directed Staff to Look for Options on Additional Funding
- D) Directed Consultant to Provide Any Additional Information Available on Cost Increases
- E) Directed Consultant to Come Up w/ another VE Option w/ Zero Beach

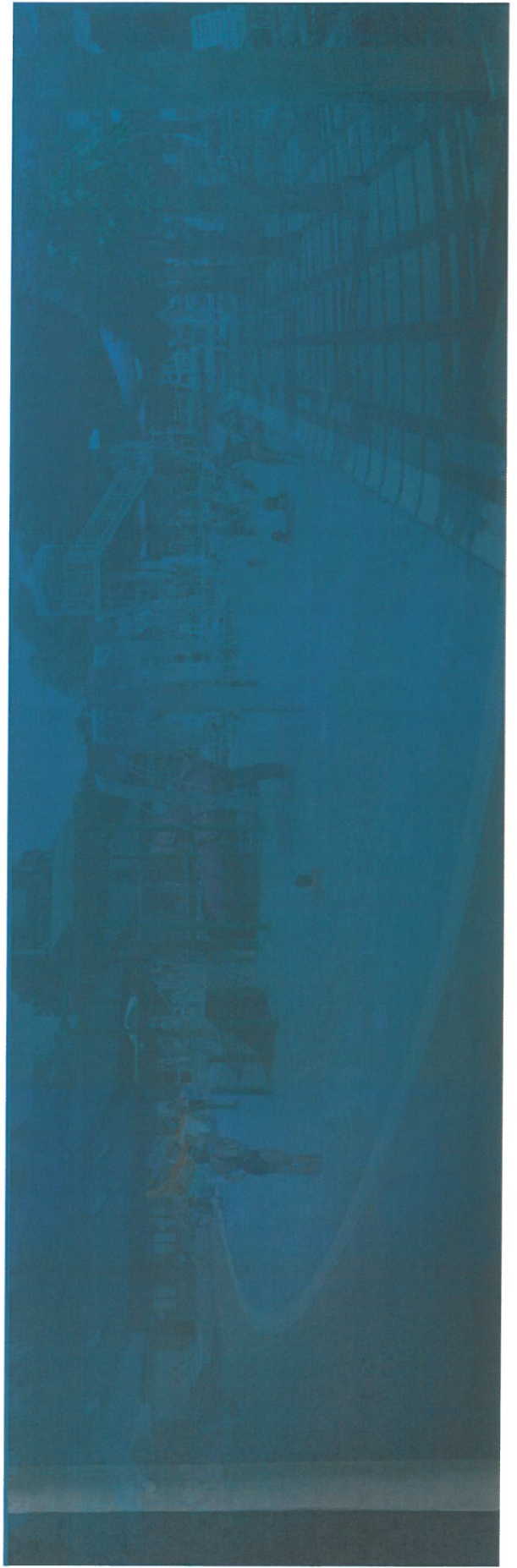
Original Bid vs. VE Options

8/27/2013

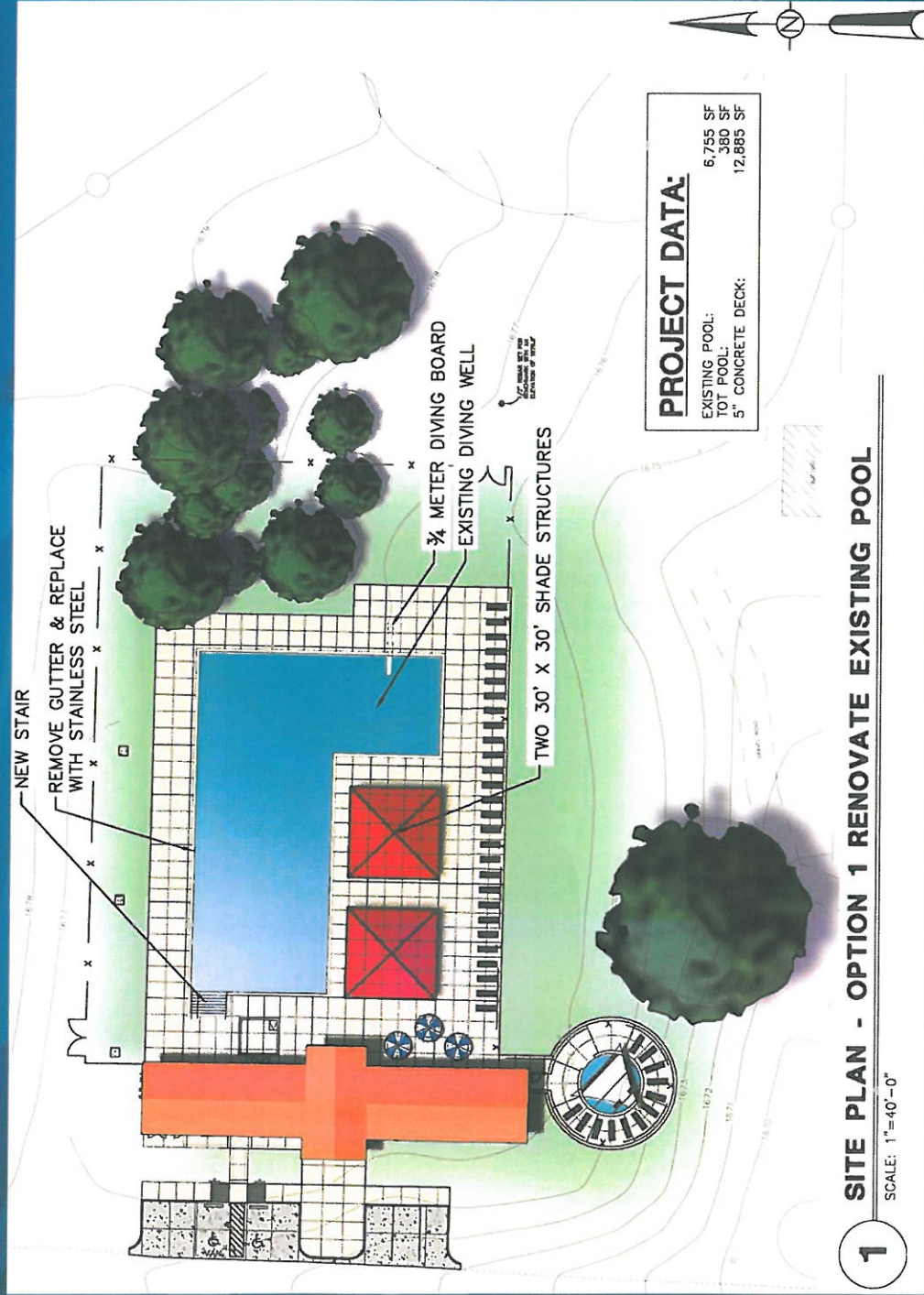
	Name	Building	Tot Pool	Sitework	3/4 M Dive	1 M Dive	Zero Entry	Furniture	Shade	Dem Old	SS Gutter	Total Const. Cost	Pool SF < 5' D	Pool SF > 5' D	Tot Pool SF	Max Users
Park Pool As Bid	As Bid w/ Large Pools	X	X	X	X	X	X			Partial	X	\$ 2,178,601.00	3980	6150	10130	400
Park Pool (VE Option #1)	Old Shape w/ Old Well	X	X	X	X					Partial	X	\$ 1,697,065.00	5180	1138	6318	391
Park Pool (VE Option #2)	As Above w/ New Well	X	X	X	X	X				Partial	X	\$ 1,828,895.00	5180	1138	6318	391
Park Pool (VE Option #3)	All New 25x25 w/ Dive	X	X	X	X	X	X			100%	X	\$ 1,925,484.00	3295	3215	6510	336
Park Pool (VE Option #4)	New 6 LN 25' w/Dive	X	X	X	X	X	X	X	X	100%	X	\$ 1,917,796.00	4263	1958	6221	362
Current Available Funding												\$ 1,670,000.00				

(57)

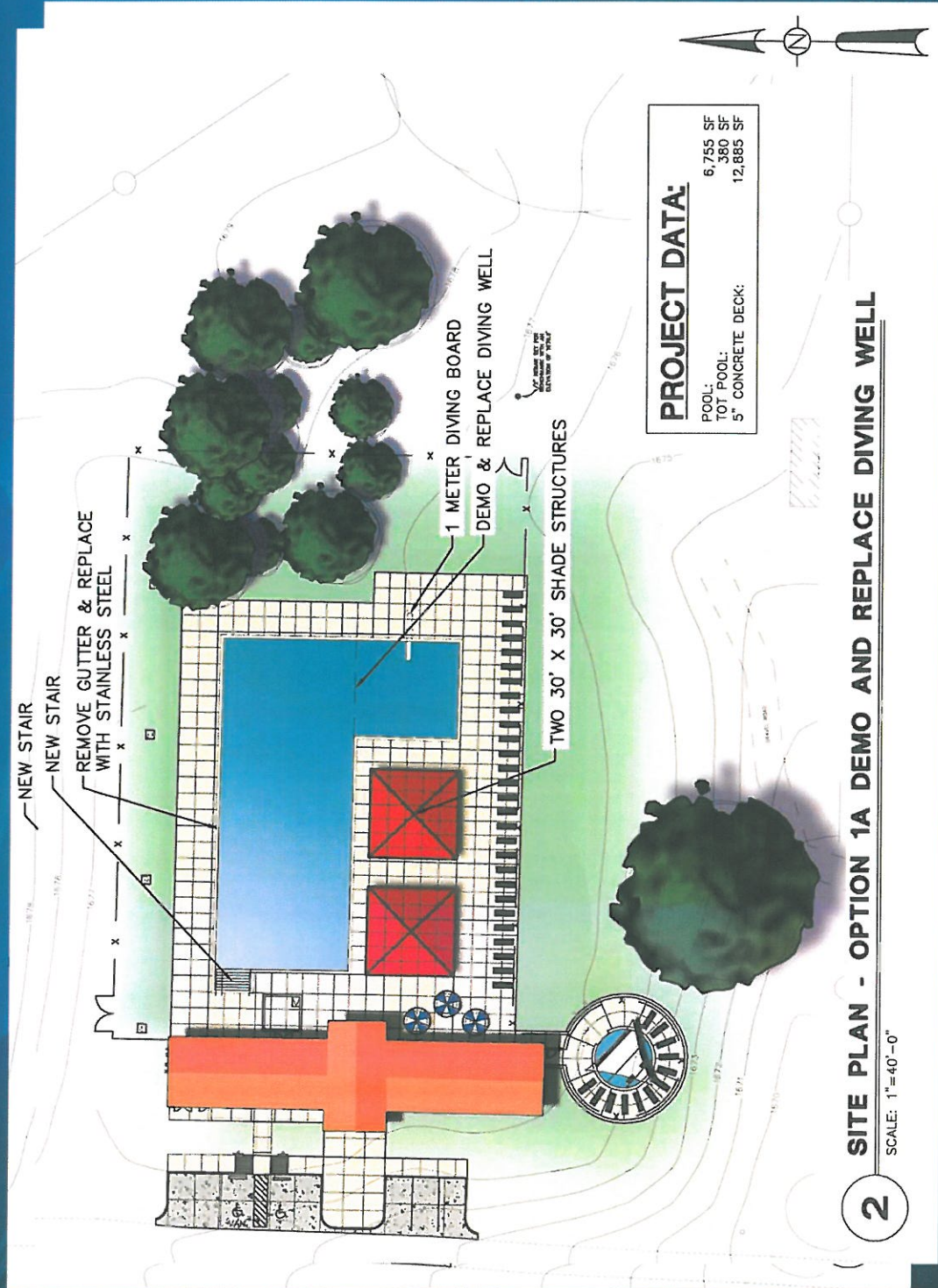
Note: The pool as bid is 60% larger than the existing pool. However, to keep the size of the bathhouse down and based upon current usage the maximum pool capacity is set at 400. Therefore, the larger pools do not provide any additional capacity unless we provide make the restroom facilities larger and increase the building costs.



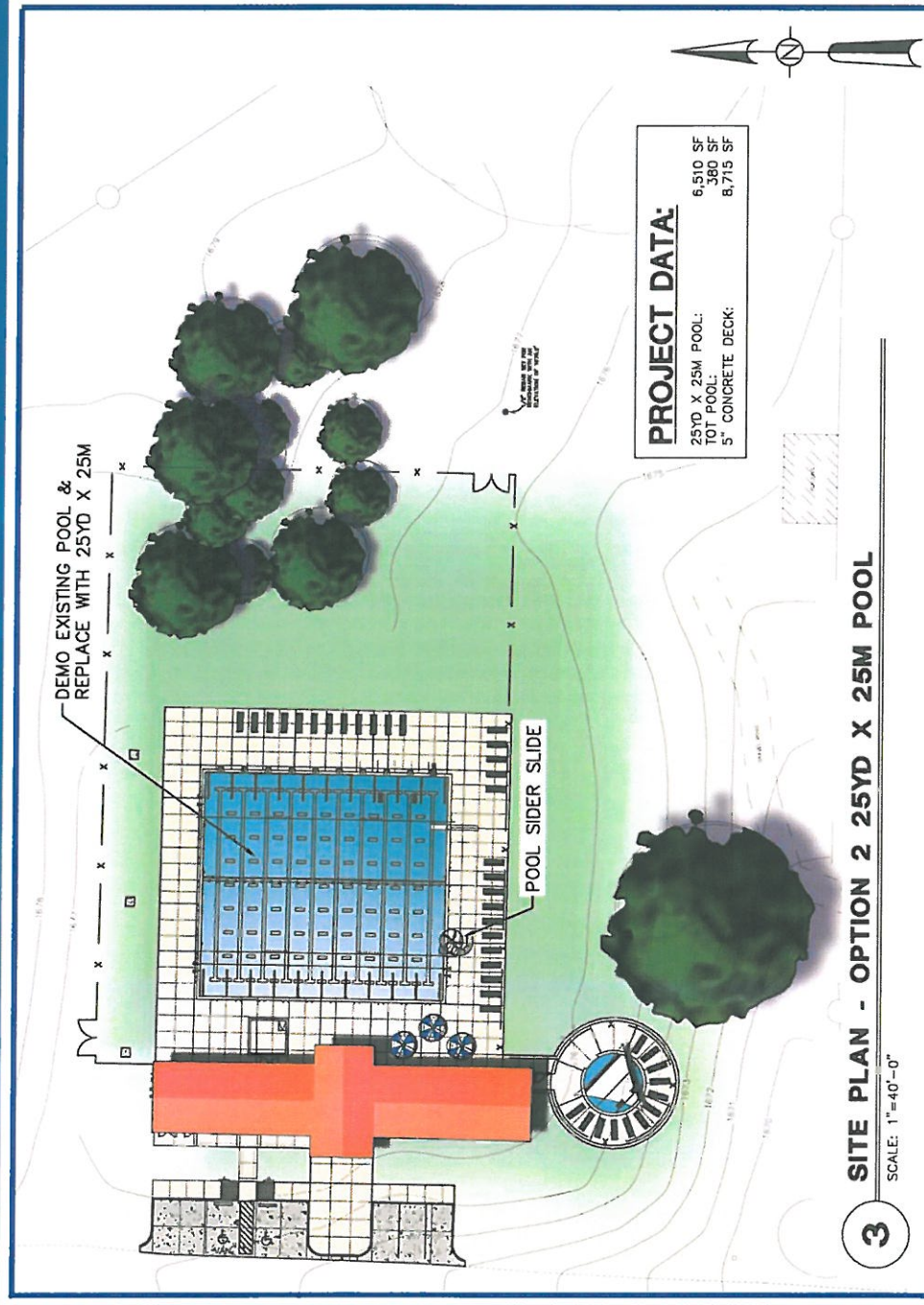
VE Option #1 Cost \$1,697,069



VE Option #2 Cost \$1,828,895



VE Option #3 Cost \$1,925,484

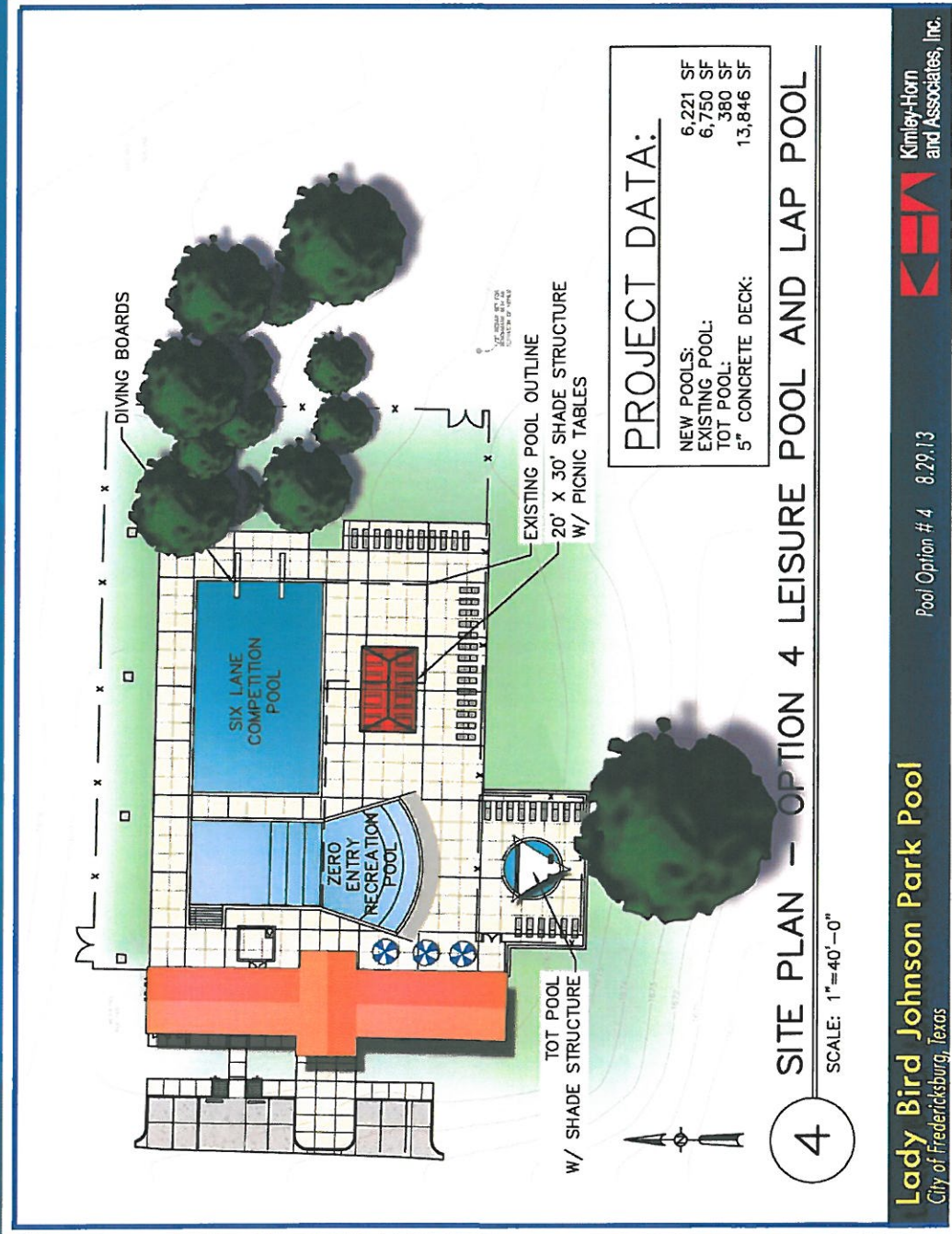


Lady Bird Johnson Park Pool
City of Fredericksburg, Texas

Pool Option # 3 8.27.13

KEA Kimley-Horn
and Associates, Inc.

VE Option #4 Cost \$1,917,796



VE Option #4 Comments

- A) Option #4 Requires \$247,796 in Additional Funding
- B) All Pools are Brand New/All Old Demolished
- C) More Learn-to-Swim and Rec Water with Zero Beach Entry than Deep Lap Pool
- D) Provides the Standard Six Lane 25 YD Competition Pool Required for Recreation League Meets and HS Meets and Practice
- E) Includes Two One Meter Dive Boards
- F) Includes Shade, Picnic Tables, and Deck Furniture
- G) Includes Stainless Steel Gutter System
- H) Pool Capacity is Between 350 to 400 Same as Other Options
- I) Approx. Same SF as Existing Pool



CITY COUNCIL MEMO

DATE: August 30, 2013

TO: Mayor and City Council

FROM: Kris Kneese, P.E., Assistant City Engineer

SUBJECT: WWTP Master Plan Contract

Summary:

The City's Wastewater Treatment Plant needs work to ensure it will service the City's treatment needs for many years. As Council is aware, the TCEQ recently sent the City an enforcement action for not meeting the permitted effluent discharge limits. As part of the City's approach to rehabilitating the WWTP, City staff issued Request for Proposal to engineering consulting firms for professional services to develop a WWTP Master Plan. After a detailed selection process, City staff has selected HDR Engineering to perform the WWTP Master Plan.

Recommendation:

City Engineering Staff recommends approving the contract with HDR Engineering to prepare a WWTP Master Plan (Task No. 1) for the City's WWTP in the amount of \$89,920.00. Additionally, City staff recommends approving Task No. 2 for Regulatory Support and Task No. 3 for Operation Support in the amount of \$10,890.00 and \$10,700.00, respectfully.

Background / Analysis:

(63)
The City of Fredericksburg

The City's WWTP was constructed in 1995. Since 1995, few infrastructure improvements have been made to keep the plant in good operating condition. Last year, the Council approved a contract with Matous Construction to install a new bar screen. This project is near completion and will eliminate large debris from by-passing the headworks and entering the downstream treatment processes. However, other major infrastructure improvements are necessary as well. Such improvements include aeration basin, sludge dewatering, chemical storage and site security improvements.

Additionally, in the last few years the WWTP has had issues meeting the ammonia-nitrogen discharge limits set by the TCEQ with the City's discharge permit. As a result, the City has had to fund Supplemental Environmental Projects, such as the Household Hazardous Waste Clean-up.

As part of the WWTP rehabilitation process, City staff proposed creating a good "roadmap" to determine the best approach and treatment technologies available for the WWTP. This "roadmap", in the form of a WWTP Master Plan, will optimize the City's available funds for these projects, create a solution to ensure the treatment process is in compliance with State regulations, plan for future nutrient discharge limits, and give guidance to creating an efficient process at the WWTP. The WWTP Master Plan has three (3) parts.

- Task A: Data Acquisition, Regulatory Review and Condition Assessment
- Task B: Facilities and Unit Process Alternative Evaluation
- Task C: Alternative Development, Cost Estimating and Construction Phasing.

In June, City staff advertised a Request for Proposal (RFP) for the WWTP Master Plan. The City received eight (8) RFPs which were submitted on July 16, 2013. After receiving the RFPs, a five (5) member committee consisting of City staff from the City Manager's office and Public Works and Engineering evaluated the RFPs. The committee short-listed three (3) of the eight (8) engineering firms and followed up with individual interviews during the week of August 5, 2013. After the interviews, City staff selected HDR Engineering and has worked with them over the last couple of weeks to develop a scope and fee for this project.

Included in your packet is the scope and fee contract for the WWTP Master Plan Project. The contract includes three (3) tasks:

- Task No. 1: WWTP Master Plan for \$89,920.00
- Task No. 2: Regulatory Support for \$10,890.00
- Task No. 3: Operation Support for \$10,700.00

The fees for this project will be funded with the utility bonds, recently approved by Council.


The City of Fredericksburg

MULTIPLE PROJECT AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT is made as of this _____ day of _____, 20____, between the City of Fredericksburg, Texas, hereinafter referred to as "OWNER", and HDR Engineering, Inc., hereinafter referred to as "ENGINEER," for engineering services as described in this Agreement.

WHEREAS, OWNER desires to retain ENGINEER, a professional engineering firm, to provide professional engineering, consulting and related services ("Services") on one or more projects in which the OWNER is involved; and

WHEREAS, ENGINEER desires to provide such services on such projects as may be agreed, from time to time, by the parties;

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

SECTION I. PROJECT TASK ORDER

- 1.1 This Agreement shall apply to as many projects as OWNER and ENGINEER agree will be performed under the terms and conditions of this Agreement. Each project ENGINEER performs for OWNER hereunder shall be designated by a "Task Order." No Task Order shall be binding or enforceable unless and until it has been properly executed by both OWNER and ENGINEER. Each properly executed Task Order shall become a separate supplemental agreement to this Agreement.
- 1.2 In resolving potential conflicts between this Agreement and the Task Order pertaining to a specific project, the terms of the Task Order shall control.
- 1.3 ENGINEER will provide the Scope of Services as set forth in Part 2.0 of each Task Order.

SECTION II. RESPONSIBILITIES OF OWNER

In addition to the responsibilities described in paragraph 6 of the attached "HDR Engineering, Inc. Terms and Conditions for Professional Services," OWNER shall have the responsibilities described in Part 3.0 of each Task Order.

SECTION III. COMPENSATION

Compensation for ENGINEER's Services shall be in accordance with Part 5.0 of each Task Order, and in accordance with paragraph 11 of the attached "HDR Engineering, Inc. Terms and Conditions for Professional Services."

SECTION IV. TERMS AND CONDITIONS OF ENGINEERING SERVICES

The "HDR Engineering, Inc. Terms and Conditions for Professional Services," which are attached hereto, are incorporated into this Agreement by this reference.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first written above.

City of Fredericksburg

"OWNER"

BY: _____

NAME: Kent Myers

TITLE: City Manager

ADDRESS: 126 W. Main St
Fredericksburg, TX 78624

HDR ENGINEERING, INC.

"ENGINEER"

BY: _____

NAME: Carmen Abad-Fitts, P.E.

TITLE: Vice President

ADDRESS: 1020 NE Loop 410, Suite 400
San Antonio, TX 78209

TASK ORDER No. 1

This Task Order pertains to an Agreement by and between the City of Fredericksburg, Texas, ("OWNER"), and HDR Engineering, Inc. ("ENGINEER"), dated _____, 20____, ("the Agreement"). Engineer shall perform services on the project described below as provided herein and in the Agreement. This Task Order shall not be binding until it has been properly signed by both parties. Upon execution, this Task Order shall supplement the Agreement as it pertains to the project described below.

TASK ORDER NUMBER: One

PROJECT NAME: City of Fredericksburg Wastewater Treatment Plant Master Plan

PART 1.0 PROJECT DESCRIPTION:

The City of Fredericksburg seeks to balance capital costs of future improvements needed at the Wastewater Treatment Plant (WWTP) with ongoing operation and maintenance costs to provide the most cost effective long-term service to its customers. The project will develop a 10-year master plan for the WWTP to include a projected improvement implementation schedule and a related schedule of expenditures.

The WWTP currently has the hydraulic capacity to treat 2.5 MGD of municipal wastewater in an extended aeration activated sludge process. The plant consists of a headworks with bar screens and grit removal, a shallow concrete aeration basin with floating surface aerators, two (2) secondary clarifiers, a chlorine/dechlorination contact tank, an aerobic sludge thickener, drying beds (currently not used) and a belt filter press for sludge dewatering, and a effluent reuse pumping system.

Some of the recent concerns with the WWTP include lack of oxygen transfer into the aeration basin as well as current process equipment energy efficiency, process equipment deterioration in the plant, inability to clean/take the aeration basin offline, poor sludge thickening and limited sludge dewatering capacity, no ability to measure flow on the RAS and WAS, chemical storage (chlorine and sulfur dioxide), and lack of system redundancies and flexibility.

PART 2.0 SCOPE OF SERVICES TO BE PERFORMED BY ENGINEER ON THE PROJECT:

TASK 1.0 – WWTP MASTER PLAN

A. This Task describes the engineering services required for the proposed City of Fredericksburg WWTP Master Plan. The Task Order represents the work anticipated in the evaluation of the WWTP and study of proposed treatment alternatives. The Engineer shall provide the services set forth herein.

1. Data Acquisition, Regulatory Review, and Condition Assessment

- Conduct a project kickoff meeting with the City staff to define objectives, schedule, project team members, and data requirements.
- Review the plant's historical data for the following parameters: flow, influent characteristics, effluent characteristics, solids production and quality, and energy use. Identify any anomalies and identify any additional characterization or performance testing that City of Fredericksburg may need to conduct. Develop the design basis (flows and wastewater characteristics) for the planning period.
- Briefly summarize the current and projected regulatory requirements for the plant, including TCEQ Chapter 217 design criteria, re-use requirements, and possible effluent nutrient limits.
- Examine the plant's unit processes and facilities and summarize their condition, hydraulic capacity, projected remaining life expectancy, and suitability for their current role or for other uses.
- Summarize the results of data collection/analysis, regulatory requirements, and condition assessment in a Technical Memorandum (TM) and meet with City of Fredericksburg staff to present and discuss the TM.
- Incorporate City of Fredericksburg's comments on the draft TM into the final Baseline Definition TM.

Deliverable: Five (5) copies of the draft Baseline Definition TM with one copy in electronic format, written response to City comments, and five (5) copies of the finalized Baseline TM with one copy in electronic format.

2. Facilities and Unit Process Alternatives Evaluation

- In concert with City of Fredericksburg staff, develop three (3) activated sludge liquid treatment process alternatives for more detailed evaluation. At a minimum, the evaluation shall consider process alternatives to meet current and future effluent discharge regulations, energy efficiencies of equipment, operational flexibility, and future plant expandability (if necessary).
- As one of the facility evaluation alternatives, perform a basic evaluation of relocating the WWTP to City-owned property to the East/Southeast of the current WWTP. This evaluation will include a preliminary site layout based on TCEQ Chapter 217 process sizing requirements.

- Conduct up to three (3) workshops as needed with City of Fredericksburg staff to describe, in general, potential modifications to the existing plant as well as new treatment processes that may be necessary to meet more stringent effluent limits or to reduce operating costs.
 - Evaluate the sludge dewatering system for existing capacity, evaluate any needed capacity improvements, and provide a recommendation on capacity and system improvements.
 - Develop process alternatives for effluent disinfection.
 - Evaluate need for security improvements and/or a vulnerability assessment.
 - Make an interim project presentation to the City Council summarizing the Baseline Definition and the selected treatment alternatives.
3. Alternatives Development, Cost Estimating, and Construction Phasing
- For each alternative combination, develop a process flow diagram, basic hydraulic profile, mass balance, site plan, project cost (including professional services), O&M cost, life-cycle cost, and a discussion of advantages and disadvantages of that alternative.
 - Perform a constructability and construction sequence review of the proposed improvements to confirm that the modifications can be built while keeping the plant in operation during construction. Consider constructability and sequencing findings in the calculation of cost estimates.
 - Recommend to Owner the solutions, which in Engineer's judgment, meet Owner's requirements for the Project.
 - Provide a WWTP staffing evaluation and recommendation based on proposed plant operation.
 - Summarize the analysis of the alternatives and provide recommendations in a draft Alternative Analysis TM. Include a discussion of options for phasing each of the alternatives as required for capacity and/or regulatory compliance. Meet with City of Fredericksburg staff to present and discuss the TM.
 - Incorporate City of Fredericksburg comments on the draft TM into the final Alternative Analysis TM.
 - Combine the Baseline Definition and Alternative Analysis TMs into the Wastewater Treatment Plant Master Plan, with recommendations and an Executive Summary, and present the Wastewater Treatment Plant Master Plan to the City Council.

Deliverables: Five (5) copies of the draft Alternative Analysis TM with one copy in electronic format, written response to City comments, and five (5) copies of the finalized Alternative Analysis TM with one copy in electronic format.

Five (5) copies of the draft Wastewater Treatment Plant Master Plan with one copy in electronic format, written response to City comments, and five (5) copies of the finalized Wastewater Treatment Plant Master Plan with one copy in electronic format.

TASK 2.0 – REGULATORY SUPPORT

- A. This task describes the regulatory support services. The task represents the work anticipated in assisting the City in addressing questions and issues associated with the pending TCEQ enforcement action. The Engineer shall provide the services set forth herein.
1. Attend four (4) meetings with TCEQ, and four (4) preparatory meetings with City of Fredericksburg representatives prior to the meetings with TCEQ. It is assumed that two of these meetings with City of Fredericksburg representatives will be in person, and two by phone. Assist the City in preparing written response to questions and issues identified by TCEQ during the in-person meetings.
 2. Review correspondence sent to the City by TCEQ and assist the City in preparing written responses to TCEQ.

TASK 3.0 – OPERATIONS SUPPORT

- A. This task describes the operations support services. This task represents the work anticipated in assisting the City in evaluating current WWTP operations and to recommend changes to the operation that will assist the City in meeting the current effluent limits. The Engineer shall provide the services set forth herein.
1. Plant Trouble Shooting: Review of operating data, conduct site visit(s), and coordinate with plant operating staff to identify items that may be impacting plant operation. Initial items to evaluate include methods to increase the dissolved oxygen levels in the aeration basin for improved ammonia removal, as well as modifying the operation of the solids thickener to improve the loading rate to dewatering equipment.
 2. Plant Control Sampling and Testing Plan: Review the City's current control sampling and testing at the plant, and provide recommendations on parameters that could be sampled and tested for improved process control.
 3. This proposal is based on three (3) day-long visits to the WWTP by an operations specialist, with one (1) visit including the project manager and process engineer.

Deliverable: A brief memorandum in electronic format, summarizing process optimization findings and recommendations.

PART 3.0 OWNER'S RESPONSIBILITIES:

A. Owner shall be responsible for, and Engineer may rely upon, the accuracy and completeness of all requirements, programs, instructions, reports, data, and other information furnished by Owner to Engineer pursuant to this Agreement. Engineer may use such requirements, programs, instructions, reports, data, and information in performing or furnishing services under this Agreement. The Owner shall at its expense:

1. Provide Engineer with all criteria and full information as to Owner's requirements for the Project, including objectives and constraints, space, capacity and performance requirements, flexibility, and expandability, and any budgetary limitations; and furnish copies of all design and construction standards which Owner will require to be included.
2. Furnish to Engineer any other available information pertinent to the Project including previous design plans, reports and data relative to previous designs, or investigation at or adjacent to the Site.
3. Following Engineer's assessment of initially-available Project information and data and upon Engineer's request, furnish or otherwise make available such additional Project related information and data as is reasonably required to enable Engineer to complete its Basic and Additional Services. Such additional information or data would generally include the following:
 - i. Property descriptions.
 - ii. Zoning, deed, and other land use restrictions.
 - iii. Property, boundary, easement, right-of-way, and other special surveys or data, including establishing relevant reference points.
 - iv. Explorations and tests of subsurface conditions at or contiguous to the Site, drawings of physical conditions relating to existing surface or subsurface structures at the Site, or hydrographic surveys, with appropriate professional interpretation thereof.
 - v. Environmental assessments, audits, investigations, and impact statements, and other relevant environmental or cultural studies as to the Project, the Site, and adjacent areas.
 - vi. Data or consultations as required for the Project but not otherwise identified in the Agreement or the Exhibits thereto.
4. Give prompt written notice to Engineer whenever Owner observes or otherwise becomes aware of the presence at the Site of any Constituent of Concern, or of any other development that affects the scope or time of performance of Engineer's services, or any defect or nonconformance in Engineer's services.

5. Arrange for safe access to and make all provisions for Engineer to enter upon public and private property as required for Engineer to perform services under the Agreement.
6. Examine all alternate solutions, studies, reports, sketches, proposals, and other documents presented by Engineer (including obtaining advice of an attorney, insurance counselor, and other advisors or consultants as Owner deems appropriate with respect to such examination) and render in writing timely decisions pertaining thereto.
7. Provide reviews, approvals, and permits from all governmental authorities having jurisdiction to approve all phases of the Project designed or specified by Engineer and such reviews, approvals, and consents from others as may be necessary for completion of each phase of the Project.
8. Recognizing and acknowledging that Engineer's services and expertise do not include the following services, provide, as required for the Project:
 - i. Accounting, bond and financial advisory, independent cost estimating, and insurance counseling services.
 - ii. Legal services with regard to issues pertaining to the Project as Owner requires, or Engineer reasonably requests, including but not limited to the review of Contract Documents supplied by Engineer.
 - iii. Such auditing services as Owner requires to ascertain how or for what purpose Contractor has used the moneys paid.
9. Advise Engineer of the identity and scope of services of any independent consultants employed by Owner to perform or furnish services in regard to the Project, including, but not limited to, cost estimating, project peer review, value engineering, and constructability review.
10. Furnish to Engineer data as to Owner's anticipated costs for services to be provided by others (including, but not limited to, accounting, bond and financial, independent cost estimating, insurance counseling, and legal advice) for Owner so that Engineer may assist Owner in collating the various cost categories which comprise Total Project Costs.
11. Provide the services of an independent testing laboratory to perform all inspections, tests, and approvals of samples, materials, and equipment required by the Contract Documents, or to evaluate the performance of materials, equipment, and facilities of Owner, prior to their incorporation into the Work with appropriate professional interpretation thereof.
12. Provide Engineer with the findings and reports generated by the entities providing services to Owner pursuant to this paragraph.

13. Inform Engineer in writing of any specific requirements of safety or security programs that are applicable to Engineer, as a visitor to the Site.
- B. Owner shall be responsible for, and Engineer may rely upon, the accuracy and completeness of all requirements, programs, instructions, reports, data, and other information furnished by Owner to Engineer pursuant to this Agreement. Engineer may use such requirements, programs, instructions, reports, data, and information in performing or furnishing services under this Agreement.

PART 4.0 PERIODS OF SERVICE:

- A. Engineer is authorized to begin rendering services as of the date of Notice to Proceed.
- B. Engineer shall complete its obligations within a reasonable time. Specific period of time for rendering services is six (6) months, and are hereby agreed to be reasonable.
- C. If, through no fault of Engineer, such periods of time or dates are changed, or the orderly and continuous progress of Engineer's services is impaired, or Engineer's services are delayed or suspended, then the time for completion of Engineer's services, and the amounts of Engineer's compensation, shall be adjusted equitably.
- D. If Owner authorizes changes in the scope, extent, or character of the Project, then the time for completion of Engineer's services, and the amounts of Engineer's compensation, shall be adjusted equitably.
- E. Owner shall make decisions and carry out its other responsibilities in a timely manner so as not to delay the Engineer's performance of its services.
- F. If Engineer fails, through its own fault, to complete the performance required in this Agreement within the time set forth, as duly adjusted, then Owner shall be entitled, as its sole remedy, to the recovery of direct damages, if any, resulting from such failure.

PART 5.0 PAYMENTS TO ENGINEER:

A. Owner shall pay Engineer for Basic Services set forth in Part 2.0 as follows:

1. Task 1: A Lump Sum amount of \$89,920.00 for the WWTP Master Plan.
Task 2: A Lump Sum amount of \$10,890.00 for Regulatory Support.
Task 3: A Lump Sum amount of \$10,700.00 for Operations Support.
2. Engineer may alter the distribution of compensation between individual tasks noted herein to be consistent with services actually rendered, but shall not exceed the total Lump Sum amount unless approved in writing by the Owner.
3. The Lump Sum includes compensation for Engineer's services and services of Engineer's Consultants, if any. Appropriate amounts have been incorporated in the Lump Sum to account for labor, overhead, profit, and Reimbursable Expenses.
4. The portion of the Lump Sum amount billed for Engineer's services will be based upon Engineer's estimate of the percentage of the total services actually completed during the billing period.

B. *Period of Service:* The compensation amount stipulated is conditioned on a period of service not exceeding six (6) months. If such period of service is extended, the compensation amount for Engineer's services shall be appropriately adjusted.

This Task Order is executed this _____ day of _____, 20__.

THE CITY OF FREDERICKSBURG
"OWNER"

HDR ENGINEERING, INC.
"ENGINEER"

BY: _____

BY: _____

NAME: Kent Myers

NAME: Carmen B. Abad-Fitts, PE

TITLE: City Manager

TITLE: Vice President

ADDRESS: 126 W. Main Street
Fredericksburg, Texas
78624

ADDRESS: 1020 NE Loop 410
Suite 400
San Antonio, Texas 78209

HDR Engineering, Inc.

Terms and Conditions for Professional Services

1. STANDARD OF PERFORMANCE

The standard of care for all professional engineering, consulting and related services performed or furnished by ENGINEER and its employees under this Agreement will be the care and skill ordinarily used by members of ENGINEER's profession practicing under the same or similar circumstances at the same time and in the same locality. ENGINEER makes no warranties, express or implied, under this Agreement or otherwise, in connection with ENGINEER's services.

2. INSURANCE/INDEMNITY

ENGINEER agrees to procure and maintain, at its expense, Workers' Compensation insurance as required by statute; Employer's Liability of \$250,000; Automobile Liability insurance of \$1,000,000 combined single limit for bodily injury and property damage covering all vehicles, including hired vehicles, owned and non-owned vehicles; Commercial General Liability insurance of \$1,000,000 combined single limit for personal injury and property damage; and Professional Liability insurance of \$1,000,000 per claim for protection against claims arising out of the performance of services under this Agreement caused by negligent acts, errors, or omissions for which ENGINEER is legally liable. OWNER shall be made an additional insured on Commercial General and Automobile Liability insurance policies and certificates of insurance will be furnished to the OWNER. ENGINEER agrees to indemnify OWNER for claims to the extent caused by ENGINEER's negligent acts, errors or omissions. However, neither Party to this Agreement shall be liable to the other Party for any special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to the Project or the Agreement from any cause or causes, including but not limited to any such damages caused by the negligence, errors or omissions, strict liability or breach of contract.

3. OPINIONS OF PROBABLE COST (COST ESTIMATES)

Any opinions of probable project cost or probable construction cost provided by ENGINEER are made on the basis of information available to ENGINEER and on the basis of ENGINEER's experience and qualifications, and represents its judgment as an experienced and qualified professional engineer. However, since ENGINEER has no control over the cost of labor, materials, equipment or services furnished by others, or over the contractor(s) methods of determining prices, or over competitive bidding or market conditions, ENGINEER does not guarantee that proposals, bids or actual project or construction cost will not vary from opinions of probable cost ENGINEER prepares.

4. CONSTRUCTION PROCEDURES

ENGINEER's observation or monitoring portions of the work performed under construction contracts shall not relieve the contractor from its responsibility for performing work in accordance with applicable contract documents. ENGINEER shall not control or have charge of, and shall not be responsible for, construction means, methods, techniques, sequences, procedures of construction, health or safety programs or precautions connected with the work and shall not manage, supervise, control or have charge of construction. ENGINEER shall not be responsible for the acts or omissions of the contractor or other parties on the project. ENGINEER shall be entitled to review all construction contract documents and to require that no provisions extend the duties or liabilities of ENGINEER beyond those set forth in this Agreement. OWNER agrees to include ENGINEER as an indemnified party in OWNER's construction contracts for the work, which shall protect ENGINEER to the same degree as OWNER. Further, OWNER agrees that ENGINEER shall be listed as an additional insured under the construction contractor's liability insurance policies.

5. CONTROLLING LAW

This Agreement is to be governed by the law of the state where ENGINEER's services are performed.

6. SERVICES AND INFORMATION

OWNER will provide all criteria and information pertaining to OWNER's requirements for the project, including design objectives and constraints, space, capacity and performance requirements, flexibility and expandability, and any budgetary limitations. OWNER will also provide copies of any

OWNER-furnished Standard Details, Standard Specifications, or Standard Bidding Documents which are to be incorporated into the project.

OWNER will furnish the services of soils/geotechnical engineers or other consultants that include reports and appropriate professional recommendations when such services are deemed necessary by ENGINEER. The OWNER agrees to bear full responsibility for the technical accuracy and content of OWNER-furnished documents and services.

In performing professional engineering and related services hereunder, it is understood by OWNER that ENGINEER is not engaged in rendering any type of legal, insurance or accounting services, opinions or advice. Further, it is the OWNER's sole responsibility to obtain the advice of an attorney, insurance counselor or accountant to protect the OWNER's legal and financial interests. To that end, the OWNER agrees that OWNER or the OWNER's representative will examine all studies, reports, sketches, drawings, specifications, proposals and other documents, opinions or advice prepared or provided by ENGINEER, and will obtain the advice of an attorney, insurance counselor or other consultant as the OWNER deems necessary to protect the OWNER's interests before OWNER takes action or forebears to take action based upon or relying upon the services provided by ENGINEER.

7. SUCCESSORS AND ASSIGNS

OWNER and ENGINEER, respectively, bind themselves, their partners, successors, assigns, and legal representatives to the covenants of this Agreement. Neither OWNER nor ENGINEER will assign, sublet, or transfer any interest in this Agreement or claims arising therefrom without the written consent of the other.

8. RE-USE OF DOCUMENTS

All documents, including all reports, drawings, specifications, computer software or other items prepared or furnished by ENGINEER pursuant to this Agreement, are instruments of service with respect to the project. ENGINEER retains ownership of all such documents. OWNER may retain copies of the documents for its information and reference in connection with the project; however, none of the documents are intended or represented to be suitable for reuse by OWNER or others on extensions of the project or on any other project. Any reuse without written verification or adaptation by ENGINEER for the specific purpose intended will be at OWNER's sole risk and without liability or legal exposure to ENGINEER, and OWNER will defend, indemnify and hold harmless ENGINEER from all claims, damages, losses and expenses, including attorney's fees, arising or resulting therefrom. Any such verification or adaptation will entitle ENGINEER to further compensation at rates to be agreed upon by OWNER and ENGINEER.

9. TERMINATION OF AGREEMENT

OWNER or ENGINEER may terminate the Agreement, in whole or in part, by giving seven (7) days written notice to the other party. Where the method of payment is "lump sum," or cost reimbursement, the final invoice will include all services and expenses associated with the project up to the effective date of termination. An equitable adjustment shall also be made to provide for termination settlement costs ENGINEER incurs as a result of commitments that had become firm before termination, and for a reasonable profit for services performed.

10. SEVERABILITY

If any provision of this agreement is held invalid or unenforceable, the remaining provisions shall be valid and binding upon the parties. One or more waivers by either party of any provision, term or condition shall not be construed by the other party as a waiver of any subsequent breach of the same provision, term or condition.

11. INVOICES

ENGINEER will submit monthly invoices for services rendered and OWNER will make prompt payments in response to ENGINEER's invoices.

ENGINEER will retain receipts for reimbursable expenses in general accordance with Internal Revenue Service rules pertaining to the support

of expenditures for income tax purposes. Receipts will be available for inspection by OWNER's auditors upon request.

If OWNER disputes any items in ENGINEER's invoice for any reason, including the lack of supporting documentation, OWNER may temporarily delete the disputed item and pay the remaining amount of the invoice. OWNER will promptly notify ENGINEER of the dispute and request clarification and/or correction. After any dispute has been settled, ENGINEER will include the disputed item on a subsequent, regularly scheduled invoice, or on a special invoice for the disputed item only.

OWNER recognizes that late payment of invoices results in extra expenses for ENGINEER. ENGINEER retains the right to assess OWNER interest at the rate of one percent (1%) per month, but not to exceed the maximum rate allowed by law, on invoices which are not paid within thirty (30) days from the date of the invoice. In the event undisputed portions of ENGINEER's invoices are not paid when due, ENGINEER also reserves the right, after seven (7) days prior written notice, to suspend the performance of its services under this Agreement until all past due amounts have been paid in full.

12. CHANGES

The parties agree that no change or modification to this Agreement, or any attachments hereto, shall have any force or effect unless the change is reduced to writing, dated, and made part of this Agreement. The execution of the change shall be authorized and signed in the same manner as this Agreement. Adjustments in the period of services and in compensation shall be in accordance with applicable paragraphs and sections of this Agreement. Any proposed fees by ENGINEER are estimates to perform the services required to complete the project as ENGINEER understands it to be defined. For those projects involving conceptual or process development services, activities often are not fully definable in the initial planning. In any event, as the project progresses, the facts developed may dictate a change in the services to be performed, which may alter the scope. ENGINEER will inform OWNER of such situations so that changes in scope and adjustments to the time of performance and compensation can be made as required. If such change, additional services, or suspension of services results in an increase or decrease in the cost of or time required for performance of the services, an equitable adjustment shall be made, and the Agreement modified accordingly.

13. CONTROLLING AGREEMENT

These Terms and Conditions shall take precedence over any inconsistent or contradictory provisions contained in any proposal, contract, purchase order, requisition, notice-to-proceed, or like document.

14. EQUAL EMPLOYMENT AND NONDISCRIMINATION

In connection with the services under this Agreement, ENGINEER agrees to comply with the applicable provisions of federal and state Equal Employment Opportunity for individuals based on color, religion, sex, or national origin, or disabled veteran, recently separated veteran, other protected veteran and armed forces service medal veteran status, disabilities under provisions of executive order 11246, and other employment, statutes and regulations, as stated in Title 41 Part 60 of the Code of Federal Regulations § 60-1.4 (a-f), § 60-300.5 (a-e), § 60-741 (a-e).

15. HAZARDOUS MATERIALS

OWNER represents to ENGINEER that, to the best of its knowledge, no hazardous materials are present at the project site. However, in the event hazardous materials are known to be present, OWNER represents that to the best of its knowledge it has disclosed to ENGINEER the existence of all such hazardous materials, including but not limited to asbestos, PCB's, petroleum, hazardous waste, or radioactive material located at or near the project site, including type, quantity and location of such hazardous materials. It is acknowledged by both parties that ENGINEER's scope of services do not include services related in any way to hazardous materials. In the event ENGINEER or any other party encounters undisclosed hazardous materials, ENGINEER shall have the obligation to notify OWNER and, to the extent required by law or regulation, the appropriate governmental officials, and ENGINEER may, at its option and without liability for delay, consequential or any other damages to OWNER, suspend performance of services on that portion of the project affected by hazardous materials until OWNER: (i) retains appropriate specialist

consultant(s) or contractor(s) to identify and, as appropriate, abate, remediate, or remove the hazardous materials; and (ii) warrants that the project site is in full compliance with all applicable laws and regulations.

OWNER acknowledges that ENGINEER is performing professional services for OWNER and that ENGINEER is not and shall not be required to become an "arranger," "operator," "generator," or "transporter" of hazardous materials, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1990 (CERCLA), which are or may be encountered at or near the project site in connection with ENGINEER's services under this Agreement. If ENGINEER's services hereunder cannot be performed because of the existence of hazardous materials, ENGINEER shall be entitled to terminate this Agreement for cause on 30 days written notice. To the fullest extent permitted by law, OWNER shall indemnify and hold harmless ENGINEER, its officers, directors, partners, employees, and subconsultants from and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) caused by, arising out of or resulting from hazardous materials, provided that (i) any such cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or injury to or destruction of tangible property (other than completed Work), including the loss of use resulting therefrom, and (ii) nothing in this paragraph shall obligate OWNER to indemnify any individual or entity from and against the consequences of that individual's or entity's sole negligence or willful misconduct.

16. EXECUTION

This Agreement, including the exhibits and schedules made part hereof, constitute the entire Agreement between ENGINEER and OWNER, supersedes and controls over all prior written or oral understandings. This Agreement may be amended, supplemented or modified only by a written instrument duly executed by the parties.

17. ALLOCATION OF RISK

OWNER AND ENGINEER HAVE EVALUATED THE RISKS AND REWARDS ASSOCIATED WITH THIS PROJECT, INCLUDING ENGINEER'S FEE RELATIVE TO THE RISKS ASSUMED, AND AGREE TO ALLOCATE CERTAIN OF THE RISKS, SO, TO THE FULLEST EXTENT PERMITTED BY LAW, THE TOTAL AGGREGATE LIABILITY OF ENGINEER (AND ITS RELATED CORPORATIONS, SUBCONSULTANTS AND EMPLOYEES) TO OWNER AND THIRD PARTIES GRANTED RELIANCE IS LIMITED TO THE GREATER OF \$100,000 OR ITS FEE, FOR ANY AND ALL INJURIES, DAMAGES, CLAIMS, LOSSES, OR EXPENSES (INCLUDING ATTORNEY AND EXPERT FEES) ARISING OUT OF ENGINEER'S SERVICES OR THIS AGREEMENT REGARDLESS OF CAUSE(S) OR THE THEORY OF LIABILITY, INCLUDING NEGLIGENCE, INDEMNITY, OR OTHER RECOVERY. THIS LIMITATION SHALL NOT APPLY TO THE EXTENT THE DAMAGE IS PAID UNDER ENGINEER'S COMMERCIAL GENERAL LIABILITY INSURANCE POLICY.

18. LITIGATION SUPPORT

In the event ENGINEER is required to respond to a subpoena, government inquiry or other legal process related to the services in connection with a legal or dispute resolution proceeding to which ENGINEER is not a party, OWNER shall reimburse ENGINEER for reasonable costs in responding and compensate ENGINEER at its then standard rates for reasonable time incurred in gathering information and documents and attending depositions, hearings, and trial.

19. UTILITY LOCATION

If underground sampling/testing is to be performed, a local utility locating service shall be contacted to make arrangements for all utilities to determine the location of underground utilities. In addition, OWNER shall notify ENGINEER of the presence and location of any underground utilities located on the OWNER's property which are not the responsibility of private/public utilities. ENGINEER shall take reasonable precautions to avoid damaging underground utilities that are properly marked. The OWNER agrees to waive any claim against ENGINEER and will indemnify and hold ENGINEER harmless from any claim of liability, injury or loss caused by or allegedly caused by ENGINEER's damaging of underground utilities that are not properly marked or are not called to ENGINEER's attention prior to beginning the underground sampling/testing.