



City Council Budget Workshop & Regular Meeting

City of Dripping Springs Council Chambers

511 Mercer Street - Dripping Springs, Texas

Tuesday, June 18, 2024, at 6:00 PM

AGENDA

CALL TO ORDER & ROLL CALL

City Council Members

Mayor Bill Foulds, Jr.

Mayor Pro Tem Taline Manassian

Council Member Place 2 Wade King

Council Member Place 3 Geoffrey Tahuahua

Council Member Place 4 Travis Crow

Council Member Place 5 Sherrie Parks

Staff, Consultants & Appointed/Elected Officials

City Administrator Michelle Fischer

Deputy City Administrator Ginger Faught

Deputy City Administrator Shawn Cox

City Attorney Laura Mueller

City Secretary Diana Boone

Deputy City Secretary Cathy Gieselman

IT Director Jason Weinstock

People & Communications Director Lisa Sullivan

Parks & Community Services Director Andy Binz

DSRP Manager Emily Nelson

Community Events Coordinator Johnna Krantz

Utilities Director Dane Sorenson

Planning Director Tory Carpenter

TIRZ Project Manager Kennan Smith

PLEDGE OF ALLEGIANCE

CONSENT AGENDA

The following items will be acted upon in a single motion and are considered to be ministerial or routine. No separate discussion or action on these items will be held unless pulled at the request of a member of the City Council or City staff.

- 1. Approval of the June 4, 2024, City Council budget workshop & regular meeting minutes.**
- 2. Approval of the May 2024 Treasurer's Report.**

- 3. Approval of a Use Agreement between the City of Dripping Springs and Aaron Farmer for the Adult Softball League for use of the Adult Softball Fields at Sports and Recreation Park and the authorization for staff to finalize the agreement with the Adult Softball League. *Sponsor: Mayor Bill Foulds, Jr.***
- 4. Approval of the Appointment of Eric Strang from St. Martin de Porres Catholic Church and Justin Cornett from the Dripping Springs Cook Off Club to the Founders Day Commission for terms ending June 30, 2026, and the Reappointment of Brenda Medcalf as Commission Chair for a term of one (1) year.**
- 5. Approval of the Reappointment of at large members Sharon Hamilton, Jimmy Brown, and Roman Grijalva to the Transportation Committee for terms ending June 24, 2026 and the Reappointment of Travis Crow as the Committee Chair for a term of one (1) year.**
- 6. Approval of a Resolution Authorizing intervention in Texas Gas Service Company’s rate case before the Texas Railroad Commission. *Sponsor: Mayor Pro Tem Taline Manassian***

BUDGET WORKSHOP

Workshop items are for discussion purposes only and no action shall be taken. City Council may provide staff direction.

- 7. Presentation and discussion regarding the proposed Municipal Budget for Fiscal Year 2025.**

PRESENTATION OF CITIZENS

A member of the public that wishes to address the City Council on any issue, regardless of whether it is posted on this agenda, may do so during Presentation of Citizens. It is the request of the City Council that individuals wishing to speak on agenda items with a public hearing hold their comments until the item is being considered. Individuals are allowed two (2) minutes each to speak regarding issues not on the agenda and two (2) minutes per item on the agenda and may not cede or pool time. Those requiring the assistance of a translator will be allowed additional time to speak. Individuals are not required to sign in; however, it is encouraged. Individuals that wish to share documents with the City Council must present the documents to the City Secretary or City Attorney providing at least seven (7) copies; if seven (7) copies are not provided, the City Council will receive the documents the following day. Audio Video presentations will not be accepted during Presentation of Citizens. By law no action shall be taken during Presentation of Citizens; however, the Mayor may provide a statement of specific factual information, recitation of existing policy, or direction or referral to staff.

PRESENTATION

Presentations are for discussion purposes only and no action shall be taken.

- 8. Presentation Update regarding Old Fitzhugh Road Improvement Project Landscape Plans. *Keenan Smith, TIRZ Project Manager.***

BUSINESS AGENDA

- 9.** Discuss and consider approval of a Resolution regarding the Appointment of Diana Boone as the City Secretary of the City of Dripping Springs, Hays County, Texas.
- 10.** Presentation, discussion, and consideration of approval of the acceptance of the Stephenson Building Rehabilitation and Improvement Project 100% Construction Documents. *Presenters: Keenan Smith, TIRZ Project Manager and Larry Irsik, Architexas. Sponsor: Mayor Pro Tem Taline Manassian.*
- 11.** Discussion and consideration of possible action on City Council direction to staff regarding Architexas's Task Order #3 Permitting, Bidding, and Construction Administration, and funding for the Stephenson Building Rehabilitation and Improvement Project. *Sponsor: Mayor Pro Tem Taline Manassian.*
- 12.** Presentation, discussion, and consideration of possible action regarding Downtown Restrooms Project and City Council direction to staff regarding procurement and funding. *Keenan Smith, TIRZ Project Manager.*
- 13.** Discuss and consider approval of City of Dripping Springs Logo Use by the Dripping Springs Helping Hands for the Empty Bowls Project and authorization of staff to finalize Logo Use Agreement with Dripping Springs Helping Hands. *Applicant: Dripping Springs Helping Hands. Sponsor: Mayor Bill Foulds, Jr.*
- 14.** Discuss and consider approval of the selection of a bidder and authorization of contract negotiation for the Rob Shelton Blvd. Intersection Improvements Project Construction Contract between Asphalt Inc., LLC dba Lone Star Paving and the City of Dripping Springs, and authorization for staff to finalize the agreement contingent upon TXDOT concurrence of award. *Sponsor: Mayor Bill Foulds, Jr.*
- 15.** Discuss and consider approval of the First Amendment to Second Amended Wastewater Service and Impact Fee Agreement between The City of Dripping Springs and Development Solution Carter for The Ranch at Caliterra *Sponsor: Mayor Bill Foulds, Jr.*
- 16.** Presentation, discussion, and consideration of approval of a Beneficial Reuse Irrigation Project at Sports and Recreation Park. *Sponsor: Mayor Bill Foulds, Jr.*
- 17.** Discuss and consider approval of the Mayoral Appointment of a Council Member to the Hays County Mental Health Coordinating Committee. *Sponsor: Mayor Bill Foulds, Jr.*
- 18.** Discuss and consider approval of the Reappointment of Dean Erickson and Haley Hunt, and the Appointment of Gwyn Sommerfeld to the Historic Preservation Commission for terms ending June 30, 2026.

REPORTS

Reports listed are on file and available for review upon request. The City Council may provide staff direction; however, no action shall be taken.

19. City Attorney Report
Laura Mueller, City Attorney

CLOSED SESSION

The City Council has the right to adjourn into closed session on any item on this agenda and at any time during the course of this meeting to discuss any matter as authorized by law or by the Open Meetings Act, Texas Government Code Sections 551.071 (Consultation With Attorney), 551.072 (Deliberation Regarding Real Property), 551.073 (Deliberation Regarding Prospective Gifts), 551.074 (Personnel Matters), 551.076 (Deliberation Regarding Security Devices or Security Audits), and 551.087 (Deliberation Regarding Economic Development Negotiations), and 551.089 (Deliberation Regarding Security Devices or Security Audits). Any final action or vote on any Closed Session item will be taken in Open Session.

- 20. Consultation with Attorney regarding legal issues related to the Waste Connections Lone Star Solid Waste Services Agreement.** *Consultation with Attorney, 551.071*
- 21. Consultation with Attorney regarding legal issues related to land use, infrastructure, and takings requirements.** *Consultation with Attorney, 551.071*
- 22. Consultation with Attorney regarding legal issues related to the South Regional Water Reclamation Project, Wastewater, and Amendment 2 Permits, Wastewater Service Area and Agreements, Water Service, Wastewater Fees, and related items.** *Consultation with Attorney, 551.071*

UPCOMING MEETINGS

City Council & Board of Adjustment Meetings

- July 2, 2024, at 6:00 p.m. (CC & BOA)
- July 16, 2024, at 6:00 p.m. (CC)
- August 6, 202, at 6:00 p.m. (CC & BOA)
- August 20, 2024, at 6:00 p.m. (CC)

Board, Commission & Committee Meetings

- June 20, 2024, Famers Market Committee at 10:00 a.m.
- June 20, 2024, Emergency Management Committee at 12:00 p.m.
- June 20, 2024, Utility Commission at 4:00 p.m.
- June 20, 2024, Parks & Recreation Committee at 6:00 p.m.
- June 24, 2024, Transportation Committee at 3:30 p.m.
- June 25, 2024, Planning & Zoning Commission at 6:00 p.m.
- June 26, 2024, Economic Development Committee at 4:00 p.m.

ADJOURN

TEXAS OPEN MEETINGS ACT PUBLIC NOTIFICATION OF MEETING

*I certify that this public meeting is posted in accordance with Texas Government Code Chapter 551, Open Meetings. This meeting agenda is posted on the bulletin board at the City of Dripping Springs City Hall, located at 511 Mercer Street, and on the City website at, www.cityofdrippingsprings.com, on **June 14, 2024, at 5:00 p.m.***

Diana Boone, City Secretary

This facility is wheelchair accessible. Accessible parking spaces are available. Request for auxiliary aids and services must be made 48 hours prior to this meeting by calling (512) 858-4725.



City Council Budget Workshop & Regular Meeting

City of Dripping Springs Council Chambers

511 Mercer Street - Dripping Springs, TexasTexas

Tuesday, June 04, 2024, at 6:00 PM

MINUTES

CALL TO ORDER & ROLL CALL

With a quorum of the City Council present, Mayor Foulds, Jr. called the meeting to order at 6:00 p.m.

City Council Members present were:

Mayor Bill Foulds, Jr.
 Mayor Pro Tem Taline Manassian
 Council Member Place 2 Wade King
 Council Member Place 3 Geoffrey Tahuahua (*arrived @ 6:14 p.m.*)
 Council Member Place 4 Travis Crow
 Council Member Place 5 Sherrie Parks

Staff, Consultants, & Appointed/Elected Officials present were:

City Administrator Michelle Fischer
 Deputy City Administrator Ginger Faught
 Deputy City Administrator Shawn Cox
 City Attorney Laura Mueller
 Deputy City Attorney Aniz Alani
 People & Communications Director Lisa Sullivan
 IT Director Jason Weinstock
 Deputy City Secretary Cathy Gieselman
 Parks & Community Services Director Andy Binz
 TIRZ Project Manager Keenan Smith
 Deputy Constable Zach Miller

PLEDGE OF ALLEGIANCE

Council Member King led the Pledge of Allegiance to the Flag.

BUDGET WORKSHOP

Workshop items are for discussion purposes only and no action shall be taken. The City Council may provide direction to staff regarding workshop items.

- 1. Presentation and discussion regarding the proposed Municipal Budget for Fiscal Year 2025.**

Shawn Cox provided a presentation which is on file.

PRESENTATION OF CITIZENS

A member of the public that wishes to address the City Council on any issue, regardless of whether it is posted on this agenda, may do so during Presentation of Citizens. It is the request of the City Council that individuals wishing to speak on agenda items with a public hearing hold their comments until the item is being considered. Individuals are allowed two (2) minutes each to speak regarding issues not on the agenda and two (2) minutes per item on the agenda and may not cede or pool time. Those requiring the assistance of a translator will be allowed additional time to speak. Individuals are not required to sign in; however, it is encouraged. Individuals that wish to share documents with the City Council must present the documents to the City Secretary or City Attorney providing at least seven (7) copies; if seven (7) copies are not provided, the City Council will receive the documents the following day. Audio Video presentations will not be accepted during Presentation of Citizens. By law no action shall be taken during Presentation of Citizens; however, the Mayor may provide a statement of specific factual information, recitation of existing policy, or direction or referral to staff.

No one spoke during Presentation of Citizens.

PRESENTATIONS

Presentations are for discussion purposes only and no action shall be taken. The City Council may provide staff direction.

2. Update on Old Fitzhugh Road Improvement Project Landscape Plans.

Keenan Smith, TIRZ Project Manager

Keenan Smith noted the presentation was not received in time for the meeting and will be postponed for another date.

3. Update on Downtown Restrooms Project.

Keenan Smith, TIRZ Project Manager

Keenan Smith and Laura Mueller provided a presentation and addressed questions from council members. Presentation is on file.

CONSENT AGENDA

The following items will be acted upon in a single motion and are considered to be ministerial or routine. No separate discussion or action on these items will be held unless pulled at the request of a member of the City Council or City staff.

4. Approval of the May 21, 2024, City Council regular meeting minutes.

5. Approval of Cadel Beasley's Distinguished Conservation Service Award project to build a Composting Station at Dripping Springs Ranch Park. Sponsor: Council Member Wade King.

6. Approval of a Resolution of the City of Dripping Springs appointing F.A. Bartlett Tree Expert Company as City Arborist. Sponsor: Council Member Travis Crow.

Filed as Resolution No. 2024-R07

A motion was made by Mayor Por Tem Manassian to approve Consent Agenda Items 4 – 6. Council Member Crow seconded the motion which carried unanimously 5 to 0.

BUSINESS AGENDA

- 7. Presentation and consideration of approval of the City of Dripping Springs Fiscal Year 2022-2023 Audit.** *Presenter: Roger Tovar, Whitley Penn.*

Shawn Cox introduced the item and provided a handout, *Financial Statements and Other Financial Information for the Fiscal Year Ended September 30, 2023*, which is on file. Roger Tovar, Partner with Whitley Penn, provided a presentation of the audit which is on file.

A motion was made by Mayor Pro Tem Manassian to approve the City of Dripping Springs Fiscal Year 2022-23 Audit as presented. Council Member Tahuahua seconded the motion which carried unanimously 5 to 0.

- 8. Discuss and consider approval of a Supplemental Agreement Regarding Wastewater Service between the City of Dripping Springs and Development Solutions Carter, LLC for The Ranch at Caliterra.** *Sponsor: Mayor Bill Foulds.*

Ginger Faught requested this item be postponed until the June 18, 2024, meeting. No action taken.

- 9. Discuss and consider the Appointment of the Mayor Pro Tem to serve a term of one (1) year.**

A motion was made by Council Member Crow to approve the Reappointment of Taline Manassian as Mayor Pro Tem to serve a term of one year. Council Member King seconded the motion which carried unanimously 5 to 0.

- 10. Discussion and possible action regarding the Mayoral Appointment of Council Members to Council Areas of Oversight.** *Sponsor: Mayor Bill Foulds, Jr.*

Mayor Foulds, Jr. appointed Council Members to the following Areas of Oversight and discussed the role of oversight which includes providing input to Mayor and City Staff:

a. Parks:

Primary: Mayor Pro Tem Manassian;
Council Member Crow will help

Dripping Springs Ranch Park & Farmers Market:

Primary: Council Member Parks;
Secondary: Mayor Pro Tem Manassian

b. Public Health and Safety:

Primary: Council Member Tahuahua;
Secondary: Council Member King

- c. **Utilities:**
Mayor Foulds, Jr.
- d. **Finance:**
Mayor Pro Tem Manassian
- e. **Transportation and Streets:**
Primary: Council Member Crow;
Secondary: Council Member Tahuahua
Council Member Parks will help
- f. **Community Events and Services:**
Council Member Parks

Laura Mueller noted that it was important to be aware of a walking quorum due to the number of members appointed to each area of oversight.

11. Discuss and consider possible action regarding the Mayoral Appointment of Council Members to Council Committees and to the Hays County Mental Health Coordinating Committee. Sponsor: Mayor Bill Foulds, Jr.

Mayor Foulds, Jr. appointed Council Members to the following Committees:

- a. **Economic Development Committee:**
Mayor Foulds, Jr. noted that the Economic Development Committee will be paused to figure out a direction of the Committee moving forward. The Chamber will be reactivating their Economic Development Committee and would like to have a representative from City Council serve.
Primary: Council Member Parks;
Secondary: Mayor Pro Tem Manassian
- b. **Transportation Committee:**
Council Member Crow
- c. **Farmers Market Committee:**
Primary: Council Member Parks
Secondary: Mayor Pro Tem Manassian
- d. **Emergency Management Committee:**
Council Member Tahuahua
- e. **Hays County Mental Health Coordinating Committee**
Mayor Foulds Jr. and Ginger Faught will attend the first virtual meeting with Hays County on June 12th and bring back more information about this committee to council members at the June 18th meeting.

REPORTS

Reports listed are on file and available for review upon request. The City Council may provide staff direction; however, no action shall be taken.

- 12. City Attorney Report**
Laura Mueller, City Attorney
- 13. Planning Department Report**
Tory Carpenter, Planning Director

A motion was made by Mayor Pro Tem Manassian to adjourn into Closed Session under Item 14 pursuant to Texas Government Code Sections 551.071, Consultation with Attorney. Council Member Tahuahua seconded the motion which carried unanimously 5 to 0.

CLOSED SESSION

The City Council has the right to adjourn into closed session on any item on this agenda and at any time during the course of this meeting to discuss any matter as authorized by law or by the Open Meetings Act, Texas Government Code Sections 551.071 (Consultation With Attorney), 551.072 (Deliberation Regarding Real Property), 551.073 (Deliberation Regarding Prospective Gifts), 551.074 (Personnel Matters), 551.076 (Deliberation Regarding Security Devices or Security Audits), and 551.087 (Deliberation Regarding Economic Development Negotiations), and 551.089 (Deliberation Regarding Security Devices or Security Audits). Any final action or vote on any Closed Session item will be taken in Open Session.

- 14. Consultation with Attorney regarding legal issues related to the South Regional Water Reclamation Project, Wastewater, and Amendment 2 Permits, Wastewater Service Area and Agreements, Water Service, Wastewater Fees, and related items. Consultation with Attorney, 551.071**

The City Council met in Closed Session from 7:03 p.m. to 7:22 p.m.

Council Member Crow recused from Closed Session during water discussion, exited the Closed Session and did not return until Open Session.

No vote or action was taken during Closed Session. Mayor Foulds, Jr. returned the meeting to Open Session at 7:22 p.m.

UPCOMING MEETINGS

City Council & Board of Adjustment Meetings

- June 18, 2024, at 6:00 p.m. (CC)
- July 2, 2024, at 6:00 p.m. (CC & BOA)
- July 16, 2024, at 6:00 p.m. (CC)
- August 6, 2024, at 6:00 p.m. (CC & BOA)

Board, Commission & Committee Meetings

- June 6, 2024, Historic Preservation Commission at 4:00 p.m.
- June 10, 2024, TIRZ No. 1 & No. 2 Board at 4:00 p.m.
- June 12, 2024, DSRP Board at 11:00 a.m.
- June 20, 2024, Parks & Recreation Commission at 6:00 p.m.
- June 20, 2024, Farmers Market Committee at 10:00 a.m.
- June 20, 2024, Emergency Management Committee at 12:00 p.m.
- June 20, 2024, Utility Commission at 4:00 p.m.
- June 24, 2024, Transportation Committee at 3:30 p.m.
- June 26, 2024, Economic Development Committee at 4:00 p.m.

ADJOURN

A motion was made by Mayor Pro Tem Manassian to adjourn the meeting. Council Member Tahuahua seconded the motions which carried unanimously 5 to 0.

This regular meeting adjourned at 7:22 p.m.

APPROVED ON: June 18, 2024

Bill Foulds, Jr., Mayor

ATTEST:

Cathy Gieselman, Deputy City Secretary



DRIPPING SPRINGS
Texas

To: Mayor Bill Foulds, Jr. and City Council, City of Dripping Springs

From: Shawn Cox, Deputy City Administrator 

Date: June 18, 2024

RE: May 2024 City Treasurer's Report

General Fund:

The General Fund received **\$669,745.11** in revenues for May.

General Fund revenues are in line with the amended/projected budget. Some line items of note include:

- 100-000-40001: Sales Tax Revenue – \$415,693.30 was received in May, of which \$315,053.03 is considered City Revenues and is not allocated to either the Utility Fund or through agreements. This is a decrease of 1.48% over May 2023 collections. However, current projections still anticipate collecting \$4.2 to \$4.3 million in FY 2024.
- 100-200-43000: Site Development Fees – In May, \$73,166.35 was collected, bring total collection for FY 2024 to \$392,652.09.
- 100-200-43030: Subdivision Fees - \$64,181.38 was collected in May. Total collections for the year equal \$271,873.38.
- 100-402-44004: Park Rental Income – For May, \$18,735.00 was collected. The primary revenue source for this line item comes from the pool use agreement with Tiger Splash.

General Fund expenditures are in line with the amended budget. Some line items of note include:

- 100-106-64001: Office IT Equipment & Support – Through May, \$131,739.97 (94.44%) has been spent out of this line item. This also included costs related to the new Development Services Building, which will be reimbursed for the debt issuance.
- 100-300-71001: Transportation Improvement Projects – This line item, through May, shows to be \$64,814.95 over budget. The primary driver for this overage is the reimbursement for the improvements made to Rob Shelton Boulevard. The improvements were anticipated to be completed in FY 2023. The savings from 2023 will be carried forward in a future budget amendment to cover these overages.

Utility Fund:

The Utility Fund received **\$262,623.65** in revenues for May.

Utility Fund revenues are in line with the amended/projected budget. Some line items of note include:

- 400-300-43018: Wastewater Service Fees - \$117,693.77 was received in May.
- 400-301-43041: Water Usage Through May, \$128,556.44 has been collected. This is \$28,556.44 more than the \$100,000.00 budgeted for FY 2024.
- 400-310-41001: PEC Franchise Fee – The City received \$45,236.93 from PEC for their quarterly franchise fee payment. This payment brings the total collected for the year to \$152,407.62, which is \$22,407.62 more than



DRIPPING SPRINGS
Texas

what was budgeted for FY 2024. There is one more remaining payment for this year. The budget will be amended to reflect these revenues.

- 400-310-41003: Cable Franchise Fees – The City received \$36,797.59 in May, bringing total collection for the year to \$ 112,928.81.

Utility Fund expenditures are in line with the amended/projected budget.

Dripping Springs Ranch Park (DSRP):

The Ranch Park received **\$226,291.34** in May.

DSRP revenues are in line with the amended/projected budget. Some line items of note include:

- 200-401-43010: Stall Rental Fees – Through May, \$40,176.99 has been collected, which is \$2,976.99 more than the \$37,200.00 budgeted for FY 2024.
- 200-201-43011: RV Site Rental Fees – Through May, \$24,845.82 has been collected, which is \$5,845.82 more than the \$19,000.00 budgeted for FY 2024. This is primarily due to revenue from the Thomas Carnival who utilizes the site during Founders Day.
- 200-401-43012: Facility Rental Fees - \$34,636.38 was collected in May, bringing total collections for the year to \$124,868.02. This is \$11,368.02 more than the \$113,500.00 budgeted for FY 2024.
- 200-401-44005: Coyote Camp – \$100,163.50 (73.06%) of the projected \$137,100.00 has been collected through May.

DSRP expenditures are in line with the amended/projected budget.

Banking:

On May 31st, the City's cash balance was **\$29.28 Million**. This is a 6.16% decrease from the previous month's cash balances. The primary driver for this reduction is the payments of the City's debt services. A total of **\$65,776.86** was collected in interest revenues in May.



DRIPPING SPRINGS Texas





DRIPPING SPRINGS
Texas

		Original Total Budget	Current Total Budget	Period Activity	Fiscal Activity	Variance Favorable (Unfavorable)	Percent Remaining
Fund: 100 - General Fund							
Revenue							
Department: 000 - Undesignated							
100-000-40000	Ad Valorem Tax	3,389,487.36	3,389,487.36	14,083.54	3,258,958.43	-130,528.93	3.85 %
100-000-40001	Sales Tax Revenue	3,800,000.00	3,800,000.00	415,693.30	3,087,330.98	-712,669.02	18.75 %
100-000-40002	Mixed Beverage	75,000.00	75,000.00	9,926.49	65,690.16	-9,309.84	12.41 %
100-000-40006	Ad Valorem Tax Penalty/Interest	4,000.00	4,000.00	1,089.69	6,145.87	2,145.87	153.65 %
100-000-41000	Solid Waste Franchise Fee	45,000.00	45,000.00	17,712.50	34,856.19	-10,143.81	22.54 %
100-000-42000	Alcohol Permit Fees	9,000.00	9,000.00	0.00	4,737.50	-4,262.50	47.36 %
100-000-46001	Other Revenues	40,000.00	40,000.00	-42,981.82	428,249.83	388,249.83	1,070.62 %
100-000-46002	Interest	50,000.00	50,000.00	15,579.24	127,171.00	77,171.00	254.34 %
100-000-46013	Opioid Abatement	0.00	0.00	0.00	49.56	49.56	0.00 %
100-000-46014	Transportation Improvements Reim	240,000.00	240,000.00	0.00	0.00	-240,000.00	100.00 %
100-000-47001	Transfer from DSRP	10,400.00	10,400.00	0.00	0.00	-10,400.00	100.00 %
100-000-47013	Transfer From TIRZ	100,558.00	100,558.00	0.00	0.00	-100,558.00	100.00 %
Department: 000 - Undesignated Total:		7,763,445.36	7,763,445.36	431,102.94	7,013,189.52	-750,255.84	9.66%
Department: 105 - Communications							
100-105-43046	Eclipse Vendor Fee	0.00	0.00	0.00	250.00	250.00	0.00 %
100-105-44000	Sponsorships & Donations	30,000.00	30,000.00	500.00	20,302.50	-9,697.50	32.33 %
100-105-46006	Merchandise	17,500.00	17,500.00	0.00	59,516.09	42,016.09	340.09 %
100-105-47005	Transfer from HOT	62,709.00	62,709.00	0.00	0.00	-62,709.00	100.00 %
Department: 105 - Communications Total:		110,209.00	110,209.00	500.00	80,068.59	-30,140.41	27.35%
Department: 200 - Planning & Development							
100-200-42001	Health Permits/Inspections	75,000.00	75,000.00	6,665.00	47,200.00	-27,800.00	37.07 %
100-200-43000	Site Development Fees	850,000.00	850,000.00	73,166.35	392,652.09	-457,347.91	53.81 %
100-200-43002	Zoning Fees	65,000.00	65,000.00	10,640.00	113,035.50	48,035.50	173.90 %
100-200-43030	Subdivision Fees	638,875.00	638,875.00	64,181.38	271,873.38	-367,001.62	57.44 %
Department: 200 - Planning & Development Total:		1,628,875.00	1,628,875.00	154,652.73	824,760.97	-804,114.03	49.37%
Department: 201 - Building							
100-201-42007	Sign Permits	0.00	0.00	1,725.00	27,102.90	27,102.90	0.00 %
100-201-43029	Fire Inspections	50,000.00	50,000.00	9,218.48	48,052.35	-1,947.65	3.90 %
100-201-43031	Building Code Fees	1,500,000.00	1,500,000.00	1,810.70	1,129,150.36	-370,849.64	24.72 %
Department: 201 - Building Total:		1,550,000.00	1,550,000.00	12,754.18	1,204,305.61	-345,694.39	22.30%
Department: 400 - Parks & Recreation							
100-400-44000	Sponsorships & Donations	5,000.00	5,000.00	0.00	2,605.00	-2,395.00	47.90 %
100-400-44001	Community Service Fees	1,800.00	1,800.00	50.00	340.00	-1,460.00	81.11 %
100-400-44002	Program & Event Fees	22,600.00	22,600.00	0.00	6,257.00	-16,343.00	72.31 %
100-400-44004	Park Rental Income	6,000.00	6,000.00	550.00	11,468.00	5,468.00	191.13 %
100-400-47002	Transfer from Parkland Dedication	541,480.00	554,048.00	0.00	0.00	-554,048.00	100.00 %
100-400-47003	Transfer from Landscaping Fund	3,000.00	3,000.00	0.00	0.00	-3,000.00	100.00 %
Department: 400 - Parks & Recreation Total:		579,880.00	592,448.00	600.00	20,670.00	-571,778.00	96.51%
Department: 402 - Aquatics							
100-402-44003	Aquatic Fees	55,300.00	55,300.00	6,684.14	8,133.14	-47,166.86	85.29 %
100-402-44004	Park Rental Income	20,800.00	20,800.00	18,735.00	18,735.00	-2,065.00	9.93 %
Department: 402 - Aquatics Total:		76,100.00	76,100.00	25,419.14	26,868.14	-49,231.86	64.69%
Department: 404 - Founders Day							
100-404-45000	FD Craft/Business Booths	6,250.00	6,250.00	-10,415.00	12,285.00	6,035.00	196.56 %
100-404-45001	FD Food Booths	1,300.00	1,300.00	1,575.00	1,575.00	275.00	121.15 %
100-404-45002	FD BBQ Cooker Registration Fees	4,600.00	4,600.00	4,950.00	4,950.00	350.00	107.61 %
100-404-45003	FD Carnival	14,000.00	14,000.00	16,739.00	16,739.00	2,739.00	119.56 %

		Original Total Budget	Current Total Budget	Period Activity	Fiscal Activity	Variance Favorable (Unfavorable)	Percent Remaining
100-404-45004	FD Parade Registration Fees	4,000.00	4,000.00	155.00	4,130.00	130.00	103.25 %
100-404-45005	FD Sponsorships	90,000.00	90,000.00	29,050.00	119,400.00	29,400.00	132.67 %
100-404-45006	FD Parking Fees	1,000.00	1,000.00	522.12	522.12	-477.88	47.79 %
100-404-45007	FD Electric Fees	3,300.00	3,300.00	2,140.00	2,470.00	-830.00	25.15 %
Department: 404 - Founders Day Total:		124,450.00	124,450.00	44,716.12	162,071.12	37,621.12	30.23%
Revenue Total:		11,832,959.36	11,845,527.36	669,745.11	9,331,933.95	-2,513,593.41	21.22%
Expense							
Department: 000 - Undesignated							
100-000-60000	Salaries	3,238,716.65	3,238,716.65	0.00	0.00	3,238,716.65	100.00 %
100-000-61000	Health Insurance	279,323.88	279,323.88	4,642.33	40,584.40	238,739.48	85.47 %
100-000-61001	Dental Insurance	0.00	0.00	0.00	2.18	-2.18	0.00 %
100-000-61002	Medicare	0.00	0.00	0.00	4.34	-4.34	0.00 %
100-000-61003	Social Security	0.00	0.00	0.00	18.55	-18.55	0.00 %
100-000-61005	Federal Withholding	259,605.82	259,605.82	0.00	0.00	259,605.82	100.00 %
100-000-61006	TMRS	185,186.55	185,186.55	0.00	18.18	185,168.37	99.99 %
100-000-62009	Human Resources Consultant	28,306.00	28,306.00	1,833.33	21,830.84	6,475.16	22.88 %
100-000-63004	Dues, Fees & Subscriptions	31,500.00	31,500.00	3,580.24	63,194.82	-31,694.82	-100.62 %
100-000-63005	Training/Continuing Education	84,158.93	84,158.93	5,122.53	51,355.04	32,803.89	38.98 %
100-000-64000	Office Supplies	35,000.00	35,000.00	3,924.88	23,399.18	11,600.82	33.15 %
100-000-64004	Office Furniture and Equipment	10,300.00	10,300.00	0.00	299.99	10,000.01	97.09 %
100-000-66002	Postage & Shipping	3,500.00	3,500.00	567.04	3,321.12	178.88	5.11 %
100-000-68004	Animal Control	3,400.00	3,400.00	0.00	0.00	3,400.00	100.00 %
100-000-69002	Economic Development	5,000.00	5,000.00	0.00	5,000.00	0.00	0.00 %
100-000-70001	Mileage	2,000.00	2,000.00	0.00	0.00	2,000.00	100.00 %
100-000-70002	Contingencies/Emergency Fund	50,000.00	50,000.00	0.00	0.00	50,000.00	100.00 %
100-000-70003	Other Expenses	10,000.00	10,000.00	0.00	107.41	9,892.59	98.93 %
100-000-90000	Transfer to Reserve Fund	500,000.00	500,000.00	0.00	0.00	500,000.00	100.00 %
100-000-90002	Transfer to TIRZ	668,644.77	668,644.77	0.00	0.00	668,644.77	100.00 %
100-000-90011	Transfer to Capital Improvements	300,000.00	300,000.00	0.00	0.00	300,000.00	100.00 %
100-000-90013	Transfer to Vehicle Replacement Fu	86,010.00	86,010.00	0.00	0.00	86,010.00	100.00 %
100-000-90015	Transfer to Farmers Marke	16,679.31	16,679.31	0.00	0.00	16,679.31	100.00 %
Department: 000 - Undesignated Total:		5,797,331.91	5,797,331.91	19,670.35	209,136.05	5,588,195.86	96.39%
Department: 100 - City Council/Boards & Commissions							
100-100-69000	Family Violence Center	7,000.00	7,000.00	0.00	0.00	7,000.00	100.00 %
100-100-69008	Land Acquisition	10,000.00	10,000.00	0.00	67,500.00	-57,500.00	-575.00 %
Department: 100 - City Council/Boards & Commissions Total:		17,000.00	17,000.00	0.00	67,500.00	-50,500.00	-297.06%
Department: 101 - City Administrators Office							
100-101-60000	Regular Employees	0.00	0.00	58,497.51	354,009.41	-354,009.41	0.00 %
100-101-60002	Overtime	0.00	0.00	57.28	1,281.39	-1,281.39	0.00 %
100-101-61000	Health Insurance	0.00	0.00	2,206.68	12,769.59	-12,769.59	0.00 %
100-101-61001	Dental Insurance	0.00	0.00	202.20	1,179.50	-1,179.50	0.00 %
100-101-61002	Medicare	0.00	0.00	800.34	4,859.66	-4,859.66	0.00 %
100-101-61003	Social Security	0.00	0.00	3,422.24	18,179.17	-18,179.17	0.00 %
100-101-61004	Unemployment	0.00	0.00	0.00	575.99	-575.99	0.00 %
100-101-61006	TMRS	0.00	0.00	3,454.70	20,913.97	-20,913.97	0.00 %
Department: 101 - City Administrators Office Total:		0.00	0.00	68,640.95	413,768.68	-413,768.68	0.00%
Department: 102 - City Secretary							
100-102-60000	Regular Employees	0.00	0.00	11,464.62	99,817.49	-99,817.49	0.00 %
100-102-60001	Part-time Employees	0.00	0.00	631.60	631.60	-631.60	0.00 %
100-102-60002	Overtime	0.00	0.00	402.23	1,458.35	-1,458.35	0.00 %
100-102-61000	Health Insurance	0.00	0.00	728.37	7,981.36	-7,981.36	0.00 %
100-102-61001	Dental Insurance	0.00	0.00	50.55	556.05	-556.05	0.00 %
100-102-61002	Medicare	0.00	0.00	179.37	1,458.07	-1,458.07	0.00 %
100-102-61003	Social Security	0.00	0.00	766.93	6,234.46	-6,234.46	0.00 %
100-102-61004	Unemployment	0.00	0.00	10.11	298.11	-298.11	0.00 %
100-102-61006	TMRS	0.00	0.00	700.15	5,989.89	-5,989.89	0.00 %
100-102-62000	Municipal Election	8,000.00	8,000.00	0.00	0.00	8,000.00	100.00 %

		Original Total Budget	Current Total Budget	Period Activity	Fiscal Activity	Variance Favorable (Unfavorable)	Percent Remaining
100-102-62018	Code Publication	5,200.00	5,200.00	4,761.47	5,138.07	61.93	1.19 %
100-102-64003	Uniforms	0.00	0.00	0.00	138.00	-138.00	0.00 %
100-102-64032	Meeting Supplies	12,700.00	12,700.00	520.00	2,696.08	10,003.92	78.77 %
100-102-66003	Public Notices	2,000.00	2,000.00	756.60	2,422.95	-422.95	-21.15 %
100-102-69003	Records Management	1,220.00	1,220.00	60.00	514.00	706.00	57.87 %
Department: 102 - City Secretary Total:		29,120.00	29,120.00	21,032.00	135,334.48	-106,214.48	-364.75%
Department: 103 - Courts							
100-103-62003	Muni Court Attorney/ Judge	15,500.00	15,500.00	0.00	3,890.00	11,610.00	74.90 %
Department: 103 - Courts Total:		15,500.00	15,500.00	0.00	3,890.00	11,610.00	74.90%
Department: 104 - City Attorney							
100-104-60000	Regular Employees	0.00	0.00	30,053.93	147,763.38	-147,763.38	0.00 %
100-104-60001	Part-time Employees	0.00	0.00	0.00	265.00	-265.00	0.00 %
100-104-61000	Health Insurance	0.00	0.00	1,468.08	6,122.94	-6,122.94	0.00 %
100-104-61001	Dental Insurance	0.00	0.00	101.10	421.25	-421.25	0.00 %
100-104-61002	Medicare	0.00	0.00	432.33	2,126.65	-2,126.65	0.00 %
100-104-61003	Social Security	0.00	0.00	1,848.63	9,093.61	-9,093.61	0.00 %
100-104-61004	Unemployment	0.00	0.00	0.00	292.23	-292.23	0.00 %
100-104-61006	TMRS	0.00	0.00	1,773.18	8,766.97	-8,766.97	0.00 %
100-104-62003	Special Counsel and Consultants	49,000.00	49,000.00	4,000.00	26,079.97	22,920.03	46.78 %
Department: 104 - City Attorney Total:		49,000.00	49,000.00	39,677.25	200,932.00	-151,932.00	-310.07%
Department: 105 - Communications							
100-105-60000	Regular Employees	0.00	0.00	20,544.45	124,080.80	-124,080.80	0.00 %
100-105-61000	Health Insurance	0.00	0.00	1,488.06	8,923.80	-8,923.80	0.00 %
100-105-61001	Dental Insurance	0.00	0.00	101.10	606.60	-606.60	0.00 %
100-105-61002	Medicare	0.00	0.00	296.34	1,789.84	-1,789.84	0.00 %
100-105-61003	Social Security	0.00	0.00	1,267.05	7,652.78	-7,652.78	0.00 %
100-105-61004	Unemployment	0.00	0.00	0.00	287.99	-287.99	0.00 %
100-105-61006	TMRS	0.00	0.00	1,212.12	7,362.42	-7,362.42	0.00 %
100-105-63023	General Maintenance	32,670.00	32,670.00	3,921.00	31,231.00	1,439.00	4.40 %
100-105-64021	Merchandise	23,639.00	23,639.00	-417.51	43,619.73	-19,980.73	-84.52 %
100-105-66000	Website	6,800.00	6,800.00	0.00	6,916.24	-116.24	-1.71 %
100-105-66005	Public Relations	15,300.00	15,300.00	1,039.20	1,059.20	14,240.80	93.08 %
100-105-66010	Events, Entertainment & Activities	28,500.00	28,500.00	461.02	3,561.02	24,938.98	87.51 %
100-105-70003	Other Expenses	25,400.00	25,400.00	7,588.37	17,301.30	8,098.70	31.88 %
Department: 105 - Communications Total:		132,309.00	132,309.00	37,501.20	254,392.72	-122,083.72	-92.27%
Department: 106 - IT							
100-106-60000	Regular Employees	0.00	0.00	8,806.65	54,132.22	-54,132.22	0.00 %
100-106-61000	Health Insurance	0.00	0.00	749.55	4,496.24	-4,496.24	0.00 %
100-106-61001	Dental Insurance	0.00	0.00	50.55	303.30	-303.30	0.00 %
100-106-61002	Medicare	0.00	0.00	127.44	783.37	-783.37	0.00 %
100-106-61003	Social Security	0.00	0.00	544.86	3,349.29	-3,349.29	0.00 %
100-106-61004	Unemployment	0.00	0.00	0.00	144.00	-144.00	0.00 %
100-106-61006	TMRS	0.00	0.00	519.60	3,216.63	-3,216.63	0.00 %
100-106-64001	Office IT Equipment & Support	139,499.00	139,499.00	23,935.17	131,739.97	7,759.03	5.56 %
100-106-64002	Software	192,000.00	192,000.00	13,140.59	146,306.94	45,693.06	23.80 %
100-106-65000	Network/Phone	58,395.84	58,395.84	7,505.24	42,314.37	16,081.47	27.54 %
Department: 106 - IT Total:		389,894.84	389,894.84	55,379.65	386,786.33	3,108.51	0.80%
Department: 107 - Finance							
100-107-60000	Regular Employees	0.00	0.00	40,278.70	187,215.28	-187,215.28	0.00 %
100-107-60002	Overtime	0.00	0.00	28.73	323.45	-323.45	0.00 %
100-107-61000	Health Insurance	0.00	0.00	2,911.62	14,341.66	-14,341.66	0.00 %
100-107-61001	Dental Insurance	0.00	0.00	202.20	994.15	-994.15	0.00 %
100-107-61002	Medicare	0.00	0.00	454.75	2,414.23	-2,414.23	0.00 %
100-107-61003	Social Security	0.00	0.00	1,944.36	10,322.58	-10,322.58	0.00 %
100-107-61004	Unemployment	0.00	0.00	0.00	431.99	-431.99	0.00 %
100-107-61006	TMRS	0.00	0.00	2,051.06	10,748.29	-10,748.29	0.00 %
100-107-62001	Financial Services	37,500.00	37,500.00	18,000.00	41,000.00	-3,500.00	-9.33 %

		Original Total Budget	Current Total Budget	Period Activity	Fiscal Activity	Variance Favorable (Unfavorable)	Percent Remaining
100-107-67000	TML Liability Insurance	27,277.00	27,277.00	0.00	11,087.50	16,189.50	59.35 %
100-107-67001	TML Property Insurance	48,810.00	48,810.00	13,478.00	40,677.00	8,133.00	16.66 %
100-107-67002	TML Workmen's Comp Insurance	34,656.00	34,656.00	8,664.00	44,007.00	-9,351.00	-26.98 %
100-107-70001	Mileage	0.00	0.00	21.93	207.45	-207.45	0.00 %
100-107-80004	Series 2024	367,000.00	367,000.00	0.00	0.00	367,000.00	100.00 %
100-107-90003	Transfer to Wastewater Utility Fund	760,000.00	760,000.00	0.00	534,327.53	225,672.47	29.69 %
100-107-90004	SPA & ECO D Transfers	218,880.00	218,880.00	0.00	115,964.05	102,915.95	47.02 %
Department: 107 - Finance Total:		1,494,123.00	1,494,123.00	88,035.35	1,014,062.16	480,060.84	32.13%
Department: 200 - Planning & Development							
100-200-60000	Regular Employees	0.00	0.00	18,062.30	132,316.16	-132,316.16	0.00 %
100-200-60002	Overtime	0.00	0.00	24.69	383.85	-383.85	0.00 %
100-200-61000	Health Insurance	0.00	0.00	1,484.92	11,311.20	-11,311.20	0.00 %
100-200-61001	Dental Insurance	0.00	0.00	101.10	775.10	-775.10	0.00 %
100-200-61002	Medicare	0.00	0.00	250.26	1,848.45	-1,848.45	0.00 %
100-200-61003	Social Security	0.00	0.00	1,070.02	7,903.42	-7,903.42	0.00 %
100-200-61004	Unemployment	0.00	0.00	0.00	428.92	-428.92	0.00 %
100-200-61006	TMRS	0.00	0.00	1,067.13	7,879.61	-7,879.61	0.00 %
100-200-62002	Engineering & Surveying	70,000.00	70,000.00	1,006.25	2,168.75	67,831.25	96.90 %
100-200-62005	Health Inspector	60,000.00	60,000.00	5,750.00	36,071.30	23,928.70	39.88 %
100-200-62006	Architectural & Landscape Consulta	5,000.00	5,000.00	0.00	949.13	4,050.87	81.02 %
100-200-62007	Historic District Consultant	13,500.00	19,750.00	6,625.00	8,840.40	10,909.60	55.24 %
100-200-62010	Miscellaneous Consultant	165,000.00	257,119.92	1,020.00	18,518.18	238,601.74	92.80 %
Department: 200 - Planning & Development Total:		313,500.00	411,869.92	36,461.67	229,394.47	182,475.45	44.30%
Department: 201 - Building							
100-201-60000	Regular Employees	0.00	0.00	46,161.45	254,754.07	-254,754.07	0.00 %
100-201-60002	Overtime	0.00	0.00	1,675.15	7,126.22	-7,126.22	0.00 %
100-201-61000	Health Insurance	0.00	0.00	5,060.34	26,000.48	-26,000.48	0.00 %
100-201-61001	Dental Insurance	0.00	0.00	353.85	1,818.61	-1,818.61	0.00 %
100-201-61002	Medicare	0.00	0.00	663.14	3,679.57	-3,679.57	0.00 %
100-201-61003	Social Security	0.00	0.00	2,835.33	15,732.70	-15,732.70	0.00 %
100-201-61004	Unemployment	0.00	0.00	50.98	1,196.42	-1,196.42	0.00 %
100-201-61006	TMRS	0.00	0.00	2,822.36	15,541.48	-15,541.48	0.00 %
100-201-62004	Bldg. Inspector	750,000.00	750,000.00	0.00	440,070.00	309,930.00	41.32 %
100-201-62008	Lighting Consultant	2,000.00	2,000.00	488.75	983.75	1,016.25	50.81 %
100-201-62014	FireInspector	40,000.00	40,000.00	0.00	49,448.43	-9,448.43	-23.62 %
100-201-64003	Uniforms	0.00	0.00	448.00	3,067.75	-3,067.75	0.00 %
Department: 201 - Building Total:		792,000.00	792,000.00	60,559.35	819,419.48	-27,419.48	-3.46%
Department: 300 - Wastewater							
100-300-60000	Regular Employees	0.00	0.00	0.00	49,404.97	-49,404.97	0.00 %
100-300-61000	Health Insurance	0.00	0.00	0.00	2,448.22	-2,448.22	0.00 %
100-300-61001	Dental Insurance	0.00	0.00	0.00	168.50	-168.50	0.00 %
100-300-61002	Medicare	0.00	0.00	0.00	677.82	-677.82	0.00 %
100-300-61003	Social Security	0.00	0.00	0.00	2,898.32	-2,898.32	0.00 %
100-300-61004	Unemployment	0.00	0.00	0.00	143.99	-143.99	0.00 %
100-300-61006	TMRS	0.00	0.00	0.00	2,924.70	-2,924.70	0.00 %
100-300-71001	Transportation Improvement Proje	1,140,000.00	1,140,000.00	889,424.83	1,204,814.95	-64,814.95	-5.69 %
Department: 300 - Wastewater Total:		1,140,000.00	1,140,000.00	889,424.83	1,263,481.47	-123,481.47	-10.83%
Department: 304 - Maintenance							
100-304-60000	Regular Employees	0.00	0.00	38,978.58	279,982.38	-279,982.38	0.00 %
100-304-60002	Overtime	0.00	0.00	3,456.36	9,692.17	-9,692.17	0.00 %
100-304-60003	On Call Pay	0.00	0.00	1,200.00	7,400.00	-7,400.00	0.00 %
100-304-61000	Health Insurance	0.00	0.00	4,341.28	30,365.96	-30,365.96	0.00 %
100-304-61001	Dental Insurance	0.00	0.00	303.30	2,123.10	-2,123.10	0.00 %
100-304-61002	Medicare	0.00	0.00	627.89	4,181.60	-4,181.60	0.00 %
100-304-61003	Social Security	0.00	0.00	2,684.89	17,879.97	-17,879.97	0.00 %
100-304-61004	Unemployment	0.00	0.00	0.00	1,152.00	-1,152.00	0.00 %
100-304-61006	TMRS	0.00	0.00	2,574.48	17,562.92	-17,562.92	0.00 %

		Original Total Budget	Current Total Budget	Period Activity	Fiscal Activity	Variance Favorable (Unfavorable)	Percent Remaining
100-304-63000	Office Maintenance/Repairs	19,860.00	19,860.00	1,832.11	9,610.93	10,249.07	51.61 %
100-304-63001	Equipment Maintenance	6,750.00	6,750.00	-61.21	2,080.11	4,669.89	69.18 %
100-304-63002	Fleet Maintenance	78,020.00	78,020.00	6,715.02	25,933.69	52,086.31	66.76 %
100-304-63008	Stephenson Building & Lawn Maint	550.00	550.00	0.00	0.00	550.00	100.00 %
100-304-63009	Street/ROW Maintenance	211,005.00	211,005.00	22,600.03	34,176.48	176,828.52	83.80 %
100-304-63018	Triangle/Veterans Park Maintenanc	0.00	0.00	70.94	86.20	-86.20	0.00 %
100-304-64003	Uniforms	17,500.00	17,500.00	-3.80	6,111.89	11,388.11	65.07 %
100-304-64004	Office Furniture and Equipment	0.00	0.00	569.99	569.99	-569.99	0.00 %
100-304-64006	Fleet Acquisition	361,000.00	361,000.00	649.95	313,227.99	47,772.01	13.23 %
100-304-64009	Maintenance Equipment	8,500.00	8,500.00	413.49	2,571.27	5,928.73	69.75 %
100-304-64010	Maintenance Supplies	6,500.00	6,500.00	157.87	1,707.31	4,792.69	73.73 %
100-304-65001	Street Electricity	20,000.00	20,000.00	1,914.96	12,166.48	7,833.52	39.17 %
100-304-65002	City Streets Water	4,000.00	4,000.00	281.85	1,972.07	2,027.93	50.70 %
100-304-65003	Office Electricity	5,500.00	5,500.00	890.40	4,096.18	1,403.82	25.52 %
100-304-65004	Office Water	650.00	650.00	141.21	390.27	259.73	39.96 %
100-304-65005	Stephenson Bldg Electric	1,500.00	1,500.00	76.50	536.28	963.72	64.25 %
100-304-65006	Stephenson Water	500.00	500.00	64.74	276.96	223.04	44.61 %
100-304-65009	Triangle Electric	0.00	0.00	38.25	267.75	-267.75	0.00 %
100-304-69001	Lighting Compliance	2,000.00	2,000.00	0.00	0.00	2,000.00	100.00 %
100-304-69006	Stephenson Bldg Improvements	92,025.00	92,025.00	52,805.10	120,317.59	-28,292.59	-30.74 %
100-304-69010	Downtown Bathroom	200,000.00	200,000.00	0.00	0.00	200,000.00	100.00 %
100-304-69011	City Hall Planning	20,000.00	20,000.00	0.00	0.00	20,000.00	100.00 %
100-304-71002	Street Improvements	660,000.00	660,000.00	0.00	1,245.00	658,755.00	99.81 %
100-304-71003	City Hall Improvements	556,000.00	556,000.00	7,200.00	9,300.00	546,700.00	98.33 %
Department: 304 - Maintenance Total:		2,271,860.00	2,271,860.00	150,524.18	916,984.54	1,354,875.46	59.64%

Department: 400 - Parks & Recreation

100-400-60000	Regular Employees	0.00	0.00	35,365.36	162,938.36	-162,938.36	0.00 %
100-400-60001	Part-time Employees	27,801.76	27,801.76	0.00	0.00	27,801.76	100.00 %
100-400-60002	Overtime	0.00	0.00	480.94	1,658.32	-1,658.32	0.00 %
100-400-60005	Camp Staff	0.00	0.00	249.00	15,526.11	-15,526.11	0.00 %
100-400-61000	Health Insurance	0.00	0.00	1,045.44	5,022.76	-5,022.76	0.00 %
100-400-61001	Dental Insurance	0.00	0.00	67.89	328.00	-328.00	0.00 %
100-400-61002	Medicare	0.00	0.00	521.36	2,597.95	-2,597.95	0.00 %
100-400-61003	Social Security	0.00	0.00	2,229.25	11,108.65	-11,108.65	0.00 %
100-400-61004	Unemployment	0.00	0.00	70.04	925.27	-925.27	0.00 %
100-400-61006	TMRS	0.00	0.00	1,813.95	8,853.77	-8,853.77	0.00 %
100-400-63004	Dues, Fees & Subscriptions	3,402.00	3,402.00	36.15	1,458.45	1,943.55	57.13 %
100-400-63010	Sports & Rec Park Lawn Mainten	0.00	0.00	550.00	2,790.00	-2,790.00	0.00 %
100-400-63011	Founders Park Lawn Maintenance	0.00	0.00	500.00	2,540.00	-2,540.00	0.00 %
100-400-63012	Charro Ranch Landscaping	0.00	0.00	325.00	2,315.00	-2,315.00	0.00 %
100-400-63013	General Parks Maintenance	9,000.00	9,000.00	971.40	1,637.37	7,362.63	81.81 %
100-400-63015	Founders Park/Pool Maintenance	17,740.00	17,740.00	73.81	2,758.26	14,981.74	84.45 %
100-400-63016	Sports & Rec Park Maintenance	42,920.00	42,920.00	263.98	6,621.07	36,298.93	84.57 %
100-400-63017	Charro Ranch Park Maintenance	9,300.00	9,300.00	191.77	480.44	8,819.56	94.83 %
100-400-63018	Triangle/Veterans Park Maintenanc	700.00	700.00	0.00	24.99	675.01	96.43 %
100-400-63036	Skate Park Maintenance	500.00	500.00	0.00	0.00	500.00	100.00 %
100-400-63037	Rathgeber Maintenance	0.00	0.00	0.00	36.93	-36.93	0.00 %
100-400-64005	Equipment Rental	1,000.00	1,000.00	0.00	0.00	1,000.00	100.00 %
100-400-64011	Park Supplies	8,550.00	8,550.00	1,940.43	2,414.81	6,135.19	71.76 %
100-400-64012	Charro Ranch Supplies	1,250.00	1,250.00	0.00	310.54	939.46	75.16 %
100-400-64013	Founders Park/Pool Supplies	0.00	0.00	2,482.24	9,641.62	-9,641.62	0.00 %
100-400-64014	Sports & Rec Park Supplies	400.00	400.00	19.98	93.66	306.34	76.59 %
100-400-64015	Park Program & Event Supplies	10,950.00	10,950.00	353.95	3,151.77	7,798.23	71.22 %
100-400-64033	Rathgeber Supplies	600.00	600.00	0.00	587.09	12.91	2.15 %
100-400-65000	Network/Phone	8,568.00	8,568.00	0.00	0.00	8,568.00	100.00 %
100-400-65007	Portable Toilets	7,250.00	7,250.00	605.00	4,840.00	2,410.00	33.24 %
100-400-65009	Triangle Electric	500.00	500.00	0.00	0.00	500.00	100.00 %
100-400-65010	Triangle Water	500.00	500.00	35.18	246.26	253.74	50.75 %

		Original Total Budget	Current Total Budget	Period Activity	Fiscal Activity	Variance Favorable (Unfavorable)	Percent Remaining
100-400-65011	Sports & Rec Park Water	13,000.00	13,000.00	5,970.69	1,897.63	11,102.37	85.40 %
100-400-65012	Sports & Rec Park Electricity	2,500.00	2,500.00	-348.75	1,627.57	872.43	34.90 %
100-400-65014	Founders Park/Pool Electricity	0.00	0.00	460.30	3,480.34	-3,480.34	0.00 %
100-400-66001	Advertising	16,250.00	16,250.00	196.00	6,322.28	9,927.72	61.09 %
100-400-70003	Other Expenses	13,320.00	13,320.00	0.00	179.31	13,140.69	98.65 %
100-400-71004	All Parks Improvements	156,500.00	156,500.00	2,592.00	9,900.82	146,599.18	93.67 %
100-400-71005	Founders Park/Pool Improvmts	597,000.00	597,000.00	67,191.75	67,191.75	529,808.25	88.75 %
100-400-71006	Sports & Rec Park Improvements	54,000.00	66,560.00	0.00	0.00	66,560.00	100.00 %
100-400-71007	Charro Ranch Improvements	600.00	600.00	0.00	0.00	600.00	100.00 %
100-400-71010	Rathgeber Improvements	215,000.00	215,000.00	13,165.22	157,631.55	57,368.45	26.68 %
100-400-71012	Skate Park Improvements	150,000.00	150,000.00	11,463.75	100,919.02	49,080.98	32.72 %
Department: 400 - Parks & Recreation Total:		1,369,101.76	1,381,661.76	150,883.08	600,057.72	781,604.04	56.57%
Department: 401 - DSRP							
100-401-60000	Regular Employees	540,752.60	540,752.60	58,960.26	368,795.25	171,957.35	31.80 %
100-401-60002	Overtime	0.00	0.00	1,026.49	6,414.23	-6,414.23	0.00 %
100-401-60003	On Call Pay	0.00	0.00	1,200.00	7,200.00	-7,200.00	0.00 %
100-401-61000	Health Insurance	66,694.30	66,694.30	6,486.84	43,310.65	23,383.65	35.06 %
100-401-61001	Dental Insurance	0.00	0.00	454.46	3,041.01	-3,041.01	0.00 %
100-401-61002	Medicare	0.00	0.00	833.12	5,222.05	-5,222.05	0.00 %
100-401-61003	Social Security	0.00	0.00	3,562.46	22,328.98	-22,328.98	0.00 %
100-401-61004	Unemployment	0.00	0.00	93.77	1,739.79	-1,739.79	0.00 %
100-401-61005	Federal Withholding	43,887.57	43,887.57	0.00	0.00	43,887.57	100.00 %
100-401-61006	TMRS	31,931.44	31,931.44	3,601.25	22,504.94	9,426.50	29.52 %
Department: 401 - DSRP Total:		683,265.91	683,265.91	76,218.65	480,556.90	202,709.01	29.67%
Department: 402 - Aquatics							
100-402-60000	Regular Employees	0.00	0.00	7,500.00	26,633.74	-26,633.74	0.00 %
100-402-60007	Aquatic Staff	130,642.09	130,642.09	5,387.17	5,387.17	125,254.92	95.88 %
100-402-61000	Health Insurance	0.00	0.00	724.32	3,135.26	-3,135.26	0.00 %
100-402-61001	Dental Insurance	0.00	0.00	50.55	219.05	-219.05	0.00 %
100-402-61002	Medicare	0.00	0.00	186.88	448.27	-448.27	0.00 %
100-402-61003	Social Security	0.00	0.00	798.98	1,916.71	-1,916.71	0.00 %
100-402-61004	Unemployment	0.00	0.00	94.81	230.19	-230.19	0.00 %
100-402-61006	TMRS	0.00	0.00	442.50	1,570.30	-1,570.30	0.00 %
100-402-63015	Founders Park/Pool Maintenance	36,000.00	36,000.00	0.00	0.00	36,000.00	100.00 %
100-402-64013	Pool Supplies	40,075.00	40,075.00	117.42	11,730.20	28,344.80	70.73 %
100-402-65000	Network/Phone	3,040.00	3,040.00	170.87	3,194.50	-154.50	-5.08 %
100-402-65013	FMP Pool/Pavilion Water	6,000.00	6,000.00	205.97	1,398.42	4,601.58	76.69 %
100-402-65014	FMP Pool/Pavilion Electric	5,000.00	5,000.00	0.00	0.00	5,000.00	100.00 %
100-402-65019	Propane/Natural Gas	13,250.00	13,250.00	0.00	0.00	13,250.00	100.00 %
Department: 402 - Aquatics Total:		234,007.09	234,007.09	15,679.47	55,863.81	178,143.28	76.13%
Department: 404 - Founders Day							
100-404-63019	FD Clean Up	20,000.00	20,000.00	1,022.66	15,572.66	4,427.34	22.14 %
100-404-63038	FD Transportation	7,000.00	7,000.00	0.00	5,700.00	1,300.00	18.57 %
100-404-64016	FD Event Supplies	7,750.00	7,750.00	2,056.33	5,768.86	1,981.14	25.56 %
100-404-64017	FD Event Tent, Table, & Chairs	4,400.00	4,400.00	1,512.26	6,992.75	-2,592.75	-58.93 %
100-404-64018	FD Barricades	6,500.00	6,500.00	0.00	7,510.00	-1,010.00	-15.54 %
100-404-65007	Portable Toilets	15,000.00	15,000.00	0.00	8,368.10	6,631.90	44.21 %
100-404-65016	FD Electricity	2,225.00	2,225.00	1,025.09	1,025.09	1,199.91	53.93 %
100-404-66008	FD Parade	650.00	650.00	17.08	17.08	632.92	97.37 %
100-404-66009	FD Publicity	2,500.00	2,500.00	0.00	527.51	1,972.49	78.90 %
100-404-66010	Events, Entertainment & Activities	22,500.00	22,500.00	1,676.66	20,426.66	2,073.34	9.21 %
100-404-66012	FD Sponsorship	6,000.00	6,000.00	2,816.55	2,816.55	3,183.45	53.06 %
100-404-68005	FD Security	35,000.00	35,000.00	0.00	37,621.65	-2,621.65	-7.49 %
100-404-68006	FD Health, Safety & Lighting	30,500.00	30,500.00	4,745.40	26,298.42	4,201.58	13.78 %
Department: 404 - Founders Day Total:		160,025.00	160,025.00	14,872.03	138,645.33	21,379.67	13.36%
Department: 500 - Emergency Management							
100-500-60000	Regular Employees	0.00	0.00	9,111.47	55,070.09	-55,070.09	0.00 %

Budget Report

For Fiscal: FY 2024 Period Ending: Item 2. 4

		Original	Current	Period	Fiscal	Variance	
		Total Budget	Total Budget	Activity	Activity	Favorable	Percent
						(Unfavorable)	Remaining
100-500-61000	Health Insurance	0.00	0.00	25.59	152.42	-152.42	0.00 %
100-500-61001	Dental Insurance	0.00	0.00	50.55	303.30	-303.30	0.00 %
100-500-61002	Medicare	0.00	0.00	130.98	791.69	-791.69	0.00 %
100-500-61003	Social Security	0.00	0.00	560.00	3,384.85	-3,384.85	0.00 %
100-500-61004	Unemployment	0.00	0.00	0.00	143.99	-143.99	0.00 %
100-500-61006	TMRS	0.00	0.00	537.57	3,247.40	-3,247.40	0.00 %
100-500-68000	Emergency Management Equip	79,200.00	79,200.00	63.96	21,458.82	57,741.18	72.91 %
100-500-68001	Emergency Fire& Safety	996.00	996.00	212.00	1,156.64	-160.64	-16.13 %
100-500-68002	Emergency Management PR	2,000.00	2,000.00	0.00	890.92	1,109.08	55.45 %
100-500-68003	Emergency Equipment Maint	12,102.00	12,102.00	3,248.22	12,265.37	-163.37	-1.35 %
100-500-70015	Winter Storm Mara	0.00	0.00	0.00	-103,775.15	103,775.15	0.00 %
Department: 500 - Emergency Management Total:		94,298.00	94,298.00	13,940.34	-4,909.66	99,207.66	105.21%
Expense Total:		14,982,336.51	15,093,266.43	1,738,500.35	7,185,296.48	7,907,969.95	52.39%
Fund: 100 - General Fund Surplus (Deficit):		-3,149,377.15	-3,247,739.07	-1,068,755.24	2,146,637.47	5,394,376.54	166.10%

Fund: 200 - Dripping Springs Ranch Park

Revenue							
Department: 401 - DSRP							
200-401-42008	Riding Permit Fees	9,500.00	9,500.00	1,600.00	6,590.00	-2,910.00	30.63 %
200-401-43010	Stall Rental Fees	37,200.00	37,200.00	13,282.00	40,176.99	2,976.99	108.00 %
200-401-43011	RV Site Rental Fees	19,000.00	19,000.00	10,285.00	24,845.82	5,845.82	130.77 %
200-401-43012	Facility Rental Fees	113,500.00	113,500.00	34,636.38	124,868.02	11,368.02	110.02 %
200-401-43013	Equipment Rental Fees	6,000.00	6,000.00	4,065.00	11,479.48	5,479.48	191.32 %
200-401-43014	Staff & Miscellaneous Fees	4,000.00	4,000.00	400.00	2,845.00	-1,155.00	28.88 %
200-401-43015	Cleaning Fees	25,000.00	25,000.00	5,115.00	20,359.46	-4,640.54	18.56 %
200-401-44000	Sponsorships & Donations	52,275.00	52,275.00	5,480.20	8,003.20	-44,271.80	84.69 %
200-401-44005	Coyote Camp	137,100.00	137,100.00	92,061.00	100,163.50	-36,936.50	26.94 %
200-401-44006	Riding Series	35,000.00	35,000.00	9,230.00	26,119.25	-8,880.75	25.37 %
200-401-44007	Miscellaneous Events	2,000.00	2,000.00	36,046.00	59,361.00	57,361.00	2,968.05 %
200-401-44008	Program Fees	15,100.00	15,100.00	7,819.44	29,632.24	14,532.24	196.24 %
200-401-44009	Ice Rink	0.00	0.00	168.27	82,494.27	82,494.27	0.00 %
200-401-44011	Ice Rink	329,425.00	320,625.00	0.00	0.00	-320,625.00	100.00 %
200-401-44012	Rink Merchandise	0.00	0.00	0.00	439.00	439.00	0.00 %
200-401-46001	Other Revenues	500.00	500.00	0.00	423.00	-77.00	15.40 %
200-401-46002	Interest	2,000.00	2,000.00	589.05	5,554.25	3,554.25	277.71 %
200-401-46006	Merchandise Sales	22,065.20	22,065.20	5,514.00	22,809.52	744.32	103.37 %
200-401-47005	Transfer from HOT Fund	300,000.00	308,800.00	0.00	150,000.00	-158,800.00	51.42 %
Department: 401 - DSRP Total:		1,109,665.20	1,109,665.20	226,291.34	716,164.00	-393,501.20	35.46%
Revenue Total:		1,109,665.20	1,109,665.20	226,291.34	716,164.00	-393,501.20	35.46%

Expense							
Department: 400 - Parks & Recreation							
200-400-63035	Ranch House Maintenance	10,000.00	10,000.00	360.00	3,370.09	6,629.91	66.30 %
200-400-64024	Ranch House Supplies	1,000.00	1,000.00	0.00	15.38	984.62	98.46 %
Department: 400 - Parks & Recreation Total:		11,000.00	11,000.00	360.00	3,385.47	7,614.53	69.22%

Department: 401 - DSRP							
200-401-60003	On Call Pay	10,400.00	10,400.00	0.00	0.00	10,400.00	100.00 %
200-401-60005	Camp Staff	108,246.48	108,246.48	0.00	0.00	108,246.48	100.00 %
200-401-63000	Building/Office Maintenance	0.00	0.00	1,942.59	36,756.65	-36,756.65	0.00 %
200-401-63001	Equipment Maintenance	25,000.00	25,000.00	412.48	14,309.48	10,690.52	42.76 %
200-401-63002	Fleet Maintenance	5,500.00	5,500.00	0.00	147.56	5,352.44	97.32 %
200-401-63003	Lawn Maintenance	0.00	0.00	980.00	7,397.11	-7,397.11	0.00 %
200-401-63004	Dues, Fees & Subscriptions	5,127.50	5,127.50	634.77	4,947.43	180.07	3.51 %
200-401-63005	Training/Continuing Education	12,400.00	12,400.00	109.95	361.85	12,038.15	97.08 %
200-401-63023	General Maintenance	177,387.24	177,387.24	24.27	3,729.62	173,657.62	97.90 %
200-401-63024	Stall Cleaning & Repair	4,000.00	4,000.00	0.00	4,200.00	-200.00	-5.00 %
200-401-63028	Lift Station Maintenance	12,000.00	12,000.00	0.00	13,010.50	-1,010.50	-8.42 %
200-401-64000	Office Supplies	10,000.00	10,000.00	0.00	1,214.37	8,785.63	87.86 %

		Original Total Budget	Current Total Budget	Period Activity	Fiscal Activity	Variance Favorable (Unfavorable)	Percent Remaining
200-401-64001	IT Equipment	5,000.00	5,000.00	0.00	4,262.67	737.33	14.75 %
200-401-64003	Uniforms	3,500.00	3,500.00	0.00	272.00	3,228.00	92.23 %
200-401-64005	Equipment Rental	2,000.00	2,000.00	0.00	9,003.62	-7,003.62	-350.18 %
200-401-64008	Fuel	0.00	0.00	1,589.46	1,589.46	-1,589.46	0.00 %
200-401-64010	Maintenance Supplies	0.00	0.00	0.00	36.99	-36.99	0.00 %
200-401-64011	Park Supplies	13,545.00	13,545.00	0.00	0.00	13,545.00	100.00 %
200-401-64021	Merchandise	17,065.20	17,065.20	0.00	12,401.54	4,663.66	27.33 %
200-401-64023	Equipment	20,000.00	20,000.00	0.00	1,448.00	18,552.00	92.76 %
200-401-64026	Sponsorship Expenses	2,100.00	2,100.00	0.00	0.00	2,100.00	100.00 %
200-401-64027	Coyote Camp	16,000.00	16,000.00	0.00	528.68	15,471.32	96.70 %
200-401-64028	Riding Series	32,000.00	32,000.00	6,818.55	23,559.99	8,440.01	26.38 %
200-401-64029	Miscellaneous Events	700.00	700.00	10,402.52	24,009.44	-23,309.44	-3,329.92 %
200-401-64030	Programing	8,000.00	8,000.00	0.00	3,357.83	4,642.17	58.03 %
200-401-64031	Concert Series	0.00	0.00	0.00	503.50	-503.50	0.00 %
200-401-64038	Ice Rink	242,719.40	242,719.40	0.00	176,735.26	65,984.14	27.19 %
200-401-65000	Network/Phone	14,518.00	14,518.00	1,207.50	11,818.06	2,699.94	18.60 %
200-401-65004	Office Water	0.00	0.00	0.00	241.92	-241.92	0.00 %
200-401-65005	Water	7,000.00	7,000.00	1,784.55	10,264.33	-3,264.33	-46.63 %
200-401-65007	Portable Toilets	2,500.00	2,500.00	160.00	720.00	1,780.00	71.20 %
200-401-65008	Alarm	6,660.00	6,660.00	470.55	5,180.53	1,479.47	22.21 %
200-401-65017	Electricity	60,000.00	60,000.00	6,545.81	46,656.25	13,343.75	22.24 %
200-401-65018	Septic	750.00	750.00	0.00	0.00	750.00	100.00 %
200-401-65019	Propane/Natural Gas	2,500.00	2,500.00	0.00	2,600.83	-100.83	-4.03 %
200-401-66001	Advertising	15,000.00	15,000.00	191.88	251.88	14,748.12	98.32 %
200-401-66002	Postage & Shipping	0.00	0.00	0.00	18.18	-18.18	0.00 %
200-401-66004	City Sponsored Events	0.00	0.00	26.59	26.59	-26.59	0.00 %
200-401-70001	Mileage	500.00	500.00	0.00	0.00	500.00	100.00 %
200-401-70002	Contingencies/Emergency Fund	50,000.00	50,000.00	0.00	68,611.18	-18,611.18	-37.22 %
200-401-70003	Other Expenses	20,000.00	20,000.00	0.00	0.00	20,000.00	100.00 %
200-401-70004	Hays County Livestock Board Agree	13,200.00	13,200.00	0.00	0.00	13,200.00	100.00 %
200-401-70007	Sponsored Events	7,900.00	7,900.00	0.00	0.00	7,900.00	100.00 %
200-401-70013	DSRP Sales Tax	0.00	0.00	0.00	1,176.83	-1,176.83	0.00 %
200-401-71008	DSRP Improvements	355,000.00	355,000.00	4,585.88	29,862.83	325,137.17	91.59 %
200-401-90013	Transfer to Vehicle Replacement Fu	32,145.00	32,145.00	0.00	0.00	32,145.00	100.00 %
Department: 401 - DSRP Total:		1,320,363.82	1,320,363.82	37,887.35	521,212.96	799,150.86	60.53%
Expense Total:		1,331,363.82	1,331,363.82	38,247.35	524,598.43	806,765.39	60.60%
Fund: 200 - Dripping Springs Ranch Park Surplus (Deficit):		-221,698.62	-221,698.62	188,043.99	191,565.57	413,264.19	186.41%
Fund: 400 - Utilities							
Revenue							
Department: 000 - Undesignated							
400-000-43024	Over Use Fees	335,135.58	335,135.58	0.00	0.00	-335,135.58	100.00 %
400-000-43025	Reuse Fees	204,350.00	204,350.00	0.00	0.00	-204,350.00	100.00 %
400-000-46001	Other Revenues	0.00	0.00	600.06	1,179,917.90	1,179,917.90	0.00 %
Department: 000 - Undesignated Total:		539,485.58	539,485.58	600.06	1,179,917.90	640,432.32	118.71%
Department: 300 - Wastewater							
400-300-41003	Cable Franchise Fees	0.00	0.00	-37,267.74	0.00	0.00	0.00 %
400-300-43018	Wastewater Service Fees	1,478,767.68	1,478,767.68	117,693.77	1,384,391.66	-94,376.02	6.38 %
400-300-43020	Late Fees	9,600.00	9,600.00	1,304.01	13,762.85	4,162.85	143.36 %
400-300-43021	Delayed Connection Fees	5,000.00	5,000.00	3,500.00	17,500.00	12,500.00	350.00 %
400-300-43024	Over Use Fees	0.00	0.00	14,562.73	146,001.01	146,001.01	0.00 %
400-300-43025	Reuse Fees	0.00	0.00	2,143.34	6,944.44	6,944.44	0.00 %
400-300-46001	Other Revenues	60,000.00	60,000.00	0.00	0.00	-60,000.00	100.00 %
400-300-47008	Transfer from TWDB	14,715,000.00	14,715,000.00	0.00	0.00	-14,715,000.00	100.00 %
400-300-47009	Sales Tax	760,000.00	760,000.00	0.00	534,327.53	-225,672.47	29.69 %
Department: 300 - Wastewater Total:		17,028,367.68	17,028,367.68	101,936.11	2,102,927.49	-14,925,440.19	87.65%
Department: 301 - Water							
400-301-43038	Meter Set Fees	5,000.00	5,000.00	300.00	2,700.00	-2,300.00	46.00 %

		Original Total Budget	Current Total Budget	Period Activity	Fiscal Activity	Variance Favorable (Unfavorable)	Percent Remaining
400-301-43040	Water Base Rate	63,840.00	63,840.00	3,683.64	24,109.66	-39,730.34	62.23 %
400-301-43041	Water Usage	100,000.00	100,000.00	15,901.42	128,556.44	28,556.44	128.56 %
400-301-43043	Equipment Fee	36,200.00	36,200.00	362.00	6,516.00	-29,684.00	82.00 %
400-301-43044	Inspection Fees	5,000.00	5,000.00	50.00	900.00	-4,100.00	82.00 %
400-301-46001	Other Revenues	6,000.00	6,000.00	0.00	256.56	-5,743.44	95.72 %
Department: 301 - Water Total:		216,040.00	216,040.00	20,297.06	163,038.66	-53,001.34	24.53%
Department: 310 - Utility Operations							
400-310-41001	PEC Franchise Fee	130,000.00	130,000.00	45,236.93	152,407.62	22,407.62	117.24 %
400-310-41002	ROW Fees	6,000.00	6,000.00	1,054.27	3,398.89	-2,601.11	43.35 %
400-310-41003	Cable Franchise Fees	130,000.00	130,000.00	74,065.33	112,928.81	-17,071.19	13.13 %
400-310-41004	Texas Gas Franchise Fee	3,000.00	3,000.00	0.00	4,298.84	1,298.84	143.29 %
400-310-46002	Interest	60,000.00	60,000.00	19,433.89	133,717.61	73,717.61	222.86 %
Department: 310 - Utility Operations Total:		329,000.00	329,000.00	139,790.42	406,751.77	77,751.77	23.63%
Revenue Total:		18,112,893.26	18,112,893.26	262,623.65	3,852,635.82	-14,260,257.44	78.73%
Expense							
Department: 300 - Wastewater							
400-300-60000	Regular Employees	0.00	0.00	0.00	17,325.60	-17,325.60	0.00 %
400-300-60002	Overtime	0.00	0.00	0.00	299.60	-299.60	0.00 %
400-300-61000	Health Insurance	0.00	0.00	0.00	2,156.62	-2,156.62	0.00 %
400-300-61001	Dental Insurance	0.00	0.00	0.00	151.65	-151.65	0.00 %
400-300-61002	Medicare	0.00	0.00	0.00	254.78	-254.78	0.00 %
400-300-61003	Social Security	0.00	0.00	0.00	1,089.34	-1,089.34	0.00 %
400-300-61004	Unemployment	0.00	0.00	0.00	60.82	-60.82	0.00 %
400-300-61006	TMRS	0.00	0.00	0.00	1,031.71	-1,031.71	0.00 %
400-300-62002	Engineering and Surveying	857,000.00	857,000.00	57,125.50	73,697.41	783,302.59	91.40 %
400-300-62019	Planning and Permitting	5,000.00	5,000.00	10,337.50	27,619.01	-22,619.01	-452.38 %
400-300-62020	Lab Testing	0.00	0.00	0.00	2,256.75	-2,256.75	0.00 %
400-300-63004	Dues, Fees & Subscriptions	0.00	0.00	282.83	1,880.31	-1,880.31	0.00 %
400-300-63005	Training/Continuing Education	0.00	0.00	0.00	668.03	-668.03	0.00 %
400-300-63025	Wastewater Treatment Plant Maint	92,430.00	92,430.00	4,000.00	37,879.54	54,550.46	59.02 %
400-300-63026	Routine Operations	87,000.00	87,000.00	2,087.06	12,747.57	74,252.43	85.35 %
400-300-63027	Operations Non Routine	85,800.00	85,800.00	175.29	21,163.11	64,636.89	75.33 %
400-300-63028	Lift Station Maintenance	64,300.00	64,300.00	0.00	26,902.21	37,397.79	58.16 %
400-300-63029	Sanitary Sewer Line Maintenance	51,360.00	193,630.14	5,292.50	117,549.42	76,080.72	39.29 %
400-300-63030	Drip Field Maintenance	30,000.00	30,000.00	349.95	2,032.59	27,967.41	93.22 %
400-300-63031	Sludge Hauling	150,000.00	150,000.00	8,510.07	73,286.45	76,713.55	51.14 %
400-300-63033	Wastewater Flow Measurement	9,000.00	9,000.00	0.00	0.00	9,000.00	100.00 %
400-300-63034	Utility Operations	0.00	0.00	11,119.50	33,400.25	-33,400.25	0.00 %
400-300-64003	Uniforms	0.00	0.00	0.00	119.96	-119.96	0.00 %
400-300-64010	Supplies	28,500.00	28,500.00	928.54	12,371.00	16,129.00	56.59 %
400-300-64022	Chemicals	15,000.00	15,000.00	80.00	5,865.50	9,134.50	60.90 %
400-300-65000	Network/Phone	0.00	0.00	722.72	3,779.76	-3,779.76	0.00 %
400-300-65017	Electric	80,000.00	80,000.00	6,492.08	38,869.83	41,130.17	51.41 %
400-300-70001	Mileage	0.00	0.00	0.00	119.25	-119.25	0.00 %
400-300-70003	Other Expenses	85,000.00	85,000.00	0.00	3,374.88	81,625.12	96.03 %
400-300-71000	Capital Projects	2,000,000.00	2,670,464.62	0.00	605,692.22	2,064,772.40	77.32 %
400-300-72001	TWDB - Capital Projects	16,175,000.00	16,175,000.00	0.00	0.00	16,175,000.00	100.00 %
400-300-72002	TWDB - Engineering and Design	485,000.00	485,000.00	125,926.51	239,295.26	245,704.74	50.66 %
400-300-72003	TWDB - Special Counsel and Consul	0.00	0.00	6,409.75	14,388.86	-14,388.86	0.00 %
400-300-72004	TWDB - Misc.	230,000.00	230,000.00	0.00	550.00	229,450.00	99.76 %
400-300-72005	TWDB - Land Acquisition	0.00	0.00	0.00	30,000.00	-30,000.00	0.00 %
400-300-90013	Transfer to Vehicle Replacement Fu	37,936.00	37,936.00	0.00	0.00	37,936.00	100.00 %
Department: 300 - Wastewater Total:		20,568,326.00	21,381,060.76	239,839.80	1,407,879.29	19,973,181.47	93.42%
Department: 301 - Water							
400-301-62020	Lab Testing	0.00	0.00	0.00	18.36	-18.36	0.00 %
400-301-63026	Routine Operations	25,000.00	25,000.00	0.00	571.90	24,428.10	97.71 %
400-301-63027	Operations Non Routine	10,000.00	10,000.00	0.00	1,631.68	8,368.32	83.68 %

		Original Total Budget	Current Total Budget	Period Activity	Fiscal Activity	Variance Favorable (Unfavorable)	Percent Remaining
400-301-63032	Water Line Maintenance & Repair	20,000.00	22,210.11	0.00	27,866.35	-5,656.24	-25.47 %
400-301-63034	Utility Operations	0.00	0.00	0.00	100.00	-100.00	0.00 %
400-301-64010	Supplies	50,000.00	52,368.61	0.00	46,251.79	6,116.82	11.68 %
	Department: 301 - Water Total:	105,000.00	109,578.72	0.00	76,440.08	33,138.64	30.24%
	Department: 310 - Utility Operations						
400-310-60000	Regular Employees	527,345.98	527,345.98	59,338.08	290,037.94	237,308.04	45.00 %
400-310-60002	Overtime	0.00	0.00	3,412.16	17,838.51	-17,838.51	0.00 %
400-310-60003	On Call Pay	10,400.00	10,400.00	1,200.00	10,974.92	-574.92	-5.53 %
400-310-61000	Health Insurance	59,572.49	59,572.49	5,792.64	27,769.60	31,802.89	53.39 %
400-310-61001	Dental Insurance	0.00	0.00	404.40	1,937.75	-1,937.75	0.00 %
400-310-61002	Medicare	0.00	0.00	893.70	4,402.73	-4,402.73	0.00 %
400-310-61004	Unemployment	0.00	0.00	17.44	1,342.38	-1,342.38	0.00 %
400-310-61005	Federal Withholding	42,609.97	42,609.97	0.00	0.00	42,609.97	100.00 %
400-310-61006	TMRS	30,894.73	30,894.73	3,773.06	18,900.07	11,994.66	38.82 %
400-310-62001	Financial Services	10,000.00	10,000.00	0.00	0.00	10,000.00	100.00 %
400-310-62003	Special Coounsel and Consultants	50,000.00	50,000.00	13,232.90	24,385.39	25,614.61	51.23 %
400-310-62020	Lab Testing	30,000.00	30,000.00	2,316.25	20,025.71	9,974.29	33.25 %
400-310-63001	Equipment Maintenance	10,000.00	10,000.00	0.00	708.51	9,291.49	92.91 %
400-310-63002	Fleet Maintenance	12,000.00	12,000.00	0.00	902.07	11,097.93	92.48 %
400-310-63005	Training/Continuing Education	13,305.00	16,330.51	1,861.00	4,613.50	11,717.01	71.75 %
400-310-63034	Utility Operations	355,560.00	355,560.00	0.00	50,325.93	305,234.07	85.85 %
400-310-64001	IT Equipment & Support	4,340.00	4,340.00	0.00	1,179.16	3,160.84	72.83 %
400-310-64002	Software	15,313.00	15,313.00	260.00	13,750.44	1,562.56	10.20 %
400-310-64003	Uniforms	7,470.00	7,470.00	0.00	4,282.63	3,187.37	42.67 %
400-310-64006	Fleet Acquisition	62,000.00	62,000.00	0.00	63,236.00	-1,236.00	-1.99 %
400-310-64008	Fuel	20,000.00	20,000.00	0.00	0.00	20,000.00	100.00 %
400-310-64023	Equipment	53,000.00	53,000.00	0.00	18,746.63	34,253.37	64.63 %
400-310-65000	Network/Phone	16,250.00	16,250.00	221.51	19,120.88	-2,870.88	-17.67 %
	Department: 310 - Utility Operations Total:	1,330,061.17	1,333,086.68	92,723.14	594,480.75	738,605.93	55.41%
	Department: 311 - Arrowhead Wastewater Plant						
400-311-63025	Arrowhead - Wastwater Treatment	18,325.00	18,325.00	0.00	3,784.66	14,540.34	79.35 %
400-311-63026	Arrowhead - Routine Operations	23,250.00	23,250.00	1,765.16	6,556.04	16,693.96	71.80 %
400-311-63027	Arrowhead - Non-Routine Operatio	21,450.00	21,450.00	0.00	13,441.43	8,008.57	37.34 %
400-311-63028	Arrowhead - Lift Station Maintenanc	6,500.00	6,500.00	0.00	1,400.16	5,099.84	78.46 %
400-311-63030	Arrowhead - Drip Field Maintenanc	51,500.00	51,500.00	0.00	0.00	51,500.00	100.00 %
400-311-63031	Arrowhead - Sludge Hauling	39,000.00	39,000.00	8,510.07	34,151.00	4,849.00	12.43 %
400-311-64010	Arrowhead - Supplies	7,500.00	7,500.00	0.00	794.57	6,705.43	89.41 %
400-311-64022	Arrowhead - Chemicals	13,000.00	13,000.00	516.80	6,520.80	6,479.20	49.84 %
400-311-65017	Arrowhead - Electricity	20,000.00	20,000.00	1,440.14	7,562.08	12,437.92	62.19 %
400-311-71000	Arrowhead - Capital Projects	2,029,109.57	2,029,109.57	0.00	47,760.00	1,981,349.57	97.65 %
	Department: 311 - Arrowhead Wastewater Plant Total:	2,229,634.57	2,229,634.57	12,232.17	121,970.74	2,107,663.83	94.53%
	Expense Total:	24,233,021.74	25,053,360.73	344,795.11	2,200,770.86	22,852,589.87	91.22%
	Fund: 400 - Utilities Surplus (Deficit):	-6,120,128.48	-6,940,467.47	-82,171.46	1,651,864.96	8,592,332.43	123.80%
	Report Surplus (Deficit):	-9,491,204.25	-10,409,905.16	-962,882.71	3,990,068.00	14,399,973.16	138.33%

Group Summary

Department	Original Total Budget	Current Total Budget	Period Activity	Fiscal Activity	Variance Favorable (Unfavorable)	Percent Remaining
Fund: 100 - General Fund						
Revenue						
000 - Undesignated	7,763,445.36	7,763,445.36	431,102.94	7,013,189.52	-750,255.84	9.66%
105 - Communications	110,209.00	110,209.00	500.00	80,068.59	-30,140.41	27.35%
200 - Planning & Development	1,628,875.00	1,628,875.00	154,652.73	824,760.97	-804,114.03	49.37%
201 - Building	1,550,000.00	1,550,000.00	12,754.18	1,204,305.61	-345,694.39	22.30%
400 - Parks & Recreation	579,880.00	592,448.00	600.00	20,670.00	-571,778.00	96.51%
402 - Aquatics	76,100.00	76,100.00	25,419.14	26,868.14	-49,231.86	64.69%
404 - Founders Day	124,450.00	124,450.00	44,716.12	162,071.12	37,621.12	30.23%
Revenue Total:	11,832,959.36	11,845,527.36	669,745.11	9,331,933.95	-2,513,593.41	21.22%
Expense						
000 - Undesignated	5,797,331.91	5,797,331.91	19,670.35	209,136.05	5,588,195.86	96.39%
100 - City Council/Boards & Commissions	17,000.00	17,000.00	0.00	67,500.00	-50,500.00	-297.06%
101 - City Administrators Office	0.00	0.00	68,640.95	413,768.68	-413,768.68	0.00%
102 - City Secretary	29,120.00	29,120.00	21,032.00	135,334.48	-106,214.48	-364.75%
103 - Courts	15,500.00	15,500.00	0.00	3,890.00	11,610.00	74.90%
104 - City Attorney	49,000.00	49,000.00	39,677.25	200,932.00	-151,932.00	-310.07%
105 - Communications	132,309.00	132,309.00	37,501.20	254,392.72	-122,083.72	-92.27%
106 - IT	389,894.84	389,894.84	55,379.65	386,786.33	3,108.51	0.80%
107 - Finance	1,494,123.00	1,494,123.00	88,035.35	1,014,062.16	480,060.84	32.13%
200 - Planning & Development	313,500.00	411,869.92	36,461.67	229,394.47	182,475.45	44.30%
201 - Building	792,000.00	792,000.00	60,559.35	819,419.48	-27,419.48	-3.46%
300 - Wastewater	1,140,000.00	1,140,000.00	889,424.83	1,263,481.47	-123,481.47	-10.83%
304 - Maintenance	2,271,860.00	2,271,860.00	150,524.18	916,984.54	1,354,875.46	59.64%
400 - Parks & Recreation	1,369,101.76	1,381,661.76	150,883.08	600,057.72	781,604.04	56.57%
401 - DSRP	683,265.91	683,265.91	76,218.65	480,556.90	202,709.01	29.67%
402 - Aquatics	234,007.09	234,007.09	15,679.47	55,863.81	178,143.28	76.13%
404 - Founders Day	160,025.00	160,025.00	14,872.03	138,645.33	21,379.67	13.36%
500 - Emergency Management	94,298.00	94,298.00	13,940.34	-4,909.66	99,207.66	105.21%
Expense Total:	14,982,336.51	15,093,266.43	1,738,500.35	7,185,296.48	7,907,969.95	52.39%
Fund: 100 - General Fund Surplus (Deficit):	-3,149,377.15	-3,247,739.07	-1,068,755.24	2,146,637.47	5,394,376.54	166.10%
Fund: 200 - Dripping Springs Ranch Park						
Revenue						
401 - DSRP	1,109,665.20	1,109,665.20	226,291.34	716,164.00	-393,501.20	35.46%
Revenue Total:	1,109,665.20	1,109,665.20	226,291.34	716,164.00	-393,501.20	35.46%
Expense						
400 - Parks & Recreation	11,000.00	11,000.00	360.00	3,385.47	7,614.53	69.22%
401 - DSRP	1,320,363.82	1,320,363.82	37,887.35	521,212.96	799,150.86	60.53%
Expense Total:	1,331,363.82	1,331,363.82	38,247.35	524,598.43	806,765.39	60.60%
Fund: 200 - Dripping Springs Ranch Park Surplus (Deficit):	-221,698.62	-221,698.62	188,043.99	191,565.57	413,264.19	186.41%
Fund: 400 - Utilities						
Revenue						
000 - Undesignated	539,485.58	539,485.58	600.06	1,179,917.90	640,432.32	118.71%
300 - Wastewater	17,028,367.68	17,028,367.68	101,936.11	2,102,927.49	-14,925,440.19	87.65%
301 - Water	216,040.00	216,040.00	20,297.06	163,038.66	-53,001.34	24.53%
310 - Utility Operations	329,000.00	329,000.00	139,790.42	406,751.77	77,751.77	23.63%
Revenue Total:	18,112,893.26	18,112,893.26	262,623.65	3,852,635.82	-14,260,257.44	78.73%
Expense						
300 - Wastewater	20,568,326.00	21,381,060.76	239,839.80	1,407,879.29	19,973,181.47	93.42%
301 - Water	105,000.00	109,578.72	0.00	76,440.08	33,138.64	30.24%
310 - Utility Operations	1,330,061.17	1,333,086.68	92,723.14	594,480.75	738,605.93	55.41%
311 - Arrowhead Wastewater Plant	2,229,634.57	2,229,634.57	12,232.17	121,970.74	2,107,663.83	94.53%

Budget Report

For Fiscal: FY 2024 Period Ending: Item 2. 4

Department	Original Total Budget	Current Total Budget	Period Activity	Fiscal Activity	Variance Favorable (Unfavorable)	Percent Remaining
Expense Total:	24,233,021.74	25,053,360.73	344,795.11	2,200,770.86	22,852,589.87	91.22%
Fund: 400 - Utilities Surplus (Deficit):	-6,120,128.48	-6,940,467.47	-82,171.46	1,651,864.96	8,592,332.43	123.80%
Report Surplus (Deficit):	-9,491,204.25	-10,409,905.16	-962,882.71	3,990,068.00	14,399,973.16	138.33%

Fund Summary

Fund	Original Total Budget	Current Total Budget	Period Activity	Fiscal Activity	Variance Favorable (Unfavorable)
100 - General Fund	-3,149,377.15	-3,247,739.07	-1,068,755.24	2,146,637.47	5,394,376.54
200 - Dripping Springs Ranch Park	-221,698.62	-221,698.62	188,043.99	191,565.57	413,264.19
400 - Utilities	-6,120,128.48	-6,940,467.47	-82,171.46	1,651,864.96	8,592,332.43
Report Surplus (Deficit):	-9,491,204.25	-10,409,905.16	-962,882.71	3,990,068.00	14,399,973.16



STAFF REPORT
City of Dripping Springs
PO Box 384
511 Mercer Street
Dripping Springs, TX 78620

Submitted By: Laura Mueller, City Attorney

Council Meeting Date: June 18, 2024

Agenda Item Wording: Approval of a Use Agreement between the City of Dripping Springs and Aaron Farmer for the Adult Softball League for use of the Adult Softball Fields at Sports and Recreation Park and the authorization for staff to finalize the agreement with the Adult Softball League. Sponsor: Mayor Bill Foulds, Jr.

Agenda Item Requestor: Mayor Bill Foulds, Jr.

Summary/Background: The Adult Softball League has traditionally used the fields at the Sports and Recreation Park. They are requesting to do so again this year, but there will be a limitation on dates because of irrigation upgrades that are planned for this summer. Because of this limitation the costs will be lower than previous years. In addition, city staff will not be providing any assistance or staff for these games. This agreement will only be for use of the fields. This issue is time sensitive as the league would like to get started soon. Staff is requesting authorization to allow this use and to finalize a use agreement with this group.

Commission Recommendations: N/A

Recommended Council Actions: Approval of use and authorize staff to finalize agreement.

Attachments: Draft 2024 Softball Use Agreement with Aaron Farmer; Adult Softball Participation Waiver; 2023 Softball Use Agreement with Logan Lilly with Certificate of Insurance for an example.

Next Steps/Schedule: Staff will work with Mayor Foulds and the Adult Softball League to finalize agreement that works with the City's and Softball's schedules.

USE AGREEMENT

Aaron Farmer (Tuesday Adult Softball 2024) and City of Dripping Springs for Adult Softball Fields

(Sports and Recreation Park)

THIS USE AGREEMENT (the “Agreement”) is entered into by and between the City of Dripping Springs, Hays County, Texas, (the “City”), a general law municipality organized and operating under the general laws of the state of Texas, and Aaron Farmer an individual (the “user”).

I. RECITALS

- A. Aaron Farmer is an individual whose purpose is to provide for an adult softball league at Sports and Recreation Park for the male league.
- B. Aaron Farmer wishes to enter into a use agreement with the City to allow a male adult softball league to use Sports and Recreation Park Adult Softball Fields for the male league games.
- C. The City desires to contract with. Aaron Farmer and, accordingly, agrees to allow Aaron Farmer. and the male adult softball teams to use the adult softball fields for their games.

II. AGREEMENT

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

A. Duties of Aaron Farmer and teams:

1. Aaron Farmer is responsible for providing proof of insurance from the ASA/USA Softball or other organizations as provided in Attachment “A”.
2. Aaron Farmer is responsible for ensuring payment of field rental fees, including electricity, as listed herein and no later than the second Friday of June or June 20, 2024.
3. Aaron Farmer and the teams, will provide all equipment needed for the games as well as providing for and compensating, as needed, scorekeepers and umpires.
4. Aaron Farmer and the teams will provide signed waivers for each participant in field use to the City prior to the person’s participation in the league. Electronic copies of the waivers will be accepted, as well as hard copies, so long as hard copies are provided within seven (7) business days of signature. Copies can be provided electronically to Andrew Binz at

ABinz@cityofdrippingsprings.com and in hard copy at City Hall at 511 Mercer Street, Dripping Springs, Texas 78620. Any participant without a signed waiver cannot use the fields.

5. Aaron Farmer and teams shall ensure compliance with all park rules and all direction from City Staff and officials. Any parking outside marked parking places within the designated parking lot shall incur the cost of damage up to \$100 per night. Any deviation from compliance with these rules, including unauthorized parking, can result in immediate suspension or termination of the use agreement without refund other than the deposit if not needed for damages or cleanup.

B. Duties of the City

1. The City will allow User and the male adult softball league to use two fields on Tuesday nights from June 18th to August 13th, 2024.
2. City shall not collect individual fees, hire scorekeepers or umpires, or create schedules for games.
3. City will ensure trash cans are available for use. Any trash outside of the city trash cans at or near the adult softball fields and parking lot will be the responsibility of the user and will result in additional charges or deduction in deposit at a rate of \$50/day.
4. City will ensure lights are usable for each night of play.
5. The fields will be closed during the period of June 24th – July 8th. If contractor allows the fields may be available during this period. Any approval of availability shall be in writing from the City of Dripping Springs to User.

C. Rental Fees and Payment

Total Rental Fees per Season will be as follows:

1. Field Fees: (2 fields x \$20/day x 8 days) = \$320.00
2. Electricity Fees: (use of lighting and scoreboard): (1 fields x \$75/day x 8 days) = \$600.00
3. Total Fees Per Season due to the City of Dripping Springs = \$920.00.

Deposit: (to be used for damage to grass for unauthorized parking, additional cleanup after field use, or any damages): \$200/season.

4. Payment of up to \$50 per day if excessive cleaning is needed after use of field.
5. Additional use of fields shall be subject to City's fee schedule.
6. Payment shall occur in full for each season on or before the second Friday of each season. June 20, 2024

D. Access to Facilities

- a. User shall have access to two fields from 6 p.m. to 10 p.m. every Tuesday Night except for the dates noted in Section B(5).
- b. If there is an emergency such as inclement weather, public health emergency, or an unforeseen circumstance, the City may decide to close the fields or limit access to the Park on impacted days. If the fields or Park are closed, the City will work with the user to reschedule the canceled game during the season.

E. It is understood and agreed between the parties that:

- a. User will maintain its own liability insurance through [REDACTED] and will name the City as an additional named insured and provide a copy of such policy prior to the beginning of the terms of this Use Agreement.
- b. It is specifically agreed that nothing herein is intended to convey any real property rights of the fields to the User.
- c. The City assumes no responsibility for any property placed by the User or any User member, agent, participant, or guest, at the fields or in the Park or any part thereof, and the City is hereby expressly released and discharged from any and all liability for any loss, injury, or damage to persons or property that may be sustained by reason of the use of the fields, Park, and related facilities under this Agreement.
- d. The User accepts full responsibility for protecting property and equipment and assumes any and all liability for repairs or replacement necessitated by any damage done to fields, equipment, or other property used by the User.
- e. The User accepts the premises as-is. User may not change any part of the fields or layout of its related facilities unless it receives prior written approval from the Parks and Community Services Director for the proposed changes.
- f. USER AGREES TO INDEMNIFY AND HOLD HARMLESS THE CITY, ITS AGENTS, SERVANTS, AND EMPLOYERS, FROM AND AGAINST ANY AND ALL CLAIMS FOR DAMAGES OR INJURIES TO PERSONS OR PROPERTY ARISING OUT OF OR INCIDENT TO THEIR USE OF, OR THE USE AND

OCCUPANCY OF THE FIELDS BY THE USER OR PARTICIPANTS, AND THE USER DOES HEREBY ASSUME ALL LIABILITY AND RESPONSIBILITY FOR INJURIES, CLAIMS OR SUITS FOR DAMAGES TO PERSONS OR PROPERTY WHATSOEVER KIND OR CHARACTER, WHETHER REAL OR ASSERTED, OCCURRING DURING THE TERM OF THIS AGREEMENT IN CONNECTION WITH THE USE OR OCCUPANCY OF THE FIELDS BY USER OR ITS AGENTS, SERVANTS, EMPLOYEES, CONTRACTORS OR SUBCONTRACTORS, MEMBERS, GUESTS, PARTICIPANTS.

- g. The User shall not assign this Agreement, or any rights, obligations dates, discounts, or entitlements created under this Agreement to any other person or entity.
- h. Either party may terminate this Agreement without cause upon the terminating party giving the non-terminating party fourteen (14) day written notice.
- i. This Agreement may be immediately suspended or terminated by the City if any rules, ordinances, or directions are violated by the User, or the User’s participants, guests, agents, or members.
- j. All notices in connection with this Agreement shall be in writing and shall be considered given as follows:

When delivered personally to the recipient’s address as stated in this Agreement; or Five (5) days after being sent by certified mail in the United States mail, with postage prepaid to the recipient’s address as stated in this Agreement:

To the City:
City of Dripping Springs
Attn: City Administrator
PO Box 384
Dripping Spring, TX 78620

To User:
Aaron Farmer

Nothing contained herein shall be construed to restrict the transmission of routine communications between representatives of City and the User.

This Agreement shall be effective upon final signing by both parties.

IN WITNESS WHEREOF, The City of Dripping Springs and Aaron Farmer have executed this Agreement on the dates indicated.

CITY OF DRIPPING SPRINGS:

USER:

Bill Foulds Jr., Mayor

Aaron Farmer

Date

Date

Adult Softball - Participation Waiver

This form must be completed for every player.



Item 3.

PARTICIPANT INFORMATION

Name: _____ Phone: _____

Email : _____

City of Residence: _____ Zip Code: _____

TEAM INFORMATION

League: (Please circle one) Womens Spring League Men's Summer League Men's Fall League

Team Manger's Name: _____

Team Name: _____

PARTICIPANT WAIVER

I, _____ for myself and on behalf of my/our heirs, assigns, personal representatives and
PARTICIPANT NAME

next of kin, hereby acknowledge that I voluntarily have applied to participate in the ADULT SOFTBALL PLAY. I understand that the act of ADULT SOFTBALL involves known and unknown risks of injury to me and other people, which includes but is not limited to death, permanent or temporary paralysis, disability, or other injury, as well as damage to my equipment and personal property. Some of these risks include the risks inherent in play such as falling and coming into contact with the ground, bases, bats, balls, and other players, latent or apparent defects or conditions in equipment or property, and passive or active negligent acts of myself, the City of Dripping Springs ("The City"). I understand that the above list of risks is not complete or exhaustive and that those and other risks known or unknown. I assume all risks associated with using the ADULT SOFTBALL FIELDS for league play located at Dripping Springs Sports and Recreation park, even if they arise from the negligence of the City of Dripping Springs, promoters, officials, advertisers, and property owners. By signing this release of liability and participating in the Adult Softball Season, I hereby fully and forever release and discharge, indemnify and hold harmless the City of Dripping Springs and their employees and agents from any and all liabilities, claims, demands, damages, rights of action, suits or causes of action present of future, whether the same be known or unknown, anticipated or unanticipated, resulting from or arising out of my use or intended use of said premises, facilities or equipment.

I have read, understand, and agree to the above waiver:

Printed Name (Parent/Guardian if under 18) Signature (Parent/Guardian if under 18) Date

SPORTS AND RECREATION PARK USE AGREEMENT

THIS USE AGREEMENT (the “Agreement”) is entered into by and between the City of Dripping Springs, Hays County, Texas, (the “City”), a general law municipality organized and operating under the general laws of the state of Texas, and Logan Lilly an individual (the “user”).

I. RECITALS

- A. Logan Lilly is an individual whose purpose is to provide for an adult softball league at Sports and Recreation Park for the male league.
- B. Logan Lilly wishes to enter into a use agreement with the City to allow a male adult softball league to use Sports and Recreation Park Adult Softball Fields for the male league games.
- C. The City desires to contract with Logan Lilly and, accordingly, agrees to allow Logan Lilly, and the male adult softball teams to use the adult softball fields for their games.

II. AGREEMENT

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

A. Duties of Logan Lilly and Teams

- 1. Logan Lilly is responsible for providing proof of insurance from the ASA/USA Softball or other organization as provided in Attachment “A”.
- 2. Logan Lilly is responsible for ensuring payment of field rental fees, including electricity, prior to league play at the cost of field fees and electricity.
- 3. Logan Lilly and the teams, will provide all equipment needed for the games as well as providing for and compensating, as needed, scorekeepers and umpires.
- 4. Logan Lilly and the teams will provide signed waivers for each participant in field use to the City prior to the person’s participation in the league. Electronic copies of the waivers will be accepted, as well as hard copies, so long as hard copies are provided within seven (7) business days of signature. Copies can be provided electronically to Mack Rusick at mrusick@cityofdrippingsprings.com and in hard copy at City Hall at 511 Mercer Street, Dripping Springs, Texas 78620. Any participant without a signed waiver cannot use the fields.
- 5. Logan Lilly and teams ensure compliance with all park rules, all Adult Softball League rules, and all direction from City Staff and officials. shall ensure that no one without a city

parking pass will park on the grass adjacent to the fields but shall use marked parking places. Any parking outside marked parking places shall incur the cost of damage to the grass up to \$100 per night. Any deviation from compliance with these rules, including unauthorized parking, can result in immediate suspension or termination of the use agreement without refund other than the deposit if not needed for damages or cleanup.

B. Duties of the City

1. The City will allow User and the male adult softball league to use two fields on Thursday nights from March 23rd to August 10th.
2. City shall not collect individual fees, hire scorekeepers or umpires, or create schedules for games.
3. City will monitor the field use for compliance and will ensure that the fields are cleaned after each use. City will collect trash in city cans. Any trash outside of city cans will be the responsibility of user and will result in damages charge or deduction in deposit if left behind after field use.
4. City will ensure fields and lights are usable for each night of play.

C. Rental Fees and Payment

1. Total Rental Fees per Season will be as follows:
 - a. Field Fees: (2 fields x \$50/day x 10 days) = \$1,000
 - b. Electricity Fees: (use of lighting and scoreboard): (2 fields x \$75/day x 10 days) = \$1,500
 - c. Total Fees Per Season due to the City of Dripping Springs = \$2,500
Deposit: (to be used for damage to grass for unauthorized parking, additional cleanup after field use, or any damages): \$200/season
 - d. Payment of up to \$100 per game if excessive cleaning is needed after use of field. Documentation of need for excessive cleaning will be provided to user prior to charge of fee.
 - e. Additional use of fields shall be subject to City's fee schedule.
 - f. Payment shall occur in full for each season on or before the second Friday of each season. (March 31st, 2023 & June 16th, 2023)

D. Access to Facilities

1. User shall have access to two fields from 6 p.m. to 10 p.m. every Thursday Night from March 23rd – May 25th and June 8th – August 10th.
2. If there is an emergency such as inclement weather, public health emergency, or an unforeseen circumstance, the City may decide to close the fields or limit access to the Park on impacted days. If the fields or Park are closed, the City will work with the user to reschedule the canceled game during the season.
3. It is understood and agreed between the parties that:
 - a. User will maintain its own liability insurance through USA Softball Association of Texas and will name the City as an additional named insured and provide a copy of such policy prior to the beginning of the terms of this Use Agreement.
 - b. It is specifically agreed that nothing herein is intended to convey any real property rights of the fields to the User.
 - c. The City assumes no responsibility for any property placed by the User or any User member, agent, participant, or guest, at the fields or in the Park or any part thereof, and the City is hereby expressly released and discharged from any and all liability for any loss, injury, or damage to persons or property that may be sustained by reason of the use of the fields, Park, and related facilities under this Agreement.
 - d. The User accepts full responsibility for protecting property and equipment and assume any and all liability for repairs or replacement necessitated by any damage done to fields, equipment, or other property used by the User.
 - e. The User accepts the premises as-is. User may not change any part of the fields or layout of its related facilities unless it receives prior written approval from the Programs and Aquatics Manager or the Parks and Community Services Director for the proposed changes.
 - f. User agrees to indemnify and hold harmless the city, its agents, servants, and employers, from and against any and all claims for damages or injuries to persons or property arising out of or incident to their use of, or the use and occupancy of the fields by the user or participants, and the user does hereby assume all liability and responsibility for injuries, claims or suits for damages to persons or property whatsoever kind or character, whether real or asserted, occurring during the term of this agreement in connection with the use or occupancy of the fields by user or its agents, servants, employees, contractors or subcontractors, members, guests, participants.

- g. The User shall not assign this Agreement, or any rights, obligations, duties, discounts, or entitlements created under this Agreement to any other person or entity.
- h. Either party may terminate this Agreement without cause upon the terminating party giving the non-terminating party fourteen (14) day written notice.
- i. This Agreement may be immediately suspended or terminated by the City if any rules, ordinances, or directions are violated by the User, or the User's participants, guests, agents, or members.
- j. All notices in connection with this Agreement shall be in writing and shall be considered given as follows:
- k. When delivered personally to the recipient's address as stated in this Agreement; or Five (5) days after being sent by certified mail in the United States mail, with postage prepaid to the recipient's address as stated in this Agreement:

To the City:
 City of Dripping Springs
 Attn: City Administrator
 PO Box 384
 Dripping Springs, Texas 786920

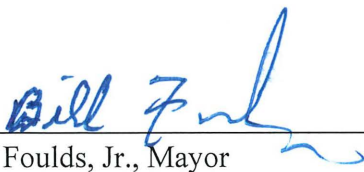
To User:
 Logan Lilly
 252 Lost Mine Peak Lane
 Dripping Springs, TX 78620
loganlilly33@gmail.com

Nothing contained herein shall be construed to restrict the transmission of routine communications between representatives of City and the User.

This Agreement shall be effective upon final signing by both parties.

CITY OF DRIPPING SPRINGS:

USER:



 Bill Foulds, Jr., Mayor

 Logan Lilly

2/23/25

 Date

 Date

- g. The User shall not assign this Agreement, or any rights, obligations, discounts, or entitlements created under this Agreement to any other person or entity.
- h. Either party may terminate this Agreement without cause upon the terminating party giving the non-terminating party fourteen (14) day written notice.
- i. This Agreement may be immediately suspended or terminated by the City if any rules, ordinances, or directions are violated by the User, or the User's participants, guests, agents, or members.
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 Attn: City Administrator
 PO Box 384
 Dripping Springs, Texas 786920

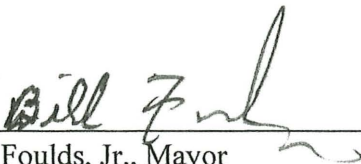
To User:
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 Dripping Springs, TX 78620
loganlilly33@gmail.com

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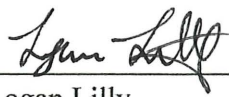
CITY OF DRIPPING SPRINGS:

USER:



 Bill Foulds, Jr., Mayor
 2/23/25

 Date



 Logan Lilly
 3/1/23

 Date

Received

MAR 01 2023

Attachment “A”

Insurance



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
02/13/2023

Item 3.

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER RPS Bollinger 200 Jefferson Park Whippany, NJ 07981 PHONE: 1-800-446-5311 FAX: 973-921-8474	CONTACT NAME: _____	
	PHONE (A/C, No. Ext): 800-446-5311	FAX (A/C, No.): 973-921-8474
	E-MAIL ADDRESS: _____	
INSURER(S) AFFORDING COVERAGE		NAIC # 12831
INSURER A: State National Insurance Company		
INSURER B:		
INSURER C:		
INSURER D:		
INSURER E:		
INSURER F:		

INSURED
 USA Softball, Inc.
 2801 NE 50th Street
 Oklahoma City, OK 73111

COVERAGES

CERTIFICATE NUMBER: IRO202378955


REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR VVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	<input checked="" type="checkbox"/> GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input checked="" type="checkbox"/> LOC	X		OVE-0000327-000	2/14/2023	1/1/2024	EACH OCCURRENCE	\$3,000,000
	Sexual Abuse & Molestation Liab per occurrence: \$1,000,000 Sexual Abuse & Molestation Aggregate limit: \$2,000,000 Participant & Legal Liability per occurrence: \$2,000,000 Participant & Legal Liability Aggregate limit: \$2,000,000 * Applies to non-participants only							DAMAGE TO RENTED PREMISES (Ea occurrence)
							MED EXP (Any one person) *	\$10,000
							PERSONAL & ADV INJURY	\$1,000,000
							GENERAL AGGREGATE	\$5,000,000
							PRODUCTS - COM/OP AGG	\$2,000,000
								\$
							COMBINED SINGLE LIMIT (Ea accident)	\$
							BODILY INJURY (Per person)	\$
							BODILY INJURY (Per accident)	\$
							PROPERTY DAMAGE (Per accident)	\$
								\$
							EACH OCCURRENCE	
							AGGREGATE	
								\$
							PER STATUTE	\$
							OTH-ER	\$
							E.L. EACH ACCIDENT	\$
							E.L. DISEASE - EA EMPLOYEE	\$
							E.L. DISEASE - POLICY LIMIT	\$

Accident Medical

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)
 COVERAGE UNDER THIS POLICY SHALL APPLY TO LIABILITY OF DRIPPING SPRINGS ADULT SOFTBALL ASSOCIATION ARISING OUT OF THE ADMINISTRATION, PLAY OR PRACTICE OF AMATEUR SOFTBALL/BASEBALL, BUT ONLY FOR INCIDENTS INVOLVING BODILY INJURY, PERSONAL INJURY OR PROPERTY DAMAGE. THE CERTIFICATE HOLDER BELOW IS NAMED AS AN ADDITIONAL INSURED TO THIS POLICY. ALL UMPIRES MUST BE USA SOFTBALL REGISTERED OR THE UMPIRES AND ANY ADDITIONAL INSUREDS WILL HAVE NO COVERAGE FOR AN UMPIRE LIABILITY CLAIM. 100% REGISTRATION IN USA SOFTBALL FOR TEAMS AND UMPIRES IS REQUIRED. THERE IS NO ACCIDENT INSURANCE COVERAGE FOR PARTICIPANTS UNDER THIS PLAN.

CERTIFICATE HOLDER City of Dripping Springs Mack Rusick 27148 Ranch Rd. 12 Dripping Springs, Texas 78620	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.  AUTHORIZED REPRESENTATIVE
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STAFF REPORT
City of Dripping Springs
PO Box 384
511 Mercer Street
Dripping Springs, TX 78620

Submitted By: Johnna Krantz, Community Events Coordinator

Council Meeting Date: June 18, 2024

Agenda Item Wording: **Approval of recommendations for appointment to the Founders Day Commission of Scott Phillips from the Lions Club, Eric Strang from St. Martin de Porres Catholic Church, and Justin Cornett from the Cook-Off Club, for commission terms ending June 30, 2026; and reappointment of Brenda Medcalf as Commission Chair for a term of one (1) year.**

Agenda Item Requestor: Founders Day Commission

Summary/Background: The Founders Day Commission is a fourteen-member advisory commission tasked with managing the City of Dripping Springs' Annual Founders Day celebration. The Commission is responsible for planning, promoting, arranging, and organizing Founders Day. The Commission makes recommendations to City Council regarding the improvement and safe operation of the Founders Day celebration.

Nine (9) members serve as representatives of the following organizations that are involved with the planning of the Founders Day Festival; St. Martin de Porres Catholic Church (3 seats), Dripping Springs Lions Club (3 seats), and the Dripping Springs Cook-Off Club (3 seats), with one member appointed by the City Council as the Chair. One Founders Day Commissioner is appointed by the City Council as the Commission Chair annually.

Commission Recommendation: Per ordinance, each organization provides the City Council with their recommendation for representative appointment to the Commission.

Brian Varnell will be stepping down as Cook-Off Club Representative at the end of his current term June 30, 2024.

Recommended Council Actions: Approve the recommended appointments of Scott Phillips, Eric Strang, and Justin Cornett to their respective organization representative seats for terms ending June 30, 2026; and appointment of Brenda Medcalf as Commission Chair for 2025.

Attachments:

- Lions Club Recommendation_FDC 2024-26
- SMP Appointment Letter to Commission – Strang
- Cook-Off Club Recommendation – Cornett

Next Steps/Schedule:

1. Inform applicant of council decision
2. Send welcome letter and calendar invite
3. Update master roster, group email and city website
4. Distribute updated roster and notice of new members to commission



Dripping Springs Lions Club

P. O. Box 53

Dripping Springs, TX 78620

May 15, 2024

City of Dripping Springs, Founders Commission,

The DS Lions Club recommends Sharon Goss and Scott Phillips to be Lions Club representatives on the Founders Day Commission.

In service to our community,

A handwritten signature in black ink that reads 'Marilyn Miller'. The signature is written in a cursive, flowing style.

Marilyn Miller, President
Dripping Springs Lions Club

PO Box 1062 - 230 Post Oak Drive - Dripping Springs, TX 78620

www.stmartindp.org - 512-858-5667



May 16, 2024

Andrea Cunningham
511 Mercer Street
PO Box 384
Dripping Springs, TX 78620

Dear Ms. Cunningham,
Darrell Debish will be resigning from the Founder's Day commission on June 30.
There is one more year remaining on his appointment.

We are requesting the appointment of Eric Strang to the City of Dripping Springs
Founder's Day Commission as our representative.

Sincerely,

Rev. Justin Nguyen
Pastor



June 4, 2024

To Whom it may concern:

I would like to recommend Justin Cornett for appointment to the Founder's Day Commission as a representative for the Dripping Springs Cookoff Club.

Justin has been a valued member of the Club for several years. He's always there to help and promote the Club to the community. He takes initiative, is dependable and would represent the Club well.

Regards,

Michele

Michele Ryon, President

Dripping Springs Cookoff Club



STAFF REPORT
City of Dripping Springs
PO Box 384
511 Mercer Street
Dripping Springs, TX 78620

Submitted By: Diana Boone, City Secretary

Council Meeting Date: June 20, 2024

Agenda Item Wording: **Approval of the Reappointment of at large members Sharon Hamilton, Jimmy Brown, and Roman Grijalva to the Transportation Committee for terms ending June 24, 2026 and the Reappointment of Travis Crow as the Committee Chair for a term of one (1) year.**

Agenda Item Requestor: Tory Carpenter, Planning Director

Summary/Background: The Transportation Committee will have nine voting members, one of whom will be the committee chair appointed by the city council. The Transportation Committee is responsible for organizing an inclusive process for assessing community needs and priorities in an orderly fashion and providing the council with guidance via a proposed transportation master plan that reflects the skills, creativity, vision, and cooperation of the committee, its members, and any advisors.

Every two years, on even years, starting in June 2014, city staff will prepare a slate of nominees for city council consideration. The slate will include nominees including but not limited to those with a background and experience in civil engineering, land/transportation planning, real estate/development, business ownership, and alternative mobility. The slate will only include individuals that city staff has contacted and who have expressed an interest and availability to serve. Potential nominees may express interest in the committee by contacting the city secretary in writing.

There are three (3) expiring seats not including the appointed Chair. All three members have requested reappointment. The City Secretary's Office received four applications for this committee.

Recommended Council Actions:

Staff recommends approval of committee member and committee Chair

Attachments:

1. Request for re-appointment
2. Applications

Next Steps/Schedule:

1. Notify members of Council decision
2. Update website and master roster
3. Administer Oath of Office and Statement of Officer
4. Notify applicants that were not appointed



STAFF REPORT
City of Dripping Springs
PO Box 384
511 Mercer Street
Dripping Springs, TX 78620

Submitted By: Laura Mueller, City Attorney

Council Meeting Date: June 18, 2024.

Agenda Item Wording: **Discuss and consider approval of a resolution authorizing intervention in Texas Gas Service Company’s rate case before the Railroad Commission.**

Agenda Item Requestor: Laura Mueller, City Attorney

Summary/Background: On June 3, 2024, Texas Gas Service Company (“TGS” or “Company”) a Division of ONE Gas, Inc. (“ONE Gas”), pursuant to Subchapter C of Chapter 104 of the Gas Utility Regulatory Act, filed its Statement of Intent to change gas rates at the Railroad Commission of Texas (“RRC”) and in all municipalities exercising original jurisdiction within the incorporated areas of the Central-Gulf Service Area (“CGSA”), effective July 8, 2024.

TGS is seeking to increase its revenues in the CGSA by \$25.8 million, which is an increase of 9.83% including gas costs, or 15.59% excluding gas costs. TGS is also requesting: (1) approval of new depreciation rates for certain plant within the CGSA; (2) a finding that expenses for Winter Storm Uri and COVID-19 that are contained in regulatory assets authorized by the RRC are reasonable, necessary, and accurate; (3) a prudence determination for capital investment made in the CGSA through December 31, 2023; (4) approval to include Excess Deferred Income Taxes (“EDIT”) in base rates, with discontinuance of the EDIT Rider to return EDIT to customers; and (5) approval to recover the reasonable rate case expenses associated with the filing through a surcharge.

The Company’s new proposed tariff includes: (1) a new Small and Large Residential rate design and related rate schedules based on customer usage patterns; (2) a new Small and Large Commercial rate design and related rate schedules based on customer usage patterns; (3) a new Renewable Natural Gas Credits program rate schedule; (4) new rate schedules for a rate case expense surcharge; and (5) certain revisions to the Company’s Rules of Service.

The resolution suspends the July 8, 2024 effective date of the Company’s rate increase for the maximum period permitted by law to allow the City, working in conjunction with other similarly situated cities with original jurisdiction served by TGS, to evaluate the filing, to determine whether the

filing complies with the law, and if lawful, to determine what further strategy, including settlement, to pursue.

The law provides that the Company’s rate request cannot become effective until at least 35 days following the filing of the application. The law permits the City to suspend the rate change for 90 days after the date the rate change would otherwise be effective. If the City fails to take some action regarding the filing before the effective date, TGS’s rate request is deemed approved

**Commission
Recommendations:**

N/A

**Recommended
Council Actions:**

Approve Resolution 2024-R08 authorizing City to engage law firm and intervene in TGS’s pending application for approval to increase its rates before the Railroad Commission.

Attachments:

Resolution 2024-R08.

Next Steps/Schedule:

Notify and engage law firm to represent City in intervention.

CITY OF DRIPPING SPRINGS

RESOLUTION No. 2024-R

A RESOLUTION OF THE CITY OF DRIPPING SPRINGS, TEXAS SUSPENDING THE JULY 8, 2024 EFFECTIVE DATE OF TEXAS GAS SERVICE COMPANY'S REQUESTED INCREASE TO PERMIT THE CITY TIME TO STUDY THE REQUEST AND TO ESTABLISH REASONABLE RATES; APPROVING COOPERATION WITH OTHER CITIES IN THE TEXAS GAS SERVICE COMPANY'S CENTRAL-GULF SERVICE AREA; HIRING LEGAL AND CONSULTING SERVICES TO NEGOTIATE WITH THE COMPANY AND DIRECT ANY NECESSARY LITIGATION AND APPEALS; AUTHORIZING INTERVENTION IN GUD NO. 17471 AT THE RAILROAD COMMISSION; REQUIRING REIMBURSEMENT OF CITIES' RATE CASE EXPENSES; FINDING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED IS OPEN TO THE PUBLIC AS REQUIRED BY LAW; REQUIRING NOTICE OF THIS RESOLUTION TO THE COMPANY AND LEGAL COUNSEL.

WHEREAS, on or about June 3, 2024, Texas Gas Service Company, a Division of ONE Gas, Inc. ("TGS" or "Company"), pursuant to Gas Utility Regulatory Act § 104.102, filed with the City of Dripping Springs ("City") a Statement of Intent to change gas rates in all municipalities exercising original jurisdiction within the incorporated areas of the Central-Gulf Service Area, effective July 8, 2024; and

WHEREAS, the City is a gas customer of TGS and a regulatory authority with exclusive original jurisdiction over the rates and charges of TGS within the City; and

WHEREAS, it is reasonable for the City of Dripping Springs to cooperate with other similarly situated cities in conducting a review of the Company's application and to hire and direct legal counsel and consultants and to prepare a common response and to negotiate with the Company and direct any necessary litigation; and

WHEREAS, the Gas Utility Regulatory Act § 104.107 grants local regulatory authorities the right to suspend the effective date of proposed rate changes for ninety (90) days; and

WHEREAS, TGS has filed an application with the Railroad Commission, Gas Utilities Docket (GUD) No. 17471, that could become the docket into which appeals of city action on the TGS filing are consolidated; and

WHEREAS, the Gas Utility Regulatory Act § 103.022 provides that costs incurred by cities in ratemaking activities are to be reimbursed by the regulated utility;

WHEREAS, pursuant to Texas Administrative code Section 51.001, the City has general authority to adopt an ordinance or police regulation that is for the good government, peace or

order of the City and is necessary or proper for carrying out a power granted by law to the City.

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

- 1. Finding of Fact:** The above and foregoing recitals are hereby found to be true and correct and are incorporated as finding of fact.
- 2. Suspension of Rate Request Effective Date:** That the July 8, 2024, effective date of the rate request submitted by TGS on or about June 3, 2024, be suspended for the maximum period allowed by law to permit adequate time to review the proposed changes and to establish reasonable rates.
- 3. Rate Case Authorization:** That the City is authorized to cooperate with other cities in the TGS service area to hire and direct legal counsel and consultants, negotiate with the Company, make recommendations to the City regarding reasonable rates and to direct any necessary administrative proceedings or court litigation associated with an appeal of a rate ordinance and the rate case filed with the City or Railroad Commission.
- 4. Hiring of Law Firm:** That, subject to the right to terminate employment at any time, the City of Dripping Springs hereby authorizes the hiring of the law firm of Lloyd Gosselink Rochelle & Townsend, P.C. and consultants to represent the City in all matters associated with the TGS application to increase rates and appeals thereof.
- 5. Intervention:** That intervention in Railroad Commission GUD No. 17471 is authorized.
- 6. Reimbursement:** That the City's reasonable rate case expenses shall be reimbursed by the Company.
- 7. Effective Date:** The resolution shall be effective from and after its approval and passage.
- 8. Meeting:** The meeting at which this Resolution was passed was open to the public, and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act, Texas Government Code, Chapter 551.

9. Notice: A copy of this Resolution shall be sent to TGS representatives Judy Hitchye and Anthony Brown, Texas Gas Service Company, Barton Skyway IV, 1301 S. Mopac, Suite 400, Austin, Texas 78746 (Judy.Hitchye@onegas.com; Anthony.Brown@onegas.com), and to Thomas Brocato at Lloyd Gosselink Rochelle & Townsend, P.C., 816 Congress Avenue, Suite 1900, Austin, Texas 78701 (tbrocato@lglawfirm.com).

PASSED AND APPROVED this, the ____ day of _____ 202____, by a vote of ____ (ayes) to ____ (nays) to ____ (abstentions) of the City Council of Dripping Springs, Texas:

CITY OF DRIPPING SPRINGS:

Bill Foulds, Jr., Mayor

ATTEST:

_____, City Secretary

Old Fitzhugh Road: Reimagining the Gateway to Historic Dripping Springs



Dripping Springs City Council Update: June 18, 2024

Prepared by McCann Adams Studio for HDR & TIRZ Project Manager

Agenda

- Old Fitzhugh Road (OFR): Overall Project Update
- Proposed Gateway Concept at the RM 12 Intersection
- Concept Design: Recalling an Historic Native Plant Landscape



Old Fitzhugh Road (OFR): Overall Landscape Update



DRAFT 90% Design Plan: in-progress

RM 12 & OFR "Gateway"

Proposed Gateway Concept: OFR / RM 12 Intersection

The land on the south side of this RM 12 & OFR intersection is already a gateway to the Dripping Springs Old Fitzhugh Road Historic District and to the Downtown area.

There is an existing "Dripping Springs-Gateway to the Hill Country" sign located at this entry. This sign is not owned by the City and will be replaced by newer, fresher and more appropriate identity signage.

This is a unique opportunity to create an enhanced, inviting place that helps tell the story of Dripping Springs' history, landscapes and preservation by re-imagining this highly-visible entry to the Old Fitzhugh Road historic district.



The Mercer Street Historic District uses limestone flagstone paving, limestone benches, specialty pedestrian street-lighting poles and litter bins to enhance the unique identity of this main street.

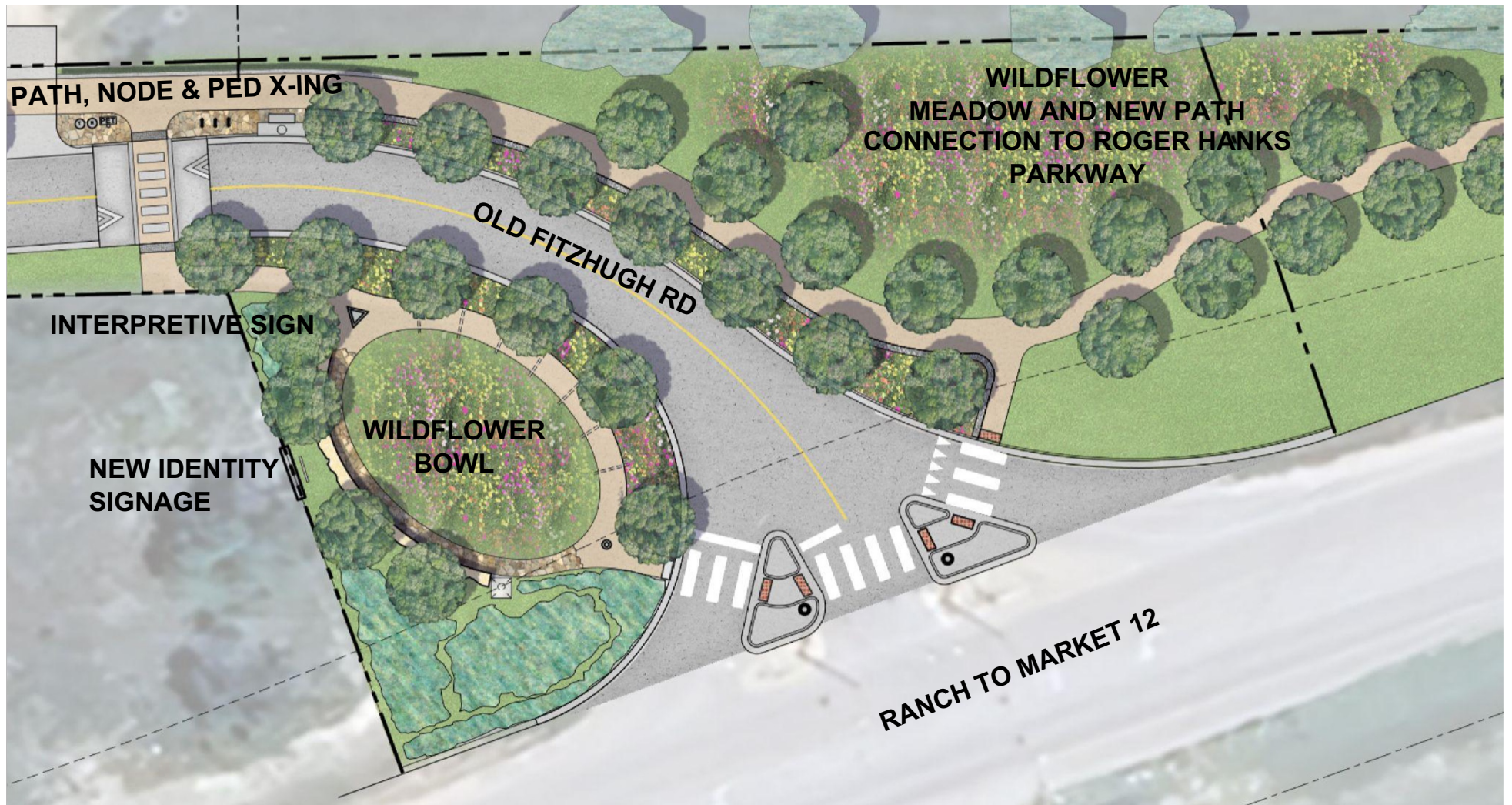
Gateway Site: looking south toward Old Fitzhugh Road



Gateway Site: aerial view of existing conditions before parkway construction



Gateway Pollinator Garden Concept Plan



Proposed Trees & Hardscape Elements



Limestone picnic table under Hill Country native, the Live Oak



Limestone ledgerock along flagstone and gravel and pathways

Proposed Historic Hill Country Native Plants



Evergreen and Flameleaf Sumac will shape and buffer the Gateway Garden from the RM 12 traffic.



Autumn color of Flameleaf Sumac

Historic Hill Country Native Plants



Native wildflower mix for the "Bowl"



Silver Ponyfoot for Curbside Planting Zones

Potential Wayfinding & Interpretive Signage



2-Sided Interpretive Sign Identifying Plant Types, Located along Greenway Trail



3-Sided Historic District Interpretive Sign

Concept Rendering: Gateway Pollinator Garden





Roger Hanks Parkway

Ranch to Market Road 12

Old Fitzhugh Road

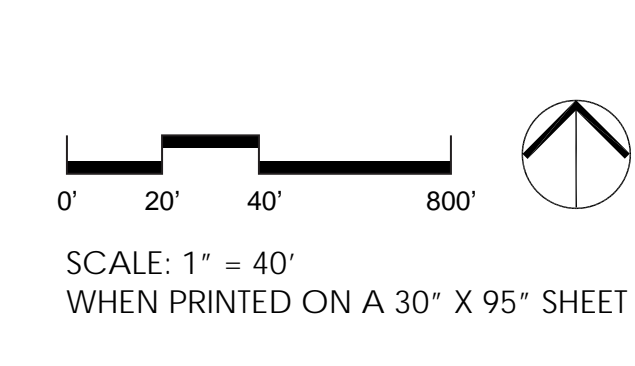
Founders Park Road

Ranch to Market Road 12

Mercer Street

OLD FITZHUGH ROAD: DRAFT 90% DESIGN PLAN

Prepared by McCann Adams Studio for the City of Dripping Springs
DRAFT June 4, 2024



CITY OF DRIPPING SPRINGS

RESOLUTION No. 2024-_____

A RESOLUTION OF THE CITY OF DRIPPING SPRINGS, TEXAS, APPOINTING CITY SECRETARY FOR THE CITY OF DRIPPING SPRINGS.

WHEREAS, the City Council of the City of Dripping Springs, Texas (the “City”), desires to appoint a City Secretary for the City of Dripping Springs, Texas; and

WHEREAS, Section 22.071 of the Texas Local Government Code creates the office of City Secretary; and

WHEREAS, the City Secretary’s duties and powers are outlines in Section 22.073 of the Texas Local Government Code that meets the requirements of that section; and

WHEREAS, the City Secretary appointee has agreed to faithfully discharge the duties of City Secretary; and

WHEREAS, it is hereby officially found and determined that the meeting at which this resolution was passed was open to the public and public notice of the time, place and purpose of said meeting was given, all as required by Chapter 551, Texas Government Code.

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

Section 1. The above and foregoing premises are true and correct and are incorporated herein and made a part hereof for all purposes.

Section 2. The City Council hereby appoints:

Diana Boone

as the City Secretary for the City of Dripping Springs, Texas, as a municipal officer under Section 22.071 of the Texas Local Government Code.

Section 3. This Resolution shall take effect immediately from and after its passage in accordance with law and it is accordingly so resolved.

PASSED AND APPROVED this, the 18th day of June, 2024, by a vote of ____ (ayes) to ____ (nays) to 0 (abstentions) of the City Council of Dripping Springs, Texas:

CITY OF DRIPPING SPRINGS:

Bill Foulds, Jr., Mayor

ATTEST:

Cathy Gieselman, Deputy City Secretary



STAFF REPORT
City of Dripping Springs
PO Box 384
511 Mercer Street
Dripping Springs, TX 78620

Submitted By: Keenan Smith, TIRZ Project Manager and Michelle Fischer, City Administrator

Council Meeting Date: June 18, 2024

Agenda Item Wording: **Presentation, discussion, and consideration of approval of the acceptance of the Stephenson Building Rehabilitation and Improvement Project 100% Construction Documents.** *Sponsor: Mayor Pro Tem Taline Manassian. Presenter: Keenan Smith, TIRZ Project Manager and Larry Irsik, Architexas.*

Agenda Item Requestor: Michelle Fischer, City Administrator / Historic Preservation Officer

Summary/Background: The Historic Preservation Commission approved a Certificate of Appropriateness for the adaptive re-use and addition of the Stephenson Building on 4/6/23.

The City Council approved a Professional Services Agreement for Full Architectural Design Services with authorization to proceed with Design Development Phase (Architexas PSA- Task Order #1) on 6/6/23.

The Design Development phase was completed and presented to Council, including a DD cost Estimate on 11/14/23. At that time, authorization to proceed with Construction Documents (Task Order #2) was requested and given by Council.

The Architexas's PSA is a "Task Order" contract, stipulating that design progress and cost estimate updates be given to Historic Preservation Commission, TIRZ Board, and City Council at the completion of each design phase, requesting City Council acceptance of progress and Staff authorization for Notice to Proceed with next phase Task Order. These built-in "check points" allow the City to monitor design progress, estimated costs, and control the orderly progression of each phase of the work. This Agenda Item is the "Construction Documents Phase Update."

100% Architectural Construction Documents Drawings (Un-Stamped "Issued for Pricing set) and Final Project Manual (outline specifications) have now been produced by the Architexas (submittal dated 4/26/24). The architect's live link to access the production CD Drawings and Project Manual is incorporated here for Council review and reference:

https://architexas1-my.sharepoint.com/:f:/g/personal/dridenour_architexas_com/Eu7pBl_gXORPgNUaASOPaHsBofDGy3KO-1YJ3nXSqROOMQ?e=BfTBuL

The Construction Document phase is an important transition and milestone in the design of a project. The approved design concepts are translated from abstract ideas to physical forms. CDs both describe, in detail, the needed building fabrications, and prescribe the components and overall assembly scheme for a built project. The Construction Documents provide necessary documentation to enable it to progress to regulatory permitting and be put out to bid for actual construction. A refined Estimate of Probable Construction Cost (CD Cost Estimate) is also produced at this stage.

Construction Documents Progress Acceptance: After careful review of the CD submissions and discussion of comments with the architect, Staff finds that the design that has been documented by Architexas remains consistent with all the City's goals and program for adaptive re-use of the building and satisfies all known City requirements.

Advisory Boards and Commissions: The HPC was given a similar update presentation on 6/6/23, and the TIRZ Board was updated in their meeting on 6/10/24. Both the HPC and the TIRZ Board acknowledged the progress and continue to strongly support the project.

Construction Documents Cost Estimate: (Estimate of Probable Construction Costs- EOPCC): A final EOPCC was prepared and submitted 6/3/24 by the Vermuelens, the professional Third-Party Cost Estimator engaged by Architexas. The estimate was extensively reviewed by Architexas, City Staff, and the Project Manager and reflects their comments, recommendations and adjustments.

The Final Construction Documents EOPCC is \$3,930,067 including 4% escalation factor pushing to a projected January 2025 Date of Construction, and includes a 7% "Owners Bidding Contingency" reflecting current construction industry climate volatility and variations in the bidding environment. Staff notes that project schedule delays or pushing the Construction Start date even further out will invariably incur additional escalation costs.

The current estimate is an increase of \$460,445, or 13.2% from the Design Development EOPCC of \$3,469,622 as presented in the DD Update last November. The reasons for the increase include the escalation due to a construction start date of 2025 vs 2024, scope increases for necessary site development and utilities, and inclusion of certain code required, and City specified building systems such as digital lighting, fire alarm & access controls, AV and IT infrastructure. Staff acknowledges direction for, and supports the reasons for these increases, especially those system improvements which will contribute to making the

building more functional, more technologically current, and perform more efficiently.

Architexas and City Staff are prepared to review, discuss and answer any questions or address concerns about any aspect of the 100% CDs, Project Manual Specifications, and Estimate of Probable Construction Costs for this project.

Staff recommends acceptance of the Architectural Construction Documents (CD).

Comprehensive Plan Element: Goal L5: Develop a Facilities Plan for City-owned properties: Evaluate Stephenson Building and determine needed repairs/changes to meet building codes; Develop plan for repair/renovation and reuse, including potential tenants of Stephenson Building and adjoining land; Renovate Stephenson Building when funding is available and make improvements to adjoining land.

Commission Recommendations: The Historic Preservation Commission and TIRZ Board continue to be supportive of the project but did not make recommendations on this specific agenda item.

Recommended Council Actions: Approval of the acceptance of the Stephenson Building Rehabilitation and Improvement Project 100% Construction Documents.

Attachments: Staff presentation, construction cost estimate, parking lot concept plan.

Next Steps/Schedule: Consider approval of Task Order #3 Permitting, Bidding, and Construction Administration, contingent on funding.

STEPHENSON HIGH SCHOOL

Dripping Springs, Texas



City of Dripping Springs
City Council Update

**100% Construction Documents
Confirmation**

June 18, 2024

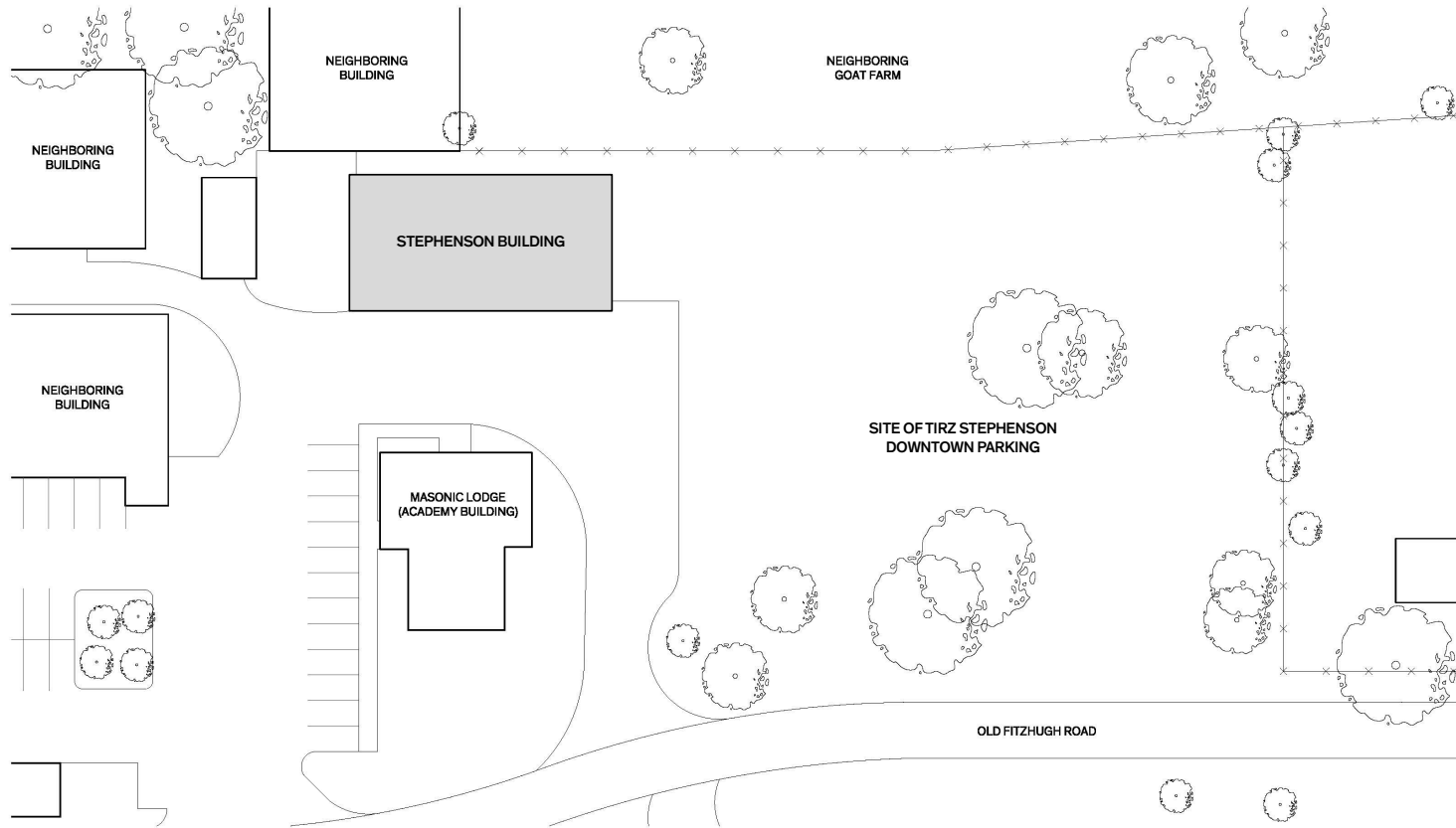
*Adaptive Re-Use and Rehabilitation of the
Historic Stephenson High School Building
and Proposed Addition*

UPDATE SUMMARY

- Construction Documents 100% Complete
- Issued for Pricing (un-stamped drawings & specs)
- Associated 100% Estimate of Probable Construction Costs
- Design Consistent with previously approved COA and Design Development
- Project meets or exceeds all City Programming & Goal Objectives
- Seeking City Council Confirmation & Approval of Permitting & Bid Phases*



*Contingent upon Construction Funding

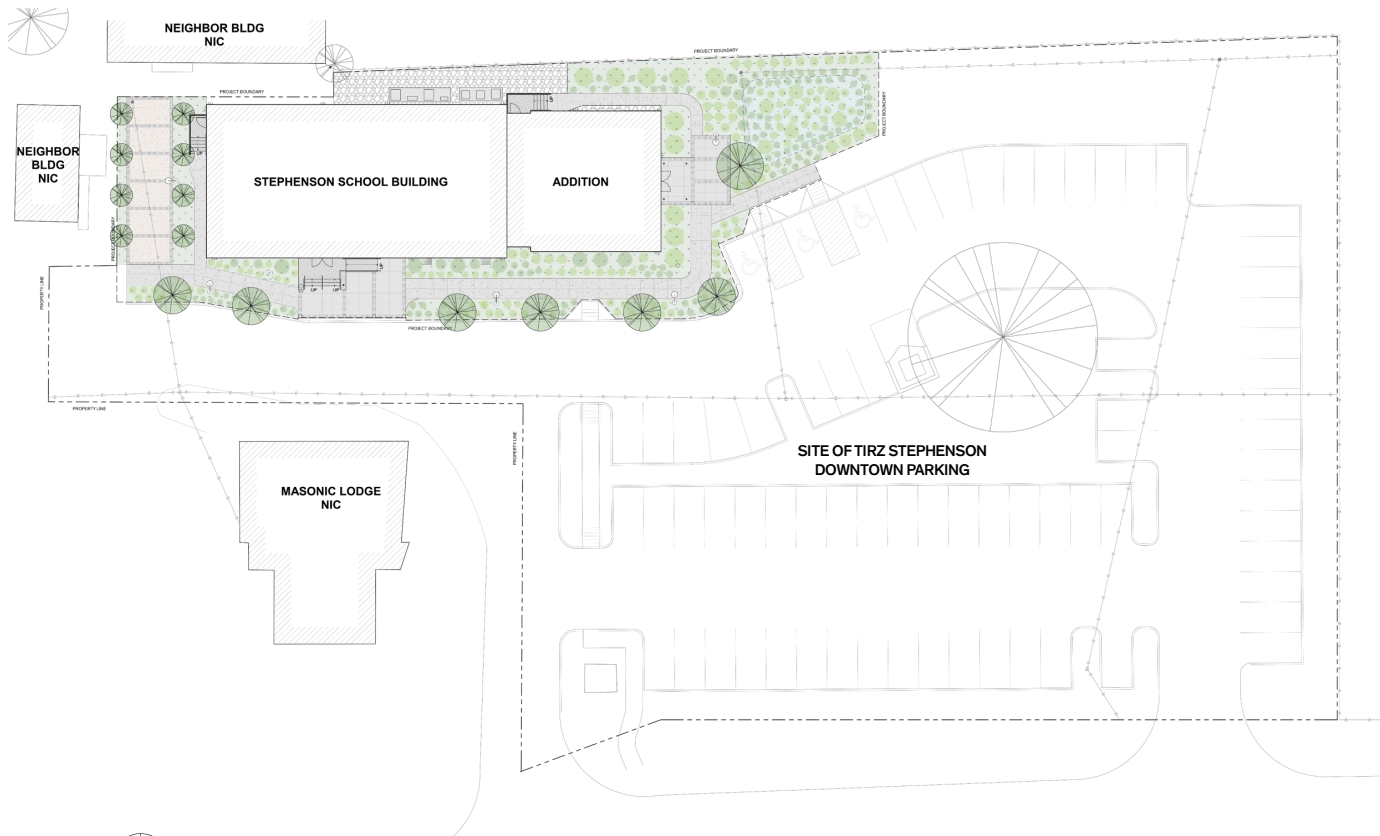



Existing Site Plan

Scale: 1/32" = 1'-0"

04/01/2020

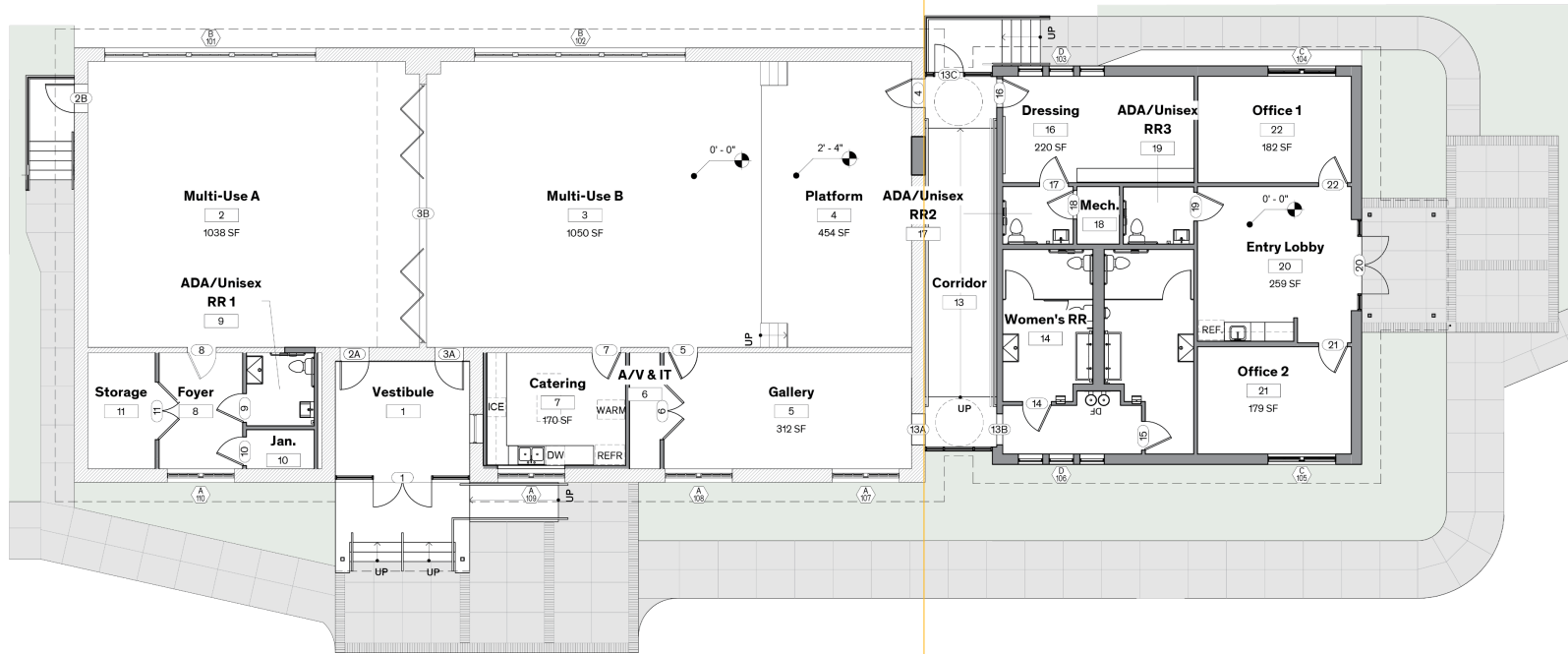




Site Plan 
PLAN NORTH

Existing Building Renovation

Addition / New Construction



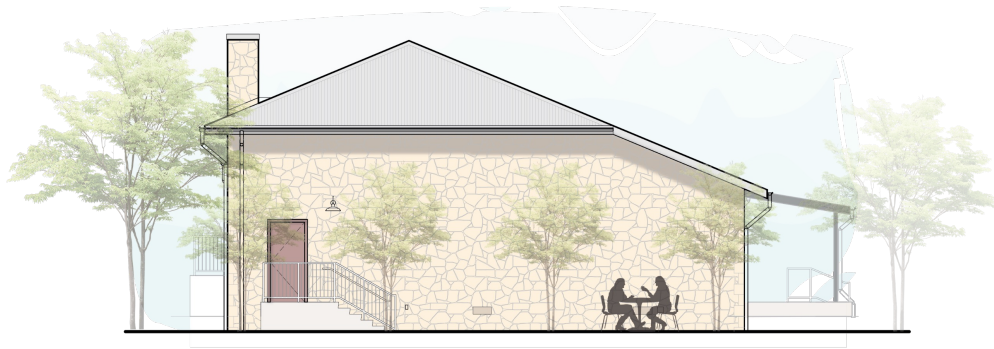
Floor Plan  PLAN NORTH



West Elevation



East Elevation



South Elevation



North Elevation

MATERIALS

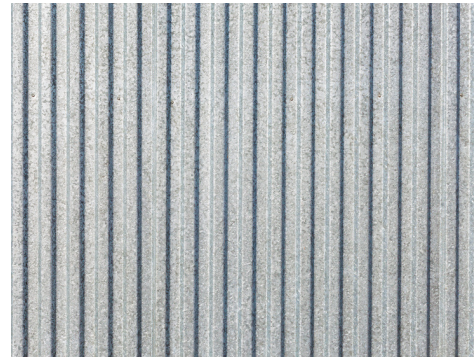
Existing Limestone



Matching Cordova cream limestone in ashlar pattern



Galvanized Corrugated Metal





Direct Construction Cost:

**100% CD's
COST ESTIMATE**

\$2,966,088

General Requirements:

\$489,405

- 12% General Conditions
- 4.5% Profit/Fee/Risk

Contingencies:

\$474,574

- 5% Design/Construction Contingency
- 4.0% Escalation to Jan'25 Start Date
- 7% Bidding Contingency

Estimated Total Construction Cost:

\$3,930,067



STEPHENSON TRACT BASE MAP
11.4.2020 Prepared by McCombs Adams Studio for the City of Dripping Springs

Stephenson Civic District
Illustrative Plan



Stephenson Civic District Illustrative Plan



LEVEL 2 ELEMENTAL SUMMARY		Element \$	%	01 New	02 Reno	03 Site		
GROSS FLOOR AREA	\$/sf	5,901 sf		\$/sf	1,881	\$/sf	4,020	\$/sf
A1 SUBSTRUCTURE	10.61	62,600	2%	31.35	58,967	0.90	3,633	0
A2 STRUCTURE	33.19	195,843	5%	44.40	83,520	27.94	112,324	0
A3 ENCLOSURE	120.01	708,195	18%	163.01	306,613	99.90	401,581	0
B1 PARTITIONS & DOORS	26.64	157,176	4%	33.84	63,657	23.26	93,519	0
B2 FINISHES	29.30	172,886	4%	32.90	61,878	27.61	111,008	0
B3 FITTINGS & EQUIPMENT	22.91	135,217	3%	19.70	37,051	24.42	98,166	0
C1 MECHANICAL	99.65	588,012	15%	113.35	213,209	93.23	374,803	0
C2 ELECTRICAL	69.16	408,099	10%	88.76	166,948	59.99	241,151	0
D1 SITE WORK	69.36	409,275	10%	0.00	0	1.17	4,716	404,559
D2 ANCILLARY WORK	21.82	128,783	3%	0.00	0	32.04	128,783	0
DIRECT CONSTRUCTION COST	502.64	2,966,088	75%	527.30	991,843	390.47	1,569,686	404,559
Z1 GENERAL REQUIREMENTS	82.94	489,405	12%	87.00	163,654	64.43	258,998	66,752
Z2 CONTINGENCIES	80.42	474,574	12%	84.37	158,695	62.48	251,150	64,730
TOTAL CONSTRUCTION COST	666.00	3,930,067	100%	698.67	1,314,192	517.37	2,079,833	536,041

LEVEL 3 ELEMENTAL SUMMARY	\$/sf	Element \$	%	01 New \$/sf	02 Reno \$/sf	03 Site \$/sf	
GROSS FLOOR AREA				1,881	4,020		0
A1 SUBSTRUCTURE							
A11 Foundations	8.19	48,334	24.97	46,972	0.34	1,362	0
A12 Building Excavation	2.42	14,266	6.38	11,995	0.56	2,270	0
A2 STRUCTURE							
A21 Lowest Floor Structure	18.40	108,560	21.00	39,493	17.18	69,067	0
A23 Roof Structure	14.79	87,283	23.41	44,027	10.76	43,257	0
A3 ENCLOSURE							
A32 Walls Above Grade	40.11	236,700	81.67	153,619	20.67	83,082	0
A33 Windows & Entrances	23.71	139,913	24.00	45,148	23.57	94,765	0
A34 Roof Covering	43.49	256,647	39.46	74,225	45.38	182,422	0
A35 Projections	12.70	74,933	17.87	33,622	10.28	41,312	0
B1 PARTITIONS & DOORS							
B11 Partitions	16.73	98,696	20.12	37,837	15.14	60,859	0
B12 Doors	9.91	58,480	13.73	25,820	8.12	32,660	0
B2 FINISHES							
B21 Floor Finishes	12.41	73,222	12.02	22,614	12.59	50,609	0
B22 Ceiling Finishes	7.35	43,399	9.32	17,537	6.43	25,862	0
B23 Wall Finishes	9.53	56,265	11.55	21,727	8.59	34,538	0
B3 FITTINGS & EQUIPMENT							
B31 Fittings	12.75	75,217	19.70	37,051	9.49	38,166	0
B32 Equipment	10.17	60,000	0.00	0	14.93	60,000	0
C1 MECHANICAL							
C11 Plumbing & Drainage	34.66	204,510	51.00	95,938	27.01	108,572	0
C12 Fire Protection	7.35	43,372	7.35	13,825	7.35	29,547	0
C13 HVAC	44.71	263,845	44.08	82,908	45.01	180,938	0
C14 Controls	12.93	76,284	10.92	20,538	13.87	55,746	0

LEVEL 3 ELEMENTAL SUMMARY	\$/sf	Element \$	%	01 New \$/sf	1,881	02 Reno \$/sf	4,020	03 Site \$/sf	0
GROSS FLOOR AREA									
C2 ELECTRICAL									
C21 Service & Distribution	12.81	75,589		29.50	55,488	5.00	20,101		0
C22 Lighting & Devices	35.14	207,379		42.09	79,163	31.89	128,216		0
C23 Systems	21.21	125,131		17.17	32,297	23.09	92,834		0
D1 SITE WORK									
D11 Site Development	31.53	186,075		0.00	0	1.17	4,716		181,359
D12 Mechanical Site Services	27.16	160,250		0.00	0	0.00	0		160,250
D13 Electrical Site Services	10.67	62,950		0.00	0	0.00	0		62,950
D2 ANCILLARY WORK									
D21 Demolition	21.82	128,783		0.00	0	32.04	128,783		0
DIRECT CONSTRUCTION COST				527.30	991,843	390.47	1,569,686		404,559
Z1 GENERAL REQUIREMENTS									
Z11 General Requirements	60.32	355,931	12.0%	63.28	119,021	46.86	188,362		48,547
Z12 Fee	22.62	133,474	4.5%	23.73	44,633	17.57	70,636		18,205
Z2 CONTINGENCIES									
Z21 Design Contingency	25.13	148,304	5.0%	26.36	49,592	19.52	78,484		20,228
Z22 Escalation Contingency	55.29	326,270	11.0%	58.00	109,103	42.95	172,665		44,502
TOTAL CONSTRUCTION COST									
	666.00	3,930,067		698.67	1,314,192	517.37	2,079,833		536,041

ELEMENTAL ESTIMATE

Description	Quantity	01 New Quantity	02 Reno Quantity	03 Site Quantity
GROSS FLOOR AREA				
Level 1	5,901 sf	1,881	4,020	
TOTAL GROSS FLOOR AREA	5,901 sf	1,881	4,020	0

REPORT NOTES

ELEMENTAL ESTIMATE

Description	Trade	Quantity	Rate	\$	01 New		02 Reno		03 Site	
					Quantity	\$	Quantity	\$	Quantity	\$
A1 SUBSTRUCTURE										
A11 Foundations										
Foundations										
existing no work	+	4,020 sf	0.00	0	0	0	4,020	0	0	0
column footings 2x2x2' avg, 2psf		6 no	681.20	4,087	4	2,725	2	1,362		0
grade beams 1.75x2' avg, 204lf		20 cy	1,519.60	30,392	20	30,392		0		0
foundation walls 12" avg, 130sf, 4psf		5 cy	1,414.80	7,074	5	7,074		0		0
foundation details, misc	+	1,881 sf	1.57	2,953	1,881	2,953		0		0
foundation drains		174 lf	22.00	3,828	174	3,828		0		0
Subtotal Foundations		5,901 sf	8.19	48,334	1,881	46,972	4,020	1,362	0	0
Total A11 Foundations		5,901 sf	8.19	48,334	24.97	46,972	0.34	1,362	#Num!	0
A12 Building Excavation										
Earthwork										
excavation foundation	+	205 cy	12.58	2,579	174	2,189	31	390		0
haul away		205 cy	12.58	2,579	174	2,189	31	390		0
backfill granular		178 cy	36.68	6,529	148	5,429	30	1,100		0
excavation misc		205 cy	12.58	2,579	174	2,189	31	390		0
Subtotal Earthwork		205 cy	69.59	14,266	174	11,995	31	2,270	0	0
Total A12 Building Excavation		5,901 sf	2.42	14,266	6.38	11,995	0.56	2,270	#Num!	0
TOTAL A1 SUBSTRUCTURE				62,600		58,967		3,633		0

ELEMENTAL ESTIMATE

Description	Trade	Quantity	Rate	\$	01 New	02 Reno	03 Site		
					Quantity	\$	Quantity	\$	Quantity
A2 STRUCTURE									
A21 Lowest Floor Structure									
On Grade									
existing mud slab to remain	+	4,020 sf	0.00	0	0	4,020	0		0
slab on grade 5" avg, mesh	+	1,881 sf	12.58	23,663	1,881	23,663	0		0
vapor barrier to sog		1,881 sf	2.50	4,703	1,881	4,703	0		0
extra for ramps		156 sf	52.40	8,174	156	8,174	0		0
pits, pads, detailing		1,881 sf	1.57	2,953	1,881	2,953	0		0
Subtotal On Grade		5,901 sf	6.69	39,493	1,881	39,493	4,020	0	0
Plenums, Crawlspace									
remove, reinstall and make good to sub floor	+	3,820 sf	3.14	11,995		3,820	11,995		0
cement board to sub floor	+	200 sf	5.00	1,000		200	1,000		0
new vapor barrier to existing crawl space		4,020 sf	1.05	4,221		4,020	4,221		0
wood joists reinforcing		1,598 bf	8.38	13,391		1,598	13,391		0
steel beams reinforcing existing		2 tns	10,480.00	20,960		2	20,960		0
infill crawl space wall		5 no	2,500.00	12,500		5	12,500		0
stage framing extra		1 ls	5,000.00	5,000		1	5,000		0
Subtotal Plenums, Crawlspace		4,020 sf	17.18	69,067	0	0	4,020	69,067	0
Total A21 Lowest Floor Structure		5,901 sf	18.40	108,560	21.00	39,493	17.18	69,067	#Num!
A23 Roof Structure									
Roof Structure									
wood ply roof deck	+	7,342 sf	5.76	42,290	2,382	13,720	4,960	28,570	0
wood trusses		2,569 bf	9.50	24,406	2,369	22,506	200	1,900	0
wood stud wall extra for bearing		775 sf	5.24	4,061	775	4,061		0	0
wood connections, details		7,342 sf	1.57	11,527	2,382	3,740	4,960	7,787	0
rafter tail replacement 10% at existing		5,000 ls	1.00	5,000		0	5,000	5,000	0
Subtotal Roof Structure		7,342 sf	11.89	87,283	2,382	44,027	4,960	43,257	0

ELEMENTAL ESTIMATE

Description	Trade	Quantity	Rate	\$	01 New		02 Reno		03 Site	
					Quantity	\$	Quantity	\$	Quantity	\$
Total A23 Roof Structure		5,901 sf	14.79	87,283	23.41	44,027	10.76	43,257	#Num!	0
TOTAL A2 STRUCTURE				195,843		83,520		112,324		0

ELEMENTAL ESTIMATE

Description	Trade	Quantity	Rate	\$	01 New		02 Reno		03 Site	
					Quantity	\$	Quantity	\$	Quantity	\$
A3 ENCLOSURE										
A32 Walls Above Grade										
Cladding										
clean existing limestone	+	3,600 sf	7.86	28,296			0	3,600	28,296	0
repoint existing limestone, 25%		900 sf	8.38	7,542			0	900	7,542	0
repair existing limestone at removed fasteners and 20 locations		20,000 ls	1.00	20,000			0	20,000	20,000	0
replace parge coat at openings		15 no	500.00	7,500			0	15	7,500	0
concrete, smooth finish	+	40 sf	52.40	2,096	22	1,153		18	943	0
limestone panel	+	1,300 sf	83.84	108,992	1,300	108,992			0	0
metal panel, trim	+	47 sf	78.60	3,694	22	1,729		25	1,965	0
masonry infill at non-historic window/door, match existing		2 no	4,000.00	8,000			0	2	8,000	0
masonry restoration allowance		7,500 ls	1.00	7,500			0	7,500	7,500	0
Subtotal Cladding		4,987 sf	38.82	193,620	1,344	111,874		3,643	81,746	0
Backup										
existing, see B23	+	3,600 sf	0.00	0			0	3,600	0	0
wood stud 6"	+	1,387 sf	8.00	11,096	1,344	10,752		43	344	0
sheathing, avb, insul, gyp		1,387 sf	23.06	31,984	1,344	30,993		43	992	0
Subtotal Backup		4,987 sf	8.64	43,080	1,344	41,745		3,643	1,336	0
Total A32 Walls Above Grade		5,901 sf	40.11	236,700	81.67	153,619		20.67	83,082	#Num!
A33 Windows & Entrances										
Windows										
storefront	+	326 sf	83.84	27,332	215	18,026		111	9,306	0
punched windows	+	134 sf	73.36	9,830	134	9,830			0	0
replace sashes, 100%	+	664 sf	60.16	39,946			0	664	39,946	0
window restoration, allowance		5,000 ls	1.00	5,000			0	5,000	5,000	0
window frame restoration		25,000 ls	1.00	25,000			0	25,000	25,000	0
Subtotal Windows		1,124 sf	95.29	107,108	349	27,856		775	79,252	0
Entrances										

ELEMENTAL ESTIMATE

Description	Trade	Quantity	Rate	\$	01 New		02 Reno		03 Site	
					Quantity	\$	Quantity	\$	Quantity	\$
glazed aluminum	*	5 no	5,764.00	28,820	3	17,292	2	11,528		0
hollow metal	*	1 no	3,985.00	3,985		0	1	3,985		0
Subtotal Entrances		6 no	5,467.50	32,805	3	17,292	3	15,513	0	0
Total A33 Windows & Entrances		5,901 sf	23.71	139,913	24.00	45,148	23.57	94,765	#Num!	0
A34 Roof Covering										
Roofing										
TPO roofing	+	282 sf	26.20	7,388	282	7,388		0		0
sheet corrugated, no insulation	+	7,060 sf	18.00	127,080	2,100	37,800	4,960	89,280		0
flashing and accessories, gutters and downspouts		7,342 sf	4.19	30,763	2,382	9,981	4,960	20,782		0
insulation R-38 batt		2,382 sf	8.00	19,056	2,382	19,056		0		0
5.5" rigid insulation, 1/2" gyp board, 2" spray acoustic insulation		4,020 sf	18.00	72,360		0	4,020	72,360		0
Subtotal Roofing		7,342 sf	34.96	256,647	2,382	74,225	4,960	182,422	0	0
Total A34 Roof Covering		5,901 sf	43.49	256,647	39.46	74,225	45.38	182,422	#Num!	0
A35 Projections										
Projections - Area Based										
building soffit, new	+	350 sf	78.60	27,510	350	27,510		0		0
building soffit, restore, replace 25% - area	+	555 sf	0.00	0		0	555	0		0
building soffit, restore, replace 25% - cost		25,000 ls	1.00	25,000		0	25,000	25,000		0
exterior wood soffits allowance no 6		5,000 ls	1.00	5,000		0	5,000	5,000		0
wood rafter tail allowance no 8		5,000 ls	1.00	5,000		0	5,000	5,000		0
Canopy										
foundations see A11		cy	0.00	0		0		0		0
structural steel		500 lbs	10.48	5,240	250	2,620	250	2,620		0
wood framing		199 sf	5.50	1,095	96	528	103	567		0
wood connections, misc		1,500 ls	1.00	1,500	750	750	750	750		0
sheet corrugated		199 sf	23.06	4,589	96	2,214	103	2,375		0

ELEMENTAL ESTIMATE

Description	Trade	Quantity	Rate	\$	01 New		02 Reno		03 Site	
					Quantity	\$	Quantity	\$	Quantity	\$
Subtotal Projections - Area Based		905 sf	82.80	74,933	350	33,622	555	41,312	0	0
Total A35 Projections		5,901 sf	12.70	74,933	17.87	33,622	10.28	41,312	#Num!	0
TOTAL A3 ENCLOSURE				708,195		306,613		401,581		0

ELEMENTAL ESTIMATE

Description	Trade	Quantity	Rate	\$	01 New		02 Reno		03 Site	
					Quantity	\$	Quantity	\$	Quantity	\$
B1 PARTITIONS & DOORS										
B11 Partitions										
Partitions										
existing façade cut/patch 10% make good - part of cladding	+	1,266 sf	0.00	0		0	1,266	0		0
existing cut/patch 10% make good	+	1,491 sf	4.10	6,113		0	1,491	6,113		0
existing infill		173 sf	8.40	1,453		0	173	1,453		0
metal misc		2,500 lbs	4.00	10,000	1,400	5,600	1,100	4,400		0
safing, sealing		6,239 ls	1.00	6,239	3,389	3,389	2,850	2,850		0
gyp2, stud2, batt to chase	+	173 sf	15.65	2,707	173	2,707		0		0
gyp3, stud, batt to demising	+	1,015 sf	13.11	13,307	1,015	13,307		0		0
gyp2, stud, batt to typical	+	1,921 sf	10.48	20,132	1,071	11,224	850	8,908		0
plaster to infill		91 sf	26.20	2,384		0	91	2,384		0
gyp, stud/furring		750 sf	6.25	4,688		0	750	4,688		0
wood blocking		1,271 lf	2.89	3,673	557	1,610	714	2,063		0
existing movable doors		216 sf	0.00	0		0	216	0		0
reconstruct leaves to match existing		2 no	3,500.00	7,000		0	2	7,000		0
repair and refinish existing leaves		7 no	1,500.00	10,500		0	7	10,500		0
new hardware for doors		9 no	500.00	4,500		0	9	4,500		0
Subtotal Partitions		5,866 sf	15.80	92,696	2,259	37,837	3,607	54,859	0	0
Railings										
metal bronze handrail, wall mounted	+	60 lf	100.00	6,000		0	60	6,000		0
Subtotal Railings		60 lf	100.00	6,000	0	0	60	6,000	0	0
Total B11 Partitions		5,901 sf	16.73	98,696	20.12	37,837	15.14	60,859	#Num!	0
B12 Doors										
Doors, Frames, Hardware										
stile rail glazed to vestibule	+	2 no	4,000.00	8,000		0	2	8,000		0
stile rail glazed to gallery	+	1 no	3,600.00	3,600		0	1	3,600		0

ELEMENTAL ESTIMATE

Description	Trade	Quantity	Rate	\$	01 New		02 Reno		03 Site	
					Quantity	\$	Quantity	\$	Quantity	\$
stile rail glazed to foyer	+	1 no	3,600.00	3,600		0	1	3,600		0
stile rail glazed to offices	+	2 no	3,600.00	7,200	2	7,200		0		0
stile rail solid to bathroom	+	5 no	3,200.00	16,000	4	12,800	1	3,200		0
stile rail solid to catering	+	1 no	3,200.00	3,200		0	1	3,200		0
stile rail solid to dressing	+	1 no	3,200.00	3,200	1	3,200		0		0
stile rail solid to platform/corridor	+	1 no	3,200.00	3,200		0	1	3,200		0
painting to service/support	+	4 no	2,620.00	10,480	1	2,620	3	7,860		0
Subtotal Doors, Frames, Hardware		18 no	3,248.89	58,480	8	25,820	10	32,660	0	0
Total B12 Doors		5,901 sf	9.91	58,480	13.73	25,820	8.12	32,660	#Num!	0
TOTAL B1 PARTITIONS & DOORS				157,176		63,657		93,519		0

ELEMENTAL ESTIMATE

Description	Trade	Quantity	Rate	\$	01 New		02 Reno		03 Site	
					Quantity	\$	Quantity	\$	Quantity	\$
B2 FINISHES										
B21 Floor Finishes										
Flooring										
existing make good concrete, acid etch and seal	+	168 sf	2.00	336		0	168	336		0
existing make good wood	+	3,268 sf	10.48	34,249		0	3,268	34,249		0
concrete polished	+	1,637 sf	7.50	12,278	1,637	12,278		0		0
tile ceramic	+	88 sf	18.86	1,660		0	88	1,660		0
wood floor restoration allowance no 4		7,500 ls	1.00	7,500		0	7,500	7,500		0
Subtotal Flooring		5,161 sf	10.85	56,022	1,637	12,278	3,524	43,744	0	0
Base										
existing make good	+	258 lf	1.05	271		0	258	271		0
wood base	+	505 lf	13.10	6,616	241	3,157	264	3,458		0
metal trim on tile (tile base part of wall finishes)	+	165 lf	25.00	4,125	165	4,125		0		0
rubber base	+	324 lf	3.67	1,189	151	554	173	635		0
wood base allowance no. 5		5,000 ls	1.00	5,000	2,500	2,500	2,500	2,500		0
Subtotal Base		1,252 lf	13.74	17,200	557	10,336	695	6,864	0	0
Total B21 Floor Finishes		5,901 sf	12.41	73,222	12.02	22,614	12.59	50,609	#Num!	0
B22 Ceiling Finishes										
Ceilings										
existing wood lath, replace 5%	+	2,309 sf	3.50	8,082		0	2,309	8,082		0
wood beadboard	+	168 sf	10.48	1,761		0	168	1,761		0
wood t&g	+	354 sf	7.86	2,782	354	2,782		0		0
gyp suspended	+	1,239 sf	8.91	11,039	1,239	11,039		0		0
gyp attached to exist wood framing	+	945 sf	5.00	4,725		0	945	4,725		0
gyp detailing allow		100 lf	26.20	2,620	50	1,310	50	1,310		0
paint exposed	+	146 sf	3.14	458	44	138	102	320		0
paint gyp		2,184 sf	1.83	3,997	1,239	2,267	945	1,729		0
paint all exposed equipment in multi-use (mep ducts, sprinkler pipe, conduit, etc)		2,527 sf	3.14	7,935		0	2,527	7,935		0

ELEMENTAL ESTIMATE

Description	Trade	Quantity	Rate	\$	01 New		02 Reno		03 Site	
					Quantity	\$	Quantity	\$	Quantity	\$
Subtotal Ceilings		5,161 sf	8.41	43,399	1,637	17,537	3,524	25,862	0	0
Total B22 Ceiling Finishes		5,901 sf	7.35	43,399	9.32	17,537	6.43	25,862	#Num!	0
B23 Wall Finishes										
Wall Finishes										
existing plaster - 5% replace		250 sf	10.00	2,500		0	250	2,500		0
existing plaster - 10% repair		500 sf	5.00	2,500		0	500	2,500		0
existing plaster - 5% replace complete assembly		250 sf	25.00	6,250		0	250	6,250		0
infill new plaster		50 sf	50.00	2,500		0	50	2,500		0
existing plaster - trench and restore plaster finish at new wall switches/receptacles/devices		5,000 sf	0.60	3,000		0	5,000	3,000		0
wood shiplap	+	125 sf	20.00	2,500	125	2,500		0		0
panel glass fiber reinforced	+	86 sf	12.00	1,032	86	1,032		0		0
tile wainscot	+	667 sf	18.86	12,580	563	10,618	104	1,961		0
paint	+	11,722 sf	1.57	18,404	4,826	7,577	6,896	10,827		0
acoustic panels		480 sf	0.00	0		0	480	0		0
plaster restoration allowance no 3		5,000 ls	1.00	5,000		0	5,000	5,000		0
Subtotal Wall Finishes		12,600 sf	4.47	56,265	5,600	21,727	7,000	34,538	0	0
Total B23 Wall Finishes		5,901 sf	9.53	56,265	11.55	21,727	8.59	34,538	#Num!	0
TOTAL B2 FINISHES				172,886		61,878		111,008		0

ELEMENTAL ESTIMATE

Description	Trade	Quantity	Rate	\$	01 New	02 Reno	03 Site			
					Quantity	\$	Quantity	\$	Quantity	\$
B3 FITTINGS & EQUIPMENT										
B31 Fittings										
Casework										
note: solid surface top, wood fronts u.n.o.										
cabinet base	+	7 lf	525.00	3,675	7	3,675	0		0	
cabinet base, stainless steel top	+	21 lf	675.00	14,175		0	21	14,175	0	
cabinet base island by owner	+	7 lf	0.00	0	7	0		0	0	
cabinet upper		17 lf	262.00	4,454	7	1,834	10	2,620	0	
counter vanity	+	10 lf	375.00	3,750	10	3,750		0	0	
counter, solid wood at dressing	+	12 lf	365.00	4,380	12	4,380		0	0	
picture rail recessed		32 lf	26.20	838		0	32	838	0	
Subtotal Casework		57 lf	548.64	31,272	36	13,639	21	17,633	0	0
Fittings - Misc										
washroom accessories		17 no	628.80	10,690	12	7,546	5	3,144	0	
washroom partitions, hdpe		4 no	2,250.00	9,000	4	9,000		0	0	
window treatments - mechoshades at multi-use		503 sf	15.72	7,907		0	503	7,907	0	
window treatments - wood louver blinds at offices, catering, gallery, dressing room, foyer		311 sf	8.00	2,488	105	840	206	1,648	0	
signage		23 no	157.20	3,616	10	1,572	13	2,044	0	
exterior signage - ofoi		23 no	0.00	0	10	0	13	0	0	
specialties, misc. - cornerguards, visual display, fec	+	23 no	445.40	10,244	10	4,454	13	5,790	0	
Subtotal Fittings - Misc		23 no	1,910.63	43,945	10	23,412	13	20,533	0	0
Total B31 Fittings		5,901 sf	12.75	75,217	19.70	37,051	9.49	38,166	#Num!	0
B32 Equipment										
Equipment - Other										
catering kitchen equipment - refrigerator, dw, ice, warm - by owner		no	0.00	0		0		0	0	
entry lobby - refrigerator - by owner		no	0.00	0		0		0	0	
stage equipment - assume by owner		1 no	0.00	0		0	1	0	0	

ELEMENTAL ESTIMATE

Description	Trade	Quantity	Rate	\$	01 New		02 Reno		03 Site		
					Quantity	\$	Quantity	\$	Quantity	\$	
stage light bar allowance no 7		10,000 ls	1.00	10,000		0	10,000	10,000		0	
av system by owner		50,000 ls	1.00	50,000		0	50,000	50,000		0	
Subtotal Equipment - Other				60,000		0	0	60,000		0	
Total B32 Equipment		5,901 sf	10.17	60,000		0.00	0	14.93	60,000	#Num!	0
TOTAL B3 FITTINGS & EQUIPMENT				135,217			37,051		98,166		0

ELEMENTAL ESTIMATE

Description	Trade	Quantity	Rate	\$	01 New		02 Reno		03 Site	
					Quantity	\$	Quantity	\$	Quantity	\$
C1 MECHANICAL										
C11 Plumbing & Drainage										
Equipment										
water service entrance, water meter, RPBP, etc		20,000 ls	1.00	20,000		0	20,000	20,000		0
water heaters, electric (40 gal)		1 no	11,004.00	11,004		0	1	11,004		0
circulation pump		1 no	5,240.00	5,240		0	1	5,240		0
demo support/make safe		4,008 sf	1.05	4,208		0	4,008	4,208		0
Subtotal Equipment				40,452		0	0	40,452		0
Major Domestic Fixtures										
water closet	*	6 no	1,912.00	11,472	5	9,560	1	1,912		0
urinal	*	1 no	1,729.00	1,729	1	1,729		0		0
lavatory	*	3 no	1,624.00	4,872	2	3,248	1	1,624		0
lavatory, trough	*	2 no	2,305.00	4,610	2	4,610		0		0
sink	*	2 no	1,781.00	3,562	1	1,781	1	1,781		0
mop sink	*	1 no	2,043.00	2,043		0	1	2,043		0
electric water cooler	*	1 no	3,327.00	3,327	1	3,327		0		0
Subtotal Major Domestic Fixtures		16 no	1,975.94	31,615	12	24,255	4	7,360		0
Minor Domestic Fixtures										
floor drains	*	8 no	670.00	5,360	5	3,350	3	2,010		0
hose bibs	*	3 no	419.00	1,257	1	419	2	838		0
Subtotal Minor Domestic Fixtures		11 no	601.55	6,617	6	3,769	5	2,848		0
Piping										
water, 2 - 2.5"	+	127 lf	89.10	11,316	48	4,277	79	7,039		0
water, 1 - 1.5"	+	341 lf	62.90	21,449	166	10,441	175	11,008		0
water, below 1"	+	500 lf	47.15	23,575	248	11,693	252	11,882		0
waste and vent	+	720 lf	83.85	60,372	425	35,636	295	24,736		0
headend equipment connections		2 no	786.00	1,572		0	2	1,572		0
fixture connections		18 no	419.00	7,542	14	5,866	4	1,676		0

ELEMENTAL ESTIMATE

Description	Trade	Quantity	Rate	\$	01 New		02 Reno		03 Site	
					Quantity	\$	Quantity	\$	Quantity	\$
Subtotal Piping		1,688 lf	74.54	125,826	887	67,914	801	57,912	0	0
Total C11 Plumbing & Drainage		5,901 sf	34.66	204,510	51.00	95,938	27.01	108,572	#Num!	0
C12 Fire Protection										
Sprinklers										
sprinkler system	+	5,901 sf	7.35	43,372	1,881	13,825	4,020	29,547		0
Subtotal Sprinklers		5,901 sf	7.35	43,372	1,881	13,825	4,020	29,547	0	0
Total C12 Fire Protection		5,901 sf	7.35	43,372	7.35	13,825	7.35	29,547	#Num!	0
C13 HVAC										
Air Handling Units										
DOAs	+	1 no	15,000.00	15,000		0	1	15,000		0
Subtotal Air Handling Units		1 no	15,000.00	15,000	0	0	1	15,000	0	0
Fans										
exhaust fan (675cfm total)	*	2 no	1,572.00	3,144	1	1,572	1	1,572		0
roof hood (1125cfm total)	*	3 no	2,882.00	8,646	1	2,882	2	5,764		0
Subtotal Fans		5 no	2,358.00	11,790	2	4,454	3	7,336	0	0
Cooling Plant										
split DX system , 4.7 tons	+	1 no	13,833.00	13,833		0	1	13,833		0
split DX system, 4.25 tons	+	1 no	12,576.00	12,576		0	1	12,576		0
split DX system, 2.95 tons	+	1 no	8,803.00	8,803	1	8,803		0		0
split DX system, 2.2 tons	+	2 no	6,288.00	12,576	1	6,288	1	6,288		0
Subtotal Cooling Plant		5 no	9,557.60	47,788	2	15,091	3	32,697	0	0
Air Distribution										
ductwork	+	4,974 lbs	13.10	65,159	1,924	25,204	3,050	39,955		0
premium for complexity		3,050 lbs	2.60	7,930		0	3,050	7,930		0
insulation		3,759 sf	5.25	19,735	1,471	7,723	2,288	12,012		0
diffusers and grilles		41 no	257.00	10,537	14	3,598	27	6,939		0

ELEMENTAL ESTIMATE

Description	Trade	Quantity	Rate	\$	01 New		02 Reno		03 Site	
					Quantity	\$	Quantity	\$	Quantity	\$
fire/smoke dampers, transfer ducts, miscellaneous		5,901 sf	2.10	12,392	1,881	3,950	4,020	8,442		0
Subtotal Air Distribution		4,974 lbs	23.27	115,753	1,924	40,475	3,050	75,278	0	0
Piping										
refrigerant piping	+	390 lf	73.35	28,607	120	8,802	270	19,805		0
condensate piping	+	300 lf	73.35	22,005	90	6,602	210	15,404		0
headend connections		12 no	1,048.00	12,576	4	4,192	8	8,384		0
Subtotal Piping		690 lf	91.58	63,188	210	19,596	480	43,592	0	0
Miscellaneous										
testing, balancing, BIM, coordination, as-builts		5,901 sf	1.75	10,327	1,881	3,292	4,020	7,035		0
Subtotal Miscellaneous				10,327	0	3,292	0	7,035	0	0
Total C13 HVAC		5,901 sf	44.71	263,845	44.08	82,908	45.01	180,938	#Num!	0
C14 Controls										
Controls										
DOAs - 15 pts ea	*	15 pts	1,467.00	22,005		0	15	22,005		0
AHUs - 4 pts ea	*	20 pts	1,467.00	29,340	8	11,736	12	17,604		0
fans/hoods - 3pts ea	*	15 pts	1,467.00	22,005	6	8,802	9	13,203		0
misc plumbing & electrical	*	2 pts	1,467.00	2,934		0	2	2,934		0
Subtotal Controls		52 pts	1,467.00	76,284	14	20,538	38	55,746	0	0
Total C14 Controls		5,901 sf	12.93	76,284	10.92	20,538	13.87	55,746	#Num!	0
TOTAL C1 MECHANICAL				588,012		213,209		374,803		0

ELEMENTAL ESTIMATE

Description	Trade	Quantity	Rate	\$	01 New		02 Reno		03 Site	
					Quantity	\$	Quantity	\$	Quantity	\$
C2 ELECTRICAL										
C21 Service & Distribution										
Normal Service & Distribution										
incoming feeder 800A		25 lf	280.00	7,000	25	7,000		0		0
distribution board, 800A		1 no	15,000.00	15,000	1	15,000		0		0
panelboard, 42ccts		2 no	6,550.00	13,100	2	13,100		0		0
feeder, 100A		60 lf	45.00	2,700	60	2,700		0		0
meter		1 no	4,500.00	4,500	1	4,500		0		0
grounding and metering		1,881 sf	2.10	3,950	1,881	3,950		0		0
Subtotal Normal Service & Distribution				46,250	0	46,250	0	0	0	0
Motor Wiring & Control										
DOAs		1 no	4,192.00	4,192		0	1	4,192		0
DXs		10 no	1,257.00	12,570	4	5,028	6	7,542		0
fans/hoods		5 no	1,729.00	8,645	2	3,458	3	5,187		0
plumbing equipment		1 no	1,572.00	1,572		0	1	1,572		0
miscellaneous plumbing, electrical, mechanical		5,901 sf	0.40	2,360	1,881	752	4,020	1,608		0
Subtotal Motor Wiring & Control				29,339	0	9,238	0	20,101	0	0
Total C21 Service & Distribution		5,901 sf	12.81	75,589	29.50	55,488	5.00	20,101	#Num!	0
C22 Lighting & Devices										
Lighting										
4" round, recessed downlight - A1	+	24 no	628.00	15,072	10	6,280	14	8,792		0
4" square, recessed downlight - A2	+	7 no	628.00	4,396	7	4,396		0		0
4" recessed downlight - A3	+	2 no	681.00	1,362	2	1,362		0		0
4" cylinder, downlight - B	+	24 no	681.00	16,344		0	24	16,344		0
4" round, recessed wallwash - C	+	6 no	733.00	4,398		0	6	4,398		0
8' linear, pendant - D1	+	2 no	890.00	1,780	2	1,780		0		0
6' linear, pendant - D2	+	4 no	838.00	3,352	4	3,352		0		0
4' exterior linear, side mount - E1	+	4 no	838.00	3,352	2	1,676	2	1,676		0
exterior, sconce - E2	+	1 no	890.00	890		0	1	890		0
4' exterior linear, surface mount - E3	+	1 no	838.00	838	1	838		0		0

ELEMENTAL ESTIMATE

Description	Trade	Quantity	Rate	\$	01 New		02 Reno		03 Site	
					Quantity	\$	Quantity	\$	Quantity	\$
wall sconce - F	+	7 no	786.00	5,502	6	4,716	1	786		0
vertical strip light, surface mount - G	+	5 no	759.00	3,795	5	3,795		0		0
16" glass, pendant - H1	+	8 no	838.00	6,704		0	8	6,704		0
14" glass, surface mount - H2	+	4 no	812.00	3,248		0	4	3,248		0
12" glass, surface mount - H3	+	1 no	795.00	795		0	1	795		0
2' strip light, surface mount - M1	+	2 no	681.00	1,362		0	2	1,362		0
4' strip light, surface mount - M2	+	2 no	786.00	1,572	1	786	1	786		0
undercabinet light - U	+	5 no	628.00	3,140	2	1,256	3	1,884		0
exit lights	+	8 no	382.00	3,056	3	1,146	5	1,910		0
stagelight by owner		1 no	0.00	0		0	1	0		0
wiring & switches		129 no	209.00	26,961	49	10,241	80	16,720		0
emergency premium		44 no	183.00	8,052	17	3,111	27	4,941		0
lighting controls		5,901 sf	1.85	10,917	1,881	3,480	4,020	7,437		0
Subtotal Lighting		117 no	1,084.51	126,888	45	48,215	72	78,673	0	0
Devices										
duplex receptacles	*	71 no	419.00	29,749	33	13,827	38	15,922		0
double duplex receptacles	*	4 no	545.00	2,180	2	1,090	2	1,090		0
junction boxes	*	34 no	943.00	32,062	17	16,031	17	16,031		0
floor boxes	*	11 no	1,500.00	16,500		0	11	16,500		0
Subtotal Devices		120 no	670.76	80,491	52	30,948	68	49,543	0	0
Total C22 Lighting & Devices		5,901 sf	35.14	207,379	42.09	79,163	31.89	128,216	#Num!	0
C23 Systems										
Fire Alarm										
new fire alarm system	+	5,901 sf	4.70	27,735	1,881	8,841	4,020	18,894		0
Subtotal Fire Alarm		5,901 sf	4.70	27,735	1,881	8,841	4,020	18,894	0	0
Tel/Data										
tel/data outlets, full	+	5,901 sf	7.35	43,372	1,881	13,825	4,020	29,547		0
Subtotal Tel/Data		5,901 sf	7.35	43,372	1,881	13,825	4,020	29,547	0	0

ELEMENTAL ESTIMATE

Description	Trade	Quantity	Rate	\$	01 New		02 Reno		03 Site	
					Quantity	\$	Quantity	\$	Quantity	\$
Security Systems										
security - allowance	+	12,000 ls	1.00	12,000	3,800	3,800	8,200	8,200		0
Subtotal Security Systems		12,000 ls	1.00	12,000	3,800	3,800	8,200	8,200	0	0
Other Systems										
av conduit		35 no	500.00	17,500		0	35	17,500		0
miscellaneous electrical		5,901 sf	1.55	9,147	1,881	2,916	4,020	6,231		0
temporary electrical		4,020 sf	1.55	6,231		0	4,020	6,231		0
BIM coordination		5,901 sf	1.55	9,147	1,881	2,916	4,020	6,231		0
lightning protection, assume not required		5,901 sf	0.00	0	1,881	0	4,020	0		0
Subtotal Other Systems				42,024	0	5,831	0	36,193	0	0
Total C23 Systems		5,901 sf	21.21	125,131	17.17	32,297	23.09	92,834	#Num!	0
TOTAL C2 ELECTRICAL				408,099		166,948		241,151		0

ELEMENTAL ESTIMATE

Description	Trade	Quantity	Rate	\$	01 New		02 Reno		03 Site	
					Quantity	\$	Quantity	\$	Quantity	\$
D1 SITE WORK										
D11 Site Development										
Site Preparation										
strip and prepare	+	14,353 sf	0.52	7,464			0		0	14,353 7,464
fine and rough grading		8,460 sf	0.79	6,683			0		0	8,460 6,683
erosion control		14,353 sf	0.37	5,311			0		0	14,353 5,311
Subtotal Site Preparation		14,353 sf	1.36	19,458	0		0		0	14,353 19,458
Paving & Structure										
concrete pavement	+	1,467 sf	8.38	12,293			0		0	1,467 12,293
concrete utility pad	+	125 sf	12.58	1,573			0		0	125 1,573
heavy sandblast concrete paving	+	594 sf	20.00	11,880			0		0	594 11,880
concrete pavers on concrete slab	+	324 sf	38.00	12,312			0		0	324 12,312
decomposed granite, stabilized	+	525 sf	6.50	3,413			0		0	525 3,413
decomposed granite, unstabilized	+	610 sf	3.00	1,830			0		0	610 1,830
ramp extra		45 sf	52.40	2,358			0		0	45 2,358
stair treads		63 lf	125.76	7,923			0		0	63 7,923
new areaways with metal grate cover		3 no	1,572.00	4,716			0	3	4,716	0
Subtotal Paving & Structure		3,645 sf	15.99	58,297	0		0		4,716	3,645 53,581
Improvements										
flag pole		1 no	5,764.00	5,764			0		0	1 5,764
railings, hand		61 lf	150.00	9,150			0		0	61 9,150
railings, guard		36 lf	350.00	12,600			0		0	36 12,600
Subtotal Improvements				27,514	0		0		0	0 27,514
Planting										
groundcover	+	624 sf	8.00	4,992			0		0	624 4,992
rain garden	+	744 sf	12.00	8,928			0		0	744 8,928
mulch	+	3,923 sf	3.00	11,769			0		0	3,923 11,769
shrubs		326 no	50.00	16,300			0		0	326 16,300
trees, large		8 no	1,200.00	9,600			0		0	8 9,600
trees, small		8 no	850.00	6,800			0		0	8 6,800

ELEMENTAL ESTIMATE

Description	Trade	Quantity	Rate	\$	01 New		02 Reno		03 Site	
					Quantity	\$	Quantity	\$	Quantity	\$
planting soils		170 cy	65.00	11,050		0		0	170	11,050
irrigation		4,547 sf	2.50	11,368		0		0	4,547	11,368
Subtotal Planting		5,291 sf	15.27	80,807	0	0	0	0	5,291	80,807
Total D11 Site Development		5,901 sf	31.53	186,075	0.00	0	1.17	4,716	#Div/0!	181,359
D12 Mechanical Site Services										
Building Services										
water - 2"	+	150 lf	65.00	9,750		0		0	150	9,750
fire line - 6"	+	225 lf	100.00	22,500		0		0	225	22,500
fire department connection line - 6"	+	225 lf	100.00	22,500		0		0	225	22,500
backflow preventer		1 no	7,500.00	7,500		0		0	1	7,500
fire department connection, remote		1 no	3,000.00	3,000		0		0	1	3,000
fire hydrant		1 no	4,000.00	4,000		0		0	1	4,000
irrigation connections, meter		10,000 ls	1.00	10,000		0		0	10,000	10,000
sanitary, connect to existing		5,000 no	1.00	5,000		0		0	5,000	5,000
Subtotal Building Services		600 lf	140.42	84,250	0	0	0	0	600	84,250
Site Drainage & Services										
storm pipe	+	450 lf	120.00	54,000		0		0	450	54,000
storm - catch basin		3 no	4,000.00	12,000		0		0	3	12,000
storm - outlet		2 no	5,000.00	10,000		0		0	2	10,000
Subtotal Site Drainage & Services		450 lf	168.89	76,000	0	0	0	0	450	76,000
Total D12 Mechanical Site Services		5,901 sf	27.16	160,250	0.00	0	0.00	0	#Div/0!	160,250
D13 Electrical Site Services										
Building Services										
power pole relocation		1 no	5,000.00	5,000		0		0	1	5,000
service ductbank		150 lf	290.00	43,500		0		0	150	43,500
Subtotal Building Services				48,500	0	0	0	0	0	48,500
Site Lighting & Services										

ELEMENTAL ESTIMATE

Description	Trade	Quantity	Rate	\$	01 New		02 Reno		03 Site	
					Quantity	\$	Quantity	\$	Quantity	\$
historic-style pedestrian pole lights		5 no	2,500.00	12,500		0		0	5	12,500
S2-step lights		2 no	975.00	1,950		0		0	2	1,950
Subtotal Site Lighting & Services				14,450		0		0	0	14,450
Total D13 Electrical Site Services		5,901 sf	10.67	62,950		0.00		0.00	0	#Div/0! 62,950
TOTAL D1 SITE WORK				409,275		0		4,716		404,559

ELEMENTAL ESTIMATE

Description	Trade	Quantity	Rate	\$	01 New	02 Reno	03 Site		
					Quantity	\$	Quantity	\$	Quantity
D2 ANCILLARY WORK									
D21 Demolition									
Demolition									
exterior wall demo for new opening		5,000 ls	1.00	5,000		0	5,000	5,000	0
exterior demo - windows		902 sf	15.72	14,179		0	902	14,179	0
exterior demo - doors		4 no	250.00	1,000		0	4	1,000	0
exterior demo - roof		5,045 sf	3.67	18,515		0	5,045	18,515	0
interior demo - misc (majority already performed)	+	4,008 sf	3.29	13,186		0	4,008	13,186	0
demo flooring for reuse		1,084 sf	5.49	5,951		0	1,084	5,951	0
demo batt insulation and metal lath beneath floor for reuse		1,084 sf	5.49	5,951		0	1,084	5,951	0
demo furring strip ceiling at multipurpose A & B and platform for reuse as req'd for above ceiling work		1,000 sf	5.00	5,000		0	1,000	5,000	0
stage framing - no work		469 sf	0.00	0		0	469	0	0
hazardous abatement		60,000 ls	1.00	60,000		0	60,000	60,000	0
Subtotal Demolition		4,008 sf	32.13	128,783		0	4,008	128,783	0
Total D21 Demolition		5,901 sf	21.82	128,783		0.00	32.04	128,783	#Num! 0
TOTAL D2 ANCILLARY WORK				128,783		0	128,783		0

ELEMENTAL ESTIMATE

Description	Trade	Quantity	Rate	\$	01 New		02 Reno		03 Site	
					Quantity	\$	Quantity	\$	Quantity	\$
DIRECT CONSTRUCTION COST				2,966,088		991,843		1,569,686		404,559
Z1 GENERAL REQUIREMENTS										
Z11 General Requirements										
GCs, GRs, Ins, Bonds, Permits, etc										
GCs, GRs, Ins, Bonds, Permits, etc	+	12.0% ls		355,931	12.0%	119,021	12.0%	188,362	12.0%	48,547
Subtotal GCs, GRs, Ins, Bonds, Permits, etc		0 ls		355,931	0	119,021	0	188,362	0	48,547
Total Z11 General Requirements		5,901 sf		355,931	63.28	119,021	46.86	188,362	#Div/0!	48,547
Z12 Fee										
Profit/Fee/Risk										
Profit/Fee/Risk	+	4.5% ls		133,474	4.5%	44,633	4.5%	70,636	4.5%	18,205
Subtotal Profit/Fee/Risk		0 ls		133,474	0	44,633	0	70,636	0	18,205
Total Z12 Fee		5,901 sf		133,474	23.73	44,633	17.57	70,636	#Div/0!	18,205
TOTAL Z1 GENERAL REQUIREMENTS				489,405		163,654		258,998		66,752

ELEMENTAL ESTIMATE

Description	Trade	Quantity	Rate	\$	01 New		02 Reno		03 Site	
					Quantity	\$	Quantity	\$	Quantity	\$
Z2 CONTINGENCIES										
Z21 Design Contingency										
Design/Construction Contingency										
Design/Construction Contingency	+	5.0% ls		148,304	5.0%	49,592	5.0%	78,484	5.0%	20,228
Subtotal Design/Construction Contingency		0 ls		148,304	0	49,592	0	78,484	0	20,228
Total Z21 Design Contingency		5,901 sf		148,304	26.36	49,592	19.52	78,484	#Div/0!	20,228
Z22 Escalation Contingency										
Escalation Contingency - Jan 2025										
Escalation Contingency - Jan 2025	+	4.0% ls		118,644	4.0%	39,674	4.0%	62,787	4.0%	16,182
Subtotal Escalation Contingency - Jan 2025		0 ls		118,644	0	39,674	0	62,787	0	16,182
Bidding Contingency										
Bidding Contingency	+	7.0% ls		207,626	7.0%	69,429	7.0%	109,878	7.0%	28,319
Subtotal Bidding Contingency		0 ls		207,626	0	69,429	0	109,878	0	28,319
Total Z22 Escalation Contingency		5,901 sf		326,270	58.00	109,103	42.95	172,665	#Div/0!	44,502
TOTAL Z2 CONTINGENCIES				474,574		158,695		251,150		64,730

ELEMENTAL ESTIMATE

Description	Trade	Quantity	Rate	\$	01 New		02 Reno		03 Site	
					Quantity	\$	Quantity	\$	Quantity	\$
INDIRECT CONSTRUCTION COST				963,979		322,349		510,148		131,482
TOTAL COSTS				3,930,066		1,314,192		2,079,833		536,041



STAFF REPORT
City of Dripping Springs
PO Box 384
511 Mercer Street
Dripping Springs, TX 78620

Submitted By: Michelle Fischer, City Administrator

Council Meeting Date: June 18, 2023

Agenda Item Wording: **Discussion and consideration of possible action on City Council direction to staff regarding Architexas's Task Order #3 Permitting, Bidding, and Construction Administration, and funding for the Stephenson Building Rehabilitation and Improvement Project.** *Sponsor: Mayor Pro Tem Taline Manassian.*

Agenda Item Requestor: Michelle Fischer, City Administrator

Summary/Background: The FY 2024 Budget line item for the Stephenson Building Project does not include funds for Task Order #3 Permitting, Bidding, and Construction Administration. Task Order #3 costs \$77,500. The City Council may approve Task Order #3 and authorize staff to issue a Notice to Proceed contingent on the appropriation of funding for it and the construction estimated to be \$3,930,067. Alternatively, City Council may postpone action on this item so that funding sources for Task Order #3 and the construction of the Stephenson Building rehabilitation and improvements can be considered along with other large projects proposed for FY 2025. Once funding is appropriated, City Council may consider action on this item.

Goal L5: Develop a Facilities Plan for City-owned properties: Renovate Stephenson Building when funding is available and make improvements to adjoining land.

Commission Recommendations: The Historic Preservation Commission and TIRZ Board continue to be supportive of the project but did not make recommendations on this specific agenda item.

Recommended Council Actions: Postpone action on this item in order to review funding sources and appropriate funds for the project in the current or FY 2025 Budget.

Attachments: Architexas Professional Services Agreement.

Next Steps/Schedule: Approve the appropriation of funds for the project in the FY 2024 or FY 2025 Budget; approve Task Order #3 and authorize staff to issue a Notice to Proceed.

PROFESSIONAL SERVICES AGREEMENT

This Agreement, made and entered into this, the 6th day of June 2023, and between the **City of Dripping Springs**, Texas (hereinafter referred to as the "City") and **Architexas** (hereinafter referred to as "Contractor"), is understood and agreed to be as set forth herein:

1. **Description of Services:** The City and Contractor agree to the following:
 - (a) Contractor shall provide full architectural services to the City of Dripping Springs for the historic Stephenson Building at 101 Old Fitzhugh Road in Dripping Springs as described in Attachment "A".
 - (b) Contractor shall deliver reports to City Hall via mail, in person, or other electronic means as appropriate.
 - (c) Contractor shall conduct business in good faith displaying professionalism and a courteous manner in dealings with the staff, citizens, and customers of the City.
 - (d) Contractor will report to the City Administrator, verbally or in writing, any conflicts between Contractor and any citizen or customer in the course of performing said duties and responsibilities.
 - (e) Contractor shall maintain complete and accurate records of work performed for the City. Contractor shall manage both public and confidential records that Contractor obtains pursuant to this Agreement with the understanding that some records may be subject to state open records laws. Contractor shall comply with the City's public information policies.
 - (f) Contractor shall perform other related duties as needed.
2. **Scope of Work:** Contractor will provide full architectural services to the City and all work as described in Attachment "A". Additional Services may be agreed to in writing by both parties and billed at a negotiated rate.
3. **Ownership of Documents:** Any documents created for the City shall become the property of the City. Any section in Attachment "A" to the contrary is preempted by this Agreement. All portions of the proposal are considered by the Contractor to be trade secrets and proprietary information for purposes of the Texas Public Information Act. If any document related to the Contractor's proposal is requested, Contractor will be contacted as required by law. Any final draft or document created by the Contractor that is adopted by the City, other than this proposal, shall not be considered proprietary or a trade secret.
4. **Schedule:** The schedule shall include completion of the tasks as outlined in Attachment "A". Work for each Task Order will be started once each Task Order is approved by Council and a written Notice to Proceed is issued by the City Administrator or the Administrator's Designee.

- 5. **Payment for Services:** The City will compensate Contractor in accordance with the fee structure contained in Attachment "A". The cost shall not exceed two hundred eighty-eight thousand four hundred twenty-five dollars (\$288,425) plus up to three thousand five hundred (\$3,500) in reimbursable expenses. Contractor shall invoice City accordingly. Any charge that is in excess of the costs in the proposal shall not be paid by the City unless additional costs have been approved in writing by the City.
- 6. **Relationship of Parties:** It is understood by the parties that Contractor is an independent contractor with respect to the City and not an employee of the City. City will not provide fringe benefits, including health insurance benefits, paid vacation, or any employee benefit, for the benefit of Contractor. The City may contract with other individuals or firms for legal services.
- 7. **Limitations:** During the period the Contractor is covered by this agreement, the Contractor will not be permitted to perform any services for any agency, developer, contractor, or individual performing work within or for the City, or any project or construction that involves inspection, coordination, approval or in any other manner that involves the City other than that work assigned by an agency of the City.
- 8. **Termination:** Either party may terminate this Agreement at any time with written notice to the other party. In the event of termination, payment shall be made as described in Attachment "A".
- 9. **Injuries/Insurance:** Contractor acknowledges the Contractor's obligation to obtain appropriate insurance coverage as listed in Attachment "B".
- 10. **Indemnification:** Contractor agrees to indemnify and hold City harmless from all claims, losses, expenses, fees, including attorney's fees, costs, and judgments that may be asserted against the City that result from acts or omissions of Contractor, Contractor's employees, if any, and Contractor's agents. Liability of the Contractor is limited to the limits of insurance provided by Contractor in Attachment "B". Any section to the contrary in Attachment "A" is preempted by this Agreement.
- 11. **Assignment:** Contractor's obligation under this Agreement may not be assigned or transferred to any other person, firm, or corporation without the prior written consent of City except as provided for, and with the protections described in Attachment "A".
- 12. **Notice:** All notice required or permitted under this Agreement shall be in writing and shall be delivered either in person or deposited in the United States mail, postage prepaid, addressed as follows:

For the City:
City of Dripping Springs
Attn: City Administrator
P.O. Box 384
Dripping Springs, TX 78620

For the Contractor:
Architexas
Attn: Larry Irsik, AIA, Senior Principal
2900 S Congress Avenue, Suite 200
Austin, TX 78704

Either party may change such address from time to time by providing written notice to the other in the manner set forth above. Notice is deemed to have been received three (3) days after deposit in U.S. mail.

13. Law & Venue: This Agreement shall be governed by the laws of the State of Texas. The venue for any disputes arising under this Agreement shall be Hays County, Texas. Non-Non-binding mediation shall be the first dispute resolution as described in Attachment "A".

14. Mandatory Disclosures: Texas law requires that vendors make certain disclosures. Prior to the effective date of this Contract, the Contractor has submitted to the City a copy of the Conflict of Interest Questionnaire form (CIQ Form) approved by the Texas Ethics Commission (Texas Local Government Code Chapter 176). The Contractor also confirms it is in compliance with all Texas requirements related to government contracts including: (1) no boycott of Israel; (2) not listed as a foreign terrorist organization by the Texas Comptroller of Public Accounts; (3) Contractor does not have a policy or practice of discriminating against firearm entities or firearm trade associations; (4) Contractor does not boycott energy companies; and Contractor is compliant with all other Texas laws including any additional disclosure requirements.

15. Severability: If any provision of this Agreement shall be held to be invalid or unenforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

16. Waiver of Contractual Right: The failure of any party to enforce any provision of this Agreement shall not be construed as a waiver of that party's right to subsequently enforce and compel strict compliance with every provision of the Agreement.

17. Entire Agreement: This Agreement contains the entire Agreement of the parties and there are no other promises or conditions in any other Agreement whether oral or written. If this Agreement conflicts with Attachment "A", this Agreement controls. This Agreement supersedes any prior written agreements between the parties.

CITY OF DRIPPING SPRINGS:


Michelle Fischer, City Administrator

June 7, 2023
Date

ARCHITEXAS:


Larry Irsik, AIA, Senior Principal

June 9, 2023
Date

ATTACHMENT A

Architexas Proposal

May 22, 2023

Michelle Fischer
 City Administrator
 511 Mercer Street
 Dripping Springs, Texas 78620
 512.858.4725
mfischer@cityofdrippingsprings.com

**Re: Proposal for the Historic Stephenson School Building – Full Architectural Services
 101 Old Fitzhugh Road, Dripping Springs, Texas 78620**

Architexas is pleased to submit this proposal for full architectural services for the restoration, rehabilitation and addition to the City of Dripping Springs for the historic Stephenson Building at 101 Old Fitzhugh Road in Dripping Springs, Texas. These services will be provided by Architexas and our consultants with input and assistance by City of Dripping Springs representatives who will assist in guiding the design team on your desire for development of the property in a cost efficient, functional and historically sensitive manner.

PROJECT TEAM MEMBERS

Basic Services

Architexas	<i>Architect of Record</i>
AEC	<i>Structural Engineering</i>
Cleary Zimmerman	<i>MEP Engineering</i>

Specialty Consultant Services

Doucet	<i>Civil Engineering and Site Permitting</i>
BAI	<i>Acoustics and Audiovisual Programming</i>
Geotechnical Solutions	<i>Geotechnical Engineering</i>
Co'Design	<i>Landscape Architect and Irrigation Consultant</i>
Vermeulens	<i>Cost Estimating</i>
KS Permitting, LLC	<i>Permitting Services Consultant</i>
Rob Roy Parnell, Inc.	<i>RAS Reviewer</i>

SCOPE OF SERVICES

TASK Order 1 - DESIGN DEVELOPMENT

1.1 Project Kick-Off

The Architexas team will participate in a project kick-off meeting to review the scope of work, project schedule, project budget, and will discuss procedures and chain of communication with city stakeholders. **ONE (1) MEETING**

1.2 Project Base Documents

Architexas will conduct additional field measuring to further refine the existing CAD drawings and develop base CAD details of existing doors, windows, roofing details and framing conditions. The additional field measuring will also enable Architexas to develop base building sections and a reflected ceiling plan with existing framing in CAD. We will also release the geotechnical engineer to perform their work.

1.3 Existing Conditions Assessment

Architexas and its consultants will further visually inspect the existing conditions of the building and site and will document detailed deficiencies that require repair, restoration, or replacement. This documentation will be used to develop selective demolition documents and allow us to illustrate the limits of work where repair is required on materials like masonry, wood flooring, doors and windows, wood trim, and plaster, etc.

1.4 Code and ADA Review

Architexas will review and update the previously prepared local ordinances and building code analysis if needed. Architexas will also submit 100% DD documents for RAS Review.

1.5 Interior Planning and Design Development

Based on the updated concept plans approved on the Stephenson Building dated March 15, 2023, Architexas will proceed with preparation of further developed floor plans, building sections, interior elevations, and reflected ceiling plan drawings. We will also develop concept image boards to illustrate refined space planning, and interior finish materials. Our consultant team will also prepare narrative descriptions of their scope of work, including MEP and structural systems to be incorporated into the design.

1.6 Design Confirmation Meeting

Architexas will participate in one (1) design confirmation meeting with the city stake holders to review the space plan, interior elevations and finishes, and the further developed site plan. **ONE (1) MEETING**

1.7 User Meetings

Architexas and will conduct one (1) user meetings with stakeholders to verify detailed items such as owner-provided equipment, built-in cabinetry requirements, lighting, switch & outlet locations, door hardware requirements, building security, etc. **ONE (1) MEETING**

1.8 Design Development Confirmation Meeting

Architexas will conduct a one (1) Design Development confirmation meeting with city stakeholders to review the 100% Design Development documents. After comments are addressed and documents are updated, an estimate of probable construction cost will be prepared and presented to the Owner. Architexas will prepare a Certificate of Appropriateness and attend one Historic Preservation Commission meeting. We will attend one TIRZ Board/City Council meeting for project design approval. **THREE (3) MEETINGS**

Task Order 1 - Deliverables:

- *Geotechnical report*
- *Written summary of further detailed existing conditions assessment, code review, and system requirements.*
- *Written Basis of Design*
- *Demolition Floor Plan and Notes*
- *Architectural Floor Plan showing renovations scope, floor finishes and furniture/ equipment arrangements.*
- *Building Section(s)*
- *Architectural Reflected Ceiling Plans illustrating ceiling concepts, materials, and proposed lighting layout.*
- *Architectural Exterior and Interior Elevations*
- *Door, Window and Hardware Schedule*
- *Finish Schedules*
- *Civil and Landscape drawings*
- *Mechanical, Electrical and Plumbing drawings.*
- *Structural Drawings*
- *Outline Specifications - Table of Contents*
- *100% DD RAS Review*
- *100% Design Development Estimate of Probable Construction Cost*

Task Order 2 - CONSTRUCTION DOCUMENTS

Upon approval of Task Order 1, and written authorization to proceed with Task Order 2, Architexas will provide the services below:

2.1 Develop Construction Documents & Specifications

Based on the approved Design Development Documents in Task Order 1, Architexas will prepare Construction Documents that will set forth in detail the requirements for construction of the Project and will include Drawings and Specifications that establish the quality levels of materials and systems required.

2.2 50% CD Scope and Budget Confirmation Meeting

Upon completion of Task 2.1 to 50% level of Construction Document completion, Architexas will conduct one (1) meeting with Owner stakeholders to confirm the 50% CD drawings prior to finalizing Construction Documents. **ONE (1) MEETING**

2.3 TAS Consultation

Architexas will consult on an as-needed basis with a third-party Registered Accessibility Specialist for TAS compliance.

2.4 Finalize Construction Documents & Specifications

Based on input from Task 3.2 and Task 3.3, Architexas will finalize the Construction Documents and Specifications that will set forth in detail the requirements for bidding and construction of the project. A final estimate of probable Construction Cost will be prepared at 100% completion of the CD documents. **ONE (1) MEETING**

Task 3 Deliverables:

- General Notes and Specifications
- Demolition Floor Plan and Notes
- Architectural Floor Plan and Dimensional Control
- Building Sections
- Architectural Reflected Ceiling Plan
- Architectural Interior Elevations
- Door, Window and Hardware Schedule
- Interior Finish Schedule
- Architectural Details
- Mechanical, Electrical and Plumbing drawings
- Structural Drawings
- COMCheck application as required
- Civil Engineering
 - Site Plan
 - Grading Plan
 - Utility Plan
 - Existing Drainage Area Map
 - Proposed Drainage Area Map
 - Erosion & Sedimentation control plan and details
- Landscape Plan
- Irrigation Plans
- Estimate of Probable Construction Cost at CD completion
- 50% CD RAS Review
- Final Signed and Sealed Construction Documents (Drawings and Specifications)

Task Order 3 – PERMITTING / BIDDING & CONSTRUCTION ADMINISTRATION

Upon approval of Task Order 2, and written authorization to proceed with Task Order 3, Architexas will provide the services below:

3.1 Permitting Services

Architexas has a Permit Consulting Firm that will handle the permitting process from start to finish from initial consultation to delivering the approved permit.

3.2 Bidding and Negotiation

Architexas will assist as necessary in obtaining bids, negotiated proposals, and preparing bid documents, including addenda and responding to contractor's bidding questions. Architexas will attend one (1) pre-bid meeting and review bidding information and assist in evaluating the qualifications and proposals. If needed, Architexas will attend a City Council meeting for approval of the project to go to bid. **ONE (1) MEETING**

3.3 Construction Administration

Architexas will visit the site every 2 weeks during the construction period, to become generally familiar with the work progress and to observe if work is being performed in accordance with the Construction Documents.

3.4 Substantial Completion

When the work is found to be substantially complete, Architexas will conduct on-site project review to determine the date of substantial completion and the schedule to achieve final completion. **ONE (1) MEETING**

3.5 Final Completion

Architexas will receive and review written warranties and related documents required by the Contract Documents and assembled by the Contractor. When the Work is found to be fully complete, Architexas will conduct a final walk with the Project Manager to determine full compliance of the project with the Contract Documents and certify a final Certificate of Payment. This task includes one (1) site visit and approval of final pay application. **ONE (1) MEETING**

Task Order 3 Services:

- Attend **one (1) pre-construction meeting**
- Attend bi-monthly OAC meetings; virtually or at the project site
- Prepare field reports from site visits
- Respond to RFI's
- Prepare ASI's and Proposal Requests with Client approval
- Issuing Change Orders with Client approval
- Review shop drawings and other submittals from the contractor
- Review monthly pay-applications
- Assumes **two (2) site visit per month** for duration of construction
- One (1) site visitation and review of Contractor's punch list
- One (1) site visit to review Contractor final corrected work
- Review closeout documentation from the Contractor
- 1 Year Warranty Review by Architexas team

SPECIALTY CONSULTANT SERVICES

Acoustics and Audio Visual Programming

Acoustics

- Survey of existing conditions and finishes
- Recommendations to the design team relating to interior finishes as required to provide suitable meeting spaces, architectural isolation of potential noise sources such as mechanical equipment, and potential acoustical separation of spaces. Recommendations will be coordinated with historical requirements as may be determined.
- Response to RFIs and submittal review throughout the project.
- HVAC Noise Control Design:
 - Review of the HVAC design from a noise control perspective.
 - Recommendations to the ME and design team regarding control of HVAC noise
 - levels in occupied spaces

Audiovisual Systems Programming

- Programming services for potential audiovisual systems, to serve as a guide for detailed design of such systems, whether included as a part of the initial contract documents or to be used in negotiations with potential suppliers.
- Hold discussions with project stakeholders and design team members (online and/or in person), to determine what system(s) are required for functional use of the spaces.
- Coordinate with the design team regarding integration of certain audiovisual design features with the architecture, including potential audiovisual display sizes and locations, equipment room(s), and loudspeakers.
- Submit a summary list of systems and budgets for use in current or future detailed design/procurement.
- For purposes of coordination during design, most coordination will be via electronic means, including meetings as required.
- One site visit is included at inception of design. One additional audiovisual programming meeting may be in person, if needed.

Geotechnical

- Services include 2 borings at addition, site photos, site observations, lab data, and foundation design recommendations in the final report.
- A final report will be issued within 10 days of receipt of a Notice to Proceed.

Landscaping and Irrigation

- Provide landscape design and drawings, specifications, and irrigation design

Cost Estimating

- Provide estimate of probable construction cost at 100% SD, 100% DD, and 50% CD

ASSUMPTIONS

- Civil improvements limited to the "Approximate limits of site work" per the attached site layout dated 3-15-23.
- Site plans beyond the "Approximate limits of site work" to be provided by others.
- Water Quality pond not needed or by others.
- Detention pond not needed or by others.
- No platting required.
- Survey with utilities, topography, easements, setbacks, hardscaping, curbs and gutters with elevations, etc. to be provided by Owner
- No TCEQ submittal or approval required
- Title Commitment information with all easements, encumbrances, etc. to be provided for the design survey.

PROJECT SCHEDULE

Architexas proposes to provide the following schedule for project services:

Task Order 1	Design Development	8 weeks
Task Order 2	Construction Documents	9 weeks
Task Order 3	Permit/Bidding/Construction Administration	6 months (estimated)

COMPENSATION

Compensation will be hourly to a maximum fee of \$288,425 plus approved reimbursable expenses. Invoices will be submitted monthly for services performed to date.

TASK Order 1 - DESIGN DEVELOPMENT \$100,675

Basic Services Consultants

Architexas (Architect)	\$59,750
AEC (Structural)	\$6,650
<u>Cleary Zimmerman (MEP)</u>	<u>\$10,325</u>
TOTAL	\$76,725

Specialty Consultants

Doucet (Civil Engineer)	\$8,000
BAI (Acoustical and Audiovisual Programming Services)	\$5,000
Geotechnical Solutions	\$1,000
Co'Design (Landscape/Irrigation)	\$4,700
Rob Roy Parnell, Inc. (RAS Reviewer)	\$1,750 (100% DD Review + Consultation)
<u>Vermeulens (Cost Estimating)</u>	<u>\$3,500</u>
TOTAL	\$23,950

TASK Order 2 – CONSTRUCTION DOCUMENTS \$110,250

Basic Services Consultants

Architexas (Architect)	\$74,000
AEC (Structural)	\$7,600
<u>Cleary Zimmerman (MEP)</u>	<u>\$14,750</u>
TOTAL	\$96,350

Specialty Consultants

Doucet (Civil Engineer)	\$9,000
Co’Design (Landscape/Irrigation)	\$2,400
Rob Roy Parnell, Inc. (RAS Reviewer)	\$0.00 (Consultation)
<u>Vermeulens (Cost Estimating)</u>	<u>\$2,500</u>
TOTAL	\$13,900

TASK Order 3 – PERMITTING / BIDDING & CONSTRUCTION ADMIN. \$77,500

Basic Services Consultants

Architexas (Architect)	\$46,250
AEC (Structural)	\$4,750
<u>Cleary Zimmerman (MEP)</u>	<u>\$4,425</u>
TOTAL	\$55,425

Specialty Consultants

Doucet (Civil Engineer)	\$10,800 (\$6,800 Permitting + \$4,000 CA)
Doucet (Site Permitting)	\$6,000
Co’Design (Landscape/Irrigation)	\$1,000
KS Permitting, LLC (Permitting)	\$1,500
<u>Rob Roy Parnell, Inc. (RAS Reviewer)</u>	<u>\$2,775 (TDLR Registration / Plan Review / Inspection Fee)</u>
TOTAL	\$22,075

REIMBURSABLE EXPENSES

Expenses incurred in the interest of the project are included in the compensation for professional fees and include: In-house printing, copying, postage, mileage (.655/mile) and delivery. Reimbursable expenses will be invoiced at a 1.1 multiplier and are estimated to be \$3,500. Drawing submittals and final Construction Documents will be delivered electronically.

FUTURE ADDITIONAL AV and ACOUSTICAL CONSULTING SERVICES

A proposal will be provided for full Audiovisual Consulting Services will be provided once a scope of services is defined after completion of the Audiovisual Systems Programming and development of a projected budget for this scope of work.

SERVICES NOT INCLUDED IN THIS PROPOSAL

1. Hazardous materials testing, survey, abatement, report, cost estimating or consultation
2. Professional services relating to variance requests by jurisdictional authorities
3. Preparation of Federal or State Tax Credit applications (this may be provided as an additional service)
4. Historic paint analysis (this may be provided as an additional service)
5. Security Consultant Services (Architexas will work with the City’s Security consultant and will integrate Owner consultant work into our documents and project budget)
6. Laboratory Testing
7. Furnishing selection or design
8. Financial Feasibility Studies
9. Environmental Studies
10. Providing services related to future facilities systems and equipment which are not intended to be constructed during the Construction Phase
11. Revising drawings or specifications or other documents after receiving written approvals
12. Providing services made necessary by the default of the Contractor or major Subcontractor
13. Graphic design or branding (other than code required signage, which is included)
14. Rental for vertical access equipment, if needed.
15. Engineering or documentation for LEED® or other sustainable certification programs
16. Value engineering or cost-reduction services or re- design following completion of 50% CDs
17. Services related to environmental remediation
18. Transcribing contractor’s field notes into a final CAD or BIM file for the record-drawing purposes
19. Providing A/E CAD record drawings
20. Design changes after final construction documents have been submitted

21. Multiple CD packages such as a preliminary permit set or foundation package
22. Engineering and/or economic studies of alternative systems or equipment locations
23. IT consulting services
24. Detailed cost estimating Life-cycle cost analyses

HOURLY RATES

Architexas and its consultants will provide the services above at the following hourly rates up to a maximum of the fees indicated in each Task Order. Additional services requested by the Owner that are not part of the scope of work described in this proposal will be billed at these same hourly rates. Additional services must be approved by the Owner in writing before Architexas will provide any additional services.

Architexas

Senior Principal	\$300.00 / hour
Principal	\$250.00 / hour
Project Architect	\$150.00 / hour
Intern Architect	\$100.00 / hour
Senior Historic Preservation Specialist	\$150.00 / hour
Administrative	\$75.00 / hour

AEC

Managing Principal	\$250.00 / hour
Principal	\$220.00 / hour
Associate Principal	\$220.00 / hour
Senior Engineer	\$195.00 / hour
Project Engineer	\$185.00 / hour
Engineer	\$165.00 / hour
BIM Manager	\$165.00 / hour
BIM Technical/CAD Operator	\$135.00 / hour
Administrative	\$90.00 / hour

Cleary Zimmerman

Managing Principal	\$250.00 / hour
Principal	\$220.00 / hour
Associate Principal	\$220.00 / hour
Senior Engineer	\$195.00 / hour
Project Engineer	\$185.00 / hour
Engineer	\$165.00 / hour
BIM Manager	\$165.00 / hour
BIM Technical/CAD Operator	\$135.00 / hour
Administrative	\$90.00 / hour

Doucet

Managing Principal	\$250.00 / hour
Principal	\$220.00 / hour
Associate Principal	\$220.00 / hour
Senior Engineer	\$195.00 / hour
Project Engineer	\$185.00 / hour
Engineer	\$165.00 / hour
BIM Manager	\$165.00 / hour
BIM Technical/CAD Operator	\$135.00 / hour
Administrative	\$90.00 / hour

BAI	
Managing Principal	\$250.00 / hour
Principal	\$220.00 / hour
Associate Principal	\$220.00 / hour
Senior Engineer	\$195.00 / hour
Project Engineer	\$185.00 / hour
Engineer	\$165.00 / hour
BIM Manager	\$165.00 / hour
BIM Technical/CAD Operator	\$135.00 / hour
Administrative	\$90.00 / hour

Co'Design	
Senior Principal	\$300.00 / hour
Project Architect	\$150.00 / hour
Intern Architect	\$100.00 / hour
Administrative	\$75.00 / hour

Geotechnical Solutions	fixed fee proposal
Vermeulens	fixed fee proposal
KS Permitting, LLC	fixed fee proposal
Rob Roy Parnell, Inc.	fixed fee proposal

AGREEMENT

If you are in agreement with this proposal, please sign below. We look forward to the opportunity of working with you and your team on this wonderful historic structure in Dripping Springs.

Authorized Representatives:

Michelle Fischer
Dripping Springs, Texas; City Administrator

Date



Larry Isik, AIA, Senior Principal
ARCHITEXAS

05.22.2023
Date

TERMS AND CONDITIONS

Terms and Conditions:

ARCHITEXAS shall perform the services outlined in this Agreement for the stated fee arrangement.

Access to Site: Unless otherwise stated, ARCHITEXAS will have access to the site for activities necessary for the performance of the services. The CLIENT acknowledges that some exploratory work may be required to examine concealed conditions and will be notified of potential areas of work before any work is performed. ARCHITEXAS will take precautions to minimize damage due to exploratory activities, but has not included in the fee the cost of restoration of any resulting damage.

Dispute Resolution: Any claims or disputes made during design, construction or post-construction between CLIENT and ARCHITEXAS shall be submitted to non-binding mediation. CLIENT and ARCHITEXAS agree to include a similar mediation agreement with all contractors, subcontractors, sub-consultants, suppliers and fabricators, thereby providing for mediation as the primary method for dispute resolution between all parties.

Billings/Payments: Invoices for ARCHITEXAS' services shall be submitted on a monthly basis for services performed to date. Invoices shall be payable within 30 days of receipt. If the invoice is not paid within 30 days, ARCHITEXAS may, without waiving any claim or right against the CLIENT, and without liability whatsoever to the CLIENT, terminate the performance of the service.

Late Payments: Accounts unpaid 60 days after the invoice date may be subject to a monthly service charge of 1.5% (or the legal rate) on the unpaid balance. In the event any portion or all of an account remains unpaid 90 days after billing, the CLIENT shall pay all costs of collection, including reasonable attorney's fees.

Certifications: Guarantees and Warranties: ARCHITEXAS shall not be required to execute any document that would result in its certifying, guaranteeing or warranting the existence of conditions whose existence ARCHITEXAS cannot ascertain.

Termination of Services: This Agreement may be terminated by the CLIENT or ARCHITEXAS should the other fail to perform its obligations hereunder. In the event of termination, the CLIENT shall pay ARCHITEXAS for all services rendered to the date of termination, all reimbursable expenses, and reimbursable termination expenses.

Ownership of Documents: All documents produced by ARCHITEXAS under this agreement shall remain the property of ARCHITEXAS and may not be used by the CLIENT for any other endeavor without the written consent of ARCHITEXAS.

Hazardous Materials Indemnity: The CLIENT agrees, notwithstanding any other provision of this Agreement, to the fullest extent permitted by law, to indemnify and hold harmless ARCHITEXAS, its officers, partners, employees and subconsultants (collectively, ARCHITEXAS) from and against any and all claims, suits, demands, liabilities, losses, damages or costs, including reasonable attorneys' fees and defense costs arising out of or in any way connected with the detection, presence, handling, removal, abatement, or disposal of any asbestos or hazardous or toxic substances, products or materials that exist on, about or adjacent to the Project site, whether liability arises under breach of contract or warranty, tort, including negligence, strict liability or statutory liability, regulatory or any other cause of action, except for the sole negligence or willful misconduct of ARCHITEXAS.

Information Provided By Others: The CLIENT shall furnish, at the CLIENT'S expense, all information, requirements, reports, data, surveys and instructions required by this Agreement. ARCHITEXAS may use such information, requirements, reports, data, surveys and instructions in performing its services and is entitled to rely upon the accuracy and completeness thereof. ARCHITEXAS shall not be held responsible for any errors or omissions that may arise as a result of erroneous or incomplete information provided by the CLIENT and/or the CLIENT'S consultants and contractors.

Third Party Beneficiaries: Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the CLIENT or ARCHITEXAS. ARCHITEXAS' services under this Agreement are being performed solely for the CLIENT'S benefit, and no other party or entity shall have any claim against ARCHITEXAS because of this Agreement or the performance or nonperformance of services hereunder. The CLIENT and ARCHITEXAS agree to require a similar provision in all contracts with contractors, subcontractors, sub-consultant's, vendors and other entities involved in this Project to carry out the intent of this provision.

Consequential Damages: Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, neither the CLIENT nor ARCHITEXAS, their respective officers, directors, partners, employees, contractors or sub-consultant's shall be liable to the other or shall make any claim for any incidental, indirect or consequential damages arising out of or connected in any way to the Project or to this Agreement. This mutual waiver of consequential damages shall include, but is not limited to, loss of use, loss of profit, loss of business, loss of income, loss of reputation and any other consequential damages that either party may have incurred from any cause of action including negligence, strict liability, breach of contract and breach of strict or implied warranty. Both the CLIENT and ARCHITEXAS shall require similar waivers of consequential damages protecting all the entities or persons named herein in all contracts and subcontracts with others involved in this project.

Limitation of Liability: To the fullest extent permitted by law, and notwithstanding any other provision of this Agreement, the total liability, in the aggregate, of ARCHITEXAS and its officers, directors, partners, employees, agents and sub-consultants, and any of them, to the CLIENT and anyone claiming by, through or under the CLIENT, for any and all claims, losses, costs or damages of any nature whatsoever 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 the negligence, professional errors or omissions, strict liability, breach of contract or warranty, express or implied of ARCHITEXAS or its officers, directors, employees, agents or sub-consultants, or any of them, shall not exceed the total compensation received by ARCHITEXAS under this Agreement, or the total amount of \$288,000 whichever is less.

Betterment: If, due to ARCHITEXAS' negligence, a required item or component of the Project is omitted from ARCHITEXAS' construction documents, ARCHITEXAS shall not be responsible for paying the cost required to add such item or component to the extent that such item or component would have been required and included in the original construction documents. In no event will ARCHITEXAS be responsible for any cost or expense that provides betterment or upgrades or enhances the value of the Project.

Proprietary Information: All portions of this proposal are considered by ARCHITEXAS to be trade secrets and proprietary information that if released without ARCHITEXAS permission, would give advantage to competitors. As such, these records are exempt for disclosure under Section 3(A)(4) and 3(A)(10) of the Texas Open Records Act. Release and utilization of this project shall be only under conditions established with the ARCHITEXAS team.

Licensure: In accordance with State law, you are hereby notified of the following: The Texas Board of Architectural Examiners, 333 Guadalupe, Suite 2-350, Austin, Texas 78701, Telephone (512) 305-9000, has jurisdiction over complaints regarding the professional practices of persons registered as architects in Texas.

Meaning of Terms:

- A. ARCHITEXAS: ARCHITEXAS shall mean ARCHITEXAS and its independent professional associates or consultants.
- B. CLIENT: City of Dripping Springs

ATTACHMENT B

CITY OF DRIPPING SPRINGS INSURANCE REQUIREMENTS

Contractor providing services for the City of Dripping Springs (City) shall, during the term of the contract with the City or any renewal or extension thereof, provide and maintain the types and amounts of insurance set forth herein. All insurance and certificate(s) of insurance shall contain the following provisions:

1. Name the City as additional named insured as to all applicable coverage.
2. Provide for at least ten (10) days prior written notice to the City for cancellation, non-renewal, or material change of the insurance.
3. Provide for a waiver of subrogation against the City for injuries, including death, property damage, or any other loss to the extent the same is covered by the proceeds of insurance.

Insurance Company Qualifications: All insurance companies providing the required insurance shall be authorized to transact business in Texas and rated at least "A": by AM Best or other equivalent rating service.

Certificate of Insurance: Certificates of insurance evidencing all of the required insurance coverage shall be submitted to the City. Copies of any modifications, amendments, renewals, or terminations of any coverage shall be promptly submitted to the City. If the contract is renewed or extended by the City, certificates of insurance evidencing all of the required insurance coverages shall also be provided to the City prior to the date the contract is renewed or extended.

Type of Contract and Amount of Insurance:

1. Statutory Workers Compensation insurance as required by state law.
2. Commercial General Liability minimum limits of \$500,000 per occurrence for bodily injury, personal injury, and property damage.
3. Automobile Liability with a minimum of \$500,000 per combined single limit.
4. Professional Services Professional Liability Insurance with a minimum of \$1 million per occurrence and \$1 million aggregate.

CERTIFICATE OF INTERESTED PARTIES

FORM 1295

1 of 1

Complete Nos. 1 - 4 and 6 if there are interested parties.
Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.

OFFICE USE ONLY CERTIFICATION OF FILING

Certificate Number:
2023-1026083

Date Filed:
05/25/2023

Date Acknowledged:
06/07/2023

1 Name of business entity filing form, and the city, state and country of the business entity's place of business.

Architexas
Austin, TX United States

2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.

City of Dripping Springs

3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.

ARC05062023
Architectural Services

4	Name of Interested Party	City, State, Country (place of business)	Nature of interest (check applicable)	
			Controlling	Intermediary
	Irsik, Larry	Austin, TX United States	X	
	Melde, Craig	Dallas, TX United States	X	

5 Check only if there is NO Interested Party.

6 UNSWORN DECLARATION

My name is _____, and my date of birth is _____.

My address is _____, _____, _____, _____, _____.
(street) (city) (state) (zip code) (country)

I declare under penalty of perjury that the foregoing is true and correct.

Executed in _____ County, State of _____, on the _____ day of _____, 20____.
(month) (year)

Signature of authorized agent of contracting business entity
(Declarant)

CERTIFICATE OF INTERESTED PARTIES

FORM 1295

1 of 1

Complete Nos. 1 - 4 and 6 if there are interested parties.
Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.

OFFICE USE ONLY CERTIFICATION OF FILING

Certificate Number:
2023-1026083

Date Filed:
05/25/2023

Date Acknowledged:

1 Name of business entity filing form, and the city, state and country of the business entity's place of business.

Architexas
Austin, TX United States

2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.

City of Dripping Springs

3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.

ARC05062023
Architectural Services

4	Name of Interested Party	City, State, Country (place of business)	Nature of interest (check applicable)	
			Controlling	Intermediary
	Irsik, Larry	Austin, TX United States	X	
	Melde, Craig	Dallas, TX United States	X	

5 Check only if there is NO Interested Party.

6 UNSWORN DECLARATION

My name is _____, and my date of birth is _____.

My address is _____, _____, _____, _____, _____.
(street) (city) (state) (zip code) (country)

I declare under penalty of perjury that the foregoing is true and correct.

Executed in _____ County, State of _____, on the _____ day of _____, 20____.
(month) (year)

Signature of authorized agent of contracting business entity
(Declarant)

CONFLICT OF INTEREST QUESTIONNAIRE

For vendor doing business with local governmental entity

FORM CIQ

This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session.

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

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

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

OFFICE USE ONLY

Date Received

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

Architexas

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

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

N/A

Name of Officer

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

N/A

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

Yes No

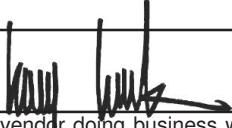
B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer or a family member of the officer AND the taxable income is not received from the local governmental entity?

Yes No

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

N/A

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

7 
Signature of vendor doing business with the governmental entity

May 25, 2023

Date



DRIPPING SPRINGS
Texas

Stephenson Way Downtown Restrooms

City Council Update
June 18, 2024



Google Earth, 2022

Currently an empty area situated between contributing and non-contributing structures downtown.

*Existing
Conditions*



Site Concept

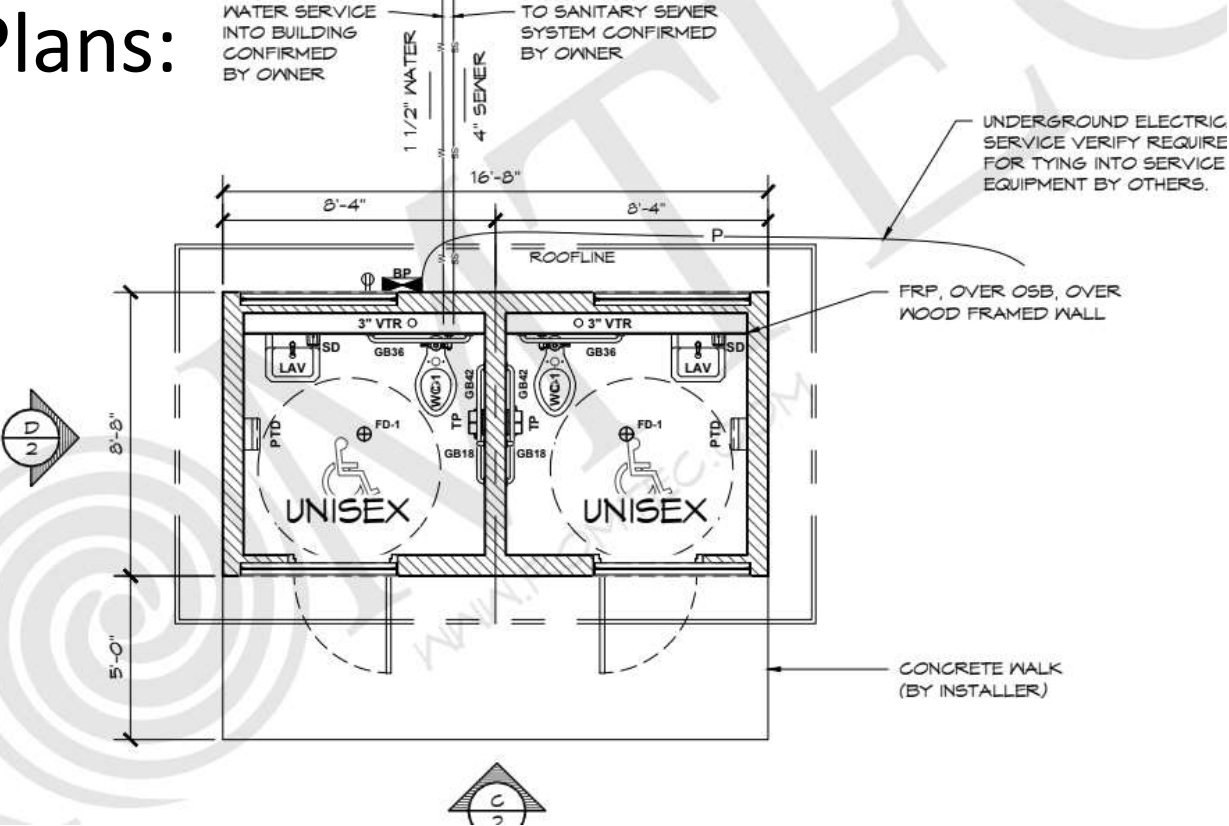


“Stephenson Way” Civic / Pedestrian Improvements:

Item 12.

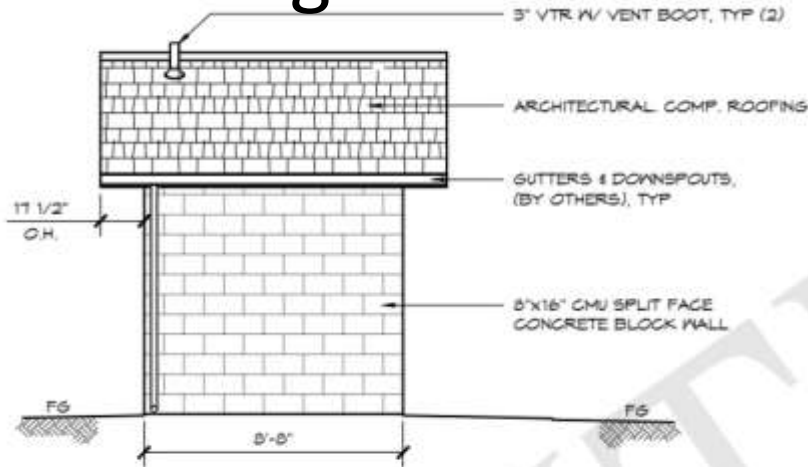
- Pedestrian Amenities
- Lighting
- Landscaping
- Pervious Pavers
- Downtown Restroom

Generic Modular Restroom Plans:

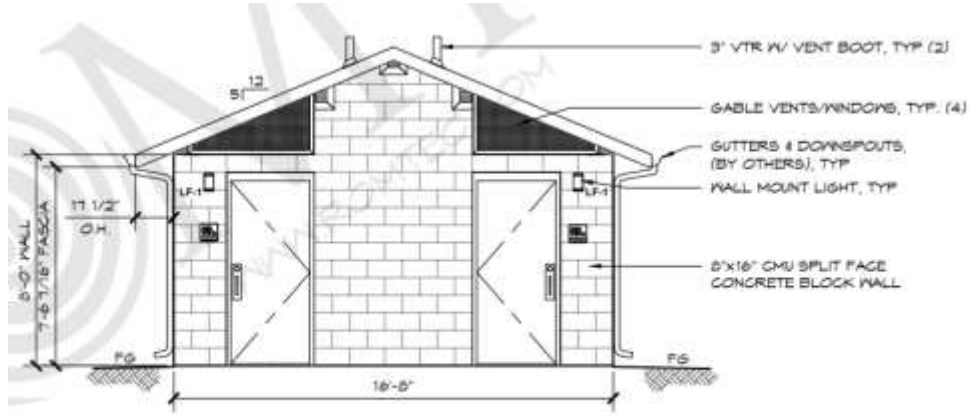


Generic Modular Restroom Buildings:

Item 12.



C ELEVATION VIEW
SCALE: 1/4" = 1'-0"

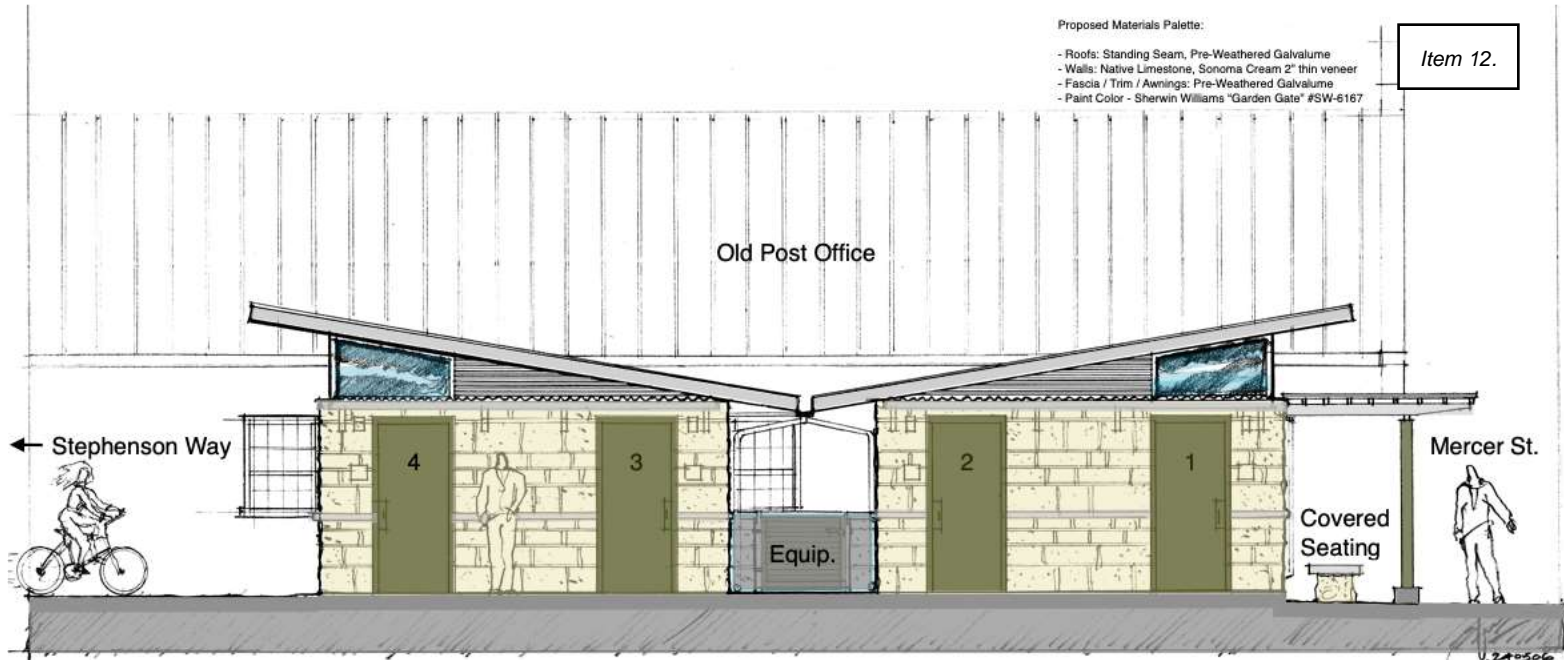


D ELEVATION VIEW
SCALE: 1/4" = 1'-0"



DRIPPING SPRINGS
Texas

Applicant Request



Item 12.

City of Dripping Springs

"Downtown Restrooms"

240516 - KS

Hill Country Contemporary - Butterfly Inspiration
Concept Sketch

- Construct public restrooms facilities within the area



Applicant Request



Hill Country Contemporary - Butterfly Inspiration
Concept Sketch

- Construct public restrooms facilities within the area



Materials

Cordova Cream Limestone
by Salado Stone,
or equal....

MATERIALS Item 12.

Existing Limestone



Matching Cordova cream limestone in ashlar pattern



Galvanized Corrugated Metal



East Elevation



DRIPPING SPRINGS
Texas



STEPHENSON TRACT BASE MAP

Stephenson Civic District
Illustrative Plan

© 2020 Prepared by WCCare Architects Studio for the City of Dripping Springs



Stephenson Item 12. Civic District Vision Plan:

- Stephenson Building
- Downtown Parking
- Old Fitzhugh Road
- Downtown Restroom 140

Next Steps

Item 12.

- Complete Cost Estimation
 - Romtec Design & Supply Only: \$255,000 to \$265,000
 - Romtec Design, Supply, & Installation: \$325,000 to \$410,000
 - Site Work: costs to be determined
- City Council Authorization to Move Forward with Procurement
- Concurrent Activities
 - Replat 4 City owned parcels into 1
 - Complete Site Plan (internal with City Engineer)
 - Construction Contract with Romtec
 - Submit Building Permit Application (internal with Building Department)
- Site Work
- Construct Restrooms



DRIPPING SPRINGS
Texas



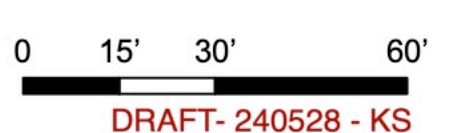
LEGEND

- PROPERTY LINE
- INTERIOR LOT LINES
- - - ADJOINER PROPERTY LINE
- OVERHEAD ELECTRIC
- EXISTING WIRE FENCE
- EDGE OF PAVEMENT
- 1/2" IRON ROD FOUND [UNLESS NOTED]
- △ CALCULATED POINT
- 1/2" IRON PIPE FOUND [UNLESS NOTED]
- ▲ NAIL FOUND
- CLEAN OUT
- AIR CONDITIONING UNIT
- WATER VALVE
- WATER METER
- SIGN [AS NOTED]
- POWER POLE
- DOWN GUY
- BENCHMARK SET
- IRRIGATION CONTROL VALVE
- ELECTRIC TRANSFORMER
- ELECTRIC METER
- MAILBOX
- PUNCH HOLE ON IRON BOLT HEAD
- ★ POINT OF BEGINNING
- DOC. NO. DOCUMENT NUMBER
- VOL. VOLUME
- PG. PAGE
- R.O.W. RIGHT-OF-WAY
- F.F. FINISHED FLOOR
- C.R.Z. CRITICAL ROOT ZONE
- M.T. MULTI-TRUNK
- O.P.R.H.C.T. OFFICIAL PUBLIC RECORDS, HAYS COUNTY, TEXAS
- D.R.H.C.T. DEED RECORDS, HAYS COUNTY, TEXAS

STEPHENSON TRACT BASE MAP

11.4.2020 Prepared by McCann Adams Studio for the City of Dripping Springs

Stephenson Civic District Illustrative Plan





STAFF REPORT
City of Dripping Springs
PO Box 384
511 Mercer Street
Dripping Springs, TX 78620

Submitted By: Emily Nelson, Dripping Springs Ranch Park Manager

Council Meeting Date: June 18, 2024

Agenda Item Wording: **Discuss and consider approval of City of Dripping Springs Logo Use by the Dripping Springs Helping Hands for the Empty Bowls Project and authorization of staff to finalize Logo Use Agreement with Dripping Springs Helping Hands.** *Applicant: Dripping Springs Helping Hands*

Agenda Item Requestor: Mayor Bill Foulds

Summary/Background: Empty Bowls Project is requesting use of the City Logo in the advertising for the Empty Bowls event held at Dripping Springs Ranch Park on November 3, 2024. They have also requested the City to be an active participant in the event by: assisting with marketing through social media; providing a soup in coordination with the Dripping Springs Farmers Market; and assisting with recruiting volunteers for the event.

Commission Recommendations: N/A

Recommended Council Actions: Options: Approve, Deny, or Approve with revisions.

Attachments: 2024 – Logo Use Agreement
Logo Request Letter – Empty Bowls
Banner Request – Empty Bowls
City Logo Use Application
Logo Use Ordinance No. 2024-20

Next Steps/Schedule: Execute Agreement if approved.



City of Dripping Springs Logo Use Agreement

Licensee Last Name: Baumoel, First Name: June

Organization: Dripping Springs Helping Hands, Inc

Address: PO Box 804

City: Dripping Springs State: Texas Zip: 78620

Phone Number: (512) 801-4987 Email: junebaumoel@gmail.com

Event Description/Purpose:

The Annual DS Empty Bowls Project is the largest fundraiser of the year for the Helping Hands Food Pantry and Social Services non-profit organization.

Event Date: 11/03/2024 **City Park/Property Location:** Dripping Springs Ranch Park 1042 Event Center Dr.

THIS LOGO USE AGREEMENT IS SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS:

1. **Parties.** The City of Dripping Springs, Texas ("City") and Licensee, as indicated above. Licensee is a non-profit organization.
2. **Scope.** This Agreement applies to utilization of the City's logo for the Event and reasons stated above.
3. **Obligations of the City.** The extent of the City's obligations under this Agreement is that:
 - a. The City agrees to allow limited use of its Logo on the Licensee's marketing materials for the above described event;
 - b. The City agrees to timely review and approve, when appropriate, use of the City Logo for Licensee's marketing materials.;
 - c. The City agrees to be an active participant in the event by:
 - i. Assisting with marketing through social media;
 - ii. Providing a soup in coordination with the Dripping Springs Farmers Market; and
 - iii. Assisting with recruiting volunteers for the event.
4. **Obligations of Licensee.** Licensee agrees to:
 - a. Limits its use of the City Logo to the marketing material for the above described event;
 - b. Agrees to present all marketing materials that will use the City Logo to the People and Communications Director at least 14 days prior to its publication or distribution and shall not use any material that has not been approved in writing by the People or Communications Director or Director's designee;
 - c. Licensee shall comply with the City Logo Ordinance and all Branding Guidelines provided by the People and Communications Director.
 - d. Licensee shall use City Park/Property listed above for the event for which the City Logo will be used.
 - e. Licensee shall cease using the City Logo or any marketing materials that use the City Logo upon written request of the City of Dripping Springs.
5. **Safety.** Licensee agrees to abide by all state, federal, and local rules and regulations.
6. **Duration.** This Agreement shall be enforceable when signed by both parties and shall be deemed terminated when all duties and obligations created herein are fully satisfied or is terminated as stated herein.
7. **Termination.** This Agreement may be terminated by mutual consent of the parties. It may be terminated by either party without prejudice upon written notice to the other party via certified mail, return receipt requested, ten (10) days prior to the Event. Termination shall release each party from all obligations of this Agreement, except termination of

this agreement shall not prohibit or impair a claim by either party based upon any breach of this Agreement. C
terminated, the Licensee shall immediately cease use of the City Logo.

- 8. **Indemnification.** LICENSEE AGREES TO INDEMNIFY AND HOLD HARMLESS THE CITY AND ITS AGENTS AND EMPLOYEES FROM AND AGAINST ALL CLAIMS, DAMAGES, LOSSES, AND EXPENSES, INCLUDING ATTORNEY’S FEES, ARISING OUT OF OR RESULTING FROM THE CITY’S ASSOCIATION WITH LICENSEE UNDER THIS AGREEMENT, PROVIDED THAT ANY SUCH CLAIMS, DAMAGE, LOSS, OR EXPENSE IS/ARE ATTRIBUTABLE TO BODILY INJURY, SICKNESS, DISEASE OR DEATH, INJURY TO OR DESTRUCTION OF TANGIBLE PROPERTY, INCLUDING THE LOSS OF USE RESULTING THEREFROM, AND IS/ARE CAUSED BY ANY NEGLIGENT OR WILLFUL ACT OR OMISSION OF LICENSEE, AND ANYONE ACTING UNDER THE DIRECT EMPLOYMENT OF THE LICENSEE.
- 9. **Notice.** Any notice provided for by this Agreement and any other notice, demand or communication which either party may wish to send to the other, shall be in writing and given by registered or certified United States mail, return receipt requested. Notices shall be addressed to the party for whom such notice, demand or communication is intended. Mail notice to the City as: Attention: City Administrator, Post Office Box 384, Dripping Springs, Texas 78620.
- 10. **Assignment.** Neither party shall assign any of its rights or obligations under this Agreement without prior written consent of the other party. Nothing herein shall be construed as giving any rights or benefits hereunder to anyone other than the City and Licensee.
- 11. **Severability.** In the event that any provision of this Agreement, or portion thereof, shall be found to be invalid or unenforceable, then, such provision or portion thereof shall be reformed in accordance with applicable laws. The invalidity or unenforceability of any provision or portion of this Agreement shall not affect the validity or enforceability of any other provision or portion thereof within this Agreement.
- 12. **Modifications.** All amendments or modifications to the Agreement must be in writing. No amendment or modification shall be effective until it is in writing and approved by both parties.
- 13. **Merger.** This instrument, and any Attachments affixed hereto, constitutes the entire Agreement between the City and Licensee. To the extent there are any conflicts between this Agreement and the attachments, this Agreement shall govern. This Agreement supersedes all other agreements, oral or written.
- 14. **Venue for Disputes.** In the event that a lawsuit is brought concerning events arising out of this Agreement, the venue for such action is *Hays County, Texas*. This Agreement shall be construed in accordance with the laws of the State of Texas.

ACKNOWLEDGMENT:

Owner:
City of Dripping Springs, Texas

Licensee:

Michelle Fischer, City Administrator

June Baumol, Dripping Springs Helping Hands, Inc.

Date

Date





Michelle Fischer, City Administrator, City of Dripping Springs
Emily Nelson, Dripping Springs Ranch Park Manager

May 6, 2024

Dear Ms. Fischer and Ms. Nelson,

Thank you for reviewing our request for the city's co-sponsorship of the 27th Annual Empty Bowls Project on Sunday, November 3, 2024 at the Dripping Springs Ranch Park.

Information to be considered

Dripping Springs Helping Hands provides more than 282,130 pounds of food to our neighbors in need each year. Temporary financial aid is given to individuals and families who are struggling to meet basic needs such as housing, transportation, utilities, medical, and other social services. In 2023, Helping Hands spent \$134,453 on purchasing food and providing financial aid. Helping Hands serves more than 100 families each week. Without Helping Hands, the needs of the less fortunate individuals in our community could not be met. Helping Hands conducts a school supply program, a summer supplement program, and a Holiday Elf program. Helping Hands operates solely on volunteers. There are no paid employees. This nonprofit organization has served our community for 38 years.

The Empty Bowls Project encourages people to contribute to Helping Hands' mission of assisting our neighbors in need. Helping Hands enhances the quality of life and well-being of others who are less fortunate. This event is open to all members of our community who come to enjoy the talents of ceramic artists, area chefs and local musicians, It is a beloved annual fundraiser that draws more than 1,000 patrons and over 100 volunteers each year,

The city has been a co-sponsor of the Empty Bowls for the past six or seven years. We appreciate the city's support of Helping Hands by joining us as a co-sponsor of the Empty Bowls Project. We are proud to include the city's logo on all our marketing materials and to call the city a friend of Helping Hands.

Respectfully submitted,
June Baumöel – Co Chair

Carrie Gregory – Co Chair
Melissa Herweck – Co-Chair



City of Dripping Springs Non-Profit Event Triangle Banner Program Agreement

Applicant First Name: June Last Name: Baumoe

Organization: Dripping Springs Helping Hands / Empty Bowls Project

Organization Address: P.O. Box 804, Dripping Springs, Tx 78620

City: Dripping Springs State: TX Zip: 78620

Phone Number: 512-801-4987 Email: junebaumoe@gmail.com

Event Description/Purpose: Empty Bowls Project is the major fundraiser for Helping Hands. Money raised is used to operate the community food pantry and to provide financial aid to those in need.

Event Date: Nov. 3, 2024 Event Location: Dripping Springs Ranch Park

City Limits or ETJ (circle one) City Facility: Dripping Springs Ranch Park

THIS AGREEMENT IS SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS:

1. **Parties.** The City of Dripping Springs, Texas ("City") and Applicant, as indicated above.
2. **Scope.** This Agreement applies to Applicant's use of the City's property for a banner and the Event subject to the description listed above.
3. **Fee.** This agreement is subject to the fee as set forth in the City's Fee Schedule.
4. **Obligations of the City.** The extent of the City's obligations under this Agreement is that the City agrees to display a banner for the Event at the intersection of US Highway 290 and Ranch Road 12 for up to thirty (30) days at a time mutually agreed between the Applicant and the City. Use of the intersection for banner placement is based on availability and certain slots of the banner facilities shall be reserved for City use. The City will decide the location and will place the banner. Any movement of a banner by an entity will result in removal of the banner by the City.
5. **Obligations of Applicant.** Applicant agrees to provide all information requested including rental agreement with the City to ensure eligibility for program. Event must use a city facility to be eligible for this program.
6. **Unauthorized Use.** No person, corporation, or entity, or any of its affiliates, subsidiaries, or parent of these entities, who are in active litigation against the City may use this program. Active litigation includes litigation in State or Federal Court, State Office of Administrative Hearings, and any contested case in front of any state agency. This prohibition is lifted only when any litigation is finally settled.
7. **Duration.** This Agreement shall be enforceable when signed by both parties and shall be deemed terminated when all duties and obligations created herein are fully satisfied.
8. **Termination.** This Agreement may be terminated by mutual consent of the parties. It may be terminated by either party without prejudice upon written notice to the other party via certified mail, return receipt requested, thirty (30) days prior to the Event. Termination shall release each party from all obligations of this Agreement, except termination of this agreement shall not prohibit or impair a claim by either party based upon any breach of this Agreement.
9. **Force Majure.** In situations in which Applicant's participation in the Event is delayed, cancelled or suspended due to the Acts of God, severe weather, natural disaster, state of public emergency, or strike, the terms of this Agreement are waived.
10. **Indemnification.** APPLICANT AGREES TO INDEMNIFY AND HOLD HARMLESS THE CITY AND ITS AGENTS AND EMPLOYEES FROM AND AGAINST ALL CLAIMS, DAMAGES, LOSSES, AND EXPENSES, INCLUDING ATTORNEY'S FEES,

ARISING OUT OF OR RESULTING FROM THE CITY'S ASSOCIATION WITH APPLICANT UNDER THIS AGREEMENT PROVIDED THAT ANY SUCH CLAIMS, DAMAGE, LOSS, OR EXPENSE IS/ARE ATTRIBUTABLE TO BODILY INJURY, SICKNESS, DISEASE OR DEATH, INJURY TO OR DESTRUCTION OF TANGIBLE PROPERTY, INCLUDING THE LOSS OF USE RESULTING THEREFROM, AND IS/ARE CAUSED BY ANY NEGLIGENT OR WILLFUL ACT OR OMISSION OF APPLICANT, AND ANYONE ACTING UNDER THE DIRECT EMPLOYMENT OF THE APPLICANT.

- 11. **Notice.** Any notice provided for by this Agreement and any other notice, demand or communication which either party may wish to send to the other, shall be in writing and given by registered or certified United States mail, return receipt requested. Notices shall be addressed to the party for whom such notice, demand or communication is intended. Mail notice to the City as: Attention: City Administrator, 511 Mercer Street, Dripping Springs, Texas 78620.
- 12. **Assignment.** Neither party shall assign any of its rights or obligations under this Agreement without prior written consent of the other party. Nothing herein shall be construed as giving any rights or benefits hereunder to anyone other than the City and Co-Sponsor.
- 13. **Severability.** In the event that any provision of this Agreement, or portion thereof, shall be found to be invalid or unenforceable, then, such provision or portion thereof shall be reformed in accordance with applicable laws. The invalidity or unenforceability of any provision or portion of this Agreement shall not affect the validity or enforceability of any other provision or portion thereof within this Agreement.
- 14. **Modifications.** All amendments or modifications to the Agreement must be in writing. No amendment or modification shall be effective until it is in writing and approved by both parties.
- 15. **Merger.** This instrument, and any Attachments affixed hereto, constitutes the entire Agreement between the City and Applicant. To the extent there are any conflicts between this Agreement and the attachments, this Agreement shall govern. This Agreement supersedes all other agreements, oral or written.
- 16. **Venue for Disputes.** In the event that a lawsuit is brought concerning events arising out of this Agreement, the venue for such action is *Hays County, Texas*. This Agreement shall be construed in accordance with the laws of the State of Texas.

ACKNOWLEDGMENT:

Owner:
City of Dripping Springs, Texas

Applicant:

June Baumel - Co-Chair for
Dripping Springs Helping Hands
Empty Bowls Project

Michelle Fischer, City Administrator

May 2, 2024

Date

Date

City Use – After Approval

Non-Profit Verification: _____
Staff Initials

Dates of Banner Posting: _____
Dates

Applicant Approval: _____
Applicant Initials



22nd Annual Empty Bowls Project

Sunday
November 3, 2019
11 am - 3 pm
Dripping Springs Ranch park

GOOD FRIENDS • GREAT FOOD • LIVE MUSIC

Thank you

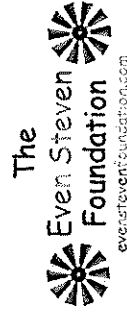
CELEDON SPONSORS



pinvest aesthetics
The Art of Skin Care
Cancer Appointments
Medical Spa Licensed Aesthetician,
Texas Licensed Aesthetic Educator

By appointment, please call 512-347-2888
511 Old Fitzhugh Rd • Dripping Springs, Texas

Wilson
AC & APPLIANCE
SALES & SERVICE SINCE 1949



The
Even Steven
Foundation
evenstevenfoundation.com

PORCELAIN SPONSORS

Dripping Springs Lions Club
June and Jim Baumel



DRIPPING SPRINGS Texas

Logo Use Application

Name of Organization

First Name Last Name

Address City State Zip

Phone Number E-mail Address

- City Logo and / or Additional Logos to use Not Applicable
- Is the organization requesting use of the City Logo a recognized 501(c)(3) tax-exempt organization?
Yes No If yes, please attach evidence of Tax-Exempt Status
- Is the organization requesting use of the City Logo a Non-profit organization?
Yes No If yes, please attach evidence of Non-Profit Status

• Please explain what event or advertising material the City Logo will be used for:

• When will your organization use the City's Logo?

Starting Date Ending Date

• Where will your organization use the City Logo?

• Will any promotional materials or items using the City's Logo be given away or sold?
No Given Away Sold Both

• Please explain the types of materials or items.

CITY OF DRIPPING SPRINGS
ORDINANCE No. 2024-20

AN ORDINANCE OF THE CITY OF DRIPPING SPRINGS, TEXAS (“CITY”), ADDING ARTICLE 22.07; ADOPTING REGULATIONS FOR THE PROTECTION OF THE CITY LOGO AND CITY SEAL AND PROHIBITING THE UNAUTHORIZED USE THEREOF; PROVIDING FOR THE LICENSING OF THE CITY LOGO AND CITY SEAL IN CERTAIN CIRCUMSTANCES; PROVIDING THAT THIS ORDINANCE SHALL BE CUMULATIVE OF ALL ORDINANCES; PROVIDING SEVERABILITY, SAVINGS, AND PENALTY CLAUSES; PROVIDING PUBLICATION IN THE OFFICIAL NEWSPAPER; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City is a Type A General Law city, acting under state laws and enacted local ordinances pursuant to Chapter 6 and related sections and provisions of the Texas Local Government Code; and

WHEREAS, the City owns and uses a logo which consists of a circular, multi-color logo, designed to appear hand-painted or -signed, with three stars in the upper right corner, a lowercase, scripted “DS” in the middle of the circle with trailing lines before and after the letters, and “DRIPPING SPRINGS Texas” below the circle with or without “Open spaces, friendly faces.” below a rightward paintbrush stroke; and

WHEREAS, the City adopted a seal which is circular with the words “City of Dripping Springs” inside the top of the outer red circle, the word “Texas” at the bottom of the outer circle, the words “Inc. 1981” inside the inner white circle along with a large star in the center and two wheat stalks going up either side of the inner circle starting from the bottom center, which the City applies to official documents of the city pursuant to Texas Local Government Code Section 51.016, et seq.; and

WHEREAS, the City has a substantial interest in protecting its logo and seal from unauthorized use and to avoid resident, as well as consumer, confusion.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Dripping Springs, Texas, that:

SECTION 1. FINDINGS OF FACT

The foregoing recitals are incorporated into this Ordinance by reference as findings of fact as if expressly set forth herein.

SECTION 2. AMENDMENT

The City Code of Ordinances is hereby amended by adding a new Article under Chapter 22, to be numbered Article 22.07, and after such amendment, shall read in accordance with Attachment A, which is attached hereto and incorporated into this Ordinance for all intents and purposes.

SECTION 3. INTELLECTUAL PROPERTY PROTECTION

In addition to amending the City Code of Ordinances as directed in Section 2, in accordance with Attachment A, the City will endeavor to gain and maintain additional protection for its City Logo, and variations therein, by applying for, obtaining if possible, and maintaining trademark protection from the United States Patent and Trademark Office. If at any such time, such additional protection becomes available for the City Seal as well, City will endeavor to gain and maintain such similar protection.

SECTION 4. REPEALER

To the extent reasonably possible, ordinances are to be read together in harmony. However, all ordinances, or parts thereof, that are in conflict or inconsistent with any provision of this Ordinance are hereby repealed to the extent of such conflict, and the provisions of this Ordinance shall be and remain controlling as to the matters regulated, herein.

SECTION 5. SEVERABILITY

Should any of the clauses, sentences, paragraphs, sections, or parts of this Ordinance, including Attachment A, be deemed invalid, unconstitutional, or unenforceable by a court of law or administrative agency with jurisdiction over the matter, such action shall not be construed to affect any other valid portion of this Ordinance.

SECTION 6. CODIFICATION

The City Secretary is hereby directed to record and publish the attached rules, regulations and policies in the City's Code of Ordinances as authorized by Section 52.003 of the Texas Local Government Code, as well as publish in the official newspaper as authorized by Section 52.011 of the same code.

SECTION 7. EFFECTIVE DATE

This ordinance shall take immediate effect upon the date of final passage noted below, or when all applicable publication requirements are satisfied in accordance with the City Code of Ordinances and the laws of the State of Texas.

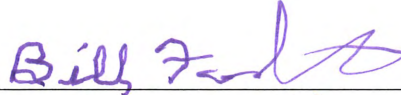
SECTION 8. PROPER NOTICE & MEETING

It is hereby officially found and determined that the meeting at which this Ordinance was passed was open to the public, and that public notice of the time, place, and purpose of said meeting was

given as required by the Open Meetings Act, Texas Government Code, Chapter 551. Notice was also provided as required by Chapter 52 of the Texas Local Government Code.

PASSED & APPROVED this, the 2nd day of April 2024, by a vote of 5 (ayes) to 0 (nays) to 0 (abstentions/recusals) of the City Council of Dripping Springs, Texas.

CITY OF DRIPPING SPRINGS:



Bill Foulds, Jr., Mayor

ATTEST:



Andrea Cunningham, City Secretary



ATTACHMENT A

City of Dripping Springs Code of Ordinances

Chapter 22: General Regulations

Article 22.07: City Logos and SealSec. 22.07.001 – Title

This article shall commonly be cited as the logos and seal ordinance.

Sec. 22.07.002 – Purpose

The article is adopted so that the City Council may properly protect its logos and seal from unauthorized use to avoid confusion among residents and consumers alike.

Sec. 22.07.003 – Scope

This article applies to all property within the incorporated municipal boundaries (i.e., city limits) and the extraterritorial jurisdiction (ETJ) as applicable. This includes all content published or shown viewable within the preceding boundaries.

Sec. 22.07.004 – Definitions

- (a) “City Logo” (or “Logo”) means the logo used by the City of Dripping Springs, including any cut, facsimile, reproduction, or alternate versions thereof, which consists of a circular, multi-color logo, designed to appear hand-painted or -signed, with three stars in the upper right corner, a lowercase, scripted “DS” in the middle of the circle with trailing lines before and after the letters, and “DRIPPING SPRINGS Texas” below the circle with or without “Open spaces, friendly faces.” below a rightward paintbrush stroke as set forth below:



- (b) “City Seal” (or “Seal”) means a seal that is circular with the words “City of Dripping Springs” inside the top of the outer red circle, the word “Texas” at the bottom of the outer circle, the words “Inc. 1981” inside the inner white circle along with a large star in the center and two wheat stalks going up either side of the inner circle starting from the bottom center as set forth below:



- (c) “Additional City Logos” (or “Additional Logos”) means a logo adopted by the City, including without limitation the Dripping Springs Bird City Logo, the Dripping Springs Night Sky Logo, the Dripping Springs Fair & Rodeo Logo, the Dripping Springs Farmers Market Logo, the Dripping Springs Ranch Park Logo, Dripping Springs Parks & Community Logo, the Dripping Springs Historic Logo, the Dripping Springs Emergency Management Logo, the Destination Dripping Springs Logo, the Dripping Springs Songwriters Festival Logo, and the Wedding Capital of Texas Logo. An Additional City Logo shall be treated the same as a City Logo.

“Dripping Springs Bird City Logo” means the logo used by the City of Dripping Springs, including any cut, facsimile, reproduction, or alternate versions thereof, which consists of a shield-shaped emblem with a blue background and white border. The top of the shield features a white egret with a yellow beak and a blue heron with a yellow beak. The bottom of the shield has the words “Bird City” in light blue, “Texas” in yellow with blue background and “Dripping Springs” in blue.



“Dripping Springs Night Sky Logo” means the logo used by the City of Dripping Springs, including any cut, facsimile, reproduction, or alternate versions thereof, which consists of a blue square with a white circle and stars on the top right corner. The text “Dripping Springs” is written in white in the center of the logo. The text “Texas” is written in white below the above text. The text “An International Dark Sky Community” is written in white below the above text. The logo for the Dark Sky International Association is on the bottom. It is a blue circle with white stars in the center and DarkSky International written in white to the right of the stars.



“Dripping Springs Fair & Rodeo Logo” means the logo used by the City of Dripping Springs, including any cut, facsimile, reproduction, or alternate versions thereof, which consists of a semicircle with a yellow and white, rising sun background. The center of the logo features a maroon silhouette of a cowboy riding a bucking bronco. Above the cowboy, there is a red star surrounded by the text “Dripping Springs”. Below the cowboy, there is a maroon banner with the words “Fair and Rodeo” in white letters.



“Dripping Springs Farmers Market Logo” means the logo used by the City of Dripping Springs, including any cut, facsimile, reproduction, or alternate versions thereof, which consists of a red truck with a silhouette of a person in the driving seat and a bed full of produce. The truck is facing forward and has “DSTX” written in black on the license plate. The produce in the bed of the truck includes a watermelon, a pumpkin, a carrot, and a bunch of bananas. The logo is surrounded with “City of Dripping Springs” written on the top and “Farmers Market” written on the bottom.



“Dripping Springs Ranch Park Logo” means the logo used by the City of Dripping Springs, including any cut, facsimile, reproduction, or alternate versions thereof, which consists of a rectangular shape with a blue background. The text “Dripping Springs” is

written in blue in a serif font on the top of the logo. The text “Ranch Park” is written in blue in a sans-serif font on the bottom of the logo. The words “Ranch” and “Park” are written in a larger font size than the other words. There is a blue border with a star at the top and bottom of the logo.



“**Dripping Springs Parks & Community Logo**” means the logo used by the City of Dripping Springs, including any cut, facsimile, reproduction, or alternate versions thereof, which consists of a rectangular shape with a green tree on the left. The tree is a large oak tree with a wide trunk and many branches. The text “Parks & Community” is written in green and black to the right of the tree. The text “City of Dripping Springs” is written in black below the tree. The background is white.



“**Dripping Springs Historic Logo**” means the logo used by the City of Dripping Springs, including any cut, facsimile, reproduction, or alternate versions thereof, which consists of a circular with a black border and white background. The text “Historic” is written in a curved manner on the top half of the logo. The text “Est. 1853” is written in a curved manner on the bottom half of the logo. The center of the logo has the text “Dripping Springs” in all caps, with illustration of the state of Texas below the above text in the center. The logo also has an illustration of a sunrise or sunset with a single bead of water in the top half of the logo.



“**Dripping Springs Emergency Management Logo**” means the logo used by the City of Dripping Springs, including any cut, facsimile, reproduction, or alternate versions thereof, which consists of a circular seal with a blue outer ring and a red inner ring. The text on the outer ring reads “City of Dripping Springs” in blue capital letters, at the top and

“Emergency Management” in red all capital letters, at the bottom. The center of the logo is a circle separated into 4 equal parts: on the top left is a house with waves over a green background. The top right quarter is a flame with red background. Bottom left panel has a swirl, representing a tornado with a blue background and the bottom right is a hurricane symbol with a yellow background.



“Destination Dripping Springs Logo” means the logo used by the City of Dripping Springs, including any cut facsimile, reproduction, or alternate versions thereof, which consists of a shield, colored brown and green. A banner across the middle of the shield reads “Destination Dripping Springs”. The shield features four symbols: a guitar, rings, wine bottle and glass, and a boot. In the center of the symbols is the state of Texas between two stars.



“Dripping Springs Songwriters Festival Logo” means the logo used by the City of Dripping Springs, including any cut facsimile, reproduction, or alternate versions thereof, which consists of a vintage circular design with a light beige background. Two blue and red banners, one at the top of the circle has the current year of the festival in black lettering and “Dripping” in white and one at the bottom that reads “Springs” in white and “Texas” in black. In the center of the circular displays the text “Songwriters Festival” in white cursive font. The logo is outlined in a dark blue color.



“Wedding Capital of Texas Logo” means the logo used by the City of Dripping Springs, including any cut facsimile, reproduction, or alternate versions thereof, which consists of

a square shaped, white background. It features a wedding cake stand in black. Above the stand, the words “Wedding Capital of Texas” are written in black serif font.



Sec. 22.07.005 – Custodian

The City Secretary or their designee is the custodian of the City Logo and the City Seal. Further amendment may alter the custodian of the City Logo but not the City Seal, unless at such time Texas Local Government Code Section 22.0703(b)(2) it determined not to constrain such amendment.

Sec. 22.07.006 – Official Use of the City Logo and City Seal

(a) City Logo, Additional City Logos, and City Seal are property of the City of Dripping Springs.

(b) **City Logo and Additional City Logos Official Uses** – The City Logo and Additional City Logos may be used by city employees and elected and appointed city officials in connection with the performance of official city business or city-sanctioned events, including but not limited to placement of the city logo on city vehicles, equipment, stationery, the city flag, department websites, handouts for city training sessions, city brochures, city presentations, city uniforms, and city-issued articles of clothing, department news releases, city-sponsored events, and city memorabilia used to promote the city. Branding guidelines adopted by the City Administrator or the Administrator’s designee shall be followed in all use of the logo. Additional City Logos as defined herein are subject to the same limitations as the City Logo. Any person, corporation, or other entity that has already been authorized to use the City Logo or an Additional City Logo prior to the effective date of this Ordinance may continue to use the Logo for the length of the authorization, the length of agreement, or up to twelve (12) months after the effective date of this Ordinance, whichever comes first.

(c) **City Seal Official Uses** – The city secretary, the city secretary’s designee, or the interim city secretary is authorized to use the City Seal on any ordinance, resolution, proclamation, commendation, certificate, or other instrument approved by the City Council or executed by the mayor or other city officials and to use the city seal to authenticate official documents in the conducting of official city business.

Sec. 22.07.007 – Other Approved Uses

(a) Any organization or person wishing to use the City Seal, City Logo, or Additional City Logos shall make an application for a license for such use to the City Council. Use of the City Seal, City Logo, or Additional City Logos shall only be by written agreement where use of a logo or seal is explicitly authorized. Use of the City Logo, City Seal, or Additional City Logos may only be authorized for events in which the City is an active participant, including but not limited to, staffing, event planning, funding, or compensation for which the event's organizing entity has an executed agreement. Rental of city facilities alone is insufficient for logo and seal use.

(b) All political or artistic expression, or non-commercial editorial expression for purposes of education or history, whatever the medium, that does not have the tendency to confuse reasonable members of the public as to the City's endorsement of said expression will be deemed an Approved Use, subject to Section 22.07.008 of this ordinance.

Sec. 22.07.008 – Unauthorized Uses

(a) Any uses of the City Logo, City Seal, or Additional City Logos that do not fall under Sections 22.07.006-.007 are deemed unauthorized uses.

(b) In particular, the following uses shall not be permitted or deemed to be permitted under Sections 22.07.006-.007 of this Code:

(1) No person, including any elected officer of the City, may use the City Seal, City Logo, or any Additional City Logo in any correspondence or other printed materials distributed in favor of or against any ballot measure, or in favor of or against any candidate for public office if such use has the tendency to cause public confusion on the City's position in favor of or against any ballot measure or candidate.

(2) No person, corporation, or other similar entity shall use the City Seal, City Logo, or any Additional City Logo for commercial purposes without obtaining express consent under this ordinance.

(3) No person, corporation, or other similar entity in active litigation (including parent, subsidiary, or affiliated entities) against the City may use the City Seal, City Logo, or Additional City Logos. Active litigation includes litigation in Texas and Federal Courts, State Office of Administrative Hearings, and any controversy between the City and a person, corporation, or other similar entity in front of any State or Federal Agency.

(c) It shall be unlawful for any person, corporation, or similar entity to make or use the City Seal, City Logo, Additional City Logos, or other indicia of the City deceptively, fraudulently, or without express written permission from the City, whether for public or private use. Unauthorized use of the City Seal, City Logo, or other City Logos is guilty of a misdemeanor. Such unauthorized use is also declared a public nuisance and the City can abate or enjoin such use pursuant to this code.

Sec. 22.07.009 – City Creation of Additional Logos, Seals, or Insignias

The City retains the right to create variations of the City Seal, City Logo and Additional Logos, and to adopt and establish other official City Seals, City Logos, and Additional Logos. Such variations may include, but are not limited to, centennial seals, or other seals which mark anniversaries, events, apparel, and any other city occasion the City Council wishes to commemorate. Such seals and logos, for the purposes of this Ordinance Section, shall be treated as a City Logo, City Seal, or Additional Logo, respectively.

Sec. 22.07.010– No Effect on Any Pending Accrued Violations or Litigation

All rights or remedies of the City of Dripping Springs, Texas, are expressly saved as to any and all violations of the City Code or any amendments thereto regarding the unauthorized use of the City Logo, City Seal, or Additional City Logos that have accrued at the time of the effective date of this ordinance; and as to such accrued violations, and all pending litigation, both civil or criminal, same shall not be affected by this ordinance but may be prosecuted until final disposition by the courts.

San Marcos Publishing, LP
Wimberley View • Century-News
 P.O. Box 49, Wimberley, Texas 78676
 (512) 847-2202

State of Texas
 County of Hays

Before me, the undersigned authority, on this day personally appeared Dalton Sweat, who being by me here and now duly sworn, upon oath says:

My name is Dalton Sweat, and I am the Publisher, of the Wimberley View and Dripping Springs Century-News, a newspaper of general circulation in Hays County, Texas, and a newspaper which has been regularly and continuously published in Wimberley and Dripping Springs, Hays County, Texas, for a period of more than one year immediately preceding the date of publications of the following, and that the said notice, a copy of which follows, was published in the regular edition of said newspaper for a period of _____ 1 day _____ on the following date:

_____ April 11, 2024 _____

The said Publisher, Dalton Sweat further states that the rate charged for this publication is the lowest rate charged to commercial advertisers for the same class as advertising for a like amount of space.

[Signature]

 Signature of Publisher

April _____ Subscribed and Sworn to me, by the said Publisher Dalton Sweat this 10th day of _____, 2024 to certify which witness my hand and seal of office.

Karitta L Love

 NOTARY PUBLIC in and for Hays County, Texas



CITY OF DRIPPING SPRINGS

**PUBLIC NOTICE OF
ORDINANCE 2024-20**

**CITY LOGO & SEAL
REGULATIONS**

AN ORDINANCE OF THE CITY OF DRIPPING SPRINGS, TEXAS ("CITY"), ADDING ARTICLE 22.07; ADOPTING REGULATIONS FOR THE PROTECTION OF THE CITY LOGO AND CITY SEAL AND PROHIBITING THE UNAUTHORIZED USE THEREOF; PROVIDING FOR THE LICENSING OF THE CITY LOGO AND CITY SEAL IN CERTAIN CIRCUMSTANCES; PROVIDING THAT THIS ORDINANCE SHALL BE CUMULATIVE OF ALL ORDINANCES; PROVIDING SEVERABILITY, SAVINGS, AND PENALTY CLAUSES; PROVIDING PUBLICATION IN THE OFFICIAL NEWSPAPER; AND PROVIDING AN EFFECTIVE DATE.



June 11, 2024

Mr. Chad Gilpin, P.E
City of Dripping Springs
511 Mercer St.
Dripping Springs, Texas 78620

Re: Rob Shelton Boulevard Intersection Improvements
Recommendation of Award

Dear Chad,

Please find the attached bid tabulation for the subject-referenced project. The bids received have been reviewed and the apparent low bid among the qualified bidders (Asphalt Inc, LLC dba Lone Star Paving Company) was found to be responsive, mathematically correct, and materially balanced with the bid total being in the amount of Four Hundred Twenty-Three Thousand One Hundred Sixty-Five Dollars and Ten Cents (\$423,165.10).

We recommend of award for the Rob Shelton Boulevard Intersection Improvements to Asphalt Inc, LLC dba Lone Star Paving Company in the amount of \$423,165.10.

Please feel free to contact me with any questions.

Sincerely,
HDR Engineering, Inc.

A handwritten signature in black ink that reads 'Leslie D. Pollack'.

Leslie D. Pollack, P.E., PTOE
Associate Vice-President



City of Dripping Springs

511 Mercer Street • PO Box 384 • Dripping Springs, TX 78620 • 512.858.4725
cityofdrippingsprings.com

Open spaces, friendly faces.

June 13, 2024

Mr. Mark Maloy
Texas Department of Transportation
9725 S. I-135
Austin, Texas 78744

Re: Rob Shelton Boulevard Intersection Improvements
Request for TxDOT Concurrence on Contract Award

Dear Mr. Maloy,

We are requesting concurrence by TxDOT for award of the contract to Asphalt Inc, LLC dba Lone Star Paving Company in the amount of Four Hundred Twenty-Three Thousand One Hundred Sixty-Five Dollars and Ten Cents (\$423,165.10).

Please see the attached recommendation of award including:

1. Engineer's Recommendation
2. Bid Analysis
3. Newspaper Affidavit verifying the minimum 21-day advertisement period.
4. Verification the contractor is not currently debarred from receiving on-system contracts.
5. Verification the prime contractor-submitted DBE subcontractors are not currently debarred from on-system contracts for review and approval by District.
6. Verification that the contractor is pre-qualified to work on TxDOT projects.
7. Documentation Evidence that all prospects received all issued addenda.
8. LGPP – Plan Development Review Checklist

I look forward to receiving TxDOT's concurrence on award of the Rob Shelton Boulevard Intersection Improvements project so City of Dripping Springs can finalize the contract.

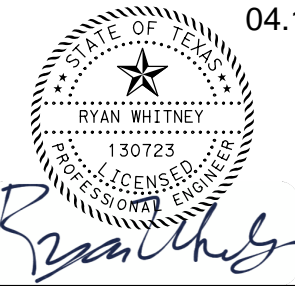
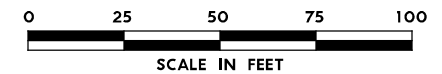
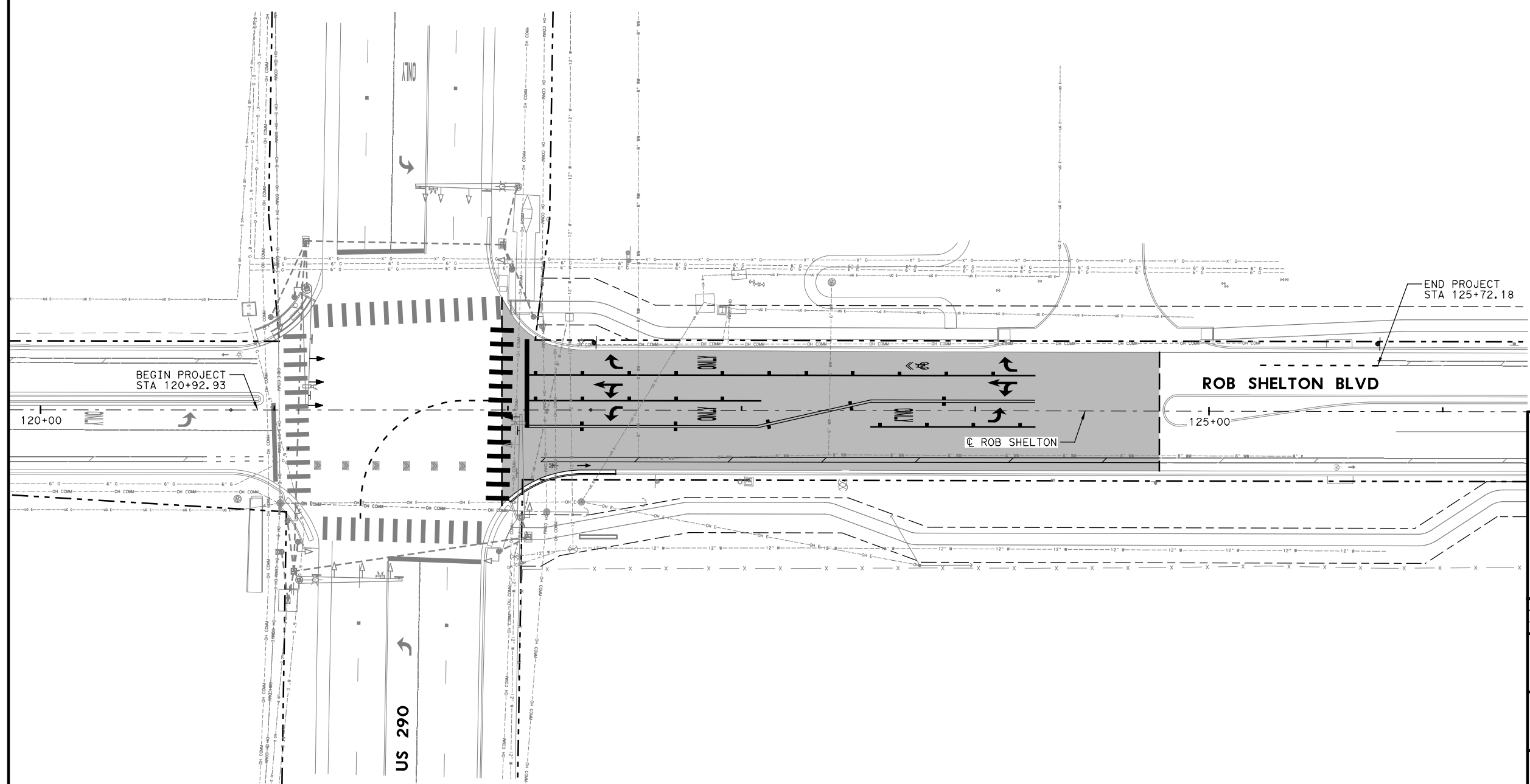
Sincerely,

Chad Gilpin, P.E.
City Engineer
City of Dripping Springs, TX-78620

LEGEND

---	CENTERLINE
---	EXISTING RIGHT OF WAY

Item 14.



04.11.2024

NO.	DATE	REVISION	APPROVED

HDR
 HDR
 Firm Registration No. F-754
 504 Lavaca St, Suite 900
 Austin, Texas 78701
 512.904.3700



ROB SHELTON

PROJECT LAYOUT

SCALE: 1" = 100' SHEET 1 OF 1

DESIGN	FED. RD. DIV. NO.	FEDERAL AID PROJECT NO.		HIGHWAY NO.
RW	-	-		SHELTON
GRAPHICS	STATE	DISTRICT	COUNTY	SHEET NO.
SF	TEXAS	AUS	HAYS	167
CHECK	CONTROL	SECTION	JOB	
LP	0914	33	090	
CHECK				
RW				

PLOT DRIVER: TXDOT_PDF_BW.plt
 USER: SEFITZPA
 FILE: RS Project Layout
 PENTABLE: 10377213.tbl
 DATE: 4/10/2024 TIME: 10:06:49 AM SCALE: 1:50



STAFF REPORT
City of Dripping Springs
PO Box 384
511 Mercer Street
Dripping Springs, TX 78620

Submitted By: Ginger Faught, Deputy City Administrator

Council Meeting Date: June 18, 2024

Agenda Item Wording: First Amendment to Second Amended Wastewater Service and Impact Fee Agreement between The City of Dripping Springs and Development Solution Carter for The Ranch at Caliterra *Sponsor: Mayor Bill Foulds*

Agenda Item Requestor: Mayor Bill Foulds, Jr.

Summary/Background:

This Supplemental Agreement is between the City and Development Solutions CARTER, LLC (“Owner”).

This agreement resolves some outstanding issues between the City and the Owner, who is the developer of the Carter tract.

Owner desires to start construction on the site. Although the original wastewater agreement had several back-up plans for wastewater in the event that the Discharge Permit was delayed, nobody anticipated the lengthy delay that has actually occurred. Because of the extreme delay of the appeal of the City’s Discharge permit, the City cannot currently accommodate the Carter development. Nevertheless, the Carter developers want to begin. The City can use additional 210 beneficial reuse fields. Therefore, the City is allowing horizontal activities (grading, trenching, backfilling) activities in exchange for additional 210 beneficial reuse land and storage.

In addition, the City is agreeing not to charge the District for its use of treated effluent (prior agreements said that the City could charge the District for the treated effluent beginning 7 years after issuance of the Discharge Permit.

The reality of the situation is that the Caliterra/Carter fields are now an integral part of our system, and charging for its use would place an undue burden on those homeowners. The agreement still provides that District will take and use as much beneficial reuse water as the City desires that District take and use (but not so much as to cause a non-compliance situation).

Therefore, we don’t have any obligation with respect to the amounts that we have to give them.

The Agreement requires the Owner to do the following:

1. Design and build facilities (fields and storage) on Carter Ranch that will allow the beneficial reuse (under Chapter 210 of the TCEQ Rules) for 50,000 gpd (“Beneficial Reuse Facilities”).

2. These Beneficial Reuse Facilities will be available for use by the City, at no cost to Hays County Development District No. 1 (HCDD-1) or any HCDD-1 residents.
3. Effluent generated from Carter Ranch (based on a 30-day average) will have first priority in reuse at these Beneficial Reuse Facilities.
4. Revise the construction plans to include the Beneficial Reuse Facilities.

In exchange, the Agreement requires the City to do the following:

1. Issue a mass-grading permit that allows excavation, clearing, grubbing, and rough grading activities. This authorization will not allow the start of utility installation beyond trenching and refilling.
2. Schedule a pre-construction meeting for the mass-grading activities (by June 26, 2024), and allow the grading activities that are authorized by the mass-grading permit.

**Commission
Recommendations:**

N/A

**Recommended
Council Actions:**

Approve as presented.

FIRST AMENDMENT
TO
SECOND AMENDED WASTEWATER SERVICE AND IMPACT FEE AGREEMENT

This First Amendment to the Second Amended Wastewater Service and Impact Fee Agreement (“First Amendment”) is entered into by and between the City of Dripping Springs, Texas (the “City”) a Type A General Law City located in Hays County, Texas, and Development Solutions CARTER, LLC (“Owner”). The City and the Owner are referred to herein jointly as “Parties”.

RECITALS:

- A. The Parties, together with Hays County Development District No. 1, entered into a Second Amended Wastewater Service and Impact Fee Agreement (“Wastewater Agreement”) with an effective date of April 13, 2014.
- B. The Wastewater Agreement contemplated that the Property referred to as the Carter Ranch would receive wastewater service through what the Wastewater Agreement refers to as the Discharge Permit or TLAP Amendment 2. The Discharge Permit and TLAP Amendment 2 have been the subject of lengthy protests and appeals that have resulted in delays not contemplated by the Parties when the Wastewater Agreement was executed.
- C. The Parties desire to retain all the rights and obligations under the Wastewater Agreement and also address the delays caused by protests of the Discharge Permit and TLAP Amendment by providing an interim path forward until the City is able to build facilities under the Discharge Permit or the TLAP Amendment 2.
- D. The purpose of this First Amendment is to allow a path forward for assuring wastewater service at Carter Ranch for vertical construction at Carter Ranch when the City constructs facilities under the Discharge Permit or the City obtains issuance and constructs facilities under TLAP Amendment 2.

THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, including the agreements set forth below, the City and Owner agree as follows:

1. This First Amendment does not amend, change or affect any right or obligation under the Wastewater Agreement, except Section 2.4, which is amended to read as follows (strike-out deleted from the Wastewater Agreement): 2.4. Use of Reclaimed Water Upon Issuance of New Application. After approval by TCEQ of the New Permit Application specified in paragraph 2.3 above and upon construction of the facilities for either the New Permit specified in paragraph 2.3 above, subject to TCEQ approval, the District or Owner will be entitled to reclaim the District’s Reserved Share as follows: (a) the City will be responsible for the costs and work product required to obtain authorization from TCEQ for use of the reclaimed water; and (b) The District shall receive the reclaimed water without any additional charges. ~~for a period of seven (7) years after issuance of the Chapter 210~~

~~authorization issued by TCEQ related to the discharge permit and the completion of construction of the facilities for the discharge permit and after operation of the System has commenced, and District agrees that during the time that the Chapter 210 beneficial reuse water is provided without charge, District will take and use as much beneficial reuse water as the City desires that District take and use (but not to exceed an amount that will provide a reasonable margin of safety to ensure compliance with any applicable laws, rules, or statutes). With respect to the charges set forth in item (b) of the preceding sentence, (i) after seven years, for any water that is beneficially used on parks or areas open to the public (which includes every citizen of the City of Dripping Springs), the District shall receive such water without any charges for as long as such water is beneficially used on parks or areas open to the public; and (ii) after seven years, for any water that is not beneficially used on parks or areas open to the public is beneficially used on parks or areas open to the public (which includes every citizen of the City of Dripping Springs), the District shall pay the City a fair market price for the reclaimed water that would be comparable to the market price for a similar quantity and quality of water.~~

2. Upon execution of this First Amendment, the City will issue a mass-grading permit (as authorized by the attached letter), schedule a pre-construction meeting (by June 26, 2024) for the mass-grading activities, and allow the excavation and grading activities that are authorized by the mass-grading permit.
3. Owner agrees that Owner will design and build facilities (fields and storage) on Carter Ranch that will allow the beneficial reuse (under Chapter 210 of the TCEQ Rules) for 50,000 gpd (“Beneficial Reuse Facilities”). These Beneficial Reuse Facilities will be available for use by the City, at no cost to Hays County Development District No. 1 (HCDD-1) or any HCDD-1 residents. Effluent generated from Carter Ranch (based on a 30-day average) will have first priority in reuse at these Beneficial Reuse Facilities.
4. Prior to installation of utilities, Owner will revise the construction plans that have been submitted to the City to include the Beneficial Reuse Facilities.
5. This Agreement shall be construed by applying Texas law and venue shall be in Hays County.
6. This Agreement may be executed electronically and in counterparts.

Effective as of June 18, 2024.

[signatures on following pages]

CITY OF DRIPPING SPRINGS, TEXAS

Attest:

City Secretary

By: _____
Bill Foulds, Mayor

STATE OF TEXAS
COUNTY OF _____

This instrument was executed by Bill Foulds before me on _____, 2024.

Notary Public, State of Texas

DEVELOPER

DEVELOPMENT SOLUTIONS CARTER, LLC

By:
Title:

STATE OF TEXAS
COUNTY OF _____

This instrument was executed by _____, in the capacity set forth above, and before me on this the ____ day of _____, 2024.

Notary Public, State of Texas



June 19, 2024

Greg Rich
Via email at: grich@siepiela.com

RE: Ranch at Caliterra Phase 1 Construction Plans to being clearing, grubbing, and grading, utilities and paving – SUB2023-0003

Greg Rich,

The City understands that regarding water, Drippings Springs Water Supply Corporation voted 5-0 at their board meeting on 2/19/24 to provide water to this development and to work on a contract. The City understands that DSWSC will inspect the waterline installation which would begin in the early 4th Quarter 2024.

Commented [DT1]: We have not received the information from Brigance to make this determination.

Staff has reviewed your request to begin excavation, clearing, grading, cuts and fills, trenches and refills and balancing for the construction permit referenced above. Per section 4.6.4 of the subdivision ordinance, staff has approved your request with the following conditions:

1. Excavation, clearing, grubbing, and rough grading activities shall be limited to the area of the permit limits of construction of the project referenced above.
2. Rough Grading includes any size cut and any size embankment within the limits of construction.
3. Regarding trees, the existing tree survey and development agreement will be adhered to.
4. The applicant shall complete installation of erosion controls including a stabilized construction entrance prior to starting excavation, clearing or grading.
5. This authorization will not allow the start of utility installation beyond trenching and refilling.

Sincerely,

Tory Carpenter, AICP
Planning Director

Open spaces, friendly faces.

511 Mercer Street • PO Box 384 • Dripping Springs, TX 78620 • 512.858.4725 • cityofdrippingsprings.com



STAFF REPORT
City of Dripping Springs
PO Box 384
511 Mercer Street
Dripping Springs, TX 78620

Submitted By: Dane Sorensen, Utilities Director

Council Meeting Date: June 18, 2024

Agenda Item Wording: **Presentation, discussion, and consideration of approval of a Beneficial Reuse Irrigation Project at Sports and Recreation Park.** *Sponsor: Mayor Bill Foulds, Jr.*

Agenda Item Requestor: Mayor Bill Foulds, Jr.

Summary/Background:

The city has an undergoing project to bring reclaimed water to the fields at Sports and Rec Park. To fully utilize the reclaimed water staff is seeking funding to retrofit the plumbing and irrigation at this facility. This would include the installation of a new potable water service line that would bring water to the restrooms and concessions, tying in reclaimed water to the existing irrigation system, and installing new irrigation at both adult softball fields. To be within compliance, existing irrigation would need to be retrofitted with purple identifiers. Completing this project would have the following benefits: conserving water resources by using reclaimed water for irrigation, potential revenue from the sale of reclaimed water, the better management of turf on the fields and fulfilling the obligation to the wastewater agreement with the Heritage subdivision. This also fills a prerequisite for a \$45,000 budgeted project in FY25 for field improvements to the adult softball fields at Sports and Rec Park. We solicited 8 contracts for this work and have received two bids. One bid from Kyle Irrigation is for the installation of the new irrigation at the adult softball fields for \$60,041.70. The other bid from Watertech Construction is for the installation of new plumbing required to separate the water and reuse systems for \$18,600. An additional \$5,000 will be needed to bring the existing irrigation system into compliance with TCEQ by retrofitting it with purple identifiers. The total cost of the project would be \$83,841.70. Due to interest in using the fields for various leagues the recommended contractors could start June 24th and be completed by July 8th. Funds for this project are available through the collection of reuse fees from the Cannon Ranch development.

**Commission
Recommendations:** N/A

**Recommended
Council Actions:** Approve as presented.

ESTIMATE

Kyle Landscaping Services
110 DASHELLE RUN
KYLE, TX 78640

kylelandscapingservices@live.com
+1 (512) 787-9989
www.kylelandscapingservices.com



City of Dripping Springs

Bill to
City of Dripping Springs
511 W Mercer St
Dripping Springs, TX 78620

Estimate details

Estimate no.: 1039
Estimate date: 05/30/2024

#	Date	Product or service	Description	Qty	Rate	Amount
1.		Irrigation Install	<ul style="list-style-type: none"> -New Irrigation System -Components - Hunter HPC 2400 WiFi/Cell Kit Outdoor - Hunter Rain-Freeze Sensor. - I25-04-R Hunter 1IN Reclaimed - Hunter PGV Globe Valve for all zones, Will be ran from controller to each individual zone. - 16 Gauge UL rated wire for all zones - 2" BBV-1 Full Port Threaded Ball Valve at all valves for shut off. - Will use Sched 80 Nipples for all threaded components. - All ball valves will be threaded brass. - All piping & rotors will be reclaimed. - All pipping will be Sched 40 - Purple primer and Christy's Red Hot will be used to achieve maximum hold. - All trenching will be done by AquaLED, LLC. will trench to 12" for main line and 6" for lateral lines. Once everything has been glued and let dry for a full 24H, trenches will be covered back to original grade. - All valves will be in their own valve box as well as all boxes will have a purple lids. - One quick couplers on field behind pitchers mound with shutoff. Will use Hunter Reclaimed Quick coupler and keys will be provided with swivel for quick couplers. Will be in its individual 	1	\$55,796.45	\$55,796.45

1 \$42,550.20 \$42,550.20
box with purple lid.
- All construction debris haul off and site clean up.
-Includes two baseball fields.
- Installation will have a 1 Year manufacture defect warranty.
-Irrigation system will start at the existing booster pump, mainline will run between both fields and T off to each field.
-Each field will have its own shut off.

2.	Irrigation Install	-New Booster Pump. Pump on site seems to be rusting out from the main head. This includes replacing pump and wiring to the electrical panel.	1	\$4,245.25	\$4,245.25
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3.		BuyBoard #705-23			
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Total **\$60,041.70**



STAFF REPORT
City of Dripping Springs
PO Box 384
511 Mercer Street
Dripping Springs, TX 78620

Submitted By: Ginger Faught, Deputy City Administrator

Council Meeting Date: June 4, 2024

Agenda Item Wording: Appointment to the Hays County Mental Health Coordinating Committee
Sponsor: Mayor Bill Foulds

Agenda Item Requestor: Mayor Bill Foulds, Jr.

Summary/Background:

County Commissioner Walt Smith has asked that we recommend a representative to serve on the newly created Hays County Mental Health Coordinating Committee (MHCC). Please see the below narrative from Chief Standridge and Judge Brown explaining the MHCC and the City's participation. The first meeting of the MHCC to be held at noon on June 12, at the Hays County Public Safety Bldg in San Marcos. There will be a virtual option:

At the recommendation of county and city officials, as well as mental health experts in Hays County, we are moving forward with the creation of a Mental Health Coordinating Committee (MHCC). The MHCC will consist of members from countywide governing bodies and service providers who are committed to function as a point of advisory, accountability, planning, and resource coordination for all countywide behavioral health services. We respectfully ask that your council / commissioner's court convene and consider the appointment of a member for service on the MHCC. Ideally this person would be a member of the governing council. Each member on the MHCC would be responsible for ensuring their governing bodies or service providers are fully informed of all goals, while also leveraging funding, technology and resources across the county to ensure the goals are operationalized.

Some of the goals of the MHCC and supporting subcommittees include, but are not limited to:

1. Expand crisis options through the development of a diversion center;
2. Develop strategies to address high needs utilizers and pilot a new Assertive

- Community Treatment (ACT) program;
3. Explore the development of a Behavioral Health Office to coordinate county services, while also focusing on local restoration services for those who are incarcerated;
 4. Increase information and data sharing across the Sequential Intercept Model;
 5. Enhance 911 and law enforcement response to behavioral health crisis.

**Commission
Recommendations:**

N/A

**Recommended
Council Actions:**

Appoint a member to represent the City of Dripping Springs on the MHCC.



STAFF REPORT
City of Dripping Springs
PO Box 384
511 Mercer Street
Dripping Springs, TX 78620

Submitted By: Diana Boone, City Secretary

Council Meeting Date: June 18, 2024

Agenda Item Wording: **Discuss and consider approval of the Reappointment of Dean Erickson and Haley Hunt, and the Appointment of Gwyn Sommerfeld to the Historic Preservation Commission for terms ending June 30, 2026.**

Agenda Item Requestor: Michelle Fischer, City Administrator & Commission Liaison

Summary/Background: The Historic Preservation Commission (HPC) is a 7 member commission tasked with making recommendations to City Council regarding Historic Preservation Items including but not limited to designation of historic places, preparation of historic district guidelines and review of concept site plans with all historic zoning districts. The HPC is also responsible for the review and approval or denial of Certificates of Appropriateness in the Historic Districts.

Members of the HPC are those that have an interest in historic preservation and expertise related to those activities. There are no residency or professional requirements, however, the city does seek to appoint residents of the city limits or ETJ and those in the categories listed below:

- Architect, Planner, or Design Professional
- Historian, Anthropologist Geographer or Archaeologist
- Licensed Real Estate broker or appraiser
- Attorney at Law
- Historic District Business or Property Owner
- Member of the Hays Historical Society

Vacancies

There are three members with an expiring term as highlighted in the Current Membership Chart. With the exception of Minnie Glosson-Needham, all expiring members have requested reappointment.

Expiring members were notified in April and applications were accepted through August – 4 applications were received for the 1 open seat. Chair Dean Erickson, Vice Chair Ashley Bobel and Mayor Pro Tem Taline Manassian conducted interviews of the applicants.

Current Membership

Chair, Dean Erickson	06/30/2024	HD Business Owner
Vice Chair, Ashley Bobel	06/30/2025	Real Estate Broker
Delbert Bassett	06/30/2025	Hays Historical Society Member
Minnie Glosson-Needham	06/30/2024	Historian
Haley Hunt	06/30/2024	HD Business Owner
Steve Mallet	06/30/2025	HD Property Owner
Richard Moore	06/30/2025	Architect
Michelle Fischer	NA	Historic Preservation Officer

Slate of Candidates

Lisa Garza	ETJ	Accountant
Alan Hutchinson	City	Portfolio Manager
Micah Gutierrez	Hays County	Real Estate Broker
Gwyn Sommerfeld	ETJ	HD Property Owner

Commission Recommendations:

Chair Erickson recommends the appointment of Gwyn Sommerfeld for a term ending June 30, 2025.

Recommended Council Actions:

Staff recommends city council appoint three individuals of their choosing.

Next Steps/Schedule:

1. Send welcome letter to new appointee
2. Inform commission of appointments
3. Update website
4. Email individuals not selected



RECENT STATE CASES OF INTEREST TO CITIES

Presented to:
TCAA Summer Conference
South Padre Island, Texas
June 12-14, 2024

Presented by:
LAURA MUELLER, CITY ATTORNEY
CITY OF DRIPPING SPRINGS

Paper by:
Legal Staff, Texas Municipal League
Laura Mueller, City Attorney, City of Dripping Springs
Aniz Alani, Deputy City Attorney, City of Dripping Springs



LAURA MUELLER
CITY ATTORNEY
City of Dripping Springs, Texas

Laura, originally from Yukon, Oklahoma, graduated summa cum laude from the University of Oklahoma in 2001 with a liberal arts degree. She attended the University of Texas School of Law and worked as a law clerk for TML and as an intern for the Travis County Juvenile Public Defender’s Office while there. After graduating with honors in 2004, Laura clerked for the Supreme Court of Texas. She joined the TML legal staff as legal counsel in November 2006. Laura became Assistant General Counsel in November 2010. Laura joined the Bojorquez Law Firm as an associate in April 2016, and became City Attorney for the City of Dripping Springs in January 2020. Laura specializes in employment law, sign regulation, land use, and open government.

ANIZ ALANI
DEPUTY CITY ATTORNEY
City of Dripping Springs, Texas

Aniz earned his J.D. at the University of Toronto in 2006, his LL.M at the University of British Columbia in 2017, and clerked at the Federal Court in Ottawa, Ontario. He practiced law in British Columbia, Canada since 2007, beginning as a litigation associate at Davis LLP (now DLA Piper (Canada) LLP). He became in-house counsel in and was appointed Corporate Secretary of British Columbia Hydro and Power Authority in 2015. He entered the world of municipal law in 2017 as the City of Abbotsford’s in-house City Solicitor. He joined the Texas Bar in 2023 and became Deputy City Attorney for the City of Dripping Springs in 2024.



TML LEGAL DEPARTMENT
Austin, Texas

The Texas Municipal League (TML) Legal Services Department provides legal assistance to TML member cities. The attorneys answer general questions, participate in educational seminars, prepare handbooks, magazine articles, and written materials, including legal opinions and amicus briefs, and provide support services for the Legislative Department. The Staff also assists with trainings and the TCAA newsletter which contains articles and the case summaries presented in this paper.

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RECENT STATE CASES OF INTEREST TO CITIES

CIVIL SERVICE

City of Houston v. Dunbar, No. 14-21-00570-CV, 2023 WL 3596260 (Tex. App.—Houston [14th Dist.] May 23, 2023, r’hg denied). During a public event on September 11, 2019, at HFD Fire Station 84 featuring Houston Rockets basketball players, district chief Dunbar was present when unauthorized personnel drove the station’s high-water emergency vehicle, using its lights and sirens. Assistant fire chief Griffin later filed a complaint of misconduct against Dunbar, resulting in a three-day unpaid suspension following an internal investigation. Dunbar appealed the suspension to the civil service commission, which upheld the suspension, and then to the district court, which ruled in his favor.

The city appealed the district court’s decision, arguing that the district court’s judgment is erroneous because (1) substantial evidence supported the commission’s order to suspend Dunbar, and (2) the commission’s order was free from any illegality. In its analysis, the appellate court emphasized the substantial evidence standard, in which the trial court may not substitute its judgment for that of the agency on controverted issues of fact but must affirm administrative findings in contested cases if there is more than a scintilla of evidence to support them. The appellate court determined that there is more than a scintilla of evidence to support the commission’s order upholding Dunbar’s suspension, siding with the city. A public employer’s action can be tainted by illegality if the employer’s action is arbitrary or capricious, or a clear abuse of authority. Dunbar’s arguments that the commission’s decision was tainted by illegality stemmed from alleged notice issues. The court was not persuaded by these arguments, reversed the district court’s judgment, and affirmed the commission’s order.

Nix v. City of Beaumont, No. 09-22-00042-CV, 2023 WL 4781212 (Tex. App.—Beaumont July 27, 2023) (mem. op.). Nix sued the City of Beaumont in district court, seeking review of the City’s Fire Fighters’ and Police Officers’ Civil Service Commission’s order permanently dismissing him from the fire department. The Civil Service Act requires that a petition for review of a commission’s order must be filed within 10 days after the date the final decision is received by the firefighter or his or her designee. Here, Nix’s attorney filed the petition 15 days after receiving the final decision. The trial court dismissed Nix’s petition for review and Nix appealed.

The appellate court affirmed, holding that although the Supreme Court’s orders providing deadline extensions related to Covid-19 were in place, those orders did not extend a jurisdictional deadline to file suit so Nix’s failure to timely appeal the commission’s order deprived the trial court of jurisdiction over the appeal.

City of Houston v. Spann, No. 01-22-00848-CV, 2023 WL 5615801 (Tex. App.—Houston [1st Dist.] Aug. 31, 2023, no pet.) (mem. op.) Fire fighter Spann appealed to the Firefighters’ and Police Officers’ Civil Service Commission of the City of Houston to reverse a disciplinary action taken against him by the fire department. The commission upheld the disciplinary action and Spann appealed to the district court. Spann filed a motion for summary judgment, arguing that because the commission did not provide him the required 15 days’ notice of the hearing, the commission’s order upholding the disciplinary action was void. The district court granted the motion and the commission appealed.

The appellate court affirmed, holding that: (1) the Code Construction Act’s computation of time rules applied; (2) additional days of notice from previously scheduled and continued hearings could not be counted for the statutorily required notice; and (3) Spann was not required to show prejudice to be entitled to summary judgment because he did not receive the full 15 days’ notice.

In re City of Beaumont, No. 09-23-00197-CV, 2024 WL 377833 (Tex. App.—Beaumont Feb. 1, 2024, no pet.) (mem. op.). James Mathews, a firefighter with the City of Beaumont, was suspended indefinitely following his involvement in a vehicle collision, after which he was accused of assaulting the driver of the other vehicle. He appealed his suspension under the Civil Service Act, and the hearing examiner upheld his suspension. Mathews sued the city, challenging the hearing examiner’s ruling, and added several constitutional claims to his suit, including an equal protection claim, a retaliation claim, and a claim for declaratory judgment that the city had deprived him of his constitutionally protected interest in employment with the city. The trial court severed Mathews’s appeal of the Civil Service Act ruling from his constitutional claims. Then, the city filed a motion for summary judgment in the severed case, relying on res judicata, claims preclusion, and law-of-the-case doctrine based on a ruling from a federal court dismissing Mathews’s constitutional claims. The district court denied the city’s motion and the city filed a petition for a writ of mandamus in the appellate court challenging the trial court’s denial of its motion for summary judgment.

The appellate court denied the city’s petition for writ of mandamus, holding that the record the city had provided was too unclear for the court to determine whether Mathews’s claims were barred because of the federal court’s ruling.

Texas Civil Service Act: City of Beaumont v. Fenter, No. 09-22-00413-CV, 2023 WL 8817684 (Tex. App.—Beaumont Dec. 21, 2023) (mem. op.). Fenter, an EMT with the City of Beaumont, sued the city and the city manager for a declaration that Fenter was a “firefighter” for purposes of the Civil Service Act. Fenter moved for summary judgment for a declaration that he was a firefighter under the Civil Service Act and the trial court granted his motion. The city filed a plea to the jurisdiction, claiming immunity for itself and the city manager. The trial court granted the city’s plea with respect to the city but denied it with respect to the city manager. The city appealed.

The appellate court affirmed in part and reversed and remanded in part, holding that the trial court should not have decided Fenter’s motion for summary judgment because Fenter’s pleadings were insufficient to show that the city manager’s immunity from suit was waived based on his ultra vires act of failing to classify Fenter as a firefighter. Because Fenter’s pleadings did not affirmatively negate jurisdiction, the court remanded the case to the trial court to allow Fenter to replead.

CLEAN AIR ACT

Tex. Comm’n on Env’tl. Quality v. Vecinos Para El Bienestar De La Comunidad Costera, No. 03-21-00395-CV, 2023 WL 4670340 (Tex. App.—Austin July 21, 2023, no pet.) After the Texas Commission on Environmental Quality (TCEQ) issued an air permit to Texas LNG Brownsville, LLC (Texas LNG) for construction of a liquefied natural gas terminal along the Brownsville Ship Channel, the city of Port Isabel sought judicial review under Texas Government Code Sec. 2001.171. In response, TCEQ and Texas LNG filed a joint plea to the jurisdiction arguing the federal National Gas Act (NGA) provided exclusive jurisdiction to review challenges to state agency permits required by federal law for natural-gas terminals to federal courts under 15 U.S.C. § 717r(d)(1). The trial court denied their plea, and TCEQ and Texas LNG appealed to the court of appeals.

The appellate court reversed, holding that although TCEQ issued the order, it was carrying out its responsibility under the federal Clean Air Act to implement federal standards, and under 15 U.S.C. § 717r(d)(1), the United States Fifth Circuit Court of Appeals has exclusive jurisdiction over permit decisions relating to liquefied natural gas facility construction.

ECONOMIC DEVELOPMENT AGREEMENTS

Corsicana Indus. Found., Inc. v. City of Corsicana, 685 S.W.3d 171 (Tex. App.—Waco Jan. 11, 2024, no pet.). The City of Corsicana and Navarro County entered into a sales tax abatement agreement with the developer of a retail center and a retail store that operated a location in the retail center under which the city and county granted the use of portions of the sales taxes generated by the store location to pay for the development of a facility in the retail center to house the store location. The city and county brought a declaratory action against the developer and the retail store, seeking to invalidate sales tax abatement agreements, due to closing of the store location at the retail center. The developer and the store brought counterclaims seeking declaratory relief regarding the city’s and county’s obligations. The lender for the loan on the facility for the store location, who was named as third-party beneficiary in the agreements, intervened. The trial court granted summary judgment for the city and county. Following the store’s Chapter 11 bankruptcy barring it from participating in the appeal and developer’s assignment of all of its rights in action and appeal to the lender, the lender appealed, both individually and as assignee of the developer.

The court of appeals affirmed, finding that: (1) that the public purpose, under the Texas constitutional provisions limiting use of governmental resources for public purposes, which authorized grant of sales tax revenue was the opening and continued operation of store location in the center; (2) the closure of the store location extinguished the public purpose of the agreements so after closure, the agreements’ predominant purpose was no longer to accomplish a public purpose, and thus, rendered agreements unconstitutional; (3) the city and county did not retain control over sales taxes, and thus, agreements were unconstitutional; and (4) the agreements were unconstitutional at the time they were entered into, and thus, presumption of validity did not apply to the city and county resolutions authorizing them to enter into the agreements.

ELECTIONS

Rodriguez v. Rangel, 679 S.W.3d 890 (Tex. App.—San Antonio Nov. 13, 2023, pet. denied). This case arises from an election dispute where Rodriguez received six more votes than Rangel in an election for city council. At trial, the court ruled that seven votes for Rodriguez were illegally cast and declared Rangel the winner. Rodriguez appealed. The appellate court addressed numerous challenges to the trial evidence and affirmed all but one of the trial court’s findings.

In re Coon, No. 09-24-00091-CV, 2024 WL 1134038 (Tex. App.—Beaumont Mar. 15, 2024, no pet.) (mem. op.). Coon and Arthur, two candidates for public office in the City of Conroe, filed petitions for writs of mandamus in the appellate court to compel the city secretary to reject applications of two other candidates to appear on the city ballot. Coon and Arthur contended that the two candidates were not physically present when the city secretary notarized their applications, and that because the applications were not properly notarized, the city secretary had a ministerial duty to reject them. The court denied the petitions, holding that Coon and Arthur had not shown that mandamus relief was warranted.

In re Gerdes, No. 11-23-00283-CV, 2024 WL 187234 (Tex. App.—Eastland Jan. 18, 2024, no pet.) (mem. op.). This case stems from a petition to recall two commissioners from the City of Ranger. One of the commissioners, Samantha McGinnis, was seated on the commission after she ran unopposed, and the city cancelled her election. The other commissioner, Kevan Moize, was appointed to a vacant seat on the commission. In accordance with the city’s charter provision which requires the city to call an election no later than 30 days from the time a petition is presented to the commission, Steve Gerdes submitted two petitions to recall McGinnis and Moize. After five months elapsed, Gerdes filed a petition for mandamus requesting the court to order the city to call the election.

The commissioners argued they lacked the authority to call the election because the petitions were defective. Based on the city’s charter language, at least one-fifth of the voters who sign the petition must indicate that they voted for the officer at an election. Because neither McGinnis nor Moize was voted for at an election, the commission determined they could not be subject to recall. However, the court disagreed holding that the commissioners, absent an express charter provision, had no authority to refuse to call an election based on their findings that the petitions were defective. Instead, the commissioners were required to call the election, but could have simultaneously sought declaratory relief in district court to determine if the petitions were defective under the terms of the charter.

The commission also argued that the uniform election requirements in Election Code Section 41.001 preempt the city’s charter provision regarding the timing of holding a recall election. The next general election date at which the recall election could be held would fall on May 2024. However, McGinnis’s and Moize’s terms will conclude by then, and the seats will already be on the ballot. Therefore, the city did not need to hold a recall election. The court noted if the commission had ordered the election when it had received the recall petitions, it could have held the recall election in November 2023. For these reasons, the court granted Gerdes’s petition, and under its authority in Election Code Section 41.001(b)(3), ordered the city to schedule a special election on the recall of the commissioners not less than 15 days and not more than 30 days from the date its ruling.

EMERGENCY MANAGEMENT

Abbott v. Harris Cnty., 672 S.W.3d 1 (Tex. June 30, 2023). This case addresses the scope and constitutionality of the governor’s authority under the Texas Disaster Act to prohibit local governments from imposing mask requirements.

Harris County filed suit against the governor and attorney general, alleging that the governor exceeded his authority under the Texas Disaster Act by issuing an executive order that prohibited local governmental entities and officials from requiring face coverings as part of their COVID-19 mitigation efforts and purported to suspend several laws that county officials relied on to issue such face covering requirements. The trial court denied the defendants’ plea to the jurisdiction and granted the county’s motion for temporary injunction. On appeal, the Austin Court of Appeals affirmed.

The Supreme Court of Texas granted the defendants’ petition for review, and held that: (1) the county had standing to bring seek injunctive relief against the attorney general; (2) the state’s appeal was not rendered moot by executive order’s expiration; (3) the county judge was governor’s designated agent under Disaster Act; (4) the executive orders were valid exercise of the governor’s authority under Disaster Act; and (5) the county was not likely to succeed on merits of its claim that governor lacked authority to issue the executive orders. The court vacated the judgment of the court of appeals, dissolved the temporary injunction, and remanded the case.

(The court reached the same conclusion in the following four separate cases related to the governor’s authority to prohibit local mask mandates: *Abbott v. Jenkins*, No. 21-1080, 2023 WL 4278505 (Tex. June 30, 2023); *Abbott v. City of San Antonio*, No. 21-1079, 2023 WL 4278501 (Tex. June 30, 2023); *Abbott v. La Joya Indep. Sch. Dist.*, No. 22-0328, 2023 WL 4278488 (Tex. June 30, 2023); and *Abbott v. Fort Bend Cnty.*, No. 22-1056, 2023 WL 4278491 (Tex. June 30, 2023).)

EMERGENCY ORDERS

Carlin v. Bexar County, et al., No. 04-22-00427-CV, 2023 WL 8793095 (Tex. App.—San Antonio Dec. 20, 2023, no pet.) (mem. op.). Carlin filed a suit against county defendants alleging minimum health standard protocols issued by Bexar County judge regarding masking violated the Texas Religious Freedom Restoration Act (TRFRA). The county defendants filed motions to dismiss on the grounds of sovereign and government immunity and on the grounds that Carlin had not complied with the pre-suit notice provisions under TRFRA. The trial court granted the motions and Carlin appealed.

On appeal, the court rejected Carlin’s argument that he did not need to provide notice if the substantial burden on his free exercise of religion was eminent. The appellate court affirmed the grant of the motions and found the trial court did not err in dismissing the claims with prejudice.

Galovelho LLC v. Abbott, No. 05-21-00965-CV, 2023 WL 5542621 (Tex. App.—Dallas Aug. 29, 2023, pet. filed) In March 2020, Galovelho, LLC operated a restaurant in Frisco. During this time when Covid-19 was spreading throughout the state, the governor, Collin County judge, and city of Frisco issued emergency orders that encouraged patrons to avoid eating or drinking at restaurants and bars and, in some cases, limited restaurants to serving patrons via take-out, drive-through, or delivery only. As a result of the emergency orders, Galovelho alleged its restaurant suffered, and it sued the governor, county, and city. After a hearing on a joint plea to the jurisdiction by the governor, county, and city, the trial court determined that: (1) Galovelho’s claims were barred by sovereign or governmental immunity and that it lacked standing; (2) it did not have a viable takings claim; and (3) its due process and equal protection claims were moot. Galovelho appealed, but the court of appeals ultimately affirmed the trial court’s decision.

The court of appeals reasoned that, with regard to the takings claim, the effect of the emergency orders was neither a categorical (per se) taking nor a taking under the factors outlined in the Supreme Court decision *Penn Cent. Transp. Co. v. City of New York*, 438 U.S. 104 (1978), because the emergency orders were temporary and did not destroy all economic value in Galovelho’s property. In addition, the court concluded that the character of the governmental action (the third factor in Penn Central) was not akin to a physical invasion but instead an example of a regulation that “adjusts the benefits and burdens of economic life to promote the common good.”

Addressing Galovelho’s equal protection and due process claims, the court agreed that the rescission of the emergency orders rendered Galovelho’s claims moot. Further, the court disagreed that the exception to the mootness doctrine (for an issue “capable of repetition, yet evading review”) applied to the issuance of the emergency orders in this manner because a mere theoretical possibility that Galovelho may be subjected to similar restrictions in the future was insufficient to claim this exception.

EMINENT DOMAIN

City of Dripping Springs v. Lazy W Conservation Dist., No. 03-22-00296-CV May 31, 2024. The City sued landowners to condemn an area in order to place a wastewater line. The landowners sold a picture frame around their property to a Municipal Utility District based in another county to thwart the condemnation. After the commissioners issued an amount to the City and the landowners/MUD, the MUD appealed arguing that the MUD had governmental immunity from suit for condemnation, among other arguments. The trial court agreed and held in favor of the MUD. The City appealed. On appeal, the City argued that political subdivisions do not have governmental immunity from condemnation suits and that the paramount public purpose argument was on the merits, not a jurisdictional issue.

The Third Court of Appeals agreed with the City, remanding the case back to the trial court for review on the merits. See *Hidalgo Cnty. Water Improvement Dist. No. 3 v. Hidalgo Cnty. Irrigation Dist. No. 1*, 669 S.W.3d 178 (Tex. May 19, 2023). The court held that political subdivisions do not have governmental immunity from suit for condemnation. In addition, the paramount public doctrine is not a jurisdictional issue but is something to be reviewed on the merits.

Hidalgo Cnty. Water Improvement Dist. No. 3 v. Hidalgo Cnty. Irrigation Dist. No. 1, 669 S.W.3d 178 (Tex. May 19, 2023). The issue in this case is whether in an eminent-domain proceeding brought by one political subdivision against another, governmental immunity bars such proceeding.

Hidalgo County Water Improvement District No. 3 (Improvement District) offered to purchase a subsurface easement from the Hidalgo County Irrigation District No. 1 (Irrigation District), which rejected the offer. After negotiations failed, the Improvement District filed a condemnation action against the Irrigation District. The Irrigation District filed a plea to the jurisdiction arguing that it had governmental immunity from the condemnation suit and the Legislature had not waived that immunity. The trial court granted the plea and dismissed the suit. The court of appeals affirmed.

The Supreme reversed, holding that governmental immunity does not apply in eminent-domain proceedings and that the Irrigation District is not immune from the Improvement District's condemnation suit. In reaching this conclusion, the court took into consideration the purposes governmental immunity serves, its nature, and the development of the court's immunity and eminent-domain precedent.

EMPLOYMENT

City of Brownsville v. Gamez, No. 13-23-00159-CV, 2024 WL 48185 (Tex. App.—Corpus Christi—Edinburg Jan. 4, 2024, no pet.) (mem. op.). Gamez sued the City of Brownsville under the Texas Commission on Human Rights Act for age and disability discrimination and retaliation based on his transfer and subsequent termination after his position was eliminated for budgetary reasons. The city filed a plea to the jurisdiction, arguing that its governmental immunity was not waived because the city had a nondiscriminatory reason to terminate Gamez, Gamez's cancer did not constitute a disability, and Gamez had not alleged that he had opposed a discriminatory practice as required for a claim of retaliation. The trial court denied the city's plea and the city appealed.

The appellate court affirmed the portion of the trial court's judgment granting the city's plea to the jurisdiction as to Gamez's age and disability discrimination claims, holding that: (1) cancer is not a disability unless it impaired him in some way, which his did not; and (2) another employee with no authority over Gamez asking him when he would retire does not alone constitute evidence of age discrimination. However, the appellate court reversed the portion of the trial court judgment granting the city's plea as to Gamez's retaliation claim and remanded the case to allow Gamez an opportunity to replead, holding that he had not clearly pleaded a retaliation claim but that his petition did not demonstrate incurable defects in his claim.

Tex. Tech Univ. Health Scis. Ctr. – El Paso v. Niehay, No. 22-0179, 671 S.W.3d 929 (Tex. June 30, 2023). This is a case of first impression in which the court determines whether morbid obesity, without an underlying physiological disorder or condition, is an impairment under the Texas Commission on Human Rights Act (TCHRA).

Following her dismissal from medical residency program administered by Texas State University's medical school, the medical resident filed suit against the university, asserting that she was terminated because her morbid obesity was regarded as an impairment, and alleging a claim for unlawful disability discrimination in violation of the TCHRA. The trial court denied the university's plea to the jurisdiction and motion for summary judgment. On appeal, the court of appeal's affirmed, and the Supreme Court granted the university's petition for review.

The Supreme Court determined that (1) the resident's morbid obesity was not an impairment for purposes of her TCHRA disability discrimination claim; (2) morbid obesity does not qualify as an impairment under the TCHRA absent an underlying physiological disorder or condition; and (3) there was no evidence that the resident had a disability as defined by the TCHRA.

Mendoza v. City of Round Rock, No. 03-23-00235-CV, 2024 WL 1642920 (Tex. App.—Austin Apr. 17, 2024, no pet.) (mem. op.). In 2019, Irma Mendoza retired from the city of Round Rock in lieu of termination after the city conducted an internal investigation into complaints it had received about Mendoza. Claiming the city's action against her involved age discrimination in violation of the Texas Commission on Human Rights Act (TCHRA), she filed an administrative charge with the Equal Employment Opportunity Commission (EEOC). After reviewing the charge, the EEOC notified Mendoza it would not investigate further and issued her a right-to-sue letter dated June 10, 2020. In its letter, the EEOC noted it had received her administrative charge on June 2, 2020. Then, on June 9, 2022, Mendoza sued the city. In response, the city filed a plea to the jurisdiction claiming governmental immunity, arguing Mendoza's lawsuit was untimely as she failed to file her lawsuit within two years of submitting her charge to the EEOC. The district court granted the city's plea, and Mendoza appealed thereafter. In affirming the lower court's decision, the court of appeals concluded that although Mendoza claimed a discrepancy with the date on the EEOC letter, there was sufficient evidence in the record to support a finding that Mendoza's administrative charge was submitted to the EEOC on June 2, 2020, and by filing her lawsuit on June 9, 2022, she failed to strictly satisfy the TCHRA procedural requirements.

Harris Ctr. for Mental Health & IDD v. McLeod, No. 01-22-00947-CV, 2024 WL 1383271 (Tex. App.—Houston [1st Dist.] Apr. 2, 2024, pet. filed) (mem. op.). McLeod sued the Harris Center for Mental Health & IDD for disability discrimination under the Texas Commission on Human Rights Act (TCHRA). She alleged that the Harris Center retaliated against her after she decided not to accept an offer to accommodate her disability by transferring to a different clinic. She also claimed Harris Center failed to accommodate her request for consistent lunch breaks. The Harris Center filed a plea to the jurisdiction claiming governmental immunity, a response raising various defenses to McLeod's claims, and a motion for summary judgment. The trial court denied Harris Center's plea to the jurisdiction and motion for summary judgment, and Harris Center appealed.

The appellate court reversed, holding that: (1) the Harris Center was a governmental entity under the TCHRA and therefore was entitled to immunity; and (2) because McLeod did not raise a fact issue regarding whether she engaged in a protected activity for her retaliation claim, her claims did not fall under the TCHRA's waiver of immunity.

Tex. Woman’s Univ. v. Casper, No. 02-23-00384-CV, 2024 WL 1561061, (Tex. App.—Fort Worth Apr. 11, 2024, pet. filed). This case presents an issue of first impression: whether, under the election-of-remedies provision in the Texas Commission on Human Rights Act (TCHRA), a plaintiff who has filed a federal action based on allegedly unlawful employment practices is barred from filing a duplicative TCHRA complaint even if she abandons her earlier-filed federal action.

Texas Woman’s University (TWU) argued that a plaintiff is barred from filing a duplicative TCHRA complaint and filed a plea to the jurisdiction. Casper contended that the election-of-remedies provision bars a TCHRA complaint only if the earlier-filed federal action remains pending or has been resolved. The trial court denied TWU’s plea. TWU filed an interlocutory appeal.

The appellate court determined that under the plain language of the TCHRA’s election-of-remedies provision, an “initiated” federal action is what triggers the prohibition on filing a duplicative TCHRA complaint. Because Casper did not dispute that she “initiated” her federal action before filing her TCHRA complaint, and because she did not dispute that both challenged the same allegedly unlawful employment practices, the court reversed the trial court’s order. *See* TEX. LAB. CODE § 21.211.

Beebe v. City of San Antonio by & through CPS Energy, 673 S.W.3d 691 (Tex. App.—San Antonio June 14, 2023, pet. denied). A former employee of city-owned CPS Energy (CPS) sued CPS alleging discrimination based on race and disability, retaliation for reporting discriminatory treatment, and harassment based on national origin and disability. CPS filed a plea to the jurisdiction, which the trial court granted.

The appellate court found that: (1) the plaintiff failed to establish disparate treatment because he failed to show an example of a similarly situated coworker not being similarly fired for sexual harassment; (2) the plaintiff presented sufficient evidence to establish a prima facie case for retaliation; (3) CPS presented sufficient evidence for a legitimate, non-discriminatory explanation for the plaintiff’s termination; and (4) there was some evidence of a legitimate reason for plaintiff’s termination rather than pretext for discriminatory intent. Based on the findings, the appellate court affirmed the trial court’s order granting the plea to the jurisdiction.

City of Houston v. Carter, No. 01-22-00453-CV, 2023 WL 3632788 (Tex. App.—Houston [1st Dist.] May 25, 2023, no pet.) (mem. op.). Carter sued the City of Houston when she was sexually harassed at work and then experienced retaliation after being transferred to another location during the sexual harassment investigation. The city filed a combined plea to the jurisdiction and motion for summary judgment, claiming governmental immunity. The trial court denied the city’s plea and the city appealed.

The appellate court reversed, holding that: (1) although Carter had exhausted her administrative remedies, she had not established a causal link between her transfer, which was the adverse employment action, and the retaliation she experienced; and (2) Carter had not established a prima facie case of sexual harassment because the conduct was not physically threatening or humiliating and did not unreasonably interfere with her work performance.

City of Pasadena v. Poulos, No. 01-22-00676-CV, 2023 WL 7134974 (Tex. App.—Houston [1st Dist.] Oct. 31, 2023, no pet.) (mem. op.). Poulos sued the City of Pasadena under the Texas Commission on Human Rights Act, Chapter 21 of the Texas Labor Code, asserting claims for hostile work environment, alleging that her supervisor treated her unfavorably compared to her white co-workers. She also asserted claims for retaliation, alleging that she received adverse employment actions such as having leave denied in retaliation for raising the issue of her unfavorable treatment and racial discrimination. The city filed a motion to dismiss, claiming governmental immunity. The trial court denied the motion and the city appealed, arguing that Poulos had not timely filed suit or served the city with process and that her charge of discrimination was not actionable under the TCHRA.

The appellate court reversed in part and affirmed in part, holding that: (1) Poulos’s racial discrimination claim was not actionable under the TCHRA because being denied leave on a specific day did not constitute an adverse employment action; (2) Poulos had not made a prima facie case for her hostile work environment claim because she had not shown that the treatment she received was related to her race or that it was so severe and pervasive that it affected a term, condition, or privilege of her employment; and (3) because the city failed to state why Poulos’s cause of action for her retaliation had no basis in law in its motion to dismiss, there was no grounds to dismiss the retaliation claim.

Limuel, v. City of Austin, No. 08-23-00041-CV, 2023 WL 5761303 (Tex. App.—El Paso Sept. 6, 2023, no pet.) (mem. op.) Alan Limuel was an employee in the Austin Resource Recovery Department. His tenure at the city was marked by various conflicts and corrective actions, which the city attributes to Limuel’s performance or behavioral issues, while Limuel claims they were instances of illegal retaliation. Limuel filed five discrimination charges with the Equal Employment Opportunity Commission (EEOC), alleging sexual harassment, discrimination, and retaliation and ultimately sued the city for retaliation and sexual harassment, representing himself in the action. After pretrial practice, including the dismissal of Limuel’s sexual harassment claim on summary judgment, there was a five-day jury trial on the merits of Limuel’s claims. At the conclusion of the trial, the jury affirmed some of Limuel’s claims, but awarded him zero damages related to emotional distress and other non-economic losses. Discontent with the outcome, Limuel sought to dismiss the jury’s damages verdict, arguing that there was no basis for the zero damages awarded. The trial court rejected his motion. Following this, Limuel moved for a new trial, which was also denied by the court, prompting him to appeal.

The appellate court took some time in the opinion to explain that the standards for pro se litigants who represent themselves in court without an attorney dictate that courts must interpret the pleadings of these litigants in a way that ensures they have a fair opportunity to present their case. This principle is grounded in the intention to prevent any miscarriage of justice due to a litigant’s lack of legal expertise or representation. However, these litigants must comply with procedural requirements. In his appeal, Limuel challenged a number of aspects of the city’s case, including rulings related to evidence, jury selection, disqualification of the city’s attorney, improper jury argument, post-trial motions, and overarching constitutional claims. For various reasons, each of Limuel’s arguments was overruled, and the trial court’s judgment was affirmed.

Moliere v. City of Buffalo, No. 10-22-00391-CV, 2023 WL 6307992 (Tex. App.—Waco Sept. 28, 2023, pet. filed). Gregory Moliere, a City of Buffalo Police Department police officer, violated city policy when he engaged in a high-speed chase with a civilian ride-along in his police vehicle. Subsequently, the Chief of Police issued Moliere a written reprimand, which was placed in his personnel file. Moliere did not appeal the reprimand, and the police chief, in an affidavit, considered the disciplinary action resolved. A few weeks later, the city council voted to terminate Moliere’s employment as a police officer with the city.

Moliere filed suit against the city and the mayor, seeking declarations that the city council lacked authority as a Type A general-law municipality to terminate his employment and that the termination of his employment violated the city’s policies. The city and the mayor filed a joint plea to the jurisdiction and motion for summary judgment, asserting governmental immunity under the Uniform Declaratory Judgements Act and that the city had the authority to terminate Moliere’s employment. The trial court granted the plea. Moliere appealed.

The court of appeals reversed and remanded, concluding that a fact issue exists regarding the authority of the city council to terminate Moliere’s employment as a police officer under Section 341.001(a) of the Local Government Code and the city employee manual.

Univ. of N. Tex. Health Sci. Ctr. v. Paul, No. 02-22-00305-CV, 2023 WL 4779480 (Tex. App.—Fort Worth July 27, 2023, no pet.). This is an age-and sex-related employment discrimination case.

Paul, a nontenure-track assistant professor sued the University of North Texas Health Science Center (UNTHSC) after her assistant-professor contract was not renewed. She alleged age discrimination, sex discrimination, and retaliation related to UNTHSC’s (1) failure to hire her for the tenure-track position that another younger woman was hired for, (2) failure to promote her to Department chair, and (3) failure to renew her one-year teaching contract. UNTHSC filed a plea to the jurisdiction on sovereign-immunity grounds, which the trial court denied. UNTHSC filed an interlocutory appeal.

The court of appeals reversed the trial court’s denial of UNTHSC’s plea to the jurisdiction on Paul’s sex-discrimination claim related to UNTHSC’s nonrenewal of her contract and on her retaliation and age-and sex-discrimination claims related to UNTHSC’s failure to hire her for the Department Chair position. However, the court affirmed the trial court’s denial of UNTHSC’s plea to jurisdiction as to (1) retaliation and age discrimination for the contract renewal and (2) retaliation, age discrimination, and sex discrimination for the failure to hire Paul for the tenure-track position.

City of Pharr v. De Leon, No. 13-23-00033-CV, 2023 WL 8642683 (Tex. App.—Corpus Christi—Edinburg Dec. 14, 2023, no pet.) (mem. op.). DeLeon sued the City of Pharr for employment discrimination, alleging that the city failed to provide reasonable accommodations for his disability. He also sued under the Whistleblower Act, claiming the city terminated him in retaliation for a report he made to the Texas Commission on Environmental Quality (TCEQ) about a wastewater spill, and under the Texas Commission on Human Rights Act (TCHRA), claiming the city denied his appeal of his termination in retaliation for a report he made to the Texas Workforce Commission. The city filed a plea to the jurisdiction and a motion for summary judgment, which the trial court denied. The city appealed.

The appellate court affirmed in part and reversed in part, holding that: (1) DeLeon had alleged a prima facie case of disability discrimination; (2) DeLeon’s TCHRA claim failed because the denial of his appeal of his termination did not constitute an adverse employment action within the meaning of the Act; and (3) DeLeon’s Whistleblower claim survived because he was entitled to a presumption that his report to the TCEQ was the cause of his termination.

Tex. Workforce Comm’n v. Seymore, No. 02-23-00036-CV, 2024 WL 283688 (Tex. App.—Fort Worth Jan. 25, 2024) (amended mem. op.). The Texas Workforce Commission (Commission) challenged the trial court’s denial of its plea to the jurisdiction asserting that Seymore’s discrimination and retaliation claims should have been dismissed because there was no evidence that it failed to provide a reasonable accommodation for Seymore’s disability, no evidence that it constructively terminated her employment, and no evidence that it paid her less than similarly situated white employees.

The court of appeals reversed finding that: (1) the breakdown of the interactive process was attributable to Seymore as she unilaterally withdrew from the interactive process when she resigned when the accommodation negotiations had been ongoing for seven months; (2) there was no evidence that the Commission forced her to resign so as to create a constructive discharge claim; and (3) Seymore did not establish a prima facie case of race-based disparate-pay discrimination.

Leonard v. City of Burkburnett, No. 02-22-00266-CV, 2023 WL 8940816 (Tex. App.—Fort Worth Dec. 28, 2023, no pet.) (mem. op.). Following the filing of motions for rehearing by both parties, the court withdrew its November 2, 2023, opinion and substituted it with this opinion to clarify its holding on Leonard’s claim based on Section 614.023(c) of the Government Code.

Following his termination of employment as a police officer with the city, Leonard filed a lawsuit against the city and two city officials, alleging the following: (1) denial of his rights without due course of law; (2) denial of equal protection under the law; (3) denial of his right to free speech; (4) denial of his right to freely associate and assemble; (5) wrongful termination; (6) denial of his right to petition; (7) violation of section 617.005 of the Government Code because no hearing was held and no one in a position of authority seriously considered his appeal; (8) civil conspiracy; (9) official oppression by the two officials; and (10) violations of the Texas Open Meetings Act. Leonard sought declaratory relief, injunctive relief, mandamus relief, and attorney’s fees, but he expressly denied “seeking money damages.” The city filed pleas to the jurisdiction, requesting dismissal for lack of subject matter jurisdiction. The trial court granted the pleas, and Leonard appealed.

The appellate court affirmed in part and reversed and remanded in part. Specifically, the court noted that no authority requires a full-blown hearing under Section 617.005 of the Government Code. The court remanded the following claims to the trial court: (1) that the city violated Leonard’s rights to free speech and assembly by wrongfully terminating his employment because of his support of civil-service implementation at the police department and related involvement in the police association; and (2) that one of the city officials failed to comply with Section 614.023(c) of the Government Code before terminating Leonard’s employment. The court also remanded the case so that Leonard may be given the opportunity to replead his equal-protection and due-course-of-law claims and the claim that he is entitled to additional rights pursuant to the “formal appeal procedure” delineated in the city’s personnel handbook. The court affirmed the remainder of the trial court’s judgement.

City of Laredo v. Moreno, No. 04-22-00624-CV, 2023 WL 7005871 (Tex. App.—San Antonio Oct. 25, 2023, no pet.) (mem. op.) This case involves a lot of procedural history. The plaintiff sued the city when he was terminated from his job as the water treatment superintendent, which is subject to the city’s civil service rules and regulations. He alleged federal and state due process violations and sought an injunction to be reinstated. The trial court granted the request for a temporary injunction and ordered the city to reinstate the plaintiff. The city filed a plea to the jurisdiction, which the trial court denied. The appellate court affirmed the denial.

Then the trial court extended the preliminary injunction and ordered the plaintiff to pay \$5,000 in a bond. The city requested the trial court increase the bond and the trial court denied the city’s motion. The city appealed the bond amount and appealed the trial court’s further order requiring the city to reinstate the plaintiff.

The appellate court dissolved the trial court’s injunction and found: (1) the trial court abused its discretion in granting the plaintiff’s request for a temporary injunction to reinstate him because he did not demonstrate an irreparable injury and did not demonstrate why monetary damages would not compensate him; and (2) the city did not demonstrate the amount of the supersedeas bond was improper.

Drew v. City of Houston, 679 S.W.3d 779 (Tex. App.—Houston [1st Dist.] Aug. 1, 2023, no pet.) Drew sued the City of Houston for sexual harassment, retaliation, and constructive discharge after a co-worker tried to kiss her and masturbated in front of her. The co-worker was placed on leave, Drew was reassigned, and several months later Drew resigned her position and filed a complaint with the EEOC. She filed suit against the city eight months later. The city filed a plea to the jurisdiction, claiming that Drew had not exhausted her administrative remedies with the EEOC because she filed her complaint more than 180 days after the incident occurred. The trial court granted the city’s plea based on the untimeliness of Drew’s complaint, and Drew appealed.

The appellate court affirmed, holding that: (1) the continuing violation doctrine did not apply because there was no evidence in the record to support Drew’s claim that the first incident was part of a series of harassment and retaliation incidents that continued into the period of time that would make her EEOC complaint timely; and (2) there was no evidence in the record to support Drew’s claim of constructive discharge.

EXTRATERRITORIAL JURISDICTION

Elliott v. City of Coll. Station, 674 S.W.3d 653 (Tex. App.—Texarkana Aug. 31, 2023, pet. filed) Two plaintiffs sued the city, the mayor, and the city manager under Article I Section 2, of the Texas Constitution to challenge the concept of extraterritorial jurisdiction (ETJ), arguing that unless residents of the ETJ can vote, any city regulation in the ETJ is void. The city and its officials filed a plea to the jurisdiction, asserting that the residents lacked standing, their claims were not ripe, and that the suit presented a political question. The trial court granted the plea and the plaintiffs appealed.

The court of appeals discussed in-depth the nature of Texas cities and concluded that the plaintiffs’ challenge presents a political question, which the court may not address without violating the separation of powers of doctrine. Accordingly, the court of appeals upheld the trial court’s decision.

GOVERNMENTAL IMMUNITY - CONTRACTS

City of Houston v. Aptim Env'tl. & Infrastructure, LLC, No. 14-22-00616-CV, 2024 WL 848417 (Tex. App.—Houston [14th Dist.] Feb. 29, 2024, no pet.). Aptim LLC sued the City of Houston for unpaid invoices issued to the city under a contract for flood projects that included two amendments. The city filed a plea to the jurisdiction, claiming that it was immune to suit because the waiver of immunity in Chapter 271, Local Government Code, did not apply to claims arising under the second amendment to the contract because that amendment had been signed by an Aptim representative under its previous corporate name, Aptim Inc., which had been changed to Aptim LLC following a corporate restructuring. The trial court denied the city's plea and the city appealed.

The appellate court affirmed, holding that the failure of Aptim to sign the second amendment to the contract using its current corporate name went to the merits of the case rather than the jurisdiction, and that Aptim had sufficiently pleaded the elements of Chapter 271's waiver of immunity.

City of League City v. Galveston Cnty. Mun. Util. Dist. No. 6, No. 01-23-00007-CV, 2023 WL 8814635 (Tex. App.—Houston [1st Dist.] Dec. 21, 2023, no pet.) (mem. op.). The Galveston County Municipal Utility District No. 6 (the MUD) and the City of League City entered a contract in which the city agreed to make certain payments to the MUD to fund the bonded indebtedness incurred by the MUD in the construction of facilities for a water and sewer system. Under the contract, the MUD agreed to expand the water, sewage, and drainage systems and the city agreed to take title to the improvements in phases, take over the maintenance of them, and make payments. Near the end of the 40-year term of the contract, the MUD issued a series of bonds without seeking approval from the city in contravention of the terms of the contract, and proposed another bond issuance, both of which the city objected to. The city and the MUD reached a settlement agreement over that dispute in which the city agreed to continue making payments to the MUD until 2024 and approved the MUD's bond issuances. A dispute arose over the city's payments to the MUD and the MUD sued the city for underpayment, delayed payments, and a unilateral offset of one payment taken by the city. The MUD sued for declaratory judgment and breach of contract. The city filed a plea to the jurisdiction claiming governmental immunity, which the trial court denied. The city appealed.

The appellate court reversed in part and affirmed in part, holding that: (1) the contract was a contract for goods and services as defined by Chapter 271 of the Local Government Code, so the waiver of immunity in that chapter applied; and (2) the city was immune to a suit seeking declaratory judgment because Chapter 271 does not expressly waive immunity from suit for adjudicating a claim for declaratory relief.

Tex. Disposal Sys., Inc. v. City of Round Rock, No. 03-22-00450-CV, 2023 WL 3727963 (Tex. App.—Austin May 31, 2023, no pet. filed). In November 2021, the city council of the City of Round Rock approved a resolution authorizing the city manager to give Texas Disposal System (TDS) notice that the city would be terminating its franchise agreement for non-residential garbage and recycling collection services effective April 30, 2022, as well as a resolution approving the mayor to execute an agreement with another vendor to be city's single service provider. In accordance with the contract terms, the city provided the 30-day notice of the contract termination in March 2022.

Upon receiving the notice, TDS sued the city and the city manager seeking declaratory and injunctive relief. After the trial court denied the first request, TDS filed an amended petition which included an ultra vires claim against the city manager. After a hearing on the second request for a temporary restraining order the trial court denied TDS's request finding that it had not proven the required elements under the Uniform Declaratory Judgment Act (UDJA). TDS subsequently filed an interlocutory appeal raising two issues. The first issue involved the city's charter provision prohibiting exclusive franchises for public utilities. TDS claimed the city violated its charter by granting an exclusive franchise agreement to the other vendor, which would cause TDS irreparable harm without relief. TDS also claimed the city violated the Texas Open Meetings Act (TOMA) at a July 2021 retreat in which the council first considered possible action regarding commercial garbage collection because the agenda notice was not "sufficiently specific" to give the public notice that it was considering an exclusive franchise agreement. The city responded by challenging the court's subject matter jurisdiction for the claims under the UDJA.

Although the court of appeals determined the trial court had subject matter jurisdiction, it affirmed the trial court's order. The court reasoned that at the time of the hearing on the temporary restraining order, the city had provided the required termination notice under the terms of their contract, and the contract between TDS and the city was no longer in effect. Therefore, TDS failed to establish "probable, imminent, and irreparable injury in the interim that its requested injunctive relief would have prevented."

Travis Cnty. Mun. Util. Dist. No. 10 v. Waterford Lago Vista, LLC, No. 07-23-00182-CV, 2023 WL 8042570 (Tex. App.—Amarillo Nov. 20, 2023, extension of time for filing petition for review granted) (mem. op.). A developer entered into an agreement with the municipal utility district (MUD) to provide for construction of water, sewer, and drainage facilities to serve property owned by the developer and it included rights to reimbursement for costs of the project. The developer defaulted on its loan and on foreclosure, the rights ultimately were assigned to Waterford. Waterford requested reimbursement under the agreement, which the MUD denied because it argued the terms of the agreement regarding assignment were not followed. Waterford sued and the MUD filed a plea to the jurisdiction, arguing there was no waiver of sovereign immunity under Local Government Code Sections 271.151 and 271,152. The trial court denied the plea and the MUD appealed.

In affirming the trial court's denial, the appellate court found: (1) prior cases with similar facts found that sovereign immunity was waived when a governmental entity agrees to reimburse a developer for costs associated with projects like the one in this case and the contract fell into a contract for "goods and services"; and (2) the MUD's argument that Waterford did not have standing to sue was really a capacity to seek reimbursement issue, not a standing issue.

San Jacinto River Auth. v. City of Conroe, No. 22-0649, 2024 WL 1590001 (Tex. Apr. 12, 2024). This case looks at the scope of the statutory waiver of immunity under Chapter 271 of the Local Government Code (Chapter 271) for contractual claims against local government entities.

At issue were contracts that obligated two cities to buy surface water from a river authority. When a dispute over fees and rates arose, the cities stopped paying their complete balances, and the authority sued the cities to recover those amounts. The trial court granted the cities' plea to the jurisdiction, and the court of appeals affirmed on the ground that the authority did not engage in pre-suit mediation as the contracts required. The river authority petitioned for review.

The Supreme Court held that neither the contractual procedures for alternative dispute resolution, which are enforceable against local governments under Section 271.154 of the Local Government Code, serve as limits on the waiver of immunity set out in Section 271.152, nor does the parties' agreement to mediate apply to the authority's claims. The Court also rejected the cities' alternative argument that the agreements did not fall within the waiver because they failed to state their essential terms. Accordingly, the Court reversed and remanded to the trial court for further proceedings to resolve the authority's claims on the merits.

Campbellton Rd., Ltd. v. City of San Antonio by & through San Antonio Water Sys., No. 22-0481, 2024 WL 1590000 (Tex. Apr. 12, 2024). A property developer, which owned 585 acres within city's extra-territorial jurisdiction, brought a breach of contract and declaratory judgment action against the city by and through the city's water utility, arising from utility's agreement with the developer that the utility would provide sewer service for proposed residential developments on the developer's property. The trial court denied the city's plea to the jurisdiction and motion to dismiss for lack of subject matter jurisdiction. On appeal, the San Antonio Court of Appeals reversed and remanded, finding Chapter 271 of the Local Government Code (Chapter 271) did not apply to waive the city's immunity. The developer filed a petition for review.

The Supreme Court reversed and remanded, finding that the following supported waiver of the city's sovereign immunity under Chapter 271: (1) the developer sufficiently pleaded that a written, bilateral contract was formed; (2) the developer sufficiently pleaded that a written, unilateral contract was formed; (3) the contract terms contemplated that the utility had a right to the developer's participation in the project upon contract signing, as would support waiver of city's governmental immunity under the Chapter 271; (4) the contract terms contemplated provision of payment to the developer; and (5) the developer sufficiently pleaded that the contract contemplated provision of services to the utility, as required to trigger waiver of governmental immunity.

Chaudhari P'ship v. AHFC Pecan Park PSH Non-Profit Corp., No. 07-23-00362-CV, 2024 WL 1185132 (Tex. App.—Amarillo Mar. 19, 2024, no pet. filed) (mem. op.). The city, in partnership with a nonprofit, planned to put in housing for the homeless in a hotel. The Chaudhari Partnership (the "Partnership") and the county attorney sued in separate actions. Once the Partnership learned that the county attorney filed a separate lawsuit, the Partnership intervened and nonsuited the action it initiated with prejudice. The city filed a plea to the jurisdiction, which the trial court granted. Only the Partnership appealed.

On appeal, the court found that: (1) the Partnership failed to address the ground implicating that the Partnership had failed to state a cause of action against the city in its cause of action; and (2) the provision of public housing is a governmental function. The appellate court affirmed the trial court's dismissal with prejudice.

San Antonio Water Sys. v. Guarantee Co. of N. Am. USA, No. 08-23-00123-CV, 2024 WL 42357 (Tex. App.—El Paso Jan. 3, 2024, pet. filed) (mem. op.). The San Antonio Water System (SAWS) entered into two separate contracts with Thyssen for the construction of the Mel Waiters Project and the Westpointe Project. GCNA served as the surety for Thyssen on both projects. A dispute arose over the Mel Waiters Project, leading SAWS to sue Thyssen for breach of performance and GCNA for breach of its performance bond obligations. In response, GCNA filed counterclaims related to the Westpointe Project, alleging several breaches of contract by SAWS and additional claims under the Texas Prompt Payment Act. SAWS then filed a plea to the jurisdiction and motion to dismiss GCNA’s counterclaims based on governmental immunity. The trial court denied the plea, and SAWS appealed.

Generally, cities have immunity from liability and lawsuits unless that immunity has been waived. Chapter 271 of the Texas Local Government Code contains a limited waiver of governmental immunity for breach of contract claims arising under certain contracts. Even though GCNA was not a signatory to the contract at issue, as an insurer of signatory (Thyssen), GCNA was subrogated to the rights of the insured, and could bring the claims under the contract. Unfortunately for GCNA, the court ultimately held that the terms of the contract were not violated by SAWS as GCNA argued. With regard to Prompt Payment Act counterclaim, it failed as well, due to SAWS not being an “owner” as defined by the Texas Property Code for purposes of GCNA’s claims. The court ultimately reversed the trial court’s judgment and dismissed GCNA’s claims with prejudice.

City of Canton v. Lewis First Monday, Inc., No. 06-23-00027-CV, 2023 WL 4945085 (Tex. App.—Texarkana Aug. 3, 2023, pet. denied) (mem. op.) The plaintiff co-owns property with the city where a flea market operates. The market has an entrance through the historical main gate owned by the city. The city voted to restrict access to the historic main gate to vendors during the flea market and the plaintiff sued for: (1) declaratory judgment for an easement by estoppel; (2) declaratory relief for a taking; and (3) injunctive relief to prevent the city from locking the main gate. The city filed a plea to the jurisdiction, which the trial court denied.

On appeal, the appellate court reversed the trial court and found: (1) the plaintiff had no easement interest in a public roadway; (2) regulating traffic is a municipal governmental function; (3) the Private Real Property Rights Preservation Act only applies in the extraterritorial jurisdiction and the city’s act did not take place in the ETJ; and (4) the plaintiff did not have a takings claim because the act took place on city-owned property, the city did not restrict access to the plaintiff’s property, and the city did not deny plaintiff a permit. The appellate court vacated the trial court’s temporary injunction, reversed the denial of the plea, and rendered judgment for the city.

GOVERNMENTAL IMMUNITY – PROPRIETARY/GOVERNMENTAL

City of League City v. Jimmy Changas, Inc., 670 S.W.3d 494 (Tex. June 9, 2023). This is an interlocutory appeal in which the Supreme Court determined the proper governmental/proprietary dichotomy in a breach-of-contract case.

The City of League City entered into a “Chapter 380 Economic Development Incentives Grant Agreement” with Jimmy Changas, Inc. (Changas) in which the city offered incentives including reimbursements of fees and a percentage of local sales tax payments to Changas to invest \$5 million to develop a restaurant facility within the city’s entertainment district. After Changas completed the project, the city failed to provide the reimbursements contending that Changas failed to timely submit documentation that it had invested \$5 million and created at least 80 full-time jobs. Changas sued the city asserting breach of contract. The court of appeals reversed the trial court’s holding, finding that the city engaged in a proprietary function when it entered the contract, and thus, was not immune from suit.

On appeal, the Supreme Court affirmed the appellate court’s holding finding that under the Wasson II factors, the city was engaging in a proprietary activity. The court determined that: (1) the city’s act of entering into the contract was discretionary; (2) the contract primarily benefited the city residents and not the general public; (3) the city was acting on its own behalf and not on the State’s behalf when it entered the contract; and (4) the city’s decision to enter into the contract was not related to any governmental function.

City of Huntsville v. Valentine, No. 13-22-00528-CV, 2023 WL 5282954 (Tex. App.—Corpus Christi—Edinburg Aug. 17, 2023, no pet.) (mem. op.) The Valentines sued the City of Huntsville alleging that the city negligently issued a building permit for construction that ended up flooding the Valentines’ property with stormwater runoff. The city filed a plea to the jurisdiction claiming governmental immunity and the trial court denied the plea. The city appealed.

The appellate court affirmed, holding that because issuance of a building permit is a governmental rather than proprietary function of a city, the Texas Tort Claims Act would have waived the city’s immunity only if the claim arose from property damage caused by the negligent operation of a motor vehicle.

GOVERNMENTAL IMMUNITY - TORTS

City of Austin v. Quinlan, 669 S.W.3d 813 (Tex. June 2, 2023). The issue in this appeal is whether the City of Austin had a legal duty to ensure a sidewalk café, to which it had delegated maintenance responsibilities under a permit, fulfilled its maintenance obligations, thus, waiving its governmental immunity.

A restaurant patron brought premises liability action against the City of Austin and a restaurant that operated a sidewalk café following an ankle injury that was sustained when the patron fell more than one foot from the sidewalk to the street. The trial court denied the city’s plea to the jurisdiction and the city appealed. The court of appeals affirmed in part and reserved in part.

The Supreme Court granted the petition for review and reversed, holding that: (1) a sidewalk café maintenance agreement between the restaurant and the city did not impose a nondiscretionary duty on the city, and thus, claims against the city did not fall outside the “discretionary function” exception to waiver of immunity under the Texas Tort Claims Act; (2) the city’s alleged control over the sidewalk café, under agreement, had no bearing on the issue of whether the “discretionary function” exception to the city’s waiver of immunity applied; (3) the statutes governing a city’s authority to issue a permit for use of city street or sidewalk for public convenience or private use did not impose a nondelegable, nondiscretionary duty on a city, for which alleged breach fell outside the “discretionary function” exception to waiver of immunity; and (4) the dismissal of the complaint, rather than remand to allow the patron an opportunity to replead, was appropriate.

CPS Energy v. Elec. Reliability Council of Tex., 671 S.W.3d 605 (Tex. June 23, 2023). This case stems from claims against ERCOT related to Winter Storm Uri.

Action was brought in two separate proceedings against the Electric Reliability Council of Texas (ERCOT)—first by CPS Energy (CPS), a municipally owned electric utility, alleging breach of contract, negligence, gross negligence, negligence per se, breach of fiduciary duty, and violations of Texas Constitution, and second, by Panda Power Companies (Panda) for fraud, negligent misrepresentation, and breach of fiduciary duty—alleging that ERCOT’s electricity capacity, demand, and reserves reports misled the power company to invest \$2.2 billion in building new power plants.

ERCOT filed a plea to the jurisdiction, arguing that the claims are barred by sovereign immunity and, alternatively, that the Public Utility Commission (PUC) has exclusive jurisdiction over the claim. The trial court denied the plea. ERCOT appealed, asserting that it is a governmental unit entitled to an interlocutory appeal from the denial of a plea to the jurisdiction. ERCOT also sought review by petition for writ of mandamus in the event it is not entitled to an interlocutory appeal. After one court of appeals panel summarily denied mandamus relief, ERCOT filed its petition for writ of mandamus in the Supreme Court to continue the alternative path to review. A different court of appeals panel then held that ERCOT is a governmental unit entitled to take an interlocutory appeal, that the PUC has exclusive jurisdiction over CPS’s claims, and that CPS’s claims should be dismissed. The Supreme Court granted review.

The Supreme Court determined that: (1) ERCOT is a governmental unit as defined in the Texas Tort Claims Act and thereby entitled to pursue an interlocutory appeal from the denial of a plea to the jurisdiction; (2) the PUC has exclusive jurisdiction over the parties’ claims against ERCOT; and (3) ERCOT is entitled to sovereign immunity. Accordingly, in the CPS case, the court affirmed the appellate court’s judgment, dismissing CPS’s motion to stay the trial court’s temporary restraining as moot. In the case related to Panda, the court reversed the court of appeals’s judgement and dismissed the case for lack of jurisdiction.

Edney v. City of Waco, No. 13-22-00152-CV, 2023 WL 8270628 (Tex. App.—Corpus Christi—Edinburg Nov. 30, 2023, pet. filed) (mem. op.). Edney sued the city of Waco claiming an illegal search and seizure after he was arrested at a mall for trespass and illegal carrying of a weapon. The city filed a motion to dismiss and a plea to the jurisdiction, claiming governmental immunity for the city and official immunity for the police officers who arrested Edney. The trial court granted the city’s motion to dismiss and the city’s plea to the jurisdiction, reasoning that the city’s governmental immunity had not been waived for Edney’s claim. Edney appealed the trial court’s grant of the city’s motion to dismiss.

The appellate court affirmed, holding that on appeal Edney had only challenged the trial court’s grant of the city’s motion to dismiss and did not challenge the trial court’s grant of the city’s plea to the jurisdiction. Because both dispositive motions relied on the city’s governmental immunity, the appellate court could not reverse the trial court regardless of whether the grant of the motion to dismiss was proper.

El Paso Water Utilities Sys.-Pub. Serv. Bd. v. Marivani, No. 08-23-00071-CV, 2023 WL 4771207 (Tex. App.—El Paso July 26, 2023, no pet. filed) (mem. op.) Aryan Marivani sued the City of El Paso and the El Paso Water Utilities System-Public Service Board (collectively “EPWU”) for negligence after a vehicle being driven by Gabriel Ramirez, an employee of EPWU, collided with Marivani’s parked car. EPWU answered the complaint with a plea to the jurisdiction, arguing that the case should be dismissed because Ramirez was commuting home at the time of the collision and was therefore not acting within the scope of his employment. The trial court denied the plea to the jurisdiction, and EPWU appealed. Municipalities generally have immunity from lawsuits unless the immunity has been waived. The Texas Tort Claims Act can provide such an immunity waiver for property damage caused by employee negligence, if the damage is caused by a motor vehicle being operated by an employee who is acting within the scope of their employment. An employee is typically not acting within the scope of their employment while they are commuting to and from work. This rule is known as the “coming-and-going” rule and can apply even when the employee is driving a city-owned vehicle. Exceptions exist if the employee is on a special mission for the employer or performing another service for the employer. Despite driving a company vehicle at the time of the collision, evidence supported the fact that Ramirez was merely commuting home at the time of the collision. Marivani argued that certain company policies might indicate that Ramirez was in his employment scope; however, the court found otherwise, taking pains to analyze and distinguish this case from other relevant cases. Ultimately, the appellate court reversed the trial order denying EPWU’s plea and rendered judgment in favor of EPWU.

Town of Little Elm v. Climer, No. 02-23-00250-CV, 2023 WL 8467513 (Tex. App.—Fort Worth Dec. 7, 2023, no pet. filed) (mem. op.). Climer filed a negligence suit under the Texas Tort Claims Act against the Town of Little Elm for injuries he received when he fell from his bicycle on a concrete pathway subject to the town’s control, asserting that he did not see the hole in the concrete prior to his fall. In its plea to the jurisdiction, Little Elm stated that it was aware of the condition of the pathway, had closed that section of the pathway to conduct an investigation prior to repairing the pathway, and it had checked the trail weekly and warned users of the condition of the trail. The trial court denied the plea, and Little Elm appealed. The court of appeals reversed the trial court’s order, finding that Little Elm’s decision to close the damaged portion of the trail and conduct a geotechnical distress investigation prior to repairing the pathway was a discretionary decision protected by governmental immunity. Further, the court determined that Climer’s factual allegations did not establish gross negligence as Little Elm presented evidence that it erected barricades to protect the public.

City of Dallas v. Ahrens, No. 10-23-00315-CV, 2024 WL 1573388 (Tex. App.—Waco Apr. 11, 2024, extension for filing petition for review approved) (mem. op.). Following a sniper shooting that resulted in the death of five Dallas police officers, the city contracted with a charitable organization, Assist the Officer Foundation (ATO), to process and distribute mail, including checks and cash, received by the city for the benefit of the families of the officers who were killed. Believing that ATO mishandled the funds, and because ATO refused to release cash they claim to be legally entitled to, Katrina Ahrens and her children sued ATO, the city and others seeking damages in connection with the city’s handling of donations sent to the city after her husband’s line of duty death.

In its plea to the jurisdiction, the city contended that it was immune from suit arising out of its governmental functions. The city specifically asserted that the complained-of activities, its handling of mail sent to the city, fell within the governmental function of police protection and control. The trial court denied the plea, and the city appealed. The appellate court affirmed the trial court’s order, finding when the city entered into an agreement with ATO it engaged in a proprietary function.

Suarez v. Silvas, No. 04-22-00540-CV, 2023 WL 4337717 (Tex. App.—San Antonio July 5, 2023, pet. denied) (mem. op.). This is the third appeal in the case where the city removed councilmember Silvas for violating a charter provision and Silvas sued the city and city employees. The city and city employees filed a plea to the jurisdiction on remand the second time, claiming the trial court should dismiss all of Silvas’s claims for attorney’s fees and costs under the Texas Tort Claims Act (TTCA) against the city employee defendants and that Silvas did not have a proper Uniform Declaratory Judgment Act (UDJA) claim because her ultra vires claims were moot. The trial court denied the plea and the city and city employees appealed.

On appeal, the appellate court affirmed the denial of the plea and held that: (1) while the city is immune from Silvas’s ultra vires claim, the city employees were not because they were acting in their official capacities and therefore were not immune from attorney’s fees under the TTCA; and (2) the decision to award attorney’s fees under the UDJA is at the discretion of the trial court.

Harris Cnty. v. Deary, No. 01-23-00516-CV, 2024 WL 234755 (Tex. App.—Houston [1st Dist.] Jan. 23, 2024, no pet. filed). Deary sued Harris County under the Texas Tort Claims Act (TTCA) and 42 U.S.C. § 1983 after a county sheriff allegedly slammed her to the ground and arrested her without probable cause. The county filed a plea to the jurisdiction, claiming governmental immunity, and additionally filed a Rule 91a motion to dismiss, claiming Deary’s suit had no basis in law and fact. The trial court denied both the plea and the motion, and the county appealed.

The appellate court affirmed in part and reversed in part, holding that: (1) because Deary had alleged only intentional torts in her pleading, the Texas Tort Claims Act did not waive the county’s immunity with regard to those claims; (2) a county has no immunity to Section 1983 claims because Section 1983 creates a cause of action against government actors who deprive a plaintiff of their constitutional rights; and (3) even if the trial court erred by denying the Rule 91a motion to dismiss, the appellate court lacked jurisdiction to review that interlocutory order because it did not implicate the court’s subject matter jurisdiction.

City of Houston v. Taylor, No. 14-22-00629-CV, 2024 WL 1403949 (Tex. App.—Houston [14th Dist.] Apr. 2, 2024, pet. filed) (mem. op.). Percy Taylor sued the City of Houston after being involved in a collision with a city ambulance. The city claimed immunity under the Texas Tort Claims Act, arguing that the ambulance was responding to an emergency, which if proven, exempts the city from liability. The trial court denied the city’s motion for summary judgment and plea to the jurisdiction. The Texas Tort Claims Act may waive immunity for injuries caused by the operation of motor-driven vehicles unless the injury arises from actions taken during emergency responses. The question in this case was whether the ambulance was actively responding to an emergency when the collision occurred. The evidence presented showed conflicting accounts of the situation. The ambulance driver indicated that they were transporting a critically ill patient with possible sepsis to the hospital under emergency conditions with lights and sirens activated. Contradictory testimony and a Houston Fire Department incident report suggested that the patient was stable and that the transportation was at the patient’s choice, without emergency lights and sirens. The appellate court affirmed the trial court’s decision, finding that factual disputes about the emergency status of the ambulance trip precluded summary judgment. The court concluded that the trial court correctly denied the city’s plea to the jurisdiction and MSJ.

City of Houston v. Caro, No. 14-23-00319-CV, 2024 WL 1732278 (Tex. App.—Houston [14th Dist.] Apr. 23, 2024, no pet. filed) (mem. op.). Lucy Caro, a flight attendant, was injured at Bush Intercontinental Airport, which is owned by the City of Houston, when she slipped on water beneath an air conditioning vent. In response to Caro’s lawsuit, the City of Houston filed a plea to the jurisdiction, which the trial court denied. On appeal, the city challenged the trial court’s denial of its plea to jurisdiction, arguing that it did not have actual knowledge of the hazard, and thereby maintained its immunity under the Texas Tort Claims Act. The court evaluated whether the City of Houston had actual knowledge of the hazard. Evidence showed longstanding issues with condensation at the airport, which were known to city staff. Despite prior observations of water accumulation and temporary remediation measures, no permanent solution was implemented, and no warning signs were present at the time of Caro’s fall. The appellate court held that evidence of the city’s awareness of the recurring condensation issue, combined with the specific observations made by city staff shortly before Caro’s injuries, established a fact issue regarding the city’s knowledge of the dangerous condition. The court also found fact issues regarding whether Caro knew about the hazard and whether the city failed in its duty of care. Ultimately, the court affirmed the trial court’s decision, holding that the evidence raised sufficient fact issues to deny the city’s plea to the jurisdiction, allowing Caro’s suit to proceed against the City of Houston for her injuries. The case was remanded for further proceedings concerning the city’s knowledge and the adequacy of its remedial actions.

City of Austin v. Kalamarides, No. 07-23-00400-CV, 2024 WL 1422741 (Tex. App.—Amarillo Apr. 2, 2024, no pet.) (mem. op.). The plaintiff sued the city for injuries he suffered in a car accident with a city police officer who was responding to an emergency call. The plaintiff claimed his light was green and that the police officer did not have lights or sirens on. The city claimed the officer did have the vehicle’s lights and sirens activated. The city filed a plea to the jurisdiction based on the “emergency exception.” The trial court denied the plea.

On appeal, the court reversed and rendered judgment in favor of the city. The court found the city retained its immunity under the emergency response exception because record did not reveal a fact issue as to whether the officer acted in a way that posed a high degree of risk or serious injury to others when responding to an emergency. The video evidence capturing the minutes preceding the collision confirmed that as the officer entered the intersection, she was proceeding slowly, with her vehicle’s lights and siren activated.

City of Springtown v. Ashenfelter, No. 02-23-00204-CV, 2024 WL 1792380 (Tex. App.—Fort Worth Apr. 25, 2024, no pet.) (mem. op.). Kalie Ashenfelter sued the City of Springtown after she was involved in an automobile collision with a city police officer. The city appealed the trial court’s denial of its combined motion for no-evidence and traditional summary judgment, asserting that it was entitled to immunity based on (1) the police officer’s official immunity and (2) the emergency exception to the Texas Tort Claims Act’s (TTCA) waiver of immunity. The appellate court affirmed the trial court’s order denying the city’s combined motion concluding that the city was not entitled to a no-evidence summary judgement and that evidence attached to the city’s traditional motion for summary judgement raised a fact issue as to whether governmental immunity was waived.

City of Houston v. Manning, No. 14-23-00087-CV, 2024 WL 973806 (Tex. App.—Houston [14th Dist.] Mar. 7, 2024, pet. filed) (mem. op.). In a case involving a collision between a City of Houston Fire Department truck driven by Wilhelm Schmidt and a car carrying Chelsea Manning and three minors, the appellate court previously affirmed the denial of the city’s initial motion for summary judgment on negligence claims. In Manning I, the city argued for immunity, citing the driver’s official status and exceptions under the Texas Tort Claims Act (TTCA), but failed to conclusively prove absence of negligence or that the emergency and 9-1-1 exceptions applied. The Supreme Court declined to review the appellate court’s decision in Manning I.

This appeal originates from a second summary judgment motion in which the city reiterated its immunity defense, added additional TTCA arguments, and challenged certain plaintiffs’ standing. The trial court denied this motion and allowed two additional plaintiffs to join the case, leading to the city’s current appeal.

Generally, a city cannot be vicariously liable for the negligent acts of its employees unless its governmental immunity has been waived. The TTCA contains waivers of governmental immunity when the negligence of a city’s employee, acting within the scope of their employment, proximately causes personal injury to another person, arising from the use or operation of a motor driven vehicle, if the employee would be personally liable for the injuries. The city argued that Schmidt would not have been liable for the injuries, since he was protected by official immunity, which can protect government employees from liability from lawsuit if at the time of the injury, they were performing discretionary job functions with good faith. As in Manning I, the court in this case held that there were fact questions surrounding Schmidt’s good faith and overruled the city on this issue.

There are also exceptions to the TTCA’s immunity waiver when an employee is responding to an emergency situation or a 9-1-1 call for assistance, if the employee’s actions are essentially reasonable, lawful, and not taken with reckless disregard for the safety of others. The city raised each of these exceptions, but again, the court overruled these issues, pointing to evidence that Schmidt may have been operating the truck recklessly at the time of the collision.

The only issue on which the court found in favor of the city was a standing issue. Two of the claimants who were minors at the time of the collision had reached the age of majority by the time the appeals in Manning I were decided, after which, a Second Amended Petition was filed seeking additional damages for medical expenses by these claimants. Because claims for the medical expenses of minors belong to the minors’ parents, the appellate court overruled the trial court on this issue. Ultimately, the court overruled all the city’s claims other than the standing issue and remanded the case to the trial court for further proceedings.

Rebeca Garcia v. The City of Austin, No. 14-23-00241-CV, 2024 WL 1326113 (Tex. App.—Houston [14th Dist.] Mar. 28, 2024, no pet.) (mem. op.). Rebeca Garcia and Mike Ramos were in a car when the police, responding to a 9-1-1 call about drug use and a possible gun, commanded them to exit the vehicle. Ramos, after initially complying, became non-compliant and was fatally shot while attempting to drive away. Garcia, who was in the car but not physically injured, sued the City of Austin for negligent infliction of emotional distress, claiming severe shock and emotional distress from witnessing the incident.

The City of Austin filed a plea to the jurisdiction, asserting immunity from Garcia's suit. The trial court granted the plea, dismissing Garcia's suit. Garcia appealed, arguing the trial court erred in granting the plea and that the city did not meet its burden to establish governmental immunity. Generally, a city is protected from liability from lawsuit by governmental immunity, but that immunity may be waived by statute. The Texas Tort Claims Act provides limited waivers of immunity for certain negligent conduct, but it does not waive immunity for injuries arising from intentional torts. Garcia argued that her injuries sounded in negligence; however, neither the trial court nor the appellate court agreed, since the shooting in question was clearly an intentional act. Consequently, the appellate court affirmed the trial court's final judgment, dismissing the case for lack of jurisdiction.

City of Mission v. Aaron Cervantes, No. 13-22-00401-CV, 2024 WL 1326396 (Tex. App.—Corpus Christi—Edinburg Mar. 28, 2024, no pet.) (mem. op.). Cervantes sued the City of Mission under the Texas Tort Claims Act (TTCA) after he was injured on a city-maintained bike path, claiming the city's failure to warn the public of the dangerous condition of the trail was grossly negligent. The city filed a plea to the jurisdiction claiming governmental immunity under the TTCA and the recreational use statute. The city argued that the dangerous condition at issue was not a special defect, so the city owed only a licensee standard of care and therefore the city's immunity was not waived under the TTCA. The trial court denied the city's plea and the city appealed.

The appellate court affirmed the trial court's denial of the city's plea to the jurisdiction, holding that because the city had not produced evidence to negate Cervantes' contention that the dangerous condition at issue was a special defect, it had failed to carry its burden to negate the existence of jurisdictional facts.

City of Dallas v. McKeller, No. 05-23-00035-CV, 2024 WL 980356 (Tex. App.—Dallas Mar. 7, 2024, no pet.) (mem. op.). In 2019, the City of Dallas was notified through a service request that one of its water meter boxes was missing the lid leaving a hole in the sidewalk. Because the repairs could not be made that day, city staff placed a large orange cone over the hole. However, the cone was later removed by an unknown third party, and Evelyn McKeller sustained injuries when she fell into the hole. McKeller then sued the city on the basis of negligence and premises liability. In response, the city filed a plea to the jurisdiction claiming immunity under the Texas Tort Claims Act (TTCA). After a hearing on the matter, the trial court denied the city's plea to the jurisdiction, and the city appealed.

In its appeal, the city claimed McKeller could not overcome the TTCA's waiver of immunity for the premises liability claim because it had no actual knowledge that the cone had been removed by a third party. The city relied on Texas Civil Practice & Remedies Code Section 101.060 which states a governmental unit retains its immunity for claims based on the removal of a traffic warning device unless the governmental unit fails to correct the removal within a reasonable period of time after having actual notice. The city further argued that the trial court did not have subject matter jurisdiction over McKeller's negligence claim separate from the premises defect claim.

As to the premises liability claim, the court of appeals concluded the city had actual knowledge of the defective condition – an open water meter hole. The court reasoned that McKeller’s claim was not based on the failure to replace the cone, and it did not qualify as a “warning device” where it was placed on a sidewalk and not a roadway as required by Section 101.060. As a result, the lower court’s denial of the city’s plea to the jurisdiction was affirmed. However, as to McKeller’s negligence claim, the court of appeals held that because the claim relied on the premises defect in this case, immunity was not waived under the TTCA. For that reason, the court of appeals granted the city’s plea to the jurisdiction and rendered judgment dismissing the negligence claim for lack of subject matter jurisdiction.

Alief Indep. Sch. Dist. v. Velazquez, No. 01-22-00444-CV, 2023 WL 3555495 (Tex. App.—Houston [1st Dist.] May 18, 2023, no pet.) (mem. op.). Velazquez sued the Alief Independent School District after he was struck by a vehicle driven by a school cafeteria worker who was on her way to the district office to inquire about her health benefits. The district filed a plea to the jurisdiction, claiming governmental immunity. The trial court denied the plea, and the district appealed.

The appellate court reversed and rendered, holding that the cafeteria worker was not acting within the scope of her employment by driving to ask about her benefits after her shift ended, and therefore the district’s governmental immunity was not waived under the TTCA.

Barker v. Sam Houston State Univ., No. 06-22-00076-CV, 2023 WL 4113275 (Tex. App.—Texarkana June 22, 2023, no pet.). Plaintiff filed a suit against her employer when she was injured by a vehicle driven by another employee. The university filed a plea to the jurisdiction and the plaintiff appealed. The appellate court found that although the plaintiff was going to lunch or running an errand when injured and not on the company’s clock, her actions were so closely connected to her employment to render it an incident thereto. Therefore, her exclusive remedy was workers’ compensation and she could not sue under the Texas Tort Claims Act. The appellate court affirmed the trial court’s judgment.

Buchanan v. City of Bogata, 674 S.W.3d 687 (Tex. App.—Texarkana Aug. 4, 2023) Plaintiff sued the city over a car accident with a city employee when she was a passenger in a car. The city filed a plea to the jurisdiction based on lack of notice, which the trial court granted. The appellate court affirmed, finding that: (1) the city did not receive statutory notice under the Tort Claims Act; and (2) the city did not have actual notice because nothing in the police report provided notice to the city that the plaintiff was injured or that her injuries were caused by the employee’s negligence.

City of Arlington v. Taylor, No. 02-22-00325-CV, 2023 WL 6631533 (Tex. App.—Fort Worth Oct. 12, 2023, pet. filed) (mem. op.). This is a Texas Tort Claims Act emergency exception case stemming from a motor-vehicle accident.

Taylor sued the City of Arlington after he was involved in a car accident at a four-way intersection with Baskin, a city police officer, who was responding to an emergency call to assist another officer with an occupied stolen vehicle. The city filed a plea to the jurisdiction, which the trial court denied. The city appealed asserting that it was entitled to immunity under the emergency exception to the Texas Tort Claims Act waiver of immunity.

After considering the city's motion for rehearing en banc, the appellate court withdrew its May 18, 2023, memorandum opinion and substituted it with this October 12, 2023, opinion. The appellate court reversed and rendered the judgement dismissing Taylor's claims, finding that Taylor bore the burden of negating the application of the TTCA's emergency exception and had failed to do so.

City of Baytown v. Fernandes, 674 S.W.3d 718 (Tex. App.—Houston [1st Dist.] Aug. 3, 2023). Fernandes sued the City of Baytown for negligence after he was injured on a waterslide at a city-owned waterpark. The City filed a plea to the jurisdiction contending that because Fernandes was engaging in a recreational activity on city-owned land, the TTCA's recreational use statute applied and Fernandes had to plead and prove gross negligence to establish a waiver of governmental immunity. The trial court denied the city's plea.

The appellate court reversed the trial court and dismissed Fernandes's claims for lack of subject matter jurisdiction, holding that: (1) riding down a waterslide constitutes recreational use for the purposes of the recreational use statute; and (2) there was no evidence that the city knew of the danger or that the waterpark's employees acted with conscious indifference to Fernandes's safety. Therefore, Fernandes had not shown the gross negligence that would be required to defeat governmental immunity under the recreational use statute.

City of Corpus Christi v. Nickerson, No. 13-22-00040-CV, 2024 WL 48181 (Tex. App.—Corpus Christi—Edinburg Jan. 4, 2024, pet. filed) (mem. op.). Nickerson sued the City of Corpus Christi under the Texas Tort Claims Act (TTCA) after she was struck by a John Deere tractor operated by a coworker. The city filed a plea to the jurisdiction arguing that the TTCA did not waive the city's immunity with respect to Nickerson's claim because she received worker's compensation benefits under the Texas Workers Compensation Act (TWCA). The trial court denied the plea and the city appealed.

The appellate court reversed, holding that when the TWCA applies, it acts as a bar to the waiver of immunity contained in the TTCA.

City of Corpus Christi v. Rios, No. 13-21-00414-CV, 2023 WL 7851900 (Tex. App.—Corpus Christi—Edinburg Nov. 16, 2023, pet. denied) (mem. op.). Rios sued the City of Corpus Christi under the Texas Tort Claims Act (TTCA) after she was injured in a traffic accident involving a stolen city police vehicle driven by a suspect who had been placed under arrest and left inside the vehicle. The city filed a plea to the jurisdiction arguing that it was protected by governmental immunity, which the trial court denied. The city appealed.

The appellate court reversed and rendered judgment, holding that the officers were performing a discretionary function when they arrested the suspect and placed him in the vehicle, so the officers were entitled to official immunity. Therefore the city's governmental immunity had not been waived.

City of Dallas v. Holmquist, No. 05-23-00276-CV, 2023 WL 6547911 (Tex. App.—Dallas Oct. 9, 2023). Remy Holmquist sued the city of Dallas for negligence after falling into a hole in a grassy area after stepping off a sidewalk in one of the city’s parks at night. Holmquist originally claimed the hole was a premise defect under Tex. Civil Practice & Remedies Code Sec. 101.022(a). After the city filed a plea to the jurisdiction, Holmquist amended his petition claiming the hole was a special defect under Sec. 101.022(b). After a hearing, the trial court denied the city’s plea, and the city filed an interlocutory appeal.

The court of appeals, in reversing the trial court’s order, held that the hole was neither a special defect nor a premise defect where: (1) it was in a grassy area off the walking path not intended for use by pedestrians in the park and Holmquist did not act as an ordinary user when he walked in this area; and (2) Holquist presented no evidence the city had any actual knowledge of the hole or was grossly negligent.

City of Fredericksburg v. Boyer, No. 08-23-00236-CV, 2024 WL 101878 (Tex. App.—El Paso Jan. 9, 2024). Susanna Boyer was injured by a falling branch from a Bradford pear tree maintained by the City of Fredericksburg while walking on a sidewalk. She accused the city of negligence in maintaining the sidewalk and the tree, failing to warn the public about the tree’s danger, and not removing or mitigating the hazard. The city filed a plea to the jurisdiction claiming immunity under the Texas Tort Claims Act (TTCA), arguing it lacked actual knowledge of the tree’s dangerous condition. The trial court denied the city’s plea, so the city appealed.

Generally, cities have immunity from liability and lawsuits unless that immunity has been waived. The TTCA contains a limited waiver of governmental immunity. For premises defects, a city owes the same duty to a claimant that a private person owes to a licensee on private property; therefore, in premises defect cases like this one, the TTCA would waive immunity if the city would be liable under a licensee theory of premises liability. To be successful in her claim, absent willful, wanton, or grossly negligent conduct by the city, Boyer had to prove, among other elements, that the city had actual knowledge of the dangerous condition. Mere hypothetical or constructive knowledge is not sufficient to satisfy this element. Boyer presented expert testimony related to the Bradford pear’s species-specific failure profile; however, the court found that the testimony did not rise to the level of actual knowledge on the part of the city. Consequently, the trial court’s order was reversed, and the case was dismissed for want of jurisdiction.

City of Hidalgo–Tex. Mun. Facilities Corp. v. Rodriguez, No. 13-23-00163-CV, 2024 WL 119245 (Tex. App.—Corpus Christi–Edinburg Jan. 11, 2024, pet. filed) (mem. op.). Rodriguez sued the City of Hidalgo–Texas Municipal Facilities Corporation (the city) under the Texas Tort Claims Act (TTCA), alleging a premises defect at a city-owned arena that was leased to the school district for which Rodriguez worked after she stepped into a sewage connection point (which she identified as a pothole or protruding steel cover) and fell, injuring her knee. The city filed a plea to the jurisdiction, claiming that: (1) Rodriguez could not identify a dangerous condition as required for a premises defect claim under the TTCA because she was unsure what she tripped over, had not seen it before she tripped, and it was not unreasonably dangerous; and (2) Rodriguez was a licensee and not an invitee, and therefore the city owed her a lower duty of care. The trial court denied the city’s plea and the city appealed.

The appellate court affirmed, holding that there were genuine issues of material fact as to: (1) whether the sewage connection point was an unreasonably dangerous condition; and (2) whether Rodriguez was an invitee or a licensee because although she had not paid to be on the premises, the school district for which she worked had paid.

City of Houston v. Branch, No. 01-21-00255-CV, 2024 WL 332993 (Tex. App.—Houston [1st Dist.] Jan. 30, 2024, pet. filed). Branch sued the City of Houston for negligence under the Texas Tort Claims Act (TTCA), claiming negligent operation of a motor vehicle when a golf cart occupied by a city council member rolled forward over Branch’s foot, allegedly when the councilmember accidentally hit the gas. The city filed a motion for summary judgment claiming governmental immunity, which the trial court denied. The city appealed.

The appellate court affirmed, holding that Branch had raised a fact issue regarding the application of the TTCA’s waiver of immunity for negligent operation of a motor vehicle because if the councilmember hit the gas pedal on the golf cart, even inadvertently, it might constitute operation of a motor-driven vehicle within the meaning of the waiver.

City of Houston v. Bustamante, No. 01-22-00699-CV, 2023 WL 5110982 (Tex. App.—Houston [1st Dist.] Aug. 10, 2023) (mem. op.) Bustamante sued the City of Houston after she, Elisondo, and their children were injured in a collision with a city emergency vehicle when the vehicle entered an intersection without slowing and struck Bustamante’s vehicle. Bustamante gave notice of her claim under the TTCA about five months after the incident. The city filed a motion for summary judgment claiming governmental immunity, arguing that Bustamante had not provided notice of her claim within ninety days as required by the city charter. The trial court denied the city’s motion and the city appealed.

The appellate court affirmed, holding that although Bustamante had not provided timely notice as required by the city charter, there was a genuine issue of material fact as to whether city had actual notice of a possible claim against it because the city had undertaken an investigation as a result of the incident, showing that the city had the necessary information to alert it of its potential liability.

City of Houston v. Cruz, No. 01-22-00647-CV, 2023 WL 8938408 (Tex. App.—Houston [1st Dist.] Dec. 28, 2023) (mem. op.) Cruz sued the City of Houston under the Texas Tort Claims Act (TTCA) when the car she was driving collided with a vehicle driven by Jamison, an animal control officer who was responding to a call about an animal bite. Jamison’s view was partially blocked by a dump truck, but she proceeded into the intersection and was struck by Cruz’s vehicle. The city filed a motion for summary judgment claiming governmental immunity, and the trial court denied the motion. The city appealed, arguing that it was entitled to government immunity because Jamison did not breach a legal duty as required to trigger the waiver of immunity under the TTCA, the TTCA’s emergency exception applied because Jamison was responding to an animal bite when the collision occurred, and the TTCA does not waive immunity for negligence per se.

The appellate court affirmed, holding that: (1) there was an issue of fact as to whether Jamison breached a legal duty by proceeding into the intersection with her view partially blocked; (2) the city did not meet its burden to establish the applicability of the emergency exception to the TTCA's waiver of immunity; and (3) negligence per se is not a separate claim, but a method of proving negligence, and because Cruz had adequately alleged negligence under the TTCA she was not required to establish a separate waiver for negligence per se.

City of Houston v. Edwards, No. 01-22-00709-CV, 2023 WL 5021217 (Tex. App.—Houston [1st Dist.] Aug. 8, 2023) (mem. op.) Edwards sued the City of Houston for injuries he received when a city police car driven by a police officer who was rushing to get to another location to assist an officer in a foot pursuit of a suspect collided first with a city fire engine that was responding to a medical emergency and then with her vehicle. Edwards claimed that the emergency-response exception to the Tort Claims Act did not apply because both the fire engine driver and the police officer would not have been entitled to official immunity. The city filed a plea to the jurisdiction, claiming governmental immunity. The trial court denied the plea and the city appealed.

The appellate court reversed, holding: (1) that the fire engine driver was entitled to official immunity because he was acting in his discretion in determining that the need to respond to a medical emergency outweighed the risk of harm to the public; and (2) the police officer was entitled to official immunity because he was acting in his discretion in determining that the need to assist another officer outweighed the risk of harm to the public; and (3) because both employees would have been entitled to official immunity, the emergency-response exception to the TTCA's waiver of immunity to suit applied.

City of Houston v. Flores-Garcia, No. 14-21-00680-CV, 2023 WL 4196541 (Tex. App.—Houston [14th Dist.] June 27, 2023) (mem. op.). Kevin Lancaster, a Senior Plant Operator at the Houston Public Works Department, ran a stop sign while driving a city-owned car, and hit Flores-Garcia's vehicle. On the day of the accident, Lancaster stopped at a convenience store near the collision site for unknown reasons, but stated that it was not related to his job duties. He also could not recall his destination after leaving the store when the accident occurred. Flores-Garcia sued the city for negligence, alleging that Lancaster failed in a number of respects concerning safe driving and that the city's immunity was waived under the Texas Tort Claims Act (TTCA) due to Lancaster acting within the scope of his employment during the collision. The city contested the claim, arguing through a motion for summary judgment that the limited waiver of governmental immunity under the Texas Tort Claims Act did not apply, because Lancaster was not acting within the scope of his employment when the accident happened. The trial court denied the city's motion, and the city appealed.

A governmental unit is typically not liable for the torts of their agents, unless there is a constitutional or statutory waiver of immunity. The TTCA provides such a waiver, allowing for a governmental unit's immunity to be waived in cases of personal injury arising from the negligent use of a motor vehicle by an employee acting within the scope of their employment and when the employee would be personally liable under Texas law. The determination of whether a person is acting within the scope of their employment depends on whether the act causing the injury was in furtherance of the employer's business and for the accomplishment of the objective for which the employee was employed. In cases where a vehicle involved in a collision is owned by the driver's employer, it is generally presumed that the driver was acting within the scope of their employment; however, evidence of the driver being on a personal errand at the time of the accident can rebut this presumption. An action is considered to be outside the scope of employment if it occurs as part of an independent course of conduct not intended by the employee to serve any purpose of the employer. Nonetheless, mixed motives do not necessarily exclude an action from being within the scope of employment if the action also serves a purpose for the employer. In the current case, Lancaster's regular work duties included driving a city-owned vehicle to inspect water complaints and flush hydrants. The city wanted the court to infer that Lancaster was still deviating from his duties after leaving the convenience store, but the court pointed out that they must resolve any doubts in favor of the nonmovant during a motion for summary judgment. The court concluded that the evidence did not definitively establish that Lancaster was on a personal errand at the time of the accident. As such, the court rejected the city's sole issue on appeal, upholding the trial court's decision to deny the city's motion for summary judgment.

City of Houston v. Gomez, No. 14-21-00761-CV, 2023 WL 5535824 (Tex. App.—Houston [14th Dist.] Aug. 29, 2023, pet. filed) On a cold and rainy Christmas Eve, Maria Christina Gomez was involved in a collision with a City of Houston police car driven by Officer Bobby Joe Simmons at an intersection in Houston. At the time, Simmons was responding to a robbery-in-progress call. Gomez sued the city alleging negligence, and the city filed a plea to the jurisdiction asserting governmental immunity. Conflicting testimony exists with regard to certain facts about the collision. According to Simmons, he was driving with his emergency lights activated but no siren and claimed to have been following the speed limit. Gomez disputed Simmons's use of emergency lights. Ultimately, the trial court granted the plea to the jurisdiction dismissing the case, and Gomez appealed.

The appellate court at that time held that the city had not conclusively demonstrated that Simmons acted in good faith and that there were unresolved fact issues related to the emergency exception to waiver of immunity. The trial court's decision was overruled, and the case was remanded for further proceedings. The lower court ultimately denied a supplemental plea filed by the city, leading to the instant appeal. In this appeal, the city raised two issues: (1) that the city established Simmons acted in good faith, and (2) that Gomez failed to raise a genuine issue of material fact regarding Simmons's good faith.

Cities are generally protected from lawsuits by governmental immunity unless that immunity is waived. The Texas Tort Claims Act provides a waiver of governmental immunity for damage or injury caused by an employee's negligent act during the scope of their employment, especially when it involves the use of a motor vehicle. The standard for evaluating official immunity hinges on the officer's good faith and whether a "reasonably prudent officer" in similar circumstances might have acted the same way based on the information available at the time. This assessment considers the necessity of the officer's response and the associated risks, evaluating the urgency and alternative actions available as well as the potential harm and likelihood of adverse outcomes. In this case, the city's evidence failed to conclusively establish Simmons's good faith, as the city's position is based on a disputed fact concerning the use of emergency lights, which was a significant aspect influencing the needs and risk analysis. Given that the city did not definitively prove Simmons acted in good faith, the court upheld the trial court's decision not to dismiss the case. Additionally, in order to reverse the court's earlier opinion on the question of whether the emergency exception applied in this case, the city would have needed to demonstrate that the court's earlier opinion was clearly erroneous. In the prior opinion, the court held that that Gomez, the plaintiff, successfully raised a fact issue defeating the application of the emergency exception to the waiver of governmental immunity. The court highlighted that because the city produced no new evidence to counter Gomez's claim of recklessness by Simmons, the original decision of the court would stand.

Ultimately, the court overruled the city's arguments on appeal and upheld the trial court's judgment denying the plea to the jurisdiction, which essentially means that the case will continue in the trial court, with the city unable to claim governmental immunity at this time.

City of Houston v. Gonzales, 682 S.W.3d 921 (Tex. App.—Houston [14th Dist.] Jan. 18, 2024) (on reh'g). In January 2016, while driving with his training officer, Houston Police Department probationary peace officer Daniel Iwai collided with the rear bumper of another vehicle while responding to a priority-two call for assistance. Jonathan Gonzalez, who was in the other vehicle, sued the city for injuries he sustained in the collision and was awarded \$250,000 at the conclusion of trial. Houston raised several issues on appeal, but the only one reached by the court was regarding an abuse of discretion by the trial court for not dismissing the case for lack of jurisdiction.

Generally, cities have immunity from liability and lawsuits unless that immunity has been waived. The Texas Tort Claims Act provides a limited waiver of governmental immunity for torts committed by city employees "acting within the scope of their employment" arising from the operation or use of motor-driven vehicles under certain circumstances. However, an exception to this waiver exists when a city employee is responding to an emergency. To prevail in this case, Gonzales needed to present evidence establishing at least one of the following: (1) the officer was not responding to an emergency, (2) the officer's actions were not in compliance with laws or ordinances applicable to emergency action, or (3) the officer's actions reflected a conscious indifference or disregard for the safety of others. At trial, both sides presented evidence regarding whether or not Iwai was responding to an emergency situation, and although the appellate court found the evidence to be inconclusive on this point, because the trial court rendered judgment for Gonzales, the appellate court held that the lower court's findings were "not factually insufficient" to support the judgment against the city. Ultimately, the appellate court affirmed the trial court's ruling; however, due to a procedural rule, the award to the plaintiff was lowered from \$250,000 to \$100,000.

City of Houston v. Green, 672 S.W.3d 27 (Tex. June 30, 2023). The primary issue in this case is whether the record contains evidence that a city police officer was driving “with reckless disregard for the safety of others” at the time of the accident.

A motorist brought an action against the city seeking to hold it vicariously liable for a police officer’s alleged negligence and independently liable for negligently hiring, training, and supervising the officer following a motor vehicle accident involving the officer while he was responding to an emergency call.

The Supreme Court held that the officer did not act with reckless disregard when the accident occurred, and thus, the emergency exception to waiver of governmental immunity under the Tort Claims Act applied.

City of Houston v. Huff, No. 01-22-00496-CV, 2023 WL 8938406 (Tex. App.—Houston [1st Dist.] Dec. 28, 2023) (mem. op.) Two City of Houston police officers made an improper left turn and struck a vehicle driven by Huff. Huff sued the city asserting negligence under the Texas Tort Claims Act (TTCA). The city filed a motion for summary judgment, claiming governmental immunity because Huff had failed to provide the city timely notice as required by the TTCA and the city’s charter. The trial court denied the motion and the city appealed.

The appellate court affirmed, holding that although Huff had not provided formal notice of his claim for personal injury, the city had actual notice of Huff’s possible injuries due to Huff lying in the road complaining of injuries and being carried away on a backboard, and the city had actual notice of the officers’ alleged fault in contributing to the injury because the city’s accident report expressly assigned fault to the officers.

City of Houston v. Ledesma, No. 01-22-00377-CV, 2023 WL 5535668 (Tex. App.—Houston [1st Dist.] Aug. 29, 2023, pet. filed) (mem. op.) Ledesma sued the City of Houston after she was allegedly injured in a collision with a Houston Police Department vehicle driven by Suarez, who was off-duty and travelling to her second job but was wearing an HPD uniform. The city filed a motion under the Texas Tort Claims Act’s (TTCA) election-of-remedies provision to dismiss Suarez from the suit, which the trial court granted, and then the city filed a motion for summary judgment claiming immunity under the TTCA, arguing that Suarez was not acting in the scope of her employment at the time of the collision. The trial court granted the motion for summary judgment and Ledesma appealed.

The appellate court reversed the grant of the motion for summary judgment and remanded to the trial court, holding that by moving to dismiss the claims against Suarez under the TTCA’s election-of-remedies provision, the city had judicially admitted that Suarez was acting in the scope of her employment. The city filed a motion for en banc rehearing which was denied and a petition to the Supreme Court which was also denied. The city then filed a plea to the jurisdiction in the trial court, the trial court denied the plea, and the city appealed.

The appellate court affirmed, holding that its prior decision had addressed all aspects of the city's arguments concerning the judicial admission issue and so the law-of-the-case doctrine applied. The appellate court denied Ledesma's request for sanctions against the city, holding that although it was a close question whether the city's appeals was frivolous, sanctions were not appropriate under the circumstances.

City of Houston v. Salazar, 682 S.W.3d 911 (Tex. App.—Houston [14th Dist.] Jan. 11, 2024). Sammy Salazar, among others, was in a vehicle which was hit by a patrol car driven by Officer Seidel of the Houston Police Department while he was pursuing another individual. The appellees sued the City of Houston and Officer Seidel for negligence. The city moved for summary judgment, claiming governmental immunity, which the trial court denied, leading to this interlocutory appeal.

Generally, cities have immunity from liability and lawsuits unless that immunity has been waived. The Texas Tort Claims Act provides a limited waiver of governmental immunity for torts committed by city employees “acting within the scope of their employment” arising from the operation or use of motor-driven vehicles if the employee would be personally liable to the claimant under Texas law. Officer Seidel would have official immunity from this suit if he could prove the lawsuit arose from (1) the performance of discretionary duties, (2) undertaken in good faith, (3) provided he was acting in the course and scope of his authority. In this case, the “good faith” element was in question, and to prevail on this element, Officer Seidel needed to show that a reasonably prudent police officer, under the same or similar circumstances, could have believed his actions were justified based on the information he possessed at the time. The city presented evidence related to Seidel's use of sirens and lights throughout his pursuit and other evidence demonstrating his considerations of the needs of the pursuit versus its risks. The appellate court determined that Officer Seidel did establish the affirmative defense of official immunity and therefore reversed the trial court's ruling and dismissed the claims against Houston for lack of subject matter jurisdiction.

City of Houston v. Walker, No. 01-22-00632-CV, 2023 WL 4937495 (Tex. App.—Houston [1st Dist.] Aug. 3, 2023) (mem. op.) Walker sued the City of Houston after her husband died in a collision at an intersection in which he and a car coming in the opposite direction both thought they had green lights. Walker alleged that the collision was caused by the misuse of safety louvers, which are devices designed in traffic lights to deliberately obscure the color of the light until the driver is a certain distance away.

Walker alleged that governmental immunity was waived under the TTCA because her husband's death was caused by a condition of tangible property. The city filed for summary judgment based on governmental immunity, arguing that the TTCA does not waive a government's immunity for discretionary acts and that the TTCA's waiver of immunity for unsafe conditions of personal property is restricted by Section 101.060 of the Act, which generally provides that the TTCA does not waive governmental immunity for claims about the condition of a traffic light unless the city was notified of the condition at issue and failed to correct it within a reasonable time. The trial court denied the city's motion for summary judgment.

The appellate court reversed, holding that the TTCA did not waive immunity for Walker's claims because: (1) the use of the louvers was a discretionary act by the city; and (2) Section 101.060 applied because Walker had not provided any evidence showing that the city was notified of the condition of the traffic light.

City of Houston v. Wilson, No. 01-22-00796-CV, 2023 WL 5615817 (Tex. App.—Houston [1st Dist.] Aug. 31, 2023) (mem. op.) Wilson sued the City of Houston after allegedly being injured in a vehicle collision with Williams, a city employee. The city filed a combined motion to dismiss and motion for summary judgment, claiming immunity under the Texas Tort Claims Act (TTCA) because the city had not received timely formal or actual notice of Wilson’s claims. The trial court denied the motion and the city appealed.

The appellate court reversed and rendered judgment dismissing the claims, holding that: (1) although Wilson’s claim letter included a date within the ninety day notice period required by the city charter, the letter was not sent in the mail until after the period expired, so the city did not receive timely formal notice of her claims; and (2) because there was no indication at the time of the collision that Wilson was injured and the existence of property damage to the vehicles does not constitute notice of a possible personal injury, the city did not have timely actual notice of Wilson’s claims.

City of Houston v. Wilson, No. 14-22-00368-CV, 2023 WL 5368101 (Tex. App.—Houston [14th Dist.] Aug. 22, 2023) (mem. op.) Emmitt Wilson sued the City of Houston following a collision that occurred involving a city fire engine. Engine 43, being driven by Jason Carroll, was responding to a collision and needed to reverse due to heavy traffic. Wilson encountered Engine 43 at an intersection. Wilson, being behind the engine and seeing it reversing, also began reversing but had to stop to avoid hitting another vehicle. Engine 43 continued reversing and collided with Wilson’s vehicle. The city sought summary judgment, claiming Carroll was protected by official immunity as he was performing his discretionary duties in good faith at the time of the accident. Because of factual disputes between the parties, the trial court denied the city’s motion for summary judgment, resulting in this appeal.

Cities are generally immune from being held liable for an employee’s actions unless this immunity is waived. In the context of this case, a potential waiver of immunity is guided by the Texas Tort Claims Act, which stipulates that a governmental unit may be held liable for damage or injury caused by an employee’s wrongful act or negligence when operating a motor-driven vehicle, provided the employee would be personally liable according to Texas law. A governmental employee is entitled to official immunity: (1) for the performance of discretionary duties; (2) within the scope of the employee’s authority; (3) provided the employee acts in good faith. An action is considered discretionary if it necessitates personal deliberation, decision, and judgment, contrasted with ministerial acts which entail adhering to orders or performing a duty where the employee has no choice. The focus is on whether the employee was performing a discretionary function rather than the discretion involved in potentially wrongful acts during that function or the job description including discretionary duties. The court concluded that Carroll was indeed engaged in discretionary duties at the time of the incident, given the undisputed evidence that he was responding to an emergency and making several critical decisions while navigating to the accident site. Therefore, the appellate court held that the trial court erred in its finding that the city failed to definitively establish that Carroll was undertaking discretionary duties during the collision.

The court then moved on to analyze whether the driver acted in good faith while taking these discretionary decisions. The court outlines that good faith is to be determined based on an objective standard of what a “reasonably prudent fire engine operator” could have believed in similar circumstances, emphasizing that it is not about what any reasonable person would have done but instead focuses on the possible beliefs of a reasonable operator in that profession. The legal framework utilized mandates considering both the “need” and the “risk” aspects of the situation, encompassing factors such as the urgency of the situation, the potential for injury or loss of life, alternative courses of action, the potential for harm caused by the fire engine operator’s actions, and whether a reasonably prudent operator would have been aware of the risk of harm. After analyzing the facts, the court found that the city met its burden of proving conclusively that Carrol was acting in good faith at the time of the incident, citing the detailed account provided by Carrol in an affidavit, which clearly addressed both the need and risk sides of the legal balancing test.

Finally, the court analyzed whether Wilson had provided evidence sufficient to raise a question of fact challenging the city’s good faith evidence. While Wilson did provide an additional piece of evidence, the court concluded that it failed to rebut the city’s proof of good faith. Ultimately, the court decided to reverse the trial court’s decision and render a judgment dismissing Wilson’s action, effectively siding with the city and concluding that Carroll was protected by official immunity and acting in good faith at the time.

City of Laredo v. Torres, No. 04-22-00453-CV, 2023 WL 6453823 (Tex. App.—San Antonio Oct. 4, 2023) (mem. op.) The plaintiff sued the city on February 18, 2021, for damages for a light pole that fell on him on February 18, 2019. The city filed a plea to the jurisdiction. The trial court denied the city’s plea and the city appealed.

The appellate court reversed and found: (1) there was a fact issue about the plaintiff’s timely notice of claim letter that identified the plaintiff, his injuries, and that a city lamp post fell on him; (2) the light pole was not a special defect; and (3) the city had no prior knowledge of the light pole as a dangerous condition so the plaintiff could not establish a premises defect.

City of Mesquite v. Wagner, No. 05-22-00826-CV, 2023 WL 3408528 (Tex. App.—Dallas May 12, 2023, pet. filed). After being bitten by an officer’s police service dog, Anthony Wagner sued the City of Mesquite asserting a negligence claim under the Texas Tort Claims Act (TTCA). The city denied the allegations of negligence and filed a plea to the jurisdiction raising, among other defenses, governmental immunity. The trial court subsequently denied the city’s plea, and the city filed an interlocutory appeal. The city claimed that: (1) the officer was entitled to official immunity which extended to the city; (2) Wagner’s injury had not been caused by the use of tangible personal property, as required to invoke a waiver of governmental immunity; (3) the claim did not arise out of negligent acts; and (4) because the officer was responding to an emergency call, the emergency-response exception to the governmental immunity waiver applied.

Affirming the trial court's order, the court of appeals first concluded that the city did not meet its burden to establish that the officer acted in good faith for purposes of official immunity. While the city presented an affidavit explaining the circumstances of the event, the evidence did not show that a reasonably prudent officer faced with the same circumstances could have believed the officer's conduct was justified. The court further held the officer was in possession of the police dog and using him to track burglary suspects when the police dog bit and caused Wagner's injuries; therefore, Wagner's injuries were caused by the officer's use of tangible personal property. To the city's argument that the officer's actions were intentional rather than negligent when using the police dog and excepted from the TTCA's waiver of immunity, the court determined that statements made in the officer's affidavit and his statements in an earlier incident memo raised fact issues about whether the officer was negligent. Lastly, the court concluded that even if the emergency-response exception applied to a situation involving an officer who is responding to a call for assistance, the evidence raised material fact issues as to whether the officer acted with conscious indifference or reckless disregard for Wagner's safety.

City of Uvalde v. Pargas, No. 04-23-00150-CV, 2023 WL 7005872 (Tex. App.—San Antonio Oct. 25, 2023) (mem. op.). The plaintiff sued the city for a premises defect and/or special defect when she fell in a hole and fractured her ankle while walking along FM 1435. The city filed a plea to the jurisdiction on multiple grounds, including that it did not owe a legal duty to the plaintiff because it did not own, control, or maintain the premises where she fell. At the hearing on the city's plea, Texas Department of Transportation's attorney represented that she believed the hole was in TxDOT's right-of-way. The trial court denied the plea.

On appeal, the appellate court found that: (1) there was some evidence that the city controlled the premises because: (a) the agreement between the city and TxDOT still required the city to require repairs of utility services and the hole was from a removed utility pole; and (b) the city made the repair after the plaintiff fell which shows control; (2) the plaintiff failed to present evidence that the city had actual knowledge of the hole for an ordinance premises defect; (3) there was a fact issue about whether the hole was a special defect and the city should have known about it; and (4) the city had a duty to repair the hole if it owned or controlled the land where the special defect is. The appellate court reversed the denial of the plea on the ordinary premises defect claim but affirmed on the other grounds.

Ferebee v. Law Office of Frank Powell, No. 01-22-00681-CV, 2023 WL 5918110 (Tex. App.—Houston [1st Dist.] Sept. 12, 2023) (mem. op. on re'hg.). Powell filed a motion for rehearing after the appellate court issued an opinion on his case against the City of Shenandoah for slander. Among other things, Powell alleged that Ferebee, the city attorney, made defamatory statements about him at a city council meeting. Ferebee filed a motion to dismiss under the Texas Tort Claims Act (TTCA), arguing that because Powell's pleadings affirmatively demonstrated that Ferebee was acting within the scope of his employment and the lawsuit could have been brought against the city, Ferebee was entitled to dismissal of the claims against him under the TTCA's election-of-remedies provision.

The appellate court reversed the trial court, holding that Powell's pleadings affirmatively demonstrated that the city officials, including Ferebee, who were defendants in the original suit were acting within the scope of their employment by making the statements during and after a city council meeting. Powell requested rehearing and the appellate court granted it. On rehearing, the appellate court reversed the trial court, again holding that Powell's pleadings had affirmatively demonstrated that Ferebee was acting within the scope of his employment at the time he made the allegedly defamatory statement.

Franz and South Texas Elderly Services, Inc., v. Interim Police Chief Romero Rodriguez and City of Hidalgo, No. 13-22-00413-CV, 2023 WL 5108966 (Tex. App.—Corpus Christi—Edinburg Aug. 10, 2023) (mem. op.) Franz sued the City of Hidalgo under the TTCA and Rodriguez and Sanchez in their individual capacity after Rodriguez and Sanchez removed a political sign located on Franz's property under the Election Code's prohibition on certain placement of political signs. Franz alleged that Rodriguez and Sanchez had violated 42 U.S.C. Section 1983. The trial court dismissed the individual claims against Rodriguez and Sanchez under Section 106.101(e) of the Texas Tort Claims Act, which requires that an employee be dismissed from a lawsuit that could have been brought against the city. Franz appealed, arguing that the trial court should not have dismissed his Section 1983 claims against the employees individually.

The appellate court affirmed, holding that because Franz had not pleaded any of the elements of a Section 1983 claim, the trial court correctly dismissed the claims under Section 106.101(e) of the Texas Tort Claims Act.

Hall v. City of Jersey Vill., No. 01-22-00452-CV, 2023 WL 3873351 (Tex. App.—Houston [1st Dist.] June 8, 2023) (mem. op.). Hall sued the City of Jersey Village when a golf ball struck her forehead while she was working at a restaurant at a city-owned golf course. The trial court granted the city's plea to the jurisdiction claiming governmental immunity and Hall appealed.

The appellate court reversed, holding that: (1) as to the premises liability claim, the city had provided no jurisdictional evidence negating the waiver of immunity, so the issue was pleading sufficiency and Hall should have been given an opportunity to amend her pleading; and (2) a fact issue existed with regard to whether the person who hit the golf ball that struck Hall did so in his capacity as a city employee.

Hous. Auth. of City of Austin v. Garza, No. 03-22-00085-CV, 2023 WL 4872981 (Tex. App.—Austin July 31, 2023) In 2017, the Housing Authority of the City of Austin (HACA) started a renovation project at one of its apartment complexes to comply with the Americans with Disabilities Act (ADA). As part of the project, HACA contracted with a project developer who subcontracted with S. Cook Construction Company, L.P. (Cook) for construction services. Cook then subcontracted with Specialty Tractor Landscaping, L.L.C. (Specialty Tractor) for landscaping and porch construction services. After the work commenced, Julia Garza, a tenant at the apartment complex, injured herself after stepping on loose dirt concealing thin wooden planks covering landscaping trenches. As a result, Garza sued HACA (and Cook and Specialty Tractor) under the theory of premises liability under the Texas Tort Claims Act (TTCA). Denying HACA's plea to the jurisdiction, the trial court ruled in favor of Garza. Thereafter, HACA filed an interlocutory appeal asserting governmental immunity and arguing Garza failed to present sufficient evidence for her premises-defect claim.

Citing to the Texas Supreme Court, the court of appeals explained that for a premises liability claim where a subcontractor is working, Garza would need to show HACA either (1) had a contractual right or (2) actually exercised control over the means, methods, or details of the independent contractor's work. Because Garza failed to show HACA had a contractual right to control the premises where she fell and only alleged that Cook and Specialty Tractor exercised actual control over the premises, the appellate court concluded HACA's governmental immunity had not been waived under the TTCA and reversed the trial court's order.

Martin v. Vill. of Surfside Beach, No. 14-22-00085-CV, 2023 WL 3476939, (Tex. App.—Houston [14th Dist.] May 16, 2023). On June 28, 2019, Martin was involved in a car accident with Pedro Gutierrez, an employee of the Village of Surfside Beach who was driving a village-owned truck. Martin sued Gutierrez and the village for negligence, claiming that Gutierrez failed to yield the right-of-way. The village argued that it had governmental immunity under the Texas Tort Claims Act because Gutierrez was not acting within the scope of his employment at the time of the accident. The trial court granted the village's plea to the jurisdiction and dismissed Martin's claims, leading to Martin's appeal.

Governmental immunity protects political subdivisions from lawsuits unless immunity has been waived by the legislature. The Texas Tort Claims Act (TTCA) provides a waiver of immunity for cases involving the use of a motor vehicle by an employee within the course and scope of their employment. A presumption exists that a driver is acting within the course and scope of their employment when a collision occurs in an employer-owned vehicle. However, this presumption can be rebutted with evidence of personal errands or actions not in furtherance of the employer's business. Additionally, the "coming-and-going rule" states that employees generally do not act within the course and scope of their employment when traveling to and from work. The village presented a declaration from Gutierrez stating that he was driving home after stopping to do some personal shopping when the collision occurred, which rebutted the presumption that Gutierrez was acting in the course and scope of his employment. Furthermore, the fact that Gutierrez was on call or wearing a village-branded shirt did not establish a connection to the employer's business at the time of the accident. The court held that the evidence demonstrated that Gutierrez was not acting within the course and scope of his employment, thereby concluding that the village's governmental immunity had not been waived. As a result, the trial court lacked jurisdiction over the plaintiff's suit, and the granting of the village's plea to the jurisdiction was not erroneous.

Trevino v. City of San Antonio, No. 04-22-00193-CV, 2023 WL 8607040 (Tex. App.—San Antonio Dec. 13, 2023). A city police officer was pursuing a suspect who stole a truck with activated sirens and emergency lights when the suspect hit the plaintiff's car, injuring the plaintiff and killing a passenger in the plaintiff's car. Plaintiff sued and the city filed a plea to the jurisdiction on three grounds, which the trial court granted. The plaintiff appealed. The appellate court affirmed the trial court because the plaintiff failed to address all grounds for the city's plea to the jurisdiction.

Wheeler v. Law Office of Frank Powell, No. 01-22-00479-CV, 2023 WL 5535670 (Tex. App.—Houston [1st Dist.] Aug. 29, 2023) (mem. op.) The Law Office of Frank Powell sued five employees of the city of Shenandoah alleging defamation based on statements they made during and after a city council meeting, and sued one city employee for defamation based on statements she made on a social media platform. The city employees filed a motion to dismiss under the election-of-remedies provision of the Texas Tort Claims Act (TTCA), arguing that Powell’s pleadings affirmatively demonstrated they were acting within the scope of their employment when they made the statements and were therefore entitled to dismissal of the claims. The trial court denied the motion and the city employees appealed.

The appellate court reversed the trial court and rendered judgment dismissing the claims against the five city employees, holding that Powell’s pleadings affirmatively demonstrated they were acting within the scope of their employment by making the statements during and after a city council meeting. The appellate court remanded the claim against the final city employee, holding that a fact issue remained as to whether the statements made on the social media platform were made in the scope of that employee’s employment.

Wilson v. City of Houston, No. 14-22-00666-CV, 2023 WL 6561249 (Tex. App.—Houston [14th Dist.] Oct. 10, 2023) (mem. op.). Brian Wilson was involved in a collision with a City of Houston fire truck on September 29, 2017. He filed a lawsuit against the City on September 27, 2019, claiming negligence and other causes of action under the Texas Tort Claims Act (TTCA). The city responded with a motion for summary judgment, citing, among other defenses, Wilson’s failure to provide timely notice of his claims, as required by the TTCA as well as the city’s charter. The trial court granted the city’s motion, and Wilson appealed.

The city’s charter mandates that written notice of a claim must be given within 90 days of the incident. Wilson attempted to overcome the city’s motion by submitting a letter expressing his intent to file a claim, a police report, and various pieces of evidence he claimed showed the city had actual notice of the incident, which the appellate court examined. The court stressed that for the city to have actual notice, it must have subjective awareness of its potential culpability. Ultimately, evidence submitted by Wilson was deemed insufficient to establish actual notice as it did not suggest the city was at fault. Wilson’s argument that the city had actual knowledge due to the involvement of its employees and the resulting damages and the fact that city employees knew he was injured was unconvincing, as the accident report charged Wilson with traffic violations rather than attributing fault to the city’s fire truck driver. Consequently, the appellate court affirmed the trial court’s judgment, dismissing Wilson’s lawsuit.

Voorhies v. Town of Hollywood Park, No. 04-22-00658-CV, 2023 WL 7171494 (Tex. App.—San Antonio Nov. 1, 2023) (mem. op.). Plaintiffs sued the city claiming: (1) the city did not use land dedicated “for recreational purposes only” for recreational purposes because it generated revenue by leasing the facility to private individuals for weddings, parties, and other events; and (2) the city’s use of the land diminished the value of plaintiffs’ property. The city filed a plea to the jurisdiction because its operation of a park was a governmental function and the challenged actions did not constitute a taking of the plaintiffs’ property. The trial court granted the plea and the plaintiffs appealed.

The appellate court affirmed and determined: (1) the city’s decisions about how, when, and by whom the property may be used are discretionary as part of an enumerated governmental function in operating a civic or community center; (2) the plaintiffs’ claims did not state a taking because they did not allege the noise rendered their home unusable or affected their property in a unique way different from the community as a whole; (3) plaintiffs’ claims for declaratory relief failed because they only alleged the city violated their own noise ordinances, not that an ordinance was invalid; and (4) the plaintiffs did not have standing to challenge the deed restriction on the city’s property.

Texas Department of Transportation v. Sonefeld, No. 07-22-00307-CV, 2023 WL 8856215 (Tex. App.—Amarillo Dec. 21, 2023, pet. denied) (mem. op.) This is a lawsuit over whether a four to six inch deep, six to seven inch wide, and up to two-hundred-foot-long separation in the road is a special defect. The plaintiff was injured when his motorcycle wheel got stuck in the separation on the road. The trial court granted his motion for summary judgment finding the separation was a special defect, and the case proceeded to a jury trial based upon the special defect. TxDOT appealed the verdict on the grounds that the separation was not a special defect.

The appellate court affirmed the judgment and: (1) overruled TxDOT’s argument that the defect could have been avoided so it was not an impediment to an ordinary user of the road; and (2) overruled TxDOT’s argument that the trial evidence was insufficient to demonstrate the separation existed for so long to reasonably discover the existence of the condition and make the condition reasonably safe.

LAND USE

City of Kyle, et al., v. Lila Knight et al., No. 03-21-00378-CV, 2023 WL 5597360 (Tex. App.—Austin Aug. 30, 2023) This case stems from a development agreement between the city and three landowners for the development and voluntary annexation of 3,268.6 acres of land in Kyle. The individual plaintiffs in the case, Lila Knight, Timothy A. Kay, Helen Brown-Kay as well as Save Our Springs Alliance, Inc., (collectively “SOS”) sued the city of Kyle and city officials for, among other things: (1) acting ultra vires in adopting amendments to the city’s comprehensive plan and transportation plan; (2) violating statutory and procedural rights granted to SOS under Chapter 211 of the Local Government Code; and (3) unconstitutionally contracting away the council’s legislative authority under the terms of the agreement. In response, the city filed a plea to the jurisdiction, a Rule 91a motion to dismiss, and a partial summary judgment motion. With respect to the above-mentioned claims, the trial court denied the city’s motions, and this interlocutory followed.

On appeal, the city argued that: (1) the trial court erred in denying the city’s plea to the jurisdiction with respect to SOS’s claim that the city acted ultra vires in approving the development agreement; and (2) SOS lacked standing to bring the claims. On the standing claim, the city relied on the court of appeals’ decision in *Save our Springs Alliance, Inc. v. City of Dripping Springs*, 304 S.W.3d 871 (Tex. App.—Austin, 2010) to support its argument that, like in *Dripping Springs*, SOS, Inc. lacked associational standing. However, the court distinguished the cases, explaining that unlike in *Dripping Springs*, the evidence in the record showed that SOS, Inc.’s members owned land near, and in some cases, obtained their groundwater through wells adjacent to and near the property that would “very likely increase their exposure to water contamination and pollution.” Addressing individual standing, the court of appeals concluded that SOS pleaded sufficient facts showing the individuals also lived close to the property to be developed, and one of the individuals, Mr. Kay, served on the planning and zoning committee and would no longer have discretion over voting decisions because of specific provisions in the development agreement.

The court of appeals also concluded that SOS pleaded sufficient facts showing city officials acted without legal authority in approving the development agreement. Specifically, the agreement included provisions adopting specific amendments to the city’s comprehensive and transportation plans in violation of procedural, notice, and hearing requirements under the Open Meeting Act and the city’s charter. For those reasons, the court of appeals affirmed the trial court’s order denying the city’s motions.

City of Dallas v. PDT Holdings, Inc., No. 05-22-00730-CV, 2023 WL 4042598 (Tex. App.—Dallas June 16, 2023, pet. filed). In this case, PDT Holdings, Inc. (PDT) sought to build a duplex on its property in Dallas. After submitting plans showing the building heights and being issued permits to build, PDT was later cited by a city inspector and issued a stop work order because the duplex’s parapet height exceeded the city’s 36-foot building height restriction. After correcting the violation, the city approved PDT’s amended building plans but later issued a second stop work order because the duplex’s overall height did not comply with city’s Residential Proximity Slope (RPS) ordinance which limited the height to 26 feet. PDT later applied for a variance from the Board of Adjustment on three separate occasions but was denied. Ultimately, the trial court ruled in favor of PDT barring the city’s enforcement of the RPS ordinance on the basis of the equitable estoppel doctrine. The city appealed thereafter.

Reversing the trial court, the court of appeals held that the case did not meet the threshold of “an exceptional case where manifest justice demanded departure from the general rule precluding estoppel against a municipality.” Although there were factors that weighed in favor of estoppel, PDT failed to establish the doctrine’s essential elements including a showing of affirmative misrepresentation on the part of the city and reasonable reliance by PDT on the misrepresentation. The court concluded that nothing in the record suggested the city deliberately calculated to induce PDT’s reliance. Rather, the city only mistakenly issued the building permits, and PDT’s reliance on those permits was not reasonable because PDT was responsible for reviewing all applicable ordinances, including the RPS ordinance, when it first applied for a building permit. As a result, the court reversed the trial court’s judgment and held that PDT was not entitled to relief on the basis of the equitable estoppel doctrine.

City of Live Oak v. Lee, No. 04-23-00022-CV, 2023 WL 4338957 (Tex. App.—San Antonio July 5, 2023) (mem. op.). The city erroneously issued a building permit to a homeowner to build in violation of the city’s setback requirements. When the city received notice from the plaintiffs of the error, the board of adjustment issued a variance for the homeowner and the plaintiffs sued. The city filed a plea to the jurisdiction and the trial court denied it. The city appealed.

The appellate court found that: (1) the plaintiffs did not need to obtain a writ of certiorari because they filed their petition within ten days after the date the board granted the variance request; (2) the city was not a proper party; and (3) the city failed to raise the issue of whether attorney’s fees were proper in the plea. The appellate court affirmed the plea but the appellate court remanded to the trial court to dismiss the city.

Badger Tavern LP, 1676 Regal JV, and 1676 Regal Row v. City of Dallas, No. 05-23-00496-CV, 2024 WL 1340397 (Tex. App.—Dallas Mar. 29, 2024) (mem. op.). This case stems from a certificate of occupancy issued to Badger Tavern, which operated a cabaret in Dallas called La Zona Rosa. In 2021, Badger Tavern applied to the city of Dallas for a certificate of occupancy record change to rename its business to La Zona Rosa dba Poker House of Dallas. During the approval process, there was some indication that Badger Tavern was changing its business operations from a cabaret to a private membership-based poker club. While the city issued the certificate of occupancy record change, it later sent Badger Tavern two notices that it was in violation of the city’s ordinances by failing to obtain the proper certificate of occupancy before changing the use of the property. When Badger Tavern failed to cease operations as a poker club and apply for a new certificate of occupancy, the city sued Badger Tavern seeking injunctive relief.

After a hearing, the trial court granted the city’s request, and Badger Tavern appealed. Badger Tavern argued that: (1) the trial court lacked jurisdiction because the city failed to first exhaust its administrative remedies by appealing to the city’s Board of Adjustment (BOA); (2) the court erred in granting an injunction under Texas Local Government Code Sections 54.016 (applicable to municipal health and safety ordinances) and 54.018 (an action for repair or demolition of a structure) when the city did not request relief under Section 54.018; and (3) the city failed to present sufficient evidence of a “substantial danger of injury or adverse health impact” to support a temporary injunction under Section 54.016.

In affirming the lower court, the court of appeals concluded that because the city was not alleging an error in a zoning decision but instead was enforcing a zoning ordinance violation by Badger Tavern, it was not required to appeal to the BOA. As for the grounds for injunctive relief, the court held that although the city did not present evidence as required under Section 54.016, it also sought temporary and permanent injunctive relief under Texas Local Government Code Section 211.012(c) (zoning ordinance violations and remedies). Because the record reflected that Badger Tavern changed the use of its property without first obtaining the proper certificate of occupancy and failed to cease operations as such, the evidence was sufficient to support temporary injunctive relief under Section 211.012(c).

City of Rusk, Texas, et al. v. 260 Office Park, Inc., et al., No. 12-22-00312-CV, 2023 WL 5663227 (Tex. App.—Tyler Aug. 31, 2023) (mem. op.) The Rusk Hotel in Rusk, Texas was being renovated and redeveloped. Once complete, the property was to be used for both commercial and residential uses. By September 2021, much of the work had been finished, and the city had issued a temporary certificate of occupancy for four of the second-floor residential units. Soon thereafter, the city enacted an ordinance which restricted residential use in the “Old Town Center” district, where the Rusk Hotel is located, and based on this ordinance, the city took steps to halt the redevelopment work at the hotel. The property owners filed a lawsuit in June 2022 alleging the city violated certain legal requirements in the passage of the ordinance and interfered with their vested property rights. The city filed a plea to the jurisdiction, countering that aspects of the case were either not ripe or were moot, and that the plaintiffs have not exhausted all administrative remedies. The trial court denied the city’s plea to the jurisdiction, and the city appealed. In the opinion the court analyzed alleged violations of state law related to local zoning ordinances, vesting issues, and the Texas Open Meetings Act (TOMA). After analyzing whether certain aspects of the property owners’ case were moot or ripe, the court ultimately sustained the trial court’s denial of the plea to the jurisdiction in part and overruled it in part. The court found that the owners had standing to pursue their TOMA and zoning claims, but that their vesting claims failed for lack of ripeness. Ultimately, the case was remanded back the trial court for further proceedings.

Stone v. Harris County, No. 01-21-00384-CV, 2023 WL 5615812 (Tex. App.—Houston [1st Dist.] Aug. 31, 2023) (mem. op.) Stone sued the City of Houston and Margaret Brown in her official capacity as director of the city’s planning department, alleging the planning commission had violated Chapter 212, Local Government Code, by approving a replat that created problems on her property. Stone argued that the city’s immunity was waived because Brown’s approval of the replat was an ultra vires act. The city filed a plea to the jurisdiction alleging immunity under the Texas Tort Claims Act which the trial court granted, and Stone appealed.

The appellate court affirmed, holding that the city was immune from suit, and that Brown’s ultra vires claim failed because while a ministerial duty exists to approve a conforming plat, there is no corresponding ministerial duty to deny a nonconforming plat. Therefore, Brown had not acted without clear authority nor failed to perform a purely ministerial act as would have been required to support a claim that a government official acted ultra vires.

MUNICIPAL COURT

Holda v. City of Waco, No. 07-23-00341-CV, 2023 WL 8939230 (Tex. App.—Amarillo Dec. 27, 2023) (mem. op.). The city seized the plaintiff’s animals based on animal cruelty. The plaintiff did not appear at the municipal court hearing to determine if the animals had been cruelly treated and the municipal court issued an order divesting the plaintiff of her ownership of the animals. The plaintiff appealed to the county court and the county court issued a de novo order affirming all of the findings of the municipal court. The plaintiff appealed.

The plaintiff claimed the appellate court had jurisdiction under the federal Servicemembers' Civil Relief Act, which protects servicemembers from default judgment, and that the SCRA preempts the Texas law governing the animal cruelty case. The appellate court rejected the plaintiff's argument that the state law actually conflicts with the federal law because the plaintiff still had the option of filing a bill of review in the state trial court.

State v. Villa, 673 S.W.3d 43 (Tex. App.—Dallas July 18, 2023, pet. granted) After Whitney Villa was convicted of assault by contact and assessed a fine by the city of Mesquite Municipal Court (a municipal court of record), she appealed the judgment to the County Criminal Court of Appeals No. 1. The county court subsequently reversed the municipal court's judgment and remanded the case for a new trial. The municipal prosecutor's office (the State) then appealed the County Criminal Court's order to the Dallas Court of Appeals.

In its opinion, the appellate court reasoned that Texas Government Code Sec. 30.00014(a) only governs an appeal from a municipal court of record to certain courts such as county courts of appeals, but it does not apply to subsequent appeals from these courts to the courts of appeals. Further, appeals to the courts of appeals, which are governed by Sec. 30.00027, only grant an appellant the right to appeal if: (a) the fine assessed against the defendant exceeds \$100 and the judgment is affirmed by the appellate court; or (2) the sole issue is the constitutionality of the statute or ordinance on which a conviction is based. Because this case did not fit within these two categories, the court ultimately concluded that it lacked jurisdiction to hear appeals by the State in these instances.

Morris v. City of Midland, No. 11-22-00209-CV, 2023 WL 8262750 (Tex. App.—Eastland Nov. 30, 2023, pet. denied). Paula Morris was fined by the city of Midland's municipal court for multiple city ordinance violations including: (1) illegally parking a trailer or recreational vehicle in a residential area; (2) holding garage sales in excess of what was allowable; and (3) accumulating debris on her property. After failing to pay all the court ordered fines and continuing to violate city ordinances, the city sought a temporary injunction, permanent injunction, and civil penalties in district court. After a number of continuances, the trial court granted the city's request for a temporary injunction, but Morris continued to violate city ordinances and the temporary injunction. Thereafter the city filed a motion for summary judgment, and the trial court granted the city's motion and entered a final judgment for a permanent injunction. Morris subsequently appealed. Morris claimed, among other things, that: (1) the permanent injunction was unconstitutionally vague and violated Rule 683 of the Texas Rules of Civil Procedure; (2) the city failed to make a showing of irreparable harm and the lack of an adequate remedy at law; and (3) the city's nuisance ordinance was invalid.

The court held that because Morris failed to raise her constitutional claim and did not present any objections to the city's nuisance ordinance at trial, she waived appellate review on these issues. To Morris's claim that the permanent injunction violated Rule 683, the court clarified that the rule is only applicable to temporary injunctions. However, the court disagreed that the permanent injunction was unclear, and determined that the injunction clearly stated which activities she was enjoined from committing. Lastly, because the city offered ample evidence that Morris had repeatedly violated city ordinances and caused irreparable harm to her neighbors' use and enjoyment of their property, the court upheld the trial court's permanent injunction.

OPEN MEETINGS ACT

In re City of Amarillo, No. 07-22-00341-CV, 2023 WL 5279473 (Tex. App.—Amarillo Aug. 16, 2023, pet. dismissed) (mem. op.) Voters in Amarillo defeated a bond proposition for expansion of the city’s civic center. In response, the city created a three-step plan: (1) create a tax increment reinvestment zone (TIRZ) to fund the improvements; (2) issue tax anticipation notes; and (3) issue 30-year refunding bonds in the future to refinance the debt. The plaintiffs sued seeking to void the ordinances creating the TIRZ and the anticipation notes based on alleged violations of the Open Meetings Act. The case went to bench trial where the court invalidated the ordinances and the anticipation notes and awarded attorneys’ fees.

On appeal, the appellate court found: (1) the district court possessed jurisdiction to hear the plaintiff’s Open Meetings Act claims; (2) the city’s notice regarding the ordinance issuing the anticipation notice failed to substantially comply with the Open Meetings Act because it failed to give the reader adequate notice of the action the city sought to take and therefore the notes were void; (3) the award of attorneys’ fees was appropriate; and (4) there was no basis for reversal on the plaintiff’s issue that the ordinance did not comply with Government Code section 1431.008(b) because it would not afford plaintiff greater relief than what he had already received. The appellate court affirmed the trial court’s judgment.

PROCEDURE

City of Laredo v. Rodriguez, No. 04-24-00093-CV, 2024 WL 950627 (Tex. App.—San Antonio Mar. 6, 2024) (mem. op.). The trial court granted the plaintiff’s continuance on the city’s plea to the jurisdiction to allow for the taking of pertinent discovery. The city appealed that ruling. The appellate court rejected the city’s argument that the appellate court had jurisdiction because of the implicit denial of its plea to the jurisdiction. The appellate court found it did not have jurisdiction to hear the appeal because: (1) the trial court’s order was not a final judgment; (2) the trial court did not grant or deny the city’s plea to the jurisdiction. Additionally, the city had filed a contemporaneous petition for writ of mandamus, which remained pending.

City of Houston v. Jared Waldhoff, No. 01-22-00825-CV, 2023 WL 5110981 (Tex. App.—Houston [1st Dist.] Aug. 10, 2023) (mem. op.). Waldhoff sued the City of Houston seeking to overturn an administrative decision by the city that he had violated the Houston Airport System Operation Instructions, a decision that resulted in the permanent revocation of his access badge and the loss of his employment. He had entered the secure area of the airport through a nonstandard entrance but contended that it was not relevant because he submitted to a security check by a TSA agent before boarding. A reviewing trial court reversed the decision, reinstated Waldhoff’s badge, and issued an order stating that the conclusion that Waldhoff had violated the rule was not supported by substantial evidence nor was it free from legal error. The city appealed the judgment of the trial court, arguing that its administrative decision was supported by substantial evidence.

The appellate court affirmed, holding that the city’s argument amounted to a sufficiency of the evidence challenge, but that the city had not addressed the part of the trial court’s order stating that the administrative decision was not free from legal error. The appellate court reasoned that the evidentiary basis and the legal basis were independent grounds for the trial court’s ruling, so because the city had not challenged the legal basis it had waived any error.

ASC Beverages, LLC v. Tex. Alcoholic Beverage Comm’n, No. 01-22-00297-CV, 2024 WL 628870 (Tex. App.—Houston [1st Dist.] Feb. 15, 2024, pet. filed). ASC Beverages sued the Texas Alcoholic Beverages Commission (TABC) over the City of Houston’s denial of a permit to sell alcohol in its package store. TABC filed a plea to the jurisdiction, arguing that because it hadn’t denied the permit, there was no justiciable controversy between it and ASC. The trial court granted the plea and ASC appealed.

The appellate court affirmed, holding that a city is not acting as an arm of the TABC in granting or denying a beer and wine license, and that therefore the city’s denial of the permit did not create a justiciable controversy between ASC and the TABC.

Union Pacific Railroad v. Anderson Cty., No. 12-23-00152-CV, 2024 WL 739110 (Tex. App.—Tyler Feb. 22, 2024, pet. filed). The City of Palestine and Anderson County filed suit in state court seeking to enforce a state court judgment from 1955 that approved an agreement from 1954 that Union Pacific Railroad maintain a certain number of offices and employees in the city. The parties filed cross-motions for summary judgment regarding the continued validity of the 1954 agreement and 1955 judgment. Union Pacific also argued that the city’s arguments were estopped by issue preclusion after a federal court ruling, and that the agreement and judgment were both preempted by the Interstate Commerce Commission Termination Act (ITTCA).

The appellate court reversed the judgment of the trial court and rendered judgment, holding that: (1) the city’s arguments were barred by collateral estoppel based on identical litigation in federal court, despite the fact that the previous federal litigation concerned the validity of the agreement while the current litigation concerned the validity of the judgment; and (2) because the requirement that Union Pacific maintain employees and offices related to the movement of property by rail, it was expressly preempted by the ITTCA and therefore the requirement was void.

In re City of McAllen, 677 S.W.3d 746 (Tex. App.—Corpus Christi–Edinburg Sept. 18, 2023) The trial court ordered the mayor and a councilmember of the City of McAllen to personally attend mediation in an ongoing inverse condemnation suit. The city appealed the order. The appellate court reversed, holding that while the trial court does have the authority to require parties to send representatives with full authority to settle the case, it does not have the authority to choose which representatives a party must attend.

PUBLIC INFORMATION ACT

Johnson v. Bastrop Cent. Appraisal Dist., No. 07-23-00173-CV, 2023 WL 6389411 (Tex. App.—Amarillo Sept. 29, 2023, pet. denied) (mem. op.). Johnson requested records from the appraisal district. The appraisal district either failed to provide the information or notify Johnson it was requesting an attorney general opinion and Johnson filed a writ of mandamus, which the trial court denied. The appellate court withdrew its opinion from August 2023 and substituted this one.

In affirming the trial court’s denial of the plaintiff’s petition for writ of mandamus, the appellate court found that: (1) the plaintiff failed to establish that he requested “public information” from the appraisal district and instead, he requested specific answers to general inquiries; and (2) even accepting the factual allegations in the plaintiff’s petition as true, the petition did not present a justiciable controversy between the parties.

PUBLIC UTILITY REGULATORY ACT

In re Disney DTC, LLC N/K/A Disney Platform Distribution, Inc., Hulu, LLC and Netflix, Inc., No. 05-23-00485-CV, 2024 WL 358117 (Tex. App.—Dallas Jan. 31, 2024, mandamus denied). This case stems from a lawsuit in which 31 cities sued streaming providers Disney, Hulu, and Netflix for, among other things, failing to obtain state-issued certificates of franchise and refusing to pay the associated city franchise fees for use of city rights-of-way in providing their services pursuant to Chapter 66 of the Texas Public Utility Regulatory Act (PURA). In response to the lawsuit, the streaming providers filed a motion to dismiss arguing that: (1) cities lack the authority to enforce PURA’s franchise requirements against non-franchise holders like Disney, Hulu, and Netflix, and (2) because they do not build or operate facilities in city rights of way, they are not required to obtain state-issued certificates of franchise. After the trial court denied the streaming providers’ motion, they filed a writ of mandamus.

In ruling in favor of the streaming providers, the court concluded that although PURA provides cities with a limited cause of action against franchise holders, it does not allow for a cause of action against non-franchise holders. The Public Utilities Commission, through the attorney general, is the only entity authorized to determine who must be a franchise holder and how to enforce compliance for failure to obtain a franchise certificate. Because the streaming providers are not franchise certificate holders, the court held that the denial of the motion to dismiss was an abuse of discretion and ordered the trial court to vacate the denial order and to grant the streaming providers’ motion.

PURCHASING

City of Dallas v. Gadberry Constr. Co., Inc., No. 05-22-00665-CV, 2023 WL 4446291 (Tex. App.—Dallas July 11, 2023) This case involves a construction project in which the city of Dallas issued a request for sealed bids. After disqualifying a bidder, Gadberry Construction Company (Gadberry), for lack of experience and mixed reviews from its references, Gadberry sued the city. The trial court, ruling in favor of Gadberry, denied the city’s plea to the jurisdiction and granted a temporary injunction based on Sec. 252.061 of the Texas Local Government Code. The city subsequently appealed, arguing that Sec. 252.043(f) grants cities the authority to reject any and all bids for procurement contracts and Gadberry failed to establish a waiver of immunity. Because the city’s bid documents specifically notified bidders that it reserved the right to reject bidders for lack of experience for equivalent projects within the past three years and the city rejected Gadberry’s bid for that reason, the court determined the city did not violate the competitive bidding requirements of Chapter 252 and reversed the trial court’s order.

TAKINGS

ATI Jet Sales, LLC v. City of El Paso, 677 S.W.3d 180 (Tex. App.—El Paso July 5, 2023). The City of El Paso filed an original application for a tax warrant against ATI Jet Sales in July 2020 due to tax delinquency for the years 2017 to 2019, amounting to \$487,271.67. Consequently, Aircraft N277AL was seized. The city voluntarily returned Aircraft N277AL and moved to nonsuit ATI Jet Sales from the warrant case. In April 2021, ATI Jet Sales filed a lawsuit against the city alleging an unlawful taking and seeking a declaratory judgment that the seizure was unlawful, and the city filed a plea to the jurisdiction. The trial court dismissed the case due to lack of jurisdiction. ATI Jet Sales appealed, challenging the city’s plea to the jurisdiction regarding the collection of taxes, which ATI Jet Sales claimed amounted to an unlawful taking by the city. ATI Jet Sales also argued that the city exceeded its statutory authority, thereby waiving its governmental immunity. The crux of the appeal was jurisdictional, centering on whether the city acted lawfully in its tax collection practices, alleging that the city illegally seized property owned by one taxpayer, the entity ATI Jet West, in satisfaction of delinquent taxes owed by another taxpayer, ATI Jet Sales. The court disagreed, finding that inaccuracies on the appraisal roll did not absolve ATI Jet Sales of its tax liability and that the city acted within the bounds of its taxing authority. Additionally, the court found that ATI Jet Sales failed to raise a fact issue as to whether the city acted lawfully in the collection of taxes, which defeated its takings claim and its governmental-immunity waiver.

Capps v. City of Bryan, 685 S.W.3d 165 (Tex. App.—Waco Jan. 11, 2024). Landowner brought action against the city for inverse condemnation, alleging that (1) the city committed a new taking when it constructed a new electric transmission line outside of the areas of a right-of-way easement previously granted to city and across the landowner’s property in which he owned full interest at the time and (2) the city abandoned original easement when the old transmission line was removed. The trial court granted the city’s plea to the jurisdiction in part finding that the landowner did not have standing to bring an inverse condemnation action against the city. The landowner filed an interlocutory appeal.

The court of appeals reversed and remanding finding that the landowner had standing to bring an inverse condemnation proceeding based on allegations of a taking and damages to property he owned.

City of Lake Jackson v. Adaway, No. 01-22-00033-CV, 2023 WL 3588383 (Tex. App.—Houston [1st Dist.] May 23, 2023) (mem. op.). Property owners sued the City of Lake Jackson, asserting that the city took certain flood mitigation actions that caused their properties to flood. The owners brought claims for constitutional takings, nuisance, trespass, negligence, and a statutory taking under Chapter 2007, Gov’t Code. The city claimed that because the owners had not shown causation, they had failed to allege a claim for which governmental immunity had been waived. The trial court denied the city’s plea to the jurisdiction and the city appealed.

The appellate court affirmed in part, reversed and rendered in part, and reversed and remanded in part. As to the constitutional takings claim, the court held that the owners sufficiently pleaded that the city acted with the intent necessary to state a takings claim, the owners produced evidence to raise a fact question on the element of proximate cause, and the public-necessity exception to the waiver was an affirmative defense rather than a jurisdictional defect. As to the nuisance and trespass claims, the court held that because the owners had stated a viable takings claim, they had stated viable trespass and nuisance claims. As to the claims of negligence, the court held that the waiver of immunity in the Texas Tort Claims Act did not apply because there was no fact question with regard to whether the motor-driven equipment had caused the flooding. As to the statutory takings claim, the court held that Chapter 2007 did not apply to an action by a city.

Selinger v. City of McKinney, No. 05-23-00180-CV, 2024 WL 260500 (Tex. App.—Dallas Jan. 24, 2024) (mem. op.). Developer Stephen Richard Selinger sued the City of McKinney after his plat application to subdivide his 82-acre property into 331 lots was denied. His plans included construction of necessary sewer infrastructure including a package treatment plant, and because the tract of land was not served by the city’s water and sewer services, Selinger would contract with a special utility district to supply water to the subdivision. However, the city’s subdivision ordinance required developments in the extraterritorial jurisdiction to connect to the city’s water and sewer systems and to pay water and sewer impact fees, approximately \$482,000 in his case. After declining to alternatively enter into a facilities agreement with the city which would include waivers to some of the city’s subdivision ordinance requirements and require him to pay the impact fees if and when the city’s water and sewer transmission lines were extended to the development, the city denied Selinger’s plat application. Selinger then sued the city arguing, among other things, that the city’s actions constituted an illegal taking of his property. However, the trial court ruled in favor of the city, issuing 118 findings of fact and 30 conclusions in law supporting its judgment. Selinger subsequently appealed the court’s decision.

The court of appeals held that based on the factual findings at trial, the city’s exaction of impact fees did not constitute a compensable taking. In so holding, the court concluded that the city’s impact fees bore an essential nexus to the substantial advancement of a legitimate government interest because (1) the city had developed a capital improvements plan based on extensive engineering and land use studies, and (2) had established a formula which determined Selinger’s projected impact to the city’s water and sewer systems. In addition, the impact fees were roughly proportional to the projected impact of Selinger’s proposed development. To Selinger’s claim that that the city’s exaction lacked the required essential nexus and rough proportionality because he never intended to use the city’s water and sewer systems in his development, the court stated that his unilateral decision did not impact the city’s exclusive right to provide water service to properties (like Selinger’s) located within its certificate of convenience and necessity (CCN). The city also offered evidence at trial that Selinger’s property would likely become more marketable with reliable city utilities. For those reasons, the court of appeals affirmed the lower court’s decision.

Consol. Towne E. Holdings, LLC v. City of Laredo, 675 S.W.3d 65 (Tex. App.—San Antonio July 12, 2023) Consolidated Towne East Holdings, LLC (“Consolidated”) sued the city to develop land in the city’s extraterritorial jurisdiction. Consolidated sought water and sewer services from the city as part of its proposed development. The city required annexation before it would provide the services. Consolidated sued on the grounds that the city’s precondition for water and sewer services amounts to an unconstitutional taking and that denial of services is an ultra vires act by the city manager and the city’s director of utilities. The trial court granted the city’s summary judgment motion and dismissed Consolidated’s claims. Consolidated appealed.

The appellate court affirmed and dismissed the case without prejudice, finding: (1) the case was not ripe because whether annexation costs are roughly proportional to their asserted purposes is not ripe for resolution until those costs are authoritatively set; (2) Consolidated’s declaratory judgment claim on the city ordinance requiring annexation likewise failed because it was premature; and (3) Consolidated’s ultra vires claim failed because the city manager and director of utilities had authority in the city’s ordinances to deny providing water and sewer services to Consolidated.

Rivera v. San Antonio Water Sys., No. 04-22-00309-CV, 2023 WL 3609233 (Tex. App.—San Antonio May 24, 2023, pet. denied) (mem. op.). This case has some complicated facts surrounding the plaintiffs’ claims. Ultimately, some individuals sued the San Antonio Water System (SAWS) because of damage to a park when SAWS’s contractor was performing sewer work at the park, claiming: (1) inverse condemnation; (2) waiver pursuant to the Texas Tort Claims Act (the “TTCA”); and (3) waiver under the Texas Uniform Declaratory Judgments Act (the “UDJA”). The trial court granted SAWS’s plea to the jurisdiction and the plaintiffs appealed.

The appellate court affirmed, finding: (1) the plaintiffs did not provide SAWS notice of the claim required by the TTCA; (2) because the damages alleged by plaintiffs are at best the accidental or negligent result of SAWS’s purported failure to supervise, mitigate, or mediate the contractor’s work, there is no public benefit, and the properties cannot be said to be taken or damaged for public use; and (3) the individual who conveyed the park to the city does not have a declaratory judgment claim because the deed is not an ordinance or statute that provides a limited waiver of immunity.

TAXATION

City of Castle Hills v. Robinson, No. 04-22-00551-CV, 2024 WL 819619 (Tex. App.—San Antonio Feb. 28, 2024) (mem. op.). The city filed maintenance liens against the Robinson’s property before he obtained ownership and eventually sued along with other taxing entities filed suit against Robinson to recover delinquent property taxes. Robinson counter-claimed against the city, claiming the city had failed to notify her of and the previous owners of the code violations and maintenance liens and that her constitutional rights were violated by the failure to provide proper notice. The city filed a motion for summary judgment on the grounds that the trial court lacked jurisdiction over the counterclaims as well as non-jurisdictional grounds, which the trial court denied.

Affirming the denial of the city's motion, the appellate court interpreted the summary judgment motion on jurisdiction as a plea to the jurisdiction and addressed only those arguments. The court addressed some of the city's arguments and dismissed them because the plaintiff did not make claims against which the city argued. On the federal constitutional claims, the court determined that the city did not support its argument that Robinson could not establish the claims as a matter of law with any citations to evidence in the record. As for the statute of limitations argument, the court determined that since the pleadings only contained federal claims, the statute of limitations was not a jurisdictional requirement.

Wommack v. City of Lone Star, No. 06-23-00086-CV, 2024 WL 367601 (Tex. App.—Texarkana Feb. 1, 2024) (mem. op.). A councilmember sued the city for injunctive relief for violating state law when the city adopted its tax rate. The trial court dismissed his case without a hearing on the date the defendants filed their answer and a specific denial. The councilmember appealed. On appeal, the court determined that the councilmember was entitled to notice and a hearing before the trial court dismissed the appeal because the trial court misconstrued the specific denial as a Rule 91 motion to dismiss. The appellate court reversed the trial court's judgment and remanded the matter for further proceedings.

Rodriguez v. City of El Paso, No. 08-23-00004-CV, 2023 WL 6319337 (Tex. App.—El Paso Sept. 28, 2023) (mem. op.). The City of El Paso sued Eldon and Maria Rodriguez in October 2020 for unpaid property taxes from 2018 and 2019 and any other year taxes that became overdue during the case's duration. In September 2021, while the city's case was still pending, the defendants initiated a separate lawsuit to contest the valuation of their property by the El Paso Central Appraisal District for 2020 and 2021. This move halted the city's ongoing tax collection case. The city intervened in the defendants' valuation case, challenging the court's right to hear it. The court sided with the city and dismissed the defendants' valuation challenge. In July 2022, the city resumed its tax delinquency case, now including taxes from 2020 and 2021 which had also become overdue. The defendants argued that they had paid the 2018 and 2019 taxes and that their property was uninhabitable and worthless in 2020 and 2021. They provided a partial payment receipt and other supporting documents. While the city conceded the receipt of payment, they clarified that the provided check bounced due to insufficient funds. Ultimately, the trial court granted the city's motion for summary judgment, ordering payment of unpaid taxes for 2018-2021 and authorizing the seizure of the property to cover the debt.

Defendants appealed the trial court's ruling, asserting that the city and county appraisal district wrongly denied their 2018 and 2019 tax payments and raised issues related to tax notifications and property valuation, claiming genuine material fact issues that should prevent a summary judgment in the city's favor. Reviewing the record, the appellate court held that the city stated a prima facie case for a suit to collect delinquent taxes, which shifted the burden to the defendants to show that they have paid all taxes, penalties, and interest that would be due or that there is another defense. The defendants raised five issues against the city, including payment, lack of notice, overvaluation of the property, and two claims related to rejected protests. The court rejected each of defendants' arguments in turn and affirmed the trial court's judgment.

Jones v. Whitmire, No. 14-23-00550-CV, 2024 WL 1724448 (Tex. App.—Houston [14th Dist.] Apr. 23, 2024). The dispute centers on whether the City of Houston’s City Council correctly allocated ad valorem tax revenues to the Dedicated Drainage and Street Renewal Fund (Drainage Fund) as mandated by the city’s charter. Taxpayers James Robert Jones and Allen Watson contested that the city council underfunded the Drainage Fund by applying incorrect methodology to calculate the required allocation. The city disagreed, resulting in lengthy litigation. Houston’s Charter requires an allocation to the Drainage Fund based on proceeds from \$0.118 per \$100 of the city’s ad valorem tax levy, adjusted for debt service for certain bonds. The Taxpayers argued that the city council allocated significantly less than what was required, while the city council contended that their allocation methodology was aligned with the charter and influenced by another charter provision which limits growth in tax revenue collections (Revenue Cap). After the case was escalated to the Texas Supreme Court and remanded back, the trial court ruled in favor of the city. The Taxpayers appealed, disputing the council’s methodology, arguing that it deviated from the charter’s directives. The appellate court in this case sided with the Taxpayers, determining that the city’s methodology of allocating funds to the Drainage Fund was incorrect. The court ruled that the full 11.8 cents per \$100 of taxable property value should be allocated to the Drainage Fund before deducting debt service obligations, and without the application of the Revenue Cap to the allocation formula. The appellate court reversed the trial court’s decision, instructed the city to follow the charter’s explicit allocation formula, and enjoined the city from using an incorrect methodology. The Taxpayers’ request for mandamus relief was denied as they obtained an adequate remedy by appeal.

TEXAS CITIZENS PROTECTION ACT

Conrad v. Joiner, No. 01-22-00450-CV, 2023 WL 4356187 (Tex. App.—Houston [1st Dist.] July 6, 2023) (mem. op.). Joiner, mayor of Kemah, Texas, sued Conrad for defamation based on a series of critical Facebook posts, billboards, and posted signs alleging that Joiner had abused power, violated the Texas Open Meetings Act, acted ultra vires as mayor, and engaged in criminal activity. Conrad moved to dismiss the suit under the Texas Citizens Protection Act and the trial court denied the motion.

The appellate court reversed, holding that because Joiner’s claims were in reaction to Conrad’s exercise of free speech, the burden then shifted to Joiner to present evidence to show a prima facie case of defamation. Joiner had not presented evidence to show actual malice, so Conrad was entitled to dismissal of the claims against him under the TCPA.

TEXAS MEDICAL LIABILITY ACT

City of Alvin v. Fields, No. 01-22-00572-CV, 2023 WL 4003522 (Tex. App.—Houston [1st Dist.] June 15, 2023) (mem. op.). Fields was injured when the ambulance in which she was being transported was struck by a truck at an intersection after the ambulance driver entered the intersection at a yellow light to avoid jostling Fields. Fields sued the city, claiming the city’s governmental immunity had been waived under the Texas Tort Claims Act. The city filed a plea to the jurisdiction claiming governmental immunity and a motion to dismiss under the Texas Medical Liability Act. The trial court denied both, and the city appealed.

The appellate court affirmed the trial court's denial of the city's plea to the jurisdiction, holding that because Fields stated she was experiencing whiplash immediately after the accident, a fact issue existed as to whether the city had actual knowledge of Fields's claim. The appellate court reversed the trial court's denial of the city's motion to dismiss, holding that because the accident occurred while Fields was in an ambulance receiving care, the Texas Medical Liability Act applied to the claim, and therefore Fields would have had to file an expert report addressing standard of care, breach, and causation.

UNIFORM DECLARATORY JUDGMENT ACT

City of Kemah v. Joiner, No. 01-23-00105-CV, 2023 WL 8041040 (Tex. App.—Houston [1st Dist.] Nov. 21, 2023) (mem. op.). Carl Joiner, the former mayor of the City of Kemah, sued the city for a declaratory judgment compelling the city to release the results of an investigative report relating to Joiner's conduct in a renovation and expansion project for city hall and related infrastructure. Joiner, as mayor, saw the report but the city chose not to release the report to the public. The city filed a plea to the jurisdiction, claiming governmental immunity and challenging Joiner's standing to sue. The trial court denied the plea and the city appealed

The appellate court reversed and remanded, giving Joiner an opportunity to replead. The appellate court held that: (1) the Uniform Declaratory Judgment Act provides a waiver of immunity only for challenges to the validity of an ordinance or statute; (2) the Texas Open Meetings Act provides a waiver of immunity only for suits brought by mandamus or injunction; and (3) the Public Information Act provides a waiver of immunity only for suits brought by a district or county attorney or the attorney general. Therefore, Joiner had not met his burden to show a waiver of immunity.

UTILITY FEES

City of Pasadena v. APTVV, LLC, No. 01-20-00287-CV, 2023 WL 8814640 (Tex. App.—Houston [1st Dist.] Dec. 21, 2023, pet. filed) (mem. op.). Two apartment owners sued the City of Pasadena and two city officials seeking the repayment of fees paid to the city through a third-party utility and trash-collection billing. The third party added a 25 percent fee on nonresidential bills for trash-collection, which was then forwarded to the city in exchange for the exclusive right to collect trash in the city. The apartments owners alleged that the fee was an impermissible tax. The city moved for dismissal claiming government immunity and pointing to the failure of the apartment owners to identify a statutory waiver of immunity. The trial court denied the city's motion and the city appealed.

The appellate court affirmed, holding that the apartment owners were not required to show a statutory waiver of immunity because no legislative consent to sue is needed when a plaintiff seeks reimbursement of an unlawful tax.

WHISTLEBLOWER ACT

City of Valley Mills v. Chrisman, No. 13-22-00144-CV, 2023 WL 7851699 (Tex. App.—Corpus Christi—Edinburg Nov. 16, 2023, pet. denied) (mem. op.). Chrisman and Troxell sued the City of Valley Mills under the Whistleblower Act, claiming they were terminated in retaliation for making a police report alleging that city officials stole their deer feeders that they had installed on city property. The city filed a plea to the jurisdiction claiming governmental immunity, which the trial court denied. The city appealed.

The appellate court reversed, holding that because Chrisman and Troxell knew that personal deer feeders were not permitted on city property, they could not show that the police report they made was in good faith. Therefore, their Whistleblower Act claim failed and the city’s governmental immunity was not waived.

WORKERS COMPENSATION

City of Stephenville v. Belew, No. 11-22-00273-CV, 2024 WL 968970 (Tex. App.—Eastland Mar. 7, 2024). In 2014, Michael Belew, a firefighter and EMT for the City of Stephenville, passed away after developing pancreatic cancer. His spouse and legal beneficiaries (the Belews) applied for workers’ compensation death benefits under the Texas Workers’ Compensation Act (TWCA), asserting Michael’s cancer originated from his service as a city firefighter. To apply for the death benefit, a claimant proceeds through a benefits review conference, a contested-case hearing, and an appeal, if applicable, through the Texas Department of Insurance’s Division of Workers’ Compensation (TDI-DWC). During the contested hearing stage of the proceedings, a TDI-DWC officer determined that Michael had sustained a qualifying injury in the form of an occupational disease during the course of his employment with the city. The hearing officer relied on the “Firefighter’s Presumption” in Texas Government Code Chapter 607 which allows state governments to shift the burden of proving causation from a claimant to an employer. The officer also relied on a similar decision in which a firefighter suffered from pancreatic cancer and was determined to be eligible for workers’ compensation benefits. After appealing the administrative decision, the TDI-DWC upheld the hearing officer’s decision, and the city appealed to the district court.

The city argued that the presumption did not apply in Michael’s case, because pancreatic cancer did not meet the requirements under Section 607.055. The district court ruled in favor of the Belews, and the city appealed to the court of appeals. At the time of Michael’s death, the “Firefighter’s Presumption” statute required a claimant to show that: “the cancer was known to be associated with fire fighting or exposure to heat, smoke, radiation, or a known or suspected carcinogen ... or a type of cancer that may be caused by exposure to heat, smoke, radiation, or a known or suspected carcinogen as determined by the International Agency for Research on Cancer [IARC].”

After a thorough analysis of the statutory construction and plain meaning of the language, the court of appeals concluded that for the “Firefighter’s Presumption” to apply, Section 607.055 required a claimant to show by exclusively relying on IARC materials and determinations, a general causal link between the cancerous condition originating from the course and scope of the person’s employment and the specific exposures listed in the statute (heat, smoke, radiation, or a known suspected carcinogen). Ultimately, because the Belews failed to establish this causal link, providing no evidence of IARC determinations, the court held that Michael did not sustain a compensable injury under Texas Government Code Chapter 607. The court further held that the “Firefighter’s Presumption” did not apply to the pancreatic cancer Michael developed. As a result, the court reversed the trial court’s decision and rendered judgment in favor of the city.



DRIPPING SPRINGS
Texas

Recent State Cases of Interest to Texas Cities



Laura Mueller
City Attorney
City of Dripping Springs

Economic Development: City of League City v. Jimmy Changas, Inc., 670 S.W.3d 494 (Tex. June 9, 2023).

- Economic Development Agreement is **proprietary**.
 - (1) the city's act of entering into the contract was discretionary;**
 - (2) the contract primarily benefited the city residents and not the general public;**
 - (3) the city was acting on its own behalf and not on the State's behalf when it entered the contract; and**
 - (4) the city's decision to enter into the contract was not related to any governmental function.**



Public Purpose ≠
Governmental Use

No Immunity for Economic Development Agreements.

Eminent Domain: Hidalgo Cnty. Water Improvement Dist. No. 3 v. Hidalgo Cnty. Irrigation Dist. No. 1, 669 S.W.3d 178 (Tex. May 19, 2023)

- ▶ Does governmental immunity bar one political subdivision from bringing eminent-domain proceeding against another?
- ▶ Water Improvement District tried to purchase subsurface easement from Irrigation District. When the offer was rejected, WID filed condemnation action against ID.
- ▶ ***Supreme Court held that governmental immunity does not apply in eminent-domain proceedings.***



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Winner: Stalemate? Except it helped my city win

Eminent Domain: City of Dripping Springs v. Lazy W Conservation Dist., No. 03-22-00296-CV May 31, 2024.



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- ▶ Cities Rule, MUDs drool (technically all political subdivisions drool under this opinion as it relates to governmental immunity and eminent domain but we need the win)
- ▶ Paramount Public Purpose is not a jurisdictional issue
- ▶ Political subdivisions do not have governmental immunity from Eminent Domain.
 - ▶ **Back to the Trial Court . . .**

Winner: City!!!!!!!!!!

Employment Discrimination: Tex. Tech Univ. Health Scis. Ctr. – El Paso v. Niehay, 671 S.W.3d 929 (Tex. Jun. 30, 2023).

- Is morbid obesity (BMI > 40) an impairment under the Texas Commission on Human Rights Act (TCHRA)?
- Hecht in Majority uses analysis of federal law to add require of “physical impairment” to find a disability that can be protected including ill-informed language related to obesity
- Courts all over the country are divided but plaintiffs still have multiple avenues as it relates to physical impairments



Employment: City of Houston v. Carter, No. 01-22-00453-CV, 2023 WL 3632788 (Tex. App.—Houston [1st Dist.] May 25, 2023) (mem. op.)

- ▶ Continuation of Sexual Harassment no longer being a viable cause of action in Texas
- ▶ Multiple inappropriate text messages and one instance of inappropriate touching is not enough because employee did not feel “threatened” or “unsafe”
- ▶ Court of Appeal’s mem. op.: no prima facie case of sexual harassment.



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Employment: Moliere v. City of Buffalo, No. 10-22-00391-CV, 2023 WL 6307992 (Tex. App.—Waco Sept. 28, 2023)

- ▶ Police officer reprimanded by police chief but then fired by City Council for same activity.
- ▶ Officer sues city and mayor, challenging authority as Type-A general-law city to terminate his employment.
- ▶ Authority to fire police officer is fact issue under LGC Section 341.001
 - ▶ Ordinance authorized City Council to hire officers
 - ▶ Police Policy & Procedure Manual states Police Chief determines disciplinary action related to officers but can be appealed to Mayor
 - ▶ Employee Manual says the “City” has the ability to terminate but does not clearly authorize the City Council to do so



Remanded to Trial Court to figure out what it all means.

Employment: Tex. Woman's Univ. v. Casper, No. 02-23-00384-CV, 2024 WL 1561061, (Tex. App.—Fort Worth Apr. 11, 2024, pet. filed).

- ▶ Employee filed claim in federal court and then filed the same claim in state court under TCHRA.
- ▶ Employee abandoned the federal claim.
- ▶ Employer argued that the prior federal claim, though never resolved, barred state law claim under election of remedies.
- ▶ Court of Appeals agreed -- ***initiation of federal suit bars state suit for duplicative complaint.***

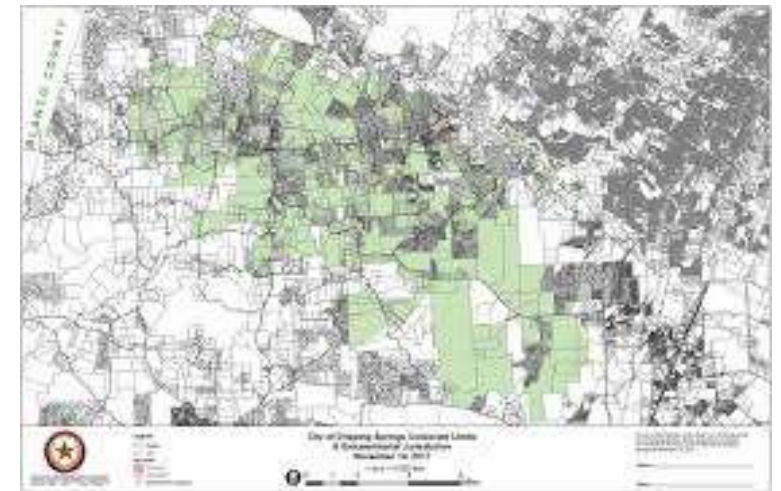


Sec. 21.211. ELECTION OF REMEDIES. A person who has initiated an action in a court of competent jurisdiction or who has an action pending before an administrative agency under other law or an order or ordinance of a political subdivision of this state based on an act that would be an unlawful employment practice under this chapter may not file a complaint under this subchapter for the same grievance.

Extraterritorial Jurisdiction: Elliott v. City of Coll. Station, 674 S.W.3d 653 (Tex. App.—Texarkana Aug. 31, 2023)

- ▶ Two plaintiffs challenge the concept of regulation by cities of ETJs generally – based on the “republican form of government” guarantee in Art. 1, Sec. 2 of the Texas Constitution.
- ▶ Court of Appeals notes “longstanding Texas Supreme Court rulings in this field” while concluding that issue presented is a nonjusticiable political question.
- ▶ Lengthy history lesson on the genesis and evolution of local government authority in Texas and a primer on ETJ regulation.

Legislature determines city authority including authority in the ETJ so the fact that voters in the ETJ do not vote in City elections does not matter



More Fun with Wasson: Proprietary v. Governmental Functions

- ***City of Dallas v. Ahrens***, No. 10-23-00315-CV, 2024 WL 1573388 (Tex. App.—Waco Apr. 11, 2024 (mem. op.)). – Agreement with charitable organization to distribute donations to families of officers killed in the line of duty was **proprietary**.
- ***City of Huntsville v. Valentine***, No. 13-22-00528-CV, 2023 WL 5282954 (Tex. App.—Corpus Christi–Edinburg Aug. 17, 2023) (mem. op.). – Issuing building permits is a **governmental function**.
- ***City of Canton v. Lewis First Monday, Inc.***, No. 06-23-00027-CV, 2023 WL 4945085 (Tex. App.—Texarkana Aug. 3, 2023) (mem. op.) – Traffic control is a **governmental function**.

Immunity: City of Canton v. Lewis First Monday, Inc., No. 06-23-00027-CV, 2023 WL 4945085 (Tex. App.—Texarkana Aug. 3, 2023) (mem. op.)

- ▶ Plaintiff co-owned property with city where flea market operated.
- ▶ City restricted access to historic main gate to vendors during flea market. Plaintiff sues seeking easement by estoppel and for takings claim.
- ▶ Appellate court finds for City:
 1. No easement interest in a public roadway.
 2. Traffic regulation is a municipal **governmental function**.
 3. No Private Real Property Rights Preservation Act claim because City's act didn't take place in ETJ .
 4. Takings claim can't succeed for acts on City property.



Immunity: Campbellton Rd., Ltd. v. City of San Antonio by & through San Antonio Water Sys., No. 22-0481, 2024 WL 1590000 (Tex. Apr. 12, 2024).

- City entered into utility agreement with developer with a minimum capacity.
 - City/SAWS was unable to provide utility service after developer constructed wastewater improvements but waited past the term to start development.
 - Breach of Contract – Chapter 271 Local Government Code.
 - Was there a contract under Chapter 271?
- Because the developer paid towards the wastewater infrastructure project, SAWS benefitted, and a contract under Chapter 271 was created.
- ***Contract for utility services where payment for utility lines equals impact fee credits falls under Chapter 271 of the Texas Local Government Code.***

Impact Fees



Takings: Selinger v. City of McKinney, No. 05-23-00180-CV, [2024 WL 260500](#) (Tex. App.—Dallas Jan. 24, 2024) (mem. op.).

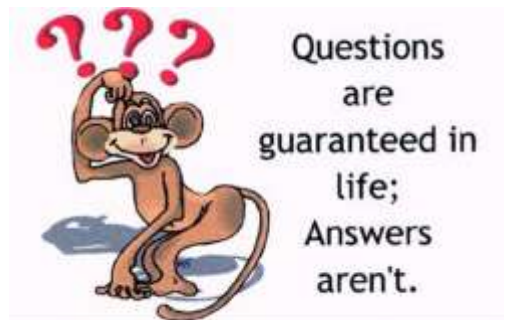
- ▶ City's subdivision ordinance required developments in ETJ to connect to the city's water and sewer systems and pay water and sewer impact fees.
- ▶ Developer's tract of land was not served by the city's water and sewer services.
- ▶ Developer planned to construct sewer infrastructure including package treatment plant and contract with special utility district to supply water to subdivision.
- ▶ City denied plat application after declining alternative facilities agreement.
- ▶ Appellate court: impact fees were not compensable taking. City had exclusive right to provide water service to property within its CCN.



Open Government

Public Information Act: *Johnson v. Bastrop Cent. Appraisal Dist.*, No. 07-23-00173-CV, 2023 WL 6389411 (Tex. App.—Amarillo Sept. 29, 2023) (mem. op.).

- **Questions are not proper Public Information Act Requests**
- **Pro Tip: just let the requestor know . . .**



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Open Meetings: *In re City of Amarillo*, No. 07-22-00341-CV, 2023 WL 5279473 (Tex. App.—Amarillo Aug. 16, 2023) (mem. op.).

- **Language that did not specify amount, use, and time frame for debt amount was insufficient after failed bond election**
- **Controversial topic requires additional specificity**

Emergency: Abbott v. Harris Cnty., 672 S.W.3d 1 (Tex. June 30, 2023).

- ▶ GA-38 (in effect until June 2023): “No governmental entity, including a county, city, school district, and public health authority, and no governmental official may require any person to wear a face covering or to mandate that another person wear a face covering.’
- ▶ “A coherent governmental response to a widespread contagious disease naturally requires coordination across arbitrary local jurisdictional lines, of which viruses are oblivious ... ***We hold that, during a declared disaster, the Governor has the lawful authority to prohibit local officials from imposing mask requirements in response to a contagious disease.***”



Continued: *Abbott v. Harris Cnty.*, 672 S.W.3d 1 (Tex. June 30, 2023).

- ▶ *county judge was Governor's designated agent under Disaster Act;*
- ▶ *executive orders were valid exercise of Governor's authority under Disaster Act;*
- ▶ *Governor can overrule the orders of a County or City related to emergency management*



Emergency Orders: Galovelho LLC v. Abbott, No. 05-21-00965-CV, 2023 WL 5542621 (Tex. App.— Dallas Aug. 29, 2023)

- ▶ Challenge to COVID-19 emergency orders discouraging patrons from dining in restaurants.
- ▶ Claims against state, governor, county judge and city barred by sovereign or governmental immunity
- ▶ Effect of orders was neither a categorical taking nor a taking under *Penn Central* factors.
 - ▶ Emergency orders were temporary and did not destroy all economic value in property
 - ▶ Government action not akin to a physical invasion but regulation that “adjusts the benefits and burdens of economic life to promote the common good.”



TORTS!

- Commuting is not within the scope of employment for TTCA purposes. *El Paso Water Utilities Sys.-Pub. Serv. Bd. v. Marivani*, No. 08-23-00071-CV, 2023 WL 4771207 (Tex. App.—El Paso July 26, 2023) (mem. op.)
- Driving to talk to management about health benefits is not within scope of employment for TTCA purposes. *Alief Indep. Sch. Dist. v. Velazquez*, No. 01-22-00444-CV, 2023 WL 3555495 (Tex. App.—Houston [1st Dist.] May 18, 2023) (mem. op.).
- Walking to and from car between classes to run errands is scope of employment for purposes of TTCA. *Barker v. Sam Houston State Univ.*, No. 06-22-00076-CV, 2023 WL 4113275 (Tex. App.—Texarkana June 22, 2023)

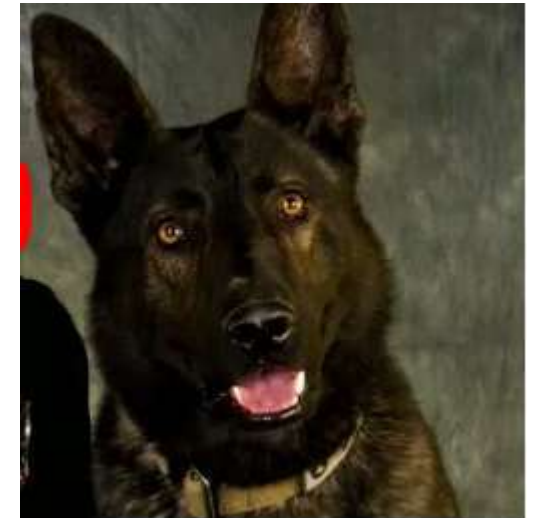


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Dog Bite: *City of Mesquite v. Wagner*, No. 05-22-00826-CV, 2023 WL 3408528 (Tex. App.—Dallas May 12, 2023, pet. filed).

- Kozmo
- Use of tangible personal property – the Dog
- Bit burglary suspect
- Normally use of police dog would be intentional, which would obviate
- Fact issue in this case of whether negligence (Tort Claims Act) or intentional (not Tort Claims Act)
- Emergency Exception?

Officer indication that he did not have control of dog when he bit the suspect raises fact issues of negligence and reckless/conscious indifference that would allow for the plaintiff to move forward on his TTCA claim.



Tort Claims Act: City of Baytown v. Fernandes, 674 S.W.3d 718 (Tex. App.—Houston [1st Dist.] Aug. 3, 2023)

- ▶ Plaintiff was injured on the Mat Racer waterslide at Pirates Bay, city-owned waterpark.
- ▶ City invoked TTCA's recreational use statute based on plaintiff's recreational activity on city-owned land.
- ▶ Appellate court dismissed claims for lack of subject matter jurisdiction:
 1. Riding down a waterslide is recreational use.
 2. No evidence city knew of danger or that waterpark employees acted with conscious indifference to plaintiff's safety.



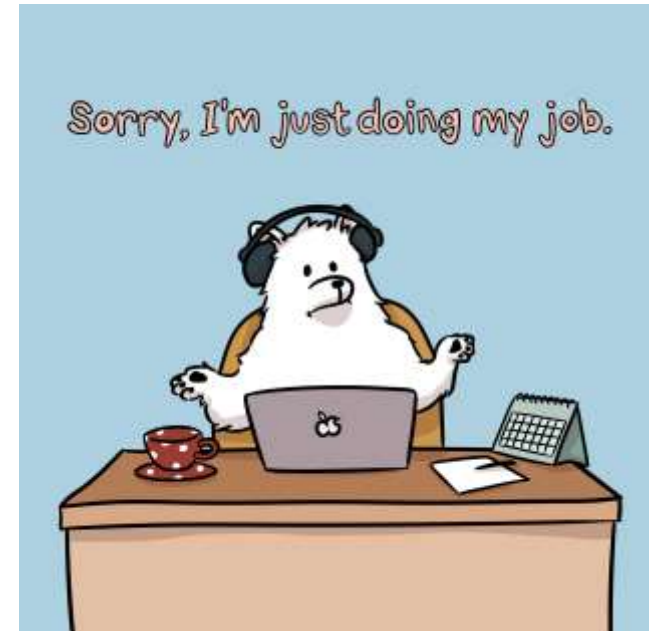
Tort Claims Act: City of Houston v. Bustamante, No. 01-22-00699-CV, 2023 WL 5110982 (Tex. App.—Houston [1st Dist.] Aug. 10, 2023) (mem. op.)

- ▶ Plaintiff and her family were injured in collision with city emergency vehicle when it entered intersection without slowing and struck plaintiff's vehicle.
- ▶ Plaintiff gave notice of her claim five months after incident.
- ▶ City filed for summary judgment claiming governmental immunity and that plaintiff failed to provide notice of claim within 90 days as required by city charter.
- ▶ Appellate court held that, although plaintiff had not provided timely notice, city may have had actual notice of a possible claim since it investigated the incident and had necessary information to alert it of its potential liability.



Tort Claims Act: Ferebee v. Law Office of Frank Powell, No. 01-22-00681-CV, [2023 WL 5918110](#) (Tex. App.— Houston [1st Dist.] Sept. 12, 2023) (mem. op. on re'hg.)

- ▶ Powell, a lawyer, sued the city attorney for the City of Shenandoah for slander following comments made about him and his law practice during a public city council meeting.
- ▶ City attorney noted that Powell had been sanctioned by several courts and was subject of petition by Commission for Lawyer Discipline.
- ▶ Appellate court held that Powell's pleadings affirmatively demonstrated that the city attorney was acting within the scope of his employment.
- ▶ Since claim could have been brought against city, the claim against the city attorney could be dismissed under the TTCA's election-of-remedies provision.
- ▶ But if this hadn't worked he had queued up a TPCA claim.



Immunity: City of Austin v. Quinlan, 669 S.W.3d 813 (Tex. June 2, 2023)

- ▶ City of Austin issued Guero's Taco Bar a permit for use and maintenance of city street/sidewalk.
- ▶ Restaurant patron injured ankle falling from sidewalk to the street
- ▶ Patron brought premises liability action against City and restaurant.
- ▶ Supreme Court held sidewalk café maintenance agreement did not impose a nondiscretionary duty on city, so no “discretionary function” exception to waiver of immunity under Texas Tort Claims Act.



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“we hold that the City had discretion to enforce or monitor the restaurant's compliance—but was not required to do so”

City (Entity) Wins

City of Huntsville v. Valentine
City of Austin v. Quinlan
El Paso Water Utilities Sys.-Pub. Serv. Bd. v. Marivani
Stone v. Harris County
City of Lake Jackson v. Adaway (on Tort Claims Act)
Rivera v. San Antonio Water Sys.
Harris Cnty. v. Deary, (on Tort Claims Act)
City of Austin v. Kalamarides
Rebeca Garcia v. The City of Austin
City of Dallas v. McKeller
Alief Indep. Sch. Dist. v. Velazquez
Barker v. Sam Houston State Univ
CPS Energy v. Elec. Reliability Council of Tex
Town of Little Elm v. Climer
City of Dallas v. McKeller
City of Baytown v. Fernandes
City of Corpus Christi v. Nickerson
City of Corpus Christi v. Rios
City of Dallas v. Holmquist
City of Fredericksburg v. Boyer
City of Hidalgo–Tex. Mun. Facilities Corp. v. Rodriguez
City of Houston v. Bustamante
City of Houston v. Edwards
City of Houston v. Green
City of Houston v. Salazar
City of Houston v. Walker
City of Houston v. Wilson
City of Houston v. Wilson
City of Laredo v. Torres
Franz and South Texas Elderly Services, Inc., v. Interim Police Chief Romero Rodriguez and City of Hidalgo
Hous. Auth. of City of Austin v. Garza
Martin v. Vill. of Surfside Beach
Trevino v. City of San Antonio
Wheeler v. Law Office of Frank Powell
Wilson v. City of Houston
Voorhies v. Town of Hollywood Park

Plaintiff's Case Moves Forward/Wins

City of Alvin v. Fields
City of Dallas v. Ahrens
Suarez v. Silvas
City of Houston v. Taylor
City of Houston v. Caro
City of Springtown v. Ashenfelter
City of Houston v. Manning
City of Mission v. Aaron Cervantes
City of Houston v. Branch
City of Houston v. Cruz
City of Houston v. Flores-Garcia
City of Houston v. Gomez
City of Houston v. Gonzales
City of Mesquite v. Wagner
City of Uvalde v. Pargas
Hall v. City of Jersey Vill.
TXDOT v. Sonefeld

Item 19.



Recall Elections: In re Gerdes, No. 11-23-00283-CV, 2024 WL 187234 (Tex. App.—Eastland Jan. 18, 2024) (mem. op.).

- ▶ Petition to recall two “unelected” city commissioners:
 - ▶ One ran unopposed, so her election was cancelled.
 - ▶ One was appointed to vacant seat
- ▶ City charter requires at least one-fifth of voters who sign period to indicate that they “voted” for the officer at an election.
- ▶ Commission determined they could not be subject to recall because nobody voted for them; refused to call election.
- ▶ Court disagreed and ordered city to schedule a special election on the recall not less than 15 and not more than 30 days from ruling.



Mediation Procedure: *In re City of McAllen*, 677 S.W.3d 746 (Tex. App.—Corpus Christi–Edinburg Sept. 18, 2023)

- ▶ Trial court ordered mayor and a councilmember to personally attend mediation in inverse condemnation suit.
- ▶ Appellate court reversed: while trial court can require parties to send representatives with full authority to settle case, it can't choose which representatives must attend.



Immunity: CPS Energy v. Elec. Reliability Council of Tex., 671 S.W.3d 605 (Tex. June 23, 2023)

- ▶ Municipally-owned electric utility sues Electric Reliability Council of Texas (ERCOT) for claims related to Winter Storm Uri.
- ▶ ERCOT files plea to jurisdiction based in part on sovereign immunity.
- ▶ Supreme Court determined that:
 1. ERCOT is a governmental unit,
 2. Public Utility Commission has exclusive jurisdiction over plaintiffs' claims;
 3. ERCOT is entitled to sovereign immunity. (4 justices disagreed)



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Winner: State Agency v. City-owned utility