

*The Bright Star Of
Central Texas*

Harker Heights



September 27, 2022

5:00 P.M.

CITY COUNCIL

MEETING AGENDA





**NOTICE OF MEETING OF THE CITY COUNCIL OF THE
CITY OF HARKER HEIGHTS, TEXAS**

Notice is hereby given that, beginning at 5:00 p.m. on Tuesday, September 27, 2022, and continuing from day to day thereafter if necessary, the City Council of the City of Harker Heights, Texas, will hold a meeting in the Kitty Young Council Chamber at 305 Miller's Crossing, Harker Heights, Texas 76548. The subjects to be discussed are listed in the following agenda:

MEETING AGENDA

I. INVOCATION:

II. PLEDGE OF ALLEGIANCE:

I Pledge Allegiance to the Flag of the United States of America and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

Honor the Texas Flag. I pledge allegiance to thee Texas; one State under God, one and indivisible.

III. ROLL CALL:

IV. MAYORAL PROCLAMATIONS AND PRESENTATIONS:

1. Present the Municipal Court with the 2022 Municipal Traffic Safety Award from the Texas Municipal Courts Education Center (TMCEC).
2. Proclamation declaring October 2022, as "Fire Prevention Month" and October 9-15, 2022, as "Fire Prevention Week".

[Proclamation](#)

V. CONSENT ITEMS:

1. Discuss and consider approving the minutes of the meeting held on September 13, 2022, and take the appropriate action.

[Minutes](#)

VI. PRESENTATIONS BY CITIZENS:

Citizens who desire to address the Council on any matter may do so during this item. Please understand that while the Council appreciates hearing your comments, State law (Texas Gov't Code §551.042) prohibits them from: (1) engaging in discussion other than providing a statement of specific factual information or reciting existing City policy, and (2) taking action other than directing Staff to place the matter on a future agenda. Please state your name and address for the record and limit your comments to three minutes.

VII. PUBLIC HEARINGS:

1. Conduct a public hearing to discuss and consider approving the adoption of an Ordinance of the City of Harker Heights, Texas, amending Title V of the City's Code of Ordinances; establishing Chapter 55 "Impact Fees"; Adopting, imposing, and establishing wastewater impact fees on new developments in the impact fee service area to the extent allowable by law; Adopting assessment and collection rates for wastewater impact fees; providing a cumulative clause, providing a severability clause; Establishing a penalty and specifically negating a requirement of a culpable mental state; Establishing a penalty for violations; Providing and establishing an effective date; and take the appropriate action. (Planning and Development Director)

[Staff Report - Pdf](#)

VIII. REGULAR BUSINESS:

1. Discuss and consider approving an Amended Resolution of the City Council of the City of Harker Heights, Texas, authorizing the City Manager to execute an Advance Funding Agreement with the Texas Department of Transportation for a surface transportation program metropolitan mobility project (Warriors Path, Phase 2 Project) and authorizing local funding share, and take the appropriate action. (Public Works Director)

[Staff Report - Pdf](#)

2. Discuss and consider approving a Resolution of the City Council of the City of Harker Heights, Texas, to authorize an agreement with Vigilant Solutions to provide services and equipment related to the digital license plate reader program in the amount of \$61,210.00 through the Homeland Security Grant; Authorize the City Manager to act and sign on behalf of the City, and take the appropriate action. (Chief of Police)

[Staff Report - Pdf](#)

3. Discuss and consider approving an appeal of the False Robbery Alarm service charge for Elli Bohac at 403 Kodiak Circle, Harker Heights, Texas, and take the appropriate action. (City Manager)

[Staff Report - Pdf](#)

4. Discuss and consider approving an appeal of the False Burglary Alarm service charge for Papa's Café at 302 Miller's Crossing, Harker Heights, Texas, and take the appropriate action. (City Manager)

[Staff Report - Pdf](#)

5. Receive and discuss the City Manager's Report. (City Manager)

IX. ITEMS FROM COUNCIL AND ANNOUNCEMENTS:

1. Councilmember closing statements.
2. Update and announcements from the Mayor.

X. ADJOURNMENT:

I hereby certify that the above notice of meeting was posted on the bulletin board of City Hall, City of Harker Heights, Texas, a place readily accessible to the general public at all times, on 23rd of September 2022, by 4:00 p.m., and remained posted for at least 72 continuous hours preceding the scheduled time of said meeting.

Julie Helsham
City Secretary

This facility is wheelchair accessible and accessible parking spaces are available. Requests for accommodations or interpretive services must be made 48 hours prior to this meeting. Please contact the City Secretary's office at 254-953-5600, or FAX 254-953-5614, or email jhelsham@harkerheights.gov for further information.

Pursuant to Chapter 551 of the Government Code the City Council reserves the right to go into Closed Meeting on any item listed above if deemed necessary.

Note: On occasion the City Council may consider agenda items out of order.



**City of Harker Heights
2022 Fire Prevention Week and Month
Proclamation**

WHEREAS, the City of Harker Heights, Texas is devoted to ensuring the safety and security of all those living in and visiting our great City; and

WHEREAS, October represents the 100th Anniversary of Fire Prevention Week, the Nation’s longest-running health observance on records; and

WHEREAS, home fires killed more than 2,580 people in the United States in 2020, according to the National Fire Protection Association® (NFPA®), and fire departments in the United States responded to 356,500 home fires; and

WHEREAS, smoke alarms sense smoke well before you can, alerting you to danger in the event of fire in which you may have as little as 2 minutes to escape safely; and

WHEREAS, The Harker Heights Fire Department is dedicated to reducing the occurrence of home fires and home fire injuries through prevention and protection education; and

WHEREAS, the 2022 Fire Prevention WeekTM theme, “Fire won’t wait. Plan your escape.TM,” effectively serves to remind us it is important to learn the different sounds of smoke and carbon monoxide alarms.

THEREFORE, I Spencer H. Smith, Mayor of the City of Harker Heights, Texas, do hereby proclaim the month of October 2022 as Fire Prevention Month and October 9th – 15th 2022, as Fire Prevention Week throughout the city, and I urge all our citizens to remain vigilant by planning and practicing a home escape plan.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the City of Harker Heights to be affixed this 27th day of September 2022.

Spencer H. Smith
City of Harker Heights Mayor

Minutes of the City of Harker Heights Council Meeting that was called to order on Tuesday, September 13, 2022, at 5:00 PM, in the Kitty Young Council Chamber at the Harker Heights City Hall at 305 Miller's Crossing, Harker Heights, Texas 76548, with the following members present:

ROLL CALL: Mayor Spencer H Smith
Councilmember, Place 2 Michael Blomquist
Councilmember, Place 3 Tony Canterino
Councilmember, Place 4 Lynda Nash
Councilmember, Place 5 Sam Halabi

City Manager David Mitchell
City Secretary Julie Helsham

EXCUSED: Mayor Pro Tem Jennifer McCann

CONSENT ITEMS:

1. Council discussed and considered approving the minutes of the meeting held on August 23, 2022.

Councilmember, Place 2 Blomquist made a motion to approve the minutes of the meeting held on August 23, 2022, with the amendments as presented. Councilmember, Place 5 Halabi seconded the motion. Carried unanimously.

PUBLIC HEARINGS:

1. Council conducted a public hearing to discuss and consider approving an Ordinance of the City Council of the City of Harker Heights, Texas, levying a tax rate of \$0.5800 per \$100 valuation, comprised of \$0.4511 for maintenance and operations and \$0.1289 for interest and sinking, for Fiscal Year 2022-2023 (Tax Year 2022). Ayesha Lealiiee, Finance Director, made the presentation.

The following Harker Heights citizen were present at the meeting and presented verbal comments regarding the Tax Rate:

- Howard Arey, 2027 Sandy Point, Harker Heights, Texas

Councilmember, Place 2 Blomquist made a motion to approve an Ordinance of the City Council of the City of Harker Heights, Texas, levying a tax rate of \$0.5800 per \$100 valuation, comprised of \$0.4511 for maintenance and operations and \$0.1289 for interest and sinking, for Fiscal Year 2022-2023 (Tax Year 2022). Councilmember, Place 3 Canterino seconded the motion. Mayor Smith conducted a record vote. The results are as follows: McCann had an excused absence, Blomquist voted aye, Canterino voted aye, Nash voted aye, and Halabi voted aye. All in favor. Motion approved 4-0. Carried unanimously.

Councilmember, Place 4 Nash made a motion that the property tax rate be increased by the adoption of a tax rate of \$0.5800, which is effectively a 2.87% increase in the tax rate. Councilmember, Place 3 Canterino seconded the motion. Mayor Smith conducted a record vote. The results are as follows: McCann had an excused absence, Blomquist voted aye, Canterino voted aye, Nash voted aye, and Halabi voted aye. All in favor. Motion approved 4-0. Carried unanimously.

2. Council conducted a public hearing to discuss and consider approving an Ordinance of the City of Harker Heights, Texas, to amend §154.01 Definitions of the Harker Heights Code of Ordinances to update and clarify definitions. Kristina Ramirez, Planning and Development Director, made the presentation.

Councilmember, Place 3 Canterino made a motion to approve an Ordinance to amend Section 154.01 Definitions of the Harker Heights Code of Ordinances to update and clarify definitions, based upon staff's recommendations and findings. Councilmember, Place 5 Halabi seconded the motion. Carried unanimously.

3. Council conducted a public hearing to discuss and consider approving an Ordinance of the City of Harker Heights, Texas, granting B-3 (Local Business District) with a Conditional Use Permit (CUP) to allow for a mobile food vendor court for one mobile food truck on property described as Meadow Acres, Block 006, Lot PT 7, 8, (E 14.5' of N 130' of 7 & W 85.5' of N 130' of 8), generally located at 808 S. Ann Blvd., Harker Heights, Bell County, Texas, 76548. Kristina Ramirez, Planning and Development Director, made the presentation.

Councilmember, Place 3 Canterino made a motion to approve with conditions an Ordinance for a Conditional Use Permit (CUP) to allow for a mobile food vendor court for one mobile food truck on property described as Meadow Acres, Block 006, Lot PT 7, 8, (E 14.5' of N 130' of 7 & W 85.5' of N 130' of 8), generally located at 808 S. Ann Blvd., Harker Heights, Bell County, Texas, 76548 with the 5 conditions as presented, and based on staff's recommendation and findings, with the conditions being as follows:

1. Modifications to this conditional use permit will require a Planning and Zoning Commission recommendation and City Council approval via a public hearing.
2. Food vendors and customers shall have access to restroom facilities on site via an active agreement with the property owner and business located in brick and mortar structure on site.
3. Hours of operation shall coincide with the business located in brick and mortar structure on site that provides access to the restroom facilities.
4. The signage, accessories and mobile food unit shall be placed on the site such that they do not interfere with the fire lane, garbage services, or required parking spaces for the site.
5. This Conditional Use Permit (CUP) automatically renews for successive two (2) year periods unless an objection is raised based on either:
 - a. A history of poor code compliance; or
 - b. A revision to the Comprehensive Plan that renders the CUP incompatible.

Councilmember, Place 5 Halabi seconded the motion. Carried unanimously.

4. Council conducted a public hearing to discuss and consider approving an Ordinance of the City of Harker Heights, Texas, granting a change in zoning designation from R-1 (One-Family Dwelling District) to R1-I (Single-Family Infill District) on property described as A0288BC V L Evans, Unit 11-Brad Mor Apts Acres 2.8, generally located North of Northside Dr. and East of Jamie Rd., Harker Heights, Bell County, Texas, 76548. Kristina Ramirez, Planning and Development Director, made the presentation. Kenneth Cates, Fort Hood Area Habitat for Humanity, was present to represent the request.

Councilmember, Place 4 Nash made a motion to approve an ordinance to change zoning designation from R-1 (One-Family Dwelling District) to R1-I (Single-Family Infill Dwelling District) on property described as A0288BC V L Evans, Unit 11-Brad Mor Apts Acres 2.8, generally located North of Northside Dr. and East of Jamie Rd., Harker Heights, Bell County, Texas, 76548, based on staff's recommendations and findings. Councilmember, Place 2 Blomquist seconded the motion. Carried unanimously.

5. Council conducted a public hearing to discuss and consider approving an Ordinance of the City of Harker Heights, Texas, granting a change in zoning designation from R-3 (Multi-Family Dwelling District) to R1-I (Single-Family Infill District) on properties described as Kern Terrace 3rd Ext., Block 004, Lots 0005-0008, generally located at 208-214 Northside Drive, Harker Heights, Bell County, Texas, 76548. Kristina Ramirez, Planning and Development Director, made the presentation. Kenneth Cates, Fort Hood Area Habitat for Humanity, was present to represent the request.

Councilmember, Place 5 Halabi made a motion to approve an ordinance to change zoning designation from R-3 (Multi-Family Dwelling District) to R1-I (Single-Family Infill Dwelling District) on properties described as Kern Terrace 3rd Ext., Block 004, Lots 0005-0008, generally located at 208-214 Northside Drive, Harker Heights, Bell County, Texas, 76548, based on staff's recommendations and findings. Councilmember, Place 3 Canterino seconded the motion. Carried unanimously.

6. Council conducted a public hearing to discuss and consider approving an Ordinance of the City of Harker Heights, Texas, granting a change in zoning designation from R-1 (One-Family Dwelling District) to R1-I (Single-Family Infill District) on property described as Kern Terrace 3rd Ext., Block 004, Lot 0009, generally located at 216 Northside Drive, Harker Heights, Bell County, Texas, 76548. Kristina Ramirez, Planning and Development Director, made the presentation. Kenneth Cates, Fort Hood Area Habitat for Humanity, was present to represent the request.

Councilmember, Place 3 Canterino made a motion to approve an ordinance to change zoning designation from R-1 (One-Family Dwelling District) to R1-I (Single-Family Infill Dwelling District) on property described as Kern Terrace 3rd Ext., Block 004, Lot 0009, generally located at 216 Northside Drive, Harker Heights, Bell County, Texas, 76548, based on staff's recommendations and findings. Councilmember, Place 5 Halabi seconded the motion. Carried unanimously.

At 6:00 p.m. Mayor Smith called for a short break.

Mayor Smith reconvened the meeting at 6:15 p.m.

REGULAR BUSINESS:

1. Council discussed and considered a resolution of the City Council of the City of Harker Heights, Texas, approving a negotiated settlement between the Atmos Cities Steering Committee ("ACSC") and Atmos Energy Corp., Mid-Tex Division regarding the Company's 2022 Rate Review Mechanism filing; declaring existing rates to be unreasonable; adopting tariffs that reflect rate adjustments consistent with the negotiated settlement; finding the rates to be set by the attached settlement tariffs to be just and reasonable and in the public interest; approving an attachment establishing a benchmark for pensions and retiree medical benefits; requiring the Company to reimburse ACSC's reasonable ratemaking expenses; determining that this resolution was passed in accordance with the requirements of the Texas Open Meeting Act; adopting a savings clause; declaring an effective date; and requiring delivery of this resolution to the Company and the ACSC's legal counsel. Ayesha Lealiiee, Finance Director, made the presentation. Tammie Bowman, Manager Public Affairs, Atmos Energy Corporation, was present to answer any questions Council may have.

Councilmember, Place 3 Canterino made a motion to approve a Resolution of the City Council of the City of Harker Heights, Texas, approving a negotiated settlement between the Atmos Cities Steering Committee ("ACSC") and Atmos Energy Corp., Mid-Tex Division regarding the Company's 2022 Rate Review Mechanism filing; declaring existing rates to be unreasonable; adopting tariffs that reflect rate adjustments consistent with the negotiated settlement; finding the rates to be set by the attached settlement tariffs to be just and reasonable and in the public interest; approving an attachment establishing a benchmark for pensions and retiree medical benefits; requiring the Company to reimburse ACSC's reasonable ratemaking expenses; determining that this resolution was passed in accordance with the requirements of the Texas Open Meeting Act; adopting a savings clause; declaring an effective date; and requiring delivery of this resolution to the Company and the ACSC's legal counsel and take the appropriate action. Councilmember, Place 2 Blomquist seconded the motion. Carried unanimously.

2. Council discussed and considered approving a Preliminary Plat referred to as Meadow White Addition, on property described as being a 1.021 acre tract of land in Bell County, Texas, being part of the John T. Tumlinson Survey, Abstract No. 831, the land herein being part of Lot 2, Block 5, Meadow Acres, an addition to the City of Harker Heights, Texas, being of record in Cabinet A, Slide 143-C, plat records of Bell County, Texas (P.R.B.C.T.), and being that all certain tract of land conveyed in a general warrant deed to BFF Construction, LLC, a Texas limited liability company, being described of record under Instrument No. 2022035043, Official Public Records of Real Property of Bell County, Texas (O.P.R.R.P.B.C.T.). Kristina Ramirez, Planning and Development Director, made the presentation. Ace Reneau, Mitchell and Associates, Inc., was present to represent the request.

Councilmember, Place 4 Nash made a motion to approve with conditions a request for a Preliminary Plat referred to as Meadow White Addition, on property described as being a 1.021 acre tract of land in Bell County, Texas, being part of the John T. Tumlinson Survey, Abstract No. 831, the land herein being part of Lot 2, Block 5, Meadow Acres, an addition to the City of Harker Heights, Texas, being of record in Cabinet A, Slide 143-C, Plat Records of Bell County, Texas (P.R.B.C.T.), and being that all certain tract of land conveyed in a General Warrant Deed to BFF Construction, LLC, a Texas limited liability company, being described of record under Instrument No. 2022035043, Official Public Records of Real Property of Bell County, Texas (O.P.R.R.P.B.C.T.), with three conditions as presented by staff and based on staff's recommendations and findings, with the conditions being as follows:

1. All outstanding comments have been addressed per staff recommendation prior to filing of plat with Bell County Public Records.
2. Approval of Waiver from design standards for City of Harker Heights Code of Ordinances Sections: §154.21(C)(1)(h), §154.21(C)(2)(d), §154.37(A)(3), and §154.37(C)(1).
3. No Parking on both sides of the road.

Councilmember, Place 5 Halabi seconded the motion. Carried unanimously.

3. Council discussed and considered approving a Final Plat referred to as Indian Land Addition, on property described as being a 1.312 acre tract of land in Bell County, Texas, being part of the E. Dawson survey, Abstract No. 258 and the H.B. Littlefield survey, Abstract No. 511, being all of Lots 11-14, Block 23, Comanche Land Second Land, an addition to the City of Harker Heights, Texas, being of record in Cabinet A, Slide 184-A, plat records of Bell County, Texas (P.R.B.C.T.), and being part of that certain tract of land conveyed in a deed reserving life estate to the Mary Jayrene Horn Revocable Living Trust dated June 20, 2005, being described of record in Volume 5762, Page 289, Official Public Records of Real Property, Bell county, Texas. Kristina Ramirez, Planning and Development Director, made the presentation. Ace Reneau, Mitchell and Associates, Inc., was present to represent the request.

Councilmember, Place 2 Blomquist made a motion to approve with condition a request for a Final Plat referred to as Indian Land Addition, on property described as being a 1.312 acre tract of land in Bell County, Texas, being part of the E. Dawson Survey, Abstract No. 258 and the H.B. Littlefield Survey, Abstract No. 511, being all of Lots 11-14, Block 23, Comanche Land Second Land, an addition to the City of Harker Heights, Texas, being of record in Cabinet A, Slide 184-A, Plat Records of Bell County, Texas (P.R.B.C.T.), and being part of that certain tract of land conveyed in a Deed Reserving Life Estate to The Mary Jayrene Horn Revocable Living Trust Dated June 20, 2005, being described of record in Volume 5762, Page 289, Official Public Records of Real Property, Bell County, Texas, with the condition as presented by staff and based on staff's recommendations and findings, with the conditions being as follows:

1. All outstanding comments have been addressed per staff recommendation prior to filing of plat with Bell County Public Records.

Councilmember, Place 3 Canterino seconded the motion. Carried unanimously.

4. Council discussed and considered approving a Final Plat referred to as Heights City Center, on property described as 3.496 acres, situated in the Martin Smith survey, abstract 750, Bell County, Texas, embracing all of Lot 1, Block 4, Park Addition, an addition within the City of Harker Heights, Bell County, Texas, according to the Plat of Record in Cabinet C, Slide 178-B, Plat Records of Bell County, Texas and all of Lot 3, Block 1, Union State Bank addition, Phase Two, an addition within the City of Harker Heights, Bell County, Texas, according to the Plat of Record in Cabinet D, Slide 67-C, of said Plat Records. Kristina Ramirez, Planning and Development Director, and David Mitchell, City Manager, made the presentation.

Councilmember, Place 3 Canterino made a motion to approve a Final Plat referred to as Heights City Center, on property described as 3.496 Acres, situated in the Martin Smith Survey, Abstract 750, Bell County, Texas, embracing all of Lot 1, Block 4, Park Addition, an addition within the City of Harker Heights, Bell County, Texas, according to the Plat of Record in Cabinet C, Slide 178-B, Plat Records of Bell County, Texas and all of Lot 3, Block 1, Union State Bank Addition, Phase Two, an addition within the City of Harker Heights, Bell County, Texas, according to the Plat of Record in Cabinet D, Slide 67-C, of said Plat records, with the condition as presented by staff and based on staff's recommendations and findings, with the conditions being as follows:

1. All outstanding comments have been addressed per staff recommendation prior to filing of plat with Bell County Public Records.

Councilmember, Place 2 Blomquist seconded the motion. Carried unanimously.

5. Council discussed and considered approving a Resolution of the City Council of the City of Harker Heights, Texas, authorizing the Mayor to sign an Interlocal Agreement between the City of Harker Heights, Texas, the City of Killeen, Texas, and Bell County, Texas, that establishes the scope of the Chaparral Road Realignment/Reconstruction Project and responsibilities of each of the parties as it relates to the project. Kristina Ramirez, Planning and Development Director, made the presentation.

Councilmember, Place 2 Blomquist made a motion to approve a Resolution authorizing the Mayor to sign an Interlocal Agreement between the City of Harker Heights, Texas, and the City of Killeen, Texas, and Bell County, Texas, that establishes the scope of the Chaparral Road Realignment/Reconstruction Project and responsibilities of each of the parties as it relates to the project. Councilmember, Place 5 Halabi seconded the motion. Carried unanimously.

6. Discuss and consider approving a Resolution of the City Council of the City of Harker Heights, Texas, to authorize an agreement with Vigilant Solutions to provide services and equipment related to the digital license plate reader program in the amount of \$61,210.00 through the Homeland Security Grant; Authorize the City Manager to act and sign on behalf of the City.

This item was tabled. No action taken.

7. Council received and discussed the City Manager's Report. David Mitchell, City Manager, made the presentation. No action taken.

ITEMS FROM COUNCIL AND ANNOUNCEMENTS:

1. Councilmember closing statements.

Councilmember Blomquist thanked everyone for their thoughts and prayers as he is recovering from his procedure he had done on August 23rd.

Blomquist stated that he attended the following events:

- September 3rd - Harker Heights Farmers' Market
- September 10th - Harker Heights Farmers' Market.
- September 10th - Harker Heights Chamber of Commerce Food, Wine and Brew Festival at Community Park.

Councilmember Nash stated that on September 9th she was the Guest Speaker at the 16th Annual Freedom Walk for Killeen Independent School District (KISD).

2. Updates and announcements from the Mayor.

Mayor Smith stated that he attended the following events:

- August 25th – Harker Heights Chamber of Commerce Lunch Mob at the Shack Caribbean Restaurant.
- August 25th – Meeting at City Hall with City Staff.
- August 26th – Harker Heights Police Department Promotion Ceremony at City Hall.
- August 27th – Harker Heights Farmers' Market.
- August 31st – Meeting at City Hall with City Staff.
- September 1st – Colonel Matt Ruedi Retirement Ceremony at 13th ESC.
- September 1st – III Corps Commanding General Mayor Engagement Luncheon at Fort Hood.
- September 6th – Harker Heights City Council Workshop.
- September 8th – Central Texas Council of Governments Executive Planning Board Meeting in Belton.
- September 8th – Meeting at City Hall with City Staff.
- September 10th – Harker Heights Farmers' Market.
- September 10th – Harker Heights Chamber of Commerce Food, Wine and Brew Festival at Community Park.
- September 12th – Meeting at City Hall with representatives from Bell County, Killeen Independent School District, City of Killeen, and Harker Heights City Staff.

ADJOURNMENT:

There being no further business the City of Harker Heights City Council Meeting was adjourned at 7:26 p.m.

CITY OF HARKER HEIGHTS, TEXAS:

Spencer H. Smith, Mayor

ATTEST:

Julie Helsham, City Secretary



City Council Memorandum

FROM: The Office of the City Manager

DATE: September 27, 2022

CONDUCT A PUBLIC HEARING TO DISCUSS AND CONSIDER APPROVING THE ADOPTION OF AN ORDINANCE OF THE CITY OF HARKER HEIGHTS, TEXAS, AMENDING TITLE V OF THE CITY'S CODE OF ORDINANCES; ESTABLISHING CHAPTER 55 "IMPACT FEES"; ADOPTING, IMPOSING, AND ESTABLISHING WASTEWATER IMPACT FEES ON NEW DEVELOPMENTS IN THE IMPACT FEE SERVICE AREA TO THE EXTENT ALLOWABLE BY LAW; ADOPTING ASSESSMENT AND COLLECTION RATES FOR WASTEWATER IMPACT FEES; PROVIDING A CUMULATIVE CLAUSE, PROVIDING A SEVERABILITY CLAUSE; ESTABLISHING A PENALTY AND SPECIFICALLY NEGATING A REQUIREMENT OF A CULPABLE MENTAL STATE; ESTABLISHING A PENALTY FOR VIOLATIONS; PROVIDING AND ESTABLISHING AN EFFECTIVE DATE; AND TAKE THE APPROPRIATE ACTION. (PLANNING AND DEVELOPMENT DIRECTOR)

EXPLANATION:

The City Council adopted the 2021 Land Use Plan on October 26, 2021, with only a few modifications since that time. The City's consultant, Ms. Jessica Vassar with Freese and Nichols, has evaluated the Land Use Plan, current development activity, and existing land uses with respect to their contribution to developing an impact fee.

RECOMMENDATION:

Staff recommended approval to the CIAC of the impact fee relating to possible adoption of impact fees for the 2022 wastewater impact fee area, as presented by Ms. Vassar. Texas Local Government Code (LGC) Section 395.042, requires municipalities to hold a public hearing on impact fee calculations prior to adoption by the City Council. On August 23, 2022, the City Council established September 27, 2022 as the required public hearing date for this item. The public hearing date was then advertised in the Killeen Daily Herald on August 28, 2022. These dates meet the LGC Sections 395.043 and 395.044 required timelines for public information availability and public notices.

Action By Capital Improvement Advisory Committee:

According to Chapter 395 of the Texas Local Government Code, Capital Improvement Advisory Committee (CIAC) serves as the advisory committee for the 2022 Wastewater Impact Fee study. On both January 12, 2022 and August 31, 2022, the CIAC voted 8-0 to recommend approval of the impact fee calculations up to the maximum allowable rate relating to possible adoption of impact fees for the 2022 wastewater impact fee area, based on staff's recommendation and findings.

ACTION BY THE COUNCIL:

1. Motion to APPROVE/DISAPPROVE the adoption of an Ordinance of the City of Harker Heights, Texas, amending Title V of the City's code of ordinances; establishing Chapter 55 "Impact Fees"; adopting, imposing, and establishing wastewater impact fees on new developments in the impact fee service area to the extent allowable by law; adopting assessment and collection rates for wastewater impact fees; providing a cumulative clause, providing a severability clause; establishing a penalty and specifically negating a requirement of a culpable mental state; establishing a penalty for violations; and providing and establishing an effective date.
2. Any other action deemed necessary.

ATTACHMENTS:

[CIAC-22-01 01-Recommendation-083122](#)

[CIAC-22-01 01-Recommendation-011222](#)

[CIAC-22-01 02-ImpactFee-Ordinance-Proposed092722](#)

[CIAC-22-01 ExhibitA-LandUse](#)

[CIAC-22-01 ExhibitB-ServiceArea](#)

[CIAC-22-01 ExhibitC-Tables](#)

[CIAC-22-01 ExhibitD-ImpactFeeStudyReport](#)



TO: Mayor and City Council
FROM: Larry Robison, Chair, Capital Improvements Advisory Committee (CIAC)
DATE: August 31, 2022
SUBJECT: Impact Fee Program Recommendation

In accordance with Texas Local Government Code, the Harker Heights Capital Improvements Advisory Committee (CIAC), which consists of members from the Planning and Zoning Commission plus an ad hoc member for the ETJ, has been conducting public meetings with City staff and the City's consultants for the development of a wastewater impact fee program. Over the course of study, the CIAC has received data regarding Land Use Assumptions (2022-2032), impact fee Capital Improvement Plan and associated costs, and the resultant cost per service unit calculations for determining impact fees.

Chapter 395.056 of the Texas Local Government Code requires the CIAC to file its written comments on the proposed land use assumptions, capital improvements plan, and impact fees before the fifth business day before the date of the public hearing on the ordinance adoption. The scheduled public hearing date is September 27, 2022.

After review and comment of the information, the CIAC recommends the following:

- Approval of the Land Use Assumptions and growth forecasts over the ten-year planning period 2022-2032,
- Approval of the impact fee Wastewater Capital Improvements Plans as presented in the Land Use Assumptions and Capital Improvements Plan submitted in September 2021, and approved in Public Hearings with the City Council on October 26 and November 9,
- Approval of the Calculated Cost per Service Unit for, and
- Approval of the collection rate per service unit between a minimum of \$0 and a maximum of \$6,133.

The CIAC believes that the implementation of a wastewater impact fee program will assist Harker Heights in the development and implementation of specific capital improvements to address growth needs and that the City Council consider a collection rate up to the maximum allowable under law.

Respectfully,

Harker Heights Capital Improvements Advisory Committee Members

Lawrence "Larry" Robison, Chairman
Robert "Rob" Robinson III, Vice Chairman
Michael Stegmeyer, Secretary
Natalie Austin, Member
Bary Heidtbrink, Member
Stephen Watford, Member
Joshua McCann, Member
Rodney Shine, Member
Jerry Bess, Member
Robert "Bobby" Hoxworth, ETJ Member



TO: Mayor and City Council
FROM: Larry Robison, Chair, *Capital Improvements Advisory Committee (CIAC)*
DATE: January 12, 2022
SUBJECT: Impact Fee Program Recommendation

In accordance with Texas Local Government Code, the Harker Heights Capital Improvements Advisory Committee (CIAC), which consists of members from the Planning and Zoning Commission plus an ad hoc member for the ETJ, has been conducting public meetings with City staff and the City’s consultants for the development of a wastewater impact fee program. Over the course of study, the CIAC has received data regarding Land Use Assumptions (2022-2032), impact fee Capital Improvement Plan and associated costs, and the resultant cost per service unit calculations for determining impact fees.

Chapter 395.056 of the Texas Local Government Code requires the CIAC to file its written comments on the proposed land use assumptions, capital improvements plan, and impact fees before the fifth business day before the date of the public hearing on the amendments. The scheduled public hearing dates February 22, 2022 and March 8, 2022.

After review and comment of the information, the CIAC recommends the following:

- Approval of the Land Use Assumptions and growth forecasts over the ten-year planning period 2022-2032,
- Approval of the impact fee Wastewater Capital Improvements Plans as presented in the Land Use Assumptions and Capital Improvements Plan submitted in September 2021, and approved in Public Hearings with the City Council on October 26 and November 9,
- Approval of the Calculated Cost per Service Unit for, and
- Approval of the maximum collection rate per service unit of \$6,133.

The CIAC believes that the implementation of a wastewater impact fee program will assist Harker Heights in the development and implementation of specific capital improvements to address growth needs and that the City Council consider a collection rate up to the maximum allowable under law.

Respectfully,

Harker Heights Capital Improvements Advisory Committee Members

- Lawrence “Larry” Robison, Chairman
- Robert “Rob” Robinson III, Vice Chairman
- Natalie Austin, Member
- Bary Heidtbrink, Member
- Stephen Watford, Member
- Joshua McCann, Member
- Rodney Shine, Member
- Jerry Bess, Member
- Michael Stegmeyer, Member
- Robert “Bobby” Hoxworth, ETJ Member

ORDINANCE NO. 2022-__

AN ORDINANCE OF THE CITY OF HARKER HEIGHTS, TEXAS AMENDING TITLE V OF THE CITY'S CODE OF ORDINANCES; ESTABLISHING CHAPTER 55 "IMPACT FEES"; ADOPTING, IMPOSING, AND ESTABLISHING WASTEWATER IMPACT FEES ON NEW DEVELOPMENTS IN THE IMPACT FEE SERVICE AREA TO THE EXTENT ALLOWABLE BY LAW; ADOPTING ASSESSMENT AND COLLECTION RATES FOR WASTEWATER IMPACT FEES; PROVIDING A CUMULATIVE CLAUSE, PROVIDING A SEVERABILITY CLAUSE; ESTABLISHING A PENALTY AND SPECIFICALLY NEGATING A REQUIREMENT OF A CULPABLE MENTAL STATE; ESTABLISHING A PENALTY FOR VIOLATIONS; AND PROVIDING AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, Chapter 395 of the Texas Local Government Code (LGC) authorizes municipalities to enact or impose impact fees on land within the city limits in accordance with Chapter 395; and

WHEREAS, the City of Harker Heights is responsible for and committed to the provision of public facilities to ensure the provision of adequate facilities in the future; and

WHEREAS, new development causes and imposes increased demands for City public wastewater facilities ("public infrastructure"); and

WHEREAS, Texas Local Government Code, Chapter 395, authorizes Cities to adopt and amend impacts for the purpose of financing capital improvements for public infrastructure required by new development; and

WHEREAS, to the extent new development places demands upon public infrastructure, those demands should be satisfied by sharing the responsibility for financing these facilities from the public at large to the developments creating the demands; and

WHEREAS, the City Council, after careful consideration of the matter, hereby finds and declares that wastewater impact fees imposed upon development to finance specific public infrastructure projects that are needed to meet the demands of the development are in the best interests of the general welfare of the City and its residents, are proportionate, and do not impose an unfair burden on such development; and

WHEREAS, the amount of the wastewater impact fees imposed on new development shall be determined by the cost of the additional public infrastructure

needed to support such new development as identified in capital improvements plans; and

WHEREAS, the Capital Improvements Advisory Committee has filed written comments regarding the proposed wastewater impact fees with the City Council; and

WHEREAS, On September 14, 2021, the City Council approved an order establishing two public hearing dates to consider adoption of land use assumptions and the capital improvements plan for the potential imposition of impact fees for wastewater facilities and directed the City Secretary to publish notice of said Public Hearings; and

WHEREAS, on October 26, 2021 and November 9 2021, the City Council held a public hearing to solicit comments from citizens and other interested parties concerning the adoption of land use assumptions and the capital improvements plan for the potential imposition of impact fees for wastewater facilities; and

WHEREAS, On November 9, 2021, the City Council approved Ordinance No. 2021-39 adopting land use assumptions and the capital improvements plans for the potential imposition of impact fees for wastewater facilities; and

WHEREAS, On January 18, 2022, the City Council approved an order establishing two public hearing dates to consider adoption of impact fees for wastewater facilities and directed the City Secretary to publish notice of said Public Hearings; and

WHEREAS, on February 22, 2022 and March 8, 2022, the City Council held a public hearing to consider land use assumptions and wastewater capital improvements plans pursuant to which impact fees would be imposed; and

WHEREAS, the land use assumptions and wastewater capital improvements plans were developed by qualified professionals using generally accepted engineering and planning practices in accordance with Chapter 395 of the Texas Local Government Code; and

WHEREAS, the report dated January 10, 2022 prepared by Freese and Nichols, Inc., and entitled “Wastewater Impact Fee Study Report” sets forth reasonable methodologies and analyses for determining the impact of new development on public infrastructure and the costs for additional wastewater facilities in the City of Harker Heights, and are in accordance with the provisions of Chapter 395 of the Texas Local Government Code; and

WHEREAS, the City Council finds that the City has complied with Chapter 395 in the notice, adoption, promulgation, and methodology necessary to adopt impact fees;

WHEREAS, the meeting at which this Ordinance was passed was open to the public, and notice of the time, place and purpose of said meeting was given as required by law, all in strict accordance with the requirements of the Texas Open Meetings Act;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HARKER HEIGHTS, TEXAS AS FOLLOWS:

Section 1. All the above whereas clauses and the premises stated in them are hereby found to be true and correct legislative and factual findings of the City Council and are hereby approved and incorporated into the body of this ordinance as if copied in their entirety.

Section 2. In accordance with Chapter 395 of the Texas Local Government Code, the City Council has employed qualified professionals to prepare land use assumptions and capital improvements plans for the imposition of wastewater impact fees. These land use assumptions and capital improvements plans were approved after a public hearing in accordance with Chapter 395 of the Texas Local Government Code.

Section 3. The report entitled “Wastewater Impact Fee Study Report”, dated January 10, 2022, which is attached to this Ordinance as Exhibit “D”, is hereby adopted and incorporated into this Ordinance. To the extent of any conflict between Exhibit “D” and prior versions of the report, Exhibit “D” shall control. To the extent of any conflict between Exhibit “D” and this Ordinance, Exhibit “D” shall control.

Section 4. The provisions in this Ordinance apply to all new development within the impact fee service area of the City.

Section 5. Chapter 55 of the Code of Ordinances of the City of Harker Heights, Texas, is hereby established which shall hereafter read as follows:

CHAPTER 55: IMPACT FEES

CHAPTER I. – GENERAL PROVISIONS

§55.01. Title.

This Chapter shall be known and may be cited as the Impact Fees Ordinance or the Impact Fees Code of the City of Harker Heights.

§55.02. Statement of Purpose.

This Chapter is intended to ensure the provision of adequate public facilities to serve new development in the City by requiring each development to pay its proportional share of the costs of such improvements necessitated by and attributable to such new development as related to wastewater capital improvements.

§55.03. Authority.

This Chapter is adopted pursuant to Chapter 395 of the Texas Local Government Code. The provisions of this Chapter shall not be construed to limit the powers of the City to utilize other methods authorized under state law, or pursuant to other City powers to accomplish the purposes set forth herein, either in substitution or in conjunction with this Chapter.

§55.04. Definitions

The following words, terms and phrases, as used in this Chapter, shall have the meanings respectively ascribed to them in this Chapter, unless the context clearly indicates otherwise:

Area-related facility means a capital improvement or facility expansion which is designated in the Impact Fee Capital Improvements Plan and which is not a site-related facility. Area-related facility may include a capital improvement, which is located offsite, within, or on the perimeter of the development site.

Assessment means the determination of the amount of the maximum credited impact fee per service unit that can be imposed on new development pursuant to this Chapter.

Capital improvement means any wastewater facilities that have a life expectancy of three (3) or more years and are owned and operated by or on behalf of the City.

Capital improvements plan means a plan approved by the City Council that identifies capital improvements or facility expansions for which impact fees may be assessed.

City means the City of Harker Heights, Texas.

City Council means the City Council of the City of Harker Heights, Texas.

City Manager means the City Manager of the City of Harker Heights, Texas, or his or her designee.

Change of Use means a new development involving a change in use or occupancy of any existing structure, with the exception of shell structures never previously occupied, that has the effect of increasing the number of service units beyond those attributable to the immediately preceding use, which requires the issuance of a new permit and which may include, but is not limited to, the reconstruction, redevelopment, conversion, structural alteration or enlargement of any structure.

Director means the Public Works Director or the Director's designee.

Effective date means March 8, 2022.

Extraterritorial jurisdiction (ETJ) means the extraterritorial range of the City's authority outside corporate limits of the city.

Facility expansion means the expansion of the capacity of any existing facility for the purpose of serving new development. The term does not include the repair, maintenance, modernization, or expansion of an existing facility to serve existing development.

Final Plat means the map of a subdivision (and any required accompanying material per §154.22 and §154.26) which is presented to the City's Planning and Zoning Commission, the City Council or authorized city staff for approval, and which, if approved, is recorded in the official public records of Bell County, Texas.

Impact Fee Capital Improvements Plan means the adopted plan for public infrastructure within the impact fee service area, as may be amended from time to time, which identifies the facilities and their associated costs which are necessitated by and which are attributable to new development, for a period not to exceed ten (10) years, and which are to be financed in whole or in part through the imposition impact fees pursuant to this Chapter.

Land use assumptions means the projections of growth and associated changes in land uses, densities and intensities for a service area adopted by the City, as may be amended from time to time, upon which the Impact Fee Capital Improvements Plan for the service area is based.

New development means an activity involving the construction, reconstruction, redevelopment, conversion, structural alteration, relocation, or enlargement of any structure, or any use or extension of land, which has the effect of increasing demand, measured by an increase in the number of the service units utilizing the City's systems that are attributable to such activity, and which requires either the approval and filing of a plat, or a re-plat pursuant to the City's subdivision regulations, or the issuance of a building permit, or a utility connection.

Owner means an owner of real property who is subject to this Ordinance, or an agent, employee or representative thereof who is authorized to act on the real property owner's behalf or a person who has paid an impact fee under this Ordinance.

Preliminary plat means the map of the proposed layout of a subdivision (and

any required accompanying material per §154.21) which is presented to the Planning and Zoning Commission and City Council and is approved by the City Council.

School District means a public or private institution for the teaching of students.

Service area means a geographic area within the City or within the City's extraterritorial jurisdiction within which impact fees may be collected for new development occurring within such area. For purposes of this Chapter, the area within in the portion of the City as illustrated and annotated in Exhibit A.

Service unit means a standardized measure of consumption, use, generation or discharge attributable to an individual unit of development calculated in accordance with generally accepted engineering or planning standards, for a particular category of capital improvements or facility expansions.

Service Unit Equivalent (“SUE’s”) means an equivalency factor, based on the demand associated with the smallest water meter used in the City of Harker Heights, Texas utility systems. SUE's are utilized to establish the number of service units to be allocated to various meter sizes used in the City of Harker Heights, Texas.

Site-related facility means an improvement or facility which is for the primary use or benefit of a new development and/or which is the for the primary purpose of safe and adequate provision of facilities to serve the new development and which is not included in the Impact Fee Capital Improvements Plan and for which the developer or owner is solely responsible under subdivision and other applicable regulations.

Study means, collectively, the impact fee report prepared by a registered professional engineer licensed in the State of Texas that is on file in the office of the City Secretary.

System-related facility means a capital improvement or facility expansion which is designated in the capital improvements plan and which is not a site-related facility. This term may include a capital improvement which is located off-site or within or on the perimeter of the development site.

Utility connection means connection of an individual meter to the City's system, or an increase in the size of an existing meter.

Wastewater facility means a wastewater interceptor or main, lift station or other facility or improvement used for providing wastewater collection and/or treatment included within the City's wastewater system. This term includes

land, easements or structures associated with such facilities. This term excludes a site-related facility.

§55.05. Impact Fee as Condition of Development Approval.

No new development shall be connected to the City's wastewater system within the service area without the assessment of an impact fee pursuant to this Chapter, and no building permit or request for service shall be issued until the applicant has paid the impact fee imposed herein, except for those entities that are expressly exempt from impact fees as set forth in Texas Local Government Code, Chapter 395.

§55.10. Land Use Assumptions.

- (A) Said land use assumptions for the service area are depicted in Exhibit A, which is attached hereto and incorporated by reference herein as §55.40(A).
- (B) Exhibit A shall be updated at least every five (5) years utilizing the amendment procedure set forth in Texas Local Government Code, Chapter 395.
- (C) Amendments to the land use assumptions shall incorporate projections of changes in land uses, densities, intensities, and population for the service area over at least a ten (10) year period.

§55.11. Wastewater Impact Fee Service Area.

- (A) There is hereby established one (1) wastewater impact fee service area the boundaries of which are depicted in Exhibit B, which is attached hereto and incorporated by reference herein as §55.40(B).
- (B) Exhibit B may be amended from time to time utilizing the amendment procedure set forth in Texas Local Government Code, Chapter 395.

§55.20. Determination of Service Units.

- (A) The service unit shall constitute the basis for establishing equivalency within various customer classes based upon the relationship of the continuous duty maximum flow rate in gallons per minute for a water meter of a given size and type compared to the continuous duty maximum flow rate in gallons per minute for a 3/4-inch diameter simple water meter.
- (B) The number of service units for impact fees shall be determined by using land use and service unit equivalencies tables, which convert the

demands generated by typical land uses to SUE. Said tables are included within Exhibit C and are incorporated by reference herein as §55.40(C).

- (C) Exhibit C shall be updated at least every five (5) years utilizing the amendment procedure set forth in Texas Local Government Code, Chapter 395.

§55.21. Impact Fees Per Service Unit.

- (A) Maximum impact fees per service unit for each service area shall be established by category of capital improvements. The maximum impact fee per service unit for each service area for each category of capital improvement shall be computed in the following manner:
 - (1) For each category of capital improvements, calculate the total projected costs of capital improvements necessitated by and attributable to new development in the service area identified in the Impact Fee Capital Improvements Plan;
 - (2) From such amount, subtract a credit in the amount of that portion of utility service revenues, if any, including the payment of debt, to be generated by new service units during the period the capital improvements plan is in effect, including the payment of debt, associated with the capital improvements in the plan;
 - (3) Divide the resultant amount by the total number of service units anticipated within the service area, based upon the land use assumptions for that service area.
- (B) The maximum impact fee per service unit by service area shall be as set forth in Exhibit C. Exhibit C shall be used to assess impact fees.
- (C) The impact fee to be paid per service unit by each new development within a service area shall be as set forth in Exhibit C and shall be an amount less than or equal to the assessed impact fee.

§55.22. Computation of Impact Fees.

- (A) Following the filing and acceptance of a written application for building permit or utility connection, the City shall compute the impact fee due in the following manner:
 - (1) The number of service units shall be determined by using the Service Unit/SUE tables in Exhibit C to calculate impact fees as applicable.

- (2) Service units shall then be multiplied by the applicable impact fees as depicted in Exhibit C.
 - (3) The amount of each impact fee shall be reduced by any allowable offsets or credits for that category of capital improvements, in the manner provided in §55.51.
- (B) The amount of impact fees due for new development shall not exceed the amount computed by multiplying the assessed fee for service units generated by the development as by the applicable impact fee(s) in Exhibit C. The amount of impact fee due for redevelopment shall not exceed the amount computed by multiplying the appropriate fees for services by the net increase in service units generated by the redevelopment.
- (C) The developer may submit, or the Director may require the submission of, a study prepared by a professional engineer licensed in the State of Texas that clearly indicates the number of service units which will be consumed or generated by the new development. The Director will review the information for completeness and conformity with generally accepted engineering practices and will, when satisfied with the completeness and conformity of the study, multiply the number of service units determined by the study by the impact fee per service unit contained in Exhibit C to determine the total impact fee to be collected for the development.
- (D) Whenever the owner increases the number of service units for a development, the additional impact fees collected for such new service units shall be determined based on Exhibit C then in effect and shall be collected at issuance of building permits or, as applicable, when water meters are purchased.
- (E) In the event the owner decreases the number of service units for a development, the owner shall be entitled to a refund of the impact fee or impact fees actually paid, but only for the amounts represented by the decrease in service units based on the assessed fees applicable at the time the fees were paid.
- (F) If the building permit for the property on which an impact fee is paid has expired and a new application for a building permit is thereafter filed for the identical property and the identical number of service units, the impact fee previously paid satisfies the requirements of this Chapter, unless the earlier impact fee was refunded to the applicant at the expiration of the previously-issued building permit, or

is otherwise refunded.

- (G) The impact fee shall attach to the property for which the impact fee was paid and shall not be transferable to other properties or service units.
- (H) No building permit or utility connection shall be issued if the applicant cannot verify payment to the City of the appropriate impact fees and other applicable fees, or if existing facilities do not have actual capacity to provide service to the new connection(s), except for those entities that are exempted from impact fees as are specifically set forth in Texas Local Government Code, Chapter 395.
- (I) All matters pertaining to the enforcement, assessment, computation, or collection of impact fees provided for herein shall be determined by the Director.

§55.30. Assessment of Impact Fees.

- (A) Assessment of impact fees for any new development in all of the service area as illustrated in Exhibit B shall be made as follows:
 - (1) For land which is unplatted at the time of application for a building permit or utility connection, or for a new development which received final plat approval prior the effective date of this Chapter, and for which no re-platting is necessary pursuant to the City's subdivision regulations prior to development, assessment of impact fees shall occur at the time application is made for the building permit or utility connection, whichever first occurs, and shall be the amount of the assessed impact fee per service unit in effect, as set forth in Exhibit C.
 - (2) For a new development which is submitted for approval pursuant to the City's subdivision regulations on or after the effective date of this Chapter, or for which re-platting results in an increase in the number of service units after such date, assessment of impact fees shall be at the time of final plat recordation and shall be the amount of the assessed impact fee per service unit in effect as set forth in Exhibit C.
- (B) Following assessment of impact fees pursuant to subsection (A), the amount of impact fee assessment per service unit for that development cannot be increased, unless the owner proposes to change the approved development by the submission of a new application for final plat approval or other development application that results in approval of additional service units, in which case a new assessment shall occur at

the Exhibit C rate then in effect for such additional service units.

- (C) Following the vacating of any plat or approval of any re-plat, a new assessment must be made in accordance with subsection (A)(2).
- (D) An application for an amending plat made pursuant to Texas Local Government Code §212.016 and the City of Harker Heights Subdivision Ordinance §154.26, for which no new development is proposed and for which there is not an increase in the number of service units, is not subject to reassessment for an impact fee.

§55.40. Exhibits.

- (A) Land Use Assumptions Map (Exhibit A)
- (B) Impact Fee Service Area Map (Exhibit B)
- (C) Impact Fee Tables (Exhibit C)

§55.50. Collection of Impact Fees.

- (A) Except as otherwise provided in this Chapter, the impact fee for the new development shall be collected at the time the City issues a building permit, or if a building permit is not required, at the time an application is filed for a new connection, to the City's wastewater system or for an increase in water meter size.
- (B) Except as otherwise provided by contracts with political subdivisions, developer's contracts, or wholesale customers, no building permit shall be issued until all impact fees due and owing have been paid to the City.
- (C) The City may enter into an agreement for capital improvements with an owner pursuant to §55.71 that establishes a different time and manner of payment.
- (D) In the event that an owner agrees to construct or finance capital improvements in the capital improvements plan pursuant to §55.71, the costs of which are to be reimbursed to the owner from impact fees paid from other new developments that will use such facilities, the City may collect impact fees from such other new developments at the time a final plat is recorded for such development or phase of development.

§55.51. Offsets and Credits.

- (A) The City shall offset the reasonable value of any area-related facilities, identified in the Impact Fee Capital Improvements Plan and

constructed pursuant to an agreement with the City, except as otherwise provided therein, which are dedicated to and received by the City on or after the effective date of this ordinance, against the amount of the impact fee due for that category of capital improvement. No offsets or credits shall be provided for required over-sizing of water and wastewater lines or lift stations not identified in the capital improvements plan or for pro-rata payments to repay other developers for such over-sizing.

- (B) The City shall credit any new development that occurs after the effective date of this Chapter, any amount of capital recovery fees which have been collected by the City pursuant to duly adopted ordinances and any impact fees collected by the City pursuant to this Chapter.
- (C) All offsets and credits against impact fees shall be subject to the following limitations and shall be granted based on this Chapter and additional standards promulgated by the City, which may be adopted as administrative guidelines.
 - (1) No offset or credit shall be given for the dedication or construction of site-related facilities.
 - (2) No offset or credit shall exceed the impact fee to be collected from new development as established in §55.22.
 - (3) The unit costs used to calculate the offsets shall not exceed those assumed for the capital improvements included in the Impact Fee Capital Improvements Plan for the category of facility within the service area for which the impact fee is imposed.
 - (4) If an offset or credit applicable to a plat has not been exhausted within ten (10) years from the date of the acquisition of the first building permit issued or connection made after the effective date of this Chapter or within such period as may be otherwise designated by agreement for capital improvements pursuant to §55.71, such offset or credit shall lapse.
 - (5) In no event will the City reimburse the owner or developer for an offset or credit when no impact fees for the new development can be collected pursuant to this Chapter or for any amount exceeding the total impact fees collected or due for the development for that category of capital improvement, unless otherwise agreed to by the City.
 - (6) The City may participate in the costs of an area-related improvement to be dedicated to the City, including costs that

exceed the amount of the impact fees due for the development under Exhibit C for that category of capital improvements, in accordance with policies and rules established under the City's subdivision regulations and when incorporated into an agreement for capital improvements pursuant to §55.71. The amount of any offset shall not include the amount of the City's participation.

- (D) Unless an agreement for capital improvements is executed providing for a different manner of offsetting or crediting impact fees due pursuant to §55.71, an offset or credit associated with a plat shall be applied to reduce an impact fee at the time of application for the first building permit or at the time of application for the first utility connection for the property, in the case of land located within the City's extraterritorial jurisdiction, and, thereafter, to reduce impact fees subsequently to be collected, until the offset or credit is exhausted.

§55.52. Establishment of Accounts.

- (A) The City's Finance Department shall establish separate interest-bearing accounts clearly identifying the category of capital improvement (i.e. wastewater facility).
- (B) Interest earned by each account shall be credited to the account on which it is earned and shall be used solely for the purposes specified for impact fees as authorized herein.
- (C) The City's Finance Department shall establish adequate financial and accounting controls to ensure that impact fees disbursed from the account are utilized solely for the purposes authorized in this Chapter. Disbursement of funds shall be authorized by the City at such times as are reasonably necessary to carry out the purposes and intent of this Chapter; provided, however, that any fee paid shall be expended within a reasonable period of time, but not to exceed ten (10) years from the date the fee is deposited into the account.
- (D) The City's Department of Finance shall maintain and keep adequate financial records for each such account, which shall show the source and disbursement of all revenues, which shall account for all monies received, the number of service units for which the monies are received, and which shall ensure that the disbursement of funds from each account shall be used solely and exclusively for the provision of projects specified in the Impact Fee Capital Improvements Plan as area-related capital projects.
- (E) The City's Department of Finance shall also maintain such records as are necessary to ensure that refunds are appropriately made in

accordance with this Chapter.

- (F) The records of the account into which impact fees are deposited shall be open for public inspection and copying during ordinary City business hours. The cost for copies is as annually adopted in the City's Fee Schedule.

§55.53. Use of Proceeds of Impact Fee Accounts.

- (A) The impact fee collected pursuant to this Chapter may be used to finance or to recoup capital construction costs for public infrastructure identified in the adopted Impact Fee Capital Improvements Plan and for any purpose authorized in Texas Local Government Code, Chapter 395, as amended. Impact fees may also be used to pay the principal sum and interest and other finance costs on bonds, notes or other obligations issued by or on behalf of the City to finance such capital improvements or facility expansions.
- (B) Impact fees collected pursuant to this Chapter shall not be used to pay for any of the following expenses:
 - (1) Construction, acquisition, or expansion of capital improvements or assets other than those identified in the Impact Fee Capital Improvements Plan;
 - (2) Repair, operation, or maintenance of existing or new capital improvements or expansion of facilities;
 - (3) Upgrading, expanding, or replacing existing capital improvements to serve existing development in order to meet stricter safety, efficiency, environmental or regulatory standards;
 - (4) Upgrading, expanding, or replacing existing capital improvements to serve existing development; provided, however, that impact fees may be used to pay the costs of upgrading, expanding or replacing existing capital improvements in order to meet the need for new capital improvements generated by new development; or
 - (5) Administrative and operating costs of the City.

§55.60. Appeals.

- (A) The owner or applicant for new development may appeal the Director's decisions and determinations first to the City Manager and then to the City Council: (a) the applicability of an impact fee to the new

development; (b) the method of calculating the amount of the impact fee due; (c) the availability or the amount of an offset, credit or rebate; (d) the application of an offset or credit against an impact fee due; or (e) the amount of a refund due, if any.

- (B) The written notice to the City Secretary requesting an appeal shall contain the following information:
- (1) The name of the owner and/or applicant of the Appeal; and
 - (2) The business address and telephone number of the owner and/or applicant; and
 - (3) The specific decision or determination of the Director which owner and/or applicant are aggrieved by, and the date of issuance thereof; and
 - (4) State specifically the grounds regarding owner's and/or applicant's application for appeal; and
 - (5) State specifically what amount of money that you believe is owed to the City, as well as the basis thereof; and
 - (6) The name and address of any legal counsel representing the owner or applicant who will appear before the City Manager/City Council; and
 - (7) The signature of the owner and/or applicant regarding the Appeal.
- (C) The burden of proof shall be on the owner and/or applicant to demonstrate that the amount of the fee or the amount of the offset, credit or rebate was not calculated according to the provisions of this Chapter. Upon submission of the case and posting of the appropriate public notification, a hearing on the case shall be held. The owner and/or applicant must be present and shall be given an opportunity to present their case.
- (1) The owner/applicant shall file a notice of appeal with the City Secretary of the City of Harker Heights, Texas in writing, of its desire to appeal the Director's decision or determination to the City Manager, no later than ten (10) days following the date of the Director's decision or determination. This notice shall be untimely if it is received by the City Secretary more than ten (10) days following the date of the Director's decision and determination.

The City Manager shall provide for a hearing on the appeal. The owner and/or applicant may appear in person or by counsel, at the time and place named in the notice of setting, and may make a defense to the action. If the appellant fails or refuses to appear, the City Manager may proceed to hear and determine the appeal. When the City Manager has completed the hearing and made a decision, one copy of the decision shall be filed with the Director, and one copy shall be forwarded to the owner/applicant by certified mail.

- (2) The owner/applicant shall file a notice of appeal with the City Secretary of the City of Harker Heights, Texas in writing, of its desire to appeal the City Manager's decision or determination to the City Council, no later than ten (10) days following the date of the City Manager's decision or determination. This notice shall be untimely if it is received by the City Secretary more than ten (10) days following the date of the City Manager's decision and determination.

The City Council shall provide for a public hearing on the appeal. The owner and/or applicant may appear in person or by counsel, at the time and place named in the notice of setting, and may make a defense to the action. If the owner/applicant fails or refuses to appear, the City Council may proceed to hear and determine the appeal. When the City Council has completed the hearing and made a decision, one copy of the decision shall be filed with the Director, and one copy shall be forwarded to the owner/applicant by certified mail.

- (D) If the notice of appeal is accompanied by a bond or other sufficient surety satisfactory to the City Attorney in an amount equal to the original determination of the impact fee due, the development application may be processed while the appeal of the impact fee is pending.

§55.70. Update of Plan and Revision of Fees.

- (A) The City shall update its land use assumptions and capital improvements plans at least every five (5) years, commencing approximately from the date of adoption of such plans, and shall recalculate the impact fees based thereon in accordance with the procedures set forth in Texas Local Government Code, Chapter 395, or in any successor statute.
- (B) The City may review its land use assumptions, impact fees, capital

improvements plans and other factors such as market conditions more frequently than provided in §55.70(A) to determine whether the land use assumptions and capital improvements plans should be updated and the impact fee recalculated accordingly, or whether Exhibit C should be changed. Exhibit C may be amended without revising land use assumptions and capital improvements plans at any time prior to the update provided for in §55.70(A), provided that the impact fees to be collected under Exhibit C do not exceed the maximum impact fees of Exhibit C.

- (C) If at the time an update is required pursuant to §55.70(A), the City Council determines that no change to the land use assumptions, capital improvements plans, or impact fees is needed it may dispense with such update by following the procedures in Texas Local Government Code, Section 395.0575.
- (D) The City may amend by resolution the Land Uses and Service Unit Equivalency tables in Exhibit A and Exhibit C respectively at any time prior to the update provided for in §55.70(A), provided that the number of service units associated with a particular land use shall not be increased.

§55.71. Agreement for Capital Improvements.

An owner of a new development may construct or finance a capital improvement or facility expansion designated in the Impact Fee Capital Improvements Plan, if required or authorized by the City, by entering into an agreement with the City prior to the issuance of any building permit for the development. The agreement shall be on a form approved by the City and shall identify the estimated cost of the improvement or expansion, the schedule for initiation and completion of the improvement or expansion, a requirement that the improvement be designed and completed to City standards and such other terms and conditions as deemed necessary by the City. The agreement shall provide for the method to be used to determine the amount of the offset to be given against the impact fees due for the development or any reimbursement to the owner for construction of the facility.

§55.72. Use of Other Financing Mechanisms.

- (A) In addition to the use of impact fees, the City may finance capital improvements or facilities expansions designated in the Impact Fee Capital Improvements Plan through the issuance of bonds, through the formation of public improvements districts or other assessment districts, or through any other authorized mechanism, in such manner

and subject to such limitations as may be provided by law.

- (B) Except as otherwise provided herein, the assessment and collection of an impact fee shall be additional and supplemental to, and not in substitution of, any other tax, fee, charge, or assessment which is lawfully imposed on and due against the property.

§55.80. Conflicting Ordinances.

All ordinances or parts of ordinances that are in force when the provisions of this ordinance become effective, which are inconsistent or in conflict with the terms or provisions contained in this ordinance, are hereby repealed to the extent of the conflict.

§55.90. Reserved.

Section 6. Impact Fees shall be assessed and collected in accordance with the provisions of Chapter 395 of the Texas Local Government Code, as amended. The City Manager, or the Manager's designee, is hereby authorized to develop procedures and policies for assessment and collection of impact fees consistent with applicable law and the City's ordinances and to implement said procedures and policies in the administration of the City's Impact Fee Program. Impact fees shall be collected at the time of issuance of the building permit or, for property outside the city limits, at the time an application for connection to the City's wastewater system is filed. On property that receives final plat approval before the effective date of this Ordinance, no impact fees shall be collected on any service unit for which a valid building permit is issued within one (1) year of the effective date of this Ordinance. If a building permit obtained within one (1) year of the effective date of this Ordinance subsequently expires, and no new application is made and approved within such period, the new development shall be subject to the payment of the impact fees adopted in this Ordinance.

Section 7. The maximum impact fee per service unit, as defined in Exhibit A and as may be amended from time to time, is hereby declared to be an appropriate measure of the impacts generated by a new development on the City's public infrastructure. To the extent that the impact fee charged against a new development, as may be amended from time to time, is less than the maximum impact fee per service unit, such difference is hereby declared to be founded on policies unrelated to the measurement of the impacts of the new development on the City's public infrastructure. The maximum impact shall therefore be used when evaluating any claim by a property owner that the dedication or construction of a capital improvement within a service area that

is imposed as a condition of development pursuant to the City's subdivision or development regulations is disproportionate to the impacts created by the development on the City's public infrastructure.

Section 8. This ordinance shall not limit the City's authority to impose other or additional impact fees authorized by Chapter 395 of the Texas Local Government Code or impose taxes, fees, charges, or assessments authorized by State law.

Section 9. This Ordinance shall be cumulative of all other Ordinances and shall not repeal any of the provisions of such Ordinances except for those instances where there are direct conflicts with the provisions of this Ordinance, Ordinances, or parts thereof, in force at the time this Ordinance shall take effect and that are inconsistent with this Ordinance are hereby repealed to the extent that they are inconsistent with this Ordinance.

Section 10. If any provision or any section of this ordinance shall be held to be void or unconstitutional, such holding shall in no way affect the validity of the remaining provisions or sections of this ordinance, which shall remain in full force and effect.

Section 11. Any person who violates this Ordinance shall be guilty of a misdemeanor and, upon conviction thereof, shall be subject to a fine not exceeding two thousand dollars (\$2,000.00). Each and every day that a violation of this Ordinance occurs shall constitute a separate offense. The culpable mental state required by Chapter 6.02, Texas Penal Code, is specifically negated and dispensed with and a violation is a strict liability offense.

Section 12. This ordinance shall be effective from and after its passage, and the City Secretary shall publish the caption or title of hereof within ten days as required by law.

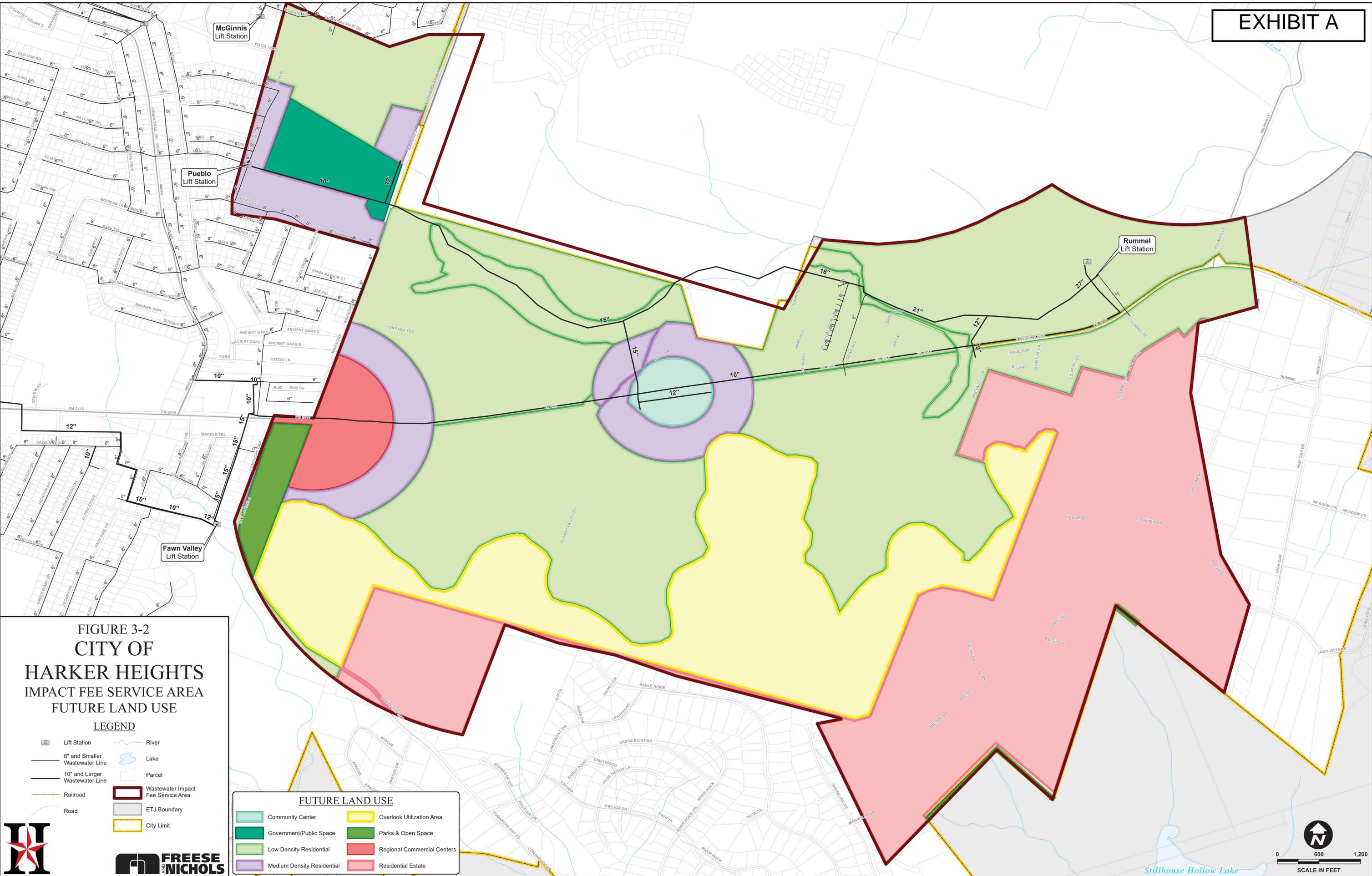
PASSED AND APPROVED by the City Council of the City of Harker Heights on September 27, 2022.

CITY OF HARKER HEIGHTS, TEXAS:

Spencer H. Smith, Mayor

ATTEST:

Julie Helsham, City Secretary



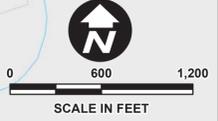
**FIGURE 3-2
CITY OF
HARKER HEIGHTS
IMPACT FEE SERVICE AREA
FUTURE LAND USE**

LEGEND

- Lift Station
- 8" and Smaller Wastewater Line
- 10" and Larger Wastewater Line
- Railroad
- Road
- River
- Lake
- Parcel
- Wastewater Impact Fee Service Area
- ETJ Boundary
- City Limit

FUTURE LAND USE

- Community Center
- Government/Public Space
- Low Density Residential
- Medium Density Residential
- Overlook Utilization Area
- Parks & Open Space
- Regional Commercial Centers
- Residential Estate



Created by Freese and Nichols, Inc. File No. 1905232 Location: 11101 W. J.W. PLANNING DELIVERABLES Land Use/Impact Fee Service Area Land Use map Updated: 8/20/2019 August 15, 2021 10:25:04 AM User Name: JBY

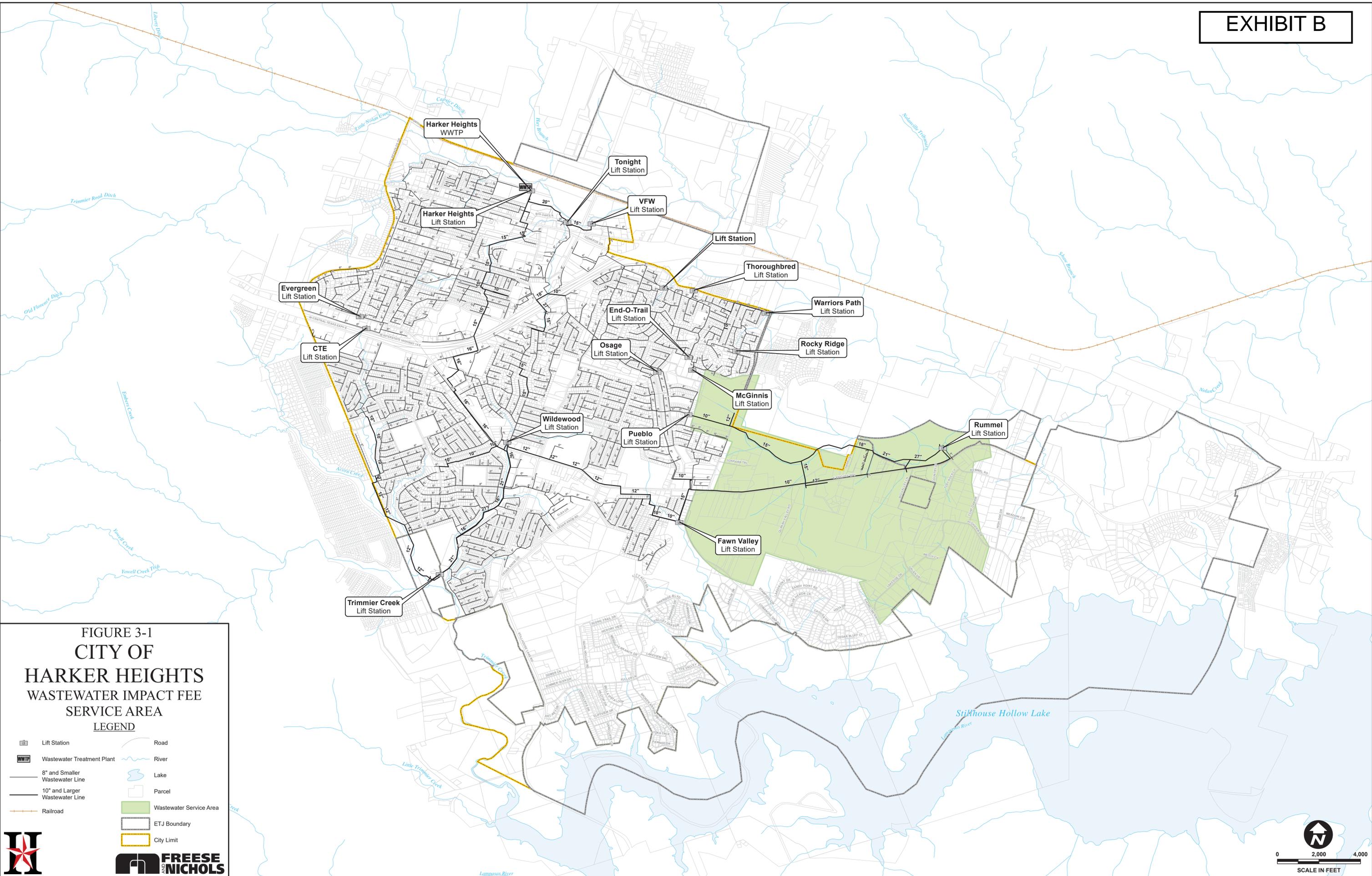


FIGURE 3-1
CITY OF
HARKER HEIGHTS
WASTEWATER IMPACT FEE
SERVICE AREA

LEGEND

| | | | |
|--|--------------------------------|--|-------------------------|
| | Lift Station | | Road |
| | Wastewater Treatment Plant | | River |
| | 8" and Smaller Wastewater Line | | Lake |
| | 10" and Larger Wastewater Line | | Parcel |
| | Railroad | | Wastewater Service Area |
| | | | ETJ Boundary |
| | | | City Limit |



0 2,000 4,000
 SCALE IN FEET

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 User: jw@fn.com Date: 05/11/2016 10:23:04 AM
 User Name: 02818

EXHIBIT C

Table 1. Service Unit Equivalency Table (per water meter)

| Water Meter Size (inches) | Meter Type | Service Unit Equivalent Water and Wastewater |
|----------------------------------|-------------------|---|
| 3/4" | Displacement | 1.0 |
| 1" | Displacement | 1.6 |
| 1 1/2" | Displacement | 2.0 |
| 2" | Ultrasonic | 4.0 |
| 3" | Compound | 12.8 |
| 4" | Compound | 20.0 |
| 6" | Compound | 40.0 |
| 8" | Compound | 64.0 |

Table 2. Wastewater Impact Fees

| Service Area | Maximum Impact Fee Per SUE | Assessed Impact Fee Per SUE | Impact Fee To Be Paid At Building Permit Per SUE |
|------------------------------|-----------------------------------|------------------------------------|---|
| 2022 Impact Fee Service Area | \$6,133 | \$6,133 | \$6,133 |



Innovative approaches
Practical results
Outstanding service

EXHIBIT D

WASTEWATER IMPACT FEE STUDY REPORT

Prepared for:

City of Harker Heights

January 2022

Prepared by:

FREESE AND NICHOLS, INC.
10431 Morado Circle, Suite 300
Austin, Texas 78759
512-617-3100



Innovative approaches
Practical results
Outstanding service

WASTEWATER IMPACT FEE STUDY REPORT

Prepared for:

City of Harker Heights



1/10/2022

Jessica B. Vassar

FREESE AND NICHOLS, INC.
TEXAS REGISTERED
ENGINEERING FIRM
F-2144

Prepared by:

FREESE AND NICHOLS, INC.
10431 Morado Circle, Suite 300
Austin, Texas 78759
512-617-3100

FNI Project No.: HAK21373

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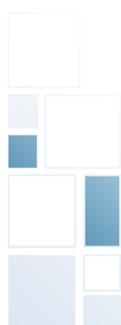
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1.0 EXECUTIVE SUMMARY

1.1 BACKGROUND

In April 2021, the City of Harker Heights, Texas (City) authorized Freese and Nichols, Inc. (FNI) to perform an impact fee analysis for the southeast portion of the City’s wastewater system. The purpose of this report is to document the methodology used in the development and calculation of wastewater impact fees for the City of Harker Heights. The methodology used herein satisfies the requirements of the Texas Local Government Code (TLGC) Section for the establishment of impact fees. The City does not currently charge wastewater impact fees to new developments.

1.2 LAND USE ASSUMPTIONS

Population and land use assumptions are important elements in the determination of needs for infrastructure systems. To assist in the determination of need and timing of capital improvements to serve future development, a reasonable estimation of future growth is required. Growth and future development projections were formulated based on the adopted future land uses within the community. These land use assumptions, which include growth projections for the ten-year planning period of 2022-2032, are the basis for the preparation of impact fee capital improvement plan (CIP).

1.3 WASTEWATER IMPACT FEE ANALYSIS

A wastewater impact fee CIP was developed for the City of Harker Heights based on the adopted land use assumptions and previously conducted studies. The recommended improvements will provide the required capacity to meet projected wastewater flows through 2032. **Table 1-1** displays the wastewater flow projections in terms of million gallons per day (MGD) for the study area.

Table 1-1: Impact Fee Service Area Wastewater Flow Projections

| Year | Average Daily Flow (MGD) | Peak Wet Weather Flow (MGD) |
|------|--------------------------|-----------------------------|
| 2022 | 0.03 | 0.11 |
| 2032 | 0.34 | 1.35 |

Chapter 395 of the TLGC states that the maximum impact fee may not exceed the amount determined by dividing the cost of capital improvements required by the total number of service units attributed to new

development during the impact fee eligibility period, less the credit to account for revenues used to finance these capital improvements. The total projected costs include the projected capital improvement costs to serve 10-year development, the projected finance cost for the capital improvements, and the consultant cost for preparing and updating the CIP. A 2.0% interest rate was used to calculate financing costs. **Table 1-2** displays a summary of the maximum allowable wastewater impact fee calculation.

Table 1-2: Maximum Wastewater Impact Fee Calculation

| | |
|--|---------------------|
| Total Eligible Capital Improvement Costs | \$15,758,705 |
| Total Eligible Financing Costs | \$1,156,784 |
| Total Eligible Impact Fee Costs | \$16,915,489 |
| Growth in Service Units | 1,379 |
| Maximum Wastewater Impact Fee per Service Unit ⁽¹⁾ | \$12,266 |
| Impact Fee Credit per Service Unit ⁽²⁾ | \$6,133 |
| Maximum Allowable Wastewater Impact Fee per Service Unit ⁽³⁾ | \$6,133 |

(1) Total Eligible Costs divided by the Growth in Service Units.

(2) Credit is 50% of Maximum Wastewater Impact Fee per Service Unit.

(3) Maximum Allowable Wastewater Impact Fee is Maximum Wastewater Impact Fee per service unit minus the Impact Fee Credit per Service Unit.

2.0 BACKGROUND AND SCOPE

In April 2021, the City of Harker Heights, Texas (City) authorized Freese and Nichols, Inc. (FNI) to perform an impact fee analysis for the southeast portion of the City's wastewater system. The purpose of this report is to document the land use assumptions and capital improvements plan which were used in the development and calculation of the maximum allowable wastewater impact fees for the City of Harker Heights. The methodology used herein satisfies the requirements of the Texas Local Government Code (TLGC) Section 395 (**Section 1.1**) for the establishment of impact fees. The City does not currently charge wastewater impact fees to new developments.

2.1 TEXAS LOCAL GOVERNMENT CODE

Chapter 395 of the Texas Local Government Code requires an impact fee analysis before impact fees can be created and assessed. Chapter 395 defines an impact fee as "a charge or assessment imposed by a political subdivision against new development in order to generate revenue for funding or recouping the costs of capital improvements or facility expansions necessitated by and attributable to the new development." In September 2001, Chapter 395 was amended creating the current procedure for implementing impact fees. Chapter 395 identifies the following items as impact fee eligible costs:

- Construction contract price
- Surveying and engineering fees
- Land acquisition costs
- Fees paid to the consultant preparing or updating the capital improvement plan (CIP) and impact fee analysis
- Projected interest charges and other finance costs for projects identified in the CIP

Chapter 395 also identifies items that impact fees cannot be used to pay for, such as:

- Construction, acquisition, or expansion of public facilities or assets other than those identified on the capital improvements plan
- Repair, operation, or maintenance of existing or new capital improvements
- Upgrading, updating, expanding, or replacing existing capital improvements to serve existing development in order to meet stricter safety, efficiency, environmental, or regulatory standards

- Upgrading, updating, expanding, or replacing existing capital improvements to provide better service to existing development
- Administrative and operating costs of the political subdivision
- Principal payments and interest or other finance charges on bonds or other indebtedness, except as allowed above

As a funding mechanism for capital improvements, impact fees allow cities to recover the costs associated with new or facility expansion in order to serve future development. Statutory requirements mandate that impact fees be based on a specific list of improvements identified in a capital improvements program and only the cost attributed (and necessitated) by new growth over a 10-year period may be considered. Once established, impact fees are required to be updated at least every five years.

2.2 METHODOLOGY

Wastewater impact fee capital improvement plan (CIP) projects were selected by FNI for the City based on the land use assumptions, input from City staff, and projects developed during previous studies. The recommended improvements will provide the required capacity to meet projected wastewater flows through year 2032. The projects identified are consistent with the Chapter 395 definition of impact fee eligible projects.

As part of the impact fee development, FNI conducted workshops with the City's appointed Capital Improvements Advisory Committee (CIAC) and City Council. FNI calculated the maximum allowable impact fee utilizing the 50% credit methodology identified in TLGC Chapter 395. The CIAC's role included reviewing the land use assumptions and impact fee CIP and recommending an impact fee rate to the City Council. The City Council sets the impact fees to be collected.

2.3 LIST OF ABBREVIATIONS

The list of abbreviations used in this report are presented in **Table 2-1**.

Table 2-1: List of Abbreviations

| Abbreviation | Actual |
|--------------|--|
| AWWA | American Water Works Association |
| CIAC | Capital Improvement Advisory Committee |
| CIP | Capital Improvement Plan |
| FNI | Freese and Nichols, Inc. |
| MGD | Million Gallons per Day |
| TCE | Thonhoff Consulting Engineers, Inc. |
| TLGC | Texas Local Government Code |



3.0 LAND USE ASSUMPTIONS

Projected land use is an important element in the analysis of wastewater collection and treatment systems. To assist the City in determining the need and timing of capital improvements to serve future development, a reasonable estimation of future growth is required. These assumptions will become the basis for the preparation of impact fee capital improvement plans for wastewater facilities.

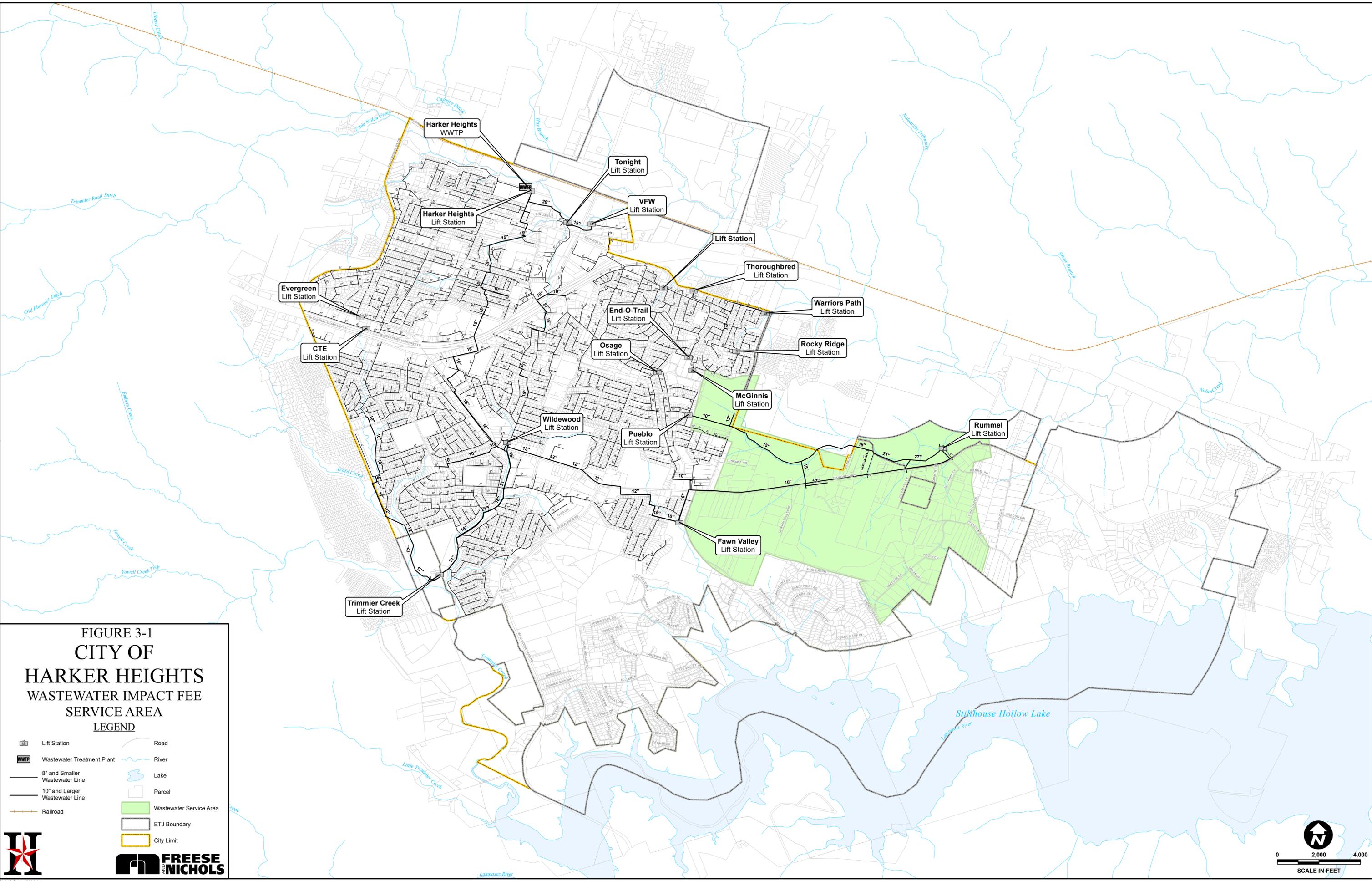
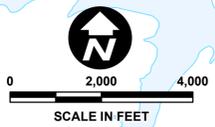
3.1 SERVICE AREA

FNI worked with City staff to develop growth projections and land use assumptions for the study area during the development of this report. The City is anticipating the majority of future developments to occur roughly within the southeast portion of the City, and therefore determined to set the wastewater impact fee service area to this boundary, shown on **Figure 3-1**. The City recently adopted an updated future land use plan that was used for this study. The future land use for the service area is presented on **Figure 3-2**.

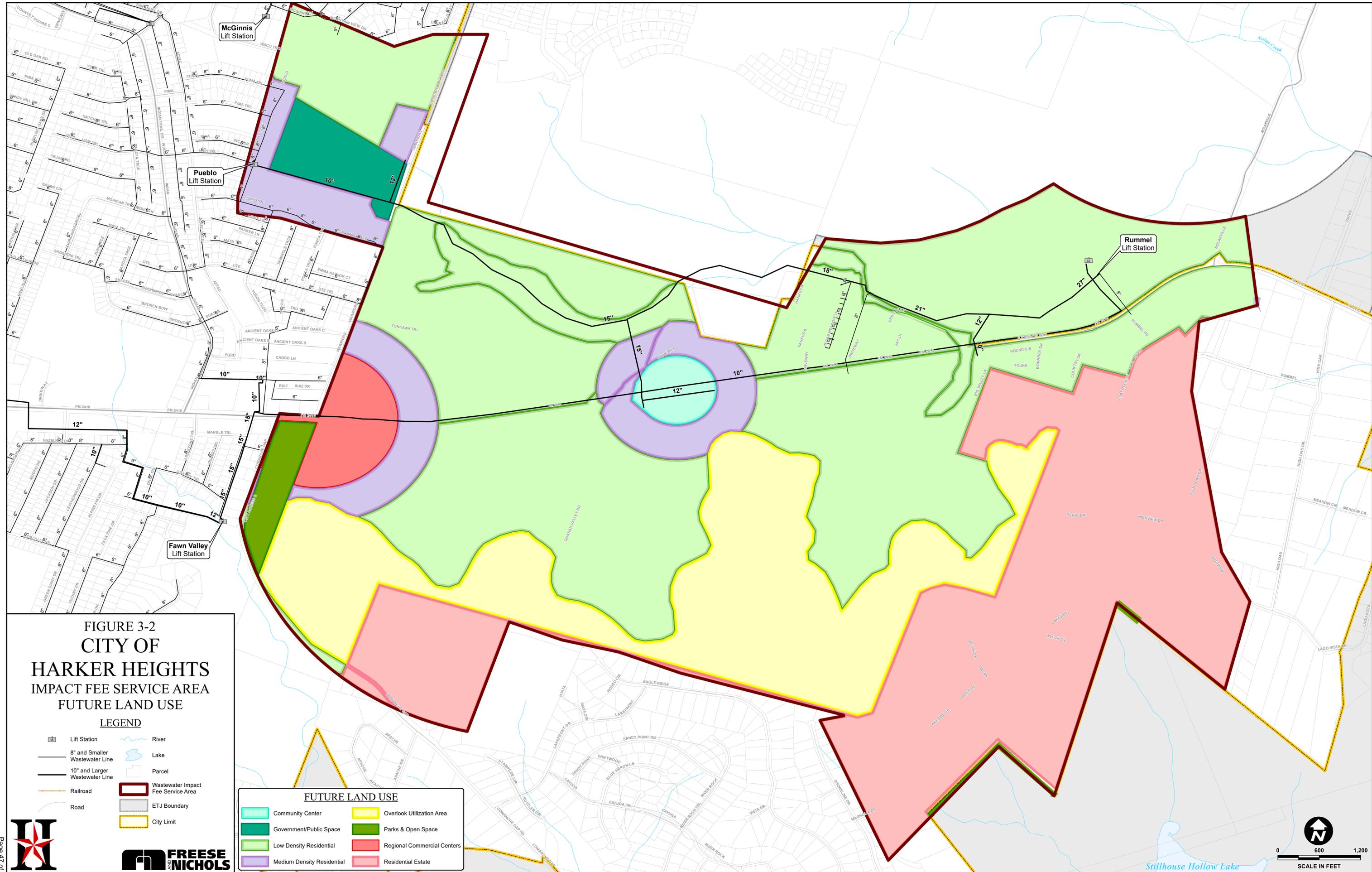
**FIGURE 3-1
CITY OF
HARKER HEIGHTS
WASTEWATER IMPACT FEE
SERVICE AREA**

LEGEND

-  Lift Station
-  Wastewater Treatment Plant
-  8" and Smaller Wastewater Line
-  10" and Larger Wastewater Line
-  Railroad
-  Road
-  River
-  Lake
-  Parcel
-  Wastewater Service Area
-  ETJ Boundary
-  City Limit



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User Name: jnichols



**FIGURE 3-2
CITY OF
HARKER HEIGHTS
IMPACT FEE SERVICE AREA
FUTURE LAND USE**

LEGEND

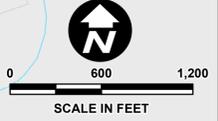
- Lift Station
- 8" and Smaller Wastewater Line
- 10" and Larger Wastewater Line
- Railroad
- Road
- River
- Lake
- Parcel
- Wastewater Impact Fee Service Area
- ETJ Boundary
- City Limit

FUTURE LAND USE

- Community Center
- Government/Public Space
- Low Density Residential
- Medium Density Residential
- Overlook Utilization Area
- Parks & Open Space
- Regional Commercial Centers
- Residential Estate



FREES AND NICHOLS



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3.2 HISTORICAL AND PROJECTED GROWTH

3.2.1 Historical Population

Historical population data was provided in the February 2021 *Wastewater Flow Capacity Analysis Report* developed by Thonhoff Consulting Engineers, Inc. (TCE). The City had an average 2.2% annual growth rate over the past eight years. This historical population information is presented in **Table 3-1**.

Table 3-1: Historical Population within City Limits

| Year | Population | Average Annual Growth Rate (%) |
|---------|------------|--------------------------------|
| 2012 | 27,894 | |
| 2013 | 28,563 | 2.4% |
| 2014 | 29,233 | 2.3% |
| 2015 | 29,903 | 2.3% |
| 2016 | 30,573 | 2.2% |
| 2017 | 31,243 | 2.2% |
| 2018 | 31,913 | 2.1% |
| 2019 | 32,583 | 2.1% |
| 2020 | 33,253 | 2.1% |
| Average | | 2.2% |

3.2.2 Projected Growth

The magnitude and distribution of the growth in the service area will dictate where future wastewater infrastructure is required. It is important to note that projecting future growth is challenging, especially for relatively small geographic areas such as individual cities or sections of cities, because it can be difficult to predict how fast or slow development will occur when there are a variety of circumstances that can impact it. **Table 3-2** presents the City’s projected growth for the 10-year planning period for the wastewater impact fee service area.

Table 3-2: Wastewater Impact Fee Service Area Growth

| Year | Connections |
|------|-------------|
| 2022 | 125 |
| 2032 | 1,500 |

4.0 WASTEWATER IMPACT FEE ANALYSIS

Wastewater CIP projects were developed for the City of Harker Heights in the February 2021 *Wastewater Flow Capacity Analysis Report* by TCE. The wastewater CIP projects that are required to serve growth within the next 10 years were identified for inclusion in the wastewater impact fee analysis.

4.1 WASTEWATER LOAD PROJECTIONS

Wastewater flow projections for 2022 and 2032 were developed using criteria from the February 2021 *Wastewater Flow Capacity Analysis Report*. 2.97 people per connection and 76 gallons per capita per day were assumed for wastewater flow projections. A wet weather peaking factor of 4.0 was applied to calculate the peak wet weather flow. **Table 4-1** presents the projected wastewater flows for the wastewater impact fee service area in million gallons per day (MGD).

Table 4-1: Impact Fee Service Area Wastewater Flow Projections

| Year | Average Daily Flow (MGD) | Peak Wet Weather Flow (MGD) |
|------|--------------------------|-----------------------------|
| 2022 | 0.03 | 0.11 |
| 2032 | 0.34 | 1.35 |

4.2 WASTEWATER SYSTEM IMPROVEMENTS

The TCE 2021 *Wastewater Flow Capacity Analysis Report* included proposed wastewater system improvements. A summary of the costs for each of the projects required for the 10-year growth period used in the wastewater system impact fee analysis is shown in **Table 4-2**. Costs listed for the existing projects are based on actual design and construction cost data provided by the City. Detailed cost estimates for the proposed wastewater system projects were provided by TCE and are provided in **Appendix A**. **Table 4-2** shows a 2022 percent utilization, which is the portion of a project’s capacity that is required to serve existing development. This portion of the project cost is not impact-fee-eligible. The 2032 percent utilization is the portion of the project’s capacity that will be required to serve projected growth in the city in 2032. The 2022-2032 percent utilization is the portion of the project’s capacity required to serve development from 2022 to 2032. The impact fee eligible cost for each project is calculated as the total capital cost multiplied by the 2022-2032 percent utilization. Only this portion of

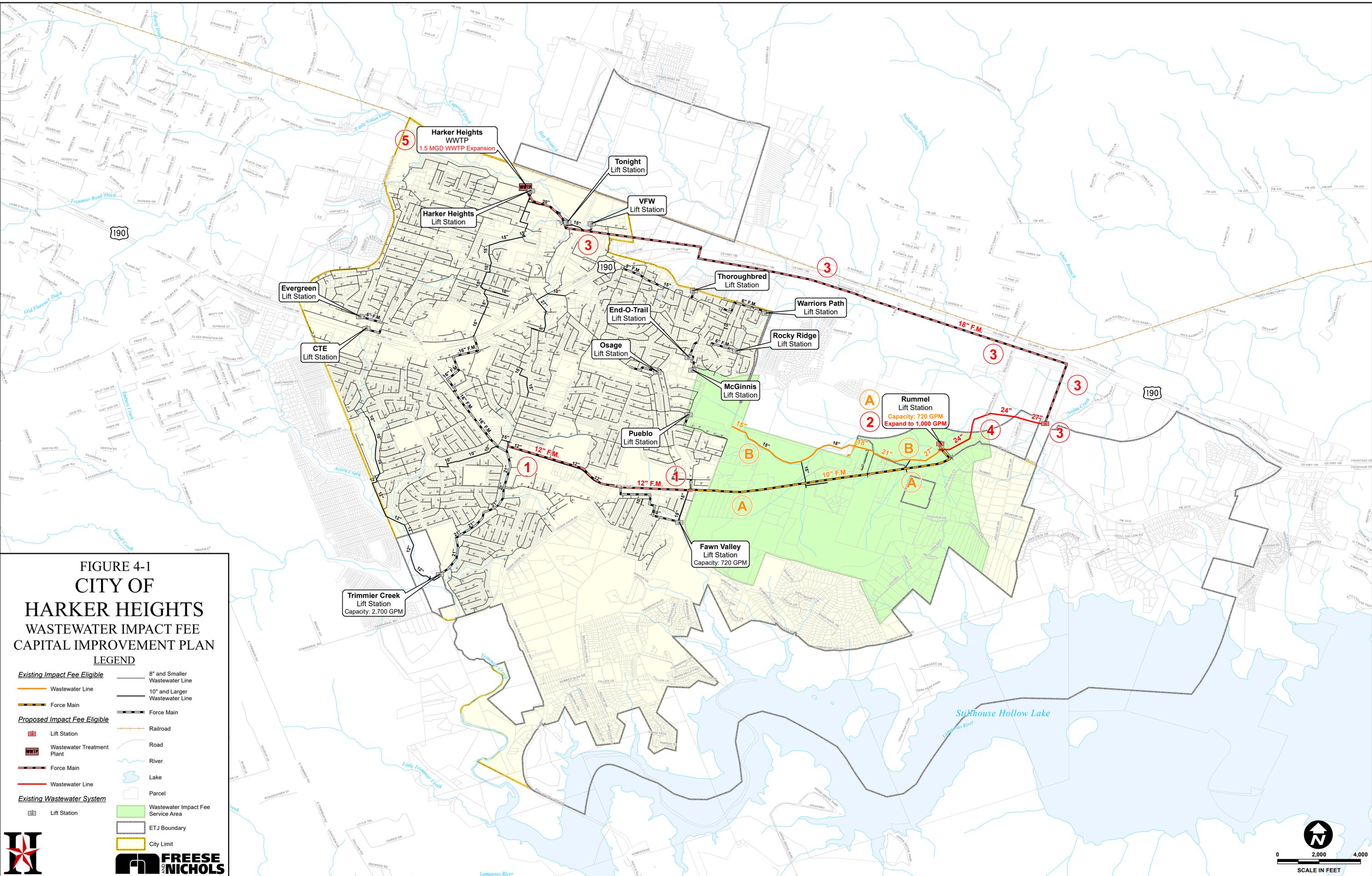
Wastewater Impact Fee Study
City of Harker Heights

the cost can be used to calculate maximum allowable impact fees. Proposed wastewater projects are shown on **Figure 4-1**.

Table 4-2: Wastewater Impact Fee Eligible Projects

| No. | Description of Project | Percent Utilization | | | Costs Based on 2022 Dollars | | |
|--|-----------------------------------|--|------|-------------|-----------------------------|--------------------------|---------------------|
| | | 2022 ⁽¹⁾ | 2032 | 2022 - 2032 | Capital Cost | Impact Fee Eligible Cost | |
| Existing | A | Rummel Lift Station and Force Main | 10% | 100% | 90% | \$1,116,502 | \$1,004,851 |
| | B | 15/18/21/27" Gravity Line | 10% | 75% | 65% | \$1,674,752 | \$1,088,589 |
| | C | Impact Fee Study | 0% | 100% | 100% | \$64,000 | \$64,000 |
| | Existing Project Sub-total | | | | | \$2,855,254 | \$2,157,440 |
| Proposed | 1 | 12" Force Main | 0% | 100% | 100% | \$1,975,412 | \$1,975,412 |
| | 2 | Rummel Lift Station Expansion | 0% | 100% | 100% | \$493,853 | \$493,853 |
| | 3 | Proposed Lift Station and 18" Force Main | 0% | 23% | 23% | \$6,330,252 | \$1,455,958 |
| | 4 | 24/27" Gravity Line | 0% | 23% | 23% | \$10,569,748 | \$2,431,042 |
| | 5 | 1.5 MGD Wastewater Treatment Plant Expansion | 0% | 23% | 23% | \$31,500,000 | \$7,245,000 |
| | Proposed Project Sub-total | | | | | \$50,869,265 | \$13,601,265 |
| Total Capital Improvements Cost | | | | | \$53,724,519 | \$15,758,705 | |

(1) Utilization in 2022 on proposed projects indicates a portion of the project that will be used to address deficiencies within the existing system, and therefore are not eligible for impact fee cost recovery for future growth.



**FIGURE 4-1
CITY OF
HARKER HEIGHTS
WASTEWATER IMPACT FEE
CAPITAL IMPROVEMENT PLAN**

LEGEND

| | |
|--|--------------------------------|
| Existing Impact Fee Eligible Wastewater Line | 8" and Smaller Wastewater Line |
| Force Main | 10" and Larger Wastewater Line |
| Proposed Impact Fee Eligible Lift Station | Force Main |
| Wastewater Treatment Plant | Railroad |
| Force Main | Road |
| Wastewater Line | River |
| Existing Wastewater System Lift Station | Lake |
| Lift Station | Parcel |
| Wastewater Impact Fee Service Area | ETJ Boundary |
| City Limit | |



4.3 WASTEWATER IMPACT FEE ANALYSIS

The impact fee analysis involves determining the utilization of existing and proposed projects required as defined by the capital improvement plan to serve new development over the next 10-year period. For existing or proposed projects, the impact fee eligible cost is calculated as a percentage of the total project cost, based upon the percentage of the project's capacity required to serve development projected to occur between 2022 and 2032. Capacity serving existing development and development projected to occur more than 10 years in the future cannot be included in the maximum allowable impact fee calculations.

4.3.1 Service Units

According to Chapter 395 of the TLGC, the maximum allowable impact fee may not exceed the amount determined by dividing the cost of required capital improvements by the total number of service units attributed to new development during the impact fee eligibility period. A service unit for wastewater is defined as the service equivalent to a water connection for a single-family residence.

Public, commercial, and industrial connections are converted into service units based upon the capacity of each meter used to provide service. The number of service units required to represent each meter size is based on the safe maximum operating capacity of the appropriate meter type. American Water Works Association (AWWA) standards C700 and C710 (Displacement Meters), C715 (Ultrasonic Meters), and C702 (Compound Meters) were used to determine the safe maximum operating capacity, as these meter types represent those in place and stocked by the City. The service unit equivalent for each meter size used by the City is listed in **Table 4-3**.

Table 4-3: Service Unit Equivalents

| Meter Size | Type | Maximum Flow (gpm) | Service Unit Equivalents |
|------------|--------------|--------------------|--------------------------|
| 3/4" | Displacement | 25 | 1.0 |
| 1" | Displacement | 40 | 1.6 |
| 1 1/2" | Displacement | 50 | 2.0 |
| 2" | Ultrasonic | 100 | 4.0 |
| 3" | Compound | 320 | 12.8 |
| 4" | Compound | 500 | 20.0 |
| 6" | Compound | 1,000 | 40.0 |
| 8" | Compound | 1,600 | 64.0 |

Typically, in Harker Heights, single-family residences are served with 3/4-inch water meters. Larger meters represent multi-family, public, commercial, and industrial water use. **Table 4-4** shows the service units by meter size for 2022 and the projected service units for 2032.

Table 4-4: Service Units

| Meter Size | 2022 | | 2032 | | Growth in Service Units |
|--------------|------------------|---------------|------------------|---------------|-------------------------|
| | Number of Meters | Service Units | Number of Meters | Service Units | |
| 3/4" | 120 | 120 | 1,489 | 1,489 | 1,369 |
| 1" | 5 | 8 | 10 | 16 | 8 |
| 1 1/2" | 0 | 0 | 1 | 2 | 2 |
| 2" | 0 | 0 | 0 | 0 | 0 |
| 3" | 0 | 0 | 0 | 0 | 0 |
| 4" | 0 | 0 | 0 | 0 | 0 |
| 6" | 0 | 0 | 0 | 0 | 0 |
| 8" | 0 | 0 | 0 | 0 | 0 |
| Total | 125 | 128 | 1,500 | 1,507 | 1,379 |

4.3.2 Maximum Impact Fee Calculations

TLGC Chapter 395 outlines the procedures and requirements for calculating maximum allowable impact fees to recover costs associated with capital improvement projects needed due to growth over a 10-year period. Chapter 395 also requires a plan that addresses possible duplication of payments for capital improvements. This plan can either provide a credit for the portion of revenues generated by new

Wastewater Impact Fee Study
City of Harker Heights

development that is used for the payment of eligible improvements, including payment of debt, or reduce the total eligible project costs by 50 percent. The City of Harker Heights has selected to utilize the reduction of the total eligible project costs by 50 percent to determine the maximum allowable impact fees.

Chapter 395 of the TLGC states that the maximum impact fee may not exceed the amount determined by dividing the cost of capital improvements required by the total number of service units attributed to new development during the impact fee eligibility period less the credit to account for water and wastewater revenues used to finance these capital improvements.

The total projected costs include the projected capital improvement costs to serve 10-year development, the projected finance cost for the capital improvements, and the consultant cost for preparing and updating the CIP. A 2.0% interest rate was used to calculate financing costs. **Table 4-5** displays a summary of the maximum allowable wastewater impact fee calculation.

Table 4-5: Maximum Wastewater Impact Fee Calculation

| | |
|--|---------------------|
| Total Eligible Capital Improvement Costs | \$15,758,705 |
| Total Eligible Financing Costs | \$1,156,784 |
| Total Eligible Impact Fee Costs | \$16,915,489 |
| Growth in Service Units | 1,379 |
| Maximum Wastewater Impact Fee per Service Unit ⁽¹⁾ | \$12,266 |
| Impact Fee Credit per Service Unit ⁽²⁾ | \$6,133 |
| Maximum Allowable Wastewater Impact Fee per Service Unit ⁽³⁾ | \$6,133 |

(1) Total Eligible Costs divided by the Growth in Service Units.

(2) Credit is 50% of Maximum Wastewater Impact Fee per Service Unit.

(3) Maximum Allowable Wastewater Impact Fee is Maximum Wastewater Impact Fee per Service Unit minus the Impact Fee Credit per Service Unit.



**Appendix A
Cost Estimates**

CITY OF HARKER HEIGHTS
Rummel Road Lift Station Upgrade
and 12-Inch Force Main Extension

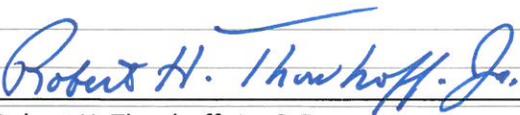
Bid Opening: January 5, 2022
2:00 PM

TCE Job # 21006.1.300

| BIDDER | BASE BID AMOUNT | COMMENT |
|--|-----------------|---------|
| Blackrock Construction Mansfield TX | 2,469,265.00 | |
| Bell Contractors Belton, TX | 2,530,098.11 | |
| | | |
| | | |
| | | |
| | | |

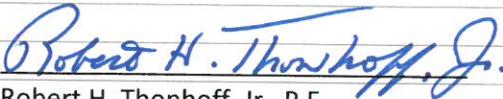
**City of Harker Heights
Phase 5 of FM 2410 Service Area Wastewater Trunk Line
and 4167 GPM Lift Station and 18-inch Force Main
Pumping Back to Existing WWTP Site**

**Update of Initial Engineering Estimate of Total Project Cost
December 6, 2021**

| | |
|--|---------------------|
| Construction Costs | |
| Original (11/03/2009) Phase 5 Wastewater Trunk Line Construction Cost Estimate: \$4,890,000 | |
| Updated Construction Cost using ENR Index Est. 7767 (12/2021) ÷ Est. 5390 (11/2009) ≈ 1.44 x | \$7,046,499 |
| Original (5/24/2011) 4167 GPM Lift Station Construction Cost Estimate: \$1,000,000 | |
| Updated Construction Cost using ENR Index Est. 7767 (12/2021) ÷ Est. 5390 (11/2011) ≈ 1.44 x | \$1,441,002 |
| Original (5/24/2011) 18-inch F.M. Construction Cost Estimate: \$1,939,800 | |
| Updated Construction Cost using ENR Index Est. 7767 (12/2021) ÷ Est. 5390 (11/2011) ≈ 1.44 x | <u>\$2,795,255</u> |
| Construction Subtotal | \$11,282,756 |
| Engineering Costs | |
| Turnkey Engineering Services at +/- 25% | <u>\$2,820,689</u> |
| Engineering Subtotal | \$2,820,689 |
| TOTAL COST | \$14,103,445 |
| Contingency at +/- 20% | <u>\$2,796,555</u> |
| UPDATE OF INITIAL ENGINEERING ESTIMATE OF TOTAL PROJECT COST | \$16,900,000 |
| Prepared by: THONHOFF CONSULTING ENGINEERS, INC. | |
|  <u>Robert H. Thonhoff, Jr.</u> Robert H. Thonhoff, Jr., P.E. | |

**City of Harker Heights
Wastewater Treatment Plant Expansion
From 3.0 MGD to 4.5 MGD**

**Initial Engineering Estimate of Total Project Cost
December 3, 2021**

| | |
|---|---------------------|
| Construction Costs | |
| Renovation of Existing 3.0 MGD Facility | |
| 3,000,000 GPD x \$1/GPD | \$3,000,000 |
| Expansion of 1.5 MGD Capacity | |
| 1,500,000 GPD x \$14/GPD | <u>\$21,000,000</u> |
| Construction Subtotal | \$24,000,000 |
| Engineering Costs | |
| Turnkey Engineering Services at +/- 25% | <u>\$6,000,000</u> |
| Engineering Subtotal | \$6,000,000 |
| Total | \$30,000,000 |
| Contingency at +/- 20% | <u>\$6,000,000</u> |
| INITIAL ENGINEERING ESTIMATE OF TOTAL PROJECT COST | \$36,000,000 |
| Prepared by: | |
| THONHOFF CONSULTING ENGINEERS, INC. | |
|  | |
| Robert H. Thonhoff, Jr., P.E. | |



City Council Memorandum

FROM: The Office of the City Manager

DATE: September 27, 2022

DISCUSS AND CONSIDER APPROVING AN AMENDED RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HARKER HEIGHTS, TEXAS, AUTHORIZING THE CITY MANAGER TO EXECUTE AN ADVANCE FUNDING AGREEMENT WITH THE TEXAS DEPARTMENT OF TRANSPORTATION FOR A SURFACE TRANSPORTATION PROGRAM METROPOLITAN MOBILITY PROJECT (WARRIORS PATH, PHASE 2 PROJECT) AND AUTHORIZING LOCAL FUNDING SHARE, AND TAKE THE APPROPRIATE ACTION. (PUBLIC WORKS DIRECTOR)

EXPLANATION:

The City Council approved Resolution No. 2022-22 on July 26, 2022, authorizing a local funding amount of \$716,204 for the Warriors Path, Phase 2 Project Advance Funding Agreement with the Texas Department of Transportation (TxDOT). TxDOT has requested the City Council to amend Resolution No. 2022-22 to include \$97,403.74 of Direct State Costs listed in Attachment B of the Project Budget within the Advance Funding Agreement. The Killeen-Temple Metropolitan Planning Organization (KTMO) allocated \$3,581,020 in Category 7 funds to the City of Harker Heights for the construction of the Warriors Path, Phase 2 Project. The program requires a minimum of 20% local funding in the amount of \$716,204 and \$97,403.74 of Direct State Costs for a project total of \$813,607.74. Additionally, the City of Harker Heights will be responsible for 100% of all cost overruns for the construction of the project. The let date for the project is scheduled for August 2023. This project is budgeted in the FY2023-24 Capital Improvement Fund.

RECOMMENDATION:

Public Works recommends authorizing the City Manager to execute the Advance Funding Agreement for the Warriors Path, Phase 2 Project with the Texas Department of Transportation.

ACTION BY THE COUNCIL:

1. Motion to APPROVE/DISAPPROVE an Amended Resolution authorizing the City Manager to execute an Advance Funding Agreement for the Warriors Path, Phase 2 Project with the Texas Department of Transportation..
2. Any other action desired.

ATTACHMENTS:

[Amended Resolution TxDOT AFA Warriors Path, Phase 2 September 27, 2022](#)

[1 AFA LongGen Signature Pages](#)

[AFA LongGen Attachment A Location Map](#)

[Revised AFA LongGen Attachment B Project Budget](#)

2-01647 WARRIORS PATH-PHASE II - EXH. D TXDOT ADVANCED FUNDING
AGREEMENT PROJECT MAP

Executed Resolution No. 2022-22 Warriors Path, Phase 2 AFA

RESOLUTION NO. _____

AN AMENDED RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HARKER HEIGHTS, TEXAS, AUTHORIZING THE CITY MANAGER TO EXECUTE AN ADVANCE FUNDING AGREEMENT WITH THE TEXAS DEPARTMENT OF TRANSPORTATION FOR A SURFACE TRANSPORTATION PROGRAM METROPOLITAN MOBILITY PROJECT (WARRIORS PATH, PHASE 2 PROJECT) AND AUTHORIZING LOCAL FUNDING SHARE.

WHEREAS, the City of Harker Heights has emphasized transportation planning through, and participation in, the Killeen-Temple Metropolitan Planning Organization (KTMPO); and

WHEREAS, the Warriors Path, Phase 2 Project represents a vital linkage in the transportation system of Harker Heights, Bell County, and the Central Texas Region; and

WHEREAS, the City of Harker Heights has partnered with the Waco District of the Texas Department of Transportation (TxDOT) in planning and executing long and short-range projects in the Region generally and in Harker Heights in particular; and

WHEREAS, the Killeen-Temple Metropolitan Planning Organization allocated \$3,581,020 in Category 7 funds to Harker Heights for this project; and

WHEREAS, the Warriors Path, Phase 2 Project construction is budgeted in the FY2023-24 Capital Improvement Fund; and

WHEREAS, the Texas Department of Transportation has requested the City of Harker Heights to amend Resolution No. 2022-22, approved by the Harker Heights City Council on July 26, 2022, to include \$97,403.74 of Direct State Costs; and

WHEREAS, the program requires a minimum of 20% local funding. The City commits to its local share of \$716,204.00, and \$97,403.74 in direct state costs for a project total of \$813,607.74.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Harker Heights, Texas, to:

1. That the City Council directs and designates the City Manager as the City's Authorized Representative to act in all matters in connection with this agreement and the City's participation in the Warriors Path, Phase 2 Project.
2. The City of Harker Heights commits to its local share of \$716,204.00, and \$97,403.74 in direct state costs for a project total of \$813,607.74. The City of Harker Heights will be responsible for 100% of all cost overruns.

PASSED AND APPROVED AT A REGULAR MEETING OF THE CITY COUNCIL OF THE CITY OF HARKER HEIGHTS, TEXAS, THIS 27TH DAY OF SEPTEMBER, 2022, AT WHICH MEETING A QUORUM WAS PRESENT, HELD IN ACCORDANCE WITH THE PROVISIONS OF THE TEXAS GOVERNMENT CODE, CHAPTER 551.

CITY OF HARKER HEIGHTS, TEXAS:

Spencer H. Smith, Mayor

ATTEST:

Julie Helsham, City Secretary
City of Harker Heights, Texas

| | | | | | |
|------------------------|---|---------------|-----------|--|--|
| TxDOT: | | | | Federal Highway Administration: | |
| CSJ # | 0909-36-171 | | | CFDA No. | 20.205 |
| District # | WAC-09 | AFA ID | Z00002955 | CFDA Title | Highway Planning and Construction |
| Code Chart 64 # | 18170 | | | | |
| Project Name | WNF 2020 Harker Heights Warriors Path | | | | <i>AFA Not Used For Research & Development</i> |

STATE OF TEXAS §

COUNTY OF TRAVIS §

**ADVANCE FUNDING AGREEMENT
For
STP-MM Widen Non-Freeway
Off-System**

THIS AGREEMENT (Agreement) is made by and between the State of Texas, acting by and through the **Texas Department of Transportation** called the “State”, and the **City of Harker Heights**, acting by and through its duly authorized officials, called the “Local Government”. The State and Local Government shall be collectively referred to as “the parties” hereinafter.

WITNESSETH

WHEREAS, federal law establishes federally funded programs for transportation improvements to implement its public purposes, and

WHEREAS, the Texas Transportation Code, Section 201.103 establishes that the State shall design, construct and operate a system of highways in cooperation with local governments, and Section 222.052 authorizes the Texas Transportation Commission to accept contributions from political subdivisions for development and construction of public roads and the state highway system within the political subdivision, and

WHEREAS, federal and state laws require local governments to meet certain contract standards relating to the management and administration of State and federal funds, and

WHEREAS, the Texas Transportation Commission has codified 43 TAC, Rules 15.50-15.56 that describe federal, state, and local responsibilities for cost participation in highway improvement and other transportation projects, and

WHEREAS, the Texas Transportation Commission passed Minute Order Number **116073** authorizing the State to undertake and complete a highway improvement or other transportation project generally described as **Widen Road-Add Lanes**. The portion of the project work covered by this Agreement is identified in the Agreement, Article 3, Scope of Work (Project), and

WHEREAS, the Texas Transportation Commission has not authorized funding for the construction of the highway improvement or other transportation project and the project is not currently listed and approved for construction in the Unified Transportation Program (UTP) or Statewide Transportation Improvement Program (STIP). This Agreement does not represent a commitment to future project funding for any project elements, including construction, not

| | | | | | |
|------------------------|---|---------------|-----------|--|--|
| TxDOT: | | | | Federal Highway Administration: | |
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| District # | WAC-09 | AFA ID | Z00002955 | CFDA Title | Highway Planning and Construction |
| Code Chart 64 # | 18170 | | | | |
| Project Name | WNF 2020 Harker Heights Warriors Path | | | | <i>AFA Not Used For Research & Development</i> |

specifically outlined in the Agreement. Costs not specifically identified as reimbursable under this Agreement will not be requested or reimbursed.

WHEREAS, the Governing Body of the Local Government has approved entering into this Agreement by resolution, ordinance, or commissioners court order dated **{Enter Date of Resolution}**, which is attached to and made a part of this Agreement as Attachment C, Resolution, Ordinance, or Commissioners Court Order (Attachment C). A map showing the Project location appears in Attachment A, Location Map Showing Project (Attachment A), which is attached to and made a part of this Agreement.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements of the parties, to be by them respectively kept and performed as set forth in this Agreement, it is agreed as follows:

AGREEMENT

1. Responsible Parties:

For the Project covered by this Agreement, the parties shall be responsible for the following work as stated in the article of the Agreement referenced in the table below:

| | | | |
|----|-------------------------|---|------------|
| 1. | Local Government | Utilities | Article 8 |
| 2. | Local Government | Environmental Assessment and Mitigation | Article 9 |
| 3. | Local Government | Architectural and Engineering Services | Article 11 |
| 4. | Local Government | Construction Responsibilities | Article 12 |
| 5. | Local Government | Right of Way and Real Property | Article 14 |

2. Period of the Agreement

This Agreement becomes effective when signed by the last party whose signing makes the Agreement fully executed. This Agreement shall remain in effect until the Project is completed or unless terminated as provided below.

3. Scope of Work

The scope of work for the Project consists of of the preliminary engineering (schematic, environmental, utilities, right-of-way), plans, specifications, and estimates (PS&E), and construction to upgrade Warriors Path by adding left turn lane, reconstructing the curb and gutter, adding 6 ft. sidewalk on the west side of the road and a 10 ft. shared use path on the east side of the road. A location map is shown in attachment A.

4. Project Sources and Uses of Funds

The total estimated cost of the Project is shown in Attachment B, Project Budget (Attachment B) which is attached to and made a part of this Agreement.

- A. If the Local Government will perform any work under this Agreement for which reimbursement will be provided by or through the State, the Local Government must complete training. If federal funds are being used, the training must be

| | | | | | |
|------------------------|---|---------------|-----------|--|-----------------------------------|
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| District # | WAC-09 | AFA ID | Z00002955 | CFDA Title | Highway Planning and Construction |
| Code Chart 64 # | 18170 | | | | |
| Project Name | WNF 2020 Harker Heights Warriors Path | | | <i>AFA Not Used For Research & Development</i> | |

completed before federal spending authority is obligated. Training is complete when at least one individual who is working actively and directly on the Project successfully completes and receives a certificate for the course entitled “Local Government Project Procedures and Qualification for the Texas Department of Transportation” and retains qualification in accordance with applicable TxDOT procedures. Upon request, the Local Government shall provide the certificate of qualification to the State. The individual who receives the training certificate may be an employee of the Local Government or an employee of a firm that has been contracted by the Local Government to perform oversight of the Project. The State in its discretion may deny reimbursement if the Local Government has not continuously designated in writing a qualified individual to work actively on or to directly oversee the Project.

- B. The expected cash contributions from the federal government, the State, the Local Government, or other parties are shown in Attachment B. The State will pay for only those Project costs that have been approved by the Texas Transportation Commission. For projects with federal funds, the State and the federal government will not reimburse the Local Government for any work performed before the federal spending authority is formally obligated to the Project by the Federal Highway Administration (FHWA). After federal funds have been obligated, the State will send to the Local Government a copy of the formal documentation showing the obligation of funds including federal award information. The Local Government is responsible for 100% of the cost of any work performed under its direction or control before the federal spending authority is formally obligated.
- C. Attachment B shows, by major cost categories, the cost estimates and the party responsible for performing the work for each category. These categories may include but are not limited to: (1) costs of real property; (2) costs of utility work; (3) costs of environmental assessment and remediation; (4) cost of preliminary engineering and design; (5) cost of construction and construction management; and (6) any other local project costs.
- D. The State will be responsible for securing the federal and State share of the funding required for the development and construction of the local Project. If the Local Government is due funds for expenses incurred, these funds will be reimbursed to the Local Government on a cost basis.
- E. The Local Government will be responsible for all non-federal or non-State participation costs associated with the Project, unless otherwise provided for in this Agreement or approved otherwise in an amendment to this Agreement. For items of work subject to specified percentage funding, the Local Government shall only in those instances be responsible for all Project costs that are greater than the maximum State and federal participation specified in Attachment B and for overruns in excess of the amount specified in Attachment B to be paid by the Local Government.
- F. The budget in Attachment B will clearly state all items subject to fixed price funding, specified percentage funding, and the periodic payment schedule, when periodic payments have been approved by the State.

| | | | | | |
|------------------------|---|---------------|-----------|--|-----------------------------------|
| TxDOT: | | | | Federal Highway Administration: | |
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| Code Chart 64 # | 18170 | | | | |
| Project Name | WNF 2020 Harker Heights Warriors Path | | | <i>AFA Not Used For Research & Development</i> | |

- G. When the Local Government bears the responsibility for paying cost overruns, the Local Government shall make payment to the State within thirty (30) days from the receipt of the State’s written notification of additional funds being due.
- H. When fixed price funding is used, the Local Government is responsible for the fixed price amount specified in Attachment B. Fixed prices are not subject to adjustment unless (1) differing site conditions are encountered; (2) further definition of the Local Government’s requested scope of work identifies greatly differing costs from those estimated; (3) work requested by the Local Government is determined to be ineligible for federal participation; or (4) the adjustment is mutually agreed to by the State and the Local Government.
- I. Prior to the performance of any engineering review work by the State, the Local Government will pay to the State the amount specified in Attachment B. At a minimum, this amount shall equal the Local Government’s funding share for the estimated cost of preliminary engineering performed or reviewed by the State for the Project. At least sixty (60) days prior to the date set for receipt of the construction bids, the Local Government shall remit its remaining financial share for the State’s estimated construction oversight and construction cost.
- J. The State will not execute the contract for the construction of the Project until the required funding has been made available by the Local Government in accordance with this Agreement.
- K. Whenever funds are paid by the Local Government to the State under this Agreement, the Local Government shall remit a check or warrant made payable to the “Texas Department of Transportation” or may use the State’s Automated Clearing House (ACH) system for electronic transfer of funds in accordance with instructions provided by TxDOT’s Finance Division. The funds shall be deposited and managed by the State and may only be applied by the State to the Project.
- L. The State will not pay interest on any funds provided by the Local Government.
- M. If a waiver for the collection of indirect costs for a service project has been granted under 43 TAC §15.56, the State will not charge the Local Government for the indirect costs the State incurs on the Project, unless this Agreement is terminated at the request of the Local Government prior to completion of the Project.
- N. If the Local Government is an Economically Disadvantaged County (EDC) and if the State has approved adjustments to the standard financing arrangement, this Agreement reflects those adjustments.
- O. Where the Local Government is authorized to perform services under this Agreement and be reimbursed by the State, the Local Government is authorized to submit requests for reimbursement by submitting the original of an itemized invoice, in a form and containing all items required by the State, no more frequently than monthly and no later than ninety (90) days after costs are incurred. If the Local Government submits invoices more than ninety (90) days after the costs are incurred and if federal funding is reduced as a result, the State shall have no responsibility to reimburse the Local Government for those costs.
- P. Upon completion of the Project, the State will perform a final accounting of the Project costs for all items of work with specified percentage funding. Any funds

| | | | | | |
|------------------------|---|---------------|-----------|--|-----------------------------------|
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| Project Name | WNF 2020 Harker Heights Warriors Path | | | <i>AFA Not Used For Research & Development</i> | |

due by the Local Government, the State, or the federal government for these work items will be promptly paid by the owing party.

- Q. The state auditor may conduct an audit or investigation of any entity receiving funds from the State directly under this Agreement or indirectly through a subcontract under this Agreement. Acceptance of funds directly under this Agreement or indirectly through a subcontract under this Agreement acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. An entity that is the subject of an audit or investigation must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit.
- R. Payment under this Agreement beyond the end of the current fiscal biennium is subject to availability of appropriated funds. If funds are not appropriated, this Agreement shall be terminated immediately with no liability to either party.

5. Termination of This Agreement

This Agreement shall remain in effect until the Project is completed and accepted by all parties, unless:

- A. The Agreement is terminated in writing with the mutual consent of the parties;
- B. The Agreement is terminated by one party because of a breach, in which case any costs incurred because of the breach shall be paid by the breaching party;
- C. The Local Government elects not to provide funding after the completion of preliminary engineering, specifications, and estimates (PS&E) and the Project does not proceed because of insufficient funds, in which case the Local Government agrees to reimburse the State for its reasonable actual costs incurred during the Project; or
- D. The Agreement is terminated by the State because the parties are not able to execute a mutually agreeable amendment when the costs for Local Government requested items increase significantly due to differing site conditions, determination that Local government requested work is ineligible for federal or state cost participation, or a more thorough definition of the Local Government’s proposed work scope identifies greatly differing costs from those estimated. The State will reimburse Local Government remaining funds to the Local Government within ninety (90) days of termination; or
- E. The Project is inactive for thirty-six (36) consecutive months or longer and no expenditures have been charged against federal funds, in which case the State may in its discretion terminate this Agreement.

6. Amendments

Amendments to this Agreement due to changes in the character of the work, terms of the Agreement, or responsibilities of the parties relating to the Project may be enacted through a mutually agreed upon, written amendment.

| | | | | | |
|------------------------|---|---------------|-----------|--|-----------------------------------|
| TxDOT: | | | | Federal Highway Administration: | |
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| District # | WAC-09 | AFA ID | Z00002955 | CFDA Title | Highway Planning and Construction |
| Code Chart 64 # | 18170 | | | | |
| Project Name | WNF 2020 Harker Heights Warriors Path | | | <i>AFA Not Used For Research & Development</i> | |

7. Remedies

This Agreement shall not be considered as specifying the exclusive remedy for any agreement default, but all remedies existing at law and in equity may be availed of by either party to this Agreement and shall be cumulative.

8. Utilities

The party named in Article 1, Responsible Parties, under AGREEMENT shall be responsible for the adjustment, removal, or relocation of utility facilities in accordance with applicable state laws, regulations, rules, policies, and procedures, including any cost to the State of a delay resulting from the Local Government’s failure to ensure that utility facilities are adjusted, removed, or relocated before the scheduled beginning of construction. The Local Government will not be reimbursed with federal or State funds for the cost of required utility work. The Local Government must obtain advance approval for any variance from established procedures. Before a construction contract is let, the Local Government shall provide, at the State’s request, a certification stating that the Local Government has completed the adjustment of all utilities that must be adjusted before construction is commenced.

9. Environmental Assessment and Mitigation

Development of a transportation project must comply with the National Environmental Policy Act and the National Historic Preservation Act of 1966, which require environmental clearance of federal-aid projects. The party named in Article 1, Responsible Parties, under AGREEMENT is responsible for the following:

- A. The identification and assessment of any environmental problems associated with the development of a local project governed by this Agreement.
- B. The cost of any environmental problem’s mitigation and remediation.
- C. Providing any public meetings or public hearings required for the environmental assessment process. Public hearings will not be held prior to the approval of the Project schematic.
- D. The preparation of the NEPA documents required for the environmental clearance of this Project.

If the Local Government is responsible for the environmental assessment and mitigation, before the advertisement for bids, the Local Government shall provide to the State written documentation from the appropriate regulatory agency or agencies that all environmental clearances have been obtained.

10. Compliance with Accessibility Standards

All parties to this Agreement shall ensure that the plans for and the construction of all projects subject to this Agreement are in compliance with standards issued or approved by the Texas Department of Licensing and Regulation (TDLR) as meeting or consistent with minimum accessibility requirements of the Americans with Disabilities Act (P.L. 101-336) (ADA).

| | | | | | |
|------------------------|---|---------------|-----------|--|-----------------------------------|
| TxDOT: | | | | Federal Highway Administration: | |
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| Code Chart 64 # | 18170 | | | | |
| Project Name | WNF 2020 Harker Heights Warriors Path | | | <i>AFA Not Used For Research & Development</i> | |

11. Architectural and Engineering Services

The party named in Article 1, Responsible Parties, under AGREEMENT has responsibility for the performance of architectural and engineering services. The engineering plans shall be developed in accordance with the applicable State’s *Standard Specifications for Construction and Maintenance of Highways, Streets and Bridges* and the special specifications and special provisions related to it. For projects on the State highway system, the design shall, at a minimum conform to applicable State manuals. For projects not on the State highway system, the design shall, at a minimum, conform to applicable American Association of State Highway and Transportation Officials (AASHTO) design standards.

In procuring professional services, the parties to this Agreement must comply with federal requirements cited in 23 CFR Part 172 if the Project is federally funded and with Texas Government Code 2254, Subchapter A, in all cases. Professional contracts for federally funded projects must conform to federal requirements, specifically including the provision for participation by Disadvantaged Business Enterprises (DBEs), ADA, and environmental matters. If the Local Government is the responsible party, the Local Government shall submit its procurement selection process for prior approval by the State. All professional services contracts must be reviewed and approved by the State prior to execution by the Local Government.

12. Construction Responsibilities

The party named in Article 1, Responsible Parties, under AGREEMENT is responsible for the following:

- A. Advertise for construction bids, issue bid proposals, receive and tabulate the bids, and award and administer the contract for construction of the Project. Administration of the contract includes the responsibility for construction engineering and for issuance of any change orders, supplemental agreements, amendments, or additional work orders that may become necessary subsequent to the award of the construction contract. In order to ensure federal funding eligibility, projects must be authorized by the State prior to advertising for construction.
- B. If the State is the responsible party, the State will use its approved contract letting and award procedures to let and award the construction contract.
- C. If the Local Government is the responsible party, the Local Government shall submit its contract letting and award procedures to the State for review and approval prior to letting.
- D. If the Local Government is the responsible party, the State must concur with the low bidder selection before the Local Government can enter into a contract with the vendor.
- E. If the Local Government is the responsible party, the State must review and approve change orders.
- F. Upon completion of the Project, the party responsible for constructing the Project will issue and sign a “Notification of Completion” acknowledging the Project’s construction completion and submit certification(s) sealed by a professional engineer(s) licensed in the State of Texas.

| | | | | | |
|------------------------|---|---------------|-----------|--|-----------------------------------|
| TxDOT: | | | | Federal Highway Administration: | |
| CSJ # | 0909-36-171 | | | CFDA No. | 20.205 |
| District # | WAC-09 | AFA ID | Z00002955 | CFDA Title | Highway Planning and Construction |
| Code Chart 64 # | 18170 | | | | |
| Project Name | WNF 2020 Harker Heights Warriors Path | | | <i>AFA Not Used For Research & Development</i> | |

G. For federally funded contracts, the parties to this Agreement will comply with federal construction requirements cited in 23 CFR Part 635 and with requirements cited in 23 CFR Part 633, and shall include the latest version of Form "FHWA-1273" in the contract bidding documents. If force account work will be performed, a finding of cost effectiveness shall be made in compliance with 23 CFR 635, Subpart B.

13. Project Maintenance

The Local Government shall be responsible for maintenance of locally owned roads and locally owned facilities after completion of the work. The State shall be responsible for maintenance of the State highway system after completion of the work if the work was on the State highway system, unless otherwise provided for in existing maintenance agreements with the Local Government.

14. Right of Way and Real Property

The party named in Article 1, Responsible Parties, under AGREEMENT is responsible for the provision and acquisition of any needed right of way or real property.

The Local Government shall be responsible for the following:

- A. Right of way and real property acquisition shall be the responsibility of the Local Government. Title to right of way and other related real property must be acceptable to the State before funds may be expended for the improvement of the right of way or real property.
- B. If the Local Government is the owner of any part of the Project site under this Agreement, the Local Government shall permit the State or its authorized representative access to occupy the site to perform all activities required to execute the work.
- C. All parties to this Agreement will comply with and assume the costs for compliance with all the requirements of Title II and Title III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Title 42 U.S.C.A. Section 4601 et seq., including those provisions relating to incidental expenses incurred by the property owners in conveying the real property to the Local Government and benefits applicable to the relocation of any displaced person as defined in 49 CFR Section 24.2(g). Documentation to support such compliance must be maintained and made available to the State and its representatives for review and inspection.
- D. The Local Government shall assume all costs and perform necessary requirements to provide any necessary evidence of title or right of use in the name of the Local Government to the real property required for development of the Project. The evidence of title or rights shall be acceptable to the State, and be free and clear of all encroachments. The Local Government shall secure and provide easements and any needed rights of entry over any other land needed to develop the Project according to the approved Project plans. The Local Government shall be responsible for securing any additional real property required for completion of the Project.

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- E. In the event real property is donated to the Local Government after the date of the State’s authorization, the Local Government will provide all documentation to the State regarding fair market value of the acquired property. The State will review the Local Government’s appraisal, determine the fair market value and credit that amount towards the Local Government’s financial share. If donated property is to be used as a funding match, it may not be provided by the Local Government. The State will not reimburse the Local Government for any real property acquired before execution of this Agreement and the obligation of federal spending authority.
- F. The Local Government shall prepare real property maps, property descriptions, and other data as needed to properly describe the real property and submit them to the State for approval prior to the Local Government acquiring the real property. Tracings of the maps shall be retained by the Local Government for a permanent record.
- G. The Local Government agrees to make a determination of property values for each real property parcel by methods acceptable to the State and to submit to the State a tabulation of the values so determined, signed by the appropriate Local Government representative. The tabulations shall list the parcel numbers, ownership, acreage and recommended compensation. Compensation shall be shown in the component parts of land acquired, itemization of improvements acquired, damages (if any) and the amounts by which the total compensation will be reduced if the owner retains improvements. This tabulation shall be accompanied by an explanation to support the determined values, together with a copy of information or reports used in calculating all determined values. Expenses incurred by the Local Government in performing this work may be eligible for reimbursement after the Local Government has received written authorization by the State to proceed with determination of real property values. The State will review the data submitted and may base its reimbursement for parcel acquisitions on these values.
- H. Reimbursement for real property costs will be made to the Local Government for real property purchased in an amount not to exceed eighty percent (80%) of the cost of the real property purchased in accordance with the terms and provisions of this Agreement. Reimbursement will be in an amount not to exceed eighty percent (80%) of the State’s predetermined value of each parcel, or the net cost of the parcel, whichever is less. In addition, reimbursement will be made to the Local Government for necessary payments to appraisers, expenses incurred in order to assure good title, and costs associated with the relocation of displaced persons and personal property as well as incidental expenses.
- I. If the Project requires the use of real property to which the Local Government will not hold title, a separate agreement between the owners of the real property and the Local Government must be executed prior to execution of this Agreement. The separate agreement must establish that the Project will be dedicated for public use for a period of not less than 10 (ten) years after completion. The separate agreement must define the responsibilities of the parties as to the use of the real property and operation and maintenance of the Project after

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completion. The separate agreement must be approved by the State prior to its execution. A copy of the executed agreement shall be provided to the State.

15. Insurance

If this Agreement authorizes the Local Government or its contractor to perform any work on State right of way, before beginning work, the entity performing the work shall provide the State with a fully executed copy of the State's Form 1560 Certificate of Insurance verifying the existence of coverage in the amounts and types specified on the Certificate of Insurance for all persons and entities working on State right of way. This coverage shall be maintained until all work on the State right of way is complete. If coverage is not maintained, all work on State right of way shall cease immediately, and the State may recover damages and all costs of completing the work.

16. Notices

All notices to either party shall be delivered personally or sent by certified or U.S. mail, postage prepaid, addressed to that party at the following address:

| Local Government: | State: |
|---|---|
| City of Harker Heights ATTN: City Manager 305 Millers Crossing Harker Heights, TX. 76548 | Texas Department of Transportation ATTN: Director of Contract Services 125 E. 11 th Street Austin, TX 78701 |

All notices shall be deemed given on the date delivered in person or deposited in the mail, unless otherwise provided by this Agreement. Either party may change the above address by sending written notice of the change to the other party. Either party may request in writing that notices shall be delivered personally or by certified U.S. mail, and that request shall be carried out by the other party.

17. Legal Construction

If one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions and this Agreement shall be construed as if it did not contain the invalid, illegal, or unenforceable provision.

18. Responsibilities of the Parties

The State and the Local Government agree that neither party is an agent, servant, or employee of the other party, and each party agrees it is responsible for its individual acts and deeds as well as the acts and deeds of its contractors, employees, representatives, and agents.

19. Ownership of Documents

Upon completion or termination of this Agreement, all documents prepared by the State shall remain the property of the State. All data and information prepared under this

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Agreement shall be made available to the State without restriction or limitation on their further use. All documents produced or approved or otherwise created by the Local Government shall be transmitted to the State, in the format directed by the State, on a monthly basis or as required by the State. The originals shall remain the property of the Local Government.

20. Compliance with Laws

The parties to this Agreement shall comply with all federal, state, and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals in any manner affecting the performance of this Agreement. When required, the Local Government shall furnish the State with satisfactory proof of this compliance.

21. Sole Agreement

This Agreement constitutes the sole and only agreement between the parties and supersedes any prior understandings or written or oral agreements respecting the Agreement’s subject matter.

22. Cost Principles

In order to be reimbursed with federal funds, the parties shall comply with the cost principles established in 2 CFR 200 that specify that all reimbursed costs are allowable, reasonable, and allocable to the Project.

23. Procurement and Property Management Standards

The parties to this Agreement shall adhere to the procurement and property management standards established in 2 CFR 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, and to the Texas Uniform Grant Management Standards. The State must pre-approve the Local Government’s procurement procedures for purchases to be eligible for state or federal funds.

24. Inspection of Books and Records

The parties to this Agreement shall maintain all books, documents, papers, accounting records, and other documentation relating to costs incurred under this Agreement and shall make such materials available to the State, the Local Government, and, if federally funded, the FHWA and the U.S. Office of the Inspector General or their duly authorized representatives for review and inspection at its office during the Agreement period and for seven (7) years from the date of final reimbursement by FHWA under this Agreement or until any impending litigation or claims are resolved. Additionally, the State, the Local Government, and the FHWA and their duly authorized representatives shall have access to all the governmental records that are directly applicable to this Agreement for the purpose of making audits, examinations, excerpts, and transcriptions.

25. Civil Rights Compliance

The parties to this Agreement are responsible for the following:

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- A. Compliance with Regulations: Both parties will comply with the Acts and the Regulations relative to Nondiscrimination in Federally-assisted programs of the U.S. Department of Transportation (USDOT), the Federal Highway Administration (FHWA), as they may be amended from time to time, which are herein incorporated by reference and made part of this Agreement.
- B. Nondiscrimination: The Local Government, with regard to the work performed by it during the Agreement, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The Local Government will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the Agreement covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.
- C. Solicitations for Subcontracts, Including Procurement of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the Local Government for work to be performed under a subcontract, including procurement of materials or leases of equipment, each potential subcontractor or supplier will be notified by the Local Government of the Local Government's obligations under this Agreement and the Acts and Regulations relative to Nondiscrimination on the grounds of race, color, or national origin.
- D. Information and Reports: The Local Government will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information, and facilities as may be determined by the State or the FHWA to be pertinent to ascertain compliance with such Acts, Regulations or directives. Where any information required of the Local Government is in the exclusive possession of another who fails or refuses to furnish this information, the Local Government will so certify to the State or the FHWA, as appropriate, and will set forth what efforts it has made to obtain the information.
- E. Sanctions for Noncompliance: In the event of the Local Government's noncompliance with the Nondiscrimination provisions of this Agreement, the State will impose such contract sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:
 - 1. withholding of payments to the Local Government under the Agreement until the Local Government complies and/or
 - 2. cancelling, terminating, or suspending of the Agreement, in whole or in part.
- F. Incorporation of Provisions: The Local Government will include the provisions of paragraphs (A) through (F) in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The Local Government will take such action with respect to any subcontract or procurement as the State or the FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Local Government becomes involved in, or is threatened with, litigation with a subcontractor or supplier because of such direction, the Local Government may request the State to enter into such litigation to protect the interests of the State. In addition, the Local Government

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may request the United States to enter into such litigation to protect the interests of the United States.

26. Pertinent Non-Discrimination Authorities

During the performance of this Agreement, each party, for itself, its assignees, and successors in interest agree to comply with the following nondiscrimination statutes and authorities; including but not limited to:

- A. Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- B. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of federal or federal-aid programs and projects).
- C. Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), as amended, (prohibits discrimination on the basis of sex).
- D. Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.) as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27.
- E. The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age).
- F. Airport and Airway Improvement Act of 1982, (49 U.S.C. Chapter 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex).
- G. The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the federal-aid recipients, subrecipients and contractors, whether such programs or activities are federally funded or not).
- H. Titles II and III of the Americans with Disabilities Act, which prohibits discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38.
- I. The Federal Aviation Administration’s Nondiscrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex).
- J. Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations.
- K. Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure

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compliance with Title VI, the parties must take reasonable steps to ensure that LEP persons have meaningful access to the programs (70 Fed. Reg. at 74087 to 74100).

- L. Title IX of the Education Amendments of 1972, as amended, which prohibits the parties from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq.).

27. Disadvantaged Business Enterprise (DBE) Program Requirements

If federal funds are used:

- A. The parties shall comply with the Disadvantaged Business Enterprise Program requirements established in 49 CFR Part 26.
- B. The Local Government shall adopt, in its totality, the State’s federally approved DBE program.
- C. The Local Government shall incorporate into its contracts with subproviders an appropriate DBE goal consistent with the State’s DBE guidelines and in consideration of the local market, project size, and nature of the goods or services to be acquired. The Local Government shall submit its proposed scope of services and quantity estimates to the State to allow the State to establish a DBE goal for each Local Government contract with a subprovider. The Local Government shall be responsible for documenting its actions.
- D. The Local Government shall follow all other parts of the State’s DBE program referenced in TxDOT Form 2395, Memorandum of Understanding Regarding the Adoption of the Texas Department of Transportation’s Federally-Approved Disadvantaged Business Enterprise by Entity, and attachments found at web address http://ftp.dot.state.tx.us/pub/txdot-info/bop/dbe/mou/mou_attachments.pdf.
- E. The Local Government shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any U.S. Department of Transportation (DOT)-assisted contract or in the administration of its DBE program or the requirements of 49 CFR Part 26. The Local Government shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure non-discrimination in award and administration of DOT-assisted contracts. The State’s DBE program, as required by 49 CFR Part 26 and as approved by DOT, is incorporated by reference in this Agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this Agreement. Upon notification to the Local Government of its failure to carry out its approved program, the State may impose sanctions as provided for under 49 CFR Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).
- F. Each contract the Local Government signs with a contractor (and each subcontract the prime contractor signs with a sub-contractor) must include the following assurance: *The contractor, sub-recipient, or sub-contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure*

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by the contractor to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as the recipient deems appropriate.

28. Debarment Certifications

If federal funds are used, the parties are prohibited from making any award at any tier to any party that is debarred or suspended or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549, “Debarment and Suspension.” By executing this Agreement, the Local Government certifies that it and its principals are not currently debarred, suspended, or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549 and further certifies that it will not do business with any party, to include principals, that is currently debarred, suspended, or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549. The parties to this Agreement shall require any party to a subcontract or purchase order awarded under this Agreement to certify its eligibility to receive federal funds and, when requested by the State, to furnish a copy of the certification.

If state funds are used, the parties are prohibited from making any award to any party that is debarred under the Texas Administrative Code, Title 34, Part 1, Chapter 20, Subchapter G, Rule §20.585 and the Texas Administrative Code, Title 43, Part 1, Chapter 9, Subchapter G.

29. Lobbying Certification

If federal funds are used, in executing this Agreement, each signatory certifies to the best of that signatory’s knowledge and belief, that:

- A. No federal appropriated funds have been paid or will be paid by or on behalf of the parties to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- B. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with federal contracts, grants, loans, or cooperative agreements, the signatory for the Local Government shall complete and submit the Federal Standard Form-LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions.
- C. The parties shall require that the language of this certification shall be included in the award documents for all sub-awards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and all sub-recipients shall certify and disclose accordingly. Submission of this certification is a prerequisite for making or entering into this transaction imposed

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by Title 31 U.S.C. §1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

30. Federal Funding Accountability and Transparency Act Requirements

If federal funds are used, the following requirements apply:

- A. Any recipient of funds under this Agreement agrees to comply with the Federal Funding Accountability and Transparency Act (FFATA) and implementing regulations at 2 CFR Part 170, including Appendix A. This Agreement is subject to the following award terms: <http://www.gpo.gov/fdsys/pkg/FR-2010-09-14/pdf/2010-22705.pdf> and <http://www.gpo.gov/fdsys/pkg/FR-2010-09-14/pdf/2010-22706.pdf>.
- B. The Local Government agrees that it shall:
 - 1. Obtain and provide to the State a System for Award Management (SAM) number (Federal Acquisition Regulation, Part 4, Sub-part 4.11) if this award provides more than \$25,000 in federal funding. The SAM number may be obtained by visiting the SAM website whose address is: <https://www.sam.gov/portal/public/SAM/>
 - 2. Obtain and provide to the State a Data Universal Numbering System (DUNS) number, a unique nine-character number that allows federal government to track the distribution of federal money. The DUNS may be requested free of charge for all businesses and entities required to do so by visiting the Dun & Bradstreet (D&B) on-line registration website <http://fedgov.dnb.com/webform>; and
 - 3. Report the total compensation and names of its top five executives to the State if:
 - i. More than 80% of annual gross revenues are from the federal government, and those revenues are greater than \$25,000,000; and
 - ii. The compensation information is not already available through reporting to the U.S. Securities and Exchange Commission.

31. Single Audit Report

If federal funds are used:

- A. The parties shall comply with the single audit report requirements stipulated in 2 CFR 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.
- B. If threshold expenditures of \$750,000 or more are met during the fiscal year, the Local Government must submit a Single Audit Report and Management Letter (if applicable) to TxDOT's Compliance Division, 125 East 11th Street, Austin, TX 78701 or contact TxDOT's Compliance Division by email at singleaudits@txdot.gov.
- C. If expenditures are less than the threshold during the Local Government's fiscal year, the Local Government must submit a statement to TxDOT's Compliance Division as follows: "We did not meet the \$ _____ expenditure threshold and therefore, are not required to have a single audit performed for FY _____."

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- D. For each year the Project remains open for federal funding expenditures, the Local Government will be responsible for filing a report or statement as described above. The required annual filing shall extend throughout the life of the Agreement, unless otherwise amended or the Project has been formally closed out and no charges have been incurred within the current fiscal year.

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32. Signatory Warranty

Each signatory warrants that the signatory has necessary authority to execute this Agreement on behalf of the entity represented.

Each party is signing this Agreement on the date stated under that party's signature.

THE STATE OF TEXAS

THE LOCAL GOVERNMENT

Signature

Kenneth Stewart

Typed or Printed Name

Director of Contract Services

Typed or Printed Title

Date

Signature

David Mitchell

Typed or Printed Name

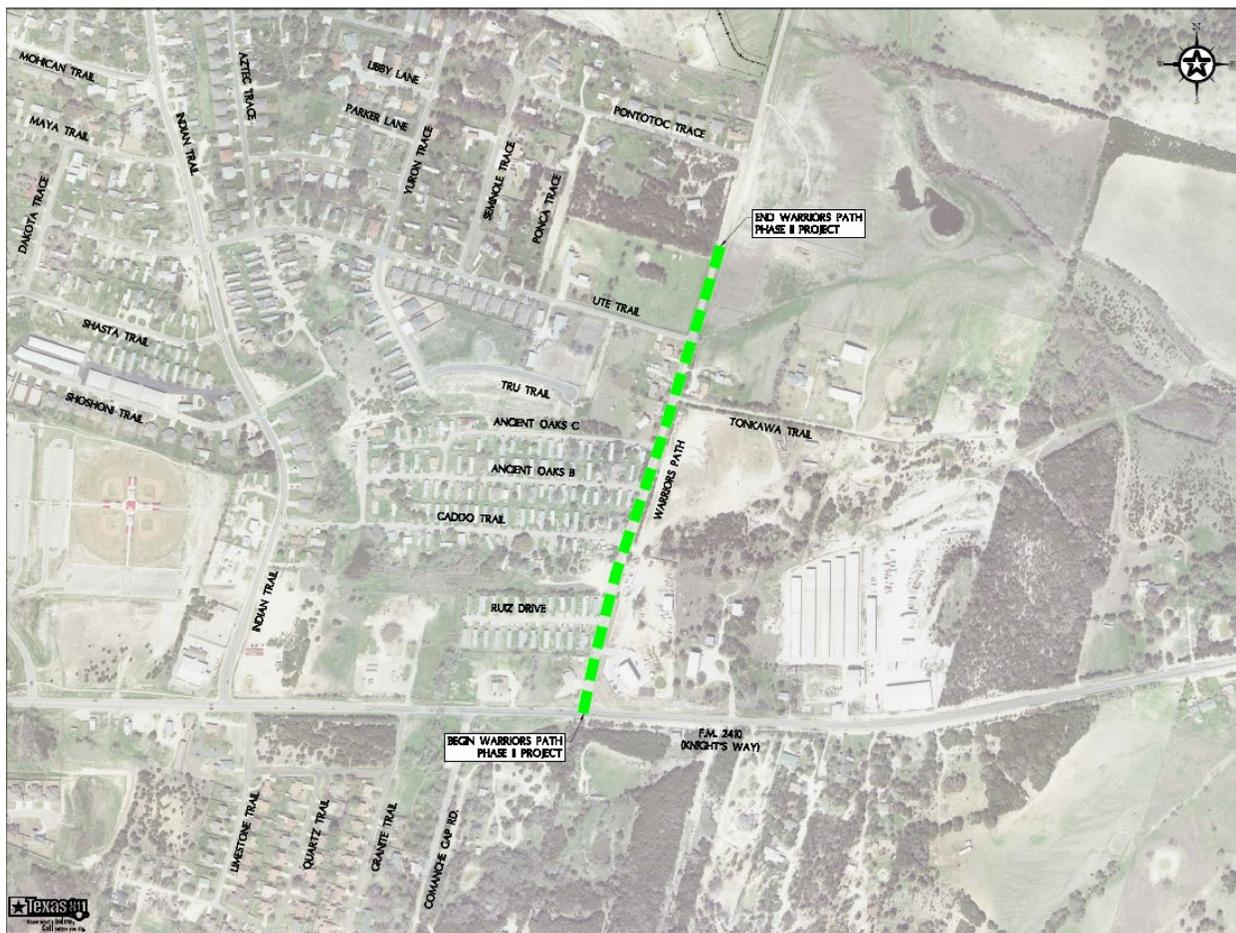
City Manager

Typed or Printed Title

Date

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**ATTACHMENT A
LOCATION MAP SHOWING PROJECT**



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**ATTACHMENT B
PROJECT BUDGET**

Construction costs will be allocated based on 80% Federal funding and 20% Local Government funding until the federal funding reaches the maximum obligated amount. The Local Government will then be responsible for 100% of the costs.

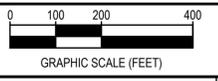
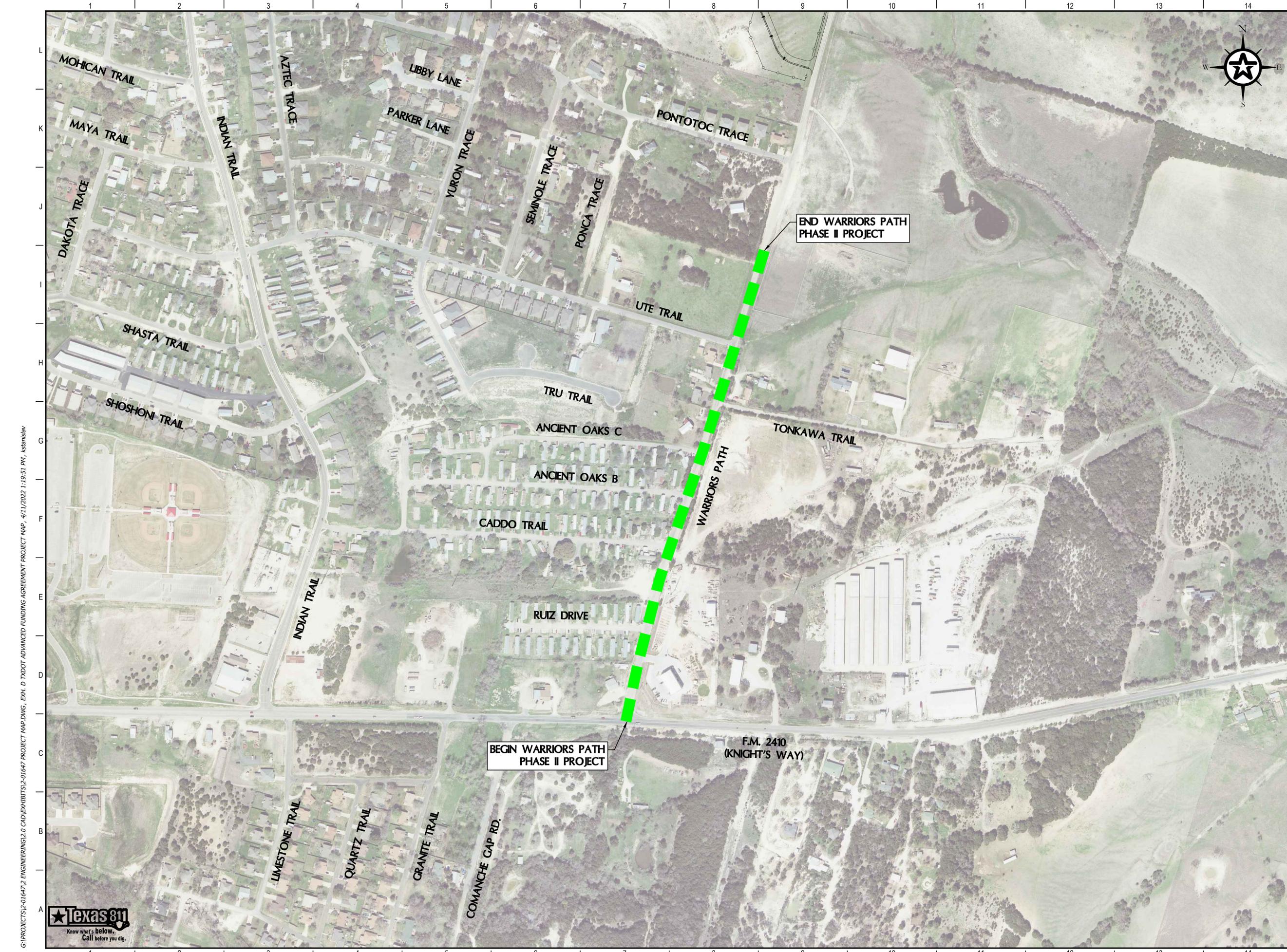
| Description | Total Estimated Cost | Federal Participation | | State Participation | | Local Participation | |
|------------------------------------|-----------------------|-----------------------|-----------------------|---------------------|---------------------|---------------------|---------------------|
| | | % | Cost | % | Cost | % | Cost |
| Engineering (by Local Government) | \$0 | 0% | \$0 | 0% | \$0 | 0% | \$0 |
| Construction (by Local Government) | \$3,581,020.00 | 80% | \$2,864,816.00 | 0% | \$0 | 20% | \$716,204.00 |
| Subtotal | \$3,581,020.00 | | \$2,864,816.00 | | \$0 | | \$716,204.00 |
| Environmental Direct State Costs | \$3,581.02 | 0% | \$0 | 0% | \$0 | 100% | \$3,581.02 |
| Right of Way Direct State Costs | \$358.10 | 0% | \$0 | 0% | \$0 | 100% | \$358.10 |
| Engineering Direct State Costs | \$17,905.10 | 0% | \$0 | 0% | \$0 | 100% | \$17,905.10 |
| Utility Direct State Costs | \$358.10 | 0% | \$0 | 0% | \$0 | 100% | \$358.10 |
| Construction Direct State Costs | \$75,201.42 | 0% | \$0 | 0% | \$0 | 100% | \$75,201.42 |
| Indirect State Costs | \$170,814.65 | 0% | \$0 | 100% | \$170,814.65 | 0% | \$0 |
| TOTAL | \$3,849,238.39 | | \$2,864,816.00 | | \$170,814.65 | | \$813,607.74 |

Initial payment by the Local Government to the State: \$22,202.32.

Payment by the Local Government to the State before construction: \$75,201.42

Estimated total payment by the Local Government to the State \$97,403.74.

This is an estimate. The final amount of Local Government participation will be based on actual costs.



| REV. | DESCRIPTION | DATE |
|------|-------------|------|
| | | |
| | | |

Walker Partners
engineers • surveyors
T.E.P.E. Registration No. 9553

CITY OF HARKER HEIGHTS

**WARRIORS PATH
RECONSTRUCTION - PHASE II**
TXDOT ADVANCED FUNDING
AGREEMENT PROJECT MAP

**PRELIMINARY
FOR REVIEW ONLY**

| | | |
|--|-------------|---------------|
| <small>THIS DOCUMENT IS RELEASED FOR THE PURPOSE OF INTERIM REVIEW UNDER THE AUTHORITY OF PROFESSIONAL ENGINEER OTTO E. WIEDERHOLD #53366 ON THE DATE SHOWN ON THE DATE STAMP. IT IS NOT TO BE USED FOR CONSTRUCTION, BIDDING, OR PERMIT PURPOSES.</small> | DESIGNED | OEW |
| | DRAFTED | KAS |
| | CHECKED | OEW |
| | PROJECT NO. | 2-01647 |
| DRAWING NO. | | EXH. D |

G:\PROJECTS\2-01647\2 ENGINEERING\2.0 CAD\EXHIBITS\2-01647 PROJECT MAP.DWG, EXH. D TXDOT ADVANCED FUNDING AGREEMENT PROJECT MAP, 4/11/2022 1:19:51 PM, lstenberg



AGENDA ITEM #VIII.1

RESOLUTION NO. 2022-22

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HARKER HEIGHTS, TEXAS, AUTHORIZING THE CITY MANAGER TO EXECUTE AN ADVANCE FUNDING AGREEMENT WITH THE TEXAS DEPARTMENT OF TRANSPORTATION FOR A SURFACE TRANSPORTATION PROGRAM METROPOLITAN MOBILITY PROJECT (WARRIORS PATH, PHASE 2 PROJECT) AND AUTHORIZING LOCAL FUNDING SHARE.

WHEREAS, the City of Harker Heights has emphasized transportation planning through, and participation in, the Killeen-Temple Metropolitan Planning Organization (KTMPO); and

WHEREAS, the Warriors Path, Phase 2 Project represents a vital linkage in the transportation system of Harker Heights, Bell County, and the Central Texas Region; and

WHEREAS, the City of Harker Heights has partnered with the Waco District of the Texas Department of Transportation (TxDOT) in planning and executing long and short-range projects in the Region generally and in Harker Heights in particular; and

WHEREAS, the Killeen-Temple Metropolitan Planning Organization allocated \$3,581,020 in Category 7 funds to Harker Heights for this project; and

WHEREAS, the Warriors Path, Phase 2 Project construction is budgeted in the FY2023-24 Capital Improvement Fund; and

WHEREAS, the program requires a minimum of 20% local funding, and the City commits to its local share of \$716,204 for this project.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Harker Heights, Texas, to:

1. That the City Council directs and designates the City Manager as the City's Authorized Representative to act in all matters in connection with this agreement and the City's participation in the Warriors Path, Phase 2 Project.
2. The City of Harker Heights commits to its local share of \$716,204, and 100% of all cost overruns.

PASSED AND APPROVED AT A REGULAR MEETING OF THE CITY COUNCIL OF THE CITY OF HARKER HEIGHTS, TEXAS, THIS 26TH DAY OF JULY, 2022 AT WHICH MEETING A QUORUM WAS PRESENT, HELD IN ACCORDANCE WITH THE PROVISIONS OF THE TEXAS GOVERNMENT CODE, CHAPTER 551.



CITY OF HARKER HEIGHTS, TEXAS:

Spencer H. Smith

 Spencer H. Smith, Mayor

ATTEST:

Julie Helsham

 Julie Helsham, City Secretary



City Council Memorandum

FROM: The Office of the City Manager

DATE: September 27, 2022

DISCUSS AND CONSIDER APPROVING A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HARKER HEIGHTS, TEXAS, TO AUTHORIZE AN AGREEMENT WITH VIGILANT SOLUTIONS TO PROVIDE SERVICES AND EQUIPMENT RELATED TO THE DIGITAL LICENSE PLATE READER PROGRAM IN THE AMOUNT OF \$61,210.00 THROUGH THE HOMELAND SECURITY GRANT; AUTHORIZE THE CITY MANAGER TO ACT AND SIGN ON BEHALF OF THE CITY, AND TAKE THE APPROPRIATE ACTION. (CHIEF OF POLICE)

EXPLANATION:

In February 2021, Harker Heights Police Department proposed a resolution to the City Council to participate in a Homeland Security Grant funding Digital License Plate Reader equipment and services. Three license plate cameras would be purchased and installed on a marked Harker Heights Police Department patrol vehicle enabling a patrol officer to patrol all streets and areas within the city with the equipment and detect vehicles that have been identified in criminal case work or currently listed as stolen in the national and Texas crime information systems. Two additional license plate cameras would be purchased with this grant and would be included with a speed traffic survey trailer. The trailer would have capabilities of conducting speed surveys with an interactive display for motorists to observe and gain voluntary compliance and collect vehicular data intelligence with the two on-board license plate cameras. The City Council approved this proposed resolution and the grant application was submitted for consideration.

The Digital License Plate Reader grant was approved in the amount of \$61,210.00. Vigilant Solutions was selected as our vendor for this program due to their price point, technology capabilities, product availability, turn-key installation, training capabilities, and their customer service practices. Vigilant Solutions is a member of the Texas BuyBoard co-op program. They were also highly recommended by other local law enforcement agencies that current use their products.

RECOMMENDATION:

Staff recommends approval.

ACTION BY THE COUNCIL:

1. Motion to APPROVE/DISAPPROVE a Resolution to authorize an agreement with Vigilant Solutions for the purchase and services related to the Digital License Plate Reader program in the amount of \$61,210.00 through the Homeland Security Grant and authorize the City Manager to sign and act on behalf of the City.
2. Any other action desired.

ATTACHMENTS:

[Resolution](#)

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HARKER HEIGHTS, TEXAS, AUTHORIZING THE AGREEMENT WITH VIGILANT SOLUTIONS TO PROVIDE SERVICES AND EQUIPMENT RELATED TO THE DIGITAL LICENSE PLATE READER PROGRAM IN THE AMOUNT OF \$61,210.00.

WHEREAS, the Harker Heights Police Department was authorized to participate in the Homeland Security Grant process to fund multiple Digital License Plate Readers and related services; and subsequently awarded the Grant in the amount of \$61,210.00.

WHEREAS, the City of Harker Heights Police Department selected Vigilant Solutions as the vendor due to their price point, technology capabilities, product availability, turn-key installation, training capabilities, and their customer service practices.

WHEREAS, the meeting at which this resolution was passed was open to the public, and notice of the time, place and purpose of said meeting was given as required by law, all in strict accordance with the requirements of the Texas Open Meetings Act;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Harker Heights, Texas:

1. The facts and recitations set forth above are hereby found and declared to be true and correct.
2. The Enterprise Service Agreement (ESA) for the Digital License Plate Reader Program is awarded to Vigilant Solutions, in the amount of \$61,210.00
3. The City Manager, David Mitchell, is hereby designated as the City’s authorized official. He is authorized and empowered to act in the name and on behalf of the City to apply for, accept, reject, alter, or terminate the City’s participation in the Grant, and to execute and deliver such agreements (and any changes therein and additions thereto as he shall determine to be necessary or advisable, such determination to be conclusively evidenced by the execution and delivery thereof), and any related consents, notices, certificates, acknowledgments, and other instruments, and to act as the representative of the City in any lawful way to perform or cause to be performed such other and further acts as may be reasonably necessary and appropriate to accomplish the purposes of these resolutions.
4. All actions taken or performed prior to the date hereof by the City Manager in respect to the matters referred to and approved in this Resolution be and hereby are ratified and confirmed in all respects.
5. The City Council agrees that in the event of loss or misuse of Grant funds, such funds will be returned to the issuing administrator, department or agency in full.

6. Any person, corporation, partnership, limited partnership, association, joint venture or other business entity may presume upon the validity of the acts of any person authorized herein to act, without further recourse to the governing documents, minutes or other proceedings of the City, and without joinder of any other officer or employee of the City.

PASSED AND APPROVED on September 27, 2022, by the Harker Heights City Council.

CITY OF HARKER HEIGHTS, TEXAS:

Spencer H. Smith, Mayor

ATTEST:

Julie Helsham, City Secretary



City Council Memorandum

FROM: The Office of the City Manager

DATE: September 27, 2022

DISCUSS AND CONSIDER APPROVING AN APPEAL OF THE FALSE ROBBERY ALARM SERVICE CHARGE FOR ELLI BOHAC AT 403 KODIAK CIRCLE, HARKER HEIGHTS, TEXAS, AND TAKE THE APPROPRIATE ACTION. (CITY MANAGER)

EXPLANATION:

Section 99.08 of the City's Code of Ordinances grants an appeal process for false alarm charges. Appeals to false alarm charges must be made within 14 days of being given notice of a false alarm charge. By Code, the City Manager is the Alarm Administrator and issues the notice of false alarm charge and the City Council is the body that hears any appeals of the charge.

Officer Cory Bates with the City of Harker Heights Police Department responded to a robbery alarm at the home of Elli Bohac, 403 Kodiak Circle, Harker Heights, Texas, on July 18, 2022, at 12:48 p.m. No evidence of robbery was found. Accordingly, per §99.06 of the Code of Harker Heights and the City's fee schedule, Elli Bohac was assessed a false alarm service charge of \$75.00. The City mailed a letter to Elli Bohac informing her of the fee on August 17, 2022.

On August 23, 2022, the City received a letter from Elli Bohac appealing the Service Charge Assessment. On September 16, 2022, a confirmation notice was sent to Elli Bohac notifying her of the date and time that the appeal would be heard before the City Council.

Section 99.06 of the Harker Heights Code of Ordinances provides the following provisions about false alarm charges:

(A) If, within any 12-month period occurring after the effective date of this chapter, five false burglar alarm notifications are made from an alarm site, the Alarm Administrator shall assess the alarm user at that alarm site a fee for each subsequent false burglar alarm notification made from the site during the 12-month period.

(B) The Alarm Administrator shall assess an alarm user for **each false robbery alarm notification** emitted from the alarm site.

(C) If, within any 12-month period occurring after the effective date of this chapter, two false fire alarm notifications are made from an alarm site, the Alarm Administrator shall assess the alarm user at that alarm site a fee for each subsequent false fire alarm notification emitted from the site during the 12-month period.

AGENDA ITEM #VIII.3.

(D) If, within any 12-month period occurring after the effective date of this chapter, two false emergency medical assistance alarm notifications are made from an alarm site, the Alarm Administrator shall assess the alarm user at that alarm site a fee for each subsequent false emergency medical assistance alarm notification made from the site during the 12-month period.

(E) The Alarm Administrator shall send written notice to the alarm user of any fee assessed under this chapter. The notice shall be hand delivered to the alarm user, or sent by certified mail, return receipt requested, to the alarm user at the alarm user's last known address.

(F) An alarm user shall pay any fee assessed under this chapter within 30 days after the date the fee is assessed.

(G) No fee shall be assessed pursuant to this section, if:

- (1) The alarm notification is cancelled prior to city personnel arriving at the alarm site; or
- (2) The alarm is shown by the alarm user to have been, in the Alarm Administrator's sole determination, justified, or due to a natural or man-made catastrophe or other situation specifically exempted by the Alarm Administrator.

False robbery alarms require a fee to be charged on the first occurrence due to the severity/priority that these calls get. Elli Bohac's letter is attached as EXHIBIT A.

The City's letter to citizens/businesses that have false alarms strongly encourages that the alarm system be properly adjusted, operated, inspected, and or serviced to avoid future false alarms, service charges, and possible termination of alarm response.

ACTION BY THE COUNCIL:

1. Motion to APPROVE/DISAPPROVE the Appeal to dismiss the False Robbery Alarm Service Charge for Elli Bohac at 403 Kodiak Circle, Harker Heights, Texas.
2. Any other action desired.

ATTACHMENTS:

[EXHIBIT A](#)

[Notice of Appeal Hearing](#)

**Elli Bohac
403 Kodiak Circle
Harker Heights, TX 76548
(254)466-6291**

August 23, 2022

**City of Harker Heights
Attn: David Mitchell – City Manager
305 Miller’s Crossing
Harker Heights, TX 76548**

RE: False Alarm Activation

Dear Mr. Mitchell:

I am writing you in response to a letter that I received, dated August 17, 2022, regarding a false alarm activation at my home on July 18, 2022. On that date I had company from out of town. Upon my company returning to my house, he accidentally set off my alarm system. He’s not familiar with my alarm system and didn’t know that I had set the alarm on our way out of the house. It was an accident that he activated the alarm. I came in right behind my guest and immediately cancelled the alarm, but the policeman was already in route.

Since I have lived in my home, I have never had a false robbery alarm. I read through code 99.06 (False alarm service charges), and my question is: Who determines whether an alarm is a burglary or robbery alarm? Under code 99.06 a resident is allowed 5 false burglar alarm notifications before being assessed a fee and a resident is assessed an immediate fee for the very 1st false robbery alarm that’s set off. I think a resident ought to be allowed at least 1 false robbery alarm before being assessed an immediate fee. Accidents do occasionally occur, and, I’m not aware of anyone reporting a robbery at my home on July 18, 2022. As a matter of fact, I had just finished calling the alarm company to cancel the alarm because it was accidentally set off by my house guest. And a few minutes later the policeman showed up.

I am hereby respectfully requesting that you reconsider the status of the false alarm that you received. I would ask that the false alarm at my residence that day was NOT a robbery alarm but a burglar alarm and that the \$75.00 fee that was assessed be forgiven. If you check your records, you will see that false alarms are not a regular occurrence at my address. I am hoping that you will find in my favor regarding this matter. Please let me know what you decide, but I think that I should be given at least one chance before being immediately assessed a \$75.00 fee.

Respectfully,



Elli Bohac

Bohac58@aol.com

CC: City Secretary

§ 99.06 FALSE ALARM SERVICE CHARGES.

ROBERT DUMONTKY

(A) If, within any 12 month period occurring after the effective date of this chapter, five false burglar alarm notifications are made from an alarm site, the Alarm Administrator shall assess the alarm user at that alarm site a fee for each subsequent false burglar alarm notification made from the site during the 12 month period.

(B) The Alarm Administrator shall assess an alarm user for each false robbery alarm notification emitted from the alarm site.

(C) If, within any 12 month period occurring after the effective date of this chapter, two false fire alarm notifications are made from an alarm site, the Alarm Administrator shall assess the alarm user at that alarm site a fee for each subsequent false fire alarm notification emitted from the site during the 12 month period.

(D) If, within any 12 month period occurring after the effective date of this chapter, two false emergency medical assistance alarm notifications are made from an alarm site, the Alarm Administrator shall assess the alarm user at that alarm site a fee for each subsequent false emergency medical assistance alarm notification made from the site during the 12 month period.

(E) The Alarm Administrator shall send written notice to the alarm user of any fee assessed under this chapter. The notice shall be hand delivered to the alarm user, or sent by certified mail, return receipt requested, to the alarm user at the alarm user's last known address.

(F) An alarm user shall pay any fee assessed under this chapter within 30 days after the date the fee is assessed.

(G) No fee shall be assessed pursuant to this section, if:

(1) The alarm notification is cancelled prior to city personnel arriving at the alarm site; or

(2) The alarm is shown by the alarm user to have been, in the Alarm Administrator's sole determination, justified, or due to a natural or man made catastrophe or other situation specifically exempted by the Alarm Administrator.

(Ord. 2001-19, passed 6-12-01)

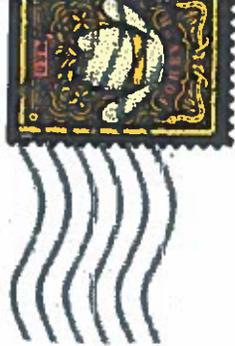
§ 99.08 APPEAL FROM FALSE ALARM SERVICE CHARGES, SUSPENSION OF RESPONSE OR ORDER TO DISCONTINUE SERVICE.

(A) If the Alarm Administrator assesses a false alarm service charge, suspends Police or Fire Department responses to alarm system notifications, or orders service of an alarm system discontinued, the Alarm Administrator shall send notice to the applicant or alarm user by certified mail, return receipt requested, setting forth the Alarm Administrator's decision and a statement of the right to an appeal. The applicant or alarm user may appeal the decision of the Alarm Administrator to the City Council by filing with the City Secretary a written request for a hearing, setting forth the reasons for the appeal, within 14 days after the notice was mailed by the Alarm Administrator. The filing of a request for an appeal hearing with the City Secretary stays an action of the Alarm Administrator until the City Council makes a final decision. If a request for an appeal hearing is not made within the 14 day period, the action of the Alarm Administrator is final as to administrative remedies of the city.

(B) The City Council shall conduct a hearing on the appeal and consider evidence offered by any interested person. The formal rules of evidence do not apply at an appeal hearing, but the City Council may adopt rules for the orderly conduct of the hearing and shall make a decision on the basis of a preponderance of the evidence presented at the hearing. The City Council shall render a decision within 45 days after the request for an appeal hearing is filed, and if no decision is made within that time the decision of the Alarm Administrator shall be deemed affirmed. The City Council may affirm,



Elli Bohac
403 Kodiak Cir
Harker Heights, TX 76548



AUSTIN TX 786
RIO GRANDE DISTRICT
24 AUG 2022 4:43 L

CITY OF HARKER HEIGHTS
ATTN: CITY SECRETARY
305 MILLER'S CROSSING
HARKER HEIGHTS, TX 76548

RECEIVED
AUG 29 2022

7654801298 2022



From: [Ursula Paddie](#)
To: [Elli Bohac](#)
Subject: False Alarm Appeal
Date: Friday, September 16, 2022 2:38:00 PM
Attachments: [image001.png](#)
[image002.png](#)

Good Afternoon Mr. Bohac

I am writing to let you know that you are being placed on the Tuesdays, September 27, 2022, City Council meeting agenda to discuss your Appeal of the False Alarm charge you received for the alarm at your residence on July 18, 2022.

The meeting will be held at the City of Harker Heights City Hall Council Chambers located at 305 Miller's Crossing, Harker Heights, Texas 76548 and starts at 5:00 p.m.

If you have any questions or will not be able to attend, please do not hesitate to contact me at the phone or email listed below.

Thank you,

Ursula Paddie
Assistant City Secretary
City of Harker Heights | 305 Miller's Crossing | Harker Heights, TX 76548
T: 254-953-5600 | F: 254-953-5605 | upaddie@harkerheights.gov

Vision: Providing public services that empower people to focus on what matters most: their goals, hopes and dreams



City Council Memorandum

FROM: The Office of the City Manager

DATE: September 27, 2022

DISCUSS AND CONSIDER APPROVING AN APPEAL OF THE FALSE BURGLARY ALARM SERVICE CHARGE FOR PAPA'S CAFÉ AT 302 MILLER'S CROSSING, HARKER HEIGHTS, TEXAS, AND TAKE THE APPROPRIATE ACTION. (CITY MANAGER)

EXPLANATION:

Section 99.08 of the City's Code of Ordinances grants an appeal process for false alarm charges. Appeals to false alarm charges must be made within 14 days of being given notice of a false alarm charge. By Code, the City Manager is the Alarm Administrator and issues the notice of false alarm charge and the City Council is the body that hears any appeals of the charge.

Officer Kelly Metress with the City of Harker Heights Police Department responded to a burglary alarm at the Papa's Café, 302 Miller's Crossing, Harker Heights, Texas, on July 22, 2022, at 10:06 p.m.. No evidence of burglary was found. Accordingly, per §99.06 of the Code of Harker Heights and the City's fee schedule, Papa's Café was assessed a false alarm service charge of \$50.00. The City mailed a letter to Papa's Café informing them of the fee on August 17, 2022.

On August 26, 2022, the City received a letter/e-mail from Beth Browell, Papa' Café appealing the Service Charge Assessment. On September 16, 2022, a confirmation notice was sent to Ms. Browell, notifying her of the date and time that his appeal would be heard before the City Council.

Section 99.06 of the Harker Heights Code of Ordinances provides the following provisions about false alarm charges:

(A) If, within any 12-month period occurring after the effective date of this chapter, five false burglar alarm notifications are made from an alarm site, the Alarm Administrator shall assess the alarm user at that alarm site a fee for each subsequent false burglar alarm notification made from the site during the 12-month period.

(B) The Alarm Administrator shall assess an alarm user for each false robbery alarm notification emitted from the alarm site.

(C) If, within any 12-month period occurring after the effective date of this chapter, two false fire alarm notifications are made from an alarm site, the Alarm Administrator shall assess the alarm user at that alarm site a fee for each subsequent false fire alarm notification emitted from the site during the 12-month period.

(D) If, within any 12-month period occurring after the effective date of this chapter, two false emergency medical assistance alarm notifications are made from an alarm site, the Alarm Administrator shall assess the alarm user at that alarm site a fee for each subsequent false emergency medical assistance alarm notification made from the site during the 12-month period.

(E) The Alarm Administrator shall send written notice to the alarm user of any fee assessed under this chapter. The notice shall be hand delivered to the alarm user, or sent by certified mail, return receipt requested, to the alarm user at the alarm user's last known address.

(F) An alarm user shall pay any fee assessed under this chapter within 30 days after the date the fee is assessed.

(G) No fee shall be assessed pursuant to this section, if:

- (1) The alarm notification is cancelled prior to city personnel arriving at the alarm site; or
- (2) The alarm is shown by the alarm user to have been, in the Alarm Administrator's sole determination, justified, or due to a natural or man-made catastrophe or other situation specifically exempted by the Alarm Administrator.

Ms. Browell's, Papa's Café, letter states the following:

"On July 22, 2022 I was called several times by ADT Security, whom we have a security system through. After the first call, I came back up to the business while remaining on the phone with the ADT representative. I told them that everything seemed fine and not to call the police. After two calls, I had told the ADT representative to disregard any back motion alarms for the rest of the night. The next morning the Kitchen Manager found what kept making the motion alarm go off and moved the plastic wrap that was causing it. We haven't had any similar problems since. I realize that the police department's time and resources don't allow for false calls. I'm also aware that whether I called the police that night or the security company did the fact still remains that they were called. Our business, along with the one next door was broken into by a former employee last summer. As a matter of fact, we were robbed a second time by the same individual. I was told then that the Harker Heights Police Department did and will do regular well checks by driving through periodically. In conclusion, I'm asking the city to please allow me to have an appeal hearing for the fine charged for a false alarm police call due to the fact that I myself did tell ADT not to call police, and the multiple calls they made to me and the owner that night along with me instructing them not to dispatch police and to disregard any further back motion alarm for the remainder of the night should have clearly stopped them from calling police. As explained above, we have since then identified and fixed the issue that was causing the back motion alarm to go off. If this were to continue to happen, I am prepared to discontinue service with ADT and look into another alarm company.

Thank you, Beth Browell, Papa's Café."

Papa's Café had five (5) prior burglary alarms in the last 12 month period with the dates as follows: October 17, 2021, October 27, 2021, October 28, 2021, March 22, 2022, and May 28, 2022. A courtesy letter informing them of the 5th False Burglar Alarm was sent in May of 2022.

The City's letter to citizens/businesses that have false alarms strongly encourages that the alarm system be properly adjusted, operated, inspected, and or serviced to avoid future false alarms, service charges, and possible termination of alarm response.

ACTION BY THE COUNCIL:

1. Motion to APPROVE/DISAPPROVE the Appeal to dismiss the False Burglary Alarm Service Charge for Papa's Café at 302 Miller's Crossing, Harker Heights, Texas.
2. Any other action desired.

ATTACHMENTS:

[FALSE BURGLARY ALARM SERVICE CHARGE LETTER](#)

[APPEAL LETTER](#)

[NOTICE OF APPEAL HEARING TO OWNER](#)



The City of Harker Heights
305 Miller's Crossing
Harker Heights, Texas 76548
Phone 254/953-5600
Fax 254/953-5614

8/17/2022

Papa's Café
302 Miller's Crossing
Suite #14
Harker Heights, TX 76548

Mayor
Spencer H. Smith

Mayor Pro Tem
Jennifer McCann

City Council
Michael Blomquist
Tony Canterino
Lynda Nash
Sam Halabi

Dear Property Owner:

Officers with the City of Harker Heights responded to a burglary alarm at your address on the following dates:

- July 22, 2022 at 10:06PM (Officer Kelly Metress)

No evidence of a burglary was found. Accordingly, per §99.06 of the Code of Harker Heights and the City's fee schedule you are hereby assessed a false alarm service charge of \$50.00. (\$50/per false activation).

Under §99.08 of the Code you have the right to appeal this service charge assessment by filing a written request for a hearing with the City Secretary within 14 days after this notice was mailed, setting forth the reasons for the appeal. The City Secretary will then set a hearing before the City Council, and you will be notified of the date and time of that hearing so you can appear in person and present your case. If you do not appeal, payment of the service charge is due within 30 days after the date of this letter.

Please note that police and fire responses to alarm notifications may be terminated if your system is determined to be unreliable, or if a false alarm service charge is not paid. Accordingly, we strongly urge you to ensure that your system is properly adjusted, operated, inspected, and serviced in order to avoid future false alarms, service charges, and possible termination of alarm response.

Sincerely,

David Mitchell
City Manager
305 Millers Crossing
Harker Heights, Texas 76548

Enclosure: False Alarm Invoice

AGENDA ITEM #VIII.4.
Invoice

City of Harker Heights
305 Miller's Crossing
Harker Heights, TX 76548

| Date | Invoice # |
|-----------|-----------|
| 7/31/2022 | 04-739 |

| |
|--|
| Bill To |
| Papa's Cafe Ste 14 302 Miller's Crossing Harker Heights, TX 76548 |

| Description | Amount |
|------------------------------------|----------------|
| 07/22/2022 6th False Burglar Alarm | 50.00 |
| Total | \$50.00 |

STATEMENT



MAIL REMITTANCE TO:
305 Miller's Crossing
Harker Heights, Texas 76548

False Alarms

| Date |
|-----------|
| 7/31/2022 |

Papa's Cafe
Ste 14
302 Miller's Crossing
Harker Heights, TX 76548

| Amount Due | Amount Enc. |
|------------|-------------|
| \$50.00 | |

| Date | Transaction | Amount | Balance | Item |
|------------|-----------------|--------|---------|------|
| 06/30/2022 | Balance forward | | 0.00 | |
| 07/31/2022 | INV #04-739. | 50.00 | 50.00 | |

| CURRENT | 1-30 DAYS PAST DUE | 31-60 DAYS PAST DUE | 61-90 DAYS PAST DUE | OVER 90 DAYS PAST DUE | Amount Due |
|---------|--------------------|---------------------|---------------------|-----------------------|------------|
| 50.00 | 0.00 | 0.00 | 0.00 | 0.00 | \$50.00 |

From: [Beth Browell](#)
To: [Harker Heights Administration Dept](#)
Subject: Invoice #04-739
Date: Friday, August 26, 2022 7:33:57 PM

On July 22, 2022 I was called several times by ADT Security, whom we have a security system through. After the first call, I came back up to the business while remaining on the phone with the ADT representative. I told them that everything seemed fine and not to call the police. After two calls, I had told the ADT representative to disregard any back motion alarms for the rest of the night. The next morning the Kitchen Manager found what kept making the motion alarm go off and moved the plastic wrap that was causing it. We haven't had any similar problems since.

I realize that the police department's time and resources don't allow for false calls. I'm also aware that whether I called the police that night or the security company did the fact still remains that they were called.

Our business, along with the one next door was broken into by a former employee last summer. As a matter of fact, we were robbed a second time by the same individual. I was told then that the Harker Heights Police Department did and will do regular well checks by driving through periodically.

In conclusion, I'm asking the city to please allow me to have an appeal hearing for the fine charged for a false alarm police call due to the fact that I myself did tell ADT not to call police, and the multiple calls they made to me and the owner that night along with me instructing them not to dispatch police and to disregard any further back motion alarm for the remainder of the night should have clearly stopped them from calling police. As explained above, we have since then identified and fixed the issue that was causing the back motion alarm to go off. If this were to continue to happen, I am prepared to discontinue service with ADT and look into another alarm company.

Thank you,
Beth Browell, Papa's Cafe

From: [Ursula Paddie](#)
To: browellbeth@gmail.com
Subject: False Alarm Appeal - Invoice #04-739
Date: Friday, September 16, 2022 2:35:00 PM
Attachments: [image001.png](#)
[image003.png](#)

Good Afternoon Ms. Browell,

I am writing to let you know that you are being placed on the Tuesdays, September 27, 2022, City Council meeting agenda to discuss your Appeal of the False Alarm charge you received for the alarm at your business on July 22, 2022.

The meeting will be held at the City of Harker Heights City Hall Council Chambers located at 305 Miller's Crossing, Harker Heights, Texas 76548 and starts at 5:00 p.m.

If you have any questions or will not be able to attend, please do not hesitate to contact me at the phone or email listed below.

Thank you,

Ursula Paddie
Assistant City Secretary
City of Harker Heights | 305 Miller's Crossing | Harker Heights, TX 76548
T: 254-953-5600 | F: 254-953-5605 | upaddie@harkerheights.gov

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