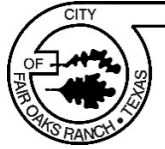


VIA ZOOM VIDEOCONFERENCE



CITY OF FAIR OAKS RANCH AGENDA – CITY COUNCIL TELECONFERENCE

November 19, 2020 6:30 PM
Via Zoom Videoconference
7286 Dietz Elkhorn, Fair Oaks Ranch

THERE EXISTS A PUBLIC HEALTH EMERGENCY RELATED TO THE COVID-19 VIRUS THAT NECESSITATES A MEETING OF THE CITY COUNCIL TO TAKE PLACE VIA VIDEO CONFERENCE PURSUANT TO GOVERNMENT CODE CHAPTERS 551.125 AND 551.127, AS MODIFIED BY EXECUTIVE ORDER OF THE GOVERNOR

Zoom Videoconference Link: <https://www.zoomgov.com/j/1606749975>

Phone in number: US: +1 669 254 5252 or +1 646 828 7666 or 833 568 8864 (Toll Free)

Webinar ID: 160 674 9975

If you wish to address the commission via telephone, please select *9 on your phone, this will place you in a queue for speaking. At the appropriate time, the City Secretary will call upon each individual separately.

I. OPEN MEETING

- A. Roll Call – Declaration of a Quorum.

II. CITIZENS and GUEST FORUM / PRESENTATIONS

If you wish to address the Council, select *9 on your phone; this will place you in a queue for speaking. At the appropriate time the City Secretary will call upon each individual separately. In accordance with the Open Meetings Act, Council may not discuss or take action on any item which has not been posted on the agenda.

- A. Citizens to be heard.

III. CONSENT AGENDA

All of the following items are considered to be routine by the City Council, there will be no separate discussion on these items and will be enacted with one motion. Items may be removed by any Council Member by making such request prior to a motion and vote.

- A. Approval of the November 5, 2020 Regular City Council meeting minutes. Pgs. 4-7
- B. Approval of the second reading of an Ordinance providing temporary financial relief to food establishment businesses relative to Covid-19 impacts. Pgs. 8-12
- C. Approval of the second reading amending the Code of Ordinances by adding Chapter 1, Article 1.10 Ethics, Division 1, Rules of Procedures on City Council Hearings for Code of Ethics Violations and City Charter Forfeitures and Prohibitions. Pgs. 13-29
- D. Approval of Council Member Hartpence's absence for the November 19, 2020 Council Meeting. Pg. 30

IV. CONSIDERATION/DISCUSSION ITEMS

- A. Consideration and possible action electing a Council Member to serve as Mayor Pro-Tem at the first regular City Council meeting following each regular city election.

Mayor Garry Manitzas

Pg. 31

- B. Consideration and possible action regarding the adoption of the proposed recommendations made by Ray Associates, Inc. concerning the completed Compensation and Benefits Analysis Study.
Joanna Merrill, Director of Human Resources and Communications Pgs. 32-64
Katharine Ray, Ray Associates, Inc.
- C. Consideration and possible action approving a Professional Service Agreement with Patti Engineering for SCADA. Julio Colunga, Public Works Superintendent Pgs. 65-84
Brian LeJeune, IT Manager
- D. Consideration and possible action re-appointing Bud Paulson or naming a replacement to the Kendall Appraisal District Board of Directors, for a two year term, beginning January 1, 2021 Mayor Garry Manitzas Pgs. 85-86
- E. Consideration and possible action approving the purchase of two (2) Patrol Vehicles for \$65,584.00 Clayton Hoelscher, Procurement Manager Pgs. 87-88
Chief Tim Moring
- F. Tabled Item:
Consideration and possible action directing the City Manager to issue a stop work order to Kimley-Horn and Associates, Inc., for Professional Design Services associated with the Elevated Storage Tank. Council Member Steve Hartpence Pgs. 89-106

V. REPORTS FROM STAFF/COMMITTEES/COUNCIL

- A. None.

VI. CONVENE INTO EXECUTIVE SESSION

Pursuant to Section 551.101 of the Open Meetings Act, Texas Gov't Code, a quorum of the governing body hereby convenes into closed session:

- A. Sec. 551.071 (Consultation with Attorney) the City Council will meet in private consultation with legal counsel to seek the advice of its attorneys about pending or contemplated litigation, a settlement offer, and/or on a matter in which the duty of the attorney to the governmental body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas conflicts with Chapter 551 of the Government Code; to wit:
1. Claims made on behalf of a real property owner against the City's operation of the K-3 Trinity Glen Rose Water Well.
 2. To receive legal advice from Special Counsel and the City Attorney regarding the City's ground water rights.
 3. To receive legal advice and to receive and deliberate an offer of settlement for claims made on behalf of a real property owner against the City's operation of well K-2.
 4. Cause No. 2018-CI-00202; the City of Fair Oaks Ranch, Texas vs. Edward I. Hill, Robert E. Heckendorn, Craig M. Kuitjen, Roger Fuentes, Wesley A. Pieper, Esther W. Hicks, William A. McDowell, Yolanda D. Ayala, PG Pfeiffer Ranches LLC, Maureen Pfeiffer Stevenson Family Trust.

VII. RECONVENE INTO OPEN SESSION

Discussion and possible action on items discussed in Executive Session.

VIII. ADJOURNMENT

Requests for City topic needing additional information/research; or, potential consideration for a future agenda.

Signature of Agenda Approval: _____

Tol L. Maple

I, Christina Picioccio, City Secretary, certify that the above Notice of Meeting was posted on the outside bulletin board at the Fair Oaks Ranch City Hall, 7286 Dietz Elkhorn, Fair Oaks Ranch, Texas, and on the city's website www.fairoaksranchtx.org, both places being convenient and readily accessible to the general public at all times. As per Texas Government Code 551.045, said Notice was posted by 5:00 PM, November 16, 2020 and remained so posted continuously for at least 72 hours before said meeting was convened.

The Fair Oaks Ranch City Hall is wheelchair accessible at the side entrance of the building from the parking lot. Requests for special services must be received forty-eight (48) hours prior to the meeting time by calling the City Secretary's office at (210) 698-0900. Braille is not available. The City Council reserves the right to convene into Executive Session at any time regarding an issue on the agenda for which it is legally permissible; pursuant to *Texas Government Code* Chapter 551. Section 551.071 (Consultation with Attorney), 551.072 (Deliberations about Real Property), 551.073 (Deliberations about Gifts and Donations), 551.074 (Personnel Matters), 551.076 (Deliberations about Security Devices) and 551.087 (Economic Development).

**CITY OF FAIR OAKS RANCH
CITY COUNCIL REGULAR MEETING MINUTES
November 5, 2020
7286 Dietz Elkhorn
Fair Oaks Ranch, TX 78015**

I. OPEN MEETING

Council Present: Mayor Manitzas and Mayor Pro Tem Elizondo
Council Members: Hartpence, Havard, Koerner, Patel, and Maxton.

With a quorum present, the meeting was called to order at 9:30 AM.

II. CITIZENS and GUEST FORUM/PRESENTATIONS

- A. Boerne Mayor Tim Handren and Deputy City Manager Jeff Thompson presented to Tobin Maples, Fair Oaks Ranch City Manager a "TAC" award recognizing his years of service on the Alamo Area Metropolitan Planning Organization Technical Advisory Committee.

Tim Corley expressed his gratitude to the residents of Fair Oaks Ranch for their patriotism and for voting in the city's election as he believes the turnout was the highest the City had ever seen. Mr. Corley congratulated Mayor Pro Tem Elizondo on his reelection to Council and stated he wants to serve his community and will continue seeking opportunities to do so.

VI. CONVENE INTO EXECUTIVE SESSION

City Council convened into Executive Session at 9:47 AM regarding:

- A. Sec. 551.071 (Consultation with Attorney) the City Council will meet in private consultation with legal counsel to seek the advice of its attorneys about pending or contemplated litigation, a settlement offer, and/or on a matter in which the duty of the attorney to the governmental body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas conflicts with Chapter 551 of the Government Code; to wit:
1. Claims made on behalf of a real property owner against the City's operation of the K-3 Trinity Glen Rose Water Well.
 2. To receive legal advice from Special Counsel and the City Attorney regarding the City's ground water rights.
 5. Cause No. 2020CI15746; Boerne Ranch Estates, LLC vs. the City of Fair Oaks Ranch, Texas.

City Council did not convene into Executive Session regarding:

3. To receive legal advice and to receive and deliberate an offer of settlement for claims made on behalf of a real property owner against the City's operation of well K-2.
4. Cause No. 2018-CI-00202; the City of Fair Oaks Ranch, Texas vs. Edward I. Hill, Robert E. Heckendorn, Craig M. Kuitjen, Roger Fuentes, Wesley A. Pieper, Esther W. Hicks, William A. McDowell, Yolanda D. Ayala, PG Pfeiffer Ranches LLC, Maureen Pfeiffer Stevenson Family Trust.

VII. RECONVENE INTO OPEN SESSION

The Mayor reconvened into open session at 10:15 AM.

A roll call reestablishing a quorum was taken:

Present: Mayor Manitzas and Mayor Pro Tem Elizondo

Council Members: Havard, Hartpence, Koerner, Patel and Maxton.

No action was taken.

II. CITIZENS and GUEST FORUM/PRESENTATIONS

B. Mayor Manitzas read a Proclamation observing November 11, 2020 as Veteran's Day.

C. Joanna Merrill, Director of Human Resources and Communications, announced that the City of Fair Oaks Ranch was presented a Top Workplace Award in the San Antonio Area for the third consecutive year.

D. Joanna Merrill, Director of Human Resources and Communications, presented Employee of the Quarter Award to Clayton Hoelscher, Procurement Manager.

E. Joanna Merrill, Director of Human Resources and Communications, presented a 5 year Service Award to Roland Rios.

F. Ryan Sowa, P.E. and Mario Valdez, P.E. of Kimley Horn provided to Council a briefing on Elevated Storage Tank 60% Design Phase and answered questions from Council.

G. Dennis Lozano, of Murfee Engineering, provided to Council a Wastewater Treatment Plant Solids Handling Study Presentation and answered questions from Council.

Council Member Havard left the meeting at 11:13 AM and returned at 11:33 AM.

Council Member Maxton left the meeting at 11:49 AM.

III. CONSENT AGENDA

A. Approval of the October 15, 2020 Regular City Council meeting minutes.

MOTION: Made by Mayor Pro Tem Elizondo, seconded by Council Member Koerner to approve the consent agenda.

VOTE: 6-0; Motion Passed.

IV. CONSIDERATION/DISCUSSION ITEMS

A. Consideration and possible action authorizing the City Manager to sign a Professional Service Agreement with Freese and Nichols, Inc. for consultant services on the America's Water Infrastructure Act of 2018 (AWIA).

MOTION: Made by Mayor Pro Tem Elizondo, seconded by Council Member Hartpence to authorize the City Manager to sign a Professional Services Agreement with Freese & Nichols, Inc. for consulting services on the America's Water Infrastructure Act of 2018 in the amount of \$76,990.00.

VOTE: 6-0; Motion Passed.

B. Consideration and possible action approving the first reading of an Ordinance providing temporary financial relief to food establishment businesses relative to Covid-19 impacts.

MOTION: Made by Council Member Patel, seconded by Council Member Koerner to approve the first reading of an Ordinance providing temporary financial relief to food establishment businesses due to the Covid-19 impacts.

VOTE: 6-0; Motion passed.

C. Consideration and possible action amending the Code of Ordinances by adding Chapter 1, Article 1.10 Ethics, Division 1, Rules of Procedures on City Council Hearings for Code of Ethics Violations and City Charter Forfeitures and Prohibitions.

MOTION: Made by Council Member Patel, seconded by Mayor Pro Tem Elizondo to approve the first reading of an ordinance amending the Code of Ordinances by adding Chapter 1, Article 1.10 Ethics, Division 1, Rules of Procedures on City Council Hearings for Code of Ethics Violations and City Charter Forfeitures and Prohibitions.

VOTE: 6-0; Motion passed.

D. Consideration and possible action approving a Resolution amending the Planning and Zoning Rules of Procedure.

At the request of the Planning & Zoning Chairperson this item will be brought back at a future meeting.

E. Consideration and possible action directing the City Manager to issue a stop work order to Kimley-Horn and Associates, Inc. for Professional Design Services associated with the Elevated Storage Tank.

Council Member Patel left the meeting at 1:14 PM.

MOTION: Made by Council Member Hartpence, seconded by Mayor Pro Tem Elizondo to issue a stop work order to Kimley-Horn to halt the design of the EST and to begin the process of rethinking our options.

INTERVENING MOTION:

Made by Mayor Pro Tem Elizondo, seconded by Council Member Hartpence to table the consideration item.

VOTE: 5-0; Motion passed.

F. Discussion regarding Council preference for in-person, telephone and video conference formats for upcoming workshops and meetings.

Tobin Maples, City Manager, led a brief discussion regarding the meeting formats and a consensus by Council was reached that meetings would continue virtually.

V. REPORTS FROM STAFF/COMMITTEES/COUNCIL

A. None.

VIII. ADJOURNMENT

Council Member Havard inquired about a future agenda item that would stop further discussions that would delay or halt the Elevated Storage Tank project. Council Member Koerner questioned if this would be possible and asked that staff seek legal advice. Council Member Hartpence expressed he would not seek future discussion and an agenda item would be unnecessary.

Mayor Manitzas adjourned the meeting at 1:47 PM.

Garry Manitzas, Mayor

ATTEST:

Christina Picioccio, City Secretary



CITY COUNCIL CONSIDERATION ITEM
CITY OF FAIR OAKS RANCH, TEXAS
November 19, 2020

AGENDA TOPIC: Approval of the second reading of an Ordinance providing temporary financial relief to food establishment businesses relative to Covid-19 impacts.

DATE: November 19, 2020

DEPARTMENT: Administration

PRESENTED BY: Tobin E. Maples, AICP, City Manager (Consent Agenda)

INTRODUCTION/BACKGROUND:

At the May 7, 2020 Council meeting, Council requested that staff continue to evaluate opportunities within its Ordinances and programs to provide temporary financial or regulatory relief to our citizenry during this unprecedented time of COVID-19.

In this spirit, Staff reviewed and discussed possibilities that we believe warrant consideration. As a reminder, the Texas Constitution prohibits a city from giving a gratuitous donation or gift. An example of a prohibited gift or donation would be providing free water and wastewater services (no charge). A city could eliminate late payment charges, reduce rates, and/or prohibit disconnection from the utility due to nonpayment.

At this time, staff recommends Council consider reducing the annual permit fee assessed to Retail Food Establishments to \$10 for calendar year 2021. If approved, this recommendation would allow food establishments to reduce operating expenditures as they continue to reopen and adjust individual business proforma relative to Covid-19 operational and capacity limitations. Details associated with the recommendation are as follows:

- **Food Establishment Permits:** Currently, all food establishment permits are renewed in January of each calendar year. Accordingly, our permits department will be mailing renewal notices to our local operators in the coming months. Food establishment permit fees are based on prior year gross annual income from food sales as shown on federal or state income reports/statement. The budget revenue estimate for the current fiscal year is \$4,150. If Council reduces the fee to \$10, staff will process a budget amendment adjusting the revenue estimate to \$170.

City Council unanimously approved the first reading this ordinance at the November 5, 2020 Council meeting.

POLICY ANALYSIS/BENEFIT(S) TO CITIZENS:

Provides temporary relief to Food Establishment Businesses relative to Covid-19 impacts.

LONG-TERM FINANCIAL & BUDGETARY IMPACT:

Estimated revenue loss of \$3,980 for FY 2020-2021.

LEGAL ANALYSIS:

The City establishes fees (fee schedule) by Ordinance. Accordingly, it is necessary to approve an Ordinance that temporarily makes the adjustment (fee reduction) for a defined period. The fees would revert back upon expiration of the defined period, and this Ordinance would not be codified.

The attached Ordinance has been approved as to form, inclusive of a finding of public purpose associated with the Covid-19 pandemic

RECOMMENDATION/PROPOSED MOTION:

(Consent Agenda) I move to approve the second reading of an Ordinance providing temporary financial relief to food establishment businesses due to the Covid-19 impacts.

AN ORDINANCE

AN ORDINANCE OF THE CITY OF FAIR OAKS RANCH TEMPORARILY SUSPENDING AND REPLACING THE CITY OF FAIR OAKS RANCH CODE OF ORDINANCES APPENDIX A “FEE SCHEDULE”; ARTICLE A5.000 “MISCELLANEOUS PERMITS” SECTION A5.002 “FOOD ESTABLISHMENT PERMITS”, PROVIDING FOR A SEVERABILITY CLAUSE, AND AN EFFECTIVE DATE OF JANUARY 1, 2021 AND A TERMINATION DATE OF DECEMBER 31, 2021.

WHEREAS, Chapter 6, Article 6.01, Division 2, Section 6.03.032 (a) of the City’s Code of Ordinances, stipulates that any person or corporation desiring to operate a food establishment in the city must make written application for a permit on forms provided by the city.

WHEREAS, Chapter 6, Article 6.01, Division 2, Section 6.03.032 (d) of the City’s Code of Ordinances, stipulates permits issued under this division shall be a provided in appendix A of the City’s Code of Ordinances; and,

WHEREAS, the City has identified certain business expenses that are permit related that could be temporarily reduced for the purpose of supporting existing business in an effort to retain such business in the City; and,

WHEREAS, the City Council specifically finds that reduction of targeted business permit expenses for the purpose of maintaining business operations during the COVID-19 Pandemic are particularly beneficial to the local residents and businesses as they suffer through the economic impacts of the COVID-19 pandemic; and,

WHEREAS, the City Council hereby finds it to be in the interest of the public to temporarily suspend and replace Section A5.002 of the City’s Fee Schedule for the period beginning January 1, 2021 and ending December 31, 2021.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF FAIR OAKS RANCH, TEXAS:

- PART 1.** Appendix A “Fee Schedule”; Article A5.000 “Miscellaneous Permits” Section A5.002 “Food Establishment Permits” of the City’s Code of Ordinances is hereby suspended and replaced as set forth in the attached Exhibit A.
- PART 2.** That the recitals contained in the preamble hereto are hereby found to be true and such recitals are hereby made a part of this Ordinance for all purposes and are adopted as a part of the judgment and findings of the Council.
- PART 3.** It is hereby declared to be the intention of the City Council that the phrases, clauses, sentences, paragraphs, and sections of this ordinance be severable, and, if any phrase, clause, sentence, paragraph, or section of this ordinance shall be declared invalid by judgment or decree of any court of competent jurisdiction, such invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs, or sections of this ordinance and the remainder of this ordinance shall be enforced as written.
- PART 4.** That it is officially found, determined and declared that the meeting at which this Ordinance is adopted was open to the public and public notice of the time, place, and subject matter of the public business to be considered at such meeting, including this ordinance, was given, all as required by Chapter 551, as amended, Texas Government Code.

PART 5. This ordinance shall take effect on January 1, 2021 and after passage and adoption as may be required by governing law and shall terminate on December 31, 2021. Upon termination, food establishment permit fees will automatically revert back to the suspended fee schedule as set forth in the attached Exhibit A.

PART 6. The repeal or amendment of any ordinance or part of ordinances effectuated by the enactment of this ordinance shall not be construed as abandoning any action now pending under or by virtue of such ordinance or as discontinuing, abating, modifying, or altering any penalty accruing or to accrue or as affecting any rights of the City of Fair Oaks Ranch under any section or provisions of any ordinances in effect at the time of passage of this ordinance.

PART 7. The provisions of this ordinance shall be cumulative of all ordinances not repealed by this ordinance and ordinances governing or regulating the same subject matter as that covered herein.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FAIR OAKS RANCH, TEXAS:

PASSED and APPROVED on First Reading this 5th day of November, 2020.

PASSED, APPROVED, and ADOPTED on Second Reading this 19th day of November, 2020.

Garry Manitzas, Mayor

ATTEST:

APPROVED AS TO FORM:

Christina Picioccio, City Secretary

Denton Navarro Rocha Bernal & Zech, P.C.,
City Attorney

Exhibit A

[additions shown as italics]

A. Appendix A “Fee Schedule”; Article A5.000 “Miscellaneous Permits” of the City’s Code of Ordinances is hereby suspended and replaced as follows:

ARTICLE A5.000 MISCELLANEOUS PERMITS

Sec. A5.002 Food establishment permits

- I. For the period beginning January 1, 2021 and ending December 31, 2021, all food establishment permits shall be \$10.00*
- II. Beginning January 1, 2022, food establishment permits shall revert back to the suspended schedule as follows:*

Sec. A5.002 Food establishment permits

- (a) Gross annual income of food establishment based on prior year food sales as shown by federal or state income reports/statements:
 - (1) \$0.00–\$24,999.99: \$125.00.
 - (2) \$25,000.00–\$49,999.99: \$150.00.
 - (3) \$50,000.00–\$149,999.99: \$225.00.
 - (4) \$150,000.00 or more: \$325.00.
- (b) Late fee assessment, per day: \$5.00.
- (c) Convenience store/mini-marts selling pre-packed food: \$125.00.
- (d) Roadside vendor: \$100.00.
- (e) Bed and breakfast: \$100.00.
- (f) Foster care inspection fee: \$35.00.
- (g) Childcare center: \$75.00.
- (h) Temporary event–4-day event (paid before event): \$30.00.
- (i) Nonprofit organizations are exempt from paying fees but must comply with TAC rule 229.372(c).



CITY COUNCIL CONSIDERATION ITEM

CITY OF FAIR OAKS RANCH, TEXAS

November 19, 2020

AGENDA TOPIC: Approval of the second reading amending the Code of Ordinances by adding Chapter 1, Article 1.10 Ethics, Division 1, Rules of Procedures on City Council Hearings for Code of Ethics Violations and City Charter Forfeitures and Prohibitions

DATE: November 19, 2020

DEPARTMENT: City Council

PRESENTED BY: Mayor Garry Manitzas (Consent Agenda)

INTRODUCTION/BACKGROUND:

The Fair Oaks Ranch City Council has from time to time discussed the need to develop a Code of Conduct and Ethics for the Mayor and City Council members. While there is some guidance regarding conduct contained within the City Charter, the scope of that guidance is limited. Our legal counsel has informed us that having a Code of Conduct for elected officials is considered a best practice and, in fact, many of the other cities they represent have adopted Codes of Conduct and Ethics.

City Charter Section 3.10.B5 states the City Council shall adopt by ordinance rules of procedures to be followed relative to hearings for forfeitures of office and prohibitions. In discussions with the City Attorney, we determined defining procedural rules for City Council hearings for code ethics violations and city charter forfeitures and prohibitions is an appropriate first step.

At the October 1, 2020 City Council meeting I presented a draft document relative to the aforementioned procedural rules for discussion and comments. Following full discussion, Council was asked to submit modification requests no later than October 9 to city staff for review.

For increased clarification, the following amendments to Definitions have been made:

1.01(g) Ethics Law. *As used herein, Ethics law ~~includes~~ refers to Section 3.10 Prohibitions of the City Charter, any adopted Code of Ethics for the City, and Local Government Code Chapter 171. ~~Ethics Code of the City, City Charter, and all applicable provisions of the Texas Local and Government codes~~*

1.01(h) Ethical Violation. "Ethical violation" includes violations of any of ~~those enactments~~ *the enactments set forth in 1.01(g).*

Additional suggestions were received; but upon review, they were found to be more for the eventual Code of Conduct and Ethics Ordinance as opposed to the procedural document being presented today.

Upon approval of this Ordinance, which will be a Division of the eventual Code of Conduct and Ethics Ordinance, staff and the City Attorney will begin preparing the Code of Conduct and Ethics Ordinance for City Council consideration and action.

City Council unanimously approved the first reading this ordinance at the November 5, 2020 Council meeting.

POLICY ANALYSIS/BENEFIT(S) TO CITIZENS:

1. Citizens should be able to rely upon ethical conduct by their elected representatives. With adoption and adherence to a Code of Conduct and Ethics, the citizens of Fair Oaks Ranch can rely upon open, accessible, and transparent conduct of business and adherence to all applicable laws at all times.
2. Similarly, an enforceable Code of Conduct and Ethics helps prevent conflicts of interest, promotes serving the public interest over the council member's personal interests, and helps avoid undue influence and the appearance of impropriety.
3. Adherence to a Code of Conduct and Ethics promotes professionalism and courtesy in conducting city business and ensures that the Council-Manager form of government adopted under the City Charter and the various roles and responsibilities inherent in that government form are respected.
4. Conforms to the requirement of City Charter 3.11.B5 relative to City Council adopting, by ordinance, rules of procedures for hearings for forfeitures of office and prohibitions.

LONG-TERM FINANCIAL & BUDGETARY IMPACT:

Adherence to a Code of Conduct and Ethics is an effective form of risk mitigation. This lessens the likelihood of unfavorable financial and budgetary impacts caused by improper behavior.

LEGAL ANALYSIS:

Approved as to form.

RECOMMENDATION/PROPOSED MOTION:

(Consent Agenda) I move to approve the second reading of an ordinance amending the Code of Ordinances by adding Chapter 1, Article 1.10 Ethics, Division 1, Rules of Procedures on City Council Hearings for Code of Ethics Violations and City Charter Forfeitures and Prohibitions.

AN ORDINANCE

OF THE CITY OF FAIR OAKS RANCH, TEXAS, AMENDING THE CODE OF ORDINANCES BY ADDING CHAPTER 1, ARTICLE 1.10 ETHICS, DIVISION 1, RULES OF PROCEDURES ON CITY COUNCIL HEARINGS FOR CODE OF ETHICS VIOLATIONS AND CITY CHARTER FORFEITURES AND PROHIBITIONS; PROVIDING FOR SEVERABILITY CLAUSE; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the City Council has determined that it is in the best interest of the City to require elected officials of the City to be independent, impartial and responsible to the citizens of the City; and,

WHEREAS, the City Council has determined that no City-elected official should have any interest, direct or indirect, nor engage in any business transaction or professional activity, nor incur any obligation of any nature, which is in conflict with the proper discharge of his or her duties in the public interest; and

WHEREAS, the City Council has determined that it is in the best interest and welfare of the City to preserve the integrity and nonpartisan nature of City government by adopting a Code of Ethics; and,

WHEREAS, the City Council on October 1, 2020 authorized the creation of a Code of Ethics by first establishing the rules and procedures on City Council hearings for Code of Ethics violations and City Charter forfeitures and prohibitions.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FAIR OAKS RANCH, TEXAS:

- PART 1.** That the City Council hereby amends the Code of Ordinances by adopting Chapter 1, Article 1.10, Division 1, Rules of Procedures on City Council Hearings for Code of Ethics Violations and City Charter Forfeitures and Prohibitions for the City of Fair Oaks Ranch as set forth in the attached Exhibit A.
- PART 2.** That the procedural rules herein adopted are intended to be further incorporated with the adoption of the future City of Fair Oaks Ranch Code of Ethics ordinance.
- PART 3.** That the recitals contained in the preamble hereto are hereby found to be true and such recitals are hereby made a part of this Ordinance for all purposes and are adopted as a part of the judgment and findings of the Council.
- PART 4.** It is hereby declared to be the intention of the City Council that the phrases, clauses, sentences, paragraphs, and sections of this ordinance be severable, and, if any phrase, clause, sentence, paragraph, or section of this ordinance shall be declared invalid by judgment or decree of any court of competent jurisdiction, such invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs, or sections of this ordinance and the remainder of this ordinance shall be enforced as written.
- PART 5.** That it is officially found, determined and declared that the meeting at which this Ordinance is adopted was open to the public and public notice of the time, place, and subject matter of the public business to be considered at such meeting, including this

ordinance, was given, all as required by Chapter 551, as amended, Texas Government Code.

PART 6. This ordinance shall take effect immediately from and after its second reading, passage and publication as may be required by governing law.

PART 7. The repeal or amendment of any ordinance or part of ordinances effectuated by the enactment of this ordinance shall not be construed as abandoning any action now pending under or by virtue of such ordinance or as discontinuing, abating, modifying, or altering any penalty accruing or to accrue or as affecting any rights of the City of Fair Oaks Ranch under any section or provisions of any ordinances in effect at the time of passage of this ordinance.

PART 8. The provisions of this ordinance shall be cumulative of all ordinances not repealed by this ordinance and ordinances governing or regulating the same subject matter as that covered herein.

PASSED AND APPROVED on the first reading on 5th day of November, 2020.

PASSED, APPROVED, AND ADOPTED on the second reading, this 19th day of November, 2020.

Garry Manitzas, Mayor

ATTEST:

APPROVED AS TO FORM:

Christina Picioccio, City Secretary

Denton Navarro Rocha Bernal & Zech, P.C.,
City Attorney

Exhibit A

Chapter 1 General Provisions of the Code of Ordinance is hereby amended by adding Article 1.10 Ethics as set forth below:

ARTICLE 1.10 ETHICS

DIVISION I. RULES OF PROCEDURES

As used in this Rules of Procedures, the following words and phrases have the meaning ascribed to them in this section, unless the context requires otherwise or more specific definitions set forth elsewhere in this code apply.

Sec. 1.10.001. Definitions.

- (a) *Before the City*. Representation or appearance "before the City" means before the City Council; before a board, commission, or other City entity; or before a City official.
- (b) *Business days*. "Business days" means the days of the week, Monday through Friday, in which the administrative offices of the City are open for business.
- (c) *City*. "City" means the City of Fair Oaks Ranch
- (d) *Code of Ethics*. "Code of Ethics," "Ethics Code," or "this code" means the city's Code of Ethics, its amendment(s), and/or enhanced definitions.
- (e) *Complainant*. "Complainant" means an individual who has filed a sworn complaint with the City Secretary as provided in section 1.10.004 (Complaints).
- (f) *Confidential government information*. "Confidential government information" includes all information held by the City that is not available to the public under the Texas Public Information Act and any information from a meeting closed to the public pursuant to the Texas Open Meetings Act, unless disclosure is permitted under the Open Meetings Act.
- (g) *Ethics Law*. As used herein, Ethics law refers to Section 3.10 Prohibitions of the City Charter, any adopted Code of Ethics for the City, and Local Government Code Chapter 171.
- (h) *Ethical Violation*. "Ethical violation" includes violations of any of those enactments set forth in 1.01(g).
- (i) *Intentionally*. A person acts intentionally, or with intent, with respect to the nature of his or her conduct or to a result of his or her conduct when it is his conscious objective or desire to engage in the conduct or cause the result.
- (j) *Knowingly*. A person acts knowingly, or with knowledge, with respect to the nature of his or her conduct or to circumstances surrounding his or her conduct when he or she is aware of the nature of his or her conduct or that the circumstances exist. A person acts knowingly, or with knowledge, with respect to a result of his or her conduct when he or she is aware that his or her conduct is reasonably certain to cause the result.
- (k) *Official*. The term "official" or "City official" includes the Mayor and members of the City Council.
- (l) *Official action*. "Official action" includes any affirmative act (including the making of a recommendation) within the scope of, or in violation of, an official's duties
- (m) *Official Information*. "Official information" includes information gathered or created by or on behalf of the City, in the conduct of the City's business, and under the power and authority of the City as a political subdivision of the State of Texas.
- (n) *Recklessly*. A person acts recklessly, or is reckless, with respect to circumstances surrounding his or

her conduct or the result of his or her conduct when he or she is aware of but consciously disregards a substantial and unjustifiable risk that the circumstances exist or the result will occur. The risk must be of such a nature and degree that its disregard constitutes a gross deviation from the standard of care that an ordinary person would exercise under all the circumstances as viewed from the actor's standpoint.

- (o) *Representation*. "Representation" is a presentation of fact—either by words or by conduct—made to induce someone to act. "Representation" does not include appearance as a witness in litigation or other official proceedings.
- (p) *Respondent* means an individual identified in a sworn complaint to have allegedly violated the Ethics Code of the City.

Sec. 1.10.002. Function of the City Council

- (a) In accordance with Article III of the City Charter, the City Council has the powers and duties specified in City Charter, and other powers and duties prescribed by ordinance.
- (b) Composition of the City Council includes the Mayor and each member of the City Council.
- (c) A member of the City Council shall recuse himself or herself from any case in which, because of familial relationship, employment, investments, or otherwise, his or her impartiality might reasonably be questioned. A Council member may not participate in official action on any complaint:
 - 1. That the member initiated; or
 - 2. During the pendency of an indictment or information charging the member with any felony or misdemeanor offense, or after a finding of guilt of such an offense.

When a majority of Council members share a conflict, they shall disclose the conflict by filing an affidavit and then proceed with the case at hand.

Sec. 1.10.003. Jurisdiction and powers.

- (a) *Jurisdiction*. The Fair Oaks Ranch City Council has jurisdiction to investigate and make findings and conclusions concerning:
 - 1. An alleged violation of the city's Ethics Code enacted from time to time by ordinance; and,
 - 2. An alleged violation of Sections 3.09, 3.10, 7.01, and 7.92 of the City Charter.
- (b) The City Council shall not consider any alleged violation that occurred more than six (6) months prior to the date of the filing of the complaint.
- (c) The City Council has the discretion to accept or decline consideration of an alleged violation that has been addressed by another governmental agency with jurisdiction over the matter.
- (d) *Powers*. The City Council has the power:
 - 1. To establish, amend, and rescind rules and procedures governing its own internal organization and operations, consistent with ordinances pertaining to the Ethics Code;
 - 2. To meet as often as necessary to fulfill its responsibilities;
 - 3. To issue advisory opinions on behalf of the Council;
 - 4. To request from the City Manager the assignment of staff necessary to carry out its duties;

5. To review, index, maintain on file, and dispose of sworn complaints;
6. To make notifications, extend deadlines, and conduct investigations, both on referral or complaint;
7. To compel the production of sworn testimony, witnesses and evidence;
8. To recommend cases for prosecution by appropriate authorities and agencies;
9. To enforce its decisions by assessing civil fines and other sanctions authorized by ordinance;
10. To request the City Attorney to provide an independent counsel to advise and represent the Council, when appropriate or necessary to avoid a conflict of interest;
11. To provide assistance in the training and education of City officials with respect to their ethical responsibilities;
12. To exercise such other powers and duties as may be established by ordinance.

Sec. 1.10.004. Complaints.

- (a) *Filing.* Any person (including a member of the City Council, acting personally or on behalf of the Council) who believes that there has been a violation of the ethics laws may file a sworn complaint with the City Secretary to allege such violations. A complaint filed in good faith is qualifiedly privileged. A person who knowingly makes a false statement in a complaint, or in proceedings before the City Council, is subject to criminal prosecution for perjury (see section 1.10.008(g) (Criminal prosecution)).
- (b) *Assistance.* The City Secretary shall provide information to persons who inquire about the process for filing a complaint.
- (c) *Form.* A complaint filed under this section must be in writing and under oath and must set forth in simple, concise, and direct statements:
 1. The name of the complainant;
 2. The street or mailing address, the telephone number, and email address of the complainant;
 3. The name of each person complained about;
 4. The position or title of each person complained about;
 5. The nature of the alleged violation, including, if possible, the specific provision of the Ethics Code alleged to have been violated;
 6. A statement of the facts constituting the alleged violation and the dates on which or period of time in which the alleged violation occurred; and
 7. All documents or other material available to the complainant that are relevant to the allegation; a list of all documents or other material relevant to the allegation and available to the complainant but that are not in the possession of the complainant, including the location of the documents, if known; and a list of all documents or other material relevant to the allegation but unavailable to the complainant, including the location of the documents, if known.

The complaint must be accompanied by an affidavit stating that the information contained in the

complaint is both true and correct or that the complainant has good reason to believe and does believe that the facts alleged constitute a violation of the Ethics Code. If the complaint is based on information and belief, the complaint shall state the source and basis of the information and belief. The complainant shall swear to the facts by oath before a notary public or other person authorized by law to administer oaths under penalty of perjury. A complaint that is not sworn as required shall not be forwarded by the City Secretary to the City Attorney as provided in subsection (d) of this section, but shall be returned to the complainant. The complaint must state on its face an allegation that, if true, constitutes a violation of a law administered and enforced by the City Council.

(d) Review by the City Attorney and notification to the City Council and respondents.

1. A copy of a complaint shall be promptly forwarded by the City Secretary to the City Attorney who shall review the complaint for compliance with the filing requirements of subsection (c) of this section within five (5) business days of receipt from the City Secretary. The City Secretary shall notify the respondent(s) of a complaint filed. This notification is for information purposes only and does not trigger subsection (e) of this section until a decision has been made to accept the complaint and forward to the City Council for consideration.
2. If the complaint alleges a violation of the city's Ethics Code, and substantially complies with the filing requirements, the complaint shall be forwarded by the City Secretary to the members of the City Council and the respondents within ten (10) business days after receipt of the complaint from the City Secretary. If the complaint does not substantially comply with the filing requirements, the City Attorney shall return the complaint with a letter explaining the defects in the complaint to the City Secretary who return all to the complainant.
3. The City Secretary shall notify the respondent(s) of the resolution of a complaint.

(e) The respondent(s) shall also be provided with a copy of the Ethics Code and shall be informed:

1. That, within ten (10) business days of receipt of the complaint, he or she may file a sworn response with the City Secretary;
2. That failure to file a response does not preclude the City Council from adjudicating the complaint;
3. That a copy of any response filed by the respondent(s) will be provided by the City Secretary to the complainant, who may, within five (5) business days of receipt, respond by sworn writing filed with the City Secretary, a copy of which shall be provided by the City Secretary to the respondent(s);
4. That the complainant(s) or respondent(s) may request a hearing.

Upon receipt, the City Secretary shall forward the response to the City Attorney and the City Council.

(f) Frivolous complaint.

1. For purposes of this section, a "frivolous complaint" is a sworn complaint that is groundless and brought in bad faith or groundless and brought for the purpose of harassment.
2. By a vote of at least two-thirds (2/3) of those present, the Council may order a complainant to show cause why the Council should not determine that the complaint filed by the complainant against a respondent is a frivolous complaint.

3. In deciding if a complaint is frivolous, the Council may consider:
 - a. The timing of the sworn complaint with respect to when the facts supporting the alleged violation became known or should have become known to the complainant, and with respect to the date of any pending election in which the respondent is a candidate or is involved with a candidacy, if any;
 - b. The nature and type of any publicity surrounding the filing of the sworn complaint, and the degree of participation by the complainant in publicizing the fact that a sworn complaint was filed with the Council;
 - c. The existence and nature of any relationship between the respondent and the complainant before the complaint was filed;
 - d. Any evidence that the complainant knew or reasonably should have known that the allegations in the complaint were groundless; and
 - e. Any evidence of the complainant's motives in filing the complaint.
 4. Notice of an order to show cause shall be given to the complainant by the City Secretary, with a copy to the respondent, and shall include:
 - a. An explanation of why the complaint against a respondent appears to be frivolous; and
 - b. The date, time, and place of the hearing to be held under this section.
 5. Before making a determination that a sworn complaint against a respondent is a frivolous complaint, the Council shall hold a hearing at which the complainant may be heard; the complainant may be accompanied by counsel retained by the complainant.
 6. By a record vote of at least two-thirds (2/3) of those present after the hearing under subsection (5) of this section, the Council may determine that a complainant filed a frivolous complaint against a respondent.
- (g) Confidentiality. Ex parte communications by members of the City Council are prohibited by section 1-06(d) (Ex parte communications).
1. The Council shall not communicate any information about a pending sworn complaint, including whether or not a complaint has been filed, to any person other than the respondent, the complainant, and a witness or potential witness identified by the respondent, the complainant, or another witness or potential witness.
 2. Information otherwise confidential under this section may be disclosed by entering it into the record of a formal hearing or City Council proceeding.
 3. Requests for records pertaining to complaints shall be responded to in compliance with the Texas Public Information Act and the Texas Open Meetings Act.

Sec. 1.10.005. City Attorney's Office.

(a) *City Attorney's Office.* The City Attorney's Office shall perform the following duties:

1. Act as legal counsel to the City Council;
2. Receive complaints and responses filed with the City Secretary as set forth in section 1.10.004;

3. Review complaints for legal sufficiency;
4. Request additional information from complainant as needed; and
5. Issue advisory opinions to City Council about the requirements imposed by the ethics laws.

(b) *Independent Counsel.*

1. An independent attorney, who does not otherwise represent the City, may be appointed to serve as the independent Counsel when a complaint is filed relating to an alleged violation of the ethics laws by the Mayor, a member of the City Council, or a candidate for City Council.
2. The City Attorney or City Council may request the appointment of an independent counsel for a particular case.

(c) *Exculpatory evidence.* The City Attorney shall disclose to the City Council and provide to the person charged with violating the ethics code evidence known to the City Attorney tending to negate guilt or mitigate the seriousness of the offense.

Sec. 1.10.006. City Council Action.

(a) *Review by City Council.* The City Council will meet to review the complaint, responses, replies to responses and any other information it has requested be provided to assist in consideration of the complaint. The Council shall consider whether the facts of the case establish a violation of any provision in the ethics laws, regardless of which provisions, if any, were identified in the complaint as having been allegedly violated. If the Council finds that the complaint fails to allege a violation of the Ethics Code when assuming all facts set forth in the complaint to be true, the Council may dismiss the complaint without further proceedings.

(b) Before the Council may find that a violation of a particular rule, the respondent must be on notice that compliance with that rule is in issue and must have an opportunity to respond. Notice is conclusively established: if the complaint alleged that the rule was violated; or if the Council or the City Secretary provides the respondent with written notice of the alleged violation and a ten (10) business-day period within which to respond in writing to the charge.

(c) *Scheduling of a hearing.* Regardless of whether the complainant or the respondent requests a hearing, the City Council has discretion to decide whether to hold a hearing.

(d) *Ex parte communications.* It is a violation of this code:

1. For the complainant, the respondent, or any person acting on their behalf to engage or attempt to engage, directly or indirectly, in ex parte communication about the subject matter of a complaint with a member of the City Council, or any known witness to the complaint; or
2. For a member of the City Council to:
 - a. Knowingly entertain an ex parte communication prohibited by subsection (1) of this section; or
 - b. Communicate directly or indirectly with any person, other than a member of the City Council, City Staff, or City Attorney's Office about any issue of fact or law relating to the

complaint.

- (e) *Duty to cooperate.* All City officials shall cooperate with the City Council and shall supply requested testimony or evidence to assist it in carrying out its charge. Failure to abide by the obligations imposed by this subsection is a violation.

City Council shall provide, by ordinance, penalties for contempt in failing or refusing to obey any subpoena or to produce any such books, papers, or other evidence.

The City Council shall have the power to punish any such contempt in an amount not to exceed one hundred dollars (\$100.00).

- (f) *Extension of deadlines.*

1. A complainant or respondent who fails to meet a deadline to submit a filing with the City Council may file a request to accept the late filing. The complainant or respondent must include within the request a statement of good cause for the Council to grant the request. The Council may grant a request to accept a late filing for good cause. Any extension given to a respondent pursuant to his or her request shall extend the deadline for the Council to issue a decision under section 1-08 by the amount of time granted.
2. The Council, under its own initiative or at the request of a respondent, may defer consideration of a complaint if the respondent is under investigation by any agency for the activity comprising the subject matter of the complaint, until such time as the investigation has concluded.

- (g) *Timeliness of notices or submissions.* When the Code of Ethics requires a notice or other document to be submitted or otherwise given to a person or to the City Council, the requirement is met in a timely fashion if the document is sent to the person or the Council by first-class mail or certified mail addressed with postage or handling charges prepaid and it bears a post office cancellation mark indicating a date within the time required to provide notice or to submit a document, unless another method of submission is expressly required.

Sec. 1.10.007. Hearing Process for Forfeiture of Office and Prohibitions.

- (a) All hearings for forfeiture of office and prohibitions shall be conducted in open session, except that the City Council may conduct a closed session to get advice from its attorney pursuant to the Texas Open Meetings Act.
- (b) *Called Special Meeting.* A special meeting shall be called to hold the hearing to be held no earlier than fourteen (14) days subsequent from the delivery of written notice and no later than ninety (90) days after delivery of written notice, unless otherwise agreed to by a majority of the City Council and the individual subject to the hearing.
- (c) *General rules.*
1. All witnesses must be sworn and all questioning of witnesses shall be conducted by the members of the City Council. The City Council may establish time limits and other rules relating to the participation of any person in the hearing. No person may be held to have violated the ethics laws unless a majority of the City Council so finds by a preponderance of the evidence.

2. A member of the City Council who initiated or is the subject of the investigation or hearing shall not sit at the dais and shall not participate in deliberation or vote.
3. The City Council shall state the nature of the hearing and the allegations to be considered.
4. Public comments shall be allowed as follows:
 - a. Comment at the beginning of the meeting under the same guidance as the city's Council Meeting Rules of Procedures found in the City Secretary's Office
 - b. Sworn to speak as witnesses shall only speak as witnesses under oath.
- (d) *Evidence.* The City Council shall rely on evidence of which a reasonably prudent person commonly relies in the conduct of the person's affairs. The Council shall further abide by the following:
 1. The Council shall hear evidence relevant to the allegations; and
 2. The Council shall not consider hearsay unless it finds the nature of the information is reliable and useful.
- (e) *The person charged (respondent).* The person charged in the complaint has the right to attend the hearing, the right to make a statement, the right to present witnesses, and the right to be accompanied by legal counsel or another advisor. They shall be provided a copy of the results of the investigation, including any written testimony acquired during the investigation. Only legal counsel to the person charged in the complaint may advise that person during the course of the hearing, but may not speak on his or her behalf, except with the permission of the Council. The time permitted for presentation will be at the discretion of the Council.
- (f) *The complainant.* The complainant has the right to attend the hearing, the right to make a statement, and the right to be accompanied by legal counsel or another advisor. Only legal counsel to the complainant may advise the complainant during the course of the hearing, but may not speak on behalf of the complainant, except with the permission of the Council. Witnesses may not be presented by the complainant, except with the permission of the Council. The time permitted for presentation will be at the discretion of the Council.

Sec. 1.10.008. Disposition.

- (a) *Violation of City Charter Section 3.09.* City Council shall vote on the forfeiture and on the affirmative vote of two-thirds of City Council to declare the office of said office holder to be forfeited and vacant.
- (b) *Violation of City Charter Section 3.10.* City Council may on the affirmative vote of a majority of the City Council take any of the following actions:
 1. Direct further investigation;
 2. Request further information;
 3. Vote to enforce a penalty pursuant to section 7.15B of the City Charter;
 4. Vote to bring an action in Municipal Court;
 5. Take a vote of censure; or

6. Upon the affirmative vote of two-thirds of City Council declare the office of said office holder to be forfeited and vacant.
- (c) *Violation of City Charter Section 7.01 or 7.02.* City Council may take any of the following actions:
1. Direct further investigation;
 2. Request further information;
 3. Vote to enforce a penalty pursuant to section 7.15B of the City Charter;
 4. Vote to bring an action in Municipal Court;
 5. Take a vote of censure; or
 6. Upon the affirmative vote of two-thirds of City Council declare the office of said office holder to be forfeited and vacant.
- (d) *Written opinion.* The Council shall issue a decision within ninety (90) calendar days after the filing of a complaint. This deadline shall be extended by any amount of time granted to a respondent pursuant to a respondent's request for additional time to respond or to attend proceedings. The Council shall state in a written opinion its findings of fact and conclusions of law. The written opinion shall either:
1. Dismiss the complaint; or
 2. Upon finding that there has been a violation of the ethics laws:
 - a. Impose sanctions in accordance with these regulations; or
 - b. Recommend criminal prosecution and/or civil remedies, in accordance with these rules; or
 - c. State why no remedial action is imposed or recommended.
- If the Council determines that a violation has occurred, the opinion shall identify in writing the particular rule or rules violated. If the complaint is dismissed, the grounds for the dismissal shall be set forth in the opinion. The failure of the Council to comply within the above time limits may result in the charge being dismissed for want of prosecution. Prior to such dismissal, the complainant will be given notice and an opportunity to request continuance of the action.
- (e) *Notification.* Copies of the opinion shall be forwarded to the complainant, the person charged in the complaint, the City Attorney, and any member of the City Council who did not participate in the disposition of the case. A copy of the opinion shall also be forwarded to the City Secretary, who shall make it available as authorized by law.
- (f) *Recommendations.* A recommendation for criminal prosecution shall be forwarded to the appropriate law enforcement agency.
- (g) *Similar charges barred.* If the complaint is dismissed because the evidence failed to establish a violation of the ethics laws, the City Council shall not entertain any other similar complaint based on substantially the same evidence.
- (h) *Factors relevant to sanctions.*
1. *General violations (non-reporting violations).* In deciding whether to recommend or impose, in the case of a violation of the ethics laws, criminal prosecution and/or civil remedies, the

City Council shall take into account relevant considerations, including, but not limited to, the following:

- a. The culpability of the person charged in the complaint;
- b. The harm to public or private interests resulting from the violation;
- c. The necessity of preserving public confidence in the conduct of local government;
- d. Whether there is evidence of a pattern of disregard for ethical obligations; and
- e. Whether remedial action has been taken that will mitigate the adverse effect of the violation.

To impose or recommend sanctions for a first violation of the Ethics Code, other than a letter of notification, a letter of admonition or a referral to training, the Council must find by a preponderance of the evidence that the person acted knowingly, unless otherwise provided by this code.

2. *Reporting requirement violations.* To impose sanctions, other than a letter of notification, a letter of admonition or a referral to training, for untimely or incomplete submission of reports required by the Ethics Code, the Council must determine by a preponderance of the evidence that the person knowingly:

- a. Failed to file the report on time; or
- b. Failed to include in the report information that is required to be included; or
- c. Submitted inaccurate or false information.

Failure to submit a required report or an amended report after receipt of notice of non-compliance by the City Secretary or the City Council may be considered evidence of a knowing failure to comply with reporting requirements. Upon finding a second or subsequent untimely, incomplete or inaccurate submission of reports within a two-year period of time, the Council may issue a letter of reprimand regardless of whether the second or subsequent violation was made knowingly by the filer.

- (i) *Civil sanctions for Ethics Code violations.* The following civil remedies may be recommended or imposed by the City Council which finds that the ethics laws have been violated:

1. *Disciplinary action.* City Council members who engage in conduct that violates the Code of Ethics may be notified, warned, reprimanded, suspended, or removed from office by the City Council, or by a person or body authorized by law to impose such remedies. Disciplinary action under this section may be imposed in addition to any other penalty or remedy contained in the Code of Ethics or any other law;
2. *Suit for damages or injunctive relief.* It is the intent of the City that the city's Ethics Code can and should be recognized by a court as a proper basis for a civil cause of action for damages or injunctive relief based upon a violation of its provisions, and that such forms of redress should be available in addition to any other penalty or remedy contained in the Ethics Code or any other law. The City Council may refer a violation of the Ethics Code to the City Attorney's Office for consideration of a suit by the City for damages or injunctive relief.
3. *Civil fine.* The City Council may impose on a City Official who violates any provision of the

Code of Ethics a fine not exceeding five hundred dollars (\$500.00).

4. *Letter of notification.* The City Council may issue a letter of notification to a City Official, when the Council finds that a violation of the Code of Ethics was clearly unintentional or inadvertent. The letter must advise the person to whom it is directed of any steps to be taken to avoid future violations.
 5. *Letter of admonition.* The City Council may issue to a City Official, a letter of admonition when the Council finds that the violation of the Code of Ethics was minor and/or may have been unintentional or inadvertent.
 6. *Letter of reprimand.* The City Council may issue to a City Official, a letter of reprimand when the Council finds that the person has intentionally or knowingly violated the Code of Ethics.
 7. *Referral to ethics training.* Upon finding of violation of the Ethics Code, the City Council may require a City official to attend Ethics Code training.
- (g) *Criminal prosecution.* The City Council may recommend to the appropriate law enforcement agency criminal prosecution under this section or V.T.C.A., Local Government Code Ch. 171. Prosecution of a city official by the City Council for a violation of this Ethics Code shall not be undertaken until a complaint is disposed of in accordance with this section. However, the absence of a recommendation to prosecute from City Council to the City Attorney shall not preclude the City Attorney from exercising his or her prosecutorial discretion to prosecute a violation of the Ethics Code.
- (h) *Reconsideration.* Within five (5) business days of receiving the final opinion of the City Council, the complainant or respondent may request the City Council to reconsider its decision. The request must be filed with the City Secretary. Within ten (10) business days after filing with the City Secretary, the City Council shall review the request for reconsideration. If the full and seated Council grants reconsideration, the Council may then order further proceedings in accordance with the provisions of these rules.
- (i) *Council action.* City Council shall dispose of the reconsideration within ninety (90) calendar days of approving the reconsideration. Failure to take action within specified time limits may result in the charge being dismissed for want of prosecution. Prior to such dismissal, the complainant will be given notice and an opportunity to request continuance of the action.
- (j) *Appeals.* A decision of the City Council is final unless the person aggrieved by the decision appeals to the State District Court in Kendall County no later than twenty (20) business days after the date the Council renders the decision.

If the decision of the City Council is not supported by substantial evidence, the District Court may reverse or affirm the Council's decision in whole or in part, or may modify the Council's decision if substantial rights of the aggrieved person have been prejudiced. Costs of an appeal may not be assessed against the Council, individual Council members, or the City.

Sec. 1.10.009. Petition for declaratory ruling and waiver.

- (a) Any City Official against whom public allegations of ethics have been made in the media or

elsewhere shall have the right to file a sworn statement with the City Secretary affirming his or her innocence, and to request the City Council to investigate and make known its findings, and make any relevant recommendations concerning the issue.

- (b) Any City Official subject to the Ethics Code who believes they have unknowingly committed an act in violation of a provision of the Ethics Code may submit a sworn request for a waiver of the application of the Code for that past act. The City Council shall investigate and make known its findings, and make any relevant recommendations to the City Council concerning the issue. The City Council may only act to waive the application of either code following receipt of the recommendation of the City Council.
- (c) The City Council is authorized to impose the sanctions contained within this Code when making their ruling.

Sec. 1.10.010. Public records and open meetings.

Meetings and other proceedings of the City Council will be conducted in compliance with the Texas Open Meetings Act. Requests for records will be handled in compliance with the Texas Public Information Act.

Secs. 1.10.011–1.10.020 Reserved

DIVISION 2. CODE OF ETHICS

Secs. 1.10.021–1.10.050 Reserved

DIVISION 3. ADMINISTRATIVE PROVISIONS

Sec. 1.10.051 Other obligations.

The Ethics Code is cumulative of and supplemental to applicable state and federal laws and regulations. Compliance with the provisions of this code shall not excuse or relieve any person from any obligation imposed by state or federal law regarding ethics, financial reporting, lobbying activities, or any other issue addressed herein.

Even if a City official is not prohibited from taking official action by the city's Ethics Code, action may be prohibited by duly promulgated personnel rules, which may be more stringent.

Sec. 1.10.052 Distribution and training.

- (a) Public service is a public trust. All City officials are stewards of the public trust. They have a responsibility to the citizens of the City to enforce the City Charter and the associated ordinances and codes. To ensure and enhance public confidence in City government, each City official must not only adhere to the principles of ethical conduct set forth in the city's Code of Ethics and technical compliance therewith, but they must scrupulously avoid the appearance of impropriety at all times.

- (b) Within thirty (30) days after entering upon the duties of his or her position, every new city official shall be furnished with a copy of the city's Code of Ethics. The failure of any person to receive a copy of the Code shall have no effect on that person's duty to comply with this code or on the enforcement of its provisions.
- (c) The Code of Ethics shall be posted on the City's webpage.
- (d) The City Manager and the City Secretary, in consultation with City Council, shall develop and implement a comprehensive training program for officials of the City on the provisions of the city's Code of Ethics, the City Charter, and V.T.C.A. Local Government Code Chapter 171. Such materials and programs shall be designed to maximize understanding of the obligations imposed by the ethics laws, as well as to prepare City officials to ensure the good judgment necessary to accomplish their duties.

Secs. 1.10.053–1.10.070 Reserved



CITY COUNCIL CONSIDERATION ITEM
CITY OF FAIR OAKS RANCH, TEXAS
November 19, 2020

AGENDA TOPIC: Approval of Council Member Hartpence's absence from the November 19, 2020 Council Meeting.

DATE: November 19, 2020

DEPARTMENT: City Council

PRESENTED BY: Consent Agenda - Council Member Hartpence

INTRODUCTION/BACKGROUND:

Due to being unavailable during the meeting.

POLICY ANALYSIS/BENEFIT(S) TO CITIZENS:

Section 3.09 of the Home Rule Charter

LONGTERM FINANCIAL & BUDGETARY IMPACT:

N/A

LEGAL ANALYSIS:

N/A

RECOMMENDATION/PROPOSED MOTION:

(Consent Agenda) I move to approve of Council Member Hartpence's absence from the November 19, 2020 Council Meeting.



CITY COUNCIL CONSIDERATION ITEM
CITY OF FAIR OAKS RANCH, TEXAS
November 19, 2020

AGENDA TOPIC: Consideration and possible action electing a Council Member to serve as Mayor Pro-Tem at the first regular City Council meeting following each regular City election

DATE: November 19, 2020

DEPARTMENT: City Council

PRESENTED BY: Mayor Garry Manitzas

INTRODUCTION/BACKGROUND:

Section 3.05 – Mayor Pro-Tem., of the Home Rule Charter states the following:

- A. The Mayor Pro-Tem shall be a Council Member elected by the City Council at the first regular City Council meeting following each regular City election.

POLICY ANALYSIS/BENEFIT(S) TO CITIZENS:

The Mayor Pro-Tem shall act as Mayor during the absence or disability of the Mayor.

LONGTERM FINANCIAL & BUDGETARY IMPACT:

N/A

LEGAL ANALYSIS:

N/A

RECOMMENDATION/PROPOSED MOTION:

I move to elect (insert council member name here) as Mayor Pro Tem.



CITY COUNCIL CONSIDERATION ITEM

CITY OF FAIR OAKS RANCH, TEXAS

November 19, 2020

AGENDA TOPIC: Consideration and possible action regarding the adoption of the proposed recommendations made by Ray Associates, Inc. concerning the completed Compensation and Benefits Analysis Study.

DATE: November 19, 2020

DEPARTMENT: Human Resources & Communications

PRESENTED BY: Joanna Merrill, Director of Human Resources & Communications
 Katherine Ray – Ray Associates, Inc.

INTRODUCTION/BACKGROUND:

Ray Associates, Inc. in combination with the Human Resources team have performed a careful and methodical review of all of the survey data provided by the Council selected benchmark cities.

Ray Associates, Inc. has compiled the results of this study in the attached summary and has put together a PowerPoint presentation to show the detailed findings of the study. Below is an overall synopsis including most of the recommendations from Ray Associates, Inc. based on the data as follows:

- 1.) Adopt the recommended FY 2020-2021 new General Government and Police Pay Schedules to bring the City's current salary structure into line with the top one-third of the market
- 2.) Adopt the recommended FY 2020-2021 placements for all City jobs on the above mentioned pay schedules.
- 3.) Adopt an internal annual review, conducted by Human Resources and Finance Director, of the City's pay schedule to recommend and propose future adjustments to ensure that the City does not fall behind the market going forward.
- 4.) Adopt the recommendation to enhance the City's Employer Paid Life Insurance to be a minimum of \$50,000/year or at least one times the employee's annual salary, whichever is higher.
- 5.) Adopt the recommendation to increase the maximum vacation accrual rate to 280 hours a year after 20 years of service with incremental increases every five years up to that point.
- 6.) Adopt the recommendation to provide 13 holidays each year instead of 11. We would like to propose the addition of Martin Luther King Jr. Day, and Good Friday.
- 7.) Adopt the recommendation to increase certification pay rates and recommendations for new certifications for Police and City employees. Human Resources continues to work on this element of the study and will present detailed recommendations to Council at a later date for review and approval.

- 8.) Adopt the recommendation to re-classify the proposed job title changes along with a review of organizational re-structuring recommendations. Human Resources continues to work on this element of the study and will present full detailed recommendation to Council at a later date for review and approval.

In most local government organizations, employee salaries and fringe benefits comprise between 50 and 75 percent of the total budget. Accordingly, we must recognize that investing in employees is a top priority as human capital is our most valuable asset. In the coming years, the workforce will begin to see a greater exodus of workers from the Baby Boomer generation leaving a gap that employers will be competing to fill. It will be paramount for the City to be able to attract and retain employees to meet the ever-growing needs of our community, to limit the high costs associated with turnover, and to ensure that we are able to compete with other entities in the market for the top candidates.

POLICY ANALYSIS/BENEFIT(S) TO CITIZENS:

- Meets Strategic Action Plan item 5.1.1 – Evaluate and Update Compensation and Benefit Plans inclusive of Exempt/Non-Exempt status
- Will align our current compensation and benefit packages with the top one-third of the market to ensure the City remains competitive to the best of our ability.
- Will enhance the City’s ability to recruit and retain top candidates to meet the City’s current and future needs.
- Increase employee engagement and job satisfaction, thus increasing retention and reducing turnover costs.

LONG-TERM FINANCIAL & BUDGETARY IMPACT:

Overall, the approval of the proposed compensation study allows the City to compete at the top one-third of the market. In total, the results of the compensation study and benefits changes is a savings of \$25,167 from the current adopted budget. Specifically, the \$51,554 calculated overage at this time does not factor in the late adoption of the plan (November), or vacancies, and we believe we will be able to manage the calculated overage without a budget amendment.

City of Fair Oaks Ranch	General Fund	Enterprise Fund	Total Overall
Proposed Compensation Study	\$ 4,668,450.00	\$ 1,553,059.00	\$ 6,221,509.00
ADOPTED FY 2020-2021 Budget	\$ 4,720,004.00	\$ 1,526,672.00	\$ 6,246,676.00
Over / (Under)	\$ (51,554.00)	\$ 26,387.00	\$ (25,167.00)

LEGAL ANALYSIS:

None needed at this time.

RECOMMENDATION/PROPOSED MOTION:

I move to approve the adoption of the proposed recommendations provided by Ray Associates, Inc. Classification and Compensation Study and Analysis for the City of Fair Oaks Ranch.

Classification and Compensation Study and Analysis *for the* **City of**



October 28, 2020



Prepared by:

Ray Associates, Inc.

Management and Leadership Strategies

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Austin, Texas 78701

Cell (512) 913-0331

www.rayassociates.com

kray@rayassociates.com

The City of Fair Oaks Ranch

EXECUTIVE SUMMARY

Classification and Compensation Study and Analysis

Assignment

The City of Fair Oaks Ranch retained Ray Associates, Inc. to assist the City in conducting a compensation study including a custom salary survey and a custom benefits survey to solicit salary and benefits information (total compensation) for comparable jobs from 12 other Texas cities and one Municipal Utility District. In addition, this study included a classification component to ensure that each job carries the appropriate job title for the work being performed and an internal equity component to ensure that all City jobs are paid comparably with one another both within departments and across departmental lines.

This engagement was conducted collaboratively with the City, with the City's Director of Human Resources and Communications and her staff performing some of the work under the guidance of Ray Associates, Inc., resulting in cost savings for the City of Fair Oaks Ranch, as well as adding value from training the City's HR staff in how to conduct a custom salary and benefits survey.

Fair Oaks Ranch's Current Position in the Market – Salaries

The analysis and recommendations contained in this report are based on a comprehensive internal equity analysis of all City jobs combined with market surveys of 13 employers, most of which were recommended by Ray Associates and all of which were approved by the City Council on April 16, 2020. The Council based its decisions as to the 12 cities and one municipal utility district to include in the salary survey on a weighted matrix prepared by Ray Associates, which compared potential employers to the City of Fair Oaks Ranch using a variety of similar characteristics (See Appendix F for Ray Associates' initial memo to the City Council with the original matrix attached).

There were two benchmark jobs for which we did not receive data from at least three employers with comparable jobs: Environmental Compliance Manager and Water-Wastewater Operator III. The comparisons that follow are based on the 38 surveyed jobs for which we received adequate market data.

Salary Range Minimums (Entry Pay at the Top Third, or 66.67th Percentile)

- Fair Oaks Ranch's current entry salaries, when compared to the minimums of the pay ranges of the other cities, were **the lowest or next-to-the-lowest** for 19 of the 38 jobs (**50% of the time**) for which we received a sufficient number of comparable positions. See the table below listing the 19 jobs:

Table 2
Pay Range Entry Levels
Fair Oaks Ranch Lowest or Next to Lowest

Administrative Assistant	IT Manager
Administrative Clerk	IT Technician
Animal Control Officer	Maintenance Lead
Assistant City Manager	Maintenance Supervisor
Building Official	Maintenance Worker
Custodian-Maintenance Worker	Manager of Engineering Services
Director of HR and Communications	Police Officer
GIS Technician	Police Sergeant
HR and Communications Specialist	Utility Technician
Infrastructure Inspector	

- For one of Fair Oaks Ranch's benchmark jobs, Procurement Manager, (**2.6% of the jobs**) the entry, or Step 1 of the pay grade, is the **next to the highest** entry in the market when compared with the pay range **entry** salary at the top third of the market (66.67th percentile).
- Fair Oaks Ranch's current salaries, when compared to the entry salary paid by the other cities, are **below the top third of the market** (66.67th percentile – one-third of the employers pay more and two-thirds of them pay less) **by double digits** for 27 of the 38 benchmark jobs (**71% of the time**) for which at least three of the 13 employers reported salary range data. We have listed the jobs in the table below:

Table 3
Pay Range Entry Levels
Fair Oaks Ranch Double Digits Below Top Third

Accountant I	IT Manager
Accounts Payable/Payroll Specialist	IT Technician
Administrative Assistant	Maintenance Lead
Administrative Clerk	Maintenance Supervisor
Animal Control Officer	Maintenance Worker
Assistant City Manager	Manager of Engineering Services
Building Official	Police Lieutenant
City Secretary	Police Officer
Custodian/Maintenance Worker	Police Sergeant
Director of HR and Communications	Utility Technician

Finance Director	Wastewater Supervisor
GIS Technician	Water-Wastewater Operator I
HR and Communications Specialist	Water-Wastewater Operator II
Infrastructure Inspector	

Table 4 in the full report illustrates, position by position, how the City of Fair Oaks Ranch's pay compared to the 13 market employers' pay.

What Caused Some of the City's Salaries to Fall Below the Market?

Ray Associates, Inc. conducted a comprehensive compensation study for the City of Fair Oaks Ranch in 2010. Our understanding is that at some point between 2010 and now, the City ceased using the compensation plan that we created for implementation in 2010, and for the last several years, the City has used a different consultant and a different methodology for market comparisons. The methodology used for the last several years has not involved regular adjustments to the City's pay structure and did not involve a custom look at cities with which the City of Fair Oaks Ranch either competes directly or should be expected to be able to compete with. Several years without adjusting the City's pay structures alone will cause the City to lose competitiveness with the market.

Beginning with the new pay schedules for Fiscal Year 2020-2021, it will be important for the City of Fair Oaks Ranch to apply future across-the-board increases to all of the numbers on the pay schedule annually, or in a very slow economy, at least every other year during the budget process and to make those increases add to all employees' base pay in most years.

These across-the-board structure adjustments should be in percentage amounts that are at least equivalent to the percent change in the U.S. Department of Labor's Employment Cost Index (ECI) for salaries and wages over the preceding 12-month period. This should help to keep the City's pay structure competitive. Compensation theory says never to apply flat dollar amount structure adjustments to the pay schedule, as that would distort the integrity of the pay structure and ultimately cause compression problems between the lower classified jobs and the higher classified jobs.

If across-the-board percentage adjustments are not applied to every number on the pay schedule in most future years, the City of Fair Oaks Ranch's salary structure will very quickly fall below the market that has been established as a result of this study. Authorized percentage adjustments should be applied to the first five steps and to the maximum of each pay range in the general government pay schedule, and to each step in the police pay schedule, all of which are used when advertising

vacant positions. Failure to make regular adjustments to the City's pay schedules will hamper the City's recruitment efforts in years to come, which could have a direct impact on the City's ability to provide the desired level of services to its residents.

Recommendations

1. **Adopt the classification recommendations** of Ray Associates (job title changes and reclassification of some positions).
2. **Adopt the recommended Fiscal Year 2020-2021 Pay Schedules** to bring the City's salary structure in line with the top third of the market. Being able to compete at this level is important because most City employees cannot afford to live in the City of Fair Oaks Ranch, so they have to commute past other potential employers to get to their jobs at the City of Fair Oaks Ranch. This will involve salary adjustments for those City employees whose newly adjusted current salary is still below the market-based recommended entry level for the position. For public safety employees and other City employees whose currently salary places them on Steps 1 through 5 in the first 10% of the General Government Pay Schedule, some will receive salary adjustments so they can be placed on a step in the pay schedule that is at least equal to but not less than their current salary.
3. In future years, we recommend that the City **make annual across-the-board adjustments** based on a percentage of base pay, and that those adjustments always be applied to the City's salary schedules.
 - ◆ Future salary schedule adjustments should be at least equivalent to the percent change in the U.S. Department of Labor's Employment Cost Index (ECI) for salaries and wages over the preceding 12-month period available from the U.S. Bureau of Labor Statistics' website (www.bls.gov); ECI today is approximately 2.7%.
 - ◆ The ECI figures should be supplemented by calls to the benchmark employers used in this study and/or review of other supplemental data to determine what the market in which City of Fair Oaks Ranch competes is planning for salary structure adjustments.
4. **Viewed as a whole, the City's benefits package is competitive** in most instances with the middle of the market and in some instances with the top third of the market. Most often, the City of Fair Oaks Ranch provides benefits that are equivalent to the other

surveyed cities, with a few benefits components provided by Fair Oaks Ranch being more generous than those provided by the other cities and a few benefits components being less generous. There are a few benefits components the City needs to review, as explained earlier in this report (see Appendix B and the section headed “Benefits Survey for additional information on each of these issues):

- a. **Amount of Employee Life Insurance Paid for by the City** – The City should investigate the cost of providing additional life insurance for City employees, and if it is not cost prohibitive, increasing its current \$50,000 flat amount of life insurance to “at least \$50,000 or one times the employee’s annual salary, whichever is higher”. This will be more competitive than just the flat \$50,000 amount.
 - b. **Vacation Leave Accrual, Maximum Accrual, and Carryover Amounts** –To be competitive at the top third, the City needs to increase its vacation accrual rate to 192 hours a year after 20 or more years of service, with incremental increases every five years up to that point, in accordance with the benefits data contained in Appendix C.
 - c. **Holidays** – To be competitive at the top third of the market, the City of Fair Oaks Ranch should provide 13 holidays each year for its employees.
 - d. **Increase Police Certification Pay** in accordance with the top third of the 12 market cities’ certification pay rates – See the Benefits section of this report and Appendix C for additional details.
 - e. **Other Certification Pay** – See Appendix C, Detailed Benefits Tables, and the earlier section of this report related to Benefits for additional details on this issue. At a minimum, the City should consider paying employees who achieve a D license in either water or wastewater to receive an additional stipend of \$25 per month.
5. We have provided the City Council with market data for the City Manager’s position for your use in considering an adjustment to the City Manager’s compensation. For single incumbent positions such as this, we recommend you look at the actual salaries, rather than the pay range data, especially since many cities do not establish a pay range for the City Manager

In most local government organizations, employee salaries and fringe benefits comprise between 50 and 75% of the total budget. As evidenced by the City Council’s approval to proceed with

this study, we know you recognize that it is important to invest in your employees, as human capital is your most valuable asset. This need for investment in human capital is underscored by the changes occurring as members of the Baby Boomer generation leave the workforce. The ability to attract and retain talented, highly competent employees to meet the needs of a demanding citizenry in rapidly changing times will help to contain costly turnover.

The remainder of this report includes additional detail about the methodology followed in this study, our findings and conclusions, and recommended actions for the City to take to become and stay competitive. The appendices to the report go further into detail, providing the salary and benefits data obtained from the 13 surveyed employers, as well as Ray Associates' recommended pay schedule and recommended job placements on the pay schedule alphabetically by job title, by department, and by pay grade for all City jobs. Additional back-up documentation is also contained in the appendices, including the documentation related to selection of the market employers and the job summaries to which the 13 surveyed employers were asked to respond.

City Council Presentation Report on Classification and Total Compensation Study and Analysis for the



November 19, 2020



Selection of Benchmark Employers

Council Selected 13 “benchmark” employers:

- Selected by the City Council April 16, 2020;
- Number of characteristics in common with the City of Fair Oaks Ranch;
- Jobs that are similar to those at the City of Fair Oaks Ranch; and/or
- With whom Fair Oaks Ranch competes, or should be expected to be able to compete, for qualified employees.



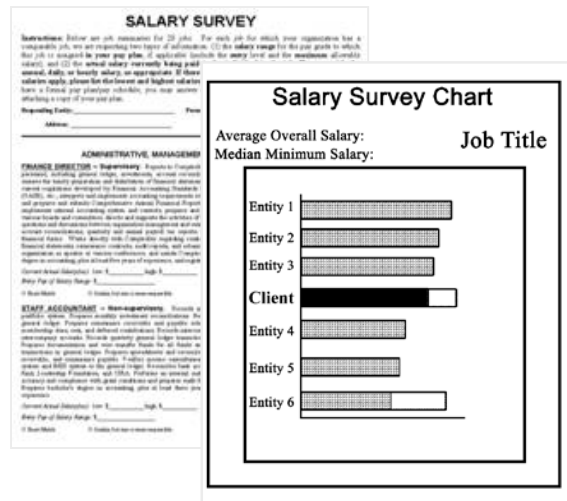
Employers Selected by Council

City of Alamo Heights	City of Lakeway
City of Boerne	City of Leon Valley
City of Cibolo	City of Live Oak
City of Fredericksburg	City of Marble Falls
City of Granbury	City of San Antonio
City of Helotes	Town of Trophy Club
Lakeway Municipal Utility District	



External Competitiveness/Salary Survey

- 40 of the City's jobs were included in the market salary survey.
- Comprehensive benefits survey.



Benefits and Other Information

1. Please explain the organization's health insurance or self-insurance program.

A. What type(s) of medical program are offered by your organization? (check all that apply)

HMO _____ Self-insurance _____
PPO _____ Indemnity plan _____

B. Cost to the organization per employee for the health program per month? \$ _____

C. Employee premium (if not fully paid by organization)?

Dependent premium? (Please indicate the premium amount for children, spouses, and families, if applicable, and the portion paid by the employee and the organization)

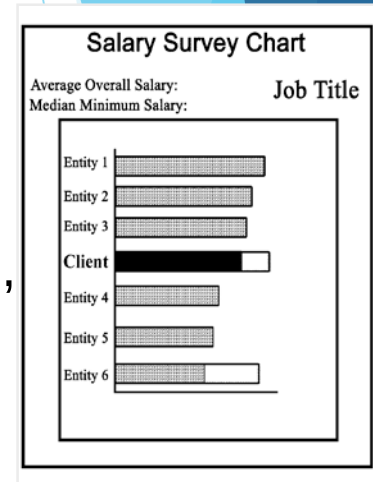
D. Deductible? (per year) \$ _____ per person
How much is the employee's co-pay? \$ _____ per visit
Maximum lifetime benefit? _____

External Competitiveness/Salary Survey



Ray Associates:

- Requested both actual salaries and salary range data for each benchmark job.
- Requested additional or clarifying information about how closely Fair Oaks Ranch's job compares with the job at their city or district.
- Received and analyzed the data and generated charts, calculating and displaying:
 - ✓ Average and how City's salary compares to it;
 - ✓ Median, or 50th percentile (Both Entry & Maximum) and how City's salary compares to it; and
 - ✓ Target (66.67th percentile, or top third) at both the entry and maximum of the pay range, and how Fair Oaks Ranch's salaries compare to each.





Job Placement Recommendations

Market-based system (11th Factor = Market):

- Both **actual** salary data and salary **range** data used for placement of each job on pay schedule, with the focus on the range data.
- Director of HR & Communications, Finance Director, HR & Communications Specialist, & Katherine Ray spent day together via Zoom, placing each job on the current pay schedules.
- First placed benchmark jobs that had adequate market data (at least 3 comps)—emphasis on market.
- Used current internal equity within job families to place jobs that didn't get 3 comps in survey. Result:
 - ✓ Ensures internal equity as well as market competitiveness for all jobs in the job families included in the survey; plus
 - ✓ All jobs tied to market (either because comparable data was obtained in survey or the job was in a “job family” with one or more jobs in survey)



Job Placement Recommendations, Cont'd.

- Each job in the City was placed on the new recommended General Government pay schedule except for Police Department positions (separate pay schedule) based on different number of hours per year for many of the certified peace officer positions (2,184 instead of 2,080), and a separate schedule for Seasonal positions.
- Took into account both internal equity (current internal equity, since based on past Point Factor scores) and market competitiveness;
- Calculated the cost to the City, by employee, by department, and citywide; and
- Reviewed the initial preliminary placements with key City management staff, discussing via Zoom call and further questions by phone.



General Findings – Classifications

Ray Associates recommends that job titles be changed for **three jobs** either to make the titles more consistent with the duties and responsibilities or to be more consistent with the titles used in other cities.

See page 18 of the full report and Appendix D, Inventories of Job Titles by Department, Pay Group, and Job Title (alphabetical).



General Findings – Salaries

- Received comparable ***salary range and actual salary*** data from at least 3 cities/districts for 38 of the 40 benchmark jobs surveyed.
- Therefore, the data in the report and in this presentation are based on the 38 benchmark jobs for which we received adequate data from the market employers.



General Findings – Salaries, Cont'd.

SALARY RANGE MINIMUMS:

- Compared with the minimum, or entry salary, of the other cities' and the district's pay ranges at the top third of the market (entry level (Step 1) at 66.67th percentile), Fair Oaks Ranch's current entry salaries were the **lowest or next-to-the-lowest** for 19 or the 38 jobs (50%) (page 19 in report):
- The entry of Fair Oaks Ranch's pay ranges for 27 of the 38 benchmark jobs (71% of the time) was below the entry pay at the bottom of the top third (66.67th percentile) by double digits (page 19 of report).



General Findings – Salaries, Cont'd.

SALARY RANGE MINIMUMS and MAXIMUMS, Continued:

- Pgs. 21-22 of the report show which benchmark jobs:
 - ✓ Are more than 5% below the top third of the market,
 - ✓ Are within +/- 5% of the top 3rd of the market,
 - ✓ Are more than 5% above the top third of the market
- The table on pgs. 21-22 compares both the entry and the maximum of Fair Oaks Ranch's current pay ranges for each of the 38 jobs.

General Findings – Salaries, Cont'd.



- **Big picture:** Fair Oaks Ranch's salary ranges do not compare favorably with the top one-third of the market (66.67th percentile).
- ✓ **31 of the 38 (81.6%) of Fair Oaks Ranch's benchmark jobs are more than 5% below the 66.67th percentile.**
- ✓ **30 of the 38 (79%) of Fair Oaks Ranch's benchmark jobs pay range maximums are more than 5% below the 66.67th percentile.**
- ✓ **No Fair Oaks Ranch employee's salary was at or beyond the maximum of the pay grade to which their job was assigned on the new pay schedules.**



General Findings – Salaries, Cont'd.

Overall:

- **69** Total employees in study
- **39** Current employees (**56.6%**) would receive an increase to go to Entry/Step 1
- **Zero** current employees at maximum of range
- **Zero** employees frozen, or “red circled”

General Findings – Salaries, Cont'd.



Compression Issue

Because 39 of 69 employees will be placed in Step 1 (entry level) the City of Fair Oaks Ranch team had the following concerns:

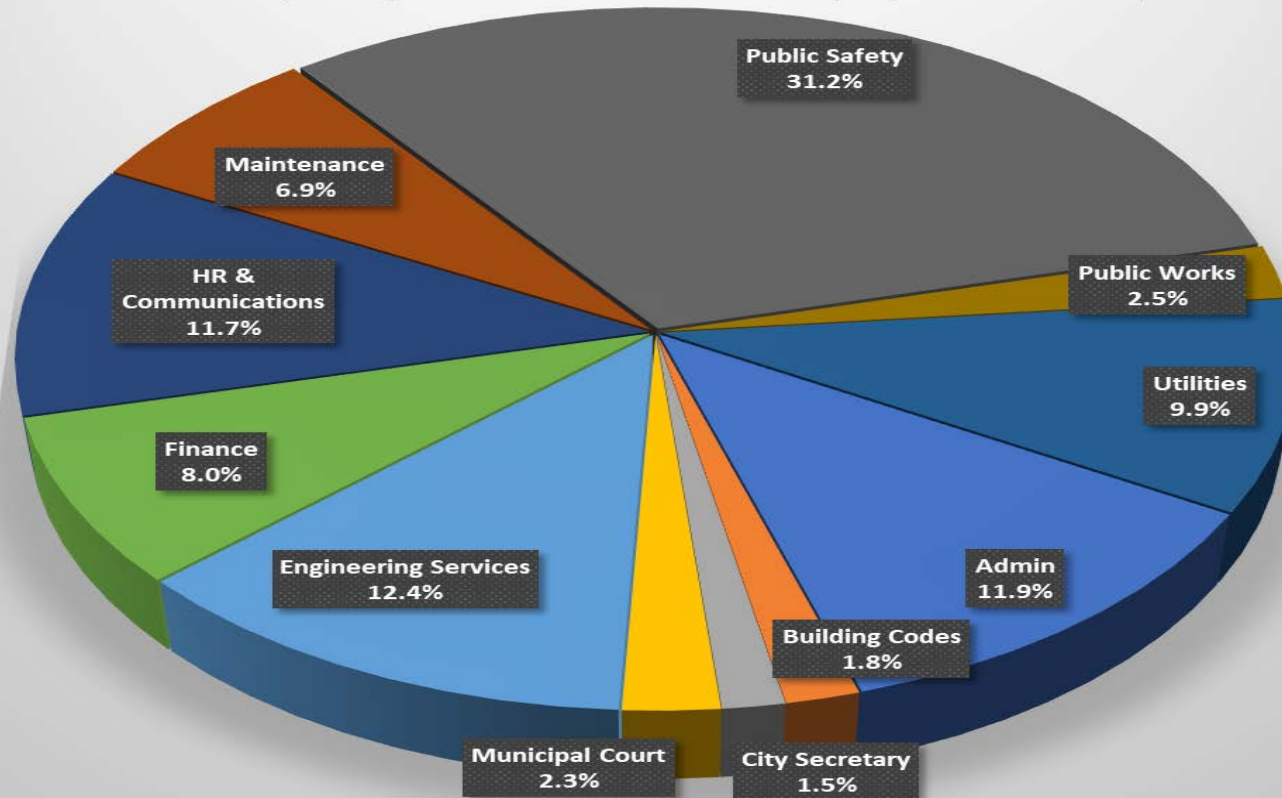
- ✓ New and tenured employees have been placed together at Step 1 (entry level).
- ✓ Potential morale issue for longer-term employees.
- ✓ Solution – A one-time adjustment to account for tenure
- ✓ After consulting with Ray Associates, the recommendation is:
 - o 0 to <2 years – Employee stays at Step 1
 - o 2 to <5 years – Employee bumps up one step
 - o 5 to <10 years – Employee bumps up two steps
 - o 10+ years – Employee bumps up three steps



Transition Cost, Cont'd.

Distribution of Transition Costs by Department

**Percentage of Total
Transition Cost By Department
(using new FY 2020-2021 pay schedules)**





Transition Cost, Cont'd.

What caused the City to get so far below market?

- The City of Fair Oaks Ranch has not over the last 10 years carefully selected its market cities, as was done in this study, and
- Has not made annual adjustments to the City's pay schedules/structure.
- Has not provided an annual COLA based on the market in past years
- Commendations are in order to the City Council and City Management for budgeting and using 3% performance pay for the last two years.
- Situation would have been worse without those adjustments.

Compensation Trends – State & National



- Several key indicators to pay attention to:
 - ✓ Employment Cost Index (ECI) – Currently an average of 2.7%.
 - ✓ Consumer Price Index (CPI) – Currently an average of 1.4% (not as specific an indicator of what is happening in the salary market).
 - ✓ National Salary Surveys – Perhaps more precise than the Bureau of Labor Statistics data – All pretty consistently saying 2.9% adjustments for 2020-21 (down from 3.3%).
 - ✓ 93% of companies are planning pay increases for 2020-21; only 7% are not.
 - ✓ Median salary structure adjustments are staying relatively stable at 2.0% for most employees.
 - ✓ **The City's selected benchmark cities total increases were an average increase of 3.0% at the top one-third.**



Recommendations

Ray Associates recommends the City – Salaries:

- Adopt the recommended FY 2020-2021 placement of all City jobs on the new General Government and Police Pay Schedules to bring the City's salary structure into line with the top one-third (66.67th percentile) of the market.
 - ✓ Involves salary adjustments for those City employees whose newly adjusted current salary is still below the market-based recommended entry level (step 1) for their positions.
 - ✓ Also adjustments if an employee's current salary fell between two steps on either pay schedule.
 - ✓ Adjustments for compression issues
 - ✓ Recommend implementation as soon as administratively practical following approval of recommendations, and annual across the board adjustment reviews to maintain consistency across future years.



Recommendations, Cont'd. – Benefits

Benefits Components:

Viewed as a whole, the City's benefits package is pretty competitive. There are a few components we recommend you consider adjusting as soon as feasible:

- a. **Amount of Employee Life Insurance Paid for by the City** – To be competitive at the top third of the market, the City should consider increasing employee life insurance from a flat \$50,000 to providing either the \$50,000 or one times the employee's annual salary, whichever is higher.
- b. **Vacation Leave Accrual, Maximum Accrual, and Carryover Amounts** – To be competitive at the top third, the City needs to increase its vacation accrual rate to 280 hours a year after 20 or more years of service, with incremental increases every five years up to that point, in accordance with the benefits data contained in Appendix C.
- c. **Holidays** – To be competitive at the top third of the market, the City of Fair Oaks Ranch should provide 13 holidays each year for its employees.



Recommendations, Cont'd. – Benefits

- d. **Increase Police Certification Pay** in accordance with the top third of the 12 market cities' certification pay rates – See the Benefits section of the report and Appendix C for additional details.
- e. **Other Certification Pay** – See Appendix C, Detailed Benefits Tables, and the earlier section of this report related to Benefits for additional details on this issue. At a minimum, the City should consider paying employees who achieve a D license in either water or wastewater to receive an additional stipend of \$25 per month.



Recommendations, Cont'd. – General

With most City budgets being comprised of 50-75% salaries and benefits, we know that you recognize that it is important to invest in your employees.

- ✓ Human capital is the City's most valuable asset;
- ✓ In the coming years, the workforce will begin to see a greater exodus of workers from the Baby Boomer generation leaving a gap that employers will be competing to fill.
- ✓ The City's ability to attract and retain highly talented, competent employees to meet the needs of a demanding citizenry in these rapidly changing times will help to contain costly turnover.



Implementation and Results

- Implementing the recommendations from this study, including consistent attention to future adjustments,
 - ✓ Should continue to enhance the City's ability to attract and retain talented, qualified, competent employees.
- Careful review and update of key components in the City's benefits package, as they become possible, will make the City's total compensation package more competitive, too.
- Continuing to budget for across-the-board (ATB) increases should keep the City's pay rates competitive and being sure to set aside funds for performance-based increases so employees can move through the pay ranges will prevent compression issues.



Implementation and Results (Cont'd.)

Avoiding Costly Turnover

- Exodus of the “boomers” from the work force
 - ✓ Insufficient number of potential qualified employees.
 - ✓ Neighboring cities and districts may attempt to “rob” your best workers as they experience a “brain drain” from retirements.
- City needs to be prepared to address potential shortages of qualified workers
 - ✓ Maintaining competitive total compensation package (salaries and benefits) will be a major factor in being able to attract and retain the best employees.
- Ray Associates remains available to assist the City with implementation of our recommendations, including telephone consultation next year as you are updating your compensation plan.



Thank You!

Questions?



CITY COUNCIL CONSIDERATION ITEM
CITY OF FAIR OAKS RANCH, TEXAS
November 19, 2020

AGENDA TOPIC: Consideration and possible action approving a Professional Service Agreement with Patti Engineering for SCADA.

DATE: November 19, 2020

DEPARTMENT: Public Works Fair Oaks Ranch Utility

PRESENTED BY: Julio Colunga, Public Works Superintendent & Brian LeJeune, IT Manager

INTRODUCTION/BACKGROUND:

In 2014 council approved SCADA upgrades to the Fair Oaks Ranch Utility system. During this process, industrialized plant panel Personal Computer (PC) computers operating with Windows 7 were installed at each plant to allow SCADA to operate the system. The SCADA upgrades in 2014 include indu-soft, which is an operations platform software. The SCADA software was also installed on one office PC to serve as the SCADA main server for information, alerts, and display in the Water Department office location.

The current system is now outdated and in need of panel PC and software upgrades. The proposed PSA would replace all panel PC's, upgrade their operating system to Windows 10, and update the server operating system to Windows Server 2019. Part of our server upgrade from the old platform to the new SCADA platform will include virtualizing the server within the City of Fair Oaks Ranch server infrastructure to provide increased flexibility in relation to future upgrades and backup inclusion to the City's backup infrastructure. The current software platform Indu-soft will also be replaced with a new SCADA operating system created for the utility industry.

POLICY ANALYSIS/BENEFIT(S) TO CITIZENS:

Upgrading these systems is crucial for providing a continuous reliable water supply and aligning with the IT Master Plan. The SCADA panel PC's at the plants will need to be upgraded to ensure they receive Microsoft security patches and hotfixes as released as well as anti-virus/malware protection. The upgraded SCADA platform would allow the utility to use a software designed for utilities. This upgrade will further reduce our IT vulnerability footprint with the elimination of Windows 7 PCs from our network in addition to added protection from computer virus/malware threats

LONG-TERM FINANCIAL & BUDGETARY IMPACT:

The Utilities department budgeted \$150,000.00 in the Enterprise Fund SAP/CIP account 22-504-106. The current contract is over budget by \$9,800.00, staff plans to cover the overage with savings from the EPA RRA/ERP Project account 22-505-105. The current budget adjustment does not require council approval as the funds are in the same fund account 22. The contract includes a 5-year warranty on computer hardware as well as 1- year warranty for software updates. Moving forward we will be purchasing software maintenance plans on an annual basis since there are no cost benefits currently available with any multi-year software maintenance plans. The conversion

from Windows 7 to Windows 10 will bring the utility up to date with the latest operating systems and security updates. Included in this cost is one additional PC that will be kept up to date and available for use in either a test environment for future enhancements or if needed a spare plant PC readily available should we temporarily endure any plant PC hardware issues.

LEGAL ANALYSIS:

The consultant will be required to sign and adhere to the City's Standard Professional Service Agreement prior to the commencement of work.

RECOMMENDATION/PROPOSED MOTION:

I move to authorize the City Manager to sign a Professional Service Agreement with Patti Engineering for SCADA upgrades in the amount of \$159,800.00

CITY OF FAIR OAKS RANCH
STANDARD PROFESSIONAL SERVICES AGREEMENT

THE STATE OF TEXAS §
 §
KENDALL COUNTY §

This Professional Services Agreement ("Agreement") is made and entered by and between the City of Fair Oaks Ranch, Texas, (the "City") a Texas municipality, and Patti Engineering, Inc ("Professional").

Section 1. Duration. This Agreement shall become effective upon execution by the City and shall remain in effect until satisfactory completion of the Scope of Work unless terminated as provided for in this Agreement.

Section 2. Scope of Work.

(A) Professional shall perform the Services as more particularly described in the Scope of Work attached hereto as Exhibit "A". The work as described in the Scope of Work constitutes the "Project". Unless otherwise provided in the Scope of Work, the anticipated submittal of all Project deliverables is immediately upon completion of the Project.

(B) The Quality of Services provided under this Agreement shall be performed with the professional skill and care ordinarily provided by competent Professionals practicing in the same or similar locality and under the same or similar circumstances and professional license, and as expeditiously as is prudent considering the ordinary professional skill and care of a competent Professional holding the same professional license.

(C) The Professional shall perform its Services for the Project in compliance with all statutory, regulatory and contractual requirements now or hereafter in effect as may be applicable to the rights and obligations set forth in the Agreement.

(D) The Professional may rely upon the accuracy of reports and surveys provided to it by the City except when defects should have been apparent to a reasonably competent professional or when it has actual notice of any defects in the reports and surveys.

Section 3. Compensation.

(A) The Professional shall be paid in the manner as provided herein.

(B) *Billing Period:* The Professional may submit monthly, or less frequently, an invoice for payment based on the estimated completion of the described tasks and approved work schedule. Subject to Chapter 2251, Texas Government Code (the "Prompt Payment Act"), payment is due within thirty (30) days of the City's receipt of the Professional's invoice. Interest on overdue payments shall be calculated in accordance with the Prompt Payment Act.

(C) *Reimbursable Expenses:* Any and all reimbursable expenses related to the Project shall be included in the scope of services (Exhibit A). If these items are not specifically accounted for in Exhibit A they shall be considered subsidiary to the total contract amount.

Section 4. Changes to the Project Work; Additional Work.

(A) *Changes to Work:* Professional shall make such revisions to any work that has been completed as are necessary to correct any errors or omissions as may appear in such work. If the City finds it necessary to make changes to previously satisfactorily completed work or parts thereof, the Professional shall make such revisions if requested and as directed by the City and such services will be considered as additional work and paid for as specified under following paragraph.

(B) *Additional Work:* The City retains the right to make changes to the Scope of Work at any time by a written order. Work that is clearly not within the general description of the Scope of Work and does not otherwise constitute special services under this Agreement must be approved in writing by the City by supplemental agreement before the additional work is undertaken by the Professional. If the Professional is of the opinion that any work is beyond that contemplated in this Agreement and the Scope of Work governing the project and therefore constitutes additional work, the Professional shall promptly notify the City of that opinion, in writing. If the City agrees that such work does constitute additional work, then the City and the Professional shall execute a supplemental agreement for the additional work and the City shall compensate the Professional for the additional work on the basis of the rates contained in the Scope of Work. If the changes deduct from the extent of the Scope of Work, the contract sum shall be adjusted accordingly. All such changes shall be executed under the conditions of the original Agreement. Any work undertaken by Professional not previously approved as additional work shall be at risk of the Professional.

Section 5. Time of Completion.

The prompt completion of the services under the Scope of Work is critical to the City. Unnecessary delays in providing services under a Scope of Work shall be grounds for dismissal of the Professional and termination of this Agreement without any or further liability to the City other than a prorated payment for necessary, timely, and conforming work done by Professional prior to the time of termination. The Scope of Work shall provide, in either

calendar days or by providing a final date, a time of completion prior to which the Professional shall have completed all tasks and services described in the Scope of Work.

Section 6. Insurance.

Before commencing work under this Agreement, Professional shall obtain and maintain the liability insurance provided for in attached Exhibit C throughout the term of this Agreement and thereafter as required herein.

In addition to the insurance provided for in Exhibit C, Professional shall maintain the following limits and types of insurance:

Professional Liability Insurance: professional errors and omissions liability insurance with limits of liability not less than \$1,000,000 per occurrence covering all work performed by the Professional, its employees, sub-contractors, or independent contractors. If this coverage can only be obtained on a "claims made" basis, the certificate of insurance must clearly state coverage is on a "claims made" basis and coverage must remain in effect for at least two years after final payment with the Professional continuing to furnish the City certificates of insurance.

Workers Compensation Insurance: The Professional shall carry and maintain during the term of this Agreement, workers compensation and employers liability insurance meeting the requirements of the State of Texas on all the Professional's employees carrying out the work involved in this contract.

General Liability Insurance: The Professional shall carry and maintain during the term of this Agreement, general liability insurance on a per occurrence basis with limits of liability not less than \$1,000,000 for each occurrence and for fire damage. For Bodily Injury and Property Damage, coverage shall be no less than \$1,000,000. As a minimum, coverage for Premises, Operations, Products and Completed Operations shall be \$2,000,000. This coverage shall protect the public or any person from injury or property damages sustained by reason of the Professional or its employees carrying out the work involved in this Agreement. The general aggregate shall be no less than \$2,000,000.

Automobile Liability Insurance: Professional shall carry and maintain during the term of this Agreement, automobile liability insurance with either a combined limit of at least \$1,000,000 per occurrence for bodily injury and property damage or split limits of at least \$1,000,000 for bodily injury per person per occurrence and \$1,000,000 for property damage per occurrence. Coverage shall include all owned, hired, and non-owned motor vehicles used in the performance of this contract by the Professional or its employees.

Subcontractor: In the case of any work sublet, the Professional shall require subcontractor and independent contractors working under the direction of either the Professional or a subcontractor to carry and maintain the same workers compensation and liability insurance required of the Professional.

Qualifying Insurance: The insurance required by this Agreement shall be written by non-assessable insurance company licensed to do business in the State of Texas and currently rated "B+" or better by the A.M. Best Companies. All policies shall be written on a "per occurrence basis" and not a "claims made" form.

Evidence of such insurance shall be attached as Exhibit "C".

Section 7. Miscellaneous Provisions.

(A) *Subletting.* The Professional shall not sublet or transfer any portion of the work under this Agreement or any Scope of Work issued pursuant to this Agreement unless specifically approved in writing by the City, which approval shall not be unreasonably withheld. Subcontractors shall comply with all provisions of this Agreement and the applicable Scope of Work. The approval or acquiescence of the City in the subletting of any work shall not relieve the Professional of any responsibility for work done by such subcontractor.

(B) *Ownership of Documents.* Upon completion or termination of this Agreement, all documents prepared by the Professional or furnished to the Professional by the City shall be delivered to and become the property of the City. All drawings, charts, calculations, plans, specifications and other data, including electronic files and raw data, prepared under or pursuant to this Agreement shall be made available, upon request, to the City without restriction or limitation on the further use of such materials PROVIDED, HOWEVER, THAT SUCH MATERIALS ARE NOT INTENDED OR REPRESENTED TO BE SUITABLE FOR REUSE BY THE CITY OR OTHERS. ANY REUSE WITHOUT PRIOR VERIFICATION OR ADAPTATION BY THE PROFESSIONAL FOR THE SPECIFIC PURPOSE INTENDED WILL BE AT THE CITY'S SOLE RISK AND WITHOUT LIABILITY TO THE PROFESSIONAL. Where applicable, Professional shall retain all pre-existing proprietary rights in the materials provided to the City but shall grant to the City a non-exclusive, perpetual, royalty-free license to use such proprietary information solely for the purposes for which the information was provided. The Professional may, at Professional's expense, have copies made of the documents or any other data furnished to the City under or pursuant to this Agreement.

(C) *Professional's Seal.* To the extent that the Professional has a professional seal it shall be placed on all documents and data furnished by the Professional to the City. All work and services provided under this Agreement will be performed in a good and workmanlike fashion and shall conform to the accepted standards and practices of the Professional's industry. The

plans, specifications and data provided by Professional shall be adequate and sufficient to enable those performing the actual work to perform the work as and within the time contemplated by the City and Professional. The City acknowledges that Professional has no control over the methods or means of work nor the costs of labor, materials or equipment. Unless otherwise agreed in writing, any estimates of costs by the Professional are for informational purposes only and are not guarantees.

(D) *Compliance with Laws.* The Professional shall comply with all federal, state and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts, administrative, or regulatory bodies in any matter affecting the performance of this Agreement, including, without limitation, worker's compensation laws, minimum and maximum salary and wage statutes and regulations, and licensing laws and regulations. When required, the Professional shall furnish the City with satisfactory proof of compliance.

(E) *Independent Contractor.* Professional acknowledges that Professional is an independent contractor of the City and is not an employee, agent, official or representative of the City. Professional shall not represent, either expressly or through implication, that Professional is an employee, agent, official or representative of the City. Income taxes, self-employment taxes, social security taxes and the like are the sole responsibility of the Professional.

(F) *Non-Collusion.* Professional represents and warrants that Professional has not given, made, promised or paid, nor offered to give, make, promise or pay any gift, bonus, commission, money or other consideration to any person as an inducement to or in order to obtain the work to be provided to the City under this Agreement. Professional further agrees that Professional shall not accept any gift, bonus, commission, money, or other consideration from any person (other than from the City pursuant to this Agreement) for any of the services performed by Professional under or related to this Agreement. If any such gift, bonus, commission, money, or other consideration is received by or offered to Professional, Professional shall immediately report that fact to the City and, at the sole option of the City, the City may elect to accept the consideration for itself or to take the value of such consideration as a credit against the compensation otherwise owing to Professional under or pursuant to this Agreement.

(G) *Force Majeure.* If the performance of any covenant or obligation to be performed hereunder by any party is delayed as a result of circumstances which are beyond the reasonable control of such party (which circumstances may include, without limitation, pending litigation, acts of God, war, acts of civil disobedience, fire or other casualty, shortage of materials, adverse weather conditions [such as, by way of illustration and not of limitation, severe rain storms or below freezing temperatures, or tornados] labor action, strikes or similar acts, moratoriums or regulations or actions by governmental authorities), the time for such

performance shall be extended by the amount of time of such delay, but no longer than the amount of time reasonably occasioned by the delay. The party claiming delay of performance as a result of any of the foregoing force majeure events shall deliver written notice of the commencement of any such delay resulting from such force majeure event not later than seven (7) days after the claiming party becomes aware of the same, and if the claiming party fails to so notify the other party of the occurrence of a force majeure event causing such delay and the other party shall not otherwise be aware of such force majeure event, the claiming party shall not be entitled to avail itself of the provisions for the extension of performance contained in this subsection.

(H) In the case of any conflicts between the terms of this Agreement and wording contained within the Scope of Services, this Agreement shall govern. The Scope of Services is intended to detail the technical scope of services, fee schedule, and contract time only and shall not dictate Agreement terms.

Section 8. Termination.

(A) This Agreement may be terminated:

- (1) By the mutual agreement and consent of both Professional and City;
- (2) By either party, upon the failure of the other party to fulfill its obligations as set forth in either this Agreement or a Scope of Work issued under this Agreement;
- (3) By the City, immediately upon notice in writing to the Professional, as consequence of the failure of Professional to perform the services contemplated by this Agreement in a timely or satisfactory manner;
- (4) By the City, at will and without cause upon not less than thirty (30) days written notice to the Professional.

(B) If the City terminates this Agreement pursuant to Section 5 or subsection 8(A)(2) or (3), above, the Professional shall not be entitled to any fees or reimbursable expenses other than the fees and reimbursable expenses then due and payable as of the time of termination and only then for those services that have been timely and adequately performed by the Professional considering the actual costs incurred by the Professional in performing work to date of termination, the value of the work that is nonetheless usable to the City, the cost to the City of employing another Professional to complete the work required and the time required to do so, and other factors that affect the value to the City of the work performed at time of termination. In the event of termination that is not the fault of the Professional, the Professional shall be compensated for all basic, special, and additional services actually performed prior to termination, together with any reimbursable expenses then due.

Section 9. Indemnification. Professional shall indemnify, defend and hold harmless the City of Fair Oaks Ranch, Texas and its officials, employees and agents (collectively referred to as “Indemnitees”) and each of them from and against all loss, costs, penalties, fines, damages, claims, expenses (including reasonable attorney’s fees) or liabilities (collectively referred to as “Liabilities”) by reason of any injury to or death of any person or damage to or destruction or loss of any property arising out of, resulting from, or in connection with (i) the performance or non-performance of Services contemplated by this Agreement but only to the extent caused by the negligent acts, errors or omissions, intentional torts, intellectual property infringement, or a failure to pay a sub-contractor or supplier committed by Professional or Professional’s agent, consultant under contract, or another entity over which Professional exercises control (whether active or passive) of Professional or its employees, agents or sub-contractors (collectively referred to as “Professional”) (ii) the failure of Professional to comply with any of the paragraphs herein or the failure of Professional to conform to statutes, ordinances, or other regulations or requirements of any governmental authority, federal, state or local, in connection with the performance of this Agreement. Professional expressly agrees to indemnify and hold harmless the Indemnitees, or any one of them, from and against all liabilities which may be asserted by an employee or former employee of Professional, or any of its sub-contractors, as provided above, for which Professional’s liability to such employee or former employee would otherwise be limited to payments under State Workers’ Compensation or similar laws. Nothing herein shall require Professional to indemnify, defend, or hold harmless any Indemnitee for the Indemnitee’s own negligence or willful misconduct. Any and all indemnity provided for in this Agreement shall survive the expiration of this Agreement and the discharge of all other obligations owed by the parties to each other hereunder and shall apply prospectively not only during the term of this Agreement but thereafter so long as any liability could be asserted in regard to any acts or omissions of Professional in performing Services under this Agreement.

For Professional Liability Claims, Professional shall be liable for reasonable defense costs incurred by Indemnitees but only after final adjudication and to the extent and percent that Professional or Professional’s agents are found negligent or otherwise at fault. As used in this Agreement, final adjudication includes any negotiated settlement and release of claims, without limitation as to when a negotiated settlement and release of claims occurs.

Section 10. Notices. Any notice required or desired to be given from one party to the other party to this Agreement shall be in writing and shall be given and shall be deemed to have been served and received (whether actually received or not) if (i) delivered in person to the address set forth below; (ii) deposited in an official depository under the regular care and

custody of the United States Postal Service located within the confines of the United States of America and sent by certified mail, return receipt requested, and addressed to such party at the address hereinafter specified; or (iii) delivered to such party by courier receipted delivery. Either party may designate another address within the confines of the continental United States of America for notice, but until written notice of such change is actually received by the other party, the last address of such party designated for notice shall remain such party's address for notice.

Section 11. No Assignment. Neither party shall have the right to assign that party's interest in this Agreement without the prior written consent of the other party.

Section 12. Severability. If any term or provision of this Agreement is held to be illegal, invalid or unenforceable, the legality, validity or enforceability of the remaining terms or provisions of this Agreement shall not be affected thereby, and in lieu of each such illegal, invalid or unenforceable term or provision, there shall be added automatically to this Agreement a legal, valid or enforceable term or provision as similar as possible to the term or provision declared illegal, invalid or unenforceable.

Section 13. Waiver. Either City or the Professional shall have the right to waive any requirement contained in this Agreement that is intended for the waiving party's benefit, but, except as otherwise provided herein, such waiver shall be effective only if in writing executed by the party for whose benefit such requirement is intended. No waiver of any breach or violation of any term of this Agreement shall be deemed or construed to constitute a waiver of any other breach or violation, whether concurrent or subsequent, and whether of the same or of a different type of breach or violation.

Section 14. Governing Law; Venue. This Agreement and all of the transactions contemplated herein shall be governed by and construed in accordance with the laws of the State of Texas. The provisions and obligations of this Agreement are performable in Kendall County, Texas such that exclusive venue for any action arising out of this Agreement shall be in Kendall County, Texas.

Section 15. Paragraph Headings; Construction. The paragraph headings contained in this Agreement are for convenience only and shall in no way enlarge or limit the scope or meaning of the various and several paragraphs hereof. Both parties have participated in the negotiation and preparation of this Agreement and this Agreement shall not be construed either more or less strongly against or for either party.

Section 16. Binding Effect. Except as limited herein, the terms and provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, devisees, personal and legal representatives, successors and assigns.

Section 17. Gender. Within this Agreement, words of any gender shall be held and construed to include any other gender, and words in the singular number shall be held and construed to include the plural, unless the context otherwise requires.

Section 18. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, and all of which shall constitute but one and the same instrument.

Section 19. Exhibits. All exhibits to this Agreement are incorporated herein by reference for all purposes wherever reference is made to the same.

Section 20. Entire Agreement. It is understood and agreed that this Agreement contains the entire agreement between the parties and supersedes any and all prior agreements, arrangements or understandings between the parties relating to the subject matter. No oral understandings, statements, promises or inducements contrary to the terms of this Agreement exist. This Agreement cannot be changed or terminated orally.

Section 21. Relationship of Parties. Nothing contained in this Agreement shall be deemed or construed by the parties hereto or by any third party to create the relationship of principal and agent or of partnership or of joint venture or of any association whatsoever between the parties, it being expressly understood and agreed that no provision contained in this Agreement nor any act or acts of the parties hereto shall be deemed to create any relationship between the parties other than the relationship of independent parties contracting with each other solely for the purpose of effecting the provisions of this Agreement.

Section 22. Right To Audit. City shall have the right to examine and audit the books and records of Professional with regards to the work described in Exhibit A, or any subsequent changes, at any reasonable time. Such books and records will be maintained in accordance with generally accepted principles of accounting and will be adequate to enable determination of: (1) the substantiation and accuracy of any payments required to be made under this Agreement; and (2) compliance with the provisions of this Agreement.

23. Dispute Resolution. In accordance with the provisions of Subchapter I, Chapter 271, TEX. LOCAL GOV'T CODE, the parties agree that, prior to instituting any lawsuit or other proceeding arising from a dispute under this agreement, the parties will first attempt to resolve the dispute by taking the following steps: (1) A written notice substantially describing the nature of the dispute shall be delivered by the dissatisfied party to the other party, which notice shall request a written response to be delivered to the dissatisfied party not less than 5 days after receipt of the notice of dispute. (2) If the response does not reasonably resolve the dispute, in the opinion of the dissatisfied party, the dissatisfied party shall give notice to that

effect to the other party whereupon each party shall appoint a person having authority over the activities of the respective parties who shall promptly meet, in person, in an effort to resolve the dispute. (3) If those persons cannot or do not resolve the dispute, then the parties shall each appoint a person from the highest tier of managerial responsibility within each respective party, who shall then promptly meet, in person, in an effort to resolve the dispute.

24. Disclosure of Business Relationships/Affiliations; Conflict of Interest Questionnaire. Professional represents that it is in compliance with the applicable filing and disclosure requirements of Chapter 176 of the Texas Local Government Code.

25. Boycott Israel. The City may not enter into a contract with a company for goods and services unless the contract contains a written verification from the company; (i) it does not Boycott Israel; and (ii) will not Boycott Israel during the term of the contract. (Texas government code chapter 2270) by entering this agreement, Professional verifies that it does not Boycott Israel, and agrees that during the term of the agreement will not Boycott Israel as that term is defined in the Texas Government Code Section 808.001, as amended.

EXECUTED, by the City on this the _____ day of _____, 2020.

CITY:

By: _____

Name: Tobin Maples, AICP

Title: City Manager

ADDRESS FOR NOTICE:

CITY

City of Fair Oaks Ranch
Attn: City Secretary
7286 Dietz Elkhorn
Fair Oaks Ranch, TX 78015

PROFESSIONAL:

By: Patti Engineering, Inc.

Name: Nicholas Hitchcock, PE

Title: Director of Texas Operations

PROFESSIONAL

Patti Engineering, Inc.
Nicholas Hitchcock, PE
7601 S Congress Ave, Suite 400
Austin, TX 78745

EXHIBIT A SCOPE OF SERVICES

The City of Fair Oaks Ranch, Texas has asked Patti Engineering to provide a fixed price proposal to upgrade the SCADA software used to monitor and control the water/wastewater system. The purpose of the upgrade is to provide a system that can run on Windows 10 and to setup the infrastructure for easier improvements and additional feature sets. The current system is running on panel PCs that are using Windows 7. The specific Panel PCs are no longer available, and Windows 7 is no longer receiving security updates from Microsoft. The existing SCADA software is not capable for running on Windows 10.

The scope of the project will include:

- Replace the 5 existing Panel PCs at each Plant with new PCs that run Windows 10
- Provide a 6th Panel PC as a spare unit
- All 6 Panel PCs to have a 5 year warranty on parts
- Develop a new SCADA system (utilizing Ignition 8.0) to replace existing functionality of the current system
- Remotely test/configure the replacement SCADA system to ensure functionality and reduce downtime and impact to the city during the change over
- Provide required Ignition licenses, including the “Basic Care” package that provides free Ignition SW upgrades for 1 year
- Commission a virtual server (provided by the city) to host the central SCADA software
- Reinstall and modify the central firewall/VPN appliance to allow the virtual server access to the remote Plant network
- Reconfigure remote firewall/VPN appliances to allow the Customer provided antivirus software to receive updates
- Commission the 5 remote Plant PCs to run the screens for local control
- Provide up to 36 hours (about 3 hours per month) to facilitate Windows updates on the Panel PCs at each plant through 9/29/2021
- Remove existing PCs and install the new Panel PCs

Professional's Responsibilities:

Patti Engineering Responsibilities

Provide controls system engineering as described in the Project Summary above except as specifically stated otherwise within this proposal.

ENGINEERING DEVELOPMENT

Provide offsite engineering development services

- Ignition SCADA software development
 - Replicate infrastructure and functionality of current system as closely as possible
- Offsite configuration of the 5 Plant PCs and the dashboard PC
- Remote testing prior to installation to reduce downtime/impact

MATERIALS/EQUIPMENT

Provide required electrical controls hardware:

- 6 Panel PCs
- Ignition Licenses
 - Central Server
 - 5 Edge Panels
 - Basic Care Contract – 1 Year Term

ONSITE SUPPORT

Provide up to 6 man-days (single shift) for:

- Installation
- Debug
- Commissioning

If more than any of the above allotted time is required/requested and Patti Engineering is not directly responsible for the need for the additional time, and extension PO will be required to continue onsite support.

City's Responsibilities:

Customer Responsibilities

ACCESS TO:

- The facility(s) and equipment and assist Patti Engineering as needed with install, testing, and verification
- An expert in the functional use and process requirements of all currently installed customer equipment and/or all proposed equipment – Based on Patti Engineering's support role in the current SCADA system, time investment by the city will be minimal

MATERIALS:

- Any passwords necessary to access and modify the virtual code
- All required 3rd party licenses for installed systems (*software, drivers, etc.*)
- The above materials must be supplied within the first two weeks of project kickoff, and be accurate and complete in their initial submitted form, or an additional PO may be required

REQUIRED:

- Virtual Server to host central SCADA software
- Provide and Install antivirus and remote access software on each Panel PC
 - Must not interfere with Ignition 8.0 or ScreenConnect provided by Patti Engineering

Identified Project Risks

- With any upgrade, there is inherent risk of extended downtime during the changeover. For this project, extended downtime would mean that city personnel are unable to make modifications to the various states of the pumps, wells, and chlorine dispensers. With Patti Engineering's background knowledge of the control system, we are able to maintain, monitor, and control the system directly via the PLCs in the event of any issues with the upgrade, greatly reducing the risk associated with this changeout.

SAFETY

- No engineering analysis of existing safety systems (mechanical or electrical) is provided as part of this proposal. While any obvious safety concerns observed during the course of the project will be noted to the customer, Patti Engineering accepts no responsibility for the safe operation of anything existing on the equipment prior to this work. All liability for the performance of the existing safety equipment remains with the original parties. All Patti Engineering provided equipment will be engineered to operate safely within the existing constraints of the equipment/machine.

DELAYS

- If there are customer-initiated delays that inhibit the scheduled progress of the project by five or more days, an additional \$5,000 per week will be invoiced to the customer for each assigned engineering resource. The customer must acknowledge and authorize these additional charges (through PO or written commitment) before we will be able to continue progress on the project.

Exhibit B COMPENSATION

Professional shall be paid an amount of \$159,800 for the services provided. Professional will bill this project in the following increments:

- 50% upon receipt of PO (due upon receipt)
- 40% upon ready for remote testing
- 10% upon completion

Please reference our project 220181 and provide an email address to which we may send invoices on your PO.

- Any additional or out of scope work can be added via a change order or can be billed per Professional's Standard Rates
- Any software provided is subject to Professional's standard licensing agreement or the software supplier's end user license agreement (Professional's document #IS.001.00)
- Proposed pricing is valid for a period of 90 days
- Any shipping costs, wire transfer, taxes or permit fee costs not specifically covered above shall be the City's responsibility
- Work will commence by Professional only after the signed contract or PO is received by Professional
- At this time, Professional projects that we can be ready onsite no sooner than 6 to 8 weeks from the project kickoff
- Please note that this projection can change at any time depending on current workload at time of receipt of a purchase order. If your timeframe is critical, please request a more definitive schedule shortly after we receive your PO
- Once we kickoff the project our engineering department will begin work-planning, order any necessary parts; and we will be in a position to offer a more definitive schedule
- Please reference our proposal number in the PO and provide an email address to which we may send billing questions

Standard Rates for Professional

Standard Scheduled Services:

Standard Engineering Time	\$150/hr
Senior Engineering Time	\$170/hr
Principal Engineering Time	\$200/hr

Off-Shift & Weekend Services:

Standard Engineering Time	\$210/hr
Senior Engineering Time	\$240/hr
Principal Engineering Time	\$275/hr

Emergency Services (Less than 48 hours' notice):	\$350/hr
Professional Engineering (PE) Services:	\$400/hr

* Important Notes:

1. Off-Shift Services include all scheduled services that occur predominately after 5pm or before 8am Monday to Friday or any work on Saturday and Sunday.
2. \$2,000 minimum charge for any Time and Material Purchase Orders or Service calls.
3. The Emergency Service rate applies to any and all work (CAD, In-house Engineering, Onsite Engineering, and Travel Time) for any work scheduled within 2 standard business days of official request.
4. All services provided under a Time and Expense Purchase Order or a Service Contract to be charged in minimum one-half hour increments.
5. 10% premium will be added to the Onsite Startup/Installation Support that is required in foreign nations outside of North America.
6. Material Procurement markup of 75%
7. 9.5% administration fee will be added to all expenses including Mileage and other expenses.
8. Mileage to be billed per the current IRS Standard Mileage Rates:
<http://www.irs.gov/taxpros/article/0,,id=156624,00.html>
9. Patti Engineering reserves the right to modify this rate schedule based on project requirements and/or market conditions - For latest update please contact Patti Engineering directly.

EXHIBIT C CERTIFICATE OF INSURANCE



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
10/23/2019

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

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

PRODUCER CIA Insurance & Risk Management 45600 Village Blvd. Shelby Twp MI 48315		CONTACT NAME: PHONE (A/C, No, Ext): 588-799-0000 FAX (A/C, No): E-MAIL: certificates@ciainsurance.com ADDRESS:															
INSURED Patti Engineering Law Enforcement Intelligent Devices LLC dba LEID Products 2110 E. Walton Blvd, Suite A Auburn Hills MI 48326		INSURER(S) AFFORDING COVERAGE <table border="1"> <tr> <th>INSURER</th> <th>NAIC #</th> </tr> <tr> <td>INSURER A: Philadelphia Insurance Co</td> <td>18058</td> </tr> <tr> <td>INSURER B: ACE American Insurance Company</td> <td>22667</td> </tr> <tr> <td>INSURER C: Accident Fund Insurance Co.</td> <td>10166</td> </tr> <tr> <td>INSURER D:</td> <td></td> </tr> <tr> <td>INSURER E:</td> <td></td> </tr> <tr> <td>INSURER F:</td> <td></td> </tr> </table>		INSURER	NAIC #	INSURER A: Philadelphia Insurance Co	18058	INSURER B: ACE American Insurance Company	22667	INSURER C: Accident Fund Insurance Co.	10166	INSURER D:		INSURER E:		INSURER F:	
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INSURER D:																	
INSURER E:																	
INSURER F:																	

COVERAGES		CERTIFICATE NUMBER: 1553610410		REVISION NUMBER:		
THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.						
INSR LTR	TYPE OF INSURANCE	ADOL SUBR INSD WYD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A B	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: POLICY ☐ PRO-JECT ☐ LOC ☒ OTHER: Foreign	Y Y	PHPK1900388 PHFD38292547006	11/1/2019 11/1/2019	11/1/2020 11/1/2020	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMPOP AGG \$ 2,000,000 \$
A	AUTOMOBILE LIABILITY ☒ ANY AUTO ☐ OWNED AUTOS ONLY ☐ SCHEDULED AUTOS ☐ HIRED AUTOS ONLY ☐ NON-OWNED AUTOS ONLY	Y Y	PHPK1900388	11/1/2019	11/1/2020	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
A	UMBRELLA LIAB ☒ OCCUR ☒ EXCESS LIAB CLAIMS-MADE CED ☒ RETENTION \$ 10,000		PHUB652597	11/1/2019	11/1/2020	EACH OCCURRENCE \$ 4,000,000 AGGREGATE \$ \$
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/ MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N N/A	WCV6154996	11/1/2019	11/1/2020	PER STATUTE OTHER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
A	Professional Liability		PHPK1900383	11/1/2019	11/1/2020	Per Claim 1,000,000 Aggregate 2,000,000
DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required) Certificate Holder is included as Additional Insured with respect to General Liability for work performed by the Named Insured if required by written contract or agreement. Waiver of subrogation applies to General Liability if required by written contract or agreement. General Liability coverage is Primary and Non-Contributory as required by written contract or agreement. This certificate of insurance neither affirmatively nor negatively amends, extends or alters the coverage afforded by the above captioned policies. General liability coverage includes Contractual Liability as broad as ISO Form CG0001.						

CERTIFICATE HOLDER	CANCELLATION
City of Fair Oaks Ranch Tobin Maples City Manager 7286 Dietz Elkhorn Fair Oaks Ranch TX 78015	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE

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CITY COUNCIL CONSIDERATION ITEM

CITY OF FAIR OAKS RANCH, TEXAS

November 19, 2020

AGENDA TOPIC: Consideration and possible action re-appointing Bud Paulson or naming a replacement to the Kendall Appraisal District Board of Directors, for a two year term, beginning January 1, 2021

DATE: November 19, 2020

DEPARTMENT: City Council

PRESENTED BY: Mayor Manitzas

INTRODUCTION/BACKGROUND:

Pursuant to Section 6.03a of the Texas Tax Code, appraisal districts are governed by a Board of Directors. It states, “to be eligible to serve on the Board, an individual must be a resident of the district and must have resided in the district for at least two years immediately preceding the date the individual takes office.” Since 2013, Bud Paulson, resident of Fair Oaks Ranch, Kendall County, has served on the Kendall Appraisal District Board of Directors.

By letter, received October 31, 2020, Kendall Appraisal District notified Mayor Manitzas of Mr. Paulson’s current term to the KAD Board of Directors expiring December 31, 2020. Before January 1, 2021, Mayor Manitzas must notify Kendall Appraisal District of Mr. Paulson’s reappointment or replacement. In discussing with Mr. Paulson, he confirms his desire to be re-appointed.

As Mr. Paulson has effectively served on the Board for seven years and, expresses a desire to continue, I respectfully ask City Council’s approval re-appointing him to the Kendall Appraisal District Board of Directors for a two-year term, beginning January 1, 2021.

POLICY ANALYSIS/BENEFIT(S) TO CITIZENS:

1. Follows Texas Tax Code on appointments to the district’s Board of Directors
2. Ensures city representation on the Kendall Appraisal District Board
3. Confirms Mr. Paulson’s, a resident and city volunteer, desire to serve on the Board

LONGTERM FINANCIAL & BUDGETARY IMPACT:

N/A

LEGAL ANALYSIS:

N/A

RECOMMENDATION/PROPOSED MOTION:

I move to approve the re-appointment of Mr. Bud Paulson to the Kendall Appraisal District Board of Directors, effective January 1, 2021 for a two year term.

**KENDALL APPRAISAL DISTRICT
118 MARKET AVE.
BOERNE, TEXAS 78006**

***Shelby W. Presley RPA, CCA
Chief Appraiser***

***Phone (830) 249-8012
Fax (830) 249-3975***

September 1, 2020

Mayor Garry Manitzas
City of Fair Oaks Ranch
7286 Dietz Elkhorn
Fair Oaks Ranch, Texas 78015

This letter is to inform Kendall County that **Bud Paulsons' two-year term to the Appraisal District's Board of Directors expires December 31, 2020.**

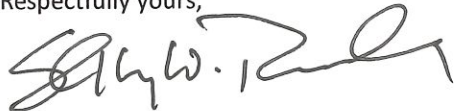
In 2017 the Kendall Appraisal District Board of Directors approved a resolution changing the selection of the Board of Directors to the two-year staggered term method. In past years we have had a cumulative voting based on each entity's tax levy. Starting in 2019 Board of Directors terms were by appointment; no vote is needed.

In accordance to Sec. 6.03 (a) of the Texas Property Tax Code: "To be eligible to serve on the Board, an individual other than a County Assessor-Collector serving as a nonvoting Director must be a resident of the (Appraisal) District and must have resided in the District for at least two years immediately preceding the date the individual takes the office. An employee of the Taxing Unit that participates in the District is not eligible to serve on the Board unless the individual is also a member of the governing body or an elected official of a Taxing Unit that participates in the District."

The responsibilities of an Appraisal District's Board of Directors include adopting an annual budget to meet the District's obligations, establish an office for the District, executing contracts for necessary services, hiring a Chief Appraiser, appointing Appraisal Review Board members and making general policy on Appraisal District's operations. A Board member may not directly or indirectly discuss appraised values with the Chief Appraiser except as allowed by law in an open meeting.

Please notify me of the Board of Trustees decision of reappointing or replacing Mr. Paulson before January 1, 2021.

Respectfully yours,



Shelby W. Presley RPA, CCA
Chief Appraiser
Kendall Appraisal District



CITY COUNCIL CONSIDERATION ITEM
CITY OF FAIR OAKS RANCH, TEXAS
November 19, 2020

AGENDA TOPIC: Consideration and possible action approving the purchase of two (2) Patrol Vehicles for \$65,584.00

START/END DATE: November 19, 2020

DEPARTMENT: Public Safety

PRESENTED BY: Clayton Hoelscher and Chief Tim Moring

INTRODUCTION/BACKGROUND:

Under the adopted budget for FY 2020/2021, council authorized the purchase of two (2) new patrol vehicles to be utilized by the Fair Oaks Ranch Police Department. The budgeted amount for the new vehicles is \$68,000. The City of Fair Oaks Ranch procurement officer has reached out to numerous agencies and vendors by utilizing both Buy Board and the Texas Sheriff's Association Vehicle Procurement Program

Three quotes were received and the lowest quote was from Caldwell Country Ford at \$65,584. The purchase amount is accompanied with a 120-150 day lead time.

Although the delivery date is extended, we believe the savings offered by Caldwell County Ford will position the City to come under the budgeted amount for the vehicles by approximately \$2,400. Additionally, the extended delivery date will allow for a quicker turn-around in terms of outfitting said patrol vehicles as it will allow the vendor responsible for outfitting more time to order and receive the aftermarket equipment needed for the vehicles.

Bidder	Caldwell Country Ford	Chastang Ford	Rush Medium Duty Truck Center
Total Amount	\$65,584.00	\$74,078.00	\$86,441.92

POLICY ANALYSIS/BENEFIT(S) TO CITIZENS:

Savings to City of Fair Oaks Ranch by coming in under budget (-\$2,400) and allotting less turnaround time regarding outfitting and deployment of vehicles.

LONGTERM FINANCIAL & BUDGETARY IMPACT:

Overall savings in vehicle replacement fund.

LEGAL ANALYSIS:

N/A.

RECOMMENDATION/PROPOSED MOTION:

I move to accept the bid from Caldwell Country Ford for the purchase of two (2) new patrol vehicles for the total amount of \$65,584.

CALDWELL COUNTRY FORD ROCKDALE COUNTRY FORD BUYBOARD 601-19	QUOTE# CC201501
--	------------------------

End User: <u>CITY OF FAIRBANKS</u> Contact: <u>CLAYTON HOELSCHER 210-698-0900 EXT 219</u> Phone/email: <u>CHOELSCHER@FAIROAKSRANCHTX.ORG</u> Product Description: <u>FORD PI UTILITY</u>	Caldwell Rep: <u>CHRIS COLLINS</u> Phone: <u>979-567-6129</u> Date: <u>Tuesday, November 3, 2020</u> email: <u>chris@caldwellcountry.com</u>
---	--

A. Bid Series: <u>114</u>	A. Base Price: \$ 29,945.00
----------------------------------	--

B. Published Options [Itemize each below]

Code	Options	Bid Price	Code	Options	Bid Price
K8A	2021 PI UTILITY	\$ 749.00		BLUETOOTH	INCL
99B	3.3L V6 FFV	INCL		TILT STEERING	INCL
44U	10 SPEED AUTOMATIC	INCL		CRUISE CONTROL	INCL
17A	AUX CLIMATE CONTROL	\$ 610.00		CLOTH FRONT/ REAR VINYL SEATS	INCL
55F	REMOTE KEYLESS ENTRY	\$ 340.00		AIR CONDITIONING FRONT/REAR	INCL
51T	DRIVER ONLY LED SPOT LAMP	\$ 420.00		AM/FM STEREO W/ WIRELESS CONNE	INCL
61B	OBD-II SPLIT CONNECTOR	\$ 55.00		REAR VISION CAMERA	INCL
60A	GRILL LED LIGHTS,SIRING, WIRING	\$ 50.00		FULL/VINYL RUBBER FLOOR	INCL
500A	ORDER CODE 500A	INCL		POWER WINDOWS	INCL
		INCL		POWER LOCKS	INCL
	GVWR 6840 LBS	INCL		BACK UP CAMERA	INCL
Total of B. Published Options:					\$ 2,224.00

C. Unpublished Options [Itemize each below, not to exceed 25%] \$= 0.0 %

Options	Bid Price	Options	Bid Price
		UM- AGATE BLACK	EXT COLOR
		96- CLOTH/VINYL REAR EBONY	INT COLOR
		120-150 DAYS ORDER	DELIVERY
Total of C. Unpublished Options:			\$ -

D. Registration, Inspection, Paperwork, Postage cost, Courthouse time, & Runner time:	\$ 150.00
E. Upfitter:	\$ -
F. Manufacturer Destination/Delivery:	\$ -
G. Floor Plan Interest (for in-stock and/or equipped vehicles):	\$ -
H. Lot Insurance (for in-stock and/or equipped vehicles):	\$ -
I. Contract Price Adjustment: _____	\$ -
J. Additional Delivery Charge: <u>156</u> miles INCLUDED	\$ 273.00
K. Subtotal:	\$ 32,592.00
L. Quantity Ordered <u>2</u> x K =	\$ 65,184.00
M. Trade in: _____	\$ -
N. BUYBOARD FEE PER PURCHASE ORDER:	\$ 400.00
O. TOTAL PURCHASE PRICE INCLUDING BUYBOARD FEE::	\$ 65,584.00



CITY COUNCIL CONSIDERATION ITEM

CITY OF FAIR OAKS RANCH, TEXAS

November 19, 2020

AGENDA TOPIC: Consideration and possible action directing the City Manager to issue a stop work order to Kimley-Horn and Associates, Inc., for Professional Design Services associated with the Elevated Storage Tank

DATE: November 19, 2020

DEPARTMENT: City Council

PRESENTED BY: Steve Hartpence, Council Member, Place 3

INTRODUCTION/BACKGROUND:

This consideration item having been tabled at the November 5, 2020 Council meeting has been brought back for Council consideration per Robert's Rules of Order. If there is no motion, second, and a vote to remove it from the table, it is dead.

Kimley-Horn is currently designing an EST to be placed on the SE corner of Boerne Ranch Estates formerly known as The Reserve. When the Council approved this contract in April 2019, it did so with the understanding that this was required to satisfy a TCEQ violation letter from September 2017. As a result, there was no Council discussion of the cost, benefits or alternatives as would normally be the case for such a large capital expenditure. There was also no attempt to discuss the need with our residents because it was viewed as something we had to do.

In September 2019 it was discovered that we were not in violation of any TCEQ regulation. Even today, not everyone agrees with this interpretation. One purpose of this agenda item is to clarify this point.

As we reviewed the budget which took effect October 1, I noted we allocated \$323K to complete the design which I had assumed was either complete or nearly so. I also learned building the EST was postponed a year with no construction planned in the current budget cycle. These two things give us the opportunity to suspend the design project and do the work to look at cost/benefit, other alternatives, etc. Most importantly, it gives us the chance to discuss the options with our residents and get community backing for whatever we decide to do.

POLICY ANALYSIS/BENEFIT(S) TO CITIZENS:

Now that we know the EST is not a TCEQ mandate, we can consider other options that can potentially save millions of dollars of capital cost. We can also explore our options for fire protection and decide if the improvements are worth the investment.

LONG-TERM FINANCIAL & BUDGETARY IMPACT:

It could save us money or cost us money. It depends on what we do.

LEGAL ANALYSIS:

This consideration item having been tabled at the November 5, 2020 Council meeting has been brought back for Council consideration per Robert's Rules of Order. If there is no motion, second, and a vote to remove it from the table, it is dead.

RECOMMENDATION/PROPOSED MOTION:

I move to authorize the City Manager to issue a stop work order to Kimley-Horn to halt the design of the EST and to begin the process of rethinking our options.

If there is no motion, second, and a vote to remove it from the table, it is dead.

Reasons to suspend detailed design of the northside EST

- The EST may never be built on our selected site in The Reserve. We don't own the land and may never own it. That has several negative consequences. Consider:
 - The developer has sued us to break the Development Agreement to avoid drilling wells on the property. If successful, the developer thereby avoids CCGCD regulations which would limit density to fewer than 100 homes.
 - If we lose, the developer will be free to bring in outside water. If the developer does so, that would reduce our Zone A buildout connections by 47% (from 1376 to 731). That would reduce the required EST volume substantially and argue for a redesign or project cancellation.
 - If we win, we have negotiating leverage to reduce housing density from 645 to a significantly smaller number.
 - If we win and we have previously suspended the EST design, our leverage to reduce housing density improves.
 - There is no foreseeable outcome where as many as 645 connections will be needed.
 - The developer may choose not to sell us the land or offer it at an exorbitant price. After all, they aren't happy with us.
 - The developer might find a better, faster, less complicated opportunity elsewhere and sell the land to someone else. That has been the story since 2013. Then the process would start over.
 - If we build an EST before the future of The Reserve is determined, we are insuring the homes will be less expensive and higher density than if we postpone the EST.
 - Studies of the effect of an EST on existing home values shows little effect on value whether or not the EST is nearby or visible. Mayor Manitzas has made this point before.
 - But there are two factors in all of these studies that don't apply to us.
 - First, all these studies are of existing communities. There are no studies that consider the effect of an existing water tower on the subsequent development of raw land.
 - Second, none of the studies I have found are of high value, low density developments. Instead the housing tends to be in urban, high-density settings with relatively low home values.
 - Think of yourself as a prospective homebuyer. Given two properties identical in every way except one has a 174' EST and the other doesn't, which would you buy?
- We are racing to build this EST for no discernable reason or advantage. But there are a number of negative consequences. Consider:
 - We don't what the future holds in Zone A. The Reserve drives the ultimate number of connections and we don't know what that will be.
 - In 2018 there were 360 Zone A connections. As we enter 2021, there are still fewer than 400. Essentially zero growth.

- In 2023, our Master Plan projects connections will have more than doubled from 360 to 781. That is an increase of 421 homes of which 265 are on The Reserve. That will never happen because there is nothing in our development pipeline.
 - An EST can be designed and built within two years. Compared to connections coming on line, that is the blink of an eye.
 - If we wait to design and build the EST, we will have the necessary knowledge of the future of Zone A and will make better decisions as a result.
 - o There is no TCEQ or any other state regulation requiring us to build an EST. TCEQ has never asked us to build an EST. TCEQ's September 2017 warning letter never mentions an EST. That misunderstanding had real consequences:
 - The Council voted 4/18/2019 to spend \$400,000 to design the northside EST after being repeatedly told it is a TCEQ requirement and that we have no choice in the matter (see attached timeline for details).
 - The Council never discussed the cost/benefit of an EST vs other alternatives such as increasing hydropneumatic tank capacity which is what we are doing in Zone C.
 - Our residents never had a chance to offer their opinions on possibly the largest capital project in the city's history.
 - Kimley-Horn held two EST workshops that discussed only the design and location.
 - There was no discussion of the cost/benefit of an EST vs other solutions.
 - Since the EST was believed to be a requirement, fewer than 40 residents attended each town hall.
 - o If we truly believed we need an EST on the northside for improved fire protection and pressure control, we would already be building one on the south side (Zone C). Instead we are building a 9,000 gallon hydropneumatic tank at a cost of \$400,000 to solve exactly the same problem: preserving our Superior Water System designation from TCEQ.
 - We now have around 1100 connections in Zone C versus fewer than 400 in Zone A.
 - If there is a need for an EST in Zone A, there is a greater need in Zone C due to the much larger number of residents.
 - Zone A will likely never have as many residents as Zone C.
 - Among other reasons, we are often told we are building the EST because professional engineers have advised us to do so. But we are never told why we are building it first in Zone A rather than in Zone C where far more residents would benefit.
- What are the downsides of suspending the design now?
 - o There will be costs to suspend the project.
 - o We will need to add hydropneumatic capacity in Zone A. If we duplicate the Zone C project, that would allow up to 722 connections to maintain Superior Water System status. It will be many years until there are that many connections in Zone A, if ever.
 - o We have 500,000 gallons of ground storage in Zone A. We might need to add more. Zones B and C share 1,000,000 gallons of ground storage.
 - o If the EST is ultimately built in the designated location using the design now underway, we will have spent a lot more money, possibly as much as a million dollars.

- Recommendations
 - Given that there is no immediate need for a northside EST, indefinitely suspend the design until there is clarity on the future of Zone A.
 - Use the time gained to:
 - Engage an engineering consulting firm to explore the hydropneumatic tank alternative as we are doing in Zone C. This is not a major project
 - Reach out to local fire departments to get their view. I have spoken with several firefighters who believe a rapid response time is more important than a vast supply of water. Should we invest in improving response time?
 - Once we have options, reach out to our residents with a new series of town halls to lay it all out and determine what the community really wants.

Steve Hartpence

10/28/2020

TIMELINE OF EVENTS TELLING US AN EST IS A TCEQ REQUIREMENT

7/25/2017	TCEQ	TCEQ conducts a compliance investigation of the city's public water supply system.
9/12/2017	TCEQ	City receives warning letter from TCEQ which includes mention of our hydropneumatic tanks exceeding 85% capacity per 30 TAC 291.93 (3). This was not a violation. The TCEQ report does not mention an EST.
2/7/2019	Council Meeting	Ron Emmons makes an EST presentation. The agenda states: Regulatory Compliance: The City's utility is subject to state law (TCEQ) o TCEQ requirements for elevated tanks based on number of existing connections to the utility, fire pressure, etc. Ron Emmons refers to the 2017 TCEQ violation report when he says "It is their kind of way of saying if we don't deal with this you are going to have a notice of violation real soon."
2/21/2019	Council Meeting	Water, Wastewater, and Reuse System Master Plan presented to Council F&N. From page ES-3: "As a public water utility, the City of Fair Oaks Ranch must comply with the rules and regulations for public water systems set forth by the Texas Commission on Environmental Quality (TCEQ) in Chapter 290, Public Drinking Water. In a letter dated September 1, 2017, the City was cited by TCEQ for reaching 91% and 95% of its hydropneumatic tank capacity in Zones A and C, respectively."
4/18/2019	Council Meeting	Council approves ~ \$400K for K-H to design the EST. Adrian Garcia repeats Ron Emmons comments from the 2/7/2019 Council meeting: Regulatory Compliance: The City's utility is subject to state law (TCEQ) o TCEQ requirements for elevated tanks based on number of existing connections to the utility, fire pressure, etc.
6/15/2019	Mayor's newsletter	"When you reach a certain number of connections on a water system, TCEQ requires that you provide elevated water storage."
6/18/2019	K-H EST Workshop #1	"2017 – City receives notification from the TCEQ of exceeding 85% capacity per 30 TAC 291.93 (3)."
7/15/2019	Mayor's newsletter	"When you reach a certain number of connections on a water system, TCEQ requires that you provide elevated water storage."
7/18/2019	Council meeting	Kimley-Horn slide states "TCEQ Regulation" and cites 290.45 (b)(1)(D)(iv) which requires an EST for systems with more than 2500 connections; p 7- Kimley -Horn slide states: 2017- City receives notification from the TCEQ of exceeding 85% capacity per 30 TAC 291.93 (3)
8/15/2019	Mayor's newsletter	"When you reach a certain number of connections on a water system, TCEQ requires that you provide elevated water storage."
9/10/2019	K-H EST Workshop #2	Discussion of style and location. No discussion of need for an EST.
9/12/2019	Phone call	TCEQ engineer Manika Sharma confirms that pressure zones A,B and C are treated independently when interpreting the TCEQ regulation regarding 2500 connections. She says there is no need for a water tower.
10/31/2019	Mayor's email	"Tobin has previously written to you and quoted several passages from TCEQ Chapter 290.45 rules and regulations which has the following stipulations involving Minimum Water System Capacity Requirements. For brevity I am only quoting a couple of the most significant ones: "Elevated Storage...is required for systems with more than 2,500 connections." "Elevated Storage is the preferred method of pressure maintenance for systems of over 2,500 connections."

Supplemental Materials for Item IV-C on 11-5-20 Council Meeting

Consideration and possible action directing the City Manager to issue a stop work order to Kimley-Horn and Associates, Inc. for Professional Design Services associated with the Elevated Storage Tank

Prepared by: Mayor Manitzas

Item A: Correspondence between Councilman Hartpence, City Manager Maples, Freese & Nichols Project Manager Jessica Vassar, P.E., Public Works Director Ron Emmons, P.E., and Mayor Manitzas between August 12, 2019 and August 21, 2019.

In this email string Councilman Hartpence raises the question about whether a large hydropneumatic tank would be a better solution for pressure maintenance than an Elevated Storage Tower (EST). City Manager Maples reviewed this question with the Public Works Director and the Project Manager for Freese & Nichols which prepared the water plan report.

The significant points raised by the Director of Public Works included:

- Historical information pointing out that the need for an EST was first raised by M&S Engineering in 2008
- Freese and Nichols, Inc. (FNI) recommended an EST in the Capital Plan for the 2015 Impact Fee study
- TCEQ cited the utility with an Additional Issue in 2017 because the utility had reached and exceeded 85% of its system capacity in Pressure Zones A & C
- FNI provided a memorandum report to TCEQ on November 27, 2017 reflecting the city's plans to construct an EST to primarily serve Zone A
- FNI submitted the Master Plan Report on February 25, 2019 recommending the EST for Zone A.
- FNI explained that an EST provides capacity for peak hour demands as well as emergency storage for fire protection and that a hydropneumatic system would be limited in these situations.
- The Director of Public Works also included a detailed explanation of TCEQ Chapter 290.45 rules and regulations including pointing out that while an EST was TCEQ's preferred method method of pressure maintenance for larger systems, qualifying exceptions could be made.
- The Director of Public Works went on to explain that the recommendation for an EST was based on sound engineering concepts and principles and has consistently been recommended due to fire protection concerns, not just for Zone A but also for portions of Zone B.

The significant points raised by the FNI Project Manager included:

- The EST improves fire flows. She referenced Figures 4-4 and 4-6 which show existing fire flow and buildout fire flow. (These figures are include following this summary.)
- The EST reduces the pumping required to Zone A.
- The EST will save energy costs by utilizing the tank to meet part of the peak hour demand. With hydropneumatic tanks, the City needs to pump the entire peak hour demand.
- The EST lowers risk in a power outage.

The City Manager offered to allow Councilman Hartpence to further vet a large hydropneumatic tank in lieu of an EST and to issue a stop work order to Kimley-Horn if council wished to do that.

Councilman Hartpence responded on August 21, 2019 saying “OK, the water tower makes sense financially and I am on board if it is in the right place.”

Summary of Findings:

The TCEQ requirements were explained in substantial detail to Councilman Hartpence. The EST solution for pressure maintenance has been recommended as a solution multiple times by a couple of different engineering firms. Councilman Hartpence expressed his agreement with the recommendations after the TCEQ regulations and the engineering recommendations were thoroughly explained. It is hard to imagine that there was any misunderstanding of circumstances and options given the thorough explanation provided and the acceptance of the proposed solution.

Item B: Existing and Build out Fire Flow Maps from Water, Wastewater, and Reuse Master Plan Prepared by FNI (Figures 4-4 and 4-6 on pages 50 and 57 of the Master Plan)

Figure 4-4 demonstrates that there are substantial portions of Zone A and C that have less than 500 gpm in available fire flow capacity. Blue, green, and yellow indicate the areas that meet the engineering standard for fire protection. ***Visually, about two thirds of the land area of the city does not have adequate water flow for firefighting.***

The report states “**FNI recommends that the City serve these zones with ESTs instead of hydropneumatic tanks to improve fire flow.**” They also commented that some parts of the city, notable Zone C (south) would require upgrades to existing water lines. These upgrades have been in our capital plans for years. Some parts of the city in the north (Meadow Creek Trail for example) have had properly sized water lines and fire hydrants installed in conjunction with the recent road rebuilding, but the fire hydrants will not flow enough water for fire suppression until the EST is installed.

Figure 4-6 demonstrates that fire flow is substantially improved with completion of the planned upgrades. ***Again, with blue, green, and yellow indicating areas adequate for firefighting, visually it appears that about 90 percent of the city has adequate water flow for firefighting after the planned improvements are made.***

Tobin Maples

From: Steve Hartpence
Sent: Wednesday, August 21, 2019 12:28 PM
To: Tobin Maples; Steve Hartpence
Cc: Garry Manitzas
Subject: Re: Thoughts on the water tower

(A)

Ok, the water tower makes sense financially and I am on board if it is in the right place.

One thing to keep in mind is that neither the consultants nor city staff appear to assign any value to the effect on our residents if the water tower towers over them. This is a big deal and must be a major consideration. For me, this takes Stone Creek off the table. Back of The Reserve or further north works well for all of our interests.

Thanks for looking at this carefully.

Steve

Sent from my Samsung Galaxy smartphone.

----- Original message -----

From: Tobin Maples <TMaples@fair Oaks ranch tx.org>
Date: 8/21/19 11:36 AM (GMT-05:00)
To: Steve Hartpence <steve.hartpence@fair Oaks ranch tx.org>
Cc: Garry Manitzas <mayor@fair Oaks ranch tx.org>
Subject: RE: Thoughts on the water tower

Mr. Hartpence,

Thanks for the email. Please note we have directed Kimley Horn to include an analysis of the property north of the old Pfeiffer tract...this was a good idea!

Per your request, we reached out to FNI. Bullet points provided to me from FNI and our City Engineer are as follows:

Jessica's comments: *Frederick + Nichols Project MGR*
Ron,

You have summarized most of the key points in your notes below. A few additional items to note:

- The elevated storage tank improves fire flows. Figures 4-4 and 4-6 attached to this email illustrate the existing fire flow and the buildout fire flow. We also ran the model to verify the fire flow with only projects 2, 3, and 4 (the elevated storage tank and the 12-inch lines connecting the tank). These projects improve the fire flow at the intersection of Ammann Road and Rolling Acres Trail from 944 gpm to 4,782 gpm.
- Elevated storage reduces the pumping required to Zone A. With the elevated storage tank, TCEQ requires the City to provide 0.6 gpm per connection. Without the elevated storage tank, TCEQ requires the City to have two or more pumps that have a total capacity of 2.0 gpm per connection or that have a total capacity of at least

1,000 gpm and the ability to meet peak hourly demands with the largest pump out of service, whichever is less, at each pump station or pressure plane. For Zone A, the buildout peak hour demand is 2,222 gpm and 2.0 gpm per connection is 2,572 gpm. Therefore, the required pumping is 2,222 gpm with the largest pump out of service. Currently Plant #3 has a firm capacity of 850 gpm, Plant #5 has a firm capacity of 575 gpm, and the proposed Plant #6 has a firm capacity of 600 gpm for a total of 2,025 gpm. To meet the TCEQ minimum requirement, the proposed Plant #6 Zone A Pump Station would need to have a firm capacity of at least 797 gpm.

- The elevated storage tank will save energy costs by utilizing the tank to meet part of the peak hour demand. With hydropneumatic tanks, the City needs to pump the entire peak hour demand.
- The elevated storage tank lowers the risk during a power outage. If the generator at the pump station fails, the elevated storage tank will still meet system demands.

Let me know if you want to discuss this further.

Thanks,

Jessica

Ron's comments:

Tobin,

Here are some elements to consider with Councilman Hartpence questions:

- M&S Engineering first identified a need to build an Elevated Storage Tank in a presentation to City Council on March 20, 2008.
- Freese & Nichols submitted their Final Impact Fee Study results on August 17, 2015 with an Elevated Storage Tank included in the Capital Plan.
- The TCEQ conducted a regular compliance investigation on July 25 & 28, 2017 where they cited the utility with an Additional Issue where the utility had reached and exceeded 85% of its system capacity in Pressure Zones A & C. Freese & Nichols provided a memorandum report dated November 27, 2017 where it identified the City planned to construct an elevated storage tank to primarily serve Zone A (northern zone).
- Freese & Nichols submitted the Master Plan Report on February 25, 2019 where they recommend an Elevated Storage Tank to serve Zone A. FNI further explains that elevated storage provides capacity for peak hour demands as well as emergency storage for fire protection. A hydropneumatic system would be limited in these situations.
- TCEQ Chapter 290.45 rules and regulations has the following stipulations involving Minimum Water System Capacity Requirements:
 - "Elevated Storage...is required for systems with more than 2,500 connections."
 - "Elevated Storage is the preferred method of pressure maintenance for systems of over 2,500 connections." Qualifying exceptions (based on Peak conditions) can be made to the TCEQ Executive Director.
 - The TCEQ rules and regulations do not clarify if the 2,500 number is based on pressure zones or does it refer to total system connections.
 - Production capacity must be 0.6 gpm per connection. The utility will exceed current pump capacity by 2028.
 - Total Storage Capacity must meet 200 gallons per connection. The utility has sufficient storage capacity for buildout.
 - The City Distribution Capacity is 2.0 gpm per connection for pressure zones with hydropneumatic pressure tank systems. Pressure Zone A will exceed its current pump capacity by buildout. It should be noted that the distribution capacity is 0.6 gpm per connection for pressure zones using elevated storage. In this instance, Pressure Zone A has sufficient pump capacity at buildout.
 - The City Hydropneumatic Storage Capacity must be 20 gallons per connection. Pressure Zone A will exceed its current hydro tank capacity by 2023 (if not sooner). It is noteworthy to point out that

Pressure Zone A would require a minimum of 33,000 gallons of Hydropneumatic tanks in order to service this area at buildout and remain below the 85% threshold identified earlier. The utility currently has 8,000 gallons of hydropneumatic storage at Plant 3, and very limited area for additional hydro storage tanks.

- The City Elevated Storage Capacity must meet 100 gallons per connection. The Pressure Zone A will meet the minimum requirements at buildout with the construction of the proposed elevation storage tank.
- I've instructed Kimley-Horn to include an analysis of the property north of the old Pfeiffer tract as a potential site for the Elevated Storage Tank.

I recognize that this is a bunch of information. The recommendation for Elevated Storage is based on sound engineering concepts and principles, and has consistently been recommended due to fire protection concerns, not just for Zone A, but also portions of Zone B. Additional analysis could be conducted; however, we would have to request additional services from a consultant to fully vet this matter. I am interested to continue this discussion if warranted.

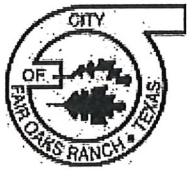
Ron

Mr. Hartpence.....Please let me know if you want use to further vet a large hydropneumatics tank in lieu of a an EST. If so, I'll need to bring this item to Council for a discussion as we'll need to issue a stop work order to Kimley Horn and develop a scope of services for the study.

My recommendation is to continue with the EST as programmed.

Tobin E. Maples, AICP

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210-698-3565 (fax)
tmaples@fairoaksranchtx.org



From: Steve Hartpence <steve.hartpence@fairoaksranchtx.org>

Sent: Monday, August 12, 2019 8:54 PM

To: Tobin Maples <TMaples@fairoaksranchtx.org>

Cc: Garry Manitzas <mayer@fairoaksranchtx.org>

Subject: Thoughts on the water tower

Garry and Tobin,

Before I discuss water tower stuff, I appreciate our meeting today and thought it gave each of us some things to consider.

One thing it caused me to think about is whether there might be an alternative solution to our need for a water tower. Let's assume Freese & Nichols is correct in their projection of future flow and pressure requirements and that we need to up our game to meet TCEQ requirements for public water systems. Are there other ways to do that? All of us on a well have a small hydropneumatic tank that uses air pressure on a reservoir of water to keep pressure up in our homes without turning the pump on and off constantly. The same thing is true in our city on a larger scale. Elmo Davis, Plant 2 and Plant 3 each have a hydropneumatic tank serving the same purpose.

If you think about this, a large hydropneumatic tank would serve exactly the same purpose as a water tower: lots of water under constant pressure. In fact it does that for many cities and is doing that for us right now. I combed through the FNI report to see if they addressed this and they did, but in a single sentence on page 4-15: "FNI recommends that the city serve these pressure zones with ESTs (water towers) instead of hydropneumatic tanks to improve fire flow." That statement recognizes that water towers aren't the only solution to our problem.

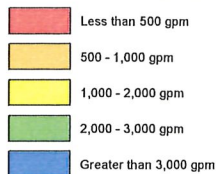
I'm sure FNI has reasons for their recommendation but we don't know what they are. Considering our resident's distaste for a water tower anywhere, I ask that we revisit the possibility of using a hydropneumatic tank. This has several positive outcomes: residents will be thrilled we found a solution; we can put it in Stone Creek Ranch and they will be happy not to have a water tower; we don't need to put it on The Reserve and give up a bargaining chip. I suspect FNI was thinking only of engineering solutions and not the community impact of a water tower. **Let's ask FNI to explain their recommendation.**

Lastly, the area to the north of The Reserve that I asked about today is mainly at 1400' which is as high or higher as anything in The Reserve. There is no elevation reason why we shouldn't look there for a water tower. Perhaps I misunderstood, but I thought that was the reason for not considering that location.

Steve

FIGURE 4-4
CITY OF
FAIR OAKS RANCH
EXISTING WATER SYSTEM
AVAILABLE FIRE FLOW
LEGEND

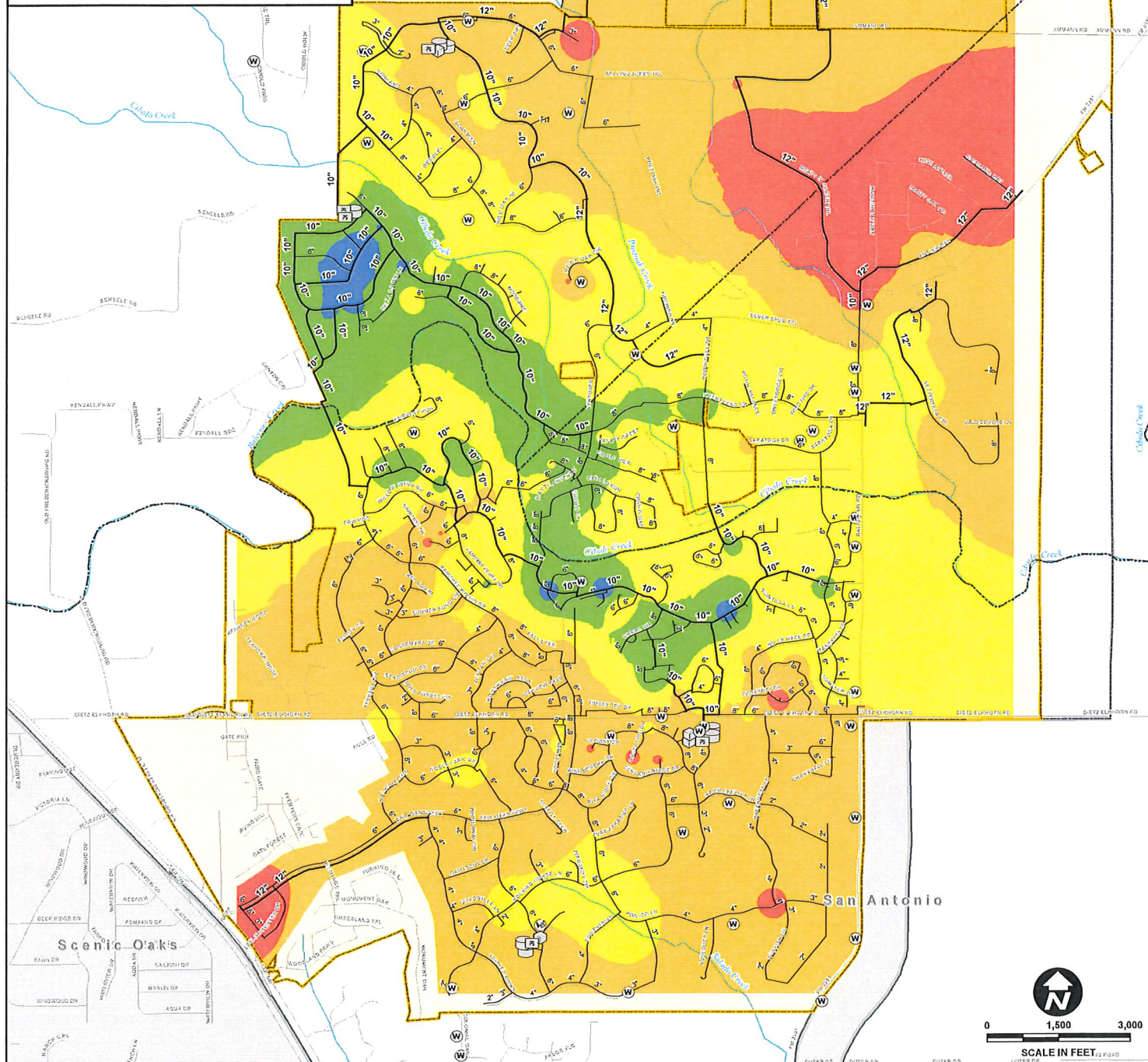
AVAILABLE FIRE FLOW

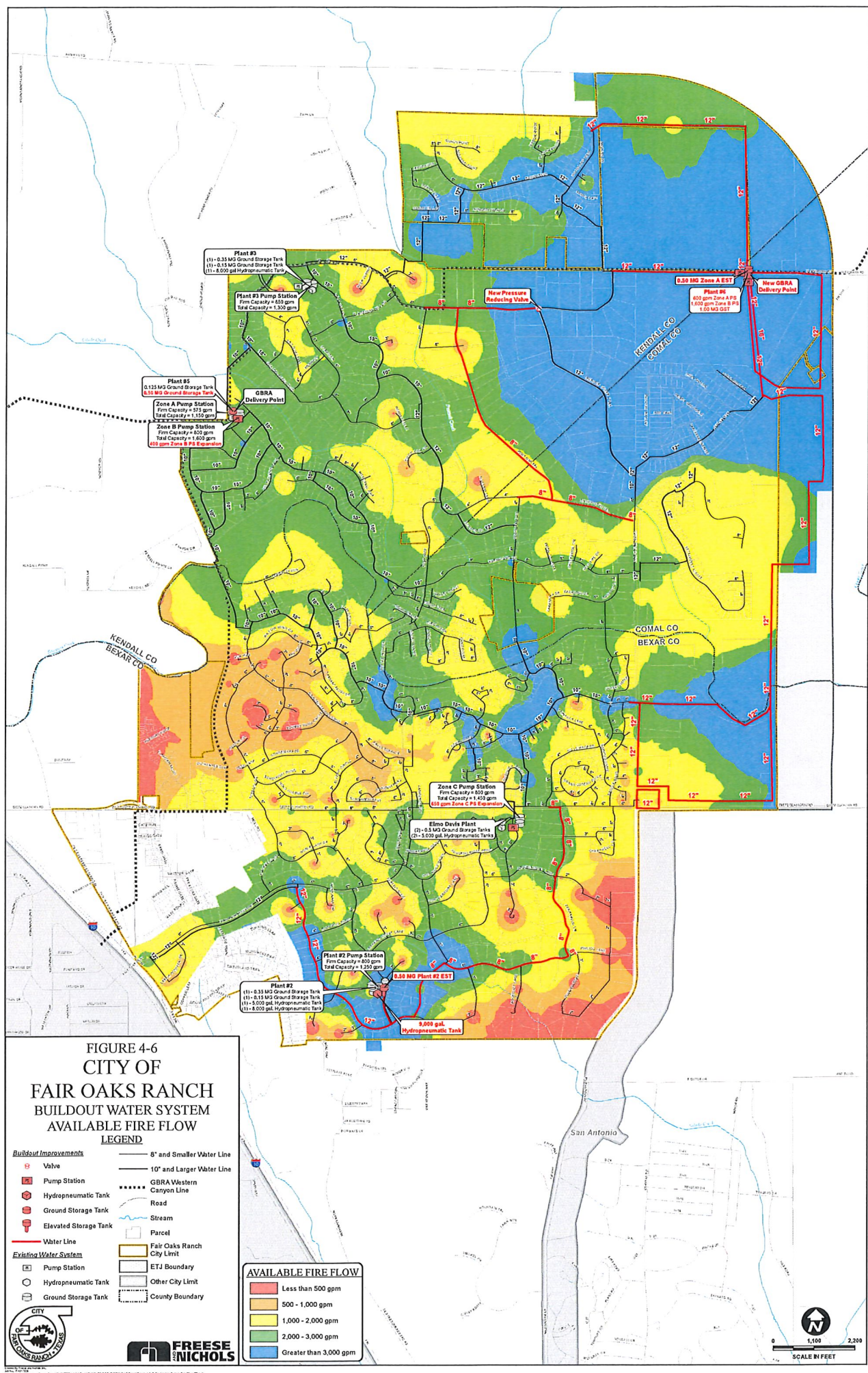


- | | | | |
|-----|---------------------------|-------|----------------------------|
| (W) | Well | — | Road |
| (P) | Pump Station | ~~~~~ | Stream |
| (H) | Hydropneumatic Tank | — | Fair Oaks Ranch City Limit |
| (G) | Ground Storage Tank | — | ETJ Boundary |
| — | 8" and Smaller Water Line | — | Other City Limit |
| — | 10" and Larger Water Line | — | County Boundary |



**FREESE
AND
NICHOLS**





Tobin Maples

From: Tobin Maples
Sent: Thursday, October 15, 2020 4:18 PM
To: Steve Hartpence
Subject: RE: Request for staff comment

Council Member Hartpence,

Sorry for the delay and you are correct, I've been slammed this week catching-up.

I had Ron and Julio discuss your question with Jessica at Freese & Nichols. Here is Jessica's response.

Tobin

From: Jessica Vassar <jbv@freese.com>
Sent: Thursday, October 8, 2020 9:26 AM
To: Julio Colunga <icolunga@fairoaksranchtx.org>
Cc: Ron Emmons <remmons@fairoaksranchtx.org>; Steven Fried <friedst@fairoaksranchtx.org>
Subject: RE: Request for staff comment

Julio,

Please see the response below. Ron please note that the buildout elevated storage total for Zone B has changed from the table I sent yesterday.

I would not feel comfortable using 1.25 for a peak hour to maximum day peaking factor because the City does not currently meet the TCEQ minimum requirements for elevated storage, but I'd also like to point out that our pumping, storage, and distribution system recommendations are appropriate even if we change the peaking factor to 1.85 (which is what TCEQ recommends if pressure tanks are used).

(60) Peak hourly demand--In the absence of verified historical data, peak hourly demand means 1.25 times the maximum daily demand (prorated to an hourly rate) if a public water supply meets the commission's minimum requirements for elevated storage capacity and 1.85 times the maximum daily demand (prorated to an hourly rate) if the system uses pressure tanks or fails to meet the commission's minimum elevated storage capacity requirement.

This is the complete guideline.

Pumping

For our recommended pumping, we used 60% of the peak hour demand in each pressure zone. Another common practice is to use 125% of the maximum day demand for pumping recommendations. The table below summarizes the difference using 125% of maximum day demand. Furthermore, if we do not build elevated storage, the TCEQ minimum pumping requirement increases. Based on this analysis, the pumping recommendations are not oversized.

Year	Zone	Water Connections	Maximum Day Demand (mgd)	Peak Hour Demand (mgd)	Recommended Pumping 60% of Peak Hour (mgd)	12
2018	Zone A	360	0.45	0.90	0.54	
2018	Zone B	1,482	1.85	3.71	2.22	
2018	Zone C	1,038	1.30	2.60	1.56	
2023	Zone A	781	0.98	1.95	1.17	
2023	Zone B	1,808	2.26	4.52	2.71	
2023	Zone C	1,139	1.42	2.85	1.71	
2028	Zone A	1,199	1.50	3.00	1.80	
2028	Zone B	2,140	2.68	5.35	3.21	
2028	Zone C	1,239	1.55	3.10	1.86	
Buildout	Zone A	1,376	1.72	3.44	2.06	
Buildout	Zone B	2,270	2.84	5.68	3.41	
Buildout	Zone C	1,278	1.60	3.20	1.92	

Storage

The ground storage recommendations were already based on maximum day demands so they would not change. The elevated storage capacity was based on 40% of the peak hour demand for a duration of 3 hours in addition to 1,500 gpm of fire flow for a duration of 3 hours. A 0.5 MG elevated storage tank is still appropriate for Zone A in Fair Oaks Ranch for a few reasons. The first reason is that the tank was sized to exclusively meet the demands of Zone A; however, this tank also has the ability to serve Zone B through a pressure reducing valve. The fire volume of this tank was also conservative. 3,500 gpm for a duration of 3 hours is frequently recommended for fire suppression (the equivalent of 0.63 MG of storage). I also updated the elevated storage tank table below to reflect using a 1.25 peak hour to maximum day peaking factor. This change results in a buildout elevated storage recommendation in Zone A of 0.38 MGD. We would recommend building a 0.5 MG elevated storage tank even if we had used a lower peak hour to maximum day peaking factor. Therefore, the storage recommendations are not oversized.

Year	Zone	*UPDATED* Peak Demand (mgd) ⁽¹⁾	*UPDATED* Peak Volume (MG) ⁽²⁾	Fire Volume (MG) ⁽³⁾	Total (MG) ⁽⁴⁾
2018	Zone A	0.23	0.03	0.27	0.30
2018	Zone B	0.93	0.12	0.27	0.39
2018	Zone C	0.65	0.08	0.27	0.35
2023	Zone A	0.49	0.06	0.27	0.33
2023	Zone B	1.13	0.14	0.27	0.41
2023	Zone C	0.71	0.09	0.27	0.36
2028	Zone A	0.75	0.09	0.27	0.36
2028	Zone B	1.34	0.17	0.27	0.44
2028	Zone C	0.77	0.10	0.27	0.37
Buildout	Zone A	0.86	0.11	0.27	0.38
Buildout	Zone B	1.42	0.18	0.27	0.45
Buildout	Zone C	0.80	0.10	0.27	0.37

(1) Equals 40% of peak hour demand using a 1.25 peak hour to maximum day peaking factor

(2) Required volume to supply the peak demand for a duration of 3 hours

- (3) Assuming highest fire flow required is 1,500 gpm for 3 hour duration
- (4) The greater of twice the peaking volume or the peaking volume plus fire volume

Distribution System

The distribution system recommendations were analyzed for a variety of demand conditions. The peak hour pressures may be higher if a lower peaking factor is used, but fire flow analysis was run using maximum day demands and also needs to be considered. Using a lower peak hour to maximum day peaking factor would not change the recommended sizing of line improvements. Therefore, the distribution system recommendations are not oversized.

Please let me know if you have any other questions.

Thanks,

Jessica

Jessica Vassar, P.E.
Freese and Nichols, Inc.

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From: Steve Hartpence <steve.hartpence@fairoaksranchtx.org>
Sent: Wednesday, October 14, 2020 7:17 PM
To: Tobin Maples <TMaples@fairoaksranchtx.org>
Subject: Fw: Request for staff comment

Tobin,

I would appreciate your response to my email even if you consider it to raise an issue already decided by Council. If you are slammed after being off a week, I understand. But I would like a response.

Steve

From: Steve Hartpence
Sent: Monday, October 5, 2020 12:51 PM
To: Tobin Maples
Subject: Request for staff comment

Tobin,

I plan to submit my agenda item regarding suspension of the EST design on Friday morning for inclusion in the Oct 15 agenda package. While researching the points I intend to make, I found an apparent overstatement of future water demand in the Water, Wastewater, and Reuse Master Plan.

Page 3-2 of the MP states "A design peak hour to maximum day peaking factor of 2.0 was selected based on input from the city." Title 30, Part 1, Chapter 290 of the Texas Administrative Code describes TCEQ regulations regarding public drinking water. §290.38(60) defines peak hour demand as follows: "Peak hourly demand--In the absence of verified historical data, peak hourly demand means 1.25 times the maximum daily demand (prorated to an hourly rate) if a public water supply meets the commission's minimum requirements for elevated storage capacity."

This information is missing the balance of the guideline.

The MP's use of the 2.0 factor rather than TCEQ's 1.25 results in increasing our water demand by 60%. For example, at buildout the MP projects a Peak Hour Demand of 12.32 million gallons. Applying the TCEQ hourly peaking factor reduces the peak hour demand to 7.4 million gallons. Making this correction to the MP would result in major revisions to nearly every area of the MP: pump size, water line diameter, EST volume, areas of low pressure, capital expenditures and so on.

Please run this by staff for comment. There may be good reasons for using the 2.0 factor, but they aren't stated in the MP. I realize you are out of the office this week but unless you ask me to do so, I don't want to send anything directly to Ron given past history.

Thanks,

Steve