

**CITY OF FAIR OAKS RANCH
AGENDA – CITY COUNCIL REGULAR MEETING**

March 19, 2020 6:30 PM
City Hall Council Chamber
7286 Dietz Elkhorn, Fair Oaks Ranch

I. OPEN MEETING

- A. Roll Call – Declaration of a Quorum.
- B. Pledge of Allegiance.

II. CITIZENS and GUEST FORUM / PRESENTATIONS

To address the Council, please sign the Attendance Roster located on the table at the entrance of the Council Chamber. 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. Speakers shall limit their comments to five (5) minutes each.

- A. Citizens to be heard.
- B. Swearing in of newly hired Police Officer, Michael Maddox.
- C. Emergency Operations Update. Tim Moring, Interim Chief of Police

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 March 5, 2020 Regular City Council Meeting Minutes. Pgs. 3-4
- B. Approval of a Preliminary Plat establishing Elkhorn Ridge Unit 5. Pgs. 5-7

IV. CONSIDERATION/DISCUSSION ITEMS

- A. Consideration and possible action accepting the FY 2018-19 Audit. Pg. 8
Sarah Buckelew, Finance Director and ABIP, PC
- B. Consideration and possible action awarding the 2020 Street Maintenance and Repair Program – High Density Mineral Bond bid and authorizing the City Manager to sign the Agreement. Pgs. 9-33
Ron Emmons, P.E., Public Works Director
- C. Consideration and possible action awarding the 2020 Street Maintenance and Repair Program – Asphalt Rejuvenator bid and authorizing the City Manager to sign the Agreement. Pgs. 34-61
Ron Emmons, P.E., Public Works Director
- D. Consideration and possible action extending a declaration of local disaster; establishing rules and regulations for the duration of the disaster; and restricting certain activities. Pgs. 62-69
Mayor Manitzas

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. 551.071 (Consultation with Attorney) - Cause No. 2018-CI-00202; the City of Fair Oaks Ranch, Texas vs Edward I. Hill, Robert E. Heckendorn, Craig M. Luitjen, Roger Fuentes, Wesley A. Pieper, Esther W. Hicks, William A. McDowell, Yolanda D. Ayala, PG Pfeiffer Ranches LLC, Maureen Pfeiffer Stevenson Family Trust.
- B. 551.071 (Consultation with Attorney) - to receive legal advice regarding claims made on behalf of a real property owner against the City's operation of the K-3 Trinity Glen Rose Water Well.
- C. 551.071 (Consultation with Attorney) - to receive legal advice from Special Counsel and the City Attorney regarding the City's ground water rights.

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: _____



I, Amanda Valdez, Deputy 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. Said Notice was posted by 5:00 PM March 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 MEETING MINUTES
March 5, 2020
7286 Dietz Elkhorn
Fair Oaks Ranch, TX 78015**

I. OPEN MEETING

A. Roll Call – Declaration of a Quorum

Present: Mayor Manitzas

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

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

Absent: Mayor Pro Tem Elizondo

B. The Pledge of Allegiance was led by resident and Wildlife Education Committee President, Bruce Nicholson.

II. CITIZENS and GUEST FORUM / PRESENTATIONS

A. There were no citizens to be heard.

B. Joanna Merrill, the City's Human Resources Director, introduced Jennifer Hudson, the newly hired Human Resources & Communications Specialist.

C. Wildlife Education Committee Members: Bruce Nicholson and Teal Harris presented wildlife education materials to Fair Oaks Ranch Elementary School Assistant Vice Principal, Jennifer Schultz and Van Raub Elementary School Registrar, America Rivas.

III. CONSENT AGENDA

A. Approval of February 20, 2020 Regular City Council Meeting Minutes.

B. Approval of February 25, 2020 Special City Council Meeting Minutes.

C. Approval of the second reading of an Ordinance amending the Water and Wastewater Impact Fees, Division 2 and 3 Land Use Assumptions Plan, and Water and Wastewater Improvements Plan.

D. Approval of Mayor Pro Tem Elizondo's absence from the March 5, 2020 City Council meeting.

The Mayor presented the Consent Agenda and with no discussion the Consent Agenda was approved by unanimous consent.

IV. CONSIDERATION/DISCUSSION ITEMS

A. Consideration and possible action authorizing the City Manager to sign a Professional Services Agreement to complete a Compensation and Benefits Study.

MOTION: Made by Council Member Hartpence, seconded by Council Member Havard to authorize the City Manager to sign a Professional Services Agreement with Ray Associates, Inc. for Compensation and Benefits Study consulting services.

VOTE: 6-0; Motion Passed.

V. REPORTS FROM STAFF/COMMITTEES/COUNCIL

- A. Director of Finance, Sarah Buckelew, provided an update on Senate Bill 2 and its' impact on the budget process.
- B. Environmental Compliance Manager, Melissa Castro, provided an update on the backflow prevention program. She noted that 805 out of 1,896 connections were tested thus far in FY 2020 with a failure rate of 5.7%. Future TCEQ proposed amendments to landscape irrigation rules may impact the city's backflow inspection frequency and types of assemblies which could be used.

VI. CONVENE INTO EXECUTIVE SESSION

City Council did not convene into Executive Session regarding:

- A. 551.071 (Consultation with Attorney) - Cause No. 2018-CI-00202; the City of Fair Oaks Ranch, Texas vs Edward I. Hill, Robert E. Heckendorn, Craig M. Luitjen, Roger Fuentes, Wesley A. Pieper, Esther W. Hicks, William A. McDowell, Yolanda D. Ayala, PG Pfeiffer Ranches LLC, Maureen Pfeiffer Stevenson Family Trust.

City Council convened into Executive Session at 10:37 AM regarding:

- B. 551.071 (Consultation with Attorney) - to receive legal advice regarding claims made on behalf of a real property owner against the City's operation of the K-3 Trinity Glen Rose Water Well.
- C. 551.071 (Consultation with Attorney) – to receive legal advice from Special Counsel and the City Attorney regarding the City's ground water rights.
- D. 551.071 (Consultation with Attorney) and 551.072 (Deliberation Regarding Real Property) – to seek the advice of its attorney 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 clearly conflicts with this chapter and to deliberate the purchase, exchange, lease, or value of real property if deliberation in an open meeting would have a detrimental effect on the position of the governmental body in negotiations with a third person, to wit: Water, utility and development issues associated with the approximately 344 acre property commonly known as the Pfeiffer Tract.

VII. RECONVENE INTO OPEN SESSION

The Mayor reconvened into Open Session at 12:13 PM. No action was taken.

VIII. ADJOURNMENT

Council Member Koerner requested a briefing on the City's emergency management response to the coronavirus.

Mayor Manitzas adjourned the meeting at 12:14 PM.

ATTEST:

Garry Manitzas, Mayor

Christina Picioccio, City Secretary



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

AGENDA TOPIC: Approval of a preliminary plat that establishes Elkhorn Ridge Unit 5
DATE: March 19, 2020
DEPARTMENT: Public Works
PRESENTED BY: Ronald C. Emmons, P.E., Public Works Director

INTRODUCTION/BACKGROUND:

In January 2020, a Preliminary Plat, establishing Elkhorn Ridge Unit 5, was submitted to the Public Works Department by Vickrey and Associates, Inc. This tract of land is generally located in the north part of the Elkhorn Ridge private subdivision. This subdivision is the sixth unit in the Elkhorn Ridge subdivision. Pertinent information regarding the progress of the subdivision can be found in the table below:

Elkhorn Ridge Unit	Final Plat Approval Date	Total Area (ac)	Residential Lots
1	11/16/2015	30.10	61
2	4/4/2017	4.54	18
3	6/20/19	4.62	15
5	-	16.29	47
6A	5/17/2018	4.62	15
9	5/17/2018	23.93	43
4, 6B, 7, 8	-	23.90	112
*Total	-	108	311

*All values are based on the original master plan and may be subject to change.

In January 2014, the City of Fair Oaks Ranch entered into a development agreement with Elkhorn Ridge SA, LLC for the development of 311 single family residential lots as part of the Elkhorn Ridge subdivision. The referenced agreement stated the following regarding lot size dimensions: "In general all lots are approximately one hundred twenty feet (120 ft) in depth at a minimum with 148 lots being approximately fifty-five (55 ft) wide, 91 lots being approximately sixty-five (65ft) wide and 72 lots being approximately eighty feet (80 ft) wide as measured from the front building setback line."

After review and comments, Vickrey and Associates submitted an updated preliminary plat and applicable supporting documentation. The updated preliminary plat has satisfied all of the requirements of the City's Subdivision Ordinance.

The Planning and Zoning Commission recommended approval of the plat at their March 12th meeting.

The Public Works Department recommends approval of the preliminary plat that establishes Elkhorn Ridge Unit 8.

POLICY ANALYSIS/BENEFIT(S) TO CITIZENS:

Article II, Section 2 of the City Subdivision Ordinance titled, Processing of the Preliminary Plat contains the following:

A. Staff Review.

City Staff will inspect the preliminary plat to verify that it conforms to all of the requirements of this ordinance. The Subdivider will be informed in writing by the City Administrator of any deficiencies in the preliminary plat.

B. Recommendation by the Fair Oaks Ranch Public Works Department.

The Fair Oaks Ranch Public Works Department shall conditionally recommend approval or disapproval of the preliminary plat at their next scheduled meeting on which a complete plat submission is received by the City Administrator. The Public Works Department's recommendation of approval of the preliminary plat shall not constitute final acceptance of the final plat but is authority to proceed with the preparation of the final plat. If any major changes are required by the Public Works Department, the Public Works Department may require submission of another preliminary plat.

C. Expiration of Plat Approval Recommendation.

The approval recommendation of the preliminary plat shall expire one year from the date of the initial recommendation.

LONGTERM FINANCIAL & BUDGETARY IMPACT:

N/A

LEGAL ANALYSIS:

Sec. 212.006 (a) of the Texas Local Government Code titled, Authority Responsible for Approval Generally, states the following:

"The municipal authority responsible for approving plats under this subchapter is the municipal planning commission or, if the municipality has no planning commission, the governing body of the municipality. The governing body by ordinance may require the approval of the governing body in addition to that of the municipal planning commission."

RECOMMENDATION/PROPOSED MOTION:

Consent (I move to approve of the preliminary plat that establishes Elkhorn Ridge Unit 5.)



CITY COUNCIL CONSIDERATION ITEM
CITY OF FAIR OAKS RANCH, TEXAS
March 19, 2019

AGENDA TOPIC: Consideration and possible action accepting the FY 2018-19 Audit
DATE: March 19, 2020
DEPARTMENT: Finance
PRESENTED BY: Michael Del Toro, ABIP, PC

INTRODUCTION/BACKGROUND:

As required by Texas Local Government Code Section 103.101, cities in Texas are required to conduct an independent annual audit of their financials. Accordingly, the City of Fair Oaks Ranch retained the firm of ABIP, PC to prepare said audit services.

Representatives from ABIP, PC will attend the meeting to present the Fiscal Year 2018-2019 audit and answer questions.

POLICY ANALYSIS/BENEFIT(S) TO CITIZENS:

Compliance with state law, citizen transparency and best practice financial management.

LONG-TERM FINANCIAL & BUDGETARY IMPACT:

The audit resulted in an unmodified ("clean") audit opinion.

LEGAL ANALYSIS:

N/A

RECOMMENDATION/PROPOSED MOTION:

I move to accept the Fiscal Year 2018-2019 annual audit as presented by ABIP, PC.



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

AGENDA TOPIC: Consideration and possible action awarding the 2020 Street Maintenance and Repair Program – High Density Mineral Bond bid and authorizing the City Manager to sign the Agreement

DATE: March 19, 2020

DEPARTMENT: Public Works

PRESENTED BY: Ronald C. Emmons, P.E.

INTRODUCTION/BACKGROUND:

The City has long relied on the Chip Seal maintenance method for its annual Street Maintenance and Repair Program due to its quick cure time, general low cost, and its effectiveness at preserving pavement. Although this method contains many positive characteristics, a common concern from residents is that this method makes it difficult for pedestrian enjoyment of the roadways. Immediately after initial application and as the chip seal wears, loose aggregate accumulates on the roadway. This problem is exacerbated on curbed streets as the aggregate cannot easily leave the roadway and these areas tend to have greater number of pedestrians on the roadways. An alternate method for roadway preservation was specified on curbed streets for this year's Street Maintenance and Repair Program. This method is called a High Density Mineral Bond (HDMB) which is spray-applied to the roadways. This method carries similar pavement preservation characteristics as the chip seal and does not include large aggregate to wear off in the future. The HDMB requires a twenty-four (24) hour cure time and carries a higher comparative cost to the chip seal. Unlike the chip seal which allows traffic to return to normal the same day, the HDMB required the road to be closed for a period of approximately twenty-four (24 hours).

On February 14, 2020, the Street Maintenance and Repair Program was released for bid for 11,279 square yards (SY) of HDMB treated streets. On March 9, 2020 at 3:00 p.m. bids were opened for the 2020 Street Maintenance and Repair Program – High Density Mineral Bond with the following Bid Tabulations:

COMPANY NAME	Bid Amount
Andale Construction Inc.	\$ 40,147.60

POLICY ANALYSIS/BENEFIT(S) TO CITIZENS:

The annual Street Maintenance and Repair Program aims to apply the most effective preventative maintenance procedure to each City street on an eight year cycle. The specific treatments seal the surface of the road to protect the base layer from water infiltration, which could lead to failure of the road surface, and ultimately higher repair costs in the future.

LONGTERM FINANCIAL & BUDGETARY IMPACT:

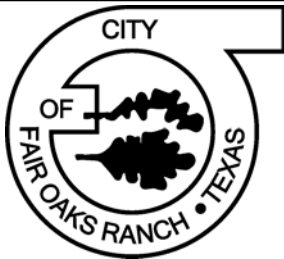
The City budgeted \$410,000 under Street Maintenance (01-642-254) for this year's Street Maintenance and Repair Program.

LEGAL ANALYSIS:

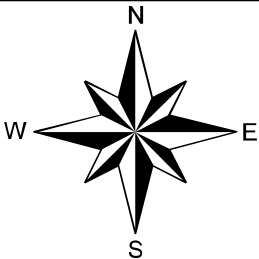
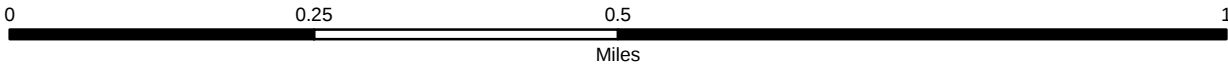
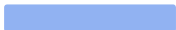
Contractor will be required to sign and adhere to the City's Standard Construction Agreement prior to the commencement of work.

RECOMMENDATION/PROPOSED MOTION:

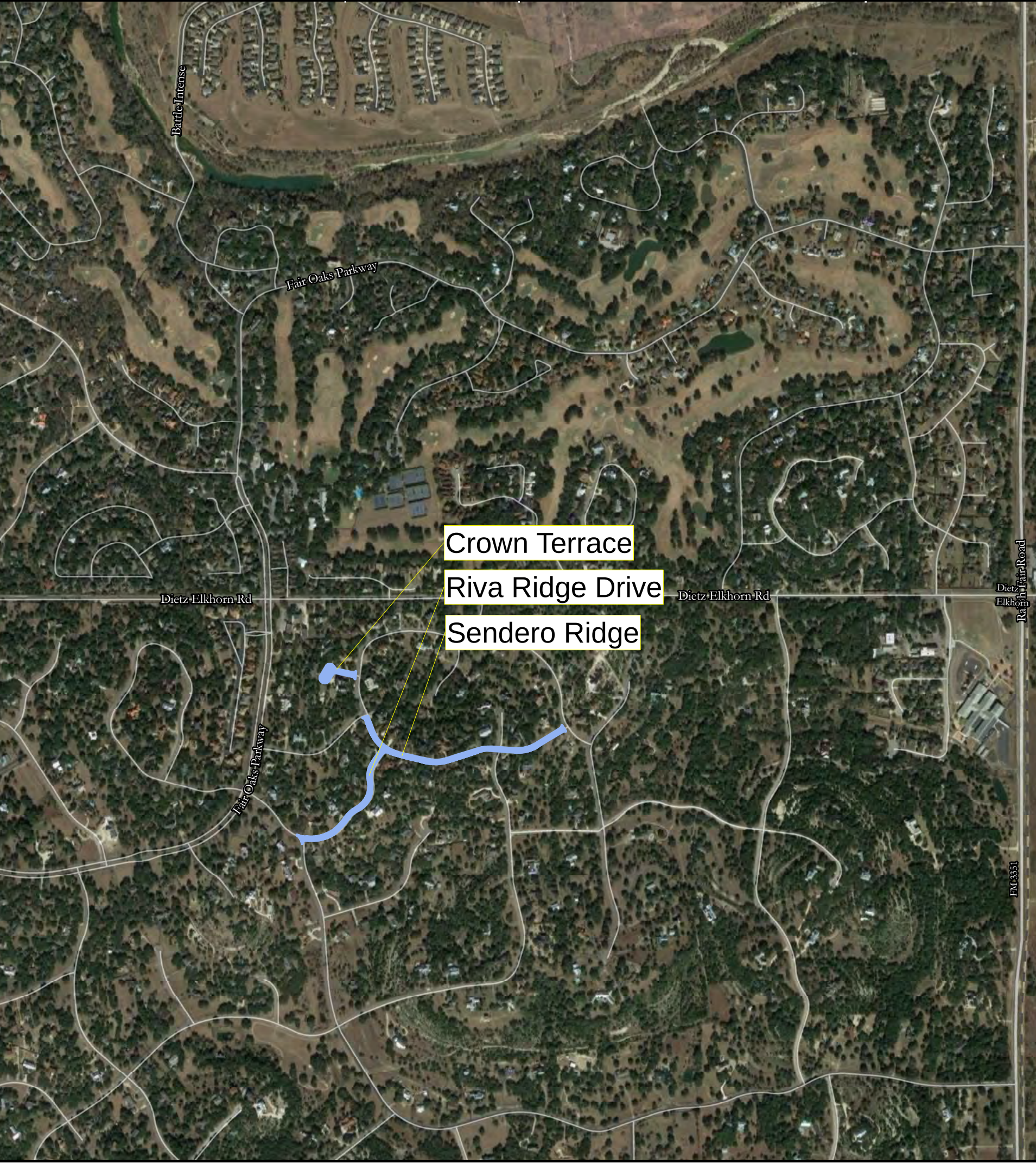
I move to accept the bid furnished by Andale Construction Inc. in the amount of \$ 40,147.60 with a 10% contingency in the amount of \$ 4,014.76 for a value not to exceed \$ 44,162.36 and authorize the City Manager to sign the construction agreement.



HDMB



Location	Area (SY)	Location	Area (SY)
Crown Terrace	1820	Sendero Ridge	5884
Riva Ridge Drive	3575	Total	11,278



Notes

- NOTE 1 HIGH DENSITY MINERAL BOND (HDMB) APPLICATION SHALL BE COMPLETED PER SPECIFICATION HDMB FOR CURBED ROADS.
- NOTE 2 ON THOSE ROADS THAT HAVE PAVEMENT MARKERS OR BLUE FIRE HYDRANT MARKERS, THE MARKERS SHALL BE PROTECTED PRIOR TO THE APPLICATION OF THE HDMB. CONTRACTOR IS RESPONSIBLE TO REPLACE ALL DAMAGED MARKERS.
- NOTE 3 THE HDMB SHALL BE PLACED TO SEAL THE SEAM BETWEEN THE CURB AND THE EDGE OF PAVEMENT. THE HDMB SHALL NOT EXTEND MORE THAN ONE INCH ON THE CURB.
- NOTE 4 APPLICATION OF THE HDMB SHALL HAVE NO VISIBLE SEAM WHERE A TIE-IN IS MADE, GIVING THE APPEARANCE OF A HOMOGENEOUS APPLICATION. IN ADDITION, STARTS AND STOPS SHOULD BE PROPERLY PROTECTED FROM EXTRA OVERLAY OF HDMB.
- NOTE 5 DO NOT ALLOW HDMB MATERIAL IN BETWEEN MANHOLE COVER AND FRAME.



Street Maintenance and Repair Program
2020 High Density Mineral Bond
Location Sheet, Seal Coat Schedule and Notes

No.	Issue	By	Date
1			
2			
3			
4			

CITY OF FAIR OAKS RANCH
CONSTRUCTION AGREEMENT

THE STATE OF TEXAS §
 §
BEXAR COUNTY §

This Construction Agreement ("Agreement") is made and entered by and between the City of Fair Oaks Ranch, Texas, (the "City") a Texas municipality, and Andale Construction, Inc. ("Contractor").

Section 1. Duration. This Agreement shall become effective upon the date of the final signature affixed hereto 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) Contractor shall perform the Work 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".

(B) The Quality of Work provided under this Agreement shall be of the level of quality performed by Contractors regularly rendering this type of service.

(C) The Contractor shall perform its Work 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 Contractor 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 Contractor or when it has actual notice of any defects in the reports and surveys.

Section 3. Compensation.

(A) The Contractor shall be paid in the manner set forth in Exhibit "A" and as provided herein.

(B) *Billing Period:* The Contractor 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 Contractor'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 Work (Exhibit A) and accounted for in the total contract amount.

Section 4. Time of Completion.

The prompt completion of the Work under the Scope of Work relates is critical to the City. Unnecessary delays in providing Work under a Scope of Work shall be grounds for dismissal of the Contractor 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 Contractor prior to the time of termination. The Project shall be completed for inspection and acceptance by the City on or before September 30, 2020.

Section 5. Insurance.

Before commencing work under this Agreement, Contractor shall obtain and maintain the liability insurance provided for below throughout the term of the Project plus an additional two years. Contractor shall provide evidence of such insurance to the City. Such documentation shall meet the requirements noted in Exhibit B.

Contractor shall maintain the following limits and types of insurance:

Workers Compensation Insurance: Contractor 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 Contractor's employees carrying out the work involved in this contract.

General Liability Insurance: Contractor 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 Contractor 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: Contractor 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 Contractor or its employees.

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

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 6. Miscellaneous Provisions.

(A) *Subletting.* The Contractor 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 Contractor of any responsibility for work done by such subcontractor.

(B) *Compliance with Laws.* The Contractor 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 Contractor shall furnish the City with satisfactory proof of compliance.

(C) *Independent Contractor.* Contractor acknowledges that Contractor is an independent contractor of the City and is not an employee, agent, official or representative of the City. Contractor shall not represent, either expressly or through implication, that Contractor 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 Contractor.

(D) *Non-Collusion.* Contractor represents and warrants that Contractor 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. Contractor further agrees that Contractor 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 Work performed by Contractor under or related to this Agreement. If any such gift, bonus, commission, money, or other consideration is received by or offered to Contractor, Contractor 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 Contractor under or pursuant to this Agreement.

(E) *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.

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

Section 7. Termination.

(A) This Agreement may be terminated:

- (1) By the mutual agreement and consent of both Contractor 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 Contractor, as consequence of the failure of Contractor to perform the Work 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 Contractor.

(B) If the City terminates this Agreement pursuant to subsection 7(A)(2) or (3), above, the Contractor 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 Work that have been timely and adequately performed by the Contractor considering the actual costs incurred by the Contractor 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 Contractor 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 not the fault of the Contractor, the Contractor shall be compensated for all basic, special, and additional Work actually performed prior to termination, together with any reimbursable expenses then due.

Section 8. Indemnification. Contractor agrees to indemnify and hold the City of Fair Oaks Ranch, Texas and all of its present, future and former agents, employees, officials and representatives harmless in their official, individual and representative capacities from any and all claims, demands, causes of action, judgments, liens and expenses (including attorney's fees, whether contractual or statutory), costs and damages (whether common law or statutory), costs and damages (whether common law or statutory, and whether actual, punitive, consequential or incidental), of any conceivable character, for injuries to persons (including death) or to property (both real and personal) created by, arising from or in any manner relating to the Work or goods performed or provided by Contractor – expressly including those arising through strict liability or under the constitutions of the United States.

Section 9. 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 10. 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 11. 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 12. Waiver. Either City or the Contractor 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 13. 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 Bexar County, Texas such that exclusive venue for any action arising out of this Agreement shall be in Bexar County, Texas.

Section 14. 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 15. 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 16. 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 17. 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 18. Exhibits. All exhibits to this Agreement are incorporated herein by reference for all purposes wherever reference is made to the same.

Section 19. 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 20. 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 21. Right To Audit. City shall have the right to examine and audit the books and records of Contractor 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.

22. 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.

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

24. 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 on this the _____ day of _____, 2020.

CITY:

CONTRACTOR:

By: _____

By: _____

Name: Tobin Maples, AICP

Name: _____

Title: City Manager

Title: _____

ADDRESS FOR NOTICE:

CITY

CONTRACTOR

City of Fair Oaks Ranch
Attn: Tobin Maples, AICP
7286 Dietz Elkhorn
Fair Oaks Ranch, TX 78015

Andale Construction, Inc.
3170 N. Ohio St.
Wichita, KIS 67219

Exhibit “A”
Scope of Services

**CITY OF FAIR OAKS RANCH
STREET MAINTENANCE AND REPAIR PROGRAM
2020 – HIGH DENSITY MINERAL BOND
Unit Pricing**

Bid Item	Unit Price	Extended Price
Mobilization Includes mobilization and cost for any required Payment and/or Performance Bonds	\$ <u>4,618.75</u> /s	\$ <u>4,618.75</u>
High Density Mineral Bond 11,279 square yards	\$ <u>3.15</u> /sy	\$ <u>35,528.85</u>
Total Bid Amount		\$ <u>40,147.60</u>

By signing below, company acknowledges it has received all bidding documents and instructions, and agrees to execute the Standard Construction Services Agreement if awarded a contract for this Project and promptly supply any required insurance certificate(s) and/or endorsements, Payment and Performance Bonds upon request by the City and prior to commencement of work. The required certified check, cashier's check or bid bond shall be included and immediately follow this executed Unit Pricing Form.

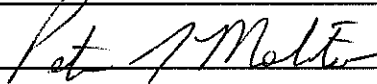
COMPANY:

Andale Construction, Inc.
3170 N. Ohio St.
Wichita, KS 67219
316-832-0063

AUTHORIZED COMPANY REPRESENTATIVE

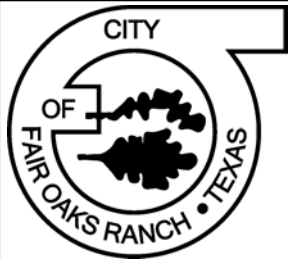
Peter J. Molitor - President

SIGNATURE:

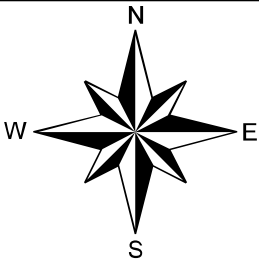
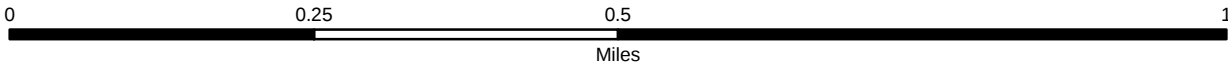
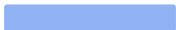


DATE

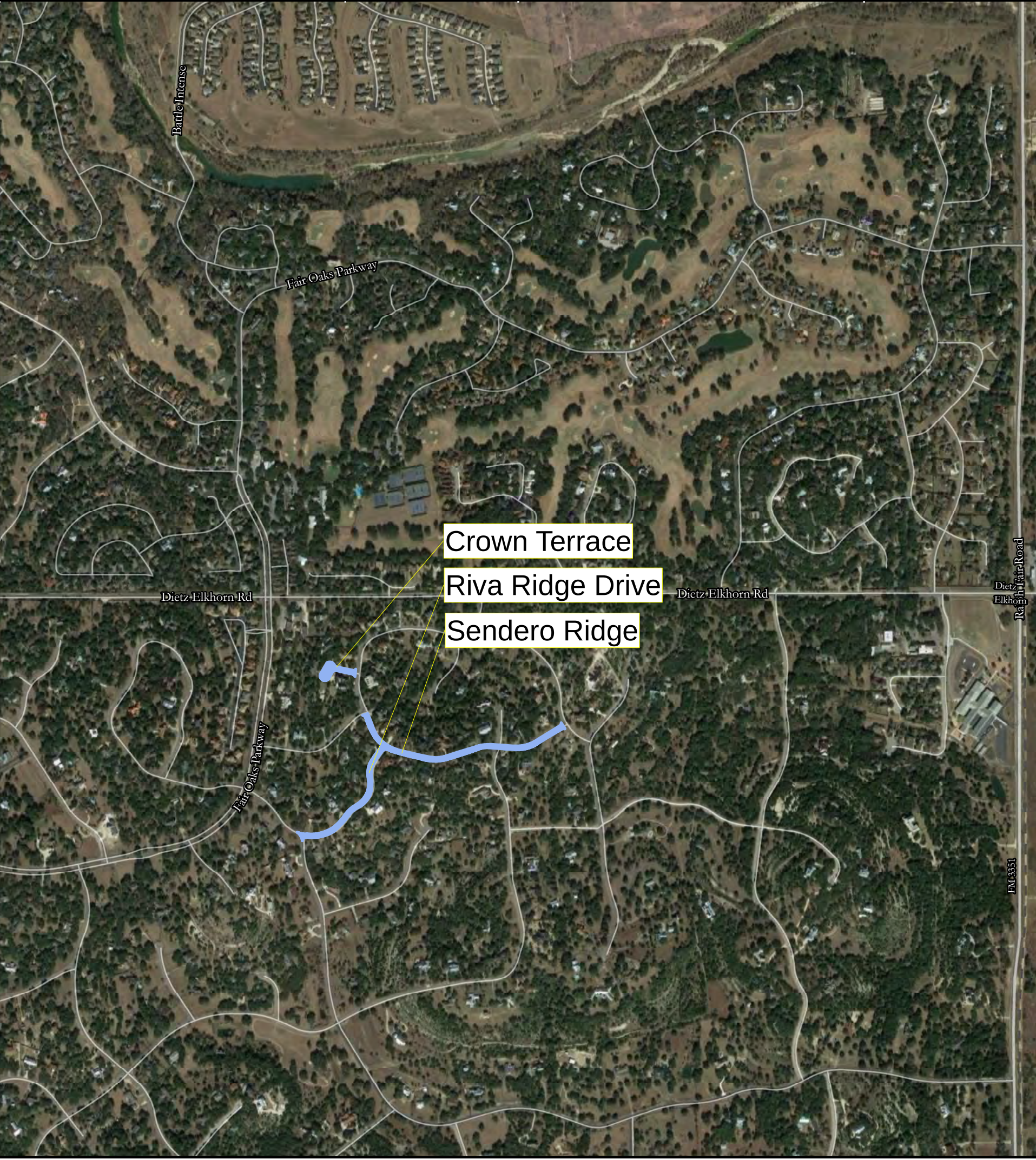
03/06/2020



HDMB

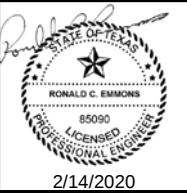


Location	Area (SY)	Location	Area (SY)
Crown Terrace	1820	Sendero Ridge	5884
Riva Ridge Drive	3575	Total	11,278



Notes

- NOTE 1 HIGH DENSITY MINERAL BOND (HDMB) APPLICATION SHALL BE COMPLETED PER SPECIFICATION HDMB FOR CURBED ROADS.
- NOTE 2 ON THOSE ROADS THAT HAVE PAVEMENT MARKERS OR BLUE FIRE HYDRANT MARKERS, THE MARKERS SHALL BE PROTECTED PRIOR TO THE APPLICATION OF THE HDMB. CONTRACTOR IS RESPONSIBLE TO REPLACE ALL DAMAGED MARKERS.
- NOTE 3 THE HDMB SHALL BE PLACED TO SEAL THE SEAM BETWEEN THE CURB AND THE EDGE OF PAVEMENT. THE HDMB SHALL NOT EXTEND MORE THAN ONE INCH ON THE CURB.
- NOTE 4 APPLICATION OF THE HDMB SHALL HAVE NO VISIBLE SEAM WHERE A TIE-IN IS MADE, GIVING THE APPEARANCE OF A HOMOGENEOUS APPLICATION. IN ADDITION, STARTS AND STOPS SHOULD BE PROPERLY PROTECTED FROM EXTRA OVERLAY OF HDMB.
- NOTE 5 DO NOT ALLOW HDMB MATERIAL IN BETWEEN MANHOLE COVER AND FRAME.



Street Maintenance and Repair Program
2020 High Density Mineral Bond
Location Sheet, Seal Coat Schedule and Notes

No.	Issue	By	Date
1			
2			
3			
4			

Exhibit "B"

REQUIREMENTS FOR ALL INSURANCE DOCUMENTS

The Contractor shall comply with each and every condition contained herein. The Contractor shall provide and maintain the minimum insurance coverage set forth below during the term of its agreement with the City. Any Subcontractor(s) hired by the Contractor shall maintain insurance coverage equal to that required of the Contractor. It is the responsibility of the Contractor to assure compliance with this provision. The City of Fair Oaks Ranch accepts no responsibility arising from the conduct, or lack of conduct, of the Subcontractor.

INSTRUCTIONS FOR COMPLETION OF INSURANCE DOCUMENT

With reference to the foregoing insurance requirements, Contractor shall specifically endorse applicable insurance policies as follows:

1. The City of Fair Oaks Ranch shall be named as an additional insured with respect to General Liability and Automobile Liability **on a separate endorsement.**
2. A waiver of subrogation in favor of The City of Fair Oaks Ranch shall be contained in the Workers Compensation and all liability policies and must be provided **on a separate endorsement.**
3. All insurance policies shall be endorsed to the effect that The City of Fair Oaks Ranch will receive at least thirty (30) days written notice prior to cancellation or non-renewal of the insurance.
4. All insurance policies, which name The City of Fair Oaks Ranch as an additional insured, must be endorsed to read as primary and non-contributory coverage regardless of the application of other insurance.
5. **Chapter 1811 of the Texas Insurance Code, Senate Bill 425 82(R) of 2011, states that the above endorsements cannot be on the certificate of insurance. Separate endorsements must be provided for each of the above.**
6. All insurance policies shall be endorsed to require the insurer to immediately notify The City of Fair Oaks Ranch of any material change in the insurance coverage.
7. All liability policies shall contain no cross liability exclusions or insured versus insured restrictions.
8. Required limits may be satisfied by any combination of primary and umbrella liability insurances.
9. Contractor may maintain reasonable and customary deductibles, subject to approval by The City of Fair Oaks Ranch.
10. Insurance must be purchased from insurers having a minimum AmBest rating of B+.
11. All insurance must be written on forms filed with and approved by the Texas Department of Insurance. (ACORD 25 2010/05). Coverage must be written on an occurrence form.
12. Contractual Liability must be maintained covering the Contractors obligations contained in the contract. Certificates of Insurance shall be prepared and executed by the insurance company or its authorized agent and shall contain provisions representing and warranting all endorsements and insurance coverages according to requirements and instructions contained herein.
13. Upon request, Contractor shall furnish The City of Fair Oaks Ranch with certified copies of all insurance policies.

14. A valid certificate of insurance verifying each of the coverages required above shall be issued directly to the City of Fair Oaks Ranch within ten (10) business days after contract award and prior to starting any work by the successful Contractor's insurance agent of record or insurance company. Also, prior to the start of any work and at the same time that the Certificate of Insurance is issued and sent to the City of Fair Oaks Ranch, all required endorsements identified in sections A, B, C and D, above shall be sent to the City of Fair Oaks Ranch. The certificate of insurance and endorsements shall be sent to:

City of Fair Oaks Ranch
Attn: Clayton Hoelscher, Procurement Manager
7286 Dietz Elkhorn
Fair Oaks Ranch, Texas 78015

Exhibit "C"

Evidence of Insurance



CERTIFICATE OF LIABILITY INSURANCE

10/1/2020

DATE (MM/DD/YYYY)

3/3/2020

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 Lockton Companies 444 W. 47th Street, Suite 900 Kansas City MO 64112-1906 (816) 960-9000		CONTACT NAME: PHONE (A/C, No, Ext): FAX (A/C, No): E-MAIL ADDRESS:		
INSURED 1352043 ANDALE CONSTRUCTION INC. 3170 N. OHIO WICHITA KS 67219		INSURER(S) AFFORDING COVERAGE		NAIC #
		INSURER A : Zurich American Insurance Company		16535
		INSURER B : Indian Harbor Insurance Company		36940
		INSURER C : Travelers Property Casualty Co of America		25674
		INSURER D :		
		INSURER E :		
INSURER F :				

COVERAGES**CERTIFICATE NUMBER:** 16624188**REVISION NUMBER:** XXXXXXXX

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

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☒ POLICY ☒ PRO-JECT ☒ LOC ☐ OTHER:	Y	N	GL00183143-03	10/1/2019	10/1/2020	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
A	☒ AUTOMOBILE LIABILITY ☒ ANY AUTO OWNED AUTOS ONLY ☐ SCHEDULED AUTOS ☒ HIRED AUTOS ONLY ☒ NON-OWNED AUTOS ONLY	Y	N	BAP0183144-03	10/1/2019	10/1/2020	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ XXXXXXXX BODILY INJURY (Per accident) \$ XXXXXXXX PROPERTY DAMAGE (Per accident) \$ XXXXXXXX \$ XXXXXXXX
B	☒ UMBRELLA LIAB ☒ EXCESS LIAB ☐ DED ☐ RETENTION \$	Y	N	SXS005272801	10/1/2019	10/1/2020	EACH OCCURRENCE \$ 5,000,000 AGGREGATE \$ 5,000,000 \$ XXXXXXXX
A	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	N/A	WC0183142-03	10/1/2019	10/1/2020	☒ PER STATUTE ☐ OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
C	SCHEDULED EQUIPMENT	N	N	QT-630-2L726757-TIL-19	10/1/2019	10/1/2020	\$17,448,632 BLANKET LIMIT; MIN \$5,000 DEDUCTIBLE

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

RE: HIGH DENSITY MINERAL BOND; OWNER AND ENGINEER AND THEIR OFFICERS, DIRECTORS, MEMBERS, PARTNERS, EMPLOYEES, AGENTS, CONSULTANTS AND SUBCONTRACTORS ARE ADDITIONAL INSURED ON GENERAL LIABILITY, AUTO LIABILITY AND UMBRELLA LIABILITY COVERAGE ON A PRIMARY AND NON-CONTRIBUTORY BASIS FOR ONGOING AND COMPLETED OPERATIONS IF REQUIRED BY WRITTEN CONTRACT. WAIVER OF SUBROGATION APPLIES ON 30 DAY NOTICE OF CANCELLATION APPLIES

CERTIFICATE HOLDER**CANCELLATION** See Attachments

16624188 CITY OF FAIR OAKS RANCH 7286 DIETZ ELKHORN FAIR OAK 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 	

© 1988-2015 ACORD CORPORATION. All rights reserved.

POLICY NUMBER: GLO0183143-03

Additional Insured - Automatic - Owners, Lessees Or Contractors

POLICY NO: GLO0183143-03
EFFECTIVE DATE: 10/1/2019
EXPIRATION DATE: 10/1/2020
AGENCY NO.: 37385-000
ADDITIONAL PREMIUM: N/A
RETURN PREMIUM: N/A

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

Named Insured: ANDALE CONSTRUCTION INC.

Address (including ZIP Code): 3170 N. OHIO, WICHITA, KS 67219

A. Section II --- - Who Is An Insured is amended to include as an additional insured any person or organization whom you are required to add as an additional insured on this policy under a written contract or written agreement. Such person or organization is an additional insured only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

1. Your acts or omissions; or
2. The acts or omissions of those acting on your behalf,

in the performance of your ongoing operations or "your work" as included in the "products-completed operations hazard", which is the subject of the written contract or written agreement.
However, the insurance afforded to such additional insured:

1. Only applies to the extent permitted by law; and
2. Will not be broader than that which you are required by the written contract or written agreement to provide for such additional insured.

B. With respect to the insurance afforded to these additional insureds, the following additional exclusion applies:
This insurance does not apply to:

"Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or failure to render, any professional architectural, engineering or surveying services including:

The preparing, approving or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or

Supervisory, inspection, architectural or engineering activities.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage", or the offense which caused the "personal and advertising injury", involved the rendering of or the failure to render any professional architectural, engineering or surveying services.

C. The following is added to Paragraph 2. Duties In The Event Of Occurrence, Offense, Claim Or Suit of Section IV - **Commercial General Liability Conditions**:
The additional insured must see to it that:

1. We are notified as soon as practicable of an "occurrence" or offense that may result in a claim;
2. We receive written notice of a claim or "suit" as soon as practicable; and

3. A request for defense and indemnity of the claim or "suit" will promptly be brought against any policy issued by another insurer under which the additional insured may be an insured in any capacity.

This provision does not apply to insurance on which the additional insured is a Named Insured if the written contract or written agreement requires that this coverage be primary and non-contributory.

D. For the purposes of the coverage provided by this endorsement:

1. The following is added to the Other Insurance Condition of Section IV --- - **Commercial General Liability Conditions:**

Primary and Noncontributory insurance

This insurance is primary to and will not seek contribution from any other insurance available to an additional insured provided that:

- a. The additional insured is a Named Insured under such other insurance; and
- b. You are required by written contract or written agreement that this insurance be primary and not seek contribution from any other insurance available to the additional insured.

2. The following paragraph is added to Paragraph 4.b. of the Other Insurance Condition of Section IV --- - **Commercial General Liability Conditions:**

This insurance is excess over:

Any of the other insurance, whether primary, excess, contingent or on any other basis, available to an additional insured, in which the additional insured on our policy is also covered as an additional insured on another policy providing coverage for the same "occurrence", offense, claim or "suit". This provision does not apply to any policy in which the additional insured is a Named Insured on such other policy and where our policy is required by a written contract or written agreement to provide coverage to the additional insured on a primary and noncontributory basis.

E. This endorsement does not apply to an additional insured which has been added to this policy by an endorsement showing the additional insured in a Schedule of additional insureds, and which endorsement applies specifically to that identified additional insured.

F. With respect to the insurance afforded to the additional insureds under this endorsement, the following is added to Section III --- - **Limits Of Insurance:**

The most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the written contract or written agreement referenced in Paragraph A. of this endorsement; or
2. Available under the applicable Limits of Insurance shown in the Declarations,

whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

All other terms and conditions of this policy remain unchanged.

U-GL-1175-F CW (4/13)

POLICY NUMBER: GLO0183143-03

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

CONTRACTORS ENHANCEMENT PLUS ENDORSEMENT

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE FORM

LOST KEY COVERAGE

SECTION I – COVERAGES, COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY, coverage is extended to include the following:

If a customer's master or grand key, excluding electronic key card, is lost while in your care, custody or control we will pay the cost of replacing the keys, including the master lock and all keys used in the same lock, the cost of adjusting locks to accept the new keys, or the cost to replace the locks, whichever is less.

Limit of Insurance - The most we will pay for "loss" arising out of any one "occurrence" is \$5,000.

SECTION V DEFINITIONS is amended as follows:

The following definition applies to Lost Key Coverage:

"Loss" means unintentional physical damage or destruction to tangible property, including theft or disappearance. Tangible property does not include money or securities.

VOLUNTARY PROPERTY DAMAGE

SECTION I – COVERAGES, COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY, coverage is extended to include the following:

At your request, we will pay for "property damage" to property of others caused by you and while in your possession, arising out of your business operations and occurring during the policy period.

Limit of Insurance - The most we will pay for "loss" arising out of any one "occurrence" is \$500.

SECTION V – DEFINITIONS is amended as follows:

The following definition applies to Voluntary Property Damage coverage:

"Loss" means unintentional damage or destruction but does not include disappearance, theft, or loss of use.

NON-OWNED WATERCRAFT

SECTION I – COVERAGES, COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY, 2.

Exclusions is amended as follows:

g. Aircraft, Auto Or Watercraft (2) (a) is replaced with:

(a) Less than 51 feet long; and

EXPANDED PROPERTY DAMAGE COVERAGE

For the purposes of this endorsement only:

SECTION I – COVERAGES, COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY, 2.

Exclusions is amended as follows:

a. Exclusions j.(3), j.(5), and j.(6) are deleted in their entirety.

b. Exclusion j.(4) is deleted in its entirety and replaced by the following:

Personal property in the care custody or control of the insured:

1. for storage or sale at premises you own, rent or occupy; or

2. while being transported by any aircraft, "auto" or watercraft owned or operated by or rented to or loaned to any insured.
- c. The following exclusions are added:

1. The coverage provided by this endorsement does not apply to "property damage" arising out of the disappearance or loss of use of personal property.
2. The coverage provided by this endorsement does not apply to "property damage" included in the "products-completed operations hazard".

Limit of Insurance - The most we will pay for "property damage" provided by this coverage in any one "occurrence" is \$5,000. **Deductible** - Our obligation to pay for a covered loss applies only to the amount of loss in excess of \$250. This insurance is excess over any other valid and collectible insurance.

DAMAGE TO PREMISES RENTED TO YOU

SECTION I – COVERAGES, COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY, the last paragraph of 2. **Exclusions** of is replaced by the following:

If **Damage to Premises Rented to You** is not otherwise excluded, exclusions c. through n. do not apply to damage by fire, lightning, explosion, smoke or sprinkler leakage to premises while rented to you or temporarily occupied by you with permission of the owner. A separate limit of insurance applies to this coverage as described in Section III-Limits of Insurance.

SECTION III – LIMITS OF INSURANCE, paragraph 6 is replaced with:

6. Subject to 5. above, the Damage To Premises Rented To You Limit is the most we will pay under Coverage A for damages because of "property damage" to any one premises, while rented to you, or in the case of damage by fire, lightning, explosion, smoke or sprinkler leakage, while rented to you or temporarily occupied by you with permission of the owner. The limit is increased to \$300,000.

SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS, 4. **Other Insurance**, b. **Excess Insurance** (1) (a) (ii) is replaced with:

(ii) That is Fire, Lightning, Explosion, Smoke or Sprinkler leakage insurance for premises rented to you or temporarily occupied by you with permission of the owner.

SUPPLEMENTARY PAYMENTS

SECTION I – COVERAGES, SUPPLEMENTARY PAYMENTS – COVERAGES A AND B is amended as follows:

1. 1. b. replaced with:

b. Up to \$2,500 for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.

2. 1. d. replaced with:

d. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to \$500 a day because of time off from work.

NEWLY FORMED AND ACQUIRED ORGANIZATIONS

SECTION II – WHO IS AN INSURED is amended as follows:

1. 3. a. is replaced with:

a. Coverage under this provision is afforded only until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier;

ADDITIONAL INSURED – WHEN REQUIRED IN AN AGREEMENT OR CONTRACT WITH YOU

PRIMARY AND NON-CONTRIBUTORY

The following is added to SECTION II – WHO IS AN INSURED

4. Any person(s) or organization(s) with whom you have agreed in a valid written contract or written agreement that such person or organization be added as an additional insured on your policy during the policy period shown in the Declarations. Such person or organization is an additional insured only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury". The person or organization added as an insured by this endorsement is an insured only to the extent you are held liable due to:

a. Lessors of Leased Equipment

Maintenance, operation or use of equipment leased to you by such person or organization. This insurance does not apply to any "occurrence" which takes place after the equipment lease expires. However, their status as additional insured under this policy ends when their lease, contract or agreement with you for such leased equipment expires.

b. Managers or Lessors of Premises

The ownership, maintenance or use of that part of the premises you own, rent, lease or occupy. This insurance does not apply to:

- (1) Any "occurrence" which takes place after you cease to be a tenant in that premises.
- (2) Structural alterations, new construction or demolition operations performed by or on behalf of the person or organization. However, their status as additional insured under this policy ends when you cease to be a tenant of such premises.

c. State or Political Subdivision - Permits

Operations performed by you or on your behalf for which the state or political subdivision has issued a permit. This insurance does not apply to:

- (1) "Bodily injury" or "property damage" or "personal or advertising injury" arising out of operations performed for the state or municipality; or
- (2) "Bodily injury" or "property damage" included within the "products-completed operations hazard". However, such state or political subdivision's status as additional insured under this policy ends when the permit ends.

d. Owners, Lessees, or Contractors

"Bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

- (1) Your acts or omissions; or
- (2) The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations performed for that additional insured, whether the work is performed by you or on your behalf. The insurance does not apply to:

- (1) "bodily injury", "property damage", or "personal and advertising injury" arising out of the rendering of or the failure to render any professional architectural, engineering or survey services, including:
 - (a). The preparing, approving, or failing to prepare or approve maps, shop drawings, opinions, reports, survey, field orders, change orders or drawings and specifications; or
 - (b) Supervisory, inspection, architectural or engineering activities.
- (2) "Bodily injury" or "property damage" occurring after:
 - (a) All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
 - (b) That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project. However, a person or organization's status as additional insured under this policy ends when your operations for that additional

insured are completed.

With respect to paragraph 4 of **SECTION II WHO IS AN INSURED**, Condition 4. Other Insurance of **Section IV – Commercial General Liability Conditions** is replaced by the following:

4. Other Insurance

If other valid and collectible insurance is available to the insured for a loss we cover under Coverages A or B of this Coverage Part, our obligations are limited as follows:

a. Primary Insurance

This insurance is primary if you have agreed in a written contract or written agreement:

- (1) That this insurance be primary. If other insurance is also primary, we will share with all that other insurance as described in c. below; or
- (2) The coverage afforded by this insurance is primary and non-contributory with the additional insured's own insurance. Paragraphs (1) and (2) do not apply to other insurance to which the additional insured has been added as an additional insured or to other insurance described in paragraph b. below.

b. Excess Insurance

This insurance is excess over:

- (1) Any of the other insurance, whether primary, excess, contingent or on any other basis:
 - (a) That is Fire, Extended Coverage, Builder's Risk, Installation Risk or similar coverage for "your work";
 - (b) That is fire, lightning, or explosion insurance for premises rented to you or temporarily occupied by you with permission of the owner;
 - (c) That is insurance purchased by you to cover your liability as a tenant for "property damage" to premises rented to you or temporarily occupied by you with permission of the owner; or
 - (d) If the loss arises out of the maintenance or use of aircraft, "autos" or watercraft to the extent not subject to Exclusion g. of Section I – Coverage A – Bodily Injury And Property Damage Liability.
 - (e) That is any other insurance available to an additional insured under this endorsement covering liability arising out of the premises or operations, or products completed operations, for which the additional insured has been added as an additional insured by that other insurance.
- (2) When this insurance is excess, we will have no duty under Coverages A or B to defend the additional insured against any "suit" if any other insurer has a duty to defend the additional insured against that "suit". If no other insurer defends, we will undertake to do so, but we will be entitled to the additional insured's rights against all those other insurers.
- (3) When this insurance is excess over other insurance, we will pay only our share of the amount of the loss, if any, that exceeds the sum of:
 - (a) The total amount that all such other insurance would pay for the loss in the absence of this insurance; and
 - (b) The total of all deductible and self-insured amounts under all that other insurance.
- (4) We will share the remaining loss, if any, with any other insurance that is not described in this Excess Insurance provision and was not bought specifically to apply in excess of the Limits of Insurance shown in the Declarations of this Coverage Part.

c. Method Of Sharing

If all of the other insurance available to the additional insured permits contribution by equal shares, we will follow this method also. Under this approach each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first. If any of the other insurance available to the additional insured does not permit contribution by equal shares, we will contribute by

limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

EMPLOYEE BODILY INJURY TO ANOTHER EMPLOYEE

SECTION II – WHO IS AN INSURED The following Paragraph is added to **2.a.(1)** Paragraphs **2.a.(1)(a), (b) and (c)** do not apply to "bodily injury" to a co-"employee" in the course of the co-"employee's" employment by you, or to "bodily injury" to a co-"volunteer worker" while performing duties related to the conduct of your business.

BROAD FORM NAMED INSURED

SECTION II – WHO IS AN INSURED The following Paragraph is added to **2.**

e. Any business entity incorporated or organized under the laws of the United State of America (including any State thereof), its territories or possessions or Canada (including any Province thereof) in which the Named Insured shown in the Declarations owns, during the policy period, an interest of more than fifty percent. If other valid collectible insurance is available to any business entity covered by this solely by reason of ownership by the Named Insured shown in the Declarations in excess of fifty percent, this insurance is excess over the other insurance, whether primary, excess, contingent, or on any other basis.

AGGREGATE LIMIT PER LOCATION

SECTION III – LIMITS OF INSURANCE The following paragraph is added to paragraph **2:**

The General Aggregate Limit under Section III Limits of Insurance applies separately to each of your locations owned by or rented to you or temporarily occupied by you with the permission of the owner. For the purposes of this provision, location means premises involving the same or connecting lots, or premises whose connection is interrupted only by a public street, roadway, waterway or railroad right-of-way.

AGGREGATE LIMIT PER PROJECT

SECTION III – LIMITS OF INSURANCE The following paragraph is added to paragraph **2:**

The General Aggregate Limit under Section III Limits of Insurance applies separately to each of your construction projects away from premises owned by or rented to you.

MEDICAL PAYMENTS

SECTION III – LIMITS OF INSURANCE, Paragraph **7.** is replaced:

7. Subject to **5.** above, the higher of:

a. \$10,000; or

b. The amount shown in the Declarations for Medical Expense Limit is the most we will pay under Coverage **C** for all medical expenses because of "bodily injury" sustained by one person. This coverage does not apply if Coverage **C – Medical Payments** is excluded either by the provisions of any coverage forms attached to the policy or by endorsement.

KNOWLEDGE OF AN OCCURRENCE

SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS, The following is added to **2. Duties In The Event Of Occurrence, Offense, Claim Or Suit condition:**

e. Knowledge of an occurrence, offense, claim or suit by an agent or employee of any insured shall not in itself constitute knowledge of the insured unless you, a partner, if you are a partnership; or an executive officer or insurance manager, if you are a corporation receives such notice of an occurrence, offense, claim or suit from the agent or employee.

f. The requirements in **Section IV – Conditions Paragraph 2.b.** will not be considered breached unless there is knowledge of occurrence as outlined in paragraph e. above.

UNINTENTIONAL FAILURE TO DISCLOSE HAZARD

SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS, **6. Representations** is amended to include:

d. Your failure to disclose all hazards or prior "occurrences" or offenses existing as of the inception date of the policy shall not prejudice the coverage afforded by this policy provided such failure to disclose all hazards or prior "occurrences" or offenses is not intentional. This provision does not affect our right to collect additional premium or exercise our right of cancellation or nonrenewal.

WAIVER OF SUBROGATION

SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS, **8. Transfer of Rights of Recovery Against Others to Us** is amended to include:

If required by a written contract executed prior to loss, we waive any right of subrogation we may have against the contracting person or organization because of payments we make for injury or damage arising out of your ongoing operations or "your work" done under a contract with that person or organization and included in the "products-completed operations hazards".

LIBERALIZATION

SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS, **10. Liberalization** is added as follows:

If we revise this coverage form to provide more coverage without additional premium charge, your policy will automatically provide the additional coverage as of the day the revision is effective in your state.

BROADENED BODILY INJURY DEFINITION (MENTAL ANGUISH)

SECTION V – DEFINITIONS is amended as follows:

1. 3. "Bodily injury" is deleted and replaced with the following:

"Bodily injury" means physical injury, sickness or disease to a person and, if arising out of the foregoing, mental anguish, mental injury, shock or humiliation, including death at any time resulting therefrom.

All terms and conditions of this policy apply unless modified by this endorsement.

CG 73 23 11/11



CITY COUNCIL CONSIDERATION ITEM

CITY OF FAIR OAKS RANCH, TEXAS

March 19, 2020

AGENDA TOPIC: Consideration and possible action awarding the 2020 Street Maintenance and Repair Program – Asphalt Rejuvenator bid and authorizing the City Manager to sign the Agreement

DATE: March 19, 2020

DEPARTMENT: Public Works

PRESENTED BY: Ronald C. Emmons, P.E.

INTRODUCTION/BACKGROUND:

When the City pursued a bond program in 2014 for \$7 million, it marked a first-ever substantial investment on the City's streets. Once the nine miles of streets were completed and new asphalt pavement installed in 2017, the City has been vigilant to protect and prolong its investment. City staff has been exploring other treatment options to extend the life of the asphalt pavements throughout the City. The goal of staff is every street receives the right preservation treatment, placed on the right street, at the right time, at least once every eight years.

Typically, staff has used a seal coat procedure affectionately known as the "Chip Seal". The City has long relied on the Chip Seal maintenance method for its annual Street Maintenance and Repair Program due to its quick cure time, general low cost, and its effectiveness at preserving pavement. Although this method contains many positive characteristics, a common concern from residents is that this method makes it difficult for pedestrian enjoyment of the roadways. Immediately after initial application and as the chip seal wears, loose aggregate accumulates on the roadway. This problem is exacerbated on curbed streets as the aggregate cannot easily leave the roadway and these areas tend to have greater number of pedestrians on the roadways.

One alternate method for roadway preservation that staff recently discovered is a process known as Asphalt Rejuvenation. Once asphalt pavements are placed, they experience oxidation effects that cause them to lose essential bituminous components as they age. This aging process leaves asphalt binders stiffer, less ductile, and with lower temperature susceptibility. The aging process reduces the ratio of oily maltenes in the binder, leaving a greater ratio of stiffer asphaltenes. These viscosity and elasticity changes result in a hardened, brittle asphalt binder. There are some asphalt emulsions that protect and add binder to the surface; however, a maltene emulsion rejuvenator penetrates into the surface and combines with the weathered and oxidized asphalt binder holding the aggregate. It softens it, or changes its viscosity and durability. The rejuvenator restores the components of asphalt lost in the aging process, and it's designed to penetrate, flux and co-mingle with the existing asphalt binder. It is very effective for extending the life of newly constructed pavement.

Understanding the major investment the City recently undertook with the street bond program, and a desire to protect and prolong that investment, staff recommends the placement of asphalt rejuvenator on these streets, which were initially placed three to five years ago. It is the right time

to add an asphalt rejuvenator to these streets, and will extend the life of the new pavement. The unit cost for the asphalt rejuvenator is nearly half that as we have experienced with the chip seal method.

On February 14, 2020, the Street Maintenance and Repair Program was released for bid for 158,655 square yards (SY) of Asphalt Rejuvenator treated streets. On March 9, 2020 at 3:00 p.m. bids were opened for the 2020 Street Maintenance and Repair Program – Asphalt Rejuvenator with the following Bid Tabulations:

COMPANY NAME	Bid Amount
Pavement Restoration, Inc.	\$ 182,453.25

POLICY ANALYSIS/BENEFIT(S) TO CITIZENS:

The annual Street Maintenance and Repair Program aims to apply the most effective preventative maintenance procedure to each City street on an eight year cycle. The specific treatments seal the surface of the road to protect the base layer from water infiltration, which could lead to failure of the road surface, and ultimately higher repair costs in the future.

LONGTERM FINANCIAL & BUDGETARY IMPACT:

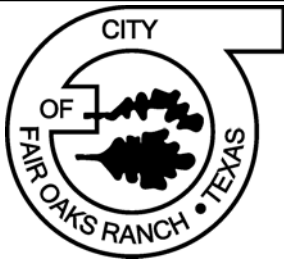
The City budgeted \$410,000 under Street Maintenance (01-642-254) for this year's Street Maintenance and Repair Program.

LEGAL ANALYSIS:

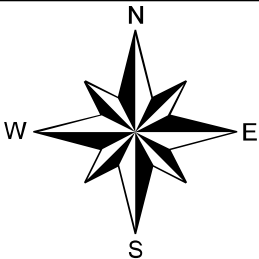
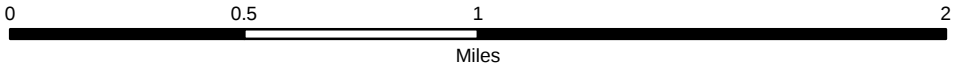
Contractor will be required to sign and adhere to the City's Standard Construction Agreement prior to the commencement of work.

RECOMMENDATION/PROPOSED MOTION:

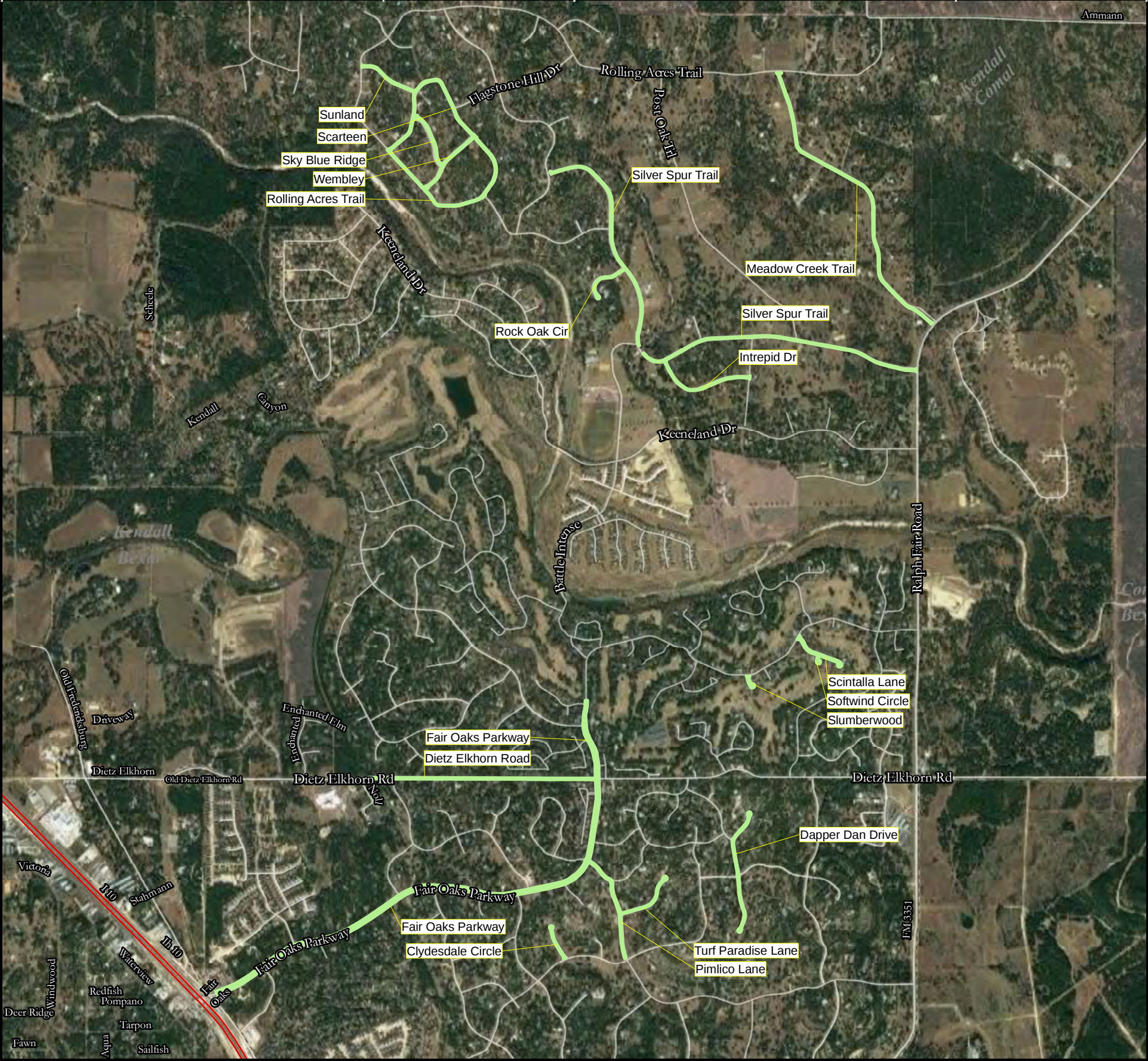
I move to accept the bid furnished by Pavement Restoration, Inc. in the amount of \$ 182,453.25 with a 10% contingency in the amount of \$ 18,245.32 for a value not to exceed \$ 200,698.57 and authorize the City Manager to sign the construction agreement.



Asphalt Rejuvenation



Location	Area (SY)	Location	Area (SY)
Clydesdale Circle	2109	Scarteen	11562
Dapper Dan Drive	6988	Scintilla Lane	3840
Dietz Elkhorn Road	12738	Silver Spur Trail	22081
Fair Oaks Parkway	43003	Sky Blue Ridge	2780
Fair Oaks Parkway	8755	Slumberwood	1155
Intrepid Drive	4541	Softwind Circle	799
Meadow Creek Trail	13932	Sunland	2808
Pimlico Lane	6939	Turf Paradise Lane	3378
Rock Oak Circle	2557	Wembley	3454
Rolling Acres Trail	5236	Total	158,655



Notes

- NOTE 1 ASPHALT REJUVENATOR APPLICATION SHALL BE COMPLETED PER SPECIFICATION.
- NOTE 2 ON THOSE ROADS THAT HAVE PAVEMENT MARKERS OR BLUE FIRE HYDRANT MARKERS, THE MARKERS SHALL BE PROTECTED PRIOR TO THE APPLICATION OF THE REJUVENATOR. CONTRACTOR IS RESPONSIBLE TO REPLACE ALL DAMAGED MARKERS.
- NOTE 3 THE REJUVENATOR SHALL BE PLACED TO SEAL THE SEAM BETWEEN THE CURB AND THE EDGE OF PAVEMENT. THE REJUVENATOR SHALL NOT EXTEND MORE THAN ONE INCH ON THE CURB.
- NOTE 4 APPLICATION OF THE REJUVENATOR SHALL HAVE NO VISIBLE SEAM WHERE A TIE- IN IS MADE, GIVING THE APPEARANCE OF A HOMOGENEOUS APPLICATION. IN ADDITION, STARTS AND STOPS SHOULD BE PROPERLY PROTECTED FROM EXTRA OVERLAY OF REJUVENATOR.



Street Maintenance and Repair Program
2020 Asphalt Rejuvenator
Location Sheet, Seal Coat Schedule and Notes

No.	Issue	By	Date
1			
2			
3			
4			

CITY OF FAIR OAKS RANCH
CONSTRUCTION AGREEMENT

THE STATE OF TEXAS §
 §
BEXAR COUNTY §

This Construction Agreement ("Agreement") is made and entered by and between the City of Fair Oaks Ranch, Texas, (the "City") a Texas municipality, and Pavement Restoration, Inc. ("Contractor").

Section 1. Duration. This Agreement shall become effective upon the date of the final signature affixed hereto 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) Contractor shall perform the Work 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".

(B) The Quality of Work provided under this Agreement shall be of the level of quality performed by Contractors regularly rendering this type of service.

(C) The Contractor shall perform its Work 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 Contractor 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 Contractor or when it has actual notice of any defects in the reports and surveys.

Section 3. Compensation.

(A) The Contractor shall be paid in the manner set forth in Exhibit "A" and as provided herein.

(B) *Billing Period:* The Contractor 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 Contractor'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 Work (Exhibit A) and accounted for in the total contract amount.

Section 4. Time of Completion.

The prompt completion of the Work under the Scope of Work relates is critical to the City. Unnecessary delays in providing Work under a Scope of Work shall be grounds for dismissal of the Contractor 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 Contractor prior to the time of termination. The Project shall be completed for inspection and acceptance by the City on or before September 30, 2020.

Section 5. Insurance.

Before commencing work under this Agreement, Contractor shall obtain and maintain the liability insurance provided for below throughout the term of the Project plus an additional two years. Contractor shall provide evidence of such insurance to the City. Such documentation shall meet the requirements noted in Exhibit B.

Contractor shall maintain the following limits and types of insurance:

Workers Compensation Insurance: Contractor 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 Contractor's employees carrying out the work involved in this contract.

General Liability Insurance: Contractor 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 Contractor 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: Contractor 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 Contractor or its employees.

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

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 6. Miscellaneous Provisions.

(A) *Subletting.* The Contractor 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 Contractor of any responsibility for work done by such subcontractor.

(B) *Compliance with Laws.* The Contractor 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 Contractor shall furnish the City with satisfactory proof of compliance.

(C) *Independent Contractor.* Contractor acknowledges that Contractor is an independent contractor of the City and is not an employee, agent, official or representative of the City. Contractor shall not represent, either expressly or through implication, that Contractor 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 Contractor.

(D) *Non-Collusion.* Contractor represents and warrants that Contractor 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. Contractor further agrees that Contractor 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 Work performed by Contractor under or related to this Agreement. If any such gift, bonus, commission, money, or other consideration is received by or offered to Contractor, Contractor 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 Contractor under or pursuant to this Agreement.

(E) *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.

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

Section 7. Termination.

(A) This Agreement may be terminated:

- (1) By the mutual agreement and consent of both Contractor 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 Contractor, as consequence of the failure of Contractor to perform the Work 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 Contractor.

(B) If the City terminates this Agreement pursuant to subsection 7(A)(2) or (3), above, the Contractor 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 Work that have been timely and adequately performed by the Contractor considering the actual costs incurred by the Contractor 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 Contractor 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 not the fault of the Contractor, the Contractor shall be compensated for all basic, special, and additional Work actually performed prior to termination, together with any reimbursable expenses then due.

Section 8. Indemnification. Contractor agrees to indemnify and hold the City of Fair Oaks Ranch, Texas and all of its present, future and former agents, employees, officials and representatives harmless in their official, individual and representative capacities from any and all claims, demands, causes of action, judgments, liens and expenses (including attorney's fees, whether contractual or statutory), costs and damages (whether common law or statutory), costs and damages (whether common law or statutory, and whether actual, punitive, consequential or incidental), of any conceivable character, for injuries to persons (including death) or to property (both real and personal) created by, arising from or in any manner relating to the Work or goods performed or provided by Contractor – expressly including those arising through strict liability or under the constitutions of the United States.

Section 9. 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 10. 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 11. 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 12. Waiver. Either City or the Contractor 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 13. 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 Bexar County, Texas such that exclusive venue for any action arising out of this Agreement shall be in Bexar County, Texas.

Section 14. 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 15. 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 16. 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 17. 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 18. Exhibits. All exhibits to this Agreement are incorporated herein by reference for all purposes wherever reference is made to the same.

Section 19. 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 20. 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 21. Right To Audit. City shall have the right to examine and audit the books and records of Contractor 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.

22. 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.

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

24. 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 on this the _____ day of _____, 2020.

CITY:

CONTRACTOR:

By: _____

By: _____

Name: Tobin Maples, AICP

Name: _____

Title: City Manager

Title: _____

ADDRESS FOR NOTICE:

CITY

CONTRACTOR

City of Fair Oaks Ranch
Attn: Tobin Maples, AICP
7286 Dietz Elkhorn
Fair Oaks Ranch, TX 78015

Pavement Restoration, Inc.
PO Box 1532
Boerne, TX 78006

Exhibit "A"
Scope of Services

**CITY OF FAIR OAKS RANCH
STREET MAINTENANCE AND REPAIR PROGRAM
2020 – ASPHALT REJUVENATOR
Unit Pricing**

Bid Item	Unit Price	Extended Price
Mobilization Includes mobilization and cost for any required Payment and/or Performance Bonds	\$ <u>NIL</u> /ls	\$ <u>N/A</u>
Asphalt Rejuvenator 158,655 square yards	\$ <u>1.15</u> /sy	\$ <u>182453.25</u>
Total Bid Amount		\$ <u>182453.25</u>

By signing below, company acknowledges it has received all bidding documents and instructions, and agrees to execute the Standard Construction Services Agreement if awarded a contract for this Project and promptly supply any required insurance certificate(s) and/or endorsements, Payment and Performance Bonds upon request by the City and prior to commencement of work. The required certified check, cashier's check or bid bond shall be included and immediately follow this executed Unit Pricing Form.

COMPANY:

Pavement Restoration Inc

AUTHORIZED COMPANY REPRESENTATIVE

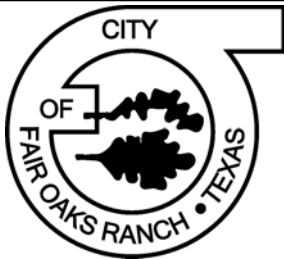
Robert Wiggins

SIGNATURE:

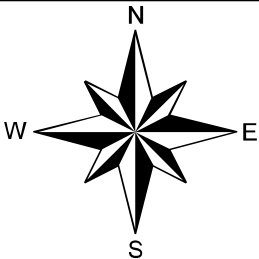
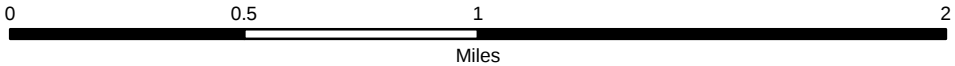
[Signature]

DATE

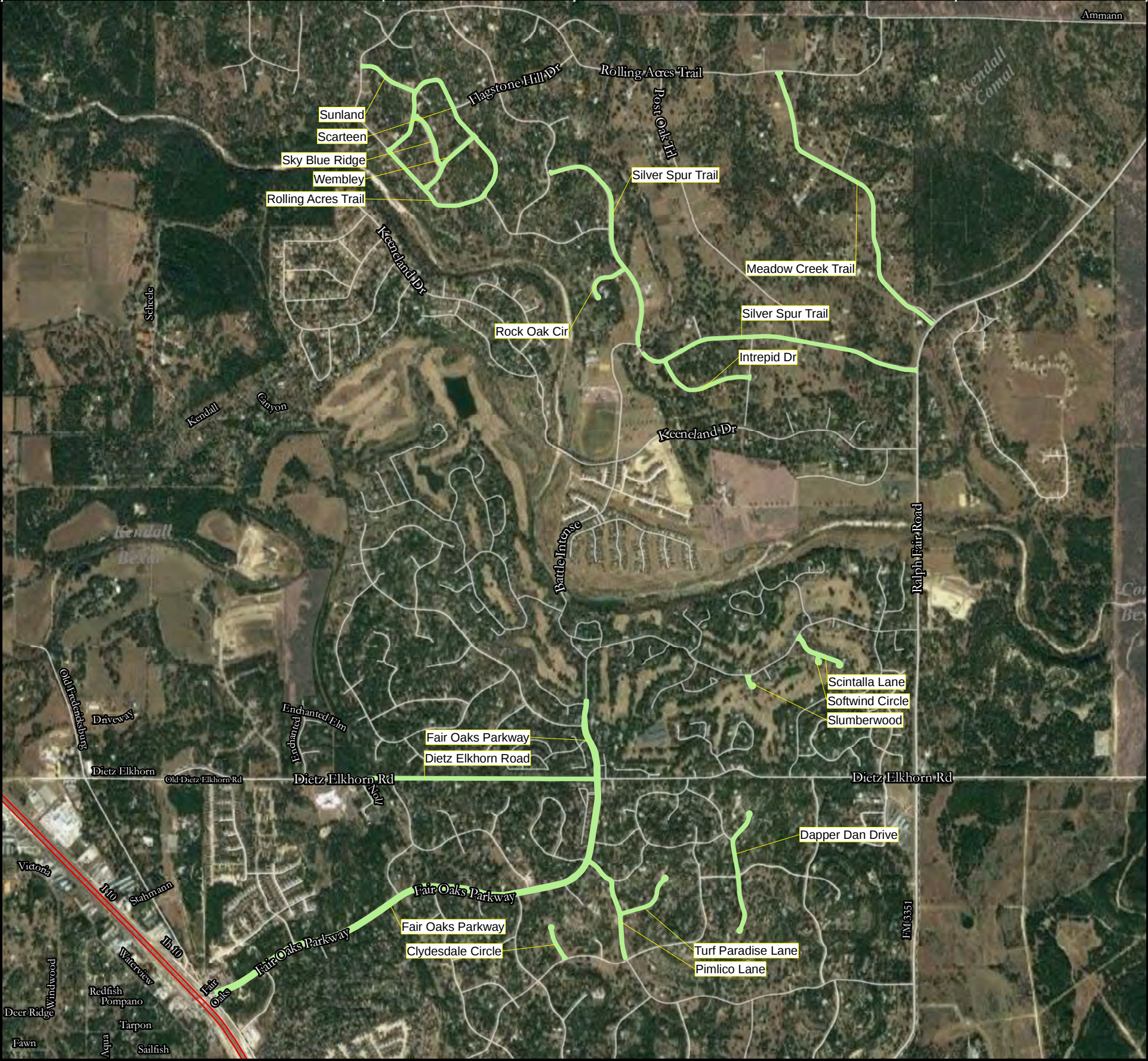
3/3/2020



Asphalt Rejuvenation



Location	Area (SY)	Location	Area (SY)
Clydesdale Circle	2109	Scarteen	11562
Dapper Dan Drive	6988	Scintilla Lane	3840
Dietz Elkhorn Road	12738	Silver Spur Trail	22081
Fair Oaks Parkway	43003	Sky Blue Ridge	2780
Fair Oaks Parkway	8755	Slumberwood	1155
Intrepid Drive	4541	Softwind Circle	799
Meadow Creek Trail	13932	Sunland	2808
Pimlico Lane	6939	Turf Paradise Lane	3378
Rock Oak Circle	2557	Wembley	3454
Rolling Acres Trail	5236	Total	158,655



Notes

- NOTE 1 ASPHALT REJUVENATOR APPLICATION SHALL BE COMPLETED PER SPECIFICATION.
- NOTE 2 ON THOSE ROADS THAT HAVE PAVEMENT MARKERS OR BLUE FIRE HYDRANT MARKERS, THE MARKERS SHALL BE PROTECTED PRIOR TO THE APPLICATION OF THE REJUVENATOR. CONTRACTOR IS RESPONSIBLE TO REPLACE ALL DAMAGED MARKERS.
- NOTE 3 THE REJUVENATOR SHALL BE PLACED TO SEAL THE SEAM BETWEEN THE CURB AND THE EDGE OF PAVEMENT. THE REJUVENATOR SHALL NOT EXTEND MORE THAN ONE INCH ON THE CURB.
- NOTE 4 APPLICATION OF THE REJUVENATOR SHALL HAVE NO VISIBLE SEAM WHERE A TIE- IN IS MADE, GIVING THE APPEARANCE OF A HOMOGENEOUS APPLICATION. IN ADDITION, STARTS AND STOPS SHOULD BE PROPERLY PROTECTED FROM EXTRA OVERLAY OF REJUVENATOR.



Street Maintenance and Repair Program
2020 Asphalt Rejuvenator
Location Sheet, Seal Coat Schedule and Notes

No.	Issue	By	Date
1			
2			
3			
4			

Exhibit "B"

REQUIREMENTS FOR ALL INSURANCE DOCUMENTS

The Contractor shall comply with each and every condition contained herein. The Contractor shall provide and maintain the minimum insurance coverage set forth below during the term of its agreement with the City. Any Subcontractor(s) hired by the Contractor shall maintain insurance coverage equal to that required of the Contractor. It is the responsibility of the Contractor to assure compliance with this provision. The City of Fair Oaks Ranch accepts no responsibility arising from the conduct, or lack of conduct, of the Subcontractor.

INSTRUCTIONS FOR COMPLETION OF INSURANCE DOCUMENT

With reference to the foregoing insurance requirements, Contractor shall specifically endorse applicable insurance policies as follows:

1. The City of Fair Oaks Ranch shall be named as an additional insured with respect to General Liability and Automobile Liability **on a separate endorsement.**
2. A waiver of subrogation in favor of The City of Fair Oaks Ranch shall be contained in the Workers Compensation and all liability policies and must be provided **on a separate endorsement.**
3. All insurance policies shall be endorsed to the effect that The City of Fair Oaks Ranch will receive at least thirty (30) days written notice prior to cancellation or non-renewal of the insurance.
4. All insurance policies, which name The City of Fair Oaks Ranch as an additional insured, must be endorsed to read as primary and non-contributory coverage regardless of the application of other insurance.
5. **Chapter 1811 of the Texas Insurance Code, Senate Bill 425 82(R) of 2011, states that the above endorsements cannot be on the certificate of insurance. Separate endorsements must be provided for each of the above.**
6. All insurance policies shall be endorsed to require the insurer to immediately notify The City of Fair Oaks Ranch of any material change in the insurance coverage.
7. All liability policies shall contain no cross liability exclusions or insured versus insured restrictions.
8. Required limits may be satisfied by any combination of primary and umbrella liability insurances.
9. Contractor may maintain reasonable and customary deductibles, subject to approval by The City of Fair Oaks Ranch.
10. Insurance must be purchased from insurers having a minimum AmBest rating of B+.
11. All insurance must be written on forms filed with and approved by the Texas Department of Insurance. (ACORD 25 2010/05). Coverage must be written on an occurrence form.
12. Contractual Liability must be maintained covering the Contractors obligations contained in the contract. Certificates of Insurance shall be prepared and executed by the insurance company or its authorized agent and shall contain provisions representing and warranting all endorsements and insurance coverages according to requirements and instructions contained herein.
13. Upon request, Contractor shall furnish The City of Fair Oaks Ranch with certified copies of all insurance policies.

14. A valid certificate of insurance verifying each of the coverages required above shall be issued directly to the City of Fair Oaks Ranch within ten (10) business days after contract award and prior to starting any work by the successful Contractor's insurance agent of record or insurance company. Also, prior to the start of any work and at the same time that the Certificate of Insurance is issued and sent to the City of Fair Oaks Ranch, all required endorsements identified in sections A, B, C and D, above shall be sent to the City of Fair Oaks Ranch. The certificate of insurance and endorsements shall be sent to:

**City of Fair Oaks Ranch
Attn: Clayton Hoelscher, Procurement Manager
7286 Dietz Elkhorn
Fair Oaks Ranch, Texas 78015**

Exhibit "C"

Evidence of Insurance



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
03/10/2020

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 M. E. Wilson Company, LLC 300 W. Platt St. Ste 200 Tampa, FL 33606		1-813-229-8021	CONTACT NAME: Michelle Liwosz PHONE (A/C, No. Ext): 813-984-3610 E-MAIL ADDRESS: mliwosz@mewilson.com	FAX (A/C, No): 813-229-2795																					
INSURED Palmetto Prime of Tampa, Inc.; Pavement Restoration, Inc Will-Bea Leasing Inc 5423 N. 59th Street Tampa, FL 33610		<table border="1"><thead><tr><th colspan="2">INSURER(S) AFFORDING COVERAGE</th><th>NAIC #</th></tr></thead><tbody><tr><td>INSURER A:</td><td>WESTFIELD INS CO</td><td>24112</td></tr><tr><td>INSURER B:</td><td>TRAVELERS PROP CAS CO OF AMER</td><td>25674</td></tr><tr><td>INSURER C:</td><td>INSURANCE CO OF THE WEST</td><td>27847</td></tr><tr><td>INSURER D:</td><td></td><td></td></tr><tr><td>INSURER E:</td><td></td><td></td></tr><tr><td>INSURER F:</td><td></td><td></td></tr></tbody></table>			INSURER(S) AFFORDING COVERAGE		NAIC #	INSURER A:	WESTFIELD INS CO	24112	INSURER B:	TRAVELERS PROP CAS CO OF AMER	25674	INSURER C:	INSURANCE CO OF THE WEST	27847	INSURER D:			INSURER E:			INSURER F:		
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INSURER D:																									
INSURER E:																									
INSURER F:																									

COVERAGES**CERTIFICATE NUMBER: 58706624****REVISION NUMBER:**

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

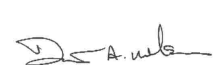
INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☒ PRO-JECT ☐ LOC ☐ OTHER:	X	X	CMM4653719	01/01/20	01/01/21	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 150,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
A	☒ AUTOMOBILE LIABILITY ☒ ANY AUTO ☐ OWNED AUTOS ONLY ☐ SCHEDULED AUTOS ☒ HIRED AUTOS ONLY ☒ NON-OWNED AUTOS ONLY	X	X	CMM4653719	01/01/20	01/01/21	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
B	☒ UMBRELLA LIAB ☒ EXCESS LIAB ☐ DED ☒ RETENTION \$ 10,000	X	X	ZUP61M9405320NF	01/01/20	01/01/21	EACH OCCURRENCE \$ 3,000,000 AGGREGATE \$ 3,000,000 \$
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	X	WFL502889405	01/01/20	01/01/21	☒ PER STATUTE ☐ OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

RE: The City of Fair Oaks Ranch 2020 Street Maintenance and Repair Program - Rejuvenation

Certificate holder is additional insured with respects to the General Liability policy for both on-going and completed operations per the attached CG2033 (4/13) and CG7087 (1/05) and on the Auto Liability per attached CA7078 (09/17) General Liability is on a Primary and NonContributory basis with respects to the Additional Insured's per CG2001 (04/13). Waiver of Subrogation applies in favor of the certificate holder with respects to the general liability, auto liability and workers comp employers liability policies referenced above per attached CG2404 5/09 CA0444 10/13 and WC000313 4/84

CERTIFICATE HOLDER**CANCELLATION**

City of Fair Oaks Ranch 7286 Dietz Elkhorn Fair Oaks Ranch, TX 78015 USA	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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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**ADDITIONAL INSURED - OWNERS, LESSEES OR
CONTRACTORS - AUTOMATIC STATUS WHEN
REQUIRED IN CONSTRUCTION AGREEMENT WITH YOU**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

A. Section II - Who Is An Insured is amended to include as an additional insured any person or organization for whom you are performing operations when you and such person or organization have agreed in writing in a contract or agreement that such person or organization be added as an additional insured on your policy. Such person or organization is an additional insured only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

1. Your acts or omissions; or
2. The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured.

However, the insurance afforded to such additional insured:

1. Only applies to the extent permitted by law; and
2. Will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

A person's or organization's status as an additional insured under this endorsement ends when your operations for that additional insured are completed.

B. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to:

1. "Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:

a. The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or

b. Supervisory, inspection, architectural or engineering activities.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage", or the offense which caused the "personal and advertising injury", involved the rendering of or the failure to render any professional architectural, engineering or surveying services.

2. "Bodily injury" or "property damage" occurring after:

a. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or

b. That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as part of the same project.

C. With respect to the insurance afforded to these additional insureds, the following is added to Section III - Limits Of Insurance:

The most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement you have entered into with the additional insured; or
2. Available under the applicable Limits of Insurance shown in the Declarations;

whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**ADDITIONAL INSURED - OWNERS, LESSEES OR
CONTRACTORS - AUTOMATIC STATUS WHEN
REQUIRED IN CONSTRUCTION AGREEMENT -
COMPLETED OPERATIONS**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

- A. Section II - Who Is An Insured** is amended to include as an additional insured any person or organization when you and such person or organization have agreed in writing in a contract or agreement that such person or organization be added as an additional insured on your policy. Such person or organization is an additional insured only with respect to liability caused, in whole or in part, by "your work" performed for that insured and included in the "products-completed operations" hazard.

The coverage afforded to the Additional Insured is solely limited to liability specifically resulting from the conduct of the Named Insured, which may be imputed to the Additional Insured.

- B.** This endorsement provides no coverage to the Additional Insured for liability caused, in whole or in part, out of the claimed negligence of the Additional Insured, other than which may be imputed to the Additional Insured by virtue of the conduct of the Named Insured.
- C.** With respect to the insurance afforded these additional insureds, the following additional exclusion applies:

This Insurance does not apply to:

1. "Bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part by the rendering of, or the failure to render, any professional architectural, engineering, or surveying services, including:
 - a. The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders, or drawing and specifications; and
 - b. Supervisory, inspection, architectural, or engineering activities.
2. Willful misconduct of, or for defects in design furnished by, the additional insured or its "employees".

As a condition of coverage, the additional insured shall be obligated to tender the defense and indemnity of every claim or suit to all other insurers that may provide coverage to the additional insured, whether contingent, excess or primary.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**PRIMARY AND NONCONTRIBUTORY -
OTHER INSURANCE CONDITION**

This endorsement modifies Insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART**

The following is added to the **Other Insurance Condition** and supersedes any provision to the contrary:

Primary And Noncontributory Insurance

This insurance is primary to and will not seek contribution from any other insurance available to an additional insured under your policy provided that:

- (1) The additional insured is a Named Insured under such other insurance; and
- (2) You have agreed in writing in a contract or agreement that this insurance would be primary and would not seek contribution from any other insurance available to the additional insured.

POLICY NUMBER: CMM4853719

COMMERCIAL GENERAL LIABILITY
CG 24 04 05 09

WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

SCHEDULE

Name Of Person Or Organization:

All persons or organizations as requested by written contract with the Named Insured.

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

The following is added to Paragraph 8. **Transfer Of Rights Of Recovery Against Others To Us** of Section IV – Conditions:

We waive any right of recovery we may have against the person or organization shown in the Schedule above because of payments we make for injury or damage arising out of your ongoing operations or "your work" done under a contract with that person or organization and included in the "products-completed operations hazard". This waiver applies only to the person or organization shown in the Schedule above.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.
FLORIDA BUSINESS AUTO EXPANDED ENDORSEMENT

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM

SCHEDULE

The coverage provided by this endorsement is summarized below and is intended to provide a general coverage description only. For the details affecting each coverage, please refer to the terms and conditions in this endorsement.

- A. Who Is An Insured broadened:**
 - Additional Insured by Contract, Agreement or Permit
 - Legally Incorporated Subsidiaries
 - Newly Acquired Organizations
- B. Supplementary Payments**
 - Bail Bonds - \$5000
 - Loss of Earnings - \$500
- C. Coverage Extensions**
 - Transportation Expenses
 - Personal Effects (Excess Basis)
- D. Additional Coverages**
 - Expenses paid for returning a stolen covered auto
 - Fire Department Service Charge
- E. Airbag Coverage - Accidental Discharge**
- F. Knowledge and Notice of an Accident, Claim or Suit**
- G. Unintentional Failure To Disclose Hazards**
- H. Definitions**
 - Bodily Injury Redefined

In addition to the policy amendments contained in A. through H. listed above, the endorsements listed below will automatically be attached to your policy to complete the coverage provided by the Business Auto Endorsement:

- Audio, Visual and Data Electronic Equipment Coverage Added Limits - CA 99 60
- Auto Loan/Lease Gap Coverage - CA 20 71
- Drive Other Car Coverage - Broadened Coverage For Named Individuals - (Executive Officers and Spouse/Members of that Person's Household) - CA 99 10
- Employee Hired Autos - CA 20 54
- Employees As Insureds - CA 99 33
- Hired Auto Physical Damage (Refer to Auto Declarations page)
- Rental Reimbursement Coverage - CA 99 23
- Waiver of Transfer of Rights of Recovery (Waiver of Subrogation) - CA 04 44

A. WHO IS AN INSURED BROADENED

SECTION II - COVERED AUTOS LIABILITY COVERAGE, item A. Coverage, 1. Who Is An Insured is amended to include the following additional paragraphs:

- d.** Any legally incorporated subsidiary of yours in which you own more than 50% of the voting stock on the effective date of this endorsement.

However, "insured" does not include any subsidiary that is an "insured" under any other liability policy or would be an "insured" under such a

policy but for its termination or the exhaustion of its limit of insurance.

Coverage under this provision is afforded only for the first 180 days after you acquire or form the organization or until the end of the policy period, whichever comes first.

- e.** Any organization you newly acquire or form, other than a partnership or joint venture, and over which you maintain ownership or a majority interest. However, coverage under this provision:

- (1) Does not apply if the organization you acquire or form is an "insured" under another auto liability policy or would be "insured" under such a policy but for its termination or the exhaustion of its limits of insurance;
 - (2) Does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization; and
 - (3) Is afforded only for the first 180 days after you acquire or form the organization or until the end of the policy period, whichever comes first.
- f. Any person or organization with whom you agreed in writing in a contract, agreement or permit, to provide insurance such as is afforded under this policy.

This provision only applies if the written contract or agreement has been executed or permit has been issued, prior to the "bodily injury" or "property damage".

B. SUPPLEMENTAL PAYMENTS

SECTION II - COVERED AUTOS LIABILITY COVERAGE, item **A. Coverage**, 2. **Coverage Extensions**, a. **Supplementary Payments**, subparagraphs (2) and (4) are deleted and replaced with the following:

- (2) Up to \$5,000 for cost of bail bonds (including bonds for related traffic law violations) required because of an "accident" we cover. We do not have to furnish these bonds.
- (4) All reasonable expenses incurred by the "insured" at our request, including actual loss of earnings up to \$500 per day because of time off from work.

C. COVERAGE EXTENSIONS

SECTION III - PHYSICAL DAMAGE COVERAGE, item **A. Coverage**, 4. **Coverage Extensions**, a. **Transportation Expenses** is replaced with the following:

a. Transportation Expenses

We will pay up to \$100 per day to a maximum of \$1,800 for transportation expense incurred by you because of the total theft of a covered "auto" of the private passenger type. We will pay only for those covered

"autos" for which you carry either Comprehensive or Specified Causes of Loss Coverage. We will pay for transportation expenses incurred during the period beginning 48 hours after the theft and ending, regardless of the policy's expiration, when the covered "auto" is returned to use or we pay for its "loss".

The following is added to Item 4. **Coverage Extensions**:

c. Personal Effects

We will pay up to \$500 for the "loss" of your personal effects that are contained in a covered "auto" due to the total theft of the covered "auto." We will pay only for those personal effects that are contained in covered "autos" for which you carry either Comprehensive or Specified Causes Of Loss Coverage.

Our payment for "loss" of or damage to personal effects will apply only on an excess basis over other collectible insurance.

D. ADDITIONAL COVERAGES

SECTION III - PHYSICAL DAMAGE COVERAGE, **A. Coverage**, is amended to include the following additional coverage items:

5. We will pay the expense of returning a stolen covered "auto" to you.

6. Fire Department Service Charge

When a fire department is called to save or protect a covered "auto", its equipment, its contents or occupants from a Covered Cause Of Loss, we will pay up to \$1,000 for your liability for Fire Department Service Charges:

- (a) Assumed by contract or agreement prior to loss; or
- (b) Required by local ordinance.

No deductible applies to this additional coverage.

E. AIRBAG COVERAGE - ACCIDENTAL DISCHARGE

SECTION III - PHYSICAL DAMAGE COVERAGE, item **B. Exclusions**, subparagraph 3.a. is deleted and replaced with the following:

- a. Wear and tear, freezing, mechanical or electrical breakdown.

Mechanical breakdown does not apply to the accidental discharge of an airbag.

F. KNOWLEDGE AND NOTICE OF AN ACCIDENT, CLAIM OR SUIT

SECTION IV - BUSINESS AUTO CONDITIONS,
Item **A. Loss Conditions** is amended as follows:

Subparagraph **a.** under Item **2. Duties In The Event Of Accident, Claim, Suit Or Loss**, is amended to include the following paragraphs:

This requirement applies when the "accident," claim, "suit" or "loss" is first known to:

- (1) You, if you are an individual;
- (2) A partner, if you are a partnership; or
- (3) An executive officer or insurance manager, if you are a corporation.

Subparagraph **b.(2)** under **2. Duties In The Event Of Accident, Claim, Suit Or Loss** is amended as follows:

- (2) Immediately send us copies of any request, demand, order, notice, summons or legal paper received concerning the claim or "suit."

Your employees may know of documents received concerning

a claim or "suit". This will not mean that you have such knowledge, unless receipt of such documents is known to you, any of your executive officers or partners or your insurance manager.

G. UNINTENTIONAL FAILURE TO DISCLOSE HAZARDS

Under **SECTION IV - BUSINESS AUTO CONDITIONS, B. General Conditions, 2. Concealment, Misrepresentation Or Fraud** is amended to include the following additional paragraph:

If you unintentionally fail to disclose any hazards existing at the inception date of your policy, we will not deny coverage under this Coverage Part because of such failure.

H. DEFINITIONS

Under **SECTION V - DEFINITIONS**, Item **C.** is replaced by the following:

- C.** "Bodily injury" means bodily injury, sickness or disease sustained by a person, including mental anguish, mental injury or death resulting from any of these. "Bodily injury" includes mental anguish or other mental injury resulting from "bodily injury".

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**WAIVER OF TRANSFER OF RIGHTS OF
RECOVERY AGAINST OTHERS TO US
(WAIVER OF SUBROGATION)**

This endorsement modifies insurance provided under the following:

AUTO DEALERS COVERAGE FORM
BUSINESS AUTO COVERAGE FORM
MOTOR CARRIER COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

This endorsement changes the policy effective on the inception date of the policy unless another date is indicated below.

Named Insured: Palmetto Prime of Tampa, Inc and Pavement Restoration, Inc.

Endorsement Effective Date: 01/01/2020

SCHEDULE

Name(s) Of Person(s) Or Organization(s):

Where required by written contract or written agreement

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

The Transfer Of Rights Of Recovery Against Others To Us Condition does not apply to the person(s) or organization(s) shown in the Schedule, but only to the extent that subrogation is waived prior to the "accident" or the "loss" under a contract with that person or organization.

WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule. (This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us.)

This agreement shall not operate directly or indirectly to benefit anyone not named in the Schedule.

Schedule

**ANY PERSON OR ORGANIZATION FOR WHOM THE NAMED INSURED IS
REQUIRED UNDER WRITTEN CONTRACT TO FURNISH THIS WAIVER.
RE: ALL FLORIDA OPERATIONS**

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.
(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Endorsement Effective **01-01-20** Policy No. **WFL 5028894 05**
Insured **PALMETTO PRIME OF TAMPA INC**
Insurance Company **INSURANCE COMPANY OF THE WEST**

Endorsement No.
Premium \$ **INCL.**

Countersigned By _____

TEXAS WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT

This endorsement applies only to the insurance provided by the policy because Texas is shown in Item 3.A. of the Information Page.

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule, but this waiver applies only with respect to bodily injury arising out of the operations described in the Schedule where you are required by a written contract to obtain this waiver from us.

This endorsement shall not operate directly or indirectly to benefit anyone not named in the Schedule.

The premium for this endorsement is shown in the Schedule.

Schedule1. ☐ Specific Waiver

Name of person or organization

☒ Blanket Waiver

Any person or organization for whom the Named Insured has agreed by written contract to furnish this waiver.

2. Operations:

ALL TEXAS OPERATIONS

3. Premium:

The premium charge for this endorsement shall be 2 percent of the premium developed on payroll in connection with work performed for the above person(s) or organization(s) arising out of the operations described.

4. Advance Premium:

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.
(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Endorsement Effective **01-01-20** Policy No. **WFL 5028894 05**
Insured **PALMETTO PRIME OF TAMPA INC**
Insurance Company **INSURANCE COMPANY OF THE WEST**

Endorsement No.
Premium \$ **INCL.**

Countersigned By _____



CITY COUNCIL CONSIDERATION ITEM

CITY OF FAIR OAKS RANCH, TEXAS

March 19, 2020

AGENDA TOPIC: Consideration and possible action extending a declaration of local disaster; establishing rules and regulations for the duration of the disaster; and restricting certain activities.

DATE: March 19, 2020

DEPARTMENT: City Council

PRESENTED BY: Mayor Manitzas

INTRODUCTION/BACKGROUND:

On January 30, 2020, the World Health Organization Director General declared the outbreak of COVID-19 as a Public Health Emergency of International Concern (PHEIC), advising countries to prepare for the containment, detection, isolation and case management, contact tracing and prevention of onward spread of the disease. On March 11, 2020, the World Health Organization declared that the COVID-19 outbreak should be characterized as pandemic. On March 13, 2020, following President Trump's declaration of a national emergency, Texas Governor Abbott declared Texas a public health disaster.

On March 16, 2020, Mayor Manitzas signed a Declaration of Public Health Emergency declaring a local state of disaster and public health emergency in the City for seven days, effective March 17. Pursuant to §418.108(b) of the Government Code, City Council can continue or renew the declaration past the seven (7) days.

The purpose of this agenda item is to ensure the City Council has an opportunity to discuss and determine necessary safety measures for its residents and city staff. Recognizing COVID-19 information is changing by the hour, measures are being taken out of an abundance of caution, inclusive of modifications to City services and operations. The City Manager will detail current and/or proposed modifications at the Council meeting.

POLICY ANALYSIS/BENEFIT(S) TO CITIZENS:

Public health, safety, and general welfare of our residents and city employees.

LONGTERM FINANCIAL & BUDGETARY IMPACT:

TBD

LEGAL ANALYSIS:

Article III; Section F.4 - Legislation by Ordinance states if City Council, by a vote of not less than two-thirds of the members present at a posted called City Council meeting at which an ordinance is first introduced, determines an emergency exists related to public health or safety and requiring immediate action, such ordinance may then be voted upon and rejected or adopted at that meeting.

RECOMMENDATION/PROPOSED MOTION:

I move to approve an Ordinance extending the Declaration of Local Disaster for xxx days; and establishing rules and regulations for the duration of the disaster and restricting certain activities as discussed.

AN ORDINANCE

OF THE CITY COUNCIL OF THE CITY OF FAIR OAKS RANCH EXTENDING A DECLARATION OF LOCAL DISASTER; ESTABLISHING RULES AND REGULATIONS FOR THE DURATION OF THE DISASTER; RESTRICTING CERTAIN ACTIVITIES; ESTABLISHING PENALTIES FOR VIOLATIONS.

WHEREAS, in December 2019 a novel coronavirus, now designated COVID-19, was detected in Wuhan City, Hubei Province, China. Symptoms of COVID-19 include fever, cough, and shortness of breath. Outcomes have ranged from mild to severe illness, and in some cases death; and,

WHEREAS, on January 30, 2020, the World Health Organization Director General declared the outbreak of COVID-19 as a Public Health Emergency of International Concern (PHEIC), advising countries to prepare for the containment, detection, isolation and case management, contact tracing and prevention of onward spread of the disease; and,

WHEREAS, on March 5, 2020, the World Health Organization Director General urged aggressive preparedness and activation of emergency plans to aggressively change the trajectory of this epidemic; and,

WHEREAS, on March 11, 2020, the World Health Organization declared that the COVID-19 outbreak should be characterized as pandemic; and,

WHEREAS, the Center for Disease Control and Prevention is closely monitoring the growing number of COVID-19 cases that have spread into the United States; and,

WHEREAS, over 3,744 cases of COVID-19 have been reported in the United States, including 69 deaths; and,

WHEREAS, a large gathering of unidentifiable individuals without necessary mitigation for the spread of infection may pose a risk of the spread of infectious disease; and,

WHEREAS, President Trump declared a national emergency on March 13, 2020; and,

WHEREAS, Governor Greg Abbott declared a public health disaster on March 13, 2020; and,

WHEREAS, the Center for Disease Control recommends that citizens stop handshaking, clean hands at the door, schedule regular hand washing, avoid touching faces and cover coughs and sneezes, disinfect surfaces like doorknobs, tables, desks, and handrails regularly, and increase ventilation by opening windows or adjusting air conditioning; and,

WHEREAS, the Center for Disease Control recommends the use of videoconferencing for meetings when possible, and adjusting or postponing large meetings or gatherings; and,

WHEREAS, the Center for Disease Control recommends citizens stay home if they are feeling sick or when they have a sick family member in their home; and,

WHEREAS, households with vulnerable seniors and those with underlying health conditions should conduct themselves as if they were a significant risk to the person with underlying conditions; and,

WHEREAS, the identification of “community spread” cases of COVID-19 in the United States could has signaled that transmission of the virus is no longer limited to those who traveled to China, or had contact with travelers who have visited china; and,

WHEREAS, the COVID-19 virus spreads between people who are in close contact with one another through respiratory droplets produced when an infected person coughs or sneezes; and,

WHEREAS, the continued worldwide spread of COVID-19 presents an imminent threat of widespread illness, which requires emergency action; and,

WHEREAS, a declaration of local disaster includes the ability to take measures to reduce the possibility of exposure to disease, control the risk, and promote the health and safety of Fair Oaks Ranch residents; and,

WHEREAS, the City of Fair Oaks Ranch will work collaboratively with Bexar, Kendall, and Comal Counties to ensure that all appropriate and necessary measures are taken to limit the development, contraction and spread of COVID-19; and

WHEREAS, pursuant to the Texas Disaster Act of 1975, the mayor is designated as the emergency management director of the City of Fair Oaks Ranch, and may exercise the powers granted to the governor on an appropriate local scale; and

WHEREAS, a declaration of local disaster and public health emergency includes the ability to reduce the possibility of exposure to disease, control the risk, promote health, compel persons to undergo additional health measures that prevent or control the spread of disease, including isolation, surveillance, quarantine, or placement of persons under public health observation, including the provision of temporary housing or emergency shelters for persons misplaced or evacuated and request assistance from the governor of state resources; and

WHEREAS, the Mayor has made a Declaration of Public Health Emergency, and further declared all rules and regulations that may inhibit or prevent prompt response to this threat suspended for the duration of the incident; and

WHEREAS, the Mayor, under the Texas Disaster Act of 1975, has authorized the use of all available resources of state government and political subdivisions to assist in the City’s response to this situation; and

WHEREAS, the Mayor has determined that extraordinary and immediate measures must be taken to respond quickly, prevent and alleviate the suffering of people exposed to and those infected with the virus, as well as those that could potentially be infected or impacted by COVID-19.

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

Section 1. The recitals contained in the preamble hereof 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 City Council.

- Section 2. That the local state of disaster and public health emergency is declared by Mayor Garry Manitzas for the City of Fair Oaks Ranch pursuant to §418.108(a) of the Texas Government Code is hereby renewed and extended for a period of not more than ~~xxxx~~ days except with the consent of the Fair Oaks Ranch City Council pursuant to §418.108(b) of the Government Code, including all rules and regulation attached hereto as Exhibit A.
- Section 3. Pursuant to §418.108(c) of the Government Code, this declaration of a local state of disaster and public health emergency shall be given prompt and general publicity and shall be filed promptly with the City Secretary.
- Section 4. Pursuant to §418.108(d) of the Government Code, this declaration of a local state of disaster and public health emergency activates the City of Fair Oaks Ranch emergency management plan.
- Section 5. Pursuant to §418.020(c) of the Government Code, this declaration authorizes the City to commandeer or use any private property, temporarily acquire, by lease or other means, sites required for temporary housing units or emergency shelters for evacuees, subject to compensation requirements.
- Section 6. Pursuant to §122.006 of the Health and Safety Code, this declaration authorizes the City to take any actions necessary to promote health and suppress disease, including quarantine, examining and regulating hospitals, regulating ingress and egress from the City, and fining those who do not comply with the City's rules.
- Section 7. All ordinances or parts thereof, which are in conflict or inconsistent with any provision of this Ordinance are hereby repealed to the extent of such conflict, and the provisions of this Ordinance shall be and remain controlling as to the matters herein.
- Section 8. This Ordinance shall be construed and enforced in accordance with the laws of the State of Texas and the United States of America.
- Section 9. If any provision of this Ordinance or the application thereof to any person or circumstance shall be held to be invalid, the remainder of this Ordinance and the application of such provision to other persons and circumstances shall nevertheless be valid, and the City Council hereby declares that this Ordinance would have been enacted without such invalid provision.
- Section 10. Pursuant to Article III; Section F - Legislation by Ordinance. If the City Council, by a vote of not less than two-thirds of the members present at the March 19, 2020 City Council meeting at which this ordinance is introduced, determines that an emergency exists related to public health or safety that requires immediate action, such ordinance may be voted upon and rejected or adopted at the meeting.
- Section 11. 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, Texas Government Code, as amended.

Section 12. This Ordinance shall be in force and effect from and after its final passage.

PASSED, ADOPTED, and APPROVED the 19th day of March, 2020.

Garry Manitzas, Mayor

ATTEST:

APPROVED AS TO FORM:

Christina Picioccio, City Secretary

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

EXHIBIT A
LOCAL DISASTER RULES AND REGULATIONS REGARDING PUBLIC AND PRIVATE GATHERINGS

1. The virus that causes COVID-19 is easily transmitted, especially in group settings, and it is essential that the spread of the virus be slowed to protect the ability of public and private health care providers to handle an influx of patients and safeguard public health and safety.
2. Because of the risk of the rapid spread of the virus, and the need to protect the most vulnerable members of the community, this Declaration prohibits all indoor public and private gatherings and outdoor gatherings within an enclosed space of 50 persons or more anywhere in the City of Fair Oaks Ranch beginning at 8:00 AM on March 17, 2020 and continuing for seven (7) days, unless extended consistent with requirements of statelaw.
3. For all other gatherings, it is strongly recommended that social distancing protocols established by the United States Centers for Disease Control and Prevention (CDC) and found within the "Implementation of Mitigation Strategies for Communities with Local COVID-19 Transmission" issued by the United States Centers for Disease Control and Prevention ("CDC") on or around March 11, 2020 (available online at www.cdc.gov/coronavirus), including canceling, rescheduling, or not attending events with more than 50 persons.
4. Further, organizations that serve high-risk populations (defined below) should follow CDC guidance for social distancing.
5. Definitions and further guidance:
 - a. For purposes of this Declaration, a "Mass Gathering" is any event or convening, subject to the exceptions and clarifications below, that brings together or is likely to bring together fifty (50) or more persons at the same time in a single room or other single confined or enclosed space, such as, by way of example and without limitation, an auditorium, theatre, stadium (indoor or outdoor), arena or event center, meeting hall, conference center, large cafeteria, or any other confined indoor or confined outdoor space.
 - b. A "Mass Gathering" includes events in confined outdoor spaces, which means an outdoor space that (i) is enclosed by a fence, physical barrier, or other structure and (ii) where people are present and they are within arm's length of one another for extended periods.
 - c. This Declaration also does not prohibit gatherings of people in multiple, separate enclosed spaces in a single building such as a multiplex movie theater, so long as 50 people are not present in any single space at the same time. This Declaration also does not prohibit use of enclosed spaces where 50 or more people may be present at different times during the day, so long as 50 or more people are not present in the space at the same time. For any gathering covered by this subsection c., compliance with Social Distancing Recommendations, including providing hand sanitizer and tissues and increasing cleaning of commonly touched surfaces

is strongly encouraged.

- d. For purposes of clarity, a "Mass Gathering" does not include the following: (i) public or private schools and places of worship; (ii) office space, hotels, or residential buildings; (iii) grocery stores, shopping malls, outdoor markets, or other retail establishments where large numbers of people are present but it is unusual for them to be within arm's length of one another for extended periods; (iv) hospitals, medical facilities and shelters; and (v) jails and detention centers. In all such settings, it is recommended that the public follow Social Distancing Recommendations, and harm reduction measures such as hand sanitizer and tissues should be provided when possible. However, any specific large gathering space that is part of any building included in this subparagraph d. is subject to the prohibition on Mass Gatherings if the space holds 50 or more people.
- e. "High-Risk Populations" include people who are:
 - 60 years old and older;
 - People with certain health conditions such as heart disease, lung disease, diabetes, kidney disease and weakened immune systems;
 - People who are pregnant or were pregnant in the last two weeks.
 - People experiencing homelessness.

- 6. The Local Health Authority and Director of Health may update restrictions set out in this Exhibit as necessary to respond to the evolving circumstances of this outbreak during the duration of the Mayor's Declaration of Public Health Emergency and any extension by the Fair Oaks Ranch City Council.