



*Janeshia A. Grider, Mayor*

Christopher Garza  
Sylvia Apodaca  
Joe Molina

Maria Lozano  
Mike Martin  
Sally Hitt

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**CITY COUNCIL AGENDA  
REGULAR MEETING  
THURSDAY, FEBRUARY 8, 2024 - 7:00 P.M.  
CITY HALL COUNCIL CHAMBER  
112 BAUMAN, KIRBY, TX 78219**

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This notice is posted pursuant to the Texas Open Meetings Act. The location where a quorum of the governmental body will be physically present is Kirby City Hall, City Council Chambers at 112 Bauman Street, Kirby, Texas 78219 and it is the intent to have a quorum present at that location and for the member of the governmental body presiding over the meeting to be physically present at that location. A member of the public who wishes to speak may do so by signing the participation sheet prior to the meeting being called to order.

Topic: Regular City Council Meeting

Date and Time: February 8, 2024 at 7:00 P.M. (Central Time)

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1. **Call Meeting to Order**
2. **Invocation and Pledge of Allegiance to the Flag**
3. **Mission Statement**

"The City of Kirby is dedicated to delivering excellent municipal services to our community in a fiscally responsible manner."

4. **Roll Call**

**5. Citizen Participation**

Citizens participation is for the City Council to receive information on issues that may be of concern to the public. Citizens participation is limited to five (5) minutes per speaker. The purpose of the open meetings act is to ensure that the public is always given notice of the items that will be discussed by the Council. Should a member of the public bring an item to the Council for which the subject was not posted on the agenda for the meeting, the Council may receive the information, but cannot discuss or act upon it at the meeting.

**6. Consideration Of And Action On Minutes**

- a. Regular Minutes – January 25, 2024

**7. Updates by staff and City Partners**

- a. Police Department – Update on Racial Profiling Report.
- b. Public Works Department – Update on Foxcross Dr. Reconstruction plans & CDBG.

**8. Action Items**

- a. Discussion Update and possible action on an Ordinance amending Code of Ordinances Title III, Administration, Article I, Meetings regarding decorum and debate and citizen participation and additions of Sections 30.11 and 30.12 related to carrying firearms on City owned Premises.
- b. Update on project, discussion and possible action on change order number 5 and extend the project completion date related to Austin Bridge and Road contract.
- c. Discussion and Possible Action on ARPA Funds balance, recommended uses and provide direction to staff on use of funds.
- d. Discussion and Possible Action in dissolving the Kirby Senior Center nonprofit and Board and placing under the City of Kirby.
- e. Discussion and Possible Action on maintenance operations the city swimming pool and provide direction to staff.
- f. Discussion and Possible Action on the Agreement between the City of Kirby and the Greater Northeast Little League to renew the contract.
- g. Discussion and Possible Action on creating new Variance/Specific use application.
- h. Discussion and Possible Action on Certificate of Appointment for a Health Authority.
- i. Discussion and Possible Action to create a Department of Parks and Recreation.
- j. Discussion and Possible Action for the City to pay for Fitness Instructors.

9. **Closed Session:** The City Council will recess its open meeting and reconvene in Closed Session:

- a. Pursuant to Texas Government Code Section 551.074 (Personnel Matters) and 551.071(1) (Consultation with City Attorney): Consultation with City Attorney on the Charter and its rules of policy and procedure.
- b. Pursuant to Texas Government Code Section 551.074 (Personnel Matters) and 551.071(1) (Consultation with City Attorney): Discussion and Possible Action on personnel matters regarding policy and procedures.
- c. Pursuant to Texas Government Code Section 551.074 (Personnel Matters) and 551.071(1) (Consultation with City Attorney): To deliberate the appointment, employment, evaluation, duties of the position of Interim City Manager.

10. **Open Session:** The City Council will reconvene into Regular Session upon conclusion of the Closed Session and may recall any item posted for Closed Session for action, as necessary.

11. **City Manager Announcements**

- a. Announcements on City Events and Items of Community Interest.

12. **Request And Announcements**

- a. Requests By Mayor And Council Members For Items To Be Placed On Future City Council Agendas And Announcements On City Events/Community Interest

13. **Adjournment**

  
Jeremy Fernandez  
Interim City Secretary

The City Council reserves the right to adjourn into executive session at any time to discuss any of the matters listed on this agenda if authorized by Texas Government Code Section 551.071, Consultation with Attorney, Texas Government Code Section 551.072, Deliberations about Real

Property, Texas Government Code Section 551.074, Personnel Matters, and Texas Government Code Section 551.076, Security Devices or Security Audits.

This meeting is wheelchair parking accessible at the main entrance located at 112 Bauman. Auxiliary services are available upon request (interpreters for the deaf must be requested twenty-four (24) hours prior to the meeting) by calling 210/661-3198 or Relay Texas 800/735-2989 (hearing/speech impaired assistance).

DATE OF POSTING: February 5, 2024

TIME OF POSTING: 5:00 P.M.

<input checked="" type="checkbox"/>	DISCUSSION AND POSSIBLE ACTION ITEMS
<input type="checkbox"/>	SPECIAL CONSIDERATION
<input type="checkbox"/>	CONSIDERATION OF MINUTES
<input type="checkbox"/>	PUBLIC HEARING
<input type="checkbox"/>	PRESENTATION
<input type="checkbox"/>	WORKSHOP

**CITY OF KIRBY  
CITY COUNCIL MEETING  
A G E N D A I T E M S U M M A R Y**

**DATE: February 8, 2024**

**AGENDA ITEM: 8. a.**

- a. Discussion Update and possible action on an Ordinance amending Code of Ordinances Title III, Administration, Article I, Meetings regarding decorum and debate and citizen participation and additions of Sections 30.11 and 30.12 related to carrying firearms on City owned Premises.

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF KIRBY  
AMENDING ORDINANCE O-2022-911; AMENDING THE CITY'S CODE  
OF ORDINANCES CHAPTER 30 SECTION 30.07 CITY COUNCIL  
MEMBERS DECORUM AND DEBATE AND SECTION 30.10 CITIZEN  
PARTICIPATION AT MEETINGS; PROVIDING A SEVERABILITY  
CLAUSE; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the city of Kirby, Texas is a home-rule municipality located in Bexar County, Texas and duly established under the Texas Constitution and the laws of this State; and

**WHEREAS**, Texas Government Code Section 551.007(a) provides that a governmental body shall allow citizens to address the body at the meeting before or during the body's consideration of an item;

**WHEREAS**, Texas Government Code Section 551.007(b) provides that a governmental body may adopt reasonable rules, including those that limit the total amount of time that a member of the public may address the body; and

**WHEREAS**, in opinion No. KP-0300, the Attorney General of Texas stated that a governmental body "may satisfy subsection 551.007(b)'s requirements by having a single public comment period at the beginning of an open meeting to address all items on the agenda"; and

**WHEREAS**, the City Council believes that revisions should be made to portions of Sections 30.07 and 30.10 of the Code of Ordinances to ensure consistency as to what vote of the City Council is needed to extend time for citizen comment during City Council meetings; and

**WHEREAS**, Sections 30.07 and 30.10 of the Kirby Municipal Code includes provisions as to the Rules of Procedure relating to City Council Members Decorum and Debate and citizen participation at the meetings of City Council; and

**WHEREAS**, the City Council finds that it is in the best interest of the City of Kirby to amend the current code sections related to Council decorum and citizens comments and allow the City Council meetings to run in an efficient and orderly manner, and to effectively conduct government business, and establish rules related to citizen participation.

**WHEREAS**, the Home Rule Charter of the City of Kirby Section 11.01 gives the City Council authority to abolish, modify or alter such ordinances; and

**WHEREAS**, the City Council finds that it is in the best interest of the City of Kirby to adopt the revised sections of Chapter 30 of the City's Code of Ordinances.

**NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF KIRBY, TEXAS, THAT:**

**Section 1. Amendments.** The Kirby Code of Ordinances Chapter 30, Sections 30.07 and 30.10 are hereby amended as shown in Exhibit A attached hereto and incorporated for all purposes. Deletions are noted as ~~striketroughs~~ and additions as underlined.

**Section 2. Findings.** That the recitals contained in the preamble hereto are hereby found to be true and such recitals are hereby made a part of this Ordinance for all purposes and are adopted as a part of the judgment and findings of the Council.

**Section 3. Cumulative Clause.** This Ordinance shall be cumulative of all provisions of ordinances of the City of Kirby, Texas, except where the provisions of the Ordinance are in direct conflict with the provisions such ordinances, in which event the conflicting provisions of such ordinances are hereby repealed.

**Section 4. Severability.** It is hereby declared to be the intention of the City Council that the phrases, clauses, sentences, paragraphs, and sections of this Ordinance are severable, and if any phrase, clause sentence, paragraph or section of this Ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Ordinance, since the same would have been enacted by the City Council without the incorporation in this Ordinance of any such unconstitutional phrase, clause, sentence, paragraph or section.

**Section 5. Public Meeting.** That it is officially found, determined and declared that the meeting at which this Ordinance is adopted was open to the public and public notice of the time, place, and subject matter of the public business to be considered at such meeting, including this ordinance, was given, all as required by Chapter 551, as amended, Texas Government Code.

**Section 6. Effective Date.** This ordinance shall take effect immediately from and after its passage and any publication requirements.

PASSED AND APPROVED on first reading this \_\_\_\_\_ day of \_\_\_\_\_,  
2024.

PASSED AND APPROVED on second reading this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

\_\_\_\_\_  
Janeshia Grider, Mayor

ATTEST:

\_\_\_\_\_

# **Exhibit A**

## **CHAPTER 30: CITY COUNCIL**



## § 30.07 CITY COUNCIL MEMBERS DECORUM AND DEBATE.

In support of and respect for open, fair, and informed decision-making process, the City Council, Committees and Boards recognize that:

- Civil, respectful, and courteous discourse and behavior are conducive to the democratic and harmonious airing of concerns and decision making; and
- Uncivil discourse and/or discourteous and inappropriate behavior have a negative impact on character and productivity of the decision-making process.
- In an effort to preserve the intent of open government and maintain a positive environment for citizen input and City Council, Boards, Commission, Committees decision-making, the following Meeting Protocol and Rules of Decorum have been adopted.

Compliance with the meeting protocol is expected and will be enforced. A printable version of the Meeting Protocol will be made available on the City of Kirby website.

A.) *Speaking.* When a measure is presented for consideration to the Council, the presiding officer shall recognize the appropriate individual to present the matter. When 2 or more members wish to speak, the presiding officer shall name the member who is to speak first. No member of the Council shall interrupt another while speaking, except to make a point of order. The presiding officer shall not be obligated to recognize any Council member for a second comment on the subject or amendment until every Council member wishing to speak has been allowed a first comment. Council members shall also have the right to yield the floor to another member.

B.) *Motion to Move The Question.* If, during debate upon any ordinance, resolution, motion or other matter before the Council, any member moves that the subject under discussion be put to a vote without further debate, and the motion is seconded, the presiding officer shall immediately and without debate put the question, "Shall the subject being discussed be put to a vote?" to a vote of the Council, and if  $\frac{1}{2}$  of the Council members present vote in favor of ordering the vote, debate on the question shall be closed and a vote on the ordinance, resolution, motion or other measure shall be taken immediately.

C.) *Etiquette.* Council members ~~should not shall not~~ indulge or engage in anger, rudeness, ridicule, personal attacks, use ~~personally offensive language obscene or profane language~~, arraign motives of Council members or staff, charge deliberate misrepresentation of the City or staff, or use language tending to hold a member of the City Council or staff up to contempt.

D.) *Seating.* All persons attending a Public Meeting shall remain seated in the seats provided, unless addressing the body at the podium or entering or leaving the meeting.

~~If a Council member is transgressing the rules of the Council, the presiding officer shall, or any Council member may call such member to order, in which case such member shall immediately be quiet unless permitted to explain. The Council shall, if appealed to, decide the matter by a vote of at least 4 members of the City Council without debate. If the decision is in favor of the member called to order, such member shall then be at liberty to proceed, but not otherwise, and in any event only in compliance with these rules.~~

E.) *Council Addressing City Business.* No member shall speak more than 5 minutes on any question or amendment to the question except as further provided in this rule.

No member shall speak more than the time limits provided on any subject or amendment, but such member may use such member's time in any combination, in separate speech or comments totaling the number of minutes permitted.

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Any member deciding to speak more than 5 minutes on any question or more than 5 minutes on any amendment to the question shall be accorded the privilege only upon motion supported by a vote of at least 4 members of the Council.

F.) *Enforcement.* If a member is speaking without being recognized or otherwise violating any of the rules of the Council, the presiding officer shall, or any Council member may, call such member to order in which case such member shall immediately be quiet unless permitted to explain. The Council shall, if appealed to, decide the matter without debate. If the decision is in favor of the member called to order, such member shall be at liberty to proceed, but not otherwise, and if the disruption continues, such member shall be liable to censure or to such punishment as the Council deems proper and consistent with applicable State statutes or city ordinances.

If a Council member is transgressing the rules of the Council, the presiding officer shall, or any Council member may call such member to order, in which case such member shall immediately be quiet unless permitted to explain. The Council shall, if appealed to, decide the matter by a vote of at least 4 members of the City Council without debate. If the decision is in favor of the member called to order, such member shall then be at liberty to proceed, but not otherwise, and in any event only in compliance with these rules.

In accordance with Robert's Rules of Order, the City Council may override any decision of the presiding officer regarding the conduct and handling of the Council meeting. In order for a decision of the presiding officer to be overruled, there must be a motion, a second, and a vote by at least 4 members of the City Council overruling the decision of the presiding officer.

#### § 30.10 CITIZEN PARTICIPATION AT MEETINGS.

(A) *Rules for speakers.* Citizens will be allowed to speak at a meeting; provided, provided, they have signed the Citizen Participation form utilizing their name, home address, and listed the specific agenda items to be addressed, however, before a member of the public may address City Council or speak at a meeting, the presiding officer must first recognize the member of the public who wishes to speak and announce that the person may proceed.

1. All guests and other persons who are to speak to the City Council, including staff members, other than the City Manager, City Attorney, or City Secretary, shall wait in the audience until recognized. When called by the presiding officer for an opportunity to be heard, that person shall move immediately to the podium and make their comments. Impromptu personal points of order, comments, objections or questions shall not be recognized, and if they persist, after the Presiding Officer has warned of the offense, a member of the public engaging in such conduct shall, at the discretion of the Presiding Officer or a majority of the City Council, be subject to election from the meeting.

2. The purpose of addressing the City Council is to formally communicate to the Council on matters relating to City business or citizen concerns. Persons addressing the City Council on an agenda item shall confine the subject matter of their remarks to the particular matter before the Council.

3. No person except City Officials shall be permitted within the platform area in front of Council dais without the prior consent of the Presiding Officer or City Manager.

3. Behavior. No person attending Public Meetings shall engage in disorderly or boisterous conduct-including but not limited to applause, whistling, stomping of feet, booing, or making any loud, threatening, profane, abusive, racist, sexist, obscene, personal, impertinent, or slanderous utterance—that disturbs, disrupts, or otherwise impedes the orderly conduct of the meeting. No person shall engage in defamation, intimidation, personal affronts, or threats of violence.

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4. Remarks. All remarks by members of the public shall be addressed to the council or the governmental body and not to any specific Council, Board or Commission Member.

(B) Noise In the Lobby or Outside. Noise emanating from the lobby outside the City Council Chambers which is audible within the City Council Chambers shall not be permitted. The Kirby Police Department is authorized to enforce this rule by requesting those in the lobby to remain silent or leave the area.

(C) Electronics Noise. Within the City Council Chambers, all cell phone and pager ringers shall be turned off; no talking on cell phones is allowed; and all electronic equipment shall be operated in a manner which does not emit sound or disturb other members of the public or disrupt the orderly conduct of the meeting.

(D) Signs. No placards, banners, or signs will be permitted in the City Council chamber or in any other room in which the City Council is meeting. Exhibits, displays, and visual aids used in connection with presentation to the City Council are permitted.

(EB) Time limit. The presiding officer, or the City Council by a vote of at least 4 members of the City Council, may set a reasonable time limit for any citizen or person in attendance who desires to address the Council or speak at a meeting.

Total time for public comment on any subject under Citizen Participation shall be 5 minutes per speaker except as indicated in Subparts H and I hereof. All persons are only allowed to speak once and their time allotted shall not be transferred to another individual to accumulate their speaking time. By an affirmative vote of at least 4 members of the City Council, the time limitations of this rule may be extended.

(EC) Identification. All members of the public speaking before Council shall preface their statements with their name and home address for the record.

(GD) Speaking from the podium. The speaker shall remain at the podium until the Mayor has dismissed the speaker. Speaking from the podium will assure that the recording equipment picks up the presentation.

(HE) Spokesperson. Speakers with similar or common interests are encouraged to select someone to act as a spokesperson in order to move the proceedings along. The presiding officer may urge the implementation of this rule at anytime.

(IF) Public comments and receipt of petition. The public comment period will not be used to air personal grievances, nor to make political endorsements or for political campaign purposes. Speakers shall address all comments to the government body and not to individual council members. Discussions between speakers and members of the audience shall not be allowed. Any person desiring to be heard by the City Council on any matter shall be heard during that part of the meeting reserved for Citizen Participation or public comments, presentation of a petition or, on matters related to the subject of a public hearing, during the time scheduled for a public hearing.

(JG) Scheduled speakers. Speakers may request, in writing, an opportunity to be placed on the agenda to speak at a meeting concerning a specific matter, as identified in their written request. A written request to be placed on the agenda to speak must be delivered to the City Secretary, or the City Secretary's designee, by noon on Wednesday the week preceding the regular, special, or workshop meeting of the City Council. In the event that the number of speakers who request to be scheduled on the agenda indicates that the comments will be lengthy or repetitious, the presiding officer may schedule such matter for a public hearing or make other appropriate arrangements to ensure that the conduct of the City's business is not unduly impeded. The City Manager or the Mayor shall determine whether to put a specific item on an agenda as requested by a speaker.

(KH) Citizen participation. Citizen comments may be made either (1) during the "citizens participation" portion of the meeting or (2) during the specific agenda item that the citizen wishes to address. Any person wishing to address the council must sign the register which will be provided and must specify whether they will speak during "citizen participation" portion of the meeting or during a specific agenda item. Citizen comments shall be limited to 5 minutes per speaker unless otherwise specified by the chair. Notwithstanding the foregoing,

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so long as the City does not have simultaneous translation equipment that allows the governmental body to hear translated testimony simultaneously, the time limit for a member of the public who requires the assistance of a translator to address the governmental body and addresses the governmental body through a translator shall be limited to 10 minutes. Time allotted per speaker may not be transferred to another individual to accumulate their speaking time.

(L) The time limitations set forth herein for remarks by citizens may be extended only by the affirmative vote of at least 4 of the members of the City Council.

(M) *Public criticism.* The City Council may not prohibit criticism of the City Council, including criticism of any act, omission, policy, procedure, program, or service. This subsection does not apply to public criticism that is otherwise prohibited by law.

(N) *Camera Recordings.* Citizens may record proceedings of the City Council. To avoid disruption of proceedings, persons recording meetings using camcorders, tripods, or similar equipment shall do the recording from the first row of the right side of the audience area last row to the left side of the City Council Chambers being the area behind the railing separating the audience area from the area where members of the City Council are seated. Persons recording meetings using a handheld cell phone may record from other parts of the public seating area at City Hall so long as they do not obstruct the view of others attending the Council meeting.

(O) *Persons Needing a Translator.* Persons needing a translator must notify the City Secretary in writing of their request for a translator at least 48 hours prior to the start time of the meeting at which they intend to speak to the City Council. The request must specify the language that is to be translated into English. The City is not obligated to provide a translator.

(P) Enforcement of the Rules of Decorum for Meetings.

1. The Presiding Officer shall be responsible for Maintaining the decorum at the Public Meeting and uniformly enforcing the Rules of Decorum.

2. Breach of Decorum. In the event that any person breaches the Rules of Decorum in a manner that disturbs, disrupts, or otherwise impedes the orderly conduct of the meeting, The Presiding Officer shall first request that a person violating the rules cease such conduct. If, after receiving a request from the Presiding Officer, the person persists in violating these rules, the Presiding Officer shall order a recess. If upon resumption of the meeting the violation persists, the Presiding Officer shall order another recess, whereupon the Kirby Police Department shall have the authority to order the person ejected from the meeting, or be placed under arrest per Texas Penal Code.

5. If any person threatens by their actions or verbal utterance the safety of the public meeting, the Presiding Officer may order that person to leave the Public Meeting.

6. Clearing the Room. In the event that any meeting is willfully interrupted by a group of groups of persons as to render the orderly conduct of such meeting unfeasible and order cannot be restored by the removal of the individuals who are willfully interrupting the meeting, The presiding officer may order the council chambers to be cleared and the meeting shall continue in session. Representatives of the press or other news media, except those participating in the disturbance, shall be allowed to attend any session.

7. Authority of Mayor. The Mayor has the authority to remove an Individual from a public meeting that poses a public safety threat to the Council and/or the public.

(Q) Violation of Texas Penal Code.

A person or persons who willfully and intentionally impair or impede the conduct of a City Council meeting by violating these rules of decorum may be prosecuted under Texas Penal Code Section 30.05 Criminal Trespass and/or 42.05 Disrupting Meeting or Procession.

<input checked="" type="checkbox"/>	DISCUSSION AND POSSIBLE ACTION ITEMS
<input type="checkbox"/>	SPECIAL CONSIDERATION
<input type="checkbox"/>	CONSIDERATION OF MINUTES
<input type="checkbox"/>	PUBLIC HEARING
<input type="checkbox"/>	PRESENTATION
<input type="checkbox"/>	WORKSHOP

**CITY OF KIRBY  
CITY COUNCIL MEETING  
AGENDA ITEM SUMMARY**

**DATE: February 8, 2024**

**AGENDA ITEM: 8. b.**

- b. Update on project, discussion and possible action on change order number 5 and extend the project completion date related to Austin Bridge and Road contract.

Change Order No. 5

Date of Issuance: \_\_\_\_\_ Effective Date: April 3, 2023  
Owner: City of Kirby Contractor's Project No.: 522012  
Contractor: Austin Bridge and Road Engineer's Project No.: C-1594.03  
Engineer: Bain Medina Bain, Inc.  
Project: 2018 Street Bond Projects – Phase II

The Contract is modified as follows upon execution of this Change Order:

Description: Contractor is seeking financial compensation for the relocation of sewer lateral service lines in conflict with storm drainage pipe. 46 sanitary sewer laterals @ \$1,152.39.

Attachments: ABR Change Order #5 Letter

CHANGE IN CONTRACT PRICE	CHANGE IN CONTRACT TIMES [note changes in Milestones if applicable]
Original Contract Price:  \$ <u>10,066,581.70</u>	Original Contract Times: Substantial Completion: <u>February 3, 2025</u> Ready for Final Payment: <u>April 3, 2025</u> days or dates
[Increase] <u>(Decrease)</u> from previously approved Change Orders No. <u>1</u> to No. <u>4</u> :  \$ <u>144,286.46</u>	[Increase] <u>(Decrease)</u> from previously approved Change Orders No. <u>1</u> to No. <u>4</u> : Substantial Completion: <u>February 29, 2025</u> Ready for Final Payment: <u>April 29, 2025</u>  Increase of 26 days
Contract Price prior to this Change Order:  \$ <u>9,922,295.24</u>	Contract Times prior to this Change Order: Substantial Completion: <u>February 29, 2025</u> Ready for Final Payment: <u>April 29, 2025</u> Increase of 26 days
<u>(Increase)</u> <u>(Decrease)</u> of this Change Order:  \$ <u>56,190.60</u>	<u>(Increase)</u> <u>(Decrease)</u> of this Change Order: Substantial Completion: <u>March 20, 2025</u> Ready for Final Payment: <u>May 19, 2025</u>  Increase of 20 days
Contract Price incorporating this Change Order:  \$ <u>9,978,485.84</u>	Contract Times with all approved Change Orders: Substantial Completion: <u>March 20, 2025</u> Ready for Final Payment: <u>May 19, 2025</u> Increase of 46 days

RECOMMENDED:	ACCEPTED:	ACCEPTED:
By: _____	By: _____	By: <u>Humberto Zambrano</u>
Title: <u>Engineer</u>	Title: <u>City of Kirby</u>	Title: <u>Austin Bridge and Road</u>
Title: <u>Executive Vice President</u>	Title: <u>City Manager</u>	Title: <u>Project Manager</u>
Date: _____	Date: _____	Date: <u>1-17-2024</u>



# Austin Bridge & Road

An Austin Industries Company

8122 Whisper Oak  
San Antonio, TX 78266

12/12/2023

Bain Medina Bain, Inc  
Attn: Lorena Carter, P. E  
7073 San Pedro  
San Antonio, Texas 78216

Re: 2018 Street Bond Projects Phase II

Dear Lorena Carter,

Enclosed is a revised request for Change Order No. 05 for the above-referenced project. Austin Bridge & Road (ABR) is seeking financial compensation for additional work required to lower Sanitary Sewer lateral service lines due to a conflict with Storm Drainage Pipe.

ABR Subcontractor (RAM2) for the installation of the storm Drainage, discover the lateral Sanitary Sewer service lines (46) running from the business and neighborhoods homes to the Sanitary Sewer Main, are located directly in conflict with the installation of the Storm Drainage Pipe for the Project and the Gas Main.

ABR is sending the additional cost associated with this change order at the request of the City Council meeting held on Thursday November 16, 2023. The total estimated amount requested in this change order is \$ \$56,190.60 and 20 days be added to the contract.

Item	Qty	Unit	Subunit Price \$	Subtotal	Bond & Ins (1%)	Contractor Fee (5%)	Total
Lower SS Service line below the new RCP	46	LF	\$ 1,152.39	\$ 53,010.00	\$ 530.10	\$ 2,650.50	\$ 56,190.60
					TOTAL C.O. #05		\$ 56,190.60

Your attention to this matter is greatly appreciated. Please contact me if you have any questions or need further information.

Sincerely,

Humberto Zambrano  
Digitally signed by Humberto Zambrano  
DN: cn=Humberto Zambrano, o=Austin Bridge & Road, ou=Operations, email=hzambrano@abroad.com, c=US  
Date: 2023.11.13 14:35:52 -0500

Humberto Zambrano, PM

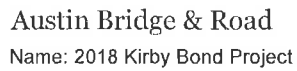
**RAM2 Utilities, LLC**  
Project: 2018 Bond

**Amount**

Aggeraget - 9876	\$ 9,876.00
Delivery - 1975	\$ 1,975.00
Haul off - 7131	\$ 7,131.00
Crew - 114885	
3 person Crew - 60547	\$ 60,547.00
Shoring - 9660	\$ 9,660.00
Excavator - 27600	\$ 27,600.00
Loader - 32200	\$ 32,200.00
Truck/Fuel - 6900	\$ 6,900.00
Pipe - 3787	\$ 3,787.00
Per Lateral Drop Fittings - 13451	\$ 13,451.00
Compactor - 16400	\$ 16,400.00
Total	\$ 189,527.00
Intrest	\$ 9,283.00
Grand Total	\$ 198,810.00
Credit	\$ 145,800.00
Extra Owed	\$ 53,010.00



Ram2 Utilities  
5511 Dietrich Rd, San Antonio, Tx 78219  
Justin Nowacki (979) 219-5667 Justin@ram2.net / Melaine Hanks (210) 460-8368 Melanie@ram2.net  
**11/21/2023**



Details	Quantity	Unit Price	Estimate
New Sewer Lateral and Cleanout Bid	1	\$198,810.00	\$198,810.00
Original Sewer Lateral and Cleanout Bid	1	\$145,800.00	\$145,800.00
			\$0.00
			\$0.00
			\$0.00
			\$0.00
			\$0.00
			\$0.00
			\$0.00
			\$0.00
			\$0.00
			\$0.00
SUBTOTAL		\$53,010.00	
TAX RATE		0.00%	
OTHER		\$0.00	
TOTAL		\$53,010.00	

This is a change order estimate and is for completing the job described above. It is based on information provided by you and our evaluation. It does not include unforeseen price increase or additional labor and materials which may be required should problems arise or the scope of work change. I/We do hereby agree to the change(s) and prices for the work as specified herein. All work specified and initiated by this change order are to be performed according to the provisions as set forth in the original Work Estimate unless otherwise noted.

Signature of Acceptance

X

Signature of Acceptance

Quantity Unit Price

Estimate

THANK YOU FOR YOUR BUSINESS!

<input checked="" type="checkbox"/>	DISCUSSION AND POSSIBLE ACTION ITEMS
<input type="checkbox"/>	SPECIAL CONSIDERATION
<input type="checkbox"/>	CONSIDERATION OF MINUTES
<input type="checkbox"/>	PUBLIC HEARING
<input type="checkbox"/>	PRESENTATION
<input type="checkbox"/>	WORKSHOP

**C I T Y O F K I R B Y**  
**C I T Y C O U N C I L M E E T I N G**  
**A G E N D A I T E M S U M M A R Y**

**DATE: February 8, 2024**

**AGENDA ITEM: 8. c.**

- c. Discussion and Possible Action on ARPA Funds balance, recommended uses and provide direction to staff on use of funds.

**Summary of ARPA Funds:**

Total ARPA Funding	2,165,708.51
FY 2022 Expenditures	(423,341.72) *
FY 2023 Expenditures	(663,380.00)
Interest Earned	<u>2,083.41</u>
Total Available	<u><u>1,081,070.20</u></u>

\* Includes \$113K not transferred from General Fund.

## Account Information

### Balance

Previous Day Transactions (-\$0.00 / +\$0.00)	\$0.00
Current Balance	\$1,081,070.20
Total Float	\$0.00
Holds	\$0.00
Pending Transactions (-\$0.00 / +\$0.00)	\$0.00
Other Transfers	\$0.00
Today's Float	\$0.00
Available Balance	\$1,081,070.20
Line Of Credit	\$0.00
Total Funds Available	\$1,081,070.20

### Activity

Last Deposit (Oct 18, 2022)	\$1,082,854.25
Last Check (Aug 17, 2023)	\$12,300.00

### Interest

Current Interest Rate	0.10%
Current Accrued Interest	\$94.78
Last Interest Payment (Dec 29, 2023)	\$85.89
Interest Paid 2024	\$0.00
Interest Paid 2023	\$1,087.95

<input checked="" type="checkbox"/>	DISCUSSION AND POSSIBLE ACTION ITEMS
<input type="checkbox"/>	SPECIAL CONSIDERATION
<input type="checkbox"/>	CONSIDERATION OF MINUTES
<input type="checkbox"/>	PUBLIC HEARING
<input type="checkbox"/>	PRESENTATION
<input type="checkbox"/>	WORKSHOP

**C I T Y O F K I R B Y**  
**C I T Y C O U N C I L M E E T I N G**  
**A G E N D A I T E M S U M M A R Y**

**DATE: February 8, 2024**

**AGENDA ITEM: 8. d.**

- d. Discussion and Possible Action in dissolving the Kirby Senior Center nonprofit and Board and placing under the City of Kirby.

# ESTIMATED COSTS SENIOR CENTER

(Health & Life)

	SALARY	BENEFITS	RETIREMENT
Executive Director*	( \$60,000)	\$694.47	\$8784.00
Driver (FT)*	( 22,230 )	694.47	3254.00
Driver (PT)*	22,230	-0-	-0-
Admin assistant (FT)	( 37,440 )	6694.47	5481.00
Admin Assistant (PT)	16,848	-0-	-0-
Dietician(pt)	3,600	-0-	-0-
TOTAL:	\$78241.41	\$2,834.41	\$17,519
Grand total:	\$78241.41		

\* = AACOG & VIA PAY

Unknown if AACOG & VIA pay benefits

Bookkeeping & IT support from existing City Staff

**RESOLUTION NUMBER: R-2023-759**

**A RESOLUTION APPROVING THE MANAGEMENT SERVICES AGREEMENT WITH THE KIRBY SENIOR CENTER AND AUTHORIZING THE CITY OF KIRBY TO ENTER INTO AN AGREEMENT PROVIDING MANAGEMENT SERVICES TO THE KIRBY SENIOR CENTER**

**WHEREAS**, it is essential for the daily functioning of the Kirby Senior Center to receive certain administrative services and support, including without limitation, financial, bookkeeping, records management, information technology, and employee benefit services and support; and

**WHEREAS**, it is the best interest, efficiently and economically, of both the City of Kirby and the Kirby Senior Center Corporation for the City of Kirby to provide such administrative services; and

**WHEREAS**, the Kirby Senior Center provides resources to Kirby citizens, to assist with healthcare, financial planning, and community engagement; and

**WHEREAS**, the Kirby Senior Center offers meal and nutrition programs, health and fitness programs, and transportation services to the citizens of Kirby; and

**WHEREAS**, by the City providing such Services, the City will maintain control over the staff quality, efficiency, and expenditures; and

**WHEREAS**, the City Council of the City of Kirby finds that the Senior Center services and providing these Professional Services will improve the functioning of the Kirby Senior Center to focus its expenditures of funding on providing services to the community while retaining City oversight; and

**WHEREAS**, the City Council of the City of Kirby finds that the Kirby Senior Center services it provides to its citizens and providing Professional Services to the Kirby Senior Center Corporation serves a public purpose as required by the Texas Constitution, Article III, Section 52(a).

**NOW THEREFORE BE IT RESOLVED** by the City Council of the City of Kirby that:

SECTION 1. The City Council hereby finds that all of the recitals above are true and correct and are incorporated herein as if restated in full.

SECTION 2. The City Council hereby finds that the provision of certain administrative services is necessary for the Kirby Senior Center's daily functions and hereby approves the terms of the Management Services Agreement by and between the City of Kirby and the Kirby Senior Center Corporation for the provision of services and support as set forth and attached hereto as Exhibit "A".

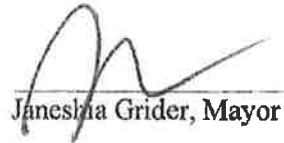
SECTION 3. The City Council authorizes the City Manager to take all necessary actions including



the execution of the Agreement and related documentation, if any.

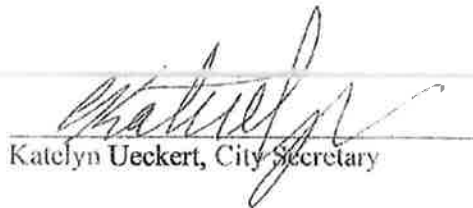
SECTION 4. This Resolution is effective upon passage.

Passed and Approved this the 16 day of August, 2023.



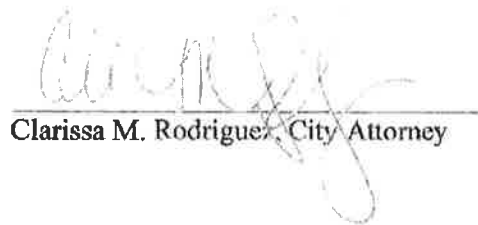
Janesha Grider, Mayor

ATTEST:



Katelyn Ueckert, City Secretary

APPROVED FOR LEGAL SUFFICIENCY:



Clarissa M. Rodriguez, City Attorney

**Exhibit "A"**

**AGREEMENT FOR PROVISION OF PROFESSIONAL SERVICES  
BETWEEN THE CITY OF KIRBY AND  
THE KIRBY SENIOR CENTER**

**THE STATE OF TEXAS   §  
                                     §  
COUNTY OF BEXAR   §**

**KNOWN ALL MEN BY THESE PRESENTS:**

THIS AGREEMENT, effective the 14 day of August, 2023, by and between the CITY OF KIRBY, (hereinafter referred to as "City") acting by and through its City Council, and the KIRBY SENIOR CENTER CORPORATION, a Texas non-profit corporation (hereinafter referred to as "KSC") acting by and through its Executive Director of the Board is as follows:

~~WHEREAS, it is essential for the daily functioning of the Kirby Senior Center to receive certain~~  
administrative services and support, including without limitation, financial, bookkeeping, records management, information technology, and employee benefit services and support; and

**WHEREAS**, it is the best interest, efficiently and economically, of both the City of Kirby and the Kirby Senior Center Corporation for the City of Kirby to provide such administrative services; and

**WHEREAS**, the Kirby Senior Center provides resources to Kirby citizens, to assist with healthcare, financial planning, and community engagement; and

**WHEREAS**, the Kirby Senior Center offers meal and nutrition programs, health and fitness programs, and transportation services to the citizens of Kirby; and

**WHEREAS**, by the City providing such Services, the City will maintain control over the staff quality, efficiency, and expenditures; and

**WHEREAS**, the City Council of the City of Kirby finds that the Senior Center services and providing these Professional Services will improve the functioning of the Kirby Senior Center to focus its expenditures of funding on providing services to the community while retaining City oversight; and

**WHEREAS**, the City Council of the City of Kirby finds that the Kirby Senior Center services it provides to its citizens and providing Professional Services to the Kirby Senior Center Corporation serves a public purpose as required by the Texas Constitution, Article III, Section 52(a).

**WHEREAS**, the City Council of the City of Kirby passed Resolution R-2023-759 on 8/10 (date) approving the City Manager to enter into this Agreement for Professional Services.

WITNESSETH:

I.

The City agrees to provide management, professional, administrative, financial, and legal services to the KSC according to the terms of this agreement. Direct services the City shall perform for the KSC shall include:

1. Preparing all financial and other related reports and keeping all financial books and records required by the KSC's Bylaws including audits.
2. Preparing a budget for the forthcoming year for review and approval by the Board and City Council.
3. Providing all necessary budgeting, accounting, financial management and other related services through the City's Finance Department.
4. Providing a repository of records, office, and conference space.
5. Providing technological support for hardware, software, and phone systems through the City's Information Technology Department.
6. Providing executive and administrative support, review and oversight by various City departments including, but not limited to, City Administrator, City Secretary, City Attorney, and other necessary support from City resources and staff.
7. Assist in winding up of the Finance Corporation by which the Kirby Senior Center was created and transition the Kirby Senior Center into a City departmental function.

It is understood and agreed that access to City staff resources by the KSC is secondary to the needs of the City Council of the City of Kirby.

II.

Subject to the KSC continuing to contract with the City for management services, the KSC will pay to the City for its services pursuant to this agreement, a flat fee of Ten Dollars (\$10.00) per year.

In the event of the termination of this agreement, the KSC will be responsible for paying the City only the portion of the cost allocated to periods prior to the effective date of the termination of the agreement.

III.

It is the express purpose of this agreement for the City to provide certain management, professional, administrative, legal, and financial services to the KSC.

IV.

Subject to early termination as provided in Article V below, this agreement shall be in effect for a period of one year commencing July 1, 2023 and ending June 30, 2024, and said agreement shall be extended for additional one-year terms thereafter under the same terms and conditions unless one party gives to the other party written notification at least thirty (30) days prior to the end of the existing term of its desire to terminate the agreement.

V.

1. This contract may be terminated by the City or KSC, in whole, or from time to time, in part, upon thirty (30) days' notice from the terminating party to the other party. Termination

shall be effective thirty (30) days after delivery of Notice of Termination specifying to what extent performance or work under the contract shall be terminated thirty (30) days after receipt by the notified party.

2. After receipt of a Notice of Termination the City shall:
- a. Stop work on the date as specified in the thirty (30) day Notice of Termination to the extent possible.
  - b. Place no further orders or subcontracts except as may be necessary for completion of the work not terminated.
  - c. Terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the Notice of Termination as far as possible.
  - d. The KSC shall pay all expenses incurred through the date of termination.


VI.


~~This Agreement shall take effect on the day of execution.~~

**IN WITNESS WHEREOF**, the parties have executed this Contract in the year and on the day indicated.

KIRBY SENIOR CENTER CORPORATION

CITY OF KIRBY, TEXAS

  
Kathy Gomez  
Executive Director

  
Dr. Brian Rowland  
City Manager

**RESOLUTION NUMBER: R-2023-759**

**A RESOLUTION APPROVING THE MANAGEMENT SERVICES AGREEMENT WITH THE KIRBY SENIOR CENTER AND AUTHORIZING THE CITY OF KIRBY TO ENTER INTO AN AGREEMENT PROVIDING MANAGEMENT SERVICES TO THE KIRBY SENIOR CENTER**

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SECTION 1. The City Council hereby finds that all of the recitals above are true and correct and are incorporated herein as if restated in full.

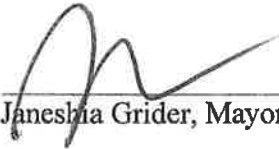
SECTION 2. The City Council hereby finds that the provision of certain administrative services is necessary for the Kirby Senior Center's daily functions and hereby approves the terms of the Management Services Agreement by and between the City of Kirby and the Kirby Senior Center Corporation for the provision of services and support as set forth and attached hereto as Exhibit "A".

SECTION 3. The City Council authorizes the City Manager to take all necessary actions including


the execution of the Agreement and related documentation, if any.

SECTION 4. This Resolution is effective upon passage.

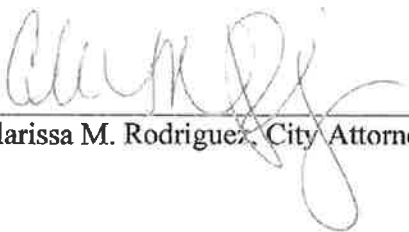
Passed and Approved this the 16 day of August, 2023.

  
\_\_\_\_\_  
Janeshia Grider, Mayor

ATTEST:

  
\_\_\_\_\_  
Katelyn Ueckert, City Secretary

APPROVED FOR LEGAL SUFFICIENCY:

  
\_\_\_\_\_  
Clarissa M. Rodriguez, City Attorney

**Exhibit "A"**



**AGREEMENT FOR PROVISION OF PROFESSIONAL SERVICES  
BETWEEN THE CITY OF KIRBY AND  
THE KIRBY SENIOR CENTER**

**THE STATE OF TEXAS   §  
                                  §  
COUNTY OF BEXAR     §**

**KNOWN ALL MEN BY THESE PRESENTS:**

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3. Providing all necessary budgeting, accounting, financial management and other related services through the City's Finance Department.
4. Providing a repository of records, office, and conference space.
5. Providing technological support for hardware, software, and phone systems through the City's Information Technology Department.
6. Providing executive and administrative support, review and oversight by various City departments including, but not limited to, City Administrator, City Secretary, City Attorney, and other necessary support from City resources and staff.
7. Assist in winding up of the Finance Corporation by which the Kirby Senior Center was created and transition the Kirby Senior Center into a City departmental function.

It is understood and agreed that access to City staff resources by the KSC is secondary to the needs of the City Council of the City of Kirby.

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Subject to the KSC continuing to contract with the City for management services, the KSC will pay to the City for its services pursuant to this agreement, a flat fee of Ten Dollars (\$10.00) per year.

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III.

It is the express purpose of this agreement for the City to provide certain management, professional, administrative, legal, and financial services to the KSC.

IV.

Subject to early termination as provided in Article V below, this agreement shall be in effect for a period of one year commencing July 1, 2023 and ending June 30, 2024, and said agreement shall be extended for additional one-year terms thereafter under the same terms and conditions unless one party gives to the other party written notification at least thirty (30) days prior to the end of the existing term of its desire to terminate the agreement.

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  - b. Place no further orders or subcontracts except as may be necessary for completion of the work not terminated.
  - c. Terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the Notice of Termination as far as possible.
  - d. The KSC shall pay all expenses incurred through the date of termination.


VI.

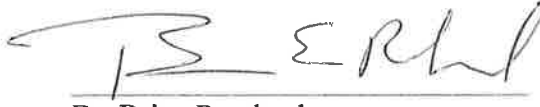
This Agreement shall take effect on the day of execution.

**IN WITNESS WHEREOF**, the parties have executed this Contract in the year and on the day indicated.

KIRBY SENIOR CENTER CORPORATION

CITY OF KIRBY, TEXAS

  
\_\_\_\_\_  
Kathy Gomez  
Executive Director

  
\_\_\_\_\_  
Dr. Brian Rowland  
City Manager

<input checked="" type="checkbox"/>	DISCUSSION AND POSSIBLE ACTION ITEMS
<input type="checkbox"/>	SPECIAL CONSIDERATION
<input type="checkbox"/>	CONSIDERATION OF MINUTES
<input type="checkbox"/>	PUBLIC HEARING
<input type="checkbox"/>	PRESENTATION
<input type="checkbox"/>	WORKSHOP

**C I T Y O F K I R B Y**  
**C I T Y C O U N C I L M E E T I N G**  
**A G E N D A I T E M S U M M A R Y**

**DATE: February 8, 2024**

**AGENDA ITEM: 8. e.**

- e. Discussion and Possible Action on maintenance operations the city swimming pool and provide direction to staff.

## SWIMMING POOL MANAGEMENT AGREEMENT

**This Agreement**, between **San Antonio Pool Management** (the “Company”) and **City of Kirby** (the “Customer”), is to provide for the staffing, water chemistry maintenance and cleaning by the Company at the Customer’s pool located at San Antonio, Texas in accordance with the specifications, conditions, and terms set forth herein. Company has no duties with regard to pool or facilities other than those explicitly stated herein.

1. **EFFECTIVE DATE.** This Agreement, when executed by both parties hereto, shall become effective on December 1, 2022 for the 2023 and 2024-year period extending from December 1, 2022 through November 30, 2024.

### About Us

We’re a local company that is part of The Pool Management Group family of companies. From advanced lifeguard training and testing, to our national back up team for key personnel, to industry thought leadership, our customers receive the rewards of a large national company combined with our local expertise.

**As a result, we are able to provide high levels of quality, safety and risk reduction.**

2. **PERSONNEL.** Company will provide pool staff, including lifeguards, for operation of Customer’s pool. The Company will provide training and testing of the lifeguards working at Customer’s facility that significantly exceed the industry norm.

*\*Please see Section 5 for more details on personnel.*

3. **INSURANCE/LIABILITY.** The company will maintain a comprehensive insurance package including General Liability, Professional Liability & Punitive coverage with \$20 million dollar limits. While this is a significant limit, Company asserts it is a requirement and not an extravagance, as pool accident judgments have been awarded for multi-millions.

The company agrees to maintain, at a minimum, \$20 million liability insurance coverage for the length of this Agreement.

*\*Please see section 6 for more information on liability insurance*

4. **VALUE ADDED SERVICES.** Service components well beyond the standard pool management services are provided as part of this Agreement.

<b>Value Added Services</b>	<b>Description</b>
<b>Advanced Lifeguard Training</b>	Proprietary training is given to our lifeguards and goes beyond the standard lifeguard training. Training focuses on critical risks and dangers that many pool operators are not even aware of. Topics include advanced scanning techniques, lifeguard distractions, bodies disappearing underwater and more.
<b>On-line Lifeguard Training</b>	Through The Pool Management Group, our advanced training is administered on-line with custom video and audio learning. This proprietary on-line system has testing throughout to ensure lifeguards view and are tested on all material.
<b>Summer Safety Campaign</b>	Posters are placed at facilities (and information posted on-line) as part of our annual pool safety campaign aimed at pool patrons.
	The safety campaign is designed to increase awareness of pool hazards and prevent drowning.
<b>Body on the Bottom Testing</b>	Proprietary testing is completed at pools throughout the season to enhance lifeguards' ability to identify and save bodies underwater.
<b>National Safety Advisors</b>	Collectively, with The Pool Management Group family of companies, we contract with prominent safety advisors to ensure our water safety standards remain at high levels.
<b>National Back Up Team</b>	In the event of a need, we will utilize back up personnel available through The Pool Management Group. From President to pool technician positions, our team is backed up in the event of injury or other emergency.
<b>National Parts Sourcing</b>	When local parts distributors do not carry a part needed to keep your pool up and running, we will utilize the support team at The Pool Management Group for a nationwide search to find the right part and order it promptly.
<b>Up to Date Information</b>	Through The Pool Management Group, important governmental decisions and water safety developments are monitored so we can provide accurate timely information.
<b>Risk Reduction</b>	Our safety and training standards increase safety and reduce risk at your pool. However, even at the safest pools, accidents can happen, so we carry Professional Liability Insurance with \$20 million of coverage.

5. **PERSONNEL.**

- (a) All Company personnel who will work at the Customer's pool in fulfilling the terms of this Agreement, including all lifeguards, shall be employed solely by the Company and be employees of the Company. No lifeguard shall be engaged by the Company as an "Independent Contractor" to fulfill the terms of this Agreement.
- (b) All lifeguards employed by the Company shall have the minimum standard American Red Cross Basic Lifeguarding Certificates or Lifeguard Training Certificates, or the equivalent, as well as Professional Rescuer CPR, and then shall go through Company's proprietary lifeguard training and testing which provides knowledge and awareness well beyond the industry standard.
- (c) Company is solely responsible for selecting competent and qualified lifeguards for the safe operation of the Customer's swimming pool.
- (d) Personnel will be trained by the Company. Personnel not performing up to the standards of the Customer will be replaced by the Company within 12 hours.
- (e) Company is responsible for exercising control over the activities performed by the lifeguards. Lifeguards will be supervised by Company management personnel.
- (f) The Company agrees to pay the following for Company's employees, including all lifeguards:
  - Wages
  - Income tax withholdings
  - Social Security withholdings
  - State unemployment insurance
  - Federal unemployment insurance
  - Workmen's Compensation insurance
- (g) Lifeguards shall have the authority to discipline swimmers and any and all other persons within the pool facility within their best judgment and sole discretion consistent with the published and posted rules of the Customer and minimum safety standards as established herein. Customer agrees to support Company's lifeguards in enforcing the rules with Customer's patrons.
- (h) Whereas, Company has responsibility for providing lifeguards, water chemistry maintenance and cleaning of Customer's swimming pool, various Company personnel will be responsible for the following duties:
  - 1) Lifeguarding main pool.
  - 2) Checking water chemistry and recording readings every two (2) hours.
  - 3) Maintaining chemical balance of pool water.
  - 4) Vacuuming pool frequently enough that the pool is always clean

- 5) Cleaning tiles around pool edge.
- 6) Backwashing filter system.
- 7) Checking and recording filter pressure gauge readings and flow meter
- 8) Cleaning bathhouse throughout the day
- 9) Cleaning swimming pool area.
- 10) Emptying trash.
- 11) Straightening deck furniture.
- 12) Replenishing janitorial supplies in bathhouse.
- 13) Enforcing rules of the Customer for safety and convenience of Customer's members.
- 14) Assisting Customer in collecting guest fees and monitoring membership, as long as the task does not interfere with lifeguarding.

Whereas, Company will invest substantial resources to train and convey information concerning operational techniques and management procedures to its employees at

~~Customer's facility and Customer acknowledges that such information and investment is a~~  
valuable asset of Company's business, Customer agrees not to hire or consult (without the prior written consent of Company) any employee or former employee of the Company for a period of one year from the date of expiration or cancellation of this agreement.

6. **INSURANCE/LIABILITY**. The Company shall maintain and keep in full force the following coverage:

- (a) **Professional Liability Insurance and General Liability Insurance** in the amount of **\$20,000,000**.
- (b) **Worker's Compensation insurance** covering all persons engaged on behalf of the Company in the performance of the terms of this Agreement.

Company agrees to indemnify and hold Customer, its officers, committees, and agents harmless from and against any claims caused by or arising out of the acts, omissions and/or negligence of the Company or its employees. This indemnity does not require Company to indemnify Customer for Customer's own negligence.

Company agrees to supply copies of the certificates of insurance to the Customer verifying the above-mentioned insurance coverage. It is the responsibility of the Customer to provide all other insurance coverage.

Except due to acts of omission or negligence on the part of the Company or its employees, Company assumes no liability for damage or injury to persons or property arising from or caused by Acts of God. Except as to the employees of Company, Company assumes no liability for damage or injury to persons or property arising from or caused by physical or mental incapacity, physical or mental diminution, or intoxication from alcoholic or other substances, whether legal or illegal.

Company shall not be held liable for any damages resulting from faulty equipment, mechanical failure, weather, flooding, or defective workmanship or design by others. Company accepts no



responsibility for hydrostatic lifting. Any risks associated with draining the pool shall be solely the Customer's.

The Company shall not be liable or responsible for any injuries or damages that arise at any time that is not within the hours of operation as stated in this Agreement, except for additional hours for which Company is contracted according to the terms of this Agreement.

The Company shall not be held liable for any personal effects of any person or persons utilizing the pool facilities.

The Customer shall maintain and keep in full force and effect the following coverage:

- (a) **Premises Liability Insurance.**
- (b) **Comprehensive General Liability Insurance** in the amount of \$1,000,000.00 each accident and \$1,000,000.00 each person.

7. **OPENING.** Company agrees to make pool "ready to swim" by completing the following services, where applicable:

- (a) Order, store, and inject all necessary chemicals to establish proper levels for:
  - free chlorine
  - total alkalinity
  - pH
  - calcium hardness
  - cyanuric acid
- (b) Vacuum pool.
- (c) Clean pool enclosure area.
- (d) Inspect chemical feeders.
- (e) Inspect all filtration equipment.
- (f) Inspect flow meters, pressure gauges, and valves.
- (g) Mount diving boards, guard chairs, and ladders.
- (h) Remove pool furniture from storage, clean, set out around pool area.
- (i) Thoroughly clean bathhouse.
- (j) Inspect and re-supply water testing supplies.
- (k) Inspect underwater lights.
- (l) Perform requisite repair work as needed and authorized by Customer (see "Repair Work").

PRE-SEASON STAFF MEETING WITH STAFF. Company's designated Pool Manager shall request a meeting with Customer's representative prior to opening day. The Pool Manager and all lifeguards, as feasible, will meet with Customer's representative.

PRE-SEASON SWIMMING POOL REVIEW MEETING. At the Customer's request, Company will walk through with a representative of the Customer prior to opening to develop a list of items needed for operation of the pool and to review items identified by the Health Department as deficient from the previous year. Company shall stand ready, at the Customer's request, to perform repairs needed for compliance with Health Department regulations. The cost for any such repairs shall be additional to the price of this Agreement.

INITIAL TAKEOVER OF POOL BY COMPANY. Customer agrees pool will be clean and free of algae on the date of signing. If pool is not clean and free of algae, Customer agrees to pay reasonable additional charges for cleanup and chemical treatment of pool.

PERMIT. The Company will assist the Customer in obtaining Customer's Swimming Pool Operation Permit from the local Health Department.

The Company shall:

- (a) Clean and chemically balance pool to health department standards.
- (b) For the convenience of Customer, complete the Operating Permit Application and return it to the Health Department with the Permit Fee.
- (c) Schedule pre-season health department inspection and meet the health department inspector at Customer's pool to walk through the inspection with the health department inspector.

The Customer shall be responsible for:

- (a) Reimbursing Company for the actual Permit Fee required by the health department.
- (b) Complying with all health department regulations.

MINIMUM FACILITY STANDARDS. Customer agrees and acknowledges that it is the Customer's responsibility to maintain Customer's pool, equipment and associated facilities within established minimum standards. The rules and codes of the local health department having jurisdiction over Customer's pool, the National Electrical Code, and the Virginia Graeme Baker Pool and Spa Safety Act shall be included as minimum standards.

PRE-SEASON SWIM TEAM PRACTICE. At Customer's request, Company shall ready the pool for swim team practice earlier than the normal opening date. Customer shall give Company at least two (2) weeks prior notice. Company shall maintain the pool three (3) times per week during pre-season swim team practice at no additional fee to Customer. Any additional maintenance visits required by the swim team will be contracted with Company separately from this Agreement.

8. **POOL OPERATION**. Company agrees to furnish certified lifeguards and other personnel as contracted herein to operate the pool on the following schedule:

**DATES OF OPERATION:**

**2023**

The pool will be open on the following days:

May 27 through September 4

Lifeguard will be provided on the following days:

**HOURS OF OPERATION: School Session**

May 27-28. August 26-27. September 2-4. (School Session)

The pool to be open during the following hours:

Saturday	12:00 p.m. to 6:00 p.m.
Sunday	12:00 p.m. to 6:00 p.m.
Monday	Closed
Tuesday	Closed
Wednesday	Closed
Thursday	Closed
Friday	Closed
Holidays	12:00 p.m. to 6:00 p.m.

**HOURS OF OPERATION: Summer Season**

May 30 through August 20.

Saturday	12:00 p.m. to 6:00 p.m.
Sunday	12:00 p.m. to 6:00 p.m.
Monday	Closed
Tuesday	Closed
Wednesday	12:00 p.m. to 6:00 p.m.
Thursday	12:00 p.m. to 6:00 p.m.
Friday	12:00 p.m. to 6:00 p.m.

**School Days Operation:**

No lifeguard will be provided on school days.

### **DATES OF OPERATION:**

**2024**

The pool will be open on the following days:

May 25 through September 2

Lifeguard will be provided on the following days:

#### **HOURS OF OPERATION: School Session**

May 25-27. August 24-25. August 31- September 2. (School Session)

Saturday 12:00 p.m. to 6:00 p.m.

Sunday 12:00 p.m. to 6:00 p.m.

Monday Closed

Tuesday Closed

Wednesday Closed

Thursday Closed

Friday Closed

Holidays 12:00 p.m. to 6:00 p.m.

#### **HOURS OF OPERATION: Summer Season**

May 28 through August 18.

Saturday 12:00 p.m. to 6:00 p.m.

Sunday 12:00 p.m. to 6:00 p.m.

Monday Closed

Tuesday Closed

Wednesday 12:00 p.m. to 6:00 p.m.

Thursday 12:00 p.m. to 6:00 p.m.

Friday 12:00 p.m. to 6:00 p.m.

#### **School Days Operation:**

No lifeguard will be provided on school days.

#### **STAFFING:**

- Three (3) Lifeguards will be provided from 12:00 p.m. until 6:00 p.m. daily

Customer agrees to indemnify and hold Company harmless for any claims arising from the use of the pool(s) other than during those times specified above, except when such claims are the result of acts of omission or negligence of the Company.

On days when attendance at the pool is very low, Company may reduce the number of lifeguards on duty to as few as two.

Company shall be excused from providing staff on the schedule above upon the occurrence of any circumstance beyond its control to the extent that such circumstance makes it impossible to provide swimming pool staffing at the level detailed above, and in such circumstance Company and Customer shall work together to establish a new staffing schedule based on available staff. In such circumstance Company shall reimburse Customer for staffing hours that are not provided.

**SAFETY BREAK.** Once every hour the pool will be completely cleared for a period of ten minutes. During this break, lifeguards will not be on duty, the pool will be closed, no one may use the pool and the lifeguards shall not be responsible for supervising the pool.

**VANDALISM.** Additional reasonable charges for cleanup required as the result of vandalism, and approved by the Customer, shall be paid by the Customer to the Company. Any vandalism shall be reported to the Customer's designated representative immediately upon discovery.

**SUPERVISION.** Company management personnel will inspect the pool at least two times each week during the full-time operation of the pool. Additional inspections and/or visits to the pool will be made by Company's management personnel as needed in order to assure Customer's satisfaction.

**UNSUITABLE WEATHER.** On rainy days, if the weather is still unsuitable for swimming at 6:00 p.m., the pool will be closed for the day. Additionally, if the weather is unsuitable for swimming before 6:00 p.m., the pool will be closed, with no refund due to the Customer. Weather unsuitable for swimming includes:

- (a) air temperature at or below 68 degrees Fahrenheit
- (b) heavy rain
- (c) severe weather

Company will work with Customer to reopen pool if weather becomes suitable for swimming early enough in the day.

**AFTER-HOURS EVENTS.** The Company will provide lifeguards for after-hours events subject to the following:

Lifeguard hours provided by the Company, other than those specified in this contract, shall be billed to the Customer at the prevailing rate.

Company shall provide no lifeguard beyond the hour of 11:00 PM.

For after-hours events, the Customer is not required to use Company lifeguards; however, Customer assumes full responsibility and liability for the pool in the event any individuals are within the pool area when the Company lifeguards are not scheduled to work. Customer agrees to indemnify and hold Company harmless for any and all claims for damages or injuries, or both arising from the use of the pool during hours other than those specified in

this contract unless Company's lifeguards have been scheduled according to the policies set forth herein.

For after-hours events, for which the Company is to provide lifeguards, the Customer is responsible for giving the Company seven (7) days' prior written notice as to:

- (a) The time and date of the event.
- (b) The number of people who are scheduled to attend.
- (c) The general age group of the people scheduled to attend.
- (d) Whether alcoholic beverages will be permitted at the event.
- (e) Any special admission instructions.

The following scale shall be used to determine the number of lifeguards required at an after-hours event:

<u>Number of People Expected</u>	<u>Number of Lifeguards Required</u>
At Pool	
1 to 50	2
51 to 75	3
76 to 100	4
101 or more	5, plus one (1) more for each additional 25 people or portion thereof. Example: 153 attendees would require 7 lifeguards.

One additional lifeguard shall be required for any teenage event, college age event, or for any event involving alcoholic beverages. Customer agrees to provide one adult chaperone for each ten (10) people at a teenage or college age event. The Company will not schedule lifeguards for any fraternity parties.

Billing shall include any time spent cleaning up after use by any special group or party. The Customer shall make payment of fees to the Company within ten (10) days after billing by Company.

9. **WADING POOL.** Company has no duties with regard to the wading pool or spa other than cleaning, maintaining water chemistry and backwashing filter.

10. **CLOSING.** The pool will be considered closed to swimmers at end of the day on the last day of operation as specified in Section 8 and Company will close the pool as soon after that date as Company deems possible. The Company will complete the following services, where applicable:

- (a) Remove and store all movable ladders, lifeguard chairs, and diving boards when required for closing pool.
- (b) Store pool furniture at Customer's pool.

11. **WATER QUALITY**. Company will be responsible for maintaining the following chemical levels of the swimming pool water within the tolerances of the local health department while pool is open to swimmers:

Free Chlorine	1.0 to 3.0 PPM
pH	7.2 to 7.8
Total Alkalinity	80 to 120 PPM
Calcium Hardness	200 to 300 PPM
Chlorine Stabilizer	less than 100 PPM

At no time will the water chemistry cause a failure of permission to operate the pool granted by the local health department. In the event the local health department revokes permission to operate the pool due to improper water chemistry, Customer shall be entitled to a partial refund of the contract price set forth herein computed by the following formula:

Number of days closed times the average daily portion of the  
contract price (total price divided by number of days pool is to be in  
operation as determined by this Agreement).

All of the foregoing notwithstanding however, the Company shall be excused from maintaining water quality as established herein and the Customer shall be entitled to no refund in the event of any Act of God, repairs, interference by Customer, together with any and all other reasons beyond the control of Company.

Any work performed by Company shall be subject to the conditions in the "Repair Work" provision of this Agreement.

12. **REPAIR WORK**. During the term of this Agreement, the Company recommends compliance with the Virginia Graeme Baker Pool and Spa Safety Act. The Company also recommends that Customer have its pool inspected annually by a licensed electrician and have all recommended electrical repairs completed by the inspecting electrician. During the term of this Agreement, the Company stands ready to perform any other installations or repairs needed to preserve Customer's pool aesthetics and/or to comply with State, Federal or local regulations, but Customer shall have the option of using its chosen contractor to perform any recommended repairs. The Customer agrees to indemnify, defend, and hold the Company harmless from all claims, injuries, damages, attorney's fees, and defense costs arising out of 1) repairs or renovations performed by any entity other than the Company, or 2) the failure of Customer to complete a) repair(s) or installations needed to comply with State, Federal or local regulations, or b) the above-described annual electrical inspection and recommended repair(s).

Work will be billed as follows:

- (a) Any repairs required as the result of error or negligence by Company shall be paid for by Company with no cost to Customer. Additionally, Company shall reimburse Customer for volume of water lost as a result of error or negligence.

- (b) Company will perform minor repairs to the pool and recirculation system, as part of the service provided; however, the Customer shall pay for parts and/or materials.
- (c) For repair work or necessary equipment wherein the cost does not exceed \$175.00, the Company shall bill Customer.
- (d) Any work or equipment in excess of \$175.00 to be provided by the Company or Company's subcontractors will be provided and billed to Customer. Such work or equipment shall be provided only upon the authorization of the designated representative of Customer, or in the event the Customer elects not to have such work performed or equipment provided, Company may cancel this Agreement if said election interferes with the Company's ability to carry out its responsibilities under this Agreement.

**13. CHEMICALS AND SUPPLIES.**

~~Company agrees to supply at its expense:~~

- (a) Chlorine and pH control chemicals throughout the period of this agreement.
- (b) The following pool and janitorial supplies:
  - Soap
  - Disinfectant
  - Paper towels
  - Deodorizer
  - Toilet tissue
  - Correct size trash can liners for the pool area and bathrooms
  - Glass cleaner

Customer shall be responsible for providing, at no cost to Company, other equipment such as:

Water hoses	Life hooks
Pool vacuum heads	Trash receptacles
Pool poles	Water test kit
Pool vacuum hoses	Test kit reagents
Leaf eater	First Aid Kit
Rescue tubes	First Aid supplies
Ring buoys	Pool rules signs

For Customer's convenience and for the efficient operation of the pool, Company will provide and invoice Customer for any of the items listed above that are not at the pool. Customer agrees to pay invoices for said supplies within thirty (30) days after invoicing.



- (c) Additional chemicals or labor. If additional chemicals or labor are required to maintain or correct pool water chemistry due to a failure or breakdown of Customer's equipment, or loss of water due (leak) to a defect in Customer's pool or recirculation system, Company shall notify Customer of such breakdown or defect, and if Customer elects not to remedy problem within seven (7) days of notice, Customer shall pay as an additional charge the reasonable expense of all said additional chemicals and/or labor. Amount owed for chemicals and/or labor shall be paid by Customer within ten (10) days after invoicing by Company.

14. **OFF-SEASON SERVICE.** The Company shall perform the following services at the Customer's pool during the off-season:

**Uncovered Off-Season Service with Filter System Running** – 2 visits per week in March, April and October. 1 visit per week November through February

- (a) Check chemicals and adjust as needed.
- (b) Vacuum as needed.
- (c) Clean skimmer baskets as needed.
- (d) Blow decks as needed.
- (e) Backwash filters & cleans strainer pots as needed.
- (f) Report any off-season vandalism to Customer.
- (g) Pool will be kept reasonably clean, but not up to Summer Season standards.

15. **INSTRUCTIONS.** Swimming instruction may be provided by Company for Customer's members only. Instruction shall be given by a qualified individual, while not on duty as a lifeguard. Company shall have rights to swimming lessons at Customer's pool during the term of this Agreement. Outside agencies approved by the Owner shall also have the right to teach swimming lessons. All Company insurance as described in Section 6 shall apply to Company's swimming instructors.

Arrangements for any instruction shall be made between individual requesting instruction and the Company. Only a member of the Customer's club or homeowner's association in good standing is eligible to receive instruction from Company on Customer's premises. Any resulting agreement shall be considered a contract between that individual and the Company; and Customer shall not be held liable for its enforcement nor for the collection of any fees due Company under the terms of that contract. Company shall be entitled to all fees paid for instruction provided by Company's employee(s).

16. **COMPANY'S INDEPENDENT CONTRACTOR STATUS.** Company is, and at all times shall be deemed to be, an independent contractor in the performance of services under this agreement. Company and its representatives are not, and shall not be considered or permitted to be, employees, agents, servants, joint venturers or partners of Customer.

17. **ACCESS AND UTILITIES.** The Customer will permit and maintain free access to the pool site and, upon signing Agreement, Customer will provide six (6) sets of keys to Company to open any and all locks required to operate the pool. Company shall keep and safeguard keys and release keys only to authorized personnel. Keys shall be returned to Customer in the event of termination of this Agreement.

Customer further agrees to furnish without cost to Company:

- (a) Water.
- (b) Electricity.
- (c) 110 volt electrical outlet in pump room.
- (d) Garbage pick-up service.
- (e) Lifeguard stand(s) and umbrella(s) for lifeguard stand(s).
- (f) Telephone.

(g) A secure and cooperative working environment at Customer's pool.

18. **TELEPHONE.** Customer shall be responsible for providing an operational telephone (not a pay phone) accessible to Company's lifeguards at pool site. Consistent with health department regulations and for the safety of pool patrons the pool will only be open when the pool telephone is operational.

19. **EMERGENCY CLOSING OF POOL.** The Customer and/or Company may close the pool in an emergency situation, whether the emergency be caused by breakdown of equipment, or by other causes outside of the Company's control; this shall not require any change or adjustment in any of the provisions of this Agreement. Should a time lapse of more than five (5) days be necessary to perform repairs and/or restore pool to normal operations, the Company shall refund fifty percent (50%) of the daily operating cost from the fifth day on a pro-rated basis. For purposes of this section, the daily operating cost is to be computed at one percent (1%) of the total contract cost until such time as the pool is reopened for normal operation. If the pool is not reopened for normal operation within thirty (30) days, Customer may cancel this Agreement by written notice to Company.

20. **CANCELLATION.** The Customer shall have the right to cancel this Agreement based on Company's non-performance of duties and responsibilities as follows:

- (a) Customer shall notify Company by certified mail of any problem regarding performance as detailed in this Agreement. Company shall have 48 hours following notification to remedy stated violation of contract.
- (b) If Company fails to remedy violation and continues to not perform as detailed in this Agreement; Customer may terminate Agreement by providing five (5) days' written notice to Company by certified mail.
- (c) In the event that Customer terminates contract by procedure stated above, the Customer shall either be entitled to a refund for money paid in advance or

shall be responsible for a balance owed to the Company. Refund to be computed as follows:

A daily portion of the contract price shall be computed by dividing the total contract price by the number of days pool was to be open to members as determined by this Agreement. This daily price shall be multiplied by the number of days pool was operated under this Agreement. That amount shall be subtracted from the total amount of contract price paid to Company by Customer as of termination date. The resulting figures shall either be the refund to which the Customer is entitled or remaining balance owed to Company.

- (d) Refund or balance owed shall be paid within five (5) business days after termination.

21. **MISCELLANEOUS.**

- (a) The Company may display a sign on the pool premises designating the responsibility to the Company for the quality of the pool and the performance of the pool staff.

22. **PROPOSAL EXPIRATION OPTION.** This contract is voidable at the Company's option if not executed by the Customer and returned to the Company by December 31, 2022.

23. **PAYMENTS.** The Company hereby proposes to perform the work and services set forth above for the price of \$50,433.00 for Year One, \$55,195.00 for Year Two, upon the specifications, conditions and terms as set forth herein. Payments by Customer to Company in Year One shall be made in accordance with the following schedule:

**2023**

<u>Month</u>	<u>Attendant Payments</u>	<u>Off-Season Service Payments</u>	<u>Total Payments Due</u>
(a) One (1%) percent upon <b>signing of Agreement</b>	\$459.00		\$459.00
(b) Off-season Maintenance on or before <b>January 1</b> of each year		\$500.00	\$500.00
(c) Nine (9%) percent plus off-season maintenance on or before <b>February 1</b> of each year.	\$4,129.00	\$500.00	\$5,876.10

(d) Off-season Maintenance on or before <b>March 1</b> of each year		\$850.00	\$850.00
(e) Off-season Maintenance on or before <b>April 1</b> of each year		\$850.00	\$850.00
(f) Fifteen (15%) percent plus off-season maintenance on or before <b>May 1</b> of each year	\$6,882.00		\$6,882.00
(g) Twenty-four (24%) percent on or before <b>June 1</b> of each year	\$11,012.00		\$11,012.00
(h) Twenty-six (26%) percent on or before <b>July 1</b> of each year	\$11,930.00		\$11,930.00
(i) Twenty (20%) percent on or before <b>August 1</b> of each year	\$9,177.00		\$9,177.00
(j) Five (5%) percent plus off-season maintenance on or before <b>September 1</b> of each year	\$2,294.00		\$2,294.00
(k) Off-season Maintenance on or before <b>October 1</b> of each year		\$850.00	\$850.00
(l) Off-season Maintenance on or before <b>November 1</b> of each year		\$500.00	\$500.00
(m) Off season Maintenance on or before <b>December 1</b> of each year		\$500.00	\$500.00
<b>TOTAL</b>	<b>\$45,883.00</b>	<b>\$4,550.00</b>	<b>\$50,433.00</b>

## 2024

<u>Month</u>	<u>Attendant Payments</u>	<u>Off-Season Service Payments</u>	<u>Total Payments Due</u>
(a) One (1%) percent upon signing of Agreement	\$506.00		\$506.00
(b) Off-season Maintenance on or before <b>January 1</b> of each year		\$500.00	\$500.00

(c) Nine (9%) percent plus off-season maintenance on or before <b>February 1</b> of each year.	\$4,558.00	\$500.00	\$5,058.00
(d) Off-season Maintenance on or before <b>March 1</b> of each year		\$850.00	\$850.00
(e) Off-season Maintenance on or before <b>April 1</b> of each year		\$850.00	\$850.00
(f) Fifteen (15%) percent plus off-season maintenance on or before <b>May 1</b> of each year	\$7,597.00		\$7,597.00
(g) Twenty-four (24%) percent on or before <b>June 1</b> of each year	\$12,155.00		\$12,155.00
(h) Twenty-six (26%) percent on or before <b>July 1</b> of each year	\$13,168.00		\$13,168.00
(i) Twenty (20%) percent on or before <b>August 1</b> of each year	\$10,129.00		\$10,129.00
(j) Five (5%) percent plus off-season maintenance on or before <b>September 1</b> of each year	\$2,532.00		\$2,532.00
(k) Off-season Maintenance on or before <b>October 1</b> of each year		\$850.00	\$850.00
(l) Off-season Maintenance on or before <b>November 1</b> of each year		\$500.00	\$500.00
(m) Off-season Maintenance on or before <b>December 1</b> of each year		\$500.00	\$500.00
<b>TOTAL</b>	<b>\$50,645.00</b>	<b>\$4,550.00</b>	<b>\$55,195.00</b>

Payments are due as indicated above. All payments as specified above, not made on or before ten (10) days after the due date shall be subject to delinquent payment fees of 1% per month, or any part of a month, of the amount due or any portion thereof. Payments for repairs, equipment or labor, not made on or before thirty (30) days after the due date shall be subject to delinquent payment fees of 1% per month, or any part of a month, of the amount due or any portion thereof. In the event payments are not received within ten (10) days from the due date for contract payments, and thirty (30) days from the due date for other payments, the Company shall have the right, at its option, and within its sole discretion to suspend, until all

overdue payments are received, or terminate its services under this Agreement and in either case to withdraw and remove all personnel from Customer's pool facilities without any further or additional notice to Customer. During a period of suspension or after termination, control of the pool and premises will be surrendered to the Customer and, if operated, it is at the Customer's sole risk and liability. Customer agrees to indemnify and hold Company harmless for any claims arising from the use of the pool(s) during a period of suspension or after termination due to payment(s) not being received on time. Any such suspension or termination notwithstanding, Customer shall be fully responsible for all payments provided herein.

In the event that Company elects to pursue collection of any amounts due under this Agreement, Customer shall pay all said amounts, together with interest at the rate of 12% per annum from the date the same became due, together with any and all cost of collection, including and together with any and all reasonable litigation expenses, including reasonable attorneys fees.

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**24. CUSTOMER CONTACTS.**

**PRIMARY CONTACT:**

Name \_\_\_\_\_

Title or Position: \_\_\_\_\_

Street \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Telephone (       ) \_\_\_\_\_

Email: \_\_\_\_\_

**PRESIDENT:**

Name \_\_\_\_\_

Street \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Telephone (       ) \_\_\_\_\_

Email: \_\_\_\_\_

**TREASURER:**

Name \_\_\_\_\_

Street \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Telephone (       ) \_\_\_\_\_

Email: \_\_\_\_\_

**BILLING ADDRESS:**

Name \_\_\_\_\_

Street \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

**FACILITY INFORMATION:**

Name \_\_\_\_\_

Street \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Telephone (        ) \_\_\_\_\_

25. **EXTENSION OF CONTRACT.** This Agreement shall automatically renew on the same terms and conditions herein at the contract amount in effect for the immediate preceding year, plus an amount not to exceed 5% thereof, at the sole option of Company. In the event that Customer desires not to renew and extend this Agreement as provided herein, Customer shall provide Company with written notice thereof on or before November 1 of the current year.

26. **GOVERNING LAW.** This Agreement shall be governed by the laws of the State of Texas.

27. **STRICT COMPLIANCE.** No failure of Company to exercise any power or right granted hereunder or to insist upon strict compliance by Customer with its obligations and duty hereunder shall constitute a waiver of Company's right to demand strict compliance with the provisions hereof at any time.

28. **TIME OF ESSENCE.** Time is of the essence of this Agreement.

29. **ENTIRE AGREEMENT. MODIFICATION. BINDING EFFECT.** This Agreement constitutes the entire agreement of the parties and supersedes any prior agreements, understandings or negotiations, written or oral. This Agreement may not be modified or amended except in writing, signed by both parties hereto. This Agreement shall be binding upon and enure to the benefit of the Customer and Company and to their respective heirs, successors and assigns.

30. **RIGHTS CUMULATIVE.** All rights and powers under this Agreement shall be cumulative and, except as otherwise provided herein, shall be in addition to any and all other provided at law or in equity.

31. **EXTENSIONS.** Unless other agreed to by Customer and Company in writing, the terms of this Agreement shall apply to all extensions and renewals hereof.

32. **SEVERABILITY.** If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

33. **ATTORNEYS FEES.** In the event of any legal proceeding or arbitration between the parties, each party shall be responsible for paying its own attorney's fees.

34. **COMPANY'S OPTION IN THE EVENT OF INCREASE IN COSTS.** The parties agree that, should any cost factor of the Company for providing services or products under this Agreement increase more than twenty percent (20%) in any contract year, Company may present a new Agreement to Customer on or before January 1 of the current contract year. Customer shall have 30 days from the date of receipt of the new Agreement in which to accept or reject the new Agreement. If Customer accepts the new Agreement then the new Agreement shall supersede and replace this Agreement. In the event the Customer elects not to accept the new Agreement, this Agreement may be terminated at the sole option of the Company.

35. **COMPANY'S OPTION IN THE EVENT OF INCREASE IN COSTS.** If there is an increase of fifteen percent (15%) or more in any cost aspect (including necessary increases in wages paid to pool staff) relating to this Agreement, Company may present to Customer a reasonable increase in the price of this Agreement based solely on Company's additional cost of providing the services provided for herein. Customer may, at its sole option, choose to refuse to pay an increase in price. In the event the Customer elects not to pay the increase, this contract may be terminated with 10 days written notice to Customer at the sole option of the company.

36. **COMPANY'S OPTION IN THE EVENT OF CHANGE IN LAWS.** If there is a change in local, state, or federal law which affects the cost of providing services under this Agreement, the Company may present a new Agreement to Customer, which new Contract shall supersede and replace this Agreement. Customer shall have 30 days from the date of receipt of the new contract in which to accept or reject the new contract. In the event the Customer elects not to accept the new Agreement, this Agreement may be terminated at the sole option of the Company.

37. **COMPANY'S OPTION IN THE EVENT OF CHANGE OF SCHOOL SCHEDULE.** The parties agree, should there be any change in the school schedule which affects the cost of providing services under this Agreement, Company may present a new Agreement to Customer, which new Agreement shall supersede and replace this Agreement. Customer shall have 30 days from the date of receipt of the new Agreement in which to accept or reject the new Agreement. In the event the Customer elects not to accept the new Agreement, this Agreement may be terminated at the sole option of the Company.

38. **ACCEPTANCE.** Acceptance of this Agreement by Customer and Company through signatures below will constitute a contract entered into in accordance with the specifications, terms and conditions and addenda attached hereto.

**San Antonio Pool Management**

By: \_\_\_\_\_

Officer

**City of Kirby**



<input checked="" type="checkbox"/>	DISCUSSION AND POSSIBLE ACTION ITEMS
<input type="checkbox"/>	SPECIAL CONSIDERATION
<input type="checkbox"/>	CONSIDERATION OF MINUTES
<input type="checkbox"/>	PUBLIC HEARING
<input type="checkbox"/>	PRESENTATION
<input type="checkbox"/>	WORKSHOP

**CITY OF KIRBY  
CITY COUNCIL MEETING  
AGENDA ITEM SUMMARY**

**DATE: February 8, 2024**

**AGENDA ITEM: 8. f.**

- f. Discussion and Possible Action on the Agreement between the City of Kirby and the Greater Northeast Little League to renew the contract.

## LICENSE AGREEMENT

This License Agreement is made by and between the City of Kirby (hereinafter called "City") and the Greater Northeast Little League, Inc. (hereinafter called "Licensee").

**1. License:** City hereby grants a non-exclusive license to Licensee for the use of a tract of land, including all ball fields and concession stand, owned by the City of Kirby and located within the corporate limits of the City and described as follows:

Fields and Concession Stand located at 5745 Binz Engleman      CB 5092 P-13B ABS 134

**2. Use:** Licensee may use the Property for the purpose of conducting athletic functions sponsored by Licensee to include a Little League Baseball Program (as that term is recognized by the State and National Little League Organization).

The City has the right to schedule tournaments and functions throughout the year and will give Licensee a notice in advance of one month. The City will not schedule a tournament on a date that interferes with a previous scheduled little league event.

It is the desire of the City that as many children as possible have the opportunity to participate in the athletic programs of Licensee. It is therefore agreed that Licensee will operate a Baseball Program under official rules and regulations of Little League Baseball, Inc., Williamsport, Pennsylvania, and under the rules and regulations established by Licensee's Board of Directors.

**IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT LICENSEE SHALL INDEMNIFY AND HOLD CITY HARMLESS FROM ANY LIABILITY FOR PAYMENT OF ANY OBLIGATIONS DUE TO-ANY IMPROVEMENTS OR OTHER THINGS PLACED IN OR UPON SAID PREMISES BY LICENSEE. LICENSEE-SHALL NOT ENCUMBER, IN ANY MANNER, NOR PERMIT A LIEN OF ANY TYPE TO BE PLACED ON SAID PREMISES, AND LICENSEE AGREES TO INDEMNIFY AND HOLD HARMLESS CITY CONCERNING ANY SUCH FINANCIAL OBLIGATIONS, LIENS, OR ENCUMBRANCES OF ANY KIND.**

**3. Term:** The term of this License is for 2 years beginning January 1, 2024 and terminating December 31, 2025 (the "Initial Term") provided that City may at any time terminate this License and take possession of the Property without being guilty in any manner of trespass; and every claim for damages for and by reason of such re-entry are hereby expressly waived by Licensee. It is understood that if the City terminates this Agreement for any reason, Licensee shall be given a hearing before the City Council prior to the effective date of such action to discuss such termination. At the end of the Initial Term, this License shall automatically renew for two (2) years (each a "Renewal Term") unless either party provides written notice of termination at least thirty (30) days before the expiration of the Initial Term or any Renewal Term. The terms and conditions of this License, including any changes to the rent amount, shall remain the same during each Renewal Term unless otherwise agreed upon in writing by both Parties.

**4. Utilities:** Licensee shall be responsible the lesser of the 2 meters that will be installed for water and electricity.

**5. Rent** Licensee shall pay City rent in the amount of \$1.00 per year, payable annually on or before January 15<sup>th</sup> of each year during the term of this License.

**6. Improvements to Property:** It is further agreed that the City Council shall gave the right to

approve all plans and specifications before any improvements are made to the Property by

Licensee, other than normal maintenance, and Licensee shall submit all such plans and specifications to the City Council for review and approval. Upon termination or expiration of this Agreement, Licensee shall have the right to remove all physical improvements placed upon the Property by Licensee, provided that Licensee shall repair any damage to the Premises resulting from said removal.

7. Concession Stand: Licensee shall be permitted to operate a concession stand on the Premises and shall be permitted to sell merchandise, pre-packaged snacks, prepared food and non-alcoholic beverages during Little League functions for the period from one (1) hour immediately before said function commences until one (1) hour immediately after said function. The concession stand will not be allowed to operate during the City of Kirby July 4<sup>th</sup> event. Licensee shall provide adequate and suitable containers for collecting discarded cups, papers, and trash from the operation of said concession stand and shall be responsible for keeping the entire Premises free of all paper, cups, and trash resulting from the operation of said concession stand. The City of Kirby has the right to sell concessions at the same time of the little league if another City sponsored sport or function is going on at the same time of a scheduled little league game. At no time shall Licensee sell or allow the sale of beer, wine, or any other alcoholic beverage.

8. Equal Opportunity: It is agreed and understood between the parties hereto that the Premises owned by the City are the subject of the contract and that in the conduct of Licensee's operation thereon, discrimination on account of race, color, sex, religion, age, disability, or national origin, directly or indirectly, is strictly prohibited.

9. Maintenance and Responsibility:

a) It is understood that Licensee will maintain in a good condition all property furnished to it by the City and further that Licensee will maintain the Premises in a condition satisfactory to City. If the fields are in need of mowing, the City will notify Licensee that the fields must be mowed within 10 days of receipt of such notice. If fields are not mowed by Licensee within 10 days of Licensee receipt of such notice, the City may mow the fields and Licensee shall pay the City fee of \$150.00 each time the City mows the fields where Licensee fails to do so after receiving notice from the City that the fields need to be mowed. If Licensee fails to make such payment within 10 days of receipt of an invoice from the City, Licensee will be in default under this Agreement.

b) In return for services rendered by Licensee to the youth of City, City will provide such maintenance that requires the use of heavy equipment. Such equipment shall be operated ONLY by a City employee and such maintenance shall be authorized by the City Manager ONLY, and scheduled by his/her designated representative. Other maintenance by City shall be at the discretion of the City Council upon written request by the City Manager.

10. Advertising: All advertising shall be maintained in a state of good repair. All fence signs shall be removed at the end of the regular Little League season.

11. Annual Report and Financial Statement: It is agreed that Licensee shall furnish to City, through the City Manager, a financial statement of the past year's operation by October 15<sup>th</sup> of

each year. Said financial statement shall contain the same information as is furnished in Licensee's Annual Report to the National Little League Headquarters. If said annual report is not submitted, said financial statement shall contain the following information:

- a. Value of physical improvements placed on the Property
- b. Statement of assets and liabilities
- c. Disbursement of physical improvements
- d. Disbursements for utilities, itemized as to water, electricity, and gas
- e. Number of children in league
- f. Gross receipts from advertising sold
- g. Gross receipts from all donations
- h. Gross receipts from concessions
- i. Disbursements for concessions
- j. All other receipts and disbursements
- k. A complete inventory of all Greater Northeast Little League equipment used within the concession stand

The League Treasurer must, upon written request by the City Manager, furnish the League Bank balance within ten (10) days of such written request.

12. Insurance and Indemnification: As a condition precedent to the use of the Premises, Licensee agrees to indemnify and hold harmless City, its officials, employees, and agents from and against any and all costs, claims, and damages (including attorney's fees) that may be caused by the use of said Property, and shall protect and indemnify City from any and all claims costs, expenses, judgments, and causes of action arising out of the use of said Property, and shall defend (through legal counsel acceptable to the City) any litigation arising in connection with such use, all at Licensee's sole cost and expense. In addition, Licensee agrees to obtain an insurance policy protecting City from any liability and to have City named as co-insured in said policy. Such policy shall be for not less than \$500,000.00 per person for bodily injuries, not less than \$50,000.00 for property damage, and an aggregate limit of not less than \$1,000,000.00 per occurrence. Proof of payment of premium for said policy (and evidence of the existence of said policy) shall be delivered to and kept by the City Secretary of City and such insurance policy shall be maintained in full force by Licensee so long as this Agreement is in effect.

13. Non-Profit Status: The Licensee shall have on file at City Hall a completed application for non-profit civic organization status for the City of Kirby, signed and approved by the City Manager.

14. Sublicense: Licensee may not assign its rights under this license or sublicense the Property without the prior express consent of the City Council as evidenced by a resolution adopted at a regular or special meeting of the City Council of Kirby.

15. Severability: Each section, subsection, provision, requirement, regulation or restriction established by this Agreement is hereby declared to be independent, and the holding of any part to be unconstitutional, invalid, or ineffective for any cause, shall not affect or render invalid this agreement or amendments hereto as a whole or any part thereof, except the particular part so declared to be invalid.

16. Entire Agreement: This Agreement constitutes the entire agreement between the City and the Licensee concerning the use of the Property.

17. Amendments: This Agreement may be amended only by a written amendment executed on behalf of the parties hereto.

18. Counterparts: This Agreement may be executed in counterparts which, when taken together, constitute one and the same agreement.

19. Facsimiles: This Agreement may be executed by a facsimile signature or a signature transmitted by facsimile and such signature shall be considered the same as an original signature for all purposes.



<input checked="" type="checkbox"/>	DISCUSSION AND POSSIBLE ACTION ITEMS
<input type="checkbox"/>	SPECIAL CONSIDERATION
<input type="checkbox"/>	CONSIDERATION OF MINUTES
<input type="checkbox"/>	PUBLIC HEARING
<input type="checkbox"/>	PRESENTATION
<input type="checkbox"/>	WORKSHOP

**C I T Y O F K I R B Y**  
**C I T Y C O U N C I L M E E T I N G**  
**A G E N D A I T E M S U M M A R Y**

**DATE: February 8, 2024**

**AGENDA ITEM: 8. g.**

- g. Discussion and Possible Action on creating new Variance/Specific use application.



## APPLICATION FOR SPECIFIC USE PERMIT

CITY OF KIRBY

112 Bauman st

Kirby, TX 78219

(210) 661-3198

### Property Identification:

Street Address: \_\_\_\_\_

Legal Description: \_\_\_\_\_

Present Improvement of Property: \_\_\_\_\_

### Owner of Property:

Name \_\_\_\_\_

Mailing Address \_\_\_\_\_

Phone \_\_\_\_\_

Email \_\_\_\_\_

### Authorized Agent of Applicant:

Name \_\_\_\_\_

Mailing Address \_\_\_\_\_

Phone \_\_\_\_\_

Email \_\_\_\_\_

If owner of property is not submitting application, a letter of authorization from the owner to apply for the request must accompany this application.

### Proposed Use Requested:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The applicant believes the Planning & Zoning Commission should approve this request for the following reason(s):

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**If required by City staff, please attach two (2) sets of the site plan, no larger than 11" x 17", of the proposed use to include the following information:**

- (A) Name, address and telephone number of applicant
- (B) Drawn to scale showing scale used, north arrow, date and title of project
- (C) Location, length and width of streets, alleys and easements
- (D) Location and width of driveways and sidewalks
- (E) Property lines and setback lines
- (F) Location and dimension of buildings, parking spaces, landscaped areas and/or open space
- (G) Location of signs and design features
- (H) Location of visual screens and design features if required or proposed
- (I) Landscape designs and materials proposed
- (J) Total square footage of the lot or lots, proposed buildings, parking spaces, sign area, landscaped areas and/or open space areas
- (K) Height of building(s), signs and visual screens
- (L) Number of parking spaces proposed including handicap accessible spaces.

Has a previous application for a specific use permit been filed?

Yes No If Yes, Date: \_\_\_\_\_

I hereby certify the preceding information and any supporting documents submitted herewith are true and correct to the best of my knowledge.

I acknowledge this application will not be reviewed by the Planning and Zoning Commission until: (i) required notices have been published and mailed identifying the scheduled public hearing date; and (ii) all required submissions have been reviewed by City staff and all fees paid.

\_\_\_\_\_  
Signature of Applicant

\_\_\_\_\_  
Date

Filing Fee Due: \$60.00

Make all checks and money orders payable to the City of Kirby.

FOR OFFICE USE ONLY

Fee Received: \_\_\_\_\_

Meeting Date: \_\_\_\_\_

Legal Notice: \_\_\_\_\_

Revised 02/02/2024

## VARIANCE APPLICATION

CITY OF KIRBY

112 Bauman st

Kirby, Tx 78219

Date of Request: \_\_\_\_\_

### Record Owner of Property:

Owner Name: \_\_\_\_\_

Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Phone No.: \_\_\_\_\_ Email: \_\_\_\_\_

### Agent\*/Applicant:

Agent/Applicant Name: \_\_\_\_\_

Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Phone No.: \_\_\_\_\_ Email: \_\_\_\_\_

### Property Information:

Property Address or General Location: \_\_\_\_\_

Property ID(s): \_\_\_\_\_ Current Zoning: \_\_\_\_\_

Legal Description: Lot(s): \_\_\_\_\_ Block(s): \_\_\_\_\_ Subdivision: \_\_\_\_\_

Lot Acreage: \_\_\_\_\_ Present Use of Property: \_\_\_\_\_

Description of Variance Request: (Cite hardship or difficulty as described in criteria for approval)

Variance from Code Section & Requirement: \_\_\_\_\_

Provide Description of Request: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Please answer the following questions in detail: (use additional pages if necessary)

**1) What are the special circumstances or conditions affecting the land that warrant the request?**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**2) How may other surrounding properties be affected by the request?**

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**3) What undue hardship may exist if the variance is not granted?**

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**Criteria for Approval Recommendation**

- 1) The variance requested arises from such condition which is unique to the property in question and which is not ordinarily shared by others in the same neighborhood or zoning district.
- 2) The particular physical surrounding, shape or topographical condition of the specific property involved would result in a practical difficulty or unnecessary hardship upon or for the owner or occupant, as distinguished from a mere inconvenience, if the provision of the regulations were literally enforced. The hardship must be caused by the property itself and not created by the owner/applicant.
- 3) The request for a variance is not based exclusively up a desire from the owner, occupant, or applicant for increased financial gain from the property, or to reduce an existing financial hardship.
- 4) The granting of the variances will not be materially detrimental or injurious to, or adversely affect the rights of owners or residents of surrounding properties.
- 5) The variance will not authorize the operation of a use other than those uses specifically authorized for the zoning district in which the subject property is located.
- 6) The proposed variance will not impair an adequate supply of light or air to adjacent property, substantially increase congestion in the public streets, increase danger of fire, endanger the public safety, substantially diminish or impair property values within the neighborhood, or otherwise be opposed to the general spirit and intent of the City's Code of Ordinance.

**Submittal Check List**

- ✓ Completed application and fee
- ✓ Letter of Authorization if applicant is not the Record Owner of the property
- ✓ Site Plan drawn to scale and no larger than 11" x 17" (see below for required details)
- ✓ Location of all property lines and their dimensions
- ✓ Location of all setbacks according to current zoning district
- ✓ Location of and dimensions of all existing and proposed buildings/structures, to include distances from property lines

- ✓ Location of all adjacent streets, alleys, and access easements, to include known utility easements (Additional information may be deemed necessary by staff for processing and reviewing of this request.)

I hereby certify that I am the agent\*/record owner of the property. I further certify that the information provided on

this application is true and correct.

I understand that this request must go forward to the Planning & Zoning Commission with further review with City Council before a final decision will be presented to me.

Record Owner Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Agent\*/Applicant Signature (if not owner): \_\_\_\_\_ Date: \_\_\_\_\_

Printed Name of Applicant: \_\_\_\_\_

Filing Fee Due: \$60.00

Make all checks and money orders payable to the City of Kirby.

**For Office Use Only**

Date Received: \_\_\_\_\_ Fee Received By: \_\_\_\_\_

Amount: \$ \_\_\_\_\_ Cash: \_\_\_\_\_ Check: \_\_\_\_\_ Credit Card: \_\_\_\_\_ Receipt No.: \_\_\_\_\_

Revised 02/02/2024

<input checked="" type="checkbox"/>	DISCUSSION AND POSSIBLE ACTION ITEMS
<input type="checkbox"/>	SPECIAL CONSIDERATION
<input type="checkbox"/>	CONSIDERATION OF MINUTES
<input type="checkbox"/>	PUBLIC HEARING
<input type="checkbox"/>	PRESENTATION
<input type="checkbox"/>	WORKSHOP

**C I T Y O F K I R B Y**  
**C I T Y C O U N C I L M E E T I N G**  
**A G E N D A I T E M S U M M A R Y**

**DATE: February 8, 2024**

**AGENDA ITEM: 8. h.**

- h. Discussion and Possible Action on Certificate of Appointment for a Health Authority.



## Certificate of Appointment for a Health Authority

The Health Authority has been appointed and approved by the:

*(Check the appropriate designation below)*

\_\_\_\_\_ Commissioners Court for \_\_\_\_\_ County

☒ Governing Body for the Municipality of KIRBY

\_\_\_\_\_ Director, \_\_\_\_\_ Health Department

\_\_\_\_\_ Director, \_\_\_\_\_ Public Health District

I, \_\_\_\_\_, acting in my capacity as:

*(Check the appropriate designation below)*

\_\_\_\_\_ County Judge or Designee

\_\_\_\_\_ Mayor or Designee

\_\_\_\_\_ Non-physician and the Local Health Department Director

\_\_\_\_\_ Non-physician and the Public Health District Director

do hereby certify the physician, CHICHI JUNDA WOO, who is licensed  
by the Texas Board of Medical Examiners, was duly appointed as the (check as applicable),

☒ Health Authority

\_\_\_\_\_ Health Authority Designee

for the jurisdiction of KIRBY, Texas.

Date term of office begins MAY 14, 20 22

Date term of office ends MAY 13, 20 24, unless removed by law.

I certify to the above information on this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Signature of Appointing Official





## Certificate of Appointment for a Health Authority

The Health Authority has been appointed and approved by the:

*(Put an "X" by the appropriate designation below)*

\_\_\_\_ Commissioners Court for \_\_\_\_\_ County

☒ Governing Body for the Municipality of \_\_\_ Kirby \_\_\_\_\_

\_\_\_\_ Director, \_\_\_\_\_ Health Department

\_\_\_\_ Director, \_\_\_\_\_ Public Health District

I, \_\_\_\_\_, acting in my capacity  
as: *(Put an "X" by the appropriate designation below)*

\_\_\_\_ County Judge or Designee

\_\_\_\_ Mayor or Designee

\_\_\_\_ Non-physician and the Local Health Department Director

\_\_\_\_ Non-physician and the Public Health District Director

do hereby certify the physician, \_\_\_ Chichi Junda Woo \_\_\_\_\_, who is licensed  
by the Texas Board of Medical Examiners, was duly appointed as the (check as applicable),

\_\_\_\_ Health Authority

☒ Health Authority Designee

for the jurisdiction of \_\_\_ Kirby \_\_\_\_\_, Texas.

Date term of office begins \_\_\_\_\_, 20\_\_

Date term of office ends \_\_\_\_\_, 20\_\_, unless removed by law.

I certify to the above information on this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Signature of Appointing Official



**METROPOLITAN  
HEALTH DISTRICT**

## 2023 Texas Notifiable Conditions

**Report all suspected cases to**

**San Antonio Metropolitan Health District, unless noted by \***

Reporting forms are available at <http://www.sanantonio.gov/Health/HealthProfessionals/ReportableDiseases>.

Call as indicated for immediately reportable conditions

### Epidemiology Program

24/7 Main Line: (210) 207-8876 Fax: (210) 207-2007

Fax for COVID-19: (210) 207-8807

Condition	When to Report	Condition	When to Report
Amebic meningitis and encephalitis	Within 1 week	Leishmaniasis	Within 1 week
Anaplasmosis	Within 1 week	Listeriosis <sup>6</sup>	Within 1 week
Anthrax <sup>1, 2</sup>	Call Immediately	Lyme disease	Within 1 week
Arboviral infections <sup>3, 4</sup>	Within 1 week	Malaria	Within 1 week
*Asbestosis <sup>5</sup>	Within 1 week	Measles (rubeola)	Call Immediately
Ascariasis	Within 1 week	Meningococcal infection, invasive ( <i>Neisseria meningitidis</i> ) <sup>6</sup>	Call Immediately
Babesiosis <sup>4</sup>	Within 1 week	Mumps	Within 1 work day
Botulism (adult and infant) <sup>2, 6, 7</sup>	Call Immediately	Paragonimiasis	Within 1 week
Brucellosis <sup>1, 2</sup>	Within 1 work day	Pertussis	Within 1 work day
Campylobacteriosis	Within 1 week	*Pesticide poisoning, acute occupational <sup>17</sup>	Within 1 week
*Cancer <sup>8</sup>	See rules <sup>6</sup>	Plague ( <i>Yersinia pestis</i> ) <sup>1, 2</sup>	Call Immediately
<i>Candida auris</i>	Within 1 work day	Poliomyelitis, acute paralytic	Call Immediately
Carbapenem-resistant <i>Enterobacteriales</i> (CRE) <sup>9</sup>	Within 1 work day	Poliovirus infection, non-paralytic	Within 1 work day
Chagas disease <sup>4</sup>	Within 1 week	Prion disease such as Creutzfeldt-Jakob disease (CJD) <sup>18</sup>	Within 1 week
Chickenpox (varicella) <sup>10</sup>	Within 1 week	Q fever	Within 1 work day
*Contaminated sharps injury <sup>11</sup>	Within 1 month	Rabies, human	Call Immediately
*Controlled substance overdose <sup>12</sup>	Report Immediately	Rubella (including congenital)	Within 1 work day
Coronavirus, novel <sup>13</sup>	Call Immediately	Salmonellosis, including typhoid fever <sup>6</sup>	Within 1 week
Cryptosporidiosis	Within 1 week	Shiga toxin-producing <i>Escherichia coli</i> <sup>6</sup>	Within 1 week
Coronavirus Disease 2019 (COVID-19)	Within 1 week	Shigellosis	Within 1 week
Cyclosporiasis	Within 1 week	*Silicosis <sup>5</sup>	Within 1 week
Cysticercosis	Within 1 week	Smallpox <sup>1, 2</sup>	Call Immediately
Diphtheria <sup>6</sup>	Call Immediately	*Spinal cord injury <sup>14</sup>	Within 10 work days
*Drowning/near drowning <sup>14</sup>	Within 10 work days	Spotted fever rickettsioses	Within 1 week
Echinococcosis	Within 1 week	Streptococcal disease ( <i>S. pneumoniae</i> ), invasive	Within 1 week
Ehrlichiosis	Within 1 week	<i>Taenia solium</i> and undifferentiated <i>Taenia</i> infection	Within 1 week
Fascioliasis	Within 1 week	Tetanus	Within 1 week
<i>Haemophilus influenzae</i> , invasive	Within 1 week	Tick-borne relapsing fever	Within 1 week
*Hansen's disease (leprosy) <sup>15</sup>	Within 1 week	*Traumatic brain injury <sup>14</sup>	Within 10 work days
Hantavirus infection	Within 1 week	Trichinosis	Within 1 week
Hemolytic uremic syndrome (HUS)	Within 1 week	Trichuriasis	Within 1 week
Hepatitis A	Within 1 work day	Tularemia <sup>1, 2</sup>	Call Immediately
Hepatitis B, C, and E (acute)	Within 1 week	Typhus	Within 1 week
Hepatitis B infection identified prenatally or at delivery (mother)	Within 1 week	Vancomycin-intermediate <i>Staph aureus</i> (VISA) <sup>6</sup>	Call Immediately
Hepatitis B, perinatal (HBsAg+ < 24 months old) (child)	Within 1 work day	Vancomycin-resistant <i>Staph aureus</i> (VRSA) <sup>6</sup>	Call Immediately
Hookworm (ancylostomiasis)	Within 1 week	<i>Vibrio</i> infection, including cholera <sup>6</sup>	Within 1 work day
Influenza-associated pediatric mortality	Within 1 work day	Viral hemorrhagic fever (including Ebola) <sup>2</sup>	Call Immediately
Influenza, novel	Call Immediately	Yellow fever	Call Immediately
*Lead, child blood, any level & adult blood, any level <sup>16</sup>	Call/Fax Immediately	Yersiniosis	Within 1 week
Legionellosis	Within 1 week		

In addition to specified reportable conditions, any outbreak, exotic disease, or unusual group expression of disease that may be of public health concern should be reported by the most expeditious means available. This includes any case of a select agent. <sup>2</sup>

See select agent list at <https://www.selectagents.gov/sat/list.htm>

\*See condition-specific footnote for reporting contact information

(Rev. 1/23) Expires 1/31/24 -- Go to <http://www.sanantonio.gov/Health/HealthProfessionals/ReportableDiseases> for updates.

Report to STDs/ HIV Program			
Main Line: (210) 207-8830		Fax: (210) 207-2116	
Condition	When to Report	Condition	When to Report
Acquired immune deficiency syndrome (AIDS) <sup>19</sup>	Within 1 week	Human immunodeficiency virus (HIV), acute infection <sup>19,20</sup>	Within 1 work day
Chancroid <sup>19</sup>	Within 1 week	Human immunodeficiency virus (HIV), non-acute Infection <sup>19,20</sup>	Within 1 week
<i>Chlamydia trachomatis</i> infection <sup>19</sup>	Within 1 week	Syphilis – all other stages <sup>19,21</sup>	Within 1 week
Gonorrhea <sup>19</sup>	Within 1 week	Syphilis – primary and secondary stages <sup>19,21</sup>	Within 1 work day
Report to Tuberculosis Program			
Main Line: (210) 207-8823		Fax: (210) 207-8779	
Tuberculosis infection <sup>22</sup>	Within 1 week	Tuberculosis ( <i>Mycobacterium tuberculosis</i> complex) <sup>6,23</sup>	Within 1 work day

### 2023 Texas Notifiable Conditions Footnotes

- Lab isolate should be sent to San Antonio Metropolitan Health District (Metro Health) lab. Call 210-207-5883 for specimen submission information.
- Please secure select agent isolates and specimens in accordance with the guidance in the [Select Agent Regulation](#), and immediately initiate a consultation with public health regarding need for further testing or sequencing. Notify any transfer facilities of any test results of high consequence/interest
- Arboviral infections including, but not limited to, those caused by California serogroup virus, chikungunya virus, dengue virus, Eastern equine encephalitis (EEE) virus, St. Louis encephalitis (SLE) virus, Western equine encephalitis (WEE) virus, West Nile (WN) virus, and Zika virus.
- All blood collection centers should report all donors with reactive tests for West Nile virus, Zika virus, *Babesia* species and *Trypanosoma cruzi* (Chagas disease) to the DSHS Zoonosis Control Branch. If your center uses a screening assay under an IND protocol, please include results of follow-up testing as well. Fax the report to Metro Health at 210-207-2007 and send to DSHS by secure email to [WNV@dshs.texas.gov](mailto:WNV@dshs.texas.gov) or fax the report to 512-776-7454. Providing the following data points will suffice: Collection Agency; Unique BUI #; Test Name; Collection Date; Last Name, First Name, Donor Phone Number, Donor Address, Date of Birth, Age, Sex, Race, and Hispanic Ethnicity (Y/N).
- Lab samples of the following must be sent to the Department of State Health Services, Laboratory Services Section, 1100 West 49th Street, Austin, Texas 78756-3199 or other public health laboratory as designated by the Department of State Health Services: *Candida auris* isolates, *Clostridium botulinum* isolates, *Corynebacterium diphtheriae* isolates, *Haemophilus influenzae* isolates from normally sterile sites in children under five years old, *Listeria monocytogenes* isolates, *Neisseria meningitidis* isolates from normally sterile sites or purpuric lesions, *Salmonella* species isolates (also requested - specimens positive for *Salmonella* by culture-independent diagnostic testing (CIDT) methods), Shiga toxin-producing *Escherichia coli* (all *E. coli* O157:H7 isolates and any *E. coli* isolates or specimens in which Shiga toxin activity has been demonstrated), isolates of all members of the *Mycobacterium tuberculosis* complex, *Staphylococcus aureus* with a vancomycin MIC greater than 2 µg/mL (VISA and VRSA), *Streptococcus pneumoniae* isolates from normally sterile sites in children under five years old, and *Vibrio* species isolates (also requested - specimens positive for *Vibrio* by culture-independent diagnostic testing (CIDT) methods). Pure cultures (or specimens) should be submitted as they become available accompanied by a current department Specimen Submission Form. See the Texas Administrative Code (TAC) Chapter 97: §97.3(a)(4), §97.4(a)(6), and §97.5(a)(2)(C). Call 512-776-7598 for specimen submission information.
- Report suspected botulism immediately by phone to 210-207-8876.
- For more information on cancer reporting rules and requirements go to <http://www.dshs.state.tx.us/tcr/reporting.shtm>.
- See additional CRE reporting information at [http://www.dshs.state.tx.us/IDCU/health/antibiotic\\_resistance/Reporting-CRE.doc](http://www.dshs.state.tx.us/IDCU/health/antibiotic_resistance/Reporting-CRE.doc).
- For Varicella (Chickenpox) reporting see <https://www.sanantonio.gov/Health/HealthProfessionals/ReportableDiseases> for the Varicella Reporting Form.
- Applicable for governmental entities. Not applicable to private facilities. (TAC §96.201) Initial reporting forms for Contaminated Sharps at [http://www.dshs.texas.gov/idcu/health/infection\\_control/bloodborne\\_pathogens/reporting/](http://www.dshs.texas.gov/idcu/health/infection_control/bloodborne_pathogens/reporting/).
- To report a Controlled Substance Overdose, go to <http://odreport.dshs.texas.gov/>.
- Novel coronavirus causing severe acute respiratory disease includes Middle East Respiratory Syndrome (MERS) and Severe Acute Respiratory Syndrome (SARS). Call immediately for SARS, MERS, or any other novel coronavirus cases.
- Please refer to specific rules and regulations for injury reporting and who to report to at <http://www.dshs.state.tx.us/injury/rules.shtm>.
- Reporting forms are available at <https://www.dshs.texas.gov/idcu/disease/hansens/forms.shtm>.
- For lead reporting information see <http://www.dshs.texas.gov/lead/Reporting-Laws-Administrative-Code.aspx>.
- For pesticide reporting information see <https://www.dshs.texas.gov/sites/default/files/epitox/pesttrptfrm.pdf>.
- For purposes of surveillance, CJD notification also includes Kuru, Gerstmann-Sträussler-Scheinker (GSS) disease, fatal familial insomnia (FFI), sporadic fatal insomnia (sFI), Variably Protease-Sensitive Prionopathy (VPSPr), familial CJD (fCJD) or genetic CJD (gCJD), variant CJD (vCJD), iatrogenic CJD (iCJD) and any novel prion disease affecting humans.
- Please refer to specific rules and regulations for HIV/STD reporting and who to report to at: <http://www.sanantonio.gov/Portals/0/Files/Health/HealthProfessionals/ReportableConditions-STDs.pdf>
- Any person suspected of having HIV should be reported, including HIV exposed infants.
- Laboratories should report syphilis test results within 3 work days of the testing outcome.
- TB infection is determined by a positive result from an FDA-approved Interferon-Gamma Release Assay (IGRA) test such as T-Spot® TB or QuantiFERON® - TB GOLD In-Tube Test or a tuberculin skin test, and a normal chest radiograph with no presenting symptoms of TB disease. See rules and reporting information at <http://www.dshs.state.tx.us/idcu/disease/tb/reporting/>. Please report skin test results in millimeters.
- Reportable tuberculosis disease includes the following: suspected tuberculosis disease pending final laboratory results; positive nucleic acid amplification tests; clinically or laboratory-confirmed tuberculosis disease, and all *Mycobacterium tuberculosis* (*M. tb*) complex including *M. tuberculosis*, *M. bovis*, *M. africanum*, *M. canettii*, *M. microti*, *M. caprae*, and *M. pinnipedii*. See rules and reporting information at <http://www.dshs.texas.gov/idcu/disease/tb/reporting/>.

### San Antonio Metropolitan Health District

**Epidemiology Program**  
Phone (210) 207-8876  
Fax (210) 207-2007  
Fax for COVID-19: (210) 207-8807

**Sexually Transmitted Diseases/HIV Program**  
Phone (210) 207-8830  
Fax (210) 207-2116

**Tuberculosis Program**  
Phone (210) 207-8823  
Fax (210) 207-8779

<input checked="" type="checkbox"/>	DISCUSSION AND POSSIBLE ACTION ITEMS
<input type="checkbox"/>	SPECIAL CONSIDERATION
<input type="checkbox"/>	CONSIDERATION OF MINUTES
<input type="checkbox"/>	PUBLIC HEARING
<input type="checkbox"/>	PRESENTATION
<input type="checkbox"/>	WORKSHOP

**CITY OF KIRBY  
CITY COUNCIL MEETING  
A G E N D A I T E M S U M M A R Y**

**DATE: February 8, 2024**

**AGENDA ITEM: 8. i.**

- i. Discussion and Possible Action to create a Department of Parks and Recreation.

<input checked="" type="checkbox"/>	DISCUSSION AND POSSIBLE ACTION ITEMS
<input type="checkbox"/>	SPECIAL CONSIDERATION
<input type="checkbox"/>	CONSIDERATION OF MINUTES
<input type="checkbox"/>	PUBLIC HEARING
<input type="checkbox"/>	PRESENTATION
<input type="checkbox"/>	WORKSHOP

**CITY OF KIRBY  
CITY COUNCIL MEETING  
A G E N D A I T E M S U M M A R Y**

**DATE: February 8, 2024**

**AGENDA ITEM: 8. j.**

j. Discussion and Possible Action for the City to pay for Fitness Instructors.