

AGENDA FOR REGULAR MEETING

KERRVILLE CITY COUNCIL

TUESDAY, DECEMBER 10, 2013, 6:00 P.M.

KERRVILLE CITY HALL UPSTAIRS CONFERENCE ROOM

701 MAIN STREET, KERRVILLE, TEXAS

KERRVILLE CITY COUNCIL AGENDA
REGULAR MEETING, TUESDAY, DECEMBER 10, 2013, 6:00 P.M.
CITY HALL COUNCIL CHAMBERS
701 MAIN STREET, KERRVILLE, TEXAS

CALL TO ORDER

INVOCATION offered by Jimmy Sportsman, minister of Kerrville Church of Christ.

PLEDGE OF ALLEGIANCE TO THE FLAG: led by Cadet 2nd Lt Heather Rene Wyatt with the Tivy High School Air Force Junior Reserve Training Officer Corps.

Those in attendance may stand if they wish.

1. VISITORS/CITIZENS FORUM:

Any citizen with business not scheduled on the agenda may speak to the City Council. Prior to speaking, each speaker must fill out the speaker request form and give it to the City Secretary. City Council may not discuss or take any action on an item but may place the issue on a future agenda. The number of speakers will be limited to the first ten speakers and each speaker is limited to four minutes.

2. CONSENT AGENDA:

These items are considered routine and can be approved in one motion unless a city councilmember asks for separate consideration of an item. It is recommended that City Council approve the following items which will grant the Mayor or City Manager the authority to take all actions necessary for each approval:

2A. Minutes of the City Council regular meeting held November 12, 2013. (staff)

2B. Resolution No. 46-2013 authorizing the filing of an application with the Alamo Area Council of Governments for a 2013 solid waste pass through grant. (staff)

2C. Election agreement with Kerr County for conducting the City of Kerrville General and Special Elections to be held on May 10, 2014. (staff)

2D. Accept donation of permit to Use State Water, Permit No. #5208. (staff)

END OF CONSENT AGENDA

The facility is wheelchair accessible and accessible parking spaces are available. Requests for accommodations or interpretive services must be made 48 hours prior to this event. Please contact the City Secretary's Office at 830-258-1117 for further information.

I do hereby certify that this notice of meeting was posted on the bulletin board at the city hall of the city of Kerrville, Texas, and said notice was posted on the following date and time, December 5, 2013 at 4:00 p.m. and remained posted continuously for at least 72 hours preceding the scheduled time of the meeting.

Brenda Craig
City Secretary, City of Kerrville, Texas

3. PUBLIC HEARING AND RESOLUTION

3A. Resolution No. 44-2013 repealing Resolution No. 118-2004 and granting a Conditional Use Permit for an approximate 2.80 acre tract of land located on Lots 1 and 2-R, Block 1 of the Bryant Addition, a subdivision within the City of Kerrville, Texas, and otherwise known as 1871 and 1903 Junction Highway; said tract is located within the 3-W zoning district; by permitting said property to be used for “dwelling – single family attached”, “vehicle sales – new”, and “vehicle sales – used”; and making said permit subject to certain conditions and restrictions contained herein. (staff)

4. ORDINANCE, SECOND AND FINAL READING:

4A. Ordinance No. 2013-22, amending the City’s “Zoning Code” by revising regulations regarding building setbacks; containing a cumulative clause; containing a savings and severability clause; providing for a penalty for a violation of any provision hereof; ordering publication; providing an effective date; and providing other matters related to the subject. (staff)

5. CONSIDERATION AND POSSIBLE ACTION:

5A. Appointment of municipal court judges. (staff)

5B. Funding agreement between the City of Kerrville, Texas Economic Improvement Corporation and Habitat for Humanity in an amount not to exceed \$375,000. (staff)

5C. Funding agreement between the City of Kerrville, Texas Economic Improvement Corporation and Schreiner University in an amount not to exceed \$250,000. (staff)

5D. Authorization to submit application to the City of Kerrville, Texas Economic Improvement Corporation in the amount of \$500,000 for improvements to the Cailloux Theater for the construction of a support facility. (staff)

5E. Kerrville beautification advisory committee’s proposed goals and objectives. (staff)

5F. Casting votes to elect member to the Kerr Central Appraisal District 2014-2015 Board of Directors. (staff)

6. INFORMATION AND DISCUSSION:

6A. Budget and economic update. (staff)

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Brenda Craig
City Secretary, City of Kerrville, Texas

7. BOARD APPOINTMENTS:

7A. Appointments to the library advisory board. (staff)

7B. Appointments to the building board of adjustment and appeals. (staff)

7C. Appointments to the planning and zoning commission. (staff)

8. ITEMS FOR FUTURE AGENDAS

9. ANNOUNCEMENTS OF COMMUNITY INTEREST:

Announcement of items of community interest, including expressions of thanks, congratulations, or condolences; information regarding holiday schedules; honorary recognitions of City officials, employees, or other citizens; reminders about upcoming events sponsored by the City or other entity that is scheduled to be attended by City officials or employees; and announcements involving imminent threats to the public health and safety of the City. No action will be taken.

10. EXECUTIVE SESSION:

City Council may, as permitted by law, adjourn into executive session at any time to discuss any matter listed above including if they meet the qualifications in Sections 551.071 (consultation with attorney), 551.072 (deliberation regarding real property), 551.073 (deliberation regarding gifts), 551.074 (personnel matters), 551.076 (deliberation regarding security devices), and 551.087 (deliberation regarding economic development negotiations) of Chapter 551 of the Texas Government Code, including the following matters:

Sections 551.071 and 551.072:

Discuss the purchase, exchange, lease, sale, or value of real property, the public discussion of which would not be in the best interests of the City's bargaining position with third parties, regarding property interests related to the following:

- 800 Junction Highway, former city hall
- Jefferson lift station
- River Trail.

Sections 551.071, 551.072, and 551.073:

Discuss the purchase, exchange, lease, sale, or value of real property, the public discussion of which would not be in the best interests of the City's bargaining position with third parties, regarding property interests related to the following:

- Acceptance of surface water right #5208.

The facility is wheelchair accessible and accessible parking spaces are available. Requests for accommodations or interpretive services must be made 48 hours prior to this event. Please contact the City Secretary's Office at 830-258-1117 for further information.

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Brenda Craig
City Secretary, City of Kerrville, Texas

Section 551.074:

- Appointments to the planning and zoning commission
- Annual review of municipal court judges.

11. ACTION ON ITEMS DISCUSSED IN EXECUTIVE SESSION

12. ADJOURNMENT.

The facility is wheelchair accessible and accessible parking spaces are available. Requests for accommodations or interpretive services must be made 48 hours prior to this event. Please contact the City Secretary's Office at 830-258-1117 for further information.

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Brenda Craig
City Secretary, City of Kerrville, Texas

Agenda Item:

2A. Minutes of the City Council regular meeting held November 12, 2013. (staff)

CITY COUNCIL MINUTES
REGULAR MEETING

KERRVILLE, TEXAS
NOVEMBER 12, 2013

On November 12, 2013, the Kerrville City Council meeting was called to order at 6:00 p.m. by Mayor Pratt in the City Hall Council Chambers at 701 Main Street. The invocation was offered by Father Tom Murray, of St. Peter's Episcopal Church, followed by the Pledge of Allegiance led by Kerrville Fire Chief Robert Ojeda.

COUNCILMEMBERS PRESENT:

Jack Pratt	Mayor
Carson Conklin	Mayor Pro Tem
Stacie Keeble	Councilmember
Justin MacDonald	Councilmember
Gene Allen	Councilmember

COUNCILMEMBER ABSENT:

None

CITY EXECUTIVE STAFF PRESENT:

Todd Parton	City Manager
Mike Hayes	City Attorney
Kristine Ondrias	Deputy City Manager
Brenda G. Craig	City Secretary
Sandra Yarbrough	Director of Finance
Robert Ojeda	Fire Chief
Ashlea Boyle	Special Projects Coordinator
John Young	Police Chief
Charlie Hastings	Director of Public Works
Kim Meisner	Director of General Operations
Jason Lutz	City Planner

VISITORS PRESENT: List on file in city secretary's office for the required retention period.

1. VISITORS/CITIZENS FORUM:

1A. Suzanne Tomerlin noted that Hill Country Cares would be the beneficiary of the New Year's 2014 MO Ranch Polar Bear Plunge. Hill Country Cares provides services to Kerr Gillespie, Kendall, Kimble, and Bandera counties; she urged the council's and public's participation.

2. CONSENT AGENDA:

Mr. MacDonald moved to approve consent agenda items 2A and 2B. Mr. Allen seconded, and the motion passed 5-0:

2A. Minutes of the city council special meeting held October 22, 2013 at 8:30 a.m. and the regular meeting held October 22, 2013 at 6:00 p.m., as amended.

2B. Authorization to submit a funding application in the amount of \$20,000 to the City of Kerrville, Texas Economic Improvement Corporation to host an arts event during Memorial Day weekend.

END OF CONSENT AGENDA

3. PUBLIC HEARING AND RESOLUTION

3A. Resolution No. 43-2013 amending Resolution No. 34-2010, which granted a Conditional Use Permit (CUP) for an approximate 2.19 acre tract of land, being Lots 134 through 143, inclusive, of Block 2 of the J.D. Brown Addition, a subdivision within the City of Kerrville, Kerr County, Texas, and otherwise known as 620 Main Street (State Highway 27) and located within zoning district 11-C (Central City), by amending the provisions applicable to signage on the property. Mr. Lutz noted the applicant wished to replace the existing sign at Sidney Baker and Main with a larger electronic sign; however, the current CUP limited existing signs at this location to their current size and dimension; therefore, Mr. Miller requested the CUP be amended to allow the new sign. The sign code did not allow a sign between the height of 2' and 10' to be located in the sight visibility triangle of an intersection; the existing sign was located in that triangle, and Mr. Miller proposed to remove that sign. The proposed sign would meet sign code regulations and be outside of the sight visibility triangle. Mr. Lutz noted that the planning and zoning commission voted 4-0 to recommend approval of the CUP.

Mayor Pratt opened the public hearing at 6:09 p.m.; no one spoke; Mayor Pratt closed the public hearing at 6:10 p.m.

Mr. Allen moved for approval of Resolution No. 43-2013; Ms. Keeble seconded the motion and it passed 5-0.

4. PUBLIC HEARING AND ORDINANCE, FIRST READING:

4A. Ordinance No. 2013-22, amending the city's "Zoning Code" by revising regulations regarding building setbacks; containing a cumulative clause; containing a savings and severability clause; providing for a penalty for a violation of any provision hereof; ordering publication; providing an effective date; and providing other matters related to the subject. Mayor Pratt read the ordinance by title only.

Mr. Lutz noted the zoning ordinance input committee (ZOIC) recommended approval of the proposed amendments regarding accessory structures in residential areas:

- Allow accessory structures with a floor area between 150 square feet and 528 square feet to extend into the 25 foot rear setback but not within six foot of the property line.
- Increase from 400 sq. ft. to 528 sq. ft. to accommodate standard two-car garage.
- Refer to screening as Type A screening fence for accessory structures located on property not zoned as residential, or on property abutting property not zoned residential.

Mayor Pratt opened the public hearing at 6:12 p.m.; and the following persons spoke:

1. John Mosty, chairman of ZOIC, noted that in 2010 ZOIC had proposed a similar amendment but the language was changed by the council and no longer reflected ZOIC's intent; specifically, ZOIC wanted the ordinance to state that a person in a residential zone could build an accessory building in the back yard within the 25 foot setback.

2. Ruth Spradling, ZOIC member, stated she was against the amendment. Accessory buildings did not require a building permit, and a 528 square foot structure was too large to be considered an accessory building; in comparison, a guest home could be smaller and it would require a building permit.

Mr. Lutz explained that anything over 120 square feet would require a permit. A guest home did not fall into the definition of an accessory structure; any guest home would have to meet full setbacks and requirements of the zoning district. whether it was an accessory structure or a guest house.

No one else spoke and Mayor Pratt closed the public hearing at 6:19 p.m.

Mr. MacDonald moved for approval of Ordinance 2013-22 on first reading, as presented Mr. Conklin seconded the motion and it passed 5-0.

5. CONSIDERATION AND POSSIBLE ACTION:

5A. Charter of the City of Kerrville, Texas and proposed amendments, if any.
Mr. Hayes noted that council should consider the amendments they wanted to be placed on the May 2014 ballot; he proposed the first reading of the ordinance setting the ballot and ordering the special election be held at the first meeting in January, and second reading at the second meeting in January.

Council discussed the amendments presented by the Charter Review Commission (CRC).

Ms. Keeble was opposed to placing on the ballot amendments to sections 5.04 (recall), 5.12A (initiative) and 5.13A (referendum) that would reduce the number of signatures required on a petition. Under the principle of a democracy, citizens elect officials to represent them in matters. If every issue had to be voted on by citizens, no work would ever be accomplished, and councilmembers would not take action for fear of recall so they would do nothing. She noted the county did not even have a procedure for recall; however, citizens could petition the county for a referendum to stop the issuance of certain certificates of obligation, and the requirement for that petition was 5% of qualified voters, the same requirement as in the city's current charter. She opined that 5% or 300 voters was not an undue burden; if the petitioner could not get the support of 5%, the city should not be forced to pay for a special election brought by special interest groups. She recommended keeping the number of signatures required on petitions the same as

was voted on and adopted by the citizens previously. Elections were held every year for councilmembers and at least two positions were voted on, and the citizens could vote councilmembers out if they did not approve of their actions. She was not proposing to remove these sections from the charter, but to keep the petition requirements the same; the 5% threshold was fair.

The following person spoke:

1. John Mosty, chairman of the charter review commission, noted the charter was the citizens' document, not the council's and citizens should have the right to vote on any amendments. He opined that the number of signatures required for petitions was too high, especially during the timeframe that was allotted. A home rule city was the only political subdivision that had these rights; others do not have that right. The charter is what citizens want the city council to govern by, and the citizens have the right to voice their opinion on it.

Council and Mr. Hayes noted that the citizens had the right to put this item on the ballot through a petition process if they so desire. Mr. Hayes noted that qualified voters could vote for each individual amendment that was on the ballot.

Ms. Keeble moved to approve the amendments to be placed on the May 2014 ballot as proposed by the charter review commission, excluding Sections 5.04 (recall), 5.12A (initiative) and 5.1A (referendum) that would reduce the number of signatures on a petition. Mr. Conklin seconded the motion and it passed 3 to 2 with Councilmembers Keeble, Conklin, and MacDonald voting in favor of the motion and Councilmembers Pratt and Allen voting against the motion.

5B. Resolution No. 42-2013 nominating candidates to Kerr Central Appraisal District Board of Directors.

Mr. Parton noted the city could nominate up to 5 persons to be on the 2014-15 KCAD board. Each taxing entity was allotted a number of votes based on the value of its property tax levy; the city had 709 votes. The appointments were for two years, and qualifications were stated in the letter from KCAD. Mr. Moody, the city's current representative, asked not to be reappointed.

Mr. Conklin moved to approve Resolution No. 42-2013; Mr. Allen seconded the motion. Ms. Keeble amended the motion to approve Resolution No. 42-2013 and to officially nominate Justin MacDonald to the Kerr Central Appraisal District Board of Directors for FY 2014-2015; Mr. Allen seconded the amended motion and it passed 5-0.

5C. Offers to purchase property at 800 Junction Highway, the former city hall.
This matter was deferred to executive session.

5D. Donation by the Cailloux Foundation to the City of Kerrville of land and improvements consisting of the parking garage and office building located at the northwest corner of the intersection of Sidney Baker and Water Street and the office building located at 219 Clay Street. Deferred to executive session.

6. INFORMATION AND DISCUSSION:

6A. Budget and economic update.

Ms. Yarbrough noted city revenue for October was \$1,734,107 and expenditures were \$1,803,065; October property tax was coming in steady. Water and sewer fund revenue was at \$812,371, and expenditures were at \$674,179. Delinquent property tax was up 29% over October 2012; the city recently received \$65,000 from one local manufacturing company for prior year's taxes. Hotel occupancy tax was up 8.84% over 2013. Building permits were unchanged.

The following person spoke:

1. Ruth Spradling questioned why the year to date figures were the same as the current month figures. Ms. Yarbrough said she would look into it.

7. BOARD APPOINTMENTS:

7A. Appointments to the food service advisory board. Ms. Keeble moved to reappoint Tyler Archer and Brenda Hughes, and to appoint Dainelle Logan, all with terms to expire December 1, 2015. Mr. Conklin seconded the motion and it passed 5-0.

7B. Appointments to the beautification advisory committee. Mr. MacDonald moved to reappoint Brandon Douglass and John Risher with terms to expire December 11, 2015. Mr. Allen seconded the motion and it passed 5-0.

8. ITEMS FOR FUTURE AGENDAS: None.

9. ANNOUNCEMENTS OF COMMUNITY INTEREST:

- Reviewed three days of activities in observance of Veterans' Day.
- Mr. Spradling stated he was unclear on whether a building permit was necessary to place an accessory building in a back yard. (Item 4A.) Council explained that an accessory building less than 120 sq. ft. did not require a building permit; above 120 sq. ft. required a building permit; however, if the accessory building was to be occupied, in which case by definition it was not an accessory building, then it could not be located within the setback.

10. EXECUTIVE SESSION:

Mr. Conklin moved for the city council to go into executive closed session under Sections 551.071, 551.072, and 551.074 of the Texas Government Code; the motion was seconded by Mr. MacDonald and passed 5-0 to discuss the following matters:

Sections 551.071 and 551.072:

Discuss the purchase, exchange, lease, sale, or value of real property, the public discussion of which would not be in the best interests of the City's bargaining position with third parties, regarding property interests related to the following:

- 800 Junction Highway, former city hall
- Donation by the Cailloux Foundation to the City of Kerrville of land and improvements consisting of the parking garage and office building located at

the northwest intersection of Sidney Baker and Water Street and the office building located at 219 Clay Street

- Jefferson lift station
- River Trail.

Section 551.074:

- Annual review of city attorney.

At 6:52 p.m. the regular meeting recessed and Council went into executive closed session at 6:53 p.m. At 7:59 p.m. the executive closed session recessed and Council returned to open session at 8:01p.m. The mayor announced that no action had been taken in executive session.

11. ACTION ON ITEMS DISCUSSED IN EXECUTIVE SESSION:

5D. Donation by the Cailloux Foundation to the City of Kerrville of land and improvements consisting of the parking garage and office building located at the northwest corner of the intersection of Sidney Baker and Water Street and the office building located at 219 Clay Street.

Mr. Allen moved to authorize staff to execute all necessary documents to accept the generous offer by the Cailloux Foundation for the parking garage and adjacent buildings. The motion was seconded by Ms. Keeble and passed 5-0.

ADJOURNMENT. The meeting adjourned at 8:02 p.m.

APPROVED: _____

Jack Pratt, Jr., Mayor

ATTEST:

Brenda G. Craig, City Secretary

Agenda Item:

2B. Resolution No. 46-2013 authorizing the filing of an application with the Alamo Area Council of Governments for a 2013 solid waste pass through grant.
(staff)

**TO BE CONSIDERED BY THE CITY COUNCIL
CITY OF KERRVILLE, TEXAS**

SUBJECT: Resolution authorizing submittal of a grant application to the Alamo Area Council of Governments (AACOG) for Waste Reduction and Recycling

FOR AGENDA OF: 12/10/13

DATE SUBMITTED: 11/22/13

SUBMITTED BY: Stuart Barron *SB*
Interim Public Works Director

CLEARANCES: Kristine Ondrias
Deputy City Manager *KO*

EXHIBITS: Resolution

AGENDA MAILED TO:

APPROVED FOR SUBMITTAL BY CITY MANAGER: *JP*

Expenditure Required:	Current Balance in Account:	Amount Budgeted:	Account Number:
\$	\$	\$	

PAYMENT TO BE MADE TO: N/A (reimbursable grant)

REVIEWED BY THE FINANCE DIRECTOR:

SUMMARY STATEMENT

The Alamo Area Council of Governments (AACOG) allocates funds from solid waste fees paid to the Texas Commission on Environmental Quality (TCEQ) to make grant funding available for this region. Applications for FY 2015 grants receive preference if there are funds contributed by the applicant and are due December 20, 2013. Notification of successful grant applications is spring of 2014. The funds, if awarded, are reimbursable and would be used for the annual household hazardous waste collection event and used tire collection event.

Item	Grant Funding	Landfill Fund	Total Project
Household Haz. Event	\$25,000	\$15,000	\$40,000
Tire Disposal Event	\$2,000	\$500	\$2,500

RECOMMENDED ACTION

The Director of Public Works recommends that Council adopt a resolution supporting the grant application to AACOG for Waste Reduction and Recycling funds.

**CITY OF KERRVILLE, TEXAS
RESOLUTION NO. 46-2013**

**A RESOLUTION AUTHORIZING THE FILING OF AN APPLICATION
WITH THE ALAMO AREA COUNCIL OF GOVERNMENTS FOR A 2013
SOLID WASTE PASS THROUGH GRANT**

WHEREAS, the Alamo Area Council of Governments ("AACOG") is directed by the Texas Commission on Environmental Quality to administer solid waste grant funds for implementation of AACOG's adopted regional solid waste management plan; and

WHEREAS, the City of Kerrville is qualified to apply for grant funds; and

WHEREAS, the City Council of the City of Kerrville, Texas, finds it to be in the public interest to authorize the filing of a grant application with AACOG that if awarded will be utilized by the City to purchase equipment to help improve the City's solid waste management service;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF KERRVILLE, KERR COUNTY, TEXAS:

SECTION ONE. The City Council of the City of Kerrville, Texas, authorizes the City Manager, or designee, to request grant funding under the Alamo Area Council of Governments 2013 Solid Waste Pass Through Grant and act on behalf of the City in all matters related to the grant application.

SECTION TWO. If the grant is awarded, City will comply with the grant requirements of AACOG, the Texas Commission on Environmental Quality and the State of Texas; the grant funds and any grant-funded equipment will be used only for those purposes specified under the grant; and, the activities will comply with and support the adopted regional and local solid waste management plans adopted for the City's geographical area in which the activities will be performed.

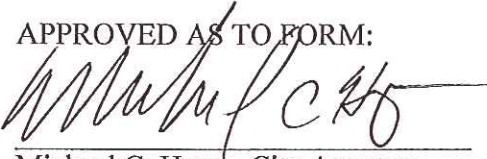
PASSED AND APPROVED ON this the ____ day of _____, A.D., 2013.

Jack Pratt, Jr., Mayor

ATTEST:

Brenda G. Craig, City Secretary

APPROVED AS TO FORM:



Michael C. Hayes, City Attorney

Agenda Item:

2C. Election agreement with Kerr County for conducting the City of Kerrville General and Special Elections to be held on May 10, 2014. (staff)

**BUSINESS OF THE CITY COUNCIL
CITY OF KERRVILLE, TEXAS**

SUBJECT: Authorize execution of a contract with Kerr County for conducting the City of Kerrville General Election and Special Election to be held on May 10, 2014

FOR AGENDA OF: December 10, 2013 **DATE SUBMITTED:** November 27, 2013

SUBMITTED BY: Brenda Craig  **CLEARANCES:** Todd Parton
Mike Hayes

EXHIBITS: Election Agreement with Kerr County

AGENDA MAILED TO:

APPROVED FOR SUBMITTAL BY CITY MANAGER: 

Expenditure Required:	Current Balance in Account:	Amount Budgeted:	Account Number:
\$	\$	\$	

PAYMENT TO BE MADE TO:

REVIEWED BY THE FINANCE DIRECTOR:

SUMMARY STATEMENT

The attached agreement will authorize the Kerr County Elections Officer to conduct the City of Kerrville General Election and Special Election to be held on May 10, 2014, including:

- Hiring and training election judges and workers;
- Management of the polling location for both early voting and election day;
- Preparation, ordering and distribution of ballots;
- Manage the early voting by mail process.

The city will reimburse the county for the actual expenses attributable to the cost of the city election, rental of equipment and supplies, plus 10% of the cost incurred, and a \$50 administrative fee. The contract and the fees proposed are the same as in prior years.

It should be noted that the attachment to the contract is only an estimate of these costs and may vary based on the needs of the election, which are currently unknown, e.g. additional ballot programming and printing of charter amendments, and the potential need to hire additional workers. The county elections office works very diligently to keep the city's cost down and will inform me prior to authorizing any significant increase.

RECOMMENDED ACTION

The city secretary recommends approval of the contract.

ELECTION AGREEMENT

CITY OF KERRVILLE

**THE STATE OF TEXAS
COUNTY OF KERR**

THIS AGREEMENT is made and entered into by and between Diane Bolin Tax Assessor/Collector (or designated employee) of Kerr County, Texas duly constituted and acting as County Elections Officer and the CITY OF KERRVILLE by and through Jack Pratt, its mayor, hereinafter referred to as The "CITY OF KERRVILLE" and by authority of Section 31.092, Vernon's Texas Civil Statutes, Election Code for conducting and supervision of the May 10, 2014 election for the CITY OF KERRVILLE in conjunction with said Election.

Diane Bolin, Tax Assessor/Collector (or designated employee) shall order all supplies for the election and distribute those supplies to the election personnel. Election forms and all records of the election shall be combined for use in this election on the tally equipment.

THIS AGREEMENT is entered into in consideration of the mutual covenants and agreement hereinafter set out. IT IS AGREED AS FOLLOWS:

I. DUTIES AND SERVICES OF KERR COUNTY

Diane Bolin Tax Assessor/Collector (or designated employee) agrees to coordinate, supervise, and handle all aspects in administering the CITY OF KERRVILLE elections in accordance with the provisions of the Texas Election Code and as outlined in this Agreement.

Diane Bolin, Tax Assessor/Collector (or designated employee) in connection with the holding and supervision of said election shall assume the following responsibilities:

- a. Shall be responsible for notifying each election judge and alternate judge of his or her appointment and for determining the number of clerks and other election workers authorized to work at each voting location, and to arrange for the notification, including writ of election, and compensation of all presiding judges and alternate judges.
- b. Election judges shall be responsible for picking up election supplies and materials at the time and place determined by Diane Bolin, Tax Assessor/Collector (or designated employee.) This responsibility will be set forth in the election judges' letter notifying the judge of his/her appointment.
- c. Procure, prepare, proof, and distribute ballots.

Elections Contract – the CITY OF KERRVILLE

- d. Procure, prepare, and distribute election judge's kits.
- e. Arrange for the use and compensation of polling locations.
- f. Use Optical scanning eScan Equipment and DAU eSlate (Hart 6.2.1) for counting of ballots as certified by the Secretary of State to comply with Help America Vote Act for early voting and election day.
- g. Assemble the list of registered voters to be used in conducting the election in conformity with the election precincts established for the election.
- h. Publish the legal notice of the date, time and place of the testing of the electronic tabulation equipment and conduct such testing.
- i. Supervise the handling and disposition of election returns, voted ballots, etc., and tabulate unofficial returns and assist in preparing the tabulation for the official canvass.
- j. Diane Bolin, Tax Assessor/Collector (or designated employee) will prepare the unofficial tabulation report after all precincts have been counted, and will provide a copy of the report to the CITY OF KERRVILLE as soon as possible after all returns have been tabulated, but in no event later than 2:00 p.m. on the 10th day following the election. CITY OF KERRVILLE will be responsible for the official canvass of its General Election.
- k. All early voting ballots (those cast by mail and those cast by personal appearance) will be prepared for counting by an Early Voting Ballot Board.
- l. Handle all aspects of Early Voting including those voting by mail.
- m. Prepare the results of the election for CITY OF KERRVILLE to conduct its own canvass of the election as prescribed by law.
- n. Provide at no cost for the storage of all election records as provided by law

II. DUTIES AND SERVICES OF CITY OF KERRVILLE

CITY OF KERRVILLE in connection with the holding and supervision of said election shall assume the following responsibilities and shall directly bear any cost for the same:

Elections Contract --the CITY OF KERRVILLE

- a. Shall receive from their candidates all documents filed under Title 15 of the Texas Election Code relating to campaign contributions and expenditures.
- b. Preparation of election orders, resolutions, notices, and other pertinent documents for adoption or execution by the appropriate office or body and post or publish in the required time frame.
- c. Prepare and send out "Notice of Drawing" for a place on the Ballot to all eligible candidates.
- d. Election Officers with a list provided by Diane Bolin Tax Assessor/Collector (or designated employee) shall be appointed and approved through the governing body of the CITY OF KERRVILLE. The Election Officers are as follows: Early Voting Judge, Election Day Judge, Election Day Alternate Judge, Central Counting Station Manager, Tabulation Supervisor, Presiding Judge, and Early Voting Ballot Board Judge.
- e. Polling Location shall be appointed and approved through the governing body of the CITY OF KERRVILLE.
- f. Deliver to Diane Bolin, Tax Assessor/Collector (or designated employee) as soon as possible, a list showing the official wording for the Election titles that are to be printed on the ballot with the exact form, orders, wording, and spelling that is to be used.
- g. Pay any additional costs incurred by Diane Bolin, Tax Assessor/Collector (or designated employee) if a recount for the election is required, or the election is contested in any manner.
- h. Shall issue "Certificates of Election" to candidates elected after the Official Canvass.
- i. The CITY OF KERRVILLE will be responsible for the official canvass of its Election.

III. PAYMENT FOR SERVICES

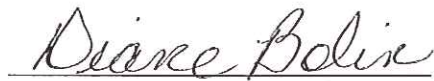
- a. The CITY OF KERRVILLE shall pay to Kerr County the actual expenses directly attributable to the Contract including the ten percent (10%) of the budget cost for Election Service Contract Fee pursuant to the Texas Election Code, Section 31.100 and the administrative fee of \$50.00 per election. (See attached Estimated Cost Sheet.)
- b. After the date of election and completion of all duties required of the Tax Assessor/Collector (or designated employee) shall then compute the final statement for all expenses including the ten percent (10%) of the budget

Elections Contract – the CITY OF KERRVILLE

cost for Election Service Contract Fee, the \$50.00 Administration Fee and mail payment for the election services to Kerr County. The CITY OF KERRVILLE shall be responsible for paying this amount within thirty (30) days from the Final Cost Report.

- c. If the election is cancelled a \$75.00 administration fee is due.

IN WITNESS WHERE OF, the parties hereto have made and entered into this agreement this _____ day of _____, _____.



Diane Bolin, Tax Assessor/Collector

(Or Designated Employee)

CITY OF KERRVILLE, TEXAS:

Jack Pratt, Mayor

APPROVED AS TO FORM:

Michael C. Hayes, City Attorney

ESTIMATED COST of City of Kerrville Election

ESTIMATED COST of City of Kerrville Election						
County Election Services Contract Costs						Estimate
1	Ballot Printing Cost					
	First 1000 Ballots Free					\$ -
	Second 1000 Ballots					
2	Electronic Voting System Programming					
	Programing, Test & Sample Ballots & shipping of ballots					\$ 1,600.00
* 3	Publication of Test of Electronic Voting Equipment					
	Newspaper-West Kerr Current					\$ 40.00
	Other Newspapers as requested				per their fees	
4	Charge for Wireless Internet					\$ 435.00
5	Lease of Voting Machines					
	Early Voting and Election Day					
			# of Unit	Lease Cost		
	eSlates		2	\$37.50		\$ 75.00
	JBC		2	\$37.50		\$ 75.00
	eScans		2	\$67.50		\$ 135.00
* Tally Computer			1	\$57.75		\$ 57.75
* Lap Top Computer			1	\$52.50		\$ 52.50
6	Precinct Election Judges and Clerks					
	\$10.00 per Hour					
	Early Voting Clerk		2	80 hours		\$ 1,600.00
	Election Day Judge & Alternate Judge		2	4 Hours		\$ 280.00
	Election Day Clerks		4	14 hours		\$ 560.00
	Early Ballot Board Clerks		3	3hours		\$ 90.00
	Tabulation Supervisor & Personnel		3	3 hours		\$ 90.00
	Election Night Workers		-	-		\$ -
7	Fee for Pickup of Supplies before Election Day and					
	Delivery of Supplies after Polls Close Per Election Day Judge					\$ 25.00
8	Technical Support Personnel					\$ -
9	Miscellaneous Election Costs					
	Elections Kits		2	\$50.00		\$ 100.00
	Central Counting Station Kit		1	\$12.00		\$ 12.00
* Shipping Kits & MBB's for programming						\$ 40.00
	Postage - Appointment of Judges & Clerks		7	\$ 0.60		\$ 4.20
	Postage - Writ of Election to Judge		2	\$ 0.60		\$ 1.20
	Postage - Mail Ballot - Applications		100	\$ 0.60		\$ 60.00
	Postage - Mail Ballots		100	\$ 0.65		\$ 65.00
	Mail Ballot Kits		100	\$ 1.50		\$ 150.00
	SUBTOTAL EXPENSES - Cost of the Election					\$ 5,547.65
10	Election Service Contract Fee (10% of Cost)					\$ 554.77

	Administrative Fee					\$	50.00
11	TOTAL COST OF ELECTION					\$	6,152.42
	Balance due 30 days after Final Cost Report						
	* The following items may be divided with the different entity having a election						
3	Publication - Newspaper	divided with Ingram ISD & KISD					
5	Lease - Election Machines	shared costed of Talley & Lap Top Computer W/ Ingram ISD & KISD					
6	Cost - Election Judges & Clerks						
9	Shipping on MBB, Election Kits & Ballots - Split with Ingram ISD & KISD						

Agenda Item:

2D. Accept donation of permit to Use State Water, Permit No. #5208. (staff)

**TO BE CONSIDERED BY THE CITY COUNCIL
CITY OF KERRVILLE, TEXAS**

SUBJECT: Acceptance of Surface Water Right # 5208

FOR AGENDA OF: 12/10/13

DATE SUBMITTED: 12/3/13

SUBMITTED BY: Stuart Barron

Interim Public Works Director

CLEARANCES: Kristine Ondrias

Deputy City Manager

EXHIBITS: Letter of Donation, Letter of acceptance, Water Right #5208,
Subordination Agreement

AGENDA MAILED TO:

APPROVED FOR SUBMITTAL BY CITY MANAGER:

Expenditure	Current Balance	Amount	Account
Required:	in Account:	Budgeted:	Number:
\$	\$	\$	

PAYMENT TO BE MADE TO:

REVIEWED BY THE FINANCE DIRECTOR:

SUMMARY STATEMENT

Mr. Jim Hayes wishes to give the City of Kerrville a 40 acre-foot surface water diversion permit. This permit (# 5208) has a use of "irrigation" and has a diversion point on Verde Creek in Kerr County. The permit was granted in 1989 with a maximum diversion rate of 0.6 cubic feet per second or 250 gallons per minute, and is subject to the maintenance of a subordination agreement with the Guadalupe Blanco River Authority (GBRA).

RECOMMENDED ACTION

Staff recommends that Council authorize the City Manager to accept the gift of a Permit to Use State Water, Permit No. 5208, subject to review and approval by the Texas Commission on Environmental Quality.



City of Kerrville

701 MAIN STREET • KERRVILLE, TEXAS 78028 • 830.257.8000 • KERRVILLETX.GOV

December 5, 2013

James F. Hayes
P. O. Box 1004
Center Point, Tx 78010
830-634-2152 Home
830-739-0028 Cell

Re: Acceptance of Verde Creek Water Right

Dear: Mr. Hayes:

The City has verified through TCEQ that you and Mrs. Hayes currently own a Verde Creek surface water right, Permit to Use State Water, Permit No. 5208. Your offer to donate this right to the City of Kerrville is very much appreciated.

As you are aware, there are many factors that affect the market value of surface water rights in this area of the state. The City of Kerrville neither confirms nor denies the appraised value of this water right, but accept it on behalf of citizens of Kerrville. No goods or services were provided by the City in exchange for your gift. We have signed and attached the IRS Form 8283.

The City accepts the water right as is, but will need to comply with TCEQ's rules and regulations with respect to the conveyance of such right. The City plans to initiate the change of ownership status at TCEQ as soon as possible and will keep you apprised of such action.

Again, the City thanks you for your generous donation. Should you have any questions, please let me know.

Sincerely,

Todd Parton
City Manager
City of Kerrville
701 Main Street
Kerrville, TX 78028

C: City Council
Stuart Barron, Interim Public Works Director

James F. Hayes
P. O. Box 1004
Center Point, Texas 78010
December 3, 2013

Mr. Stuart Barron
Director of Municipal Utilities
City of Kerrville
701 Main Street
Kerrville, Texas 78028

Dear Mr. Barron:

My wife, Mary K. Mosty Hayes, and I wish to gift to the City of Kerrville our 40 acre feet surface irrigation right, located on Verde Creek adjacent to our property in Center Point, Texas. I am attaching a copy of the permit and the subordination agreement with Guadalupe Blanco River Authority as Exhibit A and B for all purposes and intents including as a real property description.

We, James F. Hayes & Mary K. Mosty Hayes, hereinafter referred to as Donors, are willing to donate this water right to the City of Kerrville hereinafter referred to as Donee under the following provisions:

1. That the City of Kerrville prepare all the legal documents at city expense and submit them for our final review, applicable to the transfer of the right from us as donor to the City of Kerrville as donee.
3. The Donee will pay all transfer fees and all legal fees. Donor agrees to pay the appraisal fee.

4. Donee agrees to provide a letter of acceptance, authorized by an act of the city council and signed by its duly authorized person(s), to Donor stating that Donee agrees to accept the subject right at the value depicted in the appraisal. Donor agrees to provide a complete copy of the appraisal to the Donee prior to December 31, 2013. In the interim, Donor agrees to provide to Donee a copy of the Appraisal Certificate signed by the appraiser stating and the opinion of value on or before December 10, 2013. Said Certificate shall be the identical one that will appear in the appraisal and that contains the identical Value Estimate.

5. Donee agrees in addition to the items in the above paragraph to have the appropriate person of authority to sign the IRS 8283 to facilitate Donor's opportunity for an income tax deduction for the gift.

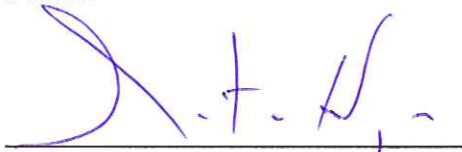
6. There are no limitations nor reservations by Donor being placed upon the water right including, but not limited to, the relocation of the diversion point.

7. For the purposes stated, the gifted water right, nor any of the land that it serves or is adjacent to, has any debt nor is there any legal action pending in any way against Donee. There is no portion of Donor's land being conveyed only the water right described herein.

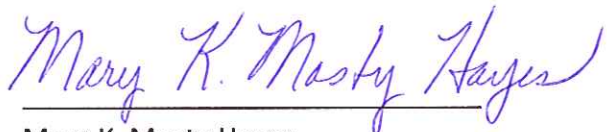
Please indicate that the City of Kerrville agrees to accept this gift under the terms and conditions expressed above, with the description in Exhibit A and B by having the appropriate person(s) of authority to sign below.

Yours truly,

Donors



James F. Hayes



Mary K. Mosty Hayes

Date December 3, 2013

The City of Kerrville as Donee has read and is willing to accept the gift of the 40 acre feet water right that is described in Exhibit A &B with all its rights and privileges and encumbrances.

City of Kerrville

By its duly authorized person

Date _____

This permit is filed of Record in Kerr County
Expiration Date found in Subordination
Agreement with G.B.A. Exhibit A

PERMIT TO
USE STATE WATER

APPLICATION NO. 5208

PERMIT NO. 5208

TYPE: §11.121

Permittees: James F. Hayes and Address:
Mary K. Mosty
Hayes

P.O. Box 1004
Clarendon, Texas 79226

Filed: December 9, 1988

Granted: August 17, 1989

Purpose: Irrigation

County: Kerr

Watercourse: Verde Creek,
tributary of the
Guadalupe River

Watershed: Guadalupe River Basin

WHEREAS, James F. Hayes and Mary K. Mosty Hayes are requesting authorization to divert and use water from Verde Creek pursuant to an upstream Subordination Agreement with the Guadalupe-Blanco River Authority; and

WHEREAS, the Texas Water Commission finds that jurisdiction over the application is established; and

WHEREAS, the Commission has complied with the requirements of the Texas Water Code and Rules of the Texas Water Commission in issuing this permit.

NOW, THEREFORE, this permit to use State water is issued to James F. Hayes and Mary K. Mosty Hayes, subject to the following terms and conditions:

1. USE

Permittees are authorized to divert and use not to exceed 40 acre-feet of water per annum from Verde Creek to irrigate 40 acres of land within two tracts totalling 55.24 acres in the William L. Hailey Survey, Abstract No. 179, Kerr County, approximately 10.5 miles southeast of Kerrville, Texas, the conveyances of which tracts to permittees are recorded in Volume 278, page 383; Volume 454, pages 476 and 489; Volume 461, pages 188 and 191 and Volume 462, page 774 of the Kerr County Deed Records.

2. DIVERSION

- (a) Point of Diversion: On the left, or north, bank of Verde Creek, S 34° W, 2900 feet from the northeast corner of the aforesaid survey.
- (b) Maximum Diversion Rate: 0.6 cfs (250 gpm).

3. SPECIAL CONDITION

- (a) Permittees are authorized to divert water hereunder only when the surface flow of Verde Creek equals or exceeds 0.5 cfs (225 gpm) at a reference device to be installed by permittees prior to diversion immediately below their diversion point. If permittees divert water prior to installation of the reference device, this permit shall expire and become null and void.
- (b) This permit is subject to the maintenance of the October 24, 1988 "Subordination Agreement", or extensions thereof, between permittees and the Guadalupe-Blanco River Authority.

This permit is issued subject to all superior and senior water rights in the Guadalupe River Basin.

Permittees agree to be bound by the terms, conditions and provisions contained herein and such agreement is a condition precedent to the granting of this permit.

All other matters requested in the application which are not specifically granted by this permit are denied.

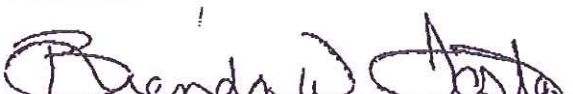
This permit is issued subject to the Rules of the Texas Water Commission and to the right of continuing supervision of State water resources exercised by the Commission.

TEXAS WATER COMMISSION

DATE ISSUED: September 22, 1989


B. J. Wynne, III, Chairman

ATTEST:


Brenda W. Foster, Chief Clerk

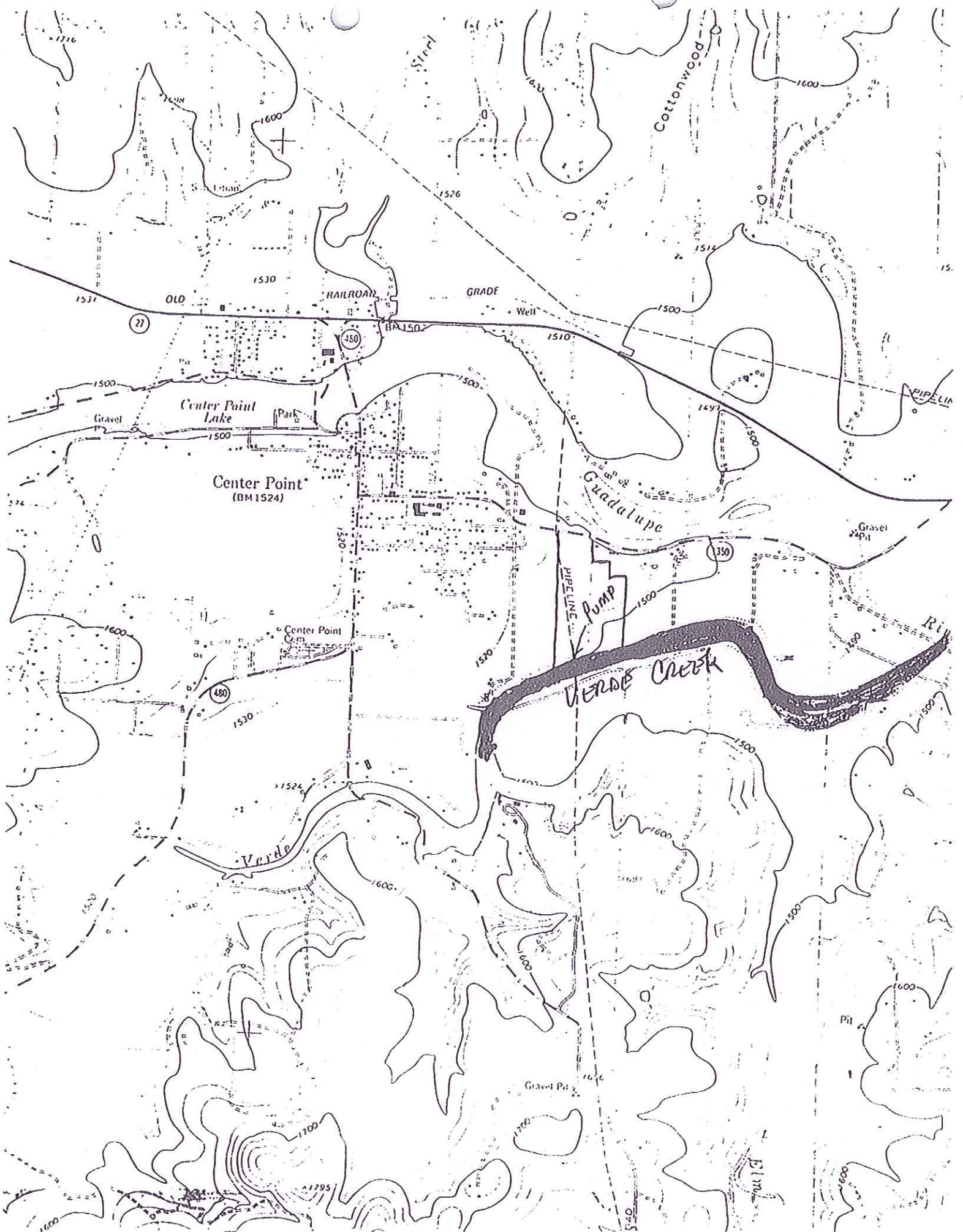


Exhibit B

SUBORDINATION AGREEMENT

This subordination agreement (this "Agreement") is entered into as of the 24th day of October, 1988, between GUADALUPE-BLANCO RIVER AUTHORITY, a conservation district and political subdivision of the State of Texas (hereinafter called the "Authority"), and James F. Hayes and/or Mary K. Mosty Hayes (hereinafter called "User").

W I T N E S S E T H :

Recitals

User desires to obtain a permit from the Texas Water Commission authorizing User to divert and use the flows of Verde Creek, a tributary of the Guadalupe River, upstream of Canyon Reservoir. The flows of the Guadalupe River and its tributaries upstream of Canyon Reservoir are already appropriated virtually all of the time under hydropower rights held by the Authority under permit Nos. 21 and 1096, other water rights held by the Authority, including Permit No. 1886 authorizing Canyon Reservoir, and water rights held by others. User desires that the Authority subordinate its hydropower rights to make water available for use by User under User's permit at times when the entire flow is required to be allowed to pass to honor the Authority's hydropower rights, but less than the entire flow is required to be allowed to pass to honor all other water rights.

Agreement

NOW, THEREFORE, for and in consideration of the mutual promises, obligations, and benefits hereinafter set forth, the Authority and user agree as follows:

1. User proposes to divert and use 40 acre-feet of water per annum at a maximum rate of .556 cfs (250 gpm) from the Verde Creek, a tributary of the Guadalupe River

for Irrigation purposes in Kerr County, Texas.

The Authority agrees to subordinate its hydropower rights to make water available for use as proposed by User at times when the entire flow is required to be allowed to pass to honor the Authority's hydropower rights, but less than the entire flow is required to be allowed to pass to honor all other rights.

2. For purposes of the agreement, the parties agree that the proposed use by User will result in a decrease in the flow of water utilized by the Authority's hydroelectric system in any given year of 40 acre-feet of water each year due to the number of acre-feet of water diverted and used during that year. The reduction in flow in any given year for which compensation is made (the "Flow Reduction") shall be the number of acre-feet of water diverted and used during that year. User agrees to pay the Authority at its office in Guadalupe County, Texas, or such other place as GERA may designate in writing, not later than the fifteenth (15th) day of each January beginning the January immediately following the date of this Agreement, the cost resulting from multiplying the Flow Reduction for the preceding calendar year times the rate in dollars per acre-foot determined by the Board of Directors of the Authority to be in effect during the preceding year for reductions of flow through the Authority's hydroelectric system. The present rate is \$4.24 per acre-foot. The rate may be adjusted by the Authority at any time and from time to time, with any adjustment to take effect on the first (1st) day of the January immediately following the date the Authority gives written notice of the proposed adjustment to User.

The Rate shall be based on (1) the revenue lost to the Authority's hydroelectric system due to reduction in flow caused by the diversion, (2) compensation to the Authority's power customers for the higher cost of replacement power, and (3) costs of the Authority in administering the subordination program.

3. The "Point of Diversion" shall be a point on the bank of Verde Creek, a tributary of the Guadalupe River. At the direction of the Authority, the User shall, at its own cost and expense, install and maintain a measuring device or devices at a specific point established by mutual

agent of the Authority. Any measuring device which fails to function or which functions incorrectly shall, at User's expense, promptly be adjusted, repaired or replaced by a like device having the required accuracy. The Authority may, at its expense, install and maintain such measuring devices as it deems appropriate to measure the quantity of water diverted by User at the Point of Diversion, in which case measurement of water for the purpose of this Agreement shall be made by the Authority's measuring devices. The Authority agrees to complete and file with the Texas Department of Water Resources all reports of water used by User.

4. The effectiveness of this Agreement is dependent upon compliance with applicable rules of the Texas Water Development Board, if any. This Agreement is subject to the terms of the Authority's hydropower rights and regulations as may be applicable to similar agreements in the State of Texas. The Authority and User will cooperate with each other to obtain any permits, approvals or other authorizations as may be required to comply therewith.

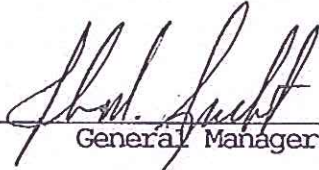
5. The Authority makes no representations and shall have no responsibility with respect to the availability or quality of water at the Point of Diversion and, except as specifically provided herein, User's rights to said water, if available. User understands and agrees that the Authority may subordinate its hydropower rights to other rights held by the Authority and others. This Agreement shall not be construed as an Agreement for the benefit of a third party.

6. User may terminate this Agreement at any time upon giving the Authority written notice of termination at least thirty (30) days prior to the date of termination. If User fails to pay any amounts payable under this Agreement when due and payable, the Authority may give written notice of such delinquency to User, and if all amounts due and unpaid, including interest thereon from the date payment was due at the maximum legal rates, are not paid within forty-five (45) days after delivery of such notice, then the Authority shall be authorized, at its option, to institute suit for the collection thereof and to utilize such other remedies as may exist to collect any amounts due and unpaid, together with interest thereon at the maximum legal rate, and

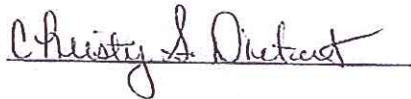
hereof. Upon expiration of said term, this Agreement may be renewed or extended for such term, or terms, as may be agreed upon by the Authority and User.

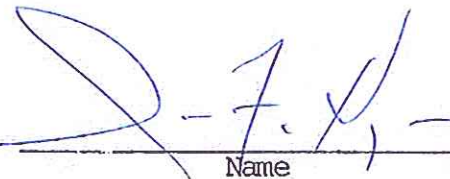
IN WITNESS WHEREOF, the Authority and User have caused this Agreement to be executed in multiple copies, each of which shall be deemed to be an original, in their behalf by their duly authorized representatives, as of the date first set forth above.

GUADALUPE-BLANCO RIVER AUTHORITY

By 
General Manager

ATTEST:




Name


Name

P. O. Box 1004

Address

Clarendon, Texas 79226

City, State, Zip

(806) 874-3546

Telephone

ATTEST:





Handwritten text, possibly a signature or date, located to the right of the notary seal.

Main body of the document containing several lines of text, likely a legal notice or affidavit. The text is mostly illegible due to fading and bleed-through.



Handwritten text or signature located in the lower-right portion of the document.

Bottom section of the document containing additional text, possibly a signature block or concluding remarks. The text is mostly illegible.

THE STATE OF TEXAS)
COUNTY OF GUADALUPE)

BEFORE ME, the undersigned authority, on this day personally appeared John H. Specht, General Manager of the GUADALUPE-BLANCO RIVER AUTHORITY, a conservation and reclamation district, a body politic and corporate and a governmental agency of the State of Texas, known to me to be the person and officer whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, in the capacity therein stated, and as the act and deed of said Authority.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 28th day of _____, 1988.



Clara Sue Brush
Notary Public
Guadalupe County, Texas

THE STATE OF TEXAS)
COUNTY OF Dovey)

BEFORE ME, the undersigned authority, on this day personally appeared James F. Hayes & Mary K. Mosty Hayes, known to me to be the persons whose names are subscribed to the foregoing instrument, and acknowledged to me that they executed the same for the purposes and consideration therein expressed, in the capacity therein stated, and as the act and deed of said corporation.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 24 day of October, 1988.



Jeanette Marie Loveless
Notary Public
Dovey County, Texas

Agenda Item:

3A. Resolution No. 44-2013 repealing Resolution No. 118-2004 and granting a Conditional Use Permit for an approximate 2.80 acre tract of land located on Lots 1 and 2-R, Block 1 of the Bryant Addition, a subdivision within the City of Kerrville, Texas, and otherwise known as 1871 and 1903 Junction Highway; said tract is located within the 3-W zoning district; by permitting said property to be used for “dwelling – single family attached”, “vehicle sales – new”, and “vehicle sales – used”; and making said permit subject to certain conditions and restrictions contained herein. (staff)

**TO BE CONSIDERED BY THE CITY COUNCIL
CITY OF KERRVILLE, TEXAS**

SUBJECT: Public Hearing & Action: Conditional Use Permit – Public hearing, consideration, and action concerning a proposed CUP to allow the land uses of "Vehicle Sales – Used", "Vehicle Sales – New" and "Dwelling, Single Family, Detached", in addition to all permitted land uses in the W-3 zoning district, for lots 1 & 2-R, Block 1, of the Bryant Addition subdivision, located at 1871 & 1903 Junction Highway.

FOR AGENDA OF: Dec. 10, 2013 **DATE SUBMITTED:** Nov. 26, 2013

SUBMITTED BY: Jason Lutz **CLEARANCES:** Kristine Ondrias

EXHIBITS: Site Map, Resolution, and Exhibits

AGENDA MAILED TO: Troy Faust, 1903 Junction Highway, Kerrville, Texas 78028

APPROVED FOR SUBMITTAL BY CITY MANAGER:

<u>Expenditure</u>	<u>Current Balance</u>	<u>Amount</u>	<u>Account</u>
<u>Required:</u>	<u>in Account:</u>	<u>Budgeted:</u>	<u>Number:</u>
\$	\$	\$	

PAYMENT TO BE MADE TO:

REVIEWED BY THE DIRECTOR OF FINANCE:

SUMMARY STATEMENT

The land owner received a CUP in 2004 (resolution 118-2004) allowing the land use of "Vehicle Sales-Used". The land owner is seeking to expand his existing business onto his adjacent lot. The goal is to construct additional parking areas for vehicle/inventory display as depicted in Exhibit B. This proposed CUP will repeal the existing CUP and establish a new CUP with additional uses. In addition this CUP will require the property to be replatted into 1 lot. Some of the proposed improvements for the parking expansion will be located in a private sewer easement, highlighted in Exhibit A – Pg. 1, that was granted to an adjacent land owner. This easement will need to be abandoned prior to any of the proposed improvements are permitted for construction. The condition for the abandonment of the easement was placed on the replat by the P&Z Commission.

The land owner owns the adjacent lot, which has a structure utilized as a single family dwelling. The existing land use for this tract is a non-conforming use. The applicant is seeking a new CUP to allow the land uses of "Vehicle Sales – Used", "Vehicle Sales – New" and "Dwelling, Single Family, Detached", in addition to all permitted land uses in the W-3 zoning district, for lots 1 & 2-R, Block 1, of the Bryant Addition subdivision.

Based on the facts that the three proposed uses are allowed in the W-3 zoning district, via a CUP, and that the property has functioned with those proposed uses since 2004, staff recommends approval of the CUP.

RECOMMENDED ACTION

1. Open the public hearing and receive comments.
2. Approve the CUP, as outlined in the attached resolution.

**CITY OF KERRVILLE, TEXAS
RESOLUTION NO. 44-2013**

A RESOLUTION REPEALING RESOLUTION NO. 118-2004 AND GRANTING A CONDITIONAL USE PERMIT FOR AN APPROXIMATE 2.80 ACRE TRACT OF LAND LOCATED ON LOTS 1 AND 2-R, BLOCK 1 OF THE BRYANT ADDITION, A SUBDIVISION WITHIN THE CITY OF KERRVILLE, TEXAS, AND OTHERWISE KNOWN AS 1871 AND 1903 JUNCTION HIGHWAY; SAID TRACT IS LOCATED WITHIN THE 3-W ZONING DISTRICT; BY PERMITTING SAID PROPERTY TO BE USED FOR "DWELLING - SINGLE FAMILY ATTACHED", "VEHICLE SALES - NEW", AND "VEHICLE SALES - USED"; AND MAKING SAID PERMIT SUBJECT TO CERTAIN CONDITIONS AND RESTRICTIONS CONTAINED HEREIN

WHEREAS, City Council, on September 22, 2004, adopted Resolution No. 118-2004, which granted a Conditional Use Permit for property located at 1903 Junction Highway (SH 27) (the "Property"); and

WHEREAS, Resolution No. 118-2004 authorized the Property to be developed and used for Vehicle Sales - Used purposes, as that term is defined within the City's Zoning Code; and

WHEREAS, the current owner of the Property has acquired additional land adjacent to the Property and seeks to combine this land with the Property for specified uses; and

WHEREAS, the uses include the existing use of Vehicle Sales-Used plus the additional uses of Vehicle Sales-New and Dwelling-Single Family Attached, as such uses are defined within the City's Zoning Code; and

WHEREAS, due to this request to authorize additional uses for the Property, City staff recommends repealing Resolution No. 118-2004, which will terminate the previously granted Conditional Use Permit, and adopting a new Conditional Use Permit to allow the Property to be used for Vehicle Sales-Used, Vehicle Sales-New, and Dwelling-Single Family Attached purposes; and

WHEREAS, the City Planning and Zoning Commission and the Governing Body of the City of Kerrville, Texas, in compliance with the City Charter and the State law with reference to the granting of conditional use permits under Title 11, Chapter I of the Code of Ordinances of the City of Kerrville, Texas, and the official zoning map adopted thereby, have given the requisite notices by United States mail, publication and otherwise; and after holding due hearings and affording a full and fair hearing to all of the property owners generally, and particularly to those interested persons situated in the affected area and in the vicinity thereof, the Governing Body of the City of Kerrville, Texas, finds that the health, safety, and general welfare will be best served by the granting of a Conditional Use Permit, set out hereinafter, subject to the special conditions and restrictions set out hereinafter on the Property;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF KERRVILLE, KERR COUNTY, TEXAS:

SECTION ONE. Resolution No. 118-2004 is repealed.

SECTION TWO. A Conditional Use Permit is granted to permit the Property described below to be used for Vehicle Sales-Used, Vehicle Sales-New, and Dwelling-Single Family Attached purposes, as those terms are defined in Article 11-I-3 of the Code of Ordinances of the City of Kerrville, Texas, subject to the provisions of this Resolution and other applicable City ordinances and regulations:

An approximate 2.80 acres, comprising all of Lot 1 (1.05 acres) in Block One of the Bryant Addition, a subdivision of Kerr County, Texas and all of Lot 2-R (1.75 acres) in Block One of the Bryant Addition, a subdivision of Kerr County, Texas; and being more particularly described and depicted in Exhibits A and B, attached hereto and incorporated herein by reference (the "Property").

SECTION THREE. If the Property is developed and used for Vehicle Sales-Used, Vehicle Sales-New, and/or Dwelling-Single Family Attached the development and use of the Property is subject to the following conditions and regulations:

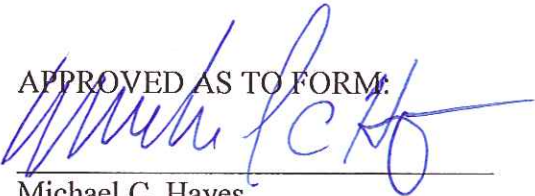
- A. Property Development: The development and use of the Property must be substantially in accordance with **Exhibit B**, attached hereto and incorporated herein by reference;
- B. Parking: The design and number of parking spaces must be in accordance with the regulations in effect at the time that individual building permits are submitted to the City. All required parking spaces must be marked and kept available for customers and employees and may not be used for the display of vehicle inventory.
- C. Signage: Any signage placed or used on the Property must conform to the applicable regulations of the City, including the City's Sign Code (Ch 6, Art. II, City's Code of Ordinances).
- D. Screening: Screening must be in accordance with the regulations in effect at the time individual building permits are submitted to the City.
- F. Trash and Other Solid Waste: Solid waste collection bins and dumpsters must be equipped with lids and screened with a gate with an opaque screen on one side and masonry material finished to look substantially like the principal building to which it is adjacent on the remaining three sides.
- G. Vehicle Repair and Maintenance: No repair or maintenance of any vehicles may occur on the Property at any time except as follows:

1. maintenance shall be performed only on used and new vehicles:
 - (a) that are in the business operator's inventory; or
 - (b) that have been sold out of the business operator's inventory within six (6) months of the date of performance of the maintenance;
 2. the level of maintenance to be performed is limited to only that which is necessary and/or required by law to prepare the used or new vehicle for sale to a retail customer;
 3. no vehicle parts or supplies, including tires, petroleum products, or hazardous materials, may be kept or stored on the exterior of any building;
 4. no tools or equipment may be stored on the exterior of any building unless contained in an enclosed area fully screened from view from all adjacent properties, streets, and alleys.
- H. Wastewater Connection: The Property must be connected to and shall comply with the City's rules and regulations regarding sanitary sewer service.
- I. Platting: The Property must comply with the City's Subdivision Code, including platting or replatting as may be appropriate, within 180 days of the date that this Resolution is adopted.

SECTION FOUR. This Resolution and the Conditional Use Permit granted herein is subject to termination in accordance with Article 11-I-13 of the Code of Ordinances of the City of Kerrville, Texas.

PASSED AND APPROVED ON this the ____ day of _____, A.D., 2013.

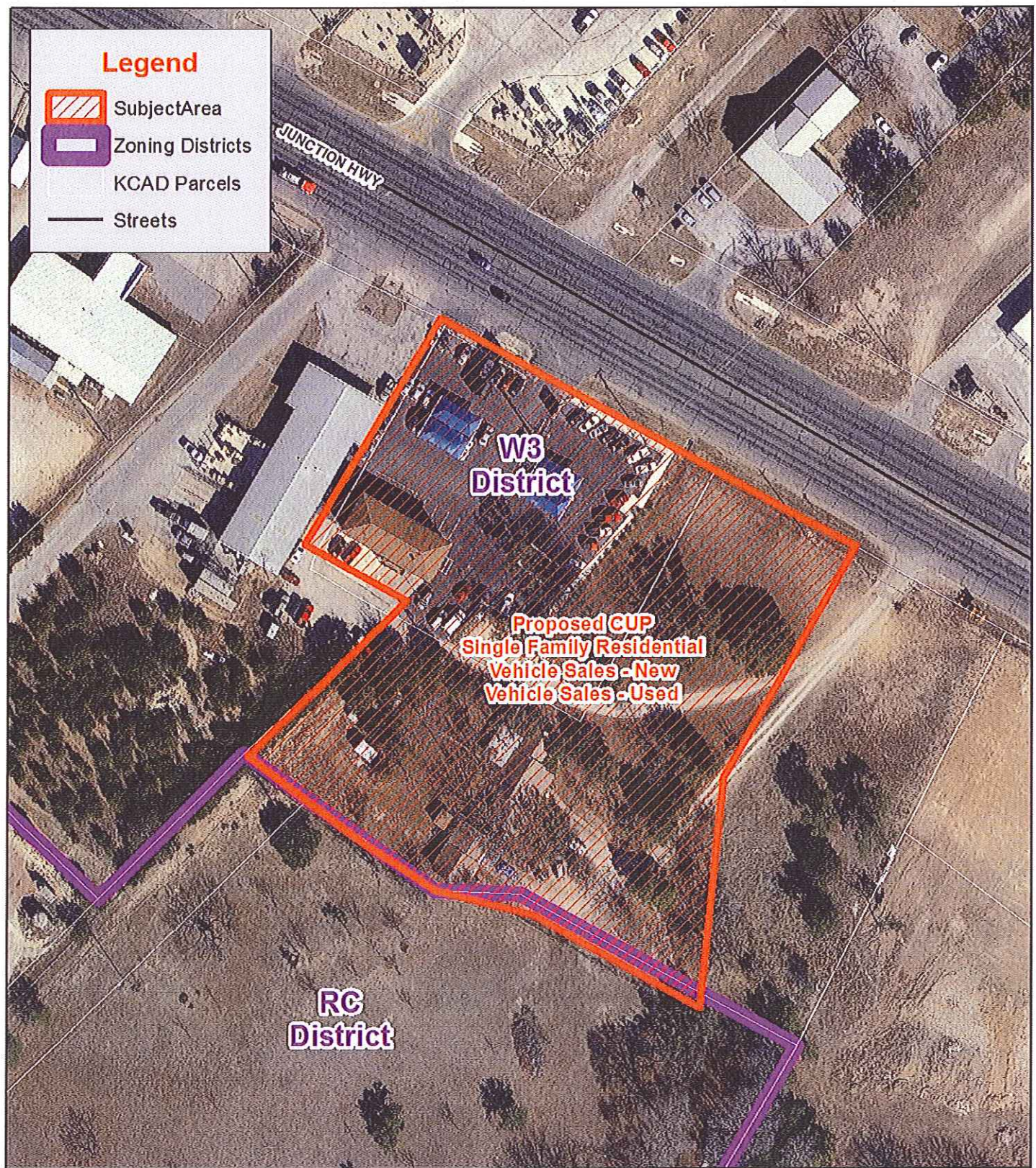
APPROVED AS TO FORM:


Michael C. Hayes

Jack Pratt, Jr., Mayor

ATTEST:

Brenda G. Craig, City Secretary



This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only approximate relative locations.

0 50 100 200 Feet

1 inch = 100 feet



Exhibit A Pg. 1

SURVEY PLAT FOR 2.80 ACRES OF LAND, MORE OR LESS, OUT OF ORIGINAL PATENT SURVEYS IN KERR COUNTY, TEXAS AS FOLLOWS:

SURVEY NO.	SURVEY	ABSTRACT NO.	ACRES
123	F. LARA	225	1.89
124	FRANCISCO MARTINEZ	247	0.91

COMPRISING ALL OF LOT 1 (1.05 ACRES) IN BLOCK ONE OF THE BRYANT ADDITION, A SUBDIVISION OF KERR COUNTY ACCORDING TO THE PLAT OF RECORD IN VOLUME 7 AT PAGE 255 OF THE PLAT RECORDS OF KERR COUNTY, TEXAS AND ALL OF LOT 2-R (1.75 ACRES) IN BLOCK ONE OF THE BRYANT ADDITION, A SUBDIVISION OF KERR COUNTY ACCORDING TO THE REPLAT OF RECORD IN FILE NO. 12-4923 OF THE OFFICIAL PUBLIC RECORDS OF KERR COUNTY, TEXAS

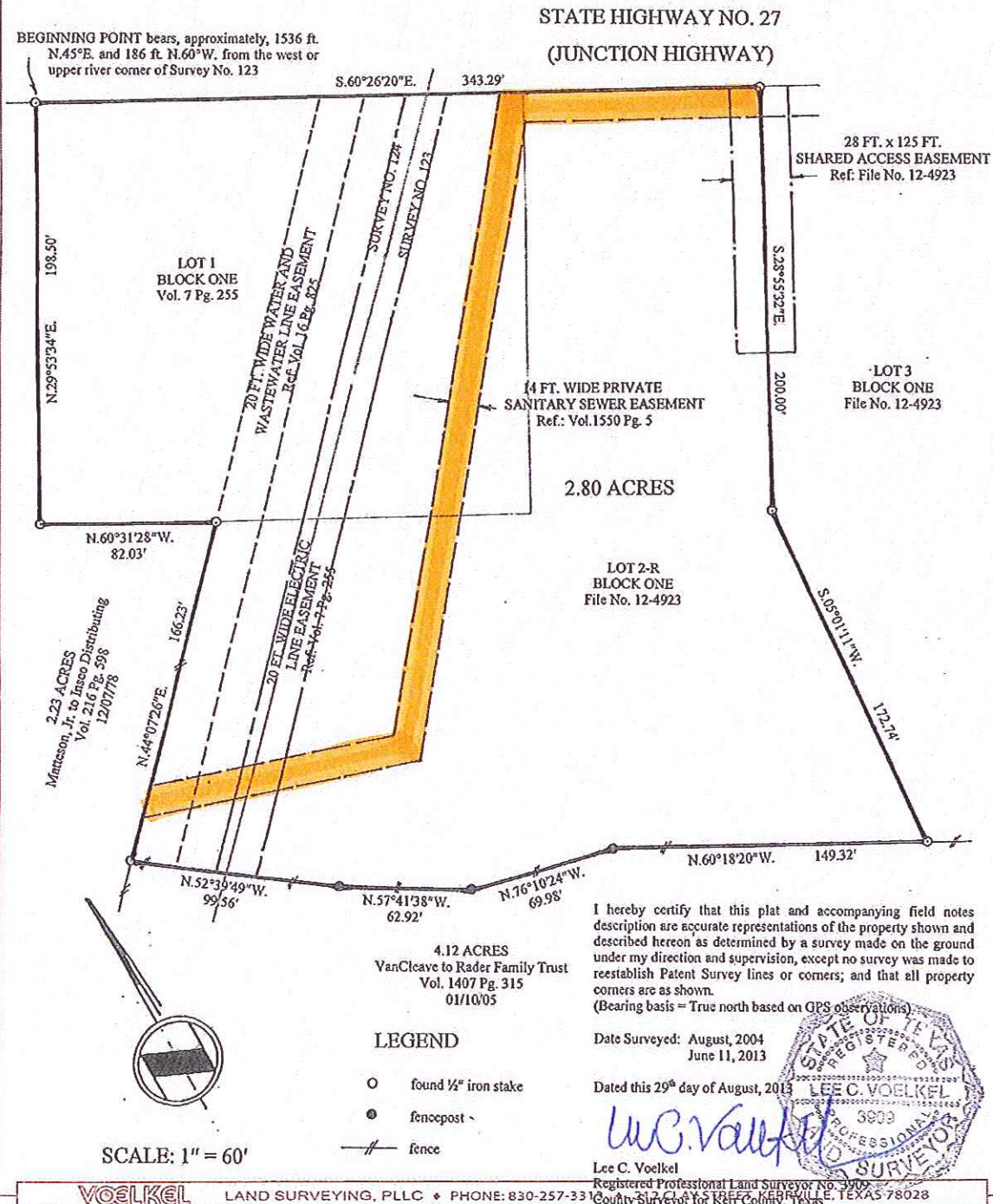


Exhibit A - Pg. 2

FIELD NOTES DESCRIPTION FOR LOTS 1 AND 2-R, BLOCK ONE OF THE BRYANT ADDITION IN THE CITY OF KERRVILLE, KERR COUNTY, TEXAS

Being all of a certain tract or parcel of land containing 2.80 acres, more or less, out of Original Patent Surveys in Kerr County, Texas as follows:

Survey No.	Survey	Abstract No.	Acres
123	F. Lara	225	1.89
124	Francisco Martinez	247	0.91

comprising all of Lot 1 (1.05 acres) in Block One of the Bryant Addition, a subdivision of Kerr County according to the plat of record in Volume 7 at Page 255 of the Plat Records of Kerr County, Texas and all of Lot 2-R (1.75 acres) in Block One of the Bryant Addition, a subdivision of Kerr County according to the replat of record in File No. 12-4923 of the Official Public Records of Kerr County, Texas; and being more particularly described by metes and bounds as follows:

BEGINNING at a ½" iron stake found in the southwest right-of-way line of State Highway No. 27 (aka Junction Highway) for the north corner of the herein described tract and said Lot 1, and the northeast corner of a certain 2.23 acre tract conveyed from Lewis M. Matteson, Jr. to Insko Distributing, Inc. by a Warranty Deed with Vendor's Lien executed the 7th day of December, 1978 and recorded in Volume 216 at Page 598 of the Deed Records of Kerr County, Texas; which point bears, approximately, 1536 ft. N.45°E. and 186 ft. N.60°W. from the west or upper river corner of said Survey No. 123;

THENCE, with the northeast line of said Lot 1 and the southwest right-of-way line of said State Highway No. 27, S.60°26'20"E., at 230.88 ft. passing the northeast common corner of Lots 1 and 2-R, then continuing with the northeast line of Lot 2-R for a total distance of 343.29 ft. to a ½" iron stake found for the east corner of the herein described tract and Lot 2-R, and the north corner of Lot 3 of the said Bryant Addition (File No. 12-4923);

THENCE, with the common line between said Lots 2-R and 3: S.28°55'32"W., 200.00 ft. to a found ½" iron stake; and S.05°01'12"W., 172.74 ft. to a ½" iron stake found in a fence, the north line of a certain 4.12 acre tract conveyed from Roger C. VanCleave and Shirley VanCleave to the Rader Family Trust by a Warranty Deed with Vendor's Lien executed the 10th day of January, 2005 and recorded in Volume 1407 at Page 315 of the Official Public Records of Kerr County, Texas for the south corner of the herein described tract and the south common corner of Lots 2-R and 3;

THENCE, along a fence with the common line between said Lot 2-R and 4.12 acre tract: N.60°18'20"W., 149.32 ft. to a fence anglepost; N.76°10'24"W., 69.98 ft. to a fence anglepost; N.57°41'38"W., 62.92 ft. to a fence anglepost; and N.52°39'49"W., 99.56 ft. to a cotton spindle found at a fencepost in the southeast line of said 2.23 acre tract for the west corner of the herein described tract and Lot 2-R, and the north corner of 4.12 acre tract;

THENCE, along a fence with the common line between said Lot 2-R and 2.23 acre tract N.44°07'26"E., 166.23 ft. to a ½" iron stake found in the southwest line of said Lot 1 for a reentrant corner of the herein described tract, the northwest corner of Lot 2-R, and an easterly corner of 2.23 acre tract;

THENCE, with the common line between said Lot 1 and 2.23 acre tract: N.60°31'28"W., 82.03 ft. to a ½" iron stake found for the northwest corner of the herein described tract, the west corner of Lot 1, and a reentrant corner of 2.23 acre tract; and N.29°53'34"E., 198.50 ft. to the PLACE OF BEGINNING.

I hereby certify that these field notes and accompanying plat are accurate representations of the property shown and described hereon as determined by a survey made on the ground under my direction and supervision, except no survey was made to reestablish Patent Survey lines or corners; and that all property corners are as shown.

(Bearing basis = True north based on GPS observations)

Date Surveyed: August, 2004
June 11, 2013

Dated this 28th day of August 2013

Lee C. Voelkel

Lee C. Voelkel
Registered Professional Land Surveyor No. 3909
County Surveyor for Kerr County, Texas

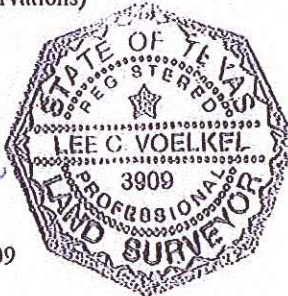
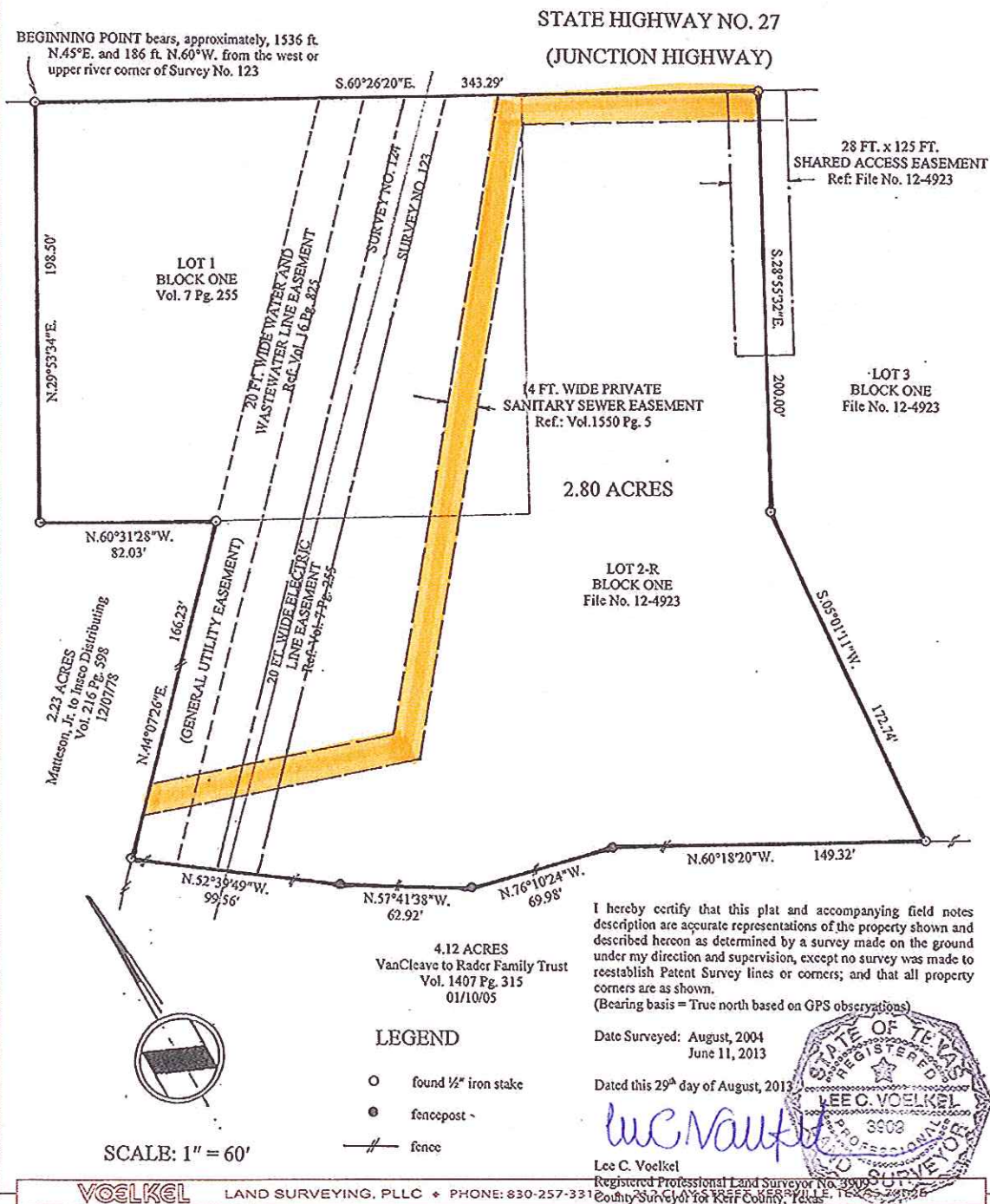


Exhibit A - Pg. 1

SURVEY PLAT FOR 2.80 ACRES OF LAND, MORE OR LESS, OUT OF ORIGINAL PATENT SURVEYS IN KERR COUNTY, TEXAS AS FOLLOWS:

SURVEY NO.	SURVEY	ABSTRACT NO.	ACRES
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COMPRISING ALL OF LOT 1 (1.05 ACRES) IN BLOCK ONE OF THE BRYANT ADDITION, A SUBDIVISION OF KERR COUNTY ACCORDING TO THE PLAT OF RECORD IN VOLUME 7 AT PAGE 255 OF THE PLAT RECORDS OF KERR COUNTY, TEXAS AND ALL OF LOT 2-R (1.75 ACRES) IN BLOCK ONE OF THE BRYANT ADDITION, A SUBDIVISION OF KERR COUNTY ACCORDING TO THE REPLAT OF RECORD IN FILE NO. 12-4923 OF THE OFFICIAL PUBLIC RECORDS OF KERR COUNTY, TEXAS



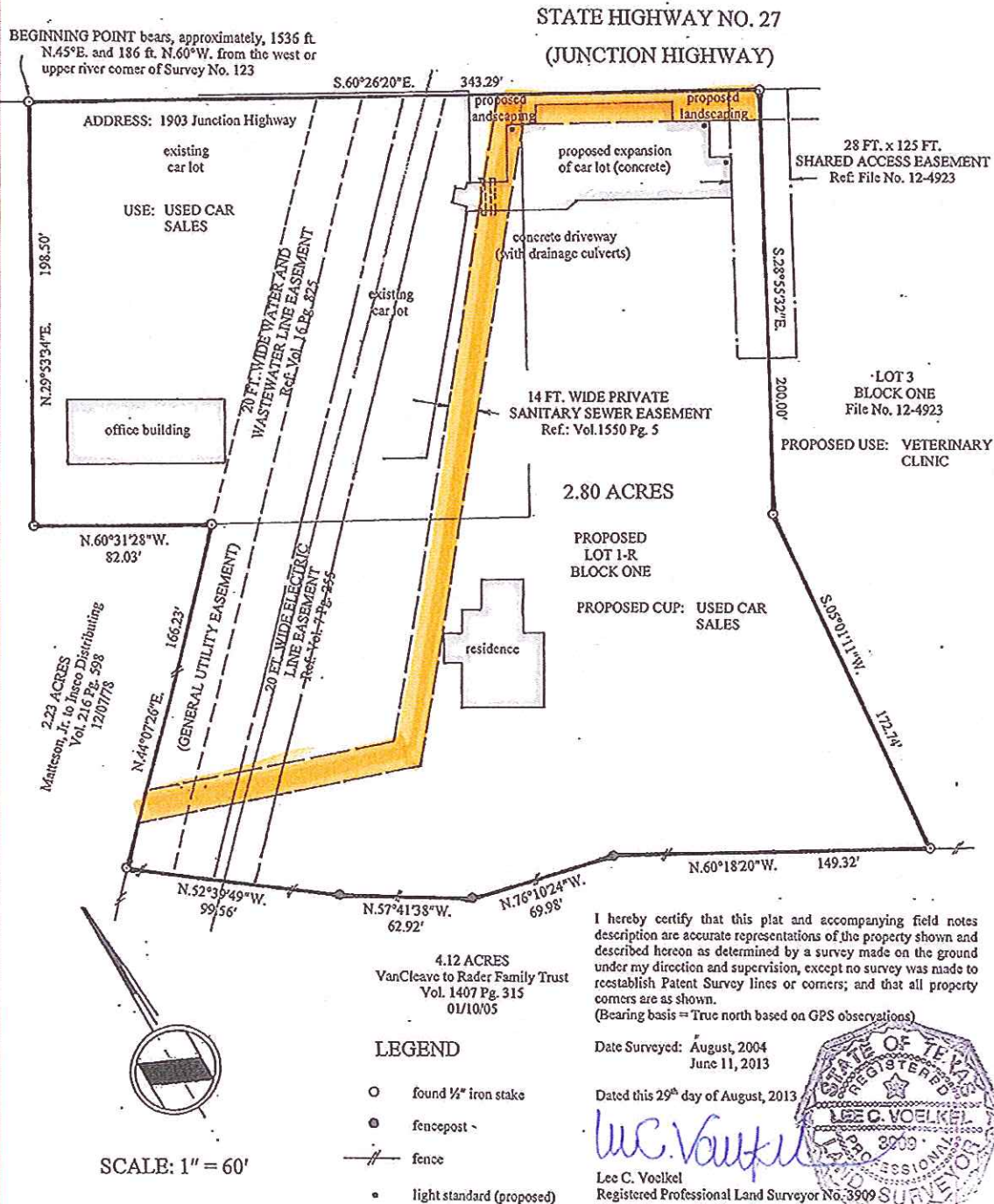
VOELKEL

LAND SURVEYING, PLLC • PHONE: 830-257-3311

Exhibit B

SITE PLAN FOR THE PROPOSED LOT 1-R OF THE BRYANT ADDITION

NOTE: Roberts Auto Sales has a similar use and is located at 1918 Junction Highway, within 1000 ft of this property



Agenda Item:

4A. Ordinance No. 2013-22, amending the City's "Zoning Code" by revising regulations regarding building setbacks; containing a cumulative clause; containing a savings and severability clause; providing for a penalty for a violation of any provision hereof; ordering publication; providing an effective date; and providing other matters related to the subject. (staff)

**TO BE CONSIDERED BY THE CITY COUNCIL
CITY OF KERRVILLE, TEXAS**

SUBJECT: 2nd Ordinance Reading: Zoning Code Text Amendments – 2nd Ordinance Reading concerning a request to amend Article 11-I-17(c)(9), regarding regulations concerning the Location of accessory structures beyond setbacks, of the Zoning Code of the City of Kerrville.

FOR AGENDA OF: Dec. 10, 2013 **DATE SUBMITTED:** Nov. 26, 2013

SUBMITTED BY: Jason Lutz **CLEARANCES:** Kristine Ondrias 

EXHIBITS: Ordinance

AGENDA MAILED TO:

APPROVED FOR SUBMITTAL BY CITY MANAGER: 

Expenditure Required:	Current Balance in Account:	Amount Budgeted:	Account Number:
\$	\$	\$	

PAYMENT TO BE MADE TO:

REVIEWED BY THE DIRECTOR OF FINANCE:

SUMMARY STATEMENT

The goal of this amendment is to modify language in the current zoning code, adjust the size of accessory structures in relation to their setbacks, limit structure height, and allow accessory structures, with a floor square footage between 150' and 528' to be located beyond the rear setback, but no closer than 6' to any property line. In addition these amendments would also eliminate an error in the current zoning code concerning screening requirements for accessory structures. All proposed amendments have been recommended by the City of Kerrville's Zoning and Input Committee.

The attached ordinance highlights new language in blue and shows deleted language in red.

The major changes are outlined below:

- (9) Location of Accessory Structures Beyond Setback:
 - Language change, structures shall not extend beyond the setbacks, except as follows.
 - "May extend" was changed to "shall not extend".
- (9) (ii)
 - Language added: added "located on property zoned as residential"
 - Language change: deleted "of less than" and replaced with "not exceeding"
 - Language added: "and not exceeding fifteen feet (15.0')"
 - Language change: deleted "in no case" and replaced with "not"
- (9) (iii)
 - Language added: added "located on property zoned as residential"

- Language change: deleted "but less than four hundred (400) square feet" and replaced with "up to a maximum of five hundred twenty-eight (528) square feet"
 - This increase in size is to accommodate a standard two car garage (22'x24')
- Language change: deleted "into any setback" and replaced with "to any property line"
 - The goal of this change is to correct an error in the language that was not intended in this regulation. The original amendment was added to allow structures beyond the setbacks but no closer than 6' to any property line. The language adopted stated "not closer than 6' into any setback" thus changing the goal. An example of this is that a property with a rear setback of 25' could only put a garden shed 19' from the property line, instead of 6', as they were only allowed to encroach the setback by 6'.
- (9) (iv)
 - Language added: added "or structure"
 - Language change: deleted "residential" and replaced with "zoned as residential"
 - Language change: deleted "non-residential" and replaced with "not zoned as residential"
 - Language change: deleted "lot" and replaced with "property"
 - Language change: deleted "as described in Paragraph (iv), above" and replaced with "Type A screening is constructed in accordance with City regulations"
 - This change is being done to correct an error in the code. The original amendment change for this section, done in 2010, deleted Paragraph (iv), consequently this section of code has been referring to another section that no longer exists.
- (9) (v)
 - Language change: deleted "residential" and replaced with "zoned as residential"
 - Language change: deleted "non-residential" and replaced with "not zoned as residential"
 - Language added: added "or structure"
 - Language change: deleted "residential" and replaced with "zoned as residential"
 - Language change: deleted "business" and replaced with "not zoned as residential"
 - Language change: deleted "in no case shall the building extend" and replaced with "not"
 - Language change: deleted "lot" and replaced with "property"

Council approved the amendments on Nov. 12, 2013, after a public hearing, by a vote of 5-0. Two citizens spoke on the issue, with John Mosty speaking in favor of the amendments and Ruth Spradling speaking against the maximum size of 528 square feet as being too large of a structure to be placed 6' from a property line.

RECOMMENDED ACTION

1. Approve the zoning code text amendments as outlined in the attached ordinance on the second reading.

**CITY OF KERRVILLE, TEXAS
ORDINANCE NO. 2013-22**

AN ORDINANCE AMENDING THE CITY'S "ZONING CODE" BY REVISING REGULATIONS REGARDING BUILDING SETBACKS; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A PENALTY FOR A VIOLATION OF ANY PROVISION HEREOF; ORDERING PUBLICATION; PROVIDING AN EFFECTIVE DATE; AND PROVIDING OTHER MATTERS RELATED TO THE SUBJECT

WHEREAS, pursuant to Texas Local Government Code Sections 211.006 and 211.007, notice has been given to all parties in interest and citizens by publication in the official newspaper and otherwise, of public hearings which were held before the City Council on November 5, 2013, which considered a report of the City of Kerrville Planning and Zoning Commission regarding its recommendations on this Ordinance, the adoption of which will result in revisions to the City's Zoning Code as specified herein; and

WHEREAS, such public hearings were held in the Council Chambers beginning at approximately 6:00 p.m. on November 5, 2013, as advertised; and

WHEREAS, after full hearings, at which all parties in interest and citizens were given an opportunity to be heard; and after receiving and considering the recommendations of the Planning and Zoning Commission and the City staff; and after considering among other things, the character of the various areas of the City and the suitability of particular uses in each area; and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout the City, the Council finds it to be in the best interest of the health, safety, morals, and general welfare of the City of Kerrville, Texas, to amend the City's Zoning Code as specified herein;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF KERRVILLE, KERR COUNTY, TEXAS:

SECTION ONE. Section 11-I-17 (9) of the City's Zoning Code is amended by adding the language that is underlined (added) and deleting the language that is bracketed and stricken (~~deleted~~) to the sections as follows:

"(9) Location of Accessory Structures Beyond Setback: Accessory buildings or structures shall not ~~may~~ extend beyond the setback, except as follows:

- i. satellite dishes may extend beyond the side or rear setback, but not the front setback;
- ii. an accessory building or structure, located on property zoned as residential, with a floor area not exceeding ~~of less than~~ one hundred fifty (150) square feet, and not exceeding fifteen feet (15.0') in height, may extend beyond the

side or rear setback, but not ~~[in no case]~~ closer than three feet (3.0') to any property line.

- iii. an accessory building or structure, located on property zoned as residential, with a floor area greater than one hundred fifty (150) square feet up to a maximum of five hundred twenty-eight (528) square feet ~~[but less than four hundred (400) square feet,]~~ and not exceeding ~~[no taller than]~~ fifteen feet (15.0') in height ~~[, and located on residential property]~~ may extend beyond the rear setback but not closer than six feet (6.0') to any property line ~~[into any setback]~~.
- iv. an accessory building or structure located on ~~[non-residential]~~ property not zoned as residential and abutting other ~~[non-residential]~~ property not zoned as residential, including garages and carports, may extend beyond the side or rear setback, but no closer than:
 - a three feet (3.0') to any property ~~[lot]~~ line, if a Type A screening fence ~~[as described in Paragraph (iv), above,]~~ is constructed in accordance with City regulations; or
 - b six feet (6.0') to any lot line if no screening fence is constructed;
- v. if the side or rear lot line of a ~~[residential]~~ property zoned as residential abuts the property line of a ~~[non-residential]~~ property not zoned as residential, an accessory building or structure located on ~~[residential]~~ property zoned as residential, including, but not limited to, a detached carport or garage, may extend beyond the rear setback of the lot line adjacent to the ~~[business]~~ property zoned as commercial property, but not ~~[in no case shall the building extend]~~ closer than three feet (3.0') to any property line ~~[lot]~~ line."

SECTION TWO. The City Secretary is authorized and directed to amend the Zoning Code to reflect the amendments adopted herein and to correct typographical errors and to index, format, and number and letter paragraphs to the existing Code, as appropriate.

SECTION THREE. The provisions of this Ordinance are cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances inconsistent with or in conflict with any of the provisions of this Ordinance are expressly repealed to the extent of any such inconsistency or conflict.

SECTION FOUR. If any section, subsection, sentence, clause or phrase of this Ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this Ordinance. The Council of the City of Kerrville, Texas, declares that it would have passed this Ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION FIVE. The penalty for violation of this Ordinance shall be in accordance with the general penalty provisions contained in Article 1-I-9 of the Code of Ordinances of the City of Kerrville, Texas, which provides for a fine not exceeding TWO THOUSAND DOLLARS (\$2,000.00).

SECTION SIX. Pursuant to Texas Local Government Code §52.013(a) and Section 3.07 of the City's Charter, the City Secretary is hereby authorized and directed to publish the descriptive caption of this Ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

SECTION SEVEN. This Ordinance shall become effective immediately upon the expiration of ten days following publication, as provided for by Section 3.07b. of the City Charter.

PASSED AND APPROVED ON FIRST READING, this the 12th day of November A.D., 2013.

PASSED AND APPROVED ON SECOND AND FINAL READING, this the day of _____, A.D., 2013.

ATTEST:

Jack Pratt, Jr., Mayor

Brenda G. Craig, City Secretary

APPROVED AS TO FORM:



Michael C. Hayes, City Attorney

Agenda Item:

5A. Appointment of municipal court judges. (staff)

**TO BE CONSIDERED BY THE CITY COUNCIL
CITY OF KERRVILLE, TEXAS**

SUBJECT: Appointment of Municipal Court Judges

FOR AGENDA OF: December 10, 2013 **DATE SUBMITTED:** December 5, 2013

SUBMITTED BY: Kimberly Meisner, **CLEARANCES:** Todd Parton, City Manager
Director of General Operations

EXHIBITS:

AGENDA MAILED TO:

APPROVED FOR SUBMITTAL BY CITY MANAGER: 

Expenditure	Current Balance	Amount	Account
Required:	in Account:	Budgeted:	Number:
\$71,800.00	\$71,800.00	\$71,800.00	01-809-003

PAYMENT TO BE MADE TO:

REVIEWED BY THE FINANCE DIRECTOR:

SUMMARY STATEMENT

The City Council of the City of Kerrville finds it to be in the public interest to appoint two Municipal Court Judges for judicial services required by the City of Kerrville, Municipal Court.

The current terms for the Municipal Court Judge, Mark Prislovsky, and Alternate Municipal Court Judge, Patrick Maguire, expire on December 31, 2013.

Because we have established equity in dockets, both Mark Prislovsky and Patrick Maguire perform duties of a Municipal Court Judge, therefore, should be appointed as such.

RECOMMENDED ACTION

Staff recommends appointment of Mark Prislovsky and Patrick Maguire as Municipal Court Judges for the City of Kerrville for two-year terms beginning January 1, 2014 and ending December 31, 2015.

Agenda Item:

5B. Funding agreement between the City of Kerrville, Texas Economic Improvement Corporation and Habitat for Humanity in an amount not to exceed \$375,000.00. (staff)

**TO BE CONSIDERED BY THE CITY COUNCIL
CITY OF KERRVILLE, TEXAS**

SUBJECT: Funding agreement between Habitat for Humanity and the City of Kerrville, Texas Economic Improvement Corporation in an amount not to exceed \$375,000

FOR AGENDA OF: December 10, 2013 **DATE SUBMITTED:** November 26, 2013

SUBMITTED BY: Ashlea Boyle 
Main Street / Special Projects Manager

CLEARANCES: Todd Parton
City Manager

EXHIBITS: Funding Agreement

AGENDA MAILED TO:

APPROVED FOR SUBMITTAL BY CITY MANAGER: 

Expenditure	Current Balance	Amount	Account
Required:	in Account:	Budgeted:	Number:
\$375,000	\$1,715,000	\$375,000	40-800-975-02

PAYMENT TO BE MADE TO:

REVIEWED BY THE DIRECTOR OF FINANCE: 

SUMMARY STATEMENT

At its meeting of October 28, 2013, the Economic Improvement Corporation (EIC) considered an application from Habitat for Humanity in the amount of \$375,000 to complete public infrastructure improvements for Phase II of developing an approximate 39 lot sub-division on Legion Drive between Meadowview and Meeker. Such public improvements include public streets, water and wastewater mains, and drainage facilities including a retention pond. The sub-division is comprised of two phases which includes approximately 20 sites in Phase I and 19 in Phase II.

In 2009, Habit for Humanity received a similar EIC grant of \$418,000 for Phase I for improvements to public streets, water and wastewater mains, and drainage facilities including a retention pond. Habit for Humanity is a non-profit organization dedicated to providing affordable housing for Kerr County low income families.

On November 25, 2013, the EIC held a public hearing and approved a funding agreement in an amount not to exceed \$375,000 for this project. Attached is the final draft of the funding agreement between Habitat for Humanity and the EIC.

RECOMMENDED ACTION

City staff recommends the consideration and approval of this funding agreement as presented.

**ECONOMIC DEVELOPMENT GRANT AGREEMENT BETWEEN HABITAT FOR
HUMANITY AND THE CITY OF KERRVILLE, TEXAS ECONOMIC IMPROVEMENT
CORPORATION**

This Agreement entered into by and between HABITAT FOR HUMANITY, Kerr County, Texas, a Texas nonprofit corporation ("Habitat"), acting herein by and through its duly authorized President of the Board, Glenn Andrew ("Officer"), and the CITY OF KERRVILLE, TEXAS, ECONOMIC IMPROVEMENT CORPORATION ("EIC"), a Texas nonprofit corporation, established pursuant to Section 4B of Tex. Rev. Civ. Stat. Art. 5190.6 (otherwise known as the Development Corporation Act of 1979 and now codified in Chapters 501, 502, and 505 of the Texas Local Government Code) (hereafter referred to as "the Act"), acting by and through its duly authorized President.

WITNESSETH:

WHEREAS, EIC was formed to administer the sales and use tax approved by the citizens of Kerrville, Texas, in May 1995 and collected for projects including but not limited to:

Land, buildings, equipment, facilities, expenditures, targeted infrastructure, and improvements that are required or suitable for the promotion of development and expansion of affordable housing, as defined by 42 U.S.C. Section 12745, as provided by Section 505.153 of the Act; and

WHEREAS, pursuant to the Act, the EIC is authorized to provide funding relating to the construction of projects which the EIC finds to be encompassed within the definition of "Projects" as that word is defined by Chapters 501 and 505 of the Act; and

WHEREAS, Habitat manages and expends funds that it receives to build or renovate homes that it then offers to qualified families in need; and

WHEREAS, Habitat has applied for a grant from the EIC for funds necessary to develop a second phase of the Maud Jennings Subdivision (Phase II) for the purpose of providing affordable homes to deserving families in Kerrville; and

WHEREAS, the EIC has determined that such a grant complies with the Act and is in keeping with the mission of the EIC and the *City of Kerrville Economic Improvement Corporation 4B Sales Tax Funding Request Guidelines and Procedures*; and

WHEREAS, the EIC finds that it will be in the public interest to enter into an agreement with Habitat to provide sales tax revenues collected pursuant to the Act ("4B Revenues") to Habitat for costs related to developing phase two of the subdivision; and

WHEREAS, on November 25, 2013, in a meeting that was open to the public in accordance with the Texas Open Meetings Act, EIC held a public hearing pursuant to Section 505.159 of the Act related to the proposed expenditure of 4B Revenues for the purposes provided above;

NOW THEREFORE, for and in consideration of the recitals set forth above and the promises made herein, Habitat and EIC agree as follows:

**ARTICLE I.
EIC'S OBLIGATIONS**

- A. EIC hereby grants Habitat Three Hundred Seventy-Five Thousand and No/100 Dollars (\$375,000.00) ("Grant") for costs related to the development and construction of public improvements for the phase two of the housing development located between Meadowview and Meeker, a residential subdivision made up of approximately nineteen (19) single family homes and herein referred to as the "Project". Such public improvements include the following:
- (1) public streets;
 - (2) water and wastewater mains; and
 - (3) drainage facilities, including a retention pond.
- The improvements and work necessary therefor are more specifically defined in **Exhibit A**, attached hereto, such that the Grant makes up only partial funding of the Project.
- B. Prior to any payment from EIC, Habitat shall provide sufficient evidence in the sole opinion of EIC that it has received and/or been promised funding from other entities or sources to complete the full Project as specified in **Exhibit A**.
- C. Subject to the terms and conditions set forth in Article II, EIC will administer and provide the Grant to Habitat on a reimbursable basis for actual costs resulting from the Project. Prior to any payment from EIC, Habitat shall submit written evidence of costs, such as invoices, receipts, and bills of sale, for review and approval by the EIC or its designated representative. Following each submission and verification thereof, which may include on-site inspections to confirm the development and construction of the Project, EIC shall then reimburse Habitat for the cost.
- D. Payments made by EIC to Habitat from 4B Revenues shall be limited to the payments of "costs" as defined by the Act.
- E. In no event shall the total amount of the Grant exceed Three Hundred Seventy-Five Thousand and No/100 Dollars (\$375,000.00).
- F. Habitat specifically agrees that EIC will only be liable to Habitat for the actual amount of the Grant to be conveyed to Habitat and is not liable to Habitat for any other actual or consequential damages, direct or indirect, interest, attorney fees, or costs of court for any act of default by EIC under the terms of this Agreement.

**ARTICLE II.
HABITAT'S OBLIGATIONS**

- A. Habitat agrees to complete the Project on or before December 31, 2015. Failure to complete the Project by this date will terminate the obligation of EIC to make any additional payments of the Grant.

- B. Habitat shall keep and maintain complete and accurate records relating to the costs of the Project, separate and identifiable from its other records, for three (3) years following the termination of this Agreement. EIC and its representatives shall be entitled to inspect the records during the term of this Agreement and for three (3) years thereafter, upon reasonable notice.
- C. Following the initial payment from EIC to Habitat, Habitat shall make written quarterly reports to EIC, or before the last day of the calendar quarter. Said reports, at a minimum, must include information on the status of the Project and the estimated completion date of the Project.
- D. Habitat shall only be liable to EIC for the actual amount of the Grant to be conveyed to Habitat and shall not be liable to EIC for any other actual or consequential damages, direct or indirect, interest, attorney fees, or cost of court for any act of default by Habitat under the terms of this Agreement.

ARTICLE III. REIMBURSEMENT

- A. If, on December 31, 2015, Habitat has failed to complete the Project, then Habitat shall repay EIC One Hundred Thousand and No/100 Dollars (\$100,000.00). The repayment shall be made as soon as commercially practicable after the receipt of a written demand by EIC, but in no event later than thirty (30) days from the receipt of such written demand. Upon repayment thereof, Habitat shall have no further obligation under this Agreement. EIC shall have the discretion to consider relevant circumstances before demanding repayment and may require partial repayment in appropriate circumstances. Failure to reimburse EIC within thirty (30) days of Habitat's receipt of such demand shall constitute a breach of this Agreement.
- B. Notwithstanding any other provision in this Agreement, Habitat shall in no event be required to repay any amount in excess of the Grant monies actually received under this Agreement.

ARTICLE IV. MERGER, CONSOLIDATION OR CHANGE IN MANAGEMENT OF HABITAT OR CONVEYANCE OF THE SUBDIVISION

- A. A sale of all or substantially all of the assets of Habitat, including the subdivision, will not release Habitat from its duties and responsibilities to EIC under the terms of this Agreement and will not result in the assignment of this Agreement by such acquiring entity without prior written consent from EIC, which will not be unreasonably withheld.
- B. In the event of any proposed merger, consolidation, or change in the management of Habitat with any third party not affiliated with Habitat, Habitat shall at least thirty (30) days prior to any such merger or consolidation provide EIC with information and assurance reasonably acceptable to EIC regarding: (1) the surviving entity's assumption and satisfaction of Habitat's duties and responsibilities hereunder and (2) the financial

condition of the surviving entity upon such merger or other consolidation to demonstrate that the surviving entity shall have the financial condition to fully satisfy Habitat's duties and responsibilities hereunder. Failure to provide such information shall be considered a breach of this Agreement.

- C. Notwithstanding anything in this Agreement to the contrary, it is expressly understood and agreed that EIC shall have no rights to approve or disapprove any sale or merger transaction of any kind involving Habitat. In the event of any sale or merger involving Habitat, the surviving entity shall assume Habitat's obligations and rights hereunder and be entitled to any and all benefits to be received pursuant to this Agreement.

ARTICLE V. HABITAT'S REPRESENTATIONS AND WARRANTIES

- A. Habitat represents and warrants as of the date hereof:
- (1) Habitat is a Texas nonprofit corporation existing in good standing and authorized to do business in the State of Texas;
 - (2) Execution of this Agreement has been duly authorized by Habitat and this Agreement is not in contravention of Habitat's articles of incorporation or bylaws, or any agreement or instrument to which Habitat is a party or by which it may be bound as of the date hereof;
 - (3) No litigation or governmental proceeding is pending, or, to the knowledge of the Officer, threatened against or affecting Habitat, which may result in a material adverse change in Habitat's business, properties, or operations sufficient to jeopardize Habitat's legal existence; and
 - (4) No written application, written statement, or correspondence delivered by Habitat to EIC in connection with this Agreement, or in connection with any transaction contemplated hereby, to the knowledge of the Officer, contains any untrue statement of a material fact or fails to state any material fact necessary to keep the statements contained therein from being misleading. The Application for 4B sales Tax Funds submitted by Habitat is attached hereto as **Exhibit B** and shall be incorporated herein by reference and expressly made a part of this Agreement.
- B. Except as expressly set forth in this Article V, Habitat makes no other representation or warranty of any kind in connection with or related to the provisions of this Agreement.

ARTICLE VI. EIC'S REPRESENTATIONS AND WARRANTIES

- A. EIC represents and warrants as of the date hereof:
- (1) EIC, to the best of the knowledge of its Board of Directors, is legally authorized to enter into this Agreement by virtue of the statute under which it is governed

and by the authorities and powers vested in it as a corporation duly and properly organized under the Act;

- (2) Execution of this Agreement has been duly authorized by EIC;
 - (3) No litigation or governmental proceeding is pending, or, to the knowledge of any of EIC's officers, threatened against or affecting EIC, which may result in EIC's inability to meet its obligations under this Agreement; and
 - (4) EIC has no reasonable basis for believing that it has or will have incurred debts beyond its ability to pay as such debts mature, including but not limited to the obligations set forth in this Agreement.
- B. Except as expressly set forth in this Article VI, the EIC makes no other representation or warranty of any kind in connection with or related to the provisions of this Agreement.

ARTICLE VII. MAJOR FORCES PREVENTING HABITAT FROM CARRYING OUT ITS OBLIGATIONS UNDER THIS AGREEMENT

If, by reason of force majeure, such as fire, flood, windstorm, drought, or other act of God, act of war, act of terrorism, labor strike, or economic downturn affecting Habitat, Habitat is reasonably unable to fulfill its obligations under this Agreement, Habitat shall use reasonable and diligent efforts to rectify the situation to allow it to perform its obligations specified herein with all due haste. In the event that the situation cannot be rectified within six (6) months after the occurrence of the force majeure, either party may terminate this Agreement by providing thirty (30) days advance written notice to the other without further liability hereunder except that termination under this provision shall not excuse Habitat from any applicable reimbursement obligations under Article III of this Agreement.

ARTICLE VIII. CONDITIONS UNDER WHICH EIC MAY SUSPEND PERFORMANCE OF ITS OBLIGATIONS UNDER THIS AGREEMENT

Under any of the following conditions EIC may, at its option, after fifteen (15) days written notice to Habitat, suspend its further performance under this Agreement until such time as Habitat shall have cured the condition(s) and so notified EIC, in writing, that the condition(s) have been cured:

- A. Habitat becomes insolvent. "Insolvent" is defined to mean one either has ceased to pay its debts in the ordinary course of business or cannot pay its debts as they become due, or is insolvent within the meaning of the federal bankruptcy law.
- B. The appointment of a receiver of Habitat, or of all or any substantial part of its property, and the failure of such receiver to be discharged within sixty (60) days thereafter.
- C. The adjudication of Habitat as bankrupt.

- D. The filing by Habitat of a petition to be adjudged as bankrupt, or a petition or answer seeking reorganization or admitting the material allegations of a petition filed against it in any bankruptcy or reorganization proceeding.

Should any of these conditions not be cured by Habitat within a period of three (3) months, EIC may, at its option, with written notice to Habitat, terminate this Agreement and Habitat shall have no further obligations hereunder.

ARTICLE IX. REMEDIES

- A. Except as otherwise provided in this Agreement, in the event of any default in or breach of this Agreement, by any party hereto, or any successor to such party, such defaulting or breaching party (or successor) shall upon written notice from the other, proceed immediately to cure or remedy such default or breach, and, in any event, within sixty (60) days after receipt of such notice. In the event that remedial action is not taken or not diligently pursued and the default or breach shall not be cured or remedied within a reasonable time (but in no event later than ninety (90) days from the date of notification of such breach), the aggrieved party may institute such proceedings as may be necessary or desirable in its opinion to cure and remedy such default or breach, including but not limited to, seeking specific performance and/or injunctive relief, enforcement by mandamus or by the appointment of a receiver in equity with power to charge and collect rents, purchase price payments, and loan payments and to apply the revenues from the project in accordance with this Agreement, as required by the Act.
- B. Upon breach of this Agreement by either party and the failure to cure as permitted by this Article IX, the non-breaching party shall have the sole right and discretion to either terminate this Agreement or pursue any and all remedies which may be provided by law and this Agreement. Each party acknowledges and agrees that no party hereunder shall be entitled to recover any amounts in excess of the Grant contracted for under this Agreement and that no party hereunder shall be liable to the other party for any other actual or consequential damages for any act of default by such party under the terms of this Agreement.
- C. Any delay by any party in instituting or prosecuting any actions or proceedings or otherwise asserting its rights shall not, so long as the breach or default by another party shall be continuing, operate as a waiver of such rights or to deprive it of or limit such rights in any way; nor shall any waiver in fact be made by any party with respect to any specific default by any other party except to the extent specifically waived in writing.

ARTICLE X. GENERAL PROVISIONS

- A. Severability. The provisions of this Agreement are severable, and if for any reason a provision of this Agreement is determined to be invalid by a court having competent jurisdiction over the subject matter of the invalid provision, the invalidity shall not affect other provisions that can be given effect without the invalid provision. Further, in lieu of such illegal, invalid or unenforceable provision, there shall be added automatically as a

part of this Agreement, a provision as similar in its terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.

- B. Amendment. This Agreement may be amended only by written amendment signed by both parties.
- C. Venue. All payments made pursuant to this Agreement and other obligations performed under this Agreement shall be made or performed in Kerrville, Kerr County, Texas. Venue shall lie in Kerr County, Texas; and this Agreement shall be governed by and construed in accordance with the laws of the State of Texas without respect to the conflict of laws rules thereof.
- D. Notices. All notices given with respect to this Agreement shall be in writing and shall be deemed to have been properly given for all purposes (i) if sent by a nationally recognized overnight carrier for next business day delivery, on the first business day following deposit of such notice with such carrier unless such carrier confirms such notice was not delivered, then on the day such carrier actually delivers such notice, or (ii) if personally delivered, on the actual date of delivery, or (iii) if sent by certified U.S. Mail, return receipt requested postage prepaid, on the fifth business day following the date of mailing, or (iv) if sent by facsimile, then on the actual date of delivery (as evidenced by a facsimile confirmation) provided that a copy of the facsimile and confirmation is also sent by regular U.S. Mail, addressed as follows:

1. For EIC

President – David Wampler
City of Kerrville, Texas, Economic Improvement Corporation
701 Main Street
Kerrville, Texas 78028
Facsimile: (830) 792-3850

With a copy to:

Todd Parton
City Manager
City of Kerrville
701 Main Street
Kerrville, Texas 78028
Facsimile: (830) 792-3850

2. For Habitat

Glenn Andrew
President of the Board
P.O. Box 2140
Kerrville, Texas 78029-2140
Facsimile: (830) 895-7085

With a copy to:

John W. Carlson
Carlson Law Firm
717 Sidney Baker Street
Kerrville, Texas 78028
(830) 896-4488
(830) 896-4474 (fax)

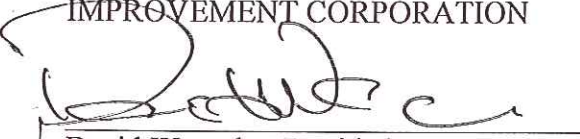
- E. Assignment. This Agreement shall be binding upon the parties hereto and their successors and assigns. Except as set forth in Article IV, this Agreement may not be assigned by either party without the specific prior written consent of the other, which consent will not be unreasonably withheld. In the event that a party consents to any valid assignment of this Agreement by the other party hereto, the assigning party shall be relieved of any and all obligations and liabilities on the part of such assigning party under this Agreement. Habitat may, without written consent of EIC, assign this Agreement to any entity controlled and 100% owned by Habitat or by the parent, subsidiary or affiliate of Habitat provided the entity assumes all of Habitat's obligations and liabilities under this Agreement; agrees to comply with all provisions of this Agreement; has the legal, managerial, technical and financial ability to properly perform and discharge such obligations and liabilities; and such abilities are each at least as great as those of Habitat and Habitat provides a written guarantee of such assignee's performance in a form reasonably acceptable to EIC. EIC shall be advised in writing of such assignment and of the entity's qualifications at least sixty (60) days before such assignment occurs.
- F. Parties In Interest. Nothing in this Agreement shall entitle any party other than Habitat or EIC to any claim, cause of action, remedy or right of any kind except as expressly provided in Article IV.
- G. Term. The term of this Agreement (the "Term") will commence on December 11, 2013 (the "Effective Date"), and shall terminate on the earlier of: (i) December 31, 2015, or when the requirements set forth in this Agreement are completed; (ii) when terminated by mutual agreement of the parties; (iii) when terminated pursuant to Article IX, Paragraph B; (iv) when terminated pursuant to Article VIII; (v) at Habitat's and absolute discretion, upon Habitat's return of all Grant funding to EIC that it has received under this Agreement; (vi) upon Habitat's repayment of all monies that are demanded by EIC and are in fact required to be repaid by Habitat under Article III; or, (vii) upon a termination of this Agreement by EIC pursuant to Article VIII. Upon termination of this Agreement as specified herein, all rights, duties and obligations of any kind under this Agreement shall automatically expire and terminate and be of no other force and effect.
- H. Interpretation. Each party has had the opportunity to be represented by counsel of its choice in negotiating this Agreement. This Agreement shall therefore be deemed to have been negotiated and prepared at the joint request, direction, and construction of the parties, at arms length, with the advice and participation of counsel, and will be interpreted in accordance with its terms without favor to any party.

- I. Indemnity. IT IS UNDERSTOOD AND AGREED BETWEEN THE PARTIES THAT HABITAT, IN PERFORMING ITS OBLIGATIONS HEREUNDER, IS ACTING INDEPENDENTLY, AND EIC ASSUMES NO RESPONSIBILITY OR LIABILITY IN CONNECTION THEREWITH TO THEIR PARTIES. HABITAT AGREES TO INDEMNIFY AND HOLD HARMLESS EIC, ITS OFFICERS AND AGENTS, AGAINST ANY AND ALL CLAIMS, LAWSUITS, JUDGMENTS, COSTS AND EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE OR OTHER HARM FOR WHICH RECOVERY OF DAMAGES IS SOUGHT, SUFFERED BY ANY PERSON OR PERSONS THAT MAY ARISE OUT OF OR BE OCCASIONED BY HABITAT'S BREACH OF ANY OF THE TERMS OR PROVISIONS OF THIS AGREEMENT OR BY ANY NEGLIGENT ACT OR OMISSION OF HABITAT, ITS OFFICER, AGENTS, ASSOCIATES, OR EMPLOYEES, IN THE PERFORMANCE OF THIS AGREEMENT; AND NOTHING HEREIN SHALL BE CONSTRUED AS A WAIVER OF ANY GOVERNMENTAL IMMUNITY AVAILABLE TO EIC UNDER TEXAS LAW.
- J. No Joint Venture. Nothing contained in this Agreement is intended by the parties to create a partnership or joint venture between the parties.
- K. Survival of Terms. All rights, duties, liabilities and obligations accrued prior to termination shall survive termination.
- L. Entire Agreement. This Agreement represents the entire agreement of the parties with respect to the subject matter hereof.

EXECUTED AND EFFECTIVE, as of the date indicated above, by the City of Kerrville, Texas, Economic Improvement Corporation, by and through its Board President, duly authorized to execute same by action of the Board, and by Habitat for Humanity, Kerr County, Texas, acting through its duly authorized official.

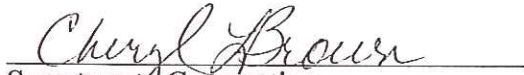
CITY OF KERRVILLE, TEXAS ECONOMIC
IMPROVEMENT CORPORATION

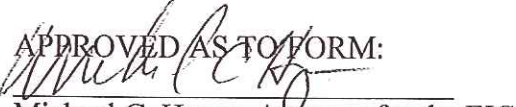
HABITAT FOR HUMANITY
KERR COUNTY, TEXAS


David Wampler, President

By: _____
Glenn Andrew, President of the Board

ATTEST:


Secretary to Corporation

APPROVED AS TO FORM:

Michael C. Hayes, Attorney for the EIC

Agenda Item:

5C. Funding agreement between the City of Kerrville, Texas Economic Improvement Corporation and Schreiner University in an amount not to exceed \$250,000.00. (staff)

**TO BE CONSIDERED BY THE CITY COUNCIL
CITY OF KERRVILLE, TEXAS**

SUBJECT: Funding agreement between Schreiner University and the City of Kerrville, Texas Economic Improvement Corporation in an amount not to exceed \$250,000

FOR AGENDA OF: December 10, 2013 **DATE SUBMITTED:** November 26, 2013

SUBMITTED BY: Ashlea Boyle *AB* **CLEARANCES:** Todd Parton
Main Street / Special Projects Manager City Manager

EXHIBITS: Funding Agreement

AGENDA MAILED TO:

APPROVED FOR SUBMITTAL BY CITY MANAGER: *JP*

Expenditure Required:	Current Balance in Account:	Amount Budgeted:	Account Number:
\$250,000	\$11,715,000	\$250,000	40-800-975-02

PAYMENT TO BE MADE TO:

REVIEWED BY THE DIRECTOR OF FINANCE: *ay*

SUMMARY STATEMENT

At its meeting of October 28, 2013, the Economic Improvement Corporation (EIC) considered a funding application from Schreiner University in the amount of \$250,000 to partially fund the Schreiner University Athletic and Event Center construction project. The funding will support expansion and improvement to existing athletic and event facilities which serve Schreiner University, Kerrville and the surrounding communities. The total project cost is \$11,063,405.

The Schreiner Athletic and Event Center project is a 35,000 square foot building that will be located adjacent to and east of the existing Mountaineer Fitness Center. It will include a 16,000 square foot gym on the main level with storage, training and locker rooms. The main level will provide a flexible venue with support and common spaces large enough to accommodate large campus events and community programs. The second level-mezzanine will include offices, visiting team locker rooms, and a small conference room. Construction will be streamlined with existing campus architecture.

It is anticipated that the project will generate 100 temporary positions for one year with annual average wages of \$30,000 per job. Approximately 25% will be local employees and approximately 75% will be from Bexar County. This project also anticipates two new full-time employees with a payroll impact of \$80,080 and three part-time employees with a payroll impact of \$34,320 over a 24 month period.

This project is aligned with the Campus Master Plan, University Strategic Plan and the

"Fulfilling the Promise" Comprehensive Campaign for Schreiner University. The Schreiner Board of Trustees has designated this project as the priority capital project for new facilities.

On November 25, 2013, the EIC held a public hearing and approved a funding agreement in an amount not to exceed \$250,000 for this project. Attached is the final draft of the funding agreement between Schreiner University and the EIC.

RECOMMENDED ACTION

City staff recommends the consideration and approval of this funding agreement as presented.

**ECONOMIC DEVELOPMENT GRANT AGREEMENT BETWEEN SCHREINER
UNIVERSITY AND THE CITY OF KERRVILLE, TEXAS ECONOMIC
IMPROVEMENT CORPORATION**

This Agreement entered into by and between SCHREINER UNIVERSITY, a Texas nonprofit corporation ("Schreiner"), acting herein by and through its duly authorized President, Dr. Tim Summerlin ("Schreiner Officer"), and the CITY OF KERRVILLE, TEXAS, ECONOMIC IMPROVEMENT CORPORATION ("EIC"), a Texas nonprofit corporation, established pursuant to Section 4B of Tex. Rev. Civ. Stat. Art. 5190.6 (otherwise known as the Development Corporation Act of 1979 and now codified in Chapters 501, 502, and 505 of the Texas Local Government Code) (hereafter referred to as "the Act"), acting by and through its duly authorized President, David Wampler.

WITNESSETH:

WHEREAS, pursuant to the Act, the EIC is authorized to provide funding relating to projects which the EIC finds to be encompassed within the definition of "Projects" as that word is defined by Chapters 501 and 505 of the Act, including:

Expenditures required or suitable for use for professional and amateur (including children's) sports, athletic, entertainment, tourist, convention, and public park purposes and events, including stadiums, ball parks, auditoriums, amphitheaters, concert halls, parks and park facilities, open space improvements, museums, exhibition facilities, and related store, restaurant, concession, and automobile parking facilities, related area transportation facilities, and related roads, streets, and water and sewer facilities, and other related improvements that enhance any of those items described by 505.152 of the Act; and

WHEREAS, Schreiner is a provider of higher education and has been in existence since 1923; and

WHEREAS, Schreiner intends to construct a new facility, the Schreiner University Athletic and Event Center (the "Facility"), which consists of a 35,000 square foot building and will include a 16,000 square foot gym; and

WHEREAS, Schreiner has applied for a grant from EIC for funds necessary to construct the Facility; and

WHEREAS, EIC has determined that such a grant complies with the Act and is in keeping with the mission of EIC and the *City of Kerrville Economic Improvement Corporation 4B Sales Tax Funding Request Guidelines and Procedures* in that it will enhance the "quality of life" within the community; and

WHEREAS, EIC finds that it will be in the public interest to enter into an agreement with Schreiner to provide sales tax revenues collected pursuant to the Act ("4B Revenues") to Schreiner for costs related to the Facility; and

WHEREAS, on November 25, 2013, in a meeting that was open to the public in accordance with the Texas Open Meetings Act, EIC held a public hearing pursuant to Section

505.159 of the Act related to the proposed expenditure of 4B Revenues for the purposes provided above;

NOW THEREFORE, for and in consideration of the recitals set forth above and the promises made herein, Schreiner and EIC agree as follows:

**ARTICLE I.
EIC'S OBLIGATIONS**

- A. EIC hereby grants Schreiner Two Hundred and Fifty Thousand and No/100 Dollars (\$250,000.00) ("Grant"). Schreiner shall use the grant proceeds for costs related to the design and construction of the Facility, herein referred to as the "Project". The Project consists of the construction of the Facility, more specifically described and with an estimation of costs as found in the attached **Exhibit A**, such that the Grant makes up only partial funding for the Project.
- B. Prior to any payment from EIC, Schreiner must provide sufficient evidence in the sole opinion of EIC that it has received and/or been promised funding from other entities or sources to complete the full Project as specified in **Exhibit A**.
- C. Subject to the terms and conditions set forth in Article II, EIC will administer and provide the Grant to Schreiner on a reimbursable basis. Prior to any payment from EIC, Schreiner shall submit written evidence of costs, such as invoices, receipts, and bills of sale, for review and approval by the EIC or its designated representative. Following each submission and verification thereof, which may include on-site inspections to confirm the development and construction of the Project, EIC shall then reimburse Schreiner for the cost.
- D. Payments made by EIC to Schreiner from 4B Revenues will be limited to the payments of "costs" as defined by the Act.
- E. In no event will the total amount of the Grant exceed Two Hundred Fifty Thousand and No/100 Dollars (\$250,000.00).
- F. Schreiner specifically agrees that EIC shall only be liable to Schreiner for the actual amount of the Grant to be conveyed to Schreiner and shall not be liable to Schreiner for any other actual or consequential damages, direct or indirect, interest, attorney fees, or costs of court for any act of default by EIC under the terms of this Agreement.

**ARTICLE II.
SCHREINER'S OBLIGATIONS**

- A. Schreiner agrees to complete its construction of the Project on or before May 31, 2015. Failure to complete construction of the Project by this date will terminate the obligation of EIC to make any additional payments of the Grant.
- B. Schreiner shall continue to offer the use of its facilities to the public for events, conferences, meetings, receptions and other activities, some uses of which will be on a fee basis. Under certain specific circumstances, Schreiner shall continue to consider

waiving or reducing such fees. Such public uses and the waiver/reduction of fees policy shall include the Facility and will be undertaken according to established Schreiner University Facility Use Policies.

- C. Schreiner shall keep and maintain complete and accurate records relating to the costs of constructing the Project, separate and identifiable from its other records, for three (3) years following the termination of this Agreement. EIC and its representatives shall be entitled to inspect the records during the term of this Agreement and for three (3) years thereafter, upon reasonable notice.
- D. Following the initial payment from EIC to Schreiner, Schreiner shall make written quarterly reports to EIC, on or before the last day of each calendar quarter. Said reports, at a minimum, shall include information on the status of the Project and the estimated opening date of the Facility.
- E. Schreiner shall only be liable to EIC for the actual amount of the Grant to be conveyed to Schreiner and shall not be liable to EIC for any other actual or consequential damages, direct or indirect, interest, attorney fees, or cost of court for any act of default by Schreiner under the terms of this Agreement.

ARTICLE III. REIMBURSEMENT

- A. If, on May 31, 2015, Schreiner has failed to open to the public and begin conducting its operations and activities of the Facility, then Schreiner shall repay EIC One Hundred Thousand and No/100 Dollars (\$100,000.00). The repayment shall be made as soon as commercially practicable after the receipt of a written demand by EIC, but in no event later than thirty (30) days from the receipt of such written demand. Upon repayment thereof, Schreiner shall have no further obligation under this Agreement. EIC shall have the discretion to consider relevant circumstances before demanding repayment and may require partial repayment in appropriate circumstances. Failure to reimburse EIC within thirty (30) days of Schreiner's receipt of such demand shall constitute a breach of this Agreement.
- B. Notwithstanding any other provision in this Agreement, Schreiner shall in no event be required to repay any amount in excess of the Grant monies actually received under this Agreement.

ARTICLE IV. SALE OF PROJECT, MERGER OR CONSOLIDATION OF SCHREINER

- A. A sale of all or substantially all of the assets of Schreiner or its Facility will not release Schreiner from its duties and responsibilities to EIC under the terms of this Agreement and will not result in the assignment of this Agreement by such acquiring entity without prior written consent from EIC, which will not be unreasonably withheld; provided, that Schreiner's proposed successor shall have the financial condition to fully satisfy Schreiner's duties and responsibilities hereunder and agrees to assume Schreiner's responsibilities under this Agreement. EIC may, in its sole discretion, reasonably determine whether such proposed successor's financial condition is satisfactory.

- B. In the event of any proposed merger or other consolidation of Schreiner with any third party not affiliated with Schreiner, Schreiner shall at least thirty (30) days prior to any such merger or consolidation provide EIC with information and assurance reasonably acceptable to EIC and Schreiner regarding: (1) the surviving entity's assumption and satisfaction of Schreiner's obligations hereunder and (2) the financial condition of the surviving entity upon such merger or other consolidation to demonstrate that the surviving entity shall have the financial condition to fully satisfy Schreiner's duties and responsibilities hereunder. Failure to provide such information shall be considered a breach of this Agreement.
- C. Notwithstanding anything in this Agreement to the contrary, it is expressly understood and agreed that EIC shall have no rights to approve or disapprove any sale or merger transaction of any kind involving Schreiner or its affiliates. In the event of any sale or merger involving Schreiner or its affiliates, the surviving entity shall assume Schreiner's obligations and rights hereunder and be entitled to any and all benefits to be received pursuant to this Agreement.

ARTICLE V. SCHREINER'S REPRESENTATIONS AND WARRANTIES

- A. Schreiner represents and warrants as of the date hereof:
- (1) Schreiner is a Texas nonprofit corporation existing in good standing and authorized to do business in the State of Texas;
 - (2) Execution of this Agreement has been duly authorized by Schreiner and this Agreement is not in contravention of Schreiner's regulations, or any agreement or instrument to which Schreiner is a party or by which it may be bound as of the date hereof;
 - (3) No litigation or governmental proceeding is pending, or, to the knowledge of Schreiner Officer, threatened against or affecting Schreiner, which may result in a material adverse change in Schreiner's business, properties or operations sufficient to jeopardize Schreiner's legal existence; and
 - (4) No written application, written statement or correspondence delivered by Schreiner to EIC in connection with this Agreement, or in connection with any transaction contemplated hereby, to the knowledge of Schreiner Officer, contains any untrue statement of a material fact or fails to state any material fact necessary to keep the statements contained therein from being misleading. The Application for 4B sales Tax Funds submitted by Schreiner is attached hereto as **Exhibit B** and shall be incorporated herein by reference and expressly made a part of this Agreement.
- B. Except as expressly set forth in this Article V, Schreiner makes no other representation or warranty of any kind in connection with or related to the provisions of this Agreement.

ARTICLE VI.
EIC'S REPRESENTATIONS AND WARRANTIES

- A. EIC represents and warrants as of the date hereof:
- (1) EIC, to the best of the knowledge of its Board of Directors, is legally authorized to enter into this Agreement by virtue of the statute under which it is governed and by the authorities and powers vested in it as a corporation duly and properly organized under the Act;
 - (2) Execution of this Agreement has been duly authorized by EIC;
 - (3) No litigation or governmental proceeding is pending, or, to the knowledge of any of EIC's officers, threatened against or affecting EIC, which may result in EIC's inability to meet its obligations under this Agreement; and
 - (4) EIC has no reasonable basis for believing that it has or will have incurred debts beyond its ability to pay as such debts mature, including but not limited to the obligations set forth in this Agreement.
- B. Except as expressly set forth in this Article VI, the EIC makes no other representation or warranty of any kind in connection with or related to the provisions of this Agreement.

ARTICLE VII.
**MAJOR FORCES PREVENTING SCHREINER FROM CARRYING
OUT ITS OBLIGATIONS UNDER THIS AGREEMENT**

If, by reason of force majeure, such as fire, flood, windstorm, drought, or other act of God, act of war, act of terrorism, labor strike, or economic downturn affecting Schreiner, Schreiner is reasonably unable to fulfill its obligations under this Agreement, Schreiner shall use reasonable and diligent efforts to rectify the situation to allow it to perform its obligations specified herein with all due haste. In the event that the situation cannot be rectified within six (6) months after the occurrence of the force majeure, either party may terminate this Agreement by providing thirty (30) days advance written notice to the other without further liability hereunder except that termination under this provision shall not excuse Schreiner from any applicable reimbursement obligations under Article III of this Agreement.

ARTICLE VIII.
**CONDITIONS UNDER WHICH EIC MAY SUSPEND PERFORMANCE
OF ITS OBLIGATIONS UNDER THIS AGREEMENT**

Under any of the following conditions EIC may, at its option, after fifteen (15) days written notice to Schreiner, suspend its further performance under this Agreement until such time as Schreiner shall have cured the condition(s) and so notified EIC, in writing, that the condition(s) have been cured:

- A. Schreiner becomes insolvent. "Insolvent" is defined to mean one either has ceased to pay its debts in the ordinary course of business or cannot pay its debts as they become due, or is insolvent within the meaning of the federal bankruptcy law.

- B. The appointment of a receiver of Schreiner, or of all or any substantial part of its property, and the failure of such receiver to be discharged within sixty (60) days thereafter.
- C. The adjudication of Schreiner as bankrupt.
- D. The filing by Schreiner of a petition to be adjudged as bankrupt, or a petition or answer seeking reorganization or admitting the material allegations of a petition filed against it in any bankruptcy or reorganization proceeding.

Should any of these conditions not be cured by Schreiner within a period of three (3) months EIC may, at its option, with written notice to Schreiner, terminate this Agreement and Schreiner shall have no further obligations hereunder.

ARTICLE IX. REMEDIES

- A. Except as otherwise provided in this Agreement, in the event of any default in or breach of this Agreement, by any party hereto, or any successor to such party, such defaulting or breaching party (or successor) shall upon written notice from the other, proceed immediately to cure or remedy such default or breach, and, in any event, within sixty (60) days after receipt of such notice. In the event that remedial action is not taken or not diligently pursued and the default or breach shall not be cured or remedied within a reasonable time (but in no event later than ninety (90) days from the date of notification of such breach), the aggrieved party may institute such proceedings as may be necessary or desirable in its opinion to cure and remedy such default or breach, including but not limited to, seeking specific performance and/or injunctive relief, enforcement by mandamus or by the appointment of a receiver in equity with power to charge and collect rents, purchase price payments, and loan payments and to apply the revenues from the project in accordance with this Agreement, as required by the Act.
- B. Upon breach of this Agreement by either party and the failure to cure as permitted by this Article IX, the non-breaching party shall have the sole right and discretion to either terminate this Agreement or pursue any and all remedies which may be provided by law and this Agreement. Each party acknowledges and agrees that no party hereunder shall be entitled to recover any amounts in excess of the Grant contracted for under this Agreement and that no party hereunder shall be liable to the other party for any other actual or consequential damages for any act of default by such party under the terms of this Agreement.
- C. Any delay by any party in instituting or prosecuting any actions or proceedings or otherwise asserting its rights shall not, so long as the breach or default by another party shall be continuing, operate as a waiver of such rights or to deprive it of or limit such rights in any way; nor shall any waiver in fact be made by any party with respect to any specific default by any other party except to the extent specifically waived in writing.

**ARTICLE X.
GENERAL PROVISIONS**

- A. Severability. The provisions of this Agreement are severable, and if for any reason a provision of this Agreement is determined to be invalid by a court having competent jurisdiction over the subject matter of the invalid provision, the invalidity shall not affect other provisions that can be given effect without the invalid provision. Further, in lieu of such illegal, invalid or unenforceable provision, there shall be added automatically as a part of this Agreement, a provision as similar in its terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.
- B. Amendment. This Agreement may be amended only by written amendment signed by both parties.
- C. Venue. All payments made pursuant to this Agreement and other obligations performed under this Agreement shall be made or performed in Kerrville, Kerr County, Texas. Venue shall lie in Kerr County, Texas; and this Agreement shall be governed by and construed in accordance with the laws of the State of Texas without respect to the conflict of laws rules thereof.
- D. Notices. All notices given with respect to this Agreement shall be in writing and shall be deemed to have been properly given for all purposes (i) if sent by a nationally recognized overnight carrier for next business day delivery, on the first business day following deposit of such notice with such carrier unless such carrier confirms such notice was not delivered, then on the day such carrier actually delivers such notice, or (ii) if personally delivered, on the actual date of delivery, or (iii) if sent by certified U.S. Mail, return receipt requested postage prepaid, on the fifth business day following the date of mailing, or (iv) if sent by facsimile, then on the actual date of delivery (as evidenced by a facsimile confirmation) provided that a copy of the facsimile and confirmation is also sent by regular U.S. Mail, addressed as follows:
1. For EIC
President – David Wampler
City of Kerrville, Texas, Economic Improvement Corporation
701 Main Street
Kerrville, Texas 78028
Facsimile: (830) 792-3850
- With a copy to:*
City Manager
City of Kerrville
701 Main Street
Kerrville, Texas 78028
Facsimile: (830) 792-3850
2. For Schreiner
Tim Summerlin
President

Schreiner University
2100 Memorial Boulevard
Kerrville, Texas 78028
Facsimile: (830) 792-7207

- E. Assignment. This Agreement shall be binding upon the parties hereto and their successors and assigns. Except as set forth in Article IV, this Agreement may not be assigned by either party without the specific prior written consent of the other, which consent will not be unreasonably withheld. In the event that a party consents to any valid assignment of this Agreement by the other party hereto, the assigning party shall be relieved of any and all obligations and liabilities on the part of such assigning party under this Agreement. Schreiner may, without written consent of EIC, assign this Agreement to any entity controlled and 100% owned by Schreiner or by the parent, subsidiary or affiliate of Schreiner provided the entity assumes all of Schreiner's obligations and liabilities under this Agreement; agrees to comply with all provisions of this Agreement; has the legal, managerial, technical and financial ability to properly perform and discharge such obligations and liabilities; and such abilities are each at least as great as those of Schreiner and Schreiner provides a written guarantee of such assignee's performance in a form reasonably acceptable to EIC. EIC shall be advised in writing of such assignment and of the entity's qualifications at least sixty (60) days before such assignment occurs.
- F. Parties In Interest. Nothing in this Agreement shall entitle any party other than Schreiner or EIC to any claim, cause of action, remedy or right of any kind except as expressly provided in Article IV.
- G. Term. The term of this Agreement (the "Term") will commence on December 11, 2013 (the "Effective Date"), and will terminate on the earlier of: (i) either on May 31, 2015, or when the requirements set forth in this Agreement are completed, whichever date is later; (ii) when terminated by mutual agreement of the parties; (iii) when terminated pursuant to Article IX, Paragraph B; (iv) when terminated pursuant to Article VIII; (v) at Schreiner's sole and absolute discretion, upon Schreiner's return of all Grant funding to EIC that it has received under this Agreement; (vi) upon Schreiner's repayment of all monies that are demanded by EIC and are in fact required to be repaid by Schreiner under Article III; or, (vii) upon a termination of this Agreement by EIC pursuant to Article VIII. Upon termination of this Agreement as specified herein, all rights, duties and obligations of any kind under this Agreement shall automatically expire and terminate and be of no other force and effect.
- H. Interpretation. Each party has had the opportunity to be represented by counsel of its choice in negotiating this Agreement. This Agreement shall therefore be deemed to have been negotiated and prepared at the joint request, direction, and construction of the parties, at arms length, with the advice and participation of counsel, and will be interpreted in accordance with its terms without favor to any party.
- I. Indemnity. **IT IS UNDERSTOOD AND AGREED BETWEEN THE PARTIES THAT SCHREINER, IN PERFORMING ITS OBLIGATIONS HEREUNDER, IS ACTING INDEPENDENTLY, AND EIC ASSUMES NO RESPONSIBILITY OR LIABILITY IN CONNECTION THEREWITH TO THEIR PARTIES.**

SCHREINER AGREES TO INDEMNIFY AND HOLD HARMLESS EIC, ITS OFFICERS AND AGENTS, AGAINST ANY AND ALL CLAIMS, LAWSUITS, JUDGMENTS, COSTS AND EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE OR OTHER HARM FOR WHICH RECOVERY OF DAMAGES IS SOUGHT, SUFFERED BY ANY PERSON OR PERSONS THAT MAY ARISE OUT OF OR BE OCCASIONED BY SCHREINER'S BREACH OF ANY OF THE TERMS OR PROVISIONS OF THIS AGREEMENT OR BY ANY NEGLIGENT ACT OR OMISSION OF SCHREINER, ITS OFFICER, AGENTS, ASSOCIATES OR EMPLOYEES, IN THE PERFORMANCE OF THIS AGREEMENT; AND NOTHING HEREIN SHALL BE CONSTRUED AS A WAIVER OF ANY GOVERNMENTAL IMMUNITY AVAILABLE TO EIC UNDER TEXAS LAW.

- J. No Joint Venture. Nothing contained in this Agreement is intended by the parties to create a partnership or joint venture between the parties.
- K. Survival of Terms. All rights, duties, liabilities and obligations accrued prior to termination shall survive termination.
- L. Entire Agreement. This Agreement represents the entire agreement of the parties with respect to the subject matter hereof.

EXECUTED AND EFFECTIVE, as of the date indicated above, by the City of Kerrville, Texas, Economic Improvement Corporation, by and through its Board President, duly authorized to execute same by action of the Board, and by Schreiner, acting through its duly authorized official.

CITY OF KERRVILLE, TEXAS ECONOMIC
IMPROVEMENT CORPORATION


David Wampler, President

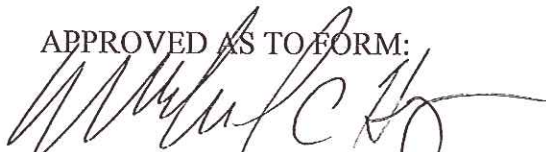
ATTEST:


Cheryl Brown, Recording Secretary

SCHREINER UNIVERSITY

By: _____
Printed Name: _____
Its: _____

APPROVED AS TO FORM:


Michael C. Hayes, Attorney for the EIC

Agenda Item:

5D. Authorization to submit application to the City of Kerrville, Texas Economic Improvement Corporation in the amount of \$500,000.00 for improvements to the Cailloux Theater for the construction of a support facility. (staff)

**TO BE CONSIDERED BY THE CITY COUNCIL
CITY OF KERRVILLE, TEXAS**

SUBJECT: Authorization to submit a funding application to the Economic Improvement Corporation in the amount of \$500,000 for improvements to the Cailloux Theater for the construction of a support facility

FOR AGENDA OF: December 10, 2013 **DATE SUBMITTED:** November 26, 2013

SUBMITTED BY: Ashlea Boyle *AB* **CLEARANCES:** Todd Parton
Main Street / Special Projects Manager City Manager

EXHIBITS: Conceptual plans

AGENDA MAILED TO:

APPROVED FOR SUBMITTAL BY CITY MANAGER: *MP*

Expenditure	Current Balance	Amount	Account
Required:	in Account:	Budgeted:	Number:
\$	\$	\$	

PAYMENT TO BE MADE TO:

REVIEWED BY THE DIRECTOR OF FINANCE: *dy*

SUMMARY STATEMENT

At its meeting of November 25, 2013, the Economic Improvement Corporation (EIC) considered a funding application from Playhouse 2000, Inc. (P2K) on a deferred follow-up application in the amount of \$500,000 to construct a 6,000 square foot facility addition. The overall cost for the project is \$755,000 and will consist of expanded dressing / green-rooms, rehearsal / classroom space, scenic and costume construction spaces, and storage. The building will be placed immediately behind the Cailloux Theater facing the parking lot with an attractive side facade facing Jefferson Street.

The front of the building will be a 1,000 square foot classroom / rehearsal room which will have a "sprung" floor for safety as well as a mirrored dance wall, ballet barre, and equipment storage. This space will also be utilized for children's programming and other ancillary theater activities in addition to dressing rooms and "green room" space. The back of the building will be dedicated for scenic and costume construction and overall storage space.

Peter Lewis Architect + Associates prepared the conceptual plans and proposed exterior materials are limestone veneer to complement the Cailloux Theater, and the general downtown theme. If approved, the goal is to break ground no later than fall of 2014 with project completion in spring 2015.

Since this project would be city managed and owned, the City Council must authorize staff to submit a funding request to the EIC. Should City Council authorize a request for

funding, the application will be presented to the EIC at its January 27, 2014 meeting.

RECOMMENDED ACTION

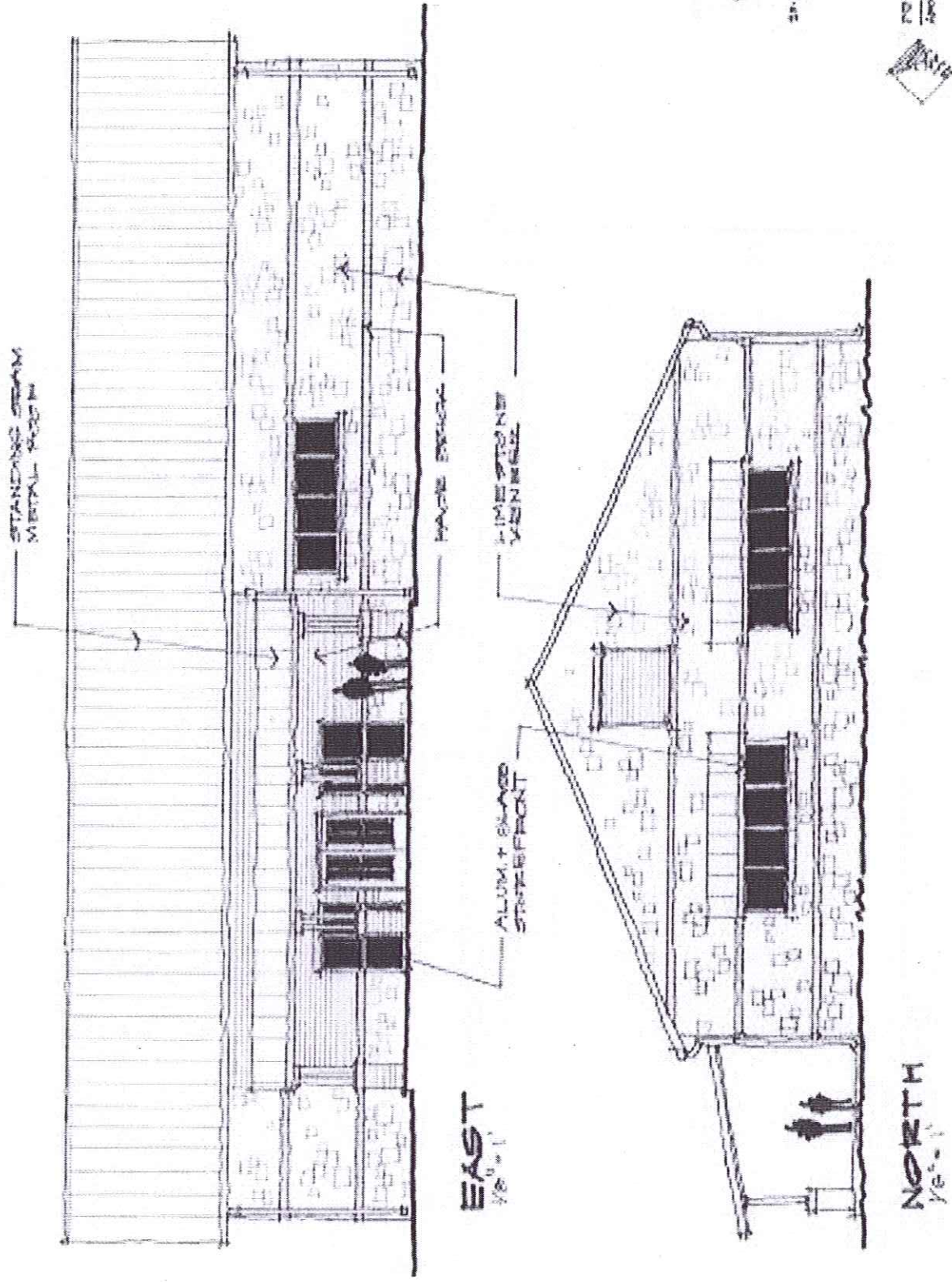
City staff is requesting authorization to submit a funding application to the Economic Improvement Corporation in the amount of \$500,000 for improvements to the Cailloux Theater for the construction of a support facility.



POTTER LEWIS
ARCHITECTS

28.10.06 9.01.18

P2K
00000000
00000000



NORTH
1/8" = 1'

EAST
1/8" = 1'

ALUM. + GLASS
STREETFRONT

BRICKWORK

PAVING

LANDSCAPING

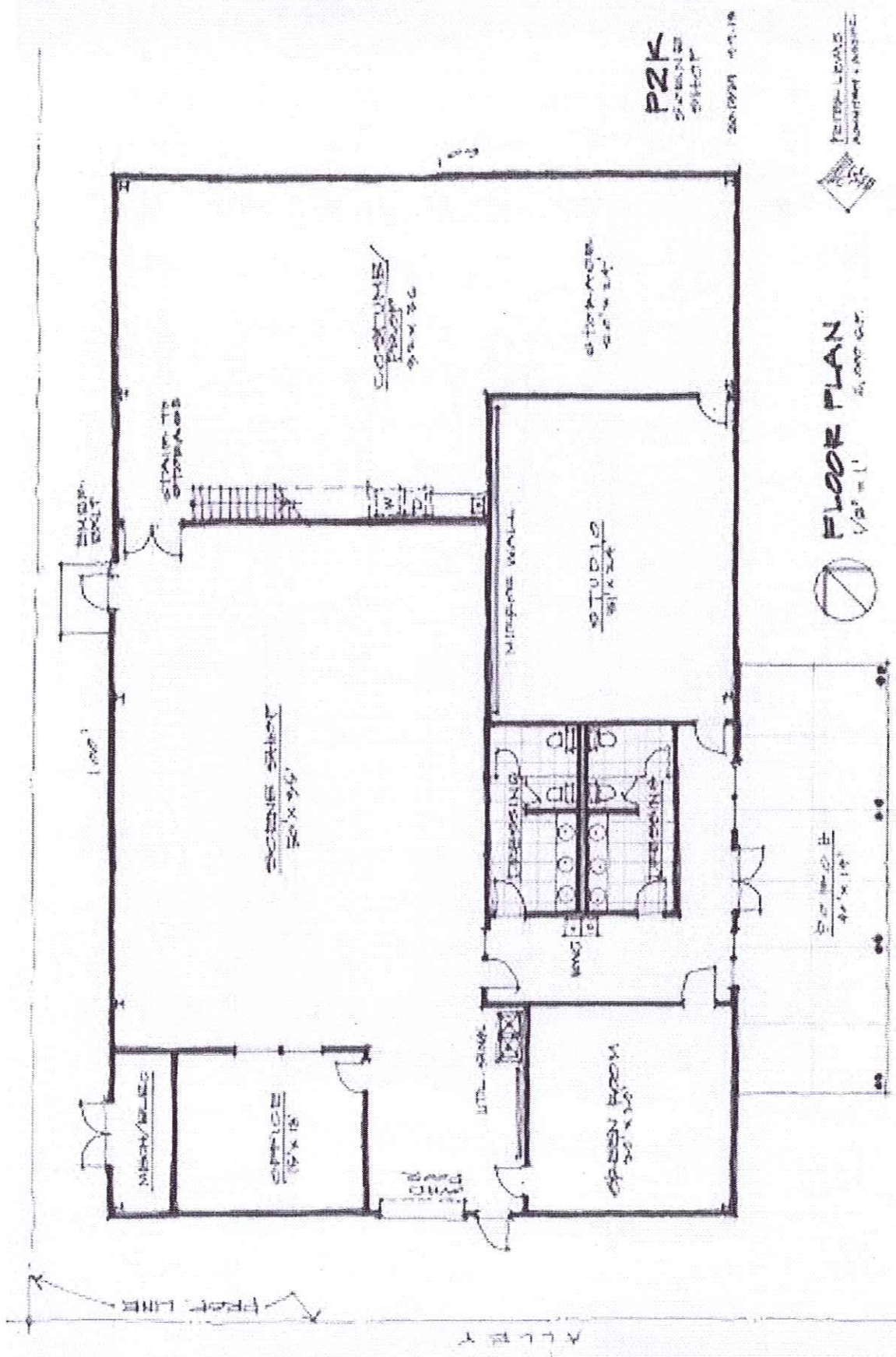
1.000' x 1.000' = 1.000' x 1.000'



1.000' x 1.000' = 1.000' x 1.000'



1.000' x 1.000' = 1.000' x 1.000'



Agenda Item:

5E. Kerrville beautification advisory committee's proposed goals and objectives.
(staff)

**TO BE CONSIDERED BY THE CITY COUNCIL
CITY OF KERRVILLE, TEXAS**

SUBJECT: Kerrville Beautification Advisory Committee's proposed goals and objectives

FOR AGENDA OF: December 10, 2013 **DATE SUBMITTED:** November 26, 2013

SUBMITTED BY: Ashlea Boyle  **CLEARANCES:** Todd Parton
Main Street / Special Projects Manager City Manager

EXHIBITS: KBAC Proposed Goals and Objectives

AGENDA MAILED TO:

APPROVED FOR SUBMITTAL BY CITY MANAGER: 

Expenditure Required:	Current Balance in Account:	Amount Budgeted:	Account Number:
\$	\$	\$	

PAYMENT TO BE MADE TO:

REVIEWED BY THE DIRECTOR OF FINANCE:

SUMMARY STATEMENT

Pursuant to the resolution creating the Kerrville Beautification Advisory Committee (KBAC), the KBAC has evaluated the community on general issues pertaining to beautification and has developed a set of proposed goals and objectives for a community beautification program for the consideration of City Council. If approved, the KBAC will proceed with the outlined objectives and prepare a beautification recognition program to be presented to City Council.

RECOMMENDED ACTION

City staff is requesting consideration and approval of the Kerrville Beautification Advisory Committee's proposed goals and objectives.

KERRVILLE BEAUTIFICATION ADVISORY COMMITTEE

PROPOSED GOALS AND OBJECTIVES

1. Improve appearance of businesses and institutional properties

- a. Identify and recognize properties that show excellence in civic pride in their structures and streetscapes;
- b. KBAC to present such businesses with a certificate of appreciation and sign to be displayed on property;
- c. Provide for media recognition.

2. Enhance appearance of residential neighborhoods

- a. Sponsor quarterly themed "Beautification Days" to encourage residents to maintain and improve their house and yard;
- b. Seek to enlist nurseries and home improvement stores to offer discounts or other incentives and recognize them as "partners in civic pride";
- c. Create and provide a sponsored brochure on suggested landscape guidelines including Xeriscaping;
- d. Encourage scout, church, college groups, school and civic organizations to participate in helping those needing special assistance.

3. Develop an "urban forestation" program

- a. Educate and motivate the community on the value of trees for both beautification and enhancement of environmental ecology;
- b. Encourage residents to plant trees, preserve and protect existing trees, and remove dead trees;
- c. Identify and label "landmark trees" throughout the city.

4. Improve appearance of Gateway corridors for all entrances to Kerrville

- a. Explore with TxDot street trees and landscaped median islands;
- b. KBAC to sponsor town hall meeting with business owners to encourage appropriate ways to enhance their highway frontage.

Agenda Item:

5F. Casting votes to elect member to the Kerr Central Appraisal District 2014-2015 Board of Directors. (staff)

**BUSINESS OF THE CITY COUNCIL
CITY OF KERRVILLE, TEXAS**

SUBJECT: Cast the City of Kerrville's ballot for the Kerr Central Appraisal District Board of Directors 2014-2015 term

FOR AGENDA OF: December 10, 2013 **DATE SUBMITTED:** November 26, 2013

SUBMITTED BY: Todd Parton **CLEARANCES:**
City Manager

EXHIBITS: Letter from KCAD dated November 21, 2013

AGENDA MAILED TO:

APPROVED FOR SUBMITTAL BY CITY MANAGER: 

Expenditure Required:	Current Balance in Account:	Amount Budgeted:	Account Number:
\$	\$	\$	

PAYMENT TO BE MADE TO:

REVIEWED BY THE FINANCE DIRECTOR:

SUMMARY STATEMENT

On November 21, 2013, the City of Kerrville received a ballot from the Kerr Central Appraisal District (KCAD) with five candidates for five positions for the KCAD Board of Directors. Directors are elected to two-year terms, and candidates elected will serve 2014-2015.

The ballot included Justin MacDonald, who was unanimously nominated by the Kerrville City Council on November 12.

There are a total of 5,000 votes distributed amongst the taxing entities in Kerr county. The City of Kerrville is allocated 709 votes. The city council may allocate all its votes entirely to one candidate or split the votes between two or more candidates. The city may not initiate the recall of a director unless it has cast at least one vote for that director.

The city must cast its ballot before December 15, 2013.

RECOMMENDED ACTION

Cast 705 votes for Justin MacDonald and cast one vote for each of the remaining four candidates; this will ensure that the city has standing in the unlikely event of a recall of any of the five board members.

KERR CENTRAL APPRAISAL DISTRICT
P.O. BOX 294387
1836 JUNCTION HIGHWAY
KERRVILLE, TEXAS 78029

To: Governing Bodies of Participating Taxing Entities Served by Kerr CAD
From: P.H. "Fourth" Coates, IV – Chief Appraiser
Re: Kerr CAD 2014-2015 BOD Member Ballot
Date: November 21, 2013

Attached is the Ballot for the election of the 2014-2015 Board of Directors for the Kerr Central Appraisal District. Please cast the allocated votes for your entity for the candidate or candidates of your choice and return them to me along with a resolution or a copy of the portion of your minutes containing the voting. Each entity may cast all of its allocated for one candidate or may divide its votes between two or more candidates. The entity may not initiate a recall of a director unless it casts at least one vote for that director. Once the ballots are received they will be tabulated. Since there are five positions and five nominees the nominated candidates will serve as the 2014-2015 board of directors.

Please do not hesitate to contact me if you need further clarification.

Thank you,

P.H. Coates, IV

PHONE 830-895-5223
FAX 830-895-5227

PHONE 830-895-5223
FAX 830-895-5227

KERR CENTRAL APPRAISAL DISTRICT

P.O. BOX 294387

1836 JUNCTION HIGHWAY

KERRVILLE, TEXAS 78029

BOARD OF DIRECTOR'S 2014/2015 BALLOT

<u>CANDIDATE</u>	<u>NOMINATING ENTITY</u>	<u>VOTES CAST</u>
1. Mark Bigott	Kerrville ISD	_____
2. Jack Parks	Hunt ISD	_____
3. Charles Lewis	Kerr County	_____
4. Justin MacDonald	City of Kerrville	_____
5. Ray Orr	Kerrville ISD	_____

Please cast your allotted votes (see below) for the candidate or candidates of your choice and return to the Chief Appraiser. Each entity may cast all of its allocated votes for one candidate or may divide its votes between two or more candidates. The entity may not initiate a recall of a director unless it casts at least one vote for that director. The votes will be counted and the Board Members for the 2014/2015 term. There are five elected positions on the Kerr Central Appraisal District Board of Directors. The County Tax Assessor/Collector serves as a non-voting member by state statute.

<u>Entity Name</u>	<u>Votes Allocated</u>
City of Ingram	26
City of Kerrville	709
Kerr County	1,256
Center Point ISD	187
Comfort ISD	135
Divide ISD	34
Harper ISD	32
Hunt ISD	252
Ingram ISD	378
Kerrville ISD	1,983
Medina ISD	8
TOTAL # Votes	5,000

PHONE 830-895-5223

FAX 830-895-5227

Agenda Item:

6A. Budget and economic update. (staff)

**TO BE CONSIDERED BY THE CITY COUNCIL
CITY OF KERRVILLE, TEXAS**

SUBJECT: Budget/Economic Update

FOR AGENDA OF: December 10, 2013 **DATE SUBMITTED:** November 22, 2013

SUBMITTED BY: Sandra Yarbrough **CLEARANCES:** Todd Parton
Director of Finance City Manager

EXHIBITS: Economic Update

AGENDA MAILED TO:

APPROVED FOR SUBMITTAL BY CITY MANAGER: 

Expenditure Required:	Current Balance in Account:	Amount Budgeted:	Account Number:
\$	\$	\$	

PAYMENT TO BE MADE TO:

REVIEWED BY THE DIRECTOR OR FINANCE:

SUMMARY STATEMENT

The City of Kerrville staff will present and update Council on a monthly basis as to the status of the City's budget and current economic trends affecting the City.

RECOMMENDED ACTION

No action required information purposes only.

City of Kerrville
Month ending November 30, 2013
 (Month 2 of FY14 Budget)

	Current Month	Year To-Date	% (16.67) to Budget	Prior Year To-Date
General Fund				
Total Revenues	\$1,478,774	\$3,137,497	14.24%	\$3,030,396
Sales tax	\$466,743	\$949,800	17.27%	\$874,913
Property tax	\$487,960	\$1,005,637	12.01%	\$902,804
Total Expenditures	\$1,565,725	\$3,249,369	15.35%	\$3,317,971

Water and Sewer Fund				
Total Revenues	\$716,991	\$1,529,973	14.59%	\$1,601,849
Water Sales	\$363,163	\$791,224	15.55%	\$885,137
(9,646 accounts serving 12,498 units - 9,826 installed meters - 253 inactive)				
Sewer Service	\$312,587	\$636,764	16.67%	\$590,128
(8,830 accounts serving 11,638 units)				
Expenditures	\$620,393	\$1,302,556	13.06%	\$1,312,232

Hotel/Motel:				
Revenues	\$39,573	\$115,616	13.44%	\$161,897
Expenditures	214,550	\$214,550	24.98%	\$206,250

Unemployment:		Consumer confidence:		
National	7.3	National	71.2	down 2.6% compared to 2012
Texas	6.2	Texas	86.6	up 2.9% compared to 2012
Local	5.3	(Sources: State Comptroller/WorkforceAlamo)		

Housing:				
<i>Statewide:</i>				
Building permits issued single family housing (not available at this time)				
Sales of existing single family house (not available at this time)				
Median sale price for existing single family was (not available at this time)				
(Source: State Comptroller)				
<i>Local:</i>				
<i>Permits Issued for New Residence</i>				
Oct - Nov 2012 - 4				
Oct - Nov 2013 - 3				

Agenda Item:

7A. Appointments to the library advisory board. (staff)

**BUSINESS OF THE CITY COUNCIL
CITY OF KERRVILLE, TEXAS**

SUBJECT: Appointments to the Library Advisory Board

FOR AGENDA OF: December 10, 2013 **DATE SUBMITTED:** December 3, 2013

SUBMITTED BY: Brenda Craig *BC* **CLEARANCES:**
City Secretary

EXHIBITS: Board List

AGENDA MAILED TO:

APPROVED FOR SUBMITTAL BY CITY MANAGER: *[Signature]*

SUMMARY STATEMENT

Consider appointments to the following board:

Library Advisory Board: Three terms expired November 22, 2013: Thomas Jones, Jeanine Kenworthy, and Diana K. Martin.

RECOMMENDED ACTION

Consider appointments.

LIBRARY ADVISORY BOARD

	<u>Telephone</u>	<u>Orig. Appt.</u>	<u>Re-Appt. Date</u>	<u>Exp. Date</u>
JONES, THOMAS #2 Antelope Trail	210-289-5483 (O) 257-5635 (H)	07-05-12		11-22-13
KENWORTHY, JEANINE 115 Erin Drive	895-3613 (H)	06-11-13		11-22-13
MARTIN, DIANA K. 3931 Kite Ct.	896-3300 (H)	03-10-09	12-13-11	11-22-13
* SMITH, JANE 2009 Crown View Dr.	792-9144 (H)	04-22-13		11-22-14
WARD, JUDY CARR 103 Creekside Dr.	895-3740 (H)	11-23-10	11-13-12	11-22-14

EX OFFICIO MEMBER:

Justin MacDonald (H) 524 Oakland Hills (O) 2951 Fall Creek Rd.	257-5323 (O) 896-4821 (H)	05-22-12
--	------------------------------	----------

CITY STAFF:

Laura Bechtel Library Director 505 Water Street	258-1260 (O)
Kim Meismer Director of General Operations 701 Main Street	258-1140 (O) 377-7691 (C)

Qualifications: Members must maintain a library card in good standing.

Powers and Duties: The Board is an advisory board to the city council; shall have the authority to hold meetings within the city and to consider and make recommendations to the Council from time to time on any and all matters pertaining to the Library. Upon a majority vote of the total membership.

Term of Office: All Board appointments shall serve two (2) year terms. No Board member shall serve more than two (2) consecutive two (2) year term on the Board without having at least one (1) full year off of the Board between terms. A majority of the members' terms shall expire in even-number years with the remaining members' terms expiring in odd-numbered years.

Quorum: Three members

Number of Members: Five members

Meeting Time & Place: Third Tuesday of Every Month; 3:00 pm; Butt-Holdsworth Memorial Library

Absences: Any member who is absent from twenty-five percent (25%) of the board's regular meetings during any twelve (12) month period, or who is absent from any three (3) consecutive regular meetings, shall be considered for removal by the City Council. The staff member has the responsibility of reporting a member's non-attendance to the City Council in writing, and the City Secretary shall notify the board member in writing that their non-attendance has been reported to the City Council. However, a member whose absences are directly related to a medical or family emergency may seek consideration from the board upon which they serve to qualify such absences as excused.

Established by: Ordinance No. 1967-17; amended by Ordinance Nos. 80-5, 84-14, 84-58, 85-01, 87-24, 87-60, 87-61, and 2005-19 (in its entirety); Resolution Nos. 045-2006, 107-2006, 076-2007, and 122-2007 did not change this board. Code of Ordinances: Chapter 66 - Article II – Sections 66-31 through 66-34; Amended by Ordinance No. 2010-05; Amended by Ordinance No. 2011-16.

Revised: May 10, 2013

* Appointed by Friends of the Butt-Holdsworth Memorial Library

Agenda Item:

7B. Appointments to the building board of adjustment and appeals. (staff)

**BUSINESS OF THE CITY COUNCIL
CITY OF KERRVILLE, TEXAS**

SUBJECT: Appointments to the Building Board of Adjustment and Appeals

FOR AGENDA OF: December 10, 2013 **DATE SUBMITTED:** November 19, 2013

SUBMITTED BY: Brenda Craig
City Secretary

CLEARANCES: Todd Parton
City Manager

EXHIBITS: Board List

AGENDA MAILED TO:

APPROVED FOR SUBMITTAL BY CITY MANAGER:



SUMMARY STATEMENT

Consider appointments to the following board:

Building Board of Adjustment and Appeals: Five terms expired on August 31, 2013: Kenneth Bledsoe, Dwayne Downey, John Hewitt and alternate John Priour; also, one architect position which remains vacant.

RECOMMENDED ACTION

Consider appointments.

BUILDING BOARD OF ADJUSTMENT AND APPEALS

		<u>Telephone</u>	<u>Orig. Appt.</u>	<u>Re-Appt. Date</u>	<u>Exp. Date</u>
i	Vacant Architect				08-31-13
ii	HEWITT, JOHN 100 Horseshoe Ridge Professional Engineer	315-8800 (O) 257-2149 (H)	08-23-11		08-31-13
iii	LUCK, CALVIN 1200 Spur 100 Master Electrician	830-928-1459 (O) 896-9333 (H)	09-14-10	09-11-12	08-31-14
iv	TREMPER II, CHARLES 702 Fay Dr. Master Plumber	739-4194 (O) 730-4194 (H)	09-14-10	09-11-12	08-31-14
v	UNDERWOOD, LEE 807 Rim Rock S. Mechanical Contractor	896-4083 (O) 896-4083 (H)	09-14-10	09-11-12	08-31-14
vi	BLEDSON, KENNETH 1308 Paragon Place Contractor	377-8300 (O) 896-8845 (H)	09-14-10	08-23-11	08-31-13
vii	DOWNEY, DWAYNE 403 Earl Drive Active Construction Industry	257-2104 (O) 377-2087 (H)	09-14-10	08-23-11	08-31-13
<u>ALTERNATES:</u>					
(*)	LOWERY, DANIEL 512 Elm St.	739-7876 (O) 896-1804 (H)	09-14-10	09-11-12	08-31-14
(*)	PRIOR, JOHN 132 Cedar Drive E.	792-5900 (O) 739-5900 (H)	09-14-10	08-23-11	08-31-13

CITY STAFF:

Danny Batts 258-1178 (O)
Director of Building Svcs.

Qualifications:

Members shall be composed of the following:

- i an architect licensed to practice in the state;
- ii a professional engineer licensed to practice in the state;
- iii a master electrician licensed to practice in the state;
- iv an unrestricted master plumber licensed to practice in the state;
- v a mechanical contractor with a Class A state license;
- vi a person licensed by the city as a contractor;
- vii a person that is active in the construction industry; provided, however, if the city council determines that there is no architect or professional engineer available to serve on the board, then council shall select a second person meeting this description to serve.

Alternate board members shall attend all meetings and are subject to the attendance requirement applicable to the board; however, alternate members shall serve only in the absence of one or more regular members and shall then act as a regular member for that entire meeting. Members shall be residents of the county and operate or be employed by a business located within the city; however, no two (2) members, regular or alternate, may be employed by or have an ownership interest in the same business or firm.

- Powers and Duties: (1) To hear appeals of decisions and interpretations of the chief building official and fire code official and to consider variances to the standardized building codes as more specifically described in Sec. 26-251 of Ordinance No. 2010-15. No appeal may arise out of the city's issuance of citation for violation of any of the standardized building codes as the procedure for the consideration and decision regarding citations is solely under the purview and authority of the municipal court. In addition, the board shall have no authority to waive, and is prohibited from waiving, any requirement of the standardized building codes; and (2) Recommend amendments to this chapter; any standardized building code adopted by the city council; or any other code, application, or process applicable to the city's review, application, interpretation, and enforcement of the standardized building codes with the goal toward addressing any deficiencies, voids, inconsistencies, inefficiencies, or technical errors; and (3) To hear appeals, issue orders, and fulfill other duties pursuant to the authority established in Article VII of this Chapter for unsafe building abatement.
- Term of Office: Two years. No regular member shall serve more than two consecutive full terms on the board without having at least one full year off of the board between terms; provided, however, if the city council finds that it has not received applications from other qualified candidates, the city council may reappoint an incumbent member of the board notwithstanding the restrictions of this subsection.
- Quorum: Four members
- Number of Members: Seven members, and two alternates
- Officers: The board shall elect a chair and vice-chair who shall be appointed from among its voting members. The board shall appoint such officers at the first meeting of the board held after September 1 of each year. Officers shall serve a term of one year and all such terms shall end on August 31 after the date of election or until a successor is elected, but in every case each subsequent term shall end on August 31. An officer of the board may not serve in the office elected for more than two consecutive terms.
- Meeting Time & Place: At least quarterly at the call of the chair, City Hall
- Absences: As established in the Procedural Rules for Kerrville City Boards.
- Established by: Ordinance No. 2010-15
- Revised: December 4, 2013
- (*) alternate members shall be qualified as one of the following: master electrician, master plumber or mechanical contractor.

Agenda Item:

7C. Appointments to the planning and zoning commission. (staff)

Consider appointments.

PLANNING AND ZONING COMMISSION

	<u>Telephone</u>	<u>Orig. Appt.</u>	<u>Re-Appt. Date</u>	<u>Exp. Date</u>
WATTERSON, DAVID Chairman 177 Phoenix Dr.	634-3300 (O) 377-6400 (C)	01-12-10	01-10-12	01-01-14
BUELL, HAROLD Vice-Chairman 1214 Jack Dr.	896-0114 (O) 895-2444 (H)	01-09-07	01-10-12	01-01-14
HARMON, GARRETT 701 Lee Street	895-4510 (O) 285-2151 (C)	06-25-13		01-01-15
MORGAN, WILLIAM 1744 Glen Road	739-9655 (O) 257-6263 (H)	01-22-13		01-01-15
WALLER, ROBERT 33 Antelope Trail	792-6088 (H) 896-2950 (O)	07-09-13		01-01-15
<u>ALTERNATES:</u>				
MALONE, DOYLE 208 Spring Mill Dr.	257-8755 (H)	07-23-13		01-01-14
VACANT				01-01-15
<u>COUNCIL LIAISON:</u>				
Justin MacDonald 2951 Fall Creek Road	257-5323 (O)			
<u>CITY STAFF:</u>				
Jason Lutz Senior Planner	258-1184 (O)			

Qualifications: At least four of the regular members shall be residents and eligible voters of the city; one regular member may reside in the city's extraterritorial jurisdiction (ETJ) and must be an eligible voter of Kerr County. At least one alternate member shall be a resident and eligible voter of the city; one alternate member may reside in the city's extraterritorial jurisdiction (ETJ) and must be an eligible voter of Kerr County.

Powers and Duties: 1. Shall formulate and recommend to the city council for adoption a Comprehensive Plan for the orderly growth and development of the city and its environs. On a yearly basis the commission shall review and if necessary recommend such changes in the plan as it finds will facilitate the movement of people and goods, and the health, recreation, safety and general welfare of the citizens of the city.

2. Shall formulate a zoning plan (ordinance) as may be deemed best to carry out the goals of the Comprehensive Plan; hold public hearings and make recommendations to the city council relating to the creation, amendment, and implementation of zoning regulations and districts as provided in state law.
3. Shall exercise all powers of a commission as to approval or disapproval of plans, plats, or replats as set out by state law and the city's subdivision regulations.
4. Shall initiate for consideration at public hearings, proposals for the original zoning of annexed areas or for the change of zoning district boundaries on an area wide basis.
5. Shall consider and take appropriate action, upon written request, variances as prescribed to the city's subdivision and sign regulations.
6. Shall from time to time recommend such changes to the subdivision regulations, sign regulations, and any other ordinance the city council assigns to their review that will facilitate the general health, safety and welfare of the citizens of the city.

Term of Office: Two years. No regular member shall serve more than three consecutive full terms on the Commission without having at least one full year off the Commission between terms.

Quorum: Three (may include an alternate member but only where substitution for and acting as a regular member)

Number of Members: Five regular members and two alternates.

Meeting Time & Place: First and third Thursdays, 4:30 p.m., City Hall

Absences: Any member who is absent from twenty-five percent (25%) of the board's regular meetings during any twelve (12) month period, or who is absent from any three (3) consecutive regular meetings, shall be considered for removal by the city council. The staff member has the responsibility of reporting a member's non-attendance to the city council in writing, and the city secretary shall notify the board member in writing that their non-attendance has been reported to the city council. However, a member whose absences are directly related to a medical or family emergency may seek consideration from the board upon which they serve to qualify such absences as excused.

Established by: Minutes of 12-18-44 Council meeting; amended by Ordinance Nos. 1979-37, 1987-24, and 2008-24 (which deleted from Code of Ordinances book Chapter 82 – Article II – Sections 82-31 through 82-36 and rolled into Zoning Code which is not codified)

Revised: July 10, 2013