

**AGENDA FOR REGULAR MEETING**

**KERRVILLE CITY COUNCIL**

**TUESDAY, JANUARY 13, 2015, 6:00 P.M.**

**KERRVILLE CITY HALL COUNCIL CHAMBERS**

**701 MAIN STREET, KERRVILLE, TEXAS**

**KERRVILLE CITY COUNCIL AGENDA**  
**REGULAR MEETING, TUESDAY, JANUARY 13, 2015, 6:00 P.M.**  
**CITY HALL COUNCIL CHAMBERS**  
**701 MAIN STREET, KERRVILLE, TEXAS**

**CALL TO ORDER**

**INVOCATION:** by Reverend Stockton Williams, Rector at St. Peter's Episcopal Church.

**PLEDGE OF ALLEGIANCE TO THE FLAG**

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 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 special city council meetings held December 8, and December 16, 2014, and the regular meeting held December 9, 2014. (staff)

2B. Resolution No. 01-2015 finding that rules adopted by the Texas Railroad Commission are against the public interest and would harm the city's ability to protect local gas utility customers; and authorizing the Mayor and City Manager to take action to challenge the rules. (staff)

2C. Request from Kerrville Area Chamber of Commerce for the City to provide in-kind police and EMS services for the Kerrfest event to be held on May 14-17, 2015, in the amount of \$4,623.00. (staff)

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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, January 9, 2015 at 3:30 p.m. and remained posted continuously for at least 72 hours preceding the scheduled time of the meeting.

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Brenda Craig  
City Secretary, City of Kerrville, Texas

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2D. Authorize execution of a contract with Kerr County for conducting the May 9, 2015 City of Kerrville General Election. (staff)

2E. First amendment to the construction contract between the City of Kerrville, Texas and L.C. United Painting Company, Inc., for maintenance work to the Summit and Stadium elevated water tanks by increasing the compensation by \$94,125 and authorizing an increase in the amount of change orders by \$62,750. (staff)

2F. Professional services agreement with Fugro Roadware, Inc. to develop a pavement management system for the City of Kerrville, Texas in an amount not to exceed \$85,000.00. (staff)

2G. Purchase street maintenance and construction equipment funded by a grant, in the total amount of \$385,194.82, to include: Caterpillar 930 wheel loader, Mack tandem dump truck 14 yard capacity; and Bobcat skid loader and 40" planer attachment. (staff)

**END OF CONSENT AGENDA**

**3. PUBLIC HEARING:**

3A. Proposed voluntary annexation of approximately 23.38 acre tract of land located at 5235 Highway 27 East, James Avery Craftsman. (staff)

**4. PUBLIC HEARING AND ORDINANCE, FIRST READING:**

4A. Ordinance No. 2015-01, amending the City's "Zoning Code" by adding a definition of "Community Gardens" to Article 11-I-3 "Definitions and interpretation of words and phrases"; revising Article 11-I-4 to add community garden as a use that is permitted within any zoning district; revising Article 11-I-19 to adopt regulations applicable to the use of property as a community garden; containing a cumulative clause; containing a savings and severability clause; providing for a maximum penalty or fine of two thousand dollars (\$2000.00); and ordering publication. (staff)

**5. ORDINANCE, FIRST READING:**

5A. Ordinance No. 2015-02, annexing an approximate 3.05 acre tract out of the W.H. Crawford Survey No. 653, Abstract No. 123, within Kerr County, Texas; said property being located adjacent to the corporate limits of the City of Kerrville, Texas, and consisting of the property addressed as 421 Roy Street; further describing the territory to be annexed; adopting a service plan for the territory annexed; and establishing the zoning for the area annexed. (staff)

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City Secretary, City of Kerrville, Texas

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**6. CONSIDERATION AND POSSIBLE ACTION:**

6A. Request to amend City Ordinance 2014-21 establishing minimum health and sanitation standards for lodging establishments. (Shirley Garrett, Hillcrest Inn)

6B. Economic Development Incentive Agreement between the City of Kerrville and James Avery Craftsman, Inc. in an amount not to exceed \$379,302.00. (staff)

6C. Economic development grant agreement between James Avery Craftsman, Inc. and the City of Kerrville, Texas Economic Improvement Corporation in an amount not to exceed \$1,219,000. (staff)

6D. Authorization to submit a request to the City of Kerrville, Texas Economic Improvement Corporation (EIC) to amend the Funding Agreement between the EIC, City of Kerrville, Texas, and Playhouse 2000, Inc. to increase the funding to an amount not to exceed \$850,000 for the construction of the support facility to the Cailloux Theater. (staff)

6E. Resolution No. 2-2015 providing for the City's approval or disapproval of an amendment to the Kerr Central Appraisal District's 2015 fiscal year budget. (staff)

**7. APPOINTMENTS TO BOARDS AND COMMISSIONS:**

7A. Appointments to the Building Board of Adjustment and Appeals. (staff)

7B. 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.

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City Secretary, City of Kerrville, Texas

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#### **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 551.087:

Discuss the economic development negotiations, the public discussion of which would not be in the best interests of the City's bargaining position with third parties related to the following:

- Economic Development Incentive Agreement between the City of Kerrville and James Avery Craftsman, Inc. in an amount not to exceed \$379,302.00.
- Economic development grant agreement between James Avery Craftsman, Inc. and the City of Kerrville, Texas Economic Improvement Corporation in an amount not to exceed \$1,219,000.

##### 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:

- River trail
- 800 Junction Highway, former City Hall property

##### Sections 551.074:

- Appointments to the Planning and Zoning Commission.

#### **11. ACTION ON ITEMS DISCUSSED IN EXECUTIVE SESSION**

#### **12. ADJOURNMENT.**

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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

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## **Agenda Item:**

2A. Minutes of the special city council meetings held December 8, and December 16, 2014, and the regular meeting held December 9, 2014. (staff)



CITY COUNCIL MINUTES  
SPECIAL MEETING

KERRVILLE, TEXAS  
DECEMBER 8, 2014

On December 8, 2014, the Kerrville City Council meeting was called to order at 10:30 a.m. by Mayor Pratt in the city hall council chambers at 701 Main Street.

COUNCILMEMBERS PRESENT:

|               |               |
|---------------|---------------|
| Jack Pratt    | Mayor         |
| Gene Allen    | Mayor Pro Tem |
| Stacie Keeble | Councilmember |
| Gary F. Stork | Councilmember |

COUNCILMEMBER ABSENT:

|                |               |
|----------------|---------------|
| Carson Conklin | Councilmember |
|----------------|---------------|

CITY CORE STAFF PRESENT:

|                  |                          |
|------------------|--------------------------|
| Todd Parton      | City Manager             |
| Kristine Day     | Deputy City Manager      |
| Brenda G. Craig  | City Secretary           |
| Sandra Yarbrough | Director of Finance      |
| Ashlea Boyle     | Special Projects Manager |
| John Young       | Police Chief             |

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

**ORDINANCE, FIRST READING:**

Ordinance No. 2014-27, amending Chapter 110 "Traffic and Vehicles" of the City's Code of Ordinances by adopting a new Article XII "Golf Carts"; authorizing the use of golf carts on public streets for parcel delivery during the fall and winter holiday season; establishing regulations under which golf carts are allowed to use public streets; containing a cumulative clause; containing a savings and severability clause; providing for penalties not to exceed \$500.00; ordering publication; providing an effective date; and providing other matters related to the subject. Mayor Pratt read the ordinance by title only.

Mayor Pratt noted that UPS delivery service had been using golf carts to deliver packages during the holiday season for the past few years, and the ordinance would clarify that golf carts could be used on city streets for package delivery during fall and winter. He recommended the delivery service be required to notify city staff when and where golf carts were being used and that such notice would be required before delivery services would be allowed to commence; however, not to establish a permit process.

Mr. Allen moved for approval of Ordinance No. 2014-27 on first reading with the amendment requiring notification to city staff; Mr. Stork seconded the motion and it passed 4-0.

**ADJOURNMENT.** The meeting adjourned at 10:37 a.m.

APPROVED: \_\_\_\_\_

\_\_\_\_\_  
Jack Pratt, Jr., Mayor

ATTEST:

\_\_\_\_\_  
Brenda G. Craig, City Secretary

CITY COUNCIL MINUTES  
INFORMAL SOCIAL MEETING

KERRVILLE, TEXAS  
DECEMBER 16, 2014

On December 16, 2014, the Kerrville City Council attended an informal social meeting sponsored by the Kerrville Fire Department and Kerrville Professional Firefighters Association at 6:00 p.m. at St. Peter's Episcopal Church, Tucker Hall, 320 St. Peter's Street, Kerrville, Texas.

CITY COUNCIL MEMBERS PRESENT:

|                 |               |
|-----------------|---------------|
| Jack Pratt, Jr. | Mayor         |
| Gary Stork      | Councilmember |

CITY COUNCIL MEMBERS ABSENT:

|                |               |
|----------------|---------------|
| Gene Allen     | Mayor Pro Tem |
| Carson Conklin | Councilmember |
| Stacie Keeble  | Councilmember |

CITY EXECUTIVE STAFF PRESENT:

|              |                |
|--------------|----------------|
| Todd Parton  | City Manager   |
| Danny Smith  | Fire Chief     |
| Brenda Craig | City Secretary |

FIRE DEPARTMENT ANNUAL AWARDS AND RECOGNITIONS CEREMONY:

Awards and recognitions for years of service, retirees, new hires, and promotions were presented to many members of the Kerrville Fire Department. Williams "Bill" Roberts was recognized for Line of Duty death in December 1936. The following presentations were also made:

2014 EMS Person of the Year: Roy Fausset  
2014 Firefighter of the Year: Kirk Scheel  
2015 EMS Person of the Year: Casey Goodman  
2015 Firefighter of the Year: Billy Williams  
2015 Officer of the Year: Chris Lee.

The ceremony ended at 7:15 p.m.

APPROVED: \_\_\_\_\_

\_\_\_\_\_  
Jack Pratt, Jr., Mayor

ATTEST:

\_\_\_\_\_  
Brenda G. Craig, City Secretary



CITY COUNCIL MINUTES  
REGULAR MEETING

KERRVILLE, TEXAS  
DECEMBER 9, 2014

On December 9, 2014, 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 Jimmy Sportsman, Senior Minister for Kerrville Church of Christ, followed by the Pledge of Allegiance led by Police Chief John Young.

COUNCILMEMBERS PRESENT:

|                |               |
|----------------|---------------|
| Jack Pratt     | Mayor         |
| Gene Allen     | Mayor Pro Tem |
| Carson Conklin | Councilmember |
| Stacie Keeble  | Councilmember |
| Gary F. Stork  | Councilmember |

COUNCILMEMBER ABSENT: None

CITY CORE STAFF PRESENT:

|                  |                                |
|------------------|--------------------------------|
| Todd Parton      | City Manager                   |
| Mike Hayes       | City Attorney                  |
| Kristine Day     | Deputy City Manager            |
| Brenda G. Craig  | City Secretary                 |
| Sandra Yarbrough | Director of Finance            |
| Ashlea Boyle     | Special Projects Manager       |
| John Young       | Police Chief                   |
| Danny Batts      | Chief Building Official        |
| Dannie Smith     | Fire Chief                     |
| Stuart Barron    | Director of Public Works       |
| Chris Stewart    | Senior Planner                 |
| Kim Meisner      | Director of General Operations |
| Kim Snyder       | Main Street Manager            |

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

A SPECIAL CHRISTMAS PRESENTATION: Art 2 Heart students performed several Christmas songs.

**1. VISITORS/CITIZENS FORUM:**

1A. Doris Williams was concerned about a recent termination of an employee at the library and asked for consideration of a reversal of that decision.

**2. PRESENTATIONS:**

2A. Kerrville Beautification Advisory Committee's Pride of Property Awards: presented to: David and Susie Moore (residential); and National Car Sales (commercial).

2B. Texas Police Chiefs Association's Certificate of Re-recognition presented to the Kerrville Police Department by Max Westbrook Jr., Texas Police Chiefs Assn., in recognition of the KPD continuing to maintain best practices for professional law enforcement; he noted only 33 agencies in Texas had received recognized status.

2C. Government Finance Officers Association Certificate of Achievement for Excellence in Financial Reporting presented to the Kerrville Finance Department (Sandra Yarbrough, Amy Dozier, Vanessa Silva, Randi VanWinkle, and Sureena Cripps) in recognition of 30 years of excellence in financial reporting since 1984.

### **3. CONSENT AGENDA:**

Ms. Keeble moved to approve consent agenda items 3A, 3B, 3C, and 3E; Mr. Stork seconded the motion, and it passed 5-0:

3A. Minutes of the regular city council meetings held October 28 and November 11, 2014.

3B. Resolution No. 38-2014 granting a petition requesting the annexation of an approximate 23.38 acre tract out of the F. Rodriguez Survey No. 72, Abstract No. 280, within Kerr County, Texas, and consisting of the property addressed as 5235 State Highway 27; and ordering the preparation of an annexation ordinance.

3C. Request to abandon land deeded to the City of Kerrville for a "Kerrville River Walk Trail" recorded in Volume 0793, Page 853, Kerr County Records and being generally located within the 700 block of Water Street.

### **END OF CONSENT AGENDA**

### **4. PUBLIC HEARING:**

4A. Proposed voluntary annexation and an initial zoning classification of (RM) "Residential Mix" District, for an approximately 3.05 acre tract of land out of the W. H. Crawford Survey No. 653, Abstract No. 123, Kerr County, Texas, located at 421 Roy Street.

Mr. Stewart noted the first public hearing was held on November 11. First reading of the ordinance will be on January 13, 2015.

Mayor Pratt opened the public hearing at 6:26 p.m.; no one spoke and the public hearing was closed at 6:26 p.m.

### **5. ORDINANCES, SECOND AND FINAL READING:**

5A. Ordinance No. 2014-23, amending the comprehensive plan for the City of Kerrville, Texas, pursuant to Chapter 213 of the Texas Local Government Code; by revising the Future Land Use Plan for certain properties located along West Main Street and between its intersection with Powell Ave N. and Cox Avenue N.; and specifically, changing the future land use of this area to Neighborhood Commercial. Mayor Pratt read the ordinance by title only.

Mr. Stewart noted that in order to approve the zoning request in item 5B, the city must first amend the comprehensive plan by revising the future land use plan for this area.



Mr. Conklin moved to approve Ordinance No. 2014-22 on second and final reading; Mr. Stork seconded the motion; Mr. Conklin withdrew the motion and Mr. Stork withdrew the second.

Mr. Stork moved for approval of Ordinance No. 2014-23 on second and final reading; Mr. Conklin seconded the motion and it passed 5-0.

5B. Ordinance No. 2014-22, amending the City's "Zoning Code" by changing the zoning district of certain properties located along West Main Street and between its intersection with Powell Avenue N. and Cox Avenue N.; such change will result in the placement of the properties within a Residential Transition (RT) district; containing a cumulative clause; containing a savings and severability clause; providing for a maximum penalty or fine of two thousand dollars (\$2000.00); ordering publication; and providing other matters relating to the subject. Mayor Pratt read the ordinance by title only.

Mr. Stewart noted the request was to change the zoning from single family residential to residential transition.

Mayor Pratt opened a public hearing at 6:32 p.m.; no one spoke and the public hearing was closed at 6:33 p.m.

Mr. Conklin moved for approval of Ordinance No. 2014-22 on second and final reading; Mr. Allen seconded the motion and it passed 5-0.

5C. Ordinance No. 2014-25 altering the prima facie speed limit on State Highway 173 (Bandera Highway) from approximately two hundred feet south of the intersection of the highway with Comanche Trace Drive and continuing south to the City's limits, such distance equal to 0.179 mile; reducing said speed limit to 55 miles per hour; authorizing installation of appropriate signs and markings; containing a savings and severability clause; providing for a maximum penalty or fine of two hundred dollars (\$200.00) and ordering publication. Mayor Pratt read the ordinance by title only.

Mr. Allen moved for approval of Ordinance No. 2014-25 on second and final reading; Mr. Conklin seconded the motion and it passed 5-0.

5D. Ordinance No. 2014-26, amending Chapter 58, Article III of the City's Code of Ordinances titled "Smoking in enclosed public places and places of employment"; to prohibit the sale, purchase, and possession of electronic vaping devices to minors; containing a cumulative clause; containing a savings and severability clause; ordering publication; and providing other matters related to the subject. Mayor Pratt read the ordinance by title only.

Mr. Parton noted no changes since first reading.

Ms. Keeble moved for approval of Ordinance No. 2014-26 on second and final reading as presented; Mr. Allen seconded the motion and it passed 5-0.



5E. Ordinance No. 2014-27, amending Chapter 110 "Traffic and Vehicles" of the City's Code of Ordinances by adopting a new Article XII "Golf Carts"; authorizing the use of golf carts on public streets for parcel delivery during the fall and winter holiday season; establishing regulations under which golf carts are allowed to use public streets; containing a cumulative clause; containing a savings and severability clause; providing for penalties not to exceed \$500.00; ordering publication; providing an effective date; and providing other matters related to the subject. Mayor Pratt read the ordinance by title only.

Mr. Allen moved for approval of Ordinance No. 2014-27 on second and final reading; Mr. Conklin seconded the motion and it passed 5-0.

## **6. CONSIDERATION AND POSSIBLE ACTION:**

6A. Increasing downtown parking time limit in public spaces from two hours to three hours.

Councilmember Stork noted that the downtown parking committee's report in September recommended increasing the parking limit from two hours to three hours and was supported by the Main Street Advisory Board (MSAB) and the Historic Downtown Business Alliance.

The following persons spoke:

- Jon Wolfmueller, downtown business owner, noted the purpose of the parking limit was to free up parking for customers. Business owners and employees already abused the two hour parking limit, and increasing the limit to three hours would basically allow abusers to park all day. The city should enforce the two hour parking limit by issuing parking tickets.
- David Martin noted he was a member of the MSAB and he presented the parking committee's findings and recommendations to city council in September. The committee found that there was a perception of a parking problem, but not a lack of parking, with 1,200 spaces of which 900 were public or quasi-public. The committee recommended: increasing the downtown parking limit from two hours to three hours to allow customers more time to eat and shop; signage advising of the three hour parking limit; enforcement of the three hour parking limit; and signs advising of the availability of free covered parking in the parking garage. Abuse of the parking limit could be handled through enforcement.

Council also discussed the following:

- The former bank property was sold and soon that parking area would no longer be available for public parking, thus placing greater demand on available parking. Increasing the parking limit would hurt businesses because the number of shoppers would be decreased by one-third. The city should enforce the current parking limit before considering changing the hours.
- People needed more time than two hours to eat and shop.
- The increase to three hours was supported by the downtown business owners, and a majority of the owners wanted the parking limit extended to three hours.

Ms. Keeble moved to increase the parking limit from two hours to three hours, continued enforcement of parking limit by issuing tickets, signage advertising three hour parking limit, and placement of additional signage advertising the parking garage. Mr. Stork seconded the motion and it passed 4 to 1 with Councilmembers Keeble, Stork, Allen, and Conklin voting in favor of the motion; and Mayor Pratt voting against the motion.

6B. Amendments to the composition of Kerrville City Boards and Commissions and the procedural rules for Kerrville City Boards.

Mr. Parton reviewed the core elements for each city board and noted conflicts between the various documents that established each of the boards and the board rules and procedures adopted by city council in 2008. He noted that the term limits and the rule prohibiting persons from serving on multiple boards, created a hindrance in maintaining full boards, particularly those boards that required specific technical expertise and professional requirements, such as building board of adjustments and zoning board of adjustment.

Council and staff discussed term limits, continuing to serve after the term expired, attendance requirements, and serving on multiple boards. The consensus of council was to have consistency in boards and terms be based on each board's term year rather than a calendar year.

Mr. Parton recommended the following changes:

- Attendance requirements: 3 consecutive regular meetings or 25% of regular meetings during the calendar year based on appointment date (existing requirement 25% within any 12 month period) applicable to all boards.
- Term expiration: some boards require that when a term lapses, if a qualified applicant was not available, the current member may continue to serve until replaced in order that the board can continue to function. The building board of adjustment allows council to reappoint a member who has reached term limit to another term if another qualified applicant is not available.
- Serve past term: All board members may serve until replaced.
- Term limits: apply only to persons serving on the following boards: economic improvement corporation (2 terms), zoning board of adjustment (3 terms), and planning and zoning (3 terms); the remaining boards would not have term limits.
- Multiple memberships: board members may serve on more than one board at a time, except those persons serving on the following boards may not serve on multiple boards: building board of adjustments, economic improvement corporation, zoning board of adjustment, and planning and zoning.

Mr. Stork moved to accept the recommendations of the city manager, except term limits for the zoning board of adjustment be amended from three terms to four terms, and ZBA members be allowed to serve on multiple boards. Mr. Allen seconded the motion and it passed 5-0.

Staff noted that changes would require amendments to various resolutions and ordinances.



6C. Entrance lighting project for Comanche Trace.

Ms. Day noted that Comanche Trace (CT) requested additional lighting be placed in the city's right of way at CT's entrance on Hwy. 173. CT will donate some of the necessary right of way, and CT will install the lighting following all building and electric codes. Future repairs and maintenance will be performed by KPUB and the city will bill the homeowner's association, as agreed by CT. Staff requested city council authorize the city manager to enter into an agreement with CT to accept the donation of land for the additional right of way and reimbursement of installation and any future services and repairs.

Mr. Allen moved to approve the donation and authorize the city manager to sign an agreement with Comanche Trace for entrance lighting as presented. Ms. Keeble seconded the motion and it passed 5-0.

6D. Set date for budget workshop.

The consensus of the council was for staff to schedule the workshop sometime the first week of February 2015.

**7. INFORMATION AND DISCUSSION:**

7A. Report on Code Red emergency notification system.

Chief Smith described Code Red as a web-based notification system with ability to notify up to 60,000 residents per hour by phone, voice mail, email, or text message about emergency situations and general information. The system had the capability of allowing the operator to select the area in which persons would be notified, and to select the method of notification. Code Red was maintained and operated by the Kerr County Sheriff's Department and they offered the city full access to the system in the event of an emergency at no cost to the city or residents, unless the person chose to sign up for mobile app service. The local phone directory was used as the data base for Code Red; however, Chief Smith recommended that people confirm that their number was registered; also, persons who had unlisted numbers or cell phones should register. Citizens may also opt out of Code Red if they are in the phone book and do not wish to be contacted. The city contained 10,062 phone contacts, 890 email, and 508 text contacts. The following city personnel would be authorized to activate the Code Red system in the city: fire chief, police chief, assistant police chief, dispatch, battalion chiefs and patrol lieutenants. Training of designated city staff should be completed by December 15 and citizens may register beginning December 16.

The following person spoke:

1. Carolyn Lipscomb asked if a person was already signed up with Kerr County Code Red, if they should sign up for the city also. Chief Smith noted if they signed up with Kerr County, then they were already in city's system.

7B. Update on City of Kerrville Fiscal Year 2015 road improvement program. (Councilmember Stork). Item was postponed.



**8. APPOINTMENTS TO BOARDS AND COMMISSIONS:**

8A. Appointments to the Beautification Advisory Committee. Item was tabled.

8B. Appointment to the Economic Improvement Corporation. Item was deferred to executive session.

8C. Appointments to the Food Service Advisory Board.

Ms. Keeble moved to reappoint Rebecca Dittmar, David Gonzales, Abel Vasquez, and Darrell Young all with terms to expire December 1, 2016; the motion was seconded by Mr. Conklin and passed 5-0.

8D. Appointment to the Library Advisory Board.

Mr. Stork moved to appoint Marty Lenard with term to expire November 22, 2016; Mr. Allen seconded the motion and it passed 5-0.

8E. Appointments to the Zoning Board of Adjustment. Item was deferred to executive session.

**9. ITEMS FOR FUTURE AGENDAS:** None.

**10. ANNOUNCEMENTS OF COMMUNITY INTEREST:**

- Supper with Santa, Saturday, December 13 at Kerrville Schreiner Park, 4:00-6:00 p.m.

-December is national impaired driving month.

-Monday, December 15 Sandi Patty concert at the Cailloux Theater.

-The city was aware of mistakes on the wayfinding signs and the contractor would correct the signs at their expense; however, some of the signs needed to be relocated and the city was waiting permission from TxDOT.

-Mr. Parton noted that Police Chief John Young would retire December 31, 2014.

**11. 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; motion was seconded by Ms. Keeble and passed 5-0 to discuss the following:

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:

- River trail.
- 800 Junction Highway, former City Hall property.

Sections 551.074:

- Appointment to the economic improvement corporation.
- Appointments to the zoning board of adjustment.

At 7:55 p.m. the regular meeting recessed and council went into executive closed session at 8:00 p.m. At 8:45 p.m. the executive closed session recessed and council returned to open session at 8:46 p.m. The mayor announced that no action had been taken in executive session.

**12. ACTION ON ITEMS DISCUSSED IN EXECUTIVE SESSION**

**8B. Appointment to the Economic Improvement Corporation.**

Mr. Conklin moved to appoint Sherri Jones with term to expire June 1, 2016; Mr. Allen seconded the motion and it passed 3-2 with Councilmembers Conklin, Allen, and Keeble voting in favor of the motion and Mayor Pratt and Councilmember Stork voting against the motion.

**8E. Appointments to the Zoning Board of Adjustment**

Ms. Keeble moved to reappoint Judy Eychner, and to appoint Peter Lewis as regular members; and to appoint Justin MacDonald, and Robert Parks as alternate members, all with terms to expire September 30, 2016; Mr. Allen seconded the motion and it passed 5-0.

11. 800 Junction Highway, former City Hall property. Mr. Stork moved to accept the offer and authorize staff to enter into a contract for the sale of the property at 800 Junction Highway; Ms. Keeble seconded the motion and it passed 5-0.

**ADJOURNMENT.** The meeting adjourned at 8:47 p.m.

APPROVED: \_\_\_\_\_

\_\_\_\_\_  
Jack Pratt, Jr., Mayor

ATTEST:

\_\_\_\_\_  
Brenda G. Craig, City Secretary

## **Agenda Item:**

2B. Resolution No. 01-2015 finding that rules adopted by the Texas Railroad Commission are against the public interest and would harm the city's ability to protect local gas utility customers; and authorizing the Mayor and City Manager to take action to challenge the rules. (staff)



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

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**SUBJECT:** Resolution No. 1-2015 finding that the rules adopted by the Texas Railroad Commission are against the public interest and would harm the city's ability to protect local gas utility customers; and authorizing the mayor and city manager to take action to challenge the proposed rules.

**FOR AGENDA OF:** Jan. 13, 2015

**DATE SUBMITTED:** Jan. 9, 2015

**SUBMITTED BY:** Jack Pratt  
Mayor

**CLEARANCES:** Todd Parton  
City Manager

**EXHIBITS:** Resolution No. 1-2015  
Railroad Commission of Texas Letter – Dated July 1, 2014  
Bullet Points in Response to Proposed RRC Rules  
ACSC 2013 Year in Review

**AGENDA MAILED TO:**

**APPROVED FOR SUBMITTAL BY CITY MANAGER:**

|                    |                        |                  |                |
|--------------------|------------------------|------------------|----------------|
| <b>Expenditure</b> | <b>Current Balance</b> | <b>Amount</b>    | <b>Account</b> |
| <b>Required:</b>   | <b>in Account:</b>     | <b>Budgeted:</b> | <b>Number:</b> |
| <b>\$0</b>         | <b>\$0</b>             | <b>\$0</b>       |                |

**PAYMENT TO BE MADE TO:**

**REVIEWED BY THE FINANCE DEPARTMENT:**

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**SUMMARY STATEMENT**

The Texas Railroad Commission approved new rules in 2014 that effectively remove municipalities from participation in gas utility rate cases. These rule changes were officially opposed by the City of Kerrville through the public comment process that ended on August 25, 2014.

Kerrville is a member of the Atmos Cities Steering Committee, a coalition of cities who work together to evaluate and weigh in on ratemaking for gas utilities. City coalitions have been formed to represent the collective interests of cities and their citizens in these utility rate cases. Coalitions refuse to accept proposed rate increases at face value and provide a cost-effective means for communities to participate in a very complex ratemaking process. Cities are able to dig into the complex calculations of ratemaking to determine whether a utility company has made a reasonable request. When it is found that the requested rate hikes are unreasonable, the coalitions present evidence supporting those findings to the Railroad Commission of Texas and recommend reducing the rate.

City coalitions have been effective in lowering proposed rate hikes. For 2013 Atmos requested a rate increase to generate an additional \$25.7 million in revenue. The Atmos Cities Steering Committee was able to negotiate with Atmos to reduce that amount to

\$16.6 million, a \$9.1 million dollar reduction (35% reduction).

The Texas Railroad Commission's new rules greatly diminish, if not entirely eliminate, the City's ability to ensure that utility rate increases are reasonable. The rules: (1) severely limit the number of requests for information that a city could request from a utility when it proposes a rate increase, (2) relieves a utility from its obligation to reimburse a city's rate case expenses until a city actually pays the expenses upfront or commits itself to pay for them, and (3) places the burden of litigation expenses on a city that challenges a rate increase.

The net result of these rules changes is that it is much more difficult for cities to challenge rate increases and to make it easier for gas utilities to increase rates. Attached to this report is the *Bullet Points in Response to Proposed RRC Rules*. This document was prepared by Herrera & Boyle, PLLC, a legal firm who represents another city coalition known as the Atmos Municipalities of Texas while the proposed rules were under public review. The bullet points provide a succinct and clear picture of how these adopted rules affect cities in the gas utility ratemaking process.

### **RECOMMENDED ACTION**

City staff recommends that the City Council approve Resolution No. 24-2015 to officially oppose the Texas Railroad Commission rule changes and to direct the city manager to challenge them.



**CITY OF KERRVILLE, TEXAS  
RESOLUTION NO. 01-2015**

**A RESOLUTION FINDING THAT RULES ADOPTED BY THE TEXAS  
RAILROAD COMMISSION ARE AGAINST THE PUBLIC INTEREST  
AND WOULD HARM THE CITY'S ABILITY TO PROTECT LOCAL  
GAS UTILITY CUSTOMERS; AND AUTHORIZING THE MAYOR AND  
CITY MANAGER TO TAKE ACTION TO CHALLENGE THE RULES**

**WHEREAS**, the Texas Railroad Commission ("RRC") recently adopted rules ("Rules") sought by natural gas utilities, including Clear Point Energy, that work to eliminate the authority of cities to review and challenge rate increases proposed by gas utilities in Texas, thus making it easier to raise rates on Texas consumers, both residents and businesses; and

**WHEREAS**, at the hearing to consider the Rules, which will take effect September 1, 2015, it should have been clear to the RRC that city officials from all over the state and some current state legislators opposed the Rules; and

**WHEREAS**, the City Council, pursuant to Resolution No. 24-2014 as adopted on August 12, 2014, previously expressed its concern and opposition to the Rules and authorized the Mayor and City Manager to act in ways that both the RRC and the City's elected state officials know and understand the City's opposition to the Rules; and

**WHEREAS**, gas utilities are monopolies and as such, customers cannot pick and choose which utility delivers gas to them; and

**WHEREAS**, the Rules appear designed to stop cities from attempting to protect gas customers by keeping gas utility rates reasonable; and

**WHEREAS**, current Texas law gives cities original jurisdiction over rates and guarantees reimbursement of their reasonable costs to review requests for rate increases; and

**WHEREAS**, under the current regulatory framework for rate increases, cities have voluntarily formed coalitions to represent the collective interests of cities and local customers and to share costs in the utility rate cases; and

**WHEREAS**, the City is part of the Atmos Cities Steering Committee ("ACSC"), which over the years has acted as the first line of defense against unreasonable or unjustifiable rate increases, refused to accept a utility's rate increase request at face value, and saved customers all over the state and locally, considerable amounts of monies; and

**WHEREAS**, by participating in rate cases through coalitions such as ACSC, cities are able to perform due diligence into the complex calculations of ratemaking to determine whether a utility's rate increase is reasonable; and



**WHEREAS**, when cities determine that a utility's request is unreasonable, they may present evidence supporting the findings to the RRC and recommend reducing the rate increase, which the City, through ACSC, has repeatedly done over the years; and

**WHEREAS**, the reviews have periodically allowed cities to find extraordinary, unauthorized, and questionable expenses, such as the purchase of travel, entertainment, and furnishings, that a gas utility was using to justify a rate increase; and

**WHEREAS**, participation by cities has generally resulted in net savings for gas customers because the utility's rate increases were reduced by an amount far in excess of the expenses incurred by the cities; and

**WHEREAS**, during the 2013 Texas legislative session, the legislature rejected proposed bills which would have had a similar impact as the rules proposed by the RRC; and

**WHEREAS**, the RRC adopted the proposed rules in spite of a clear message from the legislature that the current process is working effectively and efficiently; and

**WHEREAS**, based upon the impact that the Rules will have to local gas utility customers, the City Council strongly believes it to be in the public interest to adopt this Resolution and to authorize the action authorized herein;

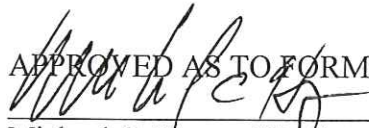
**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF KERRVILLE, KERR COUNTY, TEXAS:**

**SECTION ONE.** The City Council finds that the Rules adopted by the Texas Railroad Commission are contrary to the public interest, eliminate the authority of cities to effectively meet the needs and interests of local gas utility customers, and cause significant harm to a customer's ability to review and/or challenge rate increases.

**SECTION TWO.** The City Council authorizes the Mayor and City Manager to forward this Resolution to the City's elected state representatives and the RRC and to act in other ways in an effort to cause the Rules to be revoked, amended, and/or withdrawn.

**PASSED AND APPROVED ON this the \_\_\_\_\_ day of \_\_\_\_\_ A.D., 2015.**

APPROVED AS TO FORM:

  
Michael C. Hayes, City Attorney

\_\_\_\_\_  
Jack Pratt, Jr., Mayor

ATTEST:

\_\_\_\_\_  
Brenda G. Craig, City Secretary

BARRY T. SMITHERMAN, CHAIRMAN  
DAVID PORTER, COMMISSIONER  
CHRISTI CRADDICK, COMMISSIONER



LINDIL C. FOWLER, JR., GENERAL COUNSEL  
JASON BOATRIGHT, DIRECTOR  
GENERAL COUNSEL SECTION

## RAILROAD COMMISSION OF TEXAS

### OFFICE OF GENERAL COUNSEL

#### MEMORANDUM

**TO:** Chairman Barry T. Smitherman  
Commissioner David Porter  
Commissioner Christi Craddick

**FROM:** Cristina Self, Attorney— General Counsel Section  
Office of General Counsel *ms*

**THROUGH:** Lindil C. Fowler, General Counsel *LF*

**DATE:** July 1, 2014

**SUBJECT:** Proposed New 16 TAC §1.86, relating to Alignment of Municipal Intervenor for Purposes of Discovery;  
New 16 TAC §1.87, relating to Limitations on Discovery Requests; Amendment of 16 TAC §7.5530, relating to Allowable Rate Case Expenses; Gas Utilities Docket No. 10362.

| July 8, 2014                                               |        |         |
|------------------------------------------------------------|--------|---------|
| Approved                                                   | Denied | Abstain |
| <i>[Handwritten signature and initials over the table]</i> |        |         |

Attached is Staff's recommendation to publish new 16 Tex. Admin. Code §1.86, relating to Alignment of Municipal Intervenor for Purposes of Discovery; new 16 Tex. Admin. Code §1.87, relating to Limitations on Discovery Requests; and certain amendments to 16 Tex. Admin. Code §7.5530, relating to Allowable Rate Case Expenses.

Staff requests the Commission's approval to publish the proposed new rules and amendments in the *Texas Register* for a 30-day comment period. If approved at conference on July 8<sup>th</sup>, the proposal should appear in the July 25<sup>th</sup>, 2014, issue of the *Texas Register*. This proposal and an online comment form would also be made available on the Commission's website the day after conference, giving interested persons more than two additional weeks to review and submit comments to the Commission.

cc: Jason Boatright, Director— General Counsel Section  
Bill Geise, Director — Gas Services Division  
Gene Montes, Interim Director—Hearings Division  
Milton Rister, Executive Director  
Wei Wang, Chief Financial Officer



1           The Railroad Commission of Texas (Commission) proposes new §1.86, relating to Alignment of  
2   Municipal Intervenor for Purposes of Discovery, and §1.87, relating to Limitations on Discovery  
3   Requests. The Commission concurrently proposes amendments to §7.5530 of this title, relating to  
4   Allowable Rate Case Expenses, in a separate rulemaking, in conjunction with these proposed new rules.

5           State statutes allow participants in complex utility rate cases to recover rate-case expenses from  
6   customers. These rules are intended to reduce rate-case expenses and promote the efficient resolution of  
7   cases. Alignment of parties reduces rate-case expenses by reducing the duplication of services. Since  
8   1999, litigants in Texas courts have complied with procedures that impose discovery control plans which  
9   effectively control costs in complex cases. These rules would be limited to rate-setting proceedings and  
10   are designed to promote the efficient resolution of cases, thereby reducing rate-case expenses. Section  
11   1.121 of this title, relating to Presiding Officer, grants a presiding officer broad discretion in regulating  
12   the course and conduct of a proceeding. Proposed new §§1.86 and 1.87 specifically delineate for parties  
13   in a proceeding and a presiding officer what terms and considerations apply to alignment of municipal  
14   parties and limitations on discovery. The proposed new rules promote efficient use of party and  
15   Commission resources. Rate case proceedings, in particular, can be costly litigation exercises. While  
16   parties have the right to contest a utility's request for rate relief and other forms of relief, there are  
17   efficiencies that can be gained through alignment of parties and reasonable discovery limitations that will  
18   result in reduced rate case expenses, thereby reducing the costs that are passed on to ratepayers. New  
19   §1.86 recognizes that parties that participate in a utility ratemaking case are frequently aligned in their  
20   attempts to reduce the utility's requested rate increase, and preserves a municipal party's right to  
21   propound discovery requests while recognizing that it is more efficient for the utility to respond to a  
22   single opposing position from potential municipal intervenors rather than respond to multiple versions of  
23   similar discovery requests propounded by parties with the same goal. Thus, the goal of reducing the



1 costs ultimately passed on to ratepayers can be realized by aligning parties with similar interests.

2 In new §1.86(a), the Commission proposes wording to include a presumption that municipal  
3 parties share a common interest such that alignment of municipal parties as a single party is appropriate.  
4 Proposed subsection (a) directs the presiding officer to order alignment of municipal parties at the  
5 earliest reasonable opportunity to allow municipal parties to coordinate their efforts in the most efficient  
6 way possible.

7 The Commission proposes new §1.86(b) to require a municipal party to file a motion to realign,  
8 in whole or in part, to overcome the presumption of alignment. In paragraphs (1) - (7), the presiding  
9 officer is required to consider several factors to determine whether the motion to realign, in whole or in  
10 part, is warranted including: (1) whether the municipal parties are taking opposing positions regarding  
11 the utility's request for relief; (2) whether the municipal parties have sufficiently different positions on  
12 one or more issues to justify realignment on such issues; (3) whether granting the motion will create  
13 unnecessary inefficiencies or duplication of effort; (4) whether granting the motion will result in undue  
14 costs to the parties; (5) the effect of granting the motion on the parties and the public interest; (6)  
15 whether granting the motion will serve the interest of justice; and (7) any other relevant factors as  
16 determined by the presiding officer.

17 Proposed new §1.86(c) states that this section applies to proceedings brought pursuant to Texas  
18 Utilities Code, §103.055 and §104.102.

19 Proposed new §1.87(a) grants the presiding officer the discretion, upon request by a party, to  
20 order discovery to be limited in the interests of efficiency and justice.

21 Proposed new §1.87(b) clarifies that each request or subpart in a Request for Information (RFI) is  
22 considered a separate RFI and indicates that a reasonable limitation on discovery is no more than 600  
23 total RFIs with no more than 75 RFIs propounded by a single party in a single calendar week.

1 Commission staff and presiding officers are not subject to these discovery limitations when Commission  
2 staff or the presiding officers issue the RFIs. These figures are consistent with the discovery control plan  
3 adopted by the presiding officers in rate-setting procedures conducted at the Commission over the last ten  
4 years. New §1.87 codifies recent rulings recognizing that reasonable limitations on discovery are  
5 appropriate. For example, discovery limitations have been granted in recent dockets including GUD Nos.  
6 9902, 10006, 10007, 10038, 10097, and 10106. Moreover, limitations on discovery are common practice  
7 in civil litigation in Texas as governed by the Texas Rules of Civil Procedure 190. The goal of reducing  
8 the costs ultimately passed on to ratepayers can be realized by implementing reasonable limitations on  
9 discovery at the request of a party.

10 Proposed new §1.87(c) directs that the RFIs propounded during the municipal-level proceeding,  
11 if the utility first filed its request for relief at the municipal level and the Commission is exercising its  
12 appellate authority, shall count towards the total number of RFIs a municipality may propound on the  
13 utility during the Commission proceeding unless the utility updated its test year when filing its appeal.

14 Proposed new §1.87(d) states that RFIs that a party is not required to answer due to a sustained  
15 objection or withdrawal do not count towards the permissible total number of the propounding party's  
16 RFI limit. The subsection also states that if the presiding officer determines that a party is intentionally  
17 propounding objectionable RFIs, the request or subpart will be included in the calculation of that  
18 propounding party's RFI limit even if the responding party is not required to provide an answer.

19 In accordance with the Texas Rules of Civil Procedure 196 and 198, proposed new §1.87(e)  
20 clarifies that discovery limitations would not apply to Requests for Production and Inspection, or  
21 Requests for Admission.

22 Proposed new §1.87(f) requires the party propounding discovery to separately characterize its  
23 discovery as an RFI, a Request for Production and Inspection, or a Request for Admission.

1           Gene Montes, Interim Director, Hearings Division, has determined that for each year of the first  
2           five years that the proposed new rules are in effect, enforcing or administering the proposed new rules  
3           will not result in additional estimated costs to the state or to local governments, may result in a reduction  
4           in costs for local governments that participate in proceedings before the Commission by reducing the  
5           costs of participating in Commission proceedings, and will not result in any estimated losses or increases  
6           in revenue to the state or to local governments.

7           Mr. Montes has also determined that for each year of the first five years that the proposed rules  
8           are in effect, the public benefits expected as a result of adoption of the proposed rules include a reduction  
9           in the amount of reasonable rate case expenses included in customer rates. These proposed rules codify  
10          current Commission practice and provide regulatory certainty for parties in rate proceedings. There are  
11          no foreseeable economic costs to be incurred by parties or persons required to comply with these rules.

12          Mr. Montes has also determined that for each year of the first five years the proposed  
13          amendments are in effect, there should be no adverse effect on a local economy and therefore no local  
14          employment impact statement is required under Texas Government Code, §2001.022.

15          Texas Government Code, §2006.002, relating to Adoption of Rules with Adverse Economic  
16          Effect, requires that as a part of the rulemaking process, a state agency prepare an Economic Impact  
17          Statement that assesses the potential impact of a proposed rule on small businesses and micro-businesses  
18          and a Regulatory Flexibility Analysis that considers alternative methods of achieving the purpose of the  
19          rule if the proposed rule will have an adverse economic effect on small businesses or micro-businesses.  
20          Mr. Montes has determined that the proposed amendments will not have an adverse economic effect on  
21          small businesses or micro-businesses because it adds no new requirements on small businesses or  
22          micro-businesses. The proposed rules promote the efficient resolution of rate proceedings.

23          Mr. Montes has determined that the amendments do not meet the statutory definition of a major



1 environmental rule as set forth in Texas Government Code, §2001.0225; therefore, a regulatory analysis  
2 conducted pursuant to that section is not required.

3  
4 Comments on the proposal may be submitted to Rules Coordinator, Office of General Counsel,  
5 Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967; online at  
6 <http://www.rrc.state.tx.us/legal/rules/comment-form-for-proposed-rulemakings>; or by electronic mail to  
7 [rulescoordinator@rrc.state.tx.us](mailto:rulescoordinator@rrc.state.tx.us). Comments should refer to Gas Utilities Docket No. 10362 and will be  
8 accepted until 12:00 p.m. (noon) on Monday, August 25, 2014, which is 31 days after publication in the  
9 *Texas Register*. The Commission finds that this comment period is reasonable because the proposal as  
10 well as an online comment form will be available on the Commission's website at least two weeks prior  
11 to *Texas Register* publication of the proposal, giving interested persons additional time to review the  
12 proposal and submit comments. The Commission encourages all interested persons to submit comments  
13 no later than the deadline. The Commission cannot guarantee that comments submitted after the deadline  
14 will be considered. For further information, call Cristina Self at (512) 463-2299. The status of  
15 Commission rulemakings in progress is available at <http://www.rrc.state.tx.us/legal/rules/proposed-rules>.

16 The Commission proposes the new sections under Texas Utilities Code, Titles 3 and 4, which  
17 authorize the Commission to regulate gas utilities, to protect the public interest inherent in the rates and  
18 services of gas utilities, and to assure rates, operations, and services that are just and reasonable to the  
19 consumers and to the utilities as required by Texas Utilities Code, §104.001 and §104.051. The  
20 Commission's authority to promulgate these rules relates to the powers it is granted in Texas Utilities  
21 Code, §§103.022, which requires a gas utility in a ratemaking proceeding to reimburse the governing  
22 body of a municipality for the reasonable cost of certain services to the extent determined reasonable by  
23 the Commission; 104.051, which authorizes the Commission to establish a utility's overall revenues at an

1 amount that will permit the utility a reasonable opportunity to earn a reasonable return; and Texas  
2 Government Code §2001.004, which requires a state agency to adopt rules of practice stating the nature  
3 and requirements of all available formal and informal procedures.

4 Texas Utilities Code, §§103.022, 104.051; and Texas Government Code §2001.004 are affected  
5 by the proposed new sections.

6 Cross-reference to statute: Texas Utilities Code, §§103.022, 104.051; and Texas Government  
7 Code §2001.004.

8  
9 §1.86. Alignment of Municipal Intervenors for Purposes of Discovery.

10 (a) Municipal parties, whether participating as a single municipality or a coalition of  
11 municipalities, are presumed to share a common interest in a proceeding such that alignment of  
12 municipal parties as a single party for purposes of discovery is appropriate. The presiding officer shall  
13 order alignment of municipal intervenors at the earliest reasonable opportunity so as to avoid  
14 unnecessary duplication of effort and to allow aligned parties an adequate opportunity to coordinate  
15 discovery efforts in an efficient manner.

16 (b) To overcome the presumption of alignment, a municipality or municipal coalition must file a  
17 motion to realign in whole or in part. In ruling on such a motion, the presiding officer shall consider  
18 whether good cause exists to grant the motion to realign in whole or in part including consideration of the  
19 following:

20 (1) whether the municipal parties are taking opposing positions regarding the utility's  
21 request for relief;

22 (2) whether the municipal parties have sufficiently different positions on one or more  
23 issues to justify realignment on such issues;

1                   (3) whether granting the motion will create unnecessary inefficiencies or duplication of  
2 effort;

3                   (4) whether granting the motion will result in undue costs to the parties;

4                   (5) the effect of granting the motion on the parties and the public interest;

5                   (6) whether granting the motion will serve the interest of justice; and

6                   (7) any other relevant factors as determined by the presiding officer.

7                   (c) This section applies to proceedings brought pursuant to Texas Utilities Code, §103.055 and  
8 §104.102.

9  
10 §1.87. Limitations on Discovery Requests.

11                   (a) Upon request by a party, the presiding officer may limit discovery, by order, in the interest of  
12 efficiency and justice.

13                   (b) For purposes of calculating the number of requests for information (RFIs), each request or  
14 subpart shall be considered a separate RFI. A reasonable limitation on RFIs propounded to a party is no  
15 more than 600 total RFIs, with no more than 75 RFIs propounded by a single party in one calendar week.  
16 Commission staff and presiding officers are not subject to these discovery limitations when Commission  
17 staff or the presiding officers issue the RFIs.

18                   (c) With regard to discovery propounded by a municipality or municipal coalition, to the extent  
19 that the utility first filed its request for relief at the municipal level and the Commission is now  
20 considering the utility's request on appeal from the municipal forum, the number of RFIs (inclusive of  
21 sub-parts) that the municipality propounded at the municipal level shall count towards the total number  
22 of permissible RFIs a municipality may serve on the utility during the Commission proceeding on appeal,  
23 unless the utility updated its test year when filing its appeal.



1        (d) If a party is not required to answer a question due to a sustained objection or withdrawal, that  
2        question may not be included in the calculation of the propounding party's RFI limit. However, if the  
3        presiding officer determines that a party is intentionally propounding frivolous, irrelevant, or otherwise  
4        objectionable requests, the question shall be included in the calculation of that propounding party's RFI  
5        limit.

6        (e) As set out in the Texas Rules of Civil Procedure 196 and 198, there shall be no limitation  
7        with regard to requests for production and inspection, or requests for admission.

8        (f) The party propounding discovery shall separately characterize its discovery as an RFI, a  
9        Request for Production and Inspection, or a Request for Admission.

10       (g) This section applies to proceedings brought pursuant to Texas Utilities Code, §103.055 and  
11       §104.102.

12       This agency hereby certifies that the proposal has been reviewed by legal counsel and found to  
13       be within the agency's authority to adopt.

14       Issued in Austin, Texas on \_\_\_\_\_, 2014.

15       Filed with the Office of the Secretary of State on \_\_\_\_\_, 2014.

\_\_\_\_\_  
Cristina Martinez Self  
Rules Attorney, Office of General Counsel  
Railroad Commission of Texas

1           The Railroad Commission of Texas (Commission) proposes amendments to §7.5530, relating to  
2   Allowable Rate Case Expenses. Texas Utilities Code §§103.022(b) and 104.001 allow participants in  
3   utility rate cases to recover reasonable rate case expenses. These amendments are intended to ensure that  
4   rate case expenses are reasonable and to minimize the impact of rate case expenses on end-use  
5   customers. The amendments recognize the basic reimbursement principle included in §103.022(b), which  
6   requires a gas utility to reimburse a municipality for the reasonable costs of participating in a ratemaking  
7   proceeding. The proposed amendments are also intended to encourage municipal oversight of rate case  
8   expenses incurred on behalf of municipalities and to allocate rate case expenses to the party or parties  
9   that caused such expenses during the appeal of a municipal statement of intent. The amendments  
10   memorialize recent Commission precedent by categorizing rate case expenses of the utility as required  
11   regulatory expenses of the utility, litigation expenses of the utility, and estimated expenses of the utility.  
12   The Commission concurrently proposes new §§1.86 and 1.87 of this title, relating to Alignment of  
13   Municipal Intervenor for Purposes of Discovery, and Limitations on Discovery Requests, in a separate  
14   rulemaking, in conjunction with these proposed amendments to §7.5530.

15           The Commission proposes new §7.5530(c) to state that a gas utility shall not be required to  
16   reimburse a municipality for the reasonable costs of a person engaged to participate in a ratemaking  
17   proceeding under Texas Utilities Code, §103.022(a), unless the municipality has actually paid such fees  
18   and expenses or, by ordinance, the municipality expressly assumes the obligation to pay the fees and  
19   expenses of persons engaged under Texas Utilities Code, §103.022(a), and the municipality declares that  
20   such obligation is not in any way contingent upon the municipality's receipt of reimbursement under  
21   Texas Utilities Code, §103.022(b). Requiring municipalities to actually pay or assume the obligation to  
22   pay the fees and expenses of persons engaged under Texas Utilities Code, §103.022(a), will encourage  
23   municipal oversight of the charges incurred during an appeal of a municipal proceeding.

1           The Commission proposes new subsection (d) to require, absent a showing of good cause, that  
2       expenses the gas utility reimburses to a municipality be recovered through rates effective only within that  
3       municipality, or if the gas utility has joined a coalition of municipalities, rate case expenses reimbursed  
4       to the municipalities within the coalition would be recovered through rates effective only within the  
5       municipalities belonging to the coalition. This assures that customers who live in a city that participates  
6       in a rate proceeding would be required to pay their own city's expenses rather than allocating such costs  
7       to all customers in the service area, some of whom are not involved in the litigation.

8           The Commission proposes new subsection (e) to classify utility rate case expenses as either  
9       "required regulatory expenses," "litigation expenses," or "estimated expenses," and to provide for  
10      specific recovery of those expenses based on principles of cost causation. Through this method of  
11      allocation, rate case fees and expenses shall be attributed to affected parties according to which party or  
12      parties cause the rate case fees and expenses to occur.

13          The Commission proposes new subsection (f) to allocate the categories of rate case expenses  
14      listed in proposed subsection (e). This allocation methodology results in rate case expenses being  
15      assigned to those parties who contribute to the rate case expenses being incurred.

16          Bill Geise, Director, Gas Services Division, has determined that for each year of the first five  
17      years that the proposed amendments are in effect, enforcing or administering the proposed amendments  
18      will not have foreseeable implications relating to cost or revenues of the state or local governments.

19          Mr. Geise has also determined that for each year of the first five years that the proposed  
20      amendments are in effect, the public benefits anticipated as a result of adoption of the proposed rules  
21      include an allocation of recovery of rate case expenses that is guided by principles of cost causation.  
22      There are no foreseeable economic costs to be incurred by the parties and/or persons required to comply  
23      with these amendments. Affected municipalities will continue to be reimbursed by gas utilities for any



1 rate case expenses the Commission determines to be reasonable, provided that the municipalities have  
2 paid rate case fees and expenses or, by ordinance, expressly assumed the obligation to pay such fees and  
3 expenses.

4 Mr. Geise has also determined that for each year of the first five years the proposed amendments  
5 are in effect, there should be no adverse effect on a local economy, and therefore no local employment  
6 impact statement is required under Texas Government Code §2001.022.

7 Texas Government Code, §2006.002, relating to Adoption of Rules with Adverse Economic  
8 Effect, requires that as a part of the rulemaking process, a state agency prepare an Economic Impact  
9 Statement that assesses the potential impact of a proposed rule on small businesses and micro-businesses  
10 and a Regulatory Flexibility Analysis that considers alternative methods of achieving the purpose of the  
11 rule if the proposed rule will have an adverse economic effect on small businesses or micro-businesses.  
12 Mr. Geise has determined that the proposed amendments will not have an adverse economic effect on  
13 small businesses or micro-businesses because it adds no new requirements on small businesses or micro-  
14 businesses.

15 Mr. Geise has determined that the amendments do not meet the statutory definition of a major  
16 environmental rule set forth in Texas Government Code, §2001.0225; therefore, a regulatory analysis  
17 conducted pursuant to that section is not required.

18 The Commission requests comment from affected parties regarding these amendments. In  
19 particular, the Commission requests comments from affected municipalities regarding any potential  
20 procedural impact to municipal operations arising out of these proposed rule amendments.

21 Comments on the proposal may be submitted to Rules Coordinator, Office of General Counsel,  
22 Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967; online at  
23 <http://www.rrc.state.tx.us/legal/rules/comment-form-for-proposed-rulemakings/>; or by electronic mail to

1 rulescoordinator@rrc.state.tx.us. Comments should refer to Gas Utilities Docket No. 10362 and will be  
2 accepted until 12:00 (noon) on Monday, August 25, 2014, which is 31 days after publication in the *Texas*  
3 *Register*. The Commission finds that this comment period is reasonable because the proposal as well as  
4 an online comment form will be available on the Commission's web site at least two weeks prior to *Texas*  
5 *Register* publication of the proposal, giving interested persons additional time to review, analyze, draft,  
6 and submit comments. The Commission encourages all interested persons to submit comments no later  
7 than the deadline. The Commission cannot guarantee that comments submitted after the deadline will be  
8 considered. For further information, call Sarah Montoya at (512) 475-1958. The status of Commission  
9 rulemakings in progress is available at <http://www.rrc.state.tx.us/legal/rules/proposed-rules/>.

10 The Commission proposes the amendments under Texas Utilities Code, §102.001, which gives  
11 the Railroad Commission exclusive original jurisdiction over rates in areas outside a municipality and  
12 exclusive appellate jurisdiction to review an order or ordinance of a municipality exercising exclusive  
13 original jurisdiction; §103.022, which allows reimbursement to the governing body of a municipality for  
14 the reasonable cost of services of a person engaged to the extent the applicable regulatory authority  
15 determines reasonable; §104.001, which authorizes the Commission establish and regulate rates of a gas  
16 utility; and §104.055, which authorizes the Commission to adopt reasonable rules with respect to certain  
17 expenses used in computing the rates to be established.

18 Texas Utilities Code, §§102.001, 103.022, 104.001, and 104.055 are affected by the proposed  
19 amendments.

20 Statutory authority: Texas Utilities Code, §§102.001, 103.022, 104.001 and 104.055.

21 Cross-reference to statute: Texas Utilities Code, §§102.001, 103.022, 104.001, and 104.055.

§7.5530. Allowable Rate Case Expenses.

(a) - (b) (No change.)

(c) A gas utility shall not otherwise be required to reimburse a municipality for the reasonable cost of services of a person engaged under Texas Utilities Code, §103.022(a), unless the municipality has:

(1) paid such fees and expenses; or

(2) by ordinance, expressly assumed the obligation to pay the fees and expenses of persons engaged under Texas Utilities Code, §103.022(a), and declared that such obligation is not in any way contingent upon the municipality's receipt of reimbursement under Texas Utilities Code, §103.022(b).

(d) Absent a showing of good cause:

(1) rate case expenses reimbursed to a municipality under Texas Utilities Code, §103.022(b), shall be recovered by the utility through rates effective only within that municipality; or

(2) when a municipality has joined a coalition of municipalities for the purpose of pursuing rate case activities, rate case expenses reimbursed to the municipalities within the coalition under Texas Utilities Code, §103.022(b), shall be recovered by the utility through rates effective only within the municipalities belonging to that coalition.

(e) Reasonable rate case expenses of the utility shall be classified into three categories:

(1) required regulatory expenses, which shall consist of expenses the utility incurs that are related to the initial filing of the statement of intent and the expenses the utility incurs to provide or publish required notices;

(2) litigation expenses, which shall consist of expenses incurred after the utility files its statement of intent, excluding the cost of providing notice; and



1                   (3) estimated expenses, which shall consist of the costs the utility estimates it will incur  
2                   for potential appellate proceedings.

3                   (f) The utility's required regulatory expenses shall be allocated uniformly to all customers  
4                   affected by the proposed rate change. The utility's litigation expenses and estimated expenses, to the  
5                   extent there are any, shall be allocated to affected customers in the municipalities or coalitions of  
6                   municipalities participating in the proceeding and affected customers subject to the original jurisdiction  
7                   of the Commission.

8                   This agency hereby certifies that the proposal has been reviewed by legal counsel and found to  
9                   be within the agency's authority to adopt.

10                  Issued in Austin, Texas on July 8, 2014.

11                  Filed with the Office of the Secretary of State on July 8, 2014.

  
Cristina Martinez Self  
Rules Attorney, Office of General Counsel  
Railroad Commission of Texas

### **Bullet Points in Response to Proposed RRC Rules**

#### **THE RAILROAD COMMISSION IS PUSHING CITIES ASIDE AND MAKING IT EASIER FOR GAS UTILITIES TO INCREASE RATES:**

- The Railroad Commission of Texas (RRC) recently proposed rules that would practically eliminate cities' ability to review and challenge gas rate hikes.
- The RRC's staff claims that "[t]hese rules are intended to reduce rate-case expenses and promote the efficient resolution of cases."
- In reality, the RRC's proposed rules gut cities' ability to effectively challenge rates and allow utilities to get higher rates with little opposition.
- Specifically, the rules propose:
  - **Removing the utility's statutory obligation to reimburse cities their reasonable rate case expenses and requiring that cities pay up front before being able to seek reimbursement;**
  - **Charging most rate case expenses only to ratepayers in cities that challenged the utility's proposed rate increase at the RRC;**
    - This encourages "free-riders" by requiring that some cities pay for rate cases and then giving all other ratepayers the benefit of the rate reductions obtained by the active cities without having to bear any of the cost of the rate case.
    - This discourages cities from challenging rate increases for fear of being "stuck with the bill."
  - **Forcing all cities to act as a single party unless they can convince the RRC staff to allow separate groups.**
    - City groups forced together would not be able to each choose their own legal representative.
    - City groups forced together could result in more unwieldy groups with fewer common interests.
  - **Limiting discovery in the interest of "efficiency and justice."**
    - Currently:
      - There are no default discovery limits and the RRC staff in the case already has the discretion to place limitations on discovery as may be necessary given the number and complexity of issue involved in the case.
    - Under the proposed rule:
      - The utility would not be required to respond to more than 600 requests for information, including sub-parts to the requests from all parties other than the RRC staff

- The default discovery limit would be the same for every case, regardless of how much information is involved or how much money is at stake, or how many issues are involved or how complex the issues may be.
- All requests for information a city may have asked while the case was being reviewed at the city level would count toward the arbitrary cap of 600 requests for information.
  - If a city asks 600 or more questions at the city level, the city would be barred from further inquiry once the RRC has authority, that is, on appeal to the RRC.
  - This is a clear infringement on cities' original jurisdiction by punishing them on appeal if they rigorously questioned a utility's proposed rate increase at the city level.

#### **THE CURRENT SYSTEM WORKS:**

- **Gas utilities are monopolies.** Customers cannot pick and choose which utility delivers the gas to them and the Cities as the "regulatory authority" with original jurisdiction and the RRC on appeal, are supposed to set the utility's rates to make sure the utility has a reasonable opportunity to earn a reasonable return on its investment.
- **State law guarantees cities the right to participate in Railroad Commission rate cases, and requires that the utility reimburse the cities' related expenses.**
  - The utility ultimately passes on all rate-case expenses found reasonable to ratepayers, including the cost of city participation. However, ratepayers benefit from cities' efforts to challenge unreasonable rate increases.
- **Texas cities have already voluntarily formed their own coalitions** to ensure that they speak with a united voice where their interests are aligned, and to avoid redundant costs when they examine and challenge utilities' proposals to increase rates. And even when more than one city or city group is involved in a rate case, the city/city groups coordinate their presentations to as to avoid duplication of effort.
- **The RRC already has a rule that prohibits discovery abuses.** Despite this long-standing rule, there have been few complaints and very few (if any) sanctions.

#### **CITIES' ROBUST PARTICIPATION HAS DRAMATICALLY REDUCED RATES:**

- In one case, cities helped reveal that utilities were charging ratepayers for more than \$1 million dollars in luxury items including meals that cost as



much as \$400 per person; a case of merlot; and hotel stays for as much as \$950 a night.

- Utilities can buy their employees expensive treats. That's great. But ratepayers do not benefit from those costs in any way, so the RRC should not force them to pay for it.
- In another case, cities convinced the RRC to reject \$42 million in unreasonable or imprudently incurred costs that a utility wanted to charge to ratepayers.
- If the proposed rules were adopted, cities would be less likely to identify and successfully oppose similar unreasonable rate increases.

#### **CITIES' ROBUST PARTICIPATION HAS COST RELATIVELY LITTLE:**

- Challenging utility rate increases can be time-consuming and expensive.
  - But it would be a lot **more** expensive in the higher rates customers would pay if cities didn't scrutinize utility proposals and challenge any unreasonable costs.
  - The RRC staff's proposal would "promote efficient resolution" of utility rate hikes, but "efficiently" resolving a case under the RRC's proposed rules means less scrutiny.

#### **THE LEGISLATURE ALREADY REJECTED THE RRC'S BAD IDEA:**

- The Legislature has previously rejected efforts to restrict cities from fully participating in rate cases.
- Just like the proposed rule, HB 1148 in the 2013 Legislative Session proposed that cities pay rate case expenses out of their budgets before getting reimbursed. But HB 1148 never even made it to a vote in committee.
- H.B. 1677 went even farther to completely eliminate cities' ability to recover the cost of fighting utility rate proposals. H.B. 1677 also failed.

#### **THE RRC'S PROPOSAL IS A SYMPTOM OF PROBLEMS THE SUNSET COMMISSION ALREADY ACKNOWLEDGED:**

- In 2013, the Sunset Commission pointed out several problems with the RRC. One of these problems was that the staff examiners in RRC rate cases are RRC staff members, who "answer to the elected Commissioners who receive campaign contributions from many of the industry parties in these cases." The Sunset Commission pointed out that "[t]his relationship can create the perception of bias towards the industry..."
- RRC staff proposed a rule that would prevent cities' ability to challenge utility rate hikes. The proposal is similar to utility-friendly/ratepayer-hostile legislative bills that failed. RRC staff claims its proposal seeks to reduce expenses, but really, it's a gift to utilities that would shove cities out of the way and lead to less scrutiny and predictably higher rates.



## ***2013 Year In Review***

### **Atmos Cities Steering Committee Has Another Active Year In 2013**

This year in review of the Atmos Cities Steering Committee ("ACSC") highlights a few of the notable proceedings in which ACSC participated throughout 2013. ACSC maintained its presence before the Texas Legislature concerning gas utility matters, including the Sunset Review of the Railroad Commission ("RRC"). Additionally, ACSC settled Atmos Mid-Tex's first RRM filing under the newly renegotiated RRM tariff. ACSC expects to be equally busy in 2014, with another annual RRM filing and gearing up for the 2015 legislative session.

Sincerely,

Jay Doegey and Odis Dalton, Chairmen of the Steering Committee

### **ACSC Representatives Make Legislative Visits to Legislators in Local Offices**

In the fall of 2013, ACSC representatives continued ACSC's ongoing efforts to promote consumer interests at the Legislature. Specifically, ACSC representatives conducted meetings with over 31 legislators and staffers at their local district offices. The purpose of these meetings was to introduce ACSC's membership and agenda, as well as to offer ACSC as a resource on gas utility matters. ACSC representatives also sought input regarding concerns of the legislators. ACSC representatives have thus far met with legislators in the Metroplex, Central Texas, West Texas, the Houston area, and North/Northeast Texas. The reception and impact that the interim legislative activities have achieved has overall been very good.

These interim efforts will continue in the new year to prepare for the 2015 legislative session. In 2014, ACSC intends to follow up with staffers for the members ACSC representatives have already visited with and to make additional visits. Additionally, in the spring, ACSC will be developing its agenda for the 2015 legislative session.





## ACSC Settles 2013 RRM With Atmos Mid-Tex



In July of 2013, Atmos Energy Corporation Mid-Tex Division ("Atmos Mid-Tex" or "Company") filed a Rate Review Mechanism ("RRM") application with each of the ACSC members. You will recall that earlier in 2013, ACSC and Atmos Mid-Tex renewed the RRM mechanism for an additional period of five years.

In the filing, Atmos Mid-Tex alleged a test year revenue deficiency of \$25.7 million on a total company basis. Pursuant to the RRM renewal ordinances passed by the ACSC cities, the Company was required in its filing to make an automatic downward adjustment of \$3 million to its alleged cost of service revenue deficiency. Including this adjustment, Atmos requested \$22.7 million in additional revenues.

ACSC hired consultants, who performed discovery upon the Company's rate request. The consultants produced a report to ACSC counsel in late August 2013. The report concluded that the Company was entitled to additional revenues but significantly less than it had requested. After several rounds of negotiations with Atmos Mid-Tex, the Company agreed to accept additional revenues of \$16.6 million, rather than the initially requested \$22.7 million. The Executive Committee recommended adoption of the settlement and ACSC cities passed ordinances adopting the settlement in fall of 2013. Due to ACSC's advocacy in both the renegotiation of the RRM tariff, as well as in the 2013 RRM filing, Atmos Mid-Tex ratepayers will pay rates designed to collect over \$9 million less than originally requested by the Company.

## Appeal of Atmos Pipeline Rate Case Heard at Third Court of Appeals

In GUD No. 10000, Atmos Pipeline—Texas' ("APT") last rate case, the Railroad Commission of Texas ("Commission") introduced a trial run of a new rate mechanism that has proven harmful to consumers. In that case, the Commission allocated all of APT's revenue requirement to its rate-regulated customers, despite the fact that APT also serves unregulated customers who contract with APT for gas service. The Commission determined that APT and the rate-regulated customers would "share" in the alleged volatility of Other Revenues, due to changes in the amount of these revenues from year to year. The Commission thus approved the Rider REV tariff, which requires an annual filing by APT to report the amount of revenues received from unregulated customers in the preceding year. To the extent the amount exceeds \$83.7 million in any one year, APT provides an additional credit to the Rate CGS and PT customers in the amount of 75% of the additional revenues, keeping 25% for itself. To the extent the amount of unregulated revenues is less than \$83.7 million, APT raises the rates to CGS and PT customers by 75% of the "shortfall."



ACSC strongly opposed the creation of the Rider REV tariff in GUD No. 10000. ACSC has pursued an appeal to the courts in an effort to overturn the Commission's decision to implement the Rider REV tariff. In December of 2012, a Travis County District Court judge affirmed the Railroad Commission order creating the Rider REV tariff. ACSC appealed the district court's decision to the Third Court of Appeals in Austin. In October of 2013, the Third Court of Appeals heard

oral argument regarding the Rider REV tariff.

ACSC argued that the Rider REV tariff is unlawful piecemeal ratemaking and that it is detrimental to customers. The Railroad Commission and APT argued mainly that the Commission's authority under the law is virtually unfettered when it comes to ratemaking. The Third Court has taken the matter under advisement and has not yet issued a ruling in the appeal of GUD No. 10000.



## ACSC Sets Budget and Elects Officers for 2014

At the December 19, 2013 membership meeting, ACSC approved its budget for 2014. Additionally, ACSC members elected the following officers for 2014:

Co-Chairs—Jay Doegey, Arlington & Odis Dolton, Abilene

Co-Vice Chairs—Tim Kelty, Red Oak & Carla Robinson, College Station

Secretary—Joel Welch, Haltom City

Congratulations to the 2014 ACSC officers!



## Commission Extends Rider REV Tariff

In late 2013, APT filed an application to renew the Rider REV tariff. APT sought renewal of the tariff for an additional term of three years. ACSC intervened and argued that the Rider REV should not be renewed. ACSC's main objection to the renewal of the Rider REV is that over the life of its three-year trial period, the Rider REV has proven to be detrimental to customers. While customers saw a credit of \$3.8 million in the first year of its application, over the next two years, customers experienced an \$8.6 million *increase* in rates. Over the life of the trial run of the Rider REV, customers had to pay \$4.8 million in additional rates simply due to the Rider REV. ACSC presented this evidence as proof that the Rider REV harms customers. The evidence conclusively showed that APT is in fact overearning, above its authorized rate of return, due to a combination of both the Rider REV tariff and annual GRIP filings.

Rider REV was originally approved on the alleged grounds that revenues from non-regulated customers are unpredictable. ACSC's testimony, however, showed that this was not the case—unregulated revenues are stable and predictable. APT also claimed that the Rider REV reduces the need for general rate cases. ACSC was also able to refute that claim, as the GRIP statute requires APT to file a rate case periodically.

The Commission's Hearings Examiners held a hearing in late October 2013. The Examiners issued a proposal for decision in December 2013, recommending the renewal of the Rider REV tariff, despite the overwhelming evidence presented by ACSC that Rider REV is not in the public interest. In December, the Commission adopted the Examiners' recommendation without any discussion whatsoever. The Commission issued an order renewing the Rider REV for an additional period. Additionally, the Commission restricted whom may intervene and participate in Rider REV proceedings. ACSC will file its Motion for Rehearing on the Commission's Order on January 10, 2014.

### Questions?

If you have questions about any Steering Committee matter or communication, please feel free to contact:

Geoffrey Gay at  
(512) 322-5875 or [ggay@lglawfirm.com](mailto:ggay@lglawfirm.com) or

Thomas Brocato at  
(512) 322-5857 or [tbrocato@lglawfirm.com](mailto:tbrocato@lglawfirm.com).

They will be happy to answer your question or assist you.

**Lloyd  
Gosselink**  
ATTORNEYS AT LAW

Lloyd Gosselink Rochelle and Townsend, P.C.  
816 Congress Avenue Suite 1900  
Austin, Texas 78701

## **Agenda Item:**

2C. Request from Kerrville Area Chamber of Commerce for the city to provide in-kind police and EMS services for the Kerrfest event to be held on May 14-17, 2015, in the amount of \$4,623.00. (staff)

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

**SUBJECT:** Request from the Kerrville Area Chamber of Commerce for in-kind Police and EMS services for the 5<sup>th</sup> Annual Kerrfest event

**FOR AGENDA OF:** January 13, 2015    **DATE SUBMITTED:** January 2, 2015

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

**EXHIBITS:** Letter from the Kerrville Area Chamber of Commerce Dated December 5, 2014

**AGENDA MAILED TO:**

**APPROVED FOR SUBMITTAL BY CITY MANAGER:** 

| <b>Expenditure</b> | <b>Current Balance</b> | <b>Amount</b>    | <b>Account</b> |
|--------------------|------------------------|------------------|----------------|
| <b>Required:</b>   | <b>in Account:</b>     | <b>Budgeted:</b> | <b>Number:</b> |
| \$                 | \$                     | \$               |                |

**PAYMENT TO BE MADE TO:**

**REVIEWED BY THE DIRECTOR OF FINANCE:**

**SUMMARY STATEMENT**

Attached is a letter from the Kerrville Area Chamber of Commerce and Kerrfest Committee requesting in-kind Police and EMS services for the 5<sup>th</sup> Annual Kerrfest event to be held May 14-17, 2015. This request is similar to the approved request of the past two years outlined below. The value of this request totals to \$4,623 (EMS: \$1,100; Police: \$3,523).

Prior Kerrfest Requests Approved by City Council:

2014 - \$4,545

2013 - \$4,350

**RECOMMENDED ACTION**

City staff recommends consideration and approval of the in-kind public safety services request for the 2015 Kerrfest event.





December 5, 2014

Todd Parton, City of Kerrville

701 Main St.; Kerrville, Texas 78028

Dear Todd,

On behalf of the Kerrville Area Chamber of Commerce and the Kerrfest Committee, we respectfully request the following in-kind sponsorship services from the City of Kerrville for the 5<sup>th</sup> Annual Kerrfest, set for May 14-17, 2015:

- Kerrville Police Department

|                                                |                                        |
|------------------------------------------------|----------------------------------------|
| Thursday, May 14, 2015, 5:00 p.m. – 10:00 p.m. | 1 Officer + 1 marked unit (5 hours)    |
| Friday, May 15, 2015, 5:00 p.m. – 12:30 p.m.   | 3 Officers + 1 marked unit (7.5 hours) |
| Saturday, May 16, 2015, 10:00 a.m. – 6:00 p.m. | 1 Officer + 1 marked unit (8 hours)    |
| Saturday, May 16, 2015, 12:00 p.m. – 6:00 p.m. | 1 Officer + 1 marked unit (6 hours)    |
| Saturday, May 16, 2015, 6:00 p.m. – 1:00 a.m.  | 4 Officers + 2 marked units (7 hours)  |
| Sunday, May 1, 2015, 10:00 a.m. – 10:00 p.m.   | 1 Officer + marked unit (12 hours)     |

- Kerrville Fire Department / EMS

|                                                                      |                   |
|----------------------------------------------------------------------|-------------------|
| Thursday, May 14, 2015, 6:30 p.m. – 9:00 p.m.                        | Ambulance on-site |
| Friday, May 14, 2015, 8:00 p.m. – 10:30 p.m.                         | Ambulance on-site |
| Saturday, May 15, 2015, 10:00 a.m. – 2:00 p.m., 8:00 p.m.-10:00 p.m. | Ambulance on-site |

This year we had approximately 4,000 attendees and look forward to that number growing in 2015. We appreciate the awesome support we received from the city for this year's event, which exceeded \$600,000.00. Your support is vital to the Commerce, Kerr County, the City of Kerrville, Kerrville Convention and Visitors Bureau, Kerr Economic Development Corporation, and a large host of local businesses. Our request is akin to that of this year's event. Thank you for the City's past support of this event through your in-kind police and EMS services. We respectfully ask for your same level of commitment and outstanding support for the 5<sup>th</sup> Annual Kerrfest.

Sincerely,

  
Angela Mayer

Vice-President of Operations

Kerrville Area Chamber of Commerce

## **Agenda Item:**

2D. Authorize execution of a contract with Kerr County for conducting the May 9, 2015 City of Kerrville General Election. (staff)

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

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**SUBJECT:** Authorize execution of a contract with Kerr County for conducting the City of Kerrville General Election to be held on May 9, 2015

**FOR AGENDA OF:** January 13, 2015    **DATE SUBMITTED:** December 30, 2014

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

**EXHIBITS:** Election Agreement with Kerr County

**AGENDA MAILED TO:**

**APPROVED FOR SUBMITTAL BY CITY MANAGER:** *RP*

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| <b>Expenditure</b> | <b>Current Balance</b> | <b>Amount</b>    | <b>Account</b> |
|--------------------|------------------------|------------------|----------------|
| <b>Required:</b>   | <b>in Account:</b>     | <b>Budgeted:</b> | <b>Number:</b> |
| \$                 | \$                     | \$               |                |

**PAYMENT TO BE MADE TO:**

**REVIEWED BY THE FINANCE DIRECTOR:**

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**SUMMARY STATEMENT**

The attached agreement will authorize the Kerr County Elections Office to conduct the City of Kerrville General Election to be held on May 9, 2015, 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, printing of additional ballots, 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 the city secretary prior to authorizing any significant increase.

**RECOMMENDED ACTION**

The city secretary recommends approval of the contract.



**THE STATE OF TEXAS  
COUNTY OF KERR**

**JOINT ELECTION AGREEMENT  
BETWEEN  
CITY OF KERRVILLE AND KERR COUNTY**

**THIS AGREEMENT** is made and entered into by and between Diane Bolin Tax Assessor/Collector (or designated employee) on behalf of Kerr County, Texas duly constituted and acting as County Elections Officer and the City of Kerrville by and through \_\_\_\_\_, its city manager, hereinafter referred to as “CITY OF KERRVILLE” and by authority of Section 31.092, Vernon’s Texas Civil Statutes, Election Code for conducting and supervision of the elections for the CITY OF KERRVILLE in conjunction with the 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. 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.

## Election Contract – CITY OF KERRVILLE

- c. Procure, prepare, proof, and distribute ballots.
- 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 HAVA 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 10<sup>th</sup> day following the election. CITY OF KERRVILLE will be responsible for the official canvass of its Trustee 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
- o. As the general custodian of election records shall conduct a criminal background check for relevant election officials, staff, and temporary workers upon hiring.
- p. Hart Intercivic certifies that a criminal background check on all employees, including temporary employees that may program, test, perform maintenance, transport equipment, or perform technical support

on the voting system equipment for KERR COUNTY has been performed. The Company has determined there are no findings that would prevent the employees from performing their assigned duties.

## **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:

- 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 thru 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 thru 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 is 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.



Election Contract – CITY OF KERRVILLE

- i. CITY OF KERRVILLE will be responsible for the official canvass of its Election.

**III. PAYMENT FOR SERVICES**

- a. CITY OF KERRVILLE shall pay to Kerr County the actual expenses directly attributable to the Contract including 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, the Tax Assessor/Collector (or designated employee) shall then compute the final statement for all expenses including ten percent (10%) of the budget cost for Election Service Contract Fee, the \$50.00 Administration Fee and mail payment for the election services to Kerr County. CITY OF KERRVILLE shall be responsible for paying this amount within thirty (30) days from the Final Cost Report.
- c. If 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

Kerr County, Texas

| <b>ESTIMATED COST of May 2015 Election</b>      |                                                               |                   |                   |    |          |                 |
|-------------------------------------------------|---------------------------------------------------------------|-------------------|-------------------|----|----------|-----------------|
| <b>for the City of Kerrville</b>                |                                                               |                   |                   |    |          |                 |
| <b>County Election Services Contract Costs</b>  |                                                               |                   |                   |    |          |                 |
| <b>1</b>                                        | <b>Ballot Printing Cost</b>                                   |                   |                   |    |          | <b>Estimate</b> |
|                                                 | First 1000 Ballots Free                                       |                   |                   |    |          | <b>Actual</b>   |
|                                                 |                                                               |                   |                   |    |          |                 |
| <b>2</b>                                        | <b>Electronic Voting System Programming</b>                   |                   |                   |    |          |                 |
|                                                 | Test and Sample Ballots                                       |                   |                   |    |          | \$2,000.00      |
|                                                 |                                                               |                   |                   |    |          |                 |
| <b>* 3</b>                                      | <b>Publication of Test of Electronic Voting Equipment</b>     |                   |                   |    |          |                 |
|                                                 | Newspaper-Kerrville Daily Times                               |                   |                   |    |          | \$ 40.00        |
|                                                 | Other Newspapers as requested per their fees                  |                   |                   |    |          |                 |
| <b>4</b>                                        | <b>Charge for Wireless Internet</b>                           |                   |                   |    |          | \$ -            |
|                                                 |                                                               |                   |                   |    |          |                 |
| <b>* 5</b>                                      | <b>Lease of Voting Machines</b>                               |                   |                   |    |          |                 |
|                                                 | Early Voting and Election Day                                 |                   |                   |    |          |                 |
|                                                 |                                                               |                   |                   |    |          |                 |
|                                                 |                                                               | <b># of Units</b> | <b>Lease Cost</b> |    |          |                 |
|                                                 | eSlates                                                       | 2                 | \$37.50           |    |          | \$ 75.00        |
|                                                 | JBC                                                           | 2                 | \$37.50           |    |          | \$ 75.00        |
|                                                 | eScans                                                        | 2                 | \$67.50           |    |          | \$ 135.00       |
| <b>* Tally Computer</b>                         |                                                               | 1                 | \$57.75           |    |          | \$ 57.75        |
| <b>* Lap Top Computer</b>                       |                                                               | 1                 | \$52.50           |    |          | \$ 52.50        |
|                                                 |                                                               |                   |                   |    |          |                 |
| <b>* 6</b>                                      | <b>Precinct Election Judges and Clerks</b>                    |                   |                   |    |          |                 |
|                                                 | \$10.00 per Hour                                              |                   |                   |    |          |                 |
|                                                 | <b>Early Voting Clerks (2)</b>                                |                   |                   | 2  | 80 hours | \$ 1,600.00     |
|                                                 | <b>Election Day Judge &amp; Alternate Judge</b>               |                   |                   | 2  | 15 hours | \$ 300.00       |
|                                                 | <b>Election Day Clerks</b>                                    |                   |                   | 1  | 14 hours | \$ 140.00       |
| <b>* Early Ballot Board Clerks</b>              |                                                               |                   |                   | 3  | 1 hour   | \$ 30.00        |
| <b>* Tabulation Supervisor &amp; Personnel</b>  |                                                               |                   |                   | 3  | 2 hours  | \$ 60.00        |
|                                                 | <b>Election Night Workers</b>                                 |                   |                   |    |          | \$ -            |
|                                                 |                                                               |                   |                   |    |          |                 |
| <b>7</b>                                        | <b>Fee for Pickup of Supplies before Election Day and</b>     |                   |                   |    |          |                 |
|                                                 | Delivery of Supplies after Polls Close Per Election Day Judge |                   |                   |    |          | \$ 25.00        |
|                                                 |                                                               |                   |                   |    |          |                 |
| <b>8</b>                                        | <b>Technical Support Personnel</b>                            |                   |                   |    |          | \$ -            |
|                                                 |                                                               |                   |                   |    |          |                 |
| <b>9</b>                                        | <b>Miscellaneous Election Costs</b>                           |                   |                   |    |          |                 |
|                                                 | Elections Kits                                                |                   |                   | 2  | \$ 50.00 | \$ 100.00       |
|                                                 | Central Counting Station Kit                                  |                   |                   | 1  | \$ 12.00 | \$ 12.00        |
|                                                 | Shipping of Kits & MBB's for programming                      |                   |                   |    |          | \$ 60.00        |
|                                                 | Postage - Appointment of Judges & Clerks                      |                   |                   | 4  | \$ 0.60  | \$ 2.40         |
|                                                 | Postage - Writ of Election to Judge                           |                   |                   | 1  | \$ 0.60  | \$ 0.60         |
| <b>* Postage - Mail Ballots Application</b>     |                                                               |                   |                   | 25 | \$ 0.60  | \$ 15.00        |
| <b>* Postage- Mail Ballots</b>                  |                                                               |                   |                   | 25 | \$ 0.60  | \$ 15.00        |
| <b>* Mail Ballot Kits</b>                       |                                                               |                   |                   | 25 | \$ 2.00  | \$ 50.00        |
|                                                 |                                                               |                   |                   |    |          |                 |
| <b>SUBTOTAL EXPENSES - Cost of the Election</b> |                                                               |                   |                   |    |          | \$ 4,845.25     |

|                                                                                      |                                                                                        |  |  |                                                                   |  |  |             |       |
|--------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------|--|--|-------------------------------------------------------------------|--|--|-------------|-------|
|                                                                                      |                                                                                        |  |  |                                                                   |  |  |             |       |
| 10                                                                                   | Election Service Contract Fee (10% of Cost)                                            |  |  |                                                                   |  |  | \$ 454.53   |       |
|                                                                                      | Administrative Fee                                                                     |  |  |                                                                   |  |  | \$ 50.00    | 50.00 |
|                                                                                      |                                                                                        |  |  |                                                                   |  |  |             |       |
| 11                                                                                   | TOTAL COST OF ELECTION                                                                 |  |  |                                                                   |  |  | \$ 5,349.78 | 50.00 |
|                                                                                      | Balance due 30 days after Final Cost Report                                            |  |  |                                                                   |  |  |             |       |
|                                                                                      |                                                                                        |  |  |                                                                   |  |  |             |       |
|                                                                                      |                                                                                        |  |  |                                                                   |  |  |             |       |
|                                                                                      |                                                                                        |  |  |                                                                   |  |  |             |       |
| * The following items may be divided with the different entities having the election |                                                                                        |  |  |                                                                   |  |  |             |       |
| 3                                                                                    | Publication - Newspaper                                                                |  |  | shared costed with all Enitities                                  |  |  |             |       |
| 5                                                                                    | Lease - Election Machines                                                              |  |  | shared costed of Talley & Lap Top Computer w/all Enitities        |  |  |             |       |
| 5                                                                                    | Lease - Election Machines                                                              |  |  | Equipment costed shared with City of Kerrville                    |  |  |             |       |
| 6                                                                                    | Cost - Election Judge-Clerks                                                           |  |  | City of Kerrville & KISD share /City of Ingram & Ingram ISD share |  |  |             |       |
| 9                                                                                    | Shipping on MBB, Election Kits, & Ballots - Shared with all Enities                    |  |  |                                                                   |  |  |             |       |
| 9                                                                                    | Postage - Applications, Ballots, Mail Ballot Kits Shared with City of Kerrville & KISD |  |  |                                                                   |  |  |             |       |



## **Agenda Item:**

2E. First amendment to the construction contract between the City of Kerrville, Texas and L.C. United Painting Company, Inc., for maintenance work to the Summit and Stadium elevated water tanks by increasing the compensation by \$94,125 and authorizing an increase in the amount of change orders by \$62,750. (staff)

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

**SUBJECT:** City Council authorization to amend the total amount allowable for the construction contract awarded to L.C. United Painting Co., Inc. for the Stadium and Summit Tanks Improvements in the amount of \$627,500.00 authorizing the City Manager to execute additional change orders which may exceed \$50,000 but not to exceed the total amount of \$784,375.00.

**FOR AGENDA OF:** January 13, 2014    **DATE SUBMITTED:** December 12, 2014

**SUBMITTED BY:** Dieter Werner, P.E.                      **CLEARANCES:** Kristine Day  
Director of Engineering                                              Deputy City Manager

**PAYMENT TO BE MADE TO:** L.C. United Painting Co., Inc.  
3525 Barbara Drive  
Sterling Heights, MI 48310

**APPROVED FOR SUBMITTAL BY CITY MANAGER:** 

|                                  |                                        |                             |                            |
|----------------------------------|----------------------------------------|-----------------------------|----------------------------|
| <b>Expenditure<br/>Required:</b> | <b>Current Balance<br/>in Account:</b> | <b>Amount<br/>Budgeted:</b> | <b>Account<br/>Number:</b> |
| <b>\$784,375.00</b>              | <b>\$1,281,950.84</b>                  | <b>\$1,300,000.00</b>       | <b>U06</b>                 |

**REVIEWED BY THE FINANCE DIRECTOR:**

**SUMMARY STATEMENT**

The Stadium and Summit Storage Tanks Improvements project was awarded to L.C. United Painting Co. Inc. on September 23, 2014. The original executed contract amount of \$627,500.00 was awarded for the base bid consisting of replacing ladders and access openings, installing overflow piping, and painting the interior and exterior of the Stadium No. 1 Tank as well as the alternate bid for painting the Summit Elevated Storage Tank.

Due to unforeseen circumstances, areas within the Summit Elevated Water Storage Tank were found to be unsatisfactory in need of maintenance. Additional funding is needed to blast and repaint the interior dry access tube and seal overlapped roof plates preventing any potential for corrosion and contamination in the water storage area.

The Kerrville North Pressure Plane was identified in the 2014 Water Master Plan as having a higher modeled water age with a possible location to further reduce the potential TTHM concentrations. Supplementary funds to install an in-tank mixing and aeration system to remove any potential total trihalomethane (TTHMs) in the Kerrville North Ground Storage Tank is requested to reduce the water age for the pressure plane and improve water quality.

Staff recommends amending the total allowable funding for the Stadium and Summit

Tank Improvements executed contract with L.C. United Painting Co. Inc. to be increased by \$94,125.00 to authorize the City Manager to execute change orders for the maximum of 25% allowed for change orders but not to exceed the total contract amount of \$784,375.00.

### **RECOMMENDED ACTION**

The Director of Engineering recommends the City Council authorization to amend the total amount allowable for the construction contract awarded to L.C. United Painting Co., Inc. for the Stadium and Summit Tanks Improvements in the amount of \$627,500.00 authorizing the City Manager to execute additional change orders which may exceed \$50,000 but not to exceed the total amount of \$784,375.00.



**FIRST AMENDMENT TO THE CONSTRUCTION  
CONTRACT BETWEEN THE CITY OF KERRVILLE,  
TEXAS AND L.C. UNITED PAINTING COMPANY, INC.,  
FOR MAINTENANCE WORK TO THE SUMMIT AND  
STADIUM ELEVATED WATER TANKS BY INCREASING  
THE COMPENSATION BY \$94,125 AND AUTHORIZING  
AN INCREASE IN THE AMOUNT OF CHANGE ORDERS  
BY \$62,750**

This **First Amendment to the Construction Contract between the City of Kerrville, Texas ("City"), and L.C. United Painting Company, Inc. ("Contractor")** for maintenance services for the Summit and Stadium elevated water tanks ("**Amendment**") is entered into the on January \_\_\_\_, 2015. This First Amendment amends the contract ("**Contract**") previously entered into between the parties on or about October 22, 2014.

**NOW, THEREFORE**, in consideration of the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby amend the Contract as follows:

**SECTION ONE. Contract Sum.** The Agreement is amended to increase the compensation by \$94,125.00 for additional services described in and attached hereto as **Exhibit A** to this Amendment and to increase the authority for additional change orders to the Contract, in an amount not to exceed \$62,750.00.

**SECTION TWO. No other amendments.** Except as expressly amended herein, all other terms and conditions of the Contract remain unchanged and the Contract remains in full force and effect.

**IN WITNESS WHEREOF**, the parties have entered into this Amendment effective the day and year written above.

**CITY OF KERRVILLE**

**L.C. UNITED PAINTING COMPANY, INC.**

\_\_\_\_\_  
Todd Parton, City Manager

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

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Brenda G. Craig, City Secretary

APPROVED AS TO FORM: \_\_\_\_\_

\_\_\_\_\_  
Michael C. Hayes, City Attorney

Stadium & Summit Tank Improvements Project

Contractor: LC United Painting Co., Inc.  
3535 Barbara Drive  
Sterling Heights, MI 48310

Original Contract Amount: **\$627,500.00**

Original Approved Contingency: **\$62,750.00** (10%)

Additional Requested Contingency: **\$94,125.00** (15%)

Approved Change Order(s) to Date:

- Change Order #1 – Blast and repaint the interior dry access tube, platform, and cone on Summit Elevated Storage Tank. **\$26,250.00**

Pending Change Order(s) to Date:

- Proposed Change Order #2 – Caulk overlap roof plates and provide neoprene gasket for air gap on top access of Summit Elevated Storage Tank. **\$2,945.00**
- Proposed Change Order #3 – Additional blast, paint, and containment for Stadium #1 Ground Storage Tank to be included with ladder and overflow pipe extension to cover difference in dimensions provided in project specifications compared to actual dimensions. **\$38,877.75**

## **Agenda Item:**

2F. Professional services agreement with Fugro Roadware, Inc. to develop a pavement management system for the City of Kerrville, Texas in an amount not to exceed \$85,000.00. (staff)



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

**SUBJECT:** Council authorization for the City Manager to enter into a Professional Services Agreement with Fugro Roadware, Inc. to develop a pavement management system in an amount not to exceed \$85,000.00.

**FOR AGENDA OF:** January 13, 2015

**DATE SUBMITTED:** January 2, 2015

**SUBMITTED BY:** Stuart Barron  
Director of Public Works

**CLEARANCES:** Kristine Day  
Deputy City Manager

**EXHIBITS:**

**AGENDA MAILED TO:**

**APPROVED FOR SUBMITTAL BY CITY MANAGER:** 

| Expenditure | Current Balance | Amount       | Account       |
|-------------|-----------------|--------------|---------------|
| Required:   | in Account:     | Budgeted:    | Number:       |
| \$85,000.00 | \$778,099.00    | \$800,000.00 | 01-861-207-01 |

**PAYMENT TO BE MADE TO:** Fugro Roadware, Inc.  
8613 Cross Park Drive  
Austin, Texas 78754

**REVIEWED BY THE FINANCE DIRECTOR:**

**SUMMARY STATEMENT**

For the past five years the City of Kerrville Street Division has been working diligently to identify and repair our aging streets. We have used a surface inspection method to identify which streets are in the most need of repair. Unfortunately the surface method is subjective and does not always catch base and subgrade failures.

Currently there is a new generation of street inspection equipment available. Fugro Roadware, Inc has trucks outfitted with cameras, ground penetrating radar, gyroscopic sensors and GIS capabilities. Their inspection method guarantees an accurate unbiased approach to street maintenance needs. Fugro incorporates their technical data with traffic loads and develops a map of the street in most need of repair.

Fugro would inspect all 142 miles of our streets and develop a five and ten year prioritized capital improvement plan for our Street Division to follow. They can also recommend the best repair method for the type of failure found.

**RECOMMENDED ACTION**

The Director of Public Works recommends that council authorize the City Manager to enter into a Professional Services Agreement with Fugro Roadware, Inc. to develop a Pavement Management System in an amount not to exceed \$85,000.00.

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**FUGRO ROADWARE, INC.**

Proposal No. 04.3214-2038  
January 2, 2015

8613 Cross Park Drive  
Austin, TX 78754  
Phone: 512-977-1800  
Fax: 512-973-9565  
[www.roadware.com](http://www.roadware.com)

Stuart Barron  
City of Kerrville  
701 Main Street  
Kerrville, Texas 78028  
Phone: 830-258-1530  
E-mail: [stuart.barron@kerrvilletx.gov](mailto:stuart.barron@kerrvilletx.gov)

Attention: Mr. Stuart Barron

**Proposal for Pavement Condition Data Collection  
City of Kerrville, Texas**

Submitted herein is Fugro's proposal to assist the City of Kerrville with a pavement condition survey for roadways maintained by the City. The following sections of this proposal describe the scope of our services, a cost estimate for the evaluation services to be provided.

**Scope of Work**

The City of Kerrville's road network is comprised of approximately 142 centerline miles which equates to approximately 174 test miles of roadway, primarily paved, 2-lane undivided roadways. This cost estimate is based on a review of the City's street shape file by Fugro and City personnel during the cost estimate process. The city has requested Fugro to perform an automated condition survey on the 174 test miles of the city's roadway network as well as provide pavement condition to the City of Kerrville.

Based upon our knowledge of the project and the scope of work described above, we propose the following phases:

**Phase I – Project Management**

**Phase II – Data Collection**

**Phase III – Data Processing, Data QA/QC, and PCI Calculation**

**Phase IV – Final Report**



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**Phase I – Project Management**

This phase consists of management for this project. This phase will involve coordination with the City of Kerrville throughout the project as well as information gathering and project setup prior to data collection. It is our goal to provide monthly updates to the City regarding the progress of the project as well as meetings with our project manager as requested by the City of Kerrville. Weekly updates will be provided during data collection to ensure Kerrville is aware of activities on their streets.

***Task 1 – Project Management***

Four meetings with City personnel over the duration of this project are anticipated. The issues that will be discussed will include a confirmation of the condition data that is to be collected for the pavement condition assessment and the format in which it will be delivered. In addition, existing sources of inventory data and access to that data will be discussed. Proposed tasks will be reviewed with the City staff to confirm compliance with the goals of the project. Any gaps that are identified in the proposed project approach will be resolved during this task. It is Fugro's intent, in this review, to confirm the types of data that will be collected as part of the pavement condition data survey. It is also essential to discuss the format in which the final data will be delivered to the City. It is important to have full participation from the different personnel affected by the data collection, processing and use of the PMS and GIS information.

The four meetings with City personnel will include the following:

- 1) Kickoff meeting
- 2) Vehicle Visit
- 3) Field Audit to Review PCI Scores
- 4) Close-out meeting and Final Report





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***Task 2 – Data Gathering and Inventory Review***

This task comprises of reviewing the existing inventory and addressing and discrepancies in the inventory, GIS, and PMS Databases

From the review of existing inventory, GIS, and databases, an official inventory of the roads to be surveyed for condition and physical attributes will be developed. Additional inventory data identified as being required for the proposed PMS or found to be missing or inaccurate will have to be located or collected. The review of inventory data will be conducted in consultation with the City of Kerrville staff. Fugro will assist the City to identify and resolve discrepancies between data sets of their inventory. These data sets include any existing databases and GIS data files provided by the City. Prior identification of discrepancies reduces difficulties in identifying roadways and their section limits during the data collection effort and reduces the amount of time post-processing the data collected. Fugro has developed a standard set of quality control checks for reviewing GIS and PMS databases. These checks are conducted by identifying corresponding data fields in each database then comparing them for consistency. If data fields are missing in one database, but not the other, the missing data field is populated from the existing data for a more complete data set.

The data gathering and review phase is extremely important to the overall success of the project. Having a dataset that has been thoroughly reviewed prior to data collection saves time and money for both the City and the project team during later phases of the project.

The shape file from the City **must** contain the following information for data collection to be performed. Underlined items are the City's responsibility to provide.

- Street Name
- From/To Description
  - Address Range (acceptable, must be in separate fields)
  - Intersection Street Names / Text Description (preferred, must be in separate fields)
- Unique Segment ID
- Length
- Functional Classification
- One-way status (optional, highly recommended)
- Owner
- Divided/Undivided (optional, recommended)
- Number of Lanes (optional, recommended)

Information that Fugro can populate for the City that makes data collection and processing easier is listed below. This information will be **required** for the pavement management implementation, but is not required for data collection. Underlined items are the City's responsibility to provide if they are to be considered in the pavement management



program. A special task for pavement width measurements is included elsewhere in this proposal.

- Pavement Classification (mandatory, part of survey)
- Divided/Undivided (not mandatory, but highly recommended)
- Number of Lanes (not mandatory, but highly recommended)
- Pavement Width (mandatory, separate task to measure pavement widths included)
- Pavement Area (mandatory, can be estimated from length and width or actual measurements)
- Shoulder pavement information (mandatory, if shoulder costs are to be estimate)

### **Phase II – Data Collection**

Phase II entails the collection, QC, and upload of distress data and profile data on the City's network. Automated Distress data will be collected on the City's road network. Digital images will be collected of the pavement surface and cracking distresses extracted from the images. Rutting and ride are recorded with laser systems that scan the transverse and longitudinal road profiles. The distress data will then be uploaded to the pavement management system as part of calculating a Pavement Condition Index (PCI) score for each road segment surveyed. Additionally, ride index values are developed from the International Roughness Index values recorded in the field. Distress data will be collected on approximately 142 centerline miles of roadway in the city's road network. One pass along each road segment shape file is anticipated for this project.

#### ***Task 1 – Routing***

Routing is the process performed by Fugro to generate a complete list for data collection including all necessary location descriptions and lengths to ensure collection will be complete and accurate. A routing process is also performed based on a final road listing developed during the inventory review task. This information is required for network definition and navigation. The routing process defines a data collection order and direction for each roadway in the City's network, as well as sets up a unique raw file name necessary for processing of distress, and right-of-way data. Once this has been performed for the initial round of data collection, this task on any potential subsequent data collection rounds to be performed by Fugro or the City will require significantly less time. Routing will be performed based on the following:

Arterials and Collectors:

- 1) one lane, one direction, per divided shape for divided roadways, AND
- 2) one pass in each direction, per shape, for undivided roadways

Residential Streets: one direction, one test pass, per shape





### ***Task 2 – Data Collection***

Before any field data collection begins, equipment checks and calibrations are performed to ensure the quality of the data. Additionally, the data collection database is uploaded and tested on the field computers. This ensures that the equipment, sensors, and subsystems are consistent and accurate to deliver high quality data.

Data collection of distress images, profile data, and right-of-way images will be performed on approximately 142 centerline miles of roadway in the city's road network.

The purpose of the distress data collection is to determine the general distress characteristics of each of the roadway segments in this project.

Transverse Profile data is collected using a point cloud laser system to locate the presence of ruts or other irregularities in the cross slope of the city roads or area scan lasers that obtain a full cross-sectional profile. The purpose of the transverse profile testing is to determine the rutting characteristics of each of the roadway segments profiled.

Longitudinal Profile data is collected on the network at 4-inch intervals throughout the length of each section selected in each direction and summarized at 0.01 to 0.1-mile intervals to provide International Roughness Indices (IRI) throughout the network. The collected IRI values will be reported as an average IRI value for each roadway segment. The purpose of the longitudinal profile-testing program is to determine the general ride characteristics of each of the roadway segments profiled. The longitudinal profile-testing program will be performed in accordance with ASTM Test Standard E950 (Standard Test Method for Measuring Longitudinal Profile of Traveled Surfaces with an Accelerometer Established Inertial Profiling Reference).

In order to meet the requirements of ASTM E950, the results are reviewed for areas of exclusion. As such, it is not always possible to report an IRI value for every roadway within a network for the following reasons:

- 1) A minimum collection speed of 12 mph is required to have valid data to report an IRI value. This speed must be maintained with sufficient lead-in and lead-out distance for data to be valid for a section.
- 2) Data is also filtered for anomalies in the data such as peaks in IRI due to speed bumps or other non-representative features in the roadway that cause spikes in the IRI data.
- 3) Sections that are very short such as cul-de-sacs often do not allow for safe collection above the minimum collection speed and IRI data is often invalidated on these segments.
- 4) Stops and starts along segments that may not necessarily be very short can also result in data being filtered out due to minimum collection speed requirements.

Standard procedure is to make reasonable effort in the field to maximize collection of valid IRI data. Recollection will not be performed for roadways with invalidated IRI data for any of the





reasons listed above, as the cause for the low speeds encountered are likely to be encountered again during the recollection.

Fugro conducts quality control measures in the field, which have been beneficial to meet project objectives. These procedures are standard practice for our data collection services. The automated procedure is repeatable and consistent.

### ***Task 3 – Special Data Collection Considerations for Alleyways***

If the automated data collection vehicle is unable to access alleyways due to clearance or rideability issue, Fugro will perform a driving windshield survey on affected alleyways. During the automated data collection, field operators will flag which alleyways are not accessible so that a windshield survey can be performed. Since this task may be non-existent or only affect a portion of the data collection, a daily inspection rate assuming a production of 8-12 miles per day is assumed, depending on mobilization between alleyways requiring windshield survey.

### **Phase III – Data Processing, Data QA/QC, and PCI Calculation**

This phase of the project will encompass office tasks that involve processing, analysis, and PCI score calculation.

#### ***Task 1 – Distress and Profile Rating and Analysis***

Distress Rating and Analysis will be done in accordance with ASTM D6433 with distress types required to calculate a Pavement Condition Index. Certain ride related distresses such as bumps/swells, depressions, corrugations, and other distresses that cannot be extracted from pavement imagery will not be reported. Distresses such as these are taken into account in the IRI measurements. It is not uncommon for certain distresses to be omitted from upload to the pavement management system. Prior to upload into the pavement management system the distresses to upload will be defined with input from the City. The majority of distresses will be extracted from the pavement images, however, rutting is obtained from a laser subsystem.

Additionally, the International Roughness Index for each roadway will be reported. This provides an assessment of how comfortable the roadways are to travel on. This is another index that can be used to help prioritize and select maintenance and rehabilitation strategies for the City. This value is then converted to a Ride Condition Index (RCI) so that it can be reported on a 0 to 100 scale.

#### ***Task 2 – PCI Calculation & QA/QC***

Fugro will calculate a Pavement Condition Index (PCI) for each pavement section using industry standard procedures. This PCI uses a scale from zero (0) for a failed pavement to 100 for a pavement in perfect condition. The index is based on the type, severity, and extent of surface distress and it is compliant with ASTM D6433-11 (Army Corps of Engineers PAVER distress rating system). Standard definitions for these distresses are included in ASTM E1778 – Standard Terminology Relating to Pavement Distress. The images are processed using a



combination of automated crack detection software and semi-automated manual analysis. In addition, Rutting will be extracted from the transverse profile information. It is not always practical or realistic to upload all of the distress types in the ASTM standard into the pavement management system, as such, **before any inspection information is used to calculate a PCI score, the distresses to include in the PCI score will be confirmed with and approved by the City.**

Additionally, the International Roughness Index for each roadway will be reported. This provides an assessment of the roadway's ride characteristics. This is another index that can be used to help prioritize and select maintenance and rehabilitation strategies for the City. This value is then converted to a Ride Condition Index (RCI) so that it can be reported on a 0 to 100 scale. This will be added as another field in the condition summary to be provided to the City.

As part of the QA/QC process, the project team will perform a field audit of the distresses measured and calculated PCI scores. An onsite meeting will take place for this audit. One full day should be scheduled for this meeting.

### Task 3 – iVision Upload

Pavement and Right-of-Way (ROW) images, inspection data, and PCI scores will be uploaded to Fugro's iVision web-viewing software. The City will be provided with 5 licenses to use the software for one year, after which licenses can be renewed annually. Setup and configuration of the iVision software will be performed once the inspection information is finalized.







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***Task 4 – Maintenance Recommendations***

Task 4 involves developing work plan recommendations using the results of the condition survey to prioritize and select maintenance and rehabilitation recommendations for the City's network. During this phase existing strategies are reviewed and updated. If none exist, these strategies will be developed. Updates other pavement management system settings are also performed. Preliminary and final work plans are develop in conjunction with City staff.

In implementing the pavement management program, Fugro will perform network-level 5-year work plan based on the results of the condition survey. A budget analysis of this type allows for allocation of funds to where they are used the most effectively based on the agency's maintenance policies and City Council expectations/requirements. The steps taken during the development of a five-year work plan are as follows:

- Update Decision Trees; if none exist, one will be developed (with City)
- Evaluate Maintenance and Rehabilitation Strategies (with City)
- Update Unit Costs (with City)
- Update Pavement Performance Models based on results of condition survey; if non-existent, data collected this year will be used in conjunction with typical performance curves based on similar pavement types
- Develop 5-year maintenance work plan (with City)
- Identify and list potential candidate Capital Improvements Projects
- Develop projects based on pavement management software output results
  - Review recommendations based on pavement condition survey
  - Evaluate alternative pavement treatments, repair, and reconstruction strategies
  - Select candidate roadways and groupings of projects with City of Kerrville staff
    - Compare pavements projects to other utility projects
    - Priority roadway considerations
    - Other considerations/information required and provided by City
  - Develop project level costs for the purposes of estimate purposes only
    - Pavement treatments/repairs
    - Other infrastructure repairs/upgrades
- To perform these tasks, the project team requests the following information from the City before proceeding with the analysis:
  - City of Kerrville rehabilitation and/or repair standards
  - Unit pricing for work performed by City roadway crews and bid by contractors





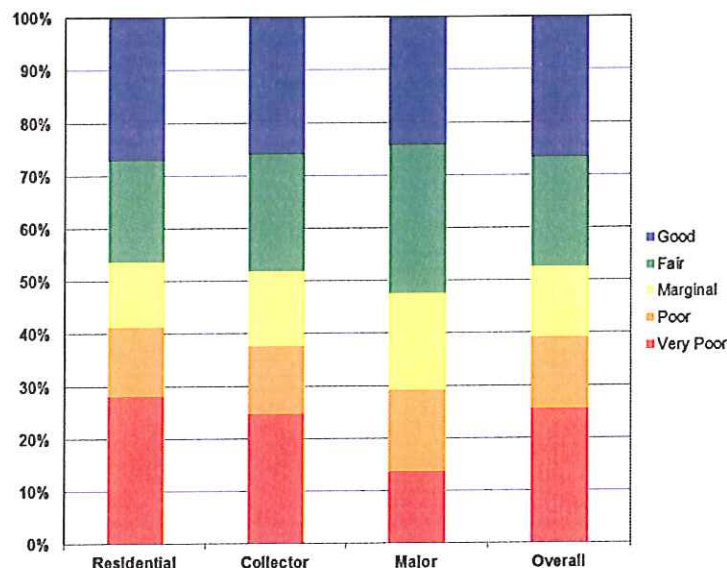
- Roadway construction plans of existing roadways
- Materials used in the past and their outcome
- Traffic control for field visits, if necessary

It is crucial to have the City's involvement in this task. The goal of this task is to produce a tool that allows the City to make more informed maintenance and rehabilitation decisions. Including information from the City is essential to implementing the pavement management program effectively. To develop a work plan that will help the City to get the most out of this project, it is anticipated that three review iterations will be required, each with an on-site meeting.

#### **Phase IV – Final Report**

Phase IV involves preparing a final report that will document all fieldwork, ride statistics, distress information, and listing of repair recommendations. A draft of the report will be prepared and provided to the City of Kerrville for review. Upon inclusion of City comments and acceptance of the report by the City, Fugro will finalize the report. Additional revisions of the plan provided or report will entail additional fees. This report will include the following:

- Summary of fieldwork – description of equipment, listing of roadways tested
- Summary of network condition – condition score (PCI and ride condition for all roadways tested); this will include graphs and charts of network condition.

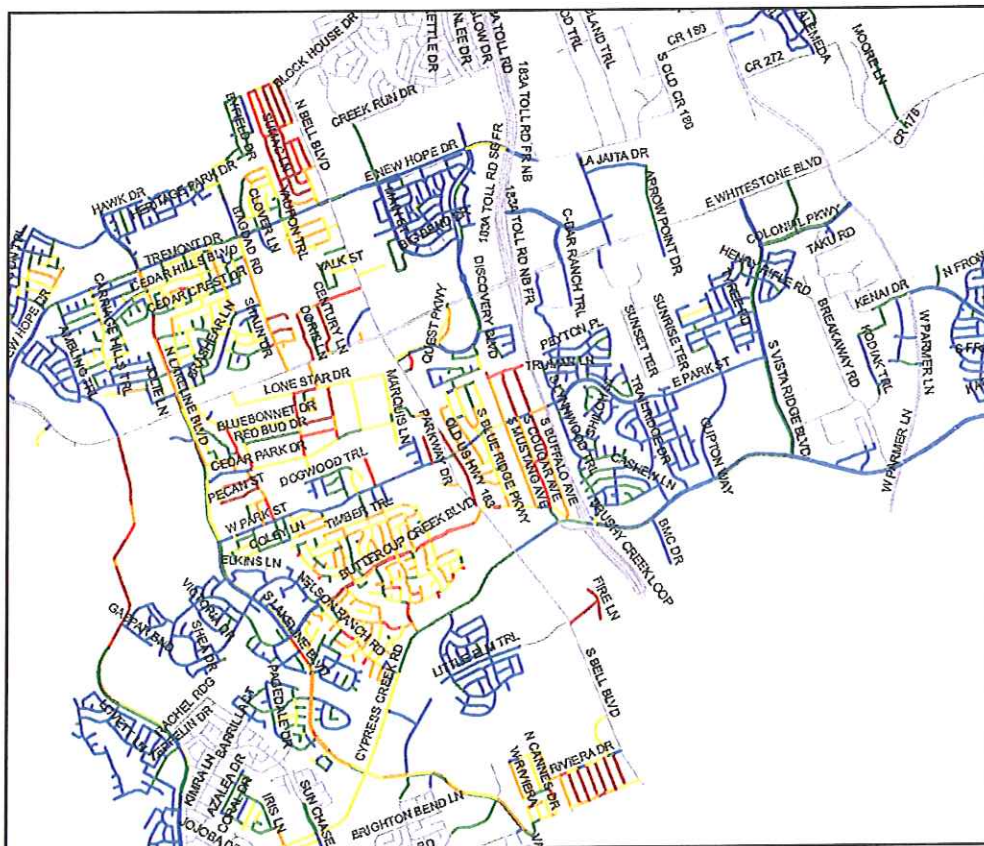


- Spreadsheet and/or database summaries of network condition – tabular representation of roadway conditions (PCI and ride)



| SEgid  | STREET | FROM          | TO          | FUNCTIONAL CLASS | LEN (FT) | WD (FT) | AREA (SQ FT) | SURFACE | PCI | IRI | RCI |
|--------|--------|---------------|-------------|------------------|----------|---------|--------------|---------|-----|-----|-----|
| 800100 | 1ST AV | HOUSTON ST    | ELM ST      | Residential      | 723      | 18      | 12659        | AC      | 64  | 744 | 7   |
| 800200 | 2ND AV | END           | ELM ST      | Residential      | 248      | 18      | 4467         | AC      | 47  | 0   |     |
| 800300 | 2ND AV | ELM ST        | MARKET ST   | Residential      | 375      | 18      | 6748         | AC      | 43  | 492 | 41  |
| 800400 | 2ND AV | MARKET ST     | WILDCAT DR  | Residential      | 766      | 18      | 13781        | AC      | 36  | 647 | 20  |
| 800500 | 3RD AV | BAY VIEW BLVD | MOORE AV    | Residential      | 412      | 18      | 7413         | AC      | 31  | 624 | 23  |
| 800600 | 3RD AV | ELM ST        | MARKET ST   | Residential      | 375      | 22      | 8247         | AC      | 65  | 640 | 21  |
| 800700 | 4TH AV | BAY VIEW BLVD | MOORE AV    | Residential      | 375      | 19      | 7123         | AC      | 51  | 0   |     |
| 800800 | 4TH AV | MOORE AV      | HOUSTON ST  | Residential      | 259      | 20      | 5174         | AC      | 37  | 0   |     |
| 800900 | 4TH AV | HOUSTON ST    | ELM ST      | Residential      | 380      | 20      | 7603         | AC      | 51  | 0   |     |
| 801000 | 4TH AV | ELM ST        | MARKET ST   | Residential      | 380      | 20      | 7603         | AC      | 62  | 525 | 36  |
| 801100 | 4TH AV | MARKET ST     | COMMERCE ST | Residential      | 385      | 20      | 7709         | AC      | 49  | 639 | 21  |
| 801200 | 4TH AV | COMMERCE ST   | WILDCAT DR  | Residential      | 380      | 20      | 7603         | AC      | 46  | 582 | 29  |
| 801300 | 5TH AV | MOORE AV      | HOUSTON ST  | Residential      | 391      | 51      | 19731        | AC      | 99  | 327 | 62  |
| 801400 | 5TH AV | HOUSTON ST    | ELM ST      | Residential      | 375      | 37      | 13871        | AC      | 85  | 343 | 60  |
| 801500 | 5TH AV | ELM ST        | RAILROAD AV | Residential      | 201      | 37      | 7424         | AC      | 96  | 217 | 77  |
| 801600 | 5TH AV | RAILROAD AV   | MARKET ST   | Residential      | 185      | 37      | 6838         | AC      | 100 | 287 | 68  |
| 801700 | 5TH AV | MARKET ST     | COMMERCE ST | Residential      | 380      | 37      | 14066        | AC      | 100 | 317 | 64  |
| 801800 | 5TH AV | COMMERCE ST   | WILDCAT DR  | Residential      | 380      | 37      | 14066        | AC      | 95  | 247 | 73  |
| 801900 | 6TH AV | BAY VIEW BLVD | MOORE AV    | Residential      | 391      | 20      | 7814         | AC      | 38  | 438 | 48  |
| 802000 | 6TH AV | MOORE AV      | DALLAS ST   | Residential      | 190      | 49      | 9238         | AC      | 97  | 0   |     |
| 802100 | 6TH AV | DALLAS ST     | HOUSTON ST  | Residential      | 380      | 49      | 18476        | AC      | 88  | 0   |     |

- GIS maps summarizing roadway condition scores – graphical representation of roadway conditions (PCI and ride)







- A listing of repair recommendations based on PCI analysis and current City maintenance practices. This will be an appendix listing of estimated costs and network-level maintenance recommendations summarized by roadway segment. The body of the report will include a summary of the required needs.

### **Cost Estimate**

Based on the scope of work outlined above, the cost for this evaluation effort is shown below. A lump sum fee of **\$83,400** for up to 174 test miles is estimated for this effort. Additional test miles will cost \$240/mile for collection and processing. Project management and reporting will not change without client approval.

#### **Base Services**

| Description                         | Fee              |
|-------------------------------------|------------------|
| Project Management and Meetings (4) | \$ 17,800        |
| Collection                          | \$ 32,200        |
| Processing                          | \$ 11,200        |
| PCI Calculation & Report            | \$ 22,200        |
| <b>Total</b>                        | <b>\$ 83,400</b> |

#### **OPTIONAL Services**

| Description                                                       | Fee          |
|-------------------------------------------------------------------|--------------|
| Software Implementation<br>(City to purchase software separately) | \$ 4,400.00  |
| Pavement Widths Measurements<br>(assumes 4,800 measurements)      | \$ 11,000.00 |

The fee is based on our understanding of the pavement consulting services anticipated. If changes in work are required or requested, any potential change orders with the City will be negotiated prior to commencing any additional work. The fee will not be exceeded without the City's prior authorization and issue of change order from the City.

This cost estimate also assumes that the work on this project will be performed immediately after another project in the Dallas-Ft. Worth area, using the same collection settings as the other project. If the project is performed at a different time, then additional mobilization, set-up fees, or both may apply.



**Schedule**

Fugro can typically commence within two weeks of formal notice to proceed. It is currently anticipated that activities will take approximately 4-6 months to complete. A finalized schedule will be provided once the final details of the scope of work have been defined at the kick-off meeting. Accelerating the schedule may be possible once final details are worked out. From notice to proceed it is estimated that a minimum of 4-8 weeks lead time is required until field data collection can begin. The 4-8 weeks will be required to finalize and resolve the inventory and prepare the files for data collection as well as work out any pertinent technical details with City personnel. We anticipate a start date in the first quarter of 2015.

**Terms and Conditions**

The attached General Conditions for Technical Services (Fugro Schedule 40.01) describe general contractual conditions including identification of Client, on-site responsibilities and risks, warranty, invoicing procedures, and record maintenance.

\*

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We appreciate the opportunity to submit this proposal and look forward to working with you on this project. Please call if we may be of any additional assistance.

TBPE Firm Registration No. F-15799

Robert R. Williams

**CLIENT:**

Firm Name

Typed Name and Title

Date \_\_\_\_\_





## GENERAL CONDITIONS FOR TECHNICAL SERVICES

1. **Parties to This Agreement**  
CLIENT as used herein is the entity who authorizes performance of services by Fugro Consultants, Inc. (FUGRO) under the conditions stated herein. FUGRO as used herein includes, Fugro Consultants, Inc., its employees and officers, and its subcontractors and sub-consultants (including affiliated corporations).
2. **On-site Responsibilities and Risks**
  - 2.1 Right-of-Entry. Unless otherwise agreed, CLIENT will furnish unfettered rights-of-entry and obtain permits as required for FUGRO to perform the fieldwork.
  - 2.2 Damage to Property. FUGRO will take reasonable precautions to reduce damage to land and other property caused by FUGRO's operations. However, CLIENT understands that damage may occur and FUGRO's fee does not include the cost of repairing such damage. If CLIENT desires FUGRO to repair and/or pay for damages, FUGRO will undertake the repairs and add the pre-agreed cost to FUGRO's fee.
  - 2.3 Toxic and Hazardous Materials. CLIENT will provide FUGRO with all information within CLIENT's possession or knowledge as to the potential occurrence of toxic or hazardous materials, or Biological Pollutants (as defined in 9. below) at the site being investigated. If unanticipated toxic or hazardous materials, or biological pollutants are encountered, FUGRO reserves the right to demobilize FUGRO's field operations at CLIENT's expense. Remedialization will proceed following consultation with FUGRO's safety coordinator and CLIENT's acceptance of proposed safety measures and fee adjustments.
  - 2.4 Utilities and Pipelines. While performing FUGRO's fieldwork, FUGRO will take reasonable precautions to avoid damage to subterranean and subaqueous structures, pipelines, and utilities. CLIENT agrees to defend, indemnify, and hold FUGRO harmless for any damages to such structures, pipelines, and utilities that are not called to FUGRO's attention and/or correctly shown on plans furnished to FUGRO.
  - 2.5 Site Safety. FUGRO is not responsible for the job site safety of others, nor does FUGRO have stop-work authority over work by others. However, FUGRO will conduct its work in a safe, workman-like manner, and will observe the work-site safety requirements of CLIENT that have been communicated to FUGRO in writing.
3. **Standard of Care**
  - 3.1 FUGRO will perform its services consistent with that level of care and skill ordinarily exercised by members of the profession currently practicing under similar conditions in the same location.
  - 3.2 CLIENT acknowledges that conditions may vary from those encountered at the location where borings, surveys, or explorations are made and that FUGRO's data, interpretations, and recommendations are based solely on the information available to FUGRO, and FUGRO is not responsible for the interpretation by others of the information developed.
4. **Limitation of Remedies**  
To the greatest extent permitted by law, CLIENT's sole remedy against FUGRO for claims and liabilities in any way arising out of or directly or indirectly related to FUGRO's work for CLIENT will not exceed an aggregate limit of \$50,000 or the amount of FUGRO's fee, whichever is greater, regardless of the legal theory under which remedy is sought, whether based on negligence [whether sole or concurrent, active or passive], breach of warranty, breach of contract, strict liability or otherwise. In the event CLIENT does not wish to limit FUGRO's remedy to this sum, and if CLIENT requests in writing prior to acceptance of this Agreement, FUGRO agrees to negotiate a greater remedy amount in exchange for an increase in scope and fee appropriate to the project and remedy risks involved.
5. **Invoices and Payment**  
At FUGRO's discretion, invoices will be submitted at the completion of task elements, or monthly for services rendered. Payment is due upon presentation of FUGRO's invoice and is past due thirty (30) days from invoice date. CLIENT agrees to pay a financing charge of one percent (1%) per month (or the maximum rate allowable by law, whichever is less), on past due accounts, and agrees to pay attorney's fees or other costs incurred in collecting any delinquent amount.
6. **Data, Records, Work Product and Report(s), and Samples**  
Data, Records, Work Product and Report(s) are FUGRO's property. All pertinent records relating to FUGRO's services shall be retained for a minimum of two (2) years after completion of the work. CLIENT shall have access to the records at all reasonable times during said period. FUGRO will retain samples of soil and rock for a minimum of 30 days after submission of FUGRO's report unless CLIENT advises FUGRO otherwise. Upon CLIENT's written request, for an agreed charge FUGRO will store or deliver the samples in accordance with CLIENT's instructions.
7. **Indemnification**  
Each party (Indemnitor) shall protect, defend, indemnify and hold harmless the other party (Indemnitee) from and against any claims, damages, losses, and costs arising from this Agreement or the project, including, but not limited to, reasonable attorney's fees and litigation costs, to the extent such claims, damages, losses or costs are caused by the negligence of the Indemnitor regardless of the negligence of the Indemnitee its employees, affiliated corporations, officers, and sub-tier parties in connection with the project.
8. **Consequential Damages**  
Notwithstanding any other provision of this Agreement, CLIENT and FUGRO waive and release any claim against the other for loss of revenue, profit or use of capital, loss of services, business interruption and/or delay, loss of product, production delays, losses resulting from failure to meet other contractual commitments or deadlines, downtime of facilities, or for any special, indirect, delay or consequential damages resulting from or arising out of this Agreement, or as a result of or in connection with the work, and whether based on negligence (whether sole or concurrent, active or passive), breach of warranty, breach of contract, strict liability or otherwise.
9. **Biological Pollutants**  
FUGRO's scope of work does not include the investigation, detection, or design related to the presence of any Biological Pollutants. The term "Biological Pollutants" includes, but is not limited to, mold, fungi, spores, bacteria, and viruses, and the byproducts of any such biological organisms. CLIENT agrees that FUGRO will have no liability for any claim regarding bodily injury or property damage alleged, arising from, or caused directly or indirectly by the presence of or exposure to any Biological Pollutants. In addition, CLIENT will defend, indemnify, and hold harmless FUGRO from any third party claim for damages alleged to arise from or be caused by the presence of or exposure to any Biological Pollutants. If CLIENT requests in writing prior to acceptance of this Agreement, FUGRO will negotiate a greater limitation amount, and remove CLIENT's responsibilities, in exchange for an increase in fee to develop an expanded scope of work to provide biological pollutant protection.
10. **Acceptance of Agreement**  
These GENERAL CONDITIONS have been established in large measure to allocate certain risks between CLIENT and FUGRO. FUGRO will not initiate service without formal agreement on the terms and conditions set forth in these GENERAL CONDITIONS. Acceptance or authorization to initiate services shall be considered by both parties to constitute formal acceptance of all terms and conditions of these GENERAL CONDITIONS. Furthermore, all preprinted terms and conditions on CLIENT's purchase order or purchase order acknowledgment forms are inapplicable to these GENERAL CONDITIONS and FUGRO's involvement in CLIENT's project.
11. **Termination of Contract**  
CLIENT and FUGRO may terminate services at any time upon ten (10) days written notice. In the event of termination, CLIENT agrees to fully compensate FUGRO for services performed including reimbursable expenses to the termination date, as well as demobilization expenses. FUGRO will terminate services without waiving any claims or incurring any liability.



## **Agenda Item:**

2G. Purchase street maintenance and construction equipment funded by a grant, in the total amount of \$385,194.82, to include: Caterpillar 930 wheel loader, Mack tandem dump truck 14 yard capacity; and Bobcat skid loader and 40" planer attachment. (staff)

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

**SUBJECT:** Purchase of Construction Equipment Funded by Cailloux Grant

**FOR AGENDA OF:** January 13, 2015

**DATE SUBMITTED:** December 26, 2014

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

**CLEARANCES:** Kristine Day  
Deputy City Manager

**EXHIBITS:** Equipment Specifications

**APPROVED FOR SUBMITTAL BY CITY MANAGER:** 

| <b>Expenditure<br/>Required:</b> | <b>Current Balance<br/>in Account:</b> | <b>Amount<br/>Budgeted:</b> | <b>Account<br/>Number:</b> |
|----------------------------------|----------------------------------------|-----------------------------|----------------------------|
| \$ 385,194.82                    | \$ 386,000                             | \$ 386,000                  | 85-861-504-03              |

**PAYMENT TO BE MADE TO:** Holt Cat \$138,850.00  
Grande Truck Center \$123,053.34  
Ranchers ATV & Tractor \$123,291.48

**REVIEWED BY THE FINANCE DIRECTOR:** All Equipment to be purchased from Buy Board  
using monies from the Cailloux Foundation Grant.

**SUMMARY STATEMENT**

The City of Kerrville Street Division is responsible for maintaining, and repairing 142 miles of asphalt streets and drainage ways. In recent years the Street Division has transformed from a maintenance crew (patching potholes, etc...) into a road repair, reconstruction and paving crew. In an effort to keep up with the new work load the City has requested a Grant from the Cailloux Foundation to purchase three pieces of heavy equipment. The Cailloux awarded the Grant to the City January 2015. The three new pieces of equipment are:

Caterpillar 930 Wheel Loader - \$138,850.00: The addition of a large loader will allow us to double our efforts when it comes to reconstruction and milling older streets.

Mack Tandem Dump Truck (14 Yard Capacity) - \$123,053.34: The current dump trucks have 6 yard beds. The larger 14 yard dump truck will allow much more efficient use of crew time and allow for bigger hauls of hot asphalt when paving.

Bobcat Skid Loader and 40" Planer Attachment - \$123,291.48: The T870 skid loader is very diverse and will allow our street crews to reconstruct streets quicker and easier than in the past. Attachments include: 40" planner, 96" dozer blade, 30" & 18" trenching buckets. Many other attachments are available as needed.

**RECOMMENDED ACTION**

Recommend approval of purchases.



Quote 134757-01

Oct. 23, 2014

CITY OF KERRVILLE  
701 MAIN  
KERRVILLE ,TEXAS 78028

Dear Bandon,

Thank you for this opportunity to quote Caterpillar products for your business needs. We are pleased to quote the following for your purchase consideration.

**One (1) New CATERPILLAR INC Model: 924K Wheel Loader with all standard equipment in addition to the additional specifications listed below:**

#### **STANDARD EQUIPMENT**

**POWERTRAIN** - Axle seal guards - Brake/decelerator pedal - Caterpillar C6.6 ACERT engine - Tier 4/Stage 3B compliant - Turbocharged and aftercooled - Filtered crankcase breather - Diesel particulate filter - Coolant protection to -34C (-29F) - Differential lock in front axle - Differential rear open - Dry type air cleaner - Enclosed wet disc full hydraulic brakes - Fuel priming pump, Automatic - Fuel water separator - Hydraulically driven demand cooling fan - Hydrostatic transmission with electronic - speed range control (4 speed ranges) - Rimpull control - Creeper control - Lubed for life driveshafts - Parking brake, Electric - Single plane cooling system with remote - coolant reservoir - SOS port.Engine,Coolant,Transmission Oil - Thermal starting aid (Glow plugs) - Throttle lock - Transmission directional control on - implement joystick - Transmission sight gauge

**HYDRAULICS** - Heavy duty hydraulic cooler - Hydraulic diagnostic connectors and - SOS ports - Hydraulic sight gauge, Visible - Load sensing hydraulics and steering - Seat mounted hydraulic controls with FNR

**ELECTRICAL** - 110A heavy duty alternator - 12v power supply in cab (2) - 2 x 1000 CCA batteries - 24 volt system - Back up alarm - Battery disconnect switch - Beacon ready - Diagnostic connector - Directional signals front and rear - Emergency shutdown switch - Halogen work lights front and rear - Heavy duty gear reduction starter - LED rear stop tail turn lights - Remote jump start post - Resetable main and critical - function breakers - Rooding lights front and rear

**OPERATOR ENVIRONMENT** - 3 in (75mm) retractable seatbelt - Automatic temperature control - Cab. enclosed ROPS/FOPS pressurized - and sound suppressed - Cup holder - External heated mirrors - Ground level cab door release - Gauges - Digital direction indicator - Digital hourmeter and odometer - Digital speedometer - Engine coolant temperature gauge - Fuel level indicator - Hydraulic oil temperature gauge - Tachometer - Hydraulic control lockout - Interior cab lighting door and dome - Interior rear view mirrors (2) - Lunch box storage - Operator warning system indicators - Radio ready inc. speakers - Rear window defrost, Electric - Removable floor mat - Seat mounted electronic implement - controls. Adjustable - Sliding glass on the side windows - Steering column mounted multi function - control. Lights wipers turn signal - Suspension seat, Fabric - Tilt and telescope steering wheel - Tinted front glass - Wet arm wiper washer 2 speed and - intermittent front - Wet arm wiper washer, Rear

**OTHER STANDARD EQUIPMENT** - Automatic bucket / fork positioner. - In cab adjustable - Automatic lift and bucket kickouts. - In cab adjustable - Fenders - Large-access enclosure doors with - adjustable close/open force - Parallel lift loader linkage with - sealed pins - Recovery hitch with pin - Remote mounted lubrication points - Toolbox, Lockable - Vandalism protection: - Lockable compartments



## MACHINE SPECIFICATIONS

| Description                                              | Reference No |
|----------------------------------------------------------|--------------|
| 924K WHEEL LOADER                                        | 333-6522     |
| STEERING, STANDARD, DUAL MODE                            | 333-6856     |
| DIFFERENTIAL, OPEN REAR                                  | 333-6528     |
| ENVIRONMENT, STANDARD                                    | 366-8125     |
| WEATHER, STANDARD                                        | 333-1415     |
| SEAT, DELUXE                                             | 342-0110     |
| RADIO, READY                                             | 342-0130     |
| TIRES, 20.5-R25, MXL, L3                                 | 376-0827     |
| FENDERS, STANDARD                                        | 366-8148     |
| COUNTERWEIGHT, STANDARD                                  | 348-2579     |
| KIT, SERIALIZED TECHNICAL MEDIA                          | 0P-2491      |
| RIDE CONTROL                                             | 384-6282     |
| LIGHTS, AUX, HALOGEN / HALOGEN                           | 333-1427     |
| *QUICK COUPLER, FUSION                                   | 333-6865     |
| BUCKET-GP, 3.1 CYD, HO                                   | 345-2784     |
| CUTTING EDGE, BOLT ON, 4 PIECE                           | 345-2758     |
| CAB, DELUXE                                              | 342-0200     |
| PRODUCT LINK, CELLULAR-PL421                             | 370-6980     |
| QUICK COUPLER FORKS, WITH CARRIAGE 54"                   |              |
| ROTATING BEACON                                          |              |
| BUDGET PRICE F.O.B. CITY OF KERRVILLE (BUY BOARD PRICE ) | \$138,850    |
| PLUS APPLICABLE TAX                                      |              |
| STANDARD WARRANTY :                                      |              |
| ONE YEAR TOTAL MACHINE / UNLIMITED HOURS                 |              |

SINCERELY,

KEN POWELL  
HOLT CAT SALES  
(210) 508 5063



# Bobcat®

## Product Quotation

Quotation Number: 7685E09156

Date: 2014-10-22 18:16:50

| Ship to                                                                                                | Bobcat Dealer                                                                                                                                                                                                                                                                   | Bill To                                                                                                |
|--------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------|
| City Of Kerrville<br>Attn: Brandon<br>800 junction hwy<br>Kerrville, TX 78028<br>Phone: (830) 792-8312 | Ranchers ATV and Tractor, LLC,<br>Kerrville, TX<br>2330 JUNCTION HIGHWAY<br>KERRVILLE TX 78028<br>Phone: (830) 315-2330<br>Fax: (830) 315-2303<br><br>Contact: Scot Ince<br>Phone: 830-315-2330<br>Fax: 830-315-2303<br>Cellular: 830-459-6979<br>E Mail: scotranchers@hctc.net | City Of Kerrville<br>Attn: Brandon<br>800 junction hwy<br>Kerrville, TX 78028<br>Phone: (830) 792-8312 |

| Description                          | Part No                 | Qty | Price Ea.  | Total      |
|--------------------------------------|-------------------------|-----|------------|------------|
| Factory Installed A91 Option Package | M0185-P01-A91           | 1   | \$9,599.00 | \$9,599.00 |
| Cab Enclosure with Heat and AC       | Engine Block Heater     |     |            |            |
| High Flow Hydraulics                 | Attachment Control Kit  |     |            |            |
| Sound Reduction                      | Cab Accessories Package |     |            |            |
| Hydraulic Bucket Positioning         | Two Speed Travel        |     |            |            |
| Power Bob-Tach                       | 3-Point Seat Belt       |     |            |            |
| Deluxe Instrument Panel              |                         |     |            |            |
| Keyless Start                        |                         |     |            |            |

|             |                                                                      |               |   |                       |             |
|-------------|----------------------------------------------------------------------|---------------|---|-----------------------|-------------|
| Attachments | Selectable Joystick Controls (SJC)                                   | M0185-R01-C04 | 1 | \$2,750.00            | \$2,750.00  |
|             | 40" Planer, High Flow                                                | 6726632       | 1 | \$25,760.00           | \$25,760.00 |
|             | --- Nozzle Spray Kit for 40" Planer                                  | 7113092       | 1 | \$344.00              | \$344.00    |
|             | 8811 Backhoe                                                         | 7130772       | 1 | \$12,050.00           | \$12,050.00 |
|             | --- 8811 Mounting Kit for M-Series Loaders (500,600 & 700 platform)  | 7168488       | 1 | \$360.00              | \$360.00    |
|             | --- Quick-Tach Rear Stabilizer Kit                                   | 6811449       | 1 | \$1,395.00            | \$1,395.00  |
|             | --- Bob-Tach Adapter (Spacer) Kit for M-Series Loaders               | 7168932       | 1 | \$590.00              | \$590.00    |
|             | --- Quick-Tach Stabilizer Mounting Kit                               | 7152512       | 1 | \$440.00              | \$440.00    |
|             | --- Rear Auxiliary Hydraulic Kit                                     | 7220912       | 1 | \$2,210.00            | \$2,210.00  |
|             | 18" Base Class 3, Must order cutting edge.                           | M7023         | 1 | \$0.00                | \$0.00      |
|             | --- 18" X-Change Std. Duty Trenching Bucket, Class 3 (Weld-on Teeth) | M7023-R01-C01 | 1 | \$825.00              | \$825.00    |
|             | 30" Base Class 3, Must order cutting edge.                           | M7028         | 1 | \$0.00                | \$0.00      |
|             | --- 30" X-Change Trenching Bucket, Class 3, Smooth                   | M7028-R01-C03 | 1 | \$887.00              | \$887.00    |
|             | 96" Dozer Blade, 6-Way                                               | 7105781       | 1 | \$6,250.00            | \$6,250.00  |
|             |                                                                      |               |   | Total for these items | \$63,460.00 |

| Description                                          | Part No                                                                                                                      | Qty | Price Ea.   | Total       |
|------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------|-----|-------------|-------------|
| T870 Bobcat Compact Track Loader (iT4)               | M0195                                                                                                                        | 1   | \$75,876.00 | \$75,876.00 |
| 99.2 HP Turbo Interim Tier 4 Diesel Engine           | Lift Path: Vertical                                                                                                          |     |             |             |
| Air Intake Heater - Automatically Activated          | Lights, Front & Rear                                                                                                         |     |             |             |
| Auxiliary Hydraulics: Variable Flow                  | Operator Cab                                                                                                                 |     |             |             |
| Backup Alarm                                         | Includes: Adjustable Suspension Seat, Top & Rear                                                                             |     |             |             |
| Bob-Tach                                             | Windows, Seat Bar and Seat Belt                                                                                              |     |             |             |
| Bobcat Interlock Control System (BICS)               | Roll Over Protective Structure (ROPS) meets SAE-J1040 & ISO 3471                                                             |     |             |             |
| Controls: Bobcat Standard Controls with Power Assist | Falling Object Protective Structure (FOPS) meets SAE-J1043 & ISO 3449, Level I; (Level II is available through Bobcat Parts) |     |             |             |
| Engine/Hydraulic Systems Shutdown                    | Parking Brake: Spring Applied, Pressure Released                                                                             |     |             |             |
| Horn                                                 |                                                                                                                              |     |             |             |
| Instrumentation: Engine Temperature & Fuel Gauges,   |                                                                                                                              |     |             |             |
| Hourmeter, RPM and Warning Lights                    |                                                                                                                              |     |             |             |

Lift Arm Support

(SAPR)

Roller Suspension with 4 Rollers

Tracks: Rubber, 17.7" wide

Warranty: 12 Months, Unlimited Hours

Total for this Machine \$75,876.00

|                                      |               |
|--------------------------------------|---------------|
| Total of Items Quoted                | \$139,336.00  |
| Dealer P.D.I.                        | \$550.00      |
| Freight Charges                      | \$2,566.00    |
| Dealer Assembly Charges              | \$1,360.00    |
| Discount rebate in lieu of financing | (\$5,000.00)  |
| Discount Target Model Rebate         | (\$1,800.00)  |
| Discount Ranchers discount           | (\$13,934.00) |
| Sales total before Taxes             | \$123,078.00  |
| Taxes: State Inventory Tax           | \$213.48      |
| Quote Total - US dollars             | \$123,291.48  |

Notes:

All prices subject to change without prior notice or obligation. This price quote supersedes all preceding price quotes.  
Customer must exercise his purchase option within 30 days from quote date.

Customer Acceptance:

Purchase Order: \_\_\_\_\_

Authorized Signature:

Print: \_\_\_\_\_ Sign: \_\_\_\_\_ Date: \_\_\_\_\_





## CHASSIS SPECIFICATIONS SUMMARY

October 22, 2014

### 2016 MACK GU533

DUMP . . . . . Inner City  
STRAIGHT TRUCK WITHOUT TRAILER

|             |                                 |              |                                                                  |
|-------------|---------------------------------|--------------|------------------------------------------------------------------|
| Engine      | CUMMINS ISL-D<br>345HP          | Transmission | 3000-RDS-6                                                       |
|             |                                 | Clutch       | OMIT CLUTCH                                                      |
| Front Axle  | 14,600# FXL14.6                 | Rear Axle    | 40,000# MT-40-14X4D Ratio 5.86                                   |
| Suspension  | 14,600#                         | Suspension   | 40,000# HMX400                                                   |
| Tires       | Front: 12R22.5<br>Rear: 11R22.5 | Wheels       | 22.5x8.25 STEEL DISC (10-HOLE)<br>22.5x8.25 STEEL DISC (10 HOLE) |
| Ratings     | GVW: 54,600#                    | Fuel Tanks   | LH: 88gal                                                        |
| Fifth Wheel |                                 | Sleeper      |                                                                  |

### PRICING SUMMARY

|                                             | List Price   |
|---------------------------------------------|--------------|
| CHASSIS BASE                                | \$167,180.00 |
| Factory Options                             | \$13,823.00  |
| Allison Pricing                             | \$6,900.00   |
| Freight                                     | \$2,100.00   |
| Less Additional Factory Rebate              |              |
| Sales Allowances                            |              |
| TOTAL FACTORY                               | \$190,003.00 |
| Locally Installed Options                   | \$16,900.00  |
| Soft Products/Bulldog Protection Plans      | \$0.00       |
| TOTAL FACTORY & LOCAL                       | \$206,903.00 |
| Less Customer Discount from List            | \$84,042.00  |
| SELLING PRICE (Excluding Taxes/Fees/Trade)  | \$122,861.00 |
| Less Trade Allowances per New Vehicle       | \$0.00       |
| QUOTED PRICE OR TRADE DIFFERENCE            | \$122,861.00 |
| Surcharge                                   | \$0.00       |
| Net FRET or Canadian GST Taxes              | \$0.00       |
| Tire Tax Credit (Municipal Only)            | (\$275.36)   |
| Sales/Usage Taxes                           | \$275.70     |
| License/Title/Etc.                          | \$62.00      |
| Misc Fees not subject to FRET               | \$130.00     |
| ACQUISITION COST (Include Trade if applies) | \$123,053.34 |
| Less Down Payment                           |              |
| BALANCE DUE Per Unit                        | \$123,053.34 |
| PRICE (Total Order)                         | \$0.00       |
| BALANCE DUE (Total Order)                   | \$0.00       |

Total Quantity: 0

Estimated Total Weight: 15,888#

Reference#: AFYN006016A

X \_\_\_\_\_  
Prepared For: \_\_\_\_\_  
City of Kerrville  
62 Hays St  
Kerrville, TX 78028  
Phone: --  
Fax: --

Customer Signature \_\_\_\_\_ Date \_\_\_\_\_

X \_\_\_\_\_  
Presented By: \_\_\_\_\_  
David Parry  
Grande Truck Center, Inc.  
4562 IH 10 East  
San Antonio, TX 78219  
(210) 661-4121  
dparry@grandetruck.com

Dealer Signature \_\_\_\_\_ Date \_\_\_\_\_

## **Agenda Item:**

3A. Proposed voluntary annexation of approximately 23.38 acre tract of land located at 5235 Highway 27 East, James Avery Craftsman. (staff)

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

---

**SUBJECT:** Public hearing concerning a petition for annexation of an approximately 23.38 acre tract of land out of the F. Rodriguez Survey No. 72, Abstract No. 280, Kerr County, Texas, and located at 5235 State Highway 27 East.  
Applicant: AP29, LLC (File No.2014-044)

**FOR AGENDA OF:** January 13, 2015    **DATE SUBMITTED:** January 6, 2015

**SUBMITTED BY:** Chris Stewart    **CLEARANCES:** Dieter Werner

**EXHIBITS:** Resolution 38-2014  
Petition for Annexation  
Exhibit A – Metes & Bounds Description and Survey  
Exhibit B – Location Map  
Exhibit C – Annexation Service Plan

**AGENDA MAILED TO:** Harvey Brinkmann C/O Lee Voelkel  
212 Clay Street  
Kerrville, Texas 75201

**APPROVED FOR SUBMITTAL BY CITY MANAGER:** 

---

| <b>Expenditure</b> | <b>Current Balance</b> | <b>Amount</b>    | <b>Account</b> |
|--------------------|------------------------|------------------|----------------|
| <b>Required:</b>   | <b>in Account:</b>     | <b>Budgeted:</b> | <b>Number:</b> |
| <b>\$ NA</b>       | <b>\$ NA</b>           | <b>\$ NA</b>     | <b>NA</b>      |

**PAYMENT TO BE MADE TO:**

**REVIEWED BY THE DIRECTOR OF FINANCE:**

---

**SUMMARY STATEMENT**

The applicant is seeking annexation in order to connect to the City of Kerrville's utility systems for water and sanitary sewer and receive other city services. The subject property is a currently undeveloped and consists of 23.38 acres located at 5235 State Highway 27. The site is across the highway from the airport and is bounded on the other side by the Guadalupe River. The Future Land Use plan shows the area as "Industrial". The Planning and Zoning Commission has recommended approval of the PDD zoning concept, as submitted under File No. 2014-47

The following timeline applies to the annexation process:

*January 13, 2015*

First public hearing on the requested annexation by the City Council.

*January 27, 2015*

Second public hearing on the requested annexation by the City Council.



*February 10, 2015*

First ordinance reading by the City Council. Public hearing and first reading on PDD zoning request.

*February 24, 2015*

Second and final ordinance reading by the City Council. Second reading on PDD zoning request.

**RECOMMENDED ACTION**

Hold the public hearing for citizen comment.

**CITY OF KERRVILLE, TEXAS  
RESOLUTION NO. 38-2014**

**A RESOLUTION GRANTING A PETITION REQUESTING THE ANNEXATION OF AN APPROXIMATE 23.38 ACRE TRACT OUT OF THE F. RODRIGUEZ SURVEY NO. 72, ABSTRACT NO. 280, WITHIN KERR COUNTY, TEXAS, AND CONSISTING OF THE PROPERTY ADDRESSED AS 5235 STATE HIGHWAY 27; AND ORDERING THE PREPARATION OF AN ANNEXATION ORDINANCE**

WHEREAS, on November 3, 2014, the owner of an approximate 23.38 acre tract out of the F. Rodriguez Survey No. 72, Abstract No. 280, within Kerr County, Texas, and more commonly known as 5235 State Highway 27, filed a petition with the City and requested annexation of this property; and

WHEREAS, having considered the petition and hearing the recommendation from City staff, City Council finds it to be in the public interest to grant said petition and to initiate the annexation process, which includes the preparation of an ordinance annexing the subject property;

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

**SECTION ONE.** The petition requesting annexation of an approximate 23.38 acre tract out of the F. Rodriguez Survey No. 72, Abstract No. 280, within Kerr County, Texas, consisting of the property addressed as 5235 State Highway 27, and more fully described in said petition, a copy of which is attached as **Exhibit A**, is granted.

**SECTION TWO.** City staff is directed to initiate the annexation process under the authority of the City's Charter and Section 43.021 of the Texas Local Government Code and to prepare an ordinance annexing the subject property described in the above-referenced petition.

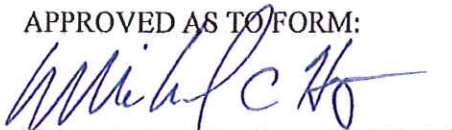
**PASSED AND APPROVED ON this the \_\_\_\_ day of \_\_\_\_\_, A.D., 2014.**

\_\_\_\_\_  
Jack Pratt, Jr., Mayor

ATTEST:

\_\_\_\_\_  
Brenda G. Craig, City Secretary

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Michael C. Hayes, City Attorney

PETITION REQUESTING ANNEXATION TO THE CORPORATE LIMITS OF THE CITY  
OF KERRVILLE, TEXAS, OF TEXAS ACRES OUT OF THE F. Rodriguez  
Survey, Abstract Number 280 KERR COUNTY TEXAS

TO THE HONORABLE MAYOR AND CITY COUNCIL OF THE CITY OF KERRVILLE,  
TEXAS:

AP29, LLC is the sole owner of an approximately 23.38 acre tract of  
land located adjacent to the incorporated limits of the City of Kerrville which is out of the  
Survey No. 72 Abstract No. 280 Kerr County, Texas, and is more particularly  
described as follows:

SEE EXHIBIT "A". (Paste in legal description here & provide two copies of  
the survey with the legal description to Development Services Department)

The above-described property is (a) one-half mile or less in width, (b) contiguous to the  
incorporated limits of the City of Kerrville, Texas, and (c) presently vacant and without  
residents or on which fewer than three qualified voters reside.

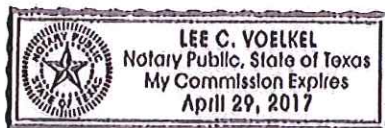
In accordance with Texas Local Government Code §43.028,  
AP29, LLC hereby respectfully requests and petitions that the above-  
described property be annexed into the incorporated limits of the City of Kerrville, Texas.  
SUBMITTED THIS 3rd day of November, 2014

By: [Signature]  
Legally authorized signature

ACKNOWLEDGEMENT

THE STATE OF TEXAS           §  
                                             §  
COUNTY OF KERR           §

This instrument was acknowledged before me on the 3rd day of November, 2014  
by Harvey Brinkman for and on behalf of  
AP29, LLC.



[Signature]  
NOTARY PUBLIC, STATE OF TEXAS  
Printed Name: Lee C. Voelkel  
My Commission Expires: April 29, 2017



EXHIBIT A

FIELD NOTES DESCRIPTION FOR 23.38 ACRES OF LAND OUT OF  
THE AP 29, LLC LAND ALONG STATE HIGHWAY NO. 27 IN KERR  
COUNTY, TEXAS

Being all of a certain tract or parcel of land containing 23.38 acres, more or less, out of F. Rodriguez Survey No. 72, Abstract No. 280 in Kerr County, Texas; part of a certain 29.15 acre tract conveyed from Amegy Bank National Association to AP 29, LLC by a Special Warranty Deed executed the 29<sup>th</sup> day of March, 2013 and recorded in File No. 13-02298 of the Official Public Records of Kerr County, Texas; and being more particularly described by metes and bounds as follows:

BEGINNING at an unmarked point in a fence, the northwest line of said 29.15 acre tract for the north corner of the herein described tract; which point bears: 349.42 ft. S27°31'37"W from ½" iron stake found for the north corner of 29.15 acre tract; and approximately, 5285 ft. North and 1536 ft. West from the southeast corner of said Survey No. 72:

THENCE, upon, over and across said 29.15 acre tract S52°11'40"E, 982.25 ft. to an unmarked point in its east line for the east corner of the herein described tract;

THENCE, with the east line of said 29.15 acre tract: 74.50 ft. along the arc of a 23°45' curve to the right subtended by a 17°41'47" central angle and 241.21 ft. radius (long chord: S10°57'51"W, 74.21 ft.) to a ½" iron stake found at its end; S19°48'48"W, 295.07 ft. to a fence angle post; S20°19'58"W, 15.74 ft. to a fence angle post; S52°47'18"W, 795.55 ft. to a fence angle post; and S55°38'25"W, 209.17 ft. to a ½" iron stake found on the east bank of the Guadalupe River for the south corner of the herein described tract and 29.15 acre tract;

THENCE, along the east bank of the said Guadalupe River with the southwest line of the said 29.15 acre tract: N17°53'04"W, 86.02 ft. to an unmarked point; N17°20'46"W, 438.90 ft. to a ½" iron stake found at the base of a 34" diameter Cypress tree; N09°14'47"W, 204.76 ft. to a found ½" iron stake; and N08°58'14"W, 164.18 ft. to a ½" iron stake found for the west corner of the herein described tract and 29.15 acre tract;

THENCE, with the northwest line of said 29.15 tract N27°31'37"E., 790.95 ft. to the PLACE OF BEGINNING.

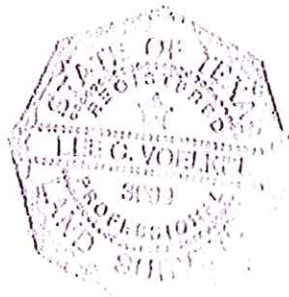
I hereby certify that this field notes description and accompanying plat are accurate representations of the property shown and described hereon as determined by a survey made on the ground under my direction and supervision, except no survey was made to reestablish Patent Survey lines or corners; and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

(Bearing basis = True north based on GPS observations)

Dated this 3rd day of November, 2014



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



FIELD NOTES DESCRIPTION FOR 23.38 ACRES OF LAND OUT OF  
THE AP 29, LLC LAND ALONG STATE HIGHWAY NO. 27 IN KERR  
COUNTY, TEXAS

Being all of a certain tract or parcel of land containing 23.38 acres, more or less, out of F. Rodriguez Survey No. 72, Abstract No. 280 in Kerr County, Texas; part of a certain 29.15 acre tract conveyed from Amegy Bank National Association to AP 29, LLC by a Special Warranty Deed executed the 29<sup>th</sup> day of March, 2013 and recorded in File No. 13-02298 of the Official Public Records of Kerr County, Texas; and being more particularly described by metes and bounds as follows:

BEGINNING at an unmarked point in a fence, the northwest line of said 29.15 acre tract for the north corner of the herein described tract; which point bears: 349.42 ft. S27°31'37"W from ½" iron stake found for the north corner of 29.15 acre tract; and approximately, 5285 ft. North and 1536 ft. West from the southeast corner of said Survey No. 72:

THENCE, upon, over and across said 29.15 acre tract S52°11'40"E, 982.25 ft. to an unmarked point in its east line for the east corner of the herein described tract;

THENCE, with the east line of said 29.15 acre tract: 74.50 ft. along the arc of a 23°45' curve to the right subtended by a 17°41'47" central angle and 241.21 ft. radius (long chord: S10°57'51"W, 74.21 ft.) to a ½" iron stake found at its end; S19°48'48"W, 295.07 ft. to a fence angle post; S20°19'58"W, 15.74 ft. to a fence angle post; S52°47'18"W, 795.55 ft. to a fence angle post; and S55°38'25"W, 209.17 ft. to a ½" iron stake found on the east bank of the Guadalupe River for the south corner of the herein described tract and 29.15 acre tract;

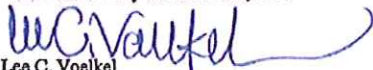
THENCE, along the east bank of the said Guadalupe River with the southwest line of the said 29.15 acre tract: N17°53'04"W, 86.02 ft. to an unmarked point; N17°20'46"W, 438.90 ft. to a ½" iron stake found at the base of a 34" diameter Cypress tree; N09°14'47"W, 204.76 ft. to a found ½" iron stake; and N08°58'14"W, 164.18 ft. to a ½" iron stake found for the west corner of the herein described tract and 29.15 acre tract;

THENCE, with the northwest line of said 29.15 tract N27°31'37"E, 790.95 ft. to the PLACE OF BEGINNING.

I hereby certify that this field notes description 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)

Dated this 3rd day of November, 2014

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



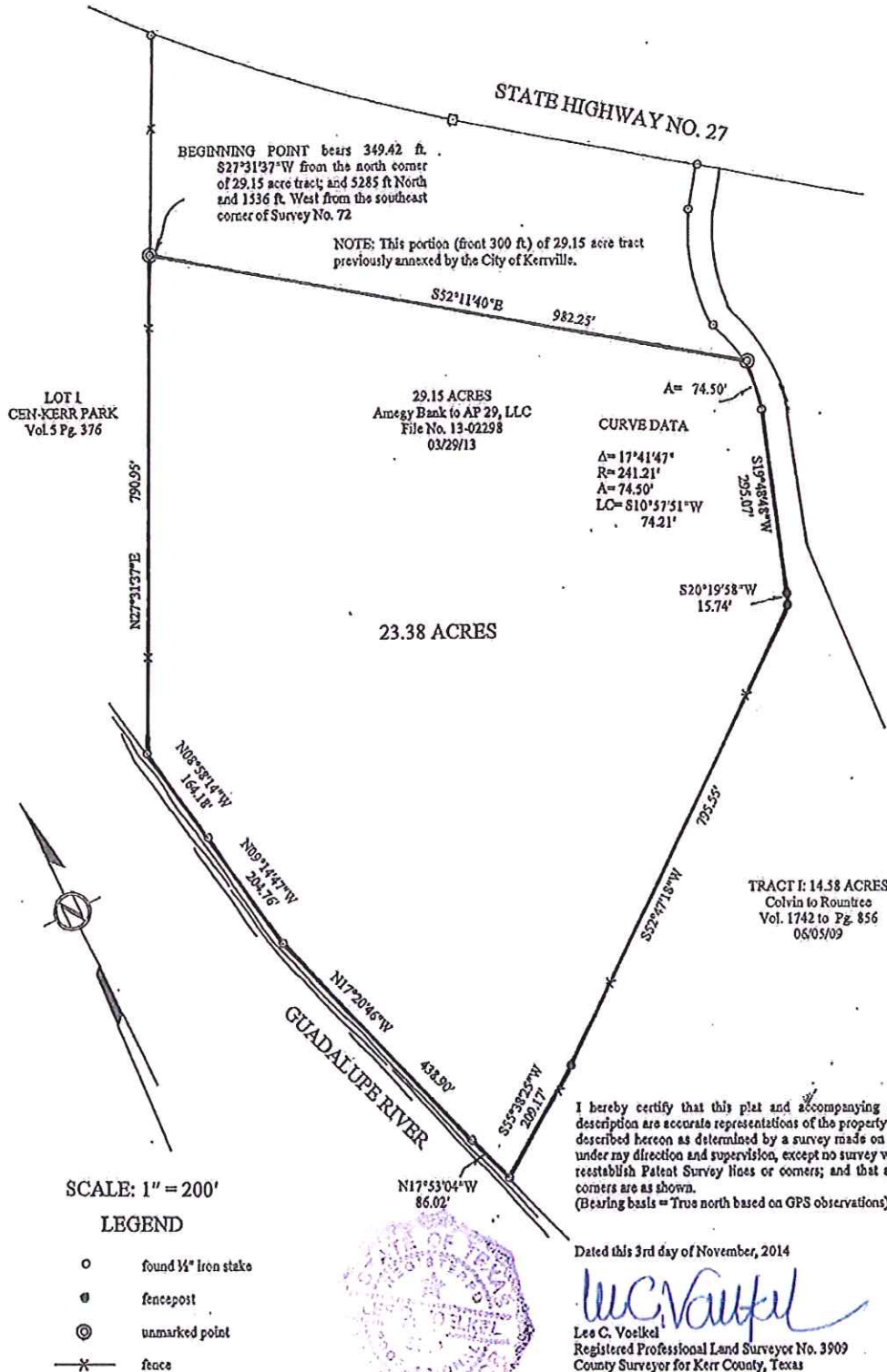
VOELKEL

LAND SURVEYING, PLLC ♦ PHONE: 830-257-3313 ♦ 212 CLAY STREET, KERRVILLE, TEXAS 78028



# EXHIBIT B

SURVEY PLAT FOR 23.38 ACRES OF LAND, MORE OR LESS, OUT OF F. RODRIGUEZ SURVEY NO. 72, ABSTRACT NO. 280 IN KERR COUNTY, TEXAS; PART OF A CERTAIN 29.15 ACRE TRACT CONVEYED FROM AMEGY BANK NATIONAL ASSOCIATION TO AP 29, LLC BY A SPECIAL WARRANTY DEED EXECUTED THE 29<sup>TH</sup> DAY OF MARCH, 2013 AND RECORDED IN FILE NO. 13-02298 OF THE OFFICIAL PUBLIC RECORDS OF KERR COUNTY, TEXAS





## EXHIBIT C

### ANNEXATION SERVICE PLAN

| SERVICE                         | DETAILS OF SERVICE PROVIDED                                                                                                                                                                                                                                                                                                                                                                                                                              | TIMETABLE                                                                 |
|---------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------|
| Animal Control                  | The provisions of animal control services shall be in effect following annexation of the property.                                                                                                                                                                                                                                                                                                                                                       | Immediately following annexation                                          |
| Code Enforcement                | The provisions of Code Enforcement services, including the application and enforcement of building, electrical, plumbing, and other related code requirements adopted by the City shall be made immediately to the area upon annexation. The preparation of a zoning plan shall serve as a basis for the zoning of land following annexation. The adoption of the zoning plan shall be in accordance with the procedures of the City's Zoning Ordinance. | Immediately following annexation, zoning to be concurrent with annexation |
| Fire Protection and Suppression | Fire protection and suppression personnel and equipment from the Kerrville Fire Department will be provided to the area as needed.                                                                                                                                                                                                                                                                                                                       | Immediately following annexation                                          |
| Fire Prevention                 | The services of the City's Fire Marshall shall be provided to the area.                                                                                                                                                                                                                                                                                                                                                                                  | Immediately following annexation.                                         |
| Library                         | Future residents of the area, if any, will continue to be entitled to utilize all City's Library facilities.                                                                                                                                                                                                                                                                                                                                             | Immediately following annexation.                                         |
| Parks and Recreation            | The City's Parks and Recreation services will continue to be available to any area residents.                                                                                                                                                                                                                                                                                                                                                            | Immediately following annexation                                          |
| Police Protection               | Kerrville Police Department protection personnel and equipment shall be provided to the area immediately upon annexation. Police enforcement and protection services shall be provided through regular patrol activities.                                                                                                                                                                                                                                | Immediately following annexation                                          |

# ANNEXATION SERVICE PLAN (CONTINUED)

| SERVICE                                                  | DETAILS OF SERVICE PROVIDED                                                                                                                                                       | TIMETABLE                        |
|----------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------|
| Public Services - Street Department                      | Public streets not maintained by the Texas Department of Transportation within the area shall be maintained by the City.                                                          | Immediately following annexation |
| Sanitation (Refuse Collection)                           | Refuse collection shall be available to any residents of the annexed area at the same costs and procedures as required of City residents and businesses.                          | Immediately following annexation |
| Traffic Engineering                                      | Traffic control devices and street markers shall be installed where deemed necessary by the City Street Department, except as provided by the Texas Department of Transportation. | Immediately following annexation |
| Utilities (Water and Wastewater Collection) Distribution | Extension of utilities to the property shall be in accordance with the City's Subdivision Ordinance.                                                                              | As the property develops         |

## **Agenda Item:**

4A. Ordinance No. 2015-01, amending the City's "Zoning Code" by adding a definition of "Community Gardens" to Article 11-I-3 "Definitions and interpretation of words and phrases"; revising Article 11-I-4 to add community garden as a use that is permitted within any zoning district; revising Article 11-I-19 to adopt regulations applicable to the use of property as a community garden; containing a cumulative clause; containing a savings and severability clause; providing for a maximum penalty or fine of two thousand dollars (\$2000.00); and ordering publication. (staff)



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

**SUBJECT:** Public hearing, consideration, and action on Ordinance concerning a proposed Zoning Code Text Amendment to amend Article 11-I-3 and Article 11-I-4 of the Zoning Regulations, related to Community Garden land use, associated accessory use and site development standards.

**FOR AGENDA OF:** January 13, 2015 **DATE SUBMITTED:** January 6, 2015

**SUBMITTED BY:** Chris Stewart, AICP,  
Interim Senior Planner

**CLEARANCES:**

**EXHIBITS:** Ordinance

**AGENDA MAILED TO:**

**APPROVED FOR SUBMITTAL BY CITY MANAGER:** 

| <b>Expenditure<br/>Required:</b> | <b>Current Balance<br/>in Account:</b> | <b>Amount<br/>Budgeted:</b> | <b>Account<br/>Number:</b> |
|----------------------------------|----------------------------------------|-----------------------------|----------------------------|
| \$                               | \$                                     | \$                          |                            |

**PAYMENT TO BE MADE TO:**

**REVIEWED BY THE DIRECTOR OR FINANCE:**

**SUMMARY STATEMENT**

The current zoning regulations do not contain guidance on "community gardens" as a use, nor regarding accessory uses which usually accompany such principal use. Based upon recent inquiries about the feasibility of community garden use, with respect to the zoning regulations, Staff has initiated this text amendment to be able to address this use. Currently under the Zoning Code, to use an accessory building on a property, there must be a primary structure. Community gardens are allowed now and there is at least one community garden that exists; however, this code amendment is intended to specifically allow community gardens and, authorize them to use accessory structures under site development standards.

As proposed, the amendment to the regulations would define a "community garden", permit this use within all districts, and apply a set of site development standards. Specifically, the amendments are as follows:

**Art. 11-1-3**

**DEFINITIONS AND INTERPRETATION OF WORDS AND PHRASES**

**Add the following definition.**

**a) Definitions:** For purposes of this Chapter, the following words and phrases shall have the following meanings unless the context otherwise clearly indicates a different meaning:

**Community Gardens:** a single piece of land gardened collectively by a group of people for the growing and harvesting of food crops and/or non-food, ornamental crops, such as flowers. Community gardens may be divided into separate plots for cultivation by one or more individuals

or may be farmed collectively by members of the group and may include common areas maintained and used by group members.

**Art. 11-1-4                    ZONING DISTRICTS-GENERALLY**

**Add the following land use to be permitted in any zone.**

**(f) Uses Permitted in Any Zone:** The following uses are permitted in any zoning district of the City:

“Community Gardens”.

**Art. 11-1-19                    SUPPLEMENTARY DEVELOPMENT REQUIREMENTS**

**Add the following site development regulations.**

**H. Community Gardens:** a single piece of land gardened collectively by a group of people for the growing and harvesting of food crops and/or non-food, ornamental crops, such as flowers. Community gardens may be divided into separate plots for cultivation by one or more individuals or may be farmed collectively by members of the group and may include common areas maintained and used by group members and shall be subject to the following site development regulations:

1. can be publicly or privately held;
2. shall be permitted in any zoning district of the city;
3. may be placed on a roof structure provided that all applicable building and fire codes are in compliance;
4. lighting shall be shielded so that substantially all directly emitted light falls within the property.
5. shall only be utilized for gardening purposes and not utilized as a storage lot for equipment or materials not associated with the garden;
6. compost piles abutting adjacent properties shall not be visible from adjacent property (shielded from view by shrubbery or an enclosure);
7. shall be managed to prevent the harborage of rodents and pests.
8. shall be maintained to prevent odors.
9. the site shall be designed and maintained to prevent water from irrigation and/or other activities and/or fertilizer from draining onto adjacent property.
10. trash areas shall be provided and screened on at least three (3) sides from public view;
11. commercial waste disposal shall be required for the site;
12. parking spaces shall be constructed in accordance with the City of Kerrville's parking standards and required based on one (1) space per 4,000 square ft;
13. an accessory structures such as greenhouses, sheds, farmstands, or other similar structures may be placed on the property without the presence of an associated primary structure;
14. an accessory structure must adhere to the primary structure setback requirements for the zoning district or land use;
15. may only be utilized for the storage of equipment and materials required for the operation of a community garden;

*16. must be removed from the property upon the cessation of the community garden*

The Planning and Zoning Commission held a public hearing on this matter at its December 18, 2014 regular meeting. The Commission, noting concerns about oversight and liability, recommended unanimously against the Ordinance.

### **RECOMMENDED ACTION**

Staff recommends that the Council hold the required public hearing to receive public comments and take action on the Ordinance.







**CITY OF KERRVILLE, TEXAS  
ORDINANCE NO. 2015-01**

**AN ORDINANCE AMENDING THE CITY'S "ZONING CODE" BY ADDING A DEFINITION OF "COMMUNITY GARDENS" TO ARTICLE 11-I-3 "DEFINITIONS AND INTERPRETATION OF WORDS AND PHRASES"; REVISING ARTICLE 11-I-4 TO ADD COMMUNITY GARDEN AS A USE THAT IS PERMITTED WITHIN ANY ZONING DISTRICT; REVISING ARTICLE 11-I-19 TO ADOPT REGULATIONS APPLICABLE TO THE USE OF PROPERTY AS A COMMUNITY GARDEN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2000.00); AND ORDERING PUBLICATION**

**WHEREAS**, pursuant to Texas Local Government Code Sections 211.006 and 211.007, legal notice has been given to all parties in interest and citizens by publication in the official newspaper and otherwise, of a hearing which was held before the City Council on January 13, 2015, which considered a report of the City of Kerrville Planning and Zoning Commission regarding its recommendations on an ordinance, the adoption of which will result in revisions to Articles 11-I-3, 11-I-4, and 11-I-19 of the City's Zoning Code which will add regulations with respect to the use of a "community garden" as defined; and

**WHEREAS**, such public hearing was held in the Council Chambers beginning at approximately 6:00 p.m. on January 13, 2015, as advertised; and

**WHEREAS**, after a full hearing, 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 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 properties 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 to revise Articles 11-I-3, 11-I-4, and 11-I-19 to allow for and address the use of a "community garden";

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

**SECTION ONE.** Article 11-I-3 "Definitions and Interpretation of Words and Phrases" of the City's Zoning Code is amended by adding the language that is underlined (added), which is a definition of "community" as follows:

**“Art. 11-I-3 DEFINITIONS AND INTERPRETATION OF WORDS AND PHRASES**

- (a) **Definitions:** For purposes of this Chapter, the following words and phrases shall have the following meanings unless the context otherwise clearly indicates a different meaning:

⋮

- (28) Community Garden: A single piece of land gardened collectively by a group of people for the growing and harvesting of food crops and/or nonfood, ornamental crops, such as flowers. A community garden may be divided into separate plots for cultivation by one or more individuals or may be farmed collectively by members of the group and may include common areas maintained and used by group members.”

**SECTION TWO.** Subsection (f) of Article 11-I-4 “Zoning Districts - Generally” of the City’s Zoning Code is amended by adding the language that is underlined (added), which will authorize the use of a “community garden” within any zoning district of the City as follows:

- “(f) **Uses Permitted in Any Zone:** The following uses are permitted in any zoning district of the City:

⋮

- (1) Community garden, but subject to the application of regulations found within Art. 11-I-19, below.”

**SECTION THREE.** Article 11-I-19 “Special Development Regulations for Specific Uses” of the City’s Zoning Code is amended by adding the language that is underlined (added), which will apply regulations to community gardens as follows:

- “(h) Community Gardens: Property used for the purpose of a community garden must comply with the following:

- (1) may be publically or privately owned;
- (2) may be placed and maintained on a roof structure provided that it meets all applicable building and fire code requirements;
- (3) any lighting must be shielded so that substantially all directly emitted light falls within the property;
- (4) the property may not be used for the storage of items, to include vehicles, equipment, or materials, which are not directly associated with the operation of the community garden;



- (5) compost or and other organic material must not be visible from an adjacent property, to include being shielded by shrubbery, an enclosure, or fence;
- (6) must be routinely managed to control for and prevent the harborage of rodents and other pests;
- (7) must be routinely managed to control for and prevent odors;
- (8) must be designed, maintained, and operated to prevent water from irrigation, fertilizer, and other substances from traveling onto adjacent property;
- (9) trash receptacles must be provided and which must be screened on at least 3 sides so as to prevent public view;
- (10) commercial waste service must be secured for the site;
- (11) an accessory structure, to include a greenhouse, shed, farmstand, or a similar structure:
  - a. may be placed and used on the property without the presence of a primary structure;
  - b. must comply with the setbacks that would be applicable to a primary structure for the zoning district;
  - c. may only be used for the storage of equipment and materials directly required for the operation of the community garden; and
  - d. must be removed from the property upon the cessation of the community garden.”

**SECTION FOUR.** 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 FIVE.** 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 SIX.** The penalty for violation of this Ordinance shall be in accordance with the general penalty provisions contained in Section 1-9, Chapter 1 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 SEVEN.** 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 EIGHT.** 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 \_\_\_\_ day of \_\_\_\_\_, A.D., 2015.**

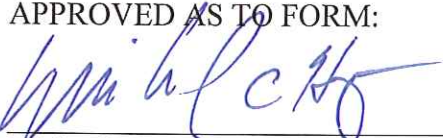
**PASSED AND APPROVED ON SECOND AND FINAL READING, this the \_\_\_\_ day of \_\_\_\_\_, A.D., 2015.**

\_\_\_\_\_  
Jack Pratt, Jr., Mayor

ATTEST:

\_\_\_\_\_  
Brenda G. Craig, City Secretary

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Michael C. Hayes, City Attorney

## **Agenda Item:**

5A. Ordinance No. 2015-02, annexing an approximate 3.05 acre tract out of the W.H. Crawford Survey No. 653, Abstract No. 123, within Kerr County, Texas; said property being located adjacent to the corporate limits of the City of Kerrville, Texas, and consisting of the property addressed as 421 Roy Street; further describing the territory to be annexed; adopting a service plan for the territory annexed; and establishing the zoning for the area annexed. (staff)



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

**SUBJECT:** First reading of Ordinance concerning a proposed voluntary annexation and an initial zoning classification of (RM) "Residential Mix" District, for an approximately 3.05 acre tract of land out of the W.H. Crawford Survey No. 653, Abstract No. 123, Kerr County, Texas, located at 421 Roy Street.

**FOR AGENDA OF:** January 13, 2015

**DATE SUBMITTED:** January 6, 2015

**SUBMITTED BY:** Chris Stewart, AICP,  
Interim Senior Planner

**CLEARANCES:**

**EXHIBITS:** Ordinance and associated exhibits.

**AGENDA MAILED TO:**

**APPROVED FOR SUBMITTAL BY CITY MANAGER:**



| <b>Expenditure<br/>Required:</b> | <b>Current Balance<br/>in Account:</b> | <b>Amount<br/>Budgeted:</b> | <b>Account<br/>Number:</b> |
|----------------------------------|----------------------------------------|-----------------------------|----------------------------|
| \$                               | \$                                     | \$                          |                            |

**PAYMENT TO BE MADE TO:**

**REVIEWED BY THE DIRECTOR OR FINANCE:**

**SUMMARY STATEMENT**

This item concerns the voluntary annexation and initial zoning classification of 421 Roy St. The applicants requested annexation by petition on August 1, 2014 and the Council granted the petition and directed Staff to begin the proceedings with Resolution No. 27-2014 on September 23, 2014. Two public hearings have been held concerning the request to-date.

The process is scheduled for second reading on both ordinances January 27, 2015.

The applicant has requested RM "Residential Mix" zoning. This district allows all uses permitted in the "RC" Residential Cluster District with the addition of the development of subdivisions which include the location of manufactured housing, subject to certain development restrictions.

**RECOMMENDED ACTION**

Staff recommends that the Council take action on the annexation and initial zoning, for this first reading of the ordinance.





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 B - Location Map



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.

0 200 400 800 Feet

1 inch = 400 feet





**CITY OF KERRVILLE, TEXAS  
ORDINANCE NO. 2015-02**

**AN ORDINANCE ANNEXING AN APPROXIMATE 3.05 ACRE TRACT OUT OF THE W.H. CRAWFORD SURVEY NO. 653, ABSTRACT NO. 123, WITHIN KERR COUNTY, TEXAS; SAID PROPERTY BEING LOCATED ADJACENT TO THE CORPORATE LIMITS OF THE CITY OF KERRVILLE, TEXAS, AND CONSISTING OF THE PROPERTY ADDRESSED AS 421 ROY STREET; FURTHER DESCRIBING THE TERRITORY TO BE ANNEXED; ADOPTING A SERVICE PLAN FOR THE TERRITORY ANNEXED; AND ESTABLISHING THE ZONING FOR THE AREA ANNEXED**

**WHEREAS**, pursuant to Texas Local Government Code Section 43.052(h)(2), the owner of the property described in Section One, below, has petitioned the City of Kerrville, Texas ("City"), to annex said property into the corporate limits of the City; and

**WHEREAS**, having provided all required public notices, held all required public hearings at which people with an interest in the matter were provided an opportunity to be heard, the City Council of the City of Kerrville, Texas, finds it to be in the public interest to approve an ordinance annexing the subject property, adopt a service plan as required by state law, and establish zoning regulations for the area;

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

**SECTION ONE.** The property described and depicted in **Exhibit A** is annexed and incorporated into the corporate limits of the City of Kerrville, Texas, for all legal purposes.

**SECTION TWO.** The petition for annexation concerning the property described in Section One, above, is attached as **Exhibit B**.

**SECTION THREE.** The service plan regarding the provision of public services, as set forth in **Exhibit C** is adopted for the property described in Section One, above, as required by Texas Local Government Code §43.065.

**SECTION FOUR.** Upon the adoption of this Ordinance, the property as described in Section One, above, will be subject to the zoning designation of a "Residential Mix" (RM) District.

**SECTION FIVE.** The provisions of this Ordinance are to be cumulative of all 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 hereby expressly repealed to the extent of any such inconsistency or conflict.

**SECTION SIX.** 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, hereby 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 SEVEN.** The penalty for violation of this Ordinance shall be in accordance with the general penalty provisions contained in Article 1-1-7 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 EIGHT.** In accordance with Section 3.07 of the City Charter and Texas Local Government Code §52.013(a), 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 NINE.** The City Secretary is directed to file a certified copy of this Ordinance together with a copy of the petition requesting annexation with the Kerr County Clerk.

**PASSED AND APPROVED ON FIRST READING, this the \_\_\_\_ day of \_\_\_\_\_, A.D., 2015.**

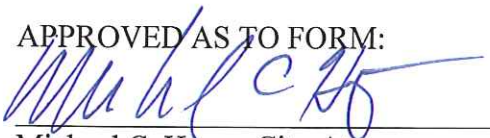
**PASSED AND APPROVED ON SECOND READING, this the \_\_\_\_ day of \_\_\_\_\_, A.D., 2015.**

\_\_\_\_\_  
Jack Pratt, Jr., Mayor

ATTEST:

\_\_\_\_\_  
Brenda G. Craig, City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Michael C. Hayes, City Attorney



## Exhibit A - Pg. 1

### FIELD NOTES DESCRIPTION FOR 3.05 ACRES OF LAND OUT OF THE PAT JACKSON KARR LAND ALONG ROY STREET IN KERR COUNTY, TEXAS

Being all of a certain tract or parcel of land containing 3.05 acres, more or less, out of W. H. Crawford Survey No. 653, Abstract No. 123 in Kerr County, Texas; that same land conveyed as 3 acres from Jewel Osborne, et al to Pat Jackson Karr by a Warranty Deed executed the 3<sup>rd</sup> day of July, 1995 and recorded in Volume 805 at Page 467 of the Real Property Records of Kerr County, Texas; and being more particularly described by metes and bounds as follows:

BEGINNING at a fence cornerpost in the southwest right-of-way line of Roy Street, a public street for the east corner of the herein described tract and said 3 acre tract, and the north corner of a certain one acre tract conveyed as SECOND TRACT from Otillia Marie January, et al to David R. Jackson by a Warranty Deed executed the 3<sup>rd</sup> day of May, 1994 and recorded in Volume 744 at Page 536 of the Real Property Records of Kerr County, Texas;

THENCE, along a fence with the common line between said 3 acre tract and SECOND TRACT S47°16'34"W, at 548.6 ft. passing a fence cornerpost, then continuing not along a fence for a total distance of 600.00 ft. to an unmarked point in the northeast line of a certain one acre tract conveyed from George Griesbach, Independent Executor to Rogelio Fuentes and Debra Fuentes by a Warranty Deed with Vendor's Lien executed the 13<sup>th</sup> day of January, 2006 and recorded in Volume 1501 at Page 666 of the Official Public Records of Kerr County, Texas for the south corner of the herein described tract and southwest common corner of 3 acre tract and SECOND TRACT;

THENCE, with the common line between said 3 and one acre tracts N45°29'26"W, 223.15 ft. to an unmarked point for the west corner of the herein described tract and 3 acre tract, and the south corner of a certain 5.0 acre tract conveyed from Isabel Spenrath to Isabel Spenrath, Trustee by a Warranty Deed executed the 7<sup>th</sup> day of March, 2007 and recorded in Volume 1595 at Page 567 of the Official Public Records of Kerr County, Texas;

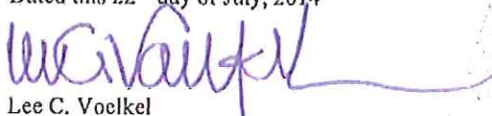
THENCE, with the common line between said 3 and 5.0 acre tracts N47°27'31"E, at 36.7 ft. passing a fence cornerpost, then continuing along a fence for a total distance of 597.20 ft. to a fence cornerpost in the southwest right-of-way line of said Roy Street for the north corner of the herein described tract and northeast common corner of 3 and 5.0 acre tracts;

THENCE, with the northeast line of said 3 acre tract along the southwest right-of-way line of said Roy Street S46°14'19"E, at 87.8 ft. passing a fence cornerpost, then continuing along a fence for a total distance of 221.40 ft. to the PLACE OF BEGINNING.

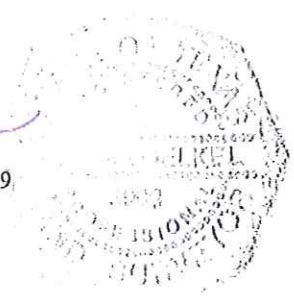
I hereby certify that these field notes and accompanying plat are accurate representations of the property shown and described hereon as determined by a survey made on the ground under my direction and supervision, except no survey was made to reestablish Patent Survey lines or corners; and that all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

Date Surveyed: June 11, 2014

Dated this 22<sup>nd</sup> day of July, 2014

  
Lee C. Voelkel

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





## Exhibit A - Pg. 2

SURVEY PLAT FOR 3.05 ACRES OF LAND, MORE OR LESS, OUT OF W. H. CRAWFORD SURVEY NO. 653, ABSTRACT NO. 123 IN KERR COUNTY, TEXAS; THAT SAME LAND CONVEYED AS 3 ACRES FROM JEWEL OSBORNE, ET AL TO PAT JACKSON KARR BY A WARRANTY DEED EXECUTED THE 3<sup>RD</sup> DAY OF JULY, 1995 AND RECORDED IN VOLUME 805 AT PAGE 467 OF THE REAL PROPERTY RECORDS OF KERR COUNTY, TEXAS

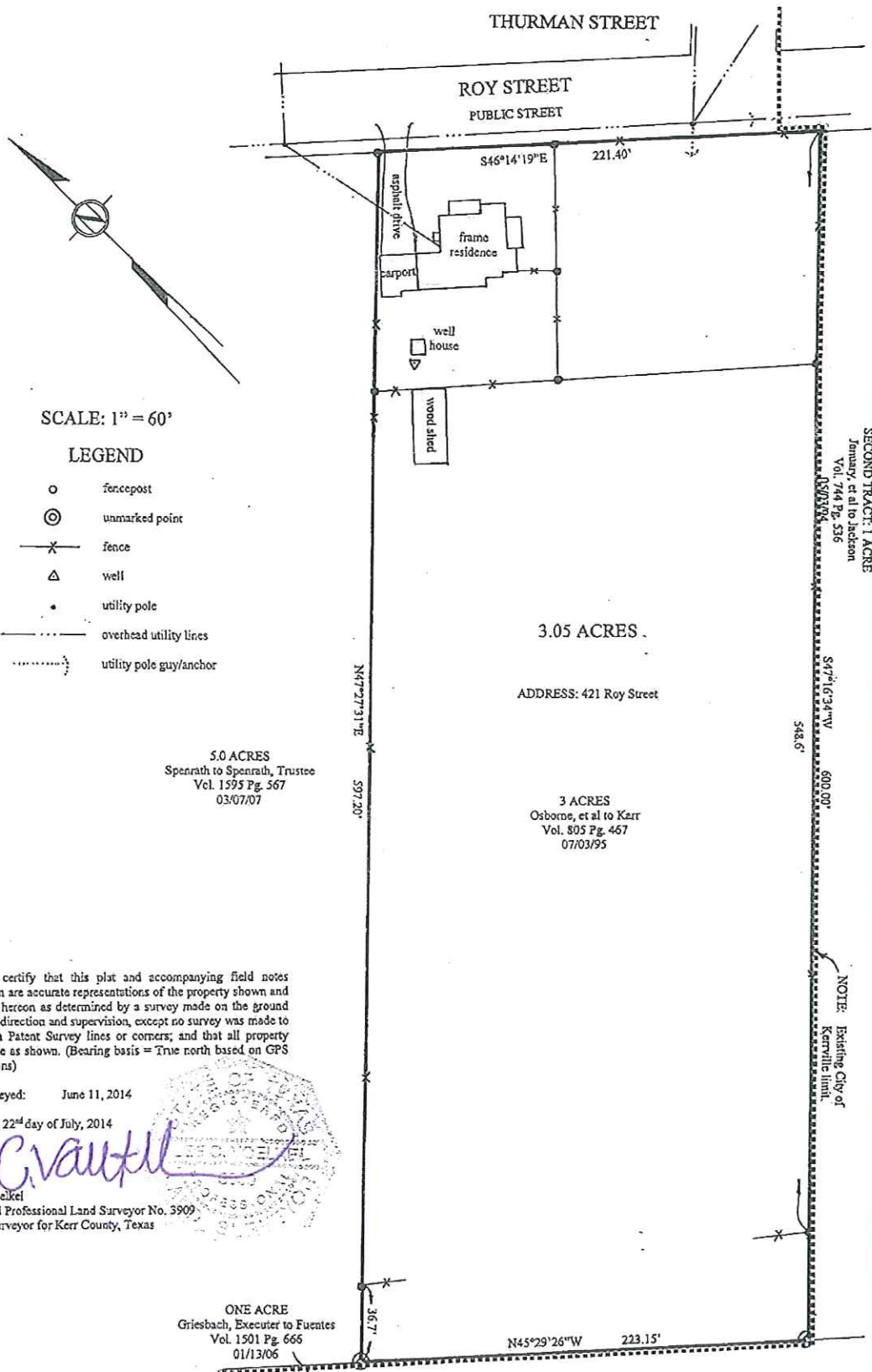


EXHIBIT "B"

PETITION REQUESTING ANNEXATION TO THE CORPORATE LIMITS OF THE CITY OF KERRVILLE, TEXAS, OF TEXAS ACRES OUT OF THE W.H. Crawford Survey, Abstract Number 123, KERR COUNTY TEXAS

TO THE HONORABLE MAYOR AND CITY COUNCIL OF THE CITY OF KERRVILLE, TEXAS:

Pat Jackson Karr is the sole owner of an approximately 3 acre tract of land located adjacent to the incorporated limits of the City of Kerrville which is out of the Survey No. 653 Abstract No. 123 Kerr County, Texas, and is more particularly described as follows:

SEE EXHIBIT "A". (Paste in legal description here & provide two copies of the survey with the legal description to Development Services Department)

The above-described property is (a) one-half mile or less in width, (b) contiguous to the incorporate limits of the City of Kerrville, Texas, and (c) presently vacant and without residents or on which fewer than three qualified voters reside.

In accordance with Texas Local Government Code §43.028, Pat Jackson Karr hereby respectfully requests and petitions that the above-described property be annexed into the incorporated limits of the City of Kerrville, Texas.  
SUBMITTED THIS 1 day of Aug. 2014

By: Elizabeth Jackson D'Ambrosi  
Legally authorized signature

By: Elizabeth Jackson D'Ambrosi  
Elizabeth

ACKNOWLEDGEMENT

Washington DC  
THE STATE OF TEXAS

COUNTY OF KERR

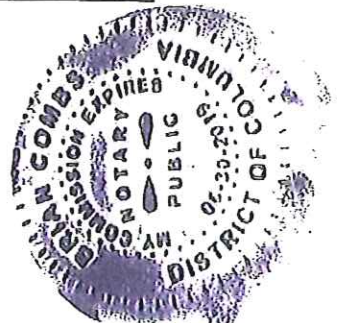
§  
§  
§

This instrument was acknowledged before me on the 1 day of Aug 2014  
by Elizabeth Jackson for and on behalf of Patricia Ridd Jackson Karr  
D'Ambrosi

Eric Calf  
NOTARY PUBLIC, STATE OF TEXAS

Printed Name: Washington DC

My Commission Expires: \_\_\_\_\_



## EXHIBIT C

### ANNEXATION SERVICE PLAN

| SERVICE                         | DETAILS OF SERVICE PROVIDED                                                                                                                                                                                                                                                                                                                                                                                                                              | TIMETABLE                                                                 |
|---------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------|
| Animal Control                  | The provisions of animal control services shall be in effect following annexation of the property.                                                                                                                                                                                                                                                                                                                                                       | Immediately following annexation                                          |
| Code Enforcement                | The provisions of Code Enforcement services, including the application and enforcement of building, electrical, plumbing, and other related code requirements adopted by the City shall be made immediately to the area upon annexation. The preparation of a zoning plan shall serve as a basis for the zoning of land following annexation. The adoption of the zoning plan shall be in accordance with the procedures of the City's Zoning Ordinance. | Immediately following annexation, zoning to be concurrent with annexation |
| Fire Protection and Suppression | Fire protection and suppression personnel and equipment from the Kerrville Fire Department will be provided to the area as needed.                                                                                                                                                                                                                                                                                                                       | Immediately following annexation                                          |
| Fire Prevention                 | The services of the City's Fire Marshall shall be provided to the area.                                                                                                                                                                                                                                                                                                                                                                                  | Immediately following annexation.                                         |
| Library                         | Future residents of the area, if any, will continue to be entitled to utilize all City's Library facilities.                                                                                                                                                                                                                                                                                                                                             | Immediately following annexation.                                         |
| Parks and Recreation            | The City's Parks and Recreation services will continue to be available to any area residents.                                                                                                                                                                                                                                                                                                                                                            | Immediately following annexation                                          |
| Police Protection               | Kerrville Police Department protection personnel and equipment shall be provided to the area immediately upon annexation. Police enforcement and protection services shall be provided through regular patrol activities.                                                                                                                                                                                                                                | Immediately following annexation                                          |



### ANNEXATION SERVICE PLAN (CONTINUED)

| SERVICE                                                  | DETAILS OF SERVICE PROVIDED                                                                                                                                                       | TIMETABLE                        |
|----------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------|
| Public Services - Street Department                      | Public streets not maintained by the Texas Department of Transportation within the area shall be maintained by the City.                                                          | Immediately following annexation |
| Sanitation (Refuse Collection)                           | Refuse collection shall be available to any residents of the annexed area at the same costs and procedures as required of City residents and businesses.                          | Immediately following annexation |
| Traffic Engineering                                      | Traffic control devices and street markers shall be installed where deemed necessary by the City Street Department, except as provided by the Texas Department of Transportation. | Immediately following annexation |
| Utilities (Water Distribution and Wastewater Collection) | Extension of utilities to the property shall be in accordance with the City's Subdivision Ordinance.                                                                              | As the property develops         |

## **Agenda Item:**

6A. Request to amend City Ordinance 2014-21 establishing minimum health and sanitation standards for lodging establishments. (Shirley Garrett, Hillcrest Inn)

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

SUBJECT OF REQUEST: Amending Hotel Statue

AGENDA DATE: \* 1/13/2015

DATE SUBMITTED: \* 1/5/2015

REQUESTED/SUBMITTED BY: Shirley Garrett

PHONE: 830 896-7400

ORGANIZATION REPRESENTING: Hillcrest Inn

MAILING ADDRESS: 1508 Sidney Baker  
Kerrville Tx 78028

EMAIL ADDRESS: hillcrestinn@windstream.net

EXHIBITS/INFORMATION:

APPROVED FOR SUBMITTAL BY CITY MANAGER: 

WILL THIS ITEM REQUIRE CITY COUNCIL TO AUTHORIZE THE  
EXPENDITURE OF CITY FUNDS? YES: \_\_\_\_\_ NO: ✓

IF YES, STATE AMOUNT REQUESTED: \$ \_\_\_\_\_

DESCRIPTION OF REQUEST

To allow a greater monthly percentage occupancy for hotel/motel's under this ordinance that have Full Stoves/ovens & kitchen's.

Our business has always been approximately 50% monthlies accommodating 'Winter Texans' and people moving to the hill country waiting for their properties to close plus travelling nurses. This year we have not been able to take care of our 'winter guests' without the additional 13% tax. We do not rent our sleeping units out monthly, only kitchen's.

RECOMMENDED COUNCIL ACTION \*\*

\* The deadline for submission of items is 5:00 p.m. on the Wednesday preceding the city council meeting.

\*\* If no action is requested, the citizens have the option of addressing the council under the "Visitors/Citizens Forum" section of the agenda, which is open for anyone to speak on items not scheduled on the posted agenda.



## **Agenda Item:**

6B. Economic Development Incentive Agreement between the City of Kerrville and James Avery Craftsman, Inc. in an amount not to exceed \$379,302.00.  
(staff)

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

**SUBJECT:** Consideration and approval of a 380 Economic Development Incentive Agreement between the City of Kerrville and James Avery Craftsman, Inc.

**FOR AGENDA OF:** January 13, 2015    **DATE SUBMITTED:** January 9, 2015

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

**EXHIBITS:** Economic Development Incentive Agreement

**AGENDA MAILED TO:**

**APPROVED FOR SUBMITTAL BY CITY MANAGER:** 

| <b>Expenditure<br/>Required:</b> | <b>Current Balance<br/>in Account:</b> | <b>Amount<br/>Budgeted:</b> | <b>Account<br/>Number:</b> |
|----------------------------------|----------------------------------------|-----------------------------|----------------------------|
| \$                               | \$                                     | \$                          |                            |

**PAYMENT TO BE MADE TO:**

**REVIEWED BY THE DIRECTOR OF FINANCE:**

**SUMMARY STATEMENT**

The City of Kerrville is committed to the promotion and retention of high quality development in the City and to ongoing and continuous improvements to the quality of life for its citizens. In 2011, the City developed an economic development policy designed to encourage high quality business, commercial, and manufacturing concerns to remain, expand, and locate within the City. The City seeks to enhance its economic development efforts to attract and retain high quality development and jobs by establishing a Chapter 380 Economic Development Program Policies and Procedures, in accordance with Chapter 380, Texas Local Government Code. City staff and the Kerr Economic Development Corporation (KEDC) developed the program to use as an economic tool and as means for promoting economic development. City Council approved the Chapter 380 Economic Development Program Policies and Procedures on June 10, 2014.

Attached is a draft Economic Development Incentive Agreement with James Avery Craftsman, Inc. (JAC). JAC will be expanding its facilities by building a new, larger manufacturing plant on property located south of the Kerrville-Kerr County Airport. The expansion will consolidate and expand facilities currently located in multiple buildings and running at maximum capacity off of Avery Road. This expansion will create a total of 359 new jobs over a six year time frame with average wages of \$11.20 per hour.

The project will include a new production facility, necessary drainage work and site landscaping, and a deceleration lane into the entrance to the 29-acre tract to comply with Texas Department of Transportation regulations. The total expansion cost is estimated to be \$14.95 million including land development and site improvements, additional

equipment, and a 53,000+ square foot building for manufacturing, engraving, product care, wastewater treatment, break room, restrooms, and offices. Fixed equipment associated with the project is estimated at \$4 million.

This 380 Agreement will provide a reimbursement of net sales tax revenues over five years with a maximum annual grant of \$75,860 and total maximum of \$379,302. Pursuant to the agreement, the land of the new site will be annexed into the City's corporate limits.

### **RECOMMENDED ACTION**

City staff recommends consideration and approval of the 380 Economic Development Incentive Agreement between the City of Kerrville and James Avery Craftsman, Inc.



**D R A F T 01/09/14**

**STATE OF TEXAS**

§

**ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT**

§

**COUNTY OF KERR**

§

This Economic Development Incentive Agreement ("Agreement") is made by and between the City of Kerrville ("City"), a Texas home rule municipality, and James Avery Craftsman, Inc., ("Company"), a Texas corporation, acting by and through their respective authorized officers and representatives. City and Company are hereafter collectively referred to herein as "Parties" and individually as "Party."

**WITNESSETH:**

**WHEREAS**, Company, whose headquarters is in Kerrville, Texas, designs, manufactures, and sells through its on-line, catalogue, call-center, and retail outlets throughout the country, a line of fine jewelry; and

**WHEREAS**, Company owns Land (as defined below) which is located in Kerr County, Texas, adjacent to City's incorporated limits and within City's extra-territorial jurisdiction, and for which Company has petitioned City for annexation into City's incorporated limits; and

**WHEREAS**, Company desires to construct the Improvements (as defined below) on the Land in order to both consolidate and expand Company's manufacturing operations; and

**WHEREAS**, Company has advised City that a contributing factor that would induce Company to develop the Land and construct the Improvements would be an agreement with City to provide economic development grants to Company to defray a portion of the costs of the construction of the Improvements; and

**WHEREAS**, Company is expected to initially invest over Fourteen Million Dollars (\$14,000,000.00) in the Property; and

**WHEREAS**, Company intends to initially relocate or create, fill and maintain, on an annual basis, at least one hundred thirty-four (134) full time employment positions with the objective of later increasing the number of full time employment positions to more than three hundred fifty (350) employees, all to be located within the City; and

**WHEREAS**, City has adopted programs for promoting economic development, including a Chapter 380 Economic Development Program; and

**WHEREAS**, City is authorized by Article III, Section 52-a of the Texas Constitution and Texas Local Government Code Chapter 380, to provide economic development grants to promote local economic development and to stimulate business and commercial activity in City; and

**WHEREAS**, City has determined that making economic development grants to Company in accordance with this Agreement will further the objectives of City, will benefit City

and City inhabitants and will promote local economic development and stimulate business and commercial activity in City;

**NOW THEREFORE**, in consideration of the foregoing, and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

## **Article I Definitions**

For purposes of this Agreement, each of the following terms shall have the meaning set forth herein unless the context clearly indicates otherwise:

“Affiliate” means, with respect to any Person, any other Person directly or indirectly Controlling, Controlled by, or under common Control with such Person.

“Annual Grant” means, collectively, an Annual Real Property Grant and Annual TPP Grant paid in relation to a Grant Year.

“Annual Real Property Grant” means an annual economic development grant to be provided by City to Company in an amount equal to the ad valorem taxes assessed by the City against the Property for the relevant Grant Year, and collected by City for said Grant Year to be paid as set forth herein.

“Annual TPP Grant” means an economic development grant to be provided by City in an amount equal to the ad valorem taxes assessed by City against the Tangible Personal Property for the relevant Grant Year and collected by the City for the same Grant Year to be paid as set forth herein.

“Appraisal District” means the Kerr Central Appraisal District, or its successor entity.

“Bankruptcy or Insolvency” means the dissolution or termination of a Party’s existence as a going business, insolvency, appointment of receiver for any part of such Party’s property and such appointment is not terminated within ninety (90) days after such appointment is initially made, any general assignment for the benefit of creditors, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against such Party and such proceeding is not dismissed within ninety (90) days after the filing thereof.

“Commencement Date” means the later of: (i) January 1 of the calendar year immediately following the date the certificate of occupancy is issued by City for Company’s occupancy of the Improvements; and (ii) January 1, 2017.

“Commencement of Construction” means that (i) the plans have been prepared and all approvals thereof required by applicable governmental authorities have been



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obtained for construction of the Improvements on the Land; (ii) all necessary permits for the construction of the Improvement on the Land pursuant to the plans have been issued by all applicable governmental authorities; and (iii) grading of the Land for the construction of the Improvements has commenced.

“Completion of Construction” means the date (i) the Improvements have been substantially completed and (ii) a certificate of occupancy has been issued by City for Company’s occupancy of the Improvements.

“Control,” or any derivation thereof, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through ownership of securities, by contract or otherwise.

“Effective Date” means the date this Agreement is signed by authorized representatives of all of the Parties.

“Expiration Date” means the fifteenth (15<sup>th</sup>) anniversary of the Commencement Date.

“Force Majeure” means any contingency or cause beyond the reasonable control of a Party including, without limitation, acts of God or the public enemy, war, terrorist act, or threat thereof, riot, civil commotion, insurrection, government action or inaction (unless caused by the intentionally wrongful acts or omissions of the Party), fires, earthquake, tornado, hurricane, explosions, floods, strikes, slowdowns or work stoppages.

“Freeport Goods” has the same meaning as assigned by Texas Tax Code, Section 11.251 and Article VIII, Section 1-j of the Texas Constitution, and are located on the Property. Freeport Goods does not include “Goods in Transit” as defined by Texas Tax Code, Section 11.253.

“Full-Time Position(s)” means a position eligible for employee benefits at which an individual is scheduled to work at least: (i) 2080 hours for a day shift; and (ii) 1,872 hours for a second shift, both of which occur within a twelve month period during the Grant Period for the Company either as an employee or under contract and who, before deducting employee contributions to employee benefits, FICA, Federal payroll tax withholding, retirement plans, and other voluntary and involuntary deductions commonly deducted from employee wages prior to payment of the wages to the person, is paid an average hourly wage of \$11.20 per hour. The average calculation aggregates New Full-Time Positions (as defined below) as follows: i) hourly positions at their hourly rate and ii) convert salaried positions to their hourly equivalent by dividing by 2080. The sum of the hourly rates and hourly equivalents will be divided by the cumulative number of New Full-Time Positions for the applicable year as included in Section 4.5(a) for purposes of arriving at the average hourly rate required. The \$11.20 rate per hour does not include the value of employee benefits as paid for by the Company. For purposes of the definition of “Full-Time Position,” employer contributions to FICA, retirement plans, group health, dental, or life insurance premiums, or other employer funded benefits shall



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not be included in determining a workers hourly wage or salary. A Full-Time Position does not include part-time or seasonal positions.

“Goods-in-Transit” has the same meaning assigned by Texas Tax Code, Section 11.253.

“Grant Year” means a given tax year except that the first Grant Year shall mean January 1 of the calendar year immediately following the Commencement Date.

“Grants” means, collectively, all Annual Real Property Grants and Annual TPP Grants.

“Impositions” means all ad valorem and property taxes, which are or may be assessed, charged, levied, or imposed by any public or governmental authority on Company or an Affiliate or any property or any business owned by Company or an Affiliate within City, and any Texas state or local sales and use taxes.

“Improvements” means a building to be constructed on the Land containing approximately 53,000 square feet of space for manufacturing, engraving, product care, and employee work and office space, together with other ancillary facilities, parking, and landscaping, as more fully described in the submittals filed with City, from time to time, in order to obtain one or more building permits.

“KEIC” means the Kerrville Economic Improvement Corporation.

“Land” means the real property described in **Exhibit A**.

“Maximum Annual Grant” means the lesser of (i) the Annual Real Property Grant plus the Annual TPP Grant for the same Grant Year; and (ii) \$75,860.00; but subject to reduction in accordance with Section 4.6(c).

“Maximum Total Grant” means \$379,302.00.

“Payment Request” means a written request from Company to City for payment of an Annual Real Property Grant and/or Annual TPP Grant accompanied by (i) a copy of tax receipt indicating that Company has paid the ad valorem taxes assessed against the Property and Tangible Personal Property for the Tax Year to which the Payment Request applies and (ii) the Employment Verification Information for the Tax Year to which the Payment Request applies.

“Person” means an individual, corporation, partnership, trust, estate, unincorporated organization, association, or other entity.

“Property” means, collectively, the Improvements and the Land.

“Related Agreement” means that certain Economic Development Grant Agreement between KEIC and Company, dated as of approximate date herewith.

“Required Use” means Company’s continuous operation of the Improvements as a distribution or manufacturing facility on the Property.

“Tangible Personal Property” has the same meaning assigned by Tax Code, Section 1.04 and means all tangible personal property (including inventory and supplies), equipment, fixtures, and machinery, but excluding Freeport Goods and Goods-in-Transit owned by Company, and located on the Property on January 1 of a given tax year (irrespective of when such Tangible Personal Property was first located on the Improvements).

“Taxable Value” means the appraised value as certified by the Appraisal District for a given year.

## **Article II Term**

The term of this Agreement shall begin on the Effective Date and continue until the Expiration Date, unless sooner terminated as provided herein.

## **Article III Economic Development Grants**

3.1 Annual TPP Grants. Subject to the obligation of Company to repay the Grants pursuant to Section 5.2, hereof, and the continued satisfaction of all the terms and conditions of this Agreement by Company, City agrees to provide Company with five (5) Annual TPP Grants, each to be paid not later than thirty (30) days after receipt of a Payment Request for the prior Grant Year, but in no case earlier than April 1 of each calendar year (or the immediately following business day if April 1 is not a business day) beginning with the first full calendar year following the Commencement Date, provided Company has timely paid City the ad valorem taxes assessed against the Tangible Personal Property in full for the respective Grant Year (*i.e.*, the tax year immediately preceding the year in which an Annual TPP Grant is to be paid). For illustration purposes, assume that the first Grant Year is 2016, and that City ad valorem taxes assessed (and collected) against the Tangible Personal Property for tax year 2016 is \$35,000.00, then the amount of the first Annual TPP Grant of \$35,000.00 would be paid not later than the later of (i) thirty (30) days after receipt of the Payment Request for Grant Year 2016 and (ii) April 1, 2017.

3.2 Annual Real Property Grants. Subject to the obligation of Company to repay the Grants pursuant to Section 5.2 hereof, and the continued satisfaction of all the terms and conditions of this Agreement by Company, City agrees to provide Company with five (5) Annual Real Property Grants to be paid not later than thirty (30) days after receipt of a Payment Request applicable to the prior Grant Year, but in no case earlier than April 1 of each calendar year (or the immediately following business day if April 1 is not a business day) beginning with the first full



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calendar year following the Commencement Date, provided Company has timely paid City ad valorem taxes assessed against the Property in full for the respective Grant Year (*i.e.*, the tax year immediately preceding the year in which an Annual Real Property Grant is to be paid). For illustration purposes, assume that the first Grant Year is 2016, and that City ad valorem taxes assessed (and collected) against the Property for tax year 2014 is \$50,000.00, then the amount of the first Annual Real Property Grant of \$50,000.00 would be paid not later than thirty (30) days later than the later of (i) thirty (30) days after receipt of the Payment Request for Grant Year 2016 and (ii) April 1, 2017. Notwithstanding the foregoing, in the event that the ad valorem taxes assessed against the Property are not paid to City by April 1 of the calendar year, City agrees that it will pay Company any Annual Real Property Grant owed to Company not later than ten (10) days after receipt of the applicable ad valorem taxes.

3.3 Grant Limitations. Under no circumstances shall City obligations hereunder be deemed to create any debt within the meaning of any constitutional or statutory provision. Further, City shall not be obligated to pay any commercial bank, lender or similar institution for any loan or credit agreement made by Company. None of City's obligations under this Agreement shall be pledged or otherwise encumbered by Company in favor of any commercial lender and/or similar financial institution.

3.4 Current Revenue. The Grants made hereunder shall be paid solely from lawfully available funds that have been appropriated by City; provided, however, City agrees during the term of this Agreement to make a good faith effort to appropriate funds each year to pay the Grants for the then ensuing fiscal year. Further, City shall have no obligation or liability to pay any Grants except as allowed by law. City shall not be required to pay any Grants if prohibited under federal or state legislation or a decision of a court of competent jurisdiction.

3.5 Tax Protest. In the event Company timely and properly protests or contests (including any motion to correct the appraisal roll) the Taxable Value and/or the taxation of the Tangible Personal Property or the Property (or any portion thereof), with the Appraisal District (or its successor), the obligation of City to provide the Grants with respect to the Tangible Personal Property or the Property (or portion thereof), as the case may be, for such Tax Year shall be abated until a final determination has been made of such protest or contest. In the event Company protests and/or contests results in a final determination that changes the appraised value and/or the Taxable Value of the Tangible Personal Property or the Property or the amount of ad valorem taxes assessed and due for the Tangible Personal Property or the Property (or portion thereof), as the case may be, after a Grant has been paid for such property for such Grant Year, the Grant for such Grant Year for such property shall be adjusted (increased or decreased as the case may be) accordingly on the date of payment of the next Grant payment date for such property, or within thirty (30) days after such determination in the event no further Annual Grant payments are due with respect to such property under the Agreement.

3.6 Refunds and Underpayments of Grants. In the event City reasonably determines that the amount of one or more of the Grants paid by City to Company is incorrect, Company shall, not later than sixty (60) days after receipt of written notification thereof from City specifying the amount by which such Grant exceeded the correct amount to which Company was entitled (together with such records, reports and other information necessary to support such



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determination), pay such amount to City. If City reasonably determines that the amount by which such Grant was less than the correct amount to which Company was entitled (together with such records, reports and other information necessary to support such determination), City shall, within sixty (60) days, pay the adjustment to Company. If Company disputes City's determination, the Parties shall seek to amicably resolve the matter, subject to either Party's right to pursue any available rights or remedies in connection therewith.

3.7 Limits on Annual Grant Payments. Notwithstanding the amount of ad valorem assessed against Property and the Tangible Personal Property and collected by City during any Grant Year, the total amount of the Annual Real Property Grant plus the Annual TPP Grant for said Grant Year shall not exceed the Maximum Annual Grant. Furthermore, in no case shall the total amount of all Grants paid pursuant to this Agreement exceed the Maximum Total Grant.

## Article IV Conditions to the Economic Development Grant

The obligation of City to provide the Grants shall be conditioned upon the continued compliance with, and satisfaction of each of the terms and conditions of this Agreement by Company, and each of the conditions set forth in this Article IV below:

4.1 Good Standing. Company shall not have an uncured breach or default of this Agreement or any Related Agreement beyond any applicable notice and cure period.

4.2 Required Use. Commencing on the Commencement Date and continuing thereafter until the Expiration Date, the Improvements shall not be used for any purpose other than the Required Use, and the operation and occupancy of the Improvements in conformance with the Required Use shall not cease for more than six (6) months, except in connection with and to the extent of an event of Force Majeure.

4.3 Commencement and Completion of Construction. Subject to events of Force Majeure, Commencement of Construction of the Improvements shall commence not later than June 1, 2015. Subject to events of Force Majeure, Completion of Construction of the Improvements shall occur not later than December 31, 2016.

4.4 Minimum Taxable Value.

(a) The minimum Taxable Value for the Property as determined by the Appraisal District shall be not less than \$7,800,000.00 as of January 1 of the calendar year immediately following the date of Completion of Construction of the Improvements and as of January 1 of each of the four (4) consecutive calendar years thereafter; and

(b) The Taxable Value for the Tangible Personal Property as determined by the Appraisal District shall be not less than \$4,000,000.00 as of January 1 of the calendar year immediately following the date of Completion of Construction of the Improvements and as of January 1 of each of the four (4) consecutive calendar years thereafter.

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(c) Notwithstanding any provision in this Agreement to the contrary, the failure of the Property and/or the Tangible Personal Property to be determined by the Appraisal District to have a Taxable Value for any given year as required by paragraphs (a) and (b) of this Section 4.4 shall not be considered an event of default subject to termination and repayment pursuant to Article V hereof; provided, however, such failure shall result in Company forever forfeiting the right to receive the Annual Real Property Grant (with respect to failure to satisfy paragraph (a)) and/or the Annual TPP Grant (with respect to failure to satisfy paragraph (b)) for such Grant Year.

4.5 Tax Payments. Company timely pays to City, through City's designated tax collector, the ad valorem taxes assessed by City against the Property and the Tangible Personal Property in full prior to the delinquency date (each a "Tax Payment")(subject to the notice and cure provision in Section 5.1(d) below). The failure of Company to timely pay a Tax Payment shall be considered an event of default subject to termination and repayment pursuant to Article V hereof (subject to the notice and cure provision in Section 5.1(d) below).

4.6 Employment Positions.

(a) After the Effective Date, but in no case later than the one hundred and twentieth (120th) day after Completion of Construction, Company shall create and fill no fewer than seventy-two (72) New Full-Time Positions within the City. Commencing with calendar year 2017 and each calendar year thereafter through the end of the Term, the total number of New Full-Time Positions created and filled by Company at any of Company's business locations within the City since the Effective Date during the specified calendar year and as quantified on December 31 of each year, shall be as follows:

| <b>End of Calendar Year<br/>(12/31)</b> | <b>Minimum No. Total New<br/>Full-Time Positions by End<br/>of Subject Calendar Year</b> | <b>Minimum No. Newly Added<br/>Full-Time Positions for The<br/>Subject Calendar Year</b> |
|-----------------------------------------|------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------|
| 2017                                    | 134                                                                                      | 62                                                                                       |
| 2018                                    | 191                                                                                      | 57                                                                                       |
| 2019                                    | 252                                                                                      | 61                                                                                       |
| 2020                                    | 306                                                                                      | 54                                                                                       |
| 2021                                    | 359                                                                                      | 53                                                                                       |

For periodic reporting purposes, the Company shall report, on a quarterly basis, the cumulative number of New Full-Time Positions in weekly increments. For purposes of this calculation, a person employed in a New Full-Time Position who is not working within the City because the person is on any type of excused paid leave (e.g., vacation, sick leave, paid family leave, etc.), or is on an unpaid leave pursuant to the Family Medical Leave Act or other federal or state law which requires Company to retain the person as an employee while absent from work, will be included in the weekly count of Full-Time Position.

(b) Each Payment Request shall be accompanied by copies of employment records, Texas Workforce Commission reports, or other documentation as is reasonably required by City to demonstrate Company's compliance with the required number of Full-Time Positions required



by Section 4.6(a). Notwithstanding Sections 3.1 and 3.2, above, City shall not be required to pay the Annual TPP Grant or the Annual Real Property Grant for a particular Grant Year earlier than thirty (30) days after City receives the documentation required by this Section 4.6(b) for the particular Grant Year.

(c) Notwithstanding any provision in this Agreement to the contrary, the failure of Company to satisfy the condition set forth in Section 4.6(a), or any element thereof, for any Grant Year shall not be considered a breach or an event of default subject to termination and repayment pursuant to Article V hereof; provided, however, such failure shall result in the reduction of the Maximum Annual Grant for the Grant Year for which the failure occurred by and amount equal to (i) \$1,056.55 times (ii) a number equal to the minimum number of Full-Time Positions required by Section 4.6(a) less the actual number of Full-Time Positions working at the Property each day during the Grant Year.

4.7 Annexation. To the extent not requested prior to the Effective Date, Company acknowledges and agrees that on the Effective Date this Agreement shall also constitute a request to annex the Land into City's incorporated limits pursuant to applicable provisions of State law and City's home rule charter.

## Article V Termination

5.1 This Agreement terminates upon the occurrence of any one or more of the following events:

(a) Upon written agreement of the Parties;

(b) Upon the Expiration Date with no further action by the Parties;

(c) Except as provided in paragraph (d), below, if a Party defaults or breaches any of the terms or conditions of this Agreement or a Related Agreement and such default or breach is not cured within thirty (30) days after delivery of written notice thereof by the other Party (or if such default or breach is not reasonably curable within such 30-day period, is cured within ninety (90) days after such default or breach provided that the defaulting Party is diligently pursuing a cure of such default or breach);

(d) If City provides a written notice of termination to Company upon Company's failure to cause Commencement of Construction or Completion of Construction to occur within the time provided in Section 4.3, above;

(e) If any Impositions owed by Company to City or the State of Texas are delinquent and such delinquency has not been cured within thirty (30) days after delivery by City to Company of written notice demanding payment of the delinquency; provided, however, Company retains the right to timely and properly protest and contest any such taxes or Impositions and the time for curing such delinquency shall be extending to the tenth (10th) day following the final, non-appealable ruling on such protest or contest;



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(f) If Company suffers an event of Bankruptcy or Insolvency and fails to reaffirm this Agreement in accordance with applicable bankruptcy laws and continue to perform Company's obligations as set forth this Agreement, City may terminate this Agreement subject to applicable bankruptcy laws; or

(g) If any subsequent Federal or State legislation or any decision of a court of competent jurisdiction declares or renders this Agreement invalid, illegal or unenforceable; provided, however, if any final, non-appealable decision by a court of competent jurisdiction declares this Agreement invalid, illegal or unenforceable then City shall use its best efforts in working with Company to restructure this Agreement (or City's obligations described herein) to be enforceable.

5.2 Repayment. In the event the Agreement is terminated by City pursuant to Section 5.1(c) or (d), Company shall immediately refund to the City an amount equal to all Annual Grants paid by the City to the Company prior to the date of termination, plus interest at the rate of interest periodically announced by the *Wall Street Journal* as the prime or base commercial lending rate, or if the *Wall Street Journal* shall ever cease to exist or cease to announce a prime or base lending rate, then at the annual rate of interest from time to time announced by Citibank, N.A. (or by any other New York money center bank selected by City) as its prime or base commercial lending rate, from the date on which each respective Annual Grant is paid by the City until each such Annual Grant is refunded by the Company. The repayment obligation of Company set forth in this section 5.2 hereof shall survive termination.

5.4 Offsets. City may at its option, offset any amounts due and payable under this Agreement against any debt (including taxes) lawfully due to City from Company, regardless of whether the amount due arises pursuant to the terms of this Agreement, a Related Agreement or otherwise, and regardless of whether or not the debt due City has been reduced to judgment by a court.

## Article VI Miscellaneous

6.1 Binding Agreement. The terms and conditions of this Agreement are binding upon the successors and permitted assigns of the Parties hereto.

6.2 Limitation on Liability. It is understood and agreed between the Parties that Company and City, in satisfying the conditions of this Agreement, have acted independently, and City assumes no responsibilities or liabilities to third parties in connection with these actions. Company agrees to indemnify and hold harmless City from all such claims, suits, and causes of actions, liabilities and expenses, including reasonable attorney's fees, of any nature whatsoever by a third party arising out of Company's performance of the conditions under this Agreement.

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6.3 No Joint Venture. It is acknowledged and agreed by the Parties that the terms hereof are not intended to and shall not be deemed to create a partnership or joint venture among the Parties.

6.4 Authorization. Each Party represents that it has full capacity and authority to grant all rights and assume all obligations that are granted and assumed under this Agreement.

6.5 Notice. Any notice required or permitted to be delivered hereunder shall be deemed received three (3) days thereafter sent by United States Mail, postage prepaid, certified mail, return receipt requested, addressed to the Party at the address set forth below (or such other address as such Party may subsequently designate in writing) or on the day actually received if sent by courier or otherwise hand delivered.

If intended for City, to:

Attn: City Manager  
City of Kerrville, Texas  
701 Main Street  
Kerrville, Texas 78028

With a copy to:

Attn: City Attorney  
City of Kerrville, Texas  
701 Main Street  
Kerrville, Texas 78028

If intended for Company:

Chris Avery, President/CEO  
James Avery Craftsman, Inc.  
P.O. Box 291367  
Kerrville, Texas 78029-1367

6.6 Entire Agreement. This Agreement is the entire Agreement between the Parties with respect to the subject matter covered in this Agreement. There is no other collateral oral or written Agreement between the Parties that in any manner relates to the subject matter of this Agreement, except the Related Agreement and as provided in any Exhibits attached hereto.

6.7 Governing Law. The Agreement shall be governed by the laws of the State of Texas, without giving effect to any conflicts of law rule or principle that might result in the application of the laws of another jurisdiction; and venue for any action concerning this Agreement shall be in the State District Court of Kerr County, Texas. The Parties agree to submit to the personal and subject matter jurisdiction of said court.



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6.8 Amendment. This Agreement may only be amended by the mutual written agreement of the Parties.

6.9 Legal Construction. In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect other provisions, and it is the intention of the Parties to this Agreement that in lieu of each provision that is found to be illegal, invalid, or unenforceable, a provision shall be added to this Agreement which is legal, valid and enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

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

6.11 Successors and Assigns. Except as provided in this Section 6.11, this Agreement may not be assigned by Company without the prior written consent of City, which consent shall not be unreasonably denied, delayed, or withheld. This Agreement may be assigned by Company to any Affiliate of Company, provided Company shall have provided City with thirty (30) days prior written notice thereof, and such assignee assumes in writing the obligations and liabilities of Company in a form reasonably approved by City.

6.12 Recitals. The recitals to this Agreement are incorporated herein.

6.13 Counterparts. This Agreement may be executed in counterparts. Each of the counterparts shall be deemed an original instrument, but all of the counterparts shall constitute one and the same instrument.

6.14 Survival of Covenants. Any of the representations, warranties, covenants, and obligations of the Parties, as well as any rights and benefits of the Parties, pertaining to a period of time following the termination of this Agreement shall survive termination.

6.15 Conditions Precedent. This Agreement is subject to and conditioned on City having issued a certificate of occupancy for Company's occupancy of the Improvements on or before December 31, 2016.

6.16 Employment of Undocumented Workers. During the term of this Agreement, Company agrees not to knowingly employ any undocumented workers, and if convicted of a violation under 8 U.S.C. Section 1324a (f), Company shall repay the Grants herein and any other funds received by Company from City as of the date of such violation within 120 days after the date Company is notified by City of such violation, plus interest at the rate of 6% compounded annually from the date of violation until paid. Company is not liable for a violation of this Section by a subsidiary, Affiliate, or franchisees of Company or by a person with whom Company contracts, or any other Person other than Company.

*(Signature Page to Follow)*



**SIGNED AND AGREED** on this \_\_\_\_\_ day of \_\_\_\_\_, 2015  
("Effective Date").

**CITY OF KERRVILLE, TEXAS**

By: \_\_\_\_\_  
Todd Parton, City Manager

**Attest:**

By: \_\_\_\_\_  
Brenda Craig, City Secretary

**Approved as to Form:**

By: \_\_\_\_\_  
Michael C. Hayes, City Attorney

**SIGNED AND AGREED** on this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

**JAMES AVERY CRAFTSMAN, INC.**

By: \_\_\_\_\_  
Chris Avery, President and CEO

**EXHIBIT A**  
**LEGAL DESCRIPTION OF LAND**

## Agenda Item:

6C. Economic development grant agreement between James Avery Craftsman, Inc. and the City of Kerrville, Texas Economic Improvement Corporation in an amount not to exceed \$1,219,000. (staff)



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

**SUBJECT:** Consideration and approval of a funding agreement between the City of Kerrville, Texas Economic Improvement Corporation and James Avery Craftsman in an amount not to exceed \$1,219,000

**FOR AGENDA OF:** January 13, 2015    **DATE SUBMITTED:** January 2, 2015

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

**EXHIBITS:** Funding Agreement

**AGENDA MAILED TO:**

**APPROVED FOR SUBMITTAL BY CITY MANAGER:**

|                    |                        |                  |                |
|--------------------|------------------------|------------------|----------------|
| <b>Expenditure</b> | <b>Current Balance</b> | <b>Amount</b>    | <b>Account</b> |
| <b>Required:</b>   | <b>in Account:</b>     | <b>Budgeted:</b> | <b>Number:</b> |
| \$1,219,000        | \$                     | \$               | E67            |
|                    |                        |                  | 75-15001       |
|                    |                        |                  | 75-800-306     |

**PAYMENT TO BE MADE TO:**

**REVIEWED BY THE DIRECTOR OF FINANCE:**

**SUMMARY STATEMENT**

A business development funding application was received from James Avery Craftsman, Inc. (JAC) in the amount of \$1,219,000. JAC will be expanding its facilities by building a new, larger manufacturing plant on property located south of the Kerrville-Kerr County Airport. The expansion will consolidate and expand facilities currently located in multiple buildings and running at maximum capacity off of Avery Road. This expansion will create a total of 359 new jobs over a six year time frame with average wages of \$11.20 per hour.

The project will include a new production facility, necessary drainage work and site landscaping, and a deceleration lane into the entrance to the 29-acre tract to comply with Texas Department of Transportation regulations. The total expansion cost is estimated to be \$14.95 million including land development and site improvements, additional equipment, and a 53,000+ square foot building for manufacturing, engraving, product care, wastewater treatment, break room, restrooms, and offices. Fixed equipment associated with the project is estimated at \$4 million.

The "GO Team" evaluated this application from an economic perspective and found that it is feasible in that the project qualifies for funding and is a quality business development project.

On October 27, 2014, the EIC considered the funding request and directed staff to prepare

a funding agreement. At its meeting of December 17, 2014, the EIC held a public hearing and approved the funding agreement.

The final step in this process is Council consideration and approval. If approved, payment of the grant will be in two installments of \$609,500 each. The first installment would be paid after submission of evidence of commencement of construction of the improvements. The second installment would be paid after completion of construction (see section 3.1 of the attached funding agreement).

### **RECOMMENDED ACTION**

City staff recommends consideration and approval of the funding agreement between the City of Kerrville, Texas Economic Improvement Corporation, and James Avery Craftsman in an amount not to exceed \$1,219,000.

**DRAFT 01/09/14**

**ECONOMIC DEVELOPMENT GRANT AGREEMENT**  
**BETWEEN JAMES AVERY CRAFTSMAN, INC. AND**  
**THE CITY OF KERRVILLE, TEXAS, ECONOMIC IMPROVEMENT CORPORATION**

This Economic Development Grant Agreement ("Agreement") is entered into as of the Effective Date by and between **JAMES AVERY CRAFTSMAN, INC.** ("Company"), a Texas corporation, acting herein by and through its duly authorized Chief Executive Officer, Chris Avery, 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. Company and EIC are sometimes collectively referred to herein as "Parties" and individually as "Party".

**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:

*Land, buildings, equipment, facilities, expenditures, targeted infrastructure, and improvements that are for the creation or retention of primary jobs, as that term is defined by the Act, and found by the EIC to be required or suitable for the development, retention, or expansion of manufacturing and industrial facilities as provided by Section 501.101 of the Act; and*

**WHEREAS**, pursuant to the Act, EIC is authorized to provide funding relating to the construction of projects which 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**, Company, whose headquarters is in Kerrville, Texas, designs, manufactures, and sells through its website, catalogue, call-center, and retail outlets throughout the country, a line of fine jewelry; and

**WHEREAS**, Company owns Land (as defined below) which is located in Kerr County, Texas, adjacent to City's incorporated limits and within City's extra-territorial jurisdiction, and for which Company has petitioned City for annexation into City's incorporated limits; and

**WHEREAS**, Company desires to construct the Improvements (as defined below) on the Land in order to both consolidate and expand Company's manufacturing operations; and

**WHEREAS**, Company has advised City that a contributing factor that would induce Company to develop the Land and construct the Improvements would be an agreement with EIC to provide economic development grants to Company to defray a portion of the costs of the



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construction of the Improvements; and

**WHEREAS**, Company is expected to initially invest over Fourteen Million Dollars (\$14,000,000.00) in the Property; and

**WHEREAS**, Company intends to initially relocate or create, fill and maintain, on an annual basis, at least one hundred thirty-four (134) full time employment positions with the objective of later increasing the number of full time employment positions to more than three hundred fifty (350) employees, all to be located within the City; and

**WHEREAS**, EIC has determined that such a grant complies with the Act and is in keeping with the mission of EIC and *City of Kerrville Economic Improvement Corporation 4B Sales Tax Funding Request Guidelines and Procedures* in that it will help develop, retain, and expand a manufacturing and industrial facility and a business enterprise and create and retain primary jobs; and

**WHEREAS**, based upon the terms of this Agreement, EIC believes that a return on its investment will occur within the next ten (10) years; and

**WHEREAS**, EIC finds that it will be in the public interest to enter into an agreement with Company to provide a grant of 4B Revenues (as defined below) to Company for a portion of its cost necessary for the construction of the Improvements; and

**WHEREAS**, on December 17, 2014, 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, Company and EIC agree as follows:

## **Article I** **Definitions**

For purposes of this Agreement, each of the following terms has the meaning set forth herein unless the context clearly indicates otherwise:

“4B Revenues” means the \$0.005 local sales and use tax collected by EIC pursuant to the Act.

“Affiliate” means, with respect to any Person, any other Person directly or indirectly Controlling, Controlled by, or under common Control with such Person.

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“Bankruptcy or Insolvency” means the dissolution or termination of a Party’s existence as a going business, insolvency, appointment of receiver for any part of such Party’s property and such appointment is not terminated within ninety (90) days after such appointment is initially made, any general assignment for the benefit of creditors, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against such Party and such proceeding is not dismissed within ninety (90) days after the filing thereof.

“Commencement of Construction” means that (i) the plans have been prepared and all approvals thereof required by applicable governmental authorities have been obtained for construction of the Improvements on the Land; (ii) all necessary permits for the construction of the Improvements on the Land pursuant to the plans have been issued by all applicable governmental authorities; and (iii) grading of the Land and construction of the vertical elements of the Improvements have begun.

“Completion of Construction” means the date (i) the Improvements have been substantially completed; and, (ii) a certificate of occupancy has been issued by City for Company’s occupancy of the Improvements.

“Control,” or any derivation thereof, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through ownership of securities, by contract or otherwise.

“Employment Period” means each full calendar year after Completion of Construction.

“Force Majeure” means any contingency or cause beyond the reasonable control of a Party including, without limitation, acts of God or the public enemy, war, terrorist act, or threat thereof, riot, civil commotion, insurrection, government action or inaction (unless caused by the intentionally wrongful acts or omissions of the Party), fires, earthquake, tornado, hurricane, explosions, floods, strikes, slowdowns or work stoppages.

“Full-Time Position(s)” means a position eligible for employee benefits at which an individual is scheduled to work at least: (i) 2080 hours for a day shift; and (ii) 1,872 hours for a second shift, both of which occur within a twelve month period during the Grant Period for the Company either as an employee or under contract and who, before deducting employee contributions to employee benefits, FICA, Federal payroll tax withholding, retirement plans, and other voluntary and involuntary deductions commonly deducted from employee wages prior to payment of the wages to the person, is paid an average hourly wage of \$11.20 per hour. The average calculation aggregates New Full-Time Positions (as defined below) as follows: i) hourly positions at their hourly rate and ii) convert salaried positions to their hourly equivalent by dividing by 2080. The sum of the hourly rates and hourly equivalents will be divided by the cumulative number of New Full-Time Positions for the applicable year as included in Section 4.5(a) for purposes of arriving at the average hourly rate required. The \$11.20 rate per hour does not include the value of employee benefits as paid for by the Company. For purposes of the



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definition of “Full-Time Position,” employer contributions to FICA, retirement plans, group health, dental, or life insurance premiums, or other employer funded benefits shall not be included in determining a workers hourly wage or salary. A Full-Time Position does not include part-time or seasonal positions.

“Grant” means the amount of One Million Two Hundred Nineteen Thousand and No/100 Dollars (\$1,219,000.00) paid by EIC to Company in installments as provided in this Agreement.

“Improvements” means a building to be constructed on the Land containing approximately 53,000 square feet of space for manufacturing, engraving, product care, and employee work and office space, together with other ancillary facilities, parking, and landscaping, as more fully described in the submittals filed with City, from time to time, in order to obtain one or more building permits.

“Land” means the real property described in **Exhibit A**.

“New Full-Time Positions” means Full-Time Positions created and filled by Company employees working at one of Company’s business locations within the City after the Effective Date as opposed to existing Full-Time Positions filled by Company employees working at one of Company’s business locations within the City as of the Effective Date, which is agreed to be  .

“Payment Request” means a written request from Company to City for payment of an installment of the Grant accompanied by the information set forth in Section 3.1.

“Person” means an individual, corporation, partnership, trust, estate, unincorporated organization, association, or other entity.

“Project” means the design and construction of the Improvements, including costs related to site development with utilities, landscaping, parking, and other associated improvements, and the purchase and installation of manufacturing equipment and other personal property reasonable and necessary for the operation of Company’s manufacturing and distribution facility at the Land.

“Property” means, collectively, the Improvements and the Land.

“Related Agreement” means that certain Economic Development Incentive Agreement between City and Company, dated as of approximate date herewith.

“Required Use” means Company’s continuous operation of the Improvements as a distribution or manufacturing facility on the Property.



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## Article II Term

2.1. Effective Date and Termination. Subject to approval by City's City Council and, if applicable, compliance with Section 505.160 of the Act, the term of this Agreement (the "Term") commences on January 14, 2015 (the "Effective Date"), and terminates on the earlier of:

- (a) January 13, 2022;
- (b) when terminated by mutual agreement of the Parties;
- (c) if Commencement of Construction does not occur by the date set forth in Section 4.4 and, EIC elects to terminate this Agreement by providing notice to Company before Commencement of Construction actually occurs;
- (d) if Completion of Construction does not occur by the date set forth in Section 4.4 and, EIC elects to terminate this Agreement by providing notice to Company before Completion of Construction actually occurs;
- (e) when terminated pursuant to Articles VIII or IX; or
- (f) at Company's sole and absolute discretion, upon Company's return of the Grant, or the portion of the Grant it has received, to EIC.

2.2 Rights upon Termination. Upon termination of this Agreement, all rights, duties, and obligations of any kind under this Agreement will automatically expire and terminate and be of no other force and effect except to the extent such obligations expressly survive the termination of this Agreement.

## Article III 4B Revenue Grant

3.1 Payment of Grant. Subject to the obligation of Company to repay the Grant pursuant to Section 4.5 or other provisions of this Agreement, and the continued satisfaction of all the terms and conditions of this Agreement by Company, EIC agrees to provide Company with the Grant payable in two equal installments of Six Hundred Nine Thousand Five Hundred and No/100 Dollars \$609,500.00 each, as follows:

- (a) The first installment of the Grant shall be paid to Company not later than thirty (30) days after Commencement of Construction of the Improvements and delivery to EIC of a request for payment of said installment accompanied by (i) appropriate evidence of the date of Commencement of Construction; and (ii) documentation that

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Company has incurred, or contractually obligated itself to incur, not less than \$609,500.00 related to design and construction of the Project; and

(b) The second installment of the Grant shall be paid not later than the one hundred and twentieth (120<sup>th</sup>) day after Completion of Construction of the Improvements and delivery to EIC of a request for payment of said installment accompanied by (i) appropriate evidence of the date of Completion of Construction; (ii) documentation that Company has incurred not less than \$1,219,000.00 related to design and construction of the Project; and (iii) the documentation required by Section 4.5(b) necessary to establish that Company has complied with the provisions of Section 4.5(a) regarding the creation and filling of New Full-Time Positions by the one hundred and twentieth (120<sup>th</sup>) day following Completion of Construction. In the event Company has failed to comply with Section 4.5(a) with respect to the number of New Full-Time Positions which are to have been created by the one hundred and twentieth (120<sup>th</sup>) day following Completion of Construction, the amount of the second installment of the Grant, and the Grant itself, shall be reduced as calculated pursuant to Section 4.5(c) as if a refund of the Grant were due.

3.2 Grant Limitations. Under no circumstances shall the obligations of EIC hereunder be deemed to create any debt within the meaning of any constitutional or statutory provision. Further, EIC shall not be obligated to pay any commercial bank, lender, or similar institution for any loan or credit agreement made by Company. None of the obligations of EIC under this Agreement may be pledged or otherwise encumbered by Company in favor of any commercial lender and/or similar financial institution.

3.3 Current Revenue. The Grant will be paid solely from lawfully available funds that have been appropriated by EIC. EIC shall have no obligation or liability to pay any installment of the Grant except as allowed by law. EIC shall not be required to pay any installment of the Grant if prohibited under federal or state legislation or a decision of a court of competent jurisdiction.

3.4 Grant Limited to "Costs". Payments made by EIC to Company from 4B Revenues will be limited to the payments of "costs" as defined by the Act and as specified above for the Project; provided, however, for purposes of this Agreement, "costs" do not include funds spent by Company relating to the purchase of the Property or interest or other fees paid by Company related to borrowing funds for the purpose of paying for the Project.

## Article IV

### Conditions to the Economic Development Grant

4.1 Generally. The obligation of EIC to provide the Grant and the right of Company to retain the Grant without an obligation to repay all or any portion of the Grant to EIC, shall be conditioned upon continued compliance with, and satisfaction of, each of the terms and conditions of this Agreement by Company and specifically, each of the conditions set forth in



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this Article IV.

4.2 Good Standing. Company shall not have incurred a breach or default of this Agreement or any Related Agreement beyond any applicable notice and cure period.

4.3 Required Use. Commencing on the Completion of Construction and continuing thereafter until the termination of this Agreement, the Improvements shall not be used for any purpose other than the Required Use, and the operation and occupancy of the Improvements in conformance with the Required Use shall not cease for more than six (6) months, except in connection with and to the extent of an event of Force Majeure.

4.4 Commencement and Completion of Construction. Subject to events of Force Majeure, Commencement of Construction of the Improvements shall commence not later than June 1, 2015. Subject to events of Force Majeure, Completion of Construction of the Improvements shall occur not later than December 31, 2016.

4.5 New Full-Time Positions.

(a) After the Effective Date, but in no case later than the one hundred and twentieth (120<sup>th</sup>) day after Completion of Construction, Company shall create and fill no fewer than seventy-two (72) New Full-Time Positions within the City. Commencing with calendar year 2017 and each calendar year thereafter through the end of the Term, the total number of New Full-Time Positions created and filled by Company at any of Company's business locations within the City since the Effective Date during the specified calendar year and as quantified on December 31 of each year, shall be as follows:

| End of Calendar Year<br>(12/31) | Minimum No. Total New<br>Full-Time Positions by End<br>of Subject Calendar Year | Minimum No. Newly Added<br>Full-Time Positions for The<br>Subject Calendar Year |
|---------------------------------|---------------------------------------------------------------------------------|---------------------------------------------------------------------------------|
| 2017                            | 134                                                                             | 62                                                                              |
| 2018                            | 191                                                                             | 57                                                                              |
| 2019                            | 252                                                                             | 61                                                                              |
| 2020                            | 306                                                                             | 54                                                                              |
| 2021                            | 359                                                                             | 53                                                                              |

For periodic reporting purposes, the Company shall report, on a quarterly basis, the cumulative number of New Full-Time Positions in weekly increments. For purposes of this calculation, a person employed in a New Full-Time Position who is not working within the City because the person is on any type of excused paid leave (e.g., vacation, sick leave, paid family leave, etc.), or is on an unpaid leave pursuant to the Family Medical Leave Act or other federal or state law which requires Company to retain the person as an employee while absent from work, will be included in the weekly count of



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Full-Time Position.

(b) Not later than February 1 following the end of each calendar year identified in Section 4.5(a), above, Company shall deliver to EIC copies of employment records, Texas Workforce Commission reports, or other documentation as is reasonably required by EIC to demonstrate Company's compliance with the required number of New Full-Time Positions required by Section 4.5(a) along with a sworn statement from an authorized officer of Company, confirming Company's compliance with Section 4.5(a). Company's failure to provide the information required by this Section 4.5(b) constitutes a breach of this Agreement.

(c) If Company fails to establish that it has filled the required number of New Full-Time Positions as required by Section 4.5(a) for a calendar year, not later than thirty (30) days after delivery of written demand from EIC, Company shall repay to EIC a portion of the Grant in an amount equal to (i) \$3,395.54 times (ii) a number equal to the minimum number of New Full-Time Position required by Section 4.5(a) less the actual number of New Full-Time Positions working in the City each day of the subject calendar year. For example, if as of December 31, 2017, Company has created and filled only 120 New Full-Time Positions in the City since the Effective Date, then, upon written demand from EIC, Company shall refund to EIC the amount of the Grant equal to \$3,395.54 multiplied by 14 (*i.e.*, 134 less 120), or \$47,537.56.

(d) In no case shall Company be required by operation of Section 4.5(c) to pay EIC more than the amount of the Grant except where Company fails to refund the amounts due in a timely manner. Any amounts not refunded by Company to EIC within thirty (30) days after the date of delivery of the demand for refund shall bear interest at the maximum rate allowed by law. EIC shall further be entitled to costs and reasonable attorneys fees if EIC institutes any action to collect the amounts due under this Section 4.5.

4.6 Records. Company shall keep and maintain complete and accurate records relating to its costs of designing and constructing the Project and employment information related to New Full-Time Positions, 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 Company's records during the term of this Agreement and for three (3) years thereafter, upon reasonable notice at Company's offices in Kerrville, Texas.

## Article V

### Sale of Project, Merger or Consolidation of Company

5.1 Sale of Company Assets. A sale of all or any of the assets of Company shall not release Company from its duties and responsibilities to EIC under the terms of this Agreement and shall 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 Company's

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proposed successor shall have the financial condition to fully satisfy Company's duties and responsibilities hereunder and agrees to assume Company's responsibilities under this Agreement. EIC may, in its sole discretion, reasonably determine whether such proposed successor's financial condition is satisfactory.

5.2 Merger. In the event of any proposed merger or other consolidation of Company with any third party not affiliated with Company, not later than thirty (30) days prior to any such merger or consolidation, Company shall provide EIC with information and assurance reasonably acceptable to EIC regarding: (i) the surviving entity's assumption and satisfaction of the Company's obligations hereunder; and (ii) 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 Company's duties and responsibilities under this Agreement.

5.3 EIC Rights. 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 Company. In the event of any sale or merger involving Company or its affiliates, the surviving entity shall assume Company's obligations and rights hereunder and be entitled to any and all benefits to be received pursuant to this Agreement.

## Article VI Company's Representations and Warranties

Company represents and warrants as of the date hereof:

(a) Company is a Texas corporation existing in good standing and authorized to do business in the State of Texas;

(b) Execution of this Agreement has been duly authorized by Company and this Agreement is not in contravention of Company's corporate charter, or any agreement or instrument to which Company is a party or by which it may be bound as of the date hereof;

(c) No litigation or governmental proceeding is pending, or, to the knowledge of Company, threatened against or affecting Company, which may result in a material adverse change in Company's business, properties, or operations sufficient to jeopardize Company's legal existence or for-profit viability; and

(d) No written application, written statement, or correspondence submitted by Company to EIC in connection with this Agreement, or in connection with any transaction contemplated hereby, to the knowledge of Company, 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.



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Except as expressly set forth in this Article VI, Company makes no other representation or warranty of any kind in connection with or related to the provisions of this Agreement.

## **Article VII EIC'S Representations and Warranties**

EIC represents and warrants as of the date hereof:

- (a) 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;
- (b) Execution of this Agreement has been duly authorized by EIC;
- (c) 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
- (d) 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.

Except as expressly set forth in this Article VII, EIC makes no other representation or warranty of any kind in connection with or related to the provisions of this Agreement.

## **Article VIII Conditions Under Which EIC May Suspend Performance of Its Obligations Under This Agreement**

EIC may, at its sole option and after fifteen (15) days written notice to Company, suspend EIC's performance under this Agreement until such time as Company shall have cured the condition(s) and so notified EIC, in writing, that the condition(s) have been cured:

- (a) Company becomes insolvent;
- (b) The appointment of a receiver of Company, or of all or any substantial part of the Property, and the failure of such receiver to be discharged within sixty (60) days thereafter;
- (c) The adjudication of Company as bankrupt; or
- (d) The filing by Company 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.



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Should any of the foregoing conditions not be cured by Company within ninety (90) days after the onset of the condition, Company will be considered to have breached this Agreement and EIC may, at its option, with written notice to Company, terminate this Agreement and Company shall be obligated to refund the Grant to EIC.

## Article IX Remedies

9.1 Notice and Opportunity to Cure. Except as otherwise provided in this Agreement, in the event of any default in or breach of this Agreement, by any Party, 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. This provision and specifically the notice and time to cure shall not apply to the obligation of Company found within Article IV.

9.2 Termination. Upon breach of this Agreement by either Party and the failure to cure as permitted by Section 9.1, the non-breaching Party shall have the sole right and discretion to either terminate this Agreement and/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.

9.3 Delay Not Waiver. 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

10.1 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

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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.

10.2 Amendment. This Agreement may be amended only by written amendment signed by both Parties.

10.3 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 a state court of competent jurisdiction 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.

10.4 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:

For EIC

*President*

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

For Company

Chris Avery, President/CEO

James Avery Craftsman, Inc.

P.O. Box 291367

Kerrville, Texas 78029-1367

Facsimile: (830) 895-6601



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10.5 Assignment. This Agreement is binding upon the Parties and their successors and assigns. Except as set forth in Article V, 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, the assigning Party shall be relieved of any and all obligations and liabilities on the part of such assigning Party under this Agreement. Company may, without written consent of EIC, assign this Agreement to any entity controlled and 100% owned by Company or by the parent, subsidiary, or affiliate of Company provided the entity assumes all of Company'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 Company and Company 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.

10.6 Parties In Interest. Nothing in this Agreement shall entitle any party other than Company or EIC to any claim, cause of action, remedy, or right of any kind except as expressly provided in Article IX.

10.7 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 arm's length, with the advice and participation of counsel, and will be interpreted in accordance with its terms without favor to any Party.

10.8 No Joint Venture. Nothing contained in this Agreement is intended by the Parties to create a partnership or joint venture between the Parties.

10.9 Survival of Terms. All rights, duties, liabilities, and obligations accrued prior to termination shall survive termination.

10.10 Entire Agreement. This Agreement represents the entire agreement of the Parties with respect to the subject matter hereof.

10.11 Recitals. The recitals to this Agreement are incorporated herein.

10.12 Counterparts. This Agreement may be executed in counterparts. Each of the counterparts shall be deemed an original instrument, but all of the counterparts shall constitute one and the same instrument.

10.13 Employment of Undocumented Workers. During the term of this Agreement, Company agrees not to knowingly employ any undocumented workers, and if convicted of a violation under 8 U.S.C. Section 1324a (f), Company shall repay the Grant herein and any other



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funds received by Company from EIC as of the date of such violation within 120 days after the date Company is notified by EIC of such violation, plus interest at the rate of 6% compounded annually from the date of violation until paid. Company is not liable for a violation of this Section by a subsidiary, Affiliate, or franchisees of Company or by a person with whom Company contracts, or any other Person other than Company.

*(Signature Page to Follow)*

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**SIGNED AND AGREED** on this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

**CITY OF KERRVILLE, TEXAS ECONOMIC  
IMPROVEMENT CORPORATION**

By: \_\_\_\_\_  
David Wampler, President

**Attest:**

By: \_\_\_\_\_  
Cheryl Brown, Recording Secretary

**Approved as to Form:**

By: \_\_\_\_\_  
Michael C. Hayes, Attorney for EIC

**SIGNED AND AGREED** on this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

**JAMES AVERY CRAFTSMAN, INC.**

By: \_\_\_\_\_  
Chris Avery, President and CEO

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**EXHIBIT A**

**LEGAL DESCRIPTION OF LAND**



## **Agenda Item:**

6D. Authorization to submit a request to the City of Kerrville, Texas Economic Improvement Corporation (EIC) to amend the Funding Agreement between the EIC, City of Kerrville, Texas, and Playhouse 2000, Inc. to increase the funding to an amount not to exceed \$850,000 for the construction of the support facility to the Cailloux Theater. (staff)

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

**SUBJECT:** Authorization to submit a request to the Economic Improvement Corporation to amend the funding agreement between the Economic Improvement Corporation and Playhouse 2000, Inc. to increase the funding to an amount not to exceed \$850,000 for the Cailloux Theater Support Facility project

**FOR AGENDA OF:** January 13, 2015    **DATE SUBMITTED:** January 7, 2015

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

**EXHIBITS:**

**AGENDA MAILED TO:**

**APPROVED FOR SUBMITTAL BY CITY MANAGER:** 

| <b>Expenditure</b> | <b>Current Balance</b> | <b>Amount</b>    | <b>Account</b> |
|--------------------|------------------------|------------------|----------------|
| <b>Required:</b>   | <b>in Account:</b>     | <b>Budgeted:</b> | <b>Number:</b> |
| <b>\$</b>          | <b>\$</b>              | <b>\$</b>        |                |

**PAYMENT TO BE MADE TO:**

**REVIEWED BY THE DIRECTOR OF FINANCE:**

**SUMMARY STATEMENT**

At the October 27, 2014 Economic Improvement Corporation (EIC) meeting, a report was received from Jeffrey Brown, Executive Director of Playhouse 2000 Inc. (P2K) regarding the Cailloux Theater support facility expansion project. P2K reported that design was currently underway and the original cost estimate of \$750,000 may exceed existing financial resources and therefore requested a timeline extension to raise the additional funds. EIC deferred action for a timeline extension and asked P2K to provide a report at the November meeting with solid estimates and a timeline.

Mr. Brown provided a report to the EIC on November 24<sup>th</sup> with a project cost estimate of \$1,186,455. The EIC directed staff to request authorization from the City Council to amend the funding agreement amount from \$500,000 to an amount not to exceed \$850,000.

**RECOMMENDED ACTION**

City staff is requesting authorization to submit a request to the Economic Improvement Corporation to amend the funding agreement between the Economic Improvement Corporation and Playhouse 2000, Inc. by increasing the funding amount from \$500,000 to an amount not to exceed \$850,000 for the Cailloux Theater Support Facility project.

**Agenda Item:**

6E. Resolution No. 2-2015 providing for the City's approval or disapproval of an amendment to the Kerr Central Appraisal District's 2015 fiscal year budget.  
(staff)



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

---

**SUBJECT:** Resolution No. 2-2015 a resolution providing for the city's approval or disapproval of an amendment to the fiscal year 2015 budget of the Kerr Central Appraisal District.

**FOR AGENDA OF:** Jan. 13, 2015

**DATE SUBMITTED:** Jan. 9, 2015

**SUBMITTED BY:** Todd Parton  
City Manager

**CLEARANCES:**

**EXHIBITS:** Resolution No. 2-2015

**AGENDA MAILED TO:**

**APPROVED FOR SUBMITTAL BY CITY MANAGER:**

|                    |                        |                  |                |
|--------------------|------------------------|------------------|----------------|
| <b>Expenditure</b> | <b>Current Balance</b> | <b>Amount</b>    | <b>Account</b> |
| <b>Required:</b>   | <b>in Account:</b>     | <b>Budgeted:</b> | <b>Number:</b> |
| <b>\$0</b>         | <b>\$0</b>             | <b>\$0</b>       |                |

**PAYMENT TO BE MADE TO:**

**REVIEWED BY THE FINANCE DEPARTMENT:**

---

**SUMMARY STATEMENT**

On January 7, 2015, Mayor Pratt received a written request for the taxing entities served by the Kerr Central Appraisal District (KCAD) to amend its FY2015 budget by allocating \$57,822 of unexpended funds to a restricted capital reserve for a new building. The request contains some background detailing the physical conditions of the district's existing building.

Should the budget amendment request not be approved by a minimum of 51% of the taxing jurisdictions, KCAD would return each entity its pro-rata share of the unexpended funds. The City of Kerrville's portion of these funds is approximately \$8,100.

In order to disapprove the budget amendment, the City of Kerrville must file a resolution to that effect within 30 days after the date of notification. Unless a special meeting is called to consider this issue, the City Council has until its regular meeting of January 27, 2015, to take action.

**RECOMMENDED ACTION**

City staff does not have a recommendation regarding this request at this time.

**CITY OF KERRVILLE, TEXAS  
RESOLUTION NO. 2-2015**

**A RESOLUTION PROVIDING FOR THE CITY'S APPROVAL OR  
DISAPPROVAL OF AN AMENDMENT TO THE FISCAL YEAR 2015  
BUDGET OF THE KERR CENTRAL APPRAISAL DISTRICT**

**WHEREAS**, the Board of Directors for the Kerr Central Appraisal District ("KCAD") is requesting an amendment to its 2015 Fiscal Year Budget to allow for the transfer of surplus funds in the amount of \$57,822.00 to KCAD's Building Reserve Fund for the possible relocation of KCAD to a new building; and

**WHEREAS**, the amendment will require no additional funding; and

**WHEREAS**, pursuant to state law, the City Council must consider KCAD's budget amendment and in the event Council does not approve, it must indicate this action via a resolution; and

**WHEREAS**, the City Council of the City of Kerrville, Texas, finds it to be in the public interest to either approve or disapprove of said proposed amendment as is indicated below;

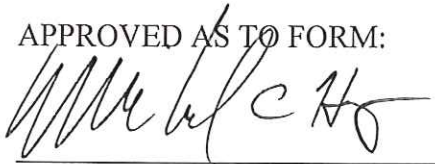
**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF KERRVILLE, KERR COUNTY, TEXAS:**

The Kerr Central Appraisal District's proposed 2015 fiscal budget amendment, the provisions being substantially as set forth in **Exhibit A**, attached hereto and incorporated herein by reference, is hereby \_\_\_\_\_ (**APPROVED OR DISAPPROVED**).

**PASSED AND APPROVED ON this the \_\_\_\_\_ day of \_\_\_\_\_ A.D., 2015.**

\_\_\_\_\_  
Jack Pratt, Jr., Mayor

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Michael C. Hayes, City Attorney

ATTEST:

\_\_\_\_\_  
Brenda G. Craig, City Secretary

**From:** Fourth Coates [mailto:Fourth.coates@kerrcad.org]  
**Sent:** Wednesday, January 07, 2015 10:24 AM  
**To:** sneuse@ingramtx.com; dhuffaker@ingramtx.com; sbreckenridge@ingramtx.com; todd.parton@kerrvilletx.gov; mary.reyes@kerrvilletx.gov; Mayor@Kerrvilletx.gov; Sandra.Yarbrough@kerrvilletx.gov; cojudge@co.kerr.tx.us; jgrinstead@co.kerr.tx.us; ihargis@co.kerr.tx.us; bishop@cpisd.net; newcomb@cpisd.net; wiseman@cpisd.net; margie.hall@comfort.txed.net; ron-gray@divide.k12.tx.us; divide.isd@gmail.com; bbacon@divide.k12.tx.us; cstevenson@harper.txed.net; cdockery@huntisd.com; loweCPA@jmlowecompany.com; borrr@ingramisd.net; rtempleton@ingramisd.net; 'Michael Carrales'; dan.troxell@kerrvilleisd.net; jackc@medinaisd.org; RBuck@ugra.org  
**Cc:** 'Sharon Constantinides'; 'lewisranch'  
**Subject:** 2013 Audit & Proposed 2013 Budget Amendment  
**Importance:** High

**Date:** January 7, 2015

**Re:** Kerr CAD 2013 Budget Surplus Amendment & 2013 Audit

**To:** Participating Taxing Entities Served by Kerr CAD

**From:** **Kerr CAD Board of Directors**

**Message:** The 2013 Budget Audit Report conducted by Pressler, Thompson and Company CPAs shows a budget surplus of **\$57,822**. A copy of the 2013 Audit is included. The Kerr CAD Board of Directors is requesting this amount to be applied to the Building Reserve Fund via budget amendment. The addition of the surplus amount will give the fund a balance of **\$224,260**.

Voting taxing units may veto the amendment to the 2013 Budget to retain the surplus amount of **\$57,822**. The 2013 Budget allocation by taxing entity is attached so you may see your entity's allocated amount.

To veto, a majority of the voting taxing units must pass resolutions disapproving the amendment to the budget. These units must file resolutions with the appraisal district's board of director's secretary within 30 days after the date of notification. If a majority of the taxing entities veto, the amendment does not take effect. The board must then return the surplus amount to the taxing entities based on their prorated share as found in the attached allocation schedule.

In the past the Building Reserve Fund was used to put a new roof on the building as well as to repair and renovate the plumbing and connect to the City of Kerrville's sewage system after the septic system failed. It has also been used to repair the floor in the equipment room caused by termite damage. There is also other termite damage in the walls in several areas. The parking lot was also repaired using this fund. The building was built in 1979 as a radio station at a time when energy efficiency was not a high priority. Most of the exterior walls are floor to ceiling single pane glass making them very energy



wasteful. Extensive future expenditures are anticipated including flooring replacement, air conditioners replacement, installation of handicapped entry access, renovation and repairs to the interior. Additional insulation and weather proofing is also needed. The parking lot is in need of additional modifications for the future. There is also the possibility of mold in the attic due to prior leaks in the old roof. There is an AM radio tower located at the rear of the property that is of concern. The lease on this tower will end March 2015.

Because of the excessive renovations required to be done to the existing building the Kerr CAD board of directors is currently considering relocating the Appraisal District Office to a new location. The options available are to:

1. Buy an existing facility that would function as the Kerr CAD Office.
2. Lease an existing facility or contract for a build to suit arrangement.
3. Purchase land and build a building specifically designed as an Appraisal District Office.

Thank you for your consideration of this proposed Budget Amendment to the 2013 Kerr Central Appraisal District budget. Addition of these funds to the Building and Reserve Fund will allow Kerr Central Appraisal District to continue to serve the taxing units and the tax payers of Kerr County.

DISCLAIMER: This email (plus any attachments) is a public record of the City of Kerrville and is subject to public disclosure under the Texas Public Information Act. This email is also subject to the State Retention Schedule.

**PRESSLER, THOMPSON AND COMPANY**

A PROFESSIONAL CORPORATION  
CERTIFIED PUBLIC ACCOUNTANTS  
ONE SCHREINER CENTER  
819 WATER STREET, SUITE 320  
KERRVILLE, TEXAS 78028

Ernst H. Druebert, Jr., C.P.A.  
Jerry N. Oliver, C.P.A.  
Douglas H. Sundberg, C.P.A.  
Timothy R. Porter, C.P.A.

P.O. Box 290590  
Telephone (830) 257-7241  
Fax (830) 896-4041  
Website: [www.ptcoopa.com](http://www.ptcoopa.com)

November 12, 2014

To the Board of Directors  
Kerr Central Appraisal District

We have audited the financial statements of the governmental activities and the general fund of the Kerr Central Appraisal District for the year ended December 31, 2013. Professional standards require that we provide you with information about our responsibilities under generally accepted auditing standards, as well as certain information related to the planned scope and timing of our audit. We have discussed such information with the Chief Appraiser. Professional standards also require that we communicate to you the following information related to our audit.

Significant Audit Findings

*Qualitative Aspects of Accounting Practices*

Management is responsible for the selection and use of appropriate accounting policies. The significant accounting policies used by Kerr Central Appraisal District are described in Note A to the financial statements. We noted no transactions entered into by the governmental unit during the year for which there is a lack of authoritative guidance or consensus. All significant transactions have been recognized in the financial statements in the proper period.

The financial statement disclosures are neutral, consistent, and clear.

*Difficulties Encountered in Performing the Audit*

We encountered no significant difficulties in dealing with management in performing and completing our audit. The audit for the most part was completed in August 2014 and a report draft was provided to management on August 21, 2014 for review and drafting Management's Discussion and Analysis (MD&A). Management provided its MD&A information portion of the report to the auditors on November 3 2014. While there was no difficulty in completing the audit, the delay in receipt of the MD&A resulted in the delay in issuance of the audit report.

*Corrected and Uncorrected Misstatements*

Professional standards require us to accumulate all known and likely misstatements identified during the audit, other than those that are trivial, and communicate them to the appropriate level of management. Management has corrected all such misstatements. In addition, none of the misstatements detected as a result of audit procedures were material, either individually or in the aggregate, to each opinion unit's financial statements taken as a whole.



*Disagreements with Management*

For purposes of this letter, professional standards define a disagreement with management as a financial accounting, reporting, or auditing matter, whether or not resolved to our satisfaction, that could be significant to the financial statements or the auditor's report. We are pleased to report that no such disagreements arose during the course of our audit.

*Management Representations*

We have requested certain representations from management that are included in the management representation letter dated November 12, 2014.

*Management Consultations with Other Independent Accountants*

In some cases, management may decide to consult with other accountants about auditing and accounting matters, similar to obtaining a "second opinion" on certain situations. If a consultation involves application of an accounting principle to the governmental unit's financial statements or a determination of the type of auditor's opinion that may be expressed on those statements, our professional standards require the consulting accountant to check with us to determine that the consultant has all the relevant facts. To our knowledge, there were no such consultations with other accountants.

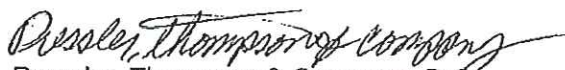
*Other Audit Findings or Issues*

We generally discuss a variety of matters, including the application of accounting principles and auditing standards, with management each year prior to retention as the governmental unit's auditors. However, these discussions occurred in the normal course of our professional relationship and our responses were not a condition to our retention.

Other Matters

With respect to the supplementary information accompanying the financial statements, we made certain inquiries of management and evaluated the form, content, and methods of preparing the information to determine that the information complies with accounting principles generally accepted in the United States of America, the method of preparing it has not changed from the prior period, and the information is appropriate and complete in relation to our audit of the financial statements. We compared and reconciled the supplementary information to the underlying accounting records used to prepare the financial statements or to the financial statements themselves.

This information is intended solely for the use of Board of Directors and management of Kerr Central Appraisal District and is not intended to be and should not be used by anyone other than these specified parties.

  
Pressler, Thompson & Company, P.C.



**KERR CENTRAL APPRAISAL DISTRICT**

**AUDIT REPORT**

**DECEMBER 31, 2013**

KERR CENTRAL APPRAISAL DISTRICT

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DECEMBER 31, 2013

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**PRESSLER, THOMPSON AND COMPANY**

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Website: [www.ptcccpa.com](http://www.ptcccpa.com)

**INDEPENDENT AUDITOR'S REPORT**

To the Board of Directors  
Kerr Central Appraisal District  
Kerrville, Texas

We have audited the accompanying financial statements of the governmental activities and the general fund of the Kerr Central Appraisal District (the District) as of and for the year ended December 31, 2013, and the related notes to the financial statements, which collectively comprise the District's basic financial statements as listed in the table of contents.

**Management's Responsibility for the Financial Statements**

Management is responsible for the preparation and fair presentation of these financial statements in accordance with accounting principles generally accepted in the United States of America; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

**Auditor's Responsibility**

Our responsibility is to express opinions on these financial statements based on our audit. We conducted our audit in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinions.



## Opinions

In our opinion, the financial statements referred to above present fairly, in all material respects, the respective financial position of the governmental activities and the general fund of the District as of December 31, 2013, and the respective changes in financial position thereof for the year then ended in conformity with accounting principles generally accepted in the United States of America.

## Other Matters

### *Required Supplementary Information*

Accounting principles generally accepted in the United States of America require that the management's discussion and analysis and budgetary comparison information on pages 3 through 7 and page 27 be presented to supplement the basic financial statements. Such information, although not a part of the basic financial statements, is required by the Governmental Accounting Standards Board, who considers it to be an essential part of the financial reporting for placing the basic financial statements in an appropriate operational, economic, or historical context. We have applied certain limited procedures to the required supplementary information in accordance with auditing standards generally accepted in the United States of America, which consisted of inquiries of management about the methods of preparing the information and comparing the information for consistency with management's responses to our inquiries, the basic financial statements, and other knowledge we obtained during our audit of the basic financial statements. We do not express an opinion or provide any assurance on the information because the limited procedures do not provide us with sufficient evidence to express an opinion or provide any assurance.

  
PRESSLER, THOMPSON AND COMPANY  
A PROFESSIONAL CORPORATION

November 12, 2014

## KERR CENTRAL APPRAISAL DISTRICT MANAGEMENT'S DISCUSSION AND ANALYSIS

As chief appraiser of the Kerr Central Appraisal District, I offer readers the following discussion and analysis of the District's financial activities for the fiscal year ended December 31, 2013. It should be read in conjunction with the accompanying basic financial statements. This discussion and analysis includes comparative analysis to the prior year for government-wide data.

### Financial Highlights - General Fund

At the end of the current fiscal year, the total fund balance was \$504,412, of which the unassigned fund balance was \$248,152 or 30.7% of the fiscal year 2013 general fund expenditures. The unreserved fund balance increased from \$243,858 to \$248,152 from fiscal year 2012, a 1.8% increase. From 2003 through 2010 and 2012 through 2013, the Board has retained the excess revenues over expenditures in reserve for building improvements versus refunding to the entities. For the fiscal year ending December 31, 2012, amounts committed by the Board for vehicle replacement reserve and building reserve were retained with the excess refunded to the taxing entities. Therefore, by retaining excess revenues over expenditures, Board committed building reserve increased from \$159,439 in 2012 to \$224,260 in 2013, as there were no building renovations in 2013. From 2010 through 2013, the Board committed \$8,000 per year for vehicle replacement reserve.

General fund revenues were \$885,219, an increase of \$28,001 or 3.27% from fiscal year 2012. General fund expenditures were \$808,104, a decrease of \$5,257 from 2012. Capital expenditures of \$3,058 in 2013 were for the purchase of two laptop computers and there were no capital expenditures in 2012.

### Overview of the Financial Statements

This annual report consists of three parts – management's discussion and analysis (this section), the basic financial statements, and required supplementary information.

Management's discussion and analysis is intended to serve as an introduction to the District's basic financial statements.

The basic financial statements consist of three components:

- The government-wide financial statements provide both long-term and short-term information about the District's overall financial status. Previously, the primary focus of local governmental financial statements has been summarized fund type information on a current financial resource basis. GASB 34 modified this approach, adding new government-wide statements, which focus on the District as a whole.
- The governmental fund financial statements, which have been provided in the past, focus on individual parts of the District. The fund balance tells what remains for future general government services.



- The financial statements also include notes that explain some of the information in the financial statements and provide more detailed data.

The fund financial statements are presented in the first column of the financial statements on pages 10 and 11 with adjustments in the middle column to arrive at the government-wide financial statements in the third column.

The statements are followed by a section of required supplementary information that further explains and supports the information in the financial statements.

The remainder of this overview section of management's discussion and analysis explains the structure and contents of each of the statements.

#### Government-Wide Financial Statements

The government-wide financial statements are designed to provide readers with a broad overview of the District's finances, in a manner similar to statements of a private-sector business.

The statement of net position includes all of the District's assets and deferred outflows of resources less liabilities and deferred inflows of resources with the difference reported as net position.

The government-wide statements report the District's net position and how they have changed. Over time, increases or decreases in the District's net position are an indicator of whether its financial health is improving or deteriorating, respectively.

Both the statement of net position and the statement of activities are prepared utilizing the accrual basis of accounting.

#### Fund Financial Statements

The fund financial statements provide detailed information about the most significant funds – not the district as a whole. A fund is a grouping of related accounts that is used to maintain control over resources that have been segregated for specific activities or objectives. State and local governments establish other funds to help control and manage money for particular purposes or to show that it is meeting legal responsibilities for using public funds. The focus is on major funds rather than fund types.

The District has one type of governmental fund, the general fund. The general fund focuses on how money flows into and out of the District and the balance left at year-end that is available for spending. This fund is reported using an accounting method called the modified accrual basis of accounting, which measures cash and all other financial assets that can readily be converted into cash. The governmental fund statements provide a detailed short-term view of the District's general operations and the services it provides. Governmental fund information helps to determine whether there are more or fewer financial resources that can be spent in the near future to finance the District's programs.



The differences between governmental funds and governmental activities are reflected in the adjustments column of the financial statements and are further explained in Notes H and I.

The District adopts an annual appropriated budget for its general fund. The District's annual budget is allocated to the taxing entities by the proportion of its total property tax levy to the total levy of all participating taxing entities. A budgetary comparison schedule has been provided for the general fund in the required supplementary information.

#### Notes to the Financial Statements

The notes provide additional information that is essential to a full understanding of the data provided in the government-wide and fund financial statements.

#### Financial Analysis of the District as a Whole

Our analysis of the District as a whole focuses on net position (Table 1) and changes in net position (Table 2). The "Summary of Net Position" (Table 1) lists assets by order of liquidity.

#### **Summary of Net Position**

|                                         | <b>Governmental<br/>Activities</b> |                   |
|-----------------------------------------|------------------------------------|-------------------|
| <b>Assets</b>                           | <b>2013</b>                        | <b>2012</b>       |
| Cash                                    | \$ 734,041                         | \$ 470,179        |
| Capital assets, net of depreciation     | 193,365                            | 203,346           |
| <b>Total assets</b>                     | <b>927,406</b>                     | <b>673,525</b>    |
| <b>Liabilities</b>                      |                                    |                   |
| Unearned revenue                        | 208,162                            | 33,264            |
| Accounts payable and other liabilities  | 21,467                             | 9,618             |
| <b>Total liabilities</b>                | <b>229,629</b>                     | <b>42,882</b>     |
| <b>Net Position</b>                     |                                    |                   |
| Invested in capital assets, net of debt | 193,365                            | 203,346           |
| Unrestricted                            | 504,412                            | 427,297           |
| <b>Total net position</b>               | <b>\$ 697,777</b>                  | <b>\$ 630,643</b> |

The Changes in Net Position (Table 2) itemizes the basic sources of revenue and expenditures. Appraisal revenue from the taxing entities accounts for 99.2% of the District's revenue in 2013 and 2012, respectively. Salaries and salary related expenses (retirement, insurance and payroll taxes) account for approximately 76.4% and 77.4% of total expenditures in 2013 and 2012, respectively. These expenses are broken out of general government operations. Expenditures are further detailed on the Statement of Activities in the financial statements.

**Table 2**  
**Changes in Net Position**

|                                      | <b>Governmental<br/>Activities</b> |                   |
|--------------------------------------|------------------------------------|-------------------|
|                                      | <b>2013</b>                        | <b>2012</b>       |
| <b>Revenues:</b>                     |                                    |                   |
| Appraisal service                    | \$ 878,525                         | \$ 850,766        |
| Mapping and copies                   | 2,727                              | 2,652             |
| Interest                             | 1,567                              | 1,400             |
| Tower lease                          | 2,400                              | 2,400             |
| Total revenues                       | <u>885,219</u>                     | <u>857,218</u>    |
| <b>Expenses:</b>                     |                                    |                   |
| Salaries, benefits and payroll taxes | 625,424                            | 628,650           |
| Government operations                | 179,622                            | 169,214           |
| Interest on debt                     | -                                  | 402               |
| Depreciation                         | 13,039                             | 13,584            |
| Total expenses                       | <u>818,085</u>                     | <u>811,850</u>    |
| Change in net position               | 67,134                             | 45,368            |
| Beginning net position               | <u>630,643</u>                     | <u>585,275</u>    |
| Net position                         | <u>\$ 697,777</u>                  | <u>\$ 630,643</u> |

#### Financial Analysis of the District's General Fund

For the fiscal year ended December 31, 2013, the District's governmental fund reflects a fund balance of \$504,412 compared to \$427,297 in 2012. Excess revenues over expenditures were \$77,115 of which none will be refunded to the taxing entities but retained and committed to the building reserve for building repairs or improvements. See further fund balance analysis at Note G.

### General Fund Budgetary Highlights

General fund revenues exceeded final budget by \$4,294 due to interest and computer generated income which were not budgeted. Overall, general fund expenditures were less than the original and final budget by \$77,321. The most significant decrease in expenditures from budget was in salaries and related benefits (insurance, retirement and taxes) which accounted for 57.8% of the expenditure cost savings to budget. This was due to an employee leaving employment and not being replaced during the year.

The District budgets for equipment repairs and maintenance of \$4,500 but does not allocate this item to the taxing entities, resulting in a \$4,500 deficit budget on the original and final budget.

### Capital Assets

**Table 3**  
**Capital Assets at Year-end**

|                           | Governmental<br>Activities |                   |
|---------------------------|----------------------------|-------------------|
|                           | 2013                       | 2012              |
| Land                      | \$ 79,375                  | \$ 79,375         |
| Building and improvements | 247,366                    | 247,366           |
| Vehicles                  | 63,500                     | 63,500            |
| Furniture and equipment   | 209,889                    | 206,831           |
| Total capital assets      | <u>\$ 600,130</u>          | <u>\$ 597,072</u> |

Additional information on capital assets, including depreciation, is presented in Note B to the financial statements.

### Management's Statement

The management of the District is not aware of any facts, existing or foreseen conditions or decisions that will have any significant impact on the financial position or operations of the District after the reporting date of this audit. The District does not foresee any major changes in its budgeting process and source of revenues.

This report is designed to provide the board of directors, taxing entities, citizens and creditors with a general overview of the District's finances and to show the District's accountability for the money it receives. If you have any questions about this report or need additional financial information, contact P.H. Coates, IV, Kerr Central Appraisal District, PO Box 294387, Kerrville, TX 78029-4387, (830) 895-5223.



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## BASIC FINANCIAL STATEMENTS

**KERR CENTRAL APPRAISAL DISTRICT  
GOVERNMENTAL FUND BALANCE SHEET/  
STATEMENT OF NET POSITION  
DECEMBER 31, 2013**

|                                                  | General<br>Fund<br>Balance Sheet | Adjustments<br>(Note H) | Statement of<br>Net Position |
|--------------------------------------------------|----------------------------------|-------------------------|------------------------------|
| <b>ASSETS</b>                                    |                                  |                         |                              |
| Cash                                             | \$ 734,041                       | \$ -                    | \$ 734,041                   |
| Capital assets (net of accumulated depreciation) | -                                | 193,365                 | 193,365                      |
| Total assets                                     | <u>\$ 734,041</u>                | <u>193,365</u>          | <u>927,406</u>               |
| <b>LIABILITIES</b>                               |                                  |                         |                              |
| Unearned revenue                                 | \$ 208,162                       | -                       | 208,162                      |
| Accounts payable                                 | 14,871                           | -                       | 14,871                       |
| Payroll liabilities                              | 6,596                            | -                       | 6,596                        |
| Total liabilities                                | <u>229,629</u>                   | <u>-</u>                | <u>229,629</u>               |
| <b>FUND BALANCE/NET POSITION</b>                 |                                  |                         |                              |
| Fund Balance:                                    |                                  |                         |                              |
| Committed to:                                    |                                  |                         |                              |
| Building reserve                                 | 224,260                          | (224,260)               | -                            |
| Vehicle reserve                                  | 32,000                           | (32,000)                | -                            |
| Unassigned                                       | 248,152                          | (248,152)               | -                            |
| Total fund balance                               | <u>504,412</u>                   | <u>(504,412)</u>        | <u>-</u>                     |
| Total liabilities and fund balance               | <u>\$ 734,041</u>                |                         |                              |
| Net Position:                                    |                                  |                         |                              |
| Invested in capital assets, net of related debt  |                                  | 193,365                 | 193,365                      |
| Unrestricted net position                        |                                  | 504,412                 | 504,412                      |
| Total net position                               |                                  | <u>\$ 697,777</u>       | <u>\$ 697,777</u>            |

See accompanying notes to the financial statements.



**KERR CENTRAL APPRAISAL DISTRICT**  
**STATEMENT OF GOVERNMENTAL FUND REVENUES, EXPENDITURES AND CHANGES**  
**IN FUND BALANCE - GENERAL FUND/STATEMENT OF ACTIVITIES**  
**FOR THE YEAR ENDED DECEMBER 31, 2013**

|                                      | General<br>Fund   | Adjustments<br>(Note 1) | Statement of<br>Activities |
|--------------------------------------|-------------------|-------------------------|----------------------------|
| <b>REVENUES</b>                      |                   |                         |                            |
| Program revenue:                     |                   |                         |                            |
| Appraisal service                    | \$ 878,525        | \$ -                    | \$ 878,525                 |
| Mapping and copies                   | 2,727             | -                       | 2,727                      |
| Interest                             | 1,567             | -                       | 1,567                      |
| Tower lease                          | 2,400             | -                       | 2,400                      |
| Total revenues                       | <u>885,219</u>    | <u>-</u>                | <u>885,219</u>             |
| <b>EXPENDITURES/EXPENSES</b>         |                   |                         |                            |
| Salaries                             | 484,644           | -                       | 484,644                    |
| Insurance, retirement and taxes      | 140,780           | -                       | 140,780                    |
| Appraisal Review Board               | 9,499             | -                       | 9,499                      |
| Travel and auto allowance            | 17,813            | -                       | 17,813                     |
| Audit and accounting                 | 5,950             | -                       | 5,950                      |
| Mapping system                       | 9,003             | -                       | 9,003                      |
| Deed copies                          | 837               | -                       | 837                        |
| Equipment lease                      | 5,822             | -                       | 5,822                      |
| Telephone and utilities              | 11,370            | -                       | 11,370                     |
| Consulting and legal                 | 42,053            | -                       | 42,053                     |
| Liability insurance                  | 5,514             | -                       | 5,514                      |
| Publishing                           | 4,003             | -                       | 4,003                      |
| Dues                                 | 1,714             | -                       | 1,714                      |
| Schools and seminars                 | 6,400             | -                       | 6,400                      |
| Postage                              | 5,370             | -                       | 5,370                      |
| Printing                             | 2,254             | -                       | 2,254                      |
| Supplies                             | 7,274             | -                       | 7,274                      |
| Capital expenditures                 | 3,058             | (3,058)                 | -                          |
| Furniture and equipment              | 1,919             | -                       | 1,919                      |
| Bank service charges                 | 187               | -                       | 187                        |
| Board expenses                       | 65                | -                       | 65                         |
| Building and grounds maintenance     | 14,514            | -                       | 14,514                     |
| Equipment maintenance                | 516               | -                       | 516                        |
| Computer system support              | 27,545            | -                       | 27,545                     |
| Depreciation                         | -                 | 13,039                  | 13,039                     |
| Total expenditures/expenses          | <u>808,104</u>    | <u>9,981</u>            | <u>818,085</u>             |
| Excess of revenues over expenditures | 77,115            | (9,981)                 |                            |
| Change in net position               |                   |                         | 67,134                     |
| <b>FUND BALANCE/NET POSITION</b>     |                   |                         |                            |
| Beginning of the year                | <u>427,297</u>    | <u>203,346</u>          | <u>630,643</u>             |
| End of the year                      | <u>\$ 504,412</u> | <u>\$ 193,365</u>       | <u>\$ 697,777</u>          |

See accompanying notes to the financial statements.

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**KERR CENTRAL APPRAISAL DISTRICT  
NOTES TO THE FINANCIAL STATEMENTS  
DECEMBER 31, 2013**

**NOTE A – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES**

The Kerr Central Appraisal District (District) is a political subdivision of the State of Texas created pursuant to Subchapter A of the Texas Property Tax Code. The District's primary responsibility is to develop an annual appraisal roll for use by the taxing entities. The District is governed by a board of five voting directors and one non-voting director. Members of the board are appointed by vote of the governing bodies of the taxing entities that participate in the District. The board has decision making authority, the power to designate management, and the responsibility to significantly influence operations. The board has the primary accountability for fiscal matters.

The basic financial statements of the District have been prepared in conformity with accounting principles generally accepted in the United States of America as applied to governmental units. The Governmental Accounting Standards Board (GASB) is the accepted standard-setting body for establishing governmental accounting and financial reporting principles. The more significant of the District's accounting policies are described below.

**1. REPORTING ENTITY**

The District is a financial reporting entity as defined by the GASB in its Statement No. 14, *The Financial Reporting Entity* and as amended by GASB Statement No. 61. There are no component units included within the reporting entity.

**2. FINANCIAL STATEMENT PRESENTATION OF FUND AND GOVERNMENT-WIDE FINANCIAL STATEMENTS**

The financial statement format includes both the fund and the government-wide financial statements on one statement. The fund financial statements present the only major fund, the general fund. The fund financial statements are reported in the first column of the financial statements. The adjustments column shows necessary adjustments for reporting governmental activities in compliance with GASB Statement No. 34 to arrive at the government-wide financial statements.

*Fund Financial Statements*

The fund financial statements are provided for governmental, proprietary, and fiduciary funds, where applicable. The general fund is the only governmental fund for the District. Only current assets, current liabilities and fund balances are included on the balance sheet. Operating statements of these funds present net increases and decreases in current assets and liabilities (i.e. revenues and other financing sources and expenditures and other financing uses).



**KERR CENTRAL APPRAISAL DISTRICT  
NOTES TO THE FINANCIAL STATEMENTS  
DECEMBER 31, 2013**

**NOTE A – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (CONTINUED)**

*Government-wide Financial Statements*

The government-wide financial statements include the statement of net position and the statement of activities. These statements report financial information for the District as a whole, excluding fiduciary funds and component units, if any. The statement of activities reports what the District did with the revenues raised. The revenues include charges for appraisal services to taxing entities the District services and other miscellaneous revenue generated by the District.

**3. MEASUREMENT FOCUS AND BASIS OF ACCOUNTING**

The government-wide financial statements are reported using the economic resources measurement focus and the accrual basis of accounting. Revenues are recognized when earned and expenses are recognized at the time liabilities are incurred, regardless of when the related cash flows take place. In the government-wide financial statements, long-term debt and other long-term obligations are reported as liabilities in the governmental activities statement of net position.

Governmental fund financial statements use the current financial resources measurement focus and the modified accrual basis of accounting. Under this method, revenues are recognized when measurable and available and expenditures recognized in the accounting period in which the fund liability is incurred, if measurable, except for unmatured interest and principal on long-term debt, which is recognized when due. Capital asset acquisitions and debt principal payments are reported as expenditures in the governmental funds.

There was only one major governmental fund during the current fiscal year, the general fund. The general fund is the overall operating fund of the District and is used to account for all financial resources of the District.

**4. CAPITAL ASSETS**

Capital assets, which include the building, building improvements, vehicles, and furniture and equipment, are reported in the governmental activities column in the government-wide financial statements. Capital assets are defined by the District as assets with an initial, individual cost of more than \$1,000. When capital assets are purchased, they are capitalized and depreciated in the government-wide financial statements. Capital assets are recorded as expenditures of the current period in the governmental fund financial statements.

Capital assets are recorded at historical cost or estimated historical cost if constructed. The cost of normal maintenance and repairs that do not add to the value of the asset or materially extend assets' lives are not capitalized but are expensed as incurred.

**KERR CENTRAL APPRAISAL DISTRICT  
NOTES TO THE FINANCIAL STATEMENTS  
DECEMBER 31, 2013**

**NOTE A – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (CONTINUED)**

Capital assets of the District are depreciated using the straight-line method over the following estimated useful lives:

|                           |          |
|---------------------------|----------|
| Building and Improvements | 40 years |
| Improvements              | 15 years |
| Vehicles                  | 5 years  |
| Furniture and Equipment   | 10 years |
| Computer Equipment        | 5 years  |

**5. CASH AND INVESTMENTS**

Cash and investments are recorded at cost which, based on the amount invested, are also fair value. Currently, the available cash is invested in a short-term interest-bearing checking account with a local bank issued under FDIC coverage. Excess account balances over FDIC coverage are collateralized by securities held by the pledging financial institution's agent in the District's name.

**6. DEFERRED OUTFLOWS/INFLOWS OF RESOURCES**

For the fiscal year 2012, the District implemented GASB Statements No. 63. Statement No. 63, *Financial Reporting of Deferred Outflows of Resources, Deferred Inflows of Resources, and Net Position*, provides financial reporting guidance for deferred outflows and inflows of resources, originally introduced and defined in GASB Concepts Statement No. 4, *Elements of Financial Statements*, as a consumption of net assets applicable to a future reporting period and an acquisition of net assets applicable to a future reporting period, respectively. Further, Concepts Statement No. 4 also identifies net position as the residual of all other elements presented in the statement of financial position. Accordingly, the term "net position" replaces the term "net assets" as previously reported.

In addition to assets, the statement of financial position includes a separate section for deferred outflows of resources. This separate financial statement element, *deferred outflows of resources*, represents a consumption of net position that applies to a future period(s) and so will not be recognized as an outflow of resources (expense/expenditure) until then. The District does not have any of this type of item.

In addition to liabilities, the statement of financial position will sometimes report a separate section for deferred inflows of resources. This separate financial statement element, *deferred inflows of resources*, represents an acquisition of net position that applies to a future period(s) and so will not be recognized as an inflow of resources (revenue) until that time. The District does not have any of this type of item.



**KERR CENTRAL APPRAISAL DISTRICT  
NOTES TO THE FINANCIAL STATEMENTS  
DECEMBER 31, 2013**

**NOTE A – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (CONTINUED)**

**7. FUND EQUITY**

The District implemented GASB Statement No. 54, *Fund Balance Reporting and Governmental Fund Type Definitions*, as of November 10, 2011. This standard changed the overall definitions and classifications of governmental fund balances.

Fund equity at the governmental fund financial reporting level is classified as "fund balance." Effective with the implementation of GASB Statement No. 63, fund equity for all other reporting is classified as "net position."

**GOVERNMENTAL FUND BALANCES**

Generally, governmental fund balances represent the difference between the assets and liabilities under the current financial resources measurement focus of accounting. Governmental funds report fund balance classifications that comprise a hierarchy based primarily on the extent to which the District is bound to honor constraints on the specific purposes for which amounts in those resources can be spent. Fund balances are classified as follows:

- **Nonspendable** – Fund balances are reported as nonspendable when amounts cannot be spent because they are either (a) not in spendable form (i.e., items that are not expected to be converted to cash) or (b) legally or contractually required to be maintained intact.
- **Restricted** – Fund balances are reported as restricted when there are limitations imposed on their use through external restrictions imposed by creditors, grantors or laws or regulations of other governments.
- **Committed** – Fund balances are reported as committed when they can be used only for specific purposes pursuant to constraints imposed by formal action of the District's Board of Directors through the adoption of a resolution. Only the Board of Directors may modify or rescind the commitment.
- **Assigned** – Fund balances are reported as assigned when amounts are constrained by the District's intent to be used for specific purposes, but are neither restricted nor committed.
- **Unassigned** – Fund balances are reported as unassigned when the balances do not meet any of the above criterion.



**KERR CENTRAL APPRAISAL DISTRICT  
NOTES TO THE FINANCIAL STATEMENTS  
DECEMBER 31, 2013**

**NOTE A – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (CONTINUED)**

In governmental funds, the District's policy is to first apply the expenditure toward restricted fund balance and then to other, less restrictive classifications – committed and then assigned fund balances before using unassigned fund balance. The District has adopted a policy to achieve a minimal level of unassigned fund balance in the general fund of 25 percent of total expenditures.

**GOVERNMENT-WIDE NET POSITION**

The government-wide financial statements use a net position presentation. Net position represents the difference between assets and deferred outflows less liabilities and deferred inflows and is categorized as invested in capital assets, net of related debt; restricted net position; and unrestricted net position.

- Invested in Capital Assets, Net of Related Debt – This category groups all capital assets into one component of net position. It consists of the historical cost of capital assets less accumulated depreciation and reduced by any debt that remains outstanding attributable to the acquisition, construction, or improvement of those assets.
- Restricted Net Position – This category presents external restriction imposed by creditors, contributors or laws or regulations of other governments and restrictions imposed by law through constitutional provisions or enabling legislation. At the present time there are no such restrictions.
- Unrestricted Net position – This category represents net position of the District not restricted for any other purpose and which are available for general use by the District.

When an expense is incurred that can be paid using either restricted or unrestricted resources (net position), the District's policy is to first apply the expense toward restricted resources.

**8. PROGRAM REVENUE**

Program revenue for the District consists of charges to participating taxing entities for appraisal services. Additionally, map and copy costs are charged to property holders or others interested in a respective property.

**KERR CENTRAL APPRAISAL DISTRICT  
NOTES TO THE FINANCIAL STATEMENTS  
DECEMBER 31, 2013**

**NOTE A – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (CONTINUED)**

**9. BUDGETS AND BUDGETARY ACCOUNTING**

The Kerr Central Appraisal District follows these procedures in establishing the budgetary data reflected in the financial statements:

- a. Formal budgetary integration is employed as a management control device during the year for the general fund.
- b. The District's Board of Directors approves total budget appropriations only. The Board of Directors must approve any revisions that alter the total appropriations of any fund. Therefore, the level of budgetary responsibility is by total appropriations.
- c. Unused appropriations for all the above annually budgeted funds lapse at the end of the year and excess budgeted funds must be returned to the taxing entities unless retention of the funds is approved by the taxing authorities supporting the District's budget.

**NOTE B – CHANGES IN CAPITAL ASSETS**

A summary of changes in capital assets for the year ended December 31, 2013 follows.

|                                | Balances at<br>January 1, 2013 | Additions  | Deletions | Balances at<br>December 31, 2013 |
|--------------------------------|--------------------------------|------------|-----------|----------------------------------|
| Land                           | \$ 79,375                      | \$ -       | \$ -      | \$ 79,375                        |
| Building and improvements      | 247,366                        | -          | -         | 247,366                          |
| Furniture and equipment        | 206,831                        | 3,058      | -         | 209,889                          |
| Vehicles                       | 63,500                         | -          | -         | 63,500                           |
| Total historical cost          | 597,072                        | 3,058      | -         | 600,130                          |
| Less accumulated depreciation  |                                |            |           |                                  |
| Building and improvements      | 132,437                        | 9,113      | -         | 141,550                          |
| Furniture and equipment        | 197,789                        | 3,926      | -         | 201,715                          |
| Vehicles                       | 63,500                         | -          | -         | 63,500                           |
| Total accumulated depreciation | 393,726                        | 13,039     | -         | 406,765                          |
| Capital assets - net           | \$ 203,346                     | \$ (9,981) | \$ -      | \$ 193,365                       |

**KERR CENTRAL APPRAISAL DISTRICT  
NOTES TO THE FINANCIAL STATEMENTS  
DECEMBER 31, 2013**

**NOTE C – ACCOUNTS PAYABLE**

Accounts payable represents unpaid invoices on services rendered or items purchased which applied to the fiscal year under audit.

**NOTE D – FRINGE BENEFIT PLANS**

The Appraisal District has a medical and dental insurance plan through Texas Association of Counties (Health and Employee Benefits Pool) with medical coverage through Blue Cross/Blue Shield of Texas set up as a PPO type coverage. The District pays for the employees' premiums, with family coverage available at the employee's cost. The District's current expenditures for medical and dental for the twelve months ending December 31, 2013 and 2012 were \$86,937 and \$84,746, respectively. The plan is voluntary and all full-time employees participated as of December 31, 2013 and 2012.

Beginning in April 2011, the District also began providing long-term disability coverage to all employees through Standard Insurance Company. The cost of this coverage to the District was \$7,011 and \$7,013 in 2013 and 2012, respectively.

**NOTE E – ESTIMATES**

The presentation of financial statements in conformity with generally accepted accounting principles requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.

**NOTE F – EMPLOYEE PENSION PLAN**

The District's money purchase pension plan (Plan) is a defined contribution plan established to provide retirement benefits to all eligible participants. The Plan is administrated by South Texas Administrators, Inc. As of December 31, 2013 and 2012, Plan investments had a market value of \$1,379,391 and \$1,162,024, respectively. Each participant directs the investment of his/her entire interest in the Plan. At December 31, 2013, the Plan had 11 active participants. No retirement benefits are currently being paid.



**KERR CENTRAL APPRAISAL DISTRICT  
NOTES TO THE FINANCIAL STATEMENTS  
DECEMBER 31, 2013**

**NOTE F – EMPLOYEE PENSION PLAN (CONTINUED)**

All employees of the District are eligible to participate in the Plan. The District and each employee are currently required to contribute 8 percent of the employee's total compensation to the Plan. The District's and the employees' pretax contributions to the Plan for 2013 were each \$38,771 based on eligible payroll of \$484,644 and for 2012 were each \$38,929 based on eligible payroll of \$486,610.

The participants become vested in the District's contributions based on years of service according to the following schedule:

| <u>Years of Service</u> | <u>Percentage</u> |
|-------------------------|-------------------|
| Less than 2 years       | 0 %               |
| 2 years                 | 10 %              |
| 3 years                 | 20 %              |
| 4 years                 | 30 %              |
| 5 years                 | 100 %             |

The Plan received a favorable determination letter dated March 12, 2013 from the Internal Revenue Service.

**NOTE G – OPERATIONS AND COMMITTED FUND BALANCE**

The District's operations are financed by payments from each participating taxing unit. Each taxing unit's portion of the total annually approved budget is determined by the proportion its total property tax levy bears to the total amount of property taxes imposed in the District by all participating units. Each taxing unit pays its allocation of the District's budget in four equal payments due January 1<sup>st</sup>, March 31<sup>st</sup>, June 30<sup>th</sup> and September 30<sup>th</sup> of each year.

In addition to normal operations, the annual budget includes an amount committed for improvements on direct building expenditures to maintain the value of the real estate, \$7,000, and since 2010, \$8,000 has been committed annually for vehicle replacement reserve. Any unexpended funds related to building repairs or improvements are transferred to the committed fund balance at year-end based on Board resolution. From 2003 through 2010, the Board of Directors had approved all excess revenues over expenditures, less interest and computer or miscellaneous income, be added to the building reserve versus paid back to the taxing entities in anticipation of future building renovations. For 2011, the Board of Directors approved the refunding of this excess revenue to the taxing entities. For 2012 and 2013, the Board of Directors has approved the maintaining of any excess (\$24,806 and \$57,821, respectively) for building reserve.

**KERR CENTRAL APPRAISAL DISTRICT  
NOTES TO THE FINANCIAL STATEMENTS  
DECEMBER 31, 2013**

**NOTE G – OPERATIONS AND COMMITTED FUND BALANCE (CONTINUED)**

Following is an analysis of fund balance activity for the year ending December 31, 2013:

|                                    | Unassigned<br>Fund<br>Balance | Committed -<br>Building Reserve | Committed -<br>Vehicle Reserve | Total<br>Fund<br>Balance |
|------------------------------------|-------------------------------|---------------------------------|--------------------------------|--------------------------|
| Balances - January 1, 2013         | \$ 243,858                    | \$ 159,439                      | \$ 24,000                      | \$ 427,297               |
| Receipts over (under) expenditures | 77,115                        | -                               | -                              | 77,115                   |
| Board committed reserves for 2013  | (15,000)                      | 7,000                           | 8,000                          | -                        |
| Excess maintained versus refunded  | (57,821)                      | 57,821                          | -                              | -                        |
| Balances - December 31, 2013       | <u>\$ 248,152</u>             | <u>\$ 224,260</u>               | <u>\$ 32,000</u>               | <u>\$ 504,412</u>        |

**NOTE H – RECONCILIATION OF THE GOVERNMENTAL FUND BALANCE SHEET  
TO THE STATEMENT OF NET POSITION**

Fund Balances - Governmental Fund \$ 504,412

Amounts reported for governmental activities in the statement of net position  
are different because:

1. Capital assets used in governmental activities are not financial resources and therefore are not reported in governmental funds. At the beginning of the year, the cost of these assets was \$597,072 and the accumulated depreciation was \$393,726. The effect of including the beginning balances for capital assets (net of depreciation) in the governmental activities is to increase net position. 203,346
2. Current year capital outlays are expenditures in the fund financial statements, but they should be shown as increases in capital assets in the government-wide financial statements. The net effect of including the 2013 capital outlays is to increase net position. 3,058
3. The 2013 depreciation expense increases accumulated depreciation. The net effect of the current year's depreciation is to decrease net position. (13,039)

Net Position of Governmental Activities

\$ 697,777

**KERR CENTRAL APPRAISAL DISTRICT  
NOTES TO THE FINANCIAL STATEMENTS  
DECEMBER 31, 2013**

**NOTE I – RECONCILIATION OF THE GOVERNMENTAL FUND STATEMENT OF  
REVENUES, EXPENDITURES, AND CHANGES IN FUND BALANCE TO  
THE STATEMENT OF ACTIVITIES**

|                                                                                                                                                                                                                                                                           |                  |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------|
| Net Change in Fund Balances - Governmental Fund                                                                                                                                                                                                                           | \$ 77,115        |
| Amounts reported for governmental activities in the statement of activities<br>are different because:                                                                                                                                                                     |                  |
| 1. Current year capital outlays are expenditures in the fund financial statements, but they should be shown as increases in capital assets in the government-wide financial statements. The net effect of including the 2013 capital outlays is to increase net position. | 3,058            |
| 2. Depreciation is not recognized as an expense in governmental funds since it does not require the use of current financial resources. The net effect of the current year's depreciation is to decrease net position.                                                    | (13,039)         |
| Change in Net Position of Governmental Activities                                                                                                                                                                                                                         | <u>\$ 67,134</u> |

**NOTE J – CONTINGENCIES**

Various lawsuits have been filed against the District. All cases relate to the valuation of the properties of the plaintiffs for the purpose of ad valorem taxation. These suits seek to reduce or exempt the taxable values as determined by the District. None of the Plaintiffs are seeking monetary damages against the District except for the recovery of attorney's fees if they are successful in the suit. Should the District be unsuccessful in this litigation, the constituent taxing entities, rather than the District, would be potentially liable for refunds plus interest, as well as attorney's fees. The likelihood of direct potential loss to the District itself, other than for attorney's fees, is remote.

**NOTE K – OPERATING LEASES**

The District has entered into several operating leases for office equipment (copier and postage equipment) with terms in excess of one year. None of the leases contain purchase options and they do not contain termination clauses for cancellation. The lease payments for 2013 and 2012 under these contracts were \$5,822 and \$6,045, respectively, which includes additional copies, program fees and property taxes.



**KERR CENTRAL APPRAISAL DISTRICT  
NOTES TO THE FINANCIAL STATEMENTS  
DECEMBER 31, 2013**

**NOTE K – OPERATING LEASES (CONTINUED)**

Future minimum lease payments are as follows.

| Year Ended<br>December 31, |    |              |
|----------------------------|----|--------------|
| 2014                       | \$ | 3,312        |
| 2015                       |    | -            |
| 2016                       |    | -            |
| 2017                       |    | -            |
| 2018                       |    | -            |
|                            | \$ | <u>3,312</u> |

**NOTE L – RISK MANAGEMENT**

The District is exposed to various risks of loss related to torts; damage to, and theft or destruction of assets; errors and omissions; injuries to employees and natural disaster. The District has contracted with the Texas Municipal League Intergovernmental Risk Pool, a risk pool currently operating as a common risk management and insurance program providing insurance coverage in the following areas: general liability, errors and omissions liability, automobile coverage, workers' compensation and real and personal property damage coverage. Contributions are subject to adjustment each year on the anniversary date based on updated exposure information and changes in rating.

The District has had no significant reduction in insurance coverage from prior years and the District has had no settlements exceed insurance coverage in the current or prior years.

**NOTE M – SUBSEQUENT EVENTS**

Subsequent events were evaluated through November 12, 2014, the date the report was available for distribution.

**NOTE N – COMMITMENTS**

In 2012, the District entered into a 3-year contract with Pictometry International Corporation for access to an image library and the necessary software program. The District paid \$7,941.50 in May 2012, March 2013, and February 2014 completing the 3-year commitment.

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## REQUIRED SUPPLEMENTARY INFORMATION



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KERR CENTRAL APPRAISAL DISTRICT  
SCHEDULE OF REVENUES, EXPENDITURES AND CHANGES IN FUND BALANCES  
BUDGET AND ACTUAL - GENERAL FUND  
FOR THE YEAR ENDED DECEMBER 31, 2013

|                                                      | Original<br>Budget | Final<br>Budget   | Actual<br>Amounts | Favorable<br>(Unfavorable) |
|------------------------------------------------------|--------------------|-------------------|-------------------|----------------------------|
| <b>REVENUES</b>                                      |                    |                   |                   |                            |
| Program revenue:                                     |                    |                   |                   |                            |
| Appraisal service                                    | \$ 878,525         | \$ 878,525        | \$ 878,525        | \$ -                       |
| Mapping and copies                                   | -                  | -                 | 2,727             | 2,727                      |
| Interest                                             | -                  | -                 | 1,567             | 1,567                      |
| Tower lease                                          | 2,400              | 2,400             | 2,400             | -                          |
| Total revenues                                       | <u>880,925</u>     | <u>880,925</u>    | <u>885,219</u>    | <u>4,294</u>               |
| <b>EXPENDITURES/EXPENSES</b>                         |                    |                   |                   |                            |
| Salaries                                             | 514,311            | 514,311           | 484,644           | 29,667                     |
| Insurance, retirement and taxes                      | 155,823            | 155,823           | 140,780           | 15,043                     |
| Appraisal Review Board                               | 14,500             | 14,500            | 9,499             | 5,001                      |
| Travel and auto allowance                            | 18,000             | 18,000            | 17,813            | 187                        |
| Audit and accounting                                 | 5,750              | 5,750             | 5,950             | (200)                      |
| Mapping system                                       | 11,093             | 11,093            | 9,003             | 2,090                      |
| Deed copies                                          | 1,000              | 1,000             | 837               | 163                        |
| Equipment lease                                      | 6,051              | 6,051             | 5,822             | 229                        |
| Telephone and utilities                              | 12,000             | 12,000            | 11,370            | 630                        |
| Consulting and legal                                 | 25,000             | 25,000            | 42,053            | (17,053)                   |
| Liability insurance                                  | 5,000              | 5,000             | 5,514             | (514)                      |
| Publishing                                           | 3,500              | 3,500             | 4,003             | (503)                      |
| Dues                                                 | 2,285              | 2,285             | 1,714             | 571                        |
| Schools and seminars                                 | 6,550              | 6,550             | 6,400             | 150                        |
| Postage                                              | 15,000             | 15,000            | 5,370             | 9,630                      |
| Printing                                             | 5,000              | 5,000             | 2,254             | 2,746                      |
| Supplies                                             | 7,000              | 7,000             | 7,274             | (274)                      |
| Furniture and equipment                              | 7,000              | 7,000             | 4,977             | 2,023                      |
| Bank service charges                                 | 120                | 120               | 187               | (67)                       |
| Board expenses                                       | 3,200              | 3,200             | 65                | 3,135                      |
| Building and grounds maintenance                     | 4,050              | 4,050             | 14,514            | (10,464)                   |
| Building reserve                                     | 7,000              | 7,000             | -                 | 7,000                      |
| Equipment maintenance                                | 1,500              | 1,500             | 516               | 984                        |
| Computer system support                              | 31,195             | 31,195            | 27,545            | 3,650                      |
| Appraisal system expenss                             | 15,497             | 15,497            | -                 | 15,497                     |
| Vehicle replacement reserve                          | 8,000              | 8,000             | -                 | 8,000                      |
| Total expenditures                                   | <u>885,425</u>     | <u>885,425</u>    | <u>808,104</u>    | <u>77,321</u>              |
| Excess (deficiency) of revenues<br>over expenditures | <u>\$ (4,500)</u>  | <u>\$ (4,500)</u> | 77,115            | <u>\$ 81,615</u>           |
| Fund balances, beginning of year                     |                    |                   | 427,297           |                            |
| Fund balances, end of year                           |                    |                   | <u>\$ 504,412</u> |                            |

See accompanying notes to the financial statements.

**KERR CENTRAL APPRAISAL DISTRICT  
NOTES TO REQUIRED SUPPLEMENTARY INFORMATION  
DECEMBER 31, 2013**

**Note 1 - Budgetary Basis**

The District's budgetary process accounts for certain transactions on a cash basis versus in accordance with generally accepted accounting practices. The major difference between the budgetary basis used by the District and the GAAP basis lies in the manner in which major capital expenditures and the corresponding debt to acquire these capital assets are budgeted. The District budgets for capital expenditures based on the cash basis which accounts for the smaller capital additions and only the debt service payments to be made during the year for major capital additions financed. Additionally, the District does not budget for other financing sources for the amount of the debt incurred.



Kerr Central Appraisal District  
Refund due Entities  
12/31/2013

Total due entities if would be refunded \$ 57,821.54

|                             |                   |                  |
|-----------------------------|-------------------|------------------|
| City of Ingram              | 0.46595%          | 269.42           |
| City of Kerrville           | 13.97045%         | 8,077.93         |
| Kerr Fire District 1        | 0.16098%          | 93.08            |
| Kerr Fire District 2        | 0.05225%          | 30.21            |
| Kerr County                 | 22.80716%         | 13,187.45        |
| Ingram Hill Road District   | 0.00778%          | 4.50             |
| Lateral Roads               | 1.80290%          | 1,042.46         |
| Lake Ingram Estates Rd Dist | 0.03338%          | 19.30            |
| Center Point ISD            | 3.59044%          | 2,076.05         |
| Comfort ISD                 | 2.62461%          | 1,517.59         |
| Divide ISD                  | 0.66814%          | 386.33           |
| Harper ISD                  | 0.62539%          | 361.61           |
| Hunt ISD                    | 4.84383%          | 2,800.77         |
| Ingram ISD                  | 7.30681%          | 4,224.91         |
| Kerrville ISD               | 38.95186%         | 22,522.57        |
| Medina ISD                  | 0.16415%          | 94.91            |
| UGRA                        | 1.48452%          | 858.37           |
| Headwaters Underground      | 0.43942%          | 254.08           |
|                             | <u>100.00000%</u> | <u>57,821.54</u> |

## **Agenda Item:**

7A. Appointments to the Building Board of Adjustment and Appeals. (staff)

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

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**SUBJECT:** Appointments to the Building Board of Adjustments and Appeals

**FOR AGENDA OF:** January 13, 2015      **DATE SUBMITTED:** December 29, 2014

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

**CLEARANCES:** Todd Parton  
City Manager

**EXHIBITS:** Board List

**AGENDA MAILED TO:**

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

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**SUMMARY STATEMENT**

Consider appointments to the following board:

**Building Board of Adjustment and Appeals:**

Three regular positions, and one alternate position that expired 08/31/2014.

**RECOMMENDED ACTION**

Consider appointment.



## BUILDING BOARD OF ADJUSTMENT AND APPEALS

|                    |                                                                     | <u>Telephone</u>                 | <u>Orig.<br/>Appt.</u> | <u>Re-Appt.<br/>Date</u> | <u>Exp.<br/>Date</u> |
|--------------------|---------------------------------------------------------------------|----------------------------------|------------------------|--------------------------|----------------------|
| i                  | MICHAEL WALKER<br>Architect                                         | 895-2724                         | 02-25-14               |                          | 08-31-15             |
| ii                 | HEWITT, JOHN<br>100 Horseshoe Ridge<br>Professional Engineer        | 315-8800 (O)<br>285-7925 (H)     | 08-23-11               | 12-10-13                 | 08-31-15             |
| iii                | LUCK, CALVIN<br>1200 Spur 100<br>Master Electrician                 | 830-928-1459 (O)<br>896-9333 (H) | 09-14-10               | 09-11-12                 | 08-31-14             |
| iv                 | TREMPER II, CHARLES<br>702 Fay Dr.<br>Master Plumber                | 739-4194 (O)<br>730-4194 (H)     | 09-14-10               | 09-11-12                 | 08-31-14             |
| v                  | UNDERWOOD, LEE<br>807 Rim Rock S.<br>Mechanical Contractor          | 896-4083 (O)<br>896-4083 (H)     | 09-14-10               | 09-11-12                 | 08-31-14             |
| vi                 | BLEDSON, KENNETH<br>1308 Paragon Place<br>Contractor                | 377-8300 (O)<br>896-8845 (H)     | 09-14-10               | 12-10-13                 | 08-31-15             |
| vii                | DOWNEY, DWAYNE<br>737 Rim Rock Road<br>Active Construction Industry | 257-1770 (O)<br>377-2087 (H)     | 09-14-10               | 12-10-13                 | 08-31-15             |
| <u>ALTERNATES:</u> |                                                                     |                                  |                        |                          |                      |
| (*)                | LOWERY, DANIEL<br>512 Elm St.                                       | 739-7876 (O)<br>896-1804 (H)     | 09-14-10               | 09-11-12                 | 08-31-14             |
| (*)                | PRIOR, JOHN<br>132 Cedar Drive E.                                   | 792-5900 (O)<br>739-5900 (H)     | 09-14-10               | 12-10-13                 | 08-31-15             |

### CITY STAFF:

Danny Batts                      258-1178 (O)  
Director of Building Services

### 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 30, 2014

- (\*) alternate members shall be qualified as one of the following: master electrician, master plumber or mechanical contractor.

## **Agenda Item:**

7B. Appointments to the Planning and Zoning Commission. (staff)





## **PLANNING AND ZONING COMMISSION**

|                                                   | <u>Telephone</u>             | <u>Orig.<br/>Appt.</u> | <u>Re-Appt.<br/>Date</u> | <u>Exp.<br/>Date</u> |
|---------------------------------------------------|------------------------------|------------------------|--------------------------|----------------------|
| WATTERSON, DAVID<br>Chair<br>177 Phoenix Dr.      | 634-3300 (O)<br>377-6400 (C) | 01-12-10               | 12-10-13                 | 01-01-16             |
| WALLER, ROBERT<br>33 Antelope Trail<br>Vice-Chair | 792-6088 (H)<br>896-2950 (O) | 07-09-13               |                          | 01-01-15             |
| HARMON, GARRETT<br>701 Lee Street                 | 895-4510 (O)<br>285-2151 (C) | 06-25-13               |                          | 01-01-15             |
| MORGAN, WILLIAM<br>1744 Glen Road                 | 739-9655 (O)<br>257-6263 (H) | 01-22-13               |                          | 01-01-15             |
| MOTHERAL, R. BRUCE<br>710 Overhill Drive          | 257-2087 (H)<br>257-6360 (W) | 01-14-14               |                          | 01-01-16             |

### **ALTERNATES:**

|                                                       |                              |          |          |          |
|-------------------------------------------------------|------------------------------|----------|----------|----------|
| MALONE, DOYLE<br>208 Spring Mill Dr.                  | 257-8755 (H)                 | 07-23-13 | 12-10-13 | 01-01-16 |
| ZUBER, RUSTIN<br>112 Harmon Way                       | 895-2829 (O)<br>895-4913 (H) | 12-10-13 |          | 01-01-15 |
| COUNCIL LIAISON:<br>Gary Stork<br>804 Tanglewood Lane | 257-0365 (O)<br>200-1483 (H) |          |          |          |

### **CITY STAFF:**

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; Council Chambers.

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: June 11, 2014