

AGENDA FOR REGULAR MEETING

KERRVILLE CITY COUNCIL

TUESDAY, APRIL 11, 2017, 6:00 P.M.

KERRVILLE CITY HALL COUNCIL CHAMBERS

701 MAIN STREET, KERRVILLE, TEXAS

KERRVILLE CITY COUNCIL AGENDA
REGULAR MEETING, TUESDAY, APRIL 11, 2017, 6:00 P.M.
CITY HALL COUNCIL CHAMBERS
701 MAIN STREET, KERRVILLE, TEXAS

CALL TO ORDER

**INVOCATION OFFERED BY COUNCILMEMBER PLACE FOUR WARREN
FERGUSON**

PLEDGE OF ALLEGIANCE TO THE FLAG

1. RECOGNITIONS:

1A. Certificate of Recognition to Mayor Pro Tem Stephen Fine for receiving the Certified Municipal Official Certificate from the Texas Municipal League and the Texas Association of Mayors, Councilmembers and Commissioners. (Mayor White)

2. 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.

3. 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 the City Council approve the following items which will grant the Mayor or City Manager the authority to take all actions necessary for each approval:

3A. Professional services agreement with Jess Asper for tennis professional services. (staff)

3B. Purchase of 2017 Etnyre Maintenance Oil Distributor through BuyBoard Purchasing Cooperative, in the amount of \$73,314.95. (staff)

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 830-257-8000 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: April 7, 2017 at 10:45 a.m. and remained posted continuously for at least 72 hours preceding the scheduled time of the meeting.

Brenda Craig
City Secretary, City of Kerrville, Texas

3C. Professional services agreement with Freese and Nichols Engineering, Inc. for the rehabilitation of the oxidation ditch at the water reclamation plant in the amount of \$138,400.00. (staff)

3D. Professional services agreement with Freese and Nichols Engineering, Inc. to design the rehabilitation of the clarifier at the water treatment plant in the amount of \$132,600.00. (staff)

END OF CONSENT AGENDA

4. ORDINANCES, FIRST READING:

4A. Ordinance No. 2017-09, amending Chapter 26 "Buildings and Building Regulations", Article VIII "Building Board of Adjustment and Appeals" of the Code of Ordinances of the City of Kerrville, Texas, by amending the membership qualifications for said board and ending the term limits; containing a cumulative clause; containing a savings and severability clause; establishing an effective date; and providing other matters related to the subject. (staff)

4B. Ordinance No. 2017-10, amending Chapter 66 "Library," of the Code of Ordinances of the City of Kerrville, Texas, by amending Article II "Library Advisory Board" to remove the requirement of ex officio members and to require quarterly meetings; containing a cumulative clause; containing a savings and severability clause; and providing other matters relating to this subject. (staff)

4C. Ordinance No. 2017-11, amending the budget for Fiscal Year 2017 to authorize the transfer of a portion of the unassigned fund balance within the general fund to the general asset replacement fund.

5. CONSIDERATION AND POSSIBLE ACTION:

5A. Rate methodology for the sale of reuse water. (Mayor White)

5B. Agreement for the sale of reclaimed water between the City of Kerrville and Comanche Trace. (staff)

5C. Agreement for the sale of reclaimed water between the City of Kerrville and Schreiner University. (staff)

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 830-257-8000 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: April 26, 2017 at 10:45 a.m. and remained posted continuously for at least 72 hours preceding the scheduled time of the meeting.

Brenda Craig
City Secretary, City of Kerrville, Texas

5D. Agreement for the sale of reclaimed water between the City of Kerrville and Riverhill Country Club, LP. (staff)

5E. Direction to staff regarding Scenic Cities Certification Program. (staff)

5F. Amendments to the Ethics Policy for Elected and Appointed Officials – City of Kerrville, Texas. (staff)

6. APPOINTMENTS TO BOARDS AND COMMISSIONS:

6A. Appointment to the Kerr Emergency 9-1-1 Network Board. (staff)

6B. Appointments to the Food Service Advisory Board. (staff)

6C. Appointment to the Zoning Board of Adjustment. (staff)

7. 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.

8. ITEMS FOR FUTURE AGENDAS

9. 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/officers), 551.076 (deliberation regarding security devices), and 551.087 (deliberation regarding economic development negotiations) of Chapter 551 of the Texas Government Code.

10. ACTION ON ITEM DISCUSSED IN EXECUTIVE SESSION, IF ANY

11. ADJOURNMENT.

The facility is wheelchair accessible and accessible parking spaces are available. Requests for accommodations or interpretive services must be made 48 hours prior to this event. Please contact the City Secretary's Office at 830-257-8000 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: April 7, 2017 at 10:45 a.m. and remained posted continuously for at least 72 hours preceding the scheduled time of the meeting.

Brenda Craig
City Secretary, City of Kerrville, Texas

Agenda Item:

1A. Certificate of Recognition to Mayor Pro Tem Stephen Fine for receiving the Certified Municipal Official Certificate from the Texas Municipal League and the Texas Association of Mayors, Councilmembers and Commissioners. (Mayor White)

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

SUBJECT: Recognition of Mayor Pro Tem Stephen Fine for receiving the Certified Municipal Official certificate from the Texas Municipal League and the Texas Association of Mayors, Councilmembers and Commissioners

FOR AGENDA OF: April 11, 2017 **DATE SUBMITTED:** April 5, 2017

SUBMITTED BY: Mayor Bonnie White **CLEARANCES:**

EXHIBITS: Certificate

AGENDA MAILED TO:

APPROVED FOR SUBMITTAL BY CITY MANAGER:



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

PAYMENT TO BE MADE TO:

REVIEWED BY THE FINANCE DEPARTMENT:

SUMMARY STATEMENT

Stephen Fine was recently awarded the Texas Municipal League Institute (TMLI) Certified Municipal Official designation for his commitment to continuing education. This certification was presented at the Texas Municipal League and Texas Association of Mayors, Councilmembers and Commissioners Elected Officials' Conference on February 16, 2017. Mr. Fine completed 72 continuing education units during 2016. The TMLI program is designed to enhance the leadership and problem-solving capabilities of Texas' elected city officials. Participants receive educational sessions on legal issues, budgeting, economic development, ethics, governance, leadership, and more.

This is the top award in the TMLI program and was awarded to only 31 persons statewide for 2016.

Mr. Fine is the first councilmember to receive this recognition for the City of Kerrville.

RECOMMENDED ACTION

Recognize Stephen Fine for receiving the designation of Certified Municipal Official by the Texas Municipal League and the Texas Association of Mayors, Councilmembers and Commissioners.



THE TEXAS MUNICIPAL LEAGUE AND
THE TEXAS ASSOCIATION OF MAYORS, COUNCILMEMBERS AND COMMISSIONERS
are pleased to present this designation of

CERTIFIED MUNICIPAL OFFICIAL

— to —

Stephen Fine

for fulfilling the required Continuing Education Units through participation in the

→ TEXAS MUNICIPAL LEAGUE INSTITUTE ←

Wendy Smith-Sandke

TML Executive Director

2016

Award Year

Harcen

TAMCC President

Agenda Item:

3A. Professional services agreement with Jess Asper for tennis professional services. (staff)

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

SUBJECT: Professional Services Agreement for Tennis Professional between the City of Kerrville and Jess Asper

FOR AGENDA OF: April 11, 2017

DATE SUBMITTED: March 29, 2017

SUBMITTED BY: Ashlea Boyle
Director of Parks and Recreation

CLEARANCES: E.A. Hoppe
Deputy City Manager

EXHIBITS:

1. Professional Services Agreement for Tennis Professional by and between the City of Kerrville, Texas, and Jess Asper
2. Exhibit A – Grounds Maintenance Responsibility Map
3. Exhibit B – Volunteer Background Consent Authorization

AGENDA MAILED TO:

APPROVED FOR SUBMITTAL BY CITY MANAGER:



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

PAYMENT TO BE MADE TO:

REVIEWED BY THE DIRECTOR OF FINANCE:

SUMMARY STATEMENT

In 2013, the City of Kerrville entered into an agreement with Jess Asper for tennis professional services at the H-E-B Tennis Center. This agreement was renegotiated in 2015, as approved by City Council on February 10, 2015. Since then, the City has continued renewal agreements on an annual basis. The most recent agreement has expired and has continued on a month-to-month basis. Attached is a renewal agreement between the City of Kerrville and Jess Asper for tennis professional services that will expire October 31, 2017. No other major changes were made to this agreement. It is anticipated that a contract renegotiation may be needed if the City undergoes a significant facility enhancement project at the Tennis Center, and the subsequent service delivery needs change accordingly.

RECOMMENDED ACTION

City staff recommends approval of this Professional Services Agreement as presented.

**PROFESSIONAL AGREEMENT FOR TENNIS PROFESSIONAL BY AND BETWEEN
THE CITY OF KERRVILLE, TEXAS, AND JESS ASPER**

THIS AGREEMENT is made between the CITY OF KERRVILLE, TEXAS ("City"), and JESS ASPER ("Asper"), for and in consideration of the following promises and conditions:

1. **Appointment as Tennis Professional:** During the term of this Agreement, Asper agrees to provide personal and professional services to City as a tennis professional and with respect to other services specified below while in charge of the day-to-day operations of the H.E. BUTT MUNICIPAL TENNIS CENTER ("Tennis Center") in Kerrville, Texas, which is owned by City. In performing under this Agreement, Asper shall provide the following services and perform the following duties and obligations in a professional and workmanlike manner:
 - a. Asper shall at all times during the term of this Agreement and at his own expense be and remain a member in good standing of the United States Professional Tennis Association, or successor organization. In addition, Asper shall obtain and/or maintain, in his name and at his expense, any other licenses and certifications required in order for Asper to provide the services described herein;
 - b. Asper shall, at his own expense, maintain a fully stocked pro shop to include but not limited to men's, ladies', and children's goods and services along with equipment. The pro shop must be open for the taking of court reservations and the sale of sports merchandise, non-alcoholic beverages, and ice as determined by Asper. Should Asper decide to sell food, it must comply with all applicable food service regulations, including the City's;
 - c. Asper shall at all times keep clean and maintain the courts, pro shop, and grounds immediately adjacent thereto, including providing the following:
 - (1) tents for tournaments;
 - (2) on-court water supply;
 - (3) on-court trash removal;
 - (4) water removal equipment;
 - (5) watering and maintenance of lawns and landscaping, within the area more specifically described and depicted in **Exhibit A**, at least once per week during the growing season and unless rainfall occurs, all of which must be conducted in accordance with the City's Water Management Plan (Ch., 110, Art. III, City Code) and applicable water conservation stage;
 - (6) janitorial services, including trash removal, for the pavilion, pro shop, and restrooms; and

- (7) cleaning sidewalks and court aprons after lawn mowing.
- d. Asper is not responsible for the following:
 - (1) payment for monthly utilities, but limited to electricity, water, trash collection, and basic telephone service, and not including cable/satellite television or internet;
 - (2) repairs of fences, gates, and bleacher seats;
 - (3) net replacement;
 - (4) repairs or replacements of windscreens;
 - (4) building maintenance, including plumbing, mechanical (HVAC), and electrical systems;
 - (5) signage; and
 - (6) capital improvements, as that term is defined and used by the City.
- e. Asper may employ, at his sole cost, additional staff necessary to sufficiently perform his obligations pursuant to this Agreement. Prior to any such employment, Asper shall provide notice to City of the prospective employee's name and identifying information so that City may perform, or have performed, a background investigation. Asper shall have each prospective employee complete a form provided by City which will require the prospective employee to provide certain information and agree to the terms of this Agreement, a copy of which form is attached hereto as **Exhibit B**.

2. **Revenues, Sales, and Use Tax Return:**

- a. Asper shall receive all gross revenues pursuant to his operation of the Tennis Center and related to the services provided.
- b. Asper shall collect and remit all applicable state and local sales taxes it collects to the State of Texas. Asper shall thereafter send a copy of the sale and use tax return that it submits to the state within ten (10) days of its submission.
- c. Asper shall provide monthly written reports to the City for player counts (*i.e.*, traffic summary) that includes daily play, member play, junior play, tournament play, number of lessons and/or clinics, and the number of participants in both. The reports shall be broken down by day, week, month, and year. Reports are due to the City's Assistant Director of Parks and Recreation within ten (10) days of the end of each month.

- d. Asper shall charge fees with respect to the public's use of the Tennis Center in accordance with the City's Fee Schedule, as adopted from time to time. Where such fees change, the City will provide Asper with a written copy.
3. **Term:** This Agreement shall be for a term commencing on April 1, 2017, and ending October 31, 2017, unless terminated earlier as provided herein. In addition, this Agreement is subject to an extension of the term in accordance with Section 10, below.
4. **INDEMNITY: ASPER, AND HIS EMPLOYEES, AGENTS, REPRESENTATIVES OR SUBCONTRACTORS, IF ANY, AGREE TO INDEMNIFY, DEFEND, AND HOLD HARMLESS CITY AND ALL OF ITS OFFICERS, AGENTS, AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, LOSSES, PROPERTY DAMAGES, AND EXPENSES OF ANY CHARACTER WHATSOEVER, INCLUDING ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PROPERTY ON ACCOUNT OF ANY NEGLIGENT ACT OR OMISSION OF ASPER OR ANY OF HIS EMPLOYEES, AGENTS, REPRESENTATIVES, OR SUBCONTRACTORS IN THE EXECUTION, SUPERVISION, AND OPERATIONS GROWING OUT OF OR IN ANY WAY CONNECTED WITH ASPER'S SERVICES OR OPERATIONS PURSUANT TO THIS AGREEMENT.**

5. **Insurance:**

- a. Asper shall carry Commercial General Liability Insurance with a minimum bodily injury and property damage per occurrence of \$1,000,000 combined single limit. The policy must provide contractual liability coverage for liability assumed under this Agreement, products and completed operations coverage, independent contractor's coverage, and a waiver of a Transfer of Right of Recovery Against Others in favor of the City. If this coverage is underwritten on a claims made basis, the retroactive date shall be coincident with the date of this Agreement and the certificate of insurance shall state that the coverage is claims made and the retroactive date. Asper shall maintain coverage for the duration of this Agreement.
- b. If insurance policies are not written for amounts specified in Subsection a., above, Asper shall carry umbrella or excess liability insurance for any differences in amounts specified. If excess liability insurance is provided, it must follow the form of the primary coverage.
- c. Asper shall provide City at least thirty (30) days written notice of erosion of the aggregate limit below the minimum required combined single limit coverage.
- d. Asper shall provide that all provisions of this Agreement concerning liability, duty, standard of care, together with the indemnification or defense provisions

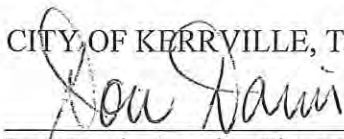
herein, shall be underwritten by contractual coverage sufficient to include such obligations within applicable policies.

- e. Asper shall not commence work under this Agreement until he has obtained all required insurance and until such insurance has been reviewed by the City.
 - f. Asper shall produce an endorsement to each affected policy that contains the following:
 - (1) That names City as additional insured with right of subrogation against City waived;
 - (2) That obligates the insurance company to notify City of any non-renewal, cancellation, or material change to the policy, at least thirty (30) calendar days before the change or cancellation.
 - g. Asper shall not cause any insurance to be canceled or permit any insurance to lapse during the term of this Agreement or the six-month period following completion, in the case of a claims-made policy.
 - h. All certificates shall include a clause to the effect that the policy may not be canceled, reduced, restricted, or limited until thirty (30) calendar days after City has received written notice of such cancellation or change.
6. **Independent Contractor:** Nothing contained herein shall be construed to create any principal/agent, employer/employee, joint venture, partnership or other arrangement or relationship between City and Asper and any of his assistants, employees, or agents. Asper and his assistants, employees, or agents shall at all times be an independent contractor and shall maintain full control over the means of conducting the business operations permitted hereby, provided such means are consistent with the provisions of this Agreement. Neither Asper nor any of Asper's assistants, employees, or agents shall have the right to obligate the City in any manner whatsoever. At no time shall Asper or any of Asper's assistants, employees, or agents be entitled to any benefits provided or available to City's employees.
7. **Rules, Regulations, and Fees:** City retains the right to establish the rules and regulations for the use and operation of the Tennis Center, including, but not limited to, the establishment of court rental fees. Asper may determine the hours of operation, subject to written approval by the City Manager. Asper shall ensure that two courts remain open for public play at all times during tournaments unless otherwise permitted in writing by City.
8. **Financial Records:** Asper shall maintain at the Tennis Center accurate financial records of the revenues and expenses related to the operation of the Tennis Center. City shall have the right to inspect and copy all such financial records during reasonable business hours, with or without notice.

9. **No Assignment:** This Agreement is for unique personal services which may not be assigned by Asper, in whole or in part, with any attempt at such assignment being void.
10. **Extension of Term:** City and Asper may agree to extend this Agreement; however, this provision does not constitute a guarantee that an extension of this Agreement will in fact be executed and any such extension is subject to current funding being approved by the City Council for the fiscal year commencing October 1, 2016, and all fiscal years thereafter. In addition, this Agreement may extend on a month-to-month basis upon agreement of the parties and subject to termination as provided by Section 11, below.
11. **Early Termination:** City or Asper may, at each's sole option, terminate this Agreement at any time upon thirty (30) days written notice to the terminating party.
12. [Intended to remain blank.]
13. **Interruption of Business:** City shall not be liable or responsible to Asper in any manner for any interruption, or adverse impact on, Asper's business as a result of casualty, flooding, acts of God, utility failures, or any other occurrence. City agrees to exercise reasonable efforts to restore access to and the use of the Tennis Center, but City shall not be responsible for failure to restore access or use within any particular period of time.
14. **Breach of Agreement:** In the event of default by Asper in the performance of his obligations hereunder, and Asper's failure to cure such default within fifteen (15) days after receipt of written notice from City, City, at his option and without prejudice to any other remedy, may immediately terminate this Agreement.
15. **Entire Agreement:** This Agreement embodies the entire agreement between the Parties, and supersedes all prior agreements and understandings, whether written or oral, and all contemporaneous oral agreements and understandings relating to the subject matter. This Agreement may not be amended, discharged, or extended, except by written instrument executed by the Parties.
16. **Choice of Law; Venue:** This Agreement shall be governed by the laws of the State of Texas and shall be performed entirely within Kerr County, Texas.

SIGNED AND AGREED on the dates indicated below.

CITY OF KERRVILLE, TEXAS

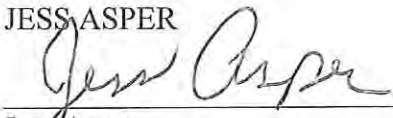


Don Davis, Interim City Manager

Date

3/31/17

JESS ASPER



Jess Asper

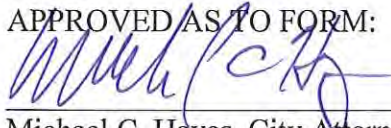
Date

03/31/17

ATTEST:

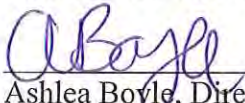
Brenda G. Craig, City Secretary

APPROVED AS TO FORM:



Michael C. Hayes, City Attorney

APPROVED AS TO CONTENT:

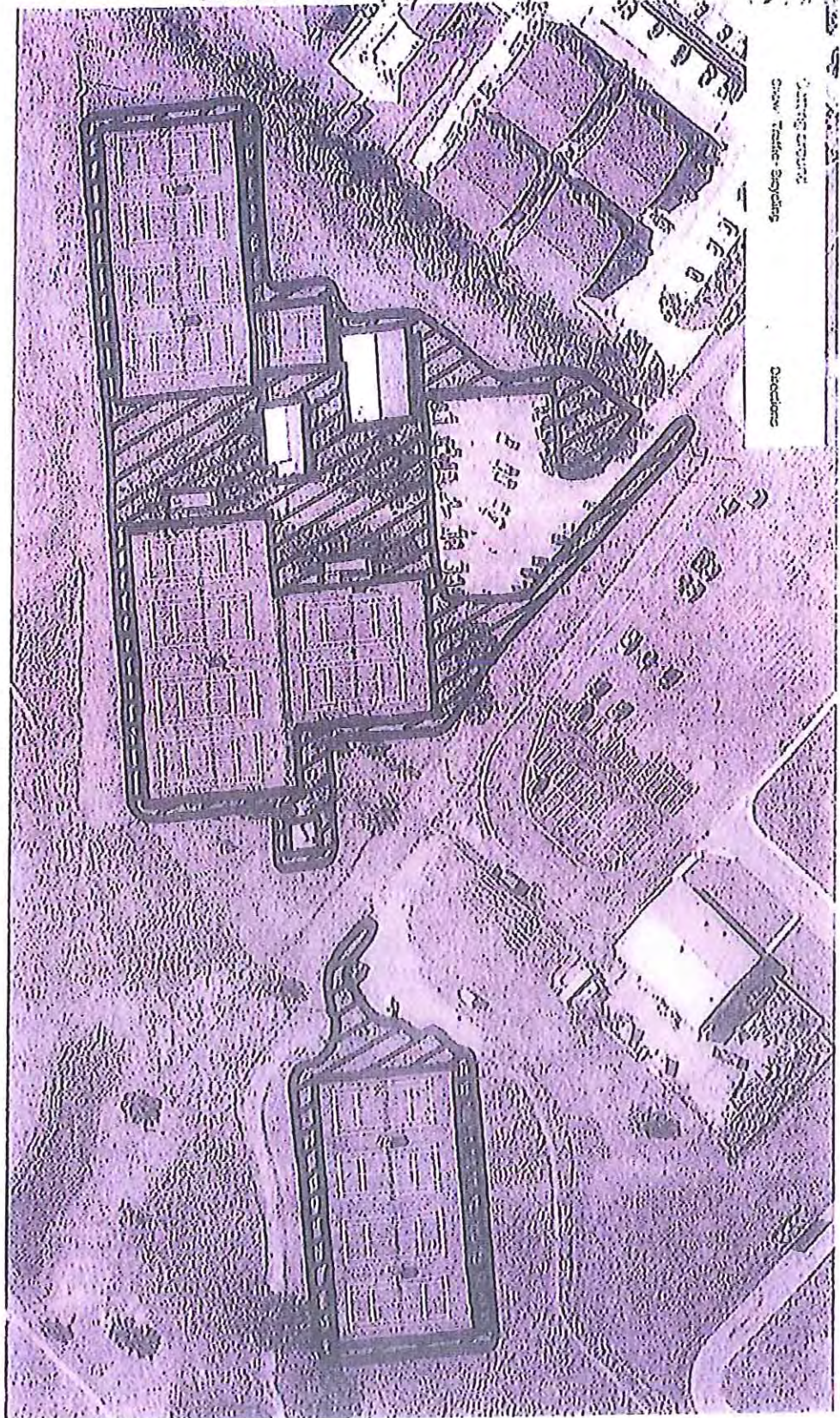


Ashlea Boyle, Director of Parks & Recreation

Attachment A



grounds maintenance
responsibility



<https://www.google.com/maps/@30.0580493,-99.1246576,240m/data=!3m1!1e3>

C5016-41

Volunteer Background Consent Authorization

1. In connection with my application to volunteer, I understand that a consumer report or an investigative consumer report will be requested. I understand that as directed by City of Kerrville policy and consistent with the job described, you may be requesting information from public and private sources about my: workers' compensation injuries, driving record, court records, education, credential, credit, and references.
2. Medical and workers' compensation information will only be requested in compliance with the Federal Americans with Disabilities Act (ADA) and/or any other applicable state laws. According to the Fair Credit Reporting Act, I am entitled to know if my request to be a volunteer is denied because of information obtained from a consumer reporting agency. If so, I will be notified and given the name and address of the agency or the source which provided the information.
3. I acknowledge that a fax or photographic copy shall be as valid as the original. This release is valid for most federal, state, and county agencies.
4. I hereby authorize, without reservation, any law enforcement agency, institution, information service bureau, school, employer, reference or insurance company contacted by the City of Kerrville or its agent, to furnish the information described above.

Employee Information <i>(please print clearly and complete all required information)</i>			
Legal Last Name	Legal First Name	Social Security Number	Date of Birth
Maiden or Other Names Used		Driver's License Number/State	CDL? ☐ Yes ☐ No
Current Home Address		Name as it Appears on License	
City	State	Zip	County
Other cities and states lived in during the past seven (7) years:			
City	State	County	When?
City	State	County	When?
City	State	County	When?
City	State	County	When?
City	State	County	When?
City	State	County	When?

The above information is required by law enforcement agencies and other entities for positive identification purposes when checking public records. Information obtained via your application and any other information that you submit as part of the process will also be utilized. It is confidential and will not be used for any other purposes other than to potentially engage me as a volunteer.

I hereby release the City of Kerrville, its agents and all persons, agencies, and entities providing information or reports about me from any and all liability arising out of the requests for or release of any of the above mentioned information or reports.

Volunteer Signature	Date Signed
---------------------	-------------

Client#: 19406

USPROFES

ACORDTM

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

1/17/2017

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

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

PRODUCER Edgewood Partners Ins. Center 27 School Street, Suite 404 Boston, MA 02108 617 398-5557	<table border="1"> <tr> <td colspan="2">CONTACT NAME:</td> </tr> <tr> <td>PHONE (A/C, No, Ext): 415 356-3900</td> <td>FAX (A/C, No):</td> </tr> <tr> <td colspan="2">E-MAIL ADDRESS:</td> </tr> <tr> <td colspan="2">INSURER(S) AFFORDING COVERAGE</td> </tr> <tr> <td>INSURER A: Philadelphia Indemnity Insurance</td> <td>NAIC # 18058</td> </tr> <tr> <td>INSURER B:</td> <td></td> </tr> <tr> <td>INSURER C:</td> <td></td> </tr> <tr> <td>INSURER D:</td> <td></td> </tr> <tr> <td>INSURER E:</td> <td></td> </tr> <tr> <td>INSURER F:</td> <td></td> </tr> </table>	CONTACT NAME:		PHONE (A/C, No, Ext): 415 356-3900	FAX (A/C, No):	E-MAIL ADDRESS:		INSURER(S) AFFORDING COVERAGE		INSURER A: Philadelphia Indemnity Insurance	NAIC # 18058	INSURER B:		INSURER C:		INSURER D:		INSURER E:		INSURER F:	
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INSURER B:																					
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INSURER D:																					
INSURER E:																					
INSURER F:																					
INSURED United States Professional Tennis Association 3535 Briarpark Dr., Suite 202 Houston, TX 77042																					

COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

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

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR YVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☒ POLICY ☐ PRO-JECT ☐ LOC OTHER:			PHPIK1584574	12/31/2016	12/31/2017	EACH OCCURRENCE \$1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$100,000 MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$1,000,000 GENERAL AGGREGATE \$2,000,000 PRODUCTS - COMP/OP AGG \$2,000,000 \$ COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	AUTOMOBILE LIABILITY ☐ ANY AUTO ☐ ALL OWNED AUTOS ☐ HIRED AUTOS ☐ SCHEDULED AUTOS ☐ NON-OWNED AUTOS						
A	☒ UMBRELLA LIAB ☒ OCCUR ☐ EXCESS LIAB ☐ CLAIMS-MADE DED RETENTION \$			PHUB565537	12/31/2016	12/31/2017	EACH OCCURRENCE \$5,000,000 AGGREGATE \$5,000,000 \$ PER STATUTE OTH-ER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? ☐ Y/N (Mandatory In NH) If yes, describe under DESCRIPTION OF OPERATIONS below		N/A				

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

USPTA Members are insured for General Liability for playing, teaching or officiating in tennis, pickleball and platform tennis or operating a tennis ball machine for practicing or teaching.

Jess Asper #26002

City of Kerrville-HEB Tennis Center is included as additional insured with respect to general liability as required by written contract.

CERTIFICATE HOLDER

CANCELLATION

City of Kerrville-HEB Tennis Center 701 Main Street Kerrville, TX 78028	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE 
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Agenda Item:

3B. Purchase of 2017 Etnyre Maintenance Oil Distributor through BuyBoard Purchasing Cooperative, in the amount of \$73,314.95. (staff)

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

**SUBJECT: Purchase of 2017 Etnyre Maintenance Oil Distributor through BuyBoard
Purchasing Cooperative**

FOR AGENDA OF:

DATE SUBMITTED:

SUBMITTED BY: Stuart Barron
Director of Public Works

CLEARANCES: EA Hoppe
Deputy City Manager

EXHIBITS: Quotation Sheet Attached, Specifications Sheet Attached

AGENDA MAILED TO:

APPROVED FOR SUBMITTAL BY CITY MANAGER:



Expenditure	Current Balance	Amount	Account
Required:	in Account:	Budgeted:	Number:
\$ 73,314.95	\$ 129,488.98	\$	18-800-504

PAYMENT TO BE MADE TO: Cooper Equipment Company
17474 Judson Rd. San Antonio, TX 78247

REVIEWED BY THE FINANCE DEPARTMENT:

SUMMARY STATEMENT

The City of Kerrville Street Paving Program is an important investment the city has made in the last eight years. With several years of commitment to the program the current equipment, 1993 Asphalt Maintenance Oil Distributor, has become worn out, unreliable, and is in need of replacement. Over the past 24 years since the city acquired the oil distributor, multiple clutches have been replaced and the spray bar has become inefficient. Due to the age of the equipment replacement parts to keep this equipment in operating condition have become difficult to locate and if available, at a high cost. This piece of equipment is crucial to the paving program, allowing staff to apply oil to the roadway for paving overlays and pothole repairs, utility cut repairs. In order to keep the level of performance and continued progress to the Street Paving Program replacement of the oil distributor is a necessity to this program.

The 2017 Etnyre Asphalt Maintenance Distributor is a trailer mounted unit. This unit will have a 600 gallon capacity tank and comes with a Kubota D902 – E3B, 20hp diesel motor, LPG burner w/100lb. propane tank, full 12' circulating spray bar and a patented automatic suck back system. This equipment is available through BuyBoard Purchasing Cooperative.

RECOMMENDED ACTION

Recommend approval of purchase.



BUYBOARD Quotation

Cooper Equipment Company Phone: (210) 657-5151 Fax: (210) 657-5871
 17474 Judson Rd., San Antonio, TX 78247
 Phone (210) 657-5151 Fax (210) 657-5871

DATE 2/13/2017
 Quotation valid until: 90 Days
 Prepared by: jh

BUYBOARD Quotation For:

Brandon Kelly Assistant Street Division Manager
 Street Division Manager
 City of Kerrville, Texas
 830-258-1222 ph
 brandon.kelly@kerrvilletx.gov

Etnyre Maintenance Distributor - Trailer Mounted

600 Gallon Capacity
 Kubota D902-E3B, 20hp diesel
 LPG Burner w/ 100 Lb. tank, full
 12' Circulating Spraybar
 Patented automatic suckback system
 Electric Trailer Brakes
 On board air compressor

BUYBOARD CONTRACT NO. 515-16

Salesperson	Warranty	Delivery	F.O.B.
John Houston	12 Months	120 - 140 days	San Antonio, TX

QTY	Description	Unit Price	Extension
1	New 2017 Etnyre Asphalt Maintenance Distributor, 600 Gallon, Trailer-mounted. Trailer: 2 1/2" Pintle Eye, Tandem Axle, electric brakes Tank: steel shell, surge plates, 2' insulation, aluminum jacketing Manual suction valve, removable strainer Control Panel: on a 20' cord to reach cab of chassis Asphalt Pump: 200 GPM, electronic analog GPM tach Misc: 25' rubber hand spray hose and gun Kubota D902-E3B, 20hp diesel engine with electric starter, alternator, battery and 20 gallon fuel	\$61,250.00	\$61,250.00

OPTIONAL EQUIPMENT:

1	B1	Tank Float Gauge (50 Gallon increments)	\$800.00	\$800.00
1	B2	Sample Valve/Gravity Drawoff, 3/4"	\$200.00	\$200.00
1	B4	Thermometer 2" dial type in addition to pencil type	\$100.00	\$100.00
1	B6	Manhole Strainer, 20"	\$250.00	\$250.00
1	D4	Radar ground speed indicator with readout in cab control panel	\$2,000.00	\$2,000.00
1	E2	10' Full circulating spray bar consisting of 8' center section with (2) 1' folding non removable sections with breakaway feature. Hydraulic power lift and shift with manual wing fold. Electric-hydraulic gang on/off with manual flip valve nozzle control every 4". Includes spray bar on/off with a 20' electrical cord to reach the chassis cab.	\$4,800.00	\$4,800.00
2	E3	Bar extensions, ft. (TOTAL BAR WIDTH = 12')	\$400.00	\$800.00
1	H2	Measuring Stick, Aluminum 50 Gallon increments	\$195.00	\$195.00
1		Loading Hose, 12' X 3" rubber, male to male fittings	\$440.00	\$440.00
1	H1	Toolbox with hasp	\$280.00	\$280.00
1		100 Lb. tank, propane	\$300.00	\$300.00
1	H11	Air Compressor	\$1,800.00	\$1,800.00

List Total:	\$73,215.00
BUYBOARD DISCOUNT 7%:	(\$5,125.05)
Net:	\$68,089.95
Start Up Considerations/Training 1/2 Day:	\$350.00
Freight/PDI:	\$4,875.00
Fuel:	\$0.00
Misc.:	\$0.00
BUYBOARD Total:	\$73,314.95

Respectfully Submitted:

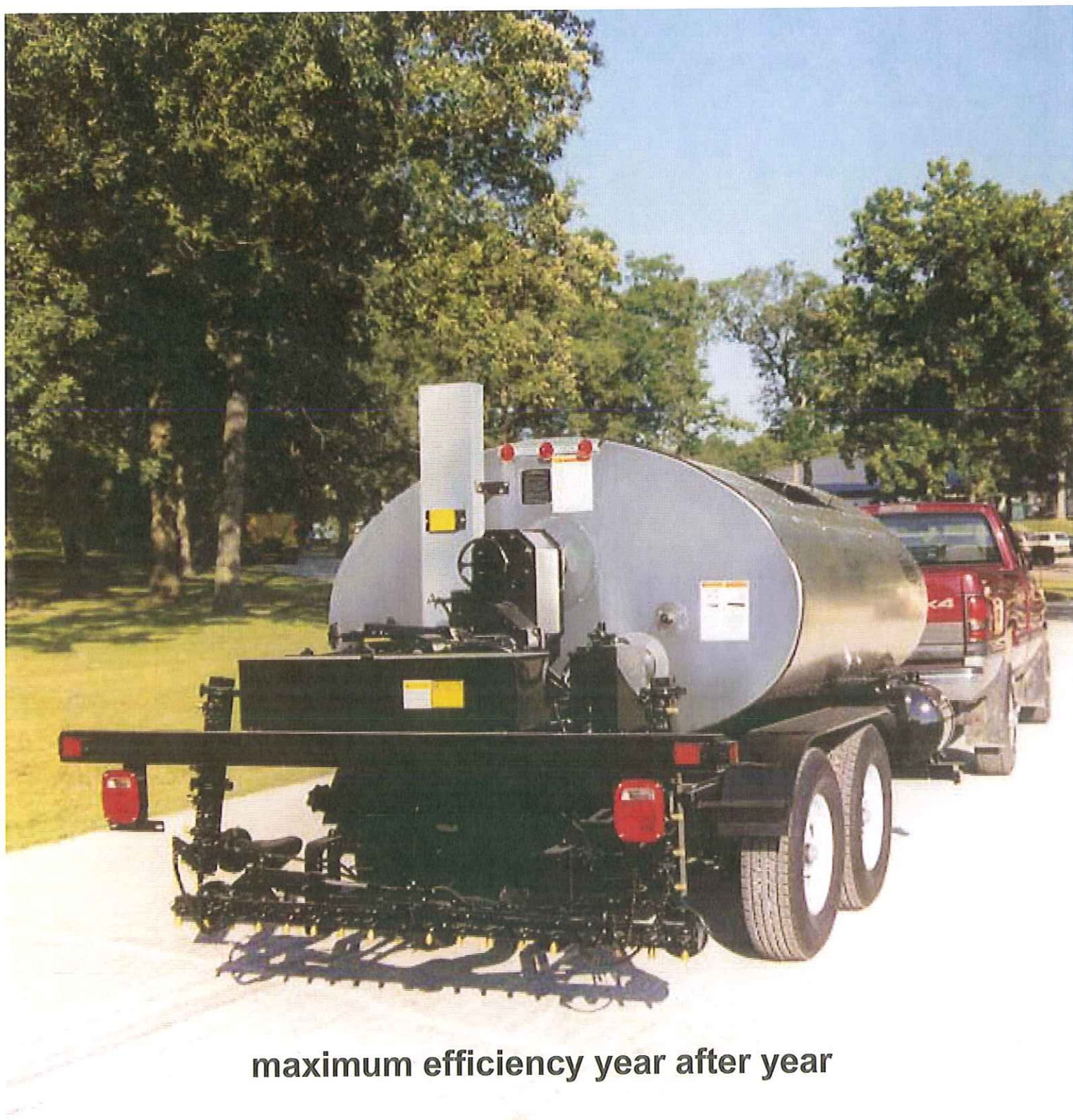
John Houston - Cooper Equipment Co. - District Manager
 (210) 867-6131

All warranties on the product sold hereby are those made by the manufacturer. All units subject to prior sale.



Maintenance Distributor

L-401-03



maximum efficiency year after year

Etnyre Maintenance Distributors



Photos may contain optional equipment

Trailer, Truck and
Skid Mounted



600, 800, 1000
Gallon capacities

Designed for dependable and safe operation.



Mounted on a tandem axle, 6" channel frame with electric brakes and safety breakaway, an adjustable pintle eye and crank type jacks front and rear. Two 6000# axles with four LT235/85 R16 (E) tires on disk wheels and flanged steel fenders insure safe, efficient travel. FMVSS-108 lights and wiring and electrical connection for towing vehicle are also provided.



Tank constructed of a 12 gauge steel shell and full section surge plates. Spill collar with 20" man-hole with strainers and rollover protection meet HM-198A/HM 183 DOT hot asphalt requirements. Fiberglass 2" insulation covered with aluminum jacketing.



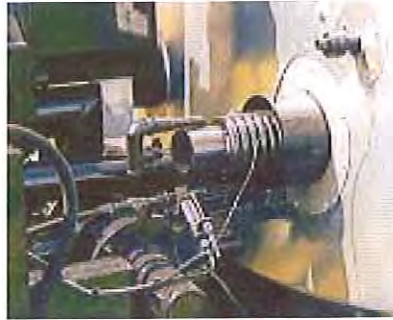
The hydraulic system is powered by an 18 H.P. gasoline engine with electric starter, alternator, battery and 6 gallon fuel tank. The system develops 2500 P.S.I.

A 30 H.P. gas and a 23 H.P. diesel engine are available.

The Etnyre Maintenance Distributor's features promise reliability and ease of operation.



Patented automatic suckback system and coaxial bar feed lines provide complete suckback of the circulating system. Includes all manual valves for loading, circulating in the tank, handspraying and unloading. Pump, valves, and circulating system are manufactured by Etnyre to minimize exposed lines, heat loss and sumps.



Heating system options provide a choice of either one or two flues and LPG, Fuel Oil or Kerosene Generating burners. Portable burners and outfire protection for LPG burners are also available.



Maintenance distributors offer either an 8' or 10' full circulating spray bar. All bars feature electric-hydraulic gang on/off controls and manual flip valve nozzle control every 4". 10' bars offer 2' folding wings on each side with 1' on each side removable and manual lift and wing fold. Additional 1' add-on sections are also available for either spray bar.



Electric-hydraulic cab control for spray bar gang on-off from the cab is standard equipment with either bar. Spray bar on/off switch is provided in a control panel operated from the towing vehicle cab. The panel is provided with a 20' electrical cord to reach the towing vehicle cab.



Hydraulic pump and high torque motor drive the Etnyre 200 GPM asphalt pump. The circulating system includes a manual suction valve, removable strainer and a 20 gallon flushing tank with line to asphalt pump. Built-in relief valve in system.



Versatile handspray attachment is standard equipment, allows greater efficiency on all maintenance jobs. For finishing intersections, patching, and surfacing in limited areas. Includes hand spray gun with triple lap 3 nozzle spray and 25' of asphalt grade hose.

**Ease of operation
assures maximum
efficiency and
greater profitability
year after year.**



Request the following items for more information about the Etnyre Maintenance Distributor:

- A-401- ** Maintenance Distributors Features
- SMU-401- ** Specifications for Maintenance Distributors
- V-401- ** Etnyre Maintenance Distributors Video



E. D. Etnyre & Co., whose policy is one of continuous improvement, reserves the right to change specifications without notice. Some items shown in photos and illustrations may be optional equipment.

Distributed By:



E. D. ETNYRE & CO.,

1333 South Daysville Road, Oregon, Illinois 61061
Phone: 800-995-2116 or 815/732-2116 • Fax 815-732-7400
Web Site: www.etnyre.com • E Mail: sales@etnyre.com

L-401-03 supersedes L-401-99

Agenda Item:

3C. Professional services agreement with Freese and Nichols Engineering, Inc. for the rehabilitation of the oxidation ditch at the water reclamation plant in the amount of \$138,400.00. (staff)

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

SUBJECT: Award Professional Services Agreement to Freese and Nichols Engineering, Inc. for the Rehabilitation of the Oxidation Ditch at the Water Reclamation Plant.

FOR AGENDA OF: April 11, 2017

DATE SUBMITTED: March 31, 2017

SUBMITTED BY: Stuart Barron,
Director of Public Works

CLEARANCES: E.A. Hoppe,
Deputy City Manager 

EXHIBITS: Professional Services Agreement between City of Kerrville and Freese and Nichols, Inc.

AGENDA MAILED TO: N/A

APPROVED FOR SUBMITTAL BY CITY MANAGER:

Expenditure	Current Balance	Amount	Account
Required:	in Account:	Budgeted:	Number:
\$138,400.00	\$1,487,745.00	\$1,487,745.00	71-800-511
			U11-71-17003

PAYMENT TO BE MADE TO: N/A

REVIEWED BY THE FINANCE DEPARTMENT:

SUMMARY STATEMENT

The intent of this project is to replace the baffle deflectors, as well as remove accumulated solids from the bottom of the oxidation ditch. This project was first listed in the approved 2015 Community Investment Plan, and the funding for the design, engineering, and construction of the project was approved by the City Council in the FY 2017 Budget. As part of the approved Wastewater Master Plan, the oxidation ditch was listed as a high-risk, critical component. The reason for this is due to the oxidation ditch being the main treatment component not having any redundancy within the treatment system.

The oxidation ditch has been in continuous service since the plant was built in 1974. Over the years, three of the four baffles have pulled out of their concrete anchors and are no longer functional. The baffles are intended to force air down into the mixed liquor, so that oxygen can be mixed with wastewater. This process is necessary so the aerobic bacteria can complete the treatment process.

Over the 43 years of operation, the oxidation ditch has accumulated a blanket of solids across the bottom. These solids are counterproductive to the treatment process and take up volumetric capacity. In addition, the solids house anaerobic

bacteria which adds additional nutrient loading for the aerobic bacteria process. Once the accumulation is removed from the process and the baffles are reinstalled, the level of free oxygen in the oxidation ditch will be increased, and this will aid in optimizing the treatment process.

Freese and Nichols will design a solution for the removal and reinstallation of the baffle deflectors, and develop a process for dredging out the bottom of the oxidation ditch. Freese and Nichols will also assist the City with any phases related to bidding and construction of the project. Design is anticipated to be completed in the next several months, with staff also anticipating bringing the Council a recommended construction bid so that construction can begin Summer 2017.

RECOMMENDED ACTION

Authorize City Manager to execute a Professional Services Agreement with Freese and Nichols Engineering the design and rehabilitation of the oxidation ditch at the Water Reclamation Plant.

PROFESSIONAL SERVICES AGREEMENT

[FIRM: Freese and Nichols | PROJECT-SERVICES: City of Kerrville Wastewater Treatment Plant
Oxidation Ditch Rehabilitation – Design, Bid and Construction Phase Services]

THIS AGREEMENT is entered into the ____ day of _____, 20167 (“Effective Date”), by and between the **CITY OF KERRVILLE, TEXAS (“CITY”)** and **FREESE AND NICHOLS, (“CONSULTANT”)**, and at times, collectively referred to herein as “parties”.

WHEREAS, CITY hires CONSULTANT to perform certain work and services set forth in Scope of Services, marked **Attachment A**, and attached hereto and incorporated herein, toward completion of the Project; and

WHEREAS, CONSULTANT agrees to perform said work and services as specified under Article I of this Agreement;

NOW, THEREFORE, the parties agree as follows:

I. CONSULTANT’S SERVICES

CONSULTANT shall perform and pay for all labor, tools, materials, equipment, supplies, transportation, and management necessary to perform all services set forth in **Attachment A** and all other professional services reasonably inferable from **Attachment A** and necessary for complete performance of CONSULTANT’s obligations under this Agreement, collectively referred to herein as “Services”. CITY may, at any time, stop CONSULTANT from performing the Services upon giving CONSULTANT written notice. To the extent of any conflict between the terms of this Agreement and **Attachment A**, the terms of this Agreement will prevail.

II. CONSULTANT’S RESPONSIBILITIES

A. CONSULTANT, upon its review of a general description of the Project provided by CITY, has prepared and provided to CITY the specific Services required to complete the Project, which is attached as **Attachment A**.

B. CONSULTANT shall use its best efforts, skill, judgment, and abilities in performing the Services in an expeditious and timely manner consistent with the applicable professional standards of care and the orderly progress of the Project. CONSULTANT shall at all times provide sufficient personnel to accomplish the Services in a timely manner. CONSULTANT shall manage the Services, administer the Project, and coordinate other professional services as necessary for the complete performance of CONSULTANT’s obligations under this Agreement. CONSULTANT shall periodically report the status of the Services to CITY as is appropriate to keep CITY informed as to the status of the work.

C. CONSULTANT shall perform the Services in compliance with all applicable federal, state, and municipal laws, to include building codes and accessibility standards (e.g., Americans with Disabilities Act) and with those of any other entity having jurisdiction over the Project. In

addition, CONSULTANT shall perform the Services in a manner consistent with generally accepted standards for its profession.

D. Plans, drawings, specifications, and/or other reports produced by CONSULTANT (collectively referred to herein as "Design Documents") pursuant to the Services must be reasonably accurate and free from material errors or omissions. CONSULTANT shall promptly correct any known or discovered error, omission, or other defect in the Design Documents without any additional cost or expense to CITY and notify of CITY of same.

E. CONSULTANT shall designate a representative primarily responsible for its performance of the Services. The designated representative shall act on behalf of CONSULTANT with respect to all phases of the Services and shall be available as required for the benefit of the Project and CITY. CONSULTANT shall not change the designated representative without prior written approval of CITY, which approval may not be unreasonably withheld.

III. CITY'S RESPONSIBILITIES

A. CITY has provided CONSULTANT with a general description of the Project.

B. CITY shall furnish surveys, geotechnical reports, or other special investigations or tests, including structural, mechanical, and chemical, for the Project site as requested by the CONSULTANT and as reasonably necessary for the completion of the Services. The parties will agree to this work prior to entering into this Agreement and such work will not be included as part of the Services specified in **Attachment A**.

C. CITY shall review the Design Documents and shall notify CONSULTANT of any design fault or defect in the Services or Design Documents of which CITY becomes aware.

D. CITY shall furnish required information and services and shall render approvals and decisions as expeditiously as necessary for the orderly progress of the Services.

E. CITY designates **KYLE BUROW, DIRECTOR OF ENGINEERING, (830) 258-1410** as its representative authorized to act on its behalf with respect to the Project.

IV. PAYMENT

CITY shall compensate CONSULTANT for the Services in the amount and manner described and set forth in the Payment Schedule, attached hereto and incorporated herein as **Attachment A**. The amount will not exceed \$138,400.00.

V. TIME FOR PERFORMANCE

A. CONSULTANT shall commence its work immediately upon the parties' execution of this Agreement and proceed diligently with said work, except for delays beyond the reasonable control of CONSULTANT.

B. In the event CONSULTANT's performance of this Agreement is delayed or interfered with by acts of CITY or others, CONSULTANT may request an extension of time for the performance of same as hereinafter provided, but shall not be entitled to any increase in fee or price, or to damages or additional compensation as a consequence of such delays unless such delays exceed 90 days.

C. CITY is not obligated to approve and may not approve any allowance of an extension of time for any cause whatever claimed or made by CONSULTANT, unless CONSULTANT shall have made written request upon CITY for such extension within forty-eight (48) hours after the cause for such extension occurred, and unless CITY and CONSULTANT have agreed in writing upon the allowance of additional time to be made.

VI. DOCUMENTS

A. CONSULTANT shall submit all Design Documents to CITY for approval. All Design Documents must be professionally sealed as required by law or by CITY.

B. CONSULTANT shall deliver the Design Documents, together with any necessary supporting documents, to CITY and CITY has unlimited rights, for the benefit of CITY, in all Design Documents, including the right to use same on any other work of CITY without additional cost to CITY. If CITY uses the Design Documents on any work of CITY other than that specified in the Services, then under those circumstances and only to the extent allowed by law, CONSULTANT, its officers, agents, servants, and employees will not be liable for damages or claims arising from any inaccuracy or any use of the Design Documents with respect to such other work, and except where CONSULTANT participates in such other work.

C. CONSULTANT grants CITY a royalty-free, perpetual license and right, to survive the termination of this Agreement, to all Design Documents which CONSULTANT may cover by copyright and to all designs as to which CONSULTANT may assert any rights or establish any claim under the design patent or copyright laws. This license includes CITY's right to use and reproduce these documents as necessary to implement any CITY project which may require the use of these documents. Further, CONSULTANT acknowledges that CITY is subject to Chapter 552 of the Government Code, commonly known as the "Texas Public Information Act," and hereby waives and releases the CITY from any claims against CITY for providing copies of the Design Documents in compliance with that Act. CONSULTANT, after completion of the Project, shall immediately furnish originals of all Design Documents to CITY.

D. CONSULTANT shall ensure that all text documents supplied to CITY as provided herein are fully compatible with MS Word and that all drawings are fully compatible with Adobe PDF format.

VII. TERMINATION

A. CITY or CONSULTANT may suspend or terminate this Agreement for cause or without cause at any time by giving written notice to the other party. In the event suspension or termination is without cause, CITY's payment to CONSULTANT, in accordance with this

Agreement, will be made on the basis of the Services reasonably determined by CITY to be satisfactorily performed to date of suspension or termination. In addition, CITY's payment is subject to the CONSULTANT's delivery of all documents and reports reasonably required by CITY, to include Design Documents, invoices, statements, and accounts.

B. Should CITY require a modification to this Agreement, and in the event CITY and CONSULTANT fail to agree upon such modification, either CITY or CONSULTANT have the option of terminating this Agreement. Thereafter, CITY shall pay CONSULTANT in accordance with this Agreement for the Services mutually agreed upon by CITY and CONSULTANT to be properly performed by the CONSULTANT prior to such termination date.

VIII. INSURANCE

CONSULTANT shall provide and maintain in full force and effect during the term of this Agreement the following types of insurance and liability coverage:

A. Workers Compensation Insurance: in an amount meeting statutory requirements of the State of Texas on all CONSULTANT's employees carrying out the Services.

B. Automobile Liability Insurance: with either a combined limit of at least \$1,000,000 per occurrence for bodily injury and property damage or split limits of at least \$1,000,000 for bodily injury per person per occurrence and \$1,000,000 for property damage per occurrence. Coverage must include all owned, hired, and non-owned motor vehicles used in the performance of this Agreement by CONSULTANT or its employees.

C. General Liability Insurance: on a per occurrence basis with limits of liability not less than \$1,000,000 for each occurrence and for fire damage and for Bodily Injury and Property Damage, no less than \$1,000,000. As a minimum, coverage for Premises, Operations, Products, and Completed Operations shall be \$2,000,000. This coverage must protect the public or any person from injury or property damages sustained by reason of CONSULTANT or its employees providing the Services. The general aggregate must be no less than \$2,000,000.

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

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

F. Qualifying Insurance: the insurance required by this Agreement must be written by non-assessable insurance company licensed to do business in the State of Texas and currently rated "B"

or better by the A.M. Best Companies. All policies must be written on a "per occurrence basis" and not a "claims made" form.

IX. INDEMNIFICATION FOR INJURY AND PERFORMANCE

A. CONSULTANT shall protect, indemnify, and hold harmless CITY, its officers, agents, servants, and employees, hereinafter individually and collectively referred to as "Indemnitee(s)", from and against suits, actions, claims, losses, liability, or damage of any character and from and against costs and expenses, including, in part, attorney fees incidental to the defense of such suits, actions, claims, losses, damages, or liability on account of injury, disease, sickness, including death, to any person or damage to property including, in part, the loss of use resulting therefrom, arising from any negligent act, error, or omission of CONSULTANT, its officers, employees, servants, agents, or subcontractors, or anyone else under CONSULTANT's, direction and control, and arising out of, resulting from, or caused by the performance or failure of performance of the Services, or from conditions created by the performance or non-performance of said work. In the event one or more of the Indemnitees is determined by a court of law to be jointly or derivatively negligent or liable for such damage or injury, CONSULTANT shall indemnify Indemnitee(s) as provided herein on a proportionate basis in accordance with the final judgment, after all appeals are exhausted, determining such joint or derivative negligence or liability.

B. CONSULTANT is not responsible for the actions of the CITY's contractor to perform the construction of the improvements covered under this Agreement.

C. Acceptance and approval of any work or final plans by CITY neither constitutes nor may be deemed a release of this responsibility and liability of CONSULTANT, its employees, associates, agents, and consultants for the accuracy or competency of their designs, working drawings, and specifications, or other documents and work; nor shall such approval be deemed to be an assumption of such responsibility by CITY for any defect in the Design Documents, or CONSULTANT's employees, contractor, agents, and consultants.

X. INDEMNIFICATION FOR UNEMPLOYMENT COMPENSATION

CONSULTANT agrees that it is an independent contractor and not an agent of CITY, and that CONSULTANT is subject, as an employer, to all applicable Unemployment Compensation Statutes, so as to relieve CITY of any responsibility or liability from treating CONSULTANT's employees as employees of CITY for the purpose of keeping records, making reports or payments of Unemployment Compensation taxes or contributions. CONSULTANT shall indemnify and hold CITY harmless and reimburse it for any expenses or liability incurred under said statutes in connection with employees of CONSULTANT.

XI. INDEMNIFICATION FOR PERFORMANCE

CONSULTANT shall defend and indemnify Indemnitees against and hold CITY and the premises harmless from any and all claims, suits, or liens based upon or alleged to

be based upon the non-payment of labor, tools, materials, equipment, supplies, transportation, and management costs incurred by CONSULTANT in performing the Services.

XIV. DEFAULT OF CONSULTANT

In the event CONSULTANT fails to comply or becomes disabled and unable to comply with this Agreement as to the quality or character of the Services or time of performance, and the failure is not corrected within ten (10) days after written notice from CITY to CONSULTANT, CITY may, at its sole discretion, without prejudice to any other right or remedy:

A. Terminate this Agreement and be relieved of the payment of any further consideration to CONSULTANT except for all work determined by CITY to be satisfactorily completed prior to termination. Payment for work satisfactorily completed will equal actual costs, including reasonable salaries and travel expenses of CONSULTANT to and from meetings called by CITY at which CONSULTANT is required to attend, but shall not include any loss of profit of CONSULTANT. In the event of such termination, CITY may complete the services in any manner deemed proper by CITY, either by the use of its own forces or by assigning the work to others. In either event, CONSULTANT is liable for all costs in excess of the total contract price under this Agreement incurred to complete the Services and CITY may deduct the costs CITY incurs out of such monies as may be due or that may thereafter become due to CONSULTANT under this Agreement.

B. CITY may, without terminating this Agreement or taking over the Services, furnish the necessary materials, equipment, supplies, and/or help necessary to remedy the situation, at the expense of CONSULTANT.

XV. MISCELLANEOUS PROVISIONS

A. Entire Agreement. This Agreement supersedes all prior agreements, written or oral, between CITY and CONSULTANT and constitutes the entire and integrated Agreement and understanding between the parties with respect to the subject matter of the Agreement. This Agreement may only be amended by a written instrument signed by both parties.

B. Assignment. This Agreement is a personal service contract for the services of CONSULTANT and CONSULTANT's interest in this Agreement, duties hereunder, and/or fees due may not be assigned or delegated to a third party without the written consent of CITY. Sale of more than fifty percent (50%) ownership of CONSULTANT will be considered an assignment.

C. Adjustment in Services. CONSULTANT shall not make any claims for extra services, additional services, or changes in the Services without a written agreement with CITY prior to the performance of such services.

D. Applicable Law. This Agreement must be construed, interpreted, and applied in accordance with and governed by and enforced under the laws of the State of Texas without giving effect to principles of conflict of law. Venue will occur in Kerr County, Texas.

E. Waiver. A delay or omission by either party in exercising any right or power under the Agreement may not be construed as a waiver of that right or power. A waiver by either party of any term or condition of the Agreement may not be construed as a waiver of any subsequent breach of that term or condition or of any other term or condition of the Agreement. Further, neither CITY's review, approval, or acceptance of, nor payment for any of the Services may be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement.

F. Severability. If any provision of this Agreement is determined to be invalid or unenforceable in any respect, that determination may not affect any other provision of this Agreement which will be interpreted as if the invalid or unenforceable provision had not been included.

G. Independent Contractor. CONSULTANT agrees that CONSULTANT is engaged as an independent contractor and that City has no responsibility to provide CONSULTANT or its employees with any benefits associated with employee status. CONSULTANT shall neither hold itself out as nor claim to be an officer, partner, employee, or agent of CITY.

H. Attachments. The following Attachment(s) is attached to this Agreement and are included herein for all purposes:

Attachment A Scope of Services

I. Execution Becomes Effective. This Agreement is effective as of the Effective Date.

J. Notices and Authority. CONSULTANT shall send all notices required under this Agreement to the City Manager at City Hall, 701 Main Street, Kerrville, TX 78028. CONSULTANT agrees that only the City Manager, or designee, has the authority to represent CITY or bind CITY under this Agreement. CITY shall send all notices required under this Agreement to the CONSULTANT at:

Freese and Nichols
BY: _____
TITLE: _____
ADDRESS: 4040 Broadway, Suite 600
San Antonio, Texas 78209

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

OWNER
THE CITY OF KERRVILLE

CONSULTANT
FREESE AND NICHOLS

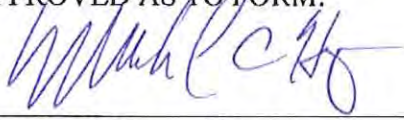
BY: _____
NAME: DON DAVIS,
TITLE: INTERIM CITY MANAGER

BY: _____
NAME: _____
TITLE: _____

ATTEST:

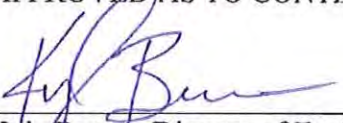
Brenda G. Craig, City Secretary

APPROVED AS TO FORM:



Michael C. Hayes, City Attorney

APPROVED AS TO CONTENT:



Kyle Burow, Director of Engineering

ATTACHMENT A

PROFESSIONAL SERVICES AGREEMENT BETWEEN THE CITY OF KERRVILLE AND FREESE AND NICHOLS, INC.

ENGINEERING SCOPE OF SERVICES

PROJECT DESCRIPTION: The objective of this project is to prepare a complete set of contract documents including the plans, bid documents, general/supplementary conditions, technical specifications, and other related documents for the rehabilitation of the existing oxidation ditch. This work will include dredging of materials from the ditch and baffling improvements at the City of Kerrville's Wastewater Treatment (WWTP) plant.

SUBCONSULTANTS:

A. None

PROJECT SCOPE/ASSUMPTIONS:

A. Oxidation Ditch Rehabilitation Design

1. Design will be performed in accordance with TCEQ Chapter 217 requirements.
2. Dredging activities will be specified and coordinated so that the oxidation ditch will remain in service.

B. General

1. Project will be designed, bid and constructed as a single bid package.
2. Project will utilize FNI standard contract documents and specifications after City review/approval.
3. Project will be procured using the standard bid process in conformance with City policy and state law. Procurement by other means such as Competitive Sealed Proposal shall be an additional service.
4. Storm Water Pollution Prevention Plan(s), if necessary, will be provided by Contractor.

BASIC SERVICES: FNI shall render the following professional services in connection with the development of the Project:

A. PROJECT MANAGEMENT

1. Conduct Internal Kickoff Meeting: Purpose of this meeting is to orient the team members to the work, review project scope, schedule, and budget, and make initial task assignments.
2. Conduct Project Kickoff Meeting and Site Visit with City Staff: Purpose of this meeting is to introduce the FNI project team to City staff, establish project communications protocols, confirm project goals and objectives, review scope, schedule and budget, and coordinate initial project tasks.
 - a) FNI will prepare and distribute a kickoff meeting agenda at least one week prior to the meeting.
 - b) FNI will schedule and attend the kickoff meeting in Kerrville.
 - c) FNI will visit the site in conjunction with the kickoff meeting.
 - d) FNI will prepare and distribute meeting minutes within one week following the project kickoff meeting.
3. Monthly Invoicing: FNI will prepare and submit monthly invoices to City for payment in accordance with Attachment CO of the Professional Services Agreement.
4. Quality Assurance/Quality Control: FNI will develop and implement a QA/QC plan for the work. Elements of the QA/QC plan will include the following:
 - a) FNI will develop a Quality Control Plan that will identify scheduled reviews of project deliverables, and individuals responsible for review.
 - b) FNI will implement the quality control plan developed in the prior task, then monitor and document implementation of the QC plan through project completion. Implementation will include:
 1. Internal checks of deliverables prior to delivery to City.
 2. Constructability and Cost Estimate Reviews.
5. Quality Assurance:

- a) Quality Assurance Reviews. Senior FNI staff will meet with project staff and verify that FNI quality control guidelines and the project-specific quality control plans are being implemented. We anticipate two Quality assurance reviews:
 - 1. Interim Quality Assurance Review: FNI shall prepare for and conduct an Internal quality assurance review at approximately the mid-point of the project schedule
 - 2. Final Quality Assurance Review: FNI shall prepare for and conduct an Internal quality assurance review prior to submittal of the 90 percent drawings to the City.

B. 60% DESIGN PHASE

1. Meetings:

- a) Project Kickoff Meeting and site visit.
- b) 60% Design Drawings Workshop, including a technology transfer discussion on method of dredging, sequencing, and other applicable topics.
- c) One Progress Meeting, each month, which may be held by conference call.

2. Aeration Analysis:

- a) Review existing data regarding the oxidation ditch process, including design standards and applicable TCEQ regulations.
- b) Develop desktop model for aeration requirements for the oxidation ditch.

3. Oxidation Ditch Dredging Coordination

- a) Project team will coordinate with prospective dredging subcontractors to evaluate methods and solicit budget estimates for dredging activities and solids disposal.

4. Develop 60% Design Drawings and Specifications:

- a) Assemble findings of preliminary investigations
- a) Assemble preliminary drawings.
- b) Develop 60% Specifications
- c) Submit the draft drawings and specifications to the City for review.
- d) After the 60% workshop, incorporate City comments and provide a comment/response form to the City.

5. Phase Deliverables:

- a) Preliminary Opinion of Probable Construction Cost (OPCC)
- b) 60% Design Drawings and Specifications:
 - 1. Four (4) hard copies
 - 2. One (1) electronic copy in PDF format.

- C. **100% Submittal:** FNI will incorporate any comments made by the City in the 60% design submittal and submit a 100% complete submittal for review.

Phase Deliverables

- 1. 100% Design Plans: One (1) electronic copy in PDF format
- 2. Design Specifications: One (1) electronic copy in PDF format.
- 3. Updated OPCC for the project.

- D. **BID OR NEGOTIATION PHASE:** Upon completion of the design services and approval bid drawings and specifications by City, FNI will proceed with the performance of services in this phase as follows:

1. Meetings:

- a) Prebid Meeting: Assist the City in conducting a pre-bid conference for the construction project and coordinate responses with City. Response to the pre-bid conference will be in the form of addenda issued after the conference.
- b) Bid Opening: Attend project bid opening and open bids as required by the City.

2. Bid Phase Services:

- a) FNI will set up the project on CivCastusa.com to distribute the bid documents to prospective bidders and plan rooms. Electronic sets of documents will be made available at no charge to plan holders. Hard copy plans will not be provided by the Engineer except as indicated below.

- b) Assist City by responding to questions and interpreting bid documents. Prepare and issue addenda to the bid documents to plan holders if necessary.
- c) Tabulate and analyze the bids received. Review the qualification information provided by the apparent low bidder to determine if, based on the information available, they appear to be qualified to construct the project.
- d) Recommend award of contracts or other actions as appropriate to be taken by City.
- e) Provide Notice of Award of Contract to the Contractor and provide letter with directions for the execution of the contract documents.
- f) Assist City in the preparation of the Construction Contract Documents.

3. Phase Deliverables:

- a) Conformed Construction Documents
 - 1. For City:
 - a) Contractor will provide two original documents with bid submittal that will be used for execution. FNI will provide a letter to the Contractor with directions for contract execution.
 - b) Three (3) copies of full size and five (5) copies of half-size conformed construction plans and five (5) copies of the contract documents bound with hard covers for use during construction.
 - c) One (1) electronic copy of conformed construction documents for use during construction.
 - 2. For Construction Contractor:
 - a) Five (5) copies of conformed construction plans (full size) and documents bound with hard covers for use during construction.
 - b) One (1) electronic copy of conformed construction documents for use during construction.

E. CONSTRUCTION PHASE:

Upon completion of the bid or negotiation phase services, FNI will proceed with the construction phase services as described below. FNI will endeavor to protect the City in providing these services however, it is understood that FNI does not guarantee the Contractor's performance, nor is FNI responsible for supervision of the Contractor's operation and employees. FNI shall not be responsible for the means, methods, techniques, sequences or procedures of construction selected by the Contractor, or any safety precautions and programs relating in any way to the condition of the premises, the work of the Contractor or any Subcontractor. FNI shall not be responsible for the acts or omissions of any person (except its own employees or agents) at the Project site or otherwise performing any of the work of the Project.

These services are based on the use of FNI standard General Conditions for construction projects. Modifications to these services required by use of other general conditions or contract administration procedures are an additional service. If general conditions other than FNI standards are used, the City agrees to include provisions in the construction contract documents that will require the construction contractor to include FNI and their subconsultants on this project to be listed as an additional insured on contractor's insurance policies.

1. Meetings:

- a) Pre-Construction Meeting: Assist the City in conducting pre-construction conference with the Contractor. Prepare meeting agenda and minutes.
- b) Construction Site Visits/Construction Progress Meetings: Make up to 12 site visits during the course of construction, as distinguished from the continuous services of a Resident Project Representative, to observe the progress and the quality of work and to attempt to determine in general if the work is proceeding in accordance with the Contract Documents.
- c) Punchlist Meetings: Conduct, in company with City's representative, reviews of the Project for conformance with the design concept of the Project and for general compliance with the Construction Contract Documents. These reviews will be when project considered ready for substantial completion and for final completion. Prepare a list of deficiencies to be corrected by the contractor before recommendation of substantial completion and before recommendation for final payment.

2. Construction Phase Services:

- a) Establish and maintain a project documentation system (eBuilder) consistent with the requirements of the construction Contract Documents.
- b) Monitor the processing of contractor's submittals and provide for filing and retrieval of project documentation.
- c) Produce monthly reports indicating the status of all submittals in the review process.
- d) Review contractor's submittals, including:
 - 1. Requests for Information
 - 2. Modification requests
 - 3. Shop drawings
 - 4. Schedules
 - 5. Certified test reports
 - 6. Other submittals as required
- e) Monitor the progress of the contractor in sending and processing submittals to see that documentation is being processed in accordance with schedules.
- f) Notify City of Contractor's non-conforming work observed on site visits. Review quality related documents provided by the contractor such as test reports, equipment installation reports or other documentation required by the Construction Contract Documents.
- g) Interpret the drawings and specifications for City and Contractor. Investigations, analyses, and studies requested by the Contractor and approved by City, for substitutions of equipment and/or materials or deviations from the drawings and specifications is an additional service.
- h) Coordinate the work of testing laboratories and inspection bureaus required for the testing or inspection of materials, witnessed tests, factory testing, etc. for quality control of the Project. The cost of such quality control shall be paid by the City and is not included in the services to be performed by Freese and Nichols, Inc.
- i) Consult with and advise the City during construction, make recommendations to the City regarding materials and workmanship, and prepare change orders with the City's approval.
- j) Review samples, catalog data, schedules, shop drawings, laboratory, shop and mill tests of material and test equipment, and other data pursuant to the General Conditions of the Construction Contract.
- k) Assist the City in arranging for testing of materials and laboratory control during construction to be conducted at the City's expense.
- l) Review and comment on monthly and final estimates for payment to Contractor pursuant to the General Conditions of the Construction Contract.
- m) Conduct, in company with the City's representative, a final review of the Project for conformance with the design concept of the Project and general compliance with the Contract Documents, and review and comment on the Certificate of Completion and the recommendation for final payment to the Contractor.
- n) Provide construction staking for project as specified above.

3. Phase Deliverables:

- a) Monthly Status Reports.
- b) Project site visit memos and construction progress meeting minutes – up to 7 site meetings/visits
- c) Project Record Drawings:
 - 1. Two (2) sets of full size plans.
 - 2. USB flash drive or similar data storage device with Record Drawings in PDF Format, project survey files, project CAD files in AutoCad or Microstation formats and shapefiles in GIS format if needed.

ADDITIONAL SERVICES: Additional Services to be performed by FNI, if authorized by the City, which are not included in the above described basic services, are described as follows:

- A. Topographic Survey or SUE.
- B. Obtaining the services of a SCADA Integration subconsultant.
- C. Identification and evaluation of future wastewater system improvements.
- D. Updates to wastewater master plan and/or model that are not directly related to this project.

- E. Electrical Design, Bld, and Construction Phase Services if the Plant Generator and/or Electrical Utility Service are determined to require modifications and/or Improvements.
- F. Preparation of Storm Water Pollution Prevention Plan. (To be prepared by Contractor)
- G. Preparation of construction traffic control plan. (To be prepared by Contractor if needed)
- H. Investigations involving consideration of operation, maintenance and overhead expenses, and the preparation of rate schedules, earnings and expense statements, feasibility studies, appraisals, evaluations, assessment schedules, and material audits or inventories required for certification of force account construction performed by the City.
- I. Preparing applications and supporting documents for government grants, loans, or planning advances and providing data for detailed applications.
- J. Providing shop, mill, field or laboratory inspection of materials and equipment.
- K. Preparing Operation and Maintenance Manuals or conducting operator training. (To be provided and conducted by Contractor and equipment suppliers)
- L. Preparing data and reports for assistance to the City in preparation for hearings before regulatory agencies, courts, arbitration panels or any mediator, giving testimony, personally or by deposition, and preparations therefore before any regulatory agency, court, arbitration panel or mediator.
- M. Assisting City in claims disputes with Contractor(s).
- N. Performing investigations, studies and analyses of substitutions of equipment and/or materials or deviations from the plans and specifications.
- O. Performing any "Special Inspections" required by the International Building Code. (None are anticipated.)
- P. Construction phase site visits requested by Owner in excess of the number stipulated in this scope of services.
- Q. Assisting City in the defense or prosecution of litigation in connection with or in addition to those services contemplated by this proposal. Such services, if any, shall be furnished by FNI on a fee basis negotiated by the respective parties outside of and in addition to this proposal.
- R. Providing environmental and archeological support services including the design and implementation of ecological baseline studies, environmental monitoring, impact assessment and analyses, permitting assistance, and other assistance required to address environmental issues.

COMPENSATION

Lump Sum: Compensation to FNI shall be the lump sum amount of \$138,400. If FNI sees the Scope of Services changing so that additional services are needed, including but not limited to those services described as Additional Services in Attachment SC, FNI will notify OWNER for OWNER'S approval before proceeding.

A breakdown of major task items and their associated costs are as follows:

TASK	COST
Design Phase	\$89,900
Bid Phase	\$ 9,000
Construction Contract Administration	\$39,500
Total Basic Services Fee	\$138,400

PROJECT SCHEDULE

TIME OF COMPLETION: FNI is authorized to commence work on the Project upon execution of this AGREEMENT and agrees to complete the services in accordance with the following schedule:

Milestone/Deliverable	Calendar Days
60% Design Phase Submittal	120 days following Notice to Proceed
100% Design Phase Submittal	60 days following receipt of comments from City and TCEQ on 60% Design Submittal
Bid Phase Documents	21 days following receipt of comments from City on 100% Design Submittal
Bid Phase	±60 days for advertisement & contract execution
Construction Phase	To Be Determined

If FNI's services are delayed through no fault of FNI, FNI shall be entitled to adjust contract schedule consistent with the number of days of delay. These delays may include but are not limited to delays in City or regulatory reviews, delays on the flow of information to be provided to FNI, governmental approvals, etc.

Agenda Item:

3D. Professional services agreement with Freese and Nichols Engineering, Inc. to design the rehabilitation of the clarifier at the water treatment plant in the amount of \$132,600.00. (staff)

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

SUBJECT: Award Professional Services Agreement to Freese and Nichols Engineering to Design the Rehabilitation of the Clarifier at the Water Treatment Plant

FOR AGENDA OF: April 11, 2017

DATE SUBMITTED: March 31, 2017

SUBMITTED BY: Stuart Barron,
Director of Public Works

CLEARANCES: E.A. Hoppe,
Deputy City Manager



EXHIBITS: Professional Services Agreement between City of Kerrville and Freese and Nichols, Inc.

AGENDA MAILED TO: N/A

APPROVED FOR SUBMITTAL BY CITY MANAGER:



Expenditure	Current Balance	Amount	Account
Required:	in Account:	Budgeted:	Number:
\$132,600	\$ 683,750	\$ 683,750	71-800-510
			U10-71-17002

PAYMENT TO BE MADE TO: N/A

REVIEWED BY THE FINANCE DEPARTMENT:

SUMMARY STATEMENT

The City of Kerrville has two water treatment plants, a Zenon Ultra Filtration Plant and a conventional water treatment plant. The 2014 Water Master Plan ranked the rehabilitation of the clarifier at the conventional water treatment plant the most important Water Treatment Plant (WTP) project over all. This project was first listed in the approved 2015 Community Investment Plan, and the funding for the design, engineering, and construction of the project was approved by the City Council in the FY 2017 Budget. The clarifier is a critical component. When taken offline, the conventional plant will not produce water.

The conventional plant treats approximately 80% of the City's drinking water. It has been in operation since the plant was built in 1979. Over the last 38 years many of the metal components within the clarifier have become corroded and are now structurally damaged or they have simply worn out. These parts are no longer available and must be manufactured or fabricated prior to replacement. That increases the City's operating cost and the down time while the components are being made and installed.

Freese and Nichols will specify and design the installation of new hardware within the clarifier. They will also assist the City with bidding the project and the

construction administration. Design is anticipated to be completed in the next several months, with staff also anticipating bringing the Council a recommended construction bid so that construction can begin Summer 2017.

RECOMMENDED ACTION

Authorize City Manager to execute a Professional Services Agreement with Freese and Nichols Engineering to design the rehabilitation of the Clarifier at the Water Treatment Plant.

PROFESSIONAL SERVICES AGREEMENT

[FIRM: Freese and Nichols | PROJECT-SERVICES: City of Kerrville Water Treatment Plant Clarifier Rehabilitation – Design, Bid and Construction Phase Services]

THIS AGREEMENT is entered into the ____ day of _____, 2017 (“Effective Date”), by and between the **CITY OF KERRVILLE, TEXAS (“CITY”)** and **FREESE AND NICHOLS, (“CONSULTANT”)**, and at times, collectively referred to herein as “parties”.

WHEREAS, CITY hires CONSULTANT to perform certain work and services set forth in Scope of Services, marked **Attachment A**, and attached hereto and incorporated herein, toward completion of the Project; and

WHEREAS, CONSULTANT agrees to perform said work and services as specified under Article I of this Agreement;

NOW, THEREFORE, the parties agree as follows:

I. CONSULTANT’S SERVICES

CONSULTANT shall perform and pay for all labor, tools, materials, equipment, supplies, transportation, and management necessary to perform all services set forth in **Attachment A** and all other professional services reasonably inferable from **Attachment A** and necessary for complete performance of CONSULTANT’s obligations under this Agreement, collectively referred to herein as “Services”. CITY may, at any time, stop CONSULTANT from performing the Services upon giving CONSULTANT written notice. To the extent of any conflict between the terms of this Agreement and **Attachment A**, the terms of this Agreement will prevail.

II. CONSULTANT’S RESPONSIBILITIES

A. CONSULTANT, upon its review of a general description of the Project provided by CITY, has prepared and provided to CITY the specific Services required to complete the Project, which is attached as **Attachment A**.

B. CONSULTANT shall use its best efforts, skill, judgment, and abilities in performing the Services in an expeditious and timely manner consistent with the applicable professional standards of care and the orderly progress of the Project. CONSULTANT shall at all times provide sufficient personnel to accomplish the Services in a timely manner. CONSULTANT shall manage the Services, administer the Project, and coordinate other professional services as necessary for the complete performance of CONSULTANT’s obligations under this Agreement. CONSULTANT shall periodically report the status of the Services to CITY as is appropriate to keep CITY informed as to the status of the work.

C. CONSULTANT shall perform the Services in compliance with all applicable federal, state, and municipal laws, to include building codes and accessibility standards (e.g., Americans with Disabilities Act) and with those of any other entity having jurisdiction over the Project. In

addition, CONSULTANT shall perform the Services in a manner consistent with generally accepted standards for its profession.

D. Plans, drawings, specifications, and/or other reports produced by CONSULTANT (collectively referred to herein as "Design Documents") pursuant to the Services must be reasonably accurate and free from material errors or omissions. CONSULTANT shall promptly correct any known or discovered error, omission, or other defect in the Design Documents without any additional cost or expense to CITY and notify of CITY of same.

E. CONSULTANT shall designate a representative primarily responsible for its performance of the Services. The designated representative shall act on behalf of CONSULTANT with respect to all phases of the Services and shall be available as required for the benefit of the Project and CITY. CONSULTANT shall not change the designated representative without prior written approval of CITY, which approval may not be unreasonably withheld.

III. CITY'S RESPONSIBILITIES

A. CITY has provided CONSULTANT with a general description of the Project.

B. CITY shall furnish surveys, geotechnical reports, or other special investigations or tests, including structural, mechanical, and chemical, for the Project site as requested by the CONSULTANT and as reasonably necessary for the completion of the Services. The parties will agree to this work prior to entering into this Agreement and such work will not be included as part of the Services specified in **Attachment A**.

C. CITY shall review the Design Documents and shall notify CONSULTANT of any design fault or defect in the Services or Design Documents of which CITY becomes aware.

D. CITY shall furnish required information and services and shall render approvals and decisions as expeditiously as necessary for the orderly progress of the Services.

E. CITY designates **KYLE BUROW, DIRECTOR OF ENGINEERING, (830) 258-1410** as its representative authorized to act on its behalf with respect to the Project.

IV. PAYMENT

CITY shall compensate CONSULTANT for the Services in the amount and manner described and set forth in the Payment Schedule, attached hereto and incorporated herein as **Attachment A**. The amount will not exceed \$132,600.00.

V. TIME FOR PERFORMANCE

A. CONSULTANT shall commence its work immediately upon the parties' execution of this Agreement and proceed diligently with said work, except for delays beyond the reasonable control of CONSULTANT.

B. In the event CONSULTANT's performance of this Agreement is delayed or interfered with by acts of CITY or others, CONSULTANT may request an extension of time for the performance of same as hereinafter provided, but shall not be entitled to any increase in fee or price, or to damages or additional compensation as a consequence of such delays unless such delays exceed 90 days.

C. CITY is not obligated to approve and may not approve any allowance of an extension of time for any cause whatever claimed or made by CONSULTANT, unless CONSULTANT shall have made written request upon CITY for such extension within forty-eight (48) hours after the cause for such extension occurred, and unless CITY and CONSULTANT have agreed in writing upon the allowance of additional time to be made.

VI. DOCUMENTS

A. CONSULTANT shall submit all Design Documents to CITY for approval. All Design Documents must be professionally sealed as required by law or by CITY.

B. CONSULTANT shall deliver the Design Documents, together with any necessary supporting documents, to CITY and CITY has unlimited rights, for the benefit of CITY, in all Design Documents, including the right to use same on any other work of CITY without additional cost to CITY. If CITY uses the Design Documents on any work of CITY other than that specified in the Services, then under those circumstances and only to the extent allowed by law, CONSULTANT, its officers, agents, servants, and employees will not be liable for damages or claims arising from any inaccuracy or any use of the Design Documents with respect to such other work, and except where CONSULTANT participates in such other work.

C. CONSULTANT grants CITY a royalty-free, perpetual license and right, to survive the termination of this Agreement, to all Design Documents which CONSULTANT may cover by copyright and to all designs as to which CONSULTANT may assert any rights or establish any claim under the design patent or copyright laws. This license includes CITY's right to use and reproduce these documents as necessary to implement any CITY project which may require the use of these documents. Further, CONSULTANT acknowledges that CITY is subject to Chapter 552 of the Government Code, commonly known as the "Texas Public Information Act," and hereby waives and releases the CITY from any claims against CITY for providing copies of the Design Documents in compliance with that Act. CONSULTANT, after completion of the Project, shall immediately furnish originals of all Design Documents to CITY.

D. CONSULTANT shall ensure that all text documents supplied to CITY as provided herein are fully compatible with MS Word and that all drawings are fully compatible with Adobe PDF format.

VII. TERMINATION

A. CITY or CONSULTANT may suspend or terminate this Agreement for cause or without cause at any time by giving written notice to the other party. In the event suspension or termination is without cause, CITY's payment to CONSULTANT, in accordance with this

Agreement, will be made on the basis of the Services reasonably determined by CITY to be satisfactorily performed to date of suspension or termination. In addition, CITY's payment is subject to the CONSULTANT's delivery of all documents and reports reasonably required by CITY, to include Design Documents, invoices, statements, and accounts.

B. Should CITY require a modification to this Agreement, and in the event CITY and CONSULTANT fail to agree upon such modification, either CITY or CONSULTANT have the option of terminating this Agreement. Thereafter, CITY shall pay CONSULTANT in accordance with this Agreement for the Services mutually agreed upon by CITY and CONSULTANT to be properly performed by the CONSULTANT prior to such termination date.

VIII. INSURANCE

CONSULTANT shall provide and maintain in full force and effect during the term of this Agreement the following types of insurance and liability coverage:

A. Workers Compensation Insurance: in an amount meeting statutory requirements of the State of Texas on all CONSULTANT's employees carrying out the Services.

B. Automobile Liability Insurance: with either a combined limit of at least \$1,000,000 per occurrence for bodily injury and property damage or split limits of at least \$1,000,000 for bodily injury per person per occurrence and \$1,000,000 for property damage per occurrence. Coverage must include all owned, hired, and non-owned motor vehicles used in the performance of this Agreement by CONSULTANT or its employees.

C. General Liability Insurance: on a per occurrence basis with limits of liability not less than \$1,000,000 for each occurrence and for fire damage and for Bodily Injury and Property Damage, no less than \$1,000,000. As a minimum, coverage for Premises, Operations, Products, and Completed Operations shall be \$2,000,000. This coverage must protect the public or any person from injury or property damages sustained by reason of CONSULTANT or its employees providing the Services. The general aggregate must be no less than \$2,000,000.

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

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

F. Qualifying Insurance: the insurance required by this Agreement must be written by non-assessable insurance company licensed to do business in the State of Texas and currently rated "B"

or better by the A.M. Best Companies. All policies must be written on a "per occurrence basis" and not a "claims made" form.

IX. INDEMNIFICATION FOR INJURY AND PERFORMANCE

A. CONSULTANT shall protect, indemnify, and hold harmless CITY, its officers, agents, servants, and employees, hereinafter individually and collectively referred to as "Indemnitee(s)", from and against suits, actions, claims, losses, liability, or damage of any character and from and against costs and expenses, including, in part, attorney fees incidental to the defense of such suits, actions, claims, losses, damages, or liability on account of injury, disease, sickness, including death, to any person or damage to property including, in part, the loss of use resulting therefrom, arising from any negligent act, error, or omission of CONSULTANT, its officers, employees, servants, agents, or subcontractors, or anyone else under CONSULTANT's, direction and control, and arising out of, resulting from, or caused by the performance or failure of performance of the Services, or from conditions created by the performance or non-performance of said work. In the event one or more of the Indemnitees is determined by a court of law to be jointly or derivatively negligent or liable for such damage or injury, CONSULTANT shall indemnify Indemnitee(s) as provided herein on a proportionate basis in accordance with the final judgment, after all appeals are exhausted, determining such joint or derivative negligence or liability.

B. CONSULTANT is not responsible for the actions of the CITY's contractor to perform the construction of the improvements covered under this Agreement.

C. Acceptance and approval of any work or final plans by CITY neither constitutes nor may be deemed a release of this responsibility and liability of CONSULTANT, its employees, associates, agents, and consultants for the accuracy or competency of their designs, working drawings, and specifications, or other documents and work; nor shall such approval be deemed to be an assumption of such responsibility by CITY for any defect in the Design Documents, or CONSULTANT's employees, contractor, agents, and consultants.

X. INDEMNIFICATION FOR UNEMPLOYMENT COMPENSATION

CONSULTANT agrees that it is an independent contractor and not an agent of CITY, and that CONSULTANT is subject, as an employer, to all applicable Unemployment Compensation Statutes, so as to relieve CITY of any responsibility or liability from treating CONSULTANT's employees as employees of CITY for the purpose of keeping records, making reports or payments of Unemployment Compensation taxes or contributions. CONSULTANT shall indemnify and hold CITY harmless and reimburse it for any expenses or liability incurred under said statutes in connection with employees of CONSULTANT.

XI. INDEMNIFICATION FOR PERFORMANCE

CONSULTANT shall defend and indemnify Indemnitees against and hold CITY and the premises harmless from any and all claims, suits, or liens based upon or alleged to

be based upon the non-payment of labor, tools, materials, equipment, supplies, transportation, and management costs incurred by CONSULTANT in performing the Services.

XIV. DEFAULT OF CONSULTANT

In the event CONSULTANT fails to comply or becomes disabled and unable to comply with this Agreement as to the quality or character of the Services or time of performance, and the failure is not corrected within ten (10) days after written notice from CITY to CONSULTANT, CITY may, at its sole discretion, without prejudice to any other right or remedy:

A. Terminate this Agreement and be relieved of the payment of any further consideration to CONSULTANT except for all work determined by CITY to be satisfactorily completed prior to termination. Payment for work satisfactorily completed will equal actual costs, including reasonable salaries and travel expenses of CONSULTANT to and from meetings called by CITY at which CONSULTANT is required to attend, but shall not include any loss of profit of CONSULTANT. In the event of such termination, CITY may complete the services in any manner deemed proper by CITY, either by the use of its own forces or by assigning the work to others. In either event, CONSULTANT is liable for all costs in excess of the total contract price under this Agreement incurred to complete the Services and CITY may deduct the costs CITY incurs out of such monies as may be due or that may thereafter become due to CONSULTANT under this Agreement.

B. CITY may, without terminating this Agreement or taking over the Services, furnish the necessary materials, equipment, supplies, and/or help necessary to remedy the situation, at the expense of CONSULTANT.

XV. MISCELLANEOUS PROVISIONS

A. Entire Agreement. This Agreement supersedes all prior agreements, written or oral, between CITY and CONSULTANT and constitutes the entire and integrated Agreement and understanding between the parties with respect to the subject matter of the Agreement. This Agreement may only be amended by a written instrument signed by both parties.

B. Assignment. This Agreement is a personal service contract for the services of CONSULTANT and CONSULTANT's interest in this Agreement, duties hereunder, and/or fees due may not be assigned or delegated to a third party without the written consent of CITY. Sale of more than fifty percent (50%) ownership of CONSULTANT will be considered an assignment.

C. Adjustment in Services. CONSULTANT shall not make any claims for extra services, additional services, or changes in the Services without a written agreement with CITY prior to the performance of such services.

D. Applicable Law. This Agreement must be construed, interpreted, and applied in accordance with and governed by and enforced under the laws of the State of Texas without giving effect to principles of conflict of law. Venue will occur in Kerr County, Texas.

E. Waiver. A delay or omission by either party in exercising any right or power under the Agreement may not be construed as a waiver of that right or power. A waiver by either party of any term or condition of the Agreement may not be construed as a waiver of any subsequent breach of that term or condition or of any other term or condition of the Agreement. Further, neither CITY's review, approval, or acceptance of, nor payment for any of the Services may be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement.

F. Severability. If any provision of this Agreement is determined to be invalid or unenforceable in any respect, that determination may not affect any other provision of this Agreement which will be interpreted as if the invalid or unenforceable provision had not been included.

G. Independent Contractor. CONSULTANT agrees that CONSULTANT is engaged as an independent contractor and that City has no responsibility to provide CONSULTANT or its employees with any benefits associated with employee status. CONSULTANT shall neither hold itself out as nor claim to be an officer, partner, employee, or agent of CITY.

H. Attachments. The following Attachment(s) is attached to this Agreement and are included herein for all purposes:

Attachment A Scope of Services

I. Execution Becomes Effective. This Agreement is effective as of the Effective Date.

J. Notices and Authority. CONSULTANT shall send all notices required under this Agreement to the City Manager at City Hall, 701 Main Street, Kerrville, TX 78028. CONSULTANT agrees that only the City Manager, or designee, has the authority to represent CITY or bind CITY under this Agreement. CITY shall send all notices required under this Agreement to the CONSULTANT at:

Freese and Nichols
BY: _____
TITLE: _____
ADDRESS: 4040 Broadway, Suite 600
San Antonio, Texas 78209

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

OWNER
THE CITY OF KERRVILLE

CONSULTANT
FREESE AND NICHOLS

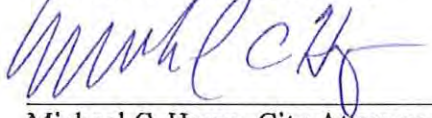
BY: _____
NAME: DON DAVIS,
TITLE: INTERIM CITY MANAGER

BY: _____
NAME: _____
TITLE: _____

ATTEST:

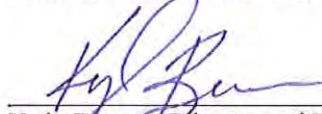
Brenda G. Craig, City Secretary

APPROVED AS TO FORM:



Michael C. Hayes, City Attorney

APPROVED AS TO CONTENT:



Kyle Burow, Director of Engineering

ATTACHMENT A

PROFESSIONAL SERVICES AGREEMENT BETWEEN THE CITY OF KERRVILLE AND FREESE AND NICHOLS, INC.

ENGINEERING SCOPE OF SERVICES

PROJECT DESCRIPTION: The objectives of this project include:

1. Prepare a complete set of contract documents including the plans, bid documents, general/supplementary conditions, technical specifications, and other related deliverables for the rehabilitation of the clarifier mechanisms and related appurtenances, and electrical equipment at the City of Kerrville's (City) Water Treatment Plant (WTP).

PROJECT SCOPE/ASSUMPTIONS:

A. Clarifier Rehabilitation

1. It is expected that a new clarifier mechanism, including catwalk, monorail hoist, center well, troughs, rake arms, and appurtenances will be recommended and specified for this rehabilitation.
2. Design will be performed in accordance with TCEQ Chapter 290 requirements.
3. Appropriate electrical improvements will also be included.

B. General

1. Design Elements of the Project will be designed, bid and constructed as a single bid package.
2. Project will utilize FNI standard contract documents and specifications after City review/approval.
3. Project will be procured using the standard bid process in conformance with City policy and state law. Procurement by other means such as Competitive Sealed Proposal shall be an additional service.
4. Storm Water Pollution Prevention Plan(s) will be provided by Contractor.
5. City will provide construction materials testing within a separate contract.
6. City will provide any required "Special Inspections" required by the International Building Code.

I. BASIC SERVICES: FNI shall render the following professional services in connection with the development of the Project:

A. PROJECT MANAGEMENT

1. Conduct Internal Kickoff Meeting: Purpose of this meeting is to orient the team members to the work, review project scope, schedule, and budget, and make initial task assignments.
2. Conduct Project Kickoff Meeting and Site Visit with City Staff: Purpose of this meeting is to introduce the FNI project team to City staff, establish project communications protocols, confirm project goals and objectives, review scope, schedule and budget, and coordinate initial project tasks.
 - a) FNI will prepare and distribute a kickoff meeting agenda at least one week prior to the meeting.
 - b) FNI will schedule and attend the kickoff meeting in Kerrville.
 - c) FNI will visit the WTP site in conjunction with the kickoff meeting
 - d) FNI will prepare and distribute meeting minutes within one week following the project kickoff meeting.
3. Monthly Invoicing: FNI will prepare and submit monthly invoices to City for payment in accordance with Attachment CO of the Professional Services Agreement.
4. Quality Assurance/Quality Control: FNI will develop and implement a QA/QC plan for the work. Elements of the QA/QC plan will include the following:
 - a) FNI will develop a Quality Control Plan that will identify scheduled reviews of project deliverables, and individuals responsible for review.
 - b) FNI will implement the quality control plan developed in the prior task, then monitor and document implementation of the QC plan through project completion. Implementation will include:
 1. Internal checks of deliverables prior to delivery to City.
 2. Checks of subconsultant-prepared materials prior to delivery to City.
5. Quality Assurance:

- a) **Quality Assurance Reviews.** Senior FNI staff will meet with project staff and verify that FNI quality control guidelines and the project-specific quality control plans are being implemented. We anticipate two Quality assurance reviews:
 1. **Interim Quality Assurance Review:** FNI shall prepare for and conduct an internal quality assurance review at approximately the mid-point of the project schedule
 2. **Final Quality Assurance Review:** FNI shall prepare for and conduct an internal quality assurance review prior to submittal of the 90 percent drawings to the City.
- B. **60% Design Phase:** FNI shall provide professional services in this phase as follows:
 1. **Meetings:**
 - a) Monthly Progress Meetings which will be by conference call.
 2. **Clarifier Rehabilitation:**
 - a) Review Record Drawings and Record Information on the 85ft diameter Solids Contact Clarifier
 - b) Design mechanical, structural, and electrical improvements for the rehabilitation of the Clarifier
 - c) Develop 60% Design Drawings
 - d) Develop 60% Specifications
 - e) Develop 60% (OPCC)
 3. **60% Design Coordination**
 - a) Submit 60% Design Package to City for review.
 - b) Meet with City for 60% Design Workshop.
 4. **Phase Deliverables**
 - a) 60% Design Plans:
 1. Five (5) hard copies in 22"x34" (full-size) format
 2. One (1) electronic copy in PDF format
 - b) Design Specifications:
 1. Three (3) hard copies.
 2. One (1) electronic copy in PDF format.
 - c) Updated OPCC for the project.
- C. **100% Submittal:** FNI will incorporate any comments made by the City in the 60% design submittal and submit a 100% complete submittal for review.
 1. **Coordination with the TCEQ:**
 - a) Provide documentation and coordination with the TCEQ for project plan approval.
 2. **Phase Deliverables**
 - a) 100% Design Plans: One (1) electronic copy in PDF format
 - b) Design Specifications: One (1) electronic copy in PDF format.
 - c) Updated OPCC for the project.
- D. **Bid Phase:** Upon completion of the design services and approval bid drawings and specifications by City, FNI will proceed with the performance of services in this phase as follows:
 1. **Meetings:**
 - a) **Prebid Meeting:** Assist the City in conducting a pre-bid conference for the construction project and coordinate responses with City. Response to the pre-bid conference will be in the form of addenda issued after the conference.
 - b) **Bid Opening:** Attend project bid opening and open bids as required by the City.
 2. **Bid Phase Services:**
 - a) FNI will set up the project on ClvCastusa.com to distribute the bid documents to prospective bidders and plan rooms. Electronic sets of documents will be made available at no charge to plan holders. Hard copy plans will not be provided by the Engineer except as indicated below.
 - b) Assist City by responding to questions and interpreting bid documents. Prepare and issue addenda to the bid documents to plan holders if necessary.

- c) Tabulate and analyze the bids received. Review the qualification information provided by the apparent low bidder to determine if, based on the information available, they appear to be qualified to construct the project.
 - d) Recommend award of contracts or other actions as appropriate to be taken by City.
 - e) Provide Notice of Award of Contract to the Contractor and provide letter with directions for the execution of the contract documents.
 - f) Assist City in the preparation of the Construction Contract Documents.
3. Phase Deliverables:
- a) Bid Sets
 - 1. Provide City two (2) sets of bid documents. (Contract documents and 11"x17" plans)
 - 2. Provide City a CD with bid documents in PDF format.
 - b) Conformed Construction Documents
 - 1. For City:
 - a) Contractor will provide two original documents with bid submittal that will be used for execution. FNI will provide a letter to the Contractor with directions for contract execution.
 - b) Three (3) copies of full size and five (5) copies of half-size conformed construction plans and five (5) copies of the contract documents bound with hard covers for use during construction.
 - c) One (1) electronic copy of conformed construction documents for use during construction.
 - 2. For Construction Contractor:
 - a) Five (5) copies of conformed construction plans (full size) and documents bound with hard covers for use during construction.
 - b) One (1) electronic copy of conformed construction documents for use during construction.

E. CONSTRUCTION PHASE:

Upon completion of the bid or negotiation phase services, FNI will proceed with the performance of construction phase services as described below. The scope assumes FNI will provide minimal construction phase services with the City providing construction inspection, meetings, and coordination. FNI will endeavor to protect the City in providing these services however, it is understood that FNI does not guarantee the Contractor's performance, nor is FNI responsible for supervision of the Contractor's operation and employees. FNI shall not be responsible for the means, methods, techniques, sequences or procedures of construction selected by the Contractor, or any safety precautions and programs relating in any way to the condition of the premises, the work of the Contractor or any Subcontractor. FNI shall not be responsible for the acts or omissions of any person (except its own employees or agents) at the Project site or otherwise performing any of the work of the Project.

These services are based on the use of FNI standard General Conditions for construction projects. Modifications to these services required by use of other general conditions or contract administration procedures are an additional service. If general conditions other than FNI standards are used, the City agrees to include provisions in the construction contract documents that will require the construction contractor to include FNI and their subconsultants on this project to be listed as an additional insured on contractor's insurance policies.

1. Meetings:

- a) Pre-Construction Meeting: Assist the City in conducting pre-construction conference with the Contractor. Prepare meeting agenda and minutes.
- b) Construction Site Visits/Construction Progress Meetings: Make up to 1 site visit during the course of construction, as distinguished from the continuous services of a Resident Project Representative, to observe the progress and the quality of work and to attempt to determine in general if the work is proceeding in accordance with the Contract Documents.
- c) Punchlist Meeting: Conduct, in company with City's representative, reviews of the Project for conformance with the design concept of the Project and for general compliance with the Construction Contract Documents. This review will be when project is considered ready for substantial completion.

Prepare a list of deficiencies to be corrected by the contractor before recommendation of substantial completion and before recommendation for final payment.

2. Construction Phase Services:

- a) Establish and maintain a project documentation system (eBuilder or FN/Manager) consistent with the requirements of the construction Contract Documents.
- b) Monitor the processing of contractor's submittals and provide for filing and retrieval of project documentation.
- c) Produce monthly reports indicating the status of all submittals in the review process.
- d) Review contractor's submittals, including:
 1. Requests for information
 2. Modification requests
 3. Shop drawings
 4. Schedules
 5. Certified test reports
 6. Other submittals as required
- e) Monitor the progress of the contractor in sending and processing submittals to see that documentation is being processed in accordance with schedules.
- f) Notify City of Contractor's non-conforming work observed on site visits. Review quality related documents provided by the contractor such as test reports, equipment installation reports or other documentation required by the Construction Contract Documents.
- g) Interpret the drawings and specifications for City and Contractor. Investigations, analyses, and studies requested by the Contractor and approved by City, for substitutions of equipment and/or materials or deviations from the drawings and specifications is an additional service.
- h) Consult with and advise the City during construction, make recommendations to the City regarding materials and workmanship, and prepare change orders with the City's approval.
- i) Review samples, catalog data, schedules, shop drawings, laboratory, shop and mill tests of material and test equipment, and other data pursuant to the General Conditions of the Construction Contract.
- j) Conduct, in company with the City's representative, a final review of the Project for conformance with the design concept of the Project and general compliance with the Contract Documents, and review and comment on the Certificate of Completion and the recommendation for final payment to the Contractor.

3. Phase Deliverables:

- a) Monthly Status Reports.
- b) Project site visit memos and construction progress meeting minutes
- c) Project Record Drawings:
 1. Two (2) sets of full size plans.
 2. USB flash drive or similar data storage device with Record Drawings in PDF Format, project survey files, project CAD files in AutoCad or Microstation formats and shapefiles in GIS format if needed.

II. ADDITIONAL SERVICES: Additional Services to be performed by FNI, if authorized by the City, which are not included in the above described basic services, are described as follows:

- A. Raw and Treated Water Sampling Effort and Laboratory Analyses of Samples for the THM Evaluation.
- B. Design of primary electrical service to the site from the power company.
- C. Obtaining the services of a SCADA integration subconsultant.
- D. Identification and evaluation of future water system improvements outside of the scope of the THM Evaluation and Clarifier Rehabilitation.
- E. Updates to water master plan and/or model that are not directly related to this project.
- F. Preparation of Storm Water Pollution Prevention Plan. (To be prepared by Contractor)
- G. Preparation of construction traffic control plan. (To be prepared by Contractor if needed)
- H. Investigations involving consideration of operation, maintenance and overhead expenses, and the preparation of rate schedules, earnings and expense statements, feasibility studies, appraisals, evaluations, assessment

schedules, and material audits or inventories required for certification of force account construction performed by the City.

- I. Preparing applications and supporting documents for government grants, loans, or planning advances and providing data for detailed applications.
- J. Providing shop, mill, field or laboratory inspection of materials and equipment.
- K. Preparing Operation and Maintenance Manuals or conducting operator training. (To be provided and conducted by Contractor and equipment suppliers)
- L. Preparing data and reports for assistance to the City in preparation for hearings before regulatory agencies, courts, arbitration panels or any mediator, giving testimony, personally or by deposition, and preparations therefore before any regulatory agency, court, arbitration panel or mediator.
- M. Assisting City in claims disputes with Contractor(s).
- N. Performing investigations, studies and analyses of substitutions of equipment and/or materials or deviations from the plans and specifications.
- O. Performing any "Special Inspections" required by the International Building Code. (None are anticipated.)
- P. Construction phase site visits requested by Owner in excess of the number stipulated in this scope of services.
- Q. Assisting City in the defense or prosecution of litigation in connection with or in addition to those services contemplated by this proposal. Such services, if any, shall be furnished by FNI on a fee basis negotiated by the respective parties outside of and in addition to this proposal.
- R. Providing environmental and archeological support services including the design and implementation of ecological baseline studies, environmental monitoring, impact assessment and analyses, permitting assistance, and other assistance required to address environmental issues.

COMPENSATION

Lump Sum: Compensation to FNI shall be the lump sum amount of \$132,600. If FNI sees the Scope of Services changing so that additional services are needed, including but not limited to those services described as Additional Services in Attachment SC, FNI will notify OWNER for OWNER'S approval before proceeding.

A breakdown of major task items and their associated costs are as follows:

TASK	COST
Design Phase	\$92,200
Bid Phase	\$11,200
Construction Contract Administration	\$29,200
Total Basic Services Fee	\$132,600

PROJECT SCHEDULE

TIME OF COMPLETION: FNI is authorized to commence work on the Project upon execution of this AGREEMENT and agrees to complete the services in accordance with the following schedule:

Milestone/Deliverable	Calendar Days
THM Preliminary Design Report	120 days following receipt of Notice to Proceed
Clarifier Rehabilitation	
60% Design Phase Submittal	120 days following receipt of Notice to Proceed
100% Design Phase Submittal	60 days following receipt of comments from City and TCEQ on 60% Design Submittal
Bid Phase Documents	14 days following receipt of comments from City on 100% Design Submittal
Bid Phase	±60 days for advertisement & contract execution
Construction Phase	To Be Determined

If FNI's services are delayed through no fault of FNI, FNI shall be entitled to adjust contract schedule consistent with the number of days of delay. These delays may include but are not limited to delays in City or regulatory reviews, delays on the flow of information to be provided to FNI, governmental approvals, etc.

Agenda Item:

4A. Ordinance No. 2017-09, amending Chapter 26 "Buildings and Building Regulations", Article VIII "Building Board of Adjustment and Appeals" of the Code of Ordinances of the City of Kerrville, Texas, by amending the membership qualifications for said board and ending the term limits; containing a cumulative clause; containing a savings and severability clause; establishing an effective date; and providing other matters related to the subject. (staff)

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

SUBJECT: Ordinance No. 2017-09, amending Chapter 26 "Buildings and Building Regulations", Article VIII "Building Board of Adjustment and Appeals" by amending the membership qualifications for said board and ending the term limits

FOR AGENDA OF: April 11, 2017

DATE SUBMITTED: April 4, 2017

SUBMITTED BY: Brenda Craig
City Secretary

CLEARANCES: Don Davis, Interim City Manager
Mike Hayes, City Attorney

EXHIBITS: Ordinance No. 2017-09

APPROVED FOR SUBMITTAL BY CITY MANAGER:



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

PAYMENT TO BE MADE TO:

REVIEWED BY THE FINANCE DEPARTMENT:

SUMMARY STATEMENT

City Council gave direction to staff on February 21 to prepare an ordinance to eliminate the term limits on the Building Board of Adjustment and Appeals.

RECOMMENDED ACTION

Approve Ordinance No. 2017-09 amending Chapter 26 "Buildings and Building Regulations", Article VIII "Building Board of Adjustment and Appeals" by amending the membership qualifications for said board and ending the term limits.

**CITY OF KERRVILLE, TEXAS
ORDINANCE NO. 2017-09**

AN ORDINANCE AMENDING CHAPTER 26 “BUILDINGS AND BUILDING REGULATIONS”, ARTICLE VIII “BUILDING BOARD OF ADJUSTMENT AND APPEALS” OF THE CODE OF ORDINANCES OF THE CITY OF KERRVILLE, TEXAS, BY AMENDING THE MEMBERSHIP QUALIFICATIONS FOR SAID BOARD AND ENDING THE TERM LIMITS; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; ESTABLISHING AN EFFECTIVE DATE; AND PROVIDING OTHER MATTERS RELATED TO THE SUBJECT

WHEREAS, the City Council previously created a single, multi-trade board known as the Building Board of Adjustment and Appeals (“Board”), as found within Chapter 26 of the City’s Code of Ordinances; and

WHEREAS, City Council created the Board to hear appeals, grant variances, and to recommend amendments to and the adoption of standardized building codes to be considered for adoption by Council; and

WHEREAS, in an effort to address inefficiencies with respect to the appointment of members and the operation of the Board, City staff previously recommended amending Chapter 26 to change the qualifications for the Board to provide greater flexibility in making Board appointments and to remove the term limits; and

WHEREAS, the City Council of the City of Kerrville, Texas, finds it to be in the public interest to amend the membership qualifications and to end the term limits for the Board in the manner and for the reasons provided above;

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

SECTION ONE. Chapter 26 “Buildings and Building Regulations”, Article VIII “Building Board of Adjustment and Appeals” of the Code of Ordinances of the City is amended by amending Section 26-250, subsection (d) by deleting the language that is bracketed and stricken (~~deleted~~) as follows:

“Sec. 26-250. Building Board of Adjustment and Appeals.

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- (d) Qualifications. Each regular member and each alternate member shall be a resident of the county ~~[and operate or be employed by a business located within the city]~~; however, no two members, regular and alternate combined, may be employed by or have an ownership interest in the same business or firm.

SECTION TWO. Chapter 26 “Buildings and Building Regulations”, Article VIII “Building Board of Adjustment and Appeals” of the Code of Ordinances of the City is amended by amending Section 26-250, subsection (f) by deleting it in its entirety as indicated by the language that is bracketed and stricken (~~deleted~~) as follows:

"Sec. 26-250. Building Board of Adjustment and Appeals.

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~~[(f) Term limits. 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.]"~~

SECTION THREE. The City Secretary is authorized and directed to submit this Ordinance to the publisher of the City's Code of Ordinances and the publisher is authorized to amend said Code to reflect the amendments adopted herein and to correct typographical errors and to index, format, and number and letter paragraphs to the existing Code, as appropriate.

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

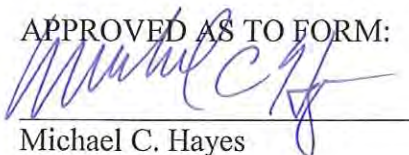
SECTION FIVE. If any section, subsection, sentence, clause or phrase of this Ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this Ordinance. The Council of the City of Kerrville, Texas, hereby declares that 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 SIX. This Ordinance shall become effective immediately upon approval.

PASSED AND APPROVED ON FIRST READING, this the ____ day of _____, A.D., 2017.

PASSED AND APPROVED ON SECOND AND FINAL READING, this the ____ day of _____, A.D., 2017.

APPROVED AS TO FORM:


Michael C. Hayes

Bonnie White, Mayor

ATTEST:

Brenda G. Craig, City Secretary

Agenda Item:

4B. Ordinance No. 2017-10, amending Chapter 66 "Library," of the Code of Ordinances of the City of Kerrville, Texas, by amending Article II "Library Advisory Board" to remove the requirement of ex officio members and to require quarterly meetings; containing a cumulative clause; containing a savings and severability clause; and providing other matters relating to this subject. (staff)

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

SUBJECT: Ordinance No. 2017-10, amending Chapter 66 "Library," by amending Article II "Library Advisory Board" to remove the requirement of ex officio members and to require quarterly meetings

FOR AGENDA OF: April 11, 2017

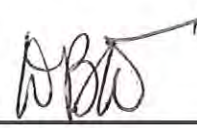
DATE SUBMITTED: April 4, 2017

SUBMITTED BY: Brenda Craig
City Secretary

CLEARANCES: Don Davis, Interim City Manager
Mike Hayes, City Attorney

EXHIBITS: Ordinance No. 2017-10

APPROVED FOR SUBMITTAL BY CITY MANAGER:



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

PAYMENT TO BE MADE TO:

REVIEWED BY THE FINANCE DEPARTMENT:

SUMMARY STATEMENT

City Council gave direction to staff on February 21 to prepare an ordinance to remove the ex-officio positions on the Library Advisory Board.

RECOMMENDED ACTION

Approve Ordinance No. 2017-10.

**CITY OF KERRVILLE, TEXAS
ORDINANCE NO. 2017-10**

**AN ORDINANCE AMENDING CHAPTER 66 “LIBRARY,”
OF THE CODE OF ORDINANCES OF THE CITY OF
KERRVILLE, TEXAS, BY AMENDING ARTICLE II
“LIBRARY ADVISORY BOARD” TO REMOVE THE
REQUIREMENT OF EX OFFICIO MEMBERS AND TO
REQUIRE QUARTERLY MEETINGS; CONTAINING A
CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND
SEVERABILITY CLAUSE; AND PROVIDING OTHER
MATTERS RELATING TO THIS SUBJECT**

WHEREAS, the City of Kerrville, Texas (“City”), owns and administers the Butt-
Holdsworth Memorial Library (“Library”); and

WHEREAS, the City Council previously established a Library Advisory Board (“LAB”) for the purpose of advising and making recommendations to the City Council on matters pertaining to the Library; and

WHEREAS, City Council recently reviewed the make-up and functions of the LAB and agreed to make amendments, including to remove the requirement of ex officio members and to require at least quarterly meetings for the LAB; and

WHEREAS, the City Council of the City of Kerrville, Texas, finds it to be in the public interest to amend Chapter 66, Article II of the Code of Ordinances of the City of Kerrville to revise the LAB as provided above;

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

SECTION ONE. Chapter 66 “Library,” Article II “Library Advisory Board” of the Code of Ordinances of the City of Kerrville, Texas, is amended by amending Section 66-31, by deleting the language that is bracketed and stricken (~~[[deleted]]~~) and adding the language that is underlined (added) as follows:

“Sec. 66-31. – Definitions.

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~~[Commissioners court means the governing body of Kerr County, Texas.]~~

~~[County means Kerr County, Texas.]~~

Library means the Butt-Holdsworth Memorial Library and its campus to include the history center.”

SECTION TWO. Chapter 66 “Library,” Article II “Library Advisory Board” of the Code of Ordinances of the City of Kerrville, Texas, is amended by amending Section 66-34, subsection (b) by deleting it in its entirety as indicated by the language that is bracketed and stricken (~~deleted~~) as follows:

“Sec. 66-34. Composition of and appointment to the Board; ex-officio members; terms; vacancies; absences, officers, compensation; meetings.

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~~[(b) Ex-officio members. Ex-officio members of the board shall consist of a member of the Council and the Library Director. Such ex-official members shall serve without voting privileges and may act in an advisory capacity to the board.]”~~

SECTION THREE. Chapter 66 “Library,” Article II “Library Advisory Board” of the Code of Ordinances of the City of Kerrville, Texas, is amended by amending Section 66-34, subsection (h) by adding the language that is underlined (underlined) as follows:

“Sec. 66-34. Composition of and appointment to the Board; ex-officio members; terms; vacancies; absences, officers, compensation; meetings.

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(h) *Meetings.* The board shall meet at least quarterly and on dates and times as agreed upon by the board members, which schedule may be changed from time to time. All such meetings of the board shall be held in accordance with the Texas Open Meetings Act.”

SECTION FOUR. The City Secretary is authorized and directed to submit this amendment to the publisher of the City’s Code of Ordinances and the publisher is authorized to amend said Code to reflect the amendment adopted herein and to correct typographical errors and to index, format, and number and letter paragraphs to the existing Code as appropriate.

SECTION FIVE. The provisions of this Ordinance are to be 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 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 one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

PASSED AND APPROVED ON FIRST READING, this the ____ day of _____, 2017.

PASSED AND APPROVED ON SECOND AND FINAL READING, this the ____ day of _____, 2017.

Bonnie White, Mayor

ATTEST:

Brenda G. Craig, City Secretary

APPROVED AS TO FORM:

A handwritten signature in blue ink, appearing to read "Michael C. Hayes", is written over a horizontal line.

Michael C. Hayes, City Attorney

Agenda Item:

4C. Ordinance No. 2017-11, amending the budget for Fiscal Year 2017 to authorize the transfer of a portion of the unassigned fund balance within the general fund to the general asset replacement fund.

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

SUBJECT: First reading of an ordinance amending the FY2017 Budget

FOR AGENDA OF: April 11, 2017

DATE SUBMITTED: April 4, 2017

SUBMITTED BY: Sandra Yarbrough
Director of Finance

CLEARANCES: Don Davis
Interim City Manager

EXHIBITS: Ordinance Amending FY2017 Budget
Attachment A – detailing changes

AGENDA MAILED TO:

APPROVED FOR SUBMITTAL BY CITY MANAGER:



Expenditure Required:	Current Balance in Account:	Amount Budgeted:	Account Number:
\$ 750,000.00	\$	\$	

PAYMENT TO BE MADE TO:

REVIEWED BY THE FINANCE DEPARTMENT:

SUMMARY STATEMENT

The attached ordinance provides for the third amendment to the FY2017 budget. There is one transaction included in this amendment as shown on Attachment A.

1. Transfer \$750,000.00 from the General Fund to the General Asset Replacement Fund. This transfer will be used to replace fixed assets that have reached their useful life such as fire trucks, dump trucks, ambulances, and other vehicles and equipment used in daily operations. In particular, our 10 year Community Investment Plan forecasts needing 2 fire engines by FY2019. All future expenditures for asset replacements which are greater than \$50,000 will include Council review and approval prior to purchase.

Per the Management's Discussion and Analysis section of the FY2016 Comprehensive Annual Financial Report presented to City Council on March 8, 2017, the General Fund's unassigned fund balance as of September 30, 2016 was \$7,879,828 or 34% of General Fund expenditures.

The city's Financial Management Policy states that the General Fund shall maintain an unassigned fund balance equal to 15 to 25 percent of the fund's annual operating expenditures. Fund balance that exceeds the minimum level established may be appropriated for non-recurring capital or debt.

This budget amendment proposes transferring a portion of the excess unassigned fund balance to the General Asset Replacement Fund, so that it can be used for non-recurring capital purchases. After the transfer is made, we still anticipate ending FY2017 above our goal with a 28% unassigned fund balance.

RECOMMENDED ACTION

It is recommended that the City Council approve the first reading of the ordinance amending the FY2017 budget and authorize city staff to make all necessary entries and adjustments to reflect the attached changes.

**CITY OF KERRVILLE, TEXAS
ORDINANCE NO. 2017-11**

**AN ORDINANCE AMENDING THE BUDGET FOR FISCAL YEAR 2017 TO
AUTHORIZE THE TRANSFER OF A PORTION OF THE UNASSIGNED
FUND BALANCE WITHIN THE GENERAL FUND TO THE GENERAL
ASSET REPLACEMENT FUND**

WHEREAS, Ordinance No. 2016-15 dated September 27, 2016 adopted the Fiscal Year 2017 Budget for the City of Kerrville, Texas; and

WHEREAS, the City Council finds that amending the City's Fiscal Year 2017 Budget is in the best interest of the citizens of the City of Kerrville;

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

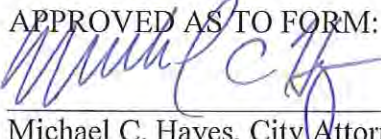
In accordance with Section 8.07 of the City Charter, the Official Budget for Fiscal Year 2017 is amended as set forth in **Attachment A**.

PASSED AND APPROVED ON FIRST READING, this the ____ day of _____, A.D., 2017.

PASSED AND APPROVED ON SECOND AND FINAL READING, this the ____ day of _____, A.D., 2017.

Bonnie White, Mayor

APPROVED AS TO FORM:



Michael C. Hayes, City Attorney

ATTEST:

Brenda G. Craig, City Secretary

Agenda Item:

5A. Rate methodology for the sale of reuse water. (Mayor White)

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

SUBJECT: Rate methodology for the sale of reuse water

FOR AGENDA OF: 04/11/17

DATE SUBMITTED: 04/05/17

SUBMITTED BY: Don Davis
Interim City Manager

CLEARANCES:

EXHIBITS: Agenda bill prepared by Mayor White

AGENDA MAILED TO:

APPROVED FOR SUBMITTAL BY CITY MANAGER:



Expenditure Required:	Current Balance in Account:	Amount Budgeted:	Account Number:
\$0	\$0	\$0	

PAYMENT TO BE MADE TO:

REVIEWED BY THE FINANCE DEPARTMENT:

SUMMARY STATEMENT

The mayor requested that this item be placed on the agenda (see attached exhibit).

As you may remember, a Fee Schedule is presented and approved by Council once a year as a part of the budget. This schedule includes all the fees that the City charges. I would not recommend that schedule be amended at this time. The agreed upon rate for each of these customers is included in their respective agreements.

We will be prepared to discuss the rate methodology that was used to arrive at the 65 cents per thousand charge for the reuse water.

RECOMMENDED ACTION

There is no action required on this item.

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

SUBJECT: Discussion of amendment to the City of Kerrville Fee Schedule as adopted in the 2017 Budget

FOR AGENDA OF: 04/11/17

DATE SUBMITTED: 04/06/17

SUBMITTED BY: Bonnie White
Mayor

CLEARANCES:

EXHIBITS:

AGENDA MAILED TO:

APPROVED FOR SUBMITTAL BY CITY MANAGER:

Expenditure	Current Balance	Amount	Account
Required:	in Account:	Budgeted:	Number:
\$0	\$0	\$0	

PAYMENT TO BE MADE TO:

REVIEWED BY THE FINANCE DEPARTMENT:

SUMMARY STATEMENT

During the budget deliberations in September, 2016, the City Council reviewed the Fee Schedule concerning the adopted price for effluent or re-use water. Currently, the monthly maintenance fee is listed at \$12.00 with the standard price (unless otherwise agreed to in separate contract) listed at \$.38/1000. Although there was consideration of amending that number to cover the cost of maintenance, operations, and transport costs, Mr. Andrew recommended passing the Budget as written with a promise to revisit the fee schedule at a later date. However, that discussion was never brought back to Council, and now that the Council is being asked to consider contracts with various effluent water customers, it seems an appropriate time to establish a benchmark for future re-use water sales.

RECOMMENDED ACTION

Take appropriate action to amend the City of Kerrville Fee Schedule for effluent or re-use water.

Agenda Item:

5B. Agreement for the sale of reclaimed water between the City of Kerrville and Comanche Trace. (staff)

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

SUBJECT: Consideration of an Agreement for the sale of reclaimed water between the City of Kerrville and Comanche Trace.

FOR AGENDA OF: April 11, 2017 **DATE SUBMITTED:** March 31, 2017

SUBMITTED BY: E.A. Hoppe **CLEARANCES:** Don Davis
EAH Deputy City Manager Interim City Manager

EXHIBITS: Agreement for the Sale of Reclaimed Water
Article VI of the Development Agreement with Comanche Trace
pertaining to the Use of Reclaimed Water

AGENDA MAILED TO:

APPROVED FOR SUBMITTAL BY CITY MANAGER:

Expenditure	Current Balance	Amount	Account
Required:	in Account:	Budgeted:	Number:
\$0	\$0	\$0	

PAYMENT TO BE MADE TO:

REVIEWED BY THE FINANCE DEPARTMENT:

SUMMARY STATEMENT

Attached is an Agreement for the sale of reclaimed water between the City of Kerrville and Comanche Trace. Comanche Trace is a current reclaimed water user, and has been since 2001. They are also one of the largest reclaimed water users on the current system. The terms of their reclaimed water use are provided for within the current and active Development Agreement between the City of Kerrville and Comanche Trace, approved in 1999 and subsequently amended in 2000. While the overall terms of the Development Agreement are for 20 years, the provisions of Article VI that pertain to the use of reclaimed water carry on indefinitely (attached). Article VI provides for two time periods; the first fifteen years of reclaimed water service, and all remaining time after the initial fifteen years of service. Per the Development Agreement, Comanche Trace is currently in the post-initial 15 years of service tier, and their rates for reuse water have shifted to the currently Council-adopted Fee Schedule of \$0.38 per \$1,000 gallons.

As you may recall, in May of 2016 the City Council authorized City staff to proceed with a plan to design, engineer, and construct a City-owned reclaimed water storage facility and expansion and retrofitting of the City's reclaimed water irrigation distribution system. That system has been designed and is currently under construction, per subsequent votes by the City Council in October of 2016 and January of 2017.

With construction of the reclaimed water storage facility and enhanced distribution system well underway, staff has engaged with Comanche Trace to create a new Agreement for the sale of reclaimed water based upon the new storage and distribution system. The proposed Agreement will provide for Comanche Trace, within the time period of the Agreement, to move to the proposed rate that is in line with the new level of service delivery.

Key terms of the Agreement include:

- Full replacement of the terms of Article VI provided for within the Development Agreement
- Clarification of the rate structure going forward, providing for a stair-stepped rate plan over 7 years to bring Comanche Trace up to the Council-adopted rate for reclaimed water at that time
- A reduction of potential annual usage from 365 million gallons to 246 million gallons, based on seasonal usage
- Clarification of terms if the City has to reduce product delivery because of drought and/or potable water needs, within the bounds of the Water Management Plan

RECOMMENDED ACTION

Staff recommends approval of the Agreement for the Sale of Reclaimed Water with Comanche Trace.



April 5, 2017

The Honorable Bonnie White, Mayor of Kerrville
Mr. Stephen Fine, Place 1
Mr. Glenn Andrew, Place 2
Ms. Mary Ellen Summerlin, Place 3
Mr. Warren Ferguson, Place 4
City of Kerrville
701 Main Street
Kerrville, TX 78028

Re:

**City of Kerrville and Comanche Trace
Development Agreement**

Dear Mayor Bonnie White and Kerrville City Council Members,

We are pleased to submit the enclosed Agreement for Sale of Reclaimed Water for your review and approval. City staff and Comanche Trace Ranch & Golf Club have worked together to continue the successful reclaimed water arrangement currently governed by the Development Agreement.

Comanche Trace is the City's oldest and largest reclaimed water partner, and the mutual consideration of this Agreement is regarded by both parties as being in the best interest of all.

The success and added tax values of Comanche Trace is in part a result of Reclaimed Water and the valued relationship with the City. The terms of this Agreement will further support the common goals of the parties and growth of the City tax base.

Some of the main points that have led to this Agreement are:

1. Extend the primary existing terms in the Development Agreement including the pricing provisions.
2. Comanche Trace concessions on short-term pricing for longer-term tier pricing.
3. Further increase in tax value and development of approximately 650 new households.
4. Building on the mutual support and history of use and cooperation.
5. Comanche Trace concessions on the required volume of reclaimed water to support the City's future water commitments.

6. Additional support of the City's future water commitments by making accommodations for needed interruptions in service and alternative water needs.

We are available to further discuss this matter and thank you for your help in bringing this Agreement to a conclusion.

Sincerely,

A handwritten signature in blue ink, appearing to be 'Trevor Hyde', with a stylized, cursive script.

Trevor Hyde
President

AGREEMENT FOR SALE OF RECLAIMED WATER
(Comanche Trace Ranch & Golf Club, LLLP)

THIS AGREEMENT for the Sale of Reclaimed Water (this "Agreement") is entered into between the City of Kerrville, Texas ("City") and Comanche Trace Ranch and Golf Club, LLLP, a Colorado limited liability limited partnership ("Customer") sometimes referred to either as the "Party" or collectively as the "Parties"; whereby City agrees to provide Reclaimed Water (as defined below) to Customer under and pursuant to the terms and provisions of this Agreement which replaces and modifies the provisions of the Development Agreement ("Development Agreement"), dated January 26, 1999, as amended, only to the extent of and for Reclaimed Water (Type I Reclaimed Water) and the provisions of Article VI of the Development Agreement.

1. Reclaimed Water System.

City owns, operates, and maintains a reclaimed water system. City has provided Reclaimed Water in at least the capacity of one million gallons a day under the Development Agreement and agrees hereby to continue to provide Reclaimed Water at a rate of up to one million gallons per day, but subject to the more specific delivery schedule found within Section 2.5, said water that can be used to irrigate Customer's golf courses, green belts, and common areas as provided in the Development Agreement and subject to the terms of this Agreement. This system can produce and supply Reclaimed Water to Customer in order to serve Customer's existing golf courses located at 3074 Bandera Highway, which are within the corporate limits of City, and other areas referenced above. Reclaimed Water is defined as domestic or municipal wastewater which has been treated to a quality suitable for a beneficial use pursuant to Title 30, Chapter 210 of the Texas Administrative Code, as amended, and other applicable rules and permits of the Texas Commission on Environmental Quality ("TCEQ"), or its successor agencies, the use of which is likely to result in contact between humans and the Reclaimed Water. The purpose of the Reclaimed Water system is to provide an alternative water supply for non-potable water uses and thereby reduce demand for other sources of water.

2. Terms and Conditions of Reclaimed Water Service.

2.1 Initial Term. This Agreement is effective as of the Effective Date specified below and will continue in effect for an initial term of fifteen (15) years (the "Initial Term") unless extended or terminated earlier as provided herein. This Agreement will automatically be extended for an additional five (5) years beyond the Initial Term unless either Party provides notice to the other Party of its intent not to extend the Agreement in this manner. Such notice must be provided and received at least 180 days prior to the end of the Initial Term.

2.2 Supply of Reclaimed Water. Subject to Customer's receipt of those permits specified by Section 2.16 below, City shall supply Reclaimed Water to Customer for non-potable purposes in the amount set forth herein and in Section 2.5 below. Customer intends to use the Reclaimed Water for irrigating the property and areas herein referenced, specifically including its golf courses as well as areas surrounding the golf courses as are generally described and depicted on the map attached hereto as **Exhibit A** (the "Property"). If Customer, at any time during the term

of this Agreement, determines that it needs and can beneficially use an amount of Reclaimed Water in excess of the volume set forth herein and in Section 2.5 below or in areas beyond those shown in **Exhibit A**, Customer may request that City make available an increased amount of Reclaimed Water; City may then consider such request based upon availability and other considerations, to include an agreed upon rate for the additional Reclaimed Water, with the understanding that City shall not be required to increase the Reclaimed Water supply to the Property in excess of the volume set forth herein and in Section 2.5, below during the term of this Agreement. Customer will need to seek approval from TCEQ with respect to additional area that it desires to irrigate with Reclaimed Water.

2.3 Compliance with Local, State, and Federal Law. City and Customer agree that the production, transportation, delivery, and use of Reclaimed Water by City and/or Customer shall be in compliance with applicable local, state, and federal laws and regulations, including Title 30, Chapter 210 of the Texas Administrative Code, as amended; and City's Water Management Plan, which may be amended from time to time and is found in Chapter 110 of the City's Code of Ordinances ("Water Management Plan").

2.4 Commencement of Reclaimed Water Service. As of the Effective Date, City is and shall continue to be able to deliver Reclaimed Water to the Property in the capacities provided herein.

2.5 Delivery and Amount of Reclaimed Water; Obligation to Use.

- A. City shall continue to deliver Reclaimed Water to Customer at the meter ("Meter"), the location of which is more particularly identified in **Exhibit A**. City has the capacity to deliver Reclaimed Water in an amount of not less than the amounts provided herein including the amounts shown below:

January through March	3,500,000 gallons/week
April through June	5,250,000 gallons/week
July through September	7,000,000 gallons/week
October through December	3,500,000 gallons/week

- B. City is not obligated to provide Reclaimed Water in an amount exceeding those provided in subsection A, above. In addition, the City does not guarantee the delivery of more than 246,000,000 gallons of Reclaimed Water within a calendar year.
- C. The City shall use its best efforts to deliver the amount of Reclaimed Water specified above to Customer. If there is temporary interruption of service, Customer shall have the right to irrigate the Property with other water available to it, including potable water purchased from City, subject to the applicable potable water rate in effect at the time and the Water Management Plan. However, City cannot and does not guarantee a certain amount of Reclaimed Water on any basis, whether daily, weekly, or yearly. City has the right at any time and without notice to shut down its system or discontinue the delivery of Reclaimed Water due to plant malfunction, Force

Majeure (as defined below), drought, the implementation of water conservation stages pursuant to the Water Management Plan, or other unforeseen events or conditions that require emergency conservation measures ("Water Capacity Events") for the period of such events ("Water Capacity Periods"); provided that such interruption of service shall be no more than is reasonably necessary under the specific circumstances and with the understanding that the City shall prioritize delivery and allocation of Reclaimed Water to Customer with special consideration given during the months of June, July and August ("Equal Protection").

- D. City has the right at any time pursuant to the Water Management Plan, as may be amended, to curtail the delivery of all Reclaimed Water to the Property because of Water Capacity Events and for Water Capacity Periods so long as all Reclaimed Water customers of City are impacted within Equal Protection; and provided that any such curtailment of Reclaimed Water to the Property shall only be as is reasonably necessary for Water Capacity Events and for Water Capacity Periods.
- E. Nothing herein requires Customer to use said amount of water on a daily basis. However, Customer shall use, for those purposes specified in Section 2.15, said amount of Reclaimed Water and any water stored in its on-site storage facility, prior to its use of any alternative sources of water.

2.6 No Minimum Pressure Guaranteed. City does not represent or guarantee to Customer that the Reclaimed Water provided to Customer under this Agreement will be provided at any specific minimum pressure and City is under no obligation with respect thereto.

2.7 Equipment. Customer shall maintain at its expense, and subject to City's periodic inspections, appropriate valves, back flow prevention, flow controllers, and other appropriate equipment on the Property, which is reasonably necessary for City to deliver Reclaimed Water to the Property. The Meter and SCADA System shall continue to be owned, operated, and maintained by City. However, all other pipelines, equipment, and facilities located on the Property shall be owned, operated, and maintained by Customer.

2.8 Reclaimed Water System to Comply with Regulations. The design, materials, construction, and maintenance of Customer's Reclaimed Water system, which begins at the Meter and continues thereon through the Property, shall comply with Title 30, Chapter 210 of the Texas Administrative Code, as amended. Further, Customer's Reclaimed Water system, pursuant to applicable rules and regulations, shall be physically separated from Customer's potable water supply system. Customer shall take all actions necessary for it to comply with the law referenced within this section including the posting of signage, maintenance of storage facilities including ponds, and the maintenance and marking of equipment and Reclaimed Water lines.

2.9 Meter Calibrations. The City shall calibrate the Meter on an annual basis.

2.10 On-site Storage. Customer shall maintain in good working order its existing on-site storage facility capable of storing 8 million gallons of Reclaimed Water.

2.11 Charge for Use of Reclaimed Water; Connection Fee. Customer shall pay the following amounts per 1,000 gallons of Reclaimed Water and shall pay only for the amount of Reclaimed Water that Customer receives through the Meter:

Rate as of February 1, 2017	\$0.34
Rate as of October 1, 2018	\$0.38
Rate as of October 1, 2019	\$0.42
Rate as of October 1, 2020	\$0.46
Rate as of October 1, 2021	\$0.50
Rate as of October 1, 2022	\$0.55
Rate as of October 1, 2023	\$0.60
Rate as of October 1, 2024	City Rate for Reclaimed Water (as determined by City Council pursuant to adoption of a Fee Schedule)

After October 1, 2024, said rate is subject to annual increases based upon charges adopted by City Council for the same classification of Reclaimed Water customers other than the rate City charges itself or is charging others with whom City has established a contractual rate, such as in conjunction with land development. Customer shall be responsible for assuring its ability to receive Reclaimed Water at the Meter regardless of the fact that such water passed through the Meter as a result of leaks, breaks, ruptures, or other defects in Customer's water system. City shall not charge Customer any fee for Customer's existing connection to the City's Reclaimed Water system.

2.12 Statement of Charges; Payments. City shall read the Meter on a monthly basis and prepare and deliver to Customer a written billing statement specifying the charges for each month. The statement shall be delivered to Customer in accordance with the City's standard utility billing practices. All payments required to be made by Customer to City shall be delivered to City's offices at 701 Main Street, Kerrville, Texas 78028, or to such other place as City may direct by written notice to Customer from time to time. Customer shall pay said statement by the fifteenth (15th) day after the statement is received by Customer. Any late payments shall bear per annum interest at a rate equal to the lesser of four percentage points (4%) above the Prime Interest Rate as published in the Wall Street Journal on the day said statement becomes delinquent, or the maximum allowed by law to be charged to Customer. If any charges remain unpaid at the expiration of thirty (30) days after receipt of the statement, Customer shall be in default under this Agreement, and City may invoke the remedies specified herein.

2.13 Statement Dispute; Protest. If Customer has a protest or dispute concerning a billing statement, Customer shall notify City in writing within ten (10) days of receipt of said statement. Customer shall pay the portion of the statement which is not being disputed or protested. Upon written notification, the portion of the statement under dispute or protest (provided the dispute or protest is made in good faith and is not unreasonable) shall be set aside until resolved and shall

not be subject to the penalties stated herein. If City is not notified in writing, postmarked within ten (10) days of receipt of said statement, said protest or dispute shall be considered waived. This section shall not apply to protests made by Customer pursuant to an increase in the rate charged for Reclaimed Water made by City Council.

2.14 Termination for Non-payment. Except when Customer is contesting a fee or charge in good faith, City may terminate Reclaimed Water service to the Property for non-payment for such services in accordance with applicable City ordinances and state law, without further obligation or responsibility to Customer including, but not limited to, the provision of an alternate water supply. If City terminates Reclaimed Water service to Customer pursuant hereto, City may reinstate such service, but only after payment of all past due amounts, including all late fees and penalties, and subject to the availability of Reclaimed Water at the time of payment.

2.15 Use of Reclaimed Water and Title. Customer shall use Reclaimed Water solely for the purpose of irrigating the Property. City shall be the owner of and responsible for the Reclaimed Water until it passes through the Meter. After the Reclaimed Water has passed through the Meter, it becomes the property and responsibility of Customer.

2.16 Required Permits and Agreements. City and Customer represents and confirms that each has complied with and obtained such additional agreements, notices, and permits required by Title 30, Chapter 210 of the Texas Administrative Code, as amended, and other applicable laws and regulations which are necessary for supply and use of Reclaimed Water for the irrigation of the Property.

2.17 Mutual Responsibilities. Unless otherwise provided in this Agreement, responsibility for damages arising from the improper treatment, transportation, and delivery of all Reclaimed Water provided under this Agreement shall remain with City to the Meter. Once Reclaimed Water has passed the Meter, liability for all damages arising from improper transportation and delivery of the Reclaimed Water shall pass to Customer. City's only responsibilities under this Agreement are to provide Reclaimed Water to Customer as provided in this Agreement at the Meter of a quality which meets the provisions of this Agreement and the minimum Reclaimed Water standards as prescribed by TCEQ or appropriate governing agency and to maintain the Meter.

2.18 Record Keeping and Reporting. Customer acknowledges that TCEQ, pursuant to Title 30, Section 210 *et seq.* of the Texas Administrative Code, requires City to make monthly reports regarding the volume and quality of reclaimed water it provides to each customer.

2.19 Transfer of Real Property Where Reclaimed Water Utilized. Customer agrees that all leases, sales, and other disposal or transfer of ownership or control of the Property shall be made expressly subject to this Agreement and any such successors and assigns shall have the benefit of, and be expressly subject to the terms specified herein.

2.20 Inspection of Premises Where Reclaimed Water Utilized. Customer acknowledges and agrees that in order to verify compliance with this Agreement and with applicable statutes, ordinances and regulations, City, or any other governmental agency with appropriate jurisdiction

may inspect the premises (for purposes within that jurisdiction) being served with Reclaimed Water at reasonable times during Customer's normal business hours, unless Section 2.21 applies.

2.21 Receiving Water; Right to Terminate Service. Customer shall be responsible for assuring its ability to receive the Reclaimed Water at the Meter. In the event a leak, break, rupture, or other defect occurs within the Customer's system which could either endanger or contaminate City's system or prejudice City's ability to maintain service to other customers or, where City finds that Customer's system violates this Agreement or applicable law or Customer has failed to maintain a valid permit for its use of the Reclaimed Water as specified by Section 2.16, City shall have the right to take, without notice to Customer, whatever action it considers reasonably appropriate to protect the public health or welfare, which includes the right to inspect, valve-off, or discontinue service to Customer at the Meter until such leak, break, rupture, defect, default or violation has been repaired or remedied to City satisfaction. In the event such permits and/or authorizations required by 30 TAC §210.5, as amended, lapse or are not renewed for a period of time greater than thirty (30) days, City shall have the right to terminate this Agreement.

2.22 Notification of Regulatory Agencies. Customer acknowledges and agrees that it shall inform, notify, and/or request inspection and approvals from City and other governmental agencies for certain activities relating to the construction, maintenance, and operation of its onsite Reclaimed Water system, including materials, construction, facility testing, violations, use and emergency response.

2.23 Obligation to Provide Alternative Water. If City is unable, through no fault of Customer, to deliver Reclaimed Water to the Property, Customer shall have the right to irrigate the Property with other sources of water but only during such period of interruption and subject to the Water Management Plan.

3. Default and Termination.

Either Party shall have the right to terminate this Agreement for a default of the provisions of this Agreement by the other Party if the defaulting Party has not cured such default within ninety (90) days of notice of the default. This Agreement may be terminated at any time at the mutual written consent of the Parties.

4. Miscellaneous.

4.1 Indemnification. CUSTOMER AGREES TO ASSUME FULL RESPONSIBILITY AND LIABILITY FOR ITS ACCEPTANCE, STORAGE, AND USE OF THE RECLAIMED WATER PROVIDED UNDER THIS AGREEMENT AND HEREBY AGREES TO INDEMNIFY, HOLD HARMLESS, AND DEFEND THE CITY, ITS OFFICERS, EMPLOYEES, AND AGENTS FROM ALL CLAIMS, DEMANDS, AND CAUSES OF ACTION OF EVERY KIND AND CHARACTER ARISING FROM PERSONAL INJURY OR DEATH OF ANY PERSON OR DAMAGE TO ANY PROPERTY WHERE SUCH IS CAUSED BY OR ALLEGED TO BE CAUSED BY, OR

ARISING OUT OF OR ALLEGED TO ARISE OUT OF THIS CONTRACT OR THE ACTIVITIES TO BE PERFORMED HEREUNDER.

4.2 Complete Agreement; Amendment to Development Agreement between the Parties.

A. This Agreement constitutes the complete and entire agreement between the Parties. This Agreement supersedes and cancels all prior negotiations, agreements, representations, resolutions, and understandings, if any, relating to this subject, whether written or oral, including as specified in subsection 4.2 B., below.

B. This Agreement amends the *Development Agreement by and between Comanche Trace Ranch and Golf Club, LLLP, a Colorado Limited Liability Limited Partnership* and the City, with respect to Section VI Provision of Type I Reclaimed Water and the charges for the use of the Reclaimed Water.

4.3 Savings and Severability. In case any one or more provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalid, illegal or unenforceable provision shall not affect any other provision hereof, and this Agreement shall be construed by a court, giving effect to the general intent and specific directives of the Parties so as not to be invalid, illegal or unenforceable. In the event such provision cannot be reformed or construed to be valid, legal, or enforceable, this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

4.4 Applicable Law and Venue. This Agreement shall be construed under and in accordance with the laws of the State of Texas and the obligations and undertaking of each of the Parties shall be performed or deemed to be performed in Kerrville, Kerr County, Texas. A lawsuit involving this Agreement brought by either Party shall be brought only in Kerr County, Texas.

4.5 Assignment and Modification; Future Amendments Due to Direct Potable Reuse.

A. Except as provided and permitted hereunder, this Agreement shall not be assignable by either Party without the prior written consent of the other Party. Further, this Agreement may be modified only by an instrument signed by the duly authorized representatives of each of the Parties. This Agreement may be assigned by Customer, without consent or approval, to The Club at Comanche Trace, LP, any affiliate of Customer or The Club at Comanche Trace, LP, and/or any successor owner(s) of the Property.

B. Customer acknowledges and agrees that should City implement direct potable reuse ("DPR") of its reclaimed water system, City has the right to amend this Agreement with respect to the volume of Reclaimed Water upon notice to Customer to account for DPR, the application of government regulations to DPR, and/or other operational factors directly relating to DPR for Water Capacity Events and for Water Capacity Periods so long as all customers are impacted

within Equal Protection. Should Customer fail to agree to any such amendments, City has the authority to immediately terminate this Agreement upon notice to Customer.

4.6 No Third-Party Beneficiary. The Parties are entering into this Agreement solely for the benefit of themselves, their successors and permitted assigns, and the other parties herein referenced in 4.5 and agree that nothing herein shall be construed to confer any right, privilege or benefit on any person or entity other than the Parties hereto, their successors and their permitted assigns.

4.7 Waiver. Any waiver at any time by either Party with respect to a default or other matter arising in connection with this Agreement shall not be deemed a waiver with respect to any subsequent default or matter.

4.8 Captions. The captions and headings appearing in this Agreement are inserted merely to facilitate reference and are not to be considered a part of this Agreement and in no way shall they affect the interpretation of any of the provisions of this Agreement.

4.9 Approvals. All approvals and agreements by either Party that are required or contemplated under this Agreement must be in writing unless other means are specifically permitted, and must be signed by the person authorized to give such approvals and make such agreements for that Party. The persons authorized to give such approvals and make such agreements for the Parties shall, until changed as hereinafter provided, be as follows: for Customer, the undersigned representative or other designated representative, and for City, the City Manager or other designated representative. Each Party shall have the right from time to time and at any time to change the person authorized to give such approvals and make such agreements by giving at least fifteen (15) days' written notice to the other Party.

4.10 Force Majeure. If by reason of Force Majeure, if any Party hereto shall be rendered partially or wholly unable to carry out its obligations under this Agreement, then if such Party shall give notice in writing and full particulars of such Force Majeure to the other Party immediately after occurrence of the event or cause relied on, the obligation of the Party giving such notice, so far as it is affected by such Force Majeure, with the exception of the obligation of Customer to pay for services actually received from City hereunder, shall be suspended during the continuance of the inability then claimed, and such Party shall endeavor to remove or overcome such inability with all reasonable dispatch. The term Force Majeure as used herein shall mean a cause or causes beyond the reasonable control of the Party claiming Force Majeure, and shall include but not be limited to natural disasters, strikes, lockouts or other industrial disturbances, acts of public enemy, orders of any kind of the United States of America or the State of Texas or any civil or military authority, insurrections, riots, epidemics, lightning, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraint of government and people, civil disturbances, explosions and breakage or accidents to machinery, pipelines, or facilities; however, lockouts shall be entirely within the discretion of the Party having the difficulty, and the above requirement that any Force Majeure shall be remedied with all dispatch shall not require the settlement of strikes and lockouts by acceding to the demands of the opposing Party or Parties when such settlement is unfavorable in the judgment of the Party having the difficulty

4.11 Notices. All notices under this Agreement shall be in writing; shall be mailed by certified mail, return receipt requested; and shall be effective on the date actually received. For purposes of notices and payments of amounts due, the mailing addresses of the Parties shall, until changed as hereinafter provided, be as follows:

as to Customer:

Trevor Hyde, President
Comanche Trace Ranch and Golf Club, LLLP
3074 Bandera Highway
Kerrville, Texas 78028

as to City:

City Manager
City of Kerrville
City Hall, 701 Main Street
Kerrville, Texas 78028

With Copy to:

City of Kerrville Public Works Department
Water & Wastewater Division
Attention: Water/Wastewater Manager
City Hall, 701 Main Street
Kerrville, Texas 78028

In witness whereof, the Parties have caused this Agreement to be duly executed in multiple counterparts, each of which shall constitute an original and shall then be effective the _____ ("Effective Date").

CITY OF KERRVILLE

Don Davis, Interim City Manager
DATE: _____, 2017
ATTEST:

Brenda Craig, City Secretary

**COMANCHE TRACE
RANCH and GOLF, LLLP, a
Colorado limited liability limited
partnership**

By: Comanche Trace LLC, a
Colorado limited liability
company

Trevor Hyde, President
DATE: _____, 2017

APPROVED AS TO FORM

Michael C. Hayes, City Attorney

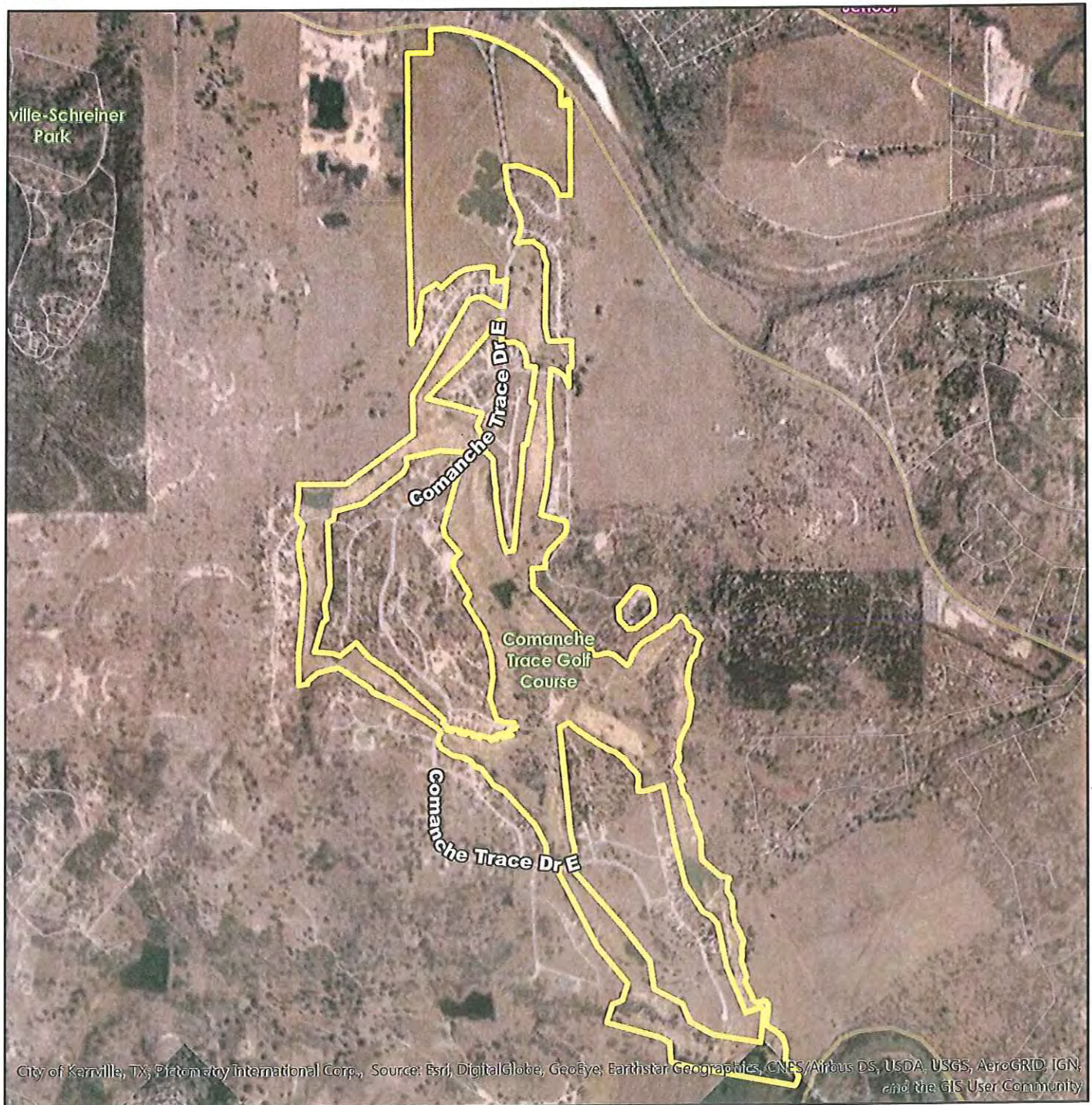
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Exhibit A



Comanche Trace Reuse Area



Legend

 Reuse Service Area



joyoung
4/6/2017 14:02
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Scale In Feet

ARTICLE VI, DEVELOPMENT AGREEMENT WITH COMANCHE TRACE

4. Article VI of the Agreement shall be amended to read in its entirety as follows:

VI. PROVISION OF TYPE I RECLAIMED WATER

A. Provision of Reclaimed Water by City: As soon as is reasonable and feasible after December 14, 1999, City, at its cost, agrees to construct a transmission pipeline for the purpose of providing Type I Reclaimed Water to the Property:

1. which can be accessed by Developer from a location on the Property;
2. which will be of a quality that can be used to irrigate the fairways, tees, roughs, and other areas of the golf course other than the putting greens (including the practice and nursery greens) and the surrounds of the putting surfaces; greenbelts; and common areas developed on the Property; and
3. which can be provided at a rate of not less than one million gallons per day.

Developer understands and acknowledges that City reasonably anticipates constructing said transmission main concurrently with the City Improvements, the timing of which is deemed to be acceptable to Developer.

B. Agreement to Use Type I Reclaimed Water: Not later than 30 days after City makes Type I Reclaimed Water Service available to the Property in accordance with Section A, above, and except as otherwise authorized by this Agreement, Developer agrees to exclusively use Type I Reclaimed Water for irrigating:

1. the fairways, tees, roughs, and other areas of Developer's golf course; and
2. the greenbelts and common areas developed on the Property which Developer elects to irrigate.

C. Use of Type I Reclaimed Water Not Required: Notwithstanding Section B, above, Developer shall not be required to use Type I Reclaimed Water for irrigation of the following:

1. the putting greens (including the practice and nursery greens) and the surrounds of the putting surfaces of the golf course; and
2. irrigation of planted flower and shrub beds located within the common areas and greenbelt areas of the Property which contain plant materials that will not reasonably tolerate irrigation with the Type I Reclaimed Water provided by City; and
3. areas of the Property located between State Highway 173 and the Guadalupe River; and
4. areas where the application of Type I Reclaimed Water is prohibited by law or regulation, including, but not limited to, the areas around Water Well No. 1 and Water Well No. 2 where TNRCC regulations prohibit such application; and
5. ponds or lakes located on a surface drainage channel or which are to be used in conjunction with the "greens-only" golf course irrigation system; and
6. such other areas of the Property as may be approved in writing by City.

D. Charge for Use of Type I Reclaimed Water: City and Developer agree that Developer shall pay the following charges for the use of Type I Reclaimed Water for the periods herein specified for Type I Reclaimed Water Service delivered and provided by City to the Property and used by Developer and its successors and assigns for the Property:

1. The charge for the period beginning on the date City provides and delivers Type I Reclaimed Water to the Property and ending on the fifteenth (15th) anniversary of such beginning date shall be the lesser of:
 - a. \$0.30 per 1000 gallons; or
 - b. the then current charges established by City ordinance for the same classification of customers; or

- c. the least amount per 1000 gallons then being charged to others (excluding City) with whom City has contractually agreed to provide Type I Reclaimed Water; or
 - d. 15% of City potable water rate for similar classification of users; or
 - e. a monthly amount equal to the costs to the City for the design, bidding, and construction of the transmission pipeline to the Property for Type I Reclaimed Water Service to the Property amortized over a fifteen year period plus a rate of 10% per annum of such costs for such 15-year period, plus monthly expenses of transmission operations directly attributable to and required for such Type I Reclaimed Water Service to the Property.
2. Charges for Type I Reclaimed Water provided and delivered to the Property by City as described in Article V, above, after the 15-year period specified in VI.D.1. above shall be the lesser of:
- a. the then current charges established by City ordinance for the same classification of customers; or
 - b. the least amount per 1000 gallons then being charged to others (excluding City) with whom City has contractually agreed to provide Type I Reclaimed Water; or
 - c. a monthly amount equal to the costs to the City of capital improvements that are reasonable and necessary for Type I Reclaimed Water Service to the Property, other than the transmission pipeline to the Property referenced in Section VI.D.1 above, amortized over a fifteen year period plus a rate of 10% per annum of such costs for such 15-year period, plus the monthly expenses of transmission operations directly attributable to and required for

such Type I Reclaimed Water Service to the Property; provided, however:

- (1) such amount shall in no case be required to be less than the charges for Type I Reclaimed Water Service in effect at the end of the initial 15 year period described in Section VI.D.1, above; and
 - (2) Developer understands and agrees that there may be multiple capital improvement projects during any fifteen year period which may result in a rate that contains more than amortized cost element being included in the charges established by City.
3. Notwithstanding any change in the rate for Type I Reclaimed Water Service as may from time to time occur by application of Section VI.D.2, above, the rate for Type I Reclaimed Water Service provided to the Property after the fifteen year period described in Section VI.D.1, above shall remain in effect for a period of not less than two (2) years. Any ordinance establishing a rate for Type I Reclaimed Water Service shall permit the establishment of a different rate in accordance with the provision of contracts signed prior to the adoption of the ordinance, which the parties agree shall include this Agreement. In the event the application of Section VI.D.2.c., above, with respect to the inclusion of costs attributable to reasonable and necessary capital project costs in the rates charged for Type I Reclaimed Water Service would result in an increase in the rate for providing Type I Reclaimed Water Service to the Property prior to the end of any two year period between rate increases affecting the Property, City may, at its sole option, decrease the amortization period for recovering the costs of capital improvements to 180 months less the number of months beginning the month in which the capital improvements were completed and ending the month in which a rate increase is permitted by this Section VI.D.3. or, alternatively, commence the 15 year amortization period at the end of the then current two year rate period. The City shall provide Developer with

notice of any rate change at least sixty (60) days in advance of the effective date of the rate change. The City shall maintain the ability to amend its policies, ordinances and rates relating to Type I Reclaimed Water Service so long as such amendments are in accordance with the provisions of this Agreement.

- E. **Exclusive Agreement:** Developer agrees that City shall have the exclusive right to provide Type I Reclaimed Water Service to the Property for the purpose of irrigating the golf course, common areas, and greenbelts developed on the Property; provided, however, if Developer's needs for Type I Reclaimed Water exceed the maximum amount of Type I Reclaimed Water that City has available and is able to deliver to the Property for use, Developer shall have the right to enter into one or more agreements with any party other than City to provide Developer an additional supply of Type I Reclaimed Water for the purpose of irrigating the golf course, greenbelts, and common areas developed on the Property which may be purchased after purchasing all of the Type I Reclaimed Water that City is capable of and has available to provide to Developer.
- F. **Right to Acquire and Use Other Surface Water:** Nothing herein shall be construed as prohibiting Developer from acquiring additional surface water rights from the Guadalupe River which may be used for irrigation of the golf course, greenbelts, and common areas; provided, however, Developer agrees not to use such additional surface water to irrigate those areas required to be irrigated with Type I Reclaimed Water as set forth in Section B, above, unless City is unable to provide an adequate supply of Type I Reclaimed Water to those areas described in Section E, above, or a temporary interruption of Type I Reclaimed Water Service occurs as described in Section J, below.
- G. **Compliance with State and Federal Law:** City and Developer agree that the production, transportation, and use of Type I Reclaimed Water by City and/or Developer shall be in compliance with applicable state and federal laws and regulations, including, but not limited to, Title 30, Texas Administrative Code, Chapter 210, as amended.

- H. **Required Permits and Agreements:** When City provides Type I Reclaimed Water to the Property as described in this Agreement, City and Developer agree to diligently and in good faith prepare, negotiate, execute, and/or prosecute all additional agreements, notices, and permit applications required by Chapter 210 of Title 30, Texas Administrative Code, as amended, which are necessary prior to the use of Type I Reclaimed Water for irrigation of the golf course, greenbelts and common areas. In the event the permits and/or authorizations required by 30 TAC §210.5, as amended, are not obtained on or before the thirtieth day after the date City makes Type I Reclaimed Water available to the Property as described in Section A, above, the conveyance to City of the Developer's remaining interest Water Well No. 1 and Water Well No. 2 shall be delayed until such permits or authorizations are issued by the TNRCC.
- I. **Irrigation Systems to Comply with Regulations:** The design and materials for the irrigation system(s) for the golf course, greenbelts, and common areas on the Property which are to be irrigated with Type I Reclaimed Water pursuant to this Agreement shall comply with 30 TAC Chapter 210, as amended, upon initial construction and installation of said irrigation systems by Developer. Furthermore, the irrigation system for areas of the Property to be irrigated with water other than Type I Reclaimed Water, including, but not limited to, the areas described in Section B, above, shall be physically separated from the Type I Reclaimed Water irrigation system unless otherwise approved in writing by City, which approval shall not be unreasonably withheld.
- J. **Temporary Interruption of Service:** If Type I Reclaimed Water Service provided by City to the Property, through no fault of Developer, is temporarily interrupted, Developer shall have the right to irrigate the entire golf course with the Surface Water Rights in which Developer owns an interest, but only during such period of interruption. If the amount of water available remains inadequate after use by Developer of its Surface Water Rights, and Developer has no other source of water available to irrigate its golf course for such temporary period of interruption, City agrees to provide and sell to Developer during the period of interruption water which City has available and has the legal ability and authority to sell (other than water treated by City's water treatment plant) at the same rate per 1000 gallons for which Developer

would be obligated to pay City for Type I Reclaimed Water Service to the Property

K. Need Exceeds Available Supply: If because of adverse weather conditions, City is unable to provide Type I Reclaimed Water to the Property in sufficient quantities to keep the areas of the golf course which by this Agreement must be irrigated using Type I Reclaimed Water in a healthy, growing, and playable condition in accordance with generally accepted standards of the golf course management industry, Developer shall have the right to irrigate the entire golf course with the Surface Water Rights in which Developer retains an interest, subject to the following conditions:

1. Such surface water supply shall be used only after the Type I Reclaimed Water supply is exhausted;
2. Such surface water supply shall only be used until the adverse weather conditions subside and quantities of Type I Reclaimed Water are again sufficient for the purpose stated herein;
3. Developer provides City not less than 48 hours written notice of the need for such additional water; and
4. City determines that it does not in fact have the quantities of Type I Reclaimed Water requested, which determination shall be reasonable and made and communicated to Developer or its designated representative not later than 48 hours after receipt of the written request.

L. Sale of Additional Water: If the combined amount of Type I Reclaimed Water and the Surface Water Rights in which Developer retains an interest remains inadequate for the purposes stated in Section K, above, and Developer has no other source of water available to irrigate the golf course during such period of adverse weather conditions, City agrees, if it owns available water, to provide and sell to Developer water which City has the legal authority and ability to sell (other than water treated by City's water treatment plant) at the same rate per 1000 gallons for which Developer would be obligated to pay City for Type I Reclaimed Water Service to the Property.

M. **Use of Potable Water:** When use of an alternate or supplemental source of water is authorized by Sections J and K of this Article VI, City agrees that Developer shall at all times have the same ability as any other City water customer to use potable water from City's water system to irrigate the areas of the golf course where irrigation with Type I Reclaimed Water is otherwise required by this Agreement at the then current charge established by City ordinance and subject to the regulations established by City ordinance, including water conservation regulations.

N. **City Right to Terminate Type I Reclaimed Water Service:** City may, at its sole option, terminate Type I Reclaimed Water Service to the Property if City determines that the rates that City is allowed to charge Developer pursuant to this Article VI for providing Type I Reclaimed Water Service will not allow City to recover:

1. City costs of constructing, operating, maintaining, and repairing the reclaimed water transmission line and its related pumps and other appurtenances used to deliver Type I Reclaimed Water to the Property, including, but not limited to debt service; and
2. City's costs of treating the Type I Reclaimed Water delivered to the Property over and above what is required by state or federal law in order to permit the City to discharge said water into the Guadalupe River under the City's wastewater treatment plant discharge permit, if such additional treatment is required by the TNRCC or Developer so that the Type I Reclaimed Water may be used in the manner described in this Agreement.

City may not terminate Type I Reclaimed Water Service to the Property pursuant to this Section VI.N. until one year after providing written notice to Developer of City's intent to terminate said service and conveying to Developer the right to use untreated surface and/or ground water in sufficient quantities to replace the quantities of Type I Reclaimed Surface Water used by Developer prior to termination, but in no case earlier than five years after the commencement of Type I Reclaimed Water Service to the Property. Such notice shall contain the rate which City estimates is required to recover its costs as stated in this section. City agrees to continue to provide Type I Reclaimed Water Service if

Developer delivers to City not later than 90 days after receipt of the notice of proposed termination in which Developer agrees to pay for such Type I Reclaimed Water Service at the price set forth in the notice of proposed termination.

- O. Termination for Non-Payment:** Notwithstanding anything in this Agreement to the contrary, City may terminate Type I Reclaimed Water Service to the Property for non-payment for such services in accordance with applicable city ordinances and state law, without further obligation or responsibility to Developer, including, but not limited to, the provision of an alternate water supply. If City terminates Type I Reclaimed Water Service to Developer pursuant to this Section O, City agrees to reinstate such service, but only after payment of all past due amounts and only subject to the availability of Type I Reclaimed Water.
- P. Survivorship of Certain Rights and Obligations:** The rights, agreements and provisions for the provision of Type I Reclaimed Water Service to the Property, as provided in this Article VI, shall survive the termination of this Agreement.
- Q. Quality of Type I Reclaimed Water:** For purposes of Article V, above, and this Article VI, Developer agrees that the Type I Reclaimed Water to be provided by City pursuant to this Article VI will be of an acceptable quality such that it can be used to irrigate the fairways, tees, roughs, and other areas of Developer's golf course other than the putting greens (including the practice and nursery greens) and the surrounds of the putting surfaces so long as the effluent from City's wastewater treatment plant is treated:
1. to meet or exceed the requirements of TNRCC Wastewater Treatment Facility Permit No. WQ0010576-001, dated December 15, 1995, as amended and reissued on October 3, 1997; and
 2. to maintain an annual average sodium concentration of not greater than 225 ppm.

Developer and City agree that the intent of this Section N. is solely for the purpose of establishing agreement that Type I Reclaimed Water treated in the manner stated above is of acceptable quality

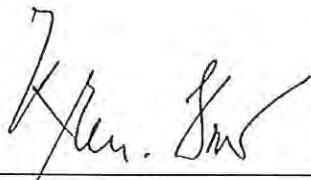
for the purposes stated herein. Developer and City further agree this Section N. does not create any agreement or presumption that Type I Reclaimed Water which fails to conform to the above treatment standards is not of the quality required by this Agreement for the uses described above or any other uses.

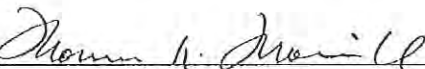
5. Except as amended hereby, City and Developer agree that the provisions of the Agreement are not otherwise amended and are hereby agreed to be in full force and effect.

EXECUTED in duplicate the day and year first above written.

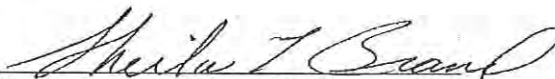
CITY OF KERRVILLE, TEXAS

COMANCHE TRACE RANCH AND
GOLF CLUB, LLLP, a Colorado limited
liability limited partnership BY:
COMANCHE TRACE, LLC, a Colorado
limited liability company, General Partner

By: 
Ben R. Low, Mayor

By: 
Thomas N. Morrill, Manager

ATTEST:


Sheila L. Brand, City Clerk

APPROVED AS TO FORM:


Kevin B. Laughlin, City Attorney

DAWPdocs\WPdocs\Planning\development\Comanche Trace\1st amend (v5 final).wpd4

Agenda Item:

5C. Agreement for the sale of reclaimed water between the City of Kerrville and Schreiner University. (staff)

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

SUBJECT: Consideration of an Agreement for the sale of reclaimed water between the City of Kerrville and Schreiner University.

FOR AGENDA OF: April 11, 2017 **DATE SUBMITTED:** March 31, 2017

SUBMITTED BY: E.A. Hoppe **CLEARANCES:** Don Davis
 Deputy City Manager Interim City Manager

EXHIBITS: Agreement for the Sale of Reclaimed Water
Approved Letter of Intent – August 1, 2016



AGENDA MAILED TO:

APPROVED FOR SUBMITTAL BY CITY MANAGER:

Expenditure Required:	Current Balance in Account:	Amount Budgeted:	Account Number:
\$0	\$0	\$0	

PAYMENT TO BE MADE TO:

REVIEWED BY THE FINANCE DEPARTMENT:

SUMMARY STATEMENT

Attached is an Agreement for the sale of reclaimed water between the City of Kerrville and Schreiner University. This reclaimed water will be used for irrigation purposes at their campus.

As you may recall, in May of 2016 the City Council authorized City staff to proceed with a plan to design, engineer, and construct a City-owned reclaimed water storage facility and expansion and retrofitting of the City's reclaimed water irrigation distribution system. That same night, Council also authorized staff to draft and negotiate a Letter of Intent (LOI) in regards to the future sale of reclaimed water to Schreiner University. Council approval was also given for staff to develop an application for EIC review for the distribution system enhancements. An application was subsequently reviewed and approved with a 7-0 vote by the EIC on September 19, 2016. These capital projects were included in the FY17 budget that was adopted by City Council on September 27, 2016. On October 25, the City Council awarded a construction contract for the construction of a 105 million gallon storage facility for reclaimed water and a new pump station. Consequently, a Funding Agreement was developed for EIC review for the distribution of reclaimed water. A public hearing was held on Nov. 21, 2016 and the Funding Agreement was subsequently unanimously approved. The reclaimed water distribution system construction contracts and EIC Funding Agreements were approved by Council on January 24, 2017.

Specifically in regards to the LOI with Schreiner University for the sale of reclaimed water,

subsequent drafts of the LOI were reviewed and unanimously approved by the City Council at the June 2016 City Council meeting, and their final executed copies were approved unanimously at the July 2017 City Council meeting. A copy of the executed LOI is attached.

With construction of the water storage facility and distribution system well underway, staff has utilized the agreed upon terms of the LOI to draft an Agreement for the Sale of Reclaimed Water with Schreiner University. Schreiner University desires to finalize and execute this Agreement at this time so that they can proceed with the construction of their own onsite reclaimed water storage facility as well as enhancements to their irrigation system, which is a multi-million dollar project.

RECOMMENDED ACTION

Staff recommends approval of the Agreement for the Sale of Reclaimed Water with Schreiner University.

AGREEMENT FOR SALE OF RECLAIMED WATER
SCHREINER UNIVERSITY

THIS AGREEMENT for the Sale of Reclaimed Water (this "Agreement") is entered into between the City of Kerrville, Texas ("City") and Schreiner University, a Texas nonprofit corporation ("Customer"), sometimes referred to either as the "Party" or collectively as the "Parties"; whereby City agrees to provide Reclaimed Water (as defined below) to Customer under and pursuant to the terms and provisions of this Agreement.

1. Reclaimed Water System.

City owns, operates, and maintains a reclaimed water system. City agrees to provide Reclaimed Water to be used to irrigate Customer's campus, including its athletic fields (collectively referred to as the "Property") and subject to the terms of this Agreement. This system can produce and supply Reclaimed Water to Customer in order to serve the Property located at 2100 Memorial Boulevard, which is within the corporate limits of City. Reclaimed Water is defined as domestic or municipal wastewater which has been treated to a quality suitable for a beneficial use pursuant to Title 30, Chapter 210 of the Texas Administrative Code, as amended, and other applicable rules and permits of the Texas Commission on Environmental Quality ("TCEQ"), or its successor agencies, the use of which is likely to result in contact between humans and the Reclaimed Water. The purpose of the Reclaimed Water system is to provide an alternative water supply for non-potable water uses and thereby reduce demand for other sources of water.

2. Terms and Conditions of Reclaimed Water Service.

2.1 Initial Term. This Agreement is effective as of the Effective Date specified below and will continue in effect for an initial term of twenty (20) years (the "Initial Term") unless extended or terminated earlier as provided herein. The Initial Term will begin on the date that Customer begins using Reclaimed Water provided by City and such use shall occur no later than thirty (30) days after City makes Reclaimed Water available to the Property regardless of actual use for reasons such as weather conditions. This Agreement will automatically be extended for an additional five (5) years beyond the Initial Term unless either Party provides notice to the other Party of its intent not to extend the Agreement in this manner. Such notice must be provided and received at least 180 days prior to the end of the Initial Term.

2.2 Easements. Upon request of City, Customer shall provide a survey and thereafter convey at no cost to City, any required easements for City's provision of Reclaimed Water to the Property, to include easements for piping, metering, SCADA equipment, pond level indicator equipment, signs, or any other apparatus that City may reasonably require for its service.

2.3 Supply of Reclaimed Water. Subject to Customer's receipt of permits specified by Section 2.17 below, City shall supply Reclaimed Water to Customer for non-potable purposes in the amount set forth herein and in Section 2.6 below. Customer intends to use the Reclaimed Water for irrigating the Property as is generally described and depicted on the map attached hereto as **Exhibit A**. If Customer, at any time during the term of this Agreement, determines that it needs and can beneficially use an amount of Reclaimed Water in excess of the volume set forth

herein and in Section 2.6 below or in areas beyond those shown in **Exhibit A**, Customer may request that City make available an increased amount of Reclaimed Water; City may then consider such request based upon availability and other considerations, to include an agreed upon rate for the additional Reclaimed Water, with the understanding that City shall not be required to increase the Reclaimed Water supply to the Property in excess of the volume set forth herein and in Section 2.6 below during the term of this Agreement. Customer will need to seek approval from TCEQ with respect to additional area that it desires to irrigate with Reclaimed Water.

2.4 Compliance with Local, State, and Federal Law. City and Customer agree that the production, transportation, delivery, and use of Reclaimed Water by City and/or Customer shall be in compliance with applicable local, state, and federal laws and regulations, including Title 30, Chapter 210 of the Texas Administrative Code, as amended; and City's Water Management Plan, which may be amended from time to time and is found in Chapter 110 of the City's Code of Ordinances ("Water Management Plan").

2.5 Commencement of Reclaimed Water Service. Based upon the current estimated construction schedule, City should be able to deliver Reclaimed Water to the Property in the capacities provided herein on or before February 1, 2018. Customer agrees that this is an estimated date, and despite City's best efforts and due diligence, this date may be delayed on account of weather or other conditions beyond City's control. City will keep Customer updated as to any known changes from this schedule or date.

2.6 Delivery and Amount of Reclaimed Water; Obligation to Use.

- A. City shall deliver Reclaimed Water to Customer at the meter ("Meter"), the location of which is more particularly identified in **Exhibit A**. City has the capacity to deliver Reclaimed Water in an amount of not less than 250,000 gallons per day.
- B. The City shall use its best efforts to deliver the amount of Reclaimed Water specified above to Customer. If there is temporary interruption of service, Customer shall have the right to irrigate the Property with other water available to it, including potable water purchased from City, subject to the applicable potable water rate in effect at the time and the Water Management Plan. However, City cannot and does not guarantee a certain amount of Reclaimed Water on any basis, whether daily, weekly, or yearly. City has the right at any time and without notice to shut down its system or discontinue the delivery of Reclaimed Water due to plant malfunction, Force Majeure (as defined below), drought, the implementation of water conservation stages pursuant to the Water Management Plan, or other unforeseen events or conditions that require emergency conservation measures ("Water Capacity Events") for the period of such events ("Water Capacity Periods"); provided that such interruption of service shall be no more than is reasonably necessary under the specific circumstances and with the understanding that the City shall prioritize delivery and allocation of Reclaimed Water to Customer with special consideration given during the months of June, July and August ("Equal Protection").

- C. City has the right at any time to curtail the delivery of all Reclaimed Water to the Property because of Water Capacity Events, for Water Capacity Periods and with Equal Protection of all Reclaimed Water customers; provided that any such curtailment of Reclaimed Water to the Property shall only be as is reasonably necessary for Water Capacity Events and for Water Capacity Periods.
- D. Nothing herein requires Customer to use said amount of water on a daily basis. However, Customer shall use, for those purposes specified in Section 2.16, said amount of Reclaimed Water and any water stored in its on-site storage facility, prior to its use of any alternative sources of water.

2.7 No Minimum Pressure Guaranteed. City does not represent or guarantee to Customer that the Reclaimed Water provided to Customer under this Agreement will be provided at any specific minimum pressure and City is under no obligation with respect thereto.

2.8 Equipment; Cross-Connection Survey.

- A. Customer shall maintain at its expense, and subject to City's periodic inspections, appropriate valves, back flow prevention, flow controllers, and other appropriate equipment on the Property, which is reasonably necessary for City to deliver Reclaimed Water to the Property. The Meter and SCADA System shall continue to be owned, operated, and maintained by City. However, all other pipelines, equipment, and facilities located on the Property shall be owned, operated, and maintained by Customer.
- B. Prior to the City's provision of Reclaimed Water, Customer shall have a third party inspector perform a cross-connection survey, which shall include compliance with American Water Works Association ("AWWA") M-14 manual (3rd Addition, pgs. 76-77), AWWA M-24 manual (pgs. 79-81) as well as dye and pressure testing. The survey shall also confirm that Customer's use of the Reclaimed Water is limited to the Property. The completed report must be signed and sealed by a licensed engineer or qualified backflow/cross connection professional, a copy of which must be presented to City.

2.9 Reclaimed Water System to Comply with Regulations. The design, materials, construction, and maintenance of Customer's Reclaimed Water system, which begins at the Meter and continues thereon through the Property, shall comply with Title 30, Chapter 210 of the Texas Administrative Code, as amended. Further, Customer's Reclaimed Water system, pursuant to applicable rules and regulations, shall be physically separated from Customer's potable water supply system. Customer shall take all actions necessary for it to comply with the law referenced within this section including the posting of signage, maintenance of storage facilities including ponds, and the maintenance and marking of equipment and Reclaimed Water lines.

2.10 Meter Calibrations. The City shall calibrate the Meter on a periodic basis.

2.11 On-site Storage. Customer shall maintain in good working order an on-site storage facility capable of storing at least 1.5 million gallons of Reclaimed Water.

2.12 Charge for Use of Reclaimed Water; Connection Fee. Customer shall pay \$0.65 per 1,000 gallons of Reclaimed Water for the amount of Reclaimed Water that Customer receives through the Meter. This rate shall remain in effect for seven years following the beginning of the Initial Term. After this seven years, said rate is subject to annual increases, not to exceed 2%, based upon charges adopted by City Council for the same classification of Reclaimed Water customers other than the rate City charges itself or is charging others with whom City has established a contractual rate, such as in conjunction with land development. Customer shall be responsible for assuring its ability to receive Reclaimed Water at the Meter regardless of the fact that such water passed through the Meter as a result of leaks, breaks, ruptures, or other defects in Customer's water system. City shall not charge Customer any fee for Customer's existing connection to the City's Reclaimed Water system.

2.13 Statement of Charges; Payments. City shall read the Meter on a monthly basis and prepare and deliver to Customer a written billing statement specifying the charges for each month. The statement shall be delivered to Customer in accordance with the City's standard utility billing practices. All payments required to be made by Customer to City shall be delivered to City's offices at 701 Main Street, Kerrville, Texas 78028, or to such other place as City may direct by written notice to Customer from time to time. Customer shall pay said statement by the fifteenth (15th) day after the statement is received by Customer. Any late payments shall bear per annum interest at a rate equal to the lesser of four percentage points (4%) above the Prime Interest Rate as published in the Wall Street Journal, or alternate source as agreed to by the parties, on the day said statement becomes delinquent, or the maximum allowed by law to be charged to Customer. If any charges remain unpaid at the expiration of thirty (30) days after receipt of the statement, Customer shall be in default under this Agreement, and City may invoke the remedies specified herein.

2.14 Statement Dispute; Protest. If Customer has a protest or dispute concerning a billing statement, Customer shall notify City in writing within ten (10) days of receipt of said statement. Customer shall pay the portion of the statement which is not being disputed or protested. Upon written notification, the portion of the statement under dispute or protest (provided the dispute or protest is made in good faith and is not unreasonable) shall be set aside until resolved and shall not be subject to the penalties stated herein. If City is not notified in writing, postmarked within ten (10) days of receipt of said statement, said protest or dispute shall be considered waived. This section shall not apply to protests made by Customer pursuant to an increase in the rate charged for Reclaimed Water made by City Council.

2.15 Termination for Non-payment. Except when Customer is contesting a fee or charge in good faith, City may terminate Reclaimed Water service to the Property for non-payment for such services in accordance with applicable City ordinances and state law, without further obligation or responsibility to Customer including, but not limited to, the provision of an alternate water supply. If City terminates Reclaimed Water service to Customer pursuant hereto,

City may reinstate such service, but only after payment of all past due amounts, including all late fees and penalties, and subject to the availability of Reclaimed Water at the time of payment.

2.16 Use of Reclaimed Water and Title. Customer shall use Reclaimed Water solely for the purpose of irrigating the Property. City shall be the owner of and responsible for the Reclaimed Water until it passes through the Meter. After the Reclaimed Water has passed through the Meter, it becomes the property and responsibility of Customer.

2.17 Required Permits and Agreements. City and Customer represents and confirms that each has complied with and obtained such additional agreements, notices, and permits required by Title 30, Chapter 210 of the Texas Administrative Code, as amended, and other applicable laws and regulations which are necessary for supply and use of Reclaimed Water for the irrigation of the Property.

2.18 Mutual Responsibilities. Unless otherwise provided in this Agreement, responsibility for damages arising from the improper treatment, transportation, and delivery of all Reclaimed Water provided under this Agreement shall remain with City to the Meter. Once Reclaimed Water has passed the Meter, liability for all damages arising from improper transportation and delivery of the Reclaimed Water shall pass to Customer. City's only responsibilities under this Agreement are to provide Reclaimed Water to Customer as provided in this Agreement at the Meter of a quality which meets the provisions of this Agreement and the minimum Reclaimed Water standards as prescribed by TCEQ or appropriate governing agency and to maintain the Meter.

2.19 Record Keeping and Reporting. Customer acknowledges that TCEQ, pursuant to Title 30, Section 210 *et seq.* of the Texas Administrative Code, requires City to make monthly reports regarding the volume and quality of reclaimed water it provides to each customer.

2.20 Transfer of Real Property Where Reclaimed Water Utilized. Customer agrees that all leases, sales, and other disposal or transfer of ownership or control of the Property shall be made expressly subject to this Agreement and any such successors and assigns shall have the benefit of, and be expressly subject to the terms specified herein.

2.21 Inspection of Premises Where Reclaimed Water Utilized. Customer acknowledges and agrees that in order to verify compliance with this Agreement and with applicable statutes, ordinances and regulations, City, or any other governmental agency with appropriate jurisdiction may inspect the premises (for purposes within that jurisdiction) being served with Reclaimed Water at reasonable times during Customer's normal business hours, unless Section 2.22 applies.

2.22 Receiving Water; Right to Terminate Service. Customer shall be responsible for assuring its ability to receive the Reclaimed Water at the Meter. In the event a leak, break, rupture, or other defect occurs within the Customer's system which could either endanger or contaminate City's system or prejudice City's ability to maintain service to other customers or, where City finds that Customer's system violates this Agreement or applicable law or Customer has failed to maintain a valid permit for its use of the Reclaimed Water as specified by Section

2.17, City shall have the right to take, without notice to Customer, whatever action it considers reasonably appropriate to protect the public health or welfare, which includes the right to inspect, valve-off, or discontinue service to Customer at the Meter until such leak, break, rupture, defect, default or violation has been repaired or remedied to City satisfaction. In the event such permits and/or authorizations required by 30 TAC §210.5, as amended, lapse or are not renewed for a period of time greater than thirty (30) days, City shall have the right to terminate this Agreement.

2.23 Notification of Regulatory Agencies. Customer acknowledges and agrees that it shall inform, notify, and/or request inspection and approvals from City and other governmental agencies for certain activities relating to the construction, maintenance, and operation of its onsite Reclaimed Water system, including materials, construction, facility testing, violations, use and emergency response.

2.24 Obligation to Provide Alternative Water. If City is unable, through no fault of Customer, to deliver Reclaimed Water to the Property, Customer shall have the right to irrigate the Property with other sources of water but only during such period of interruption and subject to the Water Management Plan. If Customer uses potable water from City, the City will apply the potable water rate.

3. Default and Termination.

Either Party shall have the right to terminate this Agreement for a default of the provisions of this Agreement by the other Party if the defaulting Party has not cured such default within ninety (90) days of notice of the default. This Agreement may be terminated at any time at the mutual written consent of the Parties.

4. Miscellaneous.

4.1 Indemnification. CUSTOMER AGREES TO ASSUME FULL RESPONSIBILITY AND LIABILITY FOR ITS ACCEPTANCE, STORAGE, AND USE OF THE RECLAIMED WATER PROVIDED UNDER THIS AGREEMENT AND HEREBY AGREES TO INDEMNIFY, HOLD HARMLESS, AND DEFEND THE CITY, ITS OFFICERS, EMPLOYEES, AND AGENTS FROM ALL CLAIMS, DEMANDS, AND CAUSES OF ACTION OF EVERY KIND AND CHARACTER ARISING FROM PERSONAL INJURY OR DEATH OF ANY PERSON OR DAMAGE TO ANY PROPERTY WHERE SUCH IS CAUSED BY OR ALLEGED TO BE CAUSED BY, OR ARISING OUT OF OR ALLEGED TO ARISE OUT OF THIS CONTRACT OR THE ACTIVITIES TO BE PERFORMED HEREUNDER.

4.2 Complete Agreement.

This Agreement constitutes the complete and entire agreement between the Parties. This Agreement supersedes and cancels all prior negotiations, agreements, representations, resolutions, and understandings, if any, relating to this subject, whether written or oral.

4.3 Savings and Severability. In case any one or more provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalid, illegal or unenforceable provision shall not affect any other provision hereof, and this Agreement shall be construed by a court, giving effect to the general intent and specific directives of the Parties so as not to be invalid, illegal or unenforceable. In the event such provision cannot be reformed or construed to be valid, legal, or enforceable, this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

4.4 Applicable Law and Venue. This Agreement shall be construed under and in accordance with the laws of the State of Texas and the obligations and undertaking of each of the Parties shall be performed or deemed to be performed in Kerrville, Kerr County, Texas. A lawsuit involving this Agreement brought by either Party shall be brought only in Kerr County, Texas.

4.5 Assignment and Modification; Future Amendments Due to Direct Potable Reuse.

A. Except as provided and permitted hereunder, this Agreement shall not be assignable by either Party without the prior written consent of the other Party. Further, this Agreement may be modified only by an instrument signed by the duly authorized representatives of each of the Parties.

B. Customer acknowledges and agrees that should City implement direct potable reuse ("DPR") of its reclaimed water system, City has the right to amend this Agreement with respect to the volume of Reclaimed Water upon notice to Customer to account for DPR, the application of government regulations to DPR, and/or other operational factors directly relating to DPR for Water Capacity Events and for Water Capacity Periods so long as all customers are afforded Equal Protection and impacted within Equal Protection. Should Customer fail to agree to any such amendments, City has the authority to immediately terminate this Agreement upon notice to Customer.

4.6 No Third-Party Beneficiary. The Parties are entering into this Agreement solely for the benefit of themselves, their successors and permitted assigns, and the other parties herein referenced in 4.5 and agree that nothing herein shall be construed to confer any right, privilege or benefit on any person or entity other than the Parties hereto, their successors and their permitted assigns.

4.7 Waiver. Any waiver at any time by either Party with respect to a default or other matter arising in connection with this Agreement shall not be deemed a waiver with respect to any subsequent default or matter.

4.8 Captions. The captions and headings appearing in this Agreement are inserted merely to facilitate reference and are not to be considered a part of this Agreement and in no way shall they affect the interpretation of any of the provisions of this Agreement.

4.9 Approvals. All approvals and agreements by either Party that are required or contemplated under this Agreement must be in writing unless other means are specifically permitted, and must be signed by the person authorized to give such approvals and make such agreements for that Party. The persons authorized to give such approvals and make such agreements for the Parties shall, until changed as hereinafter provided, be as follows: for Customer, the undersigned representative or other designated representative, and for City, the City Manager or other designated representative. Each Party shall have the right from time to time and at any time to change the person authorized to give such approvals and make such agreements by giving at least fifteen (15) days' written notice to the other Party.

4.10 Force Majeure. If by reason of Force Majeure, if any Party hereto shall be rendered partially or wholly unable to carry out its obligations under this Agreement, then if such Party shall give notice in writing and full particulars of such Force Majeure to the other Party immediately after occurrence of the event or cause relied on, the obligation of the Party giving such notice, so far as it is affected by such Force Majeure, with the exception of the obligation of Customer to pay for services actually received from City hereunder, shall be suspended during the continuance of the inability then claimed, and such Party shall endeavor to remove or overcome such inability with all reasonable dispatch. The term Force Majeure as used herein shall mean a cause or causes beyond the reasonable control of the Party claiming Force Majeure, and shall include but not be limited to natural disasters, strikes, lockouts or other industrial disturbances, acts of public enemy, orders of any kind of the United States of America or the State of Texas or any civil or military authority, insurrections, riots, epidemics, lightning, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraint of government and people, civil disturbances, explosions and breakage or accidents to machinery, pipelines, or facilities; however, lockouts shall be entirely within the discretion of the Party having the difficulty, and the above requirement that any Force Majeure shall be remedied with all dispatch shall not require the settlement of strikes and lockouts by acceding to the demands of the opposing Party or Parties when such settlement is unfavorable in the judgment of the Party having the difficulty

4.11 Notices. All notices under this Agreement shall be in writing; shall be mailed by certified mail, return receipt requested; and shall be effective on the date actually received. For purposes of notices and payments of amounts due, the mailing addresses of the Parties shall, until changed as hereinafter provided, be as follows:

as to Customer:

Bill Muse, VP of Administration and Finance
Schreiner University
2011 Memorial Boulevard
Kerrville, Texas 78028

as to City:

City Manager
City of Kerrville

City Hall, 701 Main Street
Kerrville, Texas 78028

With Copy to:

City of Kerrville Public Works Department
Water & Wastewater Division
Attention: Water/Wastewater Manager
City Hall, 701 Main Street
Kerrville, Texas 78028

In witness whereof, the Parties have caused this Agreement to be duly executed in multiple counterparts, each of which shall constitute an original and shall then be effective the _____ ("Effective Date").

CITY OF KERRVILLE

SCHREINER UNIVERSITY

Don Davis, Interim City Manager
DATE: _____, 2017

Bill Muse, VP of Admin. and Finance
DATE: _____, 2017

ATTEST:

Brenda Craig, City Secretary

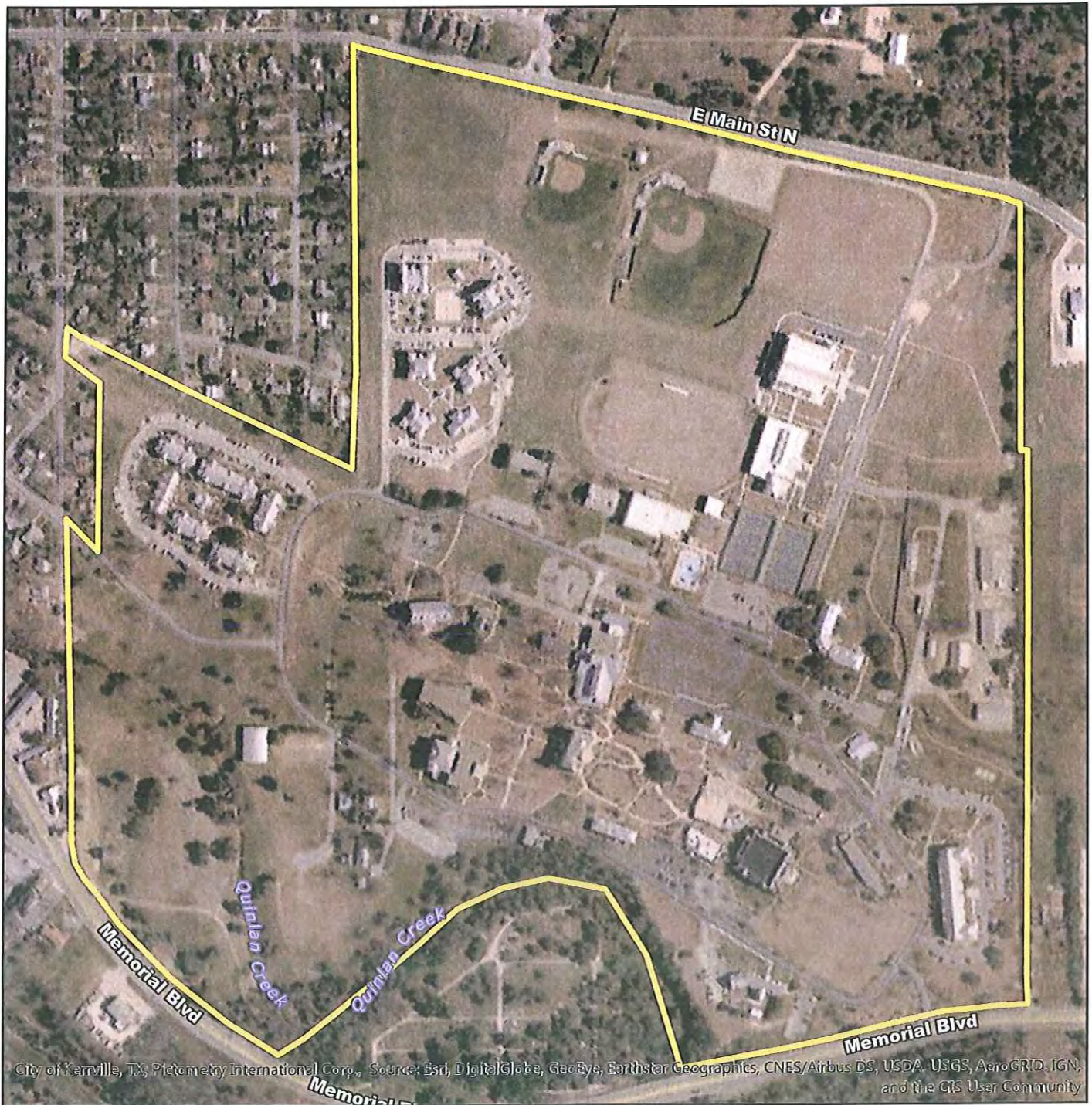
APPROVED AS TO FORM

Michael C. Hayes, City Attorney



Exhibit A

Schreiner University Reuse Area



Legend

 Reuse Service Area



joyoung
4/6/2017 14:02

0 250 500 1,000
Scale In Feet

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.



City of Kerrville

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Letter of Intent for Supply of Reclaimed Water

June 22, 2016

Mr. Bill Muse
Vice President of Administration and Finance
Schreiner University
2100 Memorial Boulevard
Kerrville, Texas 78028

Dear Mr. Muse,

This letter is to confirm the mutual intent between the City of Kerrville ("City") and Schreiner University to enter into a funding and use agreement(s) for the provision of reclaimed water for irrigation purposes at the university campus. The City of Kerrville is designing a reclaimed water project with the capability of delivering an adequate supply of non-potable water to irrigate the athletic fields and landscaped areas and to the chiller plant at Schreiner University. Completion of the City's reclaimed water project (the "Project") is anticipated early in the 2018 calendar year.

By virtue of signing below, the parties acknowledge both the scope and timing of the Project and the general terms and conditions as follows:

1. City will deliver reclaimed water to a point within the Schreiner University property as mutually agreed to by both parties ("Delivery Point");
2. City will cause to be designed, constructed, and installed all the improvements required to deliver reclaimed water to the Delivery Point at its sole expense. Said improvements to include, distribution mains, pump station as the City of Kerrville Water Reclamation Plant, valve system(s) at the Delivery Point, SCADA system(s), and related appurtenances;
3. Schreiner University will cause to be designed, constructed, and installed all the improvements required for the storage and use of reclaimed water on its property at its sole expense. Said improvements to include, surface storage, pumping systems, distribution systems, and related appurtenances;
4. Schreiner University agrees to coordinate with the City on the design of the Project by identifying the location of on-site utility systems, location of on-site water storage facilities, and, if appropriate, the dedication of easements to the City on the university's property to accommodate the location and maintenance of reclaimed water infrastructure;
5. City intends to apply to the City of Kerrville Economic Improvement Corporation for funds adequate to cover the costs for the construction and installation of the distribution portion of the Project to deliver reclaimed water from the City of Kerrville Water Reclamation Plant to the Delivery Point. Schreiner University agrees to be a party to the application;

6. Schreiner University agrees that it will take all actions necessary to begin utilizing reclaimed water for irrigation purposes within 24 months of the City's completion of the Project;
7. City's Project will provide a peak daily demand of 250,000 gallons of reclaimed water to the Delivery Point subject to the following conditions:
 - a. A weekly pumping schedule established by the City of Kerrville and Schreiner University that will satisfy the peak daily demand at the Delivery Point ,
 - b. Except where the City needs to utilize reclaimed water supply as part of its potential direct potable reuse program; and
 - c. City will not add additional reclaimed water customers that impede the City's ability to meet the peak daily demand.
8. Schreiner University and the City will enter into a reclaimed supply funding and use agreement(s) that will include, the following provisions:
 - a. 20-year term,
 - b. Application of standard base and volumetric rates established by the City in effect at the time that Schreiner University begins to take reclaimed water;
 - c. Initial base and volumetric rates to remain frozen for the first (7) seven years of consumption;
 - d. Maximum cap of two percent (2%) on annual increases to base and volumetric rates after the first seven (7) years of consumption; and
 - e. Guarantee that Schreiner University will use its reclaimed water in accordance with state and federal law; and
9. This Letter of Intent does not constitute or create, and shall not be deemed to constitute or create, any legally binding or enforceable obligation on the part of either party to this letter of intent. No such obligation shall be created, except by the execution of a separate written agreement between the parties regarding the proposed transaction, and then only in accordance with the terms and conditions of such separate agreement.

By providing the signatures below, each party confirms its acceptance of the terms and conditions of this Letter of Intent.

Sincerely,



Todd Parton
City Manager

By affixing my signature below I acknowledge that I am duly authorized to execute this MOU on behalf of my organization and accept the terms and conditions outlined herein.

On behalf of Schreiner University:

On behalf of the City of Kerrville:

Date: 7-22-16

Date: 8/1/2016

Signed:

A handwritten signature in black ink, appearing to read 'Bill Muse', written over a horizontal line.

Mr. Bill Muse, Vice President of
Administration and Finance
Schreiner University

Signed:

A handwritten signature in black ink, appearing to read 'Todd Parton', written over a horizontal line.

Mr. Todd Parton, City Manager
City of Kerrville, Texas

Agenda Item:

5D. Agreement for the sale of reclaimed water between the City of Kerrville and Riverhill Country Club, LP. (staff)

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

SUBJECT: Consideration of an Agreement for the sale of reclaimed water between the City of Kerrville and Riverhill CC, LP.

FOR AGENDA OF: April 11, 2017 **DATE SUBMITTED:** March 31, 2017

SUBMITTED BY: E.A. Hoppe **CLEARANCES:** Don Davis
 Deputy City Manager Interim City Manager

EXHIBITS: Agreement for the Sale of Reclaimed Water
Approved Letter of Intent – July 21, 2016



AGENDA MAILED TO:

APPROVED FOR SUBMITTAL BY CITY MANAGER:

Expenditure Required:	Current Balance in Account:	Amount Budgeted:	Account Number:
\$0	\$0	\$0	

PAYMENT TO BE MADE TO:

REVIEWED BY THE FINANCE DEPARTMENT:

SUMMARY STATEMENT

Attached is an Agreement for the sale of reclaimed water between the City of Kerrville and Riverhill CC, LP. This reclaimed water will be used for irrigation purposes at their facility.

As you may recall, in May of 2016 the City Council authorized City staff to proceed with a plan to design, engineer, and construct a City-owned reclaimed water storage facility and expansion and retrofitting of the City's reclaimed water irrigation distribution system. That same night, Council also authorized staff to draft and negotiate a Letter of Intent (LOI) in regards to the future sale of reclaimed water to Riverhill. Council approval was also given for staff to develop an application for EIC review for the distribution system enhancements.

An application was subsequently reviewed and approved with a 7-0 vote by the EIC on September 19, 2016. These capital projects were included in the FY17 budget that was adopted by City Council on September 27, 2016. On October 25, the City Council awarded a construction contract for the construction of a 105 million gallon storage facility for reclaimed water and a new pump station. Consequently, a Funding Agreement was developed for EIC review for the distribution of reclaimed water. A public hearing was held on Nov. 21, 2016 and the Funding Agreement was subsequently unanimously approved. The reclaimed water distribution system construction contracts and EIC Funding Agreements were approved by Council on January 24, 2017.

Specifically in regards to the LOI with Riverhill for the sale of reclaimed water, subsequent drafts of the LOI were reviewed and unanimously approved by the City Council at the June

2016 City Council meeting, and their final executed copies were approved unanimously at the July 2017 City Council meeting. A copy of the executed LOI is attached.

With construction of the water storage facility and distribution system well underway, staff has utilized the agreed upon terms of the LOI to draft an Agreement for the Sale of Reclaimed Water with Riverhill. Riverhill desires to finalize and execute this Agreement at this time so that they can proceed with the construction of their own onsite reclaimed water storage facility as well as enhancements to their irrigation system.

RECOMMENDED ACTION

Staff recommends approval of the Agreement for the Sale of Reclaimed Water with Riverhill CC, LP.

The agreement for Riverhill Country Club, LP
was not available by press time.

The agreement will be provided
as soon as it is available,
but definitely before the meeting.



Exhibit A

Riverhill Country Club Reuse Area



Legend

 Reuse Service Area



joyoung
4/6/2017 14:02
0 325 650 1,300
Scale In Feet



City of Kerrville

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Letter of Intent for Supply of Reclaimed Water

July 21, 2016

Mr. John Junker
CEO – Southern Golf Properties
100 Riverhill Club Lane
Kerrville, Texas 78028

Dear Mr. Junker,

This letter is to confirm the mutual intent between the City of Kerrville ("City") and Southern Golf Properties to enter into a funding and use agreement(s) for the provision of reclaimed water for irrigation purposes at the Riverhill Golf Course. The City of Kerrville is designing a reclaimed water project that with the capability of delivering adequate supplies of non-potable water that will allow the Riverhill Golf Course to irrigate with reclaimed water. Completion of the city's reclaimed water project (the "Project") is anticipated early in the 2018 calendar year.

Both parties agree to work cooperatively according to the principal terms and conditions outlined as follows:

1. City will deliver reclaimed water to a point within the Riverhill Golf Course property as mutually agreed to by both parties ("Delivery Point");
2. City will cause to be designed, constructed, and installed all the improvements required to deliver reclaimed water to the Delivery Point at its sole expense. Said improvements to include, but not be limited to, distribution mains, pump station as the City of Kerrville Water Reclamation Plant, valve system(s) at the Delivery Point, SCADA system(s), and other related appurtenances;
3. Southern Golf Properties will cause to be designed, constructed, and installed all the improvements required for the storage of reclaimed water at the Delivery Point and the on-site use of the reclaimed water at its sole expense. Said improvements to include, but not be limited to, surface storage, pumping systems, distribution systems, and other related appurtenances;
4. Southern Golf Properties agrees to coordinate with the City on the design of the Project by identifying the location of on-site utility systems, location of on-site reclaimed water storage facilities, and, if appropriate, the dedication of easements or rights-of-way to the City on the Southern Golf Property's property to accommodate the location and maintenance of reclaimed water infrastructure;
5. City intends to apply to the City of Kerrville Economic Improvement Corporation for funds adequate to cover the costs for the construction and installation of the distribution system portion of the Project to deliver reclaimed water from the City of Kerrville Water Reclamation Plant to the Delivery Point. Southern Golf Properties agrees to be a party to the application;

6. Southern Golf Properties agrees that it will take all actions necessary to begin utilizing reclaimed water for irrigation purposes within 24 months of the city's completion of the Project;
7. City's Project will provide a peak daily demand of 600,00 gallons of reclaimed water to the Delivery Point subject to the following conditions:
 - a. A weekly pumping schedule established by the City and Southern Golf Properties that will satisfy the peak daily demand at the Delivery Point,
 - b. Except where the City needs to utilize reclaimed water supply as part of its potential direct potable reuse program, and
 - c. City will not add additional reclaimed water customers that impede the City's ability to meet the peak daily demand.
8. Southern Golf Properties and the City will enter into a reclaimed supply funding and use agreement(s) that will include the following provisions:
 - a. 20-year term,
 - b. Application of standard base and volumetric rates established by the City in effect at the time that Southern Golf Properties begins to take reclaimed water,
 - c. Riverhill will be billed monthly with charges being the base rate in addition to the application of the volumetric rate for actual gallons delivered to the Delivery Point, which shall be metered. The monthly statement sent by the City will show the gallons metered to the Delivery Point;
 - d. Initial base and volumetric rates to remain frozen for the first (7) seven years of consumption;
 - e. Maximum cap of two percent (2%) on annual increases to base and volumetric rates, and
 - f. Guarantee that Southern Golf Properties will use its reclaimed water in accordance with state and federal law; and
9. This Letter of Intent does not constitute or create, and shall not be deemed to constitute or create, any legally binding or enforceable obligation on the part of either party to this letter of intent. No such obligation shall be created, except by the execution of a separate written agreement between the parties regarding the proposed transaction, and then only in accordance with the terms and conditions of such separate agreement.

By providing the signatures below, each party confirms its acceptance of the terms and conditions of this Letter of Intent.

Sincerely,



Todd Parton
City Manager

By affixing my signature below I acknowledge that I am duly authorized to execute this MOU on behalf of my organization and accept the terms and conditions outlined herein.

On behalf of Southern Golf Properties:

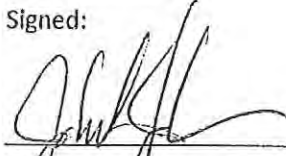
On behalf of the City of Kerrville:

Date: 7/21/16

Date: 7/22/2016

Signed:

Signed:



Mr. John Junker, CEO
Southern Golf Properties

Mr. Todd Parton, City Manager
City of Kerrville, Texas

Agenda Item:

5E. Direction to staff regarding Scenic Cities Certification Program. (staff)

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

SUBJECT: Scenic Cities Certification Program

FOR AGENDA OF: 04/11/17

DATE SUBMITTED: 04/04/17

SUBMITTED BY: Don Davis
Interim City Manager

CLEARANCES:

EXHIBITS:

AGENDA MAILED TO:



APPROVED FOR SUBMITTAL BY CITY MANAGER:

Expenditure Required:	Current Balance in Account:	Amount Budgeted:	Account Number:
\$0	\$0	\$0	

PAYMENT TO BE MADE TO:

REVIEWED BY THE FINANCE DEPARTMENT:

SUMMARY STATEMENT

Staff had a good meeting with Anne Culver, Executive Director, Scenic Cities Certification Program, last week. We have also met this week and discussed the advantages and disadvantages of joining the program. The deadline for joining the program was March. Ann said she would extend the deadline; however, our application for grading would be due in June. Existing staff does not have the time to work on this program. It would be a perfect program/learning experience for an intern, and we have discussed the possibility of hiring one. However, they are not available until May. In short, I do not think participation is right at this time.

RECOMMENDED ACTION

I recommend that we not participate in the Scenic Cities Certification Program this year. Further, I would recommend that we reconsider joining in January 2018.

Agenda Item:

5F. Amendments to the Ethics Policy for Elected and Appointed Officials – City of Kerrville, Texas. (staff)

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

SUBJECT: Amendments to the Ethics Policy for Elected and Appointed Officials –
City of Kerrville, Texas

FOR AGENDA OF: April 11, 2017

DATE SUBMITTED: April 4, 2017

SUBMITTED BY: Don Davis
Interim City Manager

CLEARANCES:

EXHIBITS: Ethics Policy



APPROVED FOR SUBMITTAL BY CITY MANAGER:

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

PAYMENT TO BE MADE TO:

REVIEWED BY THE FINANCE DEPARTMENT:

SUMMARY STATEMENT

At the February 21 work session, City Council discussed several topics, and Council has acted on some of those topics by placing them in the Meeting Rules. Other topics have yet to be acted upon; therefore, staff is bringing these issues to you at this meeting and seeking direction whether to include these items in the city's Ethics Policy.

1. Council to submit questions to staff prior to meetings to allow time to research; this would make meetings more efficient.
2. When staff provides information, conversations, emails, etc. to council, such should be considered privileged information until city council takes action on the subject. It is inappropriate to provide such information to citizens or the media. If a councilmember quotes a document or receives information, they should provide a copy of the documents/information to all councilmembers prior to the meeting.
3. Council attendance at board meetings should be avoided.

Council may also wish to discuss other topics for inclusion or amendment to the Ethics Policy.

RECOMMENDED ACTION

Provide direction to staff.

ETHICS POLICY

for Elected and Appointed Officials - City of Kerrville, Texas

I. Purpose.

City Council has adopted this Ethics Policy as a way to encourage and ensure the highest standards of personal and public conduct during tenure in office. Adherence to this Policy will help maintain confidence and trust in the representatives and decision-makers for the City of Kerrville, Texas ("City"), each of whom must remain independent, impartial, and accountable to the citizens and businesses that they serve. In addition to this Policy, elected and appointed officials must adhere to state laws, the City Charter, and other City policies, which govern their conduct.

II. Goals.

The goals of this Policy are that both Councilmembers and City Officials:

- A. comply with both the letter and spirit of the laws and policies affecting the operations of government;
- B. remain independent, impartial, and fair in their judgment and actions; and
- C. use their respective office or position for the public good and not for personal gain.

III. Definitions.

The following terms when used in this Policy have the following meanings:

Board means a board, commission, or committee of the City, in whatever form and whether advisory or nonadvisory and temporary or permanent.

City Council means the legislative and governing body of the City consisting of the mayor and councilmembers.

City Official means City Council and any appointed member of a Board.

IV. Standards of Conduct.

A. *Act in the Public Interest:* Recognizing that stewardship of the public interest must be their primary concern, City Officials shall work for the common good of the whole City and not for any private or personal interest. Furthermore, each City Official shall assure fair and equal treatment of all persons and matters presented to them in their service to the City. City Officials are prohibited from using their positions to influence any City-government decision in which they have a personal interest. Under the City Charter, City Council assumes the duties of office without party or partisan mark or designation.

B. *Comply with Laws:* City officials shall comply with the laws of the nation, the State of Texas, and the City in the performance of their public duties. These laws include the United States and Texas constitutions; laws pertaining to conflicts of interest, election campaigns, financial disclosures, open government; and the City Charter, ordinances, and policies. City officials acknowledge that most information created by a City Official, regardless of whether it

is created on a personal electronic device or with a personal email account, is subject to public disclosure under the Texas Public Information Act.

C. *Civility*: The professional and personal conduct of City Officials must be above reproach and avoid even the appearance of impropriety. City Officials shall refrain from abusive conduct, personal charges, or verbal attacks upon the character or motives of the public or other City Officials and employees. Each Official should strive to promote and maintain courtesy, civility, and collegiality.

D. *Respect the Process*: City Officials shall perform their duties in accordance with the processes and rules of order established by the City Council, which govern the public deliberation of public policy issues, meaningful involvement of the public, and implementation of policy decisions of the City Council by City staff.

E. *Meeting Attendance*: City Officials are obligated to attend meetings and come prepared with an awareness and a fairly good and well-informed understanding of the agenda issues; listen courteously and attentively to all public discussions before the body; and focus on the business at hand. City Officials shall refrain from interrupting other speakers, making personal comments not germane to the business of the body, or to otherwise interfere with the orderly conduct of meetings, all of which is in accordance with Council's applicable meeting rules and procedures.

F. *Decisions Based on Merit*: City Officials should review the agenda material, participate in public discussion, and base all decisions on the merits and substance of the matter at hand.

G. *Communication*: Prior to taking final action on a matter under consideration, City Officials shall publicly share any substantive information, which they may have received from sources outside the public decision-making process that is relevant to such action by the Council or Board.

H. *Conflicts of Interest and Disclosure*: City Officials shall familiarize themselves and adhere to the following conflicts of interest and disclosure statutes and principles:

a. Ch. 171, Tx. Local Gov't Code – requires City Council and some City Officials to file an affidavit disclosing a substantial interest in a business or property that would be beneficially affected by a decision of the Council or Board and thereafter abstaining from participation in discussion and a vote. Once disclosure is made, the City Official shall leave the meeting to ensure their presence does not hinder the discussion of the item or influence the vote.

b. Ch. 176, Tx. Local Gov't Code – requires City Council to file a conflicts disclosure statement disclosing any business relationship with a person or business doing business with the City or being considered by the City for a business relationship.

c. Section 176.003(a)(2)(B), Tx. Local Gov't Code – requires the disclosure of gifts of an aggregate value of more than \$250.00 in a twelve (12) month period, other than gifts of food, lodging, transportation, or entertainment and accepted as a gift.

d. Sections 553.001-553.003, Tx. Gov't Code – requires the filing of an affidavit before the date the City will acquire a property in which a public servant has an interest.

e. Penal Code provisions concerning corruption, including Section 36.02 prohibiting bribes, Section 36.08(d) prohibiting illegal benefits, Section 36.09 prohibiting receipt of prohibited gifts, Section 39.02 concerning abuse of official capacity, and Section 39.06(a) concerning misuse of official information.

I. *Advocacy*: City Officials shall not utilize the City's name or logo for purposes of endorsing any political candidate or business. City Officials shall only represent the official policies or positions of the City Council or Board to the best of their ability, and such representation may only occur upon receiving the specific approval of City Council or Board. When presenting their individual opinions and positions, City Officials shall explicitly state they do not represent their body or the City nor will they allow any inference that they do.

J. *Confidential Information*: City Officials shall respect the confidentiality of information concerning City property, personnel, or proceedings of the City. They shall neither disclose confidential information without proper legal authorization nor use such information to advance their personal interests.

K. *Use of Public Resources*: City Officials shall not use public resources generally unavailable to the public, such as City staff time, equipment, supplies, or facilities for private gain or personal purposes.

L. *Representation of Private Interests*: In keeping with their role as stewards of public interests, City Officials shall not appear on behalf of private interests of third parties before the Council or Board.

M. *Policy Role of City Officials*: City Officials shall respect and adhere to the City's governmental structure as outlined in the City's charter, policies, and procedures. In this structure, the City Council determines the policies of the City with information, analysis, and advice provided by the public, Boards, and staff. City Officials therefore shall not interfere with the administrative functions of the City or the professional duties of the City staff; nor shall they impair the ability of staff to implement Council policy decisions.

N. *Independence of Boards*: Because of the value of the independent advice of Boards to the public decision-making process, City Officials shall refrain from using their position to unduly influence the deliberations or outcomes of Board proceedings.

O. *Positive Workplace Environment*: City Officials shall support the maintenance of a positive and constructive work place environment for City employees and for citizens and businesses interacting with the City. City Officials shall recognize their special role in dealing with City employees and refrain from creating the perception of inappropriate direction to staff.

V. Implementation.

As an expression of the expected standards of conduct for City Officials, the Policy is self-enforcing. It therefore is most effective when City Officials are thoroughly familiar with it and embrace its provisions. Ethical standards will be included in the orientation for new Councilmembers and new Board members. City Officials entering office must sign the attached statement affirming that they have read, understood, and agree to follow this Policy. City Council shall periodically review this Policy and consider any revisions.

VI. Compliance and Enforcement.

The Policy expresses standards of ethical conduct expected for City Officials. City Officials have the primary responsibility to assure that ethical standards are understood and met and that the public maintains full confidence in the integrity of City government. Councilmembers, as well as Board members, have the responsibility to intervene when a City Official's actions appear to be in violation of the Policy and such actions or inactions are brought to their attention. The City Council may impose sanctions, such as reprimand, formal censure, or loss of assignment on a City Official whose conduct does not comply with this Policy. The City Council also may act to remove members of Boards from office.

STATEMENT OF COMMITMENT
Ethics Policy for Elected and Appointed Officials - City of Kerrville, Texas

As a member of the Kerrville City Council or a City board, commission, or committee, I agree to uphold the Policy and conduct myself by the following model of behavior. I will:

- Recognize the worth of City Officials and employees and appreciate their individual talents, perspectives, and contributions;
- Help create an atmosphere of respect and civility where the public, City Officials, and City staff are free to express their ideas and work to their full potential;
- Conduct my personal and public affairs with honesty, integrity, fairness and respect for others;
- Respect the dignity and privacy of individuals and organizations;
- Keep the common good as my highest purpose and focus on achieving constructive solutions for public benefit;
- Avoid and discourage conduct which is divisive or harmful to the best interests of the City;
- Treat all people with whom I come in contact in a manner I wish to be treated;
- Before speaking or acting, I will ask myself the following questions:
 1. Is it the truth?
 2. Is it fair to all concerned?
 3. Will it build goodwill and better relationships?
 4. Will it be beneficial to all concerned?

I affirm that I have read and that I understand, accept and support the Policy.

Name; Position; Council, Board, etc.

Signature

Date

Agenda Item:

6A. Appointment to the Kerr Emergency 9-1-1 Network Board. (staff)

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

SUBJECT: Appointment to the Kerr Emergency 9-1-1 Network Board

FOR AGENDA OF: April 11, 2017

DATE SUBMITTED: March 30, 2017

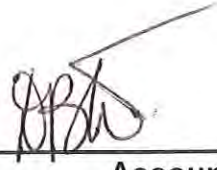
SUBMITTED BY: Chief David Knight

CLEARANCES: Don David
Interim City Manager

EXHIBITS: Board List

AGENDA MAILED TO:

APPROVED FOR SUBMITTAL BY CITY MANAGER:



Expenditure

Current Balance

Amount

Account

Required:

in Account:

Budgeted:

Number:

\$

\$

\$

\$

PAYMENT TO BE MADE TO:

REVIEWED BY THE FINANCE DIRECTOR:

SUMMARY STATEMENT

Consider appointment to the following board:

Kerr Emergency 9-1-1 Network Board: One regular member position that expired March 31, 2017: Paul Huchton.

Mr. Huchton is the public safety communications manager for the Kerrville Police Department. Police Chief David Knight recommends that Mr. Huchton be reappointed.

RECOMMENDED ACTION

Consider appointment.

Kerr Emergency 9-1-1 Network Board of Managers And Staff as of June 2016

Mr. Paul Huchton

Board Chairman

Member Representing the City of Kerrville

205 Sparkman Dr.
Kerrville, Texas 78028
830-377-6662

830-257-2711 (fax)

Paul.huchton@kerrvilletx.gov

Original Appointment 01/2013

Current Term Expires: 03/2017

Mr. Mark Del Toro

Executive Director

830-792-5911 (O)

830-739-5912 (C)

830-792-5923 (fax)

Mr. Robert Neuman

Board Vice-Chairman

Member Representing Kerr County

405 Alvin Dr.
Kerrville, Texas 78028
830-896-1791

Robert.neuman@kerrcad.org

Original Appointment 09/2014

Current Term Expires: 09/2016

Mr. Nick LaMontia

GIS/Address Coordinator

830-792-5911 (O)

830-792-5923 (fax)

Mrs. Dene' Huffaker

Member Representing the City of Ingram

158 Ranchland Dr. (P.O. Box 204)
Mountain Home, Texas 78052
830-739-1956

dhuffaker@hctc.net

Original Appointment: 4/2009

Current Term Expires: 04/2017

Mr. Ronald Vick

Member Representing Kerr County

1845 Foothills Dr.
Kerrville, Texas 78028
830-792-4111

830-257-7080 (fax)

rvick@ft.newyorklife.com

Original Appointment 10/2004

Current Term Expires: 05/2017

Mr. Gerald "Jerry" Vincent

Member Representing Kerr Area Rural Fire Association

728 Elp Pass II Road
Center Point, Texas 78010
830-634-7814

gcv1@hctc.net

Original Appointment: 07/2008

Current Term Expires: 09/2016

Agenda Item:

6B. Appointments to the Food Service Advisory Board. (staff)

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

SUBJECT: Appointments to the Food Service Advisory Board

FOR AGENDA OF: April 11, 2017

DATE SUBMITTED: March 31, 2017

SUBMITTED BY: Brenda Craig
City Secretary

CLEARANCES: Don Davis
Interim City Manager

EXHIBITS: Board List

APPROVED FOR SUBMITTAL BY CITY MANAGER:



SUMMARY STATEMENT

Consider appointments to the following board:

Food Service Advisory Board: Four terms that expired on December 1, 2016.

RECOMMENDED ACTION

Consider appointments.

FOOD SERVICE ADVISORY BOARD

	<u>Telephone</u>	<u>Orig. Appt.</u>	<u>Re-Appt. Date</u>	<u>Exp. Date</u>
YOUNG, DARRELL Chairperson 1326 Ranchero Rd.	257-0800 (O) 896-1852 (H)	12-11-12	12-09-14	12-01-16
DITTMAR, REBECCA Vice-Chairperson 155 Aqua Vista	353-1305 (O) 896-9037 (H)	12-11-12	12-09-14	12-01-16
AAMODT, "GARY", JR. 160 Kerrville South Dr.	257-3533 (O) 896-7979 (H) 370-4416 (C)	08-11-15		12-01-17
GONZALES, DAVID C. 704 Englemann Oak Dr. Fredericksburg, TX 78624	830-315-2750 (O) 940-452-5486 (H)	08-27-13	12-09-14	12-01-16
MOLINA, RUBEN 325 George Ct.	896-3313 (O) 377-2768 (H)	01-12-16		12-01-17
TOLLE, BECKY 540 Fairway Dr.	377-4255 (O) 837-0076 (H)	01-12-16		12-01-17
VAZQUEZ, ABEL 158 Valley View	257-0606 (O) 896-9899 (H)	01-11-11	12-09-14	12-01-16
COUNCIL LIAISON: STEPHEN FINE 1210 Virginia Dr.	285-4234 (C) 896-2934 (H)			
CITY STAFF: Daryle Poe Health Specialist	258-1173			
Danny Batts Director of Bldg. Services	258-1178 (O) 896-0517 (F)			

Qualifications: Shall be composed of local certified food managers from the food service or food processing industry, any member of the local restaurant association who owns or conducts business in the city of Kerrville or any citizen of Kerr County qualified by training and/or experience to advise on the application of the food code.

Powers and Duties: To hear appeals and make recommendations to the health official for variances from provisions of the code; to provide assistance to the health official concerning interpretations of the code; to advise the city manager, at his request, regarding the suspension or revocation of food permits; and to consider and make recommendations to city council regarding any matters relating to the food service program.

Term of Office: Two Years; no member shall serve more than two consecutive terms.

Quorum: Four

Number of Members: Seven

Meeting Time & Place: Tri-annually (April, August & Dec), Third Tuesday, 3:00 p.m., Development Services

Absences: Any member who misses three consecutive regular meetings shall thus cause his/her seat on the board to become vacant. The council shall then appoint a new member to fill the vacancy.

Established by: Ordinance 1989-30; amended by Ordinance 1994-11
Code of Ordinances: Chapter 58 - Article II - Section 58-34

Revised: April 15, 2016

Agenda Item:

6C. Appointment to the Zoning Board of Adjustment. (staff)

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

SUBJECT: Appointment to the Zoning Board of Adjustment

FOR AGENDA OF: April 11, 2017 **DATE SUBMITTED:** March 31, 2017

SUBMITTED BY: Brenda Craig **CLEARANCES:** Don Davis
City Secretary *BC* Interim City Manager

EXHIBITS: Board List

AGENDA MAILED TO:

APPROVED FOR SUBMITTAL BY CITY MANAGER:



SUMMARY STATEMENT

Consider appointment to the following board:

Zoning Board of Adjustment: One regular member position will expire on September 30, 2017, due to the resignation of Justin MacDonald.

RECOMMENDED ACTION

Consider appointment.

ZONING BOARD OF ADJUSTMENT

	<u>Telephone</u>	<u>Orig. Appt.</u>	<u>Re-Appt. Date</u>	<u>Exp. Date</u>
STILWELL, LINDA Chair 415 Timber Ridge Dr.	329-6456 (C)	01-10-12** 10-11-11*	10-13-15	09-30-17
LEWIS, PETER Vice-Chair 334 West Water St.	896-1707 (H) 896-4220 (W)	12-09-14	10-25-16	09-30-18
VACANT				9-30-17
EYCHNER, JUDY 604 Cardinal	370-1587 (C) 257-5010 (O)	10-22-13** 01-08-13*	10-25-16	09-30-18
LIGON, SAM 431 Valley Drive	895-4431 (H) 895-5111 (W)	10-22-13	10-13-15	09-30-17
<u>ALTERNATES:</u>				
ALMOND, DANNY 3540 Trail Head Dr.	214-202-4819 (C)	10-25-16		09-30-18
PARKS, ROBERT 2515 Rogers Circle	896-5861 (H) 928-1616 (C)	12-09-14	10-25-16	09-30-18
CITY STAFF: Gordon Browning Interim City Planner	258-1184 (O)			

Qualifications: The board shall be composed of five members all of whom shall be residents and qualified voters of the city of Kerrville.

Alternate Members: Two alternate members will be appointed who shall be qualified voters of the city to serve concurrent terms as the regular members. The alternate members will serve on the board in place of an absent member when requested to do so by the chairperson of the board so that all cases to be heard by the board shall always be heard by a minimum of four members.

Powers and Duties: 1. The board shall hear and decide an appeal that alleges an error in any order, decision, or determination made by an administrative official of the city in the interpretation or enforcement of Chapter 211 of the Texas Local Government Code, as amended, or the zoning code.

2. The board shall grant, upon written request, variances from the height, yard, area, coverage, floor-to-area, and buffering regulations and required number of parking and loading spaces prescribed by the zoning code, which variances are not contrary to the public interest, and which, because of special conditions, a literal enforcement of the ordinance would result in unnecessary hardship.

Term of Office: Two years. The members shall be appointed by a majority vote of the members of the city council. No member or alternate member shall serve more than three consecutive full terms on the board without having at least one full year off of the board between terms.

Quorum: Three members

Number of Members: Five with two alternates

Meeting Time & Place: At the call of the chairperson and at such other times as the members of the board shall determine.

Absences: Cause for removal of a member of the board by the city council shall be deemed to exist if during any period of twelve consecutive months for any reason other than a medical reason which prevents the member's attendance, the member is absent from the greater of three called meetings of the board or 25 percent of the called meetings of the board.

Established by: Ordinance No. 1997-07

Revised: February 9, 2017

* Appointed as alternate

** Appointed as full member