AGENDA FOR REGULAR MEETING

KERRVILLE CITY COUNCIL

TUESDAY, NOVEMBER 23, 2010, 6:00 P.M.

CITY HALL COUNCIL CHAMBERS

800 JUNCTION HIGHWAY, KERRVILLE, TEXAS

Agenda Item:
(Mayor)

2A. Keri & Patrick Wilt, owners of Grape Juice, the Texas Downtown Association President's Award for Best Commercial Interior 2010.

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

SUBJECT: Presentation to Keri & Patrick Wilt, owners of Grape Juice, the Texas Downtown Association President's Award for Best Commercial Interior 2010

FOR AGENDA OF: November 23, 2010 **DATE SUBMITTED:** November 15, 2010

SUBMITTED BY: Mindy N. Wendele, Director of Business Programs & Public Affairs **CLEARANCES:** Todd Parton, City Manager

EXHIBITS:

AGENDA MAILED TO:

APPROVED FOR SUBMITTAL BY CITY MANAGER: TP

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

PAYMENT TO BE MADE TO:
REVIEWED BY THE FINANCE DIRECTOR:

SUMMARY STATEMENT

The Texas Downtown Association awarded **Grape Juice** the President's Award for **Best Commercial Interior 2010** at their annual conference in El Paso on November 11, 2010. The awards gala was held at the Camino Real Hotel in downtown El Paso where our Main Street Manager, Johnna Wade, was on hand to accept the award for Keri & Patrick Wilt, owners of the establishment.

Nominated by Kerrville Main Street, Grape Juice joins an impressive list of Presidential Winners throughout the years including Union State Bank, Kerr County Abstract & Title, Rails ~ A Cafe at the Depot and the Kathleen C. Cailloux Performing Arts Center.

RECOMMENDED ACTION

Present award to Mr. and Mrs. Wilt by Mayor Wampler, assisted by KMSAB Board chairman Matt Sletten and KMS Manager Johnna Wade.

Agenda Item:
(Staff)

2B. Recognition of street department employees.

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

SUBJECT: Recognition of the Street Division for saving the city of Kerrville nearly $700,000 by reconstructing streets with in-house labor and equipment.

FOR AGENDA OF: 11/23/10 **DATE SUBMITTED**: 11/15/10

SUBMITTED BY: Charlie Hastings CH Public Works Director

CLEARANCES: Todd Parton City Manager

EXHIBITS:

AGENDA MAILED TO:

APPROVED FOR SUBMITTAL BY CITY MANAGER: TP

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

PAYMENT TO BE MADE TO:
REVIEWED BY THE FINANCE DIRECTOR:

SUMMARY STATEMENT

During the summer and fall months of 2010, Street Division personnel placed over 4400 tons of hot mix asphalt and 5000 tons of limestone road base in their efforts to reconstruct 2.1 miles and overlay 1.5 miles of streets. This work was done for a total cost of $550,000; a cost savings of nearly $700,000. The street division of public works is to be recognized and commended for their efforts and success in transforming a "pot-hole" crew into a full-blown street reconstruction crew.

RECOMMENDED ACTION

The Director of Public Works recommends that the Mayor recognize and commend the Street Division for their 2010 street work efforts and for saving the city of Kerrville nearly $700,000.

Agenda Item:
(Staff)

3A. Approval of the minutes of the regular city council meeting held November 9, 2010.

CITY COUNCIL MINUTES KERRVILLE, TEXAS
REGULAR MEETING NOVEMBER 9, 2010

On November 9, 2010, the Kerrville City Council meeting was called to order by Mayor Wampler at 6:00 p.m. in the city hall council chambers, 800 Junction Highway. The invocation was offered by Reverend Fern Lancaster, First Assembly of God Church, followed by the Pledge of Allegiance led by Russ Holmer, Military Officers Association of America.

MEMBERS PRESENT:

David Wampler	Mayor
R. Bruce Motheral	Mayor Pro Tem
Gene Allen	Councilmember
T. Scott Gross	Councilmember
Stacie Keeble	Councilmember

MEMBER ABSENT: No one

STAFF PRESENT:

Mike Hayes	City Attorney
Kristine Ondrias	Assistant City Manager
Brenda G. Craig	City Secretary
Travis Cochrane	Director of Information Technology
Mindy Wendele	Director of Business Programs
Mike Erwin	Director of Finance
Robert Ojeda	Fire Chief
Kevin Coleman	Director of Development Services
Kim Meismer	Director of General Operations
Charlie Hastings	Director of Public Works
John Young	Police Chief

VISITORS PRESENT: List on file in city secretary's office.

1. VISITORS/CITIZENS FORUM: No one spoke.

2. RECOGNITION AND COMMENDATION:

2A. Kerrville Police Chief John Young for his election as the President of the Texas Police Chiefs Association for 2010-2011. Mayor Wampler presented a certificate of recognition to Police Chief John Young.

3. CONSENT AGENDA:

Mr. Allen moved for approval of items 3A through 3F; Mr. Motheral seconded the motion and it passed 5-0:

3A. Approval of the minutes of the city council meetings held on October 12, October 26, and October 27, 2010.

3B. Resolution No. 037-2010 authorizing the closure of a portion of Memorial Highway (Hwy 27) during certain hours for the Kerrville Main Street Annual Holiday Lighted Parade and authorizing the mayor to execute an agreement for

the temporary closure of state right-of-way with the Texas Department of Transportation.
3C. Authorize execution of a construction contract with N.G. Painting L.P. for rehabilitation of the College Cove ground storage tank in the amount of $183,860.00 and execution of change orders in an amount not to exceed $18,500.00.
3D. Authorize execution of a Homeland Security grant in the amount of $125,000 for the police department to purchase communications equipment and backup power generators.
3E. Authorize execution of a lease agreement for a city-wide telephone system and telephony services.
3F. Authorize application for the 2010 Texas Capital Fund Grant for the Harper Road utility extension project.
END OF CONSENT AGENDA

4. ORDINANCE , SECOND AND FINAL READING:
4A. Ordinance No. 2010-023 terminating the automatically repeating allowance of updated service credits and increased prior and current service annuities under the Texas Municipal Retirement System; and establishing an effective date for the ordinance. Mayor Wampler read the ordinance by title only.

Mayor Wampler questioned if the adjustment was necessary to balance the FY11 budget; Ms. Meismer agreed.

Mr. Motheral moved for approval of Ordinance No. 2010-23 on second and final reading; Mr. Gross seconded the motion and it passed 5-0.

5. ORDINANCE , FIRST READING:
5A. 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; containing a cumulative clause; containing a savings and severability clause; establishing an effective date; and providing other matters related to the subject. Mayor Wampler read the ordinance by title only.

Mr. Coleman recommended approval of the ordinance to expand the membership qualifications to include any state licensed mechanical contractor in order to allow flexibility in filling positions on the board.

Ms. Keeble moved for approval of the ordinance on first reading; Mr. Motheral seconded the motion and it passed 5-0.

5B. An ordinance amending Chapter 58 "Health and Sanitation" of the Code of Ordinances of the City of Kerrville, Texas, by adding a new Article IV "Illegal Smoking Products and Illegal Smoking Paraphernalia"; containing a cumulative clause; containing a savings and severability clause; providing for a penalty for violation of any provision hereof; ordering publication; providing for an effective date; and providing other matters related to the subject. Mayor Wampler read the ordinance by title only.

Chief Young noted the synthetic cannabinoids, also known as K2 or Spice, was a synthetic drug that mimicked the chemical found in marijuana. It was marketed as herbal incense not for human consumption and was sold in convenience stores and tobacco shops outside the city limits. Passage of the ordinance would prohibit the sale, possession, and use of synthetic cannabinoids in the city. He confirmed this was currently an unregulated drug; however there was pending state legislation that would make the drug illegal to possess or sell in Texas.

Police Officer Mike Baker stated that several states and cities had banned K2; he noted that stores inside Kerrville City Limits were not currently selling the product, but several stores outside the city were.

The following person spoke:
- Lori Gagne, representing KISD, discussed one case at Tivy High School. KISD supported passage of the ordinance as it would assist KISD in enforcement and in placement of students in alternative school.
- It was noted that a letter had been received from Schreiner University in support of the ordinance banning synthetic cannabis.

Mr. Gross moved for approval of the ordinance on first reading; Mr. Allen seconded the motion and it passed 5-0.

5C. An ordinance amending Chapter 118 "Waterways", Article II, "City Water Impoundment Regulations," of the Code of Ordinances of the City of Kerrville, Texas, by clarifying that the construction of habitable structures is prohibited within certain areas adjacent to the city's impounded waters of the Guadalupe River and adding a definition for "habitable structure"; containing a cumulative clause; containing a savings and severability clause; establishing an effective date; ordering publication; and providing other matters related to the subject. Mayor Wampler read the ordinance by title only.

Mr. Parton noted council instructed staff to review ordinances, specifically Chapter 118-33, Article II of the Code of Ordinances that prohibited or limited development in the flood easement, and propose possible amendments that would facilitate construction of a river trail and amenities; the proposed amendment would allow construction of non-habitable structures in the flood easement. Staff would continue to reevaluate floodplain management codes and other flood water mitigation regulations to accommodate potential development in flood easement areas; city council would have to consider potential developments on a case by case basis.

Mr. Motheral moved for approval of the ordinance on first reading; Ms. Keeble seconded the motion and it passed 5-0.

6. INFORMATION AND DISCUSSION:

6A. Update regarding Lower Colorado River Authority Transmission Services Corporation's (LCRA-TSC) application for the proposed McCamey D to Kendall to Gillespie CREZ project (PUC Docket No. 38354).

Mr. Hayes noted the administrative law judges were expected to issue their opinion to the Public Utility Commission (PUC) in late December; it was anticipated the PUC would make a determination on the route of the CREZ line by late January or early February.

6B. Kerrville budget/economic update.

Mr. Erwin noted the local economy continued to be flat with virtually no improvement. Sales tax up slightly but HOT tax down.

7. ITEMS FOR FUTURE AGENDAS

- Naming of rivertrail.
- Edwards Plateau Conservation Plan and how it could affect Kerrville and the surrounding land owners; possible resolution from city council.

8. ANNOUNCEMENTS OF COMMUNITY INTEREST:

- Veterans Day ceremony at the Kerr County Courthouse at 11:00 a.m. on November 11.

9. EXECUTIVE SESSION:

Ms. Keeble moved for the city council to go into executive closed session under Section 551.071 (consultation with attorney) 551.072 (deliberation regarding real property), and 551.087 (deliberation regarding economic development negotiations) of the Texas Government Code; the motion was seconded by Mr. Motheral and passed 5-0 to discuss the following matters:

Section 551.071:

- Contemplated litigation involving a claim against C&C Groundwater Services.

Sections 551.071, 551.072 and 551.087:

- Negotiations with Hunter Equity regarding the construction of a multi-purpose meeting facility for the city of Kerrville.

At 6:31 p.m. the regular meeting recessed and council went into executive closed session at 6:34 p.m. At 7:07 p.m. the executive closed session recessed and council returned to open session at 7:08 p.m. The mayor announced that no action had been taken in executive session.

10. ACTION ON ITEMS DISCUSSED IN EXECUTIVE SESSION

Negotiations with Hunter Equity regarding the construction of a multi-purpose meeting facility for the city of Kerrville.

Mr. Motheral moved to authorize an additional 30 days for receipt of information from Hunter Equity. Mr. Gross seconded the motion and it passed 5-0.

ADJOURNMENT. The meeting adjourned at 7:09 p.m.

APPROVED: ____________________ ____________________________
David Wampler, Mayor

ATTEST:

____
Brenda G. Craig, City Secretary

Agenda Item:
(Staff)

3B. A resolution canceling the regular meeting of the city council scheduled for December 28, 2010.

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

SUBJECT: Resolution canceling the second city council meeting in December

FOR AGENDA OF: November 23, 2010 **DATE SUBMITTED**: November 10, 2010

SUBMITTED BY: Brenda Craig BC
City Secretary

CLEARANCES: Todd Parton
City Manager

EXHIBITS: Resolution

AGENDA MAILED TO:

APPROVED FOR SUBMITTAL BY CITY MANAGER: TP

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

PAYMENT TO BE MADE TO:

REVIEWED BY THE FINANCE DIRECTOR:

SUMMARY STATEMENT

As scheduled, the second city council meeting in December will fall on December 28. It has been customary for city council to cancel the second meeting in December due to the holidays.

RECOMMENDED ACTION

The city secretary recommends that city council approve the resolution canceling the second city council meeting in December 2010.

CITY OF KERRVILLE, TEXAS
RESOLUTION NO. ___-2010

A RESOLUTION CANCELING THE REGULAR MEETING OF THE CITY COUNCIL SCHEDULED FOR DECEMBER 28, 2010

WHEREAS, Section 2-31 of the Code of Ordinances for the City of Kerrville provides that City Council meetings are to be held the second and fourth Tuesdays of each month; and

WHEREAS, Section 2-31 also provides the City Council may, by majority vote at a regular meeting, change the days or times of meetings as circumstances may necessitate;

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

The regular meeting of the City Council scheduled for December 28, 2010, is hereby canceled.

PASSED AND APPROVED ON this the _____ day of _______________ A.D., 2010.

____
David Wampler, Mayor

ATTEST:

____
Brenda G. Craig, City Clerk

APPROVED AS TO FORM:

____
Michael C. Hayes, City Attorney

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Agenda Item:
(Staff)

3C. Authorize execution of a contract for the renewal of the enterprise agreement with Microsoft, in the amount of $32,897.17.

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

SUBJECT: Authorization to Execute Contract for Renewal of Microsoft Enterprise Agreement

FOR AGENDA OF: November 23, 2010 **DATE SUBMITTED**: November 15, 2010

SUBMITTED BY: Travis Cochrane TC **CLEARANCES:** Kim Meismer KM
Director of Information Technology Director of General Operations

EXHIBITS: Contract

AGENDA MAILED TO:

APPROVED FOR SUBMITTAL BY CITY MANAGER: TP

Expenditure Required:	Current Balance in Account:	Amount Budgeted:	Account Number:
$ 32,897.17	$	$ 40,000	01-807-112

PAYMENT TO BE MADE TO:
REVIEWED BY THE FINANCE DIRECTOR:

SUMMARY STATEMENT

With changing technology, the use of the Microsoft Enterprise Agreement is recommended as the most effective and economical means of managing licenses and new purchases of Microsoft products. The largest cost savings utilizing this approach will be realized as our desktops and laptops are upgraded to current versions of Microsoft products on a regular interval. The proposed number of desktops and laptops to be covered under the Microsoft Enterprise Agreement is 182. This includes all desktops and laptops with the current IT system which are required to be covered.

This Microsoft Enterprise Agreement will be purchased from Dell, under a cooperative contract of the Texas Department of Information Resources (DIR). When compared to the first three years of the Microsoft Enterprise Agreement, our costs per computer will be reduced by 43% because we spread the purchase price of each computer license out over the initial three years of this agreement and are now only responsible for annual maintenance of those licenses. Given our current computer count, our annual payment with Microsoft will be $32,897.17. If we add additional licenses through adding computers, servers or other software, this annual price will increase only by the cost of the maintenance of the license.

With the approval of this agreement, the IT Department will upgrade all desktop operating systems to Windows 7 and the Office 2010 suite.

RECOMMENDED ACTION

Staff recommends City Council authorize the City Manager to execute a contract to renew the City's Microsoft Enterprise Agreement in an amount not to exceed $33,000 for the first year. The cost for year 1 has been included in the IT Department budget for FY 11. Future budgets will be budgeted accordingly.

Enterprise Enrollment (indirect) State and Local

		Framework ID	N36
Microsoft Business Agreement number (if applicable) *Reseller or Microsoft affiliate to complete*		Reseller purchase order number *Reseller to complete*	
Enterprise Agreement number *Reseller or Microsoft affiliate to complete*	01E61288	Previous Qualifying Enrollment number *Reseller to complete*	6409679
Enrollment number *Microsoft affiliate to complete*		Previous Qualifying Enrollment end date *Reseller to complete*	12/31/2010

This Microsoft Enterprise Enrollment is entered into between the following entities signing, as of the effective date identified below.

Definitions. When used in this enrollment, "you" refers to the entity that signs this enrollment with us, and "we" or "us" refers to the Microsoft entity that signs this enrollment.

"Qualifying Enrollment," means (i) an enterprise enrollment under a separate Microsoft Select Master Agreement or Microsoft Enterprise Agreement; (ii) any enterprise subscription enrollment entered into under a separate Microsoft Enterprise Subscription Agreement; or (iii) any other enrollment submitted under the Microsoft Enterprise Agreement identified on the cover page.

All other definitions in the Microsoft Enterprise Agreement identified above apply here.

Effective date. If you are renewing Software Assurance from one or more previous "Qualifying Enrollments" then the effective date will be the day after the first Enrollment expires.

Otherwise the effective date will be the date this enrollment is signed by us. Where a previous Qualifying Enrollment is being used, your reseller will require that enrollment number and end date to complete the applicable boxes above.

Term. This enrollment will expire 36 full calendar months from the effective date. It could be terminated earlier or renewed as provided in the Microsoft Enterprise Agreement. We will advise you of your renewal options before it expires.

Representations and warranties. By signing this enrollment, the parties agree to be bound by the terms of this enrollment, and you represent and warrant that: (i) you have read and understand the Microsoft Business Agreement identified above (if any) and the Microsoft Enterprise Agreement, including all documents it incorporates by reference and any amendments to those documents, and agree to be bound by those terms; and (ii) you are either the entity that signed the Microsoft Enterprise Agreement or its affiliate.

Non-exclusivity. This enrollment is non-exclusive. Nothing contained in it requires you to license, use or promote Microsoft software or services exclusively. You may, if you choose, enter into agreements with other parties to license, use or promote non-Microsoft software or services.

This enrollment consists of (1) this cover page, (2) the Contact Information Page(s), (3) the Enterprise order information, (4) the Reseller Information Form, (5) the Media Order Form, and (6) the Core User CAL Terms and Conditions (if applicable).

Customer	Contracting Microsoft Affiliate
Name of entity * City of Kerrville	**Microsoft Licensing, GP**
Signature *	Signature
Printed name * Todd Parton	Printed name
Printed title * City Manager	Printed title
Signature date *	Signature date (date Microsoft affiliate countersigns)
* indicates required fields	Effective date (may be different than our signature date)

Microsoft Volume Licensing web sites (Note: We will advise you of any changes to these URLs.)	
Product use rights	http://microsoft.com/licensing
Product List	http://microsoft.com/licensing
Microsoft Volume Licensing Services (MVLS) (password protected site to view orders under this enrollment)	https://licensing.microsoft.com/
Customer guide	http://microsoft.com/licensing/programs/

Notices to Microsoft should be sent to:	Copies should be sent to:
MSLI, GP 6100 Neil Road, Suite 210 Reno, Nevada USA 89511-1137 Dept. 551, Volume Licensing	Microsoft Law and Corporate Affairs One Microsoft Way Redmond, WA 98052 USA Volume Licensing Group (425) 936-7329 fax

Attachments:

☒	Media Order Form (required)
☐	Core User CAL Terms and Conditions, if applicable
☐	MS Capital Form, if applicable

***Customer*:** Please remit to your reseller.

***Reseller*:** Please remit to Microsoft.

1. Contact information. Each party will notify the other in writing if any of the information in the following contact information page(s) change. The * indicates required fields. By providing contact information, you consent to its use for purposes of administering this enrollment by us, our affiliates, and other parties that help us administer this enrollment.

Primary contact information: The customer signing on the cover page must identify an individual from inside its organization to serve as the primary contact. This contact is the default online administrator for this enrollment and receives all notices unless you provide us written notice of a change. The online administrator may appoint others as administrators and grant others access to online information.

Customer		
Name of entity * City of Kerrville		Contact name * Last Cochrane First Travis
Street address * 800 Junction Hwy		Contact email address (required for online access) * travis.cochrane@kerrvilletx.gov
City * Kerrville	State/Province * TX	Phone 830-792-8390
Country * USA	Postal code * 78028	Fax 830-792-8346

Notices and online access contact information: Complete this only if you want to designate a notices and online access contact different than the primary contact. This contact will become the default online administrator for this enrollment and receive all notices. This contact may appoint other administrators and grant others access to online information.

Notices and online access contact		
☒ Same as primary contact		
Name of entity		Contact name Last First
Street address		Contact email address (required for online access)
City	State/Province	Phone
Country	Postal code	Fax

Language preference: This section designates the language in which you prefer to receive notices.

English

Additional electronic contractual notices contact information: This contact will receive electronic contractual notices in addition to the notices contact. This contact is not required if you do not want an additional set of notices issued.

Electronic contractual notices contact		
Name of entity		Contact name Last First
Street address		Contact email address (required for electronic notices)
City	State/Province	Phone
Country	Postal code	Fax

Software Assurance benefits contact: This contact will receive communications concerning Software Assurance benefits, and any additional TechNet subscriptions that have been ordered separately from Software Assurance under this enrollment. This contact is optional. If this contact is not completed, any notices for Software Assurance benefits will default to the notices and online contact.

Software Assurance benefits contact		
Name of entity		Contact name Last First
Street address		Contact email address (required for electronic notices)
City	State/Province	Phone
Country	Postal code	Fax

MSDN contact: This contact will receive communications concerning registration for MSDN products ordered under this enrollment. This contact is optional. If this contact is not completed, any notices for MSDN will default to the notices and online contact.

MSDN contact		
Name of entity		Contact name Last First
Street address		Contact email address (required for electronic notices)
City	State/Province	Phone
Country	Postal code	Fax

Microsoft account manager: This section designates your Microsoft account manager contact.

Microsoft account manager name	Microsoft account manager email address @microsoft.com

2. Defining your enterprise.

Use this section to identify which affiliates will be included in your enterprise. Your enterprise must consist of entire government agencies, departments or legal jurisdictions, not partial government agencies, departments, or legal jurisdictions. Each affiliate must be entirely "in" or entirely "out." All affiliates acquired after the effective date of this enrollment that are not party to a Qualifying Enrollment of their own will automatically be included unless you fill in part b below.

a.	***Use this part (a) to determine which current affiliates will be included in your enterprise. Check only one of the boxes in part (a).***
☒	Only you (and no other affiliates) will be participating
☐	You and the following affiliates will be participating (attach a list of names on a separate piece of paper if more than 10 affiliates are being included):
1	
2	
3	
4	
5	
6	
7	
8	
9	
10	
b.	***Use this part (b) to indicate whether affiliates with which you consolidate after the enrollment effective date will be included. Unless you check the box below, all affiliates you consolidate with after the enrollment effective date that are not party to a Qualifying Enrollment of their own will automatically be included.***
☐	Exclude all affiliates consolidated with after the enrollment effective date that are not party to a Qualifying Enrollment of their own.

3. Selecting your language option.

Select the option for the languages in which you will run the products licensed under this enrollment. The options and their corresponding languages are identified here.

All Languages		
"Listed Languages"	"Restricted Languages"	"Extended Languages"
Arabic Bulgarian Chinese Simplified Chinese Traditional Croatian English[1]Hebrew Indic Japanese Korean Portuguese (Brazil) Romanian Russian Serbian Spanish[2] Thai Turkish Ukrainian	Danish Dutch English[1] Finnish French[3] German Greek Italian Norwegian Portuguese (Portugal) Spanish[2] Swedish	Czech Estonian Hungarian Latvian Lithuanian Polish Slovenian Slovak

[1] English is a Listed Language if this enrollment is signed outside of the following countries and a Restricted Language if this enrollment is signed inside these countries: Austria, Belgium, Cyprus, Czech Republic, Denmark, Estonia, France, Finland, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Slovakia, Slovenia, United Kingdom, Switzerland, Sweden, or Spain. English is a "Listed Language", except when restricted as described in the "Restricted Languages" list (see footnote 3)

[2] Spanish is a Listed Language only if this enrollment is signed in Latin America and is otherwise Restricted Language.

[3] French is a "Listed Language," if signed in Canada

- Select All Languages to run your products in any of the Listed, Extended or Restricted Languages. This option also allows you to run Multi-Language packs for your products.
- Select Listed Languages to run your products in those languages.
- Select Extended Languages to run your products in those languages.
- If you select the Listed or Extended Languages option you may run up to 10% of the copies of each of your products in All Languages.

Check one box

☐ **Listed Languages**

☒ **All Languages**

☐ **Extended Languages**

4. Language allocation.

Provide us with your good faith estimate of the specific languages in which you will run all copies of all products and the approximate percentage of those copies you will run in each language. Information that you provide here does not limit your future use of products under this enrollment in any permitted language within the language group you select above. Attach a separate sheet if more space is needed.

Language	Percentages
English	100%%
	%
	%
	%

5. Applicable currency.

Payments made in connection with this enrollment must be in U.S. Dollars

6. Establishing your price level.

The price level for enterprise products is determined by the terms and conditions of the enterprise agreement. Your price level for additional products will be level "D".

Qualified desktops: You represent that the total number of qualified desktops in your enterprise is, or will be increased to, this number during the initial term of this enrollment (This number must be equal to at least 250 desktops).	**182**
Qualified users: You represent that the total number of qualified users in your enterprise is, or will be increased to, this number during the initial term of this enrollment (This number must be equal to at least 250 users).	**0**

7. *Enterprise product orders.*

Your reseller will provide you with your product pricing and order. Your prices and payment terms for all products ordered will be determined by agreement between you and your reseller. Your reseller will provide us with your order separately from this enrollment.

We will invoice your reseller in three equal annual installments for the enterprise products covered by your initial order. The first installment will be invoiced to your reseller upon our acceptance of this enrollment; the remaining installments will be invoiced at the next two anniversaries of the enrollment effective date. We will invoice your reseller for the enterprise products covered by any true up orders in total upon our acceptance of each true up order.

Select the enterprise products to be covered by your initial order. If you select the Core CAL, you must select either *desktop* or *user* licenses.

Enterprise Products	Desktop Licenses	User Licenses
Windows Desktop Operating System Upgrade	☒	
Office Professional Plus[1]	☒	
Office Enterprise	☐	
Office Standard [1]	☐	
Core Client Access License [1, 2]	☒	☐
Enterprise Client Access License Suite[1, 2]	☐	☐
Exchange Server Client Access License Standard[2]	☐	☐
Exchange Server Client Access License Enterprise [2]	☐	☐
Office SharePoint Server Client Access License Standard [2]	☐	☐
OfficeSharePoint Server Client Access License Enterprise[2]	☐	☐
Windows Server Client Access License [2]	☐	☐
Systems Management Server Configuration Management License	☐	☐
Systems Center Operations Manager Client Operations Management License	☐	☐

Windows Terminal Services Client Access License [2]	☐	☐
Office Communication Server Client Access License Standard [2]	☐	☐
Office Communication Server Client Access License Enterprise [2]	☐	☐
SQL Server Client Access License [2]	☐	☐
Microsoft Rights Management Services	☒	☐
Microsoft Forefront Security Suite	☒	☐

[1] The components of the current versions of Office Professional, Office Standard and the current versions of the components that make up the Core CAL, are identified in the Product List.

[2] If you select a User CAL and the agreement identified on the cover page is version 6.1 or earlier, the User CAL Terms and Conditions apply.

8. Additional Products

We will invoice your reseller for each additional product covered by your initial order in three equal annual installments. The first installment will be invoiced to your reseller upon our acceptance of this enrollment; the remaining installments will be invoiced at the next two anniversaries of the enrollment effective date. We will invoice your reseller for any new additional product not initially included in your enrollment in total upon our acceptance of your order. We will invoice your reseller for additional products initially included in your enrollment and covered by any true up order submitted during the initial term in total upon our acceptance of your true up order.

9. Qualifying systems licenses.

All desktop operating system licenses provided under this program are upgrade Licenses. **No full operating system licenses are available under this program**. Therefore, if you select the Windows Desktop Operating System Upgrade & Software Assurance, all qualified desktops on which you will run the Windows Desktop Operating System Upgrade must be licensed to run one of the qualifying operating systems identified in the Product List at http://www.microsoft.com/licensing. Note that the list of operating systems that qualify for the Windows Desktop Operating System Upgrade varies with the circumstances of your order. That list is more extensive at the time of your initial order than it is for some subsequent true ups and system refreshes during the term of your enrollment.

10. Renewal orders.

For any 36-month renewal, your renewal order will be invoiced to your reseller in three annual installments. The first installment will be invoiced upon our acceptance of the renewal order; the remaining installments will be invoiced at the next two anniversaries of the effective date of that renewal term. For any 12-month renewal and for any true up orders, we will invoice your reseller in total upon our acceptance of your order.

Your reseller should complete the following sections and sign this form where indicated.

General information

Reseller company name: Dell, Inc.
Street address: (PO boxes will not be accepted) 850 Asbury Dr.
City and State / Province and postal code: Buffalo Grove, IL
Country: US
Contact name: Nathan Schramm
Phone number: 847-465-3700
Fax number: 847-465-3277
Email address: nathan_schramm@dell.com

The undersigned confirms that the reseller information is correct.

Name of reseller Dell, Inc.
Signature
Printed name Nathan Schramm
Printed title Buyer
Date

Microsoft | Volume Licensing

Enterprise Signature Form

State and Local

Master Agreement number or Enrollment number*	6409679

SGN-	Proposal ID

Microsoft to complete if applicable

**Note*: Enter the applicable active numbers associated with the below documents. Microsoft requires the associated active number be indicated here, or listed below as new.

This signature form and all contract documents identified in the table below are entered into between the Customer and the Microsoft Affiliate signing, as of the effective date identified below.

Contract Document	Document Number or Code
<Choose One>	
<Choose One>	
<Choose One>	
<Choose One>	
Enterprise Enrollment Amendment	W16
Enterprise Enrollment Amendment	2B9

By signing below, Customer and the Microsoft Affiliate agree that both parties (1) have received, read and understand the above contract documents,, including any websites or documents incorporated by reference and any amendments and (2) agree to be bound by the terms of all such documents.

Customer	Microsoft Affiliate
Name of Entity * City of Kerrville	**Microsoft Licensing, GP**
Signature * ______________________	**Signature**
Printed Name * Todd Parton	**Printed Name**
Printed Title * City Manager	**Printed Title**
Signature Date *	**Signature Date** (date Microsoft Affiliate countersigns)
Tax ID	**Effective Date** (may be different than Microsoft's signature date)

** indicates required field*

Optional 2nd Customer signature or Outsourcer Signature *(if applicable)*

Customer	Outsourcer
Name of Entity *	**Name of Entity ***
Signature * ______________________	**Signature *** ______________________
Printed Name *	**Printed Name ***
Printed Title *	**Printed Title ***
Signature Date *	**Signature Date ***

If Customer requires physical media, additional contacts, or is reporting multiple previous Enrollments, include the appropriate form(s) with this signature form. If no media form is included, no physical media will be sent.

After this signature form is signed by the Customer, send it and the Contract Documents to Customer's channel partner or Microsoft account manager who must submit them to the following address. When the signature form is fully executed by Microsoft, Customer will receive a confirmation copy.

Microsoft Licensing, GP
Dept. 551, Volume Licensing
6100 Neil Road, Suite 210
Reno, Nevada 89511-1137
USA

Prepared By:	Casey Dellsperger casey_dellsperger@dell.com

Enterprise Enrollment – State and Local
Amendment ID W16

Proposal ID

1. On the first page of the Enrollment, the following is added after the second paragraph:

By entering into this Enrollment, the Enrolled Affiliate agrees that (1) it also has 250 or more Qualified Desktops; or (2) as a condition of entering into this Enrollment with 25-249 Qualified Desktops, Enrolled Affiliate has elected not to receive CD ROMs as part of the Enrollment and therefore no CD ROMs will automatically be shipped. If Enrolled Affiliate is enrolling with 25-249 Qualified Desktops and it would like to receive CD ROM Kits and updates, Enrolled Affiliate may order these through its Reseller for a fee.

2. The section entitled "Establishing Customer price level," is hereby amended and restated in its entirety with the following:

Establishing Customer price level.

The price level indicated in this section will be Customer's price level for the initial Enrollment term for all Enterprise Products Enrolled Affiliate orders and for any Additional Products in the same pool(s). Customer's price level for any other Additional Products will be level "D".

Qualified Desktops: Enrolled Affiliate represents that the total number of Qualified Desktops in its Enterprise is, or will be increased to, this number during the initial term of this Enrollment (This number *may be less than* 250 desktops, *but must be at least 25 desktops*).	**182**
Qualified Users: Enrolled Affiliate represents that the total number of Qualified Users in its Enterprise is, or will be increased to, this number during the initial term of this Enrollment (This number *may be less than* 250 users, *but must be at least 25 users*).	**0**

Number of desktops/users	Price level
250 to 2,399	A
2,400 to 5,999	B
6,000 to 14,999	C
15,000 and above	D

	Qualified Desktop	Qualified User
Price level (for pools in which Customer orders an Enterprise Product):	**182**	**0**
Price level (for pools in which Customer does not order an Enterprise Product):	**Price level "*D*"**	

3. Software Assurance addition and migration.

Renewing Software Assurance: If customer will be renewing Enterprise Products Software Assurance coverage from a separate agreement, check this box.	☒

By checking the above box, a new section is added to the Enrollment entitled "Software Assurance addition and migration.":

Customer is permitted to and will include in its initial order under this Enrollment the Software Assurance quantities identified in the table below (the "New Software Assurance"), even though Customer is not otherwise eligible to order such Software Assurance without simultaneously ordering a License.

On behalf of Customer and its Affiliates, Customer agrees that any perpetual Licenses received through the New Software Assurance shall supersede and replace the underlying Licenses, and the underlying Licenses are not to be transferred separately from any Licenses received through the New Software Assurance. Any remaining payment obligations with respect to the underlying Licenses shall continue in effect.

Program	Enrollment Number	Expiration Date
Enterprise 6	6409679	12/31/2010

New Software Assurance replacing underlying Licenses

New Software Assurance Item Name	Quantity	Underlying license type being replaced (UA, SA or L&SA)
CORE CALCLIENT ACCESS LIC ALL LNG SA MVL PLATFORM DEVICE CAL	182	SA
OFFICE PROFESSIONAL PLUS ALL LNG SA MVL PLATFORM	182	SA
WINDOWS VISTA BUSINESS ALL LNG SA MVL PLATFORM W/MDOP	182	SA
WIN RIGTS MGMT SVC CL ALL LNG SA MVL PLATFORM DEVICE CAL	182	SA
EXCHGSVRENT ALNG SA MVL	1	SA
PRJCT ALNG SA MVL	1	SA
PRJCTPRO ALNG SA MVL W1PRJCTSVRCAL	1	SA
SQLSVRSTD ALNG SA MVL 1PROC	2	SA
STSANDTRIPS WIN32 ALNG SA MVL	14	SA
SYSCTRCNFGMGRSVR ALNG SA MVL	1	SA
SYSCTROPSMGRSVR ALNG SA MVL	1	SA
SYSCTROPSMGRSVRMLSTD ALNG SA MVL	18	SA
VISIOSTD ALNG SA MVL	3	SA
WINSVRSTD ALNG SA MVL	18	SA

Only the Products listed above shall be orderable as Software Assurance. Any copies in excess of those quantities listed in the table above must be ordered as L&SA.

This amendment must be attached to a signature form to be valid.

Enterprise and Enterprise Subscription

Media Election Form

Entity name* City of Kerrville (must be same as Enrollment primary contact)

For the purposes of this form, "entity" can mean the signing entity, Customer, Enrolled Affiliate, Integrator, Institution, or other party entering into a volume licensing program agreement.

This form identifies entity's software comprehensive and subscription kit preferences. All software for this program is available for download at https://licensing.microsoft.com under fulfillment guide. Entity may choose to receive physical media delivery in addition to this download facility, if required. Terms used but not defined in this form have the meanings given to them in entity's Enrollment.

The comprehensive kit delivery address information identifies the delivery location. A comprehensive kit is not shipped to renewing entities. Microsoft reserves the right to discontinue media shipments or charge for them in the future.

All CD/DVD-ROM subscriptions and licenses that Microsoft provides (if any) under this enrollment are delivered on a DDU (INCOTERMS 2000) port of entry in entity country basis. Entity is solely responsible for compliance with all associated costs and procedures, including customs and import requirements, and for paying all customs duties, import value added taxes, and other governmental fees and taxes, applicable to the importation of all such CD/DVD-ROM subscriptions and licenses and all accompanying documentation into entity's country, as well as any and all loading, downloading, transportation and mobilization costs. Microsoft may, at its sole discretion, act in entity's name and behalf, in any given shipment, to carry out and bear the costs related to the customs formalities. In any event, after any such CD/DVD-ROM subscriptions and licenses reach the port of entry in entity's country, (1) Microsoft has completed its delivery obligations with respect to such merchandise, and (2) all risk of delay, loss, apprehension or seizure of or damage to the CD/DVD-ROM subscriptions and licenses, including the carrier medium and related documentation, will be transferred from Microsoft to entity.

The charges for Licenses and any purchase of media may be subject to sales taxes based upon where delivery occurs. If entity is exempt from sales taxes in the delivery location, please provide the applicable sales tax exemption documentation with entity's Enrollment.

MEDIA DELIVERY ADDRESS

☒ ***Same as notices contact in the Enrollment***

Name of entity*
Contact name: First* **Last***
Contact email address (required for online access)*
Street address (no PO boxes accepted)*
City* **, State / Province*** **Postal code***
County **Country***
Phone* **Fax**
In City Limits ☐ **Estimated Tax Rate**

If entity chooses below to receive media in addition to the software download option available at https://licensing.microsoft.com, entity's selected media preference will be noted in Microsoft's systems so entity may automatically receive that media preference. Please note that DVD kits will include DVDs if available. If media is not available on DVDs, then CDs will be provided. Likewise, CD kits will include CDs if available; if CDs are not available, DVDs will be included.

What is entity's media preference? Download Only

Does entity request a comprehensive kit? (This option does not apply to renewing entities) **No**

Does entity request subscription updates? No

Media election form (continued)

For each language and group entity chooses to receive, mark the corresponding box with an X	
Language	Enterprise Kit
English	☐
English/Multi-Language	☐
Arabic	☐
Brazilian Portuguese	☐
Bulgarian	☐
Chinese Simplified	☐
Chinese Traditional	☐
Chinese Traditional Hong Kong/Pan-Chinese	☐
Croatian	☐
Czech	☐
Danish	☐
Dutch	☐
Estonian	☐
Finnish	☐
French	☐
German	☐
Greek	☐
Hebrew	☐
Hungarian	☐
Indic	☐
Italian	☐
Japanese	☐
Korean	☐
Latvian	☐
Lithuanian	☐
Norwegian	☐
Polish	☐
Portuguese	☐
Romanian	☐
Russian	☐
Serbian Latin	☐
Slovak	☐
Slovenian	☐
Spanish	☐
Swedish	☐
Thai	☐
Turkish	☐
Ukrainian	☐

= Not Available

Enterprise Enrollment (Indirect)
Amendment ID 2B9

000-cgodfrey-S-091

Customer and Microsoft both wish to renew Customer's Microsoft Enterprise Agreement Enrollment, and this renewal may be earlier than the timeline required by the Microsoft Enterprise Agreement. The renewal Enrollment's effective date shall be one day following the expiration of the Expiring Enrollment.

The Enrollment is hereby amended by adding the following:

Customer's initial order under this Enrollment includes a renewal of Customer's licenses previously ordered under Enrollment number 6409679 (the "Expiring Enrollment") for 37 full calendar months from the day after expiration. The following conditions apply to this renewal:

- Customer's final true-up order on the Expiring Enrollment shall be placed at the time this Enrollment is signed and any contents of that true-up order that Customer wishes to renew must also be added to this Enrollment at the prices established by the Reseller
- Any subsequent true-up orders placed under the Expiring Enrollment after the signing of this Enrollment must be placed no later than 15 days prior to the Expiring Enrollment's expiration and must be placed with the assistance of Customer's Reseller.

During the period between the execution and effective date of this Enrollment, Customer may add to the Expiring Enrollment new Additional Products not previously ordered under the Expiring Enrollment. To the extent that Customer desires to renew the Software Assurance for any such added Products, Customer will have the following renewal options (to be completed no later than 15 days prior to the effective date of this Enrollment):

- **Renewing Under Select.** Customer can renew the Software Assurance for those added Products by placing a renewal order for them under a Select Agreement (if Customer has entered into such a Select Agreement and such Products are available under the Select program). The renewal order is to be placed within 30 days of the expiration of the Expiring Enrollment.

- **Renewing Under This Enrollment.** Should Customer desire to renew the Software Assurance for those added Products under this Enrollment, Customer will work with its Reseller to submit a supplemental order under this Enrollment within 15 days prior to its effective date to renew Software Assurance for those quantities.

Reseller/Distributor acknowledgement

Name of Reseller/Distributor
Printed Name
Printed Title
Date
Purchase Order Number

Reseller/Distributor Signature

This amendment must be attached to a signature form to be valid.

Dell Customer Confidential

Quotation

Quote Number: CXD10110901
Quote Expires: Nov 30, 2010

Casey Dellsperger
Inside Account Manager
850 Asbury Dr
Buffalo Grove, IL 60089
P: (847) 465-3700
F: (866) 610-5636
Casey_Dellsperger@Dell.com

Celeste Williams
Inside Account Manager
850 Asbury Dr.
Buffalo Grove, IL 60089
P: (847) 465-3700
F: (866) 549-8212
Celeste_Williams@Dell.com

Customer: CITY OF KERRVILLE
Contact: Travis Cochrane
Customer # : 319526
Phone: (830) 792-8390
Fax:
E-mail travis.cochrane@kerrvilletx.gov
Date of Issue: Nov 09, 2010

PLEASE SEE IMPORTANT TERMS AND CONDITIONS AT THE BOTTOM OF THIS QUOTATION

State Contract: DIR-SDD-1014

Product Description	Part #	Mfg #	Quantity	Unit Price	Ext. Price
CORE CALCLIENT ACCESS LIC ALL LNG SA MVL PLATFORM DEVICE CAL		W06-01069	182	$25.52	$4,644.64
OFFICE PROFESSIONAL PLUS ALL LNG SA MVL PLATFORM		269-12442	182	$71.77	$13,062.14
WINDOWS VISTA BUSINESS ALL LNG SA MVL PLATFORM W/MDOP		66J-04734	182	$33.49	$6,095.18
FOREFRONT SEC SUITE ALL LNG MONTHLY SUBSCRIPTION MVL PLATFORM PER DEVICE		9SE-00148	182	$13.56	$2,467.92
WIN RIGTS MGMT SVC CL ALL LNG SA MVL PLATFORM DEVICE CAL		T98-02188	182	$3.19	$580.58
EXCHGSVRENT ALNG SA MVL		395-02504	1	$633.93	$633.93
FRFRNTCLTSECMGMTCNSL ALNG SUBSVL MVL		FTZ-00043	1	$33.49	$33.49
PRJCT ALNG SA MVL		076-01912	1	$98.08	$98.08
PRJCTPRO ALNG SA MVL W1PRJCTSVRCAL		H30-00238	1	$162.67	$162.67
SQLSVRSTD ALNG SA MVL 1PROC		228-03148	2	$1,122.74	$2,245.48
STSANDTRIPS WIN32 ALNG SA MVL		B17-00171	14	$5.58	$78.12
SYSCTRCNFGMGRSVR ALNG SA MVL		J3A-00162	1	$90.90	$90.90
SYSCTROPSMGRSVR ALNG SA MVL		UAR-00661	1	$91.70	$91.70

Quote Prepared By: Casey Dellsperger

1) Customer's purchase is subject to the terms and conditions of the above referenced contract.

2) Sale/use tax is based on the "ship to" address on your invoice. Please indicate your taxability status on your purchase order. If exempt, Customer must have an Exemption Certificate on file, including non-federal government customers.If you have a questions re: your tax status, please contact your inside sales representative listed above.

3) Shipments to California: for certain products, a State Environmental Fee of up to $10 per item may be applied to your invoice. Prices do not reflect this fee unless noted.For more information, refer to www.dell.com/environmentalfee. This applies unless this provision is specifically excluded in the above referenced contract.

4) All product descriptions and prices are based on latest information available and are subject to change within the terms of the above referenced contract.

5) Unless specified otherwise in the above referenced contract, all prices are based on Net 30 terms. If not shown, shipping, handling, taxes and other fees will be added at the time of the order where applicable.

6) Customer understands and acknowledges that all warranties, representations and returns are subject to the manufacturer, publisher or distributor guidelines.

Rev. 12/20/2007

DELL

Dell Customer Confidential

Quotation

Quote Number: CXD10110901

Quote Expires: Nov 30, 2010

Casey Dellsperger
Inside Account Manager
850 Asbury Dr
Buffalo Grove, IL 60089
P: (847) 465-3700
F: (866) 610-5636
Casey_Dellsperger@Dell.com

Celeste Williams
Inside Account Manager
850 Asbury Dr.
Buffalo Grove, IL 60089
P: (847) 465-3700
F: (866) 549-8212
Celeste_Williams@Dell.com

Product Description	Part #	Mfg #	Quantity	Unit Price	Ext. Price
SYSCTROPSMGRSVRMLSTD ALNG SA MVL		UAT-00315	18	$24.72	$444.96
VISIOSTD ALNG SA MVL		D86-01253	3	$38.28	$114.84
WINSVRSTD ALNG SA MVL		P73-00226	18	$114.03	$2,052.54

Notes:
Please reference this quote on your purchase order.

Renewal for Microsoft EA Enrollment #6409679

Current EA will expire on 12/31/2010

New Agreement Term:
1/01/2010 - 12/31/2013

The pricing quoted above is the annual amount that will be due each year on the anniversary date for the next three years.

The customer must complete all required EA documentation in order for the renewal to take place. The completed documentation must be submitted along with a copy of the purchase order for the first annual payment. The order cannot be processed unless both the completed documentation and purchase order are received.

Product Sub Total	**$32,897.17**
Grand Total	**$32,897.17 USD**

Quote Prepared By: Casey Dellsperger

1) Customer's purchase is subject to the terms and conditions of the above referenced contract.
2) Sale/use tax is based on the "ship to" address on your invoice. Please indicate your taxability status on your purchase order. If exempt, Customer must have an Exemption Certificate on file, including non-federal government customers.If you have a questions re: your tax status, please contact your inside sales representative listed above.
3) Shipments to California: for certain products, a State Environmental Fee of up to $10 per item may be applied to your invoice. Prices do not reflect this fee unless noted.For more information, refer to www.dell.com/environmentalfee. This applies unless this provision is specifically excluded in the above referenced contract.
4) All product descriptions and prices are based on latest information available and are subject to change within the terms of the above referenced contract.
5) Unless specified otherwise in the above referenced contract, all prices are based on Net 30 terms. If not shown, shipping, handling, taxes and other fees will be added at the time of the order where applicable.
6) Customer understands and acknowledges that all warranties, representations and returns are subject to the manufacturer, publisher or distributor guidelines.

Rev. 12/20/2007

Agenda Item:
(Staff)

3D. Authorize execution of the second amendment to the professional engineering services agreements with LNV Engineering, Inc. regarding the safe routes to schools program (TxDOT grant projects No. 0915-15-091, 0915-15-092, 0915-15-093, 0915-15-094) in the amount not to exceed $32,000.

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

SUBJECT: Council authorization for the City Manager to amend four (4) existing professional service agreements with LNV Engineering for the Safe Routes to School CIP Project by a combined amount not to exceed $32,000.00.

FOR AGENDA OF: November 23, 2010 **DATE SUBMITTED**: November 16, 2010

SUBMITTED BY: Michael Wellborn, P.E. Director of Engineering
CLEARANCES: Kristine Ondrias Assistant City Manager

EXHIBITS: Contract Amendment

AGENDA MAILED TO: LNV ENGINEERING
801 Navigation, Suite 300
Corpus Christi, TX 78408

APPROVED FOR SUBMITTAL BY CITY MANAGER:

Expenditure Required:	**Current Balance in Account:**	**Amount Budgeted:**	**Account Number:**
$32,000.00	$67,492.00	$100,000.00	G86

PAYMENT TO BE MADE TO: LNV ENGINEERING

REVIEWED BY THE FINANCE DIRECTOR:

SUMMARY STATEMENT

As a part of the Federal Safe Routes to School Program awarded in 2007, the City of Kerrville entered into Advance Funding Agreements with the Texas Department of Transportations (Tx-DOT) to receive funds not to exceed $3,092,902.00 for sidewalk design and construction. The program's objective is to enhance safety in and around school areas through a construction program designed to improve the bicycle and the pedestrian safety of school aged children. The Safe Routes to School (SRTS) Plan is comprised of four separate projects that will provide sidewalks to the following school areas: 1) BT Wilson and Peterson Middle School; 2) Tally Elementary; 3) Starkey Elementary; and 4) Tom Daniels Elementary.

The city's obligation to the project is to provide professional engineering services to design the project in accordance with Tx-DOT standards and specifications. Tx-DOT's obligation to the project is to provide construction bidding and construction administration services. In March of 2010, the plans were approved and subsequently bid. Tx-DOT received eight (8) bids that ranged from $2,804,390.50 to $1,784,709.95. They awarded the construction contract to the low bidder TI-ZACK Concrete, Inc. in August of this year. Tx-DOT anticipates having a construction schedule finalized with the contractor by the end of November.

Given that there are additional grant funds available to this project, Tx-DOT has agreed to allow the city an opportunity to maximize the SRTS funds by adding additional sidewalks to the projects. LNV has quantified the additions and prepared exhibits in their proposal and supporting documents that highlight the areas of the proposed additions. Their fee for these additional services is not to exceed $32,000.00 and is to cover site survey work & design services that were not included in their original scope. Such services include site observations & surveys of existing sidewalks that need to be upgraded to comply with ADA requirements in addition to adding new sidewalks in locations eliminated from the original scope due to budgetary concerns. The following table summarizes the project's accounting.

	Grant Funds				
EXPENSES / ENCUMBRANCES	Engineering $368,620.98	Construction $2,692,902.00	Tx-DOT Management $31,379.02	FY10 CIP Funds $40,000.00	FY11 CIP Funds $60,000.00
Grant Works	$108,000.00				
LNV Original Contract	$260,620.98				
LNV Amendment #1				$18,090.00	
Tx-DOT Management Fee			$31,379.02		
Tx-DOT Construction (TI-ZACK)		$1,784,709.95			
City Participation (Paid to Tx-DOT)				$14,418.00	
City Participation (Signs & Striping)					$35,000.00
10% Contingency		$269,290.20			
REMAINING FUNDS	**$0.00**	**$638,901.85**	**$0.00**	**$7,492.00**	**$25,000.00**

Note that Council authorized Amendment #1 with LNV in December of 2009 for a not to exceed amount of $40,000.00; however, LNV only invoiced $18,090.00 for these services. The existing and proposed LNV contracts for the SRTS projects are summarized in the following table.

School	LNV Original Contract Amount	LNV Amendment #1 Amount	LNV Amendment #2 Amount	TOTAL Contract Amount
BT Wilson/Peterson Middle School CSJ:0915-15-091	$67,850.00	$0.00	$10,560.00	$78,410.00
Starkey Elementary CSJ:0915-15-092	$63,850.00	$7,500.00	$9,715.00	$81,065.00
Tom Daniels CSJ:0915-15-093	$61,071.00	$1,770.00	$6,085.00	$68,926.00
Tally Elementary CJS:0915-15-094	$67,850.00	$8,820.00	$5,640.00	$82,310.00
TOTAL	**$260,621.00**	**$18,090.00**	**$32,000.00**	**$310,711.00**

RECOMMENDED ACTION

The Director of Engineering recommends that Council authorize the City Manager to amend four (4) existing professional service agreements with LNV Engineering for the Safe Routes to School CIP Project by a combined amount not to exceed $32,000.00 and a combined total of all contracts (Original contract plus Amendments #1 and #2) not to exceed $310,711.00.

SECOND AMENDMENT TO THE PROFESSIONAL ENGINEERING SERVICES AGREEMENTS BETWEEN LNV ENGINEERING, INC., AND THE CITY OF KERRVILLE, FOR SERVICES REGARDING THE FEDERAL SAFE ROUTES TO SCHOOLS PROGRAM (TXDOT GRANT PROJECT NOS. 0915-15-091, 0915-15-092, 0915-15-093, 0915-15-094)

This **Second Amendment to those Professional Engineering Services Agreements between LNV Engineering, Inc., and the City of Kerrville (TXDOT GRANT PROJECT NOS. 0915-15-091, 0915-15-092, 0915-15-093, 0915-15-094)**, for services regarding the Federal Safe Routes to Schools Program ("Amendment") is entered into the _____ day of ________________, 2010. This Second Amendment amends each of the following four (4) agreements (referred to herein as the "Agreement" or collectively as the "Agreements") previously entered into between the parties, and is made in accordance with Section VIII (M) of the Agreements:

1. Professional Engineering Services Agreement Between LNV Engineering, Inc., and City of Kerrville [BT Wilson 6th Grade and Peterson Middle School area - Safe Routes to School/TxDOT Grant project # 0915-15-091]

2. Professional Engineering Services Agreement Between LNV Engineering, Inc., and City of Kerrville [Starkey Elementary area - Safe Routes to School/TxDOT Grant project # 0915-15-092]

3. Professional Engineering Services Agreement Between LNV Engineering, Inc., and City of Kerrville [Tom Daniels Elementary area - Safe Routes to School/TxDOT Grant project # 0915-15-093]

4. Professional Engineering Services Agreement Between LNV Engineering, Inc., and City of Kerrville [Tally Elementary area - Safe Routes to School/TxDOT Grant project # 0915-15-094]

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

SECTION ONE. Compensation; scope of services. The Agreements are amended to increase the compensation by $8,000.00 for each Agreement for additional services relating to the acquisition of field notes and surveys and, where applicable, hydraulic and hydrology studies.

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

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

(SIGNATURES BEGIN ON FOLLOWING PAGE)

CITY OF KERRVILLE

By:__________________________

Print Name: Jeffrey Todd Parton

Title: City Manager

LNV ENGINEERING, INC.

By:__________________________

Print Name:__________________________

Title:__________________________

Attest:

____

Brenda G. Craig, City Secretary

APPROVED AS TO FORM:

____

Michael C. Hayes, City Attorney

L:\Legal\PUBLIC WORKS\Engineering\Amendment to Prof Engr Srvs Agmt-LNV Engineering_Safe Routes to Schools_110410.doc engineers | architects | contractors

SOLUTIONS TODAY WITH
A VISION FOR TOMORROW

November 16, 2010

Michael Wellborn, P.E.
Director of Engineering
City of Kerrville
800 Junction Highway
Kerrville, Texas 78028

RE: CSJ 0915-15-091, ETC.
City of Kerrville Safe Routes to School
Request for Amendment

Dear Mr. Wellborn,

LNV requests an amendment for additional engineering services to prepare the Change Order for the work proposed below. The additional work includes sidewalk and ramp improvements to utilize the majority of the available funds remaining due to the low bids received in July.

<u>BT Wilson/Peterson Middle School: CSJ: 0915-15-091</u>

Stadium:	Add additional sidewalks and curbs
Peterson:	Add additional sidewalks and curbs
Barnett:	Upgrade existing ramps
Tivy:	Upgrade existing ramps
Aransas:	Upgrade existing ramps
Lytle:	Upgrade existing ramps
Travis:	Upgrade existing ramps
Main:	Upgrade existing ramps

<u>Starkey Elementary: CSJ: 0915-15-092</u>

Jackson:	Add additional sidewalks and curbs
Culberson:	Add additional sidewalks and curbs
Main:	Upgrade existing ramps and add additional sidewalks
Woodcrest:	Upgrade existing ramps
Lois:	Upgrade existing ramps
Paschal:	Upgrade existing ramps

<u>Tom Daniels Elementary: CSJ: 0915-15-093</u>

Singing Wind:	Upgrade existing ramps and add additional sidewalks
Legion:	Upgrade existing ramps
Olympic:	Add additional sidewalks

Tally Elementary: CSJ: 0915-15-094

Glenview:	Add additional sidewalks
Methodist Encampment:	Add additional sidewalks and curbs
Coronado:	Upgrade existing ramps
Lois:	Upgrade existing ramps

The following is a cost breakdown for the additional services:

School Name and CSJ No.	Proposed Engineering Fee	Proposed Surveying Fee	Proposed Total Fee
BT Wilson/Peterson Middle School: CSJ: 0915-15-091	$8,740	$1,820	$10,560
Starkey Elementary: CSJ: 0915-15-092	$7,120	$2,595	$9,715
Tom Daniels Elementary: CSJ: 0915-15-093	$3,700	$2,385	$6,085
Tally Elementary: CSJ: 0915-15-094	$5,015	$625	$5,640
Total	**$24,575**	**$7,425**	**$32,000**

If you have any further questions or comments, please feel free to give me a call.

Sincerely,
LNV, Inc.
TBPE Firm No. F-366

Derek E Naiser, P.E., CFM
Vice-President

engineers | architects | contractors

SOLUTIONS TODAY WITH
A VISION FOR TOMORROW

October 29, 2010

Michael Wellborn, P.E.
Director of Engineering
City of Kerrville
800 Junction Highway
Kerrville, Texas 78028

RE: CSJ 0915-15-091, ETC.
City of Kerrville Safe Routes to School
Request for Amendment

Dear Mr. Wellborn,

Below is a breakdown of the work to be included with the requested amendment:

BT Wilson/Peterson Middle School: CSJ: 0915-15-091

The following locations were in the original scope but were removed due to budgetary constraints, ROW constraints and/or having existing sidewalk on at least one side of the street.

Stadium: Add approximately 1900 LF of sidewalk, curb, associated ramp improvements, extend side street culverts (12" and 18") and driveway approaches.

Peterson: Add approximately 600 LF of sidewalk, curb, associated ramp improvements and driveway approaches.

The following locations were not included in the original scope due to having existing sidewalk on at least one side of the street.

Barnett: Upgrade existing ramps (approx. seven (7) ramps) and driveway approaches, (approx. three (3) driveways); remove and replace existing concrete sidewalks that may not meet ADA standards.

Tivy: Upgrade existing ramps (approx. three (3) ramps); remove and replace existing concrete sidewalks that may not meet ADA standards.

Lytle: Upgrade existing ramps (approx. two (2) ramps) and driveway approaches, (approx. five (5) driveways); remove and replace existing concrete sidewalks that may not meet ADA standards.

Travis: Upgrade existing ramps (approx. three (3) ramps) and driveway approaches, (approx. two (2) driveways); remove and replace existing concrete sidewalks that may not meet ADA standards.

8918 TESORO DRIVE | SUITE 401 | SAN ANTONIO, TEXAS 78217

OFFICE 210.822.2232 | FAX 210.822.4032 | WWW.LNVINC.COM

Main: Upgrade existing ramps (approx. three (3) ramps); remove and replace existing concrete sidewalks that may not meet ADA standards.

Aransas: Topo survey approximately 1800 LF of the East side of Aransas (Tivy to Main) to add additional sidewalks, driveway approaches and associated ramp improvements (approx. eleven (11) ramps).

Starkey Elementary: CSJ: 0915-15-092

The following locations were in the original scope but were removed due to budgetary constraints, ROW constraints and/or having existing sidewalk on at least one side of the street.

Jackson: Add approximately 2200 LF of sidewalk, curb, associated ramp improvements and driveway approaches.

Culberson: Add approximately 250 LF of sidewalk, associated ramp improvements and driveway approaches.

The following locations were not included in the original scope due to having existing sidewalk on at least one side of the street.

Lois: Upgrade existing ramps (approx. two (2) ramps) and driveway approaches, (approx. three (3) driveways); remove and replace existing concrete sidewalks that may not meet ADA standards.

Paschal: Upgrade existing ramps (approx. three (3) ramps); remove and replace existing concrete sidewalks that may not meet ADA standards.

Main: Topo survey approximately 1700 LF (Harper Hwy to Galbraith) to add additional sidewalks, driveway approaches and associated ramp improvements (approx. eight (8) ramps).

Woodcrest: Topo survey approximately 800 LF to add additional sidewalks, driveway approaches and associated ramp improvements (approx. two (2) ramps).

Tom Daniels Elementary: CSJ: 0915-15-093

The following locations were not included in the original scope due to having existing sidewalk on at least one side of the street.

Olympic: Add approximately 1200 LF of sidewalk and associated ramp improvements.

Singing Wind: Topo survey approximately 1200 LF (Olympic to Meadow View) to add additional sidewalks, upgrade existing ramps (approx. twelve (12) ramps) and driveway approaches, (approx. four (4) driveways); remove and replace existing concrete sidewalks that may not meet ADA standards.

Legion: Topo survey approximately 1100 LF (Meeker to Goss) to add additional sidewalks, driveway approaches and associated ramp improvements (approx. twelve (12) ramps).

Tally Elementary: CSJ: 0915-15-094

The following locations were in the original scope but were removed due to budgetary constraints, ROW constraints and/or having existing sidewalk on at least one side of the street.

Glenview: Add approximately 700 LF of sidewalk, associated ramp improvements (approx. three (3) ramps) and driveway approaches (approx. three (3) driveways).

Methodist Encampment: Add approximately 2400 LF of sidewalk, associated ramp improvements (approx. five (5) ramps) and driveway approaches (approx. three (3) driveways).

The following locations were not included in the original scope due to having existing sidewalk on at least one side of the street.

Lois: Upgrade existing ramps (approx. six (6) ramps) and driveway approaches, (approx. three (3) driveways); remove and replace existing concrete sidewalks that may not meet ADA standards.

Coronado: Topo survey approximately 600 LF (Lois to Woodstone) to add additional sidewalks, upgrade existing ramps (approx. five (5) ramps) and driveway approaches; remove and replace existing concrete sidewalks that may not meet ADA standards.

NOTE: All above improvements are subject to change based on approval by TxDOT, budgetary constraints and field data. The objective of the above work is to utilize the remaining funds available due to the low bids received in July.

If you have any further questions or comments, please feel free to give me a call.

Sincerely,
LNV, Inc.
TBPE Firm No. F-366

Derek E Naiser, P.E., CFM
Vice-President

BT Wilson/Peterson

Budget Amount	$715,000
Low Bidder	$508,894
Contingency	$50,889
Funds Available	$155,217

Street Name	Sheet No.	Description	Unit	Quantity	Unit Cost	Sub-Total
Barnett St	52	Curb Ramps	EA	7	$775	$5,425
		Driveways	SY	90	$44	$3,960
		Sidewalks	SY	150	$29	$4,350
Lytle St	55	Sidewalks	SY	222	$29	$6,438
		Driveways	SY	140	$44	$6,160
		Curb Ramps	EA	2	$775	$1,550
Main St	59	Sidewalks	SY	80	$29	$2,320
		Driveways	SY	40	$44	$1,760
		Curb Ramps	EA	3	$775	$2,325
Stadium Dr	62	Sidewalks	SY	1055	$29	$30,595
		Conc Curb	LF	1900	$10	$19,000
		Curb Ramps	EA	5	$775	$3,875
		Extend 12" Culvert at Mae	LF	14	$75	$1,050
		Extend 18" Culvert at Crawford	LF	14	$75	$1,050
Tivy St	66	Sidewalks	SY	195	$29	$5,655
		Curb Ramps	EA	3	$775	$2,325
Travis St	69	Sidewalks	SY	135	$29	$3,915
		Driveways	SY	60	$44	$2,640
		Curb Ramps	EA	3	$775	$2,325
Peterson	NA	Sidewalks	SY	320	$29	$9,280
		Conc Curb	LF	570	$10	$5,700
		Drainage	LS	1	$24,200	$24,200
		Driveways	SY	140	$44	$6,160
Aransas	NA	Curb Ramps	EA	11	$775	$8,525
		Sidewalks	SY	150	$29	$4,350
		Driveways	SY	90	$44	$3,960
					Total	$168,893

Starkey

Budget Amount	$715,000
Low Bidder	$451,060
Contingency	$45,106
Funds Available	$218,834

Street Name	Sheet No.	Description	Unit	Quantity	Unit Cost	Sub-Total
Culberson Ave	72	Sidewalks	SY	140	$29	$4,060
		Driveways	SY	60	$44	$2,640
		Curb Ramps	EA	1	$775	$775
Jackson Rd	78	Sidewalks	SY	1200	$29	$34,800
		Conc Curb	LF	1125	$10	$11,250
		Curb Ramps	EA	7	$775	$5,425
		Remove Conc Curb	LF	1125	$20	$22,500
Lois	80	Sidewalks	SY	335	$29	$9,715
		Driveways	SY	200	$44	$8,800
		Curb Ramps	EA	2	$775	$1,550
Main St	84	Sidewalks	SY	800	$29	$23,200
		Driveways	SY	160	$44	$7,040
		Curb Ramps	EA	8	$775	$6,200
Paschal	86	Sidewalks	SY	45	$29	$1,305
		Curb Ramps	EA	3	$775	$2,325
Woodcrest	NA	Curb Ramps	EA	2	$775	$1,550
		Sidewalks	SY	300	$29	$8,700
					Total	$151,835

Tom Daniels

Budget Amount	$592,902
Low Bidder	$287,966
Contingency	$28,797
Funds Available	$276,139

Street Name	Sheet No.	Description	Unit	Quantity	Unit Cost	Sub-Total
Legion Dr	99	Curb Ramps	EA	12	$775	$9,300
		Sidewalks	SY	500	$29	$14,500
		Driveways	SY	300	$44	$13,200
Singing Wind	110	Curb Ramps	EA	12	$775	$9,300
		Sidewalks	SY	450	$29	$13,050
		Driveways	SY	140	$44	$6,160
Olympic	107-108	Sidewalks	SY	650	$29	$18,850
		Curb Ramps	EA	2	$775	$1,550
					Total	$85,910

Tally

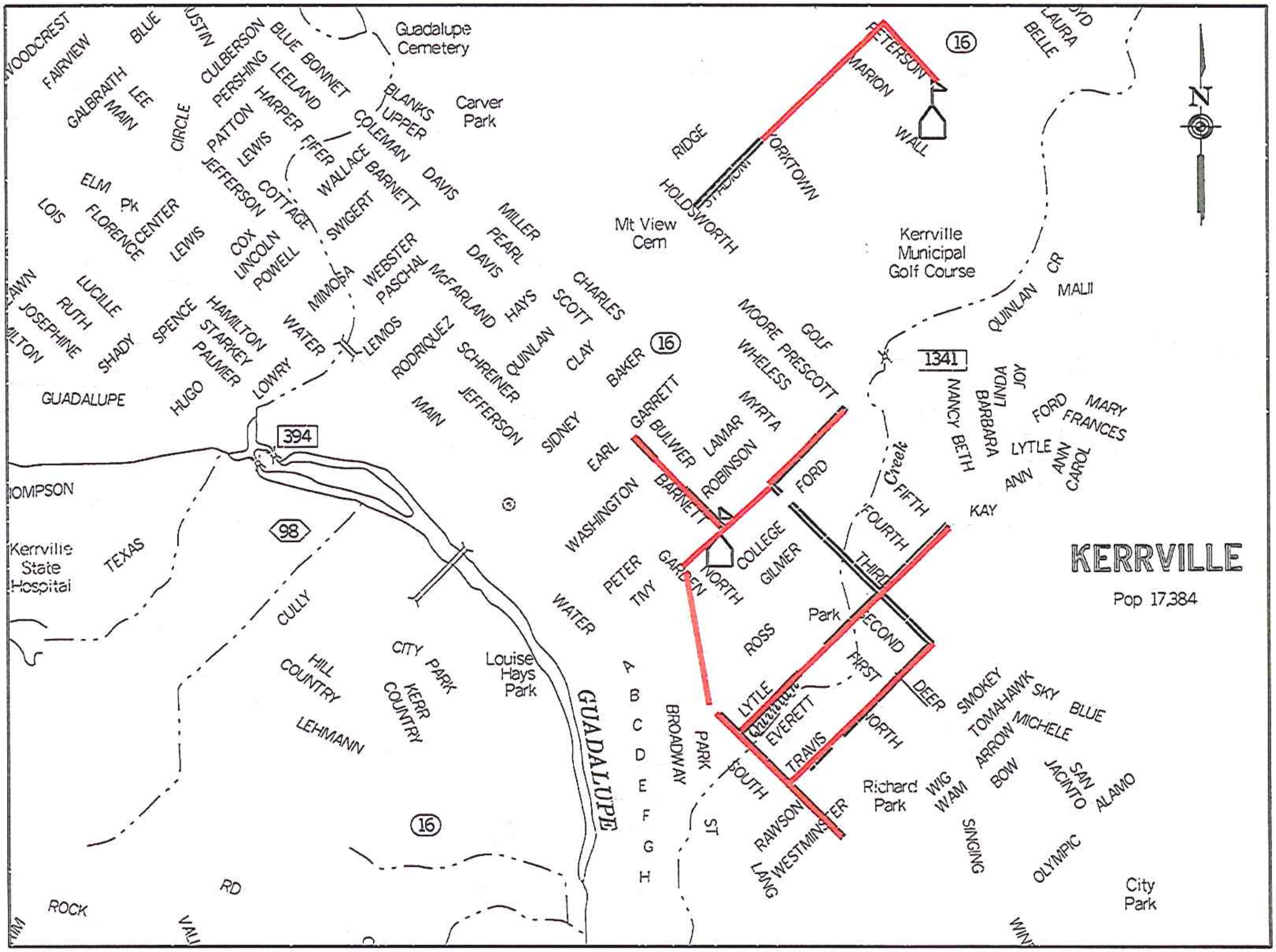
Budget Amount	$715,000
Low Bidder	$536,789
Contingency	$53,679
Funds Available	$124,532

Street Name	Sheet No.	Description	Unit	Quantity	Unit Cost	Sub-Total
Coronado Dr	114	Sidewalks	SY	55	$29	$1,595
		Curb Ramps	EA	5	$775	$3,875
		Driveways	SY	90	$44	$3,960
Lois	127	Curb Ramps	EA	6	$775	$4,650
		Driveways	SY	90	$44	$3,960
Methodist Encampment	134	Sidewalks	SY	1350	$29	$39,150
		Curb Ramps	EA	5	$775	$3,875
		Driveways	SY	90	$44	$3,960
		Inlet (Armor Curb Slot)	EA	2	$5,500	$11,000
Glenview	NA	Sidewalks	SY	420	$29	$12,180
		Driveways	SY	90	$44	$3,960
		Curb Ramps	EA	3	$775	$2,325
		Conc Curb Ty F1	LF	100	$75	$7,500
		Drainage	LS	1	$11,000	$11,000
		Handrail	LF	25	$75	$1,875
					Total	$114,865

BT WILSON ELEMENTARY/PETERSON MIDDLE SCHOOL

CSJ

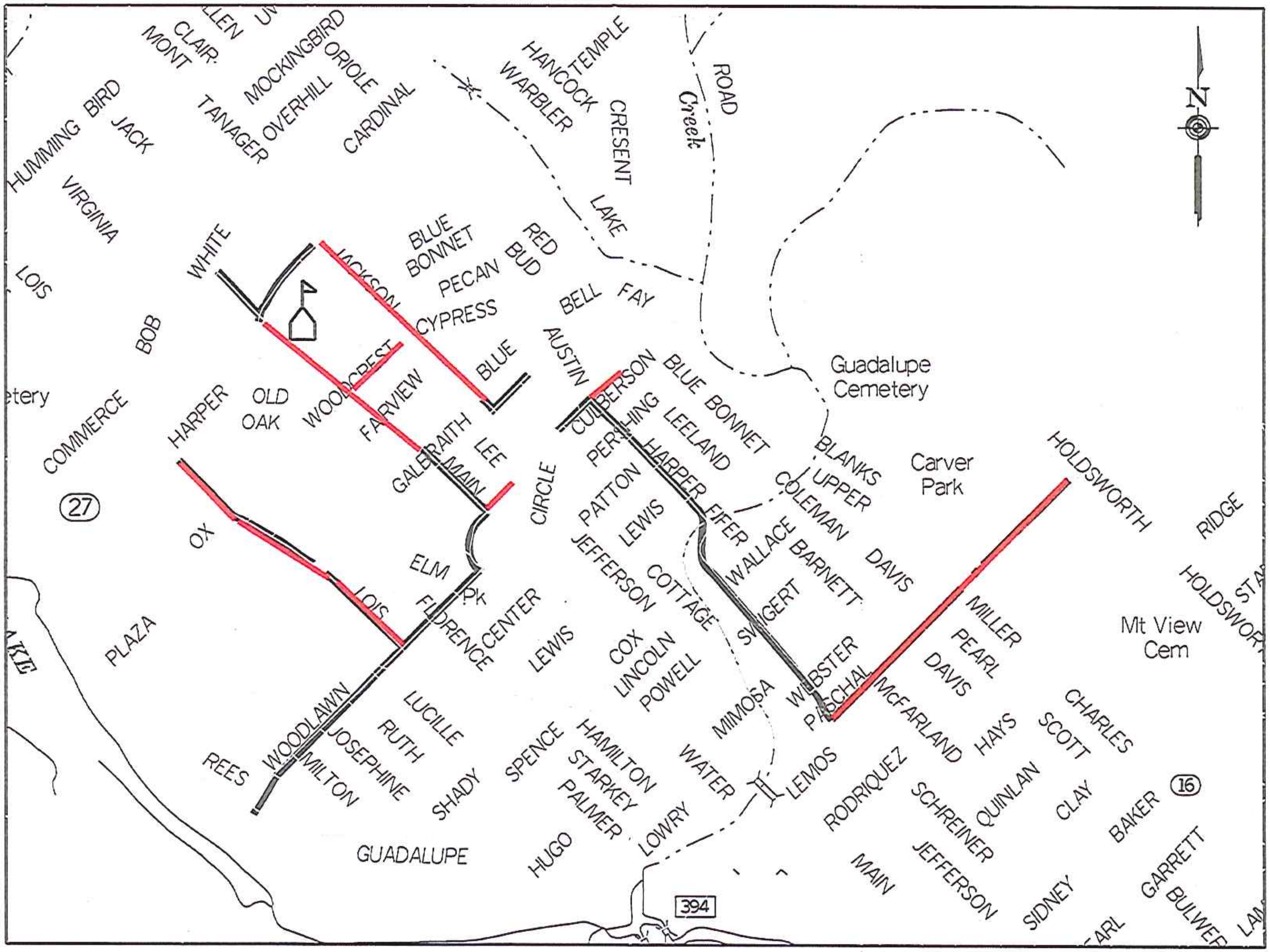
0915-15-091



STARKEY ELEMENTARY

CSJ

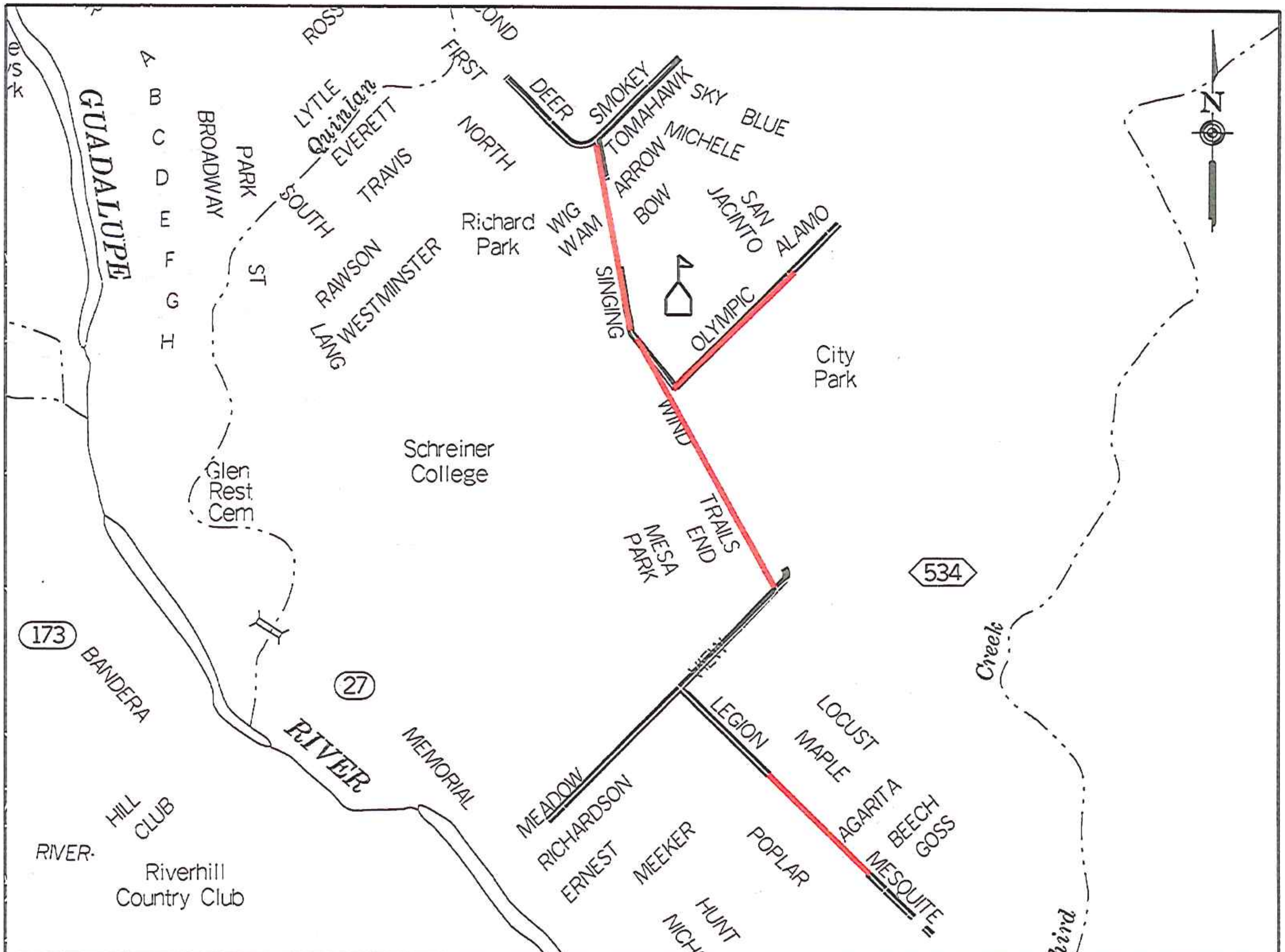
0915-15-092



TOM DANIELS ELEMENTARY

CSJ

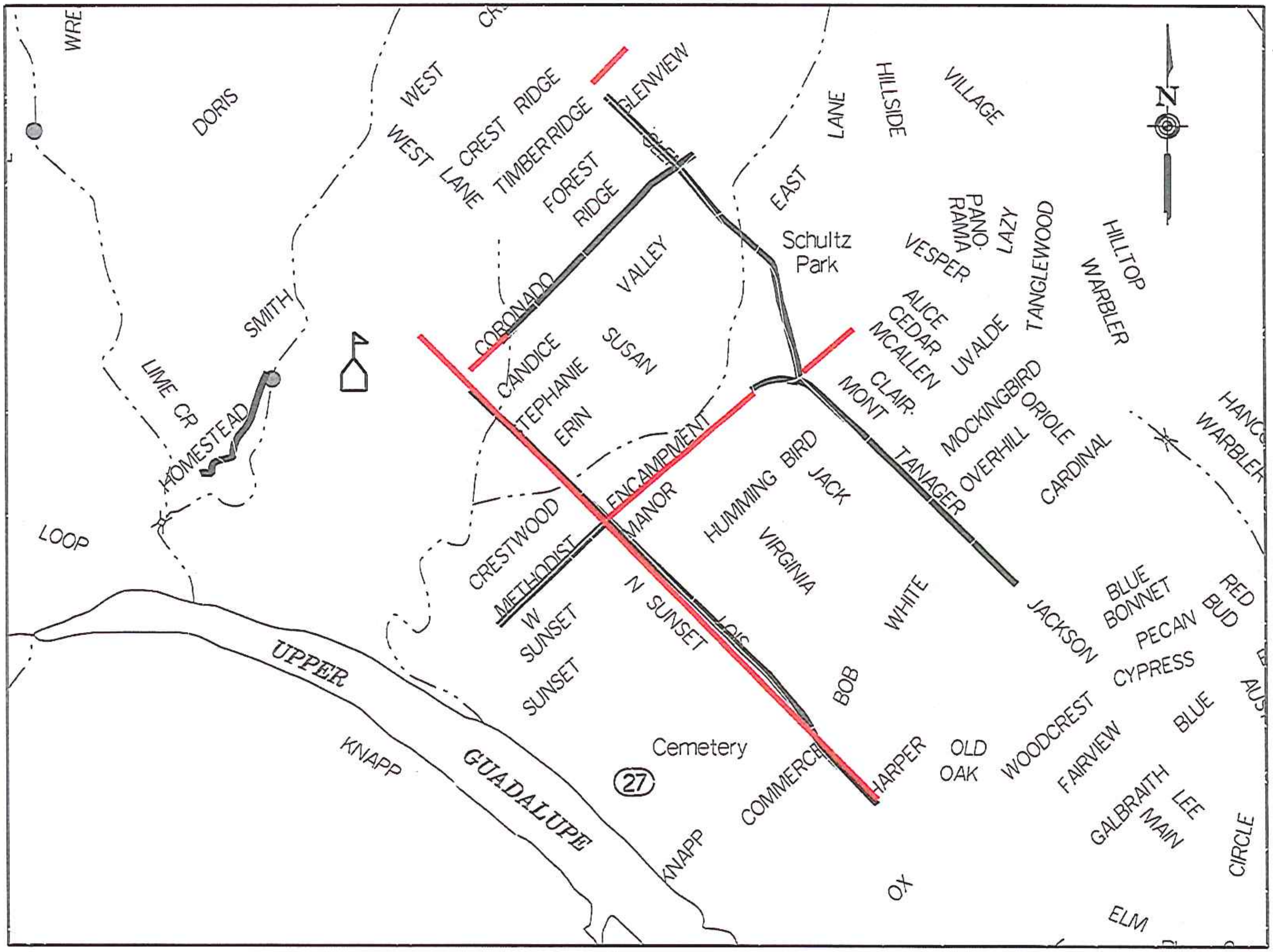
0915-15-093



TALLY ELEMENTARY

CSJ

0915-15-094



Agenda Item:
(Staff)

3E. A resolution authorizing the assignment of the city's lease agreement with Omni Multimedia Network International, L.L.C. to West Central Net and approving an amendment to said agreement with respect to the term.

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

SUBJECT: Assignment of contract between the City of Kerrville and Omni Multi-Media Network International, LLC to West Central Net and amendment of same.

FOR AGENDA OF: November 23, 2010 **DATE SUBMITTED**: November 16, 2010

SUBMITTED BY: Travis Cochrane TC
Director of Information Technology

CLEARANCES: Kim Meismer KM
Director of General Operations

EXHIBITS: Resolution, Lease Agreement

AGENDA MAILED TO:

APPROVED FOR SUBMITTAL BY CITY MANAGER:

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

PAYMENT TO BE MADE TO:
REVIEWED BY THE FINANCE DIRECTOR:

SUMMARY STATEMENT

On April 12, 2005, the City of Kerrville entered into a multi-year agreement with OMNI Multimedia Network International, LLC (OMNI) that states the City will provide to OMNI, exclusive access to City property for certain wireless frequencies and in return the city received wireless video services from OMNI.

On November 5, 2010, the City was approached by representatives of West Central Net stating their intentions to purchase OMNI. As part of the original agreement with OMNI, the City must provide written consent to OMNI for the transfer of ownership. It also states the City may not unreasonably withhold such consent.

West Central Net is requesting the City allow them to assume the lease and to continue to utilize the benefits of the lease for a period of one year. They will also continue to provide the wireless video services to the City currently being provided by OMNI.

RECOMMENDED ACTION

Staff recommends Council approve the assignment of the contract between the City of Kerrville and Omni Multi-Media Network International, LLC to West Central Net and the amendment to the term and conditions of the agreement as stated.

CITY OF KERRVILLE, TEXAS
RESOLUTION NO. ___-2010

A RESOLUTION AUTHORIZING THE ASSIGNMENT OF THE CITY'S LEASE AGREEMENT WITH OMNI MULTIMEDIA NETWORK INTERNATIONAL, L.L.C. TO CT CUBE, L.P., DOING BUSINESS AS WEST CENTRAL NET AND APPROVING AN AMENDMENT TO SAID AGREEMENT WITH RESPECT TO THE TERM

WHEREAS, on or about May 13, 2005, the City entered into a Lease Agreement ("Agreement") with Omni Multimedia Network International, LLC ("Omni"), which authorized Omni to install and operate communication equipment on certain City-owned properties and facilities, which included City water towers; and

WHEREAS, CT Cube, L.P., doing business as West Central Net ("WCN"), is in the process of acquiring Omni's assets, which includes the Agreement, and as such, has requested that the City consent to the assignment of the Agreement from Omni to WCN; and

WHEREAS, pursuant to the terms of the Agreement, the City must first consent to any such assignment; and

WHEREAS, City staff believes that the City should consent to the assignment of the Agreement, and also agrees with a request from WCN that the term of the Agreement should be revised so that it terminates on January 1, 2012, as opposed to May 13, 2015; and

WHEREAS, upon the termination of the Agreement, WCN will give the City the option of continuing to have WCN provide the services contemplated by the Agreement, at no cost to the City; and

WHEREAS, the City Council of the City of Kerrville, Texas, finds it to be in the public interest to consent to the assignment of the Agreement and to amend the Agreement as specified above;

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

SECTION ONE. The City Council consents to the assignment of the City's Lease Agreement with Omni Multimedia Network International to CT Cube, L.P., doing business as West Central Net, and authorizes the City Manager and City Attorney to take whatever actions are appropriate to effectuate such consent to the assignment.

SECTION TWO. The City Manager and City Secretary are hereby authorized to execute and attest, respectively, on behalf of the City of Kerrville, Texas, an amendment to the Lease

Agreement with Omni Multimedia Network International, L.L.C., the provisions of said amendment to be substantially as set forth in **Exhibit A**.

PASSED AND APPROVED ON this the ______ day of ______________, A.D., 2010.

David Wampler, Mayor

APPROVED AS TO FORM:

Michael C. Hayes, City Attorney

ATTEST:

Brenda C. Craig, City Secretary

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FIRST AMENDMENT TO LEASE AGREEMENT
BETWEEN CITY OF KERRVILLE AND WEST CENTRAL NET

This First Amendment to Lease Agreement is made and entered into by and between the CITY OF KERRVILLE, a Texas home rule municipal corporation ("CITY"), and CT CUBE, LP, a Texas limited partnership dba WEST CENTRAL NET ("WCN") assignee of the herein described lease agreement from OMNI MULTIMEDIA NETWORK INTERNATIONAL, LLC, a Texas Limited Liability Company ("OMNI"), and amends that certain ***Lease Agreement between the City of Kerrville and Omni Multimedia Network International, LLC*** (the "Agreement") dated on or about May 13, 2005, as follows:

1. Section 3.1 of the Agreement is amended in its entirety to provide as follows:

   "3.1 *Initial Term.* This Agreement shall be for an initial term commencing on the Effective Date and terminating on January 1, 2012. The Effective Date shall be the date that this Agreement has been executed by both Parties. However, this Agreement may be terminated by either Party if OMNI is unable to obtain all necessary government approvals for OMNI's Use."

2. Upon termination of the revised one year term, which was requested by WCN and is the subject of the amendment in Section 1., above, WCN shall continue to provide the services currently provided to CITY by OMNI pursuant to the Lease through May 13, 2015. WCN shall continue to provide these services to CITY, at the option of CITY and at no additional cost to CITY.

3. Except as amended hereby, CITY and WCN agree that the Lease is and shall remain in full force and effect in accordance with its terms and the City approves the assignment of the Agreement, as hereby amended, to WCN by Omni.

SIGNED this the ________ day of ________________________, 2010.

CITY OF KERRVILLE:

By:____________________________
Jeffrey Todd Parton, City Manager

ATTEST:

____
Brenda G. Craig, City Clerk

APPROVED AS TO FORM:

____
Michael C. Hayes, City Attorney

CT Cube, LP dba WEST CENTRAL NET:

By:____________________________

Name:__________________________

Its:___________________________

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Agenda Item:
(Staff)

3F. Right-of-way license agreement to allow a sidewalk café at 804 Water Street for the Water Street Café

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

SUBJECT: Approval of a Sidewalk Café permit for 804 Water Street, (Water Street Café)

FOR AGENDA OF: 11/23/10 **DATE SUBMITTED**: 11/15/10

SUBMITTED BY: Charlie Hastings CH Public Works Director

CLEARANCES: Todd Parton City Manager

EXHIBITS: Copy of Application

AGENDA MAILED TO:

APPROVED FOR SUBMITTAL BY CITY MANAGER: TP

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

PAYMENT TO BE MADE TO:

REVIEWED BY THE FINANCE DIRECTOR:

SUMMARY STATEMENT

The Public Works Department has received a permit application for a sidewalk café located at 804 Water Street (Water Street Café). The restaurant owners, John and Julie Finch dba Water Street Café, has satisfied the conditions and standards of the ordinance; the sidewalk café will consist of two 42" tables located on the peninsula in front of 804 Water Street adjacent to Francisco's Restaurant. Pursuant to Article II, Sidewalk Cafes, of the Kerrville Code of Ordinances, once authorized by council, the City Manager will execute a license agreement with the owner for this use of the city's right of way.

RECOMMENDED ACTION

The Director of Public Works recommends that council authorize the City Manager to execute a license agreement with Water Street Café for a sidewalk café located at 804 Water Street.

SIDEWALK CAFE-APPLICATION

NAME OF ESTABLISHMENT: Water Street Cafe
Type of Business: Restaurant

Phone 830-257-5464 Fax#:

Address of Establishment: 804 Water St
City, State, Zip Kerrville, TX 78028

OWNER OF FEE TITLE INFORMATION

Owner's Name: Jeff Conrad

Phone # 830-257-4000 Fax #

Owner's Address: 804 Water St
City, State, Zip Kerrville, TX 78028

Application must be made in writing to the Public Works Director and must include:

☑ Proof of ownership and any leasehold rights therein;

☑ A scale plan and sketch showing area to be licensed, including dimensions from face of building to curb and width of sidewalk café parallel to curb;

☑ Complete information on type of sidewalk to be established, including the number of tables, chairs and related appurtances, their placement, name and address of restaurants adjacent to area to be licensed and used as the sidewalk café, and any other information required by the Public Works Department;

☑ Proof of general commercial liability insurance coverage (bodily injury and property damage) by a carrier acceptable to the city, in an amount not less than $1,000,000 Combined single limit; and

☑ Operated on one peninsula, under the following conditions:

☑ The peninsula must be located within span of the restaurant façade, or the peninsula's leading edge is no more than 20 feet from the closest edge of the restaurants façade; and

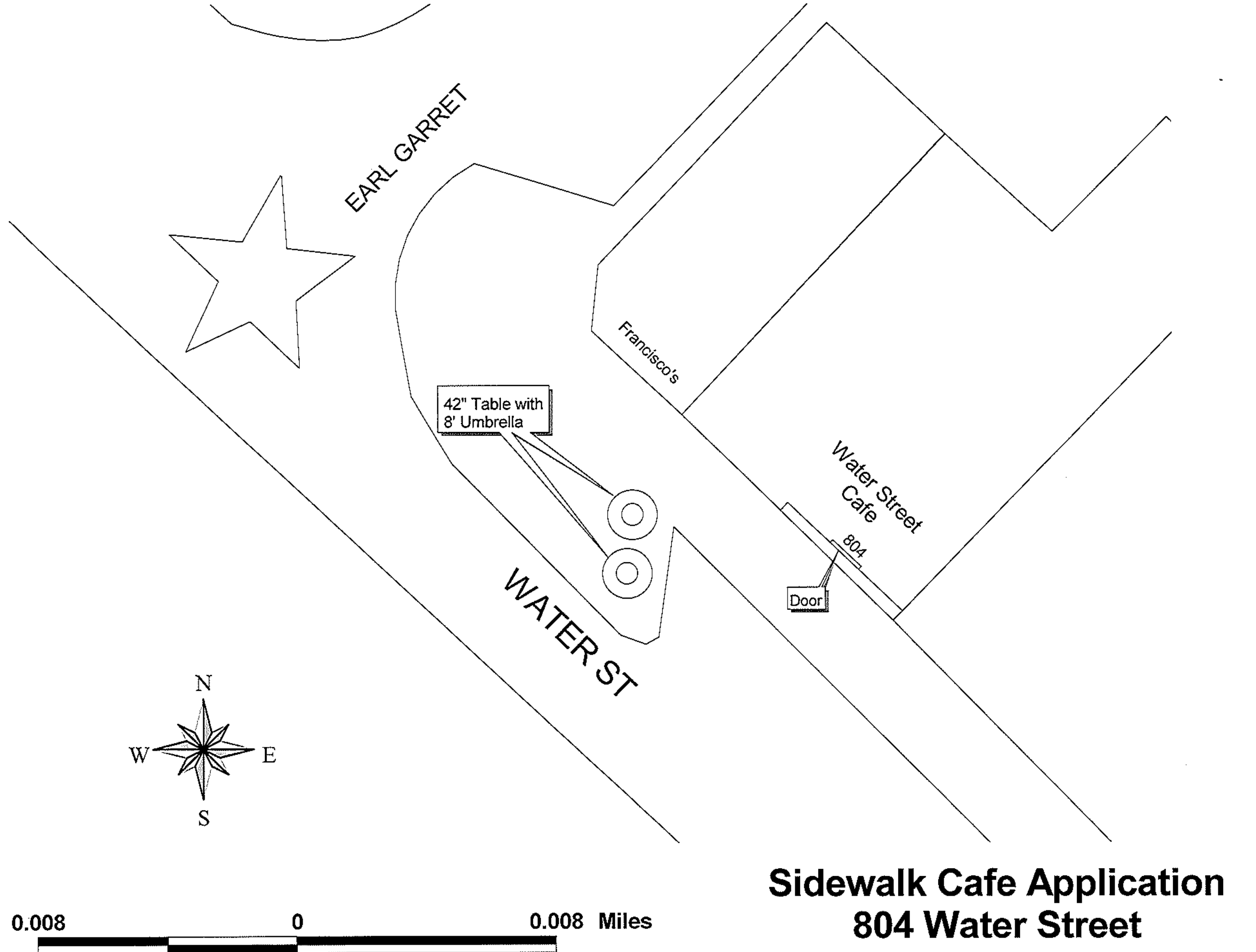
☑ The operation of the sidewalk café on a peninsula would meet the standards of section 30-55 of City Ordinance NO. 95-26

Reviews:

☑ **Public Works Director** Charles Hastings **Date** 11/15/10

☑ **Development Services Director** K Coffman **Date** 11-15-10

☐ **City Manager** ______________ **Date** ________



Sidewalk Cafe Application
804 Water Street
Water Street Cafe

CERTIFICATE OF INSURANCE

This certifies that

☐ STATE FARM FIRE AND CASUALTY COMPANY, Bloomington, Illinois
☐ STATE FARM GENERAL INSURANCE COMPANY, Bloomington, Illinois
☐ STATE FARM FIRE AND CASUALTY COMPANY, Scarborough, Ontario
☐ STATE FARM FLORIDA INSURANCE COMPANY, Winter Haven, Florida
☒ STATE FARM LLOYDS, Dallas, Texas

insures the following policyholder for the coverages indicated below:

Name of policyholder: JOHN & JULIE FINCH DBA WATER STREET CAFE

Address of policyholder: 804 WATER STREET, KERRVILLE, TX 78028

Location of operations: ALL

Description of operations: CAFE

The policies listed below have been issued to the policyholder for the policy periods shown. The insurance described in these policies is subject to all the terms exclusions, and conditions of those policies. The limits of liability shown may have been reduced by any paid claims.

POLICY NUMBER	TYPE OF INSURANCE	POLICY PERIOD Effective Date	POLICY PERIOD Expiration Date	LIMITS OF LIABILITY (at beginning of policy period)
90-BR-W949-9	Comprehensive Business Liability	05/24/2010	05/24/2011	BODILY INJURY AND PROPERTY DAMAGE
This insurance includes:	☐ Products - Completed Operations ☒ Contractual Liability ☐ Underground Hazard Coverage ☒ Personal Injury ☐ Advertising Injury ☐ Explosion Hazard Coverage ☐ Collapse Hazard Coverage ☐ ☐			Each Occurrence $ 1,000,000 General Aggregate $ 2,000,000 Products – Completed Operations Aggregate $ 2,000,000

		POLICY PERIOD Effective Date	POLICY PERIOD Expiration Date	
NONE	EXCESS LIABILITY ☐ Umbrella ☐ Other			BODILY INJURY AND PROPERTY DAMAGE (Combined Single Limit) Each Occurrence $ Aggregate $
NONE	Workers' Compensation and Employers Liability			Part 1 STATUTORY Part 2 BODILY INJURY Each Accident $ Disease Each Employee $ Disease - Policy Limit $

POLICY NUMBER	TYPE OF INSURANCE	POLICY PERIOD Effective Date	POLICY PERIOD Expiration Date	LIMITS OF LIABILITY (at beginning of policy period)
NONE				
NONE				
NONE				

THE CERTIFICATE OF INSURANCE IS NOT A CONTRACT OF INSURANCE AND NEITHER AFFIRMATIVELY NOR NEGATIVELY AMENDS, EXTENDS OR ALTERS THE COVERAGE APPROVED BY ANY POLICY DESCRIBED HEREIN.

If any of the described policies are canceled before its expiration date, State Farm will try to mail a written notice to the certificate holder 30 days before cancellation. If however, we fail to mail such notice, no obligation or liability will be imposed on State Farm or its agents or representatives.

Name and Address of Certificate Holder

CITY OF KERRVILLE
800 JUNCTION HIGHWAY
KERRVILLE, TX 78028

Mike Kropp by Imc SSA

Signature of Authorized Representative

AGENT — 09/30/2010

Title — Date

Agent's Code Stamp

AFO Code 8198

RIGHT-OF-WAY LICENSE AGREEMENT

The City of Kerrville, Texas, a home rule municipal corporation ("City"), acting by and through its duly authorized City Manager and City Clerk, for sufficient consideration, does hereby grant to John Kevin Finch, dba Water Street Café, 804 Water Street, Kerrville, Kerr County, Texas ("Licensee"), a license to enter upon those certain parcels of land owned or controlled by the City of Kerrville in Kerr County, Texas, (the "Public Area"), in front of the building located at 804 Water Street, to wit:

> That portion of the Public Area as shown on **Attachment A**, which is attached hereto and incorporated herein, and more specifically described as an approximately 336 128 square foot area of land located in front of Lot 89, Part of Lots 90 and 91; Block 7; J.D. Brown's Addition, an addition to the City of Kerrville, Texas, said area extending South-westerly an approximate distance of less than thirty feet (30) from the existing building into the City's public right of way toward Water Street, and for a distance of approximately twenty-five (25') from the existing door of the building on the side facing Water Street.

referred to herein as the "Licensed Premises", and to use the Licensed Premises for the purpose of establishing and maintaining a sidewalk café. City's consent to encroachment, as evidenced by this Right-of-Way License Agreement ("Agreement"), does not constitute its abandonment, partial or otherwise, of the Licensed Premises.

For and in consideration of the execution of this Agreement and the mutual promises and covenants of the parties hereto, it is mutually promised, understood and agreed as follows:

1. This Agreement shall be for a term of one (1) year, commencing on the date it is signed by both parties hereto (also known as the "Commencement Date"), unless terminated earlier as provided hereafter. Licensee shall have the option of renewing and extending the term of this Agreement for an additional one (1) year term by giving notice of renewal in writing to the City not less than thirty (30) days in advance of the date of termination of the original one (1) year term. However, such option shall not be automatic and will be subject to City review of the then existing conditions and an analysis to minimize potential harm, injury or interference to the public of the use of a public right-of-way. Following such review, the City Manager may authorize the extension of this Agreement for another one (1) year term.

2. In further consideration for the rights herein granted to Licensee, Licensee shall pay to City the sum of $100.00 per year, payable on or before the Commencement Date and then on or before the anniversary thereof. The yearly license fee payment shall be made to City at the office of the City Manager, 800 Junction Highway, Kerrville, Texas, 78028. Following payment of the fee, no part shall be refunded for any reason, including early termination.

3. Licensee shall have the option to terminate this Agreement at any time upon giving the City written notice thirty (30) days in advance of such termination.

4. City shall have the option to terminate this Agreement for failure of Licensee to comply with any provisions or requirement contained in this License after thirty (30) days written notice to do so. City shall also have the option to terminate this Agreement should the City Manager make a finding that conditions have changed such that the location and maintenance of the sidewalk café can no longer be safely done. If such finding is made, the City will provide Licensee with thirty (30) days written notice of such finding.

5. The establishment and maintenance of the sidewalk café shall be in strict conformance with the scale plan and sketch showing the Licensed Premises. Said plan is shown as **Attachment A**, which is attached hereto and incorporated herein. Any deviation from the plan shall give the City the right to revoke this Agreement.

6. The Licensee shall comply with the following terms during the duration of this Agreement:

   A. The sidewalk café shall be limited to 2 square 42 inch tables and no more than 8 chairs, which are placed within the Licensed Premises. Said tables and chairs shall not be placed within ten feet (10') of an entrance or doorway, which distance is measured in front of the doorway, and not the sides. No other furniture or equipment shall be placed within the Licensed Premises.

   B. The sidewalk area outside the Licensed Premises shall have a minimum of six feet (6') of clear passage for pedestrians. The City may require additional pedestrian passage area, including area within the Licensed Premises, based upon pedestrian activity.

   C. No fences, walls, partitions, barriers, signs or other fixtures or objects shall be placed within the Licensed Premises with the exception that a removable freestanding balustrade may be used to mark the boundaries of the sidewalk café.

   D. Licensee shall clean the Licensed Premises and adjacent sidewalk and street areas of spills, debris and litter each day or night after the sidewalk café is closed.

   E. The sidewalk café shall only be in operation during the hours that the adjacent business located at 804 Water Street is open to the public.

   F. The sidewalk café shall comply with the Americans with Disabilities Act (ADA) requirements and any other federal or state accessibility requirements.

G. Licensee is responsible for the condition of the sidewalk and the making of repairs to the sidewalk area and to brick pavers. Repairs shall be made within thirty (30) days after notice from City.

H. Licensee shall secure and weight all tables, chairs and umbrellas in such a way to prevent movement or damage during periods of wind or storms.

7. Licensee shall carry insurance in the following types and amounts for the duration of this Agreement and furnish Certificates of Insurance along with copies of policy declaration pages and all policy endorsements as evidence thereof to City:

A. Commercial General Liability Insurance with a minimum bodily injury and property damage per occurrence limit of $1,000,000. The policy must provide contractual liability coverage for liability assumed under this contract, products and completed operations coverage, independent contractors 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. Licensee shall maintain coverage for the duration of this Agreement and for six-months following termination of this Agreement. Licensee shall pay for this extended reporting period coverage.

B. If insurance policies are not written for amounts specified in Subsection A, above, Licensee 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. Licensee 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. Licensee 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. Licensee shall not commence work under this Agreement until it has obtained all required insurance and until such insurance has been reviewed by the City.

F. Licensee shall produce an endorsement to each affected policy that contains the following:

(1) That names City of Kerrville, Texas, 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;

(3) That the "other" insurance clause shall not apply to City where City is an additional insured shown on the policy. It is intended that the policies required in this Agreement, covering both City and Licensee, shall be considered primary coverage, as applicable.

(4) Licensee 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.

(5) City reserves the right to review the insurance requirements of this Paragraph during the effective period of this Agreement and to make reasonable adjustments to insurance coverages, their limits when deemed necessary and prudent by City based upon changes in statutory law, court decisions, or the claims history of the industry or financial condition of the insurance company as well as that of Licensee. City shall be entitled to review, upon request, and without expense to City, to receive copies of the requisite insurance policies and endorsements thereto and may make any reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions, except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter on any of such policies.

G. 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.

8. **LICENSEE AGREES TO INDEMNIFY, DEFEND, AND HOLD HARMLESS CITY AND ALL OF CITY'S OFFICERS, AGENTS AND EMPLOYEES** from all suits, actions, claims, damages, personal injuries, losses, property damage 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 PERSONS OR PROPERTY, ON ACCOUNT OF ANY INTENTIONAL OR NEGLIGENT ACT OR OMISSION OF LICENSEE, ITS OFFICERS, AGENTS, EMPLOYEES, TENANTS, OR CONTRACTORS AND ANY OF THEIR RESPECTIVE SUBCONTRACTORS,** arising out of the location of the sidewalk café within the public right-of-way, or any operations conducted on the Licensed Premises by Licensee, its officers, employees, contractors, or tenants, with respect to the establishment, maintenance operation of the sidewalk café.

9. City reserves the right to use the Licensed Premises and the airspace above the Licensed Premises for any purpose allowed by law and to do and permit to be done, any work in connection therewith which may be deemed necessary or proper by the City on, across, along, under or over said Licensed Premises; and whenever by reason of said work in connection with said other purposes it shall be deemed necessary by the City to alter, change, adapt, conform, relocate, remove, or otherwise disturb Licensee's sidewalk café or other property in any part of the Licensed Premises occupied by Licensee, such alterations or changes or relocations shall be made by the Licensee when ordered in writing by the City Manager without any claim for reimbursement for damages against the City.

10. Any notice or communication required in the administration of this License shall be sent to the City as follows:

    City Manager
    800 Junction Highway
    Kerrville, Texas 78028

    Any notice or communication required in the administration of this License shall be sent to the Licensee as follows:

    John Kevin Finch
    Julie Finch
    804 Water Street
    Kerrville, Texas 78028

11. This License Agreement shall be governed by and construed in accordance with the laws of the State of Texas, and is fully performed in Kerr County, Texas.

IN WITNESS WHEREOF, the undersigned have set their hand on the day indicated, with the effective date of this License Agreement being the latter of the dates this agreement is signed by the respective parties.

CITY OF KERRVILLE, TEXAS	LICENSEE
By ________________________	By ________________________
Todd Parton, City Manager	John Kevin Finch
Date:______________________	Date:______________________

ATTEST:

____
Brenda G. Craig, City Clerk

APPROVED AS TO FORM:

____
Michael C. Hayes, City Attorney

ACKNOWLEDGMENTS

THE STATE OF TEXAS §

COUNTY OF KERR §

This instrument was acknowledged before me on the ____ day of ______________, 2010, by TODD PARTON, CITY MANAGER, for and on behalf of the CITY OF KERRVILLE, TEXAS.

____
NOTARY PUBLIC, STATE OF TEXAS

Printed Name:______________________

My Commission Expires:____________

THE STATE OF TEXAS §

COUNTY OF KERR §

This instrument was acknowledged before me on the ____ day of ______________, 2010, by JOHN KEVIN FINCH.

____
NOTARY PUBLIC, STATE OF TEXAS

Printed Name:______________________

My Commission Expires:____________

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Agenda Item:
(Staff)

3G. Approval of an economic development grant agreement between A&D Properties #2 and the City of Kerrville, Texas Economic Improvement Corporation in the amount of $10,000.

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

SUBJECT: Authorize the execution of a funding agreement between the City of Kerrville, Texas Economic Improvement Corporation and A & D Properties #2 in the amount of $10,000.00

FOR AGENDA OF: November 23, 2010 **DATE SUBMITTED**: November 16, 2010

SUBMITTED BY: Mindy N. Wendele, Director of Business Programs & Public Affairs

CLEARANCES: Todd Parton, City Manager

EXHIBITS: Funding agreement

AGENDA MAILED TO:

APPROVED FOR SUBMITTAL BY CITY MANAGER: TP

Expenditure Required:	**Current Balance in Account:**	**Amount Budgeted:**	**Account Number:**
$10,000.00	$50,000.00	$	40-800-306

PAYMENT TO BE MADE TO:

REVIEWED BY THE FINANCE DIRECTOR:

SUMMARY STATEMENT

Harvey Brinkman, representative for A & D Properties #2, made application to the EIC requesting funds from the Commercial Improvement Program established by the EIC earlier this year. Mr. Brinkman's project is a demolition of buildings at Loop 534 and SH 27 making way for future development.

A public hearing was conducted and a funding agreement approved by EIC for $10,000.00.

RECOMMENDED ACTION

Approve funding agreement.

ECONOMIC DEVELOPMENT GRANT AGREEMENT BETWEEN A&D PROPERTIES #2 AND THE CITY OF KERRVILLE, TEXAS ECONOMIC IMPROVEMENT CORPORATION

This Agreement entered into by and between A&D PROPERTIES #2 ("A&D"), acting herein by and through its duly authorized Representative, Harvey Brinkman ("Officer"); and the CITY OF KERRVILLE, TEXAS, ECONOMIC IMPROVEMENT CORPORATION ("EIC"), a Texas nonprofit corporation, established pursuant to Section 4B of Tex. Rev. Civ. Stat. Art. 5190.6 and now codified in Chapters 501, 502, and 505 of the Texas Local Government Code (otherwise known as the Development Corporation Act of 1979 hereafter referred to as "the Act"), acting by and through its duly authorized President, Bill Crumrine, as authorized by the Board of Directors of the EIC ("Board").

WITNESSETH:

WHEREAS, EIC was formed to administer the sales and use tax approved by the citizens of Kerrville, Texas, in May 1995, and collected for the funding of various projects including:

> land, buildings, equipment, facilities, and improvements found by the Board to promote or develop new or expanded business enterprises that create or retain primary jobs, including, (1) a project to provide public safety facilities, streets and roads, drainage and related improvements, demolition of existing structures, general municipally owned improvements, and any improvements or facilities related to a project described herein; and (2) any other project that the Board in its discretion determines promotes or develops new or expanded business enterprises that create or retain primary jobs; and

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

WHEREAS, the EIC adopted a Commercial Improvement Program ("Program") for the purpose of encouraging existing businesses to make improvements to their buildings; and

WHEREAS, for eligible projects, the Program will reimburse funding up to 20% of the cost of the improvement project, with any such reimbursement not to exceed $10,000; and

WHEREAS, the Program also provides funding up to 40% of the cost to tear down a building; and

WHEREAS, A&D has applied for a grant from the EIC under the Program to demolish and remove several buildings in an effort to attract development to the property (the "Project"); and

WHEREAS, based upon A&D's application for Grant funding under the Program, the EIC finds that the Project promotes or develops new or expanded business enterprises that create or retain primary jobs, as that term is defined by the Act; and

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

WHEREAS, EIC finds that it will be in the public interest to enter into this Agreement with A&D to provide sales tax revenues collected pursuant to the Act ("4B Revenues") to A&D for costs related to the demolition and removal of buildings; and

WHEREAS, on October 18, 2010, in a meeting that was open to the public in accordance with the Texas Open Meetings Act, EIC held a public hearing pursuant to Section 501.072 of the Act related to the proposed expenditure of 4B revenues for the purposes provided above;

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

ARTICLE I.
EIC'S OBLIGATIONS

A EIC hereby grants to A&D Ten Thousand and No/100 Dollars ($10,000.00) ("Grant") from 4B Revenues for costs related to the demolition and removal of the Parkway Apartments located at corner of Loop 534 and Highway 27, Kerrville, Texas, 78028 (the "Property"). A&D agrees that should the costs be reduced for any reason, EIC may reduce the Grant in accordance with the Program's funding limitations.

B. Subject to the terms and conditions set forth in Article II, the Grant shall be provided to A&D by EIC and EIC shall administer the Grant on a reimbursable basis. Prior to any payment from EIC, A&D must first submit written evidence of costs, such as invoices, receipts, and bills of sale for review and approval. Following each submission and verification thereof, which may include on-site inspections to confirm the construction and development of the Project, EIC shall then reimburse A&D for the cost.

C. Payments made by EIC to A&D from 4B Revenues shall be limited to the payments of "costs" as defined by the Act.

D. In no event shall the total amount of the Grant exceed Ten Thousand and No/100 Dollars ($10,000.00).

E. A&D specifically agrees that EIC shall only be liable to A&D for the actual amount of the Grant to be conveyed to A&D and shall not be liable to A&D for any other actual or consequential damages, direct or indirect, interest, attorney fees, or costs of court for any act of default by EIC under the terms of this Agreement.

ARTICLE II.
A&D'S OBLIGATIONS

A. A&D agrees to complete the Project on or before June 30, 2011. Failure to complete the Project by this date shall terminate the obligation of EIC to make any additional payments of the Grant.

B. A&D shall keep and maintain complete and accurate records relating to the costs of the Project, separate and identifiable from its other records, for three (3) years following the termination of this Agreement. EIC and its representatives shall be entitled to inspect the records during the term of this Agreement and for three (3) years thereafter, upon reasonable notice.

C. Following the initial payment from EIC to A&D, A&D shall make written monthly reports to EIC on or before the last day of the month. Said reports, at a minimum, shall include information on the status of the Project and its estimated completion date.

D. A&D shall only be liable to EIC for the actual amount of the Grant to be conveyed to A&D and shall not be liable to EIC for any other actual or consequential damages, direct or indirect, interest, attorney fees, or cost of court for any act of default by A&D under the terms of this Agreement.

ARTICLE III.
REIMBURSEMENT

A. If, on June 30, 2011, A&D has failed to complete the Project, then A&D shall repay EIC the total amount of funding that the EIC has paid to A&D under this Agreement. The repayment shall be made as soon as commercially practicable after the receipt of a written demand by EIC, but in no event later than thirty (30) days from the receipt of such written demand. Upon repayment thereof, A&D shall have no further obligation under this Agreement. EIC shall have the discretion to consider relevant circumstances before demanding repayment and may require partial repayment in appropriate circumstances. Failure to reimburse EIC within thirty (30) days of A&D's receipt of such demand shall constitute a breach of this Agreement.

B. Notwithstanding any other provision in this Agreement, A&D shall in no event be required to repay any amount in excess of the Grant monies actually received under this Agreement.

ARTICLE IV.
MERGER, CONSOLIDATION OR CHANGE IN MANAGEMENT OF A&D OR CONVEYANCE OF PROPERTY

A. A sale of all or substantially all of the assets of A&D, including the Property, shall not release A&D from its duties and responsibilities to EIC under the terms of this Agreement and shall not result in the assignment of this Agreement by such acquiring entity without prior written consent from EIC, which will not be unreasonably withheld.

B. In the event of any proposed merger, consolidation, or change in the management of A&D with any third party not affiliated with A&D, A&D shall at least thirty (30) days prior to any such merger or consolidation provide EIC with information and assurance reasonably acceptable to EIC regarding: (1) the surviving entity's assumption and satisfaction of A&D's duties and responsibilities hereunder; and (2) the financial condition of the surviving entity upon such merger or other consolidation to demonstrate that the surviving entity shall have the financial condition to fully satisfy A&D's duties and responsibilities hereunder. Failure to provide such information shall be considered a breach of this Agreement.

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

ARTICLE V.
A&D'S REPRESENTATIONS AND WARRANTIES

A. A&D represents and warrants as of the date hereof:

(1) A&D is a Texas corporation existing in good standing and authorized to do business in the State of Texas;

(2) Execution of this Agreement has been duly authorized by A&D and this Agreement is not in contravention of A&D's articles of incorporation or bylaws, or any agreement or instrument to which A&D is a party or by which it may be bound as of the date hereof;

(3) No litigation or governmental proceeding is pending, or, to the knowledge of the Officer, threatened against or affecting A&D, which may result in a material adverse change in A&D's business, properties, or operations sufficient to jeopardize A&D's legal existence; and

(4) No written application; written statement; oral statement to either the EIC, an EIC Boardmember, or staff for the City of Kerrville; correspondence delivered by A&D to EIC in connection with this Agreement, or in connection with any transaction contemplated hereby, to the knowledge of the Officer, contains any untrue statement of a material fact or fails to state any material fact necessary to keep the statements contained therein from being misleading.

B. Except as expressly set forth in this Article V, A&D makes no other representation or warranty of any kind in connection with or related to the provisions of this Agreement.

ARTICLE VI.
EIC'S REPRESENTATIONS AND WARRANTIES

A. EIC represents and warrants as of the date hereof:

(1) EIC, to the best of the knowledge of its Board, is legally authorized to enter into this Agreement by virtue of the Act and by the authorities and powers vested in it as a corporation duly and properly organized under the Act;

(2) Execution of this Agreement has been duly authorized by EIC;

(3) No litigation or governmental proceeding is pending, or, to the knowledge of any of EIC's officers, threatened against or affecting EIC, which may result in EIC's inability to meet its obligations under this Agreement; and

(4) EIC has no reasonable basis for believing that it has or will have incurred debts beyond its ability to pay as such debts mature, including but not limited to the obligations set forth in this Agreement.

B. Except as expressly set forth in this Article VI, the EIC makes no other representation or warranty of any kind in connection with or related to the provisions of this Agreement.

ARTICLE VII.
MAJOR FORCES PREVENTING A&D FROM CARRYING OUT ITS OBLIGATIONS UNDER THIS AGREEMENT

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

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

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

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

(2) The appointment of a receiver of A&D, or of all or any substantial part of its Property, and the failure of such receiver to be discharged within sixty (30) days thereafter.

(3) The adjudication of A&D as bankrupt.

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

(B) Should any of these conditions not be cured by A&D within a period of one (1) month, EIC may, at its option, with written notice to A&D, terminate this Agreement and A&D shall have no further obligations hereunder.

ARTICLE IX.
REMEDIES

A. Except as otherwise provided in this Agreement, in the event of any default in or breach of this Agreement, by any party hereto, or any successor to such party, such defaulting or breaching party (or successor) shall upon written notice from the other, proceed immediately to cure or remedy such default or breach, and, in any event, within sixty (30) days after receipt of such notice. In the event that remedial action is not taken or not diligently pursued and the default or breach shall not be cured or remedied within a reasonable time (but in no event later than ninety (30) days from the date of notification of such breach), the aggrieved party may institute such proceedings as may be necessary or desirable in its opinion to cure and remedy such default or breach, including but not limited to, seeking specific performance and/or injunctive relief, enforcement by mandamus or by the appointment of a receiver in equity with power to charge and collect rents, purchase price payments, and loan payments and to apply the revenues from the project in accordance with this Agreement, as required by the Act.

B. Upon breach of this Agreement by either party and the failure to cure as permitted by this Article IX, the non-breaching party shall have the sole right and discretion to either terminate this Agreement or pursue any and all remedies which may be provided by law and this Agreement. Each party acknowledges and agrees that no party hereunder shall be entitled to recover any amounts in excess of the Grant contracted for under this Agreement and that no party hereunder shall be liable to the other party for any other actual or consequential damages for any act of default by such party under the terms of this Agreement.

C. Any delay by any party in instituting or prosecuting any actions or proceedings or otherwise asserting its rights shall not, so long as the breach or default by another party shall be continuing, operate as a waiver of such rights or to deprive it of or limit such rights in any way; nor shall any waiver in fact be made by any party with respect to any specific default by any other party except to the extent specifically waived in writing.

ARTICLE X.
GENERAL PROVISIONS

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

B. Amendment. This Agreement may be amended only by written amendment signed by both parties.

C. Venue. All payments made pursuant to this Agreement and other obligations performed under this Agreement shall be made or performed in Kerrville, Kerr County, Texas. Venue shall lie in Kerr County, Texas; and this Agreement shall be governed by and construed in accordance with the laws of the State of Texas without respect to the conflict of laws rules thereof.

D. Notices. All notices given with respect to this Agreement shall be in writing and shall be deemed to have been properly given for all purposes (i) if sent by a nationally recognized overnight carrier for next business day delivery, on the first business day following deposit of such notice with such carrier unless such carrier confirms such notice was not delivered, then on the day such carrier actually delivers such notice, or (ii) if personally delivered, on the actual date of delivery, or (iii) if sent by certified U.S. Mail, return receipt requested postage prepaid, on the fifth business day following the date of mailing, or (iv) if sent by facsimile, then on the actual date of delivery (as evidenced by a facsimile confirmation) provided that a copy of the facsimile and confirmation is also sent by regular U.S. Mail, addressed as follows:

1. For EIC

President – Bill Crumrine
City of Kerrville, Texas, Economic Improvement Corporation
800 Junction Highway
Kerrville, Texas 78028
Facsimile: (830) 792-3850

With a copy to:

Mindy Wendele
Director of Business Programs
City of Kerrville
800 Junction Highways
Kerrville, Texas 78028
Facsimile: (830) 792-3850
Email: mindy.wendele@kerrvilletx.gov

2. For A&D

Harvey Brinkman
A&D Properties #2
PO BOX 290743
Kerrville, Texas 78029
Email: hbrink@ktc.com

E. Assignment. This Agreement shall be binding upon the parties hereto and their successors and assigns. Except as set forth in Article IV, this Agreement may not be assigned by either party without the specific prior written consent of the other, which consent will not be unreasonably withheld. In the event that a party consents to any valid assignment of this Agreement by the other party hereto, the assigning party shall be relieved of any and all obligations and liabilities on the part of such assigning party under this Agreement. A&D may, without written consent of EIC, assign this Agreement to any entity controlled and owned 100% by A&D or by the parent, subsidiary, or affiliate of A&D provided the entity assumes all of A&D's obligations and liabilities under this Agreement; agrees to comply with all provisions of this Agreement; has the legal, managerial, technical and financial ability to properly perform and discharge such obligations and liabilities; and such abilities are each at least as great as those of A&D and A&D provides a written guarantee of such assignee's performance in a form reasonably acceptable to EIC. EIC shall be advised in writing of such assignment and of the entity's qualifications at least thirty (30) days before such assignment occurs.

F. Parties In Interest. Nothing in this Agreement shall entitle any party other than A&D or EIC to any claim, cause of action, remedy or right of any kind except as expressly provided in Article IV.

G. Term. Subject to the required approvals, the term of this Agreement (the "Term") shall commence on November 23, 2011 (the "Effective Date"), and shall terminate on the earlier of: (i) June 30, 2011, or when the requirements set forth in this Agreement are completed; (ii) when terminated by mutual agreement of the parties; (iii) when terminated pursuant to Article IX, Paragraph B; (iv) when terminated pursuant to Article VIII; (v) at A&D's absolute discretion, upon A&D's return of all Grant funding to EIC that it has received under this Agreement; (vi) upon A&D's repayment of all monies that are demanded by EIC and are in fact required to be repaid by A&D under Article III; or, (vii) upon a termination of this Agreement by EIC pursuant to Article VIII. Upon termination of this Agreement as specified herein, all rights, duties and obligations of any kind under this Agreement shall automatically expire and terminate and be of no other force and effect.

H. Interpretation. Each party has had the opportunity to be represented by counsel of its choice in negotiating this Agreement. This Agreement shall therefore be deemed to have been negotiated and prepared at the joint request, direction, and construction of the parties, at arms length, with the advice and participation of counsel, and will be interpreted in accordance with its terms without favor to any party.

I. Indemnity. **IT IS UNDERSTOOD AND AGREED BETWEEN THE PARTIES THAT A&D, IN PERFORMING ITS OBLIGATIONS HEREUNDER, IS ACTING**

INDEPENDENTLY AND EIC, ITS OFFICERS, AND AGENTS ASSUME NO RESPONSIBILITY OR LIABILITY IN CONNECTION THEREWITH. A&D AGREES TO INDEMNIFY AND HOLD HARMLESS EIC, ITS OFFICERS AND AGENTS, AGAINST ANY AND ALL CLAIMS, LAWSUITS, JUDGMENTS, COSTS, AND EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE OR OTHER HARM FOR WHICH RECOVERY OF DAMAGES IS SOUGHT, SUFFERED BY ANY PERSON OR PERSONS THAT MAY ARISE OUT OF OR BE OCCASIONED BY A&D'S BREACH OF ANY OF THE TERMS OR PROVISIONS OF THIS AGREEMENT OR BY ANY NEGLIGENT ACT OR OMISSION OF A&D, ITS OFFICER, AGENTS, ASSOCIATES OR EMPLOYEES, IN THE PERFORMANCE OF THIS AGREEMENT; AND NOTHING HEREIN SHALL BE CONSTRUED AS A WAIVER OF ANY GOVERNMENTAL IMMUNITY AVAILABLE TO EIC UNDER TEXAS LAW.

J. No Joint Venture. Nothing contained in this Agreement is intended by the parties nor do the parties intend to create a partnership or joint venture between the parties.

K. Survival of Terms. All rights, duties, liabilities and obligations accrued prior to termination shall survive termination.

L. Entire Agreement. This Agreement represents the entire agreement of the parties with respect to the subject matter hereof.

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

CITY OF KERRVILLE, TEXAS ECONOMIC IMPROVEMENT CORPORATION

Bill Crumrine

Bill Crumrine, President

ATTEST:

Secretary to Corporation

APPROVED AS TO FORM:

Michael C. Hayes, City Attorney

A&D PROPERTIES #2.

By: ______________________________

Harvey Brinkman, President

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Agenda Item:
(Staff)

4A. 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; containing a cumulative clause; containing a savings and severability clause; establishing an effective date; and providing other matters related to the subject.

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

SUBJECT: Ordinance, second reading, amending Ordinance 2010-15 by changing the membership requirements of the Building Board of Adjustment and Appeal

FOR AGENDA OF: November 23, 2010 **DATE SUBMITTED:** November 10, 2010

SUBMITTED BY: Kevin Coleman KC **CLEARANCES:** Kristine Ondrias

EXHIBITS: Proposed Ordinance

AGENDA MAILED TO:

APPROVED FOR SUBMITTAL BY CITY MANAGER:

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

PAYMENT TO BE MADE TO:
REVIEWED BY THE DIRECTOR OF FINANCE:

SUMMARY STATEMENT

The proposed ordinance reflects needed changes to the membership requirements of the recently converted Building Board of Adjustment and Appeals.

The current requirements for the mechanical contractor position is a Class A state license. There are only a few Class A contractors that meet the residency requirements limiting the pool of contractors to serve in this role.

The proposed Section 26-229(b)(5) expands this description to include any state licensed mechanical contractor.

The proposed changes to Section 26-229(b)(7) and Section 26-229(c) provide flexibility to City Council in making appointments and avoid gaps in appointments in the future.

The proposed change was reviewed and recommended by the Building Board of Adjustment and Appeals at its November 1 meeting.

RECOMMENDED ACTION

Approve proposed ordinance on second and final reading.

CITY OF KERRVILLE, TEXAS
ORDINANCE NO. 2010-___

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; 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 recently created a single, multi-trade board known as the Building Board of Adjustment and Appeals ("Board"); and

WHEREAS, it was the intent of the City Council for the Board to include a broad spectrum of members, to include contractors, design professionals, and trades people; and

WHEREAS, the mechanical contractor position currently requires that a person hold a Class A state license, which along with the residency requirement, significantly limits the number of contractors who are qualified to serve on the Board; and

WHEREAS, in an effort to address this issue and maintain the membership of a mechanical contractor to the Board, City staff recommends amending the membership qualifications for the Board to provide greater flexibility in making appointments to the Board; and

WHEREAS, the proposed amendment was reviewed and recommended by the Board; and

WHEREAS, the City Council of the City of Kerrville, Texas, finds it to be in the public interest to amend the membership qualifications for the Board in the manner and for the reason 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, subsections (b) and (c) by adding the language that is underlined (<u>added</u>) and deleting the language that is bracketed and stricken ([~~deleted~~]) as follows:

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

⋮

(b) *Membership.* The Board shall consist of seven (7) regular members appointed by the City Council as follows:

(1) an architect licensed to practice in the state;

(2) a professional engineer licensed to practice in the state;

(3) a master electrician licensed to practice in the state;

(4) an unrestricted master plumber licensed to practice in the state;

(5) a mechanical contractor [~~with a Class A state license~~] licensed to practice in the state;

(6) a person licensed by the City as a contractor; and

(7) a person that is active in the construction industry; provided, however, if the City Council determines that it is unable to fill any one of the other regular positions specified above [~~there is no architect or professional engineer available to serve on the Board~~], then Council shall select a [~~second~~] person meeting this description to serve.

(c) *Alternates.* In an effort to obtain a quorum, increase efficiency, or for other reasons, the City Council may appoint two or more alternate members to the Board. Each alternate member shall meet any one of the qualification provisions applicable to regular members [~~as contained within subsections (b)(3) through (5) above~~]. An alternate member shall serve only in the absence of one or more regular members when requested to do so by the Chief Building Official so that all cases considered by the Board are heard by a minimum of at least four (4) members. Alternate members may only participate in meetings if called to act and shall then act as a regular member for the entire meeting. Even where not called upon to act as a regular member, alternate members shall attend all meetings and are subject to the attendance requirements applicable to the Board."

SECTION TWO. 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 amendment adopted herein and to correct typographical errors and to index, format, and number and letter paragraphs to the existing Code, as appropriate.

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

PASSED AND APPROVED ON FIRST READING, this the 9th **day of** November **A.D., 2010.**

PASSED AND APPROVED ON SECOND AND FINAL READING, this the ___day of _________, A.D., 2010.

David Wampler, Mayor

ATTEST:

Brenda G. Craig, City Secretary

APPROVED AS TO FORM:

Michael C. Hayes, City Attorney

T:\Legal\DEVELOPMENT SERVICES (planning)\Bldg Bd of Adjustment & Appeals\Ord\Amendment to BBAA qualifications-mech contractor_110510.doc

Agenda Item:
(Staff)

4B. An ordinance amending Chapter 58 "Health and Sanitation" of the Code of Ordinances of the City of Kerrville, Texas, by adding a new Article IV "Illegal Smoking Products and Illegal Smoking Paraphernalia"; containing a cumulative clause; containing a savings and severability clause; providing for a penalty for violation of any provision hereof; ordering publication; providing for an effective date; and providing other matters related to the subject.

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

SUBJECT: Prohibit the use, possession, sale, ingestion, or smoking of synthetic cannabinoids as well as the possession of ingestion devices used to ingest illegal smoking products.

FOR AGENDA OF: November 23, 2010 **DATE SUBMITTED:** November 15, 2010

SUBMITTED BY: Chief John Young **CLEARANCES:** Mike Hayes City Attorney

EXHIBITS: Ordinance

AGENDA MAILED TO:

APPROVED FOR SUBMITTAL BY CITY MANAGER: TP

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

PAYMENT TO BE MADE TO:
REVIEWED BY THE FINANCE DIRECTOR:

SUMMARY STATEMENT

Over the past few months, there has been an increased awareness of synthetic cannabinoids referred to commercially as K2 or Spice through media reports, law enforcement circles and community service groups. K2 or Spice, is a synthetic drug that gives users a marijuana like high when smoked. It consists of herbs that are sprayed with synthetic substances that mimic THC, the chemical found in marijuana. Synthetic cannabinoids are sold in convenience stores, tobacco shops and retail outlets which specialize in drug paraphernalia. It is generally marketed as herbal incense not for consumption. Several states have introduced legislation, which would ban the sale and possession of synthetic cannabinoids. Most recently, municipalities across the state considered and adopted city ordinances, which would ban the substance until state laws are enacted. There is pending legislation supported by the Texas Police Chiefs Association that would make it illegal to possess or sell the substance.

RECOMMENDED ACTION

The police department is aware of synthetic cannabinoid sales within the community. We recommend council approval of the city ordinance regulating the sale, possession and use of synthetic cannabinoids.

CITY OF KERRVILLE, TEXAS
ORDINANCE NO. 2010-___

AN ORDINANCE AMENDING CHAPTER 58 "HEALTH AND SANITATION" OF THE CODE OF ORDINANCES OF THE CITY OF KERRVILLE, TEXAS, BY ADDING A NEW ARTICLE IV "ILLEGAL SMOKING PRODUCTS AND ILLEGAL SMOKING PARAPHERNALIA"; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A PENALTY FOR VIOLATION OF ANY PROVISION HEREOF; ORDERING PUBLICATION; PROVIDING FOR AN EFFECTIVE DATE; AND PROVIDING OTHER MATTERS RELATED TO THE SUBJECT

WHEREAS, the City of Kerrville Police Department has determined that certain businesses within and around the City may be selling specified substances that when ingested produce intoxicating effects similar to THC or marijuana; and

WHEREAS, such substances may be generally described as synthetic cannabinoids or salvia divinorum distributed, marketed, and sold under various names such as K–2, K–2 Summit, K–2 Sex, Genie, Dascents, Zohai, Sage, Spice, KO Knock–Out 2, Spice Gold, Spice Diamond, Yucatan Fire, Solar Flare, Pep Spice, Fire 'N Ice, and Salvia Divinorum; and

WHEREAS, the substances described above are not yet categorized as illegal controlled substances under federal or state law; and

WHEREAS, the products identified above may be marketed as incense but are commonly being used as an alternative to marijuana which is an identified and documented controlled substance, the sale and use of which is prohibited under both federal and state law; and

WHEREAS, the synthetic cannabinoids substances described above may be presented under a variety of street names but share common ingredients including JWH-018 and JWH-073H; and

WHEREAS, salvia divinorum contains the ingredient known as Salvinorin A; and

WHEREAS, these unregulated synthetic cannabinoids and salvia divinorum produce a very potent intoxicating effect which medical professionals estimate produce effects ranging from three to one hundred times greater and more potent than THC, the active ingredient in marijuana; and

WHEREAS, the substances described above manifest all of the demonstrated attributes of substances that deprive individuals of judgment, coordination, and the ability to conduct themselves in a safe and appropriate manner; and

WHEREAS, the available medical and law enforcement information on the products identified above indicates that individuals under the effects of these substances may be a clear and present danger to themselves and others; and

WHEREAS, the long-term effects of these substances are not yet known; and

WHEREAS, it is anticipated that the Texas Legislature will consider regulating the above described substances during its upcoming legislative session, but until then, City staff recommends that the City adopt restrictions on these products until such a state-wide regulatory system is implemented; and

WHEREAS, City staff, including the City's Public Health Officer and its Police Chief, believe that the effects of these substances are a public health concern; and

WHEREAS, the City Council of the City of Kerrville, Texas, has determined that it is in the best interest of the public health, safety, and welfare to immediately address the health concerns to the citizens of the City by prohibiting the use, possession, and sale of the substances described above and the devices used to ingest these substances; and

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

SECTION ONE. Chapter 58 "Health and Sanitation" of the Code of Ordinances of the City of Kerrville, Texas, is amended by adding a new Article IV "Illegal Smoking Products and Illegal Smoking Paraphernalia", as follows:

"Article IV. Illegal Smoking Products and Illegal Smoking Paraphernalia.

Sec. 58-90. Definitions.

As used in this chapter, the following phrases and words shall have the following meanings:

Illegal Smoking Paraphernalia means any equipment, product, object, or material that is used or intended for use in ingesting, inhaling, or otherwise introducing an illegal smoking product into the human body, including:

(a) metal, wooden, acrylic, glass, stone, plastic, or ceramic pipe with or without a screen, permanent screen, hashish head, or punctured metal bowl;

(b) a water pipe;

(c) a carburetion tube or device;

(d) a smoking or carburetion mask;

(e) a chamber pipe;

(f) a carburetor pipe;

(g) an electric pipe;

(h) an air-driven pipe;

(i) a chillum;

(j) a bong; or

(k) an ice pipe or chiller.

Illegal Smoking Product means any plant or other substance, whether described as tobacco, herbs, incense, spice, or any blend thereof, under any of the marketed names of illegal smoking products, regardless of whether the substance is marketed for the purpose of being smoked, which includes any one or more of the following substances or chemicals:

(a) Salvia divinorum or salvinorin A; all parts of the plant presently classified botanically as salvia divinorum, whether growing or not, the seeds thereof, any extract from any part of such plant, and every compound, manufacture, salts, derivative, mixture or preparation of such plant, its seeds or extracts or similar structural analogs;

(b) 2-[(1R,3S)-3-hydroxycyclohexyl]-5-(2-methyloctan-2-yl)phenol (also known as CP47,497) and homologues or similar structural analogs;

(c)(6aS,10aS)-9-(hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol (also known as HU-211 or Dexanabinol) or similar structural analogs;

(d) 1-pentyl-3-(1-naphthoyl)indole (also known as JWH-018) or similar structural analogs;

(e) 1-butyl-3-(1-naphthoyl)indole (also known as JWH-073) or similar structural analogs;

(f) 1-pentyl-3-(4-methoxynaphthoyl)indole (also known as JWH-081) or similar structural analogs;

(g) any synthetic cannabinoid and any analogue variant thereof by whatsoever name it may be called or any substance similar in nature and sold or used for the purpose of inducing intoxication in the human body.

Marketed Names of Illegal Smoking Products means illegal smoking products containing some or all of the substances used to define illegal smoking products and currently marketed under the following commercial names: K–2, K–2 Summit, K–2 Sex, Genie, Dascents, Zohai, Sage, Spice, KO Knock–Out 2, Spice Gold, Spice Diamond, Yucatan Fire, Solar Flare, Pep Spice, Fire 'N Ice, and Salvia Divinorum.

Person means an individual, corporation, partnership, wholesaler, retailer, or any licensed or unlicensed business.

Sec. 58-91. Offenses.

(a) It shall be unlawful for any person to use, possess, purchase, barter, give, deliver, publicly display, sell, or offer for sale any illegal smoking product.

(b) It shall be unlawful for any person to use or possess any illegal smoking paraphernalia with the intent to inject, ingest, inhale, or otherwise introduce into the human body an illegal smoking product.

(c) Any product containing any of the chemical compounds set forth above shall be subject to the provisions of this Article, regardless of whether the product is marketed under names other than those listed above.

Sec. 58-92. Affirmative Defenses.

(a) It shall be an affirmative defense for a person charged with an offense for possession or use of an illegal smoking product that the use or possession was pursuant to the direction or prescription of a licensed physician or dentist authorized to direct or prescribe such act.

(b) It shall be an affirmative defense that the sale or possession of Salvinorin A was in conjunction with ornamental landscaping and used solely for that purpose.

(c) In the possession of or being used by a governmental entity for a health purpose, research and education, or a similar program."

SECTION TWO. 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 amendment adopted herein and to correct typographical errors and to index, format, and number and letter paragraphs to the existing Code as appropriate.

SECTION THREE. The provisions of this Ordinance are 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 FOUR. If any section, subsection, sentence, clause or phrase of this Ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this Ordinance. The Council of the City of Kerrville, Texas, 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 FIVE. The penalty for violation of this Ordinance shall be in accordance with that general penalty provision contained in Chapter 1 of the Code of Ordinances of the City of Kerrville, Texas, which provides for a fine not exceeding TWO THOUSAND DOLLARS ($2,000.00). Each continuing day's violation under this Ordinance shall constitute a separate offense.

SECTION SIX. In accordance with Section 3.07 of the City Charter and Texas Local Government Code §52.013(a), the City Secretary is hereby authorized and directed to publish the descriptive caption of this Ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication. This Ordinance shall become effective ten days following publication.

PASSED AND APPROVED ON FIRST READING, this the 9th **day of** November **A.D., 2010.**

PASSED AND APPROVED ON SECOND AND FINAL READING, this the ___ day of __________, A.D., 2010.

ATTEST:

____
David Wampler, Mayor

____
Brenda G. Craig, City Secretary

APPROVED AS TO FORM:

Michael C. Hayes
Michael C. Hayes, City Attorney

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Agenda Item:
(Staff)

4C. An ordinance amending Chapter 118 "Waterways", Article II, "City Water Impoundment Regulations," of the Code of Ordinances of the City of Kerrville, Texas, by clarifying that the construction of habitable structures is prohibited within certain areas adjacent to the city's impounded waters of the Guadalupe River and adding a definition for "habitable structure"; containing a cumulative clause; containing a savings and severability clause; establishing an effective date; ordering publication; and providing other matters related to the subject.

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

SUBJECT: Ordinance Second Reading Amending Chapter 118, Article II City Water Impoundment Regulations of the Kerrville Code of Ordinances

FOR AGENDA OF: November 18, 2010 **DATE SUBMITTED**: November 23, 2010

SUBMITTED BY: Todd Parton
City Manager

CLEARANCES: NA

EXHIBITS: Ordinance

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 DIRECTOR:

SUMMARY STATEMENT

At a special meeting of the City Council held on October 7, 2010, staff was directed to amend those ordinances that prohibit or significantly limit development along the Guadalupe River Corridor. Pursuant to that direction, staff has been conducting a review of each of the relevant ordinances, specifically Chapter 118, Article II of the Kerrville Code of Ordinances. One of the primary factors that staff is considering is how negative impacts to water quality may be mitigated as development occurs immediately adjacent to the river and to the lake.

In order to facilitate the proposed development of the river trail by Hunter Equity at the Family Sports Center location, staff is proposing the attached amendment of Chapter 118, Article II.

RECOMMENDED ACTION

Approve the second reading of the amended ordinance.

CITY OF KERRVILLE, TEXAS
ORDINANCE NO. 2010-___

AN ORDINANCE AMENDING CHAPTER 118 "WATERWAYS", ARTICLE II "CITY WATER IMPOUNDMENT REGULATIONS," OF THE CODE OF ORDINANCES OF THE CITY OF KERRVILLE, TEXAS, BY CLARIFYING THAT THE CONSTRUCTION OF HABITABLE STRUCTURES IS PROHIBITED WITHIN CERTAIN AREAS ADJACENT TO THE CITY'S IMPOUNDED WATERS OF THE GUADALUPE RIVER AND ADDING A DEFINITION FOR "HABITABLE STRUCTURE"; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; ESTABLISHING AN EFFECTIVE DATE; ORDERING PUBLICATION; AND PROVIDING OTHER MATTERS RELATED TO THE SUBJECT

WHEREAS, the City Council finds that from time to time, the City's regulations governing the City's impounded waters and waterways should be updated; and

WHEREAS, the City Council of the City of Kerrville, Texas, finds it to be in the public interest to amend the Code of Ordinances of the City of Kerrville, Texas, to clarify that the construction of habitable structures is prohibited within certain areas adjacent to the City's impounded waters of the Guadalupe River and adding a definition of "habitable structure";

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

SECTION ONE. Chapter 118 "Waterways", Article II "City Water Impoundment Regulations" of the Code or Ordinances of the City of Kerrville, Texas, is amended by amending Section 118-32 by adding the language that is underlined (<u>added</u>) and deleting the language that is bracketed and stricken (~~[deleted]~~) as follows:

"Sec. 118-32. Definitions.

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<u>*Habitable Structure* means a structure designed primarily for human occupancy and are potential locations for shelter from storms. Typically included within this category are residences, hotels and restaurants. Additionally, a habitable structure includes improvements, attached or otherwise, including but not limited to porches and gazebos, and excludes sidewalks, swimming pools, and other surface level improvements.</u>"

SECTION TWO. Chapter 118 "Waterways", Article II "City Water Impoundment Regulations" of the Code or Ordinances of the City of Kerrville, Texas, is amended by amending Section 118-33 by adding the language that is underlined (<u>added</u>) and deleting the language that is bracketed and stricken (~~[deleted]~~) as follows:

"Sec. 118-33. Prohibited activities.

No person shall:

(1) Operate an internal combustion engine of a watercraft on the lake;
(2) Construct or maintain a dock, wharf, or ~~other~~ habitable structure fixed into, resting upon, or located over the lakebed or fixed into, resting upon, or located over any other property owned by the city;

(3) Construct or maintain a dock, wharf, or ~~other~~ habitable structure fixed into, resting upon, or located over any flood easement owned by the city that is upstream of the dam;

(4) Place, operate, or maintain a houseboat on the lake;

(5) Place, use, or maintain a trotline, throwline, or jugline at any location within the lake; or

(6) Swim, fish, or operate a watercraft within a distance of 200 feet from the raw water intake of the water treatment plant."

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 amendment 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. In accordance with Section 3.07 of the City Charter and Texas Local Government Code §52.013(a), the City Secretary is hereby authorized and directed to publish the descriptive caption of this Ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication. This Ordinance shall become effective ten days following publication.

PASSED AND APPROVED ON FIRST READING, this the 9th day of November A.D., 2010.

PASSED AND APPROVED ON SECOND AND FINAL READING, this the ___ day of __________, A.D., 2010.

David Wampler, Mayor

ATTEST:

Brenda G. Craig

Brenda G. Craig, City Secretary

APPROVED AS TO FORM:

Michael C. Hayes

Michael C. Hayes, City Attorney

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Agenda Item:
(Staff)

5A. Overview of the Southern Edwards Plateau Habitat Conservation Plan.

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

SUBJECT: City Attorney overview of the Southern Edwards Plateau Habitat Conservation Plan to City Council.

FOR AGENDA OF: November 23, 2010 **DATE SUBMITTED**: November 16, 2010

SUBMITTED BY: Michael Hayes MH
City Attorney

CLEARANCES:

EXHIBITS: Draft SEP-HCP Plan area map

AGENDA MAILED TO:

APPROVED FOR SUBMITTAL BY CITY MANAGER: TP

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

PAYMENT TO BE MADE TO:
REVIEWED BY THE FINANCE DIRECTOR:

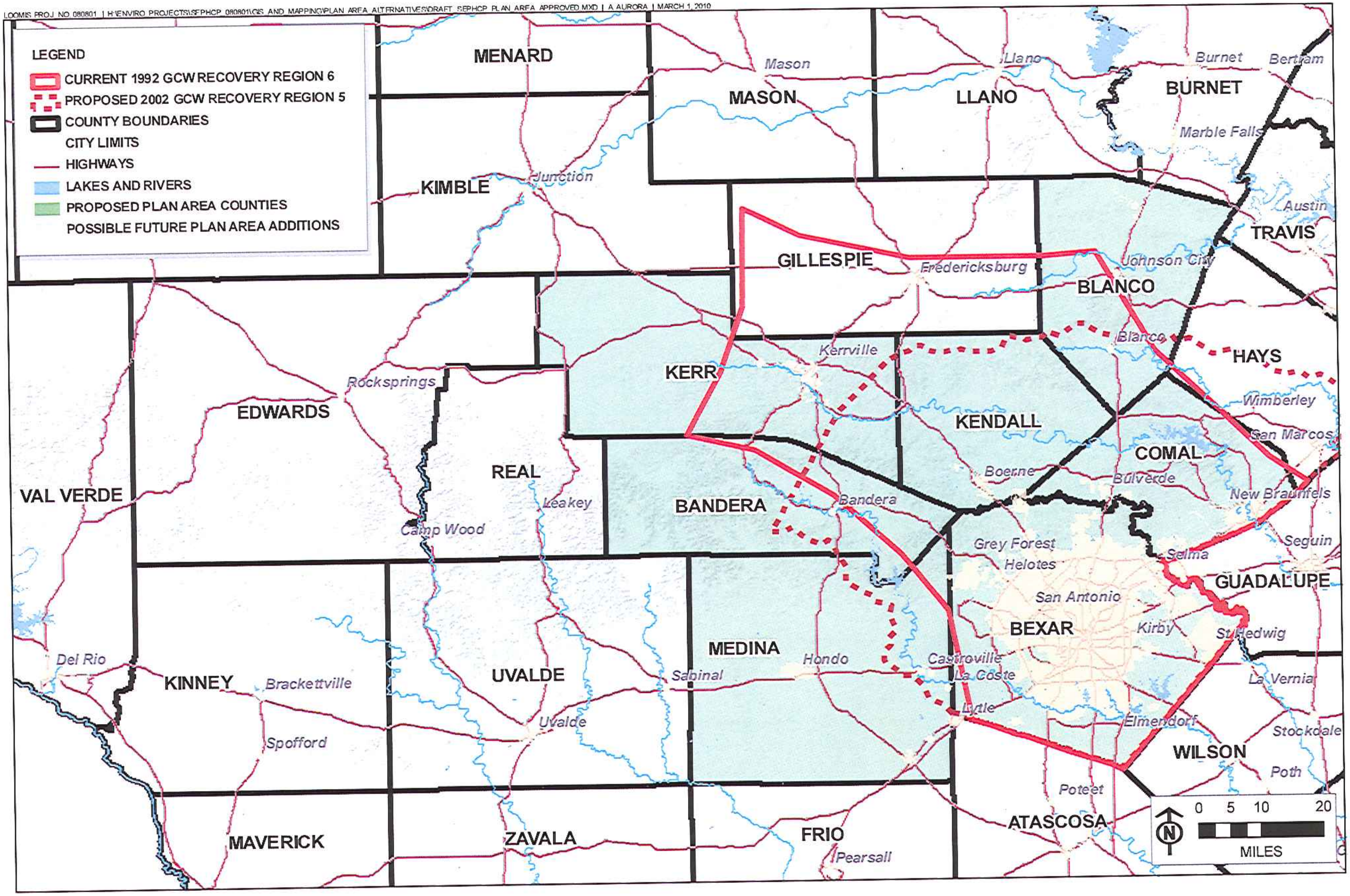
SUMMARY STATEMENT

The City Attorney will provide Council with information about any such impact and the ongoing process of the Southern Edwards Plateau Habitat Conservation Plan.

RECOMMENDATION

Provide direction to city staff as deemed appropriate by the City Council.

LOOMIS PROJ NO 080801 | H:\ENVIRO PROJECTS\SEPHCP 080801\GIS AND MAPPING\PLAN AREA ALTERNATIVES\DRAFT SEPHCP PLAN AREA APPROVED.MXD | A AURORA | MARCH 1, 2010



LOOMIS PARTNERS

DRAFT SEP-HCP PLAN AREA

RECOMMENDED BY BAT FEB 8, 2010; ADOPTED BY CAC FEB 18, 2010
INFORMATION SUBJECT TO CHANGE

Agenda Item:
(Staff)

5B. Naming of the proposed river trail.

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

SUBJECT: Naming of the proposed River Trail.

FOR AGENDA OF: November 23, 2010 **DATE SUBMITTED**: November 16, 2010

SUBMITTED BY: David Wampler, Mayor **CLEARANCES:**

EXHIBITS:

AGENDA MAILED TO:

APPROVED FOR SUBMITTAL BY CITY MANAGER: W

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

PAYMENT TO BE MADE TO:
REVIEWED BY THE FINANCE DIRECTOR:

SUMMARY STATEMENT

Council discussion regarding results of project naming campaign.

RECOMMENDATION

Provide direction to city staff as deemed appropriate by the City Council.

Agenda Item:
(Staff)

5C. Update regarding Lower Colorado River Authority Transmission Services Corporation's (LCRA-TSC) application for the proposed McCamey D to Kendall to Gillespie CREZ project (PUC Docket No. 38354).

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

SUBJECT: Update regarding Lower Colorado River Authority Transmission Services Corporation application for the proposed McCamey D to Kendall to Gillespie CREZ project (PUC Docket No. 38354).

FOR AGENDA OF: November 23, 2010 **DATE SUBMITTED**: November 15, 2010

SUBMITTED BY: Todd Parton
City Manager

CLEARANCES:

EXHIBITS: None

AGENDA MAILED TO:

APPROVED FOR SUBMITTAL BY CITY MANAGER: TP

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

City Staff will provide on update regarding the CREZ Project.

RECOMMENDED ACTION

No additional action is required at this time.

Agenda Item:
(Staff)

5D. Kerrville budget/economic update.

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

SUBJECT: Kerrville Budget/Economic Update

FOR AGENDA OF: November 23, 2010 **DATE SUBMITTED**: November 15, 2010

SUBMITTED BY: Mike Erwin, Director of Finance
CLEARANCES: Todd Parton, City Manager

EXHIBITS: Economic Update
AGENDA MAILED TO:

APPROVED FOR SUBMITTAL BY CITY MANAGER:

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

PAYMENT TO BE MADE TO:
REVIEWED BY THE DIRECTOR OR FINANCE:

SUMMARY STATEMENT

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

RECOMMENDED ACTION

No action required information purposes only.

CITY OF KERRVILLE
ECONOMIC UPDATE AS OF NOVEMBER 16, 2010

	Current Month	Previous Month	1 Year Ago	Trend	Current Month
National					
Unemployment	9.60%	9.60%	10.10%	↔	October
Consumer Confidence	50.2	48.6	48.7	↑	October
1 year T-Bills	0.27%	0.21%	0.28%	↑	11/16/10
State					
Monthly Unemployment	7.90%	8.40%	8.10%	↓	September
Monthly Sales Tax	$1,617.7m	$1,571.3m	$1,517.9m	↑	October
Local					
Monthly Unemployment (Kerr Co.)	6.00%	6.20%	6.10%	↓	September
Median Listing Price	$219,000	$219,000	$229,000	↑	11/5/10
Monthly Sales Tax	$413,948	$369,252	$377,758	↑	November
Monthly EIC Tax	$206,974	$184,602	$188,879	↑	November
Monthly HOT	$67,868	$69,839	$72,153	↓	October

	FY11 Budget	FY11 as of 10/31/2010	FY11 % Received	FY10 as of 10/31/2009	FY10 % Received
General Fund					
Tax Revenue	$14,647,100	$884,527	6.04%	$810,358	5.38%
Property Tax	$8,240,000	$349,252	4.24%	$434,974	5.14%
Sales Tax	$4,500,000	$369,252	8.21%	$359,470	7.77%
Permits & Fees	$402,450	$28,549	7.09%	$18,936	5.11%
Intergovernmental	$707,013	$174,602	24.70%	$41,231	5.93%
Service Revenues	$2,578,260	$212,811	8.25%	$251,413	7.59%
Grant Revenue	$10,000	$0	0.00%	$0	0.00%
Fines & Forfeitures	$477,710	$48,522	10.16%	$49,794	9.87%
Interest & Misc.	$170,317	$25,910	15.21%	$33,259	7.23%
Transfers In	$1,000,000	$83,333	8.33%	$61,992	4.92%
Total General Fund	$19,992,850	$1,458,254	7.29%	$1,266,982	5.85%
Water/Sewer Fund					
Water Sales	$4,400,000	$424,993	9.66%	$318,445	6.29%
Sewer Sales	$3,760,000	$304,114	8.09%	$279,591	7.17%
Other Revenue	$714,500	$53,854	7.54%	$48,114	7.19%
Total Water & Sewer Fund	$8,874,500	$782,961	8.82%	$646,150	6.71%

Agenda Item:
(Staff)

6A. Appointment to the Library Advisory Board.

BUSINESS OF THE CITY COUNCIL
CITY OF KERRVILLE, TEXAS

SUBJECT: Appointment to the Library Advisory Board

FOR AGENDA OF: November 23, 2010 **DATE SUBMITTED**: November 17, 2010

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

EXHIBITS: Board List

AGENDA MAILED TO:

APPROVED FOR SUBMITTAL BY CITY MANAGER: TP

SUMMARY STATEMENT

Consider appointment to the following board:

Library Advisory Board: One term expired November 22, 2010: David Lipscomb.

RECOMMENDED ACTION

Consider appointment.

LIBRARY ADVISORY BOARD

		Telephone	Orig. Appt.	Re-Appt. Date	Exp. Date
**	LIPSCOMB, DAVID Chair 909 Lake Drive	895-4232 (H)	11-22-05	11-13-07	11-22-10
*	HAYES, KAY Vice-Chair Box 1004 Center Point 78010	257-2122 (O) 634-2152 (H)	10-11-05	11-13-07	11-22-10
***	DOBIE, JIM 211 South Spanish Oak Trail	792-6583 (H)	10-22-07		11-22-10
**	MARTIN, DIANA K. 3931 Kite Ct.	896-3300 (H)	03-10-09	01-12-10	11-22-11
*	MOSELEY, JANET 151 Bluff Hill Rd., Hunt, Texas 78024	238-4436 (H)	07-09-07	12-08-08	11-22-11

EX OFFICIO MEMBERS:

		Telephone	Orig. Appt.
	Scott Gross City Council, Place 3 2908 Dry Hollow PO Box 291277	792-5555 (O) 210-363-1144 (C)	03-09-10
	Jonathan Letz County Commissioner, Pct. 3 Kerr County Courthouse 700 Main St.	792-2216 (O)	03-09-10
	Antonio Martinez Library Director 800 Junction Hwy	792-8320 (O)	03-09-10
****	Mike Bowlin 425 Water St. Kerrville Genealogical Society		03-09-10

CITY STAFF:

Kim Meismer 792-8340 (O)
Director of General Operations
800 Junction Highway 377-7691 (C)

Qualifications:	Two board members shall be appointed by Kerrville City Council; two board members shall be appointed by Kerr County Commissioners Court; one board member shall be appointed by The Friends of the Butt-Holdsworth Memorial Library
Powers and Duties:	The Board is an advisory board to the city council; shall have the authority to hold meetings within the city and to consider and make recommendations to the Council from time to time on any and all matters pertaining to the Library. Upon a majority vote of the total membership.
Term of Office:	All Board appointments shall serve two (2) year terms. No Board member shall serve more than two (2) consecutive two (2) year term on the Board without having at least one (1) full year off of the Board between terms. A majority of the members' terms shall expire in even-number years with the remaining members' terms expiring in odd-numbered years.
Quorum:	Three members
Number of Members:	Five members
Meeting Time & Place:	Third Tuesday of Every Month; 4:00 pm – 5:00 pm; City Council Chambers
Absences:	Any member who is absent from twenty-five percent (25%) of the board's regular meetings during any twelve (12) month period, or who is absent from any three (3) consecutive regular meetings, shall be considered for removal by the City Council. The staff member has the responsibility of reporting a member's non-attendance to the City Council in writing, and the City Secretary shall notify the board member in writing that their non-attendance has been reported to the City Council. However, a member whose absences are directly related to a medical or family emergency may seek consideration from the board upon which they serve to qualify such absences as excused.
Established by:	Ordinance No. 1967-17; amended by Ordinance Nos. 80-5, 84-14, 84-58, 85-01, 87-24, 87-60, 87-61, and 2005-19 (in its entirety); Resolution Nos. 045-2006, 107-2006, 076-2007, and 122-2007 did not change this board. Code of Ordinances: Chapter 66 - Article II – Sections 66-31 through 66-34; Amended by Ordinance No. 2010-05.
Revised:	May 28, 2010

* Appointed by Kerr County Commissioners Court – voting member

** Appointed by Kerrville City Council – voting member

*** Appointed by Friends of the Butt-Holdsworth Memorial Library

**** Appointed By Kerrville Genealogical Society