

KERRVILLE CITY COUNCIL AGENDA
REGULAR COUNCIL MEETING, APRIL 10, 2018, 6:00 PM
CITY HALL COUNCIL CHAMBERS
701 MAIN STREET, KERRVILLE, TEXAS

CALL TO ORDER

INVOCATION: offered by George Baroody, Councilmember Place Two.

PLEDGE OF ALLEGIANCE TO THE FLAG

1. ANNOUNCEMENTS OF COMMUNITY INTEREST:

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

2. VISITORS/CITIZENS FORUM:

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

3. PRESENTATIONS

3.A Proclamation proclaiming April 8-14, 2018 as "Kerrville Public Safety Telecommunicators Week."

[Telecommunication Proclamation.pdf](#)

4. CONSENT AGENDA:

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

4.A Memorandum of Understanding (MOU) between Baptist Children and Family Services (BCFS) and the City of Kerrville.

[AB BCFS MOU.docx](#)

[MOU between BCFS HHS and City of Kerrville V.3 032118.pdf](#)

The facility is wheelchair accessible and accessible parking spaces are available. Requests for accommodations or interpretive services must be made 48 hours prior to this event. Please contact the City Secretary's Office at 830-257-8000 for further information.

I do hereby certify that this notice of meeting was posted on the bulletin board at the City hall of the City of Kerrville, Texas, and said notice was posted on the following date and time: April 6, 2018 at 4:00 pm and remained posted continuously for at least 72 hours preceding the scheduled time of the meeting.

Brenda Craig
City Secretary, City of Kerrville, Texas

4.B Resolution No. 11-2018 supporting the construction of T-Hangars at the Kerrville-Kerr County Airport pursuant to a grant agreement with the Texas Department of Transportation.

[AB Airport T-Hangars.docx](#)

[Resolution 11-2018.pdf](#)

4.C Resolution No. 12-2018 authorizing the waiver of various fees and ratifying a nonexclusive license and funding agreement regarding the use of a portion of the City's Butt Holdsworth Memorial Library Campus for the Kerrville Farmers Market to be held in Downtown Kerrville.

[AB Farmers Market.docx](#)

[Resolution No. 12-2018.pdf](#)

[Library Campus Map KerrvilleFMVend24.pdf](#)

[Farmers_Market_Budget_2018 - 20180308.pdf](#)

END OF CONSENT AGENDA

5. ORDINANCES, SECOND AND FINAL READING:

5.A Ordinance No. 2018-10 amending Chapter 102 "Traffic and Vehicles", Article IV "Operation of Vehicles", Division 1 "Generally", by adding a new Section 102-118 to regulate the use of hand-held potable electronic devices while operating a vehicle; providing exemptions; providing affirmative defenses; providing an increasing penalty for subsequent offenses; containing a cumulative clause; containing a savings and severability clause; ordering publication; providing an effective date; and providing other matters related to the subject.

[AB Ord. 2018-10, Hands Free Device.docx](#)

[Ordinance No. 2018-10.pdf](#)

5.B Ordinance No. 2018-11 adopting the "Design Manual for the Installation of Network Nodes and Node Support Poles pursuant to Texas Local Government Code, Chapter 284"; containing a cumulative clause; containing a savings and severability clause; providing for penalties not to exceed \$2,000.00; ordering publication; providing an effective date; and providing other matters related to the subject.

[AB design manual.docx](#)

[Ordinance_No._2018-11.pdf](#)

[Design_manual_04.04.18.pdf](#)

6. CONSIDERATION AND POSSIBLE ACTION:

6.A Authorize the execution of a construction contract with Acme Bridge Company, Inc. for the Singing Wind Drive Reconstruction project in an amount of \$791,734.40 and review the current street maintenance program.

[AB Singing Wind Construction.docx](#)

[Singing Wind Drive Reconstruction_Received Bids.pdf](#)

7. INFORMATION & DISCUSSION

7.A Presentation from Impact DataSources regarding the impact of the Kerr Economic Development Corporation (KEDC) and various recent economic development projects.

[AB_KEDC Impact.docx](#)
[KEDC performance report.pdf](#)

8. CITY MANAGER'S REPORT

9. ITEMS FOR FUTURE AGENDAS

10. EXECUTIVE SESSION:

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

10.A Section 551.072:

Deliberate and consider the purchase of, exchange, lease or value of real property in accordance with Section 551.072, of the Texas Government Code for property consisting of approximately 34 acres.

11. ACTION ON ITEMS DISCUSSED IN EXECUTIVE SESSION, IF ANY

ADJOURNMENT.

PROCLAMATION

- WHEREAS,** *Emergencies can occur at any time that require police, fire, or emergency medical services; and*
- WHEREAS,** *When an emergency occurs, prompt response of police officers, firefighters, and paramedics is critical to the protection of life and preservation of property; and*
- WHEREAS,** *The safety of our police officers and firefighters is dependent upon the quality and accuracy of information obtained from citizens who telephone the City of Kerrville Police and Fire Communications Center; and*
- WHEREAS,** *Telecommunicators are the first and most critical contact our citizens have with emergency services; and*
- WHEREAS,** *Telecommunicators are the single vital link for our police officers and firefighters by monitoring their activities by radio, providing them information and insuring their safety; and*
- WHEREAS,** *Telecommunicators of the City of Kerrville have contributed substantially to the apprehension of criminals, suppression of fires, and treatment of patients; and*
- WHEREAS,** *Telecommunicators exhibit compassion, understanding, and professionalism during the performance of their job;*

NOW, THEREFORE, *I, the Mayor of the City of Kerrville, Texas, do hereby proclaim the week of April 08 – 14, 2018, as*

“KERRVILLE PUBLIC SAFETY TELECOMMUNICATORS WEEK”

in the city of Kerrville, and ask all citizens to honor these men and women whose diligence and professionalism keep our city and citizens safe.

IN WITNESS WHEREOF, *I have Hereunto set my hand and caused the Seal of the City of Kerrville to be affixed hereto, the 10 day of April, 2018.*

Bonnie White, Mayor





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

SUBJECT: Memorandum of Understanding (MOU) between Baptist Children and Family Services (BCFS) and the City of Kerrville.

AGENDA DATE OF: 4/10/2018

DATE SUBMITTED: 3/29/2018

SUBMITTED BY: Dannie Smith, Fire Chief

EXHIBITS: Memorandum of Understanding

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

PAYMENT TO BE MADE TO: N/A

SUMMARY STATEMENT:

BCFS Health and Human Services was established in 1944, and has had a presence in our City since 2007. In addition to providing health and human services, BCFS has an emergency management division. The division specializes in emergency management, all hazards incident management, and turnkey disaster response. BCFS's emergency management division was contracted by the State of Texas to provide services at the following incidents: the 2011 Texas Wildfires; Hurricanes Ike, Katrina and Rita; and the Branch Davidian Incident.

The division has numerous resources such as: mobile command platforms, mobile medical units, mobile laundry, shower and restroom units. In an effort to be a good community partner, BCFS has offered to share their resources with the City. This MOU provides our City access to BCFS resources, as an in-kind service, at no cost during times of need. This agreement is an update to the original agreement signed with BCFS on July 29, 2016, with one change – it does not require renewal annually, it automatically renews unless written notification of termination is provided by BCFS, or the City, 30 days prior to expiration.

RECOMMENDED ACTION:

Adopt MOU between BCFS and the City of Kerrville for in-kind services of BCFS resources.



MEMORANDUM OF UNDERSTANDING

This Agreement is by and between:

- **BCFS Health and Human Services**, a Texas non-profit corporation (hereinafter referred to as "BCFS HHS"), 1506 Bexar Crossing, San Antonio, Texas 78232, which includes the BCFS HHS Emergency Management Division (EMD), and the
- **The City of Kerrville**, (also referred to as the "City"), 701 Main Street, Kerrville, Texas, 78028.

WHEREAS, the City of Kerrville could benefit with the temporary provision and use of BCFS HHS resources, including but not limited to those items listed in Attachment A, that could supplement City resources and certain functions during isolated incidents of need; and

WHEREAS, BCFS HHS would consider providing the CITY with temporary, emergency access to the BCFS HHS Hill Country Resource Center (located at 1127 East Main Street, Kerrville, Texas 78028), for use as an alternate or backup Public Safety Answering Point (PSAP) location to the frontline Emergency Call Center; and

WHEREAS, BCFS HHS owns Mobile Command Platforms and other related and supportive assets that could assist as temporary resource(s) to establish and conduct emergency, recovery, and/or steady state-type functions; and

WHEREAS, the parties hereto wish to express their agreement in which BCFS HHS would make resources available, in accordance with conditions and stipulations specified herein; and

WHEREAS, public safety personnel that deploy with the BCFS HHS Emergency Management Division gain invaluable emergency response experience with no direct cost to the CITY,

NOW, THEREFORE, in consideration of the mutual promises hereinafter contained, BCFS HHS and the City express their agreement and define the duties, scope, responsibilities, conditions, and stipulations of the parties as follows:

1. This Agreement is effective from the date of signing until terminated by either party and may be abbreviated, or otherwise modified by mutual, written agreement of the parties.
2. The CITY agrees to utilize the BCFS HHS Emergency Response toll free number (800.337.0373) in order to request activation of available BCFS HHS resources.
3. The CITY agrees that any BCFS HHS resource that is inoperable or unavailable at the

Initials _____
Date _____

Initials _____
Date _____



time of request(s) will not obligate BCFS HHS to provide an alternative for or backup to the requested resource.

4. The CITY agrees that BCFS HHS will not be held responsible or liable for any mechanical, programming, or failure of any equipment, supplies, and/or functions of/on any requested BCFS HHS resource(s).

5. Relative to each requested resource, BCFS HHS personnel will support, operate and/or oversee the requested resource to the extent deemed appropriate by BCFS HHS. Alternatively, the CITY agrees that BCFS HHS will not be held responsible or liable for procedures, processes, functions, etc., conducted in/on any requested BCFS HHS resource by the CITY and/or officially designated supportive entities, organizations, and/or personnel.

6. Regarding resources left to the responsibility and operation of CITY or CITY-approved personnel, the CITY agrees to perform all reasonable and necessary maintenance on requested resources during and after its use, as deemed appropriate and/or necessary by BCFS HHS. During use, particularly for extended periods of time, the CITY agrees to monitor and maintain vehicle fuel and fluid levels at appropriate levels and in a timely manner. Mechanical issues or concerns will be reported to the designated BCFS HHS representative without fail or delay.

7. The CITY agrees that it is responsible for all damages to requested resource(s) that may occur during use by the CITY. The CITY agrees to provide the funding for any and all repairs or replacements made necessary as the result of its use of the requested resource(s).

9. This Agreement shall remain in full force and effect until terminated by either Party with 30 days' notice to the other Party.

10. This Agreement may not be assigned, in whole or in part, by either of the parties to another without the prior written consent of the other Party. The parties may subcontract with other parties to provide personnel, services, equipment and goods as needed during an operation, but such subcontracting shall not excuse either party from meeting its obligations under this Agreement.

11. This Agreement constitutes the entire understanding and agreement of, and between, the parties with respect to the subject matter hereof, and supersedes all prior representatives and agreement, verbal or written. While the parties may add to or modify this Agreement by subsequent signed writings, this Agreement shall not be varied except by an instrument in writing, duly executed by an authorized representative of each party.

12. If any provision in this Agreement is held by a court of competent jurisdiction to be unenforceable, the balance of this Agreement remains enforceable to the extent allowed by law.

Initials _____
Date _____

Initials _____
Date _____



13. Any notice, consent, demand, or request required or permitted by and directly related to the establishment, continuance, renewing and/or cancellation of this Agreement shall be in writing and shall be deemed to have been sufficiently given when personally delivered or deposited in the United States mail, postage prepaid, certified, addressed as follows:

The CITY:

Name: _____
Address: _____
City, ST Zip: _____
Phone #: () _____
Email address: _____

BCFS HHS:

BCFS HHS
c/o Emergency Management Division
1506 Bexar Crossing
San Antonio, Texas 78232
210-832-5000
ktatro@BCFS.net

14. The validity, construction, scope, and performance of this Agreement shall be governed by the applicable laws of the State of Texas. Further, each party consents to the exclusive jurisdiction and venue of the courts located in Bexar County, Texas, with respect to all matters arising out of, or related to, this Agreement.

15. The signatories hereto warrant and represent that they have authority to bind their principals and that the parties hereto are the correct parties to the Agreement as to the promises exchanged herein.

The parties hereto have executed this Agreement on _____, 2018.

The CITY

By: _____

Date

BCFS Health And Human Services

By: _____
Kevin C. Dinnin, Chairman

Date



Attachment A: BCFS HHS Resource List

Type-1 Mobile Command Platforms
Type-3 Mobile Command Platform
Semi-Trailer Trucks
Trucks (650, 450, 1 ton, 3/4 ton)
Box Trucks w/ lift
Passenger Vans
Cargo Vans
12' - 36' trailers (supply)
48' - 53 ' Trailers with Lift
Trailer Shelter Support Units
60 KW - 300 KW Generators
Shower/Washer-Dryer Trailer (8 heads, 2 washers & dryers)
Shower Trailer
Toilet Trailer
Laundry Trailer
Light Towers
Communication Mast Trailers 60' - 100'
Fire Engines
BLS Ambulances
Mobile Medical Unit
Medical Tents
Coach Buses
24' Tilt/Flat Bed Trailer
Forklift Trailer
48' Flat Bed Trailer
53' Low Boy Trailer
Forklifts 8000 lbs. - 11000 lbs.
Polaris (Diesel) Rangers
12' - 26' Trailers with ramp
Mass Care / Shelter Supplies
Communications Equipment
VHF Radios, Cellular Phones, Laptops, Printers, Monitors



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

SUBJECT: Resolution No. 11-2018 supporting the construction of T-Hangars at the Kerrville-Kerr County Airport pursuant to a grant agreement with the Texas Department of Transportation.

AGENDA DATE OF: 4/10/2018

DATE SUBMITTED: 3/30/2018

SUBMITTED BY: Bruce McKenzie, Airport Manager

EXHIBITS: Resolution No. 11-2018

Expenditure Required:	Current Balance in Account:	Amount Budgeted:	Account Number:
\$0	\$0	\$0	N/A
			Project #: N/A

PAYMENT TO BE MADE TO: N/A

SUMMARY STATEMENT:

The Airport Board would like to initiate the process of building new T-Hangars at the Kerrville-Kerr County Airport. The Resolution consummates an agreement between TxDOT and the local airport partner entities (City and County) on a 90-10 matching grant program. As you may recall, this project has the same general parameters as the T-Hangar project that was completed at the Airport four years ago. TxDOT will contribute \$660,000 towards the project, and both the City and County are committing to \$33,000 each in funding or in-kind contributions towards the project. As currently contemplated, the Airport will pay for all of the project materials for the paving outside of the T-Hangars (base material, geo-grid, corrugated pipe, surveying, tack coat, hot mix asphalt, etc.), the County will perform the site work (excavation, placing geo-grid, hauling and placing all base material), and the City will provide the equipment and labor (via City staff or contractor) to complete the asphalt paving work.

The County is also in the process of reviewing and completing a support Resolution. Both Resolutions are anticipated to be submitted to TxDOT in May 2018, although the construction and funding requirements will not actually occur until Fiscal Year 2020.

RECOMMENDED ACTION:

Approve Resolution No. 11-2018.

**CITY OF KERRVILLE, TEXAS
RESOLUTION NO. 11-2018**

A RESOLUTION SUPPORTING THE CONSTRUCTION OF T-HANGARS AT THE KERRVILLE-KERR COUNTY AIRPORT PURSUANT TO A GRANT AGREEMENT WITH THE TEXAS DEPARTMENT OF TRANSPORTATION

WHEREAS, the Kerrville-Kerr County Joint Airport Board ("Board") intends to make certain improvements to the Kerrville-Kerr County Airport ("Airport"); and

WHEREAS, the general description of the project is for the development of additional hangars; and

WHEREAS, the Board will construct said hangar development in a manner consistent with the Airport Layout Plan, as previously approved by the Texas Department of Transportation ("TxDOT"); and

WHEREAS, the Board commits to maintaining Airport minimum standards, rates, and charges that are reasonable and nondiscriminatory; and

WHEREAS, the total project cost is estimated to be \$660,000.00, which will be funded in part through a grant agreement that the Board enters into with TxDOT; and

WHEREAS, the Board has available and will provide at least 10% of the project costs with local funds and understands that it will be responsible for any additional costs above \$600,000.00; and

WHEREAS, the Board has named TxDOT as its agent for the purposes of applying for, receiving, and disbursing funds for these improvements and for the administration of contracts necessary for the implementation and completion of the project;

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

City Council hereby endorses the Board's decision to move forward with the described improvements with respect to the T-Hangars at the Airport; concurs in its direction and authority provided to the Airport Manager, who is to take all necessary steps to implement the above-described improvements at the Airport; and authorizes the Mayor to execute the Certification of Project Funds and the Designation of Sponsor's Authorized Representative, both documents attached as **Exhibit A**.

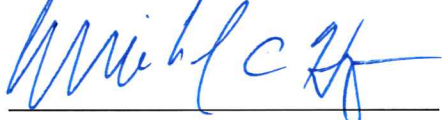
PASSED AND APPROVED ON this the ____ day of _____, A.D., 2018.

Bonnie White, Mayor

ATTEST:

Brenda Craig, City Secretary

APPROVED AS TO FORM:



Michael C. Hayes, City Attorney

CERTIFICATION OF PROJECT FUNDS

I, Bonnie White, Mayor of Kerrville,

(Name)

(Title)

do certify that sufficient funds to meet the City of Kerrville share of

(Sponsor Name)

project costs as identified for the project and will be available in accordance with the schedule shown below:

SPONSOR FUNDS

Source

Amount

Date Available

City of Kerrville, Texas
(Sponsor)

By: _____

Title: Mayor of Kerrville

Date: _____

_____, Texas
(Sponsor)

By: _____

Title: _____

Date: _____

DESIGNATION OF SPONSOR'S AUTHORIZED REPRESENTATIVE

I, Bonnie White Mayor of Kerrville,
(Name) (Title)
with the City of Kerrville designate _____
(Sponsor Name) (Name, Title)
as the City of Kerrville authorized representative for the T-Hangar project,
(Sponsor Name)
who shall have the authority to make approvals and disapprovals as required on behalf of
the City of Kerrville.
(Sponsor Name)

City of Kerrville , Texas
(Sponsor)

By: _____
(Signature)

Title: Mayor of Kerrville

Date: _____

By: _____
(Signature)

Title: _____

Date: _____

DESIGNATED REPRESENTATIVE

Mailing Address: 1877 Airport Loop
Kerrville, Texas 78028

*Physical/Overnight Address: 1877 Airport Loop
Kerrville, Texas 78028

Telephone Number: (830)896-9399

Fax Number: (830)896-9440

E-Mail Address: _____

* ALL GRANT AGREEMENTS ARE SENT BY OVERNIGHT MAIL



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

SUBJECT: Resolution No. 12-2018 authorizing the waiver of various fees and ratifying a nonexclusive license and funding agreement regarding the use of a portion of the City's Butt Holdsworth Memorial Library Campus for the Kerrville Farmers Market to be held in Downtown Kerrville.

AGENDA DATE OF: 4/10/2018

DATE SUBMITTED: 4/4/2018

SUBMITTED BY: Ashlea Boyle
Director of Parks and Recreation

EXHIBITS: Resolution No. 12-2018
Library Campus Map
Farmers Market Budget Proposal

Expenditure Required:	Current Balance in Account:	Amount Budgeted:	Account Number:
\$3,000	\$32,000	\$3,000	01-0190-4300
PAYMENT TO BE MADE TO: Kerrville Farmers Market			

SUMMARY STATEMENT:

On March 13, 2018, City Council passed a resolution and approved a non-exclusive license agreement between the City of Kerrville and *Kerrville Farmers Market, DBA*. Since that meeting, the event location has moved from the City's Downtown Pavilion and the privately owned adjacent parking lot because the property owner is no longer willing to authorize use of its parking lot. The new venue for this event, beginning April 6th, will be the A.C. Schreiner House located at 529 Water Street at the library campus. Due to the venue change, ratification of the new agreement is required.

The City is a co-sponsor of this event. The license agreement will provide the following support by the City:

- Allow use of the A.C. Schreiner House grounds (exterior only) and library campus;
- Waive associated fees such as permit / application fees;
- Use of City's existing picnic tables and trash receptacles;
- Assist with in-kind marketing such as including the event in the annual activity guide, press releases, list the event on the City's website and water bills, etc.;
- Contribute to half the costs with a maximum of \$250 for downtown lamppost banners;
- Provide barricades, access to electricity / water, and keep the library restrooms open late for event attendees; and
- Provide a sponsorship of \$3,000 to assist with promotional merchandise.

This agreement does not waive associated fees if Police Officers are required or requested to be present for security or traffic control.

RECOMMENDED ACTION:

Approve Resolution No. 12-2018 ratifying the license agreement.

**CITY OF KERRVILLE, TEXAS
RESOLUTION NO. 12-2018**

**A RESOLUTION AUTHORIZING THE WAIVER OF VARIOUS FEES
AND RATIFYING A NONEXCLUSIVE LICENSE AND FUNDING
AGREEMENT REGARDING THE USE OF A PORTION OF THE CITY'S
BUTT HOLDSWORTH MEMORIAL LIBRARY CAMPUS FOR THE
KERRVILLE FARMERS MARKET TO BE HELD IN DOWNTOWN
KERRVILLE**

WHEREAS, organizers of the Kerrville Farmers Market (the "KFM") plan to hold a farmers market each Friday evening in downtown Kerrville from April through October, and thereafter, one Friday per month; and

WHEREAS, the organizers have requested that the City waive various fees for this event; that the City authorize the use that portion of its Butt Holdsworth Memorial Library Campus, known as the A.C. Schreiner Mansion, located at 529 Water Street; that the City provide some equipment; and that the City provide funding; and

WHEREAS, City Council determines that waiving applicable City fees; entering into an agreement for the use of City property; and providing equipment and funding, is in the public interest;

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

SECTION ONE. The above findings are found to be true and correct.

SECTION TWO. City Council authorizes the following:

- A. waiver of various City fees for the organizers of the Kerrville Farmers Market, as specifically detailed in the attachment found at **Exhibit A**.
- B. ratification of the City Manager executing a *Nonexclusive License and Funding Agreement* with the organizers of the Kerrville Farmers Market for its use of a portion of the City's Butt Holdsworth Memorial Library Campus; the use of City property; and funding from the City in the amount of \$3,000.00, such agreement is attached as **Exhibit B**.

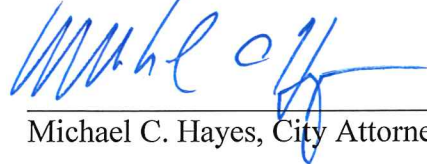
SECTION THREE. Resolution No. 16-2018, adopted by City Council during its March 13, 2018, meeting, is hereby repealed.

PASSED AND APPROVED ON this the ____ day of _____ A.D., 2018.

(signatures begin on following page)

Bonnie White, Mayor

APPROVED AS TO FORM:



Michael C. Hayes, City Attorney

ATTEST:

Brenda G. Craig, City Secretary

EXHIBIT A

Kerrville Farmers Market

Summary: The *Kerrville Farmers Market* will be held each Friday evening April through October at the City's Butt-Holdsworth Memorial Library Campus. Thereafter, the event will continue each month.

City agrees to waive the following fees:

- Use permit for the City's Butt-Holdsworth Memorial Library Campus;
- Special Event Permit;
- Health permit(s) for food vendors; and
- Fire Department (Fire Marshal) permit(s), to include use of tents.

City fees not waived:

- The Farmers Market will pay the associated fees if Police Officers are required or requested to be present.

**NONEXCLUSIVE LICENSE AND FUNDING AGREEMENT BETWEEN THE
CITY OF KERRVILLE, TEXAS AND THE KERRVILLE FARMERS MARKET**

This Nonexclusive License and Funding Agreement ("Agreement") is made and entered into by and between the **CITY OF KERRVILLE, TEXAS** ("City"), and the **KERRVILLE FARMERS MARKET** ("Licensee"), as follows:

1. Grant of Nonexclusive License. In consideration of and subject to the terms, provisions, and covenants herein contained, City hereby grants to Licensee a nonexclusive license to use the property next to the City's Butt Holdsworth Memorial Library ("BHML"), which contains the A.C. Schreiner House, is addressed as 529 Water Street, and is located within the City of Kerrville, Kerr County, Texas ("Licensed Premises"). The Licensed Premises is depicted on the survey attached as **Exhibit A**, and consists of a part of the grounds surrounding the home, which in turn makes up a portion of what the City refers to as the BHML Campus. The Licensed Premises does not include any area within either the home. Licensee may use the Licensed Premises each Friday evening between April and the end of October, and then on one Friday evening of each of the remaining months. Licensee shall provide a specific schedule to City on or before April 1 of each year of this Agreement.

2. Payment, Reports, Records. City shall make a one-time payment to Licensee of \$3,000.00 as follows: the first payment of \$1,500.00 will be made on or before May 1, 2018; with the second payment of \$1,500.00 to be made on or before September 30, 2018. At the request of the City Manager, Licensee shall furnish any information concerning Licensee's operations and finances to City. Licensee shall provide such information to City within thirty (30) days of its request.

3. Term. This Agreement shall become effective on April 6, 2018, and shall terminate on December 31, 2018 (Initial Term), subject to renewal or earlier termination as provided herein.

4. Renewal. This Agreement may automatically renew for a one-year term, for a maximum of three (3) such one-year terms. Not later than ninety (90) days prior to the end of the Initial Term, or any one-year term thereafter, the parties may agree in writing to extend the term an additional year. Any such renewal shall provide the same terms and conditions as the Initial Term, with the exception of the one-time payment specified in Section 2, above. If no renewal agreement is entered into prior to the end of the Initial Term or any annual term, this Agreement shall expire and terminate and be of no force and effect provided that Licensee is not in default hereunder.

5. Termination Election. City and Licensee each shall have the right, either with or without cause and at any time, to terminate this Agreement upon not less than thirty (30) days prior written notice to the other party. Upon such termination, City and Licensee shall be relieved of all further obligations hereunder except only for obligations accruing prior to the effective date of termination. Where City has cause to terminate this Agreement or should Licensee terminate this Agreement on or before the end of the Initial Term, Licensee, upon request from City, shall reimburse City the payment it most recently received from City pursuant to Section 2, above. In no case, however, will Licensee be required to reimburse City more than \$1,500.00. Licensee shall reimburse City pursuant to this section within ten (10) days of City's request.

6. **Use.** Licensee shall comply with and perform the following with respect to its use of the Licensed Premises:

- a. Licensee may use the Licensed Premises pursuant to activities associated with a farmers market, including the staging of vendor booths, product displays, and sales.
- b. Licensee agrees that at all times all persons and activities will be adequately supervised by an adult.
- c. Licensee shall provide City a schedule of its use, to include dates and hours.
- d. Licensee shall not permit smoking or vaping.
- e. Licensee is authorized to allow for the sale, consumption, and display of alcohol. Licensee shall comply with all rules of the Texas Alcoholic Beverage Commission (TABC) with respect to the sale and consumption of alcohol, to include the receipt of appropriate license(s) for its activities.
- f. Licensee shall abide by all rules that the City has adopted for use of the Licensed Premises. The City shall provide any such rules to the Licensee.

7. **City's Contributions.** City shall provide the following equipment and services to Licensee in conjunction with its operation of a farmers market:

- a. Pursuant to the schedule provided to City pursuant to Section 6, above, City shall allow the Licensee to use the following property of the City: three (3) picnic tables and trash cans. City will make the equipment available to Licensee at the Licensed Premises with enough time to allow for setup and staging by Licensee. Should the property be broken or destroyed during the event, City is not obligated to replace any such items or provide an equal amount to Licensee.
- b. City shall provide notice to the public of the farmers market, which may include a press release, website notice, utility bills, and displays in downtown on property owned by City. The way(s) that City provides any such notice is in City's sole discretion.
- c. Should Licensee design and develop lamppost banners for the downtown area, the City shall contribute up to \$250.00 toward such cost. Thereafter, City shall be responsible for installing and taking down such banners.
- d. City shall make the public restrooms located at BHML (505 Water Street) available for use by operators, vendors, and customers of the farmers market.
- e. City shall provide barricades to prevent vehicular access to the Licensed Premises.
- f. City shall provide access to electricity as located at the Licensed Premises.
- g. Where necessary, City shall provide a letter of approval to Licensee pursuant to its application for a permit with the Texas Alcoholic and Beverage Commission.

- h. City's point of contact to Licensee is the Library Director. Where such person is unavailable, Licensee may contact the Assistant Library Director. City shall provide Licensee with contact information for both.

8. Insurance. Licensee shall purchase public liability and casualty insurance from an insurance company licensed to do business in the State of Texas. City's Director of General Operations must approve the policy. The policy shall be in the amount of \$500,000 per person and \$1,000,000.00 per occurrence and covering the Licensed Premises for the duration of Licensee's use of the Premises. Upon execution of this Agreement, Licensee shall provide City's Director of General Operations with a copy of the insurance policies required hereby, showing premium prepaid for the period covered. In the event of failure by Licensee to keep such insurance in effect, City may immediately terminate the Agreement, followed by notice Licensee. The public liability and casualty insurance policies shall name City as an "additional insured". All policies shall include a waiver of subrogation provision in favor of City. The policy and any renewal certificate shall provide that the City be notified thirty (30) days prior to cancellation or modification of any coverage. Language to the effect that the insurance company will "endeavor" or "attempt" to so notify the City is not sufficient. Renewal certificates must be received by the City at least ten (10) days prior to expiration date. Policies will be in effect for the entire term of this Agreement and any renewals.

9. Alterations and Improvements. Licensee does not have the right to make any alterations, additions, or improvements to the Licensed Premises without the written approval of the City Manager, or designee.

10. Access. City shall maintain access to the Licensed Premises at all times for any purpose.

11. Termination for Safety Violation or Unlawful Use. Licensee shall not use or occupy nor permit the Licensed Premises or any part thereof to be used or occupied for any unlawful purpose, or for any purpose or in any manner which is in violation of any present or future governmental laws or regulations. Licensee shall comply with all laws, ordinances, orders, rules and regulations of state, federal, municipal or other agencies or bodies having any jurisdiction thereof relating to the use, condition, or occupancy of the Licensed Premises. Notwithstanding any other provision of this Agreement, any violation of this provision, or a gross violation of any safety-related provision herein, entitles City to terminate this Agreement immediately.

12. INDEMNIFICATION. LICENSEE AGREES TO INDEMNIFY, DEFEND, AND HOLD CITY, ITS OFFICIALS, EMPLOYEES, AND AGENTS HARMLESS OF AND FROM ALL CLAIMS, DEMANDS, LIABILITY, LOSS, COST AND EXPENSE (INCLUDING ATTORNEY'S FEES AND COST OF LITIGATION) IN ANY MANNER ARISING OUT OF OR RESULTING FROM LICENSEE'S OPERATIONS, LICENSEE'S USE OF THE LICENSED PREMISES OR THE EXISTENCE OF LICENSEE AND LICENSEE'S IMPROVEMENTS AND PERSONALTY ON THE PREMISES, INCLUDING BUT NOT LIMITED TO ANY AND ALL LIABILITY, LOSS, COST AND EXPENSE ARISING FROM CLAIMS OR DEMANDS BY LICENSEE'S AGENTS OR PARTICIPANTS.

13. Assignment or Sublicense. Licensee may not assign or sublicense the Licensed Premises or any of its rights hereunder, in whole or in part, without the express prior written consent of City.

14. Casualty. In the event of property damage caused by Licensee or its participants, Licensee shall restore all damaged improvements within thirty (30) days thereafter. Insurance proceeds will be made available for such repairs.

15. Performance by City. If Licensee fails to perform its obligation, City may (at its option) perform such obligations and Licensee shall pay to City upon demand all costs and expenses incurred by City.

16. No Other Relationship/Termination of Previous Agreement. This Agreement constitutes the entire agreement between City and Licensee. Nothing contained herein shall be construed to create any principal/agent, employer/employee, joint venture, partnership or other arrangement between City and Licensee. In addition, the Nonexclusive License Agreement authorized by the City on or about September 26, 2017, with Licensee and concerning the same subject matter, is hereby terminated in accordance with its provisions.

17. Default. If either party hereto shall fail to perform any obligation of such party as herein set forth, and such failure shall continue for a period of (10) days after written notice of default (except for Licensee's insurance obligations above provided, for which no notice or opportunity to cure shall be given) the party not in default shall have the right, at such party's option, and in addition to any other remedies available at law or in equity, to terminate this Agreement by notice to the party in default. The failure of either party to declare any default immediately upon the occurrence thereof or delay in taking any action in connection therewith shall not waive such default, but such party shall have the right to declare any such default at any time and take such action as might be authorized hereunder or that may be available at laws or in equity.

18. Notice. Any notice or document required or permitted to be delivered hereunder shall be deemed to be delivered, whether or not actually received, when deposited in the United States mail, postage prepaid, or certified mail, return receipt requested, addressed to the parties hereto at their respective addresses as set forth below or at such other address as they have heretofore specified by written notice delivered in accordance with the terms hereof:

City: City of Kerrville, Texas
Attention: Library Director
City Hall, 701 Main Street
Kerrville, Texas 78028
(830) 258-1260
laura.bechtel@kerrvilletx.gov

Licensee: Kerrville Farmers Market
Attention: Kayte Graham, Market Coordinator
542 Kelly Street

Center Point, Texas 78010
(830) 928-4161
kerrvillefm@gmail.com

19. Fee. Licensee shall pay City the applicable fee for its use of the Licensed Premises. City Council may agree to waive the fee pursuant to a separate action.

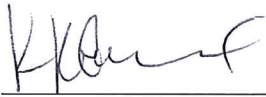
20. Approval Authority. In this Agreement, wherever an act requires approval by or consent of City, such approval or consent may be obtained from the Library Director, unless City notifies Licensee of a change.

21. Governing Law and Enforcement. This Agreement shall be governed by the laws of the State of Texas and shall be performable in Kerr County. Venue for any dispute arising between the parties to this Agreement shall be in Kerr County, Texas.

SIGNED and agreed by the authorized representatives of City and Licensee on the dates indicated below.


KERRVILLE FARMERS MARKET

CITY OF KERRVILLE, TEXAS

By: 
Kayte Graham, Market Coordinator
Date: 4/6/18

By: _____
Mark L. McDaniel, City Manager
Date: _____


APPROVED AS TO FORM:


Michael C. Hayes, City Attorney

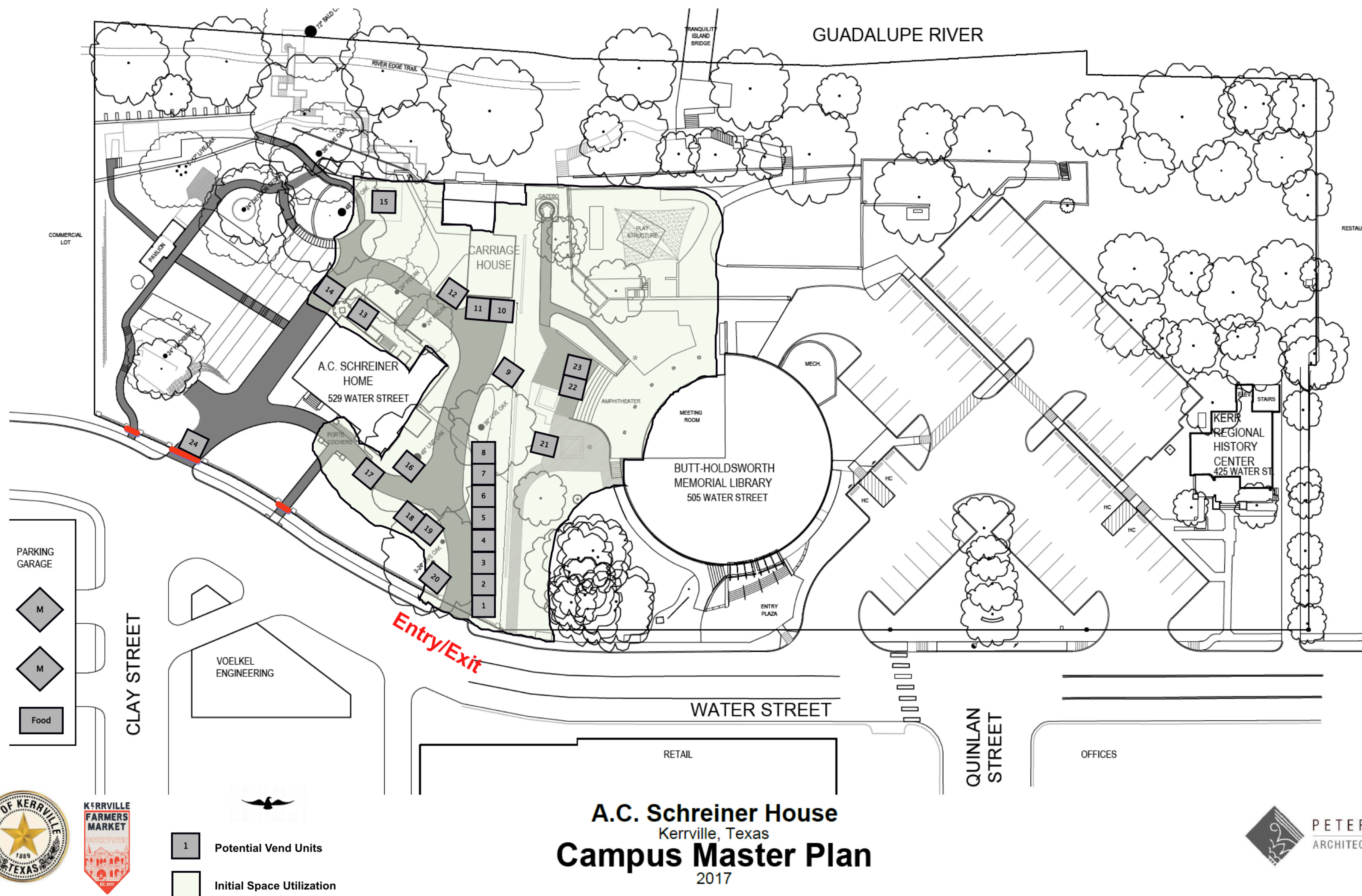
ATTEST:

Brenda G. Craig, City Secretary

APPROVED AS TO CONTENT:


Laura Bechtel, Library Director

Existing Campus Plan





BUDGET PROPOSAL CITY OF KERRVILLE, 2018 KERRVILLE FARMERS MARKET-DOWNTOWN

February 10, 2018

Through the first four First Friday markets, the Kerrville Farmers Market has gained positive and sustainable momentum from community, vendor, and City support. Due to vendor and customer demand, we intend to expand to a weekly market beginning April, 2018.

The attached budget is divided into three sections: 1) Projected Operating Budget for Weekly Activity; 2) Projected Operating Budget for Annual Activity; and 3) Community Donations Received by the Market, to date.

Weekly vendor booth fees will cover operating costs for each event, assuming a minimum of 20 paid vendors under the current fee structure. Additional revenue through merchandise sales will cover annual costs such as insurance, printing, website maintenance, and other marketing expenses. With these revenue strategies, our goal is to become completely self-sufficient within two years.

The Market requests financial support from the City to help with the initial investment of revenue-generating merchandise material plus one year of operating costs, for a total commitment of **\$3,000.00**. This support, along with financial support already received from local businesses, will add to gaining momentum needed for the Market to achieve sustainability. These funds will also allow the Market to expand efforts to engage downtown businesses and to increase visibility to customers throughout the Kerrville community.

Kerrville Farmers Market
2018 Budget (Calendar Year)

Revenues	2017 Actual	2018 Proposed	2018 Year to Date
Booth Fees	\$ 645	\$ 9,405	\$ 315
Sponsorships			
Water		\$ 1,650	
Mugs		\$ 1,500	
Shirts		\$ 1,500	
Donations	\$ 600		\$ 1,325
Other			
Total	\$ 1,245	\$ 14,055	\$ 1,640
Expenditures	2017 Actual	2018 Proposed	2018 Year to Date
Ice	\$ 90	\$ 990	\$ 90
Bottled Water	\$ 50	\$ 825	
Beer		\$ 3,780	
Cups	\$ 75	\$ 825	\$ 25
Music		\$ 3,300	\$ 50
Mugs		\$ 700	
Shirts		\$ 800	
Insurance	\$ 500	\$ 1,500	
Website	\$ 160	\$ 500	\$ 40
Printing		\$ 450	\$ 30
Security		\$ 385	
Other	\$ 250		
Total	\$ 1,125	\$ 14,055	\$ 235
Net Under (Over)	\$ 120	\$ -	\$ 1,405
Other Items (In Kind)			
Beer	\$ 630	\$ 2,520	\$ 420
Logo Design		\$ 750	\$ 750
Banner		\$ 180	\$ 180
City (banners)		\$ 250	\$ 250
City (pavilion)	\$ 1,200	\$ 9,600	\$ 800



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

SUBJECT: Second reading of Ordinance No. 2018-10 establishing regulations for the use of portable electronic devices while operating a vehicle within the City of Kerrville, Texas.

AGENDA DATE OF: 4/10/2018

DATE SUBMITTED: 4/2/2018

SUBMITTED BY: Chief David Knight

EXHIBITS: Ordinance No. 2018-10

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

PAYMENT TO BE MADE TO: N/A

SUMMARY STATEMENT:

Council heard a presentation by the Police Chief at the February 13, 2018 City Council meeting on the development of an ordinance regulating the use of portable electronic devices while driving. The consensus of Council was to support the development of an ordinance containing regulations that are more restrictive than those currently contained in state law under Sec. 545.4251 of the Texas Transportation Code. The proposed ordinance provides for a complete ban on the use of portable electronic devices while operating a vehicle unless the device is used in conjunction with a hands-free device.

RECOMMENDED ACTION:

Approve Ordinance No. 2018-10 on second reading.

**CITY OF KERRVILLE, TEXAS
ORDINANCE NO. 2018-10**

AN ORDINANCE AMENDING CHAPTER 102 "TRAFFIC AND VEHICLES", ARTICLE IV "OPERATION OF VEHICLES", DIVISION 1 "GENERALLY", BY ADDING A NEW SECTION 102-118 TO REGULATE THE USE OF HAND-HELD PORTABLE ELECTRONIC DEVICES WHILE OPERATING A VEHICLE; PROVIDING EXEMPTIONS; PROVIDING AFFIRMATIVE DEFENSES; PROVIDING AN INCREASING PENALTY FOR SUBSEQUENT OFFENSES; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; ORDERING PUBLICATION; PROVIDING AN EFFECTIVE DATE; AND PROVIDING OTHER MATTERS RELATED TO THE SUBJECT

WHEREAS, the City Council finds it inherently distracting when a person operates a motor vehicle while using a hand-held portable electronic device for engaging in a call, texting, taking or viewing pictures, gaming, and any other purpose; and

WHEREAS, the Texas Legislature adopted House Bill 62 ("HB 62") during the 2017 Legislative Session, which created a new state-wide law essentially banning texting-while-driving; and

WHEREAS, HB 62, however, allows drivers to read, write, and send text messages on hand-held wireless communication devices such as cell phones, while the vehicle is stopped; and

WHEREAS, while HB 62 addresses one aspect of distracted driving, the Kerrville Police Department recommends prohibiting similar activities involving hand-held portable electronic devices in an effort to further reduce distracted driving; and

WHEREAS, City Council believes that adopting these reasonable restrictions on operators while driving is in furtherance of addressing the public's health, safety, and welfare;

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

SECTION ONE. City Council finds that the findings and recitations set out in the preamble to this Ordinance are true and correct and are adopted and made a part hereof for all purposes.

SECTION TWO. Chapter 102, Article IV, Division 1 of the Code of Ordinance of the City of Kerrville, Texas, is amended by adding a new Section 102-118 to read as follows:

“Sec. 102-118. - Regulating the use of hand-held portable electronic devices while driving.

(a) The following definitions apply to this section:

“Electronic message” means data that is read from or entered into a wireless communication device for the purpose of communicating with another person.

“Engaging in a call” means talking, dialing, or listening on a hand-held portable electronic device, including holding a portable electronic device to activate or deactivate the device.

“Hand-held portable electronic device” means a text-messaging device or other electronic, two-way communication device that uses a commercial mobile service, as defined by 47 United States Code §332, that is designed to receive and transmit voice communication, text message or pictorial communication, whether by internet or other electronic means. The term includes devices such as mobile telephones, personal digital assistants (PDA), MP3 or other portable music players, electronic reading devices, laptop computers or tablets, portable computing devices, portable global positioning or navigation systems, pagers, electronic game devices and broadband personal communication devices.

“Hands-free wireless communication device” means a mobile telephone, a device with speakerphone capability, a telephone attachment, or another function or other piece of equipment, regardless of whether or not permanently installed in a motor vehicle, that allows use of the wireless communication device without use of either of the operator's hands, or prosthetic device or aid in the case of a physically disabled person.

“Operating a vehicle” means a vehicle that is moving, stopped, or standing on a public street, highway, or right-of-way, unless it is parked.

“Park or parked” means for the operator to completely cease movement of a vehicle in a lawful manner and location. For the purposes of this section, “parked” does not mean a vehicle stopped in a lane of traffic due to either a lawful traffic control device, roadway conditions, or existing traffic congestion.

“Text message” means a two-way communication, whether real-time or asynchronous, in which data, composed in whole or in part of text, numbers, images, or symbols, is sent, entered, or received by a method other than by voice and transmitted through either a short message service (SMS) or a computer network. This term includes instant messaging and email. The term does not include a communication transmitted through a global positioning or navigation system.

“Stop or stopped” means for the operator to completely cease movement of a vehicle while in traffic due to a traffic control device, roadway conditions, or existing traffic congestion.

“Vehicle” means a motor vehicle, motorcycle, quadricycle, or bicycle.

(b) It is an offense if a person uses a hand-held portable electronic device while operating a vehicle to:

(1) Engage in a call;

(2) Send, read or write an electronic message on a wireless communication device, unless the vehicle is stopped. To be prosecuted, the behavior must be committed in the presence of or within view of a peace officer or established by other evidence. The state law definitions of electronic message and wireless communication device will apply to this subparagraph (b)(2) and the reference to electronic messages in (b)(3), and (e);

(3) Take or view pictures or written text, excluding electronic messages referenced in subparagraph (b)(2) above, whether transmitted by internet or other electronic means, or access or view an internet website or software application;

(4) Engage in gaming; or

(5) Engage in any other use of the device while operating a vehicle, to include holding the hand-held portable electronic device.

(c) This section does not apply to an operator of a vehicle using a hand-held portable electronic device:

(1) While the vehicle is parked or is being driven on private property;

(2) With a hands-free wireless communication device;

(3) If the operator is a law enforcement officer, firefighter, member of a governmental emergency medical services function, or member of a governmental emergency management function, and the operator is using the device to conduct official business related to the position; or

(4) Who is licensed by the Federal Communications Commission while operating a radio frequency device, other than a hand-held portable electronic device; or an operator using a two-way radio communication.

(d) It is an affirmative defense to prosecution under subparagraphs (b)(1), (3), (4), and (5), above, that a person was using a hand-held portable electronic device for the purpose of:

(1) Reporting illegal activity to a law enforcement agency;

(2) Communicating with an emergency response operator, a fire department, a law enforcement agency, a hospital, a physician's office, or a health clinic regarding a medical or other emergency situation; or

(3) In the reasonable belief that a person's life or safety is in immediate danger.

(e) Affirmative defenses applicable to prosecution under subparagraph (b)(2), above, are limited to those provided in the *Texas Transportation Code*, Section 545.4251(c), and are listed below. It is an affirmative defense to prosecution under this section that the operator used the hand-held portable electronic device:

(1) in conjunction with a hands-free device as defined by Texas Transportation Code, Section 545.425;

(2) to navigate a global positioning system or navigation system;

(3) to report illegal activity, summon emergency help, or enter information into a software application that provides information relating to traffic and road conditions to users of the application;

(f) An offense under this section is not a moving violation and may not be made a part of a person's driving record or insurance record.

(g) To the extent that this section conflicts with Texas Transportation Code Section 545.424, as amended, regarding the use of wireless communication devices while operating a motor vehicle by minors, or Texas Transportation

Code Section 545.425, as amended, regarding use of wireless communication devices in school crossing zones, state law shall control.”

SECTION THREE. The City Secretary is authorized and directed to send this Ordinance to the publisher of the City’s Code of Ordinances and the publisher is authorized to amend said Code to reflect the new Section 102-118, of Chapter 102, Article IV, Division 1 as adopted herein, to correct any typographical errors, and to index, format, number, and letter the paragraphs to the existing Code, as appropriate.

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

SECTION FIVE. If any section, subsection, sentence, clause, or phrase of this Ordinance is, for any reason, held to be unconstitutional or invalid, such holding will not affect the validity of the remaining portions of this Ordinance. The City Council 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. A person convicted of an offense under this Ordinance, to exclude the state law provision specified above, shall be fined in accordance with the following:

- (a) First offense shall have a minimum fine of \$100.00 and a maximum fine of \$500.00;
- (b) Second offense shall have a minimum fine of \$200.00 and a maximum fine of \$500.00; and
- (c) Third and subsequent offenses shall have a minimum fine of \$500.00.

Each day’s violations constitute a separate and distinct offense. Any prior conviction under this Ordinance will count towards a second and third charge regardless of when it occurred.

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

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

SECTION NINE. Beginning on the effective date of this Ordinance and continuing for 90 days, the City's Police Department may only issue warnings for violations of this Ordinance. During this period, the City Manager, or designee(s), will engage in an educational effort to inform the public about this Ordinance and the importance of not driving distracted.

PASSED AND APPROVED ON FIRST READING, this the 13th day of March, A.D., 2018.

PASSED AND APPROVED ON SECOND AND FINAL READING, this the ____ day of _____, A.D., 2018.

Bonnie White, Mayor

ATTEST:

Brenda G. Craig, City Secretary

APPROVED AS TO FORM:



Michael C. Hayes, City Attorney



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

SUBJECT: Ordinance No. 2018-11 adopting the "Design Manual for the Installation of Network Nodes and Node Support Poles pursuant to Texas Local Government Code, Chapter 284"; containing a cumulative clause; containing a savings and severability clause; providing for penalties not to exceed \$2,000.00; ordering publication; providing an effective date; and providing other matters related to the subject.

AGENDA DATE OF: 4/10/2018

DATE SUBMITTED: 4/4/2018

SUBMITTED BY: Drew Paxton

EXHIBITS: Ordinance No. 2018-11, Design Manual for Network Nodes

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

PAYMENT TO BE MADE TO: N/A

SUMMARY STATEMENT:

In 2017 staff began working with City Council on a multi-step process to develop specific guidelines and rules regarding the installation of Small Cell Tower or Network Nodes. In response to the State Legislature and the addition of Chapter 284 of the Texas Local Government Code (TxLGC), City Council approved amendments to the zoning code to designate specific design districts.

Step two is the adoption of a Design Manual for the Installation of Network Nodes and Node Support Poles, pursuant to Chapter 284 of the TxLGC. This Design Manual will create regulations to manage the public right of way, ensure public health, safety, and welfare and promote the most efficient use of the right of way to benefit the citizens of the City of Kerrville. The Design Manual will give assistance and guidance to wireless telecommunications providers to assist such companies in the timely, efficient, safe and aesthetically pleasing installation of these facilities.

RECOMMENDED ACTION:

Approve Ordinance No. 2018-11.

**CITY OF KERRVILLE, TEXAS
ORDINANCE NO. 2018-11**

AN ORDINANCE ADOPTING THE “DESIGN MANUAL FOR THE INSTALLATION OF NETWORK NODES AND NODE SUPPORT POLES PURSUANT TO TEXAS LOCAL GOVERNMENT CODE, CHAPTER 284”; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR PENALTIES NOT TO EXCEED \$2,000.00; ORDERING PUBLICATION; PROVIDING AN EFFECTIVE DATE; AND PROVIDING OTHER MATTERS RELATED TO THE SUBJECT

WHEREAS, the City of Kerrville, Texas (“City”) recognizes that the State of Texas has delegated to the City the fiduciary duty, as a trustee, to manage the public right-of-way for the health, safety, and welfare of the public; and

WHEREAS, during the 2017 legislative session, the Texas Legislature adopted Senate Bill 1004; and

WHEREAS, Senate Bill 1004 added Chapter 284 to the Local Government Code to regulate the deployment of network nodes for wireless services within public right-of-way; and

WHEREAS, Chapter 284 of the Texas Local Government Code (“the Code”) allows certain wireless network providers to install equipment and facilities in the public rights-of-way, such facilities more fully described and defined in Section 284.002 of Chapter 284 as “Micro Network Nodes”, “Network Nodes”, and “Node Support Poles” and related equipment; and

WHEREAS, as expressly allowed by Section 284.108 of the Code and pursuant to its police power authority reserved in Sec. 284.301 of the Code, the City desires to adopt “*The City of Kerrville, Texas Design Manual for the Installation of Network Nodes and Node Support Poles Pursuant to Texas Local Government Code Chapter 284*” (“the Design Manual”) in order to meet its fiduciary duty to the citizens of the City and the State of Texas, and to give assistance and guidance to wireless telecommunications network providers to assist such companies in the timely, efficient, safe and aesthetically pleasing installation of technologically competitive equipment; and

WHEREAS, City Council has determined that the adoption of the Design Manual is in the best interest of the public and will promote the public health, safety, and welfare of the City;

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

SECTION ONE. The forgoing recitals are the findings of the City Council and are incorporated into this Ordinance as if set forth fully herein.

SECTION TWO. The City Council hereby adopts the “*City of Kerrville, Texas Design Manual for the Installation of Network Nodes and Node Support Poles Pursuant to Texas Local Government Code Chapter 284*”. A copy of the Design Manual is attached hereto as **Exhibit A**.

SECTION THREE. This Ordinance shall be construed in accordance with Chapter 284 of the Texas Local Government Code (“the Code”) to the extent not in conflict with the Constitution and laws of the United States or of the State of Texas.

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

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

SECTION SIX. The penalty for violation of this Ordinance shall be in accordance with the general penalty provisions contained in Section 1-7, or its successor section, of the Code of Ordinances of the City of Kerrville, Texas, which provides for a fine not exceeding TWO THOUSAND DOLLARS (\$2,000.00).

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

PASSED AND APPROVED ON FIRST READING, this the 27th day of March, A.D., 2018.


PASSED AND APPROVED ON SECOND AND FINAL READING, this the ____ day of _____, A.D., 2018.

Bonnie White, Mayor

ATTEST:

Brenda G. Craig, City Secretary

APPROVED AS TO FORM:



Michael C. Hayes, City Attorney



Design Manual

for the

*Installation of Network Nodes and Node Support Poles
pursuant to Tex. Loc. Gov. Code, Chapter 284.*

Adopted by Ordinance No. 2018-11

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SECTION 1. PURPOSE AND APPLICABILITY.

The City of Kerrville (“City”) recognizes that the State of Texas has delegated to the City the fiduciary duty, as a trustee, to manage the public right-of-way for the health, safety, and welfare of the public to Texas municipalities.

Purpose: Loc. Gov. Code, Chapter 284 allows certain wireless Network Providers to install in the public rights-of-way their wireless facilities, described and defined in Tex. Loc. Gov. Code, Chapter 284, Sec. 284.002 as “Micro Network Nodes”, “Network Nodes”, and “Node Support Poles”.

As expressly allowed by Tex. Loc. Gov. Code, Chapter 284, Section 284.108, and pursuant to its police power authority reserved in Sec. 284.301¹, the City enacts these Design Guidelines in order to meet its fiduciary duty to the citizens of the City, and to give assistance and guidance to wireless telecommunications providers to assist such companies in the timely, efficient, safe and aesthetically pleasing installation of technologically competitive equipment.

Applicability: This Design Manual is for siting and criteria for the installation Wireless Facilities, including Micro Network Nodes, Network Nodes, Node Support Poles and related ground equipment being installed pursuant to Loc. Gov. Code, Chapter 284

This Design Manual shall apply to any sitings, installations, collocations in, on, over or under the public rights-of-way of Network nodes, Node support poles, Micro network nodes, Distributed Antenna Systems, microwave communications or other Wireless Facilities, by whatever nomenclature, whether they are installed pursuant to Chapter 284, or installed pursuant to an agreement as agreed to and consented to by the City in its discretion, or installed as may otherwise be allowed by state law.

SECTION 2. DEFINITIONS.

Abandon and its derivatives means the facilities installed in the right-of-way (including by way of example but not limited to: poles, wires, conduit, manholes, hand holes, cuts, network nodes and node support poles, or portion thereof) that have been left by Provider in an unused or non-functioning condition for more than 120 consecutive calendar days unless, after notice to Provider, Provider has established to the reasonable satisfaction of the City that the applicable facilities, or portion thereof, is still in active use.

Antenna means communications equipment that transmits or receives electromagnetic radio frequency signals used in the provision of wireless services.

Applicable codes means:

- (A) building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization; and
- (B) local amendments to those codes to the extent not inconsistent with Chapter 284.

City means the City of Kerrville, Texas or its lawful successor.

City Manager shall mean City Manager or designee

Chapter 284 means Tex. Loc. Gov. Code, Chapter 284.

Collocate and *collocation* mean the installation, mounting, maintenance, modification, operation, or replacement of network nodes in a public right-of-way on or adjacent to a pole.

Concealment or Camouflaged means any Wireless Facility or Pole that is covered, blended, painted, disguised, camouflaged or otherwise concealed such that the Wireless Facility blends into the surrounding environment and is visually unobtrusive. A Concealed or Camouflaged Wireless Facility or Pole also includes any Wireless Facility or Pole conforming to the surrounding area in which the Wireless Facility or Pole is located and may include, but is not limited to hidden beneath a façade, blended with surrounding area design, painted to match the supporting area, or disguised with artificial tree branches.

Decorative pole means a streetlight pole specially designed and placed for aesthetic purposes and on which no appurtenances or attachments, other than specially designed informational or directional signage or temporary holiday or special event attachments, have been placed or are permitted to be placed according to nondiscriminatory municipal codes.

Design District means an area that is zoned, or otherwise designated by municipal code, and for which the city maintains and enforces unique design and aesthetic standards on a uniform and nondiscriminatory basis.

Disaster emergency or *disaster* or *emergency* means an imminent, impending, or actual natural or humanly induced situation wherein the health, safety, or welfare of the residents of the city is

threatened, and includes, but is not limited to any declaration of emergency by city, state or federal governmental authorities.

Distributed Antenna System or DAS shall be included as a type of “Network Node.”

Easement means and shall include any public easement or other compatible use created by dedication, or by other means, to the city for public utility purposes or any other purpose whatsoever. "Easement" shall include a private easement used for the provision of utilities.

Federal Communications Commission or FCC means the Federal Administrative Agency, or lawful successor, authorized to oversee cable television and other multi-channel regulation on a national level.

Highway right-of-way means right-of-way adjacent to a state or federal highway.

Historic district means an area that is zoned or otherwise designated as a historic district under municipal, state, or federal law.

Law means common law or a federal, state, or local law, statute, code, rule, regulation, order, or ordinance.

Local means within the geographical boundaries of the City.

Location means the City approved and lawfully permitted location for the Network Node.

Macro tower means a guyed or self-supported pole or monopole greater than the height parameters prescribed by Chapter 284, Section 284.103 and that supports or is capable of supporting antennas.

Micro network node means a network node that is not larger in dimension than 24 inches in length, 15 inches in width, and 12 inches in height, and that has an exterior antenna, if any, not longer than 11 inches.

Municipal park means an area that is zoned or otherwise designated by municipal code as a public park for the purpose of recreational activity.

Municipally owned utility pole means a utility pole owned or operated by a municipally owned utility, as defined by Section 11.003, Utilities Code, and located in a public right-of-way. This includes utility poles owned and/or controlled by Kerrville Public Utility Board (KPUB).

MUTCD means Manual of Uniform Traffic Control Devices.

Network node means equipment at a fixed location that enables wireless communications between user equipment and a communications network. The term:

(A) includes:

- (i) equipment associated with wireless communications;
- (ii) a radio transceiver, an antenna, a battery-only backup power supply, and comparable equipment, regardless of technological configuration; and
- (iii) coaxial or fiber-optic cable that is immediately adjacent to and directly associated with a particular collocation; and

(B) does not include:

- (i) an electric generator;
- (ii) a pole; or
- (iii) a macro tower.

Network provider means:

- (A) a wireless service provider; or
- (B) a person that does not provide wireless services and that is not an electric utility but builds or installs on behalf of a wireless service provider:
 - (i) network nodes; or
 - (ii) node support poles or any other structure that supports or is capable of supporting a network node.

Node support pole means a pole installed by a network provider for the primary purpose of supporting a network node.

Park has the same meaning as “Municipal Park.”

Permit means a written authorization for the use of the public right-of-way or collocation on a service pole required from a municipality before a network provider may perform an action or initiate, continue, or complete a project over which the municipality has police power authority.

Pole means a service pole, municipally owned utility pole, node support pole, or utility pole.

Private easement means an easement or other real property right that is only for the benefit of the grantor and grantee and their successors and assigns.

Provider has the same meaning as “Network Provider.”

Public right-of-way means the surface of, area on, below, or above a public street, roadway, highway, freeway, land, path, public way or place, public sidewalk, alley, court, boulevard, parkway, drive, waterway, utility easement in which the municipality has an interest, or other easement now or hereafter held by the city (including any street, as defined, which is acquired by eminent domain) for the purpose of public travel and shall include other easements or rights-of-way now or hereafter held by the city (including any easements or rights-of-way acquired by eminent domain) which shall, with their proper use and meaning, entitle the city or utility provider, with proper authorization, to use thereof for the purpose of installing or transmitting utilities over poles, wires, cable, conductors, ducts, conduits, viaducts, manholes, amplifiers, appliances, attachments, and other property as may ordinarily be necessary. The term does not include:

- (A) a private easement; or
- (B) the airwaves above a public right-of-way with regard to wireless telecommunications.

Right-of-way means “Public right-of-way”.

Service pole means a pole, other than a municipally owned utility pole, owned or operated by a

municipality and located in a public right-of-way, including:

- (A) a pole that supports traffic control functions;
- (B) a structure for signage;
- (C) a pole that supports lighting, other than a decorative pole; and
- (D) a pole or similar structure owned or operated by a municipality and supporting only network nodes.

Small cell shall be included as a type of “Network Node.”

State means the State of Texas.

Street means only the paved portion of the right-of-way with a specially prepared surface used for vehicular travel, which surface may be concrete, blacktop or other material commonly used to prepare a surface for vehicular travel, being the area between the inside of the curb to the inside of the opposite curb, or the area between the two parallel edges of the paved roadway for vehicular travel where there is no curb. A “Street” is generally part of, but smaller in width than the width of the entire right-of-way, while a right-of-way may include sidewalks and utility easements, a “Street” does not. A “street” does not include the curb or the sidewalk, if either are present at the time of a permit application or if added later.

SWPPP shall mean Storm Water Pollution Prevention Plan.

TAS means Texas Accessibility Standards.

Thoroughfare shall have the same meaning as “Street.”

Traffic Signal means any device, whether manually, electrically, or mechanically operated by which traffic is alternately directed to stop and to proceed.

Transport facility means each transmission path physically within a public right-of-way, extending with a physical line from a network node directly to the network, for the purpose of providing backhaul for network nodes.

Underground Requirement Area shall mean means an area where poles, overhead wires, and associated overhead or above ground structures have been removed and buried or have been approved for burial underground pursuant to municipal ordinances, zoning regulations, state law, private deed restrictions, and other public or private restrictions, that prohibit installing aboveground structures in a public right-of-way.

User means a person or organization which conducts a business over facilities occupying the whole or a part of a public street or right-of-way, depending on the context.

Utility pole means a pole that provides:

- (A) electric distribution with a voltage rating of not more than 34.5 kilovolts; or
- (B) services of a telecommunications provider, as defined by Chapter 284, Section 51.002, Utilities Code.

Wireless service means any service, using licensed or unlicensed wireless spectrum, including the use of Wi-Fi, whether at a fixed location or mobile, provided to the public using a network node.

Wireless service provider means a person that provides wireless service to the public.

Wireless facilities mean “Micro Network Nodes,” “Network Nodes,” and “Node Support Poles” as defined in Texas Local Government Code Chapter 284.

**SECTION 3. PROHIBITED AND PREFERRED LOCATIONS OF MICRO
NETWORK NODE, NETWORK NODE, NODE SUPPORT POLE AND RELATED
GROUND EQUIPMENT.**

**A. Prohibited or Restricted Areas for Certain Wireless facilities, except with
Separate City Agreement or Subject to Concealment Conditions.**

1. ***Municipal Parks and Residential Areas.*** In accordance with Chapter 284, Sec. 284.104 (a), a Network Provider may not install a Node Support Pole in a public right-of-way without the City's discretionary, nondiscriminatory, and written consent if the public right-of-way is in a Municipal park or is adjacent to a street or thoroughfare that is:

(a) not more than 50 feet wide of paved street surface, being the area measured as the shortest distance between the inside of the curb to the inside of the opposite curb, or the area measured as the shortest distance between the two parallel edges of the paved roadway for vehicular travel where there is no curb; and

(b) adjacent to single-family residential lots or other multifamily residences or undeveloped land that is designated for residential use by zoning or deed restrictions.

1.1. In accordance with Chapter 284, Sec. 284.104 (b), a Network Provider installing a Network Node or Node Support Pole in a public right-of-way described above shall comply with private deed restrictions and other private restrictions in the area that apply to those facilities.

1.2. Each permit application shall disclose if it is within a Municipal Park and Residential Areas as described above.

2. ***Historic District and Design Districts.*** In accordance with Chapter 284, Sec. 284.105, a Network Provider must obtain advance written approval from the City before collocating Network Nodes or installing Node Support Poles in a Design District with Decorative Poles or in an area of the City zoned or otherwise designated as a Design District or Historic District.

2.1. As a condition for approval of Network Nodes or Node Support Poles in Design Districts with Decorative Poles or in a Historic District, the City shall require reasonable design or Concealment measures for the Network Nodes or Node Support Poles. Therefore, any request for installations in a Design District with Decorative Poles or in a Historic District, must be accompanied with proposed Concealment measures in the permit applications.

2.2. The City request that a Network Provider explore the feasibility of using Camouflage measures to improve the aesthetics of the Network Nodes, Node Support Poles, or related ground equipment, or any portion of the nodes, poles, or equipment, to minimize the impact to the aesthetics in Design Districts or in an Historic District.

2.3. Network Provider shall comply with and observe all applicable City, State, and federal historic preservation laws and requirements.

2.4. Each permit application shall disclose if it is within a Design District with Decorative Poles or in an area of the City zoned or otherwise designated as a Design District or Historic District.

3. **Historic Landmarks.** A Network Provider is discouraged from installing a Network Node or Node Support Pole within 300 feet of a historic site or structure or Historic Landmark recognized by the City, state or federal government (*see, for example, and not limited to* §442.001(3) of the Texas Government Code, and 16 U.S.C. §470), as of the date of the submission of the permit. It is recommended that each permit application disclose if it is with 300 feet of such a structure.

4. **Compliance with Undergrounding Requirements.** In accordance with Chapter 284, Sec. 284.107, a Network Provider shall comply with nondiscriminatory undergrounding requirements, including municipal ordinances, zoning regulations, state law, private deed restrictions, and other public or private restrictions, that prohibit installing aboveground structures in a public right-of-way without first obtaining zoning or land use approval.

4.1 Areas may be designated from time to time by the City as Underground Requirement Areas in accordance with filed plats, and or conversions of overhead to underground areas, as may be allowed by law.

4.2 Each permit application shall disclose if it is within an area that has undergrounding requirements.

B. Least preferable locations.

1. **Residential Areas and Parks.** A Network Provider is discouraged from installing a Network Node on an existing pole in a public right-of-way without written consent from the City Council if the public right-of-way is located in or adjacent to a street or thoroughfare that is adjacent to a municipal park or single-family residential lots or other multifamily residences or undeveloped land that is designated for residential use by zoning or deed restrictions.

1.1 In accordance with Chapter 284, Sec. 284.104 (b) a Network Provider installing a Network Node or a Node Support Pole in a public right-of-way shall comply with private deed restrictions and other private restrictions in the area that apply to those facilities.

2. **Historic Districts and Design Districts.** A Network Provider is discouraged from installing a Network Node or a Node Support Pole in the public right-of-way in any area designated by the City as a Design Districts, in an area of the City zoned, or otherwise designated as a Historic District unless such a Network Node or a new Node Support Pole is camouflaged.

C. Most preferable locations

1. *Industrial areas* if not adjacent to a Municipal Park, Residential area, Historic District or Design District.

2. *Highway Rights-of-Way* areas if not adjacent to a Municipal Park, Residential area, Historic District or Design District.

3. *Retail and Commercial areas* if not adjacent to a Municipal Park, Residential area, Historic District or Design District.

D. Designated Areas.

1. The City Council may designate an area as a Historic District or a Design District under Chapter 284.105 at any time.

2. Currently designated *Design District* areas are:

(a) Design District Number 1 is the area referred to as Guadalupe River District. Its generic boundaries are areas along or near the Guadalupe River.

(b) Design District Number 2 is the area referred to as Central Business District. Its generic boundaries are north and east of the Guadalupe River, south of Hays Street, west of Barnett Street, and north of Tivy Street.

(c) Design District Number 3 is the area referred to as Gateway District. Its generic boundaries are the areas adjacent to Sidney Baker Street (Highway 16) corridor and the area adjacent to the intersection of Interstate Highway 10 and Highway 16 (Sidney Baker Street).

Applicant shall confirm with the City of Kerrville Planning Department to confirm the location of Design Districts and each districts specific boundaries.

3. Reserved for designated *Historic Districts* are:

4. The failure to designate an area in this Chapter shall not mean that such an area is not within a defined district, if so designated by the City Council. Future areas may be designated as one of these Districts at any time. Such a designation does not require a zoning case.

5. While not required under Chapter 284 to designate Underground Compliance Areas to prohibit above ground Wireless facilities, the City may also, from time to time, also designate Underground Compliance Areas.

Currently designated *Underground Compliance Areas* are all areas within the city limits. Within the City of Kerrville, all utilities shall be placed underground unless located within service drives, alleys, or rear lot easements.

E. Exceptions

The City by its discretionary consent and agreement may grant exception to the above prohibited locations and sizes, but only in a non-exclusive and non-discriminatory manner, as allowed or required by Chapter 284, Sec. 284.109 and Sec. 284.110.

F. Order of Preference regarding Network Node attachment to existing facilities and New Node Support Poles.

1. *Existing telephone or electrical lines between existing utility poles.* Micro Network Nodes shall only be lashed on existing telephone or electrical lines between existing utility poles (electric poles or telephones poles), with notice to the pole owner as required by the Federal Pole Attachment Act, and not placed on Utility Poles, Node Support Poles or Service Poles.

2. *Existing Utility Poles* (electric poles or telephones poles), shall be the preferred support facility for Network Nodes and related ground equipment.

3. *Municipal Service Poles:*

a. *Non-decorative street lights* with a height of more than 20 feet.

b. *Traffic signal structures* when such installation will not interfere with the integrity of the facility and will not interfere with the safety of public and in accordance with an agreement as allowed by Chapter 284, Sec. 285.056 and Sec. 284.101 (a) (3), and (b).

c. *Street signage* shall be a low priority use for attachment of a Network Node.

d. *Other municipal Service pole* use is discouraged.

4. *New node support poles* shall be the least preferred type of allowed facility for attachment of Network Nodes.

5. *Ground Equipment.* Ground equipment should be minimal and the least intrusive.

SECTION 4. GUIDELINES ON PLACEMENT.

A. Generally.

In accordance with Chapter 284.102, a Network Provider shall construct and maintain Network Nodes and Node Support Poles in a manner that does not:

1. obstruct, impede, or hinder the usual travel or public safety on a public right-of-way;
2. obstruct the legal use of a public right-of-way by other utility providers;
3. violate nondiscriminatory applicable codes;
4. violate or conflict with the municipality's publicly disclosed public right-of-way policy or this Design Manual.
5. violate the federal Americans with Disabilities Act of 1990 (42 U.S.C. Section 12101 et seq.).

B. General Requirements and Information:

1. *Size Limits.* Network Providers shall provide detailed drawings, with calculations to show strict conformity to the size limitations as set forth in Chapter 284, in accordance with, but not limited to Chapter 284, Sec. 284.002, size of a Micro Network Node, Sec. 284.003, Size of Network Nodes, and Sec. 284.103, Max. pole height, with each application and with each request for a permit for each location.²

2. *State and Federal Rights-of-way permit.* If the project lies within a Highway Right-of-Way, the applicant must provide evidence of a permit from the State or Federal Government.

3. *Confirmation of non-interference with City Safety Communication Networks.*

a. The Network Provider needs to provide analysis that the proposed network node shall not cause any interference with City public safety radio system, traffic signal light system, or other city safety communications components in accordance with Chapter 284, Sec. 284.304.

b. It shall be the responsibility of the Network Provider to evaluate, prior to making application for permit, the compatibility between the existing City infrastructure and Provider's proposed Network Node. A Network Node shall not be installed in a location that causes any interference. Network Nodes shall not be allowed on City's public safety radio infrastructure.

4. *Improperly Located Network Node facilities, Node Support Poles and related ground equipment:*

a. Improperly Located Network Node facilities, Node Support Poles and related ground equipment shall not impede pedestrian or vehicular traffic in the Right-of-Way. If any Network Node facilities, Node Support Poles or ground equipment is installed in a location that is not in accordance with the plans approved by the City Manager and impedes pedestrian or vehicular traffic or does not comply or otherwise renders the Right-of-Way non-compliant with applicable Laws, including the American Disabilities Act, then Network Provider shall promptly remove the Network Node facilities, Node Support Poles or ground equipment.

b. Notice to Remove unauthorized facilities and relocate and penalty: After 30 days' notice to remove of Network Node facilities, Node Support Poles or ground equipment that

is located in the incorrect permitted location, if not relocated the Network Provider shall be subject to a penalty of \$500 per day penalty until the Network Node facilities, Node Support Poles or ground equipment is relocated to the correct area within the permitted Location, regardless of whether or not the Network Provider's contractor, subcontractor, or vendor installed the Network Node facilities, Node Support Poles or ground equipment in strict conformity with the City applicable ordinances concerning improperly located facilities in the rights-of-way.

C. Underground Requirement Areas.

1. In accordance with Chapter 284.107, a Network Provider shall, in relation to installation for which the City approved a permit application, comply with nondiscriminatory undergrounding requirements, including municipal ordinances, zoning regulations, state law, private deed restrictions, and other public or private restrictions, that prohibit installing aboveground structures in a public right-of-way without first obtaining zoning or land use approval.

2. If a location is designated by the City to transits to be an Underground Requirement Area, then a Network Provider's permit for the location of the Micro Network Node, Network Node, Node Support Pole, and related ground equipment at such location will be revoked 90 days after the designation, with removal of said the Micro Network Node, Network Node, Node Support Pole, and related ground equipment at such location within 90 days of such designation, or as otherwise reasonably allowed by the City for the transition of other overhead facilities.

D. Network Node facilities placement:

1. *Right-of-Way:* Network Node facilities, Node Support Poles and related ground equipment shall be placed, as much as possible, within two feet of the outer edge of the Right-of-Way line to minimize any obstruction, impediment, or hindrance to the usual travel or public safety on a public right-of-way.

2. *Height above ground.* Network Node attachments to a pole shall be installed at least eight (8) feet above the ground in accordance with Chapter 284, Sec. 284.108, and if a Network Node attachment is projecting toward the street, for the safety and protection of the public and vehicular traffic, the attachment shall be installed no less than sixteen (16) feet above the ground.

3. *Protrusions.* In accordance with Chapter 284, Sec. 284.003 (a) (1) (C), Sec. 284.003 (a) (2) (C) and Sec. 284.003 (a) (3) (B) no protrusion from the outer circumference of the existing structure or pole shall be more than two (2) feet.

4. *Limit on number of Network Nodes per Site.* There shall be no more than one Network Node on any one Pole.

E. New Node Support Poles.

1. *New Node Support Poles Spacing.* New node support poles shall be spaced apart from existing utility poles or Node Support poles at the same as the spacing between utility poles in the immediate proximity, but no less than at a minimum 300 feet from a utility pole or another Node Support Pole to minimize the hazard of poles adjacent to road ways and to minimize effect on property values and aesthetics on the area.

2. *Height of Node Support Poles or modified Utility Pole.* In accordance with Chapter 284, Sec. 284.103 a Node support pole or modified Utility Pole may not exceed the lesser of:

- (1) 10 feet in height above the tallest existing utility pole located within 500 linear feet of the new pole in the same public right-of-way; or
- (2) 55 feet above ground level.

F. Ground Equipment.

1. *Ground Equipment near street corners and intersections:* Ground equipment should be minimal and the least intrusive. In accordance with Chapter 284.102 (1), to minimize any obstruction, impediment, or hindrance to the usual travel or public safety on a public right-of-way the maximum line of sight required to add to safe travel of vehicular and pedestrian traffic and in order to maximize that line of sight at street corners and intersections and to minimize hazards at those locations, ground equipment may not be installed within 250 feet of a street corner or a street intersection.

2. *Ground Equipment near Municipal Parks.* For the safety of Municipal park patrons, particularly small children, and to allow full line of sights near Municipal park property, the Network Provider shall not install Ground Equipment in a Right-of-Way that is within a Park or within 250 feet of the boundary line of a Park, unless approved by the City Manager and Parks Director in writing.

3. *Minimize Ground equipment density:*

In accordance with Chapter 284, Sec. 284.102 (1) to enhance the safety requirements of line of sight of pedestrians, particularly small children, the City's designee may deny a request for a proposed Location if the Network Provider installs Network Node ground equipment where existing ground equipment within 300 feet already occupies a footprint of 25 sq. ft. or more.

G. Municipal Service Poles:

1. *In accordance with Agreement:* Installations on all Service Poles shall be in accordance with an agreement as allowed by Chapter 284, Sec. 285.056 and Sec. 284.101 (a) (3), and (b).

2. *Required industry standard pole load analysis:* Installations on all Service Poles shall have an industry standard pole load analysis completed and submitted to the municipality with each permit application indicating that the Service Pole to which the Network Node is to be attached will safely support the load, in accordance with Chapter 284.108.

3. *Height of attachments:* All attachments on all Service Poles shall be at least 8 feet above grade, in accordance with Chapter 284, Sec. 285.108 (a) (1) - (2) and if a Network Node attachment is projecting toward the street, for the safety and protection of the public and vehicular traffic, the attachment shall be installed no less than sixteen (16) feet above the ground.

4. *Installations on Traffic Signals:* Installations on all Traffic signal structures must not interfere with the integrity of the facility in any way that may compromise the safety of the public and must be in accordance with an agreement as allowed by Chapter 284, Sec. 285.056 and Sec. 284.101 (a) (3), and (b). Installation of Network Node facilities on any traffic signal structures shall:

- (a) Be encased in a separate conduit than the traffic light electronics;

- (b) Have a separate electric power connection than the traffic signal structure; and
- (c) Have a separate access point than the traffic signal structure; and

5. *Installations on Street signage:* Installations on all street signage structures must not interfere with the integrity of the facility in any way that may compromise the safety of the public. Installation of Network Node facilities on any street signage structures that has electrics shall:

- (a) Be encased in a separate conduit than any City signage electronics;
- (b) Have a separate electric power connection than the signage structure;
- (c) Have a separate access point than the signage structure.

SECTION 5. GENERAL AESTHETIC REQUIREMENTS

A. Concealment.

1. Concealment of Network Nodes and Node support poles shall be required by the City in Design Districts with Decorative Poles and in Historic Districts pursuant to Chapter 284.105.

2. It is also the City's preference that all new node support poles be camouflaged, except those located in an area zoned or predominantly industrial area. Companies shall submit their proposal for camouflage with the permit application.

3. The Network Node facilities shall be concealed or enclosed as much as reasonably possible in an equipment box, cabinet, or other unit that may include ventilation openings. External cables and wires hanging off a pole shall be sheathed or enclosed in a conduit, so that wires are protected and not visible or visually minimized to the extent possible in strict accordance with the City's applicable ordinances, except to the extent not consistent with Chapter 284.

Each permit application shall include documentation showing that the color of the network node shall match the existing pole color such that the network node blends with the color of the pole to the maximum extent practicable.

The Network Node facilities shall be concealed or enclosed as much as possible in an equipment box, cabinet, or other unit that may include ventilation openings. External cables and wires hanging off a pole shall be sheathed or enclosed in a conduit, so that wires are protected and not visible or visually minimized to the extent possible, except to the extent not consistent with Chapter 284.

B. New Node Support Pole Spacing.

New node support poles shall be at a minimum 300 feet from a utility pole or another Node Support Pole to minimize the hazard of poles adjacent to roadways and to minimize effect on property values and aesthetics on the area.

C. Minimize Ground Equipment Concentration.

In order to minimize negative visual impact to the surrounding area, and in accordance with Chapter 284, Sec. 284.102 (1) to enhance the safety requirements of line of sight of pedestrians, particularly small children, the City's designee may deny a request for a proposed Location if the Network Provider installs Network Node ground equipment where existing ground equipment within 300 feet already occupies a footprint of 25 sq. ft. or more to minimize effect on property values and aesthetics on the area.

D. Allowed Colors.

Colors in Historic Districts and Design Districts must be in strict accordance with the City's applicable ordinances, except to the extent not consistent with Chapter 284

Colors in Historic Districts and Design Districts must be approved by the City Manager from a palette of approved colors. Unless otherwise provided, all colors shall be earth tones or shall match the background of any structure the facilities are located upon and all efforts shall be made for the colors to be inconspicuous. Colors in areas other than in Historic Districts and Design

Districts shall conform to colors of other installations of telecommunication providers in the immediately adjacent areas.

Each permit application shall include documentation showing that the color of the network node shall match the existing pole color such that the network node blends with the color of the pole to the maximum extent practicable.

SECTION 6. ELECTRICAL SUPPLY

A. Network Provider shall be responsible for obtaining any required electrical power service to the Micro Network Node, Network Node facilities, Node Support Poles and ground equipment. The City shall not be liable to the Network Provider for any stoppages or shortages of electrical power furnished to the Micro Network Node, Network Node facilities, Node Support Poles or ground equipment, including without limitation, stoppages or shortages caused by any act, omission, or requirement of the public utility serving the structure or the act or omission of any other tenant or Network Provider of the structure, or for any other cause beyond the control of the City.

B. Network Provider shall not allow or install generators or back-up generators in the Right-of-Way in accordance with Chapter 284, Sec. 284.002 (12) (B) (1).

SECTION 7. INSURANCE, INDEMNITY, BONDING AND SECURITY DEPOSITS.

1. Insurance, bonding and security deposits shall be in strict accordance with the City's applicable ordinances, except to the extent not consistent with Chapter 284.

2. Indemnity shall be in accordance with Chapter 284, Sec. 284.302, as provided for in Chapter 283, Sec. 283.057 (a) and (b) of the Texas Loc. Gov't Code.

SECTION 8. REQUIREMENTS IN REGARD TO REMOVAL, REPLACEMENT, MAINTENANCE AND REPAIR

A. REMOVAL OR RELOCATION BY NETWORK PROVIDER.

1. Removal and relocation by the Network provider of its Micro Network Node, Network Node facilities, Node Support Pole or related ground equipment at its own discretion, shall be in strict accordance with the City's applicable ordinances, except to the extent not consistent with Chapter 284
2. If the Network Provider removes or relocates a Micro Network Node, Network Node facilities, Node Support Pole or related ground equipment at its own discretion, it shall notify the City Manager in writing not less than 10 business days prior to removal or relocation. Network Provider shall obtain all Permits required for relocation or removal of its Micro Network Node, Network Node facilities, Node Support Poles and related ground equipment prior to relocation or removal.
3. The City shall not issue any refunds for any amounts paid by Network Provider for Micro Network Node, Network Node facilities, Node Support Poles or related ground equipment that have been removed.

B. REMOVAL OR RELOCATION REQUIRED FOR CITY PROJECT.

1. Removal and Relocation of Network Provider's Micro Network Node, Network Node, Node Support Pole or related ground equipment, or portion thereof required for a City project shall be in strict accordance with the City's applicable ordinances, except to the extent not consistent with Chapter 284, Sec. 284.107, except as provided in existing state and federal law.
2. In accordance with Chapter 284, Sec. 284.107, except as provided in existing state and federal law, a Network Provider shall relocate or adjust Micro Network Node, Network Node, Node Support Pole and related ground equipment in a public right-of-way in a timely manner and without cost to the municipality managing the public right-of-way
3. Network Provider understands and acknowledges that the City may require Network Provider to remove or relocate its Micro Network Node, Network Node, Node Support Pole and related ground equipment, or any portion thereof from the Right-of-Way for City construction projects as allowed by state and feral law, including the common-law.
4. Network Provider shall, at the City Manager's direction, remove or relocate the same at Network Provider's sole cost and expense, except as otherwise provided in existing state and federal law, whenever the City Manager reasonably determines that the relocation or removal is needed for any of the following purposes: Required for the construction, completion, repair, widening, relocation, or maintenance of, or use in connection with, any City construction or maintenance project of a street ort public rights-of-way to enhance the traveling publics use for travel and transportation.
5. If Network Provider fails to remove or relocate the Micro Network Node, Network Node, Node Support Pole or related ground equipment, or portion thereof as requested by the City Manager within 90 days of Network Provider's receipt of the request, then the City shall be entitled to remove the Micro Network Node, Network Node, Node

Support Pole or related ground equipment, or portion thereof at Network Provider's sole cost and expense, without further notice to Network Provider.

6. Network Provider shall, within 30 days following issuance of invoice for the same, reimburse the City for its reasonable expenses incurred in the removal (including, without limitation, overhead and storage expenses) of the Micro Network Node, Network Node, Node Support Pole or related ground equipment, or portion thereof.

C. REMOVAL REQUIRED BY CITY FOR SAFETY AND IMMINENT DANGER REASONS.

1. Network Provider shall, at its sole cost and expense, promptly disconnect, remove, or relocate the applicable Micro Network Node, Network Node, Node Support Pole and related ground equipment within the time frame and in the manner required by the City Manager if the City Manager reasonably determines that the disconnection, removal, or relocation of any part of a Micro Network Node, Network Node, Node Support Pole and related ground equipment (a) is necessary to protect the public health, safety, welfare, or City property, (b) the Micro Network Node, Network Node, Node Support Pole and related ground equipment, or portion thereof, is adversely affecting proper operation of streetlights or City property, or (c) Network Provider fails to obtain all applicable licenses, Permits, and certifications required by Law for its Micro Network Node, Network Node, Node Support Pole and related ground equipment, or use of any Location under applicable law in strict accordance with the City's applicable ordinances, except to the extent not consistent with Chapter 284.
2. If the City Manager reasonably determines that there is imminent danger to the public, then the City may immediately disconnect, remove, or relocate the applicable Micro Network Node, Network Node, Node Support Pole and related ground equipment at the Network Provider's sole cost and expense in strict accordance with the City's applicable ordinances, except to the extent not consistent with Chapter 284.
3. Network Provider shall, at its sole cost and expense, promptly disconnect, remove, or relocate the applicable Micro Network Node, Network Node, Node Support Pole and related ground equipment within the time frame and in the manner required by the City Manager if the City Manager reasonably determines that the disconnection, removal, or relocation of any part of a Micro Network Node, Network Node, Node Support Pole and related ground equipment (a) is necessary to protect the public health, safety, welfare, or City property, (b) the Micro Network Node, Network Node, Node Support Pole and related ground equipment, or portion thereof, is adversely affecting proper operation of streetlights or City property, or (c) Network Provider fails to obtain all applicable licenses, Permits, and certifications required by Law for its Micro Network Node, Network Node, Node Support Pole and related ground equipment, or use of any Location under applicable law. If the City Manager reasonably determines that there is imminent danger to the public, then the City may immediately disconnect, remove, or relocate the applicable Micro Network Node, Network Node, Node Support Pole and related ground equipment at the Network Provider's sole cost and expense.
4. The City Manager shall provide 90 days written notice to the Network Provider before removing a Micro Network Node, Network Node, Node Support Pole and related

ground equipment under this Section, unless there is imminent danger to the public health, safety, and welfare.

5. Network Provider shall reimburse City for the City's actual cost of removal of Micro Network Node, Network Node, Node Support Pole and related ground equipment within 30 days of receiving the invoice from the City.

SECTION 9. INSTALLATION AND INSPECTIONS

A. INSTALLATION.

Network Provider shall, at its own cost and expense, install the Micro Network Node, Network Node facilities, Node Support Poles and related ground equipment in a good and workmanlike manner in strict accordance with the City's applicable ordinances, except to the extent not consistent with Chapter 284

Network Provider shall, at its own cost and expense, install the Micro Network Node, Network Node facilities, Node Support Poles and related ground equipment in a good and workmanlike manner and in accordance with the requirements promulgated by the City Manager, as such may be amended from time to time. Network Provider's work shall be subject to the regulation, control and direction of the City Manager. All work done in connection with the installation, operation, maintenance, repair, modification, and/or replacement of the Micro Network Node, Network Node facilities, Node Support Poles and related ground equipment shall be in compliance with all applicable laws, ordinances, codes, rules and regulations of the City, applicable county, the state, and the United States ("Laws").

B. INSPECTIONS.

The City Manager, or designee, may perform visual inspections of any Micro Network Node, Network Node, Node Support Pole or related ground equipment located in the Right-of-Way shall be allowed in strict accordance with the City's applicable ordinances, except to the extent not consistent with Chapter 284

The City Manager, or designee, may perform visual inspections of any Micro Network Node, Network Node, Node Support Pole or related ground equipment located in the Right-of-Way, as the City Manager deems appropriate without notice. If the inspection requires physical contact with the Micro Network Node, Network Node, Node Support Poles or related ground equipment, the City Manager shall provide written notice to the Network Provider within five business days of the planned inspection. Network Provider may have a representative present during such inspection.

SECTION 10. REQUIREMENTS UPON ABANDONMENT OF OBSOLETE MICRO NETWORK NODE, NETWORK NODE, NODE SUPPORT POLE AND RELATED GROUND EQUIPMENT.

Abandoned or obsolete Micro Network Node, Network Node, Node Support Pole and related ground equipment shall be removed in strict accordance with the City's applicable ordinances, except to the extent not consistent with Chapter 284.

Network Provider shall remove Micro Network Node, Network Node, Node Support Pole and related ground equipment when such facilities are abandoned regardless of whether or not it receives notice from the City. Unless the City sends notice that removal must be completed immediately to ensure public health, safety, and welfare, the removal must be completed within the earlier of 90 days of the Micro Network Node, Network Node, Node Support Pole and related ground equipment being Abandoned or within 90 days of receipt of written notice from the City. When Network Provider removes, or Abandons permanent structures in the Right-of-Way, the Network Provider shall notify the City Manager and City Manager in writing of such removal or Abandonment and shall file with the City Manager and City Manager the location and description of each Micro Network Node, Network Node, Node Support Pole and related ground equipment removed or Abandoned. The City Manager may require the Network Provider to complete additional remedial measures necessary for public safety and the integrity of the Right-of-Way.

SECTION 11. GENERAL PROVISIONS.

A. As Built Maps, Records, and Inventory.

Network Provider's as built maps and records shall be in strict accordance with the City's applicable ordinances, except to the extent not consistent with Chapter 284.

The Provider shall maintain a list of its network nodes and node support poles, and shall provide to the City an inventory of the locations of such nodes and poles within ten (10) days of their installation. The inventory of network nodes and node support poles shall include GIS coordinates, date of installation, City pole ID number (if applicable), type of pole used for installation, pole owner, and a description of the type of installation for each network node and node support pole installation.

The Provider shall provide an inventory of its network nodes and node support poles within thirty (30) days of City's written request. Concerning network nodes and node support poles that become inactive, the inventory shall include the same information as active installations in addition to the date the network node or node support pole was deactivated and the date the network node or node support pole was removed from the Right-of-Way. The City may compare the inventory to its records to identify any discrepancies.

Network Provider shall maintain accurate maps and other appropriate records of its Network Node facilities, Node Support Poles and related ground equipment as they are actually constructed in the Rights-of-Way, including, upon request, the use of Auto CAD/GIS digital format. Network Provider will provide additional maps to the City upon request.

B. Courtesy and Proper Performance.

Courtesy and Proper Performance of Network provider's personnel, and contractors shall be in strict accordance with the City's applicable ordinances, except to the extent not consistent with Chapter 284.

Network Provider shall make citizen satisfaction a priority in using the Right-of-Way. Network Provider shall train its employees to be customer service-oriented and to positively and politely interact with citizens when dealing with issues pertaining to its Micro Network Node, Network Node, Node Support Pole and related ground equipment in the Right-of-Way. Network Provider's employees shall be clean, courteous, efficient, and neat in appearance and committed to offering the highest quality of interaction with the public. If, in the opinion of the City Manager or designee, Network Provider is not interacting in a positive and polite manner with citizens, he or she shall request Network Provider to take all remedial steps to conform to these standards.

C. DRUG POLICY.

Drug policy of Network provider's personnel and contractors in the rights-of-way shall be in strict accordance with the City's applicable ordinances, except to the extent not consistent with Chapter 284.

It is the policy of the City to achieve a drug-free workforce and workplace. The manufacture, distribution, dispensation, possession, sale, or use of illegal drugs or alcohol by Network Provider's employees, contractors, subcontractors, sub-Network Provider's, or vendors while on City rights-of-way is prohibited.

D. ALLOCATION OF FUNDS FOR REMOVAL AND STORAGE.

The City has appropriated \$0 to pay for the cost of any removal or storage of Micro Network Node, Network Node, Node Support Pole and related ground equipment, as authorized under this Article, and no other funds are allocated.

E. OWNERSHIP.

Ownership of Network Node and related equipment shall be in strict accordance with the City's applicable ordinances, except to the extent not consistent with Chapter 284.

No part of a Micro Network Node, Network Node, Node Support Pole and related ground equipment erected or placed on the Right-of-Way by Network Provider will become, or be considered by the City as being affixed to or a part of, the Right-of-Way. All portions of the Micro Network Node, Network Node, Node Support Pole and related ground equipment constructed, modified, erected, or placed by Network Provider on the Right-of-Way will be and remain the property of Network Provider and may be removed by Network Provider at any time, provided the Network Provider shall notify the City Manager prior to any work in the Right-of-Way.

F. Tree Maintenance.

Tree maintenance shall be in strict accordance with the City's applicable ordinances, except to the extent not consistent with Chapter 284.

Network Provider, its contractors, and agents shall obtain written permission from the City Manager before trimming trees hanging over its Micro Network Node, Network Node, or Node Support Pole, to prevent branches of such trees from contacting attached Micro Network Node, Network Node, or Node Support Pole. When directed by the City Manager, Network Provider shall trim under the supervision and direction of the Parks Director. The City shall not be liable for any damages, injuries, or claims arising from Network Provider's actions under this section.

G. Signage.

Signage shall be in strict accordance with the City's applicable ordinances, except to the extent not consistent with Chapter 284.

Network Provider shall post its name, location identifying information, and emergency telephone number in an area on the cabinet of the Network Node facility that is visible to the public. Signage required under this section shall not exceed 4" x 6", unless otherwise required by law (e.g. RF ground notification signs) or the City Manager.

Except as required by Laws or by the Utility Pole owner, Network Provider shall not post any other signage or advertising on the Micro Network Node, Network Node, Node Support Pole, Service pole or Utility Pole.

H. Graffiti Abatement.

Graffiti abatement shall be in strict accordance with the City's applicable ordinances, except to the extent not consistent with Chapter 284.

As soon as practical, but not later than fourteen (14) calendar days from the date Network Provider receives notice thereof, Network Provider shall remove all graffiti on any of its Micro Network Node, Network Node, Node Support Pole, and related ground equipment located in the

Right of Way. The foregoing shall not relieve the Network Provider from complying with any City graffiti or visual blight ordinance or regulation.

I. Restoration.

Network Provider shall restore and repair of the rights-of-way from any damage to the Right-of-Way, or any facilities located within the Right-of-Way, and the property of any third party resulting from Network Provider's removal or relocation activities (or any other of Network Provider's activities hereunder) in strict accordance with the City's applicable ordinances, except to the extent not consistent with Chapter 284.

Network Provider shall repair any damage to the Right-of-Way, or any facilities located within the Right-of-Way, and the property of any third party resulting from Network Provider's removal or relocation activities (or any other of Network Provider's activities hereunder) within 10 calendar days following the date of such removal or relocation, at Network Provider's sole cost and expense, including restoration of the Right-of-Way and such property to substantially the same condition as it was immediately before the date Network Provider was granted a Permit for the applicable Location or did the work at such Location (even if Network Provider did not first obtain a Permit), including restoration or replacement of any damaged trees, shrubs or other vegetation. Such repair, restoration and replacement shall be subject to the sole, reasonable approval of the City Manager.

J. Network provider's responsibility.

Network Provider shall be responsible and liable for the acts and omissions of Network Provider's employees, temporary employees, officers, directors, consultants, agents, Affiliates, subsidiaries, sub-Network Provider's and subcontractors in connection with the installations of any Micro Network Node, Network Node, Node Support Pole and related ground equipment, as if such acts or omissions were Network Provider's acts or omissions in strict accordance with the City's applicable ordinances, except to the extent not consistent with Chapter 284.

Network Provider shall be responsible and liable for the acts and omissions of Network Provider's employees, temporary employees, officers, directors, consultants, agents, Affiliates, subsidiaries, sub-Network Provider's and subcontractors in connection with the installations of any Micro Network Node, Network Node, Node Support Pole and related ground equipment, as if such acts or omissions were Network Provider's acts or omissions.

SECTION 12. ADMINISTRATIVE HEARING – REQUEST FOR EXEMPTION

Should the Network Provider desire to deviate from any of the standards set forth in the Design Manual, the Network Provider may request an Administrative Hearing before a Board of Appeals. The Zoning Board of Adjustment shall act as the Board of Appeals for a Request for Exemption.

The process for an application, hearing and vote shall follow the process set out for a variance.

SECTION 13-19. RESERVED

SECTION 20. DESIGN MANUAL - UPDATES

Placement or Modification of Micro Network Node, Network Node, Node Support Pole and related ground equipment shall comply with the City's Design Manual at the time the Permit for installation or Modification is approved and as amended from time to time.

¹ Sec. 284.301. LOCAL POLICE-POWER-BASED REGULATIONS. (a) Subject to this chapter and applicable federal and state law, a municipality may continue to exercise zoning, land use, planning, and permitting authority in the municipality's boundaries, including with respect to utility poles.

(b) A municipality may exercise that authority to impose police-power-based regulations for the management of the public right-of-way that apply to all persons subject to the municipality.

(c) A municipality may impose police-power-based regulations in the management of the activities of network providers in the public right-of-way only to the extent that the regulations are reasonably necessary to protect the health, safety, and welfare of the public.

² Sec. 284.002. DEFINITIONS (8) "Micro network node" means a network node that is not larger in dimension than 24 inches in length, 15 inches in width, and 12 inches in height, and that has an exterior antenna, if any, not longer than 11 inches.

Sec. 284.003. LIMITATION ON SIZE OF NETWORK NODES. (a) Except as provided by Section 284.109, a network node to which this chapter applies must conform to the following conditions:

- (1) each antenna that does not have exposed elements and is attached to an existing structure or pole:
 - (A) must be located inside an enclosure of not more than six cubic feet in volume;
 - (B) may not exceed a height of three feet above the existing structure or pole; and
 - (C) may not protrude from the outer circumference of the existing structure or pole by more than two feet;
- (2) if an antenna has exposed elements and is attached to an existing structure or pole, the antenna and all of the antenna's exposed elements:
 - (A) must fit within an imaginary enclosure of not more than six cubic feet;
 - (B) may not exceed a height of three feet above the existing structure or pole; and
 - (C) may not protrude from the outer circumference of the existing structure or pole by more than two feet;
- (3) the cumulative size of other wireless equipment associated with the network node attached to an existing structure or pole may not:
 - (A) be more than 28 cubic feet in volume; or
 - (B) protrude from the outer circumference of the existing structure or a node support pole by more than two feet;
- (4) ground-based enclosures, separate from the pole, may not be higher than three feet six inches from grade, wider than three feet six inches, or deeper than three feet six inches; and
- (5) pole-mounted enclosures may not be taller than five feet.

(b) The following types of associated ancillary equipment are not included in the calculation of equipment volume under Subsection (a):

- (1) electric meters;
- (2) concealment elements;
- (3) telecommunications demarcation boxes;
- (4) grounding equipment;
- (5) power transfer switches;
- (6) cut-off switches; and
- (7) vertical cable runs for the connection of power and other services.

(c) Equipment attached to node support poles may not protrude from the outer edge of the node support pole by more than two feet.

(d) Equipment attached to a utility pole must be installed in accordance with the National Electrical Safety Code, subject to applicable codes, and the utility pole owner's construction standards.



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

SUBJECT: Authorize the execution of a construction contract with Acme Bridge Company, Inc. for the Singing Wind Drive Reconstruction project in an amount of \$791,734.40 and review the current Street Maintenance program.

AGENDA DATE OF: 4/10/2018

DATE SUBMITTED: 3/30/2018

SUBMITTED BY: Kyle Burow

EXHIBITS: Singing Wind Drive Reconstruction_Received Bids

Expenditure Required:	Current Balance in Account:	Amount Budgeted:	Account Number:
\$791,734.40	\$1,178,650.00	\$1,000,000.00	70-7000-2400
			Project #: 70-15006

PAYMENT TO BE MADE TO: Acme Bridge Company, Inc.

SUMMARY STATEMENT:

As part of the City of Kerrville's adopted Street Maintenance Plan, the City hired 6S Engineering, Inc. to assist the Street Department with the reconstruction portion of the adopted paving plan. Previously, almost all roadway reconstruction work had been done by City street crews in addition to the mill and overlay portion of the adopted plan. The scope of work was to provide construction documents for Singing Wind Drive which was selected because of the low Pavement Condition Index scores, the high level of use of the roadway, and the longer contiguous section from Sailing Way to Deer Trail needing repair. The project specifications were completed and the project was placed for advertisement, the bid opening was held March 27, 2018. Four bids were received with Acme Bridge Company, Inc. as the apparent low bid. Staff, along with 6S Engineering, evaluated the contractor and recommend awarding the base bid construction contract amount of \$791,734.40 to Acme Bridge Company, Inc.

Regarding the overall status of the Street Maintenance Plan, staff will provide a presentation the bids received from third party construction maintenance have presented additional cost savings. City staff is proposing to utilize the funds remaining from the first three years to assist with additional reconstruction maintenance. Two locations currently being analyzed for potential reconstruction are Francisco Lemos from Main Street to Schreiner Street and Guadalupe Street from Junction Highway to Plaza Drive.

RECOMMENDED ACTION:

Authorize the City Manager to finalize and execute a construction contract with Acme Bridge Company, Inc.

Bid Opening: March 27, 2017

[illegible]



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

SUBJECT: Presentation from Impact DataSources regarding the impact of the Kerr Economic Development Corporation (KEDC) and various recent economic development projects.

AGENDA DATE OF: 4/10/2018

DATE SUBMITTED: 3/30/2018

SUBMITTED BY: E.A. Hoppe, Deputy City Manager

EXHIBITS: KEDC Performance Report

Expenditure Required:	Current Balance in Account:	Amount Budgeted:	Account Number:
\$0	\$0	\$0	N/A
			Project #: N/A

PAYMENT TO BE MADE TO: N/A

SUMMARY STATEMENT:

The Kerr Economic Development Corporation (KEDC) is a non-profit entity that assists and coordinates the economic development activity within Kerr county. The corporation's board has representatives from the Kerrville Chamber of Commerce, Kerrville Economic Improvement Corporation, Convention and Visitors Bureau, Kerrville Public Utility Board, City of Kerrville, Kerr County and local businesses. The corporation provides a wide variety of financial, technical and real estate services to assist primary employers looking to start, relocate, and expand their businesses in Kerr county including: location assistance, tax information, demographics, traffic counts, wage & labor market information, population data, city and county trends, and businesses retention & expansion.

The KEDC recently utilized an independent third-party economist, Impact DataSources, to retroactively evaluate several KEDC-facilitated economic development projects, including James Avery Craftsman, Fox Tank, and others. A representative from Impact DataSources will be on hand to present their findings to the City Council.

RECOMMENDED ACTION:

Receive presentation from KEDC/Impact DataSources.

Executive Summary: The Economic Impact of Kerr Economic Development Corporation 2014-2017

December 5, 2017

Prepared for:

Kerr Economic Development Corporation
1700 Sidney Baker, Suite 100
Kerrville, TX 78028

Prepared by:

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Executive Summary

Introduction

This report presents the results of an economic impact analysis performed by Impact DataSource, an Austin, Texas economic consulting, research and analysis firm. This report estimates the economic and fiscal impact resulting from projects supported by the Kerr Economic Development Corporation (KEDC) during fiscal years 2014-2017

KEDC is a private nonprofit company dedicated to ensuring a diverse and strong economic climate for all businesses in Kerrville and Kerr County, Texas. KEDC was formed with the mission of stimulating a diversified and strong economic climate for Kerrville and Kerr County. They recruit new businesses, help established businesses' retention and expansion efforts and work with local companies to provide economic data, workforce information, facilitation of the regulatory processes, real estate site searches and evaluation for potential economic development incentives.

Economic Impact, 2014-2017

Over the past four years, KEDC assisted the following companies to locate, startup or expand in the community:

- Mooney International,
- Fox Tank,
- James Avery, and
- Nature Blinds.

Economic Output

KEDC supported the above projects that produced economic output representing how much money the projects pumped into the Kerrville area's economy:

Estimated Economic Output Generated by Firms over the Past Four Years			
Year	Direct Economic Output	Indirect & Induced Economic Output	Total Economic Output
2014	\$219,113,425	\$125,206,889	\$344,320,313
2015	\$225,868,788	\$129,067,072	\$354,935,861
2016	\$232,645,667	\$132,939,550	\$365,585,218
2017	\$239,625,878	\$136,928,217	\$376,554,095
Total	\$917,253,758	\$524,141,729	\$1,441,395,487

Jobs and Salaries

The cumulative number of permanent jobs and salaries created by these projects/firms are shown below

Total Permanent Jobs and Annual Salaries Created, 2014-2017			
	Direct	Indirect & Induced	Total
Total jobs created/supported	329	343	672
Workers' earnings created/supported over the period	\$48,818,511	\$40,568,183	\$89,386,694

Taxable Spending

Taxable sales and spending generated by the firms, direct and indirect workers and out-of-town visitors are shown below.

Taxable Sales and Spending Generated by Firms, Workers and Visitors, 2014-2017	
Year	Taxable Sales
2014	\$29,184,079
2015	\$33,189,910
2016	\$37,332,964
2017	\$35,470,661
Total	\$135,177,613

Property Added to Local Tax Rolls

Property added to local tax rolls by the firms and new residential property built for some new workers moving to the community is shown below.

Value of New Property on Tax Rolls by 2017 Generated by 2014-2017 Projects	
Industrial and commercial property	\$39,702,595
Residential property	\$1,863,614
Total	\$41,566,209

Fiscal Impact of 2014-2017 Projects

The economic impacts described above translate into the following fiscal impacts or additional revenues for the city, county and other local taxing districts:

Total Revenues for Local Taxing District Generated by KEDC Supported Projects During 2014-2017					
	Sales Taxes	Property Taxes	Hotel Occupancy Taxes	Other Revenues Including Net Utility Revenues*	Total
City of Kerrville	\$1,351,776	\$662,279	\$6,903	\$311,065	\$2,332,024
EIC	\$675,888				\$675,888
KPUB				\$197,369	\$197,369
Kerr County	\$675,888	\$544,020		\$36,350	\$1,256,259
Kerrville & Center Point ISD		\$1,398,994			\$1,398,994
Upper Guadalupe River Authority		\$28,554			\$28,554
Lateral Road		\$38,294			\$38,294
Underground Water		\$8,773			\$8,773
Total	\$2,703,552	\$2,680,915	\$6,903	\$544,785	\$5,936,156

**The amounts shown are (1) miscellaneous revenues for the city and county, (2) utility franchise fees for the city, and (3) net income from utilities for the city and KPUB. Net utility income are gross utility revenues for the city and KPUB minus a cost of an estimated of 83.5% and a resulting net utility income of 16.5%.*

Return on the Community's Investment in Economic Development

Community's Investment in Economic Funding During 2014-2017

Over the past four years Kerrville Economic Development Corporation's budget has totaled \$798,224. The funds came from City of Kerrville, Economic Improvement Corporation, Kerr County, and Kerrville Public Utility Board. This funding was used to support KEDC's operations during 2014-2017.

Additionally, direct incentives and tax abatement were provided to the eligible projects by the Economic Improvement Corporation, the City of Kerrville and Kerr County.

A summary of this public investment in KEDC and its four economic development projects during 2014-2017 is shown below.

Summary of Public Investments in Economic Development, 2014-2017		
Contributions for KEDC's operations:		
City of Kerrville	\$79,341	
EIC	\$560,653	
Kerr County	\$79,115	
KPUB	\$79,115	
Total contributions to KEDC		\$798,224
EIC Incentives to firms		\$2,319,000
Tax abatement/rebates:		
City of Kerrville	\$333,442	
Kerr County	\$272,381	
Total abatement/rebates		\$605,822
Contribution for roof replacement		
City of Kerrville		\$500,000
Kerr County		\$500,000
Total		\$4,723,046

Returns on Investment

Contributions in support of KEDC projects may be considered investments that public entities are making in economic development in the community. The returns on these investments are the additional revenues the projects assisted by KEDC generate for local public entities making these investments, including the City of Kerrville, Kerr County, the EIC, and KPUB.

The returns on investment/revenues for local public entities, discussed on previous pages, are shown below.

Total Revenues for Local Taxing District from KEDC Supported Projects During 2014-2017	
City of Kerrville	\$2,332,024
EIC	\$675,888
KPUB	\$197,369
Kerr County	\$1,256,259
Kerrville & Center Point ISDs	\$1,398,994
Upper Guadalupe River Authority	\$28,554
Lateral Road	\$38,294
Underground Water	\$8,773
Total	\$5,936,156

Rate of Return on Investment

With community investments in KEDC's project and returns on investment, a rate of return on total community investment may be calculated, along with rates of return for each public entity investing in KEDC and its projects. Those rates of return are shown below.

Rate of Return on Investment for Public Investments in KEDC and its Projects, 2014-2017						
	City	EIC	KPUB	County	ISDs and Other Districts	Total
Investment in KEDC, incentives, tax abatement/rebates and roof replacement costs	\$912,783	\$2,879,653	\$79,115	\$851,496		\$4,723,046
Returns on investment over four years	\$2,332,024	\$675,888	\$197,369	\$1,256,259	\$1,474,616	\$5,936,156
Rate of return on investment	255%	23%	249%	148%	NA	126%

Conclusions and Perspective

Some conclusions can be drawn by Impact DataSource from this and other studies that it conducts for economic development organizations. These conclusions or observations include the following:

The creation of new taxes generated by KEDC-assisted projects are examples of what a focused economic development effort can accomplish for the benefit of a community and such new taxes and other public revenues are significant.

The job growth and increased tax revenues can be accomplished with a relative inexpensive investment in economic development activities.

Impact DataSource does not suggest that KEDC caused all of the investments and growth presented in this report. KEDC provided support to these businesses, some more than others, and in some cases facilitated incentives.

However, Impact DataSource believes that such one-stop center for economic development services is critical to a community's economic growth and many of these investments may not have occurred without the efforts of KEDC.

About Impact DataSource

Impact DataSource is a 24 year-old Austin economic consulting, research and analysis firm. The firm has conducted economic impact analyses of numerous projects in 39 states, including Texas. In addition, the firm has developed economic impact analysis computer programs for several clients, including the New Mexico Economic Development Department.

The firm's principal, Jerry Walker, performed this economic impact analysis. He is an economist and has Bachelor of Science and Master of Business Administration degrees in accounting and economics from Nicholls State University, Thibodaux, Louisiana.