

**AGENDA FOR REGULAR MEETING**

**CITY OF KERRVILLE, TEXAS**

**ECONOMIC IMPROVEMENT CORPORATION**

**MONDAY, NOVEMBER 26, 2018 AT 4:00 P.M.**

**KERRVILLE CITY HALL CITY COUNCIL CHAMBERS**

**701 MAIN STREET, KERRVILLE, TEXAS**

**AGENDA FOR REGULAR MEETING OF THE**  
**CITY OF KERRVILLE, TEXAS**  
**ECONOMIC IMPROVEMENT CORPORATION**  
**MONDAY, NOVEMBER 26, 2018, 4:00 P.M.**  
**KERRVILLE CITY HALL COUNCIL CHAMBERS**  
**701 MAIN STREET, KERRVILLE, TEXAS**

**CALL TO ORDER**

**INVOCATION**

**1. VISITORS / CITIZENS FORUM:**

Any citizen with business not scheduled on the agenda may speak to the Economic Improvement Corporation. No deliberation or action can be taken on these items because the Open Meetings Act requires an item be posted on an agenda 72 hours before the meeting. Visitors are asked to limit their presentation to three minutes.

**2. APPROVAL OF MINUTES:**

2A. Approval of minutes for the regular EIC meeting held on October 29, 2018.

**3. MONTHLY REPORTS:**

3A. Monthly financials for October 2018.

3B. Projects update:

River Trail  
Reuse Distribution Lines  
Tennis Center Improvements  
Aquatics Feasibility Study  
Downtown Parking Garage Streetscape  
Legion Lift Station

3C. Report from Kerr Economic Development Corporation (KEDC)

**4. PUBLIC HEARING AND POSSIBLE ACTION:**

4A. Public Hearing for an Economic Development Grant Agreement between Thompson Drive Partners, LLC and the City of Kerrville, Texas Economic Improvement Corporation, and the City of Kerrville, Texas

**5. CONSIDERATION AND POSSIBLE ACTION:**

5A. Presentation regarding a funding request for an expansion of the River Trail to Schreiner University

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The facility is wheelchair accessible and accessible parking spaces are available. Requests for accommodations or interpretive service 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: November 20, 2018, at 4:00 p.m. and remained posted continuously for at least 72 hours preceding the scheduled time of the meeting.

  
Sana Waller

Interim City Secretary, City of Kerrville, Texas

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5B. Amendment to the Project Funding Agreement between the City of Kerrville, Texas, Economic Improvement Corporation and the City of Kerrville, Texas for the design of and improvements to the City's H-E-B Tennis Center

**6. EXECUTIVE SESSION:**

The Economic Improvement Corporation 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 Section 551.071 (consultation with attorney), 551.072 (deliberation regarding real property), 551.073 (deliberation regarding gifts), 551.074 (personnel matters), 551.076 (deliberation regarding security devices), and 551.087 (deliberation regarding economic development negotiations) of Chapter 551 of the Texas Government Code, including the following matters:

6A. Deliberation regarding economic development negotiations in accordance with the Texas Open Meetings Act, Section 551.087, discussion regarding commercial or financial information received from a business prospect(s), and/or to deliberate the offer of a financial or other incentive to a business prospect(s). (Sections 551.087, TX Government Code)

6B. Economic Development Grant Agreement between Thompson Drive Partners, LLC and the City of Kerrville, Texas Economic Improvement Corporation, and the City of Kerrville, Texas

6C. Schreiner University River Trail Expansion

**7. POSSIBLE ACTION FOR ITEMS DISCUSSED IN EXECUTIVE SESSION**

**8. ITEMS FOR FUTURE AGENDAS**

**9. ANNOUNCEMENTS**

**10. ADJOURNMENT.**

**CITY OF KERRVILLE, TEXAS ECONOMIC IMPROVEMENT CORPORATION  
REGULAR MEETING** **OCTOBER 29, 2018**

On Monday, October 29, 2018, the regular meeting of the members of the City of Kerrville, Texas Economic Improvement Corporation, was called to order at 4:01 p.m. by Kenneth Early, President, in the Council Chambers at City Hall, at 701 Main Street, Kerrville, Texas. Ms. Megee offered the invocation.

**Members Present:**

Kenneth Early, President  
Kent McKinney, Vice President  
Maggie Megee  
Gary Cooper  
Robert Naman  
Delayne Sigerman

**Members Absent:**

Don Barnett

**City Executive Staff Present:**

Mark McDaniel, City Manager  
E.A. Hoppe, Deputy City Manager  
Mike Hayes, City Attorney  
Cheryl Brown, Interim City Secretary  
Sana Waller, Interim Deputy City Secretary  
Amy Dozier, Finance Director

**Visitors Present:** Visitor list available in the City Secretary's Office for the required retention period.

**1. VISITORS/CITIZENS FORUM:** The following person spoke: Mr. Walt Koenig of the Kerrville Chamber of Commerce announced that Kerr Economic Development Foundation had hired a new Chief Operating Officer and his first day would be November 5, 2018.

**2. APPROVAL OF MINUTES:**

2A. Approval of minutes for the regular EIC meeting held on September 17, 2018. Ms. Megee moved to approve the minutes for the regular meeting held on September 17, 2018. Motion was seconded by Mr. McKinney, and it passed 6-0.

**3. MONTHLY REPORTS:**

3A. Monthly financials for September 2018. Ms. Dozier reported that the EIC operating fund received sales tax revenue of \$281,969 for September, which was a 6.4% increase compared to September 2017 due primarily to a 5.5% increase in retail trade and a large increase in public administration due to a

timing difference in KPUB's payment. September's sales tax revenue also included a year-end accrual for financial reporting purposes of \$16,750.

Interest income for the month was \$7,106. EIC's money is primarily invested in TexPool, which is earning 2.20% as of September 30, 2018. Interest income exceeded budget for the year due to rising rates and higher than anticipated cash balances.

Expenditures for the month were \$101,169, which included budgeted transfers for debt service and the administrative service fee.

**3B. Projects update:**

Mr. Hoppe made the following reports:

Tennis Center Improvements:

The engineering and design was complete and out for bid.

Aquatics Feasibility Study:

Had a Town Hall meeting last month and staff was conducting Citizen Survey.

Downtown Parking Garage Streetscape:

Ready to seek Council permission to present Funding Application to EIC in November or December.

Legion Lift Station:

Received approval from the Texas Water Development Board and should be finalized and anticipate going out for bids within the next couple of months.

**4. CONSIDERATION AND POSSIBLE ACTION:**

4A. Discuss changing November Meeting Date due to Thanksgiving Holiday.

After discussion, it was determined that November 26, 2018 would be acceptable. Motion was made by Ms. Megee and seconded by Ms. Sigerman that the November meeting be held November 26, 2018 and it passed 6-0.

**5. EXECUTIVE SESSION:**

Executive Session began at 4:22 p.m. to discuss subject matter under Section 551.087 (deliberation regarding economic development negotiations) of Chapter 551 of the Texas Government Code including the following matters:

Sections 551.087:

5A. Deliberation regarding economic development negotiations in accordance with the Texas Open Meetings Act, Section 551.087, discussion regarding commercial or financial information received from a business prospect(s), and/or to deliberate the offer of a financial or other incentive to a business prospect(s). (Section 551.087, TX Government Code).

Motion was made by Ms. Sigerman to enter Executive Session under Section 551.087 and was seconded by Mr. Naman and it passed 6-0.

Executive Session adjourned at 5:08, and EIC entered into open session at 5:08 p.m. Mr. Early announced that no action was taken during Executive Session.

**6. POSSIBLE ACTION FOR ITEMS DISCUSSED IN EXECUTIVE SESSION:**

6A. Thompson Road Infrastructure Extension – Ms. Sigerman made a motion to conduct a Public Hearing for approval of a Funding Agreement at their November 26, 2018 meeting. The motion was seconded by Mr. McKinney and it passed 6-0.

6B. Schreiner University Trail Expansion – Ms. Megee made a motion that at their November 26, 2018 meeting, Schreiner University bring a presentation before the EIC to illustrate their vision for the Trail. The Motion was seconded by Ms. Sigerman and passed 5-0 with Mr. McKinney abstaining due to conflict of interest.

**7. ITEMS FOR FUTURE AGENDAS:**

None

**8. ANNOUNCEMENTS:**

None

**9. ADJOURNMENT**

Mr. Early adjourned the meeting at 5:13.

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

\_\_\_\_\_  
Kenneth Early, President

ATTEST:

\_\_\_\_\_  
Sana Waller, Interim Deputy City Secretary



**TO BE CONSIDERED BY THE EIC BOARD  
CITY OF KERRVILLE, TEXAS**

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**SUBJECT:** EIC Monthly Financial Statements for the month ended October 31, 2018

**AGENDA DATE OF:** 11/26/2018

**DATE SUBMITTED:** 11/19/2018

**SUBMITTED BY:** Amy Dozier, CFO

**EXHIBITS:** Financial Reports

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<b>Expenditure Required:</b> n/a	<b>Current Balance in Account:</b> n/a	<b>Amount Budgeted:</b> n/a	<b>Account Number:</b> n/a
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**PAYMENT TO BE MADE TO:**

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<b>Kerrville 2050 Item?</b>	<b>Yes:</b> <input type="checkbox"/>	<b>No:</b> <input checked="" type="checkbox"/>
<b>Key Priority Area</b>		
<b>Guiding Principle</b>		
<b>Action Item</b>	N/A	

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**SUMMARY STATEMENT:**

The EIC operating fund received sales tax revenue of \$284,752 in October 2018. This is an increase of 2.6% compared to October 2017. The FY2019 budget projects only a 0.6% increase over FY2018, so October's sales tax is better than budget.

Interest income for the month was \$8,172. EIC's money is invested entirely in TexPool, which is earning 2.40% as of November 18, 2018. The investment is completely liquid and can be used to fund projects at any time.

Expenditures for the month were \$107,682, which included budgeted transfers for debt service and the administrative service fee.

**RECOMMENDED ACTION:**

Information only; no action required.

**ECONOMIC IMPROVEMENT CORPORATION**  
**STATEMENT OF ACTIVITIES**  
**FOR THE MONTH ENDED OCTOBER 31, 2018**

	Annual Budget	Current Period	Y-T-D Actual	% of Budget	Budget Balance
<b>BEGINNING CASH BALANCE</b>			<b>\$1,242,648</b>		<b>\$1,242,648</b>
<b>REVENUES</b>					
Sales and Use Tax	3,469,051	284,752	284,752	8.2%	(3,184,299)
Interest Income	45,000	8,172	8,172	18.2%	(36,828)
<b>TOTAL REVENUES</b>	<b>3,514,051</b>	<b>292,924</b>	<b>292,924</b>	<b>8.3%</b>	<b>(3,221,127)</b>
<b>EXPENDITURES</b>					
Administrative					
Office Supplies	500	-	-	0.0%	500
Administrative Services Fee	180,000	15,000	15,000	8.3%	165,000
Kerr Economic Development Corp	140,000	-	-	0.0%	140,000
Administrative Set Aside	50,000	-	-	0.0%	50,000
Total Administrative	<b>370,500</b>	<b>15,000</b>	<b>15,000</b>	<b>4.0%</b>	<b>355,500</b>
Category I - Business Development					
ED Set Aside	500,000	-	-	0.0%	500,000
Total Category I	<b>500,000</b>	<b>-</b>	<b>-</b>	<b>0.0%</b>	<b>500,000</b>
Category II - Quality of Life					
Quality of Life Set Aside	250,000	-	-	0.0%	250,000
Debt Service - Series 2011A (River Trail)	258,506	21,542	21,542	8.3%	236,964
Debt Service - Series 2012 (River Trail)	250,330	20,861	20,861	8.3%	229,469
Debt Service - Series 2015 (Sports Complex)	603,350	50,279	50,279	8.3%	553,071
Total Category II	<b>1,362,186</b>	<b>92,682</b>	<b>92,682</b>	<b>6.8%</b>	<b>1,269,504</b>
Category III - Public Infrastructure					
Housing	250,000	-	-	0.0%	250,000
Legion Lift Station	1,000,000	-	-	0.0%	1,000,000
Total Category III	<b>1,250,000</b>	<b>-</b>	<b>-</b>	<b>0.0%</b>	<b>1,250,000</b>
<b>TOTAL EXPENDITURES</b>	<b>3,482,686</b>	<b>107,682</b>	<b>107,682</b>	<b>3.1%</b>	<b>3,375,004</b>
<b>CHANGE IN NET POSITION</b>	<b>\$ 31,365</b>	<b>\$ 185,242</b>	<b>\$ 185,242</b>		
<b>ENDING CASH BALANCE</b>	<b>\$ 1,274,013</b>			<b>\$1,428,779</b>	

## Sales Tax Revenue Analysis - FY2019

Month	Actual FY2017	Actual FY2018	Budget FY2019	Actual FY2019	FY2018 vs. FY2019	Budget vs. Actual
October	\$ 264,806	\$ 277,430	\$ 279,029	\$ 284,752	2.64%	2.05%
November	278,707	278,698	280,305			
December	260,757	252,047	253,500			
January	273,741	273,590	275,167			
February	357,098	354,753	356,798			
March	248,560	242,127	243,523			
April	240,783	241,702	243,095			
May	308,696	324,560	326,431			
June	261,944	286,255	287,905			
July	282,792	306,165	307,930			
August	306,807	323,628	325,494			
September	275,901	288,215	289,876			
<b>YTD Total</b>	<b>\$ 3,360,592</b>	<b>\$ 3,449,171</b>	<b>\$ 3,469,051</b>	<b>\$ 284,752</b>	<b>2.64%</b>	<b>2.05%</b>

### Cash and Investment Balances by Fund

Fund	Fund Name	Balance	Period Ending
40	Sales Tax Improvement Fund (operating fund)	\$ 1,428,779	9/30/2018
75	EIC Projects Fund	2,850,000	9/30/2018
	<b>Total Cash and Investments</b>	<b>\$ 4,278,779</b>	<b>9/30/2018</b>

### Cash and Investments by Type - Placement - Amount

Type	Investment Placement	Amount	Period Ending
Short Term Investment	EIC TexPool	\$ 4,278,779	9/30/2018
	<b>Total Cash and Investments</b>	<b>\$ 4,278,779</b>	<b>9/30/2018</b>

### Projects in Progress

Project	Entire Project Budget	EIC Portion	Project Expense To Date	Remaining Project Balance
River Trail	\$ 6,525,000	\$ 6,000,000	\$ 6,289,974	\$ 235,026
Downtown Streetscape	765,100	765,100	47,968	717,132
Olympic Pool	100,000	100,000	321	99,679
Tennis Center	1,500,000	1,500,000	129,924	1,370,076
Legion Lift Station	10,000,000	2,000,000	552,296	9,447,704

### Lump Sum Project Funding

Project Inception	Project Description	EIC Budget	Funding Transferred to Project	Funding Transferred to EIC Project Fund
FY2013	Downtown Streetscape	\$ 765,100	\$ 765,100	\$ -
FY2015	ED Set Aside	2,000,000	-	2,000,000
FY2016	Olympic Pool	100,000	100,000	-
FY2016	Housing	850,000	-	850,000
FY2017	Tennis Center	1,500,000	1,500,000	-
FY2017	Legion Lift Station	2,000,000	-	-
<b>TOTALS</b>		<b>\$ 7,265,100</b>	<b>\$ 2,365,100</b>	<b>\$ 2,850,000</b>

**TO BE CONSIDERED BY THE  
ECONOMIC IMPROVEMENT CORPORATION,  
CITY OF KERRVILLE, TEXAS**

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**SUBJECT:** Economic Development Grant Agreement between Thompson Drive Partners, LLC, the City of Kerrville, Texas Economic Improvement Corporation, and the City of Kerrville, Texas in an amount not to exceed \$850,000 for public infrastructure extension along Thompson Road related to a private development.

**AGENDA DATE:** November 26, 2018 **DATE SUBMITTED:** November 20, 2018

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

**EXHIBITS:** Project Funding Agreement between the City of Kerrville, Texas, Economic Improvement Corporation and the City of Kerrville, Texas for public infrastructure extension along Thompson Road.

**APPROVED FOR SUBMITTAL BY CITY MANAGER:**

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Expenditure Required:	Current Balance in Account:	Amount Budgeted:	Account Number:
\$850,000	\$0	\$0	N/A

**PAYMENT TO BE MADE TO:** N/A

**REVIEWED BY THE FINANCE DIRECTOR:** N/A

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**SUMMARY STATEMENT**

Thompson Road, LLC (The MacDonald Companies) have conceptualized a multi-phase, mixed-use development called "The Landing" along Thompson Drive on an approximate 59-acre tract of land they own that was annexed into the Kerrville City limits this fall. The property is not currently served by centralized water or wastewater utilities. The developer has made an \$850,000 request for EIC assistance in installing \$1.85 million in off-site water and wastewater public infrastructure.

The developer intends to develop the property for market rate multi-family and mixed-use purposes; with the initial phase intended to provide a 120 unit multi-family complex and later phases having additional multi-family (120 units), townhome (48 units), and mixed-use office, retail, & restaurant potential (91,000 sq. ft.). Overall, the project is intended to have a 30-year fiscal impact to the City of over \$22 million in additional property and sales tax revenue (Over \$63 million to the community overall, including \$6.6 million to the EIC). The proposed public infrastructure is intended to be turned over to the City of Kerrville once constructed. River trail easements, trail heads, and parkland dedication are also a component of the deal.

One key impediment to development within this corridor of Thompson Drive is the lack of water and wastewater utility services. The extension of utility services in this corridor should catalyze development not only for this 60 acre property, but throughout much of the vacant land within that corridor. It was identified as a public project in the 2012 Wastewater Master Plan, but has not yet been achieved due to cost. The developer has received bids for the utility service extensions as described, and intends to install infrastructure that has approximately 20% more wastewater capacity than needed for the anticipated full build out of their 60 acres of land. Current estimates for the engineering and construction costs to extend utilities to this site are \$1,850,000, and the developer is asking for \$850,000 in EIC assistance to accomplish the construction. Upon completion of the utility project, the utilities will be turned over to the City of Kerrville for ownership, operation, and maintenance.

### PROJECT HISTORY

August 4, 2017: City receives EIC application from MacDonald Associates Inc.

Early August 2017: City staff and KEDC discussed the application and additional information was sought by KEDC

September 12, 2017: KEDC completed an initial Economic Impact Analysis based off of the project assumptions at that time (full mixed-use development of the 60 acres in phases over 10 years) indicating over \$12 Million in Net Benefits.

September 18, 2017: EIC was presented with the initial EIC application and conducted an Executive Session discussion to discuss the preliminary project details and economic impact analysis. Direction was provided to staff to proceed with negotiating preliminary terms.

October 16, 2017: EIC conducted an Executive Session discussion to discuss the preliminary negotiated deal points.

November 27, 2017: EIC conducted an Executive Session discussion to discuss the renegotiated deal points.

January 22, 2018: EIC conducted an Executive Session discussion to discuss the project and directed staff to reanalyze the economic impact analysis under the assumption that only the initial phase of 120 multifamily units would occur, yielding a Net Benefit to the community of \$1,354,448 over the first 10 years.

March 6, 2018: City staff reviewed the project proforma with the applicant.

March 12, 2018: The GO Team (Gary Cooper, Walt Koenig, Mark McDaniel, E.A. Hoppe) met to review the current status of the project and the revised Economic Impact Analysis. The GO Team unanimously recommended the project.

March 19, 2018: EIC conducted an Executive Session discussion to review the revised Economic Impact Analysis and the terms of a draft Funding Agreement. The EIC voted to direct staff to set a Public Hearing on the project.

April 16<sup>th</sup>, 2018: A Public Hearing was conducted regarding the Economic Development Grant Agreement and the EIC voted to direct staff to finalize changes to the Agreement and set a Special called meeting on April 23<sup>rd</sup>, 2018.

April 23<sup>rd</sup>, 2018: The Special called meeting was canceled due to EIC member absences. Subsequently, the developer requested that consideration of the funding request be delayed until after the property completes the annexation process into the Kerrville City limits.

October 29, 2018: EIC conducted an Executive Session discussion to review the status of the project and the EIC funding request. EIC provided direction to City staff to draft a revised Economic Development Agreement based on their latest feedback and set a Public Hearing to be held on November 26<sup>th</sup>, 2018.

### **ECONOMIC DEVELOPMENT AGREEMENT SUMMARY**

**Developer will:**

- Engineer and install the \$1,850,000 in public water and wastewater infrastructure as described
- Upon completion of the utility project, the utilities will be turned over to the City of Kerrville for ownership, operation, and future maintenance
- Agree to dedicate a 20' river trail easement across the property near the river/lakefront and in an agreeable location with the City (~0.90 acres). Will provide dedicated park space on the property accessible to the public (1.5 acres) in addition to working with the City to create a Trailhead/Shared Parking Agreement for trail and park users.
- Conduct a traffic impact analysis for the development site

**City will:**

- Provide \$850,000 in total EIC 4A/4B funding in three equal installments of \$283,333:
  - Installment 1: Payable upon completion of the annexation and zoning of the property into the Kerrville City limits (Planned Development District or adjacent zoning designation consistent with Kerrville 2050 Comprehensive Plan) as well as well as the letting of the contract, by Developer, for the completion of the infrastructure improvements
  - Installment 2: Payable upon substantial completion of the construction, and acceptance from the City, of the proposed infrastructure in addition to commencement of construction of the 120 unit multifamily complex (First two installments to be refunded to City if developer does not construct development within a set period of time)
  - Installment 3: Payable upon Certificates of Occupancy being issued for 120 units of workforce housing
- Evaluate a Chapter 380 Agreement directly with the City (not EIC) to pay for the requested upsizing of the HDPE bore pipe, gravity sewer main, and other desired features for regional service extension. This funding will be payable via a rebate of property taxes collected by the City from the taxable improvements installed on the property.
- Reserve 80% of the installed wastewater capacity for the proposed development for up to five (5) years from the date of annexation into the City
- Reserve up to 40% of the installed wastewater capacity for the proposed development for up to ten (10) years

- After 10 years the City will have full access to the original capacity provided by the original installed infrastructure and can assign said capacity to the general public via any regular policy or practice adopted by the City Council/staff

#### **RECOMMENDED ACTION**

Conduct Public Hearing and provide direction on approval of Economic Development Grant Agreement.

**ECONOMIC DEVELOPMENT GRANT AGREEMENT BETWEEN  
THOMPSON DRIVE PARTNERS, LLC, THE CITY OF  
KERRVILLE, TEXAS ECONOMIC IMPROVEMENT  
CORPORATION, AND THE CITY OF KERRVILLE, TEXAS**

This Economic Development Grant Agreement ("Agreement") is entered into as of the Effective Date by and between **THOMPSON DRIVE PARTNERS, LLC**, a Texas limited liability company ("Company"), acting herein by and through its duly authorized Managing Member; the **CITY OF KERRVILLE, TEXAS, ECONOMIC IMPROVEMENT CORPORATION** ("EIC"), a Type B Economic Development Corporation established pursuant to Chapters 501, 502, and 505 of the Texas Local Government Code, as amended (*i.e.*, the Development Corporation Act and hereafter referred to as "the Act"), acting by and through its duly authorized President; and the City of Kerrville, Texas ("City"), acting by and through its duly authorized City Manager. Company, EIC, and City are sometimes collectively referred to herein as "Parties" and individually as "Party".

**WITNESSETH:**

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

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

*Expenditures that are found by the EIC to be required or suitable for infrastructure necessary to promote or develop new or expanded business enterprises, limited to, streets and roads, rail spurs, water and sewer utilities, electric utilities, or gas utilities, drainage, site improvements, and related improvements as provided by Section 501.103 of the Act; and*

**WHEREAS**, Company, whose headquarters is in Kerr County, Texas, is part of a group of companies specializing in developing, building, and managing multifamily neighborhoods across Texas, which includes over 5,700 units in 48 communities within 25 Texas cities, and has become one of the nation's leading homebuilders specializing in multifamily developments; and

**WHEREAS**, Company owns the Land (as defined below) which is located within the City's incorporated limits; and

**WHEREAS**, Company desires to develop the Land and to have the Land served by public water and wastewater service provided through a connection to

City's water and wastewater systems and in so doing, will need to design, construct, and extend the closest water and wastewater mains to the Land (the "Improvements", as defined below) as part of its initial multifamily project; and

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

**WHEREAS**, Company has also requested, and by this Agreement the City agrees, to reserve capacity in the Water System and Wastewater System (as defined below) that Company constructs and extends to the Land per the terms contained herein;

**WHEREAS**, Company is expected to initially invest over 8 Million Dollars (\$8,000,000.00) to develop the Property (as defined below); and

**WHEREAS**, Company plans to build a multifamily housing project on the Land consisting of no fewer than 120 multifamily housing units within an initial phase, with subsequent construction phases that may include a mixed-use development on the remainder of the Land; and

**WHEREAS**, upon completion, the Improvements will not only provide service to the Land, but will provide access to service to additional property that the Improvements will extend over or be near to, which may generate and enable future development in the area; and

**WHEREAS**, finding that providing a grant to fund construction of the Improvements in support of the Development (as defined below) is required or suitable for infrastructure necessary to promote or develop new or expanded business enterprises by promoting the expansion of additional housing stock needed to encourage the relocation to the City of people entering the local employment pool, EIC has determined that such a grant complies with the Act and is in keeping with the mission of EIC and City of Kerrville Economic Improvement Corporation 4B Sales Tax Funding Request Guidelines and Procedures; and

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

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

**WHEREAS**, on November 26, 2018, in a meeting that was open to the public in accordance with the Texas Open Meetings Act, EIC held a public hearing pursuant

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

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

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

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

“*4B Sales Tax*” means the one-half of one percent (0.5%) sales and use tax imposed pursuant to the Development Corporation Act, Title 12, Subt. C-1, Ch. 501-505, Texas Government Code, and collected by City for the benefit of EIC.

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

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

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

“*Completion of Construction*” means the date that the certificates of occupancy for all buildings and other improvements comprising the Development have been issued by City.

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

“*Development*” means a multifamily housing development with no fewer than 120 dwelling units and associated utilities, landscaping, parking, and other associated improvements of Class A quality and characteristics, similar to that of Company’s “Orchard Grove” development located in Fredericksburg, Texas.

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

*“Grant”* means the amount of Eight Hundred Fifty Thousand and No/100 Dollars (\$850,000.00) paid by EIC to Company in installments as provided in this Agreement.

*“Improvements”* means collectively the Water System and Wastewater System each of which will provide public water and wastewater services to the Land, as more fully described in the submittals filed with and approved by City, from time to time.

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

*“Local Sales and Use Tax”* means (i) the one percent (1%) sales and use tax imposed by the City pursuant to Chapter 321, Texas Tax Code and (ii) the 4B Sales Tax.

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

*“Project”* means the design and construction of the Improvements extending to and terminating at the Land.

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

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

*“Required Use”* means Company’s and its assigns, as permitted by this Agreement, continuous use for occupancy of the Development on the Land.

*“Substantial Completion of Construction”* means City is able to use the Improvements for their intended purpose and thereby approves and accepts the Improvements in accordance with its standards.

*“Wastewater System”* includes an approximate 8,000 linear foot sewer force main, an approximate 2,000 linear foot gravity sewer main, and a lift station culminating in a base design capacity of 110,000 gallons of wastewater per day as more fully described in the submittals filed with and approved by City, from time to time.

“Water System” includes an approximate 4,000 linear foot, twelve inch (12.0”) public water main as more fully described in the submittals filed with and approved by City, from time to time.

## **Article II** **Term**

2.1. **Effective Date and Termination.** Subject to approval by City’s City Council, the term of this Agreement (the “Term”) commences on \_\_\_\_\_ (the “Effective Date”), and terminates on the earlier of:

- (a) December 31, 2030;
- (b) when terminated by mutual agreement of the Parties;
- (c) if Commencement of Construction does not occur by the date set forth in Section 4.5 and, EIC elects to terminate this Agreement by providing notice to Company before Commencement of Construction actually occurs;
- (d) if Completion of Construction does not occur by the date set forth in Section 4.5 and, EIC elects to terminate this Agreement by providing notice to Company before Completion of Construction actually occurs;
- (e) when terminated pursuant to Articles VIII or IX; or
- (f) at Company’s sole and absolute discretion, upon Company’s return of the Grant, or the portion of the Grant it has received, to EIC.

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

## **Article III** **4B Revenue Grant**

3.1 **Payment of Grant.** Subject to the obligation of Company to repay the Grant pursuant to Section 4.4 or other provisions of this Agreement, and the continued satisfaction of all the terms and conditions of this Agreement by Company, EIC agrees to provide Company with an amount up to and not to exceed the Grant, which EIC shall pay in three equal installments of Two Hundred Eighty-three Thousand Three Hundred Thirty-three and No/100 Dollars (\$283,333.00) each, as follows:

(a) EIC shall pay the first installment of the Grant to Company not later than thirty (30) days after Company has delivered documentation to City, in a form acceptable to City, that Company has incurred or contractually obligated itself to incur not less than the full price of the cost for the Improvements;

(b) EIC shall pay the second installment of the Grant to Company not later than thirty (30) days after Company's delivery to City of a request for payment of said installment (i) following Substantial Completion of Construction; and (ii) Commencement of Construction for the Development has occurred; and

(c) The third installment of the Grant shall be paid not later than thirty (30) days after City's issuance, in compliance with its applicable building codes and development regulations, of a certificate of occupancy for the Development.

**3.2 Grant Limitations.** Under no circumstances shall the obligations of EIC hereunder be deemed to create any debt within the meaning of any constitutional or statutory provision. Further, EIC shall not be obligated to pay any commercial bank, lender, or similar institution for any loan or credit agreement made by Company.

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

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

**3.5 Reservation of Wastewater System Capacity.** Capacity in the Wastewater System will be allocated as follows between City and Company:

(a) Upon acceptance of the Wastewater System by City, Company may immediately use 80% of the capacity of the Wastewater System to provide sanitary sewer service to City's sanitary sewer customers within the Land, whether existing on the Effective Date or who connects to the Wastewater System thereafter.

(b) Commencing on the fifth (5th) anniversary of City's acceptance of Wastewater System, City's capacity shall increase in the Wastewater System

for City's wastewater customers other than those located within the Land, up to a capacity equal to the lesser of: (i) 60% of the capacity of the Wastewater System or (ii) the capacity in the Wastewater System not being used by wastewater customers located on the Land; provided in no case shall City's capacity in the Wastewater System for wastewater customers not located on the Land be less than 20%, unless otherwise as agreed to in writing by the parties.

(c) Commencing on the tenth (10th) anniversary of City's acceptance of the Wastewater System, City shall have the right to use any and all remaining capacity of the Wastewater System for wastewater customers not located on the Land that is not being used as of said date by wastewater customers located on the Land.

**3.6 Reservation of Water System Capacity.** Capacity in the Water System will be allocated as follows between City and Company:

(a) Upon acceptance of the Water System by City, Company may immediately use 80% of the capacity of the Water System to provide water service to City's water customers within the Land, whether existing on the Effective Date or who connects to the Water System thereafter.

(b) Commencing on the fifth (5th) anniversary of City's acceptance of Water System, City's capacity shall increase in the Water System for City's water customers other than those located within the Land, up to a capacity equal to the lesser of: (i) 60% of the capacity of the Water System or (ii) the capacity in the Water System not being used by water customers located on the Land; provided in no case shall City's capacity in the Water System for water customers not located on the Land be less than 20%, unless otherwise as agreed to in writing by the parties.

(c) Commencing on the tenth (10th) anniversary of City's acceptance of the Water System, City shall have the right to use any and all remaining capacity of the Water System for water customers not located on the Land that is not being used as of said date by water customers located on the Land.

## **Article IV** **Conditions to the Economic Development Grant**

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

**4.2 Good Standing.** Company shall not have an incurred a breach or default

of this Agreement or any Related Agreement beyond any applicable notice and cure period.

**4.3 Development Regulations.** Prior to and following annexation of the Land, Company shall comply with all applicable development regulations of the City, to include building codes, subdivision regulations, and zoning, in its development and construction of the Development. In addition, Company shall cause to be developed a traffic impact analysis for any proposed or future impact from vehicle use or access to or from the Land and mitigate any impact as required by the study, Texas Department of Transportation, and/or City irrespective of vesting rights. Company shall engage a firm or professional to conduct the study that is licensed to do so by the state. Company's failure to comply with this provision constitutes a breach of this Agreement should Company, following notice from City, fail to fully comply.

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

**4.5 Commencement and Completion of Construction.** Subject to events of Force Majeure, Commencement of Construction of the Development shall commence not later than January 1, 2020. Subject to events of Force Majeure, Completion of Construction of the Development shall occur not later than December 31, 2023. If Commencement of Construction or Completion of Construction of the Development does not occur prior to the foregoing dates, Company shall immediately following written demand return to EIC the first and second installments of the Grant Revenue in the amount of Five Hundred Sixty-six Thousand Six Hundred and Sixty-Six and No/100 dollars (\$566,666.00).

**4.6 River Trail Easements and Parkland Dedication.** In conjunction with the platting of the Land, Company, upon request from City, shall convey to City:

- a. A twenty foot (20.0') wide easement in an agreed upon location adjacent to the Guadalupe River across the entire width of the Land for the possible future extension of the City's River Trail; and/or
- b. Via deed, 1.5 acres of parkland in an agreed upon location adjacent to the River Tail easement for public use as a City park and River Trail trailhead facility.

These conveyances will be in accordance with the City's Parkland Dedication Ordinance ("Ordinance"), and the acreage conveyed in the easement and deed shall apply to its requirements. Following City's request, Company shall convey such easement and/or deed to the City within one-hundred and eighty days. Company will

satisfy any additional parkland dedication required by the Ordinance by cash deposit. Company agrees to work with City to consider creating additional public open space, including a shared parking agreement. Upon request from City, Company shall work with adjacent property owners to the development to encourage additional extensions of the river trail.

**4.7 Records.** Company shall keep and maintain complete and accurate records relating to its costs of designing and constructing the Project for three (3) years following the termination of this Agreement. EIC and its representatives shall be entitled to inspect Company's records related to the Project during the term of this Agreement and for three (3) years thereafter, upon reasonable notice at Company's offices at the address identified in Section 10.4, below.

## **Article V** **Sale of Project, Merger or Consolidation of Company**

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

**5.2 Merger.** In the event of any proposed merger or other consolidation of Company with any third party not affiliated with Company, not later than thirty (30) days prior to any such merger or consolidation, Company shall provide EIC with information and assurance reasonably acceptable to EIC regarding: (i) the surviving entity's assumption and satisfaction of the Company's obligations hereunder; and (ii) the financial condition of the surviving entity upon such merger or other consolidation to demonstrate that the surviving entity shall have the financial condition to fully satisfy Company's duties and responsibilities under this Agreement.

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

## **Article VI** **Company's Representations and Warranties**

Company represents and warrants as of the date hereof:

(a) Company is a Texas limited liability company existing in good standing and authorized to do business in the State of Texas;

(b) Execution of this Agreement has been duly authorized by Company and this Agreement is not in contravention of Company's corporate charter, or any agreement or instrument to which Company is a party or by which it may be bound as of the date hereof;

(c) No litigation or governmental proceeding is pending, or, to the knowledge of Company, threatened against or affecting Company, which may result in a material adverse change in Company's business, properties, or operations sufficient to jeopardize Company's legal existence or for-profit viability; and

(d) No written application, written statement, or correspondence submitted by Company to EIC in connection with this Agreement, or in connection with any transaction contemplated hereby, to the knowledge of Company, contains any untrue statement of a material fact or fails to state any material fact necessary to keep the statements contained therein from being misleading.

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

## **Article VII** **EIC'S Representations and Warranties**

EIC represents and warrants as of the date hereof:

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

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

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

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

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

## **Article VIII** **Conditions under which EIC May Suspend Performance** **of Its Obligations Under This Agreement**

EIC may, at its sole option and after thirty (30) days written notice to Company, suspend EIC's performance under this Agreement until such time as Company shall have cured the condition(s) and so notified EIC, in writing, that the condition(s) have been cured:

- (a) Company becomes insolvent;
- (b) The appointment of a receiver of Company, or of all or any substantial part of the Property, and the failure of such receiver to be discharged within sixty (60) days thereafter;
- (c) The adjudication of Company as bankrupt;
- (d) The filing by Company of a petition to be adjudged as bankrupt, or a petition or answer seeking reorganization or admitting the material allegations of a petition filed against it in any bankruptcy or reorganization proceeding; or

Should any of the foregoing conditions not be cured by Company within ninety (90) days after the onset of the condition, Company will be considered to have breached this Agreement and EIC may, at its option, with written notice to Company, terminate this Agreement and Company shall be obligated to refund the Grant to EIC.

## **Article IX** **Remedies**

**9.1 Notice and Opportunity to Cure.** Except as otherwise provided in this Agreement, in the event of any default in or breach of this Agreement, by any Party, or any successor to such Party, such defaulting or breaching Party (or successor) shall upon written notice from the other, proceed immediately to cure or remedy such default or breach, and, in any event, within sixty (60) days after receipt of such notice. In the event that remedial action is not taken or not diligently pursued and the default or breach shall not be cured or remedied within a reasonable time (but in no event later than ninety (90) days from the date of notification of such breach), the aggrieved Party may institute such proceedings as may be necessary or desirable in its opinion to cure and remedy such default or breach, including but not limited to, seeking specific performance and/or injunctive relief, enforcement by mandamus or

by the appointment of a receiver in equity with power to charge and collect rents, purchase price payments, and loan payments and to apply the revenues from the project in accordance with this Agreement, as required by the Act. This provision and specifically the notice and time to cure shall not apply to the obligation of Company found within Article IV.

**9.2 Termination.** Upon breach of this Agreement by either Party and the failure to cure as permitted by Section 9.1, the non-breaching Party shall have the sole right and discretion to either terminate this Agreement and/or pursue any and all remedies which may be provided by law and this Agreement. Each Party acknowledges and agrees that no Party hereunder shall be entitled to recover any amounts in excess of the Grant contracted for under this Agreement.

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

## **Article X** **General Provisions**

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

**10.2 Amendment.** This Agreement may be amended only by written amendment signed by both Parties.

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

**10.4 Notices.** All notices given with respect to this Agreement shall be in writing and shall be deemed to have been properly given for all purposes (i) if sent by a nationally recognized overnight carrier for next business day delivery, on the first business day following deposit of such notice with such carrier unless such carrier confirms such notice was not delivered, then on the day such carrier actually delivers

such notice, or (ii) if personally delivered, on the actual date of delivery, or (iii) if sent by certified U.S. Mail, return receipt requested postage prepaid, on the fifth business day following the date of mailing, or (iv) if sent by facsimile, then on the actual date of delivery (as evidenced by a facsimile confirmation) provided that a copy of the facsimile and confirmation is also sent by regular U.S. Mail, addressed as follows:

For Company

G. Granger MacDonald, Managing Member  
Thompson Drive Partners, LLC  
2951 Fall Creek Road  
Kerrville, Texas 78028

For EIC

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

For City

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

10.5 Assignment. This Agreement is binding upon the Parties and their successors and assigns. Except as set forth in Article V, this Agreement may not be assigned by either Party without the specific prior written consent of the other, which consent will not be unreasonably withheld. In the event that a Party consents to any valid assignment of this Agreement by the other Party, the assigning Party shall be relieved of any and all obligations and liabilities on the part of such assigning Party under this Agreement. Company may, without written consent of EIC, assign this Agreement to any entity controlled and 100% owned by Company or by the parent, subsidiary, or affiliate of Company provided the entity assumes all of Company's obligations and liabilities under this Agreement; agrees to comply with all provisions of this Agreement; has the legal, managerial, technical, and financial ability to properly perform and discharge such obligations and liabilities; and such abilities are each at least as great as those of Company and Company provides a written guarantee of such assignee's performance in a form reasonably acceptable to EIC. EIC shall be advised in writing of such assignment and of the entity's qualifications at least sixty (60) days before such assignment occurs.

10.6 Parties In Interest. Nothing in this Agreement shall entitle any party other than Company or EIC to any claim, cause of action, remedy, or right of any kind except as expressly provided in Article IX.

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

10.8 No Joint Venture. Nothing contained in this Agreement is intended by the Parties to create a partnership or joint venture between the Parties.

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

10.10 Entire Agreement. This Agreement represents the entire agreement of the Parties with respect to the subject matter hereof.

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

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

10.13 Employment of Undocumented Workers. During the term of this Agreement, Company agrees not to knowingly employ any undocumented workers and, if convicted of a violation under 8 U.S.C. Section 1324a (f), Company shall repay the Grants and any other funds received by Company from EIC as of the date of such violation within one hundred twenty (120) days after the date Company is notified by EIC of such violation, plus interest at the rate of four percent (4%) compounded annually from the date of violation until paid. Company is not liable for a violation of this section in relation to any workers employed by a subsidiary, Affiliate, contractor, subcontractor, or franchisee of Company or any other Person other than Company.

(signatures begin on following page(s))

**SIGNED AND AGREED** on this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

**THOMPSON DRIVE PARTNERS, L.L.C.**

**BY:** \_\_\_\_\_  
G. Granger MacDonald, Managing Member

**SIGNED AND AGREED** on this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

**CITY OF KERRVILLE, TEXAS ECONOMIC IMPROVEMENT CORPORATION**

**BY:** \_\_\_\_\_  
Kenneth Early, President

**ATTEST:**

**BY:** \_\_\_\_\_  
Cheryl Brown, Recording Secretary

**APPROVED AS TO FORM:**

**BY:** \_\_\_\_\_  
Michael C. Hayes, Attorney for EIC

**SIGNED AND AGREED** on this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

**CITY OF KERRVILLE**

**BY:** \_\_\_\_\_  
Mark McDaniel, City Manager

**ATTEST:**

**BY:** \_\_\_\_\_  
Brenda Craig, City Secretary

**EXHIBIT A**

**LAND**

# D R A F T 11/15/18

## ECONOMIC DEVELOPMENT GRANT AGREEMENT BETWEEN THOMPSON DRIVE PARTNERS, L.L.C., THE CITY OF KERRVILLE, TEXAS ECONOMIC IMPROVEMENT CORPORATION, AND THE CITY OF KERRVILLE, TEXAS

This Economic Development Grant Agreement ("Agreement") is entered into as of the Effective Date by and between THOMPSON DRIVE PARTNERS, L.L.C., a Texas limited liability company ("Company"), acting herein by and through its duly authorized Managing Member~~Chief Executive Officer~~; the CITY OF KERRVILLE, TEXAS, ECONOMIC IMPROVEMENT CORPORATION ("EIC"), a Type B Economic Development Corporation established pursuant to Chapters 501, 502, and 505 of the Texas Local Government Code, as amended (i.e., the Development Corporation Act and hereafter referred to as "the Act"), acting by and through its duly authorized President; and the City of Kerrville, Texas ("City"), acting by and through its duly authorized City Manager. Company, EIC, and City are sometimes collectively referred to herein as "Parties" and individually as "Party".

### WITNESSETH:

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

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

*Expenditures that are found by the EIC to be required or suitable for infrastructure necessary to promote or develop new or expanded business enterprises, limited to, streets and roads, rail spurs, water and sewer utilities, electric utilities, or gas utilities, drainage, site improvements, and related improvements as provided by Section 501.103 of the Act; and*

WHEREAS, Company, whose headquarters is in Kerr County, Texas, is part of a group of companies specializing in developing, building, and managing multifamily neighborhoods across Texas, which includes over 5,700 units in 48

communities within 25 Texas cities, and has become one of the nation's leading homebuilders specializing in multifamily developments; and

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

**WHEREAS**, Company desires to develop the Land and to have the Land served by public water and wastewater service provided through a connection to City's water and wastewater systems and in so doing, will need to design, construct, and extend the closest water and wastewater mains to the Land (the "Improvements", as defined below) as part of its initial multifamily project; and

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

**WHEREAS**, Company has also requested, and by this Agreement the City agrees, to reserve capacity in the Water System and Wastewater System (as defined below) that Company constructs and extends to the Land per the terms contained herein;

**WHEREAS**, Company is expected to initially invest over 8 Million Dollars (\$8,000,000.00) to develop the Property (as defined below); and

**WHEREAS**, Company plans to build a multifamily housing project on the Land consisting of no fewer than 120 multifamily housing units within an initial phase, with subsequent construction phases that may include a mixed-use development on the remainder of the Land; and

**WHEREAS**, upon completion, the Improvements will not only provide service to the Land, but will provide access to service to additional property that the Improvements will extend over or be near to, which may generate and enable future development in the area; and

**WHEREAS**, finding that providing a grant to fund construction of the Improvements in support of the Development (as defined below) is required or suitable for infrastructure necessary to promote or develop new or expanded business enterprises by promoting the expansion of additional housing stock needed to encourage the relocation to the City of people entering the local employment pool, EIC has determined that such a grant complies with the Act and is in keeping with

the mission of EIC and City of Kerrville Economic Improvement Corporation 4B Sales Tax Funding Request Guidelines and Procedures; and

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

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

**WHEREAS**, on November 26, 2018, in a meeting that was open to the public in accordance with the Texas Open Meetings Act, EIC held a public hearing pursuant to Section 505.159 of the Act related to the proposed expenditure of 4B Revenues for the purposes provided above;

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

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

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

**"4B Sales Tax"** means the one-half of one percent (0.5%) sales and use tax imposed pursuant to the Development Corporation Act, Title 12, Subt. C-1, Ch. 501-505, Texas Government Code, and collected by City for the benefit of EIC.

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

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

**"Commencement of Construction"** means that (i) the plans have been prepared and all approvals thereof required by applicable governmental authorities have been obtained for construction of the Development on the Land; (ii) all necessary permits for the construction of the Development on the Land pursuant to the plans have been

issued by all applicable governmental authorities; and (iii) grading of the Land and construction of the vertical elements of the Development have begun.

*“Completion of Construction”* means the date that the certificates of occupancy for all buildings and other improvements comprising the Development have been issued by City.

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

*“Development”* means a multifamily housing development with no fewer than 120 dwelling units and associated utilities, landscaping, parking, and other associated improvements of Class A quality and characteristics, similar to that of Company’s “Orchard Grove” development located in Fredericksburg, Texas.

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

*“Grant”* means the amount of Eight Hundred Fifty Thousand and No/100 Dollars (\$850,000.00) paid by EIC to Company in installments as provided in this Agreement.

*“Improvements”* means collectively the Water System and Wastewater System each of which will provide public water and wastewater services to the Land, as more fully described in the submittals filed with and approved by City, from time to time.

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

*“Local Sales and Use Tax”* means (i) the one percent (1%) sales and use tax imposed by the City pursuant to Chapter 321, Texas Tax Code and (ii) the 4B Sales Tax.

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

*“Project”* means the design and construction of the Improvements extending to and terminating at the Land.

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

*"Related Agreement"* means that certain Economic Development Incentive Agreement between City and Company dated as of the approximate date of this Agreement.

*"Required Use"* means Company's (and assigns as permitted by this agreement) continuous use for occupancy of the Development on the Land.

*"Substantial Completion of Construction"* means City is able to use the Improvements for their intended purpose and thereby approves and accepts the Improvements in accordance with its standards.

*"Wastewater System"* includes an approximate 8,000 linear foot sewer force main, an approximate 2,0001,000 linear foot gravity sewer main, and a lift station culminating in a base design capacity of 110,000 gallons of wastewater per day as more fully described in the submittals filed with and approved by City, from time to time.

*"Water System"* includes an approximate 4,000 linear foot, twelve inch (12.0") public water main as more fully described in the submittals filed with and approved by City, from time to time.

## Article II Term

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

- (a) December 31, 2030;
- (b) when terminated by mutual agreement of the Parties;
- (c) if Commencement of Construction does not occur by the date set forth in Section 4.5 and, EIC elects to terminate this Agreement by providing notice to Company before Commencement of Construction actually occurs;
- (d) if Completion of Construction does not occur by the date set forth in Section 4.5 and, EIC elects to terminate this Agreement by providing notice to Company before Completion of Construction actually occurs;
- (e) when terminated pursuant to Articles VIII or IX; or

(f) at Company's sole and absolute discretion, upon Company's return of the Grant, or the portion of the Grant it has received, to EIC.

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

### **Article III 4B Revenue Grant**

**3.1 Payment of Grant.** Subject to the obligation of Company to repay the Grant pursuant to Section 4.4 or other provisions of this Agreement, and the continued satisfaction of all the terms and conditions of this Agreement by Company, EIC agrees to provide Company with an amount up to and not to exceed the Grant, which EIC shall pay in three equal installments of Two Hundred Eighty-three Thousand Three Hundred Thirty-three and No/100 Dollars (\$283,333.00) each, as follows:

(a) EIC shall pay the first installment of the Grant to Company not later than thirty (30) days after (i) the City's enactment of an ordinance annexing the Land and adopting the initial zoning to the Land setting forth regulations relating to the development and use of the Land that will permit the use of the Land for the Development; and (ii) Company has delivered documentation to City, in a form acceptable acceptance to City, that Company has incurred or contractually obligated itself to incur not less than the full price of the cost for the Improvements;

(b) EIC shall pay the second installment of the Grant to Company not later than thirty (30) days after Company's delivery to City of a request for payment of said installment (i) following Substantial Completion of Construction; and (ii) Commencement of Construction for the Development has occurred; and

(c) The third installment of the Grant shall be paid not later than thirty (30) days after City's issuance, in compliance with its applicable building codes and development regulations, of a certificate of occupancy for the Development.

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

**institution.**

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

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

**3.5 Reservation of Wastewater System Capacity.** Capacity in the Wastewater System will be allocated as follows between City and Company:

(a) Upon acceptance of the Wastewater System by City, Company may immediately use 80% of the capacity of the Wastewater System to provide sanitary sewer service to City's sanitary sewer customers within the Land, whether existing on the Effective Date or who connects to the Wastewater System thereafter.

(b) Commencing on the fifth (5th) anniversary of City's acceptance of Wastewater System, City's capacity shall increase in the Wastewater System for City's wastewater customers other than those located within the Land, up to a capacity equal to the lesser of: (i) 60% of the capacity of the Wastewater System or (ii) the capacity in the Wastewater System not being used by wastewater customers located on the Land; provided in no case shall City's capacity in the Wastewater System for wastewater customers not located on the Land be less than 20%, unless otherwise as agreed to in writing by the parties.

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(c) Commencing on the tenth (10th) anniversary of City's acceptance of the Wastewater System, City shall have the right to use any and all remaining capacity of the Wastewater System for wastewater customers not located on the Land that is not being used as of said date by wastewater customers located on the Land.

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**3.6 Reservation of Water System Capacity.** Capacity in the Water System will be allocated as follows between City and Company:

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(a) Upon acceptance of the Water System by City, Company may

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immediately use 80% of the capacity of the Water System to provide water service to City's water customers within the Land, whether existing on the Effective Date or who connects to the Water System thereafter.

(b) Commencing on the fifth (5th) anniversary of City's acceptance of Water System, City's capacity shall increase in the Water System for City's water customers other than those located within the Land, up to a capacity equal to the lesser of: (i) 60% of the capacity of the Water System or (ii) the capacity in the Water System not being used by water customers located on the Land; provided in no case shall City's capacity in the Water System for water customers not located on the Land be less than 20%, unless otherwise as agreed to in writing by the parties.

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(c) Commencing on the tenth (10th) anniversary of City's acceptance of the Water System, City shall have the right to use any and all remaining capacity of the Water System for water customers not located on the Land that is not being used as of said date by water customers located on the Land.

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#### **Article IV Conditions to the Economic Development Grant**

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

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

4.3 Development Regulations. Prior to and following annexation of the Land, Company shall comply with all applicable development regulations of the City, to include building codes, subdivision regulations, and zoning, in its development and construction of the Development. In addition, Company shall cause to be developed a traffic impact analysis for any proposed or future impact from vehicle use or access to or from the Land and mitigate any impact as required by the study, Texas Department of Transportation, and/or City irrespective of vesting rights. Company shall engage a firm or professional to conduct the study that is licensed to do so by the state. Company's failure to comply with this provision constitutes a breach of this Agreement should Company, following notice from City, fail to fully comply.

4.4 Required Use. Commencing on the Completion of Construction of the Development and continuing thereafter until the termination of this Agreement, the

Development shall not be used for any purpose other than the Required Use, and the operation and occupancy of the Development in conformance with the Required Use shall not cease for more than six (6) months, except in connection with and to the extent of an event of Force Majeure.

4.5 Commencement and Completion of Construction. Subject to events of Force Majeure, Commencement of Construction of the Development shall commence not later than January 1, 2020. Subject to events of Force Majeure, Completion of Construction of the Development shall occur not later than December 31, 2023. If Commencement of Construction or Completion of Construction of the Development does not occur prior to the foregoing dates, Company shall immediately following written demand return to EIC the first and second installments of the Grant Revenue in the amount of Five Hundred Sixty-six Thousand Six Hundred and Sixty-Six and No/100 dollars (\$566,666.00).

4.6 River Trail Easements and Parkland Dedication. In conjunction with the platting of the Land, Company, upon request from City, shall convey to City:

- a. A twenty foot (20.0') wide easement in an agreed upon location adjacent to the Guadalupe River across the entire width of the Land for the possible future extension of the City's River Trail; and
- b. Via deed, 1.5 acres of parkland in an agreed upon location adjacent to the River Tail easement for public use as a City park and River Trail trailhead facility.

These conveyances will be in accordance with the City's Parkland Dedication Ordinance ("Ordinance"), and the acreage conveyed in the easement and deed shall apply to its requirements. Following City's request, Company shall convey such easement and/or deed to the City within one-hundred and eighty days. Company will satisfy any additional parkland dedication required by the Ordinance by cash deposit. Company agrees to work with City to consider creating additional public open space, including a shared parking agreement. Upon request from City, Company shall work with adjacent property owners to the development to encourage additional extensions of the river trail.

4.7 Records. Company shall keep and maintain complete and accurate records relating to its costs of designing and constructing the Project for three (3) years following the termination of this Agreement. EIC and its representatives shall be entitled to inspect Company's records related to the Project during the term of this Agreement and for three (3) years thereafter, upon reasonable notice at Company's offices at the address identified in Section 10.4, below.

## Article V

## **Sale of Project, Merger or Consolidation of Company**

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

5.2 **Merger.** In the event of any proposed merger or other consolidation of Company with any third party not affiliated with Company, not later than thirty (30) days prior to any such merger or consolidation, Company shall provide EIC with information and assurance reasonably acceptable to EIC regarding: (i) the surviving entity's assumption and satisfaction of the Company's obligations hereunder; and (ii) the financial condition of the surviving entity upon such merger or other consolidation to demonstrate that the surviving entity shall have the financial condition to fully satisfy Company's duties and responsibilities under this Agreement.

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

## **Article VI**

### **Company's Representations and Warranties**

Company represents and warrants as of the date hereof:

- (a) Company is a Texas limited liability company corporation existing in good standing and authorized to do business in the State of Texas;
- (b) Execution of this Agreement has been duly authorized by Company and this Agreement is not in contravention of Company's corporate charter, or any agreement or instrument to which Company is a party or by which it may be bound as of the date hereof;
- (c) No litigation or governmental proceeding is pending, or, to the knowledge of Company, threatened against or affecting Company, which may result

in a material adverse change in Company's business, properties, or operations sufficient to jeopardize Company's legal existence or for-profit viability; and

(d) No written application, written statement, or correspondence submitted by Company to EIC in connection with this Agreement, or in connection with any transaction contemplated hereby, to the knowledge of Company, contains any untrue statement of a material fact or fails to state any material fact necessary to keep the statements contained therein from being misleading.

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

### **Article VII EIC'S Representations and Warranties**

EIC represents and warrants as of the date hereof:

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

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

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

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

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

## Article VIII Conditions under which EIC May Suspend Performance of Its Obligations Under This Agreement

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EIC may, at its sole option and after thirtyfifteen (3015) days written notice to Company, suspend EIC's performance under this Agreement until such time as Company shall have cured the condition(s) and so notified EIC, in writing, that the condition(s) have been cured:

- (a) Company becomes insolvent;
- (b) The appointment of a receiver of Company, or of all or any substantial part of the Property, and the failure of such receiver to be discharged within sixty (60) days thereafter;
- (c) The adjudication of Company as bankrupt;
- (d) The filing by Company of a petition to be adjudged as bankrupt, or a petition or answer seeking reorganization or admitting the material allegations of a petition filed against it in any bankruptcy or reorganization proceeding; or

Should any of the foregoing conditions not be cured by Company within ninety (90) days after the onset of the condition, Company will be considered to have breached this Agreement and EIC may, at its option, with written notice to Company, terminate this Agreement and Company shall be obligated to refund the Grant to EIC.

## Article IX Remedies

9.1 Notice and Opportunity to Cure. Except as otherwise provided in this Agreement, in the event of any default in or breach of this Agreement, by any Party, or any successor to such Party, such defaulting or breaching Party (or successor) shall upon written notice from the other, proceed immediately to cure or remedy such default or breach, and, in any event, within sixty (60) days after receipt of such notice. In the event that remedial action is not taken or not diligently pursued and the default or breach shall not be cured or remedied within a reasonable time (but in no event later than ninety (90) days from the date of notification of such breach), the aggrieved Party may institute such proceedings as may be necessary or desirable in its opinion to cure and remedy such default or breach, including but not limited to, seeking specific performance and/or injunctive relief, enforcement by mandamus or by the appointment of a receiver in equity with power to charge and collect rents, purchase price payments, and loan payments and to apply the revenues from the

project in accordance with this Agreement, as required by the Act. This provision and specifically the notice and time to cure shall not apply to the obligation of Company found within Article IV.

**9.2 Termination.** Upon breach of this Agreement by either Party and the failure to cure as permitted by Section 9.1, the non-breaching Party shall have the sole right and discretion to either terminate this Agreement and/or pursue any and all remedies which may be provided by law and this Agreement. Each Party acknowledges and agrees that no Party hereunder shall be entitled to recover any amounts in excess of the Grant contracted for under this Agreement.

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

## ~~Article X~~ General Provisions

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

**10.2 Amendment.** This Agreement may be amended only by written amendment signed by both Parties.

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

**10.4 Notices.** All notices given with respect to this Agreement shall be in writing and shall be deemed to have been properly given for all purposes (i) if sent by a nationally recognized overnight carrier for next business day delivery, on the first business day following deposit of such notice with such carrier unless such carrier confirms such notice was not delivered, then on the day such carrier actually delivers

such notice, or (ii) if personally delivered, on the actual date of delivery, or (iii) if sent by certified U.S. Mail, return receipt requested postage prepaid, on the fifth business day following the date of mailing, or (iv) if sent by facsimile, then on the actual date of delivery (as evidenced by a facsimile confirmation) provided that a copy of the facsimile and confirmation is also sent by regular U.S. Mail, addressed as follows:

For Company  
Granger MacDonald, Managing Member CEO  
Thompson Drive Partners, L.L.C.  
2951 Fall Creek Road  
Kerrville, Texas 78028

For EIC  
*President*  
City of Kerrville, Texas, Economic Improvement Corporation  
701 Main Street  
Kerrville, Texas 78028  
Facsimile: (830) 792-3850

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

10.5 Assignment. This Agreement is binding upon the Parties and their successors and assigns. Except as set forth in Article V, this Agreement may not be assigned by either Party without the specific prior written consent of the other, which consent will not be unreasonably withheld. In the event that a Party consents to any valid assignment of this Agreement by the other Party, the assigning Party shall be relieved of any and all obligations and liabilities on the part of such assigning Party under this Agreement. Company may, without written consent of EIC, assign this Agreement to any entity controlled and 100% owned by Company or by the parent, subsidiary, or affiliate of Company provided the entity assumes all of Company's obligations and liabilities under this Agreement; agrees to comply with all provisions of this Agreement; has the legal, managerial, technical, and financial ability to properly perform and discharge such obligations and liabilities; and such abilities are each at least as great as those of Company and Company provides a written guarantee of such assignee's performance in a form reasonably acceptable to EIC. EIC shall be advised in writing of such assignment and of the entity's qualifications at least sixty (60) days before such assignment occurs.

10.6 Parties In Interest. Nothing in this Agreement shall entitle any party other than Company or EIC to any claim, cause of action, remedy, or right of any kind except as expressly provided in Article IX.

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

10.8 No Joint Venture. Nothing contained in this Agreement is intended by the Parties to create a partnership or joint venture between the Parties.

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

10.10 Entire Agreement. This Agreement represents the entire agreement of the Parties with respect to the subject matter hereof.

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

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

10.13 Employment of Undocumented Workers. During the term of this Agreement, Company agrees not to knowingly employ any undocumented workers and, if convicted of a violation under 8 U.S.C. Section 1324a (f), Company shall repay the Grants and any other funds received by Company from EIC as of the date of such violation within one hundred twenty (120) days after the date Company is notified by EIC of such violation, plus interest at the rate of four percent (4%) compounded annually from the date of violation until paid. Company is not liable for a violation of this section in relation to any workers employed by a subsidiary, Affiliate, contractor, subcontractor, or franchisee of Company or any other Person other than Company.

(signatures begin on following page(s))

SIGNED AND AGREED on this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

THOMPSON DRIVE PARTNERS, L.L.C.

BY:

G. Granger MacDonald, Managing Member GRANGER MACDONALD, CEO

SIGNED AND AGREED on this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

CITY OF KERRVILLE, TEXAS ECONOMIC IMPROVEMENT CORPORATION

BY:

Kenneth Early, President

ATTEST:

BY:

Cheryl Brown, Recording Secretary

APPROVED AS TO FORM:

BY:

Michael C. Hayes, Attorney for EIC

SIGNED AND AGREED on this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

CITY OF KERRVILLE

BY:

Mark McDaniel, City Manager

ATTEST:

BY:

Brenda Craig, City Secretary

**EXHIBIT A**

**LAND**

**DRAFT**

**TO BE CONSIDERED BY THE  
ECONOMIC IMPROVEMENT CORPORATION,  
CITY OF KERRVILLE, TEXAS**

---

**SUBJECT:** Amendment to the Project Funding Agreement between the City of Kerrville, Texas, Economic Improvement Corporation and the City of Kerrville, Texas for the design of and improvements to the City's H-E-B Tennis Center

**AGENDA DATE:** November 26, 2018 **DATE SUBMITTED:** November 20, 2018

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

**EXHIBITS:** Project Funding Agreement between the City of Kerrville, Texas, Economic Improvement Corporation and the City of Kerrville, Texas for the design of and improvements to the City's H-E-B Tennis Center

**APPROVED FOR SUBMITTAL BY CITY MANAGER:**

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Unencumbered			
Expenditure	Balance	Amount	Account
Required:	in Account:	Budgeted:	Number:
\$1,750,000	\$1,281,196	\$1,500,000	

**PAYMENT TO BE MADE TO:** N/A

**REVIEWED BY THE FINANCE DIRECTOR:** N/A

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**SUMMARY STATEMENT**

The renovation of the H-E-B tennis Center was initially included in the EIC FY14 annual budget. The EIC entered into a \$1.5 million Project Funding Agreement with the City of Kerrville in January 2017 to assist with a master planning and reconstruction effort of the City's H-E-B Tennis Center. The City subsequently engaged a design-engineering firm to conduct a master plan for the property, including a significant public engagement effort, as well as develop construction documents for the initial phase of the reconstruction effort. That design-engineering contract totaled \$161,500 with Shrickel Rollins and Associates (SRA). The public engagement effort was completed over the course of 2017 and the project bid documents were released at the end of Summer 2018. In addition, the City let a \$57,304 contract for a portion of the reconstruction effort, to resurface a portion of the courts, to help expedite the reconstruction effort and minimize the anticipated downtime of the facility in Spring and Summer 2019 during the larger construction effort of Phase 1.

On November 13<sup>th</sup> the City received four bids to complete the Phase 1 portion of the Master Plan. The apparent low bid is \$1,453,939. In conjunction with the resurfacing effort (\$57,304) and the initial design-engineering contract (\$161,500), and some degree of project contingency (5% = \$73,000) the Phase 1 effort will likely total approximately \$1,750,000. The City would like to respectfully request an additional \$250,000 to the original Project Funding Agreement of \$1,500,000 in order to complete Phase 1 of the Tennis Center Reconstruction effort.

This funding increase request is based upon the following:

- Construction costs locally have increased on average 15-20% over the past three years since the project scope was first estimated and budgeted.
- Construction contractors are busy and attracting numerous bidders is difficult in a good economy.
- No inflationary indexing was included in the project cost estimates.

Any unused contingency funds not utilized will be refunded to the EIC at the end of the project.

**RECOMMENDED ACTION**

Provide direction on amending the Project Funding Agreement.

PROJECT FUNDING AGREEMENT BETWEEN THE CITY OF KERRVILLE, TEXAS, ECONOMIC IMPROVEMENT CORPORATION AND THE CITY OF KERRVILLE, TEXAS FOR THE DESIGN OF AND IMPROVEMENTS TO THE CITY'S H-E-B TENNIS CENTER

THIS PROJECT FUNDING AGREEMENT (the "Agreement") is entered into this 24 day of January 2017, by and between the City of Kerrville, Texas Economic Improvement Corporation ("Corporation"), a Texas non-profit corporation established by the City of Kerrville pursuant to Section 4B of Tex. Rev. Civ. Stat. Art. 5190.6 (otherwise known as the Development Corporation Act of 1979 and hereafter called "the Act"), and the City of Kerrville, Texas ("City"), a Texas home-rule municipality.

WITNESSETH:

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

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

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

WHEREAS, the City Council of the City (the "City Council") and the Board of Directors of the EIC (the "Board") have determined to undertake a project to design and provide improvements to the City's H-E-B Tennis Center ("Center"), to include improving walking paths, ADA access, lighting, parking, seating areas, irrigation, landscaping, signage, and drainage; the resurfacing of tennis courts; remodeling buildings; and other related improvements (the "Project"), all as authorized by the Act; and

WHEREAS, the EIC finds that the Project as described generally above constitutes a "project" as defined by the Act; and

WHEREAS, the EIC finds that the Project includes land, buildings, equipment, facilities, and improvements to be required or suitable for use for professional and amateur sports, including children's sports, athletic, entertainment, and tourist purposes and events facilities and other related improvements that enhance any of these items; and

**WHEREAS**, the EIC finds that it will be in the public interest to enter into this Agreement with City to provide sales tax revenues collected pursuant to the Act ("4B Revenues") to City for costs related to the Project; and

**WHEREAS**, on January 17, 2017, in a meeting that was open to the public in accordance with the Texas Open Meetings Act, the EIC held a public hearing pursuant to Section 501.072 of the Act related to the proposed expenditure of 4B Revenues for the Project;

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

1. **“Project” Defined:** When used in this Agreement, the phrase “Project” means the project summary and estimate specified in **Exhibit A** attached hereto and included herein for all purposes. City will manage the funding it receives from EIC and the bidding and construction of the Project. City shall not substantively alter the description of the Project in any respect without the prior approval of the EIC.
2. **Agreement to Fund Project:** The EIC agrees to provide City an amount up to and not to exceed \$1,500,000.00 in 4B Revenues to be used for the design, bidding and/or request for proposals, acquisition, construction, and installation of the Project.
3. **Payments Authorized:** City is authorized to make payments for the herein described purposes directly from the Sales Tax Improvement Fund (Fund 40) or by making a transfer of 4B Revenues from the Sales Tax Improvement Fund (Fund 40) to one or more funds described in the City’s approved budget.
4. **Eligible Costs:** Payments made by City from 4B Revenues as authorized by Section 3, above, shall be limited to the payment of “costs” as defined in the Act.
5. **Project Timeline:** The City shall begin design activities for the Project on or before September 30, 2017. Should such activities not occur, EIC may elect to cancel and withhold its pledge of funds for the Project.
6. **Severability:** The provisions of this Agreement are severable, and if for any reason a provision of this Agreement is determined to be invalid by a court having competent jurisdiction over the subject matter of the invalid provision, the invalidity shall not affect other provisions that can be given effect without the invalid provision. Further, in lieu of such illegal, invalid, or unenforceable provision, there will be added automatically as a part of this Agreement, a provision as similar in its terms to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable.
7. **Amendment:** This Agreement may be amended only by written amendment signed by the parties.
8. **Notices:** All notices given with respect to this Agreement must be in writing and will be deemed to have been properly given for all purposes (i) if sent by a nationally recognized overnight carrier for next business day delivery, on the first business day following deposit of such notice with such carrier unless such carrier confirms such notice was not delivered, then on the day such carrier actually delivers such notice, or (ii) if personally delivered, on the actual date of delivery, or (iii) if sent by certified U.S. Mail, return receipt requested

postage prepaid, on the fifth business day following the date of mailing, or (iv) if sent by facsimile, then on the actual date of delivery (as evidenced by a facsimile confirmation) provided that a copy of the facsimile and confirmation is also sent by regular U.S. Mail, addressed as follows:

For EIC

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

For City

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

9. **Applicable Law:** This Agreement is governed by and construed in accordance with the laws of the State of Texas. The Agreement is entered into and fully performable within Kerr County, Texas. Accordingly, venue for any cause of action arising pursuant to this Agreement is proper only in Kerr County, Texas.
10. **Interpretation:** Each party has had the opportunity to be represented by counsel of its choice in negotiating this Agreement. This Agreement will therefore be deemed to have been negotiated and prepared at the joint request, direction, and construction of the parties, at arm's length, with the advice and participation of counsel, and will be interpreted in accordance with its terms without favor to any party.
11. **No Joint Venture:** Nothing contained in this Agreement is intended by the parties to create a partnership or joint venture between any or all of the parties.
12. **Parties In Interest:** Nothing in this Agreement shall entitle any party other than EIC or City to any claim, cause of action, remedy, or right of any term of this Agreement.
13. **Survival of Terms:** All rights, duties, liabilities and obligations accrued prior to termination will survive termination.
14. **Entire Agreement:** This Agreement represents the entire agreement of the parties with respect to the subject matter hereof.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in the year and as of the date indicated.

EIC F.A.  
2017-01

CITY OF KERRVILLE, TEXAS

CITY OF KERRVILLE, TEXAS ECONOMIC  
IMPROVEMENT CORPORATION

By:

Bonnie White  
Bonnie White, Mayor

By:

Gary Cochrane  
Gary Cochrane, President

ATTEST:

Brenda G. Craig  
Brenda G. Craig, City Secretary

ATTEST:

Cheryl Brown  
Cheryl Brown, Secretary for the EIC

APPROVED AS TO FORM:

Michael C. Hayes  
Michael C. Hayes, City Attorney



### Exhibit A: PROJECT DESCRIPTION

The project consists of design / engineering process and subsequent physical improvements to the City of Kerrville's H-E-B Tennis Center located at 801 Tennis Drive. The original complex was built in 1978 with six courts. Improvements consisting of an additional eight lit courts, trail, and playground were completed in 1993. The current facility now consists of a total of 14 lighted courts.

In mid-2016, the original battery of asphalt courts were resurfaced and re-striped to seal cracks. This repair was a temporary solution with no guarantee on life expectancy with the knowledge that the courts would eventually need to be overlaid with a concrete cap. Striping for Jr. Courts and Pickleball was also added at this time to support programming needs.

If funded, the City intends to hire a consulting firm that will facilitate a design / engineering process. This process will engage various tennis-related community stakeholders (KTA, KISD, Schreiner University, etc.) in a planning and design process for the future of the facility. That input will culminate in construction engineering documents that will be utilized to bid and construct the identified improvements.

Staff has identified the following minimum infrastructure improvements, but additional elements may be identified by the stakeholders during the design process:

- Improving path of travel and ADA access to areas such as the pavilion, practice area, pro shop, lower parking, and observation areas.
- Resurfacing all post tension concrete courts.
- Evaluate the newly resurfaced asphalt courts in regards to upgrading to post tension concrete courts.
- Address drainage and parking issues.
- Address irrigation and landscaping.
- Address lighting.
- Address signage, fencing, windscreens, and net equipment.
- Address the existing playground.
- Evaluation / renovation of existing buildings.

EIC  
F.A.  
2017-01

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EXHIBIT A