



**KERRVILLE CITY COUNCIL AGENDA  
REGULAR COUNCIL MEETING, FEBRUARY 12, 2019, 6:00 PM  
CITY HALL COUNCIL CHAMBERS  
701 MAIN STREET, KERRVILLE, TEXAS**

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

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**CALL TO ORDER:**

*Mayor Bill Blackburn*

**INVOCATION:**

*Offered by Councilmember Baroody.*

**PLEDGE OF ALLEGIANCE TO THE FLAG:**

*Led by Councilmember Baroody.*

**1 ANNOUNCEMENTS OF COMMUNITY INTEREST:**

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

**2 VISITORS/CITIZENS FORUM:**

*Any citizen with business not scheduled on the agenda may speak to the City Council. Prior to speaking, each speaker must fill out the speaker request form and give it to the City Secretary. City Council may not discuss or take any action on an item but may place the issue on a future*

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I hereby certify that this agenda was posted as notice of the meeting on the bulletin board at the City Hall of the City of Kerrville, Texas, and on the City's website on the following date and time: February 8, 2019 at 5:00 p.m. and remained posted continuously for at least 72 hours preceding the scheduled time of the meeting.

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Shelley McElhannon, City Secretary  
City of Kerrville, Texas

*agenda. The number of speakers will be limited to the first ten speakers and each speaker is limited to four minutes.*

### **3 PRESENTATIONS:**

- 3.A. Certificate of Recognition for Madaline Munoz for her heroic and life-saving actions during a fire in her home on January 22, 2019.  
Attachments:  
[20190201\\_Presentation\\_Madaline Munoz Recognition.pdf](#)
- 3.B. Certificate of Recognition for Matthew Zapata for obtaining a Class "A" Wastewater Treatment Operator License.  
Attachments:  
[20190206\\_Certificate\\_Zapata, Matthew.pdf](#)
- 3.C. Certificate of Recognition to Rosa Ledesma, Parks and Recreation Specialist on receiving the Certified Festival and Event Association Certification.  
Attachments:  
[20190206\\_Certificate\\_Ledesma, Rosa.pdf](#)

### **4 CONSENT AGENDA:**

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

- 4.A. Purchase of new Vermeer vacuum trailer for Water Distribution Division.  
Attachments:  
[20190212\\_Quote\\_Vermeer Vacuum Trailer.pdf](#)
- 4.B. Compromise, Settlement, and Release Agreement between Kerrville Camp-Resort, LLC and the City of Kerrville.  
Attachments:  
[20190212\\_Settlement\\_Kerrville Camp-Resort LLC\\_HOT Audit 2018.pdf](#)  
[20190212\\_Settlement\\_Audit Deficiency Letter.pdf](#)
- 4.C. Resolution 04-2019 supporting the application of Freedom's Path Kerrville II Limited Partnership to construct affordable rental housing pursuant to the Low Income Housing Tax Credit Program Administered by the Texas Department of Housing and Community Affairs.  
Attachments:  
[20190212\\_Presentation\\_Freedom's Path VA Housing for 9% Tax Credits.pdf](#)  
[20190212\\_Resolution\\_04-2019 Freedoms Path Affordable Housing.pdf](#)
- 4.D. Resolution 05-2019 supporting the application of Hillcrest Senior Village, LP, to construct affordable rental housing pursuant to the Low Income Housing Tax Credit Program Administered by the Texas Department of Housing and Community Affairs.  
Attachments:  
[20190212\\_Presentation\\_Hillcrest Senior Village for 9% Tax Credits.pdf](#)



[20190212\\_Resolution\\_05-2019 Hillcrest Senior Village Affordable Housing.pdf](#)

- 4.E. Minutes for the City Council meeting held on January 8, 2019.

Attachments:

[20190108\\_Minutes\\_Regular Council Meeting 1-08-19.pdf](#)

- 4.F. Minutes for the City Council meeting held on January 22, 2019.

Attachments:

[20190122\\_Minutes\\_Regular Council Meeting 1-22-19.pdf](#)

- 4.G. Minutes for the City Council Workshop held on January 29, 2019.

Attachments:

[20190212\\_Minutes\\_CC Workshop 1-29-19.pdf](#)

## **END OF CONSENT AGENDA**

### **5 PUBLIC HEARINGS:**

### **6 PUBLIC HEARINGS AND RESOLUTIONS:**

- 6.A. Resolution 03-2019 Granting a Conditional Use Permit for an Approximate 1.166 Acres, Being a Portion of Lot 1, H.E.B. Addition and Portions of Lots 300-302 and Lots 348-349, Block 48 of the Schreiner 2nd Addition, Subdivisions Within the City of Kerrville, Kerr County, Texas; and More Commonly Known as the Property Located at 300 Main Street (State Hwy. 27); Said Property is Located Within the Central Business District "CBD" by Permitting Said Property to be Used for Gasoline Station (Fuel Sales) with Car Wash and Convenience Store; and Making Said Permit Subject to Certain Conditions and Restrictions Contained Herein.

Attachments:

[20190212\\_Resolution\\_03-2019\\_CUP HEB 300 Main.pdf](#)

[20190212\\_ConceptPlan\\_2018-095\\_CUPHEB.pdf](#)

[20190212\\_LocationMap\\_2018-095\\_CUPHEB.pdf](#)

### **7 PUBLIC HEARING AND ORDINANCES, FIRST READING:**

### **8 ORDINANCES, FIRST READING:**

- 8.A. Ordinance 2019-04 amending Chapter 58 "Health and Sanitation", Article II "Food Establishments" of the Code of Ordinances of the City of Kerrville, Texas, by repealing the existing Article II and adopting a new Article II, which will adopt the Texas Food Establishment Rules, adopt local amendments to said rules, and provide for the regulation of mobile food units (food trucks); containing a cumulative clause; containing a savings and severability clause; providing a penalty; and providing other matters relating to the subject.

Attachments:

[20190212\\_Ordinance\\_2019-04 Food Truck.pdf](#)

- 8.B. Ordinance 2019-05 Amending Chapter 2, "Administration", Article IV "Boards and Commissions", Section 2-91 "Senior Services Advisory Committee" of the Code of Ordinances of the City of Kerrville, Texas; By Amending Subsections (A)(1) and (A)(2) to

Increase the Membership of this Committee to 16 Members; Containing a Cumulative Clause; Containing a Savings and Severability Clause; and Providing Other Matters Relating to this Subject.

Attachments:

[20190212\\_Ordinance\\_2019-05 Senior Services Advisory Cmte Amendment to increase membership.pdf](#)

## **9 ORDINANCES, SECOND READING:**

## **10 CONSIDERATION AND POSSIBLE ACTION:**

10.A. Operations Agreement for the Kathleen C. Cailloux City Center for the Performing Arts between the City of Kerrville, Texas, and Playhouse 2000, Inc.

Attachments:

[20190212\\_Agreement\\_Playhouse 2000.pdf](#)

[20190212\\_Summary of Maintenance\\_Exhibit A\\_013119.pdf](#)

10.B. Application for Project Funding Request to the Kerrville Economic Improvement Corporation Regarding Downtown Parking Garage/Streetscape.

Attachments:

[20190212\\_Budget Cost\\_PARKING\\_GARAGE-PROJECT\\_2-4-19.pdf](#)

[20180105\\_Professional\\_Services\\_Proposal\\_Parking Garage Peter Lewis 020518.pdf](#)

10.C. Resolution 06-2019, granting a petition requesting the voluntary annexation of an approximate 35.05 acre tract of land out of the S. Wallace Survey No. 114, Abstract No. 348, and the S. Wallace Survey No. 113, Abstract No. 347, said tract located within Kerr County Texas, and the extraterritorial jurisdiction of the City of Kerrville, Texas; consisting of property lying adjacent to State Highway Loop 534; and ordering the preparation of an annexation ordinance.

Attachments:

[20190212\\_Resolution\\_06-2019 KISD Annexation.pdf](#)

[20190212\\_Application\\_KISD Application.pdf](#)

## **11 INFORMATION & DISCUSSION:**

## **12 BOARD APPOINTMENTS**

12.A. Appointments to the Zoning Board of Adjustments. There are currently three full-member positions vacant on the Zoning Board of Adjustments.

Attachments:

[20190212\\_Appointment\\_Zoning Board of Adjustment.pdf](#)

## **13 ITEMS FOR FUTURE AGENDAS:**

## **14 EXECUTIVE SESSION:**

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

*(deliberation regarding economic development negotiations) of Chapter 551 of the Texas Government Code.*

14.A. Economic Development Negotiations Related to the Construction of a Marriot Springhill Suites in the Downtown Area located near Water Street and Spring Street.

Attachments:

**15    ACTION ON ITEMS DISCUSSED IN EXECUTIVE SESSION, IF ANY**

**ADJOURNMENT.**



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

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**SUBJECT:** Certificate of Recognition for Madaline Munoz for her heroic and life-saving actions during a fire in her home on January 22, 2019.

**AGENDA DATE OF:** February 12, 2019    **DATE SUBMITTED:** Jan 30, 2019

**SUBMITTED BY:** Dannie Smith

**EXHIBITS:** [20190201\\_Presentation\\_Madaline Munoz Recognition.pdf](#)

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<b>Expenditure Required:</b>	<b>Remaining Budget Balance in Account:</b>	<b>Amount Budgeted:</b>	<b>Account Number:</b>
\$0	\$0	\$0	N/A

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

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<b>Kerrville 2050 Item?</b>	No
<b>Key Priority Area</b>	N/A
<b>Guiding Principle</b>	N/A
<b>Action Item</b>	N/A

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**SUMMARY STATEMENT:**

On January 22, 2019, Madaline Munoz, a fourth-grade year old student at Nimitz Elementary School, awoke and noticed smoke in her home. Madaline woke her family, and helped lead them to safety. Madaline told Emergency Personnel that she learned how to prepare for a fire scenario at school.

**RECOMMENDED ACTION:**

Present Certificate of Recognition



# Certificate of Recognition

Is hereby presented to  
**Madaline Munoz**

This Certificate of Recognition is being presented to Madaline Munoz, who is 10 years old and lives in the 100 block of Spring Meadow. Around 12:43a.m. on Tuesday January 22, 2019, Madaline awoke from sleep. Noticing smoke, Madaline yelled at the top of her voice, "Mom, wake up! There's a fire!"

The Nimitz Elementary School fourth-grader memorized the training during Fire Prevention Week, which was provided by the Kerrville Fire Department. She alerted people in the house to the danger, she dropped to her hands and knees to crawl beneath the smoke, she tapped the doorknob to ensure it wouldn't burn her hand, she escaped the danger, and found a safe place to call 911. She told Emergency Personnel that she learned how to prepare for a fire scenario at school.

Due to these heroic and life-saving actions, the City of Kerrville and Kerrville Fire Department commend this citizen for her quick thinking in this emergency situation.

Hereunto set my hand and caused the  
Seal of the City Kerrville to be affixed  
hereto the 12 day of February, 2019.

\_\_\_\_\_  
Dannie Smith, Fire Chief

\_\_\_\_\_  
Bill Blackburn, Mayor







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

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**SUBJECT:** Certificate of Recognition for Matthew Zapata for obtaining a Class "A" Wastewater Treatment Operator License.

**AGENDA DATE OF:** February 12, 2019    **DATE SUBMITTED:** Feb 06, 2019

**SUBMITTED BY:** Cheryl Brown

**EXHIBITS:** [20190206\\_Certificate\\_Zapata, Matthew.pdf](#)

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<b>Expenditure Required:</b>	<b>Remaining Budget Balance in Account:</b>	<b>Amount Budgeted:</b>	<b>Account Number:</b>
\$0	\$0	\$0	N/A

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

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<b>Kerrville 2050 Item?</b>	No
<b>Key Priority Area</b>	N/A
<b>Guiding Principle</b>	N/A
<b>Action Item</b>	N/A

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**SUMMARY STATEMENT:**

Certificate of Recognition to Matthew Zapata for his exceptional service to the citizens of Kerrville, and willingness to improve his knowledge and obtain a Class "A" Wastewater Treatment Operator License through the Texas Commission on Environmental Quality. Obtaining this license is something many operators strive to achieve. However, this is a difficult task, which requires various skills and years of experience. This past year, Matthew completed 17 years of service with the City of Kerrville, Public Works Department. In addition to his proven dedication, the ability to obtain a license has allowed him to advance in his career. Matthew was recently promoted to a Superintendent where he will manage the Wastewater Collection Division. Matthew will utilize this license to ensure that the division is operating in compliance with regulatory requirements while protecting public health. Matthew is a huge asset to this community, and his professional achievement has earned him this recognition.

**RECOMMENDED ACTION:**

Present Certificate of Recognition to Matthew Zapata.



# Certificate of Recognition

Is hereby presented to

**Matthew Zapata**  
**Wastewater Collections Superintendent**

On receiving the  
*Class "A" Wastewater Treatment Operator License.*

Obtaining the Class "A" Wastewater Treatment Operator License is a difficult task, which requires various skills and years of experience. Matthew completed 17 years of service with the City of Kerrville, Public Works Department. In addition to his proven dedication, the ability to obtain a license has allowed him to advance in his career. Matthew was recently promoted to a Superintendent, where he will manage the Wastewater Collections Division. Matthew will utilize this license to ensure that the division is operating in compliance with regulatory requirements while protecting public health. Matthew is a huge asset to this community and his professional achievement has earned him this recognition.



Hereunto set my hand and caused the  
Seal of the City of Kerrville to be affixed  
hereto, the 12 day of February, 2019.

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Mark L. McDaniel, City Manager





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

---

**SUBJECT:** Certificate of Recognition to Rosa Ledesma, Parks and Recreation Specialist on receiving the Certified Festival and Event Association Certification.

**AGENDA DATE OF:** February 12, 2019    **DATE SUBMITTED:** Feb 06, 2019

**SUBMITTED BY:** Cheryl Brown

**EXHIBITS:** [20190206\\_Certificate\\_Ledesma, Rosa.pdf](#)

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<b>Expenditure Required:</b>	<b>Remaining Budget Balance in Account:</b>	<b>Amount Budgeted:</b>	<b>Account Number:</b>
\$0	\$0	\$0	N/A

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

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<b>Kerrville 2050 Item?</b>	No
<b>Key Priority Area</b>	N/A
<b>Guiding Principle</b>	N/A
<b>Action Item</b>	N/A

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**SUMMARY STATEMENT:**

The Certification Program is a two year program by the National Recreation and Park Association's Event Management School, and the International Festival & Events Association. The program covers the basics of successful event management, and an applied-knowledge project environment. Topics include: event management, budgeting, marketing, risk management, and event inclusion/accessibility.

**RECOMMENDED ACTION:**

Present Certificate of Recognition to Rosa Ledesma.



# Certificate of Recognition

Is hereby presented to

**Rosa Ledesma**  
**Parks and Recreation Specialist**

On receiving the  
*Certified Festival and Event Association Certification.*

The Certification Program is a two year program by the National Recreation and Park Association's Event Management School, and the International Festival & Events Association. The program covers the basics of successful event management, and an applied-knowledge project environment. Topics include: event management, budgeting, marketing risk management, and event inclusion/accessibility.



Hereunto set my hand and caused the  
Seal of the City of Kerrville to be affixed  
hereto, the 12 day of February, 2019.

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Mark L. McDaniel, City Manager





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

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**SUBJECT:** Purchase of new Vermeer vacuum trailer for Water Distribution Division.

**AGENDA DATE OF:** February 12, 2019    **DATE SUBMITTED:** Feb 01, 2019

**SUBMITTED BY:** Stuart Barron

**EXHIBITS:** [20190212\\_Quote\\_Vermeer Vacuum Trailer.pdf](#)

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<b>Expenditure Required:</b>	<b>Remaining Budget Balance in Account:</b>	<b>Amount Budgeted:</b>	<b>Account Number:</b>
\$102,948.25	\$367,000.00	\$367,000.00	19-1900-5300

**PAYMENT TO BE MADE TO:** Vermeer Texas-Louisiana

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<b>Kerrville 2050 Item?</b>	No
<b>Key Priority Area</b>	N/A
<b>Guiding Principle</b>	N/A
<b>Action Item</b>	N/A

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**SUMMARY STATEMENT:**

The Water Distribution Division repairs various water and wastewater breaks throughout the City. This process requires careful excavation to uncover exiting underground utilities. This vacuum trailer allows crews to dig around utility lines with minimal disturbance to other utilities in the area.

**RECOMMENDED ACTION:**

Approve Purchase of Vermeer Vacuum Trailer through Buy Board Purchasing Cooperative.



Jan. 17<sup>th</sup>, 2019

Quote Valid for 30 Day

**City of Kerrville**  
**Attn: C.Y. GUTHRIE**

We are pleased to quote the following equipment for your consideration:

**1. Maglaughlin VX75-500**

74 HP Deutz T4F Engine  
1,200 CFM Vacuum Pump  
15" of Mercury Blower  
6 Way Hydraulic Boom W/ Remote  
Hydraulic Jack  
18,000 GVWR Trailer w/ LED Light  
800 Gallon Debris Tank w/ Hydraulic Tilt  
3,000 PSI@ 8 GPM High Water System  
(2)205 Gallon Water Tanks  
Reverse Pressure  
30' x 4" Suction Hose  
3 Stage Cyclone Filtration Standard  
Standard 1 Year/ 1,000 Hour Warranty  
Local Parts & Service

**VX75-500.....\$105,335.00**  
Approved Buy Board Vendor (Ref. # 515-16. 5% Discount).....(\$5,266.75)  
**Freight & Prep.....\$2,880.00**

**SALE PRICE.....\$102,948.25**

Respectfully submitted,

John M. Carver  
Sales Rep.  
Vermeer Equipment of Texas, Inc.  
Mobile: 210-997-9416

**Vermeer Texas-Louisiana**  
16593 I H 35 North, Selma, TX 78154  
**(210) 337-7700**

Dallas/Ft. Worth TX • San Antonio TX • Houston TX • Round Rock TX • Lubbock TX • Kilgore TX



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

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**SUBJECT:** Compromise, Settlement, and Release Agreement between Kerrville Camp-Resort, LLC and the City of Kerrville.

**AGENDA DATE OF:** February 12, 2019    **DATE SUBMITTED:** Feb 05, 2019

**SUBMITTED BY:** Amy Dozier

**EXHIBITS:** [20190212\\_Settlement\\_Kerrville Camp-Resort LLC\\_HOT Audit 2018.pdf](#)  
[20190212\\_Settlement\\_Audit Deficiency Letter.pdf](#)

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<b>Expenditure Required:</b>	<b>Remaining Budget Balance in Account:</b>	<b>Amount Budgeted:</b>	<b>Account Number:</b>
\$0	\$0	\$0	N/A

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

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<b>Kerrville 2050 Item?</b>	No
<b>Key Priority Area</b>	N/A
<b>Guiding Principle</b>	N/A
<b>Action Item</b>	N/A

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**SUMMARY STATEMENT:**

The City contracted with an outside auditor to perform hotel occupancy tax audits at several hotels in 2018. The audit at Yogi Bear's Jellystone Park Camp-Resort, owned by Kerrville Camp-Resort, LLC, covered the period January 1, 2016 to March 31, 2018. Auditors found unpaid occupancy taxes of \$22,408.30. Almost all of the unpaid tax relates to the period January 1, 2016 to August 31, 2016, the first eight months of operations under the Kerrville Camp-Resort's ownership.

Kerrville Camp-Resort collected and remitted occupancy tax to the State during this time period, but mistakenly failed to collect or remit City occupancy tax. Since then, Kerrville Camp-Resort has been in compliance with reporting and remitting occupancy tax. From October 2016 through January 2019, Kerrville Camp-Resort has remitted \$192,330.81 to the City's Hotel Occupancy Tax Fund.

The City's occupancy tax ordinance specifies penalties and interest to be charged on unpaid occupancy tax. The City sent an audit deficiency letter to Kerrville Camp-Resort on November 30, 2018 requesting that they remit:

Unpaid occupancy tax: \$22,408.30

10% Penalty: 2,240.83

Interest: 4,988.90

Total \$29,638.03

Kerrville Camp-Resort requested that the penalty and interest be waived. They asked the City to consider their good record since August 2016, the large amount of occupancy tax they contribute to the City, their overall good corporate citizenship and the fact that the unpaid tax was an unintentional omission.

Over the last two months, the City Attorney and Finance department have worked with Kerrville Camp-Resort to negotiate a settlement that waives the interest portion only, resulting in a payment of \$24,649.13. Kerrville Camp-Resort has agreed to this settlement and has issued the check.

In light of the facts presented and in the interest of timely action, City staff recommends accepting this settlement agreement.

**RECOMMENDED ACTION:**

Approve agreement.

## **COMPROMISE, SETTLEMENT, AND RELEASE AGREEMENT**

This Compromise, Settlement, and Release Agreement (the "Agreement") is made and entered into as of the date set forth below by and between the **City of Kerrville, Texas (the "City")** and **Kerrville Camp-Resort, LLC ("Resort")**, sometimes collectively referred to herein as the "Parties":

**WHEREAS**, the Parties have a bona fide dispute as to the City's previous assessment of hotel occupancy tax to property owned by Resort, known as Yogi Bear's Jellystone Park Camp-Resort ("Resort"), which is located within the City; and

**WHEREAS**, Resort purchased the Resort in 2015 and has made a number of improvements to the property; and

**WHEREAS**, City, in accordance with Chapter 351 of the Texas Tax Code and its hotel occupancy tax ordinance (City Code Chapter 94, Article III), imposes a tax upon the cost of occupancy of any sleeping room or space furnished by any hotel, as those terms are defined by said ordinance; and

**WHEREAS**, City, using an outside auditor, performs audits on selected hotels within its jurisdiction, which in July 2018, included an audit of Resort's operations of its Resort from January 1, 2016, through March 31, 2018; and

**WHEREAS**, the audit found that Resort underreported revenue and failed to apply the occupancy tax in some circumstances and as a result, must remit unpaid taxes to City, and is subject to penalties and interest due to such deficiencies; and

**WHEREAS**, in an effort to resolve the differences between the Parties and in the spirit of compromise, the Parties find it to their mutual advantage to enter into the Agreement as a way of resolving this claim and dispute, such that Resort would pay the City the existing amount it owes the City in occupancy tax plus penalties and the City would thereafter waive the interest due on said amount;

**NOW, THEREFORE**, for and in consideration of the covenants, conditions, and promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in order to fully and finally resolve all claims and disputes arising out of the referenced incident, the Parties agree as follows:

### **1. PAYMENT TO CITY**

Resort shall pay City on or before March 1, 2019, **\$24,649.13**, which is the amount of past due occupancy tax plus penalty that Resort owes City. Both Parties agree and acknowledge that this action and compensation equals full and final settlement of all claims and disputes brought or which could ever be brought between the Parties in

relation to the issue described above, and that the City is hereby forgiving its claim to applicable interest from this amount.

## **2. RELEASE BY PARTIES**

Except for claims arising out of a breach of this Agreement, the Parties, and their successors, assigns, and any and all persons or entities claiming by, through or under them, hereby **RELEASE, DISCHARGE, AND ACQUIT**, forever and for all purposes, each other, and their agents, employees, officers, legal representatives, successors, and assigns from and against any and all liability which they now have, have had, or may have, and all past, present, and future actions, causes of action, claims, demands, damages, costs, expenses, compensations, losses, and attorneys fees of any kind or nature whatsoever, or however described, whether known or unknown, fixed or contingent, in law or in equity, whether asserted or unasserted, whether in tort or contract, whether now existing or accruing in the future arising out of or related to the claim described above.

## **3. WARRANTY OF CAPACITY**

Each individual and entity executing this Agreement hereby represents and warrants that he, she, or it has the capacity set forth on the signature pages hereof with full power and authority to bind the party on whose behalf he, she, or it is executing this Agreement to the terms hereof. In entering into this Agreement, the Parties represent that they have completely read the terms of this Agreement and that the terms are fully understood and voluntarily accepted by each party. The Parties each represent and warrant that prior to the execution of this Agreement, each party has had an opportunity to consult with independent counsel of their own choice in negotiating this Agreement, and this Agreement is the result of protracted arm's length negotiation among the Parties. The Parties acknowledge that each of them has been afforded an opportunity to review this Agreement and the documents relating to the settlement with its chosen counsel.

## **4. NO ADMISSION OF LIABILITY**

This Agreement is made to compromise, terminate, and to constitute an accord and satisfaction of all claims released by this Agreement and neither City nor Resort admit any liability, fault, or wrongdoing of any kind or nature whatsoever and expressly deny and disclaim any liability, fault, or wrongdoing alleged or which could have been alleged with regard to the claims asserted or any similar claims which might be asserted.



**5. RECOVERY OF DAMAGES DUE TO BREACH OF THIS AGREEMENT**

In the event of breach by any party of the terms and conditions of this Agreement, the non-breaching party shall be entitled to recover all expenses as a result of such breach, including, reasonable attorney fees and costs.

**6. AGREEMENT SETTLES ALL CLAIMS**

It is understood and agreed that all agreements and understandings by and between the Parties to this Agreement are expressly embodied in this Agreement and that this Agreement supersedes any and all prior agreements, arrangements, or understandings between the Parties relating to the claims released pursuant to this Agreement or any matters related thereto executed by the Parties.

**7. TERMS ARE CONTRACTUAL**

The Parties acknowledge and agree that the terms of this Agreement are all contractual and not mere recitals.

**8. VOLUNTARY AGREEMENT**

The Parties acknowledge that they have read this Agreement, understand its terms, and that this Agreement is entered into voluntarily, without duress, and with full knowledge of its legal significance. The Parties represent and warrant that no party has been induced to enter this Agreement by any statement, action, or representation of any kind or character made by the persons or entities released under this Agreement or any person or persons representing them, other than those expressly made in this Agreement.

**9. MODIFICATIONS MUST BE IN WRITING**

This Agreement may not be modified in any manner, nor may any rights provided for herein be waived, except by an instrument in writing signed by each party.

**10. AGREEMENT BINDING ON SUCCESSORS AND ASSIGNS**

This Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective successors and assigns.

**11. SEVERABILITY**

Should any term or any provision of this Agreement be declared invalid by a court of competent jurisdiction, the Parties agree that all other terms of this Agreement are binding and have full force and effect as if the invalid portion had not been included.

**12. MULTIPLE ORIGINALS**

It is understood and agreed that this Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes.

**13. HEADINGS ARE FOR REFERENCE ONLY**

The headings contained herein are for convenience and reference only and are agreed, in no way, to define, describe, extend, or limit the scope or intent of this Agreement or its provisions.

**14. TEXAS LAW APPLIES**

This Agreement shall be performable and enforceable in Kerr County, Texas, and shall be construed in accordance with the laws of the State of Texas.

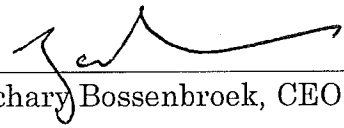
IN WITNESS WHEREOF, this Agreement has been executed by the Parties as of the date set forth.

**THE CITY OF KERRVILLE, TEXAS**

By: \_\_\_\_\_  
Mark L. McDaniel, City Manager

Date: \_\_\_\_\_

**KERRVILLE CAMP-RESORT,  
LLC.**

By:  \_\_\_\_\_  
Zachary Bossenbroek, CEO

Date: Feb 5, 2019

STATE OF TEXAS       §  
                                  §  
COUNTY OF KERR     §

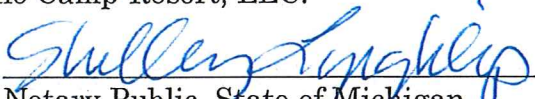
This instrument was acknowledged before me on the \_\_\_\_ day of February, 2019, by Mark L. McDaniel for the City of Kerrville, Texas.

\_\_\_\_\_  
Notary Public, State of Texas

STATE OF MICHIGAN     §  
                                     §  
COUNTY OF KENT       §

This instrument was acknowledged before me on the 5<sup>th</sup> day of February, 2019, by Zachary Bossenbroek for the Kerrville Camp-Resort, LLC.

SHELLEY LYNGLIP  
Notary Public, State of Michigan  
County of Kent  
My Commission Expires 11-20-2024  
Acting in the County of Kent

  
Notary Public, State of Michigan



## City of Kerrville

701 MAIN STREET • KERRVILLE, TEXAS 78028 • 830.257.8000 • KERRVILLETX.GOV

November 30, 2018

Kerrville Camp-Resort, LLC  
Shelley Lyngklip, CPA  
Yogi Bear's Jellystone Park Camp-Resort  
2605 Junction Hwy.  
Kerrville, TX 78028

Re: Hotel Occupancy Tax Audit  
Notice of Deficiency Determination

Dear Ms. Lyngklip,

The City of Kerrville, in accordance with the provisions of its Hotel Occupancy Tax Ordinance, commissioned MuniServices to perform an audit of Yogi Bear's Jellystone Park Camp-Resort. This audit was conducted on July 17, 2018.

The results have been reported to the City, and specific instances of non-compliance were detected. The findings involved:

1. Failure to report the correct amount of taxable revenue earned for the time period of January 1, 2016 through August 31, 2016 (Unreported Taxable Revenue). Such revenue totaled \$310,804.17.
2. Failure to collect and remit tax to the City on pet fees collected as part of the room revenue. Such revenue totaled \$9,314.45.

Consequently, an aggregate deficiency has been determined by the City as follows:

7% Occupancy Tax due on unreported revenue of \$310,804.17 (January 1, 2016 to August 31, 2016)	\$ 21,756.29
7% Occupancy Tax due on pet fees of \$9,314.45	<u>652.01</u>
Total Unpaid Occupancy Tax	22,408.30
10% Penalty (per Code of Ordinances, Chapter 94, Article III, Sec. 94-66)	2,240.83
Interest at 12% - beginning 60 days after due date through July 17, 2018 (per Code of Ordinances, Chapter 94, Article III, Sec. 94-66)	<u>4,988.90</u>
TOTAL DUE	<u><u>\$ 29,638.03</u></u>

Please remit the total amount due by December 31, 2018. Payment should be made to:

City of Kerrville  
701 Main St.  
Kerrville, TX 78028

Thank you for your cooperation.

Regards,

A handwritten signature in blue ink that reads "Amy Dozier". The signature is written in a cursive style with a large initial "A" and a long, sweeping underline.

Amy Dozier  
Chief Financial Officer

Encl: State Comptroller – Tax Matrix



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

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**SUBJECT:** Resolution 04-2019 supporting the application of Freedom's Path Kerrville II Limited Partnership to construct affordable rental housing pursuant to the Low Income Housing Tax Credit Program Administered by the Texas Department of Housing and Community Affairs.

**AGENDA DATE OF:** February 12, 2019 **DATE SUBMITTED:** Feb 01, 2019

**SUBMITTED BY:** Sherry Mosier

**EXHIBITS:** [20190212\\_Presentation\\_Freedom's Path VA Housing for 9% Tax Credits.pdf](#)  
[20190212\\_Resolution\\_04-2019 Freedoms Path Affordable Housing.pdf](#)

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<b>Expenditure Required:</b>	<b>Remaining Budget Balance in Account:</b>	<b>Amount Budgeted:</b>	<b>Account Number:</b>
\$0	\$0	\$0	N/A

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

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<b>Kerrville 2050 Item?</b>	Yes
<b>Key Priority Area</b>	H - Housing
<b>Guiding Principle</b>	H1. Provide a diverse range of housing options to meet the needs and desires of all age groups, income levels, and lifestyles
<b>Action Item</b>	H1.3 - Explore financial incentives and/or infrastructure funding for developers of residential subdivisions supporting new single family homes under \$200,000

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**SUMMARY STATEMENT:**

Freedom's Path Kerrville II Limited Partnership intends to submit an application to the Texas Department of Housing and Community Affairs (TDHCA) for 2019 Competitive 9% Housing Tax Credits for the construction of Freedom's Path at Kerrville II. This second phase to the existing Freedom's Path Kerrville is proposed to include up to 40 affordable rental supportive housing units for low-income, senior and disabled veterans. The term "Supportive Housing" is defined by TDHCA as "a housing, including Housing Units and Group Quarters, that has a supportive environment and includes a planned service component." The proposed project will be located at 3602 Memorial Boulevard, Kerrville, Texas. This Resolution is in standard form as required by TDHCA. The Applicant's

presentation regarding this project is attached for reference.

**RECOMMENDED ACTION:**

Approve Resolution No. 04-2019 as presented.

# **Freedom's Path at Kerrville II**

## **Project Overview**

To enhance and support its mission, the United States Department of Veterans Affairs ("VA") under its enhanced-use leasing ("Enhanced-Use Lease" or "EUL") authority, codified at 38 U.S.C. §§ 8161-8169, entered into an EUL agreement with Kerrville Senior Apartments Limited Partnership (Lessee) for the construction of a housing facility for low income, senior and disabled Veterans at the South Texas Healthcare System – Kerrville Division VA Medical Center campus, Kerrville, Texas. Under the EUL, VA has ground leased the land to the Lessee, who as consideration in exchange will be authorized and responsible for financing, designing, developing, occupying, operating, and maintaining the EUL site in accordance with the EUL, and applicable federal, state, and local laws, codes, ordinances, and regulations. The project was conceived in two phases. The first Phase was completed in December 2015 and has provided much needed housing for Veterans and working class households in Kerrville since that time. The community has received high marks for the quality of the housing and the professionalism of the operations.

Conceived as a two phase project, the second phase is now being considered. A new partnership has been formed (Freedom's Path Kerrville II Limited Partnership) which will sublease a 1.09 acre portion of the site from the existing Leaseholder of the property (Communities for Veterans—Kerrville Senior Apartments Limited Partnership). Financing is projected to come from the award and sale of Housing Tax Credits issued by the Texas Department of Housing and Community Affairs (TDHCA) and a soft payment loan from TDHCA. Due to financing limitations in the available amount of tax credits, the original projection of 48 units will be reduced to 36-42 units, depending on construction pricing. The competitive application for tax credits is due March 1, with an award decision expected in July, 2019. If awarded credits, the project would begin construction sometime in the late Fall or early Winter of 2019, with a projected opening about 12 months later.

As shown in Figure 1 below, the EUL site consists of approximately 5.0 acres located near the main entrance of the Kerrville VA Medical Center ("VAMC") campus and is southeast of the intersection of Memorial Boulevard and Memorial Parkway. Phase I is shown to the right when looking at the diagram, and Phase II will be constructed adjacent to the first phase on a 1.09 acre part of the site. In anticipation of the second phase, significant infrastructure has already been put into place to facilitate a lower cost and quicker completion of Phase II.



[illegible]

The project envisioned for the EUL site includes construction of a new residential community with priority placement for Veterans who have limited incomes, and therefore, are at risk of finding no housing, or becoming rent burdened or living in overcrowded or substandard condition due to the lack of workforce housing in the Kerrville market. Additionally, the project will focus on Veterans who are disabled, and who have the ability to live independently while benefiting from proximity to VA services. The project, named “Freedom’s Path at Kerrville II,” will consist of private residences with numerous amenities to enhance and extend independence and quality of life. To enable residents to pay only 30% of their gross income for rent and utilities, the project may incorporate rental subsidies through Housing Choice Vouchers and other sources available to support housing for disabled Veterans. The project will also include supportive services provided through VA and through third party non-profit and governmental entities designed to promote self-sufficiency and independent living.

## Proposed Improvements:

Freedom's Path will consist of an elevator-equipped three-story building of approximately 47,000 square feet. The building includes 18 one-bedroom and 18 two-bedroom units, each with a private bath. Each unit will include an Energy Star-rated refrigerator with top-mount freezer, two-burner electric cooktop, Energy Star-rated range hood, Energy Star-rated countertop microwave oven, dishwasher, garbage disposal, carpeting, window blinds, and central air conditioning.

Phase II community amenities include on site management, a fitness center, a clubroom, technology center/library, laundry facility and elevator as well as communal areas and break-out rooms for therapy and special needs services. Phase II will have 36 surface parking spaces, a covered vehicular drop-off/pick-up area at the building's main entrance, and open green space around the building with a dedicated picnic area.

The unit mix and proposed rental rates for Phase II are shown in the table below.

**Table 1 : Phase 1 Rental Mix**

Type	Description*	SF	No.	Rental Rate
Unit A	One bedroom, one bath	560	18	\$328-\$876
Unit B	Two bedroom, two bath	660	18	\$384-\$1050
<i>*Three fully accessible handicap units and One total sight and hearing impaired units are included.</i>				

Phase II is designed to achieve a LEED for Homes Silver certification, and will be certified upon completion of construction.

## Development Team Composition

The Development Team will include the local Veterans' led non-profit, Freedom's Path Texas, Inc. with a Board comprised of Kerrville area Veterans. The co-General Partner will be Blue Ridge Atlantic, the principals of whom have a long and successful record of developing affordable housing in the Pacific Northwest (through the parent company Shelter Resources, Inc). A local architect (Scott Schelhase), civil engineer (Mike Wellborn) and a Texas based General Contractor (to be determined by bid) will round out the development group.

**CITY OF KERRVILLE, TEXAS  
RESOLUTION NO. 04-2019**

**A RESOLUTION SUPPORTING THE APPLICATION OF  
FREEDOM'S PATH KERRVILLE II LIMITED  
PARTNERSHIP TO CONSTRUCT AFFORDABLE RENTAL  
HOUSING PURSUANT TO THE LOW INCOME HOUSING  
TAX CREDIT PROGRAM ADMINISTERED BY THE TEXAS  
DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS**

**WHEREAS**, Freedom's Path Kerrville II Limited Partnership has proposed a development for affordable rental housing at 3602 Memorial Boulevard, Kerrville, Texas, named Freedom's Path at Kerrville II; and,

**WHEREAS**, Freedom's Path Kerrville II Limited Partnership has advised that it intends to submit an application to the Texas Department of Housing and Community Affairs for 2019 Competitive 9% Housing Tax Credits for Freedom's Path at Kerrville II; and

**WHEREAS**, to be competitive, Freedom's Path at Kerrville II tax credit application requires a commitment of a financial contribution to the project by the City of Kerrville in an amount of at least \$250.00 as a loan, grant, or reduced fees; and

**WHEREAS**, City Council finds it in the public interest to support efforts by the private development sector to construct decent affordable housing in Kerrville;

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

**SECTION ONE.** The City of Kerrville, Texas, acting through its City Council, hereby confirms that it supports the proposed Freedom's Path at Kerrville II, 3602 Memorial Boulevard, Kerrville, TX, Application #19030 and that this formal action has been taken to put on record the opinion expressed by the City of Kerrville, Texas on February 12, 2019.

**SECTION TWO.** In accordance with 10 Texas Administrative Code §11.9(d)(2), City Council hereby commits to an in-kind contribution to the project referenced in Section One, above, in the form of an in-kind contribution such as a fee waiver, grant, or contribution of other value for the benefit of the project. Should the project be approved, City Council will formalize such action pursuant to the future adoption of a resolution.

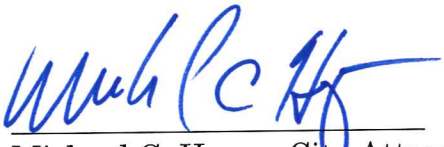
**SECTION THREE.** For and on behalf of the City Council, the City Manager is hereby authorized, empowered, and directed to certify this Resolution to the Texas Department of Housing and Community Affairs.

**PASSED AND APPROVED ON this the \_\_\_\_ day of \_\_\_\_\_, A.D., 2019.**

\_\_\_\_\_  
Bill Blackburn, Mayor

APPROVED AS TO FORM:

ATTEST:

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

\_\_\_\_\_  
Shelley McElhannon,  
City Secretary



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

**SUBJECT:** Resolution 05-2019 supporting the application of Hillcrest Senior Village, LP, to construct affordable rental housing pursuant to the Low Income Housing Tax Credit Program Administered by the Texas Department of Housing and Community Affairs.

**AGENDA DATE OF:**

**DATE SUBMITTED:** Feb 01, 2019

**SUBMITTED BY:** Sherry Mosier

**EXHIBITS:** [20190212\\_Presentation\\_Hillcrest Senior Village for 9% Tax Credits.pdf](#)  
[20190212\\_Resolution\\_05-2019 Hillcrest Senior Village Affordable Housing.pdf](#)

<b>Expenditure Required:</b>	<b>Remaining Budget Balance in Account:</b>	<b>Amount Budgeted:</b>	<b>Account Number:</b>
\$0	\$0	\$0	N/A

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

<b>Kerrville 2050 Item?</b>	Yes
<b>Key Priority Area</b>	H - Housing
<b>Guiding Principle</b>	H3. Continue to leverage Kerrville as a retirement living destination
<b>Action Item</b>	H3.3 - Seek to attract senior living options for individuals requiring varying levels of assistance and care

**SUMMARY STATEMENT:**

Hillcrest Senior Village, LP, in association with JES Dev Co, Inc. (the "Developer"), intends to submit an application to the Texas Department of Housing and Community Affairs (TDHCA) for 2019 Competitive 9% Housing Tax Credits for the construction of a mixed income multifamily housing community for seniors to be known as Hillcrest Senior Village. This proposed development will be located on Lehman Drive and will contain approximately 50 units of which 40 will have restricted rents and 10 will offer market rate rents, in order to accommodate the diverse housing needs of mixed-income seniors in the City of Kerrville. This Resolution is in standard form as required by TDHCA. Applicant's presentation for the project is attached for reference.

**RECOMMENDED ACTION:**

Approve Resolution No. 05-2019 as presented.

# HILLCREST SENIOR VILLAGE

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Kerrville, TX



JES HOLDINGS, LLC

# OVERVIEW

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- Company Overview
- Texas Communities
- Community Features
- Unit Features & Resident Profile
- Tax Credit Funding



# COMPANY OVERVIEW

## JES HOLDINGS, LLC

DEVELOP

BUILD

MANAGE

INVEST



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QUALITY HOUSING WHERE **OUR FAMILIES**  
WOULD BE PROUD TO LIVE.

# DEVELOPER

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- Over 20 years experience developing affordable multi-family housing
- Developed 200 apartment communities with over 4,300 residential units
- Four communities in Central Texas and a fifth under construction in Central Texas.

# GENERAL CONTRACTOR

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**Fairway Construction Co., Inc.**

- 30 years experience
- Over 130 apartment communities
- Over 4,500 apartment units
- Over \$2 billion in construction value

# PROPERTY MANAGER

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- Over 20 years of experience
- Currently manages over 8,500 apartment units throughout the South, Southwest, and Midwest.
- 190 apartment communities under management
- Overall portfolio occupancy of 97%

# SYNDICATOR

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**Affordable Equity Partners, Inc.**

- Provides a full range of services for developers and investors in the Section 42 LIHTC Program.
- More than 500 tax credit developments and has never had a foreclosure or credit recapture.
- Syndicated over \$3 billion in Federal and State Tax Credits.



# Texas Communities



**Settlement Estates**

70 Garden-Style Senior Units  
(32) One Bedroom Units  
– 651 Sq. Ft.  
(38) Two Bedroom Units  
– 859 Sq. Ft.



**Riverwood Commons**

36 Senior Units Located in a Three-Story Building  
(11) One Bedroom Units  
– 725 Sq. Ft.  
(25) Two Bedroom Units  
– 935 Sq. Ft.



**Hidden Glen**

50 Garden-Style Senior Units  
(15) One Bedroom Units  
– 700 Sq. Ft.  
(35) Two Bedroom Units  
– 850 Sq. Ft.



**Bluff View Senior Village**

48 Senior Units Located in a Three-Story Building  
(15) One Bedroom Units  
– 710 Sq. Ft.  
(33) Two Bedroom Units  
– 893 to 925 Sq. Ft.



**Highlander Senior Village**

66 Garden-Style Senior Units  
(20) One Bedroom Units  
– 740 Sq. Ft.  
(46) Two Bedroom Units  
– 850 Sq. Ft.

# SETTLEMENT ESTATES

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# RIVERWOOD COMMONS

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# HIDDEN GLEN

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# BLUFF VIEW SENIOR VILLAGE

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# COMMUNITY FEATURES

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# SITE LOCATION



# SITE PLAN

## Kerrville, TX

January 10, 2019



### SITE DATA:

LOT ACREAGE:	4.75
6-PLEX BUILDINGS:	(38) UNITS
MIX:	(12) 1BR/1BA (26) 2BR/1BA
PARKING:	(70) STALLS

6-PLEX: PRELIMINARY SITE PLAN 1

1"=50'-0"



# EXTERIOR DESIGN

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- 30% or greater masonry stone or brick
- 70% or less fiber cement board
- 30 Year architectural shingles

Recent properties completed by the proposed development team.

# COMMUNITY FEATURES

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- 2,000 sq. ft. community building
- Community lounge
- Community kitchen
- Fitness room
- Business center
- Pavilion with BBQ grills
- Leasing office w/ full-time manager



Recent property completed by the proposed development team.



# UNIT FEATURES & RESIDENT PROFILE

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# RESIDENTIAL UNIT FEATURES

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## Unit Mix and Rents

- 12 one-bedroom units
- 26 two-bedroom units
- Rents range from \$269/mo - \$890/mo

## Unit Features

- Full kitchen with energy-star appliances
- In unit washer/dryer
- Carpet and vinyl flooring
- Covered entry & patio
- Attached storage



# RESIDENT PROFILE

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## Age and Income Requirements

- Age restricted 55 +
- 3 units set aside for residents at \$12K - \$14K
- 7 units set aside for residents at \$20K - \$24K
- 21 units set aside for residents at \$25K - \$28K
- 7 units unrestricted



## Screening Requirements

- Rental history
- Credit history
- Criminal background

# AREA INCOME & RENT LIMITS



## Texas Department of Housing and Community Affairs Rent and Income Limits<sup>1</sup> (As of 5/22/2018)

**Project:** Hillcrest Senior Village

(1) County: Kerr

(2) Place:<sup>2</sup> Kerrville

(3) Financing: 9% Housing Tax Credits

(4) Project PIS Date: On or After 5/17/2018

(5) Carryover / Determination Notice / Subaward Agreement Date:

On or After 5/17/2018

### INCOME LIMITS

2018 Area Median Income: \$58,400

AMFI %	Number of Household Members							
	1	2	3	4	5	6	7	8
30	\$ 12,270	\$ 14,040	\$ 15,780	\$ 17,520	\$ 18,930	\$ 20,340	\$ 21,750	\$ 23,130
40	\$ 16,360	\$ 18,720	\$ 21,040	\$ 23,360	\$ 25,240	\$ 27,120	\$ 29,000	\$ 30,840
50	\$ 20,450	\$ 23,400	\$ 26,300	\$ 29,200	\$ 31,550	\$ 33,900	\$ 36,250	\$ 38,550
60	\$ 24,540	\$ 28,080	\$ 31,560	\$ 35,040	\$ 37,860	\$ 40,680	\$ 43,500	\$ 46,260
80	\$ 32,720	\$ 37,440	\$ 42,080	\$ 46,720	\$ 50,480	\$ 54,240	\$ 58,000	\$ 61,680
120	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -

### RENT LIMITS

AMFI %	Number of Bedrooms						
	0	1	2	3	4	5	
30	\$306	\$328	\$394	\$455	\$508	\$561	
40	\$409	\$438	\$526	\$607	\$678	\$748	
50	\$511	\$548	\$657	\$759	\$847	\$935	
60	\$613	\$657	\$789	\$911	\$1,017	\$1,122	
65							
80	\$818	\$877	\$1,052	\$1,215	\$1,356	\$1,496	

# LOW-INCOME HOUSING TAX CREDIT PROCESS

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# LOW-INCOME HOUSING TAX CREDITS

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- Federal funds administered by state agencies
- Dollar-for-dollar tax reduction to investors
- Credits acts like equity, reducing conventional debt and allowing for lower rents



# TAX CREDIT TIMING

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## 2019 Application Round

- Pre-apps due Jan. 9<sup>th</sup>
- Full apps due March 1<sup>st</sup>
- TDHCA releases final scoring mid-May
- TDHCA board approves final awards late-July

QUESTIONS?

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**CITY OF KERRVILLE, TEXAS  
RESOLUTION NO. 05-2019**

**A RESOLUTION SUPPORTING THE APPLICATION OF  
HILLCREST SENIOR VILLAGE, LP, TO CONSTRUCT  
AFFORDABLE RENTAL HOUSING PURSUANT TO THE  
LOW INCOME HOUSING TAX CREDIT PROGRAM  
ADMINISTERED BY THE TEXAS DEPARTMENT OF  
HOUSING AND COMMUNITY AFFAIRS**

**WHEREAS**, Hillcrest Senior Village, LP, ("the Applicant") has proposed a development for affordable rental senior housing at 160 and 170 Lehmann Drive, Kerrville, Kerr County, Texas named Hillcrest Senior Village ("the Project"), and located within the extraterritorial jurisdiction of the City of Kerrville, Texas; and

**WHEREAS**, the Applicant has advised that it intends to submit an application to the Texas Department of Housing and Community Affairs for 2019 Competitive 9% Housing Tax Credits for Hillcrest Senior Village; and

**WHEREAS**, to be competitive, the Applicant's tax credit application requires a commitment of a financial contribution to the project by the City of Kerrville in an amount of at least \$250.00 as a loan, grant, or reduced fees; and

**WHEREAS**, City Council finds it in the public interest to support efforts by the private development sector to construct decent affordable housing in Kerrville;

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

**SECTION ONE.** The City of Kerrville, Texas, acting through its City Council, hereby confirms that it supports the proposed Hillcrest Senior Village, to be located at 160 and 170 Lehmann Drive, Kerrville, Kerr County, Texas, and that this formal action has been taken to put on record the opinion expressed by the City of Kerrville on February 12, 2019.

**SECTION TWO.** In accordance with 10 Texas Administrative Code §11.9(d)(2), City Council hereby commits to an in-kind contribution in the form of reduced fees for the project referenced in Section One, above. Should the project be approved, City Council will formalize such action pursuant to the future adoption of a resolution.

**SECTION THREE.** For and on behalf of the City Council, the City Manager is hereby authorized, empowered, and directed to certify this Resolution to the Texas Department of Housing and Community Affairs.

**PASSED AND APPROVED ON this the \_\_\_\_ day of \_\_\_\_\_, A.D., 2019.**

\_\_\_\_\_  
Bill Blackburn, Mayor

APPROVED AS TO FORM:

ATTEST:

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

\_\_\_\_\_  
Shelley McElhannon,  
City Secretary



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

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**SUBJECT:** Minutes for the City Council meeting held on January 8, 2019.

**AGENDA DATE OF:** February 12, 2019    **DATE SUBMITTED:** Feb 06, 2019

**SUBMITTED BY:** Cheryl Brown

**EXHIBITS:** [20190108\\_Minutes\\_Regular Council Meeting 1-08-19.pdf](#)

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<b>Expenditure Required:</b>	<b>Remaining Budget Balance in Account:</b>	<b>Amount Budgeted:</b>	<b>Account Number:</b>
\$0	\$0	\$0	N/A

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

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<b>Kerrville 2050 Item?</b>	No
<b>Key Priority Area</b>	N/A
<b>Guiding Principle</b>	N/A
<b>Action Item</b>	N/A

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**SUMMARY STATEMENT:**

Minutes for the City Council meeting held on January 8, 2019.

**RECOMMENDED ACTION:**

Approve minutes for the City Council meeting held on January 8, 2019 as presented.

CITY COUNCIL MINUTES  
REGULAR MEETING

KERRVILLE, TEXAS  
JANUARY 8, 2019

On January 8, 2019, at 6:00 p.m. the meeting was called to order by Mayor Bill Blackburn in the City Hall Council Chambers at 701 Main Street. The invocation was offered by Mr. Blackburn, followed by the Pledge of Allegiance also led by Mr. Blackburn.

COUNCILMEMBERS PRESENT:

Bill Blackburn	Mayor
Delayne Sigerman	Mayor Pro Tem
Vincent Voelkel	Councilmember
George Baroody	Councilmember
Judy Eychner	Councilmember

COUNCILMEMBERS ABSENT: None

CITY EXECUTIVE STAFF PRESENT:

Mark McDaniel	City Manager
E.A. Hoppe	Deputy City Manager
Mike Hayes	City Attorney
Cheryl Brown	Interim City Secretary
Amy Dozier	Director of Finance
Kim Meisner	Executive Director of General Operations
David Knight	Police Chief
Stuart Cunyus	Public Information Officer
Dannie Smith	Fire Chief
Drew Paxton	Executive Director of Development Services
Guillermo Garcia	Executive Director for Strategic Initiatives

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

**1. ANNOUNCEMENTS OF COMMUNITY INTEREST:**

1A. Items of Interest to the Community were made by Stuart Cunyus, and Mr. Baroody.

**2. VISITOR/CITIZENS FOURM:**

No one spoke.

**3. PRESENTATIONS:**

3A. Presentation of the Texas Police Chiefs Association's Certificate of Re-recognition. Max Westbrook, Jr., Program Director of the Texas Police Chiefs Association presented Chief David Knight with a Certificate of Re-recognition for continued use of best business practices.



#### **4. CONSENT AGENDA:**

Ms. Sigerman moved to approve items on the Consent Agenda. Ms. Eychner seconded, and the motion passed 5-0.

4A. District Office Lease Contract for City property located at 715 Water Street with Representative Andrew Murr for use as a local office.

4B. Minutes for the regular City Council meeting held on December 11, 2018.

4C. Resolution No. 02-2019 ordering that a General Election be held on May 4, 2019, for the election of two City Councilmembers; appointing election Judges; adopting an Election Counting System; establishing a Central Counting Station; appointing a Central Counting Station Manager; appointing a Tabulation Supervisor; appointing the Central Counting Station Presiding Judge; and authorizing the early processing of ballots. (Resolucion 02-2019, que decreta que las elecciones generales se lleven a cabo el 4 de Mayo del 2019 para elegir dos Concejales Municipales; nombrar a los Jueces Electorales; adoptar un sistema electronico de conteo de votos; establecer una Estacion Central de Conteo; nombrar a un Administrador(a) de la Stacion Central de Conteo; nombrar a un Supervisor(a) de Tabulacion; designar al Juez Presidente de la Estacion Central de Conteo; y autorizar el Procesamiento Temprano de los Votos Electorales)

#### **END OF CONSENT AGENDA.**

#### **5. EXECUTIVE SESSION I:**

Mr. Baroody moved to go into executive session under Section 551.087 (Business Prospect/Economic Development) of the Texas Government Code; Mr. Blackburn added Section 551.071 (consultation with attorney). Ms. Eychner seconded, and the motion passed 5-0.

The Council adjourned regular open session at 6:15 p.m.

#### **551.087 (Business Prospect/Economic Development)**

5A. Hotel Conference Center

Council left executive session at 6:43 p.m. and returned to open session at 6:43 p.m. Mr. Blackburn announced that no action was taken in executive session.

Mr. Blackburn requested that agenda item 7D be moved up on the agenda.

7D. Resolution No. 01-2019 establishing the City's support of legislation during the 86<sup>th</sup> session of the Texas Legislature to finance a hotel conference center.

Mr. Baroody moved to approve Resolution No. 01-2019. Ms. Eychner seconded, and the motion passed 5-0.

**6. PUBLIC HEARING AND ORDINANCES, FIRST READING:**

6A. Ordinance No. 2019-02 amending the City's "Zoning Code" by changing the Zoning District for an approximate 6.790 acres, consisting of Lots 1 and 2, H.E.B. Addition and portions of Lots 300-302 and Lots 348-349, Block 48 of the Schreiner 2<sup>nd</sup> Addition; both Subdivisions within the City of Kerrville, Kerr County, Texas, and more commonly known as the property located at 300 Main Street (State Hwy. 27); by removing the property from 11-C Zoning District and placing it within the Central Business Zoning District (CBD); containing a cumulative clause; containing a savings and severability clause; providing for a maximum penalty or fine of Two Thousand Dollars (\$2000.00); ordering publication, and providing other matters relating to the subject.

Mr. Blackburn opened the public hearing at 6:49 p.m.

Mr. Blackburn closed the public hearing at 6:52 p.m.

Mr. Baroody moved to approve Ordinance No. 2019-02 on first reading. Mr. Voelkel seconded, and the motion passed 5-0.

6B. Ordinance No. 2019-03 abandoning, vacating, and closing two public rights-of-way consisting of a portion of Hays Street as it extends between the northwest right-of-way of Main Street (State Highway 27) and the southwest right-of-way of Jefferson Street and consisting of approximately 0.5792 acres; and a portion of the 16 foot public alley located between Hays Street and Quinlan Street, adjacent to Lots 1 and 2, Block 2 of the H.E.B. Addition and between Lots 315, 316, and the northwest 43 feet of Lot 333, and the southwest 13 feet of Lot 334, Block 50, and consisting of approximately 0.726 acres; said rights-of-way are out of the Chas Schreiner 2<sup>nd</sup> Addition to the City of Kerrville, a Subdivision of Kerr County, Texas, according to the Plat recorded in Volume K, Pages 107 of the Deed Records of Kerr County, Texas; making a finding that neither the street nor the alley is required for present or future public use; providing for the terms and conditions of abandonment, vacation, and closure; providing for the furnishing of a certified copy of the Ordinance for recording in the Official Public Records of Kerr County, Texas as a Quitclaim Deed; authorizing the City Manager to take all necessary action to effectuate the abandonment, vacation, closure, and quitclaim, and providing for a public hearing.

Mr. Blackburn opened the public hearing at 6:53 p.m.

Mr. Blackburn closed the public hearing at 7:19 p.m.

Ms. Eychner moved to approve Ordinance No. 2019-03 on first reading. Ms. Sigerman seconded, and the motion passed 5-0.

6C. Ordinance No. 2019-01 creating a "Planned Development District" for Professional Office, Retail Trade I, and Warehousing and Distribution Uses on an approximately 4.27 acre tract of land, out of the Patrick Fleming Survey No. 666, Abstract 145, within the City of Kerrville, Kerr County, Texas, more commonly known as 318 Leslie Drive;

adopting a concept plan and conditions related to the development of said district; containing a cumulative clause; containing a savings and severability clause; establishing a penalty or fine not to exceed \$2,000.00 for each day of violation of any provision hereof; ordering publication; and providing other matters relating to the subject.

Mr. Blackburn opened the public hearing at 7:20 p.m.

Mr. Blackburn closed the public hearing at 7:27 p.m.

Ms. Sigerman moved to approve Ordinance No. 2019-01 on first reading. Ms. Eychner seconded, and the motion passed 5-0.

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

7A. Project Funding Agreement between the City of Kerrville, Texas, Economic Improvement Corporation; the City of Kerrville, Texas; and Schreiner University; for the development and construction of an extension to the City's River Trail to connect with Schreiner University's campus.

Ms. Eychner made a motion to approve the Project Funding Agreement for the development and construction of an extension to the City's River Trail to connect with Schreiner University's campus. Ms. Sigerman seconded, and the motion passed 5-0.

7B. Authorize execution of a construction contract for the Legion Lift Station with Keystone Construction in the amount of \$5,493,663.00.

Ms. Sigerman moved to authorize the execution of a construction contract for the Legion Lift Station with Keystone Construction in the amount of \$5,493,663.00. Ms. Eychner seconded, and the motion passed 5-0.

7C. Authorize execution of professional services agreement with LNV Engineering to develop a Drainage Master Plan in the amount of \$204,348.00.

Mr. Baroody moved to authorize execution of a professional services agreement with LNV Engineering to develop a Drainage Master Plan with the addition of an additional "hot spot" located on Culbertson between Harper and Lewis. Mr. Voelkel seconded, and the motion passed 5-0.

## **8. INFORMATION & DISCUSSION:**

8A. Freedom's Path regarding the Kerrville VA Medical Center Phase II.  
Mr. Craig Taylor with Solutions for Veterans, Inc. presented the item.

8B. Financial update for the month ended November 30, 2018.  
Ms. Dozier gave the financial update.

**9. BOARD APPOINTMENTS:**

9A. Appointment to the Kerrville Charter Review Commission.

The appointments were as follows:

Mr. Voelkel moved to appoint Peggy McKay, Mr. Baroody seconded, and the motion passed 5-0.

Ms. Sigerman moved to appoint Brenda Craig, Ms. Eychner seconded, and the motion passed 5-0.

Mr. Baroody moved to appoint Mario Garcia. Mr. Voelkel seconded, and the motion failed 2-3, with Mr. Baroody and Mr. Voelkel voting in favor and Mr. Blackburn, Ms. Eychner, and Ms. Sigerman voting against.

Mr. Blackburn moved to appoint Karen Yanez. Ms. Eychner seconded, and the motion passed 5-0.

Ms. Eychner moved to appoint Michael Sigerman. Mr. Blackburn seconded, and the motion passed 3-2, with Mr. Blackburn, Ms. Eychner, and Ms. Sigerman voting in favor, and Mr. Voelkel and Mr. Baroody voting against.

Mr. Voelkel moved to appoint Allan Cone. Mr. Baroody seconded, and the motion failed 2-3, with Mr. Voelkel and Mr. Baroody voting in favor, and Mr. Blackburn, Ms. Eychner, and Ms. Sigerman voting against.

Mr. Blackburn moved to appoint Stephen Fine. Ms. Eychner seconded, and the motion passed 5-0.

Ms. Eychner moved to appoint John Harrison. Ms. Sigerman seconded, and the motion passed 3-2, with Mr. Blackburn, Ms. Eychner, and Ms. Sigerman voting in favor, and Mr. Voelkel and Mr. Baroody voting against.

Ms. Sigerman moved to appoint Gregory Richards. Ms. Eychner seconded, and the motion passed 5-0.

9B. Appointment to the Animal Services Advisory Board.

Mr. Voelkel moved to nominate Karen Guerriero. Mr. Blackburn seconded, and the motion passed 4-1, with Mr. Voelkel, Mr. Baroody, Mr. Blackburn, and Ms. Sigerman voting in favor, and Ms. Eychner voting against.

9C. Appointments to the Recovery Community Coalition.

Ms. Eychner moved to reappoint Leigh Ann Fitzpatrick, Laura Godwin, Sabine Kuenzel, and Dale Trees. Mr. Voelkel seconded, and the motion passed 5-0.

Ms. Eychner moved to appoint Marissa Dodson. Mr. Voelkel seconded, and the motion passed 5-0.

Ms. Eychner moved to appoint Ross Robinson. Mr. Voelkel seconded, and the motion passed 5-0.

9D. Appointments to the Senior Services Advisory Committee.

Mr. Blackburn moved to appoint the first thirteen names on the application list, and to come back at the next meeting to amend the Ordinance to include the other three applicants. Mr. Baroody seconded, and the motion passed 5-0.

The following persons were appointed:

Lynda Ables,  
Misty Blevins,  
Cynthia Burgin,  
Karen Burkett,  
Susan Eklund,  
Margie Jetton,  
Waverly Jones,  
Christine Klima,  
Sylvia Lewis,  
Robert Ogle,  
Nicholas Oprea,  
Diana Paul, and  
Rebecca Piszczor.

9E. Appointments to the Planning and Zoning Commission.

Ms. Sigerman moved to reappoint Rustin Zuber, Garrett Harmon, and Bob Waller as regular members; and Bill Morgan as an alternate. Ms. Eychner seconded, and the motion passed 5-0.

**10. ITEMS FOR FUTURE AGENDAS:**

- Zoning Board of Adjustment appointments.
- Getting the agenda packet details to the councilmembers sooner than Friday.

**11. EXECUTIVE SESSION:** No second executive session was held.

**12. ACTION ON ITEMS DISCUSSED IN EXECUTIVE SESSION, IF ANY**

**ADJOURNMENT.**

The meeting was adjourned at 8:54 p.m.



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

ATTEST:

\_\_\_\_\_  
Bill Blackburn, Mayor

\_\_\_\_\_  
Cheryl Brown, Interim City Secretary



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

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**SUBJECT:** Minutes for the City Council meeting held on January 22, 2019.

**AGENDA DATE OF:** February 12, 2019    **DATE SUBMITTED:** Feb 05, 2019

**SUBMITTED BY:** Shelley McElhannon

**EXHIBITS:** [20190122\\_Minutes\\_Regular Council Meeting 1-22-19.pdf](#)

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<b>Expenditure Required:</b>	<b>Remaining Budget Balance in Account:</b>	<b>Amount Budgeted:</b>	<b>Account Number:</b>
\$0	\$0	\$0	N/A

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

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<b>Kerrville 2050 Item?</b>	No
<b>Key Priority Area</b>	N/A
<b>Guiding Principle</b>	N/A
<b>Action Item</b>	N/A

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**SUMMARY STATEMENT:**

Minutes from the City Council meeting on 1/22/19.

**RECOMMENDED ACTION:**

Approve the January 22, 2019 City Council regular meeting minutes.

CITY COUNCIL MINUTES  
REGULAR MEETING

KERRVILLE, TEXAS  
JANUARY 22, 2019

On January 22, 2019, at 6:00 p.m. the meeting was called to order by Mayor Bill Blackburn in the City Hall Council Chambers at 701 Main Street. The invocation was offered by Mr. Mario Garcia, followed by the Pledge of Allegiance led by the Kerrville Youth Advisory Committee.

**COUNCILMEMBERS PRESENT:**

Bill Blackburn	Mayor
Delayne Sigerman	Mayor Pro Tem
Vincent Voelkel	Councilmember
George Baroody	Councilmember
Judy Eychner	Councilmember

**COUNCILMEMBERS ABSENT:** None

**CITY EXECUTIVE STAFF PRESENT:**

Mark McDaniel	City Manager
E.A. Hoppe	Deputy City Manager
Mike Hayes	City Attorney
Cheryl Brown	Interim City Secretary
Amy Dozier	Director of Finance
Kim Meisner	Executive Director of General Operations
David Knight	Police Chief
Stuart Cunyus	Public Information Officer
Dannie Smith	Fire Chief
Drew Paxton	Executive Director of Development Services
Guillermo Garcia	Executive Director for Strategic Initiatives
Sherry Mosier	Manager for Strategic Initiatives

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

**1. ANNOUNCEMENTS OF COMMUNITY INTEREST:**

1A. Items of Interest to the Community were made by Stuart Cunyus, Ms. Eychner, and Mr. Baroody.

**2. VISITOR/CITIZENS FOURM:**

2A. Charlie McIlvain, President and CEO of the Kerrville Visitor's Bureau, presented the Bouncy Horse Competition award/trophy to Mr. Voelkel.

**3. PRESENTATIONS:**

3A. Chief David Knight presented the Officer of the Year Award to Officer Tyler Cottonware.

3B. City Manager Mark McDaniel introduced new staff member Sherry Mosier, the Manager for Strategic Initiatives.

**4. CONSENT AGENDA:**

Ms. Sigerman moved to approve items on the Consent Agenda. Mr. Baroody requested to pull both items 4A. and 4B.

4A. Authorize execution of professional services agreement with Hewitt Engineering Inc. for the River Trail extension to Schreiner University in the amount of \$102,980. Mr. Voelkel recommended using local survey companies, but otherwise he has no problems with it.

Ms. Eychner moved to approve consent item 4A. Mr. Voelkel seconded, and the motion passed 5-0.

4B. Minutes for the regular City Council meeting held on January 08, 2019. Mr. Baroody pointed out errors in the January 08, 2019 minutes, items 5A, 9A, and 12.

Mr. Baroody moved to table the minutes. Ms. Eychner seconded, and the motion passed to table the minutes 5-0.

**END OF CONSENT AGENDA.**

**8. INFORMATION AND DISCUSSION:**

Mayor Blackburn advised the Kerrville Youth Advisory Committee (KYAC) would provide their report earlier than listed on the Agenda.

8B. The KYAC is required by its Bylaws to provide City Council with a minimum of two reports regarding its activities. The KYAC approved at its meeting held Thursday, December 13, 2018, to provide City Council with three reports; one report on each of the following dates: January 22, 2018, March 26, 2019, and May 28, 2019. KYAC's report included information regarding goals and previous and upcoming activities.

**5. PUBLIC HEARING AND ORDINANCES, FIRST READING:**

5A. Ordinance 2019-05, amending Ordinance 2018-32 by adding three (3) positions to the number of members on the Senior Services Advisory Committee; appointment of a Chair and Vice-Chair; and setting term expirations for the current thirteen (13) members.

Mr. Blackburn announced that the Chair is Rebecca Piszczor; and adding Theresa Standage, Carla Webber, and Mike Wilson to the membership.

Mr. Blackburn opened the public hearing at 6:35 p.m.

Mr. Blackburn closed the public hearing at 6:37 p.m.

Mr. Baroody moved to pass the Ordinance 2019-05 on first reading with one additional date Section 291-A2 to make membership show sixteen (16) full members. Ms. Eychner seconded, and the motion passed 5-0.

**6. PUBLIC HEARING AND ORDINANCES, SECOND READING:**

6A. Ordinance No. 2019-03 abandoning, vacating, and closing two public rights-of-way consisting of a portion of Hays Street as it extends between the northwest right-of-way of Main Street (State Highway 27) and the southwest right-of-way of Jefferson Street and consisting of approximately 0.5792 acres; and a portion of the 16 foot public alley located between Hays Street and Quinlan Street, adjacent to Lots 1 and 2, Block 2 of the H.E.B. Addition and between Lots 315, 316, and the northwest 43 feet of Lot 333, and the southwest 13 feet of Lot 334, Block 50, and consisting of approximately 0.726 acres; said rights-of-way are out of the Chas Schreiner 2<sup>nd</sup> Addition to the City of Kerrville, a Subdivision of Kerr County, Texas, according to the Plat recorded in Volume K, Pages 107 of the Deed Records of Kerr County, Texas; making a finding that neither the street nor the alley is required for present or future public use; providing for the terms and conditions of abandonment, vacation, and closure; providing for the furnishing of a certified copy of the Ordinance for recording in the Official Public Records of Kerr County, Texas as a Quitclaim Deed; authorizing the City Manager to take all necessary action to effectuate the abandonment, vacation, closure, and quitclaim, and providing for a public hearing.

Mr. Blackburn opened the public hearing at 6:40 p.m.

Mr. Blackburn closed the public hearing at 6:59 p.m.

H.E.B. employee Ben Scott and Traffic Impact Study Engineer Boeak Tehrany provided information and answers to Council questions.

Mr. Baroody moved to table approval of Ordinance 2019-03. Motion died for lack of second.

Ms. Eychner moved to approve Ordinance 2019-03 on second reading. Ms. Sigerman seconded, and the motion passed 4-1.

6B. Ordinance 2019-02 amending the City's "Zoning Code" by changing the zoning district for an approximate 6.790 acres, consisting of Lots 1 and 2, H.E.B. Addition and portions of Lots 300-302 and Lots 348-349, Block 48 of the Schreiner 2nd Addition, both Subdivisions within the City of Kerrville, Kerr County, Texas; and more commonly known as the property located at 300 Main Street (State Hwy. 27); by removing the property from the 11-C Zoning District and placing it within the Central Business Zoning District (CBD); containing a cumulative clause; containing a savings and severability clause; providing for a maximum penalty or fine of Two Thousand Dollars (\$2000.00); ordering publication; and providing other matters relating to the subject.

Mr. Blackburn opened the public hearing at 7:05 p.m.

Mr. Blackburn closed the public hearing at 7:06 p.m.

Mr. Baroody moved to approve Ordinance 2019-02 on second reading. Ms. Eychner seconded, and the motion passed 5-0.



6C. Ordinance No. 2019-01 creating a “Planned Development District” for Professional Office, Retail Trade I, and Warehousing and Distribution Uses on an approximately 4.27 acre tract of land, out of the Patrick Fleming Survey No. 666, Abstract 145, within the City of Kerrville, Kerr County, Texas, more commonly known as 318 Leslie Drive; adopting a concept plan and conditions related to the development of said district; containing a cumulative clause; containing a savings and severability clause; establishing a penalty or fine not to exceed \$2,000.00 for each day of violation of any provision hereof; ordering publication; and providing other matters relating to the subject.

Mr. Blackburn opened the public hearing at 7:07 p.m.

Mr. Blackburn closed the public hearing at 7:19 p.m.

Owner of property Paco Mondragon described outside building materials and design.

Ms. Eychner moved to approve Ordinance 2019-01 on second reading. Ms. Sigerman seconded, and the motion passed 5-0.

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

7A. Award bid to J3 for \$285,000 for removal of damaged aerial pipe bridge located along the Guadalupe River near Loop 534.

Mr. Blackburn opened the public hearing at 7:20 p.m.

Mr. Blackburn closed the public hearing at 7:27 p.m.

Mr. Baroody moved to approve the J3’s base proposal and alternate proposal. Ms. Eychner seconded, and the motion passed 5-0.

#### **8. INFORMATION & DISCUSSION:**

8A. Financial update for the month ended December 31, 2018. Ms. Dozier gave the financial update.

8C. Discussion of possible Music Festival. Mr. Voelkel reviewed ideas and provided an update on the logistics of the Music Festival.

#### **9. BOARD APPOINTMENTS:**

9A. Appointment to the Recovery Community Coalition.

Ms. Eychner moved to appoint Randy Beano to the Recovery Community Coalition to fill the MHDD Center requirement. Mr. Voelkel seconded, and the motion passed 5-0.

9B. Appointment to the Kerrville Youth Advisory Committee.

Ms. Eychner moved to appoint Daphne Dozier as a permanent member of KYAC. Mr. Voelkel seconded, and the motion passed 5-0.

**10. CITY MANAGER'S REPORT:**

Mr. McDaniel highlighted several items and provided updates on the Project's List.

**11. ITEMS FOR FUTURE AGENDAS:**

- Have Council consider certifying the minutes transcripts from Granicus as being certified minutes.
- Consider having the City Manager's report sheet added to the packet so public can see up front what Council will talk about.
- Consider an advisory group of young professionals, the 30-50 year-old range.

**12. EXECUTIVE SESSION:**

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

Mr. Baroody moved to go into executive session under Section 551.071 (consultation with attorney). Ms. Eychner seconded, and the motion passed 5-0.

Council adjourned regular open session at 7:58 p.m.

12.A. Attorney briefing per Section 551.071, Texas Government Code-Lotus Peer Recovery LLC, Kacey Paige Williams, Christian Jane Rivers, and Madelyn Rebecca Clark v. City of Kerrville, Texas (Cause No. 5:18-CV-00925; in the United States District Court for the Western District of Texas, San Antonio Division.

**13. ACTION ON ITEMS DISCUSSED IN EXECUTIVE SESSION, IF ANY**

Council adjourned executive session at 8:28 p.m., and resumed regular open session at 8:29 p.m. Mr. Blackburn announced that Council took no action in executive session.

**ADJOURNMENT.**

The meeting was adjourned at 8:30 p.m.

APPROVED: \_\_\_\_\_  
Bill Blackburn, Mayor

ATTEST: \_\_\_\_\_  
Shelley McElhannon, City Secretary



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

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**SUBJECT:** Minutes for the City Council Workshop held on January 29, 2019.

**AGENDA DATE OF:** February 12, 2019    **DATE SUBMITTED:** Feb 06, 2019

**SUBMITTED BY:** Shelley McElhannon

**EXHIBITS:** [20190212\\_Minutes\\_CC Workshop 1-29-19.pdf](#)

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<b>Expenditure Required:</b>	<b>Remaining Budget Balance in Account:</b>	<b>Amount Budgeted:</b>	<b>Account Number:</b>
\$0	\$0	\$0	N/A

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

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<b>Kerrville 2050 Item?</b>	No
<b>Key Priority Area</b>	N/A
<b>Guiding Principle</b>	N/A
<b>Action Item</b>	N/A

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**SUMMARY STATEMENT:**

Minutes from the Council Workshop at Peterson Home Healthcare/Hospice on 1/29/19.

**RECOMMENDED ACTION:**

Approve minutes from the Council Workshop on 1-29-19.

## CITY COUNCIL MINUTES

KERRVILLE, TEXAS  
JANUARY 29, 2019

On January 29, 2019, the Kerrville City Council workshop was called to order at 10:05 a.m. by Mayor Blackburn in the Peterson Home Healthcare/Hospice Building, Conference Room 2 at 250 Cully Drive.

### COUNCILMEMBERS PRESENT:

Bill Blackburn	Mayor
Delayne Sigerman	Mayor Pro Tem
Vincent C. Voelkel	Councilmember
George Baroody	Councilmember
Judy Eychner	Councilmember

COUNCILMEMBER ABSENT: None

### CITY STAFF PRESENT:

Mark McDaniel	City Manager
E.A. Hoppe	Deputy City Manager
Mike Hayes	City Attorney
Amy Dozier	Chief Financial Officer
Kim Meisner	Executive Director for General Operations
Sherry Mosier	Manager of Strategic Initiatives
Drew Paxton	Executive Director for Development Services
Dannie Smith	Fire Chief
Stuart Cunyus	Public Information Officer
Shelley McElhannon	City Secretary

### OPENING REMARKS:

Mayor Blackburn provided an overview of the agenda for the workshop. Councilmember Voelkel requested to retrieve the *Priorities* listed from the 2018 City Council Retreat. It was agreed that everyone would be provided these notes.

### **1. DISCUSSION: COUNCIL PROCEDURAL RULES FOR MEETINGS**

- Process for Councilmembers to place an item on the agenda  
Mayor Blackburn suggested a new process in order for Councilmembers to place an item on the agenda. Councilmembers were not in agreement with this suggested new process.
- Timeline for agenda packet/posting  
The Council Agenda Packet will be sent to Council the Friday before the Council meeting. Pertinent information or drafts for significant agenda items will be sent to Council in advance.

- Use of Granicus closed caption transcripts for certified minutes  
Closed captioned transcripts are not accurate enough for certified minutes. Mayor Blackburn proposed this issue be revisited if needed, since personnel changes should rectify concerns about the accuracy of minutes.
- Audio recording of executive sessions  
There was disagreement on the issue of audio recordings used in executive sessions. Mayor Blackburn advised Councilmember Voelkel to request that this issue be placed on a Regular Council Meeting, for a vote.

## 2. **DISCUSSION: COUNCIL GOALS AND PRIORITIES FOR 2019**

After an exercise to identify and rank priorities for 2019, the following were developed as priorities.

- **HOUSING:**
  - 534 Property
  - Creating a Housing Agency/Dept
  - Attainable Housing
  - Develop a Housing Plan
  - Task Force
- **RIVER EVENTS:**
  - Music Fest
  - Concert Series
  - Christmas in the Park
  - Incentive with HOT
  - Electric Dinner Barges
  - Zip Line
  - Food Trucks
  - Access (pedestrian)
  - Bridge
  - Tivy Homecoming Activity
- **DOWNTOWN:**
  - Lighting (Christmas and more)
  - Advertising (Event Marketing and Downtown Star)
  - Events (Street Closure and Use of Parking Lots)
  - HDBA Partnership
  - TIRZ
  - Main Street 2.0 (Attracting Businesses that Stay Downtown)
  - DAC DIST
  - KUTS
  - Cailloux Recognition (Councilmember Eychner to take back to Council)
  - Arcadia
  - Restaurants



- Hotel
- AC Schreiner Mansion
- Residential
- Existing Garage Improvements
  
- CONSERVATION AND WATER RESOURCES
  - Long-Range Water Plan
  - ASR 3
  - “One Water” – including Drainage Standard
  - Native Landscaping
  - Cedar Removal

**ADJOURNMENT.** The meeting adjourned at 11:50 a.m.

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

\_\_\_\_\_  
Bill Blackburn, Mayor

ATTEST:

\_\_\_\_\_  
Shelley McElhannon, City Secretary



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

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**SUBJECT:** Resolution 03-2019 Granting a Conditional Use Permit for an Approximate 1.166 Acres, Being a Portion of Lot 1, H.E.B. Addition and Portions of Lots 300-302 and Lots 348-349, Block 48 of the Schreiner 2nd Addition, Subdivisions Within the City of Kerrville, Kerr County, Texas; and More Commonly Known as the Property Located at 300 Main Street (State Hwy. 27); Said Property is Located Within the Central Business District "CBD" by Permitting Said Property to be Used for Gasoline Station (Fuel Sales) with Car Wash and Convenience Store; and Making Said Permit Subject to Certain Conditions and Restrictions Contained Herein.

**AGENDA DATE OF:** February 12, 2019    **DATE SUBMITTED:** Feb 04, 2019

**SUBMITTED BY:** Rebecca Pacini

**EXHIBITS:** [20190212\\_Resolution\\_03-2019\\_CUP HEB 300 Main.pdf](#)  
[20190212\\_ConceptPlan\\_2018-095\\_CUPHEB.pdf](#)  
[20190212\\_LocationMap\\_2018-095\\_CUPHEB.pdf](#)

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<b>Expenditure Required:</b>	<b>Remaining Budget Balance in Account:</b>	<b>Amount Budgeted:</b>	<b>Account Number:</b>
\$0	\$0	\$0	N/A

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

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<b>Kerrville 2050 Item?</b>	Yes
<b>Key Priority Area</b>	D - Downtown Revitalization
<b>Guiding Principle</b>	D9. Other (Plug in where appropriate)
<b>Action Item</b>	N/A

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**SUMMARY STATEMENT:**

Public hearing, consideration, and action to recommend a resolution to allow a Conditional Use Permit for Gasoline Station (Fuel Sales) with Car Wash and Convenience Store on approximately 1.166 acres of land consisting of all of Lots 300, 301, 302, 348, and 349, Block 48, of the Schreiner 2nd Addition, and a portion of Lot 1, Block 1, of the H.E.B. Addition, and more commonly known as 212, 220, and 300 Main Street and 217 Jefferson

Street. (File No. 2018-095)

Staff Analysis.

Consistency with the Kerrville 2050 Comprehensive Plan: The request is consistent with the Kerrville 2050 Comprehensive Plan. The subject property is located within Strategic Catalyst Area 1 which comprises the downtown core and central business district. "There should be a strong focus on redevelopment and catalyzing a renewed public interest in the area."

#### Adjacent Zoning and Land Uses

##### Subject Property

Current Zoning: Central Business District "CBD"

Existing Land Uses: Gas Station, parking lot, and barber shop

##### Direction: Northwest

Current Zoning: 11-C

Existing Land Uses: Vacant retail structures and Retail

##### Direction: Northeast

Current Zoning: 11-C

Existing Land Uses: Single Family Detached Dwellings, Professional Office, Parking Lot, and Personal Services

##### Direction: Southeast

Current Zoning: Central Business District "CBD"

Existing Land Uses: Grocery store and parking lot

##### Direction: Southwest

Current Zoning: 11-C

Existing Land Uses: Vehicle Sales/Services New and Used

The uses which are permitted as a matter of right or permitted upon issuance of a conditional use permit in the CBD zoning districts are indicated by the letters "P" and "C," respectively, in the following table:

## CBD DISTRICT PERMITTED & CONDITIONAL USE TABLE

Printing	P
Quick Printing	P
New Car Dealers	C
Used Car Dealers	C
Automotive Parts, Accessories, and Tire Stores (Retail Only)	P
Furniture and Home Furnishings Stores	P
Electronics and Appliance Stores	P
Nursery, Garden Stores	P
Hardware Stores	P
Food and Beverage Stores	P
Health and Personal Care Stores	P
Gasoline Stations (w/Dev. Stnds.)	C
Gasoline Stations with Convenience Stores (w/Dev. Stnds.)	C
Clothing and Clothing Accessories Stores	P
Jewelry , Luggage and Leather Goods Store	P
Sporting Goods, Hobby, Book, and Music Stores	P
General Merchandise Stores	P
Miscellaneous Store Retailers	P
Used Merchandise Stores (w/o Drop-off)	P
Non-store Retailers	C
Scenic and Sightseeing Transportation	P
Postal Service	P
Couriers and Messengers (Retail and Drop- off Only)	P
Publishing Industries (except Internet)	C
Motion Picture and Sound Recording Industries	P
Motion Picture Theaters (except Drive-Ins)	P

Broadcasting (except Internet) - (w/o towers)	P
Telecommunications (w/o towers)	P
Data Processing, Hosting and Related Services	P
Other Information Services	P
Monetary Authorities-Central Bank	P
Credit Intermediation and Related Activities	P
All Other Non-depository Credit Intermediation (Pawnshops)	P
Securities, Commodity Contracts, and Other Financial Investments and Related Activities	P
Insurance Carriers and Related Activities	P
Agencies, Brokerages, and Other Insurance Related Activities	P
Funds, Trusts, and Other Financial Vehicles	P
Real Estate	P
Lessors of Nonresidential Buildings (except Mini-warehouses)	P
Passenger Car Rental and Leasing	C
Consumer Electronics and Appliances Rental	P
Formal Wear and Costume Rental	P
Video Tape and Disc Rental	P
Other Consumer Goods Rental	P
General Rental Centers	C
Office Machinery and Equipment Rental and Leasing	P
Professional, Scientific, and Technical Services	P
Other Specialized Design Services	P
Veterinary Services (w/o kennels)	C
Management of Companies and Enterprises	P
Administrative and Support Services	P
Business Service Center	P
Elementary and Secondary Schools	P



Junior Colleges P

Colleges, Universities and Professional Schools P

Business Schools and Computer and Management Training P

Technical and Trade Schools (Classroom Only) P

Other Schools and Instruction (Classroom Only) P

Educational Support Services P

Ambulatory Health Care Services P

Offices of Physicians P

Offices of Dentists P

Offices of Other Health Practitioners P

Outpatient Care Centers P

Other Outpatient Care Centers P

Medical and Diagnostic Laboratories P

Home Health Care Services P

Other Ambulatory Health Care Services (except air ambulance) P

All Other Ambulatory Health Care Services P

Hospitals C

General Medical and Surgical Hospitals C

Psychiatric and Substance Abuse Hospitals C

Specialty (except Psychiatric and Substance Abuse) Hospitals C

Nursing Care Facilities P

Residential Mental Retardation, Mental Health and Substance Abuse Facilities C

Community Care Facilities for the Elderly (w/o Nursing Care) P

Other Residential Care Facilities P

Social Assistance (Office only) P

Individual and Family Services P

Community Food and Housing, and Emergency and Other Relief Services P

Vocational Rehabilitation Services P

Child Day Care Services (Includes Adult) P

Performing Arts, Spectator Sports, and Related Industries (except spectator sports) P

Performing Arts Companies P

Spectator Sports C

Promoters of Performing Arts, Sports, and Similar Events P

Agents and Managers for Artists, Athletes, Entertainers, and Other Public Figures P

Independent Artists, Writers, and Performers P

Museums, Historical Sites, and Similar Institutions (w/o Zoos) P

Amusement, Gambling, and Recreation Industries C

Hotel/Motel P

Bed-and-Breakfast Inns P

Food Services and Drinking Places P

Limited - Services Eating Places (w/Dev. Stnds.) P

Mobile Food Services P

Automotive Repair and Maintenance C

Automotive Oil Change and Lubrication Shops C

Car Washes C

Electronic and Precision Equipment Repair and Maintenance (Minor) P

Personal and Household Goods - Repair and Maintenance P

Personal Care Services P

Death Care Services P

Coin-Operated Laundries and Drycleaners P

Other Personal Services P

Pet Care Services (except veterinary/kennels) P

Parking Lots and Garages (by fee)P

Religious, Grant-making, Civic, Professional, and Similar Organizations P

Religious Organizations P

Grant-making and Giving Services P

Social Advocacy Organizations	P
Civic and Social Organizations	P
Business, Professional, Labor, Political, and Similar Organizations	P
Private Households	P
Executive, Legislative, and Other General Government Support	P
Justice, Public Order, and Safety Activities	P
Administration of Human Resource Programs	P
Administration of Environmental Quality Programs	P
Administration of Housing Programs, Urban Planning, and Community Development	P
Administration of Economic Programs	P
Space Research and Technology	C
National Security and International Affairs	C
Single Family	P
Duplex	P
Multi-Family	P
Upper Story Residential (Loft Apartments)	P
Accessory Uses & Structures	P
Parking Structure	C
Parking Lot, Stand Alone	C

Thoroughfare Plan: Main Street is designated as a Primary or Principal Arterial. Principal arterials typically serve as the highest traffic volume corridors, prioritizing longer-distance trips and providing connectivity between surrounding communities and major activity centers within Kerrville. A typical principal arterial is a four-lane divided roadway with a raised median, which can accommodate turning traffic at intersections and regulates access to the adjacent development. In rural and constrained areas or where there is a high volume of left-turning vehicles, the roadway may be undivided with a center turn lane at intersections. Hays Street, Jefferson Street, and Francisco Lemos, are not designated on the Thoroughfare Plan.

Staff recommends approval of the conditional use permit.

**RECOMMENDED ACTION:**

Approve Resolution No. 03-2019 as presented.

**CITY OF KERRVILLE, TEXAS  
RESOLUTION NO. 03-2019**

**A RESOLUTION GRANTING A CONDITIONAL USE PERMIT FOR AN APPROXIMATE 1.166 ACRES, BEING A PORTION OF LOT 1, BLOCK 1 OF THE H.E.B. ADDITION, LOTS 300-302 AND A PORTION OF LOTS 348-349, BLOCK 48 OF THE SCHREINER 2ND ADDITION, BOTH SUBDIVISIONS WITHIN THE CITY OF KERRVILLE, KERR COUNTY, TEXAS; AND MORE COMMONLY KNOWN AS THE PROPERTY LOCATED AT 300 MAIN STREET (STATE HWY. 27); SAID PROPERTY IS LOCATED WITHIN THE CENTRAL BUSINESS DISTRICT "CBD"; BY PERMITTING SAID PROPERTY TO BE USED FOR GASOLINE STATION (FUEL SALES) WITH CAR WASH AND CONVENIENCE STORE; AND MAKING SAID PERMIT SUBJECT TO CERTAIN CONDITIONS AND RESTRICTIONS CONTAINED HEREIN**

WHEREAS, the City Planning and Zoning Commission and the City Council of the City of Kerrville, Texas, in compliance with the City Charter and state law with reference to the granting of conditional use permits under Title 11, Chapter I of the Zoning Code of the City of Kerrville, Texas, and the official zoning map adopted thereby; having given the requisite notices by United States mail, publication, and otherwise; and after holding due public hearings and affording a full and fair hearing to all of the property owners generally and particularly to those interested persons situated in the affected area and in the vicinity thereof, City Council, finds that the health, safety, and general welfare will be best served by the granting of a Conditional Use Permit, subject to the special conditions and restrictions set out hereinafter on the property described in Section One hereof;

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

**SECTION ONE.** A Conditional Use Permit is granted to permit the property described below to be developed and used for gasoline station (fuel sales) with car wash and convenience store, pursuant to Article 11-1-13 of the Zoning Code of the City of Kerrville, Texas ("Zoning Code"), and such use is subject to the provisions of this Resolution and other applicable City ordinances and regulations:

**Being 1.166 acres situated in the city of Kerrville, Kerr County, Texas, being all of Lots 300-302 and a portion of Lots 348-349, Block 48 of the Chas Schreiner 2nd Addition to the City of Kerrville, a Subdivision recorded in Volume K, Page 1 of the Deed Records of Kerr County Texas; also being a portion of an closed alley by City of Kerrville Ordinance No. 92-34, recorded in Volume 670,**

Page 480; being also a portion of Lot 1, Block 1 of the H.E.B. Addition, a Subdivision recorded in Volume 6, Page 120 of the Deed Records of Kerr County Texas, said property being more particularly described and depicted as Exhibit A, as attached;

And hereafter referred to as "the Property."

**SECTION TWO.** In addition to the development and use regulations currently applicable to the Property, development and use of the Property is subject to the following additional conditions:

- A. **Development Site Plan:** The development and use of the Property must conform to the submission and approval of a development site plan, which must be consistent with the concept plan submitted as part of the Conditional Use Permit, and attached as **Exhibit B**.
- B. **Platting:** An administratively complete application for a subdivision plat of the Property must be submitted to the City for approval before the issuance of any building permit.
- C. **Other Zoning Regulations:** The regulations set forth in this Resolution are in addition to those set forth in the Zoning Code, as amended. In the event of any irreconcilable conflict between this Resolution and the regulations set forth in the Zoning Code, as amended, the provisions of this Resolution will prevail.

**SECTION THREE.** This Resolution and the Conditional Use Permit granted herein is subject to termination in accordance with Article 11-I-13 of the Zoning Code.

**PASSED AND APPROVED ON this the \_\_\_\_ day of \_\_\_\_\_, A.D., 2019.**

ATTEST:

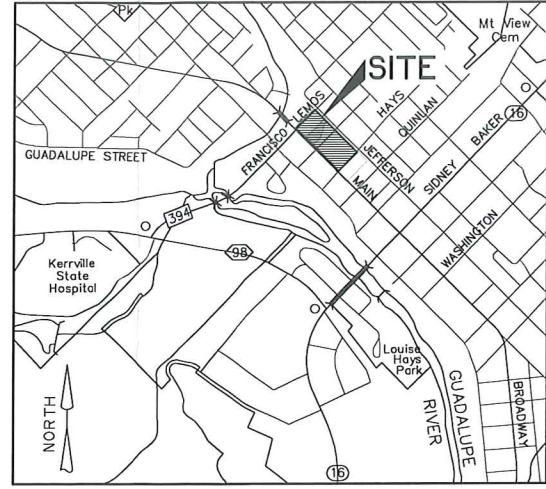
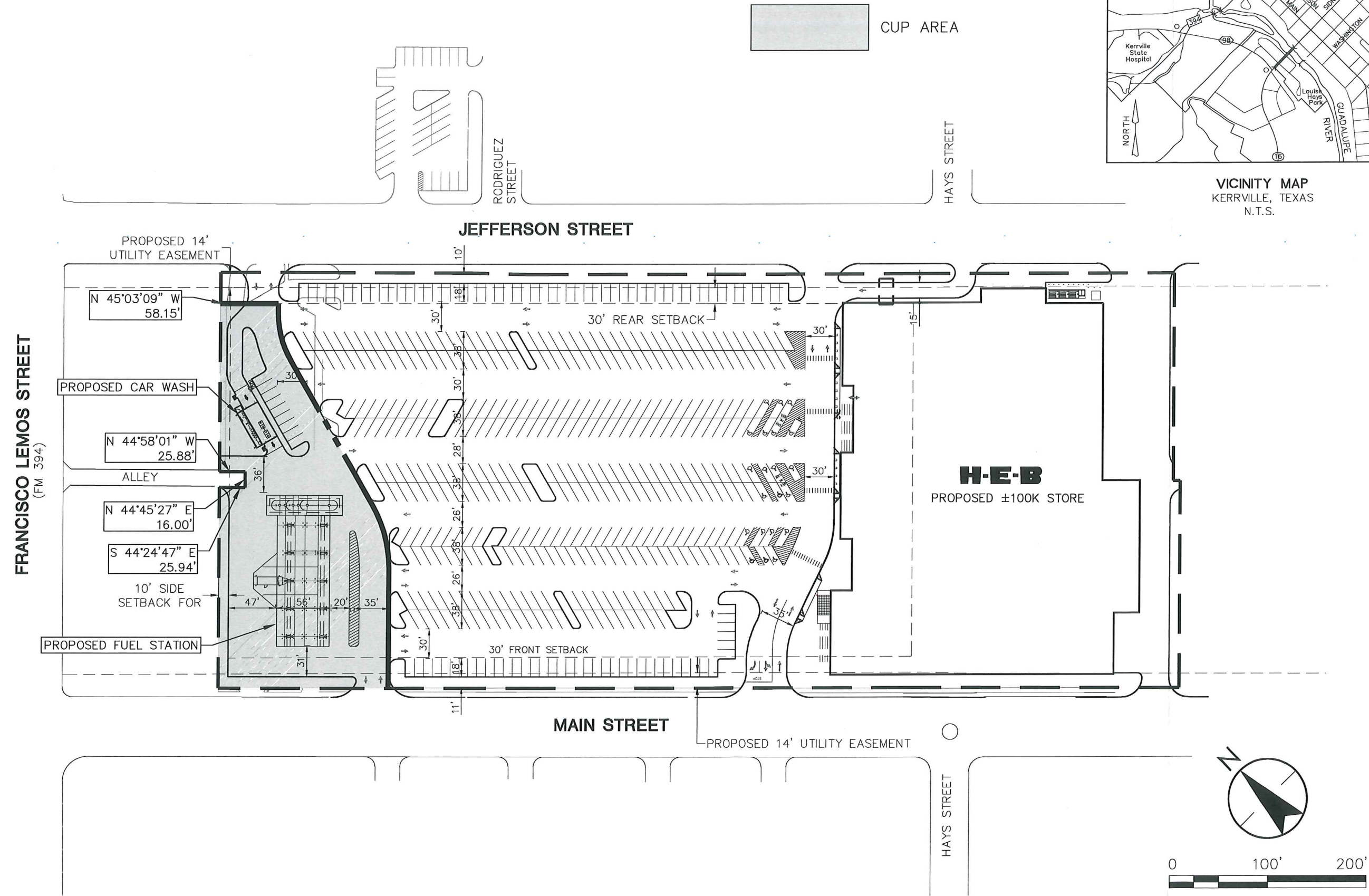
\_\_\_\_\_  
Bill Blackburn, Mayor

\_\_\_\_\_  
Shelley McElhannon, City Secretary

APPROVED AS TO FORM:

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





VICINITY MAP  
KERRVILLE, TEXAS  
N.T.S.



# Stantec

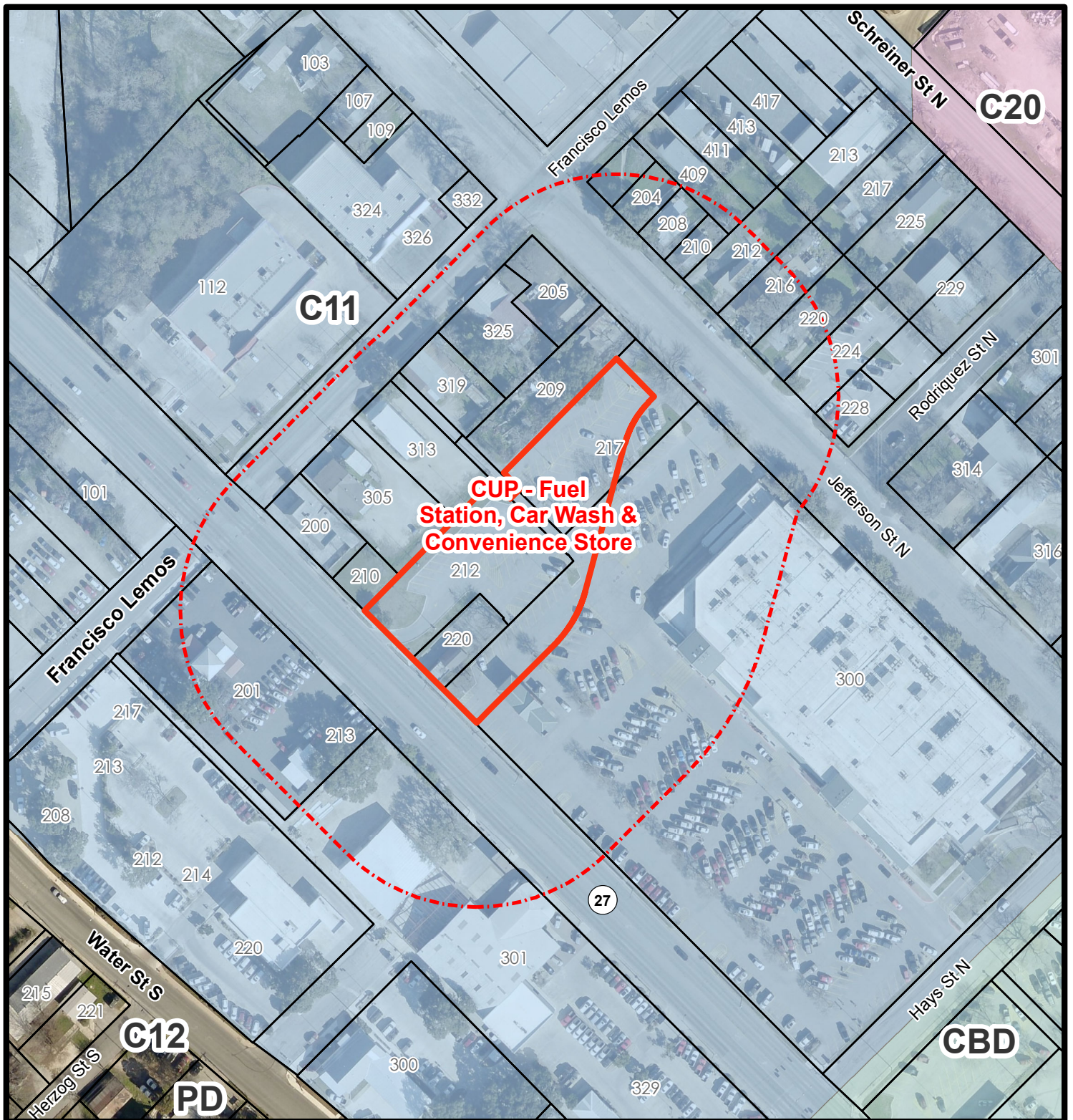
70 NE Loop 410 Suite 1100  
San Antonio, Texas 78216  
TBPE#6324 TBPLS#10194228  
[www.stantec.com](http://www.stantec.com)

KERVILLE #1

CONDITIONAL USE PERMIT EXHIBIT

11-30-2018





## Location Map

Case # 2018-095

Location:

212, 220, & 300 Main Street  
and 217 Jefferson Street

### Legend

200' Notification Area

Subject Properties

Current Zoning

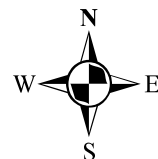
Requested Zoning

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TEXT

(TEXT)



0 65 130 260

Scale In Feet



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

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**SUBJECT:** Ordinance 2019-04 amending Chapter 58 "Health and Sanitation", Article II "Food Establishments" of the Code of Ordinances of the City of Kerrville, Texas, by repealing the existing Article II and adopting a new Article II, which will adopt the Texas Food Establishment Rules, adopt local amendments to said rules, and provide for the regulation of mobile food units (food trucks); containing a cumulative clause; containing a savings and severability clause; providing a penalty; and providing other matters relating to the subject.

**AGENDA DATE OF:** February 12, 2019    **DATE SUBMITTED:** Feb 01, 2019

**SUBMITTED BY:** Trina Sanchez

**EXHIBITS:** [20190212\\_Ordinance\\_2019-04 Food Truck.pdf](#)

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<b>Expenditure Required:</b>	<b>Remaining Budget Balance in Account:</b>	<b>Amount Budgeted:</b>	<b>Account Number:</b>
\$0	N/A	N/A	N/A

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

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<b>Kerrville 2050 Item?</b>	Yes
<b>Key Priority Area</b>	D - Downtown Revitalization
<b>Guiding Principle</b>	D6. Encourage and program Downtown public events and create more gathering places that promote and enhance Downtown as an arts, culture and music center.
<b>Action Item</b>	D4.15 - Enhance the viability of food trucks in the river parks

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**SUMMARY STATEMENT:**

The Department of State Health Services adopted the new Texas Food Establishment Rules (TFER) in October of 2015. Texas last updated its food code in 2006 which was based on the 2001 FDA Food Code. The new TFER is closely aligned with the 2013 FDA Model Food Code and brings Texas in line with current developments in food law, safety, cooking, storage and other regulatory issues. The City of Kerrville has had a food establishment ordinance for a number of years. The Code Enforcement and Environmental Health Department wishes to adopt the TFER to simplify the Food Establishment rules, with a few local amendments. The proposed ordinance will make it simple for staff and the

public since the regulations will be comprehensively handled through the Health and Safety Code; and rules that are either preempted or no longer applicable will be removed.

In addition to adoption of the 2015 TFER, this updates the Mobile Food Unit (MFU) section of the Code of Ordinances as it applies to the permitting and operation of food trucks within the Kerrville city limits. Staff met with several mobile food vendors throughout the ordinance drafting process. Comparisons were also made to several other cities across the state. The updated requirements include improved yearly permitting, inspection process, and requirements. The Food Service Advisory Board has also reviewed and recommends the ordinance for adoption.

One of the major updates to the Mobile Food Unit section is a variance process for the requirements of a Central Preparation Facility. According to the Texas Food Establishment Rules (TFER) § 228.221 (b) (1). a mobile food unit must operate from a licensed central preparation facility (CPF) or other approved retail food establishment. The Texas Department of State Health Services has a variance request that waives the requirement of a Central Preparation Facility. The updated mobile food unit section of the Code of Ordinances would follow the same provisions of the Texas Department of State Health Services. This waiver/variance would require the MFU operator to provide information about the servicing operations, the location the MFU operator will use to fill their potable water supply and the disposal of liquid waste. The servicing area must comply with all requirements identified in TFER 228.221 (c) (1) (A)-(E).

Another updated section includes requirements from the Fire Department and Fire Marshall's office. These requirements are in place for clear fire safety expectations until the final adoption/update of the building and fire codes. These fire safety requirements are similar to many cities across the state and are reflective of the Mobile Food Unit section in the 2018 Fire Code.

Along with the updated food ordinance, there will be an update to the fee schedule for the Mobile Food Units, lowering the overall fees for MFU's to obtain an annual permit. The overall goal of this update, as discussed with the participating vendors and Food Service Advisory Board, is to simplify the ordinance and increase the availability of the food truck permits.

**RECOMMENDED ACTION:**

Approve Ordinance No. 2019-04 as presented.





**CITY OF KERRVILLE, TEXAS  
ORDINANCE NO. 2019-04**

**AN ORDINANCE AMENDING CHAPTER 58 "HEALTH AND SANITATION", ARTICLE II "FOOD ESTABLISHMENTS" OF THE CODE OF ORDINANCES OF THE CITY OF KERRVILLE, TEXAS, BY REPEALING THE EXISTING ARTICLE II AND ADOPTING A NEW ARTICLE II, WHICH ADOPTS THE TEXAS FOOD ESTABLISHMENT RULES, ADOPTS LOCAL AMENDMENTS TO SAID RULES, AND PROVIDES FOR THE REGULATION OF MOBILE FOOD UNITS (FOOD TRUCKS); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING A PENALTY; AND PROVIDING OTHER MATTERS RELATING TO THE SUBJECT**

**WHEREAS**, City Council finds that the regulations of the City of Kerrville ("City") governing the sale of food within its corporate limits should be amended to establish updated standards for the preparation, handling, and serving of food; and

**WHEREAS**, in furtherance of the health, safety, and welfare of the public, the City Council finds it is in the best interest of the City to revise Chapter 58, Article II "Food Establishments" of the City Code of Ordinances, to include adopting the most recent edition of the *Texas Food Establishment Rules* (25 Texas Administrative Code, Chapter 228) ("TFER");

**WHEREAS**, City Council, pursuant to Ordinance 2011-14, previously adopted regulations applicable to the operation of a "mobile food establishment" within the City; and

**WHEREAS**, such regulations are found within Chapter 58, Article II, Section 52-36 of the City's Code of Ordinances; and

**WHEREAS**, the purpose of this article is to promote and strive for the sale of only sound, properly labeled food through adoption and enforcement of state food safety and sanitation standards, to promote education of food service workers with the underlying purpose of preventing foodborne illness and protecting the public health, and to establish standards for the issuance of a grading score which represents the compliance by food establishments with this ordinance and state law; and

**WHEREAS**, "mobile food establishments", now referred to by the state as "mobile food units" and more commonly known as "food trucks", continue to increase in number and popularity; and

**WHEREAS**, City Council now seeks to revise the City's regulations applicable to food handlers, the preparation of food, and food establishments, including food trucks; and

**WHEREAS**, the City's Food Advisory Board has considered the proposed revisions during several meetings and voted unanimously to approve the changes to the City's Code of Ordinances as contemplated herein; and

**WHEREAS**, City Council finds it to be in the public interest to amend Chapter 58 of the Code of Ordinances of the City of Kerrville, Texas, by to revise and replace Article II as follows;

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

**SECTION ONE.** Chapter 58 "Health and Sanitation", Article II "Food Establishments" of the Code of Ordinances of the City of Kerrville, Texas, is amended by repealing Sections 58-31, 58-32, 58-33, 58-34, 58-35, and 58-36 in their entirety, and adopting the following new sections to Article II as indicated by the language that is underlined (added) as follows:

**"Sec. 58-31. – Adoption of state rules.**

There is hereby adopted the "City of Kerrville Food and Food Handlers Code," which comprises the most recent version of the Texas Administrative Code, Title 25, Part 1, Chapter 228, Texas Food Establishment Rules (TFER). The City shall maintain a copy of the TFER in the office of the City Secretary and the Development Services Department.

**Sec. 58-32. – Local amendments.**

(a) The Food and Food Handlers Code adopted by Section 58-31 is amended by adding the following provisions to the Texas Administrative Code, Title 25, Part 1, Chapter 228:

1. 228.2(153) Code Enforcement/Health Officer -- the City's Code Enforcement and/or Health Officer(s), as designated by the City Manager and assigned to inspect food establishments, educate food establishments' employees and food employees on local and state statutory requirements for health and safety in food service, and enforce all local and state health and safety laws as permitted by law.



2. 228.2(154) Corn roaster -- a rotisserie type of oven mounted on a vehicle, trailer, or pushcart that is designed to cook whole ears of corn with the shucks in place.
3. 228.2(155) Grade card -- a card indicating a letter grade that is posted at the conclusion of an inspection which is based on the results from the inspection report form.
4. 228.2(156) Inspection report form -- the written report prepared by the City following an inspection which indicates a numeric score to determine compliance with this article as well as federal and state laws.
5. 228.2(157) Reconstituted -- Food created or prepared by recombining dehydrated food products with water or other liquids.
6. 228.2(158) Sanitation -- Effective bactericidal treatment process that provides enough accumulative heat or concentration of chemicals for enough time to reduce the bacterial count, including pathogens, to a safe level on tableware, utensils, and equipment.
7. 228.2(159) Route based vendor -- a restricted unit that travels from location to location selling items.
8. 228.2(160) Site based vendor -- a restricted or unrestricted unit that is stationary.
9. 228.2(161) Sticker -- a decal issued by the City that is numbered and has the month and year of the expiration date of the food permit.
10. 228.2(162) Supervisory personnel -- persons with supervisory training or management responsibilities, as well as persons in charge of food preparation or service.
11. 228.2(163) Vehicle -- every device in, upon, or by which any food is or may be transported, pushed, or drawn.
12. 228.33 (g) The certified food protection manager is considered in charge of the permitted establishment and is required to remain on-site during food preparation or where the business or operation is open to the public.
13. 228.186(o)(2)(F) in areas that are not used for food preparation or storage, a food establishment may, at the owner's or manager's discretion, allow patrons to bring dogs on the premises after the food establishment (1) has notified, in writing, the Code Enforcement/Health Officer that it intends

to allow such action; and (2) posts notice of same in all areas where dogs are allowed by the food establishment.

(b) The Food and Food Handlers Code adopted by Section 58-31 is revised by adopting in place of the identically numbered provisions in the Texas Administrative Code, Title 25, Part 1, Chapter 228, the following provisions:

1. 228.2(57) Food establishment -- Food establishment means an operation that stores, prepares, packages, serves, vends, or otherwise provides food for human consumption as follows:

a. A restaurant; retail food store; market; self-service food market; conveyance used to transport people; or institution, including any establishment where prepackaged food and food products are offered for sale to the ultimate consumer and intended for off premise consumption;

b. An establishment that relinquishes possession of food to a consumer directly or indirectly through a delivery service such as home delivery of grocery orders or restaurant takeout orders, or delivery service that is provided by common carriers;

c. Includes an element of the operation such as a transportation vehicle or a central preparation facility that supplies a vending location or satellite feeding location unless the vending or feeding location is permitted by the regulatory authority and an operation that is conducted in a mobile, stationary, temporary, or permanent facility or location; where consumption is on or off the premises;

d. Food establishment does not include a produce stand that only offers whole, uncut fresh fruits and vegetables, a food processing plant, a cottage food industry, an area where cottage food is prepared, sold, or offered for human consumption, a bed and breakfast, a food bank, or a private home that receives catered or home-delivered food.

2. 228.2(85) Mobile Food Unit ("MFU") -- a vehicle mounted, self-, or otherwise propelled, self-contained food service operation, designed to be readily movable, including catering trucks, trailers, push carts, and roadside vendors, and used to store, prepare, display, serve, or sell food. A Mobile Food Unit must completely retain their mobility at all times. A Mobile Food Unit does not include a stand or a booth. A roadside food vendor is classified as a MFU.

3. 228.2(116) Regulatory Authority -- the local, state, or federal enforcement body or authorized representative having jurisdiction over a food



establishment, in most instances being the City and its Code Enforcement/Health Officer. For purposes of this article and its regulations, Regulatory Authority, the City, and Code Enforcement/Health Officer will be used at times interchangeably.

4. 228.2(143) Temporary food establishment -- a food establishment that operates a stand or booth for a period of no more than fourteen (14) consecutive days in conjunction with a single event or celebration.

#### **Sec. 58-33. - Inspections.**

(a) The Code Enforcement/Health Officer, after proper identification, is authorized and must be permitted to enter any food establishment at any reasonable time to inspect for compliance with this article. The Code Enforcement/Health Officer is authorized to examine the records of the establishment to obtain information pertaining to food and supplies purchased, received, or used, or to persons employed.

(b) The Code Enforcement/Health Officer shall inspect each food establishment within the City at least once every six (6) months and shall make as many additional inspections as are necessary for the enforcement of this article. The Code Enforcement/Health Officer shall perform a follow-up inspection for any establishment scoring seventy-five (75) or below on an inspection within ten (10) days of the initial inspection. The food establishment shall pay a reinspection fee prior to the follow up inspection. Failure to pay the reinspection fee or a second score of seventy-five (75) or below on an inspection may result in an order to immediately cease all food service operations. Any person, firm, or food establishment proven to have failed to immediately cease all food service operations upon an order from the City may be deemed guilty of a misdemeanor and shall, upon conviction by a court of competent jurisdiction, be assessed fines or other punishment as provided by this article.

(c) If a food establishment is being inspected for the first time by a Code Enforcement/Health Officer, the following additional requirements apply:

1. For a food establishment located on or within permanent premises, a Code Enforcement/Health Officer will only conduct an inspection to obtain a food service permit after the food establishment has passed final inspections by the City's Building Official and its Fire Marshal, or designees.
2. For a food establishment operating as a Mobile Food Unit, a Code Enforcement/Health Officer will only conduct an inspection to obtain a MFU permit after any other inspections required for the specific type of



MFU being operated have been completed and approval has been given.

3. A food establishment located on or within permanent premises may not store any food defined as Time/temperature Control for Safety food ("TCS") at the premises until after the Code Enforcement/Health Officer has completed the inspection and issued a permit. If a food establishment is found to have TCS food on the premises at the time of an initial health inspection, the Code Enforcement/Health Officer may order the TCS food to be disposed of properly if it is found to have been kept in unsafe conditions.

(d) Whenever an inspection of a food establishment is conducted, the findings will be recorded in an inspection report and a copy of each inspection report with number score and corresponding letter grade will be provided to the food service manager or other person in charge of the establishment. The food service manager shall post the letter grade corresponding to the food establishment's inspection report on an inside wall or window near the main public entrance of the establishment in a location readily visible to customers. Such letter grade may not be defaced or removed by any person except the Code Enforcement/Health Officer. Any person, firm, or corporation who fails to properly post the inspection report or the corresponding letter grade as required may be deemed guilty of a misdemeanor and shall, upon conviction by a court of competent jurisdiction, be assessed fines or other punishment as provided by this Code.

(e) In the case of a temporary food service establishment, all violations must be corrected immediately. If a violation is not immediately corrected, a Code Enforcement/Health Officer shall immediately suspend the permit. Any person, firm, or establishment found to have failed to immediately cease operations upon suspension of temporary food service permit may be deemed guilty of a misdemeanor and shall, upon conviction by a court of competent jurisdiction, be assessed fines or other punishment as provided by this Code.

#### **Sec. 58-34. - Grease Traps.**

The installation, operation, and maintenance of grease traps must comply with the following regulations:

(a) When required. A food establishment, which generates grease or oil based products which thus, may not be introduced into the publically owned treatment works ("POTW"), otherwise known as the City's wastewater system, as set forth in section Chapter 110 of the City's Code, shall install a grease trap in accordance with City-approved design specifications when:

1. The food establishment is initially constructed or permitted;
2. There is a change in ownership or in occupancy of the food establishment;
3. There is a reconstruction of the premises;
4. A violation of Chapter 110 of the City's Code has occurred; or
5. The food establishment has been determined by a Code Enforcement/Health Officer to have no grease trap or to have a grease trap which is insufficiently sized such that it is reasonable to expect that the business or operation will discharge wastes into the wastewater system in violation of Chapter 110 of the City's Code if a sufficiently sized grease trap is not installed.

(b) Deferral.

1. In limited situations as specified below, the holder of a food permit may submit a written request to the City Manager, or designee, for a deferral from the requirements of the applicable sections of Chapter 110 of the City's Code. The City will not grant a deferral until:
  - a. The City determines that the operation of the food establishment will not result in the discharge of wastes into its wastewater system in violation of Chapter 110 of the City's Code; and
  - b. The permit holder has installed a sampling point (e.g., sample well) accessible to the Code Enforcement/Health Officer, which allows for the sampling of discharges from the food establishment into the City's wastewater system.
2. Once granted, a deferral will remain in effect until such time that the Code Enforcement/Health Officer determines that test samples from the sampling point indicate discharges from the food establishment violate Chapter 110 of the City's Code, or until federal, state, or local law terminates such deferrals.

(c) Permittee liable. The holder of a food permit is at all times responsible for the proper operation, cleaning, and maintenance of the grease trap connected to the wastewater system at the location to which the food establishment permit was issued.



(d) Inspection by Code Enforcement/Health Officer. When conducting inspections of a food service establishment, the Code Enforcement/Health Officer shall conduct the following additional inspections:

1. A visual inspection of all grease traps installed at that location to determine that the trap is being properly maintained and cleaned;
2. A review of the permit holder's copy of the manifest of a liquid waste transporter to determine the adequacy of cleaning of such traps in accordance with Chapter 110 of the City's Code; and
3. A visual inspection of the food establishment and the surrounding premises to determine the reasonable likelihood that the operation of the establishment will discharge wastes into the wastewater system in violation of Chapter 110 of the City's Code, if a sufficiently sized grease trap is not installed.

(e) Inspection report. The inspection report prepared by the Code Enforcement/Health Officer pursuant to this section will include an evaluation of the food establishment's grease trap maintenance with a weighted score noted for the level of compliance in the same manner as all other items inspected.

(f) Maintenance of manifests. The holder of a food establishment permit must keep and maintain on the premises of the food service establishment for a period of five years after issuance, a copy of each manifest issued by a liquid waste transporter for removal of waste from the grease trap of the food service establishment in accordance with Chapter 110 of the City's Code.

#### **Sec. 58-35. – Permit required.**

(a) It is unlawful for a person to operate a food establishment without a valid permit issued by the Code Enforcement/Health Officer. Such permit is known as a "food establishment permit", a "temporary food establishment permit", or a "mobile food unit permit"; hereinafter collectively referred to as "permit(s)" or "food permit(s)". Only a person who complies with the requirements of this article is entitled to receive or retain such a permit. A permit is not transferable from one (1) person or place to another person or place. A valid permit must be posted in view of the public in every food establishment. All food permits remain the property of the City.

(b) Any person desiring to obtain a food permit must apply for such permit on a form provided by the City. Such application must include the applicant's full



name and mailing address, the location of proposed food establishment, and the signature of the applicant(s).

(c) Whenever a food establishment and/or retail food store is constructed or remodeled, and whenever an existing structure is converted to use as a food establishment and/or retail food store, properly prepared plans and specifications for such construction, remodeling, or conversion must be submitted to the City for review and approval before construction, remodeling, or conversion begins. The plans and specifications must indicate the proposed layout, arrangement, mechanical plans, construction materials of work areas, and the type and model of proposed fixed equipment and facilities. The City shall approve the plans and specifications if they meet the requirements of this article. It is unlawful for a food establishment and/or retail food store to be constructed, remodeled, or converted except in accordance with plans and specifications approved by the City.

(d) Whenever plans and specifications are required to be submitted to the City, the City shall inspect the food establishment prior to operation to determine compliance with this article.

(e) Any person desiring to obtain a temporary food service permit must apply for such permit on a form provided by the City. In addition to the information listed in subsection (b) above, such application must include the inclusive dates of the proposed operations; the name, address and telephone number of the owner(s) of the property where the temporary food service establishment is to be located; and a statement signed by the owner(s) of the property or authorized agent, stating that arrangements have been made for the proper disposal of all rubbish, trash, garbage, and for maintaining the property free from litter and nuisances during the total period of operation up to and including any cleanup time required to remove all rubbish, trash, garbage, and litter resulting from the food service. A description of such arrangements must be included. A permit for a temporary food establishment is limited to a time period that may not exceed fourteen (14) consecutive days.

(f) Any person desiring to obtain a mobile food unit permit must apply for such permit on a form provided by the City. In addition to the information listed in subsection (b) above, such application shall include the physical address where the mobile food unit is stationed when not in use; the business name and address of the central preparation facility or other fixed food service establishment where the potentially hazardous food supplies are obtained; the address of the servicing area; a description of the mobile food unit which includes the manufacturer's make and model number.



(g) A Code Enforcement/Health Officer shall issue the appropriate permit to the applicant if the inspection reveals that the proposed food establishment complies with the requirements of this article.

#### **Sec. 58-36. – Mobile Food Units.**

(a) Any person desiring to operate a mobile food unit (MFU) must obtain a permit for each MFU from the Code Enforcement/Health Officer. A Code Enforcement/Health Officer will issue each permit only after an inspection reveals satisfactory compliance with state and local laws, including this article. Such permit remains the property of the City.

(b) It is unlawful for a person to operate or cause to be operated any MFU, which does not possess a valid permit issued by a Code Enforcement/Health Officer. Any person, firm, or establishment who is found to have operated or caused to be operated a MFU without a valid mobile food unit permit may be deemed guilty of a misdemeanor and shall, upon conviction by a court of competent jurisdiction, be assessed fines or other punishment as provided by this article. An MFU operating within the City must have onsite at least one employee who possesses a food manager certification.

(c) The Fire Marshall shall inspect the mobile food unit as follows:

1. An operator of a MFU must possess a valid driver's license. In addition, the MFU must display valid license plates and a state registration sticker and must be in good working order.
2. A mobile food unit must contain an "ABC" sized extinguisher with an annual inspection tag from a Texas licensed inspection company. If frying media (grease) may occur, a class K extinguisher is required with an annual inspection tag from a Texas licensed inspection company. An MFU equipped with an automatic extinguishing system must have a current (bi-annual) inspection tag from a Texas licensed inspection company.
3. An MFU must be parked or located in such a way as to maintain a minimum of ten (10) foot clearance around the vehicle to allow for emergency access. An MFU equipped with an automatic extinguishing system must maintain a minimum of ten (10) foot clearance from all combustible structures and other parked MFUs or unattended vehicles. An MFU not equipped with an automatic extinguishing system but that produces grease laden vapors must maintain a minimum of fifty (50) foot distance from combustible structures or parked, unattended vehicles.



4. All cooking appliances in the mobile food unit must be of an approved type, listed, and labeled for the use intended. Appliances must be installed in accordance with the manufacturer's instructions. All cooking appliances must have an approved, labeled, and listed on-off valve. Camp stoves or the equivalent are prohibited.
5. All propane and natural gas appliances must be pressure tested annually and contain only approved parts. Rubber hoses are prohibited. All piping must comply with National Fire Protection Association 58 and be protected from physical damage. Mounting and placement of containers must comply with National Fire Protection Association 58 and Texas Department of Transportation regulations. The capacity limit of propane and natural gas containers or cylinders will be determined by the fire marshal after consideration of features that secure and protect the container. Upon request of the fire marshal, the owner/operator of the MFU shall produce documentation illustrating that an annual gas test was performed and passed by a licensed individual or firm.
6. Cooking surfaces in the mobile food unit must remain clean of grease build-up. Trash containers and debris must be emptied regularly. Appliances shall be plugged directly into electrical outlets and extension cords may not be utilized for appliances.
7. The fire marshal is authorized to conduct periodic inspections as necessary to determine the extent of compliance at any time.

(d) Such permit shall be affixed by the Code Enforcement/Health Officer on the mobile food unit in a conspicuous place where it can be viewed by customers. A permit will set forth the business name, license plate number, permit number and expiration date.

(e) Every MFU must be readily identifiable by its business name and phone number that are printed, permanently affixed, and prominently displayed on the back of the unit and on the side of the unit from which food is served, in letters not less than three (3) inches in height.

(f) A MFU must meet the following operational requirements and restrictions:

1. It is unlawful for the operator of a MFU to remove any food from the MFU to vend from a stand or other temporary structure located upon any public street, sidewalk, right-of-way, or other adjacent public or private area without a permit as required by this article.

2. It is unlawful to operate an MFU from the public right-of-way. The operation of a mobile food unit near a street must not create a traffic hazard.

3. An MFU may apply for permission to operate within a City park subject to applicable park regulations.

4. A MFU may operate on private property where the property is properly zoned and the operator receives written permission from the property owner. An operator is prohibited from parking and operating from an unimproved lot as defined by the zoning code.

5. A MFU may not park in any location while operating and open for business for more than 72 hours.

6. A MFU must completely retain its mobility at all times.

7. Unless written permission is granted by the appropriate school, it is unlawful for a person to operate a MFU within 300 feet of the property line of any public or private elementary, middle, or high school one hour before, during, and after school hours.

8. No person shall operate a MFU within 50 feet of any residential zoning district.

(g) According to TFER, a MFU must operate from a licensed central preparation facility (CPF) or other approved retail food establishment. The City Manager, or designee, may approve a variance to this requirement if the MFU meets all other requirements set forth by the TFER and this article and the variance will not create any health hazard or nuisance. An application for the variance must be submitted on a form provided by the City and include: a statement of the proposed variance that includes the section of the rule(s) related to the modification; and, the rationale for how the potential public health hazards and nuisances addressed by the relevant rule(s) will be alternatively addressed by the proposed variance. In addition, an applicant may submit additional documents and photographs that will help the City verify that a health hazard or nuisance will not result from the variance. The City will provide a written response to the applicant concerning the variance request. If the City grants a variance, any deviation from the procedures is justification to rescind the variance. Where the City grants a variance, the MFU must provide information about the servicing operations, including the location the MFU operator will use to acquire potable water and dispose of liquid waste.



**Sec. 58-37. – Fees.**

Each application for a permit must be accompanied by the appropriate fee established by City Council.

**Sec. 58-38. – Permit valid for one year.**

- (a) Each permit is valid for twelve (12) months.
- (b) Anyone allowing a permit to expire without renewing, must pay a late fee to renew a permit as established by City Council.

**Sec. 58-39. – Grading of food establishment.**

(a) The Code Enforcement/Health Officer shall inspect and issue a grade to all food establishments in a uniform and consistent manner.

(b) The Code Enforcement/Health Officer, based upon a 100-point system, shall determine the grade for each food establishment using the following system:

“A” Card - a score of 90 or above, which indicates safe food handling practices and designates a food establishment as meeting the provisions of this article.

“B” Card - a score between 80 and 89, which indicates that the food establishment has met minimum health requirements but also was found to have several violations of this article.

“C” Card - a score between 70 and 79, which indicates that a food establishment was found to have several violations of this article which were not immediately correctable.

(c) A food establishment that scores below 70 points shall immediately close to the public and cease all food operations.

(d) Each food establishment shall post its grade card at or near each public entrance or in similar conspicuous place. The grade card remains the property of the City. No person shall move, remove, deface, camouflage, alter, or conceal the grade card from public view. It is unlawful to remove a grade card or to operate a food establishment unless the grade card is posted in the manner requested herein. The grade card remains valid until the next routine inspection of the food establishment.



(e) Following an inspection by the Code Enforcement/Health Officer and the issuance of a grade card, the permit holder for the food establishment may appeal the grade as follows:

1. A permit holder must submit a written request for an appeal within five business days to Development Services following the date of the inspection.
2. The Code Enforcement/Health Officer shall schedule an appeal before the City's Food Service Advisory Board within twenty (20) business days following the written appeal request. The board shall hear the appeal and provide an opinion as to whether the grade was appropriate.
3. The previously issued grade card must remain posted through the appeal process. Where a revised grade card is issued, the new grade card must be posted in accordance with this section.

**Sec. 58-40. – Suspension or revocation of permit.**

(a) The Code Enforcement/Health Officer may suspend or revoke any permit upon written notice as is reasonable under the circumstances, if the permit holder does not comply with the requirements of this article, or if the operation of the food establishment or MFU otherwise constitutes a substantial hazard to public health. Suspension or revocation is effective upon service of notice as required below. Where a permit is suspended or revoked, all food service operations must immediately cease.

(b) Whenever a permit is suspended or revoked, notice must be given to the permit holder or the person in charge of or responsible for the operation of the food establishment or MFU. Such notice must include:

1. The specific condition(s) which are in violation of this article or the specific conditions which constitute a substantial hazard to public health;
2. That the permit holder may file an appeal with the City's Food Service Advisory Board within three (3) business days after the permit is suspended revoked, but that if the Code Enforcement/Health Officer permits the food establishment to reopen before the appeal is held, the appeal will be cancelled; and
3. That if an appeal is held, the permit holder must appear in person.

(c) Whenever a permit is suspended or revoked, the Code Enforcement/Health Officer shall seize it.



(e) The Food Service Advisory Board shall hear the appeal within fifteen (15) business days of the City receiving an appeal of the permit holder. Upon setting the appeal date and time, the City shall provide notice of such appeal to the permit holder. If the permit holder fails to appear at the appeal before the Food Service Advisory Board at the time, place, and date specified, the Food Service Advisory Board may cancel the appeal.

(f) Where an appeal is held, the Food Service Advisory Board shall determine whether the food establishment was, in fact, in violation of this article or that it constituted a hazard to public health, and whether the permit should remain suspended or revoked until all violations of this article are corrected and any conditions constituting a hazard to public health are eliminated. A copy of the Board's decision shall be either given to the responsible party upon conclusion of the appeal.

(g) Whenever the reasons for a suspension or revocation no longer exist, the permit holder or the person in charge may notify the Code Enforcement/Health Officer that the conditions under which the permit was suspended have been corrected and that an inspection is requested. Upon receipt of request and payment of a reinspection fee, the Code Enforcement/Health Officer shall conduct such inspection as soon as possible and in no event, later than three (3) regular working days after the receipt of the request for inspection.

(h) When a mobile food unit permit which has been suspended or revoked is reinstated, a new permit shall be affixed to the mobile food unit. A reinstated permit shall include all of the same information as that which appeared on the permit which was suspended or revoked, and shall not be reinstated until a reinspection has been completed and the reinspection fee(s) paid.

#### **Sec. 58-41. - Food Service Advisory Board.**

(a) *Appointment.* The City has previously established and will continue to maintain a Food Service Advisory Board (the "Board"), consisting of seven members, each of whom is appointed by City Council. The Board is composed of local certified food managers from the food service or food processing industry, any person associated with a food establishment conducting business within the City, and any Kerr County resident qualified by training and/or experience to advise on the application of this article.

(b) *Term of office.* Board members serve for staggered terms of two years each and no member of the Board may serve more than two consecutive terms. Vacancies will be filled for an unexpired term in the manner in which the original appointments are made.



(c) Quorum. Four members of the Board constitute a quorum for the transaction of business and a majority vote of the full membership is required to effect an official action.

(d) Ex officio member; records. The Code Enforcement/Health Officer serves as the officio member of the Board, without voting privileges. Such ex officio member will act in an advisory capacity and secretary to the Board. The secretary shall make a detailed record of all its proceedings, which shall set forth the reasons for the Board's decisions, the vote of each member participating therein, the absence of a member, and any failure of a member to vote.

(e) Duties and powers.

1. Appeals.

- a. The Board, when so appealed to in writing, may recommend to the City a variance from any provision of this article to any particular case when, in its opinion, the enforcement thereof would do manifest injustice, and would be contrary to the spirit and purpose of this article or public interest. The Board shall develop the necessary policy that will establish the standards regarding the granting of variance applications. However, it shall be the duty and responsibility of the Code Enforcement/Health Officer to make the final determination regarding the grant of specific variance applications, and to assure that the granting of the variance will not be detrimental to the public health, safety, or welfare.
- b. A recommendation of the Board to vary the application of any provision of this article shall specify in what manner such variation or modification is made, the conditions upon which it is made, and the reasons therefor.
- c. Final recommendations of the Board must be in writing and indicate the vote upon the decision. Every decision will be promptly filed with the City Secretary and shall be open to public inspection.
- d. The Board shall, in every case, reach a decision without unreasonable or unnecessary delay.
- e. The Code Enforcement/Health Officer shall take immediate action after receiving the Board's recommendation.

(2) Interpretations. The Board shall act upon requests for interpretations of this article. The Board's opinion on interpretations shall be made in the form of a recommendation(s) to the Code Enforcement/Health Officer. Requests for interpretations may be made in writing by any person subject to the application of this article.

(3) Advisory matters.

- a. The Board shall hear and review appeals relating to a suspension or revocation of a food permit. The Board does not have the authority to change or modify a decision by the Code Enforcement/Health Officer.
- b. Board may consider and make recommendations to the City Council on any matter pertaining to this article.

#### Sec. 58-42. – Penalties.

(a) The provisions of this article are applicable to all food establishments unless otherwise required by law.

(b) It is unlawful for any food establishment to operate within the City unless it conforms to the provisions of this article.

(c) A permit holder shall ensure that the food establishment or mobile food unit is in full compliance with this article at all times. The person in charge shall ensure that the food establishment is operated in full compliance with this article and that all food is stored, prepared, displayed and served in accordance with the provisions of this article.

(d) Any person who violates any provision of this article is guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not exceeding two thousand dollars (\$2,000.00); provided, however, that no penalty shall be greater than the penalty provided for the same or a similar offense under the laws of the State of Texas. However, nothing in this article shall be construed as requiring the Code Enforcement/Health Officer to report minor violations of this article for prosecution whenever the Code Enforcement/Health Officer believes the public interest will be adequately served in the circumstances by a warning.”

**SECTION TWO.** The City Secretary is authorized and directed to submit this amendment to the publisher of the City's Code of Ordinances and the publisher is authorized to amend said Code to reflect the amendment adopted herein and to correct



typographical errors and to index, format, and number and letter paragraphs to the existing Code, as appropriate.

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

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

**SECTION FIVE.** The penalty for violation of this Ordinance shall be in accordance with the general penalty provisions contained in Section 1-7, Chapter 1 of the Code of Ordinances of the City of Kerrville, Texas.

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

**PASSED AND APPROVED ON FIRST READING, this the \_\_\_\_ day of \_\_\_\_ A.D., 2019.**

**PASSED AND APPROVED ON SECOND AND FINAL READING, this the \_\_\_\_ day of \_\_\_\_, A.D., 2019.**

APPROVED AS TO FORM:



Michael C. Hayes, City Attorney

\_\_\_\_\_  
Bill Blackburn, Mayor

ATTEST:

\_\_\_\_\_  
Shelley McElhannon, City Secretary





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

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**SUBJECT:** Ordinance 2019-05 Amending Chapter 2, "Administration", Article IV "Boards and Commissions", Section 2-91 "Senior Services Advisory Committee" of the Code of Ordinances of the City of Kerrville, Texas; By Amending Subsections (A)(1) and (A)(2) to Increase the Membership of this Committee to 16 Members; Containing a Cumulative Clause; Containing a Savings and Severability Clause; and Providing Other Matters Relating to this Subject.

**AGENDA DATE OF:** February 12, 2019    **DATE SUBMITTED:** Feb 01, 2019

**SUBMITTED BY:** Shelley McElhannon

**EXHIBITS:** [20190212\\_Ordinance\\_2019-05 Senior Services Advisory Cmte Amendment to increase membership.pdf](#)

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<b>Expenditure Required:</b>	<b>Remaining Budget Balance in Account:</b>	<b>Amount Budgeted:</b>	<b>Account Number:</b>
\$0	\$0	\$0	N/A

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

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<b>Kerrville 2050 Item?</b>	No
<b>Key Priority Area</b>	N/A
<b>Guiding Principle</b>	N/A
<b>Action Item</b>	N/A

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**SUMMARY STATEMENT:**

Amend the original Ordinance 2018-13 Senior Services Advisory Board membership from a 13 member board to a 16 member board.

**RECOMMENDED ACTION:**

Approve Ordinance 2019-05 as presented.

**CITY OF KERRVILLE, TEXAS  
ORDINANCE NO. 2019-05**

**AN ORDINANCE AMENDING CHAPTER 2, "ADMINISTRATION," ARTICLE IV "BOARDS AND COMMISSIONS", SECTION 2-91 "SENIOR SERVICES ADVISORY COMMITTEE" OF THE CODE OF ORDINANCES OF THE CITY OF KERRVILLE, TEXAS; BY AMENDING SUBSECTIONS (A)(1) AND (A)(2) TO INCREASE THE MEMBERSHIP OF THIS COMMITTEE TO 16 MEMBERS; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; AND PROVIDING OTHER MATTERS RELATING TO THIS SUBJECT**

**WHEREAS**, City Council believes it beneficial to increase the membership of the City's Senior Services Advisory Committee from 13 to 16 members; and

**WHEREAS**, City Council finds it to be in the public interest to amend Chapter 2, Article IV, Section 2-91 of the Code of Ordinances of the City of Kerrville as provided herein;

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

**SECTION ONE.** Chapter 2 "Administration," Article IV "Boards and Commissions" of the Code of Ordinance of the City of Kerrville, Texas, is amended by revising Section 2-91, subsection (a)(1), to add the language that is underlined (added) and deleting the language that is bracketed and stricken (~~deleted~~) as follows:

**"Sec. 2-91. – Senior Services Advisory Committee.**

*(a) Creation of Senior Services Advisory Committee; terms; membership; meetings.*

- (1) There is hereby created the Senior Services Advisory Committee of the City ("Committee"), which shall be an advisory body of 16 ~~[13]~~ members appointed by City Council. The mayor shall appoint the chair and vice-chair from among the appointments made by Council, but only following the appointment of the initial Committee. Thereafter, each Committee shall select the chair and vice-chair from among its members.
- (2) During the initial appointment of Committee members, Council will appoint ~~[6]~~ 8 of the Committee members to terms expiring September 30, 2019. Council will then appoint each of the remaining ~~[7]~~ 8 members to

terms expiring September 30, 2020. Subsequent appointments shall serve a full two-year term. All members shall serve until their successors are appointed and qualified, but regardless, each term will exist as a two-year term beginning October 1 through September 30 two years hence."

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

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

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

**PASSED AND APPROVED ON FIRST READING, this the \_\_\_\_ day of \_\_\_\_\_, A.D., 2019.**

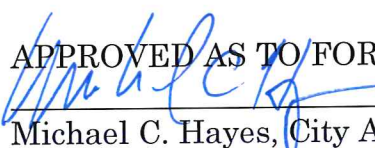
**PASSED AND APPROVED ON SECOND AND FINAL READING, this the \_\_\_\_ day of \_\_\_\_\_, A.D., 2019.**

ATTEST:

\_\_\_\_\_  
Bill Blackburn, Mayor

\_\_\_\_\_  
Shelley McElhannon, City Secretary

APPROVED AS TO FORM:

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



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

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**SUBJECT:** Operations Agreement for the Kathleen C. Cailloux City Center for the Performing Arts between the City of Kerrville, Texas, and Playhouse 2000, Inc.

**AGENDA DATE OF:** February 12, 2019    **DATE SUBMITTED:** Feb 05, 2019

**SUBMITTED BY:** EA Hoppe

**EXHIBITS:** [20190212\\_Agreement\\_Playhouse 2000.pdf](#)  
[20190212\\_Summary of Maintenance\\_Exhibit A\\_013119.pdf](#)

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<b>Expenditure Required:</b>	<b>Remaining Budget Balance in Account:</b>	<b>Amount Budgeted:</b>	<b>Account Number:</b>
\$100,000	\$100,000	\$100,000	20-2000-4900

**PAYMENT TO BE MADE TO:** Playhouse 2000

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<b>Kerrville 2050 Item?</b>	Yes
<b>Key Priority Area</b>	E - Economic Development
<b>Guiding Principle</b>	E8. Emphasize greater support for growth of the tourism industry
<b>Action Item</b>	E8.2 - Target tourism that is specific to the current and growing industries being experienced by Kerrville—cycling, culture, camps, etc.

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**SUMMARY STATEMENT:**

The City of Kerrville and Playhouse 2000 have been operating under an agreement that was created almost 20 years ago, prior to the major renovations of the General Auditorium building in the early 2000's. Consequently, the previous agreement was out of date with the current operating practices and maintenance responsibilities. The newly crafted Operations Agreement represents significant negotiation and dialogue between City staff and Playhouse 2000, culminating in an Agreement that both clarifies maintenance responsibilities and operational expectations.

**RECOMMENDED ACTION:**

Authorize the City Manager to finalize and execute.



**OPERATION AGREEMENT FOR THE KATHLEEN C. CAILLOUX  
CITY CENTER FOR THE PERFORMING ARTS BETWEEN THE  
CITY OF KERRVILLE, TEXAS, AND PLAYHOUSE 2000, INC.**

**THIS OPERATION AGREEMENT FOR THE KATHLEEN C. CAILLOUX CITY CENTER FOR THE PERFORMING ARTS** ("Agreement") is entered into on or about the \_\_\_\_ day of February 2019, by and between the **CITY OF KERRVILLE, TEXAS**, a Texas home rule municipal corporation ("City"), and **PLAYHOUSE 2000, INC.**, a Texas nonprofit corporation ("Playhouse").

**WHEREAS**, City and Playhouse desire to provide for the management, maintenance, and operation by Playhouse of the Kathleen C. Cailloux Theater and its ancillary property for the mutual benefit of the parties hereto;

**NOW, THEREFORE**, City and Playhouse, in consideration of the mutual covenants, terms, and conditions contained in this Agreement, and for other good and valuable consideration, do hereby agree as follows:

**Article I      PURPOSE OF AGREEMENT; TERM AND DEFINITIONS**

**Section 1.1      Purpose:**

The purpose of this Agreement is to set forth the terms and conditions by which Playhouse shall use, operate, manage, and maintain the City Center for the Performing Arts, as defined below.

**Section 1.2      Commencement and Initial Term:**

The Term of this Agreement begins on January 23, 2019, and terminates on September 30, 2020 ("Initial Term"), unless terminated earlier in accordance with the terms of this Agreement.

**Section 1.3      Renewal Term:**

Following the Initial Term, this Agreement will automatically renew annually for 1-year terms (October 1-September 30; City's "Fiscal Year"), subject to earlier termination as provided herein.

**Section 1.4      Termination:**

City and Playhouse may terminate this Agreement at any time by providing written notice to the nonterminating party not less than one hundred eighty days prior to the date of termination.

**Section 1.5      Definitions:**

Unless the context clearly indicates otherwise, the following words and phrases used in this Agreement have the following meanings:

- a. "City Personal Property" means the piano, lighting, control consoles, and all other tangible personal property owned by City and located on the CCPA.
- b. "City Center for the Performing Arts" ("CCPA") collectively means:
  - (1) the Theater, commonly known as the Kathleen C. Cailloux Theater or Municipal Auditorium, located at 910 Main Street;
  - (2) the Kit Werlein Annex, located at 913 Jefferson Street;
  - (3) existing or subsequently constructed improvements used in association with the management and operation of the CCPA, including all parking lots, driveways, easements, and accessory buildings; and
  - (4) the Land.
- c. "Land" collectively means:
  - (1) the real property owned by City consisting of Lot Nos. 159, 160, 161, 162, 163, and 164, Block 20, J.D. Brown Addition to the City of Kerrville, Texas, along with all other real property, parking lots, easements and appurtenances thereto presently being used for CCPA purposes;
  - (2) any additional property acquired by City either from Playhouse or a third party and used in conjunction with the purposes for the operation of the CCPA pursuant to the provisions of this Agreement; and
  - (3) the area consisting of a driveway access to the Theater's loading dock but not including any other part of the VK Garage property.

## **Article II      ASSURANCES**

### **Section 2.1      Certain Covenants of City:**

City shall use all reasonable best efforts to maintain public access to the CCPA for Playhouse events.

### **Section 2.2      Certain Covenants of Playhouse:**

Playhouse shall:

- a. provide and maintain the CCPA for handicapped patrons in accordance with the Americans with Disabilities Act and other applicable laws;
- b. treat all users of the CCPA fairly;
- c. promptly undertake or accomplish all maintenance and repairs necessary to prevent any deterioration or waste to the CCPA and improvements located on the CCPA, and continue to maintain the CCPA to the highest building standards;
- d. make prompt payment to its vendors, consultants, and contractors; and
- e. maintain and prominently display in the CCPA throughout the term of this Agreement all plaques and acknowledgments which currently exists, including those presently

located within the theater, which recognize the gift to City of property from the Kerr County War Memorial Association for the purpose of erecting a public building dedicated to the honor of those who served the United States of America in all wars.

**Section 2.3    Acceptance of City Center for the Performing Arts:**

Playhouse has previously inspected the CCPA, been given access to the records related to the CCPA, and accepts the CCPA on an AS-IS, WHERE-IS CONDITION AND BASIS, WITH ALL FAULTS. PLAYHOUSE ACKNOWLEDGES AND AGREES THAT CITY HAS NOT MADE, DOES NOT MAKE, AND SPECIFICALLY NEGATES AND DISCLAIMS ANY REPRESENTATIONS, PROMISES, COVENANTS, AGREEMENTS, GUARANTIES, OR WARRANTIES OF ANY KIND OR CHARACTER WHATSOEVER, WHETHER EXPRESS OF IMPLIED, ORAL OR WRITTEN, PAST PRESENT OR FUTURE, AS TO, CONCERNING OR WITH RESPECT TO THE VALUE, INCOME TO BE DERIVED; NATURE, QUALITY OR CONDITION, STATE OF REPAIR OR LACK OF REPAIR, HABITABILITY, MERCHANTABILITY, MARKETABILITY, PROFITABILITY, SUITABILITY, USEFULNESS, OR FITNESS OF THE CCPA. Playhouse and City acknowledge that no fiduciary relationship exists between Playhouse and City or any of City's officers, employees, agents, or attorneys. Notwithstanding anything to the contrary to the above, City warrants that it has good title to the CCPA and the City Personal Property.

**Section 2.4    Environmental:**

Without making any warranties or representations regarding the accuracy of such statement, and without any requirement by Playhouse to investigate such statement, City has no knowledge of the existence of asbestos, underground fuel storage tanks, or other environmental hazards on the CCPA.

**Article III    MANAGEMENT, OPERATION, AND MAINTENANCE**

**Section 3.1    Playhouse's Management, Operation, and Maintenance of the CCPA:**

Playhouse shall continue to manage, operate, and maintain the CCPA in accordance with the following standards and requirements:

- a. to the highest standards as a first class performing arts venue;
- b. Playhouse shall pay all management, maintenance, repair, and operating expenses, and all other costs of the CCPA that City is not obligated to pay.
- c. Playhouse shall maintain the CCPA in good, clean, sanitary order and repair;
- d. Playhouse shall coordinate and administer a preventive maintenance program for the CCPA and its machinery and equipment;

- e. Playhouse shall obtain and pay for all utility services used by Playhouse, to include water, wastewater, electric, gas, telephone, internet, and television, but not garbage collection, with all accounts set up in Playhouse's name;
- f. Playhouse shall employ, pay, supervise, and discharge all personnel Playhouse determines to be necessary for the management and operation of the CCPA;
- g. Playhouse shall purchase and maintain all materials, tools, machinery, equipment, and supplies necessary for the management, maintenance and operation of the CCPA;
- h. Playhouse shall provide and set up all required equipment, with respect its operations and performances, and maintain the same in good working and safe conditions at all times. Playhouse shall immediately report any maintenance issues or defective equipment to the City;
- i. Playhouse shall clean and maintain in sanitary conditions the CCPA, to include emptying trashcans, sweeping floors, cleaning sinks and countertops. Playhouse shall use its own cleaning supplies for this purpose.
- j. Playhouse shall provide the "essential services" to the CCPA, consisting of the following utility connections: (1) air-conditioning and heating reasonable for the occupancy and use, (2) hot and cold water for lavatory and drinking purposes, (3) janitorial service and periodic window washing, (4) elevator service, if necessary, (5) electric current, and (6) all lighting within the buildings included as part of the CCPA.
- k. Playhouse shall inspect the CCPA, in particular the public areas, prior to each use to ensure that they are safe for all intended uses;
- l. Playhouse shall ensure that the users of the CCPA are adequately supervised by an appropriate number of adults and representatives at all times, particularly where juveniles and children are involved;
- m. Playhouse possesses keys to the CCPA. These keys shall not be shared or duplicated and any loss by Playhouse which results in the City needing to re-key any part of the CCPA will be charged to Playhouse.
- n. Playhouse shall take all reasonable action to ensure that all rules, regulations, and ordinances adopted by City that are applicable to the CCPA are followed, to include prohibiting smoking on the CCPA. City shall provide Playhouse with a written copy of the rules, regulations, and ordinances that Playhouse shall address;
- o. Playhouse shall not alter the CCPA without the prior written consent of City, as provided below.
- p. Playhouse shall not install, place, or use any sign on the CCPA without the prior written consent of the City. City's consent shall be subject to the City's sign regulations;

- q. Playhouse shall cooperate with City to use every reasonable effort to encourage and maintain high attendance levels at public events on the CCPA;
- r. Playhouse shall: (1) collect and account for all revenue with respect to its use, management, and operation of the CCPA using all reasonable efforts to obtain all fees, rents, and other amounts due from users and tenants; and (2) provide periodic financial reports to City as reasonably requested by City, to include zip code information on users, guests, and invitees as a way for the parties to assess attendance of out-of-area visitors;
- s. Playhouse shall submit in writing to City any request for repairs, replacement, and maintenance that are the obligations of City.
- t. Playhouse may request funding for large or long-term capital needs or improvements from the City of Kerrville, Texas, Economic Improvement Corporation of Kerrville (EIC);
- u. Playhouse shall maintain and make available to the public a schedule of basic rates, fees, and charges for the use of the CCPA and services;
- v. Playhouse shall maintain or cause to be maintained all necessary licenses, permits and authorizations for the operation of the CCPA;
- w. Playhouse shall not create a nuisance, permit any waste, or use the CCPA in a way that will increase premiums or void insurance on the CCPA, change the lock system, or allow a lien to be placed on the CCPA; and
- x. Playhouse may pursue reimbursement from City for a repair cost that exceeds \$3,000 per any single occurrence. City shall review any such reimbursement request and determine the best funding source, to include the Cailloux Maintenance Fund.

### **Section 3.2    City's Maintenance of the City Center for the Performing Arts:**

City shall repair, replace, and maintain the (a) roof; (b) foundation; (c) structural soundness of the exterior walls, doors, corridors, and windows; (d) HVAC and plumbing; and (d) other structures making up or serving the CCPA.

### **Section 3.3    Summary of Maintenance Responsibilities:**

As a way of summarizing Sections 2.2c, 3.1, and 3.2, above, a "*Summary of Maintenance Responsibilities*" ("Summary"), is attached as **Exhibit A**, which is a summary of the maintenance responsibilities for each party. Each party, as designated, shall maintain and repair the specified items on the Summary of the CCPA. Each party shall repair a condition in need of repair that is required to be fixed and the specified items must be maintained in a clean and good operable condition, good state of appearance and repair, reasonable wear and tear excepted. The parties shall perform their required maintenance and repairs as necessary to operate the CCPA



as a first-class facility. If a governmental regulation or order requires a modification to any of the specified items on the Summary, the party designated to maintain the item must complete and pay the expense of the modification. Each party is responsible for repair and maintenance of its personal property.

**Section 3.4    Budget:**

On or before March 1, Playhouse shall submit its annual operating budget in writing to the City Manager. Playhouse's annual operating budget must include detailed information showing estimated income to be received from all sources and estimated operating expenses.

**Section 3.5    City Access:**

City reserves the reasonable right for its authorized representatives to enter and inspect the CCPA during normal business hours, provided that City shall not unreasonably interfere with the operations of the CCPA, unless such interference is necessary to preserve the health and safety of the public or made pursuant to its police powers. Notwithstanding the preceding sentence, and with reasonable written notice to Playhouse with a reasonable opportunity to cure, City reserves the right to enter the CCPA to maintain or repair the CCPA when such activities are not being performed by Playhouse as herein required in the sole opinion of the City. All costs so incurred by City shall be the responsibility of Playhouse, to be reimbursed City upon demand, and paid by Playhouse within 30 days.

**Section 3.6    Schedule of Rates and Charges for CCPA Use:**

Playhouse shall have the right to establish a schedule of rates and charges for the use of the CCPA which reasonably allows Playhouse to recover Playhouse's reasonable cost of utilities, labor, overhead allocation, and any other direct expenses incurred by Playhouse in providing the CCPA for use. Playhouse agrees to deliver to the City Manager a copy of the adopted schedule of rates and charges and any amendments thereto not later than 10 days prior to the effective date of such rates.

**Section 3.7    Use for Polling Place:**

City hereby retains for itself and other local governmental entities the right to use the CCPA at no charge as an election polling place during the times and dates established by the Texas Election Code for all local, state, and federal elections, to include primaries and runoffs. Such reservation period shall include every day on which early voting and election day occurs, with each date beginning at not earlier than one hour before the polls are required to open and ending not later than two hours after the polls are required to close. City agrees such use for this purpose shall be limited to the lobby area or other appropriate and reasonably accessible space of the CCPA. Special elections or elections involving other governmental entities which are being held jointly with the above defined election dates shall not be charged a fee for use, but shall be subject to the same restrictions set forth in this section.

### **Section 3.8    Use for Veterans Day Observances:**

Playhouse agrees that the CCPA shall be reserved for use by any one or more veterans organizations on November 11 of each year, or on such other date as may be designated by the federal government as “Veteran’s Day” or “Armistice Day”, for the holding of ceremonies and other events and activities related to said day. Such use shall not be subject to charge.

### **Section 3.9    City Uses Without Charge:**

Playhouse agrees that the City may use the CCPA at no charge for purposes including:

- a. Meetings of the City Council and any of its boards, commissions, and committees;
- b. A meeting or event conducted by a City employee with the authorization of the City Manager.
- c. Any other governmental entity with whom the City has signed an interlocal agreement whereby use of the CCPA without charge for certain purposes is part of the consideration;
- d. Veterans organization events and ceremonies.

### **Section 3.10    Security and Traffic Control:**

Playhouse shall provide all security and traffic control within the CCPA and such other traffic control offsite as is reasonably necessary to direct traffic to and from events at the CCPA. City and Playhouse shall cooperate in good faith to develop a traffic management plan to facilitate the ingress and egress of traffic to and from events at the CCPA; provided, however, that City is under no obligation under the proceeding clause to incur any cost under this section.

### **Section 3.11    Contracts Related to Management and Operation of the CCPA; General Provisions:**

- a. **General Requirements:** Subject to the provisions of this Agreement, Playhouse is the exclusive manager and operator of the CCPA with sole responsibility for, and full control and discretion in, the operation, direction, management, leasing, licensing, and supervision of the CCPA and its staff. All Playhouse contracts and licenses (all of the foregoing sometimes hereinafter collectively referred to as the “Management Contracts”) in connection with its operation and management of the CCPA may not and will not be assigned and must terminate upon termination of this Agreement; unless the City, at its sole option, elects to assume in writing one or more of the Management Contracts.
- b. **City Review:** Upon request of the City Manager, Playhouse shall provide the City Manager a copy of a current list of all Management Contracts, including the parties thereto, the primary purpose thereof and applicable contract, lease, or license fees, the

delivery of which shall not be unreasonably denied, withheld, or delayed. City is entitled to review the Management Contracts for compliance with the foregoing requirements at Playhouse's office during normal business hours.

**Section 3.12 Promotion:**

Playhouse shall plan, prepare, implement, coordinate and supervise all advertising, public relations, and other promotional programs for the CCPA and shall negotiate, execute (in its own name and not the name of City) and perform all contract promotions of the CCPA.

**Section 3.13 Concessions, Marketing, and Naming Rights:**

Playhouse shall have the duty and sole right to negotiate, execute (in its own name and not the name of City) and perform all contracts concerning:

- a. the sale, promotion, marketing and the use of all name, trademarks, trade names, logos and similar intellectual property rights relating to the CCPA;
- b. concessions for the sale of food, beverages, souvenirs, novelties or programs at the CCPA; and
- c. the naming of all or any portion of the CCPA in honor or memory of a donor or the family member(s) of a donor who contributed funds used for the construction of the Project Improvements, subject to the City's Naming Policy and City's permission.

**Section 3.14 Booking:**

Playhouse shall have the duty and sole right to:

- a. arrange for and otherwise book events in the CCPA; and
- b. to negotiate and execute (in its own name and not the name of the City) and perform all use agreements for the conduct of events.

**Section 3.15 Acknowledgments in Printed Materials:**

Playhouse agrees to acknowledge City for its support in all appropriate printed materials, with the following language included on the "title page" of all printed playbills or an equivalent location: *"The Kathleen C. Cailloux City Center for the Performing Arts is managed on behalf of The City of Kerrville by Playhouse 2000, Inc."*

**Section 3.16 Vendor Contracts:**

Playhouse shall have the sole right to negotiate and execute (in its own name and not the name of City) and perform vendor contracts.

### **Section 3.17 Taxes:**

Playhouse is responsible for and shall pay all applicable state, local, and use taxes for its use, sales, and services of or conducted upon the CCPA. City and Playhouse understand, acknowledge, and agree that title to the CCPA shall at all times during the Agreement be vested in City and should be exempt from property (ad valorem) taxation. Based upon City's continued ownership of the CCPA and public use, City shall make every effort to maintain the tax exempt status of the CCPA.

### **Section 3.18 Advertising:**

Playhouse shall be responsible for the sale of all commercial advertising on the CCPA and within the theater. The term of advertising contracts shall not exceed five (5) years, unless this requirement is waived by City in writing. The form and content of the advertising shall not, in the opinion of City, be in bad taste or inappropriate for the viewing or hearing of children or minors, or would reflect negatively upon the City of Kerrville. If so, Playhouse shall promptly remove, or have removed, the advertising from the CCPA or theater.

### **Section 3.19 Hotel Occupancy Tax Request:**

Pursuant to Section 3.20, below, City will provide funds it collects pursuant to the levy of the hotel occupancy tax, whether through it or another organization, to compensate Playhouse for management services. The City's distribution is subject to receipt of such funding, the City's policy for the distribution of such funds (the "Policy"), and its budgeting process. In addition, Playhouse may, from time to time, apply to City for a disbursement of additional hotel occupancy tax funds as the Policy may be applied to other organizations, and as the Policy may change from time to time, said funds to be used in accordance with a separate contract with City and in compliance with state law.

### **Section 3.20 Direct City Support:**

In consideration of services that Playhouse provides to City in managing the CCPA, City shall:

- a. pay Playhouse \$50,000.00 of each year of this Agreement, such payment to be made in equal monthly installments for the six-month period between October through March;
- b. pay Playhouse an additional \$50,000.00 per year, but only where Playhouse submits proof to City that Playhouse has received at least \$50,000.00 in donations and support from sources other than City for the current Fiscal Year. Where Playhouse provides such proof and the payment is triggered, such payment to be made in equal monthly installments for the remainder of the current Fiscal Year;
- c. purchase and maintain fire and casualty insurance on the CCPA and the City Personal Property during the term of this Agreement;
- d. maintain all parking lots and driveways located on the CCPA; and

- e. obtain and pay for garbage collection service for the CCPA.

**Section 3.21 Non-Appropriations:**

Playhouse understands and acknowledges that City is required by law to pay all obligations from current funds appropriated in accordance with the adoption of City's annual budget. Consequently and notwithstanding the provisions of Section 3.20, above, City has no obligation or liability pursuant to Section 3.20 beyond the end of any Fiscal Year if City fails to appropriate funds to pay for such obligations in the immediately subsequent Fiscal Year. In the event City fails in any Fiscal Year to appropriate sufficient funds for the purpose set forth in Section 3.20, above, Playhouse may, not earlier than 30 days after providing written notice to City, terminate this Agreement in its entirety.

**Section 3.22 Operating Reserve Fund:**

Playhouse shall establish an operating reserve fund in an amount reasonably determined by Playhouse to assure the financial stability of the CCPA operations and shall also use its best efforts to raise contributions from year to year in order to augment such fund.

**Section 3.23 Records and Audits:**

Playhouse shall maintain complete and accurate records for the CCPA and for Playhouse, separate and identifiable from its other records, for at least three years following the last day of the Fiscal Year during which the record was generated. City may inspect the records during the term of this Agreement and for three years thereafter at Playhouse's office upon not less than 24 hours notice to Playhouse and at all reasonable times.

**Section 3.24 City Improvements:**

City may make additions and improvements to the CCPA where necessary to comply with governmental regulations, or the provisions and conditions of this Agreement; and if required for the safe operation of the CCPA or their maintenance or repair. Where City determines that an addition(s) and/or an improvement(s) is necessary, City may, after providing reasonable notice to Playhouse, begin such work to the CCPA, unless the construction or the additions would unreasonably interfere with Playhouse events; or the additions would adversely affect the structural integrity, size, utility, or value of the CCPA.

**Section 3.25 Playhouse Improvements:**

Playhouse, following notice to and approval of City, may make additions and improvements to the CCPA if:

- a. desired to improve the functionality of the CCPA;
- b. desired to improve the quality of the audience experience, the visiting artist experience, or the rental experience;
- c. desired to improve the CCPA's revenue generation capabilities;



All fixtures installed on the CCPA pursuant to this Section 3.25, whether trade or otherwise, shall be realty, owned in fee simple by City unless otherwise agreed to in writing, prior to installation, by City.

**Section 3.26 Insurance:**

- a. **Playhouse's Minimum Insurance Amounts:** Playhouse shall obtain and maintain continuously in effect at all times during the term of this Agreement, at Playhouse's sole expense, with a carrier or carriers licensed to do business in the State of Texas and satisfactory to City, Commercial General Liability Insurance against claims for bodily injury, death, or property damage occurring on, in or about the theater, or any other portion of the CCPA, in at least the amount of \$1,000,000.00 combined single limit per occurrence. In the event that the Texas Torts Claims Act, as amended (Tex. Civ. Prac. & Rem. Code § 101.001, et seq.) or its successor statute, is amended to increase the amount of liability of municipalities for acts described in said Act above the levels set forth in this Section 3.27.a., Playhouse shall, upon notice from City, increase the amount of insurance coverage to an amount sufficient to provide coverage to the level of potential liability per occurrence under said Act.
- b. **Alcoholic Beverage Liability:** In the event Playhouse sells or serves, or authorizes the sale or service, of alcoholic beverages for on-premise consumption on the CCPA, Playhouse shall purchase and have in effect alcoholic beverage liability coverage in the same amounts as the general liability policy required by Section 3.26.a., above. Said alcoholic beverage liability coverage will be included within Playhouse's general liability policy. Playhouse shall comply with all rules of the Texas Alcoholic Beverage Commission (TABC) with respect to the sale and consumption of alcohol, to include the receipt of appropriate license(s) for its activities.
- c. **Playhouse's Coverage Primary:** All insurance herein required of Playhouse shall apply as primary and not in excess of or contributing with other insurance which the Playhouse may carry. Insurance provided pursuant to Section 3.26.a. shall name City as an additional insured or loss payee as the case may be. Playhouse's insurance policies as required by this Agreement shall apply separately to City as if separate policies had been issued to Playhouse and City.
- d. **Cancellation; Certificates of Insurance:** Playhouse's insurance as required by this Agreement shall not be subject to cancellation or material alteration until at least 30 days written notice has been provided to City. Playhouse shall furnish to City, annually, Certificates of Insurance showing City as an additional insured and evidencing that all of the herein stated requirements have been met.
- e. **City's Right to Purchase Insurance:** In the event such insurance as required by Section 3.26.a., above, shall lapse, City reserves the right to obtain such insurance at Playhouse's expense. Upon demand from City, Playhouse shall reimburse City for the full amount of the premium paid on Playhouse's behalf.

**Section 3.27 Indemnity:**

PLAYHOUSE AGREES TO DEFEND INDEMNIFY AND HOLD CITY, ITS OFFICERS, AGENTS, AND EMPLOYEES HARMLESS AGAINST ANY AND ALL CLAIMS, LAWSUITS, JUDGMENTS, COSTS, AND EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH) PROPERTY DAMAGE, OR OTHER HARM FOR WHICH RECOVERY OF DAMAGES IS SOUGHT, SUFFERED BY ANY PERSON OR PERSONS, THAT MAY ARISE OUT OF OR BE OCCASIONED BY PLAYHOUSE'S BREACH OF ANY OF THE TERMS OR PROVISIONS OF THIS AGREEMENT, OR BY ANY NEGLIGENT OR STRICTLY LIABLE ACT OR OMISSION OF PLAYHOUSE, ITS OFFICERS, AGENTS, EMPLOYEES, OR SUBCONTRACTORS, IN THE PERFORMANCE OF THIS AGREEMENT; EXCEPT THAT THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE SOLE NEGLIGENCE OR FAULT OF CITY, ITS OFFICERS, AGENTS, EMPLOYEES, OR SEPARATE CONTRACTORS, AND IN THE EVENT OF JOINT AND CONCURRING NEGLIGENCE OR FAULT OF THE PLAYHOUSE AND CITY, RESPONSIBILITY AND INDEMNITY, IF ANY, SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAW OF THE STATE OF TEXAS, WITHOUT WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW. THE PROVISIONS OF THIS PARAGRAPH ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY. NEITHER CITY NOR PLAYHOUSE WAIVE ANY LEGAL CONTENTIONS, DEFENSES, OR IMMUNITIES, INCLUDING, BUT NOT LIMITED TO GOVERNMENTAL (I.E., SOVEREIGN IMMUNITY, CHARITABLE IMMUNITY, AND THE LIMITED RECOVERY AGAINST CHARITABLE ORGANIZATIONS, THEIR PERSONNEL, AND THEIR VOLUNTEERS PURSUANT TO THE CHARITABLE IMMUNITY AND LIABILITY ACT OF 1987 (TEX. CIV. PRAC. AND REM. CODE, CH. 84, AS AMENDED). THIS INDEMNITY PROVISIONS APPLIES TO THE ENTITY PLAYHOUSE 2000, INC. IT DOES NOT APPLY TO THE PERSONAL LIABILITY OF THE EMPLOYEES, OFFICERS, OR DIRECTORS OF PLAYHOUSE 2000, INC. SUCH EMPLOYEES, OFFICERS, AND DIRECTORS SHALL NOT HAVE ANY LIABILITY UNDER THIS PROVISION.

**Section 3.28 Security Interests:**

Playhouse shall not mortgage its rights and interests under this Agreement to secure financing, except with the approval of City. Playhouse shall not suffer or permit mortgages or liens against the CCPA, and shall indemnify and defend City from and against same.

### **Section 3.29 City Appointment of Playhouse Director:**

One director of the Playhouse Board of Directors shall be appointed by the Kerrville City Council and shall have the full rights and privileges, including, but not limited to voting, of any member of the Board of Directors.

## **Article IV GENERAL PROVISIONS**

### **Section 4.1 Assignment by Playhouse:**

Playhouse shall not assign this Agreement or any obligations set forth herein without the prior written consent of City, which shall not be unreasonably withheld. It is agreed by Playhouse that assignment of the performance of any of Playhouse's rights or obligations pursuant to this Agreement to any party other than another non-profit corporation shall be deemed an acceptable reason for denial of any requested assignment.

### **Section 4.2 Assignment by City:**

City shall not assign this Agreement without the prior written consent of Playhouse.

### **Section 4.3 Default by Playhouse:**

A "Playhouse" Default" shall mean the occurrence of one or more of the following events:

- a. Playhouse shall not use or occupy nor permit anyone to use or occupy the CCPA for any unlawful purpose. Playhouse shall comply with all laws, ordinances, orders, rules, and regulations of state, federal, municipal, or other agencies or bodies having any jurisdiction thereof relating to the use, condition, or occupancy of the CCPA; or
- b. failure of Playhouse to comply with any material term, covenant, or provision of this Agreement, and the failure by Playhouse to cure or to proceed diligently to cure the failure within 30 days after City notifies Playhouse in writing of the failure in accordance with the notice provisions under this Agreement.

For the purpose of this Section 4.3 only, the notice required by this section shall not be deemed delivered until an officer or director of Playhouse other than the director appointed by City pursuant to Section 3.29, above, has actual knowledge of the existence of the written notice delivered by City.

### **Section 4.4 Termination and Other Remedies By City Upon a Playhouse Default:**

Upon the occurrence of a Playhouse Default, City may elect to pursue any legal or equitable remedy or remedies, including, without limitation, specific performance, damages, and termination of this Agreement. Notwithstanding any other provision of this Agreement, any violation of Section 4.3.b. above, or a gross violation of any safety-related provision herein, shall entitle the City to immediately terminate this Agreement. In addition, termination or

nontermination of this Agreement upon a Playhouse Default does not prevent City from suing for specific performance, damages, injunctive relief or pursuing other remedies available in law. Upon termination by City, City shall occupy the CCPA and Playhouse shall assign to City any of its contracts or leases requested by City to be assigned to City. Playhouse contracts and leases not assumed by City shall terminate immediately upon termination of this Agreement.

**Section 4.5    Casualty Loss:**

In the event of loss by fire, storm, or other casualty to the CCPA or the City Personal Property, City agrees to use any insurance proceeds to repair and replace damage caused by such casualty, in which case this Agreement shall remain in effect. However, in the event of substantial destruction rendering the majority of the CCPA unusable for a period of one year or more, City has the option to restore the CCPA. Similarly, Playhouse may, at its election, terminate this Agreement upon providing written notice to City.

**Section 4.6    No Termination on Bankruptcy:**

If Playhouse is not otherwise in default under the terms of this Agreement, neither bankruptcy, insolvency, assignment for the benefit of creditors, nor the appointment of a receiver shall affect this Agreement so long as all covenants of Playhouse continue to be performed by Playhouse, its successors, or legal representatives.

**Section 4.7    Copyright Indemnification:**

Playhouse agrees to assume full responsibility for complying with the Federal Copyright Law of 1978 (17 U.S.C. 101, et seq.) and any regulations promulgated thereunder in connection with activities in the CCPA under this Agreement, including but not limited to, the assumption of any and all responsibilities for paying royalties which may be due to the copyright owner, or representative of the copyright owner, for the use of copyrighted works in the CCPA. Playhouse agrees to indemnify, defend, and hold harmless City, its officers and employees, for any claims or damages growing out of infringement or violation of the Federal Copyright Law and any regulations promulgated thereunder by Playhouse or any tenant (other than City) of the CCPA.

**Section 4.8    Compliance with Laws:**

Playhouse and City agree to use reasonable efforts to assure that every officer, employee, or agent under Playhouse's or City's respective control that is connected with the purpose for which the CCPA is being used, shall abide by, conform to, and comply with all the laws of the United States and the State of Texas, and all the ordinances, rules or regulations of City applicable to the construction, operation, maintenance, and management of the CCPA and the other properties related to the CCPA.

**Section 4.9    Nondiscrimination:**

Playhouse shall refrain from any activity in relation to and use of the CCPA that discriminates against any person or persons based upon race, color, creed, national origin, religion, sex, or any other protected class in accordance with federal and state law.

**Section 4.10   Place of Performance of Obligations and Venue:**

All obligations of City and Playhouse under the terms of this Agreement reasonably susceptible of being paid or performed in Kerr County, Texas, shall be payable and performable in Kerr County, Texas, and venue for any legal actions arising out of this Agreement shall lie exclusively in Kerr County, Texas.

**Section 4.11   Texas Law:**

This Agreement shall be governed by and construed in accordance with the laws and court decisions of the State of Texas.

**Section 4.12   Captions:**

The captions, section numbers, article numbers, and table of contents appearing in this Agreement are inserted only as a matter of convenience and in no way define, limit, construe, or describe the scope or intent of such sections or articles of this Agreement, nor in any way affect this Agreement.

**Section 4.13   Indemnification:**

The parties agree that the Indemnity provisions set forth Section 3.27 above is conspicuous, and the parties have read and understood the same.

**Section 4.14   Notices:**

Notices provided for in this Agreement shall be either hand delivered or sent by certified mail, return receipt requested, postage prepaid, and properly addressed as follows:

If to City:	City Manager City Hall 701 Main Street Kerrville, Texas 78028	With Copy To:	Director of Parks and Recreation City Hall 701 Main Street Kerrville, Texas 78028
If to Playhouse:	President P.O. Box 290088 Kerrville, Texas 78029	Or:	305 Washington Street Kerrville, Texas 78028



The parties may change the representative or address for delivery of notices from time to time by sending written notices to the other party. All notices shall be in writing and, except as set forth in Section 4.3, above, effective only upon actual receipt.

**Section 4.15 Severability:**

In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, the invalidity, illegality, or unenforceability shall not affect any other provision, and this Agreement shall be considered as if such invalid, illegal, or unenforceable provision had never been included herein.

**Section 4.16 No Implied Waiver:**

The failure of any party hereto to insist at any time upon the strict performance of any covenant or agreement or to exercise any option, right, power, or remedy contained in this Agreement shall not be construed as a waiver or relinquishment thereof for the future. The waiver of redress for any violation of any term, covenant, agreement or condition contained in this Agreement shall not prevent a subsequent act, which would have originally constituted a violation, from having all the force and effect of an original violation. No express waiver shall affect any condition other than the one specified in such waiver and that one only for the time and in the manner specifically stated.

**Section 4.17 Force Majeure:**

Playhouse and City shall be relieved of their obligation to perform any term or condition of this Agreement, if the performance is prevented by fire, earthquake, flood, acts of God, riot or civil commotions, acts of a superior governmental authority, utility interruptions, or other reason, matter or condition beyond the control of either party (Force Majeure), but only for the duration of the Force Majeure.

**Section 4.18 Agreement Administration:**

This Agreement shall be administered on behalf of the respective parties by the following representatives of each, who shall meet periodically on matters related to the implementation of this Agreement:

**City:** The City Manager.

**Playhouse:** Its President.

**Section 4.19 Dispute Resolution:**

The parties commit to use best efforts to cooperate and resolve in good faith all issues and disputes which may arise under this Agreement. The parties covenant not to institute litigation against each other without first submitting the subject thereof to mediation, under reasonable and customary procedures to be agreed to in each instance by the parties. The highest officer or executive officer of each of the parties shall represent that party in the mediation, and shall attend

and take part throughout the proceedings, with full authority to settle the matter in controversy, subject in the case of City to City Council approval where required by law.

**Section 4.20 Abandoned Property:**

City may retain, destroy, or dispose of any property left on the CCPA at the end of any term.

**Section 4.21 Entire Agreement:**

This Agreement embodies the complete agreement of the parties hereto, superseding all oral or written previous and contemporary agreements between the parties that relate to the subject of this Agreement. This Agreement cannot be modified without written agreement of City and Playhouse. Any Exhibits attached to and referred to in this Agreement are incorporated in this Agreement as a part of this Agreement for all purposes.

**EXECUTED** this \_\_\_\_\_, 2019, by City, signing by and through the City Manager, duly authorized to execute same by action of the City Council on \_\_\_\_\_, 2019, and by Playhouse, acting through its duly authorized officials.

**CITY OF KERRVILLE, TEXAS**

**PLAYHOUSE 2000, INC.**

By: \_\_\_\_\_  
Mark L. McDaniel, City Manager

By: \_\_\_\_\_  
Kit Werlein, President

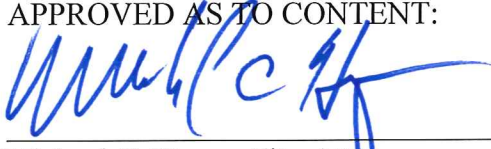
ATTEST:

\_\_\_\_\_  
Shelly McElhannon, Interim City Secretary

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

\_\_\_\_\_  
Ashlea Boyle, Director of Parks & Recreation

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

## Summary of Maintenance Responsibilities

	Landlord	Tenant
1 Foundation, exterior walls, roof, and other structural components	X	
2 Glass and Windows		X
a reasonable daily upkeep (cleaning)		
b replacement of damaged windows/frames	X	
3 Fire Protection equipment and fire sprinkler system		X
a reasonable daily upkeep (inspections, upkeep on hand units)		
b repair/replacement of major system components	X	
4 Exterior Doors, including closure devices, molding, locks, hardware		X
a reasonable daily upkeep (cleaning, adjustments)		
b repair/replacement	X	
5 Interior walls and doors (including closure devices, frames, molding locks and hardware)		X
6 Plumbing fixtures, plumbing systems, and sewer systems		X
a reasonable daily upkeep (inspections, minor repairs)		
b repair/replacement of major system components	X	
7 Electrical Systems, mechanical systems		X
a reasonable daily upkeep (inspections, minor repairs)		
b repair/replacement of major system components	X	
8 Ballast and lamp replacement		X
9 Heating, Ventilation and Air Conditioning (HVAC) systems		X
a reasonable daily upkeep (filters, inspections, minor repairs)		
b repair/replacement of major system components	X	
10 Signs		
a Monument Sign	X	
b Signs attached to CCPA	X	
11 Extermination and Pest Control		X
12 Security System (Fire reporting system only) see item 3		
13 Exterior Lighting attached to CCPA		X
a reasonable daily upkeep (lamps, cleaning)		
b repair or replacement	X	
14 Elevator		X
a reasonable daily upkeep (inspections, cleaning, maintenance agreement)		
b repair/replacement of major system components	X	
15 Theatrical Equipment		X
a lighting/sound/stage equipment, reasonable daily upkeep		
b fixed systems (including counterweight [flying,] pit lift, electrical distribution soft goods [curtains], sound reproduction)	X	
16 Communications Equipment (Telephone, Internet)		X
a reasonable daily upkeep (work stations, maintenance agreement)		
b internal wiring and distribution	X	
17 Auditorium Seating/Safety Lighting		X
a reasonable daily upkeep (cleaning, minor repairs)		
b replacement	X	



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

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**SUBJECT:** Application for Project Funding Request to the Kerrville Economic Improvement Corporation Regarding Downtown Parking Garage/Streetscape.

**AGENDA DATE OF:** February 12, 2019    **DATE SUBMITTED:** Feb 05, 2019

**SUBMITTED BY:** EA Hoppe

**EXHIBITS:**    [20190212\\_Budget Cost\\_PARKING\\_GARAGE-PROJECT\\_2-4-19.pdf](#)  
                  [20180105\\_Professional\\_Services\\_Proposal\\_Parking Garage Peter Lewis 020518.pdf](#)

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<b>Expenditure Required:</b>	<b>Remaining Budget Balance in Account:</b>	<b>Amount Budgeted:</b>	<b>Account Number:</b>
\$300,000	N/A	N/A	N/A

**PAYMENT TO BE MADE TO:**    N/A

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<b>Kerrville 2050 Item?</b>	Yes
<b>Key Priority Area</b>	D - Downtown Revitalization
<b>Guiding Principle</b>	D4. Encourage and program Downtown public events and create more gathering places that promote and enhance Downtown as an arts, culture and music center
<b>Action Item</b>	D4.6 - Enhance the access, functionality and safety of the Downtown parking garage

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**SUMMARY STATEMENT:**

The Kerrville City Council and the Kerrville Economic Improvement Corporation (EIC) funded a concept plan to enhance the Downtown Parking Garage with the help of local architectural firm, Peter Lewis Architect and Associates. In parallel, the EIC has identified this item in their annual budget over a number of years and has been allocating project funds towards this endeavor. The City of Kerrville has recently completed an extensive program to address the deferred maintenance in the Downtown Parking Garage, as well as greatly enhance the aesthetics of the interior of the facility. The facility is now ready for exterior improvement work to be accomplished, should the City Council and the EIC desire to move forward with all or some of the concept elements that have been developed.

Mr. Lewis has provided a sample estimate on anticipated budget costs, as well as a scope of work for the completion of the design work and development of construction documents to complete the facility enhancements. The costs for design, engineering, and construction will all be assembled into one application to the EIC. The City staff seeks direction from the City Council in proceeding with an application to the EIC, which could be placed on their agenda as early as February 18th.

**RECOMMENDED ACTION:**

Authorize staff to proceed with an application to the Kerrville Economic Improvement Corporation.



DOWNTOWN PARKING CENTER STREETScape  
BUDGET COST 02-14-2019

	SECTION	TOTAL COST
1	Powerwash exterior facade of entire parking garage.	NIC
2	Photomural graphics	\$40,000
3	Art in Public Places (Allowance)	\$20,000
4	Flags fixed mounted to 3 <sup>rd</sup> level posts	NIC
5	Sidewalk replacement	NIC
6	Water Street side perimeter street level upgrade	\$22,500
7	Canvas Awnings over openings	\$24,000
8	Painted cable posts 2 <sup>nd</sup> , 3 <sup>rd</sup> and 4 <sup>th</sup> level	NIC
9	Painted graphics on 4 <sup>th</sup> story elevator walls (north and south sides)	\$5,000
10	Information Kiosk structure including lighting and interactive information kiosk	\$55,000
11	Landscaping and Irrigation Allowance	\$40,000
12	Streetscape accessories (ceramic pots, bike racks, trash receptacles)	NIC
13	Timber wrapped Antique Light poles	NIC
14	42' high Galvanized trellis panels	\$72,000
15	Signage Allowance	\$12,000
16	Crosswalks-stamped and colored concrete	NIC
17	Raised stone planters with pilasters: Water Street side only	NIC
18	Interior decorative pedestrian path LED lighting	NIC
19	Repair Development Services Exterior/Sidney Baker	NIC
20	Interior graphics Allowance (Floor Level numbers/wayfinding)	\$10,000
	Subtotal	\$300,500
	Inflation @ 3%/annum	\$9,015
	Subtotal	\$309,515
	contingency 15%	\$46,427
	Subtotal	\$355,942
	plus OH&P 15%	\$53,391
	Total	\$409,334
	A/E FEES	\$42,600
	Total	\$451,934



# PETER LEWIS

## ARCHITECT + ASSOCIATES

Revised February 5, 2019

Mr. Kyle Burow, P.E.  
Director of Engineering  
City of Kerrville  
200 Sidney Baker Street  
Kerrville, TX 78028

RE: Professional Design Services Proposal  
Parking Center Streetscape

Dear Kyle:

Thank you for the opportunity to be of service to the City of Kerrville!  
At your request we have prepared this revised Proposal to provide the following services for the referenced Project.

### I. Work Scope

Additions and alterations to Parking Center located at the corner of Sidney Baker and Water Streets as described in Exhibit A, attached.

### II. Scope of Basic Services

A. Meet with City of Kerrville Staff, as required.

B. Construction Document Services (CD)  
Construction Drawings detailing all building systems and related site improvements; Technical Specifications, Interior Lighting Compliance and Exterior Lighting Compliance Certificates.

1. Architectural: Peter Lewis Architect + Associates, PLLC
2. Structural Engineering: Maxwell Engineering
2. Electrical Design: DW Electric.
3. Technical Specifications/Project Manual
4. Assist the City of Kerrville during Bid/Negotiation Phase
5. Statement of Probable Construction Cost

C. Bid Phase Services

1. Assist City of Kerrville in Soliciting and Evaluating Bids
2. Responding to Prospective Bidders questions and Issuing Addenda

D. Construction Contract Administration (CCA)

1. Office Construction Administration
2. Shop Drawing and Submittal Review
3. Periodic Site visits
4. Monthly Site meeting with Owner and Contractor
5. Review Applications for Payment and issue Certificates for Payment
6. Issue Certificate of Substantial Completion
7. Prepare As-built Drawings, based on Contractor's mark-ups

### III. Fixed Fee Schedule Basic Services Detail

A. Construction Documents: Item II(A&B)		\$ 32,250.00
Architect	\$ 26,500.00	
Structural Engineer	\$ 5,000.00	
Electrical Design	\$ 750.00	

*PWL*

B. Bid Phase: Item II(C)	\$ 2,250.00
C. Construction Contract Administration: Item II(D)	\$ 8,100.00
Architect	\$ 6,500.00
Structural Engineer	\$ 1,600.00
<b>Total Basic Services</b>	<b>\$ 42,600.00</b>

#### IV. Reimbursable Expenses

Reimbursable expenses, except those listed below, will be billed at a multiple of 1.15 times cost (invoice).

This Professional Design Services Proposal generally describes the Services to be provided and their associated Fees. If we agree on both items, please indicate so by signing and returning one original of this letter for our files. In the meantime, if you have any questions or need additional information, please do not hesitate to call me.

Very truly yours,



Peter W. Lewis, Architect  
Principal

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Accepted for City of Kerrville

Date



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

**SUBJECT:** Resolution 06-2019, granting a petition requesting the voluntary annexation of an approximate 35.05 acre tract of land out of the S. Wallace Survey No. 114, Abstract No. 348, and the S. Wallace Survey No. 113, Abstract No. 347, said tract located within Kerr County Texas, and the extraterritorial jurisdiction of the City of Kerrville, Texas; consisting of property lying adjacent to State Highway Loop 534; and ordering the preparation of an annexation ordinance.

**AGENDA DATE OF:** February 12, 2019    **DATE SUBMITTED:** Feb 06, 2019

**SUBMITTED BY:** Drew Paxton

**EXHIBITS:** [20190212\\_Resolution\\_06-2019 KISD Annexation.pdf](#)  
[20190212\\_Application\\_KISD Application.pdf](#)

<b>Expenditure Required:</b>	<b>Remaining Budget Balance in Account:</b>	<b>Amount Budgeted:</b>	<b>Account Number:</b>
\$0	\$0	\$0	N/A

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

<b>Kerrville 2050 Item?</b>	Yes
<b>Key Priority Area</b>	F - Public Facilities and Services
<b>Guiding Principle</b>	F9. Recognize public services and facilities as potential catalysts for growth and redevelopment that can promote economic development and cultural enrichment
<b>Action Item</b>	F9.3 - Target public investment for facilities and infrastructure toward areas where mixed-use and redevelopment is desired

**SUMMARY STATEMENT:**

On January 25th, Kerrville Independent School District (KISD) filed a petition for annexation. Pursuant to state statutes, City Council must accept or deny the petition within 30 days. This is the very first step in the process to consider an area for annexation. The resolution to accept the petition will also direct staff to schedule the public hearings and send proper notices and prepare other documents for the annexation procedure. The case will also go before the Planning and Zoning Commission for a zoning

recommendation upon annexation.

This property was selected as a result of the previously approved bond package from KISD. A portion of the property is within the current city limits. This will be the new home of the middle school, on Olympic Drive and Loop 534, across from the high school.

This is within the Kerrville 2050 Strategic Catalyst Area #8 and fits within the characteristics as KISD Tivy High School is already an anchor institution for the area.

If approved, the following is a proposed schedule for the annexation procedures:

Resolution to accept the petition for annexation:	February 12th
Planning and Zoning Commission for zoning:	March 21st
1st Public Hearing at City Council:	April 16th
2nd Public Hearing at City Council:	April 23rd
1st Reading of the annexation ordinance:	May 14th
2nd reading of the annexation ordinance:	May 28th

Attached are the application, petition, metes and bounds, and a map.

**RECOMMENDED ACTION:**

Approve Resolution No. 06-2019 as presented.



**CITY OF KERRVILLE, TEXAS  
RESOLUTION NO. 06-2019**

**A RESOLUTION GRANTING A PETITION REQUESTING THE VOLUNTARY ANNEXATION OF AN APPROXIMATE 35.05 ACRE TRACT OF LAND OUT OF THE S. WALLACE SURVEY NO. 114, ABSTRACT NO. 348, AND THE S. WALLACE SURVEY NO. 113, ABSTRACT NO. 347, SAID TRACT LOCATED WITHIN KERR COUNTY, TEXAS, AND THE EXTRATERRITORIAL JURISDICTION OF THE CITY OF KERRVILLE, TEXAS; CONSISTING OF PROPERTY LYING ADJACENT TO STATE HIGHWAY LOOP 534; AND ORDERING THE PREPARATION OF AN ANNEXATION ORDINANCE**

**WHEREAS**, on January 25, 2019, the Kerrville Independent School District, acting through its superintendent, as owner of an approximate 35.05 acre tract of land out of the S. Wallace Survey No. 114, Abstract No. 348, and the S. Wallace Survey No. 113, Abstract No. 347, said tract located within Kerr County, Texas, and the extraterritorial jurisdiction of the City of Kerrville, Texas, and lying adjacent to State Highway Loop 534 (Veterans Highway) (the "Property"), submitted a written petition to the City requesting the voluntary annexation of the Property pursuant to Section 43.028 of the Texas Local Government Code; and

**WHEREAS**, having considered the petition, City Council finds it to be in the public interest to grant said petition and to initiate the annexation process, which includes the preparation of an ordinance annexing the Property;

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

**SECTION ONE.** The petition requesting the voluntary annexation of the Property, as more fully described in the petition attached as **Exhibit A**, is granted.

**SECTION TWO.** The City Manager is directed to initiate the annexation process under the authority of the City's Charter and Chapter 43 of the Texas Local Government Code and to prepare an ordinance annexing the Property described in the above-referenced petition.

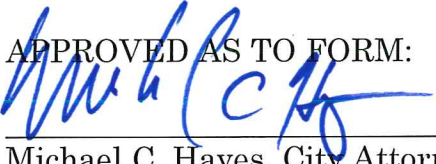
**PASSED AND APPROVED ON this the \_\_\_\_\_ day of \_\_\_\_\_, A.D., 2019.**

\_\_\_\_\_  
Bill Blackburn, Mayor

ATTEST:

\_\_\_\_\_  
Shelley McElhannon, City Secretary

APPROVED AS TO FORM:

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

PETITION REQUESTING ANNEXATION TO THE CORPORATE LIMITS OF THE CITY OF KERRVILLE, TEXAS, OF TEXAS ACRES OUT OF THE No. 114, 113 Survey, Abstract Number 348, 347, KERR COUNTY TEXAS

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

Kerrville Independent School District is the sole owner of an approximately 35.05 acre tract of land located adjacent to the incorporated limits of the City of Kerrville which is out of the Survey No. 114, 113 Abstract No. 348, 347 Kerr County, Texas, and is more particularly described as follows:

SEE EXHIBIT "A".

In accordance with Texas Local Government Code §43.028, Dr. Mark J. Foust hereby respectfully requests and petitions that the above-described property be annexed into the incorporated limits of the City of Kerrville, Texas.

SUBMITTED THIS 25 day of January 2019

By: Mark J. Foust  
Legally authorized signature

# ACKNOWLEDGEMENT

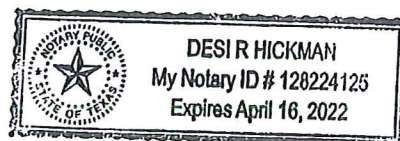
THE STATE OF TEXAS       §  
  §  
COUNTY OF KERR       §

This instrument was acknowledged before me on the 25 day of January, 2019  
by Desi R. Hickman for and on behalf of  
Kerrville ISD

Desi R. Hickman  
NOTARY PUBLIC, STATE OF TEXAS

Printed Name: Desi R. Hickman

My Commission Expires: April 16, 2022

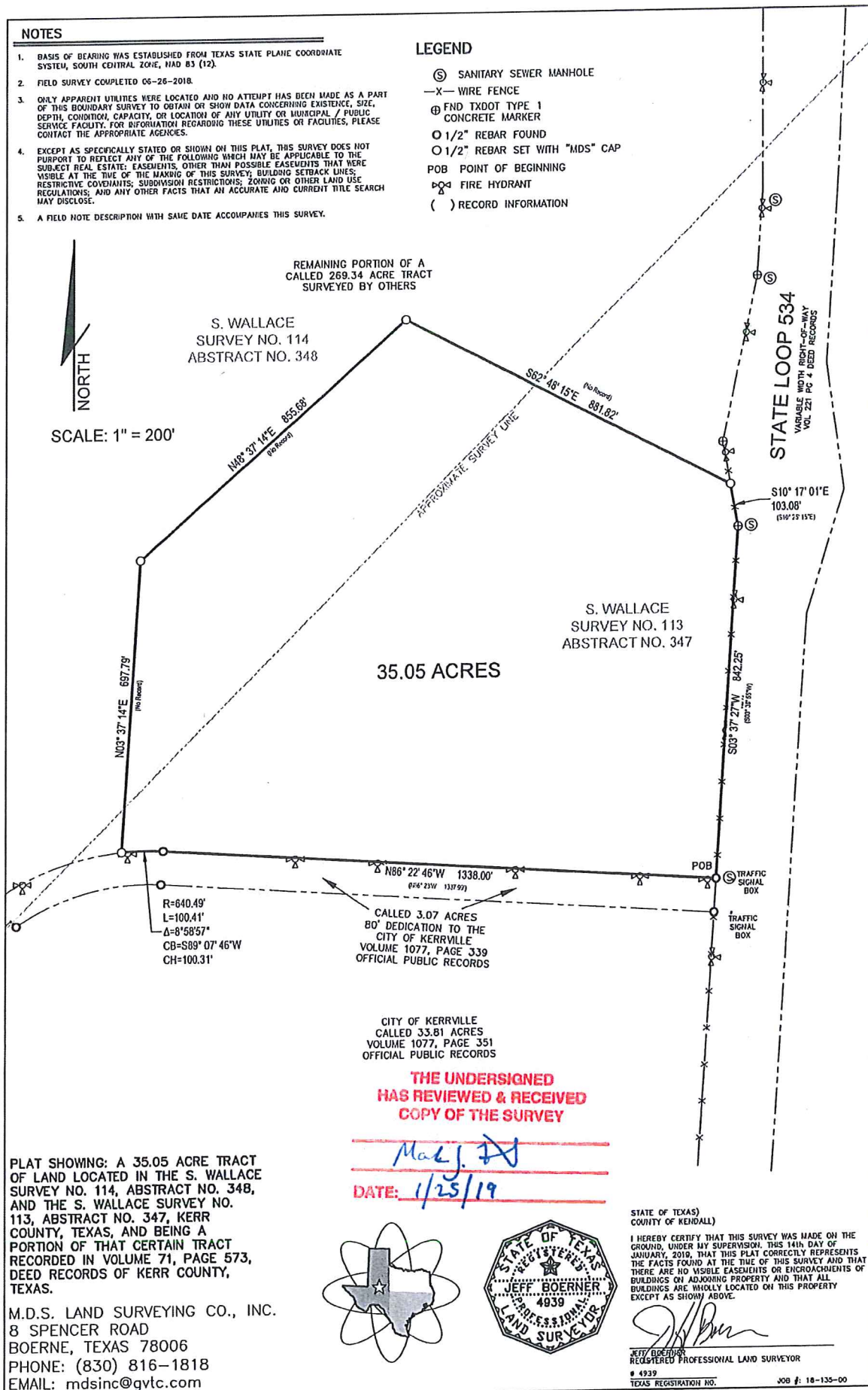


# NOTES

1. BASIS OF BEARING WAS ESTABLISHED FROM TEXAS STATE PLANE COORDINATE SYSTEM, SOUTH CENTRAL ZONE, NAD 83 (12).
2. FIELD SURVEY COMPLETED 06-26-2018.
3. ONLY APPARENT UTILITIES WERE LOCATED AND NO ATTEMPT HAS BEEN MADE AS A PART OF THIS BOUNDARY SURVEY TO OBTAIN OR SHOW DATA CONCERNING EXISTENCE, SIZE, DEPTH, CONDITION, CAPACITY, OR LOCATION OF ANY UTILITY OR MUNICIPAL / PUBLIC SERVICE FACILITY. FOR INFORMATION REGARDING THESE UTILITIES OR FACILITIES, PLEASE CONTACT THE APPROPRIATE AGENCIES.
4. EXCEPT AS SPECIFICALLY STATED OR SHOWN ON THIS PLAT, THIS SURVEY DOES NOT PURPORT TO REFLECT ANY OF THE FOLLOWING WHICH MAY BE APPLICABLE TO THE SUBJECT REAL ESTATE: EASEMENTS, OTHER THAN POSSIBLE EASEMENTS THAT WERE VISIBLE AT THE TIME OF THE MAKING OF THIS SURVEY; BUILDING SETBACK LINES; RESTRICTIVE COVENANTS; SUBDIVISION RESTRICTIONS; ZONING OR OTHER LAND USE REGULATIONS; AND ANY OTHER FACTS THAT AN ACCURATE AND CURRENT TITLE SEARCH MAY DISCLOSE.
5. A FIELD NOTE DESCRIPTION WITH SAME DATE ACCOMPANIES THIS SURVEY.

# LEGEND

- ⊙ SANITARY SEWER MANHOLE
- X- WIRE FENCE
- ⊕ FND TXDOT TYPE 1 CONCRETE MARKER
- 1/2" REBAR FOUND
- 1/2" REBAR SET WITH "MDS" CAP
- POB POINT OF BEGINNING
- ⦿ FIRE HYDRANT
- ( ) RECORD INFORMATION



# MDS

LAND SURVEYING COMPANY, INC.

Boundary ♦ Topographic ♦ Construction

729 Sidney Baker Street, Suite "B"

Kerrville, Texas 78028

Phone: 830-816-1818

Email: [mdsinc@gvfc.com](mailto:mdsinc@gvfc.com) Firm no. 10019600

## FIELD NOTES FOR A 35.05 ACRE TRACT

**BEING** A 35.05 ACRE TRACT OF LAND LOCATED IN THE S. WALLACE SURVEY NO. 114, ABSTRACT NO. 348, AND THE S. WALLACE SURVEY NO. 113, ABSTRACT NO. 347, KERR COUNTY, TEXAS, AND BEING A PORTION OF THAT CERTAIN TRACT RECORDED IN VOLUME 71, PAGE 573, DEED RECORDS OF KERR COUNTY, TEXAS. SAID 35.05 ACRE TRACT BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

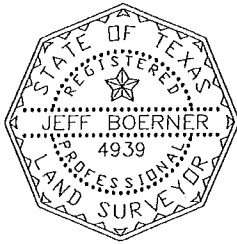
**BEGINNING** at a ½" rebar found in the west right-of-way line of State Loop 534, at the southeast corner of the herein described tract, said point being the northeast corner of a called 3.07 acre dedication to the City of Kerrville, recorded in Volume 1077, Page 339, Official Public Records of Kerr County, Texas;

- (1) **Thence**, departing the west right-of-way line of State Loop 534, with the north line of the called 3.07 acre dedication, the south boundary line of the herein described tract, the following 2 (two) courses and distances:
  - a. **N 86° 22' 46" W, 1338.00'** to a ½" rebar found for the point of curvature of a curve to the left;
  - b. with the arc of said curve to the left, with a radius of 640.49', a central angle of 08° 58' 57", an arc length of 100.41', and a chord which bears **S 89° 07' 46" W, a distance of 100.31'** to a ½" with "MDS" cap set for southwest corner;
- (2) **Thence**, departing the north line of the called 3.07 acre dedication, with the west, northwest, and north boundary lines of the herein described tract, the following 3 (three) courses and distances:
  - a. **N 03° 37' 14" E, 697.79'** to a ½" rebar with "MDS" cap set for angle;
  - b. **N 48° 37' 14" E, 855.68'** to a ½" rebar with "MDS" cap set for corner;
  - c. **S 62° 48' 15" E, 881.82'** to a ½" rebar with "MDS" cap set for northeast corner in the west right-of-way line of State Loop 534;

(3) Thence, with the west right-of-way line of State Loop 534, the east boundary line of the herein described tract, the following 2 (two) courses and distances:

- a. S 10° 17' 01" E, 103.08' to a TxDOT, Type 1, concrete marker found for angle;
- b. S 03° 37' 27" W, 842.25' to the **PLACE OF BEGINNING** and containing **35.05 acres** of land, more or less.

Note: This description is based on an on the ground survey performed in June of 2018. The basis of bearings was derived from the Texas State Plane Coordinate System, South Central Zone. A survey plat with same date accompanies this description.



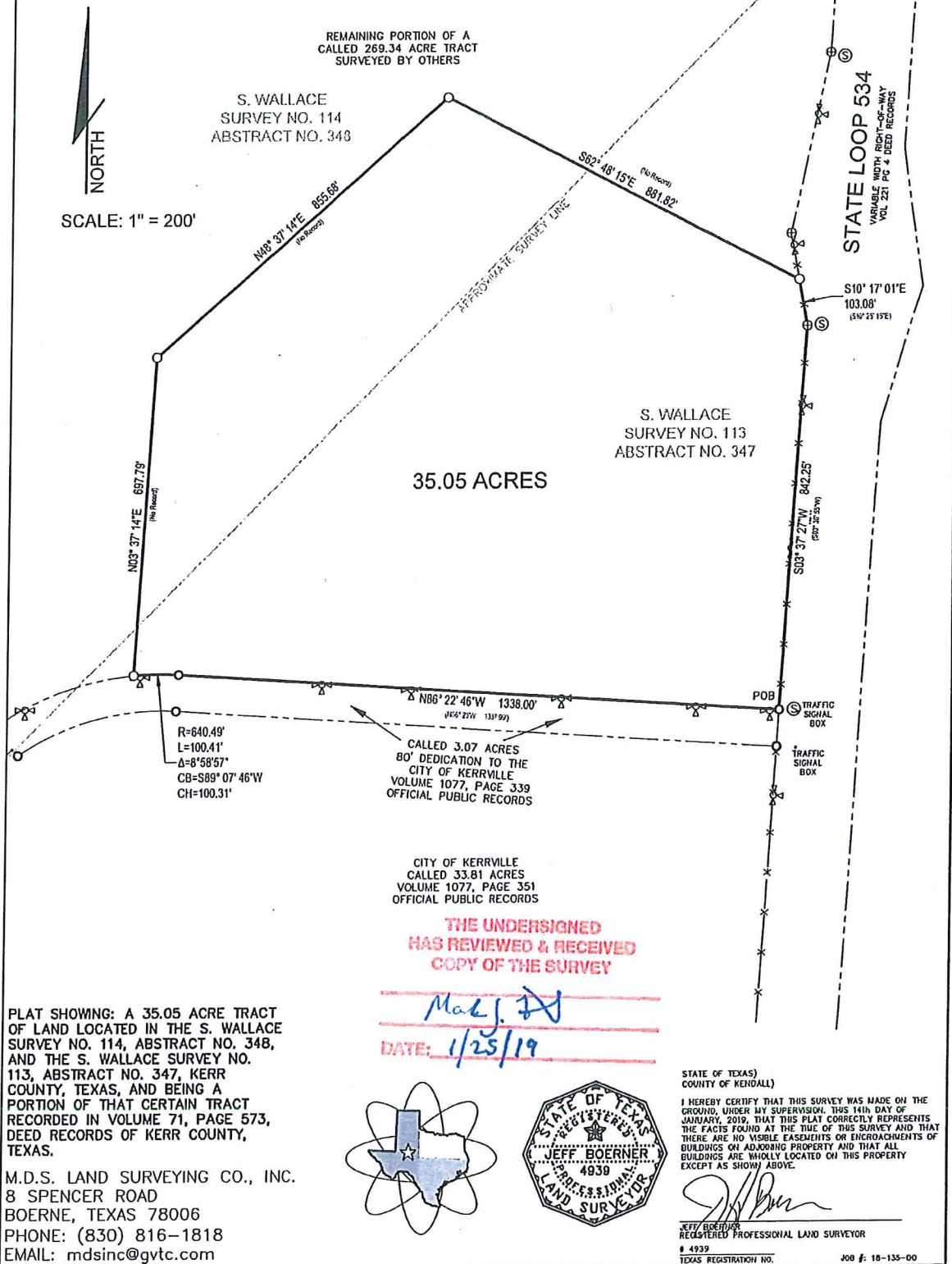
A handwritten signature in black ink, appearing to read "Jeff Boerner", written over a horizontal line.

Jeff Boerner RPLS # 4939  
Date: 01-14-2019 Job No. 18-135-00



1. BASIS OF BEARING WAS ESTABLISHED FROM TEXAS STATE PLANE COORDINATE SYSTEM, SOUTH CENTRAL ZONE, HAD B3 (12).
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5. A FIELD NOTE DESCRIPTION WITH SAME DATE ACCOMPANIES THIS SURVEY.

(S) SANITARY SEWER MANHOLE  
 —X— WIRE FENCE  
 (P) FND TXDOT TYPE 1  
 CONCRETE MARKER  
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# MDS

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Boundary ♦ Topographic ♦ Construction

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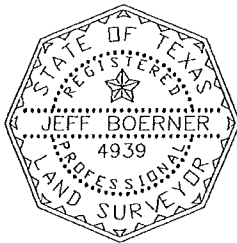
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- (1) **Thence**, departing the west right-of-way line of State Loop 534, with the north line of the called 3.07 acre dedication, the south boundary line of the herein described tract, the following 2 (two) courses and distances:
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- b. S 03° 37' 27" W, 842.25' to the **PLACE OF BEGINNING** and containing **35.05** acres of land, more or less.

Note: This description is based on an on the ground survey performed in June of 2018. The basis of bearings was derived from the Texas State Plane Coordinate System, South Central Zone. A survey plat with same date accompanies this description.

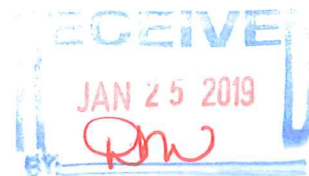


A handwritten signature in black ink, appearing to read "Jeff Boerner".

Jeff Boerner RPLS # 4939  
Date: 01-14-2019 Job No. 18-135-00



#2019-007



# Master Application

City of Kerrville - Planning Department

## Required Information:

### 1. Applicant/Owner contact information

Name of Owner: Kerrville ISD (Mark Foust, Superintendent) Email: mark.foust@kerrvilleisd.net

Mailing Address: 1009 Barnett Phone: 830 257-2200 ext. 1010

Name of Applicant (if different than owner): Mark Foust Email: mark.foust@kerrvilleisd.net

Mailing Address: 1009 Barnett Phone: 830 257-2200 ext. 1010

### 2. Subject Property

Project Name: Hal Peterson Middle School

Street address (approximate): Loop 534

Tax/Property ID Number: \_\_\_\_\_

Legal description of property \_\_\_\_\_

Subdivision Name: \_\_\_\_\_

Block: \_\_\_\_\_ Lot: \_\_\_\_\_

Zoning Districts: \_\_\_\_\_ Comprehensive Plan Designation: \_\_\_\_\_

### 3. Please check all that apply

Transaction Code: 840.01-6236

Attach completed checklists for all projects

☒ Annexation (2 copies / 2 petitions)

No Fee

☐ Preliminary Plat (20 copies)

\$300 + \$20/lot or \$10/acre (which ever is greater)

☐ Administrative Appeal

\$150

☐ Final Plat (20 copies)

\$150 + \$10/lot

☐ Preliminary Site Plan (20 copies)

No Fee

☐ Preliminary Minor Plat (20 copies)

\$150 + 10/lot

☐ Final Site Plan (20 copies)

No Fee

☐ Final Minor Plat (20 copies)

\$150 + 10/lot

☐ Concept Plan (20 copies)

\$500

☐ Replat (20 copies)

\$150 + 10/lot

☐ Alternative Screening Request  
(P&Z Commission)

No Fee

☐ Development Site Plan (20 copies)

\$200

**Note:** All Plat related fees will be collected once the application is deemed complete. Once the application has been deemed complete and all fees have been paid, the Platting process will begin. (The application completeness review process may take up to a maximum of ten (10) business days).

For plats in the ETJ: (Payment due at the time of final plat, \$200.00 per lot)

☐ Parkland Fee (East) \_\_\_\_\_  
08-6242

☐ Parkland Fee (West) \_\_\_\_\_  
08-6243

**Owner's Affidavit Required for:** *(Must attach to this Master Application Form)*

- |   |  |
|---|--|
| <input type="checkbox"/> Conditional Use Permit (CUP) Request _____<br>840. 01-6236 \$300 | <input type="checkbox"/> Zoning Change Request _____<br>840. 01-6236 \$300             |
| <input type="checkbox"/> Variance Request _____<br>840. 01-6236 \$150                     | <input type="checkbox"/> Comp. Plan Amendment Request _____<br>840. 01-6236 \$300      |
| <input type="checkbox"/> Planned Development District Request _____<br>840. 01-6236 \$300 | <input type="checkbox"/> Specific Use Permit (SUP) Request _____<br>840. 01-6236 \$300 |

4. Please provide a basic description of the proposed request/project: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

5. Submit all completed applications and forms to our office located at 200 Sidney Baker Street, Kerrville, Texas 78028 or via email [buildings@kerrvilletx.gov](mailto:buildings@kerrvilletx.gov). A completed application is due by 10:00 a.m. Friday to be reviewed the following week. If you have any questions please call (830)258-1170.

I hereby certify that I am the owner of the subject property. I further certify that I have read and examined this application and know the same to be true and correct. If any of the information provided on this application is incorrect the application may be denied and/or the permit or approval may be revoked.

Owner Signature: Mark J. Faust Date: 1/25/19

I hereby certify that I am the duly authorized agent of the owner for the purposes of this application. I further certify that I have read and examined this application and know the same to be true and correct. If any of the information provided on this application is incorrect the application may be denied and/or the permit or approval may be revoked.

Applicant Signature (if different than owner): Mark J. Faust Date: 1/25/19



## REQUIREMENTS FOR VOLUNTARY ANNEXATION

- 1) State law and ordinance requires that a public hearing be held.
- 2) The property being annexed is required to request zoning at the time of application.
- 3) Current owner's deeds, two copies of a petition, and two copies of a boundary survey, sealed by a professional surveyor registered in the State of Texas.
- 4) The Planning & Zoning Commission will consider the land use and zoning in a public hearing.
- 5) The City Council will consider the petition to accept it after the Commission recommends the land use and zoning.
- 6) City of Kerrville Fire, Police, Solid Waste, Code Enforcement and Zoning powers will prepare a service plan for provision of service.

Complete

Two signed sealed boundary surveys.

The current owner's deed, and recording information

Two copies of the annexation petition. (See Development Services for a copy).

---

I have read and understand in its entirety and understand that the requirements of annexation are subject to the terms and conditions therein. This annexation checklist is used to insure compliance with local ordinances and in some instances the City may require additional information for approval. An endorsement of this application checklist by the applicant shall be acknowledgment that all of the items on the above list have been reviewed and.

Project: HAL PETERSON MIDDLE SCHOOL Date: 1/25/2019

Owner or Engineer/Surveyor with address: Kerrville Independent School District, Dr. Mark J. Foust, Superintendent

Signature: Mark J. Foust

PETITION REQUESTING ANNEXATION TO THE CORPORATE LIMITS OF THE CITY OF KERRVILLE, TEXAS, OF TEXAS ACRES OUT OF THE No. 114, 113 Survey, Abstract Number 348, 347, KERR COUNTY TEXAS

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

Kerrville Independent School District is the sole owner of an approximately 35.05 acre tract of land located adjacent to the incorporated limits of the City of Kerrville which is out of the Survey No. 114, 113 Abstract No. 348, 347 Kerr County, Texas, and is more particularly described as follows:

SEE EXHIBIT "A".

In accordance with Texas Local Government Code §43.028, Dr. Mark J. Foust hereby respectfully requests and petitions that the above-described property be annexed into the incorporated limits of the City of Kerrville, Texas.

SUBMITTED THIS 25 day of January 2019

By: Mark J. Foust  
Legally authorized signature

ACKNOWLEDGEMENT

THE STATE OF TEXAS       §  
   §  
COUNTY OF KERR       §

This instrument was acknowledged before me on the 25 day of January, 2019  
by Desi R. Hickman for and on behalf of  
Kerrville ISD

Desi R. Hickman  
NOTARY PUBLIC, STATE OF TEXAS

Printed Name: Desi R. Hickman

My Commission Expires: April 16, 2022



PETITION REQUESTING ANNEXATION TO THE CORPORATE LIMITS OF THE CITY OF KERRVILLE, TEXAS, OF TEXAS ACRES OUT OF THE No. 114, 113 Survey, Abstract Number 348, 347, KERR COUNTY TEXAS

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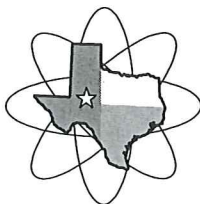
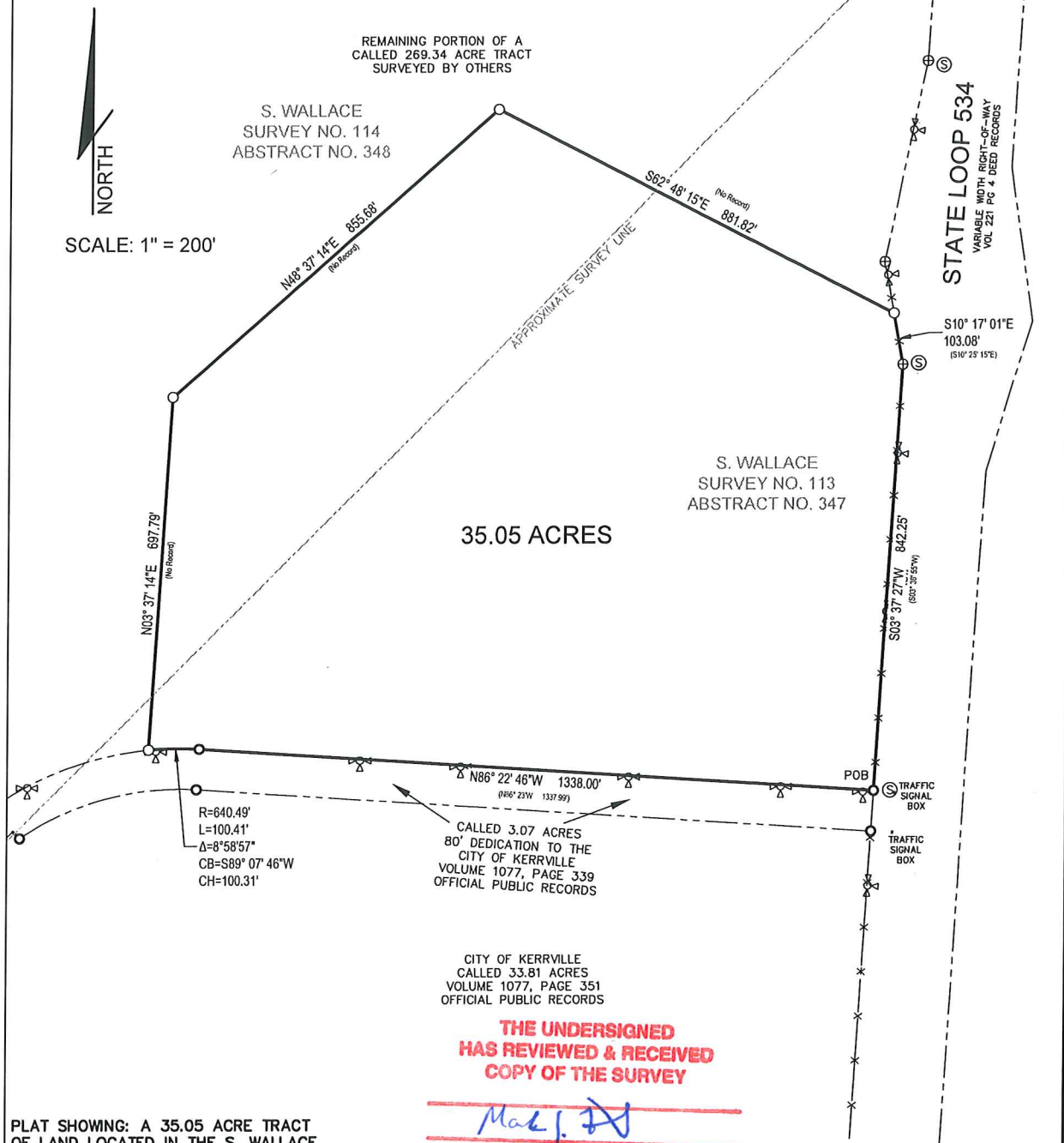


# NOTES

1. BASIS OF BEARING WAS ESTABLISHED FROM TEXAS STATE PLANE COORDINATE SYSTEM, SOUTH CENTRAL ZONE, NAD 83 (12).
2. FIELD SURVEY COMPLETED 06-26-2018.
3. ONLY APPARENT UTILITIES WERE LOCATED AND NO ATTEMPT HAS BEEN MADE AS A PART OF THIS BOUNDARY SURVEY TO OBTAIN OR SHOW DATA CONCERNING EXISTENCE, SIZE, DEPTH, CONDITION, CAPACITY, OR LOCATION OF ANY UTILITY OR MUNICIPAL / PUBLIC SERVICE FACILITY. FOR INFORMATION REGARDING THESE UTILITIES OR FACILITIES, PLEASE CONTACT THE APPROPRIATE AGENCIES.
4. EXCEPT AS SPECIFICALLY STATED OR SHOWN ON THIS PLAT, THIS SURVEY DOES NOT PURPORT TO REFLECT ANY OF THE FOLLOWING WHICH MAY BE APPLICABLE TO THE SUBJECT REAL ESTATE: EASEMENTS, OTHER THAN POSSIBLE EASEMENTS THAT WERE VISIBLE AT THE TIME OF THE MAKING OF THIS SURVEY; BUILDING SETBACK LINES; RESTRICTIVE COVENANTS; SUBDIVISION RESTRICTIONS; ZONING OR OTHER LAND USE REGULATIONS; AND ANY OTHER FACTS THAT AN ACCURATE AND CURRENT TITLE SEARCH MAY DISCLOSE.
5. A FIELD NOTE DESCRIPTION WITH SAME DATE ACCOMPANIES THIS SURVEY.

## LEGEND

- ⊙ SANITARY SEWER MANHOLE
- X— WIRE FENCE
- ⊕ FND TXDOT TYPE 1 CONCRETE MARKER
- 1/2" REBAR FOUND
- 1/2" REBAR SET WITH "MDS" CAP
- POB POINT OF BEGINNING
- ⊕ FIRE HYDRANT
- ( ) RECORD INFORMATION



STATE OF TEXAS)  
COUNTY OF KENDALL)

I HEREBY CERTIFY THAT THIS SURVEY WAS MADE ON THE GROUND, UNDER MY SUPERVISION, THIS 14th DAY OF JANUARY, 2019, THAT THIS PLAT CORRECTLY REPRESENTS THE FACTS FOUND AT THE TIME OF THIS SURVEY AND THAT THERE ARE NO VISIBLE EASEMENTS OR ENCROACHMENTS OF BUILDINGS ON ADJOINING PROPERTY AND THAT ALL BUILDINGS ARE WHOLLY LOCATED ON THIS PROPERTY EXCEPT AS SHOWN ABOVE.

JEFF BOERNER  
REGISTERED PROFESSIONAL LAND SURVEYOR

# 4939  
TEXAS REGISTRATION NO.

JOB #: 18-135-00

# MDS

LAND SURVEYING COMPANY, INC.

Boundary ♦ Topographic ♦ Construction

729 Sidney Baker Street, Suite "B"

Kerrville, Texas 78028

Phone: 830-816-1818

Email: [mdsinc@gvtc.com](mailto:mdsinc@gvtc.com) Firm no. 10019600

## FIELD NOTES FOR A 35.05 ACRE TRACT

**BEING** A 35.05 ACRE TRACT OF LAND LOCATED IN THE S. WALLACE SURVEY NO. 114, ABSTRACT NO. 348, AND THE S. WALLACE SURVEY NO. 113, ABSTRACT NO. 347, KERR COUNTY, TEXAS, AND BEING A PORTION OF THAT CERTAIN TRACT RECORDED IN VOLUME 71, PAGE 573, DEED RECORDS OF KERR COUNTY, TEXAS. SAID 35.05 ACRE TRACT BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

**BEGINNING** at a ½" rebar found in the west right-of-way line of State Loop 534, at the southeast corner of the herein described tract, said point being the northeast corner of a called 3.07 acre dedication to the City of Kerrville, recorded in Volume 1077, Page 339, Official Public Records of Kerr County, Texas;

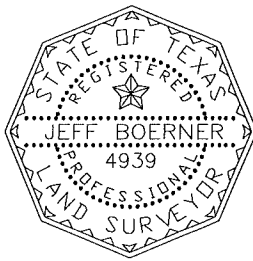
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- (2) Thence,** departing the north line of the called 3.07 acre dedication, with the west, northwest, and north boundary lines of the herein described tract, the following 3 (three) courses and distances:
  - a. **N 03° 37' 14" E, 697.79'** to a ½" rebar with "MDS" cap set for angle;
  - b. **N 48° 37' 14" E, 855.68'** to a ½" rebar with "MDS" cap set for corner;
  - c. **S 62° 48' 15" E, 881.82'** to a ½" rebar with "MDS" cap set for northeast corner in the west right-of-way line of State Loop 534;



(3) **Thence**, with the west right-of-way line of State Loop 534, the east boundary line of the herein described tract, the following 2 (two) courses and distances:

- a. **S 10° 17' 01" E, 103.08'** to a TxDOT, Type 1, concrete marker found for angle;
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Note: This description is based on an on the ground survey performed in June of 2018. The basis of bearings was derived from the Texas State Plane Coordinate System, South Central Zone. A survey plat with same date accompanies this description.



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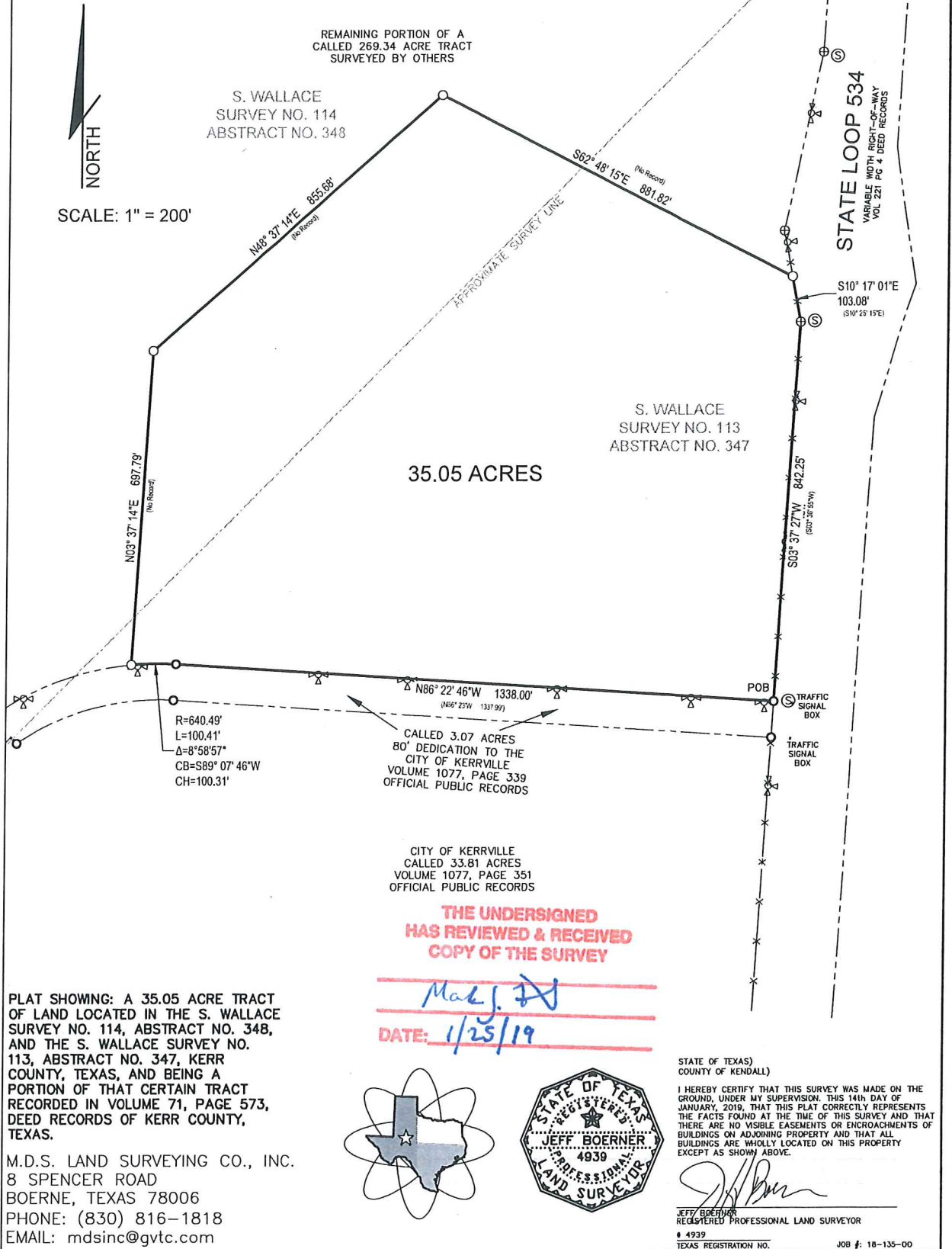
Jeff Boerner RPLS # 4939  
Date: 01-14-2019 Job No. 18-135-00

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# MDS

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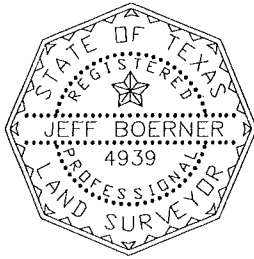
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Jeff Boerner RPLS # 4939  
Date: 01-14-2019 Job No. 18-135-00

19-00623

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

**CASH WARRANTY DEED WITH RESTRICTIONS**

**Date:** JANUARY 25, 2019

**Grantor:** SCHREINER UNIVERSITY formerly known as SCHREINER INSTITUTE, a Texas non-profit corporation

**Grantee:** KERRVILLE INDEPENDENT SCHOOL DISTRICT

**Consideration:** TEN AND NO/100 DOLLARS and other good and valuable consideration.

**Property (including any improvements):**

All that certain tract or parcel of land, lying and being situated in the County of Kerr, State of Texas, and being 35.05 acres, more or less, out of The S. Wallace Survey No. 114, Abstract No. 348 and The S. Wallace Survey No. 113, Abstract No. 347, and being a portion of that certain tract recorded in Volume 71, Page 573, Deed Records of Kerr County, Texas; said 35.055 acre tract; and being more particularly described by metes and bounds on the attached Exhibit "A" for all purposes.

**Reservations from Conveyance:** Restrictions as provided below:

**Affected Property:** The following restrictions shall apply to and affect the property conveyed herein.

1. The Property shall be used for Educational Facility Use only until January 1, 2059; when this restriction shall expire without further action.

Grantor, as the fee simple owner of the Property, establishes the Restrictions as covenants, conditions, and restrictions, whether mandatory, prohibitive, permissive, or administrative, to regulate the use of the Property and the improvements placed on it. Grantor and Grantee stipulate that (a) the Restrictions touch and concern the Property; (b) privity of estate exists by reason of the ownership of the Property; (c) notice is given by filing this



instrument in the real property records of the county in which the Property is situated; and (d) the Restrictions are reasonable. The Restrictions run with the land making up the Property, are binding on Grantee and Grantee's successors and assigns for the term stated herein, and inure to the benefit of Grantor, Grantee, and their successors and assigns forever.

**Exceptions to Conveyance and Warranty:** This conveyance is made by Grantors and accepted by Grantees expressly subject to the following matters to the extent, but only to the extent, the same are valid and subsisting and affect the Property (without waiving rights or defenses relating to and without ratifying such matters, and with the intention that the doctrine of revivor will not apply thereto), to-wit:

1. Any visible and/or apparent roadways or easements over or across property herein described.
2. All leases, grants, exceptions or reservations of coal, lignite, oil, gas and other minerals, together with all rights, privileges, and immunities relating thereto, appearing in the Public Records of Kerr County, Texas.

Grantor, for the consideration, receipt of which is acknowledged, and subject to the reservations from and exceptions to conveyance and warranty, grants, sells and conveys to Grantee the property, together with all and singular the rights and appurtenances thereto in any wise belonging, to have and hold it to Grantee, Grantee's heirs, executors, administrators, successors or assigns forever. Grantor binds Grantor and Grantor's heirs, executors, administrators and successors to warrant and forever defend all and singular the property to Grantee and Grantee's heirs, executors, administrators, successors and assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof, except as to the reservations from and exceptions to conveyance and warranty.

When the context requires, singular nouns and pronouns include the plural.

SCHREINER UNIVERSITY formerly known  
as SCHREINER INSTITUTE

BY: [Signature]  
Bill Muse, Vice President of  
Administration and Finance

ACCEPTED BY: KERRVILLE INDEPENDENT SCHOOL DISTRICT

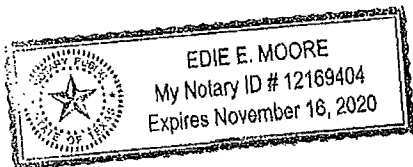
BY: Mark J. Foust  
PRINTED NAME: DR MARK FOUST  
TITLE: SUPERINTENDENT

ACKNOWLEDGMENT

STATE OF TEXAS §

COUNTY OF KERR §

This instrument was acknowledged before me on JANUARY 25, 2019, by Bill Muse, Vice President of Administration and Finance of SCHREINER UNIVERSITY formerly known as SCHREINER INSTITUTE, a Texas non-profit corporation, on behalf of said corporation.



[Signature]  
Notary Public, State of Texas

GRANTEE ADDRESS:

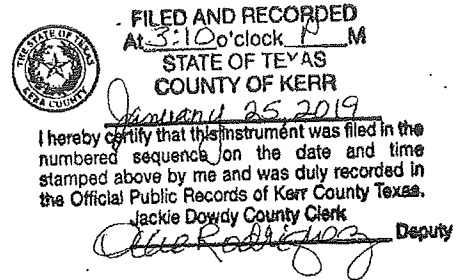
KERRVILLE INDEPENDENT SCHOOL DISTRICT

1009 Barnett  
Kerrville, Tx 78028

G.F. No: 40682

Filed By and Return To: Kerr County Abstract & Title Co.

# Exhibit "A"



## FIELD NOTES FOR A 35.05 ACRE TRACT

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

**SUBJECT:** Appointments to the Zoning Board of Adjustments. There are currently three full-member positions vacant on the Zoning Board of Adjustments.

**AGENDA DATE OF:** February 12, 2019 **DATE SUBMITTED:** Feb 06, 2019

**SUBMITTED BY:** Shelley McElhannon

**EXHIBITS:** [20190212\\_Appointment\\_Zoning Board of Adjustment.pdf](#)

<b>Expenditure Required:</b>	<b>Remaining Budget Balance in Account:</b>	<b>Amount Budgeted:</b>	<b>Account Number:</b>
\$0	\$0	\$0	N/A

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

<b>Kerrville 2050 Item?</b>	No
<b>Key Priority Area</b>	N/A
<b>Guiding Principle</b>	N/A
<b>Action Item</b>	N/A

**SUMMARY STATEMENT:**

Danny Almond's term expired as a member of the Zoning Board of Adjustments. He has applied for reappointment.

Robert Irvin's term expired as a member of the Zoning Board of Adjustments. He has applied for reappointment.

Peter Lewis' term has expired.

Alternate member Pablo Brinkman has applied as a full member of the Zoning Board of Adjustments.

**RECOMMENDED ACTION:**

Appoint members to the Zoning Board of Adjustments.

## ZONING BOARD OF ADJUSTMENT

	<u>Telephone</u>	<u>Orig. Appt.</u>	<u>Re-Appt. Date</u>	<u>Exp. Date</u>
ALMOND, DANNY Chair 3540 Trail Head Dr.	214-202-4819 (C)	04-11-17** 10-25-16*		09-30-18
<del>LEWIS, PETER</del> <del>Vice-Chair</del> <del>334 W. Water St.</del>	<del>896-1707 (H)</del> <del>896-4220 (W)</del>	<del>12-09-14</del>	<del>10-25-16</del>	<del>09-30-18</del>
LIGON, SAM 431 Valley Drive	895-4431 (H) 895-5111 (W)	10-22-13	02-13-18	09-30-19
PARKS, ROBERT 2515 Rogers Circle	896-5861 (H) 928-1616 (C)	12-09-14 02-13-18**	10-25-16*	09-30-19
IRVIN, ROBERT 2128 Bluff Ridge	377-6577 (H) 315-2000 (W)	06-12-18		09-30-18
<u>ALTERNATES:</u>				
BRINKMAN, PABLO 3928 Oak Park Drive	903-330-9187 (C) 315-7653 (W)	06-12-18		09-30-19
VACANT				09-30-18

CITY STAFF:  
Drew Paxton 258-1178 (O)  
Executive Director of Development Services

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

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

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



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

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

Quorum: Three members

Number of Members: Five with two alternates

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

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

Established by: Ordinance No. 1997-07

Revised: April 26, 2018

\* Appointed as alternate

\*\* Appointed as full member





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

---

**SUBJECT:** Economic Development Negotiations Related to the Construction of a Marriot Springhill Suites in the Downtown Area located near Water Street and Spring Street.

**AGENDA DATE OF:** February 12, 2019    **DATE SUBMITTED:** Feb 04, 2019

**SUBMITTED BY:** EA Hoppe

**EXHIBITS:**

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<b>Expenditure Required:</b>	<b>Remaining Budget Balance in Account:</b>	<b>Amount Budgeted:</b>	<b>Account Number:</b>
----------------------------------	---	-------------------------	------------------------

**PAYMENT TO BE MADE TO:**

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<b>Kerrville 2050 Item?</b>	No
<b>Key Priority Area</b>	N/A
<b>Guiding Principle</b>	N/A
<b>Action Item</b>	N/A

---

**SUMMARY STATEMENT:**

**RECOMMENDED ACTION:**

Economic development discussion.