

## **AGENDA FOR THE KERRVILLE CITY COUNCIL MEETING**

**TUESDAY, MARCH 14, 2023, 6:00 P.M.**

**CITY HALL COUNCIL CHAMBERS**

**701 MAIN STREET, KERRVILLE, TEXAS**

### **The Community Vision**

*Kerrville will be a vibrant, welcoming and inclusive community that:*

- *Respects and protects the natural environment that surrounds it;*
- *Seeks to attract economic growth and development;*
- *Provides opportunities for prosperity, personal enrichment and intellectual growth for people of all ages; and*
- *Does so while preserving the small-town charm, heritage, arts and culture of the community.*



Kerrville2050



## CITY COUNCIL MEETING AGENDA

MARCH 14, 2023 6:00 PM

CITY HALL, 701 MAIN STREET, KERRVILLE, TEXAS



### ***Council Meeting Procedures, City Council and City Staff Safety Measures, and Citizen Participation Guidelines***

Citizens may view and hear City Council meetings on Spectrum Channel 2 or by live-streaming via the City's website ([www.kerrvilletx.gov](http://www.kerrvilletx.gov)). City Council meetings are recorded and the recordings are posted on the City's website.

Citizens wishing to speak during a meeting shall submit a completed "speaker request form" to the City Secretary before the item is introduced, but are encouraged to submit the form before the meeting begin. Each speaker is limited to four minutes.

Pursuant to Section 30.06, Penal Code (trespass by license holder with a concealed handgun), a person licensed under Subchapter H, Chapter 411, Government Code (handgun licensing law), may not enter this property with a concealed handgun.

Pursuant to Section 30.07, Penal Code (trespass by license holder with an openly carried handgun), a person licensed under Subchapter H, Chapter 411, Government Code (handgun licensing law), may not enter this property with a handgun that is carried openly.

Pursuant to Section 46.03, Penal Code (places weapons prohibited), a person may not carry a firearm or other weapon on this property.

Thank you for your participation!

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### **CALL TO ORDER: By Mayor Judy Eychner**

### **INVOCATION AND PLEDGE OF ALLEGIANCE: Led by Mayor Eychner**

- 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. PRESENTATIONS:**
  - 2.A Kerrville Kindness award recognizing Peterson Regional Medical Center Darin Smith and the Kerrville Police Departments' Tivy High School Resource Officer Justin Gonzales.
  - 2.B Proclamation recognizing March 2023 as American Red Cross month in Kerrville, Texas.
  - 2.C Proclamation recognizing March 2023 as the March for Meals month at the Diertert Center in Kerrville, Texas.
- 3. 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. The speaker request form must be submitted to the City Secretary before the item is called or read into record. City Council may not discuss or take any action on an item but may place the issue on a future agenda. Each speaker is limited to four minutes.
- 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 Adopt-A-Highway Program Agreement Renewal between Texas Department of Transportation and City of Kerrville, TX.  
Attachment: [20230314\\_Contract renewal agreement TXDOT adopt a highway COK volunteers.pdf](#)

4.B City Council workshop minutes, February 28, 2023.  
Attachment: [20230314\\_Minutes Council workshop 2-28-23 430pm.pdf](#)

4.C City Council meeting minutes, February 28, 2023.  
Attachment: [20230314\\_Minutes Council meeting 2-28-23 6pm.pdf](#)

**END OF CONSENT AGENDA.**

**5. ORDINANCES, SECOND READING:**

5.A Ordinance No. 2023-09, second reading. An Ordinance amending Chapter 90 of the Code of Ordinances, City of Kerrville, Texas, titled "Streets, Sidewalks, and Other Public Places"; by adding a new Article titled "Right-Of-Way Management", to create regulations, including a permit requirement, for construction, maintenance, and repair work within the City's Rights-Of-Way; providing for a penalty in the maximum amount of \$2,000.00 for violations thereof; and providing other matters relating to the subject.

Attachment: [20230314\\_Ord 2023-09 ROW regulations 2nd reading.pdf](#)

**6. CONSIDERATION AND POSSIBLE ACTION:**

6.A Amended Commercial Lease between the City of Kerrville and BTB Baseball Ventures, LLC.  
Attachment: [20230314\\_Contract DBAT Amended Commercial Lease.pdf](#)

7. **EXECUTIVE SESSION:** *City Council may, as permitted by law, adjourn into executive session at any time to discuss any matter listed above 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.*

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

9. **ITEMS FOR FUTURE AGENDAS:** *City Council may suggest items or topics for future agendas.*

**ADJOURN.**



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

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**SUBJECT:** Kerrville Kindness award recognizing Peterson Regional Medical Center Darin Smith and the Kerrville Police Departments' Tivy High School Resource Officer Justin Gonzales.

**AGENDA DATE OF:** March 14, 2023      **DATE SUBMITTED:** February 21, 2023

**SUBMITTED BY:** Mayor Judy Eychner

**EXHIBITS:**

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

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

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**Kerrville 2050 Item?** No

**Key Priority Area** N/A

**Guiding Principle** N/A

**Action Item** N/A

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**SUMMARY STATEMENT:**

The City of Kerrville recognizes the actions of an individual or entity performing acts of kindness in the City.

**RECOMMENDED ACTION:**

Present award.



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

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**SUBJECT:** Proclamation recognizing March 2023 as American Red Cross month in Kerrville, Texas.

**AGENDA DATE OF:** March 14, 2023      **DATE SUBMITTED:** February 21, 2023

**SUBMITTED BY:** Mayor Judy Eychner

**EXHIBITS:**

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

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

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**Kerrville 2050 Item?** No

**Key Priority Area**      N/A

**Guiding Principle**      N/A

**Action Item**      N/A

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**SUMMARY STATEMENT:**

The City of Kerrville recognizes March 2023 as American Red Cross month.

**RECOMMENDED ACTION:**

Present proclamation.



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

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**SUBJECT:** Proclamation recognizing March 2023 as the March for Meals month at the Dietert Center in Kerrville, Texas.

**AGENDA DATE OF:** March 14, 2023      **DATE SUBMITTED:** February 21, 2023

**SUBMITTED BY:** Mayor Judy Eychner

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

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

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**Kerrville 2050 Item?** No

**Key Priority Area**      N/A

**Guiding Principle**      N/A

**Action Item**      N/A

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**SUMMARY STATEMENT:**

The City of Kerrville recognizes March 2023 as the Kerrville Dietert Center's March for Meals month.

**RECOMMENDED ACTION:**

Present proclamation.



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

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**SUBJECT:** Adopt-A-Highway Program Agreement Renewal between Texas Department of Transportation and City of Kerrville, TX.

**AGENDA DATE OF:** March 14, 2023      **DATE SUBMITTED:** March 1, 2023

**SUBMITTED BY:** Mike Hayes, City Attorney

**EXHIBITS:**

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

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

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**Kerrville 2050 Item?** No

**Key Priority Area**      N/A  
**Guiding Principle**      N/A  
**Action Item**      N/A

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**SUMMARY STATEMENT:**

Several years ago, City employees formed an employee committee, the Make a Difference Committee ("MDC"), as a way of encouraging employees to volunteer both in City-sponsored events and with community opportunities. The MDC and City employees regularly participate in the Light on the Hill food drive and UGRA's river clean-up. Another way that the MDC and City employees volunteer is by participating in the Texas Department of Transportation's Adopt a Highway Program. Under this program, the City has "adopted" a two-mile portion of Thompson Drive (Spur 98), which is a state road. Four times per year, City employees gather to walk Thompson Drive and pick up trash. Trash is collected in trash bags, piled at the boundaries of this section of road, and later collected by TxDOT. MDC usually schedules these pick-up events on Saturday mornings, but may alternate between that day and time and Friday afternoons. The MDC is seeking the City's continued participation in this program and requests that Council approve a renewal of a two-year agreement with TxDOT.

**RECOMMENDED ACTION:**

Approve renewal of two-year agreement.

**ATTACHMENTS:**

[20230314\\_Contract renewal agreement TXDOT adopt a highway COK volunteers.pdf](#)



## Adopt-A-Highway Program Agreement Renewal

Form 2347  
(Rev. 9/19)  
Page 1 of 3

Office Use Only Agreement ID#: 2536638

ID #: 11094

Name: CITY OF KERRVILLE VOLUNTEERS

Location: SS 0098: a 2-mile section on Spur 98 (Thompson Dr.) starting at SH 16 & going west to James Rd.

Agreement Start Date: 1/25/2023 12:00:00 AM Agreement End Date: 1/25/2025 12:00:00 AM

Length of adopted section: 2.00 miles Cleaning cycle for adopted section: 4 times per year

TxDOT Contact: Melanie McBride Phone: (210) 615-6430

The Texas Department of Transportation (Department) and CITY OF KERRVILLE VOLUNTEERS (Group) recognize the need and desirability of litter-free highways and are entering into this Agreement to permit the Group to contribute toward the effort of maintaining litter-free highways through the Adopt-A-Highway Program.

By signature below, the Group and its members, both jointly and severally, acknowledges the hazardous nature of the work and agree, both jointly and severally, to the following terms and conditions:

- Program participants must agree to hold the department harmless and agree not to hold the department responsible for any injuries that they may suffer or damages they may cause or suffer as a result of participation in the Program.
- Participants in the Group agree to abide by all laws and regulations relating to safety and such other terms and conditions as may be required by the District Engineer for special conditions on a particular adopted section.
- Groups may perform cleanups before AAH acknowledgment are mounted if they receive approval from the District and TxDOT issued safety signs are available and displayed during all cleanups.
- The Group must be incorporated, or at least one member of the Group must reside, in the county or county adjacent to the county in which the adopted section is located.
- When participants are 15 years of age or younger, the Group will furnish adequate supervision by one or more adults, with at least one adult for every three children ages seven to fourteen years of age. Children under the age of seven may not participate in the program.
- Watch the Adopt-a-Highway Safety Video before participating in a cleanup of the adopted section.
- The Group will conduct at least one safety meeting per year. Participants must attend a safety meeting conducted by the Group before participating in a cleanup.
- The Group will pick up litter a minimum of 4 times per year at approximately quarterly intervals and at such additional times as required by the District Engineer. It is desired that one of these pickups occur during the Department's annual Don't Mess With Texas Trash-Off event.
- The Group will not subcontract or assign its responsibilities to any other group, organization or enterprise without the express written authorization of the Department.
- The Group will appoint or select an authorized representative and alternate to serve as spokesperson for the group.
- The Group will obtain required supplies and materials from the Department during regular business hours.
- Assure that traffic control signs are open during a cleanup and returned to the closed position (or removed in the case of a detachable sign) after the cleanup.
- Individuals will wear Department-furnished safety vests during the trash cleanup.
- The Group will be responsible for placing litter in trash bags furnished by the Department, placing filled trash bags at the sign base, and contacting the area maintenance office the first working day after cleanup.
- Unused materials and supplies furnished by the Department will be returned to the Department within one week following each cleanup. The Group is responsible for TxDOT-issued materials. The Group will be required to reimburse the department for lost or stolen materials.
- The Group will neither possess nor consume alcoholic beverages or illegal drugs while on the adopted section.
- Groups that perform or participate in illegal acts may be removed from the AAH program.
- The Group will maintain a first-aid kit and adequate drinking water while on the adopted section.
- The Group will have the option of renewing the agreement subject to the approval of the District Engineer and continuation by the Department of the Adopt-a-Highway Program.
- School or College Groups will provide a faculty or staff contact as one of in addition to their authorized representatives.

The Group acknowledges that the Department is generally prohibited by law from expending any funds, directly or indirectly, for the purpose of influencing the outcome of any election or the passage or defeat of any legislation.

The Group agrees if any actions by the Group relative to the performance of this agreement are determined to be contrary to any legislative restrictions or any restrictions on the use of appropriated funds for political activities, the Department, at its sole discretion will take any and all necessary remedial actions, including, but not limited to, the removal of signs displaying the Group's name or acronym.

If the Group requests a name change to the sign after it has been produced, the Group is responsible for payment of the replacement sign.

If the department undertakes a construction project on an adopted section, the group may suspend its agreement or choose a new section to adopt for duration of the construction project.

The Department agrees to accomplish the following:

- ♦ Erect a 4' x 4' sign at each end of the adopted section with the Group's name or acronym displayed.
- ♦ Provide fold-down traffic control signs, safety vests, trash bags and safety literature.
- ♦ Remove the filled trash bags the first workday after the cleanup.

If in its sole judgement the Department determines that the Group is not meeting the terms and conditions of the agreement, the Department may terminate the agreement and remove the signs upon thirty (30) days notice. The Group acknowledges that all pickups must be reported to TxDOT to comply with the AAH agreement. Unreported pickups can result in a cancellation of the agreement and removal of signs.

This agreement may be modified in any manner at the sole discretion of the Department. The Department reserves the right to terminate or revise the Program at any time and for any reason at the sole discretion of the Department and the Texas Transportation Commission.

The Department and Group both recognize and agree that in no event, shall the Department have the right to control the Group in performing the details of picking up litter from the section of highway adopted by the Group, and, in picking up litter, the Group shall act as an independent contractor.

#### Litter Pick-Up Schedule

Required Number of Pickups Per Year: 4

Year: 2023

January  
 February  
 March  
 April: Trash-Off  
 May  
 June  
 July  
 August  
 September  
 October  
 November  
 December

Year: 2024

January  
 February  
 March  
 April: Trash-Off  
 May  
 June  
 July  
 August  
 September  
 October  
 November  
 December

Year: \_\_\_\_\_

January  
 February  
 March  
 April: Trash-Off  
 May  
 June  
 July  
 August  
 September  
 October  
 November  
 December

Additionally, it is desired that the Group participate in the **"Don't Mess With Texas" Annual Trash-Off Event held every April.**

**Primary Spokesperson for Group:**

Please correct and complete any missing information.

Name: Mr. Mike Hayes

Group: CITY OF KERRVILLE VOLUNTEERS

Address: 701 Main Street

City: Kerrville, TX

Zip: 78028

Phone: (830)258-1115

E-mail: mike.hayes@kerrvilletx.gov

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

Primary Authorized Signature for Group

**Alternate Spokesperson for Group:**

Please correct and complete any missing information.

Name: Ea Hoppe

Group: CITY OF KERRVILLE VOLUNTEERS

Address: 701 Main Street

City: Kerrville, TX

Zip: 78028

Phone: (830)258-1106

E-mail: ea.hoppe@kerrvilletx.gov

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

Alternate Authorized Signature for Group

**For High School and College Groups:**

Please correct and complete any missing information.

Faculty/Staff Spokesperson for the Group: \_\_\_\_\_

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

Group: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_

Zip: \_\_\_\_\_

Phone: \_\_\_\_\_

E-mail: \_\_\_\_\_

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

Faculty/Staff Authorized Signature for Group

District Representative Signature

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



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

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**SUBJECT:** City Council workshop minutes, February 28, 2023.

**AGENDA DATE OF:** March 14, 2023      **DATE SUBMITTED:** February 21, 2023

**SUBMITTED BY:** Shelley McElhannon, City Secretary

**EXHIBITS:**

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

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

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**Kerrville 2050 Item?** No

**Key Priority Area** N/A

**Guiding Principle** N/A

**Action Item** N/A

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**SUMMARY STATEMENT:**

City Council workshop minutes held February 28, 2023, 4:30 p.m., at City Hall.

**RECOMMENDED ACTION:**

Approve minutes as presented.

**ATTACHMENTS:**

[\*20230314\\_Minutes Council workshop 2-28-23 430pm.pdf\*](#)

**CITY COUNCIL WORKSHOP MINUTES  
CITY HALL COUNCIL CHAMBERS**

**FEBRUARY 28, 2023 4:30 PM  
701 MAIN STREET, KERRVILLE, TEXAS**

**CALL TO ORDER:** On February 28, 2023 at 4:30 p.m., the City Council workshop was called to order by Mayor Judy Eychner at the City Hall Council Chambers, 701 Main Street.

**COUNCILMEMBERS PRESENT:**

Judy Eychner, Mayor  
Kim Clarkson, Mayor Pro Tem, Council Place 2  
Roman Garcia, Council Place 1  
Joe Herring Jr, Council Place 3  
Brenda Hughes, Council Place 4

**COUNCILMEMBERS ABSENT:**

None

**CITY STAFF PRESENT:**

E.A. Hoppe, City Manager  
Mike Hayes, City Attorney  
Michael Hornes, Asst City Manager  
Kim Meismer, Asst City Manager  
Shelley McElhannon, City Secretary

Julie Behrens, Director Finance  
Jacob Bogusch, Finance Intern  
Trina Rodriguez, Asst Director Finance

**VISITOR(S) PRESENT:**

Kevin Kemp, Forvis CPA Partner    Louis Amestoy, Media    Roger Mathews, Media

**1. PUBLIC COMMENT:** None

**2. DISCUSSION, CONSIDERATION, AND POSSIBLE ACTION:**

2A. Annual Comprehensive Finance Report presentation.

Julie Behrens and Kevin Kemp provided information and responded to questions.

Councilmember Brenda Hughes made a motion to accept receipt of the audit for Fiscal Year 2022 ending September 30, 2022, seconded by Councilmember Kim Clarkson. The motion passed 5-0.

Councilmember Roman Garcia made a motion that the City Council adjourn into closed executive session under 551.071 (consultation with attorney), seconded by Councilmember Hughes. The motion passed 5-0.

Mayor Eychner recessed the workshop, and convened the closed executive session at 4:53 p.m. in the Upstairs Conference Room.

**3. EXECUTIVE SESSION:**

3A. Interlocal Agreement between Kerr County, Texas and the City of Kerrville, Texas for the provision of Animal Control Services within the City, and services of the Butt-Holdsworth Memorial Library for residents of Kerr County. (551.071)

The closed executive session adjourned, and Council returned to workshop open session at 6:00 p.m. No action was taken during executive session.

**4. ACTION ON ITEMS DISCUSSED IN EXECUTIVE SESSION IF ANY:** N/A

**ADJOURN.** The workshop adjourned at 6:00 p.m.

APPROVED BY COUNCIL: \_\_\_\_\_ ATTEST:

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Judy Eychner, Mayor

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Shelley McElhannon, City Secretary



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

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**SUBJECT:** City Council meeting minutes, February 28, 2023.

**AGENDA DATE OF:** March 14, 2023      **DATE SUBMITTED:** February 21, 2023

**SUBMITTED BY:** Shelley McElhannon, City Secretary

**EXHIBITS:**

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

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

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**Kerrville 2050 Item?** No

**Key Priority Area** N/A

**Guiding Principle** N/A

**Action Item** N/A

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**SUMMARY STATEMENT:**

City Council meeting minutes held February 28, 2023, 6:00 p.m., at City Hall.

**RECOMMENDED ACTION:**

Approve minutes as presented.

**ATTACHMENTS:**

*20230314\_Minutes Council meeting 2-28-23 6pm.pdf*

**CITY COUNCIL MINUTES  
REGULAR MEETING**

**KERRVILLE, TEXAS  
FEBRUARY 28, 2023 6:00 PM**

On February 28, 2023 at 6:00 p.m., Mayor Judy Eychner called the Kerrville City Council meeting to order in City Hall Council Chambers, 701 Main Street. Councilmember Brenda Hughes provided the invocation and led the Pledge of Allegiance.

**COUNCILMEMBERS PRESENT:**

Judy Eychner, Mayor  
Kim Clarkson, Mayor Pro Tem/Councilmember Place 2  
Roman Garcia, Councilmember Place 1  
Joe Herring, Jr., Councilmember Place 3  
Brenda Hughes, Councilmember Place 4

**COUNCILMEMBER ABSENT:**

None

**CITY EXECUTIVE STAFF:**

E.A. Hoppe, City Manager	Kyle Burow, Director of Engineering
Mike Hayes, City Attorney	Stuart Cunyus, Public Information Officer
Michael Hornes, Asst City Manager	Yesenia Luna, Municipal Court Coordinator
Kim Meismer, Asst City Manager	Eric Maloney, Fire Chief
Shelley McElhannon, City Secretary	Chris McCall, Police Chief
Stuart Barron, Exec Director Public Works	Drew Paxton, Planning Director
Julie Behrens, Director Finance	Trina Sanchez, Asst Director Bldg Services
Donna Bowyer, Code Enforcement Officer	

**VISITORS PRESENT:** A list of the citizen speakers present during the meeting is on file in the City Secretary's Office for the required retention period.

**1. ANNOUNCEMENTS OF COMMUNITY INTEREST:**

Announcements of Community Interest provided by Stuart Cunyus, Councilmember Roman Garcia, Mayor Eychner, and Councilmember Joe Herring, Jr.

**2. PRESENTATION(S):**

2A. Kerrville Kindness Award recognizing Starkey Elementary fourth grader Cooper Smithson.

Mayor Eychner recognized Cooper Smithson for gifting Starkey Elementary Sausage Supper tickets to more than 70 families.

2B. Proclamation recognizing March 2023 as Texas History Month in Kerrville, Texas.

Mayor Eychner presented a proclamation recognizing March 2023 as Texas History Month in Kerrville, Texas, which was received by Daughters of the Republic of Texas, Joshua D. Brown Chapter members Betsy Drapela, Jan Engler, Nancy McLarry, and Nancy Wilson, and Chapter President Judy McVay.

2C. Commendations for outgoing Board members of the Recovery Community Coalition and the Senior Services Advisory Board.

Mayor Eychner presented commendations to outgoing Board members of the Recovery Community Coalition Randie Benno, LeighAnn Fitzpatrick, and Sabine Kuenzel, and outgoing Board member of the Senior Services Advisory Committee Karen Burkett.

2D. Kerrville Police Department Team Member recognition.

Police Chief Chris McCall presented the Kerrville Police Departments' 2022 Team Members of the Year: Civilian employee Jennette Dennis, Inventory Control Analyst; Officer of the Year Officer Dan Virdell; and Supervisor of the Year Detective Sergeant James Machetta.

**3. VISITORS FORUM:**

The following person(s) spoke:

- Tara Bushnoe, Upper Guadalupe River Authority General Manager
- George Baroody

**4. CONSENT AGENDA:**

Councilmember Garcia made a motion to approve the Consent Agenda, seconded by Councilmember Hughes. The motion passed 5-0.

4A. Resolution No. 08-2023. A Resolution of the City of Kerrville, Texas designating the City of Kerrville as a HIPAA Hybrid Entity in compliance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA); and providing an effective date.

4B. City Council workshop minutes February 14, 2023.

4C. City Council meeting minutes February 14, 2023.

**END OF CONSENT AGENDA.**

**5. ORDINANCE(S), FIRST READING:**

5A. Ordinance No. 2023-09. An Ordinance amending Chapter 90 of the Code of Ordinances, City of Kerrville, Texas, titled "Streets, Sidewalks, and Other Public Places"; by adding a new Article titled "Right-Of-Way Management", to create regulations, including a permit requirement, for construction, maintenance, and repair work within the City's Rights-Of-Way; providing for a penalty in the maximum amount of \$2,000.00 for violations thereof; and providing other matters relating to the subject.

Shelley McElhannon read Ordinance No. 2023-09 caption into record.

Drew Paxton, Stuart Barron, and E.A. Hoppe provided information and responded to questions.

Councilmember Garcia made a motion to adopt Ordinance No. 2023-09, seconded by Councilmember Kim Clarkson. The motion passed 5-0.

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

6A. Request for variance from distance requirement pursuant to §30-17, City's Code of Ordinances, for a proposed boarding home facility at 316 Jefferson.

Shelley McElhannon read item 6A caption into record.

Drew Paxton and Donna Bowyer provided information and responded to questions. Applicant Brittney Andry provided information and responded to questions.

Mayor Eychner opened the public hearing at 6:56 p.m.

The following person(s) spoke:

- Brian Brannan
- Nikki Caines
- Haley Gray
- Callie Crossley
- Casandra Austin

- Bruce Stracke  
Mayor Eychner closed the public hearing at 7:08 p.m.

Councilmember Garcia made a motion to approve the distance requirement variance, seconded by Councilmember Hughes. The motion passed 5-0.

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

7A. Resolution No. 07-2023. A Resolution in support of the submission of an application to the 2023 competitive housing tax credit (HTC) program through the Texas Department of Housing and Community Affairs (TDHCA) by Communities River Rock Partners, LLC, for the new construction of affordable senior housing.

Shelley McElhannon read Resolution No. 07-2023 caption into record.

Michael Hornes, and both April Engstrom and Matt Gillam with Overland Properties provided information and responded to questions.

The following person(s) spoke:

- Nikki Caines

Councilmember Hughes made a motion to approve Resolution No. 07-2023, seconded by Councilmember Clarkson. The motion passed 5-0.

7B. Authorization to negotiate a Design-Build contract for the Public Safety Facility.

Shelley McElhannon read item 7B caption into record.

Kyle Burow, Police Chief Chris McCall, and Fire Chief Eric Maloney provided information and responded to questions.

Councilmember Hughes made a motion to authorize the City Manager to negotiate and finalize contract for the Public Safety Facility, seconded by Councilmember Clarkson. The motion passed 5-0.

7C. Resolution No. 09-2023. A Resolution authorizing the approval of a contract for collection services for debts and accounts receivable with Linebarger Goggan Blair and Sampson, LLP: such services to include collections of unpaid fines fees, and court costs pertaining to the City's Municipal Court; making certain findings required by Section 2254.1036 of the Texas Government Code; authorizing the City Manager to execute the contract; and providing for an effective date.

Shelley McElhannon read item Resolution No. 09-2023 caption into record.

Yesenia Luna and Partner Sam Turner with Linebarger provided information and responded to questions.

Councilmember Garcia made a motion to approve Resolution No. 09-2023 and authorize the City Manager to finalize and execute a contract with Linebarger Goggan Blair & Sampson, LLP, for Fines and Fees Collection Services, seconded by Councilmember Herring. The motion passed 5-0.

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

8A. Finance update for month ending January 31, 2023, and Tax Increment Reinvestment Zone (TIRZ) Annual Report for year-ended September 30, 2022.

Julie Behrens provided information and responded to questions.

9. **EXECUTIVE SESSION:** Executive Session not convened.
10. **ACTION ON ITEMS DISCUSSED IN EXECUTIVE SESSION, IF ANY.** N/A
11. **ITEM(S) FOR FUTURE AGENDAS:** None

**ADJOURN.** The meeting adjourned at 7:58 p.m.

**APPROVED BY COUNCIL:** \_\_\_\_\_

APPROVED:

ATTEST:

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Judy Eychner, Mayor

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Shelley McElhannon, City Secretary



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

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**SUBJECT:** Ordinance No. 2023-09, second reading. An Ordinance amending Chapter 90 of the Code of Ordinances, City of Kerrville, Texas, titled "Streets, Sidewalks, and Other Public Places"; by adding a new Article titled "Right-Of-Way Management", to create regulations, including a permit requirement, for construction, maintenance, and repair work within the City's Rights-Of-Way; providing for a penalty in the maximum amount of \$2,000.00 for violations thereof; and providing other matters relating to the subject.

**AGENDA DATE OF:** March 14, 2023      **DATE SUBMITTED:** March 1, 2023

**SUBMITTED BY:** Drew Paxton, Planning Director

**EXHIBITS:**

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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>	M - Mobility / Transportation
<b>Guiding Principle</b>	N/A
<b>Action Item</b>	M5.6 - Develop and implement a new ROW ordinance and an access management policy for driveways, curb cuts, median openings, turn lanes, etc.

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**SUMMARY STATEMENT:**

As an action item within the Kerrville 2050 Comprehensive Plan, the Code Review Committee reviewed the needs for Right of Way (ROW) Management. The proposed ROW ordinance provides the necessary management and regulations to protect the communities investment in the ROW infrastructure as well as coordinate the multiple interests and users of the public right of way.

On February 28, 2023 City Council unanimously approved Ordinance No. 2023-09 on first reading.

**RECOMMENDED ACTION:**

Approve Ordinance No. 2023-09, on second reading.

**ATTACHMENTS:**

[20230314\\_Ord 2023-09 ROW regulations 2nd reading.pdf](#)

**CITY OF KERRVILLE, TEXAS**  
**ORDINANCE NO. 2023-09**

**AN ORDINANCE AMENDING CHAPTER 90 OF THE CODE OF ORDINANCES, CITY OF KERRVILLE, TEXAS, TITLED “STREETS, SIDEWALKS, AND OTHER PUBLIC PLACES”; BY ADDING A NEW ARTICLE TITLED “RIGHT-OF-WAY MANAGEMENT”, TO CREATE REGULATIONS, INCLUDING A PERMIT REQUIREMENT, FOR CONSTRUCTION, MAINTENANCE, AND REPAIR WORK WITHIN THE CITY’S RIGHTS-OF-WAY; PROVIDING FOR A PENALTY IN THE MAXIMUM AMOUNT OF \$2,000.00 FOR VIOLATIONS THEREOF; AND PROVIDING OTHER MATTERS RELATING TO THE SUBJECT**

**WHEREAS**, the State of Texas has delegated to each city the fiduciary duty, as a trustee, to manage the rights-of-way within a city for the health, safety, and welfare of the public, subject to state law; and

**WHEREAS**, City Council has determined that construction within the City of Kerrville’s rights-of-way, at times, significantly interferes with the public use of the streets and results in a negative impact to public safety, level of service on streets and sidewalks, and aesthetics of the community; and

**WHEREAS**, City Council has determined that substantial public funds have been invested to build, maintain, and repair City streets, utilities, and rights-of-way; and

**WHEREAS**, City Council finds it desirable to adopt regulations to manage construction and other work within the City’s rights-of-way to protect and safeguard the public infrastructure; and

**WHEREAS**, City Council finds that the regulations provided for by this Ordinance are reasonable, necessary, and for the public benefit;

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

**SECTION ONE.** Chapter 90 “*Streets, Sidewalks, and other Public Places*” of the Code of Ordinances of the City of Kerrville, Texas, is amended by adding a new Article IV “*Right-of-Way Management*”, which will add the language that is underlined (added) as follows:

## **“ARTICLE IV. – RIGHT-OF-WAY MANAGEMENT”**

### **Sec. 90-90. – Administration.**

The provisions of this Article shall be administered by the City Manager or designee (“Director”).

### **Sec. 90-91. Purpose; violation.**

It is unlawful for any person to fail to comply with any provision of this Article, including anyone who constructs within the City of Kerrville, Texas (“City”) right-of-way or in violation of any detailed statement of specifications or plans submitted and approved by the City, or any certificate or permit issued by the City. Anyone violating a provision of this Article shall be guilty of a misdemeanor and upon conviction, shall be subject to the general penalty provision found in Section 1-7 of this Code. Each day any violation or noncompliance continues shall be a separate offense. For purposes of this Article, a “person” means a natural person (an individual), corporation, company, association, partnership, firm, limited liability company, joint venture, association, and other such entity who owns or controls facilities.

### **Sec. 90-92. Injunctive relief and other remedies for violation.**

Any person who fails to comply with any provision of this Article, or who commits any of the acts described by this Article, or is found guilty of any of the omissions thereof, shall be liable to injunctive action prohibiting the violation of this Article and shall be subject to being mandatorily enjoined to restore any right-of-way illegally excavated to its original form and function; and shall be liable and responsible for any and all expenses that may be incurred by the City in connection with any such action, omission, or other violation, including reasonable attorneys’ fees.

### **Sec. 90-93. Authorized hours for right-of-way construction.**

Unless approved in writing by the Director, any construction governed by this Article is restricted to the hours of 7:00 a.m. to 6:00 p.m., Monday through Friday, except for City-recognized holidays (“holidays”). For purposes of this Article, “construction” or “construct” means any of the following activities performed by a right-of-way user within a right-of-way: a. installation, excavation, laying, boring, jacking, placement, repair, upgrade, maintenance, or relocation of facilities or other improvements, whether temporary or permanent; b. modification or alteration to any surface or subsurface; c. performance, restoration, or repair of pavement cuts or excavations; and/or d. any other similar work. “Facilities” means the plant, equipment, and property, including lines, transport service, poles, mains, pipes, conduits, ducts, cables and wires located under, on, or above the surface of the ground within the right-of-way and valves and related equipment used or useful for the provision of utility services, wireless or network services, or communication services to the public.

### Sec. 90-94. Notice of violation.

The Director may give notice to any person who violates this Article and the person receiving the notice shall correct all violations alleged in the notice. Failure to correct any such alleged violations shall cause the person to be subject to penalties provided in Sections 90-91 and 90-92. The Director's notice may initially consist of oral notice, but must be followed up in writing. Notwithstanding this section, the Director does not need to provide any such notice prior to the application of Sections 90-91 and 90-92.

### Sec. 90-95. Revocation, suspension, or denial of permit.

Notwithstanding other sanctions set forth in this Article, if any of the provisions of this Article are not complied with, the Director may revoke or suspend a permit previously issued by the City. If a person has not followed the terms, conditions, or specifications of this Article in work done pursuant to a prior permit, the Director may deny new permits or impose additional requirements applicable to a current permit.

### Sec. 90-96. Non-transferability of permits.

Any permit issued under this Article is not transferable from the person receiving the permit to another person without the prior written approval of the Director.

### Sec. 90-97. Effect on City's liability.

No permit or certificate of inspection shall be conclusive as against the City that the work therein referred to has been installed in conformity with any applicable law; but the owner of the premises, the contractor, and all other persons concerned shall be obligated to see that all matters, things, and acts to which this Article and such permit or certificate relate shall comply with all local, state, and federal laws. All work installed in this City for purposes provided herein shall be maintained in full compliance with this Article.

### Sec. 90-98. Preserving other ordinances not in conflict.

This Article takes precedence over any other existing ordinance of the City which may contain provisions that are less restrictive than those specified in this Article. However, nothing contained in this Article mitigates, interferes with, alters, or repeals any provision of any other ordinance of the City not in conflict with the provisions of this Article.

### Sec. 90-99. Right-of-way construction.

No person shall commence or continue with construction above, upon, or beneath right-of-way in the City except as provided by this Article, including the directives as part of a permit issued pursuant to this Article.

## **Sec. 90-100. Construction standards for work within right-of-way.**

The City's Technical Construction Standards and Specifications ("TCSS") apply to all construction work undertaken within the right-of-way. A copy of the TCSS is available in the office of the City Engineer. The TCSS is referred to herein as "City construction standards".

## **Sec. 90-101. Right-of-way permits.**

- (a) No person shall perform any construction in the right-of-way without first obtaining a right-of-way permit, except as otherwise provided by this Article. The permit must be in the name of the person who owns or will subsequently own the facilities to be constructed who is referred to within this Article as the right-of-way user. The "right-of-way user" means a person and its successors and assigns that uses the right-of-way for purposes of construction, excavation, provision of services, or installing, constructing, maintaining, or repairing facilities thereon, including landowners, utilities, certified telecommunication providers, network providers, public infrastructure contractors, and the City. The permit application shall be completed and signed by the right-of-way user, who may then be referred to as "applicant" or where a permit is issued, "permittee".
- (b) Construction considered an emergency relating to existing facilities may be undertaken without first obtaining a permit from the City. However, a right-of-way user shall: 1) notify the Director's office as promptly as possible after beginning the emergency construction, but in no event later than the next City-business day, of any emergency construction; 2) provide within two (2) business days a reasonably detailed description of the construction performed in the right-of-way; and, 3) further provide to the Director within ninety (90) days from the date any facilities that are reconstructed or relocated and an updated map of any facilities that were affected by such emergency construction. For purposes of this Article, an "emergency" is narrowly defined as any event that may threaten public health or safety, including, unexpected or unplanned outages, cuts, ruptures, leaks, or any other failure of a utility facility that prevents or significantly jeopardizes the ability of a utility to provide service to customers; or could result in danger to the public or a material delay or hindrance to the provision of service to the public if the outage, cut, rupture, leak, or any other such failure of utility facilities is not immediately repaired, controlled, stabilized, or rectified; or any unforeseen occurrence involving a utility facility that a reasonable person could conclude under the circumstances that immediate action by the utility is necessary and warranted in order to protect public safety and welfare. Upgrading facilities, new service installations, and improvement projects are not an emergency.
- (c) An applicant shall provide the Director the following information prior to the issuance of a permit and such information shall be incorporated by reference into the permit if issued by the Director:

- (1) the name of the right-of-way user, to include entity name, contact information, and emergency contact information;
- (2) a description of the location of construction activities;
- (3) a description and location of existing facilities and/or facilities to be installed;
- (4) a description of the route of all facilities to be constructed on or about the right-of-way;
- (5) the location of all right-of-way easements which the applicant plans to use;
- (6) location of existing City and third-party facilities as required by section 90-110;
- (7) description of plans, which may be submitted as a form statement, to restore existing facilities pursuant to this Article and other right-of-way construction. Such plans shall comply with the standard construction guidelines of the City, including the City construction standards;
- (8) drawings of any bores, trenches, hand holes, manholes, switch gear, transformers, pedestals, poles, and the like, including applicable depths and heights;
- (9) typicals of manholes and hand holes that the applicant plans to use or access;
- (10) the construction methods and materials to be employed by the applicant for the protection of existing facilities within, above, beneath, or adjacent to the right-of-way, which methods and materials are subject to approval by the Director;
- (11) estimated dates and times that construction is scheduled to be performed;
- (12) the base material to be used pursuant to section 90-108;
- (13) the methods and scope for the restoration of property pursuant to section 90-119;
- (14) three (3) sets of construction plans which shall be on a scale not to exceed one inch equaling one hundred (100) feet unless otherwise approved by the Director. The plans shall include the dimensions from the proposed facility to permanent reference points;
- (15) detailed description of what the applicant proposes to construct, including if applicable, pipe sizes, the number of interducts, and valves;
- (16) a complete legend of drawings submitted by the applicant, which may be provided by reference to previously submitted documents; if symbols are used, the applicant shall provide the City with an accurate guide to the meaning of the symbols;

(17) the submission of proof of insurance, bond, or other financial information required by this Article or a written statement that proof of insurance, bond, or other financial information is current and on file with the City; and

(18) a traffic control plan acceptable to the Director.

(d) All construction in the right-of-way shall be in accordance with the right-of-way permit for the facilities. The Director shall be provided access to the right-of-way construction and to such further information as the Director may reasonably require in order to ensure compliance with the permit or this Article.

(e) A copy of the right-of-way permit and approved engineering plans shall be maintained at the construction site and made available for inspection by the Director at all times when construction is occurring.

(f) All construction authorized by permit shall be completed in the time specified in the permit. If construction cannot be completed in the specified time period, the permittee may request an extension of time from the Director. The permittee may continue work specified within the permit during the time the request for an extension is pending, so long as the request is made prior to the expiration of the permit.

(g) A copy of any permit or approval issued by federal or state authorities for work in federal or state right-of-way located in the City shall be provided by the permittee to the Director upon request.

(h) A request for a right-of-way permit shall be submitted at least eighteen (18) days before the commencement of the proposed construction unless:

- (1) the construction is for primary service and federal or state law requires construction time be less than eighteen (18) days; or
- (2) the Director agrees to a request by the applicant for a modified submission date.

(i) Requests for right-of-way permits shall be promptly processed and approved or disapproved by the Director but in any event no later than fifteen (15) days after receiving all the permit information required under this Article, except that, if subsection (h)(1) of this subsection shall apply, a right-of-way permit shall be processed as soon as reasonably practical.

(j) The Director may require a pre-construction meeting with the permittee.

#### Sec. 90-102. Sidewalk and lane closure permit.

(a) When work on a sidewalk or lane of a thoroughfare, including an alleyway used by traffic, requires closure, the right-of-way user shall apply for a closure permit from the Director, to include submission of the permit fee.

- (b) The right-of-way user shall be responsible for compliance with Texas Department of Transportation ("TxDOT") rules concerning markings, flagmen, barricades and barriers, and steel plate covers whether the closure occurs on a state or City controlled right-of-way.
- (c) The application for a closure permit shall include point of contact and date and time information regarding the closure.
- (d) Application fees for closure permits for sidewalks, residential thoroughfares, arterial streets, and other rights-of-way shall be as adopted in the City's fee schedule.

#### **Sec. 90-103. Required inspections.**

- (a) The Director shall provide inspections, including the following, to verify full compliance with the right-of-way permit and all federal, state, and local laws:
  - (1) upon installation of equipment, but prior to backfill;
  - (2) backfill, but prior to surface patch; and
  - (3) final inspection upon completion of work.
- (b) The fact that an inspection has been performed does not relieve, excuse, or otherwise alleviate or minimize a permittee's obligations of otherwise complying with this Article or from complying with other obligations or specifications legally imposed on a permittee.

#### **Sec. 90-104. Inspection fees.**

- (a) Permit fees include the cost for the initial inspection of completed work. When work has been reported to the Director as completed and ready for inspection, and when upon such inspection the work is found to be incomplete or defective, an additional non-refundable fee shall be paid at the time of the next request for inspection. After the second failed inspection, the inspection fee for each subsequent request for inspection shall be double the previous fee.
- (b) If the inspection requires the Director to use a third-party consultant, the City shall apply a non-refundable fee for the actual cost paid by the City plus a three (3) percent administrative fee.
- (c) Unless waived by the Director in accordance with section 90-105, inspections shall not be conducted until any and all outstanding fees owed to the City are paid in full.
- (d) All fees shall be as adopted in the City's fee schedule.

#### **Sec. 90-105. Right-of-way permit and fee exemptions.**

The Director shall have the authority to waive fees provided for in this Article for public agencies, licensees, franchisees, certificated telecommunications providers, and others but only where providing the City with construction or other services.

When deemed appropriate, the Director shall also have the authority to waive the requirement for a right-of-way permit.

**Sec. 90-106. Failure to obtain necessary inspections.**

A permittee who fails to obtain and pass all necessary inspections shall be in violation of this Article. Violation of this Article may be addressed by any combination of the following options:

- (1) Refusal of the Director to issue future permits to the violator until the inspections are successfully obtained;
- (2) Such actions as are permitted under the provisions of Sections 90-91 and 90-92; and/or
- (3) Other such appropriate procedures and measures at the time of the violation(s).

**Sec. 90-107. Construction procedures.**

- (a) A permittee shall notify the Director not less than twenty-four (24) hours in advance that construction is ready to proceed and provide the name, address, and phone number of the contractor and/or subcontractor(s) who will perform the actual construction, including the name and telephone number of an individual designated by the contractor or subcontractor(s) who will be available for contact by the Director at all times during construction.
- (b) A permittee shall notify all adjoining or impacted property owners not less than twenty-four (24) hours in advance of any construction unless such construction constitutes an emergency as defined herein. The Director will approve the type and scope of notification, which shall then be specified within the permit.
- (c) Construction shall comply with federal, state, and local laws, to include the City construction standards.
- (d) A permittee shall place information signs at the boundary(s) of the location where construction is to occur. Such signs, which must be approved by the Director and referenced within the permit, shall measure approximately three (3) feet by three (3) feet and specify the identity and telephone number of the person performing the construction (contractor). The signs shall be posted at least twenty-four hours prior to construction and remain posted during the entire time of construction. If construction is due to an emergency as defined in this Article, the twenty-four hour advanced placement is not required.
- (e) The size and nature of facilities subject of the construction within the right-of-way, including their location, depth, height, upgrades, and other particulars, are subject to the approval of the Director unless such approval conflicts with federal or state law.

### Sec. 90-108. Base material.

Base material shall be constructed as designated on the right-of-way permit and as required pursuant to the City construction standards. A permittee shall notify the Director not less than two (2) hours prior to the placement of base material. Failure to do so may result in the Director immediately suspending further construction and the required removal of any base material placed without prior approval.

### Sec. 90-109. Disturbance of facilities.

- (a) A permittee's facilities shall not be allowed to disturb City facilities, in particular gravity-dependent facilities.
- (b) The Director may require a permittee to keep a reasonable distance from facilities which are City-owned or leased. Facilities constructed shall be presumed to disturb facilities which are City-owned or leased if the existing facility, or the facility to be constructed, is within three (3) feet horizontally of such City-owned or leased facility. However, nothing in this section shall diminish the authority of the Director to require specific placement of particular facilities.

### Sec. 90-110. Location and placement.

- (a) Prior to commencing construction, unless otherwise excepted by this Article, a permittee shall verify the horizontal and vertical location of existing City and third-party facilities within three (3) feet of the proposed construction. Prior to commencing construction, unless otherwise excepted by this Article, a permittee shall verify only the horizontal location for facilities outside three (3) feet of the proposed construction and which may be reasonably anticipated to be disturbed by the construction.
- (b) Any facility constructed by a permittee shall maintain a minimum of six (6) inches vertical separation when crossing any existing facility.
- (c) Facilities constructed by the permittee shall be constructed at a minimum depth of twenty-four (24) inches, except the Director may require a lesser or greater depth if it is deemed necessary for the health, safety, or general welfare of the public.
- (d) All bores shall be a minimum of twenty-four (24) inches below the street gutter or edge of pavement.
- (e) All directional boring shall have the right-of-way user place bore marks and depths while the bore is in operation. The right-of-way user shall place a mark at each stem with a paint dot and shall mark the depth at least at every other stem.
- (f) Placement of all appurtenances must be approved by the Director prior to placement.

### Sec. 90-111. Conformance with public improvements.

- (a) For the purpose of conforming underground or overhead facilities for public improvements, and as allowed by, or consistent with, federal or state laws governing such conformance, and if it shall be deemed necessary by the Director to undertake such conformance, such conformance shall be accomplished by permittee, at the permittee's expense and direction, within ninety (90) days from receipt of notice from the Director unless a longer time schedule has been approved by the Director. The Director will consider all reasonable and economical public improvement alternatives prior to requiring conformance. The permittee may notify the Director of options other than conformance.
- (b) Facilities that do not conform after ninety (90) days to the stated purposes set forth in the permit or within an extended schedule approved by the Director, are subject to removal from the right-of-way by the City. If removal occurs, City shall not be liable for damages or other compensation to the permittee or any other person, but the City shall be responsible for reasonable care of such removed facilities while such facilities are in City custody and until permittee takes possession of such removed facilities. The City shall bear no responsibility for removed facilities not repossessed by permittee within thirty (30) days after the City has taken custody of removed facilities.
- (c) Whenever it shall be necessary to require a permittee to conform its facilities within the right-of-way, such conformance shall be made without claim for reimbursement or damages against the City. It is understood and further provided, however, that the City shall not require a permittee to remove its facilities entirely from the right-of-way. If the City requires the permittee to conform its facilities to enable any entity or person other than the City to use, or to use with greater convenience, the right-of-way, the permittee shall not be required to conform its facilities until such other person reimburses or make arrangements satisfactory to the permittee to reimburse the permittee for any loss and expense caused by or arising out of such conformance.

### Sec. 90-112. Erosion control.

- (a) The permittee shall cause all erosion control measures, including backfill, silt fencing, advance warning signs, markers, cones, and barricades to be in their proper locations before construction begins in the right-of-way. The permittee is responsible for storm water management erosion control that complies with federal, state, and local laws. Requirements may include the installation of silt fencing in erosion areas until reasonable vegetation is established and wire-backed silt fencing around high erosion areas.
- (b) A right-of-way user may be required to show proof of plans approved by the applicable federal and/or state agency (e.g., Texas Commission on Environmental Quality ("TCEQ")) relating to storm water and erosion, when applicable, or in the

alternative, written documentation verifying that the right-of-way user is not required to obtain such plans.

**Sec. 90-113. Traffic control.**

Unless an emergency exists, as that term is defined herein, traffic lane closures in the right-of-way which obstruct the flow of traffic for longer than four (4) hours at a time may be allowed only under the direction and permission of the Director and in accordance with the *Texas Manual on Uniform Traffic Control Devices* ("MUTCD") and other applicable federal, state, and local laws, except that the flow of traffic on collectors or arterials cannot be obstructed for any period of time except under the direction and permission of the Director and in accordance with the MUTCD and federal, state, and local law.

**Sec. 90-114. Street and sidewalk cuts.**

- (a) Except in the event of an emergency, when a street or sidewalk cut is required, prior written approval must be obtained from the Director, and all requirements of this Article and other applicable ordinances must be followed.
- (b) Prior to excavation of a street or sidewalk, a right-of-way user shall be in compliance with federal, state, and local law, including the *Texas Underground Facility Damage Prevention and Safety Act* (Ch. 251, Tx. Utilities Code).
- (c) All trenches in asphalt or concrete-surfaced areas shall have a clean, straight cut through the pavement surface prior to removal of the surface, in accordance with City specifications, including the City construction standards. Any cuts in sidewalks, including those cuts required in the event of an emergency, shall be made at existing control joints.
- (d) Except in the event of an emergency, a right-of-way user shall notify the Director not less than two (2) hours prior to commencing a street or sidewalk cut.
- (e) A right-of-way user shall comply with proper traffic control during a street or sidewalk cut. Traffic control shall be in conformance with the MUTCD and other applicable federal, state, and local law.
- (f) A right-of-way user shall be responsible for obtaining line locates from all affected facilities prior to executing any street or sidewalk cut.

**Sec. 90-115. Prohibition of street and sidewalk cuts; exceptions.**

- (a) Notwithstanding section 90-114, no street or sidewalk cut may be made as follows, with the Director being responsible for maintaining specific dates:
  - (1) within five (5) years of the finalized construction of new pavement;
  - (2) within five (5) years of the finalized use of mill and overlay; or
  - (3) within two (2) years of the finalized use of slurry seal.

(b) Exceptions to subsection (a) may apply for an emergency repair, minor repair, or new installations, in accordance with the following:

(1) an emergency repair is permitted but only where damage or an uncontrollable leak has occurred that renders the utility no longer operable.

(2) a minor repair exists where there is a new service line installation or a repair made that does not extend more than five (5) feet perpendicularly from the back of curb.

(c) where an exception does not exist and a right-of-way user chooses to proceed, any such cut shall require:

(1) a larger paving section to mitigate degradation, as determined by the Director.

(2) the right-of-way user to repave the entire block curb to curb, intersection to intersection, as determined by the Director.

(d) all pavement repairs to cuts made under this section shall comply with the City construction standards.

#### Sec. 90-116. Waivers.

(a) Where a prohibition against a street or sidewalk cut exists pursuant to section 90-114, a right-of-way user may apply for a waiver from City Council. Any application for a waiver shall include the submission of the applicable fee.

(b) To be considered for approval, the street and/or sidewalk cut and pavement repair shall be designed in a manner to mitigate early pavement degradation, including drainage, water infiltration, lanes, and wheel paths.

(c) a pre-application conference with the Director is required prior to the submission of a waiver application.

(d) the Director shall provide City Council with a recommendation as to whether a waiver should be granted.

(e) The Director shall set a date for City Council's consideration of a waiver within 30 days from the date a complete application for a waiver is received.

(f) In considering a waiver, City Council shall determine if trenchless technology, such as boring or other methods, can adequately be used. Where such technology may be used, a waiver shall not be approved.

#### Sec. 90-117. Backfill.

(a) Backfill shall be constructed pursuant to the City construction standards. A right-of-way user shall notify the Director at least two (2) hours prior to beginning backfill operations. Failure to so notify may result in suspension of construction and removal of any unauthorized installed backfill.

(b) Densities may be taken to ensure compliance with standard backfill requirements. At least five (5) days prior to the commencement of the backfill operations, a right-of-way user shall submit to the Director a sample of the backfill material to be used at the construction site.

(c) In excavations eighteen (18) inches or less in width, or where for any reason compaction cannot be achieved with gravel backfill, flowable concrete shall be used in place of gravel backfill in all areas within three (3) feet of the back of the curb or the edge of pavement. Flowable fill shall conform to the City construction standards.

**Sec. 90-118. Substandard construction.**

(a) A person performing construction in City right-of-way shall perform such construction in a manner that complies with federal, state, and local law, to include the City construction standards.

(b) Facilities installed after the effective date of this Article shall be presumed to be improperly constructed and substandard if:

- (1) the construction endangers, or is reasonably likely to endanger, the general public or persons using the right-of-way;
- (2) the facilities do not meet federal, state, or local law, to include the City construction standards;
- (3) the facilities are not capable of being reasonably located pursuant to the City construction standards or as otherwise required by this Article;
- (4) the facilities are not located in the proper place in accordance with this Article, the directives provided by the Director pursuant to this Article, or the City construction standards;
- (5) the facilities are placed in an area that disturbs facilities which are City-owned or leased; and/or
- (6) the facilities constructed or to be constructed are within three (3) feet horizontally of such City-owned or leased facility.

(c) Substandard construction is unacceptable to the City and may be ameliorated by the City or by a third party, at the direction of the City, and the right-of-way user shall be liable for the costs of such amelioration. Before amelioration is undertaken by or at the direction of the City, the right-of-way user shall be provided notice and allowed ten (10) days, or a longer period of time if requested by the right-of-way user and granted by the Director, to bring the construction up to applicable standards acceptable to the City.

### Sec. 90-119. Insurance requirements.

Any right-of-way user seeking a permit shall carry, and provide documentation upon request, the following:

- (1) worker's compensation insurance covering all employees of contractor engaged in any operation covered by the permit;
- (2) automobile liability insurance;
- (3) general liability insurance of at least five hundred thousand dollars (\$500,000.00) for personal injury and one hundred thousand dollars (\$100,000.00) for property damage; and
- (4) umbrella coverage of at least one million dollars (\$1,000,000.00) on an occurrence basis and must include coverage for personal injury or death, contractual liability, premises liability, medical damages, and explosion and collapse hazards.

### Sec. 90-120. Liability for damage.

- (a) Without intending to affect or determine the legal relationship between a right-of-way user and any third party, the right-of-way user and/or any person working for or at the direction of the right-of-way user shall be liable for any property damage or destruction it causes as a result of constructing within the right-of-way. A designated agent or representative of the right-of-way user shall be available to the Director for contact purposes in the event of damage or destruction.
- (b) A right-of-way user shall notify the Director upon occurrence of any damage or destruction to any facility or other property owned or leased by a third party or by the City, in connection with construction occurring in the right-of-way, if such occurrence happens during a City business day. If the occurrence happens on a day other than a City business day, notification must be given by 9:00 a.m. on the first City business day following the occurrence.

### Sec. 90-121. Restoration of property and pavement.

- (a) Surface restoration shall be constructed as designated on the right-of-way permit and as required pursuant to the City construction standards. A right-of-way user shall notify the Director not less than two (2) hours prior to the placement of surface restoration material. Failure to do so may result in the suspension of construction and the removal of any surface material placed without prior approval.
- (b) A right-of-way user shall be responsible for having all abandoned facilities removed within seven (7) days after their abandonment unless otherwise extended by the Director or unless the Director determines that such abandoned facilities should not be removed upon request.

(c) During a cessation in the construction or after completion of the construction, and in order to avoid safety hazards to vehicles and pedestrian traffic, all street and sidewalk construction shall be restored by a right-of-way user within a reasonable period of time to be determined by the Director.

(d) A right-of-way user shall restore property damaged or destroyed by construction on or adjacent to the right-of-way to a condition that is as good as or better than the pre-existing condition of the right-of-way or adjacent property, as determined by the Director. Streets shall be restored based on their Pavement Condition Index ("PCI") prior to construction, as determined by the Director during the application process, as follows:

- (1) PCI of 0-50. Excavations in streets and/or rights of way with PCI values of 50 or less shall be deemed to be excavations in streets with nominal loss of life. The right-of-way user shall promptly repair the trench envelope and surface in accordance with specifications set forth in the UECM.
- (2) PCI of 51-85. In the event of an excavation in a street or right-of-way having a PCI of 51-85, the right-of-way user shall promptly repair the trench envelope and surface, including pavement and foundation, to the same condition, or better, than existed before the commencement of the work in accordance with the specifications set forth in the UECM. In the event of failure of the repair during the guaranty period, the right-of-way user shall reimburse the City for its pavement restoration cost.
- (3) PCI of 86-100. Excavations in streets and/or right-of-way with PCI values of 86 or greater shall be deemed one hundred (100) percent loss of pavement life. These excavations require block to block and curb to curb pavement reconstruction. Use of a hot mix asphalt repaving process is an option with approval of the Director. In the event of any trench failure in the street or right-of-way during the guaranty period, the contractor shall reimburse the City for its costs to repair the failure. Additionally, in the event of such failure, the right-of-way user shall within forty-eight (48) hours repair the subject trench envelope if required by the Director.

(e) Restoration shall be completed in a timely manner as specified by schedules prepared and provided by the Director. Right-of-way users shall be fully responsible for the performance of all trenches or other restorative work for a period not to exceed twenty-four (24) months from the completion of the work and/or inspection by the Director. Any trench or other restorative failures resulting from any work authorized by this article shall be immediately repaired upon notification by the City and are subject to inspection and approval by the City.

(f) All repairs to right-of-way of any PCI are guaranteed by the right-of-way user making the repair to be made for the life of the street. The life of the street for these purposes is defined to be until such time as that certain street or right-of-

way is repaved by the City or another, in the same location as the excavation, or until such time as the PCI Index of such street or right-of-way drops to below 50.

**Sec. 90-122. Requirement to relocate equipment for City public works projects.**

Any user of the City right-of-way shall be required to relocate and bear the cost of relocating their equipment to accommodate City public works projects. Such relocation shall be completed within thirty (30) days upon notice by the City of the requirement for such relocation.

**Sec. 90-123. Exemptions for maintenance of sewer laterals by single family residents.**

Residential customers issued permits to excavate in the right-of-way for the maintenance of sewer laterals for single family or duplex residential properties shall not be subject to any fees required by this chapter and shall only be required to restore a street or right-of-way to a maximum PCI value of 85, even if the PCI value is determined to be higher than 85.”

**SECTION TWO.** The City Secretary is authorized and directed to submit this Ordinance to the publisher of the City's Code of Ordinances and the publisher is authorized to amend said Code to reflect the provisions 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 cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, this Ordinance takes precedence over any other existing City ordinance which may contain provisions that are less restrictive than those specified in this Article. However, nothing contained in this Article mitigates, interferes with, alters, or repeals any provision of any other ordinance of the City not in conflict with the provisions of this Article.

**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 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.** Pursuant to Texas Local Government Code §52.013(a) and Section 3.07 of the City's Charter, the City Secretary is hereby authorized and directed to publish the descriptive caption of this Ordinance in the manner and for

the length of time prescribed by the law as an alternative method of publication.

**SECTION SIX.** This Ordinance shall become effective as of March 29, 2023.

PASSED AND APPROVED ON FIRST READING, this the 28 day of February, A.D., 2023.

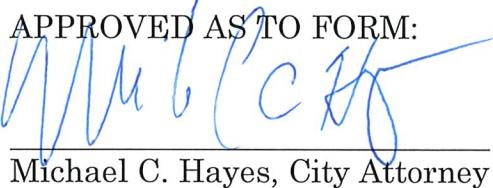
PASSED AND APPROVED ON SECOND AND FINAL READING, this the \_\_\_\_\_ of \_\_\_\_\_, A.D., 2023.

\_\_\_\_\_  
Judy Eychner, Mayor

ATTEST:

\_\_\_\_\_  
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:** Amended Commercial Lease between the City of Kerrville and BTB Baseball Ventures, LLC.

**AGENDA DATE OF:** March 14, 2023      **DATE SUBMITTED:** March 9, 2023

**SUBMITTED BY:** Ashlea Boyle, Director Parks & Recreation

**EXHIBITS:**

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

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

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**Kerrville 2050 Item?** Yes

<b>Key Priority Area</b>	P - Parks / Open Space / River Corridor
<b>Guiding Principle</b>	N/A
<b>Action Item</b>	N/A

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**SUMMARY STATEMENT:**

Attached is a contract amendment between the City of Kerrville and BTB Baseball Ventures, LLC (D-BAT). The original contract was executed in 2016 under prior City and D-BAT leadership and before the complex was built and operational. Additionally, the original entity is no longer party to the agreement, it was assigned to another entity. The Sports Complex opened in January 2018. The current contract has a twenty-year term with two five-year renewal options, essentially a thirty-year contract. A contract with a significant lease term period, especially for a new operation, should be evaluated periodically to ensure it is still relevant. After operating and managing the complex for five years, it is time to amend the contract to better reflect the actuality of operations. Significant deal point changes are outlined below.

**Deal Points:**

- **Term** - change term to three years with two one-year renewal options.
- **Performance Measures** - change the definition of a tournament from 20 teams to 10 teams. Adding a requirement for four "Stay-to-Play" tournament weekends for dedicated hotel stays. Local teams would not be excluded from participating in the "Stay-to-Play" tournaments. Define the location for tournaments and overflow.
- **Purpose of Leased Premises** - include that the complex was constructed as a place for Kerrville citizens to play and a facility to add positive economic return through

sports-related tourism. The City endeavors to strengthen and expand that purpose through this lease by spurring more tourism associated with baseball and softball tournaments that D-BAT will book and organize.

- **Reporting** - require monthly activity reporting from D-BAT.
- **Weather** - provide the City with the authority to close the complex during inclement weather to protect the asset from damages. D-BAT would not be penalized for tournament team performance if this occurs during a scheduled tournament with registered teams.
- **Maintenance** - clarify the City's role of maintenance will occur during the weekdays, excluding holidays. The City is not responsible for maintenance or field preparation on weekends for tournaments or activities unless it specifically opts to.
- **Rent Forgiveness** - add language for the 2022 year's rent forgiveness as long as the 2023 performance measures are met. If not, applicable rent will be owed for 2022 and 2023.
- **Kerrville Little League (KLL)** - simplify the language allowing D-BAT to work directly with KLL for scheduling and coordination of their spring seasons. D-BAT is obligated to provide fields for KLL to play their season games. D-BAT will provide KLL with a deadline of when field scheduling information is due. If information is not provided by the deadline, D-BAT will have no obligation to guarantee fields for KLL use. Fees assessed will be determined by the fee schedule adopted by the City Council in the annual budget process. Fees for FY23 are \$0, and proposed fees for FY24 are also \$0.

**RECOMMENDED ACTION:**

Authorize the City Manager to negotiate and finalize the lease amendment.

**ATTACHMENTS:**

[20230314\\_Contract DBAT Amended Commercial Lease.pdf](#)

# AMENDED COMMERCIAL LEASE

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**1. PARTIES:** The parties to this Amended Commercial Lease ("Lease") are:

Landlord: City of Kerrville, Texas  
City Hall, 701 Main Street  
Kerrville, Texas 78028

Tenant: BTP Baseball Ventures LLC, a franchise of D-BAT  
111 Homerun Drive  
Kerrville, Texas 78028

**2. ORIGINAL COMMERCIAL LEASE:** The parties entered into a Commercial Lease on or about February 23, 2016, which the Landlord identified as Contract 2016-01. This Amended Commercial Lease amends and supplants the February 23, 2016 Commercial Lease (Contract 2016-01) in its entirety.

**3. LEASED PREMISES:**

- A. Condition to Lease: Landlord is the owner of fee simple title in that certain tract of land depicted in Exhibit A (the "Land")
- B. Lease: Landlord shall lease to Tenant, subject to the terms below, an approximately 17,714 square foot building for uses including as a pro shop, concessions, training areas, batting cages, meeting space, offices, and restrooms (collectively referred to herein as the "Indoor Facility"); in addition, Landlord shall lease to Tenant a sports field complex consisting of 11 regulation playing fields for baseball and softball, structures at the center of each pod with bathrooms and concession areas, and a turf practice field next to the Indoor Facility (collectively referred to herein as the "Outdoor Premises"). The primary purpose for both the Indoor Facility and Outdoor Premises is for use as a public facility. The Indoor Facility and Outdoor Premises are collectively referred to herein as the "Baseball-Softball Complex," consisting of an area of approximate 35 acres, which make up a portion of the Land depicted in Exhibit B.
- C. Purpose of Leased Premises: The Baseball-Softball Complex was constructed as a place for Kerrville citizens to play and a facility to add positive economic return through sports-related tourism. Landlord endeavors to strengthen and expand that purpose through this Lease by spurring more tourism associated with baseball and softball tournaments that Tenant will book and organize.
- D. Tenant Obligations to Landlord: Tenant shall manage and operate the Indoor Facility and Outdoor Premises, as specified herein, in a first class manner consistent with industry standards for the operation of similar types of first class facilities and enforce

# AMENDED COMMERCIAL LEASE

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applicable rules for the use of the Baseball-Softball Complex, which must at least include the prohibitions found in Section 74-23 of the Kerrville Code of Ordinances, as amended.

E. Access to Baseball-Softball Complex. Tenant, through its employees, shall have the primary responsibility for access to the Indoor Facility. Landlord, through its employees, shall have the primary responsibility for access to the Outdoor Premises by unlocking the access gate each morning (if applicable) and securing the Baseball-Softball Complex by locking the access gate each evening (if applicable) during any period of time when the Baseball-Softball Complex is not open to the public. When tournaments and events conducted by Tenant make use of the Baseball-Softball complex after 3:00 PM or at any other time agreed to by the parties, Tenant shall have the responsibility of unlocking and locking the access gate. Tenant further acknowledges and agrees that Landlord's police and fire departments will be provided with duplicate keys to the access gate for use in obtaining access to the Baseball-Softball Complex for security patrols and in emergencies.

## 4. TERM:

A. Term: The initial term of this Lease is three 3 years, which will begin on January 1, 2023 (the "Commencement Date") ("Initial Term"), subject to renewal or earlier termination as herein provided. The parties may renew this Lease for up to two (2) successive one-year terms (each a "Renewal Term") by entering into a written agreement to renew this Lease not less than sixty (60) days prior to the expiration of the relevant Initial or Renewal Term.

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# AMENDED COMMERCIAL LEASE

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## 5. RENT AND EXPENSES:

A. Base Monthly Rent: On or before the first day of each month during the Lease, Tenant shall pay Landlord base monthly rent, which, except for the rent potentially due after the first year of the execution of the contract, will be calculated based upon the number of prior calendar year's tournaments and team participation as set forth in the chart below:

The Number of Stay to Play Tournaments and Number of Teams that Participated the Prior calendar year:	Monthly Base Rent for the Baseball-Softball Complex:
1 Stay to Play Tournament and 0 to 100 teams participating in tournaments throughout the year	\$14,000.00
2 Stay to Play Tournaments and 101 to 250 teams participating in tournaments throughout the year	\$10,000.00
3 Stay to Play Tournaments and 251 to 400 teams participating in tournaments throughout the year.	\$7,000.00
4 Stay to Play Tournaments and 401+ teams participating in tournaments throughout the year.	\$0.00

The first month of potential base rent for the year following the first year of this Lease will be the monthly base rent provided in the chart above in addition to \$28,000.00, which accounts for the rent payments Tenant owes Landlord as a result of its 2022 year performance, but which Landlord is willing to waive should Tenant successfully host at least 4 Stay to Play tournaments and 401 tournament teams during tournaments during the first year of the Lease.

As noted in the chart above, Tenant must organize at least four (4) "Stay to Play Tournaments" during each calendar year. For purposes of this Lease, "Stay to Play Tournaments" shall mean tournaments that require the participants to stay in one of the official hotels set up in an official tournament housing block utilizing hotels and motels within the municipal limits of Kerrville, Texas. Tenant shall retain documentation demonstrating that players in the Stay to Play Tournaments stayed at hotels within the municipal limits of Kerrville, Texas pursuant to Subsection F below. The term "tournament" as used herein means a baseball or softball event conducted by the Tenant of any age group consisting of a minimum of ten (10) teams with a minimum of ten (10) players per team ("tournament team"), playing at the Baseball-Softball Complex or an approved overflow venue within Kerrville, Texas. Tenant shall

# AMENDED COMMERCIAL LEASE

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not prohibit participation by teams from Kerr County, Texas in the Stay to Play Tournaments; however, teams from Kerr County, Texas will not count toward the ten (10) team minimum required to satisfy the definition of "tournament."

Overflow venues may only be used if the Baseball-Softball Complex is at capacity, and should any overflow venues be required for a tournament, the proposed overflow venue must be approved by the Landlord prior to any event in order to count toward the tournament and team participation requirements addressed in the above chart.

B. Place of Payment: Tenant shall remit all amounts due Landlord under this Lease to the following person at the place stated or to such other person or place as Landlord may designate in writing:

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

C. Method of Payment: Tenant shall pay all rent timely without demand, deduction, or offset, except as permitted by law or this Lease.

D. Late Charges: If Landlord does not receive a rent payment at the designated place of payment within 15 days after the date it is due, Tenant shall pay Landlord a late charge equal to 10% of the monthly payment amount. The mailbox is not the agent for receipt for Landlord. The late charge is a cost associated with the collection of rent and Landlord's acceptance of a late charge does not waive Landlord's right to exercise remedies under Paragraph 25.

E. Returned Checks: Tenant shall pay Landlord the applicable fee for each check Tenant tenders to Landlord which is returned by the institution on which it is drawn for any reason, plus any late charges, until Landlord receives payment. Such fee and late charges will be set by the City from time to time by adoption of its fee schedule.

F. Records and Audit: Tenant shall maintain a complete set of books and records in connection with all aspects of and specific to this Lease relating to its revenues, which as used here means tournament team entries, showcase entries, tournament team entry fees, showcase player entry fees, and concession revenues, which books and records Tenant shall keep and maintain in accordance with generally accepted accounting practices and procedures. Said books and records shall at all reasonable times be available for inspection, copying, audit, and examination by Landlord or by properly designated employees or agents of Landlord. Landlord has the right, such

# AMENDED COMMERCIAL LEASE

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right not to be exercised more frequently than once every year, to audit the books and records of Tenant. Landlord may, at any time, make inquiries pertaining to Tenant's operation of the Baseball-Softball Complex and Tenant shall respond to such inquiries on a timely basis. All records shall be maintained for not less than one (1) year following termination of this Lease. In addition, by the tenth (10<sup>th</sup>) day of each month, Tenant shall provide Landlord with a D-BAT Monthly Data Summary document, a form copy of which is attached hereto as **Exhibit C**.

- G. Coordination with City and Convention and Visitors Bureau: Tenant shall coordinate with City and the Kerrville Convention and Visitors Bureau ("CVB") on a montly basis to discuss options to maximitze hotel stays for all tournaments held at the Baseball-Softball Complex.
- H. All Charges Deemed Rent: Rent and all other amounts becoming payable by Tenant under this Lease constitute rent payable hereunder, and in the event Tenant fails to pay any such amount when due according to the provisions of this Lease, Landlord has all remedies available hereunder or at law or in equity for failure to pay rent. No happening, event, occurrence, or situation during the Initial Term or an Option Period, whether foreseen or unforeseen, and however extraordinary, shall relieve Tenant from its liability to pay rent and other charges payable by Tenant under this Lease or relieve Tenant from any of its other obligations under this Lease.

6. **TAXES AND OWNERSHIP BY LANDLORD:** Tenant is responsible for and shall pay all applicable state, local, and use taxes for its use, sales, and services of or conducted upon the Baseball-Softball Complex. Landlord and Tenant understand, acknowledge, and agree that title to the Land shall at all times during the Lease be vested in Landlord and should be exempt from property (ad valorem) taxation. Based upon Landlord's continued ownership of the Baseball-Softball Complex and public use, Landlord shall make every effort to maintain the tax exempt status of the Baseball-Softball Complex.

7. **UTILITIES:**

- A. Except as provided herein, Tenant shall pay all charges with respect to utilities serving the Indoor Facility to include water, sewer, electric, gas, telephone, internet, television, security system, and trash. Tenant shall make such payments directly to each applicable utility provider. Landlord is responsible for water, sewer, fire alarm system, and trash for the Outdoor Premises.
- B. Any access or alterations to the Indoor Facility which is necessary for the furnishing of any utility may be made only with Landlord's prior written consent, which Landlord

# AMENDED COMMERCIAL LEASE

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will not unreasonably withhold. If Landlord incurs any liability for utility or connection charges for which Tenant is responsible to pay and Landlord pays such amount, Tenant will immediately upon written notice from Landlord reimburse Landlord such amount.

C. Landlord is not liable for any interruption whatsoever in utility services to the Baseball-Softball Complex, unless directly caused by the actions of Landlord, and in no event shall any payments required under this Lease be modified, adjusted, reduced, or abated by Tenant as a result of the interruption of utility services.

## 8. INSURANCE:

A. Tenant shall maintain in full force and effect the following types of insurance:

- (1) commercial general liability insurance for bodily injury, death, or property damage, insuring Tenant and naming Landlord as an additional insured, against all claims, demands, or actions relating to the Baseball-Softball Complex on an occurrence basis, issued by and binding upon a solvent insurance company licensed to do business in Texas, with a minimum combined single limit of not less than \$1,000,000.00 per occurrence for injury to persons (including death), and for property damage or destruction, including loss of use.
- (2) Worker's Compensation and Employer's Liability insurance in the minimum amounts required by state law.

B. Before execution of the Lease, Tenant shall provide Landlord with a copy of all insurance declaration pages, policies and endorsements evidencing the required coverage. If the insurance coverage is renewed or changes in any manner or degree at any time this Lease is in effect, Tenant shall, not later than 30 days after the renewal or change, provide Landlord a copy of an insurance declaration pages, policies and endorsements evidencing the renewal or change.

C. If Tenant fails to maintain the required insurance in full force and effect at all times this Lease is in effect, Landlord may: (1) purchase insurance that will provide Landlord the same coverage as the required insurance and Tenant shall immediately reimburse Landlord for such expense; or (2) exercise Landlord's remedies under Paragraph 25.

D. Landlord shall maintain in full force and effect the following types of insurance: (1) fire and extended coverage in an amount to cover the reasonable replacement cost of the improvements of the Baseball-Softball Complex; and (2) any public liability insurance in an amount that Landlord determines reasonable and appropriate.

# AMENDED COMMERCIAL LEASE

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## 9. USE AND HOURS:

- A. Tenant may use the Baseball-Softball Complex for training associated with baseball and softball; sales of equipment and concessions; and the scheduling, marketing, and managing of baseball and softball tournaments and similar events.
- B. Tenant shall operate and conduct its business in the Baseball-Softball Complex during business hours that are typical of the industry in which Tenant represents it operates.
- C. Tenant may use or allow the use of the field lights until 10:00 PM Sunday through Thursday and until 11:00 PM Friday and Saturday, subject on occasion to a reasonable extension of such times due to weather events or an unforeseen extension of tournament play. Where Tenant wishes to use the lights beyond these times for tournaments and similar events, it must receive prior written approval from Landlord, such approval to be timely and not unreasonably withheld.
- D. The operating hours of the Baseball-Softball Complex shall be at Tenant's discretion.
- E. Landlord reserves the right to terminate Tenant's use of the Outdoor Facility during inclement weather to prevent damage to the fields. However, should Landlord be required to terminate Tenant's use of the Outdoor Facility during inclement weather to preserve and protect the playing fields during an ongoing tournament, Landlord will count the tournament and teams participating in the tournament toward Tenant's requirements in the chart in Section 5 to determine Base Rent.

## 10. ADVERTISING:

- A. Landlord shall have sole right to negotiate, execute, and perform all contracts pertaining to the naming rights to the Baseball-Softball Complex or any portion thereof.
- B. Tenant shall have sole right to negotiate, execute, and perform all contracts concerning the sale, promotion, marketing, and the use of all names, trademarks, tradenames, logos, and similar intellectual property rights related to the Baseball-Softball Complex and limited to tournaments and events, subject to prior written approval from Landlord, such approval to be timely and not unreasonably withheld. Tenant shall include Landlord's logo for the Baseball-Softball Complex on all marketing material.

# AMENDED COMMERCIAL LEASE

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- C. During tournaments and similar events conducted by Tenant, Tenant has the right, subject to prior written approval from Landlord, to display advertising relevant to its services and products, such approval to be timely and not unreasonably withheld.
- D. In connection with any advertising or promotional material relative to the Baseball-Softball Complex, Tenant shall use reasonable, good faith efforts to include therein the use of the words "Kerrville, Texas." In connection therewith, Landlord does hereby grant to Tenant the personal and nontransferable right and license to use the service mark of the City of Kerrville in the development and promotion of the Baseball-Softball Complex. The right granted to Tenant herein shall not be assigned, transferred, or otherwise conveyed without Landlord's prior written consent. Tenant acknowledges Landlord's exclusive right, title, and interest in and to the service mark and will not at any time do or cause to be done any act or thing contesting or in any way impairing or tending to impair any part of such right, title, and interest. In connection with the use of the service mark, Tenant shall not in any manner represent that it has any ownership in the service mark or registration thereof, and Tenant acknowledges that use of the service mark shall not create in Tenant's favor any right, title, or interest in or to the service mark, but all uses of the service mark by Tenant shall inure to the benefit of Landlord. Upon termination of this Lease, Tenant will cease and desist from all use of the service mark in any way (and will at Landlord's request deliver up to Landlord, or its duly authorized representatives, all material and papers upon which the service mark appears), and Tenant shall at no time adopt or use, without Landlord's prior written consent, any word or mark which is likely to be similar to or confusing with the service mark.

## 11. CONCESSIONS:

- A. Tenant shall be responsible for all licenses or permits required for concession operation and for maintaining all health standards required by law to operate concessions.
- B. Tenant may provide and operate mobile and/or temporary concession carts and/or kiosks during tournaments and similar events.
- C. Tenant has the right to enter contracts with Tenant's choice of vendors for the concessions, any such vendors subject to prior written approval from Landlord, such approval to be timely and not unreasonably withheld.
- D. Tenant shall pay Landlord ten percent (10%) of its gross revenues made from all food and beverage concessions at the Baseball-Softball Complex during its tournaments. Tenant shall make such payments to Landlord quarterly based upon the calendar year,

# AMENDED COMMERCIAL LEASE

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with such payments being due on or before the 10<sup>th</sup> day of the month following the quarter.

E. Tenant shall not sell, serve, distribute, give away, or store alcoholic beverages at the Baseball-Softball Complex at any time.

**12. MERCHANTISE:** Tenant has the sole right to sell merchandise. All merchandise revenue is the property of the Tenant.

**13. SCHEDULING AND FEES,**

A. Tenant has the sole right, subject to the terms below, to schedule events at the Outdoor Premises, including charging and collecting a fee for the use of fields, which fee is subject to review by City upon its request at any time.

B. Where available and subject to any provisions of Section 14 and applicable fees, Landlord agrees to provide the use of Landlord-owned and operated softball field in Singing Wind Park to Tenant as needed during tournaments and similar events.

**14. KLL USE:**

A. Tenant shall work with Kerrville Little League or any of its successors in interest ("KLL") to schedule KLL's regular season games at the Baseball-Softball Complex, which are held each year between March and the end of June ("KLL Season"). Each year, Tenant shall notify KLL in writing of its deadline to provide Tenant with KLL Season game dates, times, fields, and any other pertinent information Tenant requires to schedule the Baseball-Softball Complex for KLL games. Tenant shall provide KLL with at least six (6) weeks to provide Tenant with the required information. If KLL fails to provide the required information by the deadline Tenant provides to KLL in writing, Tenant will have no obligation to guarantee fields at the Baseball-Softball Complex for KLL games.

B. Tenant may charge KLL fees for the use of the Baseball-Softball Complex for KLL games; however, Tenant may only charge KLL the fees adopted by Landlord in its annual fee schedule relating to the "Kerrville Sports Complex."

C. Tenant may allow KLL to provide concessions during KLL games subject to any agreement reached between Tenant and KLL.

# AMENDED COMMERCIAL LEASE

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**15. RESTRICTED USES:** Tenant may not use or permit any part of the Baseball-Softball Complex to be used for:

- A. Any activity which is a nuisance or dangerous;
- B. Any activity that interferes with Landlord's management of the Baseball-Softball Complex;
- C. Any activity that violates any applicable law, regulation, zoning ordinance, governmental order, Landlord's rules or regulations, or this Lease;
- D. Any hazardous activity that would require any insurance premium on the Baseball-Softball Complex to increase or that would void any such insurance;
- E. Cutting any timber, conducting mining operations, removing sand, gravel, or kindred substances from the ground, committing waste of any kind, nor in any manner substantially changing the contour or condition of the Land; and
- F. Outdoor storage except for the customary items that are normally stored outside.

**16. SPECIFIC COVENANTS REGARDING ENVIRONMENTAL MATTERS:**

- A. Tenant covenants that (i) no toxic or hazardous substances, including, without limitation, asbestos and the group of organic compounds known as polychlorinated biphenyls (except such substances as are used in accordance with law), shall be generated, treated, stored, or disposed of, or otherwise deposited in or located on, or released on or to the Baseball-Softball Complex; (ii) Tenant will not engage in and will not permit any other party to engage in any activity on the Baseball-Softball Complex which would cause (a) the Baseball-Softball Complex to become a hazardous waste treatment storage or disposal facility within the meaning of, or otherwise bring the Baseball-Softball Complex within the ambit of, the Resource Conservation and Recovery Act of 1975 ("RCRA"), 42 U.S.C. § 6901, et seq., as amended, or any similar state law or local ordinance or other environmental law, (b) a release or threatened release of a hazardous substance from or to the Baseball-Softball Complex within the ambit of, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), 42 U.S.C. §§ 9601–9657, as amended, or any similar state law or local ordinance or any other environmental law, or (c) the discharge (except in accordance with applicable law) of pollutants or effluents into any water source or system, or the discharge (except in accordance with applicable law) into the air of any emissions, which would require a permit under the Federal Water Pollution control Act, 33 U.S.C. § 1251, et seq., or the Clean Air Act, 42 U.S.C. §§ 7401, et seq., or any similar state law or local ordinance or any other environmental law; (III) Tenant will

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not permit any substance or conditions in or on the Baseball-Softball Complex which might support a claim or causes of action under RCRA, CERCLA, or any other federal, state, or local environmental statutes, regulations, ordinances, or other environmental regulatory requirements. As used herein, the terms "hazardous substance" and "release" shall have the meanings specified in CERCLA, and the terms "solid waste" and "disposal" (or "disposed") shall have the meanings specified in RCRA; provided, in the event either CERCLA or RCRA is amended so as to broaden the meaning of any term defined thereby, such broader meaning shall apply subsequent to the effective date of such amendment, provided, further, to the extent that the laws of the State of Texas establish a meaning for such terms which is broader than that specified in either CERCLA or RCRA, such broader meaning shall apply.

- B. In the event Tenant or Landlord is obligated by any applicable federal, state, or local law, ordinance, or regulation or otherwise directed by any governmental agency or authority, to clean up, remove, or encapsulate or cause the clean-up, removal, or encapsulation of any Hazardous Wastes and/or Hazardous Materials or asbestos or material containing asbestos from the Baseball-Softball Complex, Tenant hereby guarantees to Landlord that Tenant (i) shall promptly undertake to arrange for such clean-up, removal, and disposal in accordance with all governmental regulations, (ii) shall exercise its best efforts to insure that such clean up and removal shall be conducted in a timely and diligent manner, and (iii) hereby assumes the costs and expense, including any fines, of such clean up and removal unless such condition is determined to have existed on the Baseball-Softball Complex prior to Tenant's execution and acceptance of this Lease or has resulted from Landlord's activities, in which case, Landlord shall be responsible for, and shall assume the cost and expense of, such cleanup. The above obligation contained in this section shall only apply to any act or omission of Tenant or Tenant's officers, principals, employees, agents, contractors, or subcontractors.
- C. In the event that any lien is recorded or filed against the Baseball-Softball Complex with respect to Tenant's activities and pursuant to any governmental regulations regarding Hazardous Materials, Hazardous Wastes, or Asbestos, Tenant hereby guarantees to Landlord that Tenant shall, not later than 30 days following the filing of such lien, satisfy the claim and cause the lien thereunder to be discharged of record, unless such condition is determined to have existed on the Baseball-Softball Complex prior to Tenant's execution and acceptance of this Lease or has resulted from Landlord's activities in which case, Landlord shall be responsible for, and shall assume the cost and expense of, satisfying the claim or causing the lien to be discharged.
- D. IN ADDITION TO THE FOREGOING, TENANT SHALL, WITH RESPECT TO ITS USE ONLY, PROTECT, DEFEND, INDEMNIFY AND SAVE HARMLESS LANDLORD, AND LANDLORD'S OFFICERS, ELECTED AND APPOINTED OFFICIALS, AGENTS, EMPLOYEES, AND

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REPRESENTATIVES FROM AND AGAINST ALL LOSS (INCLUDING DIMINUTION IN THE VALUE OF THE BASEBALL-SOFTBALL COMPLEX), COST, DAMAGE, LIABILITY, OBLIGATION, CAUSES OF ACTION, FINE, PENALTY, OR EXPENSE (INCLUDING ATTORNEY'S FEES AND EXPENSES FOR INVESTIGATION, INSPECTION, REMOVAL, CLEAN UP, AND REMEDIAL COSTS INCURRED TO PERMIT CONTINUED OR RESUME NORMAL OPERATION OF THE BASEBALL-SOFTBALL COMPLEX), IMPOSED UPON OR INCURRED BY OR ASSERTED AGAINST LANDLORD, ITS OFFICERS, OFFICIALS, EMPLOYEES OR AGENTS BY REASON OF: (i) THE PRESENCE, DISPOSAL, ESCAPE, SEEPAGE, LEAKAGE, SPILLAGE, DISCHARGE, EMISSION, RELEASE, OR THREATENED RELEASE OF ANY HAZARDOUS MATERIALS AND/OR HAZARDOUS WASTES ON, FROM, OR AFFECTING THE BASEBALL-SOFTBALL COMPLEX OR ANY OTHER PROPERTY OR THE PRESENCE OF ASBESTOS IN THE INDOOR FACILITY; (ii) ANY PERSONAL INJURY (INCLUDING WRONGFUL DEATH) OR PROPERTY DAMAGE OR DESTRUCTION (REAL OR PERSONAL) ARISING OUT OF OR RELATED TO SUCH HAZARDOUS WASTES, HAZARDOUS MATERIALS OR ASBESTOS; (iii) ANY LAWSUIT BROUGHT OR THREATENED, SETTLEMENT REACHED, OR GOVERNMENT ORDER RELATING TO SUCH HAZARDOUS WASTES, HAZARDOUS MATERIALS, OR ASBESTOS; OR (iv) ANY VIOLATION OF LAWS, ORDERS, REGULATIONS, REQUIREMENTS, OR DEMANDS OF GOVERNMENTAL AUTHORITIES, WHICH ARE BASED UPON OR IN ANY WAY RELATED TO SUCH HAZARDOUS WASTES, HAZARDOUS MATERIALS OR ASBESTOS INCLUDING, WITHOUT LIMITATION, THE COSTS AND EXPENSES OF ANY REMEDIAL ACTION, ATTORNEY AND CONSULTANT FEES, INVESTIGATION AND LABORATORY FEES, COURT COSTS, AND LITIGATION EXPENSES. THE ABOVE AND FOREGOING OBLIGATION CONTAINED IN THIS SECTION SHALL ONLY APPLY TO ANY ACT OR OMISSION OF TENANT OR TENANT'S OFFICERS, PRINCIPALS, EMPLOYEES, AGENTS, CONTRACTORS, OR SUBCONTRACTORS IN CONNECTION WITH ANY LOSS (INCLUDING DIMINUTION IN THE VALUE OF THE LEASED PREMISES), COST, DAMAGE, LIABILITY, OBLIGATION, CAUSES OF ACTION, FINE, PENALTY OR EXPENSE (INCLUDING ATTORNEY'S FEES AND EXPENSES FOR INVESTIGATION, INSPECTION, REMOVAL, CLEAN UP, AND REMEDIAL COSTS INCURRED TO PERMIT CONTINUED OR RESUME NORMAL OPERATION OF THE BASEBALL-SOFTBALL COMPLEX), IMPOSED UPON OR INCURRED BY OR ASSERTED AGAINST LANDLORD, ITS OFFICERS, OFFICIALS, AGENTS OR EMPLOYEES BY REASON OF SUBPARTS (i) THROUGH (iv) OF THIS SECTION AND FOR WHICH SUCH CONDITION WAS NOT A PRE-EXISTING CONDITION OF THE BASEBALL-SOFTBALL COMPLEX PRIOR TO TENANT'S EXECUTION AND ACCEPTANCE OF THE LEASE.

D. Landlord hereby warrants that Landlord has no knowledge of the existence of Hazardous Wastes and/or Hazardous Materials or asbestos or material containing asbestos on the Land, nor any other condition, the discovery of which would likely subject Tenant to civil, criminal or administrative liability. Landlord further covenants, warrants, and promises that, to the greatest extent allowed under law,

# AMENDED COMMERCIAL LEASE

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Tenant shall not be held liable by Landlord, for any condition existing prior to Tenant's execution and acceptance of this Lease.

**17. SIGNS:**

- A. Landlord shall maintain a monument sign in conformance with its sign regulations. Tenant may then install characters, letters, or illustrations that will identify it and its services, subject to prior written approval from Landlord, such approval to be timely and not unreasonably withheld.
- B. Upon termination of the Lease and at Landlord's request, Tenant shall remove anything it installed on the monument sign or building without causing damage.

**18. ACCESS BY LANDLORD:** Landlord may enter the Indoor Facility at any time and for any reasonable purpose, including for the purpose of repairs, maintenance, and alterations. Where access occurs after the Indoor Facility is closed and Tenant is not present, Landlord may only access the Indoor Facility where: (1) entry is necessary to address emergency repairs to the Indoor Facility; and (2) Landlord provides Tenant with written notice following such entry. Landlord will not unreasonably interfere with Tenant's use when accessing the Indoor Facility.

**19. MOVE-OUT CONDITION AND FORFEITURE OF TENANT'S PERSONAL PROPERTY:**

- A. At the time this Lease ends, Tenant shall surrender the Baseball-Softball Complex in acceptable conditions, except for normal wear and tear. Tenant shall leave the Baseball-Softball Complex in a clean condition free of all trash, debris, personal property, hazardous materials, and environmental contaminants.
- B. If Tenant leaves any personal property in the Baseball-Softball Complex after Tenant surrenders possession of the Baseball-Softball Complex, Landlord may: (1) require Tenant to remove the personal property by providing written notice to Tenant; or (2) retain such personal property as forfeited property to Landlord.
- C. "Surrender" means vacating the Baseball-Softball Complex and returning all keys and access devices to Landlord. "Normal wear and tear" means deterioration that occurs without negligence, carelessness, accident, or abuse.
- D. By providing 60 days written notice to Tenant before this Lease ends, Landlord may require Tenant upon move-out to remove, without damage to the Baseball-Softball Complex, any or all fixtures that were placed on the Baseball-Softball Complex by or at the request of Tenant. Any fixtures that Landlord does not require Tenant to remove become the property of the Landlord and will be automatically surrendered to Landlord at the time this Lease terminates.

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## 20. MAINTENANCE AND REPAIRS OF INDOOR FACILITY:

- A. Inspections and Cleaning: Tenant shall (i) conduct regular inspections of the Indoor Facility for compliance with health and safety standards and building codes and for cleanliness, good order, condition, and repair; (ii) buy, clean, and repair all furnishings and equipment in and for the Indoor Facility; (iii) periodically paint, redecorate, and refurbish the Indoor Facility and related equipment; (iv) cause all equipment and fixtures in and about the Indoor Facility to be repaired and maintained in good condition. Tenant shall keep the Indoor Facility clean and sanitary and dispose of all garbage in appropriate receptacles. Tenant shall provide janitorial services to the Indoor Facility that are customary and ordinary for the property type.
  
- B. Repair and Maintenance: The party designated below shall maintain and repair the following specified items in the Indoor Facility. 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 Indoor Facility as a first-class facility. If a governmental regulation or order requires a modification to any of the specified items, 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. The specified items include and relate only to the Indoor Facility as follows on the following page:

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		Landlord	Tenant
(1)	Foundation, exterior walls, roof, and other structural components.....	X	
(2)	Glass and windows.....		X
(3)	Fire protection equipment and fire sprinkler systems....	X	
(4)	Exterior doors, including closure devices, molding, locks and hardware.....		X
(5)	Interior walls and doors (including closure devices, frames, molding, locks, and hardware).....		X
(6)	Plumbing fixtures, plumbing systems, and sewer systems.....	X	
(7)	Electrical systems, mechanical systems.....		X
(8)	Ballast and lamp replacement.....		X
(9)	Heating, Ventilation and Air Conditioning (HVAC) systems.....		X
(10)	Signs and Lighting:		
	(a) Monument sign.....	X	
	(b) Signs attached to the Indoor Facility		X
(11)	Extermination and pest control.....		X
(12)	Security System		X
(13)	Exterior Lighting attached to the Indoor Facility	X	

C. Repair Persons: Repairs must be completed by trained, qualified, and insured repair persons.

D. HVAC Service Contract: Tenant shall maintain a regularly scheduled maintenance and service contract for the HVAC system. The maintenance and service contract must be purchased from a HVAC maintenance company that regularly provides such contracts to similar properties. If Tenant fails to maintain a required HVAC maintenance and service contract in effect at all times during this Lease, Landlord may do so and Tenant shall reimburse Landlord for the expense of such maintenance and service contract or Landlord may exercise Landlord's remedies under Paragraph 25.

E. Notice of Repairs: Tenant shall promptly notify Landlord in writing of any item that is in need of repair and that is Landlord's responsibility to repair.

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F. Failure to Repair: Landlord shall make a repair for which Landlord is responsible within a reasonable period of time after Tenant provides Landlord written notice of the needed repair. If Tenant fails to repair or maintain an item for which Tenant is responsible within 10 days after Landlord provides Tenant written notice of the needed repair or maintenance, Landlord may: (1) repair or maintain the item, without liability for any damage or loss to Tenant, and Tenant shall immediately reimburse Landlord for the cost to repair or maintain; or (2) exercise Landlord's remedies under Paragraph 25.

## 21. MAINTENANCE AND REPAIRS OF OUTDOOR PREMISES:

A. Repairs of Conditions Caused by a Party: Landlord shall repair a condition in need of repair on the Outdoor Premises. Where Landlord knows or believes that the conditions were caused, either intentionally or negligently, by (1) Tenant or Tenant's guests, patrons, invitees, or contractors, or by (2) Tenant's failure to prevent the use of the Outdoor Complex during inclement weather resulting in damage to the fields, Landlord will submit a bill to Tenant for payment to repair a resulting condition in need of repair.

B. Maintenance and Repair by Landlord: Landlord shall maintain and repair the Outdoor Premises and shall maintain, clean, and/or repair the following list of items in a healthy and safe operable condition and where the fields are ready for tournament play:

- (1) all 11 Baseball-Softball fields, common areas, and landscaping;
- (2) all sidewalks and parking areas;
- (3) sewer and both potable and reclaimed water distribution systems;
- (4) all permanent fencing;
- (5) all lighting to include Baseball-Softball fields;
- (6) winterizing all water systems and other improvements;
- (7) striping and preparation of all fields for play;
- (8) restrooms;
- (9) heating and cooling systems.

C. Manner of Maintenance and Repairs of Landlord: In performing the maintenance, cleaning, and repairs of the Outdoor Premises, the Landlord shall:

- (1) mow and string trim all grass areas;
- (2) water, fertilize, aerate, and dethatch the playing fields;
- (3) apply pesticides to grass areas as needed;
- (4) maintain all landscaping;
- (5) top-dress skins and grass areas for the Baseball-Softball fields;
- (6) maintain the base paths and infield skins for the Baseball-Softball fields;

# AMENDED COMMERCIAL LEASE

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(7) provide trash pickup and collection.

D. Shared Maintenance and Repair: Tenant and Landlord will evenly share the cost to replace portable pitching mounds as replacement of the mounds becomes necessary due to normal wear and tear, pursuant to Landlord's availability of funds. However, if Landlord determines the portable pitching mounds have been either intentionally or unintentionally damaged by Tenant's guests outside of normal wear and tear, including, but not limited to, the use of metal cleats, Tenant will be fully responsible for the repair or replacement cost.

E. Maintenance and Repairs During Tournaments, Weekends, and Holidays: At all times, Landlord shall maintain the Outdoor Premises in a condition ready for tournament play as Landlord deems appropriate. However, Landlord shall have no obligation to provide maintenance during tournaments, on weekends, or on City holidays unless it specifically agrees to do so in writing. For purposes of this Lease, City holiday shall mean any day that Kerrville City Hall is closed in observance of a holiday. During tournaments, on weekends, and on City holidays, Tenant is solely responsible for maintaining the Outdoor Premises in a condition ready for tournament play.

F. Cleaning: Landlord shall keep the Outdoor Premises clean and sanitary and dispose of all garbage in appropriate receptacles, except during tournaments and events organized by Tenant, at which time, Tenant is responsible for keeping the Outdoor Premises clean and sanitary and disposing of all garbage in appropriate receptacles.

G. Repair Persons: Repairs must be completed by trained, qualified, and insured repair persons.

H. Notice of Repairs: Tenant shall promptly notify Landlord in writing of any item that is in need of repair and that is Landlord's responsibility to repair.

I. Failure to Repair: Landlord shall make a repair for which Landlord is responsible within a reasonable period of time after Tenant provides Landlord written notice of the needed repair. If Tenant fails to repair or maintain an item for which Tenant is responsible within 10 days after Landlord provides Tenant written notice of the needed repair or maintenance, Landlord may (1) repair or maintain the item, without liability for any damage or loss to Tenant and Tenant shall immediately reimburse Landlord for the cost to repair or maintain; or (2) exercise Landlord's remedies under Paragraph 26. If the necessary repair is not capable of being completed within 10 days because of supply shortage or lack of an experienced or knowledgeable contractor, upon documentation from Tenant demonstrating the need for additional time, Landlord shall work with Tenant to agree to a reasonable amount of time to make the repair based on the facts associated with repair.

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J. Tenant's Use of Landlord's Equipment: Tenant is permitted to utilize Landlord's equipment to maintain the Outdoor Premises. However, Tenant must protect and be responsible for any loss, destruction, or damage to Landlord's equipment that results from or is caused by Tenant's willful misconduct or negligent acts or omissions or from the failure on the part of Tenant to maintain the equipment in good working condition. Notwithstanding anything to the contrary herein, Tenant will be liable to the Landlord for any damages resulting from damage to the equipment, which damages result from or are caused by Tenant's acts or omissions. Tenant will ensure that the equipment is returned to the Landlord in like condition to that in which it was furnished to Tenant, reasonable wear and tear excepted. Tenant will repair or make good any such damage, destruction or loss to any the Landlord's equipment, and will do so without requesting contribution from the Landlord.

## 22. ALTERATIONS:

- A. Tenant shall not alter, including making any penetrations to the roof or foundation, improve, or add, including temporary or permanently installed buildings, to the Baseball-Softball Complex without Landlord's written consent. Landlord will not unreasonably withhold consent for Tenant to make reasonable, nonstructural alterations, modifications, or improvements to the Baseball-Softball Complex.
- B. If a governmental order requires alteration or modification to the Baseball-Softball Complex, the party obligated to maintain and repair the item to be modified or altered as designated in Paragraphs 19 or 20 shall modify or alter the item in compliance with the order and in compliance with such paragraphs.
- C. Any alterations, improvements, fixtures, or additions to the Baseball-Softball Complex installed by either party during the term of this Lease will become Landlord's property and must be surrendered to Landlord at the time this Lease ends, except for those fixtures Landlord requires Tenant to remove under Paragraph 18 or if the parties agree otherwise in writing.

23. **LIENS:** Tenant shall not take any action that will cause the title of the Baseball-Softball Complex to be encumbered in any way. If a lien is filed against the Baseball-Softball Complex related with Tenant's use, Tenant shall, within 30 days after its notice thereof or Landlord's written demand: (1) pay the lien and have the lien released of record; or (2) take action to discharge the lien. Tenant shall provide Landlord with a copy of any release Tenant obtains.

24. **LIABILITY:** Landlord is NOT responsible or liable to Tenant or Tenant's employees, patrons, guests, or invitees for any damages, injuries, or losses to person or property caused by

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an act, omission, or neglect of: Tenant, or Tenant's employees, agents, vendors, guests, patrons, or invitees.

**25. INDEMNITY: LANDLORD SHALL NOT BE LIABLE FOR ANY LOSS, DAMAGE, OR INJURY OF ANY KIND OR CHARACTER TO ANY PERSON OR PROPERTY ARISING FROM TENANT'S USE OF THE BASEBALL-SOFTBALL COMPLEX. TENANT, FOR ITSELF AND ITS AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, LICENSEES, CONCESSIONAIRES, INVITEES, SUCCESSORS, AND ASSIGNS, EXPRESSLY ASSUMES ALL RISKS OF INJURY OR DAMAGE TO PERSON OR PROPERTY, EITHER PROXIMATE OR REMOTE, RESULTING FROM THE CONDITION OF THE BASEBALL-SOFTBALL COMPLEX OR ANY PART THEREOF. TENANT AGREES TO INDEMNIFY AND SAVE HARMLESS LANDLORD AND ITS AGENTS, OFFICERS, AND EMPLOYEES (COLLECTIVELY "INDEMNITIES") FROM AND AGAINST ANY AND ALL LIABILITIES, DAMAGES, CLAIMS, SUITS, COSTS (INCLUDING COURT COSTS, ATTORNEYS' FEES AND COSTS OF INVESTIGATION) AND ACTIONS OF ANY KIND ARISING OR ALLEGED TO ARISE BY REASON OF INJURY TO OR DEATH OF ANY PERSON OR DAMAGE TO OR LOSS OF PROPERTY OCCURRING ON, IN OR ABOUT THE PREMISES OR BY REASON OF ANY OTHER CLAIM WHATSOEVER OF ANY PERSON OR PARTY OCCASIONED OR ALLEGED TO BE OCCASIONED BY ANY ACT OR OMISSION ON THE PART OF TENANT OR ANY OFFICER, DIRECTOR, SERVANT, AGENT, EMPLOYEE, REPRESENTATIVE, CONTRACTOR, SUBCONTRACTOR, LICENSEE, CONCESSIONAIRE, INVITEE, SUCCESSOR OR ASSIGN, OR BY ANY BREACH, VIOLATION OR NONPERFORMANCE OF ANY COVENANT OF TENANT UNDER THIS LEASE, WHETHER SUCH LIABILITY, CLAIMS, SUITS, COSTS, INJURIES, DEATHS OR DAMAGES ARISE FROM OR ARE ATTRIBUTED TO THE CONCURRENT NEGLIGENCE OF ANY INDEMNITEE. IF ANY ACTION OR PROCEEDING SHALL BE BROUGHT BY OR AGAINST ANY INDEMNITEE IN CONNECTION WITH ANY SUCH LIABILITY OR CLAIM, TENANT, ON NOTICE FROM LANDLORD, SHALL DEFEND SUCH ACTION OR PROCEEDINGS AT TENANT'S EXPENSE, BY OR THROUGH ATTORNEYS REASONABLY SATISFACTORY TO LANDLORD. THE PROVISIONS OF THIS SECTION SHALL APPLY TO ALL ACTIVITIES OF TENANT WITH RESPECT TO THE BASEBALL-SOFTBALL COMPLEX. THE ABOVE AND FOREGOING OBLIGATION CONTAINED IN THIS SECTION SHALL ONLY APPLY TO ANY ACT OR OMISSION OF TENANT OR TENANT'S OFFICERS, PRINCIPALS, EMPLOYEES, AGENTS, CONTRACTORS, OR SUBCONTRACTORS. TENANT'S OBLIGATIONS UNDER THIS SECTION SHALL NOT BE LIMITED TO THE LIMITS OF COVERAGE OF INSURANCE MAINTAINED OR REQUIRED TO BE MAINTAINED BY TENANT UNDER THIS LEASE. THIS PROVISION SHALL SURVIVE THE TERMINATION OF THIS LEASE.**

**26. DEFAULT:**

A. The occurrence of any one or more of the following events shall constitute an Event of Default (herein so called) of Tenant under this Lease:

1. if Tenant fails to pay rent or any other amount payable by Tenant hereunder as and when same becomes due and such failure continues for more than 10 days after Landlord gives Tenant notice of past due rent;

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2. if Tenant attempts to make an unpermitted assignment or sublease of this Lease;
3. if Tenant fails to maintain in force all policies of insurance required by this Lease and such failure shall continue for more than 30 days after Landlord gives Tenant notice of such failure;
4. if any petition is filed by or against Tenant or any guarantor of this Lease under any present or future section or chapter of the Bankruptcy Code, or under any similar law or statute of the United States or any state thereof (which, in the case of an involuntary proceeding, is not permanently discharged, dismissed, stayed, or vacated, as the case may be, within 90 days of commencement), or if any order for relief shall be entered against Tenant or any guarantor of this Lease in any such proceedings;
5. if Tenant becomes insolvent or makes a transfer in fraud of creditors or makes an assignment for the benefit of creditors;
6. if a receiver, custodian, or trustee is appointed for Tenant or for all or substantially all of the assets of Tenant or of any guarantor of this Lease, which appointment is not vacated within 90 days following the date of such appointment;
7. if Tenant fails to perform or observe any provision of this Lease and such failure shall continue for more than 30 days after Landlord gives Tenant notice of such failure, or, if such failure cannot be corrected within such 30 day period, if Tenant does not commence to correct such default within said 30 day period and thereafter diligently prosecute the correction of same to completion within 90 days after notice is sent by Landlord;
8. if Tenant fails to pay any taxes or other charges it owes to any local or state or federal government;
9. if a final judgment for the payment of money in any material amount in excess of One Million Dollars (\$1,000,000.00) and which is not covered by any insurance insuring the interest of Tenant shall be rendered against Tenant, and within 60 days after the entry thereof such judgment shall not have been discharged or execution thereof stayed pending appeal or if within 60 days after the expiration of such stay, such judgment shall not have been discharged; or

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10. if Tenant, following commencement of use and operation of the Baseball-Softball Complex, abandons the Baseball-Softball Complex (failure to occupy and operate the Baseball-Softball Complex for 10 consecutive days, for reasons other than because of adverse weather conditions, natural disaster, acts of war or terrorism or other force majeure reasons, shall be deemed an abandonment).
- B. Upon the occurrence of any Event of Default, Landlord shall have the right, at Landlord's option, to elect to do any one or more of the following without further notice or demand to Tenant:
  1. terminate this Lease, in which event Tenant shall immediately surrender the Baseball-Softball Complex to Landlord, and, if Tenant fails to so surrender, Landlord shall have the right, without notice and without resorting to legal process, to enter upon and take possession of the Baseball-Softball Complex and to expel or remove Tenant and its effects without being liable for prosecution or any claim for damages therefore; and Tenant shall, and hereby agrees to indemnify Landlord for all loss and damage which Landlord suffers by reason of such termination, including without limitation, damages in an amount equal to the total of (a) the costs of recovering the Premises and all other expenses incurred by Landlord in connection with Tenant's default and (b) the unpaid rent, plus interest;
  2. enter upon and take possession of the Baseball-Softball Complex without terminating this Lease and without being liable for prosecution of any claim for damages therefore, and, if Landlord elects, relet the Baseball-Softball Complex on such terms as Landlord deems advisable, in which event Tenant shall pay to Landlord on demand the cost of repossession, repairing, and altering the Baseball-Softball Complex for a new Tenant or Tenants and any deficiency between the rent payable hereunder and the rent paid under such reletting; provided, however, that Tenant shall not be entitled to any excess payments received by Landlord from such reletting. Landlord's failure to relet the Baseball-Softball Complex shall not release or affect Tenant's liability for rent or for damages; or
  3. enter the Baseball-Softball Complex without terminating this Lease and without being liable for prosecution of any claim for damages therefore and maintain the Baseball-Softball Complex and repair or replace any damage thereto or do anything for which Tenant is responsible hereunder. Tenant shall reimburse Landlord immediately upon demand for any expenses which Landlord incurs in thus effecting Tenant's compliance under this Lease, and Landlord shall not be liable to Tenant for any damages with respect thereto.

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C. The rights granted to Landlord in this section are cumulative of every other right or remedy provided in this Lease or which Landlord may otherwise have at law or in equity or by statute, and the exercise of one or more rights or remedies will not prejudice or impair the concurrent or subsequent exercise of other rights or remedies or constitute a forfeiture or waiver of rent or damages accruing to Landlord by reason of any Event of Default under this Lease. Tenant agrees to pay to Landlord all costs and expenses incurred by Landlord in the enforcement of this Lease, including all attorneys' fees incurred in connection with the collection of any sums due hereunder or the enforcement of any right or remedy of Landlord.

**27. ABANDONMENT, INTERRUPTION OF UTILITIES, REMOVAL OF PROPERTY, AND LOCKOUT:**  
Chapter 93 of the Texas Property Code does not apply.

**28. HOLDOVER:** If Tenant fails to vacate the Baseball-Softball Complex at the time this Lease ends, Tenant will become a tenant-at-will and shall vacate the Baseball-Softball Complex immediately upon receipt of demand from Landlord. No holding over by Tenant, with or without the written consent of Landlord, will extend this Lease. Tenant shall indemnify Landlord and any prospective tenants for any and all damages caused by the holdover. Rent for any holdover period will be 100% of the base monthly rent plus any additional rent calculated on a daily basis and will be immediately due and payable daily without notice or demand.

**29. LANDLORD'S LIEN AND SECURITY INTEREST:** In consideration of the mutual benefits arising under this Lease and to secure Tenant's performance, Tenant grants to Landlord a lien and security interest against all property of Tenant, including all fixtures, machinery, equipment, furnishings, and other articles of personal property now or hereafter placed in or on the Baseball-Softball Complex by Tenant and owned by Tenant, together with the proceeds from the disposition of those items (the "Collateral"), now or hereafter placed in or upon the Baseball-Softball Complex, as security for payment of all rent and other sums agreed to be paid by Tenant herein. The provisions of this section constitute a security agreement under the Texas Uniform Commercial Code and Tenant has and may enforce a security interest in the Collateral. Except on account of replacement, removal, or substitution in the ordinary course of business, the Collateral may not be removed without the consent of Landlord until all arrearages in rent and other sums of money then due to Landlord hereunder have been paid and discharged. On or before the Commencement Date, Tenant shall execute, as debtor, two or more Financing Statements, to perfect this security interest pursuant to the Texas Uniform Commercial Code. Landlord at any time may file a copy of this Lease as a Financing Statement. Landlord, as Secured Party, has all of the rights and remedies afforded to a secured party under the Texas Uniform Commercial Code in addition to and cumulative of the Landlord's liens and rights provided by law or by the other terms and provisions of this Lease. Notwithstanding the foregoing, Landlord's lien is subordinate to (i) any purchase money lien; (ii) any line-of-credit lien secured by the assets, inventory, or accounts receivable

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of Tenant's business; or, (iii) any Small Business Administration Note, conventional bank note, and related security agreements.

**30. ASSIGNMENT AND SUBLetting:** Landlord may assign this Lease. Tenant may not assign this Lease or sublet any part of the Baseball-Softball Complex without Landlord's prior, written consent. An assignment of this Lease or subletting of the Baseball-Softball Complex without Landlord's written consent is void. If Tenant assigns this Lease or sublets any part of the Baseball-Softball Complex, Tenant shall remain liable for all of Tenant's obligations under this Lease regardless if the assignment or sublease is made with or without the written consent of Landlord. Notwithstanding the foregoing the Tenant may rent or otherwise agree to the use of party room(s) or fields for birthday parties and similar events.

**31. RELOCATION:** Landlord may not require Tenant to relocate to another location without Tenant's prior written consent.

**32. SUBORDINATION:** Landlord's security interest and lien rights shall at all times remain subordinate to the rights of any Tenant lender that holds a senior lien on Tenant's goods, wares, inventory, accounts, chattel paper, deposit accounts, and receivables. Landlord's Lien shall not be subordinate to Tenant's furniture, fixtures, and equipment located within the Indoor Facility. If required and after receiving written notification from Tenant, Landlord agrees to execute an agreement subordinating the security interest granted in this Lease to Tenant's lender within 30 days of a mutually acceptable subordination agreement as presented by Tenant's lender and agreed to by Landlord.

**33. CASUALTY LOSS:**

- A. Tenant shall immediately notify Landlord of any casualty loss in the Baseball-Softball Complex. Within 20 days after receipt of Tenant's notice of a casualty loss, Landlord will notify Tenant if the Baseball-Softball Complex is less than or more than 50% unusable, on a per square foot basis, and if Landlord can substantially restore the Baseball-Softball Complex within 120 days after Tenant notifies Landlord of the casualty loss.
- B. If the Baseball-Softball Complex is less than 50% unusable and Landlord can substantially restore the Baseball-Softball Complex within 120 days after Tenant notifies Landlord of the casualty, Landlord will restore the Baseball-Softball Complex to substantially the same condition as before the casualty. If Landlord fails to substantially restore within the time required, Tenant may terminate this Lease.
- C. If the Baseball-Softball Complex is more than 50% unusable and Landlord can substantially restore the Baseball-Softball Complex within 120 days after Tenant notifies Landlord of the casualty, Landlord may (1) terminate this Lease; or (2) restore

# AMENDED COMMERCIAL LEASE

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the Baseball-Softball Complex to substantially the same condition as before the casualty. If Landlord chooses to restore and does not substantially restore the Baseball-Softball Complex within the time required, Tenant may terminate this Lease.

- D. If Landlord notifies Tenant that Landlord cannot substantially restore the Baseball-Softball Complex within 120 days after Tenant notifies Landlord of the casualty loss, Landlord may: (1) choose not to restore and terminate this Lease; or (2) choose to restore, notify Tenant of the estimated time to restore, and give Tenant the option to terminate this Lease by notifying Landlord within 10 days.
- E. If this Lease does not terminate because of a casualty loss, rent will be abated from the date Tenant notifies Landlord of the casualty loss to the date the Baseball-Softball Complex is substantially restored by an amount proportionate to the extent the Baseball-Softball Complex is unusable.

**34. ATTORNEY FEES:** Any person who is a prevailing party in any legal proceeding brought under or related to the transaction described in this Lease is entitled to recover prejudgment interest, reasonable attorney's fees, and all other costs of litigation from the non-prevailing party.

**35. REPRESENTATIONS:**

- A. Tenant's statements in this Lease and any application for rental are material representations relied upon by Landlord. Each party signing this Lease represents that he or she is of legal age to enter into a binding contract and is authorized to sign the Lease. If Tenant makes any misrepresentation in this Lease or in any application for rental, Tenant is in default.
- B. Landlord is not aware of any material defect on the Baseball-Softball Complex that would affect the health and safety of an ordinary person or any environmental hazard on or affecting the Baseball-Softball Complex that would affect the health or safety of an ordinary person.
- C. Each party and each signatory to this Lease represents that: (1) it is not a person named as a Specially Designated National and Blocked Person as defined in Presidential Executive Order 13224; (2) it is not acting, directly or indirectly, for or on behalf of a Specially Designated and Blocked Person; and (3) is not arranging or facilitating this Lease or any transaction related to this Lease for a Specially Designated and Blocked Person. Any party or any signatory to this Lease who is a Specially Designated and Blocked person will indemnify and hold harmless any other person who relies on this representation and who suffers any claim, damage, loss, liability or expense as a result of this representation.

# AMENDED COMMERCIAL LEASE

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**36. BROKERS:** There are no brokers to this Lease.

**37. ADDENDA:** Exhibits A, B and C are incorporated into this Lease.

**38. NOTICES:** All notices under this Lease must be in writing and are effective when hand-delivered, sent by mail, or sent by facsimile transmission to:

Landlord: CITY MANAGER  
CITY OF KERRVILLE  
CITY HALL, 701 MAIN STREET  
KERRVILLE, TEXAS 78028

Tenant: BTP BASEBALL VENTURES LLC DBA D-BAT  
111 HOME RUN DRIVE  
KERRVILLE, TEXAS 78028

And a copy to: JOSHUA SANDERS, MANAGER  
2801 HUBBARD CIRCLE  
AUSTIN, TEXAS 78746

And a copy to: DIRECTOR OF PARKS AND RECREATION  
CITY OF KERRVILLE  
CITY HALL, 701 MAIN STREET  
KERRVILLE, TEXAS 78028

**39. Miscellaneous Provisions:**

- A. Landlord Contact: Landlord designates Shane Heffernan, Sports Facilities Manager, (830) 258-1152 as its primary daily representative authorized to act on its behalf with respect to this Lease. If Tenant is unable to reach the Sports Facilities Manager, the City designates Steve Blair, Sports Complex Supervisor, (830) 258-1154 as a secondary daily representative authorized to act on its behalf. If neither the Sports Facilities Manager nor the Sports Complex Supervisor is available, Tenant may contact Ashlea Boyle, Director of Parks and Recreation, (830) 258-1153.
- B. Entire Agreement: This Lease (including Exhibit(s)) contains the entire agreement between Landlord and Tenant and may not be changed except by written agreement.
- C. Binding Effect: This Lease is binding upon and inures to the benefit of the parties and their respective heirs, executors, administrators, successors, and permitted assigns.

# AMENDED COMMERCIAL LEASE

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- D. Controlling Law: The laws of the State of Texas govern the interpretation, performance, and enforcement of this Lease. Venue shall occur within Kerr County, Texas.
- E. Severable Clauses: If any clause in this Lease is found invalid or unenforceable by a court of law, the remainder of this Lease will not be affected and all other provisions of this Lease will remain valid and enforceable.
- F. Waiver: Landlord's delay, waiver, or non-enforcement of acceleration, contractual or statutory lien, rental due date, or any other right will not be deemed a waiver of any other or subsequent breach by Tenant or any other term in this Lease.
- G. Quiet Enjoyment: Provided that Tenant is not in default of this Lease, Landlord covenants that Tenant will enjoy possession and use of the Baseball-Softball Complex free from material interference.
- H. Force Majeure: If Landlord's performance of a term in this Lease is delayed by strike, lock-out, shortage of material, governmental restriction, riot, flood, or any cause outside Landlord's control, the time for Landlord's performance will be abated until after the delay.
- I. 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 Lease. 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 party 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 the Landlord to City Council approval where required by law.
- J. Time: Time is of the essence. The parties require strict compliance with the times for performance.
- K. Prior Agreements Superseded: This Lease constitutes the sole and only agreement of the parties hereto and supersedes any prior understandings or written or oral agreements between the parties respecting the within subject matter.
- L. No Warranty: Landlord makes no warranty as to the marketability, habitability, or fitness for any particular purpose of the Land or the Baseball-Softball Complex.

# AMENDED COMMERCIAL LEASE

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M. Memorandum of Lease: The parties shall, upon request of either party, execute, acknowledge, and deliver a mutually acceptable form of Memorandum of Lease (which shall, among other things, memorialize the Commencement Date), contemporaneously with the execution and delivery of this Lease, and any such Memorandum of Lease shall be recorded in the real property records of Kerr County, Texas.

N. No Joint Venture: The relationship between Landlord and Tenant at all times shall remain solely that of landlord and tenant and shall not be deemed or construed as a partnership or joint venture.

O. Further Documents: Landlord agrees that it will from time to time and at any reasonable time execute and deliver to Tenant such other and further instruments and assurances as Tenant may reasonably request approving, ratifying, and confirming this Lease and the leasehold estate created hereby and certifying that the same is in full force and effect and that no default on the part of Tenant exists, or if any such default does exist, Landlord shall specify in said certificate each such default.

P. Tenant Representations: Tenant represents and covenants that: (i) Tenant is a duly organized and validly existing limited liability company under the laws of the State of Texas and has the power and authority to transact the business in which it is now engaged or proposed to engage; (ii) Tenant has the power and authority to execute, deliver, and carry out the terms and provisions of this Lease and all other instruments to be executed and delivered by the Tenant in connection with its obligations hereunder; (iii) the execution, delivery, and performance by Tenant of this Agreement have been duly authorized by all requisite action by Tenant, and this Agreement is a valid and binding obligation of Tenant enforceable in accordance with its respective terms, except as may be affected by applicable bankruptcy or insolvency laws affecting creditors' rights generally; (iv) Tenant is not in default in the performance, observance, or fulfillment of any of the obligations, covenants, or conditions contained in any evidence of indebtedness of Tenant or contained in any instrument under or pursuant to which any such evidence of indebtedness has been issued or made and delivered; (v) neither the execution and delivery of this Lease, nor the consummation of the transactions herein contemplated, will conflict with or result in a breach of or default under (1) any terms, conditions or provisions of any agreement or instrument (A) to which Tenant is now a party or is otherwise bound, or (B) to which any of its properties or other assets is subject; (2) any order or decree of any court or governmental instrumentality; or (3) any arbitration award, franchise, or permit; and (vi) Tenant is not a party to any litigation or threatened litigation or otherwise bound by any agreement or instrument or subject to any other restriction or any judgment, order, writ, injunction, decree, award, rule or regulation which could reasonably be

# AMENDED COMMERCIAL LEASE

expected to materially and adversely affect the Tenant's ability to perform its obligations under this Agreement.

Q. City Use of the Baseball-Softball Complex. Landlord shall have the right to use the Baseball-Softball Complex without charge or cost at least four (4) times for a one-day use each calendar year upon prior reasonable written notice to Tenant. The days of use of the Baseball-Softball Complex by Landlord may not include summer weekends and holidays.

**TENANT:**

**BTP BASEBALL VENTURES,**  
a Texas limited liability company

DocuSigned by:

BY: Joshua S. Sanders  
JOSHUA S. SANDERS  
Director

**LANDLORD:**

**CITY OF KERRVILLE, TEXAS**

BY: \_\_\_\_\_

E.A. Hoppe  
City Manager

ATTEST

\_\_\_\_\_  
Shelley McEllhannon, City Secretary

APPROVED AS TO CONTENT

DocuSigned by:

Ashlea Boyle  
Ashlea Boyle, Dir. of Parks and Recreation

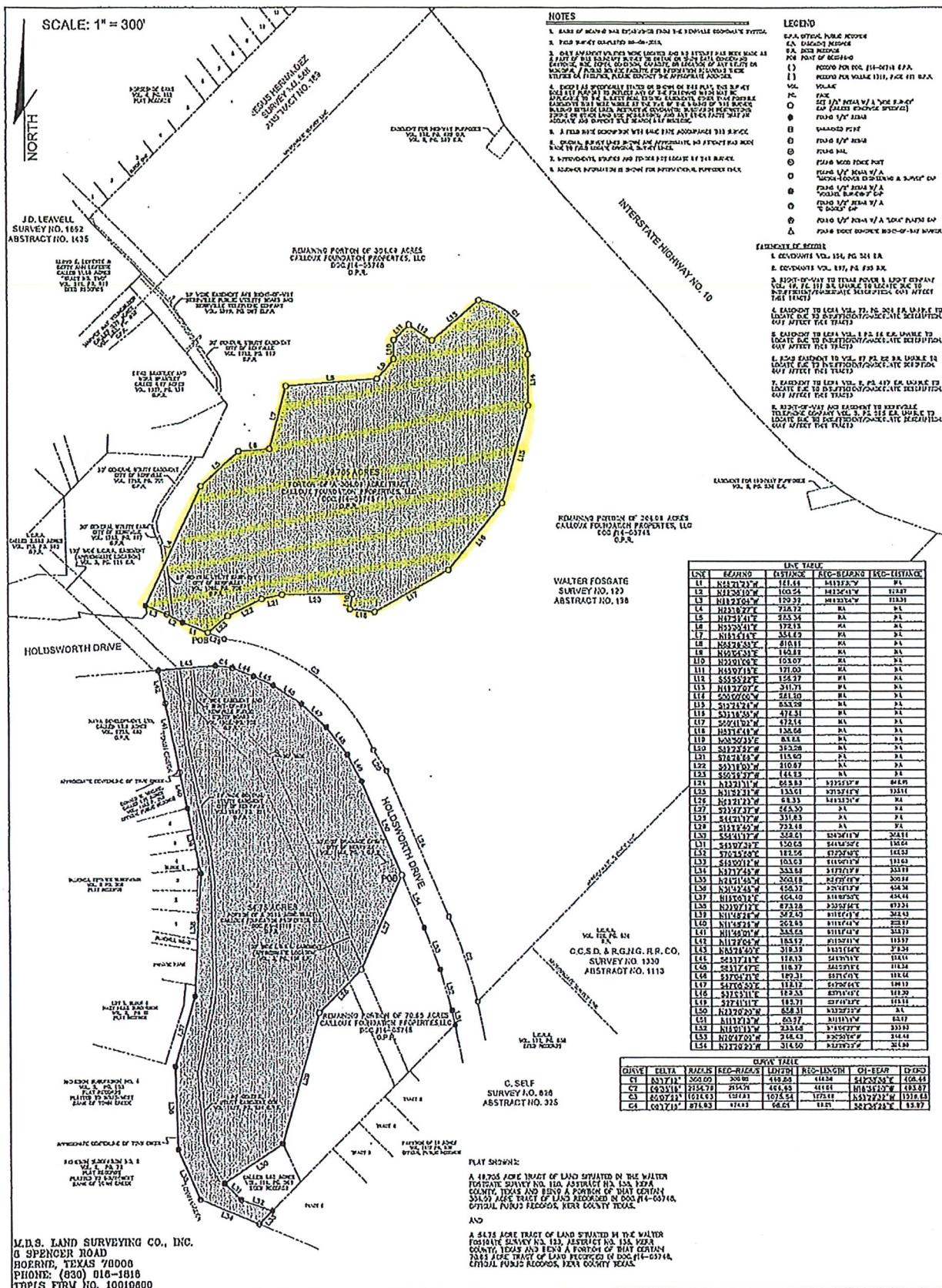
APPROVED AS TO FORM:

William L. Tatsch  
William L. Tatsch, Asst. City Attorney

T:\Legal\City\Property\Public Kerrville Sports Complex (rec P&R) \DBAT\DBAT Amended Commercial Lease Kerrville\_039933 (Final).docx

# Exhibit A

“Land”





LAND SURVEYING COMPANY, INC.  
BOUNDARY ♦ TOPOGRAPHIC ♦ CONSTRUCTION  
8 SPENCER ROAD  
BOERNE, TEXAS 78006  
PHONE: 830-249-9188 FAX: 830-249-9280  
EMAIL: MDSINC@GVTC.COM

### Field Notes for a 49.705 Acre Tract of Land

BEING A 49.705 ACRE TRACT OF LAND SITUATED IN THE WALTER FOSTGATE SURVEY NO. 120, ABSTRACT NO. 138, KERR COUNTY, TEXAS AND BEING A PORTION OF THAT CERTAIN 304.09 ACRE TRACT OF LAND RECORDED IN DOC.#14-05748, OFFICIAL PUBLIC RECORDS, KERR COUNTY TEXAS, WHICH 49.705 ACRE TRACT BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING at a  $\frac{1}{2}$ " rebar with "MDS" cap set in the northeast right-of-way line of Holdsworth Drive (right-of-way varies, Volume 1319, Page 491, Official Public Records of Kerr County, Texas), said point being along the arc of a curve to the left with a radius of 2954.79 feet, a central angle of  $09^{\circ}35'16''$ , an arc length of 494.45 feet, and chord which bears N  $18^{\circ}34'20''$  W, 493.87 feet, to a  $\frac{1}{2}$ " rebar with "C. Diggs" cap found at the point of tangency, then N  $23^{\circ}21'11''$  W, 868.83 feet, to a  $\frac{1}{2}$ " rebar with "C. Diggs" cap found for angle, then N  $31^{\circ}52'32''$  W, 135.01 feet, to a  $\frac{1}{2}$ " rebar with "C. Diggs" cap found for angle, and along the arc of a curve to the left with a radius of 1024.93 feet, a central angle of  $60^{\circ}07'29''$ , an arc length of 1075.54 feet, and chord which bears N  $53^{\circ}29'32''$  W, 1026.68 feet, and N  $68^{\circ}21'23''$  W, 98.33 feet, from a  $\frac{1}{2}$ " rebar with "C. Diggs" cap found at the south corner of the 304.09 acre tract;

- (1) THENCE along the northeast right-of-way line of Holdsworth Drive, the southwest boundary line of the herein described tract, the following courses and distances:
  - a. N  $68^{\circ}21'23''$  W, 151.44 feet, (N  $68^{\circ}25'31''$  W, Record), to a  $\frac{1}{2}$ " rebar with "Matkin-Hoover Engineering & Survey" cap found for angle;
  - b. N  $62^{\circ}36'10''$  W, 100.54 feet, (N  $62^{\circ}38'49''$  W, 100.57' Record), to a nail found for angle;
  - c. N  $68^{\circ}23'04''$  W, 129.39 feet, (N  $68^{\circ}23'04''$  W, 129.39' feet, Record), to a  $\frac{1}{2}$ " rebar with "Voelkel Survey" cap found for corner;
- (2) THENCE departing the northeast right-of-way line of Holdsworth Drive, the southwest boundary line of the herein described tract, the following courses and distances:

- a. N 25°18'27" E, 728.72 feet, (No Record), to a ½" rebar with "MDS" cap set for angle;
- b. N 47°59'41" E, 285.34 feet, (No Record), to a ½" rebar with "MDS" cap set for angle;
- c. N 85°38'41" E, 172.13 feet, (No Record), to a ½" rebar with "MDS" cap set for angle;
- d. N 15°14'14" E, 354.60 feet, (No Record), to a ½" rebar with "MDS" cap set for angle;
- e. N 85°26'38" E, 510.61 feet, (No Record), to a ½" rebar with "MDS" cap set for angle;
- f. N 40°04'38" E, 140.69 feet, (No Record), to a ½" rebar with "MDS" cap set for angle;
- g. N 00°01'09" E, 103.07 feet, (No Record), to a ½" rebar with "MDS" cap set for angle;
- h. N 45°07'18" E, 121.00 feet, (No Record), to a ½" rebar with "MDS" cap set for angle;
- i. S 55°55'22" E, 156.27 feet, (No Record), to a ½" rebar with "MDS" cap set for angle;
- j. N 49°27'07" E, 341.71 feet, (No Record), to a ½" rebar with "MDS" cap set for angle;
- k. along the arc of a curve to the right with a radius of 300.00 feet, a central angle of 85°17'12", an arc length of 446.56 feet, and chord which bears S 42°38'36" E, 406.46 feet, to a ½" rebar with "MDS" cap set for angle;
- l. S 00°00'00" W, 281.20 feet, (No Record), to a ½" rebar with "MDS" cap set for angle;
- m. S 15°24'24" W, 553.29 feet, (No Record), to a ½" rebar with "MDS" cap set for angle;
- n. S 39°16'38" W, 476.51 feet, (No Record), to a ½" rebar with "MDS" cap set for angle;
- o. S 60°41'02" W, 472.14 feet, (No Record), to a ½" rebar with "MDS" cap set for angle;
- p. N 83°14'49" W, 138.56 feet, (No Record), to a ½" rebar with "MDS" cap set for angle;
- q. N 08°50'35" E, 85.88 feet, (No Record), to a ½" rebar with "MDS" cap set for angle;
- r. S 89°23'52" W, 390.26 feet, (No Record), to a ½" rebar with "MDS" cap set for angle;
- s. S 78°26'56" W, 115.90 feet, (No Record), to a ½" rebar with "MDS" cap set for angle;
- t. S 63°19'03" W, 210.57 feet, (No Record), to a ½" rebar with "MDS" cap set for angle;

u. **S 50°29'37" W, 144.25 feet, (No Record), to the PLACE OF BEGINNING containing 49.705 acres of land, more or less.**

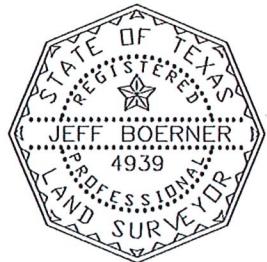
Note: This description is based on an on the ground survey performed on 5-05-2015. The basis of bearings was established from the City of Kerrville coordinate system. A survey plat of the above-described tract was prepared.

THIS IS A PRELIMINARY DOCUMENT FOR REVIEW ONLY AND SHALL NOT BE RECORDED FOR ANY PURPOSE.

PREPARED BY JEFF BOERNER, R.P.L.S. NO. 4939 ON 05-05-2015.

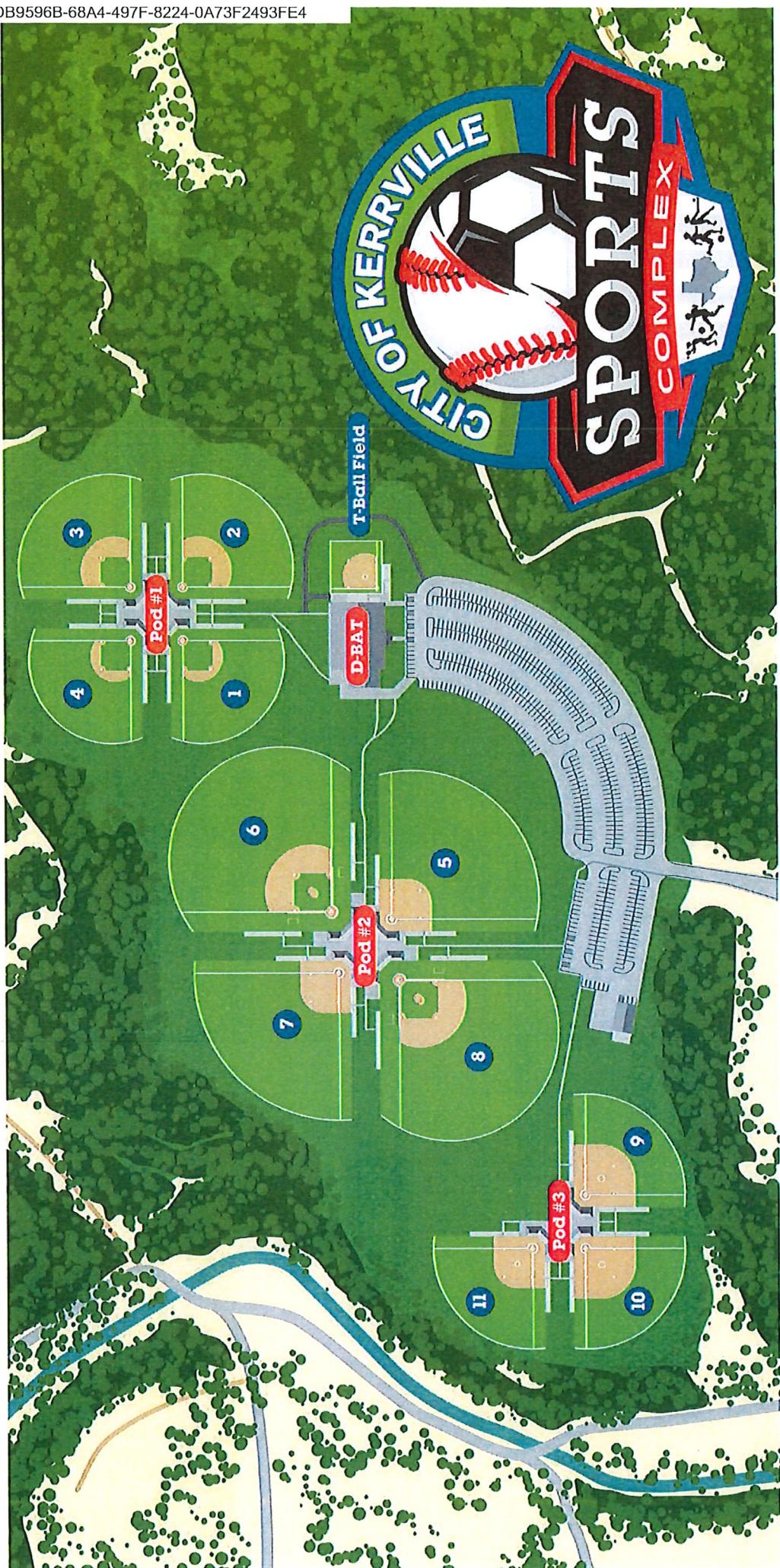
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Jeff Boerner  
Registered Professional Land Surveyor  
No.4939 Job # 14-000-00  
Date: 05-05-2015 54.75 AC.



## Exhibit B

“Baseball-Softball Complex”



## Exhibit C

### “D-BAT Monthly Data Summary”



## D-BAT MONTHLY SUMMARY REPORT

Month: \_\_\_\_\_

Year: \_\_\_\_\_

### FOOD / BEVERAGE CONCESSIONS

Gross Concession Sales: \$\_\_\_\_\_

Gross Non-Tournament Concession Sales: \_\_\_\_\_

Gross Tournament Concession Sales: \$\_\_\_\_\_

### TOTAL TOURNAMENTS

Quantity of Tournaments: \_\_\_\_\_

Quantity of Tournament Teams: \_\_\_\_\_

Quantity of Tournament Players: \_\_\_\_\_

\*\*Please attach tournament details that include the following information per tournament: tournament type (baseball / softball, etc.) and date(s), team names, number of teams, number of players per team, and city, state of origin per team.

### STAY AND PLAY TOURNAMENTS

This data is relevant only to tournaments related to sports tourism and overnight stays pursuant to the lease agreement.

Quantity of Tournaments: \_\_\_\_\_

Quantity of Tournament Teams: \_\_\_\_\_

Quantity of Hotel Rooms: \_\_\_\_\_

Quantity of Nights Stayed: \_\_\_\_\_

## FIELD RENTALS / LEAGUES

Quantity of Field Rentals: \_\_\_\_\_

#### General League Activity that Occurred and Quantity of Games (non-tournament):

Adult League: \_\_\_\_\_ Co-Ed: \_\_\_\_\_ Senior Softball: \_\_\_\_\_

Select Play: \_\_\_\_\_ Other: \_\_\_\_\_

## ADDITIONAL INFORMATION

Include any additional relevant information, such as bad weather closures, etc.

Submitted by:

**Name and Title**

### Signature

Date

*Note – all reporting criteria is for the month(s) and year outlined above only. This is not a cumulative report. Please submit this form to Shane Heffernan, Sports Facilities Manager at [shane.heffernan@kerrvilletx.gov](mailto:shane.heffernan@kerrvilletx.gov).*