

AGENDA FOR THE KERRVILLE CITY COUNCIL MEETING

TUESDAY, JULY 25, 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

JULY 25, 2023 6:00 PM

CITY HALL, 701 MAIN STREET, KERRVILLE, TEXAS



Council Meeting Procedures, City Council and City Staff Safety, 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). 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!

CALL TO ORDER: *By Mayor Judy Eychner*

INVOCATION AND PLEDGE OF ALLEGIANCE: *Led by Mayor Judy 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: Rebecca Sparkman, Lifeguard.

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 Resolution No. 20-2023. A Resolution authorizing the transfer of the ownership of funds from the City of Kerrville to the City of Kerrville Employee Benefit Trust to pay for employee related group benefits for Fiscal Year 2024.

Attachments: 20230725_Reso 20-2023 Transfer funds EBT FY24.pdf

20230725_FY2024 Employee Benefits.pdf

4.B Resolution No. 23-2023. A Resolution authorizing the City's submission of an Our Town Grant application to the National Endowment for the Arts; authorizing the City to partner with Schreiner

University and the Kerrville Convention and Visitors Bureau to utilize funds from the Our Town Grant; and authorizing the City Manager to act as the authorized representative in all matters pertaining to the participation in the Our Town Program.

Attachment: 20230725_Reso 23-2023 KCVB and Schreiner Arts Program Grant.pdf

4.C Southwest Texas Regional Advisory Council (STRAC) Electronic Records Management System Project Interlocal Cooperation Agreement with the City of Kerrville, TX.

Attachment: 20230725_Agreement STRAC_eRMS.pdf



4.D Amended Commercial Lease between the City of Kerrville and BTB Baseball Ventures, LLC.

Attachment: 20230725_Lease DBAT Amended 071423.pdf

4.E Contract for bulk fuel and card services.

Attachment: 20230725_Contract Fuel Summary and Maxey Fuel.pdf



4.F Authority to approve pre-order of street sweeper from Kinloch Equipment & Supply, Inc., in compliance with City's purchasing policy and in an amount not to exceed \$275,858.00.

Attachment: 20230725_StreetSweeperQuote.pdf

4.G City Council workshop minutes, July 11, 2023.

Attachment: 20230725_Minutes CC workshop 7-11-23 5pm.pdf

4.H City Council meeting minutes, July 11, 2023.

Attachment: 20230725_Minutes CC meeting 7-11-23 6pm.pdf

4.I City Council workshop minutes, July 18, 2023.

Attachment: 20230725_Minutes CC workshop 7-18-23.pdf

END OF CONSENT AGENDA.

5. ORDINANCES, FIRST READING:

5.A Ordinance No. 2023-23. An ordinance amending Chapter 26 "Buildings and Building Regulations", Article IX "Building Board of Adjustment and Appeals" of the Code of Ordinances, City of Kerrville, Texas; by amending requirements applicable to alternate members, making consistent the number of board members, amending the meeting schedule,, and revising the requirement for a quorum; containing a cumulative clause; containing a savings and severability clause; establishing an effective date; and providing other matters related to the subject.

Attachment: 20230725_Ord 2023-23 BBAA amendments.pdf

6. CONSIDERATION AND POSSIBLE ACTION:

6.A Resolution No. 24-2023. A Resolution providing for the City's approval or disapproval of the Kerr Central Appraisal District's Fiscal Year 2024 budget.

Attachments: 20230725_Reso 24-2023 KCAD FY24 budget.pdf

20230725_KCAD_FY2024_Proposed_Budget.pdf

6.B Kerrville Kerr-County Joint Airport Board Proposed Budget for Fiscal Year 2024.

Attachments: 20230725 AIRPORT BUDGET PROPOSED FY2024.pdf

20230725_City_Council FY2024 Proposed_Budget KKCJAB.pdf

6.C Economic Improvement Corporation (EIC) FY2024 Proposed Budget.

Attachments: 20230725_EIC FY2024 Proposed Budget.pdf

20230725_Presentation FY24 EIC Proposed Budget.pdf

7. INFORMATION & DISCUSSION:

7.A State of City's Water System and its Water Resources.

7.B Monthly Financial Report - Month-ended June 30, 2023.

8. BOARD APPOINTMENTS:

8.A Appointment and removal of a member to the Building Board of Adjustment and Appeals. (Item eligible for Executive Session 551.074).

Attachment: 2023-07-18_BBAA Term Recommendation.pdf

9. **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. City Council also reserves the right to meet in executive session on the following issue(s):*

9.A Appointment and removal of a member to the Building Board of Adjustment and Appeals. (551.074).

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

11. 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**

SUBJECT: Kerrville Kindness Award: Rebecca Sparkman, Lifeguard.

AGENDA DATE OF: July 25, 2023 **DATE SUBMITTED:** July 13, 2023

SUBMITTED BY: Mayor Judy Eychner

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

PAYMENT TO BE MADE TO: N/A

Kerrville 2050 Item? No

Key Priority Area N/A

Guiding Principle N/A

Action Item N/A

SUMMARY STATEMENT:

The City of Kerrville recognizes and honors individuals or entities for acts of kindness.

A citizen reported that while City lifeguard Rebecca Sparkman was off duty and at a private home, a child jumped in the deep end of a pool and was unable to maintain herself above water.

Rebecca did not hesitate and jumped in to rescue the child. Rebecca's quick action kept the child safe.

Ashlea Boyle acknowledged that this quick response is taught and continually practiced by City lifeguards when confronted with distressed swimmers and other aquatic related emergencies.

The City would like to provide accolades to Rebecca's outstanding actions.

RECOMMENDED ACTION:

Present award.



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

SUBJECT: Resolution No. 20-2023. A Resolution authorizing the transfer of the ownership of funds from the City of Kerrville to the City of Kerrville Employee Benefit Trust to pay for employee related group benefits for Fiscal Year 2024.

AGENDA DATE OF: July 25, 2023

DATE SUBMITTED: July 6, 2023

SUBMITTED BY: Kim Meismer, Assistant City Manager

EXHIBITS:

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

PAYMENT TO BE MADE TO: N/A

Kerrville 2050 Item? No

Key Priority Area N/A

Guiding Principle N/A

Action Item N/A

SUMMARY STATEMENT:

Due to the action taken by the Trustees of the City of Kerrville Employee Benefit Trust to approve the FY2024 employee benefit plans, rates, and funding, Council will consider authorizing the transfer of the ownership of funds from the City of Kerrville to the City of Kerrville Employee Benefit Trust to pay for employee related group benefits for FY2024.

RECOMMENDED ACTION:

Due to the action taken by the Trustees of the City of Kerrville Employee Benefit Trust to approve the FY2024 employee benefit plans, staff recommends Council adopt Resolution No. 20-2023, approving the transfer of funds from the City of Kerrville to the City of Kerrville Employee Benefit Trust to pay for employee related group benefits for FY2024.

ATTACHMENTS:

[20230725_Reso 20-2023 Transfer funds EBT FY24.pdf](#)

[20230725_FY2024 Employee Benefits.pdf](#)

**CITY OF KERRVILLE, TEXAS
RESOLUTION NO. 20-2023**

A RESOLUTION AUTHORIZING THE TRANSFER OF THE OWNERSHIP OF FUNDS FROM THE CITY OF KERRVILLE TO THE CITY OF KERRVILLE EMPLOYEE BENEFIT TRUST TO PAY FOR EMPLOYEE RELATED GROUP BENEFITS FOR FISCAL YEAR 2024

WHEREAS, in 2008, pursuant to Resolution 61-2008, City Council created an Employee Benefit Trust (the “Trust”) for the administration of employee benefits pursuant to Chapter 222, Texas Insurance Code (“Chapter 222”); and

WHEREAS, Chapter 222, as amended, provides for the creation of a single purpose, nonprofit trust established for the payment of premiums or revenues on group health, accident, injury, or life insurance benefits of employees of a municipality; and

WHEREAS, the creation of the Trust allows the City to provide the best possible insurance benefits to its employees at the most reasonable prices; and

WHEREAS, City Council finds it in the public interest to transfer the ownership of the City’s fund where gross premiums and revenue are maintained for the various City-offered employee group benefits, including health and dental insurance, life insurance, and disability benefits, to the Trust;

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

City Council authorizes the transfer of the ownership of the City of Kerrville Internal Service Fund to the City of Kerrville Employee Benefits Trust for fiscal year 2024.

PASSED AND APPROVED ON this the ___ day of July, A.D., 2023.

Judy Eychner, Mayor

APPROVED AS TO FORM:



Michael C. Hayes, City Attorney

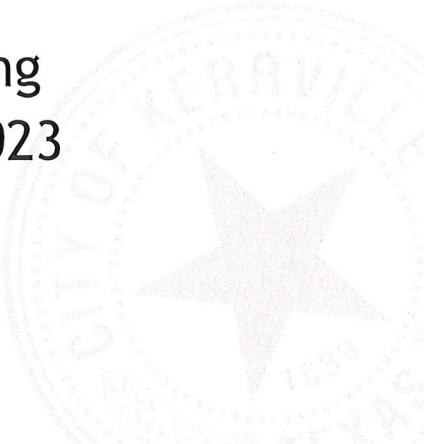
ATTEST:

Shelley McElhannon, City Secretary



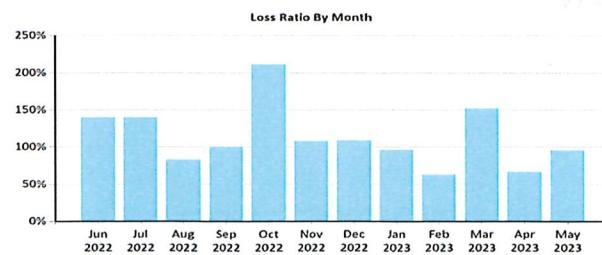
FY2024 Employee Benefits

City Council Meeting
Tuesday, July 25, 2023



Bid Process

- Received two bids for medical & multiple bids for our ancillary benefits
 - BCBSTX = 36.7% increase (initial renewal - same plan as current)
 - United Healthcare (UHC) = 24.6% increase
 - Aetna & Cigna declined to provide a proposal based upon current plan experience
- Loss ratio with BCBSTX at 113.8% (May 2023)
 - Based on premiums paid vs. claims paid
- Very challenging negotiating position



Bid Process

- Began negotiations with BCBSTX due to stronger provider network access in Kerrville
 - Best and final offer (BAFO) with package savings = 13.2% increase (includes a \$150,000 Premium Credit) with no plan design changes
 - Package savings includes: dental, life/AD&D, vol life/AD&D, & short term disability – all same rates and all same plans
- Also negotiated with UHC to see how competitive they were while realizing that some providers in Kerrville were not in network
 - Best and final offer (BAFO) with package savings = 22.6% increase with no plan design changes plus 16% rate cap on FY2025 renewal
 - Some provider network disruption for our employees and dependents
- Staff recommendation is to stay with BCBSTX

3

FY2024 Benefit Budget

- Budget calculation = \$10,377 PEPY
- FY2024 budget for benefits = \$10,500 PEPY
- Authorize use of the Employee Benefit Reserve, if needed, to pay for any overages

4

Council Action

Due to the action taken by the Trustees of the City of Kerrville Employee Benefit Trust to approve the FY2024 employee benefit plans, rates, and funding, staff recommends Council adopt Resolution No. 20-2023, authorizing the transfer of the ownership of funds from the City of Kerrville to the City of Kerrville Employee Benefit Trust to pay for employee related group benefits for FY2024.

Questions?



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

SUBJECT: Resolution No. 23-2023. A Resolution authorizing the City's submission of an Our Town Grant application to the National Endowment for the Arts; authorizing the City to partner with Schreiner University and the Kerrville Convention and Visitors Bureau to utilize funds from the Our Town Grant; and authorizing the City Manager to act as the authorized representative in all matters pertaining to the participation in the Our Town Program.

AGENDA DATE OF: July 25, 2023

DATE SUBMITTED: June 27, 2023

SUBMITTED BY: Megan Folkerts, Senior Management Analyst

EXHIBITS:

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

PAYMENT TO BE MADE TO: N/A

Kerrville 2050 Item? Yes

Key Priority Area C - Community / Neighborhood Character and Place Making

Guiding Principle N/A

Action Item N/A

SUMMARY STATEMENT:

The National Endowment for the Arts (NEA) is proud to support the nation's arts sector with grant opportunities so that together we can help everyone live more artful lives. "Artful lives" is an inclusive concept that holds everything from the creation, presentation, and consumption of professional arts to active arts engagement by all people in our daily experiences through making, teaching, learning, and advancing a broad range of art forms that express our nation's rich and diverse cultural tapestry. Arts, culture, and design are essential to building strong communities where all people can thrive. Through Our Town, the NEA is proud to support creative placemaking projects that integrate arts, culture, and design into local efforts that strengthen communities over the long-term. Our Town projects engage a wide range of local stakeholders in efforts to advance local economic, physical, or social outcomes in communities. Competitive projects are responsive to unique local conditions, authentically engage communities, advance artful lives, and lay the groundwork for long-term systems change.

The project description that the Community Arts Program is looking to apply for is as follows: *"This project will support the enhancement of the Kerrville River Trail with public art. The goals are to increase pedestrian trail use, encourage health and well-being, create an*

attractive public space, preserve community identity, and stimulate economic activity. The artist will complete a residency at the local university to create and install a large-scale public art installation. The iconic gateway artwork will be located near the River Trail trailhead entrance on the Schreiner University campus. In addition to the artist residency, there will be a lecture series for local artist professional development, a community demonstration, and a dedication event with musical performances and student exhibits."

RECOMMENDED ACTION:

Approve Resolution No. 23-2023 as presented.

ATTACHMENTS:

[20230725_Reso 23-2023 KCVB and Schreiner Arts Program Grant.pdf](#)

**CITY OF KERRVILLE, TEXAS
RESOLUTION NO. 23-2023**

A RESOLUTION AUTHORIZING THE CITY'S SUBMISSION OF AN OUR TOWN GRANT APPLICATION TO THE NATIONAL ENDOWMENT FOR THE ARTS; AUTHORIZING THE CITY TO PARTNER WITH SCHREINER UNIVERSITY AND THE KERRVILLE CONVENTION AND VISITORS BUREAU TO UTILIZE FUNDS FROM THE OUR TOWN GRANT; AND AUTHORIZING THE CITY MANAGER TO ACT AS THE AUTHORIZED REPRESENTATIVE IN ALL MATTERS PERTAINING TO THE PARTICIPATION IN THE OUR TOWN PROGRAM

WHEREAS, the City of Kerrville desires to develop a viable community, including aesthetic beauty and a local economy that embraces a broad range of diverse art forms; and

WHEREAS, included within these goals is injecting energy and enthusiasm into the community and elevating key community assets, including local history and the voices of residents; and

WHEREAS, the City recognizes the importance of local partners in pursuing these goals; and

WHEREAS, City Council finds it to be in the public interest to partner with Schreiner University and the Kerrville Convention and Visitor Bureau to apply for and utilize funding under the Our Town Program;

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

SECTION ONE. City Council authorizes the City's application to the Our Town Program with the National Endowment for the Arts for funding consideration.

SECTION TWO. City Council authorizes the City to partner with Schreiner University, a 501(c)(3) non-profit organization, to apply for \$150,000.00 of grant funds to carry out the installation of public art.

SECTION THREE. City Council authorizes the City to partner with Schreiner University and the Kerrville Convention and Visitors Bureau to utilize the Our Town Program grant funds, if awarded, to fund public art projects through

the Kerrville Convention and Visitors Bureau's Community Art Program that satisfy the purported purpose in the Our Town Program Application.

SECTION FOUR. The City Manager is designated as the Authorized Representative to act in all matters in connection with this application and participation in the National Endowment for the Arts Program.

PASSED AND APPROVED on this _____ day of _____, A.D., 2023.

Judy Eychner, Mayor

ATTEST:

Shelley McEllhannon, City Clerk

APPROVED AS TO FORM:



William L. Tatsch, Assistant City Attorney



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

SUBJECT: Southwest Texas Regional Advisory Council (STRAC) Electronic Records Management System Project Interlocal Cooperation Agreement with the City of Kerrville, TX.

AGENDA DATE OF: July 25, 2023

DATE SUBMITTED: July 5, 2023

SUBMITTED BY: Eric Maloney, Fire Chief

Expenditure Required:	Remaining Budget Balance in Account:	Amount Budgeted:	Account Number:
25,101.00	N/A	25,101.00	0121-2300

PAYMENT TO BE MADE TO: STRAC

Kerrville 2050 Item? No

Key Priority Area N/A

Guiding Principle N/A

Action Item N/A

SUMMARY STATEMENT:

Currently, Southwest Texas Regional Advisory Council (STRAC) hosts the City's EMS Records Management System (RMS) software and data since 1994. STRAC is changing software vendors from Zoll to ImageTrend for the EMS RMS and will continue to host the software and data. The cost is \$25,101 per year with a 3% increase to the Annual Per Run Fee based on the number of EMS runs per year. STRAC hosts the EMS RMS for approximately 11 EMS agencies that share the cost of the software.

In addition to the EMS Records Management System (RMS), ImageTrend has a Fire Records Management System (RMS) component included in the cost. The City is currently using a standalone software for Fire RMS. The added benefit of having RMS for both EMS and Fire under a single software umbrella will provide a cost saving of \$12,355 per year. IT currently spends a significant amount of resources to manage and host the system on premise. Moving to ImageTrend will allow IT to implement efficient processes that optimize resource utilization.

The cost of the ImageTrend is in the FY24 proposed budget.

RECOMMENDED ACTION:

Staff recommends Council approve the Interlocal Cooperation Agreement between the City of Kerrville and STRAC.

ATTACHMENTS:

[20230725_Agreement STRAC_eRMS.pdf](#)

STRAC ELECTRONIC RECORDS MANAGEMENT SYSTEM (eRMS) PROJECT INTERLOCAL COOPERATION AGREEMENT

This PROJECT AGREEMENT (“Agreement”), is entered into by the following parties: the Southwest Texas Regional Advisory Council (“STRAC”), a Texas non-profit corporation created by Texas law and regulations, and City of Kerrville, Texas (“Agency”), a political subdivision of the State of Texas.

Recitals

It is the purpose of this Agreement to establish a cooperative and mutually beneficial relationship between the parties and to set forth the relative responsibilities of the parties as they relate to the provision of certain electronic records management software (eRMS) services, as further described in Schedule A, by STRAC to Agency.

STRAC is the Regional EMS/Trauma Advisory Council designated by the Texas Department of State Health Services (“DSHS”) in the STRAC region (Trauma Service Area – P, TSA-P).

STRAC has licensed certain eRMS software from ImageTrend for providing electronic records management software services, including electronic Patient Care Records (ePCR) and/or Fire Record Management System (FireRMS).

STRAC is designated by DSHS to design, implement and maintain the Regional EMS/Trauma, Disaster and Emergency Healthcare System for Trauma Service Area – P (TSA-P) and will provide overall coordination and management to the eRMS project and as such has an interest to provide cost effective software solutions to member agencies.

STRAC is providing the eRMS solution to eligible EMS member agencies, Fire Departments and other public safety agencies on a software as a service basis in a co-operative fashion, leveraging economies of scale by having multiple public safety member agencies subscribe through STRAC to utilize STRAC’s pricing with ImageTrend for the eRMS system.

Agency has an interest in and need to have an electronic records management system to increase capability and performance for the jurisdiction or population it serves

Agreement

Accordingly, both Agency and STRAC agree as follows:

I. LEGAL AUTHORITY

STRAC represents and warrants that:

1. STRAC is a Texas non-profit corporation organized to provide one or more governmental functions and services described in Texas Administrative Code Title 25, Part 1, Chapter 157.
2. STRAC possesses adequate legal authority to enter into this Agreement.
3. The governing body of STRAC believes that this Agreement is beneficial to the public.
4. STRAC has valid and enforceable licenses and all other necessary legal authority to grant Agency the right to use the software services to be provided under this Agreement.

The Agency represents and warrants that:

1. The Agency possesses adequate legal authority to enter into this Agreement.

2. The governing body of the Agency believes that this Agreement is beneficial to the public and that the Agency has the legal authority to provide the governmental function which is the subject of this Agreement.
3. The Agency is an active member in good standing and is licensed through the Texas DSHS.

II. STATEMENT OF SERVICES TO BE PERFORMED:

STRAC shall provide services as set forth in the attached "Schedule (A), eRMS Project."

Services listed in Schedule (A) provided by STRAC under this Agreement or assigned to the Agency as eRMS Project-specific services are provided to the Agency by STRAC at the rates in Schedule (B), eRMS Project Pricing. The Agency is responsible for all costs associated with implementing and operating the eRMS Project as provided for in the attached Schedules, including all costs of wireless data, GPS and hardware equipment and any utility services required to enable the eRMS Project to function correctly.

Schedules (A) and (B), are incorporated in this Agreement for all purposes.

III. TERM OF AGREEMENT:

This Agreement is effective as of the 10/1/2023 ("Effective Date.") The initial term of this Agreement continues for one (1) year from the Effective Date ("Term"). At the end of the Term, this Agreement automatically renews on each anniversary of the Effective Date for five (5) consecutive years, unless earlier terminated by the parties in accordance with paragraph IV. The maximum duration of this contract is six (6) years.

IV. TERMINATION AND DISPUTE RESOLUTION:

This Agreement may be terminated by either the Agency or STRAC if either party in its sole discretion requests termination in writing to the other party, with 60 days prior notice.

When mediation is acceptable to both parties in resolving a dispute arising under this Agreement, the parties agree to use a mutually agreed upon mediator, or a person appointed by a court of competent jurisdiction, for mediation as described in section 154.023 of the Texas Civil Practice and Remedies Code. Unless both parties are satisfied with the result of the mediation, the mediation is not a final and binding resolution of the dispute. All communications within the scope of the mediation shall remain confidential as described in section 154.073 of the Texas Civil Practice and Remedies Code, unless both parties agree, in writing, to waive the confidentiality.

V. VENUE

This Agreement and all of the transactions described herein shall be governed by and construed in accordance with the laws of the State of Texas. All obligations under this Agreement are performable in Bexar County, Texas.

VI. GENERAL PROVISIONS:

1. This Agreement is entered into by the duly authorized officials of each respective party.
2. Any notice required pursuant to this Agreement must be in writing and is properly given if hand delivered, or sent by certified or registered mail, or overnight courier service, to the

parties either at the address below for or at such other address as the parties from time to time specify by written notice pursuant to this Section. Any such notice is considered delivered on the date of delivery if hand delivered, or upon confirmation if sent by certified or registered mail or an overnight courier service.

If to STRAC:

STRAC
Attention: Executive Director
7500 Highway 90 West
AT&T Building, Suite 200
San Antonio, Texas 78227

If to Agency:

City of Kerrville, Texas
c/o: Kerrville Fire Administration
87 Coronado Drive
Kerrville, TX 78028

3. To the extent authorized by the laws of the State of Texas, STRAC and the Agency are not liable for any lost profits, special, incidental, consequential, or punitive damages, for breach of any express or implied warranties or otherwise. STRAC and the Agency do not warrant, expressly or implied, and does not represent that the software or services provided under this Agreement are without defect, interruption, or suited for particular purposes or uses.
4. During the term of this Agreement and any extensions of it, the Agency, to the extent permitted by law assumes liability arising from the misuse or erroneous employment, deployment, redeployment, and reconstitution of the eRMS Project and supporting equipment in accordance with the provisions of law and regulations which govern its activities. This assumption of liability does not apply to claims of infringement of intellectual property rights for actions that are not in breach of this Agreement.
5. If any provision of this Agreement is held to be illegal, invalid or unenforceable in any respect, such illegality, invalidity or unenforceability shall not affect any other provision of this Agreement, and this Agreement shall be construed as if that invalid, illegal or unenforceable provision had never been included in this Agreement. In computing any period of time pursuant to this Agreement, the first day is excluded and the last day included except that if the last day falls on a Saturday, Sunday, or a day Agency has declared a holiday for its employees, these days shall be omitted. All hours stated in this Agreement are stated in Central Time as recognized in San Antonio, Texas. Words of any gender in this Agreement shall be construed to include any other genders and words in singular shall be construed to include plural and vice versa unless the context in the Agreement clearly requires otherwise. Headings and titles at the beginning of the various provisions of this Agreement have been included only to make it easier to locate the subject matter covered by that part, section or subsection and are not to be used in interpreting this Agreement.
6. Both parties understand that each will fulfill its responsibilities under this Agreement in accordance with the provisions of law and regulations which govern their activities. Nothing in this Agreement is intended to negate or otherwise render ineffective any such provisions or operating procedures. If at any time either party is unable to perform its functions under this Agreement consistent with such party's statutory and regulatory mandates or authority, the affected party shall immediately provide written notice to the other to establish a date for mutual resolution of the conflict. Resolution may include forfeiture of the use and return to STRAC of those assets described in the Schedule (A).

7. **Assignment.** The parties to this Agreement shall not assign any of the rights or obligation under this Agreement without the prior written consent of the other party. No official, employee, representative or agent of Agency has the authority to approve any assignment under this Agreement unless that specific authority is expressly granted by Agency. The terms, provisions, covenants, obligations and conditions of this Agreement are binding upon and inure to the benefit of the successors in interest and the assigns of the parties to this Agreement if the assignment or transfer is made in compliance with the provisions of this Agreement. Without the prior written approval or the prior written waiver of this right of approval from Agency, STRAC shall not enter into any subcontracts for any service or activity relating to the performance of this Agreement other than the contract with ImageTrend. STRAC acknowledges that no officer, agent, employee or representative of the Agency, has the authority to grant such approval or waiver unless expressly granted that specific authority by Agency
8. If a change of name is required, the Agency shall be notified immediately. No change in the obligation of or to STRAC will be recognized until it is approved by the Agency.
9. This Agreement constitutes the entire agreement of the parties with respect to the subject matter of it, and supersedes any prior understanding or written or oral agreements between the parties with respect to the subject matter of this Agreement.
10. No amendment, modification, or alteration of the terms of the Agreement is binding on either party unless the same is in writing, is dated subsequent to the date of this Agreement, and is duly executed by the party against whom enforcement is sought except that the Agency may, with consent of STRAC, at any time, by written document, make changes within the general scope of this Agreement in any aspect of Agreement to correct errors of a general administrative nature or other mistakes, the correction of which does not affect the scope of the Agreement and does not result in expense to the STRAC.
11. Each person signing this Agreement on behalf of a party confirms for the benefit of the other party that any requisite approvals from the governing body of the signing party have been obtained, and all prerequisites to the execution, delivery, and performance of this Agreement have been obtained by or on behalf of that party.
12. Force Majeure – Either party may be excused from performance under this Agreement for any period that the party is prevented from performing its obligations in whole or in part as a result of any act of God, war, civil disturbance, epidemic, court order, or other event outside the control of such party, provided the party seeking to be excused has prudently and promptly acted to take any and all reasonable corrective measures that are within that party's control.
13. Neither party has authority for or on behalf of the other as to the subject matter of this Agreement, except as provided in this Agreement. No other authority, power, partnership, use, or rights are granted or implied except as provided by Texas or federal laws and regulations, and as defined in the Agreement and Schedule (A) to it.
14. Neither party may incur any debt, obligation, expense, or liability of any kind on behalf of the other party without the other party's express written approval.
15. To the extent permitted by law, the Agency will defend and indemnify STRAC, its directors, employees, agents, and representatives (the "Indemnitees") and hold the Indemnitees harmless against any damage, claims, suits, actions, liabilities, loss, penalties, costs, and expenses including, without limitation, reasonable attorneys' fees arising out of or alleged to have arisen from or in any way connected to:
 - i. The misuse by the Agency of the eRMS Project and issued equipment.
 - ii. a breach of any of the representations, warranties, or obligations of this agreement by the Agency; and/or

- iii. any claim (whether founded or unfounded) of any nature or character, arising out of or alleged to have arisen from or in any way connected to any actual or alleged negligence or dishonesty of, or any actual or alleged act of commission or omission by the Agency or any of its employees, agents, representatives or contractors.
16. STRAC will defend and indemnify the Agency, its elected officials, directors, officers, employees, agents and representatives (the "Agency Indemnities") and hold the Agency Indemnities harmless against any damages, claims, suits, actions, liabilities, loss, penalties, costs, and expenses including without limitation reasonable attorneys' fees arising out of or alleged to have arisen from or in any way connected to:
 - i. any infringement of any applicable copyrights, licenses or other intellectual property or proprietary rights which may exist on materials used in this Agreement and any rights granted to Agency shall apply for the duration of this Agreement.
 - ii. a breach of any of the representations, warranties, or obligations of this Agreement by STRAC; and/or
 - iii. any claim (whether founded or unfounded) of any nature or character arising out of or alleged to have arisen from or in any way connected to any actual or alleged negligence or dishonesty of, or any actual or alleged act of commission or omission by STRAC, or any of its employees, agents, representatives or contractors.
17. STRAC certifies that at the time of execution of this Agreement, it is not on the federal government's list of suspended, ineligible, or debarred contractors. If the STRAC is placed on the list during the term of this Agreement, STRAC shall notify the Agency. False certification or failure to notify may result in terminating this Agreement.

AGREEMENT SIGNATURES:

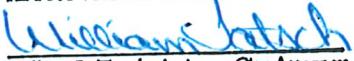
The undersigned parties bind themselves to the faithful performance of the Agreement. It is mutually understood that this Agreement shall be effective if signed by a person authorized to do so according to the normal operating procedures of that party. If the governing body of a party is required to approve this Agreement, it does not become effective until approved by the governing body of that party. In that event, when this Agreement is executed by the duly authorized official(s) of the party as expressed in an approving resolution or order of the governing body of that party, a copy of the resolution or order shall be attached to this Agreement.

[Remainder of Page Intentionally Blank; Signature Page Attached]

[Signature Page to STRAC eRMS Agreement]

APPROVED AS TO FORM AND LEGALITY:	
	City of Kerrville, Texas
	By: _____ Kimberly Meismer, Interim City Manager _____
	Date of Signature
APPROVED AS TO FORM AND LEGALITY:	
	Southwest Texas Regional Advisory Council
	By: _____ Eric Epley, Executive Director _____
	Date of Signature

APPROVED AS TO FORM


William L. Tatsch, Assistant City Attorney

SCHEDULE (A)
eRMS PROJECT

I. Project Description

The eRMS Project shall include the provision of Fire and EMS records management service Agency on a Software as a Service basis. The system includes:

- Patient Care Reporting
- Fire Incident Reporting
- Personnel Management
- Continuous Quality Improvement Module
- Community Health Records Management
- Training Records Management
- Activity Tracking
- Inventory Management
- Occupancies and Fire Inspections
- Reporting, Dashboards, and Data Analysis
- Integration with Agency CAD system
- Integration with Agency monitor/defibrillator hardware
- State compliant NEMSIS reporting
- State compliant NFIRS reporting
- STRAC technical support

II. Purpose of the eRMS Project

The eRMS Project supports day to day operations of agencies in TSA-P while also increasing efficiencies with regard to patient care documentation, patient billing, performance improvement, reporting and Fire and EMS operations.

III. Compliance with Copyrights

STRAC warrants that all applicable copyrights, licenses and other intellectual property and proprietary rights which may exist on materials used in this Agreement and any rights granted to Agency shall apply for the duration of this Agreement have been adhered to and further warrants that Agency shall not be liable for any infringement of these copyrights, licenses and other rights.

----- End of Schedule A -----

SCHEDULE (B)
eRMS Project Pricing

I. Rates

STRAC shall invoice Agency based on the following rates:

eRMS Software Service:

Annual Fees:

Annual Agency Fee: \$3,000/year (billed annually each September 1 for life of agreement)

Per Run Fee: \$3.00/run (plus 3% annual increase effective each September 1 for life of agreement) based on the actual number of total runs in the previous agreement period of September 1 thru August 31. Runs are defined as those with unique incident run numbers. For example, an incident with a unique run number that generates multiple patients or an incident with a unique run number that has a fire and EMS response is counted as a single run.

Example Calculations for First Fiscal Year and Second Fiscal Year

First Year price for Kerrville Fire/EMS starting September 1, 2023:

Actual Number of Runs in prior calendar year as provided in your initial quote: 7,367
Per Run Fee: \$3.00

Fees	Qty	Unit Price	TOTAL
Annual Agency Fee	1	\$3,000.00	\$3,000.00
Annual Per Run Fee	7,367	\$3.00	\$22,101.00
TOTAL Fees			\$25,101.00

Agency Annual Fee: \$3,000

Agency Run Volume Fee: 7,367 runs x \$3.00= \$22,101.00

Total: **\$25,101.00**

Second Year price for Kerrville Fire/EMS starting September 1, 2024:

Actual Number of Runs in prior year agreement period (9/1/23 thru 8/31/24)
Per Run Fee: \$3.00 x 3% annual increase = \$3.09/Run

Fees	Qty	Unit Price	TOTAL
Annual Agency Fee	1	\$3,000.00	\$3,000.00
Annual Per Run Fee	7,500 (est).	\$3.09	\$23,175.00

TOTAL Fees			\$26,175.00
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Agency Annual Fee: \$3,000

Agency Run Volume Fee: 7,500 estimated runs x \$3.09= \$23,175.00

Total: **\$26,175.00**

(for example purposes only; not binding)

II. INVOICING/PAYMENTS:

STRAC shall provide Agency with an Internal Revenue Form W-9, Request for Taxpayer Identification Number and Certification, that is completed in compliance with the Internal Revenue Code and its rules and regulations before any funds are payable.

Agency shall pay STRAC by check upon satisfactory deployment and annually thereafter. STRAC will submit an invoice to the address below:

Kerrville Fire Administration
Att: Accounts Payable
87 Coronado Drive
Kerrville, TX 78028

Invoices shall include at least the following information:

- name, address, and telephone number of STRAC
- name, address, and telephone number of payment location if different from STRAC address;
- Agency Contract number;
- identification of department deployed, products or services as outlined in this Agreement;
- quantity or quantities, applicable unit prices, total prices, and total amount; and
- any additional payment information called for by this Agreement.

Payment shall be deemed to have been made on the date of mailing of the check. Agency may choose to make payment through a withhold of their County 911 funds.

Accrual and payment of interest on overdue payments shall be governed by TEX. GOV'T CODE ANN., ch. 2251.

III. Business Records

STRAC shall maintain and make available all books, documents, and other evidence pertinent to the costs and expenses of this Agreement for inspection, audit or reproduction by any authorized representative of Agency to the extent this detail will properly reflect these costs to Agency. All required records shall be maintained until an audit is completed and all required questions arising therefrom are resolved, or three (3) years after completion of the Agreement term, whichever occurs first; however, the records shall be retained beyond the third year if an audit is in progress or the findings of a completed audit have not been resolved satisfactorily.

----- End of Schedule (B) -----



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

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

AGENDA DATE OF: July 25, 2023 **DATE SUBMITTED:** July 11, 2023

SUBMITTED BY: Ashlea Boyle, Director Parks & Recreation

EXHIBITS:

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

PAYMENT TO BE MADE TO: N/A

Kerrville 2050 Item? Yes

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

SUMMARY STATEMENT:

Staff brought the amended lease with BTP Baseball Ventures, LLC ("D-BAT") to Council for approval on March 14, 2023. At that meeting, Council approved the amended lease with the inclusion of two paragraphs (9C; and the guarantee of Kerrville Little League's ("KLL") use of the sports complex in 12C) from the original lease.

After staff added those paragraphs (paragraphs 10C and 14A in the amended lease), it determined that amendments were necessary to take into account the issues that could arise from the inclusion of those paragraphs, including:

1. 10C adds back permission for KLL to advertise at the sports complex, but the amendment provides that if KLL decides to advertise, it is responsible for installing the advertising. D-BAT and staff do not want to be responsible for installing or removing any such signs, and staff thinks this is reasonable.
2. 10C has also been amended to provide that if KLL advertising has to be removed during D-BAT's tournaments and events, KLL is responsible for removing the advertising. This provision has always existed in the lease, but it was originally the City's responsibility to remove KLL's signs during D-BAT's tournaments and events; staff would prefer that the party that installed the advertising also be responsible for removing the advertising.
3. The guarantee of KLL to use the Sports Complex for its games from paragraph 12C has been added into paragraph 14A. The only amendment is to provide that D-BAT copy the City on any correspondence D-BAT sends to KLL to schedule KLL's use of the sports complex.

Staff believes this amendment is necessary so that it can remain informed about the communications between D-BAT and KLL.

Staff asks Council to approve the amended lease with the suggested changes resulting from Council's prior approval of paragraphs 10C and 14A. For clarification, staff has provided the most recent version of the amended lease with both paragraphs 10C and 14A highlighted. Any amendments to those paragraphs are shown as redlines.

RECOMMENDED ACTION:

Authorize the Interim City Manager to finalize and execute the lease amendment.

ATTACHMENTS:

[*20230725_Lease DBAT Amended 071423.pdf*](#)

AMENDED COMMERCIAL LEASE

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

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

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:
0-1 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

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

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 (10th) 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 monthly basis to discuss options to maximize 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

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

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

C. The Kerrville Little League, its successor in interest, or any similar organization designated by Landlord to replace the Kerrville Little League ("KLL"), through the Landlord, shall have the right to install advertising on those fields at the Baseball-Softball Complex it is assigned during the KLL Season. All such advertising must be in a format acceptable to Landlord, to include size, format, materials, and ease of both installation and removal. Banners are acceptable as advertising. Tenant shall not be responsible for installing, maintaining, replacing, removing, and storing any advertising KLL shall install or request to be installed at the Baseball-Softball Complex; KLL shall have all such responsibility if it chooses to install advertising at the Baseball-Softball Complex. During this period of time and pursuant to tournaments and similar events conducted by Tenant, Tenant has the right to request KLL to remove its advertising during such tournaments and special events.

D. 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.

E. 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:

AMENDED COMMERCIAL LEASE

- 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, with such payments being due on or before the 10th 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. MERCHANDISE: 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. KLL shall be guaranteed fields within the Baseball-Softball Complex to play games during the KLL Season, subject to the following notice and scheduling requirements. 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

AMENDED COMMERCIAL LEASE

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. Tenant shall copy the Landlord's Contact(s) on its correspondence with KLL scheduling the use of the Baseball-Softball Complex for the KLL Season.

- 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.

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

AMENDED COMMERCIAL LEASE

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 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

AMENDED COMMERCIAL LEASE

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 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

AMENDED COMMERCIAL LEASE

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, 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.

AMENDED COMMERCIAL LEASE

- 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.

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:

AMENDED COMMERCIAL LEASE

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AMENDED COMMERCIAL LEASE

		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.

AMENDED COMMERCIAL LEASE

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

(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.

AMENDED COMMERCIAL LEASE

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.

AMENDED COMMERCIAL LEASE

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 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 ASSIGNS, 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:

AMENDED COMMERCIAL 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;
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

AMENDED COMMERCIAL LEASE

execution thereof stayed pending appeal or if within 60 days after the expiration of such stay, such judgment shall not have been discharged; or

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

AMENDED COMMERCIAL LEASE

thus effecting Tenant's compliance under this Lease, and Landlord shall not be liable to Tenant for any damages with respect thereto.

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

AMENDED COMMERCIAL LEASE

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 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.

AMENDED COMMERCIAL 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 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

AMENDED COMMERCIAL LEASE

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.

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.

AMENDED COMMERCIAL LEASE

- 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.
- 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

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,

AMENDED COMMERCIAL LEASE

order, writ, injunction, decree, award, rule or regulation which could reasonably be 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

BY: _____
JOSHUA SANDERS
Director

LANDLORD:

CITY OF KERRVILLE, TEXAS

BY: _____
E.A. Hoppe
City Manager

ATTEST

APPROVED AS TO CONTENT

Shelley McElhannon, City Secretary

Ashlea Boyle, Dir. of Parks and Recreation

APPROVED AS TO FORM:

William L. Tatsch, Asst. City Attorney



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

SUBJECT: Contract for bulk fuel and card services.

AGENDA DATE OF: July 25, 2023

DATE SUBMITTED: July 12, 2023

SUBMITTED BY: Guillermo Garcia

EXHIBITS:

Expenditure Required:	Remaining Budget Balance in Account:	Amount Budgeted:	Account Number:
\$425,000	\$425,000	\$425,000	Various accounts

PAYMENT TO BE MADE TO: Maxey Energy

Kerrville 2050 Item? No

Key Priority Area N/A

Guiding Principle N/A

Action Item N/A

SUMMARY STATEMENT:

On April 2023, the City of Kerrville requested sealed bids for the purchase of fuel and card services for city vehicles and equipment. One bid for bulk fuel and card services was received on May 22, 2023, for a one-year contract with four optional one-year extensions. This service will provide access to fuel for all City of Kerrville departments. The term of the supply contract will be October 1, 2023, through September 30, 2024, with the option to renew annually.

Maxey Energy proposed a markup above rack price at \$.0795, compared to the previous markup of \$.0695 for fuel. This will result in a change of approximately \$1,211.22 increase from the current markup being charged by Maxey Energy.

RECOMMENDED ACTION:

Authorize the City Manager to award contract

ATTACHMENTS:

[20230725_Contract Fuel Summary and Maxey Fuel.pdf](#)

FUEL CONTRACT SUMMARY

Unleaded

	Previous Contract	Maxey Energy	
Freight	\$ 0.0455	\$ 0.0632	
Tax *	\$ 0.2000	\$ 0.2000	
Markup	\$ 0.0695	\$ 0.0795	
	<hr/>	<hr/>	
	\$ 0.3150	\$ 0.3427	

Diesel

	Previous Contract	Maxey Energy	
Freight	\$ 0.0538	\$ 0.0733	
Tax *	\$ 0.2000	\$ 0.2000	
Markup	\$ 0.0695	\$ 0.0795	
	<hr/>	<hr/>	
	\$ 0.3233	\$ 0.3528	

Kerosene

	Previous Contract	Maxey Energy	
Freight	\$ 0.0538	\$ 0.0733	
Tax *	\$ 0.2000	\$ 0.2000	
Markup	\$ 1.0000	\$ 0.7500	
	<hr/>	<hr/>	
	\$ 1.2538	\$ 1.023	

* TTC 162.102, effective Jan 1, 2004

Est. # of Gallons (2024 Bgt)	121,122
@ .0695 Mark Up	\$ 8,417.98
@ .0795 Mark UP	\$ 9,629.20
Difference	\$ 1,211.22

City of Kerrville



Request for Proposal 2024 Fuel Purchases

701 Main Street
Kerrville, TX 78028
Office: (830) 258-1131
www.kerrvilletx.gov

Contents

BID ADVERTISEMENT.....	3
INSTRUCTION TO BIDDERS	4
SCHEDULES.....	4
EXAMINATION OF DOCUMENTS	4
ADDENDA AND INTERPRETATION OF DOCUMENTS.....	4
EXECUTION OF CONTRACT	4
PREPARATION OF THE BID.....	4
ALTERATION OF DOCUMENTS PROHIBITED	5
SUBMISSION OF BID.....	5
MODIFICATION OF A BID.....	5
WITHDRAWAL OF A BID	5
OPENING OF BIDS.....	6
AWARD OF BID.....	6
EXEMPTION.....	6
AFFIDAVIT OF NONCOLLUSION	6
BID SPECIFICATIONS	7
FUEL SPECIFICATIONS.....	7
SYSTEM SPECIFICATIONS.....	7
FUELING LOCATION(S) SPECIFICATIONS.....	7
PAYMENT.....	8
BID SUMMARY.....	8

CITY OF KERRVILLE

701 MAIN STREET
KERRVILLE, TX 78028

BID ADVERTISEMENT

REQUEST FOR PROPOSAL

TITLE: RFP - 2024 Fuel Purchases

DEADLINE FOR BID SUBMITTAL: 3:00 PM, May 22, 2023

The City of Kerrville is taking Sealed Bids for the purchase of fuel for use by City fleet vehicles and equipment's. Sealed bids will be received by the office of the City Secretary, City Hall, 701 Main Street, Kerrville, Texas-78028 until 3:00 P.M. on Monday, May 22, 2023, and will be publicly opened and read aloud in City Hall's meeting room #1 immediately after. The package will be available for evaluation at the Purchasing Manager's office at 701 Main Street, Kerrville, Texas. The City of Kerrville reserves the right to refuse all proposals.

Advertising Dates: April 24, 2023 & May 8, 2023

QUESTIONS RELATED TO THIS RFP SHOULD BE DIRECTED TO:

Shannon Flowers garage/purchasing coordinator)

(830) 258-1131

shannon.flowers@kerrilletx.gov

INSTRUCTION TO BIDDERS

The City of Kerrville is seeking to establish a contract to purchase fuel from an established firm for use by City fleet vehicles. The qualified firm will be required to provide fuel and related reporting as outlined in the bid specification section below.

SCHEDULES

This request for proposal (RFP) will be governed by the following schedule:

1. Advertisements – April 24 & May 8, 2023
2. Release of RFP – April 24, 2023
3. Deadline for Written Questions – May 15, 2023
4. Responses to Questions – May 16, 2023
5. Sealed Bids Due – May 22, 2023
6. Sealed Bids Opened – May 22, 2023 at 3pm
7. Notification of Award – June 26, 2023

EXAMINATION OF DOCUMENTS

Each bidder shall thoroughly examine and be familiar with the Request for Proposal (RFP). The submission of a bid shall constitute an acknowledgment that the bidder has thoroughly examined and is familiar with the Request for Proposal. The failure or neglect of a bidder to receive or examine any of the RFP shall in no way relieve him from any obligations with respect to his bid or any ensuing contract.

ADDENDA AND INTERPRETATION OF DOCUMENTS

No interpretations of the RFP or other prepared documents will be made to any bidder orally. Every request for such interpretation shall be submitted in writing, addressed to the Purchasing Agent, and in order to receive consideration, shall be received at least five days prior to the date fixed for opening of bids. Any and all such interpretations and any supplemental instructions will be in the form of written addenda to the specifications, which, if issued, will be mailed or otherwise delivered to each prospective bidder. Failure of any bidder to receive any such addendum shall not relieve such bidder from any obligation under his bid as submitted. All addenda issued shall become a part of the contract documents.

EXECUTION OF CONTRACT

The bidder, as part of the bid, shall execute the City of Kerrville Request for Proposal as a contract and fill in all blanks. Bid is subject to review and approval by City Council

PREPARATION OF THE BID

Bids must be submitted by filling in with ink (or typing) each and every blank provided for such purpose in the form headed "Request for Proposal", or if the bidder is required to provide a special form appropriate to the nature of his bid, then such form shall be complete in all respects as required by the Request for Proposal, if it is to merit consideration by the City. All amounts bid shall be listed in figures and words.

Written amounts shall take precedence where there is a conflict between the written and the figure. If the bid is made by a partnership, it should contain the name of each partner or that of a person duly authorized to act for and on behalf of such partnership. If made by a corporation, the bid should be signed with the name of the corporation and the state in which incorporated followed by the written signature of the qualified officer and the designation of the office he holds in the corporation in whose behalf the bid is submitted. The bidder shall comply with all other specific requirements of the bid.

ALTERATION OF DOCUMENTS PROHIBITED

Except as may be provided otherwise herein, bids which are incomplete, or are conditioned in a way, contain unverified erasures or alterations, or include items which are not named in the bid or which are unlawful may be rejected By City

SUBMISSION OF BID

Each bidder shall submit one (1) original and three (3) copies of the bid, together with appropriate attachments, in a completely sealed package titled "**2024 FUEL PURCHASES**" and delivered to City of Kerrville, 701 Main St., Kerrville, Texas, no bid will be accepted after 3:00 pm May 22, 2023. If forwarded by mail, the sealed package shall be addressed to the City Secretary, City Hall, 701 Main St., Kerrville, Texas 78028. Bids will be considered invalid if delivered to any address other than 701 Main St.

The closing time for filing the bid is Monday, May 22, 2023 at 3:00 PM.

MODIFICATION OF A BID

A change in a bid already delivered will be permitted only if a request for the privilege of making such modification is made in writing signed by the bidder and the specific modification itself is stated prior to the scheduled closing time for the receipt of bids. To be effective, every modification must be made in writing over the signature of the bidder, and no other procedure will be acceptable.

WITHDRAWAL OF A BID

A bid may be withdrawn at any time prior to the scheduled closing time for filing the bid. This may be done by the bidder in person or upon the written request. A telephone request for withdrawal of a bid will not be recognized. If withdrawal is made personally, a written acknowledgment thereof will be required.

After the scheduled closing time for filing the bid, no bidder will be permitted to withdraw his bid unless no award of contract has been made prior to the expiration of sixty (60) days immediately following the date when the bids are opened.

OPENING OF BIDS

All bids received prior to the scheduled closing time and which are not withdrawn as above provided will be publicly opened and read aloud in Meeting Room #1, City Hall, 701 Main St., Kerrville, Texas, at 3:00 PM on Monday, May 22, 2023, even though there may be irregularities or informalities therein. The opening and reading of the bid shall not be construed as an acceptance of the bidder as a qualified, responsible bidder.

AWARD OF BID

Within sixty (60) calendar days after the opening of the bids, the City will award the contract or reject all bids. Formal award of the bid can be made only by the City Council. The City reserves the right to reject any or all bids, to solely determine the best and lowest bid, and to waive any informalities.

EXEMPTION

Bid prices shall be less all Federal, State, and City taxes for which the City is exempt. The City will provide the necessary exemption documents.

AFFIDAVIT OF NONCOLLUSION

The City reserves the right to require that any bidder before being awarded a contract shall execute a non collusion affidavit in such form as will satisfy the City that the bid offered is genuine, is not a sham or collusive, and in no respect or degree is made in the interest or on behalf of any person, firm, or corporation not named in the form containing such bid.

BID SPECIFICATIONS

The contract will be for one year with four optional one year renewals. Contract beginning October 1, 2023 and Ending September 30, 2024 with each optional renewal beginning October 1 and ending September 30th. With the last ending on September 30, 2028.

FUEL SPECIFICATIONS

For purposes of charging monthly usage, the total per gallon price of fuel will be calculated using the following formula:

Rack Price + Freight + Taxes + Markup _____.

Rack price is the weighted average of monthly consumption

Fuel Category	Consumption Range	Your Per gallon Markup
Unleaded	50,000 to 125,000	_____ 0.0795 _____
Diesel	30,000 to 50,000	_____ 0.0795 _____
Kerosene	150 to 1,000	_____ 0.7500 _____

The City is also interested in using B20 Bio-Diesel, and other alternative fuels. Additional consideration will be given for availability of these items.

SYSTEM SPECIFICATIONS

Card System- Must provide the following information.

1. Number of fuel cards will be between 150-250. Each card will have unique Card ID and a unique personal-identification-number (PIN) that will be assigned to City employee for use in fuel purchase.
2. Fueling system should collect the following information for monthly digital (Microsoft Excel format) reporting and delivery to the City:
 - A. Date, Time, and Location (if applicable) of each Transaction
 - B. Type of Fuel, Total Gallons, Price per Gallon, and Total Cost of each Transaction
 - C. Card ID and Vehicle ID used for each Transaction
 - D. Vehicle Odometer Reading at time of each Transaction
3. Monthly billing statement and/or invoices should include all relevant information for each purchase, and should be listed by Department, Vehicle ID, and Card ID.
4. Vendor will be required to provide training for use of card system and fueling process.
5. Vendor must have a contact person available 24/7 for emergencies.

FUELING LOCATION(S) SPECIFICATIONS

Primary Fueling Locations:

1. Should be centrally located within the City, or
2. Should be distributed throughout the City, and
3. Must be available for use 24/7 for gas and diesels, and

4. Must be able to handle the size of all fleet vehicles to include ladder fire trucks, ambulances, large front loaders, backhoes, and paving machines as well as our standard fleet vehicles and equipment

Alternate Fueling Locations:

1. Bid should include a list of alternate locations where fuel may be purchased away from primary fueling locations using company card 24/7 and be able to handle all size fleet vehicles.

PAYMENT

All invoices shall be delivered to the Purchasing Agent office with monthly billing statement addressed to City of Kerrville, 310 McFarland, Kerrville, Texas 78028 on or before the 10th of each month.

BID SUMMARY

Unleaded - Two and ~~7056/10,000 dollars~~ 2.7056
 Diesel - Two and ~~7674/10,000 dollars~~ 2.7674
 Kerosene - Five and ~~2623/10,000 dollars~~ 5.2623

Fuel Type	Rack Price(*1)	Freight(*2)	Taxes(*3)	Markup	Total Rate (per gallons)
Unleaded	2.3629	0.0632	0.2000	0.0795	2.7056
Diesel	2.4151	0.0733	0.2000	0.0795	2.7679
Kerosene	4.2390	0.0733	0.2000	0.7500	5.2623

*1 Rack price each day is based on DTN FastRacks Unbranded Average.

*2 Freight is quoted based on current fuel surcharge levels, which vary based on the price of diesel fuel. Variances in the price of diesel fuel may cause the freight to go up or down.

*3 Taxes are based on current rates and regulations, subject to change by government authorities.

These prices are based on Rack Prices for 05/17/2023.

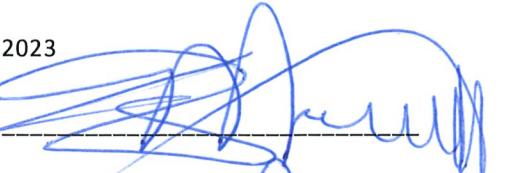
Maxey Energy Company has FIVE layers of product access to ensure the City of Kerrville has the fuel it requires for emergency services. The primary fueling location is 206 McFarland Street in Kerrville. If the primary location is down, the backup locations are 2303 Sidney Baker and 320 Junction Highway in Kerrville. In the highly unlikely event that backup locations are also impacted, Maxey Energy Company supplies fuel to and has access to eight independently operated locations in the Kerrville area that likely will have fuel available. In the event of an area-wide power outage, Maxey Energy Company operates a separate bulk storage facility in Uvalde Texas with trucking capacity to move fuel to Kerrville. Finally, Maxey Energy's bulk fuel facility in Kerrville houses aboveground tank storage such that, in an extreme emergency situation, a gravity flow solution not requiring electrical power could be implemented for emergency response as necessary.

Maxey Energy Company has contracts with two different suppliers as well as on-demand supply arrangements with other suppliers, helping to ensure we can deliver reliable fuel supply to the City of Kerrville.

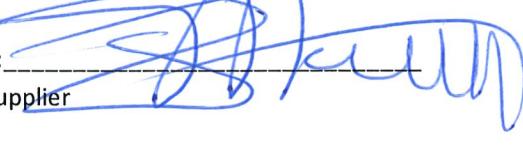
We will provide the information on the monthly statement in electronic file format (CSV) in the specification required by the city.

I. SUPPLIER SIGN PAGE

Signed this the 18th day of May, 2023

Attest: Terry Maxey By: 

Signed this the 18th day of May, 2023

Attest: Terry Maxey By: 
Secretary ~~President~~ Supplier

(if bid by corporation)

Terry Maxey President
Authorized Agent and Title

Business Address:

206 McFarland Dr
(please type business name)

Maxey Energy Company

830-257-6944

(telephone number)

II. CITY OF KERRVILLE SIGN PAGE

Accepted this the _____ day of _____, 2013

City Manager

Attest:

City secretary

Approved as to Form:

Michael C. Hayes, City Attorney



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

SUBJECT: Authority to approve pre-order of street sweeper from Kinloch Equipment & Supply, Inc., in compliance with City's purchasing policy and in an amount not to exceed \$275,858.00.

AGENDA DATE OF: July 25, 2023

DATE SUBMITTED: July 7, 2023

SUBMITTED BY: David Barrera, Assistant Director of Public Works

EXHIBITS:

Expenditure Required:	Remaining Budget Balance in Account:	Amount Budgeted:	Account Number:
\$275,858.00	Proposed FY2024	for Proposing FY2024	for 18-1861-5300

PAYMENT TO BE MADE TO: Kinloch Equipment & Supply

Kerrville 2050 Item? Yes

Key Priority Area M - Mobility / Transportation

Guiding Principle N/A

Action Item W4.1 - Map current riparian areas and determine potential future impacts associated with the potential loss of these areas and establish minimum and optimum sizes for riparian zones

SUMMARY STATEMENT:

The street sweeper is listed in the City's Fiscal Year 2024 Asset Replacement schedule to replace a 2005 unit. The sweeper is heavily utilized for the City's Paving Program and for routine sweeping throughout the City. This request is being made so that the vendor can secure a unit to be manufactured. Currently, the vendor, Kinloch Equipment & Supply, Inc., has only 2 slots remaining for pre-order. Council's action authorizing the City to essentially "get in line" for the future purchase of a sweeper will expedite the delivery of the unit by at least several months. Alternatively, waiting until after the beginning of the 2024 Fiscal Year (Oct. 1) may result in a delay of the City's receipt of up to one year. The vendor is providing this quote in accordance with Sourcewell Cooperative Purchasing and thus, purchasing the sweeper in this manner complies with the City's Purchasing Policy and state law.

RECOMMENDED ACTION:

Authorize Interim City Manager to Pre-Order a street sweeper that will be purchased in FY2024.

ATTACHMENTS:

20230725_StreetSweeperQuote.pdf



Presents a Proposal Summary

of the



Pelican P

Pelican NP Three Wheel Broom Street Sweeper with Dual Side Brooms and Belt Conveyor

For



Chuck Jones
Tel: 210.278.6998

PRODUCT DESCRIPTION

- Dual steer & gutter brooms, hydraulically driven, Tier 4F JD 4045TF low emission diesel engine, hydrostatic drive and steering, chassis and wheels powder coated standard white

STANDARD FEATURES

- Air cleaner, two-stage, dry type with restriction indicator
- Air Conditioner
- Alternator, 120 amp
- Anti Siphon water fill
- Automatic engine shutdown (oil pressure/engine temperature)
- Automatic pickup in reverse
- B20 biodiesel compatible
- Back up alarm, electric
- Battery, maintenance free
- Brakes, power
- Broom, main, hydraulically suspended
- Broom, main, in cab pressure control
- Broom, main, prefab, disposable
- Broom, side broom, hydraulically suspended
- Broom, side broom, in cab pressure control
- Broom Measurement Ruler
- Bumper pads, front jack
- Coolant recovery system
- Doors, see through glass, prop-able
- Electronic Throttle
- Engine, hour meter
- Gauges & Warning lights: engine oil temperature, engine oil pressure, fuel level, speedometer & odometer w/trip set
- Fenders, over front wheels
- Flushing system for hopper/conveyor
- Fuel tank, 35 gallons
- Fuel Water separator with indicator light
- Heater, pressurizer with filtered air, defroster
- Hose, hydrant fill, 16' 8" with coupling
- Light, spotlight, adjustable, one per side broom
- Lights, 2 combination, tail/stop lights
- Lights, headlights, multiple beam
- Lights, low water light
- Low Hydraulic Warning
- Main broom controls in cab
- Manuals, operator and parts
- Mirror, inside rear view
- Mirrors, outside, front mounted 6-inch fish eyes
- Mirrors, outside, front post mounted, west coast type, one each side
- Parking brake with interlock
- Rear Camera & in cab monitor
- Return to sweep feature
- Seat Belts (both sides for dual)
- Seats, extra wide Cordura suspension seats with arm rests
- Signals, self-canceling directional with hazard switch
- Sprung guide wheel, heavy duty
- Steering wheel, tilt, and telescoping
- Sun visors
- Tachometer, diesel engine
- Tires, tubeless radials
- Tow loops, four
- Water tank, fill gauge

- Water tank, molded polyethylene: 220-gallon total nominal capacity
- Wheels, dual guide
- Wheels painted grey
- Window, opening front opera
- Windshield washer
- Windshield wipers with intermittent setting
- Windshield, tinted
- Steel Bristles with Polyethylene Sidebroom Segments
- Single Wrap Polypropylene Main Broom - Disposable
- Rubber Dirt Shoes
- Unheated Unmotorized Mirrors
- Sweeper Painted Standard White
- Red Logo
- 1 Year Parts and Labor Warranty
- Sweeper – Parts & Operators Manuals
- John Deere Parts & Operators Manuals

ADDITIONAL FEATURES

- Sidebroom Tilt Option Right Hand Including Indicator
- Lower Roller Deflector
- Lower Conveyor Cleanout
- Conveyor Stall Alarm
- Quick Disconnect Fill Hose
- Engine Pre-Cleaner
- Magnetic Drain Plug
- Hydraulic Level Shutdown
- Hydraulic Temperature Shutdown
- Extra Auxiliary Engine Key
- Lighting Package 5: One LED Strobe w/Guard
- AM/FM/CD with (2) Map Lights
- Sliding Rear Window
- Right Hand Limb Guard
- Left Hand Limb Guard
- Right Hand Bostrom Air Ride Mid Back Cloth
- Triangle Reflective Flares
- 1 X 2.5 Lb. Fire Extinguisher

Total Sourcewell Cooperative Purchasing Contract Price F.O.B. Kerrville, TX: \$275,858.00

Product Model: PELICAN P

Proposal Date: 1/24/2023

Quote Number: 2023-51858

Price List Date: 1/24/2023

Payment Terms: Net Due Upon Delivery

Proposal Notes:

1. Prices quoted herein are in accordance with Sourcewell Cooperative Purchasing Contract # 093021-ELG. City of Kerrville Sourcewell Member # 1528671.
2. Prices quoted herein are firm until 2.25.23.
3. Under Texas Transportation Code Chapter 502, street sweepers are exempt from the titling, registering and plating in the State of Texas. As such, our proposal has made no such provisions or accommodations to provide these mandated services.

Quote Number: 2023-51858

LIMITED WARRANTY

ELGIN SWEEPER COMPANY warrants each new machine manufactured by it against defects in material and workmanship provided the machine is used in a normal and reasonable manner. This warranty is extended only to the original user-purchaser for a period of twelve (12) months from the date of delivery to the original user-purchaser.

ELGIN SWEEPER COMPANY will cause to be repaired or replaced, as the Company, may elect, any part or part of such machine which the Company's examination discloses to be defective in material or workmanship.

Repairs or replacements are to be made at the selling Elgin distributor's location or at other locations approved by ELGIN SWEEPER COMPANY.

The ELGIN SWEEPER COMPANY warranty shall not apply to:

1. Major components or trade accessories such as but not limited to, trucks, engines, tires or batteries that have a separate warranty by the original manufacturer.
2. Normal adjustments and maintenance services.
3. Normal wear parts such as but not limited to, broom filters, broom wire, shoe runners and rubber deflectors.
4. Failures resulting from the machine being operated in a manner or for a purpose not recommended by ELGIN SWEEPER COMPANY.
5. Repairs, modifications or alterations without the consent of ELGIN SWEEPER COMPANY which, in the Company's sole judgment, have adversely affected the machine's stability or reliability.
6. Items subjected to misuse, negligence, accident or improper maintenance.

The use in the product of any part other than parts approved by ELGIN SWEEPER COMPANY may invalidate this warranty. ELGIN SWEEPER COMPANY reserves the right to determine, in its sole discretion, if the use of non-approved parts operates to invalidate the warranty.

Nothing contained in this warranty shall make ELGIN SWEEPER COMPANY liable for loss, injury, or damage of any kind to any person or entity resulting from any defect or failure in the machine.

TO THE EXTENT LIMITED BY LAW, THIS WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

This warranty is also in lieu of all other obligations or liabilities on the part of ELGIN SWEEPER COMPANY, including but not limited to, liability for incidental and consequential damages on the part of the Company or the seller.

ELGIN SWEEPER COMPANY makes no representation that the machine has the capacity to perform any functions other than as contained in the Company's written literature, catalogs or specifications accompanying delivery of the machine.

No person or affiliated company representative is authorized to give any other warranties or to assume any other liability on behalf of ELGIN SWEEPER COMPANY in connection with the sale, servicing or repair of any machine manufactured by the Company.

ELGIN SWEEPER COMPANY reserves the right to make design changes or improvements in its products without imposing any obligation upon itself to change or improve previously manufactured products.



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

SUBJECT: City Council workshop minutes, July 11, 2023.

AGENDA DATE OF: July 25, 2023 **DATE SUBMITTED:** July 13, 2023

SUBMITTED BY: Shelley McElhannon, City Secretary

EXHIBITS:

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

PAYMENT TO BE MADE TO: N/A

Kerrville 2050 Item? No

Key Priority Area N/A

Guiding Principle N/A

Action Item N/A

SUMMARY STATEMENT:

City Council workshop minutes held July 11, 2023 at 5:00 p.m., City Hall.

RECOMMENDED ACTION:

Approve minutes as presented.

ATTACHMENTS:

[*20230725_Minutes CC workshop 7-11-23 5pm.pdf*](#)

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

**JULY 11, 2023 5:00 PM
701 MAIN STREET, KERRVILLE, TEXAS**

CALL TO ORDER: On July 11, 2023 at 5:00 p.m., the City Council workshop was called to order by Mayor Pro Tem Brenda Hughes at City Hall Council Chambers, 701 Main Street.

COUNCILMEMBERS PRESENT:

Brenda Hughes, Mayor Pro Tem
Roman Garcia, Council Place 1
Jeff Harris, Council Place 2
Joe Herring Jr, Council Place 3

COUNCILMEMBERS ABSENT:

Judy Eychner, Mayor

CITY STAFF PRESENT:

Kim Meismer, Interim City Manager
Mike Hayes, City Attorney

Michael Hornes, Asst City Manager
Shelley McElhannon, City Secretary

VISITOR(S) PRESENT:

Louis Amstoy, Media

1. PUBLIC COMMENT: None

2. DISCUSSION, CONSIDERATION, AND POSSIBLE ACTION:

2A. City Manager search process update.

Kim Meismer provided information and responded to questions.

Councilmember Joe Herring, Jr. made a motion City Council adjourn into closed executive session under 551.071 (consultation with attorney) and 551.087 (deliberation regarding economic development negotiations), seconded by Councilmember Roman Garcia. The motion passed 4-0.

Mayor Pro Tem Hughes recessed the workshop and convened closed executive session at 5:09 p.m.

3. EXECUTIVE SESSION:

3A. Economic Development projects update – Mount Saddle project and Winridge project (551.071, 551.087)

The closed executive session adjourned, and Council returned to open session at 5:56 p.m. No action taken during executive session.

4. ACTION ON ITEMS DISCUSSED IN EXECUTIVE SESSION IF ANY: None.

ADJOURN. The workshop adjourned at 5:57 p.m.

APPROVED BY COUNCIL: _____ ATTEST:

Brenda Hughes, Mayor Pro Tem

Shelley McElhannon, City Secretary



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

SUBJECT: City Council meeting minutes, July 11, 2023.

AGENDA DATE OF: July 25, 2023 **DATE SUBMITTED:** July 13, 2023

SUBMITTED BY: Shelley McElhannon, City Secretary

EXHIBITS:

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

PAYMENT TO BE MADE TO: N/A

Kerrville 2050 Item? No

Key Priority Area N/A

Guiding Principle N/A

Action Item N/A

SUMMARY STATEMENT:

City Council meeting minutes, July 11, 2023 at 6:00 p.m., City Hall.

RECOMMENDED ACTION:

Approve minutes as presented.

ATTACHMENTS:

[*20230725_Minutes CC meeting 7-11-23 6pm.pdf*](#)

**CITY COUNCIL MINUTES
REGULAR MEETING**

**KERRVILLE, TEXAS
JULY 11, 2023 6:00 PM**

On July 11, 2023 at 6:00 p.m., Mayor Pro Tem Brenda Hughes called the Kerrville City Council meeting to order in City Hall Council Chambers, 701 Main Street. Mayor Pro Tem Hughes provided the invocation and led the Pledge of Allegiance.

COUNCILMEMBERS PRESENT:

Brenda Hughes, Mayor Pro Tem
Roman Garcia, Councilmember Place 1
Jeff Harris, Councilmember Place 2
Joe Herring, Jr., Councilmember Place 3

COUNCILMEMBER ABSENT:

Judy Eychner, Mayor

CITY EXECUTIVE STAFF:

Kim Meismer, Interim City Manager
Mike Hayes, City Attorney
Michael Hornes, Asst City Manager
Shelley McElhannon, City Secretary
David Barrera, Director of Utilities
Stephen Boyd, Asst Fire Chief

Stuart Cunyus, Public Information Officer
Guillermo Garcia, Exec Director Innovation
Scott Loveland, Asst Director Public Works
Chris McCall, Police Chief
Drew Paxton, Director of Planning/Zoning
Trina Rodriguez, Asst Director Finance

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 and Mayor Pro Tem Hughes.

2. PRESENTATION(S):

2A. Masonic Lodge's *Community Builder Award*, requested by citizen Billy Steele.

Masonic Lodge member Billy Steele presented Police Chief Chris McCall with the Masonic's *Community Builder Award*.

3. VISITORS FORUM:

The following person(s) spoke:

- Kristin Mudry
- Robin Monroe
- Bryan Demaree

4. CONSENT AGENDA:

Councilmember Roman Garcia pulled item 4A. Councilmember Garcia made a motion to approve the items B, C, and D on the Consent Agenda, seconded by Councilmember Joe Herring, Jr. The motion passed 4-0.

4B. Resolution No. 22-2023. A Resolution terminating the Mayor's Disaster Declarations in response to COVID-19; and repealing Resolution Nos. 06-2020 and 16-2020.

4C. City Council workshop minutes, June 27, 2023.

4D. City Council meeting minutes, June 27, 2023.

END OF CONSENT AGENDA.

4A. Resolution No. 21-2023. A Resolution approving an Airport Planning Study undertaken by the Texas Department of Transportation, which will specify the need and scope for future capital improvement projects at the Airport; said study requires the provision of matching funds from the Joint Airport Board; authorizing the execution of various agreements related to this work; designating the Airport Manager as the owner's (City and County) representative for the work; and authorizing the City Manager to take any other action necessary pursuant to the work.

Michael Hornes provided information and responded to questions.

Councilmember Garcia made a motion to approve Resolution No. 21-2023, seconded by Councilmember Jeff Harris. The motion passed 4-0.

5. ORDINANCES, SECOND READING:

5A. Ordinance No. 2023-17, second reading. An Ordinance amending Chapter 60 of the Code of Ordinances, City of Kerrville, Texas; by changing the zoning of an approximate 15.92 acre property known as 199 Spur 100; from a Residential Mix Zoning District (RM) to a Public and Institutional Zoning District (PI); and providing other matters relating to the subject.

Shelley McElhannon read Ordinance No. 2023-17 caption into record.

Councilmember Herring made a motion to adopt Ordinance No. 2023-17 on second reading, seconded by Councilmember Harris. The motion passed 4-0.

5B. Ordinance No. 2023-18, second reading. An Ordinance annexing a tract of land into the corporate limits of the City of Kerrville, Texas; such property consisting of approximately 111.806 acres and generally located adjacent to and northeast of Lower Turtle Creek Road; such property being used to further the expansion of the Comanche Trace Residential Subdivision; the property more specifically described in the Ordinance and being located within the Extraterritorial Jurisdiction of and adjacent to the City Limits; adopting a service agreement; establishing the zoning for the annexed property as a Medium Density Residential Zoning District (R-2); and providing other matters relating to this subject.

Shelley McElhannon read Ordinance No. 2023-18 caption into record.

The following person(s) spoke:

- Jerry Wolff

David Barrera provided information.

Councilmember Herring made a motion to adopt Ordinance No. 2023-18 on second reading, seconded by Councilmember Harris. The motion passed 4-0.

5C. Ordinance No. 2023-19, second reading. An Ordinance amending Chapter 60 of the Code of Ordinances, City of Kerrville, Texas; by changing the zoning of an approximate 0.75 acre property known as 512 Yorktown; from a Medium Density Residential Zoning District (R-2) to a Light Commercial Zoning District (C-2); and providing other matters relating to the subject.

Shelley McElhannon read Ordinance No. 2023-19 caption into record.

Councilmember Harris made a motion to adopt Ordinance No. 2023-19 on second reading, seconded by Councilmember Herring. The motion passed 4-0.

5D. Ordinance No. 2023-20, second reading. An Ordinance amending Chapter 70 "Offenses and Miscellaneous Provisions", Article III "Electioneering at Polling Locations", of the City's Code of Ordinances to revise the Article as to regulations applicable to electioneering on City-owned or City-controlled property; containing a savings and severability clause; providing for penalties not to exceed \$2,000.00; ordering publication; providing an effective date; and providing other matters related to the subject.

Shelley McElhannon read Ordinance No. 2023-21 caption into record.

The following person(s) spoke:

- Nikki Caines
- Layng Guerriero
- George Baroody

Mike Hayes provided information and responded to questions. Discussion ensued among City Council.

Councilmember Garcia made a motion to amend Ordinance No. 2023-20 to include the 450 foot buffer from the Cailloux front door map as a part of the Ordinance. Mayor Pro Tem Hughes called for a second, with no second. Motion died for lack of second.

Councilmember Herring made a motion to adopt Ordinance No. 2023-20 on second reading, seconded by Councilmember Harris. The motion passed 3-1 with Mayor Pro Tem Hughes, Councilmember Harris, and Councilmember Herring voting in favor, and Councilmember Garcia opposed.

5F. Ordinance No. 2023-21, second reading. An Ordinance amending the City's FY2023 budget to allocate funds from the American Rescue Plan Act (ARPA) to purchase Public Safety vehicles and equipment.

Shelley McElhannon read Ordinance No. 2023-21 caption into record.

Councilmember Herring made a motion to adopt Ordinance No. 2023-21 on second reading, seconded by Councilmember Harris. The motion passed 4-0.

6. CONSIDERATION AND POSSIBLE ACTION:

6A. Request for an extension for a Conditional Use Permit approved by Resolution No. 31-2021 for 601 Spur 100.

Shelley McElhannon read item 6A caption into record.

Drew Paxton provided information and responded to questions.

The following person(s) spoke:

- Deborah Ohlmann

Councilmember Herring made a motion to authorize an extension of the Conditional Use Permit for 180 days, and then amended the motion to extend the Conditional Use Permit approved in 2021 for an additional eighteen months, seconded by Councilmember Harris. The motion passed 4-0.

7. BOARD APPOINTMENTS:

7A. Appointment to the Building Board of Adjustment and Appeals. (Item eligible for Executive Session 551.074).

Councilmember Garcia and Councilmember Harris requested to table this item until the next meeting. Mike Hayes provided information. City Council consensus to table this item until the next meeting.

8. **EXECUTIVE SESSION:** None. Executive Session not called nor convened.
10A. Appointment to the Building Board of Adjustment and Appeals. (551.074)

9. **ACTION ON ITEMS DISCUSSED IN EXECUTIVE SESSION, IF ANY.** N/A

10. **ITEM(S) FOR FUTURE AGENDAS:**

- Councilmember Harris requested to invite citizen Jerry Wolff to the July 25, 2023 City Council meeting, as Public Works is scheduled to provide a Water Presentation.

ADJOURN. The meeting adjourned at 7:02 p.m.

APPROVED BY COUNCIL: _____

APPROVED:

ATTEST:

Brenda Hughes, Mayor Pro Tem

Shelley McElhannon, City Secretary



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

SUBJECT: City Council workshop minutes, July 18, 2023.

AGENDA DATE OF: July 25, 2023 **DATE SUBMITTED:** July 13, 2023

SUBMITTED BY: Shelley McElhannon, City Secretary

EXHIBITS:

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

PAYMENT TO BE MADE TO: N/A

Kerrville 2050 Item? No

Key Priority Area N/A

Guiding Principle N/A

Action Item N/A

SUMMARY STATEMENT:

City Council workshop minutes held July 18, 2023 at 8:00 a.m., City Hall.

RECOMMENDED ACTION:

Approve minutes as presented.

ATTACHMENTS:

[*20230725_Minutes CC workshop 7-18-23.pdf*](#)

**CITY COUNCIL MINUTES
WORKSHOP, COUNCIL CHAMBERS**

**KERRVILLE, TEXAS
JULY 18, 2023 8:00 AM**

CALL TO ORDER: July 18, 2023 at 8:00 a.m., the Kerrville City Council workshop was called to order by Mayor Judy Eychner in the City Hall Council Chambers, 701 Main Street.

COUNCILMEMBERS PRESENT:

Judy Eychner	Mayor
Roman Garcia	Place 1
Jeff Harris	Place 2
Joe Herring Jr	Place 3
Brenda Hughes	Mayor Pro Tem, Place 4

COUNCILMEMBER ABSENT:

None

CITY STAFF PRESENT:

Kim Meismer, Interim City Manager
Mike Hayes, City Attorney
Michael Hornes, Asst City Manager
Shelley McElhannon, City Secretary
Stuart Barron, Exec Dir PW & Eng
David Barrera, Director of Utilities
Julie Behrens, Director Finance
Jacob Bogusch, Finance Compliance

Danielle Brigati, Library Director
Kyle Burow, Director Engineering
Megan Folkerts, Senior Analyst
Guillermo Garcia, Exec Dir Innovation
Eric Maloney, Fire Chief
Chris McCall, Police Chief
Drew Paxton, Director Planning
Trina Rodriguez, Asst Director Finance

VISITORS PRESENT:

Julie Davis, CEO KCVB

Colby Eckols, Hilltop Securities

1. PUBLIC COMMENTS: None

2. CONSIDERATION AND POSSIBLE ACTION:

2.A. Fiscal Year 2024 Budget presentation (Water Fund, Water Asset Replacement Funds, Water Debt Service Fund, Water Capital Projects, General Capital Projects, Hotel Occupancy Tax Fund, Library Memorial Fund, Grant Fund, Other).

Julie Behrens introduced the item, and Julie Behrens, Trina Rodriguez, Michael Hornes, Stuart Barron, Kyle Burow, Kim Meismer, and Julie Davis presented information and responded to questions by City Council.

At 10:24 a.m., Mayor Eychner recessed open workshop.

At 10:37 a.m., Mayor Eychner reconvened open workshop.

2.B. Creation and use of Tax Increment Reinvestment Zones.

Colby Eckols with Hilltop Securities, Mike Hayes, Michael Hornes, and Julie Behrens presented information and responded to questions.

By general consensus of City Council, staff is to proceed forward with exploring the development of a Tax Increment Reinvestment Zone.

3. **EXECUTIVE SESSION:** Executive Session was not called nor convened.
3.A Economic Development projects update: Project Mount Saddle, Project Windridge (551.071, 551.087)

Item 3.A. was not discussed.

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

ADJOURN: The workshop adjourned at 11:17 a.m.

APPROVED BY COUNCIL: _____

APPROVED:

Judy Eychner, Mayor

ATTEST:

Shelley McElhannon, City Secretary



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

SUBJECT: Ordinance No. 2023-23. An ordinance amending Chapter 26 "Buildings and Building Regulations", Article IX "Building Board of Adjustment and Appeals" of the Code of Ordinances, City of Kerrville, Texas; by amending requirements applicable to alternate members, making consistent the number of board members, amending the meeting schedule,, and revising the requirement for a quorum; containing a cumulative clause; containing a savings and severability clause; establishing an effective date; and providing other matters related to the subject.

AGENDA DATE OF: July 25, 2023

DATE SUBMITTED: July 13, 2023

SUBMITTED BY: Guillermo Garcia

EXHIBITS:

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

PAYMENT TO BE MADE TO: N/A

Kerrville 2050 Item? No

Key Priority Area N/A

Guiding Principle N/A

Action Item N/A

SUMMARY STATEMENT:

This ordinance is amending Sec. 26-250 by amending sub-sections (c) Alternates, (e) Term of appointment, (j) Meeting; voting, and (l) Quorum. The City of Kerrville in the process of identifying new candidates for board members identified areas for improvement in the city code of ordinances to ensure better clarity to the rules that govern the Building Board of Adjustments and Appeals.

Sec. 26-250 (c) Alternates - is being amended to remove the requirement that alternate members must attend all meetings and are subject to the attendance requirements applicable to the board. The alternate board member will only be required to attend when a standing board member is not able to attend the meeting.

Sec. 26-250 (e) Term of appointment - is being amended to reflect the reduction of Board members in ordinance 2022-14 from seven regular board members and two alternates to five regular board members and two alternates. The current code states that the terms of four board members will expire on odd-numbered years and that the terms of the three regular board members will expire on even-numbered years. This amendment will change

the terms to three board members expiring on odd-numbered and two board members expiring on even-numbered years.

The City Council upon adoption of this amendment will appoint board members to the appropriate terms as necessary. The code states the following, "The city council may appoint members to the board, regular or alternate, for terms of lesser duration than two years when making the initial appointments or when otherwise necessary to comply with the provisions of this article."

Sec. 26-250 (j) Meetings; voting - is being amended by replacing, "Meetings of the board shall be held at least quarterly" to reflect a requirement that the board will meet when necessary.

Sec. 26-250 (l) Quorum - is being amended to reduce the number needed to attain a quorum from four to three voting members of the board. Additionally, adding a sentence that states, "The board should remain aware of the requirement specified in section 26-251, sub-section (f)."

The ordinance was last updated on March 22, 2022.

RECOMMENDED ACTION:

Approve Ordinance 2023-23 on first reading.

ATTACHMENTS:

[*20230725_Ord 2023-23 BBAA amendments.pdf*](#)

**CITY OF KERRVILLE, TEXAS
ORDINANCE NO. 2023-23**

AN ORDINANCE AMENDING CHAPTER 26 “BUILDINGS AND BUILDING REGULATIONS”, ARTICLE IX “BUILDING BOARD OF ADJUSTMENT AND APPEALS” OF THE CODE OF ORDINANCES, CITY OF KERRVILLE, TEXAS; BY AMENDING REQUIREMENTS APPLICABLE TO ALTERNATE MEMBERS, MAKING CONSISTENT THE NUMBER OF BOARD MEMBERS, AMENDING THE MEETING SCHEDULE, AND REVISING THE REQUIREMENT FOR A QUORUM; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; ESTABLISHING AN EFFECTIVE DATE; AND PROVIDING OTHER MATTERS RELATED TO THE SUBJECT

WHEREAS, City Council previously created a single, multi-trade board known as the Building Board of Adjustment and Appeals (“Board”), as found within Chapter 26, Article IX, of the City’s Code of Ordinances (the “Article”); and

WHEREAS, City Council created the Board to hear appeals, grant variances, and to recommend amendments to and the adoption of standardized building codes to be considered for adoption by Council; and

WHEREAS, due to some inconsistencies in the Article, to address an aspect of the duties of alternate members, and to better align the meeting schedule with the needs of the City, staff recommends amending the Article as provided; and

WHEREAS, City Council finds it to be in the public interest to amend Chapter 26, Article IX in the manner and for the reasons provided above;

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

SECTION ONE. Chapter 26 “Buildings and Building Regulations”, Article IX “Building Board of Adjustment and Appeals” of the Code of Ordinances of the City is amended by amending Section 26-250, subsection (c) with deleted language indicated by red, strikeout (~~deleted~~) as follows:

“Sec. 26-250. Building Board of Adjustment and Appeals.

⋮
⋮

(c) *Alternates.* In an effort to obtain a quorum, increase efficiency, or for other reasons, the city council shall appoint two alternate members to the board. Each alternate member shall meet any one of the qualification provisions applicable to regular members. An alternate member shall serve only in the absence of one or more regular members when requested to do so by the chief building official so

that all cases considered by the board are heard by a minimum of at least four members. Alternate members may only participate in meetings if called to act and shall then act as a regular member for the entire meeting. ~~Even where not called upon to act as a regular member, alternate members shall attend all meetings and are subject to the attendance requirements applicable to the board.~~"

SECTION TWO. Chapter 26 "Buildings and Building Regulations", Article IX "Building Board of Adjustment and Appeals" of the Code of Ordinances of the City is amended by amending Section 26-250, subsection (e) with deleted language indicated by red, strikeout (~~deleted~~) and new language indicated by blue, underline (addition) as follows:

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

.(.)

(e) *Term of appointment.* All regular and alternate members of the board shall be appointed to serve two-year terms beginning on September 1 and ending on August 31 of the appropriate years. The terms of ~~four~~ three of the regular members appointed shall expire in odd-numbered years. The terms of the remaining ~~three~~ two regular members shall expire in even-numbered years. The expiration of the term for each alternate, if any, shall alternate between an even and odd year. The city council may appoint members to the board, regular or alternate, for terms of lesser duration than two years when making the initial appointments or when otherwise necessary to comply with the provisions of this article. ~~For purposes of making initial appointments and to stagger the terms, council shall appoint the regular members meeting the qualifications of subsection (b)(1), (2), (6), and (7) for terms not to exceed one year and shall appoint the regular members meeting the qualifications of subsection (b)(3), (4), and (5) for terms not to exceed two years.~~"

SECTION THREE. Chapter 26 "Buildings and Building Regulations", Article IX "Building Board of Adjustment and Appeals" of the Code of Ordinances of the City is amended by amending Section 26-250, subsection (j) with deleted language indicated by red, strikeout (~~deleted~~) and new language indicated by blue, underline (addition) as follows:

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

.(.)

(j) *Meetings; voting.* Meetings of the board shall be held ~~at least quarterly~~, at the call of the chair, and at such other times as ~~the members of the board determine required for the board to fulfill its duties as provided herein~~. All board members, regular and an alternate member(s), but only where the alternate is substituting for and acting as a regular member, shall be voting members and have the right,

duty, and obligation to vote on all matters that come before the board except for matters which involve a board member's company or employer, a board member's workmanship, or where prohibited by this article or law. A majority of members present and voting shall be necessary to constitute an official action of the board unless as provided herein."

SECTION FOUR. Chapter 26 "Buildings and Building Regulations", Article IX "Building Board of Adjustment and Appeals" of the Code of Ordinances of the City is amended by amending Section 26-250, subsection (l) with deleted language indicated by red, strikeout (~~deleted~~) and new language indicated by blue, underline (addition) as follows:

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

·
·
·

(l) *Quorum.* ~~Four~~ Three voting members of the board, which may include an alternate member(s) but only where substituting for and acting as a regular member, shall constitute a quorum for the transaction of business. The board should remain aware of the requirement specified in section 26-251, subsection (f).

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

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

SECTION SEVEN. 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. City Council hereby declares that it would have passed this Ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

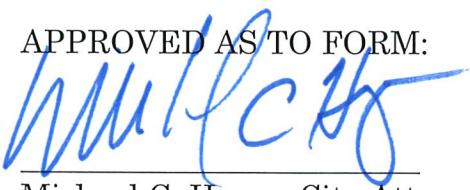
SECTION EIGHT. This Ordinance shall become effective immediately upon approval.

PASSED AND APPROVED ON FIRST READING, this the ___ day of
_____, A.D., 2023.

PASSED AND APPROVED ON SECOND AND FINAL READING, this
the ___ day of _____, A.D., 2023.

Judy Eychner, Mayor

APPROVED AS TO FORM:



Michael C. Hayes, City Attorney

ATTEST:

Shelley McElhannon, City Secretary



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

SUBJECT: Resolution No. 24-2023. A Resolution providing for the City's approval or disapproval of the Kerr Central Appraisal District's Fiscal Year 2024 budget.

AGENDA DATE OF: July 25, 2023 **DATE SUBMITTED:** June 26, 2023

SUBMITTED BY: Julie Behrens, Director of Finance

EXHIBITS:

Expenditure Required:	Remaining Budget Balance in Account:	Amount Budgeted:	Account Number:
N/A	NA FY2024 Budget	N/A	N/A

PAYMENT TO BE MADE TO: N/A

Kerrville 2050 Item? No

Key Priority Area N/A

Guiding Principle N/A

Action Item N/A

SUMMARY STATEMENT:

The Kerr Central Appraisal District (KCAD) provides appraisal services to the City of Kerrville and other taxing entities, including property valuations, annual reporting, and certified property tax rolls which are utilized to help formulate the property tax rate. Each taxing entity pays a portion of the KCAD budget, according to the entities portion of overall valuation. City Council has the authority to approve KCAD budget or provide a veto vote. All taxing entities have the same authority. The Chief Appraiser will be available if any questions.

RECOMMENDED ACTION:

Approve Resolution No. 24-2023.

ATTACHMENTS:

[20230725_Reso 24-2023 KCAD FY24 budget.pdf](#)
[20230725_KCAD_FY2024_Proposed_Budget.pdf](#)

CITY OF KERRVILLE, TEXAS
RESOLUTION NO. 24-2023

**A RESOLUTION PROVIDING FOR THE CITY'S APPROVAL OR
DISAPPROVAL OF THE KERR CENTRAL APPRAISAL DISTRICT'S
FISCAL YEAR 2024 BUDGET**

WHEREAS, the Kerr Central Appraisal District ("KCAD") has submitted its proposed fiscal year 2024 budget to the City Council for consideration; and

WHEREAS, pursuant to state law, City Council must consider KCAD's budget and in the event Council does not approve, it must indicate this action via a resolution; and

WHEREAS, the City Council finds it to be in the public interest to either approve or disapprove of said proposed budget as indicated below;

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

The Kerr Central Appraisal District's proposed fiscal year 2024 budget, as set forth in **Exhibit A**, is _____ (*APPROVED OR DISAPPROVED*).

PASSED AND APPROVED ON this the _____ day of _____, A.D., 2023.

Judy Eychner, Mayor

ATTEST:

Shelley McElhannon, City Secretary

APPROVED AS TO FORM:



Michael C. Hayes, City Attorney

2024 Proposed Budget

Kerr Central Appraisal District

P.O. Box 294387
212 Oak Hollow Dr
Kerrville, TX 78029
(830) 895-5223

BOARD MEMBERS

Carter Crain, Chairman
Bob Reeves, CTAC, Vice-Chairman
Eric Lantz, Secretary
Patrick Freedle
Lary Priour
Jeff Talarico

Sharon Constantinides, RPA, CCA
Chief Appraiser

Line	Item	2023	2024	\$ Diff	% Diff	% Total
5006	Salaries	\$585,700	\$609,730	\$24,030	4.10%	49.18%
5010	Employer Portion of Ret	\$48,336	\$50,319	\$1,983	4.10%	4.06%
5012	Medicare Insurance	\$8,493	\$8,841	\$348	4.10%	0.71%
5015	Employee Medical Insur	\$130,342	\$135,247	\$4,905	3.76%	10.91%
5016	TX Employment Comm.	\$1,500	\$1,500	\$0	0.00%	0.12%
5017	Disability Insurance	\$8,750	\$8,750	\$0	0.00%	0.71%
5030	Appraisal Review Board	\$22,500	\$22,500	\$0	0.00%	1.81%
5034	Vehicle Replace. Res.	\$8,000	\$8,000	\$0	0.00%	0.65%
5035	Travel, Mileage & Maint	\$18,000	\$18,000	\$0	0.00%	1.45%
5040	Annual Audit	\$10,750	\$11,850	\$1,100	10.23%	0.96%
5045	Mapping Expense	\$17,968	\$19,547	\$1,579	8.79%	1.58%
5055	Debt Service-Building	\$61,680	\$61,680	\$0	0.00%	4.97%
5070	Leased Equipment	\$6,350	\$6,350	\$0	0.00%	0.51%
5075	Telephone & Monitoring	\$4,390	\$4,390	\$0	0.00%	0.35%
5080	Utilities	\$7,800	\$8,350	\$550	7.05%	0.67%
5085	Facilities Maintance	\$13,672	\$16,103	\$2,431	17.78%	1.30%
5090	Consultant - Appraisal	\$63,000	\$64,200	\$1,200	1.90%	5.18%
5100	Legal & Consultants	\$15,000	\$15,000	\$0	0.00%	1.21%
5102	Legal ARB	\$2,000	\$2,000	\$0	0.00%	0.16%
5105	Liab-Workers Comp-Bld	\$9,600	\$10,600	\$1,000	10.42%	0.85%
5110	Taxpayer Assist & Ed	\$4,000	\$4,000	\$0	0.00%	0.32%
5190	Appraisal Guides & Tool	\$6,000	\$6,000	\$0	0.00%	0.48%
5120	Schools/Employee Ed.	\$7,500	\$7,500	\$0	0.00%	0.60%
5130	Postage	\$30,000	\$35,000	\$5,000	16.67%	2.82%
5135	Printing	\$15,000	\$15,000	\$0	0.00%	1.21%
5136	Professional Dues	\$2,520	\$2,520	\$0	0.00%	0.20%
5140	Office Supplies	\$9,000	\$9,000	\$0	0.00%	0.73%
5145	Furni., Fixture & Equip	\$6,000	\$6,000	\$0	0.00%	0.48%
5150	Board of Directors	\$1,200	\$1,200	\$0	0.00%	0.10%
5155	Equip. Maint & Reserve	\$1,000	\$1,000	\$0	0.00%	0.08%
5170	Building Reserve	\$2,500	\$2,500	\$0	0.00%	0.20%
5180	Software Support	\$57,365	\$66,993	\$9,628	16.78%	5.40%
5200	Banking Fees	\$200	\$200	\$0	0.00%	0.02%
TOTAL	TOTALS	\$1,186,116	\$1,239,870	\$53,754	4.53%	100.00%

5006 Salaries:

* Indicates Registered Professional Appraiser (RPA) designation through the Texas Department Of Licensing and Registration.

Positions	2023	2024	Years of Experience
Chief Appraiser*	\$97,500	\$102,375	38
Deputy Chief*	\$62,500	\$65,625	14
Appraisal Manager*	\$60,000	\$63,000	22
Operations Manager*	\$60,000	\$63,000	21
GIS/Abstractor*	\$62,250	\$63,000	25
BPP Appraiser*	\$43,200	\$45,360	6
Appraiser-II	\$39,250	\$41,210	2
AG Appraiser-RPA*	\$44,750	\$46,985	9
Appraiser-III	\$40,500	\$42,525	3
Appraiser-I	\$36,500	\$38,325	1
Exemption Clerk	\$36,500	\$38,325	1
Excess Funds	\$2,750	0	
TOTALS	\$585,700	\$609,730	

Total Benefits:

Position	2023 Salary	Medical	Retirement	Medicare	Unemp	Disability	Totals
Chief Appraiser	\$102,375	\$12,295	\$8,190	\$1,484	\$136	\$795	\$125,276
Deputy Chief	\$65,625	\$12,295	\$5,250	\$952	\$136	\$795	\$85,053
Appraisal Mgr	\$63,000	\$12,295	\$5,040	\$914	\$136	\$795	\$82,180
Operations Mgr	\$63,000	\$12,295	\$5,040	\$914	\$136	\$795	\$82,180
BPP Appraiser	\$45,360	\$12,295	\$3,629	\$658	\$136	\$795	\$62,873
Appraiser-III	\$42,525	\$12,295	\$3,402	\$617	\$136	\$795	\$59,770
AG Appr-RPA	\$46,985	\$12,295	\$3,759	\$681	\$136	\$795	\$64,651
Appraiser-II	\$41,210	\$12,295	\$3,297	\$598	\$136	\$795	\$58,331
Appraiser I	\$38,325	\$12,295	\$3,066	\$556	\$136	\$795	\$55,173
GIS/Abstractor	\$63,000	\$12,295	\$5,040	\$914	\$136	\$795	\$82,180
Exemp Spec	\$38,325	\$12,295	\$3,066	\$556	\$136	\$795	\$55,173
Totals	\$609,730	\$135,247	\$48,779	\$8,841	\$1,500	\$8,750	\$812,847

It is in the best interest of taxpayers as well as the taxing entities for the district to retain well trained and educated employees. Hiring from other districts for appraisers with an RPA designation and employees with experience and training has heightened due to the Comptroller's MAPS Review. The time required for an employee to earn their RPA designation takes approximately 5 years at a cost of more than \$20,000 to the district. It is vital that Kerr CAD remain competitive with other appraisal districts. There will be a total of 11 staff positions this year unchanged from last year.

The total salary line item for 2024 is \$609,730 which reflects an increase of 4.1% from 2023. The increases reflect wage adjustments to put Kerr CAD salaries in line with other districts. We are required by the Methods Assistance Program administered by the State of Texas Property Tax Assistance Division to display each employee's salary and benefits as well as the total salary and benefits for each employee. The total for salaries plus benefits is \$812,847 an increase of 3.99% over 2023.

5010 - Employers Retirement: KCAD has an independent employee retirement plan through John Hancock. All employees are required to participate in this plan. The Kerr CAD Board of Directors has elected to fund 8% of the employee's salary for their retirement plan. Employees also match an 8% contribution from their salary. Details as shown below:

Total Salaries	\$	609,735
KCAD Matching Percentage	\$	<u>X 0.08</u>
KCAD Contribution	\$	48,779
Administration Fee	\$	<u>1,540</u>
TOTAL	\$	50,319

5012 - Employer Medicare: KCAD is responsible for the Medicare tax on each of the employee's wages. This rate is equal to 1.45 percent of the first \$147,000 paid to each employee per year. Details of this item are as follows:

Total Salaries	\$ 609,735
Medicare Rate	<u>x 0.0145</u>
TOTAL	\$ 8,841

5015 - Employee Medical Insurance: Kerr CAD provides health insurance to its employees through the Texas Association of Counties. The carrier for Texas Association of Counties is Blue Cross / Blue Shield. The Texas Association of Counties rates for the 2023-2024 showed an increase of 3.76%.

KCAD Contribution Per Month	\$1,024.60
Number of Employees	<u>x 11</u>
Total Monthly Contribution	\$ 11,270.60
Number of Months	<u>x 12</u>
TOTAL Estimate	\$135,247

5016 - Texas Employment Commission: KCAD is responsible for the payment of each employee's unemployment tax through the Texas Workforce Commission. This tax is a percentage of the first \$9,000 of the employee's quarterly salary. These rates change annually and are determined by how much the government employees' group has withdrawn for unemployment benefits. Based on the previous year, the line item will remain \$1,500.

5017 -Disability Insurance: The KCAD Board of Directors has elected to pay disability insurance in lieu of social security for KCAD employees. New employees will be under the same vesting requirements as other benefits. The line item will remain \$8,750.

5030 - Appraisal Review Board: KCAD is responsible for the Appraisal Review Board member's stipends. There are five members who serve on the ARB. This line item covers the ARB member's salary, travel, and training expenses and other expenses related to this board. The ARB is paid \$130 per full day and \$75 per half day. This line item will remain \$22,500 for this year.

5034 - Vehicle Replacement Reserve: The allocated amount for vehicle replacement will remain at \$8,000 for this year.

5035 - Travel and Mileage: The heaviest driving period for the CAD is the fall and winter months during our appraisal period. This line item also includes maintenance and tires. This item also includes other travel expense and also pertains to meals and hotel expense when employees are sent to school. The line item will remain at \$18,000 for this year.

5040 - Annual Audit: Section 6.063 of the Property Tax Code requires that the district have an annual audit by a Certified Public Accountant. The 2023 financial year audit will be conducted in 2024. The line item will increase by \$1,100 to \$11,850 for 2024.

5045 - Mapping Expense: In previous years, Kerr CAD along with Kerr County and Kerr 911 cooperated in funding a GIS mapping system called Eagleview (Pictometry). The system is a patented information system that combines aerial imaging with a software system allowing an appraiser to view and measure any structure, intersection, fire hydrant, tree or any feature in the county from a laptop or workstation. This technology has enabled the district to increase productivity, cut down on field trips and enhance appraisal of existing as well as the discovery of new taxable property. The investment in this system began in 2009. New flyover photos are taken every three years with the last scheduled flyover being completed in 2021. The next flyover is scheduled to be flown in January 2024. The Changefinder Technology enables the software to automatically identify structures that have been altered as well as identifying new structures and ones that have been removed. The line item will increase by \$1,579 to \$19,547 for 2024.

Mapping Supplies	\$3,000
Flyover Mapping	\$11,225
Changefinder Technology	\$5,322
Total	\$19,547

5055 – Debt Service (Building): Kerr CAD began construction on the new building May 2017 and moved into new facility December 2017. A construction loan was executed for a period of 24 months with payments of \$4,251.94 thru April 2019. At the end of the 24-month period, the remaining principal after a lump sum payment of \$350,000 rolled over into a permanent 20-year loan with payments of \$5,139.98 starting May 2019. The lump sum payment was from the sale of the old building along with the building reserve that the entities had allowed the district to retain in previous years. The line item will remain at \$61,680 for 2024.

5070 - Leased Equipment: The CAD leases a copy machine and a postage machine. The line item will remain at \$6,350 for 2024.

5075 - Telephone: This item includes basic telephone service, long distance service, and Internet subscription. Additional lines were added in 2018 for the fire alarm and Appraisal Review Board phone hearings that are required to be provided. Also included in this line item are the monitoring fees for fire and security. The line item remains at \$4,390.

5080 - Utilities: The District's utility expense covers city water, sewer and electricity. The line item increases by \$550 to \$8,350 for 2024.

5085 - Facilities Maintenance: Building and grounds maintenance includes trash pickup, building cleaning, lawn care and pest control. Due to the increase in cost, this line item is increased by \$2,431 to \$16,103 for 2024. The details of this maintenance are as follows:

<u>Expense</u>	<u>\$/Month</u>	<u>\$/Year</u>
Trash Pickup	\$ 60	\$ 720
Janitorial Service	\$600	\$7,200
Lawn Service	\$100	\$1,200
Annual Fire Inspection		\$ 30
Skelton Fire Alarm		
Monitoring, testing & Annual Inspection		\$2,200
Pest Control	\$63.25/Quarter	\$ 253
Unifirst (Rugs & Restroom Supplies)		\$4,300
Document Shredding		\$ 200
TOTAL		\$16,103

5090 - Consultant – Appraisal: KCAD contracts out the appraisals on utilities, minerals, pipelines, and industrial properties to the industrial appraisal firm of Capitol Appraisal Group of Austin Texas. The annual contract amount for Kerr CAD's utilities, mineral, pipelines and industrial properties for this year's budget is \$16,200. Kerr CAD also contracts with Eagle Appraisal and Consulting a professional tax appraisal firm that appraises the commercial properties in Kerr County. Beginning 2021, the Eagle Appraisal and Consulting contract included the appraisal of apartments within Kerr County. Many appraisal districts are using contractors as a cost-efficient method of ensuring their values are meeting the stringent requirements of the Comptroller's Property Value Study and the Methods Assistance Program Study. Contracting is a valuable tool in helping ensure that all taxpayers are treated equitably as well keeping expenses down. The contract amount for Eagle Appraisal and Consulting for 2024 is \$45,000. A recap of the total for this line item is below:

Capitol Appraisal Group	\$16,200
Eagle Appraisal and Consulting	\$45,000
Litigation Consultant Fee	\$ 3,000
Total	\$64,200

5100 - Consultant – Legal & Expert Witness: KCAD changed law firms June 2017 to Perdue, Brandon, Fielder, Collins & Mott L.L.P. The monthly retainer fee is \$250. The fees are \$250/hour for attorneys in regard to litigation and \$95/hour for paralegal and legal secretarial work. Other related expenses such as travel expenses as needed are paid by the district. The line item will remain at \$15,000 for 2024.

5102 – Legal ARB : Legislation has mandated Appraisal Review Boards retain separate legal counsel from Appraisal Districts. Historically the need for legal counsel for the Kerr Appraisal Review Board has been minimal. The line item will remain at \$2,000 for 2024.

5105 - Liability & Workers Compensation – Building, FF&E Insurance: This line item covers workers compensation, general liability, automotive liability, errors and omissions, and real and personal property insurance as well as liability related to our retirement program. The carrier for this insurance is the Texas Municipal League Intergovernmental Risk Pool (TML). The line item will increase by \$1,000 to \$10,600.

5110 - Taxpayer Assistance & Education: This line item includes required newspaper advertisements, , tax workshops and related education & assistance directed to taxpayer/appraisal district relations. The line item will remain at \$4,000 for 2024.

5115 - Appraisal Guides & Tools: This line item includes property asset listings, appraisal guides and information services. The line item will remain \$6,000 for 2024.

5120 - Schools and Employee Education: According to Section 5.04, of the Property Tax Code, an appraisal district shall reimburse an employee for all actual and necessary expenses, tuition, other fees and costs of materials incurred in attending, with the Chief Appraiser's approval, a course or training program conducted or by the Texas Department of Licensing and Regulation. The item remains \$7,500 for 2024.

5130 - Postage: Kerr CAD uses an outside mailing firm to print and mail the required appraisal notices. This saves the district some postage and helps ensure a timely mailing of appraisal notices. Kerr CAD elected to mail notices only to property owners whose values increased by more than \$1,000, had a change of ownership, filed a rendition or had new account created for tax year. Significant savings have occurred since this practice was initiated but postage cost have continued to increase along with the cost of being required to send state mandated notices by certified mail. The line item will increase by \$5,000 to \$35,000 for 2024.

5135 - Printing: This line item includes expenses such as printing of Notices of Appraised Value. The state mandated additional mailings per SB2 to begin in 2021. This item remains at \$15,000 for 2024.

5136 - Dues: This line item is devoted to the registration of the district and employees with different state agencies and trade organizations. Registration with the Texas Department of Licensing and Regulation is a requirement by law. Affiliation with the Texas Association of Appraisal Districts allows KCAD to enroll in state classes for reduced tuition and keeps the district informed of changing rules and laws. Being a member of TAAD also requires us to be a member of the local Southwest Chapter. Membership in the International Association of Assessing Officers is now required by the MAPS review and also requires membership in the Texas Association of Assessing Officers. The district receives a discounted price for items purchased through the Texas Building & Procurement Commission. The district also pays a membership for the Visa charge card. A detailed cost description of this line item follows:

Texas Department of Licensing & Regulation	\$ 450
Texas Association of Appraisal Districts	\$1,500
Texas Association of Appraisal Districts Southwest Chapter	\$ 75
International Association of Assessing Officers	\$ 210
Texas Association of Assessing Officers	\$ 90
Texas Building & Procurement Commission	\$ 100
Visa Charge Membership	<u>\$ 35</u>
TOTAL	\$2,460

5140 - Office Supplies: This line item includes all miscellaneous office supplies used in the district. These items include paper, envelopes, writing utensils, toner cartridges, and other supplies. This line item remains at \$9,000 for 2024.

5145 - Furniture, Fixtures & Equipment: This line item includes upgrading and replacement of desktop computers and printers. Also providing tablets or laptops along with electronic measuring devices for use in the field. This line item remains at \$6,000 for 2024.

5150 - Board of Directors: This line item is utilized to purchase director manual and reference material for the Board of Directors. A portion of this line item is also utilized to purchase awards of appreciation to outgoing board members and name plaques. Because of increased duties, responsibilities as well as increased liability associated with being a board member this line item includes education for board members. The line item will remain at \$1,200.

5155 - Equipment Maintenance: This item includes the maintenance of PC computers, networks, postage machine and copy machines. The line item will remain at \$1,000.

5170 - Building Reserve: The district used this reserve for the land purchase and some of the expenses related to the construction of the new facility. The reserve was also used as part of the lump sum payment for the building loan that was made April 2019. The reserve fund will continue to be used for any future building expenses. The line item will remain at \$2,500.

5180 - Software Support – True Automation: Kerr CAD converted their old appraisal computer system to True Automation in October of 2006. True Automation is the largest CAD appraisal software company in the state. True Automation calls their system the PACS System. This line item provides for continuing maintenance and support of the PACS System by True Automation. This system contains active tax records and rolls for each taxing entity and individual property owner in the county housing almost forty thousand (40,000) property tax parcels. Every property account is recorded, updated, and appraised using this system and the tax roll is generated resulting in the values used to levy taxes for every taxing entity and taxpayer serviced by Kerr CAD. True Automation has notified the district that the software support and maintenance for this year will be increasing. The line item will increase to \$66,993 for 2024.

PACS System	\$64,343
Online Backup	\$2,650
Total	\$66,993

5200 – Banking Fees: We are being assessed service charges on our bank account which will remain \$200 annually.

Note: The “estimated” entity allocation is shown on the next page which is based on the 2022 values and tax rates. The “official” entity allocation will be available after the certification of the 2023 values and the 2023 tax rates have been adopted by the taxing entities.

	2022 Cert Net Tax or Freeze Adj. Tax	2022 Tax Rate	Levy	Tax on Freeze	Total Levy	% of Total Levy	2024 Allocation
City of Ingram	\$122,930,834	0.4329	532,167.58		\$532,167.58	0.4967%	6,158.63
City of Kerrville	\$2,067,265,318	0.5752	11,890,910.11	3,497,869.12	\$15,388,779.23	14.3636%	178,090.18
Kerr emerg. Dist. #1	\$924,668,008	0.0146	135,001.53		\$135,001.53	0.1260%	1,562.34
Kerr Emerg. Dist. #2	\$224,465,394	0.0309	69,359.81		\$69,359.81	0.0647%	802.68
Kerr County	\$4,890,008,433	0.3798	18,572,252.03	6,730,944.73	\$25,303,196.76	23.6176%	292,827.06
Lateral Roads	\$4,874,447,671	0.0253	1,233,235.26	486,565.12	\$1,719,800.38	1.6052%	19,902.79
Lake Ingram Estates Rd	\$17,546,097	0.1335	23,424.04		\$23,424.04	0.0219%	271.08
Center Point ISD	\$380,832,968	0.8546	3,254,598.54	758,517.77	\$4,013,116.31	3.7458%	46,442.71
Comfort ISD	\$182,029,534	1.14796	2,089,626.24	930,628.36	\$3,020,254.60	2.8191%	34,952.59
Divide ISD	\$93,390,023	0.8236	769,160.23	67,789.23	\$836,949.46	0.7812%	9,685.79
Harper ISD	\$62,570,701	0.8546	534,729.21	165,965.72	\$700,694.93	0.6540%	8,108.95
Hunt ISD	\$519,078,860	0.9246	4,799,403.14	880,234.82	\$5,679,637.96	5.3013%	65,728.92
Ingram ISD	\$639,434,229	1.1346	7,255,020.76	1,818,806.12	\$9,073,826.88	8.4694%	105,008.95
Kerrville ISD	\$2,745,071,295	1.0346	28,400,507.62	9,814,624.49	\$38,215,132.11	35.6693%	442,253.40
Medina ISD	\$14,645,933	1.0806	158,263.95	74.02	\$158,337.97	0.1478%	1,832.40
Upper Guadalupe River	\$7,123,674,198	0.0159	1,132,664.20		\$1,132,664.20	1.0572%	13,108.02
Headwaters Groundwater	\$7,123,674,198	0.007003	498,870.90		\$498,870.90	0.4656%	5,773.30
Kerr Emerg Dist #3	\$514,533,809	0.1	514,533.81		\$514,533.81	0.4803%	5,954.56
Kerr Emerg Dist #4	\$607,313,561	0.02	121,462.71		\$121,462.71	0.1134%	1,405.66
TOTAL EST LEVY			81,985,191.67	25,152,019.50	\$107,137,211.17	100.000%	1,239,870.00
2024 Budget							\$1,239,870



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

SUBJECT: Kerrville Kerr-County Joint Airport Board Proposed Budget for Fiscal Year 2024.

AGENDA DATE OF: July 25, 2023 **DATE SUBMITTED:** July 17, 2023

SUBMITTED BY: Julie Behrens, Director of Finance

EXHIBITS:

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

PAYMENT TO BE MADE TO: N/A

Kerrville 2050 Item? No

Key Priority Area N/A

Guiding Principle N/A

Action Item N/A

SUMMARY STATEMENT:

The Kerrville-Kerr County Joint Airport Board (KKCJAB), pursuant to Interlocal Agreement #2022-48, is required to present and receive approval for the operational and capital budget of the KKCJAB. Both budgets have been submitted to and discussed with City staff. Staff recommends approval of the KKCJAB Operational Budget, which requires no funding from either the City or the County and the request for support of the KKCJAB Capital Budget, which requires both the City and the County to contribute \$350,000 for potential land acquisition for future expansion. The KKCJAB is eligible for TxDot reimbursement through a land acquisition program for a portion of this contribution, should the land be acquired. In the event that reimbursement is received, those funds will be reimbursed to the City and the County.

RECOMMENDED ACTION:

Approve budget as presented.

ATTACHMENTS:

[20230725 AIRPORT BUDGET PROPOSED FY2024.pdf](#)

[20230725 City_Council FY2024 Proposed_Budget KKCJAB.pdf](#)

KERRVILLE-KERR COUNTY JOINT AIRPORT BOARD
FY2024 Proposed Budget

	FY2022 ACTUAL	FY2023 BUDGET	PROPOSED BUDGET	\$VARIANCE	%VARIANCE
47-APPORT REVENUES					
INTERGOVERNMENTAL REVENUE					
47-300-604 GRANTS	-	-	-	-	0.0%
47-300-605 CRRSSA Grant	59,000	-	-	-	0.0%
TOTAL INTERGOVERNMENTAL REVENUE	59,000	-	-	-	0.0%
LEASE/RENTAL INCOME					
47-325-350 AIRPORT LAND LEASES	43,470	45,000	63,200	18,200	40.4%
47-325-360 TERMINAL LEASES	18,452	16,000	21,100	5,100	31.9%
47-325-402 AIRPORT LAND AND STRUCTURES	149,883	129,000	132,300	3,300	2.6%
47-325-601 1815 AIRPORT LOOP HANGAR and OFFICES	95,686	106,000	125,800	19,800	18.7%
47-325-603 T-HANGAR LEASES	125,484	143,000	152,000	9,000	6.3%
47-325-404 ROW HANGAR	-	-	24,300	24,300	0.0%
47-325-604 VEHICLE RENTAL SURCHARGE	4,296	3,600	3,600	0	0.0%
47-325-605 T-HANGAR STORAGE FACILITY LEASES	1,865	1,320	1,500	180	13.6%
47-325-625 PARKING LOT LEASES	2,094	1,500	1,500	-	0.0%
47-800-406 ADDITIONAL RENT REVENUE (1815 UTILITIES)	220	-	2,300	2,300	0.0%
TOTAL LEASE/RENTAL INCOME	441,449	445,420	527,600	82,180	18.5%
FUEL SALES - AVIATION					
47-350-601 FUEL FLOWAGE FEES	46,644	42,000	45,000	3,000	7.1%
47-350-602 OTHER	-	-	-	-	0.0%
TOTAL FUEL SALES	46,644	42,000	45,000	3,000	7.1%
PROCEEDS					
47-370-260 SURPLUS PROPERTY SALE	-	-	-	-	0.0%
47-370-975 INSURANCE PROCEEDS	68,130	-	-	-	0.0%
47-370-980 APPROPRIATED FUND BALANCE	-	-	-	-	0.0%
47-375-601 MISCELLANEOUS	2,500	-	2,000	2,000	0.0%
TOTAL PROCEEDS	70,630	-	2,000	2,000	0.0%
INTEREST INCOME					
47-380-601 INTEREST INCOME	-	-	-	-	0.0%
TOTAL INTEREST	-	-	-	-	0.0%
*** TOTAL REVENUES ***	617,723	487,420	574,600	87,180	17.9%

	FY2022 ACTUAL	FY2023 BUDGET	PROPOSED BUDGET	\$VARIANCE	%VARIANCE
47-APPORT EXPENSES					
SALARIES & BENEFITS (WITH COLA)					
47-700-101 AIRPORT MANAGER	93,531	94,537	97,385	2,848	3.0%
47-700-102 OFFICE PERSONNEL	23,779	44,952	46,470	1,518	3.4%
47-700-104 AIRPORT MAINTENANCE STAFF	31,846	45,902	47,420	1,518	3.3%
47-700-205 OVERTIME	841	-	(841)	-100.0%	
47-700-201 FICA	11,501	14,812	14,750	(62)	-0.4%
47-700-202 GROUP INSURANCE	13,016	30,188	31,500	1,312	4.3%
47-700-203 RETIREMENT	17,529	27,623	29,560	1,937	7.0%
47-700-204 WORKMAN'S COMP	1,162	1,576	1,970	394	25.0%
47-700-206 BASIC INSURANCE	106	-	570	570	0.0%
47-700-207 UNEMPLOYMENT INSURANCE	-	-	380	380	0.0%
TOTAL SALARIES & BENEFITS	192,470	260,431	270,005	9,574	3.7%
PROFESSIONAL DEVELOPMENT					
47-800-008 PROFESSIONAL DEVELOPMENT	3,248	4,000	7,500	3,500	87.5%
TOTAL PROFESSIONAL DEVELOPMENT	3,248	4,000	7,500	3,500	87.5%
SUPPLIES					
47-800-101 OFFICE SUPPLIES and EQUIPMENT	2,161	3,020	3,500	480	15.9%
47-800-102 SMALL TOOLS AND EQUIPMENT	1,992	2,000	2,500	500	25.0%
47-800-104 FUEL	2,620	3,000	4,500	1,500	50.0%
47-800-106 JANITORIAL SERVICES	6,756	7,200	13,000	5,800	80.6%
47-800-110 LANDSCAPING	5,563	4,000	8,000	4,000	100.0%
47-800-112 WEARING APPAREL	594	800	900	100	12.5%
TOTAL SUPPLIES	19,686	20,020	32,400	12,380	61.8%
MAINTENANCE					
47-800-200 MOWING	30,000	37,500	40,500	3,000	8.0%
47-800-201 BUILDINGS AND STRUCTURES REPAIRS	64,535	50,000	32,000	(18,000)	-36.0%
47-800-202 BUILDINGS AND STRUCTURES MAINTENANCE	10,277	9,000	10,000	1,000	11.1%
47-800-203 VEHICLE MAINTENANCE	2,922	3,000	3,000	-	0.0%
47-800-205 AIRSIDE MAINTENANCE	15,000	14,000	23,000	9,000	64.3%
47-800-215 STORM/WIND DAMAGE REPAIRS	68,130	-	-	-	0.0%
47-800-220 1815 HANGAR DOOR REPAIR	311,988	-	-	-	0.0%
TOTAL MAINTENANCE	502,852	113,500	108,500	(5,000)	-4.4%

OTHER					
47-800-302 PROPERTY INSURANCE (County & Airport Liability)	14,724	13,500	28,500	15,000	111.1%
47-800-303 LIABILITY INSURANCE (County & Airport D&O)	1,000	750	4,500	3,750	500.0%
47-800-304 OFFICE EQUIPMENT RENTAL	436	1,800	1,900	100	5.6%
47-800-305 OFFICE EQUIPMENT RENTAL GASB RTU	1,395		600	600	0.0%
47-800-307 MARKETING	683	3,000	2,000	(1,000)	-33.3%
47-800-311 LEGAL SERVICES	1,083	5,000	14,000	9,000	180.0%
47-800-312 PROFESSIONAL SERVICES	13,540	13,000	26,000	13,000	100.0%
TOTAL OTHER	32,890	37,050	77,505	40,455	109.2%
UTILITIES					
47-800-401 CELL PHONES	1,288	1,500	1,400	(100)	-6.7%
47-800-404 WATER & SEWER	1,527	2,500	7,000	4,500	180.0%
47-800-406 LIGHT AND POWER	18,010	16,000	17,000	1,000	6.3%
47-800-503 DUES AND SUBSCRIPTIONS	449	750	750	-	0.0%
TOTAL UTILITIES	21,274	20,750	26,150	5,400	26.0%
RESERVE AND CONTINGENCY					
47-800-508 RESERVE	-	-	11,290	11,290	100.0%
47-800-512 CONTINGENCY	-	22,400	21,500	(900)	-4.0%
47-800-515 TRANSFER OUT - FUND 48	300,000		-	-	0.0%
TOTAL RESERVE AND CONTINGENCY	300,000	22,400	32,790	10,390	46.4%
TERMINAL EXPENSES					
47-801-300 FIRE ALARM MONITORING/INSPECTIONS	4,117	4,600	4,750	150	3.3%
47-801-301 LIGHT & POWER	7,092	7,500	8,000	500	6.7%
47-801-302 PROPANE GAS	2,734	3,000	3,500	500	16.7%
47-801-303 WATER & SEWER	3,193	3,000	3,500	500	16.7%
TOTAL TERMINAL EXPENSES	17,136	18,100	19,750	1,650	9.1%
*** TOTAL EXPENSES ***	\$ 1,089,556	\$ 496,251	\$ 574,600	\$ 78,349	15.8%

Version D, Approved for Submission to City and County for review/discussion



Financial Highlights – Proposed Operations Budget FY 2024

Revenues

Leases:	\$ 529,600
<u>Fuel Fees:</u>	<u>\$ 45,000</u>
Total:	\$ 574,600



Expenses

Salaries, Benefits:	\$ 270,005
Prof Dev, Maint, Supplies	\$ 148,400
<u>Other: Utilities, Insurance</u>	<u>\$ 156,195</u>
Total:	\$ 574,600

1



Financial Highlights – Proposed Capital Budget FY 2024

Rollover Projects (FY 2023)	TxDOT	City of Kerrville	Kerr County	Airport	Total
Airport Planning Study	225,000	12,500	12,500		250,000
Fire Protection Study		17,500	17,500		35,000
Box Hangar (EIC Funding)		12,500	12,500		25,000
Rollover Project Totals:	225,000	30,000	30,000		297,000

New Projects (FY 2024)	TxDOT	City of Kerrville	Kerr County	Airport	Total
Land Purchase, 54 Acres RPZ Land*		350,000	350,000		700,000
TxDOT Environmental Assessment	225,000			25,000	250,000
Replace AWOS	187,500			62,500	250,000
Capital FY2024 Project Totals:	412,500	350,000	350,000	87,500	1,200,000

*Anticipated 90% Reimbursement from TxDOT in FY 2026

2



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

SUBJECT: Economic Improvement Corporation (EIC) FY2024 Proposed Budget.

AGENDA DATE OF: July 25, 2023 **DATE SUBMITTED:** July 19, 2023

SUBMITTED BY: Julie Behrens, Director of Finance

EXHIBITS:

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

PAYMENT TO BE MADE TO: N/A

Kerrville 2050 Item? No

Key Priority Area N/A

Guiding Principle N/A

Action Item N/A

SUMMARY STATEMENT:

The City of Kerrville Economic Improvement Corporation (EIC) approved the FY2024 Budget on July 13, 2023. The EIC budget includes projected revenues and expenditures along. Only projects currently in progress or committed are included in the budget. All projects approved by EIC are approved by City Council.

RECOMMENDED ACTION:

Approve budget as presented.

ATTACHMENTS:

[*20230725_EIC FY2024 Proposed Budget.pdf*](#)

[*20230725_Presentation FY24 EIC Proposed Budget.pdf*](#)

	FY2023 Budget	FY2023 Estimate	FY2024 Budget
Revenues			
Sales and Use Tax	5,262,270	5,257,641	5,262,270
Interest Income	28,373	312,102	161,000
Total Revenues	\$ 5,290,643	\$ 5,569,743	\$ 5,423,270
Expenditures			
Administrative			
Supplies and Miscellaneous	650	-	650
Legal Services	10,000	-	10,000
Training	-	-	10,000
Professional Services	200,000	200,000	205,000
Kerr Economic Development Corp.	312,500	312,500	343,750
Total Administrative	523,150	512,500	569,400
Debt Service			
Debt Service - Series 2015 (KSC)	602,850	602,850	605,700
Debt Service - Series 2019 Ref (River Trail)	251,291	251,291	251,506
Debt Service - Series 2020 Ref (River Trail)	231,000	231,000	233,500
Total Debt Service	1,085,141	1,085,141	1,090,706
Project Contributions			
Airport Projects	95,901	95,901	-
Sid Peterson Memorial Hospital	1,600,000	800,000	800,000
Outdoor Fitness Court	-	100,000	-
Downtown Utilities/Streetscape	-	275,000	125,000
Downtown River Trail	-	375,000	500,000
Travis Street Pump Station Upgrades	-	250,000	500,000
Total Projects	1,695,901	1,895,901	1,925,000
Total Expenditures	\$ 3,304,192	\$ 3,493,542	\$ 3,585,106

Net Revenue (Expenditures) \$ 1,986,452 \$ 2,076,201 \$ 1,838,164

ECONOMIC IMPROVEMENT CORPORATION

FY2024 PROPOSED BUDGET

1



FY2024 Proposed Budget Revenues

	FY2023 Budget	FY2023 Estimate	FY2024 Budget
Revenues			
Sales and Use Tax	5,262,270	5,257,641	5,262,270
Interest Income	28,373	312,102	161,000
Total Revenues	\$ 5,290,643	\$ 5,569,743	\$ 5,423,270

- Sales Tax Revenue – flat with FY2023
- Interest Revenue – conservative – earn 2.5% on average daily cash balance + ST investment income

2



FY2024 Proposed Budget Expenditures

	FY2023 Budget	FY2023 Estimate	FY2024 Budget
Expenditures			
Administrative			
Supplies and Miscellaneous	650	-	650
Legal Services	10,000	-	10,000
Training	-	-	10,000
Professional Services	200,000	200,000	205,000
Kerr Economic Development Corp.	312,500	312,500	343,750
Total Administrative	523,150	512,500	569,400
Debt Service			
Debt Service - Series 2015 (KSC)	602,850	602,850	605,700
Debt Service - Series 2019 Ref (River Trail)	251,291	251,291	251,506
Debt Service - Series 2020 Ref (River Trail)	231,000	231,000	233,500
Total Debt Service	1,085,141	1,085,141	1,090,706
Project Contributions			
Airport Projects	95,901	95,901	-
Sid Peterson Memorial Hospital	1,600,000	800,000	800,000
Outdoor Fitness Court	-	100,000	-
Downtown Utilities/Streetscape	-	200,000	200,000
Downtown River Trail	-	375,000	500,000
Travis Street Pump Station Upgrades	-	150,000	600,000
Total Projects	1,695,901	1,720,901	2,100,000
Total Expenditures	\$ 3,304,192	\$ 3,318,542	\$ 3,760,106
Net Revenue (Expenditures)	\$ 1,986,452	\$ 2,251,201	\$ 1,663,164

3

- COK – 2.5% increase over FY2023
- KEDC – 10% increase over FY2023
- Debt Service payments per debt schedule
- Budgeted for committed projects as of July 2023



Questions?





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

SUBJECT: State of City's Water System and its Water Resources.

AGENDA DATE OF: July 25, 2023 **DATE SUBMITTED:** July 14, 2023

SUBMITTED BY: David Barrera, Assistant Director of Public Works

EXHIBITS:

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

PAYMENT TO BE MADE TO: N/A

Kerrville 2050 Item? Yes

Key Priority Area W - Water / Waste-Water / Drainage

Guiding Principle N/A

Action Item W10.2 - Educate the public on current water and sewer usage

SUMMARY STATEMENT:

Presentation to address some recent inquiries and to provide a holistic view of our water system. Presentation to include methodology to sustain existing operations, supplies, constraints, and other measures. In addition, expand on how wells function, how permits are utilized, and how future planning is considered and the strategies we follow.

RECOMMENDED ACTION:

No action needed.



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

SUBJECT: Monthly Financial Report - Month-ended June 30, 2023.

AGENDA DATE OF: July 25, 2023 **DATE SUBMITTED:** May 30, 2023

SUBMITTED BY: Julie Behrens , Director of Finance

EXHIBITS:

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

PAYMENT TO BE MADE TO: N/A

Kerrville 2050 Item? No

Key Priority Area N/A

Guiding Principle N/A

Action Item N/A

SUMMARY STATEMENT:

RECOMMENDED ACTION:

N/A



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

SUBJECT: Appointment and removal of a member to the Building Board of Adjustment and Appeals. (Item eligible for Executive Session 551.074).

AGENDA DATE OF: July 25, 2023

DATE SUBMITTED: July 13, 2023

SUBMITTED BY: Shelley McElhannon, City Secretary

EXHIBITS:

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

PAYMENT TO BE MADE TO: N/A

Kerrville 2050 Item? No

Key Priority Area N/A

Guiding Principle N/A

Action Item N/A

SUMMARY STATEMENT:

Appointment of Board member:

One alternate member vacancy exist.

One application has been received: Wayne Uecker.

The interview team is Councilmember Garcia and Councilmember Harris.

Guillermo Garcia is staff liaison.

Removal of Board member:

In the City Board Rules and Procedures revised 9/26/2017:

Section 2. **Appointment/Removal Process.** Item 2.8 **Removal of Member.** Board members have no vested right or property interest in a board membership and the City Council may at any time remove any member or any board by a majority vote.

Section 3. **Responsibilities of Board Members.** Item 3.2. **Attendance.** Prior to an appointment to a board, an applicant should familiarize himself/herself with the board's meeting schedule. In order to be fully aware of issues before the board, it is imperative that members are faithful in their attendance at meetings. Any member who is absent from twenty-five percent (25%) of the board's regular meetings during the calendar year, or who is absent from any three (3) consecutive regular meetings, may be considered for removal by the City Council. The staff member must report a member's non-attendance to the City Council in writing, and the City Secretary shall notify the board member in writing that their non-attendance has been reported. However, a member whose absences are directly

related to a medical or family emergency may seek consideration from the board upon which they serve to qualify such absences as excused.

Staff liaison Guillermo Garcia advises that member Mike Asmus has not attended four of the four meetings held since being appointed to the board in March 2022. He has not responded to emails sent nor voicemails left by staff regarding attendance or absence. Guillermo Garcia recommends City Council consider the removal of Mike Asmus from the Building Board of Adjustment and Appeals.

Through email and USPS, the City Secretary's Office has notified Mike Asmus of board attendance requirements and City Council notification.

Term of Appointments:

During the pandemic of Covid-19, the board members were reappointed with a start date of 1/22/2021. The term of appointments for all of the board members needs to be addressed. The City Council under Sec. 26-250 (e) is authorized to, "...appoint members to the board, regular or alternate, for terms of lesser duration than two years when making the initial appointments or when otherwise necessary to comply with the provisions of this article." The terms for regular and alternate members shall be appointed to serve a two-year term beginning on September 1 and ending on August 31 of the appropriate years. The attached exhibit provides a recommendation for establishing a term of appointments for board members.

RECOMMENDED ACTION:

Appoint member(s), confirm term appointment, and staff recommends removal of the member from the Building Board of Adjustment and Appeals.

ATTACHMENTS:

[2023-07-18_BBAA Term Recommendation.pdf](#)

BBAA Term Recommendation					
Membership	Name	Initial Start Date	Re-Start Date	End Date	Recommend End Date
Member	Bob Rue	1/22/2021	1/22/2021	1/1/2024	8/31/2023
Member	Bruce Motheral	10/25/2016	1/22/2021	1/1/2024	8/31/2023
Member	Daniel Lowery	1/22/2021	1/22/2021	1/1/2024	8/31/2023
Member	Jennifer Hyde	1/22/2021	1/22/2021	1/1/2024	8/31/2024
Member	Mack Edmiston	1/1/2021	1/22/2021	1/1/2024	8/31/2024
Alternate	Vacant				
Alternate	Vacant				