

AGENDA FOR REGULAR MEETING

CITY OF KERRVILLE, TEXAS

ECONOMIC IMPROVEMENT CORPORATION

MONDAY, MARCH 18, 2013 AT 4:00 P.M.

KERRVILLE CITY HALL COUNCIL CHAMBERS

701 MAIN STREET, KERRVILLE, TEXAS

**AGENDA FOR REGULAR MEETING OF THE
CITY OF KERRVILLE, TEXAS
ECONOMIC IMPROVEMENT CORPORATION
MONDAY, MARCH 18, 2013, 4:00 P.M.
KERRVILLE CITY HALL COUNCIL CHAMBERS
701 MAIN STREET, KERRVILLE, TEXAS**

CALL TO ORDER

INVOCATION

1. VISITORS/CITIZENS FORUM:

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

2. APPROVAL OF THE MINUTES:

2A. Minutes of the regular meeting held February 25, 2013.

3. MONTHLY REPORTS:

3A. Monthly financials for February 2013. (staff)

3B. Capital projects update. (staff)

Harper Highway Project Phase II

Golf Course Improvements (Pavilion and Parking Lot Projects)

Downtown Utility Improvement Project

3C. Update regarding "Go" Team activities. (staff)

3D. Update on River Trail and Parks projects. (Rickert)

3E. Kerrville Economic Development Corporation (KEDC) Update regarding KEDC Activities. (Jonas Titus)

3F. Downtown Wireless Project. (staff)

The facility is wheelchair accessible and accessible parking spaces are available. Requests for accommodations or interpretive services must be made 48 hours prior to this event. Please contact the City Secretary's Office at 830-258-1118 for further information.

I do hereby certify that this notice of meeting was posted on the bulletin board at the city hall of the city of Kerrville, Texas, and said notice was posted on the following date and time March 14, 2013 at 4:00 p.m. and remained posted continuously for at least 72 hours preceding the scheduled time of the meeting.

Cheryl Brown

Deputy City Secretary, City of Kerrville, Texas

4. PUBLIC HEARINGS AND POSSIBLE ACTION:

4A. Funding agreement with Fox Tank Company for the expansion of its manufacturing operation in the City of Kerrville. (staff)

4B. Funding agreement with Texas Arts & Crafts Educational Foundation. (staff)

5. EXECUTIVE SESSION:

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

Sections 551.71, 551.072 and 551.087 :

- River Trail
- Funding agreement with Texas Arts & Crafts Educational Foundation

6. ADJOURNMENT

The facility is wheelchair accessible and accessible parking spaces are available. Requests for accommodations or interpretive services must be made 48 hours prior to this event. Please contact the City Secretary's Office at 830-258-1118 for further information.

I do hereby certify that this notice of meeting was posted on the bulletin board at the city hall of the city of Kerrville, Texas, and said notice was posted on the following date and time: March 14, 2013 at 4:00 p.m. and remained posted continuously for at least 72 hours preceding the scheduled time of the meeting.

Cheryl Brown

Deputy City Secretary, City of Kerrville, Texas

Agenda Item:

2A. Minutes of the regular meeting held February 25, 2013.

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

February 25, 2013

On Monday, February 25, 2013, the meeting of the directors of the City of Kerrville, Texas Economic Improvement Corporation, was called to order at 4:00 p.m. by David Wampler, President, in the City Hall Council Chambers, 701 Main Street, Kerrville, Texas.

Members Present:

David Wampler, President
Kenneth Early, Vice President (arrived at 4:04 p.m.)
Rex Boyland, Secretary (arrived at 4:02 p.m.)
Stacie Keeble
Polly Rickert
Gary Cochrane

Members Absent:

Larry Howard

City Executive Staff Present:

Todd Parton, City Manager
Kristine Ondrias, Assistant City Manager
Mike Hayes, City Attorney
Cheryl Brown, Deputy City Secretary
Mike Erwin, Finance Director
Sai Vongchampa, Budget/Purchasing Manager
Ashlea Boyle, Special Projects Coordinator
Malcolm Matthews, Director of Parks and Recreation
Charvy Tork, Director of Information Technology
Keith Magnell, Technical Support Analyst
Kimberly Meismer, Director of General Operations

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

Jonas Titas, Executive Director of the Kerrville Economic Development Corporation

INVOCATION: Given by Mr. Cochrane.

1. VISITORS/CITIZENS FORUM: No one spoke.

2. APPROVAL OF THE MINUTES:

2A. Minutes of the regular meeting held January 14, 2013 and the EIC Walking Tour held on February 8, 2013. Ms. Rickert moved for approval of the minutes of January 14, 2013, and February 8, 2013; Mr. Cochrane seconded the motion and it passed 4 to 0. (Mr. Early and Mr. Boyland arrived after the vote was taken.)

3. MONTHLY REPORTS:

3A. Monthly financials for December 2012: Mr. Vongchampa reported on the January 2013 financials. He reported that there was a sales tax revenue increase of 6.7% over January 2012, and that the increase was due to better economic conditions, as well as the increased sales tax revenue from Fox Tank and James Avery Craftsman. He also presented a break-down of the River Trail project; both the sources of the funding, and the expenditures of the project. He noted there was still an amount of \$747.00 due from the Hill Country Sports Shooting Center. A letter was sent to the HCSSC, and staff was waiting for a response.

3B. Capital Projects Update: Mr. Parton reported:
Harper Highway Project Phase II: The project was proceeding on schedule.

Golf Course Pavilion and Parking Lot Improvement Projects: Contracts had been signed for these projects, which should begin this week; and were to be completed before the season began in May. Mr. Parton also reported that it appeared that the projects would come in under budget.

Downtown Utility Improvement Project: Bob Keeling from KPUB reported that he had spoken with satellite and cable providers, and there was an estimate of a completion time frame for those providers to complete their portion of the work of 30 days after KPUB's work was finished. Mr. Erwin stated that the EIC had committed \$300,000.00 to this project.

3C. Update regarding "Go Team" activities:
Ms. Boyle reported that the "Go" Team met on February 18, 2013, and reviewed the funding application from Texas Arts and Crafts Educational Foundation. She reported that there were an anticipated 2-3 more "Go" Team meetings to be held in the near future regarding additional new prospects.

3D. Update on the River Trail and Parks projects:
Mr. Matthews reported Halff & Associates were preparing to begin Package B. He had spoken to KPUB regarding some solar panels for the park. He also reported that there were two bills currently before the state legislature regarding eminent domain, which could affect acquiring the easements for the River Trail. He would have an update on that, and the progress of Package B at the next EIC meeting.

3E. Update on Kerrville Economic Development Corporation: Mr. Titas reported that KEDC met with an aviation company regarding the possibility of relocating to Kerrville; and a west Texas manufacturing company that was considering bringing a machinist shop to Kerrville. He was still working with the wine industry people, and monitoring the new facility at Fox Tank. He had not completed the economic development guidelines he was asked to prepare at the last EIC meeting. He would finish preparing a proposal to present to the EIC at a future

meeting. He will also continue to work on the revolving loan program, and will bring a report to EIC soon.

4. DISCUSSION AND POSSIBLE ACTION:

4A. Funding agreement with Fox Tank Company for the expansion of its manufacturing operation in the City of Kerrville: The EIC deferred discussion of this matter to executive session.

4B. Funding application from the Texas Arts & Crafts Educational Foundation: Mark Haufler, President of the Texas Arts & Crafts Educational Foundation gave a brief presentation, and the EIC deferred the matter to executive session.

4C. Update on downtown wireless project: Mr. Parton reported that the wireless signal in City Hall was boosted to cover Peterson Plaza; he reviewed graphs indicating usage in that area. He estimated the cost of implementing full wireless coverage of the downtown area and Louise Hays Park at \$70,000.00 to \$80,000.00. He surveyed several cities that provided free wireless access, and found that many were “backing away” from that service for several reasons: availability of 4G and LTE services, free wireless was becoming less financially feasible, and the increasing danger of illegal activities related to wireless being made available to the public. Also, with Louise Hays Park closing for eighteen months, Mr. Parton opined that implementing free wireless access was not feasible at this time; rather, he suggested placing an amplifier in the parking garage and continuing to boost the City’s wireless signal from City Hall as a better option. After the park re-opens, perhaps the 4G and LTE coverage in the Kerrville area would be stronger, which may eliminate the need for free wireless access. The EIC directed staff to determine the cost of putting an amplifier in the parking garage, and report at a future meeting.

5. INFORMATION AND POSSIBLE ACTION:

5A. State of the City update: Mr. Parton reported on the City’s 5 year forecast for the general fund, including revenue, expenditures, current fund balance reserve, and reserve target through the FY18. He presented the General Fund revenue and expenditure trend for the balanced budget from 2002 through 2012. and the historical property tax rate. He outlined the City’s strategic plan, and the core infrastructure. He discussed the City’s Certificate of Convenience and Necessity from Texas Commission on Environmental Quality regarding water sales, and the City’s water supply. He reviewed the EIC’s revenue to debt service comparison, and sales tax sources.

Mr. Parton discussed holding a joint workshop meeting the City Council. He suggested the EIC hold a workshop prior to any joint meeting with the City Council. The EIC directed staff to determine a date agreeable to all, and set the workshop agenda.

6. EXECUTIVE SESSION:

Mr. Boyland moved that the Economic Improvement Corporation go into executive closed session under Section 551.071 (consultation with attorney), and Section 551.087 (deliberation regarding economic development negotiations); Ms. Keeble seconded the motion, and it passed 6-0 to discuss the following matters:

Sections 551.071, and 551.087:

At 5:15 p.m. the regular meeting recessed and the EIC went into executive closed session at 5:17 p.m. At 5:36 p.m. the executive closed session recessed and the Board returned to open session at 6:27 p.m.

Mr. Wampler announced that no action had been taken in executive closed session.

ACTION ON ITEMS DISCUSSED IN EXECUTIVE SESSION:

4A. Funding Agreement with Fox Tank Company (FTC) for the expansion of its manufacturing operation in the City of Kerrville: Ms. Rickert moved that the EIC approve the funding agreement with the following changes:

- Article 2 B (1), change the minimum level of employees to 30 full time employees by 120 days after receipt of a Certificate of Occupancy.
- Article 2 B (3), delete the sentence that states that each employee must be paid a minimum wage equal to \$19.00 per hour, and replace it with-" FTC will pay a minimum of \$1.2 million total gross payroll per year for employees related to this particular project."
- Item 2 C, change "full-time employees" to "full-time equivalent"; and change "month" to "quarter", with the report being due on or before the 30th day after the quarter ends.
- Amend Article 2, Section F, which stated "on or before December 31, 2013, FTC must receive ASME certification, and maintain such certification on an annual basis for the duration of the agreement" to "on or before December 31, 2013, FTC must apply for ASME certification," and delete the rest of that sentence.
- Article 8 G, modify the end of the term to be 2023, instead of 2022, to allow for a full 10-year term.

Ms. Keeble seconded, and the motion passed 6-0.

4B. Funding Request from Texas Arts and Crafts Educational Foundation:

Mr. Early moved that the EIC direct staff to prepare a funding agreement to fund the request from Texas Arts and Crafts Educational Foundation in the amount of \$15,500.00 for infrastructure costs associated with the 42nd annual official Texas Arts and Crafts Fair during the Memorial Day weekend at the River Star Events Park. Mr. Cochrane seconded and the motion passed 6-0.

ADJOURNMENT:

Mr. Wampler adjourned the meeting at 6:30 p.m.

APPROVED: _____

David Wampler, President

ATTEST:

Cheryl Brown
Deputy City Secretary

Agenda Item:

3A. Monthly financials for February 2013. (staff)

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

SUBJECT: EIC Financials

FOR AGENDA OF: March 18, 2013 **DATE SUBMITTED:** March 13, 2013

SUBMITTED BY: Sai Vongchampa **CLEARANCES:**
Budget & Purchasing Manager

EXHIBITS: Monthly Financials
AGENDA MAILED TO:

APPROVED FOR SUBMITTAL BY CITY MANAGER: 

Expenditure Required:	Current Balance in Account:	Amount Budgeted:	Account Number:
\$	\$	\$	

PAYMENT TO BE MADE TO:

REVIEWED BY THE DIRECTOR OR FINANCE:

SUMMARY STATEMENT

The City of Kerrville staff will present and update the EIC on a monthly basis as to the status of the EIC's financial position.

RECOMMENDED ACTION

Recommend acceptance of the financials.

CITY OF KERRVILLE
Economic Improvement Corporation
Sales Tax Improvement Fund

Cash Balance as of February 1, 2013		\$ 1,414,761
Deposits:		
Sales Tax	\$ 284,177	
Interest Revenue	\$ -	
Transfer In	\$ 80,000	
	<u>\$ 364,177</u>	
Expenses:		
Office Supplies		
Public Notice	\$ -	
Administrative Service Fee	\$ 8,333	
Transfer for Debt Service - 1999	\$ 42,083	
Transfer for Debt Service - 2012	\$ 14,167	
Transfer - Park Improvements	\$ 25,000	
Total Expenses	<u>\$ 89,583</u>	
Revenues Over (Under) Expenditures		<u>\$ 274,595</u>
Ending Cash Balance as of February 28, 2013		<u><u>\$ 1,689,355</u></u>

City of Kerrville
Economic Improvement Corporation
Sales Tax Improvement Fund - Revenue and Expense Statement
For the month ending February 28, 2013

	Annual Budget	Current Period	Y-T-D Actual	% of Budget	Budget Balance
BEGINNING CASH BALANCE	\$ 1,788,939		\$ 1,788,939		
REVENUE:					
Sales and Use Tax	\$ 2,425,000	\$ 284,177	\$ 1,144,013	47.18%	\$ 1,280,987
Interest	\$ 5,000		\$ 1,936	38.72%	\$ 3,064
Refund Airport/TXDOT	\$ -	\$ -	\$ 11,006		\$ (11,006)
Transfer In		\$ 80,000	\$ 80,000		\$ (80,000)
TOTAL REVENUE	\$ 2,430,000	\$ 364,177	\$ 1,236,955	50.90%	\$ 1,284,051
	Annual Budget	Current Period	Y-T-D Actual & Encumbrance	% of Budget	Budget Balance
EXPENDITURES:					
Administrative					
Advertising	\$ 500		\$ 280	-	\$ 220
Transfer to Debt Service Fund	\$ 505,000	\$ 42,083	\$ 210,417	41.67%	\$ 294,583
Transfer to Debt Service Fund - River Trail	\$ 170,000	\$ 14,167	\$ 70,833		\$ 99,167
Economic Development Governing Body	\$ 175,000		\$ 127,000	100.00%	\$ 48,000
Annual Disclosure Fee	\$ 3,500		\$ 3,500		\$ -
Administrative Services Fee	\$ 100,000	\$ 8,333	\$ 41,665	41.67%	\$ 58,335
Total Administrative	\$ 954,000	\$ 64,583	\$ 453,695	47.56%	\$ 500,305
Category I - Business Development					
Unspecified	\$ 1,078,961			0.00%	\$ 1,078,961
Total Category I	\$ 1,078,961	\$ -	\$ -	100.00%	\$ 1,078,961
Category II - Quality of Life					
River Trail	\$ 300,000	\$ 25,000	\$ 125,000	41.67%	\$ 175,000
Downtown Wireless	\$ 100,000				\$ 100,000
Golf Course Improvements	\$ 608,141	\$ -	\$ 608,141	100.00%	\$ -
HCDJLS	\$ 150,000		\$ 149,703	99.80%	\$ 297
Total Category II	\$ 1,158,141	\$ 25,000	\$ 882,844	76.23%	\$ 275,297
Category III - Public Infrastructure					
Category III Unspecified	\$ 500,000			0.00%	\$ 500,000
Total Category III	\$ 500,000	\$ -	\$ -	0.00%	\$ 500,000
Contingency	\$ -				\$ -
TOTAL EXPENDITURES	\$ 3,691,102	\$ 89,583	\$ 1,336,539	36.21%	\$ 2,354,563
NET REVENUES TO EXPENDITURES	\$ (1,261,101)	\$ 274,595	\$ (99,584)		
ENDING CASH BALANCE: February 28, 2013	Budget \$ 527,837		Actual \$ 1,689,355		

CITY OF KERRVILLE
 Economic Improvement Corporation
 SALES TAX REVENUE ANALYSIS

	Actual FY 2010	Actual FY 2011	Actual FY 2012	Approved FY 2013	Actual FY 2013	Difference Projected vs Actual	% of Projected Variance
October	\$ 179,735	\$ 184,602	\$ 219,934	\$ 184,164	\$ 226,663	\$ 42,500	23.08%
November	\$ 188,879	\$ 207,677	\$ 203,379	\$ 208,708	\$ 210,744	\$ 2,036	0.98%
December	\$ 170,981	\$ 169,550	\$ 208,227	\$ 186,363	\$ 204,782	\$ 18,419	9.88%
January	\$ 170,645	\$ 195,030	\$ 204,051	\$ 183,199	\$ 217,647	\$ 34,448	18.80%
February	\$ 236,837	\$ 241,320	\$ 264,744	\$ 256,158	\$ 284,177	\$ 28,018	10.94%
March	\$ 163,136	\$ 169,754	\$ 186,812			\$ -	#DIV/o!
April	\$ 160,461	\$ 157,729	\$ 185,835			\$ -	#DIV/o!
May	\$ 203,235	\$ 234,742	\$ 223,320			\$ -	#DIV/o!
June	\$ 182,429	\$ 186,441	\$ 195,775			\$ -	#DIV/o!
July	\$ 179,622	\$ 190,696	\$ 210,758			\$ -	#DIV/o!
August	\$ 221,711	\$ 238,491	\$ 239,007			\$ -	#DIV/o!
September	\$ 186,321	\$ 179,133	\$ 203,486			\$ -	#DIV/o!
Total	\$ 2,243,991	\$ 2,355,166	\$ 2,545,329	\$ 1,018,593	\$ 1,144,013	\$ 125,421	12.31%

CITY OF KERRVILLE
Economic Improvement Corporation
Sales Tax Debt Service Fund

Cash Balance as of February 1, 2013		\$ 590,004
Revenues:		
Transfer from Sales Tax Improvements Fund	<u>\$ 42,083</u>	
Total Deposits	\$ 42,083	
Expenses:		
Paying Agent Fee	\$ 1,000	
Bond Principal	\$ 465,000	
Bond Interest	<u>\$ 21,971</u>	
Total Expenses	\$ 487,971	
Revenues Over (Under) Expenditures:		<u>\$ (445,888)</u>
Ending Cash Balance as of February 28, 2013		<u><u>\$ 144,117</u></u>

CITY OF KERRVILLE
Economic Improvement Corporation
Sales Tax Debt Service Fund
Revenue and Expense Statement
For the month ending February 28, 2013

	Annual Budget	Current Period	Y-T-D Actual	% of Budget	Budget Balance
BEGINNING CASH BALANCE	\$ 421,672		\$ 421,672		
REVENUE:					
Transfer from Sales Tax Improvement Fund	\$ 505,000	\$ 42,083	\$ 210,417	41.67%	\$ 294,583
TOTAL REVENUE	\$ 505,000	\$ 42,083	\$ 210,417	41.67%	\$ 294,583
	Annual Budget	Current Period	Y-T-D Actual	% of Budget	Budget Balance
EXPENDITURES:					
Series 1999 Sales Tax Bond Debt Service	\$ 465,000	\$ 465,000	\$ 465,000	100%	\$ -
Series 1999 Sales Tax Bond Interest Expense	\$ 33,248	\$ 21,971	\$ 21,971	66%	\$ 11,277
Paying Agent Fees	\$ 1,000	\$ 1,000	\$ 1,000	100%	\$ -
First Southwest Continuing Disclosure Fee	\$ -	\$ -	\$ -	-	\$ -
TOTAL EXPENDITURES	\$ 499,248	\$ 487,971	\$ 487,971	97.74%	\$ 11,277
ENDING CASH BALANCE: February 28, 2013	Budget \$ 427,424		Actual \$ 144,117		

CITY OF KERRVILLE
Economic Improvement Corporation
EIC Capital Projects Fund

Cash Balance as of February 1, 2013		\$ 1,864,892
Revenues:		
Transfer In	\$ -	
Total Revenues/Transfer In	<u>\$ -</u>	
Expenses:		
Services		
Special Services		
Harper Road Utilities - Phase 2		
Hill Country Jr. Livestock Association		
Golf Course Improvements	\$ 693	
	<u>\$ 693</u>	
 Total Expenses	 \$ 693	
Revenue Over (Under) Expenditures		<u>\$ (693)</u>
 Ending Cash Balance as of February 28, 2013		 <u><u>\$ 1,864,199</u></u>

CITY OF KERRVILLE

River Trail Project Status Summary

As of month ending February 28, 2013

Date	Funding Commitment	Revenues					Actual Funding	Expenditures		Available Balance		
		Note	Bond Issuance	Transfers In From EIC Sales Tax	Interest Revenue	Total Funded		River Trail	Louise Hays	River Trail	Louise Hays	Total Available
12/31/2011	\$ 8,000,000	Funding from 2011A Bond	\$ 3,449,745	\$ 25,000		\$ 3,474,745			\$ 3,474,745			\$ 3,474,745
1/31/2012	\$ 8,000,000			\$ 25,000		\$ 3,499,745			\$ 3,499,745			\$ 3,499,745
2/29/2012	\$ 8,000,000			\$ 25,000		\$ 3,524,745			\$ 3,524,745			\$ 3,524,745
3/31/2012	\$ 8,000,000	Funding from 2012 Bond	\$ 3,500,000	\$ 25,000		\$ 7,049,745			\$ 6,000,000		\$ 1,049,745	\$ 7,049,745
4/30/2012	\$ 8,000,000			\$ 25,000		\$ 7,074,745			\$ 6,000,000		\$ 1,074,745	\$ 7,074,745
5/31/2012	\$ 8,000,000			\$ 25,000		\$ 7,099,745			\$ 6,000,000		\$ 1,099,745	\$ 7,099,745
6/30/2012	\$ 8,000,000			\$ 25,000		\$ 7,124,745	\$ 5,450		\$ 5,994,550		\$ 1,124,745	\$ 7,119,295
7/31/2012	\$ 8,000,000			\$ 25,000		\$ 7,149,745	\$ 3,958		\$ 5,990,592		\$ 1,149,745	\$ 7,140,337
8/31/2012	\$ 8,000,000			\$ 25,000		\$ 7,174,745			\$ 5,165,337		\$ 2,000,000	\$ 7,165,337
9/30/2012	\$ 8,000,000			\$ 25,000		\$ 7,199,745			\$ 5,190,337		\$ 2,000,000	\$ 7,190,337
10/31/2012	\$ 8,000,000	Transfer In from EIC Sales Tax Fund		\$ 25,000		\$ 7,224,745			\$ 5,215,337		\$ 2,000,000	\$ 7,215,337
11/30/2012	\$ 8,000,000			\$ 25,000		\$ 7,249,745			\$ 5,240,337		\$ 2,000,000	\$ 7,240,337
12/31/2012	\$ 8,000,000	Interest earned on Total Available balance (retroactive)		\$ 25,000		\$ 7,291,684	\$ 25,860		\$ 5,256,416		\$ 2,000,000	\$ 7,256,416
1/31/2013	\$ 8,000,000			\$ 25,000		\$ 7,317,349	\$ 206,155		\$ 5,075,926		\$ 2,000,000	\$ 7,075,926
2/28/2013	\$ 8,000,000			\$ 25,000		\$ 7,343,724	\$ 2,817		\$ 5,099,484		\$ 2,000,000	\$ 7,099,484
	\$ 8,000,000	Total	\$ 6,949,745	\$ 375,000	\$ 18,979	\$ 7,343,724	\$ 244,240	\$ -	\$ 5,099,484	\$ 2,000,000	\$ 2,000,000	\$ 7,099,484

Cash Balance			
<u>Fund Number</u>	<u>Fund Name</u>	<u>Cash Amount</u>	<u>Period</u>
40	Sales Tax Improvement Fund	\$ 1,689,355	2/28/2013
43	EIC Debt Service Fund	\$ 144,117	2/28/2013
75	EIC Projects Fund	\$ 1,864,199	2/28/2013
Total EIC Cash Balance		\$ 3,697,670	2/28/2013

Where Cash and Investment Held					
<u>Type</u>	<u>Investment Vehicle</u>	<u>Amount</u>	<u>Interest Earned</u>	<u>Interest Earned (Annualized)</u>	<u>Period</u>
Cash	Wells Fargo Checking	\$ 161,264	\$ -	0.00%	2/28/2013
ST Investment	EIC TexPool	\$ 1,522,608	\$ 132.29	0.10%	2/28/2013
ST Investment	EIC TexStar	\$ 1,523,701	\$ 141.01	0.11%	2/28/2013
HILCO FCU	CD	\$ 245,099	\$ 98.67	0.48%	2/28/2013
Kerr County FCU	CD	\$ 245,000	\$ -	0.00%	2/28/2013
Total Cash & Investments		\$ 3,697,670	\$ 371.97	0.12%	

Agenda Item:

3B. Capital projects update. (staff)

Harper Highway Project Phase II

Golf Course Improvements (Pavilion and Parking Lot Projects)

Downtown Utility Improvement Project

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

SUBJECT: Capital Projects Update

AGENDA DATE: March 18, 2013

DATE SUBMITTED: March 8, 2013

SUBMITTED BY: Todd Parton,
City Manager

CLEARANCES:

EXHIBITS/INFORMATION: Status Reports

APPROVED FOR SUBMITTAL BY CITY MANAGER:



Expenditure Required:	Current Balance in Account:	Amount Budgeted:	Account Number:
\$	\$	\$	

PAYMENT TO BE MADE TO:

REVIEWED BY THE FINANCE DIRECTOR:

SUMMARY STATEMENT

Attached are status reports for the following projects:

- Harper Highway Project Phase II
- Golf Course Improvements (Pavilion and Parking Lot)
- Downtown Utility Improvement Project

RECOMMENDED ACTION

Update only. No action required.

EIC Status Report Harper Highway Utility Extension Phase Two

SCOPE
<ul style="list-style-type: none"> Phase Two Projects consists of the construction of approximately 4,600 linear feet of 12" water main & appurtenances from the North end of Old Harper Road; thence west along the south line of Interstate I-10 R.O.W. to Harper Road (RM 783); thence south along both the east & west side of RM 783 to its intersection with Old Harper Road; thence, east along Old Harper Road to its intersection with Town Creek Road; installation of 12" wastewater main from the North end of Old Harper Road; thence west along the south line of Interstate I-10 R.O.W. to the West side of Harper Road (RM 783); thence south along the west line of RM 783 to a property owned by the Kerrville Bible Church; and installation of 12" wastewater main from the intersection of Old Harper Road and Town Creek Road; thence Southwest along Old Harper Road to the west side of Harper Road (RM 783); thence North along the west line of RM 783 to the property North of the Northpoint Investors, LTD. property. In all, the sanitary sewer for this Phase 2 project includes approximately 3,000 linear feet of wastewater main & appurtenances.
<p>Status Construction contract was awarded to Qro Mex Construction at May 22, 2012 City Council meeting. Construction is complete. The contractor is currently addressing final punch list items. Outstanding final acceptance issues include revegetation/stabilization within the TxDOT right of way. Contractor is currently working through TxDOT issues regarding revegetation requirements within the right of way of Harper Highway. Project final acceptance shall be issued upon successful compliance with TxDOT requirements.</p>

PHASING	Action Item	Schedule (Status)	Task/Issues	Comments/Risks
Easement Acquisition or Property Agreements	6 easements to CoK completed through Legal and executed by property owner 1 easement (Howard) in negotiation	Complete		
Misc. Reports/Permits	Approval from TxDOT for construction approval within Control of Access area in TxDOT right of way received. TxDOT Permits	Approved/Complete	TxDOT final approval of permits	
Design	under contract—HDR-Engineering	Approved	General construction permits for construction within TxDOT right of way	
Construction Drawings	final plans/specs/costs/ documents	Complete		
Bidding/Contracts	Construction contract awarded to Qro Mex Construction 5/22/12	completed 4/2012	all project elements	
Construction	build project /Under Construction	start June 2012; complete Dec. 2012	contract prep	

FUNDING - BUDGET					
	Allocation	Expended - Encumbered	Balance	Cost Est. for Package	Needed to Complete Package
EIC funding (FA2008-013)	\$1,000,000	\$411,499.66	\$588,500.34	Construction \$580,000 Materials Testing \$38,000	

EIC Status Report Golf Course Pavilion Project

SCOPE

- This project will consist of approximately a 40'x40' pavilion with 1600 square feet of covered space with a standing seam roof to match the pro shop, rehabilitation of the retaining wall below the pavilion area, cart path connection from the pavilion area to the course, electrical outlets, lights, ceiling fans, score board for tournaments and stone/brick on the pavilion columns to bring the pro shop building and the pavilion together. Additionally, this project consists of the construction of an approximately 100 space parking lot, which will increase the existing parking by approximately 30 spaces; one main entrance into the golf course simplifying circulation; landscape islands to provide aesthetics and shade; a plaza area in front of the pro shop and a screen for the adjacent residences.

Status

Construction contract was awarded to JM Lowe at February 12, 2013 City Council meeting. Construction began on February 26, 2013. The contractor is currently excavating for the pavilion, regrading the parking lot and constructing the new retaining wall below the pavilion area. The City is currently coordinating with franchise utilities for underground relocation of the existing overhead utilities on the site.

PHASING	Action Item	Schedule (Status)	Task/Issues	Comments/Risks
Design	Materials Testing and Survey	December 2012	Geotechnical Testing-Completed Survey-Completed	
	Design	December 2012/January 2013	Final Design Documents complete	Documents combined with the parking lot for one project at bidding
	Bidding	January-February 2013	Advertise-Jan 18,Jan 25 Prebid-Jan 29 Open Bids-Feb 5	Bids opened on Feb 5. Five bids received with low bid of \$328,150.00 for both improvement projects combined
Construction	Award	February 2013	City Council agenda item for award-Feb 12	Council awarded the construction contract to JM Lowe on February 12, 2013
		February-April 2013	Begin Construction-Feb 25 Final Punch List-April 30 Open for use-May 15	Preconstruction meeting was held on Feb 22. Construction began on Feb 26.

FUNDING - BUDGET		Allocation	Expended - Encumbered	Balance	Cost Est. for Package	Needed to Complete Package
FA-2012-05	Survey	\$608,141.00	\$41,192.80	\$566,948.20		
	Materials Testing	\$7,000.00				
	Design	\$7,500.00				
		\$19,000.00 for Pavilion				
		Parking lot improvements designed in house by Engineering Director and Project Engineer for a cost savings of approximately \$24,000.00				
	Construction	\$328,141.00				



KERRVILLE
PUBLIC
UTILITY
BOARD

2250 Memorial Blvd. • P. O. Box 294999 • Kerrville, Texas 780294999 • 830-257-3050 • FAX 830-257-8078

MEMORANDUM

To: David Wampler Kenneth Early
Rex Boyland Gary Cochran
Larry Howard Polly Rickert
Councilmember Stacie Keeble

From: Mike Wittler

Date: March 14, 2013

Re: Update on Downtown Utility Conversion Project Status

Our contractors have completed installation of the underground conduit and the retaining wall where the transformer and utility junction boxes will be installed. By the 22nd of March, we should have completed the underground electric cable and transformer installation and be ready to switch the West Side Customers over to the new underground electric services. At that point, it should take two to three weeks for the electrical contractor to schedule outages and switch the customers over to underground electric service.

We have notified Windstream, Time Warner Cable, and Hill Country Telecommunications that the conduits are ready for their use. Time Warner has indicated that it will take 30 to 60 days to schedule and complete their work. Hill Country is waiting for TXDOT permits. Once all of the utilities have moved their services underground, KPUB can remove the overhead poles and wires in about a week; if all goes well, this should happen in late April.

I will be available at your March 18^h meeting to address any additional questions or concerns that you may have.

Sincerely,

Mike Wittler, P.E.
Chief Engineer
Kerrville Public Utility Board
Office 830-792-8270
Mobile 830-739-7834

Agenda Item:

3C. Update regarding "Go" Team activities. (staff)

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

SUBJECT: Update on "Go Team" activities

FOR AGENDA OF: March 18, 2013 **DATE SUBMITTED:** March 8, 2013

SUBMITTED BY: Ashlea Boyle,  **CLEARANCES:** Todd Parton,
Special Projects Coordinator City Manager

EXHIBITS:

AGENDA MAILED TO:

APPROVED FOR SUBMITTAL BY CITY MANAGER: 

Expenditure	Current Balance	Amount	Account
Required:	in Account:	Budgeted:	Number:
\$	\$	\$	

PAYMENT TO BE MADE TO:

REVIEWED BY THE DIRECTOR OF FINANCE:

SUMMARY STATEMENT

The Economic Development "Go Team" has not met since the last EIC meeting of February 25, 2013.

It is anticipated that additional "GO Team" meetings will be scheduled in the near future to discuss prospects and Economic Development strategies that Kerrville Economic Development Corporation has tasked the KEDC Executive Director with.

RECOMMENDED ACTION

This report is provided for informational purposes only and no action is required.

Agenda Item:

3D. Update on River Trail and Parks projects. (Rickert)

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

SUBJECT: EIC Monthly Report on River Trail and Parks Projects

FOR AGENDA OF: March 18, 2013 **DATE SUBMITTED:** March 13, 2013

SUBMITTED BY: Malcolm Matthews **CLEARANCES:** Kristine Ondrias

EXHIBITS: Monthly Report

AGENDA MAILED TO:

APPROVED FOR SUBMITTAL BY CITY MANAGER:



Expenditure	Current Balance	Amount	Account
Required:	in Account:	Budgeted:	Number:
\$	\$	\$	

PAYMENT TO BE MADE TO:

REVIEWED BY THE FINANCE DIRECTOR:

SUMMARY STATEMENT

EIC Monthly Report on the River Trail and the Louise Hays and Lehmann & Monroe Parks projects.

RECOMMENDED ACTION

No action required.

Monthly Status Report

River Trail/Parks Projects

March 2013

4B Funds

\$6,000,000 (River Trail Project)

\$2,000,000 (Louise Hays and Lehmann & Monroe Parks Project Renovation)

Status Report Kerrville River Trail

Package A

SCOPE

Package A extends from a new trailhead at the Riverside Nature Center parking lot, along the west property line of the RNC, down to the river's edge, under the Lemos St. Bridge, construction of a trail bridge across the river, through Tranquility Island, to the west end of the parking area in Louise Hays Park. The 10' wide trail will be constructed of concrete, except for the segment that runs along the RNC western property line. *Total trail length: 0.6 miles*

Amenities

Trailheads with lighting, observation areas, seating areas, trail bridge, drainage, and signage. [Note: additional amenities, such as trail entries, kiosks, and interpretive signage, will be added, once designed.]

PHASING	Action Item	Schedule (Status)	Task/Issues	Comments/Risks
Recreation easements or Property Agreements	easement to CoK from RNC	complete (6/12; 9/12)	RNC to provide easement to City	requires RNC approval
	lease renewal to RNC of CoK property	complete (6/12)	City to provide lease to RNC	requires City Council approval
	approval from TxDOT and GLO for use of state property	complete (5/12)	TxDOT approval of plans and Const./Maint. Agreement	SA office approval; include in MMA
Property Survey	construction easements, if needed	NA	NA	NA
Misc. Reports/Permits	M&B and Topo surveys	complete (3/12)	identify property boundary and grades	
	LOMR	upon const. completion	flood level impact, if any	submittal to FEMA
	TPWD (land & water permit)	complete (5/12)	coffer dam - bridge construction review	review by TPWD
Design	USACE	complete (5/12)	involves jurisdictional waters of the US	no USACE individual permit required
	contract - Hewitt Engineering			
	location of trail	complete (12/11)	define gradients and layout	
Preliminary Design	schematic plans; prelim. costs	50% review - complete (12/11)	all project elements	
		75% review - complete (1/12)	all project elements	
		90% review - complete (2/12)	all project elements	
Construction Drawings	final plans/specs/costs/ documents	complete (3/12)	all project elements	
Bidding/Contracts	secure contractor	bid (3/12); awarded (5/12) to Westar Construction	bid process, contract prep	project delay, bid cost, permit approvals, etc.
Construction	build project	start (5/12); 100% complete; <u>completion (12/12)</u>	sequencing of work	dedication 12/15/12

FUNDING - BUDGET		Allocation	Expended - Encumbered	Balance	Cost Est. for Package	Needed to Complete Package
G.O. bonds (2002) Park Dedication Funds	\$500,000 <u>25,000</u> \$525,000	2002 bonds \$147,112 [includes completion of the River Trail Master Plan and survey work]	\$377,888	Construction bid: \$667,427 plus 10% contingency \$735,000	2002 bonds \$377,888 2011 bonds \$357,112 (includes contingency)	
COs (4B)	\$357,112					

Status Report Kerville River Trail

Package B and Parks Project

SCOPE

Package B and Parks Project connects to Package A at the west end of the Louise Hays Park parking lot, through Louise Hays Park and Lehmann & Monroe Park, to G St. r.o.w. The 10' wide trail will be constructed of concrete. This Package will be coordinated with the Jefferson Wastewater Project and Water transmission Line Project, both slated for completion by mid 2013. This Package will include the entire scope of work for the Louise Hays Park/Lehmann & Monroe Park Project, as funded by 4B. *Total trail length: 1 mile*

Amenities

Trail - trailheads with lighting, observation areas, seating areas, bridging, drainage, signage, trail entries, kiosks, and interpretive signage.
Parks - park amenities, amphitheater/stage, playground/sprayground, picnic areas, group pavilion upgrades, river access, restrooms, parking, lighting, utilities, landscaping, and signage.

PHASING	Action Item	Schedule (Status)	Task/Issues	Comments/Risks
Recreation easements or Property Agreements	easements to CoK from property owners	complete by 8/31/13	CoK to secure easements from property owners; title work and surveys	requires property owner approval, purchase, or other
Property Survey	construction easements, if needed	complete by 8/31/13	determine need by 4/31/12	requires property owner approval
Misc. Reports/Permits	M&B and Topo surveys	M&B - complete (9/12) Topo - partially complete	identify property boundary and grades	
Design	LOMR	upon const. completion	flood impact, if any	may require submittal to FEMA
	TPWD (land & water permit)	6/1/13, if needed	environmental impact to state waters	review by TPWD
	GLO (state property use)	6/1/13, if needed	routing preference	approval by State, if needed
	-Trail Routing Options - Haliff team	complete (6/12)	define route options w/ costs	complete (6/12)
Preliminary Design	-Final Design Contract - Haliff Team	complete (approved 12/11/12)	all remaining design phases	Council approval (12/11/12)
	schematic plan with amenities; prelim. costs	50% review - (partially complete) 75% review - 90% review -	all project elements all project elements	coord. with utilities projects
Construction Drawings	final plans/specs/costs/ documents	complete by mid 2013	all project elements	project delay assoc. with approvals
Bidding/Contracts	secure contractor	mid 2013	bid process, contract prep	project delay, bid cost, etc.
Construction	build project	start mid-late 2013	sequencing of work	typical delays/field alterations

FUNDING - BUDGET		Allocation	Expended - Encumbered	Balance	Cost Est. for Package	Needed to Complete Package
COs (4B) - River Trail		\$1,000,000	Design fee: \$99,537	\$900,463		
COs (4B) - LHP/LMP Project		\$2,000,000	\$199,073	\$1,800,927		

Status Report Kerville River Trail

Package C and D

SCOPE

Package C and D extends from a new trailhead at the Knapp Crossing Boat Ramp parking lot, runs adjacent to the river, ties into the Guadalupe St. r.o.w. (Package D) extends to Guadalupe Park and connects to Package A (Package C). The 10' wide trail will be constructed of concrete. *TBD - this package's design/construction expected to be integrated with private sector improvements. Total trail length: 1.6 miles*

Amenities

Trailheads with lighting, observation areas, seating areas, trail bridge, drainage, signage, trail entries, kiosks, interpretive signage, and private improvement interface.

PHASING	Action Item	Schedule (Status)	Task/Issues	Comments/Risks
Recreation easements or Property Agreements	easement to CoK from property owners	TBD	CoK to secure easements from property owners	requires property owner approval, purchase, or other; may require KSH property
Property Survey	construction easements, if needed	TBD	TBD	requires property owner approval
Misc. Reports/Permits	M&B and Topo surveys	(partially complete)	identify property boundary and grades	
	LOMR		flood impact, if any	may require submittal to FEMA
Design	TPWD (land & water permit)		environmental impact to state waters	review by TPWD
Routing	TBD	(partially complete)		waiting for private development
Preliminary Design	location of trail schematic plan with amenities; prelim. costs	50% review – 75% review – 90% review –	define gradients and layout all project elements all project elements all project elements	" " " "
Construction Drawings	final plans/specs/costs/ documents	TBD	all project elements	" " " "
Bidding/Contracts	secure contractor	TBD	bid process, contract prep	" " " "
Construction	build project	TBD	sequencing of work	" " " "

FUNDING - BUDGET		Allocation	Expended - Encumbered	Balance	Cost Est. for Package	Needed to Complete Package
COs (4B)						

Status Report Kerrville River Trail

Package E

SCOPE	<u>Package E</u> extends from west terminus of trail on Junction Hwy along the river's edge, connect to a new trailhead at the Cypress Boat Ramp parking lot, to the trailhead at the Knapp Crossing trailhead. The 10' wide trail will be constructed of concrete. <i>Total trail length: up to 1 mile</i>
Amenities	Trailheads with lighting, observation areas, seating areas, trail bridge, drainage, signage, trail entries, kiosks, and interpretive signage.

PHASING	Action Item	Schedule (Status)	Task/Issues	Comments/Risks
Recreation easements or Property Agreements	easement to CoK from property owners	TBD	CoK to secure easements from property owners	requires property owner approval, purchase, or other
Property Survey	construction easements, if needed	TBD	TBD	requires property owner approval
Misc. Reports/Permits	M&B and Topo surveys	(partially complete)	identify property boundary and grades	
	LOMR		flood impact, if any	may require submittal to FEMA
	TPWD (land & water permit)		environmental impact to state waters	review by TPWD
Design	TBD			waiting for private development
Preliminary Design	schematic plan with amenities; prelim. costs	50% review – (partially complete) 75% review – 90% review –	all project elements all project elements all project elements	" " " "
Construction Drawings	final plans/specs/costs/ documents	TBD	all project elements	" " " "
Bidding/Contracts	secure contractor	TBD	bid process, contract prep	" " " "
Construction	build project	TBD	sequencing of work	" " " "

FUNDING - BUDGET	Allocation	Expended - Encumbered	Balance	Cost Est. for Package	Needed to Complete Package
COs (4B)					

Status Report Kerrville River Trail

Package F

SCOPE	Package F extends from G St. (Package B terminus) along the river to near Kerrville Schreiner Park. The 10' wide trail will be constructed of concrete. This Package will be coordinated with the Jefferson Wastewater Project and Water transmission Line Project, both slated for completion by mid 2013. Consultant team scope will include design details/criteria used throughout the River Trail Project, including <u>Package A</u> . <i>Total trail length: up to 2 miles</i>
Amenities	Trailheads with lighting, observation areas, seating areas, trail bridge, drainage, signage, trail entries, kiosks, and interpretive signage.

PHASING	Action Item	Schedule (Status)	Task/Issues	Comments/Risks
Recreation easements or Property Agreements	easement to CoK from property owners	complete by 7/31/13	CoK to secure easements from property owners	requires property owner approval, purchase, or other
	construction easements, if needed	complete by 7/31/13	determine need by 5/1/13	requires property owner approval
Property Survey	M&B and Topo surveys	M&B - complete (9/12)	identify property boundary and grades	coord. w/ utilities projects
	Misc. Reports/Permits	LOMR	flood impact, if any	may require submittal to FEMA
Design	TPWD (land & water permit)		environmental impact to state waters	
	-Trail Confirmation - Terra Design Group (TDG) team	complete (6/12)	define route options w/ costs	complete (6/12)
Preliminary Design	-Final Design Contract – TDG Team	negotiate by 4/15/13	all remaining design phases	requires Council approval
	schematic plans with amenities;	50% review –	all project elements	coord. with utilities projects
	prelim. costs	75% review – 90% review –	all project elements	
Construction Drawings Bidding/Contracts	final plans/specs/costs/ documents	complete by late 2013	all project elements	project delay assoc. with approvals
	secure contractor	late 2013	bid process, contract prep	project delay, bid cost, etc.
Construction	build project	Start late 2013	sequencing of work	typical delays/field alterations

FUNDING - BUDGET	Allocation	Expended - Encumbered	Balance	Cost Est. for Package	Needed to Complete Package
COs (4B)	\$2,000,000				

Other Services to be Evaluated

Required reporting and permitting may dictate additional professional services or consolidation of services assigned to the design teams. These include, but are not limited to, the following.

1. Floodplain/Floodway Impact, Hydraulic Analysis, Section 404 – Clean Water Act submittals (Corps of Engineers), and Flood Insurance Rate Map/ Letter of Map Revision preparation and submittal (CoK, FEMA) may be best completed by one firm in order to comprehensively address the issues and data collection/reporting. This could avoid multiple submittals (costs) and reduce mistakes and need for resubmittals. We will make a determination on this approach in the near future.
2. Archeological and Environmental Surveys and Section 404 review will need to be completed in areas where sensitive site conditions are probable. We anticipate no extreme findings in the initial surveys/reports; however, if further study is required by state or federal agencies, those services will require amendments to the consultant contracts.
3. TDLR permitting for ADA compliance, CoK building permits, Texas Historical Commission plan review, any other city or state agency submittals, will best be submitted by each of the design teams at the time of plan completion. This keeps regulation compliance with the design teams.

Agenda Item:

3E. Kerrville Economic Development Corporation (KEDC) Update regarding KEDC Activities. (Jonas Titas)

Agenda Item:

3F. Downtown Wireless Project. (staff)

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

SUBJECT: Update on Downtown Wireless Usage

FOR AGENDA OF: March 18, 2013 **DATE SUBMITTED:** March 8, 2013

SUBMITTED BY: Ashlea Boyle, *ab* **CLEARANCES:** Todd Parton,
Special Projects Coordinator City Manager

EXHIBITS: February Usage Report

AGENDA MAILED TO:

APPROVED FOR SUBMITTAL BY CITY MANAGER: 

Expenditure	Current Balance	Amount	Account
Required:	in Account:	Budgeted:	Number:
\$	\$	\$	

PAYMENT TO BE MADE TO:

REVIEWED BY THE DIRECTOR OF FINANCE:

SUMMARY STATEMENT

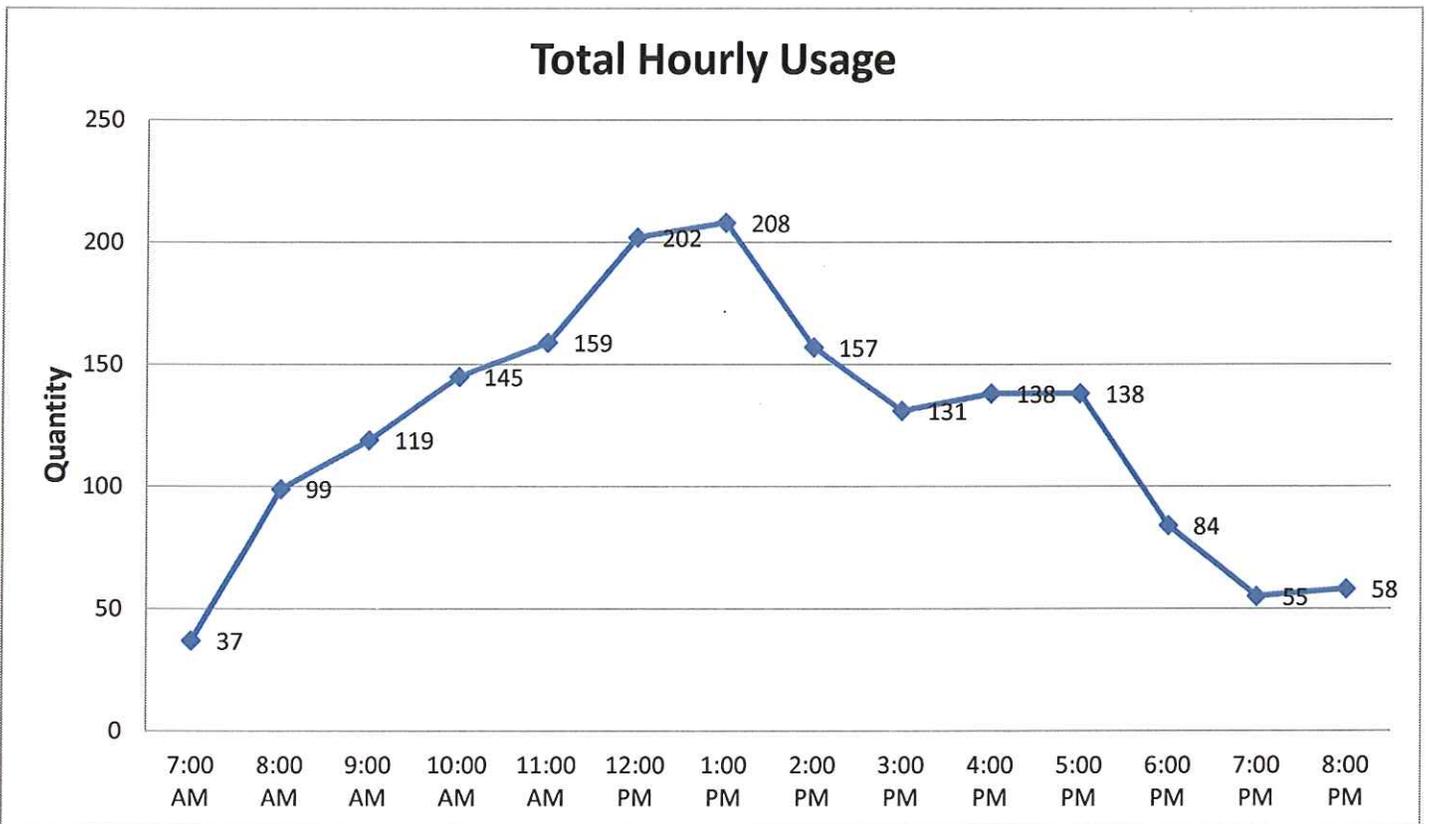
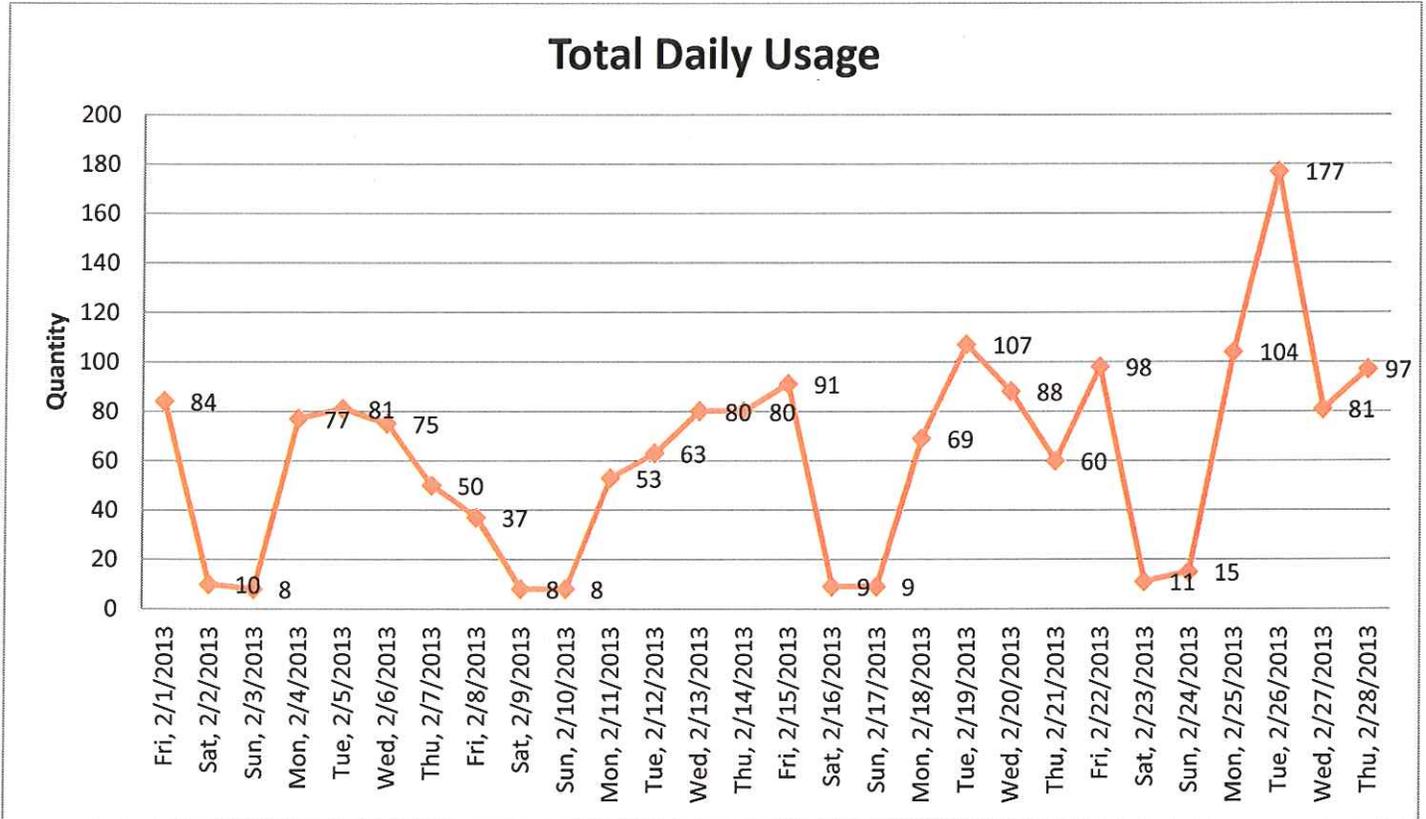
As per direction at the February 25, 2013 EIC meeting, staff are continuing to monitor and document the Downtown Wireless usage for Peterson Plaza. The attached graphs depict the trend analysis from February 2013.

Staff will continue to provide monthly usage and trend analysis reports.

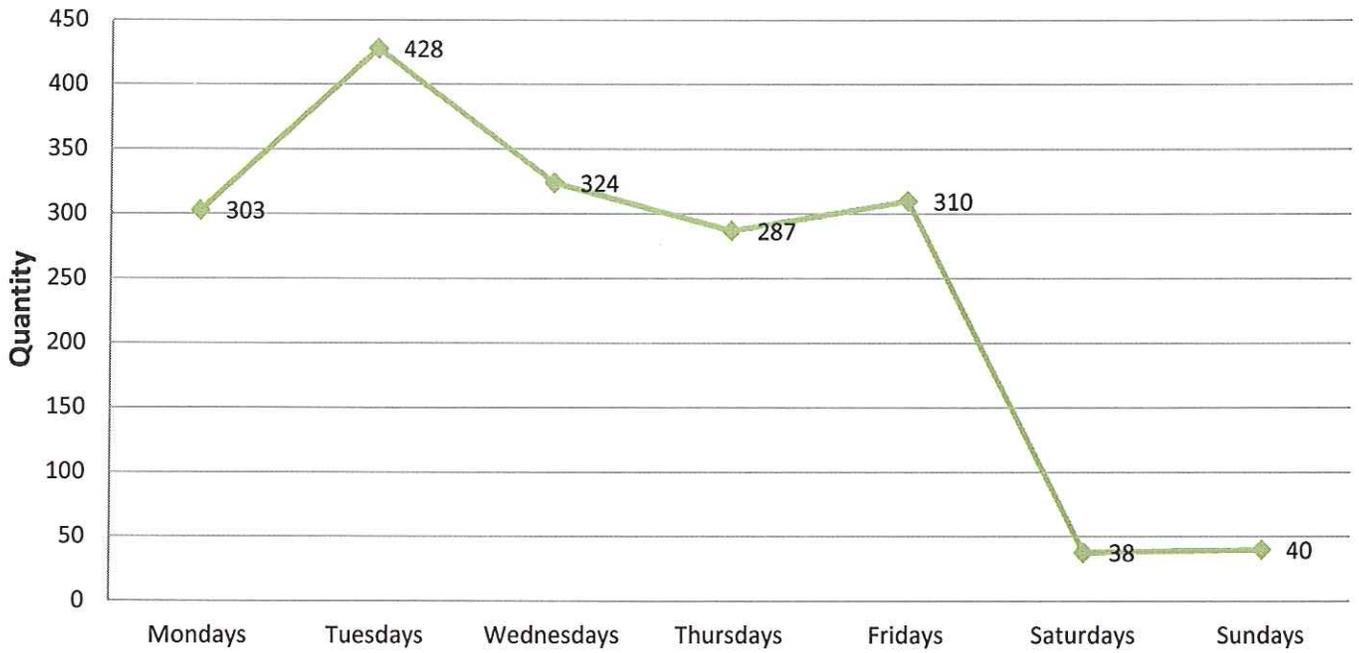
RECOMMENDED ACTION

This report is for informational purposes only and no action is required.

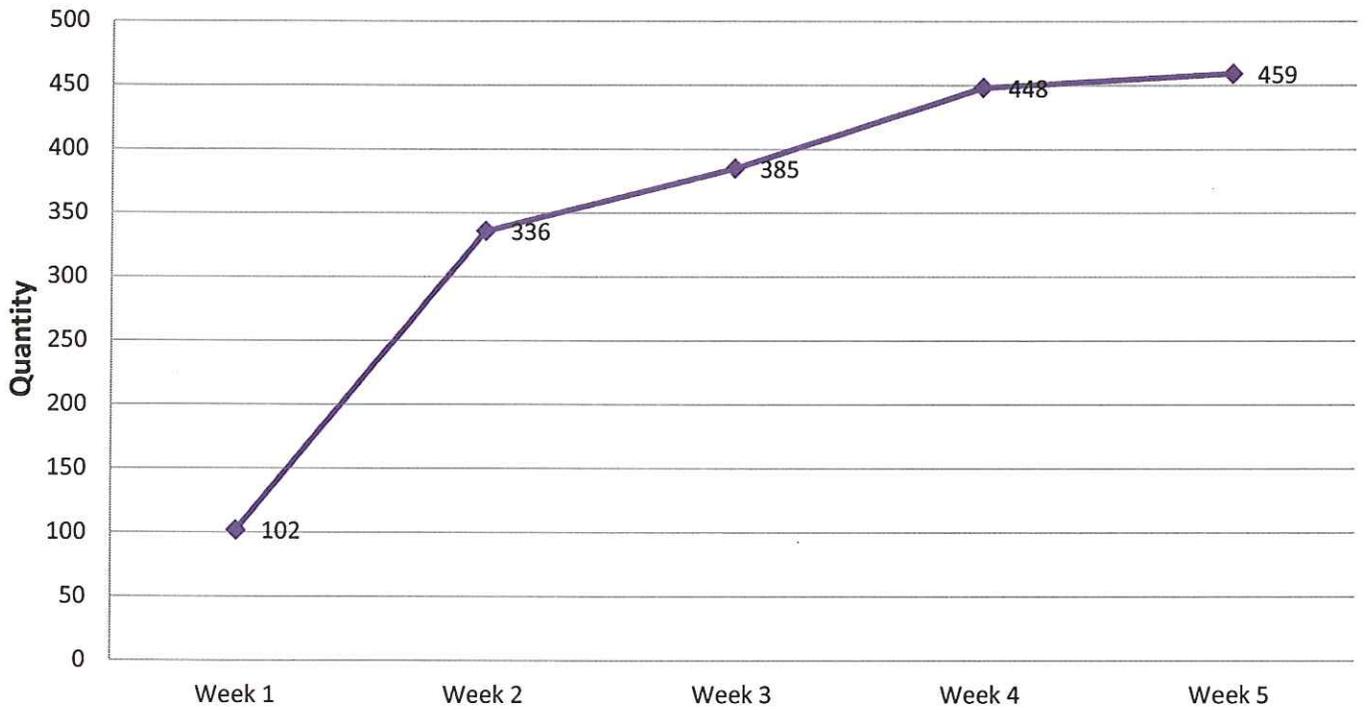
Downtown Wireless Usage Report – February 2013

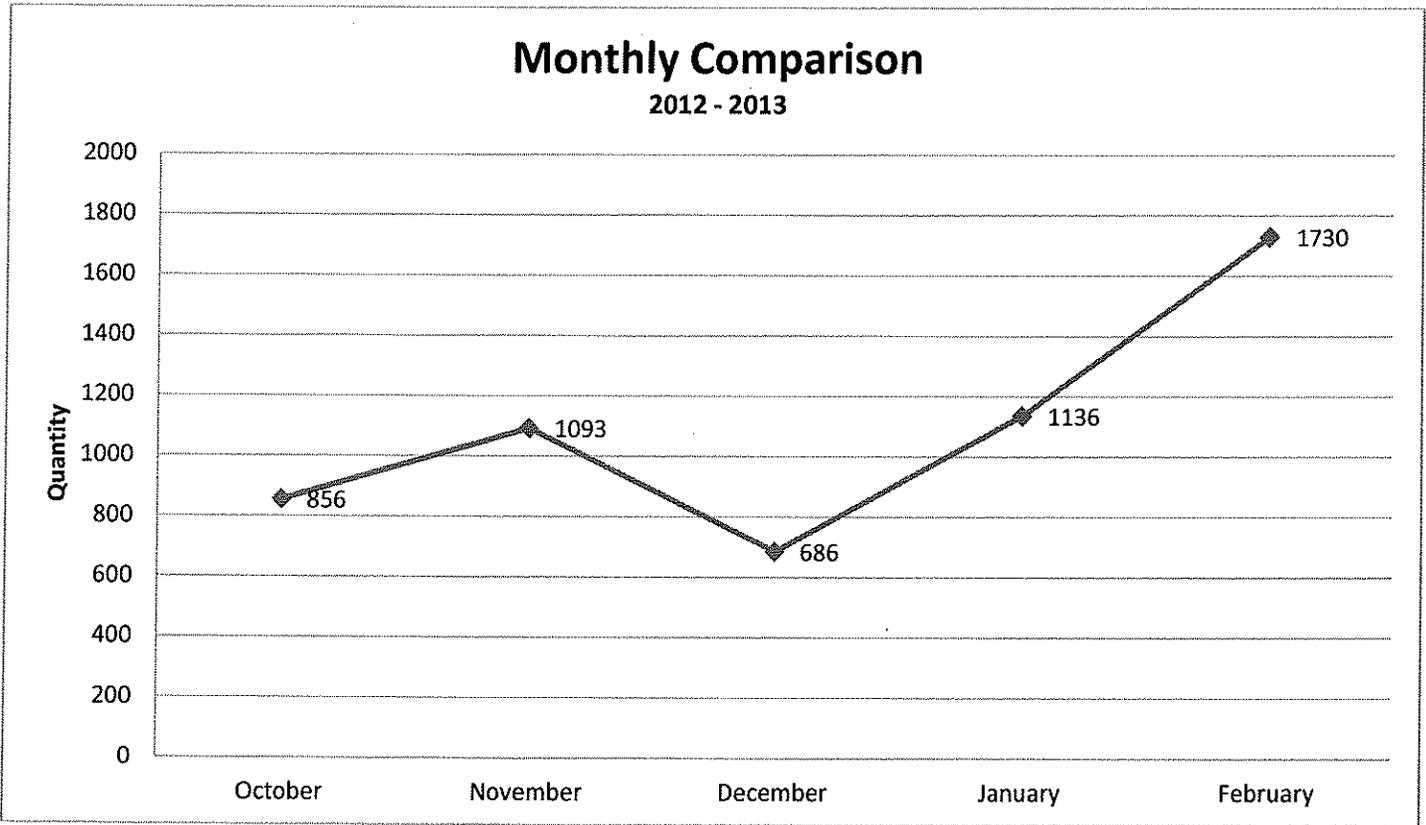


Total Usage per Day of Week



Total Weekly Usage





Agenda Item:

4A. Funding agreement with Fox Tank Company for the expansion of its manufacturing operation in the City of Kerrville. (staff)

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

SUBJECT: Hold a Public Hearing for the Funding Agreement between the Fox Tank Company and the City of Kerrville Economic Improvement Corporation

FOR AGENDA OF: March 18, 2013 **DATE SUBMITTED:** March 13, 2013

SUBMITTED BY: Todd Parton,
City Manager **CLEARANCES:**

EXHIBITS: Funding Agreement

AGENDA MAILED TO:

APPROVED FOR SUBMITTAL BY CITY MANAGER: 

Expenditure Required:	Current Balance in Account:	Amount Budgeted:	Account Number:
\$	\$	\$	

PAYMENT TO BE MADE TO:

REVIEWED BY THE DIRECTOR OF FINANCE:

SUMMARY STATEMENT

Attached is the final draft of the funding agreement between the Fox Tank Company and the EIC. This agreement was drafted as per direction at the January 14, 2013 EIC meeting and previously approved at the February 25, 2013 EIC meeting, however, a public hearing failed to be held as required.

The purpose of this agenda item is to hold a public hearing and to take the funding agreement to City Council to be considered at the March 26, 2013 City Council meeting.

RECOMMENDED ACTION

City staff recommends holding a public hearing for the funding agreement between the Fox Tank Company, Inc. and the Economic Improvement Corporation.

ECONOMIC DEVELOPMENT GRANT AGREEMENT
BETWEEN FOX TANK COMPANY, INC. AND
THE CITY OF KERRVILLE, TEXAS ECONOMIC IMPROVEMENT CORPORATION

This Agreement entered into by and between FOX TANK COMPANY, INC., a Texas corporation ("Fox"), acting herein by and through its duly authorized Vice President, R. Nathan Fox ("Fox Officer"), and the CITY OF KERRVILLE, TEXAS, ECONOMIC IMPROVEMENT CORPORATION ("EIC"), a Texas nonprofit corporation established pursuant to Section 4B of Tex. Rev. Civ. Stat. Art. 5190.6 (otherwise known as the Development Corporation Act of 1979 and now codified in Chapters 501, 502, and 505 of the Texas Local Government Code) (hereafter referred to as "the Act"), acting by and through its duly authorized President.

WITNESSETH:

WHEREAS, EIC was formed to administer the sales and use tax approved by the citizens of Kerrville, Texas, in May 1995 and collected for projects including but not limited to:

Land, buildings, equipment, facilities, expenditures, targeted infrastructure, and improvements that are for the creation or retention of primary jobs, as that term is defined by the Act, and found by the EIC to be required or suitable for the development, retention, or expansion of manufacturing and industrial facilities as provided by Section 501.101 of the Act; and

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

WHEREAS, Fox is a manufacturer of production equipment in the oil and gas industry, including oilfield storage tanks and other specialty oilfield production products; and

WHEREAS, Fox is seeking to expand its manufacturing operations through the construction of an additional facility to be located within the City of Kerrville; and

WHEREAS, Fox intends to use the new facility to manufacture field separators, which are used in the production of oil and gas; and

WHEREAS, Fox has applied for a grant from EIC for funding necessary to build the new facility; and

WHEREAS, EIC has determined that such a grant complies with the Act and is in keeping with the mission of EIC and *City of Kerrville Economic Improvement Corporation 4B Sales Tax Funding Request Guidelines and Procedures* in that it will help develop, retain, and expand a manufacturing and industrial facility and a business enterprise and create and retain primary jobs; and

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

WHEREAS, the EIC finds that it will be in the public interest to enter into an agreement with Fox to provide sales tax revenues collected pursuant to the Act (“4B Revenues”) to Fox for its cost necessary for the construction of a new manufacturing facility; and

WHEREAS, on March 18, 2013, in a meeting that was open to the public in accordance with the Texas Open Meetings Act, EIC held a public hearing pursuant to Section 505.159 of the Act related to the proposed expenditure of 4B Revenues for the purposes provided above;

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

**ARTICLE I.
EIC’S OBLIGATIONS**

- A. EIC hereby grants to Fox up to One Hundred Fifty Thousand and No/100 Dollars (\$150,000.00) (“Grant”) for costs relating to the design, construction, and equipping of a new manufacturing facility to be located at 117 Airport Commerce Parkway, Kerrville, Texas 78028 (“Project”). In general, the Project consists of the extension of public utilities to the property and the purchase and installation of a crane(s), the estimated costs of which are specified in the attached **Exhibit A**. The EIC derived the value of said grant from the assignment of the amount of \$5,000.00 for each employee that Fox is required to employ at the Project, as specified in Article II.
- B. Subject to the terms and conditions set forth in Article II, EIC will administer and provide the Grant to Fox as follows:
 - (1) EIC shall pay Fox an amount not to exceed One Hundred and Fifty Thousand and No/100 Dollars (\$150,000.00) at the time that the City of Kerrville (“City”) issues Fox a certificate of occupancy for the Project; and
 - (2) EIC shall administer the Grant on a reimbursable basis such that prior to any payment from EIC, Fox must first submit written evidence of costs, such as invoices, receipts, and bills of sale for review and approval. Following the submission and verification thereof, which may include on-site inspections to confirm purchase and installation, EIC shall then reimburse Fox for the cost.
- C. Payments made by EIC to Fox from 4B Revenues shall be limited to the payments of “costs” as defined by the Act and as specified above for the Project.
- D. In no event shall the total amount of the Grant exceed One Hundred Fifty Thousand and No/100 Dollars (\$150,000.00).

**ARTICLE II.
FOX’S OBLIGATIONS**

- A. Once the City issues a certificate of occupancy for the Project, Fox shall begin hiring employees for work at the Project.

- B. Through the term of this Agreement, Fox shall comply with the following requirements with respect to its employment at the Project, such terms to be collectively referred to herein as the "Employment Requirements":
- (1) the minimum level of employment must be at least thirty (30) full-time equivalent employees, which Fox must reach within one hundred twenty (120) days of its receipt of a certificate of occupancy;
 - (2) Sixty percent (60%) of the employees must reside and continue to reside within Kerr County during their employment;
 - (3) the minimum gross payroll must equal at least \$1.2 million for each year of this Agreement, beginning for the year ending December 31, 2014; and
 - (4) each employee must work full-time, which means for purposes of this Agreement that Fox pays each employee for at least forty (40) hours of work per week, with the exception of where an employee is on some form of leave.
- C. Once Fox reaches the employment of thirty (30) full-time equivalent employees for the Project, Fox shall thereafter submit to the EIC on a quarterly basis for the remaining term of this Agreement written evidence, including its quarterly tax payroll submission to the State Comptroller and a sworn statement from the Fox Officer, confirming the Employment Requirements and in particular, those employees hired for the Project, for review and verification. Fox shall submit such information to the EIC on or before the thirtieth (30) day of the month following the quarter that Fox is reporting. The failure by Fox to provide this information to EIC constitutes a breach of this Agreement.
- D. Should Fox fail to comply with the Employment Requirements, Fox, as a penalty, shall provide a refund to the EIC equal to \$1000.00 for each employee that fails to meet such Employment Requirements. For example, where Fox employs only twenty-five (25) full-time equivalent employees, a penalty of \$5,000.00 would be assessed against Fox. Fox shall pay the refund as soon as commercially practicable after the receipt of a written demand by EIC, but in no event later than thirty (30) days from the receipt of such demand. Failure to reimburse the EIC within thirty (30) days of Fox's receipt of such demand constitutes a breach of this Agreement.
- E. Within twenty-four (24) months of the EIC's payment of the Grant to Fox, Fox shall relocate all of its operations and employees from its Comfort, Texas, facility(s) to the location of the Project and/or Fox's adjacent facility(s).
- F. On or before December 31, 2013, Fox must apply for ASME certification.
- G. Fox will comply with all applicable development regulations of the City, to include building codes, subdivision regulations, and zoning, in its development and construction of the Project. Fox's failure to comply with this provision constitutes a breach of this Agreement.
- H. Fox shall keep and maintain complete and accurate records relating to its costs of designing and constructing the Project and employment information, separate and

identifiable from its other records, for three (3) years following the termination of this Agreement. EIC and its representatives shall be entitled to inspect the records during the term of this Agreement and for three (3) years thereafter, upon reasonable notice. Fox's failure to comply with this provision constitutes a breach of the Agreement.

- I. Should Fox breach this Agreement as specified herein, Fox shall pay and refund the EIC the appropriate amount specified below, which is dependent upon the length of time that this Agreement has been in existence, with each year to be considered as a calendar year from the Effective Date:

- (1) Year 1 = \$150,000.00
- (2) Year 2 = \$135,000.00
- (3) Year 3 = \$120,000.00
- (4) Year 4 = \$105,000.00
- (5) Year 5 = \$90,000.00
- (6) Year 6 = \$75,000.00
- (7) Year 7 = \$60,000.00
- (8) Year 8 = \$45,000.00
- (9) Year 9 = \$30,000.00
- (10) Year 10 = \$15,000.00

Fox shall provide any such refund to the EIC within thirty (30) days of written demand from EIC and following refund, this Agreement will terminate and Fox will have no further obligation under this Agreement.

- J. Fox shall only be liable to EIC up to the actual amount of the Grant and shall not be liable to EIC for any other actual or consequential damages, direct or indirect, interest, attorney fees, or cost of court for any act of default by Fox under the terms of this Agreement.

**ARTICLE III.
SALE OF PROJECT, MERGER OR CONSOLIDATION OF FOX**

- A. A sale of all or any of the assets of Fox shall not release Fox from its duties and responsibilities to EIC under the terms of this Agreement and shall not result in the assignment of this Agreement by such acquiring entity without prior written consent from EIC, which will not be unreasonably withheld; provided, that Fox's proposed successor shall have the financial condition to fully satisfy Fox's duties and responsibilities hereunder and agrees to assume Fox's responsibilities under this Agreement. EIC may, in its sole discretion, reasonably determine whether such proposed successor's financial condition is satisfactory.
- B. In the event of any proposed merger or other consolidation of Fox with any third party not affiliated with Fox, Fox shall at least thirty (30) days prior to any such merger or consolidation provide EIC with information and assurance reasonably acceptable to EIC regarding: (1) the surviving entity's assumption and satisfaction of the Fox's obligations hereunder and (2) the financial condition of the surviving entity upon such merger or other consolidation to demonstrate that the surviving entity shall have the financial

condition to fully satisfy Fox's duties and responsibilities hereunder. Failure to provide such information constitutes a breach of this Agreement.

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

**ARTICLE IV.
FOX'S REPRESENTATIONS AND WARRANTIES**

- A. Fox represents and warrants as of the date hereof:
- (1) Fox is a Texas corporation existing in good standing and authorized to do business in the State of Texas;
 - (2) Execution of this Agreement has been duly authorized by Fox and this Agreement is not in contravention of Fox's corporate charter, or any agreement or instrument to which Fox is a party or by which it may be bound as of the date hereof;
 - (3) No litigation or governmental proceeding is pending, or, to the knowledge of Fox Officer, threatened against or affecting Fox, which may result in a material adverse change in Fox's business, properties, or operations sufficient to jeopardize Fox's legal existence or for-profit viability; and
 - (4) No written application, written statement, or correspondence submitted by Fox to EIC in connection with this Agreement, or in connection with any transaction contemplated hereby, to the knowledge of Fox Officer, contains any untrue statement of a material fact or fails to state any material fact necessary to keep the statements contained therein from being misleading.
- B. Except as expressly set forth in this Article IV, Fox makes no other representation or warranty of any kind in connection with or related to the provisions of this Agreement.

**ARTICLE V.
EIC'S REPRESENTATIONS AND WARRANTIES**

- A. EIC represents and warrants as of the date hereof:
- (1) EIC, to the best of the knowledge of its Board of Directors, is legally authorized to enter into this Agreement by virtue of the statute under which it is governed and by the authorities and powers vested in it as a corporation duly and properly organized under the Act;
 - (2) Execution of this Agreement has been duly authorized by EIC;

- (3) No litigation or governmental proceeding is pending, or, to the knowledge of any of EIC's officers, threatened against or affecting EIC, which may result in EIC's inability to meet its obligations under this Agreement; and
 - (4) EIC has no reasonable basis for believing that it has or will have incurred debts beyond its ability to pay as such debts mature, including but not limited to the obligations set forth in this Agreement.
- B. Except as expressly set forth in this Article V, EIC makes no other representation or warranty of any kind in connection with or related to the provisions of this Agreement.

**ARTICLE VI.
CONDITIONS UNDER WHICH EIC MAY SUSPEND PERFORMANCE
OF ITS OBLIGATIONS UNDER THIS AGREEMENT**

Under any of the following conditions EIC may, at its option, after fifteen (15) days written notice to Fox, suspend its further performance under this Agreement until such time as Fox shall have cured the condition(s) and so notified EIC, in writing, that the condition(s) have been cured:

- A. Fox becomes insolvent. "Insolvent" is defined to mean one either has ceased to pay its debts in the ordinary course of business or cannot pay its debts as they become due, or is insolvent within the meaning of the federal bankruptcy law.
- B. The appointment of a receiver of Fox, or of all or any substantial part of the Property, and the failure of such receiver to be discharged within sixty (60) days thereafter.
- C. The adjudication of Fox as bankrupt.
- D. The filing by Fox of a petition to be adjudged as bankrupt, or a petition or answer seeking reorganization or admitting the material allegations of a petition filed against it in any bankruptcy or reorganization proceeding.

Should any of these conditions not be cured by Fox within ninety (90) days, Fox will be considered to have breached this Agreement and EIC may, at its option, with written notice to Fox, terminate this Agreement and Fox shall be obligated to refund the EIC the appropriate amount specified in Article II. G.

**ARTICLE VII.
REMEDIES**

- A. Except as otherwise provided in this Agreement, in the event of any default in or breach of this Agreement, by any party hereto, or any successor to such party, such defaulting or breaching party (or successor) shall upon written notice from the other, proceed immediately to cure or remedy such default or breach, and, in any event, within sixty (60) days after receipt of such notice. In the event that remedial action is not taken or not diligently pursued and the default or breach shall not be cured or remedied within a reasonable time (but in no event later than ninety (90) days from the date of notification of such breach), the aggrieved party may institute such proceedings as may be necessary

or desirable in its opinion to cure and remedy such default or breach, including but not limited to, seeking specific performance and/or injunctive relief, enforcement by mandamus or by the appointment of a receiver in equity with power to charge and collect rents, purchase price payments, and loan payments and to apply the revenues from the project in accordance with this Agreement, as required by the Act. This provision and specifically the notice and time to cure shall not apply to the obligation of Fox found within Article II.B.

- B. Upon breach of this Agreement by either party and the failure to cure as permitted by this Article VII, the non-breaching party shall have the sole right and discretion to either terminate this Agreement and/or pursue any and all remedies which may be provided by law and this Agreement. Each party acknowledges and agrees that no party hereunder shall be entitled to recover any amounts in excess of the Grant contracted for under this Agreement.
- C. Any delay by any party in instituting or prosecuting any actions or proceedings or otherwise asserting its rights shall not, so long as the breach or default by another party shall be continuing, operate as a waiver of such rights or to deprive it of or limit such rights in any way; nor shall any waiver in fact be made by any party with respect to any specific default by any other party except to the extent specifically waived in writing.

ARTICLE VIII. GENERAL PROVISIONS

- A. Severability. The provisions of this Agreement are severable, and if for any reason a provision of this Agreement is determined to be invalid by a court having competent jurisdiction over the subject matter of the invalid provision, the invalidity shall not affect other provisions that can be given effect without the invalid provision. Further, in lieu of such illegal, invalid or unenforceable provision, there shall be added automatically as a part of this Agreement, a provision as similar in its terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.
- B. Amendment. This Agreement may be amended only by written amendment signed by both parties.
- C. Venue. All payments made pursuant to this Agreement and other obligations performed under this Agreement shall be made or performed in Kerrville, Kerr County, Texas. Venue shall lie in Kerr County, Texas; and this Agreement shall be governed by and construed in accordance with the laws of the State of Texas without respect to the conflict of laws rules thereof.
- D. Notices. All notices given with respect to this Agreement shall be in writing and shall be deemed to have been properly given for all purposes (i) if sent by a nationally recognized overnight carrier for next business day delivery, on the first business day following deposit of such notice with such carrier unless such carrier confirms such notice was not delivered, then on the day such carrier actually delivers such notice, or (ii) if personally delivered, on the actual date of delivery, or (iii) if sent by certified U.S. Mail, return receipt requested postage prepaid, on the fifth business day following the date of mailing, or (iv) if sent by facsimile, then on the actual date of delivery (as evidenced by a

facsimile confirmation) provided that a copy of the facsimile and confirmation is also sent by regular U.S. Mail, addressed as follows:

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

With a copy to:
City Manager
City of Kerrville
701 Main Street
Kerrville, Texas 78028
Facsimile: (830) 792-3850

For Fox
R. Nathan Fox
Vice President
Fox Tank Company, Inc.
South Texas Office
104 Hwy. 87
P.O. Box 658
Comfort, TX 78013
Facsimile: (830) 995-5022
Email: nathan@foxtankcompany.com

- E. Assignment. This Agreement is binding upon the parties hereto and their successors and assigns. Except as set forth in Article III, this Agreement may not be assigned by either party without the specific prior written consent of the other, which consent will not be unreasonably withheld. In the event that a party consents to any valid assignment of this Agreement by the other party hereto, the assigning party shall be relieved of any and all obligations and liabilities on the part of such assigning party under this Agreement. Fox may, without written consent of EIC, assign this Agreement to any entity controlled and 100% owned by Fox or by the parent, subsidiary, or affiliate of Fox provided the entity assumes all of Fox's obligations and liabilities under this Agreement; agrees to comply with all provisions of this Agreement; has the legal, managerial, technical, and financial ability to properly perform and discharge such obligations and liabilities; and such abilities are each at least as great as those of Fox and Fox provides a written guarantee of such assignee's performance in a form reasonably acceptable to EIC. EIC shall be advised in writing of such assignment and of the entity's qualifications at least sixty (60) days before such assignment occurs.
- F. Parties In Interest. Nothing in this Agreement shall entitle any party other than Fox or EIC to any claim, cause of action, remedy or right of any kind except as expressly provided in Article IV.

- G. Term. Subject to approval by the City Council and if applicable, compliance with Section 505.160 of the Act, the term of this Agreement (the "Term") commences on March 18, 2013 (the "Effective Date"), and terminates on the earlier of (i) March 18, 2023; (ii) when terminated by mutual agreement of the parties; (iii) when terminated pursuant to Articles VI or VII; (iv) at Fox's sole and absolute discretion, upon Fox's return of the Grant funding to EIC that it has received under this Agreement; or (v) upon Fox's repayment of all monies that are demanded by EIC and are in fact required to be repaid by Fox under Article III. Upon termination of this Agreement as specified herein, all rights, duties, and obligations of any kind under this Agreement will automatically expire and terminate and be of no other force and effect.
- H. Interpretation. Each party has had the opportunity to be represented by counsel of its choice in negotiating this Agreement. This Agreement shall therefore be deemed to have been negotiated and prepared at the joint request, direction, and construction of the parties, at arms length, with the advice and participation of counsel, and will be interpreted in accordance with its terms without favor to any party.
- I. No Joint Venture. Nothing contained in this Agreement is intended by the parties to create a partnership or joint venture between the parties.
- J. Survival of Terms. All rights, duties, liabilities and obligations accrued prior to termination shall survive termination.
- K. Entire Agreement. This Agreement represents the entire agreement of the parties with respect to the subject matter hereof.

EXECUTED AND EFFECTIVE, as of the date indicated above, by the City of Kerrville, Texas, Economic Improvement Corporation, by and through its Board President, duly authorized to execute same by action of the Board; and by Fox Tank Company, Inc., acting through its duly authorized official.

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

FOX TANK, INC.

David Wampler, President

R. Nathan Fox, Vice President

ATTEST:

Cheryl Brown, Recording Secretary

APPROVED AS TO FORM:

Michael C. Hayes, Attorney for EIC

Exhibit A
Fox Tank Reimbursement Schedule
Phase 2 Expansion - Separator Facility

Reimbursement Item	Maximum Reimbursement
Utilities	
Extensions (Water, Sewer, Electric)	\$ 50,000
Subtotal	\$ 50,000
Equipment	
Cranes (Includes Purchase and Installation)	\$ 100,000
Subtotal	\$ 100,000
TOTAL MAXIMUM REIMBURSEMENT	\$ 150,000

Agenda Item:

4B. Funding agreement with Texas Arts & Crafts Educational Foundation. (staff)

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

SUBJECT: Hold a public hearing and consider a funding agreement between the Texas Arts and Crafts Educational Foundation, Inc. and the City of Kerrville Economic Improvement Corporation

FOR AGENDA OF: March 18, 2013 **DATE SUBMITTED:** March 8, 2013

SUBMITTED BY: Ashlea Boyle, *AB* **CLEARANCES:** Todd Parton,
Special Projects Coordinator City Manager

EXHIBITS: Draft Funding Agreement

AGENDA MAILED TO:

APPROVED FOR SUBMITTAL BY CITY MANAGER: *TP*

Expenditure	Current Balance	Amount	Account
Required:	in Account:	Budgeted:	Number:
\$	\$	\$	

PAYMENT TO BE MADE TO:

REVIEWED BY THE DIRECTOR OF FINANCE:

SUMMARY STATEMENT

An application has been submitted by The Texas Arts and Crafts Foundation for rented items in conjunction with hosting the 42nd Annual Official Texas Arts and Crafts Fair during Memorial Day Weekend at River Star Events Park. The event will be held Friday, May 24 through Sunday, May 26, 2013 and will consist of a variety of activities such as showcasing of art, vendors, carnival, live music and more.

The gate count has been consistent with approximately 5,000-6,000 attendees for the past several years. The Texas Arts and Crafts Foundation's mission is to promote appreciation of fine arts and craft skills and create educational opportunities in the visual and creative arts in Texas. In addition to professional artists, the Fair is the home of the Emerging Texas Artist Scholarship Program, which provides a venue for college-level student artists to show and sell their work, as well as compete for scholarship funds for continuing education.

The overall projected cost of the event is \$182,555. The funding request is for a total of \$15,500 for rental of:

- Tents (\$12,000)
- Golf Carts (\$2,000)
- Porta potties (\$1,500)

The "Go Team" met on February 18, 2013 to evaluate this application and finds that it is

feasible in that the uses are allowed under the regulations for projects related to recreation or community facilities. A copy of the complete funding application was made available to the EIC Board for executive session deliberations.

As per direction at the February 25, 2013 EIC meeting, attached is a draft of the funding agreement between the Texas Arts and Crafts Educational Foundation, Inc. and the EIC.

RECOMMENDED ACTION

City staff recommends the consideration and approval of this funding agreement as presented.

**ECONOMIC DEVELOPMENT GRANT AGREEMENT BETWEEN
TEXAS ARTS & CRAFT EDUCATIONAL FOUNDATION, INC. AND
THE CITY OF KERRVILLE, TEXAS ECONOMIC IMPROVEMENT CORPORATION**

This Agreement entered into by and between TEXAS ARTS & CRAFTS EDUCATIONAL FOUNDATION, INC., a Texas nonprofit corporation (“TACEF”), acting herein by and through its duly authorized President, Mark Haufler (“TACEF Officer”), and the CITY OF KERRVILLE, TEXAS, ECONOMIC IMPROVEMENT CORPORATION (“EIC”), a Texas nonprofit corporation established pursuant to Section 4B of Tex. Rev. Civ. Stat. Art. 5190.6 (otherwise known as the Development Corporation Act of 1979 and now codified in Chapters 501, 502, and 505 of the Texas Local Government Code) (hereafter referred to as “the Act”), acting by and through its duly authorized President, David Wampler.

WITNESSETH:

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

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

Equipment and improvements found by the EIC to be required or suitable for use for professional and amateur sports, including children’s sports, athletic, entertainment, tourist, and events, including stadiums, auditoriums, parks and park facilities, exhibition facilities, and related store, restaurant, and concessions and other related improvements that enhance any of the items described by Section 505.152 of the Act; and

WHEREAS, TACEF is hosting the 42nd Annual Official Texas Arts and Crafts Fair (“Fair”) during Memorial Day weekend at River Star Events Park; and

WHEREAS, TACEF’s mission is to promote appreciation of fine arts and craft skills and to create educational opportunities in visual and creative arts in Texas; and

WHEREAS, TACEF has applied for a grant from EIC for funding to rent equipment, including tents, golf carts, and porta potties for the Fair from May 24, 2013 through May 26, 2013; and

WHEREAS, EIC has determined that such a grant complies with the Act and is in keeping with the mission of EIC and *City of Kerrville Economic Improvement Corporation 4B Sales Tax Funding Request Guidelines and Procedures* in that it will enhance the “quality of life” within the community; and

WHEREAS, EIC finds that it will be in the public interest to enter into an agreement with TACEF to provide sales tax revenues collected pursuant to the Act (“4B Revenues”) to TACEF for its cost in renting equipment for use at the Fair; and

WHEREAS, on March 18, 2013, in a meeting that was open to the public in accordance with the Texas Open Meetings Act, EIC held a public hearing pursuant to Section 505.159 of the Act related to the proposed expenditure of 4B Revenues for the purposes provided above;

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

**ARTICLE I.
EIC’S OBLIGATIONS**

- A. EIC hereby grants to TACEF an amount up to Fifteen Thousand Five Hundred and No/100 Dollars (\$15,500.00) (“Grant”) for costs relating to the rental of equipment (collectively referred to herein as “Equipment”) for the Fair. The specific items approved for rental by the TACEF are listed on the attachment included as **Exhibit A**.
- B. Subject to the terms and conditions set forth in Article II, the Grant will be provided to TACEF by EIC and EIC shall administer the Grant on a reimbursable basis. Prior to any payment from EIC, TACEF must first submit written evidence of costs, such as invoices, receipts, and bills of sale for review and approval. Following the submission and verification thereof, EIC shall then reimburse TACEF for the cost.
- C. Payments made by EIC to TACEF from 4B Revenues will be limited to the payments of “costs” as defined by the Act and as specified above for the Project.
- D. In no event will the total amount of the Grant exceed Fifteen Thousand Five Hundred and No/100 Dollars (\$15,500.00).

**ARTICLE II.
TACEF’S OBLIGATIONS**

- A. TACEF must rent the equipment for the Fair. Such equipment shall not be used for any other purpose.
- B. TACEF must keep and maintain complete and accurate records relating to the costs of the Equipment, separate and identifiable from its other records, for three (3) years following the termination of this Agreement. EIC and its representatives shall be entitled to inspect the records during the term of this Agreement and for three (3) years thereafter, upon reasonable notice.
- C. TACEF will only be liable to EIC for the actual amount of the Grant to be conveyed to TACEF and will not be liable to EIC for any other actual or consequential damages, direct or indirect, interest, attorney fees, or cost of court for any act of default by TACEF under the terms of this Agreement.

D. TACEF shall provide a written report to the EIC no later than 30 days following the Fair. The report shall include, but may not be limited to: attendance for each day of the Fair, gross receipts for the Fair, total expenses for the Fair, total ticket sales for the Fair, list of exhibitors, and the estimated number of attendees from outside of Kerr County.

**ARTICLE III.
SALE OF PROJECT, MERGER OR CONSOLIDATION OF TACEF**

- A. A sale of all or any of the assets of TACEF will not release TACEF from its duties and responsibilities to EIC under the terms of this Agreement and shall not result in the assignment of this Agreement by such acquiring entity without prior written consent from EIC, which will not be unreasonably withheld; provided, that TACEF's proposed successor shall have the financial condition to fully satisfy TACEF's duties and responsibilities hereunder and agrees to assume TACEF's responsibilities under this Agreement. EIC may, in its sole discretion, reasonably determine whether such proposed successor's financial condition is satisfactory.
- B. In the event of any proposed merger or other consolidation of TACEF with any third party not affiliated with TACEF, TACEF shall at least thirty (30) days prior to any such merger or consolidation provide EIC with information and assurance reasonably acceptable to EIC regarding: (1) the surviving entity's assumption and satisfaction of the TACEF's obligations hereunder and (2) the financial condition of the surviving entity upon such merger or other consolidation to demonstrate that the surviving entity has the financial condition to fully satisfy TACEF's duties and responsibilities hereunder. Failure to provide such information may be considered a breach of this Agreement.
- C. Notwithstanding anything in this Agreement to the contrary, it is expressly understood and agreed that EIC shall have no rights to approve or disapprove any sale or merger transaction of any kind involving TACEF. In the event of any sale or merger involving TACEF or its affiliates, the surviving entity shall assume TACEF's obligations and rights hereunder and be entitled to any and all benefits to be received pursuant to this Agreement.

**ARTICLE IV.
TACEF'S REPRESENTATIONS AND WARRANTIES**

- A. TACEF represents and warrants as of the date hereof:
- (1) TACEF is a Texas nonprofit corporation existing in good standing and authorized to do business in the State of Texas;
- (2) Execution of this Agreement has been duly authorized by TACEF and this Agreement is not in contravention of TACEF's governing authority or any agreement or instrument to which TACEF is a party or by which it may be bound as of the date hereof;
- (3) No litigation or governmental proceeding is pending, or, to the knowledge of TACEF Officer, threatened against or affecting TACEF, which may result in a material adverse

change in TACEF's business, properties, or operations sufficient to jeopardize TACEF's legal existence; and

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

- B. Except as expressly set forth in this Article IV, TACEF makes no other representation or warranty of any kind in connection with or related to the provisions of this Agreement.

ARTICLE V. EIC'S REPRESENTATIONS AND WARRANTIES

- A. EIC represents and warrants as of the date hereof:

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

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

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

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

- B. Except as expressly set forth in this Article V, EIC makes no other representation or warranty of any kind in connection with or related to the provisions of this Agreement.

ARTICLE VI. CONDITIONS UNDER WHICH EIC MAY SUSPEND PERFORMANCE OF ITS OBLIGATIONS UNDER THIS AGREEMENT

- A. Under any of the following conditions EIC may, at its option, after fifteen (15) days written notice to TACEF, suspend its further performance under this Agreement until such time as TACEF shall have cured the condition(s) and so notified EIC, in writing, that the condition(s) have been cured:

(1) TACEF becomes insolvent. "Insolvent" is defined to mean one either has ceased to pay its debts in the ordinary course of business or cannot pay its debts as they become due, or is insolvent within the meaning of the federal bankruptcy law.

(2) The appointment of a receiver of TACEF, or of all or any substantial part of the Property, and the failure of such receiver to be discharged within sixty (60) days thereafter.

(3) The adjudication of TACEF as bankrupt.

(4) The filing by TACEF of a petition to be adjudged as bankrupt, or a petition or answer seeking reorganization or admitting the material allegations of a petition filed against it in any bankruptcy or reorganization proceeding.

- B. Should any of these conditions not be cured by TACEF within ninety (90) days, TACEF will be considered to have breached this Agreement and EIC may, at its option, with written notice to TACEF, terminate this Agreement and TACEF shall be obligated to refund the EIC the full amount of any Grant funding received from the EIC.

ARTICLE VII. REMEDIES

- A. Except as otherwise provided in this Agreement, in the event of any default in or breach of this Agreement by any party hereto, or any successor to such party, such defaulting or breaching party (or successor) shall upon written notice from the other party, proceed immediately to cure or remedy such default or breach, and, in any event, within sixty (60) days after receipt of such notice. In the event that remedial action is not taken or not diligently pursued and the default or breach shall not be cured or remedied within a reasonable time (but in no event later than ninety (90) days from the date of notification of such breach), the aggrieved party may institute such proceedings as may be necessary or desirable in its opinion to cure and remedy such default or breach, including but not limited to, seeking specific performance and/or injunctive relief.
- B. Upon breach of this Agreement by either party and the failure to cure as permitted by this Article VII, the non-breaching party shall have the sole right and discretion to either terminate this Agreement and/or pursue any and all remedies which may be provided by law and this Agreement. Each party acknowledges and agrees that TACEF is not entitled to recover any amounts in excess of the Grant contracted for under this Agreement and that EIC, pursuant to a breach and failure to cure by TACEF in accordance with this Agreement, is entitled to recover attorney fees, collection costs, and any other costs due to its pursuit of repayment and remedies under this Agreement.
- C. Any delay by any party in instituting or prosecuting any actions or proceedings or otherwise asserting its rights will not, so long as the breach or default by another party is continuing, operate as a waiver of such rights or to deprive it of or limit such rights in any way; nor will any waiver in fact be made by any party with respect to any specific default by any other party except to the extent specifically waived in writing.

**ARTICLE VIII.
GENERAL PROVISIONS**

- A. Severability. The provisions of this Agreement are severable, and if for any reason a provision of this Agreement is determined to be invalid by a court having competent jurisdiction over the subject matter of the invalid provision, the invalidity shall not affect other provisions that can be given effect without the invalid provision. Further, in lieu of such illegal, invalid, or unenforceable provision, there will be added automatically as a part of this Agreement, a provision as similar in its terms to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable.
- B. Amendment. This Agreement may be amended only by written amendment signed by both parties.
- C. Venue. All payments made pursuant to this Agreement and other obligations performed under this Agreement shall be made or performed in Kerrville, Kerr County, Texas. Venue will lie in Kerr County, Texas; and this Agreement is governed by and construed in accordance with the laws of the State of Texas without respect to the conflict of laws rules thereof.
- D. Notices. All notices given with respect to this Agreement must be in writing and will be deemed to have been properly given for all purposes (i) if sent by a nationally recognized overnight carrier for next business day delivery, on the first business day following deposit of such notice with such carrier unless such carrier confirms such notice was not delivered, then on the day such carrier actually delivers such notice, or (ii) if personally delivered, on the actual date of delivery, or (iii) if sent by certified U.S. Mail, return receipt requested postage prepaid, on the fifth business day following the date of mailing, or (iv) if sent by facsimile, then on the actual date of delivery (as evidenced by a facsimile confirmation) provided that a copy of the facsimile and confirmation is also sent by regular U.S. Mail, addressed as follows:

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

With a copy to:
City Manager
City of Kerrville
701 Main Street
Kerrville, Texas 78028
Facsimile: (830) 792-3850

Texas Arts & Crafts Educational Foundation, Inc.
Mark R. Haufler
President
Texas Arts & Crafts Educational Foundation, Inc.
4000 Riverside Drive
Kerrville, Texas 78028
Email: mark.r.haufler@wellsfargo.com

- E. Assignment. This Agreement is binding upon the parties hereto and their successors and assigns. Except as set forth in Article III, this Agreement may not be assigned by either party without the specific prior written consent of the other, which consent will not be unreasonably withheld. In the event that a party consents to any valid assignment of this Agreement by the other party hereto, the assigning party will be relieved of any and all obligations and liabilities on the part of such assigning party under this Agreement. TACEF may, without written consent of EIC, assign this Agreement to any entity controlled and 100% owned by TACEF or by the parent, subsidiary, or affiliate of TACEF provided the entity assumes all of TACEF's obligations and liabilities under this Agreement; agrees to comply with all provisions of this Agreement; has the legal, managerial, technical, and financial ability to properly perform and discharge such obligations and liabilities; and such abilities are each at least as great as those of TACEF and TACEF provides a written guarantee of such assignee's performance in a form reasonably acceptable to EIC. EIC shall be advised in writing of such assignment and of the entity's qualifications at least sixty (60) days before such assignment occurs.
- F. Parties In Interest. Nothing in this Agreement shall entitle any party other than TACEF or EIC to any claim, cause of action, remedy or right of any.
- G. Term. The term of this Agreement (the "Term") shall commence on the date that signatures of the parties are affixed to this Agreement (the "Effective Date"), and will terminate on the earlier of: (i) either on June 26, 2013, or when the requirements set forth in this Agreement are completed, whichever date is later; (ii) when terminated by mutual agreement of the parties; (iii) when terminated pursuant to Articles VI or VII; (iv) or at the TACEF's sole and absolute discretion, but only upon the TACEF's return of all Grant funding to EIC that it has received under this Agreement. Upon termination of this Agreement as specified herein, all rights, duties and obligations of any kind under this Agreement shall automatically expire and terminate and be of no other force and effect.
- H. Interpretation. Each party has had the opportunity to be represented by counsel of its choice in negotiating this Agreement. This Agreement will therefore be deemed to have been negotiated and prepared at the joint request, direction, and construction of the parties, at arms length, with the advice and participation of counsel, and will be interpreted in accordance with its terms without favor to any party.
- I. No Joint Venture. Nothing contained in this Agreement is intended by the parties to create a partnership or joint venture between the parties.

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

K. Entire Agreement. This Agreement represents the entire agreement of the parties with respect to the subject matter hereof.

EXECUTED AND EFFECTIVE, as of the date indicated above, by the City of Kerrville, Texas, Economic Improvement Corporation, by and through its Board President, duly authorized to execute same by action of the Board; and by Texas Arts & Crafts Education Foundation, Inc., acting through the TACEF Officer.

CITY OF KERRVILLE, TEXAS

**TEXAS ARTS & CRAFTS
EDUCATIONAL FOUNDATION, INC.**

Jack Pratt, Jr., Mayor

Date: _____

Mark Haufler, President

Date: _____

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

David Wampler, President

Date: _____

ATTEST:

Cheryl Brown, Recording Secretary

APPROVED AS TO FORM:

Mike Hayes, City Attorney



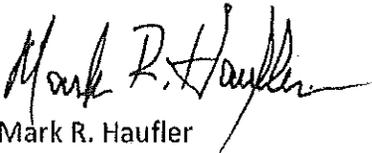
SECTION IV- PROJECT DESCRIPTION

The request the Texas Arts and Crafts Educational Foundation, Inc. is making is for the following items that are *rented* in conjunction with hosting the Official Texas Arts & Crafts Fair during the Memorial Day weekend. The Fair is held at the River Star Events Park located at 4000 Riverside Drive in Kerrville, TX. All of these items are paid for *after* the conclusion of the Fair.

Tents	\$12,000.00
Golf carts	\$2,000.00
Porta potties	\$1,500.00

Your consideration of our request is greatly appreciated.

Sincerely,



Mark R. Hafler
Board President
Texas Arts and Crafts Educational Foundation, Inc