

**AGENDA FOR REGULAR MEETING**

**CITY OF KERRVILLE, TEXAS**

**ECONOMIC IMPROVEMENT CORPORATION**

**MONDAY, MAY 20, 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, MAY 20, 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 April 15, 2013.

**3. MONTHLY REPORTS:**

3A. Monthly financials for April 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 Titas)

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The facility is wheelchair accessible and accessible parking spaces are available. Requests for accommodations or interpretive services must be made 48 hours prior to this event. Please contact the City Secretary's Office at 830-258-1118 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 May 16, 2013 at 5:00 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

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

4A. Economic development grant agreement between Kerrville's 4<sup>th</sup> on the River and the City of Kerrville Economic Improvement Corporation. (staff)

4B. Economic development grant agreement between Texas Hill Country Wine and Brew Festival and the City of Kerrville Economic Improvement Corporation. (staff)

4C. Economic development grant agreement between the Texas Folk Music Foundation dba Kerrville Folk Festival and the City of Kerrville Economic Improvement Corporation. (staff)

4D. Economic development grant agreement between the Kerrville Area Chamber of Commerce and the City of Kerrville Economic Improvement Corporation. (staff)

**5. CONSIDERATION AND POSSIBLE ACTION:**

5A. Funding request from Hill Country Quilt Guild (staff)

5B. Funding request from Playhouse 2000, Inc. (staff)

5C. Guidelines and Procedures for 4B Sales Tax Funding Requests (staff)

**6. EXECUTIVE SESSION:**

The Economic Improvement Corporation may, as permitted by law, adjourn into executive session at any time to discuss any matter listed above including if they meet the qualifications in 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:

Sections 551.071, 551.072 and 551.087 :

- River Trail

Sections 551.071 and 551.087

- Funding request from Hill Country Quilt Guild
- Funding request from Playhouse 2000, Inc.

**7. ADJOURNMENT**

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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: May 16, 2013 at 5:00 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

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## **Agenda Item:**

2A. Minutes of the regular meeting held April 15, 2013.

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

**April 15, 2013**

On Monday, April 15, 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 4:20 pm)  
Rex Boyland, Secretary  
Gary Cochrane (left at 5:07 p.m.)  
Larry Howard  
Stacie Keeble  
Polly Rickert

**Members Absent: None**

**City Executive Staff Present:**

Todd Parton, City Manager  
Kristine Ondrias, Assistant City Manager  
Mike Hayes, City Attorney  
Cheryl Brown, Deputy City Secretary  
Sai Vongchampa, Budget/Purchasing Manager  
Ashlea Boyle, Special Projects Coordinator  
Malcolm Matthews, Director of Parks and Recreation  
Kimberly Meisner, 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. Howard

1. **VISITORS/CITIZENS FORUM:** No one spoke

2. **APPROVAL OF THE MINUTES:**

2A. Minutes of the regular meeting held March 18, 2013. Mr. Howard moved for approval of the minutes of March 18, 2013; Mr. Cochrane seconded, and the motion passed 6 to 0. (Mr. Early arrived after this vote was taken.)

3. **MONTHLY REPORTS:**

3A. Monthly financials for March 2013: Mr. Vongchampa reported on the March 2013 financials. Sales tax received was \$205,749.00, which was a 10% increase over last year, and interest revenue was \$531.00, for total revenue of \$206,280 for March 2013. The expenditures for March totaled \$89,583.00, for a net increase of \$116,697.00. The ending cash balance for March, 2013 was

\$1,806,423.00. He reported on the sales tax debt service fund, and the capital projects fund, noting that \$747.00 was received from the Hill Country Shooting Center. He presented a break-down of the River Trail project expenditures and funding sources, EIC investments and funding agreements.

3B. Capital Projects Update: Mr. Parton reported:

Reimbursement was received in the amount of \$14,190.00, which was the outstanding financial commitment of the approximate 14 acres of property adjacent to the Airport Commerce Park, which was sold by Mr. Colvin. \$1,000.00 per acre was due and payable upon the transfer of ownership of those acres.

Harper Highway Project Phase II: The pipes were in the ground, and vegetation was being installed.

Golf Course Pavilion and Parking Lot Improvement Projects: The base layer was laid for the road and parking lot. The concrete for the curbs were poured; utility companies were preparing to bury their lines. The retaining walls were up, the slab for the pavilion was poured, the roof and decking, and columns for the pavilion were installed; projected completion was early May.

Downtown Utility Improvement Project: Mike Wittler, KPUB, reported that their customers were connected to the underground wires, and the transformers and wires on the tops of the poles had been removed. The telephone companies should finish their work in the next 2-3 weeks. The poles were scheduled to be removed the week of May 6, 2013.

3C. Update regarding "Go" Team activities:

Ms. Boyle reported that the "Go" Team met on April 4, 2013, and reviewed 5 funding requests. One request was deemed not to be qualified, as it was not from the property owner, who was the appropriate person to request funding. The remaining four requests, which were approved by the "Go" Team, were:

- Kerrville 4<sup>th</sup> of the River, \$22,450.00;
- Comanche Trace for the Texas Hill Country Wine and Brew Festival \$20,432.00;
- Texas Folk Music Foundation for the Kerrville Folk Festival, \$2,805.00; and
- Kerrville Area Chamber of Commerce for Kerrfest, \$10,560.00.

3D. Update on River Trail and Parks projects:

Mr. Matthews reported that, he was working on the site with the design group, changing the park elements, primarily on the west side of the park. He will have a presentable document for EIC's review at their next meeting. The design for the utility projects should be completed in July or August, and bid shortly thereafter. He was negotiating the design proposal for Package F, from G Street, to Kerrville Schreiner Park. He anticipated construction for Package F would begin in early 2014.

3E. Report on Fax Tank annual Employment and Investment Report (Jonas Titas): Mr. Titas reported that Fox Tank Company currently employed 62 people, with a gross payroll for 2012 of \$3,222,711.00.

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

Mr. Titas reported that Fox Tank Company (FTC) had their American Petroleum Institute audit last month, and they were recommended for approval; being able to start stamping their steel tanks by Memorial Day, which would allow FTC to supply tanks to the Eagle Ford Shale operation. He also reported on a West Texas manufacturing company and a trucking company. The wine industry strategy was progressing, i.e. soil tests, a marketing plan, and conversations with property owners. He attended the Southwest Texas Energy Conference in Sweetwater, Texas in March, and distributed information packets about Kerrville.

3G. Downtown Wireless Project:

Ms. Boyle reported a continued increase in the use of wireless in the downtown area.

Ms. Rickert moved to suspend the monthly reports on this matter until the work in Louise Hays Park was completed. Mr. Early seconded, and the motion passed 7-0.

3H. Update regarding reuse of effluent water from the City of Kerrville Reclamation Plant:

Mr. Parton detailed a project to store and use effluent for municipal purposes. He presented a concept plan with preliminary estimates of \$18 million to \$20 million that was prepared for the city by Freese & Nichols. He said that the wastewater reclamation plant produced approximately 325,000,000 gallons of effluent annually that could be captured and used for municipal purposes. The cost projection did not include the cost to process the effluent to make it usable for potable water. Mr. Parton proposed Phase I to treat effluent as an irrigation source, and Phase II as an alternate potable water supply.

He also noted that the city applied for a Certificate of Convenience and Necessity (CCN) from the Texas Commission on Environmental Quality (TCEQ), and it was expected to be granted soon. If current trends continued, the population of Kerrville should reach 27,000 to 30,000 in the next 30 years. The city also submitted an application two years ago to the TCEQ for an indirect reuse permit, which would protect against claims of reliance by entities downstream from Kerrville on additional effluent beyond the city's current production. If approved, Kerrville would be able to divert that effluent water and use it as either an irrigation or potable water source. The city will continue to explore other avenues of water treatment. The next step would be to determine how much the city can afford to capture, with an ultimate objective of determining the cost of converting effluent water to potable water.

**4. DISCUSSION AND POSSIBLE ACTION:**

**4A. Funding request from Kerrville's 4<sup>th</sup> on the River (staff):**

Ms. Boyle reported that the "Go Team" approved an application for a funding request of \$22,450.00, for rental charges for the stage, tents, port-a-potties, fencing, generators and ticket booths.

**4B. Funding request from Comanche Trace for the Texas Hill Country Wine and Brew Festival (staff):**

Ms. Boyle reported that the "Go Team" approved an application of \$20,432.00, for rental charges for tents, generators, fencing, port-a-potties, chairs, tables, dumpsters, misting fans, stage and sound system.

**4C. Funding request from the Texas Folk Music Foundation for the Kerrville Folk Festival (staff):**

Ms. Boyle reported that the "Go Team" approved an application for a funding request of \$2,805.00, which would to cover the cost of one chartered bus to transport people from the parking garage downtown to the Folk Festival, the Arts and Crafts Fair, and Market Days, all of the events were to be held during the Memorial Day weekend of May 24 – 26, 2013.

The following person spoke:

Ms. Dallis Allen reported that the Texas Folk Music Foundation was going to charter a bus to transport people to all of these events, in hopes that there would be less drinking and driving, and to make it easier for people to attend all of the events. If successful, they would continue to charter a bus for future events.

**4D. Funding request from the Kerrville Area Chamber of Commerce for Kerrfest (staff):**

Ms. Boyle reported that the "Go Team" approved an application for a funding request of \$10,560.00 for rental of spectator grandstands.

Mr. Cochrane left the meeting at 5:07 p.m.

**5. EXECUTIVE SESSION:**

Mr. Howard moved that the EIC go into executive closed session under Section 551.071 (consultation with attorney), Section 551.072 (deliberation regarding real property), and Section 551.087 (deliberation regarding economic development negotiations); Mr. Early seconded the motion, and it passed 7-0, to discuss the following matters:

Sections 551.071, 551.072 and 551.087

- River Trail

Ms. Keeble left the Executive Session Chambers at 5:15 PM.

Sections 551.071 and 551.087:

- Funding request from Kerrville's 4<sup>th</sup> on the River
- Funding request from Comanche Trace for the Texas Wine and Brew Festival
- Funding request from the Texas Folk Music Foundation for the Kerrville Folk Festival
- Funding request from Kerrville Area Chamber of Commerce for Kerrfest

At 5:07 p.m. the regular meeting recessed and the EIC went into executive closed session at 5:08 p.m. At 6:10 p.m. the executive closed session recessed and the board returned to open session at 6:10 p.m.

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

**ACTION TAKEN ON ITEMS DISCUSSED IN EXECUTIVE SESSION:**

4A. Mr. Boyland moved to approve the funding application from Kerrville's 4<sup>th</sup> on the River in an amount not to exceed \$25,000.00 as a reimbursement for the actual expense of the equipment listed in the application. Ms. Rickert seconded, and the motion passed 4-0-2. Mr. Boyland, Ms. Rickert, Ms. Keeble and Mr. Wampler voted in favor of the motion; no one voted against the motion; and Mr. Early and Mr. Howard abstained, as they were on the Kerrville 4<sup>th</sup> on the River Board.

4B. Mr. Howard moved to approve the funding application from Comanche Trace for the Texas Wine and Brew Festival in an amount not to exceed \$20,432.00, as a reimbursement for the actual expense of the equipment listed in the application. Ms. Keeble seconded, and the motion passed 6-0.

4C. Mr. Early moved to approve the funding application from Texas Folk Music Foundation for the Kerrville Folk Festival in an amount not to exceed \$8,500.00, as reimbursement for the actual expense of chartering up to three (3) buses to transport event patrons as referenced in the application. Mr. Boyland seconded, and the motion passed 6-0.

4D. Mr. Howard moved to approve the funding application from Kerrville Area Chamber of Commerce for Kerrfest in an amount not to exceed \$10,500.00 as reimbursement for actual expenses for the grandstands as referenced in the application. Ms. Rickert seconded, and the motion passed 6-0.

**ADJOURNMENT**

Mr. Wampler adjourned the meeting at 6:12 p.m.

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

\_\_\_\_\_  
David Wampler, President

ATTEST:

\_\_\_\_\_  
Cheryl Brown  
Deputy City Secretary

## **Agenda Item:**

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

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

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**SUBJECT:** EIC Financials

**FOR AGENDA OF:** May 20, 2013    **DATE SUBMITTED:** May 14, 2013

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

**EXHIBITS:** Monthly Financials  
**AGENDA MAILED TO:**

**APPROVED FOR SUBMITTAL BY CITY MANAGER:** 

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<b>Expenditure Required:</b>	<b>Current Balance in Account:</b>	<b>Amount Budgeted:</b>	<b>Account Number:</b>
\$	\$	\$	

**PAYMENT TO BE MADE TO:**

**REVIEWED BY THE DIRECTOR OR FINANCE:**

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**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

<b>Cash Balance as of April 1, 2013</b>		<b>\$ 1,806,422</b>
Deposits:		
Sales Tax	\$ 215,800	
Interest Revenue	\$ 508	
Colvin Reimbursement	\$ 14,190	
	<u>\$ 230,498</u>	
Expenses:		
Office Supplies		
Public Notice	\$ 43	
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>\$ 89,627</u>	
Revenues Over (Under) Expenditures		<u>\$ 140,872</u>
<b>Ending Cash Balance as of April 30, 2013</b>		<b><u><u>\$ 1,947,293</u></u></b>

City of Kerrville  
Economic Improvement Corporation  
Sales Tax Improvement Fund - Revenue and Expense Statement  
For the month ending April 30, 2013

	Annual Budget	Current Period	Y-T-D Actual	% of Budget	Budget Balance
<b>BEGINNING CASH BALANCE</b>	\$ 1,788,939		\$ 1,788,939		
<b>REVENUE:</b>					
Sales and Use Tax	\$ 2,425,000	\$ 215,800	\$ 1,565,562	64.56%	\$ 859,438
Interest	\$ 5,000	\$ 508	\$ 3,347	66.94%	\$ 1,653
Refund Airport/TXDOT	\$ -	\$ -	\$ 11,006		\$ (11,006)
Reimbursement - Colvin		\$ 14,190	\$ 14,190		\$ (14,190)
Transfer In			\$ 80,000		\$ (80,000)
<b>TOTAL REVENUE</b>	<b>\$ 2,430,000</b>	<b>\$ 230,498</b>	<b>\$ 1,674,105</b>	<b>68.89%</b>	<b>\$ 861,091</b>
<b>EXPENDITURES:</b>					
<b>Administrative</b>					
Advertising/Supplies	\$ 500	\$ 43	\$ 323	-	\$ 177
Transfer to Debt Service Fund	\$ 505,000	\$ 42,083	\$ 294,583	58.33%	\$ 210,417
Transfer to Debt Service Fund - River Trail	\$ 170,000	\$ 14,167	\$ 99,167		\$ 70,833
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	\$ 58,333	58.33%	\$ 41,667
<b>Total Administrative</b>	<b>\$ 954,000</b>	<b>\$ 64,627</b>	<b>\$ 582,907</b>	<b>61.10%</b>	<b>\$ 371,093</b>
<b>Category I - Business Development</b>					
Unspecified	\$ 1,078,961			0.00%	\$ 1,078,961
<b>Total Category I</b>	<b>\$ 1,078,961</b>	<b>\$ -</b>	<b>\$ -</b>	<b>100.00%</b>	<b>\$ 1,078,961</b>
<b>Category II - Quality of Life</b>					
River Trail	\$ 300,000	\$ 25,000	\$ 175,000	58.33%	\$ 125,000
Downtown Wireless	\$ 100,000				\$ 100,000
Golf Course Improvements	\$ 608,141	\$ -	\$ 608,141	100.00%	\$ -
HCDJLS	\$ 150,000		\$ 149,703	99.80%	\$ 297
<b>Total Category II</b>	<b>\$ 1,158,141</b>	<b>\$ 25,000</b>	<b>\$ 932,844</b>	<b>80.55%</b>	<b>\$ 225,297</b>
<b>Category III - Public Infrastructure</b>					
Category III Unspecified	\$ 500,000			0.00%	\$ 500,000
<b>Total Category III</b>	<b>\$ 500,000</b>	<b>\$ -</b>	<b>\$ -</b>	<b>0.00%</b>	<b>\$ 500,000</b>
<b>Contingency</b>	<b>\$ -</b>				<b>\$ -</b>
<b>TOTAL EXPENDITURES</b>	<b>\$ 3,691,102</b>	<b>\$ 89,627</b>	<b>\$ 1,515,751</b>	<b>41.06%</b>	<b>\$ 2,175,351</b>
<b>NET REVENUES TO EXPENDITURES</b>	<b>\$ (1,261,101)</b>	<b>\$ 140,872</b>	<b>\$ 158,354</b>		
<b>ENDING CASH BALANCE: April 30, 2013</b>	<b>Budget</b> \$ 527,837		<b>Actual</b> \$ 1,947,293		

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	\$ 175,922	\$ 205,749	\$ 29,826	16.95%
April	\$ 160,461	\$ 157,729	\$ 185,835	\$ 173,572	\$ 215,800	\$ 42,228	24.33%
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!
<b>Total</b>	<b>\$ 2,243,991</b>	<b>\$ 2,355,166</b>	<b>\$ 2,545,329</b>	<b>\$ 1,368,088</b>	<b>\$ 1,565,562</b>	<b>\$ 197,475</b>	<b>14.43%</b>

CITY OF KERRVILLE  
Economic Improvement Corporation  
Sales Tax Debt Service Fund

<b>Cash Balance as of April 1, 2013</b>		<b>\$ 186,200</b>
Revenues:		
Transfer from Sales Tax Improvements Fund	<u>\$ 42,083</u>	
Total Deposits	\$ 42,083	
Expenses:		
Paying Agent Fee		
Bond Principal		
Bond Interest		
Total Expenses	<u>\$ -</u>	
Revenues Over (Under) Expenditures:		<u>\$ 42,083</u>
<b>Ending Cash Balance as of April 30, 2013</b>		<b><u><u>\$ 228,283</u></u></b>

CITY OF KERRVILLE  
Economic Improvement Corporation  
Sales Tax Debt Service Fund  
Revenue and Expense Statement  
For the month ending April 30, 2013

	Annual Budget	Current Period	Y-T-D Actual	% of Budget	Budget Balance
<b>BEGINNING CASH BALANCE</b>	\$ 421,672		\$ 421,672		
<b>REVENUE:</b>					
Transfer from Sales Tax Improvement Fund	\$ 505,000	\$ 42,083	\$ 294,583	58.33%	\$ 210,417
<b>TOTAL REVENUE</b>	<b>\$ 505,000</b>	<b>\$ 42,083</b>	<b>\$ 294,583</b>	<b>58.33%</b>	<b>\$ 210,417</b>
<b>EXPENDITURES:</b>					
Series 1999 Sales Tax Bond Debt Service	\$ 465,000	\$ -	\$ 465,000	100%	\$ -
Series 1999 Sales Tax Bond Interest Expense	\$ 33,248	\$ -	\$ 21,971	66%	\$ 11,277
Paying Agent Fees	\$ 1,000	\$ -	\$ 1,000	100%	\$ -
First Southwest Continuing Disclosure Fee	\$ -	\$ -	\$ -	-	\$ -
<b>TOTAL EXPENDITURES</b>	<b>\$ 499,248</b>	<b>\$ -</b>	<b>\$ 487,971</b>	<b>97.74%</b>	<b>\$ 11,277</b>
<b>ENDING CASH BALANCE: April 30, 2013</b>	<b>Budget</b> \$ 427,424		<b>Actual</b> \$ 228,283		

CITY OF KERRVILLE  
Economic Improvement Corporation  
EIC Capital Projects Fund

<b>Cash Balance as of April 1, 2013</b>		<b>\$ 1,841,952</b>
Revenues:		
Hill Country Shooting Center	\$ 747	
Total Revenues/Transfer In	<u>\$ 747</u>	
Expenses:		
Services		
Special Services		
Harper Road Utilities - Phase 2		
Harper Road Utilities - Phase 2 - Retainage		
Golf Course Improvements	109,373	
Golf Course Improvements - Retainage	<u>\$ (5,104)</u>	
	\$ 104,269	
Total Expenses	\$ 104,269	
Revenue Over (Under) Expenditures		<u>\$ (103,522)</u>
<b>Ending Cash Balance as of April 30, 2013</b>		<b><u><u>\$ 1,738,431</u></u></b>

**CITY OF KERRVILLE**  
**Economic Improvement Corporation**  
**Sales Tax Improvement Capital Projects Fund**

**Project Status Summary**  
**For the month ending April 30, 2013**

YEAR(S) FUNDED	PROJECTS	Funding Agreement	Agreement Commitment	EIC Funded To Date	Non-EIC Funding	Total Funded	Project Expenses to Date	Project Balance	EIC Future Allocation Balance
2009/10	Hill Country Home Opportunity	FA 2010-02	\$ 250,000	\$ 250,000		\$ 250,000	\$ 250,000	\$ 0	-
2009/10	Commercial Improvement Program		\$ 100,000	\$ 100,000		\$ 100,000	\$ 20,000	\$ 80,000	-
2010/11	Commercial Improvement Program		\$ 100,000	\$ 100,000		\$ 100,000	\$ -	\$ 100,000	-
2010/11	Hill Country Shooting Center	FA 2010-03	\$ 494,838	\$ 494,838		\$ 495,585	\$ 495,580	\$ (0)	-
	Harper Hwy Utility Ext Phase 2		\$ 1,000,000	\$ 1,000,000		\$ 1,000,000	\$ 506,671	\$ 493,329	-
2011/12	Fox Tank		\$ 300,000	\$ 300,000		\$ 300,000		\$ 300,000	-
2011-12	Downtown Utilities		\$ 300,000	\$ 300,000		\$ 300,000		\$ 300,000	-
2012-13	Golf Course Improvements		\$ 608,141	\$ 608,141		\$ 608,141	\$ 143,038	\$ 465,103	-
	Hill Country Jr. Livestock Assoc		\$ 150,000	\$ 149,703		\$ 149,703	\$ 149,703		297
<b>TOTALS</b>			<b>\$ 3,302,979</b>	<b>\$ 3,302,682</b>		<b>\$ 3,303,429</b>	<b>\$ 1,564,993</b>	<b>\$ 1,738,431</b>	<b>297</b>

Cash Balance on 4/30/2013      \$ 1,738,431

Fund 70 - General Capital Improvement Projects - supported by EIC				Total Funded	Expense
YEAR(S) FUNDED	PROJECTS	Funding Agreement	Agreement Commitment	Total Funded	Expense
2011-12	River Trail	C2011-76	\$ 6,000,000	\$ 5,399,466	\$ 252,964
2011-12	Louise Hays Park Improvements	C2011-76	\$ 2,000,000	\$ 2,000,000	\$ -
<b>TOTALS</b>			<b>\$ 8,000,000</b>	<b>\$ 7,399,466</b>	<b>\$ 252,964</b>
				<b>\$ 7,146,502</b>	

CITY OF KERRVILLE

River Trail Project Status Summary  
As of month ending March 31, 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	\$ 16,939	\$ 7,291,684	\$ 25,860		\$ 5,256,416	\$ 2,000,000		\$ 7,256,416
1/31/2013	\$ 8,000,000			\$ 25,000	\$ 665	\$ 7,317,349	\$ 206,155		\$ 5,075,926	\$ 2,000,000		\$ 7,075,926
2/28/2013	\$ 8,000,000			\$ 25,000	\$ 1,375	\$ 7,343,724	\$ 2,817		\$ 5,099,484	\$ 2,000,000		\$ 7,099,484
3/31/2013	\$ 8,000,000			\$ 25,000	\$ 4,548	\$ 7,373,272	\$ 471		\$ 5,128,561	\$ 2,000,000		\$ 7,128,561
4/30/2013	\$ 8,000,000			\$ 25,000	\$ 1,194	\$ 7,399,466	\$ 8,253		\$ 5,146,502	\$ 2,000,000		\$ 7,146,502
	\$ 8,000,000	Total	\$ 6,949,745	\$ 425,000	\$ 24,721	\$ 7,399,466	\$ 252,964	\$ -	\$ 5,146,502	\$ 2,000,000		\$ 7,146,502

<b>Cash Balance</b>				
<u>Fund Number</u>	<u>Fund Name</u>	<u>Cash Amount</u>	<u>Period</u>	
40	Sales Tax Improvement Fund	\$ 1,947,293	4/30/2013	
43	EIC Debt Service Fund	\$ 228,283	4/30/2013	
75	EIC Projects Fund	\$ 1,738,431	4/30/2013	
Total EIC Cash Balance		\$ 3,914,008	4/30/2013	

<b>Where Cash and Investment Held</b>					
<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	\$ 201,562	\$ -	0.00%	4/30/2013
ST Investment	EIC TexPool	\$ 1,597,877	\$ 130.49	0.10%	4/30/2013
ST Investment	EIC TexStar	\$ 1,623,982	\$ 132.77	0.10%	4/30/2013
HILCO FCU	CD	\$ 245,385	\$ 141.10	0.69%	4/30/2013
Kerr County FCU	CD	\$ 245,201	\$ 104.08	0.51%	4/30/2013
Total Cash & Investments		\$ 3,914,008	\$ 508.44	0.16%	

## 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:** May 20, 2013

**DATE SUBMITTED:** May 15, 2013

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

**CLEARANCES:**

**EXHIBITS/INFORMATION:** Status Reports

**APPROVED FOR SUBMITTAL BY CITY MANAGER:**



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<b>Expenditure Required:</b>	<b>Current Balance in Account:</b>	<b>Amount Budgeted:</b>	<b>Account Number:</b>
<b>\$</b>	<b>\$</b>	<b>\$</b>	

**PAYMENT TO BE MADE TO:**

**REVIEWED BY THE FINANCE DIRECTOR:**

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**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

<b>SCOPE</b>	<ul style="list-style-type: none"> <li><b>Phase Two</b> Projects consists of the construction of approximately 4,600 linear feet of 12" water main &amp; 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 &amp; 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 &amp; appurtenances.</li> </ul>
<b>Status</b>	Construction contract was awarded to Qro Mex Construction at May 22, 2012 City Council meeting. Construction is complete. C-3 Environmental Specialties, LP was contracted to finalize the required revegetation and stabilization within the right of way of Harper Highway. Project final acceptance was issued May 7, 2013.

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 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.	Approved/Complete	TxDOT final approval of permits	
	TxDOT Permits	Approved	General construction permits for construction within TxDOT right of way	
Design	<del>under contract</del> HDR Engineering	Complete		
Construction Drawings Bidding/Contracts Construction	final plans/specs/costs/ documents Construction contract awarded to Qro Mex Construction 5/22/12 Construction Completed	completed 4/2012	all project elements contract prep	
		start June 2012; complete Dec. 2012		

FUNDING - BUDGET	Allocation	Expended - Encumbered	Balance	Cost Est. for Package	Needed to Complete Package
EIC funding (FA2008-013)	\$1,000,000	\$631,857.06	\$368,142.94	Construction \$580,000 Materials Testing \$38,000	

# EIC Status Report Golf Course Pavilion Project

<b>SCOPE</b>	<ul style="list-style-type: none"> <li>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.</li> </ul>
<b>Status</b>	Construction contract was awarded to JM Lowe at February 12, 2013 City Council meeting. Construction began on February 26, 2013. The construction for the new pavilion, retaining wall, relocation of overhead utilities, and parking lot paving is now complete. Contractor is currently finishing the construction of fence and slope stabilization within the parking lot area.

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 24	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 Materials Testing Design	\$608,141.00 \$7,000.00 \$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	\$329,985.35	\$278,155.65	Construction \$330,000 Materials Testing \$4,000	
	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  
Rex Boyland  
Larry Howard  
Councilmember Stacie Keeble

Kenneth Early  
Gary Cochrane  
Polly Rickert

From: Mike Wittler

Date: May 14, 2013

Re: Update on Downtown Utility Conversion Project Status

---

KPUB's underground installation is complete.

Hill Country Telecommunications has also completed the installation of their cables and removed all of their overhead facilities.

Windstream and Time Warner are both indicating that their crews will complete their work this week.

Once Windstream and Time Warner have moved their services underground and removed their overhead facilities, KPUB can remove the remaining poles and wires within a week.

I will be available at your April 15<sup>h</sup> 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**

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**SUBJECT:** Update on "GO Team" activities

**FOR AGENDA OF:** May 20, 2013      **DATE SUBMITTED:** May 15, 2013

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

**EXHIBITS:**

**AGENDA MAILED TO:**

**APPROVED FOR SUBMITTAL BY CITY MANAGER:** *TP*

---

<b>Expenditure Required:</b>	<b>Current Balance in Account:</b>	<b>Amount Budgeted:</b>	<b>Account Number:</b>
\$	\$	\$	

**PAYMENT TO BE MADE TO:**

**REVIEWED BY THE DIRECTOR OF FINANCE:**

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**SUMMARY STATEMENT**

The Economic Development "GO Team" met on May 7, 2013 to review the funding request application from Hill Country Quilt Guild. The team evaluated the application and found that the application partially qualifies for 4B funding as presented.

The "GO Team" also met on May 13, 2013 to discuss the funding request application from Playhouse 2000, Inc. The team evaluated the application and found that the application qualifies for 4B funding.

**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:** May 20, 2013

**DATE SUBMITTED:** May 13, 2013

**SUBMITTED BY:** Malcolm Matthews

**CLEARANCES:** Kristine Ondrias

**EXHIBITS:** Monthly Report

**AGENDA MAILED TO:**

**APPROVED FOR SUBMITTAL BY CITY MANAGER:**



---

<b>Expenditure</b>	<b>Current Balance</b>	<b>Amount</b>	<b>Account</b>
<b>Required:</b>	<b>in Account:</b>	<b>Budgeted:</b>	<b>Number:</b>
<b>\$</b>	<b>\$</b>	<b>\$</b>	

**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

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## River Trail/Parks Projects

May 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
Property Survey	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
	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 trail 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			
Routing	location of trail	complete (12/11)	define gradients and layout	
	schematic plans; prelim. costs	50% review - complete (12/11)	all project elements	
		75% review - complete (1/12)	all project elements	
Construction Drawings Bidding/Contracts	final plans/specs/costs/ documents	90% review - complete (2/12)	all project elements	
	secure contractor	complete (3/12)	all project elements	
Construction	build project	bid (3/12); awarded (5/12) to Westar Construction	bid process, contract prep	project delay, bid cost, permit approvals, etc.
		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 —25,000 \$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 Kerrville 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 fall 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 security lighting, observation areas, seating areas, bridging, drainage, signage, trail entries, kiosks, and interpretive signage.  
Parks - park amenities, amphitheater/stage, playground, sprayground, picnic areas, large 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	na	na	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 TPWD (land & water permit) GLO (state property use) -Trail Routing Options - Half Team -Final Design Contract - Half Team	upon trail completion 7/1/13, if needed 7/1/13, if needed complete (6/12) complete (approved 12/11/12)	flood impact, if any environmental impact to state waters routing preference define route options w/ costs	may require submittal to FEMA review by TPWD approval by State, if needed complete (6/12) Council approval (12/11/12)
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	coord. with utilities projects
Construction Drawings	final plans/specs/costs/ documents	complete by fall 2013	all project elements	project delay assoc. with approvals
Bidding/Contracts	secure contractor	fall 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) - 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      Kerrville 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
	construction easements, if needed	TBD	TBD	requires property owner approval
Property Survey	M&B and Topo surveys	(partially complete)	identify property boundary and grades	
Misc. Reports/Permits	LOMR		flood impact, if any	may require submittal to FEMA
	TPWD (land & water permit)		environmental impact to state waters	review by TPWD
Design	TBD	(partially complete)		waiting for private development
	location of trail	(partially complete)	define gradients and layout	" " " "
Preliminary Design	schematic plan with amenities; prelim. costs	50% review –	all project elements	" " " "
		75% review –	all project elements	" " " "
		90% review –	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

<b>SCOPE</b>
Package E 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. Total trail length: up to 1 mile
<b>Amenities</b>
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 construction easements, if needed	TBD TBD	CoK to secure easements from property owners TBD	requires property owner approval, purchase, or other requires property owner approval
Property Survey	M&B and Topo surveys	(partially complete)	identify property boundary and grades	
Misc. Reports/Permits	LOMR TPWD (land & water permit)		flood impact, if any environmental impact to state waters	may require submittal to FEMA 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

<b>SCOPE</b>
<b>Package F</b> extends from G St. (Package B terminus) along the river to 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 fall 2013. <i>Total trail length: up to 2 miles</i>
<b>Amenities</b> Trailheads with security 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 construction easements, if needed	complete by 8/31/13 complete by 8/31/13	CoK to secure easements from property owners determine need by 6/1/13	requires property owner approval, purchase, or other requires property owner approval
Property Survey	M&B and Topo surveys	M&B - complete (9/12) upon trail completion	identify property boundary and grades flood impact, if any	coord. w/ utilities projects
Misc. Reports/Permits	LOMR TPWD (land & water permit)	7/1/13, if needed complete (6/12)	environmental impact to state waters define route options w/ costs	may require submittal to FEMA
Design	-Trail Confirmation - Terra Design Group (TDG) team -Final Design Contract – TDG Team	negotiate by 5/31/13 50% review – 75% review – 90% review –	all remaining design phases all project elements all project elements all project elements	complete (6/12) requires Council approval coord. with utilities projects
Preliminary Design	final plans/specs/costs/ documents secure contractor	complete by late 2013 late 2013	all project elements bid process, contract prep	project delay assoc. with approvals project delay, bid cost, etc.
Construction Drawings Bidding/Contracts	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)

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

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**SUBJECT:** Update on Kerrville Economic Development Corporation Activities

**FOR AGENDA OF:** May 20, 2013

**DATE SUBMITTED:** May 15, 2013

**SUBMITTED BY:** Ashlea Boyle, *AB*  
Special Projects Coordinator

**CLEARANCES:** Todd Parton,  
City Manager

**EXHIBITS:**

**AGENDA MAILED TO:**

**APPROVED FOR SUBMITTAL BY CITY MANAGER:**



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<b>Expenditure Required:</b>	<b>Current Balance in Account:</b>	<b>Amount Budgeted:</b>	<b>Account Number:</b>
\$	\$	\$	

**PAYMENT TO BE MADE TO:**

**REVIEWED BY THE DIRECTOR OF FINANCE:**

---

**SUMMARY STATEMENT**

This is a routine update from the KEDC Executive Director regarding KEDC activity.

**RECOMMENDED ACTION**

This is for information only. No recommended action.

## **Agenda Item:**

4A. Economic Development grant agreement between Kerrville's 4<sup>th</sup> on the River and the City of Kerrville Economic Improvement Corporation. (staff)

---

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

**SUBJECT:** Hold a public hearing and consider a funding agreement between Kerrville's 4<sup>th</sup> on the River and the City of Kerrville Economic Improvement Corporation

**FOR AGENDA OF:** May 20, 2013      **DATE SUBMITTED:** May 15, 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:** 

<b>Expenditure Required:</b>	<b>Current Balance in Account:</b>	<b>Amount Budgeted:</b>	<b>Account Number:</b>
\$	\$	\$	

**PAYMENT TO BE MADE TO:**

**REVIEWED BY THE DIRECTOR OF FINANCE:**

**SUMMARY STATEMENT**

At its meeting of April 15, 2013, the EIC considered a funding application by Kerrville's 4<sup>th</sup> on the River for rented items in conjunction with hosting the Kerrville's 4<sup>th</sup> on the River event to be held on July 4, 2013.

The original funding request was for a total of **\$22,450** for rental of:

- Stage / Sound (\$14,500)
- Tents (\$1,500)
- Port-a-potties (\$2,750)
- Fencing (\$200)
- Generators (\$2,000)
- Ticket Booths (\$1,500)

The event has been held in Louise Hays Park for the past two years; however, to accommodate the Louise Hays Park Improvements and River Trail Project, the original plan, when the funding application transpired, was to temporarily move the event to Peterson Plaza for 2013 and 2014. It was announced at the April 15, 2013 EIC meeting that the project timeline will allow for use of the park for the 2013 event. This resulted in additional funding in the amount of \$2,250 to accommodate the transition of event locations as rented equipment may need to be modified.

As per direction at the April 15, 2013 EIC meeting, attached is a draft funding agreement between Kerrville's 4<sup>th</sup> on the River and the EIC in the amount of \$25,000.

**RECOMMENDED ACTION**

City staff recommends holding a public hearing and the consideration and approval of this funding agreement as presented.

**ECONOMIC DEVELOPMENT GRANT AGREEMENT BETWEEN  
KERRVILLE'S 4<sup>TH</sup> ON THE RIVER AND  
THE CITY OF KERRVILLE, TEXAS ECONOMIC IMPROVEMENT CORPORATION**

This Agreement entered into by and between KERRVILLE'S 4<sup>TH</sup> ON THE RIVER, a Texas nonprofit corporation ("K4OR"), acting herein by and through its duly authorized President, Ben Modisett ("K4OR 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**, K4OR is hosting the 3rd Annual Kerrville's 4<sup>th</sup> on the River event on July 4, 2013, at Louise Hays Park ("Event"); and

**WHEREAS**, K4OR's mission is to help the Kerrville community in its revitalization efforts to attract and create a more vibrant downtown focusing on the Guadalupe River; and

**WHEREAS**, K4OR has and will continue to advertise the Event both locally and beyond so as to maximize the attendance of tourists to the Event; and

**WHEREAS**, K4OR has applied for a grant from EIC for funding to rent equipment, including stage and sound equipment, tents, fencing, generators, ticket booths, and port-a-potties (collectively referred to herein as "Equipment") for the Event on July 4, 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 K4OR to provide sales tax revenues collected pursuant to the Act (“4B Revenues”) to K4OR for its cost in renting the Equipment for use at the Event; and

**WHEREAS**, on May 20, 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, K4OR and the EIC agree as follows:

**ARTICLE I.  
EIC’S OBLIGATIONS**

- A. EIC hereby grants to K4OR an amount up to Twenty-Five Thousand and No/100 Dollars (\$25,000.00) (“Grant”) for costs relating to the rental of Equipment for the Event. The specific items approved for rental by the K4OR 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 K4OR by EIC and EIC shall administer the Grant on a reimbursable basis. Prior to any payment from EIC, K4OR 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 K4OR for the cost of the Equipment.
- C. Payments made by EIC to K4OR 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 Twenty-Five Thousand and No/100 Dollars (\$25,000.00).

**ARTICLE II.  
K4OR’S OBLIGATIONS**

- A. In order to receive reimbursement from EIC, K4OR must rent the Equipment for the Event and may not use such equipment for any other purpose.
- B. K4OR 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. K4OR will only be liable to EIC for the actual amount of the Grant to be conveyed to K4OR 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 K4OR under the terms of this Agreement.

- D. K4OR shall provide a written report to the EIC no later than 30 days following the Event. The report shall include, but may not be limited to: attendance for the Event, gross revenue for the Event, total expenses for the Event, list of exhibitors, and the estimated number of attendees at the Event from outside of Kerr County.

### **ARTICLE III.**

#### **SALE OF PROJECT, MERGER OR CONSOLIDATION OF K4OR**

- A. A sale of all or any of the assets of K4OR will not release K4OR 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 K4OR's proposed successor shall have the financial condition to fully satisfy K4OR's duties and responsibilities hereunder and agrees to assume K4OR'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 K4OR with any third party not affiliated with K4OR, K4OR 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 K4OR'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 K4OR'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 K4OR. In the event of any sale or merger involving K4OR or its affiliates, the surviving entity shall assume K4OR's obligations and rights hereunder and be entitled to any and all benefits to be received pursuant to this Agreement.

### **ARTICLE IV.**

#### **K4OR'S REPRESENTATIONS AND WARRANTIES**

- A. K4OR represents and warrants as of the date hereof:
- (1) K4OR 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 K4OR and this Agreement is not in contravention of K4OR's governing authority or any agreement or instrument to which K4OR 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 K4OR Officer, threatened against or affecting K4OR, which may result in a material adverse change in K4OR's business, properties, or operations sufficient to jeopardize K4OR's legal existence; and

(4) No written application, written statement, or correspondence submitted by K4OR to EIC in connection with this Agreement, or in connection with any transaction contemplated hereby, to the knowledge of K4OR 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, K4OR 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 K4OR, suspend its further performance under this Agreement until such time as K4OR shall have cured the condition(s) and so notified EIC, in writing, that the condition(s) have been cured:

(1) K4OR 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 K4OR, 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 K4OR as bankrupt.
  - (4) The filing by K4OR 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 K4OR within ninety (90) days, K4OR will be considered to have breached this Agreement and EIC may, at its option, with written notice to K4OR, terminate this Agreement and K4OR 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 K4OR 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 K4OR 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

Kerrville's 4<sup>th</sup> on the River  
Ben Modisett  
President  
Kerrville's 4<sup>th</sup> on the River  
P.O. Box 295081  
Kerrville, Texas 78029-5081  
Email: [bmodisett@me.com](mailto:bmodisett@me.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. K4OR may, without written consent of EIC, assign this Agreement to any entity controlled and 100% owned by K4OR or by the parent, subsidiary, or affiliate of K4OR provided the entity assumes all of K4OR'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 K4OR and K4OR 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 K4OR or EIC to any claim, cause of action, remedy, or right of any kind except as expressly provided in Article IV.
  
- 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 July 31, 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 K4OR's sole and absolute discretion, but only upon the K4OR'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 Kerrville's 4<sup>th</sup> on the River, acting through the K4OR Officer.

*(signatures begin on following page)*

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

**KERRVILLE'S 4<sup>TH</sup> ON THE RIVER**

\_\_\_\_\_  
David Wampler, President  
Date: \_\_\_\_\_

\_\_\_\_\_  
Ben Modisett, President  
Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Cheryl Brown, Recording Secretary

APPROVED AS TO FORM:

\_\_\_\_\_  
Michael C. Hayes, Attorney for EIC



April 1, 2013

Dear Mr. Parton,

Kerrville's 4<sup>th</sup> on the River is a 501(c)3 tax-exempt organization based in Kerrville, TX. The mission of Kerrville's 4<sup>th</sup> on the River is to help the Kerrville Community in its revitalization efforts to attract and create a more vibrant downtown focusing on the Guadalupe River.

Kerrville's 4<sup>th</sup> on the River was started 2 years ago and has been successful events that coincided with the City of Kerrville's fireworks presentation. You may have heard about our events, for Kerrville was one of the only communities to even have a fireworks display in 2011, and was one of the most amazing displays we have ever seen. Thanks to many generous businesses in Kerrville like Mamacitas( who has given the city a grant to fund the fireworks display for 10 years) and James Avery Craftsman (our title sponsor for the 2011 event) and HEB and Guadalupe National Bank (title sponsors in 2012) we were able to bring upwards of 20,000 people to our downtown and city park to enjoy the festivities.

I am writing this letter to ask the Kerrville Economic Improvement Corporation to assist us this year in providing a free concert in downtown Kerrville.

We will have food vendors, kid's activities, and the live music. We want our event to be very family oriented and to be as economically feasible as possible for everyone to enjoy.

Our project Budget is as follows:

Stage/Sound-	\$14,500.00
Tents-	\$ 1,500.00
Port a Potties	\$ 2750.00
Fencing	\$ 200.00
Generators	\$ 2,000.00
Ticket Booths	<u>\$ 1,500.00</u>
Total	\$22,450.00

Thank you for your consideration.



Benjamin Modisett  
Kerrville's 4<sup>th</sup> on the River  
President

## **Agenda Item:**

4B. Economic development grant agreement between Texas Hill Country Wine and Brew Festival and the City of Kerrville Economic Improvement Corporation.  
(staff)

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

**SUBJECT:** Hold a public hearing and consider a funding agreement between the Texas Hill Country Wine and Brew Festival and the City of Kerrville Economic Improvement Corporation

**FOR AGENDA OF:** May 20, 2013      **DATE SUBMITTED:** May 15, 2013

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

**EXHIBITS:** Draft Funding Agreement

**AGENDA MAILED TO:**

**APPROVED FOR SUBMITTAL BY CITY MANAGER:** 

<b>Expenditure Required:</b>	<b>Current Balance in Account:</b>	<b>Amount Budgeted:</b>	<b>Account Number:</b>
\$	\$	\$	

**PAYMENT TO BE MADE TO:**

**REVIEWED BY THE DIRECTOR OF FINANCE:**

**SUMMARY STATEMENT**

An application has been submitted by Comanche Trace for rented items for the 1<sup>st</sup> Annual Texas Hill Country Wine and Brew Festival to be held around Lake Comanche Trace on July.6, 2013. The Festival will feature Texas Wineries, Microbreweries, specialty food vendors, unique retail booths, and live music.

The Texas Hill Country Wine and Brew Festival has applied for 501©3 status and expects to receive determination in May 2013. Based on other similar festivals in the area, the anticipated attendance for this event is 3,000 attendees. Proceeds from the Texas Hill Country Wine & Brew Festival will be distributed to organizations that benefit the lives, education, and well-being of the citizens of Kerr County.

The funding request is for a total of **\$20,432** for rental of:

- Tents (\$3,463)
- Generators (\$700)
- Fencing (\$7,950)
- Port-a-potties (\$2,273)
- Chairs (\$788)
- Tables (\$388)
- Dumpsters (\$750)
- Misting Fans (\$920)
- Stage (\$2,000)
- Sound System (\$1,200)

The "GO Team" met on April 4, 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 review.

As per direction at the April 15, 2013 EIC meeting, attached is a draft of the funding agreement between the Texas Hill Country Wine and Brew Festival and the EIC in the amount of \$20,432.

**RECOMMENDED ACTION**

City staff recommends holding a public hearing and the consideration and approval of this funding agreement as presented.

**ECONOMIC DEVELOPMENT GRANT AGREEMENT BETWEEN  
TEXAS HILL COUNTRY WINE AND BREW FESTIVAL AND  
THE CITY OF KERRVILLE, TEXAS ECONOMIC IMPROVEMENT CORPORATION**

This Agreement entered into by and between TEXAS HILL COUNTRY WINE AND BREW FESTIVAL, a Texas nonprofit corporation (“THCWBF”), acting herein by and through its duly authorized President, Trevor Hyde (“THCWBF 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**, THCWBF is hosting the 1<sup>st</sup> Annual Texas Hill Country Wine and Brew Festival (“Festival”) to be held around Lake Comanche Trace on July 6, 2013; and

**WHEREAS**, THCWBF has and will continue to advertise the Festival both locally and beyond so as to maximize the attendance of tourists to the event; and

**WHEREAS**, THCWBF intends to distribute proceeds from the Festival to organizations that benefit the lives, education, and well-being of the citizens of Kerr County; and

**WHEREAS**, THCWBF has applied for a grant from EIC for funding to rent equipment, including tents, generators, and porta-potties for the Festival; 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 THCWBF to provide sales tax revenues collected pursuant to the Act (“4B Revenues”) to THCWBF for its cost in renting equipment for use at the Festival; and

**WHEREAS**, on May 20, 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, THCWBF and the EIC agree as follows:

**ARTICLE I.  
EIC'S OBLIGATIONS**

- A. EIC hereby grants to THCWBF an amount up to Twenty Thousand Four Hundred and Thirty-Two and No/100 Dollars (\$20,432.00) ("Grant") for costs relating to the rental of equipment, to include tents, generators, and porta-potties (collectively referred to herein as "Equipment") for the Festival. The specific items approved for rental by the THCWBF 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 THCWBF by EIC and EIC shall administer the Grant on a reimbursable basis. Prior to any payment from EIC, THCWBF 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 THCWBF for the cost.
- C. Payments made by EIC to THCWBF 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 Twenty Thousand Four Hundred Thirty-Two Dollars and No/100 (\$20,432.00).

**ARTICLE II.  
THCWBF'S OBLIGATIONS**

- A. In order to receive reimbursement from EIC, K4OR must rent the Equipment for the Festival and may not use such equipment for any other purpose.
- B. THCWBF 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. THCWBF will only be liable to EIC for the actual amount of the Grant to be conveyed to THCWBF 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 THCWBF under the terms of this Agreement.
- D. THCWBF shall provide a written report to the EIC no later than 30 days following the Festival. The report shall include, but may not be limited to: attendance at the Festival, gross receipts for the Festival, total expenses for the Festival, total ticket sales for the

Festival, list of exhibitors, and the estimated number of attendees at the Festival from outside of Kerr County.

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

- A. A sale of all or any of the assets of THCWBF will not release THCWBF 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 THCWBF's proposed successor shall have the financial condition to fully satisfy THCWBF's duties and responsibilities hereunder and agrees to assume THCWBF'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 THCWBF with any third party not affiliated with THCWBF, THCWBF 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 THCWBF'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 THCWBF'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 THCWBF. In the event of any sale or merger involving THCWBF or its affiliates, the surviving entity shall assume THCWBF's obligations and rights hereunder and be entitled to any and all benefits to be received pursuant to this Agreement.

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

- A. THCWBF represents and warrants as of the date hereof:
  - (1) THCWBF 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 THCWBF and this Agreement is not in contravention of THCWBF's governing authority or any agreement or instrument to which THCWBF 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 THCWBF Officer, threatened against or affecting THCWBF, which may result in a material adverse change in THCWBF's business, properties, or operations sufficient to jeopardize THCWBF's legal existence; and

- (4) No written application, written statement, or correspondence submitted by THCWBF to EIC in connection with this Agreement, or in connection with any transaction contemplated hereby, to the knowledge of THCWBF 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, THCWBF 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 THCWBF, suspend its further performance under this Agreement until such time as THCWBF shall have cured the condition(s) and so notified EIC, in writing, that the condition(s) have been cured:
- (1) THCWBF 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 THCWBF, 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 THCWBF as bankrupt.

(4) The filing by THCWBF 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 THCWBF within ninety (90) days, THCWBF will be considered to have breached this Agreement and EIC may, at its option, with written notice to THCWBF, terminate this Agreement and THCWBF 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 THCWBF 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 THCWBF 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 Hill Country Wine and Brew Festival  
Trevor Hyde  
President  
2801 Comanche Trace Drive  
Kerrville, Texas 78028  
Email: [thyde@comanchetrace.com](mailto:thyde@comanchetrace.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. THCWBF may, without written consent of EIC, assign this Agreement to any entity controlled and 100% owned by THCWBF or by the parent, subsidiary, or affiliate of THCWBF provided the entity assumes all of THCWB'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 THCWBF and THCWBF 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 THCWBF or EIC to any claim, cause of action, remedy, or right of any kind except as expressly provided in Article IV.
- 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 July 31, 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 THCWBF's sole and absolute discretion, but only upon the THCWBF'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 Hill Country Wine and Brew Festival, Inc., acting through the THCWBF Officer.

*(signatures begin on following page)*

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

**TEXAS HILL COUNTRY  
WINE AND BREW FESTIVAL**

\_\_\_\_\_  
David Wampler, President  
Date: \_\_\_\_\_

\_\_\_\_\_  
Trevor Hyde, President  
Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Cheryl Brown, Recording Secretary

APPROVED AS TO FORM:

\_\_\_\_\_  
Michael C. Hayes, Attorney for EIC



EXHIBIT "A"

Texas Hill Country Wine & Brew Fest  
Estimated Rental Expenses  
3/22/2013

Tent Rentals	3,463
Generator Rentals	700
Temporary Fencing (est. 5000')	7,950
Port-a-potties (30 @ 75.78ea)	2,273
Chair Rentals (350 @ 2.25ea)	788
Table Rentals (50 @ 7.75ea)	388
Dumpster Rentals	750
Misting Fan Rentals	920
Stage Rental	2,000
Sound System Rental	<u>1,200</u>
Total Rentals	20,432

## **Agenda Item:**

4C. Economic development grant agreement between the Texas Folk Music Foundation dba Kerrville Folk Festival and the City of Kerrville Economic Improvement Corporation. (staff)

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

**SUBJECT:** Hold a public hearing and consider a funding agreement between the Texas Folk Music Foundation dba Kerrville Folk Festival and the City of Kerrville Economic Improvement Corporation

**FOR AGENDA OF:** May 20, 2013      **DATE SUBMITTED:** May 15, 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*

<b>Expenditure Required:</b>	<b>Current Balance in Account:</b>	<b>Amount Budgeted:</b>	<b>Account Number:</b>
\$	\$	\$	

**PAYMENT TO BE MADE TO:**

**REVIEWED BY THE DIRECTOR OF FINANCE:**

**SUMMARY STATEMENT**

An application has been submitted by the Texas Folk Music Foundation for transportation services in conjunction with hosting the 42<sup>nd</sup> Annual Kerrville Folk Festival. The bus will transport passengers between the three major events / points of interest being held Memorial Day Weekend, May 24-26, 2013, which are the Kerrville Folk Festival, Texas Arts and Crafts Fair, Kerr County Market Days, and the general downtown historic area. The development of the transportation services will allow for greater cross participation between the events, tourism and community shopping opportunities.

The Kerrville Folk Festival held in Quiet Valley Ranch, has had approximately 50,000 annual attendees over the last four years. The focus of the festival is to promote emerging artists while giving the audience exposure to both new and recognized seasoned talent.

The funding request was for a total of \$2,805 for transportation services via chartered bus.

The "GO Team" met on April 4, 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 review.

At its meeting of April 15, 2013, the EIC approved funding for up to 3 buses to better facilitate the transportation route and reduce wait time. Attached is a draft funding agreement between the Texas Folk Music Foundation dba Kerrville Folk Festival and the

EIC in the amount of \$8,500.

**RECOMMENDED ACTION**

City staff recommends holding a public hearing and the consideration and approval of this funding agreement as presented.

**ECONOMIC DEVELOPMENT GRANT AGREEMENT BETWEEN  
TEXAS FOLK MUSIC FOUNDATION dba KERRVILLE FOLK FESTIVAL AND  
THE CITY OF KERRVILLE, TEXAS ECONOMIC IMPROVEMENT CORPORATION**

This Agreement entered into by and between TEXAS FOLK MUSIC FOUNDATION dba KERRVILLE FOLK FESTIVAL, a Texas nonprofit corporation (“KFF”), acting herein by and through its duly authorized Producer, Dalis Allen (“KFF 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 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**, KFF is hosting the 42<sup>nd</sup> Annual Kerrville Folk Festival beginning Memorial Day weekend and continuing over the next several weeks at Quiet Valley Ranch (“Festival”); and .

**WHEREAS**, KFF has and will continue to advertise the Festival both locally and beyond so as to maximize the attendance of tourists to the event; and

**WHEREAS**, KFF has applied for a grant from EIC for funding to rent transportation services (bus) to transport passengers between the Festival, Texas Arts & Crafts Fair, Kerr County Market Days and the general downtown historic area May 25-26, 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 KFF to provide sales tax revenues collected pursuant to the Act (“4B Revenues”) to KFF for its cost in renting transportation services; and

**WHEREAS**, on May 20, 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, KFF and the EIC agree as follows:

**ARTICLE I.  
EIC'S OBLIGATIONS**

- A. EIC hereby grants to KFF an amount up to Eight Thousand Five Hundred and No/100 (\$8,500.00) ("Grant") for costs relating to KFF's acquisition of transportation services (collectively referred to herein as "Equipment") for the transporting passengers between the Festival, Texas Arts & Crafts Fair, Kerr County Market Days and the general downtown historic area on May 25 through May 26, 2013. The EIC will not provide payments for any other purpose.
- B. Subject to the terms and conditions set forth in Article II, the Grant will be provided to KFF by EIC and EIC shall administer the Grant on a reimbursable basis. Prior to any payment from EIC, KFF 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 KFF for the cost.
- C. Payments made by EIC to KFF 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 Eight Thousand Five Hundred and No/100 Dollars (\$8,500.00).

**ARTICLE II.  
KFF'S OBLIGATIONS**

- A. In order to receive reimbursement from EIC, KFF must acquire transportation services for transporting passengers between the Festival, Texas Arts & Crafts Fair, Kerr County Market Days and the general downtown historic area May 25-26, 2013.
- B. KFF 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. KFF will only be liable to EIC for the actual amount of the Grant to be conveyed to KFF 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 KFF under the terms of this Agreement.
- D. KFF shall provide a written report to the EIC no later than 30 days following the Festival. The report shall include, but may not be limited to: attendance for each day of the

Festival, gross receipts for the Festival, total expenses for the Festival, total ticket sales for the Festival, list of exhibitors, and the estimated number of attendees at the Festival from outside of Kerr County.

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

- A. A sale of all or any of the assets of KFF will not release KFF 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 KFF's proposed successor shall have the financial condition to fully satisfy KFF's duties and responsibilities hereunder and agrees to assume KFF'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 KFF with any third party not affiliated with KFF, KFF 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 KFF'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 KFF'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 KFF. In the event of any sale or merger involving KFF or its affiliates, the surviving entity shall assume KFF's obligations and rights hereunder and be entitled to any and all benefits to be received pursuant to this Agreement.

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

- A. KFF represents and warrants as of the date hereof:
  - (1) KFF 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 KFF and this Agreement is not in contravention of KFF's governing authority or any agreement or instrument to which KFF 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 KFF Officer, threatened against or affecting KFF, which may result in a material adverse change in KFF'S business, properties, or operations sufficient to jeopardize KFF's legal existence; and

- (4) No written application, written statement, or correspondence submitted by KFF to EIC in connection with this Agreement, or in connection with any transaction contemplated hereby, to the knowledge of KFF 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, KFF 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 KFF, suspend its further performance under this Agreement until such time as KFF shall have cured the condition(s) and so notified EIC, in writing, that the condition(s) have been cured:
- (1) KFF 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 KFF, 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 KFF as bankrupt.

(4) The filing by KFF 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 KFF within ninety (90) days, KFF will be considered to have breached this Agreement and EIC may, at its option, with written notice to KFF, terminate this Agreement and KFF 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 KFF 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 KFF 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.

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- 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.
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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 Folk Music Foundation dba Kerrville Folk Festival  
Dalis Allen  
Producer  
3876 Medina Highway  
Kerrville, Texas 78028

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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 KFF and KFF 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.

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- 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 July 31, 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 KFF's sole and absolute discretion, but only upon the KFF'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 Folk Music Foundation dba Kerrville Folk Festival., acting through the KFF Officer.

*(signatures begin on following page)*

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

\_\_\_\_\_  
David Wampler, President

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

**TEXAS FOLK MUSIC FOUNDATION  
dba  
KERRVILLE FOLK FESTIVAL**

\_\_\_\_\_  
Dalis Allen, Producer

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

ATTEST:

\_\_\_\_\_  
Cheryl Brown, Recording Secretary

APPROVED AS TO FORM:

\_\_\_\_\_  
Michael C. Hayes, Attorney for EIC



EXHIBIT "A"



The Texas Folk Music Foundation, dba Kerrville Folk Festival (KFF), in a collaborative project with the Texas Arts & Crafts Fair, the Kerrville Downtown Business Association and the City of Kerrville, propose the development of a Saturday, May 25<sup>th</sup> and Sunday, May 26<sup>th</sup> free Bus Ride service. The bus will pick up and drop off riders between the three major events/areas being held Memorial Day weekend in Kerrville and Kerr County. This temporary addition to the Transportation Infrastructure in Kerrville would provide Public transportation designed to offer greater opportunities for tourism and sales tax revenues in Kerrville and Kerr County.

2013 brings to Kerrville, Kerr County and surrounding communities the 42<sup>nd</sup> Kerrville Folk Festival. For the past 41 years, people from across the nation and around the world have attended KFF's yearly event. Over the last four years, KFF has provided the State of Texas and Kerr County with over \$138,445 in sales tax revenue from income received from its' estimated 50,000 yearly attendees. In addition to Sales Tax revenues paid to the Texas State Comptroller's office, the community of Kerrville receives approximately \$1.9 million in Direct Economic Impact from Festival attendees each year. The development of a temporary Bus route will allow greater participation and community shopping opportunities to patrons who visit our festival each year.

This proposed public transportation bus route would begin at Peterson Plaza, located at 700 Water Street at the corner of Sidney Baker. Bus riders from Kerrville will park their cars in the City of Kerrville's Parking Garage, and walk across the street to the Peterson Plaza pick-up location. Passengers would then travel on a looped route whose first stop to drop off or pick up passengers would be the KFF Festival Grounds located 9 miles S of Kerrville on Hwy 16. The second stop on the route will be the Texas Arts and Crafts Fair. After stopping at the Arts and Crafts Fair to drop off or pick up passengers, the bus will continue on to the original departure point at Peterson Plaza where they can enjoy the assortment of shops and eateries offered in the Historic Downtown Kerrville area or the Kerr County Market Days located on the Kerr County Courthouse grounds. Whether the bus offers Festival attendees a way to "go to town" without using their own vehicle or offers citizens a way to shop the Arts & Crafts Fair or enjoy an evening of music at the Kerrville Folk Festival, this project offers public transportation to Tourist and Residents alike which will enable them to attend events happening Memorial Day weekend in Kerrville and Kerr County.

To keep Kerrville and Kerr County Sales Tax dollars in the community, an estimated quote from the Kerrville Bus Company has been attached. Charter Quotation 20183 identifies a 55 passenger coach be used in the project for an estimated \$2,800 to \$3,000 fee. It is felt by all parties involved in this proposed project to be a worthwhile investment to increase their revenue base and thus increase the Sales Tax revenues received by Kerrville and Kerr County Texas.

Sincerely,

Dalis Allen, Producer  
Kerrville Folk Festival  
3876 Medina Hwy  
Kerrville, Tx 78028

City of Kerrville  
Funding Application - Hotel Occupancy Tax  
FY 2012

Attachment A

**Project Description**

The primary purpose of the funding request is to: advocate tourism of Kerrville by advertising in other cities around the state of Texas; marketing the festivals worldwide as a draw to Kerrville by printing, mailing and distributing over 10,000 brochures & programs; creating, printing & distributing posters; web site administration; and the promotion of these events at other venues and festivals around the country that would draw similar participants to Kerrville.

For years, our web site has promoted local hotels and a link to the Kerrville Chamber of Commerce and Visitor's Bureau for links to local attractions and accommodations. The board of the Texas Folk Music Foundation embraces the simple Formula for Economic Impact: (A) Offer quality concerts and programs with a wide variety of music genres in a fun, family-oriented atmosphere; and (B) market these audiences utilizing a multitude of advertising tools including magazines, newspaper, radio, TV, electronically and via social networking to (C) participants internationally, nationally, regionally and locally; equals (D) increased tourism in Kerrville and increased sales tax revenues from visiting guests.

2011 marked the 40<sup>th</sup> year for the Kerrville Folk Festival. The Kerrville Chamber of Commerce has documented the millions of tourism dollars these annual festivals and wine & music festivals have brought in to Kerrville as a direct result of this nationally-acclaimed arts initiative.

## **Agenda Item:**

4D. Economic development grant agreement between the Kerrville Area Chamber of Commerce and the City of Kerrville Economic Improvement Corporation. (staff)

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

**SUBJECT:** Hold a public hearing and consider a funding agreement between the Kerrville Area Chamber of Commerce and the City of Kerrville Economic Improvement Corporation

**FOR AGENDA OF:** May 20, 2013      **DATE SUBMITTED:** May 15, 2013

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

**EXHIBITS:** Draft Funding Agreement

**AGENDA MAILED TO:**

**APPROVED FOR SUBMITTAL BY CITY MANAGER:** 

<b>Expenditure Required:</b>	<b>Current Balance in Account:</b>	<b>Amount Budgeted:</b>	<b>Account Number:</b>
\$	\$	\$	

**PAYMENT TO BE MADE TO:**

**REVIEWED BY THE DIRECTOR OF FINANCE:**

**SUMMARY STATEMENT**

An application has been submitted by the Kerrville Area Chamber of Commerce for rental of spectator grandstands in conjunction with hosting the 3<sup>rd</sup> Annual Kerrfest event to be held May 16-19, 2013 at the Hill Country Youth Event Center. The event will consist of a carnival, rodeo, chili and BBQ cook-offs, homebrew competition, street dance, live music and more.

In 2011, approximately 700-800 people attended the event and 1,500+ attended in 2012. The attendance is expected to increase for the 2013 event. Grandstands are necessary to accommodate the number of spectators as the outdoor arena currently does not have spectator seating. Rented bleachers in 2011 and 2012 only accommodated seating for 300 people which was inadequate for the number of attendees.

The funding request was for a total of \$10,560 for rental of spectator grandstands. This would provide box seating for the sponsors and over 600 additional seats for spectators.

The "GO Team" met on April 4, 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 review.

As per direction at the April 15, 2013 EIC meeting, attached is a draft funding agreement between the Kerrville Area Chamber of Commerce and the EIC in the amount of \$10,500.

**RECOMMENDED ACTION**

City staff recommends holding a public hearing and the consideration and approval of this funding agreement as presented.

**ECONOMIC DEVELOPMENT GRANT AGREEMENT BETWEEN  
KERRVILLE AREA CHAMBER OF COMMERCE AND  
THE CITY OF KERRVILLE, TEXAS ECONOMIC IMPROVEMENT CORPORATION**

This Agreement entered into by and between KERRVILLE AREA CHAMBER OF COMMERCE, a Texas nonprofit corporation (“KACC”), acting herein by and through its duly authorized President/CEO, Harold Dean (“KACC 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**, KACC is hosting the 3<sup>rd</sup> Annual KerrFest May 16 through May 19, 2013 at the Hill Country Youth Event Center (“KerrFest”); and

**WHEREAS**, KACC has and will continue to advertise KerrFest both locally and beyond so as to maximize the attendance of tourists to the event; and

**WHEREAS**, KACC has applied for a grant from EIC for funding to rent equipment, including spectator grandstands, from May 16, 2013 through May 19, 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 KACC to provide sales tax revenues collected pursuant to the Act (“4B Revenues”) to KACC for its cost in renting equipment for use at the event; and

**WHEREAS**, on May 20, 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, KACC and the EIC agree as follows:

**ARTICLE I.  
EIC'S OBLIGATIONS**

- A. EIC hereby grants to KACC an amount up to Ten Thousand Five Hundred and No/100 Dollars (\$10,500.00) ("Grant") for costs relating to the rental of equipment, including spectator grandstands (collectively referred to herein as "Equipment") for KerrFest. The specific items approved for rental by the KACC 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 KACC by EIC and EIC shall administer the Grant on a reimbursable basis. Prior to any payment from EIC, KACC 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 KACC for the cost.
- C. Payments made by EIC to KACC 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 Ten Thousand Five Hundred and No/100 Dollars (\$10,500.00).

**ARTICLE II.  
KCAA'S OBLIGATIONS**

- A. In order to receive reimbursement from EIC, KACC must rent the Equipment for the KerrFest and may not use such equipment for any other purpose.
- B. KACC 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. KACC will only be liable to EIC for the actual amount of the Grant to be conveyed to KACC 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 KACC under the terms of this Agreement.
- D. KACC shall provide a written report to the EIC no later than 30 days following the event. The report shall include, but may not be limited to: attendance for each day of KerrFest, gross receipts for KerrFest, total expenses for KerrFest, total ticket sales for KerrFest, list

of exhibitors, and the estimated number of attendees from outside of Kerr County who attended KerrFest.

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

- A. A sale of all or any of the assets of KACC will not release KACC 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 KACC's proposed successor shall have the financial condition to fully satisfy KACC's duties and responsibilities hereunder and agrees to assume KACC'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 KACC with any third party not affiliated with KACC, KACC 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 KACC'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 KACC'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 KACC. In the event of any sale or merger involving KACC or its affiliates, the surviving entity shall assume KACC's obligations and rights hereunder and be entitled to any and all benefits to be received pursuant to this Agreement.

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

- A. KACC represents and warrants as of the date hereof:
  - (1) KACC 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 KACC and this Agreement is not in contravention of KACC's governing authority or any agreement or instrument to which KACC 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 KACC Officer, threatened against or affecting KACC, which may result in a material adverse change in KACC's business, properties, or operations sufficient to jeopardize KACC's legal existence; and

(4) No written application, written statement, or correspondence submitted by KACC to EIC in connection with this Agreement, or in connection with any transaction contemplated hereby, to the knowledge of KACC 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, KACC 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 KACC, suspend its further performance under this Agreement until such time as KACC shall have cured the condition(s) and so notified EIC, in writing, that the condition(s) have been cured:

(1) KACC 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 KACC, 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 KACC as bankrupt.

(4) The filing by KACC 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 KACC within ninety (90) days, KACC will be considered to have breached this Agreement and EIC may, at its option, with written notice to KACC, terminate this Agreement and KACC 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 KACC 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 KACC 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

Kerrville Area Chamber of Commerce  
Harold Dean  
President/CEO  
1700 Sidney Baker, Suite 100  
Kerrville, Texas 78028  
Email: [president@kerrvilletx.com](mailto:president@kerrvilletx.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. KACC may, without written consent of EIC, assign this Agreement to any entity controlled and 100% owned by KACC or by the parent, subsidiary, or affiliate of KACC provided the entity assumes all of KACC'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 KACC and KACC 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 KACC or EIC to any claim, cause of action, remedy, or right of any kind except as expressly provided in Article IV.
- 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 30, 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 KACC's sole and absolute discretion, but only upon the KACC'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 the Kerrville Area Chamber of Commerce, acting through the KACC Officer.

*(signatures begin on following page)*

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

**KERRVILLE AREA CHAMBER OF  
COMMERCE**

\_\_\_\_\_  
David Wampler, President  
Date: \_\_\_\_\_

\_\_\_\_\_  
Harold Dean, President/CEO  
Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Cheryl Brown, Recording Secretary

APPROVED AS TO FORM:

\_\_\_\_\_  
Michael C. Hayes, Attorney for EIC



EXHIBIT "A" 99

It's all right here.

April 3, 2013

Dear Economic Improvement Corporation:

Thank you for your consideration of the attached request for funding. The Kerrville Area Chamber of Commerce (KACOC) requests funding in the amount of \$10,560.00 for the lease of grandstands for the 2013 Kerrfest event, to be held May 16-19, 2013, at the Hill Country Youth Event Center.

Kerrfest is the largest special event hosted by KACOC. Our major event sponsors are Wells Fargo Bank and Crenwelge Motors. We will be hosting a Midway carnival all four days of the event. On Thursday night, we will kick off Kerrfest with a Junlor rodeo. A Jackpot team roping will take place Saturday morning with an estimated 100 teams. Open Pro Rodeo performances will be held Friday and Saturday nights. In addition to these rodeo events, on Friday and Saturday, we are hosting two CASI-sanctioned chili cook-offs, and on Saturday we'll have a Lone Star Barbecue Society-sanctioned BBQ cook-off and a homebrew competition. A good old fashioned street dance will be held Saturday night after the rodeo featuring local favorite John Christopher Way and Barbwire, sponsored by JM Lowe and Co. These events will draw contestants, spectators, and families from all over the state of Texas.

This is the third year for the event to take place. In 2011, we had between 700-800 people attend the event. Last year, that number increased to 1,500+ over the four-day event. The anchor of Kerrfest is the rodeo that takes place Friday and Saturday nights. Unfortunately, there is no spectator seating at the outdoor arena in order to accommodate our visitors. For the past two years, we have had to bring in portable aluminum bleachers, with seating only provided for approximately 300 people. With the increased numbers expected for this year, we are deeply concerned about the need to provide adequate seating.

Please refer to the attached quote for spectator grandstands. This would provide box seating for our sponsors and over 600 seats for spectators. Providing safe, professional-grade, adequate seating for our anchor event is absolutely essential to the continued success and reputation of Kerrfest. We have enjoyed great partnerships with the City of Kerrville, Kerr County, and the Kerrville Convention and Visitors Bureau to promote our hill country town and businesses.

We humbly request your consideration of this funding request in the amount of \$10,560.00. Thank you in advance.

Sincerely,

Harold Dean, IOM  
President/CEO

Encl:

- a) EIC Funding Request Application
- b) 2012 Kerrfest P&L
- c) Star of Texas Tents and Events Proposal
- d) Economic Impact Analysis

1700 Sidney Baker, Suite 100, Kerrville, Texas 78028  
p: 830.896.1155 f: 830.896.1175 e: president@kerrvilletx.com  
www.kerrvilletx.com

## **Agenda Item:**

- 5A. Funding request from Hill Country Quilt Guild (staff)

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

**SUBJECT:** 4B Sales Tax Funding Request from the Hill Country Quilt Guild

**FOR AGENDA OF:** May 20, 2013      **DATE SUBMITTED:** May 15, 2013

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

**EXHIBITS:** Funding Request Cover Letter

**AGENDA MAILED TO:**

**APPROVED FOR SUBMITTAL BY CITY MANAGER:** *[Signature]*

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<b>Expenditure Required:</b>	<b>Current Balance in Account:</b>	<b>Amount Budgeted:</b>	<b>Account Number:</b>
\$	\$	\$	

**PAYMENT TO BE MADE TO:**

**REVIEWED BY THE DIRECTOR OF FINANCE:**

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**SUMMARY STATEMENT**

An application has been submitted by the Hill Country Quilt Guild for funding for the biennial quilt show "Quilts in Motion" to be held at Schreiner University May 24-26, 2013. Approximately 1,200 were in attendance for the last show with attendees traveling from 16 different states and 95 different Texas cities.

The Hill Country Quilt Guild has been in existence since 1984 and has grown from 10 members to more than 200. The guild is a non-profit group that volunteers many hours to several charities and organizations in the Kerrville area.

The funding request is for a total of **\$2,700** for:

- Rental of the Edington Gymnasium at Schreiner University (\$1,000);
- To cover expenses incurred by the National Quilting Association Judge, specifically judge's fees, lodging, food, and travel (\$1,700).

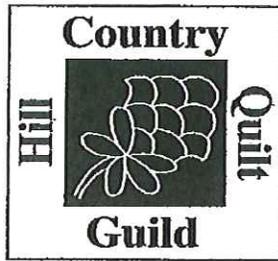
The "GO Team" met on May 7, 2013 to evaluate this application and finds that the \$1,000 request for the gymnasium rental is feasible in that the use is allowed under the regulations for projects related to recreation or community facilities. The "GO Team" finds that the \$1,700 request to cover judge's expenses does not qualify for 4B funding under the regulations for projects related to recreation or community facilities.

A copy of the complete funding application will be made available to the EIC Board for executive session deliberations, or may be viewed independently by the board at KEDC offices.

If this funding application is approved, staff will draft a funding agreement, as directed, to be presented at the June 17, 2013 EIC meeting in conjunction with holding a public hearing.

**RECOMMENDED ACTION**

City staff recommends the consideration and approval of this funding request for rental of the Edington Gymnasium in the amount of \$1,000. City staff does not recommend approving the request to cover expenses incurred for judge's fees in the amount of \$1,700 as it does not qualify under the 4B regulations.



**Hill Country Quilt Guild**  
**P.O. Box 293177**  
**Kerrville, TX 78029-3177**

*April 18, 2013*

Mr. Jonas Titas, Executive Director  
Kerrville Economic Development Corporation  
1700 Sidney Baker, Suite 1000  
Kerrville, Texas 78028

Dear Mr. Titas,

This letter covers an application for partial funding of the Hill Country Quilt Guild's biennial quilt show, to be held at Schreiner University on May 24-26, 2013. Entitled "Quilts in Motion", our show is an important part of the Memorial Day festivities here in Kerrville. Our last show attracted almost 1200 people. From the Viewer's Choice ballots, the attendees came from at least 16 different states and 95 different Texas cities.

The Hill Country Quilt Guild was started in 1984 by 10 women who shared their common interest in quilting. Now numbering more than 200 members from Kerrville and surrounding communities, we support and participate in activities that encourage appreciation of fine quilts and quilt making. Quilting has evolved in the last 20 years, with the emergence of art quilts which have more in common with art objects than with traditional quilts. Where better has this transition been nurtured than Kerrville, known for its strong support of the arts. Moreover, our quilting community is ably served by the nationally recognized quilting business, Creations, run by our own Kathy Thompson and Julie Milam.

Kerrville is recognized throughout the nation as an excellent place for quality of life and growing business opportunities. It is also known as a popular vacation destination with festivals and events throughout the year. Hill Country Quilt Guild has gained a reputation across the country for their award winning quilters and the quality of our biennial quilt shows. Our shows draw increasing numbers of people, both as exhibitors and customers each year. These people spend money in Kerrville eating, shopping, staying in hotels and bed & breakfasts and driving through our beautiful Hill Country. Many people are so impressed with the area that they come back to make this the final destination for their retirement years. Our guild has a number of these citizens who started as 'winter' Texans.

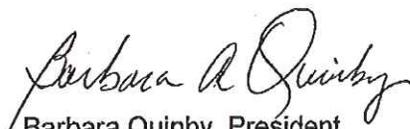
Under the umbrella of "Quality of Life" projects, we are asking for

- \$1000 in support of our rental of Edington Gymnasium for the week - it takes several days to set up and have our 260 quilts judged before the show opens
- \$1700 to cover the expenses incurred by our National Quilting Association judge, Mrs. Nell Smith from Odessa, Texas.

Our guild is a non-profit group that works with many charities in the Kerrville area. We contribute many volunteer hours to everything from galleries, teaching quilting in the state hospital & schools, making and giving quilts to the Crisis Center, Pregnancy Resource Center, Any Baby Can, K-Star, Hill Country Youth Ranch, Enhanced Horizons, Youth Builds and many more. We give to this community and by Kerrville making an investment in our quilt show you will be using some of these resources for the betterment of the community.

Please consider our request for funding.

Sincerely yours,

A handwritten signature in cursive script that reads "Barbara A. Quinby". The signature is written in black ink and is positioned above the typed name.

Barbara Quinby, President  
Hill Country Quilt Guild

## **Agenda Item:**

5B. Funding request from Playhouse 2000, Inc. (staff)

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

**SUBJECT:** 4B Sales Tax Funding Request from Playhouse 2000, Inc.

**FOR AGENDA OF:** May 20, 2013      **DATE SUBMITTED:** May 15, 2013

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

**EXHIBITS:** Funding Request Cover Letter

**AGENDA MAILED TO:**

**APPROVED FOR SUBMITTAL BY CITY MANAGER:** *JP*

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

**PAYMENT TO BE MADE TO:**

**REVIEWED BY THE DIRECTOR OF FINANCE:**

**SUMMARY STATEMENT**

An application has been submitted by Playhouse 2000, Inc. (P2K) for improvements to the facility and equipment at Playhouse 2000 and The Kathleen C. Cailloux Theater in the amount of \$1,068,652.

Improvements would be phased over a two year time period of FY 2013-2014 and FY 2014-2015 and would address interior and exterior lighting, a facility addition, outdoor staging, modular seating risers, and roof improvements to the VK Garage.

The "GO Team" met on May 13, 2013 to review this application and finds that the request qualifies under the 4B regulations. Because the Cailloux Theater is a City owned facility, some of the requested improvements would more appropriately fall under the responsibility of the City. As per the development and operation agreement between the City and P2K, P2K is responsible for the maintenance, repair, management and operations of the facilities.

The "GO" Team has identified potential responsibilities for each component of the funding application. City - \$300,652 and P2K - \$768,000.

**FY 14 – Total Amount Proposed \$269,652**

**Interior Lighting – up to \$121,000 (City)**

The overhead lighting in the auditorium appears to be from the original building dating back to 1959. One "bank" of lights has failed in a way that cannot be repaired, leaving a dark swath across the center of the seating chamber. Addressing this issue is

necessary for the safety of the public as well as avoiding possible failure to additional segments of the system which could render the auditorium unusable. A replacement of the dimmer system would cost \$43,290. Due to the age of the equipment, it is recommended to upgrade the system with a dimmable energy efficient LED overhead lighting system. It is also appropriate to consider the possibility of upgrading the entire facility which includes the lobby to dimmable LED equipment which total to \$121,000.

**Exterior Lighting – up to \$79,652 (City)**

The Cailloux Theater currently has exterior lighting to bathe the building in a beautiful white light. Over time, the fixtures have suffered water infiltration which has rendered the system inoperable thus requiring complete replacement of the lighting system. Replacement of the system would include water-tight LED fixtures, thereby reducing the possibility of problems caused by infiltration of the in-grade pockets. This project, however, is expected to be quite labor intensive with replacing wiring and conduit. New fixtures would be set in place and a new sidewalk poured with a different grading. The total cost would be \$79,650. It may be possible to replace the fixtures using current rough-in, wiring, and conduit. If this option is determined to be feasible, it would cost approximately \$35,000.

**Improvements to the VK Garage Theater - \$69,000 (P2K)**

The current space is poorly insulated and can only be effectively used outside of the summer months. The best method of insulation would be a composite roof that will protect against sound infiltration as well as heat / cold and address water leaks. A roof replacement would expand the usability of the space by half and allow for initiating program expansions. The cost to replace and upgrade the roof is approximately \$69,000.

**FY 15 – Total Amount Proposed \$799,000**

**Facility Addition – up to \$650,000 (P2K)**

The original plan for the Kathleen C. Cailloux City Center for the Performing Arts included a building addition to support the operations. This addition would create space to provide for a scenic and prop construction shop, a functioning costume construction shop, and storage areas in addition to allow room for rehearsal and classroom activities in order for P2K to recover its ability to offer programming year round, including a return for instruction purposes. The VK Garage is currently being used for these functions which has created some inefficiencies in operations of the theater company. The proposed building would be approximately 5,000 square feet of enclosed space. A basic metal building could be constructed for approximately \$250,000; however, a metal building would not be aesthetically appealing, it is proposed to design the building to match the Cailloux Theater and to facilitate the downtown theme. This would cost approximately \$625,000.

**Outdoor Staging - \$100,000 (City)**

The addition of “Shakespeare in the Park” and other outdoor community events have raised the idea of purchasing a stage to support these events. The purchase of a high

quality modular stage is proposed and would be flexible and capable of meeting the needs of a wide variety of uses ranging from small outdoor theatrical events to live concerts. It could also be rented at a reasonable cost by groups for local events.

The proposed stage (\$55,000) would have a complete outdoor lighting and control system (\$35,000) as well as a portable sound system (\$10,000) to support the outdoor staging needs. All of these components total to approximately \$100,000, however, the final cost will depend on the needs of the stakeholders to determine adequate equipment.

**Modular Seating - \$49,000 (P2K)**

Playhouse 2000, Inc. is currently investing in fire-protective sprinklers and alarms to allow of the expansion of the seating capacity to meet the growing demand of P2K products. A modular seating riser system will allow for the alteration of seating configurations to fit the needs of the play being produced by eliminating the labor and materials cost involved with creating seating on a project-by-project basis. The cost for a modular system is approximately \$49,000.

Attached with the application is a business plan for growth and outreach of their programming in addition to the fact that their facility will be available for a greater number of shows and broader community events.

**RECOMMENDED ACTION**

City staff is requesting direction for the EIC's level of interest in this request. Should EIC agree to support this proposal in concept, city staff will present the portion of this project for consideration at the May 28, 2013 City Council meeting for specific direction for application to EIC in the amount of \$300,652.

A recap of the funding proposals is as follows:

Year 1 – \$269,652  
(City \$200,652 and P2K \$69,000)

Year 2 – \$799,000  
(City \$100,000) and P2K \$699,000)

Playhouse 2000, Inc.  
 Application to the Economic Improvement Corporation  
 May, 2013

**Items proposed in this application: Overview**

	Lowest	Highest	
A: Interior Lighting - Cailloux Theater Auditorium, repair			
Option 1: Replace current equipment	\$43,290		Improvements
replaces current dimming, no change to fixtures			
Option 2: Upgrade entire facility to dimmable LED equipment			
Digital Dimmers	\$23,000		Fixed Equipment
LED Fixtures	\$78,000		Fixed Equipment
Demoliton/Installation	<u>\$25,000</u>		Fixed Equipment
		\$121,000	
B: Exterior Lighting - Cailloux Theater, repair			
Option 1: Water-tight, white LED system - remove/replace		\$79,652	Improvements
Option 2: Retro-fit current fixtures with new water-tight	\$27,000		
C: Facility addition - Storage, Scene/Costume			
Shop, Backstage support, Class/Meeting			
Option 1: Basic, metal-framed, modestly finished (est.)	\$250,000		New Building
Option2: Upgraded exterior finish, full AC, finished interiors		\$650,000	
D: Outdoor Staging - Support of City Services			
1: Modular Stage                      estimate	\$55,000	\$55,000	Fixed Equipment
2: Outdoor Lighting/Control System estimate	\$35,000	\$35,000	Fixed Equipment
3: Portable Sound System            estimate	\$10,000	\$10,000	Fixed Equipment
E: Improvements - VK Garage Theater			
1: Roof replacement	\$69,000	\$69,000	Improvements
2: Modular Seating Riser System	<u>\$49,000</u>	<u>\$49,000</u>	Fixed Equipment
Minimum Total of All Proposals	\$538,290		
Maximum Total of All Proposals		\$1,068,652	

Celebrating 15 Years  
**PLAYHOUSE**  
— 2 • 0 • 0 • 0 —

Playhouse 2000, Inc.

P.O. Box 290088

Kerrville, TX 78029

305 Washington Street

www.Playhouse2000.com

(830) 896-9393

Board of Directors

**Kit Werlein**

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Extension 305

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Extension 301

Managers of the  
Kathleen C. Cailloux  
City Center for the  
Performing Arts

Kerrville's  
Community Theater

Playhouse 2000, Inc.

Application to the Economic Improvement Corporation

May, 2013

**SECTION IV - PROJECT DESCRIPTION**

Thanks for this opportunity to apply for EIC support of proposed improvements to the facility and equipment at Playhouse 2000 and The Kathleen C. Cailloux Theater.

As producers of local arts and entertainment programming and managers of the Kathleen C. Cailloux City Center for the Performing Arts on behalf of the City of Kerrville, we are anxious to move forward with available opportunities to provide economic impact on our community. We're seeking assistance in meeting the challenges that stand in the way of meeting those goals.

What follows will be a brief discussion of a wide variety of opportunities that we see to improve the way we positively impact our City and the people of the Hill Country. They are roughly in priority order.

**A: Interior Lighting - Cailloux Theater Auditorium, upgrade**

The overhead lighting in the Cailloux Theater auditorium appears to be original to the circa 1959 Memorial Auditorium, and it is showing its age in ways that cause concern. One entire "bank" of lights (actually, the dimmer that controls the fixtures) has failed in a way that cannot be repaired, leaving a dark swath across the center of the seating chamber.

It is important to note that this system is needed to for the safety and comfort of the public using the facility. A repair or replacement will avoid the possible failure of additional segments of the system, which could potentially render the auditorium unusable.

According to our research, it is impossible to repair the failed portion of this dimmer system; a complete replacement and upgrade of the dimmers is required. A replacement for this dimming system, which would then be controlled by our theatrical control board, has been bid at \$43,290.

While this work is undertaken, it makes good sense to consider moving to a dimmable LED overhead lighting system, which would reduce annual operating costs by lowering electric demand and heat produced by incandescent lighting. It also would be prudent, while undertaking this change in the auditorium, to include a changeover to LED lighting in the lobby as well. We have a reliable estimate that a complete change to LED overhead lighting in the facility could be accomplished for \$121,000

We have identified two potential sources of additional funding for this option, which will be pursued in parallel with this application. Our initial research indicates that between \$50,000 and \$80,000 in cost to upgrade the entire structure to LED overhead lighting will remain after achieving this additional support.

**B: Exterior Lighting - Cailloux Theater, upgrade**

When it first opened, the Kathleen C. Cailloux Theater exterior benefitted from a series of ground-level lighting fixtures which bathed the exterior of the building in a beautiful white light. Over time, these fixtures have suffered water infiltration which has rendered the system inoperable. The facility will never reclaim the night-time ambiance it once boasted without a complete replacement of this lighting system.

An attractive exterior - especially one that provides night-time interest - is vital to the success of a performing arts complex like the Cailloux City Center. Exterior lighting provides a sense of excitement and animation that dramatically increases the impact of the facility on the Downtown district. The illuminated building announces to the public "something special is happening downtown tonight" in a way that both those who have tickets and those who do not will receive.

We have received information on a replacement system which utilizes water-tight fixtures, thereby reducing the possibility of problems caused by infiltration of the in-grade pockets. These are LED fixtures.

The replacement is projected to be quite labor intensive - the installation rough-in and each of the 27 fixtures will be removed in order to replace wiring and conduit. New fixtures will be set in place and new sidewalk poured with a different grading. The total bid for fixtures, demolition and installation is \$79,650.

It is possible that we will be able to replace these fixtures using the current rough-in, wiring and conduit. If this option is determined to be practical, the upgraded fixtures can be installed for about \$35,000.

**C: Facility addition - Storage, Scene/Costume Shop, Backstage support**

Playhouse 2000's ability to support the Cailloux Theater facility is largely made possible by the activities of the "Community Theater" arm of the company. A significant portion of the operations of the Cailloux Theater are subsidized by Playhouse 2000's promotion and production activities.

Moving most of the P2k performance season into the re-opened VK Garage Theater has allowed a large increase in nights available for Cailloux-based performances and enhanced P2k's operations as well. However, the move created some inefficiencies in operations of the theater company. The stage area shares space with scenic construction, prop and costume storage, and rehearsals. These activities severely curtail the potential uses of the VK Garage as a performing space.

The original plan for the Kathleen C. Cailloux City Center for the Performing Arts included a building devoted to these activities but it has not yet been constructed. In order for Playhouse 2000's operations to continue to succeed we must move forward with constructing a building to meet these needs.

Our current plan is to create space which will provide for a full-time, working scenic and prop construction shop, a functioning costume construction shop, and storage for both of these areas. It should also allow for storage and maintenance of city-owned equipment as discussed below.

Importantly, the space must allow room for rehearsal and classroom activities in order for P2k to recover its ability to offer programming year round, including a return to our program of instruction for and performances by young people.

We propose a building that is about 5,000 square feet of enclosed space, providing for a scene shop, rehearsal/classroom space and proper storage for both costumes and props. It should be climate controlled to allow for year-round use by staff, students and volunteers, and plumbed for restroom facilities and fire sprinklers. We envision a fairly basic metal building, with little in the way of beautification. Our early estimates indicate that the basic facility could be constructed and furnished for about \$250,000.

Due to the proximity of this building to the Cailloux Theater, it may be desirable that the this facility be upgraded. Discussions of programming the building may indicate that additional uses should be provided for. Estimates for constructing a more highly finished space of the same size are about \$650,000.

#### **D: Outdoor Staging - Support of City Services**

The addition of "Shakespeare In The Park" to the annual outdoor offerings in Kerrville, along with the upgrades being made to Louise Hays Park, have raised the idea that the City of Kerrville should own equipment which is frequently rented to support outdoor shows such as "4<sup>th</sup> on the River".

Having outdoor support equipment in the Cailloux inventory would allow more flexibility for the City to offer approval to a wide variety of events in City parks, especially in the renovated Louise Hays Park. While cost to outside organizations probably could not be reduced to zero, it could be limited to the cost of labor, eliminating rental fees which are often a large part of the cost of public events.

A good quality, modular stage that can be set up and configured as needed would allow for a wide variety of groups to have access to expanded performance opportunities at reasonable cost. This type of stage is fairly complex in its construction and use, and would benefit from the expertise of Playhouse 2000 staff who would coordinate its proper use, storage and maintenance. We have estimated the cost of this system at about \$55,000; the final cost will depend on the need for size and flexibility, which we will determine in discussion with the City and other stakeholders.

An outdoor lighting and control system would add to the versatility of the portable stage. Appropriate lighting fixtures, cables, poles and trusses for hanging the fixtures, and portable dimmers sufficient to support a variety of stagings would be required. A good-quality, travelling control board is already in the Cailloux/P2k inventory. The remaining equipment specifications would have to be determined, but an estimated cost is about \$35,000.

A portable sound system capable of supporting outdoor Public Address needs would complete the outdoor staging needs. It would include a small assortment of microphones suitable for outdoor use, Mixing and amplification systems, and speakers capable of filling a large, outdoor space. Microphone and speaker cables and miscellaneous equipment would be needed as well. As above, equipment specifications are yet to be determined, but we estimate the cost of this system at about \$10,000.

#### **E: Improvements - VK Garage Theater**

As discussed above, the VK Garage Theater's use as a performing space is a key component of the Playhouse 2000 business plan (attached with this document), allowing the Cailloux Theater greater flexibility of scheduling and offering P2k a better means to achieve the funds necessary to subsidize the performing arts center's annual expenses.

In order for the VK Garage to live up to its potential as a performing hall, it needs some significant improvements.

Currently, the public spaces are so poorly insulated that they can only be effectively used outside of the summer months. The best method of insulating the space has been determined to be a composite roof that will protect against sound infiltration as well as heat/cold (not to mention fix our problems with water leaks.) A roof replacement would immediately expand the usability of the space by half, and allow P2k to move forward with the first steps in program expansions including a return to theater training and performances for young people. Our current estimate for replacing the roof as described is about \$69,000.

We are currently investing \$38,500 in fire-protective sprinklers and alarms under a grant provided by the Peterson Foundation. This will allow us to expand our seating capacity to meet the growing demand for P2k products. A modular seating riser system will allow us to maintain the flexibility of altering the seating configuration to fit the needs of the play being produced, and maximize the safety and comfort of our audiences, while reducing labor and materials costs on a project-by-project basis. We have a current estimate on the system we prefer that comes to \$49,000.

## **Agenda Item:**

5C. Guidelines and Procedures for 4B Sales Tax Funding Requests (staff)

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

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**SUBJECT:** Guidelines and Procedures for the 4B Sales Tax Funding Requests

**FOR AGENDA OF:** May 20, 2013      **DATE SUBMITTED:** May 16, 2013

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

**EXHIBITS:** 4B Sales Tax Funding Request Guidelines and Procedures

**AGENDA MAILED TO:**

**APPROVED FOR SUBMITTAL BY CITY MANAGER:** 

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<b>Expenditure Required:</b>	<b>Current Balance in Account:</b>	<b>Amount Budgeted:</b>	<b>Account Number:</b>
\$	\$	\$	

**PAYMENT TO BE MADE TO:**

**REVIEWED BY THE DIRECTOR OF FINANCE:**

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**SUMMARY STATEMENT**

At its budget workshop of April 4, 2013, EIC directed staff to revise the 4B Sales Tax Funding Request Guidelines and Procedures as well as include criteria for community events. Attached is the draft guidelines developed by staff and the KEDC Executive Director. Once approved, these guidelines will be presented to the City Council for review.

**RECOMMENDED ACTION**

City staff recommends the approval of these guidelines as presented.

**City of Kerrville Economic Improvement Corporation  
4B Sales Tax Funding Request  
Guidelines and Procedures**

**4B Funding from the Economic Improvement Corporation**

Both the Economic Improvement Corporation Board of Directors (EIC) and the Kerrville City Council must approve expenditures of 4B funding. Before a project may be considered and awarded funds, the attached application must be completed and submitted to:

**Kerr Economic Development Corporation (KEDC)  
1700 Sidney Baker, Ste 100  
Kerrville, Texas 78028  
(830) 896-1157**

KEDC will review the application to determine if the application is complete and if the project would create a desired economic development effect.

All actions of the EIC are subject to the Development Corporation Act of 1979 (Article 5190.6 Vernon's Civil Statutes, Section 4B and now codified in Chapters 501, 502, and 505 of the Texas Local Government Code). The EIC is a legal entity with statutory authority to spend economic development sales tax dollars ("4B Revenues"). The Corporation is city-chartered and governed by a Council-appointed board of directors. The EIC is a 4B Corporation and may fund "projects" focused on the creation of "primary jobs" and / or to provide an economic benefit to the City of Kerrville, as well as "Quality of Life" projects. Application approvals are subject to funding availability.

**Types of Projects**

The Economic Improvement Corporation will consider applications for:

1. **Direct contributions to business development;** projects should include support of retention, expansion, or recruitment, resulting in public economic benefit, and economic and demographic analyses used for policy development.
2. **Participation in Public Infrastructure;** Projects that are found by the EIC Board of Directors to be required or suitable for infrastructure necessary to promote or develop new or expanded business enterprises (Section 501.103 of the Texas Local Government Code).
3. **Quality of Life** Quality of Life projects which are owned by the City of Kerrville upon completion; or, where funding is requested for the construction of private (which includes non-profit) development projects, but only if the resulting facility is accessible or open to the public; both such Quality of Life projects indirectly result in economic benefits.
4. **Community Event projects;** Community Event projects are those that significantly contribute to the City's objective of promoting tourism and the hotel / conference market.

## **Business Development and Participation in Public Infrastructure Projects**

### Mission and Goals of Business Development and Public Infrastructure Projects

It shall be the mission of the City, EIC and KEDC in administration of these Guidelines and Procedures to promote, encourage, and enhance the creation and retention of jobs which retain and / or expand the City tax base and economy through granting business incentives which assist in the retention, expansion and recruitment of Primary Employers.

A primary employer is any business in which at least 51% of its goods and / or services are sold to customers that are located outside Kerr County, Texas and / or are in one of the following three digit NAICS codes: 31-33 Manufacturing, 42 Wholesale Trade, 48-49 Transportation and Warehousing, 52 Finance and Insurance, 54 Professional and Technical, or 55 Management of Companies (as defined by Texas Legislature HB 2912, 2003 Regular Session); or is a supplier who supplies at least 70% of its non-retail goods and/or services to local primary employer(s) that are located outside of Kerr County, Texas.

Business Incentives are economic incentives for a Primary Employer to induce the creation or retention of primary jobs and Capital Investment that may include, but not limited to job, land, facilities, equipment and infrastructure grants or reimbursements for new facilities or modernizations of current facilities to be determined by the EIC and the City Council.

The goals of the City, EIC and KEDC in administration of these Guidelines and Procedures are to:

- Create and retain primary jobs,
- Expand the City tax base and economy, and
- Strengthen and diversify primary employers within the local economy.

## Principles and Guidelines

In making a determination regarding business incentives under these Guidelines and Procedures, the City, EIC and KEDC shall take into consideration the following non-exclusive list of principles and guidelines, if applicable, as factors in its determination:

- The payoff period of a business incentive to the City,
- The number of primary jobs added or retained by the primary employer,
- The average or median gross annual pay and any benefits for each primary job added by the primary employer,
- Whether the potential recipient of business incentives would otherwise locate in Kerrville without the business incentive,
- The type and amount of capital investment by the primary employer,
- The type of the proposed business venture,
- The potential impact on public infrastructure and resources,
- The financial strength of the primary employer,
- Whether the primary employer is consistent with target markets,
- Whether the primary employer is compatible with the community
- The contributions pledged to the primary employer, if any, by the State of Texas, any other governmental entity, KEDC or any other person, entity or association.

Nothing in this section shall be binding upon the City, EIC or KEDC, but is presented for reference by any prospective primary employer and KEDC. Moreover, the factors listed herein are not an exclusive list. Each determination shall be determined on a case-by-case basis taking into account the factors deemed relevant by the City, EIC and KEDC to that particular project.

## Business Incentives Authorized

The EIC and City will contemplate the use of all incentive options available to create an appropriate incentive package tailored for each prospect on a case-by-case basis.

## Primary Employer Business Incentives

Authorized Facilities - A capital investment for a facility may be eligible for business incentives by a funding agreement if it creates or retains primary jobs for a primary employer. Incentives may be granted for land or capital investment related to either new facilities, improvements to existing facilities for the purpose of modernization, expansion, for capital investment necessary for the retention of an existing primary employer, or for relocation expenses.

The following types of property shall be ineligible for business incentives: inventories, supplies, tools, furnishings or other forms of movable personal property (not including capital production equipment), vehicles, vessels, aircraft, deferred maintenance investments, improvements to real property which have an economic life of less than 10 years, with the exception of the City or EIC, property owned or used by the State of Texas or its political subdivisions, or by any organization owned or directed by a political subdivision of the State of Texas.

Periodic Certification - The business incentive agreement shall require periodic certification of capital investment as required by the funding agreement.

Completion of Facility Construction - The completion of facility construction or installation of capital investment shall be deemed to occur in the earliest of the following events (as determined by the City and EIC):

- When a certificate of occupancy is issued for the project,
- When commercial production of a product or provision of a service is achieved at the facility,
- When the architect or engineer supervising construction issues a certificate of substantial completion, or some similar instrument, or
- Two years after the date of the funding agreement.

Wage Requirement - In determining an incentive based on new primary jobs, the following matrix shall be considered:

<b>New Gross Payroll</b>	<b>Incentive per New Primary Job</b>
<\$30,000 per new primary job	Up to \$3,000 per new primary job
\$30,000-\$40,000 per new primary job	\$3,001 to \$5,000 per new primary job
\$40,000-\$50,000 per new primary job	\$5,001 to \$9,000 per new primary job
>\$50,000 per new primary job	Up to \$10,000 per new primary job

Job Creation Qualification - Unless there are extraordinary circumstances, in order to be eligible for business incentives, the planned capital investment shall create or retain and maintain the minimum of 10 full time (2,080 hours / year) permanent, primary jobs within one year of an effective date as set out in the agreement.

Minimum Capital Investment Qualification - In order to be eligible for business incentives, the planned capital investment must exceed \$200,000 in new plant, infrastructure, site prep and equipment.

Schedule of Incentives - The implementation schedule of any and all incentives shall be determined on a case-by-case basis to include periods of one or more years.

## Universal Requirements

Project Implementation - An authorized project funded by a business incentive must be implemented within two years of the date of the effective date of the funding agreement.

Location or Residency Requirement - The City will prefer projects be located within City limits or its extraterritorial jurisdiction (ETJ) with voluntary provision for annexation, provided the ability to be annexed is met within 10 years. Projects outside of the City limits must be approved by the Kerr County Commissioners Court. Facilities constructed in the ETJ must be built to minimum City standards, to include building codes and public improvements standards.

'Buy Local' Provision - Each recipient of business incentives shall additionally agree to use best efforts to give preference and priority to local manufacturers, suppliers, contractors, and labor, except where not reasonably possible to do so without added expense, substantial inconvenience, or sacrifice in operating efficiency. For the purposes of this provision, the term 'local' is used to describe manufacturers, suppliers, contractors, and labor shall include firms, businesses, and persons who reside in or maintain an office within Kerr County, Texas.

Insurance Requirements - Each recipient of business incentives shall carry workers' compensation insurance and / or other appropriate liability insurance coverage as the EIC determines is appropriate.

### Application

KEDC will accept applications for projects at any time. Applications will not be considered until complete. Applicants must be available to present projects at EIC & City Council meetings, as needed.

Contents of Application - The application process shall consist of a completed application form accompanied (when applicable) by: five years annual financials that include profit and loss statements, balance sheets, cash flow statements, IRS reporting forms, pro forma, a general description of proposed capital investments to the facility, a descriptive list of the improvements or program for which business incentives are requested, a list of the kind, number and location of all proposed improvements of the property, a map and property description, and a time schedule for undertaking and completing the proposed improvements or programs. In the case of a modernization or expansion project, a statement of the assessed value of the existing facility as stated by the Kerr Central Appraisal District, separately stated for real and personal property, shall be given for the tax year immediately preceding the application. The application form may require such financial or other information as the EIC and / or KEDC deems appropriate for evaluating the financial capacity and other relevant factors of the applicant. The applicant will be allowed to address and explain in writing any negative findings before action is taken on a funding agreement.

Feasibility Impact Study - After receipt of a completed application, KEDC may cause to be performed a study of the feasibility and economic impact using an independent consultant selected by KEDC. If both parties agree, KEDC may share costs with the applicant of performing the study. If performed, this study shall include, but not be limited to, an estimate of the economic effect of the business expansion.

No Business Incentives if Construction has Commenced - No funding agreement shall be approved if the application was filed after the commencement of any construction, alteration or installation of improvements related to the proposed facility modernization, expansion or new facility.

#### "GO Team"

An executive team ("GO Team") will evaluate and review applications based on:

1. Compliance with legal requirements (with necessary assistance from the City Attorney),
2. Funding Availability,
3. Consistency with the Comprehensive Plan, Capital Improvement Plan, Airport Master Plan and Parks Master Plan,
4. Economic impact analysis results\*, including a return on investment and the break-even point (as affected by the extent of developer participation), job creation impact, and impact on the tax base,
5. Project status; for example, projects already under construction.

The "GO Team" will consist of the City Manager, Special Projects Coordinator, EIC Board Member and the Executive Director of the Kerrville Economic Development Corporation. Additional members of staff may be added to the "GO Team" where appropriate depending on the nature and location of the project.

Upon review of the application and support documents, the "GO Team" will make a report to the EIC. KEDC will then notify the applicant of the next available EIC meeting for a project presentation.

The EIC may direct a public hearing to be scheduled and a funding agreement to be drafted. The EIC and the City Council must both approve the funding agreement. Public infrastructure improvement projects will be placed in the Capital Improvements Plan, and when complete, the project is owned by the City.

The EIC reserves the right to determine the eligibility of a project and the terms and conditions of any funding agreement. Nothing herein shall be construed to limit the authority of the EIC to examine each application for business incentives before it on a case-by-case basis and determine in its sole and absolute discretion whether the proposed project should be granted any business incentive, whether it complies with these Guidelines and Procedures, is feasible, and whether or not the proposed business incentives will be to the long term benefit of the City. The final decision regarding any business incentive agreement shall be made by the City.

### Clawbacks

Each agreement shall contain clawback provisions established on a case-by-case basis to ensure the primary employer is meeting the benchmarks established in the funding agreement.

### Administration

Access to Facility - The funding agreement shall stipulate that employees and / or designated representatives of the EIC, and / or the City and KEDC Executive Director will have access to the facility or program during the term of the funding agreement for inspection to determine if the terms and conditions of the funding agreement are being met. All inspections will only be conducted in such manner as to not unreasonably interfere with the construction and / or operation of the facility or program. Inspections will be made with one or more representatives of the owner and in accordance with safety standards.

Periodic reviews - Funding agreement reviews will be conducted periodically by KEDC to ensure that the owner is in compliance with the provisions of the funding agreement. If the owner is not in compliance or is in default, then the appropriate provision of the funding agreement will be enforced to recover any business incentives paid to the owner, unless the owner remedies the default on or before the conclusions of any cure period.

Right to Modify or Cancel - Notwithstanding anything herein or in any funding agreement to the contrary, the EIC may cancel or modify the funding agreement if the owner fails to comply with the funding agreement.

## Quality of Life Improvement & Community Event Projects

Projects which, include land, buildings, equipment, facilities, and improvements found by the (EIC) board of directors to be required or suitable for use for professional and amateur sports, including children's sports, athletic, entertainment, tourist, convention, and public park purposes and events, including stadiums, ball parks, auditoriums, amphitheatres, concert halls, parks and park facilities, open space improvements, museums, exhibition facilities, and related store, restaurant, concession, and automobile parking facilities, related area transportation facilities, and related roads, streets, and water and sewer facilities, and other related improvements that enhance any of the items described by this section (Section 505.152 of the Texas Local Government Code). Interested businesses, individuals, or non-profit groups are required to complete an application and provide appropriate documentation of the project. The "GO Team" will evaluate and recommend projects based on the following criteria:

1. Compliance with legal requirements (with necessary assistance from the City Attorney),
2. Funding Availability,
3. Consistency with the Comprehensive Plan, Capital Improvement Plan, Airport Master Plan and Parks Master Plan,
4. Project status; for example, projects already under construction.

The EIC may direct a public hearing to be scheduled and a funding agreement to be drafted. The EIC and the City Council must both approve the funding agreement.

**The objective of funding Community Event projects is to support tourism.** Strong consideration will be given to new projects that significantly contribute to the City's objective of growing the tourism and hotel / conference market. **Funding Applications intended to grow, expand or start events are given preferred consideration.** Applications are considered on a first come – first serve basis. Community Event projects may only be funded up to 3 consecutive events. The maximum amount of funding per eligible project is \$25,000 and the EIC will cease consideration of Community Events applications after total funding of approved Community Events projects exceeds \$100,000 in a fiscal year.

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The City of Kerrville Economic Improvement Corporation meets monthly at the Kerrville City Hall, Council Chambers, 701 Main Street, Kerrville, Texas.

For additional information visit the City's website at [www.kerrvilletx.gov](http://www.kerrvilletx.gov) or call (830) 257-8000.

# APPLICATION FOR 4B SALES TAX FUNDS

## CITY OF KERRVILLE ECONOMIC IMPROVEMENT CORPORATION

Both the Economic Improvement Corporation Board of Directors (EIC) and the Kerrville City Council must approve all expenditures of 4B funding. Before a project may be considered and awarded any funds, the attached application must be completed and submitted to:

**Kerr Economic Development Corporation**  
**1700 Sidney Baker, Ste. 100**  
**Kerrville, TX 78028**  
**(830) 896-1157**

All actions of the EIC are subject to the Development Corporation Act of 1979, article 5190.6 Vernon's Civil Statutes, Section 4B (now codified in Chapters 501, 502, and 505 of the Texas Local Government Code). The EIC is a legal entity with statutory authority to spend economic development sales tax dollars. The Corporation is city-chartered and governed by a Council-appointed board of directors. The EIC is a 4B Corporation and may fund "projects" focused on the creation of "primary jobs" and / or to provide an economic benefit to the City of Kerrville, as well as "Quality of Life" projects. Application approvals are subject to funding availability.

## APPLICATION SECTION 1 - DEFINITIONS

**Business Incentives** - Economic incentives for a Primary Employer to induce the creation or retention of primary jobs and Capital Investment that may include, but not limited to job, land, facilities, equipment and infrastructure grants or reimbursements of new facilities or modernizations of current facilities to be determined by the EIC and the City Council.

**Capital Investment** - The increase in the assessed value of an eligible property as a result of 'expansion' or 'modernization' of an 'existing facility' or construction of a 'new facility'.

**City** - City of Kerrville, Texas

**Clawback** - That provision in a Funding Agreement, which states how and to what extent any incentive payments from public funds must be repaid if the stated Performance Standards are not met.

**Current Payroll** - The company's total expenditure for all employees for the month immediately preceding this application multiplied by 12.

**Deferred Maintenance** - Improvements necessary for continued operations which do not improve productivity or are preformed to meet regulatory obligations.

**Economic Life** - The number of years a property improvement or manufacturing / processing equipment is expected to be in service in a facility.

**EIC** - Kerrville Economic Improvement Corporation

**Employee Benefit** - Incentives offered to employees and paid for by the employer such as health care coverage, vacation, etc. If an employee pays 30% of the cost, or more, it should not be considered a "benefit" for purposes of this application.

**Facility** - Property Improvements completed or in the process of construction which together compromise an integral whole, as well as new fixed machinery and equipment. Includes an existing building purchased for expansion or relocation

**Full Time Job** - The employment of a person for a minimum of 35 hours per week and offering that person all those benefits adopted by company policy for Full Time Employees. Major stockholders or immediate family members should not be included in this number when considering "New Full-Time Jobs Created."

**Funding Agreement** - A written contract designed to protect the interest of local taxpayers by putting a businesses' job creation or capital investment commitments in writing and by linking the payment of any financial incentive to the business fulfilling its written commitments (i.e. clawbacks).

**Hourly Wage** - The gross amount paid to the employee for each hour worked not including the Employer's portion of FICA or FWH. Benefits should not be included in this figure, but should be listed separately under the compensation per employee section of the application.

**KEDC** - The Kerr Economic Development Corporation

**Modernization** - The replacement and upgrading of existing facilities which increase the productive input or output, updates the technology or substantially lowers the unit cost of the operation, and extends the economic life of the facilities. Modernization may result in from the construction, alteration or installation of buildings, structures, fixed machinery or equipment. It shall not be for the purpose of reconditioning, refurbishing, repairing or the completion of deferred maintenance.

**New Facility** - Property previously undeveloped which is placed into service by means other than in conjunction with an expansion or modernization.

**Owner** - The owner of a facility or program subject to business incentives. If the facility is constructed on a leased property, the owner shall be the party which owns the property subject to the business incentive. A lessee or other interested third party may, at the discretion of the City, be required to join in the execution of the Agreement but shall not be obligated to assure performance of the party receiving the Business Incentive.

**Part-Time Job** - A person working less than 35 hours per week. Major stockholders or immediate family members should not be included in this category when completing the application under New Part-Time Jobs Created.

**Public Capital Project** - Improvements owned and maintained by the City of Kerrville included in the Capital Improvement Plan and funded by the capital budget.

**Payoff Period** - The amount of time in years that it will take the EIC and the City to recover the costs of business incentives from additional revenues it will receive from the facility.

**Primary Employer** - A business in which at least 51% of its goods and / or services are sold to customers that are located outside Kerr County, Texas and / or are in one of the following three digit NAICS codes: 31-33 Manufacturing, 42 Wholesale Trade, 48-49 Transportation and Warehousing, 52 Finance and Insurance, 54 Professional and Technical, or 55 Management of Companies (as defined by Texas Legislature HB 2912, 2003 Regular Session); or is a supplier who supplies at least 70% of its non-retail goods and/or services to local primary employer(s) that are located outside of Kerr County, Texas.

**SECTION II - APPLICANT INFORMATION**  
**Community Event Projects**

**Submittal Date:** \_\_\_ / \_\_\_ / \_\_\_

**ORGANIZATION**

\_\_\_\_\_  
Applicant Name

\_\_\_\_\_  
Address City State Zip

\_\_\_\_\_  
Phone Alt. Phone Fax

\_\_\_\_\_  
Website

**PROJECT CONTACT**

\_\_\_\_\_  
Contact Person Name Title

\_\_\_\_\_  
Address City State Zip

\_\_\_\_\_  
Phone Alt. Phone Fax

\_\_\_\_\_  
Email Address

**Amount of Funding Requested: \$** \_\_\_\_\_

Please include a cover letter and supplemental information as deemed appropriate that:

- clearly states the mission statement of the organization(s),
- a business plan (a document that projects 3-5 years and outlines a plan to grow revenues),
- what the requested funding shall be used for,
- if it is a new, existing or annual event,
- the number of years the organization has been in existence,
- the date and location of the event,
- average annual attendance,
- pertinent financial information (costs, revenues, percentage of funding request of total event budget and financial history), and
- a plan or statement of how the event shall become self-sustained in future years.

**Quality of Life Projects**

**Submittal Date:** \_\_\_/\_\_\_/\_\_\_

**ORGANIZATION**

\_\_\_\_\_  
Applicant Name

\_\_\_\_\_  
Address City State Zip

\_\_\_\_\_  
Phone Alt. Phone Fax

\_\_\_\_\_  
Website

**PROJECT CONTACT**

\_\_\_\_\_  
Contact Person Name Title

\_\_\_\_\_  
Address City State Zip

\_\_\_\_\_  
Phone Alt. Phone Fax

\_\_\_\_\_  
Email Address

**Amount of Funding Requested: \$** \_\_\_\_\_

Please include a cover letter and supplemental information as deemed appropriate that:

- clearly states the mission statement of the organization(s),
- what the requested funding shall be used for,
- pertinent financial information (costs, revenues, percentage of funding request of total budget and financial history), and
- other information, as requested.

**Business Development Projects**

Submittal Date: \_\_\_/\_\_\_/\_\_\_

**ORGANIZATION**

\_\_\_\_\_  
Applicant Name

\_\_\_\_\_  
Address City State Zip

\_\_\_\_\_  
Phone Alt. Phone Fax

\_\_\_\_\_  
Website

**PROJECT CONTACT**

\_\_\_\_\_  
Contact Person Name Title

\_\_\_\_\_  
Address City State Zip

\_\_\_\_\_  
Phone Alt. Phone Fax

\_\_\_\_\_  
Email Address

Type of Business Structure: Corporation \_\_ Partnership \_\_ Sole Proprietorship \_\_

Year Business Started: Year \_\_\_\_\_ Location \_\_\_\_\_

Current Employment: Permanent Full-Time \_\_\_\_\_ Permanent Part-Time \_\_\_\_\_

Average Production Wage \_\_\_\_\_

Full-Time Employees receive the following benefits:

\_\_\_\_\_  
\_\_\_\_\_

Financial Information: Five Years Annual Financials Attached \_\_\_\_\_  
Include: Statement of profit and loss; Balance sheet; Cash Flow Statement; IRS reporting forms, Pro forma

Annual Sales for Corporation / Company \$ \_\_\_\_\_

This Facility \$ \_\_\_\_\_

Local Sales Tax paid Annually \$ \_\_\_\_\_

Current Payroll \$ \_\_\_\_\_

Has the Company ever filed for bankruptcy protection under Chapter 7 or Chapter 11 of the Bankruptcy Statutes? No ( ) Yes ( ) Details:

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**SECTION III - PROJECT INFORMATION**

This application is for a:

- Business Development ( )
  - Expansion of Existing Facility ( ) or
  - New Construction ( )
  - Other ( )

Capital Improvements for Public Infrastructure

- Utilities ( )
- Roadways ( )
- Other ( )

The proposed improvements are to be located within the following taxing district(s): City of Kerrville ( ) Kerr County ( ) Kerrville ISD ( ) Ingram ISD ( ) Center Point ISD ( )

**SECTION IV - PROJECT DESCRIPTION**

Please attach a statement on company letterhead and signed by an officer of the company (1) fully explaining the nature and scope of the project; (2) describing the proposed site and existing improvements, if any; (3) describing all proposed improvements; and (4) providing a list of eligible improvements; (5) provide a list of major, fixed equipment along with manufacturer specifications and cost quote from the manufacturer.

Should this project be approved, the Economic Improvement Corporation may require performance criteria as a part of the funding agreement, in addition to this application.

The funding agreement is between the Economic Improvement Corporation and the City of Kerrville. Said funding agreement will outline project costs, timelines, other information may be necessary to carry out the project in an efficient manner.

**SECTION V – ECONOMIC IMPACT INFORMATION**

**Part A - Project Investment in Improvements**

Total \$ \_\_\_\_\_  
Sq. Footage of New Building (s) \_\_\_\_\_  
Size of Parking \_\_\_\_\_  
Other \_\_\_\_\_

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**Part B - Project Investment in Fixed Equipment**

(New)\$ \_\_\_\_\_  
Manufacturer of Equipment \_\_\_\_\_  
Anticipated Useful Life of Equipment \_\_\_\_\_  
Purchase Price \$ \_\_\_\_\_ Installation Cost \$ \_\_\_\_\_  
Anticipated Delivery time from Date of Order \_\_\_\_\_

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**Part C - Permanent Employment Estimates-** (do not include owners, stockholders or their dependents)

Anticipated Number of New Full-Time Employees as a result of this project \_\_\_\_\_  
Anticipated Number within 12 months of Completion of this project \_\_\_\_\_  
Anticipated Number within 24 months of Completion of this project \_\_\_\_\_  
Typical Job Descriptions or Job Titles \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Anticipated starting salaries of these employees: (avg.) \$ \_\_\_\_\_/hour

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**Part D - Permanent Part-Time Employment Estimates-**  
(do not include owners, stockholders or their dependents)

Anticipated Number of New Part-Time Employees as a result of this project \_\_\_\_\_  
Anticipated Number within 12 months of Completion of this project \_\_\_\_\_  
Anticipated Number within 24 months of Completion of this project \_\_\_\_\_  
Typical Job Descriptions or Job Titles of these employees: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Anticipated starting salaries of these employees: (avg.) \$ \_\_\_\_\_ / hour

**Part E - Payroll Impact**

Within 12 months of Project Completion \_\_\_\_\_ Within 24 months of Project Completion \_\_\_\_\_

\$ \_\_\_\_\_  
FTE X Avg. Wage X 40 hrs X 52 wks

\$ \_\_\_\_\_  
PTE X Avg. Wage X 20 hrs X 52 wks

**SECTION VI- OTHER ASSISTANCE**

Has the Company applied for any State or Federal assistance on this project?

No ( ) Yes ( )

Describe:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

To the best of my knowledge, the above information is an accurate description of the proposed project details.

\_\_\_\_\_  
Printed name

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title

\_\_\_\_\_  
Signature