

**AGENDA FOR REGULAR MEETING**

**KERRVILLE CITY COUNCIL**

**TUESDAY, SEPTEMBER 10, 2013, 6:00 P.M.**

**KERRVILLE CITY HALL COUNCIL CHAMBERS**

**701 MAIN STREET, KERRVILLE, TEXAS**

**KERRVILLE CITY COUNCIL AGENDA**  
**REGULAR MEETING, TUESDAY, SEPTEMBER 10, 2013, 6:00 P.M.**  
**CITY HALL COUNCIL CHAMBERS**  
**701 MAIN STREET, KERRVILLE, TEXAS**

**CALL TO ORDER**

**INVOCATION** offered by Reverend Stockton Williams, of St. Peter's Episcopal Church.

**PLEDGE OF ALLEGIANCE TO THE FLAG** led by David Rittenhouse, U.S. Army, Retired.

Those in attendance may stand if they wish.

**1. VISITORS/CITIZENS FORUM:**

Any citizen with business not scheduled on the agenda may speak to the City Council. Prior to speaking, each speaker must fill out the speaker request form and give it to the City Secretary. City Council may not discuss or take any action on an item but may place the issue on a future agenda. The number of speakers will be limited to the first ten speakers and each speaker is limited to four minutes.

**2. RECOGNITION:**

2A. Proclamation to proclaim September 20, 2013 as "Brigadier General Walter Schellhase Day." (Mayor Pratt)

2B. Certificate of Recognition to honor Air Force Master Sergeant Bennie Hyde (retired) for unceasing service to veterans. (Mayor Pratt)

**3. CONSENT AGENDA:**

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

3A. Minutes of the Kerrville City Council regular meeting held August 27, 2013. (staff)

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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 830-258-1117 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, September 6, 2013 at 4:00 p.m. and remained posted continuously for at least 72 hours preceding the scheduled time of the meeting.

Cheryl Brown  
Deputy City Secretary, City of Kerrville, Texas

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3B. Promoter racing agreement between City of Kerrville, Texas and High Five Events, LLC for the 2013 Kerrville Triathlon. (staff)

3C. Resolution No. 30-2013 canceling the regular meeting of the city council scheduled for December 24, 2013. (staff)

**END OF CONSENT AGENDA**

**4. PUBLIC HEARINGS AND ORDINANCES FIRST READING :**

4A. Second public hearing to set the 2013 ad valorem tax rate. (staff)

4B. Ordinance No. 2013-16 levying an ad valorem tax for the use and the support of the municipal government for the City of Kerrville, Texas, for the fiscal year 2014; providing for apportioning each levy for specific purposes; and providing when taxes shall become due and when same shall become delinquent if not paid. (staff)

4C. Public hearing to set the budget for fiscal year 2014. (staff)

4D. Ordinance No. 2013-17, adopting the annual budget for the fiscal year 2014; providing appropriations for each department and fund; containing a cumulative clause; and containing a savings and severability clause. (staff)

**5. ORDINANCE, SECOND AND FINAL READING:**

5A. Ordinance No. 2013-15 amending the budget for fiscal year 2013 to account for a change to the city's operational budget within the water and sewer fund to appropriate funding for a feasibility study of reclaimed water. (staff)

**6. ORDINANCE, FIRST READING:**

6A. Ordinance No. 2013-18 amending in part Ordinance No. 99-18, as amended, by adopting a new residential rate tariff: Burned Veterans' Discount Program rider BVDP for residential electric service administered by the Kerrville Public Utility Board; containing a cumulative clause; containing a savings and severability clause; and establishing an effective date. (KPUB General Manager Tracy McCuan)

**7. CONSIDERATION AND POSSIBLE ACTION:**

7A. Agreement with Freese and Nichols to perform a feasibility study to determine environmental impacts, geotechnical requirements, floodplain analysis, pumping requirements, regulatory requirements, and cost implications for reuse of treated effluent from the wastewater treatment plant in an amount not to exceed \$135,000.00. (staff)

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7B. Administrative services contract between the City of Kerrville, Texas Economic Improvement Corporation and the City of Kerrville, Texas. (staff)

7C. Ethics policy. (staff)

7D. Resolution No. 32-2013 declaring the public necessity to acquire a 0.002 of an acre (662 square feet) and a 0.192 of an acre (8,375 square feet) recreation easements (public river trail); both property interests situated in the J.A. Southmayd Survey No. 148, Abstract 288, in the City of Kerrville, Kerr County, Texas, and generally located north of the intersection of old F.M. 689 and State Highway Loop 534 with a street address of 2140 Old F.M. 689; said easements are required for the extension of a public river trail adjacent to and along the Guadalupe River; determining the public necessity for such acquisition; authorizing the acquisition of property interests necessary for the river trail expansion; authorizing the city manager or designee to take all steps necessary to acquire the property interests in compliance with all applicable laws; and authorizing the city attorney to acquire the property interests through eminent domain if negotiations between the city and the property owners are not successful. (staff)

7E. Resolution No. 33-2013 declaring the public necessity to acquire a 0.085 of an acre (3,695 square feet) and a 0.014 of an acre (455 square feet) recreation easements (public river trail); both property interests situated in the William Francis Survey No. 146, Abstract 137, in the City of Kerrville, Kerr County, Texas, and located on property with a street address of 1609-B State Highway 173 (Bandera Highway); said easements are required for the extension of a public river trail adjacent to and along the Guadalupe River; determining the public necessity for such acquisition; authorizing the acquisition of property interests necessary for the river trail expansion; authorizing the city manager or designee to take all steps necessary to acquire the property interests in compliance with all applicable laws; and authorizing the city attorney to acquire the property interests through eminent domain if negotiations between the city and the property owners are not successful. (staff)

7F. Resolution No. 31-2013 supporting community-wide quarterly "Kerrville Beautification Days." (staff)

## **8. ITEMS FOR FUTURE AGENDAS**

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**9. ANNOUNCEMENTS OF COMMUNITY INTEREST:**

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

**10. EXECUTIVE SESSION:**

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

Sections 551.071 and 551.072:

Discuss the purchase, exchange, lease, sale, or value of real property, the public discussion of which would not be in the best interests of the City's bargaining position with third parties, regarding property interests related to the following projects:

- Jefferson lift station
- River Trail.

**11. ACTION ON ITEMS DISCUSSED IN EXECUTIVE SESSION**

**12. ADJOURNMENT.**

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Cheryl Brown  
Deputy City Secretary, City of Kerrville, Texas

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## **Agenda Item:**

2A. Proclamation to proclaim September 20, 2013 as "Brigadier General Walter Schellhase Day." (Mayor Pratt)



## City of Kerrville

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### PROCLAMATION

- WHEREAS,** Brigadier General Walter Schellhase, US Army (Retired), has completed the better part of two decades as an officer and member of the Board of Directors of the Hill Country Veterans Council; and
- WHEREAS,** His most recent efforts, on behalf of the nearly 20,000 former U.S. servicemen and women in the Hill Country, have been as President of the Veterans Council; and
- WHEREAS,** He has given unceasingly and unselfishly of his time to the Council's ongoing efforts to preserve vital medical services at the Kerrville facility of the United States Department of Veterans Affairs; and
- WHEREAS,** Those endeavors have involved repeated trips to San Antonio, Austin and Washington, as well as many meetings in Kerrville, to explain and emphasize the needs of US military veterans to officials at the Department of Veterans Affairs, members of Congress, state officials and other concerned parties; and
- WHEREAS** The ongoing work of the Hill Country Veterans Council, and the former servicemen and women whom it serves, will benefit greatly from the long and devoted work of General Schellhase; and
- WHEREAS** General Schellhase is a Kerr County native who has been recognized by the Kerrville Area Chamber of Commerce as "Citizen of the Year" and has served in leadership positions in the Upper Guadalupe River Authority, Economic Improvement Corporation, Downtown Business Association, Kerr County Historic Commission, the holiday lighting project and the Boy Scouts,
- NOW, THEREFORE,** I, Jack Pratt, Mayor of the City of Kerrville, Texas, do hereby proclaim September 20, 2013 as

### "WALTER SCHELLHASE DAY"

And urge all citizens of Kerrville, Texas and the Texas Hill Country to express their deep and unanimous appreciation for the many years of service by this distinguished and patriotic gentleman on this the 237<sup>th</sup> year of the Independence of the United States of America.

#### IN WITNESS WHEREOF,

I have hereunto set my hand and caused the Seal of the City of Kerrville to be affixed hereto, the \_\_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
Jack Pratt, Jr., Mayor



## **Agenda Item:**

2B. Certificate of Recognition to honor Air Force Master Sergeant Bennie Hyde (retired) for unceasing service to veterans. (Mayor Pratt)



**City of Kerrville**

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**CERTIFICATE OF RECOGNITION**

**WHEREAS,** Air Force Master Sergeant Bennie Hyde (Retired) was among the organizers of the Hill Country Veterans Council nearly two decades ago; and

**WHEREAS,** Sgt. Hyde has served faithfully as a director and most recently as Vice President of the Hill Country Veterans Council in support of the nearly 20,000 former servicemen and women in the Hill Country; and

**WHEREAS,** His efforts included coordinating a petition drive that gathered approximately 10,000 signatures in support of the Kerrville facility of the US. Department of Veterans Affairs; and

**WHEREAS,** Sgt. Hyde's work on behalf of former service women was instrumental in the formation of the Women Veterans Coalition in the Hill Country, and

**WHEREAS** Sgt. Hyde has maintained close and important contacts with employees at the Kerrville VA facility, assuring them of the full support of the Veterans Council, and of its determination to continue its firm opposition to reductions in the personnel and services of that historic hospital; and

**WHEREAS** Personal commitments have now forced Sgt. Hyde to step down as vice president and a member of the Board of Directors of the Hill Country Veterans Council

**NOW, THEREFORE,** the Kerrville City Council hereby honors and expresses their unanimous appreciation to Staff Sgt. Bennie Hyde (Retired) for his unceasing work on behalf of those men and women who have defended our nation, and wish him all success and great pleasure in his retirement.

Given this the \_\_\_\_\_ day of \_\_\_\_\_, 2013.



\_\_\_\_\_  
Jack Pratt, Jr., Mayor

## **Agenda Item:**

3A. Minutes of the Kerrville City Council regular meeting held August 27, 2013.  
(staff)

CITY COUNCIL MINUTES  
REGULAR MEETING

KERRVILLE, TEXAS  
AUGUST 27, 2013

On August 27, 2013, the Kerrville City Council meeting was called to order at 6:00 p.m. by Mayor Pratt in the city hall council chambers at 701 Main Street. The invocation was offered by John Standridge, Pastor of Christ Church Presbyterian, followed by the Pledge of Allegiance led by Bill Wingate with the American Legion Post 208.

COUNCILMEMBERS PRESENT:

Jack Pratt	Mayor
Carson Conklin	Mayor Pro Tem
Stacie Keeble	Councilmember
Justin MacDonald	Councilmember
Gene Allen	Councilmember

COUNCILMEMBER ABSENT: None

CITY EXECUTIVE STAFF PRESENT:

Todd Parton	City Manager
Mike Hayes	City Attorney
Kristine Ondrias	Assistant City Manager
Brenda G. Craig	City Secretary
Sandra Yarbrough	Director of Finance
Robert Ojeda	Fire Chief
John Young	Police Chief
Charlie Hastings	Director of Public Works

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

1. VISITORS/CITIZENS FORUM: No one spoke.

2. RECOGNITION:

2A. Recognition of the city's contribution to the 10<sup>th</sup> annual river clean up by the Upper Guadalupe River Authority. Ray Buck, UGRA General Manager, and Tara Bushnoe, UGRA, reported 28 businesses sponsored the event and 337 volunteers participated in collecting almost 3.5 tons of trash, including 18 tires and 960 pounds of recyclable materials.

2B. Proclamation to proclaim September 2013 as "Childhood Cancer Awareness Month" was presented by Mayor Pratt.

3. CONSENT AGENDA:

Mr. Conklin moved for approval of agenda items 3A through 3C; Mr. Allen seconded the motion and it passed 5-0:

3A. Minutes of the Kerrville City Council regular meeting held August 13, 2013.

3B. Resolution 27-2013, approving the budget for fiscal year 2014 for the Kerr Emergency 9-1-1 Network.

3C. Resolution No. 28-2013 authorizing the use of internal combustion engines on Nimitz Lake upstream of the city's impoundment dam for a triathlon.

**END CONSENT AGENDA**

**4. PUBLIC HEARING:**

4A. First public hearing to set the 2013 tax rate.

Ms. Yarbrough noted the proposed tax rate was \$0.5625 which was .14% above the effective tax rate for maintenance and operation. The total property tax levy increased \$70,901 from the addition of new property, and increased \$2,120 from existing property value. The average home value increased from \$172,644 to \$173,883, thereby increasing taxes from \$971.12 in 2012 to \$978.09 in 2013, a difference of less than \$7. She proposed that the second public hearing and first reading of the ordinance to set the 2013 property tax rate be scheduled for September 10, 2013.

Mayor Pratt declared the public hearing open at 6:15 p.m., no one spoke and Mayor Pratt closed the public hearing at 6:15 p.m.

Mr. Conklin moved to set the date of the second public hearing for September 10, 2013; Mr. MacDonald seconded the motion and it passed 5-0.

**5. ORDINANCE, FIRST READING:**

5A. Ordinance No. 2013-15 amending the budget for fiscal year 2013 to account for a change to the city's operational budget within the water and sewer fund to appropriate funding for a feasibility study of reclaimed water.

Mayor Pratt read the ordinance by title only.

Mr. Parton noted the budget amendment would transfer \$135,000 from the utility fund to pay for a study to evaluate the feasibility of impounding effluent at the wastewater treatment plant site, and the feasibility of treating effluent to a level suitable for potable water. The project originally was proposed to be funded by 4B sales tax; even though 4B funds could be used to fund water impoundment projects for recreational use, the funds could not be used to develop additional potable water supplies. The feasibility study should be completed in six months. He estimated the cost to complete the entire project was roughly \$20-27 million; however, potential phasing of the project and timing of funding could generate revenue sufficient to fund the project.

The following person spoke:

- Jimmie Spradling asked if this project could result in customers consuming treated effluent. Mr. Parton noted the study would provide information on whether effluent could be treated and used as a potable water supply.

Mr. MacDonald moved for approval of Ordinance No. 2013-15 on first reading, as presented; Mr. Conklin seconded the motion and it passed 5-0.

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

6A. Update on water/wastewater, river trail and park improvements through Louise Hays Park and Lehmann & Monroe Park and the use of eminent domain for the acquisition of a water/wastewater easement, temporary construction easement, and recreation easement (river trail) through property owned by Rio Robles, Inc. (32 Chaparral).

Ms. Keeble explained that she and her husband owned the river front property where the utility line and river trail would cross; therefore, she would recuse herself from any voting and executive session regarding this subject, just as she had in the past. She stated that neither she nor her husband had ever received any money for the donation of their land for either the utility easement or the river trail project. They donated their property, which was the largest tract involved, and she felt it was ideally suited for a river trail. She stated that the rumors that they had accepted money for the easements were insulting to her, her husband, and city staff.

Mr. Parton updated the council on several projects along the river:

- Jefferson phase I utility project began August 15 to construct a 21" diameter water transmission main and an 18" gravity wastewater main that will be extended to Town Creek and beyond. This project will increase circulation and water pressure throughout the city, create better fire flow and enable future growth; anticipated completion was February 2014.
- G Street utility project would install a wastewater line to Birkdale lift station and provide capacity to accommodate growth; anticipated completion March 2014.
- The trees marked in Louise Hays Park (LHP) were identified for inclusion in the park improvement plan, not marked for destruction as rumored. The utility project would cause the removal of 17 desirable trees, and the utilities project budget contained \$1,000 for each desirable tree removed and in the case of the utility project a total of \$17,000 was budgeted to replace at least 17 trees of similar species. Six large oak trees near the Lemos Street side of LHP were dead and would be removed.
- Louise Hays Park (LHP) and Lehmann & Monroe Park (LMP) improvements and the river trail to Kerrville Schreiner Park (KSP) would begin immediately after completion of the utility project. The park renovations would include repair, replacement, and removal of existing facilities and infrastructure and additional park facilities and enhancements. The project would also address regulations, codes, and floodplain issues, and meet handicapped accessibility requirements.
- The river trail project had been part of the city's comprehensive plan since the early 1970s and was based on the parks master plan adopted in 2009. The parks master plan was the result of a citizens' survey and input at numerous public hearings, and supported park amenities and a river trail from LHP to KSP. The route would cross under the G Street bridge, have an at grade crossing at Legion Crossing under Loop 534, and provide pedestrian bridges, restrooms, trailheads and drainage structures at numerous locations. The trailhead at KSP would provide gated access for persons staying at KSP. The project would begin in February/March 2014; anticipated completion January 2015.

- The river trail and parks improvement project were being financed by 4B sales tax funds and would not affect the city's ad valorem tax rate.
- The LHP and LMP would remain closed during construction for the safety of the public; construction and storage of material would cover a large part of the park and would not be conducive for visitors.
- Tranquility Island would be accessible throughout the project with access from Butt-Holdsworth Memorial Library and the Riverside Nature Center. Also, the navigable waterway through LHP would remain open.
- Reviewed the availability and amenities at 19 other city parks and noted LHP/LMP were not the heaviest used city parks.

Ms. Keeble recused herself and left the meeting at 6:58 p.m. prior to the motion being made and voted on.

Mr. Parton noted that staff had not been successful in completing negotiations for the utility easement or the recreation easement. He asked council to reaffirm its previous action to proceed with the eminent domain process and anticipated the condemnation on the subject property would be complete by the end of October.

Mr. Conklin moved that the City of Kerrville authorize the use of the power of eminent domain to acquire a water/wastewater, a temporary construction, and recreation easements for a public utility project and a river trail across land generally adjacent to the Guadalupe River and between the city's Lehmann & Monroe Park and G Street. Mr. MacDonald seconded the motion and it passed 3-1-1 on record vote as follows: Councilmembers Allen, Conklin and MacDonald voted in favor of the motion; Mayor Pratt voted against the motion; and Councilmember Keeble abstained.

Ms. Keeble returned to the meeting at 7:03 p.m.

6B. Resolution No. 29-2013 approving the City of Kerrville, Texas Economic Improvement Corporation (EIC) budget for fiscal year 2013-2014.

Mr. Parton presented the proposed FY2014 budget as approved by EIC. He noted the budget included: revolving loan fund program (interim financing for business expansion); funds for a potential significant economic development project, such as a convention center; quality of life projects; and utility project for new or expanded business. Staff recommended approval as proposed.

Ms. Keeble moved for approval of Resolution No. 29-2013; Mr. Allen seconded the motion and it passed 5-0.

6C. Guadalupe-Blanco River Authority's (GBRA) application for a water use permit from the Texas Commission on Environmental Quality to divert and use not to exceed 75,000 acre-feet of water per year from the Guadalupe River in Gonzales County.

Mr. Hastings noted that GBRA filed an application for a water permit (No. 12378) December 23, 2009, for 75,000 acre-feet (24 billion gallons) of water annually.

Bill West, GBRA general manager, commended the city for evaluating the water re-use project (Item 5A) and discussed the issues and particulars of GBRA's permit:

- GBRA recently spent over \$6 million defending their downstream water rights associated with the Endangered Species Act that attempted to reallocate GBRA's water for the whooping cranes.
- GBRA borrowed \$4.4 million from the Texas Water Development Board to develop water rights for the fast growing area between I-35 and SH130, and to compete for possible future state funding in 2015.
- The Canyon Reservoir currently was the only water source for the I-35 corridor area, and all of the Canyon water was committed.
- There was no ground water available east of I-35.
- The permit was for diversion of surface water; additionally, GBRA was negotiating for acquisition of ground water rights. The plan was to co-mingle the water sources, treat the water, and transport it to the I-35/SH130 corridor.
- TCEQ evaluates and determines the availability of unappropriated water by using computer modeling program (Water Availability Model, WAM). WAM indicated that 24,000 acre feet of water was available annually at the confluence of the Guadalupe and San Marcos rivers after meeting all existing senior water permits. The permit seeks to acquire a total of 75,000 acre feet of surface water annually to be stored in an off channel reservoir with a capacity of 125,000 acre feet.
- Section 6.1L of the permit stated that the permittee may store in and divert from an off channel reservoir other water from the Guadalupe River authorized by surface water rights as long as the underlying surface right authorized storage in off channel reservoirs.
- GBRA was negotiating to purchase water rights, and if successful, that water would be co-mingled and stored in the off channel reservoir.
- If GBRA wanted to store water authorized under other water rights in their off channel reservoir, including water authorized under Canyon Reservoir, their water rights would have to be amended.
- The water use permit was issued subject to all senior and superior water rights in the Guadalupe River Basin.
- The Canyon Reservoir was totally committed and water could not be released for diversion. Canyon Reservoir was currently only 78% full.
- Several parties had filed intervention in GBRA's permit, e.g. the San Antonio Water Supply and the group representing the whooping cranes, and he anticipated national environmental groups would become involved.

Council also discussed the following:

- Did Canyon Reservoir have the ability to deliver the amount of water that it had committed? Mr. West replied yes.
- How long could Canyon meet its commitments? Mr. West stated that Canyon could meet its commitments through the end of 2015 under current drought conditions. He explained that the amount of flow available was determined by the historical flow coming into the reservoir in the 1950s, which was the drought of record, and honoring the senior water rights issued prior to 1962, which

equated to 90,000 acre feet every year. Mr. West will provide that information to city staff.

- If the permit is granted, GBRA would be allowed to draw 500 cfs at the diversion point; what is the current and normal flow at that point? Mr. West noted the current flow was 200-250 cfs, and normal flow was 702 cfs. GBRA would only be allowed to pump when the river was full, and GBRA would have to honor all senior rights and provide downstream environmental flow.
- The total cost of the project was \$380 million; where was the project funding? Mr. West stated that GBRA hoped to qualify for state funding in 2015. The project would have to compete with other projects throughout the state, and if selected, the state would own part of the project for the first 15 years, and as such, the state would be co-owners of the project and carry the debt for 15 years. If the state did not participate, GBRA would not be able to do the project as it would be cost prohibitive. The state participation would be a loan, not a grant.

The following person spoke:

- Jimmie Spradling questioned if GBRA's permit would be affected in anyway by the reservoir the city was considering to capture effluent. Mr. West said it would not and he commended the city for recognizing the scarcity of water and investigating this as a potable water source.

Mr. Hastings noted that the city's engineering consultants, RPS Espey, reviewed the application, and it was noted that although the application would have a priority date junior to Kerrville's water rights, it had the potential to allow the use of other water rights that may be more senior, such as Canyon or any water rights that GBRA was negotiating to purchase as the city did not know the priority dates of those rights. Staff recommended council authorize the city manager to protest the application.

Mr. Allen moved to authorize the city manager to contest the permit application with the TCEQ because it appears that it could have a negative impact on our permits and our water supply; however, the city could withdraw its opposition at some point if the city determines there would be no negative impact. Mr. MacDonald seconded the motion.

Council encouraged staff to coordinate efforts with Kerr County and UGRA as long as they were aligned with the city's interests, and if it was determined that the permit would not impact Kerrville's water rights, the city may consider withdrawing.

The following person spoke:

- Ruth Spradling questioned the figures for future growth. Mr. West noted the I-35/ SH130 was a high development area. If the state issued GBRA's permit, they likely would not issue any further permits downstream.

The motion passed 5-0.

6D. Ethics policy.

Mr. Hayes reviewed previous changes made by council and noted that he had forwarded a draft policy provided by Mayor Pratt.

The consensus of the council was that each member review both drafts and send their recommended changes to Mr. Hayes for compilation in a new draft.

**7. INFORMATION AND DISCUSSION:**

7A. Update on activities of the beautification advisory committee.

Mayor Pratt noted the committee was: 1) Evaluating issues pertaining to beautification of the community and preparing a report for council; 2) Preparing goals and objectives for a community beautification education program; 3) Will recommend a community beautification recognition program; 4) Proclamation for quarterly beautification days will be presented at the next council meeting; and 5) Participated in Republic Services Good Steward clean up event at which more than 40 volunteers participated in picking up 30 bags of trash along Holdsworth Drive. The next BAC meeting was scheduled for Thursday, September 5.

The following persons spoke:

- Carolyn Lipscomb asked that the city consider placing trash receptacles along Holdsworth Drive.
- Jimmie Spradling had heard in the past that the city was required to return water from the wastewater treatment plant back into the river; is that true, and how would such a requirement affect the city's effluent impoundment project? Mayor Pratt noted the issue had been discussed earlier in the meeting and considering that the city may become involved in possible litigation, it should not be discussed.

7B. Budget and economic update.

Ms. Yarbrough reported year to date: general fund revenue, \$19,190,433 and expenditures, \$16,920,993; water and sewer fund revenue, \$7,444,854, and expenditures, \$6,916,006; hotel occupancy tax revenue, \$761,012, and expenditures, \$620,250; building permits issued for new residences for FY13 to date was 31.

**8. BOARD APPOINTMENTS:**

8A. Appointment to the food service advisory board. Ms. Keeble moved to appoint David Gonzales with term to expire December 1, 2014, due to a resignation; Mr. Conklin seconded the motion and it passed 5-0.

**9. ITEMS FOR FUTURE AGENDAS**

- Schedule for upcoming holidays and future council meetings.

**10. ANNOUNCEMENTS OF COMMUNITY INTEREST:**

- Wayfinding signs have been installed at various locations.

The following person spoke:

- Ruth Spradling questioned whether there was a leash free area at Flat Rock Park for dogs. Council noted it was a county park, not a city park.

**11. EXECUTIVE SESSION:**

Mr. MacDonald moved for the city council to go into executive closed session under Sections 551.071 and 551.072 of the Texas Government Code; the motion was seconded by Mr. Allen and passed 5-0 to discuss the following matters:

Sections 551.071 and 551.072:

Discuss the purchase, exchange, lease, sale, or value of real property, the public discussion of which would not be in the best interests of the City's bargaining position with third parties, regarding property interests related to the following projects:

- Jefferson lift station
- River Trail.

At 7:50 p.m. the regular meeting recessed and council went into executive closed session at 7:54 p.m. At 8:10 p.m. the executive closed session recessed and council returned to open session at 8:10 p.m. The mayor announced that no action had been taken in executive session.

Ms. Keeble left the meeting at 7:50 p.m.

**12. ACTION ON ITEMS DISCUSSED IN EXECUTIVE SESSION**

Mr. MacDonald moved to authorize staff to acquire two tracts from Mr. Tidwell along the proposed river trail route at the negotiated price. Mr. Conklin seconded the motion and it passed 4-0.

**ADJOURNMENT.** The meeting adjourned at 8:11 p.m.

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

\_\_\_\_\_  
Jack Pratt, Jr., Mayor

ATTEST:

\_\_\_\_\_  
Brenda G. Craig, City Secretary

## **Agenda Item:**

3B. Promoter racing agreement between City of Kerrville, Texas and High Five Events, LLC for the 2013 Kerrville Triathlon. (staff)

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

**SUBJECT:** Multiyear Promoter Racing Agreement with High Five Events for the Kerrville Triathlon Festival to be held in Kerrville 2013–2016.

**FOR AGENDA OF:** September 10, 2013 **DATE SUBMITTED:** September 5, 2013

**SUBMITTED BY:** Ashlea Boyle, *AB* **CLEARANCES:** Todd Parton,  
Main Street / Special Projects Manager City Manager

**EXHIBITS:** Draft Agreement

**AGENDA MAILED TO:**

**APPROVED FOR SUBMITTAL BY CITY MANAGER:**

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

**PAYMENT TO BE MADE TO:**

**REVIEWED BY THE DIRECTOR OF FINANCE:**

**SUMMARY STATEMENT**

The Kerrville Triathlon Festival, by High Five Events in Austin, has been held in Kerrville for the past two years at the end of September. The third annual Kerrville Triathlon Festival will be held September 27-29, 2013. This multi-day event will again consist of several different events including a sprint distance triathlon, half distance triathlon, quarter distance triathlon, and a free kid's fun run. The event will also feature a two-day sports exposition and multi-loop run course with a downtown run and finish. This successful event grew in attendance from 764 participants in 2011 to 1,307 in 2012 nearly meeting the maximum capacity of 1,500 participants.

Attached is the final draft of the multi-year agreement between the City of Kerrville and High Five Events for 2013-2016. City staff continues to work with High Five Events to establish routes, obtain necessary permits and assist with event details. This agreement has been finalized through negotiations of both entities.

**RECOMMENDED ACTION**

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

**PROMOTER RACING AGREEMENT BETWEEN CITY OF KERRVILLE, TEXAS  
AND HIGH FIVE EVENTS, LLC  
2013-2016**

This Agreement is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2013, by and between the City of Kerrville, ("City") and High Five Events, LLC (hereinafter referred to as "Promoter").

WHEREAS Promoter desires to produce and conduct a Triathlon and Triathlon-related events on streets located within the municipal boundaries of City; and

WHEREAS City owns, operates and maintains the public streets within the corporate boundaries of the City and possesses the authority to provide the exclusive use of the public rights of way required for the Triathlon Event described herein for limited periods of time at definite locations and retaining the right to revoke the privilege upon certain conditions; and

WHEREAS Promoter desires to stage the Triathlon and Triathlon-related events in a manner that will provide international media exposure to City, attract destination visitors to City during the Triathlon that will result in higher hotel occupancy and restaurant visitation, and generate positive community relations; and

WHEREAS City and Promoter have determined that it is in their mutual interest to permit the production of the Triathlon on streets of City and desire to enter into this Agreement,

**NOW, THEREFORE**, in consideration of the mutual covenants, terms and conditions herein contained, City and Promoter agree as follows:

**1. Definitions.**

As used in this Agreement, the terms defined in this Section shall have the following meanings unless the context clearly otherwise requires:

- a. "Agreement" means this Agreement including all exhibits, schedules, amendments, and supplements attached hereto.
- b. "Augmented Triathlon Period" means, the period of time commencing five (5) days before and ending three (3) days after the applicable Triathlon Period in which Promoter shall be allowed to set up and dismantle the facilities and apparatus associated with the Triathlon Event in the Staging Area, including, but not limited to, the route equipment designated for the event.
- c. "City Manager" means the City Manager of the City or his designee.
- d. "City Representatives" means the individuals from the Departments of Kerrville Main Street Parks and Recreation, Public Works, Police and Fire, who will serve as the points of contact for Promoter on issues related to their respective Departments.

- e. "City Services" means types and levels of services customarily provided by cities hosting similar events, taking into account the size and nature of the crowd and event.
- f. "City Streets" means the streets (including the sidewalks, medians, and landscaping located therein), and other public rights of way owned or leased by City within the Triathlon Area as more fully identified in the Detailed Race Plans.
- g. "Detailed Race Plans" means printed detailed race information, to be prepared by Promoter, which shall include, but not be limited to, route maps, safety matters, security, schedules and procedures for the installation, construction, operation and removal of Triathlon Materials, traffic management, parking management, community relations and notification, services provided by and paid for by Promoter and City pursuant to the Agreement, and other matters mutually determined by Promoter and the City. The Detailed Race Plans, once submitted by Promoter as required by Subsection 5(h), shall be attached to this Agreement as Exhibit A and incorporated herein.
- h. "Effective Date" means the date following the execution of this Agreement by Promoter upon which a representative of the City executes this Agreement.
- i. "Triathlon Area" means the real property area within the Route as set forth in Exhibit A, including but not limited to the City Streets and any adjoining City property on which official Triathlon Event activity will occur or materials reside.
- j. "Triathlon Event" means the Triathlon, Sprint Relay, and Kids Fun Run, and associated health and fitness expo and incidental and related events within the Triathlon Area during the related Triathlon Period. Additional events (such as a bike ride, children's races, 5K) may be added at Promoter's discretion and in the event added, will be considered part of the applicable Triathlon Event.
- k. "Triathlon Event Damages" means the damages to the Triathlon Area resulting from the Triathlon Event, the repair of which are necessary to return the property to its normal use, including, without limitation, damages caused by Triathlon vehicles, equipment and structures, and generator fuel and oil contamination, but excluding, in any case, normal wear and tear.
- l. "Triathlon Materials" means, without limitation, all equipment, materials, and apparatus associated with the conduct of the Triathlon Event within the Route Area which is provided by Promoter including barriers, barricades, traffic control devices, blockades, cable (electrical and other), safety equipment and devices, fencing, fence covering material, signage, broadcasting equipment, credentials trailer, registration booths, vehicles, tents, cranes, forklifts, fire protection equipment and apparatus, medical equipment and apparatus, bleachers/viewing stands, seats, wiring, banners, structures and components thereof.
- m. "Triathlon Period" means that period of time commencing twenty-four (24) hours preceding and twelve (12) hours following the published start times of the Triathlon

Events, or, in the event that adverse weather conditions cause a delay in staging the related Triathlon Event (with the rescheduling of such Triathlon Event to be on the next available day as determined by Promoter and City, or on such other date as is mutually agreed upon by Promoter and City), ending at twelve (12) hours following the conclusion of such Triathlon Event or at a time mutually agreed upon by Promoter and City.

- n. "Mayor" means Mayor of the City.
- o. "Moratorium Period" means that period of time commencing twenty-four (24) hours prior to the commencement of the applicable Augmented Triathlon Period and ending with the conclusion of such Augmented Triathlon Period.
- p. "Participants" means the organizations and personnel directly involved in the production and carrying out of the Triathlon Event, such as equipment providers, race sponsors, and supporting personnel including contract staff, as well as race participants.
- q. "Private Property" means any real property within the Triathlon Area not owned or leased by the City.
- r. "Route" means the surface over the specific route through the City Streets over which the Triathlon Event shall be conducted and includes all parts of the Triathlon circuit, the specifics of which may be changed from time to time during contract period with the permission and cooperation of the City.
- s. "Spectator" means each person or those people, other than Participants, within the Triathlon Area for the purpose of viewing a Triathlon Event.
- t. "Street Repairs" means the restoration and repair determined necessary by the City that must be made to the City Streets, including medians, sidewalks and landscaping after the conclusion of each Triathlon Event in order to return the City Streets to their normal use by the public.

## **2. Premises.**

- a. City represents that it has the right and authority to grant the rights and privileges set forth herein, but only with respect to City Streets. City expressly disclaims any authority to affect Private Property rights of property owners or holders of property interests within the Triathlon Area, and this Agreement shall not be otherwise construed to affect the same.
- b. None of the rights herein granted to Promoter are, nor shall they be construed as, a lease, easement, or other interest in land.

## **3. Term of Agreement.**

The term of this Agreement shall commence on the Effective Date and cover the 2013,

2014, 2015, an 2016 Triathlon Events, terminating after the conclusion of the 2016 Triathlon Event, unless earlier terminated in accordance with Sections 13 or 14 of this Agreement. Any reference herein to the term of this Agreement shall, unless otherwise indicated, mean the term of the original Agreement and any extension thereto.

**4. Use and Occupancy; Exclusivity.**

Promoter, subject to all of the terms and conditions of this Agreement and to the extent authorized by law, shall have:

- a. During the Augmented Triathlon Period, the exclusive right to install and remove equipment and to construct, place or otherwise locate Triathlon Materials within the Triathlon Area, except for the portions of the Triathlon Area already subject to lease, agreement, other rights extended by the City, or that are Private Property. Motor and pedestrian traffic may be disrupted temporarily during the Augmented Triathlon Period with the prior permission of the City Manager, provided that Promoter provides a traffic barricade plan that meets the approval of the appropriate City departments. Triathlon Materials shall be removed from all areas within the Triathlon Area by the end of the Augmented Triathlon Period.
- b. During each Triathlon Period, commencing with the Triathlon Event in 2013, the exclusive right to produce and conduct the Triathlon Event in the Triathlon Area.

**5. Promoter Covenants.**

Promoter covenants and agrees that, during the term hereof, it will:

- a. Use the Triathlon Area only for the purposes of the Triathlon Event(s), and other Triathlon-related activities and only at the time and in the places expressly permitted in this Agreement or as otherwise permitted by the City Manager not inconsistent with this Agreement. City reserves and has exclusive rights to the use and occupancy of the City Streets at all times except as expressly permitted to Promoter herein. City shall have the right to permit the use and occupancy of the Triathlon Area on dates other than those provided for in this Agreement for any purpose not inconsistent with this Agreement.
- b. Produce the Events and other Triathlon-related activities with respect to each Triathlon Event in the Triathlon Area each year of the term hereof, on the days and dates as determined hereunder.
- c. Restrict all of its activities under this Agreement to the City Streets and any other property to which, or in which, it secures privileges.
- d. Obtain a release and waiver of liability or an appropriate indemnity agreement in favor of the City from all registered participants and volunteers.
- e. Pay, at its sole expense, the Triathlon Event Damages resulting from each Triathlon

Event within 30 days of receiving an invoice from the City.

f. Provide and install at its sole expense the Triathlon Materials not otherwise provided by the City in connection with the City Services.

g. At its sole expense, provide adequate portable toilets and related sanitation services for the use of the Participants and Spectators during each Triathlon Period within the Triathlon Area. Instruct all appropriate parties to take standard industry measures to prevent the spillage of waste or pollutants, including fuel and motor oil, into the storm drains.

h. Submit, no later than July 1 of each Triathlon Event year, Detailed Race Plans for the next scheduled Triathlon Event that will include detailed route maps that include block-by-block locations of music stages, water stations, portable toilets and any other equipment or material brought into the right-of-way expressly for the races. The City will have final approval of the Detailed Race Plans. The deadline for submission of the Detailed Race Plans may be extended by the City in its sole discretion. If the deadline is extended, the deadline for City approval set forth in Section 6(c) shall also be extended accordingly. The Detailed Race Plans shall also include:

1. Traffic Plan. Working in conjunction with City, provide a traffic management plan containing approval from the Texas Department of Transportation, Kerrville Police Department, Public Works, Kerrville Main Street and any other necessary entities.

i. Promoter acknowledges that it shall be responsible for providing adequate security, Fire and EMS protection within the Triathlon Area by employing off-duty police officers and for paying the costs of such services in advance of each Triathlon Event. City shall assist Promoter in making the arrangements for such services through Kerrville Police Department and Kerrville Fire Department EMS, however for purposes of the Fair Labor Standards Act (FLSA), City and Promoter shall at all times remain separate and independent employers and Promoter will be billed, in advance, directly from the Kerrville Police Department and Kerrville Fire Department EMS for estimated costs associated with employing personnel for each Triathlon Event.

j. Operate each Triathlon Event in material compliance with all applicable federal, state and City laws and regulations, including applicable zoning ordinances, subject to applicable permits, if any.

k. Not prevent reasonable access to private or public facilities per approved Traffic Plan.

l. Actively facilitate and assist with coordinating all City services including sanitation services, fire and emergency medical related services, law enforcement, Park and Recreation Department assistance, water services and security services in accordance with this Agreement. A representative of Promoter shall be present at all event

coordination meetings as deemed necessary by the City for effective Triathlon Event planning and implementation.

m. Coordinate with designated City Representative on all efforts for each Triathlon Event.

n. Submit Shuttle Plan at least 30 days prior to each Triathlon Event to include organization providing said shuttling services.

o. Provide Emergency Medical Service Plan at least 30 days prior to each Triathlon Event to include entity providing the service and approval from the Kerrville Fire Department.

p. Obtain a parade permit from the Kerrville Police Department at least 30 days prior to each Triathlon Event.

q. Submit documentation of written approval verifying use of private and non-city owned facilities/property to be utilized during event (i.e. band/water stations, etc.) to City Representative at least 30 days prior to each Triathlon Event.

r. Obtain all permits for facility rentals, health, fire, police, electrical, etc. and provide evidence of such permits to City Representative prior to the start of each Triathlon Event.

s. Be responsible for all expenses associated with Police, Fire, and EMS, required to stage the Triathlon Event to the extent they are required under this Agreement.

## **6. City Covenants.**

City covenants and agrees that, during the term hereof, it will:

a. Use its best efforts to assist Promoter in obtaining permits and licenses from the City necessary for Promoter to take full advantage of its privileges under the Agreement, upon normal application and qualification by Promoter.

b. At least sixty (60) days prior to the date of approval of the Detailed Race Plans and continuing until commencement of the Moratorium Period, notify Promoter of planned developments within, on, or adjacent to, the Triathlon Area that may, in the City's reasonable opinion, affect Promoter's planning and staging of any Triathlon Event or other Triathlon related activity. Notwithstanding the foregoing, when City becomes aware of any planned development within, on, or adjacent to, the Triathlon Area that the City believes may affect Promoter's planning and staging of any Triathlon Event, submit nonconfidential information of which it is aware to Promoter.

c. Approve the Detailed Race Plans, in writing, at least 30 days prior to each Triathlon Event. If necessary, City and Promoter shall work together to revise said Plans

in order for City to issue such approval.

d. Require any essential changes to the Detailed Race Plans, following the approval provided for above, or make additional requirements for any Triathlon Event after reasonable consultation with Promoter.

e. Appoint City's Representatives for the purpose of facilitating the development of each Triathlon Event. City's Representatives shall be authorized to act on behalf of their respective departments, in order to promptly address issues arising in connection with the Triathlon Event so that the resolution of such issues do not unnecessarily impede the progress of such Triathlon Event.

#### **7. Entry and Inspection.**

Notwithstanding any other term or condition of this Agreement, City reserves, and shall have the right at all reasonable times and upon reasonable notice, to enter the Triathlon Area for the purpose of viewing and ascertaining the condition of the same, to protect its interest in the Triathlon Area, to inspect the operations conducted thereon, or for public safety or Triathlon Event management purposes. If the City finds, in its sole discretion, upon such entry or inspection by the City, that the Triathlon Area is not in a safe or satisfactory condition, City shall have the right to cause Promoter to correct any unsafe or unsatisfactory condition created by Promoter or its operation of the Triathlon Area. City emergency vehicles shall have access at all times to the Triathlon Area for the purpose of protecting life and property, and shall use best efforts to coordinate such access with Promoter.

#### **8. Indemnification.**

**PROMOTER covenants and agrees to FULLY INDEMNIFY and HOLD HARMLESS, CITY and the elected officials, employees, officers, directors, volunteers and representatives of CITY, individually or collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon CITY directly or indirectly arising out of, resulting from or related to PROMOTER'S activities under this AGREEMENT, including any acts or omissions of PROMOTER, any agent, officer, director, representative, employee, consultant, subcontractor or vendor of PROMOTER, and their respective officers, agents, employees, directors and representatives while in the exercise of performance of the rights or duties under this AGREEMENT. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY, its officers or employees in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT PROMOTER AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY**

**AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.**

The provisions of this INDEMNIFICATION are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

PROMOTER shall promptly advise CITY in writing of any claim or demand against CITY or PROMOTER known to PROMOTER related to or arising out of PROMOTER'S activities under this AGREEMENT.

**Defense Counsel** - CITY shall have the right to approve defense counsel to be retained by PROMOTER in fulfilling its obligation hereunder to defend and indemnify CITY, unless such right is expressly waived by CITY in writing. PROMOTER shall retain defense counsel within seven (7) business days of CITY'S written notice that CITY is invoking its right to indemnification under this Agreement. If PROMOTER fails to retain counsel within such time period, CITY shall have the right to retain defense counsel on its own behalf, and PROMOTER shall be liable for all costs incurred by CITY. CITY shall also have the right, at its option, to be represented by advisory counsel of its own selection and at its own expense, without waiving the foregoing.

**Employee Litigation** - In any and all claims against any party indemnified hereunder by any employee of PROMOTER, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation herein provided shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for PROMOTER or any subcontractor under worker's compensation or other employee benefit acts.

## **9. Insurance**

Prior to the commencement of any work under this Agreement, Promoter shall furnish copies of all required endorsements and a completed Certificate(s) of Insurance to the City's Kerrville Main Street Department, which shall be clearly labeled "**2013-2016 Kerrville Triathlon Event**" in the Description of Operations block of the Certificate. The Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. City will not accept Memorandum of Insurance or Binders as proof of insurance. The certificate(s) or form must have the agent's signature and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to City. City shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by City's Kerrville Main Street Department. No officer or employee, other than City's Director of General Operations, shall have authority to waive this requirement.

City reserves the right to review the insurance requirements of this Section during the effective period of this Agreement and any extension or renewal hereof and to modify insurance

coverages and their limits when deemed necessary and prudent by City's Director of General Operations based upon changes in statutory law, court decisions, or circumstances surrounding this contract. In no instance will City allow modification whereupon City may incur increased risk.

A contractor's financial integrity is of interest to City; therefore, subject to Promoter's right to maintain reasonable deductibles in such amounts as are approved by City, Promoter shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at Promoter's sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and with an A.M. Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed:

<u>TYPE</u>	<u>AMOUNT</u>
1. Workers' Compensation Employers' Liability	Statutory \$500,000/\$500,000/\$500,000
2. Commercial General Liability Insurance (Broad Form) to include coverage of limits of \$2,000,000 aggregate with \$1,000,000 per occurrence for the following:	
a. Premises operations	
b. Independent contractors	
c. Products/completed operations	
d. Personal Injury	
e. Contractual liability	
3. Business Automobile Liability Insurance with combined single limit coverage of \$500,000.	
For:	
(1) Owned/leased vehicles	
(2) Non-owned vehicles	
(3) Hired vehicles	

As they apply to the limits required by City, City shall be entitled, upon request and without expense, to receive copies of the policies, declarations page and all endorsements thereto, and may require the deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). Promoter shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to City at the address provided below within 10 days of the requested change. Promoter shall pay any costs incurred resulting from said changes.

City of Kerrville  
Attn: Kerrville Main Street  
701 Main Street  
Kerrville, Texas 78028

Promoter agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following required provisions:

- Name City and its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with City, with the exception of the workers' compensation and professional liability policies;
- Provide for an endorsement that the "other insurance" clause shall not apply to City where City is an additional insured shown on the policy;
- Workers' compensation, employers' liability, general liability and auto liability policies will provide a waiver of subrogation in favor of City; and
- Provide advance written notice directly to City of any suspension, cancellation, non-renewal or material change in coverage, and not less than 10 days advance written notice for nonpayment of premium.

Within 5 days of a suspension, cancellation, or non-renewal of coverage, Promoter shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend Promoter's performance should there be a lapse in coverage at any time during this Agreement. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.

In addition to any other remedies City may have upon Promoter's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, City shall have the right to order Promoter to stop work hereunder, and/or withhold any payment(s) which become due to Promoter hereunder until Promoter demonstrates compliance with the requirements hereof.

Nothing herein contained shall be construed as limiting in any way the extent to which Promoter may be held responsible for payments of damages to persons or property resulting from Promoter's or its subcontractors' performance of the work covered under this Agreement.

It is agreed that Promoter's insurance shall be deemed primary and non-contributory with respect to any insurance or self-insurance carried by City for liability arising out of operations under this Agreement.

It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Agreement.

### **10. Triathlon Events.**

The dates for each of the Triathlon Events for the years 2013 through the termination of this Agreement, or any extension thereof, shall be:

September 28-29, 2013

September 27-28, 2014

September 26-27, 2015

September 24-25, 2016

or such other dates as may be mutually agreed upon by the parties.

### **11. Other Events.**

Any other events that Promoter would plan to stage to promote any Triathlon Event would be the sole responsibility and expense of Promoter. Any other events besides the Triathlon Event will require additional permits and/or licenses for those events, i.e. concerts. Any such event to be held on City property shall be subject to Subsection 5(i) of this Agreement. Any such event held on Private Property will be the sole responsibility and expense of Promoter to lease or otherwise contract for the use of that property.

### **12. Conditions Precedent to Effectiveness of Agreement.**

This Agreement shall not be or become effective until the following conditions have been satisfied:

- a. Promoter has signed this Agreement;
- b. An authorized representative of the City has signed this Agreement;

### **13. Remedies for Breach.**

It is understood that the parties shall have the following remedies and rights under this Agreement:

- a. In the event that:
  - (1) Promoter breaches or defaults in the performance or fulfillment of any material term, covenant or condition herein, other than its obligations pursuant to Section 5, contained on its part to be performed or filled and shall fail to cure such breach or default within 30 days following written notification from City to Promoter (or, if Promoter is diligently pursuing a cure, such greater time as may be reasonably necessary to completely cure such breach or default as allowed by City in its sole discretion) specifying the breach or default or defaults complained of and the date on which its rights hereunder will be terminated;

- (2) A petition in bankruptcy is filed by or against Promoter and not released within 60 days thereafter;
- (3) A receiver, trustee in bankruptcy or similar officer is appointed to take charge of Promoter or its property;
- (4) Promoter shall make a general assignment for the benefit of creditors; or
- (5) Promoter or any of its officers are convicted, plead nolo contendere, enter into a formal agreement in which they admit guilt, enter a plea of guilty, or otherwise admit culpability to criminal offenses of bribery, kickbacks, collusive bidding, bid-rigging, antitrust, fraud, undue influence, theft, racketeering, extortion or any offense of a similar nature, in connection with Promoter's business;

Then the City may, at its sole option, upon written notice to Promoter as provided in Section 17, terminate this Agreement.

- b. Any election on the part of City to terminate this Agreement must be in writing, properly executed by City and served upon Promoter. No termination of this Agreement on account of default by Promoter shall be or become effective by operation of law or otherwise, unless and until City shall have given such notice to Promoter, specifying the default and Promoter shall have failed to cure the default so specified within 30 days following said written notice (or, if Promoter is diligently pursuing a cure, such greater time as may be necessary to completely cure such breach or default as is allowed by City in its sole discretion).
- c. Promoter may terminate this Agreement upon the material breach or default in the performance or fulfillment of any material term, covenant or condition herein by the City, provided Promoter shall have given notice in writing to the City, specifying the default and City shall have failed to cure the default so specified within 30 days following said written notice (or, if City is diligently pursuing a cure, such greater time as may be necessary to completely cure such breach or default as is allowed by Promoter in its sole discretion).
- d. Notwithstanding any other termination provisions herein, City may, in its sole discretion, terminate this Agreement by written notice to Promoter on or before March 1 of any Triathlon Event year, in the event Promoter has failed to make satisfactory progress toward the requirements of Section 5 with respect to the next occurring Triathlon Event, provided City has previously given notice to Promoter of such failure and Promoter shall have failed to cure the failure so specified within 30 days following such notification (or, if Promoter is diligently pursuing a cure, such greater time as may be reasonably necessary to completely cure such failure as allowed by City in its sole discretion) .
- e. Notwithstanding anything in this Agreement to the contrary, the parties reserve

the right to seek specific performance of this Agreement and either party hereto shall have the right to enjoin any anticipatory repudiation of this Agreement by the other.

**14. Right to Terminate for Reasons Other than Breach.**

In addition to the right to terminate as set forth in Section 13, and notwithstanding that Promoter is in compliance with all the requirements of this Agreement, the City shall have the right to terminate this Agreement at any time without penalty if the City reasonably determines that the Triathlon Event causes such occurrences as undue public endangerment, loss of Private Property, claims for the denial of access to Private Property, and excessive damage to public right of way. In addition to the rights of Promoter to terminate this Agreement for the reasons set forth herein, if Promoter reasonably determines that the Triathlon Event becomes commercially unfeasible due to the loss of, or inability to gain access to, necessary Private Property, or loss or inability to obtain any necessary permits or schedule any events, Promoter shall have the right to terminate this Agreement without penalty.

**15. When Rights and Remedies Not Waived.**

In no event shall any performance by either party hereunder constitute or be construed to be a waiver by such party of any breach of term, covenant, or condition or any default which may then exist on the part of the other party, and the rendering of such performance when any such breach or default shall exist shall not impair or prejudice any right or remedy available to the non-breaching party with respect to such breach or default; and no assent, expressed or implied to any breach of any one or more terms, covenants or conditions of the Agreement shall be construed as a waiver of any succeeding or other breach.

**16. Assignment and Subcontracting.**

The City is not obligated or liable under this Agreement to any party other than Promoter, and Promoter is not liable under this Agreement to any party other than the City. Promoter understands and agrees that it shall not assign or subcontract with respect to any of its material rights, benefits, obligations or duties as owner, organizer and promoter of the Triathlon under this Agreement except upon prior written consent and approval of the City, which consent or approval may be withheld in the sole discretion of the City. In the event the City consents to an Assignment or subcontract, such action shall not be construed to create any contractual relationship between the City and the assignee or subcontractor, and Promoter shall remain fully responsible to City according to the terms of this Agreement. Notwithstanding any of the foregoing, the sale of the Promoter during the term of this Agreement shall be considered an approved assignment as long as the City reasonably determines, in its sole discretion, that the assignee is able to satisfy the requirements of this Agreement.

**17. Notices.**

All notices, demands or other communications required or permitted to be given under this

Agreement shall be in writing and any and all such items shall be deemed to have been duly delivered upon personal delivery or as of the third business day after mailing by United States mail, certified, return receipt requested, postage prepaid, addressed as follows; or as of 12:00 noon, local time of the recipient, on the immediately following business day after deposit with Federal Express or a similar overnight courier service provides evidence of receipt, addressed as follows:

If to City, to: City Manager  
City of Kerrville  
701 Main Street  
Kerrville, Texas 78028

If to Promoter, to: High Five Events  
Daniel P. Carroll, Managing Partner  
High Five Events, LLC  
2122 Melridge Pl.  
Austin, Texas 78704

**18. Construction of this Agreement.**

- a. Governing Law. Each and every term, condition, or covenant herein is subject to and shall be construed in accordance with the provisions of any applicable federal, state and local law or regulation. This Agreement shall be governed in accordance with the laws of the State of Texas, which will be controlling in any dispute that arises hereunder.
- b. Venue. Exclusive venue for any litigation related hereto shall occur in Kerr County, Texas.
- c. Paragraph Headings. The captions and headings set forth herein are for convenience of reference only, and shall not be construed so as to define or limit the terms and provisions hereof.
- d. Time. The parties agree that in the performance of the terms, conditions and requirements of this Agreement, time is of the essence.
- e. Successors. This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of Promoter as are permitted to succeed Promoter's rights unto and subject to the terms hereof.
- f. Singular and Plural. Whenever the context shall so require, the singular shall include the plural and the plural shall include the singular.
- g. Reasonableness of Consent or Approval. Unless otherwise specifically provided to the contrary, decisions, approvals, permissions or consents shall be made or granted in the reasonable discretion of the party making the same. Further, unless a specific time frame is provided herein, any approval, permission or consent shall not be unreasonably

withheld or delayed. Whenever under this Agreement "reasonableness" is the standard for the granting or denial of the consent or approval of either party hereto, such party shall be entitled to consider public and governmental policy, moral and ethical standards and business and economic considerations.

h. Severability. It is understood and agreed by the parties hereto that if any part, term, or provision of this Agreement is held by the courts to be illegal or in conflict with any applicable law, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular part, term, or provision held to be invalid.

i. Survival of Certain Agreement Provisions. The parties understand and agree that all terms, conditions and covenants of this Agreement, together with the exhibits and attachments hereto, if any, any or all of which, by reasonable implication, contemplate continued performance or compliance beyond the expiration or termination of this Agreement (by expiration of the term or otherwise), shall survive such expiration or termination and shall continue to be enforceable as provided herein.

j. Days. Unless specified otherwise in this Agreement, the term "days" shall refer to calendar days.

#### **19. Status of Promoter.**

Promoter covenants and agrees that it is an independent contractor and not an officer, agent, servant or employee of City; that Promoter shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors and consultants; that the doctrine of respondent superior shall not apply as between City and Promoter, its officers, agents, employees, contractors, subcontractors and consultants, and nothing herein shall be construed as creating the relationship of employer-employee, principal-agent, partners or joint venturers between City and Promoter. The parties hereto understand and agree that the City shall not be liable for any claims which may be asserted by any third party occurring in connection with the services to be performed by Promoter under this Agreement and that Promoter has no authority to bind the City.

#### **20. Legal Authority.**

a. Each party assures and guarantees the other that it possesses the legal authority to enter into this Agreement.

b. The person or persons signing and executing this Agreement on behalf of each party do hereby warrant and guarantee that he/she or they have been fully authorized by the related party to execute this Agreement on behalf of such party and to validly and legally bind such party to all the terms, performances and provisions herein set forth.

c. Each party shall have the right, at its option, to either temporarily suspend or

permanently terminate this Agreement if there is a dispute as to the legal authority of the other party or the person signing the Agreement to enter into this Agreement.

**21. No Third Party Beneficiary.**

It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to City and Promoter, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other or third person, including, but not limited to subcontractors, subconsultants, and suppliers set forth herein. It is the express intention of City and Promoter that any person or entity other than City or Promoter receiving services or benefits under this Agreement shall be deemed a third party beneficiary. City shall not be liable for payment to any of Promoter's third party beneficiaries.

**22. Parties' Obligations with Respect to Confidential Information.**

The parties agree that issues governing the use and disclosure of Confidential Information, as defined below, provided to or made available to the City by Promoter will be governed by the following provisions:

- a. Definition of Confidential Information. As used in this Agreement, the term "Confidential Information" means all information, of any nature and in any form, regardless of when given, that (i) is disclosed or provided by or through Promoter to the City pursuant to performance of this Agreement, including but not limited to documents referenced in subsection (e) hereof; and (ii) has been clearly marked or indicated in writing as being confidential by Promoter. Information falling within this definition shall be treated by the City as confidential proprietary information of Promoter, subject to the provisions of the Texas Public Information Act and under any court order. Information not so marked or indicated will not be considered to be Confidential Information.
- b. Use of Confidential Information. Except as expressly provided in this Agreement or as otherwise mandated by the Texas Public Information Act, or other applicable law, the City will not disclose Confidential Information to anyone without the prior written consent of Promoter. The City will not use, or permit others to use, Confidential Information for any purpose other than actions incidental to the performance and enforcement of this Agreement between the City and Promoter, including but not limited to auditing of records by Promoter by the City Auditor and/or other representatives of the City. The City will take all reasonable measures to avoid disclosure, dissemination or unauthorized use of Confidential Information.
- c. Public Records Requests. The parties recognize that the mere marking of a document as "Confidential" does not render it conclusively confidential under the Texas Public Information Act. In the event that the City is served with an open records request or subpoena from any third party requesting all or part of any Confidential Information as defined herein, the City shall give timely notice to Promoter of the request or subpoena within the time parameters of the Texas Public Information Act or of any applicable court

rule. Upon receipt of the notice from the City, Promoter may, at its option, immediately seek judicial relief (including, without limitation the issuance of a temporary restraining order) preventing the disclosure of the Confidential Information or make arguments to the Texas Attorney General, as provided for under the Texas Public Information Act and shall defend, save and hold harmless and indemnify the City and its agents and employees with respect to such issues. Promoter's failure to seek judicial relief or to seek a ruling from the Texas Attorney General within 10 days of notice from the City or the failure of Promoter to notify City of such efforts shall entitle the City to disclose the Confidential Information to the person seeking the disclosure.

d. Disclosure Prohibited. Neither party shall, at any time or in any manner, either directly or intentionally by indirect means, divulge, disclose or communicate to any person, firm or corporation in any manner whatsoever any information concerning any matters which are not subject to public disclosure including, without limitation, the trade secrets of business or entities doing business with either party and other privileged or confidential information.

e. Review of Documents. Promoter covenants that City shall have the right to review its agreement with subcontractors, vendors and assigns and its agreements with Private Property holders, in each case that relate specifically to the Triathlon Event. Promoter shall make these agreements available to City, at a City location, upon request. Notwithstanding anything in this Agreement to the contrary, the City shall not copy or retain a copy of the agreements, and any review thereof by City shall be subject to the confidentiality standards of this Section 22. The review shall be conducted only by City employees who have a "need to know" in connection with the provisions of this Agreement.

### **23. Examination of Records.**

Promoter agrees to maintain financial records pertaining to all matters relative to this Agreement in accordance with standard accounting principles and procedures and to retain all records and supporting documentation applicable to this Agreement for a period of four (4) years after termination of this Agreement and any subsequent extensions thereof. All records' subject to audit findings shall be retained for four (4) years after such findings have been resolved. In the event Promoter goes out of existence, Promoter shall turn over to City all of such records and supporting documentation that relate to this Agreement to be retained by City for the required period of time.

### **24. Post Event Report.**

Promoter shall provide to City a post Triathlon Event report for each Triathlon Event that shows attendance numbers, downtown room occupancy, estimated economic impact, media distribution, police and emergency response actions, and other items that will help City determine the success of the Triathlon Event for the downtown area. Promoter shall deliver to the City a preliminary draft summary report concerning each Triathlon Event within sixty (60) days of that Triathlon Event and a final report with the economic impact of each Triathlon Event within 120 days of that Triathlon Event.

**25. No Discrimination in Employment.**

Promoter will not discriminate against any worker, employee or applicant, or any member of the public because of race, color, religion, gender, national origin, or disability, nor otherwise commit an unfair employment practice. Promoter will take affirmative action to ensure that applicants are employed, and that employees are dealt with during employment without regard to their race, color, religion, gender, or national origin.

**26. Taxes, Permits and Licenses.**

Promoter agrees to pay promptly all taxes, excises, license fees and permit fees of whatever nature applicable to its operations, and to take out and keep current all required licenses, municipal, state or federal, required for the conduct of business hereunder and further agrees not to permit any of such taxes, excises or license or permit fees to become delinquent. Promoter further agrees to furnish City, upon request, duplicate receipts or other satisfactory evidence showing the prompt payment by Promoter of all required licenses and permits and all taxes. Promoter further agrees to pay promptly when due all bills, debts and obligations incurred by it in connection with its operations, and not to permit the same to become delinquent in any material respect and to suffer no lien, mortgage, judgment or execution to be filed which will in any way impair the rights of City under this Agreement.

**27. Force Majeure.**

The rights and obligations of the parties to this Agreement shall be subject to delays or cancellation caused by strikes, fires, accident, acts of terrorism, war, adverse weather, acts of God, or orders of any military, civil or government authority beyond the control of the best efforts of the parties, and should such event or events occur from time to time the rights or obligations of the parties affected thereby, if any, shall be continued for a period equal to the period resulting from such delay, or suspended or excused pro rata. Notwithstanding the foregoing, in the event of a delay as a result of one or more of the foregoing events that continues for 60 days, Promoter shall have the right to terminate this Agreement without penalty.

**28. Agreement as Complete Integration-Amendments.**

This Agreement is intended as the complete integration of all understandings between the parties pertaining to the subject matter of the Agreement. No prior or contemporaneous addition, deletion or other amendment shall have any force or effect whatsoever, unless embodied herein in writing. No subsequent notation, renewal, addition, deletion or other amendment hereto shall have any force or effect unless embodied in a written amendment or other agreement properly executed by the parties. This Agreement and any amendments shall be binding upon the parties, their successors and assigns.

**29. Incorporation of Exhibits.**

Each of the Exhibits listed below is an essential part of the Agreement, which governs the

rights and duties of the parties, and shall be interpreted in the order of priority as appears below:

Exhibit A: Detailed Race Plans

In the event of a conflict between this Agreement and any of the Exhibits, this Agreement shall be controlling.

IN WITNESS WHEREOF, this Agreement is executed by City and by Promoter, and both have caused this Agreement to be executed as of the day and year first above written.

**CITY OF KERRVILLE, TEXAS**

**HGH FIVE EVENTS, LLC**

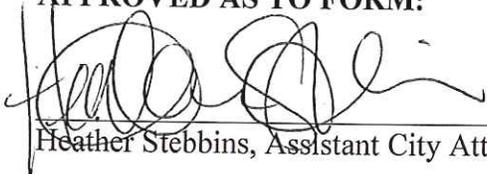
\_\_\_\_\_  
Todd Parton, City Manager

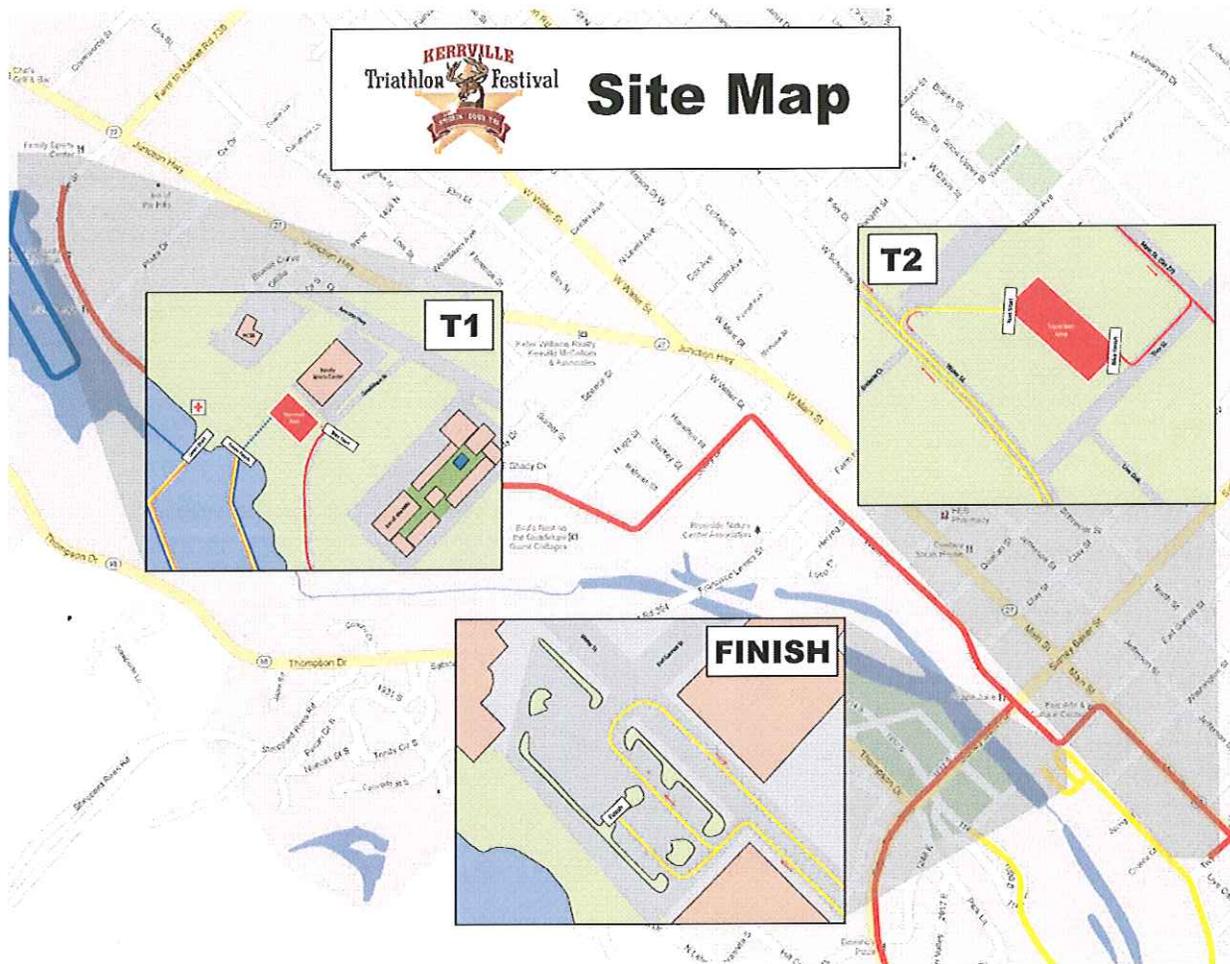
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Name: \_\_\_\_\_  
Title: \_\_\_\_\_

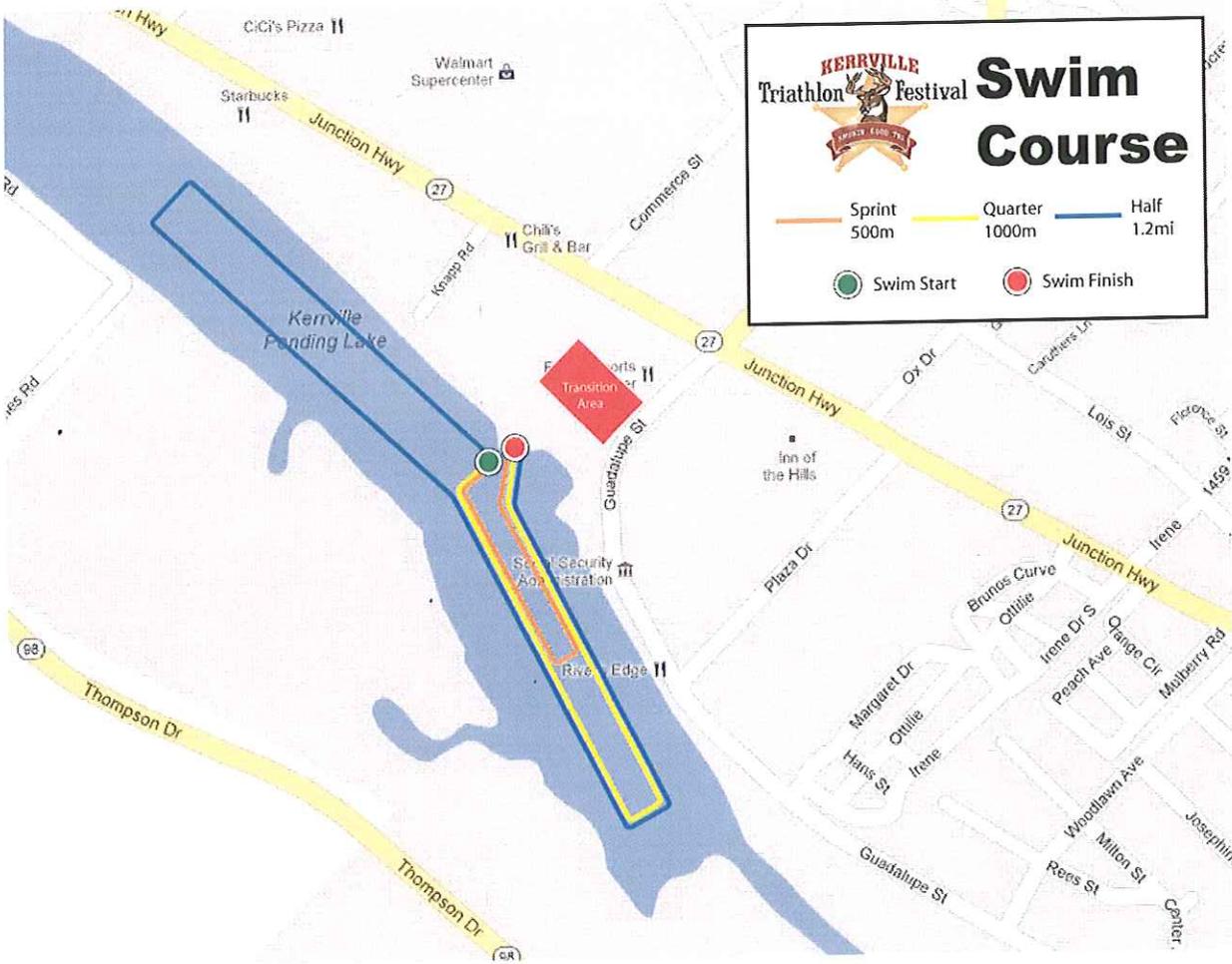
**ATTEST:**

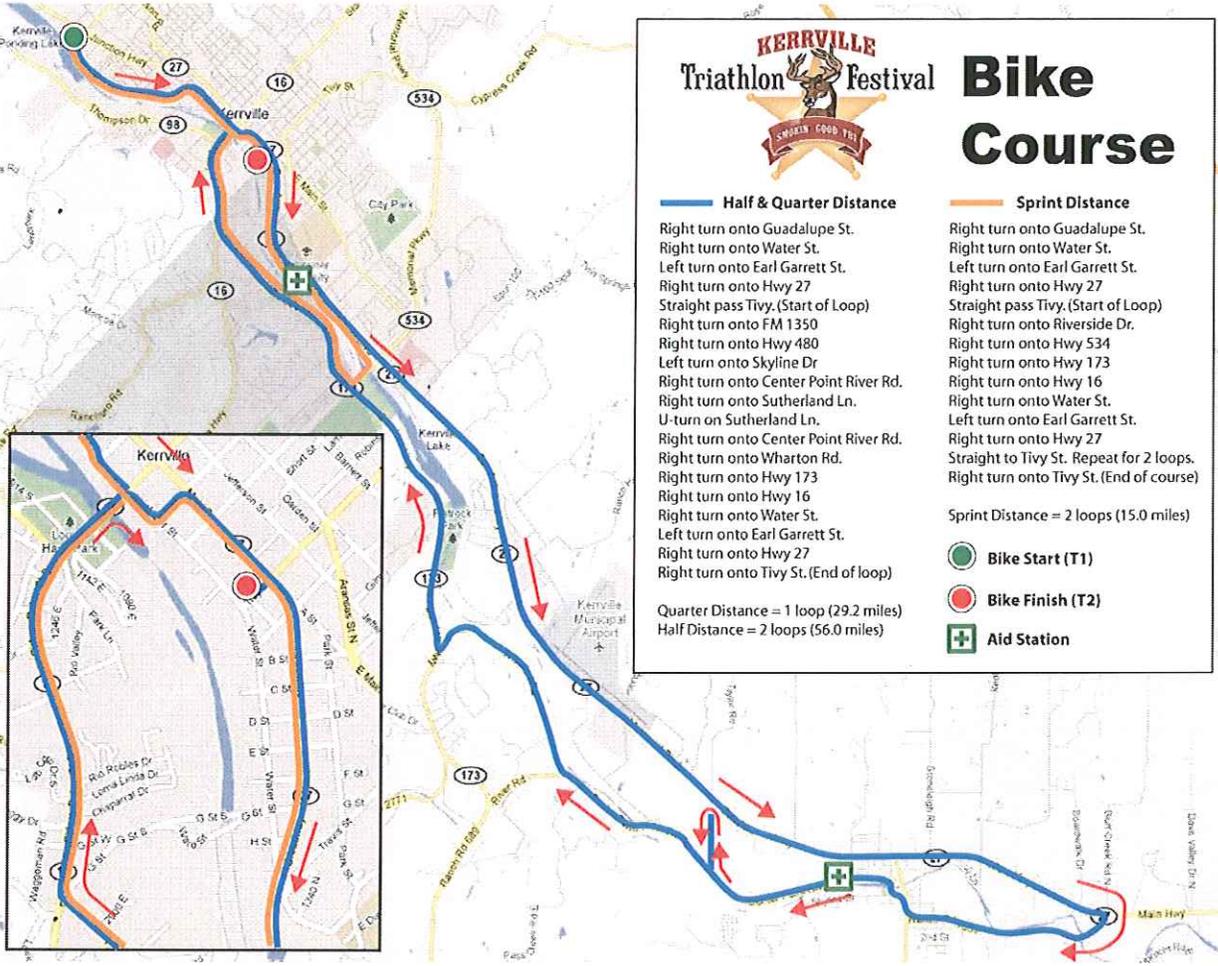
\_\_\_\_\_  
Brenda G. Craig, City Secretary

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Heather Stebbins, Assistant City Attorney

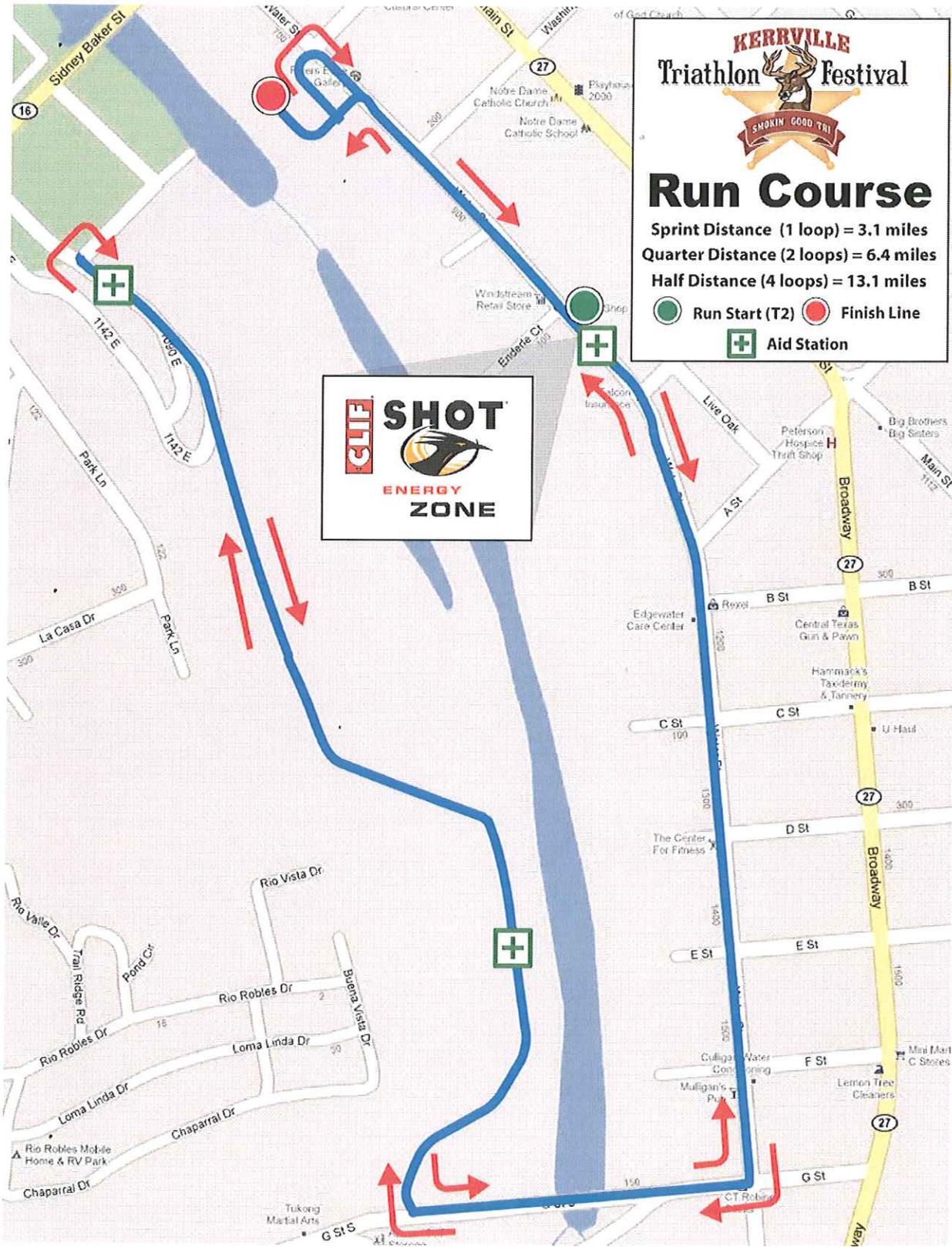






# KERRVILLE Triathlon Festival Bike Course

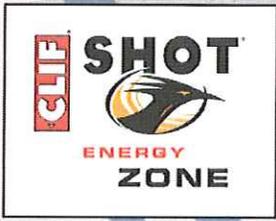
- **Half & Quarter Distance**
  - **Sprint Distance**
  - **Bike Start (T1)**
  - **Bike Finish (T2)**
  - + **Aid Station**
- Right turn onto Guadalupe St.  
 Right turn onto Water St.  
 Left turn onto Earl Garrett St.  
 Right turn onto Hwy 27  
 Straight pass Tivy. (Start of Loop)  
 Right turn onto FM 1350  
 Right turn onto Hwy 480  
 Left turn onto Skyline Dr  
 Right turn onto Center Point River Rd.  
 Right turn onto Sutherland Ln.  
 U-turn on Sutherland Ln.  
 Right turn onto Center Point River Rd.  
 Right turn onto Wharton Rd.  
 Right turn onto Hwy 173  
 Right turn onto Hwy 16  
 Right turn onto Water St.  
 Left turn onto Earl Garrett St.  
 Right turn onto Hwy 27  
 Straight to Tivy St. Repeat for 2 loops.  
 Right turn onto Tivy St. (End of course)
- Sprint Distance = 2 loops (15.0 miles)  
 Quarter Distance = 1 loop (29.2 miles)  
 Half Distance = 2 loops (56.0 miles)



# Run Course

Sprint Distance (1 loop) = 3.1 miles  
 Quarter Distance (2 loops) = 6.4 miles  
 Half Distance (4 loops) = 13.1 miles

- Run Start (T2)
- Finish Line
- + Aid Station



## **Agenda Item:**

3C. Resolution No. 30-2013 canceling the regular meeting of the city council scheduled for December 24, 2013. (staff)

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

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**SUBJECT:** Resolution establishing the upcoming holiday schedule and canceling the second city council meeting in December

**FOR AGENDA OF:** September 10, 2013      **DATE SUBMITTED:** August 30, 2013

**SUBMITTED BY:** Brenda Craig  
City Secretary

**CLEARANCES:** Todd Parton  
City Manager

**EXHIBITS:** Resolution

**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:**

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**SUMMARY STATEMENT**

The proposed resolution establishes the upcoming city holiday schedule as listed:

- November 28, Thanksgiving Day
- November 29, the day after Thanksgiving Day
- December 24, Christmas Eve
- December 25, Christmas Day
- January 1, New Year's Day.

It is customary that the city council cancel the second meeting in December; therefore, if adopted, the resolution would cancel the December 24 council meeting.

**RECOMMENDED ACTION**

The city secretary recommends approval of the resolution canceling the December 24 regular city council meeting.

**CITY OF KERRVILLE, TEXAS  
RESOLUTION NO. 30-2013**

**A RESOLUTION CANCELING THE REGULAR MEETING OF  
THE CITY COUNCIL SCHEDULED FOR DECEMBER 24, 2013**

**WHEREAS**, Section 2-31 of the Code of Ordinances for the City of Kerrville provides that City Council meetings are to be held the second and fourth Tuesdays of each month; and

**WHEREAS**, Section 2-31 also provides the City Council may, by majority vote at a regular meeting, change the days or times of meetings as circumstances may necessitate;

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

The regular meeting of the City Council scheduled for December 24, 2013, is hereby canceled.

**PASSED AND APPROVED ON this the \_\_\_\_\_ day of \_\_\_\_\_ A.D., 2013.**

\_\_\_\_\_  
Jack Pratt, Jr., Mayor

ATTEST:

\_\_\_\_\_  
Brenda G. Craig, City Secretary

APPROVED AS TO FORM:

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

## **Agenda Item:**

4A. Second public hearing to set the 2013 ad valorem tax rate. (staff)



## **Agenda Item:**

4B. Ordinance No. 2013-16 levying an ad valorem tax for the use and the support of the municipal government for the City of Kerrville, Texas, for the fiscal year 2014; providing for apportioning each levy for specific purposes; and providing when taxes shall become due and when same shall become delinquent if not paid. (staff)



**CITY OF KERRVILLE, TEXAS  
ORDINANCE NO. 2013-16**

**AN ORDINANCE LEVYING AN AD VALOREM TAX FOR THE USE AND THE SUPPORT OF THE MUNICIPAL GOVERNMENT FOR THE CITY OF KERRVILLE, TEXAS, FOR THE FISCAL YEAR 2014; PROVIDING FOR APPORTIONING EACH LEVY FOR SPECIFIC PURPOSES; AND PROVIDING WHEN TAXES SHALL BECOME DUE AND WHEN SAME SHALL BECOME DELINQUENT IF NOT PAID**

WHEREAS, the City Council finds that an ad valorem tax must be levied to provide for current expenses and improvements for the City of Kerrville, Texas, during the fiscal year 2014; and

WHEREAS, the City Council further finds that an ad valorem tax must be levied to provide for the payment of principal and interest on outstanding debt maturing in the fiscal year 2014; and

WHEREAS, after due deliberation, study, and consideration of the proposed tax rate for the fiscal year 2014, the City Council has determined that adoption of the rate is in the best interest of the taxpayers of the City and it should be adopted in accordance with law;

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

**SECTION ONE.** There is hereby levied and there shall be collected for the use and support of the municipal government of the City of Kerrville, Texas, and to provide interest and sinking funds for the fiscal year 2014, a tax of **\$0.5625** on each one hundred dollars (\$100.00) valuation of all property, real, personal, and mixed, within the corporate limits of the City subject to taxation, for the specific purposes herein set forth:

- (A) For the current expenditures of the City of Kerrville and for the general improvement, use and support of the City and its property, there is hereby levied and ordered to be assessed and collected for the fiscal year 2014 on all property situated within the corporate limits of the City, and not exempt from taxation by a valid law, an ad valorem tax rate of \$0.489 on each one hundred dollars (\$100.00) valuation of such property. **THIS TAX RATE WILL RAISE MORE TAXES FOR MAINTENANCE AND OPERATIONS THAN LAST YEAR'S TAX RATE. THE TAX RATE WILL EFFECTIVELY BE RAISED BY .14% PERCENT AND WILL RAISE TAXES FOR MAINTENANCE AND OPERATIONS ON A \$100,000 HOME BY APPROXIMATELY \$0.00.**
- (B) For the purpose of paying principal and interest and providing payments into various debt service funds for each issue of tax supported debt, there is hereby levied and ordered to be assessed and collected for the fiscal year 2014 on all property situated within the corporate limits of the City and not exempt from taxation by a valid law,

an ad valorem tax for each issue of debt described in this Section, the sum of such levies being \$0.0735 on each one hundred dollars (\$100.00) valuation of such property.

**SECTION TWO.** The ad valorem taxes levied are due on October 1, 2013, and may be paid up to and including January 31, 2014, without penalty, but if not paid, such taxes are delinquent on February 1, 2014, provided, however, in accordance with Texas Tax Code §31.03(a), the ad valorem taxes due hereunder may, at the option of the taxpayer, be paid in two payments without penalty or interest so long as the first payment of one-half of the taxes levied is paid before December 1, 2013, and the remaining one-half is paid before July 1, 2014.

**SECTION THREE.** No discounts are authorized on property tax payments made prior to January 31, 2014.

**SECTION FOUR.** All taxes become a lien upon the property against which assessed, and the designated City tax collector for the City of Kerrville is authorized and empowered to enforce the collection of such taxes according to the Constitution and Laws of the State of Texas and ordinances of the City of Kerrville, and shall by virtue of the tax rolls, fix and establish a lien by levying upon such property, whether real or personal, for the payment of said taxes, penalty, and interest. All delinquent taxes shall bear interest and other charges from date of delinquency as prescribed by state law.

**PASSED AND APPROVED ON FIRST READING, this the \_\_\_\_\_ day of \_\_\_\_\_ A.D., 2013.**

**PASSED AND APPROVED ON SECOND AND FINAL READING, this the \_\_\_\_\_ day of \_\_\_\_\_, A.D., 2013.**

**THE MEMBERS OF CITY COUNCIL, FOLLOWING THE SPECIFIC MOTION REQUIRED BY STATE LAW, VOTED ON THE PROPOSAL TO CONSIDER THE TAX INCREASE AS FOLLOWS:**

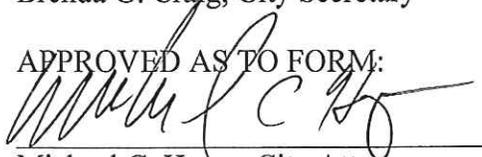
	YES	NO
Jack Pratt, Mayor	_____	_____
Carson Conklin, Place 1	_____	_____
Stacie Keeble, Place 2	_____	_____
Justin MacDonald, Place 3	_____	_____
Gene Allen, Place 4	_____	_____

\_\_\_\_\_  
Jack Pratt, Jr., Mayor

ATTEST:

\_\_\_\_\_  
Brenda G. Craig, City Secretary

APPROVED AS TO FORM:

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

## **Agenda Item:**

4C. Public hearing to set the budget for fiscal year 2014. (staff)



**CITY OF KERRVILLE, TEXAS  
ORDINANCE NO. 2013-17**

**AN ORDINANCE ADOPTING THE ANNUAL BUDGET  
FOR THE FISCAL YEAR 2014; PROVIDING  
APPROPRIATIONS FOR EACH DEPARTMENT AND  
FUND; CONTAINING A CUMULATIVE CLAUSE; AND  
CONTAINING A SAVINGS AND SEVERABILITY CLAUSE**

**WHEREAS**, in accordance with Section 8.01 of the City Charter, the City Manager of the City of Kerrville prepared and filed with the City Secretary on July 26, 2013, a proposed budget for the City of Kerrville, Texas, for the fiscal year beginning October 1, 2013, and ending September 30, 2014; and

**WHEREAS**, in accordance with Section 8.04 of the City Charter, and after providing the required public notice in the City's official newspaper not less than two weeks prior to the date of the public hearing, a public hearing was duly held on September 10, 2013, at the time and place set forth in the public notice, said date being more than thirty days subsequent to the filing of the proposed budget by the City Manager, at which all interested persons were given an opportunity to be heard for or against any item within the proposed budget; and

**WHEREAS**, after due deliberation, study, and consideration of the proposed budget, and after making such amendments to the budget proposed by the City Manager that the City Council has determined are (1) warranted by law or (2) in the best interest of the taxpayers of the City, the City Council is of the opinion that the Official Budget for the Fiscal Year 2014, with the amendments described and discussed, should be approved and adopted, in accordance with Section 8.06 of the City Charter;

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

**SECTION ONE.** The Official Budget of the City of Kerrville, Texas, a copy of which is on file in the office of the City Secretary, referenced by the date and number of this Ordinance, and incorporated herein by reference as if fully set out herein, is adopted, in accordance with Section 8.06 of the City Charter.

**SECTION TWO.** The budgets for each department of the City are hereby deemed to provide a complete financial plan of City funds and activities for the Fiscal Year 2014, in accordance with Section 8.05 of the City Charter.

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

**SECTION FOUR.** If any section, subsection, sentence, clause or phrase of this Ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this Ordinance. The City Council of the City of

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

PASSED AND APPROVED ON FIRST READING, this the \_\_\_\_ day of \_\_\_\_\_, A.D., 2013.

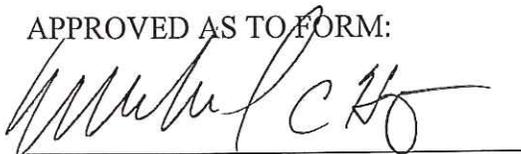
PASSED AND APPROVED ON SECOND AND FINAL READING, this the \_\_\_\_ day of \_\_\_\_\_, A.D., 2013.

\_\_\_\_\_  
Jack Pratt, Jr., Mayor

ATTEST:

\_\_\_\_\_  
Brenda G. Craig, City Secretary

APPROVED AS TO FORM:



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

## **Agenda Item:**

4D. Ordinance No. 2013-17, adopting the annual budget for the fiscal year 2014; providing appropriations for each department and fund; containing a cumulative clause; and containing a savings and severability clause. (staff)



**CITY OF KERRVILLE, TEXAS  
ORDINANCE NO. 2013-17**

**AN ORDINANCE ADOPTING THE ANNUAL BUDGET  
FOR THE FISCAL YEAR 2014; PROVIDING  
APPROPRIATIONS FOR EACH DEPARTMENT AND  
FUND; CONTAINING A CUMULATIVE CLAUSE; AND  
CONTAINING A SAVINGS AND SEVERABILITY CLAUSE**

**WHEREAS**, in accordance with Section 8.01 of the City Charter, the City Manager of the City of Kerrville prepared and filed with the City Secretary on July 26, 2013, a proposed budget for the City of Kerrville, Texas, for the fiscal year beginning October 1, 2013, and ending September 30, 2014; and

**WHEREAS**, in accordance with Section 8.04 of the City Charter, and after providing the required public notice in the City's official newspaper not less than two weeks prior to the date of the public hearing, a public hearing was duly held on September 10, 2013, at the time and place set forth in the public notice, said date being more than thirty days subsequent to the filing of the proposed budget by the City Manager, at which all interested persons were given an opportunity to be heard for or against any item within the proposed budget; and

**WHEREAS**, after due deliberation, study, and consideration of the proposed budget, and after making such amendments to the budget proposed by the City Manager that the City Council has determined are (1) warranted by law or (2) in the best interest of the taxpayers of the City, the City Council is of the opinion that the Official Budget for the Fiscal Year 2014, with the amendments described and discussed, should be approved and adopted, in accordance with Section 8.06 of the City Charter;

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

**SECTION ONE.** The Official Budget of the City of Kerrville, Texas, a copy of which is on file in the office of the City Secretary, referenced by the date and number of this Ordinance, and incorporated herein by reference as if fully set out herein, is adopted, in accordance with Section 8.06 of the City Charter.

**SECTION TWO.** The budgets for each department of the City are hereby deemed to provide a complete financial plan of City funds and activities for the Fiscal Year 2014, in accordance with Section 8.05 of the City Charter.

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

**SECTION FOUR.** If any section, subsection, sentence, clause or phrase of this Ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this Ordinance. The City Council of the City of

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

**PASSED AND APPROVED ON FIRST READING, this the \_\_\_\_ day of \_\_\_\_\_, A.D., 2013.**

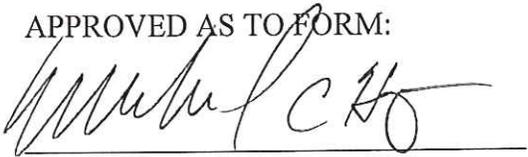
**PASSED AND APPROVED ON SECOND AND FINAL READING, this the \_\_\_\_ day of \_\_\_\_\_, A.D., 2013.**

\_\_\_\_\_  
Jack Pratt, Jr., Mayor

ATTEST:

\_\_\_\_\_  
Brenda G. Craig, City Secretary

APPROVED AS TO FORM:



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

## **Agenda Item:**

5A. Ordinance No. 2013-15 amending the budget for fiscal year 2013 to account for a change to the city's operational budget within the water and sewer fund to appropriate funding for a feasibility study of reclaimed water. (staff)



CITY OF KERRVILLE, TEXAS  
ORDINANCE NO. 2013-15

AN ORDINANCE AMENDING THE BUDGET FOR FISCAL YEAR 2013  
TO ACCOUNT FOR A CHANGE TO THE CITY'S OPERATIONAL  
BUDGET WITHIN THE WATER AND SEWER FUND TO APPROPRIATE  
FUNDING FOR A FEASIBILITY STUDY OF RECLAIMED WATER

WHEREAS, Ordinance No. 2012-11, dated September 25, 2012, adopted the Fiscal Year 2013 Budget; and

WHEREAS, the City Council of the City of Kerrville, Texas, finds that amending the City's Fiscal Year 2013 Budget is in the best interest of the citizens of the City of Kerrville;

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

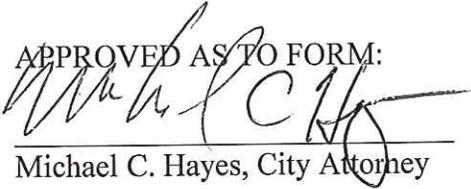
In accordance with Section 8.07 of the City Charter, the Official Budget for Fiscal Year 2013 is amended as set forth in Exhibit A.

PASSED AND APPROVED ON FIRST READING, this the 27<sup>th</sup> day of August, A.D., 2013.

PASSED AND APPROVED ON SECOND AND FINAL READING, this the \_\_\_\_\_ day of \_\_\_\_\_, A.D., 2013.

\_\_\_\_\_  
Jack Pratt, Jr., Mayor

APPROVED AS TO FORM:

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

ATTEST:

\_\_\_\_\_  
Brenda G. Craig, City Secretary

August 2013 Budget Amendment - Attachment A

<u>Fund</u>	<u>Fund Name</u>	<u>Dept</u>	<u>Account Type</u>	<u>Line Item Account</u>	<u>Line Item Name</u>	<u>Reason</u>	<u>Amount</u>
02	Water/Sewer Fund	General Operations	Expenditures	02-890-410	Contingency	Fund feasibility study of re-use water	\$135,000.00

## **Agenda Item:**

6A. Ordinance No. 2013-18 amending in part Ordinance No. 99-18, as amended, by adopting a new residential rate tariff: Burned Veterans' Discount Program rider BVDP for residential electric service administered by the Kerrville Public Utility Board; containing a cumulative clause; containing a savings and severability clause; and establishing an effective date. (KPUB General Manager Tracy McCuan)

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

---

**SUBJECT:** Ordinance No. 2013-18 KPUB burned veterans discount program

**FOR AGENDA OF:** Sep. 10, 2013      **DATE SUBMITTED:** Sep. 6, 2013

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

**EXHIBITS:** Ordinance No. 2013-18  
KPUB Letter – Dated August 26, 2013

**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**

Mr. Tracy McCuan, General Manager and CEO of the Kerrville Public Utility Board (KPUB), has requested that the City Council consider the passage of an ordinance to allow a bill payment assistance program for military veteran customers who suffer the effects of severe burns received in combat.

KPUB has already taken action to establish a discount of \$90 per month for the months of April through October. This discount is for military veterans who have significantly decreased abilities to regulate their body temperature because of severe burns received during armed conflict or in combat.

This is the first of two readings required to pass this ordinance. No public hearing is required to approve this discount program.

**RECOMMENDED ACTION**

Staff recommends following the KPUB action to approve the ordinance to establish the this discount program.



KERRVILLE  
PUBLIC  
UTILITY  
BOARD

2250 Memorial Blvd. • P.O. Box 294999 • Kerrville, Texas 78029-4999 • 830-257-3050 • FAX 830-257-8078

August 26, 2013

Mr. Todd J. Parton  
City Manager  
City of Kerrville  
701 Main Street  
Kerrville, Texas 78028

**Re: KPUB Burned Veteran Discount Program**

Dear Todd,

During the 83rd Regular Legislative Session, the Texas Legislature approved an amendment to the Utilities Code. The amendment allows a bill payment assistance program for military veteran customers who have a significantly decreased ability to regulate their body temperature because of severe burns received in combat. The bill allows the costs of such program to be considered a necessary operations expense. It became effective on June 14, 2013. We were provided information through the Texas Public Power Association on programs that CPS Energy of San Antonio and Floresville Electric Light & Power System (FELPS) have approved. They both implemented a discount of \$90.00 per month during summer months (April through October) for residential accounts where an eligible veteran resides.

Based on the information above, KPUB staff recommended offering similar discounts to KPUB customers. Staff felt that with the local VA Hospital, there may be burned veterans who are KPUB customers. At its meeting on August 21, 2013, the Kerrville Public Utility Board passed and approved the enclosed KPUB Resolution No. 13-13, which approved Residential Rate Tariff: Burned Veterans' Discount Program - Rider BVDP, also enclosed. Since this tariff involves residential rates, City Council approval is also required.

In accordance with KPUB Resolution No. 13-13, I respectfully request you place this matter on an upcoming City Council agenda for a public hearing and first reading of an ordinance to approve the Rider BVDP. I also request you place a second reading of the ordinance on a following City Council agenda. Dwaine Machann is currently drafting an ordinance for your and Mike Hayes' review.

Mr. Todd J. Parton

- 2 -

August 26, 2013

Please let me know if you have any questions or need additional information.

Yours truly,

A handwritten signature in blue ink, appearing to read "T. L. McCuan". The signature is fluid and cursive, with a long horizontal stroke at the end.

Tracy L. McCuan  
General Manager and CEO

TLM/lg

cc: Mike Hayes, City Attorney  
Dwaine Machann, KPUB Counsel

Enc: KPUB Resolution 13-13  
Residential Rate Tariff: Burned Veterans' Discount Program—Rider BVDP

**RESOLUTION NO. 13-13**

**A RESOLUTION OF THE KERRVILLE PUBLIC UTILITY BOARD APPROVING A NEW RESIDENTIAL RATE TARIFF: BURNED VETERANS' DISCOUNT PROGRAM—RIDER BVDP AND FORWARDING THE PROPOSED RESIDENTIAL TARRIFF TO THE CITY OF KERRVILLE FOR ACTION AND APPROVAL BY THE CITY COUNCIL.**

**WHEREAS**, on June 14, 2013 Texas SB 981 became effective amending the Utilities Code allowing a bill payment assistance program for customers who are military veterans who have a significantly decreased ability to regulate their body temperature because of severe burns received in combat; and

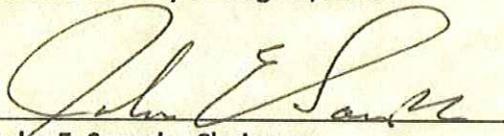
**WHEREAS**, the KPUB staff recommended the approval of a new Residential Rate Tariff: Burned Veterans' Discount Program—Rider BVDP; now, therefore,

**BE IT RESOLVED BY THE KERRVILLE PUBLIC UTILITY BOARD THAT:**

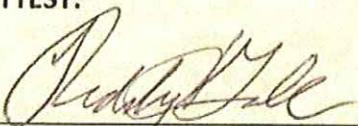
**Section 1.** The above recitals are true and correct.

**Section 2.** The Board approves the new Residential Rate Tariff: Burned Veterans' Discount Program—Rider BVDP, attached hereto as Exhibit "A", as recommended by staff and the General Manager is authorized to forward the new residential rate tariff described herein to the Kerrville City Council for its consideration and action.

**PASSED, APPROVED AND ADOPTED on this 21<sup>st</sup> day of August, 2013**

  
\_\_\_\_\_  
John E. Sample, Chairman

**ATTEST:**

  
\_\_\_\_\_  
**Stephen Fine, Secretary**  
Fred Gamble, Vice Chairman

---

**BURNED VETERANS' DISCOUNT PROGRAM**  
**RIDER BVDP**

**AVAILABILITY**

This rider is available only in conjunction with full service electric residential accounts for customers who meet the following eligibility requirements:

1. Applicant is a military veteran who has significantly decreased ability to regulate his or her body's core temperature because of severe burns received during armed conflict or in combat.
2. Applicant shall complete the Burned Veterans' Discount Application and provide confirmation from a military medical facility that the applicant has met the above criteria. Medical confirmation will be required every 12 months to continue program participation.
3. Only the applicant's primary residence that he or she currently occupies is eligible for the discount. The discount will apply even if the veteran is not the customer of record.
4. Applicant will be eligible for other available rate discounts, but only one discount at a time will be applied to the bill.

**CONDITIONS**

The current rules and regulations shall apply to the Program, including the payment and collection process.

**MONTHLY RATE**

The monthly bill will be calculated in accordance with the corresponding full service electric rate less a discount of \$90.00 per month during the months of April through October. This discount shall not result in a credit balance to the monthly bill of any Customer receiving this discount.

**CITY OF KERRVILLE, TEXAS  
ORDINANCE NO. 2013-18**

**AN ORDINANCE AMENDING IN PART ORDINANCE NO. 99-18, AS AMENDED, BY ADOPTING A NEW RESIDENTIAL RATE TARIFF: BURNED VETERANS' DISCOUNT PROGRAM RIDER BVDP FOR RESIDENTIAL ELECTRIC SERVICE ADMINISTERED BY THE KERRVILLE PUBLIC UTILITY BOARD; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; AND ESTABLISHING AN EFFECTIVE DATE**

**WHEREAS**, the City of Kerrville, Texas, owns an electric system and manages and operates its system through its duly appointed board of trustees, the Kerrville Public Utility Board ("KPUB"), a body created pursuant to Tex. Rev. Civ. Stat. Ann. art 1115, as amended; and

**WHEREAS**, on June 14, 2013, Texas Senate Bill 981 ("SB 981"), which amended the Texas Utilities Code, became effective; and

**WHEREAS**, SB 981 authorizes a bill payment assistance program for residential electric customers that are military veterans and who have a significantly decreased ability to regulate their body temperatures because of severe burns received in combat; and

**WHEREAS**, KPUB has approved a new Residential Rate Tariff: Burned Veterans' Discount Program –Rider BVDP and forwarded the new residential rate tariff to the City Council for its consideration and action; and

**WHEREAS**, the City Council finds that the new Residential Rate Tariff: Burned Veterans' Discount Program –Rider BVDP approved KPUB should be approved and adopted;

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

**SECTION ONE.** Ordinance No. 99-18, as amended, and as it applies to residential rates and charges applicable to electric service provided by the electric system owned by the City of Kerrville and managed and operated on the City's behalf by the Kerrville Public Utility Board is amended as follows:

The new Residential Rate Tariff: Burned Veterans' Discount Program – Rider BVDP, attached to this Ordinance as **Exhibit A** and incorporated herein by reference, is hereby in all things adopted and is applicable to all qualifying residential customers that are military veterans of the City's electric system managed and controlled by the Kerrville Public Utility Board, effective October 1, 2013.

**SECTION TWO.** Except as specifically amended by Section One above as to residential rates for qualifying military veterans, Ordinance No. 99-18, as amended, remains in full force and effect.

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

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

**SECTION FIVE.** This Ordinance shall become effective from and after the date of final passage on second reading.

**PASSED AND APPROVED ON FIRST READING,** this the \_\_\_\_\_ day of September, 2013.

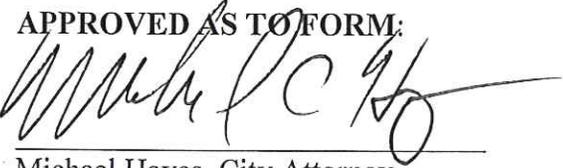
**PASSED AND APPROVED ON SECOND AND FINAL READING,** this the \_\_\_\_\_ day of September, 2013.

\_\_\_\_\_  
Jack Pratt, Mayor

**ATTEST:**

\_\_\_\_\_  
Brenda Craig, City Secretary

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Michael Hayes, City Attorney

---

**BURNED VETERANS' DISCOUNT PROGRAM**  
**RIDER BVDP**

**AVAILABILITY**

This rider is available only in conjunction with full service electric residential accounts for customers who meet the following eligibility requirements:

1. Applicant is a military veteran who has significantly decreased ability to regulate his or her body's core temperature because of severe burns received during armed conflict or in combat.
2. Applicant shall complete the Burned Veterans' Discount Application and provide confirmation from a military medical facility that the applicant has met the above criteria. Medical confirmation will be required every 12 months to continue program participation.
3. Only the applicant's primary residence that he or she currently occupies is eligible for the discount. The discount will apply even if the veteran is not the customer of record.
4. Applicant will be eligible for other available rate discounts, but only one discount at a time will be applied to the bill.

**CONDITIONS**

The current rules and regulations shall apply to the Program, including the payment and collection process.

**MONTHLY RATE**

The monthly bill will be calculated in accordance with the corresponding full service electric rate less a discount of \$90.00 per month during the months of April through October. This discount shall not result in a credit balance to the monthly bill of any Customer receiving this discount.

## **Agenda Item:**

7A. Agreement with Freese and Nichols to perform a feasibility study to determine environmental impacts, geotechnical requirements, floodplain analysis, pumping requirements, regulatory requirements, and cost implications for reuse of treated effluent from the wastewater treatment plant in an amount not to exceed \$135,000.00. (staff)



geotechnical, floodplain and regulatory impacts, as well as the financial viability of the reuse pond project. The study will also aid in addressing and planning future strategies for effluent reuse possibilities in irrigation, construction, and ultimately aquifer storage and recovery (ASR) and potable water applications.

### **RECOMMENDED ACTION**

The Director of Engineering recommends the City Council authorize the City Manager to enter into a Professional Services Agreement with Freese and Nichols, Inc. to perform a feasibility study to determine environmental impacts, geotechnical requirements, floodplain analysis, pumping requirements, regulatory requirements, and cost implications for reuse of treated effluent from the wastewater treatment plant in an amount not to exceed \$135,000.00.

## Professional Engineering Services Agreement

### Between

### Freese and Nichols, Inc., and City of Kerrville

THIS AGREEMENT is made as of this \_\_\_\_\_ day of \_\_\_\_\_, 2013, between the CITY OF KERRVILLE, a Texas home rule municipality with principal offices at 701 Main Street, Kerrville, Texas, 78028, hereinafter referred to as "Client", and Freese and Nichols, Inc., with its offices located at 4040 Broadway, Suite 600, San Antonio, Texas 78209, hereinafter referred to as "Engineer", for the performance of professional engineering services in consideration of the following terms, conditions, and agreements:

#### PART I. SERVICES

Engineer shall perform all work described in the proposal attached hereto as **Exhibit A**.

- A. Engineer shall be responsible for the professional quality, technical accuracy, timely completion, and the coordination of all designs, drawings, specifications, reports, and other services furnished by Engineer under this Agreement, Engineer shall, without additional compensation, correct or revise any errors, omissions or other deficiencies in his designs, drawings, specifications, reports and others services.
- B. Engineer hereby agrees to comply with all Federal, State, and Local laws and ordinances applicable to the work or services under this Agreement.
- C. Engineer shall hold periodic conferences with Client or Client's representatives to the end that the project as developed shall have the full benefit of Client's experience and knowledge and be consistent with Client's objectives for this project.
- D. Engineer shall periodically report project status to Client as is appropriate to keep Client informed regarding project progress.
- E. Engineer shall perform or have performed all services under this Agreement in a manner which is consistent with generally accepted standards of professional engineering practice.

#### PART II. CLIENT'S RESPONSIBILITIES

- A. Client shall provide all criteria and full information as to Client's requirements for the Project; designate a person to act with authority on Client's behalf in respect of all aspects of the Project; examine and respond promptly to Engineer's submissions; and give prompt written notice to Engineer whenever Client observes or otherwise becomes aware of any defect in Engineer's submissions.

Furnish to engineer, upon Engineer's notification that data is required, core borings, probings and subsurface explorations, hydrographic surveys, laboratory tests and inspections of samples, materials and equipment and similar data; appropriate professional interpretations of all of the foregoing; environmental assessment and impact statements; geologic assessments, environmental impact studies, and endangered species studies; and any other information previously made available to Client, which may be required by Engineer; all of which Engineer may rely upon as accurate in performing Engineer's services provided, however, Engineer shall not be entitled to rely on any inaccuracy or incompleteness of information or services provided by Client or at Client's direction if a professional engineer using generally accepted engineering practices and procedures would have discovered such inaccuracy or incompleteness without reviewing any other data other than the document or information provided.

Guarantee access to and make all provisions for Engineer to enter upon public and private property.

Provide such legal, accounting, independent cost estimating and insurance counseling services as may be required for the Project, any auditing service required in respect of contractor(s)' applications for payment, and any inspection services to determine if contractor(s) are performing the work legally.

- C. Client shall pay all non-labor costs incident to obtaining bids or proposals from contractor(s).

### PART III. WORK ORDER AMENDMENTS

- A. Client may at any time, by written Work Order, make changes relating to services to be performed. If such changes cause an increase or decrease in Engineer's cost of, or time required for, performance of any services, an agreeable equitable adjustment shall be made and reflected in a properly executed Work Order. Engineer must assert any claim for adjustment under this clause in writing within thirty (30) calendar days from the date of receipt by Engineer of the notification of change, unless Client grants a further period of time before the date of final payment under this Agreement.
- B. No services for which additional compensation will be charged by Engineer shall be furnished without a properly executed Work Order signed by Client.
- C. In the event that there are modifications and/or additions to regulatory requirements relating to the services to be performed under this Agreement after the date of execution of this Agreement, the increased or decreased cost of performance of the services provided in this Agreement and subsequent Work Orders shall be reflected in an appropriate Work Order.

PART IV. COMPENSATION

Client agrees to pay Engineer for Professional Services in accordance with the descriptions, definitions, terms and conditions as set forth in **Exhibit A**.

PART V. PAYMENTS

Engineer will invoice Client in accordance with the terms and conditions as set forth in **Exhibit A**. Client agrees to promptly pay Engineer at its office located at 4055 International Plaza, Suite 200, Fort Worth, Texas 76109, the full amount of each such invoice upon receipt. In no event shall Engineer's failure to invoice constitute a default under the terms and conditions of this Agreement.

PART VI. INSURANCE

Engineer shall procure and maintain the following types and limits of insurance for the duration of this Agreement:

<u>Type of Insurance</u>	<u>Minimum Limits of Liability</u>
Workers' Compensation	Statutory
Employer's Liability	\$250,000.00
Commercial General Liability-Personal Injury/Property Damage	\$1,000,000.00 combined single limit per occurrence
Automobile Liability	\$1,000,000.00 combined single limit per occurrence – Hired car, owned and non-owned autos
Professional Liability	\$1,000,000 per claim

The commercial general liability insurance required above will include contractual liability coverage. The commercial general liability and automobile liability policies shall be endorsed to name the Client as an additional insured, and all policies shall be endorsed to show a waiver of subrogation in favor of Client. Engineer shall direct that a certificate of insurance be delivered to Client before any services are performed pursuant to this Agreement. Such certification of insurance shall provide for not less than thirty (30) days written notice to Client prior to cancellation or material modification by endorsement of any insurance referenced therein and shall indicate that all required coverage and endorsements are in effect.

PART VII. TERMINATION

A. CONDITIONS OF TERMINATION

This Agreement and/or Work Order(s) may be terminated without cause at any time prior to completion of Engineer's services, either by Client or by Engineer, upon written notice to the other at the address of record. Upon receipt of written notice from Client to discontinue work, Engineer shall discontinue work under

this Agreement immediately. In the event Client terminates the Agreement based on Client's reasonable opinion Engineer has failed or refused to prosecute the work efficiently, promptly, or with diligence, Engineer shall have fifteen (15) business days, from the receipt of written notification by Client, to cure such failure to perform in accordance with the terms of the Agreement.

B. ACTIONS ON TERMINATION

Upon any termination, Engineer shall: (1) promptly discontinue all Services affected (unless a termination notice from Client directs otherwise); and (2) upon full payment for services, deliver or otherwise make available to Client all documents, data, drawings, specifications, reports, estimates, summaries, and such other information and materials as may have been accumulated by Engineer in performing this Agreement, whether completed or in process.

C. COMPENSATION PAYABLE ON TERMINATION

On termination, by either Client or Engineer, Client shall pay Engineer with respect to all contracted services rendered and expenses incurred before termination an amount fixed by applying the Engineer's Standard hourly rates, in force at the time of termination, to all services performed to date, in addition to termination settlement costs Engineer reasonably incurs relating to commitments which had become firm before the termination; however, in no case shall Client be required to pay Engineer more than the amount set forth in this Agreement.

PART VIII. MISCELLANEOUS

A. REUSE OF DOCUMENTS

All documents, including Drawings and Specifications prepared or furnished by Engineer pursuant to this Agreement, are instruments of service with respect to the Project, are the property of both Client and Engineer, and may be used by both Client and Engineer, as they deem necessary in their reasonable discretion. Either Client or Engineer may retain copies, reproduce copies, and disseminate copies of said Instruments of Service as are reasonably necessary for the construction and on-going maintenance of the Project. Not later than 90 days after substantial completion, Engineer shall deliver to Client one (1) set of Record Drawings in CADD format incorporating all Addenda and Change Orders and consisting of one set of compact disks; provided, however, Engineer reserves the right to remove all indicia of ownership and/or involvement from the disc/magnetic tape provided to Client. The original CADD data will be retained by Engineer. Client hereby releases and holds harmless Engineer from any claims, losses, or liability resulting from Client's use of the Instruments of Service in a manner not authorized on this project by this Agreement. Any reuse without written verification or adaptation by Engineer, for the specific purposes intended will be at Client's sole risk and without liability or legal exposure to Engineer. Any such verification or adaptation by Engineer will entitle Engineer to further compensation at rates to be agreed upon by Client and Engineer.

B. OPINION OF COST

Since Engineer has no control over the cost of labor, materials, equipment or services furnished by others, or over the contractor(s)' method of determining prices, or over competitive bidding or market conditions, Engineer's opinions of probable Project Cost and Construction Cost are to be made on the basis of Engineer's experience and qualifications and represent Engineer's best judgment as an experienced and qualified professional engineer, familiar with the construction industry; but Engineer cannot and does not warrant or guarantee Engineer's opinions of cost as an "actual" cost and if an "actual" "Construction Cost" is required, and/or desired, then, construction bids should be obtained by Client from appropriate sources. Opinions of cost may be supplied to applicable municipalities for bonding purposes and no representations, warranties, or guarantees are rendered hereby to any other person or entity. Opinions of cost for presentation to any mortgagee or lending institution will only be prepared by Engineer at Client's specific request. Preparation of such may involve substantial additional cost to Client and Engineer cannot and does not warrant or guarantee such opinion of cost as an "Actual" cost.

C. TRENCH SAFETY DESIGN

Engineer shall not perform any service for design of Trench Safety Systems and/or Trench Excavation Safety during construction and said services are specifically excluded from the provision of this Agreement.

D. LATE PAYMENT

If Client fails to make any payment due Engineer for services and expenses in accordance with Part VI herein, within thirty (30) calendar days from the date of Engineer's invoice, thereafter the amounts due Engineer shall include a charge at the rate of 1.50% per month, calculated from the date of the invoice, and in addition, Engineer may, after giving ten (10) business days written notice to Client, suspend services under this Agreement until engineer has been paid in full all amounts due for services and expenses.

E. ATTORNEY'S FEES

In the event Engineer's invoices for services are given to an attorney for collection, or if suit is brought for collection, or if they are collected through probate, bankruptcy, or other judicial proceeding, then Client shall pay Engineer all costs of collection, including the maximum attorney's fees allowed by law and court costs, in addition to other amounts due.

F. PERIOD OF SERVICE

Engineer shall diligently pursue completion of services in accordance with the timely completion specified in **Exhibit A** and shall promptly inform Client of any

anticipated delay. Engineer shall not be liable or responsible for any delays caused by circumstances beyond Engineer's control.

G. CONSTRUCTION OBSERVATION

During the Construction Phase, Engineer shall make visits to the site at intervals appropriate to the various stages of construction to observe as an experienced and qualified design professional the progress and quality of the executed work of contractor(s) and to determine in general if such work is proceeding in accordance with Engineer's design, drawings, specifications, and other instructions.

Engineer shall not be responsible for the means, methods, techniques, sequences or procedures of construction selected by contractor(s) or the safety precautions and programs incident to the work of contractor(s).

H. SALES AND USE TAXES

Not applicable. Client is a tax-exempt entity. Client will provide Engineer with a current copy of Client's tax-exempt certificate.

I. SUCCESSORS AND ASSIGNS

Client and Engineer each binds himself, and his partners, successors, executors, administrators, and assigns to partners, successors, executors, administrators, in respect to all covenants of this Agreement. Neither Client nor Engineer shall assign, sublet, or transfer their interest in this Agreement without written consent of the other. Nothing herein shall be construed as giving any rights or benefits hereunder to anyone other than Client or Engineer.

J. CONTROLLING LAW; VENUE

This Agreement is to be governed by and construed in accordance with the laws of the State of Texas. Venue for any disputes between Client and Engineer arising from or related to this Agreement shall be in Kerr County, Texas.

K. SEVERABILITY AND WAIVER

In the event any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions shall continue to be valid and binding upon the parties. One or more waivers by either party of any provision, term, condition or covenant shall not be construed as a waiver of a subsequent breach of the same by the other party.

L. EXTENT OF AGREEMENT

This Agreement, including **Exhibit A**, and any and all amendments, modifications, and supplements duly executed by the parties in accordance with this Agreement, govern and supersede any and all inconsistent or contradictory terms, prior oral or written representations or understandings, conditions or

provisions set forth in any purchase orders, requisition, request for proposal, authorization of services, notice to proceed or other form or document issued by Client with respect to the project or Engineer's services.

M. AMENDMENTS

The parties agree that no change or modification to this Agreement, or any attachments hereto, shall have any force or effect unless the change is reduced to writing, dated, and made a part of this Agreement. The execution of the change shall be authorized and signed in the same manner as this Agreement. No one has authority to make variations in, or additions to the terms of this Agreement on behalf of Engineer other than the undersigned Principal, and then only in writing.

Executed on this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

CITY OF KERRVILLE

FREESE & NICHOLS, INC.

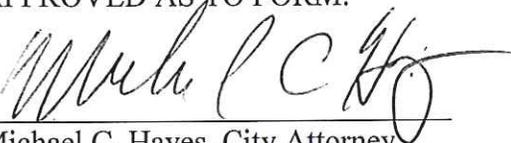
BY: \_\_\_\_\_  
Todd Parton  
City Manager

BY: \_\_\_\_\_  
Name  
\_\_\_\_\_  
Title

ATTEST:

\_\_\_\_\_  
Brenda G. Craig, City Secretary

APPROVED AS TO FORM:

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

**EXHIBIT A**  
**City of Kerrville**  
**Reuse Feasibility Study**  
**SCOPE OF SERVICES**

**A. Environmental Services**

- A1. Site Visits: Prior to making a field visit, FNI will obtain information for the vicinity such as soils maps, National Wetland Inventory maps, topographic maps, floodplain maps, and other readily available, pertinent data. This information will be evaluated to guide the field survey described below. FNI's scientists will conduct a pedestrian survey of the proposed reuse pond(s) and associated facilities to assess the conditions at the site.
- A2. Section 404 Permitting: Waters of the U. S. are regulated by the USACE and require a permit for activities conducted within the jurisdictional boundaries. The presence of jurisdictional waters such as ephemeral, intermittent, or perennial streams; wetlands; or other open waters will be documented and mapped.
- A3. Threatened and Endangered Species Survey: FNI will conduct reconnaissance-level field surveys within the area of the proposed water reuse ponds to identify potential habitat and document any threatened or endangered (T&E) species encountered. Emphasis will be on federally listed species, but the Texas Parks and Wildlife Department T&E species database will be reviewed and documented.
- A4. Archeological Review: FNI environmental scientist will provide desktop review of the Texas Archeological Research Laboratory (TARL) to determine the likelihood and potential extent of coordination with the Texas Historical Commission (THC). Subsequent activities, potentially including shovel test and/or backhoe trenching, may require the services of a qualified archeologist, as an additional service.
- A5. Environmental Permitting Technical Memorandum: FNI will prepare a technical memorandum that will include a description of field observations described above; and if so, the type(s) of waters; an estimate of the area of impact to waters of the U.S.; and a discussion of USACE 404 permit authorizations. The results of the T&E species review will also be documented in the memorandum.

**B. Geotechnical and Landfill Investigation**

- B1. Geologic Atlas Review: FNI will review the Geologic Atlas of Texas to study general geologic conditions at the project site
- B2. Select Locations for Exploratory Borings: FNI will select locations for exploratory borings and coordinate with Texas 811 and the City regarding underground utilities, other existing construction and accessibility. The borings will be staked the same day as drilling occurs.



- B3. Perform Drilling of Borings: FNI will subcontract with a drilling contractor to drill a total of 8 borings to a depth of 25 feet for the re-use ponds (5 borings for Ponds 1 and 2 and 3 borings for Pond 3). Samples will be collected intermittently using continuous flight augers and either split-spoon or tube samplers. At completion, the boreholes will be backfilled with auger cuttings to the ground surface.
- B4. Lab Testing and Log Preparation: FNI will provide an engineer or geologist to direct the drilling, log the borings, record field test data, and handle and transport the samples. FNI will select samples for laboratory testing, assign tests, deliver samples to a subcontractor laboratory selected by FNI (with concurrence by City of Kerrville) and review test results. Testing is expected to include classification tests (liquid and plastic limits and percent passing a #200 sieve or gradation) and moisture content tests.
- B5. Technical Memorandum on Geotechnical Investigation: Prepare a technical memorandum summary report of the geotechnical investigation to include:
- Appendix with the boring locations, boring logs, laboratory test results, and a key to the symbols used.
  - Discussion of subsurface conditions and soil properties indicated by the field and laboratory work, and the implications for design.
  - General discussion of expected earthwork and construction related issues
- B6. Review Landfill Documents: Review existing landfill documents (Site Development Plan, Monitoring Well Data, etc.) and identify potential issues related to the impact of the landfill on the re-use ponds.
- B7. Conference Call on Landfill Issues: Discuss with City staff (by telephone) existing landfill data, including City monitoring of leachate, groundwater issues (if present) and future plans for landfill expansion, and the impact these issues may have on the re-use ponds.
- B8. Technical Memorandum on Landfill Issues: FNI will provide a technical memorandum that identifies potential landfill issues that may impact the operation of the re-use ponds.

### C. Flood Plain Analysis

The Federal Emergency Management Agency (FEMA) floodplain map shows that the subject tributary has an approximate floodplain noted as Zone A on FIRM Panel 48265C0490F. We understand that the City wishes to establish base flood elevations along the subject tributary to more accurately define the existing condition floodplain. To accomplish this FNI proposes to complete an existing condition study for this project by developing hydrologic and hydraulic models to reflect current conditions and floodplain limits. This floodplain will then be evaluated to determine how it affects the potential development of the project. If floodplain reclamation is needed for the proposed development, FNI will coordinate with the City to discuss the feasibility of reclaiming or reshaping the floodplain.

- C1. Data Collection: Utilize topographic data obtained during Task G for watershed delineations. A site visit will be made to determine hydrologic and hydraulic conditions



and parameters. City specific flood study requirements will be coordinated with the City. Obtain GIS base data from the City, including existing land use maps, road centerlines, building footprints, property lines, and aerials. Obtain as-built data for road crossings within the study limits from the City and/or County

- C2. Hydrologic Analyses: Using topographic data obtained in Item 1, develop a drainage area map to describe stormwater runoff patterns through the study limits. Use USDA soil data to determine hydrologic soil groups for each watershed.
  - a. Determine existing land use conditions in the watershed based on field visits, information obtained from the City and available maps.
  - b. Determine hydrologic parameters including curve numbers, time of concentration, hydraulic lengths, and slopes for existing land use conditions.
  - c. Develop a hydrologic model using USACE HEC-HMS to describe the expected stormwater runoff through the study limits for the 100-year storm event based on existing land use conditions.
  - d. For scoping purposes, it is assumed that runoff conditions along the reach will remain the same between pre-project and project conditions; therefore changes to the flow regime based on project conditions is not included and can be developed as an additional service.
  
- C3. Pre-Project Hydraulic Analyses: Develop new cross section data using topographic data obtained in Item 1 to adequately describe the study reach.
  - a. Add bridge and culvert information for structures within the study limits. It is assumed that geometry data for the crossings will be based on approximate field measurements and topography data.
  - b. Develop a pre-project condition hydraulic model through the study reach for the storm events described above.
  - c. Delineate 100-year floodplain limits through the study reach based on existing land use conditions for pre-project conditions.
  
- C4. Project Team Coordination: Attend one meeting with the City to discuss the impacts of the pre-project floodplain on the proposed development and develop up to three (3) conceptual project alternatives to mitigate such impacts.
  
- C5. Project Conditions Hydraulic Analyses: Modify the pre-project condition cross sections to develop a project conditions hydraulic model for up to three (3) project alternatives. Prepare a tabular comparison of the project conditions results to the pre-project condition flood levels and velocities to determine if there are any adverse impacts due to project conditions. This comparison shall be completed for up to three project alternatives. Delineate 100-year floodplain limits through the study reach based on existing land use conditions for up to three (3) project conditions.
  
- C6. Prepare Hydrologic and Hydraulic Analyses Technical Report: Summarize the hydrologic and hydraulics analyses outlined in Items C1-5 above. Report text shall include a description of the methodology used in the analysis, hydrologic results, pre-project conditions hydraulic results, up to three (3) project conditions hydraulic results and a final design recommendation.



- a. Figures shall include a drainage area map depicting the time of concentration path for each basin, existing land use maps, soils map, cross sections map and floodplain delineations for both pre-project and project conditions.
- b. Schematic designs of up to three (3) project alternatives shall be developed to describe the general concept of each alternative, including plan view and typical cross section alignments.

#### **D. Water Reuse Pump Station Requirements**

- D1. Analyze Topographic Information: FNI will analyze topographic information from Task G. to determine if possibilities exist for gravity flow to or from the plant and the proposed reuse ponds. FNI will also recommend a preliminary location for a reuse pump station.
- D2. Pump Station Arrangement: FNI will analyze the feasibility of a single, multi-use pump station or if two, separate pump stations would be required for the reuse project. FNI will describe the pump station arrangements. Drawings are not included in the scope of services.

#### **E. Water Reuse Regulatory Requirements**

- E1. Permitting Requirements: FNI will analyze regulatory requirements that relate to the feasibility of the proposed reuse project.
  - a. Permeability standards - FNI will identify permeability requirements for the proposed effluent storage pond, considering the historical effluent quality and pond location. FNI will also determine if this location is within the Edwards Aquifer recharge zone.
  - b. Existing Reuse Authorization - FNI will review the existing reuse authorization to determine if the proposed project requires amendment of the existing authorization.
  - c. TCEQ Chapter 210 – FNI will analyze this regulation to determine if there are any additional requirements for the proposed reuse project as currently conceived.
- E2. Reuse Pond Treatment Requirements: FNI will analyze and document the categorical quality of the existing plant's wastewater effluent prior to storage in the proposed reuse ponds (effluent quality – Type 1 or Type 2).
- E3. Future Reuse Strategies: FNI will evaluate the future reuse strategies under consideration by the City for direct potable water reuse and aquifer storage and recovery (ASR).
  - a. Direct Potable Water Reuse – FNI will briefly discuss existing regulatory requirements for direct potable water reuse and blending ratio practices. FNI will also discuss trends in Texas and across the United States with respect to direct potable reuse projects. Direct potable reuse system drawings and costs are not included in this scope of services.
  - b. ASR – FNI will discuss the treatment/regulatory requirements for sending reclaimed water to an ASR system.



## **F. Cost Development and Report Preparation**

- F1. Conduct Kickoff Meeting with City: FNI will conduct a kick-off meeting with the City to discuss project goals, scope, schedule, and milestones. FNI will coordinate this kickoff meeting's timing so that initial site investigations can be done on the same day. FNI will submit a data request memorandum outlining the data needs and schedule for the project. FNI will prepare and provide meeting minutes.
- F2. Data Collection: FNI will compile information from the City including GIS files, wastewater and reuse system data, and landfill data for use in the feasibility study.
- F3. Develop Conceptual Reuse Costs, Schedule, and Mapping: Develop costs for each proposed project in Year 2013 dollars including engineering and contingencies. GIS maps will be produced showing proposed projects and recommended in-service dates of proposed projects. FNI will provide City with cost and schedule data needed for City to perform reuse system cost analyses.
- F4. Prepare Draft Reuse Feasibility Report: FNI will prepare a Reuse Feasibility Report summarizing the feasibility of the Reuse System. An electronic PDF file and five hard copies of the Draft Report will be submitted to the City for review.
- F5. Conference Call with City to Review Draft Reuse Feasibility Report: FNI will conduct a conference call with City to discuss the Draft Reuse Feasibility Report. Comments will be solicited and incorporated into the Final Reuse Feasibility Report.
- F6. Finalize Reuse Feasibility Report: FNI will revise the report based on City's comments and submit 10 final hard copies and one electronic copy in PDF format of the Reuse Feasibility Report to the City.
- F7. Council and EIC Presentations: FNI will present the Reuse feasibility report to City Council and the City's Economic Improvement Corporation. FNI will be available to answer questions and discuss content.

## **G. Surveying (by sub-consultant MDS Land Surveying)**

- G1. Locate and verify existing survey control: The work shall include all horizontal and vertical coordinates of the survey. The survey shall use the same coordinate system typically used by the City of Kerrville and compatible with the City's existing survey data and adjoining construction projects. The surveyor is responsible for locating any benchmarks necessary to establish his work in this coordinate system.
- G2. Provide survey data for the Kerrville WWTP proposed pond locations
- G3. Tie in the existing features and structures on the survey as follows:
  - a. WWTP structures
  - b. Re-use water outfall
  - c. Trees greater than twenty-four (24) inches in diameter



- d. Building and structures on City property
- e. Edges of roadway
- f. Channels and drainage ways
- g. Utilities, signs and structures (Gas To Be Marked By Atmos)
- h. Fences and property pins
- i. Geotechnical Boring locations (to be staked by FNI)
- j. Edges of impounded water, floors of ponds (by sounding or rodding), and grade breaks

G4. Research and locate utilities and easements within the project boundaries.

G5. Provide sufficient ground shots to create two (2) foot contours for the project. Level fields may be surveyed using 300 ft. grid spacing, or as required to obtain contours.

#### Summary of Reuse Feasibility Study Deliverables

- 1. Technical Memorandums:
  - a. Environmental Permitting
  - b. Geotechnical Investigation
  - c. Landfill Issues
  - d. Hydrologic and Hydraulic Analyses
- 2. Draft and Final Reuse Feasibility Study Report

#### Schedule for Reuse Feasibility Study

- 1. Draft Report within 180 Days after NTP
- 2. Final Report within 15 days after receiving City Comments

#### Summary of Reuse Feasibility Study Fee

Task A - Environmental Services	\$9,000
Task B - Geotechnical and Landfill Investigation	\$17,500
Task C - Flood Plain Analysis	\$45,000
Task D & E - Pump Station and Treatment Requirements	\$31,000
Task F - Cost Development and Report Preparation	\$22,500
Task G - Surveying	<u>\$10,000</u>
TOTAL:	\$135,000

## **Agenda Item:**

7B. Administrative services contract between the City of Kerrville, Texas Economic Improvement Corporation and the City of Kerrville, Texas. (staff)

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

**SUBJECT:** Administrative Services Contract between the City of Kerrville, Texas  
Economic Improvement Corporation and the City of Kerrville, Texas

**FOR AGENDA OF:** September 10, 2013 **DATE SUBMITTED:** September 5, 2013

**SUBMITTED BY:** Ashlea Boyle, *AB* **CLEARANCES:** Todd Parton,  
Main Street / Special Projects Manager City Manager

**EXHIBITS:** FY 2013 EIC Administrative Services Contract

**AGENDA MAILED TO:**

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

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

**PAYMENT TO BE MADE TO:**

**REVIEWED BY THE DIRECTOR OF FINANCE:**

**SUMMARY STATEMENT**

Attached is the FY 2013 Administrative Services Contract between the City of Kerrville and the Economic Improvement Corporation (EIC). The City of Kerrville provides services to the EIC through an annual contract. This contract includes services for project management, engineering, financial, legal, and administrative support. EIC pays the City \$100,000 for these services. The current contract expires on September 30, 2013 thus necessitating a new contract for FY 2014.

Staff will provide a report to the EIC at its next meeting to be held September 23, 2013 on any proposed changes requested by City Council for the FY 2014 contract. The final contract will then be presented to City Council for approval.

**RECOMMENDED ACTION**

City staff is requesting the consideration of the EIC Administrative Services Contract and direction for any modifications to be made for the FY 2014 contract.

**ADMINISTRATIVE SERVICES CONTRACT BETWEEN CITY OF KERRVILLE, TEXAS AND  
CITY OF KERRVILLE, TEXAS ECONOMIC IMPROVEMENT CORPORATION**

THIS CONTRACT is entered into and effective as of the 1st day of October 2012, by and between the City of Kerrville, Texas, ("City") and the City of Kerrville, Texas Economic Improvement Corporation ("EIC") for and in consideration of the following promises and conditions:

**ARTICLE I**  
**SERVICES PROVIDED BY CITY**

City agrees to provide the following services to the EIC subject to the limitations and conditions set forth below:

1. Engineering and Project Management Services: City agrees to provide engineering services, including, but not limited to, design, bid, and construction phases for EIC projects; provided, however, for projects which will require an expenditure of more than \$25,000.00 for construction, specialized engineering services and administration, or supervision and/or coordination of contracts between the EIC and consulting engineers, prior approval of the City Manager shall be required before commencement of such services. City further agrees to provide the necessary labor and overhead to conduct project management services for all projects, which are authorized by the EIC to be funded in whole or in part by sales tax revenues generated pursuant to the authority of Chapters 501, 502, and 505 of the Texas Local Government Code, as amended.
2. Legal Services: City agrees the City Attorney will be the legal advisor of, and attorney for, the EIC, which representation will include review of documents, contracts, and other instruments as to form and legality, and conduct of legal research and, if requested, issuance of legal memoranda or opinions. In the provision of legal services by the City Attorney, the City Attorney shall provide such services only if the provision of legal services to the EIC does not unreasonably impair his ability to provide legal services to the City. Furthermore, in the event the City Attorney determines that a legal or ethical conflict exists between the City and the EIC, the EIC agrees that the City Attorney may continue to represent the City on such matter notwithstanding such conflict provided the City Attorney has made reasonable disclosure of the conflict to the president of the EIC. Notwithstanding this paragraph, EIC shall at all times retain the right to hire counsel of its own choice at EIC expense.
3. Financial Services: City agrees to provide accounting and banking and investment services, including, but not limited to, accounts receivable, accounts payable, investments, record keeping, and financial reporting and an audit of all funds. The City will provide a report at each regular monthly meeting of the EIC, such report to include a statement of revenues and expenditures for all funds and a cash flow analysis on a form approved by the EIC.
4. Administrative Services: City agrees to provide the services of the City Manager TO INCLUDE secretarial and other clerical services, including, taking minutes and preparation of resolutions and correspondence related to the operation of the EIC. The City Manager or designee WILL engage with the EIC in a manner comparable to the role identified by Article/Section 6.04 of the City Charter.

5. Investment Officer: The City's Director of Finance will serve as the EIC's investment officer in accordance with the EIC'S Investment Policy, said policy previously approved by the EIC.
6. Regulatory Financial Reporting: The City's Director of Finance shall prepare all financial reports required by state and federal regulatory agencies.
7. Annual Audit: The City's Director of Finance shall include the EIC'S financial information AS part of the CITY'S Comprehensive Annual Financial Report (CAFR).
8. Project Reports: The City Manager or designee shall provide a report at each regular monthly meeting of the EIC on all ongoing projects which are subject to a funding agreement with the EIC. these reports shall include but ARE not limited to the status and estimated completion date of the project and verification that performance criteria are being met.
9. Staff Reports: The City Manager or designee shall prepare a report on each application for EIC funds, such report to include but IS not limited to, the following information:
  - a. Complete Application
  - b. Financial Impact Analysis
    - i. Total Payroll
    - ii. Payroll Multiplier
    - iii. Sales and Tax (Sales and Ad Valorem) Generation
  - c. Return on Investment Analysis
    - i. Property Tax – City, County and KISD
    - ii. Sales tax – City, County and KISD
    - iii. Payroll Multiplier
    - iv. Timeline by which return is realized
  - d. Feasibility Analysis
    - i. Land – Size, Zoning, Platting, Building/Fire Codes
    - ii. Building – Size, Suitability, Condition
    - iii. Infrastructure – Water, Wastewater, Streets, Drainage, Electricity, Public Safety
10. Prospect Support Services: The City Manager or designee shall ensure that the following support services as provided by City staff are provided to the EIC in the review and processing of applications for EIC funds:
  - a. Receive applications
  - b. Evaluate applications for completeness
  - c. Determine eligibility
  - d. Facilitate submission before the EIC
  - e. Provide technical evaluation pursuant to Section 9, above
  - f. Provide recommendations to the Board
  - g. Coordinate with other aligned agencies/entities
  - h. Identify appropriate incentives and programs

ARTICLE II  
COMPENSATION

In consideration of the provision by City to EIC of the services described in Article I, above, EIC agrees to pay to City the sum of \$100,000.00. It is agreed by the parties hereto that the compensation described in this Article II is equal to the reasonable value of the services anticipated to be provided by City to the EIC. City shall deduct the payment required hereunder upon receipt of said sales tax revenues from the Comptroller of Public Accounts for the State of Texas.

ARTICLE III  
TERM

The Term of this Contract shall commence on October 1, 2012, and end on September 30, 2013, subject to earlier termination as herein provided, and extension by agreement of the parties hereto.

ARTICLE IV  
TERMINATION

This Contract may be terminated by the City or EIC for any reason, with or without cause, not earlier than thirty (30) days prior to delivery to the non-terminating party of a written notice of termination. EIC agrees to pay City the reasonable cost of services rendered by City up to the date of termination.

ARTICLE V  
GOVERNING LAW

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

IN WITNESS WHEREOF, the parties hereto have executed this Contract in the year and as of the date indicated.

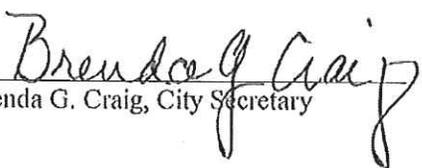
CITY OF KERRVILLE, TEXAS

CITY OF KERRVILLE, TEXAS ECONOMIC  
IMPROVEMENT CORPORATION

By:   
Jeffrey Todd Patton, City Manager

By:   
David Wampler, President

ATTEST:

  
Brenda G. Craig, City Secretary

ATTEST:

  
Rex Boyland, Secretary-Treasurer

APPROVED AS TO FORM:

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

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## **Agenda Item:**

7C. Ethics policy. (staff)

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

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**SUBJECT:** Ethics Policy

**FOR AGENDA OF:** Sept. 10, 2013 **DATE SUBMITTED:** Sept. 5, 2013

**SUBMITTED BY:** Mike Hayes *meH* **CLEARANCES:**  
City Attorney

**EXHIBITS:** None

**AGENDA MAILED TO:**

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

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<b>Expenditure Required:</b>	<b>Current Balance in Account:</b>	<b>Amount Budgeted:</b>	<b>Account Number:</b>
\$ 0	\$ 0	\$ 0	NA

**PAYMENT TO BE MADE TO:** NA

**REVIEWED BY THE FINANCE DEPARTMENT:**

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**SUMMARY STATEMENT**

City Council has discussed a draft ethics policy and directed the City Attorney to revise the draft in accordance with changes submitted by Councilmembers.

**RECOMMENDED ACTION**

Consideration of ethics policy and direction to staff.

## **Agenda Item:**

7D. Resolution No. 32-2013 declaring the public necessity to acquire a 0.002 of an acre (662 square feet) and a 0.192 of an acre (8,375 square feet) recreation easements (public river trail); both property interests situated in the J.A. Southmayd Survey No. 148, Abstract 288, in the City of Kerrville, Kerr County, Texas, and generally located north of the intersection of old F.M. 689 and State Highway Loop 534 with a street address of 2140 Old F.M. 689; said easements are required for the extension of a public river trail adjacent to and along the Guadalupe River; determining the public necessity for such acquisition; authorizing the acquisition of property interests necessary for the river trail expansion; authorizing the city manager or designee to take all steps necessary to acquire the property interests in compliance with all applicable laws; and authorizing the city attorney to acquire the property interests through eminent domain if negotiations between the city and the property owners are not successful. (staff)

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

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**SUBJECT:** A Resolution declaring the public necessity to acquire a 0.002 of an acre (662 square feet) and a 0.192 of an acre (8,375 square feet) recreation easements (public river trail); both property interests situated in the J.A. Southmayd Survey No. 148, Abstract 288, in the City of Kerrville, Kerr County, Texas, and generally located north of the intersection of Old F.M. 689 and State Highway Loop 534 with a street address of 2140 Old F.M. 689; said easements are required for the extension of a public river trail adjacent to and along the Guadalupe River; determining the public necessity for such acquisition; authorizing the acquisition of property interests necessary for the river trail expansion; authorizing the City Manager or designee to take all steps necessary to acquire the property interests in compliance with all applicable laws; and authorizing the City Attorney to acquire the property interests through eminent domain if negotiations between the City and the property owners are not successful

**FOR AGENDA OF:** Sept. 10, 2013      **DATE SUBMITTED:** Sept. 6, 2013

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

**EXHIBITS:** Resolution, Description of Property (easements), Aerial Photograph showing location of project

**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 DEPARTMENT:**

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**SUMMARY STATEMENT**

City staff continues preparing for the construction of the Kerrville River Trail. The next phase will extend the river trail from Louise Hays Park until it connects to Kerrville Schreiner Park. For the last year, City staff has met with and provided information to the owners of several parcels of undeveloped property located along Old F.M. 689. Staff has recently acquired appraisals for the property the City seeks to acquire and has made an offer to the owners. However, the parties have not reached an agreement and

the City is facing deadlines as to the acquisition of the property interests.

### **RECOMMENDED ACTION**

Consideration and adoption of Resolution, which will, in part, authorize the commencement of eminent domain proceedings to acquire a property interest (easements) necessary for the construction of the river trail project.

**CITY OF KERRVILLE, TEXAS  
RESOLUTION NO. 32-2013**

**A RESOLUTION DECLARING THE PUBLIC NECESSITY TO ACQUIRE A 0.002 OF AN ACRE (662 SQUARE FEET) AND A 0.192 OF AN ACRE (8,375 SQUARE FEET) RECREATION EASEMENTS (PUBLIC RIVER TRAIL); BOTH PROPERTY INTERESTS SITUATED IN THE J.A. SOUTHMAYD SURVEY NO. 148, ABSTRACT 288, IN THE CITY OF KERRVILLE, KERR COUNTY, TEXAS, AND GENERALLY LOCATED NORTH OF THE INTERSECTION OF OLD F.M. 689 AND STATE HIGHWAY LOOP 534 WITH A STREET ADDRESS OF 2140 OLD F.M. 689; SAID EASEMENTS ARE REQUIRED FOR THE EXTENSION OF A PUBLIC RIVER TRAIL ADJACENT TO AND ALONG THE GUADALUPE RIVER; DETERMINING THE PUBLIC NECESSITY FOR SUCH ACQUISITION; AUTHORIZING THE ACQUISITION OF PROPERTY INTERESTS NECESSARY FOR THE RIVER TRAIL EXPANSION; AUTHORIZING THE CITY MANAGER OR DESIGNEE TO TAKE ALL STEPS NECESSARY TO ACQUIRE THE PROPERTY INTERESTS IN COMPLIANCE WITH ALL APPLICABLE LAWS; AND AUTHORIZING THE CITY ATTORNEY TO ACQUIRE THE PROPERTY INTERESTS THROUGH EMINENT DOMAIN IF NEGOTIATIONS BETWEEN THE CITY AND THE PROPERTY OWNERS ARE NOT SUCCESSFUL**

**WHEREAS**, City staff, with Council's acknowledgment and approval, has previously determined that the City must acquire two recreation easements for the City's River Trail (the "Easements"), each of which is more specifically described in **Exhibit A**, consisting of a 0.002 of an acre, or 662 square feet, and a 0.192 of an acre, or 8,375 square feet, for the construction, installation, and maintenance of the River Trail adjacent to and along the Guadalupe River; and

**WHEREAS**, the City has negotiated in good faith with the property owners where the Easements are located ("Owners") for the City's acquisition and/or purchase of the Easements; and

**WHEREAS**, to date, negotiations between the City and Owners have not been successful; and

**WHEREAS**, the City continues to move forward with respect to reviewing and finalizing construction plans for the River Trail project; and

**WHEREAS**, the City hired a certified appraiser to appraise the value of the Easements and any damage to the remainder property; and

**WHEREAS**, the appraiser recently submitted a report to the City detailing an investigation and analysis of the property and Easements and providing an opinion as to the fair market value of the Easements and any resulting damage to the remainder property; and

**WHEREAS**, the City Council of the City of Kerrville, Texas, now finds that it is in the public interest to authorize the City Manager or designee to continue negotiations with the Owners with the goal of reaching an agreement as to the City's acquisition of the necessary Easements and where such negotiations are not successful, to authorize the City Attorney to commence eminent domain proceedings against the Owners so that the City may acquire the Easements, as required for the River Trail project;

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

**SECTION ONE.** The facts and recitals set forth in the preamble of this Resolution are found to be true and correct.

**SECTION TWO.** City Council finds and determines that public use and necessity exist for the City to construct, install, and maintain the extension of the Kerrville River Trail adjacent to and along the Guadalupe River from Louise Hays Park to Kerrville Schreiner Park and to acquire the necessary and appropriate property interests for the project as allowed by law.

**SECTION THREE.** City Council confirms and ratifies the appraised values of the Easements as provided by the appraiser for the City.

**SECTION FOUR.** The City Manager or designee shall continue acting as the negotiator for the acquisition of the needed property interests and, as such, the City Manager or designee is authorized and directed to act as specified herein or authorized by reference, subject to the availability of funds appropriated by the City Council for such purposes. Further, the City Manager or designee is specifically authorized to establish the just compensation for the acquisition of the necessary property interests, to include the Easements or fee simple title. Additionally, if the City Manager or designee determines that an agreement as to acquisition, compensation, and/or damages cannot be reached, then the City Attorney is authorized and directed to file against the Owners and other interested parties of the needed property interests, if any, a proceeding(s) in eminent domain to acquire the above-stated interests for the River Trail project.

**SECTION FIVE.** The City Attorney is authorized and directed to negotiate for and to acquire the required property interests for the City, including fee simple title, and to acquire said interests in compliance with State and Federal law and with the City's charter and policies. Moreover, the City Attorney is specifically authorized and directed to do each and every act necessary to acquire the needed property interests including the authority to negotiate, give notices, make written offers to purchase, prepare contracts, to retain and designate a qualified appraiser of the property interests to be acquired, as well as any other experts or consultants that deemed necessary for the acquisition process and, if necessary, to institute eminent domain proceedings.

**PASSED AND APPROVED ON this the \_\_\_\_\_ day of \_\_\_\_\_, A.D., 2013.**

THE MEMBERS OF CITY COUNCIL, FOLLOWING THE SPECIFIC MOTION REQUIRED BY STATE LAW, VOTED ON THE PROPOSAL TO CONSIDER THE USE OF EMINENT DOMAIN AS FOLLOWS:

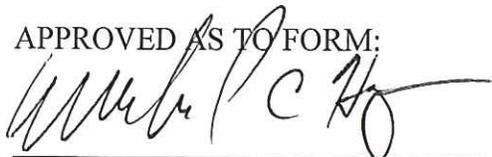
	YES	NO
Jack Pratt, Mayor	_____	_____
Carson Conklin, Place 1	_____	_____
Stacie Keeble, Place 2	_____	_____
Justin MacDonald, Place 3	_____	_____
Gene Allen, Place 4	_____	_____

\_\_\_\_\_  
Jack Pratt, Jr., Mayor

ATTEST:

\_\_\_\_\_  
Brenda G. Craig, City Secretary

APPROVED AS TO FORM:



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

**NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM THIS INSTRUMENT BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.**

**RECREATION EASEMENT  
(Public River Trail)**

**THE STATE OF TEXAS           §  
  §  
COUNTY OF KERR           §**

That Roy Tidwell and Vance Matthews, collectively hereinafter referred to as “Grantor”, whose mailing address is 2140 Old FM 689 E., Kerrville, Texas 78028, for good and valuable consideration, including the desire to improve the quality of life for the residents of the City of Kerrville, Texas, by making a gift of property for the establishment of a linear public park, and more specifically, a public river trail adjacent to the Guadalupe River, has GIVEN, GRANTED, AND CONVEYED and by these presents does hereby GIVE, GRANT, AND CONVEY to the City of Kerrville, Texas (“Grantee”), its successors and assigns, a permanent, perpetual, and non-exclusive easement and right-of-way, along, across, over, and under all of the certain tracts of land, which is further described and depicted in **Exhibit A** attached hereto and made a part hereof, and hereinafter referred to as the “Easement.” The Easement shall be for the purpose of creating, constructing, and maintaining a public river trail, consisting of materials such as concrete or natural materials to be solely determined by the Grantee, for exercising, walking, jogging, bicycling, and other recreational uses and amenities related thereto, such as the placement, installation, and construction of restrooms, pavilions, playground equipment, trash receptacles, lighting, security telephones, park benches, water fountains, irrigation, and signage, the types and locations of which to be solely determined by the Grantee, and hereinafter the trail

and amenities collectively referred to as the "Facilities." Grantee's rights shall include the right to bring and operate such equipment upon the Easement as may be necessary or appropriate to effectuate the purposes for which the Easement is granted, which include public use, and for the purposes of creating, constructing, and maintaining the Facilities. Grantee shall not commence the placement, installation, and construction of the Facilities without first notifying Grantor in writing within a reasonable period of time prior to such placement, installation, and construction, such period not to be less than fifteen (15) days. Grantee shall construct, operate, and maintain its Facilities in an efficient and workmanlike manner and shall not interfere with Grantor's use and enjoyment of the real property burdened by the Easement. Grantee shall have the right to remove any and all vegetation from the Easement, including trees and brush, which may be necessary or appropriate to effectuate the purposes for which the Easement is granted. In addition, Grantee may, in its sole discretion, plant vegetation, including trees and shrubs, within the Easement as a way of enhancing public use of Grantee's linear park. Grantee agrees to restrict use of the Easement to pedestrians, skaters, and bicyclists and for other non-motorized uses, except in cases where motorized vehicles are used by Grantee to maintain the Facilities or where such vehicles are used to monitor and patrol the Easement or respond to emergencies. Grantee shall install and maintain signs to provide public notice of the prohibition of motorized vehicle use. Grantee shall enforce all rules and regulations for City park and recreation areas. Grantee also acknowledges that the Facilities to be installed or constructed shall belong to the Grantee and that Grantee, not Grantor, shall be responsible for the maintenance, repair, or removal of any of the Facilities and for all liability, costs, or claims arising from the Grantee's or the public's use of the Easement or the Facilities. Further, Grantee shall be responsible for the periodic removal of trash and debris within the Easement.

Grantee, its successor and assigns shall enjoy the rights, benefits, and privileges herein conveyed until such time as the Easement may be abandoned, at which time all right, title, and interest in the Easement shall automatically and immediately cease to exist. However, any such "abandonment" shall only be effective and occur upon formal action taken by the Kerrville City Council.

This instrument contains the entire agreement of the parties. There are no other or different agreements or understandings between Grantor and Grantee or its agents. Grantor, in executing and delivering this instrument, has not relied upon any promises, inducements, or representations of Grantee or its agents or employees, except as such are set forth herein. This instrument and the rights, easements, and agreements herein contained shall be covenants running with the land and shall inure to the benefit of and be binding and obligatory upon the heirs, executors, administrators, successors and assigns of the parties hereto.

TO HAVE AND TO HOLD the Easement, together with all and singular the rights and appurtenances thereto in any wise belonging, unto Grantee, its successors, assigns, and legal representatives and Grantor hereby binds itself and its successors, assigns and legal representatives to warrant and forever defend all and singular the Easement unto Grantee, its successors, assigns and legal representatives against every person whomsoever lawfully claiming or to claim the same or any part thereof by through or under Grantor, but not otherwise.

EXECUTED this the \_\_\_\_ day of \_\_\_\_\_, 2013.

**GRANTOR**

**ROY TIDWELL**

By: \_\_\_\_\_  
Roy Tidwell





METES AND BOUNDS

FOR

A 0.002 of an acre, or 662 square feet, tract of land out of a portion of that called 2.078 acre tract described in a conveyance to Vance Matthews by instrument recorded in Volume 1702, Pages 521-524 of the Official Public Records of Kerr County, Texas, situated in the J.A. Southmayd Survey No. 148, Abstract 288, in the City of Kerrville, Kerr County, Texas. Said 0.002 acre tract being more fully described as follows with bearings based on the North American Datum of 1983 (CORS 1996) from the Texas State Plane Coordinate System, Texas South Central Zone:

COMMENCING: At a point on the northeast right-of-way line of Old F.M. 689, at the south corner of Lot 1 of the Guadalupe Plaza Too subdivision recorded in Volume 6, Page 217 of the Plat Records of Kerr County, Texas, the west corner of a called 5.01 acre tract conveyed to Roy Tidwell by instrument recorded in Volume 778, Pages 839-842 of the Official Public Records of Kerr County, Texas, Records of Kerr County, Texas, from which a Texas Department of Transportation Monument (Type I) at the intersection of the northwest right-of-way line of State Highway 534 and the northeast right-of-way line of said Old F.M. 689 bears S 39°36'35" E, a distance of 300.96 feet;

THENCE: N 45°13'47" E, along and with the southeast line of said Lot 1, the northwest line of said 5.01 acre tract, passing at a distance of 154.72 feet, the east corner of said Lot 1, the south corner of said 2.078 acre tract and continuing along and with the southeast line of said 2.078 acre tract for a total distance of 791.82 feet to the POINT OF BEGINNING of the herein described tract;

THENCE: N 00°47'44" W, departing the northwest line of said 5.01 acre tract, over and across said 2.078 acre tract, a distance of 25.83 feet to a point on the southeast line of the remaining portion of a called 20.9611 acre tract conveyed to David W. McElvain and Ann B. McElvain by instrument recorded in Volume 1744, Pages 307-312 of the Official Public Records of Kerr County, Texas, on the northwest line of said 2.078 acre tract;

THENCE: N 53°41'29" E, along and with the southeast line of said 20.9611 acre tract, the northwest line of said 2.078 acre tract, a distance of 36.86 feet to a point;

THENCE: S 00°47'44" E, departing the southeast line of said 20.9611 acre tract, over and across said 2.078 acre tract, a distance of 18.29 feet to a point on the northwest line of said 5.01 acre tract, the southeast line of said 2.078 acre tract, from which a found nail for a northeast corner of said 2.078 acre tract bears N 45°13'47" E, a distance of 65.45 feet;



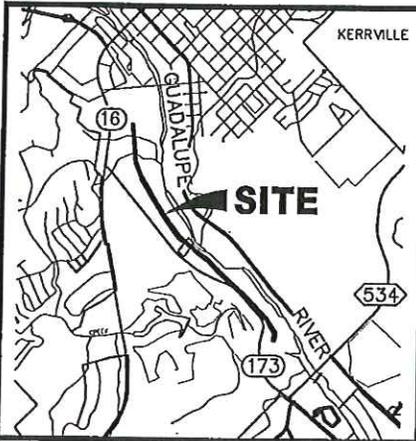
engineers | architects | contractors

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THENCE: S 45°13'47" W, along and with the northwest line of said 5.01 acre tract, the southeast line of said 2.078 acre tract, a distance of 41.69 feet to the POINT OF BEGINNING and containing 0.002 of an acre in the City of Kerrville, Kerr County, Texas. Said tract being described in accordance with a survey made on the ground and an exhibit prepared by LNV, Inc.;

Prepared by: LNV, Inc.  
Job No.: 120304  
File: 120304MB-13  
Date: September 13, 2012  
TBPLS Firm No.: 10126502



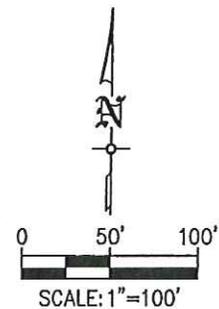


**NOTE:**

1. BEARINGS ARE BASED ON THE NORTH AMERICAN DATUM OF 1983 (CORS 1996), FROM THE TEXAS STATE PLANE COORDINATE SYSTEM, TEXAS SOUTH CENTRAL ZONE
2. A METES AND BOUNDS DESCRIPTION OF EVEN DATE ACCOMPANIES THIS EXHIBIT.

**REFERENCE:**

OPR OFFICIAL PUBLIC RECORDS OF KERR COUNTY, TEXAS  
 PR PLAT RECORDS OF KERR COUNTY, TEXAS



PORTION OF  
 20.9611 ACRES  
 DAVID W. MCELVAIN AND  
 ANN B. MCELVAIN  
 (VOL. 1744, PGS. 307-312 OPR)

**0.002 ACRE**  
 (662 SQ. FEET)

FD. NAIL BEARS  
 N 45°13'47" E  
 65.45'

N 53°41'29" E  
 36.86'

S 00°47'44" E  
 18.29'

N 00°47'44" W  
 25.83'

S 45°13'47" W  
 41.69'

**P.O.B.**

J.A. SOUTHMAYD  
 SURVEY NO. 148  
 ABSTRACT 288

2.078 ACRES  
 VANCE MATTHEWS  
 (VOL. 1702, PGS. 521 OPR)

LOT 1  
 GUADALUPE PLAZA TOO  
 (VOL. 6, PG 217 PR)

5.01 ACRES  
 ROY TIDWELL  
 (VOL. 778, PGS. 839-842 OPR)

**P.O.C.**

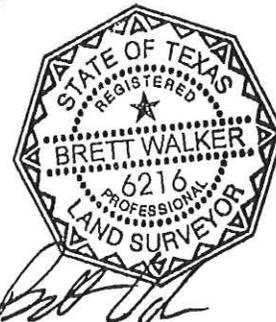
**OLD F.M. 689**  
 (VARIABLE WIDTH PUBLIC R.O.W.)

1.108 ACRES  
 LARRY PLASTER AND LINDA PLASTER  
 (VOL. 1092, PGS. 62-65 OPR)

**STATE HWY. LOOP 534**  
 (200-FOOT PUBLIC R.O.W.)

S 39°36'35" E  
 300.96'

FD. TXDOT TYPE I MON.



S:\PROJECTS\KERRVILLE\120304 KERRVILLE RIVER TRAIL-SECT. F\000\SURVEY\EX120304-13.DWG PLOT DATE: 9/13/2012 3:13 PM PLOT BY: BWALKER



engineers | architects | contractors

8918 TESORO DR., STE. 401  
 SAN ANTONIO, TEXAS 78217  
 TBPE FIRM NO. F-366

PH. (210) 822-2232  
 FAX (210) 822-4032  
 WWW.LNVINC.COM

EXHIBIT  
 OF

A 0.002 of an acre, or 662 square feet, tract of land out of a portion of that called 2.078 acre tract described in a conveyance to Vance Matthews by instrument recorded in Volume 1702, Pages 521-524 of the Official Public Records of Kerr County, Texas, situated in the J.A. Southmayd Survey No. 148, Abstract 288, in the City of Kerrville, Kerr County, Texas.

DRAWN BY: B.W.  
 SCALE: 1"=100'  
 DATE: 9-13-12  
 SHEET

**1 OF 1**

**NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM THIS INSTRUMENT BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.**

**RECREATION EASEMENT  
(Public River Trail)**

**THE STATE OF TEXAS           §  
  §  
COUNTY OF KERR           §**

That Roy Tidwell and Martha L. Tidwell, joint owners of the property described herein, and hereinafter referred to as "Grantor", whose mailing address is 2140 Old FM 689 E., Kerrville, Texas 78028, for good and valuable consideration, including the desire to improve the quality of life for the residents of the City of Kerrville, Texas, by making a gift of property for the establishment of a linear public park, and more specifically, a public river trail adjacent to the Guadalupe River, has GIVEN, GRANTED, AND CONVEYED and by these presents does hereby GIVE, GRANT, AND CONVEY to the City of Kerrville, Texas ("Grantee"), its successors and assigns, a permanent, perpetual, and non-exclusive easement and right-of-way, along, across, over, and under all of the certain tracts of land, which is further described and depicted in **Exhibit A** attached hereto and made a part hereof, and hereinafter referred to as the "Easement." The Easement shall be for the purpose of creating, constructing, and maintaining a public river trail, consisting of materials such as concrete or natural materials to be solely determined by the Grantee, for exercising, walking, jogging, bicycling, and other recreational uses and amenities related thereto, such as the placement, installation, and construction of restrooms, pavilions, playground equipment, trash receptacles, lighting, security telephones, park benches, water fountains, irrigation, and signage, the types and locations of which to be solely

determined by the Grantee, and hereinafter the trail and amenities collectively referred to as the "Facilities." Grantee's rights shall include the right to bring and operate such equipment upon the Easement as may be necessary or appropriate to effectuate the purposes for which the Easement is granted, which include public use, and for the purposes of creating, constructing, and maintaining the Facilities. Grantee shall not commence the placement, installation, and construction of the Facilities without first notifying Grantor in writing within a reasonable period of time prior to such placement, installation, and construction, such period not to be less than fifteen (15) days. Grantee shall construct, operate, and maintain its Facilities in an efficient and workmanlike manner and shall not interfere with Grantor's use and enjoyment of the real property burdened by the Easement. Grantee shall have the right to remove any and all vegetation from the Easement, including trees and brush, which may be necessary or appropriate to effectuate the purposes for which the Easement is granted. In addition, Grantee may, in its sole discretion, plant vegetation, including trees and shrubs, within the Easement as a way of enhancing public use of Grantee's linear park. Grantee agrees to restrict use of the Easement to pedestrians, skaters, and bicyclists and for other non-motorized uses, except in cases where motorized vehicles are used by Grantee to maintain the Facilities or where such vehicles are used to monitor and patrol the Easement or respond to emergencies. Grantee shall install and maintain signs to provide public notice of the prohibition of motorized vehicle use. Grantee shall enforce all rules and regulations for City park and recreation areas. Grantee also acknowledges that the Facilities to be installed or constructed shall belong to the Grantee and that Grantee, not Grantor, shall be responsible for the maintenance, repair, or removal of any of the Facilities and for all liability, costs, or claims arising from the Grantee's or the public's use of the Easement or

the Facilities. Further, Grantee shall be responsible for the periodic removal of trash and debris within the Easement.

Grantee, its successor and assigns shall enjoy the rights, benefits, and privileges herein conveyed until such time as the Easement may be abandoned, at which time all right, title, and interest in the Easement shall automatically and immediately cease to exist. However, any such “abandonment” shall only be effective and occur upon formal action taken by the Kerrville City Council.

This instrument contains the entire agreement of the parties. There are no other or different agreements or understandings between Grantor and Grantee or its agents. Grantor, in executing and delivering this instrument, has not relied upon any promises, inducements, or representations of Grantee or its agents or employees, except as such are set forth herein. This instrument and the rights, easements, and agreements herein contained shall be covenants running with the land and shall inure to the benefit of and be binding and obligatory upon the heirs, executors, administrators, successors and assigns of the parties hereto.

TO HAVE AND TO HOLD the Easement, together with all and singular the rights and appurtenances thereto in any wise belonging, unto Grantee, its successors, assigns, and legal representatives and Grantor hereby binds itself and its successors, assigns and legal representatives to warrant and forever defend all and singular the Easement unto Grantee, its successors, assigns and legal representatives against every person whomsoever lawfully claiming or to claim the same or any part thereof by through or under Grantor, but not otherwise.

EXECUTED this the \_\_\_\_ day of \_\_\_\_\_, 2013.

*(signatures begin on following page)*

**GRANTORS**

**ROY TIDWELL**

By: \_\_\_\_\_  
Roy Tidwell

**Acknowledgment**

**THE STATE OF TEXAS §**  
**§**  
**COUNTY OF KERR §**

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 2013, by Roy Tidwell.

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

**MARTHA L. TIDWELL**

By: \_\_\_\_\_  
Martha L. Tidwell

**Acknowledgment**

**THE STATE OF TEXAS §**  
**§**  
**COUNTY OF KERR §**

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 2013, by Martha L. Tidwell.

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

**APPROVED AND ACCEPTED:**

\_\_\_\_\_  
Todd Parton, City Manager  
City of Kerrville, Texas

**AFTER RECORDING RETURN TO:**

**Office of the City Secretary  
City of Kerrville, Texas  
City Hall  
701 Main Street  
Kerrville, Texas 78028**



METES AND BOUNDS

FOR

A 0.192 of an acre, or 8,375 square feet, tract of land out of that called 5.01 acre tract conveyed to Roy Tidwell by instrument recorded in Volume 778, Pages 839-842 of the Official Public Records of Kerr County, Texas, situated in the J.A. Southmayd Survey No. 148, Abstract 288, in the City of Kerrville, Kerr County Texas. Said 0.192 acre tract being more fully described as follows with bearings based on the North American Datum of 1983 (CORS 1996) from the Texas State Plane Coordinate System, Texas South Central Zone:

COMMENCING: At a found nail on the northeast right-of-way line of Old F.M. 689, at the southwest corner of a called 1.108 acre tract conveyed to Larry Plaster and Linda Plaster by instrument recorded in Volume 1092, Pages 62-65 of the Official Public Records of Kerr County, Texas, the south corner of said 5.01 acre tract from which a Texas Department of Transportation Monument (Type I) monument on the northwest right-of-way line of State Highway Loop 534, for the south corner of said 1.108 acre tract bears S 39°36'35" E, a distance of 68.90 feet;

THENCE: N 45°07'47" E, departing the northeast right-of-way line of said Old F.M. 689, along and with the northwest line of said 1.108 acre tract, the southeast line of said 5.01 acre tract, a distance of 688.34 feet to the POINT OF BEGINNING of the herein described tract;

THENCE: Departing the northwest line of said 1.108 acre tract, over and across said 5.01 acre tract, the following bearings and distances:

N 45°08'04" W, a distance of 15.61 feet to a point;

N 10°15'47" E, a distance of 77.31 feet to a point;

N 45°07'49" W, a distance of 23.86 feet to a point;

N 24°11'43" W, a distance of 144.50 feet to a point;

N 00°47'44" W, a distance of 15.08 feet to a point on the southeast line of a called 2.078 acre tract described in a conveyance to Vance Mathews by instrument recorded in Volume 1702, Pages 521 of the Official Public Records of Kerr County, Texas;

THENCE: N 45°13'47" E, along and with the southeast line of said 2.078 acre tract, the northwest line of said 5.01 acre tract, a distance of 41.69 feet to a point;

THENCE: Departing the southeast line of said 2.078 acre tract, over and across said 5.01 acre tract, the following bearings and distances:

S 00°47'44" E, a distance of 37.81 feet to a point;



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S 24°11'43" E, a distance of 132.75 feet to a point;

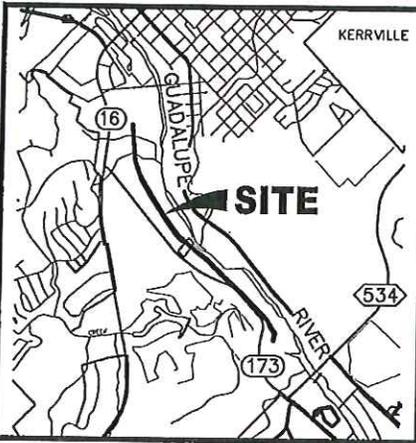
S 45°07'49" E, a distance of 34.07 feet to a point;

S 10°15'47" W, a distance of 77.30 feet to a point on the southeast line of said 5.01 acre tract, at the north corner of said 1.108 acre tract;

THENCE: S 45°07'47" W, along and with the southeast line of said 5.01 acre tract, the northwest line of said 1.108 acre tract, a distance of 30.00 feet to the POINT OF BEGINNING and containing 0.192 of an acre in the City of Kerrville, Kerr County, Texas. Said tract being described in accordance with a survey made on the ground and an exhibit prepared by LNV, Inc.

Prepared by: LNV, Inc.  
Job No.: 120304  
File: 120304.12MB-14  
Date: September 10, 2012  
TBPLS Firm No.: 10126502



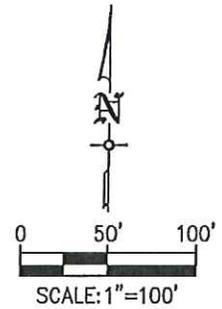


**NOTE:**

1. BEARINGS ARE BASED ON THE NORTH AMERICAN DATUM OF 1983(CORS 1996), FROM THE TEXAS STATE PLANE COORDINATE SYSTEM, TEXAS SOUTH CENTRAL ZONE
2. A METES AND BOUNDS DESCRIPTION OF EVEN DATE ACCOMPANIES THIS EXHIBIT.

**REFERENCE:**

OPR OFFICIAL PUBLIC RECORDS OF KERR COUNTY, TEXAS  
 PR PLAT RECORDS OF KERR COUNTY, TEXAS



LINE	BEARING	DISTANCE
L1	N 45°08'04" W	15.61'
L2	N 10°15'47" E	77.31'
L3	N 45°07'49" W	23.86'
L4	N 24°11'43" W	144.50'
L5	N 00°47'44" W	15.08'
L6	N 45°13'47" E	41.69'
L7	S 00°47'44" E	37.81'
L8	S 24°11'43" E	132.75'
L9	S 45°07'49" E	34.07'
L10	S 10°15'47" W	77.30'
L11	S 45°07'47" W	30.00'

PORTION OF  
 20.9611 ACRES  
 DAVID W. MCELVAIN AND  
 ANN B. MCELVAIN  
 (VOL. 1744, PGS. 307-312 OPR)

FD. NAIL BEARS  
 N 45°13'47" E  
 65.45'

5.01 ACRES  
 ROY TIDWELL  
 (VOL. 778, PGS. 839-842 OPR)

2.078 ACRES  
 VANCE MATTHEWS  
 (VOL. 1702, PGS. 521 OPR)

**0.192 ACRE**  
 (8,375 SQ. FEET)

J.A. SOUTHMAYD  
 SURVEY NO. 148  
 ABSTRACT 288

(REMAINDER)  
 4.99 ACRES  
 KENNETH W. HOLLIMON  
 (VOL. 165, PGS. 153-167 OPR)

**P.O.B.**

**STATE HWY. LOOP 534**  
 (200-FOOT PUBLIC R.O.W.)

N 45°07'47" E  
 688.34' 1.108 ACRES  
 LARRY PLASTER AND LINDA PLASTER  
 (VOL. 1092, PGS. 62-65 OPR)

(VARIABLE WIDTH PUBLIC R.O.W.)  
**OLD F.M. 689**

**STATE HWY. 173**  
 (120-FOOT PUBLIC R.O.W.)

**P.O.C.**  
 FD. NAIL  
 S 39°56'35" E  
 68.90' FD. TXDOT TYPE I MON.



*Brett Walker*



engineers | architects | contractors

8918 TESORO DR., STE. 401  
 SAN ANTONIO, TEXAS 78217  
 T&PE FIRM NO. F-356

PH. (210) 822-2232  
 FAX (210) 822-4032  
 WWW.LNVINC.COM

EXHIBIT  
 OF

A 0.192 of an acre, or 8,375 square feet, tract of land out of that called 5.01 acre tract conveyed to Roy Tidwell by instrument recorded in Volume 778, Pages 839-842 of the Official Public Records of Kerr County, Texas, situated in the J.A. Southmayd Survey No. 148, Abstract 288, in the City of Kerrville, Kerr County Texas.

DRAWN BY: B.W.  
 SCALE: 1"=100'  
 DATE: 9-10-12  
 SHEET

**1 OF 1**

S:\PROJECTS\KERRVILLE\201304\_KERRVILLE\_RIVER\_TRAIL-SECT. F:\000\SURVEY\EXHIBIT0304-14.DWG PLOT DATE: 9/13/2012 3:31 PM PLOT BY: BWALKER



## **Agenda Item:**

7E. Resolution No. 33-2013 declaring the public necessity to acquire a 0.085 of an acre (3,695 square feet) and a 0.014 of an acre (455 square feet) recreation easements (public river trail); both property interests situated in the William Francis Survey No. 146, Abstract 137, in the City of Kerrville, Kerr County, Texas, and located on property with a street address of 1609-B State Highway 173 (Bandera Highway); said easements are required for the extension of a public river trail adjacent to and along the Guadalupe River; determining the public necessity for such acquisition; authorizing the acquisition of property interests necessary for the river trail expansion; authorizing the city manager or designee to take all steps necessary to acquire the property interests in compliance with all applicable laws; and authorizing the city attorney to acquire the property interests through eminent domain if negotiations between the city and the property owners are not successful.  
(staff)

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

**SUBJECT:** A Resolution declaring the public necessity to acquire a 0.085 of an acre (3,695 square feet) and a 0.014 of an acre (445 square feet) recreation easements (public river trail); both property interests situated in the William Francis Survey No. 146, Abstract 137, in the City of Kerrville, Kerr County, Texas, and located on property with a street address of 1609-B State Highway 173 (Bandera Highway); said easements are required for the extension of a public river trail adjacent to and along the Guadalupe River; determining the public necessity for such acquisition; authorizing the acquisition of property interests necessary for the river trail expansion; authorizing the City Manager or designee to take all steps necessary to acquire the property interests in compliance with all applicable laws; and authorizing the City Attorney to acquire the property interests through eminent domain if negotiations between the City and the property owners are not successful

**FOR AGENDA OF:** Sept. 10, 2013      **DATE SUBMITTED:** Sept. 6, 2013

**SUBMITTED BY:** Mike Hayes *MCH*      **CLEARANCES:**  
City Attorney

**EXHIBITS:** Resolution, Description of Property (easements), Aerial Photograph showing location of project

**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 DEPARTMENT:**

**SUMMARY STATEMENT**

City staff continues preparing for the construction of the Kerrville River Trail. The next phase will extend the river trail from Louise Hays Park until it connects to Kerrville Schreiner Park. Over the last year, City staff has met with and provided information to the owners of undeveloped property located at 1609-B State Highway 173. After several conversations between the parties and reaching what staff believed to be an agreement for the City's acquisition of the property, the owners recently rejected the City's offer. Staff is now in the process of acquiring appraisals for the property interests

that the City seeks to acquire. Once the appraisals are received, the City will make an official, initial offer to the owners. However, the City is facing deadlines as to the acquisition of the property interests and thus, staff recommends that the City Council authorize the use of eminent domain where negotiations are not successful.

### **RECOMMENDED ACTION**

Consideration and adoption of Resolution, which will, in part, authorize the commencement of eminent domain proceedings to acquire a property interest (easements) necessary for the construction of the river trail project.

**CITY OF KERRVILLE, TEXAS  
RESOLUTION NO. 33-2013**

**A RESOLUTION DECLARING THE PUBLIC NECESSITY TO ACQUIRE A 0.085 OF AN ACRE (3,695 SQUARE FEET) AND A 0.014 OF AN ACRE (455 SQUARE FEET) RECREATION EASEMENTS (PUBLIC RIVER TRAIL); BOTH PROPERTY INTERESTS SITUATED IN THE WILLIAM FRANCIS SURVEY NO. 146, ABSTRACT 137, IN THE CITY OF KERRVILLE, KERR COUNTY, TEXAS, AND LOCATED ON PROPERTY WITH A STREET ADDRESS OF 1609-B STATE HIGHWAY 173 (BANDERA HIGHWAY); SAID EASEMENTS ARE REQUIRED FOR THE EXTENSION OF A PUBLIC RIVER TRAIL ADJACENT TO AND ALONG THE GUADALUPE RIVER; DETERMINING THE PUBLIC NECESSITY FOR SUCH ACQUISITION; AUTHORIZING THE ACQUISITION OF PROPERTY INTERESTS NECESSARY FOR THE RIVER TRAIL EXPANSION; AUTHORIZING THE CITY MANAGER OR DESIGNEE TO TAKE ALL STEPS NECESSARY TO ACQUIRE THE PROPERTY INTERESTS IN COMPLIANCE WITH ALL APPLICABLE LAWS; AND AUTHORIZING THE CITY ATTORNEY TO ACQUIRE THE PROPERTY INTERESTS THROUGH EMINENT DOMAIN IF NEGOTIATIONS BETWEEN THE CITY AND THE PROPERTY OWNERS ARE NOT SUCCESSFUL**

**WHEREAS**, City staff, with Council's acknowledgment and approval, has previously determined that the City must acquire two recreation easements for the City's River Trail (the "Easements"), each of which is more specifically described in **Exhibit A**, consisting of a 0.085 of an acre, or 3,695 square feet, and a 0.014 of an acre, or 455 square feet, for the construction, installation, and maintenance of the River Trail adjacent to and along the Guadalupe River; and

**WHEREAS**, the City has negotiated in good faith with the property owners where the Easements are located ("Owners") for the City's acquisition and/or purchase of the Easements; and

**WHEREAS**, to date, negotiations between the City and Owners have not been successful; and

**WHEREAS**, the City continues to move forward with respect to reviewing and finalizing construction plans for the River Trail project; and

**WHEREAS**, the City hired a certified appraiser to appraise the value of the Easements and any damage to the remainder property; and

**WHEREAS**, the appraiser recently submitted a report to the City detailing an investigation and analysis of the property and Easements and providing an opinion as to the fair market value of the Easements and any resulting damage to the remainder property; and

**WHEREAS**, the City Council of the City of Kerrville, Texas, now finds that it is in the public interest to authorize the City Manager or designee to continue negotiations with the Owners with the goal of reaching an agreement as to the City's acquisition of the necessary Easements and where such negotiations are not successful, to authorize the City Attorney to commence eminent domain proceedings against the Owners so that the City may acquire the Easements, as required for the River Trail project;

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

**SECTION ONE.** The facts and recitals set forth in the preamble of this Resolution are found to be true and correct.

**SECTION TWO.** City Council finds and determines that public use and necessity exist for the City to construct, install, and maintain the extension of the Kerrville River Trail adjacent to and along the Guadalupe River from Louise Hays Park to Kerrville Schreiner Park and to acquire the necessary and appropriate property interests for the project as allowed by law.

**SECTION THREE.** City Council confirms and ratifies the appraised values of the Easements as provided by the appraiser for the City.

**SECTION FOUR.** The City Manager or designee shall continue acting as the negotiator for the acquisition of the needed property interests and, as such, the City Manager or designee is authorized and directed to act as specified herein or authorized by reference, subject to the availability of funds appropriated by the City Council for such purposes. Further, the City Manager or designee is specifically authorized to establish the just compensation for the acquisition of the necessary property interests, to include the Easements or fee simple title. Additionally, if the City Manager or designee determines that an agreement as to acquisition, compensation, and/or damages cannot be reached, then the City Attorney is authorized and directed to file against the Owners and other interested parties of the needed property interests, if any, a proceeding(s) in eminent domain to acquire the above-stated interests for the River Trail project.

**SECTION FIVE.** The City Attorney is authorized and directed to negotiate for and to acquire the required property interests for the City, including fee simple title, and to acquire said interests in compliance with State and Federal law and with the City's charter and policies. Moreover, the City Attorney is specifically authorized and directed to do each and every act necessary to acquire the needed property interests including the authority to negotiate, give notices, make written offers to purchase, prepare contracts, to retain and designate a qualified appraiser of the property interests to be acquired, as well as any other experts or consultants that deemed necessary for the acquisition process and, if necessary, to institute eminent domain proceedings.

**PASSED AND APPROVED ON this the \_\_\_\_\_ day of \_\_\_\_\_, A.D., 2013.**

**THE MEMBERS OF CITY COUNCIL, FOLLOWING THE SPECIFIC MOTION REQUIRED BY STATE LAW, VOTED ON THE PROPOSAL TO CONSIDER THE USE OF EMINENT DOMAIN AS FOLLOWS:**

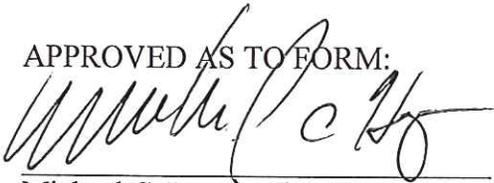
	YES	NO
Jack Pratt, Mayor	_____	_____
Carson Conklin, Place 1	_____	_____
Stacie Keeble, Place 2	_____	_____
Justin MacDonald, Place 3	_____	_____
Gene Allen, Place 4	_____	_____

\_\_\_\_\_  
Jack Pratt, Jr., Mayor

ATTEST:

\_\_\_\_\_  
Brenda G. Craig, City Secretary

APPROVED AS TO FORM:



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

**NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM THIS INSTRUMENT BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.**

**RECREATION EASEMENT  
(Public River Trail)**

THE STATE OF TEXAS           §  
  §  
COUNTY OF KERR           §

That Victor Stadter and Peggy Stadter, owners of the real property described herein and hereinafter collectively referred to as (“Grantor”), whose address is P.O. Box 5, Rio Frio, Texas 78879-0005, for ten dollars (\$10.00) and other good and valuable consideration, has GIVEN, GRANTED, AND CONVEYED and by these presents does hereby GIVE, GRANT, AND CONVEY to the City of Kerrville, Texas (“Grantee”), its successors and assigns, a permanent, perpetual, and non-exclusive easement and right-of-way, along, across, over, and under all of the certain tracts of land, which is further described in **Exhibit A** attached hereto and made a part hereof, and hereinafter referred to as the “Easement.” The Easement shall be for the purpose of creating, constructing, and maintaining a linear public park, and more specifically, a public river trail adjacent to the Guadalupe River, consisting of materials such as concrete or natural materials to be solely determined by the Grantee, for walking, jogging, bicycling, and other recreational uses and amenities, if any, related thereto, such as the placement, installation, and construction of trash receptacles, lighting, security telephones, water fountains, irrigation, and signage, the types and locations of which to be solely determined by the Grantee, and hereinafter the trail and amenities collectively referred to as the “Facilities.” Facilities may not include and Grantee shall not install restrooms, pavilions, or playground equipment.

The Easement is granted and accepted subject to the following conditions:

1. Grantee's rights shall include the right to bring and operate such equipment upon the Easement as may be necessary or appropriate to effectuate the purposes for which the Easement is granted, which include public use, and for the purposes of creating, constructing, and maintaining the Facilities. Grantee shall not commence the placement, installation, and construction of the Facilities without first notifying Grantor in writing within a reasonable period of time prior to such placement, installation, and construction, such period not to be less than fifteen (15) days. Grantee shall construct, operate, and maintain its Facilities in an efficient and workmanlike manner and shall not interfere with Grantor's use and enjoyment of the real property burdened by the Easement, to include any impact to drainage on Grantor's property. Grantee shall have the right to remove portions of the boundary fence(s) and any and all vegetation from the Easement, including trees and brush, which may be necessary or appropriate to effectuate the purposes for which the Easement is granted. In addition, Grantee may, in its sole discretion, plant vegetation, including trees and shrubs, within the Easement as a way of enhancing public use of Grantee's linear park. Grantee agrees to restrict use of the Easement to pedestrians, skaters, and bicyclists and for other non-motorized uses, except in cases where motorized vehicles are used by Grantee to maintain the Facilities or where such vehicles are used to monitor and patrol the Easement or respond to emergencies or where personal transport equipment is allowed pursuant to the American with Disabilities Act. Grantee shall install and maintain signs to provide public notice of the prohibition of motorized vehicle

use. Grantee shall enforce all rules and regulations for City park and recreation areas.

2. Grantee also acknowledges that:

(A) Grantee has control over the Facilities to be installed or constructed within the Easement and will use its best efforts and due diligence to control the public's use thereof for recreational purposes;

(B) the Facilities shall belong to the Grantee and that Grantee, not Grantor, shall be responsible for the continuous maintenance, repair, or removal of any of the Facilities; and

(C) Grantee is solely responsible for all liability, claims, obligations, causes of action, and costs arising from the Grantee's or the public's use of the Easement or the Facilities. Further, Grantee shall be responsible for the periodic removal of trash and debris within the Easement.

3. The grant of the Easement is subject to the following specific reservations and exceptions:

(A) Grantor reserves the right to include the Easement for purposes of calculating impervious cover requirements, setback requirements, or such other requirements that may be imposed in the development or redevelopment of Grantor's adjacent lands;

(B) Grantor reserves the right to install a fence along, but not adjacent to, the eastern boundary of the Easement for the purpose of separating the public's use of the Easement with Grantor's property. In constructing and placing any fence, Grantor shall meet all floodway or similar requirements and applicable

regulations of Grantee. Grantor also reserves the right to provide for a connection between its property and the Easement to allow access to the Easement. Grantor may control any such access through a gate that locks. Grantor will thereafter own, control, and maintain both the gate and the lock;

(C) Grantor conveys and Grantee accepts the Easement's condition "AS IS AND WITH ALL FAULTS", including, without limitation, latent and patent defects.

(D) The Easement is granted subject to all recorded easements, rights of way, and other documents of record and all zoning and other municipal ordinances and regulations; and

(E) Grantee shall not install or construct any seating or observation areas within the Easement.

(F) Grantor reserves for Grantor and Grantor's heirs, successors, and assigns the right to continue to use and enjoy the surface of the Easement for all purposes that do not interfere with or interrupt the use or enjoyment of the Easement by Grantee for the purposes for which the Easement was conveyed and accepted; and

Grantee, its successor and assigns shall enjoy the rights, benefits, and privileges herein conveyed until such time as the Easement may be abandoned as defined below, at which time all right, title, and interest in the Easement will automatically and immediately terminate and cease to exist. Grantor and Grantee agree that "abandonment" of the Easement will be effective and will occur upon the earlier of the occurrence of any of the following: (A) formal action taken by the Kerrville City Council; or (B) Grantee's failure to complete the Facilities within that part of the "Public River Trail" to include the Easement within thirty-six (36) months from and after the date that this instrument is executed as indicated below, which period will not include periods

tolled due to "Acts of God", delays due to litigation, delays waiting on the issuance of federal or state permits; or (C) Grantee's failure for a period of six (6) consecutive months to continuously operate and maintain the Easement and the Facilities and, after written notice from Grantor to Grantee of such failure, Grantee's failure to recommence operation and maintenance within sixty (60) days after such notice. The six (6) month and sixty (60) period will not include periods tolled due to "Acts of God", delays due to litigation, or delays waiting on the issuance of federal or state permits. For purposes of this paragraph, the general phrase "failure to operate and maintain" means either (A) that the Easement is closed to public access; or (B) that Grantee, after written notice from Grantor or other owner of the adjacent land, persistently fails to maintain the Facilities in a good and serviceable condition or persistently fails to periodically remove accumulations of trash and debris from the Easement.

This instrument contains the entire agreement of the parties. There are no other or different agreements or understandings between Grantor and Grantee or their agents. Grantor, in executing and delivering this instrument, has not relied upon any promises, inducements, or representations of Grantee or its agents or employees, except as such are set forth herein. This instrument and the rights, easements, and agreements herein contained shall be covenants running with the land and shall inure to the benefit of and be binding and obligatory upon the heirs, executors, administrators, successors and assigns of the parties hereto.

TO HAVE AND TO HOLD the Easement, together with all and singular the rights and appurtenances thereto in any wise belonging, unto Grantee, its successors, assigns, and legal representatives and Grantor hereby binds itself and its successors, assigns and legal representatives to warrant and forever defend all and singular the Easement unto Grantee, its

successors, assigns and legal representatives against every person whomsoever lawfully claiming or to claim the same or any part thereof by through or under Grantor, but not otherwise.

EXECUTED this the \_\_\_\_ day of \_\_\_\_\_, 2013.

**GRANTOR**

**VICTOR STADTER**

By: \_\_\_\_\_  
Victor Stadter

**Acknowledgment**

**THE STATE OF TEXAS §**  
**§**  
**COUNTY OF KERR §**

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2013, by Victor Stadter.

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

**PEGGY STADTER**

By: \_\_\_\_\_  
Peggy Stadter

**Acknowledgment**

**THE STATE OF TEXAS §**  
**§**  
**COUNTY OF KERR §**

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2013, by Peggy Stadter.

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

APPROVED AND ACCEPTED:

\_\_\_\_\_  
Todd Parton, City Manager  
City of Kerrville, Texas

**AFTER RECORDING RETURN TO:**

**Office of the City Secretary  
City of Kerrville, Texas  
City Hall, 701 Main Street  
Kerrville, Texas 78028**



METES AND BOUNDS

FOR

A 0.085 of an acre, or 3,695 square feet, tract of land out of that called 1.0 acre tract (Tract I), conveyed to Vic Stadter and Peggy Stadter by instrument recorded in Volume 1597, Pages 745-749 of the Official Public Records of Kerr County, Texas, situated in the William Francis Survey No. 146, Abstract 137, in the City of Kerrville, Kerr County Texas. Said 0.085 acre tract being more fully described as follows with bearings based on the North American Datum of 1983 (CORS 1996) from the Texas State Plane Coordinate System, Texas South Central Zone:

**COMMENCING:** At a point on the northeast right-of-way line of State Highway 173, a 120-foot public right-of-way, at the west corner of a called 55.89 acre tract conveyed to Tuscany Land, Ltd., by instrument recorded in Volume 1454, Pages 5-9 of the Official Public Records of Kerr County, Texas, the south corner of a called 20-Foot Strip (Tract III), conveyed to Vic Stadter and Peggy Stadter by instrument recorded in Volume 1597, Pages 745-749 of the Official Public Records of Kerr County, Texas, from which a found Texas Department of Transportation Monument (Type II) bears S 44°42'21" E, a distance of 10.45 feet;

**THENCE:** N 44°24'31" E, departing the northeast right-of-way line of said State Highway 173, along and with the northwest line of said 55.89 acre tract, the southeast line of said 20-foot strip and the southeast line of a called 15-Foot Strip (Tract II), conveyed to Vic Stadter and Peggy Stadter by instrument recorded in Volume 1597, Pages 745-749 of the Official Public Records of Kerr County, Texas, a distance of 504.61 feet to a point, the south corner of 0.014 acre tract out of said 15-Foot Strip, surveyed concurrently;

**THENCE:** N 53°45'50" W, departing the northwest line of said 55.89 acre tract, over and across said 15-Foot Strip, along and with the southwest line of said 0.014 acre tract, a distance of 15.15 feet to the **POINT OF BEGINNING** of the herein described tract;

**THENCE:** S 81°23'27" W, departing the northwest line of said 15-Foot Strip, over and across said 1.0 acre tract, a distance of 56.08 feet to a point;

**THENCE:** N 54°29'25" W, over and across said 1.0 acre tract, a distance of 67.07 feet to a point on the northwest line of said 1.0 acre tract, the southeast line of a called 15.00 acre tract described by instrument recorded in Volume 1280, Page 350 of the Official Public Records of Kerr County, Texas;



engineers | architects | contractors

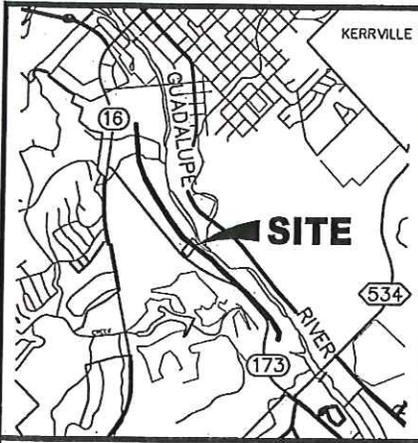
SOLUTIONS TODAY WITH  
A VISION FOR TOMORROW

- THENCE:** N 44°24'31" E, along and with the northwest line of said 1.0 acre tract, the southeast line of said 15.00 acre tract, a distance of 30.37 feet to a point on the northwest line of said 1.0 acre tract, the southeast line of said 15.00 acre tract, the north corner of the herein described tract;
- THENCE:** S 54°29'25" E, departing the southeast line of said 15.00 acre tract, over and across said 1.0 acre tract, a distance of 50.22 feet to a point;
- THENCE:** N 81°23'27" E, over and across said 1.0 acre tract, a distance of 56.30 feet to a point;
- THENCE:** S 53°45'50" E, over and across said 1.0 acre tract, a distance of 16.69 feet to a point on the southeast line of said 1.0 acre tract, the northwest line of the aforementioned 15-Foot Strip;
- THENCE:** S 44°24'31" W, along and with the northwest line of said 15-Foot Strip, the southeast line of said 1.0 acre tract, the northwest line of said 0.017 acre tract, a distance of 30.31 feet to the **POINT OF BEGINNING** of the herein described tract and containing 0.085 of an acre in the City of Kerrville, Kerr County, Texas. Said tract being described in accordance with a survey made on the ground and an exhibit prepared by LNV, Inc.;

Prepared by: LNV, Inc.  
Job No.: 120304  
File: 120304MB-03-R1  
Date: September 9, 2012  
Revised: June 26, 2013  
TBPLS Firm No.: 10126502



*Brett Walker*

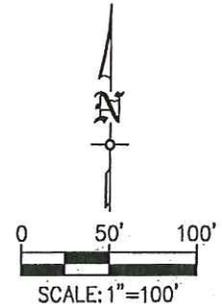


**NOTE:**

1. BEARINGS ARE BASED ON THE NORTH AMERICAN DATUM OF 1983(CORS 1996), FROM THE TEXAS STATE PLANE COORDINATE SYSTEM, TEXAS SOUTH CENTRAL ZONE
2. A METES AND BOUNDS DESCRIPTION OF EVEN DATE ACCOMPANIES THIS EXHIBIT.

**REFERENCE:**

- OPR OFFICIAL PUBLIC RECORDS OF KERR COUNTY, TEXAS
- PR PLAT RECORDS OF KERR COUNTY, TEXAS



LOCATION MAP  
(NOT TO SCALE)

LINE	BEARING	DISTANCE
L1	S 81°23'27" W	56.08'
L2	N 54°29'25" W	67.07'
L3	N 44°24'31" E	30.37'
L4	S 54°29'25" E	50.22'
L5	N 81°23'27" E	56.30'
L6	S 53°45'50" E	16.69'
L7	S 44°24'31" W	30.31'

WILLIAM FRANCIS  
SURVEY NO. 146  
ABSTRACT 137

**0.085 ACRE**  
(3,695 SQ. FEET)

PROPOSED 50-FOOT  
SANITARY SEWER EASEMENT

15.00 ACRES  
(VOL. 1280, PG. 350 OPR)

GUADALUPE RIVER

**P.O.B.**

N 53°45'50" W  
15.15'

N 44°24'31" E  
504.60'

1.0 ACRE  
TRACT I  
VIC STADTER AND PEGGY STADTER  
(VOL. 1597, PGS 745-749 OPR)

15-FOOT STRIP  
TRACT II  
VIC STADTER AND PEGGY STADTER  
(VOL. 1597, PGS 745-749 OPR)

STATE HWY. 173  
(120-FOOT PUBLIC R.O.W.)

ORIGINAL SURVEY LINE  
(NOT FIELD LOCATED)

20-FOOT STRIP  
TRACT III  
VIC STADTER AND PEGGY STADTER  
(VOL. 1597, PGS 745-749 OPR)

NATANIEL HOYT  
SURVEY NO. 147  
ABSTRACT 178

**P.O.C.**

TXDOT MON (TYPE II)  
BEARS  
S 44°42'21" E  
10.45'



REVISED: 6-26-13



engineers | architects | contractors

8918 TESORO DR., STE. 401  
SAN ANTONIO, TEXAS 78217  
TBPE FIRM NO. F-366

PH. (210) 822-2232  
FAX. (210) 822-4032  
WWW.LNVINC.COM

EXHIBIT  
OF

A 0.085 of an acre, or 3,695 square feet, tract of land out of that called 1.0 acre tract (Tract I), conveyed to Vic Stadter and Peggy Stadter by instrument recorded in Volume 1597, Pages 745-749 of the Official Public Records of Kerr County, Texas, situated in the William Francis Survey No. 146, Abstract 137, in the City of Kerrville, Kerr County Texas.

DRAWN BY: JMW  
SCALE: 1"=100'  
DATE: 9-4-12  
SHEET

**1 OF 1**

S:\PROJECTS\KERRVILLE\120304 KERRVILLE RIVER TRAIL-SECT. F.000\SURVEY\EX120304-03-R1.DWG PLOT DATE:6/26/2013 10:58 AM PLOT BY:BWALKER

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**RECREATION EASEMENT  
(Public River Trail)**

THE STATE OF TEXAS           §  
  §  
COUNTY OF KERR             §

That Victor Stadter and Peggy Stadter, owners of the real property described herein and hereinafter collectively referred to as (“Grantor”), whose address is P.O. Box 5, Rio Frio, Texas 78879-0005, for ten dollars (\$10.00) and other good and valuable consideration, has GIVEN, GRANTED, AND CONVEYED and by these presents does hereby GIVE, GRANT, AND CONVEY to the City of Kerrville, Texas (“Grantee”), its successors and assigns, a permanent, perpetual, and non-exclusive easement and right-of-way, along, across, over, and under all of the certain tracts of land, which is further described in **Exhibit A** attached hereto and made a part hereof, and hereinafter referred to as the “Easement.” The Easement shall be for the purpose of creating, constructing, and maintaining a linear public park, and more specifically, a public river trail adjacent to the Guadalupe River, consisting of materials such as concrete or natural materials to be solely determined by the Grantee, for walking, jogging, bicycling, and other recreational uses and amenities, if any, related thereto, such as the placement, installation, and construction of trash receptacles, lighting, security telephones, water fountains, irrigation, and signage, the types and locations of which to be solely determined by the Grantee, and hereinafter the trail and amenities collectively referred to as the “Facilities.” Facilities may not include and Grantee shall not install restrooms, pavilions, or playground equipment.

The Easement is granted and accepted subject to the following conditions:

1. Grantee's rights shall include the right to bring and operate such equipment upon the Easement as may be necessary or appropriate to effectuate the purposes for which the Easement is granted, which include public use, and for the purposes of creating, constructing, and maintaining the Facilities. Grantee shall not commence the placement, installation, and construction of the Facilities without first notifying Grantor in writing within a reasonable period of time prior to such placement, installation, and construction, such period not to be less than fifteen (15) days. Grantee shall construct, operate, and maintain its Facilities in an efficient and workmanlike manner and shall not interfere with Grantor's use and enjoyment of the real property burdened by the Easement, to include any impact to drainage on Grantor's property. Grantee shall have the right to remove portions of the boundary fence(s) and any and all vegetation from the Easement, including trees and brush, which may be necessary or appropriate to effectuate the purposes for which the Easement is granted. In addition, Grantee may, in its sole discretion, plant vegetation, including trees and shrubs, within the Easement as a way of enhancing public use of Grantee's linear park. Grantee agrees to restrict use of the Easement to pedestrians, skaters, and bicyclists and for other non-motorized uses, except in cases where motorized vehicles are used by Grantee to maintain the Facilities or where such vehicles are used to monitor and patrol the Easement or respond to emergencies or where personal transport equipment is allowed pursuant to the American with Disabilities Act. Grantee shall install and maintain signs to provide public notice of the prohibition of motorized vehicle

use. Grantee shall enforce all rules and regulations for City park and recreation areas.

2. Grantee also acknowledges that:

(A) Grantee has control over the Facilities to be installed or constructed within the Easement and will use its best efforts and due diligence to control the public's use thereof for recreational purposes;

(B) the Facilities shall belong to the Grantee and that Grantee, not Grantor, shall be responsible for the continuous maintenance, repair, or removal of any of the Facilities; and

(C) Grantee is solely responsible for all liability, claims, obligations, causes of action, and costs arising from the Grantee's or the public's use of the Easement or the Facilities. Further, Grantee shall be responsible for the periodic removal of trash and debris within the Easement.

3. The grant of the Easement is subject to the following specific reservations and exceptions:

(A) Grantor reserves the right to include the Easement for purposes of calculating impervious cover requirements, setback requirements, or such other requirements that may be imposed in the development or redevelopment of Grantor's adjacent lands;

(B) Grantor reserves the right to install a fence along, but not adjacent to, the eastern boundary of the Easement for the purpose of separating the public's use of the Easement with Grantor's property. In constructing and placing any fence, Grantor shall meet all floodway or similar requirements and applicable

regulations of Grantee. Grantor also reserves the right to provide for a connection between its property and the Easement to allow access to the Easement. Grantor may control any such access through a gate that locks. Grantor will thereafter own, control, and maintain both the gate and the lock;

(C) Grantor conveys and Grantee accepts the Easement's condition "AS IS AND WITH ALL FAULTS", including, without limitation, latent and patent defects.

(D) The Easement is granted subject to all recorded easements, rights of way, and other documents of record and all zoning and other municipal ordinances and regulations; and

(E) Grantee shall not install or construct any seating or observation areas within the Easement.

(F) Grantor reserves for Grantor and Grantor's heirs, successors, and assigns the right to continue to use and enjoy the surface of the Easement for all purposes that do not interfere with or interrupt the use or enjoyment of the Easement by Grantee for the purposes for which the Easement was conveyed and accepted; and

Grantee, its successor and assigns shall enjoy the rights, benefits, and privileges herein conveyed until such time as the Easement may be abandoned as defined below, at which time all right, title, and interest in the Easement will automatically and immediately terminate and cease to exist. Grantor and Grantee agree that "abandonment" of the Easement will be effective and will occur upon the earlier of the occurrence of any of the following: (A) formal action taken by the Kerrville City Council; or (B) Grantee's failure to complete the Facilities within that part of the "Public River Trail" to include the Easement within thirty-six (36) months from and after the date that this instrument is executed as indicated below, which period will not include periods

tolled due to “Acts of God”, delays due to litigation, delays waiting on the issuance of federal or state permits; or (C) Grantee’s failure for a period of six (6) consecutive months to continuously operate and maintain the Easement and the Facilities and, after written notice from Grantor to Grantee of such failure, Grantee’s failure to recommence operation and maintenance within sixty (60) days after such notice. The six (6) month and sixty (60) period will not include periods tolled due to “Acts of God”, delays due to litigation, or delays waiting on the issuance of federal or state permits. For purposes of this paragraph, the general phrase “failure to operate and maintain” means either (A) that the Easement is closed to public access; or (B) that Grantee, after written notice from Grantor or other owner of the adjacent land, persistently fails to maintain the Facilities in a good and serviceable condition or persistently fails to periodically remove accumulations of trash and debris from the Easement.

This instrument contains the entire agreement of the parties. There are no other or different agreements or understandings between Grantor and Grantee or their agents. Grantor, in executing and delivering this instrument, has not relied upon any promises, inducements, or representations of Grantee or its agents or employees, except as such are set forth herein. This instrument and the rights, easements, and agreements herein contained shall be covenants running with the land and shall inure to the benefit of and be binding and obligatory upon the heirs, executors, administrators, successors and assigns of the parties hereto.

TO HAVE AND TO HOLD the Easement, together with all and singular the rights and appurtenances thereto in any wise belonging, unto Grantee, its successors, assigns, and legal representatives and Grantor hereby binds itself and its successors, assigns and legal representatives to warrant and forever defend all and singular the Easement unto Grantee, its

successors, assigns and legal representatives against every person whomsoever lawfully claiming or to claim the same or any part thereof by through or under Grantor, but not otherwise.

EXECUTED this the \_\_\_\_\_ day of \_\_\_\_\_, 2013.

**GRANTOR**  
**VICTOR STADTER**

By: \_\_\_\_\_  
Victor Stadter

**Acknowledgment**

**THE STATE OF TEXAS** §  
§  
**COUNTY OF KERR** §

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 2013, by Victor Stadter.

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

**PEGGY STADTER**

By: \_\_\_\_\_  
Peggy Stadter

**Acknowledgment**

**THE STATE OF TEXAS** §  
§  
**COUNTY OF KERR** §

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 2013, by Peggy Stadter.

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

APPROVED AND ACCEPTED:

\_\_\_\_\_  
Todd Parton, City Manager  
City of Kerrville, Texas

**AFTER RECORDING RETURN TO:**

**Office of the City Secretary  
City of Kerrville, Texas  
City Hall, 701 Main Street  
Kerrville, Texas 78028**



METES AND BOUNDS

FOR

A 0.014 of an acre, or 455 square feet, tract of land out of that called 15-Foot Strip (Tract II), conveyed to Vic Stadter and Peggy Stadter by instrument recorded in Volume 1597, Pages 745-749 of the Official Public Records of Kerr County, Texas, situated in the William Francis Survey No. 146, Abstract 137, in the City of Kerrville, Kerr County Texas. Said 0.014 acre tract being more fully described as follows with bearings based on the North American Datum of 1983 (CORS 1996) from the Texas State Plane Coordinate System, Texas South Central Zone:

COMMENCING: At a point on the northeast right-of-way line of State Highway 173, a 120-foot public right-of-way, at the west corner of a called 55.89 acre tract conveyed to Tuscany Land, Ltd., by instrument recorded in Volume 1454, Pages 5-9 of the Official Public Records of Kerr County, Texas, the south corner of a called 20-Foot Strip (Tract III), conveyed to Vic Stadter and Peggy Stadter by instrument recorded in Volume 1597, Pages 745-749 of the Official Public Records of Kerr County, Texas, from which a found Texas Department of Transportation Monument (Type II) bears S 44°42'21" E, a distance of 10.45 feet;

THENCE: N 44°24'31" E, departing the northeast right-of-way line of said State Highway 173, along and with the northwest line of said 55.89 acre tract, the southeast line of said 20-foot strip and the southeast line of said 15-Foot Strip, a distance of 540.60 feet to the POINT OF BEGINNING of the herein described tract;

THENCE: N 53°45'50" W, departing the northwest line of said 55.89 acre tract, over and across said 15-Foot Strip, a distance of 15.15 feet to a point on a called 1.0 acre tract (Tract I), conveyed to Vic Stadter and Peggy Stadter by instrument recorded in Volume 1597, Pages 745-749 of the Official Public Records of Kerr County, Texas the south corner of a 0.116 acre tract, surveyed concurrently;

THENCE: N 44°24'31" E, along and with the southeast line of said 1.0 acre tract, the northwest line of said 15-Foot Strip, the southeast line of said 0.116 acre tract, a distance of 30.31 feet to a point, the east corner of said 0.116 acre tract;

THENCE: S 53°45'50" E, departing the southeast line of said 1.0 acre tract, over and across said 15-Foot Strip, a distance of 15.15 feet to a point on the northwest line of said 55.89 acre tract, the southeast line of said 15-Foot Strip;



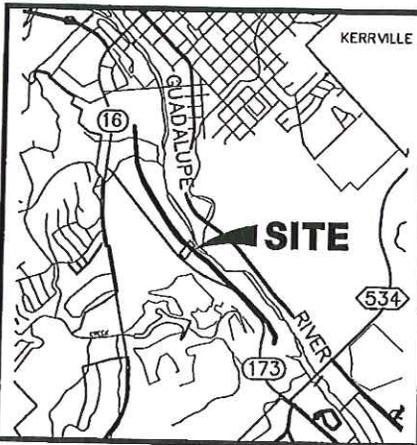
engineers | architects | contractors

SOLUTIONS TODAY WITH  
A VISION FOR TOMORROW

THENCE: S 44°24'31" W, along and with the northwest line of said 55.89 acre tract, the southeast line of said 15-Foot Strip, a distance of 30.31 feet to the POINT OF BEGINNING and containing 0.014 of an acre in the City of Kerrville, Kerr County, Texas. Said tract being described in accordance with a survey made on the ground and an exhibit prepared by LNV, Inc.

Prepared by: LNV, Inc.  
Job No.: 120304  
File: 120304MB-02  
Date: September 4, 2012  
TBPLS Firm No.: 10126502





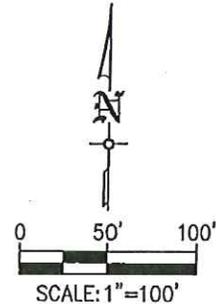
LOCATION MAP  
(NOT TO SCALE)

**NOTE:**

1. BEARINGS ARE BASED ON THE NORTH AMERICAN DATUM OF 1983(CORS 1996), FROM THE TEXAS STATE PLANE COORDINATE SYSTEM, TEXAS SOUTH CENTRAL ZONE
2. A METES AND BOUNDS DESCRIPTION OF EVEN DATE ACCOMPANIES THIS EXHIBIT.

**REFERENCE:**

- OPR OFFICIAL PUBLIC RECORDS OF KERR COUNTY, TEXAS
- PR PLAT RECORDS OF KERR COUNTY, TEXAS



LINE	BEARING	DISTANCE
L1	N 53°45'50" W	15.15'
L2	N 44°24'31" E	30.31'
L3	S 53°45'50" E	15.15'
L4	S 44°24'31" W	30.31'

WILLIAM FRANCIS  
SURVEY NO. 146  
ABSTRACT 137

**0.014 ACRE**  
(455 SQ. FEET)

15-FOOT STRIP  
TRACT II  
VIC STADTER AND PEGGY STADTER  
(VOL. 1597, PGS 745-749 OPR)

1.0 ACRE  
TRACT I  
VIC STADTER AND PEGGY STADTER  
(VOL. 1597, PGS 745-749 OPR)

PROPOSED 50-FOOT  
SANITARY SEWER EASEMENT

PROPOSED 40-FOOT  
SANITARY SEWER EASEMENT

**P.O.B.**

55.89 ACRES  
TUSCANY LAND, LTD.  
(VOL. 1454, PGS 5-9 OPR)

NATANIEL HOYT  
SURVEY NO. 147  
ABSTRACT 178

20-FOOT STRIP  
TRACT III  
VIC STADTER AND PEGGY STADTER  
(VOL. 1597, PGS 745-749 OPR)

**P.O.C.**

TXDOT MON (TYPE II)  
BEARS  
S 44°42'21" E  
10.45'

**STATE HWY - 173**  
(120-FOOT PUBLIC R.O.W.)

N 44°24'31" E  
504.60'  
ORIGINAL SURVEY LINE  
(NOT FIELD LOCATED)




engineers | architects | contractors

8918 TESORO DR., STE. 401  
SAN ANTONIO, TEXAS 78217  
TBPE FIRM NO. F-356

PH. (210) 822-2232  
FAX (210) 822-4032  
WWW.LNVINC.COM

EXHIBIT  
OF

A 0.014 of an acre, or 455 square feet, tract of land out of that called 15-Foot Strip (Tract II), conveyed to Vic Stadter and Peggy Stadter by instrument recorded in Volume 1597, Pages 745-749 of the Official Public Records of Kerr County, Texas, situated in the William Francis Survey No. 146, Abstract 137, in the City of Kerrville, Kerr County Texas.

DRAWN BY: B.W.  
SCALE: 1"=100'  
DATE: 9-4-12  
SHEET

**1 OF 1**

S:\PROJECTS\KERRVILLE\120304 KERRVILLE RIVER TRAIL - SECT. F\000\SURVEY\EXT020304-02.DWG PLOT DATE: 9/4/2012 3:43 PM PLOT BY: BWALKER

# KERRVILLE RIVER TRAIL & 'G' STREET SEWER

MEMORIAL HWY. (HWY. 21)

Guadalupe River

Orphan Creek

Stadter Property

BANDERA HWY. (HWY. 173)

HIGHRIDGE

OVERLOOK

RIVERHILL CLUB

OKANNO TRAIL



- Proposed Sewer
- Proposed River Trail

Flood Zone	
[Pattern]	AE,
[Pattern]	AE, FLOODWAY
[Pattern]	A,
[Pattern]	0.2 PCT

This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only approximate relative locations.

Map Produced by B. Gore  
 Engineering Department  
 City of Kerrville, TX  
 11/15/2012



## **Agenda Item:**

7F. Resolution No. 31-2013 supporting community-wide quarterly "Kerrville Beautification Days." (staff)

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

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**SUBJECT:** Resolution of support for quarterly beatification days

**FOR AGENDA OF:** Sep. 10, 2013      **DATE SUBMITTED:** Sep. 6, 2013

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

**EXHIBITS:** Resolution No. 31-2013

**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 DIRECTOR OF FINANCE:**

---

**SUMMARY STATEMENT**

The Kerrville Beautification Advisory Committee (KABC) is working to launch a community-wide beautification program. The purpose of the program is to increase community awareness and foster a proactive effort within the community where citizens and volunteer groups work to clean up and beautify Kerrville.

Attached is a resolution of support for this KABC initiative. The initiative would be to establish "Kerrville Beautification Days" to be designated for the third Saturday of January, April, July and October.

If approved, the KABC will initiate a public awareness campaign that would consist of public service announcements, press releases, and coordination efforts with appropriate community service organizations within the community.

**RECOMMENDED ACTION**

Staff recommends approval of Resolution No. 31-2103 to support the establishment of "Kerrville Beautification Days."

**CITY OF KERRVILLE, TEXAS  
RESOLUTION NO. 31-2013**

**A RESOLUTION SUPPORTING COMMUNITY-WIDE  
QUARTERLY "KERRVILLE BEAUTIFICATION DAYS"**

WHEREAS, the Kerrville Beautification Advisory Committee (KBAC) is encouraging community-wide themed beautification efforts to be held once a quarter on the third Saturday of January, April, July and October; and

WHEREAS, the quality of life in a community is often exemplified by the physical beauty of that community; and

WHEREAS, Kerrville citizens through various individual, neighborhood and civic initiatives, are asked to demonstrate pride in our community's appearance and to work together to enhance the beauty of the City through a variety of endeavors; and

WHEREAS, the City Council of the City of Kerrville, Texas finds it to be in the public interest to support and participate in quarterly "Kerrville Beautification Days" in an effort to enhance the beauty of our community,

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

The City Council of the City of Kerrville, Texas, hereby supports quarterly "Kerrville Beautification Days", and that all Kerrville citizens are encouraged to observe this opportunity to come together as friends, neighbors and as a community to beautify the City and enhance community pride and quality of life. Such beautification days will be held on the third Saturday of January, April, July, and October.

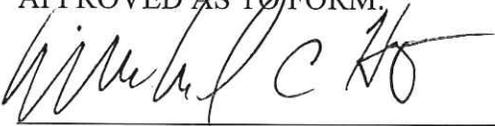
PASSED AND APPROVED this the \_\_\_\_\_ day of \_\_\_\_\_, A.D., 2013.

ATTEST:

\_\_\_\_\_  
Jack Pratt, Jr., Mayor

\_\_\_\_\_  
Brenda G. Craig, City Secretary

APPROVED AS TO FORM:

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