

AGENDA FOR REGULAR MEETING

CITY OF KERRVILLE, TEXAS

ECONOMIC IMPROVEMENT CORPORATION

MONDAY, NOVEMBER 25, 2013 AT 4:00 P.M.

KERRVILLE CITY HALL COUNCIL CHAMBERS

701 MAIN STREET, KERRVILLE, TEXAS

**AGENDA FOR REGULAR MEETING OF THE
CITY OF KERRVILLE, TEXAS
ECONOMIC IMPROVEMENT CORPORATION
MONDAY, NOVEMBER 25, 2013, 4:00 P.M.
KERRVILLE CITY HALL COUNCIL CHAMBERS
701 MAIN STREET, KERRVILLE, TEXAS**

CALL TO ORDER

INVOCATION

1. VISITORS/CITIZENS FORUM:

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

2. APPROVAL OF THE MINUTES:

2A. Minutes of the regular meeting held October 28, 2013.

3. MONTHLY REPORTS:

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

3B. Capital projects update. (staff)
River Trail and Parks projects

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

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

4. PUBLIC HEARING AND POSSIBLE ACTION:

4A. Funding agreement between the City of Kerrville Economic Improvement Corporation and Habitat for Humanity in an amount not to exceed \$375,000.00. (staff)

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

I do hereby certify that this notice of meeting was posted on the bulletin board at the city hall of the city of Kerrville, Texas, and said notice was posted on the following date and time November 22, 2013 at 1:00 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

4B. Funding agreement between the City of Kerrville Economic Improvement Corporation and Schreiner University in an amount not to exceed \$250,000.00. (staff)

5. CONSIDERATION AND POSSIBLE ACTION:

5A. Funding request from Playhouse 2000, Inc. in the amount of \$500,000.00. (staff)

5B. Funding request from the City of Kerrville for the improvements to the History Center in the amount of \$400,000.00. (staff)

6. EXECUTIVE SESSION:

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

- Funding agreement between the City of Kerrville Economic Improvement Corporation and Habitat for Humanity in an amount not to exceed \$375,000.00.
- Funding agreement between the City of Kerrville Economic Improvement Corporation and Schreiner University in an amount not to exceed \$250,000.00
- Funding request from Playhouse 2000, Inc. in the amount of \$500,000.00.
- Funding request from the City of Kerrville for the improvements to the History Center in the amount of \$400,000.00

7. ADJOURNMENT

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

I do hereby certify that this notice of meeting was posted on the bulletin board at the city hall of the city of Kerrville, Texas, and said notice was posted on the following date and time: November 22, 2013 at 1:00 p.m. and remained posted continuously for at least 72 hours preceding the scheduled time of the meeting.

Cheryl Brown

Deputy City Secretary, City of Kerrville, Texas

Agenda Item:

2A. Minutes of the regular meeting held on October 28, 2013. (staff)

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

October 28, 2013

On Monday, October 28, 2013, the regular meeting of the directors of the City of Kerrville, Texas Economic Improvement Corporation, was called to order at 4:02 p.m. by David Wampler, President in the Council Chambers at City Hall, at 701 Main Street, Kerrville, Texas.

Members Present:

David Wampler, President
Kenneth Early, Vice President
Rex Boyland, Secretary
Gary Cochrane
Larry Howard
Stacie Keeble
Polly Rickert

Members Absent:

City Executive Staff Present:

Todd Parton, City Manager
Kristine Ondrias, Assistant City Manager
Cheryl Brown, Deputy City Secretary
Mike Hayes, City Attorney
Sandra Yarbrough, Director of Finance
Amy Dozier, Assistant Director of Finance
Ashlea Boyle, Main Street/Special Projects Manager
Malcolm Matthews, Director of Parks and Recreation
Laura Bechtel, Library Director

1. VISITORS/CITIZENS FORUM:

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

2. APPROVAL OF THE MINUTES:

2A. Minutes of the regular meeting held September 23, 2013, the joint meeting with the City Council held on October 3, 2013, and the joint meeting with the Kerrville Economic Development Corporation, also held on October 3, 2013.

Mr. Howard moved to approve the minutes for the regular meeting held September 23, 2013, the joint meeting with the City Council held on October 3, 2013, and the joint meeting with the Kerrville Economic Development Corporation held on October 3, 2013. Mr. Early seconded, and the motion passed 7-0

3. MONTHLY REPORTS:

3A. Monthly financials for September 2013.

Ms. Dozier reported that the beginning balance in the sales tax improvement fund was \$2,462,664.00. During the month of September, there was \$225,256.00 in revenue, and \$89,583.00 in expenses, leaving an ending balance as of September 30, 2013 of \$2,598,336.00. Pursuant to the board's request from their last meeting, Ms. Dozier also presented a comparison of the sales tax growth rate in Kerrville to other Texas cities. In cities whose size was comparable, the sales tax growth rate in Kerrville was the highest. In Texas cities throughout central Texas, the rate was in the mid-range.

3B. Capital projects update River Trail and Parks projects

Mr. Matthews reported that the condemnation meeting for the remaining easement was scheduled for November, and after the condemnation process was completed, the Utility and River Trail projects would proceed. The design team was ready to complete their design. He reported that most of the geo-tech work was done.

3C. Update regarding "GO Team" activities

Ms. Boyle reported that the "GO Team" met, and reviewed three applications for funding. Two of those applications were determined to be acceptable, and the third application was not complete, and it was returned to the applicant for completion.

3D. Update on Downtown Wireless Usage

Ms. Boyle reviewed the report of the downtown wireless usage.

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

Mr. Titas requested that this item be combined with item 5F, the board agreed, and the item was postponed until 5F was heard.

4. INFORMATION AND DISCUSSION:

4A. Report on 2013 events funded by EIC.

Kerrfest:

The event was held May 16-19, 2013 at the Hill Country Youth Event Center. There was a reported 28% increase in attendance from last year. There were approximately 3,300 attendees, with revenue, including in-kind sponsorships, totaling \$86,505. Total cash revenue was \$54,705, with \$26,529 in expenses. The total reimbursement from EIC was \$10,500.00.

Texas Arts and Crafts Fair:

The event was held May 24-26, 2013 at the River Star Events Park. There was an estimated 2,450 in attendance. Total revenue was \$139,239 with \$141,511 in expenses. Total reimbursement from EIC for rental of equipment was \$15,500.00.

Hill Country Quilt Guild:

The event was held May 25-26, 2013 at Schreiner University. There were 261 quilts displayed, and 18 vendors participating. There were 1,041 in attendance. Ticket sales totaled \$5,205.00. Total revenue was \$25,916, with \$8,628.00 in expenses. Total reimbursement from EIC for the rental of the Edington Gymnasium at Schreiner University was \$1,000.00.

Kerrville Folk Festival:

The event was held May 23-June 9, 2013 at Quiet Valley Ranch. There were over 100 craft and food vendors at the event. There were 33,794 in attendance at the 18 day event. Ticket sales totaled \$292,099.00. Total revenue was \$773,831.00 with \$683,160 .00 in expenses. Total reimbursement from EIC for three chartered buses was \$8,415.30.

Kerrville's Fourth on the River:

The event was held on July 4, 2013 at Louise Hays Park. There was no entry fee for the event. Approximately 5,000 – 7,000 attended the event. Total revenue was approximately \$90,000.00 with \$83,235.00 in expenses. Total reimbursement from EIC for the rental of equipment was \$22,076.11.

Texas Hill Country Wine and Brew Festival:

The event was held on July 6, 2013 at Lake Comanche Trace. There were 1,252 in attendance. Total revenue was \$79,840.00 with \$82,000.00 in expenses. Total reimbursement from EIC for the rental of equipment was \$16,490.00.

5 CONSIDERATION AND POSSIBLE ACTION:

5A. Funding request from Playhouse 2000, Inc. in the amount of \$500,000.00
Pursuant to the request of the board at their May 20, 2013, meeting, consideration of funding for the addition of a new building was postponed until more detail was available for the construction of a support facility to the Cailloux Theater. Jeffrey Brown, Executive Director of Playhouse 2000 and the Kathleen C. Cailloux City Center for the Performing Arts, made a presentation of the different programs that were offered at the theater, and the reasons for the need for a support building. He showed the board several artists' renderings which detailed plans of each room in the proposed new building. It was the consensus of the board to table consideration of this request to executive session.

5B. Funding request from the City of Kerrville for Phase III of the library campus renovation project in the amount of \$400,000.00

Ms. Boyle reviewed the funding request. She reported that a structural analysis of the building was done, and there were several issues with the building. Laura Bechtel, Library Director, reviewed the uses and purpose of the History Center, and the donation from the Remschel-Deering Trust that created the Center, and reported that it is part of the city's library campus. Ms. Boyle reviewed the structural issues with the foundation of the Kerr Regional History Center, as well as the various other needs to bring the building up to code, and to demolish the carriage house behind the building. Ms. Bechtel responded to several questions regarding the trust and the building.

Peter Lewis, architect, responded to questions from the board regarding the structural integrity of the building.

Mr. Parton responded to questions from the board regarding the scope of the proposed work on the History Center and what part of that work would be covered by the request for funding.

The consensus of the board was to table consideration of this request to executive session.

5C. Funding request from Schreiner University in the amount of \$250,000.00

Ms. Boyle reviewed the funding application.

Dr. Summerlin, President of Schreiner University, showed the board a power point presentation regarding the university and the need for the proposed athletic and event center. He responded to questions from the board regarding the project and the additional funding from other sources for it.

Mr. Howard moved to approve the funding request as presented. Mr. Early seconded and the motion passed 7-0.

5D. Funding request from Habitat for Humanity in the amount of \$375,000.00

Ms. Boyle reviewed the funding application.

Karen Quanstrom, Executive Director of Habitat for Humanity of Kerr County, Texas, spoke and showed a power point presentation about Habitat for Humanity and the eight houses they built in Phase I of the Maud Jennings Subdivision. She also reviewed the plans for Phase II, which would allow for 19 more houses.

Robert Naman spoke in favor of the funding request.

Ms. Rickert moved to direct staff to work with Habitat for Humanity of Kerr County to get the correct monetary amounts for the project. Staff was to prepare a funding agreement to reimburse Habitat for Humanity for one-half of the costs up to \$375,000.00, which is to include the contingency built into Habitat for Humanity's project budget. Mr. Howard seconded, and the motion passed 6-0, with Mr. Early abstaining due to being on the Habitat for Humanity Board.

5E. Streetscape Presentation

Peter Lewis presented a review of his design for the Kerrville Central City Plan, which included conceptual drawings of possible landscaping, crosswalks, art in public places, and revitalization of the downtown area. He responded to questions from the board regarding his designs. Mr. Lewis stated he will return to the EIC board with a phasing program and a budget for the project.

5F. and 3E. Kerrville Economic Development Corporation Annual Report and Update regarding KEDC Activities

Jonas Titas presented his update regarding KEDC activities and his annual report regarding all economic development opportunities and prospects for the Kerrville area. He responded to questions from the board.

6. EXECUTIVE SESSION:

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

Sections 551.771 and 551.087: of Chapter 551 of the Texas Government Code

- Funding request from Playhouse 2000, Inc. in the amount of \$500,000.00
- Funding request from City of Kerrville for Phase III of the library campus renovation
- Funding request from Schreiner University in the amount of \$250,000.00
- Funding request from Habitat for Humanity in the amount of \$375,000.00

At 6:52 the open session recessed and the EIC went into executive closed session at 6:57 p.m. At 7:50 p.m. the executive closed session recessed and the EIC returned to open session at 7:50 p.m. Mr. Wampler announced that no action was taken in executive session.

ACTION ON ITEMS DISCUSSED IN EXECUTIVE SESSION:

5A. Funding request from Playhouse 2000, Inc. in the amount of \$500,000.00

Ms. Rickert moved to direct staff to draft a funding agreement with Playhouse 2000, Inc., for two-thirds of the actual cost of the project on a reimbursement basis, not to exceed \$500,000.00, with the City of Kerrville managing the project; the VK Garage, as well as any land attached to the expansion, would be deeded to the City of Kerrville; city staff was also directed to review the contract with Playhouse 2000, Inc. to determine the owner of the buildings, and the land on which the new building will be erected, and the utilities for that building. Mr. Boyland seconded, and the motion passed 7-0.

5B. Funding request from the City of Kerrville for Phase III of the library campus renovation project in the amount of \$400,000.00

The consensus of the board was to direct staff to arrange site visits for the EIC members to the history center. Any action on this item was deferred until after those visits had taken place.

ANNOUNCEMENTS:

Mr. Parton reminded the board that the date for the December meeting would fall on the week of the Christmas holiday. He asked the board if they would prefer to meet on the third Monday of December, or if they would rather cancel their December meeting. The consensus of the board was to discuss the options, and let Mr. Parton know before their November meeting.

The meeting was adjourned at 7:52 p.m.

APPROVED: _____

David Wampler, President

ATTEST:

Cheryl Brown
Deputy City Secretary

Agenda Item:

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

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

SUBJECT: Budget/Economic Update

FOR AGENDA OF: December 10, 2013 **DATE SUBMITTED:** November 22, 2013

SUBMITTED BY: Sandra Yarbrough
Director of Finance **CLEARANCES:** Todd Parton
City Manager

EXHIBITS: Economic Update

AGENDA MAILED TO:

APPROVED FOR SUBMITTAL BY CITY MANAGER: 

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

PAYMENT TO BE MADE TO:

REVIEWED BY THE DIRECTOR OR FINANCE:

SUMMARY STATEMENT

The City of Kerrville staff will present and update Council on a monthly basis as to the status of the City's budget and current economic trends affecting the City.

RECOMMENDED ACTION

No action required information purposes only.

CITY OF KERRVILLE
Economic Improvement Corporation
Sales Tax Improvement Fund

Cash Balance as of October 1, 2013		\$ 2,598,336
Deposits:		
Sales Tax	\$ 241,503	
Interest Revenue	\$ 376	
	<u>\$ 241,879</u>	
Expenses:		
Office Supplies	\$ -	
Administrative Service Fee	\$ 8,333	
Transfer for Debt Service - 1999	\$ 13,600	
Transfer for Debt Service - 2012	\$ 14,167	
Transfer - Park Improvements	\$ 25,000	
KEDC	\$ 60,000	
Total Expenses	<u>\$ 121,100</u>	
Revenues Over (Under) Expenditures		<u>\$ 120,780</u>
Ending Cash Balance as of October 31, 2013		<u><u>\$ 2,719,115</u></u>

City of Kerrville
Economic Improvement Corporation
Sales Tax Improvement Fund - Revenue and Expense Statement
For the month ending October 31, 2013

	Annual Budget	Current Period	Y-T-D Actual	% of Budget	Budget Balance
BEGINNING CASH BALANCE	\$ 2,598,336		\$ 2,598,336		
REVENUE:					
Sales and Use Tax	\$ 2,750,000	\$ 241,503	\$ 241,503	8.78%	\$ 2,508,497
Interest	\$ 5,000	\$ 376	\$ 376	7.52%	\$ 4,624
TOTAL REVENUE	<u>\$ 2,755,000</u>	<u>\$ 241,879</u>	<u>\$ 241,879</u>	<u>8.78%</u>	<u>\$ 2,513,121</u>
EXPENDITURES:					
	Annual Budget	Current Period	Y-T-D Actual & Encumbrance	% of Budget	Budget Balance
Administrative					
Advertising/Supplies	\$ 500	\$ -	\$ -	-	\$ 500
Transfer to Debt Service Fund	\$ 68,000	\$ 13,600	\$ 13,600	20.00%	\$ 54,400
Transfer to Debt Service Fund - River Trail	\$ 170,000	\$ 14,167	\$ 14,167		\$ 155,833
Economic Development Governing Body	\$ 60,000	\$ 60,000	\$ 60,000	100.00%	\$ -
Annual Disclosure Fee	\$ 3,500	\$ -	\$ -		\$ 3,500
River Trail Contribution	\$ 300,000	\$ 25,000	\$ 25,000		\$ 275,000
Administrative Services Fee	\$ 100,000	\$ 8,333	\$ 8,333	8.33%	\$ 91,667
Total Administrative	<u>\$ 702,000</u>	<u>\$ 121,100</u>	<u>\$ 121,100</u>	<u>17.25%</u>	<u>\$ 580,900</u>
Category I - Business Development					
Revolving Loan Fund	\$ 100,000	\$ -	\$ -		\$ 100,000
ED Set Aside	\$ 250,000	\$ -	\$ -		\$ 250,000
Unspecified	\$ 146,750	\$ -	\$ -	0.00%	\$ 146,750
Total Category I	<u>\$ 496,750</u>	<u>\$ -</u>	<u>\$ -</u>	<u>100.00%</u>	<u>\$ 496,750</u>
Category II - Quality of Life					
Special Events	\$ 100,000	\$ -	\$ -	0.00%	\$ 100,000
Downtown Wireless	\$ 100,000	\$ -	\$ -	0.00%	\$ 100,000
Streetscape	\$ 250,000	\$ -	\$ -	0.00%	\$ 250,000
History Center	\$ 400,000	\$ -	\$ -	0.00%	\$ 400,000
Baseball Complex	\$ 500,000	\$ -	\$ -	0.00%	\$ 500,000
Unspecified	\$ 365,000	\$ -	\$ -	0.00%	\$ 365,000
Total Category II	<u>\$ 1,715,000</u>	<u>\$ -</u>	<u>\$ -</u>	<u>0.00%</u>	<u>\$ 1,715,000</u>
Category III - Public Infrastructure					
Village West - Water (1/2 cost)	\$ 500,000				
Village West - Wastewater	\$ 750,000			0.00%	\$ 750,000
Total Category III	<u>\$ 1,250,000</u>	<u>\$ -</u>	<u>\$ -</u>	<u>0.00%</u>	<u>\$ 750,000</u>
Contingency	\$ -				\$ -
TOTAL EXPENDITURES	<u>\$ 4,163,750</u>	<u>\$ 121,100</u>	<u>\$ 121,100</u>	<u>2.91%</u>	<u>\$ 3,542,650</u>
NET REVENUES TO EXPENDITURES	<u>\$ (1,408,749)</u>	<u>\$ 120,780</u>	<u>\$ 120,778</u>		
ENDING CASH BALANCE: October 31, 2013	Budget \$ 1,189,586		Actual \$ 2,719,115		

CITY OF KERRVILLE
 Economic Improvement Corporation
 SALES TAX REVENUE ANALYSIS

	Actual FY 2011	Actual 2012	FY 2012	Actual FY 2013	Approved 2014	FY 2014	Actual FY 2014	Difference Projected vs Actual	% of Projected Variance
October	\$ 184,602	\$ 219,934	\$ 219,934	\$ 226,663	\$ 227,546	\$ 227,546	\$ 241,503	\$ 13,957	5.78%
November	\$ 207,677	\$ 203,379	\$ 203,379	\$ 210,744					
December	\$ 169,550	\$ 208,227	\$ 208,227	\$ 204,782					
January	\$ 195,030	\$ 204,051	\$ 204,051	\$ 217,647					
February	\$ 241,320	\$ 264,744	\$ 264,744	\$ 284,177					
March	\$ 169,754	\$ 186,812	\$ 186,812	\$ 205,749					
April	\$ 157,729	\$ 185,835	\$ 185,835	\$ 215,800					
May	\$ 234,742	\$ 223,320	\$ 223,320	\$ 251,468					
June	\$ 186,441	\$ 195,775	\$ 195,775	\$ 234,781					
July	\$ 190,696	\$ 210,758	\$ 210,758	\$ 216,641					
August	\$ 238,491	\$ 239,007	\$ 239,007	\$ 245,964					
September	\$ 179,133	\$ 203,486	\$ 203,486	\$ 224,905					
Total	\$ 2,355,166	\$ 2,545,329	\$ 2,545,329	\$ 2,739,321	\$ 2,275,546	\$ 2,275,546	\$ 241,503	\$ 13,957	5.78%

CITY OF KERRVILLE
Economic Improvement Corporation
Sales Tax Debt Service Fund

Cash Balance as of October 1, 2013		\$ 427,424
Revenues:		
Transfer from Sales Tax Improvements Fund	<u>\$ 13,600</u>	
Total Deposits	<u>\$ 13,600</u>	
Expenses:		
Paying Agent Fee		
Bond Principal		
Bond Interest	<u>\$ -</u>	
Total Expenses		
Revenues Over (Under) Expenditures:		<u>\$ 13,600</u>
Ending Cash Balance as of October 31, 2013		<u><u>\$ 441,024</u></u>

CITY OF KERRVILLE
Economic Improvement Corporation
Sales Tax Debt Service Fund
Revenue and Expense Statement
For the month ending October 31, 2013

	Annual Budget	Current Period	Y-T-D Actual	% of Budget	Budget Balance
BEGINNING CASH BALANCE	\$ 427,424		\$ 427,424		
REVENUE:					
Transfer from Sales Tax Improvement Fund	\$ 68,000	\$ 13,600	\$ 13,600	20.00%	\$ 54,400
TOTAL REVENUE	\$ 68,000	\$ 13,600	\$ 13,600	20.00%	\$ 54,400
	Annual Budget	Current Period	Y-T-D Actual	% of Budget	Budget Balance
EXPENDITURES:					
Series 1999 Sales Tax Bond Debt Service	\$ 485,000	\$ -	\$ -	0%	\$ 485,000
Series 1999 Sales Tax Bond Interest Expense	\$ 11,276	\$ -	\$ -	0%	\$ 11,276
Paying Agent Fees	\$ 1,000	\$ -	\$ -	0%	\$ 1,000
First Southwest Continuing Disclosure Fee	\$ -	\$ -	\$ -	-	\$ -
TOTAL EXPENDITURES	\$ 497,276	\$ -	\$ -	0.00%	\$ 497,276
ENDING CASH BALANCE: October 31, 2013	Budget \$ (1,852)		Actual \$ 441,024		

CITY OF KERRVILLE
Economic Improvement Corporation
EIC Capital Projects Fund

Cash Balance as of October 1, 2013		\$ 927,327
Revenues:		
Total Revenues/Transfer In	<u>\$ -</u>	
Expenses:		
Quilt Guild	1,000	
Streetscape	5,921	
Golf Course	1,621	
Playhouse 2000	<u>67,154</u>	
Total Expenses	<u>\$ 75,695</u>	
Revenue Over (Under) Expenditures		<u>\$ (75,695)</u>
Ending Cash Balance as of October 31, 2013		<u><u>\$ 851,632</u></u>

CITY OF KERRVILLE
Economic Improvement Corporation
Sales Tax Improvement Capital Projects Fund
Project Status Summary
For the month ending October 31, 2013

YEAR(S) FUNDED	PROJECTS	Funding Agreement	Agreement Commitment	EIC Funded To Date	Non-EIC Funding	Total Funded	Project Expenses to Date	Project Balance	EIC Future Allocation Balance
2009/10	Hill Country Home Opportunity	FA 2010-02	\$ 250,000	\$ 250,000		\$ 250,000	\$ 250,000	\$ 0	-
2010/10	Commercial Improvement Program		\$ 100,000	\$ 100,000		\$ 100,000	\$ 20,000	\$ 80,000	-
2010/11	Commercial Improvement Program		\$ 100,000	\$ 100,000		\$ 100,000	-	\$ 100,000	-
2010/11	Hill Country Shooting Center	FA 2010-03	\$ 494,838	\$ 494,838		\$ 495,585	\$ 495,580	\$ (0)	-
2011/12	Harper Hwy Utility Ext Phase 2		\$ 1,000,000	\$ 1,000,000		\$ 641,857	\$ 631,857	\$ 10,000	-
2011/12	Fox Tank		\$ 300,000	\$ 300,000		\$ 300,000	\$ 300,000	\$ -	-
2011-12	Downtown Utilities		\$ 300,000	\$ 300,000		\$ 300,000	\$ -	\$ 300,000	-
2012-13	Golf Course Improvements		\$ 608,141	\$ 608,141		\$ 608,141	\$ 510,119	\$ 98,022	-
	Hill Country Jr. Livestock Assoc		\$ 150,000	\$ 149,703		\$ 149,703	\$ 149,703	\$ (0)	297
	Texas Arts and Crafts Fair		\$ 15,500	\$ 15,500		\$ 15,500	\$ 15,500	\$ -	-
	Downtown Street Scape		\$ 35,100	\$ 35,100		\$ 35,100	\$ 29,939	\$ 5,162	-
	Kerr Fest		\$ 10,500	\$ 10,500		\$ 10,500	\$ 10,500	\$ -	-
	Quiet Valley Folk Festival		\$ 8,500	\$ 8,500		\$ 8,500	\$ 8,415	\$ 85	-
	Quilt Show		\$ 1,000	\$ 1,000		\$ 1,000	\$ 1,000	\$ -	-
	Playhouse 2000		\$ 118,000	\$ 118,000		\$ 118,000	\$ 67,154	\$ 50,847	-
	Cailloux Theater Lighting		\$ 200,652	\$ 200,652		\$ 200,652	\$ -	\$ 200,652	-
	4th on the River		\$ 25,000	\$ 25,000		\$ 25,000	\$ 22,077	\$ 2,923	-
	Hill Country Wine and Brew Fest		\$ 20,432	\$ 20,432		\$ 20,432	\$ 16,490	\$ 3,942	-
TOTALS			\$ 3,737,663	\$ 3,737,366		\$ 3,379,970	\$ 2,528,334	\$ 851,632	297

Cash Balance on 10/31/2013

\$ 851,632

Fund 70 - General Capital Improvement Projects - supported by EIC			
PROJECTS	Funding Agreement	Agreement Commitment	Expense
2011-12	River Trail	\$ 6,000,000	\$ 487,111
2011-12	Louise Hays Park Improvements	\$ 2,000,000	\$ 36,107
TOTALS		\$ 8,000,000	\$ 523,217
		\$ 7,527,939	\$ 7,004,722

Agenda Item:

3B. Capital projects update. (staff)
River Trail and Parks projects

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

SUBJECT: Capital Projects Update

AGENDA DATE: November 25, 2013 **DATE SUBMITTED:** November 20, 2013

SUBMITTED BY: Todd Parton
City Manager

CLEARANCES:

EXHIBITS/INFORMATION: Status Reports

APPROVED FOR SUBMITTAL BY CITY MANAGER:



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

PAYMENT TO BE MADE TO:

REVIEWED BY THE FINANCE DIRECTOR:

SUMMARY STATEMENT

Staff will provide reports on the following projects:
River Trail and Parks Projects

RECOMMENDED ACTION

Update only. No action required.

Monthly Status Report

River Trail/Parks Projects

November 2013

Updates highlighted.

4B Funds

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

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

Status Report Kerrville River Trail

Riverside Nature Center (RNC) to Louise Hays Park (Package A)

SCOPE
 Extends from a new trailhead at the Riverside Nature Center parking lot, along the west property line of the RNC, down to the river's edge, under the Lemos St. Bridge, construction of a trail bridge across the river, through Tranquility Island, to the west end of the parking area in Louise Hays Park. The 10' wide trail will be constructed of concrete, except for the segment that runs along the RNC western property line. *Total trail length: 0.7 miles*

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

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

FUNDING - BUDGET	Allocation	Expended - Encumbered	Balance	Cost Est. for Package	Needed to Complete Package
G.O. bonds (2002) Park Dedication Funds	\$500,000 -25,000 \$525,000	2002 bonds \$147,112 [includes completion of the River Trail Master Plan, design, and survey work]	\$0	Construction bid: \$667,427 plus 10% contingency \$735,000	2002 bonds/PD COs \$525,000 \$357,112 \$882,112
COs (4B)	\$357,112				

Status Report Kerrville River Trail

Louise Hays Park to G St. (Package B) and Parks Project

SCOPE	Connects to the west end of the Louise Hays Park parking lot (Package A), through Louise Hays Park and Lehmann & Monroe Park, to G St.(west r.o.w. line). The 10' wide trail will be constructed of concrete. This Package will be coordinated with the Jefferson Wastewater Project and Water transmission Line Project, both slated for completion by early 2014. This segment will include the entire scope of work for the Louise Hays Park/Lehmann & Monroe Park Project, as funded by 4B. Total trail length: 1 mile
Amenities	Trail - trailheads with security lighting, observation areas, seating areas, bridging, drainage, signage, trail entries, kiosks, and interpretive signage. Parks - park amenities, amphitheater/stage, interactive water feature, event areas, large pavilion upgrades, river access, restrooms, roads/parking, lighting, utilities, landscaping, signage.

PHASING	Action Item	Schedule (Status)	Task/Issues	Comments/Risks
Recreation easements or Property Agreements	easements to CoK from property owners	complete by 11/31/13	CoK to secure from property owners; title work and surveys	final easement legal proceedings rescheduled
Property Survey	construction easements, if needed	na	na	
Misc. Reports/Permits	M&B and Topo surveys	M&B - complete (9/12) Topo - partially complete upon trail completion	identify property boundary and grades	
	LOMR	12/1/13, if needed	flood impact, if any	may require submittal to FEMA
	TPWD (land & water permit)	12/1/13, if needed	environmental impact to state waters	review by TPWD
	GLO (state property use)	complete (6/12)	routing preference	approval by State, if needed
Design	-Trail Routing Options - Halff -Design Contract Document - Halff, PLA*	complete (approved 12/11/12)*	define route options w/ costs all remaining design phases	complete (6/12) Council approval
Preliminary Design and Construction Drawings	schematic plan with amenities/est.	Schematic - (complete) 50% review - underway 75% review - 90% review -	all project elements all project elements all project elements	coord. with utilities projects; water feature design/build approach being finalized; geotech & structural eng. underway.
Final Bid Documents	final plans/specs/costs/ documents	complete by late 2013	all project elements	project delay assoc. with approvals
Bidding/Contracts	secure contractor	early 2014	bid process, contract prep	project delay, bid cost, etc.
Construction	construct project	start early 2014	sequencing of work	typical delays/field alterations

* Halff Assoc. design agreement terminated; new design agreement with Peter Lewis Architect + Assoc. (PLA) approved 8/13/13.

FUNDING - BUDGET	Allocation	Expended - Encumbered	Balance	Cost Est. for Package	Needed to Complete Package
COs (4B) - River Trail	\$1,000,000	\$99,537	\$900,463	\$2,600,00	\$1,000,000
COs (4B) - LHP/LMP Project	\$2,000,000	\$199,073	\$1,800,927		\$2,000,000

Status Report Kerrville River Trail

G St. to Kerrville-Schreiner Park (Package F)

SCOPE	Extends from G St. (west r.o.w. line) along the south bank of the river into Kerrville-Schreiner Park. The 10' wide trail will be constructed of concrete. This Package will be coordinated with the Jefferson Wastewater Project and Water transmission Line Project, both slated for completion by fall 2013. <i>Total trail length: + 2 miles</i>
Amenities	Trailheads with parking, security lighting, observation areas, seating areas, trail bridges, drainage, signage, trail entries, kiosks, and interpretive signage.

PHASING	Action Item	Schedule (Status)	Task/Issues	Comments/Risks
Recreation easements or Property Agreements	easement to CoK from property owners; land acquisition	complete by 1/31/14	CoK to secure from property owners; title work and surveys	tract acquisition proceeding; final easement proceedings in early 2014.
Property Survey	construction easements, if needed	complete by 12/13, if needed	determine need by 10/13	from property owners
Misc. Reports/Permits	M&B and Topo surveys	M&B amend. - complete (10/13) Topo - partially complete upon trail completion	identify property boundary and grades	coord. w/ utilities projects
Design	LOMR	12/1/13, if needed	flood impact, if any	may require submittal to FEMA
	TPWD (land & water permit)	Not required per GLO	environmental impact to state waters	associated with Guadalupe River
	GLO (lease)	complete (6/12)	state land/water under G St. bridge	complete (6/12)
Preliminary Design and Construction Drawings	-Trail Confirmation - Terra Design Group (TDG)	complete (6/23/13)	define route options w/ costs	
	-Final Design Contract - TDG	Schematic - (complete) 50% review - underway 75% review - 90% review -	all remaining design phases all project elements all project elements all project elements	Council approval (6/23/13) coord. with utilities projects; geotech underway.
	schematic plans with amenities/est.			
Final Bid Documents	final plans/specs/costs/ documents	complete by late 2013	all project elements	project delay assoc. with approvals
Bidding/Contracts	secure contractor	early 2014	bid process, contract prep	project delay, bid cost, etc.
Construction	construct project	start early 2014	sequencing of work	typical delays/field alterations

FUNDING - BUDGET	Allocation	Expended - Encumbered	Balance	Cost Est. for Package	Needed to Complete Package
COs (4B)	\$2,300,000	\$228,305	\$2,071,695	\$2,071,695	\$2,300,000

Status Report Kerrville River Trail

RNC to Knapp Crossing (Packages C and D)

SCOPE	Extends from a new trailhead at the Knapp Crossing Boat Ramp parking lot, runs adjacent to the river, ties into the Guadalupe St. r.o.w.(Package D) extends to Guadalupe Park and connects to Package A (Package C). The 10' wide trail will be constructed of concrete. Total trail length: 1.6 miles
Amenities	Trailheads with lighting, observation areas, seating areas, trail bridge, drainage, signage, trail entries, kiosks, interpretive signage, and private improvement interface.

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

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

Status Report Kerrville River Trail

Knapp Crossing to West Terminus (Package E)

SCOPE	Extends from Knapp Crossing trailhead to the west terminus of trail on Junction Hwy along the river's edge. The 10' wide trail will be constructed of concrete. Total trail length: up to 1 mile
Amenities	Trailheads with lighting, observation areas, seating areas, trail bridge, drainage, signage, trail entries, kiosks, and interpretive signage.

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

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

Other Services to be Evaluated

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

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

Agenda Item:

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

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

SUBJECT: Update on "GO Team" activities

FOR AGENDA OF: November 25, 2013 **DATE SUBMITTED:** November 18, 2013

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

EXHIBITS:

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 Economic Development "GO Team" has not met since the last EIC meeting of October 28, 2013.

RECOMMENDED ACTION

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

Agenda Item:

3D. Kerrville Economic Development Corporation (KEDC) update regarding KEDC activities. (staff)

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

SUBJECT: Update on Kerrville Economic Development Corporation Activities

FOR AGENDA OF: November 25, 2013 **DATE SUBMITTED:** November 18, 2013

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

EXHIBITS:

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

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

RECOMMENDED ACTION

This is for information only. No recommended action.

Agenda Item:

4A. Funding agreement between the City of Kerrville Economic Improvement Corporation and Habitat for Humanity in an amount not to exceed \$375,000.00.
(staff)

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

SUBJECT: Hold a public hearing and consider a funding agreement between Habitat for Humanity and the City of Kerrville Economic Improvement Corporation

FOR AGENDA OF: November 25, 2013 **DATE SUBMITTED:** November 20, 2013

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

EXHIBITS: Draft Funding Agreement

AGENDA MAILED TO:

APPROVED FOR SUBMITTAL BY CITY MANAGER: 

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

PAYMENT TO BE MADE TO:

REVIEWED BY THE DIRECTOR OF FINANCE:

SUMMARY STATEMENT

At its meeting of October 28, 2013, the Economic Improvement Corporation considered an application by Habitat for Humanity in the amount of \$375,000 to complete infrastructure for Phase II of developing a 39 lot sub-division on Legion Drive between Meadowview and Meeker. The sub-division comprised of two phases includes 20 sites in Phase I and 19 in Phase II. In 2009, Habitat for Humanity received an EIC grant of \$418,000 for Phase I for improvements to public streets, water and wastewater mains, and drainage facilities including a retention pond. Habitat for Humanity is a non-profit organization dedicated to providing affordable housing for Kerr County low income families.

As per direction at the October 28, 2013 EIC meeting, attached is a draft funding agreement between Habitat for Humanity and the EIC in the amount of \$375,000. If approved, this funding agreement will be presented to City Council on December 10, 2013 for final consideration and approval.

RECOMMENDED ACTION

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

ECONOMIC DEVELOPMENT GRANT AGREEMENT BETWEEN HABITAT FOR HUMANITY AND THE CITY OF KERRVILLE, TEXAS ECONOMIC IMPROVEMENT CORPORATION

This Agreement entered into by and between HABITAT FOR HUMANITY, Kerr County, Texas, a Texas nonprofit corporation (“Habitat”), acting herein by and through its duly authorized President of the Board, Glenn Andrew (“Officer”), and the CITY OF KERRVILLE, TEXAS, ECONOMIC IMPROVEMENT CORPORATION (“EIC”), a Texas nonprofit corporation, established pursuant to Section 4B of Tex. Rev. Civ. Stat. Art. 5190.6 (otherwise known as the Development Corporation Act of 1979 and now codified in Chapters 501, 502, and 505 of the Texas Local Government Code) (hereafter referred to as “the Act”), acting by and through its duly authorized President.

WITNESSETH:

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

Land, buildings, equipment, facilities, expenditures, targeted infrastructure, and improvements that are required or suitable for the promotion of development and expansion of affordable housing, as defined by 42 U.S.C. Section 12745, as provided by Section 505.153 of the Act.

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

WHEREAS, Habitat manages and expends funds that it receives to build or renovate homes that it then offers to qualified families in need; and

WHEREAS, Habitat has applied for a grant from the EIC for funds necessary to develop a second phase of a Maud Jennings Subdivision (Phase II) for the purpose of providing affordable homes to deserving families in Kerrville; and

WHEREAS, the EIC has determined that such a grant complies with the Act and is in keeping with the mission of the EIC and the *City of Kerrville Economic Improvement Corporation 4B Sales Tax Funding Request Guidelines and Procedures*; and

WHEREAS, the EIC finds that it will be in the public interest to enter into an agreement with Habitat to provide sales tax revenues collected pursuant to the Act (“4B Revenues”) to Habitat for costs related to developing phase two of the subdivision; and

WHEREAS, on November 25, 2013, in a meeting that was open to the public in accordance with the Texas Open Meetings Act, EIC held a public hearing pursuant to Section 505.159 of the Act related to the proposed expenditure of 4B Revenues for the purposes provided above;

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

**ARTICLE I.
EIC'S OBLIGATIONS**

- A. EIC hereby grants Habitat Three Hundred Seventy-Five Thousand and No/100 Dollars (\$375,000.00) ("Grant") for costs related to the development and construction of public improvements for the phase two of the housing development located between Meadowview and Meeker, a residential subdivision made up of approximately nineteen (19) single family homes and herein referred to as the "Project". Such public improvements include the following:
- (1) public streets;
 - (2) water and wastewater mains; and
 - (3) drainage facilities, including a retention pond.

The improvements and work necessary therefor are more specifically defined in **Exhibit A**, attached hereto, such that the Grant makes up only partial funding of the Project.

- B. Prior to any payment from EIC, Habitat shall provide sufficient evidence in the sole opinion of EIC that it has received and/or been promised funding from other entities or sources to complete the full Project as specified in **Exhibit A**.
- C. Subject to the terms and conditions set forth in Article II, EIC will administer and provide the Grant to Habitat on a reimbursable basis. Prior to any payment from EIC, Habitat shall submit written evidence of costs, such as invoices, receipts, and bills of sale, for review and approval by the EIC or its designated representative. Following each submission and verification thereof, which may include on-site inspections to confirm the development and construction of the Project, EIC shall then reimburse Habitat for the cost.
- C. Payments made by EIC to Habitat from 4B Revenues shall be limited to the payments of "costs" as defined by the Act.
- D. In no event shall the total amount of the Grant exceed Three Hundred Seventy-Five Thousand and No/100 Dollars (\$375,000.00).
- E. Habitat specifically agrees that EIC will only be liable to Habitat for the actual amount of the Grant to be conveyed to Habitat and is not liable to Habitat for any other actual or consequential damages, direct or indirect, interest, attorney fees, or costs of court for any act of default by EIC under the terms of this Agreement.

**ARTICLE II.
HABITAT'S OBLIGATIONS**

- A. Habitat agrees to complete the Project on or before December 31, 2015. Failure to complete the Project by this date will terminate the obligation of EIC to make any additional payments of the Grant.
- B. Habitat shall keep and maintain complete and accurate records relating to the costs of the Project, separate and identifiable from its other records, for three (3) years following the termination of this Agreement. EIC and its representatives shall be entitled to inspect the records during the term of this Agreement and for three (3) years thereafter, upon reasonable notice.
- C. Following the initial payment from EIC to Habitat, Habitat shall make written quarterly reports to EIC, or before the last day of the calendar quarter. Said reports, at a minimum, must include information on the status of the Project and the estimated completion date of the Project.
- D. Habitat shall only be liable to EIC for the actual amount of the Grant to be conveyed to Habitat and shall not be liable to EIC for any other actual or consequential damages, direct or indirect, interest, attorney fees, or cost of court for any act of default by Habitat under the terms of this Agreement.

**ARTICLE III.
REIMBURSEMENT**

- A. If, on December 31, 2015, Habitat has failed to complete the Project, then Habitat shall repay EIC One Hundred Thousand and No/100 Dollars (\$100,000.00). The repayment shall be made as soon as commercially practicable after the receipt of a written demand by EIC, but in no event later than thirty (30) days from the receipt of such written demand. Upon repayment thereof, Habitat shall have no further obligation under this Agreement. EIC shall have the discretion to consider relevant circumstances before demanding repayment and may require partial repayment in appropriate circumstances. Failure to reimburse EIC within thirty (30) days of Habitat's receipt of such demand shall constitute a breach of this Agreement.
- B. Notwithstanding any other provision in this Agreement, Habitat shall in no event be required to repay any amount in excess of the Grant monies actually received under this Agreement.

**ARTICLE IV.
MERGER, CONSOLIDATION OR CHANGE IN MANAGEMENT OF
HABITAT OR CONVEYANCE OF THE SUBDIVISION**

- A. A sale of all or substantially all of the assets of Habitat, including the subdivision, will not release Habitat from its duties and responsibilities to EIC under the terms of this Agreement and will not result in the assignment of this Agreement by such acquiring entity without prior written consent from EIC, which will not be unreasonably withheld.

- B. In the event of any proposed merger, consolidation, or change in the management of Habitat with any third party not affiliated with Habitat, Habitat shall at least thirty (30) days prior to any such merger or consolidation provide EIC with information and assurance reasonably acceptable to EIC regarding: (1) the surviving entity's assumption and satisfaction of Habitat's duties and responsibilities hereunder and (2) the financial condition of the surviving entity upon such merger or other consolidation to demonstrate that the surviving entity shall have the financial condition to fully satisfy Habitat's duties and responsibilities hereunder. Failure to provide such information shall be considered a breach of this Agreement.
- C. Notwithstanding anything in this Agreement to the contrary, it is expressly understood and agreed that EIC shall have no rights to approve or disapprove any sale or merger transaction of any kind involving Habitat. In the event of any sale or merger involving Habitat, the surviving entity shall assume Habitat's obligations and rights hereunder and be entitled to any and all benefits to be received pursuant to this Agreement.

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

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

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

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

- (1) EIC, to the best of the knowledge of its Board of Directors, is legally authorized to enter into this Agreement by virtue of the statute under which it is governed and by the authorities and powers vested in it as a corporation duly and properly organized under the Act;
 - (2) Execution of this Agreement has been duly authorized by EIC;
 - (3) No litigation or governmental proceeding is pending, or, to the knowledge of any of EIC's officers, threatened against or affecting EIC, which may result in EIC's inability to meet its obligations under this Agreement; and
 - (4) EIC has no reasonable basis for believing that it has or will have incurred debts beyond its ability to pay as such debts mature, including but not limited to the obligations set forth in this Agreement.
- B. Except as expressly set forth in this Article VI, the EIC makes no other representation or warranty of any kind in connection with or related to the provisions of this Agreement.

**ARTICLE VII.
MAJOR FORCES PREVENTING HABITAT FROM CARRYING
OUT ITS OBLIGATIONS UNDER THIS AGREEMENT**

If, by reason of force majeure, such as fire, flood, windstorm, drought, or other act of God; act of war, act of terrorism, labor strike, or economic downturn affecting Habitat, Habitat is reasonably unable to fulfill its obligations under this Agreement, Habitat shall use reasonable and diligent efforts to rectify the situation to allow it to perform its obligations specified herein with all due haste. In the event that the situation cannot be rectified within six (6) months after the occurrence of the force majeure, either party may terminate this Agreement by providing thirty (30) days advance written notice to the other without further liability hereunder except that termination under this provision shall not excuse Habitat from any applicable reimbursement obligations under Article III of this Agreement.

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

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

- A. Habitat becomes insolvent. "Insolvent" is defined to mean one either has ceased to pay its debts in the ordinary course of business or cannot pay its debts as they become due, or is insolvent within the meaning of the federal bankruptcy law.
- B. The appointment of a receiver of Habitat, or of all or any substantial part of its property, and the failure of such receiver to be discharged within sixty (60) days thereafter.

- C. The adjudication of Habitat as bankrupt.
- D. The filing by Habitat of a petition to be adjudged as bankrupt, or a petition or answer seeking reorganization or admitting the material allegations of a petition filed against it in any bankruptcy or reorganization proceeding.

Should any of these conditions not be cured by Habitat within a period of three (3) months, EIC may, at its option, with written notice to Habitat, terminate this Agreement and Habitat shall have no further obligations hereunder.

ARTICLE IX. REMEDIES

- A. Except as otherwise provided in this Agreement, in the event of any default in or breach of this Agreement, by any party hereto, or any successor to such party, such defaulting or breaching party (or successor) shall upon written notice from the other, proceed immediately to cure or remedy such default or breach, and, in any event, within sixty (60) days after receipt of such notice. In the event that remedial action is not taken or not diligently pursued and the default or breach shall not be cured or remedied within a reasonable time (but in no event later than ninety (90) days from the date of notification of such breach), the aggrieved party may institute such proceedings as may be necessary or desirable in its opinion to cure and remedy such default or breach, including but not limited to, seeking specific performance and/or injunctive relief, enforcement by mandamus or by the appointment of a receiver in equity with power to charge and collect rents, purchase price payments, and loan payments and to apply the revenues from the project in accordance with this Agreement, as required by the Act.
- B. Upon breach of this Agreement by either party and the failure to cure as permitted by this Article IX, the non-breaching party shall have the sole right and discretion to either terminate this Agreement or pursue any and all remedies which may be provided by law and this Agreement. Each party acknowledges and agrees that no party hereunder shall be entitled to recover any amounts in excess of the Grant contracted for under this Agreement and that no party hereunder shall be liable to the other party for any other actual or consequential damages for any act of default by such party under the terms of this Agreement.
- C. Any delay by any party in instituting or prosecuting any actions or proceedings or otherwise asserting its rights shall not, so long as the breach or default by another party shall be continuing, operate as a waiver of such rights or to deprive it of or limit such rights in any way; nor shall any waiver in fact be made by any party with respect to any specific default by any other party except to the extent specifically waived in writing.

ARTICLE X. GENERAL PROVISIONS

- A. Severability. The provisions of this Agreement are severable, and if for any reason a provision of this Agreement is determined to be invalid by a court having competent

jurisdiction over the subject matter of the invalid provision, the invalidity shall not affect other provisions that can be given effect without the invalid provision. Further, in lieu of such illegal, invalid or unenforceable provision, there shall be added automatically as a part of this Agreement, a provision as similar in its terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.

B. Amendment. This Agreement may be amended only by written amendment signed by both parties.

C. Venue. All payments made pursuant to this Agreement and other obligations performed under this Agreement shall be made or performed in Kerrville, Kerr County, Texas. Venue shall lie in Kerr County, Texas; and this Agreement shall be governed by and construed in accordance with the laws of the State of Texas without respect to the conflict of laws rules thereof.

D. Notices. All notices given with respect to this Agreement shall be in writing and shall be deemed to have been properly given for all purposes (i) if sent by a nationally recognized overnight carrier for next business day delivery, on the first business day following deposit of such notice with such carrier unless such carrier confirms such notice was not delivered, then on the day such carrier actually delivers such notice, or (ii) if personally delivered, on the actual date of delivery, or (iii) if sent by certified U.S. Mail, return receipt requested postage prepaid, on the fifth business day following the date of mailing, or (iv) if sent by facsimile, then on the actual date of delivery (as evidenced by a facsimile confirmation) provided that a copy of the facsimile and confirmation is also sent by regular U.S. Mail, addressed as follows:

1. For EIC

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

With a copy to:

Todd Parton
City Manager
City of Kerrville
701 Main Street
Kerrville, Texas 78028
Facsimile: (830) 792-3850

2. For Habitat

President of the Board
P.O. Box 2140
Kerrville, Texas 78029-2140
Facsimile: (830) 895-7085

- E. Assignment. This Agreement shall be binding upon the parties hereto and their successors and assigns. Except as set forth in Article IV, this Agreement may not be assigned by either party without the specific prior written consent of the other, which consent will not be unreasonably withheld. In the event that a party consents to any valid assignment of this Agreement by the other party hereto, the assigning party shall be relieved of any and all obligations and liabilities on the part of such assigning party under this Agreement. Habitat may, without written consent of EIC, assign this Agreement to any entity controlled and 100% owned by Habitat or by the parent, subsidiary or affiliate of Habitat provided the entity assumes all of Habitat's obligations and liabilities under this Agreement; agrees to comply with all provisions of this Agreement; has the legal, managerial, technical and financial ability to properly perform and discharge such obligations and liabilities; and such abilities are each at least as great as those of Habitat and Habitat provides a written guarantee of such assignee's performance in a form reasonably acceptable to EIC. EIC shall be advised in writing of such assignment and of the entity's qualifications at least sixty (60) days before such assignment occurs.
- F. Parties In Interest. Nothing in this Agreement shall entitle any party other than Habitat or EIC to any claim, cause of action, remedy or right of any kind except as expressly provided in Article IV.
- G. Term. The term of this Agreement (the "Term") will commence on December 11, 2013 (the "Effective Date"), and shall terminate on the earlier of: (i) June 1, 2015, or when the requirements set forth in this Agreement are completed; (ii) when terminated by mutual agreement of the parties; (iii) when terminated pursuant to Article IX, Paragraph B; (iv) when terminated pursuant to Article VIII; (v) at Habitat's and absolute discretion, upon Habitat's return of all Grant funding to EIC that it has received under this Agreement; (vi) upon Habitat's repayment of all monies that are demanded by EIC and are in fact required to be repaid by Habitat under Article III; or, (vii) upon a termination of this Agreement by EIC pursuant to Article VIII. Upon termination of this Agreement as specified herein, all rights, duties and obligations of any kind under this Agreement shall automatically expire and terminate and be of no other force and effect.
- H. Interpretation. Each party has had the opportunity to be represented by counsel of its choice in negotiating this Agreement. This Agreement shall therefore be deemed to have been negotiated and prepared at the joint request, direction, and construction of the parties, at arms length, with the advice and participation of counsel, and will be interpreted in accordance with its terms without favor to any party.
- I. Indemnity. **IT IS UNDERSTOOD AND AGREED BETWEEN THE PARTIES THAT HABITAT, IN PERFORMING ITS OBLIGATIONS HEREUNDER, IS ACTING INDEPENDENTLY, AND EIC ASSUMES NO RESPONSIBILITY OR LIABILITY IN CONNECTION THEREWITH TO THEIR PARTIES. HABITAT AGREES TO INDEMNIFY AND HOLD HARMLESS EIC, ITS OFFICERS AND AGENTS, AGAINST ANY AND ALL CLAIMS, LAWSUITS, JUDGMENTS, COSTS AND EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE OR OTHER HARM FOR WHICH RECOVERY OF DAMAGES IS SOUGHT, SUFFERED BY ANY PERSON OR PERSONS THAT**

MAY ARISE OUT OF OR BE OCCASIONED BY HABITAT'S BREACH OF ANY OF THE TERMS OR PROVISIONS OF THIS AGREEMENT OR BY ANY NEGLIGENT ACT OR OMISSION OF HABITAT, ITS OFFICER, AGENTS, ASSOCIATES, OR EMPLOYEES, IN THE PERFORMANCE OF THIS AGREEMENT; AND NOTHING HEREIN SHALL BE CONSTRUED AS A WAIVER OF ANY GOVERNMENTAL IMMUNITY AVAILABLE TO EIC UNDER TEXAS LAW.

- J. No Joint Venture. Nothing contained in this Agreement is intended by the parties to create a partnership or joint venture between the parties.
- K. Survival of Terms. All rights, duties, liabilities and obligations accrued prior to termination shall survive termination.
- L. Entire Agreement. This Agreement represents the entire agreement of the parties with respect to the subject matter hereof.

EXECUTED AND EFFECTIVE, as of the date indicated above, by the City of Kerrville, Texas, Economic Improvement Corporation, by and through its Board President, duly authorized to execute same by action of the Board, and by Habitat for Humanity, Kerr County, Texas, acting through its duly authorized official.

CITY OF KERRVILLE, TEXAS ECONOMIC
IMPROVEMENT CORPORATION

HABITAT FOR HUMANITY
KERR COUNTY, TEXAS

David Wampler, President

By: _____
_____, President of the Board

ATTEST:

Secretary to Corporation

APPROVED AS TO FORM:

Michael C. Hayes, Attorney for the EIC



EXHIBIT "A"

Building houses, building hope

June 24, 2013

Mr. Jonas Titas
Executive Director
Kerr' Economic Development Corp.
1700 Sidney Baker
Kerrville, TX 78028

Dear Mr. Titas;

Habitat for Humanity Kerr County is currently developing a thirty-nine (39) lot sub-division on Legion Drive between Meadowview and Meeker. This sub-division is comprised of two (2) phases. Phase I has twenty (20) build sights and Phase II has nineteen (19). Eight (8) homes have been completed in Phase I, an additional home will receive Certificate of Occupancy this week, house 10 is under construction and should receive Certificate of Occupancy in October of this year. Of these homes, one is being used for a model home/office for Habitat for Humanity Kerr County. With the anticipated construction schedule Phase I should be built out by 2016 (with one lot remaining as a secure construction holding area).

Habitat for Humanity Kerr County is seeking funding to complete the infrastructure for Phase II. Attached is a pre-bid from VEI (Vordenbaum Engineering, Inc.). I have been instructed by the Board of Directors to provide this letter and bid to you for potential funding by your organization and partners you may secure.

In providing affordable housing for Kerr County low income families, Habitat for Humanity Kerr County acts as an economic development partner. The impact of the homes we construct and sell to our target audience supports the community with tax dollars, increased disposable income spent by owners, employee payroll and purchase of construction materials and other goods and services.

After reviewing the information attached please let me know what other information you require to review this request for potential funding.

A handwritten signature in black ink that reads "Karen Quanstrom". The signature is written in a cursive, flowing style.

Karen Quanstrom
Executive Director

Attachment: VEI 08093 cost estimate 140613

Maud Jennings Subdivision Phase 2

7.55 ac. Development - 19 lots - Phase II

RECEIVED
NOV 21 2013
BY: *QJB*

ESTIMATE OF PROBABLE COST

SUMMARY

A EARTHWORK	\$	118,828.85
B EROSION CONTROL	\$	13,534.00
C SANITARY SEWER	\$	82,046.70
D DRAINAGE	\$	13,400.00
E WATER	\$	60,187.30
F PAVING	\$	178,258.20
G DETENTION FACILITIES	\$	-
H PERIMETER	\$	-
I FRANCHISE UTILITIES	\$	18,550.00
J LANDSCAPE	\$	-
K ENGINEERING/SURVEY/CONSTRUCTION	\$	124,255.00
M IMPACT FEES	\$	7,971.00
N CONTINGENCY	\$	154,257.76
TOTAL DEVELOPMENT COSTS	\$	771,288.81

Assumptions:

1. Preliminary water, storm, sanitary & grading prepared by VEI
2. Estimated quantities based on layout dated 12/10/09 by VEI
3. Improvements include items benefiting the single family portion of the development only
4. Cost do not include developer related fees

Maud Jennings #08093
 7.55 ac. Development - 19 lots - Phase II
 CONSTRUCTION COST ESTIMATE

	QUANTITY	UNITS	UNIT PRICE	
A. EARTHWORK				
1	7.55	AC	427.00	3,224
2	5,000.00	CY	16.50	82,500
3	0.00	EA	10,000.00	-
4	4,070.00	CY	6.50	26,455
5	0.00	CY	10.50	-
6	19.00	EA	350.00	6,650
				<u>118,829</u>
B. EROSION CONTROL				
1	1.00	EA	550.00	550
2	1,000.00	LF	3.00	3,000
3	1.00	EA	1,000.00	1,000
4	1.00	EA	150.00	150
5	1,400.00	LF	2.00	2,800
6	2.00	EA	70.00	140
7	3.50	AC	1,000.00	3,500
8	7.00	EA	17.00	119
9	35.00	EA	65.00	2,275
				<u>13,534</u>
C. SANITARY SEWER				
1	605.00	LF	39.50	23,898
2	0.00	LF	30.00	-
3	5.00	EA	4,675.00	23,375
4	0.00	EA	2,300.00	-
5	19.00	EA	1,449.00	27,531
6	1.00	EA	1,000.00	1,000
7	0.00	EA	400.00	-
8	605.00	LF	3.92	2,372
9	605.00	LF	3.92	2,372
10	1.00	EA	1,500.00	1,500
11	0.00	EA	300.00	-
12	0.00	EA	1,000.00	-
				<u>82,047</u>

Maud Jennings #08093
 7.55 ac. Development - 19 lots - Phase II
 CONSTRUCTION COST ESTIMATE

	QUANTITY	UNITS	UNIT PRICE		
D. DRAINAGE					
1	Grade to Drain	200.00	LF	10.75	2,150
2	RipRap	450.00	SY	25.00	11,250
					<u>13,400</u>
E. WATER					
1	8" PVC	693.00	LF	23.50	16,286
2	8" Valves & box	3.00	EA	1,546.00	4,638
3	Blowoff/air release valve	0.00	EA	2,550.00	-
4	Tapping sleeve & valve	0.00	EA	4,000.00	-
5	Fire hydrants	2.00	EA	3,754.00	7,508
6	3/4" Domestic service	19.00	EA	980.00	18,620
7	Fittings	1.00	TNS	5,500.00	5,500
8	2" Irrigation service & meter box	0.00	EA	750.00	-
9	1" Irrigation service & meter box	0.00	EA	550.00	-
10	8"stub and plug	0.00	EA	785.00	-
11	Remove 8"stub	1.00	EA	562.00	562
12	4" sleeves	100.00	LF	10.00	1,000
13	Bond	1.00	LS	1,500.00	1,500
14	Testing (chlorination & pressure)	693.00	LF	2.60	1,802
15	Trench safety	693.00	LF	4.00	2,772
16	Remove Existing 8" PVC	0.00	LF	10.00	-
					<u>60,187</u>

Maud Jennings #08093
 7.55 ac. Development - 19 lots - Phase II
 CONSTRUCTION COST ESTIMATE

		QUANTITY	UNITS	UNIT PRICE	
F. PAVING					
(815 of roadway)					
1	4" Type B HMAC	2,924.00	SY	15.50	45,322
2	2" Type D HMAC	2,924.00	SY	11.25	32,895
3	12" Crushed Base	1,440.00	LF	16.78	24,163
4	6" moisture Treated Subgrade	3,230.00	SY	13.20	42,636
5	Curb/ Gutter	1,440.00	LF	14.25	20,520
6	Temp Roadway(base material)	0.00	SY	12.00	-
7	Barricades	60.00	LF	40.00	2,400
8	Street signs & poles	2.00	EA	315.00	630
9	Stop signs & poles	2.00	EA	536.00	1,072
10	Pavement header	0.00	LF	10.00	-
11	Barrier free ramp	2.00	EA	400.00	800
12	Common Sidewalk	0.00	SF	2.50	-
13	Testing	1,440.00	LF	3.00	4,320
14	Maintenance bond	1.00	LS	3,500.00	3,500
					<u>178,258</u>
G. DETENTION FACILITY					
1	Overflow Structure	0.00	EA	45,000.00	-
					<u>-</u>
J. Perimeter					
1	Fencing	0.00	LF	10.00	-
2	Gates	0.00	EA	150.00	-
					<u>-</u>
K. Franchise Utilities					
1	Franchise utilities - Electric mainline (3")	700.00	LF	12.00	8,400
2	Franchise utilities - Transformer Pads(8x8x12)	7.00	EA	250.00	1,750
3	Franchise utilities - Gas Mainline	0.00	LF	7.50	-
4	Franchise utilities - Gas Lot Service	0.00	LF	9.50	-
5	Franchise utilities - Telephone mainline	700.00	LF	12.00	8,400
					<u>18,550</u>

*Currently Cable installation is at no cost

Maud Jennings #08093
 7.55 ac. Development - 19 lots - Phase II
 CONSTRUCTION COST ESTIMATE

	QUANTITY	UNITS	UNIT PRICE	
L. Landscape				
1	0.00	EA	45,000.00	0.00
2	0.00	EA	25,000.00	0.00
3	0.00	LF	10.00	0.00
				<u>0.00</u>

M. Engineering/ Survey/Construction				
1	7,500			7,500.00
2	-			0.00
3	-			0.00
4	-			0.00
5	-			0.00
6	4,750			4,750.00
7	28,730			28,730.00
8	3,500			3,500.00
9	6,675			6,675.00
10	6,500			6,500.00
11	1,750			1,750.00
12	5,500			5,500.00
13	25,000			25,000.00
14	28,500			28,500.00
15	5,850			5,850.00
				<u>124,255.00</u>

O. Impact Fees				
1				2,500.00
2				0.00
3				0.00
4				5,000.00
5				0.00
6				0.00
7				0.00
8	-	EA	1,509.20	0.00
9	-	EA	1,441.40	0.00
10	-	EA	20.00	0.00
11	-	EA	10.00	150.00
12	-	AC	125.00	0.00
13	-	EA	50.00	0.00
14	19	EA	10.00	321.00
				<u>7,971.00</u>

P. Contingency				
1	154,257.76			154,257.76
				<u>154,257.76</u>

Agenda Item:

4B. Funding agreement between the City of Kerrville Economic Improvement Corporation and Schreiner University in an amount not to exceed \$250,000.00.
(staff)

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

SUBJECT: Hold a public hearing and consider a funding agreement between Schreiner University and the City of Kerrville Economic Improvement Corporation

FOR AGENDA OF: November 25, 2013 **DATE SUBMITTED:** November 20, 2013

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

EXHIBITS: Draft Funding Agreement

AGENDA MAILED TO:

APPROVED FOR SUBMITTAL BY CITY MANAGER: 

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

PAYMENT TO BE MADE TO:

REVIEWED BY THE DIRECTOR OF FINANCE:

SUMMARY STATEMENT

At its meeting of October 28, 2013, the Economic Improvement Corporation (EIC) considered a funding application from Schreiner University in the amount of \$250,000 to partially fund the Schreiner University Athletic and Event Center construction project. The funding will support expansion and improvement to existing athletic and event facilities which serve Schreiner University, Kerrville and the surrounding communities. The total project cost is \$11,063,405 and funding may be phased over two fiscal years.

The Schreiner Athletic and Event Center project is a 35,000 square foot building that will be located adjacent to and east of the existing Mountaineer Fitness Center. It will include a 16,000 square foot gym on the main level with storage, training and locker rooms. The main level will provide a flexible venue with support and common spaces large enough to accommodate large campus events and community programs. The second level-mezzanine will include offices, visiting team locker rooms, and a small conference room. Construction will be streamlined with existing campus architecture.

It is anticipated that the project will generate 100 temporary positions for one year with annual average wages of \$30,000 per job. Approximately 25% will be local employees and approximately 75% will be from Bexar County. This project also anticipates two new full-time employees with a payroll impact of \$80,080 and three part-time employees with a payroll impact of \$34,320 over a 24 month period.

This project is aligned with the Campus Master Plan, University Strategic Plan and the

"Fulfilling the Promise" Comprehensive Campaign for Schreiner University. The Schreiner Board of Trustees has designated this project as the priority capital project for new facilities.

The "GO Team" met on October 7, 2013 to evaluate this application and found that it is feasible in that the uses are allowed under the 4B regulations. A copy of the complete funding application was made available to the EIC Board for executive session deliberations, or to be viewed independently by the board at KEDC offices.

As per direction at the October 28, 2013 EIC meeting, attached is a draft funding agreement between Schreiner University and the EIC in the amount of \$250,000. If approved, this funding agreement will be presented to City Council on December 10, 2013 for final consideration and approval.

RECOMMENDED ACTION

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

**ECONOMIC DEVELOPMENT GRANT AGREEMENT BETWEEN SCHREINER
UNIVERSITY AND THE CITY OF KERRVILLE, TEXAS ECONOMIC
IMPROVEMENT CORPORATION**

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

WITNESSETH:

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

Expenditures required or suitable for use for professional and amateur (including children's) sports, athletic, entertainment, tourist, convention, and public park purposes and events, including stadiums, ball parks, auditoriums, amphitheaters, concert halls, parks and park facilities, open space improvements, museums, exhibition facilities, and related store, restaurant, concession, and automobile parking facilities, related area transportation facilities, and related roads, streets, and water and sewer facilities, and other related improvements that enhance any of those items described by 505.152 of the Act; and

WHEREAS, Schreiner is a provider of higher education and has been in existence since 1923; and

WHEREAS, Schreiner intends to construct a new facility, the Schreiner University Athletic and Event Center, which consists of a 35,000 square foot building and will include a 16,000 square foot gym; and

WHEREAS, Schreiner has applied for a grant from EIC for funds necessary to construct these improvements; and

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

WHEREAS, EIC finds that it will be in the public interest to enter into an agreement with Schreiner to provide sales tax revenues collected pursuant to the Act (“4B Revenues”) to Schreiner for costs related to improvements at the site of the new Schreiner University Athletic and Event Center (“Facility”); and

WHEREAS, on November 25, 2013, in a meeting that was open to the public in accordance with the Texas Open Meetings Act, EIC held a public hearing pursuant to Section

505.159 of the Act related to the proposed expenditure of 4B Revenues for the purposes provided above;

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

**ARTICLE I.
EIC'S OBLIGATIONS**

- A. EIC hereby grants Schreiner Two Hundred and Fifty Thousand and No/100 Dollars (\$250,000.00) ("Grant"). Schreiner shall use the grant proceeds for costs related to the design and construction of improvements of the Facility, herein referred to as the "Project". The Project consists of the construction of the Facility, more specifically described and with an estimation of costs as found in the attached **Exhibit A**, such that the Grant makes up only partial funding for the Project.
- B. Prior to any payment from EIC, Schreiner must provide sufficient evidence in the sole opinion of EIC that it has received and/or been promised funding from other entities or sources to complete the full Project as specified in **Exhibit A**.
- C. Subject to the terms and conditions set forth in Article II, EIC will administer and provide the Grant to Schreiner on a reimbursable basis. Prior to any payment from EIC, Schreiner shall submit written evidence of costs, such as invoices, receipts, and bills of sale, for review and approval by the EIC or its designated representative. Following each submission and verification thereof, which may include on-site inspections to confirm the development and construction of the Project, EIC shall then reimburse Schreiner for the cost.
- D. Payments made by EIC to Schreiner from 4B Revenues will be limited to the payments of "costs" as defined by the Act.
- E. In no event will the total amount of the Grant exceed Two Hundred Fifty Thousand and No/100 Dollars (\$250,000.00).
- F. Schreiner specifically agrees that EIC shall only be liable to Schreiner for the actual amount of the Grant to be conveyed to Schreiner and shall not be liable to Schreiner for any other actual or consequential damages, direct or indirect, interest, attorney fees, or costs of court for any act of default by EIC under the terms of this Agreement.

**ARTICLE II.
SCHREINER'S OBLIGATIONS**

- A. Schreiner agrees to complete its construction of the Project on or before _____, 20___. Failure to complete construction of the Project by this date will terminate the obligation of EIC to make any additional payments of the Grant.
- B. Schreiner shall continue to offer the use of its facilities to the public for events, conferences, meetings, receptions and other activities, some uses of which will be on a fee basis. Under certain specific circumstances, Schreiner shall continue to consider

waiving or reducing such fees. Such public uses and the waiver/reduction of fees policy shall include the Facility.

- C. Schreiner shall keep and maintain complete and accurate records relating to the costs of constructing the Project, separate and identifiable from its other records, for three (3) years following the termination of this Agreement. EIC and its representatives shall be entitled to inspect the records during the term of this Agreement and for three (3) years thereafter, upon reasonable notice.
- D. Following the initial payment from EIC to Schreiner, Schreiner shall make written quarterly reports to EIC, on or before the last day of each calendar quarter. Said reports, at a minimum, shall include information on the status of the Project and the estimated opening date of the Facility.
- E. Schreiner shall only be liable to EIC for the actual amount of the Grant to be conveyed to Schreiner and shall not be liable to EIC for any other actual or consequential damages, direct or indirect, interest, attorney fees, or cost of court for any act of default by Schreiner under the terms of this Agreement.

ARTICLE III. REIMBURSEMENT

- A. If, on _____, 20__, Schreiner has failed to open to the public and begin conducting its operations and activities of the Facility, then Schreiner shall repay EIC One Hundred Thousand and No/100 Dollars (\$100,000.00). The repayment shall be made as soon as commercially practicable after the receipt of a written demand by EIC, but in no event later than thirty (30) days from the receipt of such written demand. Upon repayment thereof, Schreiner shall have no further obligation under this Agreement. EIC shall have the discretion to consider relevant circumstances before demanding repayment and may require partial repayment in appropriate circumstances. Failure to reimburse EIC within thirty (30) days of Schreiner's receipt of such demand shall constitute a breach of this Agreement.
- B. Notwithstanding any other provision in this Agreement, Schreiner shall in no event be required to repay any amount in excess of the Grant monies actually received under this Agreement.

ARTICLE IV. SALE OF PROJECT, MERGER OR CONSOLIDATION OF SCHREINER

- A. A sale of all or substantially all of the assets of Schreiner or its Facility shall not release Schreiner from its duties and responsibilities to EIC under the terms of this Agreement and shall not result in the assignment of this Agreement by such acquiring entity without prior written consent from EIC, which will not be unreasonably withheld; provided, that Schreiner's proposed successor shall have the financial condition to fully satisfy Schreiner's duties and responsibilities hereunder and agrees to assume Schreiner's responsibilities under this Agreement. EIC may, in its sole discretion, reasonably determine whether such proposed successor's financial condition is satisfactory.

- B. In the event of any proposed merger or other consolidation of Schreiner with any third party not affiliated with Schreiner, Schreiner shall at least thirty (30) days prior to any such merger or consolidation provide EIC with information and assurance reasonably acceptable to EIC and Schreiner regarding: (1) the surviving entity's assumption and satisfaction of Schreiner's obligations hereunder and (2) the financial condition of the surviving entity upon such merger or other consolidation to demonstrate that the surviving entity shall have the financial condition to fully satisfy Schreiner's duties and responsibilities hereunder. Failure to provide such information shall be considered a breach of this Agreement.
- C. Notwithstanding anything in this Agreement to the contrary, it is expressly understood and agreed that EIC shall have no rights to approve or disapprove any sale or merger transaction of any kind involving Schreiner or its affiliates. In the event of any sale or merger involving Schreiner or its affiliates, the surviving entity shall assume Schreiner's obligations and rights hereunder and be entitled to any and all benefits to be received pursuant to this Agreement.

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

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

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

- A. EIC represents and warrants as of the date hereof:
- (1) EIC, to the best of the knowledge of its Board of Directors, is legally authorized to enter into this Agreement by virtue of the statute under which it is governed and by the authorities and powers vested in it as a corporation duly and properly organized under the Act;
 - (2) Execution of this Agreement has been duly authorized by EIC;
 - (3) No litigation or governmental proceeding is pending, or, to the knowledge of any of EIC's officers, threatened against or affecting EIC, which may result in EIC's inability to meet its obligations under this Agreement; and
 - (4) EIC has no reasonable basis for believing that it has or will have incurred debts beyond its ability to pay as such debts mature, including but not limited to the obligations set forth in this Agreement.
- B. Except as expressly set forth in this Article VI, the EIC makes no other representation or warranty of any kind in connection with or related to the provisions of this Agreement.

**ARTICLE VII.
MAJOR FORCES PREVENTING SCHREINER FROM CARRYING
OUT ITS OBLIGATIONS UNDER THIS AGREEMENT**

If, by reason of force majeure, such as fire, flood, windstorm, drought, or other act of God, act of war, act of terrorism, labor strike, or economic downturn affecting Schreiner, Schreiner is reasonably unable to fulfill its obligations under this Agreement, Schreiner shall use reasonable and diligent efforts to rectify the situation to allow it to perform its obligations specified herein with all due haste. In the event that the situation cannot be rectified within six (6) months after the occurrence of the force majeure, either party may terminate this Agreement by providing thirty (30) days advance written notice to the other without further liability hereunder except that termination under this provision shall not excuse Schreiner from any applicable reimbursement obligations under Article III of this Agreement.

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

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

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

- B. The appointment of a receiver of Schreiner, or of all or any substantial part of its property, and the failure of such receiver to be discharged within sixty (60) days thereafter.
- C. The adjudication of Schreiner as bankrupt.
- D. The filing by Schreiner of a petition to be adjudged as bankrupt, or a petition or answer seeking reorganization or admitting the material allegations of a petition filed against it in any bankruptcy or reorganization proceeding.

Should any of these conditions not be cured by Schreiner within a period of three (3) months EIC may, at its option, with written notice to Schreiner, terminate this Agreement and Schreiner shall have no further obligations hereunder.

ARTICLE IX. REMEDIES

- A. Except as otherwise provided in this Agreement, in the event of any default in or breach of this Agreement, by any party hereto, or any successor to such party, such defaulting or breaching party (or successor) shall upon written notice from the other, proceed immediately to cure or remedy such default or breach, and, in any event, within sixty (60) days after receipt of such notice. In the event that remedial action is not taken or not diligently pursued and the default or breach shall not be cured or remedied within a reasonable time (but in no event later than ninety (90) days from the date of notification of such breach), the aggrieved party may institute such proceedings as may be necessary or desirable in its opinion to cure and remedy such default or breach, including but not limited to, seeking specific performance and/or injunctive relief, enforcement by mandamus or by the appointment of a receiver in equity with power to charge and collect rents, purchase price payments, and loan payments and to apply the revenues from the project in accordance with this Agreement, as required by the Act.
- B. Upon breach of this Agreement by either party and the failure to cure as permitted by this Article IX, the non-breaching party shall have the sole right and discretion to either terminate this Agreement or pursue any and all remedies which may be provided by law and this Agreement. Each party acknowledges and agrees that no party hereunder shall be entitled to recover any amounts in excess of the Grant contracted for under this Agreement and that no party hereunder shall be liable to the other party for any other actual or consequential damages for any act of default by such party under the terms of this Agreement.
- C. Any delay by any party in instituting or prosecuting any actions or proceedings or otherwise asserting its rights shall not, so long as the breach or default by another party shall be continuing, operate as a waiver of such rights or to deprive it of or limit such rights in any way; nor shall any waiver in fact be made by any party with respect to any specific default by any other party except to the extent specifically waived in writing.

**ARTICLE X.
GENERAL PROVISIONS**

- A. Severability. The provisions of this Agreement are severable, and if for any reason a provision of this Agreement is determined to be invalid by a court having competent jurisdiction over the subject matter of the invalid provision, the invalidity shall not affect other provisions that can be given effect without the invalid provision. Further, in lieu of such illegal, invalid or unenforceable provision, there shall be added automatically as a part of this Agreement, a provision as similar in its terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.
- B. Amendment. This Agreement may be amended only by written amendment signed by both parties.
- C. Venue. All payments made pursuant to this Agreement and other obligations performed under this Agreement shall be made or performed in Kerrville, Kerr County, Texas. Venue shall lie in Kerr County, Texas; and this Agreement shall be governed by and construed in accordance with the laws of the State of Texas without respect to the conflict of laws rules thereof.
- D. Notices. All notices given with respect to this Agreement shall be in writing and shall be deemed to have been properly given for all purposes (i) if sent by a nationally recognized overnight carrier for next business day delivery, on the first business day following deposit of such notice with such carrier unless such carrier confirms such notice was not delivered, then on the day such carrier actually delivers such notice, or (ii) if personally delivered, on the actual date of delivery, or (iii) if sent by certified U.S. Mail, return receipt requested postage prepaid, on the fifth business day following the date of mailing, or (iv) if sent by facsimile, then on the actual date of delivery (as evidenced by a facsimile confirmation) provided that a copy of the facsimile and confirmation is also sent by regular U.S. Mail, addressed as follows:
1. For EIC
President – David Wampler
City of Kerrville, Texas, Economic Improvement Corporation
701 Main Street
Kerrville, Texas 78028
Facsimile: (830) 792-3850

With a copy to:
City Manager
City of Kerrville
701 Main Street
Kerrville, Texas 78028
Facsimile: (830) 792-3850
 2. For Schreiner
Tim Summerlin
President

Schreiner University
2100 Memorial Boulevard
Kerrville, Texas 78028
Facsimile: (830) 792-7207

- E. Assignment. This Agreement shall be binding upon the parties hereto and their successors and assigns. Except as set forth in Article IV, this Agreement may not be assigned by either party without the specific prior written consent of the other, which consent will not be unreasonably withheld. In the event that a party consents to any valid assignment of this Agreement by the other party hereto, the assigning party shall be relieved of any and all obligations and liabilities on the part of such assigning party under this Agreement. Schreiner may, without written consent of EIC, assign this Agreement to any entity controlled and 100% owned by Schreiner or by the parent, subsidiary or affiliate of Schreiner provided the entity assumes all of Schreiner's obligations and liabilities under this Agreement; agrees to comply with all provisions of this Agreement; has the legal, managerial, technical and financial ability to properly perform and discharge such obligations and liabilities; and such abilities are each at least as great as those of Schreiner and Schreiner provides a written guarantee of such assignee's performance in a form reasonably acceptable to EIC. EIC shall be advised in writing of such assignment and of the entity's qualifications at least sixty (60) days before such assignment occurs.
- F. Parties In Interest. Nothing in this Agreement shall entitle any party other than Schreiner or EIC to any claim, cause of action, remedy or right of any kind except as expressly provided in Article IV.
- G. Term. The term of this Agreement (the "Term") will commence on December 11, 2013 (the "Effective Date"), and will terminate on the earlier of: (i) either on _____, 2013, or when the requirements set forth in this Agreement are completed, whichever date is later; (ii) when terminated by mutual agreement of the parties; (iii) when terminated pursuant to Article IX, Paragraph B; (iv) when terminated pursuant to Article VIII; (v) at Schreiner's sole and absolute discretion, upon Schreiner's return of all Grant funding to EIC that it has received under this Agreement; (vi) upon Schreiner's repayment of all monies that are demanded by EIC and are in fact required to be repaid by Schreiner under Article III; or, (vii) upon a termination of this Agreement by EIC pursuant to Article VIII. Upon termination of this Agreement as specified herein, all rights, duties and obligations of any kind under this Agreement shall automatically expire and terminate and be of no other force and effect.
- H. Interpretation. Each party has had the opportunity to be represented by counsel of its choice in negotiating this Agreement. This Agreement shall therefore be deemed to have been negotiated and prepared at the joint request, direction, and construction of the parties, at arms length, with the advice and participation of counsel, and will be interpreted in accordance with its terms without favor to any party.
- I. Indemnity. **IT IS UNDERSTOOD AND AGREED BETWEEN THE PARTIES THAT SCHREINER, IN PERFORMING ITS OBLIGATIONS HEREUNDER, IS ACTING INDEPENDENTLY, AND EIC ASSUMES NO RESPONSIBILITY OR LIABILITY IN CONNECTION THEREWITH TO THEIR PARTIES.**

SCHREINER AGREES TO INDEMNIFY AND HOLD HARMLESS EIC, ITS OFFICERS AND AGENTS, AGAINST ANY AND ALL CLAIMS, LAWSUITS, JUDGMENTS, COSTS AND EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE OR OTHER HARM FOR WHICH RECOVERY OF DAMAGES IS SOUGHT, SUFFERED BY ANY PERSON OR PERSONS THAT MAY ARISE OUT OF OR BE OCCASIONED BY SCHREINER'S BREACH OF ANY OF THE TERMS OR PROVISIONS OF THIS AGREEMENT OR BY ANY NEGLIGENT ACT OR OMISSION OF SCHREINER, ITS OFFICER, AGENTS, ASSOCIATES OR EMPLOYEES, IN THE PERFORMANCE OF THIS AGREEMENT; AND NOTHING HEREIN SHALL BE CONSTRUED AS A WAIVER OF ANY GOVERNMENTAL IMMUNITY AVAILABLE TO EIC UNDER TEXAS LAW.

- J. No Joint Venture. Nothing contained in this Agreement is intended by the parties to create a partnership or joint venture between the parties.
- K. Survival of Terms. All rights, duties, liabilities and obligations accrued prior to termination shall survive termination.
- L. Entire Agreement. This Agreement represents the entire agreement of the parties with respect to the subject matter hereof.

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

CITY OF KERRVILLE, TEXAS ECONOMIC
IMPROVEMENT CORPORATION

SCHREINER UNIVERSITY

David Wampler, President

By: _____
Printed Name: _____
Its: _____

ATTEST:

Cheryl Brown, Recording Secretary

APPROVED AS TO FORM:

Michael C. Hayes, Attorney for the EIC

Statement of Need

In 2013, Schreiner joined the Southern Collegiate Athletic Conference (SCAC), comprised of colleges known for solid academics and competitive athletics. Many consider the SCAC the premier NCAA Division III conference in the West; however, SCAC officials have told us that we will not be considered for conference basketball tournaments until we can provide adequate facilities. Schreiner is the only school so excluded. The schools of the SCAC are Trinity, Southwestern, Austin College, University of Dallas, Texas Lutheran, Colorado College and Centenary.

The existing gym was built in 1980 for a campus community of less than half our current size. Both athletic and intramural facilities face enormous scheduling challenges. Providing practice space for nearly 300 athletes at any given time places an enormous strain on the existing space. Practice schedules often start at 6 a.m. for team sports, and intramural activities typically take place from 9 p.m. to 11 p.m. to accommodate everyone. Though team sports are seasonal, athletes train continuously. Cross country, softball, and baseball athletes practice inside in early spring until the weather permits them to practice outside.

PROJECT BUDGET AND TIMELINE

Estimate of Probable Cost May 2013-- <i>Actual Costs Expected Fall 2013</i>	
Item	Cost Estimate
General Conditions	\$342,741
Site Work	\$523,169
Concrete	\$343,191
Masonry	\$694,751
Structural Steel	\$1,124,223
Carpentry/Millwork	\$102,440
Moisture Protection	\$340,975
Doors & Windows	\$344,216
Finishes	\$973,313
Specialties	\$163,585
Elevator	\$49,500
Fire Protection	\$154,530
Plumbing	\$367,815
HVAC	\$984,854
Electrical	\$501,116
Construction Fee	\$305,470
Gym floors, Bleachers, Scoring Systems, FF&E and Parking	\$2,284,338
Building Maintenance Endowment	\$1,463,178
TOTAL	\$11,063,405

Agenda Item:

5A. Funding Request from Playhouse 2000, Inc. in the amount of \$500,000.00. (staff)

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

SUBJECT: Consider a funding request by Playhouse 2000, Inc. in the amount of \$500,000 for improvements to the Cailloux Theater

FOR AGENDA OF: November 25, 2013 **DATE SUBMITTED:** November 22, 2013

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

EXHIBITS: Performing Arts Center Development and Operation Agreement Between the City of Kerrville and Playhouse, 2000 Inc.; page 9, section 3.21

AGENDA MAILED TO:

APPROVED FOR SUBMITTAL BY CITY MANAGER: 

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

PAYMENT TO BE MADE TO:

REVIEWED BY THE DIRECTOR OF FINANCE:

SUMMARY STATEMENT

At its meeting of May 20, 2013, the Economic Improvement Corporation (EIC) considered an application from Playhouse 2000, Inc. (P2K) for multiple projects. One of the projects that was supported but deferred until more detail was available was for the construction of a support facility to the Cailloux Theater.

At its meeting of October 28, 2013, the EIC considered a funding application from P2K on the follow-up application in the amount of \$500,000 to construct a 6,000 square foot facility addition. The overall cost for the project is \$750,000 and will consist of expanded dressing / green-rooms, rehearsal / classroom space, scenic and costume construction spaces, and storage. The building will be placed immediately behind the Cailloux Theater facing the parking lot with an attractive side facade facing Jefferson Street. Peter Lewis Architect + Associates prepared the conceptual plans and proposed exterior materials are limestone veneer to complement the Cailloux Theater, and the general downtown theme. If approved, the goal is to break ground no later than fall of 2014 with project completion in spring 2015.

Staff was directed by the EIC to review the operational and maintenance agreement between the City and P2K as it pertained to the requirement to transfer the VK Garage to the City of Kerrville. Section 3.21 of the agreement addresses the conveyance of the property by P2K. Staff's review of the provisions contained within this section is not yet complete.

Since the project would be city managed and owned, the City Council must authorize staff to submit a funding request. City Council is scheduled to consider this item at its regular meeting of December 10, 2013. Should City Council authorize a request for funding, it would be presented to the EIC at its January 27, 2014 meeting.

RECOMMENDED ACTION

City staff will be prepared to provide more detailed information on the property conveyance provisions of the agreement as they pertain to the VK Garage and will be requesting additional direction from the EIC Board.

certification by Playhouse's architect and construction manager that the construction performed conforms with the approved plans and specifications, and (3) a certificate of occupancy has been issued in accordance with City ordinances, City shall issue final acceptance of the Project Improvements, provided, however, that warranty obligations of the contractor(s) and correction of defective work shall not by such acceptance become the responsibility of the City, but shall remain the responsibility of Playhouse and its construction manager and its contractor(s).

Section 3.19 Exemption From Sales and Use Taxes:

Except for work done on land owned by Playhouse which is not a functional part of the Facilities, the Project Improvements and all Project construction work, materials, equipment, and supplies shall belong to City. City acknowledges and agrees that all amounts paid by Playhouse to the contractors and suppliers will be paid as agent for and on behalf of City in accordance with the provisions of this Agreement. City qualifies for exemption from state and local sales taxes, pursuant to the provisions of Section 151.309 of the Texas Tax Code, as amended. To the extent permitted by law, Playhouse shall not pay any sales or use taxes which would otherwise be payable in connection with the construction of the Project Improvements.

Section 3.20 Fee Simple Title to City:

The parties acknowledge that fee simple title to the Project Improvements shall, upon final written acceptance of the City Manager, automatically vest in City without any further action by either party hereto, free and clear of all liens and other encumbrances arising by, through or under Playhouse, and Playhouse agrees to take no action before, during or after construction that would prejudice City's ability to secure clear fee simple title to the Auditorium and the Facilities.

Section 3.21 Conveyance of Real Property Acquired by Playhouse:

It is understood and acknowledged by City that Playhouse may acquire by purchase, gift, or other means fee simple title to real property within the vicinity of the Property on which may be constructed a portion of the Project Improvements or which may otherwise be used in conjunction with the management and operations of the Facilities. Playhouse agrees to convey such real property to City in fee simple and indefeasible title, at no cost to City, upon completion of construction of the Project Improvements if (1) a portion of the Auditorium is constructed on the property, or (2) the property constitutes a functional part of the Facilities such that the operation of the Facilities will be negatively impacted if such property and the improvements thereon are not owned by the City. For purposes of this Section 3.21, property purchased by Playhouse and used for purposes including, but not limited to, parking lots, driveways, utilities, storage buildings, and other types of uses reasonably necessary for the operation of the Facilities for their intended and designed use shall be deemed functional parts of the Facilities. Parking lots and driveways on such other Playhouse property, intended for use only in the operation of such other property, shall not be deemed a functional part of the Facilities, nor shall such other Playhouse property be deemed a functional part of the Facilities merely because it is connected to the Facilities by a walkway.

Section 3.22 Construction Warranties:

All rights under construction warranties shall be assigned to City and administered by Playhouse or its construction manager; provided, however, that any net funds received after deduction of expenses by Playhouse in settlement or compromise of, or otherwise resulting from, rights associated with any of such warranties shall belong to, and promptly be paid to Playhouse, to the

Agenda Item:

5B. Funding request from the City of Kerrville for the improvements to the history center in the amount of \$400,000.00. (staff)

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

SUBJECT: Consideration and direction to city staff relating to the funding request by the City of Kerrville for renovations and improvements for Phase III of the Library Campus Renovation Project - Kerr Regional History Center

FOR AGENDA OF: November 25, 2013 **DATE SUBMITTED:** November 20, 2013

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

EXHIBITS:

AGENDA MAILED TO:

APPROVED FOR SUBMITTAL BY CITY MANAGER: *TP*

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

PAYMENT TO BE MADE TO:

REVIEWED BY THE DIRECTOR OF FINANCE:

SUMMARY STATEMENT

At its meeting of October 22, 2013, the City Council authorized staff to submit a funding request to the Economic Improvement Corporation (EIC) in the amount of \$400,000 for Phase III of the Butt-Holdsworth Memorial Library Campus Renovation Project which includes plans for renovations of the Kerr Regional History Center for approximately \$800,000.

At its meeting of October 28, 2013, the EIC considered a funding application from the City of Kerrville for the History Center project in the amount of \$400,000. As directed by the EIC, a tour of the History Center was held on November 11, 2013.

RECOMMENDED ACTION

City staff is requesting consideration and direction relating to the funding request by the City of Kerrville for renovations and improvements for Phase III of the Library Campus Renovation Project - Kerr Regional History Center.