

AGENDA FOR REGULAR MEETING

CITY OF KERRVILLE, TEXAS

ECONOMIC IMPROVEMENT CORPORATION

MONDAY, FEBRUARY 24, 2014 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, FEBRUARY 24, 2014, 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 special meeting held January 23, 2014 and the regular meeting held January 27, 2014.

3. MONTHLY REPORTS:

3A. Monthly financials for January 2014. (staff)

3B. Projects update. (staff)

River Trail and Parks projects

Cailloux Theater Lighting project

Streetscape

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

4. PUBLIC HEARING AND POSSIBLE ACTION:

4A. Public hearing to consider a funding agreement between the City of Kerrville, Texas Economic Improvement Corporation, and the Kerrville Area Chamber of Commerce for Kerrfest in an amount not to exceed \$25,000.00. (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: February 21, 2014 at :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. Public hearing to consider a funding agreement between the City of Kerrville, Texas Economic Improvement Corporation, and Kerrville Festival of the Arts to host a downtown arts event in an amount not to exceed \$20,000.00. (staff)

4C. Public hearing to consider a funding agreement between the City of Kerrville, Texas Economic Improvement Corporation, and the Kerrville Folk Festival for event transportation services during Memorial Day weekend in an amount not to exceed \$7,800.00. (staff)

4D. Public hearing to consider a funding agreement between the City of Kerrville, Texas Economic Improvement Corporation, and Comanche Trace for the Texas Wine and Brew Festival in an amount not to exceed \$18,643.00. (staff)

4E. Public hearing to consider a funding agreement between the City of Kerrville, Texas Economic Improvement Corporation, and Kerrville's Fourth on the River in an amount not to exceed \$23,100.00. (staff)

4F. Public hearing to consider a funding agreement between the City of Kerrville, Texas Economic Improvement Corporation, and the Historic Downtown Business Alliance for the Sock Hop on the Square event in an amount not to exceed \$5,016.00. (staff)

4G. Public hearing to consider a funding agreement between the City of Kerrville, Texas Economic Improvement Corporation, and the High Five Events for the Kerrville Triathlon Festival in an amount not to exceed \$18,600.00. (staff)

5. CONSIDERATION AND POSSIBLE ACTION:

5A. Update on the River Trail project from Riverside Nature Center going west to include Pedestrian Bridge Study and cost analysis for a south side trail; provide direction to staff. (staff)

5B. Update on Riverfront Boardwalk Concept Study; provide direction to staff. (staff)

5C. Discuss and provide direction to City staff regarding amendments to the Fiscal Year 2014 budget and schedule a workshop for the Fiscal Year 2015 budget. (staff)

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Cheryl Brown

Deputy City Secretary, City of Kerrville, Texas

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.

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.

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Cheryl Brown

Deputy City Secretary, City of Kerrville, Texas

Agenda Item:

2A. Minutes of the special meeting held on January 23, 2014 and the regular meeting held on January 27, 2014. (staff)

**CITY OF KERRVILLE, TEXAS ECONOMIC IMPROVEMENT CORPORATION
BUDGET WORKSHOP MEETING**

January 23, 2014

On Thursday, January 23, 2014, the Budget Workshop meeting of the City of Kerrville, Texas Economic Improvement Corporation, was called to order at 8:30 a.m. by David Wampler, President, in the Upstairs Conference Room of 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, Deputy City Manager
Cheryl Brown, Deputy City Secretary
Mike Hayes, City Attorney
Sandra Yarborough, Director of Finance
Ashlea Boyle, Special Projects Manager
Malcolm Matthews, Director of Parks and Recreation

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

Jonas Titas, Executive Director of the Kerrville Economic Development Corporation

BOARDWALK PRESENTATION

David Martin, Garrett Harmon and David Tritenbach gave a power point presentation of their original concept for the city's boardwalk from the year 2005. They answered questions from staff and the board.

Mr. Parton spoke regarding the city's current concept for a boardwalk, and the challenges that were being encountered in the efforts to do boring in the proposed area, due to the difficulty in getting drills and equipment down to the location.

DISCUSSION OF MULTI-YEAR FINANCIAL AND CAPITAL PROJECT PLAN

Mr. Parton reviewed the multi-year financial and capital project plan for the board. He also reviewed the projected increase in yearly sales tax revenue, and the costs involved in the proposed projects in the current budget.

Mr. Parton listed the proposed future projects, which included streetscape, and an athletic complex. He answered questions from the board regarding the budgeted amounts for the future years for projects. The board directed staff to get more firm numbers for the proposed future projects, and to present the resulting report to the board at a future meeting.

Mr. Wampler reported that KEDC met with a strategist who suggested they develop a list of the available buildings in the downtown area into which a prospective business could move.

Mr. Early reported that the "GO" Team reviewed eight funding requests, and that seven of them would be presented to the board at their next meeting.

ADJOURNMENT

The meeting was adjourned by Mr. Wampler at 10:20 a.m.

APPROVED: _____

David Wampler, President

ATTEST:

Cheryl Brown
Deputy City Secretary

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

January 27, 2014

On Monday, January 27, 2014, 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.

The invocation was offered by Larry Howard.

Members Present:

David Wampler, President
Kenneth Early, Vice President
Rex Boyland, Secretary
Gary Cochrane (arrived at 4:05 p.m.)
Larry Howard
Stacie Keeble
Polly Rickert

Members Absent:

City Executive Staff Present:

Todd Parton, City Manager
Kristine Ondrias, Deputy City Manager
Cheryl Brown, Deputy City Secretary
Mike Hayes, City Attorney
Sandra Yarbrough, Director of Finance
Ashlea Boyle, Special Projects Manager
Malcolm Matthews, Director of Parks and Recreation
Kim Meismer, Director of General Operations

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

Jonas Titas, Executive Director of the Kerrville Economic Development Corporation

1. VISITORS/CITIZENS FORUM:

No one spoke.

2. APPROVAL OF THE MINUTES:

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

Mr. Early moved to approve the minutes for the regular meeting held November 25, 2013. Ms. Rickert seconded, and the motion passed 6-0

3. MONTHLY REPORTS:

3A. Monthly financials for October 2013

Ms. Yarbrough reported that the beginning balance in the sales tax improvement fund was \$2,898,696.00. During the month of December, there was \$214,892.00

in revenue, and \$61,127.00 in expenses, leaving an ending balance as of December 31, 2013 of \$3,052,461.00. She reported that the sales tax revenue was 6.47% ahead of the projected budget. She also reviewed the Capital Projects Fund. She reviewed the cash and investments accounts.

3B. Capital projects update
River Trail and Parks projects

Mr. Matthews reviewed the progress of the projects. He stated that staff is working on coordinating multiple contractors, the design teams, and the bidding process. For the parks and river trail projects, from Tranquility Island to G Street, there was to be one general contractor's bid. He stated that specialty contractors for the interactive fountain project would be sought through Texas Buy Board. These projects would be coordinated to "dovetail" with each other. City staff would also be utilized for as much of the work as possible, in order to preserve funds.

Mr. Matthews reported that the City is going to appeal the decision regarding the easement hearing for the Rio Robles property.

Cailloux Theater improvements

Ms. Boyle reported that this would be a two part project, with the first portion beginning in April, and the remaining work beginning in early fall.

Streetscape

Ms. Boyle reported that the final proposed project would be presented to the City Council at their next meeting.

3C. Update regarding "GO Team" activities

Ms. Boyle reported that the "GO Team" met twice since the last EIC meeting, and had reviewed eight applications. One of the applications was determined to be not recommended for funding, and the remaining seven were on the agenda for this meeting. She reported that the total funding amount requested for the seven applicants was approximately \$118,000.00, and the maximum available allocated amount according to the guidelines was \$100,000.00.

4. INFORMATION AND DISCUSSION:

4A. Update on reuse pond feasibility study

Ms. Ondrias reported Freese & Nichols, Inc. (FNI) was contracted for a feasibility study for the reuse pond(s). The geotech and environmental portions were done. The landfill expansion study was done simultaneously with this study. There were plans to return to City Council in April or May with a more firm project proposal. Initial findings were that the pond(s) could be constructed at the proposed site. Staff asked FNI to prepare a report with the construction totals for the proposed phase one, which would consist of approximately 150,000,000 gallons. When that report is complete, staff will return to City Council for further direction. Further reports will be presented to the board at future meetings.

5. PUBLIC HEARING AND POSSIBLE ACTION:

5A. Public hearing to consider funding agreement between the City of Kerrville, Texas Economic Improvement Corporation, the City of Kerrville, and Playhouse 2000, Inc. in the amount of \$500,000.00 for construction of a support facility to be owned by the City and used in conjunction with the Cailloux Theater for performing arts

The public hearing was opened at 4:25 p.m. No one from the public spoke, and the public hearing was closed at 4:25 p.m.

Ms. Keeble moved to approve the funding agreement as presented. Mr. Howard seconded, and the motion passed 7-0.

6. CONSIDERATION AND POSSIBLE ACTION:

6A. Hear a proposal regarding the construction of an athletics complex for the City of Kerrville

Mr. Ben Modisett offered the services of the Cailloux Foundation as a partner in the construction of the athletic complex.

The board deferred a decision on this matter to a future meeting when further information was available.

ITEMS 6B THROUGH 6H, funding requests from the Kerrville Area Chamber of Commerce for Kerrfest in the amount of \$25,000.00; Kerrville Festival of Arts to host an arts event in downtown Kerrville on Memorial Day weekend in the amount of \$20,000.00; the Kerrville Folk Festival for event transportation services during the Memorial Day Weekend in the amount of \$7,800.00; Comanche Trace for the Hill Country Wine and Brew Festival in the amount of \$18,643.00; Kerrville's Fourth on the River in the amount of \$23,100.00; Historic Downtown Business Alliance for Sock Hop on the Star in the amount of \$5,016.00; and High Five Events for the Kerrville Triathlon Festival in the amount of \$18,600.00;

Mr. Wampler suggested the board discuss the projects as a whole group, and not have presentations for each one separately, as the board members received the applications in their agenda packets. He asked the board if anyone had any questions regarding any of the requests.

The board discussed the total of the amounts requested, and whether they should approve the whole amount, or attempt to decrease the amounts to stay under the \$100,000.00 approved in the budget.

Mr. Howard moved to approve all seven of the funding requests as presented.

Ms. Rickert seconded. The motion passed 6-1 with Mr. Wampler, Mr. Cochran, Mr. Howard, Mr. Early, Ms. Keebler and Ms. Rickert voting in favor, and Mr. Boyland voting in opposition.

6I. Discussion and direction to City staff regarding a multi-year financial and capital project plan

Mr. Parton reviewed the things that were discussed at the workshop, including the debt service proposal. He reported that he was waiting for the final information from FNI for the proposed boardwalk project, the river trail bridges, and the Village West utility expansion.

Mr. Parton stated that staff would bring further information to the board at a future meeting.

5. EXECUTIVE SESSION:

There was no executive session.

ANNOUNCEMENTS:

None

The meeting was adjourned at 4:50 p.m.

APPROVED: _____

David Wampler, President

ATTEST:

Cheryl Brown
Deputy City Secretary

Agenda Item:

3A. Monthly financials for January 2014. (staff)

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

SUBJECT: EIC Financials

AGENDA DATE: February 24, 2014 **DATE SUBMITTED:** February 20, 2014

SUBMITTED BY: Sandra Yarbrough *SY* **CLEARANCES:**
Director of Finance

EXHIBITS: Monthly Financials

APPROVED FOR SUBMITTAL BY CITY MANAGER: *JP*

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

PAYMENT TO BE MADE TO:

REVIEWED BY THE FINANCE DIRECTOR:

SUMMARY STATEMENT

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

RECOMMENDED ACTION

Recommend acceptance of the financials.

CITY OF KERRVILLE
Economic Improvement Corporation
Sales Tax Improvement Fund

Cash Balance as of January 1, 2014		\$ 3,053,239
Deposits:		
Sales Tax	\$ 229,761	
Interest Revenue	\$ 331	
	<hr/>	
	\$ 230,092	
Expenses:		
Meeting Expense	\$ 63	
Administrative Service Fee	\$ 8,333	
Transfer for Debt Service - 1999	\$ 13,600	
Transfer for Debt Service - 2012	\$ 14,167	
Transfer - Park Improvements	\$ 25,000	
Total Expenses	<hr/>	
	\$ 61,163	
Revenues Over (Under) Expenditures		<hr/>
		\$ 168,930
Ending Cash Balance as of January 31, 2014		<u><u>\$ 3,222,168</u></u>

City of Kerrville
Economic Improvement Corporation
Sales Tax Improvement Fund - Revenue and Expense Statement
For the month ending January 31, 2014

	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	\$ 229,761	\$ 919,838	33.45%	\$ 1,830,162
Interest	\$ 5,000	\$ 331	\$ 1,414	28.28%	\$ 3,586
Transfer In	\$ -	\$ -	\$ 7,070	6911.00%	\$ -
TOTAL REVENUE	<u>\$ 2,755,000</u>	<u>\$ 230,092</u>	<u>\$ 928,322</u>	<u>33.70%</u>	<u>\$ 1,833,748</u>
	Annual Budget	Current Period	Y-T-D Actual & Encumbrance	% of Budget	Budget Balance
EXPENDITURES:					
Administrative					
Advertising/Supplies	\$ 500	\$ 63	\$ 90	18.05%	\$ 410
Transfer to Debt Service Fund	\$ 68,000	\$ 13,600	\$ 54,400	80.00%	\$ 13,600
Transfer to Debt Service Fund - River Trail	\$ 170,000	\$ 14,167	\$ 56,667	33.33%	\$ 113,333
Economic Development Governing Body	\$ 60,000	\$ -	\$ 60,000	100.00%	\$ -
Annual Disclosure Fee	\$ 3,500	\$ -	\$ -	0.00%	\$ 3,500
River Trail Contribution	\$ 300,000	\$ 25,000	\$ 100,000	33.33%	\$ 200,000
Administrative Services Fee	\$ 100,000	\$ 8,333	\$ 33,333	33.33%	\$ 66,667
Total Administrative	<u>\$ 702,000</u>	<u>\$ 61,163</u>	<u>\$ 304,490</u>	<u>43.37%</u>	<u>\$ 397,510</u>
Category I - Business Development					
Revolving Loan Fund	\$ 100,000	\$ -	\$ -	0.00%	\$ 100,000
ED Set Aside	\$ 250,000	\$ -	\$ -	0.00%	\$ 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	\$ -	\$ -	0.00%	\$ 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>\$ 1,250,000</u>
Contingency	\$ -				\$ -
TOTAL EXPENDITURES	<u>\$ 4,163,750</u>	<u>\$ 61,163</u>	<u>\$ 304,490</u>	<u>7.31%</u>	<u>\$ 3,859,260</u>
NET REVENUES TO EXPENDITURES	<u>\$ (1,408,749)</u>	<u>\$ 168,930</u>	<u>\$ 623,832</u>		
ENDING CASH BALANCE: January 31, 2014	Budget \$ 1,189,586		Actual \$ 3,222,168		

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	\$ 211,566	\$ 211,566	\$ 233,371	\$ 21,806	9.34%
December	\$ 169,550	\$ 208,227	\$ 208,227	\$ 204,782	\$ 205,583	\$ 205,583	\$ 214,424	\$ 8,841	4.12%
January	\$ 195,030	\$ 204,051	\$ 204,051	\$ 217,647	\$ 218,496	\$ 218,496	\$ 229,761	\$ 11,265	4.90%
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	\$ 863,191	\$ 863,191	\$ 919,060	\$ 55,869	6.08%

CITY OF KERRVILLE
Economic Improvement Corporation
Sales Tax Debt Service Fund

Cash Balance as of January 1, 2014		\$ 468,224
Revenues:		
Transfer from Sales Tax Improvements Fund	\$ 13,600	
Total Deposits	<u>\$ 13,600</u>	
Expenses:		
Paying Agent Fee		
Bond Principal		
Bond Interest	\$ -	
Total Expenses	<u> </u>	
Revenues Over (Under) Expenditures:		<u>\$ 13,600</u>
Ending Cash Balance as of January 31, 2014		<u><u>\$ 481,824</u></u>

CITY OF KERRVILLE
Economic Improvement Corporation
Sales Tax Debt Service Fund
Revenue and Expense Statement
For the month ending January 31, 2014

	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	\$ 54,400	80.00%	\$ 13,600
TOTAL REVENUE	<u>\$ 68,000</u>	<u>\$ 13,600</u>	<u>\$ 54,400</u>	<u>80.00%</u>	<u>\$ 13,600</u>
	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	<u>\$ 497,276</u>	<u>\$ -</u>	<u>\$ -</u>	<u>0.00%</u>	<u>\$ 497,276</u>
ENDING CASH BALANCE: January 31, 2014	Budget \$ (1,852)		Actual \$ 481,824		

CITY OF KERRVILLE
Economic Improvement Corporation
EIC Capital Projects Fund

Cash Balance as of January 1, 2014		\$ 780,034
Revenues:		
Total Revenues/Transfer In	<u>\$ -</u>	
Expenses:		
Golf Course	603	
	-	
Total Expenses	<u>\$ 603</u>	
Revenue Over (Under) Expenditures		<u>\$ (603)</u>
Ending Cash Balance as of January 31, 2014		<u><u>\$ 779,431</u></u>

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

Project Status Summary
 For the month ending January 31, 2014

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	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	
2011-12	Downtown Utilities		\$ 300,000	\$ 300,000		\$ 300,000		\$ 300,000	
2012-13	Golf Course Improvements		\$ 608,141	\$ 608,141		\$ 608,141	\$ 518,568	\$ 89,573	
	Downtown Street Scape		\$ 35,100	\$ 35,100		\$ 35,100	\$ 30,425	\$ 4,676	
	Playhouse 2000		\$ 118,000	\$ 118,000		\$ 118,000	\$ 113,469	\$ 4,532	
	Cailloux Theater Lighting		\$ 200,652	\$ 200,652		\$ 200,652		\$ 200,652	
TOTALS			\$ 1,461,893	\$ 1,461,893		\$ 1,461,893	\$ 682,461	\$ 779,431	

Cash Balance on 1/31/2014 \$ 779,431

Fund 70 - General Capital Improvement Projects - supported by EIC

YEAR(S) FUNDED	PROJECTS	Funding Agreement	Agreement Commitment	Total Funded	Expense
2011-12	River Trail	C2011-76	\$ 6,000,000	\$ 5,629,440	\$ 873,746
2011-12	Louise Hays Park Improvements	C2011-76	\$ 2,000,000	\$ 2,000,000	\$ 180,314
TOTALS			\$ 8,000,000	\$ 7,629,440	\$ 1,054,059

Cash and Investments

Cash and Investment Balances by Fund			
<u>Fund</u>	<u>Fund Name</u>	<u>Balance</u>	<u>Period</u>
40	Sales Tax Improvement Fund	\$ 3,222,168	1/31/2014
43	EIC Debt Service Fund	\$ 481,824	1/31/2014
75	EIC Projects Fund	\$ 779,431	1/31/2014
Total EIC Cash Balance		\$ 4,483,423	1/31/2014

<u>Type</u>	<u>Investment Vehicle</u>	<u>Amount</u>	<u>Interest Earned</u>	<u>Interest Earned (Annualized)</u>	<u>Period</u>
Cash	Wells Fargo Checking	\$ 743,280	\$ -	0.00%	1/31/2014
ST Investment	EIC TexPool	\$ 1,623,365	\$37.65	0.05%	1/31/2014
ST Investment	EIC TexStar	\$ 1,624,462	\$41.84	0.05%	1/31/2014
HILCO FCU	CD	\$ 246,394	\$146.56	0.71%	1/31/2014
Kerr County FCU	CD	\$ 245,921	\$104.47	0.51%	1/31/2014
Total Cash & Investments		\$ 4,483,423	\$330.52	0.12%	

Agenda Item:

- 3B. Capital projects update. (staff)
 - River Trail and Parks projects
 - Cailloux Theater improvements
 - Streetscape

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

SUBJECT: Capital Projects Update

FOR AGENDA OF: February 24, 2014 **DATE SUBMITTED:** February 19, 2014

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

EXHIBITS:

AGENDA MAILED TO:

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

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

PAYMENT TO BE MADE TO:

REVIEWED BY THE DIRECTOR OF FINANCE:

SUMMARY STATEMENT

River Trail Project (G Street to KSP)

Project Advertised	February 7 th February 14 th
Pre-Bid Meeting	February 18 th
Open Bids	March 11 th at 3pm
Award Construction	March 25 th
Construction to begin	April 14 th

Construction Budget for the project is \$1.8M.

One property acquisition is still undergoing the eminent domain process and the city is waiting for the special commissioners to be set.

Project completion date is March 2015.

Louise Hays and Lehmann Monroe Park Improvements / River Trail Project

Project Advertised	February 7 th February 14 th
Pre-Bid Meeting	February 18 th
Open Bids	March 11 th at 3pm
Award Construction	March 25 th

Construction to begin April 14th

Construction Budget for the project is \$1.7M

Interactive Water Feature budget for the project is \$775,000.00. Anticipated award of this portion of the project is April 8th with construction beginning in June 2014.

Project completion date is March 2015.

RECOMMENDED ACTION

This report is for informational purposes only. No action required.

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: February 24, 2014 **DATE SUBMITTED:** February 19, 2014

SUBMITTED BY: Ashlea Boyle *AB* **CLEARANCES:** Todd Parton
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

The Economic Development "GO Team" has a meeting scheduled for Friday, February 21, 2014 to review an application submitted by Mooney Aviation Corporation. It is anticipated that the application will be presented at the March EIC meeting.

RECOMMENDED ACTION

This report is for informational purposes only. No action required.

Agenda Item:

4A. Public hearing to consider a funding agreement between the City of Kerrville, Texas Economic Improvement Corporation and the Kerrville Area Chamber of Commerce for Kerrfest in an amount not to exceed \$25,000.00 (staff)

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

SUBJECT: Hold a public hearing and consider a funding agreement between the City of Kerrville, Texas Economic Improvement Corporation, and the Kerrville Area Chamber of Commerce for Kerrfest in an amount not to exceed \$25,000

FOR AGENDA OF: February 24, 2014 **DATE SUBMITTED:** February 19, 2014

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

EXHIBITS: Draft Funding Agreement

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

A community event funding request application has been submitted by the Kerrville Area Chamber of Commerce in the amount of \$25,000 for the rental of grandstands for the 2014 Kerrfest event to be held May 15-18, 2014 at the Hill Country Youth Event Center.

The event will include rodeo events, a chili cook-off, BBQ cook-off, homebrew competition, street dance with live music, carnival, and more. This is the fourth year for the event to take place and it continues to grow in attendance each year from 700-800 people in 2011 to over 3,300 people in 2013. The venue does not have spectator seating to accommodate the visitors or the growth in the event. The event seated approximately 300 people in its first two years, 700 in 2013 and will seat approximately 1,400 in 2014.

Kerrfest received \$10,500 in EIC funding for the 2013 event.

The "GO Team" evaluated this application and found that it is feasible in that the uses are allowed under the regulations for projects related to recreation or community facilities.

As per direction at the January 27, 2014 EIC meeting, attached is a draft funding agreement between the Kerrville Area Chamber of Commerce and the EIC. If approved, this funding agreement will be presented to City Council on March 11, 2014 for final consideration and approval.

RECOMMENDED ACTION

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

**ECONOMIC DEVELOPMENT GRANT AGREEMENT BETWEEN
KERRVILLE AREA CHAMBER OF COMMERCE, INC. (KACCFEST) AND
THE CITY OF KERRVILLE, TEXAS ECONOMIC IMPROVEMENT CORPORATION**

This Agreement is entered into by and between **KERRVILLE AREA CHAMBER OF COMMERCE, INC.**, a Texas nonprofit corporation (“KACC”), acting herein by and through its duly authorized President/CEO, Harold Dean (“KACC Officer”), and the **CITY OF KERRVILLE, TEXAS, ECONOMIC IMPROVEMENT CORPORATION** (“EIC”), a Texas nonprofit corporation established pursuant to Section 4B of Tex. Rev. Civ. Stat. Art. 5190.6 and codified in Chapters 501, 502, and 505 of the Texas Local Government Code, otherwise known as the Development Corporation Act of 1979 (the Act’), and acting by and through its duly authorized President, David Wampler.

WITNESSETH:

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

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

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

WHEREAS, KACC is hosting its annual Kerrfest on May 15-18, 2014, which is an event that includes rodeo events, food cook-offs, a street dance with live music, and a carnival (“Kerrfest”); and

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

WHEREAS, KACC has applied for a grant from EIC for funding to rent equipment, including grandstands; and

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

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

WHEREAS, on February 24, 2014, in a meeting that was open to the public in accordance with the Texas Open Meetings Act, EIC held a public hearing pursuant to Section 505.159 of the Act related to the proposed expenditure of 4B Revenues for the purposes provided above;

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

**ARTICLE I.
EIC'S OBLIGATIONS**

- A. EIC grants to KACC an amount up to \$25,000.00 ("Grant") for costs relating to equipment rental ("Equipment") for Kerrfest. The specific items that KACC intends to rent are listed on the attachment included as **Exhibit A**.
- B. Subject to the terms and conditions set forth in Article II, the Grant will be provided to KACC by EIC and EIC shall administer the Grant on a reimbursable basis. Prior to any payment from EIC, KACC must first 1) submit written evidence of costs, such as invoices, receipts, and bills of sale for review and approval; and 2) comply with section D of Article II. Following the submission and verification thereof, EIC shall then reimburse KACC for the costs.
- C. Payments made by EIC to KACC from 4B Revenues will be limited to the payments of "costs" as defined by the Act and as specified above for the Project.
- D. In no event will the total amount of the Grant exceed \$25,000.00.

**ARTICLE II.
KACC'S OBLIGATIONS**

- A. In order to receive reimbursement from EIC, KACC must rent the Equipment for Kerrfest and may not use the Equipment for any other purpose.
- B. KACC must keep and maintain complete and accurate records relating to the costs of the Equipment, separate and identifiable from its other records, for three (3) years following the termination of this Agreement. EIC and its representatives shall be entitled to inspect the records during the term of this Agreement and for three (3) years thereafter, upon reasonable notice.
- C. KACC will only be liable to EIC for the actual amount of the Grant to be conveyed to KACC and will not be liable to EIC for any other actual or consequential damages, direct or indirect, interest, attorney fees, or cost of court for any act of default by KACC under the terms of this Agreement.
- D. KACC shall provide a written report to the EIC no later than 30 days following Kerrfest. The report must include: attendance, gross receipts, total expenses, total ticket sales, list of exhibitors, and the estimated number of attendees at Kerrfest from outside of Kerr County.

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

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

ARTICLE IV.
KACC'S REPRESENTATIONS AND WARRANTIES

- A. KACC represents and warrants as of the date hereof:
- (1) KACC is a Texas nonprofit corporation existing in good standing and authorized to do business in the State of Texas;
- (2) Execution of this Agreement has been duly authorized by KACC and this Agreement is not in contravention of KACC's governing authority or any agreement or instrument to which KACC is a party or by which it may be bound as of the date hereof;
- (3) No litigation or governmental proceeding is pending, or, to the knowledge of KACC Officer, threatened against or affecting KACC, which may result in a material adverse change in KACC's business, properties, or operations sufficient to jeopardize KACC's legal existence; and
- (4) No written application, written statement, or correspondence submitted by KACC to EIC in connection with this Agreement, or in connection with any transaction contemplated hereby, to the knowledge of KACC Officer, contains any untrue statement

of a material fact or fails to state any material fact necessary to keep the statements contained therein from being misleading.

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

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

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

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

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

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

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

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

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

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

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

(2) The appointment of a receiver of KACC;

(3) The adjudication of KACC as bankrupt; and

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

033

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

ARTICLE VII. REMEDIES

- A. Except as otherwise provided in this Agreement, in the event of any default in or breach of this Agreement by any party hereto, or any successor to such party, such defaulting or breaching party (or successor) shall upon written notice from the other party, proceed immediately to cure or remedy such default or breach. 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, the aggrieved party may institute such proceedings as may be necessary or desirable in its opinion to cure and remedy such default or breach.
- B. Upon breach of this Agreement by either party and the failure to cure as permitted by this Article VII, the non-breaching party shall have the sole right and discretion to either terminate this Agreement and/or pursue any and all remedies which may be provided by law and this Agreement. Each party acknowledges and agrees that KACC is not entitled to recover any amounts in excess of the Grant contracted for under this Agreement and that EIC, pursuant to a breach and failure to cure by KACC in accordance with this Agreement, is entitled to recover attorney fees, collection costs, and any other costs due to its pursuit of repayment and remedies under this Agreement.
- C. Any delay by any party in instituting or prosecuting any actions or proceedings or otherwise asserting its rights will not, so long as the breach or default by another party is continuing, operate as a waiver of such rights or to deprive it of or limit such rights in any way; nor will any waiver in fact be made by any party with respect to any specific default by any other party except to the extent specifically waived in writing.

ARTICLE VIII. GENERAL PROVISIONS

- A. Severability. The provisions of this Agreement are severable, and if for any reason a provision of this Agreement is determined to be invalid by a court, the invalidity shall not affect other provisions that can be given effect without the invalid provision. Further, in lieu of such illegal, invalid, or unenforceable provision, there will be added automatically as a part of this Agreement, a provision as similar in its terms to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable.
- B. Amendment. This Agreement may be amended only by written amendment signed by both parties.
- C. Venue. All payments made pursuant to this Agreement and other obligations performed under this Agreement will be made or performed in Kerrville, Kerr County, Texas. Venue exists in Kerr County, Texas; and this Agreement is governed by and construed in accordance with the laws of the State of Texas.

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

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

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

Kerrville Area Chamber of Commerce, Inc.
Harold Dean, IOM
President/CEO
Kerrville Area Chamber of Commerce
1700 Sidney Baker, Ste. 100
Kerrville, Texas 78028
president@kerrvilletx.com
Telephone: (830) 896-1155

- E. Assignment. This Agreement is binding upon the parties hereto and their successors and assigns. Except as set forth in Article III, this Agreement may not be assigned by either party without the specific prior written consent of the other, which consent will not be unreasonably withheld. In the event that a party consents to any valid assignment of this Agreement by the other party hereto, the assigning party will be relieved of any and all obligations and liabilities on the part of such assigning party under this Agreement.
- F. Parties In Interest. Nothing in this Agreement entitles anyone other than KACC or EIC to any claim, cause of action, remedy, or right of any kind.
- G. Term. The term of this Agreement (the "Term") shall commence on the date that signatures of the parties are affixed to this Agreement (the "Effective Date"), and will terminate on the earlier of: (i) July 1, 2014, or when the requirements set forth in this Agreement are completed, whichever date is later; (ii) when terminated by mutual agreement of the parties; (iii) when terminated pursuant to Articles VI or VII; (iv) or at

the KACC's sole and absolute discretion, but only upon the KACC's return of all Grant funding to EIC that it has received under this Agreement. Upon termination of this Agreement, all rights, duties, and obligations of any kind under this Agreement will automatically expire and terminate and be of no other force and effect.

- H. Interpretation. Each party has had the opportunity to be represented by counsel of its choice in negotiating this Agreement. This Agreement will therefore be deemed to have been negotiated and prepared at the joint request, direction, and construction of the parties, at arms length, with the advice and participation of counsel, and will be interpreted in accordance with its terms without favor to any party.
- I. No Joint Venture. Nothing contained in this Agreement is intended by the parties to create a partnership or joint venture between the parties or between the parties and the City of Kerrville, Texas.
- J. Survival of Terms. All rights, duties, liabilities and obligations accrued prior to termination will survive termination.
- K. Entire Agreement. This Agreement represents the entire agreement of the parties with respect to the subject matter hereof.

EXECUTED AND EFFECTIVE, as of the date indicated above, by the City of Kerrville, Texas, Economic Improvement Corporation, by and through its Board President, duly authorized to execute same by action of the Board; and by Kerrville Area Chamber of Commerce, Inc., acting through the KACC Officer.

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

**KERRVILLE AREA CHAMBER
OF COMMERCE, INC.**

David Wampler, President
Date: _____

Harold Dean, President/CEO
Date: _____

ATTEST:

Cheryl Brown, Recording Secretary

APPROVED AS TO FORM:

Michael C. Hayes, Attorney for EIC

EXHIBIT A



Kerrville

KERRVILLE AREA CHAMBER OF COMMERCE

It's all right here.

November 26, 2013

Dear Economic Improvement Corporation:

Thank you for your consideration of the attached request for funding. The Kerrville Area Chamber of Commerce (KACOC) requests funding in the amount of \$25,000 for the lease of grandstands for the 2014 Kerrfest event, to be held May 15-18, 2014, at the Hill Country Youth Event Center.

The Kerrville Area Chamber of Commerce exists to strengthen and improve the greater Kerrville area business community in order to promote the economic well-being of our citizens. Kerrfest is the largest special event hosted by KACOC. Our major event sponsors last year were Wells Fargo-Bank and Crenwolge Motors. We will be hosting a Midway carnival all four days of the event. On Thursday night, we will kick off Kerrfest with a Junior rodeo. A jackpot team roping will take place Saturday morning with an estimated 100 teams. Open Pro Rodeo performances will be held Friday and Saturday nights. In addition to these rodeo events, on Friday and Saturday, we are hosting two CASI-sanctioned chili cook-offs, and on Saturday we'll have a Lone Star Barbecue Society-sanctioned BBQ cook-off and a homebrew competition. Good old fashioned street dances are planned for Friday and Saturday nights after the rodeo featuring local favorite bands. These events will draw contestants, spectators, and families from all over the state of Texas.

This is the fourth year for the event to take place. In 2011, between 700-800 people attended the event. In 2012, that number increased to 1,500+ over the four-day event. Last year, we had over 3300 people through the gates over the four-day period. The anchor of Kerrfest is the rodeo that takes place Friday and Saturday nights. Unfortunately, there is no spectator seating at the outdoor arena in order to accommodate our visitors. For the first two years, we had to bring in portable aluminum bleachers, with seating only provided for approximately 300 people. Last year, with the EIC funding, we were able to increase that seating to almost 700. In order to grow this event, and increase the economic impact and number of visitors, we feel it is imperative that we provide adequate seating.

Please refer to the attached quote for spectator grandstands. This would provide box seating for our sponsors and almost 1400 seats for spectators. Providing safe, professional-grade, adequate seating for our anchor event is absolutely essential to the continued success and reputation of Kerrfest. We have enjoyed great partnerships with the City of Kerrville, Kerr County, and the Kerrville Convention and Visitors Bureau to promote our hill country town and businesses.

Our future plans are to continue to grow the event substantially every year, and to continue to expand in to the facilities at the Hill Country Youth Event Center. We recognize the inherent need for permanent seating at the outdoor arena and are exploring several different avenues for that, including public-private partnerships.



Kerrville

KERRVILLE AREA CHAMBER OF COMMERCE

It's all right here.

We humbly request your consideration of this funding request in the amount of \$25,000. Thank you in advance.

Sincerely,

Harold Dean, IOM
President/CEO

Encl:

- a) EIC Funding Request Application
- b) 2013 Kerrfest P&L
- c) 2013 Economic Impact Analysis
- d) Star of Texas Tents and Events Proposal



Proposal

Company

Kerrville Area Chamber of Commerce
1700 Sidney Baker Ste. 100
Kerrville, TX 78028

Attn: Denny Foster

E-mail:
Office:
Fax:
Cell: (830) 796-1805

Proposal Date: 10/14/13
Withdrawn By: 11/14/13
Amended Date:

Presented By: Mary Fryer
Mobile: (210) 632-5017
Mary.Fryer@startxevents.com

Job Site:

Youth Exhibition Center
3805 State Hwy 27 E
Kerrville, TX 78028
Event Date: Friday, May 16, 2014 @ 8a-12p
Delivery: Monday, May 5th, 2014 @ 8a-12p
Strike: Monday, May 19th, 2014 @ 8a-4p

Star of Texas Events, an Austin Sales, Inc. Company is pleased to quote the following for your consideration:

Bleachers

1 – 13 Row by 180' long 6' elevated bleacher Approximate Gross seating 1560 Net seating 1388	\$22,620.00
1 – 8' X 180' long deck with 19 (8'X8') VIP Sections w/ stairs for access to bleacher Seating as well as VIP sections	\$ 5,225.00
Forklift Rental	\$ 3,500.00
Delivery	\$ 1,800.00
8.25% Tax	Exempt
Estimated Total	\$33,145.00

Note: All work is quoted as work performed during normal business hours. Any work performed before or after normal business hours are subject to overtime rates

Quality People * Superior Service

Plus Applicable Taxes

Terms: 50% with Order, Balance Due Before Delivery

Austin Sales, Inc. provides \$2,000,000.00 General Liability and Workman's Comp. insurance

All materials will be of the best grade available and will be constructed to meet O.S.H.A. and A.N.S.I. regulations. Any alterations or deviation from the above specifications involving extra costs will be executed only upon written orders, and will become an extra charge over and above the proposal. The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do as specified. Payment due upon receipt of invoice, unless otherwise stated.

Authorized By: _____ Date: _____

3626 Binz-Engleman Rd., * San Antonio TX 78219 ** (210) 656-1136 ** Fax (210) 656-1143



Proposal Addendum

Normal conditions are as follows.

1. **Rental equipment:** This proposal is subject to the terms and conditions of our standard rental or sales contract.
2. **Terms:** Terms of proposal are 50% to Secure Order, balance to be paid before delivery.
3. **Normal working hours:** This quotation is based on all work being carried out during normal working hours, Monday – Friday 7:00 am – 4:00 pm. Saturday 8:00 am - 1:00pm, excluding holidays. All work executed outside these hours will be charged at overtime rates.
4. **Fluctuation:** This proposal is based on rates in effect at the date of our initial proposal and is subject to any increases after 30 days.
5. **Extras:** Any alteration or deviation from the proposal as quoted is subject to be charged at an additional amount. No additional work will be undertaken until approval has been received in writing from an authorized agent of your company.
6. **Alterations:** Any modification or alterations to the erected structure, by anyone including the Client, will be at the sole risk of the Client, and will remove liability from Star of Texas Events
7. **Incomplete Structures:** No one except Austin Sales, Inc., employees will be allowed to perform any work on or under the structure while erection, dismantling, additions or alterations are being performed.
8. **Access & Permits:** Reasonable access for men and materials are to be provided by Client. All permits are the Client's Responsibility.
9. **Delays:** If the completion of work is delayed, interrupted, or otherwise held up or discontinued because of Weather, Accidents, or any cause whatsoever beyond our control, and is not attributable to negligence or willful failure to perform, we shall not be held liable for any loss sustained by the Client or owner. Client will be liable for any delay, interruption, or stoppage that is attributable to Client or his client.
10. **Completion and Use of Rented Items:** Client accepts responsibility for all work performed as complete and safe. Client agrees to abide by all local, state and federal laws and OSHA regulations. No open flames or smoking is permitted under any tent structure.
11. **Liability and Indemnification:** Refer to the Rental Contract or Sales Contract.
12. **Making Reservations:** Quotes and Proposals do not guarantee availability of rental equipment. Equipment will be reserved only upon receipt of a signed rental contract and a 50% deposit. Final payment is due before delivery and installation.
13. **Cancellations:** (Non-Refundable 50% Deposit) When you reserve any product from us, and pay the required deposit, we will immediately remove the items from our inventory and schedule a crew. Therefore, any cancellation received within 14 days of installation will be charged 50% of the rental contract order. If the order is cancelled within 24 hours, full payment is due.
14. **Tent Installation:** Tent installation must be done correctly for the protection of the Client, the tent, and ultimately the success of the event. Therefore, a tent may not be erected in rain, excess wind, electrical storm, or any other weather conditions that pose a danger to any property or injury to any individual. The field supervisor will make the final call on whether the job can be completed safely. Star is not responsible for any acts of God.
15. **Weather:** Client understands that tents are temporary structures and are NOT to be used as safe protection or shelter from weather conditions like, but not limited to, strong winds, lightning, rain, hail or snow. Please evacuate the tents and seek adequate shelter if any unsafe conditions arise.
16. **Damages:** Star will take every possible means to protect the client's property. Client agrees to hold harmless Austin Sales, Inc, dba Star of Texas Events from any liability for any damage incurred during delivery, setup, dismantling and removal while on Client's property. This includes, but not limited to, ruts in the grass, sprinkler systems, scratches or cracks on the installed surface, and high wind related damages. Client also understands that tents are temporary structures and may leak during heavy rain.

Presented by:

Mary Fryer
Austin Sales, Inc.
Dba Austin Sales & Scaffold
Dba Star of Texas Events

Terms and conditions accepted by:

Date

Signature

Contact & Mobile #

Date

Agenda Item:

4B. Public hearing to consider a funding agreement between the City of Kerrville, Texas Economic Improvement Corporation, and Kerrville Festival of the Arts to host a downtown arts event in an amount not to exceed \$20,000.00.
(staff)

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

SUBJECT: Hold a public hearing and consider a funding agreement between the City of Kerrville, Economic Improvement Corporation, and Kerrville Festival of the Arts to host a downtown arts event in an amount not to exceed \$20,000

FOR AGENDA OF: February 24, 2014 **DATE SUBMITTED:** February 19, 2014

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

EXHIBITS: Draft Funding Agreement

AGENDA MAILED TO:

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

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

PAYMENT TO BE MADE TO:

REVIEWED BY THE DIRECTOR OF FINANCE:

SUMMARY STATEMENT

Upon the announcement from the Texas Arts and Crafts Educational Foundation of the retirement of the Official Texas State Arts and Crafts Fair, a community event funding application has been submitted by Kerrville Festival of the Arts in the amount of \$20,000 to host an event in downtown Kerrville Memorial Day weekend. Kerrville has an established reputation of hosting a major arts event during Memorial Day weekend as the fair has been held in Kerrville for over 40 years. In an effort to keep a major arts event in Kerrville on Memorial Day weekend, the City of Kerrville in conjunction with other community stakeholders such as the Kerr County Market Association and the Historic Downtown Business Alliance, will host an event in downtown Kerrville in 2014. Kerrville Festival of the Arts will present a juried fine art show in addition to family "fun art" events incorporating a multitude of different forms of art.

Staff received authorization at the November 12, 2013 City Council meeting to submit the funding application. The funding request of \$20,000 will include rental of items such as large tents, canopies, tables, chairs, port-a-potties, golf cart rental and other applicable event items. The event will be held on Water Street Saturday and Sunday, May 24-25, 2014 and anticipates moving to Louise Hays Park in 2015 upon completion of the park improvement project.

The "GO Team" evaluated this application and found that it is feasible in that the uses are allowed under the regulations for projects related to recreation or community facilities.

As per direction at the January 27, 2014 EIC meeting, attached is a draft funding agreement between Kerrville Festival of the Arts and the EIC. If approved, this funding agreement will be presented to City Council on March 11, 2014 for final consideration and approval.

RECOMMENDED ACTION

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

**ECONOMIC DEVELOPMENT GRANT AGREEMENT BETWEEN
KERRVILLE FESTIVAL OF THE ARTS, INC. AND
THE CITY OF KERRVILLE, TEXAS ECONOMIC IMPROVEMENT CORPORATION**

This Agreement is entered into by and between **KERRVILLE FESTIVAL OF THE ARTS, INC.**, a Texas nonprofit corporation (“KFA”), acting herein by and through its duly authorized Executive Director, LuAnn Anderson (“KFA 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 and codified in Chapters 501, 502, and 505 of the Texas Local Government Code, otherwise known as the Development Corporation Act of 1979 (the Act”), and acting by and through its duly authorized President, David Wampler.

WITNESSETH:

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

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

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

WHEREAS, KFA is hosting its annual juried fine art show and family “fun art” events incorporating a multitude of different forms of art on May 24-25, 2014 (“Festival”); and

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

WHEREAS, KFA has applied for a grant from EIC for funding to rent equipment, including tents, canopies, tables, chairs, and golf carts; and

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

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

WHEREAS, on February 24, 2014, 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, KFA and the EIC agree as follows:

**ARTICLE I.
EIC'S OBLIGATIONS**

- A. EIC grants to KFA an amount up to \$20,000.00 ("Grant") for costs relating to equipment rental ("Equipment") for the Festival. The specific items that KFA intends to rent are listed on the attachment included as **Exhibit A**.
- B. Subject to the terms and conditions set forth in Article II, the Grant will be provided to KFA by EIC and EIC shall administer the Grant on a reimbursable basis. Prior to any payment from EIC, KFA must first 1) submit written evidence of costs, such as invoices, receipts, and bills of sale for review and approval; and 2) comply with section D of Article II. Following the submission and verification thereof, EIC shall then reimburse KFA for the costs.
- C. Payments made by EIC to KFA from 4B Revenues will be limited to the payments of "costs" as defined by the Act and as specified above for the Project.
- D. In no event will the total amount of the Grant exceed \$20,000.00.

**ARTICLE II.
KFA'S OBLIGATIONS**

- A. In order to receive reimbursement from EIC, KFA must rent the Equipment for the Festival and may not use the Equipment for any other purpose.
- B. KFA must keep and maintain complete and accurate records relating to the costs of the Equipment, separate and identifiable from its other records, for three (3) years following the termination of this Agreement. EIC and its representatives shall be entitled to inspect the records during the term of this Agreement and for three (3) years thereafter, upon reasonable notice.
- C. KFA will only be liable to EIC for the actual amount of the Grant to be conveyed to KFA and will not be liable to EIC for any other actual or consequential damages, direct or indirect, interest, attorney fees, or cost of court for any act of default by KFA under the terms of this Agreement.
- D. KFA shall provide a written report to the EIC no later than 30 days following the Festival. The report must include: attendance, gross receipts, total expenses, total ticket sales, list of exhibitors, and the estimated number of attendees at the Festival from outside of Kerr County.

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

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

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

- A. KFA represents and warrants as of the date hereof:
- (1) KFA 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 KFA and this Agreement is not in contravention of KFA's governing authority or any agreement or instrument to which KFA 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 KFA Officer, threatened against or affecting KFA, which may result in a material adverse change in KFA's business, properties, or operations sufficient to jeopardize KFA's legal existence; and
- (4) No written application, written statement, or correspondence submitted by KFA to EIC in connection with this Agreement, or in connection with any transaction contemplated hereby, to the knowledge of KFA Officer, contains any untrue statement of

a material fact or fails to state any material fact necessary to keep the statements contained therein from being misleading.

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

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

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

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

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

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

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

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

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

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

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

(2) The appointment of a receiver of KFA;

(3) The adjudication of KFA as bankrupt; and

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

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

ARTICLE VII. REMEDIES

- A. Except as otherwise provided in this Agreement, in the event of any default in or breach of this Agreement by any party hereto, or any successor to such party, such defaulting or breaching party (or successor) shall upon written notice from the other party, proceed immediately to cure or remedy such default or breach. 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, the aggrieved party may institute such proceedings as may be necessary or desirable in its opinion to cure and remedy such default or breach.
- B. Upon breach of this Agreement by either party and the failure to cure as permitted by this Article VII, the non-breaching party shall have the sole right and discretion to either terminate this Agreement and/or pursue any and all remedies which may be provided by law and this Agreement. Each party acknowledges and agrees that KFA is not entitled to recover any amounts in excess of the Grant contracted for under this Agreement and that EIC, pursuant to a breach and failure to cure by KFA in accordance with this Agreement, is entitled to recover attorney fees, collection costs, and any other costs due to its pursuit of repayment and remedies under this Agreement.
- C. Any delay by any party in instituting or prosecuting any actions or proceedings or otherwise asserting its rights will not, so long as the breach or default by another party is continuing, operate as a waiver of such rights or to deprive it of or limit such rights in any way; nor will any waiver in fact be made by any party with respect to any specific default by any other party except to the extent specifically waived in writing.

ARTICLE VIII. GENERAL PROVISIONS

- A. Severability. The provisions of this Agreement are severable, and if for any reason a provision of this Agreement is determined to be invalid by a court, the invalidity shall not affect other provisions that can be given effect without the invalid provision. Further, in lieu of such illegal, invalid, or unenforceable provision, there will be added automatically as a part of this Agreement, a provision as similar in its terms to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable.
- B. Amendment. This Agreement may be amended only by written amendment signed by both parties.
- C. Venue. All payments made pursuant to this Agreement and other obligations performed under this Agreement will be made or performed in Kerrville, Kerr County, Texas. Venue exists in Kerr County, Texas; and this Agreement is governed by and construed in accordance with the laws of the State of Texas.

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

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

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

Kerrville Festival of the Arts, Inc.
LuAnn Anderson
Executive Director
Kerr County Market Association
P.O. Box 29054
Kerrville, Texas 78029
kerrmarket@aol.com
Telephone (830) 459-6198

- E. Assignment. This Agreement is binding upon the parties hereto and their successors and assigns. Except as set forth in Article III, this Agreement may not be assigned by either party without the specific prior written consent of the other, which consent will not be unreasonably withheld. In the event that a party consents to any valid assignment of this Agreement by the other party hereto, the assigning party will be relieved of any and all obligations and liabilities on the part of such assigning party under this Agreement.
- F. Parties In Interest. Nothing in this Agreement entitles anyone other than KFA or EIC to any claim, cause of action, remedy, or right of any kind.
- G. Term. The term of this Agreement (the "Term") shall commence on the date that signatures of the parties are affixed to this Agreement (the "Effective Date"), and will terminate on the earlier of: (i) July 1, 2014, or when the requirements set forth in this Agreement are completed, whichever date is later; (ii) when terminated by mutual agreement of the parties; (iii) when terminated pursuant to Articles VI or VII; (iv) or at

the KFA's sole and absolute discretion, but only upon the KFA's return of all Grant funding to EIC that it has received under this Agreement. Upon termination of this Agreement, all rights, duties, and obligations of any kind under this Agreement will automatically expire and terminate and be of no other force and effect.

- H. Interpretation. Each party has had the opportunity to be represented by counsel of its choice in negotiating this Agreement. This Agreement will therefore be deemed to have been negotiated and prepared at the joint request, direction, and construction of the parties, at arms length, with the advice and participation of counsel, and will be interpreted in accordance with its terms without favor to any party.
- I. No Joint Venture. Nothing contained in this Agreement is intended by the parties to create a partnership or joint venture between the parties or between the parties and the City of Kerrville, Texas.
- J. Survival of Terms. All rights, duties, liabilities and obligations accrued prior to termination will survive termination.
- K. Entire Agreement. This Agreement represents the entire agreement of the parties with respect to the subject matter hereof.

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

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

**KERRVILLE FESTIVAL
OF THE ARTS, INC.**

David Wampler, President
Date: _____

LuAnn Anderson, Executive Director
Date: _____

ATTEST:

Cheryl Brown, Recording Secretary

APPROVED AS TO FORM:

Michael C. Hayes, Attorney for EIC

EXHIBIT A 59

December 2, 2013

Kerrville Festival of the Arts
P.O. Box 290454
Kerrville, Texas 78029

Economic Improvement Corporation
701 Main Street
Kerrville, Texas 78028

Dear EIC Board Members:

Please accept our application for Economic Improvement Corporation funding for a new Community Event, Kerrville Festival of the Arts. With approval of the requested funding, this event will be held in the Downtown area on Memorial Day weekend, May 24-25, 2014.

In the absence of the Texas State Arts and Crafts Fair from its traditional role that holiday weekend, it is imperative to offer the opportunity for a major Fine Arts event to continue in Kerrville. To accomplish this, a coalition of the City of Kerrville, Kerr County Market Association and the Historic Downtown Business Alliance have come together to develop this new fine arts event to maintain Kerrville's position as a fine art destination for tourists and to enhance the economic environment for our downtown businesses.

We look forward to the opportunity to present our proposal to the EIC Board of Directors.

Sincerely,


LuAnn Anderson, Executive Director
Kerr County Market Association

Kerrville Festival of the Arts 2014 Itemized EIC Request

Expenses

Tent Rental	800 blk Water	* \$	12,200.00
Vehicle Rental	1 pickup	* \$	650.00
Storage Rental	1 10x10 unit	* \$	720.00
Golf Cart Rental	2 carts	* \$	500.00
PO Box Rental	1 box	* \$	54.00
Porta Can Rental	10 units	* \$	958.00
Tables, Chairs Rental	volunteer stations	* \$	65.00
Canopies	volunteer stations	* \$	653.00
Street Banner Purchase	2 banners	* \$	1,200.00
Electrical	power to booths	* \$	3,000.00
Total expenses		\$	20,000.00

Agenda Item:

4C. Public hearing to consider a funding agreement between the City of Kerrville, Texas Economic Improvement Corporation, and the Kerrville Folk Festival for event transportation services during Memorial Day weekend in an amount not to exceed \$7,800.00. (staff)

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

SUBJECT: Hold a public hearing and consider a funding agreement between the City of Kerrville, Texas Economic Improvement Corporation, and Kerrville Folk Festival for event transportation services during Memorial Day weekend in an amount not to exceed \$7,800

FOR AGENDA OF: February 24, 2014 **DATE SUBMITTED:** February 19, 2014

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

EXHIBITS: Draft Funding Agreement

AGENDA MAILED TO:

APPROVED FOR SUBMITTAL BY CITY MANAGER: *TP*

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

PAYMENT TO BE MADE TO:

REVIEWED BY THE DIRECTOR OF FINANCE:

SUMMARY STATEMENT

A community event funding application has been submitted by the Kerrville Folk Festival in the amount of \$7,800 for event transportation during Memorial Day weekend ("Get on the Bus" campaign). The funding will cover three 28 passenger buses to be on scheduled routes between local hotels and the major events occurring Memorial Day weekend. The transportation will again be free in an effort to provide more opportunities for the public and tourists to shop local and visit the festivities / events during Memorial Day weekend. The bus stops will include locations such as local hotels, Kerrville Folk Festival, historic downtown Kerrville in addition to the Kerrville Festival of the Arts event, Kerr County Market Days, and the Hill Country Wine and Brew Festival.

Kerrville Folk Festival received \$8,500 in EIC funding in 2013 and approximately 230 people participated in the free transportation services.

The "GO Team" evaluated this application and found that it is feasible in that the uses are allowed under the regulations for projects related to recreation or community facilities.

As per direction at the January 27, 2014 EIC meeting, attached is a draft funding agreement between the Kerrville Folk Festival and the EIC. If approved, this funding agreement will be presented to City Council on March 11, 2014 for final consideration and approval.

RECOMMENDED ACTION

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

**ECONOMIC DEVELOPMENT GRANT AGREEMENT BETWEEN
KERRVILLE FOLK FESTIVAL, INC. AND
THE CITY OF KERRVILLE, TEXAS ECONOMIC IMPROVEMENT CORPORATION**

This Agreement is entered into by and between **KERRVILLE FOLK FESTIVAL, INC.**, a Texas nonprofit corporation (“KFF”), acting herein by and through its duly authorized Producer, Dalis Allen (“KFF Officer”), and the **CITY OF KERRVILLE, TEXAS, ECONOMIC IMPROVEMENT CORPORATION** (“EIC”), a Texas nonprofit corporation established pursuant to Section 4B of Tex. Rev. Civ. Stat. Art. 5190.6 and codified in Chapters 501, 502, and 505 of the Texas Local Government Code, otherwise known as the Development Corporation Act of 1979 (the Act”), and acting by and through its duly authorized President, David Wampler.

WITNESSETH:

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

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

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

WHEREAS, KFF is hosting its annual music festival between May 22 and June 8, 2014 (“Festival”); and

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

WHEREAS, KFF has applied for a grant from EIC for funding to rent equipment, including passenger busses to provide transportation during the Memorial Day Weekend for the Festival; and

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

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

WHEREAS, on February 24, 2014, in a meeting that was open to the public in accordance with the Texas Open Meetings Act, EIC held a public hearing pursuant to Section 505.159 of the Act related to the proposed expenditure of 4B Revenues for the purposes provided above;

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

**ARTICLE I.
EIC'S OBLIGATIONS**

- A. EIC grants to KFF an amount up to \$7,800.00 ("Grant") for costs relating to equipment rental ("Equipment") for the Festival. The specific items that KFF intends to rent are listed on the attachment included as **Exhibit A**.
- B. Subject to the terms and conditions set forth in Article II, the Grant will be provided to KFF by EIC and EIC shall administer the Grant on a reimbursable basis. Prior to any payment from EIC, KFF must first 1) submit written evidence of costs, such as invoices, receipts, and bills of sale for review and approval; and 2) comply with section D of Article II. Following the submission and verification thereof, EIC shall then reimburse KFF for the costs.
- C. Payments made by EIC to KFF from 4B Revenues will be limited to the payments of "costs" as defined by the Act and as specified above for the Project.
- D. In no event will the total amount of the Grant exceed \$7,800.00.

**ARTICLE II.
KFF'S OBLIGATIONS**

- A. In order to receive reimbursement from EIC, KFF must rent the Equipment for the Festival and may not use the Equipment for any other purpose.
- B. KFF must keep and maintain complete and accurate records relating to the costs of the Equipment, separate and identifiable from its other records, for three (3) years following the termination of this Agreement. EIC and its representatives shall be entitled to inspect the records during the term of this Agreement and for three (3) years thereafter, upon reasonable notice.
- C. KFF will only be liable to EIC for the actual amount of the Grant to be conveyed to KFF and will not be liable to EIC for any other actual or consequential damages, direct or indirect, interest, attorney fees, or cost of court for any act of default by KFF under the terms of this Agreement.
- D. KFF shall provide a written report to the EIC no later than 30 days following the Festival. The report must include: attendance, gross receipts, total expenses, total ticket sales, list of exhibitors, and the estimated number of attendees at the Festival from outside of Kerr County.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) The appointment of a receiver of KFF;

(3) The adjudication of KFF as bankrupt; and

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

- B. Should any of these conditions not be cured by KFF, KFF will be considered to have breached this Agreement and EIC may, at its option, with written notice to KFF,

terminate this Agreement and KFF shall be obligated to refund the EIC the full amount of any Grant funding received from the EIC.

ARTICLE VII. REMEDIES

- A. Except as otherwise provided in this Agreement, in the event of any default in or breach of this Agreement by any party hereto, or any successor to such party, such defaulting or breaching party (or successor) shall upon written notice from the other party, proceed immediately to cure or remedy such default or breach. 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, the aggrieved party may institute such proceedings as may be necessary or desirable in its opinion to cure and remedy such default or breach.
- B. Upon breach of this Agreement by either party and the failure to cure as permitted by this Article VII, the non-breaching party shall have the sole right and discretion to either terminate this Agreement and/or pursue any and all remedies which may be provided by law and this Agreement. Each party acknowledges and agrees that KFF is not entitled to recover any amounts in excess of the Grant contracted for under this Agreement and that EIC, pursuant to a breach and failure to cure by KFF in accordance with this Agreement, is entitled to recover attorney fees, collection costs, and any other costs due to its pursuit of repayment and remedies under this Agreement.
- C. Any delay by any party in instituting or prosecuting any actions or proceedings or otherwise asserting its rights will not, so long as the breach or default by another party is continuing, operate as a waiver of such rights or to deprive it of or limit such rights in any way; nor will any waiver in fact be made by any party with respect to any specific default by any other party except to the extent specifically waived in writing.

ARTICLE VIII. GENERAL PROVISIONS

- A. Severability. The provisions of this Agreement are severable, and if for any reason a provision of this Agreement is determined to be invalid by a court, the invalidity shall not affect other provisions that can be given effect without the invalid provision. Further, in lieu of such illegal, invalid, or unenforceable provision, there will be added automatically as a part of this Agreement, a provision as similar in its terms to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable.
- B. Amendment. This Agreement may be amended only by written amendment signed by both parties.
- C. Venue. All payments made pursuant to this Agreement and other obligations performed under this Agreement will be made or performed in Kerrville, Kerr County, Texas. Venue exists in Kerr County, Texas; and this Agreement is governed by and construed in accordance with the laws of the State of Texas.
- D. Notices. All notices given with respect to this Agreement must be in writing and will be deemed to have been properly given for all purposes (i) if sent by an overnight carrier for

next business day delivery, on the first business day following deposit of such notice with such carrier unless such carrier confirms such notice was not delivered, then on the day such carrier actually delivers such notice, or (ii) if personally delivered, on the actual date of delivery, or (iii) if sent by certified U.S. Mail, return receipt requested postage prepaid, on the fifth business day following the date of mailing, or (iv) if sent by facsimile, then on the actual date of delivery (as evidenced by a facsimile confirmation) provided that a copy of the facsimile and confirmation is also sent by regular U.S. Mail, addressed as follows:

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

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

Kerrville Folk Festival Foundation, Inc.
Dalis Allen
Producer
Kerrville Folk Festival Foundation, Inc.
3876 Medina Hwy
Kerrville, Texas 78028
dalis@kerrville-music.com
Telephone: (830) 257-3600

- E. Assignment. This Agreement is binding upon the parties hereto and their successors and assigns. Except as set forth in Article III, this Agreement may not be assigned by either party without the specific prior written consent of the other, which consent will not be unreasonably withheld. In the event that a party consents to any valid assignment of this Agreement by the other party hereto, the assigning party will be relieved of any and all obligations and liabilities on the part of such assigning party under this Agreement.
- F. Parties In Interest. Nothing in this Agreement entitles anyone other than KFF or EIC to any claim, cause of action, remedy, or right of any kind.
- G. Term. The term of this Agreement (the "Term") shall commence on the date that signatures of the parties are affixed to this Agreement (the "Effective Date"), and will terminate on the earlier of: (i) July 1, 2014, or when the requirements set forth in this Agreement are completed, whichever date is later; (ii) when terminated by mutual agreement of the parties; (iii) when terminated pursuant to Articles VI or VII; (iv) or at the KFF's sole and absolute discretion, but only upon the KFF's return of all Grant funding to EIC that it has received under this Agreement. Upon termination of this

Agreement, all rights, duties, and obligations of any kind under this Agreement will automatically expire and terminate and be of no other force and effect.

- H. Interpretation. Each party has had the opportunity to be represented by counsel of its choice in negotiating this Agreement. This Agreement will therefore be deemed to have been negotiated and prepared at the joint request, direction, and construction of the parties, at arms length, with the advice and participation of counsel, and will be interpreted in accordance with its terms without favor to any party.
- I. No Joint Venture. Nothing contained in this Agreement is intended by the parties to create a partnership or joint venture between the parties or between the parties and the City of Kerrville, Texas.
- J. Survival of Terms. All rights, duties, liabilities and obligations accrued prior to termination will survive termination.
- K. Entire Agreement. This Agreement represents the entire agreement of the parties with respect to the subject matter hereof.

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

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

KERRVILLE FOLK FESTIVAL, INC.

David Wampler, President
Date: _____

Dalis Allen, Producer
Date: _____

ATTEST:

Cheryl Brown, Recording Secretary

APPROVED AS TO FORM:

Michael C. Hayes, Attorney for EIC

EXHIBIT 4A



P.O. Box 291466 • Kerrville, Texas 78029 • phone: (830)257-2000 • fax: (830)257-6000 • email: info@kff.org

2014 "Get on the Bus" Project

Proposed by the Kerrville Folk Festival Foundation

The Kerrville Folk Festival Foundation (formerly the Texas Folk Music Foundation), dba Kerrville Folk Festival (KFF), in a collaborative project with the Kerrville Downtown Business Association and the City of Kerrville, proposes the development of a Saturday, May 24th and Sunday, May 25th free Bus Ride service in which three buses on scheduled routes will provide transportation between local Hotels and the two major events/areas held Memorial Day weekend in Kerrville and Kerr County. This temporary addition to the Transportation Infrastructure in Kerrville would provide Public transportation designed to offer greater opportunities for tourism and sales tax revenues in Kerrville and Kerr County.

2014 brings to Kerrville and Kerr County the 43rd Kerrville Folk Festival. For the past 42 years, people from across the nation and around the world have attended KFF's yearly event. Over the last five years, KFF has provided the State of Texas and Kerr County with over \$160,359 in sales tax revenue as well as approximately \$1.9 million in Direct Economic Impact from Festival attendees each year. The development of a temporary bus route comprised of three 28 passenger buses will offer festival attendees, local residents and visiting tourists increased opportunities to shop local stores and restaurants and attend the Memorial Day events and festivities.

The proposed bus route begins at 10 a.m. Saturday and Sunday and runs until 1 a.m. the following morning. The route includes stops at the YO Ranch Resort Hotel, the Inn of the Hills and other local hotels as need dictates. Also on the route will be Peterson Plaza, located at 700 Water Street at the corner of Sidney Baker. There, passengers may depart and enjoy the assortment of shops and eateries offered in the Historic Downtown Kerrville area. Also accessible from Peterson Plaza is the Kerr County Market Days located on the Kerr County Courthouse grounds. Visitors and locals alike can take a leisurely stroll through Historic Downtown Kerrville to the Courthouse grounds and enjoy the skilled crafts of artisans from across the state of Texas.

Local residents, parking at the Kerrville Parking Garage and visitors of Historic Downtown Kerrville and Kerr County Market Days may then board the buses for the next scheduled stop on the route, the world renowned Kerrville Folk Festival (KFF). Located at Quiet Valley Ranch, 9 miles south of Kerrville on Hwy 16 S, KFF offers passengers the option to enjoy an afternoon and/or evening of music performed by nationally and internationally known songwriters. Return trips from KFF to Kerrville (and the local hotels) will continue throughout the evening until the last run at 1 a.m. each morning.

Upon review of received bids, the company that offers the best rate for the proposed services and schedule is Tuxedo Charters, located in Boerne, TX. Tuxedo Charter's fees for three 28 passenger buses, drivers and all costs incurred for services total \$7,800. This proposal will provide visiting tourists, local residents, or attendees of the Kerrville Folk Festival a source of free public transportation during the Memorial Day weekend and increases the potential for sales tax revenues in Kerrville and Kerr County over the Memorial Day Weekend.

Sincerely,


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

The Kerrville Folk Festival Foundation is a 501(c)(3) organization and your donation is tax deductible to the extent allowed by law.

Logos for sponsors: Texas Monthly, JAMBASE GO SEE LIVE MUSIC, Y.O. DUBBEZ RESORVE HOTEL, BEST GENTLE PRESS, Texas Commission on the Arts, and WVO.

8034 MULHOLLAND (830) 257-2000 FAX (830) 257-6000 EMAIL: INFO@KFF.MUSIC.COM
1000 A TEXAS FOLK MUSIC FOUNDATION BOULEVARD, KERRVILLE, TEXAS 78029

Agenda Item:

4D. Public hearing to consider a funding agreement between the City of Kerrville, Texas Economic Improvement Corporation, and Comanche Trace for the Texas Wine and Brew Festival in an amount not to exceed \$18,643.00. (staff)

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

SUBJECT: Hold a public hearing and consider a funding agreement between the City of Kerrville, Texas Economic Improvement Corporation, and Texas Hill Country Wine and Brew Fest, INC. in an amount not to exceed \$18,643

FOR AGENDA OF: February 24, 2014 **DATE SUBMITTED:** February 19, 2014

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

EXHIBITS: Draft Funding Agreement

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

A community event funding application has been submitted by Comanche Trace for the 2nd Annual Hill Country Wine and Brew Fest in the amount of \$18,643. This year, the event will be held during Memorial Day weekend in lieu of July. The festival will again feature Texas Wineries, Microbreweries, specialty food vendors, unique retail booths, and live music.

The funding request is for a total of **\$18,643** for rental of items such as:

- Tents
- Generators
- Fencing
- Port-a-potties
- Chairs
- Tables
- Dumpsters
- Misting Fans
- Stage
- Sound System

The Texas Hill Country Wine and Brew Festival received \$20,432 in EIC funding in 2013. The event had approximately 1,250 attendees. Event organizers anticipate up to 3,000 attendees for the 2014 event.

The "GO Team" evaluated this application and found that it is feasible in that the uses are allowed under the regulations for projects related to recreation or community facilities.

As per direction at the January 27, 2014 EIC meeting, attached is a draft funding agreement between the Texas Hill Country Wine and Brew Fest, INC. and the EIC. If approved, this funding agreement will be presented to City Council on March 11, 2014 for final consideration and approval.

RECOMMENDED ACTION

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

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

This Agreement is entered into by and between **TEXAS HILL COUNTRY WINE AND BREW FESTIVAL, INC.**, a Texas nonprofit corporation (“THCWBF”), acting herein by and through its duly authorized President, Trevor Hyde (“THCWBF Officer”), and the **CITY OF KERRVILLE, TEXAS, ECONOMIC IMPROVEMENT CORPORATION** (“EIC”), a Texas nonprofit corporation established pursuant to Section 4B of Tex. Rev. Civ. Stat. Art. 5190.6 and codified in Chapters 501, 502, and 505 of the Texas Local Government Code, otherwise known as the Development Corporation Act of 1979 (the Act”), and acting by and through its duly authorized President, David Wampler.

WITNESSETH:

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

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

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

WHEREAS, THCWBF is hosting its 2nd Annual Texas Hill Country Wine and Brew Festival (“Festival”) to be held around Lake Comanche Trace on May 24, 2014; and

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

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

WHEREAS, THCWBF has applied for a grant from EIC for funding to rent equipment, including tents, generators, and fencing for the Festival; and

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

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

WHEREAS, on February 24, 2014, in a meeting that was open to the public in accordance with the Texas Open Meetings Act, EIC held a public hearing pursuant to Section 505.159 of the Act related to the proposed expenditure of 4B Revenues for the purposes provided above;

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

**ARTICLE I.
EIC'S OBLIGATIONS**

- A. EIC grants to THCWBF an amount up \$18,643.00 ("Grant") for costs relating to equipment rental ("Equipment") for the Festival. The specific items that THCWBF intends to rent are listed on the attachment included as **Exhibit A**.
- B. Subject to the terms and conditions set forth in Article II, the Grant will be provided to THCWBF by EIC and EIC shall administer the Grant on a reimbursable basis. Prior to any payment from EIC, THCWBF must first 1) submit written evidence of costs, such as invoices, receipts, and bills of sale for review and approval; and 2) comply with section D of Article II. Following the submission and verification thereof, EIC shall then reimburse THCWBF for the costs.
- C. Payments made by EIC to THCWBF from 4B Revenues will be limited to the payments of "costs" as defined by the Act and as specified above for the Project.
- D. In no event will the total amount of the Grant exceed \$18,643.00.

**ARTICLE II.
THCWBF'S OBLIGATIONS**

- A. In order to receive reimbursement from EIC, THCWBF must rent the Equipment for the Festival and may not use the Equipment for any other purpose.
- B. THCWBF must keep and maintain complete and accurate records relating to the costs of the Equipment, separate and identifiable from its other records, for three (3) years following the termination of this Agreement. EIC and its representatives shall be entitled to inspect the records during the term of this Agreement and for three (3) years thereafter, upon reasonable notice.
- C. THCWBF will only be liable to EIC for the actual amount of the Grant to be conveyed to THCWBF and will not be liable to EIC for any other actual or consequential damages, direct or indirect, interest, attorney fees, or cost of court for any act of default by THCWBF under the terms of this Agreement.
- D. THCWBF shall provide a written report to the EIC no later than 30 days following the Festival. The report must include: attendance, gross receipts, total expenses, total ticket sales, list of exhibitors, and the estimated number of attendees at the Festival from outside of Kerr County.

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

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

ARTICLE IV.
THCWBF'S REPRESENTATIONS AND WARRANTIES

- A. THCWBF represents and warrants as of the date hereof:
- (1) THCWBF is a Texas nonprofit corporation existing in good standing and authorized to do business in the State of Texas;
- (2) Execution of this Agreement has been duly authorized by THCWBF and this Agreement is not in contravention of THCWBF's governing authority or any agreement or instrument to which THCWBF is a party or by which it may be bound as of the date hereof;
- (3) No litigation or governmental proceeding is pending, or, to the knowledge of THCWBF Officer, threatened against or affecting THCWBF, which may result in a material adverse change in THCWBF's business, properties, or operations sufficient to jeopardize THCWBF's legal existence; and
- (4) No written application, written statement, or correspondence submitted by THCWBF to EIC in connection with this Agreement, or in connection with any transaction contemplated hereby, to the knowledge of THCWBF Officer, contains any untrue 009

statement of a material fact or fails to state any material fact necessary to keep the statements contained therein from being misleading.

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

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

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

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

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

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

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

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

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

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

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

- (2) The appointment of a receiver of THCWBF;

- (3) The adjudication of THCWBF as bankrupt; and

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

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

ARTICLE VII. REMEDIES

- A. Except as otherwise provided in this Agreement, in the event of any default in or breach of this Agreement by any party hereto, or any successor to such party, such defaulting or breaching party (or successor) shall upon written notice from the other party, proceed immediately to cure or remedy such default or breach. 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, the aggrieved party may institute such proceedings as may be necessary or desirable in its opinion to cure and remedy such default or breach.
- B. Upon breach of this Agreement by either party and the failure to cure as permitted by this Article VII, the non-breaching party shall have the sole right and discretion to either terminate this Agreement and/or pursue any and all remedies which may be provided by law and this Agreement. Each party acknowledges and agrees that THCWBF is not entitled to recover any amounts in excess of the Grant contracted for under this Agreement and that EIC, pursuant to a breach and failure to cure by THCWBF in accordance with this Agreement, is entitled to recover attorney fees, collection costs, and any other costs due to its pursuit of repayment and remedies under this Agreement.
- C. Any delay by any party in instituting or prosecuting any actions or proceedings or otherwise asserting its rights will not, so long as the breach or default by another party is continuing, operate as a waiver of such rights or to deprive it of or limit such rights in any way; nor will any waiver in fact be made by any party with respect to any specific default by any other party except to the extent specifically waived in writing.

ARTICLE VIII. GENERAL PROVISIONS

- A. Severability. The provisions of this Agreement are severable, and if for any reason a provision of this Agreement is determined to be invalid by a court, the invalidity shall not affect other provisions that can be given effect without the invalid provision. Further, in lieu of such illegal, invalid, or unenforceable provision, there will be added automatically as a part of this Agreement, a provision as similar in its terms to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable.
- B. Amendment. This Agreement may be amended only by written amendment signed by both parties.
- C. Venue. All payments made pursuant to this Agreement and other obligations performed under this Agreement will be made or performed in Kerrville, Kerr County, Texas. Venue exists in Kerr County, Texas; and this Agreement is governed by and construed in accordance with the laws of the State of Texas.

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

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

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

Texas Hill Country Wine and Brew Festival
Trevor Hyde
President
2801 Comanche Trace Drive
Kerrville, Texas 78028
Email: thyde@comanchetrace.com
Telephone: (830) 895-8505

- E. Assignment. This Agreement is binding upon the parties hereto and their successors and assigns. Except as set forth in Article III, this Agreement may not be assigned by either party without the specific prior written consent of the other, which consent will not be unreasonably withheld. In the event that a party consents to any valid assignment of this Agreement by the other party hereto, the assigning party will be relieved of any and all obligations and liabilities on the part of such assigning party under this Agreement.
- F. Parties In Interest. Nothing in this Agreement entitles anyone other than THCWBF or EIC to any claim, cause of action, remedy, or right of any kind.
- G. Term. The term of this Agreement (the "Term") shall commence on the date that signatures of the parties are affixed to this Agreement (the "Effective Date"), and will terminate on the earlier of: (i) June 1, 2014, or when the requirements set forth in this Agreement are completed, whichever date is later; (ii) when terminated by mutual agreement of the parties; (iii) when terminated pursuant to Articles VI or VII; (iv) or at the THCWBF's sole and absolute discretion, but only upon the THCWBF's return of all

Grant funding to EIC that it has received under this Agreement. Upon termination of this Agreement, all rights, duties, and obligations of any kind under this Agreement will automatically expire and terminate and be of no other force and effect.

- H. Interpretation. Each party has had the opportunity to be represented by counsel of its choice in negotiating this Agreement. This Agreement will therefore be deemed to have been negotiated and prepared at the joint request, direction, and construction of the parties, at arms length, with the advice and participation of counsel, and will be interpreted in accordance with its terms without favor to any party.
- I. No Joint Venture. Nothing contained in this Agreement is intended by the parties to create a partnership or joint venture between the parties or between the parties and the City of Kerrville, Texas.
- J. Survival of Terms. All rights, duties, liabilities and obligations accrued prior to termination will survive termination.
- K. Entire Agreement. This Agreement represents the entire agreement of the parties with respect to the subject matter hereof.

EXECUTED AND EFFECTIVE, as of the date indicated above, by the City of Kerrville, Texas, Economic Improvement Corporation, by and through its Board President, duly authorized to execute same by action of the Board; and by Texas Hill Country Wine and Brew Festival, Inc., acting through the THCWBF Officer.

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

**TEXAS HILL COUNTRY
WINE AND BREW FESTIVAL**

David Wampler, President
Date: _____

Trevor Hyde, President
Date: _____

ATTEST:

Cheryl Brown, Recording Secretary

APPROVED AS TO FORM:

Michael C. Hayes, Attorney for EIC

EXHIBIT "A" 59



TEXAS HILL COUNTRY WINE & BREW FESTIVAL
2801 COMANCHE TRACE DR.
KERRVILLE, TX 78028
(830) 875-8505

INFO: TEXASHILLCOUNTRYWINEANDBREWFEEST.COM
WWW.WINEANDBREWFEEST.COM

November 26, 2014

Mr. Jonas Titas, Executive Director of the Kerrville Economic Development Corporation
Kerr Economic Improvement Corporation
701 Main Street
Kerrville, TX 78028

Dear Mr. Titas,

We respectfully submit the following information to the Kerr Economic Improvement Corporation committee members for their review regarding the request from The Texas Hill Country Wine & Brew Festival.

Section IV – Project Description

Texas Hill Country Wine & Brew Fest, Inc. is a 501(C) 3 non-profit organization and will be holding the 2nd Annual Texas Hill Country Wine & Brew Festival around Lake Comanche Trace on Saturday, May 24, 2014 to help kick off the Memorial Day weekend festivities in Kerrville. The 2014 festival will feature Texas Wineries, Microbreweries, specialty food vendors, unique retail booths, and live entertainment.

The festival organizers are anticipating and planning for up to 3,000 attendees for this one day event. This estimate is based on the more than 1,000 paid attendees who attended our inaugural event in 2013. The 2013 festival was held in July, and has had an overwhelmingly positive response from attendees, vendors and sponsors of the event. This is in line with the number of attendees who attend similar festivals in our area. We expect to grow in our attendance as the Fredericksburg Food & Wine Festival – which has over 2,400 attendees annually and Becker Vineyards' 2-day Lavender Festival – which historically draws over 5,000 attendees during its two day event.

The 2014 event will be held during the Memorial Day weekend in May, which should provide pleasant weather for an outdoor event. The Wine & Brew Festival will be a wonderful, high quality event that will enhance Kerrville's other weekends' activities, and will replace the cancelled arts & craft fair which was held during this weekend for 42 years.

Kerr Economic Improvement Corporation
November 26, 2014
Page 2

General Admission will be \$35, which includes a choice of a souvenir wine or pilsner glass, a wine-bottle carrier, as well as ten tasting-tickets for ten 1 oz tastings of wine or ten 3.5 oz tastings of beer. Tickets for additional tastings will cost \$10 for 10 tickets. Admission for an adult non-alcohol patron is \$25, admission for individuals under 21 will cost \$10, and children under 6 get in free.

We are in the midst of reviewing the musical entertainment for the 2014 festival which will be chosen from several different genres. For additional entertainment, we are looking to bring back trick roper Kevin Fitzpatrick from Bandera to dazzle the crowd with his extraordinary tricks. We are also adding additional entertainment options which will enhance and continue the growth of this premier event that is designed as a family & pet friendly festival in Kerrville.

As of this early date, we have received confirmation from 95% of last year's vendors that they will return for the 2014 festival. In addition to the eight Texas Wineries that participated in the 2013 festival, additional wineries from across the State will be included at the event.

Brown Distributing Company and Ben E. Keith Co. have committed to participate in the 2014 festival showcasing Craft Breweries from Texas and across the nation.

Once again, Buzzie's Bar-B-Q of Kerrville and Chef's Kitchen have committed to participate in the 2014 festival. The festival organizers are contacting additional food vendors who will provide different varieties of food to please every attendee's palette.

Unique specialty vendors are being contacted to provide an additional spectrum to this festival. Some of the vendors who have already committed to attending the 2014 festival are: Hill Country Wine Charms and Artisan Soap, Barrel Design, Blue Bottle Studio, Gourmet Texas Pasta, Texas Hill Country Olive Company, Vela Farms, Artist Melissa Torres, Hill Country Premium Beverages, and Tara Hutch Fine Jewelry. Additional specialty vendors are being added to broaden the variety of vendors.

We will be bringing back the popular large tent with misting fans which will be set up near the entertainment stage where attendees can listen to the music, rest a while and enjoy foods from specialty food vendors. Cold bottled water will be available at no charge, and soft drinks will be available for a minimal charge.

This event will be manned almost entirely by volunteers from the Kerrville community and we expect that volunteer base to grow in 2014. In 2013, we had nearly 60 volunteers who were all wonderful ambassadors for Kerrville with an event that had approximately 50-60% of the patrons coming from 100 or more miles away, and stayed in town multiple days over the holiday weekend. There were also numerous attendees from the San Antonio and Austin area.

An added bonus the 2013 Wine & Brew Festival brought to Kerrville and to our local economy during the festival was the economic impact received from sales tax revenue and hotel & restaurant revenue.

Additionally, an attendee of the festival liked the area so much they contracted to purchase a home at Comanche Trace.

According to the National Association of Homes Builders, the estimated one-year local economic impacts of building 100 single-family homes with an average price of \$321,000 and built on a lot with an average value of \$40,000 in a typical metro area include:

- \$21.1 million in local income (trade, services, retail, etc.)
- \$2.2 million in taxes and other revenue for local governments, and
- 324 local jobs.

With the average price of \$500,000 for a single-family home in Comanche Trace and an average price of \$80,000 for a lot, the economic impact for the sale/building of one home brings an estimated:

- \$339,000 in local income (trade, services, retail, etc.)
- \$35,420 in taxes and other revenue for local governments, and
- 3 local jobs.

Additionally, based on the home and lot prices referenced above, the annually recurring impact for one home in Comanche Trace brings an estimated:

- \$49,910 in local income (trade, services, retail, etc.)
- \$12,000 in taxes and other revenue for local governments, and
- ½ local jobs.

If you look at the economic impact of the 16 new homes currently under construction at Comanche Trace (approximately 25 new home starts in 2013 and an estimated 25 new homes scheduled to begin construction in 2014), these additional homes will add:

- \$5,424,000 in local income (trade, services, retail, etc.)
- \$566,720 in taxes and other revenue for local governments, and
- 48 local jobs.

Comanche Trace, as a community of 306 homes, provides an annually recurring impact to the Kerrville area of:

- \$15,272,460 in local income (trade, services, retail, etc.)
- \$3,672,000 in taxes and other revenue for local governments, and
- 153 local jobs.

As the Texas Hill Country Wine & Brew Festival continues to grow, so will the positive economic impact to the Kerrville area -- and with the continued growth of Comanche Trace -- we believe this is a "Win-Win" opportunity for the entire Texas Hill Country.

Kerr Economic Improvement Corporation
November 26, 2014
Page 4

The Texas Hill Country Wine & Brew Festival will provide marketing for this event through multiple venues. THCWBF will advertise the event through the Texas Wine Trail website and e-blasts, Lifestyle magazine and website, radio spots, publications in Houston, San Antonio, and Austin, the Texas Golf Association, local area Chambers of Commerce, CVB websites, Facebook and Twitter. In addition to the marketing venues listed above, wineries who are participating in this festival will also provide e-blast marketing to the members of their Wine Club. Overall, more than 500,000 e-blasts will be sent promoting this event. The festival website address is: www.wineandbrewfest.com.

Check the event website, Facebook, and Twitter pages for the latest news and updates on additional wineries, breweries, vendors, and attractions.

Website	Facebook	Twitter
www.wineandbrewfest.com	/TexasHillCountryWineAndBrewFest	/TexasWineFest

We appreciate your consideration to this request to assist The Texas Hill Country Wine & Brew Festival and look forward to hearing from you soon.

Sincerely,



Trevor Hyde, President
Michael Parker, Vice President
Gena Teer, Secretary

Texas Hill Country Wine & Brew Fest
Estimated Rental Expenses for 2014
11/19/2013

	Proposed
Tent Rentals	4,100
Generator Rentals	300
Temporary Fencing (est. 5000')	5,800
Port-a-potties (30 @ 75.78 ea)	2,273
Chair Rentals (400 @ 2.25 ea)	900
Table Rentals (50 @ 8.00 ea)	400
Dumpster Rentals	500
Misting Fan Rentals	750
Motorola Walkie Talkies	120
Stage Rental	2,300
Sound System Rental	<u>1,200</u>
 Total Rentals	 18,643

Agenda Item:

- 4E. Public hearing to consider a funding agreement between the City of Kerrville, Texas Economic Improvement Corporation, and Kerrville's Fourth on the River in an amount not to exceed \$23,100.00. (staff)

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

SUBJECT: Hold a public hearing and consider a funding agreement between the City of Kerrville, Texas Economic Improvement Corporation, and Kerrville's 4th on the River in an amount not to exceed \$23,100

FOR AGENDA OF: February 24, 2014 **DATE SUBMITTED:** February 19, 2014

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

EXHIBITS: Draft Funding Agreement

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

An application has been submitted by Kerrville's 4th on the River organization for rented items in conjunction with hosting the Kerrville's 4th on the River event to be held on July 4, 2014 in Lehmann-Monroe Park. The event will consist of children's activities, food vendors, and live music in conjunction with the annual City fireworks display sponsored by Mamacita's. There is no admission fee associated with this event. Approximately 5,000 – 7,000 attended the 2013 event.

Kerrville's 4th on the River, a 501C3 organization, established in 2011 has hosted the event in Louise Hays Park for the past three years. Due to the park improvements / River Trail project, the park will be unavailable to host the event thus relocating the event to Lehmann-Monroe Park. Upon completion of these projects, the event will move back to Louise Hays Park in 2015.

Kerrville's 4th on the River mission is to help the Kerrville Community in its revitalization efforts to attract and create a more vibrant downtown focusing on the Guadalupe River.

The funding request is for a total of **\$23,100** for rental of:

- Stage / Sound
- Tents
- Port-a-potties
- Fencing

- Generators
- Tables / Chairs

Kerrville's 4th on the River received \$25,000 in EIC funding in 2013.

The "GO Team" evaluated this application and found that it is feasible in that the uses are allowed under the regulations for projects related to recreation or community facilities.

As per direction at the January 27, 2014 EIC meeting, attached is a draft funding agreement between the Kerrville's 4th on the River and the EIC. If approved, this funding agreement will be presented to City Council on March 11, 2014 for final consideration and approval.

RECOMMENDED ACTION

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

**ECONOMIC DEVELOPMENT GRANT AGREEMENT BETWEEN
KERRVILLE'S FOURTH ON THE RIVER, INC. AND
THE CITY OF KERRVILLE, TEXAS ECONOMIC IMPROVEMENT CORPORATION**

This Agreement is entered into by and between **KERRVILLE'S FOURTH ON THE RIVER, INC.**, a Texas nonprofit corporation ("KFOR"), acting herein by and through its duly authorized President, Ben Modisett ("KFOR 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 and codified in Chapters 501, 502, and 505 of the Texas Local Government Code, otherwise known as the Development Corporation Act of 1979 (the Act"), and acting by and through its duly authorized President, David Wampler.

WITNESSETH:

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

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

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

WHEREAS, KFOR is hosting its annual event in conjunction with the City's July 4th fireworks display ("Event") on July 4, 2014; and

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

WHEREAS, KFOR has applied for a grant from EIC for funding to rent equipment, including a stage, fencing, and generators for the Event; and

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

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

WHEREAS, on February 24, 2014, 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, KFOR and the EIC agree as follows:

**ARTICLE I.
EIC'S OBLIGATIONS**

- A. EIC grants to KFOR an amount up to \$23,100.00 ("Grant") for costs relating to equipment rental ("Equipment") for the Event. The specific items that KFOR intends to rent are listed on the attachment included as **Exhibit A**.
- B. Subject to the terms and conditions set forth in Article II, the Grant will be provided to KFOR by EIC and EIC shall administer the Grant on a reimbursable basis. Prior to any payment from EIC, KFOR must first 1) submit written evidence of costs, such as invoices, receipts, and bills of sale for review and approval; and 2) comply with section D of Article II. Following the submission and verification thereof, EIC shall then reimburse KFOR for the costs.
- C. Payments made by EIC to KFOR from 4B Revenues will be limited to the payments of "costs" as defined by the Act and as specified above for the Project.
- D. In no event will the total amount of the Grant exceed \$23,100.00.

**ARTICLE II.
KFOR'S OBLIGATIONS**

- A. In order to receive reimbursement from EIC, KFOR must rent the Equipment for the Event and may not use the Equipment for any other purpose.
- B. KFOR must keep and maintain complete and accurate records relating to the costs of the Equipment, separate and identifiable from its other records, for three (3) years following the termination of this Agreement. EIC and its representatives shall be entitled to inspect the records during the term of this Agreement and for three (3) years thereafter, upon reasonable notice.
- C. KFOR will only be liable to EIC for the actual amount of the Grant to be conveyed to KFOR and will not be liable to EIC for any other actual or consequential damages, direct or indirect, interest, attorney fees, or cost of court for any act of default by KFOR under the terms of this Agreement.
- D. KFOR shall provide a written report to the EIC no later than 30 days following the Event. The report must include: attendance, gross receipts, total expenses, total ticket sales, list of exhibitors, and the estimated number of attendees at the Event from outside of Kerr County.

ARTICLE III.
SALE OF PROJECT, MERGER OR CONSOLIDATION OF KFOR

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

ARTICLE IV.
KFOR'S REPRESENTATIONS AND WARRANTIES

- A. KFOR represents and warrants as of the date hereof:
- (1) KFOR 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 KFOR and this Agreement is not in contravention of KFOR's governing authority or any agreement or instrument to which KFOR 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 KFOR Officer, threatened against or affecting KFOR, which may result in a material adverse change in KFOR's business, properties, or operations sufficient to jeopardize KFOR's legal existence; and
 - (4) No written application, written statement, or correspondence submitted by KFOR to EIC in connection with this Agreement, or in connection with any transaction contemplated hereby, to the knowledge of KFOR Officer, contains any untrue statement

of a material fact or fails to state any material fact necessary to keep the statements contained therein from being misleading.

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

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

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

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

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

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

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

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

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

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

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

(2) The appointment of a receiver of KFOR;

(3) The adjudication of KFOR as bankrupt; and

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

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

**ARTICLE VII.
REMEDIES**

- A. Except as otherwise provided in this Agreement, in the event of any default in or breach of this Agreement by any party hereto, or any successor to such party, such defaulting or breaching party (or successor) shall upon written notice from the other party, proceed immediately to cure or remedy such default or breach. 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, the aggrieved party may institute such proceedings as may be necessary or desirable in its opinion to cure and remedy such default or breach.
- B. Upon breach of this Agreement by either party and the failure to cure as permitted by this Article VII, the non-breaching party shall have the sole right and discretion to either terminate this Agreement and/or pursue any and all remedies which may be provided by law and this Agreement. Each party acknowledges and agrees that KFOR is not entitled to recover any amounts in excess of the Grant contracted for under this Agreement and that EIC, pursuant to a breach and failure to cure by KFOR in accordance with this Agreement, is entitled to recover attorney fees, collection costs, and any other costs due to its pursuit of repayment and remedies under this Agreement.
- C. Any delay by any party in instituting or prosecuting any actions or proceedings or otherwise asserting its rights will not, so long as the breach or default by another party is continuing, operate as a waiver of such rights or to deprive it of or limit such rights in any way; nor will any waiver in fact be made by any party with respect to any specific default by any other party except to the extent specifically waived in writing.

**ARTICLE VIII.
GENERAL PROVISIONS**

- A. Severability. The provisions of this Agreement are severable, and if for any reason a provision of this Agreement is determined to be invalid by a court, the invalidity shall not affect other provisions that can be given effect without the invalid provision. Further, in lieu of such illegal, invalid, or unenforceable provision, there will be added automatically as a part of this Agreement, a provision as similar in its terms to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable.
- B. Amendment. This Agreement may be amended only by written amendment signed by both parties.
- C. Venue. All payments made pursuant to this Agreement and other obligations performed under this Agreement will be made or performed in Kerrville, Kerr County, Texas. Venue exists in Kerr County, Texas; and this Agreement is governed by and construed in accordance with the laws of the State of Texas.

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

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

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

Kerrville's Fourth on the River, Inc.
Benjamin Modisett
President
Kerrville's 4th on the River
P.O. Box 295081
Kerrville, Texas 78029
bmodisett@me.com
Telephone (830) 370-9316

- E. Assignment. This Agreement is binding upon the parties hereto and their successors and assigns. Except as set forth in Article III, this Agreement may not be assigned by either party without the specific prior written consent of the other, which consent will not be unreasonably withheld. In the event that a party consents to any valid assignment of this Agreement by the other party hereto, the assigning party will be relieved of any and all obligations and liabilities on the part of such assigning party under this Agreement.
- F. Parties In Interest. Nothing in this Agreement entitles anyone other than KFOR or EIC to any claim, cause of action, remedy, or right of any kind.
- G. Term. The term of this Agreement (the "Term") shall commence on the date that signatures of the parties are affixed to this Agreement (the "Effective Date"), and will terminate on the earlier of: (i) September 1, 2014, or when the requirements set forth in this Agreement are completed, whichever date is later; (ii) when terminated by mutual agreement of the parties; (iii) when terminated pursuant to Articles VI or VII; (iv) or at

the KFOR's sole and absolute discretion, but only upon the KFOR's return of all Grant funding to EIC that it has received under this Agreement. Upon termination of this Agreement, all rights, duties, and obligations of any kind under this Agreement will automatically expire and terminate and be of no other force and effect.

- H. Interpretation. Each party has had the opportunity to be represented by counsel of its choice in negotiating this Agreement. This Agreement will therefore be deemed to have been negotiated and prepared at the joint request, direction, and construction of the parties, at arms length, with the advice and participation of counsel, and will be interpreted in accordance with its terms without favor to any party.
- I. No Joint Venture. Nothing contained in this Agreement is intended by the parties to create a partnership or joint venture between the parties or between the parties and the City of Kerrville, Texas.
- J. Survival of Terms. All rights, duties, liabilities and obligations accrued prior to termination will survive termination.
- K. Entire Agreement. This Agreement represents the entire agreement of the parties with respect to the subject matter hereof.

EXECUTED AND EFFECTIVE, as of the date indicated above, by the City of Kerrville, Texas, Economic Improvement Corporation, by and through its Board President, duly authorized to execute same by action of the Board; and by Kerrville's Fourth on the River, Inc., acting through the KFOR Officer.

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

**KERRVILLE'S FOURTH ON
THE RIVER, INC.**

David Wampler, President
Date: _____

Ben Modisett, President
Date: _____

ATTEST:

Cheryl Brown, Recording Secretary

APPROVED AS TO FORM:

Michael C. Hayes, Attorney for EIC

EXHIBIT "A" 20

RECEIVED
OCT 28 2013
BY: CUB

October 28, 2013

Dear Mr. Wampler,

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

Kerrville's 4th on the River was started 3 years ago and has been successful events that coincided with the City of Kerrville's fireworks presentation. You may have heard about our events, for Kerrville was one of the only communities to even have a fireworks display in 2011, and was one of the most amazing displays we have ever seen. Thanks to many generous businesses in Kerrville like Mamacitas (who has given the city a grant to fund the fireworks display for 10 years) and James Avery Craftsman (our title sponsor for the 2011 event) and HEB and Guadalupe National Bank (title sponsors in 2012) we were able to bring upwards of 20,000 people to our downtown and city park to enjoy the festivities.

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

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

As our annual attendance has grown, we are expecting to increase the advertisement and hope to get 7,500 people to the day's festivities.

For the first two years of the event we were able to fund the concert solely on donations and ticket sales, and was able to breakeven. This past year, we were able to raise enough money to put some towards next year's show, and plan to make our first grant to the Friends of the River Trail in 2014.

Our project Budget is as follows:

Stage/Sound-	\$14,500.00
Tents-	\$ 2,500.00
Port a Potties	\$ 2,000.00
Fencing	\$ 200.00
Generators	\$ 3,450.00
Tables/Chairs	\$ 700.00
Total	\$23,100.00

Thank you for your consideration.

Benjamin Modisell
Kerrville's 4th on the River
President

Agenda Item:

- 4F. Public hearing to consider a funding agreement between the City of Kerrville, Texas Economic Improvement Corporation, and the Historic Downtown Business Alliance for the Sock Hop on the Square event in an amount not to exceed \$5,016.00. (staff)

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

SUBJECT: Hold a public hearing and consider a funding agreement between the City of Kerrville, Texas Economic Improvement Corporation, and the Historic Downtown Business Alliance for the Sock Hop on the Square event in an amount not to exceed \$5,016

FOR AGENDA OF: February 24, 2014 **DATE SUBMITTED:** February 19, 2014

SUBMITTED BY: Ashlea Boyle  **CLEARANCES:** Todd Parton
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

An application has been submitted by the Historic Downtown Business Alliance (HDBA) for the Sock Hop on the Star event to be held in Downtown Kerrville on September 27, 2014. HDBA resurrected the former Harvest Moon Dance with a new 50's theme twist that included a variety of fun oldies type booths, live music, food, classic cars and more. Approximately 450 people attended the first Sock Hop on the Star event in 2013.

The funding request is for a total of **\$5,016** for rental of:

- Tables
- Chairs
- Tablecloths
- Booth and raffle supplies (purchase)

The "GO Team" evaluated this application and found that it is feasible in that the uses are allowed under the regulations for projects related to recreation or community facilities.

As per direction at the January 27, 2014 EIC meeting, attached is a draft funding agreement between the Historic Downtown Business Alliance and the EIC. If approved, this funding agreement will be presented to City Council on March 11, 2014 for final consideration and approval.

RECOMMENDED ACTION

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

**ECONOMIC DEVELOPMENT GRANT AGREEMENT BETWEEN
HISTORIC DOWNTOWN BUSINESS ALLIANCE, INC. AND
THE CITY OF KERRVILLE, TEXAS ECONOMIC IMPROVEMENT CORPORATION**

This Agreement is entered into by and between **HISTORIC DOWNTOWN BUSINESS ALLIANCE, INC.**, a Texas nonprofit corporation (“HDBA”), acting herein by and through its duly authorized President, Keri Wilt (“HDBA 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 and codified in Chapters 501, 502, and 505 of the Texas Local Government Code, otherwise known as the Development Corporation Act of 1979 (the Act”), and acting by and through its duly authorized President, David Wampler.

WITNESSETH:

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

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

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

WHEREAS, HDBA is hosting its 2nd Annual Sock Hop on the Star (“Event”) on September 27, 2014, which consists a multigenerational family event; and

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

WHEREAS, HDBA has applied for a grant from EIC for funding to rent equipment, including tables, chairs, and booths for the Event; and

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

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

WHEREAS, on February 24, 2014, 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, HDBA and the EIC agree as follows:

**ARTICLE I.
EIC'S OBLIGATIONS**

- A. EIC grants to HDBA an amount up to \$5,016.00 ("Grant") for costs relating to equipment rental ("Equipment") for the Event. The specific items that HDBA intends to rent are listed on the attachment included as **Exhibit A**.
- B. Subject to the terms and conditions set forth in Article II, the Grant will be provided to HDBA by EIC and EIC shall administer the Grant on a reimbursable basis. Prior to any payment from EIC, HDBA must first 1) submit written evidence of costs, such as invoices, receipts, and bills of sale for review and approval; and 2) comply with section D of Article II. Following the submission and verification thereof, EIC shall then reimburse HDBA for the costs.
- C. Payments made by EIC to HDBA from 4B Revenues will be limited to the payments of "costs" as defined by the Act and as specified above for the Project.
- D. In no event will the total amount of the Grant exceed \$5,016.00.

**ARTICLE II.
HDBA'S OBLIGATIONS**

- A. In order to receive reimbursement from EIC, HDBA must rent the Equipment for the Event and may not use the Equipment for any other purpose.
- B. HDBA must keep and maintain complete and accurate records relating to the costs of the Equipment, separate and identifiable from its other records, for three (3) years following the termination of this Agreement. EIC and its representatives shall be entitled to inspect the records during the term of this Agreement and for three (3) years thereafter, upon reasonable notice.
- C. HDBA will only be liable to EIC for the actual amount of the Grant to be conveyed to HDBA and will not be liable to EIC for any other actual or consequential damages, direct or indirect, interest, attorney fees, or cost of court for any act of default by HDBA under the terms of this Agreement.
- D. HDBA shall provide a written report to the EIC no later than 30 days following the Event. The report must include: attendance, gross receipts, total expenses, total ticket sales, list of exhibitors, and the estimated number of attendees at the Event from outside of Kerr County.

ARTICLE III.
SALE OF PROJECT, MERGER OR CONSOLIDATION OF HDBA

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

ARTICLE IV.
HDBA'S REPRESENTATIONS AND WARRANTIES

- A. HDBA represents and warrants as of the date hereof:
- (1) HDBA 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 HDBA and this Agreement is not in contravention of HDBA's governing authority or any agreement or instrument to which HDBA 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 HDBA Officer, threatened against or affecting HDBA, which may result in a material adverse change in HDBA's business, properties, or operations sufficient to jeopardize HDBA's legal existence; and
 - (4) No written application, written statement, or correspondence submitted by HDBA to EIC in connection with this Agreement, or in connection with any transaction contemplated hereby, to the knowledge of HDBA Officer, contains any untrue statement

of a material fact or fails to state any material fact necessary to keep the statements contained therein from being misleading.

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

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

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

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

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

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

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

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

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

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

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

(2) The appointment of a receiver of HDBA;

(3) The adjudication of HDBA as bankrupt; and

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

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

ARTICLE VII. REMEDIES

- A. Except as otherwise provided in this Agreement, in the event of any default in or breach of this Agreement by any party hereto, or any successor to such party, such defaulting or breaching party (or successor) shall upon written notice from the other party, proceed immediately to cure or remedy such default or breach. 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, the aggrieved party may institute such proceedings as may be necessary or desirable in its opinion to cure and remedy such default or breach.
- B. Upon breach of this Agreement by either party and the failure to cure as permitted by this Article VII, the non-breaching party shall have the sole right and discretion to either terminate this Agreement and/or pursue any and all remedies which may be provided by law and this Agreement. Each party acknowledges and agrees that HDBA is not entitled to recover any amounts in excess of the Grant contracted for under this Agreement and that EIC, pursuant to a breach and failure to cure by HDBA in accordance with this Agreement, is entitled to recover attorney fees, collection costs, and any other costs due to its pursuit of repayment and remedies under this Agreement.
- C. Any delay by any party in instituting or prosecuting any actions or proceedings or otherwise asserting its rights will not, so long as the breach or default by another party is continuing, operate as a waiver of such rights or to deprive it of or limit such rights in any way; nor will any waiver in fact be made by any party with respect to any specific default by any other party except to the extent specifically waived in writing.

ARTICLE VIII. GENERAL PROVISIONS

- A. Severability. The provisions of this Agreement are severable, and if for any reason a provision of this Agreement is determined to be invalid by a court, the invalidity shall not affect other provisions that can be given effect without the invalid provision. Further, in lieu of such illegal, invalid, or unenforceable provision, there will be added automatically as a part of this Agreement, a provision as similar in its terms to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable.
- B. Amendment. This Agreement may be amended only by written amendment signed by both parties.
- C. Venue. All payments made pursuant to this Agreement and other obligations performed under this Agreement will be made or performed in Kerrville, Kerr County, Texas. Venue exists in Kerr County, Texas; and this Agreement is governed by and construed in accordance with the laws of the State of Texas.

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

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

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

Historic Downtown Business Alliance, Inc.
Keri Wilt
President
Historic Downtown Business Alliance
P.O. Box 294443
Kerrville, Texas 78028
keri@grapejuiceonline.com
Telephone: (830) 343-7259

- E. Assignment. This Agreement is binding upon the parties hereto and their successors and assigns. Except as set forth in Article III, this Agreement may not be assigned by either party without the specific prior written consent of the other, which consent will not be unreasonably withheld. In the event that a party consents to any valid assignment of this Agreement by the other party hereto, the assigning party will be relieved of any and all obligations and liabilities on the part of such assigning party under this Agreement.
- F. Parties In Interest. Nothing in this Agreement entitles anyone other than HDBA or EIC to any claim, cause of action, remedy, or right of any kind.
- G. Term. The term of this Agreement (the "Term") shall commence on the date that signatures of the parties are affixed to this Agreement (the "Effective Date"), and will terminate on the earlier of: (i) November 1, 2014, or when the requirements set forth in this Agreement are completed, whichever date is later; (ii) when terminated by mutual agreement of the parties; (iii) when terminated pursuant to Articles VI or VII; (iv) or at

the HDBA's sole and absolute discretion, but only upon the HDBA's return of all Grant funding to EIC that it has received under this Agreement. Upon termination of this Agreement, all rights, duties, and obligations of any kind under this Agreement will automatically expire and terminate and be of no other force and effect.

- H. Interpretation. Each party has had the opportunity to be represented by counsel of its choice in negotiating this Agreement. This Agreement will therefore be deemed to have been negotiated and prepared at the joint request, direction, and construction of the parties, at arms length, with the advice and participation of counsel, and will be interpreted in accordance with its terms without favor to any party.
- I. No Joint Venture. Nothing contained in this Agreement is intended by the parties to create a partnership or joint venture between the parties or between the parties and the City of Kerrville, Texas.
- J. Survival of Terms. All rights, duties, liabilities and obligations accrued prior to termination will survive termination.
- K. Entire Agreement. This Agreement represents the entire agreement of the parties with respect to the subject matter hereof.

EXECUTED AND EFFECTIVE, as of the date indicated above, by the City of Kerrville, Texas, Economic Improvement Corporation, by and through its Board President, duly authorized to execute same by action of the Board; and by Historic Downtown Business Association, Inc., acting through the HDBA Officer.

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

**HISTORIC DOWNTOWN
BUSINESS ASSOCIATION, INC.**

David Wampler, President
Date: _____

Keri Wilt, President
Date: _____

ATTEST:

Cheryl Brown, Recording Secretary

APPROVED AS TO FORM:

Michael C. Hayes, Attorney for EIC

November 30, 2013

Kerr Economic Development Corporation
1700 Sidney Baker, Ste. 100
Kerrville, Texas 78028

To whom it may concern:

The Historic Downtown Business Alliance would like to request \$5,016 in funds to support their Sock Hop on the Star Event to be held in the heart of Downtown Kerrville on September 27th, 2014 from 5-11pm. The funds will be used to cover hard costs of equipment rentals, tables, chairs, table cloths, and booth and raffle supplies.

Event Purpose

- 1) To create a multi-generational family friendly community event that will drive potential customers into Downtown Kerrville.
- 2) To raise awareness of the businesses in Downtown Kerrville.
- 3) To raise funds for the Historic Downtown Business Alliance.

Event History

On September 14th, 2013 from 5 pm to 9 pm, the Historic Downtown Business Alliance hosted its 1st Annual Sock Hop on the Star. The event was free with a suggested donation of \$10 for adults and \$5 for children and included a raffle, silent auction, dancing, and various 50's inspired booths.

HDBA brought back the old tradition of the Harvest Moon Dance that took place every fall in Downtown Kerrville, but replaced it with a fun for all ages 50's street dance that was very well received in its first year.

An estimated 450 people attended and the fledgling event turned a small profit.

Growth Plan

HDBA plans to grow the event attendance and its revenue in the following ways:

- 1) By moving the event to the Saturday of the Kerrville Triathlon, HDBA hopes to provide a fun event for the athletes and their family to attend, while also reducing the amount of days that the downtown streets will need to be closed. This will expand the mostly local crowd that attended in year 1.
- 2) By charging vendors for booth space.
- 3) By soliciting additional sponsors.
- 4) By increasing the marketing budget to include Radio and additional print.
- 5) By increasing the hours of the event giving attendees more time to spend money.

Historic Downtown Business Alliance Purpose

The Historic Downtown Business Alliance is a not-for-profit organization funded by its membership and local fundraisers.

HDBA's Mission:

- o Promote a strong business climate in Historic Downtown Kerrville by developing ideas and programs to promote existing businesses and to attract new businesses;
- o Raise monies through membership dues, sponsorships, donations, grants, and fundraising activities to fund activities and advertising focused on expanding the customer base for all Downtown businesses;
- o Foster communication and a spirit of cooperation within the Downtown community.

HDBA Background

HDBA in its current format began in 2012 by a group of downtown business owners who wanted to get involved in the revitalization of downtown Kerrville and work together to drive awareness and customers into the heart of our city. The Kerrville Downtown Business Association was currently in existence, but was not making an impact. The Downtown Businesses joined the then KDBA and revised the mission and bylaws to breathe new life into the organization and Downtown Kerrville.

For a brand new organization, HDBA has quickly become involved with the city and partnering with Main Street on key downtown issues, creating new events and refreshing old ones, and working hard to promote Downtown Kerrville.

Downtown Kerrville

Why is focusing on and supporting Downtown important? A successful downtown is important because that is an indicator of community pride, economic vitality, and social capital. Therefore, when the city center suffers, the whole city suffers. Creating an inviting and vibrant city center is an asset for recruiting new residents, businesses, industry, visitors, & the like. It also keeps the current residents happy & excited to call their city home.

Thank you for your time and consideration of funding. If you have any questions, please contact me direction at 830-343-7259 or at contacthdba@downtownkerrville.com.

Sincerely,



Keri Wilt
President of the Historic Downtown Business Alliance



For more information:
Email: contacthdba@downtownkerrville.com
Website: www.downtownkerrville.com/hdba

HDBA
PO. Box 29444
Kerrville, Texas 78029

Sock Hop Budget

	Sept. 14th	Sept 27th	TBD	TBD
	2013	2014	2015	2016
Attendance	Approx. 450	800	1000	1200
Expenses				
Muslc	\$346	\$1,000	\$1,200	\$1,200
1 Band Yr One, Two + DJ in future				
Security	\$360	\$480	\$600	\$720
\$120 per police officer				
Booth Supplles	\$370	\$300	\$500	\$700
Tattoos, Hair Spray/Gel, Face Paint, etc.				
Decorations	\$174	\$227	\$352	\$352
50's Decorattons, Balloons				
Rentals	\$1,540	\$4,189	\$4,899	\$5,399
Tables/Chairs/Table Coths	\$1,540	\$1,540	\$2,000	\$2,500
Port-O-Potties	\$0	\$1,625	\$1,875	\$1,875
Light Poles/Generators	\$0	\$1,024	\$1,024	\$1,024
Raffle Supplles	\$199	\$300	\$400	\$500
Tickets and Old Time Candy for Blg Givers				
Marketing	\$268	\$1,000	\$1,000	\$1,000
Poster Printing/Social Media/ Radlo/Print/Signs				
Total Costs	\$3,257	\$7,496	\$8,951	\$9,871
Revenue				
Donations at the Door/Raffle Tickets	\$2,233	\$5,000	\$7,000	\$9,000
Silent Auction Items	\$385	\$1,000	\$1,500	\$2,000
Sponsorshp	\$1,540	\$3,000	\$4,000	\$5,000
Vendors	\$0	\$500	\$1,000	\$1,500
General Donations Total	\$4,158	\$9,500	\$13,500	\$17,500
Net Profit	\$901	\$2,004	\$4,549	\$7,629
Funding Request		\$5,016	\$6,151	\$6,951
% of Budget		67%	69%	70%



Absolute Event Management & Rentals, Inc.
 1617 Broadway
 Kerrville, TX 78028
 (830)315-0033
 sales@absoluteem.com
 www.AbsoluteEM.com

Quote

Date	Quote No.
11/26/2013	1067
Exp. Date	

Address

Keri Wilt
 HDBA

Event Date	Service	Description	Quantity	Rental Rate	Amount
11/26/2013	RT60-T	60" ROUND TABLE	20	10.00	200.00
11/26/2013	CT3042-T	30" X 42" COCKTAIL TABLE	10	10.00	100.00
11/26/2013	RTC120-L	120" ROUND BASIC POLYESTER TABLE LINEN	30	16.00	480.00
11/26/2013	WGC-CS	WHITE GARDEN CHAIR WITH PADDED SEAT	200	3.00	600.00
11/26/2013	BC90132-L	90" X 132" BASIC POLYESTER TABLE LINEN (for booth tables)	10	16.00	160.00
11/26/2013	SDEL	STANDARD DELIVERY AND PICK-UP	1	0.00	0.00T

This is only an estimate. Actual charges are subject to change until a contract is signed.
 A 50% deposit is required to secure rentals unless other arrangements have been made.

SubTotal	\$1,540.00
Tax (8.25%)	\$0.00
Total	\$1,540.00

Accepted By

Accepted Date

Rentals are no longer afterthoughts; they are key elements to great events.

Agenda Item:

- 4G. Public hearing to consider a funding agreement between the City of Kerrville, Texas Economic Improvement Corporation, and the High Five Events for the Kerrville Triathlon. (staff)

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

SUBJECT: Hold a public hearing and consider a funding agreement between the City of Kerrville, Texas Economic Improvement Corporation, and High Five Events for the Kerrville Triathlon Festival in an amount not to exceed \$18,600

FOR AGENDA OF: February 24, 2014 **DATE SUBMITTED:** February 19, 2014

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

EXHIBITS: Draft Funding Agreement

AGENDA MAILED TO:

APPROVED FOR SUBMITTAL BY CITY MANAGER: *TP*

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

PAYMENT TO BE MADE TO:

REVIEWED BY THE DIRECTOR OF FINANCE:

SUMMARY STATEMENT

An application has been submitted by High Five Events for the 4th Annual Kerrville Triathlon Festival to be held in downtown Kerrville the last weekend of September 2014. The festival consists of a sprint distance triathlon and relay, intermediate distance triathlon, half distance triathlon and relay, free kids fun run and a health and fitness exposition. This event has grown from 764 participants in 2011 to 1,264 in 2013. The event will incorporate Louise Hays Park and the River Trail upon completion of those projects, anticipated for 2015.

The funding request is for a total of **\$25,000** however **\$18,600** qualifies for rental of:

- Traffic control barricades
- Shuttle buses
- Tents, tables, chairs, lights
- Fencing
- Port-a-potties and trash receptacles

The "GO Team" evaluated this application and found that \$18,600 is feasible in that the uses are allowed under the regulations for projects related to recreation or community facilities.

As per direction at the January 27, 2014 EIC meeting, attached is a draft funding agreement between High Five Events and the EIC. If approved, this funding agreement

will be presented to City Council on March 11, 2014 for final consideration and approval.

RECOMMENDED ACTION

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

ECONOMIC DEVELOPMENT GRANT AGREEMENT BETWEEN
HIGH FIVE EVENTS, INC. AND
THE CITY OF KERRVILLE, TEXAS ECONOMIC IMPROVEMENT CORPORATION

This Agreement is entered into by and between **HIGH FIVE EVENTS, INC.**, a Texas corporation (“HFE”), acting herein by and through its duly authorized Chief Executive Officer, Dan Carroll (“HFE 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 and codified in Chapters 501, 502, and 505 of the Texas Local Government Code, otherwise known as the Development Corporation Act of 1979 (the Act”), and acting by and through its duly authorized President, David Wampler.

WITNESSETH:

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

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

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

WHEREAS, HFE is hosting its 4th Annual Kerrville Triathlon Festival (“Festival”) on September 26-28, 2014, which consists of a sprint distance triathlon and relay, intermediate distance triathlon, half distance triathlon and relay, free kids fun run, and a health and fitness exposition; and

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

WHEREAS, HFE has applied for a grant from EIC for funding to rent equipment, including traffic control barricades, shuttle busses, and tents for the Festival; and

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

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

WHEREAS, on February 24, 2014, 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, HFE and the EIC agree as follows:

**ARTICLE I.
EIC'S OBLIGATIONS**

- A. EIC grants to HFE an amount up to \$18,600.00 ("Grant") for costs relating to equipment rental ("Equipment") for the Festival. The specific items that HFE intends to rent are listed on the attachment included as **Exhibit A**.
- B. Subject to the terms and conditions set forth in Article II, the Grant will be provided to HFE by EIC and EIC shall administer the Grant on a reimbursable basis. Prior to any payment from EIC, HFE must first 1) submit written evidence of costs, such as invoices, receipts, and bills of sale for review and approval; and 2) comply with section D of Article II. Following the submission and verification thereof, EIC shall then reimburse HFE for the costs.
- C. Payments made by EIC to HFE from 4B Revenues will be limited to the payments of "costs" as defined by the Act and as specified above for the Project.
- D. In no event will the total amount of the Grant exceed \$18,600.00.

**ARTICLE II.
HFE'S OBLIGATIONS**

- A. In order to receive reimbursement from EIC, HFE must rent the Equipment for the Festival and may not use the Equipment for any other purpose.
- B. HFE must keep and maintain complete and accurate records relating to the costs of the Equipment, separate and identifiable from its other records, for three (3) years following the termination of this Agreement. EIC and its representatives shall be entitled to inspect the records during the term of this Agreement and for three (3) years thereafter, upon reasonable notice.
- C. HFE will only be liable to EIC for the actual amount of the Grant to be conveyed to HFE and will not be liable to EIC for any other actual or consequential damages, direct or indirect, interest, attorney fees, or cost of court for any act of default by HFE under the terms of this Agreement.
- D. HFE shall provide a written report to the EIC no later than 30 days following the Festival. The report must include: attendance, gross receipts, total expenses, total ticket sales, list of exhibitors, and the estimated number of attendees at the Festival from outside of Kerr County.

ARTICLE III.
SALE OF PROJECT, MERGER OR CONSOLIDATION OF HFE

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

ARTICLE IV.
HFE'S REPRESENTATIONS AND WARRANTIES

- A. HFE represents and warrants as of the date hereof:
- (1) HFE 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 HFE and this Agreement is not in contravention of HFE's governing authority or any agreement or instrument to which HFE 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 HFE Officer, threatened against or affecting HFE, which may result in a material adverse change in HFE's business, properties, or operations sufficient to jeopardize HFE's legal existence; and
- (4) No written application, written statement, or correspondence submitted by HFE to EIC in connection with this Agreement, or in connection with any transaction contemplated hereby, to the knowledge of HFE Officer, contains any untrue statement of a material fact or fails to state any material fact necessary to keep the statements contained therein from being misleading.

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

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

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

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

- A. Under any of the following conditions EIC may, at its option, after fifteen (15) days written notice to HFE, suspend its further performance under this Agreement until such time as HFE has cured the condition(s) and so notified EIC, in writing, that the condition(s) have been cured:
- (1) HFE becomes insolvent. "Insolvent" is defined to mean one either has ceased to pay its debts in the ordinary course of business or cannot pay its debts as they become due, or is insolvent within the meaning of the federal bankruptcy law;
 - (2) The appointment of a receiver of HFE;
 - (3) The adjudication of HFE as bankrupt; and
 - (4) The filing by HFE of a petition to be adjudged as bankrupt, or a petition or answer seeking reorganization or admitting the material allegations of a petition filed against it in any bankruptcy or reorganization proceeding.
- B. Should any of these conditions not be cured by HFE, HFE will be considered to have breached this Agreement and EIC may, at its option, with written notice to HFE,

terminate this Agreement and HFE shall be obligated to refund the EIC the full amount of any Grant funding received from the EIC.

ARTICLE VII. REMEDIES

- A. Except as otherwise provided in this Agreement, in the event of any default in or breach of this Agreement by any party hereto, or any successor to such party, such defaulting or breaching party (or successor) shall upon written notice from the other party, proceed immediately to cure or remedy such default or breach. 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, the aggrieved party may institute such proceedings as may be necessary or desirable in its opinion to cure and remedy such default or breach.
- B. Upon breach of this Agreement by either party and the failure to cure as permitted by this Article VII, the non-breaching party shall have the sole right and discretion to either terminate this Agreement and/or pursue any and all remedies which may be provided by law and this Agreement. Each party acknowledges and agrees that HFE is not entitled to recover any amounts in excess of the Grant contracted for under this Agreement and that EIC, pursuant to a breach and failure to cure by HFE in accordance with this Agreement, is entitled to recover attorney fees, collection costs, and any other costs due to its pursuit of repayment and remedies under this Agreement.
- C. Any delay by any party in instituting or prosecuting any actions or proceedings or otherwise asserting its rights will not, so long as the breach or default by another party is continuing, operate as a waiver of such rights or to deprive it of or limit such rights in any way; nor will any waiver in fact be made by any party with respect to any specific default by any other party except to the extent specifically waived in writing.

ARTICLE VIII. GENERAL PROVISIONS

- A. Severability. The provisions of this Agreement are severable, and if for any reason a provision of this Agreement is determined to be invalid by a court, the invalidity shall not affect other provisions that can be given effect without the invalid provision. Further, in lieu of such illegal, invalid, or unenforceable provision, there will be added automatically as a part of this Agreement, a provision as similar in its terms to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable.
- B. Amendment. This Agreement may be amended only by written amendment signed by both parties.
- C. Venue. All payments made pursuant to this Agreement and other obligations performed under this Agreement will be made or performed in Kerrville, Kerr County, Texas. Venue exists in Kerr County, Texas; and this Agreement is governed by and construed in accordance with the laws of the State of Texas.
- D. Notices. All notices given with respect to this Agreement must be in writing and will be deemed to have been properly given for all purposes (i) if sent by an overnight carrier for

next business day delivery, on the first business day following deposit of such notice with such carrier unless such carrier confirms such notice was not delivered, then on the day such carrier actually delivers such notice, or (ii) if personally delivered, on the actual date of delivery, or (iii) if sent by certified U.S. Mail, return receipt requested postage prepaid, on the fifth business day following the date of mailing, or (iv) if sent by facsimile, then on the actual date of delivery (as evidenced by a facsimile confirmation) provided that a copy of the facsimile and confirmation is also sent by regular U.S. Mail, addressed as follows:

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

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

High Five Events, Inc.
Dan Carroll
CEO
High Five Events
2122 Melridge Pl
Austin, Texas 78704
dan@highfiveevents.com
Telephone: (512)917-3579

- E. Assignment. This Agreement is binding upon the parties hereto and their successors and assigns. Except as set forth in Article III, this Agreement may not be assigned by either party without the specific prior written consent of the other, which consent will not be unreasonably withheld. In the event that a party consents to any valid assignment of this Agreement by the other party hereto, the assigning party will be relieved of any and all obligations and liabilities on the part of such assigning party under this Agreement.
- F. Parties In Interest. Nothing in this Agreement entitles anyone other than HFE or EIC to any claim, cause of action, remedy, or right of any kind.
- G. Term. The term of this Agreement (the "Term") shall commence on the date that signatures of the parties are affixed to this Agreement (the "Effective Date"), and will terminate on the earlier of: (i) November 1, 2014, or when the requirements set forth in this Agreement are completed, whichever date is later; (ii) when terminated by mutual agreement of the parties; (iii) when terminated pursuant to Articles VI or VII; (iv) or at the HFE's sole and absolute discretion, but only upon the HFE's return of all Grant funding to EIC that it has received under this Agreement. Upon termination of this

Agreement, all rights, duties, and obligations of any kind under this Agreement will automatically expire and terminate and be of no other force and effect.

- H. Interpretation. Each party has had the opportunity to be represented by counsel of its choice in negotiating this Agreement. This Agreement will therefore be deemed to have been negotiated and prepared at the joint request, direction, and construction of the parties, at arms length, with the advice and participation of counsel, and will be interpreted in accordance with its terms without favor to any party.
- I. No Joint Venture. Nothing contained in this Agreement is intended by the parties to create a partnership or joint venture between the parties or between the parties and the City of Kerrville, Texas.
- J. Survival of Terms. All rights, duties, liabilities and obligations accrued prior to termination will survive termination.
- K. Entire Agreement. This Agreement represents the entire agreement of the parties with respect to the subject matter hereof.

EXECUTED AND EFFECTIVE, as of the date indicated above, by the City of Kerrville, Texas, Economic Improvement Corporation, by and through its Board President, duly authorized to execute same by action of the Board; and by High Five Events, Inc., acting through the HFE Officer.

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

HIGH FIVE EVENTS, INC.

David Wampler, President
Date: _____

Dan Carroll, CEO
Date: _____

ATTEST:

Cheryl Brown, Recording Secretary

APPROVED AS TO FORM:

Michael C. Hayes, Attorney for EIC

EXHIBIT "A"



Dan Carroll
High Five Events
2122 Melridge Pl
Austin, TX 78704
512-917-3579
dan@highfiveevents.com

Kerr Economic Development Corporation (KEDC)
1700 Sidney Baker, Ste 100
Kerrville, TX 78028

November 27, 2013

To whom it may concern:

Please find included with this letter the Application for 4B Sales Tax Funds and supplemental documentation for the Kerrville Triathlon Festival, an event created and produced by High Five Events. I hope you find this event worthy of consideration based upon its positive impact to businesses that benefit from increased visitors to the Kerrville area, and for its influence on Kerrville area residents to follow a healthy lifestyle.

Our company mission is to create and produce the safest, most well organized, and most enjoyable athletic endurance events, while also growing the health and fitness community in the places where we host these events. Our goal is to continue to develop the Kerrville Triathlon into one of the premier triathlon events in the nation, while also making participating in the triathlon an annual fitness tradition for many Kerrville residents.

Please do not hesitate to contact me if you need any additional information regarding the event.

Sincerely,

A handwritten signature in cursive script that reads "Daniel P. Carroll".

Daniel P. Carroll, CEO
High Five Events



About the Kerrville Triathlon Festival

The Kerrville Triathlon Festival is held annually on the last weekend in September. The festival consists of the following events:

- Sprint Distance Triathlon & Relay, held on Saturday
- Intermediate Distance Triathlon, held on Sunday
- Half Distance Triathlon & Relay, held on Sunday
- Kids Fun Run, held on Saturday
- Health & Fitness Expo, held on Friday and Saturday

The swim portion of the event is held in the Guadalupe River, with the starting area located behind the Family Sports Center. The bike course makes 2 loops through the City of Kerrville and Kerr County before finishing on the athletic field at Notre Dame School. The multi-loop run course follows Water St and parts of the Guadalupe River Trail. The finish site of the triathlon is the parking lot adjacent to "the star" at the intersection of Water St. and Earl Garrett St.

History

In early 2010, High Five Events approached the City of Kerrville about the possibility of creating a triathlon event. The goal was to create a premier triathlon event that would attract visitors to the Kerrville area and also act as a catalyst to engage Kerr County residents in health and fitness activities. High Five Events collaborated with Kerrville Police, Kerrville Fires & EMS, Kerrville Parks and Recreation, Kerrville Public Works, Kerr County Sheriff, Texas Department of Public Safety, the Texas Department of Transportation, and various Kerrville business and community groups, and in September 2011, the inaugural Kerrville Triathlon was held. Since then, the event has been held each year on the last weekend in September.

Participation (Not including the Kids Fun Run or volunteers):

- 2011 = 764
- 2012 = 1307
- 2013 = 1264

Annually, the event has between 350-400 volunteers.

The Kids Fun Run is 100% free and open to any child under 16 years old. Each child receives a t-shirt and post run treat. In 2013, the kids run had approximately 170 participants.

Demographics

The average participant demographics for 2012 & 2013 are as follows:

- 91% of participants reside outside of Kerr and Gillespie counties.
- 80 City of Kerrville residents participated, many more volunteered.
- 16 different states were represented.

- The Kerrville CVB tracked 1041 room nights for the 2013 event.
- A conservative estimate of economic impact to Kerr County is \$750k to \$1 Million based upon visitor counts and identified spending habits during a sporting event.
- According to USA Triathlon, triathlete data shows:
 - Average Age = 38
 - Average Income = \$128,000
 - 49% report white-color jobs
 - 19% report professional jobs such as doctor, lawyer, or accountant
 - 12% are students are educational workers

Plan for Growth

The Kerrville Triathlon experienced tremendous growth in 2012 as the result of a successful event in 2011. In 2013, those participant numbers were matched, despite the temporary changes to the course due to the construction in Louise Hays Park and the River Trail.

The goal is to reach 2000 total participants for the 2015 edition of the triathlon. The event narrowly missed being selected as the location as the USA Triathlon Age Group for 2014, and it is believed that it has an excellent chance of receiving that designation for 2015. The designation will bring significant national exposure and additional participants. Furthermore, the plan is to make the new Guadalupe River Trail and the improvements to Louise Hays Park showcase features of this already great host city.

Financial Information

Since its inception, High Five Events has covered all of the expenses of the triathlon.

The cost breakdown from 2013 is below:

Traffic Control Barricades	\$	9,300
Water Safety	\$	4,700
Medical / EMS	\$	3,500
Police	\$	9,200
Security	\$	2,500
Shuttle Buses	\$	1,700
Tents, Tables, Chairs, Lights	\$	2,500
Advertising	\$	10,000
Fencing	\$	3,400
Toilets & Trash	\$	1,700
Aid Stations	\$	1,000
Awards	\$	4,000
Ice	\$	1,100
Race Numbers	\$	2,000
Shirts, Hats, etc.	\$	26,000
Timing	\$	5,000
Volunteers	\$	2,200
	\$	<u>89,800</u>

Plans for Funding

High Five Events is seeking funds to help offset the production costs of the triathlon. The savings from the offset would be used for additional advertising to increase the number of participants. High Five Events can provide a report to the KEDC showing how the funding was used to cover expenses that were directly paid back to City of Kerrville entities, businesses, and individual residents

Agenda Item:

- 5A. Update on the Riverfront Boardwalk Concept Study; give direction to staff.
(staff)

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

SUBJECT: Update on the Riverfront Boardwalk Concept Study

FOR AGENDA OF: February 24, 2014 **DATE SUBMITTED:** February 19, 2014

SUBMITTED BY: Kristine Ondrias *KO* **CLEARANCES:**
Deputy City Manager

EXHIBITS: Riverfront Boardwalk Concept Study by Freese and Nichols

AGENDA MAILED TO:

APPROVED FOR SUBMITTAL BY CITY MANAGER: *JP*

Expenditure	Current Balance	Amount	Account
Required:	in Account:	Budgeted:	Number:
\$	\$ 0	\$ 0	

PAYMENT TO BE MADE TO:

REVIEWED BY THE FINANCE DEPARTMENT:

SUMMARY STATEMENT

The City of Kerrville tasked Freese and Nichols, Inc. with developing a concept plan, and conducting an evaluation to determine the structural feasibility and conceptual cost of constructing a riverfront boardwalk from the Butt-Holdsworth Memorial Library east across Sidney Baker Street to the Dallas Daughtery Memorial Pavilion. Staff will provide an overview of the concept study and Opinion of Probable Construction Cost provided by FNI.

RECOMMENDED ACTION

Provide staff input and direction on next steps.

TO: Kristine Ondrias, Deputy City Manager, City of Kerrville, Texas

CC: Matt Milano, Associate ASLA
Shane Torno, P.E., Freese and Nichols, Inc.

FROM: John New, P.E., Freese and Nichols, Inc.

SUBJECT: Riverfront Boardwalk Concept Study

DATE: February 13, 2014

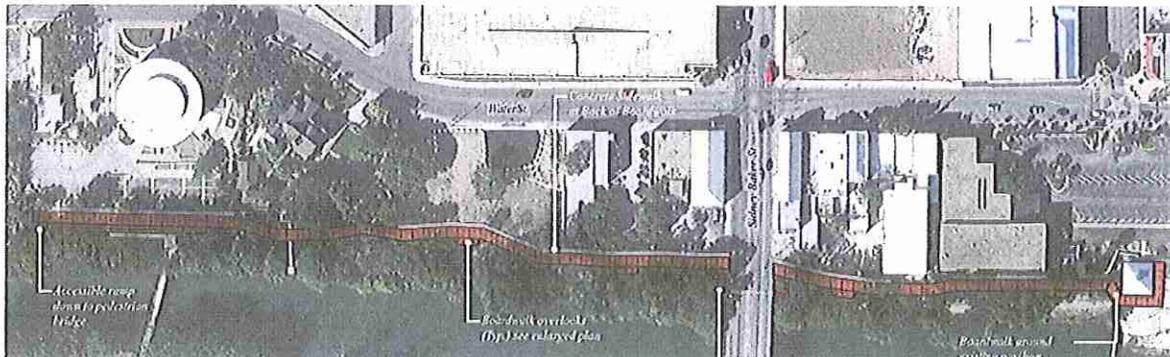


FREESE AND NICHOLS, INC.
TEXAS REGISTERED
ENGINEERING FIRM
F-2144

INTRODUCTION

The City of Kerrville tasked Freese and Nichols, Inc. (FNI) with developing a concept plan, and conducting an evaluation to determine the structural feasibility and conceptual cost of constructing a Riverfront Boardwalk generally along the north side of the Guadalupe River from the Butt–Holdsworth Memorial Library east across Sidney Baker Street to the Dallas Daugherty Memorial Pavilion. **Figure 1** shows the location of the proposed Boardwalk.

Figure 1
Boardwalk Location



BOARDWALK DESIGN PARAMETERS

The Boardwalk is recommended to have the following design features:

- 12' to 15' wide Boardwalk
- Light finish composite decking material
- Galvanized steel framework with concrete and steel pile support system
- 42" high architectural guard rail along the river side of the Boardwalk and along both sides in some locations.



- Concrete border and footing along street side of Boardwalk (only at areas identified, see Concept Plan)
- Five overlook/rest stations with optional benches and informational kiosks
- ADA accessible handicap ramp from Boardwalk down to existing pedestrian bridge adjacent to the Library
- Access stairs down to lower level for access across (below) the Sidney Baker Street Bridge

BOARDWALK DESCRIPTION

The new Boardwalk is being considered for the City of Kerrville to promote pedestrian connectivity and riverfront access along a portion of the downtown area which is adjacent to the Guadalupe River. The Boardwalk is proposed to be approximately 1,550 feet long and be located along the north side of the Guadalupe River connecting the Butt–Holdsworth Memorial Library on the western edge (900 foot long segment) with the Dallas Daughtry Memorial Pavilion to the east (650 foot long segment). The Boardwalk will primarily run along the top of the slope of the river escarpment while abutting a concrete footing which will parallel the Boardwalk. See attached Concept Study and Product Options drawings for graphical representations of the Boardwalk in an overall Plan View including several details, and options for various architectural features that can be considered in the future.

Five scenic overlook rest stations are strategically located for pedestrians to relax and enjoy the views of the river. These overlooks will be extensions of the Boardwalk and will protrude out over the river embankment. Furnishing digital informational kiosks is an option that can be considered at the overlooks where the user would be able to access a variety of information including potentially connecting to the Library’s network. Electrical power will be provided along the Boardwalk to accommodate future addition of kiosks. Another optional feature that can be considered at each overlook is furnishing park style benches. The overlooks are sized to accommodate two benches. Note that neither of these options is included in the opinion of probable construction cost.

Boardwalk lighting is another feature that was considered. There are many lighting options, but the one that was considered as part of this study is having architectural light poles along the riverside of the Boardwalk spaced at either 15 feet or 30 feet on center. Structural support and electrical power for these lights will be provided but the provision of light poles is not included in the opinion of probable construction cost.

Access down to the Guadalupe River Trail and the existing pedestrian bridge will be provided by an accessible ramp at the western most portion of the Boardwalk. An at grade crossing at Sidney Baker Street is not feasible, so access to the opposite side of the street will be provided under the Sidney Baker Bridge via Boardwalk stairs on both sides of the street. Pedestrians will also have the option to



cross Sidney Baker at street level by traveling north 150 feet toward the Kerrville City Hall to the Water Street intersection, where there are existing street crossing provisions including sidewalks, ramps and signalization.

The Boardwalk will typically be a 15 foot wide decked surface (a 12 foot wide option is also included in the opinion of probable construction cost). Decking material is proposed to be 2"X6" composite material. The decking will be supported by galvanized steel wide flange members spanning 15 feet to a set of galvanized steel channel beams. The channels will be supported by a concrete column offset to the uphill side of the Boardwalk. The single concrete column will likely be 24" diameter and will be supported by a concrete footing. The footing will be below grade and will transfer the structural load of the Boardwalk down to a pair of steel helical anchors. This structural system will provide adequate strength for the anticipated Boardwalk loading while keeping a minimal profile. The intent of this structural framing system is to support the Boardwalk while providing a relatively pleasing aesthetic appearance since it will be clearly visible from the River Trail below. Over time, existing vegetation will re-grow around the structural supports partially obscuring the concrete portion of the structure, but it is likely that the steel framing and underside of the decking will be permanently visible from below.

The main segments of the Boardwalk will be above the 100 year flood plain. However, the ramp at the west end, the stairs and lower section at the Sidney Baker Bridge, and portions of the structural support columns will be within the 100 year flood plain. A floodplain impact analysis was **not** performed as part of this study. However, it is understood that there is **no allowable rise** in the 100 year flood elevation resulting from any construction within the flood plain. We have reduced the impact the Boardwalk will cause by minimizing the structural elements below the 100 year elevation. While these elements have been minimized, they will still cause a rise in the elevation. **This situation will require floodplain mitigation. The extent of this mitigation, and its associated cost, cannot be determined at this time.**

OPINION OF PROBABLE CONSTRUCTION COST

Construction costs were developed based on the conceptual Boardwalk design. Several options were included to help the City make a determination on how to proceed with this project. First, costs were provided for both a 15 foot wide Boardwalk and 12 foot wide Boardwalk. Second, costs were provided for the entire 1,550 foot long Boardwalk (Library to Pavilion), for just the western segment (Library to Sidney Baker), and for just the eastern segment (Sidney Baker to Pavilion). The Opinion of Probable Construction Cost for each option is included in the table below.



Table 1: Conceptual Opinion of Probable Construction Cost

Boardwalk Option	Library to Pavilion	Library to Pavilion	Library Segment	Library Segment	Pavillion Segment	Pavillion Segment
Task Description	15' Wide	12' Wide	15' Wide	12' Wide	15' Wide	12' Wide
Excavation and Backfill	\$419,000	\$377,000	\$260,000	\$234,000	\$160,000	\$144,000
Helical Piers	\$184,000	\$184,000	\$114,000	\$114,000	\$70,000	\$70,000
Footings and Columns	\$263,000	\$250,000	\$163,000	\$147,000	\$100,000	\$90,000
Galvanized Steel Framing	\$489,000	\$406,000	\$303,000	\$242,000	\$247,000	\$199,000
Composite Decking	\$592,000	\$524,000	\$401,000	\$359,000	\$191,000	\$164,000
Post and Cable Handrail	\$275,000	\$275,000	\$171,000	\$171,000	\$105,000	\$105,000
Concrete Edging/Footing	\$32,000	\$32,000	\$20,000	\$20,000	\$12,000	\$12,000
Electrical Power	\$57,000	\$57,000	\$36,000	\$36,000	\$22,000	\$22,000
Drainage Improvements	\$110,000	\$110,000	\$69,000	\$69,000	\$42,000	\$42,000
Site Restoration	\$93,000	\$93,000	\$58,000	\$58,000	\$36,000	\$36,000
Mob, OH & Profit (20%)	\$503,000	\$462,000	\$319,000	\$290,000	\$197,000	\$177,000
Design (15%)	\$453,000	\$416,000	\$288,000	\$261,000	\$177,000	\$160,000
Contingency (20%)	\$694,000	\$637,000	\$441,000	\$400,000	\$272,000	\$244,000
Total*	\$4,164,000	\$3,823,000	\$2,643,000	\$2,401,000	\$1,631,000	\$1,465,000

*OPCC excludes following items of work:

- Floodplain mitigation
- Landscaping/Irrigation
- Grade Crossing at Bridge
- Amenities including Lighting, Informational Kiosks, Park Benches, etc.
- Adjacent Property Improvements

Agenda Item:

5B. Update on the River Trail project from Riverside Nature Center going west to include Pedestrian Bridge Study and cost analysis for a south side trail; give direction to staff. (staff)

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

SUBJECT: Update on the River Trail project from Riverside Nature Center going west to include Pedestrian Bridge Study and cost analysis for a south side trail.

FOR AGENDA OF: February 24, 2014 **DATE SUBMITTED:** February 19, 2014

SUBMITTED BY: Kristine Ondrias *AO* **CLEARANCES:**
Deputy City Manager

EXHIBITS: Pedestrian Bridge Study by Freese and Nichols
River Trail Financial Analysis dated 2/12/14

AGENDA MAILED TO:

APPROVED FOR SUBMITTAL BY CITY MANAGER: *MP*

Expenditure	Current Balance	Amount	Account
Required:	in Account:	Budgeted:	Number:
\$	\$ 0	\$ 0	

PAYMENT TO BE MADE TO:

REVIEWED BY THE FINANCE DEPARTMENT:

SUMMARY STATEMENT

Staff will provide an update on the structural feasibility and conceptual cost of constructing a pedestrian bridge across the Guadalupe River just east of the Water Treatment Plant and the UGRA dam.

Additionally, staff will review the Financial Analysis of all phases of the River Trail and review with EIC the potential financial impact of constructing the bridge and south side trail.

RECOMMENDED ACTION

Provide staff direction on next steps for the west side trail alignment.

TO: Kristine Ondrias, Deputy City Manager, City of Kerrville, Texas
CC: John New, P.E., Freese and Nichols, Inc.
FROM: Shane Torno, P.E., Freese and Nichols, Inc.
SUBJECT: Pedestrian Bridge Study
DATE: February 4, 2014



Shane Torno 2-4-14

INTRODUCTION

The City of Kerrville tasked Freese and Nichols, Inc. (FNI) with conducting an evaluation to determine the structural feasibility and conceptual cost of constructing a pedestrian bridge across the Guadalupe River just east of the Kerrville Water Treatment Plant and UGRA dam. **Figure 1** shows the approximate location of the proposed pedestrian bridge.

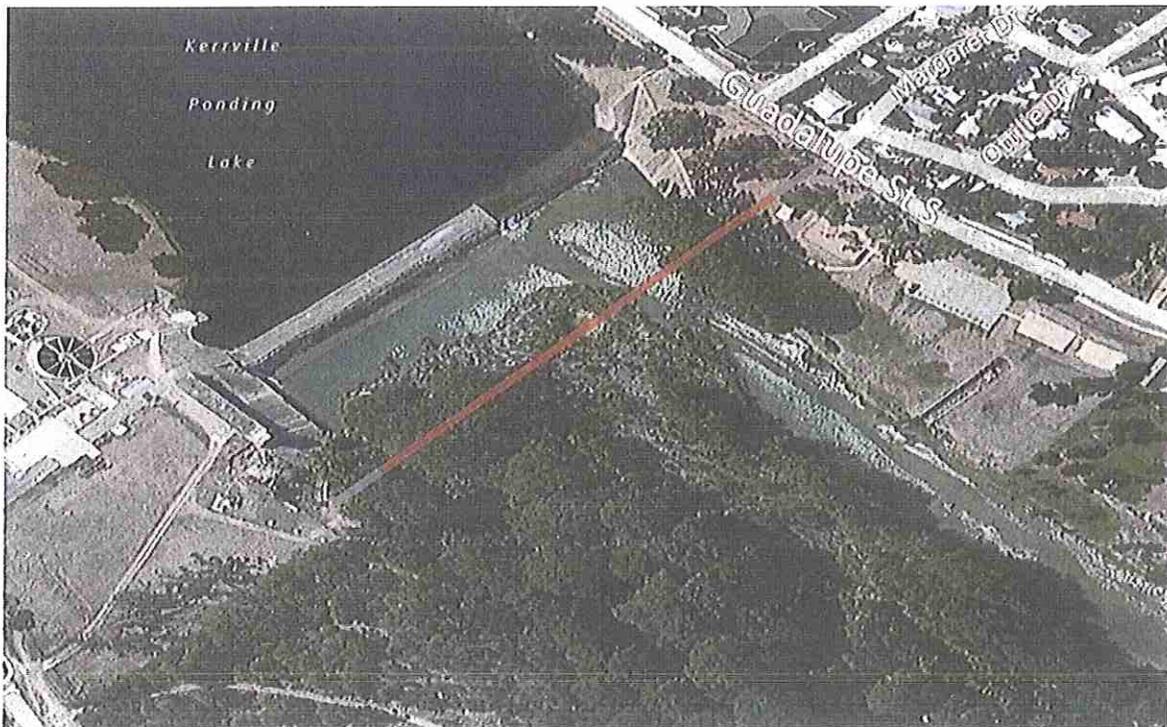


Figure 1
Approximate Bridge Location



BRIDGE DESIGN PARAMETERS

The pedestrian bridge should have the following design features:

- Span the Guadalupe River to connect park trails for pedestrian and bicycle use
- Elevate the bridge deck above the existing 100 year flood plain elevation of 1,632' (elevation based on FEMA Flood Insurance Map dated March 3, 2011)
- Provide a 10' wide bridge section
- Provide accessible path meeting ADA requirements
- Provide aesthetically pleasing bridge components and materials that require minimal maintenance

BRIDGE DESCRIPTION

Based on the above design parameters, a pre-fabricated steel bridge with wood/composite decking was selected. See Figure 2 for examples of similar bridges.

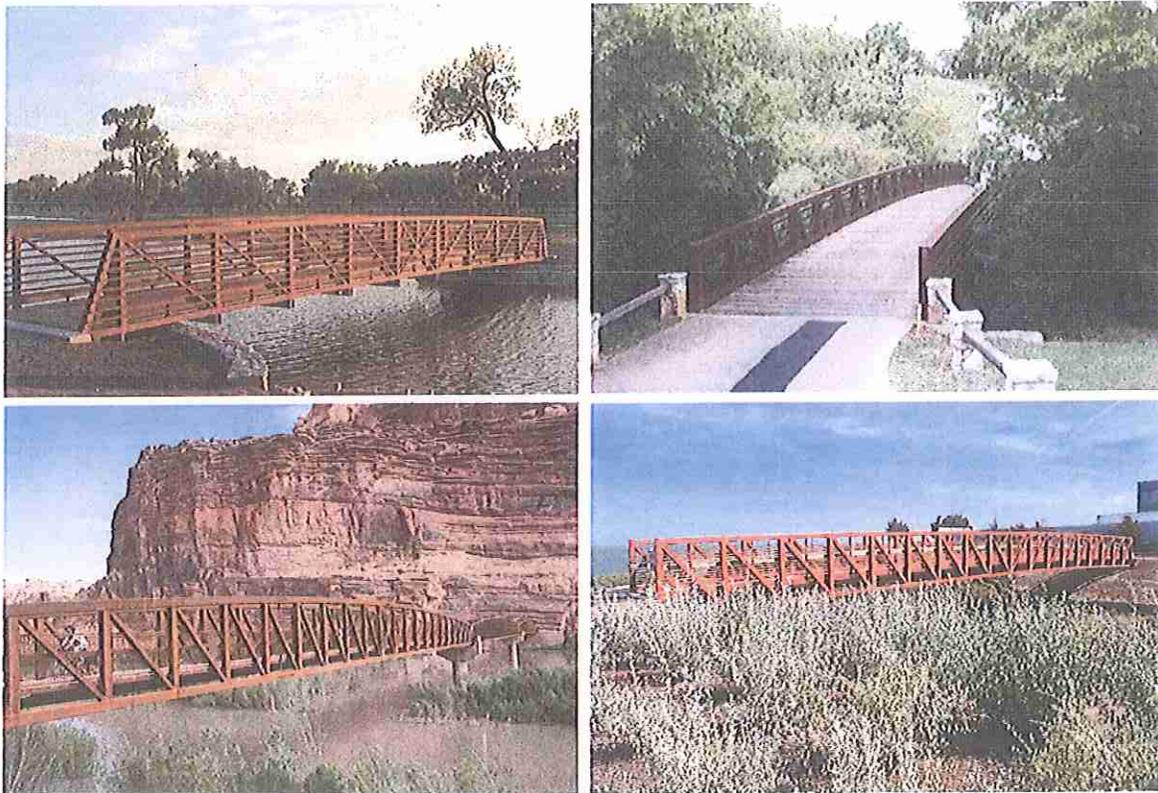


Figure 2
Examples of Pre-fabricated Bridges Similar to Proposed Bridge

In order for the entire bridge to remain above the 100 year flood plain in the proposed location, the total bridge length must be approximately 700 feet. Different spanning conditions were considered, and it was determined that a cost effective approach would be to utilize a total of five (5) bridge segments. This approach maximizes the length of each bridge segment while staying within the bridge manufacturers' limitations of standard 150'



maximum span distances. Note that custom lengths of over 150' are available but at exponentially greater costs.

Therefore, the proposed bridge will be composed of four (4) 150' long segments and one (1) 100' long segment to provide a total bridge length of 700'. The bridge segments will be supported on concrete abutments and pier caps. Concrete columns will support the abutments and pier caps. Concrete drilled shaft foundations will in turn support the concrete columns. A Preliminary Bridge Drawing Package has been included in Appendix A.

At each end of the bridge, sidewalks will be provided to connect the bridge to existing and future sections of the City's park trails system. The walks will be 10' wide to match the bridge width and will be constructed of reinforced concrete with appropriate aesthetic features (texture and color). They will be sloped as needed to provide proper connectivity while conforming to the requirements of the Texas Accessibility Standards (TAS).

A floodplain impact analysis was not performed as part of this study. However, it is understood that there is no allowable rise in the 100' year flood elevation resulting from any construction within the flood plain. We have minimized the impact the bridge will cause by elevating it above the 100' elevation. However, the bridge supports must be constructed in this area thus causing obstructions that would cause a rise in the elevation. This situation will require floodplain mitigation. The extent of this mitigation, and its associated cost, cannot be determined at this time.

OPINION OF PROBABLE CONSTRUCTION COST

Construction costs were developed based on the conceptual bridge design. The Opinion of Probable Construction Cost is included in the table below.

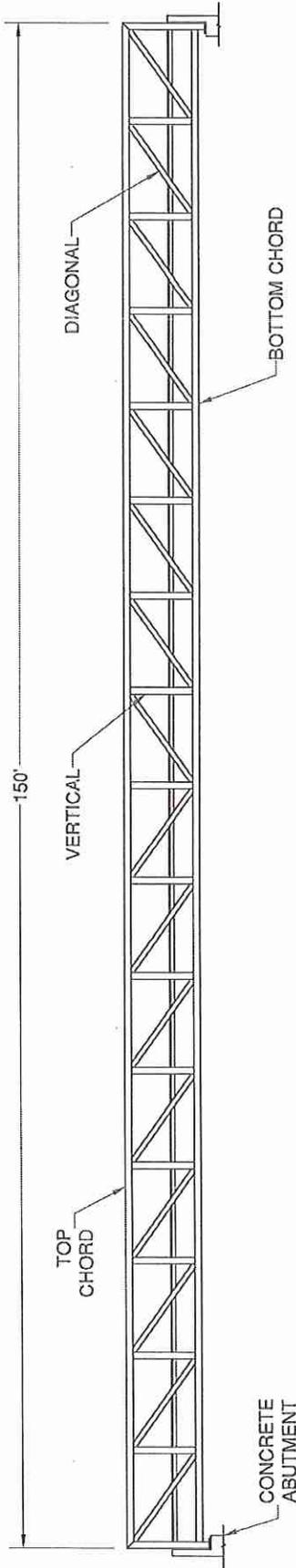
Table 1: Conceptual Opinion of Probable Construction Cost

Description	Cost (\$)
Pre-fabricated Steel Bridges (4 – 150' Segments, 1 – 100' Segment)	\$1,000,000
Bridge Abutments, Intermediate Support Columns, and Drilled Piers	\$200,000
Sidewalks and Bridge Approaches	\$100,000
Earthwork (Excavation, Rip Rap)	\$200,000
Care of Water	\$50,000
Site Restoration	\$50,000
Construction Mobilization, Overhead & Profit; Engineering	\$500,000
Contingency (30%)	\$630,000
Total*	\$2,730,000

*Floodplain impact mitigation is not included

Appendix A
Preliminary Pedestrian Bridge Drawings

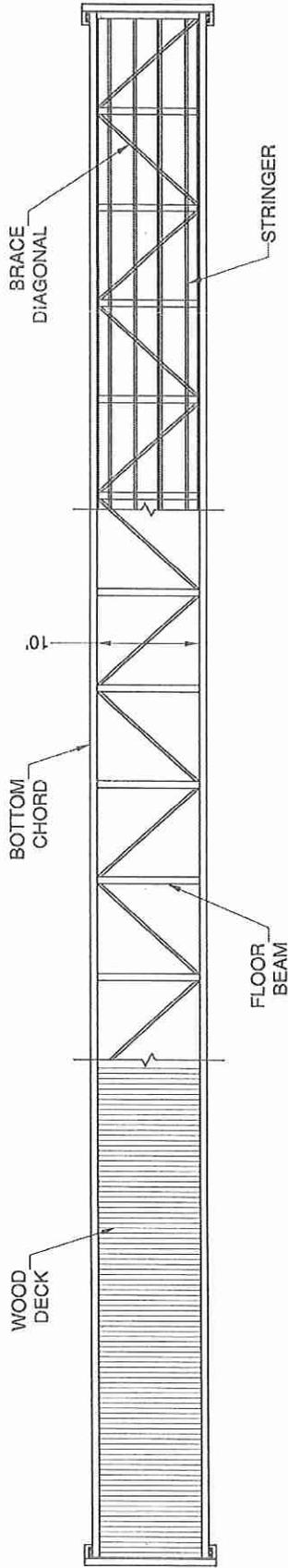
BRIDGE SUMMARY
Connector Pedestrian Bridge 150' Span x 10' Width
Deck Type: IPE (Hardwood)
Bridge Finish: Painted Black



BRIDGE ELEVATION

The graphic information and details contained in these plans is schematic in nature. The plans, elevations and sections have been developed automatically in a way that demonstrates your current input in a relative and proportional manner. The details included in these plans have been selected to represent commonly built construction assemblies. These are not Engineering drawings, and as such, the details may vary in the final design for your project depending on many variables that are selected in your final scope of work and specifications.

<p>CONTECH ENGINEERED SOLUTIONS LLC 8825 Centre Pointe Dr., Suite 400, West Chester, OH 41099 900-330-1122 513-645-7000 513-645-7998 FAX</p>		<p>CONTINENTAL DYOB® DRAWING</p>		<p>Connector® 150' Span x 10' Width New Pedestrian Bridge Pedestrian Bridge Kerrville, Texas</p>	
<p>www.conteches.com</p>		<p>DATE: 12/06/2013</p>		<p>1 OF 4</p>	
<p>825 Centre Pointe Dr., Suite 400, West Chester, OH 41099</p>		<p>DATE: 12/06/2013</p>		<p>1 OF 4</p>	
<p>900-330-1122 513-645-7000 513-645-7998 FAX</p>		<p>DATE: 12/06/2013</p>		<p>1 OF 4</p>	
<p>825 Centre Pointe Dr., Suite 400, West Chester, OH 41099</p>		<p>DATE: 12/06/2013</p>		<p>1 OF 4</p>	
<p>900-330-1122 513-645-7000 513-645-7998 FAX</p>		<p>DATE: 12/06/2013</p>		<p>1 OF 4</p>	



FRAMING

BRACING

DECK

BRIDGE PLAN

PROJECT NUMBER: 130383	DATE: 12/26/2013
DRAWN BY: DYOB	DRAWING: DYOB
CHECKED BY: [blank]	APPROVAL: [blank]
DRAWING NO.:	SHEET NO. 2 of 4

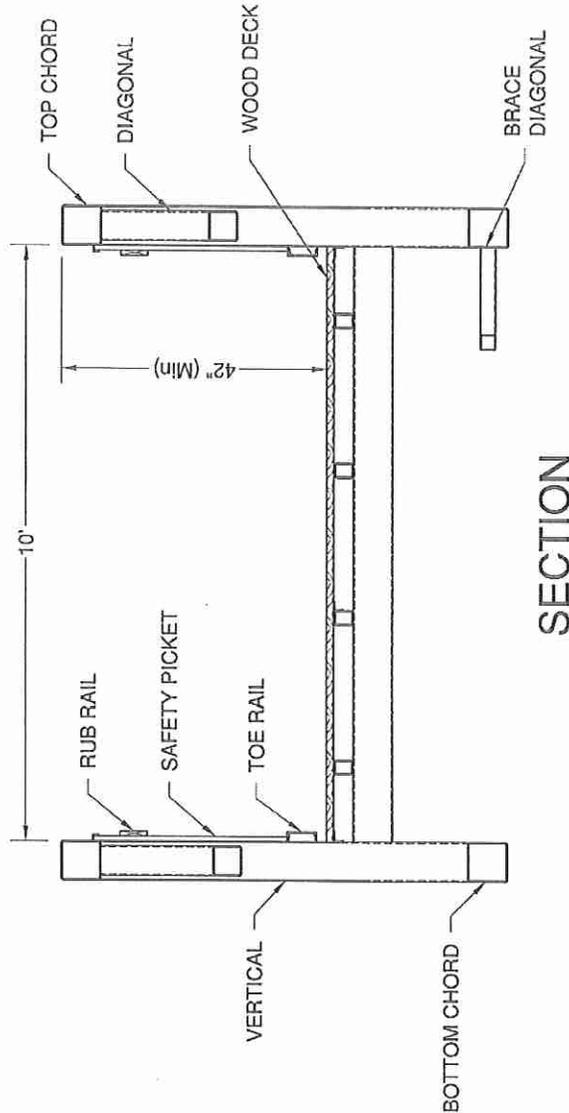
The graphic information and details contained in these plans is schematic in nature. The plans, elevations and sections have been developed automatically in a way that demonstrates your current input in a relative and proportional manner. The details included in these plans have been selected to represent commonly built construction assemblies. These are not Engineering drawings, and as such, the details may vary in the final design for your project depending on many variables that are selected in your final scope of work and specifications.

Connector® 150' Span x 10' Width
 New Pedestrian Bridge
 Pedestrian Bridge
 Kerrville, Texas



CONTECH
 ENGINEERED SOLUTIONS LLC
 www.contechcs.com
 8025 Centre Pointe Dr., Suite 400, West Chester, OH 45020
 800-538-1122 513-646-7000 513-445-7993 FAX

NO.	DATE	REVISION DESCRIPTION	BY



SECTION

The graphic information and details contained in these plans is schematic in nature. The plans, elevations and sections have been developed automatically in a way that demonstrates your current input in a relative and proportional manner. The details included in these plans have been selected to represent commonly built construction assemblies. These are not Engineering drawings, and as such, the details may vary in the final design for your project depending on many variables that are selected in your final scope of work and specifications.

PRELIMINARY
NOT FOR CONSTRUCTION

PROJECT NUMBER: 122622913
DATE: 12/26/2013
DESIGNED BY: DYNARD DYOD
CHECKED BY: M'PHOSHEE
SHEET NO.: 3 OF 4

Connector® 150' Span x 10' Width
New Pedestrian Bridge
Pedestrian Bridge
Kerville, Texas

CONTINENTAL
BRIDGE

CONTINENTAL
DYOD®
DRAWING

CONTECH
ENGINEERED SOLUTIONS LLC

WWW.CONTECH.COM
8025 Central Expressway, Suite 400, West Chester, OH 45380
000-338-1122 513-646-7000 513-646-7892 FAX

MARK	DATE	REVISION DESCRIPTION	BY

River Trail Financial Analysis - 2/12/14

Revenue - All Phases		
General Fund	\$	525,000.00
<u>Bond Funds</u>	\$	<u>6,000,000.00</u>
<i>TOTAL</i>	\$	<i>6,525,000.00</i>
Phase 1 - Riverside Nature Center to Louise Hays Park (0.6 mile)		
Revenue		
General Fund	\$	525,000.00
<u>Bond Funds</u>	\$	<u>600,000.00</u>
<i>TOTAL</i>	\$	<i>1,125,000.00</i>
Expenses		
Actual	\$	817,131.27
<i>Revenues Less Expenses</i>	\$	<i>307,868.73</i>
Phase 2 - Louise Hays Park Trail (1.0 mile)		
Revenue		
General Fund	\$	-
<u>Bond Funds</u>	\$	<u>1,000,000.00</u>
<i>TOTAL</i>	\$	<i>1,000,000.00</i>
Expenses		
Design	\$	128,647.05
Legal Fees	\$	38,276.48
Land Acquisition	\$	225,000.00
Construction Estimate	\$	1,000,000.00
<u>Sub-Total Expenses</u>	\$	<u>1,391,923.53</u>
<i>Revenues Less Expenses</i>	\$	<i>(391,923.53)</i>
Phase 3 - G Street to Kerrville Schreiner Park (2.0 miles)		
Revenue		
General Fund	\$	-
<u>Bond Funds</u>	\$	<u>2,000,000.00</u>
<i>TOTAL</i>	\$	<i>2,000,000.00</i>
Expenses		
Design	\$	256,623.00
Legal Fees	\$	11,700.00
Land Acquisition	\$	157,740.92
Construction Estimate	\$	1,837,346.70
<u>Sub-Total Expenses</u>	\$	<u>2,263,410.62</u>
<i>Revenues Less Expenses</i>	\$	<i>(263,410.62)</i>
Phase 4 - West of Riverside Nature Center (2.1 miles)		
Revenue		
General Fund	\$	-
Bond Funds	\$	2,100,000.00
Expenses		
Design	\$	230,000.00
Construction Estimate	\$	4,378,500.00
<u>Sub-Total Expenses</u>	\$	<u>4,608,500.00</u>
<i>Revenues Less Expenses</i>	\$	<i>(2,508,500.00)</i>
Revenue Above/(Below) Cost	\$	(2,555,965.42)

Agenda Item:

5C. Discuss and provide direction to City staff regarding amendments to the Fiscal Year 2014 budget and schedule a workshop for the Fiscal Year 2015 budget. (staff)

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

SUBJECT: Discuss and provide direction to city staff regarding amendments to the Fiscal Year 2014 budget and schedule a workshop for the Fiscal Year 2015 budget.

FOR AGENDA OF: 2/25/14

DATE SUBMITTED: 2/21/14

SUBMITTED BY: Todd Parton
City Manager

CLEARANCES:

EXHIBITS: Adopted FY2014 Budget
Draft Amendment to FY2014 Budget

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

In past workshops amendments to the FY2014 budget were discussed. These amendments were to update the budget to reflect actual programming and project schedules.

It is also time to initiate the process for FY2015.

RECOMMENDED ACTION

City staff recommends that the EIC amend the budget to reflect the programming and project funding needs and to set a time and date for a workshop to initiate the FY2015 budget process.

**Economic Improvement Corporation
Expenditures by Line Item**

Acct.	Account Name	FY 12 Actual	FY 13 Approved	FY 13 Amended	FY13 Actual 05/31/13	FY 13 Estimated	FY 14 Proposed
101	Office Supplies	\$16	\$500	\$0	\$500	\$500	\$250
Total Supplies		\$16	\$500	\$0	\$500	\$500	\$250
305	Legal Services	\$254	\$0	\$0	\$3,500	\$3,500	\$3,500
306	Special Services	\$1,000	\$103,500	\$103,500	\$66,667	\$100,000	\$100,000
316	Advertising	\$0		\$500	\$0	\$0	\$250
Total Services		\$1,254	\$103,500	\$104,000	\$70,167	\$103,500	\$103,750
441	River Trail Debt Service	\$90,000	\$170,000	\$170,000	\$113,333	\$170,000	\$170,000
442	River Trail	\$250,000		\$300,000	\$200,000	\$300,000	\$300,000
443	Kerr Economic Development Corp	\$175,000	\$175,000	\$175,000	\$127,000	\$127,000	\$60,000
Total Other Expenses			\$345,000	\$645,000	\$440,333	\$597,000	\$530,000
501	Land Capital		\$0	\$0	\$0	\$0	\$0
Total Capital Outlay			\$0	\$0	\$0	\$0	\$0
901	General Fund			\$100,000	\$0	\$0	\$0
903	Kerr Economic Development Foundation		\$0	\$0	\$0	\$0	\$0
914	Golf Fund		\$0	\$0		\$0	
943	EIC Debt Service	\$505,000	\$505,000	\$505,000	\$336,667	\$505,000	\$68,000
947	Airport Fund		\$0	\$0	\$0	\$0	\$0
970	General CIP		\$0	\$0	\$0	\$0	\$0
974	Airport CIP		\$0	\$0	\$0	\$0	\$0
975	EIC Capital Projects	\$0	\$0	\$0	\$0	\$0	\$0
975-01	Category 1	\$350,000	\$1,078,961	\$1,078,961	\$650,000	\$650,000	\$496,750
975-02	Category 2	\$100,000	\$858,141	\$1,158,141	\$149,703	\$1,192,528	\$1,715,000
975-03	Category 3	\$1,000,000	\$500,000	\$500,000	\$0	\$500,000	\$1,250,000
Total Operating Transfers		\$1,450,000	\$2,942,102	\$3,242,102	\$1,786,369	\$4,690,056	\$3,461,750
EIC FUND Total Expenditures		\$1,451,270	\$3,391,102	\$3,991,102	\$2,297,369	\$5,391,056	\$4,163,750

EIC - 2014 Budget Amendment - February 2014

		FY14 Amended	FY15 Projected	FY16 Projected	FY17 Projected	FY18 Projected	FY19 Projected
BEGINNING CASH BALANCE		\$2,598,336	\$1,189,586	\$1,294,586	\$1,160,086	\$1,160,086	\$645,706
Fund Balance		\$2,598,336	\$1,189,586	\$1,294,586	\$1,160,086	\$1,160,086	\$645,706
REVENUE:							
	Sales and Use Tax	\$2,750,000	\$2,887,500	\$3,003,000	\$3,123,120	\$3,216,814	\$3,313,318
	Interest	\$5,000	\$5,000	\$5,000	\$5,000	\$5,000	\$5,000
	Miscellaneous						
	Transfers In						
TOTAL REVENUE		\$2,755,000	\$2,892,500	\$3,008,000	\$3,128,120	\$3,221,814	\$3,318,318
		Budget	Budget	Budget	Budget	Budget	Budget
EXPENDITURES:							
Administrative							
	Advertising/Supplies	\$500	\$500	\$500	\$500	\$500	\$500
	Legal Services						
	Appraisal Services						
	Transfer to Debt Service Fund	\$68,000	\$0	\$0	\$0	\$0	\$0
	Transfer to General Fund Debt Service	\$170,000	\$512,000	\$512,000	\$512,000	\$512,000	\$512,000
	Economic Development Governing Body	\$60,000	\$175,000	\$180,000	\$180,000	\$180,000	\$185,000
	River Trail Funding	\$300,000	\$150,000	\$0	\$0	\$0	\$0
	Annual Disclosure Fee	\$3,500	\$0	\$0	\$0	\$0	\$0
	Administrative Services Fee	\$100,000	\$100,000	\$100,000	\$100,000	\$100,000	\$100,000
Total Administrative		\$702,000	\$937,500	\$792,500	\$792,500	\$792,500	\$797,500
Category I - Business Development							
	Revolving Loan Fund	\$0	\$0	\$0	\$0	\$0	\$0
	ED Set Aside	\$250,000	\$500,000	\$500,000	\$500,000	\$500,000	\$500,000
	Unspecified	\$246,750					
Total Category I		\$496,750	\$500,000	\$500,000	\$500,000	\$500,000	\$500,000
Category II - Quality of Life							
	Schreiner University Project	\$250,000					
	Habitat for Humanity	\$375,000					
	Downtown Wireless	\$0					
	Special Events	\$125,000	\$100,000	\$100,000	\$100,000	\$100,000	\$100,000
	Streetscape	\$0	\$500,000	\$250,000	\$250,000	\$250,000	
	History Center	\$0					
	Baseball Complex	\$0	\$500,000	\$500,000	\$500,000	\$500,000	
	Cailloux Theater expansion	\$500,000					
	River Trail	\$0					
	Soccer Improvements			\$0	\$0	\$0	
	Tennis Center			\$0	\$500,000		
	Boardwalk		\$250,000	\$1,000,000	\$1,000,000	\$1,000,000	
	Unspecified	\$465,000					\$500,000
Total Category II		\$1,715,000	\$1,350,000	\$1,850,000	\$2,350,000	\$1,850,000	\$600,000
Category III - Public Infrastructure							
			\$0	\$0	\$0	\$0	\$0
Total Category III		\$1,250,000	\$0	\$0	\$0	\$0	\$0
Contingency							
TOTAL EXPENDITURES		\$4,163,750	\$2,787,500	\$3,142,500	\$3,642,500	\$3,142,500	\$1,897,500
NET REVENUES TO EXPENDITURES		-\$1,408,750	\$105,000	-\$134,500	-\$514,380	\$79,314	\$1,420,818
FUND BALANCE		\$1,189,586	\$1,294,586	\$1,160,086	\$645,706	\$1,239,400	\$2,066,524