

AGENDA FOR REGULAR MEETING

KERRVILLE CITY COUNCIL

TUESDAY, DECEMBER 8, 2015, 6:00 P.M.

KERRVILLE CITY HALL COUNCIL CHAMBERS

701 MAIN STREET, KERRVILLE, TEXAS

KERRVILLE CITY COUNCIL AGENDA
REGULAR MEETING, TUESDAY, DECEMBER 8, 2015, 6:00 P.M.
CITY HALL COUNCIL CHAMBERS
701 MAIN STREET, KERRVILLE, TEXAS

CALL TO ORDER

INVOCATION: by Kristin Mudry, the Welcome Lady from Kerr County Hospitality Ministry.

PLEDGE OF ALLEGIANCE TO THE FLAG

Those in attendance may stand if they wish.

1. VISITORS/CITIZENS FORUM:

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

2. PRESENTATIONS:

2A. Employee recognitions for 30 years of service in the Kerrville Fire Department: J. Mitchell Ray and Mickey Smart. (staff)

3. CONSENT AGENDA:

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

3A. Construction contract with Swat Construction, Inc. for the Bear Creek Road at Guadalupe River culvert grate replacement project in the amount of \$55,900.00 and authorization for the city manager to execute additional change orders which may not exceed a total contract value of \$69,875.00. (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 830-257-8000 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: December 4, 2015 at 12:30 p.m. and remained posted continuously for at least 72 hours preceding the scheduled time of the meeting.

Brenda Craig
City Secretary, City of Kerrville, Texas

3B. Economic development grant agreement between Playhouse 2000, Inc. and the City of Kerrville, Texas Economic Improvement Corporation, in the amount of \$108,500.00 to be used: 1) replacement of all stage curtains in The Cailloux Theater; 2) replacement of portable seating in the VK Garage Theater; and 3) repairs and maintenance to the theater's Steinway Concert Grand Piano. (staff)

3C. Reimbursement of parade permit fees in the amount of \$100 paid by the veterans parade committee for the 2015 Veteran's Day Parade. (Councilmember White)

3D. Authorize execution of a contract with Kerr County for conducting the May 7, 2016 City of Kerrville General Election. (staff)

END OF CONSENT AGENDA

4. PUBLIC HEARINGS AND RESOLUTIONS:

4A. Resolution No. 37-2015, granting a conditional use permit for an approximate 2.95 acre tract of land out of the Sam Wallace Survey No. 112, Abstract No. 360 and the Sam Wallace Survey No. 113, Abstract No. 347, within the City of Kerrville, Kerr County, Texas, and otherwise known as 3370 Loop 534 (Veterans Highway); said tract is located within the 27-E zoning district; by permitting said property to be used for a manufactured home or manufactured housing; and making said permit subject to certain conditions and restrictions contained herein. (staff)

4B. Resolution No. 38-2015, granting a conditional use permit for an approximate .35 acre tract out of the P.R. Oliver Survey No. 122, Abstract No. 265, within the City of Kerrville, Kerr County, Texas, and otherwise known as 1612 Goat Creek Road (FM 1338); said tract located within the 6-W zoning district; by permitting said property to be used for building construction, specialist purposes; and making said permit subject to certain conditions and restrictions contained herein. (staff)

5. ORDINANCE, SECOND READING:

5A. Ordinance No. 2015-24 amending Ordinance No. 2006-01, which granted Atmos Energy Corporation a franchise to furnish, transport, and supply gas to the general public within the City of Kerrville, Kerr County, Texas, by extending the term of the franchise ordinance for an additional ninety (90) days through the end of March 29, 2016. (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 830-257-8000 for further information.

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Brenda Craig
City Secretary, City of Kerrville, Texas

6. CONSIDERATION AND POSSIBLE ACTION:

6A. Wiedenfeld Water Works application to amend Certificate of Convenience and Necessity (CCN) for water service on the southeast corner of Hwy. 27 and Hwy. 480, also known as 5881 Hwy. 27, Center Point, Texas. (staff)

6B. Commercial lease between City of Kerrville, Texas, and BTP Baseball Ventures, LLC, a franchise of D-BAT for the development and management of an indoor and outdoor baseball and softball athletic facility (Holdsworth Athletics Facility), 398 Holdsworth Drive. (staff)

6C. Direction to city staff on returning surplus funds from fiscal year 2015 to the Kerrville taxpayers or options to apply these funds directly to outstanding debt. (Councilmember Stork)

6D. Establish a policy for accepting board and committee applications. (Councilmember Fine)

6E. Direction to city staff on the City of Kerrville Fiscal Year 2017 budget. (staff)

7. INFORMATION AND DISCUSSION:

7A. Report from city staff regarding the disruptions of AT&T phone service. (staff)

7B. Budget and economic update. (staff)

8. APPOINTMENTS TO CITY BOARDS AND COMMISSIONS:

8A. Reuse Water ad hoc Advisory Committee. (Mayor Pratt and Councilmember Allen)

9. ITEMS FOR FUTURE AGENDA

10. ANNOUNCEMENTS OF COMMUNITY INTEREST:

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

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 830-257-8000 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: December 4, 2015 at 12:30 p.m. and remained posted continuously for at least 72 hours preceding the scheduled time of the meeting.

Brenda Craig
City Secretary, City of Kerrville, Texas

11. EXECUTIVE SESSION:

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

11A. Section 551.074:

- Annual review of municipal court judges.

11B. Section 551.071:

- Amber Wood Frye vs Parks and Recreation Department, City of Kerrville, in the Justice Court, Precinct Four, Kerr County, Case No. 152677.

11C. Sections 551.071 and 551.072:

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

- River trail.

12. ACTION ON ITEMS DISCUSSED IN EXECUTIVE SESSION

13. 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 830-257-8000 for further information.

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Brenda Craig
City Secretary, City of Kerrville, Texas

Agenda Item:

2A. Employee recognitions for 30 years of service in the Kerrville Fire Department: J. Mitchell Ray and Mickey Smart. (staff)

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

SUBJECT: Employee Recognition of 30 years of service

FOR AGENDA OF: 12/08/2015

DATE SUBMITTED: 12/02/2015

SUBMITTED BY: Dannie Smith
Fire Chief

CLEARANCES: Todd Parton
City Manager

EXHIBITS:

AGENDA MAILED TO:

APPROVED FOR SUBMITTAL BY CITY MANAGER: 

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

PAYMENT TO BE MADE TO:

REVIEWED BY THE DIRECTOR OR FINANCE:

SUMMARY STATEMENT

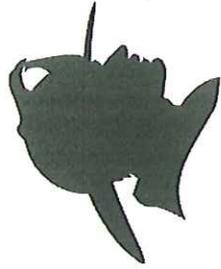
On February 4, 2015, two employees of the Kerrville Fire Department (KFD) celebrated thirty years of service. J. Mitchell Ray has served as a firefighter, emergency medical technician, driver and lieutenant. Mickey Smart's tenure with KFD started on September 26, 1977. He left KFD on December 12, 1981, to pursue a career in oil field services; however, Mickey returned to KFD on February 4, 1985, to spend thirty consecutive years with the department. Mickey has served as a firefighter, emergency medical technician and driver. Mickey retired from KFD on December 5, 2015. Both Mitchell and Mickey are devoted public safety servants who have provided a high level of professionalism to the citizens of Kerrville.

RECOMMENDED ACTION

Recognition by special presentation.

Certificate of Recognition

Is hereby presented to



J. Mitchell Ray



In appreciation for 30 years of outstanding and dedicated service to the City of Kerrville, and the residents of Kerr County while serving as a Firefighter, Emergency Medical Technician, Driver and Lieutenant with the Kerrville Fire Department. Your professionalism and devotion to your job as a public safety servant are appreciated.

Hereunto set my hand and caused the seal of the City of Kerrville to be affixed hereto, the 8th day of December 2015.



A handwritten signature in black ink, appearing to read 'Jack Pratt, Jr.', written over a horizontal line.

Jack Pratt, Jr. Mayor

Certificate of Recognition

Is hereby presented to



Mickey Smart



In appreciation for 30 years of outstanding and dedicated service to the City of Kerrville, and the residents of Kerr County while serving as a Firefighter, Emergency Medical Technician, and Driver with the Kerrville Fire Department. Your professionalism and devotion to your job as a public safety servant are appreciated. Enjoy your retirement, but you will be missed.



Hereunto set my hand and caused the seal of the City Kerrville to be affixed hereto, the 8th day of December 2015.

Jack Pratt, Jr. Mayor

Agenda Item:

3A. Construction contract with Swat Construction, Inc. for the Bear Creek Road at Guadalupe River culvert grate replacement project in the amount of \$55,900.00 and authorization for the city manager to execute additional change orders which may not exceed a total contract value of \$69,875.00. (staff)

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

SUBJECT: Council authorization for the City Manager to execute a construction contract with Swat Construction, Inc. for the Bear Creek Road at Guadalupe River Culvert Grate Replacement Project in the amount of \$55,900.00 and authorize the City Manager to execute additional change orders which may not exceed a total contract value of \$69,875.00.

FOR AGENDA OF: December 8, 2015 **DATE SUBMITTED:** December 1, 2015

SUBMITTED BY: Kyle Burow, E.I.T., CFM **CLEARANCES:** Kristine Day
Interim Director of Engineering Deputy City Manager

EXHIBITS: Bid Tabulation
Letter of Recommendation for Award

PAYMENT TO BE MADE TO: Swat Construction, Inc.
9835 State Highway 97 West
Floresville, TX 78114

APPROVED FOR SUBMITTAL BY CITY MANAGER: 

| Expenditure | Current Balance | Amount | Account |
|--------------------|------------------------|--------------------|-------------------|
| Required: | in Account: | Budgeted: | Number: |
| \$69,875.00 | \$69,875.00 | \$69,875.00 | 02-890-210 |

REVIEWED BY THE FINANCE DIRECTOR:

The Bear Creek Road at Guadalupe River Culvert Grate Replacement project involves the replacement of two existing grate structures at the upstream end of two box culverts under the Bear Creek Road low water crossing at the Guadalupe River. The current condition of the existing grates acts as a dam leading to misreadings of the river flow gauge used by the Water Master to curtail river water consumption.

Staff along with LNV, Inc. evaluated the contractor and recommends awarding the Bear Creek Road at Guadalupe River Culvert Grate Replacement project to Swat Construction, Inc. Staff recommends awarding the base bid for a project cost of \$55,900.00. Additionally, staff recommends authorizing the City Manager to execute additional change orders which may exceed \$50,000.00 but will not exceed a total contract value of \$69,875.00.

RECOMMENDED ACTION

Authorize the City Manager to execute a construction contract with Swat Construction, Inc. for the Bear Creek Road at Guadalupe River Culvert Grate Replacement Project in the amount of \$55,900.00 and authorize the City Manager to execute additional change orders which may exceed \$50,000.00 but will not exceed a total contract value of \$69,875.00.



engineers | architects | contractors

SOLUTIONS TODAY WITH
A VISION FOR TOMORROW

November 12, 2015

Kyle Burow, E.I.T., C.F.M.
Project Engineer
City of Kerrville
701 Main Street
Kerrville, TX 78028

**RE: Bear Creek Rd. at Guadalupe River Culvert Grate Replacement Project
Contract Award Recommendation**

Dear Mr. Burow,

Bids were received and opened November 10, 2015 at 3:00 p.m. Two (2) bids were received and the results are shown on the attached Bid Tabulation Form. The low bidder on the project is SWAT Construction, Inc. with a Base Bid of \$55,900.00.

I have reviewed the Contractor's bid documents and, to the best of my knowledge and belief, SWAT Construction, Inc. had the lowest and best qualified bid. Please note that SWAT Construction, Inc. had placed the incorrect unit cost for Item 551.1 "Temporary Special Shoring" and the correct unit cost is \$24.80/sq. ft. It is my recommendation that the City of Kerrville award the construction contract for the Bear Creek Rd. at Guadalupe River Culvert Grate Replacement Project to **SWAT Construction, Inc.** in the amount of **\$55,900.00.**

Attached are the following:

1. One (1) copy of the Overall Bid Tabulation

If you have any additional questions, I can be contacted at 210-822-2232

Respectfully Submitted,
LNV, Inc.
TBPE Firm No. F-366

Bryan J. Spina, P.E., C.F.M.
Project Manager

Bear Creek Road at Guadalupe River Culvert Grate Replacement

PW#15-022

Bid Opening: November 10, 2015

| Item | Qty | Unit | Description | Nelson Lewis, Inc. | | Swat Construction, Inc. | | Average | |
|-----------------------|-----|------|---|--------------------|--------------------|-------------------------|--------------------|-------------|--------------------|
| | | | | Unit Price | Total Amount | Unit Price | Total Amount | Unit Price | Total Amount |
| 100.1 | 1 | LS | Mobilization and Bonds (10% of Base Bid Max) | \$6,000.00 | \$6,000.00 | \$5,000.00 | \$5,000.00 | \$5,500.00 | \$5,500.00 |
| 101.1 | 1 | LS | Preparing Right-of-Way | \$1,500.00 | \$1,500.00 | \$3,500.00 | \$3,500.00 | \$2,500.00 | \$2,500.00 |
| 530.1 | 1 | LS | Barricades, Signs, and Traffic Handling | \$3,000.00 | \$3,000.00 | \$6,000.00 | \$6,000.00 | \$4,500.00 | \$4,500.00 |
| 551.1 | 500 | SF | Temporary Special Shoring | \$45.00 | \$22,500.00 | \$24.80 | \$12,400.00 | \$34.90 | \$17,450.00 |
| 1 | 1 | LS | Box Culvert Inlet Grates on Bear Creek Rd. at the Guadalupe River | \$50,000.00 | \$50,000.00 | \$29,000.00 | \$29,000.00 | \$39,500.00 | \$39,500.00 |
| Total Base Bid | | | | | \$83,000.00 | | \$55,900.00 | | \$69,450.00 |

Agenda Item:

3B. Economic development grant agreement between Playhouse 2000, Inc. and the City of Kerrville, Texas Economic Improvement Corporation, in the amount of \$108,500.00 to be used: 1) replacement of all stage curtains in The Cailloux Theater; 2) replacement of portable seating in the VK Garage Theater; and 3) repairs and maintenance to the theater's Steinway Concert Grand Piano. (staff)

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

SUBJECT: Economic development grant agreement between the City of Kerrville, Texas Economic Improvement Corporation and Playhouse 2000, Inc. in an amount not to exceed \$108,500

FOR AGENDA OF: December 8, 2015 **DATE SUBMITTED:** November 24, 2015

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

EXHIBITS: Economic Development Grant Agreement

AGENDA MAILED TO:

APPROVED FOR SUBMITTAL BY CITY MANAGER: 

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

PAYMENT TO BE MADE TO:

REVIEWED BY THE DIRECTOR OF FINANCE:

SUMMARY STATEMENT

On October 19, 2015, the EIC board considered and approved a quality of life funding request from Playhouse 2000 Inc. (P2K) in the amount of \$108,500 for three specific projects at The Cailloux Theater. These projects are outlined below.

1. The replacement of all stage curtains in The Cailloux Theater – (\$33,000);
2. Replacement of portable seating in the VK Garage Theater – (\$52,000); and
3. Repairs and maintenance to the Theater's Steinway Concert Grand Piano – (\$23,500).

On November 16, 2015, the EIC board held a public hearing and approved the agreement. No one spoke at the public hearing. The last step in this process is consideration and final approval by City Council.

RECOMMENDED ACTION

Staff recommends approval of the agreement as presented.

ECONOMIC DEVELOPMENT GRANT AGREEMENT
BETWEEN PLAYHOUSE 2000, INC. AND
THE CITY OF KERRVILLE, TEXAS ECONOMIC IMPROVEMENT CORPORATION

This Agreement entered into by and between **PLAYHOUSE 2000, INC.**, a Texas nonprofit corporation ("P2K"), acting herein by and through its duly authorized Executive Director, Jeffrey Brown ("P2K Officer"), and the **CITY OF KERRVILLE, TEXAS, ECONOMIC IMPROVEMENT CORPORATION** ("EIC"), a Texas nonprofit corporation established pursuant to Section 4B of Tex. Rev. Civ. Stat. Art. 5190.6 (otherwise known as the Development Corporation Act of 1979 and now codified in Chapters 501, 502, and 505 of the Texas Local Government Code) (hereafter referred to as "the Act"), acting by and through its Board of Directors ("Board") and 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:

"[L]and, buildings, *equipment, facilities, and improvements* found by the [Board] to be required or suitable for use for professional and amateur sports, including children's sports, athletic, *entertainment, tourist, convention*, and public park purposes and events, including stadiums, ball parks, *auditoriums, amphitheaters, concert halls*, parks and park facilities, open space improvements, museums, *exhibition facilities, and related store, restaurant, concession*, and automobile parking facilities, related area transportation facilities, and related roads, streets, and water and sewer facilities, *and other related improvements that enhance any of the items described by Section 505.152 of the Act*" (emphasis supplied); and

WHEREAS, P2K produces a wide variety of performing arts and entertainment programming and is the manager of the Kathleen C. Cailloux City Center for the Performing Arts ("Auditorium") pursuant to a contract with the City of Kerrville, Texas ("City"); and

WHEREAS, P2K wishes to improve and enhance the use and operation of the Auditorium; and

WHEREAS, P2K has applied to EIC for grant funding to pay for several projects, as described below, which are required for the safe and efficient use of the Auditorium; 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 P2K to provide sales tax revenues collected pursuant to the Act (“4B Revenues”) to P2K for its cost of the Project, as described below; and

WHEREAS, on November 16, 2015, 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 expenditures of 4B Revenues for the purposes provided herein;

NOW THEREFORE, for and in consideration of the recitals set forth above and the promises made herein, P2K and the EIC agree as follows:

**ARTICLE I.
EIC’S OBLIGATIONS**

- A. EIC hereby grants to P2K an amount up to **One Hundred Eight Thousand Five Hundred and No/100 Dollars (\$108,500.00)** (“Grant”) for costs relating to the replacement of stage curtains and portable seating and costs associated with repairs for a grand piano, collectively referred to herein as the “Project”. The Project is more specifically described and costs itemized in the attached **Exhibit A**.
- B. Subject to the terms and conditions set forth in Article II, EIC will administer and provide the Grant to P2K on a reimbursable basis. Prior to any payment from EIC, P2K shall submit written evidence of costs, such as invoices, receipts, and bills of sale, for review and approval by the EIC or its designated representative. Following each submission and verification thereof, which may include on-site inspections to confirm the purchases, replacements, and repairs specifically relating to the Project, EIC shall then reimburse P2K for the cost.
- C. Payments made by EIC to P2K 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 **One Hundred Eight Thousand Five Hundred and No/100 Dollars (\$108,500.00)**.

**ARTICLE II.
P2K’S OBLIGATIONS**

- A. P2K shall complete the Project on or before June 1, 2016. Failure to complete the Project by this date will terminate EIC’s obligation to make any additional payments of the Grant.
- B. P2K shall keep and maintain complete and accurate records relating to the costs of the Project, separate and identifiable from its other records, for three (3) years following the termination of this Agreement. EIC and its representatives shall be entitled to inspect the records during the term of this Agreement and for three (3) years thereafter, upon reasonable notice.

- C. P2K will only be liable to EIC for the actual amount of the Grant to be conveyed to P2K 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 P2K under the terms of this Agreement.

**ARTICLE III.
SALE OF PROJECT, MERGER, OR CONSOLIDATION OF P2K**

- A. A sale of all or any of the assets of P2K will not release P2K from its duties and responsibilities to EIC under the terms of this Agreement and will not result in the assignment of this Agreement by such acquiring entity without prior written consent from EIC, which will not be unreasonably withheld; provided, that P2K's proposed successor shall have the financial condition to fully satisfy P2K's duties and responsibilities hereunder and agrees to assume P2K'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 P2K with any third party not affiliated with P2K, P2K 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 P2K'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 P2K'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 P2K. In the event of any sale or merger involving P2K or its affiliates, the surviving entity shall assume P2K's obligations and rights hereunder and be entitled to any and all benefits to be received pursuant to this Agreement.

**ARTICLE IV.
P2K'S REPRESENTATIONS AND WARRANTIES**

- A. P2K represents and warrants as of the date hereof:
 - (1) P2K 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 P2K and this Agreement is not in contravention of P2K's governing authority or any agreement or instrument to which P2K 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 P2K Officer, threatened against or affecting P2K, which may result in a material adverse change in P2K's business, properties, or operations sufficient to jeopardize P2K's legal existence; and

(4) No written application, written statement, or correspondence submitted by P2K to EIC in connection with this Agreement, or in connection with any transaction contemplated hereby, to the knowledge of P2K Officer, contains any untrue statement of a material fact or fails to state any material fact necessary to keep the statements contained therein from being misleading. The Application for 4B sales Tax Funds submitted by P2K is attached hereto as **Exhibit B** and shall be incorporated herein by reference and expressly made a part of this Agreement.

- B. Except as expressly set forth in this Article IV, P2K 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, is legally authorized to enter into this Agreement by virtue of the statute under which it is governed and by the authorities and powers vested in it as a corporation duly and properly organized under the Act;

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

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

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

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

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

- A. Under any of the following conditions EIC may, at its option, after fifteen (15) days written notice to P2K, suspend its further performance under this Agreement until such time as P2K shall have cured the condition(s) and so notified EIC, in writing, that the condition(s) have been cured:

(1) P2K 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 P2K, or of all or any substantial part of the Property, and the failure of such receiver to be discharged within sixty (60) days thereafter.

(3) The adjudication of P2K as bankrupt.

(4) The filing by P2K 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 P2K within ninety (90) days, P2K will be considered to have breached this Agreement and EIC may, at its option, with written notice to P2K, terminate this Agreement and P2K shall be obligated to refund the EIC the full amount of any Grant funding received from the EIC.

ARTICLE VII. REMEDIES

- A. Except as otherwise provided in this Agreement, in the event of any default in or breach of this Agreement by any party hereto, or any successor to such party, such defaulting or breaching party (or successor) shall upon written notice from the other party, proceed immediately to cure or remedy such default or breach, and, in any event, within sixty (60) days after receipt of such notice. In the event that remedial action is not taken or not diligently pursued and the default or breach shall not be cured or remedied within a reasonable time (but in no event later than ninety (90) days from the date of notification of such breach), the aggrieved party may institute such proceedings as may be necessary or desirable in its opinion to cure and remedy such default or breach, including but not limited to, seeking specific performance and/or injunctive relief.
- B. Upon breach of this Agreement by either party and the failure to cure as permitted by this Article VII, the non-breaching party shall have the sole right and discretion to either terminate this Agreement and/or pursue any and all remedies which may be provided by law and this Agreement. Each party acknowledges and agrees that P2K 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 P2K in accordance with this Agreement, is entitled to recover attorney fees, collection costs, and any other costs due to its pursuit of repayment and remedies under this Agreement.
- C. Any delay by any party in instituting or prosecuting any actions or proceedings or otherwise asserting its rights will not, so long as the breach or default by another party is continuing, operate as a waiver of such rights or to deprive it of or limit such rights in any way; nor will any waiver in fact be made by any party with respect to any specific default by any other party except to the extent specifically waived in writing.

ARTICLE VIII. GENERAL PROVISIONS

- A. Severability. The provisions of this Agreement are severable, and if for any reason a provision of this Agreement is determined to be invalid by a court having competent jurisdiction over the subject matter of the invalid provision, the invalidity shall not affect other provisions that can be given effect without the invalid provision. Further, in lieu of such illegal, invalid, or unenforceable provision, there will be added automatically as a

part of this Agreement, a provision as similar in its terms to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable.

- B. Amendment. This Agreement may be amended only by written amendment signed by both parties.
- C. Venue. All payments made pursuant to this Agreement and other obligations performed under this Agreement shall be made or performed in Kerrville, Kerr County, Texas. Venue will lie in Kerr County, Texas; and this Agreement is governed by and construed in accordance with the laws of the State of Texas without respect to the conflict of laws rules thereof.
- D. Notices. All notices given with respect to this Agreement must be in writing and will be deemed to have been properly given for all purposes (i) if sent by a nationally recognized overnight carrier for next business day delivery, on the first business day following deposit of such notice with such carrier unless such carrier confirms such notice was not delivered, then on the day such carrier actually delivers such notice, or (ii) if personally delivered, on the actual date of delivery, or (iii) if sent by certified U.S. Mail, return receipt requested postage prepaid, on the fifth business day following the date of mailing, or (iv) if sent by facsimile, then on the actual date of delivery (as evidenced by a facsimile confirmation) provided that a copy of the facsimile and confirmation is also sent by regular U.S. Mail, addressed as follows:

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

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

For Playhouse 2000, Inc.
Executive Director – Jeffrey Brown
Playhouse 2000, Inc.
P.O. Box 290088
Kerrville, Texas 78029

- 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. P2K may, without written consent of EIC, assign this Agreement to any entity controlled and

100% owned by P2K or by the parent, subsidiary, or affiliate of P2K provided the entity assumes all of P2K's obligations and liabilities under this Agreement; agrees to comply with all provisions of this Agreement; has the legal, managerial, technical, and financial ability to properly perform and discharge such obligations and liabilities; and such abilities are each at least as great as those of P2K and P2K provides a written guarantee of such assignee's performance in a form reasonably acceptable to EIC. EIC shall be advised in writing of such assignment and of the entity's qualifications at least sixty (60) days before such assignment occurs.

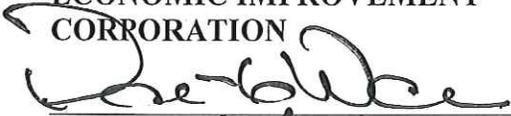
- F. Parties In Interest. Nothing in this Agreement shall entitle any party other than P2K or EIC to any claim, cause of action, remedy, or right of any.
- G. Term. The term of this Agreement (the "Term") will commence on December 9, 2015 (the "Effective Date"), and will terminate on the earlier of: (i) either on June 1, 2016, 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 P2K's sole and absolute discretion, but only upon the P2K's return of all Grant funding to EIC that it has received under this Agreement. Upon termination of this Agreement as specified herein, all rights, duties, and obligations of any kind under this Agreement shall automatically expire and terminate and be of no other force and effect, with the exception of those duties and obligations that specifically last beyond any such date.
- 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. Indemnity. **IT IS UNDERSTOOD AND AGREED BETWEEN THE PARTIES THAT P2K, IN PERFORMING ITS OBLIGATIONS HEREUNDER, IS ACTING INDEPENDENTLY, AND EIC ASSUMES NO RESPONSIBILITY OR LIABILITY IN CONNECTION THEREWITH TO THEIR PARTIES. P2K AGREES TO INDEMNIFY AND HOLD HARMLESS EIC, ITS OFFICERS, AND AGENTS, AGAINST ANY AND ALL CLAIMS, LAWSUITS, JUDGMENTS, COSTS, AND EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE, OR OTHER HARM FOR WHICH RECOVERY OF DAMAGES IS SOUGHT, SUFFERED BY ANY PERSON OR PERSONS THAT MAY ARISE OUT OF OR BE OCCASIONED BY P2K'S BREACH OF ANY OF THE TERMS OR PROVISIONS OF THIS AGREEMENT, OR BY ANY NEGLIGENT ACT OR OMISSION OF P2K, ITS OFFICER, AGENTS, ASSOCIATES, OR EMPLOYEES, IN THE PERFORMANCE OF THIS AGREEMENT; AND NOTHING HEREIN SHALL BE CONSTRUED AS A WAIVER OF ANY GOVERNMENTAL IMMUNITY AVAILABLE TO EIC UNDER TEXAS LAW.**
- J. No Joint Venture. Nothing contained in this Agreement is intended by the parties to create a partnership or joint venture between the parties.

- K. Survival of Terms. All rights, duties, liabilities, and obligations accrued prior to termination will survive termination.
- L. Entire Agreement. This Agreement represents the entire agreement of the parties with respect to the subject matter hereof.

EXECUTED AND EFFECTIVE, as of the date indicated above, by the City of Kerrville, Texas, Economic Improvement Corporation, by and through its President, duly authorized to execute same by action of the Board; and by Playhouse 2000, Inc., acting through the P2K Officer.

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

PLAYHOUSE 2000, INC.



David Wampler, President

Date: 12/4/15

Jeffrey Brown, Executive Director

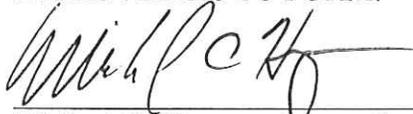
Date: _____

ATTEST:



Cheryl Brown, Recording Secretary

APPROVED AS TO FORM:



Michael C. Hayes, acting as the
Attorney for EIC

1: Installing New Stage Curtains

We are requesting \$33,000 to be used to upgrade all "Soft Goods" inside The Cailloux Theater:

1. Improve the "Look" and usability of the main stage
 - Curtains, Legs and Teasers are main aspect of all stage appearance
 - Current soft goods are (potentially) 55 years old, and are patched, torn, and rotted.
2. Address serious concerns regarding safety and usability
 - 100% of current inventory failed NFPA Field Fire Test
 - All inventory deemed "at the end of their usable life."
3. Requested funds would provide and install upgrades for all currently hanging soft goods, including main drape, all legs, both travelers, all borders, cyclorama and scrim

2: Acquiring Modular Seating

We are requesting \$52,000 to be used to purchase high quality Modular Seating for the VK Garage Theater:

1. Expand Audience Capacity
 - Provide seating for 140 guests, up from 100
2. Improve Audience Comfort
 - Replace chairs that are 15 years old, and are now both uncomfortable and unsightly
 - Proposed chairs are similar in quality to permanent seating
3. Maintain the flexibility of the "Black Box" space
 - Chairs set up quickly and attach securely for orderly rows
 - Chairs store easily when not in use

The Wenger Model 23

- Luxury seating that doesn't need to be secured to the floor
- Quickly and easily adapts to changing needs
- Integrated high-quality audience seating system
- Designed for today's modular performance environments



STANDARD PORTABLE AUDIENCE CHAIR

3: Improving the Piano

We are requesting \$23,500 to be used for improvements to the Steinway Concert Grand Piano

1. The "Gold Standard of Concert Pianos" in declining condition
 - 1960 Steinway Model "D", 9' Grand Piano
 - Now in its 56th year of service
 - Tone and Action are both showing signs of decline, which will accelerate without attention
2. Refurbish, Not Replace
 - Cost of replacement with similar piano would fall between \$150,000 and \$200,000
 - Upgraded interior parts could extend the life of the piano by 30 years or more
3. Bring This Piano Back to World-Class Standards
 - Rebuild "action," replace all hammers, shafts and dampers, restore key bed, replace strings and tuning pins
 - Reclaim the tone for which the Steinway was created

KERRVILLE'S COMMUNITY THEATER

PLAYHOUSE

— 2 • 0 • 0 • 0 —

EXHIBIT 'B'

Playhouse 2000, Inc.
P.O. Box 290088
Kerrville, TX 78029
305 Washington Street
www.Playhouse2000.com
(830) 896-9393

Board of Directors

Kit Werlein
President

Tom Terrell
Vice President

Stephen Fine
City of Kerrville
Representative

Susan Neely Balentine

Arthur Bell

Chris Distel

Paul E. Stafford

Roxie Orms

Gene Smith

Gary Stork

Nancy B. Watts

James E. Wilson

Staff

Jeffrey Brown

Executive Director

jbrown@caillouxtheater.com

Extension 303

Nicholas Boland

Technical Director/
Facilities Manager

nck@caillouxtheater.com

Extension 305

Amy Goodyear

Office Manager

amy@caillouxtheater.com

Extension 304

Sarah Distel

Associate Producer for

Children's Programming

distelse@gmail.com

Susan Burns

Front-of-House Manager

susan@caillouxtheater.com

Extension 302

Josie Reyes

Box Office Manager

boxoffice@caillouxtheater.com

Extension 301

Managers of the

Kathleen C. Cailloux

City Center for the

Performing Arts

Managers of the

Kathleen C. Cailloux

City Center for the

Performing Arts

Managers of the

Kathleen C. Cailloux

City Center for the

Performing Arts

22 September 2015

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

Dear Mr. Titus,

We are pleased to submit the attached application for support from the Economic Improvement Corporation. This letter will provide background information as requested in the 4B Sales Tax Funding Request application.

Playhouse 2000, Inc, is a 501(c)(3)-recognized organization whose mission is to ensure a wide variety of performing arts events and activities are available to all residents of Kerrville, Kerr County and the Texas Hill Country. We achieve this mission by managing and programming the City-Owned Kathleen C. Cailloux City Center for the Performing Arts, and by producing local events including a full Community Theater season, a Youth Theater and Young People's Performances Series, a Fine-Arts Performances Series, an annual "Shakespeare in the Park" and several others.

We are requesting \$125,000 to be used for three specific projects that are required for the continued safe and efficient use of the Cailloux City Center complex. These projects are: 1) the replacement of all stage curtains in The Cailloux Theater; 2) replacement of portable seating in the VK Garage Theater; and 3) repair and maintenance of the Cailloux City Center's Steinway Concert Grand Piano.

As stewards of this beautiful complex on behalf of The City of Kerrville, we take seriously the need to ensure the continued usability of all of its components, and work hard to be aware of needs for improvement before they become urgent. Even so, successful completion of these three projects is urgent if The Cailloux City Center is to remain an active and vital part of the Hill Country's arts community.

I am hopeful that the balance of our application, including the project narrative, will provide all of the information necessary for your consideration. If anything else is needed, please feel free to contact me at the address or phone number above, or by email at Jeffrey@Playhouse2000.com.

Sincerely,



Jeffrey Brown, Executive Director
Playhouse 2000, Inc. and
The Kathleen C. Cailloux City Center
For the Performing Arts

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

Annual Sales for Corporation / Company \$ _____

This Facility \$ _____

Local Sales Tax paid Annually \$ _____

Current Payroll \$ _____

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

SECTION III - PROJECT INFORMATION

This application is for a:

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

Capital Improvements for Public Infrastructure

- Utilities
- Roadways
- Other ()

Quality of Life

- Community Event
- Project

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

SECTION IV - PROJECT DESCRIPTION

Please attach a statement on company letterhead and signed by an officer of the company (1) fully explaining the nature and scope of the project; (2) describing the proposed site and existing improvements, if any; (3) describing all proposed

Anticipated Number within 12 months of Completion of this project _____
Anticipated Number within 24 months of Completion of this project _____
Typical Job Descriptions or Job Titles of these employees: _____

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

Part E - Payroll Impact

Within 12 months of Project Completion _____ Within 24 months of Project
Completion _____

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

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

SECTION VI - OTHER ASSISTANCE

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

No Yes

Describe:

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

Jeffrey Brown

Printed name

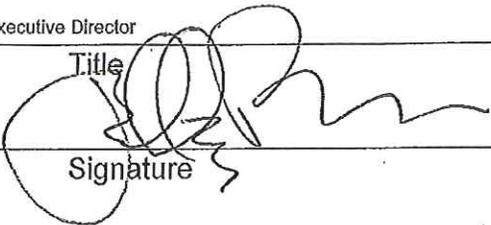
Date

9/21/2015

Executive Director

Title

Signature



Playhouse 2000, Inc.
Application to the Kerrville Economic Improvement Corporation
September, 2015

SECTION IV - PROJECT DESCRIPTION

Thank you for this opportunity to apply for EIC support of proposed repairs and improvements to the facilities of The Kathleen C. Cailloux City Center for the Performing Arts.

Playhouse 2000 has been proud to serve as managers and stewards of this outstanding asset owned by The City of Kerrville, for the past decade. We work hard to ensure that the facility and its furnishings are always in top condition and able to represent the very best our City has to offer to guests from across the region.

We have a regular schedule of inspections and assessments that help us review the condition and fitness of assets within the City Center, and these have helped us uncover three specific areas that need attention soon.

These problem areas, why they are important, and our recommended action, are described below.

1. Replacement of all "soft goods" inside the Cailloux Theater:

Theatrical Curtains are important to the polished look of any performance hall. "Curtains" and "Travelers" are large, full-stage drapes, usually made with velour or similar to enhance their light-carrying characteristics. "Legs" and "Teasers" go together to frame the stage at various distances from front to back. All of them assist theatrical and concert designers to "finish" the set dressing appropriately.

These curtains - known collectively as "Soft Goods" - are treated for fire resistance for safety, and are usually black in color. Occasionally the front curtain (The "Grand Drape") is colored to match the décor of the auditorium.

All of the curtains on The Cailloux stage have been tested for both suitability-to-purpose and fire retarding properties, and almost all of them failed one or the other (or both) aspects of this test. It appears that the curtains, legs, teasers and valances were not replaced during the 2003 renovation, which may explain why they are exhibiting "dry-rot" and other problems. Many are torn and patched, making them unsightly, and all have outlived their fire-resistance treatments.

While it is possible, in some instances to refurbish hanging soft-goods - usually a process of cleaning, repairing tears, and refreshing fire-retardant chemicals - this is impossible in this case due to the curtains' advanced state of wear.

We have an estimate from Texas Scenic Company, a San Antonio based theatrical supplier, to construct and deliver replacement curtains, plus equipment for storage of curtains when they are not in use, totaling \$26,850. A contingency of 15% will cover potential changes in cost or design,

We request a grant of (up to) \$33,000 in this portion of the application.

2. Seating for the VK Garage Theater:

With the opening of the Cailloux Support Facility, the VK Garage will transition to a full-time performance venue, with expanded seating capacity. The chairs that we currently use for audience seating were adequate when they were purchased for use in "The Interim Theater" in 1998; they are now showing wear badly. In addition to being somewhat unsightly and less than comfortable, there are too few of them to outfit the new performance space.

We propose to purchase a full set of 140 chairs manufactured by the Wenger Corporation, a well-known manufacturer of theatrical equipment. The chairs are truly theatrical in style, without

the need for being permanently attached to the floor. With spring-return "flip-up" seats, heavy duty frame and upholstery, and coupling attachments for stability, these chairs provide an excellent audience experience with all the flexibility needed by the VK Garage Theater's "Black Box" design.

We have a quote direct from The Wenger Corporation that includes 140 chairs, storage for times the chairs are not in use, and freight, which totals \$47,235, to which we add a contingency of 10% to cover potential price changes.

We request \$52,000 in this portion of our request.

3. Repairs to the concert piano.

The Cailloux Theater is blessed to house a 1960 Steinway Model "D" Concert Grand Piano. This instrument is the "gold standard" of concert pianos, but ours is definitely "showing its age."

Consistent use over the 55 years of the piano's life have led to predictable wear on the many thousands of moving parts inside the piano, as well as on strings, hammers and felts. This wear has left the piano with an uncharacteristically "bright" tone which is noticeable to both artists and sensitive audience members. Failure to provide upkeep at this point could render the piano inadequate to some of the uses for which we require it now and in the future.

Replacement of the Concert Grand Piano has been considered, but it would be expensive and could leave The Cailloux with an instrument inferior to the one we have now. A brand-new replacement Model D would cost about \$118,000 retail, plus delivery from New York, and according to many experts, it would be an inferior instrument when compared to the 1960 Model D in prime condition. A comparable new piano by Bosendorfer or Mason & Hamlin (there is MUCH discussion about whether or not these are truly comparable pianos) would cost between \$110,000 and \$200,000, according to retail price guides.

Our regular piano technician for many years, Mr. Ramon Ramirez of Austin, has provided a report on the need for a thorough rebuild of the piano. The types of services required include replacing worn parts, re-balancing the action, evening the tone of the instrument, and refinishing the instrument's exterior. His estimate for a comprehensive "re-build" of the Steinway comes to \$35,000. We will also need to factor in the cost of renting a replacement instrument during the re-building process.

We request a grant of up to \$40,000 in this portion of the application.

In each of these cases, repair or replacement of vital equipment is needed in the near term, and the cost of repair or replacement is more than we would be able to absorb without years of fundraising. We are requesting the EIC's assistance in tackling these sensitive items before a larger problem or an emergency exists.

Additional Information, including financial reports, IRS reports, and time schedules are readily available and will be supplied as needed.

Additional Attachments

Attachment 1: Quotation from Texas Scenic Company related to Project 1: Replacement of Soft Goods

PLEASE NOTE: THIS QUOTATION INCLUDES PRICING FOR EQUIPMENT NOT INCLUDED IN THIS REQUEST. The Total cost related to this project is \$26,850 for curtains.

Attachment 2: Customer Quotation from Wenger Corporation related to Project 2: Seating for the VK Garage Theater

Attachment 3: An email letter from piano technician Ramon Ramirez related to Project 3: Repairs to the Cailloux Theater Grand Piano.

Customer Quotation



Quote: 970990

Date: 4/29/2015

Effective: For 30 days only

Ship Within: 60 days

Prepared For: Nick Boland
 Playhouse 2000, Inc.
 305 Washington St
 Kerrville, TX 78028-4509

Delivery Within:
 Tax: Not Included
 Terms: PENDING CREDIT APPROVAL
 F.O.B. Point: Destination

Regarding: Standard Portable Aud Chairs/Carts

Page: 1

| Item | Description | Quantity | Unit Price | Price |
|---|--|----------|------------|-----------|
| 027A101.111 | CHAIR,AUD.STD.MODEL 23 SINGLE SIZE: 23 IN. OUTSIDE/OUTSIDE FABRIC: ** UNDEFINED ** | 140 | 280.00 | 39,200.00 |
| 027A036 | STORAGE CART,AUDIENCE CHAIR Note: Cart capacity is 24 chairs. | 6 | 854.00 | 5,124.00 |
| | Total Product Charge | | | 44,324.00 |
| | Freight/Handling Charge | | | 2,911.00 |
| | Total Charge | | | 47,235.00 |
| <p>***** The freight reflected in this quotation is for common carrier shipment with tailgate delivery. Tailgate delivery will require staff at your location to be available for unloading, moving the product to your desired location and completing any assembly or installation. Contact your Wenger representative if you want to look into delivery and installation by Wenger truck and technician. *****</p> | | | | |

* Terms and Conditions of Sale appear on following page.

Submitted By: Doug Olson
 Sales Representative

Phone: 800-733-0393 Ext 182 Fax: 507-455-4258

Email: doug.olson@wengercorp.com

Printed by: Sue Morris

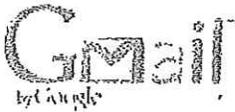
WENGER CORPORATION
 555 Park Drive, PO Box 448
 Owatonna, MN 55060-0448
 Phone 800.4WENGER (493-6437)
 Fax 507.455.4258
 Parts & Service 800.887.7145

WENGER CORPORATION
 CANADA OFFICE
 Phone 800.268.0148

WORLDWIDE
 Phone 1.507.455.4100
 Fax 1.507.774.8576

WEB SITE
www.wengercorp.com





eduardo Ramirez <ramonantonioramirez@gmail.com>

Cailloux Theater Steinway

1 message

Ramon Ramirez <ramonantonioramirez@gmail.com>

Mon, Nov 8, 2010 at 11:04 PM

To: nicholasboland@gmail.com, Ramon Ramirez <ramonantonioramirez@gmail.com>

Mr. Nick Boland
Cailloux Theater
Kerrville, TX
(830) 792-6447

Dear Nick,

At your request, I have assembled the following information to help with the long term maintenance planning of the Cailloux Theater grand piano. It is the result of our conversations along with some research I have done. This piano is a Steinway brand Model D concert grand. (At just under nine feet in length, this model is the gold standard of concert halls the world over.) The Cailloux Steinway bears the serial number 367336 and was manufactured in 1960. It is now fifty years old, and has served the theater very well. However, it has wear issues to be sure and its future use mandates that these issues eventually be dealt with.

The Steinway D is still being manufactured, of course, and replacing 367336 with a new D would be a very simple solution if the high cost were not an issue. A new D retails now for roughly 115,000 dollars. 367336 has trade in value, but given its age and wear, the final cost of a new D would still be high -- my guess would be in the 80,000 to 90,000 dollar range. Our conversations have revealed that cost is an issue, however, and my experience with this instrument has formed the opinion that given appropriate maintenance, 367336 can continue to serve the theater very well for many years to come.

A comprehensive restoration of a quality concert grand piano would currently run in the 35,000 dollar range. Such a restoration would entail a complete rebuilding of the action and damper systems, replacement of the pin block and strings, replacement of the sound board, and complete refinishing and/or case restoration. It would also typically require the removal of the piano from the theater for perhaps a year or so. Therefore, while a considerable savings would be realized over replacing the instrument, some of that savings would be lost in the rental of a suitable piano for the performances that take place during its absence.

In our discussions, the possibility of leaving the finish alone has come up as a viable means of reducing restoration costs since the piano's appearance has proven acceptable. Also, the sound board is in good shape and likely to hold up for another extended period of time. Finally, the pin block is in good shape and would not necessarily need to be replaced; restringing the piano with over-size tuning pins looks to be a viable option.

What we are left with would be: rebuilding the action, rebuilding the damper system, and restringing with oversize tuning pins. By eliminating the case restoration, sound board replacement, and pin block replacement, we would end up with a figure roughly one-half of the cost of a comprehensive restoration. Further, if selected to perform this work, I could do it over the course of one Summer thus eliminating or at least greatly reducing the need for renting a piano while 376336 is being worked on. (I do not perform comprehensive restoration; a quality shop would have to be used.)

All of the three operations in the preceding paragraph could be performed individually. However, when totaled, the cost would be greater due to logistics. (The piano would have to be transported here for restringing. Once here, rebuilding the action and damper systems could be done without trips to Kerrville.) I have most of the information needed to produce an estimate for these operations, but with one more look at the piano I could commit to some solid figures.

Agenda Item:

3C. Reimbursement of parade permit fees in the amount of \$100 paid by the veterans parade committee for the 2015 Veteran's Day Parade. (Councilmember White)

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

SUBJECT: Reimbursement of parade permit fees in the amount of \$100 paid by the Veterans Parade Committee for the 2015 Veteran's Day Parade

FOR AGENDA OF: Dec. 8, 2015

DATE SUBMITTED: Dec. 2, 2015

SUBMITTED BY: Todd Parton
City Manager

CLEARANCES:

EXHIBITS: None

AGENDA MAILED TO:

APPROVED FOR SUBMITTAL BY CITY MANAGER:



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

PAYMENT TO BE MADE TO:

REVIEWED BY THE FINANCE DEPARTMENT:

SUMMARY STATEMENT

This item has been placed on this agenda as requested by Councilmember White at the City Council meeting of November 10, 2015. The Veterans Parade Committee paid a deposit of \$750 and a permit fee of \$100 to the City of Kerrville for the 2015 Veteran's Day Parade. The \$750 deposit has been fully refunded.

RECOMMENDED ACTION

It is recommended that the City Council reimburse the \$100 parade fee to the Veterans Parade Committee and consider providing an exception for this parade as fees are established for next fiscal year.

Agenda Item:

3D. Authorize execution of a contract with Kerr County for conducting the May 7, 2016 City of Kerrville General Election. (staff)

**BUSINESS OF THE CITY COUNCIL
CITY OF KERRVILLE, TEXAS**

SUBJECT: Authorize execution of a contract with Kerr County for conducting the City of Kerrville General Election to be held on May 7, 2016

FOR AGENDA OF: December 8, 2015 **DATE SUBMITTED:** December 4, 2015

SUBMITTED BY: Brenda Craig *BC* **CLEARANCES:** Todd Parton
City Secretary

EXHIBITS: Election Agreement with Kerr County

AGENDA MAILED TO:

APPROVED FOR SUBMITTAL BY CITY MANAGER: 

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

PAYMENT TO BE MADE TO:

REVIEWED BY THE FINANCE DIRECTOR:

SUMMARY STATEMENT

The attached agreement will authorize the Kerr County Elections Office to conduct the City of Kerrville General Election to be held on May 7, 2016, including:

- Hiring and training election judges and workers;
- Management of the polling location for both early voting and election day;
- Preparation, ordering and distribution of ballots;
- Manage the early voting by mail process.

The city will reimburse the county for the actual expenses attributable to the cost of the city election, rental of equipment and supplies, plus 10% of the cost incurred, and a \$50 administrative fee. The contract and the fees proposed are the same as in prior years.

It should be noted that the attachment to the contract is only an estimate of these costs and may vary based on the needs of the election, which are currently unknown, e.g. additional ballot programming, printing of additional ballots, and the potential need to hire additional workers. The county elections office works very diligently to keep the city's cost down and will inform the city secretary prior to authorizing any significant increase.

RECOMMENDED ACTION

The city secretary recommends approval of the contract.

**THE STATE OF TEXAS
COUNTY OF KERR**

**JOINT ELECTION AGREEMENT
BETWEEN
CITY OF KERRVILLE AND KERR COUNTY**

THIS AGREEMENT is made and entered into by and between Diane Bolin Tax Assessor/Collector (or designated employee) on behalf of Kerr County, Texas duly constituted and acting as County Elections Officer and the City of Kerrville by and through Todd Parton, its City Manager hereinafter referred to as “CITY OF KERRVILLE” and by authority of Section 31.092, Vernon’s Texas Civil Statutes, Election Code for conducting and supervision of the elections for the CITY OF KERRVILLE in conjunction with the Election.

Diane Bolin, Tax Assessor/Collector (or designated employee) shall order all supplies for the election and distribute those supplies to the election personnel. Election forms and all records of the election shall be combined for use in this election on the Tally Equipment.

THIS AGREEMENT is entered into in consideration of the mutual covenants and agreement hereinafter set out. IT IS AGREED AS FOLLOWS:

I. DUTIES AND SERVICES OF KERR COUNTY

Diane Bolin Tax Assessor/Collector (or designated employee) agrees to coordinate, supervise, and handle all aspects in administering the CITY OF KERRVILLE elections in accordance with the provisions of the Texas Election Code and as outlined in this Agreement.

Diane Bolin, Tax Assessor/Collector (or designated employee) in connection with the holding and supervision of said election shall assume the following responsibilities:

- a. Shall be responsible for notifying each election judge and alternate judge of his or her appointment and for determining the number of clerks and other election workers authorized to work at each voting location. Arrange for the notification, including writ of election, and compensation of all presiding judges and alternate judges.
- b. Election judges shall be responsible for picking up election supplies and materials at the time and place determined by Diane Bolin, Tax Assessor/Collector (or designated employee). This responsibility will be set forth in the election judges’ letter notifying the judge of his/her appointment.

Election Contract – CITY OF KERRVILLE

- c. Procure, prepare, proof, and distribute ballots.
- d. Procure, prepare, and distribute election judge's kits.
- e. Arrange for the use and compensation of polling locations.
- f. Use Optical scanning eScan Equipment and DAU eSlate (Hart 6..2.1) for counting of ballots as certified by the Secretary of State to comply with HAVA for early voting and election day.
- g. Assemble the list of registered voters to be used in conducting the election in conformity with the election precincts established for the election.
- h. Publish the legal notice of the date, time and place of the testing of the electronic tabulation equipment and conduct such testing.
- i. Supervise the handling and disposition of election returns, voted ballots, etc., and tabulate unofficial returns and assist in preparing the tabulation for the official canvass.
- j. Diane Bolin, Tax Assessor/Collector (or designated employee) will prepare the unofficial tabulation report after all precincts have been counted, and will provide a copy of the report to the CITY OF KERRVILLE as soon as possible after all returns have been tabulated, but in no event later than 2:00 p.m. on the 10th day following the election. CITY OF KERRVILLE will be responsible for the official canvass of its General Election.
- k. All early voting ballots (those cast by mail and those cast by personal appearance) will be prepared for counting by an Early Voting Ballot Board.
- l. Handle all aspects of Early Voting including those voting by mail.
- m. Prepare the results of the election for CITY OF KERRVILLE to conduct its own canvass of the election as prescribed by law.
- n. Provide at no cost for the storage of all election records as provided by law
- o. As the general custodian of election records shall conduct a criminal background check for relevant election officials, staff, and temporary workers upon hiring.
- p. Hart Intercivic certifies that a criminal background check on all employees, including temporary employees that may program, test, perform maintenance, transport equipment, or perform technical support

Election Contract – CITY OF KERRVILLE

on the voting system equipment for KERR COUNTY has been performed. The Company has determined there are no findings that would prevent the employees from performing their assigned duties.

II. DUTIES AND SERVICES OF CITY OF KERRVILLE

CITY OF KERRVILLE in connection with the holding and supervision of said election shall assume the following responsibilities and shall directly bear any cost for the same:

- a. Shall receive from their candidates all documents filed under Title 15 of the Texas Election Code relating to campaign contributions and expenditures.
- b. Preparation of election orders, resolutions, notices, and other pertinent documents for adoption or execution by the appropriate office or body and post or publish in the required time frame.
- c. Prepare and send out “Notice of Drawing” for a place on the Ballot to all eligible candidates.
- d. Election Officers with a list provided by Diane Bolin Tax Assessor/Collector (or designated employee) shall be appointed and approved thru the governing body of the CITY OF KERRVILLE. The Election Officers are as follows: Early Voting Judge, Election Day Judge, Election Day Alternate Judge, Central Counting Station Manager, Tabulation Supervisor, Presiding Judge, and Early Voting Ballot Board Judge.
- e. Polling Location shall be appointed and approved thru the governing body of the CITY OF KERRVILLE.
- f. Deliver to Diane Bolin, Tax Assessor/Collector or designated employee as soon as possible, a list showing the official wording for the Election titles that is to be printed on the ballot with the exact form, orders, wording, and spelling that is to be used.
- g. Pay any additional costs incurred by Diane Bolin, Tax Assessor/Collector or designated employee if a recount for the election is required, or the election is contested in any manner.
- h. Shall issue “Certificates of Election” to candidates elected after the Official Canvass.

Election Contract – CITY OF KERRVILLE

- i. CITY OF KERRVILLE will be responsible for the official canvass of its Election.

III. PAYMENT FOR SERVICES

- a. CITY OF KERRVILLE shall pay to Kerr County the actual expenses directly attributable to the Contract including ten percent (10%) of the budget cost for Election Service Contract Fee pursuant to the Texas Election Code, Section 31.100 and the administrative fee of \$50.00 per election. (See attached Estimated Cost Sheet.)
- b. After the date of election and completion of all duties required, the Tax Assessor/Collector (or designated employee) shall then compute the final statement for all expenses including ten percent (10%) of the budget cost for Election Service Contract Fee, the \$50.00 Administration Fee and mail payment for the election services to Kerr County. CITY OF KERRVILLE shall be responsible for paying this amount within thirty (30) days from the Final Cost Report.
- c. If Election is cancelled a \$75.00 administration fee is due.

IN WITNESS WHERE OF, the parties hereto have made and entered into this agreement this 8th day of December, 2015.

Diane Bolin

Diane Bolin, Tax Assessor/Collector

Or Designated Employee

Kerr County, Texas

Todd Parton, City Manager

CITY OF KERRVILLE

| ESTIMATED COST of May 2016 Election for the City of Kerrville | | | | | | |
|---|---|---|-------------------|--|-----------------|---------------|
| County Election Services Contract Costs | | | | | | |
| | | | | | Estimate | Actual |
| 1 | Ballot Printing Cost | | | | | |
| | First 1000 Ballots Free | | | | | |
| 2 | Electronic Voting System Programming | | | | | |
| | Test and Sample Ballots | | | | \$2,000.00 | |
| * 3 | Publication of Test of Electronic Voting Equipment | | | | | |
| | Newspaper-Kerrville Daily Times | | | | \$ 40.00 | |
| | Other Newspapers as requested per their fees | | | | | |
| 4 | Charge for Wireless Internet | | | | \$ - | |
| * 5 | Lease of Voting Machines | | | | | |
| | Early Voting and Election Day | | | | | |
| | | # of Units | Lease Cost | | | |
| | eSlates | 2 | \$37.50 | | \$ 75.00 | |
| | JBC | 2 | \$37.50 | | \$ 75.00 | |
| | eScans | 2 | \$67.50 | | \$ 135.00 | |
| * Tally Computer | | 1 | \$57.75 | | \$ 57.75 | |
| * Lap Top Computer | | 1 | \$52.50 | | \$ 52.50 | |
| * 6 | Precinct Election Judges and Clerks | | | | | |
| | \$10.00 per Hour | | | | | |
| | Early Voting Clerks (2) | 2 | 80 hours | | \$ 1,600.00 | |
| | Election Day Judge & Alternate Judge | 2 | 15 hours | | \$ 300.00 | |
| | Election Day Clerks | 1 | 14 hours | | \$ 140.00 | |
| * Early Ballot Board Clerks | | 3 | 1 hour | | \$ 30.00 | |
| * Tabulation Supervisor & Personnel | | 3 | 2 hours | | \$ 60.00 | |
| | Election Night Workers | | | | \$ - | |
| 7 | Fee for Pickup of Supplies before Election Day and Delivery of Supplies after Polls Close Per Election Day Judge | | | | \$ 25.00 | |
| 8 | Technical Support Personnel | | | | \$ - | |
| 9 | Miscellaneous Election Costs | | | | | |
| | Elections Kits | 2 | \$ 50.00 | | \$ 100.00 | |
| | Central Counting Station Kit | 1 | \$ 12.00 | | \$ 12.00 | |
| | Shipping of Kits & MBB's for programming | | | | \$ 60.00 | |
| | Postage - Appointment of Judges & Clerks | 4 | \$ 0.60 | | \$ 2.40 | |
| | Postage - Writ of Election to Judge | 1 | \$ 0.60 | | \$ 0.60 | |
| * Postage - Mail Ballots Application | | 25 | \$ 0.60 | | \$ 15.00 | |
| * Postage- Mail Ballots | | 25 | \$ 0.60 | | \$ 15.00 | |
| * Mail Ballot Kits | | 25 | \$ 2.00 | | \$ 50.00 | |
| | SUBTOTAL EXPENSES - Cost of the Election | | | | \$ 4,845.25 | |
| 10 | Election Service Contract Fee (10% of Cost) | | | | \$ 454.53 | |
| | Administrative Fee | | | | \$ 50.00 | 50.00 |
| 11 | TOTAL COST OF ELECTION | | | | \$ 5,349.78 | 50.00 |
| | Balance due 30 days after Final Cost Report | | | | | |
| * The following items may be divided with the different entities having the election | | | | | | |
| 3 | Publication - Newspaper | shared costed with all Entities | | | | |
| 5 | Lease - Election Machines | shared costed of Talley & Lap Top Computer w/all Entities | | | | |
| 5 | Lease - Election Machines | Equipment costed shared with City of Kerrville | | | | |

Agenda Item:

4A. Resolution No. 37-2015, granting a conditional use permit for an approximate 2.95 acre tract of land out of the Sam Wallace Survey No. 112, Abstract No. 360 and the Sam Wallace Survey No. 113, Abstract No. 347, within the City of Kerrville, Kerr County, Texas, and otherwise known as 3370 Loop 534 (Veterans Highway); said tract is located within the 27-E zoning district; by permitting said property to be used for a manufactured home or manufactured housing; and making said permit subject to certain conditions and restrictions contained herein. (staff)

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

SUBJECT: Public hearing and consideration of resolution concerning a requested conditional use permit for a Manufactured Home or Manufactured Housing for an approximate 2.95 acres tract. Legal Description 2.95 acres out of Sam Wallace Survey No. 112, Abstract No. 360 and Sam Wallace Survey No. 113, Abstract No. 347, both surveys in Kerr County, Texas; Recorded in Volume 681 on Page 527 of the real property records of Kerr County, Texas located at 3370 Loop 534; north of Singing Wind Drive, between Loop 534 and Landfill Road North.

FOR AGENDA OF: December 8, 2015

DATE SUBMITTED: November 20, 2015

SUBMITTED BY: Trenton Robertson
City Planner

CLEARANCES: Kristine Day
Deputy City Manager

EXHIBITS: Staff Report, Location Map, Site Plan
AGENDA MAILED TO:

APPROVED FOR SUBMITTAL BY CITY MANAGER:



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

PAYMENT TO BE MADE TO:

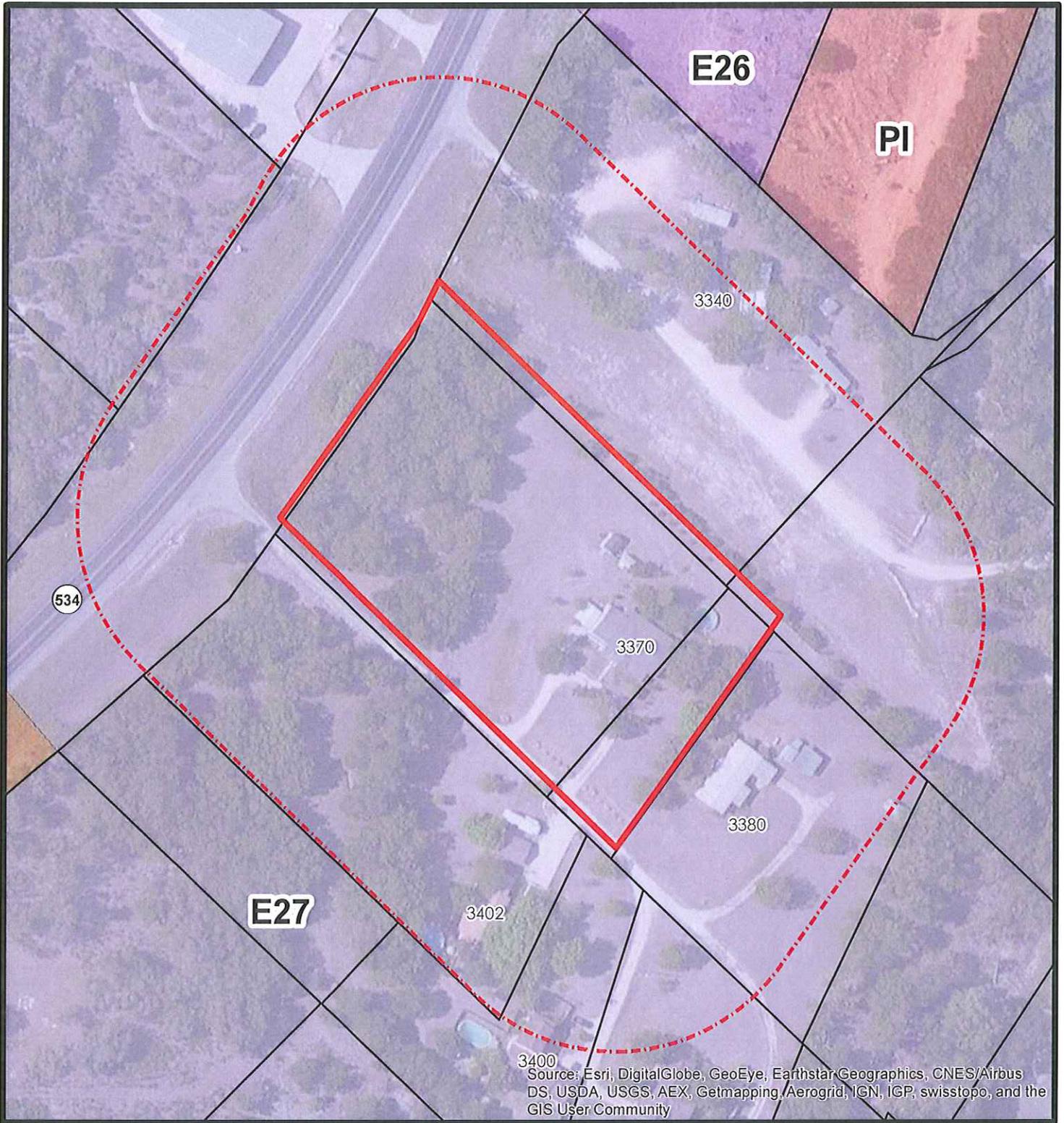
REVIEWED BY THE DIRECTOR OR FINANCE:

SUMMARY STATEMENT

This item concerns a public hearing and consideration of the resolution for a requested conditional use permit for a Manufactured Home or Manufactured Housing.

RECOMMENDED ACTION

Staff recommends that the Council conduct the public hearing and consideration of the resolution and take action.



Conditional Use Permit Location Map

Case 2015-050

**Location:
3370 Loop 534**

Legend

- 200' Notification Area - - - - -
- Subject Properties —————
- Current Zoning TEXT



0 50 100 200

Scale In Feet

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



City of Kerrville Planning Department Report

To: Planning & Zoning Commission
Agenda Item: 2A
Planning File #: 2015-050
Hearing Date: December 3, 2015
Representative: Melanie Lavrakas
Location: 3370 Loop 534; north of Singing Wind Drive, between Loop 534 and Landfill Road North
Legal Description: 2.95 acres out of Sam Wallace Survey No. 112, Abstract No. 360 and Sam Wallace Survey No. 113, Abstract No. 347, both surveys in Kerr County, Texas; Recorded in Volume 681 on Page 527 of the real property records of Kerr County, Texas
Total Acreage: 2.95

Proposal

Requested conditional use permit for a Manufactured Home or Manufactured Housing for an approximate 2.95 acres tract.

Procedural Requirements

The application was published in The Hill Country Community Journal, an official newspaper of general circulation on November 18, 2015. Notices were sent to property owners within two hundred (200) feet of the subject property on November 23, 2015. Additionally, notice of this meeting was posted at city hall and on the city's internet website on November 25, 2015, in accordance with Section 551.043(a) of the Texas Government Code.

Recommended Action

Staff recommends that the Commission hold the required public hearing to receive public comments and make a recommendation to the Council.

Notices Mailed

Owners of Property within 200 feet: 10

Topography

The subject property has a slight slope from Loop 534 heading southeast to the rear of the property. The property has various types of grasses and trees creating a natural buffer between the residential structure and Loop 534.

Adjacent Zoning and Land Uses

Direction: North, South, East and West

Current Base Zoning: "E-27"

Current Land Uses: Manufactured Housing, Single-Family Residential and Vacant Land

Transportation

Thoroughfare: Loop 534

Existing Character: One lane in each direction

Proposed Changes: None known

Parking Information: Single-Family Residential

Minimum vehicle spaces: Two (2) spaces per dwelling unit

Staff Analysis and Recommendation: Approval with conditions

1. Consistency:

The property's land use designation is Mixed-Use. The requested Conditional Use Permit is consistent with the adopted land use designation.

2. Adverse Impacts on Neighboring Lands:

There will be little to no impact on neighboring lands adjacent to the proposed conditional use. The surrounding properties have similar uses already established. The proposed conditional use for a "Manufactured Home or Manufacturing Housing", will allow the existing structure to no longer be considered a non-conforming use, but instead meet the provisions and regulations set forth in the City of Kerrville's zoning code.

3. Suitability as Presently Zoned:

The existing "E-27" zoning district is consistent with the surrounding area. The requested Conditional Use Permit will allow for the subject property's existing non-conforming use to be permitted. Additionally, the Conditional Use Permit will allow for the future replacement of the existing manufactured home (with the same footprint and square footage).

4. Health, Safety and Welfare:

Staff has found no indication of likely adverse effects on the public health, safety, or welfare.

5. Size of Tract:

The subject property is approximately 2.95 acres in size, which should be able to reasonably accommodate the residential use.

6. Other Factors:

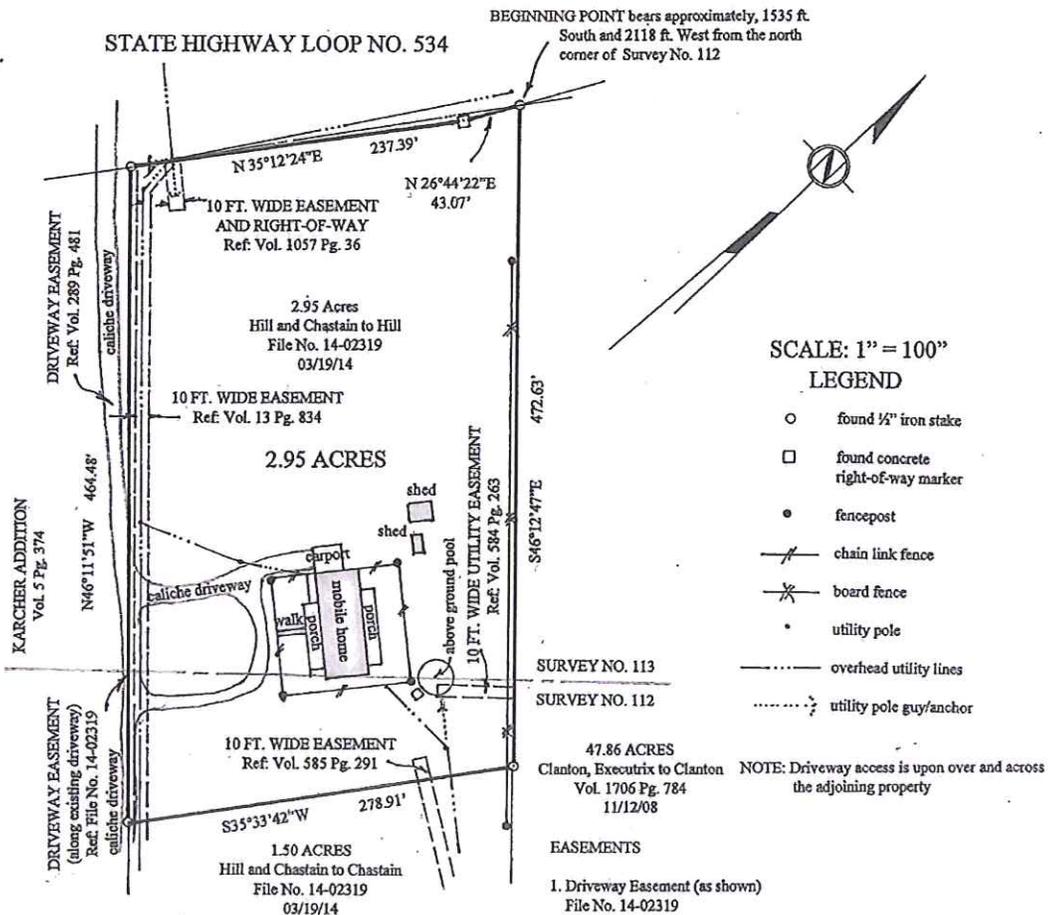
Meets and abides to all requirements in accordance with Chapter I, "The City of Kerrville Zoning Code" Article 11-1-13 Conditional Use Permits and Article 11-1-12 Manufactured Homes, Mobile Homes, Trailers, And Recreation Vehicles.

As part of the Conditional Use Permit process, a site plan has been submitted and will be included with the ordinance. The site plan is in accordance with Article 11-1-13(f)(1)(xiv) "Procedures for Obtaining a Conditional Use Permit".

TITLE SURVEY PLAT FOR 2.95 ACRES OF LAND, MORE OR LESS, OUT OF ORIGINAL PATENT SURVEYS IN KERR COUNTY, TEXAS AS FOLLOWS:

| SURVEY NO. | SURVEY | ABSTRACT NO. | ACRES |
|------------|-------------|--------------|-------|
| 112 | SAM WALLACE | 360 | 0.53 |
| 113 | SAM WALLACE | 347 | 2.42 |

THAT SAME LAND CONVEYED FROM MELANIE MEEKER HILL AND CONNIE MEEKER CHASTAIN TO MELANIE MEEKER HILL BY PARTITION DEED EXECUTED THE 19TH DAY OF MARCH, 2014 AND RECORDED IN FILE NO. 14-02319 OF THE OFFICIAL PUBLIC RECORDS OF KERR COUNTY, TEXAS



SCALE: 1" = 100"
LEGEND

- found 1/2" iron stake
- found concrete right-of-way marker
- fencepost
- chain link fence
- board fence
- utility pole
- overhead utility lines
- ⋯ utility pole guy/anchor

NOTE: Driveway access is upon over and across the adjoining property

SURVEY NO. 113

SURVEY NO. 112

47.86 ACRES
Clanton, Executrix to Clanton
Vol. 1706 Pg. 784
11/12/08

EASEMENTS

1. Driveway Easement (as shown)
File No. 14-02319
2. Easement and Right-of-Way (as shown)
Lavarkas and Chastain to KPUB
and Kerrville Telephone
Vol. 1057 Pg. 36
03/14/00
3. Easement (as shown)
Meeker to Kerrville Telephone
Vol. 13 Pg. 834
03/23/82
4. Electrical Line Easement and
Right-of-Way (as shown)
Meeker to KPUB
Vol. 584 Pg. 263
03/08/91
5. Electrical Line Easement
and Right-of-Way (as shown)
Meeker to KPUB
Vol. 585 Pg. 291
03/18/91

I hereby certify that this plat is an accurate representation of the property shown and described hereon as determined by a survey made on the ground under my direction and supervision, except no survey was made to reestablish Patent Survey lines or corners, and that all property corners are as shown: all applicable easements of record as provided to me by Fidelity Abstract are shown hereon and there are no visible easements, encroachments, conflicts or protrusions apparent or known to me to be on the property except as shown. (Bearing basis = True North based on GPS observations)

Title Company: Fidelity Abstract
Commitment No.: GF150637F
Effective Date: August 26, 2015
Date Surveyed: September 3, 2015

Dated this 11th day of September 2015

Lee C. Voelkel
Lee C. Voelkel



**CITY OF KERRVILLE, TEXAS
RESOLUTION NO. 37-2015**

A RESOLUTION GRANTING A CONDITIONAL USE PERMIT FOR AN APPROXIMATE 2.95 ACRE TRACT OF LAND OUT OF THE SAM WALLACE SURVEY NO. 112, ABSTRACT NO. 360 AND THE SAM WALLACE SURVEY NO. 113, ABSTRACT NO. 347, WITHIN THE CITY OF KERRVILLE, KERR COUNTY, TEXAS, AND OTHERWISE KNOWN AS 3370 LOOP 534 (VETERANS HIGHWAY); SAID TRACT IS LOCATED WITHIN THE 27-E ZONING DISTRICT; BY PERMITTING SAID PROPERTY TO BE USED FOR A MANUFACTURED HOME OR MANUFACTURED HOUSING; AND MAKING SAID PERMIT SUBJECT TO CERTAIN CONDITIONS AND RESTRICTIONS CONTAINED HEREIN

WHEREAS, the City Planning and Zoning Commission and the City Council of the City of Kerrville, Texas, in compliance with the City Charter and state law with reference to the granting of conditional use permits under Title 11, Chapter I of the Zoning Code of the City of Kerrville, Texas, and the official zoning map adopted thereby; having given the requisite notices by United States mail, publication, and otherwise; and after holding due public hearings and affording a full and fair hearing to all of the property owners generally and particularly to those interested persons situated in the affected area and in the vicinity thereof, the City Council of the City of Kerrville, Texas, finds that the health, safety, and general welfare will be best served by the granting of a Conditional Use Permit, subject to the special conditions and restrictions set out hereinafter on the property described in Section One hereof;

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

SECTION ONE. A Conditional Use Permit is granted to permit the property described below to be developed and used for a manufacture home or manufactured housing as that term is defined by Title 11, Chapter I of the Zoning Code of the City of Kerrville, Texas ("Zoning Code"), and such use is subject to the provisions of this Resolution and other applicable City ordinances and regulations:

A 2.95 acre, more or less, tract of land out of Sam Wallace Survey No. 112, Abstract No. 360, and Sam Wallace Survey No. 113, Abstract No. 347, within the City of Kerrville, Kerr County, Texas, and created pursuant to the Partition Deed filed within the Real Property Records of Kerr County, Texas, File No. 14-2319; and more commonly known as 3370 Loop 534 (Veterans Highway), Kerrville, Texas, 78028.

Hereafter referred to as "the Property."

SECTION TWO. In addition to the development and use regulations currently applicable to the Property, development and use of the Property is subject to the following additional conditions:

- A. **Site Plan:** The development and use of the Property must conform with the site plan, attached as **Exhibit A**.
- B. **Platting:** An administratively complete application for a plat of the Property must be submitted to the City for approval before the issuance of any building permit.
- C. **Other Zoning Regulations:** The regulations set forth in this Resolution are in addition to those set forth in Title 11, Chapter I of the Zoning Code, as amended or superseded. In the event of any irreconcilable conflict between this Resolution and the regulations set forth in Title 11, Chapter I of the Code of Ordinances of the City of Kerrville, as amended or superseded, the provisions of this Resolution will prevail.

SECTION THREE. This Resolution and the Conditional Use Permit granted herein is subject to termination in accordance with Article 11-I-13 of the Zoning Code.

PASSED AND APPROVED ON this the ____ day of _____, A.D., 2015.

Jack Pratt, Jr., Mayor

ATTEST:

Brenda G. Craig, City Secretary

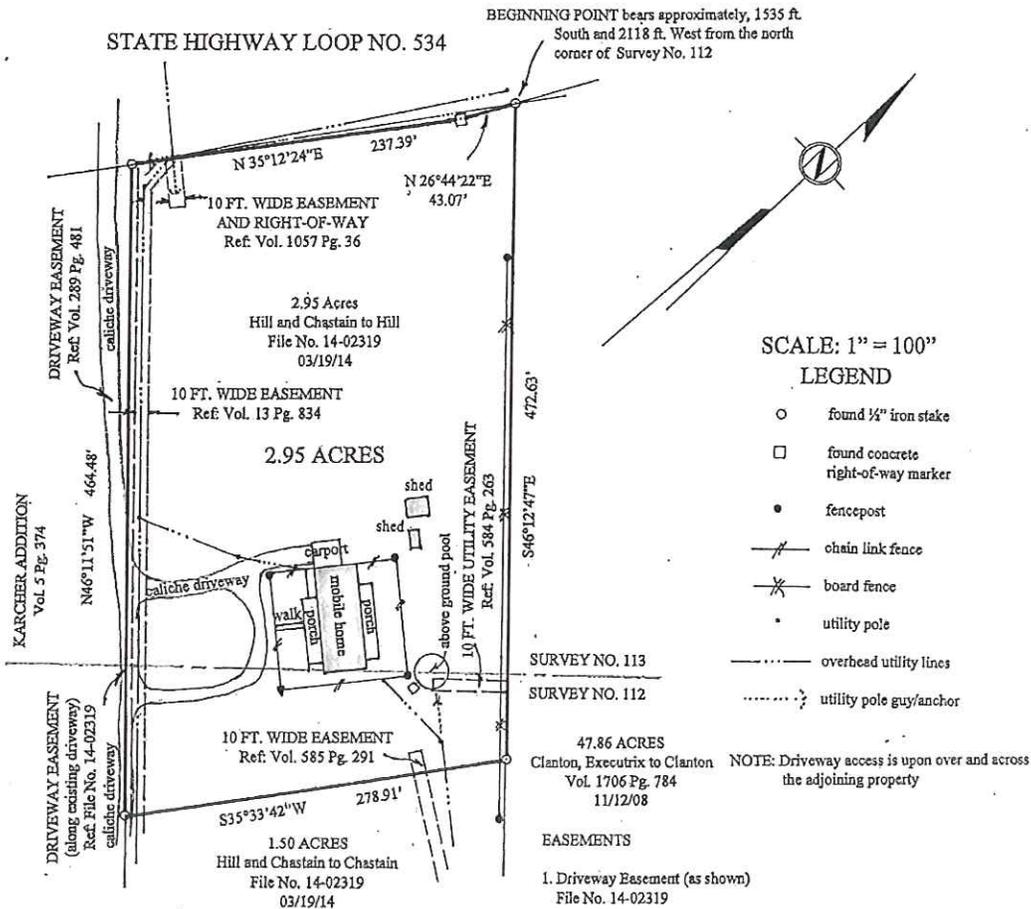
APPROVED AS TO FORM:

Michael C. Hayes, City Attorney

TITLE SURVEY PLAT FOR 2.95 ACRES OF LAND, MORE OR LESS, OUT OF ORIGINAL PATENT SURVEYS IN KERR COUNTY, TEXAS AS FOLLOWS:

| SURVEY NO. | SURVEY | ABSTRACT NO. | ACRES |
|------------|-------------|--------------|-------|
| 112 | SAM WALLACE | 360 | 0.53 |
| 113 | SAM WALLACE | 347 | 2.42 |

THAT SAME LAND CONVEYED FROM MELANIE MEEKER HILL AND CONNIE MEEKER CHASTAIN TO MELANIE MEEKER HILL BY PARTITION DEED EXECUTED THE 19TH DAY OF MARCH, 2014 AND RECORDED IN FILE NO. 14-02319 OF THE OFFICIAL PUBLIC RECORDS OF KERR COUNTY, TEXAS



I hereby certify that this plat is an accurate representation of the property shown and described hereon as determined by a survey made on the ground under my direction and supervision, except no survey was made to reestablish Patent Survey lines or corners, and that all property corners are as shown: all applicable easements of record as provided to me by Fidelity Abstract are shown hereon and there are no visible easements, encroachments, conflicts or protrusions apparent or known to me to be on the property except as shown. (Bearing basis = True North based on GPS observations)

Title Company: Fidelity Abstract
 Commitment No.: GF150637F
 Effective Date: August 26, 2015
 Date Surveyed: September 3, 2015

Dated this 11th day of September 2015

Lee C. Voelkel
 Lee C. Voelkel



Agenda Item:

4B. Resolution No. 38-2015, granting a conditional use permit for an approximate .35 acre tract out of the P.R. Oliver Survey No. 122, Abstract No. 265, within the City of Kerrville, Kerr County, Texas, and otherwise known as 1612 Goat Creek Road (FM 1338); said tract located within the 6-W zoning district; by permitting said property to be used for building construction, specialist purposes; and making said permit subject to certain conditions and restrictions contained herein. (staff)

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

SUBJECT: Public hearing and consideration of resolution concerning a requested conditional use permit for a Building Construction, Specialist for an approximate .35 acres tract. Legal Description 0.35 acres, more or less, out of P.R. Oliver Survey No. 122, Abstract No. 265 in the City of Kerrville, Kerr County, Texas; part of a certain 1.937 acre tract recorded in Volume 1784 at Page 29 of the Official Public Records of Kerr County, Texas. Located at 1612 Goat Creek Road; east of Goat Creek Road, between Stephanie Drive North and Junction Highway (also known as Highway 27).

FOR AGENDA OF: December 8, 2015

DATE SUBMITTED: November 20, 2015

SUBMITTED BY: Trenton Robertson
City Planner

CLEARANCES: Kristine Day
Deputy City Manager

EXHIBITS: Staff Report, Location Map
AGENDA MAILED TO:

APPROVED FOR SUBMITTAL BY CITY MANAGER: 

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

PAYMENT TO BE MADE TO:

REVIEWED BY THE DIRECTOR OR FINANCE:

SUMMARY STATEMENT

This item concerns a public hearing and consideration of the resolution for a requested conditional use permit for a Building Construction, Specialist.

RECOMMENDED ACTION

Staff recommends that the Council conduct the public hearing and consideration of the resolution and take action.



City of Kerrville Planning Department Report

To: Planning & Zoning Commission
Agenda Item: 2C
Planning File #: 2015-057
Hearing Date: December 3, 2015
Representative: Lee Voelkel
Location: 1612 Goat Creek Road; east of Goat Creek Road, between Stephanie Drive North and Junction Highway (also known as Highway 27)
Legal Description: 0.35 acres, more or less, out of P.R. Oliver Survey No. 122, Abstract No. 265 in the City of Kerrville, Kerr County, Texas; part of a certain 1.937 acre tract recorded in Volume 1784 at Page 29 of the Official Public Records of Kerr County, Texas.
Total Acreage: 0.35

Proposal

Requested conditional use permit for a Building Construction, Specialist for an approximate .35 acres tract.

Procedural Requirements

The application was published in The Hill Country Community Journal, an official newspaper of general circulation on November 18, 2015. Notices were sent to property owners within two hundred (200) feet of the subject property on November 23, 2015. Additionally, notice of this meeting was posted at city hall and on the city's internet website on November 25, 2015, in accordance with Section 551.043(a) of the Texas Government Code.

Recommended Action

Staff recommends that the Commission hold the required public hearing to receive public comments and make a recommendation to the Council.

Notices Mailed

Owners of Property within 200 feet: 11

Topography

The subject property has no significant slope. However, the entire subject property is within the within the flood zone ("AE") and a portion falls within the FEMA floodway. The property is developed with a residential and commercial structure.

Adjacent Zoning and Land Uses

Direction: North

Current Base Zoning: "RC"

Current Land Uses: Single-Family Residential

Direction: South

Current Base Zoning: "W-6"

Current Land Uses: Professional Office, Restaurant, and Mini Storage

Direction: East

Current Base Zoning: "R-1"

Current Land Uses: Single-Family Residential

Direction: West

Current Base Zoning: "W-5"

Current Land Uses: Vacant Land and Construction Trade Facility

Transportation

Thoroughfare: Goat Creek Road (aka Highway 1338)

Existing Character: One lane in each direction with no sidewalks

Proposed Changes: None known

Parking Information: Construction Building; Specialist

Minimum vehicle spaces: One (1) space for each 500 sq. feet of indoor area/storage; one (1) space for each 1,000 sq. feet of outdoor area/storage; one (1) space for each 300 sq. feet of Professional Office.

Staff Analysis and Recommendation: Approval with conditions

1. Consistency:

The property's land use designation is General Commercial. The requested Conditional Use Permit is consistent with the adopted land use designation.

2. Adverse Impacts on Neighboring Lands:

The requested conditional use permit will have little impact on the surrounding properties. The majority of the surrounding properties have similar uses. Staff's only concern is the abutting residential uses to the north and east of the proposed conditional use. Through proper mitigation and the implementation of screening, the impact should be limited.

3. Suitability as Presently Zoned:

The existing "W-6" zoning district and proposed conditional use is consistent with the surrounding area. The area has been established as a commercial mixed use corridor. The uses in the area range in intensity from professional office to a landscaping yard/business. The proposed conditional use will not increase traffic or alter traffic patterns. The surrounding area will be impacted minimally due to the proposed use in comparison to previous uses of the property. The existing conditions of the site will be minimally changed or altered. Future growth or alterations on the site beyond the submitted site plan, will require the property owner to amend the Conditional Use Permit through a public hearing process before the Planning & Zoning Commission and City Council.

4. Health, Safety and Welfare:

Staff has found no indication of likely adverse effects on the public health, safety, or welfare.

5. Size of Tract:

The subject property is approximately .35 acres in size, which should be able to reasonably accommodate the proposed Building Construction, Specialist use.

6. Other Factors:

Meets and abides to all requirements in accordance with Chapter I, "The City of Kerrville Zoning Code" Article 11-1-13 Conditional Use Permits.

As part of the Conditional Use Permit process, a site plan has been submitted and will be included with the ordinance. The site plan is in accordance with Article 11-1-13(f)(1)(xiv) "Procedures for Obtaining a Conditional Use Permit".

Staff recommends approval with the following conditions:

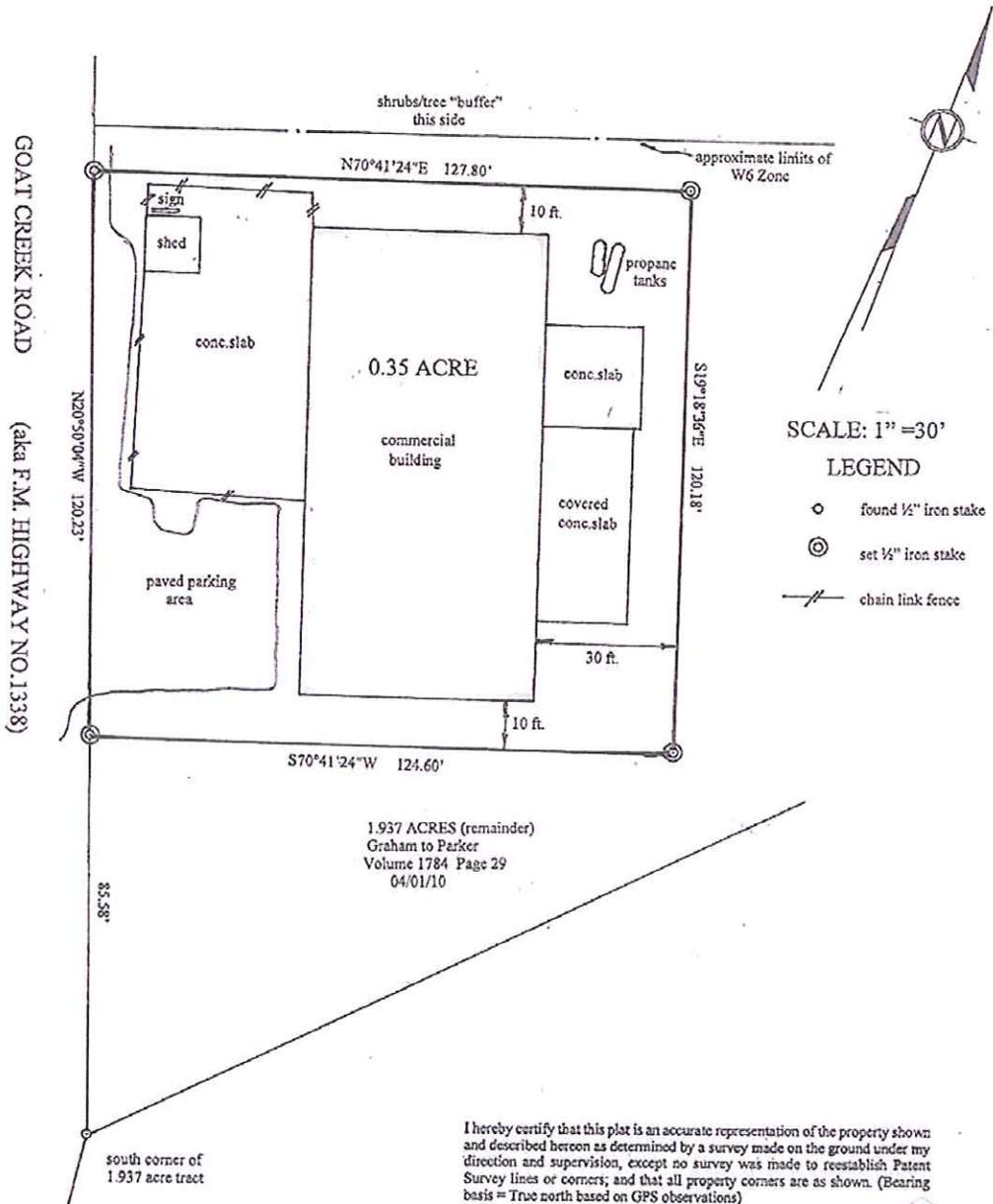
- Hours of Operation: Monday-Sunday 8:00 a.m. – 6:00 p.m.
- Screening: "Type "B" screening (Chapter I, "The City of Kerrville Zoning Code" Article 11-1-18) to be maintained along the northern "W-6" zoning boundary line (between the existing residential and proposed Building Construction, Specialist use), and the eastern property line abutting residential uses.

-Type "B" Screening

- (1) a minimum height of eight (8) feet;
- (2) construction materials to consist of weather resistant wood, masonry or combination thereof;
- (3) open spaces in the fence constituting no more than twenty-five percent (25%) of the fence area;
- (4) maximum ground clearance of three inches (3.0"); and
- (5) shall test plumb and square at all times unless otherwise dictated by the City Building Code.

The applicant is requesting an amendment to the screening regulations in Chapter I, "The City of Kerrville Zoning Code" Article 11-1-18.

SURVEY PLAT FOR 0.35 ACRE OF LAND, MORE OR LESS, OUT OF P.R. OLIVER SURVEY NO. 122, ABSTRACT NO. 265 IN THE CITY OF KERRVILLE, KERR COUNTY, TEXAS; PART OF A CERTAIN 1.937 ACRE TRACT CONVEYED FROM LAWRENCE L. GRAHAM TO ANN PARKER BY A WARRANTY DEED EXECUTED THE 1ST DAY OF APRIL, 2010 AND RECORDED IN VOLUME 1784 AT PAGE 29 OF THE OFFICIAL PUBLIC RECORDS OF KERR COUNTY, TEXAS



SCALE: 1" = 30'

LEGEND

- found 1/2" iron stake
- ⊙ set 1/2" iron stake
- /— chain link fence

1.937 ACRES (remainder)
Graham to Parker
Volume 1784 Page 29
04/01/10

south corner of
1.937 acre tract

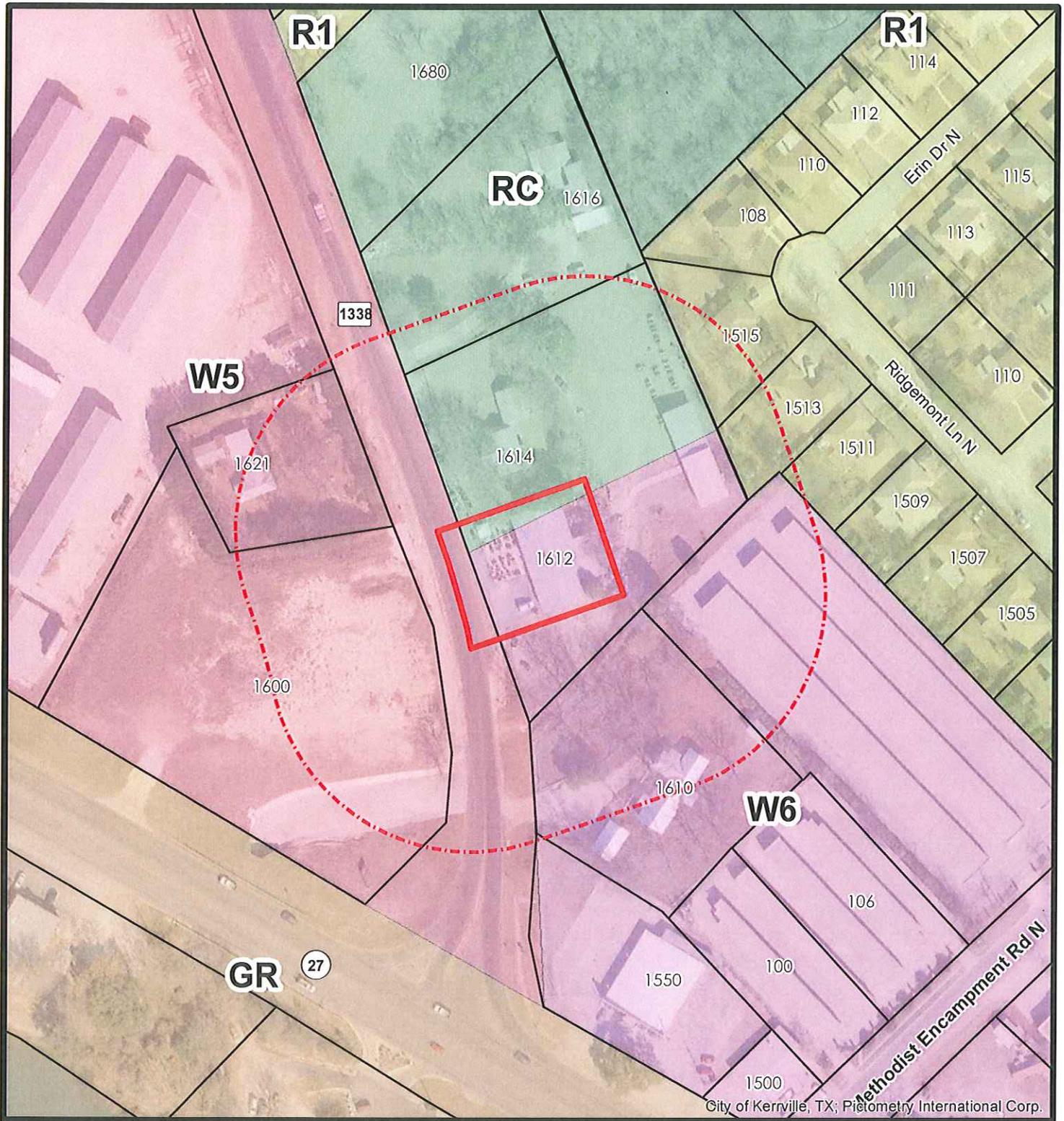
I hereby certify that this plat is an accurate representation of the property shown and described hereon as determined by a survey made on the ground under my direction and supervision, except no survey was made to reestablish Patent Survey lines or corners; and that all property corners are as shown. (Bearing basis = True north based on GPS observations)

Date Surveyed:

Dated this

Lee C. Voelkel
Lee C. Voelkel
Registered Professional Land Surveyor No. 3909
County Surveyor for Kerr County, Texas





City of Kerrville, TX; Pictometry International Corp.

Conditional Use Permit Location Map

Case 2015-057

Location:
1612 Goat Creek Rd

Legend

- 200' Notification Area - - - - -
- Subject Properties ▭
- Current Zoning TEXT



0 50 100 200

Scale In Feet

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

**CITY OF KERRVILLE, TEXAS
RESOLUTION NO. 38-2015**

A RESOLUTION GRANTING A CONDITIONAL USE PERMIT FOR AN APPROXIMATE .35 ACRE TRACT OUT OF THE P.R. OLIVER SURVEY NO. 122, ABSTRACT NO. 265, WITHIN THE CITY OF KERRVILLE, KERR COUNTY, TEXAS, AND OTHERWISE KNOWN AS 1612 GOAT CREEK ROAD (FM 1338); SAID TRACT LOCATED WITHIN THE 6-W ZONING DISTRICT; BY PERMITTING SAID PROPERTY TO BE USED FOR BUILDING CONSTRUCTION, SPECIALIST PURPOSES; AND MAKING SAID PERMIT SUBJECT TO CERTAIN CONDITIONS AND RESTRICTIONS CONTAINED HEREIN

WHEREAS, the Planning and Zoning Commission and City Council of the City of Kerrville, Texas, in compliance with the City Charter and state law with reference to the granting of conditional use permits under Title 11, Chapter I of the Zoning Code of the City of Kerrville, Texas, and the official zoning map adopted thereby, have given the requisite notices by United States mail, publication, and otherwise; and after holding due hearings and affording a full and fair hearing to all of the property owners generally and particularly to those interested persons situated in the affected area, the City Council of the City of Kerrville, Texas, finds that the health, safety, and general welfare will be best served by the granting of a Conditional Use Permit for the property described in Section One hereof, and subject to the special conditions and restrictions as provided herein;

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

SECTION ONE. A Conditional Use Permit is granted to permit the property described below to be developed and used for Building Construction, Specialist purposes, as that term is defined in Article 11-I-3 of the Code of Ordinances of the City of Kerrville, Texas ("Zoning Code"), and such use is subject to the provisions of this Resolution and other applicable City ordinances and resolutions:

A 0.35 acre, more or less, tract of land out of the P.R. Oliver Survey No. 122, Abstract No. 265, within the City of Kerrville, Kerr County, Texas; and part of a certain 1.937 acre tract conveyed by Warranty Deed filed within Volume 1784, Page 29 of the Real Property Records of Kerr County, Texas; and more commonly known as 1612 Goat Creek Road (FM 1338);

hereafter referred to as "the Property."

SECTION TWO. In addition to the development and use regulations currently applicable to the Property, if the Property is developed and used for Building Construction, Specialist purposes, such development and use is subject to the following additional conditions:

- A. **Concept Plan:** The development and use of the Property must conform substantially to the concept plan, attached as **Exhibit A** (“Concept Plan”).
- B. **Hours of Operation:** The Property may only be open to the public during the hours of 8:00 AM through 6:00 PM on any day.
- C. **Signs:** The design, installation, location, operation, and maintenance of signs must comply with the City’s ordinances regulating signs at the time of installation.
- D. **Exterior Lighting:** Any exterior lighting must be located, shielded, and aimed in such a manner so as not to allow light to fall directly onto adjacent properties or streets.
- E. **Screening:** The Property must be screened with Type “B” screening as contemplated by Article 11-I-18 of the Zoning Code and the screening wall or fence must comply with the following:
 - 1) must be located and installed to separate the commercial and residential structures currently located on the Property and with the adjacent residential property to the north, in the general locations depicted on the Concept Plan;
 - 2) must be a minimum of eight feet (8.0’) in height;
 - 3) must be constructed with materials consisting of weather resistant wood, masonry, or a combination thereof;
 - 4) open spaces may exist but may not constitute more than twenty-five percent (25%) of the fence area;
 - 5) the ground clearance may not exceed three inches (3.0”); and
 - 6) must test plumb and square at all times unless in conflict with the City’s Building Code.
- F. **Outside Storage:** The outside storage of any materials and/or equipment must be behind solid fencing as shown on the Concept Plan.
- G. **Parking:** The design and number of parking spaces must be in accordance with the City’s regulations in effect at the time building permits are submitted to the City. All required parking spaces must be constructed of asphalt or concrete and must be marked and kept available for customers and employees.
- H. **Other Zoning regulations:** The regulations set forth in this Resolution are in addition to those set forth in Title 11, Chapter I of the Zoning Code of the City of Kerrville, as amended or superseded. In the event of any irreconcilable conflict

between this Resolution and the regulations set forth in Title 11, Chapter I of the Zoning Code of the City of Kerrville, as amended or superseded, the provisions of this Resolution will prevail.

SECTION THREE. This Resolution and the Conditional Use Permit granted herein is subject to termination in accordance with Article 11-I-13 of the Zoning Code of the City of Kerrville, Texas.

PASSED AND APPROVED ON this the _____ day of _____ A.D., 2015.

Jack Pratt, Jr., Mayor

APPROVED AS TO FORM:

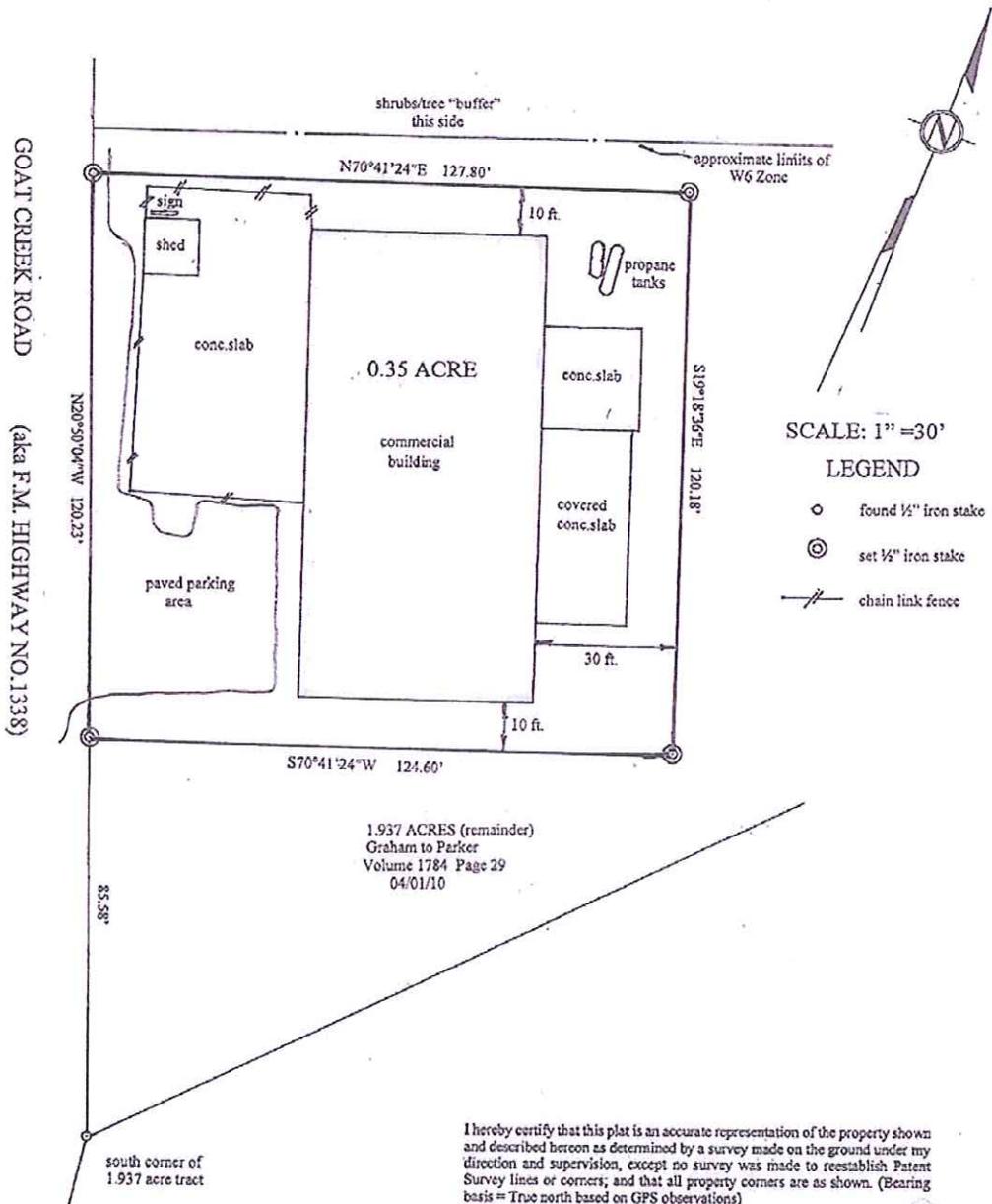
ATTEST:



Michael C. Hayes, City Attorney

Brenda G. Craig, City Secretary

SURVEY PLAT FOR 0.35 ACRE OF LAND, MORE OR LESS, OUT OF P.R. OLIVER SURVEY NO. 122, ABSTRACT NO. 265 IN THE CITY OF KERRVILLE, KERR COUNTY, TEXAS; PART OF A CERTAIN 1.937 ACRE TRACT CONVEYED FROM LAWRENCE L. GRAHAM TO ANN PARKER BY A WARRANTY DEED EXECUTED THE 1ST DAY OF APRIL, 2010 AND RECORDED IN VOLUME 1784 AT PAGE 29 OF THE OFFICIAL PUBLIC RECORDS OF KERR COUNTY, TEXAS



SCALE: 1" = 30'

LEGEND

- found 1/2" iron stake
- ⊙ set 1/2" iron stake
- /— chain link fence

1.937 ACRES (remainder)
Graham to Parker
Volume 1784 Page 29
04/01/10

I hereby certify that this plat is an accurate representation of the property shown and described hereon as determined by a survey made on the ground under my direction and supervision, except no survey was made to reestablish Patent Survey lines or corners; and that all property corners are as shown. (Bearing basis = True north based on GPS observations)

Date Surveyed:

Dated this

Lee C. Voelkel
Lee C. Voelkel
Registered Professional Land Surveyor No. 3909
County Surveyor for Kerr County, Texas



Agenda Item:

5A. Ordinance No. 2015-24 amending Ordinance No. 2006-01, which granted Atmos Energy Corporation a franchise to furnish, transport, and supply gas to the general public within the City of Kerrville, Kerr County, Texas, by extending the term of the franchise ordinance for an additional ninety (90) days through the end of March 29, 2016. (staff)

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

SUBJECT: Ordinance No. 2015-24 amending Ordinance No. 2006-01, which granted Atmos Energy Corporation a franchise to furnish, transport, and supply gas to the general public within the City of Kerrville, Kerr County, Texas, by extending the term of the Franchise Ordinance for an additional ninety (90) days through the end of March 29, 2016 [**SECOND OF THREE ORDINANCE READINGS**]

FOR AGENDA OF: December 8, 2015 **DATE SUBMITTED:** November 24, 2015

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

EXHIBITS: Ordinance No. 2015-24; letter from Atmos Energy Corp.

AGENDA BILL MAILED TO: Atmos Energy Corp. c/o Erika L. Hise, attorney; Randy Hartford, Manager Public Affairs

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

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

PAYMENT TO BE MADE TO: NA

REVIEWED BY THE FINANCE DEPARTMENT:

SUMMARY STATEMENT

The City is currently engaged in ongoing negotiations with Atmos Energy Corporation (“Atmos”), with respect to a new franchise agreement between the City and Atmos. The agreement, in the form of an ordinance, is necessary to authorize Atmos to continue utilizing City property (rights-of-way) for the transport and delivery of natural gas to their customers within the City.

The City charter requires three readings for each new franchise ordinance. Based upon this requirement, the number of Council meetings remaining this year, newspaper notice requirements, and other timing issues, representatives of each party agreed to postpone the adoption of a new franchise and to extend the existing franchise agreement for ninety days.

The attached ordinance will amend the existing franchise ordinance by extending its term for ninety days, through March 29, 2016.

RECOMMENDED ACTION

Adoption of Ordinance on 2nd reading.



Randy Hartford
Manager, Public Affairs
Atmos Energy Corporation
Mid-Tex Division
3110 North I35
Round Rock, Texas 78681

October 26, 2015

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

RE: Extension of Ordinance No. 2006-01

Dear Mr. Parton:

Atmos Energy Corporation hereby confirms its commitment to continue to operate in the City of Kerrville under and be bound by the terms and conditions of Ordinance No. 2006-01.

This commitment shall be in effect for the duration of negotiations leading up to final passage and approval of a new franchise ordinance. Please let me know if you have additional questions or concerns regarding this Letter of Commitment.

Sincerely,

Randy Hartford
Manager of Public Affairs

CITY OF KERRVILLE

Received by: _____ Date: _____, 2015

Printed Name: _____ Title: _____

**CITY OF KERRVILLE, TEXAS
ORDINANCE NO. 2015-24**

AN ORDINANCE AMENDING ORDINANCE 2006-01, WHICH GRANTED ATMOS ENERGY CORPORATION A FRANCHISE TO FURNISH, TRANSPORT, AND SUPPLY GAS TO THE GENERAL PUBLIC WITHIN THE CITY OF KERRVILLE, KERR COUNTY, TEXAS, BY EXTENDING THE TERM OF THE FRANCHISE ORDINANCE FOR AN ADDITIONAL NINETY DAYS THROUGH THE END OF MARCH 29, 2016

WHEREAS, Atmos Energy Corporation (“Atmos”), is authorized to furnish, transport, and supply gas to the general public in the City of Kerrville pursuant to Ordinance No. 2006-01, adopted by City Council following the third reading of said franchise ordinance (the “Franchise”) on January 10, 2006; and

WHEREAS, representatives for both the City and Atmos are seeking the renewal of the Franchise, which will expire on January 1, 2016, and are engaged in ongoing negotiations; and,

WHEREAS, despite these negotiations, the representatives for each party have yet to reach an agreement on a new Franchise but believe that a new deal is imminent, but in any event, can be reached on or before the extension of the Franchise by ninety days; and

WHEREAS, based upon this recommendation, both the City and Atmos wish to extend the term of the Franchise for ninety days through March 29, 2016;

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

The term of the Franchise, as adopted by the City Council pursuant to Ordinance No. 2006-01, as between the City of Kerrville, Texas, and Atmos Energy Corporation, which is to terminate on December 31, 2015, shall be extended for an additional ninety days through March 29, 2016, unless sooner terminated by either party.

PASSED AND APPROVED ON FIRST READING, this the 10th day of November, 2015.

PASSED AND APPROVED ON SECOND READING, this the ___ day of _____, 2015.

PASSED AND APPROVED ON SECOND READING AND FINAL READING, this the ___ day of _____, 2016.

Jack Pratt, Jr., Mayor

ATTEST:

Brenda G. Craig, City Secretary

APPROVED AS TO FORM:



Michael C. Hayes, City Attorney

Agenda Item:

6A. Wiedenfeld Water Works application to amend Certificate of Convenience and Necessity (CCN) for water service on the southeast corner of Hwy. 27 and Hwy. 480, also known as 5881 Hwy. 27, Center Point, Texas. (staff)

**BUSINESS OF THE CITY COUNCIL
CITY OF KERRVILLE, TEXAS**

SUBJECT: Wiedenfeld Water Works, Application to Amend Certificate of Convenience and Necessity CCN for Water Service in Center Point.

FOR AGENDA OF: December 8, 2015

DATE SUBMITTED: November 19, 2015

SUBMITTED BY: Stuart Barron
Director of Public Works

CLEARANCES: Kristine Day
Deputy City Manager

EXHIBITS: Notice & Site Map

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 FINANCE DIRECTOR:

SUMMARY STATEMENT

A new Family Dollar has been built in Center Point, Texas on the southeast corner of Hwy 27 & Hwy 480 (Camp Verde Rd). This area is not served by a public water system, otherwise known as a CCN or Certificate of Convenience and Necessity. The two water purveyors in the area are Aqua-Texas and Wiedenfeld Water Works (WWW). Family Dollar has approached WWW for water service, thus WWW is applying to the Texas Commission on Environmental Quality (TCEQ) to expand their existing CCN to include the Family Dollar and the adjoining area down to the Guadalupe River. Family Dollar's address is 5881 Hwy. 27.

When applying to expand a CCN the TCEQ requires the applicant to notify all CCN owners within one mile of the service area. The proposed service area is approximately 2.5 miles from our closest water line, and 400 feet outside our CCN.

RECOMMENDED ACTION

Take no action on this application and allow it to pass without opposition.

Notice to Neighboring Systems, Landowners and Cities

**NOTICE OF APPLICATION TO AMEND A CERTIFICATE OF
CONVENIENCE AND NECESSITY (CCN) TO PROVIDE WATER
UTILITY SERVICE IN KERR COUNTY, TEXAS**

To: CITY OF KERRVILLE % Stuart Date Notice Mailed: 11/13, 2015
(Neighboring System, Landowner or City)
701 MAIN ST.
(Address)
Kerrville Tx 78028
(City State Zip)

Wiedenfeld Water Works, Incorporated has filed an application to amend CCN No. 12052 with the Public Utility Commission of Texas to provide water utility service in Kerr County.

The proposed service area is located approximately 1.0 mile north of downtown Center Point, Texas, and is generally bounded on the north by State Highway 27; on the east by the intersection of State Highway 27 and Stoneleigh Road; on the west by Park Avenue; and on the south by the Guadalupe River.

See enclosed map of the proposed service area.

The total area being requested includes approximately 13 acres and 2 current customers.

The proposed amendment affects customers and/or areas located in the following zip code: 78010.

A request for a public hearing must be in writing. You must state (1) your name, mailing address, and daytime telephone number; (2) the applicant's name, application number or another recognizable reference to this application; (3) the statement, "I/we request a public hearing"; (4) a brief description of how you or the persons you represent, would be adversely affected by the granting of the application for a CCN; and (5) your proposed adjustment to the application or CCN which would satisfy your concerns and cause you to withdraw your request for a hearing.

Persons who wish to intervene or comment should write the:

**Public Utility Commission of Texas
Central Records
1701 N. Congress, P. O. Box 13326
Austin, TX 78711-3326**

within thirty (30) days from the date of this publication or notice. A public hearing will be held only if a legally sufficient hearing request is received or if the Commission on its own motion requests a hearing. Only those individuals who submit a written hearing request or a written request to be notified if a hearing is set will receive notice if a hearing is scheduled.

If you are a landowner with a tract of land at least 25 acres or more, that is partially or wholly located within the proposed area, you may request to be excluded from the proposed area (or "opt out") by providing written notice to the Commission within (30) days from the date that notice was provided by the applicant. All request to opt out of the requested service area must include a scaled, general location map and a metes and bounds description of the tract of land.

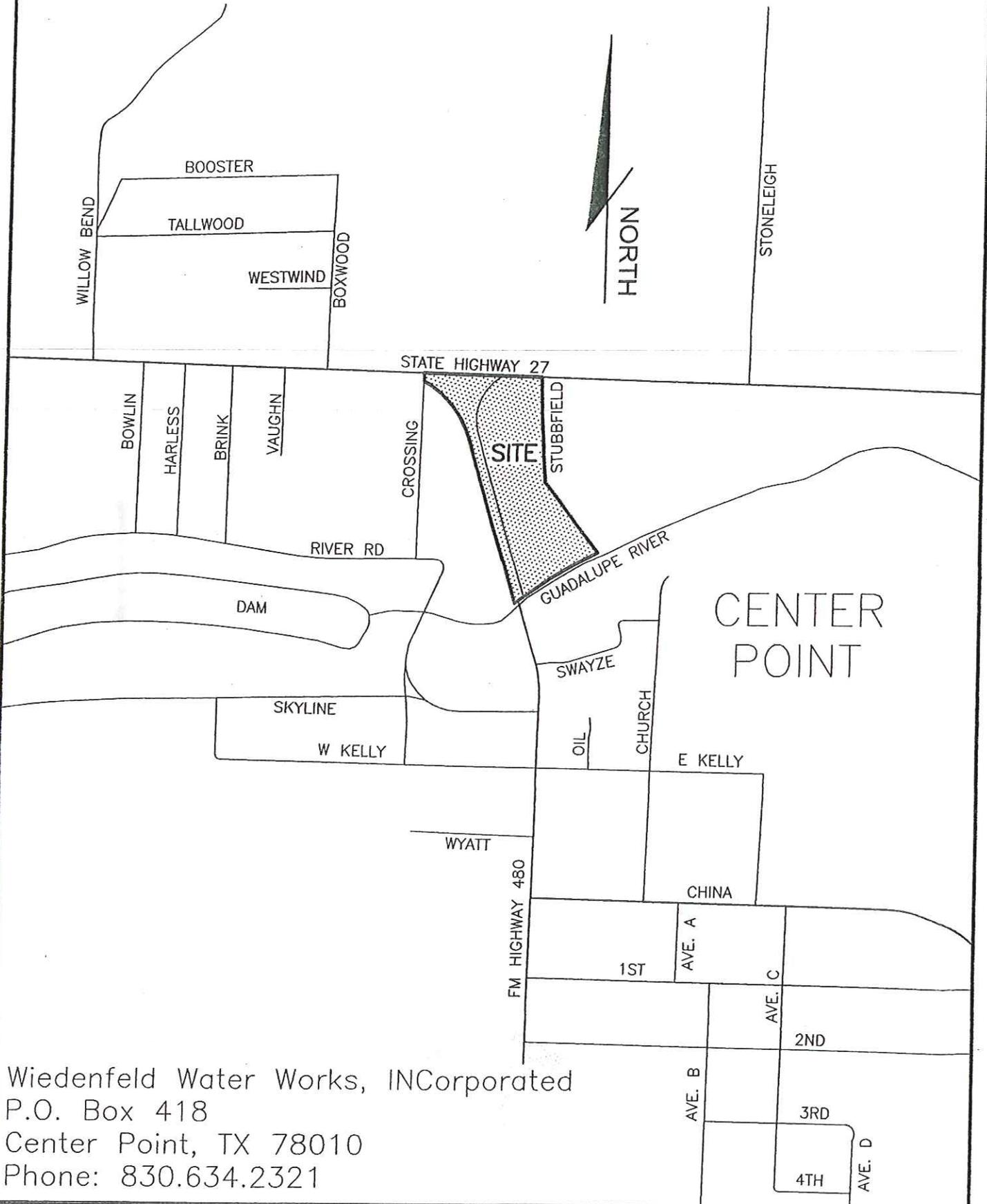
Persons who meet the requirements to opt out, and wish to request this option should file the required documents with the:

Public Utility Commission of Texas
Central Records
1701 N. Congress, P. O. Box 13326
Austin, TX 78711-3326

A copy of the request to opt out of the proposed area must also be sent to the applicant. Staff may request additional information regarding your request.

Si desea informacion en Espanol, puede llamar al 1-512-936-7221.

PROPOSED AREA FOR:
FAMILY DOLLAR ADDITION TO THE CENTER POINT - WIEDENFELD SYSTEM PWS 1330007
AMENDING CCN 12052



Wiedenfeld Water Works, INCorporated
P.O. Box 418
Center Point, TX 78010
Phone: 830.634.2321

Agenda Item:

6B. Commercial lease between City of Kerrville, Texas, and BTP Baseball Ventures, LLC, a franchise of D-BAT for the development and management of an indoor and outdoor baseball and softball athletic facility (Holdsworth Athletics Facility), 398 Holdsworth Drive. (staff)

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

SUBJECT: Commercial lease between the City of Kerrville and BTP Baseball Ventures LLC, a franchise of D-BAT, for the athletic complex to be constructed at the intersection of Holdsworth Drive and Town Creek Road

FOR AGENDA OF: Dec. 8, 2015 **DATE SUBMITTED:** Dec. 3, 2015

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

EXHIBITS: Commercial Lease – Draft 12/4/2015

AGENDA MAILED TO:

APPROVED FOR SUBMITTAL BY CITY MANAGER: 

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

PAYMENT TO BE MADE TO:

REVIEWED BY THE FINANCE DEPARTMENT:

SUMMARY STATEMENT

City staff has amended the lease document to incorporate City Council direction provided at its meeting held on November 11, 2015, input from the Kerrville Youth Baseball Softball Association (KYBSA), Cailloux Foundation, and BTP Baseball Ventures LLP, a franchise of D-BAT (BTP).

A redline version of the agreement is attached.

RECOMMENDED ACTION

City staff recommends approval of this commercial lease agreement.

COMMERCIAL LEASE

1. PARTIES: The parties to this Commercial Lease ("Lease") are:

Landlord: City of Kerrville, Texas
City Hall, 701 Main Street
Kerrville, Texas 78028

Tenant: BTP Baseball Ventures LLC, a franchise of D-BAT
213 Lakewood
Kerrville, Texas 78028

2. LEASED PREMISES:

- A. Condition to Lease: Landlord, pursuant to a separate agreement with another party, has contracted to become the owner of fee simple title in that certain tract of land described in **Exhibit A** (the "Land") on or about the time that Landlord is ready to begin construction on the Land. Should Landlord, for whatever reason, not become owner of the Land pursuant to that agreement, Landlord shall immediately notify Tenant of this condition and this Lease will terminate.
- B. Lease: Landlord hereby intends to lease to Tenant, subject to the terms below, an approximately 30,000 square foot building for use including as a proshop, concessions, training areas, meeting space, offices, and restrooms ("Indoor Facility") and athletic field complex consisting of 11 regulation playing fields for baseball and softball ("Outdoor Premises"), the primary purpose of each is to be used as a public facility, both the Indoor Facility and the Outdoor Premises making up a portion of the Land. The Indoor Facility and Outdoor Premises are collectively referred to herein as the "Baseball-Softball Complex", consisting of an area of approximate 35 acres.
- C. Design; approval process: Landlord shall, at its cost, be solely responsible for the completion of design, development, and construction of the Baseball-Softball Complex, subject to the terms of this Agreement. In this regard, Landlord shall enter into and perform all contracts necessary to fully complete the development and construction of the Outdoor Premises. With respect to the Indoor Facility, Landlord intends to enter into and perform all contracts necessary to construct an approximately 30,000 square foot building, subject to completion of final design documents and sufficient funding of the Landlord following the submission of bids. In any case, Landlord shall construct the Indoor Facility with up to 14,000 square feet, which shall include 2,000 square feet of walled-off, finished-out space designed for a pro-shop, offices, and restrooms. The remainder of the Indoor Premises will consist of an enclosed space which is not walled-off or finished out but with interior stub outs for utilities, which Tenant will be responsible for finishing out. All

COMMERCIAL LEASE

schematic design, design development, and construction plans and specifications for the construction of the Baseball-Softball Complex shall be reviewed and approved by Tenant prior to commencement of work, such approval to be timely and not unreasonably withheld. All design and construction of the Baseball-Softball Complex will conform to applicable City codes, ordinances, regulations, design criteria, building standards, and specifications. Any material changes to the final plans and specifications of the Baseball-Softball Complex shall require the approval of Tenant, which shall be timely and not unreasonably withheld.

- D. Landlord Obligations to Tenant: Landlord shall construct the Indoor Facility up to at least 14,000 square feet of heated and air-conditioned space for baseball and softball training including areas for build out by Tenant to include the use of a proshop, concessions, training areas, meeting space, offices, and restrooms. Subject to its available funding and future costs, Landlord intends for the Indoor Facility to be up to 30,000 square feet. Landlord shall also construct the Outdoor Premises consisting of an outdoor baseball and softball complex to include 11 playing fields, lighting for 8 of the playing fields to be determined by Landlord, dugouts, restroom facilities, storage, and parking areas.
- E. Tenant Obligations to Landlord: Tenant shall manage and operate the Indoor Facility and Outdoor Premises, as specified herein, in a first class manner consistent with industry standards for the operation of similar types of first class facilities. Tenant shall construct, install, supply, and/or pay for all of the interior finish out of the Indoor Facility to include interior walls, floor finishes, electrical and plumbing fixtures, furnishings, and equipment, including the turf, netting, lighting, baseball and softball machines, proshop fixtures, and inventory. Tenant has final approval of the interior design and construction of the Indoor Facility, such approval not to be unreasonably withheld or delayed.
- F. Access to Baseball-Softball Complex. Tenant, through its employees, shall have the primary responsibility for access to the Indoor Facility. Landlord, through its employees, shall have the primary responsibility for access to the Outdoor Premises by unlocking the access gate each morning (if applicable) and securing the Baseball-Softball Complex by locking the access gate each evening (if applicable) during any period of time when the Baseball-Softball Complex is not open to the public. When tournaments and events conducted by Tenant make use of the Baseball-Softball complex after 5:00 PM or at any other time agreed to by the parties, Tenant shall have the responsibility of locking the access gate. Tenant further acknowledges and agrees that Landlord's police and fire departments will be provided with duplicate keys to the access gate for use in obtaining access to the Baseball-Softball Complex for security patrols and in emergencies.

COMMERCIAL LEASE

3. TERM:

- A. Term: The initial term of this Lease is 20 years, which will begin on the Commencement Date as defined in paragraph 3D ("Initial Term").
- B. Option Period: Tenant will have two (2) option periods of five (5) years each ("Option Period") in length immediately following the Initial Term and under the same terms and conditions as set forth in this Lease. Tenant shall give Landlord written notice of its intention to exercise an Option Period at least 180 days before the Initial Term expires and at least 180 days before the first Option Period expires if the second Option Period is exercised.
- C. Certificate of Occupancy: The parties will work together to obtain a certificate of occupancy for the Baseball-Softball Complex.
- D. Commencement Date: The Commencement Date will occur when the Landlord has substantially completed the Baseball-Softball Complex. "Substantially completed" means all final, permanent certificates of occupancy for the occupancy of the Baseball-Softball Complex has been issued by the Landlord. Upon reaching "substantially completed", the parties shall execute the Commencement Date Declaration attached hereto as **Exhibit B**, which will establish the Commencement Date.

4. RENT AND EXPENSES:

- A. Base Monthly Rent: On or before the first day of each month during the Lease, Tenant shall pay Landlord base monthly rent. However, Landlord and Tenant agree that following the Commencement Date, the initial twenty-four (24) months of the Lease will have a base monthly rent of \$0.00. Beginning on the 1st day of the 1st full month following the expiration of twenty-four (24) months, the base monthly rent will be calculated based upon the number of prior calendar year's tournaments and team participation as set forth below:

| The Number of Tournaments or Number of Teams Participated the Prior Year (previous 365 days, which is a rolling period): | Monthly Base Rent for the Baseball-Softball Complex: |
|---|---|
| 0 to 4 Tournaments or 20 to 80 teams during any such tournament(s) | \$14,000.00 |
| 5 to 7 Tournaments or 81 to 140 teams during any such tournament(s) | \$12,500.00 |
| 8 to 10 Tournaments or 141 to 200 teams | \$10,000.00 |

COMMERCIAL LEASE

| | |
|--|------------|
| during any such tournament(s) | |
| 11 to 19 Tournaments or 201 to 220 teams during any such tournament(s) | \$7,000.00 |
| 20+ Tournaments or 400+ teams during any such tournament(s) | \$0.00 |

The term "tournaments" as used here means a baseball or softball event conducted by the Tenant of any age group consisting of a minimum of 20 teams, a minimum average of 10 players per team, playing in the event within Kerrville, Texas, or totaling at least 200 players per an event.

- B. Place of Payment: Tenant shall remit all amounts due Landlord under this Lease to the following person at the place stated or to such other person or place as Landlord may later designate in writing:

City Manager
City of Kerrville
City Hall, 701 Main Street
Kerrville, Texas 78028

- C. Method of Payment: Tenant shall pay all rent timely without demand, deduction, or offset, except as permitted by law or this Lease.
- D. Late Charges: If Landlord does not receive a rent payment at the designated place of payment within 15 days after the date it is due, Tenant shall pay Landlord a late charge equal to 10% of the monthly payment amount. The mailbox is not the agent for receipt for Landlord. The late charge is a cost associated with the collection of rent and Landlord's acceptance of a late charge does not waive Landlord's right to exercise remedies under Paragraph 25.
- E. Returned Checks: Tenant shall pay Landlord the applicable fee for each check Tenant tenders to Landlord which is returned by the institution on which it is drawn for any reason, plus any late charges, until Landlord receives payment. Such fee and late charges will be set by the City from time to time by adoption of its fee schedule.
- F. Records and Audit: Tenant shall maintain a complete set of books and records in connection with all aspects of and specific to this Lease relating to its revenues, which books and records Tenant shall keep and maintain in accordance with generally accepted accounting practices and procedures. Said books and records shall at all reasonable times be available for inspection, copying, audit and examination by Landlord or by properly designated employees or agents of Landlord. Landlord has the right, such right not to be exercised more frequently

COMMERCIAL LEASE

than once every year, to audit the books and records of Tenant. Landlord may, at any time, make inquiries pertaining to Tenant's operation of the Baseball-Softball Complex and Tenant shall respond to such inquiries on a timely basis.

- G. All Charges Deemed Rent: Rent and all other amounts becoming payable by Tenant under this Lease constitute rent payable hereunder, and in the event Tenant fails to pay any such amount when due according to the provisions of this Lease, Landlord has all remedies available hereunder or at law or in equity for failure to pay rent. No happening, event, occurrence, or situation during the Initial Term or an Option Period, whether foreseen or unforeseen, and however extraordinary, shall relieve Tenant from its liability to pay rent and other charges payable by Tenant under this Lease or relieve Tenant from any of its other obligations under this Lease.

5. **TAXES AND OWNERSHIP BY LANDLORD**: Tenant is responsible for and shall pay all applicable state, local, and use taxes for its use, sales, and services of or conducted upon the Baseball-Softball Complex. Landlord and Tenant understand, acknowledge, and agree that title to the Land shall at all times during the Lease be vested in Landlord and should be exempt from property (ad valorem) taxation. Based upon Landlord's continued ownership of the Baseball-Softball Complex and public use, Landlord shall make every effort to maintain the tax exempt status of the Baseball-Softball Complex.

6. UTILITIES:

- A. Except as provided herein, Tenant shall pay all charges with respect to utilities serving the Indoor Facility to include water, sewer, electric, gas, telephone, internet, television, and trash. Tenant shall make such payments directly to each applicable utility provider. Prior to occupancy, Landlord shall have meters installed for the applicable utilities and Tenant shall set up accounts in its name for all utilities. Landlord shall install separate meters for the Indoor Facility and Outdoor Premises. Landlord is responsible for water, sewer, and trash for the Outdoor Premises.
- B. Any access or alterations to the Indoor Facility which is necessary for the furnishing of any utility may be made only with Landlord's prior written consent, which Landlord will not unreasonably withhold. If Landlord incurs any liability for utility or connection charges for which Tenant is responsible to pay and Landlord pays such amount, Tenant will immediately upon written notice from Landlord reimburse Landlord such amount.
- C. Landlord is not liable for any interruption whatsoever in utility services to the Baseball-Softball Complex, unless directly caused by the actions of Landlord, and in no event shall any payments required under this Lease be modified, adjusted, reduced, or abated by Tenant as a result of the interruption of utility services.

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7. INSURANCE:

- A. Tenant shall maintain in full force and effect the following types of insurance:
- (1) commercial general liability insurance for bodily injury, death or property damage, insuring Tenant and naming Landlord as an additional insured, against all claims, demands, or actions relating to the Baseball-Softball Complex on an occurrence basis, issued by and binding upon a solvent insurance company licensed to do business in Texas, with a minimum combined single limit of not less than \$1,000,000.00 per occurrence for injury to persons (including death), and for property damage or destruction, including loss of use.
 - (2) Worker's Compensation and Employer's Liability insurance in the minimum amounts required by state law.
- B. Before the Commencement Date, Tenant shall provide Landlord with a copy of insurance certificates evidencing the required coverage. If the insurance coverage is renewed or changes in any manner or degree at any time this Lease is in effect, Tenant shall, not later than 30 days after the renewal or change, provide Landlord a copy of an insurance certificate evidencing the renewal or change.
- C. If Tenant fails to maintain the required insurance in full force and effect at all times this Lease is in effect, Landlord may: (1) purchase insurance that will provide Landlord the same coverage as the required insurance and Tenant shall immediately reimburse Landlord for such expense; or (2) exercise Landlord's remedies under Paragraph 25.
- D. Landlord shall maintain in full force and effect the following types of insurance: (1) fire and extended coverage in an amount to cover the reasonable replacement cost of the improvements of the Baseball-Softball Complex; and (2) any public liability insurance in an amount that Landlord determines reasonable and appropriate.

8. USE AND HOURS:

- A. Tenant may use the Baseball-Softball Complex for training associated with baseball and softball; sales of equipment and concessions; and the scheduling, marketing, and managing of baseball and softball tournaments and similar events.
- B. Tenant shall operate and conduct its business in the Baseball-Softball Complex during business hours that are typical of the industry in which Tenant represents it operates.

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- C. Tenant may use or allow the use of the field lights until 10:00 PM Sunday through Thursday and until 11:00 PM Friday and Saturday, subject on occasion to a reasonable extension of such times due to weather events. Where Tenant wishes to use the lights beyond these times for tournaments and similar events, it must receive prior written approval from Landlord, such approval to be timely and not unreasonably withheld.
- D. The operating hours of the Athletic Facility shall be at Tenant's discretion.

9. ADVERTISING:

- A. Landlord shall have sole right to negotiate, execute, and perform all contracts pertaining to the naming rights to the Baseball-Softball Complex or any portion thereof.
- B. Tenant shall have sole right to negotiate, execute, and perform all contracts concerning the sale, promotion, marketing, and the use of all names, trademarks, tradenames, logos, and similar intellectual property rights related to the Baseball-Softball Complex and limited to tournaments and events, subject to prior written approval from Landlord, such approval to be timely and not unreasonably withheld.
- C. The Kerrville Youth Baseball Softball Association ("KYBSA"), through the Landlord, shall have the right to install advertising on those fields at the Baseball-Softball Complex it is assigned between the months of March and June. All such advertising must be in a format acceptable to Landlord, to include size, format, materials, and ease of both installation and removal. Banners are acceptable as advertising. During this period of time and pursuant to tournaments and similar events conducted by Tenant, Tenant has the right to request that Landlord remove KYBSA's advertising during such tournaments and special events.
- D. During tournaments and similar events conducted by Tenant, Tenant has the right, subject to prior written approval from Landlord, to display advertising relevant to its services and products, such approval to be timely and not unreasonably withheld.
- E. In connection with any advertising or promotional material relative to the Baseball-Softball Complex, Tenant shall use reasonable, good faith efforts to include therein the use of the words "Kerrville, Texas". In connection therewith, Landlord does hereby grant to Tenant the personal and nontransferable right and license to use the service mark of the City of Kerrville in the development and promotion of the Baseball-Softball Complex. The right granted to Tenant herein shall not be assigned, transferred, or otherwise conveyed without Landlord's prior written consent.

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Tenant acknowledges Landlord's exclusive right, title, and interest in and to the service mark and will not at any time do or cause to be done any act or thing contesting or in any way impairing or tending to impair any part of such right, title, and interest. In connection with the use of the service mark, Tenant shall not in any manner represent that it has any ownership in the service mark or registration thereof, and Tenant acknowledges that use of the service mark shall not create in Tenant's favor any right, title, or interest in or to the service mark, but all uses of the service mark by Tenant shall inure to the benefit of Landlord. Upon termination of this Lease, Tenant will cease and desist from all use of the service mark in any way (and will at Landlord's request deliver up to Landlord, or its duly authorized representatives, all material and papers upon which the service mark appears), and Tenant shall at no time adopt or use, without Landlord's prior written consent, any word or mark which is likely to be similar to or confusing with the service mark.

10. CONCESSIONS:

- A. Subject to below and KYBSA's right to provide concessions, concessions equipment, labor, menu, pricing, and the receipt of revenues and the payment of expenses are the responsibility of Tenant. Tenant shall be responsible for all licenses or permits required for concession operation and for maintaining all health standards required by law to operate concessions.
- B. Tenant may provide and operate mobile and/or temporary concession carts and/or kiosks during tournaments and similar events.
- C. Tenant has the right to enter contracts with Tenant's choice of vendors for the concessions, any such vendors subject to prior written approval from Landlord, such approval to be timely and not unreasonably withheld.
- D. Tenant shall pay Landlord ten percent (10%) of its gross revenues made from all food and beverage sales at the Baseball-Softball Complex during its tournaments. Tenant shall make such payments to Landlord quarterly based upon the calendar year, with such payments being due on or before the 10th day of the month following the quarter.
- E. Tenant shall not sell, serve, distribute, give away, or store alcoholic beverages at the Baseball-Softball Complex at any time.

11. MERCHANDISE: Tenant has the sole right to sell merchandise. All merchandise revenue is the property of the Tenant.

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12. SCHEDULING, FEES, AND KYBSA USE:

- A. Tenant has the sole right, subject to the terms below, to schedule events at the Outdoor Premises, including charging and collecting a fee for the use of fields, which fee is subject to review by City upon its request at any time.
- B. Tenant shall work closely with KYBSA for the scheduling of KYBSA's regular season practices and games, which are held each year between March and the end of June ("KYBSA Season"). On or before October 31 of each year, Landlord shall provide to Tenant a tentative written schedule of the upcoming KYBSA Season, which must include dates, times, and number of fields, plus potential make-up dates for weather related cancellations. Subsequently, and on or before February 15 of each year, Landlord shall provide to Tenant a final written schedule of the KYBSA Season, to include dates, times, number of fields, and make-up dates for weather related cancellations.
- C. Tenant shall guarantee KYBSA's use of the Outdoor Premises from 5:00 PM to 9:00 PM each Monday, Tuesday, and Thursday during the KYBSA Season. Tenant shall prioritize KYBSA's use of the Outdoor Premises from 5:00 PM to 9:00 PM each Friday during the KYBSA Season, where KYBSA provides at least a one-week written notice to Tenant of KYBSA's upcoming intended use of the Outdoor Premises on a Friday. Tenant shall allow KYBSA to use the Outdoor Premises all day on one Saturday in March for KYBSA's Opening Day Celebration.
- D. On or before January 1 of each year, Landlord shall establish a reduced fee for KYBSA's use of the Outdoor Premises and provide such fees to Tenant in writing. KYBSA will make payment for its use of the Outdoor Premises directly to Tenant.
- E. Tenant shall work with KYBSA as to whether KYBSA wants to provide for and staff concessions during the KYBSA Season. Where KYBSA provides concessions without involvement of Tenant, KYBSA may keep all revenue it derives from such sales.
- F. Where available and subject to any applicable fees, Landlord agrees to provide the use of Landlord-owned and operated baseball and softball fields to the Tenant as needed during tournaments and similar events.

13. RESTRICTED USES: Tenant may not use or permit any part of the Baseball-Softball Complex to be used for:

- A. any activity which is a nuisance or dangerous;

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- B. any activity that interferes with Landlord's management of the Baseball-Softball Complex;
- C. any activity that violates any applicable law, regulation, zoning ordinance, governmental order, Landlord's rules or regulations, or this Lease;
- D. any hazardous activity that would require any insurance premium on the Baseball-Softball Complex to increase or that would void any such insurance;
- E. to cut any timber, conduct mining operations, remove sand, gravel, or kindred substances from the ground, commit waste of any kind, nor in any manner substantially change the contour or condition of the Land; and
- F. outdoor storage except for the customary items that are normally stored outside.

14. SPECIFIC COVENANTS REGARDING ENVIRONMENTAL MATTERS:

- A. Tenant covenants that (i) no toxic or hazardous substances, including, without limitation, asbestos and the group of organic compounds known as polychlorinated biphenyls (except such substances as are used in accordance with law), shall be generated, treated, stored, or disposed of, or otherwise deposited in or located on, or released on or to the Baseball-Softball Complex; (ii) Tenant will not engage in and will not permit any other party to engage in any activity on the Baseball-Softball Complex which would cause (a) the Baseball-Softball Complex to become a hazardous waste treatment storage or disposal facility within the meaning of, or otherwise bring the Baseball-Softball Complex within the ambit of, the Resource Conservation and Recovery Act of 1975 ("RCRA"), 42 U.S.C. § 6901, et seq., as amended, or any similar state law or local ordinance or other environmental law, (b) a release or threatened release of a hazardous substance from or to the Baseball-Softball Complex within the ambit of, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), 42 U.S.C. §§ 9601- 9657, as amended, or any similar state law or local ordinance or any other environmental law, or (c) the discharge (except in accordance with applicable law) of pollutants or effluents into any water source or system, or the discharge (except in accordance with applicable law) into the air of any emissions, which would require a permit under the Federal Water Pollution control Act, 33 U.S.C. § 1251, et seq., or the Clean Air Act, 42 U.S.C. §§ 7401, et seq., or any similar state law or local ordinance or any other environmental law, (iii) Tenant will not permit any substance or conditions in or on the Baseball-Softball Complex which might support a claim or causes of action under RCRA, CERCLA, or any other federal, state or local environmental statutes, regulations, ordinances or other environmental regulatory requirements. As used herein, the terms "hazardous substance" and "release" shall have the meanings

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specified in CERCLA, and the terms "solid waste" and "disposal" (or "disposed") shall have the meanings specified in RCRA; provided, in the event either CERCLA or RCRA is amended so as to broaden the meaning of any term defined thereby, such broader meaning shall apply subsequent to the effective date of such amendment, provided, further, to the extent that the laws of the State of Texas establish a meaning for such terms which is broader than that specified in either CERCLA or RCRA, such broader meaning shall apply.

- B. In the event Tenant or Landlord is obligated by any applicable federal, state or local law, ordinance, or regulation or otherwise directed by any governmental agency or authority, to clean up, remove, or encapsulate or cause the clean-up, removal, or encapsulation of any Hazardous Wastes and/or Hazardous Materials or asbestos or material containing asbestos from the Baseball-Softball Complex, Tenant hereby guarantees to Landlord that Tenant (i) shall promptly undertake to arrange for such clean-up, removal, and disposal in accordance with all governmental regulations, (ii) shall exercise its best efforts to insure that such clean up and removal shall be conducted in a timely and diligent manner, and (iii) hereby assumes the costs and expense, including any fines, of such clean up and removal unless such condition is determined to have existed on the Baseball-Softball Complex prior to Tenant's execution and acceptance of this Lease in which case, Landlord shall be responsible for, and shall assume the cost and expense of, such cleanup.

- C. In the event that any lien is recorded or filed against the Baseball-Softball Complex pursuant to any governmental regulations regarding Hazardous Materials, Hazardous Wastes, or Asbestos, Tenant hereby guarantees to Landlord that Tenant shall, not later than 30 days following the filing of such lien, satisfy the claim and cause the lien thereunder to be discharged of record, unless such condition is determined to have existed on the Baseball-Softball Complex prior to Tenant's execution and acceptance of this Lease in which case, Landlord shall be responsible for, and shall assume the cost and expense of, satisfying the claim or causing the lien to be discharged.

- D. IN ADDITION TO THE FOREGOING, TENANT SHALL PROTECT, DEFEND, INDEMNIFY AND SAVE HARMLESS LANDLORD, AND LANDLORD'S OFFICERS, ELECTED AND APPOINTED OFFICIALS, AGENTS, EMPLOYEES, AND REPRESENTATIVES FROM AND AGAINST ALL LOSS (INCLUDING DIMINUTION IN THE VALUE OF THE BASEBALL-SOFTBALL COMPLEX), COST, DAMAGE, LIABILITY, OBLIGATION, CAUSES OF ACTION, FINE, PENALTY, OR EXPENSE (INCLUDING ATTORNEY'S FEES AND EXPENSES FOR INVESTIGATION, INSPECTION, REMOVAL, CLEAN UP, AND REMEDIAL COSTS INCURRED TO PERMIT CONTINUED OR RESUME NORMAL OPERATION OF THE BASEBALL-SOFTBALL COMPLEX), IMPOSED UPON OR INCURRED BY OR ASSERTED AGAINST LANDLORD, ITS OFFICERS, OFFICIALS, EMPLOYEES OR AGENTS BY REASON

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OF: (i) THE PRESENCE, DISPOSAL, ESCAPE, SEEPAGE, LEAKAGE, SPILLAGE, DISCHARGE, EMISSION, RELEASE, OR THREATENED RELEASE OF ANY HAZARDOUS MATERIALS AND/OR HAZARDOUS WASTES ON, FROM, OR AFFECTING THE BASEBALL-SOFTBALL COMPLEX OR ANY OTHER PROPERTY OR THE PRESENCE OF ASBESTOS ON THE BASEBALL-SOFTBALL COMPLEX; (ii) ANY PERSONAL INJURY (INCLUDING WRONGFUL DEATH) OR PROPERTY DAMAGE OR DESTRUCTION (REAL OR PERSONAL) ARISING OUT OF OR RELATED TO SUCH HAZARDOUS WASTES, HAZARDOUS MATERIALS OR ASBESTOS; (iii) ANY LAWSUIT BROUGHT OR THREATENED, SETTLEMENT REACHED, OR GOVERNMENT ORDER RELATING TO SUCH HAZARDOUS WASTES, HAZARDOUS MATERIALS OR ASBESTOS; OR (iv) ANY VIOLATION OF LAWS, ORDERS, REGULATIONS, REQUIREMENTS, OR DEMANDS OF GOVERNMENTAL AUTHORITIES, WHICH ARE BASED UPON OR IN ANY WAY RELATED TO SUCH HAZARDOUS WASTES, HAZARDOUS MATERIALS OR ASBESTOS INCLUDING, WITHOUT LIMITATION, THE COSTS AND EXPENSES OF ANY REMEDIAL ACTION, ATTORNEY AND CONSULTANT FEES, INVESTIGATION AND LABORATORY FEES, COURT COSTS, AND LITIGATION EXPENSES. THE ABOVE AND FOREGOING OBLIGATION CONTAINED IN THIS SECTION SHALL ONLY APPLY TO ANY ACT OR OMISSION OF TENANT OR TENANT'S OFFICERS, PRINCIPALS, EMPLOYEES, AGENTS, CONTRACTORS, OR SUBCONTRACTORS IN CONNECTION WITH ANY LOSS (INCLUDING DIMINUTION IN THE VALUE OF THE LEASED PREMISES), COST, DAMAGE, LIABILITY, OBLIGATION, CAUSES OF ACTION, FINE, PENALTY OR EXPENSE (INCLUDING ATTORNEY'S FEES AND EXPENSES FOR INVESTIGATION, INSPECTION, REMOVAL, CLEAN UP, AND REMEDIAL COSTS INCURRED TO PERMIT CONTINUED OR RESUME NORMAL OPERATION OF THE BASEBALL-SOFTBALL COMPLEX), IMPOSED UPON OR INCURRED BY OR ASSERTED AGAINST LANDLORD, ITS OFFICERS, OFFICIALS, AGENTS OR EMPLOYEES BY REASON OF SUBPARTS (i) THROUGH (iv) OF THIS SECTION AND FOR WHICH SUCH CONDITION WAS NOT A PRE-EXISTING CONDITION OF THE BASEBALL-SOFTBALL COMPLEX PRIOR TO TENANT'S EXECUTION AND ACCEPTANCE OF THE LEASE.

- E. Landlord hereby warrants that Landlord has no knowledge of the existence of Hazardous Wastes and/or Hazardous Materials or asbestos or material containing asbestos on the Land, nor any other condition, the discovery of which would likely subject Tenant to civil, criminal or administrative liability. Landlord further covenants, warrants, and promises that, to the greatest extent allowed under law, Tenant shall not be held liable by Landlord, for any condition existing prior to Tenant's execution and acceptance of this Lease.

15. SIGNS:

- A. Landlord shall install a monument sign in conformance with its sign regulations. Tenant may then install characters, letters, or illustrations that will identify it and its

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services, subject to prior written approval from Landlord, such approval to be timely and not unreasonably withheld.

- B. Upon termination of the Lease and at Landlord's request, Tenant shall remove anything it installed on the monument sign without causing damage.

16. ACCESS BY LANDLORD: Landlord may enter the Indoor Facility at any time and for any reasonable purpose, including for the purpose of repairs, maintenance, and alterations. Where access occurs after the Indoor Facility is closed and Tenant is not present, Landlord may only access the Indoor Facility where: (1) entry is necessary to address emergency repairs to the Indoor Facility; and (2) Landlord provides Tenant with written notice following such entry. Landlord will not unreasonably interfere with Tenant's use when accessing the Indoor Facility.

17. MOVE-IN CONDITION: Tenant has the right to inspect the Indoor Facility prior to move-in.

18. MOVE-OUT CONDITION AND FORFEITURE OF TENANT'S PERSONAL PROPERTY:

- A. At the time this Lease ends, Tenant shall surrender the Baseball-Softball Complex in acceptable conditions, except for normal wear and tear. Tenant shall leave the Baseball-Softball Complex in a clean condition free of all trash, debris, personal property, hazardous materials, and environmental contaminants.
- B. If Tenant leaves any personal property in the Baseball-Softball Complex after Tenant surrenders possession of the Baseball-Softball Complex, Landlord may: (1) require Tenant to remove the personal property by providing written notice to Tenant; or (2) retain such personal property as forfeited property to Landlord.
- C. "Surrender" means vacating the Baseball-Softball Complex and returning all keys and access devices to Landlord. "Normal wear and tear" means deterioration that occurs without negligence, carelessness, accident, or abuse.
- D. By providing 60 days written notice to Tenant before this Lease ends, Landlord may require Tenant, upon move-out to remove, without damage to the Baseball-Softball Complex, any or all fixtures that were placed on the Baseball-Softball Complex by or at the request of Tenant. Any fixtures that Landlord does not require Tenant to remove become the property of the Landlord and will be automatically surrendered to Landlord at the time this Lease terminates.

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19. MAINTENANCE AND REPAIRS OF INDOOR FACILITY:

- A. Inspections and Cleaning: Tenant shall (i) conduct regular inspections of the Indoor Facility for compliance with health and safety standards and building codes and for cleanliness, good order, condition, and repair; (ii) buy, clean, and repair all furnishings and equipment in and for the Indoor Facility; (iii) periodically paint, redecorate, and refurbish the Indoor Facility and related equipment; (iv) cause all equipment and fixtures in and about the Indoor Facility to be repaired and maintained in good condition. Tenant shall keep the Indoor Facility clean and sanitary and dispose of all garbage in appropriate receptacles. Tenant shall provide janitorial services to the Indoor Facility that are customary and ordinary for the property type.
- B. Repair and Maintenance: The party designated below shall maintain and repair the following specified items in the Indoor Facility. Each party shall repair a condition in need of repair that is required to be fixed and the specified items must be maintained in a clean and good operable condition, good state of appearance and repair, reasonable wear and tear excepted. The parties shall perform their required maintenance and repairs as necessary to operate the Indoor Facility as a first-class facility. If a governmental regulation or order requires a modification to any of the specified items, the party designated to maintain the item must complete and pay the expense of the modification. Each party is responsible for repair and maintenance of its personal property. The specified items include and relate only to the Indoor Facility as follows:

| | Landlord | Tenant |
|---|----------|--------|
| (1) Foundation, exterior walls, roof, and other structural components..... | X | |
| (2) Glass and windows..... | | X |
| (3) Fire protection equipment and fire sprinkler systems.... | X | |
| (4) Exterior doors, including closure devices, molding, locks and hardware | | X |
| (5) Interior walls and doors (including closure devices, frames, moldings, locks, and hardware) | | X |
| (6) Plumbing fixtures, plumbing systems, and sewer systems | X | |
| (7) Electrical systems, mechanical systems..... | | X |
| (8) Ballast and lamp replacement..... | | X |
| (9) Heating, Ventilation and Air Conditioning (HVAC) systems | | X |
| (10) Signs and Lighting: | | |

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| | | |
|--|---|---|
| | X | |
| (a) Monument sign..... | | X |
| (b) Signs attached to the Indoor Facility | | X |
| (11) Extermination and pest control..... | | X |
| (12) Security System | | X |
| (13) Exterior Lighting attached to the Indoor Facility | X | |

D. Repair Persons: Repairs must be completed by trained, qualified, and insured repair persons.

E. HVAC Service Contract: Tenant shall maintain a regularly scheduled maintenance and service contract for the HVAC system. The maintenance and service contract must be purchased from a HVAC maintenance company that regularly provides such contracts to similar properties. If Tenant fails to maintain a required HVAC maintenance and service contract in effect at all times during this Lease, Landlord may do so and Tenant shall reimburse Landlord for the expense of such maintenance and service contract or Landlord may exercise Landlord’s remedies under Paragraph 25.

F. Notice of Repairs: Tenant shall promptly notify Landlord in writing of any item that is in need of repair and that is Landlord’s responsibility to repair.

G. Failure to Repair: Landlord shall make a repair for which Landlord is responsible within a reasonable period of time after Tenant provides Landlord written notice of the needed repair. If Tenant fails to repair or maintain an item for which Tenant is responsible within 10 days after Landlord provides Tenant written notice of the needed repair or maintenance, Landlord may: (1) repair or maintain the item, without liability for any damage or loss to Tenant, and Tenant shall immediately reimburse Landlord for the cost to repair or maintain; or (2) exercise Landlord’s remedies under Paragraph 25.

20. MAINTENANCE AND REPAIRS OF OUTDOOR PREMISES:

A. Repairs of Conditions Caused by a Party: Landlord shall repair a condition in need of repair on the Outdoor Premises. Where Landlord knows or believes that the conditions were caused, either intentionally or negligently, by Tenant or Tenant’s guests, patrons, invitees, or contractors, Landlord will submit a bill to Tenant for payment.

B. Maintenance and Repair by Landlord: Landlord shall maintain and repair the Outdoor Premises and shall maintain, clean, and/or repair the following list of items

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in a healthy and safe operable condition and where the fields are ready for tournament play:

- (1) all 11 Baseball-Softball fields, common areas, and landscaping;
- (2) all sidewalks and parking areas;
- (3) sewer and both potable and reclaimed water distribution systems;
- (4) all permanent fencing;
- (5) all lighting to include Baseball-Softball fields;
- (6) winterizing all water systems and other improvements;
- (7) striping and preparation of all fields for play;
- (8) restrooms;
- (9) Heating and cooling systems.

C. Manner of Maintenance and Repairs of Landlord: In performing the maintenance, cleaning, and repairs of the Outdoor Premises, the Landlord shall:

- (1) mow and string trim all grass areas;
- (2) water, fertilize, aerate, and dethatch the playing fields;
- (3) apply pesticides to grass areas as needed;
- (4) maintain all landscaping;
- (5) top-dress skins and grass areas for the Baseball-Softball fields;
- (6) maintain the base paths and infield skins for the Baseball-Softball fields;
- (7) provide trash pickup and collection.

D. Maintenance and Repairs During Tournaments: At all times, Landlord shall maintain the Outdoor Premises in a condition ready for tournament play. However, during tournaments and similar events organized by Tenant, Tenant, in conjunction with the Landlord's personnel where available and where Tenant has provided reasonable notice of such tournaments and events and schedules to Landlord, shall clean, maintain, and repair the Outdoor Premises.

E. Cleaning: Landlord shall keep the Outdoor Premises clean and sanitary and dispose of all garbage in appropriate receptacles, except during tournaments and events organized by Tenant, at which time, Tenant is responsible for keeping the Outdoor Premises clean and sanitary and disposing of all garbage in appropriate receptacles.

F. Repair Persons: Repairs must be completed by trained, qualified, and insured repair persons.

G. Notice of Repairs: Tenant shall promptly notify Landlord in writing of any item that is in need of repair and that is Landlord's responsibility to repair.

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- H. Failure to Repair: Landlord shall make a repair for which Landlord is responsible within a reasonable period of time after Tenant provides Landlord written notice of the needed repair. If Tenant fails to repair or maintain an item for which Tenant is responsible within 10 days after Landlord provides Tenant written notice of the needed repair or maintenance, Landlord may (1) repair or maintain the item, without liability for any damage or loss to Tenant and Tenant shall immediately reimburse Landlord for the cost to repair or maintain; or (2) exercise Landlord's remedies under Paragraph 25.

21. ALTERATIONS:

- A. Tenant shall not alter, including making any penetrations to the roof or foundation, improve, or add, including temporary or permanently installed buildings, to the Baseball-Softball Complex without Landlord's written consent. Landlord will not unreasonably withhold consent for the Tenant to make reasonable, nonstructural alterations, modifications, or improvements to the Baseball-Softball Complex.
- B. If a governmental order requires alteration or modification to the Baseball-Softball Complex, the party obligated to maintain and repair the item to be modified or altered as designated in Paragraphs 19 or 20 shall modify or alter the item in compliance with the order and in compliance with such paragraphs.
- C. Any alterations, improvements, fixtures, or additions to the Baseball-Softball Complex installed by either party during the term of this Lease will become Landlord's property and must be surrendered to Landlord at the time this Lease ends, except for those fixtures Landlord requires Tenant to remove under Paragraph 17 or if the parties agree otherwise in writing.

22. LIENS: Tenant shall not take any action that will cause the title of the Baseball-Softball Complex to be encumbered in any way. If a lien is filed against the Baseball-Softball Complex related with Tenant's use, Tenant shall, within 30 days after its notice thereof or Landlord's written demand: (1) pay the lien and have the lien released of record; or (2) take action to discharge the lien. Tenant shall provide Landlord with a copy of any release Tenant obtains.

23. LIABILITY: Landlord is NOT responsible or liable to Tenant or Tenant's employees, patrons, guests, or invitees for any damages, injuries, or losses to person or property caused by an act, omission, or neglect of: Tenant, or Tenant's employees, agents, vendors, guests, patrons, or invitees.

24. INDEMNITY: LANDLORD SHALL NOT BE LIABLE FOR ANY LOSS, DAMAGE, OR INJURY OF ANY KIND OR CHARACTER TO ANY PERSON OR PROPERTY ARISING FROM TENANT'S USE OF THE BASEBALL-SOFTBALL COMPLEX. TENANT, FOR ITSELF AND ITS AGENTS, EMPLOYEES,

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REPRESENTATIVES, CONTRACTORS, LICENSEES, CONCESSIONAIRES, INVITEES, SUCCESSORS, AND ASSIGNS, EXPRESSLY ASSUMES ALL RISKS OF INJURY OR DAMAGE TO PERSON OR PROPERTY, EITHER PROXIMATE OR REMOTE, RESULTING FROM THE CONDITION OF THE BASEBALL-SOFTBALL COMPLEX OR ANY PART THEREOF. TENANT AGREES TO INDEMNIFY AND SAVE HARMLESS LANDLORD AND ITS AGENTS, OFFICERS, AND EMPLOYEES (COLLECTIVELY "INDEMNITIES") FROM AND AGAINST ANY AND ALL LIABILITIES, DAMAGES, CLAIMS, SUITS, COSTS (INCLUDING COURT COSTS, ATTORNEYS' FEES AND COSTS OF INVESTIGATION) AND ACTIONS OF ANY KIND ARISING OR ALLEGED TO ARISE BY REASON OF INJURY TO OR DEATH OF ANY PERSON OR DAMAGE TO OR LOSS OF PROPERTY OCCURRING ON, IN OR ABOUT THE PREMISES OR BY REASON OF ANY OTHER CLAIM WHATSOEVER OF ANY PERSON OR PARTY OCCASIONED OR ALLEGED TO BE OCCASIONED BY ANY ACT OR OMISSION ON THE PART OF TENANT OR ANY OFFICER, DIRECTOR, SERVANT, AGENT, EMPLOYEE, REPRESENTATIVE, CONTRACTOR, SUBCONTRACTOR, LICENSEE, CONCESSIONAIRE, INVITEE, SUCCESSOR OR ASSIGN, OR BY ANY BREACH, VIOLATION OR NONPERFORMANCE OF ANY COVENANT OF TENANT UNDER THIS LEASE, WHETHER SUCH LIABILITY, CLAIMS, SUITS, COSTS, INJURIES, DEATHS OR DAMAGES ARISE FROM OR ARE ATTRIBUTED TO THE CONCURRENT NEGLIGENCE OF ANY INDEMNITEE. IF ANY ACTION OR PROCEEDING SHALL BE BROUGHT BY OR AGAINST ANY INDEMNITEE IN CONNECTION WITH ANY SUCH LIABILITY OR CLAIM, TENANT, ON NOTICE FROM LANDLORD, SHALL DEFEND SUCH ACTION OR PROCEEDINGS AT TENANT'S EXPENSE, BY OR THROUGH ATTORNEYS REASONABLY SATISFACTORY TO LANDLORD. THE PROVISIONS OF THIS SECTION SHALL APPLY TO ALL ACTIVITIES OF TENANT WITH RESPECT TO THE BASEBALL-SOFTBALL COMPLEX. TENANT'S OBLIGATIONS UNDER THIS SECTION SHALL NOT BE LIMITED TO THE LIMITS OF COVERAGE OF INSURANCE MAINTAINED OR REQUIRED TO BE MAINTAINED BY TENANT UNDER THIS LEASE. THIS PROVISION SHALL SURVIVE THE TERMINATION OF THIS LEASE.

25. DEFAULT:

- A. The occurrence of any one or more of the following events shall constitute an Event of Default (herein so called) of Tenant under this Lease:
1. if Tenant fails to pay rent or any other amount payable by Tenant hereunder as and when same becomes due and such failure continues for more than 10 days after Landlord gives Tenant notice of past due rent;
 2. if Tenant attempts to make an unpermitted assignment or sublease of this Lease;
 3. if Tenant fails to maintain in force all policies of insurance required by this Lease and such failure shall continue for more than 30 days after Landlord gives Tenant notice of such failure;

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4. if any petition is filed by or against Tenant or any guarantor of this Lease under any present or future section or chapter of the Bankruptcy Code, or under any similar law or statute of the United States or any state thereof (which, in the case of an involuntary proceeding, is not permanently discharged, dismissed, stayed, or vacated, as the case may be, within 90 days of commencement), or if any order for relief shall be entered against Tenant or any guarantor of this Lease in any such proceedings;

5. if Tenant becomes insolvent or makes a transfer in fraud of creditors or makes an assignment for the benefit of creditors;

6. if a receiver, custodian, or trustee is appointed for the Facilities or for all or substantially all of the assets of Tenant or of any guarantor of this Lease, which appointment is not vacated within 90 days following the date of such appointment;

7. if Tenant fails to perform or observe any provision of this Lease and such failure shall continue for more than 30 days after Landlord gives Tenant notice of such failure, or, if such failure cannot be corrected within such 30 day period, if Tenant does not commence to correct such default within said 30 day period and thereafter diligently prosecute the correction of same to completion within 90 days after notice is sent by Landlord;

8. if Tenant fails to pay any taxes or other charges it owes to any local or state or federal government;

9. if a final judgment for the payment of money in any material amount in excess of One Million Dollars (\$1,000,000.00) and which is not covered by any insurance insuring the interest of Tenant shall be rendered against Tenant, and within 60 days after the entry thereof such judgment shall not have been discharged or execution thereof stayed pending appeal or if within 60 days after the expiration of such stay, such judgment shall not have been discharged; or

10. if Tenant, following commencement of use and operation of the Baseball-Softball Complex, abandons the Baseball-Softball Complex (failure to occupy and operate the Baseball-Softball Complex for 10 consecutive days, for reasons other than because of adverse weather conditions, natural disaster, acts of war or terrorism or other force majeure reasons, shall be deemed an abandonment).

B. Upon the occurrence of any Event of Default, Landlord shall have the right, at Landlord's option, to elect to do any one or more of the following without further notice or demand to Tenant:

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1. terminate this Lease, in which event Tenant shall immediately surrender the Baseball-Softball Complex to Landlord, and, if Tenant fails to so surrender, Landlord shall have the right, without notice and without resorting to legal process, to enter upon and take possession of the Baseball-Softball Complex and to expel or remove Tenant and its effects without being liable for prosecution or any claim for damages therefore; and Tenant shall, and hereby agrees to indemnify Landlord for all loss and damage which Landlord suffers by reason of such termination, including without limitation, damages in an amount equal to the total of (a) the costs of recovering the Premises and all other expenses incurred by Landlord in connection with Tenant's default and (b) the unpaid rent, plus interest;
 2. enter upon and take possession of the Baseball-Softball Complex without terminating this Lease and without being liable for prosecution of any claim for damages therefore, and, if Landlord elects, relet the Baseball-Softball Complex on such terms as Landlord deems advisable, in which event Tenant shall pay to Landlord on demand the cost of repossession, repairing, and altering the Baseball-Softball Complex for a new Tenant or Tenants and any deficiency between the rent payable hereunder and the rent paid under such reletting; provided, however, that Tenant shall not be entitled to any excess payments received by Landlord from such reletting. Landlord's failure to relet the Baseball-Softball Complex shall not release or affect Tenant's liability for rent or for damages; or
 3. enter the Baseball-Softball Complex without terminating this Lease and without being liable for prosecution of any claim for damages therefore and maintain the Baseball-Softball Complex and repair or replace any damage thereto or do anything for which Tenant is responsible hereunder. Tenant shall reimburse Landlord immediately upon demand for any expenses which Landlord incurs in thus effecting Tenant's compliance under this Lease, and Landlord shall not be liable to Tenant for any damages with respect thereto.
- C. The rights granted to Landlord in this section are cumulative of every other right or remedy provided in this Lease or which Landlord may otherwise have at law or in equity or by statute, and the exercise of one or more rights or remedies will not prejudice or impair the concurrent or subsequent exercise of other rights or remedies or constitute a forfeiture or waiver of rent or damages accruing to Landlord by reason of any Event of Default under this Lease. Tenant agrees to pay to Landlord all costs and expenses incurred by Landlord in the enforcement of this Lease, including all attorneys' fees incurred in connection with the collection of any sums due hereunder or the enforcement of any right or remedy of Landlord.

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26. ABANDONMENT, INTERRUPTION OF UTILITIES, REMOVAL OF PROPERTY, AND LOCKOUT:

Chapter 93 of the Texas Property Code does not apply.

27. HOLDOVER: If Tenant fails to vacate the Baseball-Softball Complex at the time this Lease ends, Tenant will become a tenant-at-will and shall vacate the Baseball-Softball Complex immediately upon receipt of demand from Landlord. No holding over by Tenant, with or without the written consent of Landlord, will extend this Lease. Tenant shall indemnify Landlord and any prospective tenants for any and all damages caused by the holdover. Rent for any holdover period will be 100% of the base monthly rent plus any additional rent calculated on a daily basis and will be immediately due and payable daily without notice or demand.

28. LANDLORD'S LIEN AND SECURITY INTEREST: In consideration of the mutual benefits arising under this Lease and to secure Tenant's performance, Tenant grants to Landlord a lien and security interest against all property of Tenant, including all fixtures, machinery, equipment, furnishings, and other articles of personal property now or hereafter placed in or on the Baseball-Softball Complex by Tenant and owned by Tenant, together with the proceeds from the disposition of those items (the "Collateral"), now or hereafter placed in or upon the Baseball-Softball Complex, as security for payment of all rent and other sums agreed to be paid by Tenant herein. The provisions of this section constitute a security agreement under the Texas Uniform Commercial Code and Tenant has and may enforce a security interest in the Collateral. Except on account of replacement, removal, or substitution in the ordinary course of business, the Collateral may not be removed without the consent of Landlord until all arrearages in rent and other sums of money then due to Landlord hereunder have been paid and discharged. On or before the Commencement Date, Tenant shall execute, as debtor, two or more Financing Statements, to perfect this security interest pursuant to the Texas Uniform Commercial Code. Land at any time may file a copy of this Lease as a Financing Statement. Landlord, as Secured Party, has all of the rights and remedies afforded to a secured party under the Texas Uniform Commercial Code in addition to and cumulative of the Landlord's liens and rights provided by law or by the other terms and provisions of this Lease. Notwithstanding the foregoing, Landlord's lien is subordinate to (i) any purchase money lien, (ii) any line-of-credit lien secured by the assets, inventory, or accounts receivable of Tenant's business, or (iii) any Small Business administration Note, conventional bank note, and related security agreements.

29. ASSIGNMENT AND SUBLETTING: Landlord may assign this Lease. Tenant may not assign this Lease or sublet any part of the Baseball-Softball Complex without Landlord's prior, written consent. An assignment of this Lease or subletting of the Baseball-Softball Complex without Landlord's written consent is void. If Tenant assigns this Lease or sublets any part of the Baseball-Softball Complex, Tenant shall remain liable for all of Tenant's obligations under this Lease regardless if the assignment or sublease is made with or without the

COMMERCIAL LEASE

written consent of Landlord. Notwithstanding the foregoing the Tenant may rent or otherwise agree to the use of party room(s) or fields for birthday parties and similar events.

30. RELOCATION: Landlord may not require Tenant to relocate to another location without Tenant's prior written consent.

31. SUBORDINATION: Landlord's security interest and lien rights shall at all times remain subordinate to the rights of any Tenant lender that holds a senior lien on Tenant's goods, wares, inventory, accounts, chattel paper, deposit accounts, and receivables. Landlord's Lien shall not be subordinate to Tenant's furniture, fixtures, and equipment located within the Indoor Facility. If required and after receiving written notification from Tenant, Landlord agrees to execute an agreement subordinating the security interest granted in this Lease to Tenant's lender within 30 days of a mutually acceptable subordination agreement as presented by Tenant's lender and agreed to by Landlord.

32. CASUALTY LOSS:

- A. Tenant shall immediately notify Landlord of any casualty loss in the Baseball-Softball Complex. Within 20 days after receipt of Tenant's notice of a casualty loss, Landlord will notify Tenant if the Baseball-Softball Complex is less than or more than 50% unusable, on a per square foot basis, and if Landlord can substantially restore the Baseball-Softball Complex within 120 days after Tenant notifies Landlord of the casualty loss.
- B. If the Baseball-Softball Complex is less than 50% unusable and Landlord can substantially restore the Baseball-Softball Complex within 120 days after Tenant notifies Landlord of the casualty, Landlord will restore the Baseball-Softball Complex to substantially the same condition as before the casualty. If Landlord fails to substantially restore within the time required, Tenant may terminate this Lease.
- C. If the Baseball-Softball Complex is more than 50% unusable and Landlord can substantially restore the Baseball-Softball Complex within 120 days after Tenant notifies Landlord of the casualty, Landlord may (1) terminate this Lease; or (2) restore the Baseball-Softball Complex to substantially the same condition as before the casualty. If Landlord chooses to restore and does not substantially restore the Baseball-Softball Complex within the time required, Tenant may terminate this Lease.
- D. If Landlord notifies Tenant that Landlord cannot substantially restore the Baseball-Softball Complex within 120 days after Tenant notifies Landlord of the casualty loss, Landlord may: (1) choose not to restore and terminate this Lease; or (2) choose to

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restore, notify Tenant of the estimated time to restore, and give Tenant the option to terminate this Lease by notifying Landlord within 10 days.

- E. If this Lease does not terminate because of a casualty loss, rent will be abated from the date Tenant notifies Landlord of the casualty loss to the date the Baseball-Softball Complex is substantially restored by an amount proportionate to the extent the Baseball-Softball Complex is unusable.

33. ATTORNEY FEES: Any person who is a prevailing party in any legal proceeding brought under or related to the transaction described in this Lease is entitled to recover prejudgment interest, reasonable attorney's fees, and all other costs of litigation from the non-prevailing party.

34. REPRESENTATIONS:

- A. Tenant's statements in this Lease and any application for rental are material representations relied upon by Landlord. Each party signing this Lease represents that he or she is of legal age to enter into a binding contract and is authorized to sign the Lease. If Tenant makes any misrepresentation in this Lease or in any application for rental, Tenant is in default.
- B. At the time of the issuance of the Certificate of Occupancy, Landlord shall not be aware of any material defect on the Baseball-Softball Complex that would affect the health and safety of an ordinary person or any environmental hazard on or affecting the Baseball-Softball Complex that would affect the health or safety of an ordinary person.
- C. Each party and each signatory to this Lease represents that: (1) it is not a person named as a Specially Designated National and Blocked Person as defined in Presidential Executive Order 13224; (2) it is not acting, directly or indirectly, for or on behalf of a Specially Designated and Blocked Person; and (3) is not arranging or facilitating this Lease or any transaction related to this Lease for a Specially Designated and Blocked Person. Any party or any signatory to this Lease who is a Specially Designated and Blocked person will indemnify and hold harmless any other person who relies on this representation and who suffers any claim, damage, loss, liability or expense as a result of this representation.

35. BROKERS: There are no brokers to this Lease.

36. ADDENDA: Exhibits A and B are incorporated into this Lease.

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37. NOTICES: All notices under this Lease must be in writing and are effective when hand-delivered, sent by mail, or sent by facsimile transmission to:

Landlord: CITY MANAGER
CITY OF KERRVILLE
CITY HALL, 701 MAIN STREET
KERRVILLE, TEXAS 78028

Tenant: BTP Baseball Ventures LLC dba D-BAT
398 HOLDSWORTH DRIVE N.
KERRVILLE, TEXAS 78028

And a copy to: THOMAS R. HOUDESHHELL, MANAGER
500 RIVERHILL BOULEVARD
KERRVILLE, TEXAS 78028

38. Miscellaneous Provisions:

- A. Entire Agreement: This Lease (including Exhibit(s)) contains the entire agreement between Landlord and Tenant and may not be changed except by written agreement.
- B. Binding Effect: This Lease is binding upon and inures to the benefit of the parties and their respective heirs, executors, administrators, successors, and permitted assigns.
- C. Controlling Law: The laws of the State of Texas govern the interpretation, performance, and enforcement of this Lease. Venue shall occur within Kerr County, Texas.
- D. Severable Clauses: If any clause in this Lease is found invalid or unenforceable by a court of law, the remainder of this Lease will not be affected and all other provisions of this Lease will remain valid and enforceable.
- E. Waiver: Landlord's delay, waiver, or non-enforcement of acceleration, contractual or statutory lien, rental due date, or any other right will not be deemed a waiver of any other or subsequent breach by Tenant or any other term in this Lease.
- F. Quiet Enjoyment: Provided that Tenant is not in default of this Lease, Landlord covenants that Tenant will enjoy possession and use of the Baseball-Softball Complex free from material interference.

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- G. Force Majeure: If Landlord's performance of a term in this Lease is delayed by strike, lock-out, shortage of material, governmental restriction, riot, flood, or any cause outside Landlord's control, the time for Landlord's performance will be abated until after the delay.
- H. Dispute Resolution: The parties commit to use best efforts to cooperate and resolve in good faith all issues and disputes which may arise under this Lease. The parties covenant not to institute litigation against each other without first submitting the subject thereof to mediation, under reasonable and customary procedures to be agreed to in each instance by the parties. The highest officer or executive officer of each party shall represent that party in the mediation and shall attend and take part throughout the proceedings, with full authority to settle the matter in controversy, subject in the case of the Landlord to City Council approval where required by law.
- I. Time: Time is of the essence. The parties require strict compliance with the times for performance.
- J. Prior Agreements Superseded: This Lease constitutes the sole and only agreement of the parties hereto and supersedes any prior understandings or written or oral agreements between the parties respecting the within subject matter.
- K. No Warranty: Landlord makes no warranty as to the marketability, habitability, or fitness for any particular purpose of the Land or the Baseball-Softball Complex.
- L. Memorandum of Lease: The parties shall, upon request of either party, execute, acknowledge, and deliver a mutually acceptable form of Memorandum of Lease (which shall, among other things, memorialize the Commencement Date), contemporaneously with the execution and delivery of this Lease, and any such Memorandum of Lease shall be recorded in the real property records of Kerr County, Texas.
- M. No Joint Venture: The relationship between Landlord and Tenant at all times shall remain solely that of landlord and tenant and shall not be deemed or construed as a partnership or joint venture.
- N. Further Documents: Landlord agrees that it will from time to time and at any reasonable time execute and deliver to Tenant such other and further instruments and assurances as Tenant may reasonably request approving, ratifying, and confirming this Lease and the leasehold estate created hereby and certifying that the same is in full force and effect and that no default on the part of Tenant exists,

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or if any such default does exist, Landlord shall specify in said certificate each such default.

- O. Exhibits and Recitals: The exhibits to this Lease are incorporated herein.
- P. Tenant Representations: The Tenant represents and covenants that: (i) Tenant is a duly organized and validly existing limited liability company under the laws of the State of Texas and has the power and authority to transact the business in which it is now engaged or proposed to engage; (ii) Tenant has the power and authority to execute, deliver, and carry out the terms and provisions of this Lease and all other instruments to be executed and delivered by the Tenant in connection with its obligations hereunder; (iii) the execution, delivery, and performance by the Tenant of this Agreement have been duly authorized by all requisite action by the Tenant, and this Agreement is a valid and binding obligation of the Tenant enforceable in accordance with its respective terms, except as may be affected by applicable bankruptcy or insolvency laws affecting creditors' rights generally; (iv) the Tenant is not in default in the performance, observance, or fulfillment of any of the obligations, covenants, or conditions contained in any evidence of indebtedness of the Tenant or contained in any instrument under or pursuant to which any such evidence of indebtedness has been issued or made and delivered; (v) neither the execution and delivery of this Lease, nor the consummation of the transactions herein contemplated, will conflict with or result in a breach of or default under (1) any terms, conditions or provisions of any agreement or instrument (A) to which the Tenant is now a party or is otherwise bound, or (B) to which any of its properties or other assets is subject; (2) any order or decree of any court or governmental instrumentality; or (3) any arbitration award, franchise, or permit; and (vi) the Tenant is not a party to any litigation or threatened litigation or otherwise bound by any agreement or instrument or subject to any other restriction or any judgment, order, writ, injunction, decree, award, rule or regulation which could reasonably be expected to materially and adversely affect the Tenant's ability to perform its obligations under this Agreement.
- Q. City Use of the Baseball-Softball Complex. Landlord shall have the right to use the Baseball-Softball Complex without charge or cost at least four (4) times for a one-day use each calendar year upon prior reasonable written notice to Tenant. The days of use of the Baseball-Softball Complex by Landlord may not include summer weekends and holidays.

(signatures begin on following page)

COMMERCIAL LEASE

TENANT:

BTP BASEBALL VENTURES,
a Texas limited liability company

BY: _____
THOMAS R. HOUESHELL
Manager

BY: _____
PATRICK J. BOYLE
Manager

BY: _____
BRANDON T. HARJO
Manager

LANDLORD:

CITY OF KERRVILLE, TEXAS

BY: _____

NAME: _____

ITS: _____

Agenda Item:

6C. Direction to city staff on returning surplus funds from fiscal year 2015 to the Kerrville taxpayers or options to apply these funds directly to outstanding debt.
(Councilmember Stork)

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

SUBJECT: Direction to city staff on returning surplus funds from Fiscal Year 2015 to the Kerrville taxpayers or options to apply these funds directly to outstanding debt

FOR AGENDA OF: Dec. 8, 2015

DATE SUBMITTED: Dec. 2, 2015

SUBMITTED BY: Gary Stork
Place 3

CLEARANCES: Todd Parton
City Manager

EXHIBITS: Estimated General Fund Balance – FY2015

AGENDA MAILED TO:

APPROVED FOR SUBMITTAL BY CITY MANAGER:



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

PAYMENT TO BE MADE TO:

REVIEWED BY THE FINANCE DEPARTMENT:

SUMMARY STATEMENT

The preliminary end of year calculations for Fiscal Year 2015 estimate that approximately \$860,000 of General Fund revenues were retained.

RECOMMENDED ACTION

Provide direction to city staff on ways to either return the surplus funds from Fiscal Year 2016 to the Kerrville taxpayers or apply them to outstanding debt.

City of Kerrville
Statement of Revenues, Expenditures and Changes in Fund Balance
General Fund
For the Year Ended September 30, 2015
Unaudited

| | |
|----------------------------|------------------|
| BEGINNING FUND BALANCE* | \$ 5,969,071 |
| REVENUES | |
| Property Tax | 8,646,774 |
| Sales Tax | 6,201,118 |
| Other Taxes | 1,882,043 |
| Permits and Fees | 532,606 |
| Intergovernmental Revenue | 1,373,334 |
| Service Revenues | 3,306,072 |
| Grant Revenue | 141,033 |
| Fines and Forfeitures | 351,265 |
| Interest and Miscellaneous | 585,371 |
| Operating Transfer In | <u>1,802,560</u> |
| TOTAL REVENUES | 24,822,176 |
| EXPENDITURES | |
| Personnel | 17,140,897 |
| Supplies | 1,025,087 |
| Maintenance | 1,706,165 |
| Services | 2,082,002 |
| Other Expenses | 109,071 |
| Capital Outlay | 426,132 |
| Operating Transfers Out | <u>1,473,169</u> |
| TOTAL EXPENDITURES | 23,962,521 |
| CHANGE IN NET POSITION | \$ 859,655 |
| ENDING FUND BALANCE* | \$ 6,828,726 |
| Reserve Target (25%) | 5,990,630 |
| Over (Under) Reserve | 838,095 |
| Actual Reserve % | 28.5% |

* FUND BALANCE indicates only UNRESTRICTED fund balance.

Agenda Item:

6D. Establish a policy for accepting board and committee applications.
(Councilmember Fine)

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

SUBJECT: Establish a policy for accepting board and committee applications

FOR AGENDA OF: Dec. 8, 2015

DATE SUBMITTED: Dec. 2, 2015

SUBMITTED BY: Stephen Fine
Place 1

CLEARANCES: Todd Parton
City Manager

EXHIBITS: None

AGENDA MAILED TO:

APPROVED FOR SUBMITTAL BY CITY MANAGER: 

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

PAYMENT TO BE MADE TO:

REVIEWED BY THE FINANCE DEPARTMENT:

SUMMARY STATEMENT

Appointments to city boards and commissions are one of the most important responsibilities of the City Council. Adequate time is necessary in order for each City Council member to adequately review applications and for City Council liaisons to visit with applicants. City Council frequently receives applications after information packets have been delivered and without the time necessary to fully review them.

RECOMMENDED ACTION

I recommend that the City Council establish a policy that it will only consider board and committee applications that have been received by the close of business on the Wednesday preceding a meeting where board or committee appointments are scheduled for consideration.

Agenda Item:

6E. Direction to city staff on the City of Kerrville Fiscal Year 2017 budget. (staff)

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

SUBJECT: Direction to city staff on the City of Kerrville Fiscal Year 2017 budget

FOR AGENDA OF: Dec. 8, 2015

DATE SUBMITTED: Dec. 3, 2015

SUBMITTED BY: Todd Parton
City Manager

CLEARANCES:

EXHIBITS: Five Year Fiscal Forecast Models

AGENDA MAILED TO:

APPROVED FOR SUBMITTAL BY CITY MANAGER: 

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

PAYMENT TO BE MADE TO:

REVIEWED BY THE FINANCE DEPARTMENT:

SUMMARY STATEMENT

City staff is initiating the budgeting process for Fiscal Year 2017 (FY2017). The budget schedule anticipates that a draft budget will be submitted to the City Council in June 2016. In order to meet this schedule, departmental submissions must be turned in to the Finance Department by the end of April 2016.

City staff seeks some general direction as the budget process begins. Some specific questions to contemplate are:

1. What are the top priorities for next year?
2. What challenges/concerns are anticipated for next year?
3. What city services should be expanded next year?
4. What city services should be reduced or eliminated next year?
5. What data/research would the City Council like staff to gather/conduct?

The five year fiscal forecasts have been updated for both the General Fund and the Water and Sewer Fund. These models will be reviewed and updated as actual financial data becomes known.

RECOMMENDED ACTION

No specific action is required. City staff requests input as deemed appropriate by the City Council.

GENERAL FUND - FIVE YEAR FISCAL FORECAST

| | FY15 Preliminary Actual | FY16 Budget | FY17 Forecast | FY18 Forecast | FY19 Forecast | FY20 Forecast | FY21 Forecast |
|----------------------------|-------------------------------|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|
| BEGINNING FUND BALANCE | \$ 5,969,071 | \$ 6,828,726 | \$ 6,828,726 | \$ 6,880,215 | \$ 6,827,988 | \$ 6,955,588 | \$ 6,681,958 |
| REVENUES | | | | | | | |
| Property Tax | 8,646,774 | 9,037,622 | 9,191,262 | 9,347,513 | 9,506,421 | 9,668,030 | 9,832,386 |
| Sales Tax | 6,201,118 | 6,254,534 | 6,442,170 | 6,571,013 | 6,899,564 | 7,175,547 | 7,390,813 |
| Other Taxes | 1,882,043 | 1,855,100 | 1,886,637 | 1,918,710 | 1,951,328 | 1,984,500 | 2,018,237 |
| Permits and Fees | 532,606 | 421,870 | 429,042 | 436,336 | 443,753 | 451,297 | 458,969 |
| Intergovernmental Revenue | 1,373,334 | 1,350,895 | 1,373,860 | 1,397,216 | 1,420,969 | 1,445,125 | 1,469,692 |
| Service Revenues | 3,306,072 | 3,038,399 | 3,090,052 | 3,145,133 | 3,291,150 | 3,348,119 | 3,406,057 |
| Grant Revenue | 141,033 | 26,800 | 27,256 | 27,719 | 28,190 | 28,669 | 29,157 |
| Fines and Forfeitures | 351,265 | 437,200 | 444,632 | 452,191 | 459,878 | 467,696 | 475,647 |
| Interest and Miscellaneous | 585,371 | 244,200 | 248,351 | 252,573 | 256,867 | 261,234 | 265,675 |
| Operating Transfer In | 1,802,560 | 1,920,903 | 1,953,558 | 1,986,769 | 2,020,544 | 2,054,893 | 2,089,826 |
| TOTAL REVENUES | 24,822,176 | 24,587,523 | 25,086,820 | 25,535,172 | 26,278,664 | 26,885,111 | 27,436,460 |
| EXPENDITURES | | | | | | | |
| Personnel | 17,140,897 | 17,834,951 | 18,675,825 | 19,252,420 | 19,733,731 | 20,227,074 | 20,631,616 |
| Supplies | 1,025,087 | 1,174,271 | 1,246,487 | 1,223,400 | 1,239,305 | 1,255,416 | 1,271,736 |
| Maintenance | 1,706,165 | 2,009,921 | 2,036,050 | 2,065,519 | 2,092,370 | 2,119,571 | 2,147,126 |
| Services | 2,082,002 | 1,921,985 | 1,946,971 | 1,972,281 | 1,997,921 | 2,023,894 | 2,050,205 |
| Other Expenses | 109,071 | 248,861 | 252,096 | 255,373 | 258,693 | 262,056 | 265,463 |
| Capital Outlay | 426,132 | 401,705 | 476,927 | 412,217 | 417,576 | 423,005 | 428,504 |
| Operating Transfers Out | 1,473,169 | 995,829 | 400,975 | 406,187 | 411,468 | 416,817 | 422,236 |
| TOTAL EXPENDITURES | 23,962,521 | 24,587,523 | 25,035,330 | 25,587,399 | 26,151,064 | 26,727,833 | 27,216,884 |
| CHANGE IN NET POSITION | 859,655 | - | 51,490 | (52,227) | 127,599 | 157,278 | 219,576 |
| ENDING FUND BALANCE | \$ 6,828,726 | \$ 6,828,726 | \$ 6,880,215 | \$ 6,827,988 | \$ 6,955,588 | \$ 7,112,866 | \$ 7,332,442 |
| Reserve Target (25%) | 5,990,630 | 6,146,881 | 6,258,833 | 6,396,850 | 6,537,766 | 6,681,958 | 6,804,221 |
| Over (Under) Reserve | 838,095 | 681,845 | 621,383 | 431,139 | 417,822 | 430,908 | 528,220 |
| Actual Reserve % | 28.5% | 27.8% | 27.5% | 26.7% | 26.6% | 26.6% | 26.9% |

FUND BALANCE indicates only UNRESTRICTED fund balance.

Key assumptions for FY17 - FY21:

1. Total property tax rate held at \$0.5625.
2. Assessed value increase at 1.7% annually.
3. Sales tax revenue follows a cyclical growth pattern of 2% to 5% annually.
4. Other revenues increase at 1.7% annually.
5. Personnel expenses increase by 2.0 to 4.7% annually (average annual increase of 3.0%), other expenses by 1.3% annually.
6. Additional expenses for athletic complex personnel and police body cameras added to FY17 - FY21.
7. No fire reserve allocation after FY2016.

WATER AND SEWER FUND - FIVE YEAR FISCAL FORECAST

| | FY15 | | FY16 | FY17 | FY18 | FY19 | FY20 | FY21 |
|----------------------------|-------------------|----|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|
| | Preliminary | | Budget | Forecast | Forecast | Forecast | Forecast | Forecast |
| | Actual | | | | | | | |
| BEGINNING FUND BALANCE | \$ 8,127,701 | \$ | 5,935,945 | \$ 5,935,945 | \$5,947,342 | \$ 5,970,194 | \$ 6,004,551 | \$ 6,050,453 |
| REVENUES | | | | | | | | |
| Service Revenues | 9,076,406 | | 11,542,286 | 11,738,505 | 11,938,059 | 12,141,006 | 12,347,404 | 12,557,309 |
| Interest and Miscellaneous | 191,919 | | 199,875 | 203,273 | 206,729 | 210,243 | 213,817 | 217,452 |
| Transfer In | 23,802 | | - | - | - | - | - | - |
| TOTAL REVENUES | 9,292,128 | | 11,742,161 | 11,941,778 | 12,144,788 | 12,351,249 | 12,561,221 | 12,774,761 |
| EXPENDITURES | | | | | | | | |
| Personnel | 2,834,714 | | 2,964,265 | 3,038,372 | 3,114,331 | 3,192,189 | 3,271,994 | 3,337,434 |
| Supplies | 614,081 | | 699,449 | 708,542 | 717,753 | 727,084 | 736,536 | 746,111 |
| Maintenance | 777,962 | | 595,953 | 603,700 | 611,548 | 619,499 | 627,552 | 635,710 |
| Services | 818,944 | | 834,399 | 845,246 | 856,234 | 867,365 | 878,641 | 890,064 |
| Other Expenses | 114,295 | | 471,969 | 478,105 | 484,320 | 490,616 | 496,994 | 503,455 |
| Capital Outlay | 156,515 | | 166,150 | 168,310 | 170,498 | 172,714 | 174,960 | 177,234 |
| Operating Transfers Out | 6,167,373 | | 6,009,976 | 6,088,106 | 6,167,251 | 6,247,425 | 6,328,642 | 6,410,914 |
| TOTAL EXPENDITURES | 11,483,884 | | 11,742,161 | 11,930,380 | 12,121,936 | 12,316,893 | 12,515,319 | 12,700,922 |
| CHANGE IN NET POSITION | (2,191,756) | | - | 11,397 | 22,852 | 34,357 | 45,902 | 73,840 |
| ENDING FUND BALANCE | \$ 5,935,945 | \$ | 5,935,945 | \$ 5,947,342 | \$ 5,970,194 | \$ 6,004,551 | \$ 6,050,453 | \$ 6,124,292 |
| Reserve Target (25%) | 2,870,971 | | 2,935,540 | 2,982,595 | 3,030,484 | 3,079,223 | 3,128,830 | 3,175,230 |
| Over (Under) Reserve | 3,064,974 | | 3,000,404 | 2,964,747 | 2,939,710 | 2,925,328 | 2,921,623 | 2,949,062 |
| Actual Reserve % | 51.7% | | 50.6% | 49.9% | 49.3% | 48.8% | 48.3% | 48.2% |

FUND BALANCE indicates only UNRESTRICTED fund balance.

Key assumptions for FY17 - FY21:

1. Utility rates held for each fiscal year.
2. Revenues grows at 1.7% annually
3. Personnel expenses grow by 2.0 to 2.5% annually (average annual increase of 3.0%), other expenses by 1.3% annually

Agenda Item:

7A. Report from city staff regarding the disruptions of AT&T phone service.
(staff)

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

SUBJECT: Report from city staff regarding disruptions of AT&T phone service

FOR AGENDA OF: 12/08/2015

DATE SUBMITTED: 12/03/2015

SUBMITTED BY: Dannie Smith
Fire Chief

CLEARANCES: Todd Parton
City Manager

EXHIBITS:

AGENDA MAILED TO:

APPROVED FOR SUBMITTAL BY CITY MANAGER:



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

PAYMENT TO BE MADE TO:

REVIEWED BY THE DIRECTOR OR FINANCE:

SUMMARY STATEMENT

On November 4, 2015 the City of Kerrville lost telecommunications and 9-1-1 services for a period of approximately eight hours. The reason for the disruption in service was a cut to AT&T's fiber optics transmission line located outside the City. Similar incidents have occurred on July 31st and June 8th of 2015, as well as February of 2010. Staff will report on the recent disruptions of telecommunications service and activities underway to prevent future occurrences.

RECOMMENDED ACTION

Report only; no action necessary at this time.

Agenda Item:

7B. Budget and economic update. (staff)

City of Kerrville
Month ending November 30, 2015
 (Month 2 of FY16 Budget)

| | Current Month | Year To-Date | Budget @ 16.66% | Prior Year To-Date |
|---------------------------|--------------------|--------------------|--------------------|-----------------------|
| General Fund | | | | |
| Total Revenues | \$1,818,187 | \$2,935,212 | 11.94% | \$3,220,305 |
| Property tax | \$748,755 | \$752,641 | 8.47% | \$907,217 |
| Sales tax | \$555,352 | \$1,010,825 | 16.16% | \$993,284 |
| Total Expenditures | \$1,717,720 | \$3,584,437 | 14.58% | \$3,522,433 |

| | | | | |
|-----------------------------|--------------------|--------------------|--------|--------------------|
| Water and Sewer Fund | | | | |
| Total Revenues | \$1,009,088 | \$2,110,197 | 17.97% | \$1,594,700 |
| Water Sales | \$502,455 | \$1,075,824 | 19.25% | \$914,824 |
| Sewer Service | \$442,232 | \$893,250 | 16.50% | \$881,801 |
| Expenditures | \$434,885 | \$1,020,319 | 8.69% | \$2,424,342 |

| | | | | |
|---------------------|------------------|------------------|--------|------------------|
| Hotel/Motel: | | | | |
| Revenues | \$102,081 | \$189,638 | 18.61% | \$174,070 |
| Expenditures | \$227,850 | \$227,850 | 22.54% | \$225,250 |

| | | | |
|--------------------------------|------|--|----------------------------|
| Unemployment: (October) | | Consumer confidence: (November) | |
| National | 5.0% | National | 90.4 down .7% from 2014 |
| Texas | 4.4% | Texas | 101.2 down 15.5% from 2014 |
| Local | 3.8% | (Sources: State Comptroller/Workforce Alamo) | |

| | | | | |
|-------------------------------------|-----|-----|--|--|
| New Building Permits Issued: | | | Housing (October) | |
| | Res | Com | <i>Local:</i> | |
| Oct | 11 | 0 | 632 active residential listings; 60 residential sales October 2015 | |
| Nov | 5 | 0 | \$14,033,493 total residential sales dollars for October 2015 | |
| Dec | | | \$147,411,124 total residential sales dollars Y-T-D for 2015 | |
| Jan | | | (Source: Kerrville Board of Realtors) | |
| Feb | | | | |
| Mar | | | Water (October) | |
| Apr | | | Residential - 8,053 meters serving 10,611 units | |
| May | | | Commercial - 1,263 meters serving 1,517 units | |
| June | | | Irrigation - 548 meters; 5 re-use meters | |
| July | | | Sewer (October) | |
| Aug | | | Residential - 7,915 services serving 10,583 units | |
| Sept | | | Commercial - 1,112 services serving 1,296 units | |
| YTD | 16 | 0 | | |

Agenda Item:

8A. Reuse Water ad hoc Advisory Committee. (Mayor Pratt and Councilmember Allen)

**BUSINESS OF THE CITY COUNCIL
CITY OF KERRVILLE, TEXAS**

SUBJECT: Appointments to the Reuse Water ad hoc Advisory Committee

FOR AGENDA OF: December 8, 2015

DATE SUBMITTED: December 3, 2015

SUBMITTED BY: Brenda Craig
City Secretary

CLEARANCES: Todd Parton
City Manager

EXHIBITS:

AGENDA MAILED TO:

APPROVED FOR SUBMITTAL BY CITY MANAGER:



SUMMARY STATEMENT

Consider appointments to the following board:

Reuse Water ad hoc Advisory Committee: New Committee with nine to eleven members.

RECOMMENDED ACTION

Consider appointments.