

AGENDA FOR REGULAR MEETING

KERRVILLE CITY COUNCIL

TUESDAY, OCTOBER 11, 2016, 6:00 P.M.

KERRVILLE CITY HALL COUNCIL CHAMBERS

701 MAIN STREET, KERRVILLE, TEXAS

KERRVILLE CITY COUNCIL AGENDA
REGULAR MEETING, TUESDAY, OCTOBER 11, 2016, 6:00 P.M.
CITY HALL COUNCIL CHAMBERS
701 MAIN STREET, KERRVILLE, TEXAS

CALL TO ORDER

INVOCATION OFFERED BY COUNCILMEMBER GENE ALLEN

PLEDGE OF ALLEGIANCE TO THE FLAG

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 AND RECOGNITIONS:

2A. Certificate of Recognition presented to the Kerrville Citizens Police Academy Alumni Association for being awarded the "Texas Alumni Membership of the Year Award." (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. Acceptance of minutes of the regular meeting held August 23, 2016. (staff)

3B. Authorize the purchase and remount of a Type 1 ambulance from MacHaik Dodge through Buyboard at an amount not to exceed \$125,000. (staff)

3C. Adopt the policy for the exhibition of materials and items at the Butt-Holdsworth Memorial Library and Kerr Regional History Center (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: October 7, 2016 at 9:00 a.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

3D. Authorize funding application to the City of Kerrville, Texas Economic Improvement Corporation in the amount of \$1.5 million for improvements to the H-E-B Tennis Center. (staff)

3E. Authorize non-exclusive license agreement between Riverside Nature Center Association, Inc. and City of Kerrville, Texas. (staff)

3F. Promoter racing agreement between City of Kerrville, Texas and High Five Events, LLC. (staff)

3G. Approval of an agreement between the City of Kerrville and Texas First Group for interim city manager services.

END OF CONSENT AGENDA

4. ORDINANCES, FIRST READING:

4A. Ordinance No. 2016-14, amending Chapter 18 "Animals", of the City's Code of Ordinances by amending Section 18-31 "Dog and Cat Registration" and Section 18-32 "Rabies Vaccination"; containing a savings and severability clause; providing an effective date; and providing other matters relating to the subject. (staff)

4B. Ordinance No. 2016-18, granting to Atmos Energy Corporation, a Texas and Virginia Corporation, its successors and assigns, a franchise to furnish, transport and supply gas to the general public in the City of Kerrville, Kerr County, Texas, for the transporting, delivery, sale, and distribution of gas in, out of, and through said municipality for all purposes; providing for the payment of a fee or charge for the use of the streets, alleys, and public ways; repealing all predecessor ordinances; providing that it shall be in lieu of other fees and charges, excepting ad valorem taxes; prescribing the terms, conditions, obligations and limitations under which such franchise shall be exercised; providing a savings clause, a most favored nations clause, and a severability clause; and providing an effective date. (staff)

5. CONSIDERATION AND POSSIBLE ACTION:

5A. Authorize the execution of a construction contract with MGC Contractors, Inc. for the reuse pond and pump station project in the amount of \$10,474,822.00 and authorize execution of additional change orders which will not exceed a total contract value of \$12,000,000.00. (staff)

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Brenda Craig
City Secretary, City of Kerrville, Texas

5B. Authorize professional services agreement with Rock Engineering and Testing Laboratory, Inc. for geotechnical engineer/materials testing for reuse pond and pump station project in the amount of \$148,000.00. (staff)

5C. Resolution No. 25-2016 approving the agreement between the City of Kerrville, Texas, and Advanced Data Processing, Inc. (Intermedix) for ambulance billing and related professional services. (staff)

5D. Alternative proposal for workforce housing project submitted by MacDonald Companies. (staff)

5E. Consideration of the process to be used for the recruitment and selection of a city manager. (staff)

5F. Consideration of the process to be used for the appointment to fill the vacancy of Councilmember Place Three. (staff)

6. INFORMATION AND DISCUSSION:

6A. Post event report on the Kerrville Festival of the Arts. (staff)

6B. Post event report on the Kerrville Triathlon. (staff)

6C. Budget and economic update. (staff)

7. APPOINTMENTS TO BOARDS AND COMMISSIONS:

7A. Building Board of Adjustment and Appeals. (staff)

8. ITEMS FOR FUTURE AGENDAS

9. ANNOUNCEMENTS OF COMMUNITY INTEREST:

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

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Brenda Craig
City Secretary, City of Kerrville, Texas

10. EXECUTIVE SESSION:

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

10A. Sections 551.074:

- Annual evaluation of City Attorney

11. ACTION ON ITEM DISCUSSED IN EXECUTIVE SESSION

12. 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. Certificate of Recognition presented to the Kerrville Citizens Police Academy Alumni Association for being awarded the "Texas Alumni Membership of the Year Award." (staff)

Certificate of Recognition

Is hereby presented to

Kerrville Citizen's Police Academy Alumni Association

This Certificate of Recognition is being presented to the Kerrville Citizen's Police Academy Alumni Association (KCPAAA) for being awarded the "Texas Alumni Membership of the Year Award" at the 2016 Texas Citizen Police Academy and Law Enforcement Training Conference. This award is given to the alumni association judged to have the best membership program based on events, activities and direct support to the police departments they support and the number of hours volunteered. The KCPAAA currently has 97 members who volunteered more than 7,000 hours during the last fiscal year. The Kerrville Alumni Association has now earned all four awards offered by the conference – winning the "Ray Ramon Peace Officer of the Year Award", the "Texas Alumni Association of the Year Award", and the "Texas Alumni Member of the Year Award" in previous years. The City of Kerrville congratulates the KCPAAA for having an outstanding organization, and for their service commitment to the City of Kerrville.



Hereunto set my hand and caused
the Seal of the City Kerrville to be
affixed hereto the 27th day of
September, 2016.

Bonnie White, Mayor

Agenda Item:

3A. Acceptance of minutes of the regular meeting held August 23, 2016. (staff)

CITY COUNCIL MINUTES
REGULAR MEETING

KERRVILLE, TEXAS
AUGUST 23, 2016

On August 23, 2016, the Kerrville City Council meeting was called to order at 6:00 p.m. by Mayor White in the city hall council chambers at 701 Main Street. The invocation was offered by Troy Way of New Beginnings Church, followed by the Pledge of Allegiance led by Former Mayor Jack Pratt.

COUNCILMEMBERS PRESENT:

Bonnie White	Mayor
Stephen P. Fine	Mayor Pro Tem
Glenn Andrew	Councilmember
Gary F. Stork	Councilmember
Gene Allen	Councilmember

COUNCILMEMBER ABSENT: None

CITY CORE STAFF PRESENT:

Todd Parton	City Manager
Mike Hayes	City Attorney
E.A. Hoppe	Deputy City Manager
Brenda Craig	City Secretary
Sandra Yarbrough	Director of Finance
Kim Meisner	Director of General Operations
David Knight	Chief of Police
Dannie Smith	Fire Chief
Kaitlin Berry	Special Projects Manager
Kyle Burow	Director of Engineering
Ashlea Boyle	Assistant Director of Parks and Recreation

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

1. VISITORS/CITIZENS FORUM:

1A. James Wills requested to be on a future agenda to make a presentation on "Saving Our Night Skies" and to discuss an outdoor lighting ordinance.

1B. Jerry Wolff noted a delay in the approval of council meeting minutes. The minutes were about four meetings away; he suggested increasing staff, hiring temporary staff, or using a volunteer. He asked that the item be placed on a future agenda and direction provided to the city manager.

Council noted the videos of council meetings were available on the city's website, usually the next day.

1C. Jack Pratt suggested the city allow motorized transportation, such as golf carts, for handicapped persons to be able to access and enjoy the river trail.

2. PRESENTATIONS:

2A. Swearing in of the 2016-17 Mayor's Youth Advisory Council by Municipal Court Judge Mark Prislowsky.

2B. Recognition of the Competitive Guard Team for winning 5th Place in the Texas Super Guard Competition, 2nd Place Overall in Central Texas Lifeguard Competition, and 1st Place Overall in the State Lifeguard Championship. Members were: Wren Vogel, Jacob Pierz, Carlos Nava, Courtney LaQuey and Taylor Benedick.

3. CONSENT AGENDA:

Mr. Andrew moved to approve consent agenda items 3A through 3D; Mr. Fine seconded the motion, and the motion passed 5-0:

3A. Minutes of regular meetings held June 14 and June 28, 2016 and the budget workshop held June 30, 2016.

3B. Contract for annual audit services with BKD, LLP, to provide professional audit services for the fiscal years ending September 30, 2016, 2017, and 2018 with an option to extend the contract for fiscal years 2019 and 2020.

3C. Waiver of parade permit fee for the Veterans Day Parade.

3D. Authorizing the police department to purchase a new server storage system from CDW-G for video storage of body worn camera systems in the amount of \$75,836.00.

END OF CONSENT AGENDA

4. PUBLIC HEARINGS:

4A. First and only public hearing for the annual budget for the City of Kerrville, Texas, Fiscal Year 2017; providing appropriations for each City Department and Fund.

Mr. Parton noted the proposed budget was a fiscally sustainable, balanced budget for general fund and water and sewer fund and he reviewed the following:

- The 2017 budget including all funds totaled \$51.5 million in revenue and \$50.8 million in expenditures.
- Additional \$384,114 in property tax inclusive of added taxable property and increased assessed values added to tax roll.
- Tax rate remain \$0.5625, the same as the past 8 years.
- Anticipated water consumption rate up 5% and sewer consumption rate up 2% in FY2018.
- \$1.02 base rate increase for monthly utility bills .
- Intentional drawdown of the reserve fund to pay cash for capital needs.
- Water/sewer (W/S) debt service fund increased \$4 million, included KPUB loan.
- Significant reduction in debt service in 2021-2022; debt service capacity of additional \$10 million in FY2021.
- W/S fund anticipates new issuances: FY2019, \$6.7 million; FY2023, \$10.0 million; and FY2026, \$5,0 million for capital projects.
- Sports complex operational expenses budgeted in the last three months.

- Reclamation water project construction begins.
- Employee salary increases based on merit and step plan; overtime pay adjustments; and adjustments due to compensation study.
- Sales tax 3% above current year.
- Transfer from water and sewer fund to general fund \$1.9 million to reimburse the general fund for administrative services provided to the utility fund.
- 50% of general fund expenditures was for public safety.
- Personnel was about 44% of total expenditures.
- Texas Municipal Retirement System re-rate analysis; for the city to be funded at 99%, a 0.8% increase across all funds was necessary.
- New employees: code compliance officer, deputy municipal court clerk, sports complex manger (3 months).
- \$1.25 million for pavement maintenance.
- \$900,000 in capital replacement vehicles: ambulance, 5 replacement vehicles in police department, dump truck, 4 vehicles, included \$300,000 set aside to purchase a new fire truck in 2018.
- \$1.9 million transferred from water and sewer fund to general fund; formula based on staffing requirements.
- .0735¢/\$100 to cover tax supported debt.
- Reviewed the new community investment plan for capital projects.
- Independently conducted citizen input process to review future projects.
- \$22.5 million projects unfunded; reviewed funding plan.
- Reviewed prioritized projects: public safety complex campus, parking garage repairs, KROC detention facility, Fire Station 3 remodel, simulcast radio for fire department; enclose Peterson clock tower elevator to prevent weather related operational issues; and Olympic Pool major renovation and equipment replacement.
- Need to update 2008 facilities master plan.

Mayor White opened the public hearing at 7:05 p.m.; the following persons spoke:

1. Robert Naman questioned the transfer of \$1.9 million from the W/S fund to the general fund; using funds from the reserve fund; what happened to funds budgeted and not used in any fiscal year; what was the \$150,000 for in special services planning budget; \$290,000 was budgeted for maintenance of the sports complex, when might revenue become sufficient to off-set the cost of the sports complex?

Mr. Parton responded:

-The \$1.9 million transfer from the W/S fund to the general fund was to reimburse the general fund for administrative services provided to support the W/S fund operations, i.e. legal, IT, administrative, finance, human resources; the amount was determined by the departmental resources used.

-A planned draw down of reserve funds was used to fund projects and purchase equipment instead of selling debt. Reserve funds would not be used for recurring expenses.

-Unused funds would go into the overall unreserved general fund or W/S fund, depending whether it was a general fund or W/S fund project.

-The \$150,000 was for a rewrite and update of the comprehensive plan.
-The city had a lease with BTP Baseball Joint Ventures; whereby the city was paid \$168,000 annually; it was an incentivized lease whereby payment could be reduced if BTP brought in revenue or indirect income such as sales tax or facility use fees. The indoor athletic facility was under design now.

2. Peggy McKay asked what the downtown water feature was for \$250,000 and who recommended it? She contended that voters were bypassed when financing was approved. Taxpayers should be asked if they support quality of life projects or infrastructure. She opined that Kerrville was at the top of cities for debt and needed to be in a stronger financial position. Ms. McKay stated that one of the things mentioned in the audit was that the auditors had difficulty following projects and how money was spent as projects progressed; she suggested a different type of accounting system. She quoted statements from the audit about global economy and opined that this was not an encouragement for more debt. She also opined that the mains to be extended to Riverhill Golf Course would not be eligible for EIC funding because RGC was not open to the public.

Mr. Parton noted it was a fountain and EIC contemplated the water feature.

Council noted the city's bond rating was AA.

No one else spoke and Mayor White closed the public hearing at 7:20 p.m.

4B. First public hearing to set the 2016 ad valorem tax rate. (staff)

Mr. Parton noted the tax rate of \$0.5625 reflected the tax levy required to fund the FY2017 budget.

Mayor White opened the public hearing at 7:24 p.m.; no one spoke; Mayor White closed the public hearing at 7:25 p.m.

5. ORDINANCES, FIRST READING:

5A. Ordinance No. 2016-13 altering the prima facie speed limit on State Highway 534 (Veterans Highway) from approximately thirty-one hundred feet north of its intersection with Vista Ridge Drive and continuing in a mostly southerly direction to approximately seven hundred feet south of its intersection with Beech Street, such distance equal to 2.879 miles; reducing said speed limit to 55 miles per hour; establishing a school zone for a portion of the distance; authorizing installation of appropriate signs and markings; containing a savings and severability clause; providing for a maximum penalty or fine of Two Hundred Dollars (\$200.00); and ordering publication. Mayor White read the ordinance by title only.

Mr. Burow noted TxDOT conducted a traffic study and traffic investigation for Loop 534. TxDOT recommended decreasing the speed limit from 60 mph to 55 mph and designating a school zone at 35 mph during certain hours.

Mike Boyd, representing TxDOT, noted that signs and signalization would be placed this week. TxDOT recommended the ordinance for enforcement.

Mr. Fine moved for approval of Ordinance No. 2016-13 on first reading. Mr. Allen seconded the motion and it passed 5-0.

6. CONSIDERATION AND POSSIBLE ACTION:

6A. Interlocal Agreement for the continued existence of a joint airport board to provide management of the Kerrville/Kerr County Airport.

Mayor White noted the proposed agreement was based on the original 2011 agreement and she reviewed changes. Kerr County approved the agreement on August 22.

Mr. Andrew moved for approval of the agreement; Mr. Fine seconded the motion and it passed 5-0.

6B. Interlocal agreement between the City of Kerrville, Kerr County, and Upper Guadalupe River Authority to hire an engineering firm to evaluate flooding risks for Kerr County and provide recommendations.

Mayor White noted Kerr County proposed a county wide early flood warning system (FWS). The parties involved desired to retain a professional engineering consultant to evaluate feasibility, cost and implementation. Mr. Buck (UGRA) and Mr. Moser (County) prepared a request for qualifications to retain a professional consultant to prepare the engineering study, estimated at \$50,000 to be split 40% County, 40% UGRA, and 20% City of Kerrville; the City of Ingram decided not to participate in the program.

Ray Buck, UGRA General Manager, noted UGRA paid Guadalupe Blanco River Authority (GBRA) \$5,000 annually to maintain 22 rainfall monitors in Kerr County. The Kerrville Fire Department (KFD) was the only entity that used the rainfall monitoring system. The proposed FWS upgrade would create a more comprehensive system that would allow Kerr County to receive the information it needed. The cost to the city would be \$10,000 for an assessment study that would be the basis for a grant to implement the FWS. Participation in the assessment study did not commit the city to participate in future FWS projects.

Council noted that city citizens were being asked to pay for the study twice, through county tax and city tax. Mr. Buck replied that UGRA paid GBRA \$5,000 annually for the rainfall monitoring system that was only used by KFD.

Mr. Fine moved to approve participation in the assessment study; as long as it did not commit the city to fund any long term projects. Mr. Stork amended the motion to also include that it would not commit the city to any percentage of funding for any future projects. Mr. Stork seconded the motion.

TP noted funds were available.

1. Jack Pratt stated this was a county wide project and city residents paid county taxes; therefore, there was no reason for the city to participate financially and to

do so would be double taxation. The city could support, but not financially participate, in the project. Mr. Buck noted UGRA paid GBRA \$5,000 for the rainfall monitoring system. Mr. Pratt stated that \$5,000 should come back to the city to reimburse for the funds it spent up front to eliminate double taxation.

2. Robert Herd noted that many situations involving drownings in the county were remedied with higher bridges.

The motion passed 5-0.

6C. Community survey through the National Citizen Survey to conduct a community-wide public opinion survey on eight key areas of community liability, including public safety infrastructure, recreation and community engagement.

Ms. Berry presented plans to conduct a comprehensive scientific survey to measure public input regarding current performance and long term goals. The National Citizen Survey (NCS) is the gold standard in community assessments and is endorsed by the International City/County Management Association (ICMA). NCS would randomly select 1,500 households in the city limits to receive the survey; NCS anticipated 300-400 households would respond. NCS also provided an opt-in web link that could be made available to all residents who wished to participate. The data collected from the opt-in would remain separate from the scientific survey; however, it would give the city valuable feedback from interested persons. Survey results could be tracked based on geographic area and benchmarked against over 500 surveys from other cities.

Council noted a web-based survey would not be unbiased; the NCS survey would not be subjective and would provide a professional survey based on economical and geographical distribution. The city needed citizen input into capital project planning.

Mayor White noted the city had a lot of other needs and should prioritize spending. The survey questions presented were not applicable to Kerrville, seemed redundant, and were not significant.

The following persons spoke:

1. James Craft opined that the city could conduct the survey itself on line and reach more households, save \$13,000-15,000, and get responses more significant to the community. Staff's proposal would only survey 5% of citizens.
2. Robert Naman noted a large margin for error; the low income households would be less likely to respond, which would distort results.
3. Mike Sigerman noted there were over 9,500 households in Kerrville and only 1,500 were being surveyed; he questioned why the city was not interested in the opinions of the other 7,500. The web opt in would not be calculated in the survey.
4. Tony Farmer questioned in multi-family households who would get to fill out the

survey? Mr. Parton noted the survey would be sent to the head of household.

Mr. Stork moved to proceed with the NCS survey, Tier #3 for 1,800 households at a cost of \$16,902; the motion failed for lack of a second.

Mr. Andrew moved to proceed with the NCS survey, Tier #1 for 1,500 households at a cost of \$13,860, and staff to explore the possibility of shared funding with the Kerr Economic Development Corporation and the Economic Improvement Corporation; however, staff should move forward and not depend on alternative funding. Mr. Fine seconded the motion and it passed 5-0.

6D. Consideration of fiscal year 2017 budget for the City of Kerrville Economic Improvement Corporation.

Mr. Parton noted the proposed FY2017 budget had been approved by EIC; he reviewed projects and the proposed budget:

- Revenue projection estimated at \$3.3 million, an increase of about \$100,000 over 2016.
- Expenditures at \$4.9 million include planned draw down of \$1.6 million from unrestricted fund balance.
- Continues to fund economic development set aside in unrestricted fund,
- Included funding several capital improvement projects through FY2022.
- Is included in the city's 2017 overall budget.
- Administrative services payment to the city at \$100,000. By law, the city cannot give away city services; therefore, EIC has to fairly compensate the city for services it provides to EIC.
- Included a grant from EIC to the city for \$1.5 million (first payment) in 2017 for reclaimed water distribution project.
- Unrestricted fund balance projected to be \$3.7 million in 2017; draw down of \$3.2 million through FY2018, and projected to be \$5.2 million at the end of 2022.

Mayor White noted over \$2 million in debt for quality of life projects; she preferred that more money go toward infrastructure and economic development. Mr. Stork noted \$2 million was budgeted for infrastructure and \$1.4 million for debt service for infrastructure projects in EIC's 2017 budget.

The following persons spoke:

1. Robert Naman noted \$500,000 was set aside for economic development and asked if there was a planned ED project. He asked if there were any expenditures for the river trail and if it was finished. He asked if citizens voted to terminate the 4B sales tax, would the ½% sales tax roll into the city's sales tax and if there were any projects that the city could not do that EIC was doing now?

Mr. Parton noted the \$500,000 was to build up a reserve for a potential ED prospect; nothing pending. There was over \$1 million in the river trail project fund from the original application. The 4B sales tax funds were very restrictive; if that sales tax came directly to the city, the city would have more flexibility in spending the funds.

Mr. Fine moved to approve the FY2017 EIC budget; Mr. Stork seconded the motion and it passed 5-0.

6E. Review and discussion of public comments made by elected officials regarding the river trail.

Mayor White advised that she had retained legal counsel to review comments made for future action if need be and reminded council and the audience of procedural rules and ethics policy.

Mr. Stork discussed comments made by Mayor White in a recent radio interview; that is, the budget for the river trail project was in limbo and the accounting was interesting; professional fees, acquisition, legal fees and paving were not accounted for, estimated about \$900,000. He questioned if she received the same information he had. He stated that when she was against a project she would bring out random numbers and questions.

Mayor noted his questions had to do with motives and reminded him to observe the procedural rules.

Mr. Stork noted the finance department had received awards from 1984 to the present. Mr. Allen and Ms. White served on the audit committee and all councilmembers had reviewed and signed off on the audit this year. The city finances were in good shape, projects were not in limbo, and everything was accounted for.

Councilmember Andrew noted councilmembers can agree or disagree, but when a project has been voted on, it was absolutely mandatory that the council all agree that all funds are accounted for and move forward.

The following persons spoke:

1. Jack Pratt stated if anyone believed or had made public comments that the financial reporting was inaccurate, they had failed the citizens by not taking that information to the district attorney and filing legal charges; however, if legal charges are not filed, he questioned if their facts were factual or opinion.

2. Peggy McKay stated this was a waste of time and money and made no sense to her. Mr. Stork should have discussed problems with Ms. White; this was an ethics problem. Mr. Stork should have posted a special meeting to discuss this matter.

Mr. Stork noted that legally three councilmembers could not meet outside of posted meetings to discuss matters, and he had already discussed this with another councilmember; therefore, he had the matter placed on the agenda for discussion at this meeting and it did not need a special meeting.

Mayor White noted that three times in the interview she stated disclaimers: my

understanding, as I understood, etc.; and at the conclusion, "I will confirm these numbers, I don't want to give out anything that is incorrect." She noted the project was funded in several accounts and reviewed the expenditures. She did not say that anything was illegal, just that it was confusing. For clarification after that, she asked and received the complete B5 river trail accounting, and Mr. Parton said it included all invoices to date. What started out as a \$7 million six mile river trail and parks improvement project was now over \$9 million and about 4.5-5 miles. It was a very large project that had gone on for a while and those things happen. She also said she had not disapproved of the negotiations for future acquisitions that had been held in the back room.

6F. Review and discussion of public comments regarding the Kerrville Public Utility Board loan made by Mayor White during open session at the City Council meeting of July 26, 2016, concerning the filing of a class action lawsuit against the City of Kerrville as those comments pertained to the loan agreement between the City and KPUB

Councilmember Stork noted at a previous council meeting Mayor White replied to Mr. Ellison, a local attorney, that she hated to think that the city might be looking at some kind of class action; two days later the city received a demand letter from Mr. Ellison.

Mayor White reminded Mr. Stork to abide by the procedural rule she had cited.

The following person spoke:

1. Robert Naman stated he was surprised that there had not been any class action suit; one group of people had paid interest on a loan for another group of people.

Mayor White noted KPUB received unexpected earnings through a settlement agreement with LCRA, and an attorney general's opinion was pending whether the settlement agreement could be made public because of a confidentiality agreement with LCRA. She read comments she had received from the public and noted her comments at the meeting did not recommend or suggest, they were intended to address questions so there would be no pursuit of litigation.

She noted that four public information requests had been filed by Mr. Stork; she said that over 800 pages had been reproduced.

Mayor White asked that in the future councilpersons refer their questions or concerns directly to the other councilmember unless it is something that arises to a true ethics violation, in which case it should be clearly defined with proper notice given for response.

6G. Review and discussion of Resolution No. 40-2013 – City of Kerrville Ethics Policy for Elected and Appointed Officials.

Councilmember Stork noted council adopted the resolution on October 8, 2013. He reviewed the policy and emphasized Sections D and M, and noted it required

periodic review. He read the Statement of Commitment in the ethics policy that was to be signed by city council and board members.

Mayor White stated there was some redundancy, ambiguity and use of subjective terms between procedural rules, ethics policy and city charter; in particular, Section VI of the charter needed to be clarified.

The following person spoke:

1. Jack Pratt read parts of the ethics policy, Section IV A regarding prohibiting officials from using their positions to influence city decision in which they have a personal interest; and Section IV I that city officials should only represent the official policies or positions of the City Council. He gave the example, if a councilmember owned property on Loop 534 and a situation came up for a vote where their property could be influenced, they should recuse themselves. Also, when council makes a decision and it passes, whether the member agrees or not, they should support that decision.

The consensus was that council should be more unified as a team, work together, and be positive about the future.

6H. Discussion and direction to city staff regarding approximately 173 acres of land located in the Kerrville extraterritorial jurisdiction (ETJ). Said land being comprised of the following three tracts – Abstract A0280 Rodriguez, Survey 72, Tract (Part of 141.38 acres), Acres 49.31; Abstract A0280 Rodriguez, Survey 72, Tract (Part of 186.99 acres), Acres 31.34; and Abstract A0282 Robinson, Survey 44, Tract (Part of 186.99 acres), Acres 92.44

Mr. Parton noted he received two phone calls from a prospective buyer in a foreclosure of two properties totaling 173 acres between Highway 27 and the Guadalupe River in the city's eastern ETJ. The caller was interested in setting up a rock quarry and asked the city's position on a sand and rock quarry in this area. Mr. Parton notified the caller that council had not discussed the matter. The person called again and said the property closed and they were not the successful bidder; however, the property was marketed for a quarry. The city had very limited land use and zoning regulations in the ETJ; such regulations were only available through zoning. The city could apply zoning through a non-annexation development agreement whereby certain conditions could be negotiated. The city's master plan designated the subject property as low density residential.

Council instructed staff to contact TCEQ to see if any permits had been requested or received for the subject tract and to investigate who purchased the land and their intent. Further, staff should look at an annexation plan and where the city's risks were.

7. INFORMATION AND DISCUSSION:

7A. Post event report for Kerrville's Fourth on the River.

Ms. Boyle noted approximately 10,000 people attended the event throughout the

day in Louise Hays Park.

7B. Budget and economic update.

Ms. Yarbrough gave the financial report year to date for the period ending July 31, 2016: general fund revenues totaled \$21,865,517 and expenditures \$18,564,329; water and sewer fund revenues totaled \$9,311,748 and expenditures \$8,817,137; hotel/motel fund revenues totaled \$899,181 and expenditures \$960,474; 66 permits for new residential construction and commercial new/remodel construction totaled \$30,610,014. She provided budget information for four major capital projects: River Trail, Louise Hays and Lehmann/Monroe Park, athletic complex, and reuse pond/distribution.

8. ITEMS FOR FUTURE AGENDAS

- Texting while driving.
- Annexation plan.
- Memorials in city parks.
- Tivy Mountain accepting donations to pave the road and install benches, etc.
- Re-engage reuse water committee to look at the design.
- Certificate of recognition for Dr. Troxell, KISD Superintendent.
- Proclamation for Young People in Recovery month.
- Motorized accessibility to the river trail.

9. ANNOUNCEMENTS OF COMMUNITY INTEREST: were presented.

10. EXECUTIVE SESSION: None.

11. ACTION ON ITEM DISCUSSED IN EXECUTIVE SESSION: None.

ADJOURNMENT. The meeting adjourned at 9:31 p.m.

APPROVED: _____

ATTEST:

Bonnie White, Mayor

Brenda Craig City Secretary

Agenda Item:

3B. Authorize the purchase and remount of a Type 1 ambulance from MacHaik Dodge through Buyboard at an amount not to exceed \$125,000. (staff)



October 6, 2015

Eric Maloney
 Division Chief – EMS Coordinator
 Kerrville Fire Department
 Email: eric.maloney@kerrvilletx.gov

Quote #10677A-BuyBoard

Chief Maloney,

Below is itemized pricing for contract number Ambulance #492-15 for remounting and refurbishing your Frazer Type I 14' Generator Powered Module onto a Dodge Ram 4500 diesel chassis.

Item 1 – Remount of Type I 14' Frazer conversion on Dodge Ram 4500 diesel DRW cab/chassis \$ 67,500.00

Published Options:

LiquidSpring suspension system for Dodge Ram 4500 (2014-2015)	\$ 10,000.00
Air conditioner/heat pump as spare or retrofit	\$ 5,500.00
Onan 5.5kW generator as spare of retrofit	\$ 5,500.00
Ten (10) new interior LED fixtures	\$ 3,500.00
Complete new top floor and sub floor in patient module	\$ 3,100.00
(x14) Lighting modification from base (each)	\$ 7,000.00
(x7) Exterior compartment and/or structure modification (each)	\$ 3,500.00
(x5) Interior compartment/cabinet modification (each)	\$ 2,500.00
Strip, prime and repaint Type I or Type III 14' patient module color other than white	\$ 7,900.00
Striping and lettering - \$2,500	\$ 2,500.00
Conspicuity on the entire rear of the module including the doors in a chevron pattern	\$ 1,500.00
New Lambda power supply	\$ 1,500.00
New treadbrite at front corners, wheel wells and rear	\$ 900.00
Replace all cabinet doors with scratch resistant polycarbonate doors	\$ 825.00
Chrome nerf bars for 2011-2015 Dodge Ram 3500, 4500	\$ 450.00
Replace rear entry door grabbers	\$ 50.00
Retrofit license plate holder and light	\$ 100.00
Arm rests on the console	\$ 200.00
(1) large aluminum map holder	\$ 175.00

Base Price	\$ 67,500.00
Published Options	\$ 56,700.00
Buy Board fee	\$ 800.00
Total	\$ 125,000.00

All pricing is F.O.B Houston.

Please make your purchase order out to Mac Haik Dodge Chrysler Jeep (11000 North Freeway, Houston, TX 77037). Please email a copy of your purchase order and this quote to BuyBoard at buyboard@tasb.org and to Adam Fischer at sales@frazerbilt.com.

Thank you for the opportunity to quote this job. If you have any questions please call me at 888-372-9371.

Best Regards,

A handwritten signature in cursive script that reads "Laura Richardson". The signature is written in black ink and is enclosed within a thin, hand-drawn oval border.

Laura Richardson
Frazer, Ltd.

LGR:SH

Agenda Item:

3C. Adopt the policy for the exhibition of materials and items at the Butt-
Holdsworth Memorial Library and Kerr Regional History Center (staff)

POLICY FOR THE EXHIBITION OF MATERIALS AND ITEMS AT THE BUTT-HOLDSWORTH MEMORIAL LIBRARY AND KERR REGIONAL HISTORY CENTER

I. General Policy

The Butt-Holdsworth Memorial Library (“Library”) and Kerr Regional History Center (“KRHC”) at times may display exhibits of materials and items that promote their missions to improve cultural awareness and local historical appreciation, as well as promote the pursuit of lifelong learning and reading. Exhibits will be respectful of the community and public served and may present a broad spectrum of cultures as well as a variety of viewpoints and ideas. The purpose of this policy is to provide a process for selecting, accepting, and exhibiting in a designated, limited public forum and neither the Library, KRHC, nor the City of Kerrville (“City”) or its officials endorse the beliefs or viewpoints within the subject of any exhibit or display, whether staff-initiated or sponsored by an outside individual or community group.

II. Evaluation

The Library Director will evaluate proposals for exhibiting at the Library and KRHC based on the following criteria:

- Whether the exhibit is supportive of the mission and goals of the Library, KRHC, and the City
- Whether the exhibit is of interest to a substantial portion of the community
- Whether the exhibit may be accommodated by available space

III. Improper Uses

Exhibits may not:

- promote or represent partisan or individual candidates’ political meetings or events, including political rallies, demonstrations, movies, fundraisers, promotion, protesting, or endorsement of a political candidate or agenda
- promote specific religious or philosophical groups
- promote a personal or family interest or for-profit, commercial business
- display material which is discriminatory, obscene, defamatory, invades a particular person’s privacy, or which may incite violence
- promote or represent any activity or purpose that is in violation of local, state, or federal laws, including copyright and public performance laws
- have prices affixed

Exhibitors may provide a printed catalog listing the exhibited materials with contact information. However, the listings may not include prices and no sales may occur at the Library or KRHC.

IV. Exhibit Proposal Process

The Library Director may schedule exhibits up to one (1) year in advance. Exhibitors wanting to use exhibit space at the Library or KRHC must complete an application to the Library Director, which must be submitted at least one (1) month prior to a proposed installation date. The Library Director will review a proposal and then notify the exhibitor as to missing information or a possible opening date. For Library exhibit spaces, the City prioritizes the Library’s annual Summer Reading Program and exhibits sponsored by the Friends of the Butt-Holdsworth Memorial Library. The City reserves the right to pre-empt any

exhibit or display space for a Library, KRHC, or City-sponsored exhibit or event. In such instances, the Library Director will make a reasonable effort to give advance notice of such pre-emption and assist proposed exhibitors in reserving another date. In the event of a cancellation, exhibitors must provide notification via email or U.S. Mail at least seven (7) days before installation. The exhibitor must notify the Library Director if any portion of the exhibit is to leave before the agreed upon conclusion date.

V. Insurance

The City, its officials, and employees assume no responsibility or liability for the safekeeping of any materials or items of third parties. Materials or items owned by the City are insured by the City. The City does not and will not insure the materials or items and accepts no liability or responsibility for their loss, theft, or damage resulting from criminal conduct, handling, fire, water, or any other act or inaction causing damage.

Library Exhibits - An exhibit that is collectively valued at more than \$100.00 must be insured by the exhibitor for the duration of the exhibit and proof of such insurance must be provided to the Library Director. The certificate of insurance must name the City as an “additional insured” for the duration of the exhibit.

KRHC Exhibits - Materials or items on loan from a third-party to the KRHC are to be insured by the outside organization or individual for the duration of the loan. Proof of insurance must be provided to KRHC. The certificate of insurance must name the City as an “additional insured” for the duration of the exhibit loan.

VI. Shipping & Delivery

An exhibitor is solely responsible for shipping, delivery, installation, and removal of all materials and items. Where an exhibitor uses shipping to deliver the exhibit to the Library or KRHC, the exhibitor must be present to receive the shipped exhibit. Neither the Library nor the KRHC will receive any items on behalf of an exhibitor. If the exhibitor is not present at the time of delivery, the Library and/or KRHC will refuse delivery. In addition, neither the Library nor the KRHC will store any materials or items before the opening or after the closing of an exhibit. Unless special arrangements are approved by the Library Director, both delivery, installation, and removal of an exhibit must take place on a single day, Monday through Saturday, during normal operating hours.

VII. Installation

Exhibitors must provide for the installation of their exhibit and no City staff will be available to help. Exhibitors work at their own risk. Installation is subject to the following:

- Two-dimensional items must be framed and installed using the display systems provided and neither the Library nor KRHC will provide frames
- All mounted signs and labels must be affixed without leaving holes, stains, or other damage (see Section VIII below for more information on labels) and the use of nails is prohibited
- Three-dimensional items must be in a display case or situated on the floor so as not to damage the displayed items

If the entire exhibit is not ready on the agreed-upon installation date, the City may choose to cancel the exhibit. Exhibitors are responsible for cleaning up after installation and removal. Unless approved in advance, an exhibit may not include Library or KRHC materials.

VIII. Labels & Signage

At their sole discretion, exhibitors may provide their own labels for each piece displayed. Labels should follow these standards:

- Content on labels in this order: title of work/item, name of artist/exhibitor, short description
- Labels sized 2.5” tall x 4” wide maximum
- Labels should use Arial, Calibri or similar font style in 12 pt. size, printed in black ink
- Label materials should be printed on white paper

IX. Duration of Exhibits

The Library and KRHC currently recognize two types of exhibits – permanent and temporary.

Permanent exhibits are owned by the City and installed for the long term and for an unspecified period of time, often more than six (6) months. Permanent exhibits are installed and maintained by City staff. No loaned materials or items shall be placed on permanent exhibit.

Temporary exhibits are installed for a specified period of six (6) months or less. Temporary exhibits may be created by the Library, KRHC, or loaned by others.

X. Maintenance of Exhibits

It is recommend that exhibitors visit exhibits periodically to assure no portions have fallen or become otherwise unkempt. Exhibitors are responsible for all maintenance and repairs. An exhibitor must pick up all materials and items on exhibit within 24 hours of expiration of the period allotted for the display; the exhibitor may seek a one-time extension of such period for a maximum of seven (7) days. If the items are not picked up within the specified time, the City reserves the right to treat the exhibit as a gift and claim ownership. Ownership means that the City has the sole discretion to exhibit, maintain, store, sell, destroy, give away or otherwise discard any materials or items. Exhibitors are liable for any damages to Library and KRHC property and equipment resulting from installation or maintenance of an exhibit. Library and KRHC staff will immediately remove any item violating this policy. Exhibitors who do not adhere to policy may be prohibited from future exhibiting.

XI. Promotion & Reception

The Library and KRHC strive to provide a basic level of promotional support for the exhibit, as resources allow, typically, through the provision of exhibit signs and inclusion of the exhibit on the Library’s website. All printed and promotional items related to the exhibit must be approved prior to publication and distribution. Exhibitors may not use logos of the Library, KRHC or the City without written approval of the Library Director.

XII. Photography

The Library allows photographing and filming of Library exhibits. These images can be reproduced for any purpose, including publicity. Exhibitors may not receive compensation for such use. In addition, visitors to the Library and KRHC are allowed to photograph items in the exhibits for personal use only. However, due to the potentially sensitive condition of materials on exhibition, the use of a flash is not permitted unless the Library Director provides an exemption.

Photographs of permanent KRHC exhibits may not be commercially published without written permission from the Library Director. If permission is granted, the KRHC should be acknowledged in the publication and one free copy of the publication should be provided to the KRHC in which images of KRHC materials appear. The correct acronym for the Kerr Regional History Center is KRHC.

XIII. Limitations

The Library, KRHC, and City recognize this policy cannot address all possible situations, and it is not intended to be an all-inclusive document. Situations not specifically addressed in the policy are handled as they arise.

XIV. Questions

Please contact us at:

Butt-Holdsworth Memorial Library
Attn: Library Director
505 Water St., Kerrville, TX 78028
Email: library.webmaster@kerrvilletx.gov
Phone: 830-258-1274
Fax: 830-258-1472
Online: www.bhmlibrary.org

Agenda Item:

3D. Authorize funding application to the City of Kerrville, Texas Economic Improvement Corporation in the amount of \$1.5 million for improvements to the H-E-B Tennis Center. (staff)

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

SUBJECT: Authorization to submit a funding application to the City of Kerrville, Texas Economic Improvement Corporation in the amount of \$1.5 million for improvements to the H-E-B Tennis Center

FOR AGENDA OF: October 11, 2016 **DATE SUBMITTED:** September 30, 2016

SUBMITTED BY: Ashlea Boyle **CLEARANCES:** E.A. Hoppe
Assistant Director of Parks and Recreation Deputy City Manager



EXHIBITS: Tennis Center Improvements Concept

AGENDA MAILED TO:

APPROVED FOR SUBMITTAL BY CITY MANAGER:



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

PAYMENT TO BE MADE TO:

REVIEWED BY THE DIRECTOR OF FINANCE:

SUMMARY STATEMENT

As discussed in previous meetings and workshops, the Economic Improvement Corporation (EIC) has programmed dollars into their FY17 and FY18 budgets for improvements to the H-E-B Tennis Center at \$750,000 respectfully per year totaling to \$1.5 million. This allocation in the EIC's budget was included in the FY17 budget that was adopted by City Council on September 27, 2016.

If funded, improvements to be considered in the design phase will include but not be limited to:

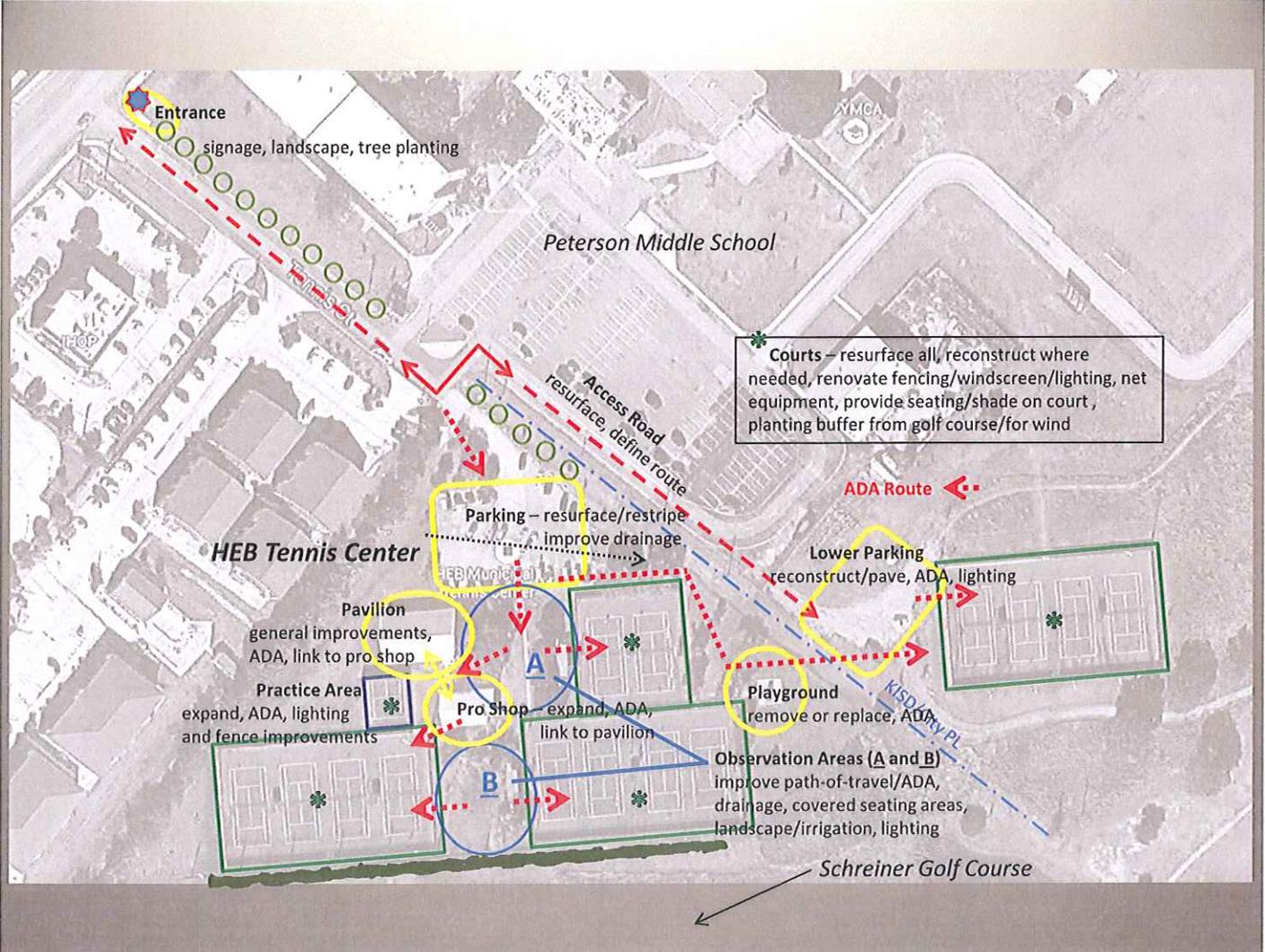
- Improving path of travel and ADA access to areas such as the pavilion, practice area, pro shop, lower parking, and observation areas.
- Resurfacing all post tension concrete courts.
- Evaluate the newly resurfaced asphalt courts in regards to upgrading to post tension concrete courts.
- Address drainage and parking issues.
- Address irrigation and landscaping.
- Address lighting.
- Address signage, fencing, windscreens, and net equipment.
- Address the existing playground.
- Improvements to the observation areas, seating, shade, etc.

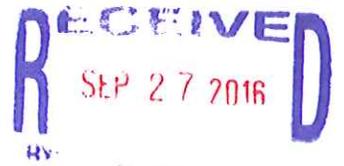
Staff is requesting authorization to submit a funding application to the EIC in the amount of \$1.5 million for this project. Authorization from City Council is required in order for an application to be made.

If approved by both entities, initial steps would begin with the design process, which will include feedback from stakeholders.

RECOMMENDED ACTION

Staff is requesting authorization to submit a funding application to the EIC in the amount of \$1.5 million for improvements to the Tennis Center.





Kerrville Tennis Association

info@kerrvilletennis.com

830.896.8606

Kerrville City Council Members

Dear Council Members,

As President of the KTA and with the approval of our members, I would like to express our appreciation for the work of the City Council, City Manager and numerous employees on behalf of the renovation and building plans for the HEB courts. As an organization that promotes tennis as a lifetime sport, we can truly believe the renovation of the courts will bring positive lifestyle changes, bring in tax monies and set us apart as a place where people want to come to live and play. Our hope is that you as a council will continue to treat us as partners in the renovation of these facilities. Please call on us at any time for recommendations and support on this endeavor. Thank you again for your support.

Sincerely,

Russell D. Kemp

President KTA

Agenda Item:

3E. Authorize non-exclusive license agreement between Riverside Nature Center Association, Inc. and City of Kerrville, Texas. (staff)

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

SUBJECT: Approval of a license agreement with the Riverside Nature Center

FOR AGENDA OF: October 11, 2016

DATE SUBMITTED: October 4, 2016

SUBMITTED BY: Ashlea Boyle
Assistant Director of Parks and Recreation

CLEARANCES: E.A. Hoppe
Deputy City Manager

EXHIBITS: Proposed License Agreement

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

When the first phase of the River Trail was developed in 2012, the City and the Riverside Nature Center (RNC) finalized easements to allow the City to construct the trailhead and a portion of the trail on RNC property. In addition to easements, the City and RNC agreed that the RNC's parking lot, restrooms, and drinking fountain would be made available to trail patrons, however, the RNC did not want to encumber their property with a lease regarding these uses.

Because there were no public trail user patterns established for this allowance, it was determined that the best course of action was to immediately allow this usage of the RNC property, but for the City to assist in occasional maintenance of the parking surface (granite) and to provide the RNC with paper goods to restock their restroom. It was mutually agreed this arrangement would be evaluated over time to determine if any amendments to services were needed. The arrangement has continued without any issues or need to change since the opening of the trail.

In order to finalize this working arrangement, a license agreement is recommended that will formalize the terms. The RNC's licensing of this property to the City is in the best interest of both the RNC and the City. The RNC's attendance has substantially increased since the opening of the trail and the trailhead in this location has greatly benefitted the City and the trail users.

RECOMMENDED ACTION

Staff recommends approval of the license agreement with the Riverside Nature Center.

**NON-EXCLUSIVE LICENSE AGREEMENT BETWEEN
RIVERSIDE NATURE CENTER ASSOCIATION, INC. AND
CITY OF KERRVILLE, TEXAS**

This Non-Exclusive License Agreement ("License") is made and entered into by and between the RIVERSIDE NATURE CENTER ASSOCIATION, INC. ("RNC"), and the CITY OF KERRVILLE, TEXAS, ("CITY") as follows:

1. Grant of Non-Exclusive License. In consideration of and subject to the terms, provisions, and covenants herein contained, RNC hereby grants to CITY a non-exclusive license to use RNC's parking lot, and other areas specified herein, located at 150 Francisco Lemos in the City of Kerrville, Kerr County, Texas ("Licensed Premises"), a map of which is attached hereto and made a part of this License as **Exhibit A**, for parking and public access to the CITY's River Trail.
2. Term. The initial term of this License shall be effective as of October 1, 2016 and end September 30, 2017, subject to earlier termination as provided herein.
3. Annual Extensions. This License shall renew for successive one-year periods, commencing on October 1, 2017, and each year thereafter. Such renewal shall be automatic and without the action of any party unless notice of termination is given by either party in writing to the other party, as provided herein.
4. Termination Election. RNC and CITY each shall have the right, either with or without cause and at any time, to terminate this License upon not less than one year (365 days) prior written notice to the other party. Upon such termination, RNC and CITY shall be relieved of all further obligations hereunder except only for obligations accruing prior to the effective date of termination.
5. Use. CITY's use of the Licensed Premises shall comply with the following:
 - a. CITY and users of the River Trail shall use the Licensed Premises thereon for parking cars and to access the River Trail during daylight hours and for no other purposes unless provided herein; said uses shall be subject to reasonable restrictions of use at RNC's sole discretion;
 - b. CITY shall routinely and periodically inspect the Licensed Premises, in an effort to ensure that it is safe for the intended use;
 - c. CITY shall provide the same level of supervision, signage for rules, and enforcement on the Licensed Premises as the CITY provides for the River Trail;
 - d. CITY's use of the Licensed Premises shall be subject to RNC's right to restrict parking on the Licensed Premises during events at RNC. Following written notice

from RNC, CITY shall take reasonable measures in an effort to ensure that CITY and users of the River Trail abide by such restrictions during times of restricted use, including the posting of advance notices on the CITY's website providing information about use of the Licensed Premises; RNC shall provide CITY notice of any restriction and schedule within ten (10) working days of subject events;

- e. CITY shall take reasonable measures in an effort to ensure that the CITY and users of the River Trail abide by all traffic and parking signs and periodic restrictions on use as required by RNC;
 - f. CITY and users of the River Trail may use RNC restrooms and water fountain during the hours that the RNC Visitor Center is open. In consideration of this use, CITY shall provide paper products and soap to stock RNC restrooms. If CITY desires an additional or new water fountain at RNC, CITY shall install and/or replace and thereafter maintain the new exterior water fountain;
 - g. CITY shall be responsible for regular trash removal from two (2) receptacles within the Licensed Premises; and
 - h. CITY may install a sign on the Licensed Premises designating 150 Francisco Lemos as the trailhead for the River Trail in a mutually agreed upon design and location. CITY shall not install, place, or use any signage without the prior written consent of the RNC. RNC's consent shall be subject to the RNC's sign regulations, if applicable, and shall not be unreasonably withheld or delayed.
6. Repairs. CITY shall supply and replenish decomposed granite on the Licensed Premises, as reasonably requested by RNC, for RNC to fill potholes and gullies on the Licensed Premises due to ordinary wear and tear. CITY shall level and compact the surface of the Licensed Premises no less than once each calendar year, at such a time and date as mutually agreed upon by RNC and CITY. In the event of a tree falling or severe storm water run-off damage on the Licensed Premises, RNC shall notify CITY of any assistance needed and CITY shall make its best efforts to restore the Licensed Premises to a safe and usable condition at a time and on a date mutually agreed upon by RNC and CITY. In the event parking stops are damaged or removed from the Licensed Premises, CITY shall replace and ensure parking stops are anchored in the ground, as needed, for all parking spaces.
7. Insurance. CITY will include the Licensed Premises in its liability insurance coverage at a level consistent with other CITY properties. CITY will provide RNC proof of coverage annually upon request.
8. Alterations and Improvements. Except as otherwise provided herein, CITY shall not make any alterations, additions, or improvements to the Licensed Premises, without the prior written approval of RNC, such approval not to be unreasonably withheld or

delayed. If authorized, all permanent improvements shall become the property of the RNC.

9. Access. RNC shall maintain its access to the Licensed Premises at all times for any purpose.
10. Termination for Safety Violation or Unlawful Use. CITY shall not use or occupy nor permit the Licensed Premises or any part thereof to be used or occupied by the City and users of the River Trail for any unlawful purpose, or for any purpose or in any manner which is in violation of any present or future governmental laws or regulations. CITY shall comply with all laws, ordinances, orders, jurisdiction thereof relating to the use, condition, or occupancy of the Licensed Premises. Notwithstanding any other provision of this License, any violation of this provision, or a gross violation of any safety-related provision herein, CITY will cease operations and public access immediately to the affected area and take corrective action.
11. **DISCLAIMER OF WARRANTIES. THIS LICENSE IS SUBJECT TO RECORDED EASEMENTS AND IS PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.**
12. Assignment or Sublicense. Neither party shall assign this License or in any respect assign or sublicense the Licensed Premises or any of its rights hereunder, in whole or in part, without the express prior written consent of the other party.
13. Casualty. In the event of property damage caused by CITY or a user(s) of the River Trail, CITY will endeavor to restore all damages within thirty (30) days of such damage and/or written notice from RNC. The CITY may make a claim under its insurance policies, which may delay the repair time. Any delays caused by insurance will adjust the repair period accordingly.
14. Performance by RNC. If CITY fails to perform any of its obligations after the cure period, RNC may, at its option, perform any such obligation and CITY shall pay RNC, upon demand, all costs and expenses incurred by RNC.
15. No Other Relationship. This License constitutes the entire agreement between RNC and CITY with respect to the Licensed Premises. Nothing contained herein shall be construed to create any principal/agent, employer/employee, joint venture, partnership, or other relationship or arrangement between RNC and CITY.
16. Default. If either party hereto shall fail to perform any obligation of such party as herein set forth, and such failure shall continue for a period of thirty (30) days after written notice of default, except for any CITY's insurance obligations as specified above, the nondefaulting party has the right, at such party's option, and in addition to any other

remedies available at law or in equity, to terminate this License by notice to the party in default. The failure of either party to declare any default immediately upon the occurrence thereof or delay in taking any action in connection therewith shall not waive such default, but such party shall have the right to declare any such default at any time and take such action as might be authorized hereunder or that may be available at laws or in equity.

17. Notice. Any notice or document required or permitted to be delivered hereunder shall be deemed to be delivered, whether or not actually received, when deposited in the United States mail, postage prepaid, or certified mail, return receipt requested, addressed to the parties hereto at their respective addresses as set forth below or at such other address as they have heretofore specified by written notice delivered in accordance with the terms hereof:

RNC: RIVERSIDE NATURE CENTER ASSOCIATION, INC.
Attention: Executive Director
150 Francisco Lemos
Kerrville, TX 78028

CITY: CITY OF KERRVILLE
Attention: City Manager or designee
City Hall, 701 Main Street
Kerrville, TX 78028

18. Warrant of Capacity. Each individual and entity executing this License hereby represents and warrants that he, she, or it has the capacity set forth on the signature page hereof with full power and authority to bind the party on whose behalf he, she, or it is executing this License to the terms hereof.
19. Approval Authority. In this License, wherever an act requires approval by or consent of the CITY such approval or consent may be obtained from the City Manager or designee. In this License, wherever an act requires approval by or consent of the RNC such approval or consent may be obtained from the RNC President or designee.
20. Governing Law and Enforcement. This License shall be governed by the laws of the State of Texas and shall be performable in Kerr County. Venue for any dispute arising between the parties to this License shall be in Kerr County, Texas.
21. Attorney's Fees. In the event any party brings or pursues any right, remedy and/or proceeding regarding or relating to this License and/or enforcement of or for any default under this License, the party substantially prevailing shall recover and be paid all reasonable attorney's fees, costs and expenses incurred by that party substantially prevailing from and by the party not substantially prevailing who shall pay such fees, costs and expenses.

22. Responsibility. CITY and RNC is responsible for its guests and invitees on the Licensed Premises. CITY shall be liable for all liability, costs, and claims arising from the CITY's or public's use of the Licensed Premises for accessing the river trail.
23. No Title. This License shall not vest any title to the CITY and shall not be any public dedication.
24. No Recording. This License shall not be recorded in the deed records of Kerr County, Texas.
25. Negotiation to Sell or Lease Property. Where RNC decides to pursue the sale or lease of its property or the Licensed Premises, RNC shall provide written notice to the CITY of such decision and negotiations within a reasonable period.

SIGNED and agreed by the authorized representatives of RNC and CITY on the dates indicated below.

RIVERSIDE NATURE CENTER
ASSOCIATION, INC.

CITY OF KERRVILLE

By: 
Peter W. Lewis, President

By: _____
Todd Parton, City Manager

Date: 10.3.16

Date: _____

ATTEST:

Brenda G. Craig, City Secretary

APPROVED AS TO FORM:

Michael C. Hayes, City Attorney

Agenda Item:

3F. Promoter racing agreement between City of Kerrville, Texas and High Five Events, LLC. (staff)

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

SUBJECT: Renewal of the five year agreement with High Five Events, LLC for the production of the Kerrville Triathlon Festival

FOR AGENDA OF: October 11, 2016 **DATE SUBMITTED:** September 30, 2016

SUBMITTED BY: Ashlea Boyle **CLEARANCES:** E.A. Hoppe
Assistant Director of Parks and Recreation Deputy City Manager



EXHIBITS: Agreement

AGENDA MAILED TO:

APPROVED FOR SUBMITTAL BY CITY MANAGER:



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

PAYMENT TO BE MADE TO:

REVIEWED BY THE DIRECTOR OF FINANCE:

SUMMARY STATEMENT

The *Kerrville Triathlon Festival*, produced by High Five Events in Austin, has been held in Kerrville at the end of September for the past six years. This multi-day event consists of several different activities including a sprint distance triathlon, half distance triathlon, quarter distance triathlon, aquabike competition, a free kid's fun run, and a sports exposition. The current multi-year agreement for this event expired with the conclusion of the 2016 triathlon held September 24th-25th.

Attached is the final draft of the multi-year agreement that has been negotiated between the City of Kerrville and High Five Events for years 2017-2021.

RECOMMENDED ACTION

Staff recommends authorization for the City Manager to execute the agreement between the City of Kerrville and High Five Events, LLC as presented.

**PROMOTER RACING AGREEMENT BETWEEN CITY OF KERRVILLE, TEXAS
AND HIGH FIVE EVENTS, LLC
2017-2021**

This Agreement is entered into this _____ day of _____, 2016, by and between the City of Kerrville, ("City") and High Five Events, LLC (hereinafter referred to as "Promoter").

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

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

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

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

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

1. Definitions.

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

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

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

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

n. "Moratorium Period" means that period of time commencing twenty-four (24) hours prior to the commencement of the applicable Augmented Triathlon Period and ending with the conclusion of such Augmented Triathlon Period.

o. "Participants" means the organizations and personnel directly involved in the production and carrying out of the Triathlon Event, such as equipment providers, race sponsors, and supporting personnel including contract staff, as well as race participants.

p. "Private Property" means any real property within the Triathlon Area not owned or leased by the City.

q. "Route" means the surface over the specific route through the City Streets over which the Triathlon Event shall be conducted and includes all parts of the Triathlon circuit, the specifics of which may be changed from time to time during contract period with the permission and cooperation of the City.

r. "Spectator" means each person or those people, other than Participants, within the Triathlon Area for the purpose of viewing a Triathlon Event.

s. "Street Repairs" means the restoration and repair determined necessary by the City that must be made to the City Streets, including medians, sidewalks and landscaping after the conclusion of each Triathlon Event in order to return the City Streets to their normal use by the public.

2. Premises.

a. City represents that it has the right and authority to grant the rights and privileges set forth herein, but only with respect to City Streets. City expressly disclaims any authority to affect Private Property rights of property owners or holders of property interests within the Triathlon Area, and this Agreement shall not be otherwise construed to affect the same.

b. None of the rights herein granted to Promoter are, nor shall they be construed as, a lease, easement, or other interest in land.

3. Term of Agreement.

The term of this Agreement shall commence on the Effective Date and cover the 2017-2021 Triathlon Events, terminating after the conclusion of the 2021 Triathlon Event, unless earlier terminated in accordance with Sections 13 or 14 of this Agreement. Any reference herein

to the term of this Agreement shall, unless otherwise indicated, mean the term of the original Agreement and any extension thereto.

4. Use and Occupancy; Exclusivity.

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

- a. During the Augmented Triathlon Period, the exclusive right to install and remove equipment and to construct, place or otherwise locate Triathlon Materials within the Triathlon Area, except for the portions of the Triathlon Area already subject to lease, agreement, other rights extended by the City, or that are Private Property. Motor and pedestrian traffic may be disrupted temporarily during the Augmented Triathlon Period with the prior permission of the City Manager, provided that Promoter provides a traffic barricade plan that meets the approval of the appropriate City departments. Triathlon Materials shall be removed from all areas within the Triathlon Area by the end of the Augmented Triathlon Period.
- b. During each Triathlon Period, commencing with the Triathlon Event in 2017, the exclusive right to produce and conduct the Triathlon Event in the Triathlon Area.

5. Promoter Covenants.

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

- a. Use the Triathlon Area only for the purposes of the Triathlon Event(s), and other Triathlon-related activities and only at the time and in the places expressly permitted in this Agreement or as otherwise permitted by the City Manager not inconsistent with this Agreement. City reserves and has exclusive rights to the use and occupancy of the City Streets at all times except as expressly permitted to Promoter herein. City shall have the right to permit the use and occupancy of the Triathlon Area on dates other than those provided for in this Agreement for any purpose not inconsistent with this Agreement.
- b. Produce the Events and other Triathlon-related activities with respect to each Triathlon Event in the Triathlon Area each year of the term hereof, on the days and dates as determined hereunder.
- c. Restrict all of its activities under this Agreement to the City Streets and any other property to which, or in which, it secures privileges.
- d. Obtain a release and waiver of liability or an appropriate indemnity agreement in favor of the City from all registered participants and volunteers.
- e. Pay, at its sole expense, the Triathlon Event Damages resulting from each Triathlon Event within 30 days of receiving an invoice from the City.

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

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

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

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

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

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

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

l. Actively facilitate and assist with coordinating all City services including sanitation services, fire and emergency medical related services, law enforcement, Park and Recreation Department assistance, water services and security services in accordance with this Agreement. A representative of Promoter shall be present at all event coordination meetings as deemed necessary by the City for effective Triathlon Event planning and implementation.

- m. Coordinate with designated City Representative on all efforts for each Triathlon Event.
- n. Submit Shuttle Plan at least 30 days prior to each Triathlon Event to include organization providing said shuttling services.
- o. Provide Emergency Medical Service Plan at least 30 days prior to each Triathlon Event to include entity providing the service and approval from the Kerrville Fire Department.
- p. Obtain a parade permit from the Kerrville Police Department at least 30 days prior to each Triathlon Event.
- q. Submit documentation of written approval verifying use of private and non-city owned facilities/property to be utilized during event (i.e. band/water stations, etc.) to City Representative at least 30 days prior to each Triathlon Event.
- r. Obtain all permits for facility rentals, health, fire, police, electrical, etc. and provide evidence of such permits to City Representative prior to the start of each Triathlon Event.
- s. Be responsible for all expenses associated with Police, Fire, and EMS, required to stage the Triathlon Event to the extent they are required under this Agreement.

6. City Covenants.

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

- a. Use its best efforts to assist Promoter in obtaining permits and licenses from the City necessary for Promoter to take full advantage of its privileges under the Agreement, upon normal application and qualification by Promoter.
- b. At least sixty (60) days prior to the date of approval of the Detailed Race Plans and continuing until commencement of the Moratorium Period, notify Promoter of planned developments within, on, or adjacent to, the Triathlon Area that may, in the City's reasonable opinion, affect Promoter's planning and staging of any Triathlon Event or other Triathlon related activity. Notwithstanding the foregoing, when City becomes aware of any planned development within, on, or adjacent to, the Triathlon Area that the City believes may affect Promoter's planning and staging of any Triathlon Event, submit nonconfidential information of which it is aware to Promoter.
- c. Approve the Detailed Race Plans, in writing, at least 30 days prior to each Triathlon Event. If necessary, City and Promoter shall work together to revise said Plans in order for City to issue such approval.
- d. Require any essential changes to the Detailed Race Plans, following the approval

provided for above, or make additional requirements for any Triathlon Event after reasonable consultation with Promoter.

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

7. Entry and Inspection.

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

8. Indemnification.

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

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

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

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

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

9. Insurance

Prior to the commencement of any work under this Agreement, Promoter shall furnish copies of all required endorsements and a completed Certificate(s) of Insurance to the City's Parks and Recreation Department, which shall be clearly labeled "2017-2021 Kerrville Triathlon Event" in the Description of Operations block of the Certificate. The Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. City will not accept Memorandum of Insurance or Binders as proof of insurance. The certificate(s) or form must have the agent's signature and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to City. City shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by City's Parks and Recreation. No officer or employee, other than City's Director of General Operations, shall have authority to waive this requirement.

City reserves the right to review the insurance requirements of this Section during the effective period of this Agreement and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by City's Director of General Operations based upon changes in statutory law, court decisions, or circumstances surrounding this contract. In no instance will City allow modification whereupon City may incur increased

risk.

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

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

For:

- (1) Owned/leased vehicles
- (2) Non-owned vehicles
- (3) Hired vehicles

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

City of Kerrville
Attn: Parks and Recreation Department
701 Main Street
Kerrville, Texas 78028

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

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

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

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

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

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

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

10. Triathlon Events.

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

September 23-24, 2017
September 29-30, 2018
September 28-29, 2019
September 26-27, 2020
September 25-26, 2021

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

11. Other Events.

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

12. Conditions Precedent to Effectiveness of Agreement.

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

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

13. Remedies for Breach.

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

- a. In the event that:
 - (1) Promoter breaches or defaults in the performance or fulfillment of any material term, covenant or condition herein, other than its obligations pursuant to Section 5, contained on its part to be performed or filled and shall fail to cure such breach or default within 30 days following written notification from City to Promoter (or, if Promoter is diligently pursuing a cure, such greater time as may be reasonably necessary to completely cure such breach or default as allowed by City in its sole discretion) specifying the breach or default or defaults complained of and the date on which its rights hereunder will be terminated;
 - (2) A petition in bankruptcy is filed by or against Promoter and not released within 60 days thereafter;
 - (3) A receiver, trustee in bankruptcy or similar officer is appointed to take charge of Promoter or its property;

(4) Promoter shall make a general assignment for the benefit of creditors; or

(5) Promoter or any of its officers are convicted, plead nolo contendere, enter into a formal agreement in which they admit guilt, enter a plea of guilty, or otherwise admit culpability to criminal offenses of bribery, kickbacks, collusive bidding, bid-rigging, antitrust, fraud, undue influence, theft, racketeering, extortion or any offense of a similar nature, in connection with Promoter's business;

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

b. Any election on the part of City to terminate this Agreement must be in writing, properly executed by City and served upon Promoter. No termination of this Agreement on account of default by Promoter shall be or become effective by operation of law or otherwise, unless and until City shall have given such notice to Promoter, specifying the default and Promoter shall have failed to cure the default so specified within 30 days following said written notice (or, if Promoter is diligently pursuing a cure, such greater time as may be necessary to completely cure such breach or default as is allowed by City in its sole discretion).

c. Promoter may terminate this Agreement upon the material breach or default in the performance or fulfillment of any material term, covenant or condition herein by the City, provided Promoter shall have given notice in writing to the City, specifying the default and City shall have failed to cure the default so specified within 30 days following said written notice (or, if City is diligently pursuing a cure, such greater time as may be necessary to completely cure such breach or default as is allowed by Promoter in its sole discretion).

d. Notwithstanding any other termination provisions herein, City may, in its sole discretion, terminate this Agreement by written notice to Promoter on or before March 1 of any Triathlon Event year, in the event Promoter has failed to make satisfactory progress toward the requirements of Section 5 with respect to the next occurring Triathlon Event, provided City has previously given notice to Promoter of such failure and Promoter shall have failed to cure the failure so specified within 30 days following such notification (or, if Promoter is diligently pursuing a cure, such greater time as may be reasonably necessary to completely cure such failure as allowed by City in its sole discretion).

e. Notwithstanding anything in this Agreement to the contrary, the parties reserve the right to seek specific performance of this Agreement and either party hereto shall have the right to enjoin any anticipatory repudiation of this Agreement by the other.

14. Right to Terminate for Reasons Other than Breach.

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

15. When Rights and Remedies Not Waived.

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

16. Assignment and Subcontracting.

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

17. Notices.

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

follows:

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

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

18. Construction of this Agreement.

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

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

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

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

19. Status of Promoter.

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

20. Legal Authority.

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

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

c. Each party shall have the right, at its option, to either temporarily suspend or permanently terminate this Agreement if there is a dispute as to the legal authority of the other party or the person signing the Agreement to enter into this Agreement.

21. No Third Party Beneficiary.

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

22. Parties' Obligations with Respect to Confidential Information.

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

a. Definition of Confidential Information. As used in this Agreement, the term "Confidential Information" means all information, of any nature and in any form, regardless of when given, that (i) is disclosed or provided by or through Promoter to the City pursuant to performance of this Agreement, including but not limited to documents referenced in subsection (e) hereof; and (ii) has been clearly marked or indicated in writing as being confidential by Promoter. Information falling within this definition shall be treated by the City as confidential proprietary information of Promoter, subject to the provisions of the Texas Public Information Act and under any court order. Information not so marked or indicated will not be considered to be Confidential Information.

b. Use of Confidential Information. Except as expressly provided in this Agreement or as otherwise mandated by the Texas Public Information Act, or other applicable law, the City will not disclose Confidential Information to anyone without the prior written consent of Promoter. The City will not use, or permit others to use, Confidential Information for any purpose other than actions incidental to the performance and enforcement of this Agreement between the City and Promoter, including but not limited to auditing of records by Promoter by the City Auditor and/or other representatives of the City. The City will take all reasonable measures to avoid disclosure, dissemination or unauthorized use of Confidential Information.

c. Public Records Requests. The parties recognize that the mere marking of a document as "Confidential" does not render it conclusively confidential under the Texas Public Information Act. In the event that the City is served with an open records request or subpoena from any third party requesting all or part of any Confidential Information as defined herein, the City shall give timely notice to Promoter of the request or subpoena within the time parameters of the Texas Public Information Act or of any applicable court rule. Upon receipt of the notice from the City, Promoter may, at its option, immediately seek judicial relief (including, without limitation the issuance of a temporary restraining order) preventing the disclosure of the Confidential Information or make arguments to the

Texas Attorney General, as provided for under the Texas Public Information Act and shall defend, save and hold harmless and indemnify the City and its agents and employees with respect to such issues. Promoter's failure to seek judicial relief or to seek a ruling from the Texas Attorney General within 10 days of notice from the City or the failure of Promoter to notify City of such efforts shall entitle the City to disclose the Confidential Information to the person seeking the disclosure.

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

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

23. Examination of Records.

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

24. Post Event Report.

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

25. No Discrimination in Employment.

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

26. Taxes, Permits and Licenses.

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

27. Force Majeure.

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

28. Agreement as Complete Integration-Amendments.

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

29. Incorporation of Exhibits.

Each of the Exhibits listed below is an essential part of the Agreement, which governs the rights and duties of the parties, and shall be interpreted in the order of priority as appears below:

Exhibit A: Detailed Race Plans

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

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

CITY OF KERRVILLE, TEXAS

HGH FIVE EVENTS, LLC

Todd Parton, City Manager

Name: _____
Title: _____

ATTEST:

Brenda G. Craig, City Secretary

APPROVED AS TO FORM:

Michael C. Hayes City Attorney

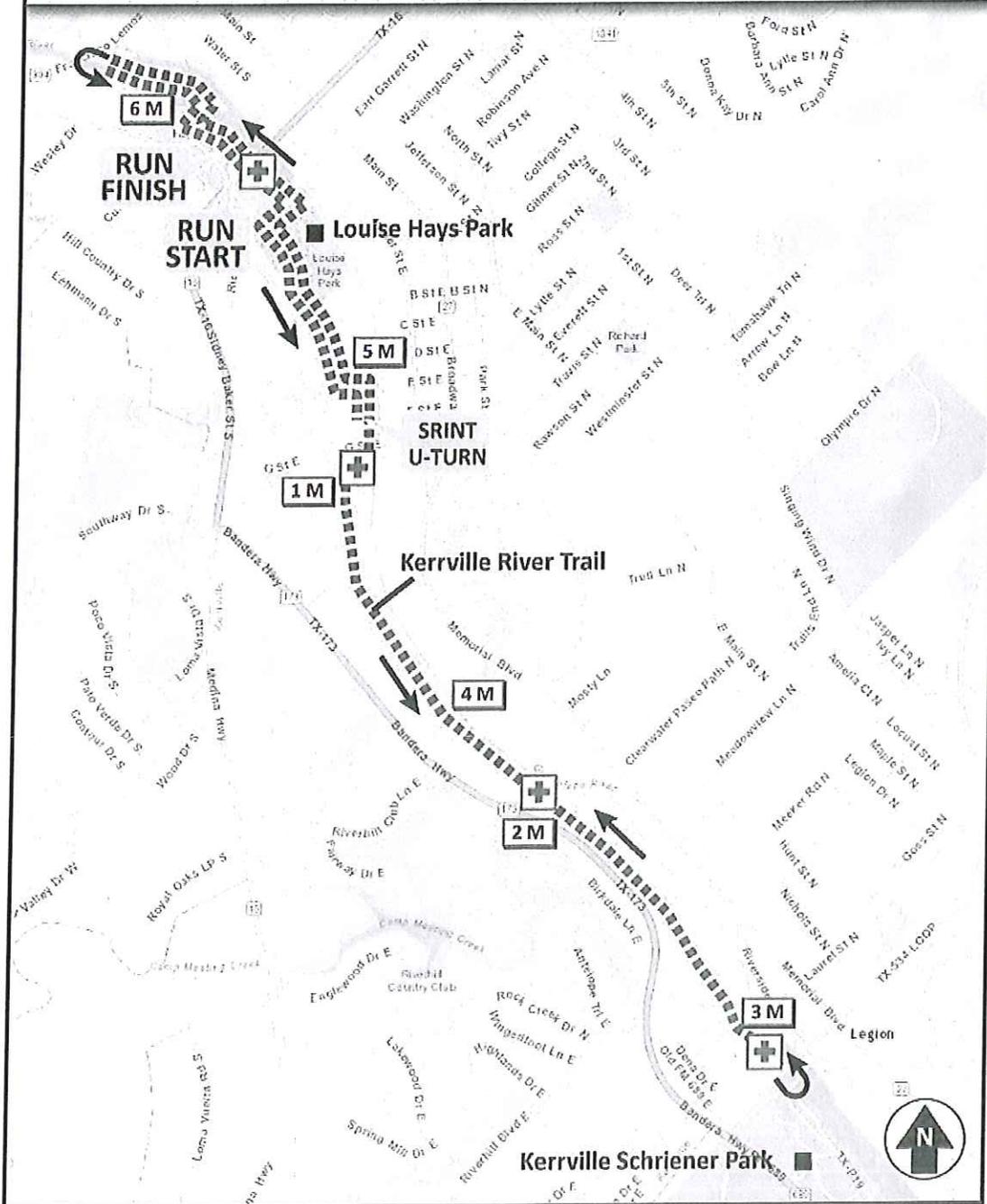
APPROVED AS TO CONTENT:

Ashlea Boyle, Assistant Director of Parks and Recreation



RUN COURSE

- Half**
 13.1 miles (2 Loops)
- Quarter**
 6.55 miles (1 Loop)
- Sprint**
 3.1 miles
- +
Aid Station



KERRVILLE Triathlon Festival




BIKE COURSE

Sprint

- Right turn onto Guadalupe St.
- Right turn onto Water St.
- Right turn onto Hwy 27
- Right turn onto Riverside Dr.
- Right turn onto Hwy 534
- Right turn onto Hwy 173
- Right turn onto Hwy 16
- Right turn onto La Casa Dr.
- Left turn onto Park Ln.
- (Start 2nd Loop)

or

- Straight to Finish in Louise Hays Park
- Sprint Distance = 2 loops (15 miles)**

Half & Quarter

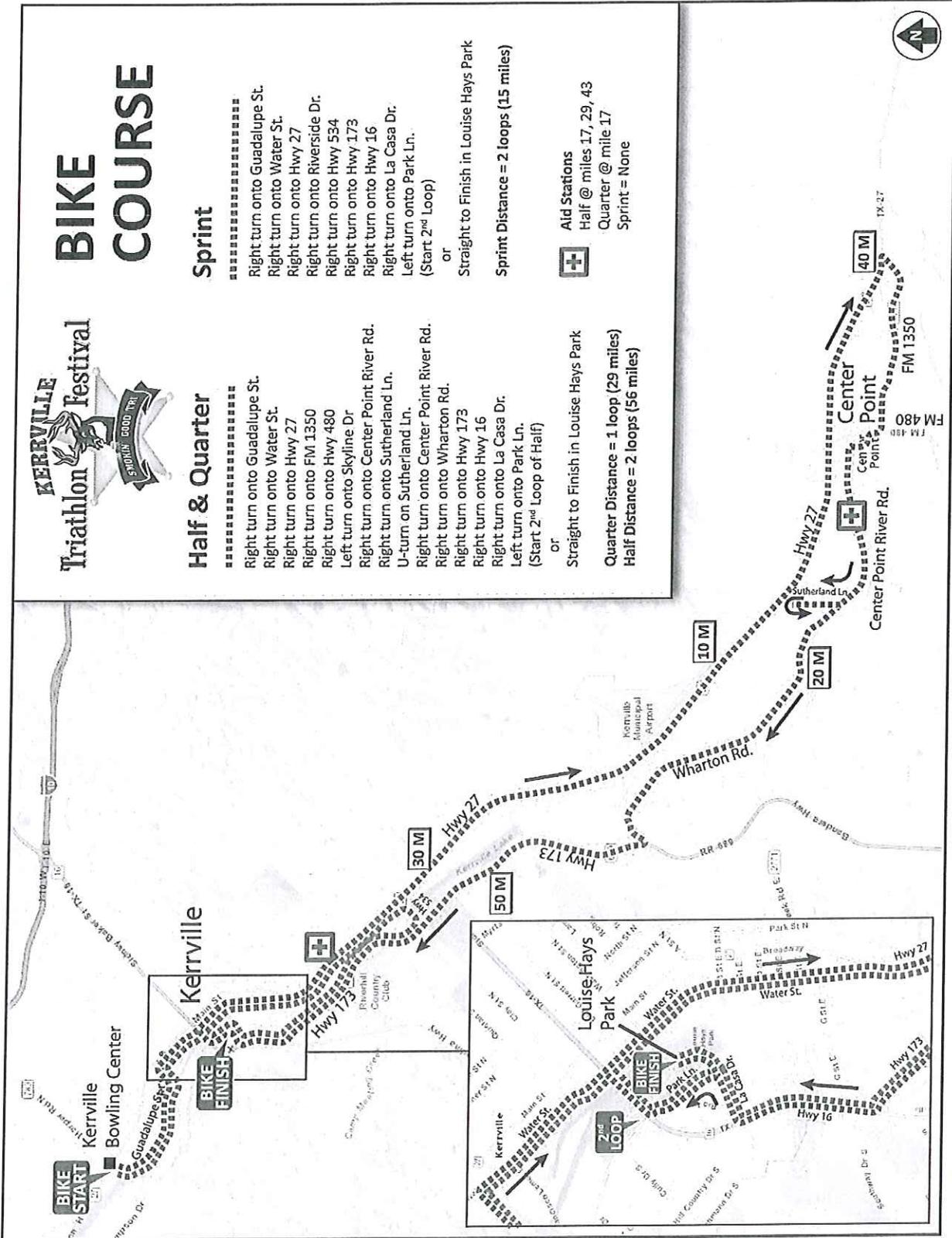
- Right turn onto Guadalupe St.
- Right turn onto Water St.
- Right turn onto Hwy 27
- Right turn onto FM 1350
- Right turn onto Hwy 480
- Left turn onto Skyline Dr
- Right turn onto Center Point River Rd.
- Right turn onto Sutherland Ln.
- U-turn on Sutherland Ln.
- Right turn onto Center Point River Rd.
- Right turn onto Wharton Rd.
- Right turn onto Hwy 173
- Right turn onto Hwy 16
- Right turn onto La Casa Dr.
- Left turn onto Park Ln.
- (Start 2nd Loop of Half)

or

- Straight to Finish in Louise Hays Park
- Quarter Distance = 1 loop (29 miles)**
- Half Distance = 2 loops (56 miles)**



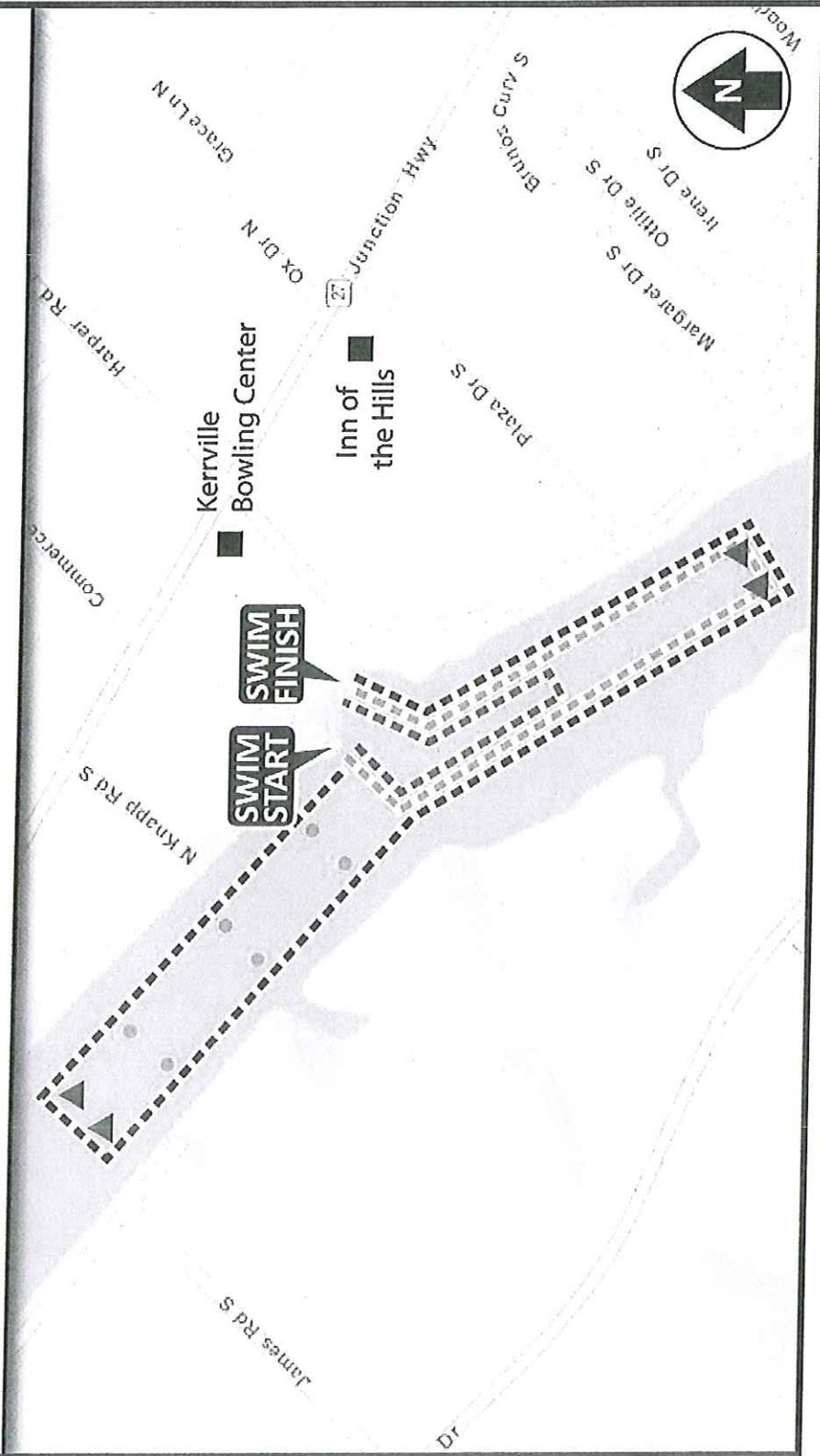
- Aid Stations**
- Half @ miles 17, 29, 43
- Quarter @ mile 17
- Sprint = None





SWIM COURSE

- Half 1.2 miles
- Quarter 1000 m
- Sprint 500 m



Agenda Item:

3G. Approval of an agreement between the City of Kerrville and Texas First Group for interim city manager services.

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

SUBJECT: Approval of an agreement between the City of Kerrville and Texas First Group for interim city manager services

FOR AGENDA OF: Oct. 11, 2016 **DATE SUBMITTED:** Oct. 3, 2016

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

EXHIBITS: Agreement for Interim City Manager Services

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

Attached is an agreement with Texas First Group for the provision of interim city manager services. Pursuant to this agreement, Texas First Group will provide personnel appropriate to handle the responsibilities of interim city manager. Texas First Group will assign Mr. Don Davis to the position. The City of Kerrville will be billed on an hourly rate of \$103. A standard 40-hour work week is anticipated.

Mr. Davis has provided interim city manager services two other times to the City of Kerrville.

RECOMMENDED ACTION

This item has been provided for City Council consideration as directed by the City Council.

AGREEMENT FOR INTERIM CITY MANAGER SERVICES

State of Texas
County of Kerr

For good and valuable consideration, the receipt and sufficiency of which is hereby conclusively acknowledged, this agreement is made by and between the City of Kerrville, Texas, a Texas Municipal Corporation (hereinafter referred to as the "City") and Texas First Group Replacement Service, Inc., (hereinafter referred to as "Texas First Group").

Texas First Group shall provide personnel appropriate to handle the responsibilities of Interim City Manager of the City beginning on October 12, 2016. Incident to such responsibilities, the person assigned by Texas First Group shall have all powers and duties as set forth in City's Home Rule Charter, City Ordinances, City Policy, State law, and as further delegated by the City Council. The parties agree that Don Davis shall handle the Interim City Manager responsibilities during the term of this agreement. The parties agree and acknowledge that Texas First Group and/or Don Davis may continue professional consultation work for other clients during the term of this agreement, and further agree and acknowledge that time spent on such consultation will not be billed to the City.

Texas First Group acknowledges that its provision of services is at the discretion of the City Council and that the City Council may terminate this agreement at its discretion at any time, with or without cause or prior notice. The hours of the work week for the Interim City Manager shall be determined by the City Council but the parties agree that most weeks will consist of at least forty (40) hours of work.

In consideration of its agreement, the City shall 1) Pay to Texas First Group the sum of \$103.00 per hour for its services, with a minimum billing increment of thirty (30) minutes; 2) Reimburse Texas First Group for any direct expenses incurred by the Interim City Manager in connection with providing services performed for the City at City's request; 3) Pay automobile mileage (at the current IRS rate) for the use of his car for City business, such pay not to apply to the Interim City Manager's travels to and from work. The parties agree that the City shall not make nor be responsible for any deductions or withholdings for any pay or benefits associated with this agreement. Responsibility for all required tax and other payments remains solely with Texas First Group and Don Davis. The City will not provide any other benefits to Texas First Group or Don Davis, to include medical/dental, retirement, or leave time.

Texas First Group will provide a billing statement to the City on a bi-weekly basis and the City shall make payment to Texas First Group pursuant to the billing statement in accordance with the City's payment policies.

In the event that the City permanently hires the person placed by Texas First Group to perform the services pursuant to this agreement for the position described in this

agreement or within sixty (60) days of the termination of the agreement, the City agrees to pay an additional consulting fee to Texas First Group in an amount equal to ten percent (10%) of the annualized salary of the full time position being filled by the person performing interim services pursuant to this agreement.

The parties agree that the person named above to handle the Interim City Manager duties for the City, or any other individual serving in that capacity with the City through Texas First Group, will be serving in the capacity of a public official for the City. To the extent permitted by law, the City hereby agrees to indemnify and hold harmless Don Davis and/or Texas First Group, and its owners, Kerry Sweatt and W.J. Sweatt, from and against any and all claims, causes of action, damages, losses, and/or costs, including reasonable attorneys' fees and expenses, resulting from or arising out of the services provided to the City pursuant to this agreement to the extent such liability or costs are covered under any existing insurance policy or coverage under an interlocal agreement providing liability coverage to the City officials and employees while acting within the scope of their employment with the City. City agrees to obtain an endorsement to its insurance policy or interlocal agreement to provide coverage for the Texas First Group, and its owners, Kerry Sweatt and W.J. Sweatt. The indemnity provided by the City herein shall not exceed the limits of liability coverage afforded to the City through its General Liability Insurance Policy coverage from the Texas Municipal League Intergovernmental Risk Pool.

To the extent permitted under its workers' compensation coverage, City will provide workers' compensation coverage for the Interim City Manager while in the scope of performing services under this agreement.

Notices to the parties shall be directed as follows:

To the City: Kim Meismer, Director of General Operations
 City Hall, City of Kerrville
 701 Main Street
 Kerrville, TX 78028-5301

To Texas First Group: Kerry Sweatt, Partner
 Texas First Group
 P.O. Box 157
 Leakey, TX 78873

The parties specifically reserve the right to designate other addresses for notices in writing from time to time.

This agreement constitutes the full and complete agreement of the parties. This agreement contains all the commitments and the agreements of the parties and any oral or written commitments not contained herein shall have no force or affect to alter any term or condition of this agreement. Any future amendment of this agreement shall be in writing and shall require the written consent of both parties.

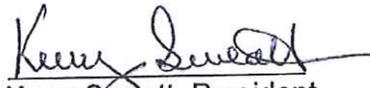
This agreement is governed by and is to be construed and enforced in accordance with the laws of the State of Texas and of the United States.

The parties agree and consent to the jurisdiction of and venue in the Courts of Kerr County, Texas, and of the United States District Court for the Western District of Texas and acknowledge that such courts shall constitute proper and convenient forums for the resolution of any actions among the parties with respect to the subject matter hereof.

The parties further agree that such courts shall be the exclusive forums for the resolution of any actions among the parties with respect to the subject matter hereof.

EXECUTED in duplicate originals to be effective on the _____ day of October, 2016.

Todd Parton, City Manager
City of Kerrville, Texas


Kerry Sweatt, President
Texas First Group

ATTEST:

Brenda G. Craig, City Secretary

ATTEST:

Michael C. Hayes, City Attorney

Agenda Item:

4A. Ordinance No. 2016-14, amending Chapter 18 "Animals", of the City's Code of Ordinances by amending Section 18-31 "Dog and Cat Registration" and Section 18-32 "Rabies Vaccination"; containing a savings and severability clause; providing an effective date; and providing other matters relating to the subject.
(staff)

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

SUBJECT: Ordinance No. 2016-14 amending Section 18-31. Dog and cat registration. and Section 18-32. Rabies vaccination. of the City of Kerrville Code of Ordinances

FOR AGENDA OF: Oct. 11, 2016 **DATE SUBMITTED:** Oct. 3, 2016

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

EXHIBITS: Amendments to Code of Ordinances

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

Attached are revisions to the City of Kerrville ordinances pertaining the animal control and rabies vaccinations. City Council directed city staff to revise the city's codes to allow for rabies vaccinations of up to 3 years. The existing code requires that cats and dogs of at least 4 months of age be vaccinated annually. There are now rabies boosters available that have a maximum labeled durability of up to 3 years. State law now allows that rabies be administered on the basis of the manufacture's specified durability not to exceed 3 years.

Additional sections of the city's rabies vaccination ordinance have been revised to coincide with state statute and current city practice.

Section 18-31 of the City of Kerrville Code of Ordinances was adopted in 1968 and required that dogs and cats be registered with the city. Kerrville does not have an animal control department and has not had an animal registration program for many years. This section has been amended to correspond with the requirement to vaccinate dogs and cats over the age of 4 months against rabies.

RECOMMENDED ACTION

City staff recommends that these amendments to Sections 18-31 and 18-32 of the City of Kerrville Code of Ordinances be amended as presented.

**CITY OF KERRVILLE
ORDINANCE NO. 2016-14**

AN ORDINANCE AMENDING CHAPTER 18 “ANIMALS”, OF THE CITY’S CODE OF ORDINANCES BY AMENDING SECTION 18-31 “DOG AND CAT REGISTRATION” AND SECTION 18-32 “RABIES VACCINATION”; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING AN EFFECTIVE DATE; AND PROVIDING OTHER MATTERS RELATING TO THE SUBJECT

WHEREAS, Chapter 18 of the City’s Code of Ordinances (“Code”) provides regulations regarding the ownership, care, and keeping of animals within the City; and

WHEREAS, Section 18-31 of the Code currently requires, in general, the registration of any dog and cat within the City; and

WHEREAS, Section 18-32 of the Code currently requires, in general, the owner of each dog or cat within the City to vaccinate their pet against rabies; and

WHEREAS, following a presentation at a recent meeting, City Council directed staff to review applicable state law, meet with Kerr County and discuss the County’s provision of animal control services, and then return to Council with recommended amendments to the City’s animal control regulations with respect to Sections 18-31 and 18-32 as referenced above; and

WHEREAS, the City Council of the City of Kerrville, Texas, finds it to be in the public interest to amend Sections 18-31 and 18-32 as provided herein;

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

SECTION ONE. Chapter 18 “Animals”, Article II “Animal Control; Rabies” of the Code of Ordinances of the City of Kerrville, Texas, is amended by revising Section 18-31 to add the language that is underlined (added) and to delete the language that is bracketed and stricken (~~deleted~~) as follows:

“Sec. 18-31. Dog and cat ~~registration~~ vaccination.

~~[(a) Required.]~~ It shall be unlawful for any person to own, keep, harbor, or have custody or control of any dog or cat over four months of age within the City without ~~first registering~~ having each dog or cat vaccinated as provided in this ~~section~~ article.

~~[(b) Registration fee.—A registration fee of \$4.00 shall be paid to local veterinarians at the time of rabies vaccination and upon procuring a rabies vaccination certificate or to the city health department after showing proof of rabies vaccination. The term “proof” shall mean either (i) presentation of a metal vaccination tag issued by a licensed veterinarian showing that such vaccination is current and can be verified as belonging to the specific animal wearing the tag, or (ii) presentation of a current rabies vaccination certificate issued by a licensed veterinarian. This fee shall be apportioned as follows:~~

~~(1) — Three dollars to be paid to city treasurer.~~

~~(2) — One dollar to be paid to issuing veterinarian.~~

~~(Noted exception: During annual rabies vaccination drives, all pets may be registered for a reduced fee of \$1.00. Any registration fees collected during this period will be paid to the city.) The fees and charges set forth and/or established in this section may be changed and amended, from time to time, by resolution of the city council.~~

~~(c) When to register. — Registration of the animal must be made within 30 days after moving to the city or after obtaining a dog or cat over four months of age, except that this requirement will not apply to a nonresident individual keeping a dog or cat within the city for no longer than 0 days.~~

~~(d) Records. — The animal control supervisor shall cause to be maintained a current record disclosing rabies tag numbers of dogs and cats registered, and the names and addresses of persons to whom the registrations are issued.~~

~~(e) Term. — The registration shall be valid on a concurrent term with the rabies vaccination.~~

~~(f) Fee exemption. — No registration fee shall be charged for any assistance animal actually used by a person with a disability, as defined in V.T.C.A., Human Resources Code § 121.002(1) and (4), (Coded 1968, art. 10-I-3(b)(1).]”~~

SECTION TWO. Chapter 18 “Animals”, Article II “Animal Control; Rabies” of the Code of Ordinances of the City of Kerrville, Texas, is amended by replacing Section 18-32 in its entirety as follows:

“Sec. 18-32. Rabies vaccination.

(a) Each person who owns, keeps, or harbors a dog or cat within the City limits shall have the animal vaccinated against rabies no later than four (4) months of age and thereafter, shall vaccinate the animal on a one (1) or three (3) year basis, depending on the type of vaccine used.

(b) For an animal to be considered currently vaccinated against rabies, the animal must have been at least three (3) months of age at the time of vaccination, at least thirty (30) days must have elapsed since the initial vaccination, and not more than thirty-six (36) months, depending on the vaccine used, can have elapsed since the last vaccination.

(c) A veterinarian who vaccinates a dog or cat as required in this section shall furnish the owner of the animal with an official rabies vaccination certificate containing the following information:

(1) The name, address, and telephone number of the owner or custodian of the animal;

- (2) Animal identification-species, sex (including neutered if applicable), approximate age, weight (pounds), predominant breed, and colors;
- (3) Vaccine information to include the product name, manufacturer, serial number, and maximum duration of immunity;
- (4) Date vaccinated;
- (5) Revaccination due date;
- (6) Rabies tag number matching the metal rabies tag issued in accordance with this section; and
- (7) The signature, signature stamp, or computerized signature of the veterinarian, and business address and license number.

(d) A veterinarian who vaccinates a dog or cat as required in this section shall furnish the owner or custodian thereof with a metal tag bearing a number matching the number placed on the certificate as specified in subsection (c) of this section.

(e) Each person who owns, keeps, or harbors a dog or cat within the City limits shall attach, and thereafter maintain at all times, the metal rabies tag issued pursuant to this section to the collar of the dog or cat for which it is issued.

(f) A veterinarian who issues a rabies vaccination certificate or the veterinary practice where the certificate was issued, shall retain a readily retrievable copy of the certificate for a period of not less than five (5) years.

(g) Where a veterinarian practice ceases the practice of veterinary medicine, the duplicate rabies vaccination certificates retained by that practice shall be turned over to the local rabies control authority. This requirement does not apply to the sale or lease of a practice when the records of the practice are transferred to a new owner or operator.

(h) Each person who owns, keeps, or harbors a dog or cat within the City limits shall (i) retain each rabies vaccination certificate until the animal receives a subsequent booster; and (ii) produce the certificate upon request by any local rabies control authority, public health official, animal control officer, police officer, or peace officer when the request is part of the requestor's official duty."

SECTION THREE. The City Secretary is authorized and directed to send this Ordinance to the publisher of the City's Code of Ordinances and the publisher is authorized to amend the Code to reflect the amendments of Chapter 18 as adopted herein, to correct any typographical errors, and to index, format, number, and letter the paragraphs to the existing Code, as appropriate.

SECTION FOUR. The provisions of this Ordinance are cumulative of all other Ordinances or parts of Ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior Ordinances or parts of Ordinances inconsistent

with or in conflict with any of the provisions of this Ordinance are expressly repealed to the extent of any such inconsistency or conflict.

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

SECTION SIX. The penalty for violation of this Ordinance is in accordance with the general penalty provision contained in Section 1-7, or its successor section, of the Code of Ordinances of the City of Kerrville, Texas, which provides for a fine not exceeding TWO THOUSAND DOLLARS (\$2,000.00).

SECTION SEVEN. Pursuant to Texas Local Government Code §52.013(a) and Section 3.07 of the City's Charter, the City Secretary is authorized and directed to publish the descriptive caption of this Ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

SECTION EIGHT. This Ordinance is effective immediately upon the expiration of ten days following publication, as provided for by Section 3.07 of the City Charter.

PASSED AND APPROVED ON FIRST READING, this _____ day of _____, 2016.

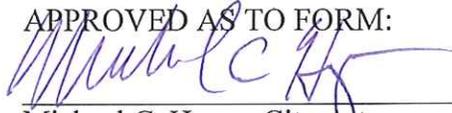
PASSED AND APPROVED ON SECOND AND FINAL READING, this _____ day of _____, 2016.

Bonnie White, Mayor

ATTEST:

Brenda G. Craig, City Secretary

APPROVED AS TO FORM:



Michael C. Hayes, City Attorney

Agenda Item:

4B. Ordinance No. 2016-18, granting to Atmos Energy Corporation, a Texas and Virginia Corporation, its successors and assigns, a franchise to furnish, transport and supply gas to the general public in the City of Kerrville, Kerr County, Texas, for the transporting, delivery, sale, and distribution of gas in, out of, and through said municipality for all purposes; providing for the payment of a fee or charge for the use of the streets, alleys, and public ways; repealing all predecessor ordinances; providing that it shall be in lieu of other fees and charges, excepting ad valorem taxes; prescribing the terms, conditions, obligations and limitations under which such franchise shall be exercised; providing a savings clause, a most favored nations clause, and a severability clause; and providing an effective date. (staff)

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

SUBJECT: Ordinance No. 2016-18, granting to Atmos Energy Corporation a franchise to furnish, transport, and supply gas to the general public within the City of Kerrville, for the transporting, delivery, sale, and distribution of gas in, out of, and through the City for all purposes; providing for the payment of a fee or charge for the use of the streets, alleys, and public ways, and providing other matters related thereto [**FIRST OF THREE ORDINANCE READINGS** (see §13.02, City Charter)]

FOR AGENDA OF: Oct. 11, 2016 **DATE SUBMITTED:** Oct. 3, 2016

SUBMITTED BY: Mike Hayes, *mkh*
City Attorney

CLEARANCES: Todd Parton, City Manager
Sandra Yarbrough, Finance
Dir.

EXHIBITS: Ordinance No. 2016-18

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

APPROVED FOR SUBMITTAL BY CITY MANAGER:

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 attached ordinance (“Franchise Ordinance”) will grant Atmos Energy Corp. (“Atmos”) a franchise for it to transport and furnish gas to residential, commercial, and industrial customers within the City. The Franchise Ordinance is necessary to authorize Atmos to continue utilizing City property (rights-of-way) for the transport and delivery of natural gas to customers within the City. Some significant aspects of the Franchise Ordinance include:

- The term of the franchise will extend through Dec. 31, 2026
- For use of the City’s rights-of-way, Atmos will pay City a franchise fee in the amount of 5% of Atmos’ Gross Revenues
- Atmos will extend its distribution main up to one hundred feet (100.0’) under certain conditions and has agreed not to arbitrarily refuse to provide service to anyone that its economically feasible for Atmos to serve
- Provisions that call for Atmos to relocate its gas lines at its expense under certain circumstances (e.g., street construction)

- Provisions for Atmos maintain a toll-free number and, in a good faith effort, maintain at least one local office for bill payments

Pursuant to the Charter, this Ordinance must be read at 3 regular Council meetings.

RECOMMENDED ACTION

Approval of Ordinance on 1st reading.

**CITY OF KERRVILLE, TEXAS
ORDINANCE NO. 2016-18**

AN ORDINANCE GRANTING TO ATMOS ENERGY CORPORATION, A TEXAS AND VIRGINIA CORPORATION, ITS SUCCESSORS AND ASSIGNS, A FRANCHISE TO FURNISH, TRANSPORT AND SUPPLY GAS TO THE GENERAL PUBLIC IN THE CITY OF KERRVILLE, KERR COUNTY, TEXAS, FOR THE TRANSPORTING, DELIVERY, SALE, AND DISTRIBUTION OF GAS IN, OUT OF, AND THROUGH SAID MUNICIPALITY FOR ALL PURPOSES; PROVIDING FOR THE PAYMENT OF A FEE OR CHARGE FOR THE USE OF THE STREETS, ALLEYS, AND PUBLIC WAYS; REPEALING ALL PREDECESSOR ORDINANCES; PROVIDING THAT IT SHALL BE IN LIEU OF OTHER FEES AND CHARGES, EXCEPTING AD VALOREM TAXES; PRESCRIBING THE TERMS, CONDITIONS, OBLIGATIONS AND LIMITATIONS UNDER WHICH SUCH FRANCHISE SHALL BE EXERCISED; PROVIDING A SAVINGS CLAUSE, A MOST FAVORED NATIONS CLAUSE, AND A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE

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

SECTION ONE. GRANT OF AUTHORITY

(A) The City of Kerrville, Texas, hereinafter called "City," hereby grants to Atmos Energy Corporation, Mid-Tex Division, hereinafter called "Atmos Energy," its successors and assigns, privilege and license to use and occupy the present and future Public Rights-of-Way of City for the purpose of laying, maintaining, constructing, protecting, operating, and replacing the System needed and necessary to deliver, transport and distribute gas in, out of, and through City and to sell gas to persons, firms, and corporations, including all the general public, within the City's corporate limits.

(B) Said privilege and license being granted by this Ordinance is for a term ending ten (10) years after the Effective Date. Unless written notice of its intent to renegotiate and/or terminate is provided by either the City or Atmos Energy at least 180 days prior to the expiration of any term, the franchise shall be extended for two (2) additional term of five (5) years on the same terms and conditions as set forth herein.

(C) The provisions set forth in this Ordinance represent the terms and conditions under which Atmos Energy shall construct, operate, and maintain the System within City, hereinafter sometimes referred to as the "Franchise." In granting this Franchise, City does not in any manner surrender or waive its regulatory or other rights and powers under and by virtue of the Constitution and statutes of the State of Texas as the same may be amended, nor any of its rights and powers under or by virtue of present or future ordinances of City, including but not limited to generally applicable ordinances regulating the use of Public Rights-of-Way. Company, by its acceptance of this Franchise, agrees that all such lawful regulatory powers and

rights as the same may be from time to time vested in City shall be in full force and effect and subject to the exercise thereof by City at any time.

SECTION TWO. DEFINITIONS

For the purposes of this Ordinance, the following terms, phrases, words, and their derivations shall have the meanings given herein. When not inconsistent with the context, words in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The word “shall” is always mandatory and not merely directory.

(A) “*Affiliate*” shall mean in relation to Company, a Person that controls, is controlled by, or is under common control with Company. As used in this definition, the term “control” means, with respect to a Person that is a corporation, the ownership, directly or indirectly, of more than 50% of the voting securities of such Person or, with respect to a Person that is not a corporation, the power to direct the management or policies of such Person, whether by operation of law, by contract, or otherwise.

(B) “*City*” shall mean the City of Kerrville, Texas.

(C) “*Company*” shall mean Atmos Energy Corporation, Mid-Tex Division, its successors and assigns, but does not include an Affiliate, which shall have no right or privilege granted hereunder except through succession or assignment in accordance with Section Six.

(D) “*City Manager*” shall mean the City’s chief executive officer, or his or her designee.

(E) “*Gross Revenues*” shall mean all revenues received by Company from the sale of gas to all classes of customers (excluding gas sold to another gas utility in City for resale to its customers within City) within the corporate limits of City.

(1) “*Gross Revenues*” shall include:

- (a) revenues derived from the following miscellaneous charges:
 - i. charges to connect, disconnect, or reconnect gas within City;
 - ii. charges to handle returned checks from consumers within City;
 - iii. miscellaneous charges may include certain other service charges that have, from time to time, been authorized in the rates and charges on file with City. Any such service charge not already described in this Section Two (D)(1)(a) will be included in the definition of Gross Revenues upon the mutual written agreement of City and Company; and
 - iv. contributions in aid of construction (“CIAC”).
- (b) revenues billed but not ultimately collected or received by Company;
- (c) State gross receipts fees;

- (d) all revenues derived by Company from the transportation of gas through the System of Company within City to customers located within City (excluding any gas transported to another gas utility in City for resale to its customers within City);
 - (e) the value of gas transported by Company for Transport Customers through the System of Company located in City's Public Rights-of-Way ("Third Party Sales")(excluding the value of any gas transported to another gas utility in the City for resale to its customers within City), with the value of such gas to be established by utilizing Company's monthly Weighted Average Cost of Gas charged to industrial customers in the Mid-Tex division, as reasonably near the time as the transportation service is performed; and
 - (f) fees paid pursuant to this Ordinance.
- (2) "*Gross Revenues*" shall not include:
- (a) the revenue of any Affiliate or subsidiary of Company; and
 - (b) sales taxes; and
 - (c) any interest or investment income earned by Company; and
 - (d) all monies received from the lease or sale of real or personal property, provided, however, that this exclusion does not apply to the lease of facilities within City's Public Right-of-Way.

(F) "*Person*" shall mean any natural person, or any association, firm, partnership, joint venture, corporation, or other legally recognized entity, whether for-profit or not-for-profit, but shall not, unless the context clearly intends otherwise, include City or any employee, agent, servant, representative or official of City.

(G) "*Public Right-of-Way*" shall mean public streets, alleys, highways, bridges, public easements, public places, public thoroughfares, grounds, and sidewalks of City, as they now exist or may be hereafter constructed, opened, laid out or extended within the present limits of City, or in such territory as may hereafter be added to, consolidated or annexed to City.

(H) "*System*" or "*System Facilities*" shall mean all of Company's pipes, pipelines, gas mains, laterals, feeders, regulators, meters, fixtures, connections, and all other appurtenant equipment used in or incident to providing delivery, transportation, distribution, supply and sales of natural gas for heating, lighting, and power, located in the Public Right-of-Way within the corporate limits of the City.

(I) "*Transport Customer*" shall mean any Person for which Company transports gas through the System of Company within the City's Public Right-of-Way for delivery within the City (excluding other gas utilities in City who resell gas to their customers within City).

SECTION THREE. EFFECT OF OTHER MUNICIPAL FRANCHISE ORDINANCE FEES ACCEPTED AND PAID BY COMPANY

(A) If Company should at any time after the effective date of this Ordinance agree to a new municipal franchise ordinance, or renew an existing municipal franchise ordinance, with another municipality in Atmos Energy's Mid-Tex Division, which municipal franchise ordinance determines the franchise fee owed to that municipality for the use of its Public Right-of-Way in a manner that, if applied to the City, would result in a franchise fee greater than the amount otherwise due City under this Ordinance, then the franchise fee to be paid by Company to City pursuant to this Ordinance may, at the election of the City, be increased so that the amount due and to be paid is equal to the amount that would be due and payable to City were the franchise fee provisions of that other franchise ordinance applied to City.

(B) The City acknowledges that the exercise of this right is conditioned upon City's acceptance of all terms and conditions of the other municipal franchise *in toto*. The City may request waiver of certain terms and Company may grant, in its sole reasonable discretion, such waiver.

SECTION FOUR. ACCEPTANCE OF TERMS OF FRANCHISE

(A) Prior to the adoption of this Ordinance by the City for the first of three readings as required by the City's charter, the Company shall provide to the City its agreement with the form of the Ordinance as presented to the City Council. After the final passage and approval of this Ordinance by the City, the Company shall file its written acceptance thereof with the City Secretary. If Company does not file such written acceptance of this Ordinance within thirty (30) calendar days of receipt of the fully executed Ordinance, the Ordinance shall be rendered null and void.

(B) At 11:59 p.m. on December 31, 2026, ALL rights, franchises and privileges herein granted, unless they have already at that time ceased or been forfeited, extended pursuant to Section One or by mutual agreement while a new franchise is being negotiated, shall at once cease and terminate.

SECTION FIVE. NO THIRD PARTY BENEFICIARIES

This Franchise is made for the exclusive benefit of City and Company, and nothing herein is intended to, or shall confer any right, claim, or benefit in favor of any third party.

SECTION SIX. SUCCESSORS AND ASSIGNS

No assignment or transfer of this Franchise shall be made, in whole or in part, except in the case of assignment or transfer to an Affiliate, without approval of the City Council of City. Notice of said transfer or assignment to an Affiliate shall be provided to the City. City will otherwise have the right to approve the transfer or assignment of the franchise to a non-Affiliate. City shall grant approval unless the assignee is materially weaker than the Company. For the purpose of this section, "materially weaker" means that the long term unsecured debt rating of the assignee is less than investment grade as rated by both S&P and Moody's. The City may request additional documents and information reasonably related to the transaction and to the legal, financial, and technical qualifications of the assignee. City agrees that approval of a

transfer or assignment to a non-Affiliate that is materially weaker shall not be unreasonably withheld or delayed. Upon approval, the rights, privileges, and franchise herein granted to Company shall extend to and include its successors and assigns. The terms, conditions, provisions, requirements and agreements contained in this Franchise shall be binding upon the successors and assigns of Company.

SECTION SEVEN. COMPLIANCE WITH LAWS, CHARTER, AND ORDINANCES

This Franchise is granted subject to the laws of the United States of America and its regulatory agencies and commissions and the laws of the State of Texas, the Kerrville City Charter, as amended, and all other applicable ordinances of City, not inconsistent herewith, including, but not limited to, ordinances generally applicable to regulating the use of Public Rights-of-Way.

SECTION EIGHT. PREVIOUS FRANCHISE ORDINANCES

All previous gas franchise ordinances and parts of franchise ordinances applicable to Company or its predecessors in interest granted by City are hereby repealed.

SECTION NINE. NOTICES

(A) Any notices required or desired to be given from one party to the other party to this Ordinance shall be in writing and shall be given and shall be deemed to have been served and received if: (i) delivered in person to the address set forth below; (ii) deposited in an official depository under the regular care and custody of the United States Postal Service located within the confines of the United States of America and sent by certified mail, return receipt requested, and addressed to such party at the address hereinafter specified; or (iii) delivered to such party by courier receipted delivery. Either party may designate another address within the confines of the continental United States of America for notice, but until written notice of such change is actually received by the other party, the last address of such party designated for notice shall remain such party's address for notice.

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

COMPANY
Manager of Public Affairs
Atmos Energy, Mid-Tex Division
3110 North I-35
Round Rock, Texas 78681

(B) The Company shall provide to the City the toll-free telephone number for its Gas Dispatch Center that is manned twenty-four (24) hours a day, seven (7) days a week. The Gas Dispatch Center is intended to provide a response to the emergency situation and will be available to the City to keep the City informed of the response and possible estimated time of arrival. The City understands that the Gas Dispatch Center is not equipped to handle calls from the public, and the City will not provide this number to customers, but will direct them to the Company's Call Center. If the Company cannot timely respond to an emergency with Company employees, the Company will attempt to respond to the emergency with qualified local

contractors. The Company's contact information shall be kept current at all times. The Company and the City shall periodically, and upon request by either party, meet to discuss and address emergency response issues, in order to rectify any problems identified by either party.

SECTION TEN. PARAGRAPH HEADINGS, CONSTRUCTION

The paragraph headings contained in this Ordinance are for convenience only and shall in no way enlarge or limit the scope or meaning of the various and several paragraphs hereof. Both parties have participated in the preparation of this Ordinance and this Ordinance shall not be construed either more or less strongly against or for either party.

SECTION ELEVEN. CONDITIONS OF OCCUPANCY

(A) All construction and the work done by Company, and the operation of its business, under and by virtue of this Ordinance, shall be in conformance with the generally applicable ordinances, rules and regulations now in force, including but not limited to any applicable ordinances that may hereafter be adopted by City, relating to the use of City's Public Rights-of-Way. This Franchise shall in no way affect or impair the rights, obligations or remedies of the parties under the Texas Utilities Code, or other state or federal law. Nothing herein shall be deemed a waiver, release, or relinquishment of either party's right to contest or appeal any action or decision of the other party, including ordinances adopted by the City, that it believes is contrary to any federal, state, or local law or regulation.

(B) As a general rule, Company shall install System Facilities in the Public Right-of-Way at a depth below any water or wastewater lines and at a distance apart from such lines as required by law. Where such situation with City lines is not present, and unless otherwise agreed to by City, all new mains installed by Company in the Public Right-of-Way shall be installed at a minimum depth of twenty-four inches (24.0") and in accordance with City's subdivision regulations. In addition, new mains installed by Company shall be installed across the street or Public Right-of-Way from water and wastewater lines when practicable. Where conflict occurs or could occur, the parties shall work together to agree on alternative locations. Notwithstanding the foregoing, Company shall not be required to install or relocate facilities to a depth of greater than four (4) feet unless prior agreement is obtained from Company.

(C) Company shall remove or allow removal of System Facilities that have been abandoned by Company where such System Facilities are in conflict with new facilities that are installed in the Public Right-of-Way or as required in Section Twelve below.

(D) When using directional boring, Company shall submit bore logs to City as they are kept by Company in the normal course of business.

SECTION TWELVE. RELOCATION OF SYSTEM FACILITIES

(A) Whenever by reason of widening or straightening or construction or reconstruction of streets, alleys, drainage, water, wastewater, or electrical line projects, to include sidewalks or other improvements to Public Rights-of-Way as required by the Americans with Disabilities Act, or any other public works projects in which beautification or accommodation of

a private developer is not a primary purpose of the project, and City requests that Company remove, alter, change, adapt, or conform the underground or aboveground System Facilities of Company to another part of the Public Right-of-Way, such alterations shall be made by Company at Company's expense for facilities that are in conflict, unless provided otherwise by federal or state law. System facilities are deemed to be in conflict to the extent that the proposed City facilities are inconsistent with gas distribution industry standard safe operating statutes, regulations, and practices for existing facilities as determined by the Company and the City. When required by City to remove or relocate its mains, laterals, and/or other facilities lying within Public Rights-of-Way, the Company shall do so as soon as practically possible with respect to the scope of the project. In no event shall the Company be required to remove or relocate its facilities in less than thirty (30) days from the time notice is given to Company by City. The Company will work with the Public Works Director or designee to set an acceptable deadline. The Company shall be responsible for any direct costs associated with project delays associated with its failure to conform System Facilities within the required time frame. Unless mutually agreed to by City and Company, in no event shall Company delay the start of its relocation work more than ninety (90) days from receipt of notice from City, which notice shall include substantially complete plans. If Company fails to move the System Facilities on or before the approved scheduled completion date, Company shall be subject to the termination provisions of Section Twenty Five.

(B) When Company is required by City to remove or relocate its System Facilities to accommodate widening or straightening or construction or reconstruction of streets, alleys, drainage, water, wastewater, or electrical line projects, to include sidewalks or other improvements to Public Rights-of-Way as required by the Americans with Disabilities Act, or any other public works projects in which beautification or accommodation of a private developer is not a primary purpose of the project (e.g., installing or improving storm drains, water lines, wastewater lines, etc.), and Company is eligible under federal, state, county, local, or other programs for reimbursement of costs and expenses incurred by Company as a result of such removal or relocation, and such reimbursement is required to be handled through City, Company costs and expenses shall be included in any application by City for reimbursement, if Company submits its cost and expense documentation to City prior to the filing of the application. City shall provide reasonable notice to Company of the deadline for Company to submit documentation of the costs and expenses of such relocation to City. Upon receipt of an amount of reimbursement intended for utility relocation including, but not limited to, gas utilities, City shall remit to Company, within thirty (30) days of receipt, the portion of reimbursement related to the relocation or removal of Company's facilities. Notwithstanding anything contained in this Ordinance, if System Facilities are required to be removed or relocated for any reason other than the reasons noted in this Section, Company shall be entitled to reimbursement from City or others of the cost and expense of such removal or relocation.

(C) If City abandons, pursuant to Council action, any Public Right-of-Way in which Company has facilities, for public safety reasons or in furtherance of a public project, City shall determine whether it is appropriate to retain a public utility easement in such Public Right-of-Way for use by Company. If City determines, in its sole discretion, that the continued use of the Public Right-of-Way by Company is compatible with the abandonment of the Public Right-of-Way, then in consideration of the compensation set forth in Section Twenty, and to the maximum extent of its right to do so, City shall grant Company an easement for such use, and

the abandonment of the Public Right-of-Way shall be subject to the right and continued use of Company. If City determines, in its sole reasonable discretion, that it is not appropriate to retain a public utility easement in such Public Right-of-Way, Company shall be responsible, subject to the provisions of Section Eleven, for relocating its System from such Public Right-of-Way, as directed by City. If Public Right-of-Way is sold, conveyed, abandoned, or surrendered by City to a third party, such action shall be conditioned upon Company's right to maintain use of the former Public Right-of-Way. If the third party requests Company to relocate its System from the former Public Right-of-Way, and if such relocation is agreed to by Company, such relocation shall be at the expense of the party requesting same. In addition, in the event of a third party requesting the relocation, if the relocation cannot practically be made to another Public Right-of-Way, the expense of any right-of-way acquisition shall be considered a relocation expense to be reimbursed by the party requesting the relocation.

(D) When Company is required to remove or relocate its mains, laterals or other System Facilities to accommodate construction by City without reimbursement from City, Company shall have the right to seek recovery of relocation costs as provided for in applicable state and/or federal law. Nothing herein shall be construed to prohibit, alter, or modify in any way the right of Company to seek or recover a surcharge from customers for the cost of relocation pursuant to applicable state and/or federal law, nor shall anything herein be construed to waive City's rights or obligations under state and/or federal law to review and approve or deny such surcharge request. Notwithstanding the foregoing, in cases where the Company is seeking to implement a surcharge to recover unreimbursed costs of relocations required by City, City shall not contest the necessity of the relocation, nor shall it demand documentation of Company's reasonable efforts to receive reimbursement for relocations required by City. City shall not oppose recovery of reasonable relocation costs when Company is required by City to perform relocation. Notwithstanding the foregoing, the City shall have the right to request other project documentation to the full extent provided by state law.

(E) When required for a public health or safety purpose, Company shall identify for the City the location of its System Facilities within the Public Rights-of-Way. Any maps provided by Company to the City shall be deemed confidential and shall be clearly identified as such by Atmos Energy when provided to the City, and will be provided solely for the City's use. The City agrees to maintain the confidentiality of any non-public information obtained from Atmos Energy to the extent allowed by law. If the City receives a request under the Texas Public Information Act that includes Company's previously designated proprietary or confidential information, City will request an opinion from the Texas Attorney General as to the confidential or the proprietary nature of the document(s). The City also will provide Company with notice of the request, and thereafter Company is responsible for establishing that an exception under the Texas Public Information Act allows the City to withhold the information. Company shall provide all location and "as built" plans on a going forward basis as required pursuant to the City's permitting process.

SECTION THIRTEEN. LAYING OF LINES IN ADVANCE OF PAVING

(A) City shall provide Company with its annual capital improvements plan as well as any updates or changes as soon as the plan, update, or change becomes available. City shall

notify Company as soon as reasonably possible of any projects that will affect Company's facilities located in the Public Rights-of-Way.

(B) Whenever City shall conclude to pave any Public Right-of-Way in which System Facilities already exist or in which Company may propose to install its System, Company will be provided the opportunity, at no expense to City, in advance of such paving to lay or renew such System Facilities.

(C) At least ninety (90) days prior to the planned paving or repaving of Public Rights-of-Way, City shall give Company written notice of the intention of City to pave any such Public Right-of-Way. Upon receipt of such notice, Company shall initiate its review process to determine the need to lay or renew its System Facilities, and the need to lay or renew service lines underneath the portions of the Public Rights-of-Way to be paved. If Company determines such a need, Company shall promptly initiate such work and shall thereafter proceed in a good faith and workmanlike manner to completion of the necessary work within ninety (90) days after receipt of the notice from the City. Company's failure to complete the necessary work within the ninety (90) day period may be excused at the City's discretion, if Company has promptly notified the City of the circumstances that have caused the delay, and has requested an extension of the construction period. City shall grant the extension unless withheld for good cause.

(D) If Company should fail to take advantage of the pre-paving opportunity to undertake new construction or repairs to existing System Facilities in the Rights-of-Way to be paved, and such street or alley is thereafter paved, except in an emergency or in response to a request for initiation of new service, Company shall for two (2) years thereafter not be allowed to cut such pavement or excavate in such paved street or alley for any purpose, except by written permission of the City Manager under such terms and conditions as the City Manager may prescribe.

SECTION FOURTEEN. CONFLICTING FACILITIES

If Company, in installing its System, shall come into conflict with the facilities of any other Person authorized by City to use the Public Right-of-Way, the Public Works Director shall decide all questions concerning the conflict of the respective parties, and shall determine the location of the structures of the said parties and the actions necessary to reconcile their differences. Company shall have the right to request City Council review of any such actions.

SECTION FIFTEEN. INSTALLATION OF METER

If a meter is to be installed in or near the Public Right-of-Way, Company agrees to discuss with the Public Works Director or his or her delegate, the aesthetics of the meter placement and to accommodate the request of City to the maximum extent possible. If City requests a meter upgrade, Company will comply so long as City reimburses Company for the reasonable costs incurred by Company in changing meters. In no event, however, shall underground meters be required.

SECTION SIXTEEN. EXTENSIONS FOR CUSTOMERS

Company shall, at its expense, extend distribution mains in any street up to one hundred (100) feet for any one residential or commercial customer so long as the customer at a minimum uses gas for unsupplemented space heating and water heating. Company shall not be required to

extend transmission mains in any Public Rights-of-Way within City or to make a tap on any transmission main within City unless Company agrees to such extension by a written agreement between Company and a customer.

SECTION SEVENTEEN. DUTY TO SERVE

Company hereby agrees that it will not arbitrarily refuse to provide service to anyone that it is economically feasible for Company to serve. In the event that a Person is refused service, said Person may request a hearing before the City Council of City or its designee, said hearing to be held within forty-five (45) days from the date of the request for hearing. The Council may order Company to provide service or take any other action necessary to bring Company into compliance with the intent of the Council in granting this Franchise, including termination or forfeiture of the Franchise in accordance with Section Twenty-Five. The Council may render its opinion at this meeting but in no event shall it be required to act in less than fourteen (14) days.

SECTION EIGHTEEN. CUSTOMER SERVICE STANDARDS; LOCAL OFFICE

(A) Company shall maintain a local, toll-free or collect call telephone access line which will be available to its customers 24 hours a day, seven days a week.

(B) Company shall make a good faith effort to maintain within City one or more conveniently located bill payment offices where customers can pay their bills. In no circumstance shall the absence of such a bill payment office be considered violation of a material provision of this Franchise as outlined in Section Twenty-Five.

SECTION NINETEEN. RATES

Company shall furnish high quality service to the public at reasonable rates and charges therefor; and Company shall maintain its System in good order and condition. Such rates shall be established in accordance with all applicable statutes and ordinances. Company shall maintain on file with City copies of its current tariffs, schedules or rates and charges, customer service provisions, and line extension policies. The rates and charges collected from its customers in the City shall be subject to revision and change by either City or Company in the manner provided by law.

SECTION TWENTY. PAYMENTS TO THE CITY

(A) In consideration of the privilege and license granted by City to Company to use and occupy the Public Rights-of-Way in the City for the conduct of its business, Company, its successors and assigns, agrees to pay and City agrees to accept such franchise fees in the amount and manner described herein. Except as provided for in Section Twenty(B), such payments shall be made on a quarterly basis, on or before the forty-fifth (45th) day following the end of each calendar quarter. The franchise fee shall be a sum of money that shall be equivalent to five percent (5%) of the quarterly Gross Revenues, as defined in Section Two(D), for the preceding calendar quarter. The initial payment provided under this Franchise shall be due on or before May 15, 2017, based on the preceding calendar quarter (January 1, 2017 to March 31, 2017) and shall be for the right and privilege during the preceding calendar quarter (January 1, 2017 to

March 31, 2017). Subsequent payments shall be made as follows during the term of the Franchise:

Payment Due	For Calendar Quarter
May 15	Jan. 1 – March 31
Aug. 15	April 1 – June 30
Nov. 15	July 1 – Sept. 30
Feb. 15	Oct. 1 – Dec. 31

The final payment under the initial term of this Franchise will be due on or before February 15, 2027, and will be for the preceding calendar quarter (October 1, 2026 to December 31, 2026).

(B) The franchise fee amounts based on “Contributions in Aid of Construction” (“CIAC”) shall be calculated on an annual calendar year basis, *i.e.*, from January 1 through December 31 of each calendar year. The franchise fee amounts that are due based on CIAC shall be paid at least once annually on or before April 30 each year based on the total CIAC recorded during the preceding calendar year. The initial CIAC franchise fee payment will be due on or before April 30, 2017 and will be based on CIAC received from January 1, 2016, through December 31, 2016. Unless this Franchise is extended, the final payment of franchise fee amounts based on CIAC will be April 30, 2027, for the calendar year ending December 31, 2026.

(C) It is also expressly agreed that the franchise fees shall be in lieu of any and all other and additional occupation taxes, easement, franchise taxes or charges (whether levied as a special or other character of tax or charge), municipal license, permit, and inspection fees, bonds, street taxes, and street or alley rentals or charges, and all other and additional municipal taxes, charges, levies, fees, and rentals of whatsoever kind and character that City may now impose or hereafter levy and collect from Company or Company’s agents, excepting only the usual general or special ad valorem taxes that City is authorized to levy and impose upon real and personal property. Except however, Company’s separate obligations to reimburse the City for City’s reasonable rate case expenses and for street repairs in accordance with City’s ordinances, are not affected by Company’s payment of franchise fees hereunder. Should City not have the legal power to agree that the payment of the foregoing sums of money shall be in lieu of occupation taxes, licenses, fees, street or alley rentals or charges, easements or franchise taxes, then City agrees that it will apply so much of said sums of money paid as may be necessary to satisfy Company’s obligations, if any, to pay such occupation taxes, licenses, charges, fees, rentals, easement or franchise taxes or charges aforesaid.

(D) If Company fails to pay when due any payment provided for in this section, Company shall pay such amount plus interest consistent with the rate for customer deposits under Texas Utilities Code Section 183.003 from such due date until payment is received by City.

(E) City agrees that: (i) as regulatory authority, it will adopt and approve the ordinance, rates or tariff which provide for 100% recovery of such franchise fees as part of Atmos’ rates; (ii) if the City intervenes in any regulatory proceeding before a federal or state agency in which the recovery of Atmos’ franchise fees is an issue, the City will take an affirmative position supporting 100% recovery of such franchise fees by Atmos; and (iii) in the event of an appeal of any such regulatory proceeding in which the City has intervened, the City

will take an affirmative position in any such appeals in support of the 100% recovery of such franchise fees by Atmos.

(F) Company shall have the right to lease, license or otherwise grant to a party other than Company the use of its Facilities within the City's Public Right-of-Way provided: (i) Company first notifies City of the name of the lessee, licensee or user, the type of service(s) intended to be provided through the facilities, and the name and telephone number of a contact person associated with such lessee, licensee or user; and (ii) Company makes the franchise fee payment due on the revenues from such lease pursuant to Section Twenty of this Ordinance. This authority to lease Facilities within City's Public Right-of-Way shall not affect any such lessee, licensee or user's obligation, if any, to pay franchise fees, access line fees, or similar Public Right-of-Way user fees.

(G) City shall, within thirty (30) days of final approval, give Company notice of annexations and disannexations of territory by City, which notice shall include a map and addresses, if known. Upon receipt of said notice, Company shall promptly initiate a process to reclassify affected customers into the City limits no later than sixty (60) days after receipt of notice from City. The annexed areas added to the City limits will be included in future franchise payments in accordance with the effective date of the annexation if notice was timely received from City. Upon request from City, Company will provide documentation to verify that affected customers were appropriately reclassified and included for purposes of calculating franchise payments. In no event shall the Company be required to add premises for the purposes of calculating franchise payment prior to the earliest date that the same premises are added for purposes of collecting sales tax.

SECTION TWENTY-ONE. BOOKS AND RECORDS

(A) Company agrees that at the time of each quarterly payment, Company shall also submit to the City a statement showing its Gross Revenues for the preceding calendar quarter as defined in Section Two(E).

(B) City may, if it sees fit, upon reasonable notice to the Company, have the books and records of Company examined by a representative of said City to ascertain the correctness of the reports agreed to be filed herein. Company shall make available, during normal working hours and upon reasonable notice, such personnel and records as City may in its reasonable discretion request in order to complete such audit, and shall make no charge to the City therefor. Company shall assist City in its review by providing all requested information no later than fifteen business (15) days after receipt of a request. The cost of the audit shall be borne by City unless the audit discloses that the Company has underpaid the franchise fee by 10% or more, in which case the reasonable costs of the audit shall be immediately reimbursed to the City by the Company. If such an examination reveals that Company has underpaid City, then upon receipt of written notification from City regarding the existence of such underpayment, Company shall undertake a review of City's claim and if said underpayment is confirmed, remit the amount of underpayment to City, including any interest calculated in accordance with Section Twenty (D). Should Company determine through examination of its books and records that City has been overpaid, upon receipt of written notification from Company regarding the existence of such overpayment, City shall review Company's claim and if said overpayment is confirmed, remit the amount of overpayment to Company including any interest calculated in accordance with

Section Twenty (D). The period of review for purposes of determining overpayments or underpayments shall be limited to payments made in the two (2) year period before commencement of the audit.

SECTION TWENTY-TWO. RESERVATION OF RIGHTS: GENERAL

(A) City reserves to itself the right and power at all times to exercise, in the interest of the public and in accordance with state law, regulation and control of Company's use of the Public Rights-of-Way to ensure the rendering of efficient public service, and the maintenance of Company's System in good repair throughout the term of this Franchise.

(B) The rights, privileges, and franchises granted by this Ordinance are not to be considered exclusive, and City hereby expressly reserves the right to grant, at any time, like privileges, rights, and franchises as it may see fit to any other person or corporation for the purpose of furnishing gas for light, heat, and power and for City and the inhabitants thereof.

(C) City expressly reserves the right to own and/or operate its own system for the purpose of transporting, delivering, distributing, or selling gas to and for the City.

(D) Nothing herein shall impair the right of the City to fix, within constitutional and statutory limits, a reasonable price to be charged for natural gas, or to provide and fix a scale of prices for natural gas, and other charges, to be charged by Company to residential consumers, commercial consumers, industrial consumers, or to any combination of such consumers, within the territorial limits of the City as same now exists or as such limits may be extended from time to time hereafter.

SECTION TWENTY -THREE. RIGHT TO INDEMNIFICATION AND TO BE HELD HARMLESS

(A) In consideration of the granting of this Franchise, Company agrees to indemnify, defend and hold harmless City, its officers, agents, and employees (City and such other persons and entities being collectively referred to herein as "Indemnitees"), from and against all suits, actions or claims of injury to any person or persons, or damages to any property brought or made for or on account of any death, injuries to, or damages received or sustained by any person or persons or for damage to or loss of property arising out of, or occasioned by Company's intentional and/or negligent acts or omissions in connection with Company's operations; except that the indemnity provided for in this paragraph shall not apply to any liability determined by a court of competent jurisdiction to have resulted from the sole negligence or intentional acts of omissions of City, its officers, agents, and employees. In the event of joint and concurrent negligence or fault of both Company and City, responsibility and indemnity, if any, shall be apportioned comparatively in accordance with the laws of the State of Texas without, however, waiving any of the defenses of the parties under Texas law. Further, in the event of joint and concurrent negligence or fault of both

Company and City, responsibility for all costs of defense shall be apportioned between City and Company based upon the comparative fault of each.

(B) In fulfilling its obligation to defend and indemnify City, Company shall have the right to select defense counsel, subject to City's approval, which shall not be unreasonably withheld. Company shall retain defense counsel within seven (7) business days of City's written notice that City is invoking its right to indemnification under this Franchise. If Company fails to retain counsel within such time period, City shall have the right to retain defense counsel on its own behalf, and Company shall be liable for all defense costs incurred by City, except as set out in Section Twenty-Three (A).

SECTION TWENTY-FOUR. INSURANCE

Company will maintain an appropriate level of insurance in consideration of the Company's obligations and risks undertaken pursuant to this Franchise, in the minimum amount of six million dollars (\$6,000,000), consisting of one million dollars (\$1,000,000) primary plus five million dollars (\$5,000,000) umbrella coverage. Such insurance may be in the form of self-insurance to the extent permitted by applicable law, under an approved formal plan of self-insurance maintained by Company in accordance with sound accounting and risk-management practices. A certificate of insurance shall be provided to City.

SECTION TWENTY-FIVE. TERMINATION

(A) Right to Terminate. In addition to any rights set out elsewhere in this Ordinance, City reserves the right to terminate the Franchise and all rights and privileges pertaining thereto, in the event that Company violates any material provision of the Franchise.

(B) Procedures for Termination.

(1) City may, at any time, terminate this Franchise for a continuing material violation by Company of any of the substantial terms hereof. In such event, City shall give to Company written notice, specifying all grounds on which termination or forfeiture is claimed, by registered mail, addressed and delivered to Company at the address set forth in Section Nine hereof. Company shall have sixty (60) days after the receipt of such notice within which to cease such violation and comply with the terms and provisions hereof. In the event Company fails to cease such violation or otherwise comply with the terms hereof, then Company's Franchise is subject to termination under the following provisions. Provided, however, that if Company commences work or other efforts to cure such violations within thirty (30) days after receipt of written notice and shall thereafter prosecute such curative work with reasonable diligence until such curative work is completed, then such violations shall cease to exist, and the Franchise will not be terminated.

(2) Termination shall be declared only by written decision of the City Council after an appropriate public proceeding whereby Company is afforded the full opportunity to be heard and to respond to any such notice of violation or failure to comply. Company shall be provided at least fifteen business (15) days prior written notice of any public hearing concerning the termination of the Franchise. In addition, ten (10) days' notice by

publication shall be given of the date, time and place of any public hearing to interested members of the public.

(3) City, after full public hearing, and upon finding material violation or failure to comply, may terminate the Franchise or excuse the violation or failure to comply, upon a showing by Company of mitigating circumstances or upon a showing of good cause of said violation or failure to comply as may be determined by the City Council.

(4) Nothing herein stated shall preclude Company from appealing the final decision of the City Council to a court or regulatory authority having jurisdiction.

(5) Nothing herein stated shall prevent City from seeking to compel compliance by suit in any court of competent jurisdiction if Company fails to comply with the terms of this Franchise after due notice and the providing of adequate time for Company to comply with said terms.

SECTION TWENTY-SIX. RENEGOTIATION

If either City or Company requests renegotiation of any term of this Ordinance, Company and City agree to renegotiate in good faith revisions to any and all terms of this Ordinance. If the parties cannot come to agreement upon any provisions being renegotiated, then the existing provisions of this Ordinance will continue in effect for the remaining term of the Franchise.

SECTION TWENTY-SEVEN. SEVERABILITY

This Ordinance and every provision hereof, shall be considered severable, and the invalidity or unconstitutionality of any section, clause, provision, or portion of this Ordinance shall not affect the validity or constitutionality of any other portion of this Ordinance. If any term or provision of this Ordinance is held to be illegal, invalid or unenforceable, the legality, validity or unenforceability of the remaining terms or provisions of this Ordinance shall not be affected thereby.

SECTION TWENTY-EIGHT. NO WAIVER

Either City or Company shall have the right to waive any requirement contained in this Ordinance, which is intended for the waiving party's benefit, but, except as otherwise provided herein, such waiver shall be effective only if in writing executed by the party for whose benefit such requirement is intended. No waiver of any breach or violation of any term of this Ordinance shall be deemed or construed to constitute a waiver of any other breach or violation, whether concurrent or subsequent, and whether of the same or a different type of breach or violation.

SECTION TWENTY-NINE. EFFECTIVE DATE

This Franchise shall be effective on January 1, 2017, if City has received Company's acceptance as provided by Section Four herein.

PASSED AND APPROVED ON FIRST READING, this the ____ day of _____, 2016.

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

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

CITY OF KERRVILLE

Bonnie White, Mayor

ATTEST:

Brenda G. Craig, City Secretary

APPROVED AS TO FORM:



Michael C. Hayes, City Attorney

Agenda Item:

5A. Authorize the execution of a construction contract with MGC Contractors, Inc. for the reuse pond and pump station project in the amount of \$10,474,822.00 and authorize execution of additional change orders which will not exceed a total contract value of \$12,000,000.00. (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 MGC Contractors, Inc. for the Reuse Pond and Pump Station Project in the amount of \$10,474,822.00 and authorize the City Manager to execute additional change orders which will not exceed a total contract value of \$12,000,000.00.

FOR AGENDA OF: October 11, 2016

DATE SUBMITTED: September 30, 2016

SUBMITTED BY: Kyle Burow, P.E., CFM
Director of Engineering

CLEARANCES: EA Hoppe
 Deputy City Manager

EXHIBITS: Bid Tabulation
Recommendation Letter

PAYMENT TO BE MADE TO: MGC Contractors, Inc.
223 Lucinda Drive
New Braunfels, TX 78130

APPROVED FOR SUBMITTAL BY CITY MANAGER: 

Expenditure	Current Balance	Amount	Account
Required:	in Account:	Budgeted:	Number:
\$12,000,000.00	\$20,179,794.91	\$21,500,000.00	U08

REVIEWED BY THE FINANCE DIRECTOR:

In October 2014, the City hired Freese and Nichols, Inc. to design and oversee the construction of a 105 million gallon earthen effluent pond with soil cement lining, 24-inch effluent gravity main from the existing treatment facility to the pond, distribution piping, and the reuse pump station and associated electrical appurtenances. This project was identified in conjunction with preparation of the 2013 Water & Wastewater Master Plan as a potential capital improvement project for the purpose of impounding treated, unused effluent from the wastewater treatment plant. It is conservatively estimated that approximately 360 million gallons of treated effluent is lost each year. This lost resource could be used to supplement the city's raw water supply as well as a source for irrigation and construction purposes which would relieve the city's potable water supply in the distribution system.

On September 20, 2016, three bids were opened and read aloud with Austin Engineering being the apparent low bid. After review of the bids, Austin Engineering

was determined to be an incomplete bid. Austin Engineering submitted the two required contract submittals for bid with one bid application being incomplete comprising a base bid of \$6,870,387.00 and the other bid application completed with a base bid of \$14,323,332.00.

Staff along with FNI evaluated the next lowest bid being MGC Contractors, Inc. and recommends awarding the Reuse Pond and Pump Station Project base bid in the amount of \$10,474,822.00.

RECOMMENDED ACTION

Authorize the City Manager to execute a construction contract with MGC Contractors, Inc. for the Reuse Pond and Pump Station Project in the amount of \$10,474,822.00 and authorize the City Manager to execute additional change orders which will not exceed a total contract value of \$12,000,000.00.



Innovative approaches
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www.freese.com

September 22, 2016

City of Kerrville
200 Sidney Baker Street
Kerrville, Texas 78028

Attn: Kyle Burow, P.E.
City Engineer

Re: Kerrville Reuse Pond and Pump Station Project
Recommendation of Award

Mr. Burow:

Listed below is the summary of Bids for the Kerrville Reuse Pond and Pump Station Project. A total of three Bids were received on September 20, 2016.

Below is a summary of bids in the order they were opened and read aloud:

<u>Bidder</u>	<u>Base Bid</u>
Thalle Construction Company	\$11,529,412
Austin Engineering Company	\$14,323,337
MGC Contractors	\$10,474,822

Freese and Nichols' estimate for the Base Bid was \$12,000,000.

Based on our previous experience with them and based on the references checked, MGC Contractors appears to be qualified and capable of performing the work on this type of project. Therefore, based on this information, Freese and Nichols recommends that the City of Kerrville award the construction contract for this Project to MGC Contractors in the Base Bid amount of \$10,474,822.

Please call me at 210-865-5461 if you have any questions.

Sincerely,

Freese and Nichols, Inc.

John M. New, P.E., CCM
Vice President/Construction Services Manager

Agenda Item:

5B. Authorize professional services agreement with Rock Engineering and Testing Laboratory, Inc. for geotechnical engineer/materials testing for reuse pond and pump station project in the amount of \$148,000.00. (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 Rock Engineering & Testing Laboratory, Inc. for the Reuse Pond and Pump Station Project in the amount of \$148,000.00.

FOR AGENDA OF: October 11, 2016

DATE SUBMITTED: September 30, 2016

SUBMITTED BY: Kyle Burow, P.E., CFM
Director of Engineering

CLEARANCES: EA Hoppe
Deputy City Manager



EXHIBITS: Contract Agreement

PAYMENT TO BE MADE TO: Rock Engineering & Testing Laboratory, Inc.
10856 Vandale Street
San Antonio, TX 78216

APPROVED FOR SUBMITTAL BY CITY MANAGER:



Expenditure	Current Balance	Amount	Account
Required:	in Account:	Budgeted:	Number:
\$148,000.00	\$20,179,794.91	\$148,000.00	U08

REVIEWED BY THE FINANCE DIRECTOR:

The City contacted Rock Engineering & Testing Laboratory, Inc. (Consultant) to prepare a scope and proposal to serve as the Geotechnical Engineer and provide material testing services for the Reuse Pond and Pump Station Project. The services provided by Rock Engineering & Testing Laboratory, Inc. include field and laboratory tests and inspections. The Consultant has served as the material's testing lab on several projects for the City and continues to provide a conservation of project funds.

RECOMMENDED ACTION

Authorize the City Manager to execute a construction contract with Rock Engineering & Testing Laboratory, Inc. for the Reuse Pond and Pump Station Project in the amount of \$148,000.00.

PROFESSIONAL SERVICES AGREEMENT

[FIRM: Rock Engineering & Testing Laboratory, Inc. | PROJECT SERVICES: Geotechnical
Engineer/Materials Testing for Reuse Pond and Pump Station]

THIS AGREEMENT is entered into the ____ day of _____, 2016 (“Effective Date”), by and between the **CITY OF KERRVILLE, TEXAS** (“CITY”) and **Rock Engineering & Testing Laboratory, Inc.**, (“CONSULTANT”), and at times, collectively referred to herein as “parties”.

WHEREAS, CITY hires CONSULTANT to perform certain work and services set forth in Scope of Services, marked **Exhibit A**, and attached hereto and incorporated herein, toward completion of the Project; and

WHEREAS, CONSULTANT has expressed a willingness to perform said work and services as specified under Article I of this Agreement;

NOW, THEREFORE, the parties agree as follows:

I. CONSULTANT’S SERVICES

CONSULTANT shall perform and pay for all labor, tools, materials, equipment, supplies, transportation, and management necessary to perform all services set forth in **Exhibit A** and all other professional services reasonably inferable from **Exhibit A** and necessary for complete performance of CONSULTANT’s obligations under this Agreement, collectively referred to herein as “Services”. CITY may, at any time, stop CONSULTANT from performing the Services upon giving CONSULTANT written notice. To the extent of any conflict between the terms of this Agreement and **Exhibit A**, the terms of this Agreement will prevail.

II. CONSULTANT’S RESPONSIBILITIES

A. CONSULTANT shall, upon review of the description of the Project provided by CITY, prepare and provide to CITY the specific Services required to complete the Project, which is attached as **Exhibit A**.

B. CONSULTANT shall use its best efforts, skill, judgment, and abilities in performing the Services in an expeditious and timely manner consistent with the applicable professional standards of care and the orderly progress of the Project. CONSULTANT shall at all times provide sufficient personnel to accomplish the Services in a timely manner. CONSULTANT shall manage the Services, administer the Project, and coordinate other professional services as necessary for the complete performance of CONSULTANT’s obligations under this Agreement. CONSULTANT shall periodically report the status of the Services to CITY as is appropriate to keep CITY informed as to the status of the work.

C. CONSULTANT shall perform the Services in compliance with all applicable federal, state, and municipal laws, to include building codes and accessibility standards (e.g., Americans with Disabilities Act) and with those of any other entity having jurisdiction over the Project. In

addition, CONSULTANT shall perform the Services in a manner consistent with generally accepted standards for its profession.

D. Plans, drawings, specifications, and/or other reports produced by CONSULTANT (collectively referred to herein as "Design Documents") pursuant to the Services must be reasonably accurate and free from material errors or omissions. CONSULTANT shall promptly correct any known or discovered error, omission, or other defect in the Design Documents without any additional cost or expense to CITY and notify of CITY of same.

E. CONSULTANT shall designate a representative primarily responsible for its performance of the Services. The designated representative shall act on behalf of CONSULTANT with respect to all phases of the Services and shall be available as required for the benefit of the Project and CITY. CONSULTANT shall not change the designated representative without prior written approval of CITY, which approval may not be unreasonably withheld.

III. CITY'S RESPONSIBILITIES

A. CITY shall provide CONSULTANT with a full description of the Project.

B. CITY shall furnish surveys, geotechnical reports, or other special investigations or tests, including structural, mechanical, chemical, for the Project site as requested by the CONSULTANT and as reasonably necessary for the completion of the Services.

C. CITY shall review the Design Documents. CITY shall notify CONSULTANT of any design fault or defect in the Services or Design Documents of which CITY becomes aware.

D. CITY shall furnish required information and services and shall render approvals and decisions as expeditiously as necessary for the orderly progress of the Services.

E. CITY designates **Kyle Burow [(830) 258-1410]**, as its representative authorized to act on its behalf with respect to the Project.

IV. PAYMENT

CITY shall compensate CONSULTANT for its Services in an amount estimated at \$148,000.00. This is an amount that both parties agree is an estimate and is subject to an increase based upon additional services or services requested outside of normal business hours. CITY shall make payment to CONSULTANT within 30 days of CITY's receipt of an invoice, such invoices to be submitted by CONSULTANT on a monthly basis.

V. TIME FOR PERFORMANCE

A. CONSULTANT shall commence its work immediately upon the parties' execution of this Agreement and proceed diligently with said work, except for delays beyond the reasonable control of CONSULTANT, to completion.

B. In the event CONSULTANT's performance of this Agreement is delayed or interfered with by acts of CITY or others, CONSULTANT may request an extension of time for the performance of same as hereinafter provided, but shall not be entitled to any increase in fee or price, or to damages or additional compensation as a consequence of such delays unless such delays exceed 90 days.

C. CITY is not obligated to approve and may not approve any allowance of an extension of time for any cause whatever claimed or made by CONSULTANT, unless CONSULTANT shall have made written request upon CITY for such extension within forty-eight (48) hours after the cause for such extension occurred, and unless CITY and CONSULTANT have agreed in writing upon the allowance of additional time to be made.

VI. DOCUMENTS

A. CONSULTANT shall submit all Design Documents to CITY for approval. All Design Documents must be professionally sealed as required by law or by CITY.

B. CONSULTANT shall deliver the Design Documents, together with any necessary supporting documents, to CITY and CITY has unlimited rights, for the benefit of CITY, in all Design Documents, including the right to use same on any other work of CITY without additional cost to CITY. If CITY uses the Design Documents on any work of CITY other than that specified in the Services, then under those circumstances and only to the extent allowed by law, CONSULTANT, its officers, agents, servants, and employees will not be liable for damages or claims arising from any inaccuracy or any use of the Design Documents with respect to such other work, and except where CONSULTANT participates in such other work.

C. CONSULTANT grants CITY a royalty-free, perpetual license and right, to survive the termination of this Agreement, to all Design Documents which CONSULTANT may cover by copyright and to all designs as to which CONSULTANT may assert any rights or establish any claim under the design patent or copyright laws. This license includes CITY's right to use and reproduce these documents as necessary to implement any CITY project which may require the use of these documents. Further, CONSULTANT acknowledges that CITY is subject to Chapter 552 of the Government Code, commonly known as the "Texas Public Information Act," and hereby waives and releases the CITY from any claims against CITY for providing copies of the Design Documents in compliance with that Act. CONSULTANT, after completion of the Project, shall immediately furnish originals of all Design Documents to CITY.

D. CONSULTANT shall ensure that all text documents supplied to CITY as provided herein are fully compatible with MS Word and that all drawings are fully compatible with Adobe PDF format.

VII. TERMINATION

A. CITY or CONSULTANT may suspend or terminate this Agreement for cause or without cause at any time by giving written notice to the other party. In the event suspension or termination is without cause, CITY's payment to CONSULTANT, in accordance with this Agreement, will be made on the basis of the Services reasonably determined by CITY to be

satisfactorily performed to date of suspension or termination. In addition, CITY's payment is subject to the CONSULTANT's delivery of all documents and reports reasonably required by CITY, to include Design Documents, invoices, statements, and accounts.

B. Should CITY require a modification to this Agreement, and in the event CITY and CONSULTANT fail to agree upon such modification, either CITY or CONSULTANT have the option of terminating this Agreement. Thereafter, CITY shall pay CONSULTANT in accordance with this Agreement for the Services mutually agreed upon by CITY and CONSULTANT to be properly performed by the CONSULTANT prior to such termination date.

VIII. INSURANCE

CONSULTANT shall provide and maintain in full force and effect during the term of this Agreement the following types of insurance and liability coverage:

A. Workers Compensation with statutory limits.

B. Auto insurance, including insurance covering the operation of owned and non-owned automobiles, trucks and other vehicles, and protecting CONSULTANT and CITY as an additional insured with limits not less than \$500,000/\$1,000,000/\$250,000.

C. General Liability Insurance covering personal and bodily injuries or death in the sum of not less than Five Hundred Thousand Dollars (\$500,000.00) per occurrence and, One Million Dollars (\$1,000,000.00) aggregate. Insurance covering damages to property in the sum of not less than Two Hundred Fifty Thousand Dollars (\$250,000.00). The General Liability Insurance must name the CITY as an additional Insured.

D. Professional Liability Errors and Omissions Insurance covering CONSULTANT's provision of Services in the sum of not less than Five Hundred Thousand Dollars (\$500,000.00) per occurrence and Five Hundred Thousand Dollars (\$500,000.00) aggregate.

E. CONSULTANT shall furnish CITY with signed Certificates of Insurance, satisfactory to CITY, showing compliance with the requirements of this Article before commencement or continuation of the Services. The certificates must provide 30 days written notice to CITY, prior to the cancellation or modification of any insurance required herein, and CONSULTANT shall maintain all such insurance for four years following termination of this Agreement.

IX. INDEMNIFICATION FOR INJURY AND PERFORMANCE

A. CONSULTANT shall protect, indemnify, and hold harmless CITY, its officers, agents, servants, and employees, hereinafter individually and collectively referred to as "Indemnitee(s)", from and against suits, actions, claims, losses, liability, or damage of any character and from and against costs and expenses, including, in part, attorney fees incidental to the defense of such suits, actions, claims, losses, damages, or liability on account of injury, disease, sickness, including death, to any person or damage to property including, in part, the loss of use resulting therefrom, arising from any negligent act, error, or omission of CONSULTANT, its officers, employees, servants, agents, or subcontractors,

or anyone else under CONSULTANT's, direction and control, and arising out of, resulting from, or caused by the performance or failure of performance of the Services, or from conditions created by the performance or non-performance of said work. In the event one or more of the Indemnitees is determined by a court of law to be jointly or derivatively negligent or liable for such damage or injury, CONSULTANT shall indemnify Indemnitee(s) as provided herein on a proportionate basis in accordance with the final judgment, after all appeals are exhausted, determining such joint or derivative negligence or liability.

B. CONSULTANT is not responsible for the actions of the CITY's contractor to perform the construction of the improvements covered under this Agreement.

C. Acceptance and approval of any work or final plans by CITY neither constitutes nor may be deemed a release of this responsibility and liability of CONSULTANT, its employees, associates, agents, and consultants for the accuracy or competency of their designs, working drawings, and specifications, or other documents and work; nor shall such approval be deemed to be an assumption of such responsibility by CITY for any defect in the Design Documents, or CONSULTANT's employees, contractor, agents, and consultants.

X. INDEMNIFICATION FOR UNEMPLOYMENT COMPENSATION

CONSULTANT agrees that it is an independent contractor and not an agent of CITY, and that CONSULTANT is subject, as an employer, to all applicable Unemployment Compensation Statutes, so as to relieve CITY of any responsibility or liability from treating CONSULTANT's employees as employees of CITY for the purpose of keeping records, making reports or payments of Unemployment Compensation taxes or contributions. **CONSULTANT shall indemnify and hold CITY harmless and reimburse it for any expenses or liability incurred under said statutes in connection with employees of CONSULTANT.**

XI. INDEMNIFICATION FOR PERFORMANCE

CONSULTANT shall defend and indemnify Indemnitees against and hold CITY and the premises harmless from any and all claims, suits, or liens based upon or alleged to be based upon the non-payment of labor, tools, materials, equipment, supplies, transportation, and management costs incurred by CONSULTANT in performing the Services.

XII. DEFAULT OF CONSULTANT

In the event CONSULTANT fails to comply or becomes disabled and unable to comply with this Agreement as to the quality or character of the Services or time of performance, and the failure is not corrected within ten (10) days after written notice from CITY to CONSULTANT, CITY may, at its sole discretion, without prejudice to any other right or remedy:

A. Terminate this Agreement and be relieved of the payment of any further consideration to CONSULTANT except for all work determined by CITY to be satisfactorily completed prior to termination. Payment for work satisfactorily completed will equal actual costs, including

reasonable salaries and travel expenses of CONSULTANT to and from meetings called by CITY at which CONSULTANT is required to attend, but shall not include any loss of profit of CONSULTANT. In the event of such termination, CITY may complete the services in any manner deemed proper by CITY, either by the use of its own forces or by assigning the work to others. In either event, CONSULTANT is liable for all costs in excess of the total contract price under this Agreement incurred to complete the Services and CITY may deduct the costs CITY incurs out of such monies as may be due or that may thereafter become due to CONSULTANT under this Agreement.

B. CITY may, without terminating this Agreement or taking over the Services, furnish the necessary materials, equipment, supplies, and/or help necessary to remedy the situation, at the expense of CONSULTANT.

XIII. MISCELLANEOUS PROVISIONS

A. Entire Agreement. This Agreement supersedes all prior agreements, written or oral, between CITY and CONSULTANT and constitutes the entire and integrated Agreement and understanding between the parties with respect to the subject matter of the Agreement. This Agreement may only be amended by a written instrument signed by both parties.

B. Assignment. This Agreement is a personal service contract for the services of CONSULTANT and CONSULTANT's interest in this Agreement, duties hereunder, and/or fees due may not be assigned or delegated to a third party without the written consent of CITY. Sale of more than fifty percent (50%) ownership of CONSULTANT will be considered an assignment.

C. Adjustment in Services. CONSULTANT shall not make any claims for extra services, additional services, or changes in the Services without a written agreement with CITY prior to the performance of such services.

D. Applicable Law. This Agreement must be construed, interpreted, and applied in accordance with and governed by and enforced under the laws of the State of Texas without giving effect to principles of conflict of law. Venue will occur in Kerr County, Texas.

E. Waiver. A delay or omission by either party in exercising any right or power under the Agreement may not be construed as a waiver of that right or power. A waiver by either party of any term or condition of the Agreement may not be construed as a waiver of any subsequent breach of that term or condition or of any other term or condition of the Agreement. Further, neither CITY's review, approval, or acceptance of, nor payment for any of the Services, may be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement.

F. Severability. If any provision of this Agreement is determined to be invalid or unenforceable in any respect, that determination may not affect any other provision of this Agreement which will be interpreted as if the invalid or unenforceable provision had not been included.

G. Independent Contractor. CONSULTANT agrees that CONSULTANT is engaged as an independent contractor and that City has no responsibility to provide CONSULTANT or its

employees with any benefits associated with employee status. CONSULTANT shall neither hold itself out as nor claim to be an officer, partner, employee, or agent of CITY.

H. Exhibits. The following exhibit(s) is(are) attached to this Agreement and is (are) included herein for all purposes:

Exhibit A: Scope of Services

I. Execution Becomes Effective. This Agreement is effective as of the Effective Date.

J. Notices and Authority. CONSULTANT shall send all notices required under this Agreement to the City Manager at City Hall, 701 Main Street, Kerrville, TX 78028. CONSULTANT agrees that only the City Manager, or designee, has the authority to represent CITY or bind CITY under this Agreement. CITY shall send all notices required under this Agreement to the CONSULTANT at:

Rock Engineering & Testing Laboratory, Inc.
10856 Vandale Street
San Antonio, Texas 78216

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

OWNER
THE CITY OF KERRVILLE

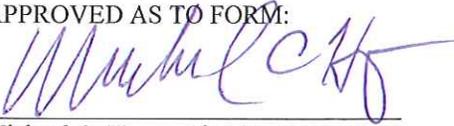
CONSULTANT
ROCK ENGINEERING & TESTING
LABORATORY, INC.

BY: _____
TITLE: CITY MANAGER

BY: _____
TITLE: _____

ATTEST:

Brenda G. Craig, City Secretary

APPROVED AS TO FORM:


Michael C. Hayes, City Attorney



EXHIBIT "A"

- GEOTECHNICAL ENGINEERING
- CONSTRUCTION MATERIALS ENGINEERING & TESTING
- SOILS • ASPHALT • CONCRETE

September 19, 2016

City of Kerrville
701 Main Street
Kerrville, Texas 78028

Attention: Kyle Burow, P.E., CFM

SUBJECT: PROPOSAL TO PERFORM CONSTRUCTION MATERIALS TESTING AND SPECIAL INSPECTIONS FOR THE PROPOSED KERRVILLE REUSE POND & PUMP STATION SPUR 100 KERRVILLE, TEXAS
RETL Proposal Number: P083116A (Revision No. 1)

Dear Mr. Burow,

Introduction

Rock Engineering and Testing Laboratory, Inc. (RETL) is pleased to provide this proposal to perform the Construction Materials Testing and Special Inspections for the proposed Kerrville Reuse Pond & Pump Station to be constructed in Kerrville, Texas. This proposal contains our unit rates and an estimated testing and special inspection budget. It is understood that RETL has been selected by the City of Kerrville to perform these services based on our qualifications and experience in the Kerrville area.

Unit Rates

The type of field and laboratory tests and inspections that may be required on this project and the associated unit fees are as follows:

- Atterberg Limits - \$75.00 each
- Proctors - \$225.00 each
- Sieve Analysis - \$75.00 each
- Minus #200 Sieve - \$45.00 each
- Soil Compaction Test - \$40.00 each
- Set of 5 Concrete Test Cylinders - \$225.00 per set
- Set of 4 Grout Prisms - \$200.00 per set
- Soil Cement Compressive Strength - \$75.00 each
- Engineering Technician - \$50.00 per hour (observations, weekend and standby time)
- Professional Engineer (PE) - \$150.00 per hour (concrete, masonry, & soil special inspections)
- Certified Weld Inspector (CWI) - \$85.00 per hour (weld and bolt special inspections)
- Transportation Charge - \$150.00 each

ROCK ENGINEERING & TESTING LABORATORY, INC.
10856 Vandale St. • San Antonio, Texas 78216
OFFICE: (210) 495-8000 • FAX: (210) 495-8015 • www.rocktesting.com

A minimum of 3 compaction tests will be billed each time this service is requested and the compaction test fee includes the technician time, equipment, and reporting. The fee for a set of concrete test cylinders and grout prisms includes the technician time up to 1-hour onsite, sampling equipment, casting, curing, testing specimens, and reporting the test results. Standard work hours are from 8:00 a.m. to 4:00 p.m., Monday through Friday. Weekend or work outside of standard work hours will be considered overtime and the Contractor will be responsible for reimbursing the City for overtime wages. Inspector overtime wages are \$50/hour. Weekend work will have a minimum 4-hour charge per day with a trip charge of \$150/day. Professional Engineer (PE) and Certified Weld Inspector (CWI) for requested special inspections will be billed at a 2 and 4-hour minimum rate, respectively. The transportation charge includes the technician travel time and all vehicle charges.

In the event the project moves at a pace where a technician is required to remain on-site full-time for soil compaction testing, a day rate of **\$850.00 per day** will be applicable. The day rate will include technician time up to 8 hours on-site, unlimited soil compaction tests, technician travel time with all vehicle charges and report preparation. The above listed regular unit rate costs will apply if the soil technician is on-site for less than 4-hours per day. Overtime hours as defined above will also be applicable for the day rate billing method.

Estimated Budget

Based on the project information provided to RETL, the project will include the construction of a new lined reuse pond and pump station. The new pond berms will require approximately 7 to 25-feet of embankment material and will require HDPE liners and 9-inches of soil cement. A gravel base roadway will be constructed along the top of berm. The pump station will include installation of five pumps, an electrical and chemical building and reuse distribution waterlines. Approximately 2,800 LF effluent line will be installed. RETL estimates the following quantities of testing for the project:

- Atterberg Limits = 12 each (subgrade, berm fill, utility backfill, base & soil cement)
- Proctors = 12 each (subgrade, berm fill, utility backfill, base & soil cement)
- Sieve Analysis = 4 each (berm fill & base)
- Minus #200 Sieve = 8 each (subgrades, berm fill & soil cement)
- Soil Compaction Test = 150 each (pump station backfill, utility backfill & soil cement)
- Set of 5 Concrete Cylinders = 18 sets (pump station, effluent box & electrical/chemical fdns.)
- Soil Cement Compressive Strength = 10 each
- Full Time Soil Technician (Berm Backfill) = 95 days
- Full Time Soil Technician (Soil Cement) = 45 days
- Technician = 48 hours (proof-roll, rebar & pier observations and standby)
- Professional Engineer = 8 hours (soil & concrete special inspections)
- Certified Weld Inspector (CWI) = 16 hours (weld and bolt special inspections)
- Transportation Charge = 60 each

Using the applicable unit rates and day rates, the estimated testing and special inspection budget is on the order of \$148,000.00.

Limitations

Services provided by RETL under this Agreement will be performed in a manner consistent with the degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances.

The Parties to this agreement agree that if any claim is made that RETL failed to comply with any term of this agreement or that it failed to perform its work and/or duties under this agreement properly, the client, upon proof that there was some failure to comply or some mistake in the performance of the work, shall not be entitled to recover any sum greater than the amount paid by the client to RETL for the services performed by RETL.

Either the Client or RETL may terminate this Agreement at any time with or without cause upon giving the other party 10-calendar days prior written notice. The Client shall within 10 calendar days of termination pay RETL for all services rendered and all costs incurred up to the date of termination, in accordance with the compensation provisions of this contract.

Closing

RETL looks forward to providing the construction materials testing and special inspections during the construction phase of this project. Copies of the construction materials testing reports will be delivered to the client via email. A hard copy of the construction materials testing reports will be available through the mail only if explicitly requested by the client. If there are any questions, or if we can be of assistance, please contact our office.

Sincerely,



Kyle D. Hammock, P.E.
Vice President - San Antonio

ACCEPTED AND APPROVED

By: _____

Date: _____



Nathan Ruckstuhl, E.I.T.
CMT Project Manager

Project Information Sheet

1. Project Manager _____
2. Telephone No. _____ Email address _____
3. Your Project No. _____ Purchase Order No. _____
4. Report Distribution (electronically):
 - () Company: _____
Attn: _____
Email: _____
 - () Company: _____
Attn: _____
Email: _____
 - () Company: _____
Attn: _____
Email: _____
5. Invoicing Address: _____

Attn: _____
6. Site Contact: _____ Telephone No.: _____
Email: _____

Agenda Item:

5C. Resolution No. 25-2016 approving the agreement between the City of Kerrville, Texas, and Advanced Data Processing, Inc. (Intermedix) for ambulance billing and related professional services. (staff)

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

SUBJECT: Resolution approving the agreement between the City of Kerrville, Texas and Intermedix for ambulance billing and related professional services.

FOR AGENDA OF: October 11, 2016 **DATE SUBMITTED:** September 23, 2016

SUBMITTED BY: Dannie Smith **CLEARANCES:** Todd Parton
Fire Chief City Manager

EXHIBITS: Resolution, proposal evaluation, Intermedix proposal

AGENDA MAILED TO:

APPROVED FOR SUBMITTAL BY CITY MANAGER:



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

REVIEWED BY THE DIRECTOR OF FINANCE:

SUMMARY STATEMENT

EMS billing is a critical element in order to sustainably provide EMS services to Kerrville and Kerr County. After careful evaluation, staff recommends that we outsource our EMS billing department for the following reasons:

1. Current situation – Our EMS billing department consists of 2 positions, one of which is currently vacant. Our lead Billing Specialist recently retired after 22 years with the city. The remaining Billing Specialist was recently hired without any medical billing experience. During that job search process, the city received no applications with EMS billing experience.
2. Best practices evaluation - We have evaluated best practices from other cities and found most cities outsource their EMS billing because of the issues that a small staff size creates. Quick and efficient filing of medical claims is critical to ensure payment. When one employee is out (vacation, medical leave, training), the remaining employee is not able to handle the full workload, leading to lower billing and collection rates. In addition, this is a highly specialized field with continuing regulatory and technology changes.
3. Enhanced customer service – Outside firms offer extended hours and online account access that the City is not able to provide.
4. Financial analysis – Outside firms offer services that we believe will increase our billing and collections (large insurance coverage database, electronic interface with Peterson Regional Medical Center, 100% electronic filing, online payments, evening and Saturday hours, auto insurance billing, skip trace service, etc.). In addition, these services can be provided at a lower cost than our in house service.

Accordingly, we began interviewing EMS billing firms. Based on the quotes we received, we recommend entering into a contract with Intermedix to perform this professional service for the city for the following reasons:

1. Reputation – Intermedix is one of the largest EMS billing services in the nation, billing almost 4 million transactions a year for over 250 cities nationwide ranging from very large (New York City, Chicago and Los Angeles) to very small, with 80% of their client base made up of small cities. Intermedix offers the latest in filing, reporting, collection services and technology as well as extensive analytics regarding our EMS services.
2. Fees – Intermedix charges a 5.75% fee on dollars collected. Other quotes ranged from 7% to 8%. Based on anticipated dollars collected, Intermedix fees would be lower than other quotes by approximately \$47,000 annually.
3. References – We spoke with representatives from other cities that use Intermedix. All of the references spoke highly of their experience with Intermedix and recommended using their service.
4. Compatibility with existing systems – EMS claims begin with a patient care report completed by medics taking the call. Intermedix has an established interface with our existing patient care reporting system, meaning the conversion to Intermedix would not be noticeable for our field staff. Other firms would require us to convert to a different patient care reporting system and retrain our staff.

RECOMMENDED ACTION

For the reasons stated above, staff recommends approval of the attached resolution approving the agreement between the City of Kerrville and Intermedix for ambulance billing and related professional services and authorizing the City Manager to execute a professional services agreement.

**CITY OF KERRVILLE, TEXAS
RESOLUTION NO. 25-2016**

**A RESOLUTION APPROVING THE AGREEMENT BETWEEN THE
CITY OF KERRVILLE, TEXAS, AND ADVANCED DATA PROCESSING,
INC. (INTERMEDIX) FOR AMBULANCE BILLING AND RELATED
PROFESSIONAL SERVICES**

WHEREAS, the Kerrville Fire Department provides emergency medical services (“EMS”) for the City and into areas of the county; and

WHEREAS, the City’s billing for EMS is a critical element of this operation in order to sustain such services; and

WHEREAS, City staff recently conducted a review of its EMS billing operations, the efficiency of collections, and how other cities handle such operations, and recommends that the City outsource this part of EMS; and

WHEREAS, City staff believes that outsourcing will help maintain the quick and efficient filing of medical claims and provide greater customer services, both of which are critical components in realizing a higher percentage of collections; and

WHEREAS, after interviewing several EMS billing firms and reviewing proposals and fees for services, City staff also believes that by outsourcing its billing operation, the City will realize a cost reduction; and

WHEREAS, Section 252.022(a)(4) of the Texas Government Code provides an exemption from competitive bidding for contracts pertaining to the provision of professional services; and

WHEREAS, because EMS billing services entails special knowledge and a high order of learning, skill, and intelligence, including achieving medical billing certifications, the City may procure these types of services without a competitive bid process, though in any case, City staff believes that the interviews of potential service providers and analysis of proposals has helped ensure that the City has been offered fair, reasonable fees for the services offered; and

WHEREAS, the City Council of the City of Kerrville, Texas, finds it to be in the public interest to enter into an agreement with Intermedix to perform EMS billing services for the City;

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

The City Manager and City Secretary are authorized to execute and attest, respectively, on behalf of the City of Kerrville, Texas, the *Agreement between the City of Kerrville, Texas, and Advanced Data Processing, Inc., a subsidiary of Intermedix Corporation for Ambulance*

Billing and Related Professional Services, which agreement shall be substantially set forth in Exhibit A.

PASSED AND APPROVED ON this the _____ day of _____, A.D., 2016.

Bonnie White, Mayor

APPROVED AS TO FORM:



Michael C. Hayes, City Attorney

ATTEST:

Brenda G. Craig, City Secretary

AGREEMENT BETWEEN

AND

**ADVANCED DATA PROCESSING, INC., A SUBSIDIARY OF INTERMEDIX CORPORATION
FOR AMBULANCE BILLING AND RELATED PROFESSIONAL SERVICES**

THIS AGREEMENT ("Agreement") is made and entered into this _____ of _____, 2016 (the "Effective Date") by and between the _____, a Texas municipality, with principal offices located at _____ ("Client") and Advanced Data Processing, Inc., a subsidiary of Intermedix Corporation, a Delaware Corporation with principal offices located at 6451 North Federal Highway, Suite 1000, Fort Lauderdale, Florida 33308 ("Intermedix").

RECITALS

WHEREAS, Client provides emergency and non-emergency medical services, including ambulance transport ("EMS"), for residents and visitors in its jurisdiction, and charges for such services; and

WHEREAS, Intermedix provides billing, collection and related consulting services and equipment for municipalities and other providers of EMS; and

WHEREAS, the parties hereto now wish to enter into an agreement, pursuant to which Intermedix will render the Services as hereinafter provided;

NOW THEREFORE, the parties hereto agree as follows:

AGREEMENT

1. **ENGAGEMENT OF INTERMEDIX.** During the Term of this Agreement, except for accounts referred to a collection agency as provided herein, Intermedix shall be exclusively responsible for the billing and collection of all charges and fees resulting from the delivery of EMS by Client, including but not limited to all charges and fees to private insurers, Medicare, Medicaid, other governmental programs, individual patients and their responsible parties (collectively, "Payors").
2. **SCOPE OF SERVICES.** Intermedix shall perform and carry out Services as specifically described in Exhibit A (the "Scope of Services"; collectively the Scope of Services and the Billing System (as defined in Section 3.01) are the "Services"), which is attached hereto and incorporated herein by this reference. Client reserves the right to request changes in the Scope of Services within Intermedix's capabilities, which changes shall be implemented upon mutual written agreement of the parties specifying such changes and any change in compensation attributable thereto.

3. ACCESS TO BILLING SYSTEM.

3.01 Right to Use. During the Term of this Agreement, Intermedix grants to Client, access to Intermedix billing system solely to view Client's accounts, run various reports, and access to all data associated with the billing and collection process which is wholly owned by Client ("Billing System"). During the Term of this Agreement, Intermedix will not in any way transfer to any third party or use in direct or indirect competition with Client any information or data posted by or for the benefit of Client on Intermedix's website and acknowledges that all such information is confidential ("Confidential Information"). Intermedix further acknowledges that its handling of information on behalf of Client is or may be subject to federal, state or local laws, rules, regulation and restrictions regarding the privacy of consumer information. Intermedix agrees to comply with all of such laws, rules and regulations and restrictions, as is commercially reasonably possible, at its sole cost and expense. This Access to Billing System Section and all obligations contained therein will survive any termination or expiration of this Agreement.

3.02 User Restrictions. Client shall not, and shall not permit others to, without the express written consent of Intermedix: (i) use, receive, reproduce, copy, market, sell, distribute, license, sublicense, lease, timeshare, or rent the Billing System, any other Service or any component thereof; (ii) modify, alter, translate or prepare derivative works based on the Billing System or Documentation is permitted; (iii) disassemble, decompile, decrypt or reverse engineer the Billing System or in any way attempt to discover or reproduce source code for the Billing System, or any portion thereof; or (iv) develop or license any third party programs, applications, tools or other products which interface or interact with the Billing System. Client agrees not to remove the copyright, trade secret or other proprietary protection legends or notices which appear on or in the Billing System, any other Service or the Documentation.

3.03 Internet Access. Client shall be responsible for providing its own Internet access necessary to provide the Billing System, and in no event shall Client be provided with direct access (by modem or otherwise) to the Billing System server, other than access that is available to third parties generally through the Internet. The parties acknowledge that, since the Internet is neither owned nor controlled by any one entity, Intermedix makes no guarantee that any given user will be able to access the Billing System at any given time. There are no assurances that access will be available at all times and uninterrupted, and Intermedix shall not be liable to Client for its inability to access the Billing System.

3.04 Reporting. Operational and financial data reports for Client will be available on the Billing System when the Billing System is available. The format and content of the data will be established and defined by Intermedix and such reports may be added, modified or deleted without notice to Client. Notwithstanding the foregoing, Client may request that specific, custom reports be made available to it at an additional charge to be negotiated between Intermedix and Client.

3.05 Acknowledgement with Respect to Reports. With respect to each report generated for Client as part of the Billing System, Client acknowledges and agrees: (i) such report represents a "snapshot" of a moment in time, and as such, the snapshot may not be accurate with respect to financial results on the whole; (ii) the underlying data may be subject to

correction from time-to-time, which may change the results of the report or its interpretation; and (iii) the data represented in the report constitutes only a limited portion of all data available regarding Client's business. Accordingly, any particular report may not accurately represent the Client's then-current or future financial condition.

3.06 Intellectual Property. Client agrees that the equipment, computer hardware and software, billing and collection processing, Services, Billing System and other related systems and equipment are the property and trade secrets of Intermedix, and that Client will not release any information regarding such Confidential Information (as such term is defined in Section 11.01) and/or trade secrets of Intermedix to any third party without the prior written consent of Intermedix. Client further agrees that, in connection with the use of certain data entry devices, Client may gain access to the intellectual property of third parties. Client understands and agrees that it may be required to enter into agreements with respect to such intellectual property in order to use such equipment. Client agrees to enter into such arrangements at Intermedix's request.

3.07 Audit Rights. From time to time and upon reasonable prior written notice, Intermedix may audit Client's use of the Services to help ensure that Client is in compliance with the terms and conditions of this Agreement, including, but not limited to, any payment terms. Any such audit will be conducted during regular business hours at the applicable facilities of Client. Client will identify and cooperate with Intermedix (or its representatives) to provide Intermedix (or its representatives) with reasonable access to all relevant equipment, personnel and records.

4. **CLIENT RESPONSIBILITY.**

4.01 Generally. Client is responsible for all activity occurring under its User accounts and shall abide by all applicable laws and regulations in connection with its use of the Billing System. Client will immediately (and in no greater than twenty four (24) hours from Client's knowledge of the following) notify Intermedix and use best efforts to cease any further of the following: (i) any unauthorized use of a password or account or any other known or suspected breach of security; (ii) any copying or distribution of any content or other intellectual property of Intermedix related to the Services that is known or suspected by Client or its Users; (iii) any use of false identity information to gain access to or use the Billing System or (iv) any loss or theft of a hardware device on which a User has access to the Billing System (each of subsections (i) through (iv) a "Security Breach Event"). To the extent that any Security Breach Event involves Protected Health Information (as defined below), and is subject to the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191, 110 Stat. 1936), including the privacy and security rules promulgated thereunder ("HIPAA"), as amended by the Health Information Technology for Clinical Health Act (Pub. L. No. 111-5, 123 Stat. 115) (the "HITECH Act"), Client shall comply with all applicable requirements under such laws, including any applicable breach notification requirements (i.e. notifications to affected individuals, the Department of Health and Human Services ("HHS"), and prominent media outlets) (the "HIPAA Notifications") triggered by the Security Breach Event. "Protected Health Information" means Individually Identifiable Health Information (defined at 45 C.F.R. § 164.501), transmitted or maintained in any form or medium, concerning individuals for whom the Client has performed EMS.

4.02 Rights Following Notification. Upon Intermedix's receipt of notification given by the Client of a Security Breach Event, Intermedix shall have the right to immediately, without notice to Client, suspend Client's access to the Billing System until such time as the Security Breach Event has been fully resolved, and no longer presents a threat of inappropriate access to: (i) the Billing System, (ii) any other intellectual property rights of Intermedix or its affiliates or (iii) the personal data or Protected Health Information gathered by Client in the performance of EMS by the Client. To the extent that a Security Breach Event requires Client to provide HIPAA Notifications, any such notifications shall not include a reference to Intermedix or any of its affiliates unless such a reference is specifically required by HIPAA or other applicable law. Further, if Client intends to reference Intermedix in a HIPAA Notification based on its belief that such a reference is required by HIPAA or other applicable law, Client shall provide Intermedix written notice of its intent to do so no later than ten (10) days prior to Client's provision of each required HIPAA Notification (i.e. no later than ten (10) days prior to Client's provision of notifications to affected individuals, HHS, and/or prominent media outlets, as applicable).

4.03 Security. Client acknowledges that it is solely responsible for providing security software, including without limitation, firewalls and similar applications, to prevent unauthorized access to its computer systems, including malware prevention software on User's computers. Client is responsible for requiring its Users to use a password to access the Billing System in compliance with the Billing Security Characteristics. The "Billing Security Characteristics" means a password to access the Billing System, which must be at least eight (8) characters in length, and contain three (3) of four (4) of the following characteristics: lowercase letter, uppercase letter, special character or a number. Intermedix shall use commercially reasonable efforts to maintain the security of the Billing System, but shall not be responsible for the Client's loss or dissemination of passwords or other breaches beyond Intermedix's reasonable control.

5. **COMPENSATION AND METHOD OF PAYMENT.**

5.01 Fees. Intermedix shall be paid by Client a monthly amount representing fees for the Services provided by Intermedix hereunder, computed as follows:

- (a) **Five and seventy-five hundredths percent (5.75%)** of all monies collected by Intermedix for EMS billing provided by Client less refunds ("Net Collections"), plus
- (b) Three percent (3.0%) of all monies collected by Intermedix via credit card payments for EMS provided by Client less refunds ("Net Collections"), plus
- (d) All amounts set forth in any Exhibit, attached hereto.

5.02 Intermedix shall submit the monthly invoices for fees for the Services to Attn: _____. Client shall pay the amount invoiced within thirty (30) days of receipt of such invoice. In the event Client disputes any part of the invoiced amounts, such dispute shall be raised in writing to Intermedix within such thirty (30) day period or the invoice shall conclusively be deemed to be accurate and correct. Intermedix shall respond to any such notice of dispute within thirty (30) days of receipt thereof. Any overdue amounts which are not

the subject of a good faith notice of dispute shall accrue interest at the rate of twelve percent (12%) per annum.

5.03 Bank Accounts. Client agrees that it will be solely responsible for the cost and maintenance of any and all of Client's bank accounts, lock-box and/or remote deposit services. Client agrees to assume and be responsible for all costs associated with such program. Client agrees to utilize and be responsible for a lockbox or remote deposit capturing. Client agrees to give Intermedix access to the lockbox for payment posting verification. Client agrees to assume and be responsible for all credit card costs.

5.04 Taxes. All amounts payable under this Agreement are exclusive of all sales, use, value-added, withholding and other taxes and duties. Client shall promptly pay, and indemnify Intermedix against, all taxes and duties assessed in connection with any such amounts, this Agreement and its performance by any authority within or outside of the U.S., except for taxes payable on Intermedix's net income.

6. **COLLECTION EFFORTS.**

6.01 Alternative Collection Arrangements. Intermedix will have the right, on Client's behalf, in its sole and complete discretion, to enter into an alternative collection arrangement with respect to any patient encounter performed by the Client if: (i) the total payments are for at least 80 percent of the amount of the bill; (ii) an insurance company offers at least 70% of the total amount billed with a stipulation that the insured not be billed for the balance; or (iii) Intermedix is able to make arrangements for the payment of patient account that provide a substantially similar economic benefit to Client, as Intermedix determines in its sole and complete discretion.

6.02 Scope of Collection Efforts. If reasonable efforts have been made to collect a patient account of Client and such efforts have not been successful, Intermedix shall have the right to terminate collection efforts and close the account as an unpaid debt. As used herein "reasonable efforts" shall be defined to mean at least but not limited to one hundred twenty (120) days of active collection efforts in the ordinary course of business. In addition, Intermedix may terminate or suspend collection efforts in the event that Client has supplied Intermedix with materially incomplete or inaccurate billing and/or patient information. Absent contrary instructions from Client with respect to any patient encounter, the accounts that Intermedix has deemed to be uncollectible may be forwarded to a third-party collection agency for further collection effort.

6.03 Administrative Fee/Third Party Collection Costs. Client will be responsible for engaging any third party collection service for uncollectible accounts after Intermedix has exhausted its collection efforts. Client will be directly liable for all fees of third party collection agency.

6.04 Excluded Persons. If any refunds of patient accounts of Client are required to be refunded to or offset by any government and commercial payor as a result of Client's violation of its obligations set forth in Exhibit A (Scope of Services), Section B.9. (an "Excluded Person Refund"), Intermedix shall not be required to refund to Client any

commissions or fees earned or previously paid to Intermedix as a result of its collection of such Excluded Person Refund or otherwise include such Excluded Person Refunds in its calculation of Net Collections as set forth herein.

7. **SYSTEM SUPPORT.** Support and training of Client's Users will be provided subject to and in accordance with the terms of the Scope of Services.

8. **INDEPENDENT CONTRACTORS.** Intermedix is an independent contractor of Client and not an employee or agent of Client; provided, however, to the extent necessary to fulfill its billing and collection efforts under this Agreement, Intermedix is authorized to sign *in an administrative capacity* for Client the following types of standard forms and correspondence only; letters to patients or their representatives verifying that an account is paid in full; forms verifying the tax-exempt status of Client; and insurance filings and related forms. Intermedix has no authority to sign any document that imposes any additional liability on Client. Intermedix shall retain full control over the employment, direction, compensation and discharge of all persons assisting in the performance of the Services. Intermedix shall be fully responsible for all matters relating to payment of its employees, including compliance with social security, withholding tax and all other laws and regulations governing such matters. Each party shall be responsible for its own acts and those of its agents and employees during the Term of this Agreement.

9. **LIMITATION ON LIABILITY.** INTERMEDIX'S TOTAL CUMULATIVE LIABILITY UNDER THIS AGREEMENT WITH RESPECT TO THE BILLING SYSTEM, EQUIPMENT OR OTHER SERVICES DELIVERED UNDER THIS AGREEMENT WILL BE LIMITED TO THE TOTAL FEES PAID (LESS ANY REFUNDS OR CREDITS) BY CLIENT TO INTERMEDIX PURSUANT TO THIS AGREEMENT DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO THE LIABILITY. IN NO EVENT WILL INTERMEDIX BE LIABLE TO CLIENT UNDER, IN CONNECTION WITH, OR RELATED TO THIS AGREEMENT FOR ANY SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES, WHETHER BASED ON BREACH OF CONTRACT, WARRANTY, TORT, PRODUCT LIABILITY, OR OTHERWISE, AND WHETHER OR NOT INTERMEDIX HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. THE PARTIES ACKNOWLEDGE AND AGREE THAT THE FOREGOING LIMITATIONS OF LIABILITY ARE A CONDITION AND MATERIAL CONSIDERATION FOR THEIR ENTRY INTO THIS AGREEMENT.

10. **INSURANCE.** Intermedix shall procure and maintain for the duration of the Agreement, the following insurance coverage: (i) workers' compensation insurance in compliance with the applicable state and federal laws; (ii) general liability insurance in an amount no less than \$1,000,000 per occurrence; (iii) coverage for business interruption, destruction of data processing equipment and media, liabilities affecting accounts receivable, and valuable documents in an amount no less than \$100,000 aggregate; and (iv) liability coverage for all vehicles whether owned, hired or used in the amount of \$500,000.

11. **CONFIDENTIALITY AND HIPAA BUSINESS ASSOCIATE OBLIGATIONS.**

11.01 Confidential Information. Each party (the “Discloser”) may disclose to the other party (the “Recipient”) certain non-public information relating to the Discloser’s business, including technical, marketing, financial, personnel, planning, medical records and other information that is marked confidential or which the Recipient should reasonably know to be confidential given the nature of the information and the circumstance of disclosure (“Confidential Information”). Confidential Information of each party shall also include the terms of this Agreement, but not the existence and general nature of this Agreement. Confidential Information will not include any information: (i) lawfully obtained or created by the Recipient independently of, and without use of, Discloser’s Confidential Information and without breach of any obligation of confidence or violation of HIPAA or the HITECH Act; or (ii) that is in or enters the public domain without breach of any obligation of confidence. Client shall be responsible for any breach by any of its Users, employees or agents of any of the confidentiality obligations set forth herein.

11.02 Use and Disclosure. Except as expressly permitted by this Agreement or the BA Agreement (as applicable) and subject to applicable law, the Recipient will:

(a) not disclose Discloser’s Confidential Information except: (i) to the employees or contractors of the Recipient to the extent that they need to know that Confidential Information for the purpose of performing the Recipient’s obligations under this Agreement, and who are bound by confidentiality terms with respect to that Confidential Information no less restrictive than those contained in this Section 11.02; or (ii) as required to be disclosed by law, to the extent required to comply with that legal obligation, provided that the Recipient will promptly notify the Discloser of such obligation;

(b) use the Discloser’s Confidential Information only for the purpose of performing Recipient’s obligations under this Agreement;

(c) use all reasonable care in handling and securing the Discloser’s Confidential Information, and employ all reasonable data security measures that the Recipient ordinarily uses with respect to its own proprietary information of similar nature and importance; and

(d) use and disclose Confidential Information that contains Protected Health Information in accordance with the terms of the Business Associate Agreement attached hereto as Exhibit B (the “BA Agreement”), if applicable.

11.03 Return of Confidential Information. Subject to Intermedix’s internal data retention policies and applicable law, the Recipient will return to the Discloser, and destroy or erase all of the Disclosure Confidential Information in tangible form, upon the expiration or termination of this Agreement, and the Recipient will promptly certify in writing to the Discloser that it has done so.

11.04 HIPAA Business Associate Exhibit/Changes In HIPAA. Each party agrees to the obligations set forth in the BA Agreement attached hereto as Exhibit B (the “BA Agreement”). Such BA Agreement constitutes the complete and exclusive agreement between the parties with respect to Intermedix’s obligations regarding Protected Health Information,

superseding and replacing any and all prior agreements, communications, representations, and understandings (both written and oral) regarding such subject matter; provided, however, that in the event of any additions, modifications or amendments to any statute or regulation including HIPAA or future federal regulations adopted pursuant thereto, then Intermedix and Client shall promptly enter into negotiations to revise the BA Agreement to reflect such changes. Upon the execution by the parties of a revised BA Agreement (a "Revised BA Agreement"), such Revised BA Agreement will supersede the current BA Agreement in its entirety and such current BA Agreement will no longer be of any force or effect.

11.05 Right to Injunctive Relief. The parties expressly acknowledge and agree that the breach, or threatened breach, by a party of any provision of this Section 11 may cause the other party to be irreparably harmed and that the harmed party may not have an adequate remedy at law. Therefore, the parties agree that upon such breach, or threatened breach, the harmed party will be entitled to seek injunctive relief to prevent the other party from commencing or continuing any action constituting such breach without having to post a bond or other security and without having to prove the inadequacy of any other available remedies. Nothing in this paragraph will be deemed to limit or abridge any other remedy available to either party at law or in equity.

12. **NON-SOLICITATION.** For the Term of this Agreement and for one (1) year after its termination, Client or Intermedix shall not employ or hire any employee or former employees - who, pursuant to this Agreement, has had any contact with employees or representatives of either party or has worked on Client's accounts, without the prior written consent of Client and Intermedix.

13. **ATTACHMENTS.** The following named attachments are made an integral part of this Agreement:

- a. Scope of Services (Exhibit A attached hereto and made a part hereof);
- b. Business Associate Agreement (Exhibit B attached hereto and made a part hereof); and

14. **TERM AND TERMINATION.**

14.01 Term. This Agreement shall be effective for an initial three (3) year period, commencing on the Effective Date unless terminated as provided in Section 14.02 below (the "Initial Term"). Following the expiration of the Initial Term, subject to the payment of all fees due hereunder, this Agreement shall renew for successive, automatically renewable one (1) year periods ("Renewal Terms"; collectively, the Initial Term together with any Renewal Terms are the "Term"), unless either party provides the other party with written notice of termination of this Agreement as provided in Section 14.02 below. All terms and conditions hereof shall remain in full force and effect during the Term unless this Agreement is amended in a writing executed by each Party hereto.

14.02 Events Triggering Termination. This Agreement shall be subject to termination under the following conditions.

a. Termination without Cause. Following the period three (3) year from the Effective Date of this Agreement, either Client or Intermedix may terminate this Agreement without cause upon six (6) months prior written notice to the other party.

b. Termination with Cause. If Intermedix materially fails to perform any obligation required hereunder, and such default continues for thirty (30) calendar days after written notice from Client specifying the nature and extent of the failure to materially perform such obligation, this Agreement shall terminate upon the expiration of said thirty (30) calendar day period.

c. If Client materially fails to perform any obligation required hereunder, and such default continues for thirty (30) calendar days after written notice from Intermedix specifying the nature and extent of the failure to materially perform such obligation, this Agreement shall terminate upon the expiration of said thirty (30) calendar day period.

d. Termination Due to Bankruptcy. If Client or Intermedix: (i) apply for or consent to the appointment of a petition in bankruptcy; (ii) make a general assignment for the benefit of creditors; (iii) file a petition or answer seeking reorganization or arrangement with creditors; or (iv) take advantage of any insolvency, or if any order, judgment, or decree shall be entered by any court of competent jurisdiction on the application of a creditor or otherwise adjudicating either party bankrupt or approving a petition seeking reorganization of either party or appointment of a receiver, trustee or liquidator of either party or all or a substantial part of its assets (subsections (i) through (iv), each a "Bankruptcy Event"), this Agreement shall terminate automatically and immediately upon written notice from the other party to the party who has incurred a Bankruptcy Event.

14.03 Rights Upon Termination. If this Agreement is terminated for any reason, including, without limitation, the breach of this Agreement by any party, Intermedix shall be entitled to recover when due and payable hereunder, all amounts owed to Intermedix hereunder accrued but unpaid as of the date of termination. Following termination of this Agreement, for a period of ninety (90) days (the "Transition Period"), Intermedix, at its sole discretion and upon written notice to Client of its election to do so, may continue its billing and collection efforts as to those accounts referred to Intermedix prior to the effective date of termination, subject to the terms and conditions of this Agreement, for the fee set forth in Section 5 above. At the end of the Transition Period, Intermedix shall return all records to Client in a commercially standard format on a commercially standard media as determined by Intermedix in its sole discretion; provided, however, that Intermedix may keep any copies of records in accordance with applicable law. The expiration or termination of this Agreement, for whatever reason, will not discharge or relieve either party from any obligation which accrued prior to such expiration or termination, will not relieve either party that has breached this Agreement from liability for damages resulting from such breach and will not destroy or diminish the binding force and effect of any of the provisions of this Agreement that expressly, or by reasonable implication, come into or continue in effect on or after expiration or termination hereof.

15. **FORCE MAJEURE.** Except for Client's obligation to pay, when due, the fees and compensation owed to Intermedix pursuant to the terms and conditions of this Agreement, neither Client nor Intermedix shall be considered to be in default of this Agreement if delays in

or failure of performance shall be due to a Force Majeure Event (as defined below), the effect of which, by the exercise of reasonable diligence, the non-performing party could not avoid. The term "Force Majeure Event" shall mean any event which results in the prevention or delay of performance by a party of its obligations under this Agreement and which is beyond the reasonable control of the non-performing party and includes, but is not limited to fire, flood, earthquakes, storms, lightning, natural disaster, epidemic, war, riot, civil disturbance, sabotage, terrorism and governmental actions. The non-performing party shall, within a reasonable time of being prevented or delayed from performance by an uncontrollable force, give written notice to the other party describing the circumstances and uncontrollable forces preventing continued performance of the obligations of this Agreement.

16. **GOVERNING LAW.** This Agreement will be governed by and construed in accordance with the laws of the State in which the Client is located, exclusive of its rules governing choice of law and conflict of laws.

17. **GENERAL WARRANTIES AND DISCLAIMERS.**

17.01 Corporate Authority. Each party warrants that it is a duly organized and validly existing corporation and has complete and unrestricted corporate power and authority to enter into this Agreement.

17.02 Disclaimer. THE WARRANTIES EXPRESSLY PROVIDED IN THIS AGREEMENT ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT, WHICH WARRANTIES ARE HEREBY SPECIFICALLY DISCLAIMED. NO REPRESENTATIVE OF INTERMEDIX SHALL HAVE THE RIGHT TO MAKE WARRANTIES ON INTERMEDIX'S BEHALF UNLESS THOSE WARRANTIES ARE IN WRITING AND EXECUTED BY A DULY AUTHORIZED OFFICER OF INTERMEDIX.

18. **EXPORT LAWS.** Client shall comply with all then current export laws and regulations of the U.S. Government and the government of the country in which Client receives access to the Services.

19. **ASSIGNMENT OF AGREEMENT.** This Agreement will bind and inure to the benefit of each party's permitted successors and assigns. Neither party shall assign this Agreement without the express written consent of the other party, and such consent shall not be unreasonably withheld. Notwithstanding the foregoing sentence, Intermedix may, upon notice to Client, assign this Agreement to any affiliate or any entity resulting from the sale, combination or transfer of all or substantially all of the assets or capital stock, or from any other corporate form of reorganization by or of Intermedix. Intermedix may subcontract any of its obligations under this Agreement, and may perform those obligations through personnel employed by or under contract with Intermedix.

20. **NOTICES.** Any notice directed to the parties' legal rights and remedies under this Agreement will be provided in writing and will reference this Agreement. Such notices will be deemed given if sent by: (i) facsimile, when complete transmission to the recipient is

confirmed by the sender's facsimile machine; (ii) postage prepaid registered or certified U.S. Post mail, then five (5) working days after sending; or (iii) commercial courier, then at the time of receipt confirmed by the recipient to the courier on delivery. All notices to a party will be sent to its address set forth below, or to such other address as may be designated by that party by notice to the other party in accordance with this Section:

To Client: Name
 Address
 City

To Intermedix: Intermedix Corporation
 6451 North Federal Highway, Suite 1000
 Fort Lauderdale, Florida 33308
 Attn: Brad Williams, CAO & VP

21. **SEVERABILITY.** If all or a part of a provision of this Agreement is found illegal or unenforceable, it will be enforced to the maximum extent permissible, and the legality and enforceability of the remainder of that provision and all other provisions of this Agreement will not be affected.

22. **ENTIRE AGREEMENT.** This Agreement, including exhibits, attachments and written terms incorporated by reference, is the complete and exclusive agreement between the parties with respect to the subject matter hereof, superseding and replacing any and all prior agreements, communications, and understandings (both written and oral) regarding such subject matter. Pre-printed terms and conditions on or attached to any Client purchase orders or other business forms shall be of no force or effect, even if Intermedix acknowledges or accepts them.

23. **AMENDMENT/WAIVER.** This Agreement may be modified, or any rights under it waived, only by a written document executed by both parties. Any failure of a party to exercise or enforce any of its rights under this Agreement will not act as a waiver of such rights.

24. **ATTORNEYS FEES.** Should either party institute any action or procedure to enforce this Agreement or any provision hereof, or for damages by reason of any alleged breach of this Agreement or of any provision hereof, or for a declaration of rights hereunder (including, without limitation, arbitration), the prevailing party in any such action or proceeding shall be entitled to receive from the other party all costs and expenses, including without limitation reasonable attorneys' fees, incurred by the prevailing party in connection with such action or proceeding.

25. **CONSTRUCTION OF AGREEMENT.** This Agreement has been negotiated by the parties and its provisions will not be presumptively construed for or against the other party. The headings and Section titles in this Agreement are for convenience only, and will not affect the construction or interpretation of this Agreement.

26. **NO THIRD PARTY BENEFICIARIES.** Except as expressly provided in this Agreement, nothing in this Agreement shall confer upon any person other than the parties and

their respective successors and assigns, any rights, remedies, obligations or liabilities whatsoever.

27. **COUNTERPARTS.** The parties may execute this Agreement in one or more counterparts, each of which shall be an original, and which together shall constitute one instrument.

IN WITNESS WHEREOF, the parties have caused this Agreement to be signed by their authorized representatives as of the Effective Date.

ADVANCED DATA PROCESSING, INC., a subsidiary of INTERMEDIX CORPORATION, a DELAWARE CORPORATION	_____, A TEXAS MUNICIPALITY
---	---------------------------------------

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: City Manager

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Exhibit A
Scope of Services

Base Services and Obligations:

- B.** Intermedix shall provide revenue cycle management services for Client as described below. Intermedix shall, during the Term:
1. Prepare and submit initial claims and bills for Client promptly upon receipt thereof, and prepare and submit secondary claims and bills promptly after identification of the need to submit a secondary claim.
 2. Assist Client in identifying necessary documentation in order to process and bill the accounts.
 3. Direct payments to a lockbox or bank account designated by Client, to which Client alone will have signature authority.
 4. Pursue appeals of denials, partial denials and rejections when deemed appropriate by Intermedix.
 5. Respond to and follow up with Payors and respond to messages or inquiries from a Payor.
 6. Provide appropriate storage and data back-up for records pertaining to Client's bills and collections hereunder, accessible to Client at reasonable times.
 7. Maintain records of services performed and financial transactions.
 8. Meet, as needed, with representatives of Client to discuss results, problems and recommendations.
 9. Provide any Client-designated collection agency with the data necessary for collection services to be performed when an account is referred to such agency.
 10. Intermedix will support Client in filing and maintaining required documentation and agreements with commonly-used Payors (e.g. Medicare, Medicaid, Champus, etc. Client will maintain responsibility for enrollment, required documentation, and agreements with Out of State Payors, such as Out of State Medicaid programs, and other payors not commonly billed
 11. Provide reasonably necessary training periodically, as requested by Client, to Client's emergency medical personnel regarding the gathering of the necessary information and proper completion of run reports.

12. Utilize up-to-date knowledge and information with regard to coding requirements and standards, to comply with applicable federal, state and local regulations.

13. Provide a designated liaison for Client, patient and other Payor concerns.

14. Provide a toll free telephone number for patients and other Payors to be answered as designated by Client.

15. Facilitate proper security of confidential information and proper shredding of disposed materials containing such information.

16. Establish arrangements with hospitals to obtain/verify patient insurance and contact information.

17. Respond to any Client, Payor or patient inquiry or questions promptly.

18. Maintain appropriate accounting procedures for reconciling deposits, receivables, billings, patient accounts, adjustments and refunds.

19. Provide reasonable access to Client for requested information in order for Client to perform appropriate and periodic audits. Reasonable notice will be given to Intermedix for any planned audit and will be conducted during normal business hours of Intermedix, all at the Client's expense.

20. Provide timely reports facilitating required aspects of monitoring, evaluating, auditing and managing the Services provided.

21. Process refund requests and provide Client with documentation substantiating each refund requested.

22. Assign billing to patient account numbers providing cross-reference to Client's assigned transport numbers.

23. Maintain responsibility for obtaining missing or incomplete insurance information.

24. Provide accurate coding of medical claims based on information provided by Client.

25. Negotiate and arrange modified payment schedules for individuals unable to pay full amount when billed.

26. Retain accounts for a minimum of twelve (12) months (unless otherwise specified by mutual agreement) and after twelve (12) months turn over accounts for which no collection has been made (unless insurance payment is pending) to an agency designated by Client.

27. Permit real-time read only electronic look-up access by Client to Intermedix's Billing System to obtain patient data and billing information.

28. Maintain records in an electronic format that is readily accessible by Client personnel and that meets federal and state requirements for maintaining patient medical records.

29. Create, implement and comply with a Compliance Plan consistent with the Compliance Program Guidance for Third Party Medical Billing Companies 63 FR 70138; (December 18, 1998) promulgated by the Office of Inspector General of the Department of Health and Human Services (OIG).

C. *Client's Responsibilities and Obligations:*

1. From each person who receives EMS from Client ("Patient"), Client shall use its best efforts to obtain and forward the following information ("Patient Information") to Intermedix:

- (i) the Patient's full name and date of birth;
- (ii) the mailing address (including zip code) and telephone number of the Patient or other party responsible for payment ("Guarantor");
- (iii) the Patient's social security number;
- (iv) the name and address of the Patient's health insurance carrier, name of policyholder or primary covered party, and any applicable group and identification numbers;
- (v) the auto insurance carrier address and/or agent's name and phone number if an automobile is involved;
- (vi) the employer's name, address and Workers Compensation Insurance information if the incident is work related;
- (vii) the Patient's Medicare or Medicaid HIC numbers if applicable;
- (viii) the Patient's or other responsible party's signed payment authorization and release of medical authorization form or other documentation sufficient to comply with applicable signature requirements;
- (ix) the call times, transporting unit, and crew members with their license level, i.e. EMT-B, EMT-I, or EMT-P;

(x) odometer readings or actual loaded miles transported such that loaded miles may be calculated;

(xi) physician certification statements (PCS) for non-emergency transports that are to be billed to Medicare pursuant to CMS regulations; and

(xii) any other information that Intermedix may reasonably require to bill the Patient or other Payor.

2. Client represents and warrants that all information provided to Intermedix shall be accurate and complete. Intermedix shall have no obligation to verify the accuracy of such information, and Client shall be solely responsible for such accuracy. Client agrees to indemnify and hold Intermedix, its agents, and employees harmless from any and all liabilities and costs, including reasonable attorneys' fees, resulting from (a) any inaccurate or misleading information provided to Intermedix that results in the actual or alleged submission of a false or fraudulent claim or (b) any other actual or alleged violation of local, state or federal laws., including but not limited laws applicable to Medicare, Medicaid or any other public or private Payor or enforcement agency.

3. Client will provide Intermedix with necessary documents required by third parties to allow for the electronic filing of claims by Intermedix on Client's behalf.

4. Client will provide Intermedix with its approved billing policies and procedures, including dispatch protocols, fee schedules and collection protocols. Client will be responsible for engaging any third party collection service for uncollectible accounts after Intermedix has exhausted its collection efforts.

5. Client will timely process refunds identified by Intermedix for account overpayments and provide to Intermedix confirmation, including copies of checks and other materials sent.

6. Client will provide a lock box or bank account address to Intermedix and will instruct the lock box or bank custodian agency to forward all documents to Intermedix for processing.

7. Client will provide Intermedix with daily bank balance reporting capabilities via the bank's designated web site.

8. Client will cooperate with Intermedix in all matters to ensure proper compliance with laws and regulations.

9. Client represents and warrants that all of its employees, personnel and independent contractors involved in the delivery of EMS or otherwise performing services for Client: (i) hold the licensure or certification required to perform such services, (ii) have not been convicted of a criminal offense related to health care or been listed as debarred, excluded or

otherwise ineligible for participation in a Federal health care program and (iii) are not excluded persons listed on any of the following: (a) the Office of the Inspector General List of Excluded Individuals and Entities; (b) the General Services Administration's Excluded Parties List; and (c) the Office of Foreign Asset Control's Specially Designated Nationals List.

10. Client agrees that it will forward to Intermedix copies of checks, or other payment documentation requested by Intermedix relating to the subject matter of this Agreement, within 10 days of the date of receipt of those payments.

11. Client agrees to notify Intermedix in the event that their Electronic Patient Care Reporting (ePCR) vendor performs any system upgrades. Notification may be made in writing to support@Intermedix.com.

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Exhibit B
Business Associate Agreement

This Business Associate Agreement (“BA Agreement”) supplements and is made part of the Underlying Agreement (as defined below).

This BA Agreement is entered into between _____, a **Texas municipality** (“Covered Entity”) and **Advanced Data Processing, Inc., a subsidiary of Intermedix Corporation, a Delaware Corporation** (“Business Associate”), effective as of the Effective Date of the Underlying Agreement.

WHEREAS, Covered Entity and Business Associate have entered into, or plan to enter into, an agreement or other documented arrangement (the “Underlying Agreement”), pursuant to which Business Associate may provide services for Covered Entity that require Business Associate to access, create and use Protected Health Information (“PHI”) that is confidential under state and federal law; and

WHEREAS, Covered Entity and Business Associate intend to protect the privacy and provide for the security of PHI disclosed by Covered Entity to Business Associate, or collected or created by Business Associate pursuant to the Underlying Agreement, in compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (“HIPAA”), and the regulations promulgated there under, including, without limitation, the regulations codified at 45 CFR Parts 160 and 164 (“HIPAA Regulations”); the Health Information Technology for Economic and Clinical Health Act, as incorporated in the American Recovery and Reinvestment Act of 2009, and its implementing regulations and guidance issued by the Secretary of the Department of Health and Human Services (the “Secretary”) (the “HITECH Act”); and other applicable state and federal laws, all as amended from time to time, including as amended by the Final Rule issued by the Secretary on January 17, 2013 titled “Modifications to the HIPAA Privacy, Security, Enforcement, and Breach Notification Rules under the Health Information Technology for Economic and Clinical Health Act and the Genetic Information Nondiscrimination Act; Other Modifications to the HIPAA Rules”; and

WHEREAS, the HIPAA Regulations require Covered Entity to enter into an agreement with Business Associate meeting certain requirements with respect to the Use and Disclosure of PHI, which are met by this Agreement.

NOW, THEREFORE, in consideration of the mutual promises contained herein and the exchange of information pursuant to this Agreement, the parties agree as follows:

1. Definitions.

Capitalized terms used herein without definition shall have the meanings ascribed to them in the HIPAA Regulations or the HITECH Act, as applicable unless otherwise defined herein.

2. Obligations of Business Associate.

a. Permitted Uses and Disclosures. Business Associate shall only Use or Disclose PHI for the purposes of (i) performing Business Associate’s obligations under the Underlying Agreement and as permitted by this Agreement; or (ii) as permitted or Required By

Law; or (iii) as otherwise permitted by this Agreement. Business Associate shall not Use or further Disclose PHI other than as permitted or required by this Agreement or as Required By Law. Further, Business Associate shall not Use or Disclose PHI in any manner that would constitute a violation of the HIPAA Regulations or the HITECH Act if so used by Covered Entity, except that Business Associate may Use PHI (i) for the proper management and administration of Business Associate; and (ii) to carry out the legal responsibilities of Business Associate. Business Associate may Disclose PHI for the proper management and administration of Business Associate, to carry out its legal responsibilities or for payment purposes as specified in 45 CFR § 164.506(c)(1) and (3), including but not limited to Disclosure to a business associate on behalf of a covered entity or health care provider for payment purposes of such covered entity or health care provider, with the expectation that such parties will provide reciprocal assistance to Covered Entity, provided that with respect to any such Disclosure either: (i) the Disclosure is Required By Law; or (ii) for permitted Disclosures when Required By Law, Business Associate shall obtain a written agreement from the person to whom the PHI is to be Disclosed that such person will hold the PHI in confidence and will not use and further disclose such PHI except as Required By Law and for the purpose(s) for which it was Disclosed by Business Associate to such person, and that such person will notify Business Associate of any instances of which it is aware in which the confidentiality of the PHI has been breached.

b. Creation and Use of De-Identified Data. Business Associate may de-identify any and all PHI, provided that any process or mechanism used to de-identify the data meets the requirements of 45 C.F.R 164.514(a)-(b). Business Associate may use or disclose (and permit others to use or disclose) such de-identified data on a perpetual unrestricted basis, but in no case shall Business Associate attempt to run or develop any keys, codes or algorithms that may be used to re-identify the data.

c. Appropriate Safeguards. Business Associate shall implement administrative, physical and technical safeguards that (i) reasonably and appropriately protect the confidentiality, integrity and availability of electronic PHI that it creates, receives, maintains or transmits on behalf of Covered Entity; and (ii) prevent the Use or Disclosure of PHI other than as contemplated by the Underlying Agreement and this Agreement.

d. Compliance with Security Provisions. Business Associate shall: (i) implement and maintain administrative safeguards as required by 45 CFR § 164.308, physical safeguards as required by 45 CFR § 164.310 and technical safeguards as required by 45 CFR § 164.312; (ii) implement and document reasonable and appropriate policies and procedures as required by 45 CFR § 164.316; and (iii) be in compliance with all requirements of the HITECH Act related to security and applicable as if Business Associate were a “covered entity,” as such term is defined in HIPAA.

e. Compliance with Privacy Provisions. Business Associate shall only Use and Disclose PHI in compliance with each applicable requirement of 45 CFR § 164.504(e). Business Associate shall comply with all requirements of the HITECH Act related to privacy and applicable as if Business Associate were a “covered entity,” as such term is defined in HIPAA. To the extent Business Associate is to carry out one or more of Covered Entity’s obligation(s) under Subpart E of 45 CFR Part 164, Business Associate shall comply with the requirements of Subpart E that apply to Covered Entity in the performance of such obligation(s).

f. Duty to Mitigate. Business Associate agrees to mitigate, to the extent practicable and mandated by law, any harmful effect that is known to Business Associate of a Use or Disclosure of PHI by Business Associate in violation of the requirements of this Agreement.

g. Encryption. To facilitate Business Associate's compliance with this Agreement and to assure adequate data security, Covered Entity agrees that all PHI provided or transmitted to Business Associate pursuant to the Underlying Agreement shall be provided or transmitted in a manner which renders such PHI unusable, unreadable or indecipherable to unauthorized persons, through the use of a technology or methodology specified by the Secretary in the guidance issued under section 13402(h)(2) of the HITECH Act. Covered Entity acknowledges that failure to do so could contribute to or permit a Breach requiring patient notification under the HITECH Act and further agrees that Business Associate shall have no liability for any Breach caused by such failure.

3. Reporting.

a. Security Incidents and/or Unauthorized Use or Disclosure. Business Associate shall report to Covered Entity a successful Security Incident or any Use and/or Disclosure of PHI other than as provided for by this Agreement or permitted by applicable law within a reasonable time of becoming aware of such Security Incident and/or unauthorized Use or Disclosure (but not later than ten (10) days thereafter), in accordance with the notice provisions set forth herein. Business Associate shall take (i) prompt action to cure any such deficiencies as reasonably requested by Covered Entity, and (ii) any action pertaining to such Security Incident and/or unauthorized Use or Disclosure required by applicable federal and state laws and regulations. If such successful Security Incident or unauthorized Use or Disclosure results in a Breach as defined in the HITECH Act, then Covered Entity shall comply with the requirements of Section 3.b below. The Parties acknowledge and agree that this Section constitutes notice by Business Associate to Covered Entity of the ongoing existence and occurrence of attempted but Unsuccessful Security Incidents as defined herein. "Unsuccessful Security Incidents" will include, but not be limited to, pings and other broadcast attacks on Business Associate's firewall, port scans, unsuccessful log-on attempts, denials of service and any combination of the above, so long as no such incident results in unauthorized access, use or disclosure of PHI.

b. Breach of Unsecured PHI. The provisions of this Section 3.b are effective with respect to the Discovery of a Breach of Unsecured PHI occurring on or after September 23, 2009. With respect to any unauthorized acquisition, access, Use or Disclosure of Covered Entity's PHI by Business Associate, its agents or subcontractors, Business Associate shall (i) investigate such unauthorized acquisition, access, Use or Disclosure; (ii) determine whether such unauthorized acquisition, access, Use or Disclosure constitutes a reportable Breach under the HITECH Act; and (iii) document and retain its findings under clauses (i) and (ii). If Business Associate Discovers that a reportable Breach has occurred, Business Associate shall notify Covered Entity of such reportable Breach in writing within thirty (30) days of the date Business Associate Discovers such Breach. Business Associate shall be deemed to have discovered a Breach as of the first day that the Breach is either known to Business Associate or any of its employees, officers or agents, other than the person who committed the Breach, or by exercising reasonable

diligence should have been known to Business Associate or any of its employees, officers or agents, other than the person who committed the Breach. To the extent the information is available to Business Associate, Business Associate's written notice shall include the information required by 45 CFR § 164.410(c). Business Associate shall promptly supplement the written report with additional information regarding the Breach as it obtains such information. Business Associate shall cooperate with Covered Entity in meeting Covered Entity's obligations under the HITECH Act with respect to such Breach.

4. Business Associate's Agents. To the extent that Business Associate uses one or more subcontractors or agents to provide services under the Underlying Agreement, and such subcontractors or agents receive or have access to PHI, Business Associate shall sign an agreement with such subcontractors or agents containing substantially the same provisions as this Agreement.

5. Rights of Individuals.

a. Access to PHI. Within ten (10) days of receipt of a request by Covered Entity, Business Associate shall make PHI maintained in a Designated Record Set available to Covered Entity or, as directed by Covered Entity, to an Individual to enable Covered Entity to fulfill its obligations under 45 CFR § 164.524. Subject to Section 5.b below, (i) in the event that any Individual requests access to PHI directly from Business Associate in connection with a routine billing inquiry, Business Associate shall directly respond to such request in compliance with 45 CFR § 164.524; and (ii) in the event such request appears to be for a purpose other than a routine billing inquiry, Business Associate shall forward a copy of such request to Covered Entity and shall fully cooperate with Covered Entity in responding to such request. In either case, a denial of access to requested PHI shall not be made without the prior written consent of Covered Entity.

b. Access to Electronic Health Records. If Business Associate is deemed to use or maintain an Electronic Health Record on behalf of Covered Entity with respect to PHI, then, to the extent an Individual has the right to request a copy of the PHI maintained in such Electronic Health Record pursuant to 45 CFR § 164.524 and makes such a request to Business Associate, Business Associate shall provide such Individual with a copy of the information contained in such Electronic Health Record in an electronic format and, if the Individual so chooses, transmit such copy directly to an entity or person designated by the Individual. Business Associate may charge a fee to the Individual for providing a copy of such information, but such fee may not exceed Business Associate's labor costs in responding to the request for the copy. The provisions of 45 CFR § 164.524, including the exceptions to the requirement to provide a copy of PHI, shall otherwise apply and Business Associate shall comply therewith as if Business Associate were the "covered entity," as such term is defined in HIPAA. At Covered Entity's request, Business Associate shall provide Covered Entity with a copy of an Individual's PHI maintained in an Electronic Health Record in an electronic format and in a time and manner designated by Covered Entity in order for Covered Entity to comply with 45 CFR § 164.524, as amended by the HITECH Act.

c. Amendment of PHI. Business Associate agrees to make any amendment(s) to PHI in a Designated Record Set that Covered Entity directs or agrees to pursuant to 45 CFR

§ 164.526 at the request of Covered Entity or an Individual, and in the time and manner designated by Covered Entity.

d. Accounting Rights. This Section 5.d is subject to Section 5.e below. Business Associate shall make available to Covered Entity, in response to a request from an Individual, information required for an accounting of disclosures of PHI with respect to the Individual, in accordance with 45 CFR § 164.528, incorporating exceptions to such accounting designated under such regulation. Such accounting is limited to disclosures that were made in the six (6) years prior to the request and shall not include any disclosures that were made prior to the compliance date of the HIPAA Regulations. Business Associate shall provide such information as is necessary to provide an accounting within ten (10) days of Covered Entity's request. Such accounting must be provided without cost to the Individual or to Covered Entity if it is the first accounting requested by an Individual within any twelve (12) month period; however, a reasonable, cost-based fee may be charged for subsequent accountings if Business Associate informs Covered Entity and Covered Entity informs the Individual in advance of the fee, and the Individual is afforded an opportunity to withdraw or modify the request. Such accounting obligations shall survive termination of this Agreement and shall continue as long as Business Associate maintains PHI.

e. Accounting of Disclosures of Electronic Health Records. The provisions of this Section 5.e shall be effective on the date specified in the HITECH Act. If Business Associate is deemed to use or maintain an Electronic Health Record on behalf of Covered Entity, then, in addition to complying with the requirements set forth in Section 5.d above, Business Associate shall maintain an accounting of any Disclosures made through such Electronic Health Record for Treatment, Payment and Health Care Operations, as applicable. Such accounting shall comply with the requirements of the HITECH Act. Upon request by Covered Entity, Business Associate shall provide such accounting to Covered Entity in the time and manner specified by Covered Entity and in compliance with the HITECH Act. Alternatively, if Covered Entity responds to an Individual's request for an accounting of Disclosures made through an Electronic Health Record by providing the requesting Individual with a list of all business associates acting on behalf of Covered Entity, then Business Associate shall provide such accounting directly to the requesting Individual in the time and manner specified by the HITECH Act.

f. Agreement to Restrict Disclosure. If Covered Entity is required to comply with a restriction on the Disclosure of PHI pursuant to Section 13405 of the HITECH Act, then Covered Entity shall, to the extent necessary to comply with such restriction, provide written notice to Business Associate of the name of the Individual requesting the restriction and the PHI affected thereby. Business Associate shall, upon receipt of such notification, not Disclose the identified PHI to any health plan for the purposes of carrying out Payment or Health Care Operations, except as otherwise required by law. Covered Entity shall also notify Business Associate of any other restriction to the Use or Disclosure of PHI that Covered Entity has agreed to in accordance with 45 CFR § 164.522.

6. Remuneration and Marketing.

a. Remuneration for PHI. This Section 6.a shall be effective with respect to exchanges of PHI occurring six (6) months after the date of the promulgation of final regulations implementing the provisions of Section 13405(d) of the HITECH Act. On and after such date, Business Associate agrees that it shall not, directly or indirectly, receive remuneration in exchange for any PHI of Covered Entity except as otherwise permitted by the HITECH Act.

b. Limitations on Use of PHI for Marketing Purposes. Business Associate shall not Use or Disclose PHI for the purpose of making a communication about a product or service that encourages recipients of the communication to purchase or use the product or service, unless such communication: (1) complies with the requirements of subparagraph (i), (ii) or (iii) of paragraph (1) of the definition of marketing contained in 45 CFR § 164.501, and (2) complies with the requirements of subparagraphs (A), (B) or (C) of Section 13406(a)(2) of the HITECH Act, and implementing regulations or guidance that may be issued or amended from time to time. Covered Entity agrees to assist Business Associate in determining if the foregoing requirements are met with respect to any such marketing communication.

7. Governmental Access to Records. Business Associate shall make its internal practices, books and records relating to the Use and Disclosure of PHI available to the Secretary for purposes of determining Covered Entity's compliance with the HIPAA Regulations and the HITECH Act. Except to the extent prohibited by law, Business Associate agrees to notify Covered Entity of all requests served upon Business Associate for information or documentation by or on behalf of the Secretary. Business Associate shall provide to Covered Entity a copy of any PHI that Business Associate provides to the Secretary concurrently with providing such PHI to the Secretary.

8. Minimum Necessary. To the extent required by the HITECH Act, Business Associate shall limit its Use, Disclosure or request of PHI to the Limited Data Set or, if needed, to the minimum necessary to accomplish the intended Use, Disclosure or request, respectively. Effective on the date the Secretary issues guidance on what constitutes "minimum necessary" for purposes of the HIPAA Regulations, Business Associate shall limit its Use, Disclosure or request of PHI to only the minimum necessary as set forth in such guidance.

9. State Privacy Laws. Business Associate shall comply with state laws to extent that such state privacy laws are not preempted by HIPAA or the HITECH Act.

10. Termination.

a. Breach by Business Associate. If Covered Entity knows of a pattern of activity or practice of Business Associate that constitutes a material breach or violation of Business Associate's obligations under this Agreement, then Covered Entity shall promptly notify Business Associate. With respect to such breach or violation, Business Associate shall take reasonable steps to cure such breach or end such violation, if possible. If such steps are either not possible or are unsuccessful, upon written notice to Business Associate, Covered Entity may terminate its relationship with Business Associate.

b. Breach by Covered Entity. If Business Associate knows of a pattern of activity or practice of Covered Entity that constitutes a material breach or violation of Covered

Entity's obligations under this Agreement, then Business Associate shall promptly notify Covered Entity. With respect to such breach or violation, Covered Entity shall take reasonable steps to cure such breach or end such violation, if possible. If such steps are either not possible or are unsuccessful, upon written notice to Covered Entity, Business Entity may terminate its relationship with Covered Entity.

c. Effect of Termination. Upon termination of this Agreement for any reason, Business Associate shall either return or destroy all PHI, as requested by Covered Entity, that Business Associate or its agents or subcontractors still maintain in any form, and shall retain no copies of such PHI. If Covered Entity requests that Business Associate return PHI, such PHI shall be returned in a mutually agreed upon format and timeframe. If Business Associate reasonably determines that return or destruction is not feasible, Business Associate shall continue to extend the protections of this Agreement to such PHI, and limit further uses and disclosures of such PHI to those purposes that make the return or destruction of such PHI not feasible. If Business Associate is asked to destroy the PHI, Business Associate shall destroy PHI in a manner that renders the PHI unusable, unreadable or indecipherable to unauthorized persons as specified in the HITECH Act.

11. Amendment. The parties acknowledge that state and federal laws relating to data security and privacy are rapidly evolving and that amendment of this Agreement may be required to ensure compliance with such developments. The parties specifically agree to take such action as is necessary to implement any new or modified standards or requirements of HIPAA, the HIPAA Regulations, the HITECH Act and other applicable laws relating to the security or confidentiality of PHI. Upon the request of Covered Entity, Business Associate agrees to promptly enter into negotiation concerning the terms of an amendment to this Agreement incorporating any such changes.

12. No Third Party Beneficiaries. Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than Covered Entity, Business Associate and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.

13. Effect on Underlying Agreement. In the event of any conflict between this Agreement and the Underlying Agreement, the terms of this Agreement shall control.

14. Survival. The provisions of this Agreement shall survive the termination or expiration of the Underlying Agreement.

15. Interpretation. This Agreement shall be interpreted as broadly as necessary to implement and comply with HIPAA, the HIPAA Regulations and the HITECH Act. The parties agree that any ambiguity in this Agreement shall be resolved in favor of a meaning that complies and is consistent with such laws.

16. Governing Law. This Agreement shall be construed in accordance with the laws of the State of Florida.

17. Notices. All notices required or permitted under this Agreement shall be in writing and sent to the other party as directed below or as otherwise directed by either party,

from time to time, by written notice to the other. All such notices shall be deemed validly given upon receipt of such notice by certified mail, postage prepaid, facsimile transmission, e-mail or personal or courier delivery:

If to Covered Entity:

If to Business Associate:

Intermedix Corporation
6451 N. Federal Highway, Suite 1000
Ft. Lauderdale, FL 33308
Attn: Chief Compliance Officer
Telephone no: 954-308-8700
Facsimile no: 954-308-8725

DRAFT

City of Kerrville
 EMS Billing Services Proposal Analysis
 September 2016

Criteria	In House	Intermedix	A/R Concepts	Koronis Revenue Solutions	Stat Billing
1. Firm size	2	large	medium	medium	very small
2. Continue using existing PCR	yes	yes	no	yes	yes
3. Dedicated account representative	yes	yes	yes	yes	yes
4. Credit card payments	yes	yes	at COK only	at COK only	at COK only
5. Insurance/Govt Program reenrollment	yes	yes	yes	not sure	not sure
6. Electronic interface with Peterson	no	yes	no	no	no
7. Web access to patient accounts	no	yes	no	no	no
8. Online payments	no	yes	no	no	no
9. Evening and Saturday hours	no	yes	no	no	no
10. Service bad debt accounts	no	no	yes	no	no
11. Nationwide insurance eligibility database	no	yes - 40 mil.	yes - smaller	yes-smaller	no
12. Training for medics	no	yes	yes	yes	no
13. In house claim audits	no	yes	yes	yes	no
14. Auto insurance billing	no	yes	yes	yes	no
15. Skip tracing	no	yes	yes	not sure	no
16. Conversion of existing accounts	n/a	yes	yes	yes	no
17. Responsive to questions & messages	n/a	yes	yes	no	yes
18. Primary service location	Kerrville	Mansfield, TX	San Antonio	Houston	Castroville
19. Fee (% of dollars collected)	7.01%	5.75%	8.00%	7.00%	7.50%

Proposal for
Revenue Cycle Management
Respectfully Submitted to
Kerrville Fire Department
September 20, 2016



COMPANY OVERVIEW

Intermedix has been a leader in health care business services for more than 35 years. Today, with approximately 2,500 employees, Intermedix annually processes more than 15 million patient encounters, collects more than \$3 billion in revenue for clients and connects more than 95% of the United States population through its emergency preparedness and response technologies.

EMS MARKET LEADERSHIP

Intermedix is a leading provider of EMS revenue cycle management services and serves 50% of the nation's largest cities by population.

MUNICIPAL MARKET LEADERSHIP

Intermedix is committed to serving municipal clients.

- 95% Municipal EMS Operations
- 5% Commercial EMS Operations

MARKET SHARE OF TOP 50 CITIES* **cities who choose to outsource billing*



- Intermedix
- Other Vendors

GLOBAL PRESENCE



EMS BILLING

3,600,000
Patient Transports

300+
Satisfied Clients
Including Commercial, Municipal
& Hospital EMS Agencies.

Proprietary
Billing Software

Over
\$1 Billion
Annual Client
Collections

30 Million
Patient Records

30+ Years
Experience in
EMS Industry

145
Health Systems
Integrations Covering
400 Facilities

Domestic Patient
Support Center

90+ ePCR
Integrations
With Vendors Including
Zoll RescueNet

11
Of the Nation's
30
Largest Cities

70% Average
Revenue Increase in
the Last 5 Years

250+ Cities
Across the
United States

Consistent
Increases
In Average Collection
Per Account For the
Past 10 Years

17,000+
Health Care Facilities

50+ CAD
Integrations
With Vendors Including
TriTech, Zoll & Geac

3 Data Centers
Geographically
Dispersed

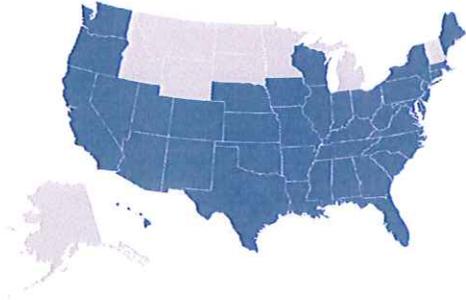
\$75 Average
Revenue Increase
Per Transport

33
Office Locations

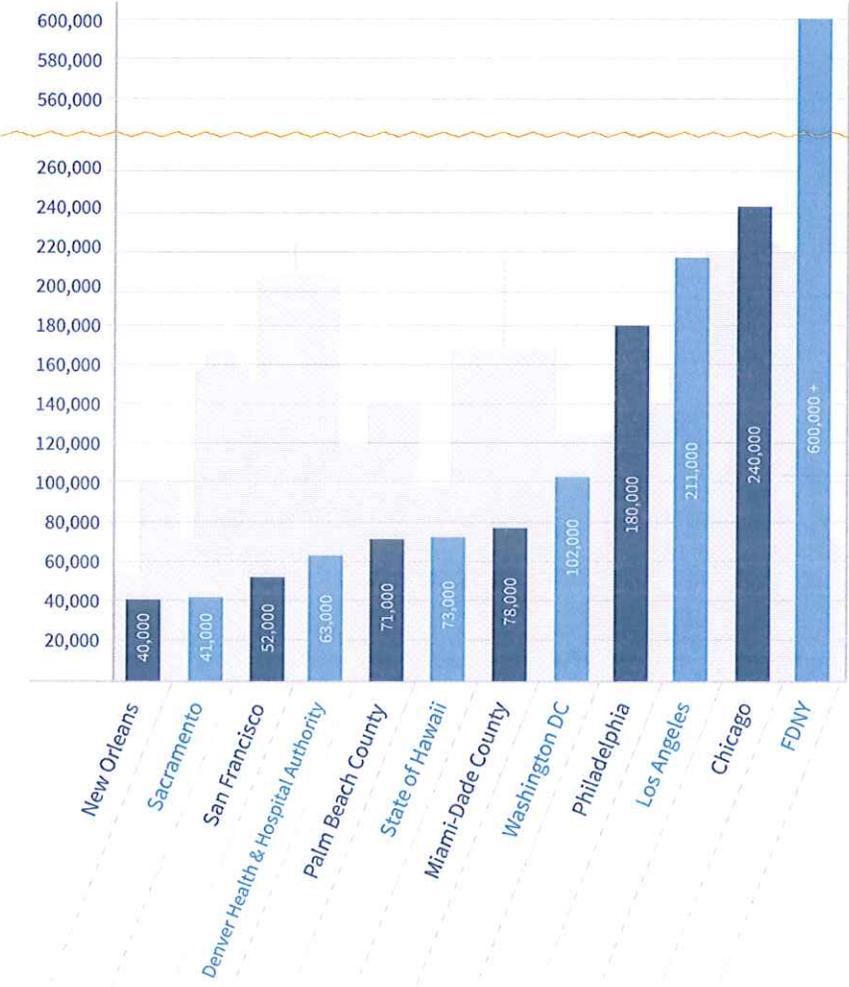
CLIENT EXPERIENCE

The nation's largest emergency medical service providers trust Intermedix as their revenue cycle management partner. We process more than 3 million transports for our clients and collect nearly \$1 billion annually.


We serve 300+ clients
across the U.S.



LARGE CLIENTS BY ANNUAL VOLUME





“*Excellence* and *integrity* describe Intermedix. We have a successful partnership. They are receptive to all our requests and respond promptly. *I would highly recommend Intermedix.*”

CHIEF DIANE SCHWEIZER | PHILADELPHIA FIRE DEPARTMENT | 2013



“... Intermedix has served as a *reliable partner* by *delivering exceptional customer service* and *consistent financial results*. ...The Intermedix client service representatives and executive managers keep me informed of compliance changes in the industry and I remain confident the Intermedix team offers a *compliance program* that clearly protects our organization and patients.... Intermedix *focuses on collecting maximum compliant reimbursements* for the Miami Dade County Fire Rescue Department and I believe they will produce the same results for any client that selects this *superior team.*”

ASSISTANT DIRECTOR | MIAMI DADE FIRE RESCUE DEPARTMENT | FEBRUARY 2013



“Please convey to all [of Intermedix’s] *great employees* both District Government’s and my *sincere appreciation* for their *hard work*. DC is closing in on \$25 million in collections this fiscal year, up almost \$3 million from last year, *another benchmark year for us, especially in tough times.*”

EMS BILLING COORDINATOR | WASHINGTON D.C. FIRE AND EMS DEPARTMENT

CLIENT HIGHLIGHTS



City of Chicago

- **Transitioned** from Sutherland while under corporate integrity agreement
- Achieved 50% **revenue increase** in first year without fee increase
- Implemented a **Medicare signature solution**
- Established 40 **hospital connections**, covering 95% of total transport volume
- Built custom **integrations** for AR management & bank/walk-in payment center

⚙️ **TECHNOLOGY SOLUTIONS:** EMTrack, WebEOC



City of Los Angeles



- **Transitioned** from in house billing, quickly worked down paper PCR backlog
- Built custom **integrations** to Sansio Health EMS and collection agency
- Configured detailed **exception processing**, including hardships
- **Trained** administrative staff on data & analytics access

⚙️ **TECHNOLOGY SOLUTIONS:** WebEOC



City of Philadelphia

- **Transitioned** from ACS with AR conversion of more than 1.2 million records
- Deployed TripTix ePCR on 90 new Toughbooks, **trained** more than 1,100 medics
- Established 21 **hospital connections**, covering 93% of total transport volume
- Built custom **integrations** with MDT, CAD and Sansio Cares Registry

⚙️ **TECHNOLOGY SOLUTIONS:** TripTix, Fleeteyes



Miami-Dade County Fire Rescue

- **Transitioned** from Per-Se/McKesson
- Built **integrations** with SafetyPad ePCR & first responder unit
- Established 16 **hospital connections**, covering 78% of total transport volume

⚙️ **TECHNOLOGY SOLUTIONS:**
▪ WebEOC



Washington D.C. Fire & EMS Department

- Built **integration** with SafetyPad ePCR
- Established 6 **hospital connections**, covering 58% of total transport volume

⚙️ **TECHNOLOGY SOLUTIONS:**
▪ WebEOC



San Francisco Fire Department

- **Transitioned** from Allied Information Services
- Assisted with transition from paper to ePCR
- Built custom **integration** with ZOLL ePCR, CAD
- Deployed 92 Toughbooks, 18 workstations and 20 printers

⚙️ **TECHNOLOGY SOLUTIONS:**
▪ WebEOC



References

New Braunfels Fire Department

Captain Mark Eliot, EMS Administrator
(830) 221-4264 office
MEliot@nbtexas.org
Dates: January 2004
Size/Complexity: 5,000 transports and TripTix ePCR

Kingsville Volunteer Fire Department

Adrian Garcia, Fire Chief
(361) 592-6445 office
AGarcia@cityofkingsville.com
Dates: October 2009
Size/Complexity: 2,000 transports and TripTix ePCR

Allen Fire Department

Chief Kurt Hall, Assistant Fire Chief
(214) 509-4402 office
KHall@cityofallen.org
Dates: 2007
Size/Complexity: 4,000 transports and TripTix ePCR

Cy-Fair Volunteer Fire Department

Amy Ramon, Fire Chief
(281) 550-6663 office
Amy.Ramon@cyfairvfd.org
Dates: December 2003 – October 2013; Returned September 2015
Size/Complexity: 15,000 transports and ImageTrend ePCR

Kendall County EMS

Jeff Fincke, EMS Administrator
(830) 249-3721 office
JFincke@co.kendall.tx.us
Dates: July 2005
Size/Complexity: 1,600 transports and TripTix ePCR

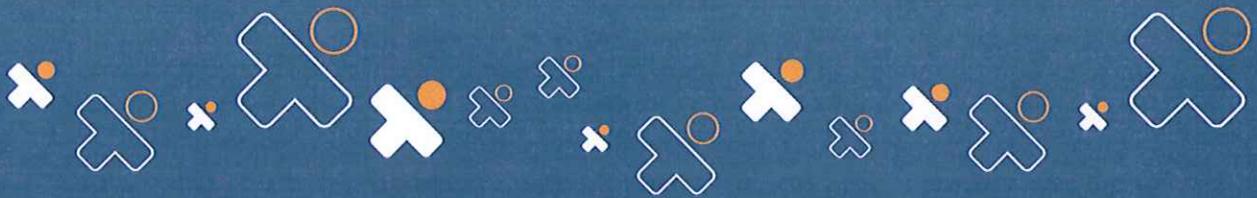
Professional Relationship Reference

Dr. Brandon Lewis, DO
Medical Director
**Bryan – St. Joseph Regional
Health Center
Emergency Department**
Mobile (979) 777-0926
Brandon@EDdocs.com

*25 Years of Service Experience
with Jackie Willett and her team*

Kerrville Fire Department

Staffing Plan



Texas Team Experience



Our Commitment to Texas

- Texas EMS Alliance - Member
- Texas Ambulance Association – Full Membership
- Texas Emergency Medicine Practice Alliance – Member
- Texas Association of Air Medical Services – Website Sponsor
- Texas Medical Group Management Association – Legislative Committee Member

Local Service by a Local Team

LEADERSHIP | CLIENT RELATIONS | OPERATIONS | PATIENT SERVICE



JACKIE WILLETT, CHBME

SVP, Operations & Client Relations

- Responsible for client management & EMS billing operations for Texas clients
- More than 20 years of experience in EMS, business & finance



LAUREN GREGORY

Client Relations Manager

- Responsible for building client relationships through outstanding service
- More than 15 years of emergency healthcare & client service experience



RICHARD KLEMME

Director, Client Relations

- Responsible for oversight of client service & overall success
- More than 15 years of business & healthcare experience



EMILY MIZE

Director, Operations

- Responsible for operations procedures & processes for EMS billing clients in Texas
- More than 10 years of operations & healthcare experience

KERRVILLE PROJECT TEAM

When it comes to managing your day-to-day business, we have a project team of Professional Services, Operations and Client Relations professionals that are dedicated to serving your needs. Our seasoned executives will work hand in hand to ensure that KFD and your representatives receive accurate, effective and timely service - allowing you to focus on your daily demands. Here's what you can expect from us:

A Full-Service Client Team

The client team we are proposing a Client Support Services Team available to quickly and effectively meet your daily needs and a dedicated Client Relationship Director and an Executive Sponsor who will ensure that KFD will have access to the internal resources of Intermedix throughout the contract. Additionally, our Professional Services Team will be tasked with executing the implementation and all of its attendant projects.

The **Client Support Services Team** is a client-only support line that KFD's Billing Manager can access toll-free for immediate help with:

- Billing questions
- Process questions
- Account inquiries
- Adding a medic
- Collections questions
- Attorney requests (subpoenas, etc.)
- And more!

Your **Client Relationship Manager**, will be available to KFD for:

- Monthly reports
- Service meetings
- Revenue and performance monitoring
- Identifying trends
- Resolution of issues identified by KFD, our Client Support and Operations Teams
- Coordination with Professional Services project managers to implement new services, fee schedules, integrations, etc.
- Ensuring the implementation and communication of changes policy (ie: an ePCR vendor migrates to NEMESIS 3, etc.)

Our **Professional Services Team** is entirely focused on effectively and efficiently implementing new contracts. They will work KFD to accomplish the following:

- Billing System Set up
- Implementation Project Management
- Documentation of an Billing Policies and Procedures Manual specific to our partnership that will be a key deliverable upon completion of implementation for Intermedix and KFD staff to monitor performance throughout the contract
- Develop integration with Zoll RescueNet to bring ePCR data into our billing system electronically
- Develop integration with Zoll to import and convert A/R data into the Intermedix billing system
- Develop relationships with KFD's transport facilities to seek electronic receipt of hospital patient demographic and insurance information to support the billing process
- Develop standard reports
- And more!

COMPLIANCE STAFF

Intermedix places compliance at the heart of all operations, and our investment in experienced professionals and industry certifications demonstrates that focus.

The Intermedix compliance team stays abreast of local and national trends that impact billing and collections and our clients. Our Compliance and Audit Departments are continuously engaged in performing reviews and analysis of payment and denial trends so that we can take appropriate action on behalf of our clients. Our Compliance team includes the following professionals:



MELISSA LEIGH, CHC
Chief Compliance Officer

- *Responsible for managing our compliance with law and industry regulations*
- *Ensures that Intermedix follows best practices to protect our clients and their constituents*
- *More than 10 years of experience in regulatory compliance and information technology*



LEIGH ANNE BEDRICH, CHC
EMS Compliance Officer

- *Oversees EMS organizational compliance*
- *More than 30 years in prehospital and acute care*
- *She is a Certified Ambulance Privacy Officer, National Fire Academy Executive Fire Officer, and a Texas licensed paramedic*

ACTIVE INDUSTRY ENGAGEMENT

Intermedix is actively involved with the following industry groups to stay up-to-date on the latest trends, show our support for their similar values and contribute insights based on our experience and expertise.

American Ambulance Association,
Federal Reimbursement Committee

We review all federal regulation changes that relate to reimbursement in the ambulance industry.

National Academy of Ambulance Coding (NAAC)

We participate in training seminars and continuing education.

Page Wolfberg & Wirth

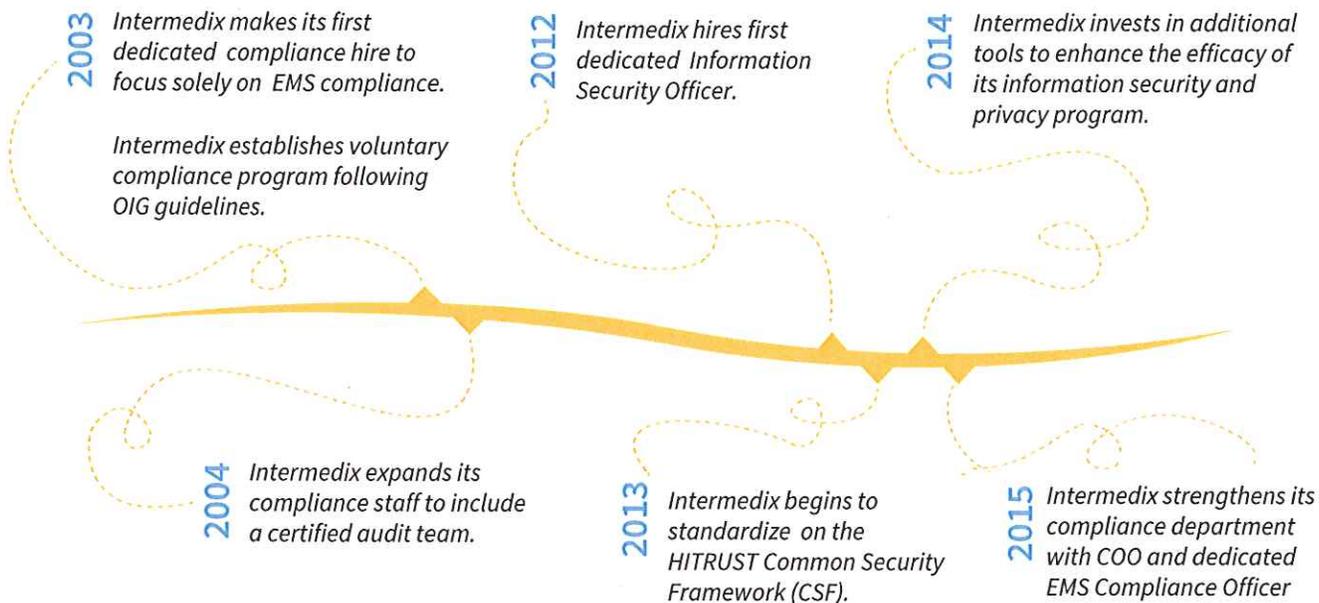
We attend national and regional seminars.



>50 nationally certified coders with expertise in EMS ambulance coding.

HISTORY OF INVESTMENT IN COMPLIANCE

The following timeline illustrates our history of investment in our compliance program.



Intermedix ensures compliance through:

- **Internal Audits**

We regularly perform audits to ensure that all the required controls are in place and effective.

- **Independent Third Party Audits**

We bring in auditors to objectively assess our control structures on a regular basis.

SSAE16 / SOC1 reports issued by auditors certify the existence and effectiveness of the controls around all major Intermedix systems.

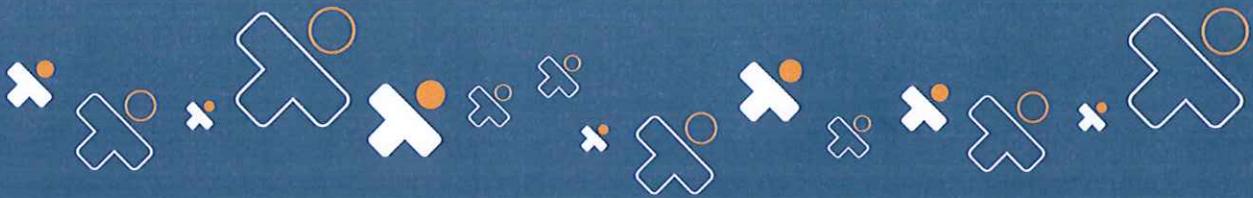
HIPAA HITECH COMPLIANCE

The HITRUST CSF is becoming the de facto standard framework that is being used by most major healthcare providers and payers - 50% of all providers and 70% of all health plans with more than 500,000 members have standardized on HITRUST. HITRUST ensures compliance with:

- HIPAA (Privacy and Security Rules)
- HITECH
- The Omnibus Rule
- PCI (Payment Card Industry) Data Security Standards
- State Information Security and Privacy Controls

Kerrville Fire Department

Implementation and Integrations



IMPLEMENTATION

Intermedix has extensive experience successfully onboarding clients. Our proven implementation process centers around the following principles:

- CLIENT FOCUS** We establish a comprehensive client profile and use it throughout the implementation process to ensure your business needs are met.
- PROACTIVITY** We establish communication channels early and remain actively engaged in the relationship to ensure we are exceeding your expectations.
- EXPERTISE** We have a dedicated implementation team with experience deploying revenue cycle management programs to clients throughout the country.
- QUALITY** We perform ongoing testing and quality assurance checks throughout the process to ensure each component of the plan is working on the date we go live.

PROJECT MANAGEMENT APPROACH

Intermedix utilizes a robust, scalable Project Management methodology based on the Project Management Institute's (PMI) Project Management Body of Knowledge (PMBOK). Intermedix adjusts its project activities and resource allocation to meet the needs of each individual client.

This methodology is flexible and scalable in nature and allows for customization of each project plan to fit the specific needs of our individual clients. In our decades of experience, we have found that most of the individual activities are standardized while about a quarter are customized activities dependent on the variables introduced by the individual project and client. This allows the team to complete a comprehensive and accurate project plan soon after project kickoff.

Once complete, the project plan provides a clear and concise, step by step road map of the activities that will need to be completed in order to meet the project's milestones and overall objectives. The project plan is reinforced by a comprehensive communication and stakeholder engagement strategy which includes regular project checkpoints, strong feedback loops and clear concise project snapshots.

ROLES & RESPONSIBILITIES

Intermedix Responsibilities

- Manage project plan and milestones.
- Conduct weekly status meetings and maintain issue resolution logs.
- Coordinate ePCR and legacy billing vendor integration tasks.
- Manage project scope and communicate/mitigate risks.
- Provide best practices and operational knowledge.
- Procure hardware and software (if within project scope).

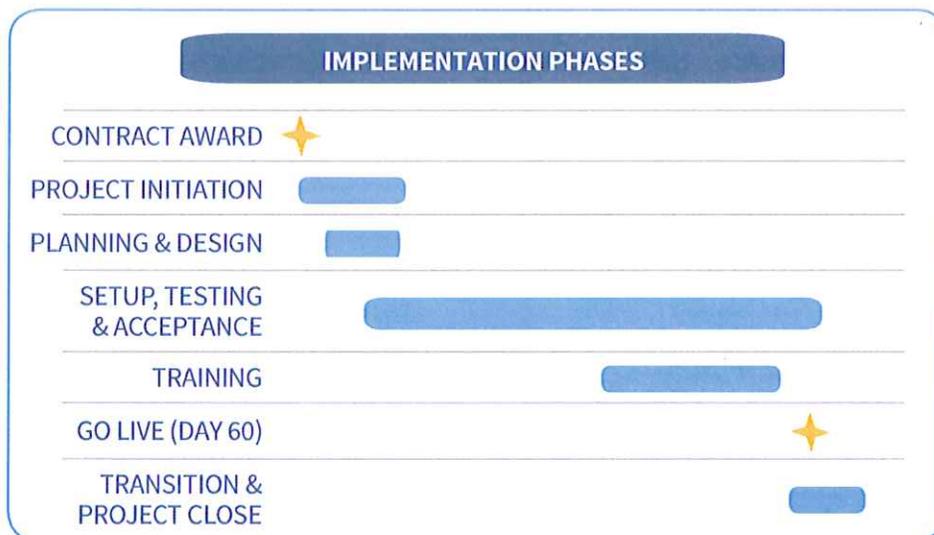
Client Responsibilities

- Designate key stakeholders, decision makers, functional and technical team members.
- Respond quickly to requests during Intermedix project startup (ie: questionnaires, data, etc.).
- Respond quickly to banking, operational processes, credentialing and enrollment requests.
- Timely acceptance and approval.

IMPLEMENTATION TIMELINE

Implementation begins with contract award and typically commences 60 days later with project go-live.

Project timing is directly related to the level of client engagement.



Intermedix EMS Billing Startup Checklist/Discussion Items

- A. **ePCR Integration (if applicable)**- Set up conference call with IMX ePCR Integration Team re: the testing needs and the user acceptance testing (UAT) process which will take 4-6 weeks after the receipt of test files.
- B. **Bank Lockbox set up (if applicable)**- Agency will need to contact their Bank to request the appropriate forms to set up a lockbox for receipt of EFTs and payments, if not already set up.
- C. **Payer Enrollment for electronic claims and remits**. We need the Payer Enrollment forms completed for the agency to authorize Zirmed, our clearinghouse, to send electronic claims and receive electronic remits; and for the major payers to set up their systems. The agency will need to confirm what EFTs (electronic funds transfers) they are currently receiving (e.g., Medicare, Medicaid, Tricare, Railroad, VA, BCBS, etc.). We also need to confirm if the same bank account numbers will be utilized. Changing bank account number will require new EFT forms to be completed for the payers.
- D. **Zirmed enrollment forms will take about 4-6 weeks** for payer approvals after submission, e.g., Medicare, Medicaid, Railroad, Tricare and BCBS. To create the enrollment forms we will first need to set up Zirmed for your agency. we need the following information: Legal Business Name, DBA, NPI, Tax Id, Medicare PTAN, Medicaid #, BCBS #, Railroad PTAN, Tricare #, Physical Address and Mailing Address. Most of this information is on the Client Enrollment form which is also the form used to set up your agency in our billing system.
- E. Copies of the latest **Medicare 855B and Medicaid provider enrollment forms** or copy of the information in PECOS will be requested. This will let us know who is "Authorized" to sign the enrollment forms for Medicare and Medicaid in particular. We will also need to update the billing agency info for these two government payers. Updating the **NPI Registry or NPPES info** with the correct physical and mailing addresses, and authorized officials are important because payers will be looking at that information.
- F. While the above is in process, we will **set up the IMX billing system** with the forms you need to complete (Client Enrollment, Facility/Pickup Locations, Responding Unit, Crew Enrollment forms.) and we will also work with you to identify all the **billing protocols** for your accounts.
 - 1. Are all ambulance vehicles ALS equipped?
 - 2. Will all ambulance transports be staffed with at least one paramedic?
 - 3. Can we round up mileage or use loaded mileage for other than Medicare accounts?
 - 4. What is the fiscal year start month?
 - 5. Do you have resident policy?
 - 6. Do you a subscription program?
 - 7. Do you want to maintain all the medics in the billing system for reports (Medic Manager)?

8. Do you bill for nonemergency transports?
9. Do you bill for specialty care transports?
10. Do you bill for air transports?
11. Other, e.g., patient statement info, logo, etc.
12. Obtain copy of medical protocols.

G. Billing Protocols - Here are some of the billing protocols we will need to discuss.

1. Please send us copies **of epcrs and signature statements** so that we can review with coding.
2. Please send us a copy of your **current charge master**. When was it last updated?
3. Please send us **sample copies of current EOBs** for your major payers
4. Do you have any **contracts with payers?**
5. **Treatment No Transport (TNT):** Will you allow billing for TNTs?
6. **Dead on Scene:** Will you allow billing for dead on scene?
7. **Deceased Patients:** Can we pursue spouse/estate for outstanding balances?
8. **Attorney Requests for Copy of Medical Records:** We generally ask that they make requests in writing and send a check for copying fee (e.g., \$25) to the agency for release of any medical records. We can send the requests to you for approval since you may want to review/QA the pcr before sending it to the attorney, to protect the agency. Will you authorize us to release billing requests after payment of our fees?
9. **Attorney Requests for Reductions in Charges:** We can forward these requests to you for review and directions.
10. **Patient Disputes:** We can forward these dispute letters to you for review and directions.
11. **Patient Hardship Requests:** We can forward these hardship request letters for review and directions. Do you have hardship forms?
12. **Installment Payments:** Will you allow us to accept installment payments from patients? What is the minimum you would accept and for how long, e.g., \$25 minimum for 12 months max?
13. **Credit Cards:** Will you allow us to accept credit card payments? If yes, do you have your own merchant id? If not, we need to set one up through our vendor partner Zirmed (Zpay). What credit cards would you or do you accept-Visa/MC? Discover? American Express?
14. **Refund Requests:** Who should we send insurance and patient refund requests for review and approval?
15. Is there any **Resident vs. Non Resident Billing** differences?

16. **Collections Agency Policy:** We only do soft collections. Do you want us to send accounts to a collections agency? Do you have any agreement with a collections agency? Do you want to review the accounts before we send them to the collections agency? Are there any special instructions prior to sending accounts to collections?
17. **Small Balance Write Off Policy:** Do you have a small balance write off policy?
18. **Hospital Facesheets:** Do your medics ask for a hospital facesheets at the time of drop off to send to us?
19. **Hospital Liaison Contacts:** Can you provide hospital contacts for us to fax facesheet requests and start to work with them on hospital downloads of patient demographic and financial information.
20. **Patient and Facility Signatures:** Are your medics collecting the patient's signature and if not, are they documenting the PUTS (Patient Unable to Sign) reason or the RUTS (Representative Unable to Sign) reason; and printing the name for legibility confirmation. Facility Representative signatures should also be printed with their titles/credentials.
21. **EOM and Special Reporting:** Do you have any special reporting needs? When is your fiscal year start? When do you need your closing reports?
22. **Fractional Mileage Documentation:** Are the medics recording fractional mileage?
23. Any **conversion requirements** from the previous vendor?
24. **Historical volume and collections by month:** Can you provide the last 12 months data for comparisons
25. **Encrypted emails, File Transfer and Secure FTP:** We need to review protocols for protecting PHI.
26. **System Access:** Names, title and emails of those needing access to our billing system.
27. **Agency Letter re: Change of Payment Address on Agency Letterhead** to send to all the payers.
28. **Other Special Billing requirements?**
29. **Special Reporting Needs?**

INTEGRATIONS

We believe that quality data is the first step to quality results. Intermedix employs a team of dedicated integration experts who stay apprised of the latest integration methods, build client customizations and ensure the transfer of accurate information.

ePCR Integrations: 90+ clients with 11million+ lifetime transports

Hospital Integrations: 400+ health systems with 2 million+ transports

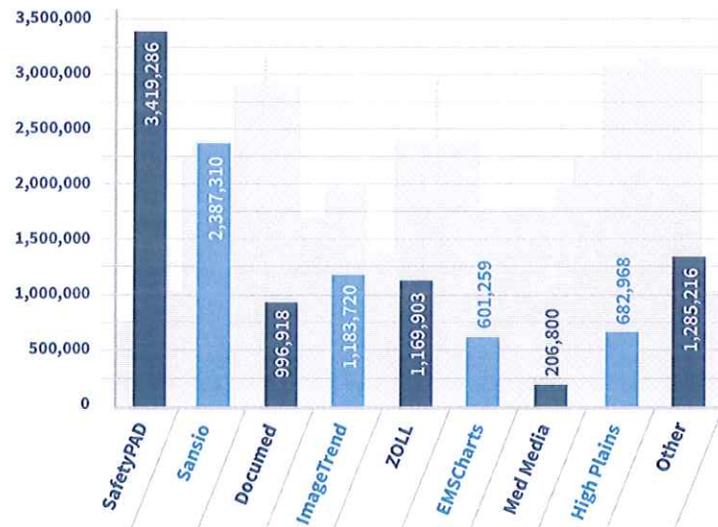
CAD Integrations: 50+ integrations with 10+ vendors

ePCR INTEGRATIONS

We have the capability to integrate with a variety of ePCR solutions to streamline the receipt of data into our proprietary billing system, and are currently maintaining more than 90 client integrations. Our team includes clinical and coding experts who ensure the integration is accurate and compliant.

Current client integration count by ePCR vendor and lifetime transport counts

SafetyPAD		4 Clients
Sansio		16 Clients
Documed		13 Clients
ImageTrend		26 Clients
ZOLL		15 Clients
EMSCcharts		6 Clients
Med Media		1 Client
High Plains		4 Clients
Other		7 Clients

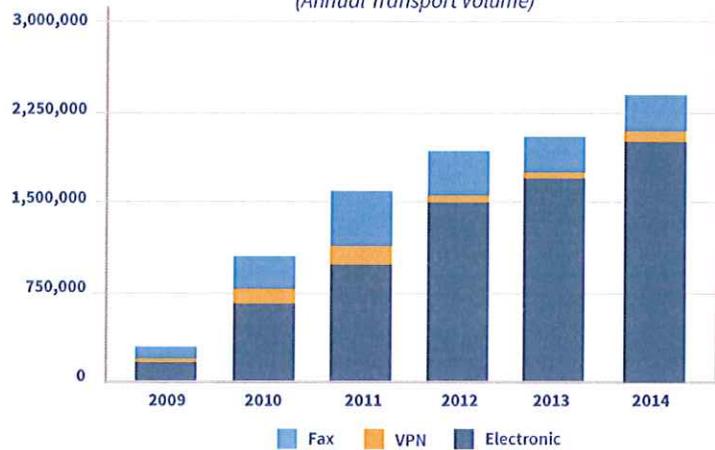


HOSPITAL INTEGRATIONS

We are committed to connecting with hospitals to ensure we have the most up-to-date patient demographic and insurance information. Since the inception of a team solely dedicated to integrations in 2009, we have significantly expanded our total hospital relationships. Today, we have connections covering more than 2.5 million transports and 400 hospitals.

The combination of our dedicated team and proprietary billing system allows us to accept hospital information in a variety of formats and support recent standards such as HL7.

HOSPITAL CONNECTIONS ESTABLISHED
(Annual Transport Volume)



ACCOUNTS RECEIVABLE (AR) CONVERSIONS

We offer new clients a seamless transition to Intermedix by working with their previous billing vendors to move historical AR data into our system. Converting the accounts provides our clients with reporting, record retention and retrieval, vendor management efficiencies and additional collections.

125 AR conversions completed, covering 3.7 million transports:

- 1.1 million transports from ACS during the City of Philadelphia transition
- 170,000 transports from Sutherland during the City of Chicago transition*
*resulted in an additional \$8.67 million in revenue
- Additional conversions from: Currey Adkins, EMS M&C, Wittman, Southwest General, Fidelis, Comstar, MBI, in house operations



COMPUTER AIDED DISPATCH (CAD) INTEGRATIONS

We integrate with a number of CAD systems to import real-time dispatch data into our ePCR and EMS billing solutions. This check-and-balance reconciliation ensures that no transports are lost.

NUMBER OF INTEGRATIONS PER VENDOR

Motorola Pintrac	11	Flight Vector	3	New World Systems	2	AlertsTS	2
Integrgraph	7	VisionAir	3	Sungard	2	Other	12
CRIMES	6	TriTech	2	Zoll	2		



Kerrville Fire Department

Intermedix EMS Billing Process, Features and Functionality



EMS BILLING SYSTEM FEATURES

TECHNOLOGY FEATURES:

- A web-based system built on a highly configurable, permission-based structure
- Queue functionality which allows multiple user access without worry of duplication
- Automated batch eligibility inquiry, batch claim filing and denial management
- Automated skip tracking ability
- Interfaces that provide automatic links of data from receiving hospitals directly to patient accounts
- Barcode-enabled document management and workflow inventory module

PROPRIETARY FUNCTIONALITY & SPECIAL FEATURES:

- Document scanning technology and proprietary image-enabled work flow module
- Proprietary patient statement configuration module provides highly customized language and template layouts
- A robust business rules engine that drives targeted language specific to a patient's account status
- Special barcode indexing of scanned documents, which are directly linked to accounts for easy accessibility
- Advanced data technologies which quickly find missing demographic and insurance information
- Hospital integrations built and managed by our specialized team which allow for automatic inbound feed of patient demographics and insurance
- High-Deductible monitoring tool

BUSINESS INTELLIGENCE AND REPORTING:

- Business Objects reporting which provides in-depth standard monthly reports, analytics and specialty reports
- Ad hoc reports can be run without the need to contact Intermedix, or set up by your Intermedix Client Team and scheduled to run on a regular basis
- In-depth analytics are provided automatically from our system, and can be customized to meet each Client's needs

INTERMEDIX EMS BILLING PROCESS

The Intermedix EMS billing process is technologically advanced, customer-centric and supported by industry best practices. Our process encompasses the following phases:

- **PCR IMPORT**— This stage includes a full NEMSIS import from Zoll ePCR to bring all field data directly into the Intermedix billing system.
- **CODING** — Our compliant coding process begins immediately upon import and includes medical necessity determination, signature verification, confirmation of submitted mileage calculation, and a level of service determination facilitated by professional coders.
- **PATIENT RESEARCH** — After coding, the patient record will undergo data verification and authentication, electronic and manual eligibility verification, and outbound phone calls to self-pay patients for possible payers.
- **BILLING** — Next, we will submit claims to third-party payers and invoice patients, if necessary. Because billing follows our extensive patient research phase, our system reliably files clean claims. We track our adjudication success and denial rates to ensure that performance follows expectations.

Clean claim adjudication rate reflecting accounts paid after the first invoice = **80%**

Denial rate, including deductibles = **8%**

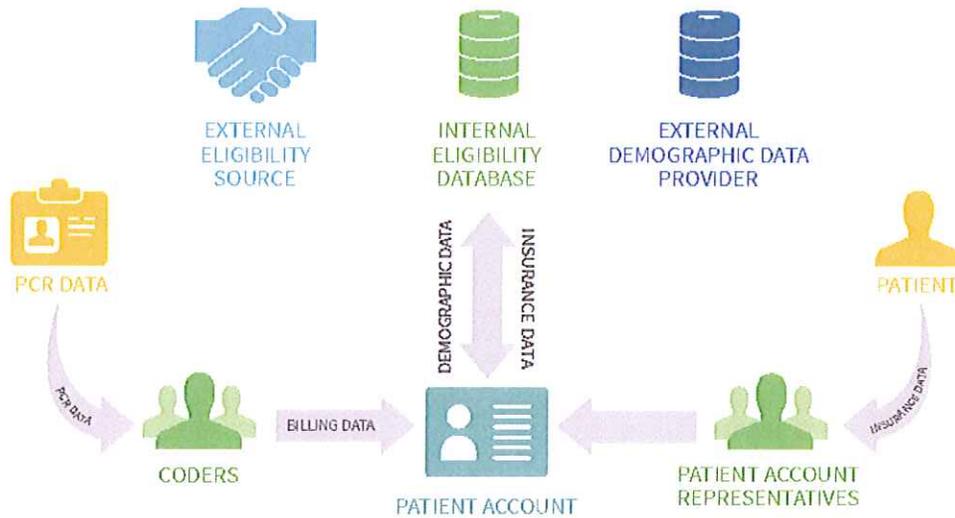
Electronic claims filing = **100% of the time electronic files are accepted**

- **PAYER RESPONSE** — When a response is received – electronically or on paper - we will post and reconcile payments and support follow-up with payers and patients. We accept payment from patients in several mediums, including credit cards on the phone or online.
- **ACCOUNT RESOLUTION** — During account resolution, we will process refunds, apply client policies for setting-up payment arrangements and identifying accounts for write-off or advanced collections.
- **UNPAID ACCOUNT STRATEGIES** — Our goal is to bring accounts to a zero balance and we have dedicated this phase of the process to contact non-responsive, uninsured patients and insurers, to facilitate alternate payment sources and payment plans (ie: credit card payoffs) to satisfy deductibles and outstanding charges prior to any third party collections activity.
- **THIRD PARTY COLLECTIONS** — Finally, we will submit secure electronic files to your chosen vendor with the information required for delinquent account collections. The patient record will reflect collections status at this phase. We also have the ability to receive data files from third party collections vendors into our billing system for full transparency of all activity within the patient record.

Throughout the billing process, Intermedix focuses on supporting you with a dedicated compliance program and experienced client service representatives. In-depth reporting makes both clinical and financial data available to you at any point in the revenue cycle.

Billing Process Highlights

We use a combination of advanced technology and experienced representatives to efficiently prepare claims for submission. Claims with accurate information can move to the billing process as quickly as possible.



PCR Import & Coding

We collaborate with virtually every ePCR vendor in the marketplace to capture electronic records directly into our billing system. We currently have 19 integrations with Zoll RescueNet ePCR, which can capture electronic records through an automated import.

Upon receipt, the transport is given a unique patient account number that corresponds with AmeriCare's internal account number. We import both electronic and paper PCRs into our proprietary front-end coding software and monitoring program that regularly checks a secured website for new transports.

Incident information will be captured directly into the Intermedix billing system from trips created in the field with your chosen ePCR solution. Through this integration, data can be automatically exported to us at a certain time during the day, reducing the amount of manual work that KFD and/or Intermedix have to do to get the claim submitted for payment. We have 26 clients for which we have provided this integration and have brought more than a quarter of a million (250k+) transports directly into our system via this interface.

In the event the electronic version is unavailable, Intermedix will enter the data from a paper PCR manually.

CODING

Our coding application automatically performs data quality and integrity checks on all incoming data. When the system finds inconsistencies, it alerts our coders. In compliance with proprietary rules-based algorithms, a coder cannot save the claim until the issues are addressed. For example, we verify that demographic data contains elements such as patient address, social security number and date of birth.

We code the trip based on dispatch, assessment, crew member narrative and treatment data. The initial coding is done through our automated systems. After that, a coder manually reviews every account for accuracy and completeness, as well as verification that insurance information is consistent with payer specific requirements.

Intermedix coders are required to maintain a greater than 95% accuracy rating. We utilize the Medicare Level of Service Coding Guidelines unless they conflict with a local ordinance and coding is typically completed within one business day of receipt.

Coding every trip at the highest, compliant level of service for the care provided ensures that KFD is able to recover the cost of providing the service while remaining compliant with all of the rules and statutes that govern ambulance billing.

MEDICAL NECESSITY REVIEW

The Intermedix billing system automatically performs data quality and integrity checks on incoming patient records. Intermedix will run all patient records received through our automated platform as an added layer of compliance verification prior to invoicing. For example, we will verify that demographic data contains elements such as patient address, social security number and date of birth. This automated platform is a proprietary system that uses algorithms and key data points to suggest medical necessity and diagnosis codes and uses the Medicare Level of Service Coding Guidelines unless in conflict with a local ordinance. We also review the account for medical necessity documentation using our proprietary contraindication codes and review required patient and crew credentials.

If we identify a discrepancy based on element of medical necessity, we will send the patient record for internal review. In compliance with our proprietary algorithms, the reviewer must resolve the issue before continuing to the next patient record. If the discrepancy is valid, we will send the patient record to a research request queue inside the billing system. From there, the reviewer has a variety of options to respond to the issue with next steps and can forward it back to the appropriate parties for resolution. This process allows for back and forth dialogue on patient records within the system, ensuring that the process is logged in the patient record.

ICD-10 READINESS

On October 1, 2015, health care providers, health plans and health care clearinghouses were required to transition to ICD-10, the tenth revision of the International Classification of Diseases. To ensure systems and business processes were prepared for the implementation date, the Intermedix ICD-10 Committee has worked steadily from our ICD-10 readiness and implementation plan since July 2013. The result of this approach has been a system that is ready, coders that are educated about all aspects of the new coding array, and clients that are informed about what these changes mean for them. We remain committed to these goals and will continue to remain on the forefront of updates as they are released.

MEDICARE SIGNATURE RECEIPT AND VERIFICATION

We will receive an electronic image of signatures from the field generated Zoll RescueNet ePCR, directly into our billing system to support billing documentation compliance for KFD.

To successfully document signatures, we implement a number of solutions:

- We link accounts without a valid signature to accounts for the same patient where we have a lifetime signature on file, or where there is an indication that the patient is deceased.
- We link Patient Unable to Sign (PUTS) and Representative Unable to Sign (RUTS) accounts to electronic medical records for the same incident that we have received from the hospitals.
- We run accounts against the SSA's "deceased" file to identify deceased patients.
- We send letters to patients with specifically targeted language asking for a signature.
- We work with hospitals to obtain a proxy signature per the Medicare regulation exception which allows certain other signatures to satisfy the signature rule.

Once the coder has manually reviewed the account, it is released to enter the Patient Research phase.

Patient Research

We place intense operational efforts on our front-end processes with the primary goal of obtaining patient demographic and insurance information wherever it exists. Our billing methodology includes a combination of technology, personnel and processes designed to locate patient information from receiving facilities, insurance databases, transport records, skip tracing resources, and patient phone calls.

In addition, all returned mail is researched and sent through the same processes and sweeps performed on the initial transport to identify any additional information that may have become available.

ELIGIBILITY VERIFICATION

We execute a series of insurance eligibility transactions to help retrieve appropriate insurance information.

To ensure the information is complete, we interface with external sources such as Medicare HIPAA Eligibility Transaction System (HETS), and various commercial partners. Our Hospital Liaison Program supplements this data by focusing on connecting with your receiving facilities to gather demographic and insurance information from their on-site registration staff to augment the data in our database.

MASTERBANK PATIENT DATA REPOSITORY

We have developed a master database application within our proprietary billing system for internal eligibility sweeps. Our database runs each account against EVERY EMS patient in our database, ALL hospital data, ALL prior patient linkage, ALL patient information maintained by our Emergency Department billing database - more than 30 million records nationwide.

This application, combined with the fact that we will be gathering data from local hospitals, means that every one of AmeriCare's accounts will be run against our nationwide database, and it ensures that its claims will access local patient data in a real-time environment every time a run is submitted, thus increasing the opportunity to gather the necessary data to bill a claim accurately and efficiently the first time. Our long history in California means that more than 430,000 annual emergency department patient records are received into our billing system every year through hospital integrations.

We process more than 4 million transports a year for more than 300 clients. Our system will search all historical transports for patient information in case demographics and insurance information exist from a previous transport - wherever it occurred throughout the country.

PATIENT OUTBOUND PHONE CALLS

When insurance information is still missing after the eligibility verification stage, Patient Account Representatives (PARs) contact the patient. We use advanced technology to call patients with a valid phone number and then automatically transfer connected calls to a PAR. If the patient is uninsured, the PAR requests payment at that time or attempts to initiate a payment plan for the patient. These call campaigns are customizable based on account attributes, patient demographics, number of attempts, days and times to call and many other attributes.

SKIP-TRACING

Many times we are not only missing insurance information but patient demographics are incomplete as well. If the patient demographic information is not found during the initial search of our databases, we utilize Accurant to perform skip tracing. Eligibility and skip tracing activities are completed with quantitatively defined metrics that the data returned belongs to the patient in our system and billing specialists review all records.

To the degree that we capture valid information, we are able to bill the patient's insurance without ever having to contact the patient, thus achieving optimal customer service for the obvious reason that we do not have to bother your patient for information we are able to recover on our own.

Patient Research Stats

Invoices paid & resolved without direct patient interaction = **61%**

Patient records in MasterBank = **>30 Million**

Outbound patient call connection rate = **35%**

Eligibility Statistics

Intermedix offers a number of systems and tools in the front end process after a run report has been input into our system via ImageTrend's ePCR application, including skip tracing, eligibility clearinghouses, MasterBank proprietary database searches, and linkage with insurance companies and hospitals. As soon as crewmember submits a run, it is available for your staff to view and begin processing with the Intermedix Billing System. Each patient account can be sent through a series of eligibility transactions to retrieve all appropriate insurance information.

The most frequently used resources are Medicare, Medicaid, BCBS or cascading insurance eligibility clearinghouses like Change Healthcare (formerly Emdeon / WebMD) and ZirMed. Many times run reports are not only missing insurance information, but patient demographics are incomplete as well. If the patient demographic information is not found during the initial search of the available databases, our own internal Intermedix billing staff utilizes Accurant to perform skip tracing, a step that we assume KFD would utilize as well. Eligibility and skip tracing activities can be completed with a quantitatively defined confidence that the data returned belongs to the patient in the billing system.

We have also implemented a "MasterBank" application within our proprietary Intermedix Billing System for internal eligibility sweeps. **MasterBank runs each account against over 34 million accounts including EVERY EMS patient in our Intermedix database, ALL hospital data, ALL prior patient linkage, and ALL patient information maintained by our Physician billing database.** This enhancement means that every account run against our nationwide MasterBank database will access local patient data in a real time environment every time it submits a run – thus increasing the opportunity to gather the necessary data to bill a claim accurately and efficiently the first time – and at no added cost to KFD.

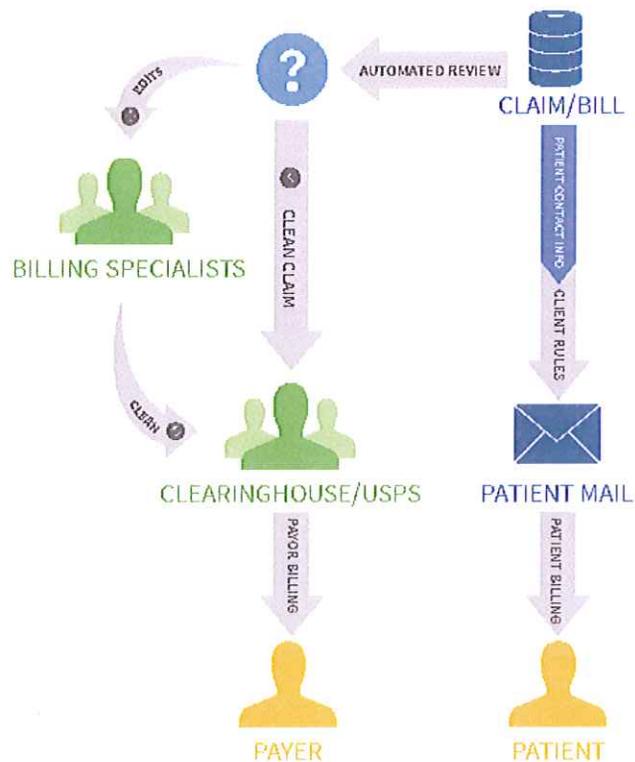
The following table reflects the eligibility and electronic claims submission process and the effect on days in A/R and payer payment times.

May 2016						
	Claims Matched to Remits – May 2016	Edit Pass Rate	Average A/R Days	Patient Ineligible Rate	% Patient Responsibility Portion of Claim	Average Days for Payer Payment
Totals	155,067	98%	50 days	4%	18%	14 days

Billing

As soon as the necessary patient demographic and insurance information is obtained and the account updated, a claim will be sent out. Accounts can often be sent within 24 hours of PCR receipt when they contain correct patient demographic and insurance information. For accounts that do not contain the necessary information to file a claim to a third party payer, the duration may be longer to ensure that all resources are exhausted to try to locate and confirm valid payer information. Any claim that has not been identified to have a third party payer will be sent out on a self-pay bill schedule within the time limits required by KFD.

We use a combination of automated technology and billing specialist monitoring to ensure clean claims. The depth of our company makes it possible to communicate electronically with a large number of payers. Our customizable patient billing rules ensure a patient-centric billing process that follows the process shown below.



Prior to submission, we automatically review claims against our proprietary rules-based engine. Claims not passing the review are placed into a work queue and processed by team members. Our clearinghouse provides a second level of review for electronic claims. Inconsistencies caught by our clearinghouse are also reviewed by a billing specialist and updated in the Intermedix system.

Claims to Medicare, Medicaid and most commercial payers are transmitted electronically. We print and mail paper claims if electronic delivery is not available or when the payer requires hard copies of PCRs or explanation of benefits.

PATIENT BILLING

Intermedix does extra work behind the scenes to ensure that we have gathered accurate patient contact information. We identify accounts with invalid addresses, as well as other data elements, and automatically apply our skip tracing process and implement manual research tools to find updated mailing address from our external demographic data provider, previous transports and hospital files.

Patient billing will follow the specific process designated by KFD. If insurance information has not yet been captured on the account, the statement will ask that the patient provide payment or insurance information, and instructs them on how to do so. Insurance information can be provided by the patient using the following methods:

- Returning the payment invoice with completed information on the back via regular mail
- Calling our toll-free customer service line
- Logging on to the patient portal on our website

If KFD enters into a merchant agreement with our online payment partner, patients will be presented with a “Make Payment” button through which they will be redirected seamlessly to the online payment site to update insurance and/or pay by credit card or electronic check.

Statement activity is generated automatically by the billing system, although authorized users can access and print statements on-demand as desired. For example, if a patient visits or calls your office requesting a copy of their statement, you can access the account and print the desired information for your patients. The patient statement wording is fully customizable to meet the needs of KFD.

The screenshot shows a web form for patient payment. At the top, a black banner reads "Test Mode Activated. Any transaction attempted will not be processed." Below this, the form is divided into two sections: "Patient Information" and "Payment Information".

Patient Information:

- * Patient Name: Text input field
- Textime Timezone: Text input field
- * Email Address: Text input field
- * Patient Account Number: Text input field (value: 21341593)
- * Dates of Service: Range selector (value: 01/20/2014 To 01/20/2014)

Payment Information:

- DEBIT / CREDIT / BANK: Radio buttons
- * Amount: Text input field
- * Name on Card: Text input field
- * Card Number: Text input field with VISA, MASTERCARD, AMEX, DISCOVER logos
- * Expiration Date: MM / YY selector
- * Security Code: Text input field
- * Cardholder's Zip Code: Text input field

Buttons: CONFIRM, Cancel

Intermedix has a flexible patient mail application that ensures clear and specific communication:

- We include account charge, payment and insurance information on invoices.
- We supply virtually unlimited patient statement wording variations.
- We automatically generate mail from the billing system.
- We allow authorized users to access and print statements on demand.

Patient Research Stats

Average clean claim rate = **94%**

First invoice payment rate = **80%**

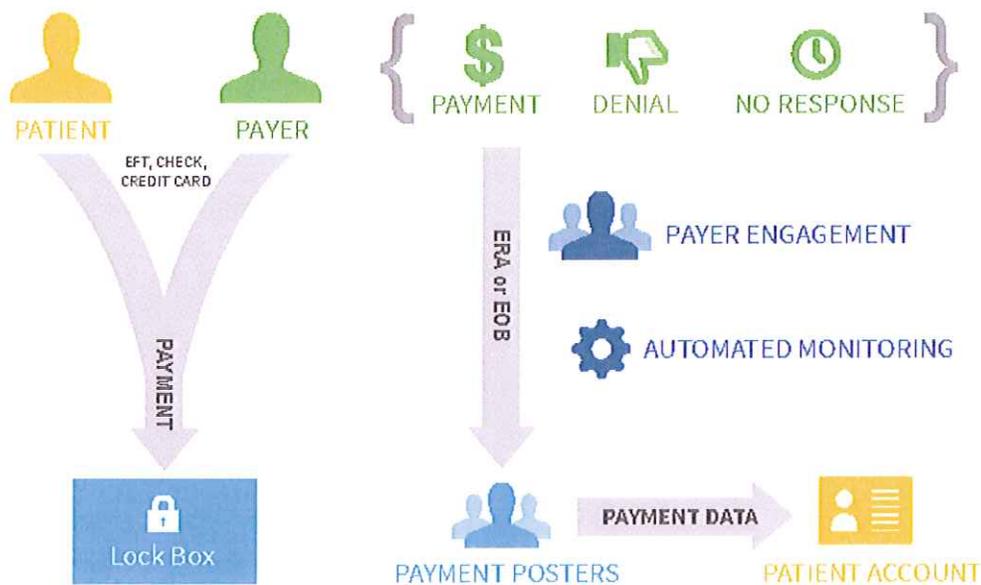
Claims submitted electronically = **100%***

(*to payers who accept electronic submission)

Payer Response

Payer responses can vary significantly between the different pay classes. Medicare will typically respond within one to two weeks from claims filing, with Medi-Cal typically responding between two to three weeks from initial filing. Commercial insurance normally responds anywhere from two to five weeks from claims filing.

We understand that the majority of patient self-pay accounts are often difficult to collect due to a lack of patient motivation. Self-pay accounts that do get paid in full are typically paid between one to seven months from PCR receipt. Therefore, we follow the process shown below for payment receipt, posting and follow-up:



PAYMENT POSTING

Upon receipt of payment documentation, our Payment Posters post payments to the account within one business day. We provide the tools necessary to receive payments through several methods, including electronic fund transfers (EFTs), checks and credit cards. We receive electronic payment from Medicare, Medicaid and most commercial payers and our Electronic Remittance Advice (ERA) Browser allows the Payment Poster to access and verify these responses.

When we receive hardcopy EOB documents instead of ERAs, a Payment Poster manually applies the payment with our web-based system. Credit card information received through the contact center or patient correspondence is processed by a Payment Poster online through Virtual Merchant.

We review every data element for accuracy and completeness before committing transactions to our database. We maintain an audit trail with the User ID to ensure the best quality assurance processes. If payments are received without identifying information, they appear in our Check Reconciliation Queue for follow-up. We research the payment with both the client and the entity that provided the payment, then post to the proper payment account. We can provide daily, weekly, monthly reconciliation with your bank account.

SUPPLEMENTAL PAYER CLAIM FILING

Claims that contain supplemental payer information are submitted according to the established procedures after the initial payment is received. When dealing with Medicare crossover claims:

- We send claims to the supplemental insurer automatically.
- We automatically file a claim with the corresponding EOBs to the secondary payer on file if a secondary payment is not received in a predefined number of days.
- We automatically handle exceptions and adjust the remaining balance when Medi-Cal does not cover the remaining 20% responsibility.
- We file a claim with the supplemental insurer immediately upon receipt of Medicare's Electronic Remittance Advice when we have supplemental insurance (MediGap) on file, but Medicare has not crossed over the information to the payer.
- We file Medicare secondary claims electronically with all required information.

DENIAL MANAGEMENT

Our goal is to file a clean claim the first time; however, denials do occur. In case of a denial, we initiate a series of actions specific to the denial reason. For example:

- If a claim is denied due to a policy number issue, we check a number of insurance eligibility sources and may contact the patient to obtain the correct insurance information.
- If a claim is denied for medical necessity reasons, we review the PCR to verify the original medical necessity determination.

Our denial rate is **6.4%**, and this includes denials for any reason. Approximately **80%** of denials are related to coverage issues and about **15%** are related to short pay appeals to commercial payers.

We are committed to timely and accurate processing to improve cash flow, and address many denials automatically upon receipt. We are continuously expanding the payer and denial code combinations that can be handled automatically. Denials that are not processed automatically are addressed by Accounts Receivable resources through our Manual Denial Management Queue.

We engage in a number of activities to resolve accounts such as researching accounts, verifying electronic claim status, accessing payer websites and making payer phone calls. Once the problem has been identified, we update accounts and re-file claims when appropriate. The queue allows sorting by payer, so that our representatives can quickly resolve multiple claim issues for a single payer at the same time.

We appeal all short pays and correct any coverage related issues by re-verifying insurance with our bevy of technological and database tools.

Intermedix is successful on short pays approximately **35%** of the time, and we have seen a marked increase in commercial short pays over the last 24 months as payers are shifting more responsibility to the patient.

We feel very confident that when we submit a transport for payment to governmental payer, we have determined that it meets the rules for Medical Necessity, Level of Service, Medicare Signature Requirements, and any remaining submittal requirements. Thus, any account that would subsequently be denied is appealed. This is typically not a large volume and usually requires only a trip report being sent to the payer.

Payer Response Stats

Credit card or e-check payment success rate = **\$80** per uninsured account*

*(*compared to \$18 for clients who do not offer online payment options)*

Primary claims filed = **55,000** per week

Monthly inbound calls = **55,600** calls

Average speed to answer = **17** seconds

Patient Response

We offer a number of methods for the patient or patient representative to respond to requests for insurance or payment. For example, they can contact us by mail, through a customer service toll-free phone line or on our secure patient website. We recommend that clients use an online payment solution to significantly increase collections.

Our professionally staffed Patient Contact Center is focused solely on interacting with EMS transport patients. Our representatives handle both insurance and self-pay arrangements. Patients can use a toll-free number to access the Contact Center, which takes calls between 8:00 a.m. and 5:00 p.m. Pacific Time. The Contact Center uses the latest telephony technology, including skills-based routing by call type and language preferences.

We have a number of bilingual Contact Center representatives for foreign language calls with fluency in many languages including Spanish, Chinese Dialects, French, Creole and others. Translation services are also available where patient account representatives can dial in the vendor for a live conference with a translator for one of the 200+ supported languages.

RECONCILIATION

We provide detailed month-end reports that include all payments, write-offs and adjustments. We reconcile with the date of transport, monthly bank deposits, credit card payments and the month-end total. Checks and balances occur at numerous levels throughout the payment posting process to ensure that all money posted balances at the end of each day. Daily “batch” reporting is reviewed to verify the total amount of money posted each day.

REFUNDS

When a credit balance occurs, Payment Posters provide the payment record to a Refund Processor for follow-up. The Refund Processor then researches the claim, gathering supporting documentation from our billing system, which may include the EOB and copies of the original check from the payer. After the credit balance is confirmed as a legitimate overpayment or duplicate payment, the Refund Processor completes the necessary refund request documentation.

Unpaid Account Strategies

We continuously look for new ways to leverage technology and processes that will help us increase our ability to collect on unpaid accounts before considering third party collections.

APPEALS

Intermedix offers several important advantages surrounding appeals:

- We review each payment received from a third party to ensure accurate reimbursement.
- We identify problematic patterns and proactively involve our EMS Compliance Officer to work directly with the carrier to get them resolved.

When we receive no payment:

- We immediately appeal any timely filing denials with proof showing when we received the insurance information and filed the claim.
- We submit a new claim with the proof of eligibility for patients who receive retroactive Medicaid coverage.

Aged Accounts Receivable

We have developed monitoring tools that allow us to follow-up on claims that have not been paid in the expected timeframe. Our staff is assigned to these work queues to avoid cases where claims are submitted without a payer response. Accurate data mining of denials is the most critical element of our denial management process.

This “Claims Status Monitor” queue monitors activity on accounts with primary and secondary insurance, an open status, and a balance that is not equal to zero. It recognizes the insurance process date and searches for a response from the payer.

PROTOCOLS FOR ACCOUNT ADJUSTMENTS

We work with each client to define and implement a core set of reasons for adjustments and write-offs; however, we can implement additional reasons that better fit KFD reporting operations as these reasons are identified during the contract.

Third-Party Debt Collections

After exhausting all efforts—including applying payments, adjustments and write-offs—accounts with open balances may become eligible for advanced collections. After a final review to ensure no recent account activity, we will send the patient an invoice warning them that the account will potentially be sent to collections if left unpaid. Then, upon written direction by KFD, we will release the account to collections by electronically providing the designated vendor with the necessary data to perform collection services.

We also have the ability to receive export files into our billing system so that even delinquent account payment activity is reflected in the patient record.

Kerrville Fire Department

Price Proposal



INTERMEDIX PRICING

The fully outsourced pricing was developed using the volumes submitted by KFD.

Service	Pricing
Intermedix EMS Billing and Collections	5.75% of net collections*

*Net Collections is defined as total cash collections less refunds and is billed monthly on the basis of collections for the current month.

The price bid herein shall include all expenses of billing and collection including, but not limited to, stationery, forms, envelopes, postage, and phone facilities.

Patrick Hart

Director, Business Development



www.intermedix.com

Agenda Item:

5D. Alternative proposal for workforce housing project submitted by MacDonald Companies. (staff)

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

SUBJECT: Alternative proposal for workforce housing project submitted by
MacDonald Companies

FOR AGENDA OF: Oct. 11, 2016 **DATE SUBMITTED:** Oct. 4, 2016

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

EXHIBITS: 1. Excerpt of Alternative Proposal
 2. Letter of Intent with MacDonald Companies – June 1, 2016

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

Earlier this year, City Council selected MacDonald Companies as its development team for a workforce housing project. The general concept was to select a development team to work with the city to determine the feasibility of building a workforce housing project on the Peterson Farm Road tract purchased with 4B sales tax revenues.

Water and sewer infrastructure are major challenges to the Peterson Farm Road property. There are major off-site improvements necessary to provide adequate capacity to the site. The Legion Lift Station project is the single most critical off-site improvement. It is scheduled to begin construction in FY2019 and is expected to take about a year to complete, meaning that the commencement of a workforce housing project would not be viable for another 4 years on Peterson Farm Road.

MacDonald Companies has identified an alternative site and has submitted an alternative proposal for the workforce housing project. They propose to develop approximately 16 acres on Loop 534, at the planned intersection of Olympic Drive. The project would provide 200 multi-family units in 21 3-story garden-style apartment buildings. The housing units would consist of a blend of one bedroom, two bedroom, and three bedroom apartments.

To develop this project, MacDonald Companies would request the following from the City of Kerrville:

1. Waiver of all city building and development fees,
2. Abatement of city property taxes for 5 years, and
3. Grant funds in the amount of \$750,000 (4B funds) to assist with off-site infrastructure.

RECOMMENDED ACTION

This alternative proposal appears to offer significant advantages to the original concept for Peterson Farm Road. Off-site infrastructure expenses appear to be much lower, project timing may be significantly shorter, and the project would not require the city's partnership/ownership.

There are some preliminary questions that need to be addressed by city staff, including the following:

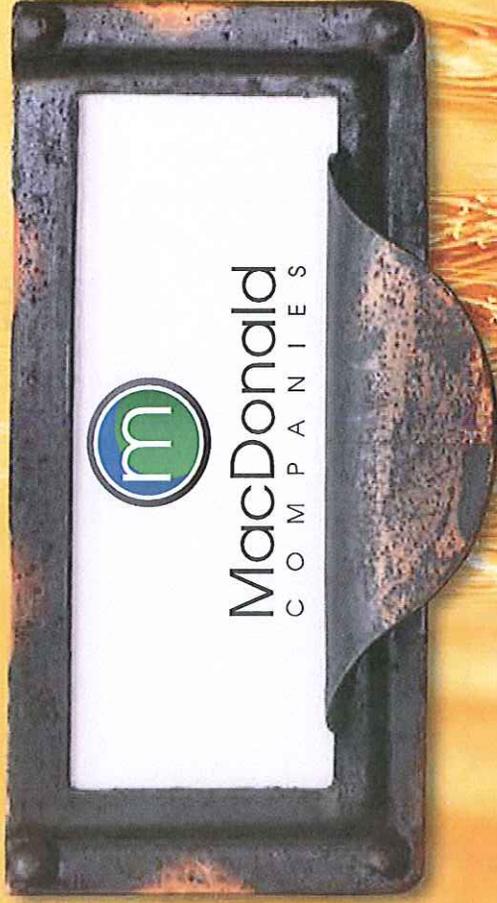
1. What is the estimated value of the building and development fees?
2. What is the projected property value of the project and what would the projected value of the property tax abatement be?
3. Which building and development fees should actually be waived?
4. What would the unit mix be for the project?
5. What would the rental rates and average rent be for the project?
6. How would the project be financed and what, if any, involvement would the city have in that process?
7. What, if any, off-site constraints exist to provide adequate water and sewer capacity?
8. How does the alternative project compare to the project contemplated in RFQ 2016-01?
9. Is the project consistent with the city's land use plan and compatible with surrounding land uses?

It is recommended that the City Council direct city staff to review the proposal with MacDonald Companies, review the questions above, and provide a report to City Council with recommendations on this alternative workforce housing proposal.

EXHIBIT 1
Excerpt of Alternative Proposal

HOW TO PLANT & HARVEST WORKFORCE HOUSING FOR A GENERATION

RFQ 2016-01_ALTERNATIVE PROPOSAL



CITY OF KERRVILLE WORKFORCE HOUSING DEVELOPMENT



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ALTERNATIVE PROPOSAL (RFQ 2016-01_ALTERNATIVE)

The following proposal (RFQ 2016-01_Alternative) is a logical next step response to the City of Kerrville Request for Qualifications Workforce Housing Development RFQ 2016-01 submitted by

MacDonald and Associates, Inc.
G.G. MacDonald, Inc.
MacDonald Property Management, LLC.

This RFQ 2016-01_Alternative response proposes a far more suitable location that resolves issues connected with the Peterson Farm Road site. The following plan demonstrates a methodical case and comprehensive proposal that will yield the City and community a number of enhanced values for years to come.

MacDonald Companies is delighted to be invited again to apply our massive experience in this arena to the benefit of the City of Kerrville.

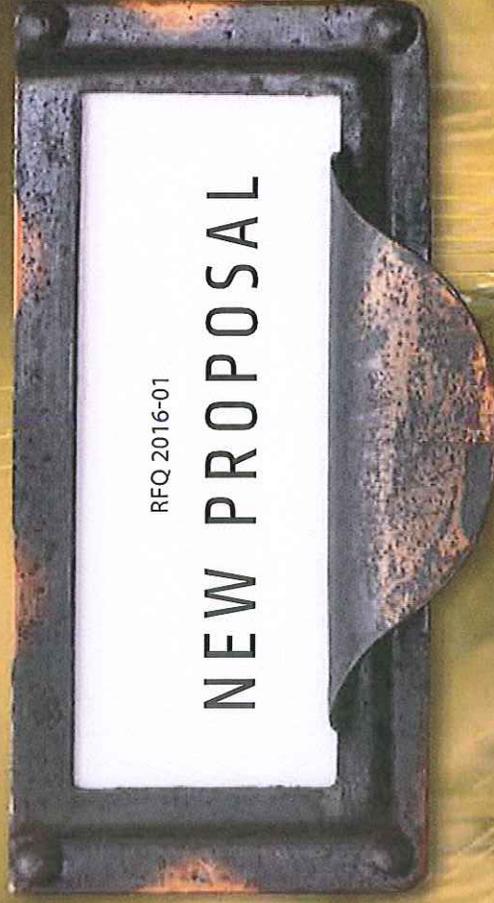


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Affordable lifestyles. Community values.



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NEW PROPOSAL

Why an alternative proposal?

After several meetings between the city of Kerrville, and MacDonald Companies, the City correctly identified water and wastewater service as a significant hurdle to planning and development of the Peterson Farm Road property. As a result it was concluded that property was not in a ready stage for residential development at this time.

Since it was agreed that the need for Workforce housing remained urgent, MacDonald Companies began the laborious process of determining a more suitable property.

A site owned by Schreiner University has been located by MacDonald Companies and identified as being suitable for multifamily development.. It is known internally as—Lookout Point.

Finding another property at this juncture benefits the City in three solid ways.

1. Preserves the Peterson Farm Road property for future industrial or commercial development.
2. Saves the City of Kerrville the cost of extending utility infrastructure to the Peterson Farm Road property (approximately \$2 million).
3. Meets the identified needs of workforce housing much faster than waiting to develop Peterson Farm Road property.

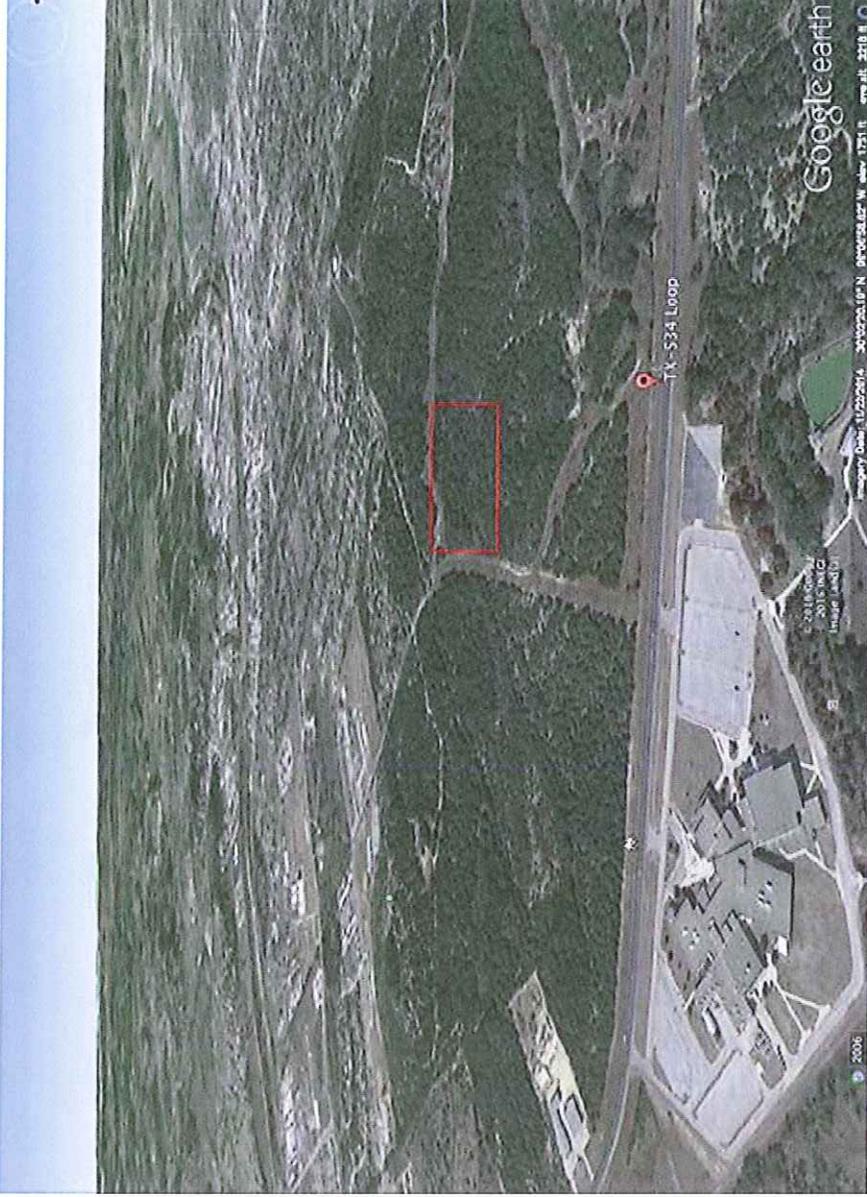


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NEW PROPOSAL

Lookout Point is a strategic next step forward to opening connections and preparing for future growth and development.

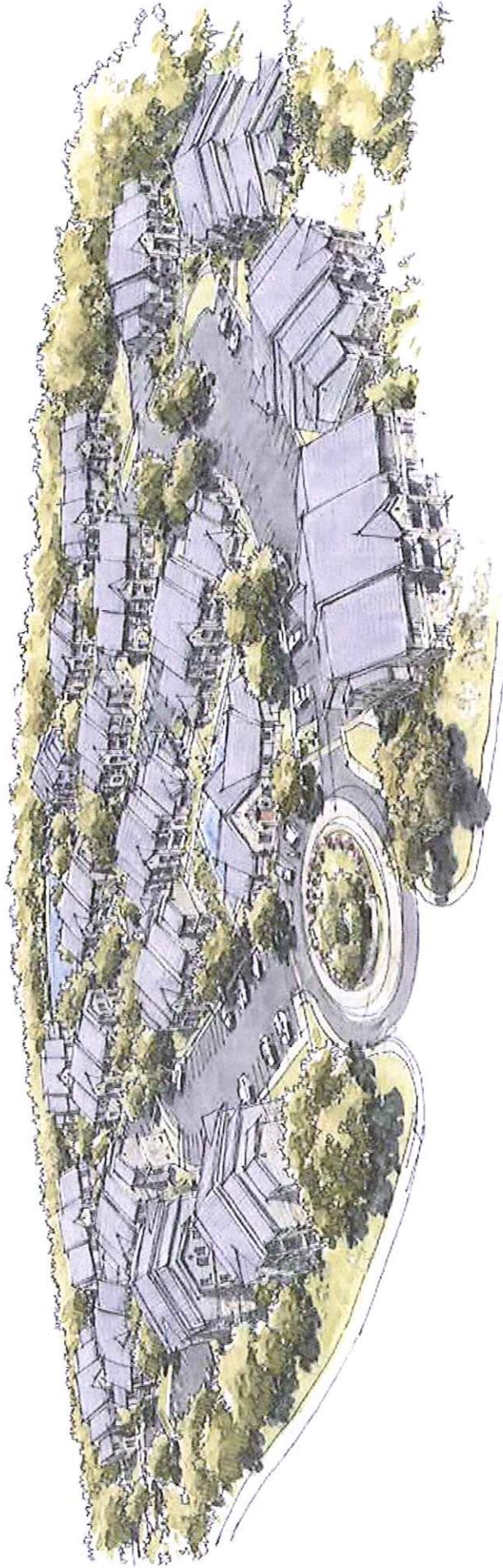
- 1.** Opens Schreiner property to future development.
- 2.** Connects a missing link in the city's master thoroughfare plan.
- 3.** Alleviates routes to Tivy high school and improves traffic without having to be on the loop.
- 4.** Develops infrastructures to city owned property (future Law Enforcement Center).





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LOOKOUT POINT-COMMUNITY ENTRY



PETER LEWIS
ARCHITECT + ASSOCIATES

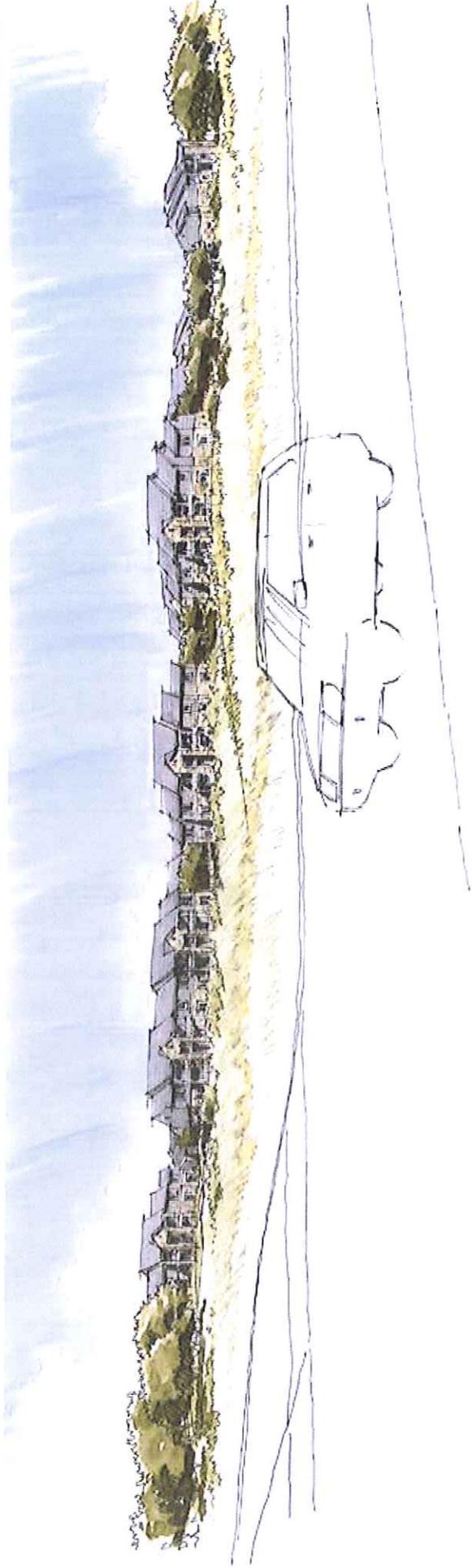


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LOOKOUT POINT-534 VIEW



PETER LEWIS
ARCHITECT + ASSOCIATES



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NEW PROPOSAL

Lookout Point is designed and crafted to fit elegantly with the land and serve those who live inside its walls well for generations.

Sitting atop 14 rolling, hillside acres at the intersection of Loop 534 and Olympic Drive the proposed Lookout Point housing community features 200 units in 21-two and three story garden-style apartment buildings.

Community amenities include a Clubhouse and pool, located at the entrance to the community, which features Leasing and Management offices, Hospitality space, Laundry and a Fitness Center for use by all residents and their guests.

On-site parking is provided for residents and their guests with additional parking dedicated for the Clubhouse. A network of wide concrete walkways designed for pedestrians and wheelchair bound individuals provides for convenient travel between buildings and to parking areas. Decorative site night lighting ensures residents' safety and security.

Regionally appropriate, drought tolerant landscaping selected for year-round color complements the buildings and their surrounds.

Three different unit types comprise the project's housing mix:

- **Type A1:**
One bedroom/one bath
- **Type B1:**
Two Bedroom/two bath
- **Type C1:**
Three Bedroom/three bath

All units feature a Living Room, Dining Room and spacious Kitchen with ample cabinet and counter space and energy efficient appliances. The spacious floor plans feature walk-in closets, private patios and balconies, and washer/dryer connections in all units.

Two of each of the ground floor unit types are designed to be fully wheelchair accessible and an additional one of each type will have enhanced audiovisual systems for residents with hearing or vision challenges.



TO DEVELOP THIS REMARKABLE SITE, MACDONALD COMPANIES HAS THREE ASKS.

1. We request a waiver of all city building and development fees.
2. We request an abatement of city (only) property taxes for the first five years. The property should yield @ \$35,000 in tax income to the city per year. MacDonald Companies is requesting a tax abatement for only the first five years.
3. We request a \$750,000 grant to help build off site extension of Olympic Drive, add running water, wastewater and electricity. The estimated costs are \$1.5 Million. MacDonald Companies is requesting for one half of those needed funds.

Recommended funding source

MacDonald Companies is of the strong opinion that Lookout Point would qualify for EIC funding.



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5 MISSION & VISION



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5 MISSION & VISION

The development project is not binding on a future proposal submittal. The purpose of the mission and vision is to demonstrate the respondent's initial ideas and programmatic response to the City's workforce housing needs.

a. The development team(s) philosophy for the development and the role this project will have in the development team(s) business plan.

Workforce housing has been a product and main focus of the MacDonald Companies for more than a quarter century. The team's philosophy is succinctly stated in our marketing slogan, "Affordable lifestyles. Community values."

Building multifamily communities that meet the stringent rent levels of workforce housing require some specific and proprietary approaches to planning, design, construction, operation, rent levels and terms. The apartments should excite prospective tenants with unexpected finishes, fixtures, and floor plans, while maintaining economy that keeps rents low.

Just as with the previous Peterson Farm Road site, the factors for the purposes and intent for new site, Lookout Point, remain exactly as before, that the project should incite tenants to react with surprise that so much quality is available for such a reasonable price. And each portion of the team's effort must contain elements that are guided by this belief. In addition, the workforce neighborhood should reflect the best of Kerrville—

from appreciation of the surrounding ecoscape in sustainability and energy efficiency to aesthetic beauty.

This new housing neighborhood should begin to offset the desperate need for labor

housing in a City of growing economic force. The project must be designed, planned, built, marketed and maintained so that it is appreciated as much by Symphony ticket holders as Mooney Aviation machinists.

The residents are our present and future neighbors, and we believe our team has more relevant experience in our hometown than any competitor.



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b. Describe the development team'(s) experience and approach to producing an exemplary product.

For over 25 years, this team has delivered workforce housing that has exceeded the Community's expectations. It accounts for over 300 multifamily units in Kerrville proper, and a total of \$130,000,000 in property under management in Bandera, Gillespie, Kendall and Kerr Counties. Our dominance in this area results from experience planning, designing, building and operating over 50 similar properties across Texas.

The team is stable, having worked multiple community projects together as a team.

And the team's experience in providing unexpected amenities, finishes, fixtures and floor plans helps us avoid dead ends, dirt roads, and inefficient approaches. Experience counts. To be a successful workforce multifamily developer requires these elements: consistent success, decades of experience, and a stable management team.





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c. Identified constraints and opportunities.

The City correctly identified water and wastewater service as a significant hurdle to planning and development of the previous Peterson Farm Road project.

As stated in this RFQ 2016-01_Alternative, pages 4-9, the enhanced opportunities have been identified as well as the utility needs: electricity, telephone, Internet, CATV. Street planning and street construction are on the drawing board now, and need priority treatment in the City's involvement.

In terms of opportunities, the MacDonald Companies are very confident of a team approach that the City of Kerrville will want to repeat—with us or other teams. The process management style of our team will keep City of Kerrville management plugged in, involved, and contributing to every step of implementation. As we continue to expand our projects across Texas, we would hope to have additional opportunities in our hometown.



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d. Best approach for creating a successful project.

The best approach in all projects of this complexity revolves around a series of planning charrettes, arranging subject matter from broad to narrow, and maintaining thoughtful involvement of the City's and MacDonald Companies' team members. We are very experienced at facilitating and moderating charrettes that move from wide scope to fine details. Overall, scoping and site planning should be the first, with all specification limits defined by the team — number of units, floor plan ratios, number of buildings, public space set asides, and amenities. As the entire site plan is completed, design elements may be introduced

for successive charrettes that ensure the aesthetic, efficiency, environmental, and sustainability qualities transition from planning to the building designs.

Upon consensus acceptance of final design and construction plans, the MacDonald team will work with the applicable City departments to ensure code compliance and approval of necessary permits to allow construction to commence. Contemporaneous to these tasks, the MacDonald team will also work in the background to obtain the requisite financing and equity investments required to fund the project.

Actual site work and building construction will take approximately 16-18 months from start until substantial completion. It should be noted that some buildings will be ready for occupancy much sooner than that, as our projects are generally constructed in phases to allow residents to get into completed apartments as soon as possible. Our construction arm, G. G. MacDonald, Inc. has quite a bit of experience in building apartment communities in this manner to ensure safe and sound, but fast, occupancy.



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5 MISSION & VISION

e. Developmental process and timeline.

Initial Design Planning Charrette	Within 2 Weeks Of Award
Additional Planning Charrettes	Multiple (As Needed)
Design Planning Charrette Output And Consensus	90 Days Following Initial Charrette
Commencement Of Construction	30 Days Following Issuance Of Permits
Leasing Office Open	180 Days Following Commencement
First Units Available To Occupy	270 Days Following Commencement
Substantial Completion And Acceptance	540 Days Following Commencement
Final Inspection & CO	Immediate

670 Days Total

(Timeline subject to change due to several factors, including weather delay, inspection delay, receipt of third-party reports, and delays associated with obtaining financing)



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9 FINANCIAL CAPACITY & CAPABILITY



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9 FINANCIAL CAPACITY & CAPABILITY

Composition of current real estate portfolio. Potential sources of debt/ equity capital available for this project. History over the past five (5) years in obtaining financial commitments. Audited financial statements and balance sheet*.

The MacDonald team has a broad range of experience and resources we can bring to bear in raising the capital for this project from multiple possible sources, as evidenced in the exhibits to this section.

Based on our understanding of the City of Kerrville's goals for this project, our opinion is that the best fit would be to utilize a combination of 4% Low Income Housing Tax Credits for equity and Multifamily Revenue Bonds/Private Activity Bonds for debt. We have significant experience with these programs, having developed the first rural Multifamily Revenue Bond project in Texas more than ten years ago.

For more information on these programs, please visit our website at www.MacDonaldCompanies.com and click on the "Housing Tax Credit" link, or the Texas Department of Housing and Community Affairs website at www.tdhca.state.tx.us/multifamily.

Please note that neither of these programs creates a debt obligation to the City of Kerrville. Rather, the tax credits are applied towards federal income taxes. The debt obligations are strictly tied to the project itself and would not encumber any City tax or utility revenues, nor would they affect the City's bond rating.

* Pursuant to RFQ 2016, Addendum No. 1, Financial Statements and Balance Sheet will be provided if MacDonald Companies are a selected candidate team.



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9 FINANCIAL CAPACITY & CAPABILITY

Schedule of Developments- 5 year Financing Commitments

Property Name	Property Address	# of Units	Financing Type	LENDER	Loan Amount	Closing Date
Bent Tree Apartments	1625 Sunset Drive San Angelo, TX 76904	112	9% Low Income Housing Tax Credits	Dougherty Mortgage LLC	\$3,684,000	8/27/15
Brookview Village	1000 Brookview Drive Copperas Cove, TX	96	FNMA Loan 9% Low Income Housing Tax Credits	Permanent Financing Dougherty Mortgage LLC	\$1,500,000	8/29/14
Comfort Place	405 Comfort Place Comfort, TX 78013	48	FNMA Loan 9% Low Income Housing Tax Credits	Permanent Financing Wells Fargo Bank, NA	\$1,462,000	12/18/14
Creekside Apartments	711 River Road Boerne, TX 78006	107	Conventional Loan 9% Low Income Housing Tax Credits	Permanent Financing Dwight Capital LLC	\$6,640,000	4/7/16
Gardens at Clearwater	451 Clearwater Paseo Drive Kerrville, TX 78028	76	HUD 223(g) Loan Tax Credit Exchange Program	Permanent Refinance Dougherty Mortgage LLC	\$1,800,000	7/17/13
Guadalupe Crossing	580 Sunflower Comfort, TX 78013	68	FNMA Loan Tax Credit Exchange Program	Permanent Financing Dougherty Mortgage LLC	\$2,590,000	3/28/12
Meadow Vista	525 Meadow Vista Circle Weatherford, TX 76087	80	FNMA Loan 9% Low Income Housing Tax Credits	Permanent Financing Wells Fargo Bank, NA	\$1,450,000	6/11/13
Mustang Heights	815 E. Arizona Avenue Sweetwater, TX	80	Conventional Loan 9% Low Income Housing Tax Credits	Permanent Financing Wells Fargo Bank, NA	\$1,440,000	8/1/13
North Angelo Housing (NoAH) Estates	Scattered Sites San Angelo, TX 76904	36	Conventional Loan 9% Low Income Housing Tax Credits	Permanent Financing Comerica Bank	\$735,000	3/25/14
Oakland Hills	388 Paloma Drive Floresville, TX	120	Conventional Loan Investor Equity Conventional Loan (Construction Financing)	Wells Fargo Bank, NA Construction Loan	\$8,400,000	12/11/12

* Pursuant to RFQ 2016, Addendum No. 1, Financial Statements and Balance Sheet will be provided if MacDonald Companies are a selected candidate team.



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9 FINANCIAL CAPACITY & CAPABILITY

Schedule of Developments- 5 year Financing Commitments (continued)

Dais of Bandera	451 Old San Antonio Highway Bandera, TX 78003	76	9% Low Income Housing Tax Credits HUD 223(0) Loan	Dwight Capital LLC	\$3,395,000	2/9/16
Paseo de Paz	401 Clearwater Paseo Drive Kerrville, TX 78028	76	9% Low Income Housing Tax Credits HUD 223(0) Loan	Permanent Refinance Dwight Capital LLC	\$2,726,700	2/9/16
Point Royale	4106 N. John Stockbauer Victoria, TX 77904	120	Investor Equity HUD 221 (d)4 Loan	Permanent Refinance Keycorp Real Estate Capital Markets, Inc.	\$9,905,100	6/1/11
River Place	501 South Irene Street San, Angelo, TX 76903	120	9% Low Income Housing Tax Credits FNMA Loan	Alliant Capital LLC	\$1,640,000	11/15/11
Seaside Landing	2969 Main St Ingleside, TX 78362	120	Investor Equity Conventional Loan - Construction Financing	FNMA Loan Southside Bank	\$10,260,223	2/13/15
Sunrise Townhomes	705 S. Creek Street Fredericksburg, TX 78624	36	Conventional Loan HOME Investments Partnership Program	Construction Loan Security State Bank and Trust, Conventional Loan (1st Lien) Texas Department of Housing and Community Affairs, HOME Loan (2nd Lien)	\$1,921,609 \$1,850,000	4/14/16 5/20/16
Walnut Grove	1400 E Walnut St Sequin, TX 78155	116	Investor Equity HUD 221 (d)4 Loan	Red Mortgage Capital, LLC	\$11,208,900	9/9/15
Westridge Apartments	5200 Greeland Midland, TX 79703	96	9% Low Income Housing Tax Credits Conventional Loan	HUD 221 (d)4 Loan Community Bank of Texas, N.A.	\$3,612,000	11/18/13
Totals - Apts		1,583			\$76,220,932	

* Pursuant to RFQ 2016, Addendum No. 1, Financial Statements and Balance Sheet will be provided if MacDonald Companies are a selected candidate team.

EXHIBIT 2
Letter of Intent with MacDonald Companies – June 1, 2016



City of Kerrville

701 MAIN STREET • KERRVILLE, TEXAS 78028 • 830.257.8000 • KERRVILLETX.GOV

June 1, 2016

Mr. Granger MacDonald
MacDonald Companies
2951 Fall Creek Road
Kerrville, Texas 78028

Dear Mr. MacDonald,

Congratulations on the selection of the MacDonald Companies development team for the City of Kerrville Workforce Housing Development project (the "Project"), as outlined in the Request for Qualifications issued by the City, which is attached as **Exhibit A**. City Council made this selection at its May 14, 2016, meeting. This Memorandum of Understanding (MOU) outlines a non-binding, general process by which both parties will determine if some form of a mutually beneficial public/private partnership may be created with respect to the Project.

Both parties agree to work collaboratively to achieve the following:

1. Establish the vision and mission for the Project;
2. Create a reasonable schedule for planning and development of the Project;
3. Develop a housing program and product that addresses the city's needs for workforce housing and is consistent with the Project;
4. Develop a business, marketing, and maintenance plan for the Project;
5. Create a public/private partnership framework for consideration by both parties; and
6. Develop details and information adequate to apply to the Texas Department of Housing and Community Affairs for the Non-Competitive (4%) Housing Tax Credit program with respect to the Project.

The work described in items 1 through 6 above will be completed by October 31, 2016. This completion date may be extended upon mutual, written consent of both parties not later than October 1, 2016, and for a period of time as is mutually acceptable.

By providing the signatures below, each party confirms its acceptance of the terms and conditions of this MOU.

Sincerely,

Todd Parton
City Manager

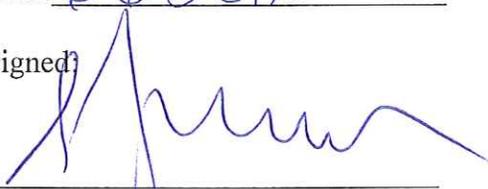
Exhibit A
RFQ 2016-001

By affixing my signature below I acknowledge that I am duly authorized to execute this MOU on behalf of my organization and accept the terms and conditions outlined herein.

On behalf of MacDonald Companies:

Date: 6/6/2016

Signed:



Mr. Granger MacDonald, CEO
MacDonald Companies

On behalf of the City of Kerrville:

Date: 6/9/2016

Signed:



Mr. Todd Parton, City Manager
City of Kerrville, Texas

City of Kerrville

**Request for Qualifications
Workforce Housing Development**



RFQ 2016-01

701 Main Street
Kerrville, Texas 78028
(830) 257-8000

www.kerrvilletx.gov



City of Kerrville
Request for Qualifications
Workforce Housing Development

RFQ 2016-001

OVERVIEW AND OBJECTIVES

The City of Kerrville, Kerr County, Texas, (City) is soliciting sealed qualifications from experienced and well qualified development team(s) who have the capacity and expertise to develop workforce housing.

The City is open to a variety of approaches including public-private partnerships consistent with state law that facilitate the development of workforce housing. The City will interview selected firms that meet the identified criteria including demonstrated success working with other communities on similar projects. Complete and detailed responses to this Request for Qualifications are critical in order for the City to determine the development team(s) that is most qualified for the project.

Sealed qualifications will be accepted through 2:30 p.m. on Thursday, April 28, 2016. Offerors must include one (1) original, four (4) copies, and a digital copy of a USB Flash Drive/DVD/CD by the stated deadline to the mailing address below. Any submittal received after this specified deadline will not be considered.

Mailing Address: City of Kerrville
 701 Main Street
 Kerrville, Texas 78028
 Attn.: Brenda Craig
 City Secretary

Questions must be submitted in writing to the contact noted below. Questions and answers, if any, will be posted on the City's website at www.kerrvilletx.gov.

Contact: Trent Robertson
 City Planner
 City of Kerrville
 701 Main Street
 Kerrville, Texas 78028
 (830) 258-1170

Trent.Robertson@kerrvilletx.gov

SCOPE OF SERVICES

The intent of this Request for Qualifications is to solicit responses that will assist the City in the selection of a qualified development team(s) to construct a multi-family, workforce housing project in the City. The development team should be comprised of planning, housing, and development finance professionals that are able to demonstrate their development experience in constructing workforce housing, have the financial capacity to undertake the development, manage the development's daily operations, and be able to work with City staff and its consultants. The City envisions a four-step process:

1. The City will select the best qualified development team(s) that best represents the goals and objectives identified in the **PROJECT PURPOSE** section of this document.
2. The City Council will work with the selected development team(s) to define the specific community development objectives.
3. The City and the selected development team(s) will mutually agree upon and create the public/private partnership to implement the development objectives identified in 2. above.
4. Following a public involvement and scoping process, the development team(s) will obtain necessary approvals and will coordinate the construction of the project.

Ultimately, the City intends to select a developer partner and/or partners who will be able to create a development plan/program that meets multiple community objectives and ensures that the housing is built and operating within the shortest reasonable timeframe.

The City shall consider financial and other subsidies, if necessary, to ensure a high quality development that meets the goals of the City. Such subsidies may include but are not limited to land, permit fee reductions/waivers, off-site infrastructure improvements or other subsidies agreed to by the City. The City would look to the selected development team(s) to:

1. Create a reasonable schedule and a mutually acceptable business plan;
2. Develop a housing program and product that addresses the City's needs; and
3. Market and develop the project.

The proposal will be evaluated under criteria which include, but are not limited to, experience with similar public private workforce housing projects, financial capability, past project aesthetics, income targets, unit type, unit size, unit mix, quality of construction demonstrated in prior similar projects, energy efficiency, and demonstrated ability to maintain quality of project over a minimum period of five (5) years.

The City would like to enter into a public-private partnership agreement with a developer and, as a function of that partnership, would require the developer to fully disclose costs and budgets associated with the project. The intent of this Request for Qualifications is to identify potential partnership teams that have the experience and qualifications to execute this project in a creative and economically sound manner and to maintain this project over a 15 to 20-year timeframe.

The selected qualified development team(s) will be responsible for the design of the project, making and obtaining all necessary site development permits, building permits, and compliance with all applicable building and zoning codes. Additionally, the development team(s) shall be responsible for obtaining, at its sole cost and expense, all architectural and engineering services, permits, surveys, zoning appeals,

subdivision approvals, other approvals, appraisals and environmental studies required by law and in connection with the construction of the project.

PROJECT PURPOSE

The City owns approximately 88 acres that is next to the Kerrville/Kerr County Municipal Airport that may be developed for mixed uses ranging from high density residential to manufacturing/assembly. *Attachment 1* to this document contains a site map showing the property, existing topography, and adjacent infrastructure.

The property is situated near several major employers who are expanding and adding primary jobs. Those employers are Mooney International Corporation, James Avery Craftsman, and Fox Tank Company. It is projected that these companies will add approximately 400 primary jobs over the next five (5) years with hourly wage rates expected to range from \$11 to \$25.

The City has a rental occupancy rate of approximately 95 percent. Coupled with an unemployment rate below 4 percent, the City needs to expand its housing stock to accommodate the growth in primary jobs for these major industries as well as job growth expected to occur in other employment sectors.

The City looks to develop a portion the 88-acre parcel with 240 to 300 multi-family housing units. The development project should be family oriented and developed with appropriate open space, recreational, and community amenities that offer an attractive living environment and quality of life.

Units within the development will include a mixture of one bedroom, two bedroom, and three bedroom apartments. Ideally, the distribution of these units should be approximately 25 percent one bedroom, 50 percent two bedroom, and 25 percent three bedroom. The average monthly rental for the units should not exceed \$750.

The City has completed an engineering analysis for the provision of off-site and on-site water and wastewater to the 88-acre site. The analysis shows requirements needed to serve a multi-family development as well as the full build-out of the 88 acres. *Attachment 2* contains a copy of the report prepared by the City's engineering consultant.

The City desires that the successful partnership team(s) will retain ownership and provide for the management of the property for a minimum period of fifteen (15) years after construction has been completed. Management of the property will ensure that the development is maintained in a clean, orderly, and healthy environment to include regular grounds maintenance and upkeep, regular building maintenance and repair, regular maintenance and upkeep of paving and parking areas, and the adoption and implementation of property maintenance requirements that ensure no junk vehicles or accumulation of trash or debris.

QUALIFICATIONS SUBMITTALS

Qualifications must contain the following minimum information:

1. **COVER LETTER:** A cover letter including the Request for Qualifications subject, the legal name, address, e-mail address, and telephone number of the proposer. The cover letter should express interest in the project and be signed by the person who has the authority to bind the proposing entity to the submitted proposal.
2. **IDENTIFICATION:** Legal entity and a description of the development team(s) that will be directly involved in the project. Identify each of the principals of the development team(s) to be directly involved with the project and include their title, entity, mailing address, phone number, and e-mail address. Describe their role in the development team(s) and include resumes.
3. **KEY PERSONNEL:** Person in charge of negotiations, key personnel who will be involved in decision-making, and the representative authorized to sign on behalf of the development team(s).
4. **DEVELOPMENT TEAM(S) QUALIFICATIONS:** Qualifications of proposed team members showing past experience for at least five (5) similar development projects completed within the last fifteen (15) years.
5. **MISSION AND VISION:** The development project is not binding on a future proposal submittal. The purpose of the mission and vision is to demonstrate the respondent's initial ideas and programmatic response to the City's workforce housing needs.
 - a. The development team(s) philosophy for the development and the role this project will have in the development team(s) business plan.
 - b. Describe the development team(s) experience and approach to producing and exemplary product.
 - c. Identified constraints and opportunities.
 - d. Best approach for creating a successful project.
 - e. Developmental process and timeline.
6. **PROJECT EXAMPLES:** Project examples and descriptions for each member of the proposed development team including photos, videos, websites, architectural designs, etc. for at least five (5) similar development projects completed within the last fifteen (15) years.
7. **MIXED INCOME PROJECTS:** Development team's experience with mixed-income projects to include percentages of affordable housing units, affordability standards for residents, and financing or incentive mechanisms utilized.
8. **CURRENT PROJECTS:** List and description of all projects currently in planning, design, or construction. Include location, status, development schedule, and financing structure.
9. **FINANCIAL CAPACITY AND CAPABILITY:** Composition of current real estate portfolio. Potential sources of debt/equity capital available for this project. History over the past five (5) years in obtaining financial commitments. Audited financial statements and balance sheet.
10. **LEGAL:** Any adverse action by any funding source or financial institution in the past five (5) years. Any pending or prior litigation against any member of the development team(s), its principals, or associates. Any persons known to the development teams(s) who would be obligated to disqualify themselves from participation in any transaction arising from or in connection to this proposed project.
11. **REFERENCES:** References for at least five (5) similar projects completed within the last fifteen (15) years including the name and contact information for at least two (2) public officials in communities in which the development team has worked on projects similar in nature.

All materials submitted are property of the City and are subject to disclosure to the public through the State of Texas Open Records Act.

EVALUATION CRITERIA

Upon receipt of submittals, City staff will evaluate and determine which, if any, respondents will be invited for follow-up interviews. However, the City retains the right to select a development team(s) without interviews. In reviewing the Request for Qualifications, the City will evaluate submittals on the basis of the following criteria:

1. Completeness of the submittal relative to the requirements listed in the **QUALIFICATIONS SUBMITTALS** section of this document;
2. Project Experience – Experience in planning, financing, building, and managing at least five (5) comparable projects completed within the last fifteen (15) years;
3. Development Team(s) Experience – Experience of the individual development team(s) key members in planning, financing, building, and managing at least five (5) comparable projects completed within the last fifteen (15) years;
4. Project Development and Financing – Successful public-private partnerships in development finance, housing project completion, marketing, and sales;
5. Architecture – Quality of design and architecture of previously constructed multi-family dwelling units and the application of designs that are appropriate to the character of the land and the community and incorporate principles of resource efficiency and maximum value;
6. Planning – Master planning of a project that includes creative site design that incorporates recreational amenities, community gathering spaces, and open spaces. Ability to manage projects through the design, development review, and construction processes plus the ability to comply with federal, state, and local regulations; and
7. Housing – Demonstrated knowledge of the City's current housing trends, challenges, and opportunities and the ability to deliver housing units within the targeted rental range specified within this document.

The City will completely review and analyze all submittals and may request that respondents modify, clarify or supplement their submissions with additional information. Respondent(s) may also be asked to make a formal presentation and/or come to the City for an interview. The final selection decision is to be made by the City Council.

ADDITIONAL INFORMATION

Requests for Qualification submittals must be signed by an official of the respondent who is authorized to bind the offeror, and it shall contain a statement that the submission is valid for a period of ninety (90) days from the submittal date.

The City reserves the right to refuse any and all proposals and waive any technicalities and informalities. The City reserves the right to negotiate with any and all qualified respondents and may enact multiple contracts if it is in the best interests of the City. The City may cancel this Request for Qualifications in part or in its entirety if it is in the City's best interests to do so.

This Request for Qualifications does not commit the City to award a contract, or to pay for any costs incurred in the preparation of the responding documents and related items, or to procure or contract for any articles of goods or services.

Any response is a public document under the State of Texas Freedom of Information Act (FOIA) and may be subject to disclosure, except as to information that may be treated as confidential as an exception to disclosure under the FOIA.

The City does not discriminate on the basis of race, color, national origin, sex, religion, age or disability in employment or the provision of goods or services.

ATTACHMENTS

1. Parcel Map – Peterson Farm Road Property
2. Water and Wastewater Analysis

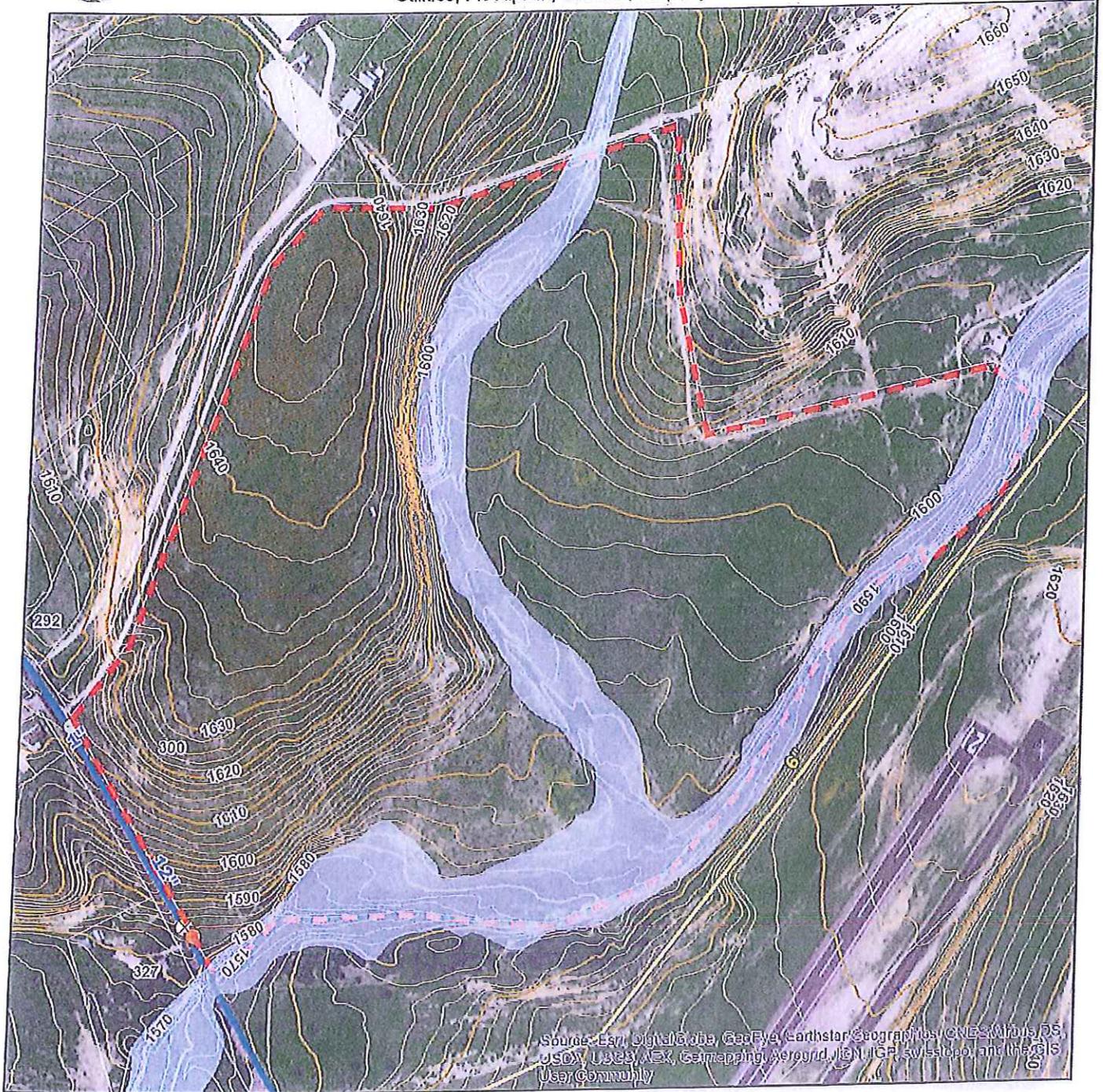
Attachment 1
Parcel Map – Peterson Farm Road Property



300 Peterson Farm Rd

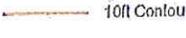
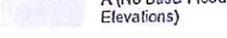


Utilities, Floodplain, Contour, Property Line



Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, IGP, swisstopo, and the GIS User Community

Legend

-  City Water Hydrants
-  Active City Water Main
-  2ft Contour
-  Property Line
-  City Water Control Valves
-  Atmos Gas Mains
-  10ft Contour
-  City Water System Valves
-  Tax Parcels
-  A (No Base Flood Elevations)



Exported By: joyoung
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 0 125 250 500
 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.

Attachment 2
Water and Wastewater Analysis

MEMORANDUM



Engineering • Planning •
Architecture • Interiors •
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www.freese.com

4040 Broadway St, Suite 600 • San Antonio, Texas 78209 • 210-298-3800 • FAX 210-298-3801

TO: Kristine Day, City of Kerrville

CC: Stuart Barron, City of Kerrville
John New, P.E., Freese and Nichols, Inc.

FROM: Richard Weatherly, P.E., Freese and Nichols, Inc.

SUBJECT: Peterson Farm Road Development Water and
Wastewater Analysis

DATE: February 16, 2016



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

INTRODUCTION

The City of Kerrville tasked Freese and Nichols, Inc. (FNI) with conducting an evaluation to determine the impact of providing water and wastewater service to the Peterson Farm Road development. The development is located outside of Kerrville City Limits, north of Highway 27 and the Kerrville Municipal Airport, at the southeast edge of the City. Figure 1 shows the location of the Peterson Farm Road development. Currently, the property is undeveloped.

FNI utilized the hydraulic models developed as part of the 2014 Water and 2012 Wastewater Master Plans to evaluate the improvements needed to serve the Peterson Farm Road development. The following sections document the analysis and recommended system improvements.

WATER SYSTEM ANALYSIS

The Peterson Farm Road development water demands were calculated using the following assumptions:

- 240 multi-family housing units and 2.2 people per unit
- 50 acres of commercial land use
- Water usage is 190 gallons per capita per day for residential land use and 1,100 gallons per acre per day for commercial land use
- Average day demand to maximum day demand peaking factor of 1.8



Based on the above criteria, the projected average day water demand for the Peterson Farm Road development is summarized in Table 1.

Table 1: Peterson Farm Road Development Water Demand

Land Use Type	Average Day Demand		Maximum Day Demand	
	gpm	MGD	gpm	MGD
Residential	70	0.10	125	0.18
Commercial	38	0.06	69	0.10
Total	108	0.16	194	0.28

The City could also potentially provide fire protection to the area. The City prefers to provide at least 1,500 gpm of fire flow at 20 psi to all hydrants within the water service area where possible.

The Peterson Farm Road development is located in the Stadium Pressure Plane, which is supplied by the water treatment plant (WTP), Aquifer Storage and Recovery Wells 1 and 2, Hays Park Well, H-Street Well, Travis Street Well, and Meadow View Lane Well. Water system pressure in the Stadium Pressure Plane is maintained by Stadium ground storage tanks (GSTs) 1 and 2, and the River Hills elevated storage tank (EST). The City's existing elevated storage and pumping capacity are sufficient to meet the additional domestic demand of the Peterson Farm Road development while maintaining a minimum pressure of 35 psi. To supply the desired fire flow to this development, increased transmission capacity is needed. Looped 12-inch water lines (Project A) were added to the model to connect the development to the existing 12-inch water line along Highway 27, shown on Figure 2. The following four scenarios were evaluated for the hydraulic analysis under maximum day demand with the Peterson Farm Road development demand included:

- Existing system with no improvements,
- Existing system with 2014 Water Master Plan Update CIP Project 4,
- Existing system with new improvements to deliver 1,500 gpm of fire flow to the Peterson Farm Road development, and
- Existing system with Project 4 and new improvements.

Table 2 shows the modeling results of the hydraulic analysis under residential Peterson Farm Road development demand. Table 3 shows the modeling results of the hydraulic analysis under both residential and commercial Peterson Farm Road development demand.



Table 2: Modeling Results with only Residential Demand

Scenario	Available Fire Flow for the Peterson Farm Road Development	Minimum Pressure at Peak Hour (psi)
Existing System with no improvements	1,172 gpm at 20 psi	51
Existing with Water CIP Project 4	1,352 gpm at 20 psi	50
Existing with new 12-inch line (Project B)	1,461 gpm at 20 psi	55
Existing with new 12-inch line (Project B) and Project 4	1,752 gpm at 20 psi	55

Table 3: Modeling Results with Residential and Commercial Demands

Scenario	Available Fire Flow for the Peterson Farm Road Development	Minimum Pressure at Peak Hour (psi)
Existing System with no improvements	1,103 gpm at 20 psi	46
Existing with Water CIP Project 4	1,284 gpm at 20 psi	47
Existing with new 12-inch line (Project B)	1,393 gpm at 20 psi	52
Existing with new 12-inch line (Project B) and Project 4	1,683 gpm at 20 psi	52

A new water line (Project B) and 2014 Water Master Plan Update CIP Project 4 are required to provide 1,500 gpm of fire flow to the majority of the residential and commercial customers in the Peterson Farm Road development:

- Project A consists of new 12-inch water lines looping around the Peterson Farm Road development and connecting to the existing 12-inch water line along Highway 27.
- Project B consists of a new 12-inch water line along North Burlison Boulevard, Nichols Street, Canyon Drive, Highway 27, Carmichael Street, and Riverside Drive to replace existing 8-inch and 6-inch water lines and connect existing 10-inch and 12-inch water lines.
- Project 4 consists of a new 12-inch water line connecting to the existing 12-inch water line along Highway 27 and crossing the Guadalupe River to connect to the existing 12-inch water line along Bandera Highway. This project was included in the 2014 Water Master Plan update CIP.

Figure 2 shows the recommended water system improvements to serve the Peterson Farm Road development. Capital costs were developed based on the infrastructure required to provide water service and fire flow to the Peterson Farm Road development. Table 4 provides a summary of project costs and detailed cost estimates are included at the end of this memorandum.



Table 4: Summary of Costs for Providing Water Service to the Peterson Farm Road Development

Project	Project Description	Project Cost
A	Peterson Farm Road Development Internal Distribution System	\$1,478,900
B	12-inch Highway 27 Water Line	\$1,029,600
4 (CIP)	12-inch River Crossing Water Line	\$1,223,800
	Total	\$3,732,300

Other alternatives that were evaluated included:

- New EST near the Peterson Farm Road development,
- New groundwater well near the Peterson Farm Road development, and
- Dedicated transmission line from the WTP.

A new EST is not recommended due to the difficulties observed in the model in the fill/drain cycle of the tank and the likelihood of increasing water age in the area. If a tank was constructed at the end of the system near the Peterson Farm Road development, a transmission line would likely be needed to aid in filling the tank so that the new tank could function properly with the existing River Hills EST and Stadium GSTs.

A new groundwater well is also not recommended to meet the fire flow demand due to the unexpected and unpredictable nature of the fire flow demand. The well may not be running during an emergency condition when it is needed and would require coordination with water utility staff and the fire department. Additional water supply is not needed in the Stadium Pressure Plane so the well would only be a redundant supply.

A dedicated transmission line from the WTP on the south side of the river or the River Hills EST is not recommended due to high initial cost.

WASTEWATER SYSTEM ANALYSIS

The Peterson Farm Road development wastewater flows were developed using the following assumptions:

- 240 multi-family housing units and 2.2 people per unit
- 50 acres of commercial land use
- Wastewater flow is 110 gallons per capita per day for residential land use and 1,000 gallons per acre per day for commercial land use
- Wet Weather peaking factor of 4

Based on the above criteria, the projected dry weather flow for the Peterson Farm Road development is



summarized in Table 5.

Table 5: Peterson Farm Road Development Wastewater Flow

Land Use Type	Dry Weather Flow		Wet Weather Flow	
	gpm	MGD	gpm	MGD
Residential	40	0.06	161	0.23
Commercial	35	0.05	139	0.20
Total	75	0.11	300	0.43

The model was used to evaluate the system under wet weather flow conditions to identify capacity issues due to the increased flow from the Peterson Farm Road development. The Peterson Farm Road development is located in the Al Mooney Airport Basin where flow is conveyed through the Al Mooney Airport Lift Station to the Legion Lift Station before being diverted to the City's Wastewater Treatment Plant.

Existing wastewater infrastructure is able to serve the residential wastewater flow for the Peterson Farm Road development. Project C is required to convey flow to the Al Mooney Airport Lift Station. New wastewater gravity lines (Projects C and E), Al Mooney Airport Lift Station rehabilitation (Project D), and Legion Lift Station expansion (Project 7) are required to serve the residential and commercial flow for the Peterson Farm Road development:

- Project C consists of a new 10-inch wastewater gravity line to convey wastewater flow from the Peterson Farm Road development along Al Mooney Road to the Al Mooney Airport Lift Station and new 6-inch wastewater gravity lines throughout the development.
- Project D consists of new pumps at the Al Mooney Airport Lift Station and recoating of the existing wet well. It is recommended that the City replace the existing pumps with new 600 gpm pumps to serve the existing flow and additional flow from the Peterson Farm Road development.
- Project E consists of a new 12-inch wastewater gravity line to replace existing 10-inch and 12-inch gravity lines from the Al Mooney Airport Lift Station force main along Highway 27 to the Legion Lift Station.
- Project 7 consists of expanding the Legion Lift Station to 8.5 MGD. This project was included in the 2012 Wastewater Master Plan update CIP. The additional flow from the Peterson Farm Road development requires that the Legion Lift Station be expanded to 9 MGD and the timing of the project would be needed sooner.

Figure 3 shows the recommended wastewater system improvements to serve the Peterson Farm Road development residential and commercial flows. Capital costs were developed based on the infrastructure



required to provide wastewater service to the Peterson Farm Road development. Table 3 provides a summary of project costs and detailed cost estimates are included at the end of this memorandum.

Table 6: Summary of Costs for Providing Wastewater Service to the Peterson Farm Road Development

Project	Project Description	2012 WW Master Plan Project Cost	2016 Project Cost	2016 Project Cost w/ Peterson Farm Road	Additional Cost to Serve All Peterson Farm Road Customers
C	Peterson Farm Road Development Internal Collection System	None	None	\$1,259,100	\$1,259,100
D	Al Mooney Lift Station Rehabilitation	None	None	\$592,800	\$592,800
E	12-inch Highway 27 Wastewater Line	None	None	\$326,900	\$326,900
F	6,300 gpm Legion Lift Station	\$4,290,000	\$7,821,800	\$8,282,000	\$460,200
Total		\$4,290,000	\$7,821,800	\$10,460,800	\$2,639,000

CONCLUSION

Table 7 summarizes the cost in 2016 dollars of serving the Peterson Farm Road development residential demand and flow only, and residential and commercial demand and flow.

Service Type	Cost to Serve Residential Customers Only	Cost to Serve Residential and Commercial Customers ⁽¹⁾
Water	\$3,732,300	\$3,732,300
Wastewater	\$1,259,100	\$2,639,000
Total	\$4,991,400	\$6,371,300

1) Wastewater based on Additional Cost to Serve in Table 6.

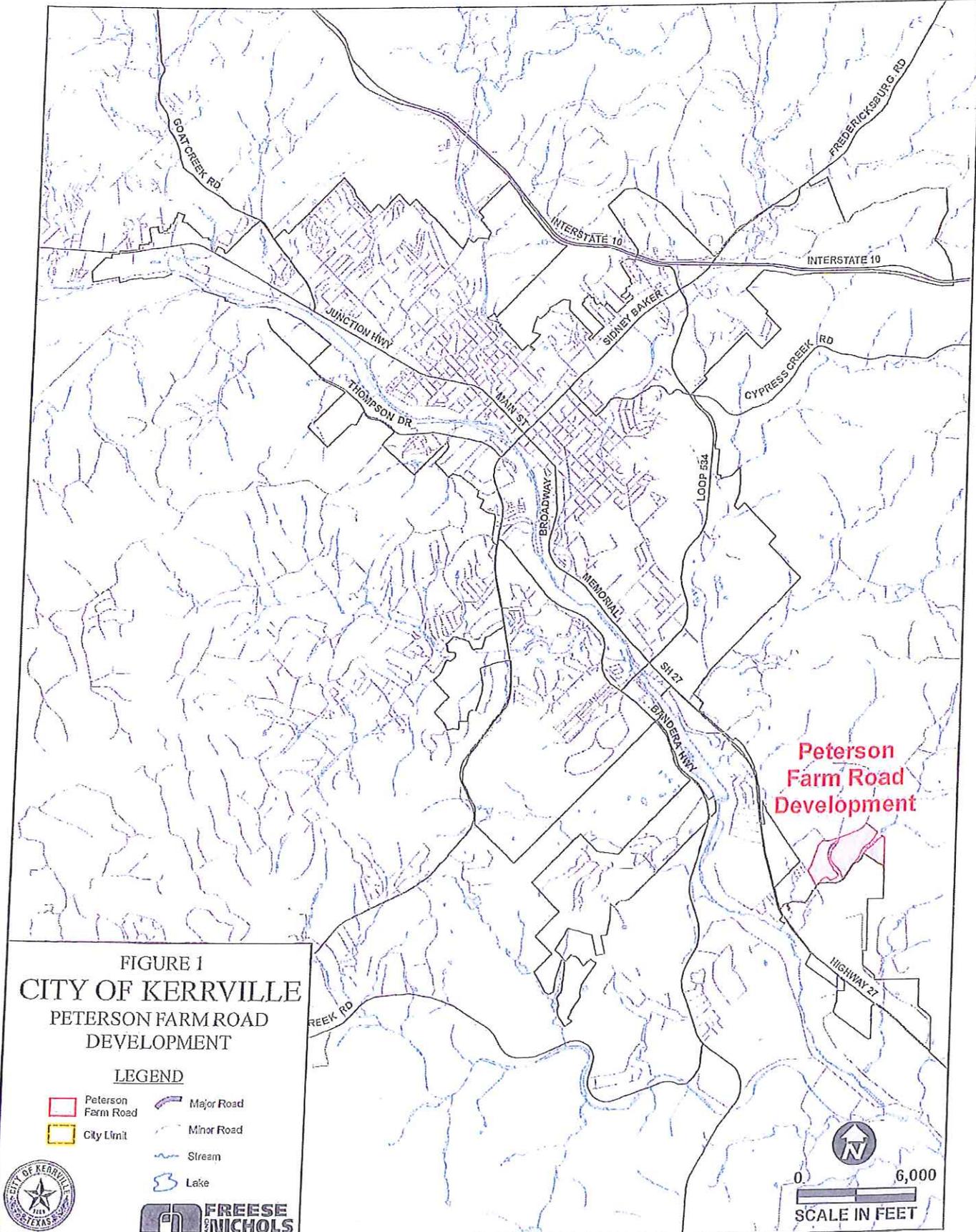
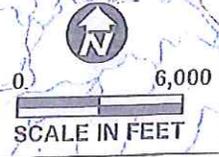


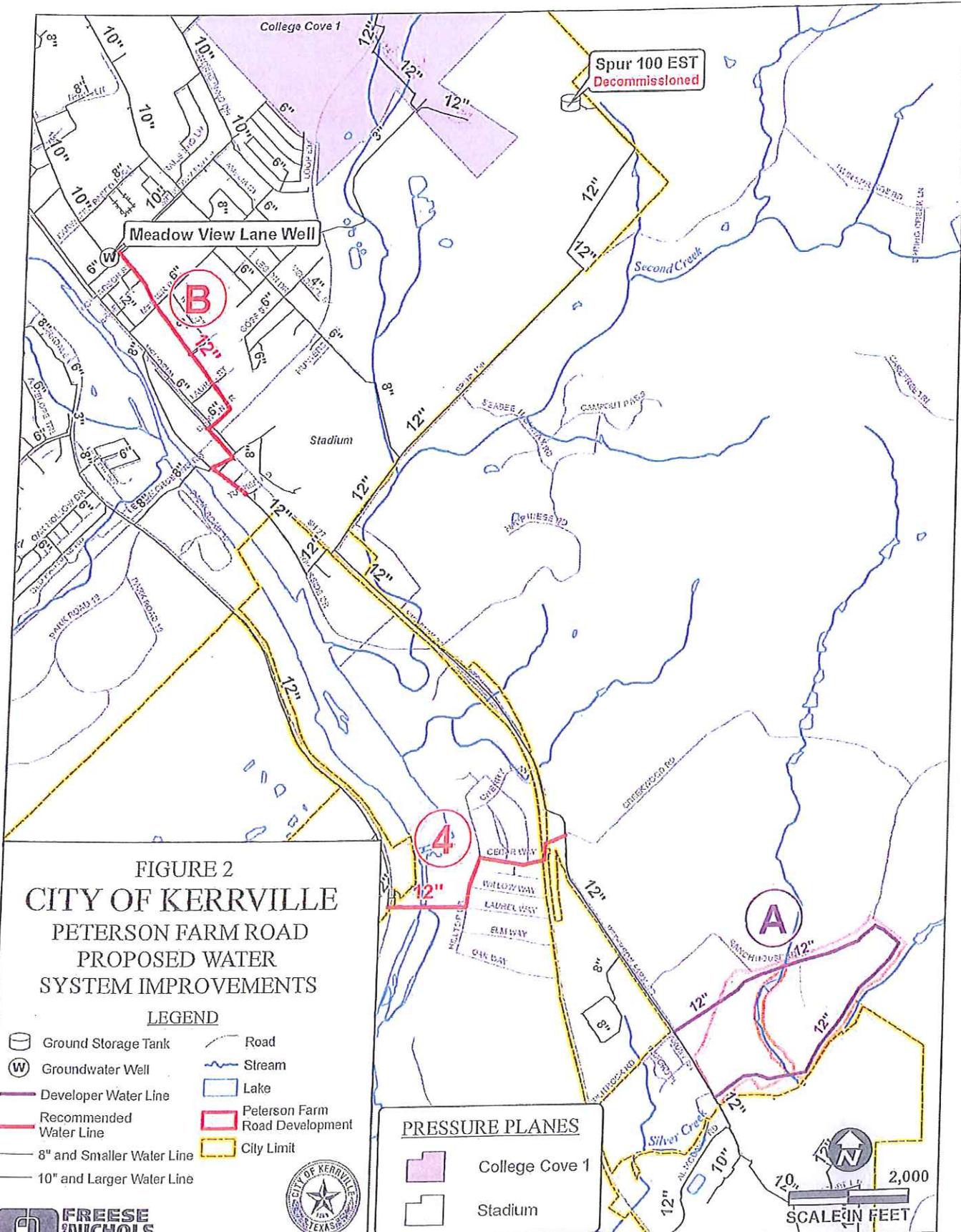
FIGURE 1
CITY OF KERRVILLE
PETERSON FARM ROAD
DEVELOPMENT

LEGEND

- Peterson Farm Road
- City Limit
- Major Road
- Minor Road
- Stream
- Lake



Created by Freese and Nichols, Inc.
 Job No.: KERR15623
 Location: H:\WV_FL\A\H\GIS\Projects\Kerrville\Kerrville_Farm_Road\Map\Figure-1\Oversight.mxd
 Updated: Tuesday, February 10, 2010



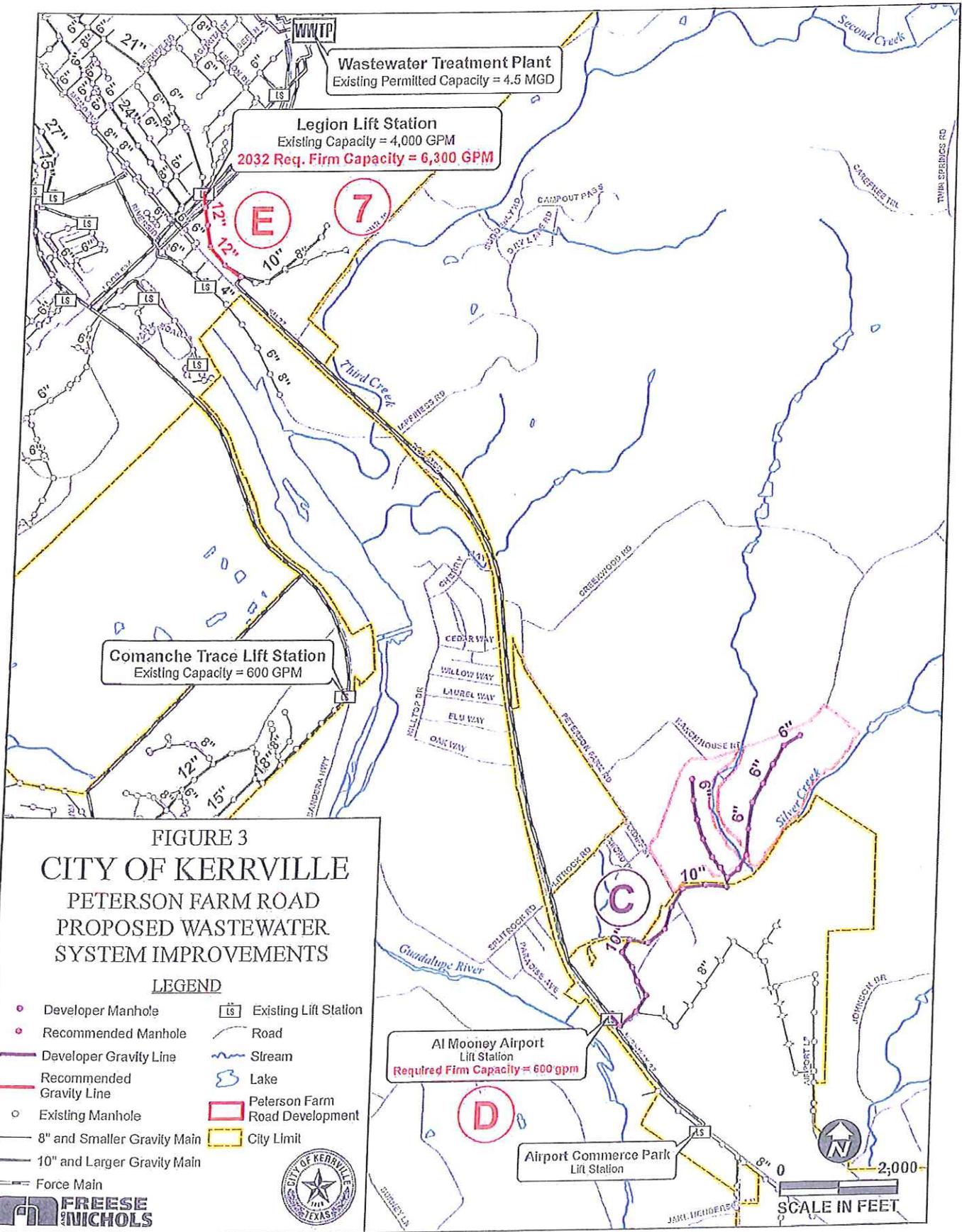


FIGURE 3
CITY OF KERRVILLE
PETERSON FARM ROAD
PROPOSED WASTEWATER
SYSTEM IMPROVEMENTS

LEGEND

- Developer Manhole
- Recommended Manhole
- Developer Gravity Line
- Recommended Gravity Line
- Existing Manhole
- 8" and Smaller Gravity Main
- 10" and Larger Gravity Main
- Force Main
- Existing Lift Station
- Road
- Stream
- Lake
- Peterson Farm Road Development
- City Limit



Created by Freese and Nichols, Inc.
 Job No.: KERR15023
 Location: HWY_VW_PLANNING/Colliverables/00-Peterson_Farm_Road_Memo/Figure-3-Sewer_Improvements.mxd
 Updated: Tuesday, February 16, 2016



**LEGION LIFT STATION
CITY OF KERRVILLE
WASTEWATER MASTER PLAN - PRELIMINARY DESIGN**

OPINION OF PROBABLE CONSTRUCTION COST

February 16, 2016

ESTIMATOR	CHECKED BY	ACCOUNT NO
BTB	JMN	

ITEM	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	TOTAL
GENERAL ITEMS					
1	MOBILIZATION	1	LS	\$282,000	\$282,000
2	SWPPP	1	LS	\$15,000	\$15,000
3	TRAFFIC CONTROL	1	LS	\$10,000	\$10,000
4	TRENCH SAFETY	1	LS	\$10,000	\$10,000
5	TREE PROTECTION AND TEMPORARY FENCING	1	LS	\$10,000	\$10,000
6	SECURITY FENCING	1	LS	\$50,000	\$50,000
LIFT STATION IMPROVEMENTS					
7	DEMO EXISTING WETWELL, VALVE VAULT AND MANHOLE	1	LS	\$150,000	\$150,000
8	EXISTING SEWER TIE-INS AND CONNECTIONS	1	LS	\$100,000	\$100,000
WET WELL					
9	STRUCTURAL EXCAVATION	4,000	CY	\$50	\$200,000
10	DEWATERING	1	LS	\$29,000	\$29,000
11	FLOWABLE FILL	1,000	CY	\$250	\$250,000
12	IN-SITU BACKFILL	5,000	CY	\$25	\$125,000
13	FOUNDATION	50	CY	\$700	\$35,000
14	WALLS	150	CY	\$1,000	\$150,000
15	TOP SLAB	20	CY	\$2,000	\$40,000
16	WATERPROOF JUNCTION BOX	1	LS	\$5,000	\$5,000
17	CONCRETE COATINGS	3,000	SF	\$75	\$225,000
18	WATERTIGHT HATCHES	3	EA	\$7,500	\$22,500
19	ELEVATED VENTING WITH CHECK VALVE	1	EA	\$10,000	\$10,000
20	SUBMERSIBLE PUMPS AND RAILING	4	EA	\$325,000	\$1,300,000
20	DISCHARGE PIPING	1	LS	\$150,000	\$150,000
20	HEADER PIPING	1	LS	\$175,000	\$175,000
21	MISC. MECHANICAL EQUIPMENT/SUPPORTS/ETC.	1	LS	\$400,000	\$400,000
VALVE VAULT					
22	PRECAST VAULT	1	LS	\$50,000	\$50,000
23	WATERTIGHT HATCHES	2	EA	\$7,500	\$15,000
24	6" CHECK VALVES	3	EA	\$5,000	\$15,000
25	AIR RELEASE VALVES	4	EA	\$3,500	\$14,000
26	6" GATE VALVES	5	EA	\$3,500	\$17,500
ELECTRICAL					
27	ELECTRICAL PLATFORM	1	LS	\$150,000	\$150,000
28	STARTERS, PANELS, TRANSFORMER, RACK, CONDUIT, WIRE, ETC.	1	LS	\$800,000	\$800,000
29	SITE LIGHTING	1	LS	\$50,000	\$50,000
30	BACKUP GENERATOR OR SECONDARY SERVICE	1	LS	\$400,000	\$400,000
31	INSTRUMENTATION AND SCADA	1	LS	\$150,000	\$150,000
RESTORATION					
32	HYDROMULCH AND SEED	1	LS	\$25,000	\$25,000
33	ASPHALT REPAIR	1,000	SY	\$100	\$100,000
CONSTRUCTION SUBTOTAL					\$5,610,000
CONTRACTOR O&P				15%	\$826,500
CONTINGENCY				30%	\$1,653,000
CONSTRUCTION TOTAL					\$7,989,500
ENGINEERING				20%	\$1,597,900
PROJECT TOTAL					\$9,587,400

Notes:

1. There is no site piping in this estimate.
2. Prices based on recent projects.

Agenda Item:

5E. Consideration of the process to be used for the recruitment and selection of a city manager. (staff)

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

SUBJECT: Consideration of the process to be used for the recruitment and selection of a city manager

FOR AGENDA OF: Oct. 11, 2016 **DATE SUBMITTED:** Oct. 3, 2016

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

EXHIBITS: None

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

This item has been placed on the agenda to allow the City Council to discuss and provide direction to city staff on the process to be used for the recruitment and selection of a city manager.

RECOMMENDED ACTION

City staff has no recommendations.

Agenda Item:

5F. Consideration of the process to be used for the appointment to fill the vacancy of Councilmember Place Three. (staff)

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

SUBJECT: Consideration of the process to be used for the appointment to fill a vacancy on the Kerrville City Council, Councilmember Place Three

FOR AGENDA OF: October 11, 2016 **DATE SUBMITTED:** September 29, 2016

SUBMITTED BY: Brenda Craig
City Secretary

CLEARANCES: Todd Parton, City Manager
Mike Hayes, City Attorney

EXHIBITS: None

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 DEPARTMENT:

SUMMARY STATEMENT

In accordance with the City Charter, Section 2.04, "Vacancies in the City Council shall be filled by the Council for the remainder of the unexpired term. The Council shall appoint a qualified elector to fill a vacancy within thirty (30) days after such vacancy occurs. For purposes of this section and the Charter, a "qualified elector" or "qualified voter" means a "registered voter" in accordance with state law."

Based on Mr. Hayes' interpretation of the Charter, the Council has until Thursday, October 27 to make the appointment.

RECOMMENDED ACTION

City Council shall consider the process to be used for the appointment to fill the vacancy for the Councilmember Place Three position.

Agenda Item:

6A. Post event report on the Kerrville Festival of the Arts. (staff)

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

SUBJECT: Kerrville's Festival of the Arts Post Event Report

FOR AGENDA OF: October 11, 2016 **DATE SUBMITTED:** September 30, 2016

SUBMITTED BY: Ashlea Boyle **CLEARANCES:** E.A. Hoppe
Assistant Director of Parks and Recreation Deputy City Manager

EXHIBITS: Post Event Report Dated July 8, 2016

AGENDA MAILED TO:

APPROVED FOR SUBMITTAL BY CITY MANAGER:

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

PAYMENT TO BE MADE TO:

REVIEWED BY THE DIRECTOR OF FINANCE:

SUMMARY STATEMENT

Pursuant to the FY16 adopted budget, the City of Kerrville funded four special events through the hotel / motel occupancy tax funds for a total of \$100,000. Each event is eligible for a maximum reimbursement of \$25,000. The four events are *Kerrville's Festival of the Arts*, *Kerrville's Fourth on the River*, *Kerrville Chalk Festival*, and the *Kerrville Triathlon Festival*. These events were approved for funding based on the economic impact to the community associated with heads in beds. These events are community wide special events that not only attract local residents, but non-local visitors as the majority.

Each event organization has been asked to provide a post event report to the City Council after the conclusion of event.

Kerrville's Festival of the Arts was held Memorial Day Weekend. A representative from the organization will be providing this report.

RECOMMENDED ACTION

This report is for information only. No action is required.



KERRVILLE FESTIVAL OF THE ARTS 2016

July 8, 2016

Ashlea Boyle, Assistant Director
Parks & Recreation Department
City of Kerrville

Reimbursement Request

The third annual Festival of the Arts was held May 28-29 in the 700 and 800 blocks of Water Street and the 200 block of Earl Garrett Street. One hundred twenty-two artists participated and attendance was estimated at 5,000-5,500.

Almost all the artists reported a successful weekend and expressed a desire to participate again in 2017. Many visitors stopped to compliment the quality of the artwork, the friendliness of the downtown merchants and restaurants and their overall enjoyment of their visit. An informal survey by a downtown merchant found every business, except one, had a very positive experience that weekend.

Charlie McIlvain, Convention and Visitors Bureau, using industry standard formulas and assuming half of the attendees were from the local community, has estimated the economic impact of the Festival to be in excess of \$500,000.

In summary, the financial report for the 2016 Festival includes income of \$29,094.58 in artists' fees; a \$100 donation to the scholarship fund; and, donated goods and services estimated at \$1,550.

The cost of this year's event, based on expenditures to date, was \$50,341.08. This includes funds encumbered for anticipated expenses to the end of the year and \$7,500 to be transferred to the scholarship fund. The first scholarship is projected to be announced in the spring of 2017.

Of the total expenses, the attached list provides detail for \$32,132.39 believed to qualify for reimbursement from the City of Kerrville. Therefore, we request reimbursement of the total \$25,000 appropriated.

We further request the City of Kerrville continue its sponsorship of the Festival in 2017 and consider increasing the appropriation if funds are available.

This report would not be complete without mentioning the events of Saturday night. Despite a severe weather event, damage sustained by the artists was minimal. This was attributable to the new tents used this year and to the support of the KPD officers providing security. The three officers made timely notification of the situation and worked several hours in the high winds, heavy rain and lightning to assist securing the tents and rescuing art work. Without their help, the damages would have been significant for several artists.

The success of the Festival has always relied on the support of the City, both in direct financial contribution and in services provided by the Police Department, Fire Department, Street Department, Park Department, KPUB and various staff members throughout the organization. Each and every city staff member has provided exceptional service.

We are extremely grateful for the City's support.


LuAnn Anderson
Executive Director
Kerrville Festival of the Arts

Attachment

Agenda Item:

6B. Post event report on the Kerrville Triathlon. (staff)

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

SUBJECT: Kerrville Triathlon Festival Post Event Report

FOR AGENDA OF: October 11, 2016 **DATE SUBMITTED:** September 30, 2016

SUBMITTED BY: Ashlea Boyle **CLEARANCES:** E.A. Hoppe
Assistant Director of Parks and Recreation Deputy City Manager

EXHIBITS: Post Event Report

AGENDA MAILED TO:

APPROVED FOR SUBMITTAL BY CITY MANAGER:



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

PAYMENT TO BE MADE TO:

REVIEWED BY THE DIRECTOR OF FINANCE:

SUMMARY STATEMENT

Pursuant to the FY16 adopted budget, the City of Kerrville funded four special events through the hotel / motel occupancy tax funds for a total of \$100,000. Each event is eligible for a maximum reimbursement of \$25,000. The four events are *Kerrville's Festival of the Arts*, *Kerrville's Fourth on the River*, *Kerrville Chalk Festival*, and the *Kerrville Triathlon Festival*. These events were approved for funding based on the economic impact to the community associated with heads in beds. These events are community wide special events that not only attract local residents, but non-local visitors as the majority.

Each event organization has been asked to provide a post event report to the City Council after the conclusion of event.

The *Kerrville Triathlon Festival* was held September 23-25, 2016. A representative from the organization will be providing this report.

RECOMMENDED ACTION

This report is for information only. No action is required.



Post Event Report 2016

The 6th Annual Kerrville Triathlon Festival was held September 24-25, 2016 and was the 5th and final event in the Texas Tri Series. This professionally organized event produced by High Five Events out of Austin, came to Kerrville in 2011 and brings a long course triathlon to the Texas Hill Country. High Five Events and the City of Kerrville aligned to set up the Kerrville Triathlon Festival, a multi-day event that consists of three races in two days along with a 2-day Health and Fitness exposition and a free Kid's Fun Run.

The event offered three different triathlon options: a sprint, quarter distance, and a half iron distance. Options for relays were also offered for the half and sprint distances and an Aquabike (Swim and Bike) was offered in quarter and half distances. The registration fee was \$225 for the half (\$250 for a three person relay), \$140 for the quarter, and \$90 for the sprint (\$140 for a three person relay). Each event participant received a name-brand tee-shirt, custom hat, reusable event bag, personalized bib number (if registered at least three weeks in advance), full color event magazine with tri tips, professional timing, plus finishers received a finisher medal, and a souvenir reusable bottle and a free finisher photo.

Awards were given to the top three overall male and female participants, and overall masters male and female participant. Awards were also presented to the top three male and female participants in each age group, starting at 19 and Under and going to 75+ in five year increments.

The swim start and finish, as well as Transition Area # 1 (location where bikes are parked during the swim), were located on the grounds of the former Family Sports Center site on SH 27, just north of Guadalupe Street. The swim portion of the event was held in the Guadalupe River. Transition Area # 2 (location where the bikes are parked during the run), was located on the field at Louise Hays Park. The Finish Line

was also located at Louise Hays Park. The bike course followed SH 27 to Centerpoint, and returned to Kerrville on SH 173 to SH 16. The run portion of the event was held entirely on the Kerrville River Trail.

Shuttle busses transported participants and spectators between the start and finish areas, and the downtown parking garage. A finish line party for participants and spectators took place each day with free food, and drinks to participants and volunteers. The event concluded Sunday night with a Volunteer Appreciation Party at Mamacita's restaurant where volunteers received free food and adult beverages.

High Five Events worked closely with the City of Kerrville, Kerr County and TxDOT throughout the planning process of this event. The Kerrville Police Department and Kerr County Sheriff's Department patrolled all affected traffic rights of way. Various lane closures and alterations took place during this event.

Schedule of Events

- Expo – Friday, September 23rd and Saturday, September 24th at the Inn of the Hills Hotel and Conference Center.
- Sprint Triathlon & Kids Fun Run – Saturday, September 24th, 7:30 a.m. – 11:30 a.m.
- Quarter & Half Distance Triathlon – Sunday, September 25th, 7:30 a.m. – 4:30 p.m.

Triathlon Distances

- Sprint – 500 meter swim, 15 mile bike, 3.1 mile run
- Quarter – 1,000 meter swim, 29 mile bike, 6.4 mile run
- Half – 1.2 mile swim, 56 mile bike, 13.1 mile run

Event Data

- 1,373 triathletes participated;
- Approximately 100 children participated in the Kids Fun Run;
- Over 350 volunteers helped produce the event;
- Health Expo had 14 vendors (occupying 26 booths);
- 3 ambulance transfers. All were as a result of a fall from the bike (not a collision).

- 14 states represented at the triathlon;
- Approximately 70 participants were from the Kerrville area. 13 were from Fredericksburg.
- Average Age: 42
- 51% Male, 49% Female
- According to the USA Triathlon Association, triathlete data indicates:
 - Average income: \$126,000
 - 49% reported white-collar jobs
 - 19% reported professional jobs such as doctor, lawyer or accountant
 - 12% are students or education workers
 - Spending habits:
 - \$2,274 on bikes in past 12 months
 - \$564 race fees in past 12 months
 - \$524 bike equipment
 - \$370 training, running and athletic footwear
 - \$277 nutritional supplements

A conservative estimate of economic impact to Kerr County was \$850k to \$1MM based on visitor counts and identified spending habits during a sporting event. Most participants stayed two nights. An exact number dedicated to the triathlon is not available. The host hotel for the event, Inn of the Hills, sold out three months before the event.

Planning for 2017

- The 2017 event will be held September 23 – 24. The event is in the process of renewing a 5 year agreement with the City of Kerrville, TxDOT and the Inn of the Hills.
- Host hotel is Inn of the Hills
- Registration begins on November 1, 2016

- Transition Area #1 will likely move to the grounds of Centennial Bank, 1145 Junction Hwy, as the current site is scheduled for construction.
- Continued planning meetings to be held with downtown merchants, sponsors, location hosts and staff from the City, County and TXDot.

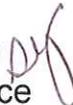
Agenda Item:

6C. Budget and economic update. (staff)

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

SUBJECT: Budget/Economic Update

FOR AGENDA OF: October 11, 2016 **DATE SUBMITTED:** September 28, 2016

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

EXHIBITS: Budget and Economic Update

AGENDA MAILED TO:

APPROVED FOR SUBMITTAL BY CITY MANAGER: 

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

PAYMENT TO BE MADE TO:

REVIEWED BY THE DIRECTOR OR FINANCE:

SUMMARY STATEMENT

FY2016 budget month ending August 31, 2016 is at 91.66% based on 11 months of the fiscal year.

General Fund revenues received as of August 31, 2016 are \$23,094,618 or 93.92% of budget with expenses at \$20,301,252 or at 82.02% of budget. Property tax collections are at 98.95% of budget and 2.81% over same time period in prior year. Sales tax collections are at 93.22% of budget and 2.31% over same time period in prior year.

Water and Sewer Fund revenues received as of August 31, 2016 are \$10,552,101 or 89.87% of budget with expense at \$9,528,676 or 81.51% of budget. Water sales are 85.44% of budget and 9.27% over same time period in prior year. Sewer service is at 88.51% of budget and 2.08% over same time period in prior year. Both water and sewer revenues are expected to increase due to landscape watering in the warmer months.

Hotel Motel Fund revenues received as of August 31, 2016 are \$1,024,527 or 100.56% of budget with expenses of \$960,474 or 95.00% of budget. Revenues are expected to increase due to increase in tourism during summer months. The final quarterly payment to the Convention and Visitor's Bureau for tourism promotion has been disbursed.

Status of key Community Investment Plan projects include:

- River Trail, evaluation for west portion of River Trail from Lowry to Guadalupe Park continues;
- Athletic Complex project, dirt work by third-party continued, walk through to be conducted before to City begins construction;
- Reuse - Design is in the final design stages with projected bid opening by end of summer.

Permits issued for new residential locations fiscal year-to-date were 70.

Value of commercial permits issued in August \$409,000. Commercial permits issued for new locations and major remodels are an estimated value of \$31,019,014 fiscal year-to-date. Values of these sites will be reflected on the property tax roll upon completion in the following tax year.

Real estate transactions remain steady with a moderate inventory available. Unemployment at national, state, and local levels has remained at a relatively low percentage for several months.

RECOMMENDED ACTION

Information purposes only, no action required.

City of Kerrville
Month ending August 31, 2016
 (Month 11 of FY2016)

	Current Month	Year To-Date	Budget @ 91.66%	Prior Year To-Date	change from prior year
General Fund					
Total Revenues	\$ 1,227,071	\$ 23,094,618	93.92%	\$ 23,191,371	-0.42%
Property tax	\$ 54,085	\$ 8,790,986	98.95%	\$ 8,550,932	2.81%
Sales tax	\$ 580,084	\$ 5,830,344	93.22%	\$ 5,698,623	2.31%
Total Expenditures	\$ 1,639,722	\$ 20,301,252	82.02%	\$ 21,167,169	-4.09%

Water and Sewer Fund					
Total Revenues	\$ 1,214,974	\$ 10,552,101	89.87%	\$ 8,257,279	27.79%
Water Sales	\$ 662,787	\$ 4,774,940	85.44%	\$ 4,369,843	9.27%
Sewer Service	\$ 466,138	\$ 4,790,397	88.51%	\$ 4,692,725	2.08%
Expenditures	\$ 754,329	\$ 9,528,676	81.15%	\$ 10,301,567	-7.50%

Hotel/Motel Fund					
Revenues	\$ 127,326	\$ 1,024,527	100.56%	\$ 990,211	3.47%
Expenditures	\$ -	\$ 960,474	95.00%	\$ 937,184	2.49%

Community Investment Plan	Project Budget	Current Month	P-T-D Expense	Budget Balance
River Trail	\$ 6,000,000	\$ 35,472	\$ 5,001,351	\$ 998,649
Athletic Complex	\$ 10,500,000	\$ -	\$ 124,493	\$ 10,375,507
Reuse - Design	\$ 2,800,000	\$ 294,546	\$ 1,234,526	\$ 1,565,474
Reuse - Construction	\$ 18,800,000	\$ -	\$ -	\$ 18,800,000

Development Services:			Housing (August)	
Residential # of permits	Commercial permits value			
Oct 11	330,680		<i>Local:</i>	
Nov 5	17,000		546 active residential listings; 73 residential sales August 2016	
Dec 6	52,000		\$17,863,384 total residential sales dollars for August 2016	
Jan 8	559,099		\$1114,692,788 total residential sales dollars Y-T-D for 2016	
Feb 9	1,372,500		(Source: Kerrville Board of Realtors)	
Mar 4	4,219,630			
Apr 4	340,466			
May 9	2,304,700		Unemployment: (July)	
June 5	21,413,939		National	5.1%
July 5	0		Texas	5.1%
Aug 4	409,000		Local	4.1%
Sept _____	_____		(Source: Texas Workforce Commission)	
YTD 70	31,019,014			

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

SUBJECT: Appointments to the Building Board of Adjustments and Appeals

FOR AGENDA OF: October 11, 2016 **DATE SUBMITTED:** October 4, 2016

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

EXHIBITS: Board List

AGENDA MAILED TO:

APPROVED FOR SUBMITTAL BY CITY MANAGER: *TP*

SUMMARY STATEMENT

Consider appointments to the following board:

Building Board of Adjustment and Appeals:

Four regular positions, and one alternate position that expired 08/31/2015; Three regular positions and one alternate position that expired 08/31/2016.

RECOMMENDED ACTION

Consider appointments.

Agenda Item:

7A. Building Board of Adjustment and Appeals. (staff)

Alternate board members shall attend all meetings and are subject to the attendance requirement applicable to the board; however, alternate members shall serve only in the absence of one or more regular members and shall then act as a regular member for that entire meeting. Members shall be residents of the county and operate or be employed by a business located within the city; however, no two (2) members, regular or alternate, may be employed by or have an ownership interest in the same business or firm.

Powers and Duties:

- (1) To hear appeals of decisions and interpretations of the chief building official and fire code official and to consider variances to the standardized building codes as more specifically described in Sec. 26-251 of Ordinance No. 2010-15. No appeal may arise out of the city's issuance of citation for violation of any of the standardized building codes as the procedure for the consideration and decision regarding citations is solely under the purview and authority of the municipal court. In addition, the board shall have no authority to waive, and is prohibited from waiving, any requirement of the standardized building codes; and
- (2) Recommend amendments to this chapter; any standardized building code adopted by the city council; or any other code, application, or process applicable to the city's review, application, interpretation, and enforcement of the standardized building codes with the goal toward addressing any deficiencies, voids, inconsistencies, inefficiencies, or technical errors; and
- (3) To hear appeals, issue orders, and fulfill other duties pursuant to the authority established in Article VII of this Chapter for unsafe building abatement.

Term of Office:

Two years. No regular member shall serve more than two consecutive full terms on the board without having at least one full year off of the board between terms; provided, however, if the city council finds that it has not received applications from other qualified candidates, the city council may reappoint an incumbent member of the board notwithstanding the restrictions of this subsection.

Quorum:

Four members

Number of Members:

Seven members, and two alternates

Officers:

The board shall elect a chair and vice-chair who shall be appointed from among its voting members. The board shall appoint such officers at the first meeting of the board held after September 1 of each year. Officers shall serve a term of one year and all such terms shall end on August 31 after the date of election or until a successor is elected, but in every case each subsequent term shall end on August 31. An officer of the board may not serve in the office elected for more than two consecutive terms.

Meeting Time & Place:

At least quarterly at the call of the chair, City Hall

Absences:

As established in the Procedural Rules for Kerrville City Boards.

Established by:

Ordinance No. 2010-15

Revised:

July 11, 2016

- (*) alternate members shall be qualified as one of the following: master electrician, master plumber or mechanical contractor.