

**AGENDA FOR REGULAR MEETING**

**KERRVILLE CITY COUNCIL**

**TUESDAY, NOVEMBER 9, 2010, 6:00 P.M.**

**CITY HALL COUNCIL CHAMBERS**

**800 JUNCTION HIGHWAY, KERRVILLE, TEXAS**

**KERRVILLE CITY COUNCIL AGENDA**  
**REGULAR MEETING, TUESDAY, NOVEMBER 9, 2010, 6:00 P.M.**  
**CITY HALL COUNCIL CHAMBERS**  
**800 JUNCTION HIGHWAY, KERRVILLE, TEXAS**

**CALL TO ORDER**

**INVOCATION** offered by Reverend Fern Lancaster, First Assembly of God Church.

**PLEDGE OF ALLEGIANCE TO THE FLAG** led by Russ Holmer, Military Officers Association of America.

**1. VISITOR/CITIZENS FORUM:**

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

**2. RECOGNITION AND COMMENDATION:**

2A. Kerrville Police Chief John Young for his election as the President of the Texas Police Chiefs Association for 2010-2011.

**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 council approve the following items which will grant the Mayor or City Manager the authority to execute all documents necessary for each transaction.

3A. Approval of the minutes of the city council meetings held on October 12, October 26, and October 27, 2010. (Staff)

3B. A resolution authorizing the closure of a portion of Memorial Highway (Hwy 27) during certain hours for the Kerrville Main Street Annual Holiday Lighted Parade and authorizing the mayor to execute an agreement for the temporary closure of state right-of-way with the Texas Department of Transportation. (Staff)

3C. Authorize execution of a construction contract with N.G. Painting L.P. for rehabilitation of the College Cove ground storage tank in the amount of \$183,860.00 and execution of change orders in an amount not to exceed \$18,500.00. (Staff)

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The facility is wheelchair accessible and accessible parking spaces are available. Requests for accommodations or interpretive services must be made 48 hours prior to this event. Please contact the City Secretary's Office at 830-257-8000 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: November 5, 2010 at 4:00 p.m. and remained posted continuously for at least 72 hours proceeding the scheduled time of the meeting.

Brenda Craig  
City Secretary, City of Kerrville, Texas

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3D. Authorize execution of a Homeland Security grant in the amount of \$125,000 for the police department to purchase communications equipment and backup power generators. (Staff)

3E. Authorize execution of a lease agreement for a city-wide telephone system and telephony services. (Staff)

3F. Authorize application for the 2010 Texas Capital Fund Grant for the Harper Road utility extension project. (Staff)

**END OF CONSENT AGENDA**

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

4A. An ordinance terminating the automatically repeating allowance of updated service credits and increased prior and current service annuities under the Texas Municipal Retirement System; and establishing an effective date for the ordinance. (Staff)

**5. ORDINANCE , FIRST READING:**

5A. An ordinance amending Chapter 26 "Buildings and Building Regulations", Article VIII "Building Board of Adjustment and Appeals" of the Code of Ordinances of the City of Kerrville, Texas, by amending the membership qualifications for said board; containing a cumulative clause; containing a savings and severability clause; establishing an effective date; and providing other matters related to the subject. (Staff)

5B. An ordinance amending Chapter 58 "Health and Sanitation" of the Code of Ordinances of the City of Kerrville, Texas, by adding a new Article IV "Illegal Smoking Products and Illegal Smoking Paraphernalia"; containing a cumulative clause; containing a savings and severability clause; providing for a penalty for violation of any provision hereof; ordering publication; providing for an effective date; and providing other matters related to the subject. (Staff)

5C. An ordinance amending Chapter 118 "Waterways", Article II, "City Water Impoundment Regulations," of the Code of Ordinances of the City of Kerrville, Texas, by clarifying that the construction of habitable structures is prohibited within certain areas adjacent to the city's impounded waters of the Guadalupe River and adding a definition for "habitable structure"; containing a cumulative clause; containing a savings and severability clause; establishing an effective date; ordering publication; and providing other matters related to the subject. (Staff)

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Brenda Craig  
City Secretary, City of Kerrville, Texas

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**6. INFORMATION AND DISCUSSION:**

6A. Update regarding Lower Colorado River Authority Transmission Services Corporation's (LCRA-TSC) application for the proposed McCamey D to Kendall to Gillespie CREZ project (PUC Docket No. 38354). (Staff)

6B. Kerrville budget/economic update. (Staff)

**7. ITEMS FOR FUTURE AGENDAS**

**8. 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.

**9. EXECUTIVE SESSION:**

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

Section 551.071:

- Contemplated litigation involving a claim against C&C Groundwater Services.

Sections 551.071, 551.072 and 551.087:

- Negotiations with Hunter Equity regarding the construction of a multi-purpose meeting facility for the city of Kerrville.

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

**11. ADJOURNMENT.**

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Brenda Craig  
City Secretary, City of Kerrville, Texas

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**Agenda Item:**  
**(Mayor)**

- 2A. Kerrville Police Chief John Young for his election as the President of the Texas Police Chiefs Association for 2010-2011.



**Agenda Item:**  
**(Staff)**

- 3A. Approval of the minutes of the city council meetings held on October 12, October 26, and October 27, 2010.

CITY COUNCIL MINUTES  
REGULAR MEETING

KERRVILLE, TEXAS  
OCTOBER 12, 2010

On October 12, 2010, the Kerrville City Council meeting was called to order by Mayor Wampler at 6:00 p.m. in the city hall council chambers, 800 Junction Highway. The invocation was offered by Reverend Stockton Williams, Church Rector, St. Peter's Episcopal Church, followed by the Pledge of Allegiance led by Dick Weaver, Military Officers Association of America.

MEMBERS PRESENT:

David Wampler	Mayor
R. Bruce Motheral	Mayor Pro Tem
T. Scott Gross	Councilmember
Stacie Keeble	Councilmember

MEMBER ABSENT:

Gene Allen	Councilmember
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STAFF PRESENT:

Mike Hayes	City Attorney
Kristine Ondrias	Assistant City Manager
Brenda G. Craig	City Secretary
Charvy Tork	Information Technology Systems Administrator
Mindy Wendele	Director of Business Programs
Mike Erwin	Director of Finance
Robert Ojeda	Fire Chief
Kevin Coleman	Director of Development Services
Mike Wellborn	Director of Engineering
Kim Meismer	Director of General Operations
John Young	Police Chief
Charlie Hastings	Director of Public Works

VISITORS PRESENT: List on file in city secretary's office.

1. VISITORS/CITIZENS FORUM: No one spoke.

2. CONSENT AGENDA:

Mr. Motheral moved for approval of items 2A through 2C; Mr. Gross seconded the motion and it passed 4-0:

2A. Approval of the minutes of the city council meetings held on September 23, and September 28, 2010.

2B. Authorize the purchase of twelve Arbitrator mobile digital audio/video camera systems for the police department, from Portable Computer Systems, in an amount not to exceed \$57,000.

2C. Authorize the execution of a three year geographic information system enterprise license agreement with Environmental Systems Research Institute, Inc. in the amount of \$25,000 per year.

END OF CONSENT AGENDA

5C. Update on the general obligation refunding bonds, Series 2010.

Ann Burger Entekin, First Southwest Company, the city's financial advisor, noted the parameters established on September 28 had been accomplished and the debt would be issued in the next few weeks in the par amount of \$4,455,000 at an average coupon rate of 3.559% with maturity date of 2011-2017 resulting in an estimated gross savings of \$228,739.03.

The ordinance had passed on first and only reading on September 28; no action was taken by council at this time.

**3. PUBLIC HEARING AND RESOLUTION:**

3A. Resolution No. 036-2010 approving a second amendment to the development site plan for an approximate 2.25 acre tract of land out of the Samuel Wallace Survey No. 114, Abstract No. 348, Kerr County, Texas, located in a residential cluster "RC" zoning district and adjacent to Pinto Trail.

Mr. Coleman noted that current zoning allowed single family development; however, the existing site plan designated multi family or shared use to allow 21 duplexes. The new property owner proposed an amendment to the site plan that would allow 12 single family homes. Staff and the planning and zoning commission (P&Z) found the proposed single family development to be compatible with the area and recommended approval of the resolution to allow single family development as stated in the amended development site plan. Staff received two letters from neighbors stating their concerns regarding traffic, drainage, and potential flooding. He noted that approval of the amendment to the development site plan did not constitute approval of the preliminary plat, which would address several issues, including a site drainage plan.

Council also noted the following points:

- The proposed project would allow less density than permitted in the existing site plan, thereby creating less traffic.
- The developer was required to provide a drainage site plan that would have to be approved by staff and P&Z, and address other issues in the preliminary plat, prior to construction.

Mayor Wampler declared the public hearing open at 6:12 p.m.; no one spoke; Mayor Wampler closed the public hearing at 6:13 p.m.

Mr. Motheral moved for approval of Resolution No. 036-2010; Mr. Gross seconded the motion and it passed 4-0.

**4. PUBLIC HEARING AND ORDINANCE FIRST READING:**

4A. An ordinance creating a "planned development district" (PDD) for dwelling, multi-family (apartment) and professional office on an approximately 1.2 acre tract of land, being Lots 3 through 8, inclusive, Block 27 of the J.A. Tivy Addition, a subdivision within the City of Kerrville, Texas, and otherwise known as 1001 Jefferson Street; adopting a concept plan and conditions related to the development of said district; containing a cumulative clause; containing a savings and severability clause;

establishing a penalty or fine not to exceed \$2,000 for each day of violation of any provision hereof; ordering publication; and providing other matters relating to the subject. Mayor Wampler read the ordinance by title only.

Mr. Coleman noted the owner proposed to establish the Jefferson Street House as a professional office building, and construct three two-story apartment buildings on the 1.2 acre site. The current zoning of "RT" residential transition would allow professional office use permitted by right; the apartment use would require a conditional use permit (CUP); however, staff proposed a PDD instead of a CUP as a means to develop the tract as a single project under one ordinance. Under the zoning ordinance, a two acre minimum was required for a PDD; the proposed project consisted of only 1.2 acre. The existing Jefferson Street House was non-conforming as it did not meet the front yard setback requirement of 25 feet (currently 11 feet and proposed to be 11-18 feet). The proposed development narrowly met the minimum standards for density, separation, and other setbacks.

P&Z had discussed several issues:

- The Jefferson Street House was one of only a few remaining Victorian houses; they recommended incorporating the appearance, character and style of the house to the proposed apartments; the proposed elevations of the three apartment buildings should be a requirement of the PDD.
- Add provision for continuous screening along the rear alleyway.
- Keep the Texas State Landmark status of the existing Jefferson Street House.
- Density of the property and the number of units.
- Not enough off-street parking.

Mr. Coleman noted that P&Z voted 0-4 against recommending the PDD to city council and felt the project needed more review.

Mayor Wampler declared the public hearing open at 6:20 p.m., and the following persons spoke:

1. Charles Gray, neighbor and property owner, stated he was opposed to the proposed apartments and noted several incidents at the subject property. The RT zoning provided a buffer around the school located one block to the east.
2. Dave Tritenbach supported the project and noted it restored a historic building, provided residential housing in the downtown area, and was compatible with the neighborhood.
3. David Naredo, architect for the project, reviewed the conceptual design of the project and noted the following: continue to fence the property to tie the project together; remove parking along the streets and create more green space; could move Buildings 1 and 2 back further and provide more green space; the Victorian house should be preserved; maintain integrity of neighborhood; screening would be the length of the alley; plan provided 8 more parking spaces than was required; and all buildings were being used.

Mayor Wampler closed the public hearing at 6:27 p.m.

Council also discussed the following:

- Questioned why density was a concern of P&Z. Mr. Coleman noted the number of units proposed and their proximity to neighboring property on Tivy Street was a concern; however, the project met the maximum density standard.
- Suggested additional screening and a greater site distance at the Jefferson/Tivy intersection.

Mr. Gross moved for approval of the ordinance on first reading with amendments to address screening, security lighting, and setback requirements on Buildings 1 and 2; Mr. Motheral seconded the motion and it passed 4-0.

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

### **5A. Request from Bruce Stracke to adopt Appendix O gray water recycling systems of the International Residential Code (IRC).**

Bruce Stracke, Corner Canyon Homes, requested council instruct staff to prepare an ordinance adopting Appendix O of the IRC to allow the use of gray water for landscape irrigation and cited potential benefits: support water conservation and reduce costs to the city, e.g. energy, wastewater treatment, and water storage tanks. He noted the adoption of Appendix O could reduce the use of potable water by as much as 40% depending on the type of system installed and wanted to offer recycling systems to potential clients.

Council also discussed the following:

- The same benefits could be accomplished through rain water catchment systems.
- Adoption of Appendix O would eliminate an income source for the city by reducing the amount of effluent; the city had contractual commitments for the sale of all effluent currently available.

The following persons spoke:

1. Carolyn Lipscomb questioned if homes would have separate lines for gray water. Mr. Stracke noted that water passing through sinks and toilets could not be used.
2. David Lipscomb asked if any statistics were available on how much water could go into a grey water system. Mr. Stracke noted potable water usage could be reduced by 40% depending on the type of system installed.

Mr. Gross moved to refer the matter to the building board for review and recommendation and to be scheduled on a future city council agenda; Ms. Keeble seconded the motion and it passed 4-0.

### **5B. Request to extend utilities from Town Creek and Old Harper Road up to Harper Road.**

Ms. Ondrias noted the city had contracted to construct water and wastewater lines to the James Avery Craftsman (JAC) campus on Harper Road. The city had since received requests from several property owners to extend those utility lines at Town Creek and Old Harper Road west to Harper Road. Staff recommended the line extension also be upgraded from 8" to 12" in order to increase fire flow and serve

future expansion in the area. She reviewed the steps necessary to extend the utility lines as proposed, i.e. TxDOT permits to bore under Harper Road, county approval to place lines in their right of way, and acquire an easement at the corner of Harper Road and Old Harper Road. She also noted the following:

- The contractor submitted a price estimate of \$185,000.00.
- The property owner at Harper Road and Old Harper Road expressed willingness to grant the easement but wanted assurance that his property would not be annexed; he was concerned about the potential loss of income from the fireworks stand if his property was in the city limits.
- Two other property owners on Harper Road requested utility extension and provided easements.
- The city's policy for extending water and wastewater service outside the city required annexation. Staff discussed possible voluntary annexation through a development agreement with one property owner who may be interested in annexation in exchange for water and wastewater service. If an owner did not request annexation, the city had two options: 1) involuntary annexation of property needed; or 2) development agreements with property owners requesting utility service that would allow annexation to be delayed until the properties were contiguous to the city, and the city provide utility service at the 1.5 out of city rate until the time of annexation.
- All permits, easements, and development agreements should be finalized prior to staff bringing a change order to city council for consideration.

Ms. Ondrias offered several payment options for the line extension:

- City fund the full cost of extending utilities thereby developing one of the main corridors to I-10 as an economic development project; such funding could come from bond funds or through application to the economic improvement corporation.
- Property owners requesting utility service pay the cost of extending the line to their property. The city subdivision code stated it was the responsibility of the property owner to pay the cost to extend services to their property.
- City fund the project up front and assess the cost of the line to property owners when they tie on to the line.

The council also discussed the following:

- Utilities were necessary in order to develop the I-10 corridor; this project had the potential of opening about 150 acres for development.
- This area was not in the city; any delayed annexation should be limited to a specified time period.
- Treat all requests the same; apply standards uniformly and not just accommodate one potential project. If utility extension is provided by the city based on potential economic development, do so equally.
- A policy change may be necessary to accommodate potential growth.
- The city should move quickly to provide utilities and not drag out the process as potential development was possible.

It was the consensus of city council to do the following:

1. Extend the line from Town Creek and Old Harper Road up to the west side of Harper Road.
2. Prefer a development agreement stating annexation would be delayed for the fireworks stand until surrounding areas were annexed in exchange for the necessary utility easement.
3. Prefer development agreement, not involuntary annexation.
4. City would not charge the living unit equivalent cost of the JAC line from these property owners.
5. City not pursue assessment of cost of line to property owners.
6. City bear the cost for a 12" line.

5C. Update on the general obligation refunding bonds, Series 2010. (Issue discussed earlier in the meeting.)

**6. INFORMATION AND DISCUSSION:**

6A. Kerrville budget/economic update.

Mr. Erwin reported a 2.7 increase in sales tax over October 2009, and hotel occupancy tax was down 6% from September 2009. General fund revenue was at \$20.8 million and expenditures at \$21.4 and \$600,000 had been used from the fund balance.

**7. BOARD APPOINTMENTS:**

7A. Appointments to the Zoning Board of Adjustment.

Ms. Keeble moved to reappoint William Morgan and Robert Irvin as regular board members; and to appoint Parker Harrison as an alternate member all with terms to expire September 30, 2012. Mr. Motheral seconded the motion and it passed 4-0.

7B. Appointment to the Kerr Emergency 9-1-1 Network Board of Managers.

Mr. Motheral moved to reappoint William E. Price with term to expire September 30, 2012; Mr. Gross seconded the motion and it passed 4-0.

**8. ITEMS FOR FUTURE AGENDAS: None.**

**9. ANNOUNCEMENTS OF COMMUNITY INTEREST:**

- Mr. Motheral reported on the Alamo Area Regional Planning Organization meeting in San Antonio; AARPO discussed the state's billions of dollars shortage for highway projects and potential funding options. A very small amount of money was available for a few projects and TxDOT requested each county submit a prioritized list of projects in order to prepare a highway program; the mayor and city manager should meet with the county judge to ensure that the city's needs were included.

- Ms. Keeble reported the Salvation Army's Gala would be held on October 23 and the Kroc Center would open thereafter.

**10. EXECUTIVE SESSION:**

Mr. Gross moved for the city council to go into executive closed session under Section 551.071 (consultation with attorney) of the Texas Government Code; the motion was seconded by Ms. Keeble and passed 4-0 to discuss the following matters:

Section 551.071:

- Contemplated litigation involving a claim against C & C Groundwater Services.
- Contemplated claim and/or litigation involving Carter and Burgess dba Jacobs Engineering.

At 7:44 p.m. the regular meeting recessed and council went into executive closed session at 7:45 p.m. At 8:03 p.m. the executive closed session recessed and council returned to open session at 8:04 p.m. The mayor announced that no action had been taken in executive session.

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

Contemplated claim and/or litigation involving Carter and Burgess dba Jacobs Engineering.

Mr. Motheral moved for approval to enter into a settlement agreement with Carter and Burgess dba Jacobs Engineering in the amount of \$65,055.32; Mr. Gross seconded the motion and it passed 4-0.

**ADJOURNMENT.** The meeting adjourned at 8:05 p.m.

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

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David Wampler, Mayor

ATTEST:

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Brenda G. Craig, City Secretary

CITY COUNCIL MINUTES  
REGULAR MEETING

KERRVILLE, TEXAS  
OCTOBER 26, 2010

On October 26, 2010, the Kerrville City Council meeting was called to order by Mayor Wampler at 6:00 p.m. in the city hall council chambers, 800 Junction Highway. The invocation was offered by Reverend Tom Preininger, New Hope Church, followed by the Pledge of Allegiance led by Tivy Air Force Junior ROTC Cadet Lt. Colonel Marki Hoyne.

**MEMBERS PRESENT:**

David Wampler	Mayor
R. Bruce Motheral	Mayor Pro Tem
Gene Allen	Councilmember
T. Scott Gross	Councilmember
Stacie Keeble	Councilmember

**MEMBER ABSENT:** No one

**STAFF PRESENT:**

Mike Hayes	City Attorney
Kristine Ondrias	Assistant City Manager
Brenda G. Craig	City Secretary
Travis Cochran	Director of Information Technology
Mindy Wendele	Director of Business Programs
Mike Erwin	Director of Finance
Robert Ojeda	Fire Chief
Kevin Coleman	Director of Development Services
Kim Meisner	Director of General Operations
Charlie Hastings	Director of Public Works

**VISITORS PRESENT:** List on file in city secretary's office.

1. **VISITORS/CITIZENS FORUM:** No one spoke.
2. **RESOLUTIONS OF COMMENDATION:** Presented to the following:
  - 2A. Building Board of Adjustment and Appeals
  - 2B. Electrical Board of Adjustments and Appeals: Keith Harmon, and Robert Thomas.
  - 2C. Mechanical Board of Adjustments and Appeals: Donald Kampfhenkel.
  - 2D. Plumbing Board of Adjustments and Appeals: Steve Holloway, and Johnny Bryant.

3. **CONSENT AGENDA:**

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

3A. Authorize the purchase of a Vac-Con hydraulic sewer cleaner/vacuum truck from Houston-Galveston Area Council Buy (HGAC Cooperative Purchasing), in the amount of \$259,155.07.

3B. Authorize the execution of a funding agreement between the City of Kerrville, Texas Economic Improvement Corporation and San Saba Cap Company in the amount of \$10,000.

3C. Authorize the execution of a funding agreement between the City of Kerrville, Texas Economic Improvement Corporation and Hewitt Engineering, Inc. in the amount of \$8,000.

**END OF CONSENT AGENDA**

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

4A. Ordinance No. 2010-22 creating a "planned development district" for dwelling, multi-family (apartment) and professional office on an approximately 1.2 acre tract of land, being Lots 3 through 8, inclusive, Block 27 of the J.A. Tivy Addition, a subdivision within the City of Kerrville, Texas, and otherwise known as 1001 Jefferson Street; adopting a concept plan and conditions related to the development of said district; containing a cumulative clause; containing a savings and severability clause; establishing a penalty or fine not to exceed \$2,000 for each day of violation of any provision hereof; ordering publication; and providing other matters relating to the subject. Mayor Wampler read the ordinance by title only.

Mr. Coleman noted changes had been made to the ordinance and site plan as requested by city council on first reading.

Mr. Motheral moved for approval of Ordinance No. 2010-22 on second and final reading; Ms. Keeble seconded the motion and it passed 5-0.

**5. ORDINANCE , FIRST READING:**

5A. An ordinance terminating the automatically repeating allowance of updated service credits and increased prior and current service annuities under the Texas Municipal Retirement System; and establishing an effective date for the ordinance. Mayor Wampler read the ordinance by title only.

Ms. Meismer noted the ordinance would terminate updated service credits (USC) and cost of living adjustments (COLA) as proposed during the budget workshops. She estimated the annual cost savings to the city at \$490,000.

Mayor Wampler noted the ordinance did not give up the city's right to reinstate the USC and COLA benefits in the future.

Mr. Motheral moved for approval of the ordinance on first reading; Mr. Gross seconded the motion and it passed 5-0.

**6. CONSIDERATION AND POSSIBLE ACTION:**

6A. Receive update from city staff and consider direction to staff regarding amendments to Chapter 118, Article II, City Water Impoundment Regulations of the Kerrville Code of Ordinances.

Mr. Hastings noted council had requested staff review ordinances that prohibited development along the river corridor. He noted at the time the city acquired the dam and lake from UGRA, the city also received the flood easement. He reviewed water impoundment regulations that prohibited certain uses, construction, and activities on the lake that were necessary to minimize potential damage from flooding and to ensure water quality at the city lake. He reviewed water pollution sources and noted ways the city could help manage pollution, e.g. federal and state laws, hazardous material routes for truck traffic, zoning buffer to protect the river from developments that had a potential for pollution.

He noted the National Pollutant Discharge Elimination System (NPDES) required certain cities adopt ordinances to protect their area lakes and rivers; although the city of Kerrville was not an NPDES city, Kerrville was not prohibited from implementing such standards. He reviewed components that should be considered in a water quality ordinance and noted that since UGRA acquired the flood easement in 1990, no construction had been allowed in the flood easement. Mr. Hastings noted he had drafted an ordinance in 2007 in anticipation of the city becoming an NPDES city. The city could abandon the UGRA flood easement in lieu of FEMA regulations; however, the city then would have to address the issue of storm water mitigation and water quality. In adopting an ordinance, the city had to balance allowing construction in the flood easement with ensuring water quality. Water quality could be addressed through creation of a special zoning district that would prohibit construction and operation of certain types of facilities.

Council also discussed the following:

- FEMA flood easements did not anticipate construction of river trails.
- FEMA flood easements prohibited construction at certain levels.
- City should not have regulations that prohibit projects that will benefit or help develop the city.
- Regulations that applied to the river should also apply to all water sources in the city.
- The FEMA flood plain elevation rose when the dam was built.
- In order to establish a hazardous material route, every major route in the city would have to be evaluated individually, and every major route had a bridge crossing the river.

The following person spoke:

- Carolyn Lipscomb noted after the 2002 flood, FEMA changed the floodplain on Town Creek; she questioned how that would affect development and how the FEMA boundary line differed from the UGRA easement.

Mr. Wellborn noted the current FEMA data was more accurate than the UGRA flood easement.

The consensus of the council was that Mr. Hastings should provide his draft ordinance to the city council and pursue establishment of hazardous material routes.

**6B. Update on zoning ordinance input committee's (ZOIC) recommendations regarding off-street parking standards and special development regulations.**

John Mosty, ZOIC chairman, noted that ZOIC would be addressing zoning along the river corridor in the future.

The council expressed concern that they had not had any direct communication with ZOIC and requested staff set up a joint meeting.

Mr. Parton provided council with copies of the May 2009 ZOIC report and other information.

The consensus of council was that ZOIC should proceed with the public vetting process through the planning and zoning commission regarding the central business district, off-street parking standards, and special development regulations.

**7. INFORMATION AND DISCUSSION:**

**7A. Library renovation update.**

Jeana Krause, executive director of the Mary Elizabeth Holdsworth Library Foundation, reported the following:

-Foundation joined the chamber of commerce and participated in Showcase 2.1.

-Received \$10,000 donation from Friends of the Library that had been gifted to them from Charles Butt.

-The foundation was selected be the recipient of the 2011 Charity Ball; therefore, a playground task force had been formed to develop the campus and playground plan.

-A new board member had been appointed: Jo Ann Henke Redden.

**7B. Update regarding Lower Colorado River Authority Transmission Services Corporation's (LCRA-TSC) application for the proposed McCamey D to Kendall to Gillespie CREZ project (PUC Docket No. 38354).**

Mr. Hayes noted this was the first week of a two week hearing in Austin. Mayor Wampler had filed written testimony and would be testifying in Austin on October 27 along with KPUB General Manager Tracy McCuan and County Judge Pat Tinley. Following the testimony period, the administrative law judges will issue their recommendation to PUC and PUC will ultimately determine the route of the CREZ line.

**7C. Update regarding planning and preparation for a 2011 July 4<sup>th</sup> celebration.**

Ms. Wendele presented a planning map detailing events and schedule and stated meetings had been held with non profit organizations, and they were asked to sponsor certain events. Kerr County Market Days volunteered to manage vendors and a fine arts gallery in the downtown area during the day. Some committee members offered to solicit donations to fund entertainment for the event with a deadline of January 1, 2011. She noted that previous council discussions proposed that any profit would be divided equally to: 1) the river trail; 2) participating non profits; and 3) start up money for 2012 4<sup>th</sup> of July event.

Council was concerned that waiting until January may not give sufficient time to book entertainers.

The following person spoke:

- Carson Conklin, committee member, stated that a plan had been developed and the committee was excited to make it a reality. He asked that council publicly support their concept and enthusiasm as this would assist them in seeking funding commitments.

7D. Kerrville budget/economic update.

Mr. Erwin noted local unemployment in September was at 6.0 up from 5.8 in 2009; the local median housing listing had declined 6% from September 2009 to September 2010.

8. ITEMS FOR FUTURE AGENDAS: None.

9. ANNOUNCEMENTS OF COMMUNITY INTEREST:

- The Hill Country Holiday Roundup would be held November 20 from noon to 6:00 p.m. at the Kerr County Courthouse, followed by the parade at 6:00 p.m.
- The Salvation Army Kroc Center Gala was well attended; the Kroc Center was an amazing facility and she encouraged people to join.

10. EXECUTIVE SESSION:

Mr. Gross moved for the city council to go into executive closed session under Section 551.071 (consultation with attorney) of the Texas Government Code; the motion was seconded by Ms. Keeble and passed 5-0 to discuss the following matters:

Section 551.072:

- Discuss the purchase, exchange, lease, sale, or value of real property for use as a city facility, the public discussion of which would not be in the best interests of the city's bargaining position with third parties.
- City of Kerrville, Texas vs. Edwin D. Higgins and Grace Higgins, No. 10838C, County Court of Law, Kerr County, Texas

At 7:25 p.m. the regular meeting recessed and council went into executive closed session at 7:34 p.m. At 7:55 p.m. the executive closed session recessed and council returned to open session at 7:56 p.m. The mayor announced that no action had been taken in executive session.

11. ACTION ON ITEMS DISCUSSED IN EXECUTIVE SESSION

ADJOURNMENT. The meeting adjourned at 7:56 p.m.

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

\_\_\_\_\_  
David Wampler, Mayor

ATTEST:

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

CITY COUNCIL MINUTES  
OF A SOCIAL MEETING

KERRVILLE, TEXAS  
OCTOBER 27, 2010

On Wednesday October 27, 2010, the Kerrville City Council met with the Kerrville Under Forty organization at 8:00 a.m. at the Y.O. Ranch Resort Hotel & Conference Center, 2033 Sidney Baker (SH 16), Kerrville, Texas.

MEMBERS PRESENT:

David Wampler	Mayor
R. Bruce Motheral	Mayor Pro Tem
T. Scott Gross	Councilmember
Stacie Keeble	Councilmember

MEMBER ABSENT:

Gene Allen	Councilmember
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STAFF PRESENT:

Todd Parton	City Manager
Brenda G. Craig	City Secretary
Mindy Wendele	Director of Business Programs
Tara LaMontia	Assistant to the City Manager
Travis Cochran	Director of Information Technology

GUEST SPEAKER: Congressman Lamar Smith.

PRESENTATION OF THE PERSON OF THE YEAR AWARD:

Mayor David Wampler presented the Person of the Year Award to Robert Henneke.

The meeting adjourned at 8:50 a.m.

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

ATTEST:

\_\_\_\_\_  
David Wampler, Mayor

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

**Agenda Item:**  
**(Staff)**

- 3B. A resolution authorizing the closure of a portion of Memorial Highway (Hwy 27) during certain hours for the Kerrville Main Street Annual Holiday Lighted Parade and authorizing the Mayor to execute an agreement for the temporary closure of State right-of-way with the Texas Department of Transportation.

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

**SUBJECT:** A RESOLUTION AUTHORIZING THE CLOSURE OF A PORTION OF MEMORIAL HIGHWAY (SH 27) DURING CERTAIN HOURS FOR THE KERRVILLE MAIN STREET'S ANNUAL HOLIDAY LIGHTED PARADE AND AUTHORIZING THE MAYOR TO EXECUTIVE AN AGREEMENT FOR THE TEMPORARY CLOSURE OF STATE RIGHT-OF-WAY WITH THE TEXAS DEPARTMENT OF TRANSPORTATION

**FOR AGENDA OF:** November 9, 2010 **DATE SUBMITTED:** October 29, 2010

**SUBMITTED BY:** Mindy N. Wendele **CLEARANCES:** Todd Parton  
Director of Business Programs & Public Affairs City Manager

**EXHIBITS:** Resolution & support documents

**AGENDA MAILED TO:**

**APPROVED FOR SUBMITTAL BY CITY MANAGER:** 

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

**PAYMENT TO BE MADE TO:**

**REVIEWED BY THE FINANCE DIRECTOR:**

**SUMMARY STATEMENT**

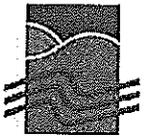
The Business Programs Department is hosting the 10<sup>th</sup> Annual Kerrville Main Street Holiday Lighted Parade on Saturday, November 20, 2010. The parade is produced in conjunction with the Courthouse Lighting Ceremony and the Hill Country Holiday Round-Up.

Each year participation in the parade has grown to a size we no longer can safely accommodate parade entries along G and Water Streets. Due to the anticipated number of vehicular and pedestrian entries, the parade will step off at the intersection of Memorial Highway and Clearwater Paseo.

The Texas Department of Transportation requires a resolution approved by the City Council, along with support documents, before a road closure can take place. This resolution provides authorization for the Mayor to execute the road closure agreement with TxDot.

**RECOMMENDED ACTION**

Approve resolution.



THE CITY OF

KERRVILLE, TEXAS

August 18th, 2010

Texas Department of Transportation  
1832 Sidney Baker N.  
Kerrville, Texas 78028

Sir or Madam:

The City of Kerrville will be conducting its annual Christmas Parade on November 20<sup>th</sup> 2010. We are requesting the closure of three lanes of S.H. 27 from the 2200 block to the 1800 block. Lane closures would include the two way left turn lane and the two inside main lanes. The hours of closure would be from 5:30pm until 7:00pm. These lane closures are solely within the city limits of Kerrville and would be established by City of Kerrville street department employees. Control of the lane closures will be conducted by City of Kerrville Police Officers.

Closing the roadway during this period would accommodate the flow of the parade onto the parade route. The outside lanes of S.H. 27 would remain open and flow at the direction of assigned traffic control officers. The parade units would utilize the two way left turn lane while the two inside turn lanes would be used as a safety zone between passing traffic and the parade units.

The area created by the lane closures will contain vehicular traffic only. The lane closures will be monitored by traffic officers to ensure the absence of conflicting pedestrian traffic.

Sincerely,

JOHN M. YOUNG JR.  
CHIEF OF POLICE

Curtis J. Thomason  
Lieutenant  
Field Operations Division

**CITY OF KERRVILLE, TEXAS**  
**RESOLUTION NO. \_\_\_\_-2010**

**A RESOLUTION AUTHORIZING THE CLOSURE OF A PORTION OF  
MEMORIAL HIGHWAY (HWY 27) DURING CERTAIN HOURS FOR THE  
KERRVILLE MAIN STREET ANNUAL HOLIDAY LIGHTED PARADE AND  
AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT FOR THE  
TEMPORARY CLOSURE OF STATE RIGHT-OF-WAY WITH THE TEXAS  
DEPARTMENT OF TRANSPORTATION**

**WHEREAS**, the Kerrville Main Street Division seeks to close a portion of Memorial Highway (HWY 27) on Saturday, November 20, 2010, from 5:00 p.m. to 7:00 p.m., for the 2010 Holiday Lighted Parade; and

**WHEREAS**, Memorial Highway (HWY 27) is a state controlled highway and as such, the Texas Department of Transportation (TxDOT) requires the City to enter into an agreement to authorize any such closure; and

**WHEREAS**, pursuant to the agreement between TxDOT and the City, the City agrees to accrue all costs associated with the closure, to include having the Kerrville Police Department provide traffic control;

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

The Mayor is authorized to execute an agreement for the *Temporary Closure of State Right-of-Way with the Texas Department of Transportation* to authorize the City's closure and use of Memorial Highway (HWY 27) between Clearwater Paseo and Water Street, said agreement attached hereto as **Exhibit A**. The closure shall occur during the time period between 5:00 p.m. and 7:00 p.m., on Saturday, November 20, 2010

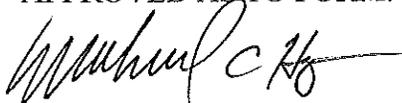
**PASSED AND APPROVED ON this the \_\_\_\_\_ day of \_\_\_\_\_,  
A.D., 2010.**

\_\_\_\_\_  
David Wampler, Mayor

ATTEST:

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

APPROVED AS TO FORM:



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

STATE OF TEXAS §

COUNTY OF TRAVIS §

**AGREEMENT FOR THE TEMPORARY CLOSURE  
OF STATE RIGHT OF WAY**

**THIS AGREEMENT** is made by and between the State of Texas, acting by and through the Texas Department of Transportation, hereinafter called the "State," and the City of Kerrville, a municipal corporation, acting by and through its duly authorized officers, hereinafter called the "local government."

**WITNESSETH**

**WHEREAS**, the State owns and operates a system of highways for public use and benefit, including SH 27, in Kerr County; and

**WHEREAS**, the local government has requested the temporary closure of SH 27 for the purpose of Holiday Lighted Parade, from 5:00 p.m. to 7:00 p.m., November 20, 2010 as described in the attached "Exhibit A," hereinafter identified as the "Event;" and

**WHEREAS**, the Event will be located within the local government's incorporated area; and

**WHEREAS**, the State, in recognition of the public purpose of the Event, wishes to cooperate with the City so long as the safety and convenience of the traveling public is ensured and that the closure of the State's right of way will be performed within the State's requirements; and

**WHEREAS**, on the 9th day of November, 2010, the Kerrville City Council passed a Resolution, attached hereto and identified as "Exhibit B," establishing that the Event serves a public purpose and authorizing the local government to enter into this agreement with the State; and

**WHEREAS**, 43 TAC, Section 22.12 establishes the rules and procedures for the temporary closure of a segment of the State highway system; and

**WHEREAS**, this agreement has been developed in accordance with the rules and procedures of 43 TAC, Section 22.12;

**NOW, THEREFORE**, in consideration of the premises and of the mutual covenants and agreements of the parties hereto, to be by them respectively kept and performed as hereinafter set forth, it is agreed as follows:

**A G R E E M E N T**

**Article 1. CONTRACT PERIOD**

This agreement becomes effective upon final execution by the State and shall terminate upon completion of the Event or unless terminated or modified as hereinafter provided.

**Article 2. EVENT DESCRIPTION**

The physical description of the limits of the Event, including county names and highway numbers, the number of lanes the highway has and the number of lanes to be used, the proposed schedule of start and stop times and dates at each location, a brief description of the proposed activities involved, approximate number of people attending the Event, the number and types of animals and equipment, planned physical modifications of any man-made or natural features in or adjacent to the right of way involved shall be attached hereto along with a location map and identified as "Exhibit C."

**Article 3. OPERATIONS OF THE EVENT**

- A.** The local government shall assume all costs for the operations associated with the Event, to include but not limited to, plan development, materials, labor, public notification, providing protective barriers and barricades, protection of highway traffic and highway facilities, and all traffic control and temporary signing.
- B.** The local government shall submit to the State for review and approval the construction plans, if construction or modifications to the State's right of way is required, the traffic control and signing plans, traffic enforcement plans, and all other plans deemed necessary by the State. The State may require that any traffic control plans of sufficient complexity be signed, sealed and dated by a registered professional engineer. The traffic control plan shall be in accordance with the latest edition of the Texas Manual on Uniform Traffic Control Devices. All temporary traffic control devices used on state highway right of way must be included in the State's Compliant Work Zone Traffic Control Devices List. The State reserves the right to inspect the implementation of the traffic control plan and if it is found to be inadequate, the local government will bring the traffic control into compliance with the originally submitted plan, upon written notice from the State noting the required changes, prior to the event. The State may request changes to the traffic control plan in order to ensure public safety due to changing or unforeseen circumstances regarding the closure.
- C.** The local government will ensure that the appropriate law enforcement agency has reviewed the traffic control for the closures and that the agency has deemed them to be adequate. If the law enforcement agency is unsure as to the adequacy of the traffic control, it will contact the State for consultation no less than 10 workdays prior to the closure.
- D.** The local government will complete all revisions to the traffic control plan as requested by the State within the required timeframe or that the agreement will be terminated upon written notice from the State to the local government. The local government hereby agrees that any failure to cooperate with the State may constitute reckless endangerment of the public and that the Texas Department of Public Safety may be notified of the situation as soon as possible for the appropriate action, and failing to follow the traffic control plan or State instructions may result in a denial of future use of the right of way for three years.
- E.** The local government will not initiate closure prior to 24 hours before the scheduled Event and all barriers and barricades will be removed and the highway reopened to traffic within 24 hours after the completion of the Event.
- F.** The local government will provide adequate enforcement personnel to prevent vehicles from stopping and parking along the main lanes of highway right of way and otherwise prevent interference with the main lane traffic by both vehicles and pedestrians. The local government will prepare a traffic enforcement plan, to be approved by the State in writing at least 48 hours prior to the scheduled Event. Additionally, the local government shall provide to the State a letter of certification from the law enforcement agency that will be providing traffic control for the Event, certifying that they agree with the enforcement plan and will be able to meet its requirements.
- G.** The local government hereby assures the State that there will be appropriate passage

allowance for emergency vehicle travel and adequate access for abutting property owners during construction and closure of the highway facility. These allowances and accesses will be included in the local government's traffic control plan.

**H.** The local government will avoid or minimize damage, and will, at its own expense, restore or repair damage occurring outside the State's right of way and restore or repair the State's right of way, including, but not limited to, roadway and drainage structures, signs, overhead signs, pavement markings, traffic signals, power poles and pavement, etc. to a condition equal to that existing before the closure, and, to the extent practicable, restore the natural and cultural environment in accordance with federal and state law, including landscape and historical features.

#### **Article 4. OWNERSHIP OF DOCUMENTS**

Upon completion or termination of this agreement, all documents prepared by the local government will remain the property of the local government. All data prepared under this agreement shall be made available to the State without restriction or limitation on their further use. At the request of the State, the Local Government shall submit any information required by the State in the format directed by the State.

#### **Article 5. TERMINATION**

**A.** This agreement may be terminated by any of the following conditions:

- (1) By mutual written agreement and consent of both parties.
- (2) By the State upon determination that use of the State's right of way is not feasible or is not in the best interest of the State and the traveling public.
- (3) By either party, upon the failure of the other party to fulfill the obligations as set forth herein.
- (4) By satisfactory completion of all services and obligations as set forth herein.

**B.** The termination of this agreement shall extinguish all rights, duties, obligations, and liabilities of the State and local government under this agreement. If the potential termination of this agreement is due to the failure of the local government to fulfill its contractual obligations as set forth herein, the State will notify the local government that possible breach of contract has occurred. The local government must remedy the breach as outlined by the State within ten (10) days from receipt of the State's notification. In the event the local government does not remedy the breach to the satisfaction of the State, the local government shall be liable to the State for the costs of remedying the breach and any additional costs occasioned by the State.

#### **Article 6. DISPUTES**

Should disputes arise as to the parties' responsibilities or additional work under this agreement, the State's decision shall be final and binding.

#### **Article 7. RESPONSIBILITIES OF THE PARTIES**

The State and the Local Government agree that neither party is an agent, servant, or employee of the other party and each party agrees it is responsible for its individual acts and deeds as well as the acts and deeds of its contractors, employees, representatives, and agents.

#### **Article 8. INSURANCE**

**A.** Prior to beginning any work upon the State's right of way, the local government and/or its contractors shall furnish to the State a completed "Certificate of Insurance" (TxDOT Form 1560, latest edition) and shall maintain the insurance in full force and effect during the period

that the local government and/or its contractors are encroaching upon the State right of way.

**B.** In the event the local government is a self-insured entity, the local government shall provide the State proof of its self-insurance. The local government agrees to pay any and all claims and damages that may occur during the period of this closing of the highway in accordance with the terms of this agreement.

**Article 9. AMENDMENTS**

Any changes in the time frame, character, agreement provisions or obligations of the parties hereto shall be enacted by written amendment executed by both the local government and the State.

**Article 10. COMPLIANCE WITH LAWS**

The local government shall comply with all applicable federal, state and local environmental laws, regulations, ordinances and any conditions or restrictions required by the State to protect the natural environment and cultural resources of the State's right of way.

**Article 11. LEGAL CONSTRUCTION**

In case one or more of the provisions contained in this agreement shall for any reason be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions hereof and this agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

**Article 12. NOTICES**

All notices to either party by the other required under this agreement shall be delivered personally or sent by certified U.S. mail, postage prepaid, addressed to such party at the following respective addresses:

<b>Local Government:</b>	<b>State:</b>
<u>Mayor David Wampler</u>	<u>Mario G. Medina, P.E.</u>
<u>City of Kerrville</u>	<u>District Engineer</u>
<u>800 Junction Hwy</u>	<u>Texas Department of Transportation</u>
<u>Kerrville, Texas 78028</u>	<u>San Antonio, Texas</u>

All notices shall be deemed given on the date so delivered or so deposited in the mail, unless otherwise provided herein. Either party hereto may change the above address by sending written notice of such change to the other in the manner provided herein.

**Article 13. SOLE AGREEMENT**

This agreement constitutes the sole and only agreement between the parties hereto and supersedes any prior understandings or written or oral agreements respecting the within subject matter.

**IN TESTIMONY WHEREOF**, the parties hereto have caused these presents to be executed in duplicate counterparts.

**THE CITY OF**     KERRVILLE    

Executed on behalf of the local government by:

By \_\_\_\_\_ Date \_\_\_\_\_  
City Official

Typed or Printed Name and Title     David Wampler      
    Mayor    

**THE STATE OF TEXAS**

Executed for the Executive Director and approved for the Texas Transportation Commission for the purpose and effect of activating and/or carrying out the orders, established policies or work programs heretofore approved and authorized by the Texas Transportation Commission.

By \_\_\_\_\_ Date \_\_\_\_\_  
District Engineer

**Exhibit A**

**Exhibit B**

**Exhibit C**



# COPY

## Texas Department of Transportation (TxDOT) CERTIFICATE OF INSURANCE

Prior to the beginning of work, the Contractor shall obtain the minimum insurance and endorsements specified. Only the TxDOT certificate of insurance form is acceptable as proof of insurance for department contracts. Agents should complete the form providing all requested information then either fax or mail this form directly to the address listed on page one of this form. Copies of endorsements listed below are not required as attachments to this certificate.

Insured: City of Kerrville  
 Street/Mailing Address: 800 Junction Hwy  
 City/State/Zip: Kerrville, Texas 79028  
 Phone Number: Area Code (830) 792-8340 EIN: 74-600490

Workers' Compensation Insurance Coverage:  
 Endorsed with a Waiver of Subrogation in favor of TxDOT.

Carrier Name: Texas Municipal League Intergovernmental Risk Pool			Carrier Phone #: (800) 537-6655	
Address: 1821 Rutherford Ln, 1 <sup>st</sup> Floor			City, State, Zip: Austin, Texas 78714-9194	
Type of Insurance	Policy Number	Effective Date	Expiration Date	Limits of Liability:
Workers' Compensation	8179	10/01/2010	10/01/2011	Not Less Than: Statutory - Texas

Comprehensive General Liability Insurance:  
 Endorsed with TxDOT as Additional Insured and with a Waiver of Subrogation in favor of TxDOT.

Carrier Name: Texas Municipal League Intergovernmental Risk Pool			Carrier Phone #: (800) 537-6655	
Address: 1821 Rutherford Ln, 1 <sup>st</sup> Floor			City, State, Zip: Austin, Texas 78714-9194	
Type of Insurance:	Policy Number:	Effective Date:	Expiration Date:	Limits of Liability:
Comprehensive General Liability Insurance Bodily Injury Property Damage OR Commercial General Liability Insurance	8179	10/01/2010	10/01/2011	Not Less Than: \$ 500,000 each occurrence \$ 100,000 each occurrence \$ 100,000 for aggregate OR \$ 600,000 combined single limit

Comprehensive Automobile Liability Insurance:  
 Endorsed with TxDOT as Additional Insured and with a Waiver of Subrogation in favor of TxDOT.

Carrier Name: Texas Municipal League Intergovernmental Risk Pool			Carrier Phone #: (800) 537-6655	
Address: 1821 Rutherford Ln, 1 <sup>st</sup> Floor			City, State, Zip: Austin, Texas 78714-9194	
Type of Insurance:	Policy Number:	Effective Date:	Expiration Date:	Limits of Liability:
Comprehensive Automobile Liability Insurance OR Texas Business Automobile Policy Bodily Injury Property Damage	8179	10/01/2010	10/01/2011	Not Less Than: \$ 250,000 each person \$ 500,000 each occurrence \$ 100,000 each occurrence

Umbrella Policy (if applicable):

Carrier Name: N/A			Carrier Phone #:	
Address:			City, State, Zip:	
Type of Insurance:	Policy Number:	Effective Date:	Expiration Date:	Limits of Liability:
Umbrella Policy				

Authorized Agent name, address and zip code:

Texas Municipal League Intergovernmental Risk Pool 1821 Rutherford Ln, 1<sup>st</sup> Floor Austin, Texas 78714-9194

This Certificate of Insurance neither affirmatively nor negatively amends, extends, or alters the coverage afforded by the above insurance policies issued by the named insurance company. Cancellation of the insurance policies shall not be made until THIRTY DAYS AFTER the agent or the insurance company has sent written notice by certified mail to the contractor and the Texas Department of Transportation.

THIS IS TO CERTIFY to the Texas Department of Transportation acting on behalf of the State of Texas that the insurance policies named meet all the requirements stipulated and such policies are in full force and effect. If this form is sent by facsimile machine (fax), the sender adopts the document received by TxDOT as a duplicate original and adopts the signature produced by the receiving fax machine as the sender's original signature.

The Texas Department of Transportation maintains the information collected through this form. With few exceptions, you are entitled on request to be informed about the information that we collect about you. Under sections 555.021 and 553.023 of the Texas Government Code, you also are entitled to receive and review the information. Under section 559.004 of the Government Code, you are also entitled to have us correct information about you that is incorrect.

Area Code (800) 537-6655  
 Authorized Agent's Phone Number

Linda Stanko  
 Authorized Agent Original Signature

10/11/2010  
 Date

**Agenda Item:**  
**(Staff)**

- 3C. Authorize execution of a construction contract with N.G. Painting L.P. for rehabilitation of the College Cove ground storage tank in the amount of \$183,860.00 and execution of change orders in an amount not to exceed \$18,500.00.

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

**SUBJECT:** Council authorization for the City Manager to execute a construction contract with N.G. Painting L.P. for rehabilitation of the College Cove Ground Storage Tank in the amount of \$183,860.00 and authorize the City Manager to execute change orders in an amount not to exceed \$18,500.00.

**FOR AGENDA OF:** November 9, 2010

**DATE SUBMITTED:** October 28, 2010

**SUBMITTED BY:** Michael Wellborn, P.E.  
Director of Engineering

**CLEARANCES:** Kristine Ondrias  
Assistant City Manager

**EXHIBITS:** Contract, Bid Tabulation

**AGENDA MAILED TO:**

**APPROVED FOR SUBMITTAL BY CITY MANAGER:**

Expenditure	Current Balance	Amount	Account
Required:	in Account:	Budgeted:	Number:
\$202,360.00	\$287,790.00	\$300,000.00	W83

**PAYMENT TO BE MADE TO:** N.G. Painting L.P.  
1225 Bandera Highway, Suite A2  
Kerrville, TX 78028

**REVIEWED BY THE FINANCE DIRECTOR:**

**SUMMARY STATEMENT**

In June of 2010 the Director of Public Works authorized a professional services agreement with Hewitt Engineering, Inc. (Consultant) for the preparation of a Phase 1 Preliminary Engineering Evaluation and a Phase 2 Final Design and Specifications for the College Cove Ground Storage Tank project. The project was created in an effort to address the need for new exterior paint and to evaluate the overall structural integrity of the structure, as well as analyze several life cost cycle alternatives.

Three alternatives were identified for further evaluation and life cycle cost analysis. These alternatives included:

1. Powerwashing and two coat epoxy urethane overcoating
2. Abrasive blasting and three coat polyurethane repainting
3. Abrasive blasting and three coat fluoropolymer urethane repainting

The total costs were estimated for each alternative and included an additional \$30,000 for recommended tank improvements, as well as mobilization costs, sterilization costs and a 10 percent (10%) contingency factor. The total costs for each alternative was estimated as:

Alternative 1: \$222,200  
Alternative 2: \$279,400  
Alternative 3: \$313,500

A life cycle cost analysis was prepared since each of the alternatives has a different useful service life. A 40 year period of analysis was evaluated for each alternative. Alternative 2 represents the least expensive long term cost, since it is only \$57,000 more expensive than alternative 1, but eliminates one future maintenance project during the analysis period. As a result, Alternative 2 is the recommended option. In accordance with the preliminary engineering report and the recommendations by City staff, the Consultant commenced with specification preparations.

This project was originally funded in the amount of \$100,000. However, Council's budget amendment provided for an increase of \$200,000 to allow for additional rehabilitation work as necessary to provide longevity to the tank. This increase was funded through the closure of the Lois Street Sewer project with 2007 bonds.

Based upon a sealed bid process, N.G. Painting, L.P. of Kerrville, Texas submitted the lowest base bid in the amount of \$183,860.00. N.G. Painting, L.P., in addition to being a local company, also has a strong reputation for quality and professionalism throughout the state.

### **RECOMMENDED ACTION**

The Director of Engineering recommends that Council authorize the City Manager to execute a construction contract with N.G. Painting L.P. for rehabilitation of the College Cove Ground Storage Tank in the amount of \$183,860.00 and authorize the City Manager to execute change orders in an amount not to exceed \$18,500.00.

Section 070

CITY OF KERRVILLE

CONSTRUCTION CONTRACT

This agreement made this day by and between the City of Kerrville, Texas, called "City," and the undersigned "Contractor" as follows:

1. THE WORK

The Contractor shall perform all the work as required by this contract for:

Provide abrasive blasting and repainting of interior and exterior of existing 1.0 million gallon College Cove Ground Storage Tank in Kerrville, Texas and other improvements, as detailed in Section 090 "Description of Work".

The following are incorporated herein:

- a. General Provisions
- b. Technical Specifications
- c. Addenda issued prior to receipt of Bid
- d. Plans
- e. Instructions to Bidders
- f. Proposal

Some of such documents may not be physically attached hereto but are on file at City Hall, and copies may be obtained upon request.

2. TIME

Construction substantial completion time will be 90 calendar days and 10 calendar days after for final completion from the date of written notice to proceed. Working days are defined in specification section 123.20. The Contractor's obligations to the project however, are not complete and retainage will not be released until all disturbed areas within Kerrville right-of-way have been re-vegetated to the satisfaction of the City Engineer.

3. LIQUIDATED DAMAGES

Liquidated damages are hereby established for work which is not substantially complete in the amount of Three Hundred Dollars (\$300.00) per working day for each working day after the date established in the Notice to Proceed. The City may offset any such liquidated damages against any sums from time to time due by the City to Contractor.

The completion time assumes that fifteen percent of the working days are "bad weather days," days on which the work cannot proceed; therefore, the time for completion shall not be extended on account of bad weather until the said number of assumed "bad weather days" has been exceeded.

The time for completion shall not be extended except by written memorandum executed by the Contractor and the City Manager. Contractor shall make written application to the City not later than

ten (10) days after the day, event, or cause claimed by Contractor to be a delay. Failure to make such written claim within such time shall result in a waiver by Contractor of an extension based on those particular days, events, or causes. If, for example, this contract assumes twenty (20) bad weather days and Contractor desired a one-day extension for the twenty-first day of rain, Contractor shall make a written claim not later than ten (10) days after the occurrence of such twenty-first day.

The said amount per day is not a penalty but an agreed amount of actual damages which are difficult to calculate. Such damages include loss of staff time, answering complaints by citizens who have been inconvenienced by the work, City Council time, loss of use, and other damages difficult to reasonably anticipate or calculate.

#### 4. PAYMENTS

The City shall pay the Contractor ninety-five percent (95%) of the portion of Contract Sum properly allocable to labor, materials, and equipment incorporated in the Work and ninety-five percent (95%) of the portion of the Contract Sum properly allocable to materials and equipment suitably stored at the site or at some other location agreed upon in writing, less the aggregate of previous payments made by the City, and, upon substantial completion of the entire Work, a sum sufficient to increase the total payments to ninety-five percent (95%) of the Contract Sum. All retainages from progress payments shall be withheld without liability for interest. Upon acceptance, the City shall make payment to Contractor such that one hundred percent (100%) of the Contract Sum has been paid.

5. LIABILITY INDEMNITY

THE CONTRACTOR AGREES TO INDEMNIFY, DEFEND, AND HOLD HARMLESS THE CITY OF KERRVILLE, TEXAS, AND ALL OF THEIR RESPECTIVE OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, LOSSES, PROPERTY DAMAGES, AND EXPENSES OF ANY CHARACTER WHATSOEVER, INCLUDING ATTORNEY'S FEES BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OF DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PROPERTY ON ACCOUNT OF ANY NEGLIGENT ACT OF THE CONTRACTOR, THE CITY OF KERRVILLE, TEXAS, OR ANY OF THEIR RESPECTIVE OFFICERS, EMPLOYEES, AGENTS, REPRESENTATIVES, OR SUBCONTRACTORS IN THE EXECUTION, SUPERVISION, AND OPERATIONS GROWING OUT OF OR IN ANY WAY CONNECTED WITH THE PERFORMANCE OF THIS AGREEMENT, WHETHER OR NOT THE ACT OR OMISSION OF THE CITY OR ANY OF THEIR RESPECTIVE OFFICERS, EMPLOYEES, OR AGENTS WAS THE SOLE PROXIMATE CAUSE OF THE INJURY OR DAMAGE OR A PROXIMATE CAUSE JOINTLY AND CONCURRENTLY WITH THE NEGLIGENCE OF THE CONTRACTOR OR ITS OFFICERS, EMPLOYEES, AGENTS, CONTRACTORS, OR SUBCONTRACTORS, IN THE EXECUTION, SUPERVISION AND OPERATIONS GROWING OUT OF OR IN ANY WAY CONNECTED WITH THE PERFORMANCE OF THIS AGREEMENT.

6. LIABILITY INSURANCE

Prior to the commencement of any work and not later than fifteen (15) days following the execution of this contract, the Contractor shall furnish the City copies of paid-up policies (to the City Risk Manager/City Hall) providing Liability and Workman's Compensation Coverage as follows (minimum limits):

TYPE OF INSURANCE	LIMITS
a. Workman's Compensation covering all employees	Statutory
b. Employer's Liability	<u>\$100,000.00</u>
c. Comprehensive General Liability	
Bodily Injury & Property Damage (per occurrence)	<u>\$1,000,000.00</u>
Aggregate	<u>\$1,000,000.00</u>
(Premises/Operations Products/Completed Operations/Independent Contractors/Contractual Liability/Coverages may not be excluded). XCU must be supplied if any exposure.	
d. Business Automobile Liability covering owned vehicles, rented and non-owned vehicles and employee non-ownership	
Bodily Injury Property Damage (per occurrence)	<u>\$1,000,000.00</u>
Aggregate	<u>\$1,000,000.00</u>

The Commercial General Liability and the Automobile Liability policies shall name the City of Kerrville, Texas, as additional insured and all policies shall provide for a waiver of subrogation in favor of the City of Kerrville. The policy and any renewal certificate shall provide that the City be notified thirty (30) days prior to cancellation or modification of any coverage. Language to the effect that the company will "Endeavor" or "Attempt" to so notify the City of Kerrville is not sufficient.

Renewal certificates must be received by the City at least ten (10) days prior to any cancellation date. Policies will be in effect until final acceptance or cancellation of this contract, unless otherwise specified. The City may, at its sole option, terminate this agreement and file a claim on the Contractor's bid bond if the Contractor fails to deliver the required policies and certificates within 15 days after execution of this contract.

It shall be the responsibility of the Contractor to insure that all Subcontractors comply with the same insurance requirements as the said Contractor.

#### 7. CASUALTY INSURANCE

In the event the work includes structures or buildings susceptible to damage by fire, windstorm, or other casualty, then the Contractor before being authorized to begin work shall furnish the City a duplicate original of an insurance policy naming the City of Kerrville as an additionally insured. Such insurance shall insure both the City of Kerrville and Contractor, during the term of the work, against loss by fire, windstorm, vandalism, theft, or other casualty. Such policy shall be in the total amount of this contract.

#### 8. QUALITY OF WORK

All work shall be of good workmanship. Contractor shall comply with all applicable City of Kerrville Codes as well as all applicable professional and technical standards. Materials shall be of first quality.

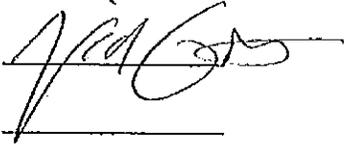
#### 9. CHANGES AND EXTRAS

No change of this Contract, whether for additional work, additional compensation, or other, shall be effective unless prior thereto a written change order has been authorized by the City Engineer.

#### 10. ADDENDA

Contractor acknowledges the receipt of the following addenda:

1. Dated: 10-21-10

Acknowledged by: 

2. Dated: \_\_\_\_\_

Acknowledged by: \_\_\_\_\_

#### 11. AWARD OF CONTRACT

The lowest qualified bidder will be awarded the base bid plus any combination of additive alternates pending availability of funds and City Council approval.

#### 12. CONTRACT SUM

Proposal: Contractor agrees to provide all labor, materials, and all incidentals necessary to complete "The Work" for the following Unit Prices:

ITEM NO.	APPROX. QUANTITY	UNIT	DESCRIPTION OF ITEM	UNIT PRICE	TOTAL AMOUNT
<b>BASE BID</b>					
1	1	LS	Mobilization and Bonds (5% of Base Bid Max)		\$ 1,000.00
2	1	LS	Interior and Exterior Blasting, Priming and Repainting complete and in place	\$155,000.	\$155,000.00
3	1	LS	Replace Exterior and Interior Ladders w/ Sa&T- Climb System complete and in place	\$ 15,000.	\$15,000.00
4	1	LS	Replace Roof Vent complete and in place	\$ 3,000.	\$ 3,000.00
5	1	LS	Replace Level Float Gauge Assembly complete and in place	\$ 1,500.	\$ 1,500.00
6	12	EA.	Replace Interior Roof Rafters complete and in place	\$ 30.00	\$ 360.00
7	20	SF	Replace 3/16-inch roof steel plate complete and in place	\$ 50.00	\$ 1,000.00
8	1	LS	Remove Center Column Dollar Plate and Replace with Support Ring. Modify all Support Rafters to Match Support Ring complete and in place	\$6,000.	\$ 6,000.00
9	1	LS	Storage Tank Sterilization-complete in place	\$1,000.	\$ 1,000.00
<b>TOTAL BASE BID</b>				<b>\$182,580</b>	<b>\$ 183,860.00</b>

COMPLETED BY

N.G. Painting, L.P.

General Contractor Name

10-26-10

Date

Nick Gramatikakis

General Contractor Representative

President

Title

Sub-Contractors:

	NAME	ADDRESS	PHONE	WORK TO BE PERFORMED
1.	No Subcontractors			
2.				
3.				

(Attach additional sheet if required)

INSURANCE AGENT

NAME            ADDRESS            PHONE            POLICY

1. Siegeler Insurance Agency

2. 172 W. Austin St, Giddings, TX 78942      800-283-4086

BONDING AGENT

NAME            ADDRESS            PHONE            POLICY

1. Suretec Insurance Agency

2. 9737 Great Hills Trail, Ste. 320, Austin, TX 78759

3. \_\_\_\_\_

•Signed this 27th day of October, 2010

Attest: NG Painting, LP Contractor  
Dawn Peltz  
Secretary  
(if bid by a Corporation)  
BY: Nick Gramatikakis  
Title: President

SEAL

Business Address:  
1225 Bandera Hwy. Ste. A2  
Kerrville, TX 78028

Phone: 830-257-5940

Fax: 830-792-4968

ACCEPTED THIS \_\_\_\_\_  
day of \_\_\_\_\_, 2010

By: \_\_\_\_\_  
Todd Parton, City Manager  
City of Kerrville, Texas.

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

APPROVED AS TO FORM:  
\_\_\_\_\_  
Mike Hayes, City Attorney

**Project Name : College Cove Tank Repaint  
Engineering Number : PW10-004**

General Contractors	Addendum No. One Acknowledged	Bid Security	Base Bid
N.G. Painting	√	√	\$183,860.00
Caldwell Tanks		√	\$192,300.00
Corrosion Eliminators	√	√	\$214,990.00
Central Tank Coating, Inc.		√	\$233,900.00
M.K. Painting, Inc.		√	\$234,000.00
Horizon Brothers Painting		√	\$238,200.00
Utility Service Company		√	\$270,400.00
Tank Pro		√	\$272,444.00
A & M Construction		√	<b>\$272,470.00</b>
PASI		√	\$291,835.00
L.C. United Painting Company	√	√	\$297,800.00
Classic Protective Coatings		√	\$297,800.00

**Agenda Item:**  
**(Staff)**

- 3D. Authorize execution of a Homeland Security grant in the amount of \$125,000 for the police department to purchase communications equipment and power generators.

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

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**SUBJECT:** Grant Award HSGP FY2010 State Homeland Security Program Acceptance

**FOR AGENDA OF:** November 9, 2010

**DATE SUBMITTED:** November 3, 2010

**SUBMITTED BY:** Chief John Young

**CLEARANCES:** Todd Parton, City  
Manager

**EXHIBITS:** Grant Document

**AGENDA MAILED TO:**

**APPROVED FOR SUBMITTAL BY CITY MANAGER:**

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

**PAYMENT TO BE MADE TO:**

**REVIEWED BY THE FINANCE DIRECTOR:**

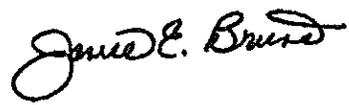
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**SUMMARY STATEMENT**

The Kerrville City Council approved the submission of a grant application to the Alamo Area Council of Governments for HSGP FY2010 project funding totaling \$125,000. The grant application has been approved and will be utilized to purchase communications antennas, repeaters and backup power generators to enhance the city's communications interoperability.

**RECOMMENDED ACTION**

The City of Kerrville has been awarded the \$125,000 HSGP FY 2010 grant. The Chief of Police recommends council accept the grant and authorize the Mayor to sign and execute the grant documents.

	<b>Texas Department of Public Safety</b>							
	<b>2010 Sub-Recipient Award</b> for <b>City of Kerrville</b>							
Date of Award								
October 20, 2010								
<b>1. Sub-Recipient Name and Address</b>	<b>2. Prepared by:</b> Seals, Freddie	<b>3. SAA Award Number:</b> 10-SR 39040-01						
Mayor David Wampler City of Kerrville 800 Junction Hwy Kerrville, TX 78028	<b>4. Federal Grant Information</b>							
	<b>Federal Grant Title:</b>	Homeland Security Grant Program (HSOP) State Homeland Security Program(SHSP)						
	<b>Federal Grant Award Number:</b>	2010-SS-T0-0008						
	<b>Date Federal Grant Awarded to TxDPS:</b>	August 1, 2010						
	<b>Federal Granting Agency:</b>	Department of Homeland Security FEMA Grant Programs Directorate						
<b>5. Award Amount and Grant Breakdowns</b>								
<b>SHSP Award Amount (Federal)</b>  CFDA: 97.073  <b>\$125,000.00</b>	<table border="1"> <tr> <th colspan="2">Grant Period:</th> </tr> <tr> <td style="text-align: center;">From: Aug 1, 2010</td> <td style="text-align: center;">To: Jul 31, 2012</td> </tr> <tr> <td colspan="2" style="text-align: center;">(The SAA must receive all invoices by the end of grant period)</td> </tr> </table>		Grant Period:		From: Aug 1, 2010	To: Jul 31, 2012	(The SAA must receive all invoices by the end of grant period)	
Grant Period:								
From: Aug 1, 2010	To: Jul 31, 2012							
(The SAA must receive all invoices by the end of grant period)								
<b>6. Statutory Authority for Grant:</b> This project is supported under Department of Homeland Security Appropriations Act, 2010 (Public Law 111-83).								
<b>7. Method of Payment:</b> Primary method is reimbursement.								
<b>8. Debarment/Suspension Certification:</b> The Sub-Recipient certifies that the sub-recipient and its contractors/vendors are not debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded by any federal department or agency and do not appear in the Excluded Parties List System at <a href="http://www.epls.gov.2.8.9029.0">http://www.epls.gov.2.8.9029.0</a>								
<b>9. Agency Approval</b>								
<b>Approving TxDPS Official:</b>	<b>Signature of TxDPS Official:</b>							
Janice E. Bruno, Administrator State Administrative Agency Texas Department of Public Safety								
<b>10. Sub-Recipient Acceptance</b>								
I have read and understand the attached Terms and Conditions.								
<b>Type name and title of Authorized Sub-Recipient official:</b>	<b>Signature of Sub-Recipient Official:</b>							
<b>11. Enter Employer Identification Number (EIN) / Federal Tax Identification Number:</b>		<b>12. Date Signed :</b>						
<b>13. DUE DATE:</b> <span style="border: 1px solid black; padding: 2px;">December 4, 2010</span>								
Signed award and Direct Deposit Form (If applicable) must be returned to TxDPS on or before the above due date.								

## 2010 TERMS AND CONDITIONS

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**Instructions:**

*The Sub-recipient must:*

1. Fill in the contact information and sign the Sub-Recipient Award
2. Certify they have read and understand the Terms and Conditions by initialing the bottom of each page.
3. Fill in the contact information located on Page 4.
4. Certify to the statements provided in Exhibits A and B and C located at the back of this document by filling in contact information and signing both exhibits.
5. Return all documents to the SAA in accordance with the date provided in the transmittal letter and/or in the agreement.

### **Parties to Sub-recipient Agreement**

This Sub-recipient Agreement (includes the Sub-recipient Award and the Terms and Conditions) is made and entered into by and between the Department of Public Safety / State Administrative Agency, (DPS/SAA) an agency of the State of Texas, hereinafter referred to as "DPS/SAA," and the funds recipient, hereinafter referred to as the "Sub-recipient." Furthermore, DPS/SAA and the Sub-recipient are collectively hereinafter referred to as the "Parties." The Sub-recipient Agreement is only an offer until the Sub-recipient returns the signed copy of the 2010 Sub-recipient Agreement in accordance with the date provided in the transmittal letter and/or in the agreement Sub-recipient Agreement Award.

Sub-recipient must not assign or transfer any interest in this Sub-recipient Agreement without the express, prior written consent of the SAA.

### **Overview, and Performance Standards**

All allocations and use of funds under this grant must be in accordance with the FY 2010 Guidelines and Application Kit for the Federal Grant Title specified on the Sub-recipient Agreement Award. All award Sub-recipients are required to have read, understood and accepted the FY 2010 Guidance and Application Kit as binding.

**Standard of Performance.** The Sub-recipient shall perform all activities and projects entered into the SAA web-based grants management system approved by its Regional Planning Group / Urban Area Working Group and/or by the State Administrative Agency (SAA) as applicable. The Sub-recipient shall perform all activities in accordance with all terms, provisions and requirements set forth in this Sub-recipient agreement, Terms and Conditions and the following Exhibits located at the end of this document:

1. Assurance – Non-Construction Programs, hereinafter referred to as "Exhibit A"
2. Assurance – Construction Programs, hereinafter referred to as "Exhibit B"
3. Certification, hereinafter referred to as "Exhibit C"

**Failure to Perform.** In the event the Sub-recipient fails to implement the project(s) entered into the SAA web-based grants management system, or comply with any of this Sub-recipient agreement's provisions, in addition to the remedies specified in this Sub-recipient agreement, the Sub-recipient is liable to DPS/SAA for an amount not to exceed the award amount of this Sub-recipient agreement and may be barred from applying for or receiving additional DHS/FEMA grant program funds or any other federal program funds administered by DPS/SAA until repayment to DPS/SAA is made and any other compliance or audit finding is satisfactorily resolved.

Initial \_\_\_\_\_ Date \_\_\_\_\_

## **DPS/SAA Obligations**

**Measure of Liability.** DPS/SAA shall not be liable to the Sub-recipient for any costs incurred by the Sub-recipient that are not allowable costs.

**Sub-recipient Agreement Funds Defined and Limit of Liability.** The term "Sub-recipient agreement funds" as used in this Sub-recipient agreement means funds provided by DPS/SAA under the DHS/FEMA grant programs. The term "Sub-recipient's funds" or match funds as used in this Sub-recipient agreement means funds provided by the Sub-recipient.

Notwithstanding any other provision of this Sub-recipient agreement, the total of all payments and other obligations incurred by DPS/SAA under this Sub-recipient agreement shall not exceed the Total Award Amount listed on the cover page of the Sub-recipient agreement.

Sub-recipient shall contribute the match funds listed on the Sub-recipient Award page.

**Excess Payments.** The Sub-recipient shall refund to DPS/SAA any sum of Sub-recipient agreement funds that has been paid to the Sub-recipient by DPS/SAA or that DPS/SAA determines has resulted in overpayment to the Sub-recipient or that DPS/SAA determines has not been spent by the Sub-recipient in accordance with this Sub-recipient agreement. No refund payment(s) may be made from local, state or federal grant funds unless repayment with grant funds is specifically permitted by statute or regulation. The Sub-recipient shall make such refund to DPS/SAA within thirty (30) days after DPS/SAA requests such refund.

## **Suspension**

In the event the Sub-recipient fails to comply with any of this Sub-recipient Agreement's terms, DPS/SAA may, upon written notification to the Sub-recipient, suspend this Sub-recipient agreement in whole or in part, withhold payments to the Sub-recipient and prohibit the Sub-recipient from incurring additional obligations of Sub-recipient agreement funds.

## **Termination**

**DPS/SAA's Right to Terminate.** DPS/SAA shall have the right to terminate this Sub-recipient agreement, in whole or in part, at any time before the end of the Performance Period, whenever DPS/SAA determines that the Sub-recipient has failed to comply with any of this Sub-recipient agreement's terms. DPS/SAA shall notify the Sub-recipient in writing prior to the thirtieth (30th) day preceding the termination of such determination and include:

1. the reasons for such termination;
2. the effective date of such termination; and
3. In the case of partial termination, the portion of the Sub-recipient agreement to be terminated.

Appeal will be made to the Deputy Director of Homeland Security, Department of Public Safety.

## **Enforcement**

In taking an enforcement action, the awarding agency will provide the sub-recipient an opportunity for such hearing, appeal, or other administrative proceeding to which the sub-recipient is entitled under any statute or regulation applicable to the action involved.

Initial \_\_\_\_\_ Date \_\_\_\_\_

## **Conflict of Interest**

No employee, officer or agent of the sub-recipient shall participate in selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved.

## **Monitoring**

Sub-recipients will be monitored periodically by federal or state agencies, both programmatically and financially, to ensure that project goals, objectives, performance requirement, timelines, milestone completion, budget, and other related program criteria are being met.

DPS/SAA reserves the right to perform periodic office-based and/or on-site monitoring of the Sub-recipient's compliance with this Sub-recipient agreement's terms and conditions and of the adequacy and timeliness of the Sub-recipient's performance pursuant to this Sub-recipient agreement. After each monitoring visit, DPS/SAA shall provide the Sub-recipient with a written report of the monitor's findings. If the monitoring report notes deficiencies in the Sub-recipient's performance under this Sub-recipient agreement's terms, the monitoring report shall include requirements for the timely correction of such deficiencies by the Sub-recipient. Failure by the Sub-recipient to take action specified in the monitoring report may be cause for this Sub-recipient agreement's suspension or termination pursuant to the Suspension and/or Termination Section.

## **Audit**

**Audit of Federal and State Funds.** The Sub-recipient shall arrange for the performance of an annual financial and compliance audit of Sub-recipient agreement funds received and performances rendered under this Sub-recipient agreement as required by the Single Audit Act (OMB Circular A -- 133; 44 C.F.R. 13.26) and as outlined in Exhibit A. The Sub-recipient will also comply, as applicable, with Texas Government Code, Chapter 783, 1 TAC 5.141.et.seq. and the Uniform Grant Management Standards (UGMS), State Uniform Administrative Requirements for Grants and Cooperative Agreements.

**DPS/SAA's Right to Audit.** DPS/SAA reserves the right to conduct a financial and compliance audit of Sub-recipient agreement funds received and performances rendered under this Sub-recipient agreement. The Sub-recipient agrees to permit DPS/SAA or its authorized representative to audit the Sub-recipient's records. The sub-recipient shall provide any documents, materials or information necessary to facilitate such audit.

**Sub-recipient's Liability for Disallowed Costs.** The Sub-recipient understands and agrees that it shall be liable to DPS/SAA for any costs disallowed pursuant to financial and compliance audit(s) of Sub-recipient agreement funds. The Sub-recipient further understands and agrees that reimbursement to DPS/SAA of such disallowed costs shall be paid by the Sub-recipient from funds that were not provided or otherwise made available to the Sub-recipient pursuant to this Sub-recipient agreement or any other federal contract.

**Sub-recipient's Facilitation of Audit.** The Sub-recipient shall take such action to facilitate the performance of such audit(s) conducted pursuant to this Section as DPS/SAA may require of the Sub-recipient. The Sub-recipient shall ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through the Sub-recipient and the requirement to cooperate is included in any subcontract it awards.

## **Other Requirements**

A. During the performance period of this grant, Sub-recipients must maintain an Emergency Management Plan at the Intermediate Level of planning preparedness or higher, as prescribed by the Texas Division of Emergency Management (TDEM). This may be accomplished by a jurisdiction maintaining its own emergency management plan or participating in an inter-jurisdictional emergency management program that meets the required standards. If TDEM identifies deficiencies in the Sub-recipient's plan, Sub-recipient will correct deficiencies within 60 days of receiving notice of such deficiencies from TDEM.

Initial \_\_\_\_\_ Date \_\_\_\_\_

B. Projects identified in the SAA web-based grant management system must identify and relate to the goals and objectives indicated by the applicable approved project investments for the period of performance of the grant.

C. During the performance period of this grant, Sub-recipient agrees that it will participate in a legally-adopted county and/or regional mutual aid agreement.

D. During the performance period, the Sub-recipient must be a registered user of the Texas Regional Response Network (TRRN) and identify all major resources such as vehicles and trailers, equipment costing \$5,000 or more and specialized teams/response units equipped and/or trained using grant funds (i.e. hazardous material, decontamination, search and rescue, etc.). This registration is to ensure jurisdictions or organizations are prepared to make grant funded resources available to other jurisdictions through mutual aid.

E. Sub-recipients must submit Fiscal Year 2010 Indirect Cost Allocation Plan signed by Cognizant Agency - "Cognizant agency" means the Federal agency responsible for reviewing, negotiating, and approving cost allocation plans or indirect cost proposals developed under 2 CFR part 225 on behalf of all Federal agencies. OMB publishes a listing of cognizant agencies. Plan should be forwarded to the SAA along with the Planning and Administration Grant Budget Form.

F. Council of Governments (COG) will follow guidelines listed in the SAA FY 10 COG Statement of Work.

G. Sub-recipient acknowledges that FEMA National Preparedness Directorate reserves a royalty-free, non-exclusive, and irrevocable license to reproduce, publish, or otherwise use, and authorize others to use, for Federal government purposes: (1) the copyright in any work developed under an award or sub-award; and (2) any rights of copyright to which a recipient or Sub-recipient purchases ownership with Federal support. The sub-recipient agrees to consult with DPS/SAA regarding the allocation of any patent rights that arise from, or are purchased with, this funding.

### **Closing the Grant**

A. The Sub-recipient must have expended all grant funds and submitted expenditure reimbursement requests and any invoices by the end of the performance period listed on the sub-recipient agreement.

B. DPS/SAA will close a sub-award after receiving Sub-recipient's final performance report indicating that all approved work has been completed and all funds have been disbursed, completing a review to confirm the accuracy of the reported information, and reconciling actual costs to awards modifications and payments. If the close out review and reconciliation indicates that the Sub-recipient is owed additional funds, DPS/SAA will send the final payment automatically to the Sub-recipient. If the Sub-recipient did not use all the funds received, DPS/SAA will issue a Grant Adjustment Notice (GAN) to recover the unused funds.

C. At the completion of the sub-recipient's performance period, DPS/SAA will de-obligate all uncommitted / unexpended funds.

### **Restrictions, Disclaimers and Notices**

A. In cases where local funding is established by a COG or UASI, governing board, the release of funds by DPS/SAA is contingent upon funding allocation approval by the governing board.

B. Notwithstanding any other agreement provisions, the parties hereto understand and agree that DPS/SAA's obligations under this agreement are contingent upon the receipt of adequate funds to meet DPS/SAA's liabilities hereunder, except as required by IECGP and HSGP grants. DPS/SAA shall not be liable to the Sub-recipient for costs under this Agreement which exceed the amount specified in the Notice of Sub-recipient Award.

C. All notices or communication required or permitted to be given by either party hereunder shall be deemed sufficiently given if mailed by registered mail or certified mail, return receipt requested, or sent by overnight courier, such as Federal Express, to the other party at its respective address set forth below or to the Point of Contact listed for the sub-recipient in the SAA Grants Management System shall be deemed received the following business day.

Initial \_\_\_\_\_ Date \_\_\_\_\_

DPS/SAA Contact Information
Deputy Director, Homeland Security Texas Department of Public Safety State Administrative Agency P.O. Box 4087 Austin, TX 78773-0220

Sub-Recipient Contact Information
(Please Fill-In Contact Information below)
Name:
Title:
Agency:
Address:

**Uniform Administrative Requirements, Cost Principles and Audit Requirements**

Except as specifically modified by law or this Sub-recipient agreement's provisions, the Sub-recipient shall administer the award through compliance with the most recent version of all applicable Laws and Regulations. A non-exclusive list is provided below

A. Administrative Requirements

1. 44 C.F.R. Part 13, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments;
2. 2 C.F.R. Part 215, Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations (OMB Circular A-110).

B. Cost Principles

1. 2 C.F.R. Part 225, Cost Principles for State, Local and Indian Tribal Governments (OMB Circular A-87)
2. 2 C.F.R. Part 220, Cost Principles for Education Institutions (OMB Circular A-21)
3. 2 C.F.R. Part 230, Cost Principles for Non-Profit Organizations (OMB Circular A-122)
4. Federal Acquisition Regulations (FAR) Subpart 31.2, Contracts with Commercial Organizations

C. Audit Requirements – OMB Circular A-133, Audits of States, Local Governments and Non-Profit Organizations.

D. Sub-recipient understands and agrees that it cannot use any federal funds, either directly or indirectly, in support of the enactment, repeal, modification or adoption of any law, regulation or policy, at any level of government, without the express prior written approval of FEMA.

E. The sub-recipient agrees that all allocations and use of funds under this grant will be in accordance with the applicable FY2010 Grant Program Guidance and Application Kit.

F. The recipient must provide information to FEMA to assist with the legally-required environmental planning and historic preservation (EHP) review and to ensure compliance with applicable EHP laws and Executive Orders (EO). These EHP requirements include but are not limited to National Environmental Policy Act, National Historic Preservation Act, Endangered Species Act, EO 11988 – Floodplain Management, EO 11990 – Protection of Wetlands, and EO 12898 – Environmental Justice. The recipient must comply with all Federal, State, and local EHP requirements and obtain applicable permits and clearances.

Recipient shall not undertake any activity from the project that would result in ground disturbance, facility modification, or relates to the use of sonar equipment without the prior approval of FEMA. These include but are not limited to communications towers, physical security enhancements involving ground disturbance, new construction, and modifications to buildings that are 50 years old or older. Recipient must comply with all mitigation or treatment measures required for the project as the result of FEMA's EHP review. Any changes to an approved project description will require re-evaluation for compliance with EHP requirements before the project can proceed. If ground disturbing activities occur during project implementation, the recipient must ensure monitoring of ground disturbance and if any potential archeological resources are discovered, the recipient will immediately cease construction in that area and notify FEMA and the appropriate State Historical Preservation Office. Initiation of these activities prior to completion of FEMA's EHP review will result in a non-compliance finding and may not be eligible for grant funding.

G. Sub-recipient shall also comply with all other federal, state, and local laws and regulations applicable to this Sub-recipient agreement's activities and performances rendered by the Sub-recipient including but not limited to the laws and the regulations promulgated in State Administrative Agency Information Bulletins, and Texas Uniform Grants Management Standards (UGMS).

H. The sub-recipient(s) must, in addition to the assurances, comply and require each of its subcontractors employed in the completion of the project to comply with all applicable statutes, regulations, executive orders, OMB circulars, terms and conditions of the award, and the approved application.

Initial \_\_\_\_\_ Date \_\_\_\_\_

## **Retention and Accessibility of Records**

**Retention of Records.** The Sub-recipient shall maintain fiscal records and supporting documentation for all expenditures of Sub-recipient agreement funds pursuant to the applicable OMB Circular and this Sub-recipient agreement. The Sub-recipient shall retain these records and any supporting documentation for the greater of three (3) years from the completion of this project's public objective, including program requirements and financial obligations, or the period of time required by other applicable laws and regulations. Sub-recipient shall comply with 44 CFR Section 13.42 and UGMS §-\_\_42

**Access to Records.** The Sub-recipient shall give the United States Department of Homeland Security (DHS), the Comptroller General of the United States, the Texas State Auditor, DPS/SAA, or any of their duly authorized representatives, access to and the right to examine all books, accounts, records, reports, files, other papers, things or property belonging to or in use by the Sub-recipient pertaining to this Sub-recipient agreement including records concerning the past use of DHS/FEMA funds. Such rights to access shall continue as long as the records are retained by the Sub-recipient. The Sub-recipient agrees to maintain such records in an accessible location and to provide citizens reasonable access to such records consistent with the Texas Public Information Act, , and Texas Government Code Chapter 552.

**Inclusion in Subcontracts.** The Sub-recipient shall include the substance of this Section in all subcontracts.

## **Legal Authority**

**Signatory Authority.** The Sub-recipient assures and guarantees that the Sub-recipient possesses the legal authority to enter into this Sub-recipient agreement, receive Sub-recipient agreement funds and to perform the services the Sub-recipient has obligated itself to perform pursuant to this Sub-recipient agreement.

**Authorized Representative.** The person or persons signing and executing this Sub-recipient agreement on the Sub-recipient's behalf do warrant and guarantee that he, she or they have been duly authorized by the Sub-recipient to execute this Sub-recipient agreement on the Sub-recipient's behalf and to validly and legally bind the Sub-recipient to all contractual terms, performances and provisions.

**Conflicts in Requirements.** If conflict exists between federal, state, or local requirements, the sub-recipient shall comply with the strictest requirement. .

## **Notice of Litigation and Claims**

The Sub-recipient shall give DPS/SAA immediate notice in writing of any action, including any proceeding before an administrative agency, filed against the Sub-recipient arising out of the performance under this Sub-recipient agreement

Except as otherwise directed by DPS/SAA, the Sub-recipient shall furnish immediately to DPS/SAA copies of all documentation or pleadings received by the Sub-recipient with respect to such action or claim.

## **Non-Waiver of Defaults**

ANY FAILURE OF DPS/SAA, AT ANY TIME, TO ENFORCE OR REQUIRE THE STRICT KEEPING AND PERFORMANCE OF ANY PROVISION OF THIS AGREEMENT WILL NOT CONSTITUTE A WAIVER OF SUCH PROVISION, AND WILL NOT AFFECT OR IMPAIR SAME OR THE RIGHT OF DPS/SAA AT ANY TIME TO AVAIL ITSELF OF SAME. A WAIVER DOES NOT BECOME EFFECTIVE UNLESS DPS/SAA EXPRESSLY AGREES TO SUCH WAIVER IN WRITING. ANY PAYMENT BY DPS/SAA SHALL NOT CONSTITUTE A WAIVER OR OTHERWISE IMPAIR OR PREJUDICE ANY RIGHT, POWER, PRIVILEGE, OR REMEDY AVAILABLE TO DPS/SAA TO ENFORCE ITS RIGHTS, AS SUCH RIGHTS, POWERS, PRIVILEGES, AND REMEDIES ARE SPECIFICALLY PRESERVED.

Initial \_\_\_\_\_ Date \_\_\_\_\_

**Indemnity**

AS PERMITTED BY LAW, SUB-RECIPIENT SHALL INDEMNIFY, DEFEND AND HOLD DPS/SAA AND THE STATE OF TEXAS (INCLUDING ITS DIRECTORS, COMMISSIONERS, EMPLOYEES, AGENTS AND THEIR SUCCESSORS) ("INDEMNITEES") HARMLESS FROM AND AGAINST ANY OF THE FOLLOWING THAT ARISE OUT OF OR RESULT FROM SUB-RECIPIENT'S NEGLIGENCE (ANY AND ALL), FAULT, ACT, FAILURE TO ACT, OMISSION, BREACH OF THIS AGREEMENT OR VIOLATION OF ANY STATE OR FEDERAL LAW AND/OR REGULATION, AS WELL AS ANY VIOLATION OF ANY MATTER MADE THE BASIS OF A TREATY AND/OR CONVENTION AND/OR AGREEMENT BETWEEN THE UNITED STATES AND ANOTHER NATION: CLAIMS; LAWSUITS; DAMAGES; LIABILITIES; PENALTIES; TAXES; FINES; INTEREST; EXPENSES (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, COURT COSTS, INVESTIGATION COSTS AND ALL DIRECT OR INDIRECT COSTS OR EXPENSES INCURRED IN DEFENDING AGAINST ANY CLAIM, LAWSUIT, OR OTHER PROCEEDING, INCLUDING THOSE EXPENSES INCURRED IN ANY NEGOTIATION, SETTLEMENT, OR ALTERNATIVE DISPUTE RESOLUTION); ANY AND ALL DAMAGES, HOWEVER CHARACTERIZED, SUCH AS DIRECT, GENERAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL, PUNITIVE, OR SPECIAL DAMAGES OF ANY KIND (INCLUDING LOST REVENUES OR PROFITS, LOSS OF BUSINESS, LOSS OF USE, OR LOSS OF DATA) ARISING OUT OF OR IN CONNECTION WITH OR RELATED TO THIS AGREEMENT OR THE RIGHTS PROVIDED THEREIN.

IN ANY AND ALL CLAIMS AGAINST ANY OF THE INDEMNITEES BY ANY EMPLOYEE OF THE SUB-RECIPIENT OR ANY EMPLOYEE OF ITS SUBCONTRACTOR(S), THE INDEMNIFICATION OBLIGATION UNDER THIS AGREEMENT WILL NOT BE LIMITED IN ANY WAY BY THE AMOUNT OR TYPE OF DAMAGES, COMPENSATION, OR BENEFITS PAYABLE BY OR FOR THE SUB-RECIPIENT OR ANY OF ITS SUBCONTRACTOR(S) UNDER WORKER'S DISABILITY COMPENSATION ACTS, DISABILITY BENEFITS ACTS, OR OTHER EMPLOYEE BENEFITS ACTS.

SUB-RECIPIENT SHALL COORDINATE ITS DEFENSE AND ANY SETTLEMENT WITH THE ATTORNEY GENERAL FOR THE STATE OF TEXAS AS REQUESTED BY THE DPS/SAA. IN ANY SETTLEMENT, SUB-RECIPIENT MUST NOT MAKE ANY ADMISSION OF LIABILITY ON THE PART OF ANY OF THE INDEMNITEES.

THIS SECTION SHALL NOT BE CONSTRUED TO ELIMINATE OR REDUCE ANY OTHER INDEMNIFICATION, CONTRIBUTION OR RIGHT WHICH ANY OF THE INDEMNITEES HAVE BY LAW OR EQUITY.

THIS SECTION SHALL SURVIVE THE TERMINATION OR EXPIRATION OF THIS AGREEMENT.

**Changes and Amendments**

Written Amendment. Except as specifically provided otherwise in this Sub-recipient agreement, any alterations, additions or deletions to this Sub-recipient agreement's terms shall be made through Grant Adjustment Notices generated by the SAA web-based grants management system and executed by the Parties.

Authority to Amend. During the period of this Sub-recipient agreement's performance DPS/SAA and/or FEMA may issue policy directives that serve to establish, interpret or clarify this Sub-recipient agreement's performance requirements. Such policy directives shall be promulgated by DPS/SAA or FEMA in the form of Information Bulletins and shall have the effect of qualifying this Sub-recipient agreement's terms and shall be binding upon the Sub-recipient as if written in the Sub-recipient agreement.

Effect of Changes in Federal and State Laws. Any alterations, additions, or deletions to this Sub-recipient agreement's terms that are required by the changes in federal and state laws or regulations are automatically incorporated into this Sub-recipient agreement without written amendment to this Sub-recipient agreement and shall become effective on the date designated by such law or regulation. . In the event FEMA or DPS/SAA determines that changes are necessary to the award document after an award has been made, including changes to period of performance or terms and conditions, recipients will be notified of the changes in writing. Once notification has been made, any subsequent request for funds will indicate sub-recipient acceptance of the changes to the award.

Initial \_\_\_\_\_ Date \_\_\_\_\_

**Headings**

Headings and captions of this Sub-recipient agreement's sections and paragraphs are only for convenience and reference. These headings and captions shall not affect or modify this Sub-recipient agreement's terms or be used to interpret or assist in the construction of this Sub-recipient agreement.

**Venue**

For purposes of litigation pursuant to this Sub-recipient agreement, venue shall lie in Travis County, Texas, and be governed by Texas Law.

Initial \_\_\_\_\_ Date \_\_\_\_\_

## Special Conditions

### 2010 Operation Stonegarden (OPSG) Specific:

1) The recipient is prohibited from obligating or expending Operation Stonegarden (OPSG) funds provided through this award until each unique, specific or modified county level or equivalent Operational Order/Frag Operations Order with embedded estimated operational budget has been reviewed and approved through an official email notice issued by FEMA removing this special programmatic condition. The Operations Order approval process/structure is as follows: Operations Orders are submitted to (1) the appropriate Customs and Border Protection (CBP) Border Patrol (BP) Sector Headquarters (HQ); upon approval by the Sector HQ, forwarded through the Border Patrol Enforcement Transfer System (BPETS) system to (2) the OPSG Coordinator, CBP/BP Washington, DC and upon approval forwarded to (3) Federal Emergency Management Agency (FEMA), Grant Programs Directorate (GPD), Grant Development and Administration Division (GD&A). Notification of release of programmatic hold will be sent by FEMA via email to the State Administrative Agency (SAA) with a copy to OPSG Coordinator at CBP/BP HQ, Washington DC.

### General:

1)

a) Provisions applicable to a sub-recipient that is a private entity.

i) You as a sub-recipient, your employees, may not:

- (1) Engage in severe forms of trafficking in persons during the period of time that the award is in effect;
- (2) Procure a commercial sex act during the period of time that the award is in effect; or
- (3) Use forced labor in the performance of the award or sub-award under this award.

ii) We may unilaterally terminate this award, without penalty, if the sub-recipient that is a private entity:

- (1) Is determined to have violated a prohibition in paragraph 1a of this award term; or
- (2) Has an employee who is determined by the agency official authorized to terminate the award to have violated a prohibition of this award term through conduct that is either:

(a) Associated with performance under this award; or

(b) Imputed to you or the sub-recipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR Part 180, "OMB Guidelines to Agencies on Government Debarment and Suspension (Non-procurement)," as implemented at 2 CFR Part 3000.

b) Provisions applicable to a sub-recipient that is other than a private entity. We may unilaterally terminate this award, without penalty, if the sub-recipient that is a private entity:

i) Is determined to have violated a prohibition in paragraph 1a of this award term; or

ii) Has an employee who is determined by the agency official authorized to terminate the award to have violated an applicable prohibition in paragraph a1 of this award term through conduct that is either:

(1) Associated with performance under this award; or

(2) Imputed to you or the sub-recipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR Part 180, "OMB Guidelines to Agencies on Government Debarment and Suspension (Non-procurement)," as implemented at 2 CFR Part 3000.

c) Provisions applicable to any recipient:

i) You must inform us immediately of any information you received from any source alleging a violation of a prohibition in paragraph a1 of this award term.

ii) Our right to terminate unilaterally that is described in 1b or 2 of this section:

(1) Implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. 7104 (g)), and

(2) Is in addition to all other remedies for noncompliance that are available to us under this award.

Initial \_\_\_\_\_ Date \_\_\_\_\_



## EXHIBIT A

### ASSURANCES - NON-CONSTRUCTION PROGRAMS

As the duly authorized representative of the sub-recipient, I certify that the sub-recipient:

1. Has the legal authority to apply for Federal assistance and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project cost) to ensure proper planning, management and completion of the project described in this agreement.
2. Will give the Department of Homeland Security, the Department of Public Safety, the Comptroller General of the United States and, if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§4728-4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681- 1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290 dd-3 and 290 ee- 3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which agreement for Federal assistance is being made; and, (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
8. Will comply, as applicable, with provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§327-333), regarding labor standards for federally-assisted construction sub-agreements.
10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more.
11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93- 205).
12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

Initial \_\_\_\_\_ Date \_\_\_\_\_



## EXHIBIT B

### ASSURANCES - CONSTRUCTION PROGRAMS

As the duly authorized representative of the sub-recipient, I certify that the sub-recipient:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of project described in this agreement.
2. Will give the Department of Homeland Security, the Department of Public Safety, the Comptroller General of the United States and, if appropriate, the State, the right to examine all records, books, papers, or documents related to the assistance; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will not dispose of, modify the use of, or change the terms of the real property title or other interest in the site and facilities without permission and instructions from the awarding agency. Will record the Federal awarding agency directives and will include a covenant in the title of real property acquired in whole or in part with Federal assistance funds to assure nondiscrimination during the useful life of the project.
4. Will comply with the requirements of the assistance awarding agency with regard to the drafting, review and approval of construction plans and specifications.
5. Will provide and maintain competent and adequate engineering supervision at the construction site to ensure that the complete work conforms with the approved plans and specifications and will furnish progressive reports and such other information as may be required by the assistance awarding agency or State.
6. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
7. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
8. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§4728-4763) relating to prescribed standards of merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
9. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.
10. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290 dd-3 and 290 ee 3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which agreement for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the agreement.
11. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal and federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
12. Will comply with the provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
13. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§327- 333) regarding labor standards for federally-assisted construction sub-agreements.
14. Will comply with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more.

Initial \_\_\_\_\_ Date \_\_\_\_\_

15. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91- 190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).

16. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

17. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§469a-1 et seq).

18. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations."

19. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

***Please fill in the appropriate information and sign.***

\_\_\_\_\_  
Type Name of Authorized Official

\_\_\_\_\_  
Title

\_\_\_\_\_  
Sub-recipient Organization

\_\_\_\_\_  
Signature of Authorized Official

\_\_\_\_\_  
Date

Initial \_\_\_\_\_ Date \_\_\_\_\_

## Exhibit C

### Certifications

The undersigned, \_\_\_\_\_ (print), as the authorized official of \_\_\_\_\_ certifies the following to the best of his/her knowledge and belief.

A. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee or a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

B. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee or a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL "Disclosure of Lobbying Activities," in accordance with its instructions

C. The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontract, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

D. As required by Executive Order 12549, Debarment and Suspension, and implemented at 28C.F.R. Part 67, for prospective participants in primary covered transactions, as defined at 28C.F.R. Part 67, Section 67.510. (Federal Certification) The Sub-recipient certifies that it and its principals and vendors:

1. Are not debarred, suspended, proposed for debarment, declared ineligible, sentenced to a denial of Federal benefits by a State or Federal court, or voluntarily excluded from covered transactions by any Federal department or agency; Sub-recipients can access debarment information by going to [www.epis.gov](http://www.epis.gov) and the State Debarred Vendor List [http://www.window.state.tx.us/procurement/procvendor\\_performance/debarred/](http://www.window.state.tx.us/prc/http://www.window.state.tx.us/procurement/procvendor_performance/debarred/)

2. Have not within a three-year period preceding this agreement been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (D)(2) of this certification; and

4. Have not within a three-year period preceding this agreement had one or more public transactions (Federal, State, or local) terminated for cause or default; and

5. Where the sub-recipient is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this agreement. (Federal Certification)

E. The Sub-recipient certifies federal funds will be used to supplement existing funds, and will not replace (supplant) funds that have been appropriated for the same purpose. Sub-recipient may be required to supply documentation certifying that a reduction in non-federal resources occurred for reasons other than the receipt or expected receipt of federal funds.

F. Sub-recipient must comply with 2 CFR Part 180 Subpart C as a condition of receiving grant funds, and sub-recipient must require such compliance in any sub-grants or contract at the next tier.

G. Will comply with all applicable requirements of all other federal laws, executive orders, regulations, program and administrative requirements, policies and any other requirements governing this program.

H. Drug-free Workplace Act, as amended, 41 U.S.C. §701 et seq. – Requires the recipient to publish a statement about its drug-free workplace program and give a copy of the statement to each employee (including consultants and temporary personnel) who will be involved in award-supported activities at any site where these activities will be carried out. Also, place(s) where work is being performed under the award (i.e., street address, city, state, and zip code) must be maintained on file. The recipient must notify the Grants Officer of any employee convicted of a violation of a criminal drug statute that occurs in the workplace. For additional information, see 44 CFR Part 17.

Initial \_\_\_\_\_ Date \_\_\_\_\_

I. Understands that failure to comply with any of the above assurances may result in suspension, termination or reduction of grant funds.

***Please fill in the appropriate information and sign.***

\_\_\_\_\_  
Type Name of Authorized Official

\_\_\_\_\_  
Title

\_\_\_\_\_  
Sub-recipient Organization

\_\_\_\_\_  
Signature of Authorized Official

\_\_\_\_\_  
Date

Initial \_\_\_\_\_ Date \_\_\_\_\_

**The Honorable David Wampler  
Mayor, City of Kerrville  
800 Junction Hwy.  
Kerrville, TX 78028**

# TEXAS DEPARTMENT OF PUBLIC SAFETY

5805 N. LAMAR BLVD • BOX 4087 • AUSTIN, TEXAS 78773-0001

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STEVEN C. McCRAW  
DIRECTOR  
LAMAR BECKWORTH  
CHERYL MacBRIDE  
DEPUTY DIRECTORS



COMMISSION  
ALLAN B. POLUNSKY, CHAIR  
C. TOM CLOWE, JR.  
ADA BROWN  
JOHN STEEN  
CARIN MARCY BARTH

October 26, 2010

The Honorable David Wampler  
Mayor, City of Kerrville  
800 Junction Hwy.  
Kerrville, TX 78028

Dear Mayor Wampler:

Please find enclosed Homeland Security Grant Program (HSGP) sub-recipient award documents for your review and signature acceptance as the Chief Elected Official for your area. Funds received under this grant award are to be used to address potential and real time challenges in response to acts of terrorism and all-hazards events only and administered using the following governance documents listed in priority level: FY 2010 Homeland Security Appropriations Act; Presidential Directives; Federal Statutes; Federal Regulations; Office of Management and Budget (OMB) Circulars; Terms and Conditions of award; FY 2010 HSGP Grant guidance; Department of Homeland Security (DHS) Policy; FEMA Policy; and Texas Homeland Security – State Administrative Agency (TXHLS-SAA) Policy.

The attached FY 2010 Sub-Recipient Agreement(s) (SRA) with Terms and Conditions requires your review, signature of acceptance/agreement, and return to the TXHLS-SAA as directed below. Response to this award offer must be received even if you decide to decline the award.

The SRA must be filled out and signed by the person indicated in the address box of the award document. Signature by anyone other than that person will only be accepted as a valid signature of acceptance of the award and agreement to follow grant fund requirements if a letter of designation from the person approved to sign the award is attached indicating he/she authorizes that person to sign on their behalf. Please note that authorization for signature will be deemed as acceptable for signing any documents going forward that pertain to this award unless the letter of authorization indicates otherwise.

You will need to fill in the contact information; sign and date the Sub-Recipient Award(s); certify you have read, understand, and accept the Terms and Conditions (T&Cs) by initializing the bottom of each page of the T&Cs; populate the contact information located in the section entitled

"Restrictions, Disclaimers and Notices" of the T&Cs; certify agreement to the statements provided in Exhibits A, B, and C located at the back of the T&Cs by filling in contact information- signing all exhibits; and return all documents to the TXHLS-SAA by the due date provided in the bottom-left corner of the Sub-Recipient Award(s) box 13.

In addition, the TXHLS-SAA must have a current Direct Deposit Authorization from your organization in order to transfer grant funds electronically to a designated bank account to reimburse you for grant-funded expenses. An electronic version of this form is available for you to download, populate and send to the TXHLS-SAA on the Texas State Comptroller's website at: <http://www.window.state.tx.us/taxinfo/taxforms/74-158.pdf> . If you submitted a completed Direct Deposit Authorization form with prior acceptance documents for HSGP awards, you do not need to submit another authorization unless your bank account information has changed or you wish to receive reimbursement by check instead of by direct deposit.

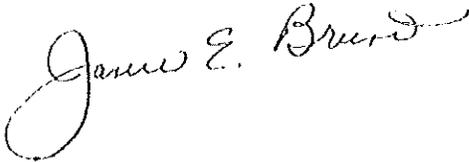
This HSGP SRA offer will be withdrawn if the required materials are not received at the TXHLS-SAA with a postmark no later than the due date indicated on your SRA(s). Extensions to this date will not be granted. You must submit required documents by the due date to the following address:

Texas Department of Public Safety  
TXHLS- State Administrative Agency  
1033 La Posada, Suite 100  
Austin, TX 78752

Please retain a copy of each document submitted to the TXHLS-SAA for your records.

If you have any questions, please contact Edwin Staples at 512-377-0002.

Sincerely,



Janice E. Bruno  
Director  
TXHLS-SAA

JEB:es

**Agenda Item:**  
**(Staff)**

- 3E. Authorize execution of a lease agreement for a city-wide telephone system and telephony services.

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

**SUBJECT:** Authorize City Manager to Execute Lease Agreement for City-Wide Telephone System and Telephony Services

**FOR AGENDA OF:** November 9, 2010    **DATE SUBMITTED:** October 29, 2010

**SUBMITTED BY:** Travis Cochran<sup>TC</sup>    **CLEARANCES:** Kimberly Meisner<sup>KM</sup>  
Director of Information Technology                      Director of General Operations

**EXHIBITS:** Contract

**AGENDA MAILED TO:**

**APPROVED FOR SUBMITTAL BY CITY MANAGER:** 

---

<b>Expenditure</b>	<b>Current Balance</b>	<b>Amount</b>	<b>Account</b>
<b>Required:</b>	<b>in Account:</b>	<b>Budgeted:</b>	<b>Number:</b>
\$58,795.32 / yr.	\$155,682.72	\$172,980.80	Various-301

**PAYMENT TO BE MADE TO:**

**REVIEWED BY THE FINANCE DIRECTOR:** 

**SUMMARY STATEMENT**

On July 13, 2010, Staff presented a concept to replace all existing telephone systems across the City with one centralized, redundant system, and at the same time consolidating our fax services into a centralized faxing system. In addition to productivity benefits such as city-wide extension dialing, digital phone service and quality, and caller ID capabilities, we estimated an annual savings of \$34,000.

On August 16, 2010, we released a request for proposals (RFP) for an IP Telephony Communications System. The RFP was written in such a way where participants could propose the city-wide voice over IP telephone system (VoIP) hardware only, the telephony services only, or both. We provided official advertisements on August 23, 2010 and August 30, 2010. On September 2, 2010, we held a pre-proposal meeting in which six companies participated where we responded to 49 questions. Over the next three weeks, we answered an additional 46 questions to all registered vendors.

At the RFP opening on September 22, 2010, we received responses from 16 different vendors; 13 responded to the VoIP system hardware only, 2 responded to the telephony services only and 1 responded with both.

## Voice Over IP (VoIP) System Hardware

A review committee of Travis Cochrane - Director of IT, Kimberly Meisner - Director of General Operations, and Charvy Tork, Systems Administrator began reviewing and grading each response. The review committee met several times over the following 10 days to evaluate each RFP on the following criteria:

- 10% - Time
- 10% - Project Implementation and Support
- 20% - References
- 30% - Experience, Expertise, Resources and Understanding of Needs
- 30% - Cost

On October 5, 2010, three vendors were selected by the review committee for onsite demonstrations at City Hall to present their full proposed solution. The vendors selected were Altura Communications, Insight Networking, and Windstream Communications.

Onsite demonstrations were held on October 14, 2010 and October 18, 2010 with Windstream and Insight Networking respectively. After numerous attempts to reach Altura Communications with no response, they were removed from the short list.

During each presentation, we brought in members of staff from the Police Department, Public Works and Development Services. These individuals not only represented different departments, they also represented a sampling of various IT-related skill sets present within the organization. Since they were not part of the original RFP review we asked them to evaluate each proposed solution from their perspective, to ask questions, and to get a hands-on feel of each proposed solution.

When the onsite demonstrations were completed we gathered feedback and comments from all who participated and then began negotiating price, service and options with the two remaining vendors.

The solutions proposed by Insight Networking and Windstream each are capable of providing the City with an amazing communications system that will improve our ability to provide exceptional services to our citizens. However, after applying our review criteria, having the onsite demonstrations where we could actually see what was being proposed, and negotiating final quantities and features, we feel the solution from Windstream Communications provides the City with the best overall value.

The recommended solution provides

- redundant call controllers at two physically separate locations providing redundancy within the system's core infrastructure;
- a single voicemail system that integrates within our current email program allowing us to check voicemail on the phone or through the computer;

- the ability to receive and send faxes as email from our computer;
- individually customizable phone keys to allow staff to program any feature supported by the system including transferring a call directly to an individual, picking up another line, and recording a call;
- the ability for IT to customize call routing and call management procedures on a per department basis;
- the ability to grow and customize the current equipment to our needs without having to re-purchase equipment.
- the ability to put the entire City on the same block of numbers while maintaining our already publicly known numbers;
- the reporting capabilities on our call volume, length, and distribution; and
- 24x7x365 support for all hardware and software associated with the system.

These are just a sampling of the new capabilities we will enjoy with the new system.

As part of this process, we visited with each department to identify and address their needs. This evaluation has given us the following phone types and counts across the City.

Phone Description	Qty
5304 – Lobby/Public use style phone	10
5320 – Base phone used where phone is not assigned to an individual	44
5330 – Standard phone used across the City	106
5340 – Adds additional keys for high call volume staff	15
5360 – Enhanced feature phone	17
5550 – Receptionist console	1
5448 - 48 Key Extension for dispatch use	4
Conference phones	4
5610 – Wireless phone used for roaming staff in large areas	4
Headset – Wired	29
Headset - Wireless	4

One of the underlying goals of this project was to put the entire City on a single phone system. In order to accomplish this, we needed to extend the City's data network to a few buildings located away from the main facility. These facilities were the Golf Course Maintenance Barn, the Water Treatment Plant Maintenance Building, and the Recycling Center. This proposal includes the equipment and installation necessary to bring these locations onto the City's data network and ultimately the proposed phone system.

Additionally the network located at the City Maintenance Yard was outdated and not robust enough to support the new phone system. As part of this agreement, Windstream will run a new fiber cable at the City Maintenance Yard to update that network to a point where it will support the new phone system.

The purchase price of the VoIP system is as follows:

VoIP System Hardware	\$ 77,153.06
VoIP System Software	\$ 36,281.24
Network Switches	\$ 23,636.30
Installation, Configuration and Training	\$ 10,712.00
Mitel Competitive Discount	\$ (13,374.85)
Wireless Network Extension	\$ 10,549.30
Fiber Upgrade at the City Yard	\$ 5,562.24
<b>Total System Purchase Price</b>	<b>\$150,519.29</b>

As part of their response to the RFP, Windstream will provide the City a 5 year lease with a \$1 buyout option at the end with 0% interest over the life of the lease. Our monthly cost for this system will be \$2,508.65.

### Telephony System

As mentioned earlier, three vendors chose to respond with a proposal to provide the City with telephony service to support the new system. After a review of each proposal, Windstream's proposal again stood out among the rest. Their proposal included 69 digital lines for the new VoIP system, 400 direct inward dial numbers, caller ID, 10,000 minutes of long distance per month and 16 backup analog lines for the VoIP system all at their proposed base charge of \$1,200 per month.

In addition, we will need to pay \$248.75 for no more than 8 months to transition our existing direct extension over to the new system while staff communicates their new phone number to their contacts. This temporary cost will not exceed \$2,000 for the first year.

### Summary & Cost

When installation of the new system and service is complete, the City's monthly charge can be broken down as follows:

VoIP System Lease	\$ 2,508.65
Telephony Service	\$ 1,200.00
Support/Maintenance	\$ 1,190.96
<b>Total Monthly Payment</b>	<b>\$ 4,899.61</b>

Currently, we pay \$105,000 annually for our land line and fax services. Proceeding with the current proposed solution will save the City \$46,204.68 annually. We will begin to see the full impact of these savings starting in FY 12.

### RECOMMENDED ACTION

Staff recommends City Council authorize the City Manager to execute a five year contract for a VoIP Telephony Communications system and Telephony Services with Windstream Communications in an amount not to exceed \$58,795.32 annually.



**AGREEMENT FOR COMMUNICATION SERVICES**

Contract No. 20100858541

This is an Agreement between Texas Windstream ('Company'), and City of Kerrville ('Customer'), dated 11/9/2010 ('Date'). Services or Equipment (check as applicable) subject to the terms and conditions of this Agreement:

- Customer Premise Equipment (CPE)
- Extended Warranty Plan
- Maintenance Plan

Included as part of this Agreement are the attached TERMS AND CONDITIONS and any applicable executed SERVICE SCHEDULES identifying the specific Services (which hereafter shall where applicable also refer to Equipment) purchased.

Upon the earlier of signature below, Company supplying the Service or Customer accepting the Service, the parties are bound by this Agreement in accordance with its terms.

**CUSTOMER**

For: City of Kerrville

By: \_\_\_\_\_  
(signature)

Name: Todd Parton  
 Title: City Manager  
 Company: City of Kerrville  
 Address: 800 Junction Hwy, Kerrville, TX 78028-2215  
 Contact Number: (830) 257-8000  
 Social Security Number, Tax ID Number or  
 Tax Exempt Status: 74-6001490  
 Tax Exempt (attach documentation):

**WINDSTREAM**

For: Texas Windstream

By: \_\_\_\_\_  
(signature)

Name: Kimberly Dandurand  
 Title: Account Executive  
 Sales ID Number: 0140795  
 Contact Number: 830-928-4052

Director of Business Solutions: \_\_\_\_\_  
(signature)

Director of Business Solutions: David Martin  
(printed name)

Regional Vice President: \_\_\_\_\_  
(signature)

Regional Vice President: \_\_\_\_\_  
(printed name)



## TERMS AND CONDITIONS FOR COMMUNICATIONS SERVICES

### **Term:**

This Agreement is binding. The duration (or "Term") of each Service is specified on the Service Schedule and begins on the date that the Service is installed and available for use. If no Term is specified, the Term is month-to-month. When a Service Term expires, Service will be provided on a month-to-month basis at Company's existing tariffed rates or prevailing price lists in the absence of a tariff. If Company is required to file this Agreement with a governmental authority, the Agreement is effective on the earlier of the date specified herein or approved by the authority.

If Customer terminates an Agreement to purchase or rent Equipment, Customer will be required to pay the entire unpaid purchase or rental price of the Equipment and all costs Company incurs for restocking, returning, repossessing, packaging, shipping, installing and delivering Equipment to Customer.

### **Termination by Customer:**

If Customer terminates a Service before the Term expires, then Customer will be required to pay immediately to the total payments remaining under the Term of the Service. For example, if Customer ordered 60 monthly installments of \$100 each, but terminates the Service at the end of 45 months, the Customer will pay \$1500 (or the remaining 15 months x \$100).

Company may waive this requirement in the event that Customer moves or changes Service to another Company product or service of equal or greater value. Customer also will be responsible for all outstanding charges for all Services Customer used prior to termination. If Customer also received a bundled rate for multiple Services and Customer unbundles, terminates, or disconnects any of the Services, then the rate for Customer's remaining Service will be adjusted to the non-bundled rate. If Customer changes service address of the location of the Service, then Company may terminate the affected Service.

Customer agrees that, for Ethernet Internet Access Services and Virtual LAN Services, Company shall verify the availability of facilities, and in the event that Company determines in its sole discretion that facilities are not economically or technically feasible, Company has the right to terminate this Agreement without liability to any party.

### **Termination by Company:**

The following actions will have negative consequences to Customer's Service:

- (a) Customer does not honor this Agreement; or
- (b) Customer uses the Service in an adverse manner; or
- (c) Others use the Service fraudulently or unlawfully while on Customer's premises or while the Service is under Customer's control; or
- (d) Customer or others use the Service in an excessive, abusive, or unreasonable manner that is not customary for the type of Service; or
- (e) Customer resells any Service; or
- (f) Customer uses the Service to aggregate other persons' traffic.

In any of these instances, Company will limit, interrupt, or terminate Service and may restore Service if Customer corrects the violation and pays all outstanding amounts owed including restoration charges.

In any of these instances, Company also may enter the premises, repossess and sell the Equipment, and apply the proceeds to the amounts Customer owes Company. Company may choose to redeliver and reinstall the Equipment if Customer corrects the violation and pays all outstanding amounts owed including restoration charges. Customer grants Company a first priority security interest in the Equipment, which remains personal property even if it is attached to real property. Upon Company's reasonable request, Customer will execute any document necessary to perfect or continue the security interest.

### **Charges for Services:**

Customer is responsible for paying all charges that apply to the Service, including items such as features, installation, repair, restocking, long distance, and directory or operator assistance. Customer also is responsible for taxes, surcharges, fees, and assessments that apply to the sale and use of the Service.

Customer is responsible for paying all charges that apply to the Equipment and taxes, surcharges, fees, and assessments that apply to the sale and use of the Equipment.



**Equipment Financing:**

Company will provide zero percent interest financing for equipment noted on the attached CPE Service Schedule based on the term of the Agreement, after which the customer will own the equipment. Customer may finance equipment listed on the Additional CPE Service Schedule at zero percent interest. The monthly charge for the equipment will be based on the cost of the equipment divided by the number of months left in the term of the Agreement.

**Delivery and Installation:**

Company will deliver and install the Service or Equipment in accordance with Company's standard practices and requirements. Customer is responsible for providing an environment that is suitable for the Service or Equipment and for all delivery and installation costs incurred by Company.

**Billing Information:**

Customer will provide Company with the correct address to obtain Service, and Customer acknowledges that Company is relying on this information to determine which taxes, fees, or surcharges apply to Service. Customer will notify Company if Customer's address changes. If Customer does not provide a valid address, Customer will be responsible for any additional taxes, fees, or surcharges for Services that result from Customer's error.

**Payments:**

Company will bill Customer monthly for the Service, and Customer will pay the charges in full either on the due date indicated on the bill or within 30 days of the date on the bill. If Customer authorizes payment of Service by credit card or debit, then Company will not obtain further consent or provide additional notice before invoicing the credit card or debit for all amounts due and owing. Company may accept late payments, partial payments or any payments Customer marks as being 'payment in full' or as being settlement of any dispute without waiving any rights Company has to collect full payments from Customer or to terminate this Agreement. Customer will be responsible for paying all costs and fees Company incurs as a result of collection Customer's unpaid balance.

Customer shall pay the [monthly / annual] maintenance charge of the Equipment set forth in the Equipment Itemization. The first [monthly / annual] maintenance charge shall be payable in advance on the commencement date of this Agreement and on the ( ) day of each [month / year] thereafter. Customer agrees that any amounts paid by it to Company shall be first applied to the payment of amounts due hereunder, unless law or regulation directs otherwise. Customer agrees to pay interest on any amount payable under this Agreement that is not paid when due at rate equal to the lesser of (i) two percent (2%) per month or (ii) the maximum rate permitted by applicable law. In no event shall Customer be obligated to pay interest at a rate in excess of the maximum permitted by law.

Customer shall pay the [monthly / annual] fee for the Business Protect Warranty Plan set forth in the attached Service Schedule. The first [monthly / annual] maintenance charge shall be payable in advance on the commencement date of this Agreement and on the ( ) day of each [month / year] thereafter. Customer agrees that any amounts paid by it to Company shall be first applied to the payment of amounts due hereunder, unless law or regulation directs otherwise. Customer agrees to pay interest on any amount payable under this Agreement that is not paid when due at rate equal to the lesser of (i) two percent (2%) per month or (ii) the maximum rate permitted by applicable law. In no event shall Customer be obligated to pay interest at a rate in excess of the maximum permitted by law.

**Late Payments:**

If Company does not receive any portion of Customer's payment when it is due or if Company receives any portion of Customer's payment in funds that are not immediately available, then Company will assess a late payment penalty. Company will add the late payment penalty to the other amounts Customer owes and will calculate the late payment penalty as the total amount Customer owes times .000590 per day, compounded daily for the number of days from the payment date to and including the date actually received in immediately available funds, or the maximum lawful rate allowable by law.

**Disputed Bills:**

Customer agrees that Customer has a responsibility to review bills in a timely manner and that Customer may dispute any portion of a bill in good faith. To dispute a bill, Customer must deliver to Company in writing the specific basis for the dispute within 30 days after the date on the bill. If Customer complies with dispute process, Customer may withhold disputed amounts from Company until the dispute is resolved but is responsible for paying Company for all other undisputed charges. Customer agrees that Company denies and Customer waives automatically any dispute that is not filed until one year or later after the date of issuance of the applicable bill or invoice.



**Contracting Parties:**

Customer and Company agree that each has the right to address billing and other payment issues that may arise under this Agreement directly with the other party. Company has the right to refuse to address billing and other payment issues through a consultant or external party representative designated by Customer and to address such issues directly with Customer.

**Credits and Deposits:**

Customer authorizes Company to ask credit-reporting agencies for credit information about Customer. Company may require Customer to submit an initial security deposit and an additional deposit if Customer increases Services or Customer's credit rating changes. Simple interest will be paid on the cash deposit for the period. Company holds deposit and will be refunded if satisfactory credit has been established or upon termination of Service. Company at its discretion may apply the deposit to any amount due and unpaid and may require a guarantee of payment by an individual or entity approved by Company.

**Internet Access Service:**

Company provides Internet access Service subject to its Acceptable Use Policy available via a link on Company's website. Company's Acceptable Use Policy generally provides that Customer may not use the Internet access Service to engage in illegal activity or any activity that unreasonably interferes with other users' use and enjoyment of the Internet. Company's Acceptable Use Policy may change, and Customer must review the policy periodically and comply with any changes.

**Personal Identifiers:**

Personal identifiers are a means through which Company provides and invoices Customer for Service, and they include telephone numbers and e-mail addresses. It is not Company's policy to change arbitrarily personal identifiers, although Company may be required by a governmental authority, regulation, or otherwise to change personal identifiers. Customer understands that personal identifiers are not Customer's property. (For example, in the case of an area code split, Company may be required to change Customer's area code.) Company may change personal identifiers upon reasonable notice, including notice of any associated transfer charges or fees.

**Other Service Charges:**

All Service charges not addressed in this Agreement will be charged in accordance with Company's tariffs or price lists established by Company in the absence of tariffs.

**Warranty Plan Chosen by Customer:**

- (a) Customer further acknowledges that it has reviewed Company's extended warranty plan options as described in the Service Schedule: BusinessProtect Maintenance Plan & Warranty Plan attached hereto ("Warranty Plan") and chooses to subscribe to the Warranty Plan noted on the Schedule. In the event that any terms and conditions under the Maintenance Service section herein and the Warranty Plan conflict, the terms and conditions of the Warranty Plan will prevail.
- (b) Company may cancel this Warranty Plan at any time if modifications, alterations, additions or repairs are made to the covered components by someone other than Company.
- (c) This Warranty Plan does not provide coverage for the following:
  - (i) Any and all labor associated with covered breakdown repairs or replacements;
  - (ii) Repair or replacement of any covered component after the expiration date of the Warranty Plan;
  - (iii) Replacement of components that are obsolete or not obtainable;
  - (iv) Damage caused by Customer's failure to provide surge protection.
- (d) In no event will Company be liable for any special, incidental, indirect, consequential, punitive or similar damages including but not limited to attorney's fees, loss of profits, business, or to the extent permitted by law, damages for injury to person or property or death.

**Advertising or Publicity:**

Neither Customer nor Company will use the others party's name, marks or trade names in any publicity, releases or advertisements without first securing the other party's written approval from an authorized representative.

**Software License:**

To the extent that any Service or Equipment contains any licensed software, Customer will use the software solely in connection with the proper and lawful use of the Services or Equipment.



**Risk of Loss:**

Once Services or Equipment is delivered to Customer, then Customer bears the risk of loss of the Services or Equipment.

**Privacy and Customer Proprietary Network Information:**

Customer understands that Company may monitor and record Customer's communications to Company regarding Customer's account, Services or Equipment and for quality assurance. Company may release information it has about Customer and Customer's account when Company is reasonably required by law to do so and if necessary for the purpose of assisting Company in providing Service to Customer or if Company reasonably believes that an emergency exists. Company may analyze Customer's account and usage information and share this information with Company's affiliates to communicate with Customer regarding services or equipment that may become available. Customer may notify Company if Customer does not want Company to provide such information to other Company affiliates for this purpose.

**Theft and Fraud:**

Company is not responsible or liable if Service is lost, stolen or misused. Customer will indemnify and hold harmless Company for all usage, charges, and liability incurred before Company received notice from Customer of such loss, misuse, or theft. Customer is responsible for taking security measures to safeguard Equipment and Services and agrees that Company is not liable for fraudulent use of Equipment or Services caused by Customer not taking such measures. Customer will cooperate in the investigation of fraud or theft and provide such information that Company may request reasonably (including affidavits and police reports).

**Limitation of Liability:**

COMPANY LIABILITY FOR SERVICES OR EQUIPMENT PROVIDED UNDER THIS AGREEMENT WILL NOT EXCEED CUSTOMER'S PRO-RATED MONTHLY RECURRING CHARGE FOR SERVICES DURING THE PERIOD IN WHICH THE DAMAGE OCCURS. IF CUSTOMER'S SERVICE IS INTERRUPTED, COMPANY'S LIABILITY WILL BE LIMITED TO A PRO-RATED CREDIT FOR THE PERIOD OF INTERRUPTION. UNDER NO CIRCUMSTANCES WILL COMPANY BE LIABLE FOR ANY INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES (SUCH AS LOST PROFITS OR LOST BUSINESS OPPORTUNITIES), PUNITIVE OR EXEMPLARY DAMAGES, THE COST OF ALTERNATIVE SERVICES, OR ATTORNEY'S FEES, COMPANY WILL NOT BE LIABLE FOR ANY ACCIDENT OR INJURY CAUSED BY SERVICES OR EQUIPMENT, AND CUSTOMER ACKNOWLEDGE THAT THE PRICING OF SERVICES REFLECTS THE INTENT OF THE PARTIES TO LIMIT COMPANY'S LIABILITY AS PROVIDED HEREIN. THIS SECTION SURVIVES AND CONTINUES AFTER THIS AGREEMENT ENDS.

**Disclaimer of Warranties:**

SERVICES AND EQUIPMENT ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS WITHOUT WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF TITLE OR NON-INFRINGEMENT OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE WITH THE LIMITED EXCEPTION THAT IF CUSTOMER HAS SUBSCRIBED TO AN EXTENDED WARRANTY PLAN, THE TERMS OF THE EXTENDED WARRANTY PLAN WILL APPLY AND NOT BE DISCLAIMED. BROADBAND SPEEDS, TRANSMISSION QUALITY, AND ACCURACY OF ANY DIRECTORY LISTINGS ARE NOT GUARANTEED. NO ORAL OR WRITTEN ADVICE OR INFORMATION BY COMPANY'S EMPLOYEES, AGENTS OR CONTRACTORS SHALL CREATE A WARRANTY, AND CUSTOMER MAY NOT RELY ON ANY SUCH INFORMATION. COMPANY MAKES NO WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, REGARDING THE QUALITY, CONTENT, ACCURACY OR VALIDITY OF THE INFORMATION OR DATA RESIDING ON OR PASSING THROUGH OR OVER THE NETWORK. THIS SECTION SURVIVES AND CONTINUES AFTER THIS AGREEMENT ENDS.

**Emergency Services or 911 Access:**

**CUSTOMER ACKNOWLEDGES THAT CERTAIN SERVICES, CUSTOMER PREMISE EQUIPMENT, AND SERVICE CONFIGURATIONS MAY NOT PROVIDE ACCESS TO 911 SERVICES OR TRANSMIT THE LOCATION OR EXTENSION IF CUSTOMER ATTEMPTS TO ACCESS 911 SERVICES IN AN EMERGENCY.**

Examples include voice over Internet protocol, Centrex, and private branch exchange. By signing this Agreement, Customer acknowledges that Customer has read this disclosure. By proceeding with use of Services or Equipment, Customer assumes all responsibility and risk of harm, loss, or damage in the event that 911 access fails, is not possible, or does not provide the address, correct address, extension or other information to emergency authorities.



**Applicable Law:**

This Agreement and the provision of Services and Equipment are subject to the laws of the state in which the Service and Equipment are provided to Customer and any applicable federal law or Company tariff. Where this Agreement covers Services or Equipment in multiple states, then this Agreement and the provision of Services and Equipment are subject to the laws of the State of Delaware.

**Assignment:**

Company may assign this Agreement to an affiliate or acquirer of all or substantially all of Company's assets without any advance consent from Customer. Customer may not assign its rights and obligations under this Agreement without Company's consent, which will not be unreasonably withheld, conditioned, or delayed.

**No Waiver; Severability:**

If Company does not enforce any right or remedy available under this Agreement, that failure is not a waiver of its rights or remedies. If any part of this Agreement is held invalid or unenforceable, the remainder of this Agreement shall remain in force.

**Third Parties:**

This Agreement is for the benefit of Customer and Company only, and not any third party.

**Confidentiality:**

Except in those instances where this Agreement is required to be filed with a governmental authority, Customer and Company agree that this Agreement together with its attachments and Service Schedules contains proprietary and confidential information and shall not be disclosed publicly to any third party.

**Entire Agreement:**

This Agreement, including the attached schedules, is the entire Agreement between Customer and Company and may be amended only in a writing signed by Customer and an authorized Company representative. This Agreement supersedes any and all statements or promises made to Customer by any Company employee or agent.

**Signatures:**

This Agreement may be signed in counterparts, and facsimile copies may be treated as original signatures. Company also may execute this Agreement via a verifiable electronic signature.

**Customer Initials:** \_\_\_\_\_

**Date:** \_\_\_\_\_



## Service Schedule: Wireline

Company Name: City of Kerrville  
Contact Number: (830) 257-8000

Contract No.: 20100858541  
Date: 11/9/2010

**Local Phone Wireline Service**

Term: 60 Month

Description of Service	Quantity	Monthly Service Charge/Unit	Total Monthly Service Charges	Total Non-Recurring Charges	Total Charges
PRI Service with 400 DIDs	3	\$400.00	\$1200.00		\$1200.00
Business Lines- POTS	16	\$16.40	\$0.00		\$0.00
**Forward DID lines	125	\$1.99	\$248.75		\$248.75
		<b>Total</b>	<b>\$1448.75</b>	<b>\$0.00</b>	<b>\$1448.75</b>

**\*\*The City may disconnect forwarding feature at any time without penalty- must submit disconnect in writing to sales rep\*\***

Service repair: From time that trouble is reported to the help desk, 1-800-800-6009, Windstream will ticket respond in 1 hour or less. Trouble will be determined and cleared on a priority basis.

Customer Initials: \_\_\_\_\_

Date: \_\_\_\_\_



Sc

<b>Service Schedule: Customer Premise Equipment (CPE)</b>
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Company Name: City of Kerrville  
 Contact Number: (830) 257-8000

Contract No.: 20100858541  
 Date: 11/9/2010

1. Windstream Financing: Financing at 0% Interest- 60 Months
2. Business Protect – Maintenance Plan: Yes

Qty	Description	Unit	Extended Price
	<b>MCD/3300 - Core Hardware and Software-City Hall</b>		
2	DUAL T1/E1 TRUNK MMC	\$ 818.58	\$ 1,637.17
1	MXe AC POWER SUPPLY	\$ 272.86	\$ 272.86
1	MXe RAID SUB-SYSTEM	\$ 1,091.44	\$ 1,091.44
1	3300 MxE 80G PATA HDD 2PK (CNTL-Server)	\$ 232.22	\$ 232.22
1	3300 MxE II EXPANSION KIT	\$ 1,227.88	\$ 1,227.88
	1 : 50001247 3300 - 128 CH. ECHO CANCELLOR ROHS5		
	1 : 50005087 MxE PROCESSOR		
1	DSP II MMC	\$ 654.87	\$ 654.87
1	3300 MxE II Controller	\$ 1,637.17	\$ 1,637.17
2	PWR CRD C13 10A 125V - NA PLUG	\$ 8.19	\$ 16.37
2	MCD T38 license (4 channels)	\$ 383.17	\$ 766.33
1	MCD Enterprise PBX Software	\$ 2,090.00	\$ 2,090.00
	1 : 54000303 MCD Network Link License		
	1 : 54000497 MCD XNET		
	1 : 54000540 MCD IP Networking		
	1 : 54000860 (AMC)3300 ADVANCED VOICEMAIL OPTION		
	1 : 54001130 MCD Voicemail Networking		
	1 : 54001490 (AMC)3300 TENANTING OPTION		
	1 : 54002949 MCD Remote Management		
	16 : 54004975 MCD Enterprise License		
	Mitel Communications Director (MCD) - Solution Licenses		
3	MCD Network Link License	\$ 1,045.00	\$ 3,135.00
3	MCD G729 license (8 channels)	\$ 383.17	\$ 1,149.50
135	MCD Enterprise License	\$ 125.40	\$ 16,929.00
	Consoles		
1	5550 IP CONSOLE - NA DARK	\$ 1,364.31	\$ 1,364.31
	Desktop Devices - 5200/5300 IP Phones and Peripherals		
3	IP Conference Saucer - Dark Grey	\$ 272.86	\$ 818.58
9	5340 IP PHONE	\$ 256.49	\$ 2,308.41
3	5310 IP CONFERENCE MODULE (5300 SER	\$ 81.86	\$ 245.58
4	Cordless Headset & Module Bundle NA DECT	\$ 231.93	\$ 927.73
78	5330 IP Phone (Backlit)	\$ 201.92	\$ 15,749.54
16	5360 IP Phone	\$ 379.28	\$ 6,068.43
39	5320 IP Phone	\$ 147.35	\$ 5,746.46
8	PWR CRD C7 2.5A 125V-NA PLUG	\$ 2.73	\$ 21.83



4	5304 IP Phone	\$ 90.04	\$ 360.18
1	Live Content Suite (5360 Version)	\$ -	\$ -
	Wireless - IP DECT		
4	IP DECT Stand+Handset NA	\$ 270.13	\$ 1,080.53
	Additions		
1	Software Assurance for 12 Additional Months	\$ 839.48	\$ 839.48
	Miscellaneous		
1	Miscellaneous Installation Materials	\$ 232.00	\$ 232.00
	NuPoint Unified Messaging		
1	(AMC) NPM IP-Record-a-Call	\$ -	\$ -
6	(AMC) NPM IP FAX Port Enable (1)	\$ 696.67	\$ 4,180.00
4	NuPoint Standard UM 50 Users	\$ 418.00	\$ 1,672.00
4	NuPoint Outbound Fax 50 Users	\$ 696.67	\$ 2,786.67
	Mitel Applications Suite		
1	MAS SW BASE	\$ 1,389.85	\$ 1,389.85
	8 : 54000291 MCD User license		
	8 : 54000294 MCD Device license		
	2 : 54001875 (EAMC) NPM IP - CALL DIR ADD USER (320)		
	1 : 54002692 NuPoint Text-to-speech port		
	2 : 54002752 (EAMC) NPM IP - Adv UM User (323)		
	3 : 54002763 MCD SIP USER LICENSE		
	1 : 54003292 (AMC) Speech Auto Attendant Ports		
	2 : 54003349 (EAMC) NPM IP AA CORP DIR (327)		
	3 : 54003463 54003463		
	8 : 54004028 SIP Peering VM Port for NPM(840.0825)		
	3 : 54004029 54004029		
	3 : 54004030 54004030		
	2 : 54004053 54004053		
	2 : 54004092 (EAMC) NP-UM STD UM USER (329)		
	1 : 54004491 Sip Trunking Channel Proxy		
	1 : 54004516 54004516		
	1 : 54004571 Mitel Border Gateway Base		
	2 : 54004572 MBG TW service 1 User		
	1 : 54004591 54004591		
	1 : 54004631 54004631		
	1 : 54004761 54004761		
	11 : 54004981 MCD Application Connection License [No Price]		
1	MAS NPUM M'BOX&CALLDIR 3300(250USER)	\$ 3,483.33	\$ 3,483.33
	Additions		
1	Software Assurance for 12 Additional Months	\$ 592.17	\$ 592.17
	<b>MCD/3300 - Core Hardware and Software-Police Department</b>		
1	DUAL T1/E1 TRUNK MMC	\$ 818.58	\$ 818.58
1	MXe AC POWER SUPPLY	\$ 272.86	\$ 272.86
1	MXe RAID SUB-SYSTEM	\$ 1,091.44	\$ 1,091.44
1	3300 MXe 80G PATA HDD 2PK (CNTL-Server)	\$ 232.22	\$ 232.22



1	3300 MxII EXPANSION KIT	\$ 1,227.88	\$ 1,227.88
	1 : 50001247 3300 - 128 CH. ECHO CANCELLOR ROHS5		
	1 : 50005087 MxII PROCESSOR		
1	DSP II MMC	\$ 654.87	\$ 654.87
1	3300 MxII Controller	\$ 1,637.17	\$ 1,637.17
2	PWR CRD C13 10A 125V - NA PLUG	\$ 8.19	\$ 16.37
2	MCD T38 license (4 channels)	\$ 383.17	\$ 766.33
1	MCD Enterprise PBX Software	\$ 2,090.00	\$ 2,090.00
	1 : 54000303 MCD Network Link License		
	1 : 54000497 MCD XNET		
	1 : 54000540 MCD IP Networking		
	1 : 54000860 (AMC)3300 ADVANCED VOICEMAIL OPTION		
	1 : 54001130 MCD Voicemail Networking		
	1 : 54001490 (AMC)3300 TENANTING OPTION		
	1 : 54002949 MCD Remote Management		
	16 : 54004975 MCD Enterprise License		
	Mitel Communications Director (MCD) - Solution Licenses		
3	MCD G729 license (8 channels)	\$ 383.17	\$ 1,149.50
33	MCD Enterprise License	\$ 125.40	\$ 4,138.20
	Desktop Devices - 5200/5300 IP Phones and Peripherals		
1	IP Conference Saucer - Dark Grey	\$ 272.86	\$ 272.86
6	5340 IP PHONE	\$ 256.49	\$ 1,538.94
1	5310 IP CONFERENCE MODULE (5300 SER	\$ 81.86	\$ 81.86
28	5330 IP Phone (Backlit)	\$ 201.92	\$ 5,653.68
4	PKM KIT - 48 KEY (for 85xx/53xx Phones)	\$ 234.66	\$ 938.64
1	5360 IP Phone	\$ 379.28	\$ 379.28
11	5320 IP Phone	\$ 147.35	\$ 1,620.80
6	5304 IP Phone	\$ 90.04	\$ 540.27
1	Live Content Suite (5360 Version)	\$ -	\$ -
	Additions		
1	Software Assurance for 12 Additional Months	\$ 270.54	\$ 270.54
	Miscellaneous		
1	Miscellaneous Installation Materials	\$ 232.22	\$ 232.22
	Discounts		
1	Mitel New System Competitive Discount Factory	\$ (13,374.85)	\$ (13,374.85)
	Implementation		
1	Labor and Professional Services	\$ 10,712.00	\$ 10,712.00
	<b>MAS Server</b>		
1	HP ProLiant DL360 G7 Base	\$ 3,253.43	\$ 3,253.43
1	HP Disk drive - DVD-ROM - Serial ATA - internal - 5.25" Slim Line	\$ 96.37	\$ 96.37
1	HP Common Slot High Efficiency Power supply-hot-plug (plug-in module)-AC 100-240V-460W	\$ 265.89	\$ 265.89
1	Processor upgrade 1 x Intel Xeon E5630 / 2.53 GHz - L3 12 MB	\$ 852.26	\$ 852.26



2	HP Dual Port Enterprise Hard drive-146 GB-hot-swap-2.5"-SAS-2-10000 rpm	\$ 276.34	\$ 552.69
			\$ -
	<b>Headsets</b>		\$ -
29	GN NETCOM 2010 MONAURAL HEADSET	\$ 48.23	\$ 1,398.74
29	Smart Cord, 6" Coil, Direct Connect cord for all tops and phones	\$ 23.57	\$ 683.55
			\$ -
	<b>Cisco Data Switches</b>		\$ -
3	Catalyst 3560V2 48 10/100 PoE + 4 SFP + IPB (Standard) Image	\$ 4,524.85	\$ 13,574.55
2	Catalyst 3560V2 24 10/100 PoE + 2 SFP + IPB (Standard) Image	\$ 2,643.85	\$ 5,287.70
2	Catalyst 3560 Compact 8 10/100 PoE + 1 T/SFP; IP Base Image	\$ 1,085.23	\$ 2,170.47
1	Installation and Configuration	\$ 2,603.58	\$ 2,603.58
	<b>City Yard Fiber Optics</b>		
1	12 Strand Single Mode with Installation	\$ 5,486.25	\$ 5,486.25
6	LC-LC DUP SM 3 METER FIBER JUMPER	\$ 12.67	\$ 75.99
	<b>Cisco Wireless Bridges</b>		
6	Cisco 1310 Wireless Bridge	\$ 904.51	\$ 5,427.03
6	Rooftop Mount	\$ 166.50	\$ 999.02
6	Installation and Tuning	\$ 316.00	\$ 1,896.00
6	Configuration and Commissioning	\$ 371.21	\$ 2,227.24
<b>Total Project</b>			\$ 150,519.29

\* Note: Sales Tax is applicable on all Customer Premise Equipment purchases due to state commerce requirements. All rates quoted are exclusive of any applicable taxes, fees or surcharges.

**Payment for Customer Premise Equipment:**

**0% Down payment- \$0.00 due upon signing**

**Monthly Amount Due for Term of Agreement: \$2,508.66**

Customer Initials: \_\_\_\_\_

Date: \_\_\_\_\_



## Service Schedule: Additional Customer Premise Equipment (CPE)

Qty	Description	Price
	<b>MCD/3300 - Core Hardware and Software</b>	
1	DUAL T1/E1 TRUNK MMC	\$ 934.13
1	MXe AC POWER SUPPLY	\$ 311.38
1	MXe RAID SUB-SYSTEM	\$ 1,245.50
1	MXe PROCESSOR	\$ 1,370.05
1	4 PLUS 12 PORT COMBO	\$ 622.75
1	ASU II	\$ 435.93
1	MXE/CX II FAN ASSEMBLY FRU	\$ 62.28
1	3300 MXe 80G PATA HDD 2PK (CNTL-Server)	\$ 265.00
1	24 port ONSp card	\$ 535.57
1	MCD ONS license	\$ 59.63
1	MCD Standard Active Agent License	\$ 95.40
1	MCD Enterprise Active Agent License	\$ 119.25
	<b>Mitel Communications Director (MCD) - Solution Licenses</b>	
1	MCD Enterprise License	\$ 143.10
1	MCD Enterprise Dynamic Extension	\$ 162.98
	<b>Consoles</b>	
1	5550 IP CONSOLE - NA DARK	\$ 1,556.88
1	5540 IP Console	\$ 1,120.95
1	GN Cordless Headset Cable (for 5540)	\$ 12.46
	<b>Desktop Devices - 5200/5300 IP Phones and Peripherals</b>	
1	5310 IP BRDM CONF OPT MOUSE DK	\$ 77.84
1	5448 PKM FRU (48 Key) Dark Gray	\$ 242.87
1	Mitel Line Interface Module (NA)	\$ 105.24
1	IP Conference Saucer - Dark Grey	\$ 311.38
1	5340 IP PHONE	\$ 292.69
1	48VDC ETNT PWR ADPT 100-240V	\$ 24.91
1	5310 IP CONFERENCE MODULE (5300 SER	\$ 93.41
1	Cordless Accessories Module (NA)	\$ 124.55
1	5324 IP Phone	\$ 158.80
1	CORDLESS HANDSET WITH MODULE NA	\$ 183.71
1	Cordless Headset & Module Bundle NA DECT	\$ 264.67
1	5330 IP Phone (Backlit)	\$ 230.42
1	PKM KIT - 12 KEY (for 85xx/53xx Phones)	\$ 155.69
1	PKM KIT - 48 KEY (for 85xx/53xx Phones)	\$ 267.78
1	5360 IP Phone	\$ 432.81
1	5320 IP Phone	\$ 168.14
1	5340 IP PHONE W/GIGABIT STAND BUNDL	\$ 342.51
1	5320 IP PHONE W/GIGABIT STAND BUNDL	\$ 217.96
1	5330 IP PHONE W/GIGABIT STAND BUNDL	\$ 280.24
1	GIGABIT ETHERNET STAND (V2)	\$ 112.10
1	PWR CRD C7 2.5A 125V-NA PLUG	\$ 3.11



1	WLAN Stand	\$ 112.10
1	5300 Intelligent Directory (30 Pack)	\$ 1,192.50
1	5304 IP Phone	\$ 102.75
1	GB PWR ADPT 48VDC 100-240VAC 802	\$ 31.14
1	Live Content Suite (5360 Version)	\$ -
1	MCD HTML Application License (5 pack)	\$ 39.75
	Network and Systems Management	
1	Management Access Point EM GBL	\$ 1,152.09
1	Management Access Point EMSU GBL	\$ 1,743.70
1	Management Access Point PRO GBL	\$ 996.40
	Mitel Applications Suite	
1	MAS AWC AUD/WEB UP FOR 3300 (10 USE	\$ 3,433.61
	10 : 54002763 MCD SIP USER LICENSE	
	1 : 54004035 54004035	
	1 : 54004038 54004038	
	10 : 54004981 MCD Application Connection License [No Price]	
1	MAS AWC AUD ONLY UP 3300 (1 USER)	\$ 318.00
1	MAS AWC AUD ONLY UP 3300 (10 USER)	\$ 2,746.73
1	MAS AWC AUD/WEB UP FOR 3300 (1 USER)	\$ 397.50
1	MAS Nupoint Advanced UM 10 Users	\$ 437.25
1	MAS AWC AUDIO ONLY UP 3300(50 USER	\$ 10,531.37
1	MAS AWC AUD/WEB ONLY UP 3300(50USER	\$ 13,251.86
	50 : 54002763 MCD SIP USER LICENSE	
	1 : 54004036 54004036	
	1 : 54004039 54004039	
	50 : 54004981 MCD Application Connection License [No Price]	
1	MAS Nupoint Advanced UM 1 User	\$ 47.70
1	MAS Nupoint Advanced UM 50 Users	\$ 1,987.50
1	MAS NPUM M'Box&Calldir3300(1 User)	\$ 31.80
1	MAS NPUM M'BOX&CALLDIR3300(10USER)	\$ 278.25
1	MAS NPUM M'BOX&CALLDIR3300(50USER)	\$ 1,192.50
	Data Switches	\$ -
1	Catalyst 3560V2 48 10/100 PoE + 4 SFP + IPB (Standard) Image	\$ 5,163.53
1	Catalyst 3560V2 24 10/100 PoE + 2 SFP + IPB (Standard) Image	\$ 3,017.03
1	Catalyst 3560 Compact 8 10/100 PoE + 1 T/SFP; IP Base Image	\$ 1,238.41



## Service Schedule: Scope of Work

Company Name: City of Kerrville  
 Contact Number: (830) 257-8000

Contract No.: 20100858541  
 Date: 11/9/2010

Project Management		
	1.0	Windstream will assign a Project Management team that will meet with the City's designated Project team members on a regular basis to provide project status updates and to alert the City of any pending critical events.
	2.0	The Windstream Project Manager shall be the single point of contact with the City in regards to changes in the Scope or Quantities of equipment.
VoIP Controllers and Servers		
	1.0	Windstream will configure the VoIP controllers to work together to create a fault tolerant resilient telecommunication system.
	2.0	The primary VoIP Controllers will be located at the City Hall and the Police Department. The City is responsible for providing all necessary site requirements for each controller.
	3.0	The Mitel Application Server shall be located at the City Hall. This server is responsible for providing voicemail, auto attendant and fax applications.
	4.0	Windstream will coordinate with the City's IT staff to arrange meetings with designated department managers to discover end-user feature requirements.
	5.0	Windstream will coordinate with the IT staff to assemble and implement a database of station users and PSTN connections.
	6.0	Windstream shall be responsible for the input and testing of the databases that shall reside on each controller or server.
Voice Network		
	1.0	Windstream will consult with the IT Department's designated team member to determine the final PSTN requirements. Windstream shall review the final quantities and inform the City of any hardware or software requirement changes that might be required.
Data Network		
	1.0	Windstream will consult with the City of Kerrville and develop an IP numbering plan that is complimentary with the City's existing plan.



	2.0	Windstream will consult with the City's IT staff and provide guidance in the configuration of any new and existing data switches and routers in the support of a final network design that allows for Quality of Service and minimum latency.
	3.0	Windstream will install and configure wireless bridges at designated locations (Golf Course, Water Treatment and Municipal Court). The City will coordinate with the installations by providing wiring pathways to designated equipment locations and any building penetrations.
	4.0	Windstream will provide a fiber optic LAN extension at the City Yard connecting the Street Department to the Garage buildings. Windstream will re-use existing fiber optics to provide connections to the Parks and Meter buildings. City to provide anchors for new strand.
Training		
	1.0	Windstream will be responsible for providing end-user training to designated department managers in support of a "Train the Trainer" program so that all City employees are instructed on the proper use of there new handsets and voicemail system.
	2.0	Windstream will provide ten "Feature Teacher" licenses to allow existing end-users or new hires availability of continuing operational instruction on each assigned set type.
	3.0	Windstream will provide access to self-paced CBT administrative training for the controllers and application servers. This certified training will allow administrator to accomplish daily moves and changes to the VoIP systems.
Project Completion		
	1.0	Upon delivery and completion of the system components detailed in the Contract, Windstream will schedule a Project Reconciliation and Acceptance meeting to review the final implementation and any changes to the Scope and or Quantities that may have occurred during the installation process.

Customer will maintain Wireless network post install.

Customer Initials: \_\_\_\_\_

Date: \_\_\_\_\_

**Service Schedule: Platinum Business Protect**



## Maintenance Plan and Business Protect Warranty Plan

Company Name: City of Kerrville  
 Contact Number: (830) 257-8000

Contract No.: 20100858541  
 Date: 11/9/2010

1. Customer Premise Equipment (CPE): Purchased

Basic Information (check all that apply)	Standard Features
Term: <u>60</u> Months CPE Equipment: New Equipment Warranty <input checked="" type="checkbox"/> Equipment Type: Mitel <input checked="" type="checkbox"/>	<input checked="" type="checkbox"/> <input checked="" type="checkbox"/> First Response Priority <input checked="" type="checkbox"/> Quarterly On-site Health Checks <input checked="" type="checkbox"/> Labor for repair of equipment <input checked="" type="checkbox"/> Discounted Contract Labor Rates applicable for move, add and change activity

Select Type of Maintenance	Number of Years Coverage (NOT including manufacturers warranty):
<input checked="" type="checkbox"/> <b>Business Protect Platinum Maintenance Plan:</b> <input checked="" type="checkbox"/> Technical Response 365 days a year, 7 days a week, 24 hours a day <input checked="" type="checkbox"/> Guaranteed non-emergency response in 8 business hours <input checked="" type="checkbox"/> Quarterly trunk traffic report <input checked="" type="checkbox"/> Monthly critical alarm report	<input checked="" type="checkbox"/> 5 years Includes all labor hours for repair (wireless network exempt)
<input checked="" type="checkbox"/> <b>Business Protect Warranty:</b> <input checked="" type="checkbox"/> Up to 5-year equipment warranty for NEW equipment purchases <input checked="" type="checkbox"/> Repair and/or replacement hardware coverage for normal hardware failure <input checked="" type="checkbox"/> Up to 5-year performance guarantee on NEW equipment	<b>NEW Systems:</b> <input checked="" type="checkbox"/> 5 years Includes all parts for Mitel Voice, HP, and Cisco Equipment  The City is guaranteed a response time of no more than 1 hour for all major system problems and a maximum of 24 hours response to other system problems.  <u>Major problems</u> Impact greater than 25% or more of users in dial tone  <u>Minor problems</u> Impact less than 25% of users in dial tone connectivity  Static or non-clarity on lines, trouble dialing Long Distance, Inability to access voicemail (barring needing to reset password)

Business Protect Maintenance and Warranty	Total Equipped Ports	Port Rate per Month	Extended Monthly Rate
<input checked="" type="checkbox"/> Hybrid Key	308		\$1190.96
<b>Total Monthly Rate<sup>(1)</sup></b>			<b>\$1190.96</b>

Notes:

(1) Sales Tax is applicable on all Customer Premise Equipment purchases due to state commerce requirements.

Customer Initials: \_\_\_\_\_

Date: \_\_\_\_\_



<b>CERTIFICATE OF DELIVERY &amp; ACCEPTANCE</b>
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Date: 11/9/2010

Contract No: 20100858541

Congratulations on the installation on your Telephone system. We are pleased that you have chosen Windstream Communications, INC. as the supplier for your telephone communications needs, and we are confident that you will be fully satisfied with your choice.

As you know, any System will require maintenance from time to time. Our service force stands ready to serve whenever you need us. In addition to needing service periodically, you may wish to order additional equipment, lines, and services. Please contact your local service representative if you experience any trouble or have any questions.

If any items of your System remain to be installed or some changes need to be made, please list them below. If nothing needs to be installed or changed, please indicate by writing "NONE" in the space provided. This indicates that the System as installed on the above date is your complete System in accordance with our Purchase Agreement.

The customer acknowledges completion of this project on the basis of the original statement of work. Any changes requested by the customer will be charged accordingly.

**Customer Signature:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**OUTSTANDING ITEM (S)**

**COMPLETION DATE**

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## Letter of Authorization Consenting Release of Customer Proprietary Network Information

(for main billing telephone number:)

**This does not authorize Windstream Communications, Inc.  
to change local, long distance or any other services.**

This document serves as instructions to all holders of the undersigned's local exchange telecommunications Customer Proprietary Network Information (CPNI) to provide such information to Windstream Communications, Inc., its officer, employees, affiliates, agents, successors or assigns. I understand that this CPNI includes the following information, which can be obtained from the customer service record: billing name, service address, billing address, service and feature subscription, directory listing information, long distance carrier identity, and all pending service order activity.

This Authorization remains in effect until such time as I revoke it directly in writing or appoint another individual/company with such capacity or Windstream Communications, Inc., receives notice to disconnect my local exchange service or notice that a service disconnect has been performed. At and from such time, this Authorization is null and void.

Signature: \_\_\_\_\_

Name (Printed): Todd Parton

Title: Director of Information Technology

Company: City of Kerrville

Address: 800 Junction Hwy, Kerrville, TX 78028-2215

Federal Tax ID Number: 74-6001490

Date: 11/9/2010

**Agenda Item:**  
**(Staff)**

- 3F. Authorize application for the 2010 Texas Capital Fund Grant for the Harper Road utility extension project.

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

**SUBJECT:** Authorize the City Manager to apply for the 2010 Texas Capital Fund Grant for the Harper Road Utility Extension project

**FOR AGENDA OF:** November 9, 2010 **DATE SUBMITTED:** November 4, 2010

**SUBMITTED BY:** Kristine Ondrias  **CLEARANCES:**  
Assistant City Manager

**EXHIBITS:** 2010 Texas Capital Fund Information, Map

**AGENDA MAILED TO:**

**APPROVED FOR SUBMITTAL BY CITY MANAGER:** 

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

**PAYMENT TO BE MADE TO:**

**REVIEWED BY THE DIRECTOR OF FINANCE:**

**SUMMARY STATEMENT**

The Texas Department of Agriculture administers the Texas Capital Fund. Grants are awarded to non-entitlement communities with the financial resources to support business growth either through basic infrastructure improvements or facility development. For 2010, the State has approximately \$10 million to award. The fund consists of two grant programs: The Infrastructure Program (INF) which provides funds for public infrastructure improvements, and the Real Estate Development Program (RE) which provides funds for acquisition of real estate and construction or rehabilitation of a facility for a new or expanding business. Each program requires job creation or job retention.

At the October 23, 2010 City Council meeting, staff was directed to move forward with the Harper Road Utility Extension from Town Creek to Harper Road. Staff is working through the necessary easements and development agreements. Staff has consulted with GrantWorks on the possibility of an INF grant through the Texas Capital Fund for this extension in conjunction with the redevelopment of the old Vintage Granite site by Hunter Equity. GrantWorks has indicated this project fits the necessary criteria and feels the preliminary application can be submitted as early as November 20, 2010. Staff is requesting authorization for the City Manager to apply for the grant.

**RECOMMENDED ACTION**

Authorize the City Manager to submit a grant application for the Texas Capital Fund for the Harper Road Utility Extension project.

**2010 Texas Capital Fund**  
**Infrastructure Program and Real Estate Development Program**  
(Funds provided under the Texas Community Development Block Grant Program)

The Texas Department of Agriculture administers the Texas Capital Fund. Grants are awarded to non-entitlement communities only. For 2010, the State has approximately \$10 million to award. Beginning with January 2010, TDA will accept applications on a monthly basis and have a sliding threshold for project funding. 70% of the annual allocation (\$7 million) will be awarded in the first seven months of the year. The remaining 30% will be reserved for applications submitted in August through December.

Specifically, TDA has proposed that applications must fall within a point range established for each month to be considered for funding. Those submitted with scores below the low cutoff will be rolled over to the following month for consideration. The point ranges are 70 to 50 points in January, 65-50 in February, 60-45 March, 55-45 in April, 55-40 in May, and 55-40 in June. The range goes back up in July for the remaining \$3 million: 70-50 in July, 65-50 in August, 60-45 in September, 55-45 in October, 55-40 in November, and 55-35 in December. Any project scoring higher than the top range for any given month will receive automatic funding.

Texas Capital Fund grants provide non-entitlement communities with the financial resources to support business growth either through basic infrastructure improvements or facility development. It is not intended to foster speculative development, so a firm commitment from the business to benefit is required.

While the grants are awarded to cities and/or counties, an application for funding cannot be made without an earnest commitment and the wholehearted cooperation of the business who will benefit from the improvement.

Much of the application is information that must be provided by the business. If the business is unwilling to provide all the required information, the application will be rejected. Consequently, TCF grants should be thought of as a public-private partnership.

Because of the complexity and time involved in preparing and compiling application documents, GrantWorks Inc. charges the business a \$3,000 application fee with \$1,500 paid at the start of the process and \$1,500 paid at the time the application is submitted. In some cases, this fee has been paid by the City economic development corporation. Administration fees to implement the project are included in the TCF contract award. No management fees are paid by the sponsoring locality.

The fund consists of two grant programs: The Infrastructure Program (INF) which provides funds for public infrastructure improvements, and the Real Estate Development Program (RE) which provides funds for acquisition of real estate and construction or rehabilitation of a facility for a new or expanding business. Each program requires job creation or job retention.

The minimum amount that can be requested is \$50,000; the usual maximum request is \$750,000. Grants of larger amounts (up to \$1 million) can also be requested, but the matching requirement increases from 1:1 to 4:1.

Stipulations applying to both programs include:

- The project must meet TCF gap financing requirements. These include showing proof that the applicant locality has tried but been unsuccessful in obtaining funds from other sources. GrantWorks contacts various other funding agencies (Texas Water Development Board, USDA, federal Economic Development Administration, and TxDOT) to determine if other grant funds are available.
- Cities that levy an economic development sales tax also must show how their ED funds are being used in their community and that no surplus ED funds are available for the project. Finally, the business must show it is financially capable of completing the business project that will benefit from the infrastructure or real estate improvement.
- At least 51% of all "jobs" created or retained must be filled by individuals who are of low to moderate income when they are hired. Applicable low to moderate thresholds are shown below.

**2010 Kerr County**

<u>1 person</u>	<u>2 persons</u>	<u>3 persons</u>	<u>4 persons</u>	<u>5 persons</u>	<u>6 persons</u>	<u>7 persons</u>	<u>8 persons</u>
\$29,050	\$33,200	\$37,350	\$41,500	\$44,850	\$48,150	\$51,500	\$54,800

- The funding awards are partially based on the number of full-time jobs to be created or retained. A full-time job is defined as permanent employment for 1,820 hours or more per year or 35 hours or more per week. A part-time job is defined as permanent employment for at least 1,040 hours per year or 20 hours or more per week. Two part-time jobs equal one full-time job.
- For grants of \$750,000 or less, the maximum allowable cost per job to be created/retained is \$25,000. For grants between \$751,000 and \$1,000,000, the maximum allowable cost per job to be created/retained is \$10,000. The minimum number of jobs that can be created/retained is 2. Example: If a water line project (constr/eng/acq/adm) will cost \$175,000.00, the company must be creating at least 7 full-time jobs with 4 of those jobs being filled by individuals of low/mod income.
- Jobs must be created within the three-year TCF contract period. Retained jobs must be documented at time the application is submitted. For retained jobs, the 51% job low/mod documentation must be included in the application. No credit is given for transferred jobs or positions held by principals.
- The grant must be matched by other funds in the project based on the following schedule: For projects of \$750,000 or less, the match is 1 local dollar to 1 state dollar. For projects between \$750,100 and \$1 million, the match is 4-to-1.
- For the Real Estate Development program: A minimum cash injection by the business of 2-1/2% of the total project cost (grant plus match) is required. The balance of match commitment can be in the form of equity value.

- For the Infrastructure Program: For existing business three or more years old, a minimum cash injection of 2-1/2% of the total project cost by the business is required. For start-up businesses, the requirement is 33% cash injection. This can be in the form of cash committed to purchase equipment and/or pay utility bills, payroll and insurance costs. The balance of match commitment can be in the form of equity value or a lender's commitment.
- The business must provide a comprehensive business plan and detailed financial information of both the business and the business' principals. However, this requirement is modified for publicly traded companies to comply with SEC regulations. For non-public companies, this information includes tax returns and personal financial statements from any individual or legal entity owning 20 percent or more of the business and their spouses, business income tax returns for the past three years, monthly cash flow and income statement projections for three years, and information concerning current business debts. For public companies, quarterly and annual shareholder reports and general corporate information from the company's website can be substituted.
- The business is prohibited from changing its business structure or ownership percentages during the contract period unless prior approval from TCF is obtained.
- Repayment Penalty: Under both the INF and RE programs, if the business fails to create the required number of jobs within the contract period, TCF will require the City to repay a negotiated amount based on the cost-per-job amount and the number of jobs not created. Therefore, the City-Company Agreement will require the business to provide some form of guarantee through which the City can recoup the repayment amount.

Applications are scored on a point system that considers community need, jobs, economic emphasis, and leverage ratio (match).

### **Infrastructure Program:**

Funds may be used for the following public infrastructure:

- water and sewer lines and facilities,
- road/street improvements,
- natural gas lines,
- electric, telephone, and fiber optic lines,
- harbor/channel dredging,
- coastline stabilization,
- drainage channels and ponds,
- pre-treatment facilities,
- traffic signals and signs,
- railroad spurs, and
- purchase of land, easements, rights-of-way and engineering related to the infrastructure improvement.

There is no repayment of public infrastructure grant funds unless the private company fails to meet its commitment to establish a new business or expand its current business, or unless it fails to create the required number of jobs within the prescribed period.

Funds called "real estate awards" may also be used to construct private infrastructure improvements that will be located on the business site or business-owned adjacent property. Those funds are awarded as a no-interest loan with repayment not to exceed 20 years.

### **Real Estate Improvements:**

Real estate improvements are intended to be owned by the applicant and leased to the business in a lease-to-own arrangement. Real estate awards require full repayment of funds. Repayment terms are 0% interest for up to a 20-year payback.

If the business fails during the repayment period, the City is liable for repayment of the remaining real estate award balance. Because of this, the City-Company Agreement will require the business to provide some form of guarantee through which the City can recoup the remaining real estate award balance.

Under the Real Estate Program, businesses that have been operating for less than three years are also required to provide 33% of the total project cost as a company injection. This can be in the form of equity value, cash, or a line of credit which is separate from the funds committed as match.

While the business is required to deed over to the City the building to be renovated or the land on which the building will be constructed, the agreement between the City and company is actually a lease-to-own arrangement whereby sole ownership of the improvements are transferred to the business upon completion of the repayment.

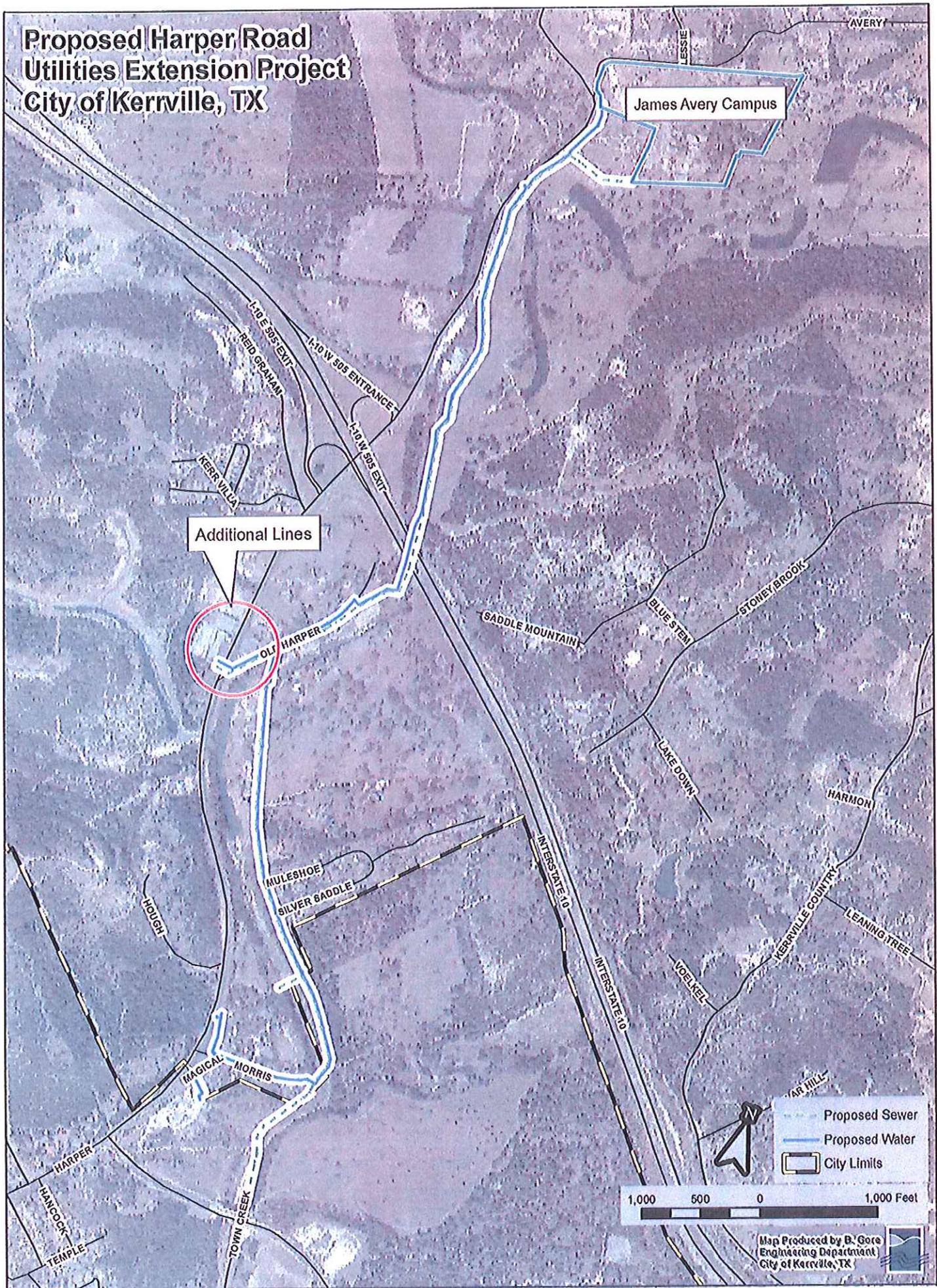
Funds may be used for the purchase of land and/or buildings, construction or rehabilitation of buildings, construction of infrastructure improvements on the project site incidental to building construction, and purchase and/or installation of fixtures that are permanently built into the buildings. The business must provide job creation and matching funds in the same proportion as required by the infrastructure program.

### **Relocation Projects:**

Businesses proposing to move from one locality within Texas to another locality must meet two basic thresholds:

1. Their job creation commitment must reflect at least a 10% increase in the number of jobs at the new location over the number of jobs in place at the old location at time of move.
2. They must document a compelling reason for the move, i.e., if they are presently located in an urban area and are landlocked or prevented from expanding at the present site for other development reason, or if the financial burden has become too great for the company to bear.

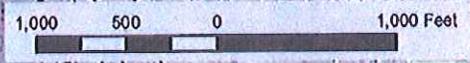
# Proposed Harper Road Utilities Extension Project City of Kerrville, TX



Additional Lines

James Avery Campus

- Proposed Sewer
- Proposed Water
- City Limits



Map Produced by B. Gore  
Engineering Department  
City of Kerrville, TX

**Agenda Item:**  
**(Staff)**

- 4A. An ordinance terminating the automatically repeating allowance of updated service credits and increased prior and current service annuities under the Texas Municipal Retirement System; and establishing an effective date for the ordinance.

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

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**SUBJECT:** Ordinance Second Reading, Terminating the Annually Repeating 100% Updated Service Credit, including Transfers, and 70% of CPI Increase to Annuitants (COLA) from the Texas Municipal Retirement System plan for employees and retirees of the City of Kerrville

**FOR AGENDA OF:** November 9, 2010 **DATE SUBMITTED:** October 6, 2010

**SUBMITTED BY:** Kimberly Meisner, *KM* **CLEARANCES:** Todd Parton,  
Director of General Operations City Manager

**EXHIBITS:** Ordinance

**AGENDA MAILED TO:**

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

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<b>Expenditure Required:</b>	<b>Current Balance in Account:</b>	<b>Amount Budgeted:</b>	<b>Account Number:</b>
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**PAYMENT TO BE MADE TO:**

**REVIEWED BY THE FINANCE DIRECTOR:**

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**SUMMARY STATEMENT**

The Texas Municipal Retirement System (TMRS) is the administrator of the mandatory retirement benefit for the City of Kerrville employees.

During the budget process, staff and TMRS representatives presented the cost savings associated with terminating the Updated Service Credits (USC) for employees and the Cost of Living Adjustments (COLA) for retirees. The potential total savings is \$490,000. Council agreed that the change was necessary in order to meet the needs of the budget for the FY11 fiscal year.

Council approved the FY11 budget in September with the forecasted TMRS contributions based on the termination of the USC and COLA.

**RECOMMENDED ACTION**

Approve the ordinance terminating the Annually Repeating 100% Updated Service Credit, including Transfers, and 70% of CPI Increase to Annuitants (COLA) to be effective January 1, 2011.

**CITY OF KERRVILLE, TEXAS  
ORDINANCE NO. 2010-\_\_\_\_\_**

**AN ORDINANCE TERMINATING THE AUTOMATICALLY REPEATING ALLOWANCE OF UPDATED SERVICE CREDITS AND INCREASED PRIOR AND CURRENT SERVICE ANNUITIES UNDER THE TEXAS MUNICIPAL RETIREMENT SYSTEM; AND ESTABLISHING AN EFFECTIVE DATE FOR THE ORDINANCE**

**WHEREAS**, the City Council of the City has heretofore adopted an ordinance under Section 853.404 of Subtitle G of Title 8, Texas Government Code, as amended (hereinafter referred to as the "TMRS Act"), authorizing the crediting of updated service credits (including updated service credits for transferred service) on an annual basis and increases in prior and current service annuities to retirees and beneficiaries of deceased members on an annual basis; and

**WHEREAS**, Subsection (e)(4) of Section 853.404 provides that such an ordinance ceases to be in effect for future years if the City adopts an ordinance stating that the previous order under Section 853.404 will cease to be in effect for future years; and

**WHEREAS**, the City Council desires to adopt an ordinance under Subsection (e)(4) of Section 853.404;

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

**SECTION ONE.** By this Ordinance, the City Council terminates the annually-repeating allowance of updated service credits (including updated service credits for transferred service) and the annually-repeating allowance of increases in prior and current service annuities to retirees and beneficiaries of deceased members as to all calendar years beginning after the effective date of this ordinance; provided, however, that nothing contained in this ordinance shall be deemed to preclude the City Council from again adopting an ordinance under Section 853.404 in the future.

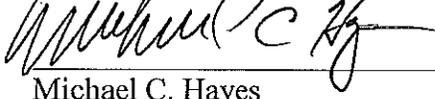
**SECTION TWO.** Provided that a signed copy of this Ordinance has been furnished to the Texas Municipal Retirement System prior that date, this Ordinance shall become effective on December 1, 2010.

**PASSED AND APPROVED ON FIRST READING, this the \_\_\_\_\_ day of \_\_\_\_\_, A.D., 2010.**

**PASSED AND APPROVED ON SECOND AND FINAL READING, this the \_\_\_\_\_ day of \_\_\_\_\_, A.D., 2010.**

\_\_\_\_\_  
David Wampler, Mayor

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Michael C. Hayes

ATTEST:

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

**Agenda Item:**  
**(Staff)**

**5A. An ordinance amending Chapter 26 “Buildings and Building Regulations”, Article VIII “Building Board of Adjustment and Appeals” of the Code of Ordinances of the City of Kerrville, Texas, by amending the membership qualifications for said board; containing a cumulative clause; containing a savings and severability clause; establishing an effective date; and providing other matters related to the subject.**

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

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**SUBJECT:** Ordinance, first reading, amending Ordinance 2010-15 by changing the membership requirements of the Building Board of Adjustment and Appeal

**FOR AGENDA OF:** November 9, 2010 **DATE SUBMITTED:** October 29, 2010

**SUBMITTED BY:** Kevin Coleman *KC* **CLEARANCES:** Kristine Ondrias

**EXHIBITS:** Proposed Ordinance

**AGENDA MAILED TO:**

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

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

**PAYMENT TO BE MADE TO:**

**REVIEWED BY THE DIRECTOR OF FINANCE:**

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**SUMMARY STATEMENT**

The proposed ordinance reflects needed changes to the membership requirements of the recently converted Building Board of Adjustment and Appeals.

The current requirements for the mechanical contractor position is a Class A state license. There are only a few Class A contractors that meet the residency requirements limiting the pool of contractors to serve in this role.

The proposed Section 26-229(b)(5) expands this description to include any state licensed mechanical contractor.

The proposed changes to Section 26-229(b)(7) and Section 26-229(c) provide flexibility to City Council in making appointments and avoid gaps in appointments in the future.

The proposed change was reviewed and recommended by the Building Board of Adjustment and Appeals at its November 1 meeting.

**RECOMMENDED ACTION**

Approve proposed ordinance on first reading.

**CITY OF KERRVILLE, TEXAS  
ORDINANCE NO. 2010-\_\_**

**AN ORDINANCE AMENDING CHAPTER 26 “BUILDINGS AND BUILDING REGULATIONS”, ARTICLE VIII “BUILDING BOARD OF ADJUSTMENT AND APPEALS” OF THE CODE OF ORDINANCES OF THE CITY OF KERRVILLE, TEXAS, BY AMENDING THE MEMBERSHIP QUALIFICATIONS FOR SAID BOARD; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; ESTABLISHING AN EFFECTIVE DATE; AND PROVIDING OTHER MATTERS RELATED TO THE SUBJECT**

**WHEREAS**, the City Council recently created a single, multi-trade board known as the Building Board of Adjustment and Appeals (“Board”); and

**WHEREAS**, it was the intent of the City Council for the Board to include a broad spectrum of members, to include contractors, design professionals, and trades people; and

**WHEREAS**, the mechanical contractor position currently requires that a person hold a Class A state license, which along with the residency requirement, significantly limits the number of contractors who are qualified to serve on the Board; and

**WHEREAS**, in an effort to address this issue and maintain the membership of a mechanical contractor to the Board, City staff recommends amending the membership qualifications for the Board to provide greater flexibility in making appointments to the Board; and

**WHEREAS**, the proposed amendment was reviewed and recommended by the Board; and

**WHEREAS**, the City Council of the City of Kerrville, Texas, finds it to be in the public interest to amend the membership qualifications for the Board in the manner and for the reason provided above;

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

**SECTION ONE.** Chapter 26 “Buildings and Building Regulations”, Article VIII “Building Board of Adjustment and Appeals” of the Code of Ordinances of the City is amended by amending Section 26-250, subsections (b) and (c) by adding the language that is underlined (added) and deleting the language that is bracketed and stricken (~~deleted~~) as follows:

**“Sec. 26-250. Building Board of Adjustment and Appeals.**

⋮

(b) *Membership.* The Board shall consist of seven (7) regular members appointed by the City Council as follows:

- (1) an architect licensed to practice in the state;
- (2) a professional engineer licensed to practice in the state;
- (3) a master electrician licensed to practice in the state;
- (4) an unrestricted master plumber licensed to practice in the state;
- (5) a mechanical contractor ~~[with a Class A state license]~~ licensed to practice in the state;
- (6) a person licensed by the City as a contractor; and
- (7) a person that is active in the construction industry; provided, however, if the City Council determines that it is unable to fill any one of the other regular positions specified above ~~[there is no architect or professional engineer available to serve on the Board]~~, then Council shall select a ~~[second]~~ person meeting this description to serve.

(c) *Alternates.* In an effort to obtain a quorum, increase efficiency, or for other reasons, the City Council may appoint two or more alternate members to the Board. Each alternate member shall meet any one of the qualification provisions applicable to regular members ~~[as contained within subsections (b)(3) through (5) above]~~. An alternate member shall serve only in the absence of one or more regular members when requested to do so by the Chief Building Official so that all cases considered by the Board are heard by a minimum of at least four (4) members. Alternate members may only participate in meetings if called to act and shall then act as a regular member for the entire meeting. Even where not called upon to act as a regular member, alternate members shall attend all meetings and are subject to the attendance requirements applicable to the Board.”

**SECTION TWO.** The City Secretary is authorized and directed to submit this Ordinance to the publisher of the City's Code of Ordinances and the publisher is authorized to amend said Code to reflect the amendment adopted herein and to correct typographical errors and to index, format, and number and letter paragraphs to the existing Code, as appropriate.

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

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

**SECTION FIVE.** This Ordinance shall become effective immediately upon approval.

**PASSED AND APPROVED ON FIRST READING, this the \_\_\_ day of \_\_\_\_\_, A.D., 2010.**

**PASSED AND APPROVED ON SECOND AND FINAL READING, this the \_\_\_ day of \_\_\_\_\_, A.D., 2010.**

\_\_\_\_\_  
David Wampler, Mayor

ATTEST:

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

APPROVED AS TO FORM:

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

**Agenda Item:**  
**(Staff)**

- 5B. An ordinance amending Chapter 58 "Health and Sanitation" of the Code of Ordinances of the City of Kerrville, Texas, by adding a new Article IV "Illegal Smoking Products and Illegal Smoking Paraphernalia"; containing a cumulative clause; containing a savings and severability clause; providing for a penalty for violation of any provision hereof; ordering publication; providing for an effective date; and providing other matters related to the subject.

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

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**SUBJECT:** Prohibit the use, possession, sale, ingestion, or smoking of synthetic cannabinoids as well as the possession of ingestion devices used to ingest illegal smoking products.

**FOR AGENDA OF:** November 9, 2010

**DATE SUBMITTED:** October 27, 2010

**SUBMITTED BY:** Chief John Young

**CLEARANCES:** Mike Hayes City  
Attorney

**EXHIBITS:** Letter of support from Schreiner University  
Ordinance

**AGENDA MAILED TO:**

**APPROVED FOR SUBMITTAL BY CITY MANAGER:** 

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

**PAYMENT TO BE MADE TO:**

**REVIEWED BY THE FINANCE DIRECTOR:**

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**SUMMARY STATEMENT**

Over the past few months, there has been an increased awareness of synthetic cannabinoids referred to commercially as K2 or Spice through media reports, law enforcement circles and community service groups. K2 or Spice, is a synthetic drug that gives users a marijuana like high when smoked. It consists of herbs that are sprayed with synthetic substances that mimic THC, the chemical found in marijuana. Synthetic cannabinoids are sold in convenience stores, tobacco shops and retail outlets which specialize in drug paraphernalia. It is generally marketed as herbal incense not for consumption. Several states have introduced legislation, which would ban the sale and possession of synthetic cannabinoids. Most recently, municipalities across the state considered and adopted city ordinances, which would ban the substance until state laws are enacted. There is pending legislation supported by the Texas Police Chiefs Association that would make it illegal to possess or sell the substance.

**RECOMMENDED ACTION**

The police department is aware of synthetic cannabinoid sales within the community. We recommend council approval of the city ordinance regulating the sale, possession and use of synthetic cannabinoids.

# Schreiner University

LEARNING BY HEART™

OFFICE OF THE  
VICE PRESIDENT FOR  
ADMINISTRATION  
AND FINANCE

2100 MEMORIAL BLVD.  
KERRVILLE, TEXAS 78028-5697  
830.792.7355

October 20, 2010

Mayor David Wampler  
Kerrville City Council  
800 Junction Hwy.  
Kerrville, TX 78028

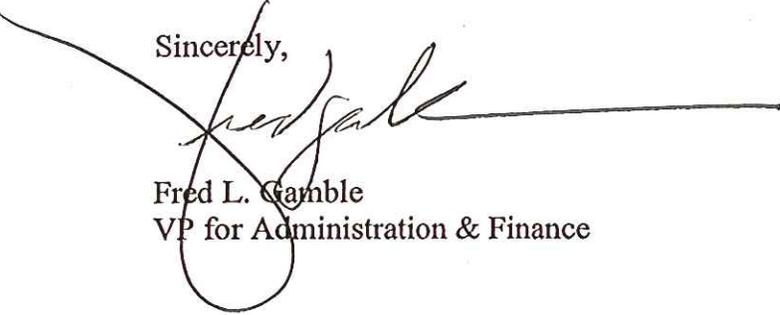
Re: Support of a City Ordinance banning synthetic cannabis

Dear Mayor Wampler,

Schreiner University is home to over seven hundred residential students and has an additional six hundred commuter students and employees. The health and safety of all of our students, employees and campus visitors is of utmost importance to us. We have recently been made aware of a synthetic/herbal combination product that when smoked, mimics the effect of cannabis. While we have not found any of this product on our campus, research shows the consumption of this product to be harmful. We have notified our campus community that possession of synthetic cannabis will be treated like that of any illegal drug as far as campus sanctions are concerned.

We wholeheartedly support all efforts by the City of Kerrville to make illegal the possession or sale or use of these products within the city limits. We feel the proper course is to be proactive in addressing this situation.

Sincerely,



Fred L. Gamble  
VP for Administration & Finance

cc: Amy Ives: City of Kerrville Compliance Center Manager  
Mike Hayes: City of Kerrville City Attorney

**CITY OF KERRVILLE, TEXAS  
ORDINANCE NO. 2010-\_\_**

**AN ORDINANCE AMENDING CHAPTER 58 "HEALTH AND SANITATION" OF THE CODE OF ORDINANCES OF THE CITY OF KERRVILLE, TEXAS, BY ADDING A NEW ARTICLE IV "ILLEGAL SMOKING PRODUCTS AND ILLEGAL SMOKING PARAPHERNALIA"; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A PENALTY FOR VIOLATION OF ANY PROVISION HEREOF; ORDERING PUBLICATION; PROVIDING FOR AN EFFECTIVE DATE; AND PROVIDING OTHER MATTERS RELATED TO THE SUBJECT**

**WHEREAS**, the City of Kerrville Police Department has determined that certain businesses within and around the City may be selling specified substances that when ingested produce intoxicating effects similar to THC or marijuana; and

**WHEREAS**, such substances may be generally described as synthetic cannabinoids or salvia divinorum distributed, marketed, and sold under various names such as K-2, K-2 Summit, K-2 Sex, Genie, Dascents, Zohai, Sage, Spice, KO Knock-Out 2, Spice Gold, Spice Diamond, Yucatan Fire, Solar Flare, Pep Spice, Fire 'N Ice, and Salvia Divinorum; and

**WHEREAS**, the substances described above are not yet categorized as illegal controlled substances under federal or state law; and

**WHEREAS**, the products identified above may be marketed as incense but are commonly being used as an alternative to marijuana which is an identified and documented controlled substance, the sale and use of which is prohibited under both federal and state law; and

**WHEREAS**, the synthetic cannabinoids substances described above may be presented under a variety of street names but share common ingredients including JWH-018 and JWH-073H; and

**WHEREAS**, salvia divinorum contains the ingredient known as Salvinorin A; and

**WHEREAS**, these unregulated synthetic cannabinoids and salvia divinorum produce a very potent intoxicating effect which medical professionals estimate produce effects ranging from three to one hundred times greater and more potent than THC, the active ingredient in marijuana; and

**WHEREAS**, the substances described above manifest all of the demonstrated attributes of substances that deprive individuals of judgment, coordination, and the ability to conduct themselves in a safe and appropriate manner; and

**WHEREAS**, the available medical and law enforcement information on the products identified above indicates that individuals under the effects of these substances may be a clear and present danger to themselves and others; and

**WHEREAS**, the long-term effects of these substances are not yet known; and

**WHEREAS**, it is anticipated that the Texas Legislature will consider regulating the above described substances during its upcoming legislative session, but until then, City staff recommends that the City adopt restrictions on these products until such a state-wide regulatory system is implemented; and

**WHEREAS**, City staff, including the City's Public Health Officer and its Police Chief, believe that the effects of these substances are a public health concern; and

**WHEREAS**, the City Council of the City of Kerrville, Texas, has determined that it is in the best interest of the public health, safety, and welfare to immediately address the health concerns to the citizens of the City by prohibiting the use, possession, and sale of the substances described above and the devices used to ingest these substances; and

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

**SECTION ONE.** Chapter 58 "Health and Sanitation" of the Code of Ordinances of the City of Kerrville, Texas, is amended by adding a new Article IV "Illegal Smoking Products and Illegal Smoking Paraphernalia", as follows:

**"Article IV. Illegal Smoking Products and Illegal Smoking Paraphernalia.**

**Sec. 58-90. Definitions.**

As used in this chapter, the following phrases and words shall have the following meanings:

*Illegal Smoking Paraphernalia* means any equipment, product, object, or material that is used or intended for use in ingesting, inhaling, or otherwise introducing an illegal smoking product into the human body, including:

- (a) metal, wooden, acrylic, glass, stone, plastic, or ceramic pipe with or without a screen, permanent screen, hashish head, or punctured metal bowl;
- (b) a water pipe;
- (c) a carburetion tube or device;
- (d) a smoking or carburetion mask;
- (e) a chamber pipe;
- (f) a carburetor pipe;

- (g) an electric pipe;
- (h) an air-driven pipe;
- (i) a chillum;
- (j) a bong; or
- (k) an ice pipe or chiller.

*Illegal Smoking Product* means any plant or other substance, whether described as tobacco, herbs, incense, spice, or any blend thereof, under any of the marketed names of illegal smoking products, regardless of whether the substance is marketed for the purpose of being smoked, which includes any one or more of the following substances or chemicals:

- (a) Salvia divinorum or salvinorin A; all parts of the plant presently classified botanically as salvia divinorum, whether growing or not, the seeds thereof, any extract from any part of such plant, and every compound, manufacture, salts, derivative, mixture or preparation of such plant, its seeds or extracts or similar structural analogs;
- (b) 2-[(1R,3S)-3-hydroxycyclohexyl]-5-(2-methyloctan-2-yl)phenol (also known as CP47,497) and homologues or similar structural analogs;
- (c) (6aS,10aS)-9-(hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol (also known as HU-211 or Dexanabinol) or similar structural analogs;
- (d) 1-pentyl-3-(1-naphthoyl)indole (also known as JWH-018) or similar structural analogs;
- (e) 1-butyl-3-(1-naphthoyl)indole (also known as JWH-073) or similar structural analogs;
- (f) 1-pentyl-3-(4-methoxynaphthoyl)indole (also known as JWH-081) or similar structural analogs;
- (g) any synthetic cannabinoid and any analogue variant thereof by whatsoever name it may be called or any substance similar in nature and sold or used for the purpose of inducing intoxication in the human body.

*Marketed Names of Illegal Smoking Products* means illegal smoking products containing some or all of the substances used to define illegal smoking products and currently marketed under the following commercial names: K-2, K-2 Summit, K-2 Sex, Genie, Descents, Zohai, Sage, Spice, KO Knock-Out 2, Spice Gold, Spice Diamond, Yucatan Fire, Solar Flare, Pep Spice, Fire 'N Ice, and Salvia Divinorum.

*Person* means an individual, corporation, partnership, wholesaler, retailer, or any licensed or unlicensed business.

**Sec. 58-91. Offenses.**

(a) It shall be unlawful for any person to use, possess, purchase, barter, give, deliver, publicly display, sell, or offer for sale any illegal smoking product.

(b) It shall be unlawful for any person to use or possess any illegal smoking paraphernalia with the intent to inject, ingest, inhale, or otherwise introduce into the human body an illegal smoking product.

(c) Any product containing any of the chemical compounds set forth above shall be subject to the provisions of this Article, regardless of whether the product is marketed under names other than those listed above.

**Sec. 58-92. Affirmative Defenses.**

(a) It shall be an affirmative defense for a person charged with an offense for possession or use of an illegal smoking product that the use or possession was pursuant to the direction or prescription of a licensed physician or dentist authorized to direct or prescribe such act.

(b) It shall be an affirmative defense that the sale or possession of Salvinorin A was in conjunction with ornamental landscaping and used solely for that purpose.

(c) In the possession of or being used by a governmental entity for a health purpose, research and education, or a similar program.”

**SECTION TWO.** The City Secretary is authorized and directed to submit this Ordinance to the publisher of the City’s Code of Ordinances and the publisher is authorized to amend said Code to reflect the amendment adopted herein and to correct typographical errors and to index, format, and number and letter paragraphs to the existing Code as appropriate.

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

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

**SECTION FIVE.** The penalty for violation of this Ordinance shall be in accordance with that general penalty provision contained in Chapter 1 of the Code of Ordinances of the City of Kerrville, Texas, which provides for a fine not exceeding TWO THOUSAND DOLLARS (\$2,000.00). Each continuing day's violation under this Ordinance shall constitute a separate offense.

**SECTION SIX.** In accordance with Section 3.07 of the City Charter and Texas Local Government Code §52.013(a), the City Secretary is hereby 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. This Ordinance shall become effective ten days following publication.

**PASSED AND APPROVED ON FIRST READING, this the \_\_\_ day of \_\_\_\_\_, A.D., 2010.**

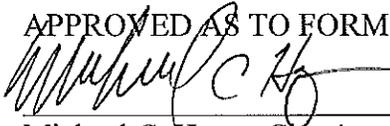
**PASSED AND APPROVED ON SECOND AND FINAL READING, this the \_\_\_ day of \_\_\_\_\_, A.D., 2010.**

ATTEST:

\_\_\_\_\_  
David Wampler, Mayor

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

APPROVED AS TO FORM:

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

**Agenda Item:**  
**(Staff)**

**5C. An ordinance amending Chapter 118 “Waterways”, Article II, “City Water Impoundment Regulations,” of the Code of Ordinances of the City of Kerrville, Texas, by clarifying that the construction of habitable structures is prohibited within certain areas adjacent to the city’s impounded waters of the Guadalupe River and adding a definition for “habitable structure”; containing a cumulative clause; containing a savings and severability clause; establishing an effective date; ordering publication; and providing other matters related to the subject.**



CITY OF KERRVILLE, TEXAS  
ORDINANCE NO. 2010-\_\_

AN ORDINANCE AMENDING CHAPTER 118 "WATERWAYS", ARTICLE II "CITY WATER IMPOUNDMENT REGULATIONS," OF THE CODE OF ORDINANCES OF THE CITY OF KERRVILLE, TEXAS, BY CLARIFYING THAT THE CONSTRUCTION OF HABITABLE STRUCTURES IS PROHIBITED WITHIN CERTAIN AREAS ADJACENT TO THE CITY'S IMPOUNDED WATERS OF THE GUADALUPE RIVER AND ADDING A DEFINITION FOR "HABITABLE STRUCTURE"; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; ESTABLISHING AN EFFECTIVE DATE; ORDERING PUBLICATION; AND PROVIDING OTHER MATTERS RELATED TO THE SUBJECT

WHEREAS, the City Council finds that from time to time, the City's regulations governing the City's impounded waters and waterways should be updated; and

WHEREAS, the City Council of the City of Kerrville, Texas, finds it to be in the public interest to amend the Code of Ordinances of the City of Kerrville, Texas, to clarify that the construction of habitable structures is prohibited within certain areas adjacent to the City's impounded waters of the Guadalupe River and adding a definition of "habitable structure";

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

SECTION ONE. Chapter 118 "Waterways", Article II "City Water Impoundment Regulations" of the Code or Ordinances of the City of Kerrville, Texas, is amended by amending Section 118-32 by adding the language that is underlined (added) and deleting the language that is bracketed and stricken (~~deleted~~) as follows:

"Sec. 118-32. Definitions.

⋮

Habitable Structure means a structure designed primarily for human occupancy and are potential locations for shelter from storms. Typically included within this category are residences, hotels and restaurants. Additionally, a habitable structure includes improvements, attached or otherwise, including but not limited to porches and gazebos, and excludes sidewalks, swimming pools, and other surface level improvements."

SECTION TWO. Chapter 118 "Waterways", Article II "City Water Impoundment Regulations" of the Code or Ordinances of the City of Kerrville, Texas, is amended by amending Section 118-33 by adding the language that is underlined (added) and deleting the language that is bracketed and stricken (~~deleted~~) as follows:

**“Sec. 118-33. Prohibited activities.**

No person shall:

- (1) Operate an internal combustion engine of a watercraft on the lake;
- (2) Construct or maintain a dock, wharf, or ~~other~~ habitable structure fixed into, resting upon, or located over the lakebed or fixed into, resting upon, or located over any other property owned by the city;
- (3) Construct or maintain a dock, wharf, or ~~other~~ habitable structure fixed into, resting upon, or located over any flood easement owned by the city that is upstream of the dam;
- (4) Place, operate, or maintain a houseboat on the lake;
- (5) Place, use, or maintain a trotline, throwline, or jugline at any location within the lake; or
- (6) Swim, fish, or operate a watercraft within a distance of 200 feet from the raw water intake of the water treatment plant.”

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

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

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

**SECTION SIX.** In accordance with Section 3.07 of the City Charter and Texas Local Government Code §52.013(a), the City Secretary is hereby 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. This Ordinance shall become effective ten days following publication.

PASSED AND APPROVED ON FIRST READING, this the \_\_\_ day of \_\_\_\_\_,  
A.D., 2010.

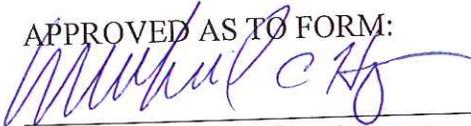
PASSED AND APPROVED ON SECOND AND FINAL READING, this the \_\_\_ day  
of \_\_\_\_\_, A.D., 2010.

\_\_\_\_\_  
David Wampler, Mayor

ATTEST:

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

APPROVED AS TO FORM:

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

**Agenda Item:**  
**(Staff)**

- 6A. Update regarding Lower Colorado River Authority Transmission Services Corporation's (LCRA-TSC) application for the proposed McCamey D to Kendall to Gillespie CREZ project (PUC Docket No. 38354).



**Agenda Item:**  
**(Staff)**

6B. Kerrville budget/economic update.



**CITY OF KERRVILLE  
ECONOMIC UPDATE AS OF NOVEMBER 3, 2010**

	Current Month	Previous Month	1 Year Ago	Trend	Current Month
<b>National</b>					
Unemployment	9.60%	9.60%	9.80%	↔	September
Consumer Confidence	50.2	48.6	48.7	↑	October
1 year T-Bills	0.21%	0.25%	0.36%	↓	11/3/10

<b>State</b>					
Monthly Unemployment	7.90%	8.40%	8.10%	↓	September
Monthly Sales Tax	\$1,571.3m	\$1,766.7m	\$1,471.7m	↑	September

<b>Local</b>					
Monthly Unemployment (Kerr Co.)	6.00%	6.20%	6.10%	↓	September
Median Listing Price	\$219,000	\$208,000	\$229,000	↑	10/5/10
Monthly Sales Tax	\$369,251	\$372,641	\$359,470	↑	October
Monthly EIC Tax	\$184,602	\$186,320	\$179,735	↑	October
Monthly HOT	\$67,868	\$69,839	\$72,153	↓	October

	FY11 Budget	FY11 as of 10/31/2010	FY11 % Received	FY10 as of 10/31/2009	FY10 % Received
<b>General Fund</b>					
Tax Revenue	\$14,647,100	\$684,831	4.68%	\$810,358	5.38%
Property Tax	\$8,240,000	\$166,616	2.02%	\$434,974	5.14%
Sales Tax	\$4,500,000	\$369,252	8.21%	\$359,470	7.77%
Permits & Fees	\$402,450	\$28,544	7.09%	\$18,936	5.11%
Intergovernmental	\$707,013	\$174,602	24.70%	\$41,231	5.93%
Service Revenues	\$2,578,260	\$315,974	12.26%	\$251,413	7.59%
Grant Revenue	\$10,000	\$0	0.00%	\$0	0.00%
Fines & Forfeitures	\$477,710	\$48,522	10.16%	\$49,794	9.87%
Interest & Misc.	\$170,317	\$19,000	11.16%	\$33,259	7.23%
Transfers In	\$1,000,000	\$0	0.00%	\$61,992	4.92%
<b>Total General Fund</b>	<b>\$19,992,850</b>	<b>\$1,271,472</b>	<b>6.36%</b>	<b>\$1,266,982</b>	<b>5.85%</b>

<b>Water/Sewer Fund</b>					
Water Sales	\$4,400,000	\$424,993	9.66%	\$318,445	6.29%
Sewer Sales	\$3,760,000	\$304,114	8.09%	\$279,591	7.17%
Other Revenue	\$714,500	\$52,665	7.37%	\$48,114	7.19%
<b>Total Water &amp; Sewer Fund</b>	<b>\$8,874,500</b>	<b>\$781,773</b>	<b>8.81%</b>	<b>\$646,150</b>	<b>6.71%</b>