

**AGENDA FOR MEETING OF  
THE CITY OF KERRVILLE, TEXAS  
ECONOMIC IMPROVEMENT CORPORATION  
Monday, January 17, 2011, 4:00 p.m.  
Kerrville City Hall Council Chambers  
800 Junction Highway, Kerrville, Texas**

**1. CALL TO ORDER**

**2. INVOCATION**

**3. VISITORS FORUM**

At this time, any person with business not scheduled on the agenda may speak to the corporation. No deliberation or action can be taken on these items because the Open Meetings Act requires an item be posted on an agenda 72 hours before the meeting. Visitors are asked to limit presentations to three minutes.

**4. APPROVE MINUTES:**

4A. December 20, 2010 .....1

**5. MONTHLY REPORTS:**

5A. Monthly financials for December 2010. ....5

5B. EIC construction project status. ....12

**6. INFORMATION AND DISCUSSION:**

6A. Update on Kerrville Economic Development Corporation. (Pratt)

6B. Discussion of long term planning for the community's economic development projects. (Crumrine)

**7. CONSIDERATION AND ACTION:**

7A. Report from the Investment Policy Committee and authorize the execution of the EIC investment policy from Patterson and Associates. (Pratt) .....13

7B. Consider proposal from Kerr Economic Development Foundation ("KEDF") for the Economic Improvement Corporation to enter into a Purchase and Sale Agreement with KEDF for the purchase of approximately 86.71 acres located at 300 Peterson Farm Road, which is intended to become the new site of the United States Department of Agriculture ("USDA") Knipling-Bushland Laboratory. (Wendele) .....25

**8. EXECUTIVE SESSION:**

The EIC Board reserves the right to discuss any of the above items in executive closed session 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), 551.075, 551.076 (deliberation regarding security devices) or 551.087 (deliberation regarding economic development negotiations) of Chapter 551 of the Government Code of the State of Texas.

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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: January 13, 2011 at 3:00 p.m. and remained posted continuously for at least 72 hours preceding the scheduled time of the meeting.

Teri Kinsey  
Deputy City Secretary, City of Kerrville, Texas

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Sections 551.071, 551.072 and 551.087:

- Consider proposal from Kerr Economic Development Foundation ("KEDF") for the Economic Improvement Corporation to enter into a Purchase and Sale Agreement with KEDF for the purchase of approximately 86.71 acres located at 300 Peterson Farm Road, which is intended to become the new site of the United States Department of Agriculture ("USDA") Knipling-Bushland Laboratory. (Wendele)

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

**10. ADJOURNMENT**

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Teri Kinsey  
Deputy City Secretary, City of Kerrville, Texas

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

**December 20, 2010**

On Monday, December 20, 2010, the meeting of the directors of the City of Kerrville, Texas Economic Improvement Corporation, was called to order at 4:02 p.m. by Bill Crumrine, President, in the City Hall Council Chambers, 800 Junction Highway, Kerrville, Texas.

**Members Present:**

Jack Pratt, Vice President  
Alan Massey, Secretary  
Gregg Appel  
Rex Boyland  
Warren Ferguson  
Robert Miller

**Members Absent:**

Bill Crumrine, President

**Staff Present**

Todd Parton, City Manager  
Mike Hayes, City Attorney  
Kristine Ondrias, Assistant City Manager  
Mike Erwin, Director of Finance  
Mindy Wendele, Director of Business Programs  
Mike Wellborn, Director of Engineering  
Kevin Coleman, Director of Development Services  
Teri Kinsey, Administrative Assistant to City Secretary

2. **INVOCATION:** Given by Vice-President Jack Pratt.

3. **VISITORS FORUM:**

Ed Hamilton addressed the Board and stated his intended purpose of the Capital Improvement Project was to assist with demolition of dilapidated buildings, bring in new businesses, thus providing new jobs. Mr. Hamilton also addressed EIC's approval of funding the Hill Country Shooting Sports Center.

4. **APPROVE MINUTES:**

4A. November 15, 2010

Mr. Massey moved to approve the minutes of the November 15, 2010 meeting; Mr. Appel seconded, motion passed 6-0.

5. **PUBLIC HEARING AND ACTION:**

5A. Funding agreement with the Kerrville Economic Development Corporation in the amount of \$225,000.00.

Mr. Pratt opened the public hearing at 4:27 pm; nobody spoke; the public hearing was closed at 4:27 pm.

Mr. Ferguson moved to approve the funding agreement with the Kerrville Economic Development Corporation in the amount of \$225,000.00; Mr. Boyland seconded, motion passed 6-0.

6. **MONTHLY REPORTS:**

6A. Monthly financials for November 2010.

Mr. Pratt moved to approve the November 2010 financials as presented; Mr. Massey seconded; motion passed 6-0.

6B. EIC construction project status.

Mr. Wellborn presented the November 2010 construction project status report. The construction report was accepted by consensus.

7. **INFORMATION AND DISCUSSION:**

7A. Update on Convention Center Review Panel.

Mr. Ferguson reported that Hunter Equity gave 3 possible sites for the New Multi Purpose Meeting Facility; one downtown and the other two locations on IH-10. City Council will either; accept one of these locations, suggest another site or reject the project completely. City Council tabled discussion on this item at the December 14, 2010 council meeting.

7B. Update on Kerrville Economic Development Corporation.

Mr. Pratt reported that the 2<sup>nd</sup> interviews for Director are scheduled for January 3, 2011, and KEDC hopes to have the position filled by February 1, 2011.

7C. Update on Harper Highway Extension Project.

Ms. Ondrias addressed the Board in regards to a possible funding request from the City of Kerrville for the Harper Road Utility Project, Phase I from EIC. Ms. Ondrias reviewed the construction schedule, annexation schedule, and cost estimate. The Board questioned:

- What was the city's motivation
- Water use projection
- Will land owners be required to hook up to city water.

Ms. Wendele stated the motivation was ad valorem taxes, water and wastewater usage, and future development but the catalyst for the project was job retention at the James Avery plant. Ms. Ondrias explained that the projected usage has not been researched yet but water would be available as needed but the owners will have the option as to whether or not to tie on to the city's system. The Board asked that staff come back with 1, 3, and 5 year projections for potential revenue and cost estimates.

7D. Update on 501 (c) 3 filing.

Mr. Parton advised the Board that EIC had the same rights and privileges as if they were a 501 (c) 3 and that he could not find any other economic development board with that status. It was a possibility that EIC might incur additional obligations and requirements by filing for 501 (c) 3. Mr. Parton explained that if the Board wished to proceed with filing they would need City Council's approval.

8. **CONSIDERATION AND ACTION:**

8A. Report from the Investment Policy Committee and authorize the execution of the EIC investment policy from Patterson and Associates.

Mr. Pratt reported that progress is being made and a recommendation should be submitted at the January 17, 2011 meeting.

8B. Consider a proposal from Kerr Economic Development Foundation ("KEDF") for the Economic Improvement Corporation to purchase KEDF's purchase money loan for the property located at 300 Peterson Farm Road, which is intended to become the site of the United States Department of Agriculture ("USDA") Knipling-Bushland Laboratory.

Mr. Steve Huser, KEDF Chairman stated to the Board that KEDF received four appraisals from 2 different companies on 2 pieces of property and it is the desire of KEDF for EIC to assume the loan, purchase the land, and take over support of the USDA project.

After discussion, it was the consensus of the Board to defer this item to executive session.

8C. Discussion of Protest Letter to PUC Docket No. 38354 – LCRA TSC's application for the McCamey D to Kendall to Gillespie Project from the Economic Improvement Corporation.

Mr. Ferguson moved to approve the letter as revised, adding the City of Kerrville's recommendation for possible alternate LCRA-CREZ route; Mr. Appel seconded; motion passed 6-0.

8D. Selection of an EIC Board representative as a part of the Economic Development delegation to Washington DC concerning the USDA project.

Mr. Pratt moved to appoint Mr. Ferguson as the EIC representative for the Economic Development delegation to go the Washington DC concerning the USDA project; Mr. Miller seconded, motion passed 5-0-1 with Messrs Pratt, Boyland, Appel, Massey and Miller voted for; no one voted against; and Mr. Ferguson abstained.

8E. Discussion of EIC Board policies, procedures, applications and funding  
• Application Documentation

Ms. Wendele addressed the board regarding an e-mail from Bob Miller asking what information the city shared with EIC members when a funding request was received. The past desire of the EIC board was not to receive these items electronically or as hard copies due to the large size of required documentation. It was discussed by the Board to possibly appoint a Board to the Initial Response Team if the grant request is over \$100,000.00, review financials in executive session on a case by case basis, and that the Board be notified one week prior to the meeting if a grant request is over \$100,000.00.

Mr. Miller moved to direct city staff to notify the board one week prior to the regularly scheduled Board meeting, by e-mail, if the grant request is over \$100,000.00; Mr. Ferguson seconded, motion passed 6-0.

**10. EXECUTIVE SESSION:**

Mr. Pratt moved that the Economic Improvement Corporation go into executive closed session under sections 551.071 (consultation with attorney) and 551.072 (deliberation regarding real property) of Chapter 551 of the Government Code of the State of Texas; Mr. Ferguson seconded; motion passed 6-0 to discuss the following matters:

Sections 551.071 and 551.072:

- Economic development grant/loan agreement between Kerr Economic Development Foundation, Inc. and the City of Kerrville, Texas Economic Improvement Corporation (USDA Facility).

At 5:50 p.m. the regular meeting recessed and the Board went into executive closed session at 5:51 p.m. At 6:25 p.m. the executive closed session recessed and the Board returned to open session at 6:26 p.m. The chairman announced that no action had been taken in executive session.

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

- 8B. Consider a proposal from Kerr Economic Development Foundation ("KEDF") for the Economic Improvement Corporation to purchase KEDF's purchase money loan for the property located at 300 Peterson Farm Road, which is intended to become the site of the United States Department of Agriculture ("USDA") Knipling-Bushland Laboratory.

Mr. Ferguson moved to request the city attorney to draft documentation for EIC to take over USDA property from Kerrville Economic Development Foundation and pay off the outstanding loan, Mr. Miller seconded; motion passed 5-0-1 with Messrs Pratt, Boyland, Ferguson, Massey and Miller voted for; no one voted against; and Mr. Appel abstained.

**12. ADJOURNMENT:**

Mr. Boyland moved to adjourn the meeting; Mr. Ferguson seconded; motion passed 6-0. The meeting adjourned at 6:25 PM.

**APPROVED:** January 17, 2011

\_\_\_\_\_  
Bill Crumrine  
President

\_\_\_\_\_  
Teri Kinsey  
Admin. Assist. to the City Secretary

CITY OF KERRVILLE  
Economic Improvement Corporation  
Sales Tax Improvement Fund

<b>Cash Balance as of December 1, 2010</b>		<b>\$ 2,527,460</b>
Deposits:		
Sales Tax	\$ 169,550	
Interest Revenue	\$ -	
	<u>\$ 169,550</u>	
Expenses:		
Office Supplies	\$ -	
Advertising	\$ 20	
Administrative Service Fee	\$ 6,250	
Special Services - Category 1	\$ 544,838	
Special Services - Category 2	\$ -	
Transfer for Debt Service	<u>\$ 42,083</u>	
Total Expenses	\$ 593,191	
Revenues Over (Under) Expenditures		<u>\$ (423,640)</u>
<b>Ending Cash Balance as of December 31, 2010</b>		<b><u><u>\$ 2,103,820</u></u></b>

City of Kerrville  
Economic Improvement Corporation  
Sales Tax Improvement Fund - Revenue and Expense Statement  
For the month ending December 31, 2010

	Annual Budget	Current Period	Y-T-D Actual	% of Budget	Budget Balance
<b>BEGINNING CASH BALANCE</b>	\$ 2,228,924		\$ 2,228,924		
<b>REVENUE:</b>					
Sales and Use Tax	\$ 2,250,000	\$ 169,550	\$ 561,829	24.97%	\$ 1,688,171
Interest	\$ -	\$ -	\$ 2,924	#DIV/0!	\$ (2,924)
<b>TOTAL REVENUE</b>	<b>\$ 2,250,000</b>	<b>\$ 169,550</b>	<b>\$ 564,753</b>	<b>25.10%</b>	<b>\$ 1,685,247</b>

	Annual Budget	Current Period	Y-T-D Actual & Encumbrance	% of Budget	Budget Balance
<b>EXPENDITURES:</b>					
<b>Administrative</b>					
Advertising	\$ -	\$ 20	\$ 20	-	\$ (20)
Transfer to Debt Service Fund	\$ 505,000	\$ 42,083	\$ 126,250	25.00%	\$ 378,750
Economic Development Governing Body	\$ 225,000	\$ -	\$ -	100.00%	\$ 225,000
Annual Disclosure Fee	\$ -	\$ -	\$ -		\$ -
Administrative Services Fee	\$ 75,000	\$ 6,250	\$ 18,750	25.00%	\$ 56,250
<b>Total Administrative</b>	<b>\$ 805,000</b>	<b>\$ 48,353</b>	<b>\$ 145,020</b>	<b>18.01%</b>	<b>\$ 659,980</b>
<b>Category I - Business Development</b>					
Hill Country Shooting Center		\$ 494,838	\$ 494,838	100.00%	\$ (494,838)
Commercial Improve Pilot Program		\$ 50,000	\$ 50,000	100.00%	\$ (50,000)
Unspecified	\$ 781,000	\$ -	\$ -	0.00%	\$ 781,000
<b>Total Category I</b>	<b>\$ 781,000</b>	<b>\$ 544,838</b>	<b>\$ 544,838</b>	<b>100.00%</b>	<b>\$ 236,162</b>
<b>Category II - Quality of Life</b>					
Schreiner University Project	\$ -	\$ -	\$ -	#DIV/0!	\$ -
Hill Country Home Opportunity Program	\$ -	\$ -	\$ -	100.00%	\$ -
Category II Unspecified	\$ 82,000	\$ -	\$ -	0.00%	\$ 82,000
<b>Total Category II</b>	<b>\$ 82,000</b>	<b>\$ -</b>	<b>\$ -</b>	<b>0.00%</b>	<b>\$ 82,000</b>
<b>Category III - Public Infrastructure</b>					
Unspecified Projects	\$ 82,000	\$ -	\$ -	0.00%	\$ 82,000
<b>Total Category III</b>	<b>\$ 82,000</b>	<b>\$ -</b>	<b>\$ -</b>	<b>0.00%</b>	<b>\$ 82,000</b>
<b>Contingency</b>	\$ 500,000	\$ -	\$ -	0.00%	\$ 500,000
<b>TOTAL EXPENDITURES</b>	<b>\$ 2,250,000</b>	<b>\$ 593,191</b>	<b>\$ 689,858</b>	<b>30.66%</b>	<b>\$ 1,560,142</b>
<b>NET REVENUES TO EXPENDITURES</b>	<b>\$ -</b>	<b>\$ (423,640)</b>	<b>\$ (125,105)</b>		

	Budget	Actual
<b>ENDING CASH BALANCE: December 31, 2010</b>	\$ 2,228,924	\$ 2,103,820

	Pro Forma				
	2011	2012	2013	2014	2015
<b>Beginning Cash Balance</b>	\$ 2,228,924	\$ 2,252,924	\$ 3,612,374	\$ 4,993,537	\$ 6,822,180
<b>Revenue</b>					
Sales Tax	\$ 2,250,000	\$ 2,272,500	\$ 2,295,225	\$ 2,318,177	\$ 2,341,359
Interest	\$ 24,000	\$ 25,200	\$ 26,460	\$ 27,783	\$ 29,172
<b>Total Revenue</b>	<b>\$ 2,274,000</b>	<b>\$ 2,297,700</b>	<b>\$ 2,321,685</b>	<b>\$ 2,345,960</b>	<b>\$ 2,370,531</b>
<b>Expense</b>					
KEDF-USDA	\$ 131,000	\$ 131,000	\$ 131,000	\$ 32,000	
Promo (ED Gov)	\$ 225,000	\$ 227,250	\$ 229,523	\$ 231,818	\$ 234,136
Administrative Services-City	\$ 75,000	\$ 75,000	\$ 75,000	\$ 75,000	\$ 75,000
Commercial Improvement Program	\$ 50,000	\$ -	\$ -	\$ -	\$ -
Other/Unspecified	\$ 1,264,000	\$ -	\$ -	\$ -	\$ -
Debt Service Transfer	\$ 505,000	\$ 505,000	\$ 505,000	\$ 178,500	
<b>Total Expenditure</b>	<b>\$ 2,250,000</b>	<b>\$ 938,250</b>	<b>\$ 940,523</b>	<b>\$ 517,318</b>	<b>\$ 309,136</b>
<b>Revenue over Expense</b>	<b>\$ 24,000</b>	<b>\$ 1,359,450</b>	<b>\$ 1,381,163</b>	<b>\$ 1,828,643</b>	<b>\$ 2,061,395</b>
<b>Ending Cash Balance</b>	<b>\$ 2,252,924</b>	<b>\$ 3,612,374</b>	<b>\$ 4,993,537</b>	<b>\$ 6,822,180</b>	<b>\$ 8,883,575</b>

CITY OF KERRVILLE  
Economic Improvement Corporation  
Sales Tax Debt Service Fund

<b>Cash Balance as of December 1, 2010</b>		<b>\$ 495,763</b>
Revenues:		
Transfer from Sales Tax Improvements Fund	<u>\$ 42,083</u>	
Total Deposits	<u>\$ 42,083</u>	
Expenses:		
Bond Interest	<u>\$ -</u>	
Total Expenses	<u>\$ -</u>	
Revenues Over (Under) Expenditures:		<u>\$ 42,083</u>
<b>Ending Cash Balance as of December 31, 2010</b>		<b><u><u>\$ 537,846</u></u></b>

CITY OF KERRVILLE  
Economic Improvement Corporation  
Sales Tax Debt Service Fund  
Revenue and Expense Statement  
For the month ending December 31, 2010

	Annual Budget	Current Period	Y-T-D Actual	% of Budget	Budget Balance
<b>BEGINNING CASH BALANCE</b>	\$ 411,596		\$ 411,596		
<b>REVENUE:</b>					
Transfer from Sales Tax Improvement Fund	\$ 505,000	\$ 42,083	\$ 126,250	25.00%	\$ 378,750
Return of Equity - Park Lane Extension	\$ -			100.00%	\$ -
<b>TOTAL REVENUE</b>	\$ 505,000	\$ 42,083	\$ 126,250	25.00%	\$ 378,750
	Annual Budget	Current Period	Y-T-D Actual	% of Budget	Budget Balance
<b>EXPENDITURES:</b>					
Series 1999 Sales Tax Bond Debt Service	\$ 425,000	\$ -		0%	\$ 425,000
Series 1999 Sales Tax Bond Interest Expense	\$ 73,859			0%	\$ 73,859
Paying Agent Fees	\$ 1,000	\$ -		0%	\$ 1,000
First Southwest Continuing Disclosure Fee	\$ -	\$ -		-	\$ -
<b>TOTAL EXPENDITURES</b>	\$ 499,859	\$ -	\$ -	0.00%	\$ 499,859
<b>ENDING CASH BALANCE: December 31, 2010</b>	<b>Budget</b> \$ 416,737		<b>Actual</b> \$ 537,846		

	Pro Forma				
	2011	2012	2013	2014	2015
<b>Beginning Cash Balance</b>	\$ 411,596	\$ 413,237	\$ 414,671	\$ 416,671	\$ 95
<b>Revenue</b>					
Transfer from Sales Tax Improvement Fund	\$ 505,000	\$ 505,000	\$ 505,000	\$ 84,200	\$ -
<b>Total Revenue</b>	\$ 505,000	\$ 505,000	\$ 505,000	\$ 84,200	\$ -
<b>Expenditures:</b>					
Series 1999 Sales Tax Bond Debt Principal	\$ 425,000	\$ 445,000	\$ 465,000	\$ 485,000	\$ -
Series 1999 Sales Tax Bond Debt Interest	\$ 73,859	\$ 54,066	\$ 33,248	\$ 11,276	\$ -
Paging Agent Fees	\$ 1,000	\$ 1,000	\$ 1,000	\$ 1,000	\$ -
Continuing Disclosure Fee	\$ 3,500	\$ 3,500	\$ 3,500	\$ 3,500	\$ -
<b>Total Expenditure</b>	\$ 503,359	\$ 503,566	\$ 502,748	\$ 500,776	\$ -
Revenue over expenditures	\$ 1,641	\$ 1,434	\$ 2,252	\$ (416,576)	\$ -
<b>Ending Cash Balance</b>	\$ 413,237	\$ 414,671	\$ 416,923	\$ 95	\$ 95

CITY OF KERRVILLE  
 Economic Improvement Corporation  
 SALES TAX REVENUE ANALYSIS

	Actual FY 2008	Actual FY 2009	Actual FY 2010	Approved FY 2011	Actual FY 2011	Difference Projected vs Actual	% of Projected Variance
October	\$ 194,330	\$ 195,050	\$ 179,735	\$ 173,552	\$ 184,602	\$ 11,050	6.37%
November	\$ 219,398	\$ 218,565	\$ 188,879	\$ 216,981	\$ 207,677	\$ (9,304)	-4.29%
December	\$ 195,398	\$ 202,043	\$ 170,981	\$ 173,554	\$ 169,550	\$ (4,004)	-2.31%
January	\$ 187,236	\$ 190,881	\$ 170,645	\$ 158,281			
February	\$ 251,426	\$ 239,208	\$ 236,837	\$ 261,777			
March	\$ 194,946	\$ 200,569	\$ 163,136	\$ 150,622			
April	\$ 168,423	\$ 259,861	\$ 160,461	\$ 153,072			
May	\$ 234,014	\$ 228,262	\$ 203,235	\$ 214,787			
June	\$ 193,637	\$ 181,835	\$ 182,429	\$ 168,623			
July	\$ 200,625	\$ 183,253	\$ 179,622	\$ 170,721			
August	\$ 230,443	\$ 219,318	\$ 221,711	\$ 228,210			
September	\$ 213,253	\$ 189,718	\$ 186,321	\$ 180,144			
<b>Total</b>	<b>\$ 2,483,129</b>	<b>\$ 2,508,562</b>	<b>\$ 2,243,991</b>	<b>\$ 2,250,324</b>	<b>\$ 561,829</b>	<b>\$ (2,258)</b>	<b>-0.40%</b>

CITY OF KERRVILLE  
 Economic Improvement Corporation  
 EIC Capital Projects Fund

<b>Cash Balance as of December 1, 2010</b>		<b>\$ 1,968,646</b>
Revenues:		
Transfer In	\$ 544,838	
Total Revenues/Transfer In	\$ 544,838	
Expenses:		
Services		
Special Services		
Harper Road Utility Extension	\$ 148,504	
	\$ -	
	\$ 148,504	
Capital Outlay		
Capital Outlay Total		-
Transfer Out		
Total Expenses	\$ 148,504	
Revenue Over (Under) Expenditures		<u>\$ 396,334</u>
<b>Ending Cash Balance as of December 31, 2010</b>		<b><u>\$ 2,364,980</u></b>

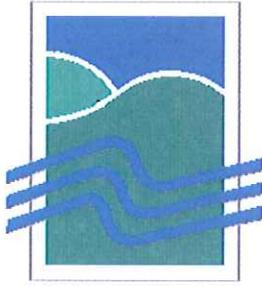
CITY OF KERRVILLE  
 Economic Improvement Corporation  
 Sales Tax Improvement Capital Projects Fund  
 Project Status Summary  
 For the month ending December 31, 2010

YEAR(S) FUNDED	PROJECTS	Funding Agreement	EIC Funding Agreement Commitment	EIC Funded To Date	Non-EIC Funding	Total Funded	Project Expenses to Date	Project Balance	EIC Future Allocation Balance
2004/05	Holdsworth Drive	FA 2004-07	\$ 1,000,000	\$ 1,000,000	\$ 3,500,396	\$ 4,500,396	\$ 4,491,208	\$ 9,188	-
2006/07	Harper Highway Utility Extension	FA 2008-013	\$ 2,850,000	\$ 2,850,000	\$ 302,396	\$ 3,152,396	\$ 1,651,456	\$ 1,500,940	-
2007/08	Salvation Army Kroc Center	FA 2008-011	\$ 500,000	\$ 500,000		\$ 500,000	\$ 438,496	\$ 61,504	-
2008/09	Alamo Workforce	FA 2009-03	\$ 109,887	\$ 109,887		\$ 109,887	\$ 108,394	\$ 1,493	0
2008/09	KEDF USDA Payment*	FA 2008-08	\$ 525,000	\$ 99,968		\$ 99,968	\$ 99,968	\$ (0)	425,032
2009/10	Hill Country Home Opportunity	FA 2010-02	\$ 150,000	\$ 150,000		\$ 150,000	\$ 11,716	\$ 138,284	-
2009/10	Commercial Improvement Program		\$ 100,000	\$ 100,000		\$ 100,000	\$ -	\$ 100,000	-
2010/11	Commercial Improvement Program		\$ 50,000	\$ 50,000		\$ 50,000	\$ -	\$ 50,000	-
2010/11	Hill Country Shooting Center	FA 2010-03	\$ 494,838	\$ 494,838		\$ 494,838	\$ -	\$ 494,838	-
<b>TOTALS</b>			\$ 5,779,725	\$ 5,354,693	\$ 3,802,792	\$ 9,157,485	\$ 6,801,238	\$ 2,356,247	425,032

Cash Balance on 12/31/2010: \$ 2,364,980

Unallocated cash available: \$ 8,733

\* Funding moved as payment becomes due



**City of Kerrville**  
Director of Engineering  
800 Junction Highway  
Kerrville, Texas 78028-5069  
830.792.8310 (O)  
830.896.8793 (F)  
mike.wellborn@kerrvilletx.gov

## MEMORANDUM

TO: EIC Board

FROM: Michael Wellborn, P.E., Director of Engineering

DATE: January 13, 2011

SUBJECT: January, 2011 CIP Update for EIC Funded Projects

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Harper Road Utility Extension (\$2,850,000.00) – The project construction contract was awarded to Nelson Lewis, Inc. in an amount not to exceed \$2,520,564.00 on June 22, 2010. Notice to precede letter issued on August 2, 2010. In addition to the construction contract, City Council awarded a separate contract to Raba Kistner Consultants, Inc to perform the required material testing for the project. The contract with the consultant is a not to exceed contract in an amount of \$67,840.00. The construction is broken up into sections as follows:

- Section 1 (James Avery Campus to north side of I-10) = water & sewer complete.
- Section 2 (South end of project to Horseshoe Oaks subdivision) = complete.
- Section 3 (Horseshoe Oaks subdivision to south side of I-10) = under construction.

Nelson Lewis, Inc. has currently invoiced & been paid 55% of their construction contract. Raba Kistner has invoice & been paid 6.3% of their material testing contract.

Salvation Army Kroc Center Site Work & Drainage Improvements (\$570,000.00) – This project consists of constructing retaining walls, side walks, walking trails, fencing, replacement of sanitary sewer and other associated improvements related to the Salvation Army Kroc Center including site preparation, grading and drainage. The construction contract was awarded to Yantis Company (Contractor) during the May 12, 2009 City Council meeting in the amount of \$1,119,735.75. On June 8, 2010, Council authorized the increase of the Yantis Contract to the amount of \$1,173,959.55 and authorized the release of the remainder funds in the amount of \$44,317.46 to cover change orders. Final acceptance has been issued to the Contractor and the project should be ready to close by the first of the year.

# Economic Improvement Corporation

## City of Kerrville, Texas Investment Policy

Adopted \_\_\_\_\_, 2011

### 1. General Policy

It is the policy of the Economic Improvement Corporation (the "EIC") of the City of Kerrville (the "City") to administer its funds and the investment of those funds, as its highest public trust. The funds shall be invested in a manner, which provides for the safety of principal through risk management and diversification while meeting all the cash needs. Investments should provide a reasonable investment return and the earnings will be used in a manner that best serves the interests of the EIC and the City.

This Policy is designed to be in conformance with the Public Funds Investment Act, Chapter 2256, Texas Government Code (the "Act"), and any applicable state and federal regulations, and applicable bond resolution requirements.

### 2. Scope

This Policy will govern the investment of all the financial assets (including, but not limited to the three funds: Sales Tax Improvement, EIC Debt Service and EIC Projects) of the EIC, with the exclusion of real-estate assets

### 3. Goals and Objectives

Investment of EIC funds shall be governed by the following investment objectives, in their order of priority:

#### a. Safety

Safety of principal is the foremost objective of the investment program. Investment shall be undertaken in a manner that seeks to ensure the preservation of capital and avoids security defaults or erosion of market values. To attain this objective, diversification will be used to limit potential losses on individual securities.

#### b. Liquidity

The investment portfolio will remain sufficiently liquid to enable EIC to meet all operating requirements that might be reasonable anticipated. Ongoing cash flow analysis will be used to identify changing liquidity needs and anticipate cash needs. A liquidity buffer of cash equivalent investments should be maintained to meet unanticipated liabilities.

To the extent possible, EIC will attempt to match its investment maturities with anticipated liabilities and cash flow requirements. EIC will not directly invest in any securities maturing more than ~~five (5)~~ two (2) years from the date of purchase.

To reflect overall cash flow requirements and risk tolerance levels of EIC, the weighted average maturity of the overall portfolio shall not exceed ~~one year~~ 185 days.

c. **Diversification**

In order to minimize investment and market risk, EIC will diversify its investments by security type and maturity. The portfolio will be designed to avoid unreasonable risks within one market sector or from an individual financial institution.

d. **Yield**

EIC's investment portfolio shall be designed with the objective of attaining a reasonable yield throughout budgetary and economic cycles, commensurate with investment risk constraints and the cash flow characteristics of the portfolio. The portfolio(s) risk shall be measured quarterly against a benchmark which is based on anticipated cash flow analysis and the authorized portfolio structure. The overall portfolio shall have a maximum weighted average maturity of ~~one year~~ 185 days. To measure the overall risk of the portfolio, a benchmark of the ~~one-year~~ 26 week Constant Maturity Treasury Bill plus 10% shall be reported.

**4. Investment Strategy**

All EIC funds are to be commingled in one portfolio for investment purposes and efficiency. The investment strategy of the portfolio has as its primary objective to assure that anticipated cash flows are matched and adequate liquidity maintained with minimal volatility. The portfolio will be structured with high credit quality, short and intermediate term securities to minimize market, liquidity, and credit risks. The maximum dollar weighted average maturity of the portfolio will be ~~one year~~ 185 days calculated on stated maturity dates.

**5. Investment Officers**

Under the Administrative Services Contract between EIC and the City, the Investment Officer designated for the City shall act as the Investment Officer of the EIC. The Treasurer of EIC is authorized to administer the investment activities of the EIC and, is designated as Investment Officer for the purposes of this Policy and the Act. The Board may designate additional qualified employees or an SEC Registered Investment Advisor, as Investment Officer(s). The designation of all Investment Officers shall be by Board resolution. Authority and designation as Investment Officer is effective until rescinded by the EIC, expiration of the officer's term, or until termination of employment.

All Investment Officer(s) shall be familiar with this Policy and its underlying procedures. No Investment Officer may engage in an investment transaction except as provided under the terms of this Policy and its supporting procedures.

A trading resolution is established by adoption of this Investment Policy authorizing the Investment Officer(s) to engage in investment transaction on behalf of the EIC. The persons so authorized to transact business are also authorized to approve wire transfers used in the process of investing.

### **Training**

All Investment Officer(s) shall attend ten (10) hours of training in accordance with the Act within twelve (12) months of assuming responsibilities and attend (10) hours of training in each successive two-year period. Training costs shall be provided by the EIC with Board approved training courses. Training should include topics such as investment controls, security risk, market risks, diversification of the investment portfolio and compliance with State laws.

## **6. Standard of Care**

The standard of care to be used by the Investment Officer(s) shall be the "prudent person standard" and shall be applied in the context of managing the overall portfolio, rather than a consideration as to the prudence of a single investment; and whether the investment decision was consistent with this Investment Policy. The standard states:

Investment shall be made with judgment and care, under prevailing circumstances, that a person of prudence, discretion, and intelligence would exercise in the management of their own affairs, not for speculation but for investment, considering the probable safety of the capital and the probable income to be derived.

Investment Officer(s) acting in accordance with the Investment Policy and exercising due diligence, shall be relieved of personal liability for an individual security's credit risk or market price change, provided that deviations from expectations are reported in a timely manner and appropriate action is taken to control adverse developments.

An investment officer who has any personal or business relationship with a business organization offering to engage in an investment transaction with the EIC shall file a statement disclosing that personal business interest to the Board.

## **7. Standard of Ethics**

Investment Officer(s) shall act as custodians of the public trust and shall refrain from any transaction that might involve a conflict of interest or the appearance of a conflict of interest, or any activity that might otherwise discourage public confidence. Investment Office(s) shall refrain from personal business activity that

could conflict with proper execution of the investment program or that could impair their ability to make impartial investment decisions.

An Investment Officer who has a personal or business relationship with an individual or organization seeking to sell an investment to the EIC shall file a disclosure statement with the Texas Ethics Commission and the Board.

## **8. Investment Advisors, Investment Pools, and Broker/Dealers**

The EIC recognizes that all investment decisions regarding the portfolio are ultimately the responsibility of the Board. However, all investment advisors and broker/dealers conducting business with the EIC shall make every reasonable effort to adhere to the spirit, philosophy, and specific terms of this Investment Policy.

### **Broker/Dealers**

A list of not less than five authorized broker/dealers (or banks) shall be maintained to assure a competitive process. The Investment Officer(s) will establish the criteria, monitor the service, and evaluate the broker/dealers based on their experience and responsiveness to the City's requests for service and information.

Financial Institutions and broker/dealers who desire to transact business with the EIC must supply the following documents to the Investment Officer or Investment Advisor (as applicable):

- Current year audited financial statements
- Financial Institutions Regulatory Agency (FINRA) certification and FINRA's Central Depository Registration (CRD) number.
- Proof of Texas State Securities registration.

Broker/dealers shall provide timely trade documentation and confirmations.

### **Certification**

Before transacting any business with the EIC, the Investment Officer shall present each broker/dealer with a current copy of the EIC's Investment Policy and an authorized representative of the firm shall, in writing, certify substantially to the effect that:

1. the broker/dealer has received and reviewed the Investment Policy, and
2. the firm has implemented reasonable procedures and controls to preclude investments with the EIC not authorized by the Policy.

The EIC shall not enter into any investment transaction with a broker/dealer prior to receiving the certification.

If material changes are made to the Investment Policy, an updated copy shall be provided to the authorized broker/dealer for re-certification.

### **Investment Advisor (Investment Manager)**

The EIC may contract with another investing entity registered under the 15 U.S.C. Section 80b-1 et seq. to invest its funds. The Adviser will be held to the same standards of this Policy as the Investment Officer.

Investment advisors shall be registered with the U.S. Security and Exchange Commission and shall provide their SEC ADV Form to the EIC on an annual basis.

The EIC shall present investment advisors with a current copy of the Investment Policy and an authorized representative of the firm shall, in writing, certify substantially to the effect that:

1. the applicable advisors have received and reviewed the EIC's Investment Policy, and
2. the firm has implemented reasonable procedures and controls to preclude investments with the EIC not authorized by the Policy.

The EIC shall not enter into any investment transaction with an investment advisor prior to receiving the certification.

### **9. Authorized Investments**

Authorized investments under this Policy shall be limited to the instruments listed below as further described by the Act.

- a. Obligations of the United States Government, its agencies and instrumentalities, excluding mortgage backed securities, with a stated final maturity not to exceed ~~five (5)~~ two (2) years.
- b. Obligations of the State of Texas, its agencies or political subdivisions, excluding mortgage backed securities, with a stated final maturity not to exceed ~~five (5)~~ two (2) years.
- c. FDIC insured certificates of deposit from banks doing business in Texas with a final stated maturity not to exceed twelve (12) months. Certificates of deposit shall be guaranteed or insured by the Federal Deposit Insurance Corporation or its successor, ~~and governed by a written Depository Agreement.~~
- d. Share certificates of credit unions doing business in Texas and insured by the National Credit Union Share Insurance Fund or its successor and not to exceed twelve (12) months to maturity.

~~e. Commercial paper rated A1/P1 or its equivalent by two (2) nationally recognized rating agencies and with a final stated maturity not to exceed ninety (90) days from the date of issuance.~~

e. AAA-rated, SEC registered money market mutual funds, striving to maintain a \$1 net asset value.

f. Constant-dollar, AAA-rated Texas Local Government Investment Pools (namely TexPool/TexPool Prime/TexStar), approved by resolution of the Board and conforming in every respect to the Act.

The EIC investment in any investment pool shall not exceed ten percent of the total assets of the pool.

g. Fully collateralized repurchase agreements transacted with a primary securities dealer as defined by the Federal Reserve, under a written Master Repurchase Agreement, with a defined termination date, secured by obligations as defined by this Policy held by an independent third party custodian approved by the EIC, and with a stated final maturity not to exceed one hundred eighty (180) days.

h. FDIC insured demand deposit accounts in banks doing business in Texas under a written depository agreement.

Diversification by investment instrument shall not exceed the following guidelines for each type of instrument:

Percentage of Portfolio ( <u>Maximum</u> )	
U.S. Treasury Obligations	
U.S. Government Agency Securities and Instrumentalities of Government-Sponsored Corporations	100%
Local Government Investment Pool	
Fully Insured <del>Collateralized</del> Certificates of Deposit	100%
Fully Collateralized Repurchase Agreements	10%
SEC-Registered No-Load Money Market Mutual Funds	50%
Obligations of States, Agencies, Counties, Cities	20%

If additional types of securities are approved for investment by public funds by state statute, they will not be eligible for investment by the EIC until this policy has been amended and the amended version adopted by the Board.

## **Delivery versus Payment**

All security transactions shall be transacted on a delivery versus payment (DVP) basis in order to ensure that the EIC has total control of its investments and its funds at all times.

## **Competitive Bidding**

All investment transactions, including certificates of deposit, will be made on a competitive basis to assure that the EIC is receiving fair market prices.

## **10. Collateralization**

The EIC is not a "public unit" as defined by FDIC regulations and is therefore not eligible to have pledged collateral from a bank. Bank time and demand deposits must be maintained under the FDIC insured limit, currently \$250,000 per bank holding company.

### **Repurchase Agreement- Owned Collateral**

Collateral under a master repurchase agreement is owned by the EIC under a buy-sell transaction. It will be held by an independent third party safekeeping agent approved by EIC under an executed Master Repurchase Agreement. Collateral with a market value totaling 102% of the principal and accrued interest is required and the counter-party is responsible for the monitoring and maintaining of collateral and margins at all times.

## **11. Safekeeping and Custody of EIC Owned Securities**

The laws of the State, this Policy, and prudent treasury management require that all securities be settled on a delivery versus payment basis and be held in safekeeping by an independent third party financial institution approved by the EIC. EIC shall contract with its banking services depository or another financial institution(s) as Custodian for the safekeeping of any securities owned. The designated Custodian will be responsible for the clearing and safekeeping of all security trades and will provide a monthly report of holdings. All securities held by the Custodian on behalf of the EIC shall be evidenced by a safekeeping receipt.

## **12. Internal Control**

The Investment Officer(s) shall maintain a system of internal controls over the investment activities and subordinate employees. The control shall be designed to address fraud, employee error, misrepresentation by third parties, unanticipated market changes, and imprudent actions. Controls deemed most important would include: control of collusion, separation of duties, custody and safekeeping, delegation of authority, securities losses and remedial actions, and documentation on all transactions.

The quarterly investment reports shall be reviewed annually by the City's independent auditor as part of the City's annual audit process. Any irregularities shall be reported to the Board.

### **Cash Flow Forecasting**

Cash flow forecasting is a control designed to protect and sustain cash flow requirements. The Investment Officer(s) will maintain a cash flow forecasting process designed to monitor and forecast cash positions ~~of~~ for investment purposes.

## **13. Reporting**

Not less than quarterly, the Investment Officer(s) shall report to the Board regarding the EIC's investment activities for the quarter in compliance with the Act. The reports shall contain sufficient information to permit an informed outside reader to evaluate the performance of the investment program. At a minimum the report shall include:

- description of each investment and depository position,
- book and market values at the beginning and end of the reporting period
- the change in market value during the period
- book value and market value of each separately invested asset at the beginning and end of the reporting period ~~market sector~~
- ~~interest~~ earnings for the period
- overall yield in comparison to its benchmark yield for the period
- maturity date of each separately invested asset that has a maturity date.

Market prices for market value calculations shall be obtained from independent sources. The quarterly report shall be signed by the Investment Officer and Investment Advisor, as applicable.

## **14. Depositories**

The EIC will ~~designate~~ one banking institution through a competitive process as its central banking services provider at least every five (5) years or utilize the banking services under the existing City contract. This institution will be used for normal banking services including disbursement, deposits, and safekeeping of securities.

Other banking institutions from which the EIC may purchase certificates of deposit will also be designated as depositories.

**15. Policies and Strategy Review**

The Board shall review and adopt the Investment Policy and incorporated Investment Strategy not less than annually. The Board shall adopt a written instrument by resolution stating that it has reviewed the Policy and Strategy and the adopting resolution shall record any changes made.

APPENDIX A  
CERTIFICATION OF BROKER/DEALER

I hereby certify that I have personally read and understand the investment policy of the Kerrville Economic Improvement Corporation (KEIC) and have implemented reasonable procedures and controls designed to fulfill these objectives and conditions. Transactions between this firm and the KEIC will be directed toward precluding imprudent investment activities and protecting the KEIC from credit and market risk.

This firm pledges due diligence in informing the KEIC of foreseeable risks associated with financial transactions connected to this firm.

I attest that I am a qualified representative of this firm, authorized to sign on its behalf.

---

Signature

Name:

Title:

Date:

APPENDIX B  
APPROVED BROKER/DEALERS

APPENDIX C  
INVESTMENT STRATEGY  
2011

**Sales Tax Improvement Fund**

All authorized investments permitted.

**Sales Tax Debt Service Fund**

All authorized investments permitted. No funds shall be invested beyond the next upcoming annual principal payment due date for the bond issue.

**Capital Projects Fund**

All authorized investments permitted. No funds shall be invested beyond thirty days before the expected project completion date.

Economic Improvement Corporation  
Kerrville, Texas  
Investment Strategy  
January 17, 2011

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**1. Scope**

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Number \_\_\_\_\_  
July 13

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While the Investment Strategy is an integral part of the administration of the investment activities of the Economic Improvement Corporation (EIC), it is subordinate to the EIC's Investment Policy. As such, no portion of this strategy or any future adopted strategy shall override or circumvent the spirit, philosophy, or specific terms of the EIC's Investment Policy.

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The purpose of the Investment Strategy is to guide the day-to-day administration of the investment activities of the EIC in meeting the investment objectives of the Investment Policy.

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**2. Investment Pool**

The EIC maintains a cash and investment pool that is available for use by all funds under the management of the EIC. Each fund's portion of the Pool is reported as "equity in investment pool." Earnings from the pooled investments are allocated monthly based on each fund's average monthly balance. Funds that incur a negative equity balance are not allocated nor charged any interest.

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The pooling method is an efficient means for managing EIC funds. For that reason, all EIC funds will be included in the pool unless otherwise required by the Corporation, state or federal regulations, or applicable bond resolution requirements.

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**3. Suitable Investments**

The following are currently considered suitable investments by the EIC, as subject to PFIA.

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**a. United States Government Obligations**

Beside U.S. Treasury Bills and Notes, the City shall limit investments in government obligations to the following federal agencies:

1. Federal Home Loan Bank Notes (FHLB)
2. Federal National Mortgage Association Notes (FNMA, Fannie Mae's)
3. Federal Home Loan Mortgage Corporation Notes (FHLMC, Freddie Macs)
4. Federal Farm Credit Bank Notes (FFCB)

- b. Fully collateralized or insured Certificates of Deposit
- d. Money Market Mutual Funds with AAA-rating
- e. Constant Dollar AAA or AAA-m rated Investment Pools
- f. Fully collateralized Repurchase Agreements (Repos)
- g. Fully collateralized or insured demand deposit accounts

Deleted: c. Commercial Paper rated A1/P1¶

4. Strategy

It is the investment strategy of the EIC to closely monitor and anticipate the cash flow needs of the organization in order to keep as much of the EIC's available funds invested in highly credit worthy, highly liquid, short-term investments.

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a. Cash flow

Investment Officers shall monitor and project the EIC's cash flow needs on a monthly basis. Funds that can be reasonably identified as available for investment, should be invested as soon as possible in order that the EIC receives the highest daily rate of return possible given the constraints of the Investment Policy and this Investment Strategy.

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Fund 40 – Sales Tax Improvement Fund

The Investment Officer(s) shall keep 110% of the next month's projected expenditures in the checking account and all other funds to be invested in TexPool or other appropriate instruments to generate the maximum return. The assigned fund balance shall be laddered up to one year.

Fund 43 – EIC Debt Service Fund

The Investment Officer shall maximize the purchase of instruments with maturity dates a month prior to debt service and interest payments. The Investment Officer(s) shall keep 110% of the next month's projected expenditures in the checking account.

Fund 75 - EIC Projects Fund

The Investment Officer ladder investments to coincide with progress of the projects. The Investment Officer(s) shall keep 110% of the next month's projected expenditures in the checking account.

b. Diversification by Security Type

Deleted: While it is important that all available funds be invested, a reasonable amount of demand deposits should be maintained in the City's depository bank so as to avoid the need to liquidate securities prior to their maturity.¶

In order to avoid a high concentration of EIC funds in any single investment type, Investment Officers shall diversify the City's investment portfolio based on the guidelines stated in the Investment Policy. As a result, Investment Officers may have to invest funds in a lower-yielding security type to achieve diversification requirements.

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c. Maturities

It is the intent of the EIC that investment activities achieve a short-term market rate of return exceeding 10% of the 6 month Treasury Bill. Investing in long-term maturities increases the market risk for the EIC. Therefore, Investment Officers shall maintain a weighted average maturity of not more than 185 days based on the EIC's total portfolio value. In no case shall Investment Officers purchase a single investment with a stated maturity greater than 2 years. Except for those instances described in the Investment Policy, Investment Officers shall invest based on the following table:

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Security Type	Maximum Maturity From Date of Purchase
United States Government Obligation	2 years
Certificates of Deposit	12 months
Fully collateralized Repurchase Agreements (Repos)	12 months

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6 months

5. Purchasing Procedures

Investment Officers shall maintain at least five qualified broker/dealers with which to transact investment purchases. Where possible, Investment Officers shall attempt to obtain competitive yield quotes by specific security type and maturity. When the situation arises where competitive quotes can not be reasonably obtained, the Investment Officers will purchase the security most closely matching what he or she believes to offer the best yield-to-maturity based on current overall short-term market performance.

In any case, to avoid any conflict of interest or any appearance of a conflict of interest, the Investment Officers shall make every reasonable attempt to gather competitive quotes on similar security types and maturities for all investment purchases.



Approved Broker/Dealer List  
January 2011

Stephen F. Capoferi  
Duncan – Williams, Inc.  
11458 W. Travelers Way Circle  
Houston, TX 77065  
Phone: 866-394-0236  
[steve@duncanw.com](mailto:steve@duncanw.com)

Mark Edelman  
Cantella & Co., Inc.  
12000 Westheimer, Suite 225  
Houston, TX 77077  
Phone: 866-521-6900  
[medelman@cantella.com](mailto:medelman@cantella.com)

Robert Fairchild  
Morgan Stanley  
1304 Junction Hwy, Suite 300  
Kerrville, TX 78028  
Phone: 830-792-2100  
[Robert.Fairchild@morganstanley.com](mailto:Robert.Fairchild@morganstanley.com)

Andy Lamanna  
Vining Sparks IBG, L.P.  
775 Ridge Lake Boulevard  
Memphis, TN 38120  
Phone: 800-829-0321  
[ALamanna@Viningsparks.com](mailto:ALamanna@Viningsparks.com)

Chris J. Rotan  
Vice President  
Institutional Sales  
Comerica Wealth & Institutional  
Management  
Comerica Bank Tower  
1717 Main Street, 3<sup>rd</sup> Floor  
Dallas, TX 75201  
Office: 214-890-4616  
Fax: 214-462-6720  
[CRotan@comerica.com](mailto:CRotan@comerica.com)

Christian Colon  
Account Executive  
MBS Securities  
24280 Woodward Avenue  
Pleasant Ridge, MI 48069  
Office: 1-800-967-9129  
Fax: 1-248-291-1101  
Main: 1-800-967-9045  
[ccolon@mbssecurities.com](mailto:ccolon@mbssecurities.com)

**DRAFT 01/07/11**

**PURCHASE AND SALE AGREEMENT**

This **Purchase and Sale Agreement** ("Agreement") to buy and sell real property is entered between Seller and Buyer as identified below and is effective on the date ("Effective Date") of the last of the signatures by Seller and Buyer as parties to this Agreement and approval of the parties respective governing bodies.

Seller: Kerr Economic Development Foundation, Inc., a Texas non-profit corporation  
1700 Sidney Baker, Suite 200  
Kerrville, Texas 78028  
Attn: Steve Huser, Chairman  
Phone: (830) 896-1157  
Fax: (830) 896-1166  
E-Mail: \_\_\_\_\_

Seller's Broker: None

Seller's Attorney: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Phone: (830) \_\_\_\_\_  
Fax: (830) \_\_\_\_\_  
E-Mail: \_\_\_\_\_

Buyer: Kerrville Economic Improvement Corporation, a Texas non-profit corporation  
800 Junction Highway  
Kerrville, Texas 78028  
Attn: Chairman  
Phone: (830) 792-3850  
Fax: \_\_\_\_\_  
E-Mail: \_\_\_\_\_

Buyer's Broker: None

Buyer's Attorney: Michael C. Hayes  
800 Junction Highway  
Kerrville, Texas 78028  
Phone: (830) 792-8380  
Fax: (830) 792-3850  
E-Mail: [mike.hayes@kerrvilletx.gov](mailto:mike.hayes@kerrvilletx.gov)

**DRAFT 01/07/11**

Title Company: Kerr County Abstract & Title Co.  
712 Earl Garrett Street  
Kerrville, Texas 78028  
Attn: Diane Green, President  
Phone: (830) 257-5151  
Fax: (830) \_\_\_\_\_  
E-Mail: [diane.green@kerrtitle.com](mailto:diane.green@kerrtitle.com)

Property: An approximately 86.71 acre tract of land, more or less, out of the W.T. Cook Survey No. 71, Abstract No. 114, Kerr County, Texas, and being more particularly described in **Exhibit "A,"** attached hereto and incorporated herein by reference.

Inspection Period: From Effective Date until Closing.

Closing Date: On or before February 5, 2011, subject to extension as provided herein.

Purchase Price: TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable consideration including the amount equal to the balance of unpaid principal and accrued but unpaid interest due and owing as of the date of Closing on that certain Promissory Note dated February 5, 2008, in the original principal amount of \$1,192,956.18 signed by Kerr Economic Development Foundation, Inc., payable to HCSB, a copy of which is attached hereto as **Exhibit "B"** and incorporated herein by reference.

Earnest Money: None

**NOW, THEREFORE,** in consideration of the Purchase Price and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. **Sale and Purchase.** Seller agrees to sell, and Buyer agrees to purchase the Property as provided in this Agreement, including any and all improvements located thereon.

2. **Title, Survey, and Environmental Reports.**

(a) Not later than ten (10) days after the Effective Date, Seller will, at Buyer's expense, obtain:

(i) a current commitment for an Owner's Policy of Title Insurance for the Property from the Title Company, setting forth the state of title to the Property together with any easements or restrictions (existing or created pursuant hereto) benefiting or burdening the Property, together with all exceptions or conditions to such title;

(ii) legible copies of all documents referenced in the Title Commitment;

(iii) tax certificate(s) regarding the payment of ad valorem taxes for current and prior years on the Properties; and

(iv) copies of any environmental studies or reports in Seller's possession or control related to the Property.

(b) Not later than ten (10) days after the Effective Date hereof, Seller shall deliver to Buyer the most recent survey obtained by Seller with respect to the Property, and Buyer may, at Buyer's sole option and in lieu of obtaining a new survey, obtain a certificate from a surveyor subject to approval of the Title Company certifying that no changes have occurred since the prior survey. If Seller's survey is not satisfactory to Buyer or the Title Company, Buyer, at Buyer's sole option, cost and expense (even if the Closing does not occur), may have a survey (the "Survey") of the Property prepared by a duly licensed Texas Registered Public Land Surveyor. The Survey shall be staked on the ground, and the plat shall show the location of all improvements, highways, streets, roads, railroads, rivers, creeks, or other water courses, fences, easements, and rights-of-way on or adjacent to the Property, if any, and shall contain the surveyor's certification that there are no encroachments on the Property other than what are listed on the Title Report and shall set forth a metes and bounds description of the Property. The legal description contained in said Survey shall be used by the Parties as the legal description contained in the Special Warranty Deed.

(c) If Buyer objects to any of the exceptions contained in the Title Commitment, Buyer's objections must be made in writing to Seller not later than ten (10) calendar days after the date Buyer receives the title commitment and the survey. Seller shall in good faith attempt to satisfy or cure the objections to title prior to closing, but Seller shall not be required to incur any cost to do so.

(d) If Seller delivers written notice to Buyer on or before the Closing Date that Seller is unable to satisfy such objections, or if Seller is unable to convey title in accordance with Section 4, below, Buyer may either waive such objections and accept such title as Seller is able to convey, or terminate this Agreement by written notice to Seller.

**3. Inspection Period.**

(a) During the Inspection Period, Buyer and its agents or employees shall have the right to enter upon the Property during regular business hours upon reasonable notice and conduct such inspections, tests and studies as Buyer deems necessary.

(b) Buyer shall be solely responsible for any damages to the Property caused by Buyer's inspection of the Property.

(c) Buyer, at Buyer's sole option and expense, may obtain a Phase I Environmental Site Assessment ("Phase I ESA") with respect to the Property. If in preparation of the Phase I ESA the investigator determines there is reason to conduct additional investigation requiring a Phase II Environmental Assessment ("Phase II ESA"), Buyer may conduct, at Buyer's sole cost, the Phase II ESA that is recommended. If the consultant preparing the Phase I ESA recommends preparation of a Phase II ESA, the Closing shall be extended for a period not to exceed (30) days unless otherwise agreed by Seller.

**DRAFT 01/07/11**

(d) Buyer may terminate this Agreement by notifying Seller and Title Company in writing at any time prior to Closing. In such event, neither party shall have any further claim against the other under this Agreement.

4. **Closing.**

(a) The closing of the sale of the Property shall occur on the Closing Date at the Title Company, or at such other time as may be agreeable to the parties.

(b) At the closing, Seller shall deliver to the Title Company:

(i) a special warranty deed, in form and substance reasonably acceptable to Seller and Buyer, conveying good and indefeasible title to the Property to Buyer, free and clear of any and all encumbrances except the Permitted Exceptions; and

(ii) a Texas owner's policy of title insurance (or equivalent) in the amount of the Purchase Price, insuring such title to the Buyer;

(iii) possession of the Property, free of parties in possession;

(iv) such other documents, signed by Seller, as reasonably requested and required by Title Company.

(c) At the Closing, the Buyer shall deliver to Seller through the Title Company:

(i) the Purchase Price; and

(ii) such other documents, signed by Buyer, as reasonably requested and required by Title Company.

5. **Ad Valorem Taxes; Prorations.** Seller shall pay at or before Closing all ad valorem taxes, plus any penalties, interest, court costs, and attorneys fees, if any, due on delinquent amounts not paid, for tax years prior to the year in which Closing occurs. In addition, rents, lease commissions, interest, insurance premiums, maintenance expenses, operating expenses, and ad valorem taxes for the year of Closing will be prorated at the Closing effective as of the date of the Closing. Seller shall give a credit to Buyer at the Closing in the aggregate amount of any security deposits deposited by tenants under leases affecting the Property and Seller shall have no liability after the date of Closing for any security deposits not actually credited to Buyer. If the Closing occurs before the tax rate is fixed for the year of the Closing, the apportionment of the taxes will be upon the basis of the tax rate for the preceding year applied to the latest assessed valuation, but any difference between actual and estimated taxes for the year of the Closing actually paid by Buyer will be adjusted equitably between the parties upon receipt of a written statement of the actual amount of the taxes. This provision will survive the Closing.

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6. **Closing Costs.**

- (a) Seller agrees to pay and be responsible for the following closing costs:
  - (i) one-half (1/2) of the Title Company's escrow fees;
  - (ii) all fees and premiums for the Basic Owner's Title Policy;
  - (iii) the cost of all tax certificates relating to all taxes and other assessments incurred or arising in relation to the Property;
  - (iv) all costs related to obtaining the release of any deed of trust liens and other liens on the Property, including the cost of preparation of any releases of lien and recording fees related to recording said releases;
  - (v) all costs and expenses incurred by or on behalf of the Seller, including Seller's attorney's fees; and
  - (vi) such other incidental costs and fees customarily paid by sellers of real estate in Kerr County, Texas for transactions of a similar nature to the transaction contemplated herein.
- (b) Buyer hereby agrees to pay and be responsible for the following closing costs:
  - (i) one-half (1/2) of the Title Company's escrow fees;
  - (ii) all fees and premiums for the Survey;
  - (iii) all costs and fees for preparing the Phase I environmental study, if not yet paid;
  - (iv) all fees and premiums for any endorsements to the Basic Owner's Title Policy desired by Buyer;
  - (v) all costs and expenses incurred by or on behalf of the Buyer, including Buyer's attorneys' fees;
  - (vi) recording fees for the special warranty deed; and
  - (vii) such other incidental costs and fees customarily paid by buyers of real estate in Kerr County, Texas, for transactions of a similar nature to the transaction contemplated herein.

7. **Permitted Exceptions.** The zoning, the lien for current taxes, and any exceptions to title to which no objection is made by Buyer pursuant to Section 2(c) are deemed to be Permitted Exceptions. In no case shall any exception noted on Schedule C of the Title Commitment be deemed a Permitted Exception.

8. **Representations and Covenants.** The parties represent and warrant that: (a) they have the authority to enter into this Agreement; and (b) no other person has any interests in or claims against the Property (other than as reflected by the Title Commitment), and it will not hereafter encumber the Property. The only representations made by any party concerning the Property and this Agreement are as set out in this Section 8.

9. **Property Sold As Is.**

(a) Buyer represents that as of the Closing Date that it:

(i) will have fully inspected the Property; and

(ii) will have made all investigations as it deems necessary or appropriate and will be relying solely upon its inspection and investigation of the Property for all purposes whatsoever, including, but not limited to, the determination of the condition of the structures, improvements, soils, subsurface, drainage, surface and groundwater quality, and all other physical characteristics; availability and adequacy of utilities; compliance with governmental laws and regulations; access; encroachments; acreage and other survey matters and the character and suitability of the Property.

(b) Buyer acknowledges and agrees that the Property is being purchased and will be conveyed "AS IS" with all faults and defects, whether patent or latent, as of the Closing.

(c) Except with respect to the quality of the title being conveyed by Seller pursuant to this Agreement, Buyer acknowledges and agrees that Seller has made no representations, warranties, guarantees, statements or information, express or implied, pertaining to the Property, its condition, or any other matters whatsoever, made to or furnished to Buyer by Seller or any employee or agent of Seller, except as specifically set forth in this Agreement.

10. **Remedies.** If Buyer defaults, Seller's sole remedy shall be to terminate this Agreement. If Seller defaults, Buyer's sole remedy shall be to terminate this Agreement.

11. **Notices.** Notices must be in writing to and given at the addresses stated above. Notice given by delivery service or fax shall be effective upon receipt at the address of the addressee; notice given by mail shall be effective upon receipt. In addition, copies of notices shall be to the party's attorney as shown above.

12. **Miscellaneous.**

(a) **Entireties.** This Agreement contains the entire agreement of the parties pertaining to the Property.

(b) **Modifications.** This Agreement may only be modified by a written document signed by both parties.

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(c) Assignment. Neither party may assign its rights under this Agreement without the prior written consent of the other party.

(d) Time is of the Essence. Time is of the essence with respect to the performance by the parties of their respective obligations hereunder.

(e) Effective Date. The Effective Date of this Agreement shall be the date on which the following conditions have been satisfied:

(i) authorized representatives of the parties have signed this Agreement; and

(ii) this Agreement has been approved, ratified, or otherwise authorized by Buyer's Board of Directors and the City Council of the City of Kerrville, Texas, in a joint or separate public meeting(s) held pursuant to the Texas Open Meetings Act.

(f) Non-Business Day. If the final date of any period provided herein for the performance of an obligation or for the taking of any action falls on a Saturday, Sunday, or holiday, then the end of such period shall be extended to the next business day.

(g) Brokers. The parties represent and warrant that they have not worked with any broker relative to this transaction and that no brokerage commission is due and payable upon the Closing. To the extent allowed by law, each party shall indemnify each other from any claim for brokers' commissions relative to the sale of the property and alleged to be due.

(h) Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original for all purposes and constitute one and the same instrument; but in making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart.

(i) Legal Construction. In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect other provisions, and the Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in it.

(j) Law Governing. This Agreement shall be construed under and in accordance with the laws of the State of Texas; and venue for any action arising from this Agreement shall be in the State District Court of Kerr County, Texas. The parties agree to submit to the personal and subject matter jurisdiction of said court.

(k) Survival of Covenants. Any of the representations, warranties, covenants, and obligations of the parties, as well as any rights and benefits of the parties, pertaining to a period of time following the Closing shall survive.

**(Signatures of Following Page)**

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**SIGNED AND AGREED** this the \_\_\_\_\_ day of \_\_\_\_\_, 2011.

**BUYER:**  
**Kerrville Economic Improvement Corporation**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
Michael C. Hayes, Attorney for Buyer

**SIGNED AND AGREED** this the \_\_\_\_\_ day of \_\_\_\_\_, 2011.

**Kerr Economic Development Foundation, Inc.**

By: \_\_\_\_\_  
**Steve Huser, Chairman**

**RECEIPT OF CONTRACT**

Title Company acknowledges receipt of a copy of this Agreement executed by both Buyer and Seller on the \_\_\_ day of \_\_\_\_\_, 2011.

By: \_\_\_\_\_  
Diane Green, President  
Kerr County Abstract & Title Co.  
712 Earl Garrett Street  
Kerrville, Texas 78028

EXHIBIT "A"  
DESCRIPTION OF PROPERTY

FIELD NOTES DESCRIPTION FOR 86.71 ACRES OF LAND OUT  
OF THE EQUITECH-BIO, INC. LAND ALONG PETERSON FARM  
ROAD IN KERR COUNTY, TEXAS

Being all of a certain tract or parcel of land containing 86.71 acres, more or less, out of W.T. Crook Survey No. 71, Abstract No. 114 in Kerr County, Texas; part of a certain 268.62 acre tract conveyed from James S. Ernst, et ux to Equitech-Bio, Inc. by an Assumption Warranty Deed with Vendor's Lien executed the 8<sup>th</sup> day of November, 1995 and recorded in Volume 823 at Page 774 of the Real Property Records of Kerr County, Texas; and being more particularly described by metes and bounds as follows:

BEGINNING at a ½" iron stake set in the northeast right-of-way line of Peterson Farm Road, a sixty (60) ft. wide public road and in the southwest line of said 268.62 acre tract for the most westerly corner of the herein described tract; which point bears: 64.57 ft. S.30°55'53"E. from a fence cornerpost, the most westerly corner of said 268.62 acre tract; and, approximately, 4646 ft. South and 3706 ft. West from the northwest corner of Survey No. 43;

THENCE, upon, over and across said 268.54 acre tract, parallel to and sixty (60) ft. east and southeast from the west line of 268.54 acre tract, all calls to set ½" iron stakes: N.37°23'22"E., 257.05 ft.; N.19°32'35"E., 746.64 ft.; N.18°32'29"E., 401.99 ft.; N.41°24'35"E., 226.79 ft.; S.89°03'43"E., 333.56 ft.; and N.71°57'13"E., 737.56 ft. to a ½" iron stake set in a fence for the northerly northeast corner of the herein described tract;

THENCE, along or near a fence continuing upon, over and across said 268.62 acre tract, all calls to fence angleposts: S.01°57'42"E., 482.78 ft.; S.13°11'05"E., 415.47 ft.; N.77°49'16"E., 753.33 ft.; N.77°58'21"E., 98.86 ft.; S.85°32'16"E., 12.08 ft.; S.74°27'14"E., 3.75 ft.; S.03°46'51"W., 17.24 ft.; and S.54°21'06"E., 154.52 ft. to a fence cornerpost in the south line of 268.62 acre tract and north line of a certain 142 acre tract conveyed as Parcel No. 1 from Ida E. Ingenhuett, et al to the City of Kerrville by a Warranty Deed executed the 16<sup>th</sup> day of August, 1941 and recorded in Volume 68 at Page 302 of the Deed Records of Kerr County, Texas;

THENCE, along a fence with the common line between said 268.62 and 142 acre tracts: S.22°36'31"W., 289.54 ft. to a fence anglepost; S.47°54'07"W., 280.75 ft. to a fence cornerpost; and N.18°05'29"W., at 29.8 ft. passing a fence endpost, then continuing for a total distance of 51.30 ft. to an unmarked point in the approximate center of Silver Creek;

THENCE, with the said approximate center of Silver Creek continuing with the said common line between 268.62 and 142 acre tracts, all calls to unmarked points: S.51°22'58"W., 235.04 ft.; S.32°29'44"W., 281.06 ft.; S.30°19'43"W., 330.44 ft.; S.40°56'47"W., 335.80 ft.; S.66°45'40"W., 349.28 ft.; N.85°35'12"W., 217.96 ft.; N.82°37'16"W., 178.69 ft.; S.88°45'46"W., 192.23 ft.; S.86°02'35"W., 125.33 ft.; N.86°48'11"W., 100.78 ft.; S.41°59'45"W., 120.64 ft.; and S.46°29'39"W., 120.34 ft. to an unmarked point in a fence, the said northeast right-of-way line of Peterson Farm Road for the southwest corner of the herein described tract and 268.62 acre tract;

THENCE, along a fence with the southwest line of said 268.62 acre tract and northeast right-of-way line of Peterson Farm Road N.30°55'53"W., 864.69 ft. to the PLACE OF BEGINNING.

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**EXHIBIT "B"**  
**COPY OF SELLER'S PROMISSORY NOTE**

Promissory Note

Kerrville, Kerr County, Texas

Date: February 5, 2008

FOR VALUE RECEIVED, Borrower jointly and severally promises to pay to the order of Lender the Principal Amount or so much as may be advanced from time to time by Lender to Borrower or for the benefit of Borrower plus interest at the Annual Interest Rate. This Note is payable at the Place for Payment, or at such other place in Kerr County, Texas as the holder hereof shall designate from time to time in writing, in lawful money of the United States of America, and according to the Terms of Payment. All unpaid amounts are due by the Maturity Date.

Borrower (whether one or more): KERR ECONOMIC DEVELOPMENT FOUNDATION, INC.

Borrower's Mailing Address: 1700 Sidney Baker, Suite 100, Kerrville, Kerr County, Texas 78028

Lender: HCSB, a state banking association

Place for Payment: 1145 Junction Highway, Kerrville, Kerr County, Texas 78028

Principal Amount: ONE MILLION ONE HUNDRED NINETY TWO THOUSAND NINE HUNDRED FIFTY SIX AND 18/100 (\$1,192,956.18) DOLLARS

Maturity Date: February 5, 2013

Annual Interest Rate: Interest shall accrue and be charged on that part of the outstanding principal remaining from time to time unpaid from the date of advancement of principal hereunder until the full amount of the principal advanced hereunder has been paid. Beginning on the date of advancement of principal under this Note and continuing until the Initial Change Date (as hereinafter defined), Borrower agrees to pay interest at an annual rate of Five and One-Half Percent (5.50%) (the "Initial Interest Rate"). Interest at the rate herein specified shall be computed on the basis of the actual number of days elapsed in a year consisting of 360 days unless the Maximum Interest Rate would thereby be exceeded in which event, to the extent necessary to avoid exceeding the Maximum Interest Rate, the applicable interest shall be computed on the basis of the actual number of days elapsed in the applicable calendar year in which accrued. Commencing on the Initial Change Date and provided the maturity of this Note has not been accelerated, the interest rate that Borrower will pay will change in accordance with the provisions hereof but in no event to exceed the Maximum Interest Rate hereinafter set forth. Interest rate changes may occur on February 5, 2009 (herein sometimes called the "Initial Change Date") and on each February 5, of each year thereafter until the Maturity Date. Each date on which the rate of interest may change is hereinafter called a "Change Date". Any changes in the interest rate will be based on an interest rate index which is hereinafter called the "Index". The Index as used herein shall be the prime rate of interest as published in The Wall Street Journal, Money Rates guide (Southwest Edition); provided that if a range of U. S. "Prime Rate" or more than one U. S. "Prime Rate" is published, the higher rate shall be used. If the Prime Rate ceases to be so published, the Note interest rate will be

determined by a comparable index selected by Lender. To set the new interest rate, the Lender first will determine the current Index figure which shall be the most recently available index value, being defined herein as the Index figure available on each Change Date (herein called the "Current Index"). The Lender will then calculate the new interest rate by subtracting one-half (.50) percentage point from the Current Index. THE INTEREST RATE CALCULATED PURSUANT TO THESE PROVISIONS WILL NOT EXCEED THE MAXIMUM INTEREST RATE AS HEREIN DEFINED. Each new interest rate will become effective on the Change Date based upon the calculation of such change in interest rate as herein specified. Changes in Borrower's payments as a result of the change in the interest rate will commence as of the first payment due after the then current Change Date. Lender will send written notification to Borrower of the new interest rate and the amount of the new payments that will begin on the date of the next payment due after each such Change Date, if any. Payments on this Note, other than prepayments, shall first be applied to accrued unpaid interest and then to the principal balance hereof. All past due principal and interest shall bear interest at the Maximum Interest Rate hereinafter set forth.

The Maximum Interest Rate payable under this Note will be, and will not exceed, eighteen percent (18%) per annum or the maximum interest rate for which parties may contract under, and as permitted by, applicable laws (the so called state usury ceiling), whichever is less.

Late Charge: If any installment becomes overdue for more than ten (10) days, at Lender's option a late payment charge of five percent (5%) may be charged in order to defray the expense of handling the delinquent payment.

Terms of Payment: (1) Interest only shall be due and payable annually as it accrues, on the 5 day of February, 2009, and on the 5 day of February, 2010.

(2) The Principal Amount and interest shall be payable in consecutive annual installments, the first installment being due and payable on February \_\_, 2011, and additional installments being due and payable on the same date of February of each year thereafter until the Maturity Date. Borrower's initial payments of the Principal Amount and interest will be in an amount set by Lender sufficient to amortize and to repay in full the unpaid principal balance of this Note, together with interest thereon at the current adjusted interest rate, in substantially equal payments over a period of thirteen (13) years. Any remaining unpaid principal, interest and other charges, if not sooner paid, shall be due and payable in full on the Maturity Date. THIS LOAN IS DUE IN FULL ON THE MATURITY DATE. AT MATURITY, YOU MUST REPAY THE ENTIRE PRINCIPAL BALANCE OF THE LOAN AND UNPAID INTEREST THEN DUE. THE BANK IS UNDER NO OBLIGATION TO REFINANCE THE BALANCE OF THIS LOAN AT MATURITY. IF THE BANK ELECTS TO REFINANCE THIS LOAN, IT IS UNDERSTOOD THAT THE INTEREST RATE ON THE NEW LOAN WILL BE AT THE PREVAILING MARKET RATES WHICH MAY BE HIGHER THAN THE INTEREST RATE OF THIS LOAN.

In the event of interest rate changes, the amount of Borrower's payments will change. Increases in the interest rate will result in higher payments unless prepayments of principal since the last Change Date offset the increases in such payments. Decreases in the interest rate will result in lower payments. The Lender shall adjust the amount of Borrower's payments as of the day of each Change

Date on which a change in interest rate is made. The amount of Borrower's payments, as adjusted, will be in an amount sufficient to amortize and to repay in full the unpaid principal balance of this Note, together with interest thereon at the current adjusted interest rate, in substantially equal, annual payments over a period of thirteen (13) years less the number of years from the date of this Note to the Change Date on which the current interest rate has been adjusted as herein provided. In setting the adjusted payment amount, the Lender will assume that the Note interest rate will not change.

**Prepayments:** Borrower shall have the right to make a full or a partial prepayment of principal at any time without paying any penalty. In the event Borrower elects to make a prepayment, Borrower agrees to notify Lender in writing of such action. Lender will use all of such prepayments to reduce the amount of principal owed under this Note. In the event of a partial prepayment, there will be no delays in the due dates of the payments hereinbefore described unless Lender agrees, in writing, to such delays. A partial prepayment will reduce the amount of Borrower's payments after a change in interest rate (as herein defined) following the date of such partial prepayment; however, any reduction due to a partial prepayment may be offset by an interest rate increase.

**Security Documents:** This Note is secured by the following described lien and/or security documents (the "Security Documents"), covering certain property, which is more particularly described therein, to which Security Documents reference is hereby made for a description of the property mortgaged, the nature and extent of the security, and the rights of the holder hereof in respect to such security:

Vendor's lien retained in Deed and Deed of Trust and Security Agreement-Financing Statement of even date herewith executed and delivered by Borrower to and for the benefit of Lender.

The entire unpaid principal balance of, and all accrued interest on, this Note shall, at the option of the holder hereof, become immediately due and payable if (i) default shall be made by Borrower in the payment of the principal hereof or interest accrued hereon as and when same becomes due and payable in accordance with the terms hereof, or (ii) default shall be made in the performance or observance of, or under, any covenant, condition, provision or agreement contained in the Security Documents, or (iii) upon the occurrence of the bankruptcy or insolvency of, the assignment for the benefit of creditors by, or the appointment of a receiver of any of the property of any party liable for the payment of this Note, whether as maker, endorser, guarantor, surety or otherwise, or (iv) default in the payment of any other indebtedness due the holder hereof or default in the performance of any other obligation owed to the holder hereof by Maker or any other party liable for the payment hereof, whether as endorser, guarantor, surety or otherwise.

Borrower and each surety, endorser, guarantor and other party liable for payment of any sums payable on this Note, (i) jointly and severally waive protest, acceleration, demand, demand for payment, presentment, presentment for payment, dishonor, and all notices, including but not limited to notice of intention to accelerate, notice of dishonor, notice of nonpayment, notice of default, notice of protest, and notice of acceleration, (ii) jointly and severally waive the filing of suit and diligence in collecting this Note or enforcing any of the security herefor, (iii) jointly and severally

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agree that their liability on this Note shall not be affected by any renewal or extension in time of payment hereof, by any indulgences, or by any release or change in any security for the payment of this Note, and (iv) jointly and severally consent to any and all renewals, extensions, indulgences, releases or changes, regardless of the number of such renewals, extensions, indulgences, releases or changes.

In the event this Note is placed in the hands of an attorney for collection, or in the event this Note is collected in whole or in part through bankruptcy, probate or other legal proceedings of any kind, legal or equitable, then in any such case, Borrower promises to pay all costs of collection incurred by the holder hereof whether or not suit is filed, including but not limited to all attorneys' fees and other costs incurred in connection therewith and all expenses incurred in connection with any foreclosure under the Security Documents; but in no event shall said attorneys' fees be less than ten percent of the then unpaid principal and interest.

Any notice or demand given hereunder by any holder hereof shall be deemed to have been given and received (i) when actually received by Borrower, if delivered in person, or (ii) when a letter containing such notice, certified or registered, with postage prepaid, addressed to Borrower is deposited in the United States mails. The address of Borrower is as set forth herein, or such other address as Borrower shall advise the holder hereof by certified or registered letter.

No delay on the part of the holder of this Note in the exercise of any power or right under this Note, or under the Security Documents, or under any other instrument executed pursuant hereto shall operate as a waiver thereof, nor shall a single or partial release of any other power or right preclude other or further exercise thereof or of the exercise of any other power or right. Enforcement by the holder of this Note of any security for the payment hereof shall not constitute any election by it of remedies so as to preclude the exercise of any other remedy available to it.

If any term hereof or of any documents securing this Note is susceptible of being construed as obligating Borrower or any guarantor or other party obligated hereon for the payment of interest in excess of that authorized by applicable law, it is agreed that such term is a mistake in calculation or wording, and notwithstanding the same, it is expressly agreed that neither Borrower, any guarantor nor any other person or entity obligated in any manner for the payment hereof shall ever be required or obligated to pay interest in excess of that authorized by applicable law. It is the intention of the holder hereof to conform strictly to the applicable laws now in force. All agreements between Borrower, any guarantor or any other party liable hereon and the holder hereof are expressly limited so that in no contingency or event whatsoever, shall the amount paid or agreed to be paid to the holder hereof for the use, forbearance or detention of the money to be advanced hereunder exceed the highest lawful rate permissible under any and all applicable laws. If from any circumstances whatsoever, the holder hereof shall ever receive as interest an amount which would exceed the highest lawful rate, such amount which would be excessive interest shall be first applied to the ~~reduction of the unpaid principal balance due hereunder, and not to the payment of interest, and any remaining excess shall be refunded to Borrower or the party making such payment.~~ All sums paid or agreed to be paid to the holder hereof for the use, forbearance or detention of the indebtedness specified herein shall, to the extent permitted by applicable law, be amortized, prorated, allocated and spread throughout the full term of such indebtedness until payment in full so that the actual rate

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of interest on account of such indebtedness is uniform throughout the term of this Note. These provisions shall control every other provision of all agreements between Borrower and any guarantor or party liable hereon and the holder hereof.

Each Borrower is responsible for all obligations represented by this Note.

When the context requires, singular nouns and pronouns include the plural.

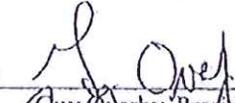
THE LOAN DOCUMENTS REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES.

THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

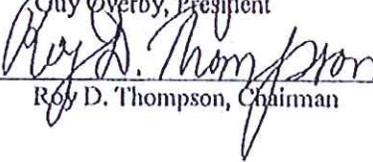
EXECUTED as of the day and year first above written.

KERR ECONOMIC DEVELOPMENT FOUNDATION, INC.

BY:

  
\_\_\_\_\_  
Guy Overby, President

BY:

  
\_\_\_\_\_  
Roy D. Thompson, Chairman