

**AGENDA FOR REGULAR MEETING**

**KERRVILLE CITY COUNCIL**

**TUESDAY APRIL 26, 2011, 6:00 P.M.**

**CITY HALL COUNCIL CHAMBERS**

**800 JUNCTION HIGHWAY, KERRVILLE, TEXAS**

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

- 2A. Recognize Mary Pierce for receiving payroll professional certification from the American Payroll Association.

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

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**SUBJECT:** Recognition of Mary Pierce, Payroll Specialist for the City of Kerrville, for receiving the Certified Payroll Professional certification from the American Payroll Association.

**FOR AGENDA OF:** April 26, 2011      **DATE SUBMITTED:** April 14, 2011

**SUBMITTED BY:** Kimberly Meismer *K.M.*      **CLEARANCES:** Todd Parton  
Director of General Operations      City Manager

**EXHIBITS:**

**AGENDA MAILED TO:**

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

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

**PAYMENT TO BE MADE TO:**

**APPROVED FOR SUBMITTAL BY DIRECTOR OF ADMINISTRATIVE SERVICES:**

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**SUMMARY STATEMENT**

Established in 1982, the American Payroll Association (APA) is the nation's leader in payroll education, publications and training. As a non-profit association with more than 23,000 members, the APA conducts nearly 300 payroll training conferences and seminars across the country each year and publishes a complete library of resource texts and newsletters. Every year, more than 18,000 professionals attend APA training sessions. APA is also highly respected as the industry's collective voice in Washington, D.C. on payroll-related regulations and legislation.

Mary Pierce has been employed by the City of Kerrville since May 21, 2007. She became interested in sitting for the Certified Payroll Professional exam in January 2009. She attended a training class shortly after and began to prepare for the exam.

The exam covers many facets of payroll including: Core Payroll Concepts, Compliance, Principles of Paycheck Calculations, Payroll Process and Systems, Accounting, and Management and Administration. The exam has 190 questions and the candidate has four (4) hours to complete it.

Mary joined the American Payroll Association in 2010 and immediately began an intense individual study program. She sat for the exam on Monday, April 11, 2011 and became a Certified Payroll Professional on her first try.

**RECOMMENDED ACTION**

This is a presentation only.

## **Agenda Item:**

(Staff)

- 3A. Approval of the minutes of the special council informational meeting held March 25, and the regular city council meeting held April 12, 2011.

CITY COUNCIL MINUTES  
INFORMATIONAL MEETING

KERRVILLE, TEXAS  
MARCH 25, 2011

On March 25, 2011, the Kerrville City Council attended an informational meeting sponsored by the Kerrville Professional Firefighters Association at 6:30 p.m. at St. Peter's Episcopal Church, Tucker Hall, 320 St. Peter's Street, Kerrville, Texas.

CITY COUNCIL MEMBERS PRESENT:

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

CITY COUNCIL MEMBERS ABSENT:

David Wampler	Mayor
Gene Allen	Councilmember

CITY STAFF PRESENT:

Todd Parton	City Manager
Brenda G. Craig	City Secretary
Mike Erwin	Director of Finance
Rosa Lea Melton	Human Resources Manager
Robert Ojeda	Fire Chief
Mark Beavers	Assistant Fire Chief
Eric Maloney	EMS Coordinator
Chris Lee	Transfer Tech/Paramedic

(members of the Kerrville Fire Department)

COUNTY COMMISSIONERS PRESENT:

Guy Overby	County Commissioner
Bruce Oehler	County Commissioner

**FIRE/EMS SERVICES BETWEEN THE CITY OF KERRVILLE AND KERR COUNTY**

Chris Lee, President of the Kerrville Professional Firefighters Association, noted the purpose of the meeting was to provide factual information to the public and answer questions regarding the fire/EMS services.

Gunner Capehart, local Allstate Insurance Company representative, reviewed the various factors that affect ISO (Insurance Services Office) ratings and how ISO ratings were used as one factor in the calculation of insurance premiums.

Chief Ojeda noted that insurance premiums were based on the ISO rating established for the fire department responding to a particular area. The ISO rating was also based on other factors, e.g. department's response time, fire protection equipment, staff and training, water availability and distribution system, and communications system. Ratings ranged from 1-10; only .1% of all cities nationwide were rated 1. In 2008 Kerrville opened Fire Station 4 and went from a 3 to a 2 rate.

The following questions were responded to by staff:

- What percent of the county was rated 2?

All of the area in the 78028 zip code, including the city of Kerrville and the Kerrville South (KS) area, which included the area south of the city to the Turtle Creek area, and north to the Gillespie County line. If Kerrville Fire Department (KFD) discontinued serving KS, the ISO rating would revert to the ISO rating of the Volunteer Fire Department (VFD) assigned to respond to that area.

- What are the ISO ratings for the VFDs?

Center Point, 9-10; Ingram, 7-9; Turtle Creek, 9-10; Comfort 6-9; Tierra Linda, 9-10.

- What did it cost the city to go from a 3 to a 2 ISO rate?

The cost associated with opening a fourth fire station, equipment, and staff.

- How many homes were located in the first response area?

The number of homes was unknown; however, 75% of the county's population was located in the first response area, including 23,000 in the city and 17,000 in the KS response area.

- Currently, does KFD also respond in the KS area even if a VFD responds?

Yes, KS was in KFD's first response area. In other areas of the county, if the VFD did not respond within four minutes, or the VFD requested assistance, KFD responded.

- If the city did not respond to calls in the county, how would the system change?
- Policies would have to be established by city council and commissioners' court.

- If an agreement is not resolved, and a VFD requested assistance, is it likely that KFD would not respond?

KFD wanted to respond to calls; however, boundaries would have to be established, and response beyond those boundaries would be a policy decision to be determined by the city council.

- The city received reimbursement for ambulance services, so why a deficit?

The city billed patients for ambulance runs; however, despite a collection rate of about 80%, most calls were paid through insurance and Medicare, which have disallowables that exceed half the cost of the service. The city did not bill a citizen for fire calls.

- The air ambulances have an annual subscription rate; has the city considered implementing a subscription rate?

The city was not aware of any type of subscription rates for fire services; KFD was not reviewing a subscription rate for EMS services.

- What type of backup service does KFD provide?

The fire contract required KFD to be first responder in the KS area, at a minimum, to provide one truck and three personnel; however, it is the discretion of the KFD battalion chief what equipment and personnel were needed for any situation. In some situations, more KFD equipment responded; for example, in 2009, 22 personnel responded for one fire. KFD provided backup service to all VFDs county-wide as requested. KFD also provided swift water rescue, high angle rescue, hazardous material, and vehicle extrication.

- What is the assessed value of homes in Kerr County?

Assessed value is estimated at \$1.9 billion in the city; residential would be approximately 70% of that.

- Are county commissioners in attendance?

Guy Overby and Bruce Oehler were in attendance.

- How many people does KFD serve?

KFD provided EMS for all 49,000 people in the 1,100 square miles of the county, of which 25 sq. mi. is in the city, and 95 sq. mi. is in the KS area.

- Was the difficulty with the contract political or financial?

The city provided the county with an outline of the services currently provided and identified the cost associated with that level of service. The city requested increased reimbursement from the county in order to maintain that same level of service, or direction on whether another level of service was desired.

Guy Overby noted that interlocal agreements were in the process of being negotiated, and the services provided by the city were important. He received many phone calls and the message he was hearing was that the KFD services were desired; cost was the issue as well as the level of service and the number of calls. The city had proposed a 108% increase, and the county would have to raise taxes to pay for the service. The city and county needed to work out a long term solution for services, perhaps an emergency services district, but that required approval of the voters. He noted that taxes could not be raised to a large portion of citizens because the senior citizens' taxes were frozen.

- The county was paying only 10% of the total cost of fire and EMS it received and the city citizens were paying 90%.

That was the total cost to deliver service under the current contract.

- The county only utilized 27% of the system.

True in the number of calls; however, the county runs accounted for 27% of the system because the time out was 27-30% of the resource allocation and calls required that a longer distance be travelled.

- The county only paid 7% of the cost and used 27% of the city's resources; the county was only paying for a fraction of the cost of the services received, and the commissioners were willing to allow an increase in insurance premiums and less fire protection for its citizens.

When determining the actual cost to deliver services, the income received from EMS was deducted from the overall expenses. To determine the actual cost of fire services, the city looked at all cost factors.

- The county desired to maintain the service as two separate services.

The fire/EMS system operated as a co-joined system; personnel were cross trained and the same equipment was used to provide both services. The cost to serve the entire county was \$14.68 per capita. In addition to fire/EMS, there were contracts for other services, i.e. library, animal control, and airport; some of those costs also would be increased to the city; therefore, the net cost to the county to maintain and deliver fire/EMS services would be somewhat offset by increases to the city for other contracts.

- Will the current agreements between Kerr and Kendall counties stay in place?

Those were county contracts, so the city could not address them, but assumed that the contracts would continue; however, under the current agreements the KFD was still the backup provider for services in those areas of the county.

- What was the level of EMS training of KFD personnel?

The minimum level was firefighter/EMT (emergency medical technician) up to firefighter/paramedic; ambulances ranged from transfer vehicles to advanced life support units.

- What level of service was provided in the Hunt area?

KFD responded if the VFD did not respond within four minutes, or if the VFD or sheriff's department requested assistance. If the VFD was not available, KFD responded immediately.

- A gentleman noted that in the past, the city failed to bill the county as costs rose, and now the city was billing the county what it should have been paying in the past. The city cannot afford to continue to pay the cost of providing services to the county and will have to close one station; this will increase citizens' insurance premiums more than the cost of providing the service. The county was getting a great service and the city and county need to work out the agreements.

- A gentleman stated that he had used KFD on three occasions and they had the equipment and trained personnel to save lives, and that was what was important. He had used independent services elsewhere and they were in poor condition and personnel were not very well trained; do not let that happen here.

Mr. Lee noted that Gillespie County paid the city of Fredericksburg about \$441,000 annually to provide only EMS service with just two ambulances; KFD's proposal of \$450,000 for EMS and \$450,000 for fire was not out of control. The city had seven ambulances available at any time, with at least one in the east and west ends of town for maximum response in the county. The city and county negotiations go on every year and the issues need to be resolved and agreements put in place. The city also provided the first responder program in the county, and 20 of the 39 first responders in the county were members of KFD. KFD trained the first responders to at least the EMT level and provided equipment to first responders to use to stabilize patients and restocked supplies. The first responder program saves lives and that program was in jeopardy.

**ADJOURNMENT.** The meeting adjourned at 8:15 p.m.

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

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Bruce Motheral, Mayor Pro Tem

ATTEST:

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Brenda G. Craig, City Secretary

CITY COUNCIL MINUTES  
REGULAR MEETING

KERRVILLE, TEXAS  
APRIL 12, 2011

On April 12, 2011, 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 Murray of St. Peter's Episcopal Church, followed by the Pledge of Allegiance led by Mayor Wampler.

MEMBERS PRESENT:

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

MEMBER ABSENT: None

STAFF PRESENT:

Todd Parton	City Manager
Mike Hayes	City Attorney
Kristine Ondrias	Assistant City Manager
Brenda G. Craig	City Secretary
Travis Cochran	Director of Information Technology
Mike Erwin	Director of Finance
Kevin Coleman	Director of Development Services
Charlie Hastings	Director of Public Works
Robert Ojeda	Fire Chief
Malcolm Matthews	Director of Parks and Recreation
Mike Wellborn	Director of Engineering
Kim Meismer	Director of General Operations
Mindy Wendele	Director of Business Programs
Johnna Wade	Main Street Manager
Daniel Schwartz	Library Director
Amy Ives	Compliance Center Manager

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

1. VISITORS/CITIZENS FORUM: No one spoke.

2. PRESENTATIONS:

2A. Acceptance of gift in memory of Robert Rector, presented by Clarabelle Snodgrass and the Rector Family.

3. CONSENT AGENDA:

Mr. Allen requested item 3C be removed from the consent agenda.

Ms. Keeble moved for approval of items 3A, 3B, and 3D; Mr. Motheral seconded the motion and it passed 5-0:

3A. Approval of the minutes of the regular city council meetings held March 8 and March 22, 2011.

3B. Authorize the city manager to execute a construction contract for the Butt-Holdsworth Memorial Library roof replacement project with Apex Enterprises, Inc. in an amount not to exceed \$112,562.

3D. Resolution No. 013-2011 granting a peddler license for use of the city's right-of-ways.

**END OF CONSENT AGENDA**

3C. Approval of investment policy for the City of Kerrville, Texas, Economic Improvement Corporation.

Mr. Allen requested the matter be tabled indefinitely; the council agreed by consensus.

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

4A. Ordinance No. 2011-05 amending Chapter 74 "Parks and Recreation", Article I "Rules and Regulations for City Park and Recreation Areas" of the Code of Ordinances of the City of Kerrville, Texas, by amending various sections to revise operating hours, establish use restrictions for the boardwalk pavilion, address age requirements for the use of the swimming pool, clarify the prohibition of the use of motor vehicles within the city parks, and make the alcohol regulations within Kerrville Schreiner Park consistent with other city parks; containing a cumulative clause; containing a savings and severability clause; providing a penalty; and providing other matters relating to the subject. Mayor Wampler read the ordinance by title only.

Mr. Matthews noted no changes since first reading; he recommended approval of the ordinance, and upon approval appropriate signage would be placed in the parks.

The following person spoke:

- Jimmie Spradling questioned why the city would change the rules to allow unlimited quantities of alcoholic beverages to be brought into and consumed in city parks; at the least, council should prohibit alcohol in Kerrville Schreiner Park where families were staying overnight.

Council noted that the parks board considered pros and cons of alcohol in KSP, but recommended that regulations be consistent in all city parks.

Ms. Keeble moved for approval of Ordinance No. 2011-05 as presented on second and final reading; Mr. Gross seconded the motion and it passed 5-0.

**5. CONSIDERATION AND POSSIBLE ACTION:**

5A. Request from Ed Pollard for access easement to Lois Street across the city's property at 800 Junction Highway.

Mr. Coleman noted that Mr. Pollard, property owner adjacent to city hall, requested the city grant an easement to allow vehicular access to Lois Street. He also noted that the city may place the city hall property on the market and encumbering the property with an easement could affect the sale of the property.

Ed Pollard noted his property fronted Junction Highway, and he requested the city grant him an easement in order to access Lois Street. Having access from both Junction Highway and Lois Street would not only benefit him, but would alleviate traffic on Junction Highway. He proposed that only vehicular traffic, no trucks, would use the Lois Street access. He desired to have a permanent easement, not just temporary access, for which he would share in the cost of construction of a driveway. The drainage problem at the rear of the property could be corrected through the easement. Mr. Pollard stated his property was currently vacant and he did not know what the future potential use of the property would be. When questioned by council whether he would be interested in purchasing the city's entire parcel, Mr. Pollard opined that the city could purchase his property and have 3.4 acres and the current city property would make a good site for city hall instead of moving city hall downtown. The city hall would not benefit downtown and that site could be used for a better purpose.

Mayor Wampler noted the current city hall property would go on the market in the near future, and council should not encumber the property with an easement that might affect the sale of the property in the future; also, Mr. Pollard did not know what the future use of his property would be at this time. The council agreed by consensus, and no motion was made in regard to Mr. Pollard's request.

5B. Food service advisory board recommendation to amend Chapter 58-Article II Food Establishments, to expand the definition of and modify the regulations that apply to mobile food vendors and commissaries.

Mr. Coleman noted under the current ordinance, mobile food vendors were treated the same and it did not differentiate based on health risk, type of operation or product, or the location from which products were sold. He reviewed recommended amendments proposed by the Food Service Advisory Board (FSAB): 1) Create definition of mobile food unit based on type of food preparation and type of operation; 2) Define and require use of a commissary (permitted kitchen used where food was prepared; 3) Outline operational restrictions of each type of mobile food vendor; 4) Define separation restrictions from the right of ways, existing buildings, and fixed retail food establishments. He noted that the main street advisory board was concerned about the effect that mobile food vendors would have on downtown food establishments; however, the separation restrictions and the requirement that vendors receive city council approval for use of city right of ways, would result in very little impact on the downtown area. He also noted that the proposed changes would not affect fixed retail food establishments or restrict special events vendors, e.g. Market Days and 4<sup>th</sup> of July vendors.

Ms. Ives noted that the city adopted the Texas Food Establishment Rules. She reviewed proposed changes based on the FSAB recommendations, in particular: definition of mobile food vendor restricted, mobile food vendor unrestricted, and separation requirements: 50' from residential or multi-family; 300' from a retail food establishment, 30' from any other structure, 300' from schools while in session, and 50' from intersections. She noted that mobile food vendors would follow the same food handling rules as fixed establishments.

Ms. Wade reviewed MSAB's concerns and noted that although, the MSAB had not taken official action on the proposed regulations, she felt that the FSAB recommended changes adequately addressed the MSAB's concerns.

The council also discussed the following:

- Mobile food vendors would have the same food safety restrictions as any other site preparation vendor.
- Concern that spacing requirements were very limited; may be too restrictive to allow a mobile food vendor to operate.
- City needs to be careful in creating regulations; city not be so restrictive as to prohibit business from operating.

The following person spoke:

- Jimmie Spradling questioned whether ice cream vendors would be allowed and noted concern for children's safety. Mr. Coleman noted the ice cream peddlers were required to have council approval before a peddlers license could be issued to sell ice cream on city right of ways, such as item 3D approved earlier in this meeting.

The consensus of the council was that staff should proceed to draft an ordinance for consideration at a future meeting.

#### 5C. Review and prioritization of the Alamo Regional Rural Planning Organization (ARRPO) list of roadway projects in Kerr County.

Mr. Hastings noted that council previously authorized staff to submit a list of roadway projects to ARRPO for consideration in transportation planning; ARRPO was now requesting the list submitted by the city and county be prioritized. He reviewed the roadway projects and the criteria that staff used to prioritize projects. Council accepted the scoring criteria and prioritized the top five projects.

Ms. Keeble noted that one of the top five roadway projects being discussed would go through property she owned. Ms. Keeble signed a conflict of interest affidavit and left the room.

Council also discussed the following:

- The county was also asked to prioritize the same list, and their priorities were not the same as the city's; ARRPO would only accept one blended list of projects.

- Although the project would be costly, the list should include the I-10 interchange; the Holdsworth Drive extension was on TxDOT's list for over 20 years before it was built. The county did not include it on their prioritized list, not because they did not support it, but because they did not feel it was likely to happen.

Mr. Motheral moved to submit the following prioritized list:

1. IH-10 from FM783 to SH16.
2. Spur 100 from SH16 to SH173.
3. Loop 534, from SH173 to SH27.
4. FM1341, Loop 534 to IH-10.
5. Wren Road South extension.

The motion was seconded by Mr. Gross and passed 4-0-1 with Messrs. Motheral, Gross, Allen, and Wampler voting in favor of the motion; no one voted against the motion; and Ms. Keeble abstained.

5D. Interlocal agreements between Kerr County and the City of Kerrville for joint operations.

Mr. Parton noted staff was in the process of finalizing the draft agreements for all services as authorized by the council at the March 22 meeting. The interlocal agreement summary for all services at the same level as FY11 projected that the city would pay a total of \$6,003,430 and the county would pay \$1,880,690 for FY12, a net increase of \$486,371 to the county over FY11. He noted the county had not responded to the outline presented on February 16; however, on April 5 he received from the county a draft agreement for fire services and a map depicting 1 mile ETJ, 2 mile, 3 mile, and 4 mile radius rings and requested the city prepare cost estimates for providing fire service in each ring except the area served by Ingram FD. He noted that the rings would require the city to provide first response into a larger area than the city had previously provided, with the VFDs providing first response only during certain hours. Staff was concerned about how 9-1-1 calls would be dispatched, particularly with regard to location within the tier of rings and the time of day. Staff would have discussion and get clarification of the county's request. He noted that 75% of the county's population was within the 4 mile radius; as the area became more rural service level decreased, but the time and cost to respond to a call increased. Mr. Parton noted that nothing had been received from the county regarding EMS.

Mr. Parton proposed an Option A, that would bring the city's and county's cost down to \$5,930,930 and \$1,808,190, respectively by reducing the airport budget \$70,000 and library budget \$75,000, for a reduction of \$72,500 each. The library was originally proposed at \$825,000 based on a ten year average of expenditures, but savings could be realized by cutting youth programming by \$75,000 for a total budget of \$750,000. The airport budget was originally proposed at \$400,000, but the fiscal year end audit showed that the airport budget could be reduced about \$70,000-\$74,000 from the current funding level; he proposed the airport budget be reduced to \$330,000. The city council previously proposed that the airport budget

be split equally and that the city maintain its status as a full partner in the airport operation. Mr. Parton proposed that the county continue to maintain the animal control operation and expenses at the same level as the remainder of the county; the city would continue to provide dead animal pick up in the city. He reviewed the schedule of meetings that had been held with the county since January when the city asked the county to provide information on the level of service desired for each service in order that the city could provide cost estimates; information on service levels had not been provided.

The council also discussed the following:

- Clarified that the county's proposed ring map would require the city to provide a greater service level than was currently being provided. Mr. Parton noted that the city was currently providing first response in the Kerrville South area; the county's proposal would require the city to also provide first response in the Center Point and Turtle Creek areas, and mutual aid in the remainder of the county, thereby increasing the workload and commitment of the city. He noted that currently the city responded to 120-130 calls annually in the KS area only.
- Division by rings and time of day would make it unclear which agency was to respond and when and could create life threatening situations; need a straight forward and clear delineation for when and where services were to be provided.
- There was a cost associated with having the service available; county participation should consider availability of service, not just a per call basis.
- The cost to provide service increased significantly for rural county runs.
- The city owned the fire/EMS service and provided services to the county for many years, and the city's proposed funding allocation still did not reflect the true cost of the system. The city was exporting these services into the county at a cost to city taxpayers.
- The city needed to begin preparations for the FY12 budget; if the necessary commitments and agreements were not substantially in place then the city should move forward to budget without county participation.
- Based on the lack of action by the county, council must believe that the city's services were no longer desired.

#### **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 Mr. Allen and passed 5-0 to discuss:

Interlocal agreements between Kerr County and the City of Kerrville for joint operations.

At 7:43 p.m. the regular meeting recessed and council went into executive closed session at 7:49 p.m. At 7:51 p.m. the executive closed session recessed and council returned to open session at 7:52 p.m. Mayor Wampler announced that no action had been taken in executive session.

5D. Interlocal agreements between Kerr County and the City of Kerrville for joint operations. (Continued)

Additional comments by council:

- Option A would require an increase in the county's participation of \$413,871 instead of the original \$486,371.
- The library allocation would not stay the same as proposed for FY12; library should not be perpetually short changed.
- The county wanted more input in the budgetary process of the library. All of the council budget workshops and meetings are open to the public, and commissioners were welcome to attend. The county had one commissioner and two appointees on the library board, and could participate in library planning through the library board.
- The county had an opportunity of accepting a \$200,000 grant that had been offered to county for their budget.

Mr. Motheral moved to instruct staff to offer the county a complete package of all five services based on Option A as presented by Mr. Parton, with funding from the county as follows: Fire/EMS \$900,000; Library \$375,000; Airport \$165,000; Animal Control \$368,190; Total \$1,808,190, that is, a net increase to the county over FY11 of \$413,871; and with the caveats: 1) Current operation contract for the airport be renegotiated to reflect the city as a full partner; 2) The package of contracts for all five services be completed in time for the city council's May 4 budget workshop. Mr. Gross seconded the motion and it passed 5-0.

5E. Presentation and acceptance of the FY10 Comprehensive Annual Financial Report (CAFR). Mr. Erwin requested the matter be rescheduled to April 26.

5F. Receive council direction on the FY 2012 budget.

Mr. Erwin outlined principles to be used in preparation of the FY12 budget: expenditures not exceed revenues, maintain current tax levy, prioritize programs, fund priorities, no use of reserves, no change in water and sewer rates, and no new debt issuance proposed. The council's budget retreat was scheduled for May 4, 8:30 a.m. and the budget kick-off for May 11, 2011.

5G. Strategic plan to address economic development needs.

Mr. Parton provided the strategic plan as prepared based on several prior planning documents and discussion at the joint City Council/EIC meeting in February; he reviewed how 4B tax funds could be used to tie into the overall objective of implementing the strategic plan. He reviewed the short-term (3-5 year) projects and how 4B funds could contribute toward implementation of the overall plan. The plan had been presented to EIC at their March meeting

Mayor Wampler noted that downtown redevelopment and the river trail had been goals of the comprehensive plan for many years. He supported the use of 4B resources to help accomplish the strategic plan and its goals.

5H. Update regarding Lower Colorado River Authority Transmission Services Corporation (LCRA-TSC) application for the proposed McCamey D to Kendall to Gillespie CREZ project PUC Docket No. 38354; City of Kerrville, Kerrville Public Utility Board, and City of Junction v. PUC, Cause No. D-1-GV-000324, in the 98<sup>th</sup> District Court of Travis County.

Mr. Hayes reported:

-The petition had been filed in Travis County District Court; he anticipated the hearing date would be in July. Kerr County Commissioners' Court allocated \$5,000 and authorized the county attorney to join the coalition to appeal the decision in district court. The city would be paying the bulk of the cost associated with the appeal.

-He was negotiating the details of an agreement with LCRA regarding concrete structures in the area. Once the agreement was signed it would be filed with the judge.

-USDA had stated they would not allow the line to cross their property; this may cause a reconfiguration of the line.

## **6. INFORMATION AND DISCUSSION:**

### **6A. Kerrville's Fourth on the River committee report.**

Carson Conklin, committee member, reported on the progress of the committee. The theme for the event would be a "Concert on the Banks of the Guadalupe in Historic Downtown Kerrville." The goals of the committee were to create an annual event, raise funds for the river trail project and future community projects, and promote Kerrville as an event destination. A 501(c)3 had been set up to receive funding and distribution of funds. The FY 2011 event would focus on multi-activities throughout the day and a fireworks display at dusk. The Market Days group would assist with events throughout the day, and three tents would be set up on the former hospital property for arts and crafts and other activities. He reviewed the event planning map and discussed activities and entertainment schedule and noted the admission charge would be \$20 adult (\$25 at the gate) and \$5 children for the ticketed event in Louise Hays Park; 60% of the proceeds were designated for the river trail project.

### **6B. Library update.**

Mr. Swartz reported circulation checkouts totaled 21,573 as of March 29; patron count was 2,634 with 54.59% city residents, and 42.63% county residents. The library advisory board will be discussing staffing and operating hours during renovation and staff will report those discussions at the next city council and county commissioners' court meetings. An informational diabetes program was scheduled for April 28, 2011, from 5:30-6:30 p.m.

### **6C. Voice Over Internet Protocol (VOIP) completion update.**

Mr. Cochran reported the installation of the new city-wide telephone system began November 30, 2010 and the hardware installation for the new system was completed March 29. The new system would provide an annual savings of approximately \$40,000.

6D. Economic update.

Mr. Erwin reported local unemployment dropped to 6.4%, HOT increased 12%, and sales tax increased slightly. He reported \$300,000 from the fund balance had been used for capital projects.

7. **BOARD APPOINTMENTS:**

7A. Appointments to the parks and recreation advisory board.

Ms. Keeble moved to reappoint Dana Cardwell, Stephen Roberts, Diane McMahon, and Jim Gardner, and to appoint David Lipscomb to the parks and recreation advisory board all with terms to expire March 31, 2013. Mr. Gross seconded the motion and it passed 5-0.

8. **ITEMS FOR FUTURE AGENDA**

- Renaming of the city's lake (formerly the UGRA Lake) on Guadalupe Street.

9. **ANNOUNCEMENTS OF COMMUNITY INTEREST:**

- Informal social event on Friday, April 15, 2011, 11:15 a.m.
- Special council meeting on Wednesday, April 20, 2011, 9:00 a.m.
- Informal event on Monday, April 25, 2011, 5:30 p.m.

10. **EXECUTIVE SESSION:** Held earlier in the meeting.

**ADJOURNMENT.** The meeting adjourned at 8:48 p.m.

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

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

ATTEST:

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

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

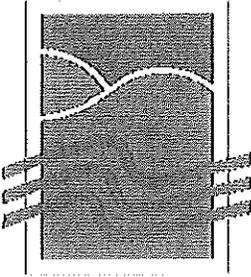
- 3B. Authorize the city manager to execute a construction contract with Central Texas Water Maintenance in the amount of \$250,871.00 for the construction of the high service pumps at Riverhill Booster Station and contingency change orders in an amount not to exceed \$51,810.67.



opening date. The lowest qualified bidder was Central Texas Water Maintenance who bid the project at \$250,871.00. The Director of Engineering recommends awarding the project at a not to exceed amount of \$302,681.67, which includes the bid amount plus \$51, 810.67 for project contingencies.

### **RECOMMENDED ACTION**

The Director of Engineering recommends Council authorize the City Manager to execute a construction contract with Central Texas Water Maintenance in the amount of \$250,871.00 for the construction of the High Service Pumps at Riverhill Booster Station and to authorize the City Manager to execute contingency change orders in an amount not to exceed \$51,810.67.



City of Kerrville  
Engineering Division  
800 Junction Highway  
Kerrville, Texas 78028-5069  
830.258.1415 (O)  
830.896.8793 (F)  
dieter.werner@kerrvilletx.gov

## MEMORANDUM

TO: Michael Wellborn, Director of Engineering

FROM: Dieter Werner, Project Engineer 

DATE: April 15, 2011

SUBJECT: Riverhills Pump Station Improvements  
Project Award Recommendation

---

Sealed bids were received and read aloud for the Riverhills Pump Station Improvements project on Tuesday, April 12, 2011. The apparent low bidder was Central Texas Water Maintenance (CTWM) with a bid of \$250,871.00. The bid tab form is included with this memo for your review.

The project specifications included two posted addenda and a Bidder's Questionnaire. The questionnaire form stated that it must be submitted with the complete bid package. However, there is no implied stipulation for disqualification if the form was not included. CTWM did not include the Bidder's Questionnaire form, but did provide a project history, or resume', in lieu of the form. Section 00100 (3.1) of the Project Specifications states that "each Bidder must be prepared to submit within 5 days after Bid opening, upon OWNER's request, detailed written evidence, such as financial data, previous experience, present commitments, and any other such data as may be called for below or elsewhere in the Contract Documents". It is the agreed opinion of both the City Attorney and me, after discussion, that the submittal of the experience history in lieu of the specified Bidder's Questionnaire is acceptable and does not constitute grounds for disqualification of the bidder.

Additionally, lack of acknowledgement of the second addendum likewise does not constitute grounds for disqualification. Addendum 2 to the Project Specifications increases the contractual time of the construction project from 150 calendar days to 180 calendar days.

CTWM has performed work for the City of Kerrville to include facilities related to the Keystone and The Heights subdivisions. The City has been satisfied with the quality of work performed by CTWM.

Therefore, I recommend that the contract for improvements to the Riverhills Pump Station be awarded to Central Texas Water Maintenance based on lowest bid and acceptable work history in the City of Kerrville.



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:

The Riverhills Pump Station Improvements.

The following are incorporated herein:

- a. General Conditions and Supplementary Conditions
- 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 150 calendar days and 30 calendar days after for final completion from the date of written notice to proceed. Working days are defined in specification section 00805. The project shall not be considered complete until all improvements and site conditions have been accepted by the City and it is operational and performing to its intended purpose. The Contractor's obligations to the project however, are not complete and retainage will not be released until all disturbed areas within State highway right-of-way have been re-vegetated to the satisfaction of local Texas Department of Transportation officials.

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 Engineer. 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.

The City may choose to award a contract for the amount of the base bid plus no or any combination of additive alternates.

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.	

10. ADDENDA

Contractor acknowledges the receipt of the following addenda:

1. Dated: 4.5.2011 Acknowledged by: A.G.
2. Dated: \_\_\_\_\_ Acknowledged by: \_\_\_\_\_

11. 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	Bonds, Mobilization and Startup (not to exceed 5% of Base Bid)	\$ _____	\$ <u>12,522.00</u>
2.	1	LS	Demolition	\$ _____	\$ <u>6,000.00</u>
3.	1	LS	Pump Station Improvements	\$ _____	\$ <u>214,159.00</u>
4.	1	LS	Trench Safety	\$ _____	\$ <u>1,000.00</u>
5.	1	LS	Allowance-BLOC Design Build, LLC Proposal	\$ 17,190.00	\$ 17,190.00
<b>TOTAL BASE BID</b>				\$ <u>250,871.00</u>	

COMPLETED BY \_\_\_\_\_

DATE \_\_\_\_\_



Signature

4.11.2011

William E. Gray  
Printed Name

Secretary/Treasurer  
Title

Central Texas Water Maintenance LLC  
Company Name

**Sub-Contractors:**

	NAME	ADDRESS	PHONE	WORK TO BE PERFORMED
1.	_____			
2.	_____			
3.	_____			

(Attach additional sheet if required)

**INSURANCE AGENT**

	NAME	ADDRESS	PHONE	POLICY
1.	<u>Anco Insurance Services 3103 Bee Cave Road Suite 242 Austin Tx 78746</u> 512-330-9836			
2.	_____			
3.	_____			

**BONDING AGENT:**

	NAME	ADDRESS	PHONE	POLICY
1.	<u>Anco Insurance Services 3103 Bee Cave Road Suite 242 Austin Tx 78746</u> 512.330.9836			

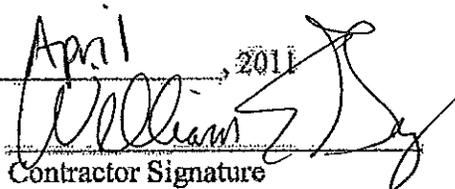
2. \_\_\_\_\_

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

**CONTRACTOR:**

Signed this 12 day of April, 2011

Attest: 

  
Contractor Signature

Secretary  
(if bid by a Corporation):

William E. Gray  
Printed Name

SEAL

Central Texas Water Maintenance LLC  
Company Name

Business Address:

5905 Williamson Rd

Creedmoor, Tx 78610

Phone: 512.243.2281

Fax: 512.610.3268

ACCEPTED THIS 12th  
day of April, 2011

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

ATTEST

\_\_\_\_\_  
Brenda Craig  
City Secretary

APPROVED AS TO FORM:

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

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

- 3C. Authorize the city manager to execute an agreement with James Avery Craftsman for the pretreatment of wastewater prior to connection to the city's wastewater system.

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

---

**SUBJECT:** Agreement between Kerrville and James Avery Craftsman for pretreatment of wastewater.

**FOR AGENDA OF:** 4/26/11

**DATE SUBMITTED:** 4/14/11

**SUBMITTED BY:** Stuart Barron *SB*  
Water/Wastewater Manager

**CLEARANCES:** Charlie Hastings, P.E. *CH*  
Director of Public Works

**EXHIBITS:** Agreement

**AGENDA MAILED TO:**

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

---

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

**PAYMENT TO BE MADE TO:**

**REVIEWED BY THE FINANCE DIRECTOR:**

---

**SUMMARY STATEMENT**

Pursuant to the annexation of the James Avery Craftsman (JAC) campus, and their connection to Kerrville's wastewater system, an agreement has been prepared to address the need for JAC's wastewater to be pretreated before it enters the Kerrville system. JAC crafts metal jewelry, and therefore their wastewater contains heavy metals and other contaminants that must be removed before entering Kerrville's system. The agreement was prepared by Kerrville and contains a list of potential contaminants and their maximum acceptable concentrations limits. The agreement includes a schedule for testing and a penalty clause for exceedances. JAC currently has a successful pretreatment program in place; they have reviewed the agreement and offer no changes.

**RECOMMENDED ACTION**

The Water/Wastewater Manager recommends that Council authorize the City Manager to execute a wastewater pretreatment agreement with James Avery Craftsman before their connection to Kerrville's wastewater system.

**CITY OF KERRVILLE, TEXAS**  
**PRETREATMENT AGREEMENT FOR INDUSTRIAL WASTEWATER DISCHARGE**

**STATE OF TEXAS**  
**COUNTY OF KERR**

§  
§

A. James Avery Craftsman, Inc. ("JAC") certifies that it is the owner of property located at 145 Avery Road, Kerrville, Texas 78028, and that as owner and operator of a jewelry manufacturing company, it seeks connection to the wastewater system of the City of Kerrville, Texas ("City"). JAC understands that the City is requiring this Agreement pursuant to the issues stemming from the City's acceptance and treatment of JAC's discharged wastewater. JAC's discharged wastewater must consist of wastewater that the City is capable of treating so that the effluent and sludge from the City's system meets current legal standards, there is no damage or corrosion to the City's system that would result in increased maintenance costs, there are no excessive treatment costs required of the City, and that JAC's wastewater discharge meets pretreatment regulations required by federal and state law.

B. JAC agrees to pay City the established rates, charges, and fees and to comply with all rules and regulations of the City now existing or revised, each of which are subject to change by the City at any time.

C. JAC understands and agrees that the City may develop and adopt wastewater pretreatment regulations, in accordance with federal and state law and similar to those found here, and establish a permitting process. If adopted, the City would terminate this Agreement and such regulations would replace and supersede this Agreement.

D. JAC waives, releases, and holds City harmless from any claims and damages resulting from malfunction or failure of any equipment or interruption or cessation of wastewater treatment service including, without limitation, damages to persons or property, direct damages, special damages, incidental damages, consequential damages, or loss of profit or revenue.

E. City, pursuant to federal and state law, is responsible for protecting its Wastewater System ("Publicly Owned Treatment Works" or "POTW"). JAC's connection to the POTW will result in additional controlled pollutants entering this system. Such pollutants can interfere with proper operation of the POTW, which may result in the City violating the wastewater treatment parameters required by the Texas Commission on Environmental Quality ("TCEQ"). In order to protect the POTW, JAC shall comply with the following restrictions and requirements:

1. Prior to the City allowing JAC to connect to the POTW, JAC shall provide City with an initial baseline monitoring report detailing the current levels of the pollutants listed in Tables 1 and 2, below. City will analyze this report to determine the efficiency of JAC's pretreatment program and the frequency of monitoring and reporting which the City will require JAC

to maintain. JAC shall not exceed the maximum concentration limits identified for pollutants in Tables 1 and 2, below.

2. TCEQ, pursuant to its legal authority, will act as the "Control Authority" and will regulate the concentrations of Cadmium, Copper, Cyanide, and Silver in the discharge originating from JAC. At present, TCEQ has not established the maximum concentration levels for these pollutants. However, City has established maximum concentration limits for these pollutants, which may be found in Table 1, below. JAC shall comply with these limits until such time that TCEQ establishes its maximum concentration limits, in which case, JAC shall comply with the most stringent limit for each of the four pollutants listed in Table 1.

3. JAC shall test and report to City a five-day composite sample for all pollutants listed in Tables 1 and 2, below, at a frequency determined by City from the initial baseline monitoring report. The City may alter JAC's frequency of testing and maximum limits at any time based upon the initial baseline report, subsequent reports, changes in production, or changes in POTW operations.

4. JAC shall notify the City in writing within one week of any new manufacturing processes and/or changes in production processes that may significantly alter the composition or concentration of any of the discharged pollutants as found within Tables 1 or 2, below.

5. If any test conducted by JAC indicates that JAC's wastewater discharge exceeds the maximum concentration limits specified in Tables 1 or 2, below, the City shall apply a surcharge to JAC based on the Industrial Waste Surcharge formula (IWS) as specified below. The City may impose a surcharge for each pollutant listed in Tables 1 and 2, below, and for each test indicating an elevated level. In addition, the City may require more frequent monitoring, at the expense of JAC, until such time that pollutant levels stabilize at or below the maximum concentration limits.

$$IWS = D.C. / M.C. * (S.A.)$$

Where:

**D.C.** is the determined concentration level for any single pollutant listed in Tables 1 and 2.

**M.C.** is the maximum concentration for corresponding pollutant listed in Tables 1 and 2.

**S.A.** is the surcharge amount of \$350.00 as set by the City.

6. JAC shall reimburse the City for all fines, penalties, and associated costs where the TCEQ, or some other governmental entity, finds that the POTW is in violation of federal or state law, and such violation has occurred as a result of JAC's wastewater discharge.

**Table 1**

<b>Pollutant</b>	<b>Max. Concentration Limit (mg/L)</b>
Cadmium	0.25
Copper	1.1
Cyanide(Total)	1.0
Silver	0.5

**Table 2**

<b>Pollutant</b>	<b>Max. Concentration Limit (mg/L)</b>
Arsenic	0.5
Barium	1.2
Chromium (Total)	2.77
Lead	0.69
Mercury	0.05
Nickel	3.98
Selenium	0.82
Sulfides	0.3
Thallium	1.4
Zinc	2.61

7. JAC shall allow the City and any other federal or state governmental entity charged with regulating wastewater and the POTW to inspect its property for potential sources of prohibited discharges.

8. If JAC fails to comply with the terms of this Agreement, the City may suspend service until all violations of this Agreement have been eliminated and/or corrected, and may exercise any and all other remedies available under federal or state law.

9. The City may terminate this Agreement at any time.

F. This Agreement may be amended only by an instrument in writing signed by both JAC and the City.

G. This Agreement is subject to and governed by the laws of the State of Texas. Each party submits to the jurisdiction of the state court in the State of Texas and to venue in Kerr County, Texas.

EXECUTED this \_\_\_ day of \_\_\_\_\_, 2011.

JAMES AVERY CRAFTSMAN, INC.

CITY OF KERRVILLE

BY: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

\_\_\_\_\_  
Todd Parton  
City Manager

Address:

Address:

145 Avery Road  
Kerrville, Texas 78028

800 Junction Highway  
Kerrville, Texas 78028

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

- 3D. Authorize the city manager to execute a contract with Blue Source to provide brokerage services to market carbon credits for the harvesting and use of gas produced at the city landfill.

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

---

**SUBJECT:** Approval of contract to Blue Source for brokerage services to market carbon credits for the harvesting and use of gas produced at the city of Kerrville Landfill

**FOR AGENDA OF:** April 26, 2011

**DATE SUBMITTED:** April 11, 2011

**SUBMITTED BY:** David Vasquez  
Solid Waste Manager

**CLEARANCES:** Charlie Hastings *CA*  
Director of Public Works

**EXHIBITS:** Contract

**AGENDA MAILED TO:** N/A

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

---

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

**PAYMENT TO BE MADE TO:**

**REVIEWED BY THE FINANCE DIRECTOR:**

---

**SUMMARY STATEMENT**

The Solid Waste Division issued a Request for Proposals from carbon credit brokers who are interested and qualified to provide services necessary to register, verify, and market carbon credits generated from the methane gas extraction project at the Kerrville landfill. The project requires the need for a brokerage firm to manage the marketing of carbon credits.

The carbon credit brokerage request for proposals was issued in February and one company, Blue Source, submitted a proposal. The proposal was evaluated based on performance criteria categories and Blue Source did meet the requirements. Landfill revenue generated from the marketing and sale of carbon credits is anticipated to be \$164,000 over an agreement term that would be in effect until 2015.

**RECOMMENDED ACTION**

The Director of Public Works recommends that council authorize the City Manager to execute a contract with Blue Source to provide brokerage services to market carbon credits for methane gas use at the Kerrville landfill.



**AGREEMENT  
FOR THE  
DEVELOPMENT, VERIFICATION, REGISTRATION, AND MARKETING  
OF  
GREENHOUSE GAS EMISSION REDUCTION BENEFITS**

This agreement ("Agreement") is effective this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ (the "Effective Date"), by and between Blue Source LLC, a Utah limited liability company ("Blue Source" or "Buyer") and \_\_\_\_\_, a \_\_\_\_\_ ("\_\_\_\_\_" or "Seller").

**RECITALS**

- A. Seller operates a (*insert description of Seller's general business or Seller's specific GHG reduction activities, as appropriate*) and may have opportunities to make operational changes or improvements which may result in decreased emissions of certain Greenhouse Gases when compared to Seller's historical practices (**add Seller-specific information**); and
- B. Seller desires, to the extent possible, to monetize or to otherwise realize benefits from its voluntary activities which result in such Greenhouse Gas emission reductions; and
- C. Blue Source is in the business of identifying, creating, acquiring, aggregating and marketing credits, offsets, incentives, and other environmental benefits created by projects which reduce carbon dioxide and other Greenhouse Gas emissions, or which create renewable energy credits or equivalents for tons of emissions reduced or kilowatts produced (all referred to collectively as Emission Reductions Benefits), and then aggregating such benefits into a portfolio in order to enhance the marketability and value of such benefits; and
- D. Seller wishes to sell to third parties, through Blue Source as its exclusive marketer, and Blue Source wishes to market the Emission Reductions Benefits generated by Seller through its ERB Creation Activities in accordance with the terms of this Agreement.

**AGREEMENT**

In consideration of the foregoing recitals, other good and valuable consideration, the receipt and sufficiency of which is acknowledged by the Parties, and the mutual obligations and undertakings set forth herein, the Parties covenant and agree as follows:

1. DEFINITIONS

- a) "Buyer's Compensable ERBs" means all ERBs arising from the Project that are created prior to termination of operations at the Project or prior to Buyer's termination of this Agreement pursuant to Section 13 in response to Seller's breach, which have not already been committed, sold, or transferred by Buyer to a third party and equal to an amount which presumably would have been created and to which the Buyer would have been entitled had the Agreement remained in force for the remainder of the Term. Buyer's Compensable ERBs shall be calculated by multiplying the average amount of ERBs generated from such Project(s) being terminated during the most recent two (2) calendar years during which the Project(s) operated fully (following any start-up, shakedown, balancing, calibration, or similar periods) by the number of calendar years remaining in the Term (including the year in which cessation occurs if a Project ceases operating prior to December 31<sup>st</sup> of such year). If the Project has not operated for two full calendar years, the average amount of ERBs generated during the months of operation times twelve (or such other amount as the Parties may agree) shall be used to calculate the annual average. The term "Buyer's Compensable ERBs" shall only apply in the event of a termination of operations at the Project or in the event of a termination of this Agreement by Buyer in response to Seller's breach, pursuant to Section 13(b).
- b) "Buyer's Retained ERBs" means all ERBs (if any) retained by Buyer in kind in lieu of Buyer's share of Proceeds, pursuant to section 5(b) hereof.
- c) "Buyer's Share" shall be the amount of Net Proceeds to which Buyer is entitled pursuant to Section 5.
- d) "Document," "Documenting," and "Documentation" means, as appropriate in the context in which such terms are used, either (i) the preparation of all documents pertaining to reductions or avoidance of GHG emissions associated with the Project as are required in order to obtain Validation, Verification, or Registration of such emission reductions and Registration of the ERBs pertaining thereto, or (ii) all documents prepared for such purposes.
- e) "Emission Reduction Benefit" or "ERB" means all benefits and all associated rights, title, and interest, without limitation, in or arising out of the environmental and financial benefits associated with a reduction in or avoidance of Greenhouse Gas emissions or the production of biogas or other renewable energy, whether such right, benefit, title, or interest is in existence as of the date of this Agreement or arises thereafter, including, without limitation, any emission reduction credits, verified emission reductions, voluntary emission reductions, offsets, allowances, voluntary carbon units, avoided compliance costs, emission rights and authorizations under any ERB Regime, renewable energy certificates or credits, tax incentives, credits, benefits or releases, and including any Reporting Rights.
- f) "ERB Creation Activities" include all voluntary activities undertaken by Seller in conjunction with the Project or in the course of its business which are intended to achieve the reduction or avoidance of Greenhouse Gas emissions, including, without limitation, operational changes or improvements and Greenhouse Gas emission

reduction, capture, collection, destruction, and/or storage (*include Seller-specific detail as appropriate*).

- g) "ERB Regime" means any ERB registry, trading system, or reporting or reduction program for ERBs or GHG emission reductions that is established, certified, maintained, or recognized by any international, governmental (including U.N., federal, state, or local agencies), or non-governmental agency from time to time.
- h) "Expenses" means all costs (other than G&A expenses) payable by Blue Source or its representative to any third party related to (1) Documenting, Validating, Verifying, or Registering ERBs (including any related engineering expenses); and (2) any costs of installing, operating or maintaining any required monitoring equipment.
- i) "Greenhouse Gas" or "GHG" means carbon dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>), nitrous oxide (N<sub>2</sub>O), hydroflourocarbons, perfluorocarbons, sulphur hexafluoride, or any other substance or combination of substances that may become regulated or designated as GHGs under (i) any federal, state or local law or regulation, or (ii) any ERB Regime, in each case measured in increments of one metric tonne of carbon dioxide equivalent.
- j) "Net Proceeds" means the Proceeds less Expenses.
- k) "Other ERB Benefits" means all benefits of any type, other than Proceeds, attributable to the sale of ERBs generated pursuant to this Agreement.
- l) "Parties" means Buyer and Seller collectively and their respective successors and assigns, and "Party" means either of them and its successors and assigns.
- m) "Proceeds" shall be the total amount received by Buyer from a third party as payment for Buyer's sale of Emission Reduction Benefits obtained from Seller pursuant to this Agreement.
- n) "Project" means all of Seller's efforts, without limitation, to create Emission Reduction Benefits in the operation of its business (*include Seller-specific detail as appropriate*).
- o) "Registration," "Register," or "Registering" means the obtaining of any and all necessary recognition, registration, credit, approval, and/or (to the extent obtainable) certification of the Project's ERBs under an applicable ERB Regime, and includes any required payment of fees for the delisting, retirement, or transfer of such ERBs.
- p) "Reporting Rights" means the exclusive right to claim and/or report the benefits of any ERB to any governmental entity, ERB Regime or private entity, including the exclusive rights to claim and/or report the benefits of any form of acknowledgement or certification related to the ERB or ERB Creation Activities by any government agency or other entity, whether arising under local, state, national, or international laws or regulations relating to climate change, renewable energy, or otherwise.
- q) "Sellers Remaining ERBs" means ERBs which: (i) were generated by the Project prior to Seller's termination pursuant to Section 13(b); (ii) were transferred from Seller to Buyer prior to Seller's termination pursuant to Section 13(b); and (iii) have not been previously

committed, sold, or transferred from Buyer to a third party prior to Seller's termination pursuant to Section 13(b). The phrase "Sellers Remaining ERBs" shall only apply in the event of a termination of this Agreement by Seller in response to Buyer's breach, pursuant to Section 13(b).

- r) "Seller's Share" shall be the amount of Net Proceeds to which Seller is entitled pursuant to Section 5.
  - s) "Term" means the term of this Agreement, which begins upon the Effective Date and continues through the tenth anniversary thereof.
  - t) "Validation", "Validate," or "Validating" means the confirmation by a Verifier that the Project and Greenhouse Gas emission reductions associated with the Project will qualify as ERBs.
  - u) "Verification," "Verify," or "Verifying" means the confirmation by a Verifier of the quantity of Greenhouse Gas emission reductions resulting from the Project during a stipulated time period.
  - v) "Verifier" means an independent person or entity that meets professional qualification, independence, and other requirements prescribed by an applicable ERB Regime to Validate or Verify ERBs under and for the purposes of the applicable ERB Regime.
2. **PURPOSE OF AGREEMENT.** The Parties anticipate that Seller has and will engage in ERB Creation Activities in the course of **(add Seller-specific information)**, providing the basis for Emission Reduction Benefits. Seller agrees to sell, transfer, and otherwise convey to Blue Source all such ERBs, pursuant to the terms of this Agreement.
3. **SERVICES PROVIDED BY BLUE SOURCE.** Throughout the Term, Blue Source will conduct the following activities:
- a) **Project Screening:** Blue Source will monitor operations and collect data relating to the Project. Following data collection, Blue Source will assess the eligibility of any ERBs relating to the Project in light of accepted standards and methodologies such as the Voluntary Carbon Standard (VCS), the California Climate Action Registry (CCAR), the EPA Climate Leaders, or such other standards or methodologies as are selected by Blue Source in its discretion.
  - b) **Protocol Development:** Blue Source will prepare such Documentation as it, in its discretion, deems necessary to document the creation of marketable Emission Reduction Benefits as a result of the ERB Creation Activities. Such Documentation may include a protocol or project design document, a baseline report, a monitoring plan, or one or more additional documents.
  - c) **Validation and Verification:** Blue Source will engage a Verifier to Validate the ERB Creation Activities and Verify the creation of marketable Emission Reduction Benefits. Such third party Validation and Verification may occur at various times throughout the ERB creation process, including after ERB Creation Activities have occurred. In determining the final available Emission Reduction Benefits to be made available to

Buyer, any offsetting emission increases in other substances believed to contribute to climate change and resulting from the same ERB Creation Activities must be netted out of the total Emission Reduction Benefits created by such ERB Creation Activities.

- d) Registration. Blue Source will make commercially reasonable efforts to Register Emission Reduction Benefits arising out of the ERB Creation Activities relating to the Project with a reputable ERB Regime selected by Blue Source in its discretion.
  - e) Marketing and Monetization. Blue Source will make commercially reasonable efforts to market and monetize Emission Reduction Benefits arising out of the ERB Creation Activities relating to the Project.
4. TITLE AND EXCLUSIVE RIGHT TO MARKET. Seller hereby grants, conveys, and transfers to Buyer title to all ERBs created as a result of ERB Creation Activities which take place during the Term, including but not limited to ERBs Validated, Verified and/or Registered during or after the Term as a result of actions taken prior to or during the Term. Blue Source shall have the exclusive right to market all benefits arising from all ERBs which are generated as a result of ERB Creation Activities which take place during the Term.
- a) Blue Source shall have discretion to determine which Emission Reduction Benefits (including vintage and operating periods) will produce Emission Reduction Benefits of sufficient magnitude and quality to be pursued for Verification and transfer in accordance with the terms of this Agreement.
  - b) Blue Source may aggregate and market Seller's ERBs with ERBs created by other suppliers of either similar or unrelated credits as Buyer deems appropriate as a function of Blue Source's portfolio management.
5. PRICE AND PAYMENT TERMS. Buyer shall pay Seller **## percent (##%)** of the Net Proceeds received from Buyer's sale of each Emission Reduction Benefit transferred from Seller to Buyer, subject to the following conditions:
- a) Buyer shall pay Seller the percentage of Net Proceeds set forth above within thirty (30) days of Buyer's receipt of Proceeds from Buyer's sale of each Emission Reduction Benefit, provided that Buyer has incurred all related Expenses and is able to calculate Net Proceeds by such date.
  - b) Buyer shall, for tax, capitalization, or other corporate reasons, have the right upon its request to receive up to **## percent (##%)** share of Proceeds in kind as a percentage of Emission Reduction Benefits available for transfer in lieu of a percentage of the Net Proceeds from such Emission Reduction Benefits (i.e., Buyer may retain the full rights and title to up to **## percent (##%)** of Emission Reduction Benefits generated in each vintage (or calendar) year instead of, and not in addition to, **##%** of the Net Proceeds). If Buyer makes elects to retain any ERBs pursuant to this election, Section 5(b):
    - i) Buyer shall be responsible for all Expenses related to such Buyer's Retained ERBs (if any); and

- ii) Seller shall be responsible for all Expenses related to ERBs which are not Buyer's Retained ERBs.
  - c) Any amounts received by Buyer from a third party purchaser, the rights or title to which are conditioned upon an occurrence of one or more subsequent conditions, shall not be deemed "Proceeds" which can be distributed to the Parties until such conditions have been satisfied.
  - d) The Parties shall share all Other ERB Benefits in the same proportion to which they share Net Proceeds.
6. SELLER'S WARRANTIES. Seller represents and warrants that:
- a) It is a corporation duly organized, validly existing and in good standing under the laws of its jurisdiction of incorporation, with full corporate power and authority to make, execute, deliver and perform this Agreement and the transactions contemplated hereby.
  - b) The execution, delivery and performance of this Agreement have been duly authorized by all necessary actions on the part of Seller and this Agreement constitutes a valid obligation of Seller enforceable against it in accordance with its terms.
  - c) It has good and marketable title to all Emission Reduction Benefits arising out of the ERB Creation Activities that are made available to Buyer for resale and that such Emission Reduction Benefits shall be free and clear of all encumbrances of any kind.
  - d) All Emission Reduction Benefits transferred to Buyer shall be based on voluntary reductions of GHG emissions or the production of electricity from renewable energy sources as a result of the ERB Creation Activities.
  - e) Data provided to Blue Source or its authorized representatives for the determination of the quantity and quality of Emission Reduction Benefits shall be accurate in all material respects.
  - f) During the Term, Emission Reduction Benefits sold or available for sale to Buyer pursuant to this Agreement shall not be sold, transferred, otherwise conveyed or made available for use by Seller to any other person or entity for any other purpose. Seller will not claim any of the ERBs delivered or sold to Buyer under this Agreement as part of its own carbon inventory, carbon footprint, or other carbon statement or declaration without disclosing, in conjunction with such claim, the general nature and impact of the ERB transaction which is the subject of this Agreement.
  - g) During the Term, Seller will provide in a timely manner all available and relevant information within Seller's control necessary to allow Blue Source to evaluate, develop and market ERBs.
7. BUYER'S WARRANTIES. Buyer represents and warrants that:
- a) It is a limited liability company duly organized, validly existing and in good standing

under the laws of the state of Utah, with full power and authority to make, execute, deliver and perform this Agreement and the transactions contemplated hereby.

- b) The execution, delivery and performance of this Agreement have been duly authorized by all necessary actions on the part of Buyer and this Agreement constitutes a valid obligation of Buyer enforceable against it in accordance with its terms.

8. FURTHER ASSURANCES. Upon Buyer's reasonable request, Seller shall execute such documents and take such further actions from time to time as may be necessary to Validate, Verify, or Register Emission Reduction Benefits. Seller shall also provide such assurances in connection with related Emission Reduction Benefits that may be created by governmental action during the term of this Agreement.

9. ACCESS TO INFORMATION; MAINTENANCE OF RECORDS

- a) Due Diligence. Seller shall provide Blue Source and its representatives with access to the Project and to all Emission Reduction Benefit-related documents, records, reports, and data reasonably necessary to Document and Verify the quantity, quality, validity, or acceptability of the Emission Reduction Benefits or the ERB Creation Activities to any ERB Regime and to any governing authority, registry, trading market, or prospective final buyer requesting such information. Verifiers as well as prospective final buyers of Emission Reduction Benefits created pursuant to this Agreement shall have the right to visit Seller's facilities for purposes of conducting such Verification upon commercially reasonable notice to Seller, subject to Seller's right to protect confidential, proprietary, and competition sensitive information and processes. Such due diligence may be undertaken at any time during the term of this Agreement during regular business hours upon reasonable advance notice.
- b) Seller's Records Regarding Project Performance. Seller shall maintain records reasonably necessary to establish the validity of the Emission Reduction Benefits sold pursuant to this Agreement. Seller shall make such records available for inspection upon reasonable advance notice from Buyer and Buyer's transferees at reasonable times and places. Seller shall also make such records available to any ERB Regime or governmental or regulatory body with competent jurisdiction over the Emission Reduction Benefits being sold. Such records shall be maintained for three years after the date of transfer of the Emission Reduction Benefits from Seller to Buyer or such other period as may be required by an applicable ERB Regime, whichever is longer.
- c) Buyer's Records Regarding Transactions. Buyer shall keep and maintain records of all sales terms, deal valuations, and documentation necessary for Buyer to complete the sale and transfer of Emission Reduction Benefits transferred to Buyer by Seller and by Buyer to any third party. These records shall be kept for a period of three years after the date of transfer and shall be made available to Seller for inspection during regular business hours upon reasonable advance notice.

10. LIMITATION OF LIABILITY.

- a) Except with respect to its reckless acts or intentional misrepresentations, Buyer's liability to Seller hereunder shall not exceed Buyer's Share of the Net Proceeds received

by Buyer from sale of the Emission Reduction Benefits plus an amount of interest equal to seven percent (7%) per annum prorated between dates of payment and repayment hereunder. Except with respect to its reckless acts or intentional misrepresentations or breach of representation in Section 6.c., Seller's liability to Buyer hereunder shall not exceed Seller's Share of the Net Proceeds plus interest equal to seven percent (7%) per annum prorated between dates of payment and repayment hereunder and Expenses. Neither Party shall be liable to the other for any indirect or consequential damages. The limitation of liability in this Section 10 shall survive cancellation, termination, or expiration of this Agreement.

- b) Buyer shall have no liability as a result of, or in relation to, the acts or omissions of Seller in connection with the operation of the Project. Buyer shall have no liability with respect to compliance with current or future environmental laws with respect to ERB Creation Activities and/or the Project.

#### 11. INDEMNITY

- a) By Seller. Seller shall indemnify and hold Buyer harmless from any claims or demands and any actions, suits, orders, or any other form of legal proceeding brought by a third party, including any government authority or regulator, relating to: (i) any grossly negligent act or omission and any materially untruthful or reckless representation made by Seller in connection with the Documentation, Registration, Verification, Validation or sale of Emission Reduction Benefits subject to this Agreement; (ii) the operation of the Project; or (iii) a breach of Seller's warranties set forth in Section 6.
- b) By Buyer. Buyer shall indemnify and hold Seller harmless from any claims or demands and any actions, suits, orders, or any other form of legal proceeding brought by a third party, including any government authority or regulator, relating to: (i) any grossly negligent act or omission and any materially untruthful or reckless representation made by Buyer in connection with the Documentation, Registration, Verification, Validation, sale, or purchase of the Emission Reduction Benefits subject to this Agreement; or (ii) a breach of Buyer's warranties set forth in Section 7.

12. RESERVATIONS REGARDING PROJECT DEVELOPMENT. The Parties acknowledge that Seller is relying on Buyer to provide certain tactical advice regarding the creation of marketable Emission Reduction Benefits. Buyer and Seller agree to use all reasonable efforts to promptly and efficiently identify and achieve as many Emission Reduction Benefits from the Project as commercially practical within the term of this Agreement. Notwithstanding this commitment, the Parties mutually acknowledge that:

- a) SELLER MAKES NO REPRESENTATION OR WARRANTY AS TO THE NUMBER OF EMISSION REDUCTION BENEFITS WHICH MAY BE GENERATED AS A RESULT OF ANY PROJECT; AND
- b) BUYER MAKES NO REPRESENTATION OR WARRANTY AS TO THE CREATION OF EMISSION REDUCTION BENEFITS AT THE PROJECT OR THE MARKETABILITY OR VALUE TO BE REALIZED AS A RESULT OF BUYER'S EFFORTS TO SELL SUCH ERBS.

13. **TERM AND TERMINATION.** This Agreement shall remain effective and in force from the Effective Date through the tenth anniversary of the Effective Date, subject to earlier termination pursuant to this Section.

- a) **Termination of Operations.** Buyer acknowledges that Seller has no obligation to Buyer to continue the operation of any facility solely in order to produce Emission Reduction Benefits. In the event Seller elects to cease operations at the Project, Seller may terminate this Agreement upon at least thirty (30) days advance written notice. In the event of such termination, Seller shall, within ten days of Buyer's request:
- i) Pay to Buyer all outstanding Expenses;
  - ii) Either (a) transfer to Buyer, or (b) Buyer shall have the right to retain title to, Buyer's Compensable ERBs. Any ERBs in excess of Buyer's Compensable ERBs shall remain with or be transferred to Seller. Seller agrees to take all actions and execute and deliver all documents reasonably necessary to transfer to Buyer all rights and benefits to Buyer's Compensable ERBs. For Buyer's Compensable ERBs that have not yet been Documented, Verified, or Registered, Seller shall transfer such ERBs subject to this Section 13.a.ii. to Buyer within ten (10) days of Documentation, Verification and/or Registration of such ERB. If the total quantity of ERBs transferred to Buyer pursuant to this Section 13(a)(ii) is less than Buyer's Compensable ERBs, such ERBs shall not be subject to payment of any percentage of Net Proceeds; and
  - iii) If Seller (a) ceases operations at the Project, (b) terminates this Agreement pursuant to section 13(a), and then (c) subsequently resumes operations at the Project within a one-year period of such termination, then (x) this Agreement shall be fully reinstated, and (y) Buyer shall have all rights to the ERBs not previously transferred pursuant to Section 13.a.ii throughout the Term as set forth in Sections 4 and 5 of this Agreement.
- b) **Termination for Seller's Breach.** In the event the Seller fails to perform any covenant in this Agreement or breaches any material representation or warranty during the term of this Agreement, Buyer shall notify Seller in writing of the failure of such covenant or the conditions of the breach and provide the Seller with a 30 day period to correct any such breach or perform such covenant. The Buyer shall have the right to terminate this Agreement after the 30-day period if the breach has not been corrected or the covenant not performed during the 30-day period. If Buyer terminates this Agreement pursuant to this Section 13(b):
- i) Either (a) Seller shall transfer to Buyer, or (b) Buyer shall have the right to retain title to, Buyer's Compensable ERBs. Any ERBs in excess of Buyer's Compensable ERBs shall remain with or be transferred to Seller. Seller agrees to take all actions and execute and deliver all documents reasonably necessary to transfer to Buyer all rights and benefits to Buyer's Compensable ERBs. For Buyer's Compensable ERBs that have not yet been Documented, Verified, or Registered, Seller shall transfer the ERBs subject to this Section 13.a.ii. to Buyer within ten (10) days of Documentation, Verification and/or Registration of such ERBs. If

- the total quantity of ERBs transferred to Buyer pursuant to this Section 13(b)(i) is less than Buyer's Compensable ERBs, such ERBs shall not be subject to payment of any percentage of Net Proceeds;
- ii) Within ten (10) days of its receipt of such notice, Seller shall pay to Buyer all outstanding Expenses plus any damages caused by such breach, subject to the Limitation of Liability sections of this Agreement which are incorporated herein by reference; and
  - iii) Seller shall not create or transfer to anyone other than Buyer any Emission Reduction Benefits arising from the Project, whether in the form of rights or benefits related to emission reductions of Greenhouse Gases, until Seller has satisfied all of the conditions of this Section 13(b).
- c) Termination for Buyer's Breach. In the event the Buyer fails to perform any covenant in this Agreement or breaches any material representation or warranty during the term of this Agreement, Seller shall notify Buyer in writing of the failure of such covenant or the conditions of the breach and provide the Buyer with a 30 day period to correct any such breach or perform such covenant. The Seller shall have the right to terminate this Agreement after the 30-day period if the breach has not been corrected or the covenant not performed during the 30-day period. If Seller terminates this Agreement pursuant to this Section 13(c):
- i) Buyer shall cease all Services for Seller; and
  - ii) Within ten days of payment of all outstanding Expenses related to Seller's Remaining ERBs, Buyer shall transfer to Seller title and all rights to Seller's Remaining ERBs. With respect to any ERBs previously transferred from Seller to Buyer and committed, sold, or transferred from Buyer to a third party, Buyer shall pay Seller's percentage of any Net Proceeds for any such ERBs in a timely manner following Buyer's receipt of Proceeds from such ERB.
- d) Termination Due to Economic Unfeasibility. Blue Source may terminate this Agreement prior to the end of the Term, upon ninety days written notice, if Blue Source, in its sole discretion, determines the Project or any part of the Project is economically unfeasible. If Blue Source terminates this Agreement pursuant to this Section 13.d., neither Party shall have any further obligation to proceed under this Agreement, except the Agreement shall continue to apply to any ERBs generated from the Project for which Blue Source has entered into sale agreements with third parties on a "forward sale" basis, and, at Blue Source's sole option, any ERBs generated prior to Blue Source's notice of termination.
- e) Termination Due to Insolvency. This Agreement may be terminated immediately upon notice by one Party to the other Party if:
- i) a receiver or trustee in bankruptcy has been appointed to take charge of all or any substantial part of the other Party's business or property, unless the receivership order or the appointment of the trustee in bankruptcy is vacated within thirty (30) days;

- ii) the other Party has become an insolvent person or committed an act of bankruptcy as defined under the bankruptcy laws of the United States;
- iii) a petition has been filed or any other action has been taken with respect to the other Party under any provision of the bankruptcy laws of the United States; or
- iv) any application or petition or certificate or order has been made or granted for the winding up or dissolution of the other Party, voluntarily or otherwise.

14. **DISPUTE RESOLUTION.** The Parties agree that any material dispute between the Parties relating to this Agreement will be submitted to a panel of two senior executives (Vice-President or more senior) of each Party. Either Party may initiate this proceeding by providing notice to the other Party. Within five (5) days from the date of receipt of the notice, the Parties' executives shall confer (via telephone or in person) in an effort to resolve such dispute. The decision of the executives will be final and binding on the Parties.

- a) Mediation. In the event the executives are unable to resolve such dispute within twenty (20) days after submission to them, the Parties agree to attempt in good faith to resolve the dispute through confidential mediation. The Parties shall select a mutually agreeable mediator or, if the Parties cannot agree upon a mediator, the Parties shall jointly request an independent mediation association such as JAMS to appoint a mediator. The Parties shall agree upon mediation procedures or, if the Parties cannot agree to such procedures, the Parties agree to be subject to mediation procedures imposed by the mediator. The Parties agree to equally divide the costs of any mediation. Each Party's executives shall be identified by notice to the other Party, and may be changed at any time thereafter also by notice to the other.
- b) Remedies not Limited. If the Parties are unable to resolve any dispute through the executive panel discussion or the mediation procedures as set forth above within 60 days of the dispute being submitted to the mediator, nothing in the Contract Documents shall be construed so as to require or preclude any specific dispute resolution procedure, including litigation in a court of law.

15. **ADDITIONAL TERMS AND CONDITIONS.**

- a) Neither Party shall issue any press release nor make other public nor web based communication outlining the existence and general benefits of this Agreement without the prior written consent of the other Party.
- b) This Agreement constitutes the full understanding of the Parties and supersedes all prior understandings of the Parties, both written and oral, and no terms, conditions, understandings or agreements purporting to modify or vary the terms of this document shall be binding unless hereafter made in writing and signed the Parties.
- c) If the event either Party is prevented from performing or is unable to perform any of its obligations under this Agreement (other than a payment obligation) due to any Act of God, fire, casualty, flood, earthquake, war, strike, lockout, epidemic, riot, insurrection, or any

other cause beyond the reasonable control of the Party ("Force Majeure") invoking this section and if such Party shall have used its commercially reasonable efforts to mitigate its effects, such Party shall give prompt written notice to the other Party, its performance shall be excused, and the time for the performance shall be extended for the period of delay or inability to perform due to such occurrences. Regardless of the excuse of Force Majeure, if such Party is not able to perform within one hundred eighty (180) days after such event, the other Party may terminate the Agreement. Termination of this Agreement shall not affect the obligations of either Party that exist as of the date of termination. Neither Party shall be required to settle a labor dispute, strike or lockout in order to mitigate or remedy a condition of Force Majeure.

- d) This Agreement shall be interpreted according to the laws of the State of Utah, without regard to any conflict of laws provisions which would compel the application of the law of any other forum.
- e) This Agreement shall be binding upon and inure to the benefit of the Seller and Buyer and their respective successors and permitted assigns. Buyer shall have the right to assign all or part of its interest in this Agreement as security without consent.
- f) Any notice or other communication which any Party is required or wishes to make to any other Party pursuant to this Agreement will be effective and valid only if in writing and delivered personally, by facsimile transmission or by email to the other Party at the address, fax number or email address set out below or at such other address, fax number or email address as such Party may from time to time designate by notice delivered in accordance with this Section 15.f.

\_\_\_\_\_. "Seller", Attn: \_\_\_\_\_; Address, Phone, Fax, Email  
\_\_\_\_\_.

Blue Source, LLC, "Buyer", Attn: Contract Administrator, 3165 East Millrock Drive, Suite 340, Holladay, UT 84121, USA. Phone (801) 322-4750. Fax (801) 363-3248. E-mail [info@ghgworks.com](mailto:info@ghgworks.com).

Any notice delivered in accordance with the foregoing will be deemed to have been received by the addressee on the date it is sent if delivered personally, by facsimile transmission or by email within normal business hours in Salt Lake City, Utah, or at the beginning of the next business day in Salt Lake City, Utah if it is sent outside normal business hours (and provided that in the case of a notice sent by facsimile transmission the Party sending the notice has received a confirmation of transmission indicating that the entire facsimile transmission has been sent).

- g) The headings set forth in this Agreement are for reference purposes only and will not be considered in the interpretation or enforcement of the provisions of this Agreement.

16. PROVISIONS SURVIVING EXPIRATION AND TERMINATION. Notwithstanding the termination or expiration of this Agreement, the provisions of Sections 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, and 15(d) shall survive for a period of one year following the end of the initial Term.

17. Each Party shall be responsible for and pay its own legal and other costs associated with the negotiation and execution of this Agreement.
18. In the event either Party brings an action against the other to enforce any term of this Agreement, the prevailing Party in such action shall be entitled to recover all of its reasonable expenses incurred in connection therewith, including but not limited to reasonable attorney's fees in the judgment rendered in such action.

BLUE SOURCE, LLC

CITY OF KERRVILLE, TX

\_\_\_\_\_

\_\_\_\_\_

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

Todd Parton, City Manager

Its: \_\_\_\_\_

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

- 3E. Authorize the city manager to enter into an agreement for the disposal of the building at 433 Water Street.

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

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**SUBJECT:** City Council authorization for the City Manager to enter into an agreement with Mark and Linda Stone for the disposal of the building at 433 Water Street.

**FOR AGENDA OF:** April 26, 2011

**DATE SUBMITTED:** April 18, 2011

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

**CLEARANCES:** Todd Parton  
City Manager

**EXHIBITS:**

**AGENDA MAILED TO:**

**APPROVED FOR SUBMITTAL BY CITY MANAGER:**

Expenditure	Current Balance	Amount	Account
Required:	in Account:	Budgeted:	Number:
\$35,000.00	\$35,357.25	\$35,000.00	Fund 67
\$5,000.00	\$1,548,094.40	\$1,615,000.00	Project G95

**PAYMENT TO BE MADE TO:**

**REVIEWED BY THE DIRECTOR OF FINANCE:**

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**SUMMARY STATEMENT**

In January 2010, staff issued an RFP for the disposal of the building located at 433 Water Street. Two proposals were received: Mark and Linda Stone and the Texas Arts and Craft Educational Foundation. In February 2010, the City Council authorized staff to enter into an agreement with the Texas Arts and Crafts Educational Foundation for the removal of the 433 Water Street building to the River Star Arts and Events Park site. Since this time, the library project has been re-phased and the need to move the building is critical in order to commence with the site work and project renovation. In conversation with the TACEF, they have determined moving this building is not possible for the Foundation due to necessary funds needed for renovation of the building.

After notification from the Foundation, staff met with Mark and Linda Stone about their potential interest in relocating the building to their proposed site. After several meetings to discuss the relocation, site work, preparation and renovation of the building to code, it was determined Mark and Linda Stone had interest in relocating the front half of the building to 425 Clay Street. Their proposal includes relocating the building and setting it up on a city approved foundation for a cost not to exceed \$40,000.00.

The agreement with the Stones would include the following:

1. A reimbursement to the Stones for removal of the building in an amount not to exceed \$40,000.00. Funds will come from the rent collected for the building and now located in

the Library Renovation project in the CIP.

2. The City will not be responsible for any asbestos abatement associated with the relocation of the building.
3. The City will not be responsible for the moving of the building to 425 Clay Street.
4. The City will be responsible for removal of shrubs or landscaping prior to the removal of the building.
5. The City will be responsible for the disconnection all services to the building prior to moving.
6. The City will be responsible for the cleanup of the site and the demolition of the remaining portion of the building not removed.
7. The Stones or their contractor will have the right to all salvage of copper, plumbing and electrical wires in the basement area of the building portion being relocated.
8. The Stones or their contractor will be responsible for complying with all City codes, obtaining all permits and lifting all utility wires associated with the relocation of the building.
9. The Stones will be required to re-plat 425 Clay Street prior to receiving a certificate of occupancy for the building.

#### **RECOMMENDED ACTION**

Staff recommends the City Council authorize the City Manager to execute an agreement with Mark and Linda Stone for the removal of the building located at 433 Water Street with the terms listed above.

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

- 4A. A resolution granting a conditional use permit for a portion of an approximate 0.70 acre parcel of land out of the J.A. Tivy Addition, a subdivision within the city of Kerrville, Texas, otherwise known as 1612 Water Street; said property is located within zoning district C-17; by permitting said property to expand the area in which it has a non-conforming use pursuant to the addition of new building; and making said permit subject to certain conditions and restrictions contained herein.

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

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**SUBJECT:** Public Hearing: Conditional Use Permit (CUP) Request – Consider a request for a CUP to allow the enlargement of a non-conforming use (warehouse and distribution) for Culligan Water Treatment Systems located at 1612 Water Street.

**FOR AGENDA OF:** April 26, 2011      **DATE SUBMITTED:** April 15, 2011

**SUBMITTED BY:** Gordon Browning *GB*      **CLEARANCES:** Kevin Coleman *KC*

**EXHIBITS:** Location Map, Applicant's Request, Resolution

**AGENDA MAILED TO:**

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

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

**PAYMENT TO BE MADE TO:**

**REVIEWED BY THE FINANCE DIRECTOR:**

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**SUMMARY STATEMENT**

Project Timeline:

- February 14, 2011 – Application for CUP accepted for review and consideration by the City.
- March 3, 2011 – Notice of the required public hearing published in The Kerrville Daily Times and mailed to property owners within 200-feet of the subject tract.
- March 17, 2011 – Public hearing before the Planning and Zoning Commission (P&Z) and consideration of a recommendation to the City Council. **Meeting cancelled.**
- March 23, 2011 – Development Review Committee (DRC) review process completed.
- March 24, 2011 – Notice of the required public hearing republished in The Kerrville Daily Times and mailed to property owners within 200-feet of the subject tract.
- April 1, 2011 – Staff comments to applicant.

- April 7, 2011 – Public hearing before the Planning and Zoning Commission (P&Z) and consideration of a recommendation to the City Council.
- April 26, 2011 – Public hearing before the City Council and consideration of a resolution approving the CUP.

CUP Process/Summary:

- The current use has been at this location since the late 1970's, meaning that the use has been non-conforming in at least two (2) Zoning Codes. The current use, warehouse and distribution, is not a permitted use in the C-17 (Central City) District, nor is it permitted by CUP.
- However, this CUP request, per Article 11-I-16(h) of the Zoning Code, is to allow the existing non-conforming use (Culligan's warehouse and distribution operation) to enlarge and remodel, see attached.
- The applicant proposes to demo and remodel the existing structure and add new office and sales areas and a covered customer drive through and loading area. New parking for customers and employees as well as new façade for the facility is also proposed, see attached.
- As stated in the draft resolution for this request, replatting and a Development Site Plan will be required prior to acceptance and review of civil construction and building plans.
- Per the Zoning Code, the P&Z and/or City Council may impose additional requirements and conditions of approval as are needed to ensure that a requested CUP is compatible and complementary to adjacent properties.
- Staff recommends approval of the CUP as requested subject to the conditions in the attached resolution which in addition to the standard development requirements and conformance to the attached site plan, will reduce the interior side yard setback for the development to zero (0') feet.
- The Planning and Zoning Commission at their April 7, 2011 meeting, following a public hearing, recommended approval of the CUP. No one from the public spoke.

## RECOMMENDED ACTION

1. Open the public hearing and receive comments, and
2. Approve the CUP as requested subject to the stipulations in the resolution.

SUBJECT  
TRACT

WATER

F

G

BROADWAY

H

(g) **Replacing Damaged Buildings:** A non-conforming use may recommence after the repair or reconstruction of any building which is damaged or destroyed by fire, flood, explosion, earthquake, war, riot, or other calamity, but only if:

- (1) such reconstruction is initiated within six months of the date the damage or destruction of the building occurred or by such later date as may be established by the Commission after a finding that the owner has made a good faith effort to commence reconstruction of the building(s) within the six months but has been delayed by factors not under the owner's control, including, but not limited to, the settlement of insurance claims or obtaining necessary financing; and
- (2) the area of the reconstructed building(s) used for the non-conforming use does not exceed the area or capacity used prior to the date of said damage or destruction.

(h) **Non-Conforming Use as Conditional Use:** A person may apply for a Conditional Use Permit pursuant to Article 11-1-13 if the person desires to:

- (1) enlarge a non-conforming use beyond that which is permitted by this Zoning Code;
- (2) demolish all or part of a building used for a non-conforming use with the intent of rebuilding the building and recommencing the non-conforming use, provided such rebuilding:
  - (i) is commenced not later than six months after the demolition occurred; and
  - (ii) is completed not later than two years after the demolition occurred;
- (3) recommence a non-conforming use on property where the building has been substantially damaged or destroyed and repair or replacement of said building will not commence within the period set forth in Subsection (g.), above

(i) **Non-Conforming Use Combined With Permitted Uses:** Property used for a non-conforming use may also be used for any other use permitted in the zoning district where the property is located. The area of a building in which a non-conforming use is occurring may be increased to include space to be used for permitted uses; however:

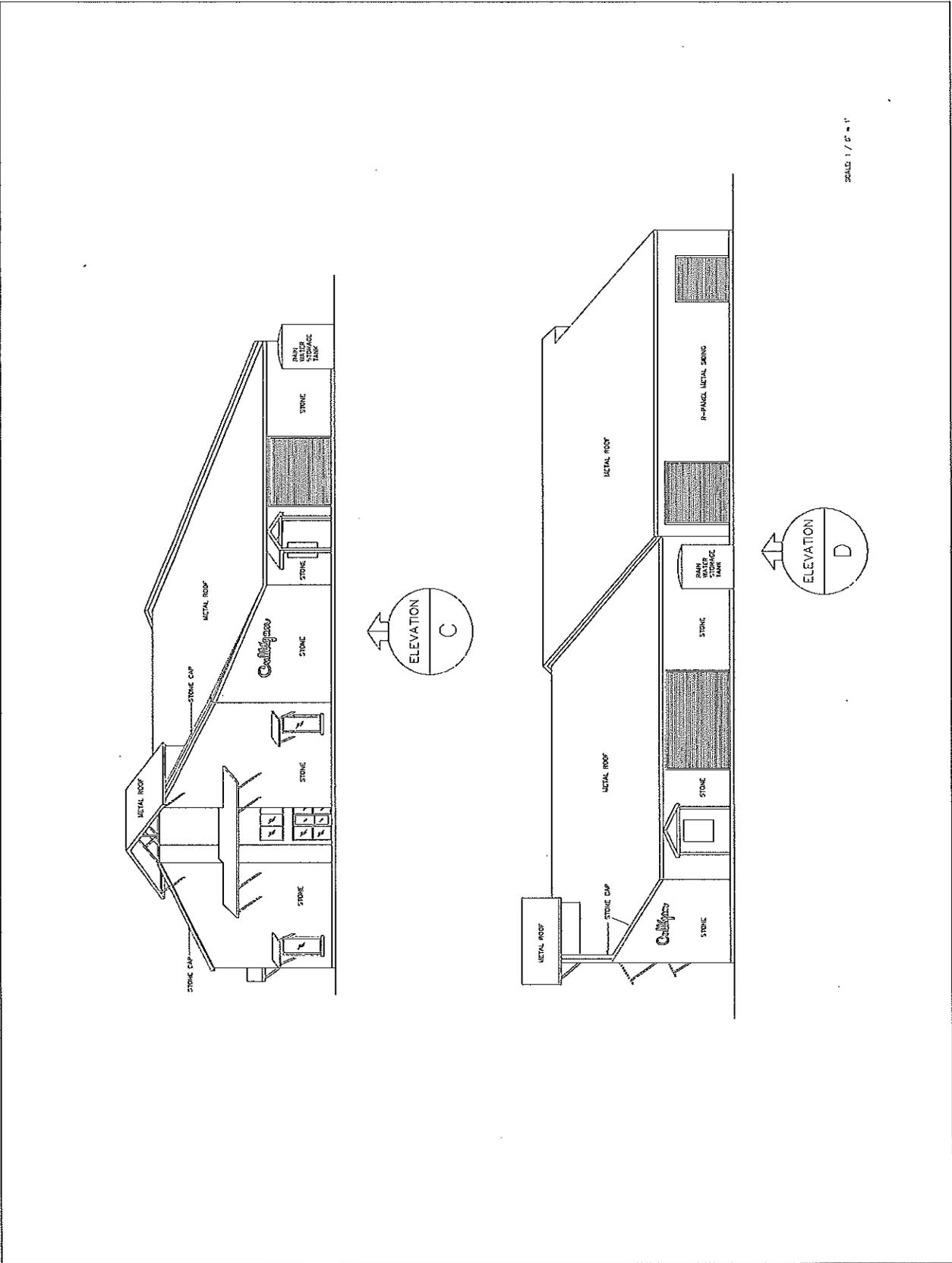
- (1) the area of the building which is used for the non-conforming use may not exceed the area used for the non-conforming use prior to the date of addition to the original building; and
- (2) the total parking area may not be increased above the maximum allowed for the permitted use as if the non-conforming use did not exist.

## ARTICLE 11-I-16, NON-CONFORMING USES





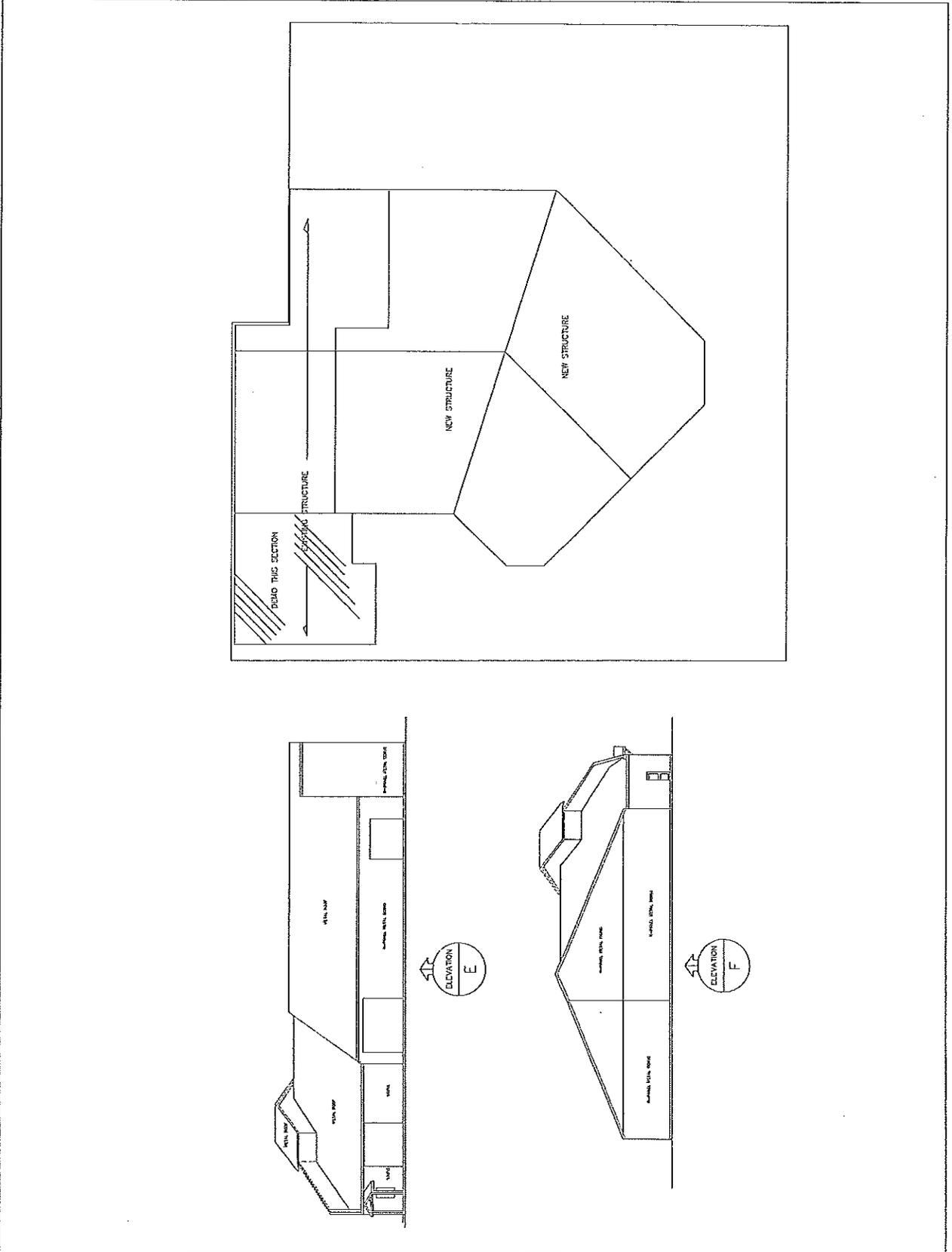


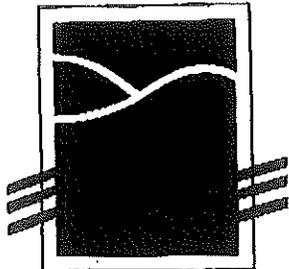


**CULLIGAN KERRVILLE WATER PLANT ADDITION**

NO.	REV.	DATE	BY	CHKD.	APP.
DATE: 01/23/11					
DESIGNER: [Signature]					
SCALE: AS SHOWN					

ALL WORK SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE IBC AND ALL APPLICABLE CODES.





*Vote Request*  
*NO*

**CITY OF KERRVILLE**

**DEVELOPMENT SERVICES**  
800 Junction Highway  
Kerrville, Texas 78028  
830-257-8000 / www.kerrvilletx.gov

March 24, 2011

W R ROTHROCK  
809 MOORE ST  
KERRVILLE, TX 78028-3334

**Re: Conditional Use Permit (CUP) Request – Consider a request for a CUP to allow the enlargement of a non-conforming use (warehouse and distribution) for Culligan Water Treatment Systems located 1612 Water Street. Zoned: C-17. Applicant: Robert Boerner. (File No. 2011-10)**

**This item was previously scheduled to be considered by the Planning and Zoning Commission on March 17, 2011 and City Council on April 12, 2011.**

Dear Sir or Madam:

Our records indicate that you own property within 200-feet of the subject tract. State law and local ordinance require notification to property owners within 200-feet of any zoning change request.

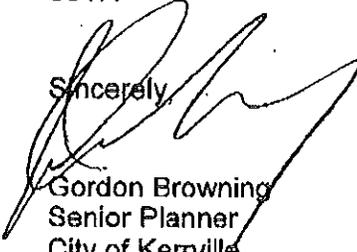
The Kerrville Planning and Zoning Commission will hold a public hearing to receive comments and consider a recommendation to the City Council on the above request Thursday, April 7, 2011, at its regular meeting starting at 4:30 p.m. in the City Council Chambers, 800 Junction Highway, Kerrville, Texas.

The Kerrville City Council will also hold a public hearing to receive comments and consider the request Tuesday, April 26, 2011, at its regular meeting starting at 6:00 p.m. in the City Council Chambers, 800 Junction Highway, Kerrville, Texas.

Only persons commenting or submitting written materials at the public hearing will be parties of record. Persons unable to attend may comment by mail, email or fax. The project application is available for review in the Planning Division office, 800 Junction Highway, Kerrville, Texas 78028, 8:00 a.m. to 5:00 p.m.

For addition information contact the Planning Division office at (830) 792-8354 or fax (830) 896-0517.

Sincerely,

  
Gordon Browning  
Senior Planner  
City of Kerrville

**CITY OF KERRVILLE, TEXAS  
RESOLUTION NO. \_\_\_\_-2011**

**A RESOLUTION GRANTING A CONDITIONAL USE PERMIT FOR A PORTION OF AN APPROXIMATE 0.70 ACRE PARCEL OF LAND OUT OF THE J.A. TIVY ADDITION, A SUBDIVISION WITHIN THE CITY OF KERRVILLE, TEXAS, OTHERWISE KNOWN AS 1612 WATER STREET; SAID PROPERTY IS LOCATED WITHIN ZONING DISTRICT C-17; BY PERMITTING SAID PROPERTY TO EXPAND THE AREA IN WHICH IT HAS A NON-CONFORMING USE PURSUANT TO THE ADDITION OF NEW BUILDING; AND MAKING SAID PERMIT SUBJECT TO CERTAIN CONDITIONS AND RESTRICTIONS CONTAINED HEREIN**

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

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

**SECTION ONE.** A Conditional Use Permit is granted to permit the property described as follows to expand the area of its non-conforming use by adding a new building to the property and subject to the provisions of this Resolution and other applicable City ordinances and resolutions:

**A portion of an approximate 0.70 acre parcel of land, made up of Lots 1, 2, and 3 and part of Lot 4, Block 14, of the J.A. Tivy Addition, a subdivision within the City of Kerrville, Kerr County, Texas, according to the plat recorded in Volume P, Page 16 of the Plat Records of Kerr County, Texas, and more commonly known as 1612 Water Street;**

hereafter referred to as "the Property."

**SECTION TWO.** The granting of the Condition Use Permit is pursuant to Section 11-I-16(h) of the Zoning Code of the City of Kerrville, Texas, as a non-conforming use is being expanded beyond that which is permitted by the Zoning Code. Thus, the Conditional Use Permit only applies to the Property and the continued use of the Property as a non-conforming use is subject to Article 11-I-16 of the Zoning Code.

**SECTION THREE.** In addition to the use and development regulations currently applicable to the Property, if the Property and its use shall be subject to the following additional use and development conditions and regulations:

- A. **Concept Plan:** The development of the Property shall conform substantially to the concept plan and elevations, which may be found in **Exhibit A**, as attached.
- B. **Development Site Plan:** Prior to the City's acceptance or permitting of any civil construction or building plans, a Development Site Plan shall be submitted to the City for approval pursuant to City regulations.
- C. **Platting:** The development of the Property shall be subject to the City's subdivision regulations, which includes submittal and approval of a plat of the Property.
- D. **Signs:** The design, installation, location, operation, and maintenance of signs shall comply with the City's ordinances regulating signs at the time of installation.
- E. **Exterior Lighting:** Any exterior lighting shall be located, shielded, and aimed in such a manner so as not to allow light to fall directly onto adjacent properties or streets.
- F. **Outside Storage:** The outside storage of any materials and/or equipment shall be behind solid fencing as shown on the concept plan.
- G. **Parking:** The design and number of parking spaces shall be in accordance with the City's regulations in effect at the time building permits are submitted for the City. All required parking spaces shall be constructed of asphalt or concrete and shall be marked and kept available for customers and employees.
- H. **Visibility Triangles:** Visibility triangles shall be established and maintained pursuant to existing City regulations for the Water Street and G Street intersection and for any entrance approved to the Property from any street.
- I. **Setbacks:** Setbacks for the enlargement/redevelopment of the Property shall be as follows:
  - 1. Front: 25-feet
  - 2. Rear: 25-feet
  - 3. Interior Side: 0-feet
  - 4. Exterior Side: 15-feet
- J. **Sidewalks:** The construction of sidewalks shall be required and constructed in accordance with City regulations in effect at the time building permits are submitted.
- K. **Other Zoning regulations:** The regulations set forth in this Resolution are in addition to those set forth in Title 11, Chapter I of the Zoning Code of the City of Kerrville, as amended or superseded. In the event of any irreconcilable conflict between this Resolution and the regulations set forth in Title 11, Chapter I of the Zoning Code of

the City of Kerrville, as amended or superseded, the provisions of this Resolution shall prevail.

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

**PASSED AND APPROVED ON this the \_\_\_\_\_ day of \_\_\_\_\_ A.D., 2011.**

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

APPROVED AS TO FORM:



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

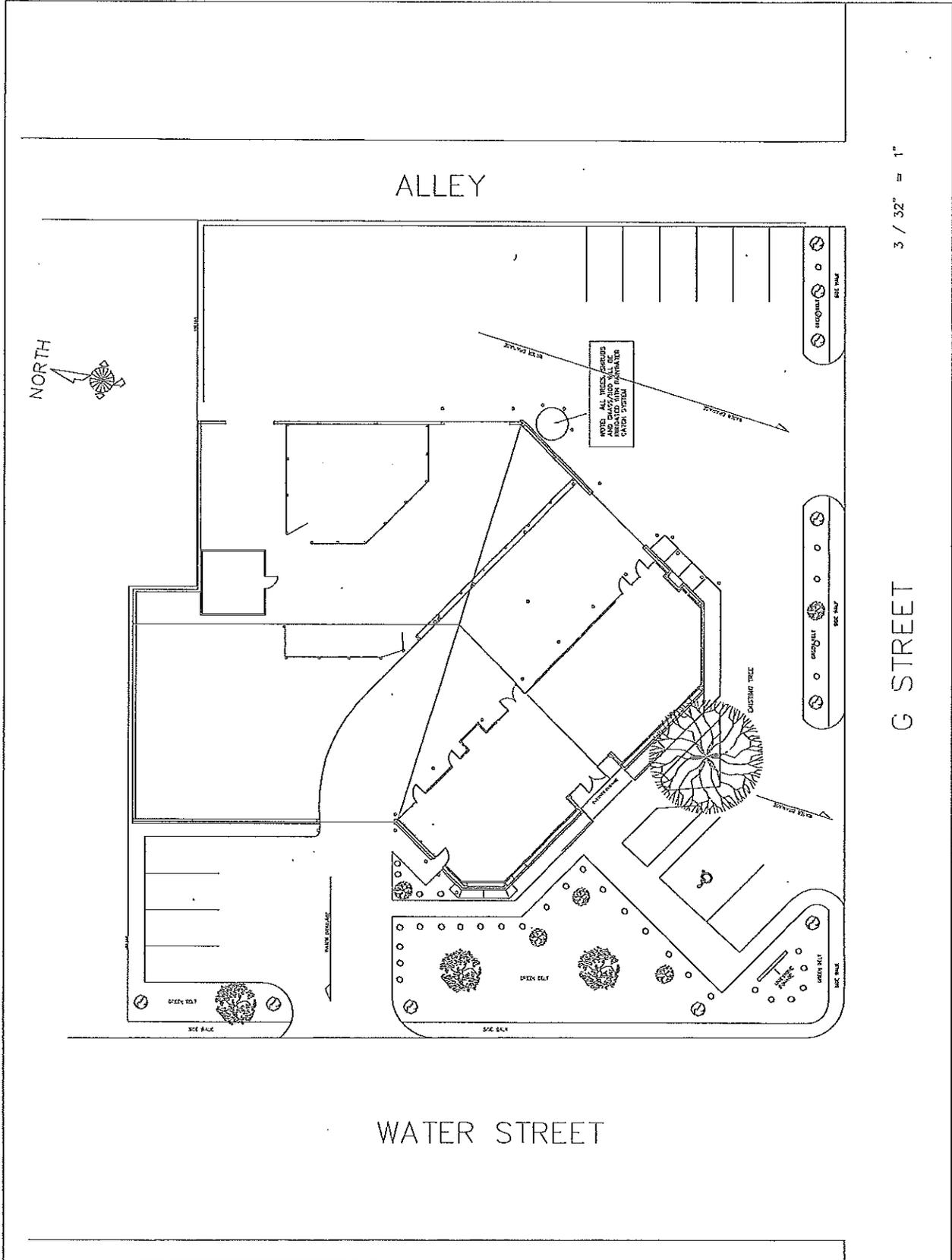
ATTEST:

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



CULLIGAN KERRVILLE WATER PLANT ADDITION

1788 N. 34th St. Phoenix, AZ 85018  
 602.998.1111  
 2010.01.03.11  
 Serrano Designs - Drawn by J. Kelly



WATER STREET

3 / 32" = 1"

G STREET

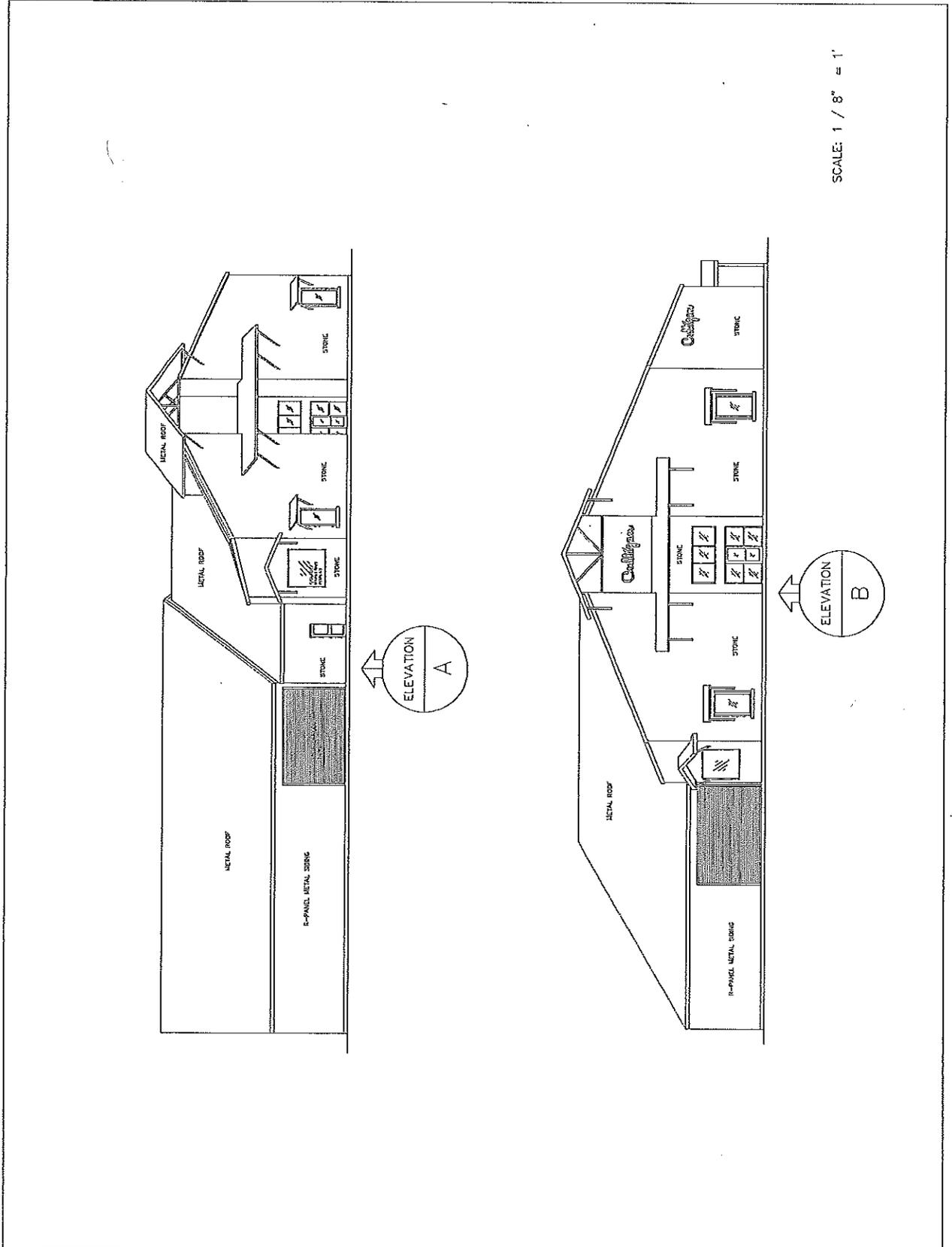
NORTH

ALLEY

CULLIGAN KERVILLE WATER PLANT ADDITION

12/10/11  
 No. 12/10/11  
 Date  
 Drawn by P.K.M.  
 Checked by  
 Approved by  
 Date

Scale: 1/8" = 1'  
 1/8" = 1"







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

- 4B. A resolution granting a conditional use permit for an approximate .35 acre parcel of land, making up parts of lots 10, 11, and 12, block 16, and out of the J.A. Tivy Addition, a subdivision within the city of Kerrville, Kerr County, Texas, otherwise known as 1421 Broadway, and located within the C-17 zoning district; by permitting said property to be used for business services II purposes (refrigeration/air conditioning service and repair); and making said permit subject to certain conditions and restrictions.

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

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**SUBJECT:** Public Hearing: Conditional Use Permit (CUP) Request – Consider a request for a CUP for Business Services II, air conditioning service and repair, for property located at 1421 Broadway.

**FOR AGENDA OF:** April 26, 2011      **DATE SUBMITTED:** April 15, 2011

**SUBMITTED BY:** Gordon Browning *GB*      **CLEARANCES:** Kevin Coleman *KC*

**EXHIBITS:** Location Map, Resolution *AKL*

**AGENDA MAILED TO:**

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

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

**PAYMENT TO BE MADE TO:**

**REVIEWED BY THE FINANCE DIRECTOR:**

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**SUMMARY STATEMENT**

Project Timeline:

- March 7, 2011 – Application for CUP submitted to the City for review and consideration.
- March 23, 2011 – Development Review Committee (DRC) review process completed.
- March 24, 2011 – Notice of the required public hearing published in The Kerrville Daily Times and mailed to property owners within 200-feet of the subject property.
- April 1, 2011 – Staff comments to applicant.
- April 7, 2011 – Public hearing before the Planning and Zoning Commission (P&Z) and consideration of a recommendation to the City Council.
- April 26, 2011 – Public hearing before the City Council and consideration of a resolution approving the CUP.

CUP Process/Summary:

- Per the Zoning Code, an air conditioning service and repair facility use in the C-17 (Central City) District requires the approval of a CUP (Conditional Use Permit) by the City Council. The applicant proposes to develop an air conditioning service and repair facility at the property located at 1421 Broadway.
- The applicant proposes to re-develop the existing frame house and garage for office and storage. Existing and proposed fencing will be used to secure and screen service vehicles and equipment. The proposed use requires a CUP in the C-17 (Central City) District. Prior to occupying the structure and property, a Certificate of Occupancy will be required from the City's Building Inspection division.
- Per the Zoning Code, the P&Z and/or City Council may impose additional requirements and conditions of approval as are needed to ensure that a use requested by a CUP is compatible and complementary to adjacent properties.
- Staff recommends approval of the CUP as requested subject to the conditions in the draft resolution.
- The Planning and Zoning Commission at their April 7, 2011 meeting, following a public hearing, recommended approval of the CUP. No one from the public spoke at the hearing.

**RECOMMENDED ACTION**

1. Open the public hearing and receive comments, and
2. Approve the CUP as requested subject to the stipulations in the attached resolution.

BROADWAY

SUBJECT  
TRACT

E

**CITY OF KERRVILLE, TEXAS  
RESOLUTION NO. \_\_\_\_-2011**

**A RESOLUTION GRANTING A CONDITIONAL USE PERMIT FOR AN APPROXIMATE .35 ACRE PARCEL OF LAND, MAKING UP PARTS OF LOTS 10, 11, AND 12, BLOCK 16, AND OUT OF THE J.A. TIVY ADDITION, A SUBDIVISION WITHIN THE CITY OF KERRVILLE, KERR COUNTY, TEXAS, OTHERWISE KNOWN AS 1421 BROADWAY, AND LOCATED WITHIN THE C-17 ZONING DISTRICT; BY PERMITTING SAID PROPERTY TO BE USED FOR BUSINESS SERVICES II PURPOSES (REFRIGERATION/AIR CONDITIONING SERVICE AND REPAIR); AND MAKING SAID PERMIT SUBJECT TO CERTAIN CONDITIONS AND RESTRICTIONS**

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

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

**SECTION ONE.** A Conditional Use Permit is granted to permit the property described below to be used for Business Services II, limited to refrigeration/air conditioning service and repair, as that term is defined in Article 11-I-3 of the Code of Ordinances of the City of Kerrville, Texas, and subject to the provisions of this Resolution and other applicable City ordinances and resolutions:

**An approximate 0.35 acre of land, made up of parts of Lots 10, 11, and 12, Block 16, and out of the J.A. Tivy Addition, a subdivision within the City of Kerrville, Kerr County, Texas, according to the plat recorded in Volume 1, Page 1 of the Plat Records of Kerr County, Texas, and more commonly known as 1421 Broadway;**

hereafter referred to as "the Property."

**SECTION TWO.** In addition to the use and development regulations currently applicable to the Property, if the Property is used for Business Services II, and limited to refrigeration/air conditioning service and repair purposes, such use shall be subject to the following additional use and development conditions and regulations:

- A. **Concept Plan:** The development of the Property shall conform substantially to the concept plan, which may be found in **Exhibit A**, as attached.
- B. **Business Services II:** Under Business Services II, the only authority authorized by the Conditional Use Permit is for the use of the Property for refrigeration/air conditioning service and repair. All other uses specified under the definition of Business Services II, as that term is defined in Article 11-I-3 of the Code of Ordinances of the City of Kerrville, Texas, are prohibited.
- C. **Signs:** The design, installation, location, operation and maintenance of signs shall comply with the City's ordinances regulating signs at the time of installation.
- D. **Exterior Lighting:** Any exterior lighting shall be located, shielded, and aimed in such a manner so as not to allow light to fall directly onto adjacent properties or streets.
- E. **Outside Storage:** The outside storage of any materials and/or equipment shall be behind solid fencing as shown on the concept plan.
- F. **Parking:** The design and number of parking spaces shall be in accordance with the City's regulations in effect at the time building permits are submitted to the City. All required parking spaces shall be constructed of asphalt or concrete and shall be marked and kept available for customers and employees.
- G. **Other Zoning regulations:** The regulations set forth in this Resolution are in addition to those set forth in Title 11, Chapter I of the Zoning Code of the City of Kerrville, as amended or superseded. In the event of any irreconcilable conflict between this Resolution and the regulations set forth in Title 11, Chapter I of the Zoning Code of the City of Kerrville, as amended or superseded, the provisions of this Resolution shall prevail.

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

**PASSED AND APPROVED ON** this the \_\_\_\_\_ day of \_\_\_\_\_ A.D., 2011.

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

APPROVED AS TO FORM:

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

ATTEST:

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

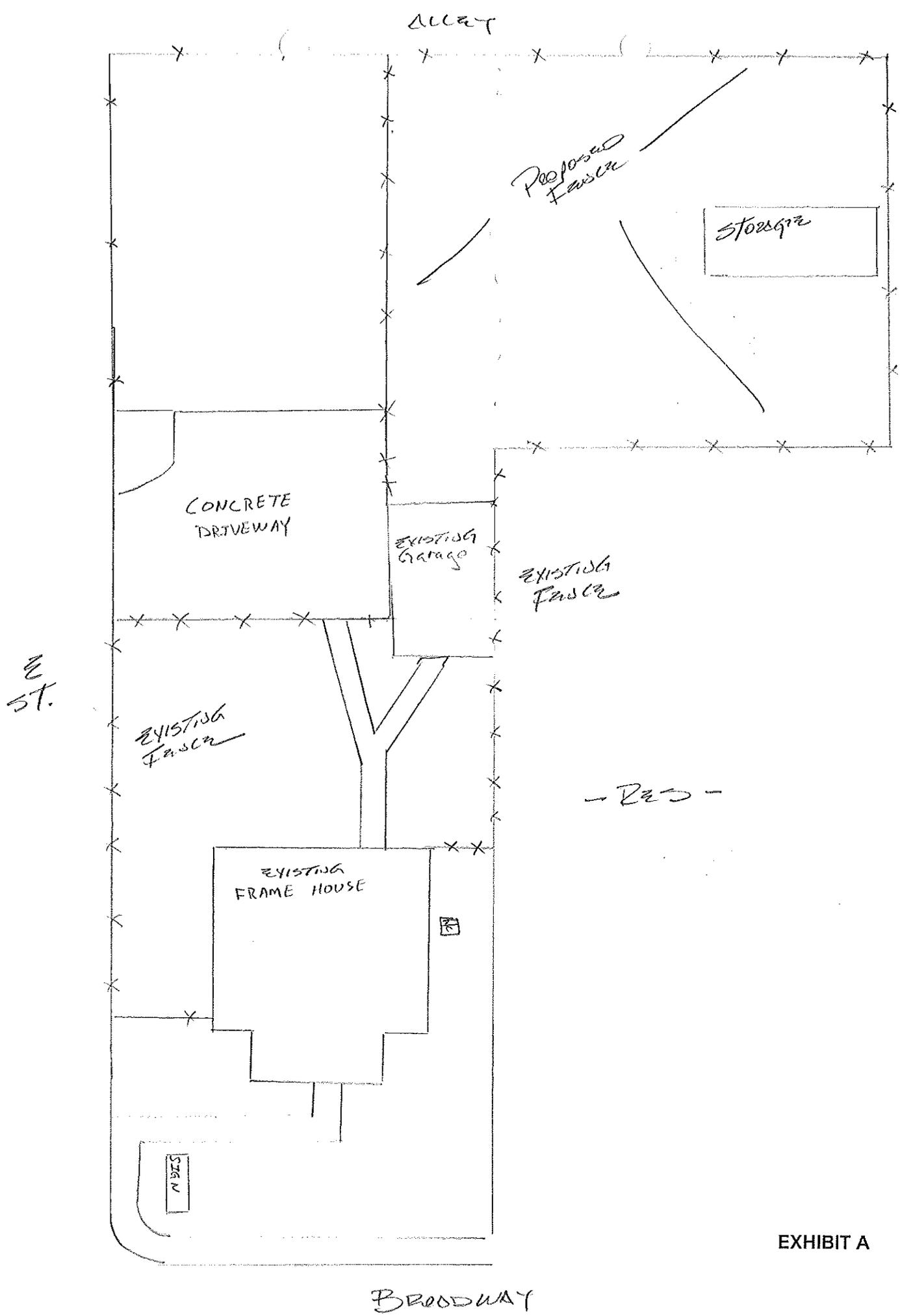


EXHIBIT A

## **Agenda Item:**

(Staff)

- 4C. A resolution granting a conditional use permit for an approximate twelve thousand square feet of retail space, part of lot 1A, block 1, and out of the Country Club Plaza- Unit 1 subdivision, within the city of Kerrville, Kerr County, Texas, otherwise known as 1305 Sidney Baker Street (State Highway 16), and located within the Gateway (GTW) zoning district; by permitting said property to be used for retail trade I purposes (alcoholic beverage sales for off-premise consumption); and making said permit subject to certain conditions and restrictions.

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

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**SUBJECT:** Public Hearing: Conditional Use Permit (CUP) Request – Consider a request for a CUP for Retail Trade I, alcoholic beverage sales for off-premise consumption, in an approximately 12,000 square foot lease space located at 1305-F Sidney Baker (Country Club Plaza Shopping Center).

**FOR AGENDA OF:** April 26, 2011      **DATE SUBMITTED:** April 15, 2011

**SUBMITTED BY:** Gordon Browning *GB*      **CLEARANCES:** Kevin Coleman *KC*

**EXHIBITS:** Location Map, Site Map, Chapter 10 (City Code), Resolution *XL*

**AGENDA MAILED TO:**

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

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

**PAYMENT TO BE MADE TO:**

**REVIEWED BY THE FINANCE DIRECTOR:**

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**SUMMARY STATEMENT**

Project Timeline:

- October 13, 2010 – Applicant submits CUP request for review and consideration.
- November 2, 2010 – At Staff's request, application was withdrawn by the applicant.
- February 28, 2011 – Applicant (property owner) requests that the CUP request be allowed to proceed through the City's process.
- March 23, 2011 – Development Review Committee (DRC) review completed.
- March 24, 2011 – Notice of the required public hearing published in The Kerrville Daily Times and mailed to tenants within the shopping center and property owners within 200-feet of the subject property.
- April 1, 2011 – Staff comments to applicant.
- April 7, 2011 – Public hearing before the Planning and Zoning Commission (P&Z) and consideration of a recommendation to the City

Council.

- **April 26, 2011** – Public hearing before the City Council and consideration of the CUP.

CUP Process/Summary:

- Per the Zoning Code, Retail Trade I uses, in this case a business conducting alcoholic beverage sales for off-premise consumption, in the GTW (Gateway) District requires the approval of a CUP by the City Council. In addition, uses engaged in the sale of alcoholic beverages for on or off-premise consumption must also have received a state permit as set out in the Texas Alcoholic Beverage Code (TABC). TABC was notified that the proposed use at this location requires a CUP approved by the City Council.
- The applicant is proposing locating, Spec's Wine, Spirits & Fine Foods, a package and food store, within a 12,000 square foot lease space in the Country Club Plaza Shopping Center located at 1305 Sidney Baker, see attached site map. In addition to the requirements set out in the Texas Alcoholic Beverage Code, the City of Kerrville requires a license for the retail sale of alcoholic beverages, hours of operation and a separation from schools and churches of 300-feet measured as follows;

Churches: Along the property lines of the street fronts and from front door to front door.

Schools: In a direct line from property line to property line.

- Per the Zoning Code, the Planning and Zoning Commission and/or City Council may impose additional requirements and conditions of approval as are needed to ensure that a use requested by a CUP is compatible and complementary to adjacent properties.
- Prior to the issuance of a Certificate of Occupancy for this use, the applicant must show that the required separation between this use (location) and Hill Country High School (across Sidney Baker) has been satisfied. If either the P&Z and/or City Council recommend approval of this request, the separation as outlined in the City Code must be a condition.
- The Planning and Zoning Commission at their April 7, 2011 meeting, following a public hearing, recommended approval of the CUP. No one from the public spoke.

## RECOMMENDED ACTION

1. Open the public hearing and receive comments, and
2. Consider the requested CUP and the attached resolution.

# Kerrville Independent School District

## Resolution

Whereas, that upon this date the duly elected Board of Trustees of the Kerrville Independent School District met in a public meeting with a quorum present and did consider the stated intention of a business to sell alcoholic beverages in the 1300 block of Sidney Baker Drive;

Whereas, the Texas Alcoholic Beverage Code subsection 109.33 states in part that the governing board of an incorporated city or town may enact regulations applicable in the city or town, prohibiting the sale of alcohol beverages by a dealer whose place of business is within 300 feet of a public school;

Whereas, the City of Kerrville has enacted the Code of Ordinances, Chapter 10 Section 10-6, to prohibit the sale of alcohol beverages by a dealer whose place of business is within 300 feet of a public school;

Whereas, the Texas Alcoholic Beverage Code subsection 109.33 and Code of Ordinances Chapter 10 Section 10-6 further state in part that the measurement of the distance between the place of business where alcoholic beverages are sold and the public school shall be in a direct line from the property line of the public school to the property line of the place of business;

And Whereas, Hill Country High School, located at 1200 Sidney Baker Drive is a public school operating in the Kerrville Independent School District to educate eleventh and twelfth grade students and is less than 300 feet as defined in state statute and city code from a proposed business that has the stated intention to sell alcoholic beverages;

THEREFORE, BE IT RESOLVED, that the Board of Trustees of the Kerrville Independent School District requests that the City of Kerrville enforce the Kerrville Texas Code of Ordinances, Chapter 10 Section 10-6, that prohibits the location of a business engaged in the sale of alcohol from being located less than 300 feet, as measured by state statute, from Hill Country High School.

APPROVED this the 19<sup>th</sup> day of April, 2011.



David Sprouse, M.D., President



Katherine Sutherlin, Secretary

SUBJECT TRACT

YORKTOWN

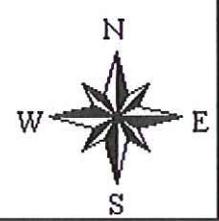
SIDNEY BAKER

COUNTRY CLUB

TURNER

DENTON

MOORE



# COUNTRY CLUB PLAZA SHOPPING CENTER

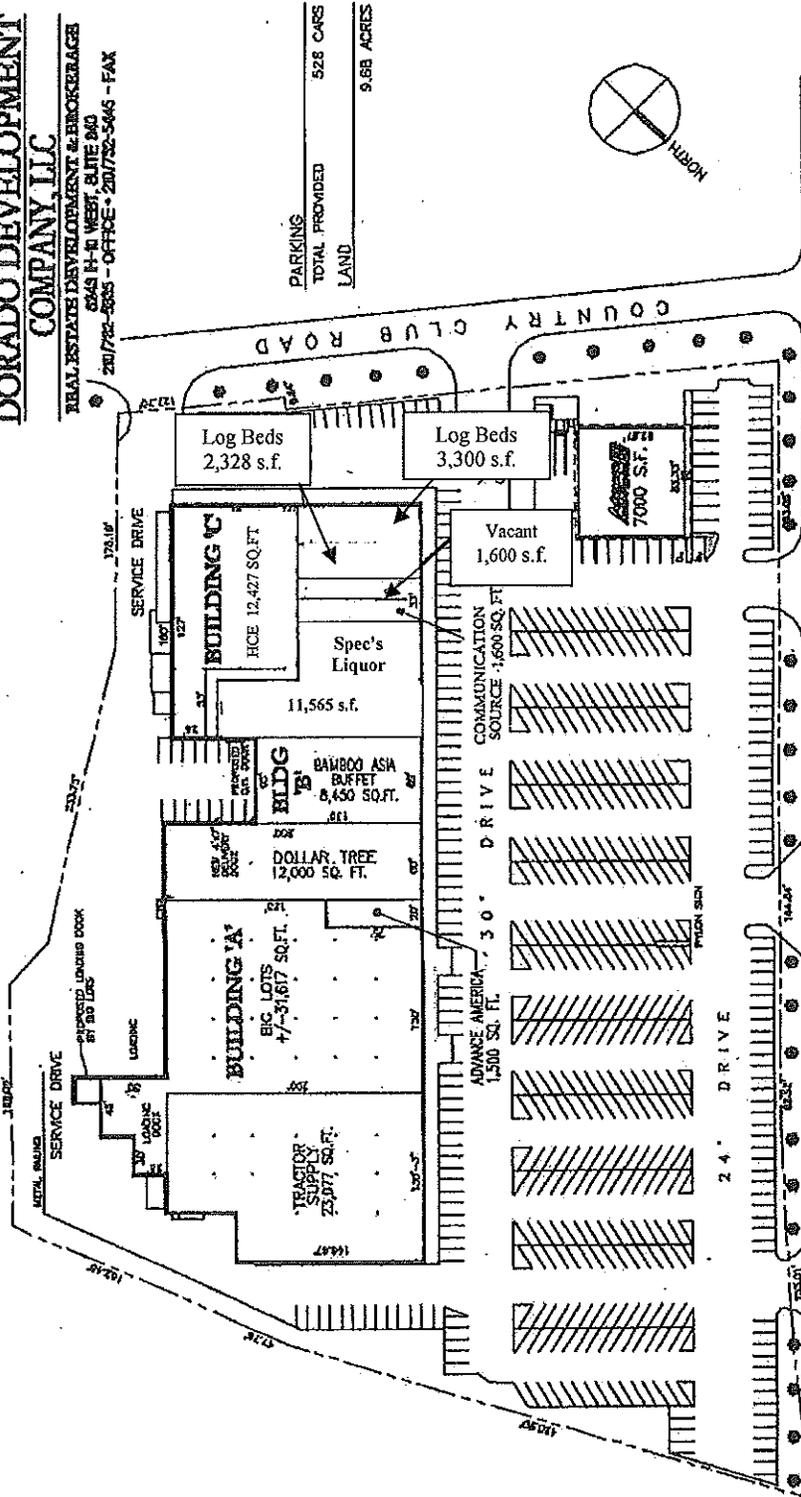
KERRVILLE, TEXAS

**DORADO DEVELOPMENT  
COMPANY, LLC**

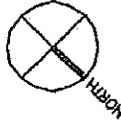
REAL ESTATE DEVELOPMENT & BROKERAGE

8549 H-10 WEST, SUITE 800  
281/782-8885 - OFFICE • 281/782-5445 - FAX

NOTE: ALL AREAS ARE SUBJECT TO FIELD MEASUREMENT



PARKING	528 CARS
TOTAL PROVIDED	LAND
	9.88 ACRES



Location-117805

## Chapter 10

### ALCOHOLIC BEVERAGES\*

- Sec. 10-1. Adoption of Alcoholic Beverage Code definitions.
- Sec. 10-2. Permit or license required.
- Sec. 10-3. Licensing requirements; fees.
- Sec. 10-4. Penalty for selling alcoholic beverages without paying fee.
- Sec. 10-5. Hours of sale.
- Sec. 10-6. Sale limited near schools, churches.
- Sec. 10-7. Alcoholic beverages prohibited at certain games in city parks.

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\*Cross references—Special events, § 14-91 et seq.; businesses, ch. 30.

State law references—Local regulation of alcoholic beverages, V.T.C.A., Alcoholic Beverage Code §§ 11.38, 61.36, 108.55, 109.31 et seq.; local option elections, V.T.C.A., Alcoholic Beverage Code § 251.01 et seq.; public intoxication, V.T.C.A., Penal Code § 49.02.

### **Sec. 10-1. Adoption of Alcoholic Beverage Code definitions.**

The definitions set forth in the Texas Alcoholic Beverage Code, as it may heretofore or hereafter be amended, are hereby adopted and shall govern the provisions of this chapter for all purposes. (Bk. 9, pg. 273, § 2, 8-19-1933; Bk. 11, pg. 3, § 2, 12-11-1935; Bk. 11, pg. 9, § 2, 1-7-1936; Bk. 11, pg. 11, § 2, 1-7-1936; Bk. 11, pg. 92, § 2, 12-7-1937; Bk. 11, pg. 198, § 2, 6-14-1939; Bk. 11, pg. 406, § 2, 9-7-1942; Code 1968, art. 8-I-1)

**Cross reference**—Definitions generally, § 1-2.

### **Sec. 10-2. Permit or license required.**

Except as otherwise provided by law, no person, firm, partnership, association of persons or corporation shall engage in the manufacture, sale, barter or exchange of any alcoholic beverage within the corporate limits of the city without first having applied for and secured a city permit or license in accordance with the requirements of section 10-3.

(Bk. 9, pg. 273, § 1, 8-19-1933; Bk. 11, pg. 3, § 1, 12-11-1935; Bk. 11, pg. 9, § 1, 1-7-1936; Bk. 11, pg. 11, § 1, 1-7-1936; Code 1968, art. 8-I-3)

### **Sec. 10-3. Licensing requirements; fees.**

(a) *Generally.* Before any permit or license required by this chapter shall be issued, the applicant shall be required to show a valid permit or license issued by the state, authorizing him to engage in such manufacture, sale, distribution, barter or sale of the class, or classes, of alcoholic beverage included in such application for such city license within the corporate limits of the city, and shall pay to the city, for the use and benefit of the general fund of the city, the applicable permit or license fees, as follows: One-half of permit or license fee paid to the state.

(b) *Payment of fees.* All permit or license fees required under the terms of this chapter shall be paid in advance and no rebates or refunds shall be made in any circumstances.

(c) *Permit, license not transferable.* Permits and licenses issued under the terms of this chapter shall not be transferable.

(d) *Permit or license term; expiration; renewal.* No permit or license shall be issued under the terms of this chapter for a longer term than two years. All permits and licenses issued under the terms of this chapter for the retail sale of beer and/or wine, either on or off premises, and for the distribution of beer from storage or warehouse facilities shall terminate on the same date of expiration as the applicant's state license or permit for the same activity. If such permit or license is for a portion of a two-year term, the fee required to be paid for the issuance of such permit or license shall cover the period of time from the date of issuance of such permit or license to midnight on the expiration date of the applicant's state license or permit, and only such pro rata part of the permit or license fee prescribed in this chapter shall be required. Upon expiration of any permit or license issued under the terms of this chapter, the holder of such permit or license who continues to engage in the sale or distribution of beer, wine, or other alcoholic beverage, or the operation of a package store within the city shall renew such permit or license and pay the applicable permit or license fee prescribed in this chapter.

(Bk. 9, pg. 273, §§ 3, 4, 8-19-1933; Bk. 11, pg. 3, §§ 3, 4, 12-11-1935; Bk. 11, pg. 9, §§ 3, 4, 1-7-1936; Bk. 11, pg. 11, §§ 3, 4, 1-7-1936; Bk. 11, pg. 75, § 1, 8-30-1937; Ord. No. 79-9, § 1, 4-10-1979; Code 1968, art. 8-I-4; Ord. No. 2005-06, § 1, 6-28-2005; Ord. No. 2009-18, § 1, 9-22-2009)

### **Sec. 10-4. Penalty for selling alcoholic beverages without paying fee.**

A permittee or licensee who sells an alcoholic beverage without first having paid a fee under this chapter commits a misdemeanor punishable by a fine of not less than \$10.00 nor more than \$200.00.

**State law reference**—Similar provisions, V.T.C.A., Alcoholic Beverage Code §§ 11.38(b), 61.36(b).

### **Sec. 10-5. Hours of sale.**

(a) It shall be unlawful for any natural person or association of natural persons, trustee, receiver, partnership, corporation, or the manager, agent, servant, or employee of any of them to directly or indirectly, sell, offer for sale, barter,

offer to barter, exchange, or offer to exchange, give, offer to give, deliver, offer to deliver, serve, or offer to serve any beer, wine, or any alcoholic beverage, by retail for consumption on or off the premises, within the corporate limits of the city in violation of V.T.C.A., Alcoholic Beverage Code ch. 105.

(b) The legal hours for the sale of all alcoholic beverages for on-premises consumption within the corporate limits of the city shall be as follows: from 7:00 a.m. until 2:00 a.m. on the following days, Monday through Saturday, and from 12:00 noon until 2:00 a.m. on Sunday.

(c) The legal hours for the consumption of all alcoholic beverages on permitted or licensed premises shall be as follows: from 7:00 a.m. until 2:15 a.m. on the following days, Monday through Saturday, and from 12:00 noon until 2:15 a.m. on Sunday.

(Bk. 11, pg. 92, § 1, 12-7-1937; Bk. 11, pg. 198, § 1, 6-14-1939; Bk. 11, pg. 406, § 1, 9-7-1942; Code 1968, art. 8-I-5; Ord. No. 2005-06, § 2, 6-28-2005)

**Sec. 10-6. Sale limited near schools, churches.**

(a) *Generally.* The sale of any alcoholic beverages is hereby prohibited within the corporate limits of the city, where the place of business of any such dealer is within 300 feet of any church or school existing at the time of the passage of the ordinance from which this section is derived (April 13, 1950), or any church or school or proposed church or school that may hereafter exist; providing, however, that such church or school or proposed church or school shall exist before the date of the filing of the application with the county clerk for a license to engage in the business of selling alcoholic beverages.

(b) *Measurement of the distance.* The measurement of the distance between the place of business where alcoholic beverages are sold and the church shall be along the property lines of the street fronts and from front door to front door, and in direct line across intersections. The measurement of the distance between the place of business where alcoholic beverages are sold and the school shall be:

- (1) In a direct line from the property line of the school to the property line of the place of business, and in a direct line across intersections; or

- (2) If the permit or license holder is located on or above the fifth story of a multistory building, in a direct line from the property line of the school to the property line of the place of business, in a direct line across intersections, and vertically up the building at the property line to the base of the floor on which the permit or license holder is located.

(c) *Definitions.*

- (1) *Proposed.* The term "proposed" used in this section shall apply only to the proposed construction or remodeling of any building to be used for a school or church, and further providing that a building permit shall have been issued by the city for such construction or remodeling, and that the actual construction shall begin within 30 days from the date of issuance of such permit and prosecuted with due diligence thereafter. If the construction or the remodeling is delayed for any period greater than 30 days, then and in that event such construction or remodeling shall not be construed as "proposed" construction or remodeling.

- (2) *From front door to front door.* The term "from front door to front door" refers to any door of the church, school, or dealer's place of business as such institutions and dealer's place of business may have several front doors and may face on two or more streets.

(d) *Provision not retroactive.* The provisions of this section shall never be construed to require the cancellation of a license or a permit of any dealer engaged in the sale of alcoholic beverages where dealer's place of business is less than 300 feet from a church or school; providing, however, that the dealer's place of business was established prior to the passage of the ordinance from which this section is derived or the application for a dealer's permit or license was filed with the county clerk before the building of any future church or school or proposed church or school as provided in this section.

(Bk. 13, pg. 323, §§ 1, 3, 4-13-1950; Code 1968, art. 8-I-6)

State law reference—Similar provisions, V.T.C.A., Alcoholic Beverage Code § 109.33.

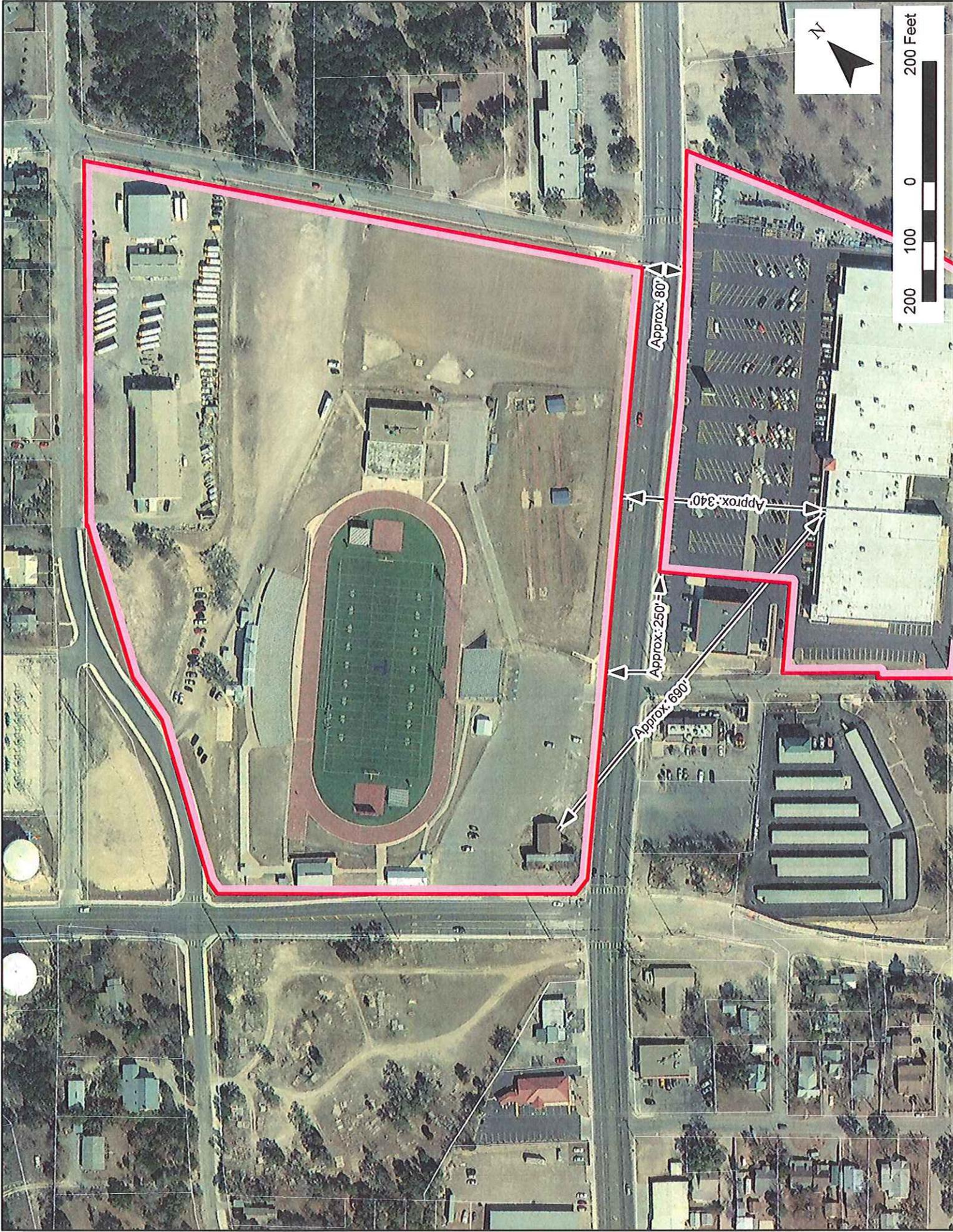
**Sec. 10-7. Alcoholic beverages prohibited at certain games in city parks.**

(a) The sale, use, consumption or possession of any alcoholic beverage is prohibited inside Lytle Park, Carver Park, and Singing Wind Park within 50 yards of the playing field boundaries from 30 minutes before, during, and until 30 minutes after any regularly scheduled game (including tournament games) of little league, junior girls league, church league, and any city-sponsored softball league.

(b) As used in this section, the term "little league" includes T-ball, minor league, major league, junior league, and senior league.

(Ord. No. 83-18, 7-12-1983; Ord. No. 89-10, 4-11-1989; Code 1968, art. 8-I-7; Ord. No. 2005-06, § 3, 6-28-2005)

**Cross reference—**Parks and recreation, ch. 74.



**CITY OF KERRVILLE, TEXAS  
RESOLUTION NO. \_\_\_-2011**

**A RESOLUTION GRANTING A CONDITIONAL USE PERMIT FOR AN APPROXIMATE TWELVE THOUSAND SQUARE FEET OF RETAIL SPACE, PART OF LOT 1A, BLOCK 1, AND OUT OF THE COUNTRY CLUB PLAZA-UNIT 1 SUBDIVISION, WITHIN THE CITY OF KERRVILLE, KERR COUNTY, TEXAS, OTHERWISE KNOW AS 1305 SIDNEY BAKER STREET (STATE HIGHWAY 16), AND LOCATED WITHIN THE GATEWAY (GTW) ZONING DISTRICT; BY PERMITTING SAID PROPERTY TO BE USED FOR RETAIL TRADE I PURPOSES (ALCOHOLIC BEVERAGE SALES FOR OFF-PREMISE CONSUMPTION); AND MAKING SAID PERMIT SUBJECT TO CERTAIN CONDITIONS AND RESTRICTIONS**

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

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

**SECTION ONE.** A Conditional Use Permit is granted to permit the property described as follows to be used for the purposes of Retail Trade I, limited to alcoholic beverage sales for off-premise consumption, as that term is currently defined in Article 11-I-3 of the Zoning Code of the City of Kerrville, Texas, subject to the provisions of this Resolution and other applicable City ordinance and regulations:

**Part of Lot 1A, Block 1, out of the Country Club Plaza-Unit 1 Subdivision, located within the City of Kerrville, Kerr County, Texas, as recorded in Volume 7, Page 142 of the Plat Records of Kerr County, Texas, consisting of 12,000 square feet of space, and more commonly known as 1305 Sidney Baker, Suite F;**

hereafter referred to as "the Property."

**SECTION TWO.** In addition to the use and development regulations currently applicable to the Property, the Property may be used and developed for Retail Trade I, and limited to alcoholic beverage sales for off-premise consumption purposes and shall be subject to the following additional regulations:

- A. Retail Trade I:** Under Retail Trade I, the only use authorized by this Conditional Use Permit is for the use of the Property for alcoholic beverage sales for off-premise consumption. All other uses specified under the definition of Retail Trade I, as that term is defined in Article 11-I-3 of the Code of Ordinances of the City of Kerrville, Texas, are prohibited.
- B. Alcoholic Beverage Sales:** Prior to the issuance of a Certificate of Occupancy from the City, all applicable alcoholic beverage sales laws and regulations, which include a distance requirement pursuant to both state law and Section 10-6 of the City's Code of Ordinances, must be met. In addition, any such use must be licensed or permitted pursuant to applicable state or local law, including Chapter 10 of the City's Code of Ordinances and must remain so during this use.
- C. Signs:** The design, installation, location, operation and maintenance of signs shall comply with the City's ordinances regulating signs existing at the time of installation.
- D. Parking:** The design and number of parking spaces shall be in accordance with the City's regulations in effect at the time building permits are submitted to the City.
- E. Outdoor Storage:** The outdoor display or storage of any product or good is prohibited.
- F. Other Zoning Regulations:** The regulations set forth in this Resolution are in addition to those set forth in Title 11, Chapter I of the Code of Ordinances of the City of Kerrville, as amended or superseded. In the event of any irreconcilable conflict between this Resolution and the regulations set forth in Title 11, Chapter I of the Code of Ordinances of the City of Kerrville, as amended or superseded, the provisions of this Resolution shall prevail.

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

**PASSED AND APPROVED ON this the \_\_\_\_\_ day of \_\_\_\_\_ A.D., 2011.**

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

APPROVED AS TO FORM:

ATTEST:

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

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

# COUNTRY CLUB PLAZA SHOPPING CENTER

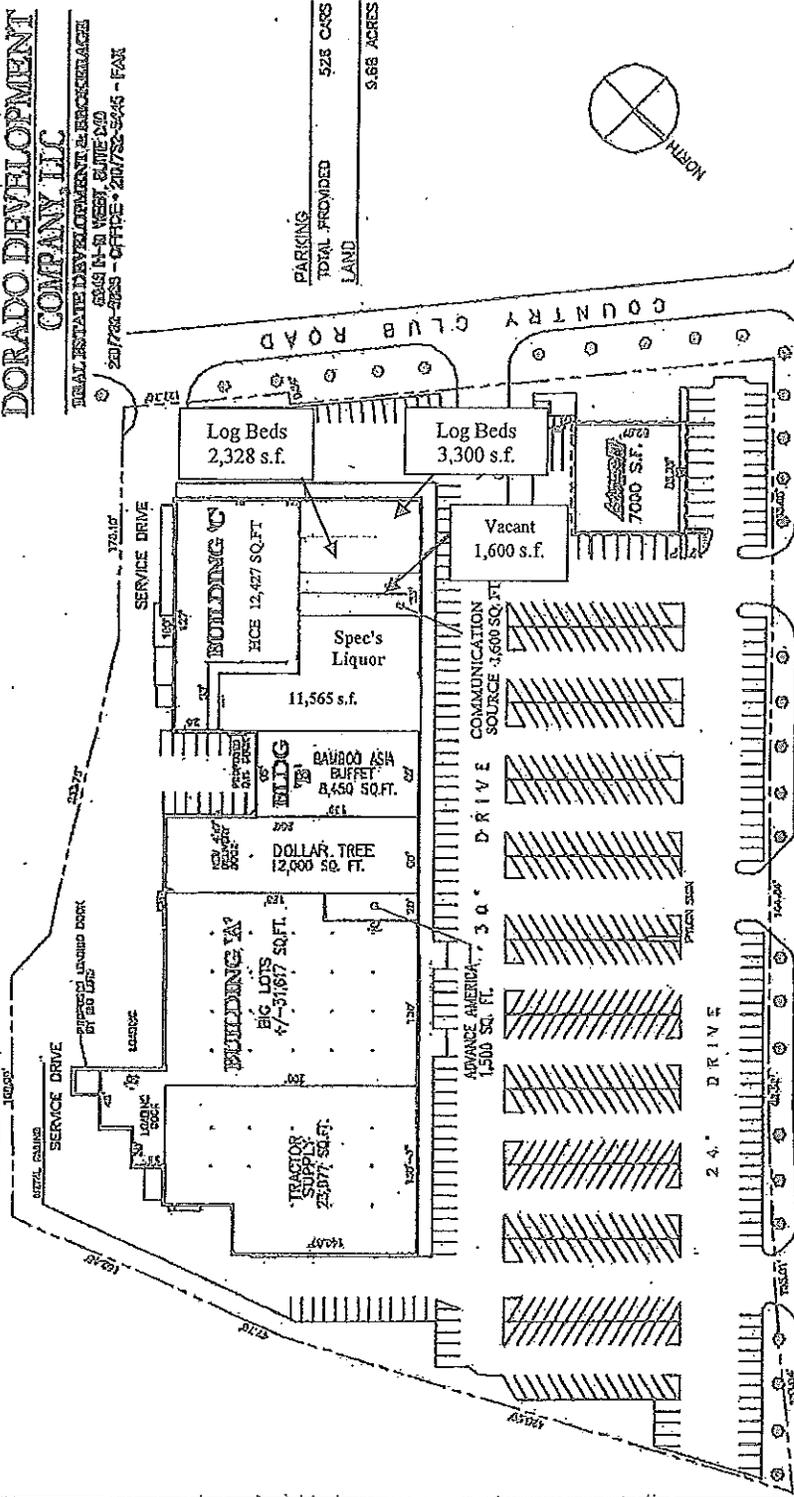
KERRVILLE, TEXAS

DORADO DEVELOPMENT  
COMPANY, LLC

REAL ESTATE DEVELOPMENT & BROKERAGE  
5045 H-30 WEST, SUITE 240  
201783-2823 - OFFICE • 201783-5645 - FAX

PARKING  
TOTAL PROVIDED 528 CARS  
LAND 9.66 ACRES

NOTE: ALL AREAS ARE SUBJECT TO FIELD MEASUREMENT



Leandroplan-111805

## **Agenda Item:**

**(Staff)**

- 5A. An ordinance amending the city's "zoning code" to revise article 11-I-6 "zoning districts-central city" by creating a new zoning district, the central business district, which will include and rezone parts of current zoning districts C-11, C-12, residential transition, and all of zoning district C-18; providing for use regulations within the new district; and making other amendments to the zoning code to account for the new district; containing a cumulative clause; containing a savings and severability clause; providing for a maximum penalty or fine of two thousand dollars(\$2,000.00); and ordering publication.

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

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**SUBJECT:** Public Hearing: Zoning Code Amendment – Consider amending the proposed Central Business District (CBD) by adding Lot 12, Block I, B.F. Cage Addition (600 Earl Garrett Street) to the boundaries of the district.

**FOR AGENDA OF:** April 26, 2011      **DATE SUBMITTED:** April 15, 2011

**SUBMITTED BY:** Gordon Browning *GB*      **CLEARANCES:** Kevin Coleman *KC*

**EXHIBITS:** Location Map, Ordinance

*Handwritten initials*

**AGENDA MAILED TO:**

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

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

**PAYMENT TO BE MADE TO:**

**REVIEWED BY THE FINANCE DIRECTOR:**

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**SUMMARY STATEMENT**

At their March 22, 2011 meeting, City Council held a public hearing regarding the creation of the Central Business District (CBD) as recommended by the Zoning Ordinance Input Committee (ZOIC). During the City Council's public hearing the owner of property located at 600 Earl Garrett Street requested that his property be included within the proposed district.

The subject property, see attached location map, is adjacent to the proposed CBD and was previously discussed by ZOIC. The property is currently zoned RT (Residential Transition) District and allows single family detached residential as well as office and restaurant uses, with conditions, among the permitted non-residential uses permitted by right in the RT District.

If included in the CBD, the amendments to the Zoning Code proposed with the creation of the district and previously presented, see attached, as well as the schedule of permitted uses, would apply to this property as well.

Following notice of the effected property owners, the Planning and Zoning Commission, held a public hearing regarding this request at their April 21, 2011 meeting. Action from that meeting will be reported to the City Council at this meeting.

## **RECOMMENDED ACTION**

1. Open the public hearing and receive comments, and
2. Approve the inclusion of the requested property into the CBD and approve an ordinance amending the Zoning Code on first reading.

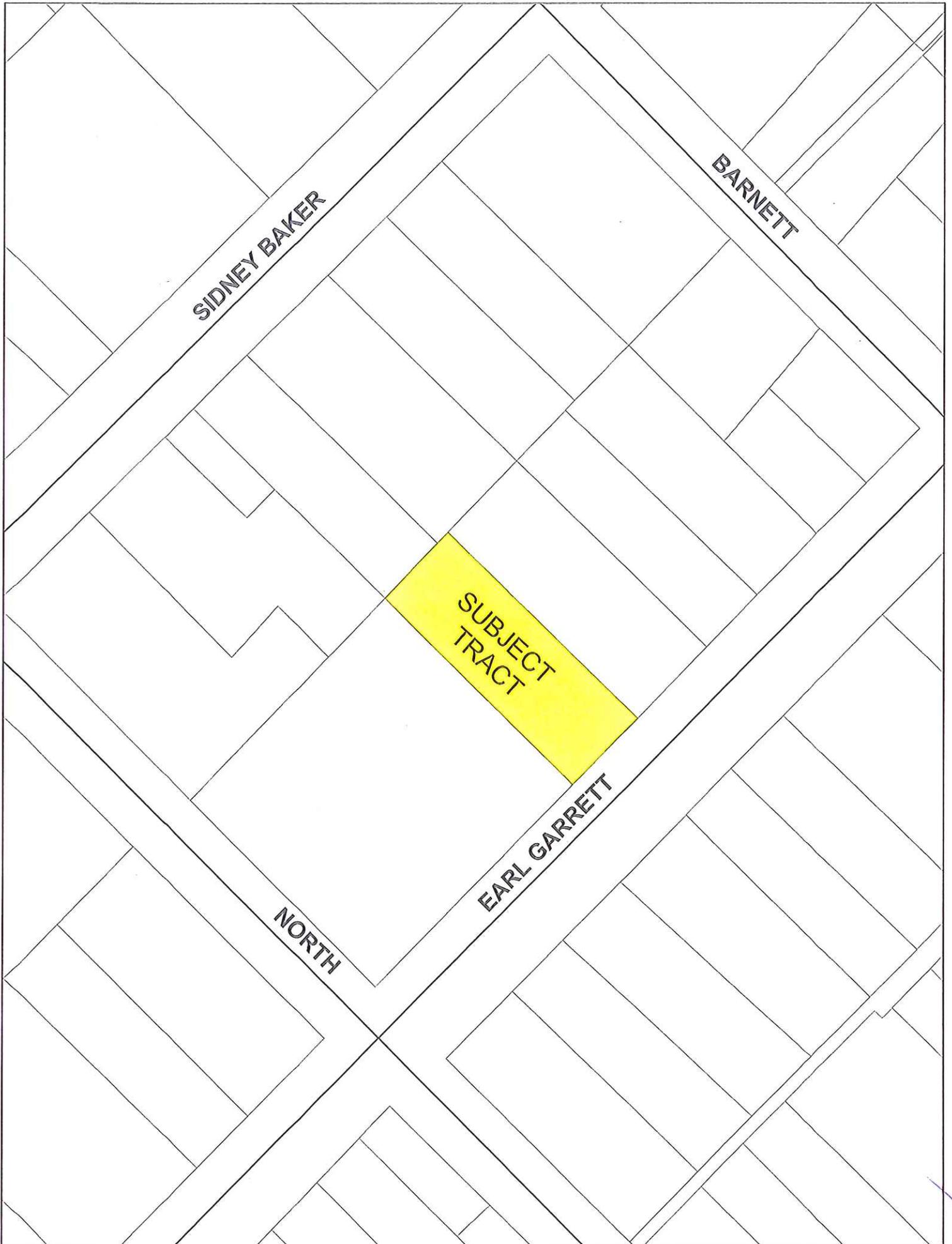
SIDNEY BAKER

BARNETT

SUBJECT TRACT

NORTH

EARL GARRETT



# Church of Christ Downtown Kerrville, Texas



Over 26,000 SF in 3 buildings  
Over 260 paved parking spaces  
Excellent zoning (#11 attached)  
19,200 traffic count 2003

270 FT frontage Sidney Baker  
402 FT frontage North St  
285 FT frontage Earl Garrett St

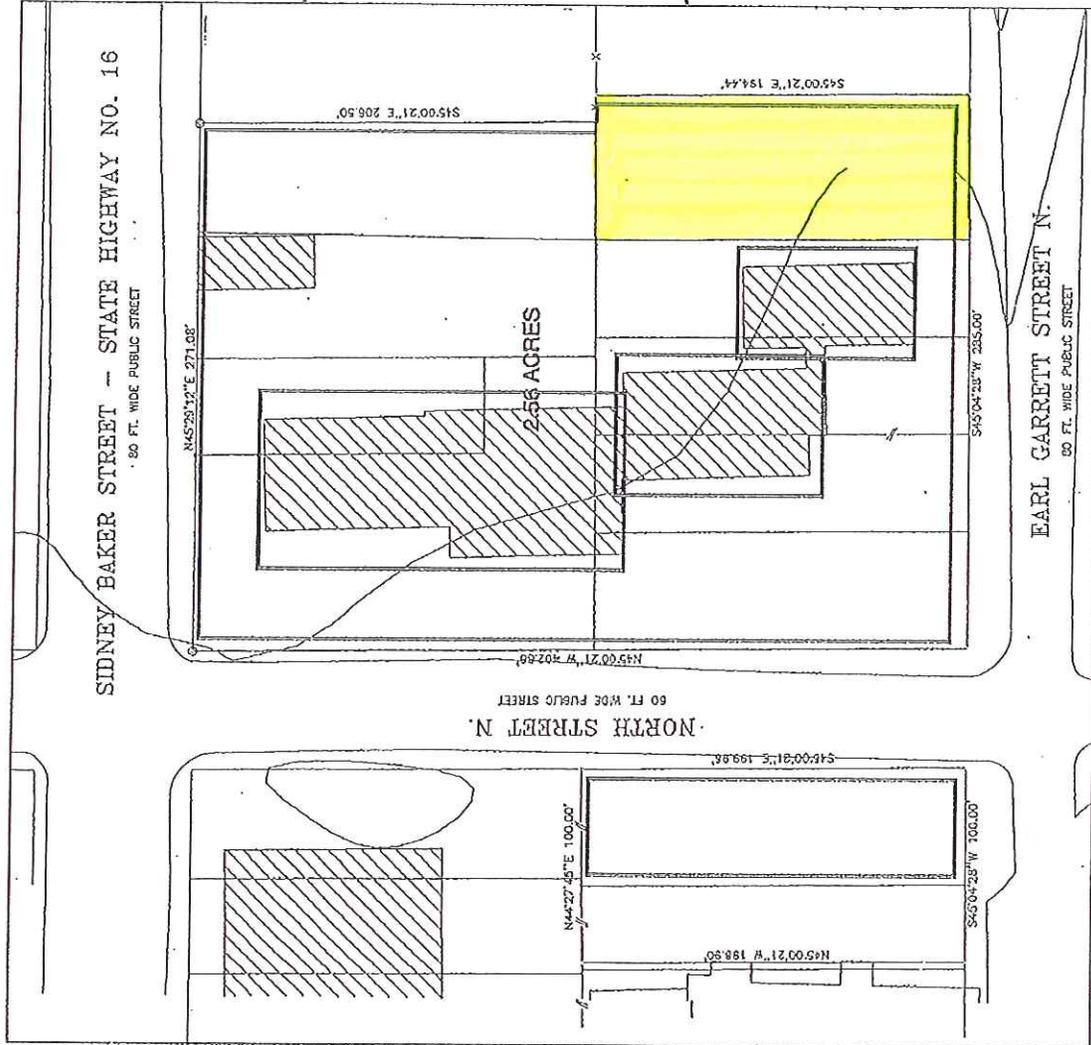
*Also available*



100 FT frontage  
North St  
199 Ft frontage Earl Garrett St  
Take a virtual tour at



**BRINKMAN**  
**COMMERCIAL PROPERTIES**  
821A Earl Garrett Kerrville, Texas  
830/896-8888



Information contained herein has been obtained by sources we have deemed reliable; however, we do not guarantee it, and buyer should perform his own due diligence.

**CITY OF KERRVILLE, TEXAS**  
**ORDINANCE NO. 2011-\_\_**

**AN ORDINANCE AMENDING THE CITY'S "ZONING CODE" TO REVISE ARTICLE 11-I-6 "ZONING DISTRICTS-CENTRAL CITY" BY CREATING A NEW ZONING DISTRICT, THE CENTRAL BUSINESS DISTRICT, WHICH WILL INCLUDE AND REZONE PARTS OF CURRENT ZONING DISTRICTS C-11, C-12, RESIDENTIAL TRANSITION, AND ALL OF ZONING DISTRICT C-18; PROVIDING FOR USE REGULATIONS WITHIN THE NEW DISTRICT; AND MAKING OTHER AMENDMENTS TO THE ZONING CODE TO ACCOUNT FOR THE NEW DISTRICT; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2000.00); AND ORDERING PUBLICATION**

**WHEREAS**, pursuant to Texas Local Government Code Sections 211.006 and 211.007, notice has been given to all parties in interest and citizens by publication in the official newspaper and otherwise, of a hearing which was held before the City Council on April 26, 2011, which considered a report of the City of Kerrville Planning and Zoning Commission regarding its recommendations on an ordinance, the adoption of which will result in revisions to Article 11-I-6 of the City's Zoning Code which will create a new zoning district, the Central Business District; and

**WHEREAS**, such public hearing was held in the Council Chambers beginning at approximately 6:00 p.m. on April 26, 2011, as advertised; and

**WHEREAS**, after a full hearing, at which all parties in interest and citizens were given an opportunity to be heard; and after receiving and considering the recommendations of the Planning and Zoning Commission and the City staff; and after considering among other things, the character of the various areas of the City and the suitability of particular uses in each area; and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout the City, the Council finds it to be in the best interest of the health, safety, morals, and general welfare of the City of Kerrville, Texas, to amend the City's Zoning Code to revise Article 11-I-6 by creating a new zoning district, the Central Business District;

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

**SECTION ONE.** Article 11-I-3 "Definitions and Interpretations of Words and Phrases" of the City's Zoning Code is amended by deleting the definition of "Central Business District" and replacing it with a new definition as follows:

- "(23) Central Business District (CBD): Lots 3-11, Block H and Lots 1-7, 12-16, Block I, B.F. Cage Addition; all of Blocks 1, 2, 3, 4, 5, 6, 7, 8, the Courthouse Block, 17, 18, 19, 20, 22, 23, 24, 25, and 26, J.D. Brown Addition; Lots 598-601, Block 10, Lots 377-**

380, Block 51, Lots 369-376, Block 52, all of Blocks 9, 22, 29, 30, 31, 43, 44, 45 and 50, Schreiners 2<sup>nd</sup> Addition, City of Kerrville, Kerr County, Texas; and being generally described as Barnett Street on the north, the Guadalupe River on the south, Hays Street on the west and Tivy Street on the east.

- (35) **Downtown Core**: An area within the Central Business District generally bounded by the Guadalupe River on the south, extending north on Clay Street, east on Main Street, north on Earl Garrett Street, east on Jefferson Street, and south on Washington Street.”

**SECTION TWO.** Article 11-I-6 “Zoning Districts-Central City” of the City’s Zoning Code is amended by deleting Section 11-I-6(a)(8).

**SECTION THREE.** Article 11-I-6 “Zoning Districts-Central City” of the City’s Zoning Code is amended by adding a new Section 11-I-6(a)(11) as follows:

- “(11) **Central Business District (CBD)**: The Central Business District is the City’s original downtown area. The district is established to promote a variety of uses and services commonly found in a downtown, pedestrian-friendly environment. Any development and/or redevelopment within this district should be conducted with goal of complimenting the culture, heritage, and history associated with the City’s downtown area. Within the CBD is an area defined as the “Downtown Core”. The Downtown Core is a 5 ½ block area consisting of small specialty shops, restaurants, offices, and tourist, visitor and public uses unique to the City. This area, defined by the boundaries shown on Figure 1, shall be exempt from the following development standards of the CBD:

- a. **Setbacks**: Setbacks are not required in the Downtown Core.
- b. **Parking**: If an existing structure in the Downtown Core changes uses and the new use does not expand the existing area encompassed by the exterior walls, the new use may be established without adding off-street parking which may otherwise be required by Article 11-1-20.
- c. **Use of Public Sidewalks**: Any retailer occupying a ground floor establishment within the Downtown Core may display merchandise on the public sidewalk during normal business hours, in an area directly in front or to the side of the business provided that there remains sufficient space allowing for a thirty-six inch (36”) wide path, which is required to meet accessibility standards. A site plan reviewed and approved by the City Planner is required.”

**SECTION FOUR.** Article 11-I-6 “Zoning Districts-Central City” of the City’s Zoning Code is amended by amending Section 11-I-6(b) as follows:

- “(b) Permitted and Conditional Uses-Central City: The uses which are permitted as a matter of right or permitted upon issuance of a conditional use permit in the enumerated Central City zoning districts described in Section (a.), above, and shown on the Official Zoning Map, are indicated by the letters “P” and “C”, respectively, in the following table:

**SEE FOLLOWING PAGE FOR TABLE**

**SECTION FIVE.** Article 11-I-17 “Regulations Regarding Building Height, Lot Width, Area, and Setbacks” of the City’s Zoning Code is amended by deleting Section 11-I-17(c)(1).

**SECTION SIX.** The Director of Development Services is authorized to amend the City’s Zoning Code to reflect the amendments adopted herein and to correct typographical errors and to index, format, and number and letter paragraphs to the existing Code, as appropriate.

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

**SECTION EIGHT.** 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, 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 NINE.** The penalty for violation of this Ordinance shall be in accordance with the general penalty provisions contained in Section 1-9, 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).

**SECTION TEN.** Pursuant to Texas Local Government Code §52.013(a) and Section 3.07 of the City’s Charter, 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.

**SECTION ELEVEN.** This Ordinance shall become effective immediately upon the expiration of ten days following publication, as provided for by Section 3.07b. of the City Charter.

PASSED AND APPROVED ON FIRST READING, this the \_\_\_ day of \_\_\_\_\_, A.D., 2011.

PASSED AND APPROVED ON SECOND AND FINAL READING, this the day of \_\_\_\_\_, A.D., 2011.

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

ATTEST:

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

APPROVED AS TO FORM:



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

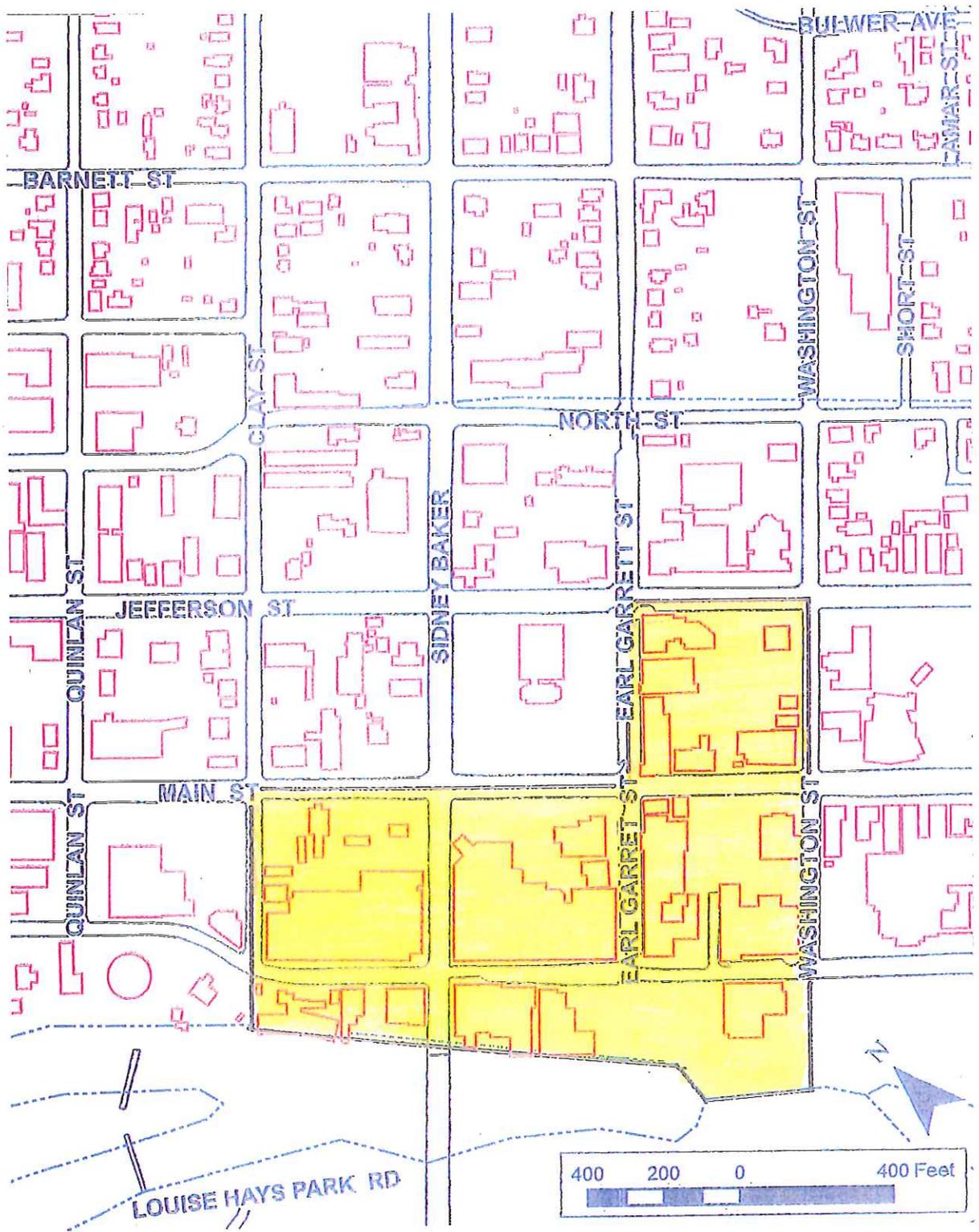


FIGURE 1  
 "Downtown Core"

SCHEDULE OF PERMITTED USES

NAICS Code	USE DESCRIPTION	NC	LC	RC	CBD	LI	I	AD	PI	PKNG. STND.	SPECIAL CONDITIONS
11	Agriculture, Forestry, Fishing and Hunting									22	
111	Crop Production									22	
112	Animal Production									22	
113	Forestry and Logging									22	
114	Fishing, Hunting and Trapping									22	
115	Support Activities for Agriculture and Forestry									22	
21	Mining, Quarrying, and Oil and Gas Extraction									22	
211	Oil and Gas Extraction									22	
212	Mining (except Oil and Gas)									22	
213	Support Activities for Mining									22	
22	Utilities									22	
221	Utilities									22	
22112	Electric Power Transmission, Control, and Distribution									22	
221320	Sewage Treatment Facilities									22	
23	Construction										
236	Construction of Buildings									4	
237	Heavy and Civil Engineering Construction									4	
238	Specialty Trade Contractors									4	
2382	Building Equipment Contractors									4	
2383	Building Finishing Contractors									4	
31-33	Manufacturing										
311	Food Manufacturing									11	
312	Beverage and Tobacco Product Manufacturing									11	
313	Textile Mills									11	
314	Textile Product Mills									11	
315	Apparel Manufacturing									11	
316	Leather and Allied Product Manufacturing									11	
321	Wood Product Manufacturing									11	
322	Paper Manufacturing									11	
323	Printing and Related Support Activities									11	
32311	Printing					C				11	
323114	Quick Printing					P				20	
324	Petroleum and Coal Products Manufacturing									11	
325	Chemical Manufacturing									11	
326	Plastics and Rubber Products Manufacturing									11	
327	Nonmetallic Mineral Product Manufacturing									11	
331	Primary Metal Manufacturing									11	
332	Fabricated Metal Product Manufacturing									11	
333	Machinery Manufacturing									11	
334	Computer and Electronic Product Manufacturing									11	
335	Electrical Equipment, Appliance, and Component Manufacturing									11	
336	Transportation Equipment Manufacturing									11	
337	Furniture and Related Product Manufacturing									11	
339	Miscellaneous Manufacturing									11	
33991	Jewelry and Silverware Manufacturing									11	
42	Wholesale Trade										
423	Merchant Wholesalers, Durable Goods									13	
424	Merchant Wholesalers, Nondurable Goods									13	

SCHEDULE OF PERMITTED USES

NAICS Code	USE DESCRIPTION	NC	LC	RC	CBD	LI	I	AD	PI	PKNG. STND.	SPECIAL CONDITIONS
425	Wholesale Electronic Markets and Agents and Brokers									13	
44-45	Retail Trade										
441	Motor Vehicle and Parts Dealers									20	Permit without Conditional Use Permit if all sales, display and storage is within an enclosed building.
44111	New Car Dealers				C					15	
44112	Used Car Dealers				C					15	
44121	Recreational Vehicle Dealers									15	
44122	Motorcycle, Boat, and Other Motor Vehicle Dealers									15	
4413	Automotive Parts, Accessories, and Tire Stores (Retail Only)				P					20	
442	Furniture and Home Furnishings Stores				P					20	
443	Electronics and Appliance Stores				P					20	
444	Building Material and Garden Equipment and Supplies Dealers									15	
444130	Nursery, Garden Stores				P					15	
444220	Hardware Stores				P					20	
445	Food and Beverage Stores				P					20	
446	Health and Personal Care Stores				P					20	
447	Gasoline Stations (w/Dev. Stnds.)				C					9	Requires Compliance with Art 11-1-19
44711	Gasoline Stations with Convenience Stores (w/Dev. Stnds.)				C					9	Requires Compliance with Art 11-1-19
448	Clothing and Clothing Accessories Stores				P					20	
4483	Jewelry, Luggage and Leather Goods Store				P					20	
451	Sporting Goods, Hobby, Book, and Music Stores				P					20	
452	General Merchandise Stores				P					20	
45291	Warehouse Clubs and Supercenters									20	
453	Miscellaneous Store Retailers				P					20	
4533	Used Merchandise Stores (w/o Drop-off)				P					20	
45331	Used Merchandise Stores									20	Drop-off area may not encroach into any required setback or parking area and must be screened from street view by a solid fence at least 6-feet in height.
45393	Manufactured (Mobile) Home Dealers									15	
454	Nonstore Retailers				C					22	
45431	Fuel Dealers									9	
48-49	Transportation and Warehousing										
481	Air Transportation									21	
482	Rail Transportation									21	
483	Water Transportation									21	
484	Truck Transportation									21	
485	Transit and Ground Passenger Transportation									21	
486	Pipeline Transportation									21	
487	Scenic and Sightseeing Transportation				P					21	
488	Support Activities for Transportation									21	
491	Postal Service				P					21	
4911	Postal Services (Retail and Drop-off Only)									21	
492	Couriers and Messengers									21	
4921	Couriers and Messengers (Retail and Drop-off Only)				P					21	
493	Warehousing and Storage									21	
51	Information										
511	Publishing Industries (except Internet)				C					22	
512	Motion Picture and Sound Recording Industries				P					15	
512131	Motion Picture Theaters (except Drive-Ins)				P					17	

SCHEDULE OF PERMITTED USES

NAICS Code	USE DESCRIPTION	NC	LC	RC	CBD	LI	I	AD	PI	PKNG. STND.	SPECIAL CONDITIONS
512132	Drive-In Motion Picture Theaters									22	
515	Broadcasting (except Internet) - (w/o towers)				P					22	
517	Telecommunications (w/o towers)				P					16	
518	Data Processing, Hosting and Related Services				P					14	
519	Other Information Services				P					14	
62	Finance and Insurance										
521	Monetary Authorities-Central Bank				P					14	
522	Credit Intermediation and Related Activities				P					14	
522298	All Other Nondepository Credit Intermediation (Pawnshops)				P					14	
523	Securities, Commodity Contracts, and Other Financial Investments and Related Activities				P					14	
524	Insurance Carriers and Related Activities				P					14	
5242	Agencies, Brokerages, and Other Insurance Related Activities				P					14	
524291	Claims Adjusting									14	
525	Funds, Trusts, and Other Financial Vehicles				P					14	
53	Real Estate and Rental and Leasing										
531	Real Estate				P					14	
53112	Lessors of Nonresidential Buildings (except Miniwarehouses)				P					14	
53113	Lessors of Miniwarehouses and Self-Storage Units (w/Dev. Stnds.)									13	Requires Compliance with Article 11-I-19
532	Rental and Leasing Services									22	
53211	Passenger Car Rental and Leasing				C					15	
53212	Truck, Utility Trailer, and RV (Recreational Vehicle) Rental and Leasing									15	
53221	Consumer Electronics and Appliances Rental				P					20	
53222	Formal Wear and Costume Rental				P					20	
53223	Video Tape and Disc Rental				P					20	
53229	Other Consumer Goods Rental				P					20	
53231	General Rental Centers				C					20	
53241	Construction, Transportation, Mining, and Forestry Machinery and Equipment Rental and Leasing									22	
53242	Office Machinery and Equipment Rental and Leasing				P					20	
53249	Other Commercial and Industrial Machinery and Equipment Rental and Leasing									22	
54	Professional, Scientific, and Technical Services										
541	Professional, Scientific, and Technical Services				P					14	
541490	Other Specialized Design Services				P					14	
54194	Veterinary Services (w/o kennels)				C					10	
541940	Veterinary Services									10	Requires the location of outdoor kennels to be at least 100-feet from any property line. Requires outdoor kennels, runs, enclosures, etc., to be enclosed by a solid fence at least 6-feet in height.
65	Management of Companies and Enterprises										
551	Management of Companies and Enterprises				P					14	
56	Administrative and Support and Waste Management and Remediation Services										
561	Administrative and Support Services				P					14	
56143	Business Service Center				P					14	
561613	Armored Car Services									15	
561622	Locksmiths									16	
56171	Exterminating and Pest Control Services									16	
56174	Carpet and Upholstery Cleaning Services									16	
562	Waste Management and Remediation Services									22	

SCHEDULE OF PERMITTED USES

NAICS Code	USE DESCRIPTION	NC	LC	RC	CBD	LI	I	AD	PI	PKNG. STND.	SPECIAL CONDITIONS
<b>61</b>	<b>Educational Services</b>										
6111	Elementary and Secondary Schools				P					8	
6112	Junior Colleges				P					8	
6113	Colleges, Universities and Professional Schools				P					8	
6114	Business Schools and Computer and Management Training				P					8	
6115	Technical and Trade Schools (Classroom Only)				P					8	
6116	Other Schools and Instruction (Classroom Only)				P					8	
6117	Educational Support Services				P					8	
<b>62</b>	<b>Health Care and Social Assistance</b>										
621	Ambulatory Health Care Services				P					10	
6211	Offices of Physicians				P					10	
6212	Offices of Dentists				P					10	
6213	Offices of Other Health Practitioners				P					10	
6214	Outpatient Care Centers				P					10	
62149	Other Outpatient Care Centers				P					10	
6215	Medical and Diagnostic Laboratories				P					10	
6216	Home Health Care Services				P					10	
6219	Other Ambulatory Health Care Services (except air ambulance)				P					10	
62191	Ambulance Services									10	
62199	All Other Ambulatory Health Care Services				P					10	
622	Hospitals				C					10	
6221	General Medical and Surgical Hospitals				C					10	
6222	Psychiatric and Substance Abuse Hospitals				C					10	Prohibits Buildings Housing Psychiatric Patients within 250 feet of any Residential District.
6223	Specialty (except Psychiatric and Substance Abuse) Hospitals				C					10	
6231	Nursing Care Facilities				P					10	
6232	Residential Mental Retardation, Mental Health and Substance Abuse Facilities				C					10	
6233	Community Care Facilities for the Elderly (w/o Nursing Care)				P					10	
6239	Other Residential Care Facilities				P					10	
624	Social Assistance (Office only)				P					14	
6241	Individual and Family Services				P					14	
6242	Community Food and Housing, and Emergency and Other Relief Services				P					21	
6243	Vocational Rehabilitation Services				P					10	
6244	Child Day Care Services (Includes Adult)				P					8	
<b>71</b>	<b>Arts, Entertainment, and Recreation</b>										
711	Performing Arts, Spectator Sports, and Related Industries (except spectator sports)				P					18	
7111	Performing Arts Companies				P					18	
7112	Spectator Sports				C					18	
7113	Promoters of Performing Arts, Sports, and Similar Events				P					14	
7114	Agents and Managers for Artists, Athletes, Entertainers, and Other Public Figures				P					14	
7115	Independent Artists, Writers, and Performers				P					14	
712	Museums, Historical Sites, and Similar Institutions (w/o Zoos)				P					5	
7121	Museums, Historical Sites, and Similar Institutions (w/o Zoos)									5	
713	Amusement, Gambling, and Recreation Industries				C					18	
7132	Gambling Industries									22	
<b>72</b>	<b>Accommodation and Food Services</b>										
721	Accommodation									12	
7211	Traveler Accommodation									12	
72111	Hotel/Motel				P					12	

SCHEDULE OF PERMITTED USES

NAICS Code	USE DESCRIPTION	NC	LC	RC	CBD	LI	I	AD	PI	PKNG. STND.	SPECIAL CONDITIONS
721191	Bed-and-Breakfast Inns				P					2	Facility must comply with all city and state building, fire and health codes and must have a valid Certificate of Occupancy.
7212	RV (Recreational Vehicle) Parks and Recreational Camps									22	
7213	Rooming and Boarding Houses									12	
722	Food Services and Drinking Places				P					19	
72221	Limited - Services Eating Places (w/Dev. Stnds.)				P					19	
72233	Mobile Food Services				P					22	
81	Other Services (except Public Administration)										
811	Repair and Maintenance									1	
8111	Automotive Repair and Maintenance				C					1	
811191	Automotive Oil Change and Lubrication Shops				C					1	Requires compliance w/Art 11-1-19
811192	Car Washes				C					22	Requires compliance w/Art 11-1-19
8112	Electronic and Precision Equipment Repair and Maintenance (Minor)				P					20	
8113	Commercial and Industrial Machinery and Equipment (except Automotive and Electronic)									1	
8114	Personal and Household Goods - Repair and Maintenance				P					20	
812	Personal and Laundry Services									16	
8121	Personal Care Services				P					16	
8122	Death Care Services				C					7	
8123	Drycleaning and Laundry Services									16	
81231	Coin-Operated Laundries and Drycleaners				P					16	
81233	Linen and Uniform Supply									16	
8129	Other Personal Services				P					16	
81291	Pet Care Services (except veterinary/kennels)				P					16	
81293	Parking Lots and Garages (by fee)				P					22	
813	Religious, Grantmaking, Civic, Professional, and Similar Organizations				P					14	
8131	Religious Organizations				P					3	
8132	Grantmaking and Giving Services				P					14	
8133	Social Advocacy Organizations				P					14	
8134	Civic and Social Organizations				P					14	
8139	Business, Professional, Labor, Political, and Similar Organizations				P					14	
814	Private Households				P					23	
92	Public Administration										
921	Executive, Legislative, and Other General Government Support				P					14	
922	Justice, Public Order, and Safety Activities				P					14	
92214	Correctional Institutions									14	
923	Administration of Human Resource Programs				P					14	
924	Administration of Environmental Quality Programs				P					14	
925	Administration of Housing Programs, Urban Planning, and Community Development				P					14	
926	Administration of Economic Programs				P					14	
927	Space Research and Technology				C					14	
928	National Security and International Affairs				C					14	
A.	Residential Uses									23	
	Single Family				P						

**SCHEDULE OF PERMITTED USES**

NAICS Code	USE DESCRIPTION	NC	LC	RC	CBD	LI	I	AD	PI	PKNG. STND.	SPECIAL CONDITIONS
	Duplex				P						
	Multi-Family				P						
	Upper Story Residential (Loft Apartments)				P						
<b>B.</b>	<b>Accessory Uses &amp; Structures</b>				P						

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

- 6A. An ordinance annexing multiple tracts of land along with and including adjacent and intervening public right-of-way; said area totaling approximately 278.4 acres and located adjacent to the corporate limits of the city of Kerrville, Texas, when considered as a whole; and being generally located beginning northeast of the intersection of Morris Road and Town Creek Road, continuing in a northerly direction across and including Interstate 10 as it passes between the existing city limits, then continuing north and terminating at the James Avery Craftsman Campus, located on the corner of Harper Road (RR 783) and Avery Road; specifically describing the area to be annexed; adopting a service plan for the area annexed; and establishing the zoning for the area annexed.

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

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**SUBJECT:** Annexation and Zoning Ordinance, First Reading – Consider a proposed annexation into the Kerrville City Limits of 278.4 acres of various properties, such properties being generally located near the Town Creek Road and Morris Road intersection, north along Town Creek Road, across and including Interstate 10, continuing north through undeveloped property and terminating at the south property line of the James Avery Craftsman Headquarters. (File No. 2011-06)

**FOR AGENDA OF:** April 26, 2011

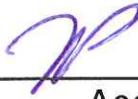
**DATE SUBMITTED:** April 15, 2011

**SUBMITTED BY:** Gordon Browning 

**CLEARANCES:** Kevin Coleman 

**EXHIBITS:** Ordinance

**AGENDA MAILED TO:**

**APPROVED FOR SUBMITTAL BY CITY MANAGER:** 

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

**PAYMENT TO BE MADE TO:**

**REVIEWED BY THE FINANCE DIRECTOR:**

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**SUMMARY STATEMENT**

Annexation-Zoning Timeline:

- January 25, 2011 – City Council accepts annexation petitions from five (5) property owners as part of the Harper Road Utility Extension Project (116.55 acres) and instructs staff, in the public interest, to begin the annexation process on an additional 161.85 acres. (Resolution Nos. 004-2011 & 006-2011)
- February 18, 2011 – Written notice to affected property owners of the City initiated annexation and zoning mailed.
- February 23, 2011 – Notice of the required public hearing published in The Kerrville Daily Times.
- March 3, 2011 – Planning and Zoning Commission (P&Z) public hearing on proposed annexation and a recommendation of zoning designation to City Council.

- March 8, 2011 – City Council conducts the first required public hearing on the proposed annexation.
- March 10, 2011 – Notice of second required public hearing published in The Kerrville Daily Times and written notification to property owners, franchise utilities, Texas Department of Transportation (TxDOT) and the Kerrville Independent School District (KISD).
- March 22, 2011 – City Council conducts the second required public hearing on the proposed annexation.
- **April 26, 2011 – City Council considers an ordinance on first reading annexing and zoning the subject property.**
- May 10, 2010 – City Council considers an ordinance on second and final reading annexing and zoning the subject property.

Summary:

- City Council adopts Resolution No. 006-2011, granting the petition for annexation of 116.55 acres and Resolution 004-2011 initiating annexation of an additional 161.85 acres.
- The properties shown and described in the attachments are adjacent to the water and/or sewer extension currently under construction along Harper and Town Creek Roads. In exchange for utility connection the owners of the five (5) properties are requesting annexation and zoning of their respective properties. The additional 161.85 acres are being annexed and zoned to complete the project and to maintain connectivity to the City Limits. Utility connections to those properties will also be available where applicable.
- Staff recommends a zoning designation of R-1 (Single Family Residential) for the properties being annexed.
- The Planning and Zoning Commission at their March 3, 2011 meeting, following a public hearing, recommended annexing the subject tract with a zoning designation of R-1. The owner of 701 Town Creek asked the Commission to defer action for 60 days or until ownership of property was settled. No one else from the public appeared at the public hearing.
- All required public hearings have been held per state and local codes.

**RECOMMENDED ACTION**

Approve ordinance on first reading.

**CITY OF KERRVILLE, TEXAS  
ORDINANCE NO. 2011-\_\_\_\_\_**

**AN ORDINANCE ANNEXING MULTIPLE TRACTS OF LAND ALONG WITH AND INCLUDING ADJACENT AND INTERVENING PUBLIC RIGHTS-OF-WAY; SAID AREA TOTALING APPROXIMATELY 278.4 ACRES AND LOCATED ADJACENT TO THE CORPORATE LIMITS OF THE CITY OF KERRVILLE, TEXAS, WHEN CONSIDERED AS A WHOLE; AND BEING GENERALLY LOCATED BEGINNING NORTHEAST OF THE INTERSECTION OF MORRIS ROAD AND TOWN CREEK ROAD, CONTINUING IN A NORTHERLY DIRECTION ACROSS AND INCLUDING INTERSTATE 10 AS IT PASSES BETWEEN THE EXISTING CITY LIMITS, THEN CONTINUING NORTH AND TERMINATING AT THE JAMES AVERY CRAFTSMAN CAMPUS, LOCATED ON THE CORNER OF HARPER ROAD (RR 783) AND AVERY ROAD; SPECIFICALLY DESCRIBING THE AREA TO BE ANNEXED; ADOPTING A SERVICE PLAN FOR THE AREA ANNEXED; AND ESTABLISHING THE ZONING FOR THE AREA ANNEXED**

**WHEREAS**, Section 1.06 of the Charter for the City of Kerrville, Texas, and state law authorizes the City to annex territory subject to the procedures required by and limitations of state law; and

**WHEREAS**, pursuant to Texas Local Government Code Sections 43.028 and 43.052(h)(2), the owners of the properties indicated below have petitioned the City to annex their properties into the corporate limits of the City of Kerrville, Texas; and

**WHEREAS**, the City staff, pursuant to the authority granted by Resolution No. 004-2011, provided written notice of the City's intent to annex several properties in accordance with Section 43.062(b) of the Texas Local Government Code; and

**WHEREAS**, City staff, based upon generally accepted municipal planning principles and practices, recommends annexing the paved public roadways which lie adjacent to the properties which are the subject of the annexation petitions, to include the annexation of the entire width of the public roadways and the adjacent public rights-of-way in accordance with Section 43.106 of the Texas Local Government Code; and

**WHEREAS**, the proposed annexation will cause several areas to be entirely surrounded by the City's new boundaries, and thus, pursuant to Section 43.057 of the Texas Local Government Code, the City Council must make a finding that surrounding these areas is in the public interest; and

**WHEREAS**, in appropriate cases, the City made offers for a development agreement pursuant to Section 43.035 of the Texas Local Government Code; and

**WHEREAS**, having provided all required public notices, held all required public hearings at which people with an interest in the matter were provided an opportunity to be heard, and following all other procedures required by state law, the City Council of the City of Kerrville, Texas, finds it to be in the public interest to approve an ordinance annexing the subject properties and public rights-of-way, adopt a service plan as required by state law, and establish zoning regulations for the areas;

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

**SECTION ONE.** The property which is the subject of a petition for annexation and including the adjacent right-of-way, all of which is more specifically described in **Exhibit A** and depicted in **Exhibit B**, is hereby annexed and incorporated into the corporate limits of the City of Kerrville, Texas, for all legal purposes. The petition for annexation concerning this property is attached as **Exhibit C**.

**SECTION TWO.** The properties which are the subject of petitions for annexation and including the adjacent rights-of-way, all of which are more specifically described in **Exhibit D** and depicted in **Exhibit E**, are hereby annexed and incorporated into the corporate limits of the City of Kerrville, Texas, for all legal purposes. The petitions for annexation concerning these properties are attached as **Exhibit F**.

**SECTION THREE.** The property and including the adjacent right-of-way, all of which is more specifically described in **Exhibit G** and depicted in **Exhibit H**, is hereby annexed and incorporated into the corporate limits of the City of Kerrville, Texas, for all legal purposes.

**SECTION FOUR.** The property, consisting of Interstate 10 and its adjacent public right-of-way from and between the City's existing boundaries, which is more specifically described in **Exhibit I** and depicted in **Exhibit J**, is hereby annexed and incorporated into the corporate limits of the City of Kerrville, Texas, for all legal purposes.

**SECTION FIVE.** The property subject of a petition for annexation, which is more specifically described in **Exhibit K** and depicted in **Exhibit L**, is hereby annexed and incorporated into the corporate limits of the City of Kerrville, Texas, for all legal purposes. The petition for annexation concerning this property is attached as **Exhibit M**.

**SECTION SIX.** The City Council hereby finds that the annexations effectuated by adoption of this Ordinance will cause several areas to be entirely surrounded by the new boundaries of the City and that surrounding these areas is in the public interest.

**SECTION SEVEN.** The service plan regarding the provision of public services is attached as **Exhibit N** and is hereby adopted for the properties described above, as required by Section 43.056 of the Texas Local Government Code.

**SECTION EIGHT.** Upon the adoption of this Ordinance, the properties described above shall be subject to a zoning designation of "R-1", Single Family Residential District.

**SECTION NINE.** The provisions of this Ordinance are to be cumulative of all 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 TEN.** 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 ELEVEN.** The penalty for violation of this Ordinance shall be in accordance with the general penalty provisions contained in Article 1-1-9 of the Code of Ordinances of the City of Kerrville, Texas, which provides for a fine not exceeding TWO THOUSAND DOLLARS (\$2,000.00).

**SECTION TWELVE.** 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.

**SECTION THIRTEEN.** In accordance with Section 43.028(f) of the Texas Local Government Code, the City Secretary is directed to file a certified copy of this Ordinance together with a copy of the petitions requesting annexation with the Kerr County Clerk.

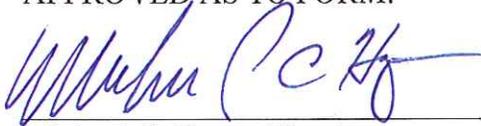
**PASSED AND APPROVED ON FIRST READING, this the \_\_\_\_\_ day of \_\_\_\_\_, A.D., 2011.**

**PASSED AND APPROVED ON SECOND READING, this the \_\_\_\_\_ day of \_\_\_\_\_, A.D., 2011.**

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

**(signatures continue on next page)**

APPROVED AS TO FORM:



Michael C. Hayes, City Attorney

ATTEST:

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

FIELD NOTES DESCRIPTION FOR 11.52 ACRES OF THE  
LLOYD E. LEIFESTE LAND IN KERR COUNTY, TEXAS

Being all of a certain tract or parcel of land out of J. D. Leavell Survey No. 1862, Abstract No. 1435, in Kerr County, Texas; comprising parts of 0.62 acre conveyed as Tract No. One and 11.55 acres conveyed as Tract No. Two to Lloyd E. Leifeste, et ux, from Dorothy L. Warren by a Warranty Deed with Vendor's Lien executed the 16<sup>th</sup> day of December, 1980 and recorded in Volume 242 at Page 510 of the Deed Records of Kerr County, Texas; and being more particularly described by metes and bounds as follows (record calls shown in parentheses, adjoiner calls shown in brackets):

BEGINNING at a ½" iron stake found in the occupied northeast right-of-way line of Town Creek Road, a public road, for the most easterly corner of the herein described tract and said 11.55 acres; in the northwest line of 279.027 acres conveyed as Tract I to Town Creek Companies, LLC from THR Corporation by a Warranty Deed with Vendor's Lien executed the 15<sup>th</sup> day of December, 1998 and recorded in Volume 986 at Page 778 of the Real Property Records of Kerr County, Texas;

THENCE, with the common line between said 11.55 acres and said 279.027 acres, S.45°19'40"W. (S.46°W.) 100.46 ft. to a ½" iron stake found at the north corner of 3.70 acres conveyed to Harvey Ray Youngblood from Harvey Ray Youngblood, Successor Trustee by a Distribution Deed of Trustee executed the 22<sup>nd</sup> day of August, 2001 and recorded in Volume 1163 at Page 832 of the Real Property Records of Kerr County, Texas;

THENCE, with the northwest line of said 3.70 acres, S.45°34'45"W. (S.46°W.), with the southeast line of said 11.55 acres, at 50.30 ft. passing a fence endpost, then generally along a fence, at 500.4 ft. passing the easterly common corner of said 11.55 acres and said 0.62 acre, then with the southeast line of said 0.62 acre for a total distance of 682.20 ft. to a cornerpost for the south corner of the herein described tract and said 0.62 acre, the west corner of said 3.70 acres, in the northeast right-of-way line of State F. M. Highway No. 783, also known as Harper Road;

THENCE, with the southwest line of said 0.62 acre, the northeast right-of-way line of said State F. M. Highway No. 783, N.10°05'43"W. (N.10°15'W.) 14.41 ft. to a "P-K" nail set at the beginning of a 03°36'29" curve concave to the west having a radius of 1588.16 ft. (1588.16 ft.), at the south corner of 0.519 acre conveyed to the State of Texas from Hilary D. Mahin by a Deed executed the 17<sup>th</sup> day of November, 1966 and recorded in Volume 126 at Page 405 of the Deed Records of Kerr County, Texas;

THENCE, generally along a fence, upon, over and across said 0.62 acre and said 11.55 acres, with the northeast line of said 0.519 acre, continuing with the northeast right-of-way line of said State F. M. Highway No. 783: 250.79 ft. (252.8 ft.) with an arc of said 03°36'29" curve subtended by a central angle of 09°02'52" [long chord = N.06°04'07"W. 250.53 ft.] to a concrete right-of-way marker at its end; N.10°35'33"W. 282.80 ft. (N.10°28'W. 285.7 ft.) to a concrete right-of-way marker found at the beginning of a 03°50'09" curve concave to the west having a radius of 1493.82 ft. (1492.69 ft.); 656.71 ft. (656.4 ft.) with an arc of said 03°50'09" curve subtended by a central angle of 25°11'17" [long chord = N.23°11'12"W. 651.43 ft.] to its end, from which a found concrete right-of-way marker bears 2.10 ft. S.35°46'51"E.; and N.35°46'51"W. 78.72 ft. (N.35°40'W. 78.8 ft.) to the west corner of the herein described tract and said 11.55 acres, the south corner of 6.96 acres conveyed to Thomas R. Taylor, et al, from Cynthia Page Bristol by a Warranty Deed with Vendor's Lien executed the 12<sup>th</sup> day of November, 2004 and recorded in Volume 1396 at Page 218 of the Real Property Records of Kerr County, Texas;

THENCE, generally along a fence with the common line between said 11.55 acres and said 6.96 acres, N.55°58'33"E. 273.63 ft. [N.55°53'04"E. 274.63 ft.] to a three-way cornerpost marked with a found ½" iron stake at the east corner of said 6.96 acres in the southwest right-of-way line of said Town Creek Road;

THENCE, with the northwest line of said 11.55 acres, N.56°58'33"E. (N.56°35'E.), at approximately 26.4 ft. passing the southwest line of 2.00 acres conveyed to Elizabeth Nottingham from Clayson H. Lambeit by a Warranty Deed executed the 18<sup>th</sup> day of October, 2005 and recorded in Volume 1476 at Page 665 of the Real Property Records of Kerr County, Texas, then upon, over and across said 2.00 acres for a total distance of 43.37 ft. to the north corner of the herein described tract and said 11.55 acres;

THENCE, with the northeast line of said 11.55 acres, continuing upon, over and across said 2.00 acres, S.26°48'04"E., at 25.2 ft. passing a fence anglepost in the occupied northeast right-of-way line of said Town Creek Road, then along a fence with the occupied northeast right-of-way line of said Town Creek Road for a total distance of 65.85 ft. to a ½" iron stake found in the southwest line of said 2.00 acres;

THENCE, along a fence with the common line between said 11.55 acres and said 2.00 acres, the occupied northeast right-of-way line of said Town Creek Road, S.26°48'04"E. 43.65 ft. [S.26°25'12"E. 43.68 ft.] to a ½" iron stake found at a cornerpost at the south corner of said 2.00 acres, the west corner of Lot No. 1 in Block No. 3 of Horseshoe Oaks, a subdivision of record in Volume 4 at Page 152 of the Plat Records of Kerr County, Texas;

THENCE, with the common line between said 11.55 acres and said Horseshoe Oaks, the northeast right-of-way line of said Town Creek Road: with the southwest line of said Lot No. 1 in Block No. 3, S.28°37'33"E. 95.22 ft. [S.28°16'E. 95.21 ft.] to an unmarked point; and S.39°56'41"E., at 12.19 ft. [12.19 ft.] passing a ½" iron stake found for reference at the south corner of said Lot No. 1 in Block No. 3, then continuing for a total distance of 456.07 ft. [S.39°52'E. 456.37 ft.] to a ½" iron stake found at the south corner of Lot No. 1, Block No. 1;

THENCE, with the northeast line of said 11.55 acres, the occupied northeast right-of-way line of said Town Creek Road, S.26°58'28"E. 3.32 ft. to a ½" iron stake found at the west corner of 21.00 acres conveyed to Town Creek Companies, LLC from Durwood A. Merritt by a Warranty Deed executed the 15<sup>th</sup> day of April, 2004 and recorded in Volume 1348 at Page 552 of the Real Property Records of Kerr County, Texas;

THENCE, with the common line between said 11.55 acres and said 21.00 acres, the northeast right-of-way line of said Town Creek Road: S.40°29'18"E. 44.79 ft. [S.40°48'37"E. 44.54 ft.] to a ½" iron stake found at the base of a tree; and generally along a fence, S.44°32'47"E. 372.17 ft. [S.44°31'03"E. 372.67 ft.] to the PLACE OF BEGINNING containing 11.52 acres of land, more or less, within these metes and bounds.

I hereby certify that these field notes and accompanying plat are accurate descriptions of the property contained therein as determined by a survey made on the ground under my direction and supervision, and that all property corners are marked as stated. (Bearing basis = True north based on GPS observations)

Date surveyed: May 14, 2007 – July 28, 2008  
June 2, 2009; December 7, 2010

Dated this 15<sup>th</sup> day of December, 2010



Don W. Voelkel  
Registered Professional Land Surveyor No. 3990





PETITION REQUESTING ANNEXATION INTO THE CORPORATE LIMITS OF THE CITY OF KERRVILLE, TEXAS, OF 11.52 ACRES OUT OF THE J.D. Leavell Survey, Abstract Number 1435, KERR COUNTY TEXAS

TO THE HONORABLE MAYOR AND CITY COUNCIL OF THE CITY OF KERRVILLE, TEXAS:

Lloyd Leifeste is the sole owner of an approximately 11.52 acre tract of land located adjacent to the incorporated limits of the City of Kerrville which is out of the Survey No. 1862, Abstract No. 1435 Kerr County, Texas, and is more particularly described as follows:

SEE EXHIBITS "A" and "B" attached hereto.

The above-described property is (a) less than one-mile in width, (b) contiguous to the incorporate limits of the City of Kerrville, Texas, and (c) presently vacant and without residents or on which fewer than three qualified voters reside.

In accordance with Texas Local Government Code §43.028, Lloyd Leifeste hereby requests and petitions that the above-described property be annexed into the incorporated limits of the City of Kerrville, Texas.

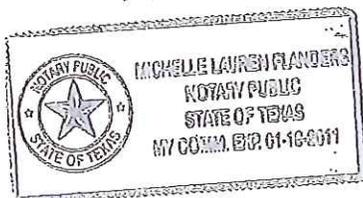
SUBMITTED THIS 5<sup>th</sup> day of January 2011.

By: Lloyd Leifeste  
Name: Lloyd Leifeste  
Title: Owner

ACKNOWLEDGEMENTS

THE STATE OF TEXAS       §  
  §  
COUNTY OF KERR         §

This instrument was acknowledged before me on the 5<sup>th</sup> day of January, 2011, by Lloyd Leifeste.



Michelle Flanders  
NOTARY PUBLIC, STATE OF TEXAS  
Printed Name: Michelle Flanders  
My Commission Expires: 1-18-2011

PARCEL NO. 8;

FIELD NOTES DESCRIPTION FOR A VARIABLE WIDTH  
UTILITY EASEMENT ACROSS PART OF THE HORACE  
LAMBERT LAND IN KERR COUNTY, TEXAS

Being all of a certain strip, tract or parcel of land out of Jesus Hernandez Survey No. 548, Abstract No. 189, in Kerr County, Texas; part of 20 acres conveyed to Horace C. Lambert, et ux, from George D. Messimer, et ux, by a Warranty Deed with Vendor's Lien executed the 7<sup>th</sup> day of August, 1972 and recorded in Volume 157 at Page 594 of the Deed Records of Kerr County, Texas; and being more particularly described by metes and bounds as follows (record calls shown in parentheses):

BEGINNING at a "P-K" nail set in the approximate center of Town Creek Road in the southwest line of said 20 acres for the northwest corner of the herein described tract, the westerly southwest corner of 3.542 acres platted as The Plains Subdivision, of record in Volume 6 at Page 103 of the Plat Records of Kerr County, Texas; from which a nail found at the northwest corner of said 20 acres bears 32.30 ft. N.21°06'40"W.;

THENCE, upon, over and across said 20 acres with the south line of said 3.542 acres, N.52°51'45"E. (N.53°00"E.) 21.70 ft. to a "P-K" nail set for the northeast corner of the herein described tract, from which a fence endpost bears 4.0 ft. N.11°38'47"W.;

THENCE, continuing upon, over and across said 20 acres, northeast of and generally parallel with a fence: S.19°32'09"E. 31.18 ft. to a set 1/2" iron stake; S.21°56'17"E. 163.52 ft. to a set 1/2" iron stake; and S.26°53'15"E. 68.32 ft. to a 1/2" iron stake set for the southeast corner of the herein described tract, in the north line of 2.00 acres conveyed to Elizabeth Nottingham from Clayton H. Lambert by a Warranty Deed executed the 18<sup>th</sup> day of October, 2005 and recorded in Volume 1476 at Page 665 of the Real Property Records of Kerr County, Texas;

THENCE, continuing upon, over and across said 20 acres with the north line of said 2.00 acres, S.53°09'02"W. (S.53°25'25"W.), at approximately 5 ft. crossing a fence, then continuing for a total distance of 20.31 ft. to a "P-K" nail found in the approximate center of Town Creek Road for the southwest corner of the herein described tract, the northwest corner of said 2.00 acres, in the southwest line of said 20 acres;

THENCE, along the approximate centerline of said Town Creek Road with the southwest line of said 2.00 acres: N.26°53'15"W. (N.26°37'W.) 72.73 ft. to a set "P-K" nail; N.21°56'15"W. 164.50 ft. (N.21°40'W. 164.5') to a set "P-K" nail; and N.21°06'40"W. (N.15°16'W.) 25.32 ft. to the PLACE OF BEGINNING containing 0.12 acre of land, more or less, within these metes and bounds.

I hereby certify that these field notes and accompanying plat are accurate descriptions of the property contained therein as determined by a survey made on the ground under my direction and supervision, and that all property corners are marked as stated. (Bearing basis = True north based on GPS observations)

Date surveyed: May 14, 2007 - July 28, 2008

Dated this 30<sup>th</sup> day of September, 2008

Don W. Voelkel  
Registered Professional Land Surveyor No. 3990



PARCEL NO. 7:

FIELD NOTES DESCRIPTION FOR A VARIABLE WIDTH  
UTILITY EASEMENT ACROSS PART OF THE ELIZABETH  
NOTTINGHAM LAND IN KERR COUNTY, TEXAS

Being all of a certain strip, tract or parcel of land out of Jesus Hernandez Survey No. 548, Abstract No. 189, in Kerr County, Texas; part of 2.00 acres conveyed to Elizabeth Nottingham from Clayson H. Lambert by a Warranty Deed executed the 18<sup>th</sup> day of October, 2005 and recorded in Volume 1476 at Page 665 of the Real Property Records of Kerr County, Texas; and being more particularly described by metes and bounds as follows (record calls shown in parentheses):

BEGINNING at a 1/2" iron stake found in a fence along the northeast right-of-way line of Town Creek Road for the southeast corner of the herein described tract in the southwest line of said 2.00 acres, which point bears 43.65 ft. N.26°48'04"W. (43.68 ft. N.26°25'12"W.) from a 1/2" iron stake found at the southwest corner of said 2.00 acres;

THENCE, with the southwest line of said 2.00 acres: N.45°32'02"W. 52.30 ft. (N.45°15'25"W. 52.41 ft.) to a "P-K" nail found in the approximate centerline of said Town Creek Road; and along the approximate centerline of said Town Creek Road, N.26°53'15"W. 157.27 ft. (N.26°36'52"W. 157.20 ft.) to a "P-K" nail found at the northwest corner of said 2.00 acres, a southerly corner of the remainder of 20 acres conveyed to Horace C. Lambert, et ux, from George D. Messimer, et ux, by a Warranty Deed with Vendor's Lien executed the 7<sup>th</sup> day of August, 1972 and recorded in Volume 157 at Page 594 of the Deed Records of Kerr County, Texas;

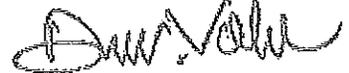
THENCE, with the common line between said 2.00 acres and the remainder of said 20 acres, N.53°09'02"E. (N.53°25'25"E.), at approximately 15 ft. crossing a fence, then continuing for a total distance of 20.31 ft. to a 1/2" iron stake set for the northeast corner of the herein described tract;

THENCE, upon, over and across said 2.00 acres: S.26°53'15"E., northeast of and generally parallel with said fence, at approximately 100 ft. crossing said fence, then southwest of and generally parallel with said fence, at approximately 150 ft. crossing said fence, then northeast of and diverging from said fence for a total distance of 160.79 ft. to a set 1/2" iron stake; and northeast of and converging with said fence, S.23°06'05"E. 49.66 ft. to the PLACE OF BEGINNING containing 0.08 acre of land, more or less, within these metes and bounds.

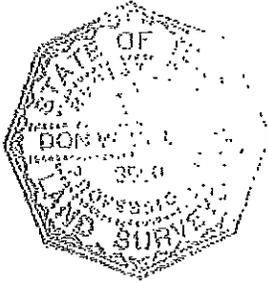
I hereby certify that these field notes and accompanying plat are accurate descriptions of the property contained therein as determined by a survey made on the ground under my direction and supervision, and that all property corners are marked as stated. (Bearing basis = True north based on GPS observations)

Date surveyed: May 14, 2007 – July 28, 2008

Dated this 30<sup>th</sup> day of September, 2008.



Don W. Voelkel  
Registered Professional Land Surveyor No. 3990



PARCEL NO. 28;

FIELD NOTES DESCRIPTION FOR A VARIABLE WIDTH  
UTILITY EASEMENT ACROSS PART OF THE ELMS  
SUBDIVISION IN KERR COUNTY, TEXAS

Being all of a certain strip, tract or parcel of land out of Jesus Hernandez Survey No. 548, Abstract No. 189, in Kerr County, Texas; part of 3.542 acres platted as The Elms Subdivision, of record in Volume 6 at Page 103 of the Plat Records of Kerr County, Texas; and being more particularly described by metes and bounds as follows (record calls shown in parentheses):

BEGINNING at a nail found in the approximate center of Town Creek Road for the west corner of the herein described tract and said 3.542 acres, the southwest corner of 49.97 acres conveyed to Edwin D. Higgins, et al, from Lee Roy Kleypas by a Warranty Deed with Vendor's Lien executed the 28<sup>th</sup> day of June, 1996 and recorded in Volume 857 at Page 35 of the Real Property Records of Kerr County, Texas;

THENCE, with the common line between said 3.542 acres and said 49.97 acres, N.52°51'45"E. (N.53°00'12") 22.63 ft. to a 1/2" iron stake set for the north corner of the herein described tract;

THENCE, upon, over and across said 3.542 acres, S.19°32'09"E. 32.57 ft. to a "P-K" nail set for the east corner of the herein described tract in the southeast line of said 3.542 acres, the northwest line of the remainder of 20 acres conveyed to Horace C. Lambert, et ux, from George D. Messimer, et ux, by a Warranty Deed with Vendor's Lien executed the 7<sup>th</sup> day of August, 1972 and recorded in Volume 157 at Page 594 of the Deed Records of Kerr County, Texas;

THENCE, with the southeast line of said 3.542 acres, the northwest line of the remainder of said 20 acres, S.52°31'45"W. (S.53°00'W.) 21.70 ft. to a "P-K" nail set in the approximate center of said Town Creek Road for the south corner of the herein described tract, the westerly south corner of said 3.542 acres;

THENCE, along the approximate centerline of said Town Creek Road with the southwest line of said 3.542 acres, N.21°06'40"W. (N.15°16'W.) 32.30 ft. to the PLACE OF BEGINNING containing 0.02 acre of land, more or less, within these metes and bounds.

I hereby certify that these field notes and accompanying plat are accurate descriptions of the property contained therein as determined by a survey made on the ground under my direction and supervision, and that all property corners are marked as stated. (Bearing basis = True north based on GPS observations)

Date surveyed: May 14, 2007 -- July 28, 2008

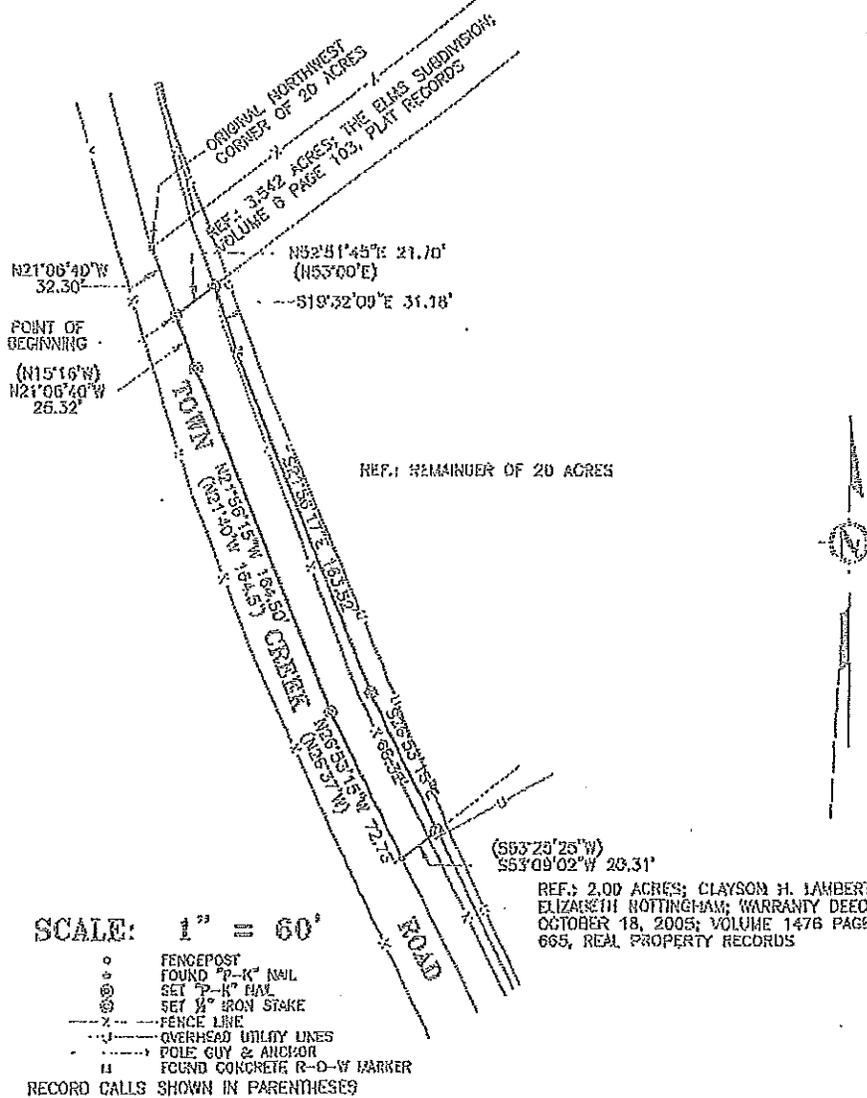
Dated this 30<sup>th</sup> day of September, 2008

*Don W. Voelkel*

Don W. Voelkel  
Registered Professional Land Surveyor No. 3990



SURVEY PLAT FOR 0.12 ACRE OF LAND, MORE OR LESS, OUT OF JESUS HERNANDEZ SURVEY NO. 548, ABSTRACT NO. 189, IN KERR COUNTY, TEXAS; BEING A VARIABLE WIDTH STRIP OF LAND OUT OF 20 ACRES CONVEYED TO HORACE C. LAMBERT, ET UX, FROM GEORGE D. MESSIMER, ET UX, BY A WARRANTY DEED WITH VENDOR'S LIEN EXECUTED THE 7TH DAY OF AUGUST, 1972 AND RECORDED IN VOLUME 157 AT PAGE 594 OF THE DEED RECORDS OF KERR COUNTY, TEXAS



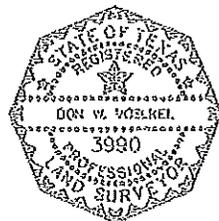
I hereby certify that this plat and accompanying field notes description are accurate representations of the property shown and described hereon as determined by a survey made on the ground under my direction and supervision, and that all property corners are marked as shown.  
(Bearing basis = True north based on GPS observations)

Date surveyed: May 14, 2007 - July 28, 2008

Dated this 30th day of September, 2008

*Don W. Voelkel*

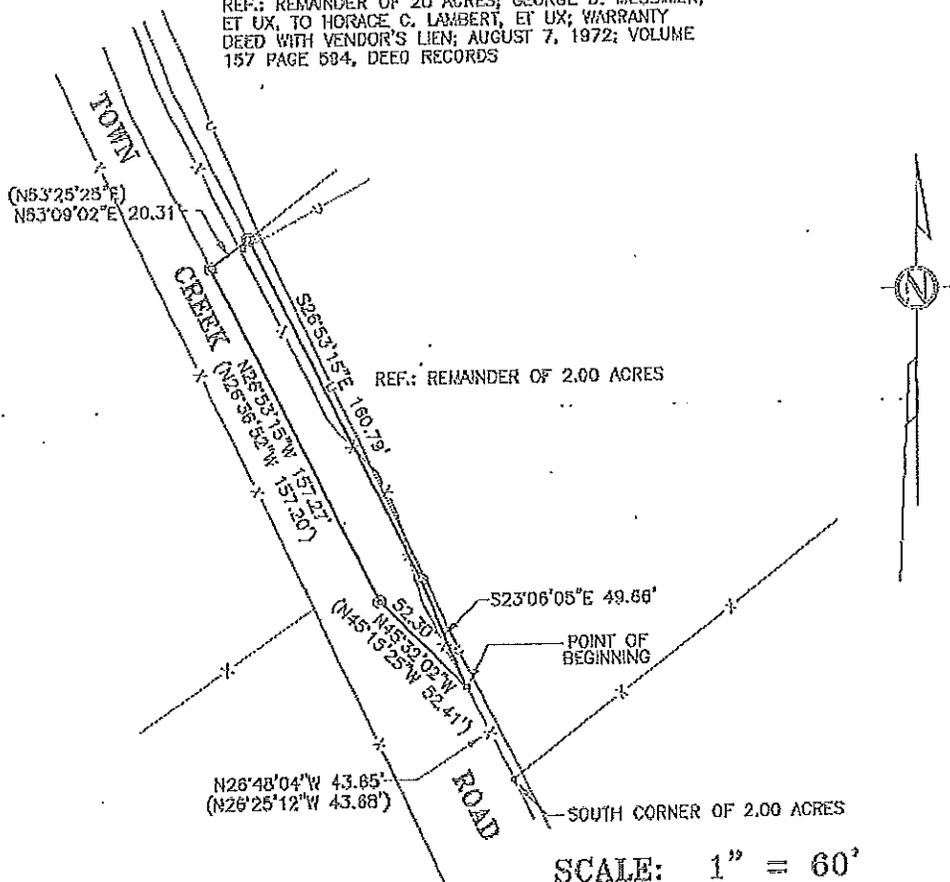
Don W. Voelkel  
Registered Professional Land Surveyor No. 3990  
CoK.HarperRd.Utilities.Parcel\_8.dwg



SURVEY PLAT FOR 0.08 ACRE OF LAND, MORE OR LESS, OUT OF JESUS HERNANDEZ SURVEY NO. 54B, ABSTRACT NO. 189, IN KERR COUNTY, TEXAS; BEING A VARIABLE WIDTH STRIP OF LAND OUT OF 2.00 ACRES CONVEYED TO ELIZABETH NOTTINGHAM FROM CLAYSON H. LAMBERT BY A WARRANTY DEED EXECUTED THE 18TH DAY OF OCTOBER, 2005 AND RECORDED IN VOLUME 1476 AT PAGE 665 OF THE REAL PROPERTY RECORDS OF KERR COUNTY, TEXAS

EXHIBIT "B"

REF.: REMAINDER OF 20 ACRES; GEORGE D. MESSMER, ET UX, TO HORACE C. LAMBERT, ET UX; WARRANTY DEED WITH VENDOR'S LIEN; AUGUST 7, 1972; VOLUME 157 PAGE 594, DEED RECORDS



SCALE: 1" = 60'

- FENCEPOST
  - ◊ FOUND 1/2" IRON STAKE
  - ⊙ FOUND "P-K" NAIL
  - ⊙ SET 1/2" IRON STAKE
  - X- FENCE LINE
  - U- OVERHEAD UTILITY LINES
  - > POLE GUY & ANCHOR
  - FOUND CONCRETE R-O-W MARKER
- RECORD CALLS SHOWN IN PARENTHESES

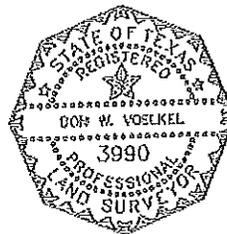
I hereby certify that this plat and accompanying field notes description are accurate representations of the property shown and described hereon as determined by a survey made on the ground under my direction and supervision, and that all property corners are marked as shown.  
(Bearing basis = True north based on GPS observations)

Date surveyed: May 14, 2007 - July 28, 2008

Dated this 30th day of September, 2008

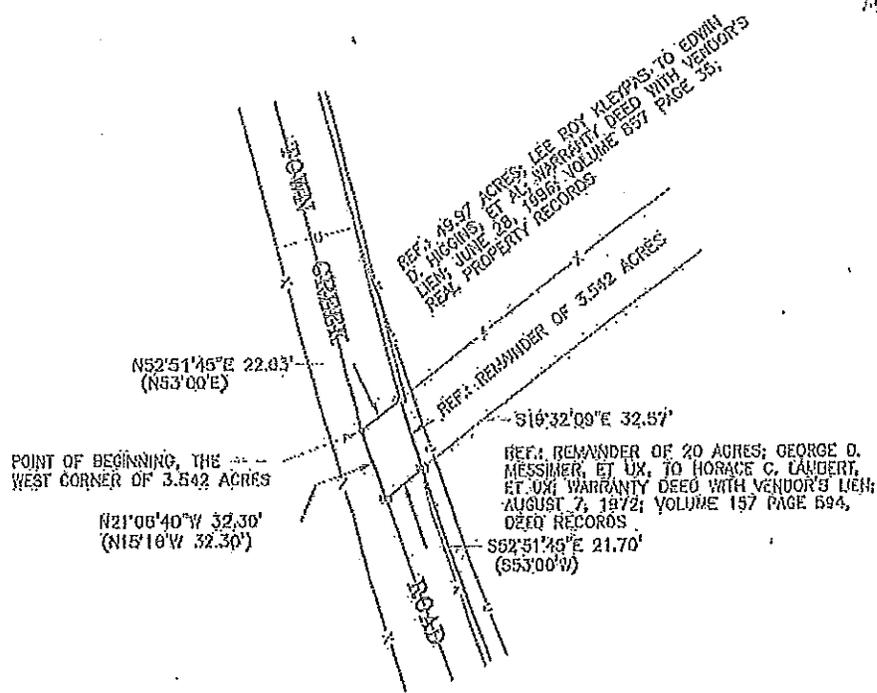
*Don W. Voelkel*

Don W. Voelkel  
Registered Professional Land Surveyor No. 3990  
Cofk.HarperRd.Utilities.Parcel\_7.dwg



SURVEY PLAT FOR 0.02 ACRE OF LAND, MORE OR LESS, OUT OF JESUS HERNANDEZ SURVEY NO. 648, ABSTRACT NO. 188, IN KERR COUNTY, TEXAS; BEING A VARIABLE WIDTH STRIP OF LAND OUT OF 3.542 ACRES PLATTED AS THE ELMS SUBDIVISION, THE PLAT OF WHICH IS RECORDED IN VOLUME 6 AT PAGE 103 OF THE PLAT RECORDS OF KERR COUNTY, TEXAS

EXHIBIT B



SCALE: 1" = 60'

- ⊕ FENCEPOST
  - △ FOUND NAIL
  - ⊙ SET 1/2" X 1" NAIL
  - ⊙ SET 1/2" IRON STAKE
  - FENCE LINE
  - OVERHEAD UTILITY LINES
  - POLE GUY & ANCHOR
  - ⊕ FOUND CONCRETE R-O-W MARKER
- RECORD CALLS SHOWN IN PARENTHESES



I hereby certify that this plat and accompanying field notes description are accurate representations of the property shown and described hereon as determined by a survey made on the ground under my direction and supervision, and that all property corners are marked as shown.  
(Bearing basis = True north based on GPS observations)

Date surveyed: May 14, 2007 - July 28, 2008

Dated this 30th day of September, 2008

*Don W. Voelkel*

Don W. Voelkel  
Registered Professional Land Surveyor No. 3990  
Coff. Harper Rd, Utilities, Parcel\_2B.dwg



PETITION REQUESTING ANNEXATION INTO THE CORPORATE LIMITS OF THE CITY OF KERRVILLE, TEXAS, OF 0.12 ACRES OUT OF THE Jesus Hernandez Survey, Abstract Number 189, KERR COUNTY TEXAS

TO THE HONORABLE MAYOR AND CITY COUNCIL OF THE CITY OF KERRVILLE, TEXAS:

, is the sole owner of an approximately 0.12 acre tract of land located adjacent to the incorporated limits of the City of Kerrville which is out of the Survey No. 548, Abstract No. 189 Kerr County, Texas, and is more particularly described as follows:

SEE EXHIBITS "A" and "B" attached hereto.

The above-described property is (a) less than one-mile in width, (b) contiguous to the incorporate limits of the City of Kerrville, Texas, and (c) presently vacant and without residents or on which fewer than three qualified voters reside.

In accordance with Texas Local Government Code §43.028, Suzanne Newell Dalton, Trustee of the Horace C. and Lavana Lambert Revocable Trust, hereby requests and petitions that the above-described property be annexed into the incorporated limits of the City of Kerrville, Texas.

SUBMITTED THIS 7<sup>th</sup> day of January, 2011.

By: Suzanne Newell Dalton  
Suzanne Newell Dalton,  
Trustee of the Horace C. and Lavana  
Lambert Revocable Trust

ACKNOWLEDGEMENTS

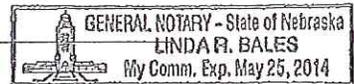
THE STATE OF NEBRASKA §  
§  
COUNTY OF DOUGLAS §

This instrument was acknowledged before me on the 7<sup>th</sup> day of January, 2011, by Suzanne Newell Dalton, Trustee of the Horace C. and Lavana Lambert Revocable Trust.

Linda R. Bales  
Notary Public, State of Nebraska

Printed Name: Linda R. Bales

My Commission Expires:





PETITION REQUESTING ANNEXATION INTO THE CORPORATE LIMITS OF THE CITY OF KERRVILLE, TEXAS, OF 0.02 ACRES OUT OF THE Jesus Hernandez Survey, Abstract Number 189, KERR COUNTY TEXAS

TO THE HONORABLE MAYOR AND CITY COUNCIL OF THE CITY OF KERRVILLE, TEXAS:

David Badillo and Gabriela A. Badillo are the sole owners of an approximately 0.02 acre tract of land located adjacent to the incorporated limits of the City of Kerrville which is out of the Survey No. 548, Abstract No. 189 Kerr County, Texas, and is more particularly described as follows:

SEE EXHIBITS "A" and "B" attached hereto.

The above-described property is (a) less than one-mile in width, (b) contiguous to the incorporate limits of the City of Kerrville, Texas, and (c) presently vacant and without residents or on which fewer than three qualified voters reside.

In accordance with Texas Local Government Code §43.028, David Badillo and Gabriella A. Badillo hereby requests and petitions that the above-described property be annexed into the incorporated limits of the City of Kerrville, Texas.

SUBMITTED THIS 20<sup>th</sup> day of January 2011.

By: [Signature]  
David Badillo

By: [Signature]  
Gabriella A. Badillo

ACKNOWLEDGEMENTS

THE STATE OF TEXAS §  
  §  
COUNTY OF KERR §

This instrument was acknowledged before me on the 20<sup>th</sup> day of Jan., 2011, by David Badillo.

[Signature]  
NOTARY PUBLIC, STATE OF TEXAS

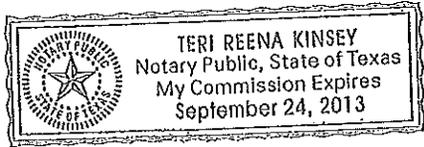


Printed Name: Teri Reena Kinsey

My Commission Expires: 9-24-13

THE STATE OF TEXAS       §  
  §  
COUNTY OF KERR           §

This instrument was acknowledged before me on the 20<sup>th</sup> day of  
Jan., 2011, by Gabriella A. Badillo.



*Teri Reena Kinsey*  
NOTARY PUBLIC, STATE OF TEXAS

Printed Name: Teri Reena Kinsey

My Commission Expires: 9-24-13

FIELD NOTES DESCRIPTION FOR 53.89 ACRES OF LAND  
BETWEEN INTERSTATE HIGHWAY NO. 10 AND F. M.  
HIGHWAY NO. 783 IN KERR COUNTY, TEXAS

EXHIBIT "G"

Being all of a certain tract or parcel of land out of Jesus Hernandez Survey No. 548, Abstract No. 189, in Kerr County, Texas; comprising 1) all of 49.97 acres conveyed to Edwin D. Higgins, et al, from Lee Roy Kleypas by a Warranty Deed with Vendor's Lien executed the 28<sup>th</sup> day of June, 1996 and recorded in Volume 857 at Page 35, 2) all of 0.66 acre conveyed to Edwin D. Higgins, et al, from HLO Partners I, Ltd. by a Warranty Deed executed the 25<sup>th</sup> day of February, 1997 and recorded in Volume 888 at Page 582, 3) part of 1.15 acres conveyed to Kerrville Pentecostals, Inc. from HLO Partners I, Ltd. by a Warranty Deed with Vendor's Lien executed the 1<sup>st</sup> day of September, 2005 and recorded in Volume 1465 at Page 464, all three deeds recorded in the Real Property Records of Kerr County, Texas, 4) part of 7.87 acres conveyed to H. H. Hilburn, Jr., et ux, from E. O. Loudon, et ux, by a Warranty Deed with Vendor's Lien executed the 15<sup>th</sup> day of May, 1954 and recorded in Volume 96 at Page 286, 5) part of 9.645 acres conveyed to Clarence Hunter McShan from Robert Louis McShan by a Warranty Deed executed the 19<sup>th</sup> day of August, 1974 and recorded in Volume 174 at Page 718, both deeds recorded in the Deed Records of Kerr County, Texas, 6) part of the right-of-way of Town Creek Road, and 7) part of the right-of-way of "Old" Harper Road, in Kerr County, Texas; and being more particularly described by metes and bounds as follows (record calls shown in parentheses):

BEGINNING at a nail found in the approximate centerline of said Town Creek Road for the south corner of said 49.97 acres, the northwest corner of a 3.542 acre lot of The Elms Subdivision, the plat of which is recorded in Volume 6 at Page 103 of the Plat Records of Kerr County, Texas;

THENCE, crossing said Town Creek Road, S.52°42'06"W. 15.99 ft. to the south corner of the herein described tract in a fence along the southwest right-of-way line of said Town Creek Road, the northeast line of 6.96 acres conveyed to Thomas R. Taylor, et al, from Cynthia Page Bristol by a Warranty Deed with Vendor's Lien executed the 12<sup>th</sup> day of November, 2004 and recorded in Volume 1396 at Page 218 of the Real Property Records of Kerr County, Texas;

THENCE, generally along a fence with the southwest right-of-way line of said Town Creek Road, the northeast line of 6.96 acres: N.17°00'43"W. (N.17°08'11"W.) 31.41 ft. to an anglepost; N.15°57'00"W. 120.17 ft. (N.16°00'06"W. 120.29 ft.) to a cornerpost at a gate opening; and N.15°31'08"W. 221.06 ft. (N.15°38'05"W. 221.11 ft.) to a ½" iron stake found at the northeast corner of said 6.96 acres, the southeast corner of 5.63 acres conveyed to John Maples from Bierschwale Credit and Lending Co. by a Special Warranty Deed executed the 20<sup>th</sup> day of July, 2005 and recorded in Volume 1452 at Page 864 of the Real Property Records of Kerr County, Texas;

THENCE, generally along a fence with the southwest right-of-way line of said Town Creek Road, the northeast line of said 5.63 acres: N.15°50'05"W. 271.46 ft. (N.15°35'52"W. 271.51 ft.); N.14°32'30"W. 378.06 ft. (N.14°18'18"W. 378.13 ft.); and N.03°54'11"W. 193.57 ft. (N.03°39'59"W. 193.61 ft.) to a ½" iron stake found for a reentrant corner of the herein described tract, the northeast corner of said 5.63 acres, at the intersection with the southeast right-of-way line of said "Old" Harper Road;

THENCE, generally along a fence with the southeast right-of-way line of said "Old" Harper Road, the northwest line of said 5.63 acres: S.52°55'06"W. 94.75 ft. (S.53°07'00"W. 94.62 ft.) to an anglepost; S.41°32'12"W. 124.30 ft. (S.41°41'45"W. 124.56 ft.) to an anglepost; S.30°31'16"W. 82.60 ft. (S.30°56'38"W. 82.41 ft.) to a found ½" iron stake; and S.24°05'58"W. 74.46 ft. (S.24°21'09"W. 74.39 ft.) to a ½" iron stake found at the northwest corner of said 5.63 acres, a northeast corner of said 9.645 acres;

THENCE, generally along a fence continuing with the southeast right-of-way line of said "Old" Harper Road, upon, over and across said 9.645 acres: S.20°02'58"W. 120.50 ft. to an anglepost; and S.16°19'26"W. 31.98 ft. to the intersection with the east right-of-way line of F. M. Highway No. 783, in a 03°05'49" curve concave to the east having a radius of 1850.21 ft. (1850.08 ft.);

VOELKEL

LAND SURVEYING, PLLC ♦ PHONE: 830-257-3313 ♦ 212 CLAY STREET, KERRVILLE, TEXAS 78028

R. 004-2011

Page 2 -- 53.89 Acres of land between Interstate Highway No.  
10 and F. M. Highway No. 783 in Kerr County, Texas

THENCE, with the east right-of-way line of said F. M. Highway No. 783: 170.21 ft. with an arc of said  $03^{\circ}05'49''$  curve subtended by a central angle of  $05^{\circ}16'15''$  [long chord =  $N.02^{\circ}39'28''E. 170.15$  ft.] to its end; and  $N.05^{\circ}08'01''E. (N.05^{\circ}23'E.) 72.70$  ft. to a  $\frac{1}{2}''$  iron stake set at the intersection of the northwest right-of-way line of said "Old" Harper Road at the southwest corner of 0.34 acre conveyed to Wildman Ranch, Inc. from Art World Security, Inc. by a Warranty Deed executed the 10<sup>th</sup> day of January, 2000 and recorded in Volume 1046 at Page 647 of the Real Property Records of Kerr County, Texas;

THENCE, with the northwest right-of-way line of said "Old" Harper Road, the southeast line of said 0.34 acre:  $N.33^{\circ}32'50''E. 98.71$  ft. ( $N.33^{\circ}50'E. 98.8$  ft.); and  $N.43^{\circ}29'49''E. 151.57$  ft. ( $N.43^{\circ}47'E. 151.7$  ft.) to the northeast corner of said 0.34 acre, the southeast corner of 0.81 acre conveyed to Albert L. Grudzinski, et al, from Christopher Marc Sherron by a Warranty Deed with Vendor's Lien executed the 1<sup>st</sup> day of December, 2010 and recorded in Volume 1817 at Page 582 of the Official Public Records of Kerr County, Texas;

THENCE, continuing with the northwest right-of-way line of said "Old" Harper Road,  $N.47^{\circ}36'21''E.$ , with the southeast line of said 0.81 acre, at approximately 185.6 ft. passing a northwest corner of said 1.15 acres, then with the common line between said 0.81 acre and said 1.15 acres for a total distance of 220.98 ft. ( $N.47^{\circ}35'05''E. 220.84$  ft.) to a fence post at the northeast corner of said 0.81 acre, a reentrant corner of said 1.15 acres;

THENCE, continuing with the northwest right-of-way line of said "Old" Harper Road, upon, over and across said 1.15 acres,  $N.48^{\circ}16'16''E. 95.71$  ft. to a  $\frac{5}{8}''$  iron stake found in the northeast line of said 1.15 acres, the south corner of 2.917 acres conveyed to Rosa Lea Meek from Hubert W. Shaw, et ux, by a Warranty Deed with Vendor's Lien executed the 1<sup>st</sup> day of August, 1973 and recorded in Volume 165 at Page 763 of the Deed Records of Kerr County, Texas;

THENCE, continuing with the northwest right-of-way line of said "Old" Harper Road, the southeast line of said 2.917 acres,  $N.50^{\circ}04'30''E. 167.71$  ft. ( $N.48^{\circ}37'E. 168.00$  ft.) to a  $\frac{5}{8}''$  iron stake found at a fence cornerpost at the east corner of said 2.917 acres, the south corner of 3.73 acres conveyed as Tract No. Two to Rosa Lea Meek from R. Clay McBryde, et ux, by a Warranty Deed executed the 18<sup>th</sup> day of May, 1966 and recorded in Volume 124 at Page 87 of the Deed Records of Kerr County, Texas;

THENCE, along a fence, continuing with the northwest right-of-way line of said "Old" Harper Road, the southeast line of said 3.73 acres:  $N.51^{\circ}01'47''E. 110.23$  ft. ( $N.51^{\circ}32'06''E. 110.53$  ft.) to an anglepost;  $N.42^{\circ}47'42''E. 50.61$  ft. ( $N.43^{\circ}10'54''E. 50.13$  ft.) to an anglepost; and  $N.36^{\circ}10'35''E. 113.79$  ft. ( $N.35^{\circ}49'13''E. 114.12$  ft.) to a  $\frac{1}{2}''$  iron stake found at the east corner of said 3.73 acres, the southeast corner of 0.34 acre conveyed to Wesley Dewayne Skains from Stacey Lynn Skains by a Special Warranty Deed executed the 18<sup>th</sup> day of March, 2003 and recorded in Volume 1255 at Page 363 of the Real Property Records of Kerr County, Texas, in the south line of said 7.87 acres;

THENCE, continuing with the northwest right-of-way line of said "Old" Harper Road, the southeast line of said 0.34 acre, upon, over and across said 7.87 acres:  $N.25^{\circ}45'56''E. 110.58$  ft. ( $N.26^{\circ}45'E. 110.7$  ft.) to a set  $\frac{1}{2}''$  iron stake; and  $N.21^{\circ}00'56''E. 24.97$  ft. ( $N.22^{\circ}E. 25$  ft.) to a  $\frac{1}{2}''$  iron stake set at the northeast corner of said 0.34 acre;

THENCE, continuing with the northwest right-of-way line of said "Old" Harper Road, over and across said 7.87 acres:  $N.25^{\circ}05'53''E. 43.90$  ft. to a set  $\frac{1}{2}''$  iron stake;  $N.12^{\circ}49'12''E. 138.31$  ft. to a set  $\frac{1}{2}''$  iron stake; and  $N.03^{\circ}12'44''E. 6.58$  ft. to a fence post;

THENCE, continuing over and across said 7.87 acres:  $S.47^{\circ}29'20''E. 120.19$  ft. to a  $\frac{1}{2}''$  iron stake set for a reentrant corner of the herein described tract;  $N.42^{\circ}30'40''E. 154.78$  ft. to a set  $\frac{1}{2}''$  iron stake; and  $N.77^{\circ}24'54''E. 68.15$  ft. to a  $\frac{1}{2}''$  iron stake set in the common line between said 7.87 acres and said 49.97 acres;

VOELKEL

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THENCE, with the common line between said 49.97 acres and said 7.87 acres, N.00°44'22"E. (N.0°40'01"E.) 26.14 ft. to the north corner of said 49.97 acres, the southwest corner of 18.858 acres conveyed to the State of Texas from Woodrow W. Anderson, et ux, by a Deed executed the 21<sup>st</sup> day of March, 1968 and recorded in Volume 132 at Page 732 of the Deed Records of Kerr County, Texas, in the southwest right-of-way line of said Interstate Highway No. 10; which point bears 0.86 ft. S.00°44'22"W. from a found ½" iron stake;

THENCE, with the common line between said 49.97 acres and said 18.858 acres with the southwest right-of-way line of said Interstate Highway No. 10: S.48°36'43"E. 180.97 ft. (S.48°36'24"E. 181.50 ft.) to a found concrete right-of-way marker; S.57°01'18"E., at 99.2 ft. passing a fence cornerpost, then along a fence for a total distance of 505.58 ft. (S.57°07'15"E. 505.57 ft.) to a found concrete right-of-way marker; and along a fence, S.48°33'55"E. 761.03 ft. (S.48°36'24"E. 761.43 ft.) to a found concrete right-of-way marker and S.44°09'59"E. 329.46 ft. (S.44°12'28"E. 327.91 ft.) to a three-way cornerpost for the east corner of the herein described tract and said 49.97 acres, the north corner of 7.49 acres conveyed to David Badillo, et ux, from Horace C. Lambert, et ux, by a Warranty Deed executed the 8<sup>th</sup> day of October, 2004 and recorded in Volume 1389 at Page 843 of the Real Property Records of Kerr County, Texas;

THENCE, along a fence with the southeast line of said 49.97 acres: S.67°50'38"W., with the northwest line of said 7.49 acres, at 712.46 ft. passing the northerly common corner of said 7.49 acres and said 3.542 acre lot of The Elms Subdivision, then with the northwest line of said 3.542 acre lot for a total distance of 1507.08 ft. (S.67°44'14"W. 1507.51 ft.) to an anglepost; and continuing with the northwest line of said 3.542 acre lot, S.52°42'06"W. 600.64 ft. (S.52°39'03"W. 600.53 ft.) to the PLACE OF BEGINNING containing 53.89 acres of land, more or less, within these metes and bounds.

I hereby certify that these field notes and accompanying plat are accurate descriptions of the property contained therein as determined by a survey made on the ground under my direction and supervision, and that all property corners are marked as stated. (Bearing basis = True north based on GPS observations)

Date surveyed: May 14, 2007 – July 28, 2008  
January 7 & December 7, 2010  
January 18, 2011

Dated this 24<sup>th</sup> day of January, 2011

Don W. Voelkel  
Registered Professional Land Surveyor No. 3990





FIELD NOTES DESCRIPTION FOR 107.96 ACRES OF  
LAND OUT OF THE INTERSTATE HIGHWAY NO. 10  
RIGHT-OF-WAY IN KERR COUNTY, TEXAS

EXHIBIT " I "

Being all of a certain tract or parcel of land comprising, approximately, 42.64 acres out of Walter Fosgate Survey No. 120, Abstract No. 138, 25.32 acres out of Jesus Hernandez Survey No. 548, Abstract No. 189, 0.06 acre out of H. W. Johnson Survey No. 627, Abstract No. 779, 0.12 acre out of H. W. Crawford Survey No. 653, Abstract No. 123, 1.20 acres out of Patrick Flemming Survey No. 666, Abstract No. 145, 37.77 acres out of C.C.S.D. & R.G.N.G. R.R. Co. Survey No. 1330, Abstract No. 1113, and 0.85 acre out of J. D. Leavell Survey No. 1862, Abstract No. 1435, in Kerr County, Texas; being 1) part of 2.658 acres conveyed to the State of Texas from Alice M. Blakely by a Deed executed the 20<sup>th</sup> day of July, 1967 and recorded in Volume 130 at Page 117, 2) all of 3.018 acres conveyed to the State of Texas from Joe C. Burrier, et ux, by a Deed executed the 26<sup>th</sup> day of August, 1967 and recorded in Volume 130 at Page 244, 3) all of 0.425 acre conveyed to the State of Texas from Eugene J. Burney, et al, by a Deed executed the 6<sup>th</sup> day of December, 1967 and recorded in Volume 132 at Page 475, 4) all of 9.964 acres conveyed to the State of Texas from Charles A. Timm, et ux, by a Deed executed the 5<sup>th</sup> day of September, 1967 and recorded in Volume 130 at Page 566, 5) all of 33.204 acres conveyed to the State of Texas from Tilford E. Clark, et ux, by a Deed executed the 18<sup>th</sup> day of April, 1968 and recorded in Volume 133 at Page 123, 6) all of 0.279 acre conveyed to the State of Texas from Charles E. Miller by a Deed executed the 7<sup>th</sup> day of August, 1967 and recorded in Volume 131 at Page 56, 7) part of 10.2 acres conveyed to Lower Colorado River Authority from Charles E. Miller by a General Warranty Deed executed the 6<sup>th</sup> day of December, 1965 and recorded in Volume 122 at Page 536, 8) all of 28.096 acres conveyed to the State of Texas from Stanley R. Frank, et al, by a Deed executed the 29<sup>th</sup> day of March, 1968 and recorded in Volume 133 at Page 154, 9) all of 6.499 acres conveyed to the State of Texas from Ralph B. Fawcett, et ux, by a Deed executed the 17<sup>th</sup> day of August, 1967 and recorded in Volume 130 at Page 248, 10) all of 18.858 acres conveyed to the State of Texas from Woodrow W. Anderson, et ux, by a Deed executed the 21<sup>st</sup> day of March, 1968 and recorded in Volume 132 at Page 732, 11) all of 0.906 acre conveyed to the State of Texas from Berry Miller, Jr., et ux, by a Deed executed the 1<sup>st</sup> day of December, 1967 and recorded in Volume 131 at Page 584, 12) all of 0.327 acre conveyed to the State of Texas from Horace E. Goodrich, et al, by a Deed executed the 8<sup>th</sup> day of January, 1968 and recorded in Volume 131 at Page 620, 13) part of 4.010 acres conveyed to the State of Texas from Sidney S. Skinner, et ux, by a Deed executed the 8<sup>th</sup> day of February, 1967 and recorded in Volume 127 at Page 589, and 14) parts of various "County Roads", all deeds recorded in the Deed Records of Kerr County, Texas; and being more particularly described by metes and bounds as follows (record calls shown in parentheses):

BEGINNING at a ½" iron stake found in the northeast right-of-way line of Interstate Highway No. 10 for the northwest corner of the herein described tract and said 0.906 acre, a southwest corner of 326.49 acres conveyed to American Bank of Texas from Town Creek Investments, LP by a Warranty Deed executed the 5<sup>th</sup> day of December, 2008 and recorded in Volume 1712 at Page 347 of the Official Public Records of Kerr County, Texas; which point bears, approximately, 438 ft. S.87°46'W. from the north corner of said Survey No. 548;

THENCE, with the common line between said 0.906 acre and said 326.49 acres, the northeast right-of-way line of said Interstate Highway No. 10, S.48°31'14"E. 296.45 ft. (S.48°38'14"E. 296.51 ft.) to a ½" iron stake found at the south corner of said 326.49 acres, the east corner of said 0.906 acre, the north corner of said 18.858 acres, the west corner of Lot No. 13 of Kerrville Country Estates Section Two, a subdivision of record in Volume 4 at Page 131 of the Plat Records of Kerr County, Texas;

THENCE, continuing with the northeast right-of-way line of said Interstate Highway No. 10, the northeast line of said 18.858 acres: S.48°33'57"E., with the southwest line of said Lot No. 13, at approximately 677.44 ft. passing the westerly common corner of Lots No. 13 and No. 14, then with the southwest line of said Lot No. 14 for a total distance of 1584.39 ft. (S.48°36'24"E. 1586.43 ft.) to a concrete right-of-way marker found at the southwesterly common corner of Lots No. 14 and No. 16; and with the southwest line of said Lot No. 16, S.42°18'43"E. 512.26 ft. (S.42°21'37"E. 512.26 ft.) to a ½" iron stake found at the southwesterly common corner of said Lot No. 16 and 3.83 acres conveyed to John G. Bishop from Barry K. Fawcett, et ux, by a Cash Warranty Deed executed the 11<sup>th</sup> day of May, 2007 and recorded in Volume 1603 at Page 658 of the Official Public Records of Kerr County, Texas, at the northeasterly common corner of said 18.858 acres and said 6.499 acres;

THENCE, continuing with the northeast right-of-way line of said Interstate Highway No. 10, the common line between said 6.499 acres and said 3.83 acres: S.42°18'43"E. 106.50 ft. (S.42°21'37"E. 106.24 ft.) to a found concrete right-of-way marker; and S.39°45'04"E. (S.39°48'32"E.) 568.09 ft. to a ½" iron stake found at the southwesterly common corner of said 3.83 acres and Lot No. 17 of said Kerrville Country Estates Section Two, the northeasterly common corner of said 6.499 acres and said 28.096 acres;

THENCE, continuing with the northeast right-of-way line of said Interstate Highway No. 10, the northeast line of said 28.096 acres: with the southwest line of said Lot No. 17, S.39°45'04"E. (S.39°48'32"E.) 483.74 ft. to a found concrete right-of-way marker and S.44°03'22"E., at 352.01 ft. passing the southwesterly common corner of said Lot No. 17 and Lot No. 34-B as established by the replat of Kerrville Country Estates Section Two of record in Volume 6 at Page 109 of the Plat Records of Kerr County, Texas, then with the southwest line of said Lot No. 34-B for a total distance of 601.67 ft. (S.44°05'53"E. 601.69 ft.) to a found ½" iron stake; with the southwest line of said Lot No. 34-B, S.39°46'01"E. 299.99 ft. (S.39°48'32"E. 300.00 ft.) and S.35°00'12"E., at 91.84 ft. passing the southwesterly common corner of said Lot No. 34-B and Lot No. 34-A, then with the southwest line of said Lot No. 34-A for a total distance of 301.03 ft. (S.35°02'43"E. 301.04 ft.) to a found ½" iron stake; and with the southwest line of said Lot No. 34-A, S.39°46'01"E. 299.99 ft. (S.39°48'32"E. 300.00 ft.), S.51°04'32"E. 305.93 ft. (S.51°07'08"E. 305.94 ft.) to a found concrete right-of-way marker, S.39°46'00"E. 299.93 ft. (S.39°48'32"E. 300.00 ft.), and S.31°38'22"E. (S.31°40'54"E.) 92.37 ft. to the south corner of said Lot No. 34-A, the west corner of 30.36 acres conveyed to Allen J. Polzin, et al, Trustees from Allen J. Polzin, et al, by a General Warranty Deed executed the 30<sup>th</sup> day of August, 2010 and recorded in Volume 1805 at Page 411 of the Official Public Records of Kerr County, Texas, at the northeasterly common corner of said 28.096 acres and said 33.204 acres;

THENCE, continuing with the northeast right-of-way line of said Interstate Highway No. 10, the common line between said 33.204 acres and said 30.36 acres: S.31°38'22"E. (S.31°40'54"E.), at 212.89 ft. passing a found concrete right-of-way marker, then continuing for a total distance of 489.24 ft., S.50°57'07"E. 276.20 ft. (S.50°59'39"E. 276.26 ft.) to a found ½" iron stake, S.62°36'12"E. 275.62 ft. (S.62°38'44"E. 275.68 ft.) to a found concrete right-of-way marker, S.65°56'40"E. 273.56 ft. (S.65°59'39"E. 273.65 ft.) to a found ½" iron stake, and S.74°51'26"E. 533.33 ft. (S.74°53'42"E. 533.29 ft.) to a concrete right-of-way marker found at the southwest corner of 4.94 acres conveyed to Jimmy D. McGehee, et ux, from Allen J. Polzin, et ux, by a Warranty Deed with Vendor's Lien executed the 21<sup>st</sup> day of January, 2000 and recorded in Volume 1047 at Page 567 of the Real Property Records of Kerr County, Texas;

THENCE, continuing with the northeast right-of-way line of said Interstate Highway No. 10, the common line between said 33.204 acres and said 4.94 acres: S.84°18'22"E. 417.17 ft. (S.84°18'34"E. 417.39 ft.) to a found concrete right-of-way marker; and N.86°35'03"E., at 359.94 ft. passing the southeast corner of said 4.94 acres, the southwest corner of 5.00 acres conveyed to Foster Charitable Foundation, Inc. from Paris Towers, Inc. by a Special Warranty Deed executed the 6<sup>th</sup> day of February, 2009 and recorded in Volume 1726 at Page 291 of the Official Public Records of Kerr County, Texas, then with the south line of said 5.00 acres for a total distance of 1045.00 ft. (N.86°26'44"E. 1045.15 ft.) to a concrete right-of-way marker found at the southeast corner of said 5.00 acres, the southwest corner of 3.06 acres conveyed to Larry H. Kohn from Anne L. Thomas, et al, by a Warranty Deed executed the 21<sup>st</sup> day of December, 2001 and recorded in Volume 1162 at Page 730 of the Real Property Records of Kerr County, Texas;

THENCE, continuing with the northeast right-of-way line of said Interstate Highway No. 10: S.69°58'09"E., with the common line between said 33.204 acres and said 3.06 acres, at approximately 156 ft. passing the northeasterly common corner of said 33.204 acres and said 9.964 acres, then with the common line between said 9.964 acres and said 3.06 acres, at approximately 734 ft. passing the southeast corner of said 3.06 acres, the southwest corner of 4.22 acres conveyed to James A. Rosser, et ux, from Jose Lopez, et ux, by a Warranty Deed executed the 18<sup>th</sup> day of April, 1994 and recorded in Volume 741 at Page 437 of the Real Property Records of Kerr County, Texas, then with the common line between said 9.964 acres and said 4.22 acres, at approximately 796.7 ft. passing the southeast corner of said 4.22 acres, the southwest corner of 11.223 acres conveyed to HK Interests, LLC from Jody J. Horton, et al, by a

General Warranty Deed executed the 28<sup>th</sup> day of August, 2006 and recorded in Volume 1548 at Page 459 of the Official Public Records of Kerr County, Texas, the northwesterly common corner of said 9.964 acres and said 0.425 acre, then with the common line between said 0.425 acre and said 11.223 acres for a total distance of 921.92 ft. (S.69°55'17"E. 923.20 ft.) to a found 1" iron stake; S.69°48'10"E., with the common line between said 0.425 acre and said 11.223 acres, at approximately 154 ft. passing the south corner of said 11.223 acres, the west corner of 1.072 acres conveyed to Jose L. Ramos from Brenda Megan Horton by a Special Warranty Deed with Vendor's Lien executed the 28<sup>th</sup> day of May, 2002 and recorded in Volume 1192 at Page 454 of the Real Property Records of Kerr County, Texas, the northeasterly common corner of said 0.425 acre and said 2.658 acres, then with the common line between said 2.658 acres and said 1.072 acres for a total distance of 497.55 ft. (S.69°42'20"E. 497.25 ft.) to a found concrete right-of-way marker; and continuing with the common line between said 2.658 acres and said 1.072 acres, N.54°12'29"E. 110.26 ft. (N.54°03'23"E. 110.66 ft.) to a concrete right-of-way marker found for the northeast corner of the herein described tract at the intersection with the northwest right-of-way line of Leslie Drive and the current City Limits line of the City of Kerrville, Texas, as established by Ordinance No. 72-20, at the beginning of a 20°24'13" curve concave to the west having a radius of 280.83 ft.;

THENCE, upon, over and across said Interstate Highway No. 10 with the northwest right-of-way line of Leslie Drive and the current City Limits line of the City of Kerrville, Texas: 274.76 ft. with an arc of said 20°24'13" curve subtended by a central angle of 56°03'26" [long chord = S.07°45'50"E. 263.93 ft.] to its end; S.20°15'53"W. 265.89 ft. to the beginning of a 23°08'31" curve concave to the east having a radius of 247.60 ft.; 239.25 ft. with an arc of said 23°08'31" curve subtended by a central angle of 55°21'45" [long chord = S.07°24'59"E. 230.05 ft.] to its end; and S.35°05'52"E. 223.37 ft. to the east corner of said 0.327 acre, the north corner of Lot No. 1 of Mathison Place, a subdivision of record in Volume 7 at Page 276 of the Plat Records of Kerr County, Texas at the intersection of the southwest right-of-way line of said Interstate Highway No. 10;

THENCE, with the southwest right-of-way line of said Interstate Highway No. 10, the common line between said 0.327 acre and said Lot No. 1 of Mathison Place, the current City Limits line of the City of Kerrville, Texas, as established by Ordinance No. 86-05, S.55°06'42"W. 75.00 ft. (S.54°59'21"W. 75.00 ft.) to a concrete right-of-way marker found at the south corner of said 0.327 acre, the east corner of 1.12 acres conveyed to Huntley Barry Hayes from Melba Rene Hayes by a Special Warranty Deed executed the 23<sup>rd</sup> day of March, 2004 and recorded in Volume 1346 at Page 266 of the Real Property Records of Kerr County, Texas;

THENCE, continuing with the southwest right-of-way line of said Interstate Highway No. 10, the common line between said 0.327 acre and said 1.12 acres, the current City Limits line of the City of Kerrville, Texas, as established by Ordinance No. 86-05, N.35°05'52"W. 193.37 ft. (N.35°13'13"W. 189.86 ft.) to a ½" iron stake found at the west corner of said 0.327 acre, the north corner of said 1.12 acres, at the intersection with the southeast right-of-way line of Morrow Street;

THENCE, continuing with the southwest right-of-way line of said Interstate Highway No. 10, crossing said Morrow Street, with the current City Limits line of the City of Kerrville, Texas, as established by Ordinance No. 86-05, N.35°07'54"W. 29.97 ft. to a 60 "d" nail found in the northwest right-of-way line of Morrow Street at the south corner of said 1.062 acres, the east corner of the remainder of 6 acres conveyed to A. C. Morris, et ux, from Nora G. Baldwin by a General Warranty Deed executed the 3<sup>rd</sup> day of October, 1961 and recorded in Volume 111 at Page 41 of the Deed Records of Kerr County, Texas;

THENCE, continuing with the southwest right-of-way line of said Interstate Highway No. 10, the common line between said 1.062 acres and the remainder of said 6 acres, the current City Limits line of the City of Kerrville, Texas, as established by Ordinance No. 2004-11: N.35°03'37"W. 223.23 ft. (N.35°07'29"W. 228.34 ft.) to a found concrete right-of-way marker; and N.73°59'03"W. (N.73°47'28"W.), at approximately 245.62 ft. passing the west corner of said 1.062 acres in the northwest line of the remainder of said 6 acres, the southeast right-of-way line of Crider Street, then crossing said Crider Street for a total distance of 287.50 ft. to a concrete right-of-way marker found

at the south corner of said 3.018 acres, the east corner of 0.982 acre conveyed to Joe Ray Herring, et al, from Joe R. Herring by a Cash Warranty Deed executed the 15<sup>th</sup> day of August, 2000 and recorded in Volume 1079 at Page 703 of the Real Property Records of Kerr County, Texas;

THENCE, continuing with the southwest right-of-way line of said Interstate Highway No. 10, the common line between said 3.018 acres and said 0.982 acre: N.46°48'55"W. 300.89 ft. (N.46°49'33"W. 300.93 ft.); and N.84°29'26"W. (N.84°30'03"W.) 128.00 ft. to the southerly common corner of said 3.018 acres and said 9.964 acres, the northerly common corner of said 0.982 acre and 18.9 acres conveyed to Les Newberry, et ux, from Richard Earl Gingrich, et ux, by a Warranty Deed with Vendor's Lien executed the 13<sup>th</sup> day of June, 1996 and recorded in Volume 854 at Page 121 of the Real Property Records of Kerr County, Texas;

THENCE, continuing with the southwest right-of-way line of said Interstate Highway No. 10, the common line between said 9.964 acres and said 18.9 acres, N.84°29'26"W. (N.84°30'03"W.) 775.38 ft. to the southwesterly common corner of said 9.964 acres and said 33.204 acres, the northeasterly common corner of said 18.9 acres and 162.55 acres conveyed to Phicof, L.L.C. from Phoenix Summit, Ltd. by a Warranty Deed executed the 1<sup>st</sup> day of April, 2008 and recorded in Volume 1669 at Page 264 of the Official Public Records of Kerr County, Texas;

THENCE, continuing with the southwest right-of-way line of said Interstate Highway No. 10, the common line between said 33.204 acres and said 162.55 acres: N.84°29'26"W. 9.17 ft. (N.84°30'03"W. 9.27 ft.) to a found concrete right-of-way marker; N.68°36'15"W. 518.61 ft. (N.68°39'27"W. 518.91 ft.) to a found concrete right-of-way marker; N.84°16'57"W. 817.24 ft. (N.84°18'34"W. 817.39 ft.) to a found concrete right-of-way marker; and N.78°50'44"W. 310.58 ft. (N.78°51'38"W. 310.63 ft.) to a ½" iron stake found at the southerly common corner of said 33.204 acres and said 0.279 acre;

THENCE, continuing with the southwest right-of-way line of said Interstate Highway No. 10, the common line between said 0.279 acre and said 162.55 acres, N.78°42'12"W. 175.91 ft. (N.78°35'04"W. 174.26 ft.) to a ½" iron stake found at the west corner of said 0.279 acre, the most northerly corner of said 162.55 acres, in the southeast line of 10.2 acres conveyed to Lower Colorado River Authority from Charles E. Miller by a General Warranty Deed executed the 6<sup>th</sup> day of December, 1965 and recorded in Volume 122 at Page 536 of the Deed Records of Kerr County, Texas;

THENCE, continuing with the southwest right-of-way line of said Interstate Highway No. 10, upon, over and across said 10.2 acres, N.78°05'32"W. 120.04 ft. (N.78°35'04"W. 119.23 ft.) to a ½" iron stake found at the easterly common corner of said 33.204 acres and 351.130 acres conveyed to Town Creek Companies, LLC from THR Corporation by a Warranty Deed with Vendor's Lien executed the 15<sup>th</sup> day of December, 1998 and recorded in Volume 986 at Page 778 of the Real Property Records of Kerr County, Texas;

THENCE, continuing with the southwest right-of-way line of said Interstate Highway No. 10, the common line between said 33.204 acres and said 351.130 acres: N.71°07'10"W. 350.59 ft. (N.71°08'11"W. 353.60 ft.) to a found ½" iron stake; N.59°42'03"W., at 110.45 ft. passing a found concrete right-of-way marker, then continuing for a total distance of 219.76 ft. (N.59°44'40"W. 219.58 ft.) to a found ½" iron stake; N.53°28'29"W. 329.27 ft. (N.53°29'39"W. 329.24 ft.) to a found ½" iron stake; N.44°04'47"W. 435.42 ft. (N.44°07'16"W. 435.51 ft.) to a found concrete right-of-way marker; and N.39°46'00"W. (N.39°48'32"W.) 174.05 ft. to the southwesterly common corner of said 33.204 acres and said 28.096 acres;

THENCE, continuing with the southwest right-of-way line of said Interstate Highway No. 10, the common line between said 28.096 acres and said 351.130 acres: N.39°46'00"W. (N.39°48'32"W.) 528.81 ft. to a found concrete right-of-way marker; N.42°36'27"W. 801.19 ft. (N.42°40'17"W. 801.00 ft.) to a found ½" iron stake; N.39°47'40"W. 499.86 ft. (N.39°48'32"W. 500.00 ft.) to a found concrete right-of-way marker; N.23°55'58"W. 311.63 ft. (N.23°59'23"W. 311.81 ft.) to a found concrete right-of-way marker; and N.39°45'33"W. (N.39°48'32"W.) 550.38 ft.

to a 5/8" iron stake found at the southwesterly common corner of said 28.096 acres and said 6.499 acres, the northeasterly common corner of said 351.130 acres and 21.00 acres conveyed to Town Creek Companies, LLC from Durwood A. Merritt by a Warranty Deed executed the 15<sup>th</sup> day of April, 2004 and recorded in Volume 1348 at Page 552 of the Real Property Records of Kerr County, Texas;

THENCE, continuing with the southwest right-of-way line of said Interstate Highway No. 10, the common line between said 6.499 acres and said 21.00 acres, N.39°45'33"W. (N.39°48'32"W.) 420.00 ft. to a 5/8" iron stake found at the north corner of said 21.00 acres, the east corner of Lot No. 16 in Block One of Horseshoe Oaks, a subdivision of record in Volume 4 at Page 152 of the Plat Records of Kerr County, Texas;

THENCE, continuing with the southwest right-of-way line of said Interstate Highway No. 10, the common line between said 6.499 acres and said Lot No. 16: N.39°45'33"W. (N.39°48'32"W.), at 129.52 ft. passing a found concrete right-of-way marker, then continuing for a total distance of 181.66 ft.; and N.44°08'47"W. (N.44°12'28"W.) 68.15 ft. to a fence cornerpost at the northeasterly common corner of said Lot No. 16 and 7.49 acres conveyed to David Badillo, et ux, from Horace C. Lambert, et ux, by a Warranty Deed executed the 8<sup>th</sup> day of October, 2004 and recorded in Volume 1389 at Page 843 of the Real Property Records of Kerr County, Texas;

THENCE, along a fence, continuing with the southwest right-of-way line of said Interstate Highway No. 10, the common line between said 6.499 acres and said 7.49 acres, N.44°08'47"W. (N.44°12'28"W.) 161.50 ft. to the southwesterly common corner of said 6.499 acres and said 18.858 acres, the northeasterly common corner of said 7.49 acres and 49.97 acres conveyed to Edwin D. Higgins, et al, from Lee Roy Kleypas by a Warranty Deed with Vendor's Lien executed the 28<sup>th</sup> day of June, 1996 and recorded in Volume 857 at Page 35 of the Real Property Records of Kerr County, Texas;

THENCE, with the common line between said 18.858 acres and said 49.97 acres, along a fence unless specified otherwise, with the southwest right-of-way line of said Interstate Highway No. 10, each point marked with a found concrete right-of-way marker: N.44°09'59"W. 329.46 ft. (N.44°12'28"W. 327.91 ft.); N.48°33'55"W. 761.03 ft. (N.48°36'24"W. 761.43 ft.); N.57°01'18"W., at 406.4 ft. passing a fence cornerpost, then not along a fence for a total distance of 505.58 ft. (N.57°07'15"W. 505.57 ft.); and continuing not along a fence, N.48°36'43"W. 180.97 ft. (N.48°36'24"W. 181.50 ft.) to the southwest corner of the herein described tract and said 18.858 acres, the north corner of said 49.97 acres, the southeast corner of 2.094 acres conveyed to the State of Texas from H. H. Hilburn, Jr., et ux, by a Deed executed the 6<sup>th</sup> day of October, 1967 and recorded in Volume 131 at Page 88 of the Deed Records of Kerr County, Texas; which point bears 0.86 ft. S.00°44'22"W. from a found 1/2" iron stake;

THENCE, with the common line between said 18.858 acres and said 2.094 acres, crossing said Interstate Highway No. 10: N.04°31'24"E. 57.50 ft. (N.04°31'24"E. 57.50 ft.); N.02°29'40"E. 149.69 ft. (N.02°29'40"E. 149.69 ft.); and N.03°09'44"W. 46.09 ft. (N.03°09'45"W. 45.61 ft.) to the south corner of said 0.906 acre;

THENCE, with the west line of said 0.906 acre, still crossing said Interstate Highway No. 10: with the east line of said 2.094 acres, N.02°53'20"W. 303.87 ft. (N.02°52'29"W. 304.43 ft.) and N.07°32'00"W., at approximately 17.24 ft. passing the northeast corner of said 2.094 acres, the southeast corner of 0.231 acre conveyed to the State of Texas from B. G. Creamer, et ux, by a Deed executed the 3<sup>rd</sup> day of October, 1967 and recorded in Volume 131 at Page 60 of the Deed Records of Kerr County, Texas, then with the east line of said 0.231 acre for a total distance of 86.75 ft. (N.07°32'00"W. 86.75 ft.) to the PLACE OF BEGINNING containing 107.96 acres of land, more or less, within these metes and bounds.

Page 6 – 107.96 Acres out of the Interstate Highway  
No. 10 Right-of-Way in Kerr County, Texas

I hereby certify that these field notes and accompanying plat are accurate descriptions of the property contained therein as determined by a survey made on the ground under my direction and supervision, and that all property corners are marked as stated. (Bearing basis = True north based on GPS observations)

Date surveyed: May 14, 2007 – July 28, 2008  
January 7 & December 7, 2010

Dated this 18<sup>th</sup> day of February, 2011



Don W. Voelkel  
Registered Professional Land Surveyor No. 3990











FIELD NOTES DESCRIPTION FOR 104.58 ACRES OF LAND OUT OF THE AMERICAN BANK OF TEXAS LAND ALONG FM HIGHWAY NO. 783 (HARPER ROAD) IN KERR COUNTY, TEXAS

Being all of a certain tract or parcel of land containing 104.58 acres, more or less, out of various Original Patent Surveys in Kerr County, Texas as follows:

Survey No.	Survey	Abstract No.	Acres
627	H.W. Johnson	779	14.16
628	G.P. Phillips	610	89.78
1862	J.D. Leavell	1435	0.64

part of a certain 326.49 acre tract conveyed from Town Creek Investments, LP to American Bank of Texas by a Warranty Deed dated December 5, 2008 and recorded in Volume 1712 at Page 347 of the Official Public Records of Kerr County, Texas; and being more particularly described by metes and bounds as follows:

BEGINNING at a 3/4" iron pipe found in the northeast right-of-way line of Interstate Highway No. 10 for the southwest corner of the herein described tract and said 326.49 acre tract, and the northwest corner of Kerrville Country Estates Section Two, a subdivision of Kerr County according to the plat of record in Volume 4 at Page 131 of the Plat Records of Kerr County, Texas; which point bears approximately 307 ft. S.45°W. from the north corner of Survey No. 548;

THENCE, with the west line of said 326.49 acre tract and northeast right-of-way line of Interstate Highway No. 10, N.48°31'14"W., 296.45 ft. to a 1/2" iron stake found for a westerly corner of the herein described tract and 326.49 acre tract;

THENCE, near a game-proof fence with the west line of said 326.49 acre tract: N.07°06'14"W., 609.85 ft. to a found 1/2" iron stake; N.22°54'20"W., 73.48 ft. to a found 1/2" iron stake; N.04°25'09"W., 228.63 ft. to a found 1/2" iron stake; N.15°59'51"E., up a bluff and along the top of said bluff 555.56 ft. to a found 1/2" iron stake; N.17°24'34"W., continuing along the top of said bluff 194.18 ft. to a found 1/2" iron stake; and N.42°06'13"W., down said bluff 174.62 ft. to a 1/2" iron stake found in the east right-of-way line of F.M. Highway No. 783 (Harper Road) for a westerly corner of the herein described tract and 326.49 acre tract;

THENCE, continuing with the said west line of 326.49 acre tract along the said east right-of-way line of F.M. Highway No. 783, all calls to 1/2" iron stakes found at road angles: N.02°33'27"W., 743.80 ft.; N.18°22'51"E., 464.00 ft.; N.29°34'56"E., 78.26 ft.; N.39°05'18"E., 169.33 ft.; N.37°12'56"E., 104.38 ft. to a 1/2" iron stake found for the northwest corner of the herein described tract, the westerly northwest corner of said 326.49 acre tract and the southwest corner of a certain 5.66 acre tract conveyed from Mary Helen Miller to Bibiano Ortega by a General Warranty Deed executed the 5th day of April, 2007 and recorded in Volume 1595 at Page 157 of the Official Public Records of Kerr County, Texas;

THENCE, with the common line between said 326.49 and 5.66 acre tracts: S.79°52'40"E., at 0.7 ft. passing a steel fence cornerpost, then continuing along a game-proof fence for a total distance of 121.44 ft. to a found 1/2" iron stake; S.71°02'32"E., along said game-proof fence 247.41 ft. to a steel fence cornerpost for a reentrant corner of the herein described tract and 326.49 acre tract and a southerly corner of 5.66 acre tract; N.20°25'20"E., along said game-proof fence 130.63 ft. to a steel fence cornerpost for a reentrant corner of 5.66 acre tract; and S.71°28'41"E., along said game-proof fence 198.02 ft. to a steel fence cornerpost for the southeast corner of 5.66 acre tract and the southwest corner of TRACT ONE of James Avery Craftsman Subdivision, a subdivision of Kerr County according to the plat of record in Volume 7 at Page 149 of the Plat Records of Kerr County, Texas;

THENCE, along a game-proof fence with the common line between said 326.49 acre tract and TRACT ONE N.72°42'35"E., 799.06 ft. to a steel fence cornerpost for the southeast corner of TRACT ONE;

Page 2 – 104.58 acres of land out of the American Bank of Texas land along FM Highway No. 783 in Kerr County, Texas

THENCE, with the north line of said 326.49 acre tract, all calls to set 1/2" iron stakes: S.78°17'04"E., 254.99 ft.; S.11°01'03"E., 489.10 ft.; S.35°44'25"E., 514.98 ft. to a reentrant corner of the herein described tract and 326.49 acre tract; and N.63°30'44"E., 408.44 ft. to an unmarked point for the northeast corner of the herein described tract;

THENCE, upon, over and across said 326.49 acre tract S.13°00'00"E., 626.22 ft. to an unmarked point in a fence, the south line of 326.49 acre tract and north line of said Kerrville Country Estates Section Two for the southeast corner of the herein described tract;

THENCE, along a game-proof fence with the common line between said 326.49 acre tract and Kerrville Country Estates Section Two: S.77°16'53"W., 175.00 ft. to a steel fence anglepost for a reentrant corner of the herein described tract and 326.49 acre tract; and S.19°52'39"W., 170.00 ft. to an unmarked point for an easterly corner of the herein described tract;

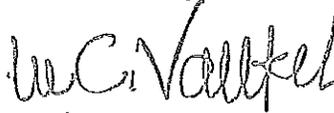
THENCE, upon, over and across said 326.49 acre tract: S.77°00'00"W., 2365.41 ft. to an unmarked point for a reentrant corner of the herein described tract; and S.13°00'00"E., 1316.64 ft. to an unmarked point in a fence, the south line of 326.49 acre tract and north line of Kerrville Country Estates Section Two for the southerly southeast corner of the herein described tract;

THENCE, along a game proof fence with the common line between said 326.49 acre tract and Kerrville Country Estates Section Two S.45°22'42"W., 307.61 ft. to the PLACE OF BEGINNING.

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

Dates Surveyed: October 20, 2008  
February 12, 2009

Dated this 10<sup>th</sup> day of December, 2010



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





## EXHIBIT N

### ANNEXATION SERVICE PLAN

SERVICE	DETAILS OF SERVICE PROVIDED	TIMETABLE
Animal Control	The provisions of animal control services shall be in effect following annexation of the property. At present, Kerr County provides such services within the City.	Immediately following annexation
Code Enforcement	The provisions of Code Enforcement services, including the application and enforcement of building, electrical, plumbing, and other related codes adopted by the City shall be made immediately to the area upon annexation. The preparation of a zoning plan shall serve as a basis for the zoning of land following annexation. The adoption of the zoning plan shall be in accordance with the procedures of the City's Zoning Ordinance.	Immediately following annexation, zoning to be concurrent with annexation
Fire Protection and Suppression	Fire protection and suppression personnel and equipment from the Fire Department will be provided to the area as needed.	Immediately following annexation
Fire Prevention	The services of the Fire Marshall shall be provided to the area as needed.	Immediately following annexation.
Library	Residents of the area will continue to be entitled to utilize the City's Library.	Immediately following annexation.
Parks and Recreation	Parks and Recreation services will continue to be available to area residents.	Immediately following annexation
Police Protection	Police Department personnel and equipment shall be provided to the area immediately upon annexation. Police	Immediately following annexation

SERVICE	DETAILS OF SERVICE PROVIDED	TIMETABLE
	enforcement and protection services shall be provided through regular patrol activities.	
Public Services - Street Department	Public streets not maintained by the Texas Department of Transportation within the annexed area shall be maintained by the City.	Immediately following annexation
Sanitation (Refuse Collection)	Refuse collection shall be available to residents of the annexed area at the same costs and procedures as required of City residents and businesses.	Immediately following annexation
Traffic Engineering	Traffic control devices and street markers shall be installed where deemed necessary by the City, except as provided by the Texas Department of Transportation.	Immediately following annexation
Utilities (Water Distribution and Wastewater Collection)	Extension of utilities to or within the property shall be in accordance with City policy and regulations.	Where applicable, pursuant to Development Agreements with individual property owners; or alternatively, as the property develops

T:\Legal\DEVELOPMENT SERVICES (planning)\Annexation\Harper HWY WW Project\Annexation Ordinance-area between City limits and JAC\_042011.docx

Ordinance No. 2011-\_\_\_; Annexation of Property between Town Creek and JAC

## **Agenda Item:**

**(Staff)**

- 6B. An ordinance annexing an approximate 43.72 acre tract of land, being all of a revision of Hartshorn Country Sites, a subdivision of record found at volume 7, page 148, plat records of Kerr County, Texas, and all of the James Avery Craftsman subdivision, a subdivision of record found at volume 7, page 149, plat records of Kerr County, Texas, and those portions of Avery Road North and Lessie Lane, public roads located within and between the two subdivisions; and said property lying adjacent to the corporate limits of the city of Kerrville, Texas, within the city's extraterritorial jurisdiction, and generally located at and east of the intersection of Harper Road (RR 783) and Avery Road North; providing a legal description of the tract to be annexed; adopting a service plan for the tract annexed; establishing the zoning for the area annexed by creating a "planned development district" for said area; making said district subject to certain conditions and restrictions; containing a cumulative clause; containing a savings and severability clause; establishing a penalty or fine not to exceed two thousand dollars (\$2,000.00); ordering publication; and providing other matters relating to the subject.

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

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**SUBJECT:** Annexation and Zoning Ordinance, First Reading – Consider a proposed annexation into the Kerrville City Limits of a 43.72 acre tract generally located at and along the intersection of Harper Road (RM 783) and Avery Road and adjacent to the north property line of the American Bank of Texas property. (File No. 2011-07)

**FOR AGENDA OF:** April 26, 2011

**DATE SUBMITTED:** April 15, 2011

**SUBMITTED BY:** Gordon Browning 

**CLEARANCES:** Kevin Coleman 

**EXHIBITS:** Ordinance

**AGENDA MAILED TO:**

**APPROVED FOR SUBMITTAL BY CITY MANAGER:** 

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

**PAYMENT TO BE MADE TO:**

**REVIEWED BY THE FINANCE DIRECTOR:**

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**SUMMARY STATEMENT**

Annexation-Zoning Timeline:

- January 25, 2011 – City Council accepts the annexation petition from James Avery Craftsman, Inc. for a 43.72 acre tract. (Resolution No. 006-2011)
- February 23, 2011 – Notice of the required public hearing is published in The Kerrville Daily Times.
- March 3, 2011 – Planning and Zoning Commission (P&Z) public hearing on the proposed annexation and recommendation of zoning designation to the City Council.
- March 8, 2011 – City Council conducts the first required public hearing on the proposed annexation.
- March 10, 2011 – Notice of the second required public hearing published in The Kerrville Daily Times and written notification to property owners, franchise utilities, Texas Department of Transportation (TxDOT) and Kerrville Independent School District (KISD).

- March 22, 2011 – City Council conducts the second required public hearing on the proposed annexation.
- April 26, 2011 – **City Council considers an ordinance on first reading annexing and zoning the subject property.**
- May 10, 2011 – City Council considers an ordinance on second and final reading annexing and zoning the subject property.

Summary:

- City Council adopts Resolution No. 006-2011, granting the petition for annexation of the subject 43.72 acre tract.
- Staff recommends a zoning designation of PDD (Planned Development District for Jewelry Manufacturing) for the property. This designation will accommodate the existing operation as well as provide for any future expansion that may take place within the boundaries of the current facility.
- The James Avery Craftsman property is a developed manufacturing operation. Once annexed the property will have the ability to be fully connected to City utilities
- The Planning and Zoning Commission at their March 3, 2011 meeting, following a public hearing, recommended annexing the subject tract with a zoning designation of PDD. No one from the public appeared at the public hearing.
- All required public hearings have been held per state and local codes.

**RECOMMENDED ACTION**

Approve ordinance on first reading.

CITY OF KERRVILLE, TEXAS  
ORDINANCE NO. 2011-\_\_\_

AN ORDINANCE ANNEXING AN APPROXIMATE 43.72 ACRE TRACT OF LAND, BEING ALL OF A REVISION OF HARTSHORN COUNTRY SITES, A SUBDIVISION OF RECORD FOUND AT VOLUME 7, PAGE 148, PLAT RECORDS OF KERR COUNTY, TEXAS, AND ALL OF THE JAMES AVERY CRAFTSMAN SUBDIVISION, A SUBDIVISION OF RECORD FOUND AT VOLUME 7, PAGE 149, PLAT RECORDS OF KERR COUNTY, TEXAS, AND THOSE PORTIONS OF AVERY ROAD NORTH AND LESSIE LANE, PUBLIC ROADS LOCATED WITHIN AND BETWEEN THE TWO SUBDIVISIONS; SAID PROPERTY LYING ADJACENT TO THE CORPORATE LIMITS OF THE CITY OF KERRVILLE, TEXAS, WITHIN THE CITY'S EXTRATERRITORIAL JURISDICTION, AND GENERALLY LOCATED AT AND EAST OF THE INTERSECTION OF HARPER ROAD (RR 783) AND AVERY ROAD NORTH; PROVIDING A LEGAL DESCRIPTION OF THE TRACT TO BE ANNEXED; ADOPTING A SERVICE PLAN FOR THE TRACT ANNEXED; ESTABLISHING THE ZONING FOR THE AREA ANNEXED BY CREATING A "PLANNED DEVELOPMENT DISTRICT" FOR SAID AREA; MAKING SAID DISTRICT SUBJECT TO CERTAIN CONDITIONS AND RESTRICTIONS; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; ESTABLISHING A PENALTY OR FINE NOT TO EXCEED TWO THOUSAND DOLLARS (\$2,000.00); ORDERING PUBLICATION; AND PROVIDING OTHER MATTERS RELATING TO THE SUBJECT

WHEREAS, Section 1.06 of the Charter for the City of Kerrville, Texas, as well as state law, authorizes the City to annex territory, subject to the procedure and limitations of state law; and

WHEREAS, pursuant to Texas Local Government Code Sections 43.028 and 43.052(h)(2), the owner of the property described in Section One, below, has petitioned the City to annex its property into the corporate limits of the City of Kerrville, Texas; and

WHEREAS, City staff, based upon generally accepted municipal planning principles and practices, recommends annexing those public roadways which lie adjacent to the property which is the subject of the annexation petition, to include the annexation of the entire width of the roadway and the adjacent right-of-way in accordance with Section 43.106 of the Texas Local Government Code; and

WHEREAS, the procedures prescribed by the Charter of the City of Kerrville, Texas, and the laws of this state have been duly followed with respect to the property described for annexation; and

WHEREAS, notice has been given to all parties in interest and citizens by publication in the official newspaper and otherwise, of hearings to be held before the City Council on April 26, 2011, and May 10, 2011, to consider said annexation and the establishment of the initial zoning

of the property described in Section One through the creation of a "Planned Development District"; and

**WHEREAS**, such public hearings were held in the Council Chambers beginning on or after 6:00 p.m. on April 26, 2011, and May 10, 2011, as advertised; and

**WHEREAS**, having provided all required public notices, held all required public hearings at which people with an interest in the matter were provided an opportunity to be heard, the City Council of the City of Kerrville, Texas, finds it to be in the public interest to approve an ordinance annexing the subject property, adopting a service plan as required by state law, and establishing zoning regulations for the annexed property;

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

**SECTION ONE.** The property described in **Exhibit A** and depicted in **Exhibit B**, which is attached hereto and incorporated herein for all purposes (the "Property"), is annexed and incorporated into the corporate limits of the City of Kerrville, Texas, for all legal purposes.

**SECTION TWO.** The service plan regarding the provision of public services set forth in **Exhibit C**, attached hereto and incorporated herein by reference, is adopted for the Property, as required by Texas Local Government Code §43.056.

**SECTION THREE.** Upon the adoption of this Ordinance, the Property shall be placed in and constitute a newly described Planned Development District for "Jewelry Manufacturing and Sales". For purposes of this Ordinance, "Jewelry Manufacturing and Sales" is defined as follows:

*Jewelry Manufacturing and Sales* means an establishment primarily engaged in the manufacturing of jewelry and includes the operational components necessary to conduct said operation such as the design, product development, production, repair, engraving, distribution, administration, marketing, and sales.

**SECTION FOUR.** The Property may be used and developed for Jewelry Manufacturing and Sales as defined in Section Three, above. All existing buildings, structures, facilities, parking lots, and signage, as depicted on the survey layout attached as **Exhibit D**, shall be considered in compliance with this Planned Development District.

**SECTION FIVE.** Any future development to the Property to include additional or expanded buildings, structures, facilities, parking lots, and signage shall be subject to the following development standards:

- a. Development Site Plan: Prior to the issuance of any building permit, a Development Site Plan shall be submitted to the City for review and approval pursuant to the City's regulations.

- b. Parking: The design, number of parking spaces, and aisle dimensions shall be in accordance with the regulations in effect at the time building permit applications are submitted to the City.
- c. Sidewalks: The construction of sidewalks shall be required in accordance with the regulations in effect at the time building permit applications are submitted to the City.
- d. Setback Requirements: The Property shall be developed with minimum setbacks from property lines as follows:
  - i. Front and Rear – 25.0 feet;
  - ii. Interior Side Yards – 5.0 feet; and
  - iii. Exterior Side Yards – 15.0 feet.
- e. Signs: The design, installation, location, and maintenance of signs shall be in accordance with the City’s sign regulations in effect at the time that permits are submitted to the City.
- f. Trash and Other Solid Waste: Solid waste collection bins and dumpsters shall be equipped with lids and screened with a gate with an opaque screen on one side and masonry material finished to look substantially like the closest adjacent building on the remaining three (3) sides.
- g. Outdoor Parking Lot Lighting: All parking lot pole lights shall be of a “shoe box” design and shall be located, shielded, and aimed in such a manner so as not to allow light to fall directly on adjacent public roadways and/or properties.

**SECTION SIX.** 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, including the City’s Zoning, Subdivision, and Sign Ordinances; 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 SEVEN.** 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 EIGHT.** The penalty for violation of this Ordinance shall be in accordance with the general penalty provisions contained in Article 1-I-9 of the Code of Ordinances of the

City of Kerrville, Texas, which provides for a fine not exceeding TWO THOUSAND DOLLARS (\$2,000.00).

**SECTION NINE.** 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.

**PASSED AND APPROVED ON FIRST READING, this the \_\_\_\_\_ day of \_\_\_\_\_, A.D., 2011.**

**PASSED AND APPROVED ON SECOND AND FINAL READING, this the \_\_\_\_\_ day of \_\_\_\_\_, A.D., 2011.**

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

ATTEST:

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

APPROVED AS TO FORM



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

EXHIBIT "A"

FIELD NOTE DESCRIPTION  
43.72 ACRES

Being a tract of land containing 43.72 acres situated all in Kerr County, Texas and being all of A Revision of Hartshorn Country Sites, a subdivision of record in Volume 7, Page 148, Plat Records of Kerr County, and all of the James Avery Craftsman Subdivision, a subdivision of record in Volume 7, Page 149, Plat Records of Kerr County, and the portions of Avery Road N and Lessie Lane within and between the two subdivisions and being more particularly described by metes and bounds as follows:

BEGINNING at a ½" iron rod found for the southeast corner of a 3.03 acre tract of record in Volume 267, Page 434, Deed Records of Kerr County and being a north corner of a 483.44 acre tract of record in Volume 910, Page 577, Real Property Records of Kerr County and being the northeast corner of Tract One of said James Avery Craftsman Subdivision and being a northeast corner of the subject tract;

THENCE with the common lines of said 483.44 acre tract and the subject tract, the following calls:

S 09° 28' 50" W for 731.98 feet to an 8" steel fence corner post found for an angle point;  
S 77° 05' 21" W for 160.19 feet to a ½" iron rod found at a fence corner post for an angle point;  
S 20° 47' 31" W for 36.80 feet to a ½" iron rod found at an 8" fence corner post for an angle point;  
S 86° 47' 11" W for 21.38 feet to a ½" iron rod found at an 8" fence corner post for an angle point;  
S 00° 16' 52" E for 273.80 feet to an 8" steel fence corner post for a southeast corner of the subject tract;  
S 72° 27' 38" W for 798.79 feet to a ½" iron rod found in concrete at a fence corner post for a southeast corner of a 5.66 acre tract of record in Volume 261, Page 504, Deed Records of Kerr County and being a southwest corner of the subject tract;

THENCE with the common lines of said 5.66 acre tract and the subject tract, the following calls:

N 07° 28' 58" E for 391.87 feet to a 3/8" iron rod found at a 2" fence angle post for an angle point;  
N 01° 20' 36" W for 94.16 feet to a 2" steel fence corner post found for the northeast corner of said 5.66 acre tract;  
S 87° 16' 08" W for 110.49 feet to a ½" iron rod found at a 2" fence angle post for an angle point;  
N 87° 40' 13" W for 403.70 feet to a ½" iron rod found in the easterly right of way line of Texas F.M. Highway No. 783 (A.K.A. Harper Road) and being the northwest corner of said 5.66 acre tract;

THENCE with the easterly right of way line of said F.M. Highway No. 783, the following calls:

N 19° 08' 52" W for 90.90 feet to a ½" iron rod found for an angle point;  
N 59° 34' 40" W for 58.41 feet to a ½" iron rod found at the intersection of the east right of way line of the aforementioned Avery Road N and said easterly right of way line of F.M. Highway No. 783;  
N 59° 34' 40" W for 188.68 feet to a ½" iron rod found at the intersection of the north right of way line of said Avery Road N and the easterly right of way line of said F.M. Highway No. 783 and being a south corner of a 0.51 acre Green Area of the aforementioned James Avery Craftsman Subdivision;

N 58° 47' 55" W for 162.28 feet to a ½" iron rod found for the northwest corner of said 0.51 acre Green Area and being a southerly corner of Tract One of said A Revision of Hartshorn Country Sites;

N 60° 14' 00" W for 241.98 feet to a ½" iron rod found for an angle point;

N 47° 57' 00" W for 39.85 feet to a ½" iron rod found for an angle point;

N 32° 25' 00" W for 41.24 feet to a ½" iron rod found for an angle point;

N 20° 37' 00" W for 62.62 feet to a ½" iron rod found for an angle point;

N 09° 39' 00" W for 74.35 feet to a ½" iron rod found for an angle point;

N 03° 55' 00" W for 36.69 feet to a ½" iron rod found for an angle point;

N 00° 58' 14" E for 15.79 feet to a ½" iron rod found for an angle point;

N 04° 01' 00" E for 96.57 feet to a ½" iron rod found for an angle point;

N 06° 58' 00" E for 178.50 feet to a ½" iron rod found at the intersection of the south right of way line of Hartshorn Drive and the easterly right of way line of said F.M. Highway No. 783;

THENCE with the south right of way lines of said Hartshorn Drive, the following calls:

N 53° 05' 00" E for 213.65 feet to a ½" iron rod found for an angle point;

N 62° 44' 00" E for 67.98 feet to a ½" iron rod found for an angle point;

N 66° 46' 00" E for 40.17 feet to a ½" iron rod found for an angle point;

N 76° 37' 00" E for 9.84 feet to a ½" iron rod found for an angle point;

N 76° 53' 00" E for 261.34 feet to a ½" iron rod found for the northwest corner of Site 10 of Hartshorn Country Sites, a subdivision of record in Volume 1, Page 68-69 Plat Records of Kerr County and being the northeast corner of said Tract One of said A Revision of Hartshorn Country Sites;

THENCE with the common line of said Site 10 and the subject tract, S 16° 47' 00" E for 359.80 feet to a ½" iron rod found for the northwest corner of a tract of land conveyed to Edward A Schoening of record in Volume 432, Page 588, Real Property Records of Kerr County;

THENCE with the common line of said Schoening's tract and the subject tract, S 16° 36' 55" E for 206.50 feet to a ½" iron rod found for the northwest corner of Tract Two of said A Revision of Hartshorn Sites;

THENCE with a south line of said Schoening's tract and subsequently another tract conveyed to Edward A Schoening of record in Volume 703, Page 588, Real Property Records of Kerr County and being the north line of said Tract Two, N 69° 40' 00" E for 451.37 feet to a ½" iron rod found in the west right of way line of the aforementioned Lessie Lane and being the north east corner of said Tract Two;

THENCE crossing said Lessie Lane, N 42° 48' 37" E for 46.64 feet to a ½" iron rod found for the southwest corner of a 0.08 acre tract of record in Volume 163, Page 728, Deed Records of Kerr County and being the northwest corner of Tract Three of said A Revision of Hartshorn Sites;

THENCE with the common line of said 0.08 acre tract and said Tract Three, N 73° 06' 00" E for 208.62 feet to a ½" iron rod found in the west line of Site 9 of the aforementioned Hartshorn Country Sites and being the northeast corner of said Tract Three;

THENCE with the common line of said Site 9 and said Tract Three, S 16° 50' 40" E for 240.84 feet to a ½" iron rod found in the north right of way line of the aforementioned Avery Road N and being the southeast corner of said Tract Three;

THENCE crossing said Avery Road N, S 16° 43' 33" E for 43.53 feet to a ½" iron rod found in the south right of way line of said Avery Road N and the north line of the aforementioned Tract One of James Avery Craftsman Subdivision and being the southwest corner of a 0.94 acre Green Area of said A Revision of Hartshorn Country Sites;

THENCE with the southerly right of way lines of said Avery Road N, the following calls:

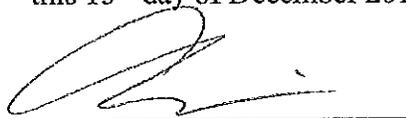
N 65° 00' 27" E for 86.78 feet to a ½" iron rod found for an angle point;  
N 54° 54' 00" E for 37.50 feet to a ½" iron rod found for an angle point;  
N 46° 17' 28" E for 37.55 feet to a ½" iron rod found for an angle point;  
N 40° 22' 14" E for 40.92 feet to a ½" iron rod found for an angle point;  
N 35° 18' 00" E for 130.10 feet to a 20" Live Oak tree found for an angle point;  
N 18° 31' 00" E for 47.80 feet to a ½" iron rod found for an angle point;  
N 08° 41' 00" E for 82.33 feet to a ½" iron rod found for an angle point;  
N 22° 48' 58" E for 25.67 feet to a ½" iron rod found for an angle point;  
N 38° 10' 07" E for 42.69 feet to a ½" iron rod found for an angle point;  
N 65° 11' 56" E for 62.84 feet to a ½" iron rod found in the approximate centerline of a creek and being the northwest corner the aforementioned 3.03 acre tract and the north corner of said 0.94 acre Green Area;

THENCE with the common lines of said 3.03 acre tract and the subject tract, with the approximate centerline of said creek the following calls:

S 16° 47' 56" W for 147.80 feet to a ½" iron rod set for an angle point;  
S 13° 52' 04" E for 133.10 feet to a ½" iron rod set for an angle point;  
S 26° 12' 04" E for 65.29 feet to a ½" iron rod set in the north line of said Tract One of James Avery Craftsman Subdivision and being the southeast corner of said 0.94 acre Green Area;

THENCE with the common line of said 3.03 acre tract and the subject tract, N 74° 47' 31" E for 392.64 feet to the POINT OF BEGINNING and containing 43.72 acres within these metes and bounds.

This description is a companion to a Plat of Survey dated December 8, 2010 and was prepared this 15<sup>th</sup> day of December 2010.



Charles Digges RPLS  
Texas Registration No. 4061  
File #10121401 msword DP

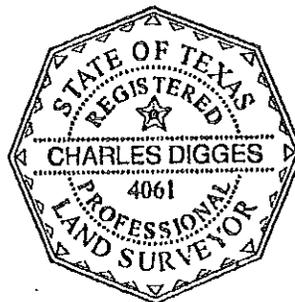


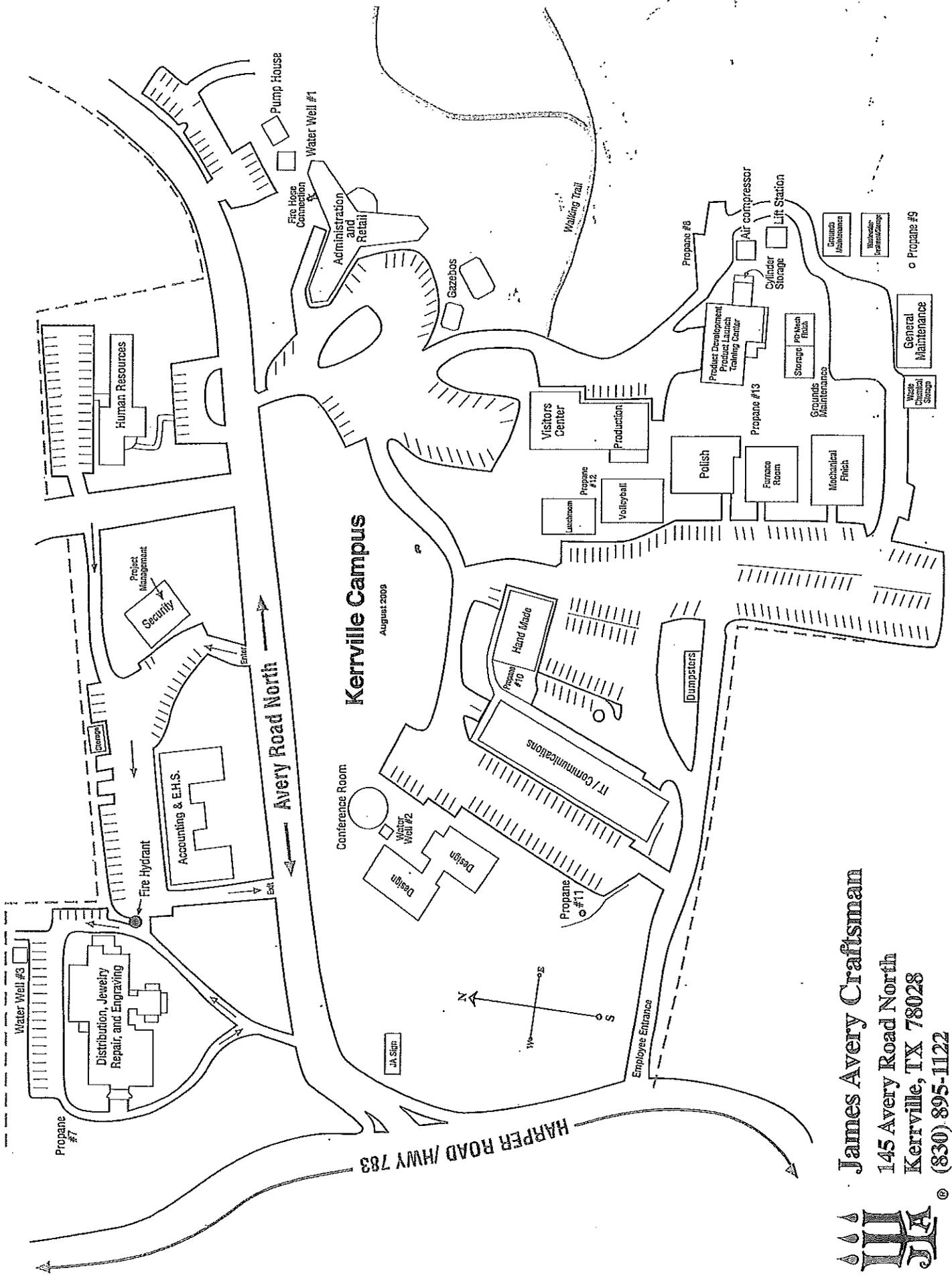


EXHIBIT C

ANNEXATION SERVICE PLAN

SERVICE	DETAILS OF SERVICE PROVIDED	TIMETABLE
Animal Control	The provisions of animal control services shall be in effect following annexation of the property.	Immediately following annexation
Code Enforcement	The provisions of Code Enforcement services, including the application and enforcement of building, electrical, plumbing, and other related code requirements adopted by the City of Kerrville shall be made immediately to the area upon annexation. The preparation of a zoning plan shall serve as a basis for the zoning of land following annexation. The adoption of the zoning plan shall be in accordance with the procedures of the City of Kerrville's Zoning Ordinance.	Immediately following annexation, zoning to be concurrent with annexation
Fire Protection and Suppression	Fire protection and suppression personnel and equipment from the Kerrville Fire Department will be provided to the area as needed.	Immediately following annexation
Fire Prevention	The services of the City of Kerrville Fire Marshall shall be provided to the area.	Immediately following annexation.
Library	Residents of the area, if any, will continue to be entitled to utilize all City of Kerrville Library facilities.	Immediately following annexation.
Parks and Recreation	City of Kerrville Parks and Recreation services will continue to be available to the area residents; if any.	Immediately following annexation
Police Protection	Police protection personnel and equipment shall be provided to the area immediately upon annexation. Police enforcement and protection services shall be provided through regular patrol activities.	Immediately following annexation

SERVICE	DETAILS OF SERVICE PROVIDED	TIMETABLE
Public Services - Street Department	Public streets not maintained by the Texas Department of Transportation within the area shall be maintained by the City of Kerrville.	Immediately following annexation
Sanitation (Refuse Collection)	Refuse collection shall be available to residents of the annexed area at the same costs and procedures as required of City residents and businesses.	Immediately following annexation
Traffic Engineering	Traffic control devices and street markers shall be installed where deemed necessary by the city street department, except as provided by the Texas Department of Transportation.	Immediately following annexation
Utilities (Water Distribution and Wastewater Collection)	Extension of utilities within the property shall be in accordance with the City of Kerrville's Subdivision Ordinance.	As the property develops



**Kerville Campus**  
August 2009

**James Avery Craftsman**  
 145 Avery Road North  
 Kerrville, TX 78028  
 (830) 895-1122



EXHIBIT D

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

- 7A. Ordinance authorizing the issuance, sale and delivery of approximately \$6,305,000 in aggregate principal amount of "City of Kerrville, Texas Combination Tax and Revenue Certificates of Obligation, series 2011"; securing the payment thereof by authorizing the levy of an annual ad valorem tax and a pledge of certain surplus revenues of the city's waterworks and sewer system; and approving and authorizing the execution of a paying agent/registrar agreement, a purchase contract, an official statement and all other instruments and procedures related thereto.

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

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**SUBJECT:** First Reading and Only Reading of an Ordinance Authorizing Issuance of 2011 Certificates of Obligation for Water and Wastewater Projects in the Amount of \$6,305,000.

**FOR AGENDA OF:** April 26, 2011      **DATE SUBMITTED:** April 14, 2011

**SUBMITTED BY:** Mike Erwin      **CLEARANCES:** Todd Parton  
Director of Finance      City Manager

**EXHIBITS:** Ordinance and agreements will be completed after the April 26, 2011 pricing and will be distributed.

**AGENDA MAILED TO:**

**APPROVED FOR SUBMITTAL BY CITY MANAGER:**



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

**PAYMENT TO BE MADE TO:**

**REVIEWED BY THE DIRECTOR OR FINANCE:**

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**SUMMARY STATEMENT**

The FY 11 budget includes CIP projects funded by Certificates of Obligation (COs). While COs are backed by the full faith and credit of the City, the water/wastewater debt that will be issued for these projects will be funded with revenue from the water/wastewater fund which is dedicated to these specific purposes. The debt will be used to acquire, construct and equip extensions and/or improvements to the City's water and wastewater systems and to pay the costs associated with issuance of the Certificates.

The aggregate amount of certificates of obligation is \$6,305,000. Because it is less than \$10,000,000, this issue will be bank qualified which should make it more attractive to banks because of the tax benefits associated with this type of issue.

**RECOMMENDED ACTION**

Approve first and only reading of the ordinance authorizing issuance of 2011 Certificates of Obligation in the amount of \$6,305,000.

**CITY OF KERRVILLE, TEXAS  
ORDINANCE NO. \_\_\_\_-2011**

**ORDINANCE AUTHORIZING THE ISSUANCE, SALE AND DELIVERY OF \$6,305,000.00 IN AGGREGATE PRINCIPAL AMOUNT OF "CITY OF KERRVILLE, TEXAS COMBINATION TAX AND REVENUE CERTIFICATES OF OBLIGATION, SERIES 2011"; SECURING THE PAYMENT THEREOF BY AUTHORIZING THE LEVY OF AN ANNUAL AD VALOREM TAX AND A PLEDGE OF CERTAIN SURPLUS REVENUES OF THE CITY'S WATERWORKS AND SEWER SYSTEM; AND APPROVING AND AUTHORIZING THE EXECUTION OF A PAYING AGENT/REGISTRAR AGREEMENT, A PURCHASE CONTRACT, AN OFFICIAL STATEMENT AND ALL OTHER INSTRUMENTS AND PROCEDURES RELATED THERETO**

**WHEREAS**, the **CITY OF KERRVILLE, TEXAS** (the "*City*") in Kerr County, Texas, is a political subdivision of the State of Texas operating as a home-rule city pursuant to the Texas Local Government Code and its City Charter which was initially approved by the qualified voters of the City on February 24, 1942, and which has been amended from time to time, with the most recent amendments being approved by the qualified voters of the City on May 20, 2008; and

**WHEREAS**, the City Council of the City hereby determines that it is necessary and desirable to acquire, construct and equip extensions and improvements to the City's waterworks and sewer system (collectively, the "*Project*"); and

**WHEREAS**, the City Council of the City intends to finance the Project from proceeds derived from the sale of Certificates of Obligation issued by the City pursuant to Sections 271.041 - 271.065, Texas Local Government Code, as amended; and

**WHEREAS**, on March 8, 2011, the City Council adopted a resolution authorizing and directing the City Secretary to give notice of intention to issue Certificates of Obligation; and

**WHEREAS**, said notice has been duly published in the *Kerrville Daily Times*, which is a newspaper of general circulation in the City in its issues of March 11, 2011, and March 18, 2011; and

**WHEREAS**, the City received no petition signed by at least five percent of the qualified electors of the City protesting the issuance of such Certificates of Obligation; and

**WHEREAS**, it is considered to be in the best interest of the City that said interest bearing Certificates of Obligation be issued; and

WHEREAS, it is hereby officially found and determined that the meeting at which this Ordinance was passed was open to the public, and public notice of the time, place and purpose of said meeting was given, all as required by Chapter 551, Texas Government Code;

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

**SECTION ONE. AMOUNT AND PURPOSE OF THE CERTIFICATES OF OBLIGATION.** The certificate of obligation or certificates of obligation of the City further described in Section Two of this Ordinance and referred to herein as the "Certificates of Obligation" are hereby authorized to be issued and delivered in the aggregate principal amount of ***\$6,305,000.00 FOR THE PURPOSE OF PAYING, IN WHOLE OR IN PART, CONTRACTUAL OBLIGATIONS TO BE INCURRED TO ACQUIRE, CONSTRUCT AND EQUIP EXTENSIONS AND IMPROVEMENTS TO THE CITY'S WATERWORKS AND SEWER SYSTEM AND TO PAY COSTS OF ISSUANCE.***

**SECTION TWO. DESIGNATION, DATE, DENOMINATIONS, NUMBERS AND MATURITIES OF THE CERTIFICATES OF OBLIGATION.** Each certificate of obligation issued pursuant to and for the purpose described in Section One of this Ordinance shall be designated: **CITY OF KERRVILLE, TEXAS COMBINATION TAX AND REVENUE CERTIFICATES OF OBLIGATION, SERIES 2011**, and initially there shall be issued, sold and delivered hereunder one fully registered certificate of obligation, without interest coupons, dated February 1, 2011, in the aggregate principal amount of ***\$6,305,000.00***, numbered T-1 (the "***Initial Certificate of Obligation***"), with certificates of obligation issued in replacement thereof being in the denomination of \$5,000 or any integral multiple thereof and numbered consecutively from R-1 upward, all payable to the initial registered owner thereof (with the Initial Certificate of Obligation being payable to the initial purchaser designated in Section Sixteen hereof), or to the registered assignee or assignees of said certificates of obligation or any portion or portions thereof (in each case, the "***Registered Owner***"), and the certificates of obligation shall mature and be payable serially on ***August 15*** in each of the years and in the principal amounts, respectively, as set forth in the following schedule:

YEAR OF MATURITY	PRINCIPAL AMOUNT (\$)	YEAR OF MATURITY	PRINCIPAL AMOUNT (\$)	YEAR OF MATURITY	PRINCIPAL AMOUNT (\$)
2011		2018		2025	
2012		2019		2026	
2013		2020		2027	
2014		2021		2028	
2015		2022		2029	

2016		2023		2030	
2017		2024			

The term “*Certificates of Obligation*” as used in this Ordinance shall mean and include the Certificates of Obligation initially issued and delivered pursuant to this Ordinance and all substitute certificates of obligation exchanged therefor, as well as all other substitute certificates of obligation and replacement certificates of obligation issued pursuant hereto, and the term “*Certificate of Obligation*” shall mean any of the Certificates of Obligation.

**SECTION THREE. INTEREST.** The Certificates of Obligation shall bear interest calculated on the basis of a 360-day year composed of twelve 30-day months from the dates specified in the FORM CERTIFICATE OF OBLIGATION set forth in this Ordinance to their respective dates of maturity or prior redemption at the following rates per annum:

YEAR OF MATURITY	INTEREST RATE (%)	YEAR OF MATURITY	INTEREST RATE (%)	YEAR OF MATURITY	INTEREST RATE (%)
2011		2018		2025	
2012		2019		2026	
2013		2020		2027	
2014		2021		2028	
2015		2022		2029	
2016		2023		2030	
2017		2024			

Said interest shall be payable in the manner provided and on the dates stated in the FORM OF CERTIFICATE OF OBLIGATION set forth in this Ordinance.

**SECTION FOUR. CHARACTERISTICS OF THE CERTIFICATES OF OBLIGATION; APPROVAL OF PAYING AGENT/REGISTRAR AGREEMENT.** *(a) Registration, Transfer, and Exchange; Authentication.* The City shall keep or cause to be kept at the designated corporate trust or commercial banking office (currently located in Houston, Texas) of **BOKF, NA dba BANK OF TEXAS** (the "**Paying Agent/Registrar**") books or records for the registration of the transfer and exchange of the Certificates of Obligation (the "**Registration Books**"), and the City hereby appoints the Paying Agent/Registrar as its registrar and transfer agent to keep such books or records and make such registrations of transfers and exchanges under such reasonable regulations as the City and Paying Agent/Registrar may prescribe; and the Paying Agent/Registrar shall make such registrations, transfers and exchanges as herein provided. Attached hereto as **Exhibit A** is a copy of the Paying Agent/Registrar Agreement between the City and the Paying Agent/Registrar which is hereby approved in substantially final form, and the Mayor, Mayor Pro-Tem and City Secretary of the City are hereby authorized to execute the Paying Agent/Registrar Agreement and approve any changes in the final form thereof.

The Paying Agent/Registrar shall obtain and record in the Registration Books the address of the registered owner of each Certificate of Obligation to which payments with respect to the Certificates of Obligation shall be mailed, as herein provided; but it shall be the duty of each registered owner to notify the Paying Agent/Registrar in writing of the address to which payments shall be mailed, and such interest payments shall not be mailed unless such notice has been given. To the extent possible and under reasonable circumstances, all transfers of Certificates of Obligation shall be made within three business days after request and presentation thereof. The City shall have the right to inspect the Registration Books during regular business hours of the Paying Agent/Registrar, but otherwise the Paying Agent/Registrar shall keep the Registration Books confidential and, unless otherwise required by law, shall not permit their inspection by any other entity. The Paying Agent/Registrar's standard or customary fees and charges for making such registration, transfer, exchange and delivery of a substitute Certificate of Obligation or Certificates of Obligation shall be paid as provided in the FORM CERTIFICATE OF OBLIGATION set forth in this Ordinance. Registration of assignments, transfers and exchanges of Certificates of Obligation shall be made in the manner provided and with the effect stated in the FORM OF CERTIFICATE OF OBLIGATION set forth in this Ordinance. Each substitute Certificate of Obligation shall bear a letter and/or number to distinguish it from each other Certificate of Obligation.

Except as provided in (c) below, an authorized representative of the Paying Agent/Registrar shall, before the delivery of any such Certificate of Obligation, date and manually sign the Paying Agent/Registrar's Authentication Certificate, and no such Certificate of Obligation shall be deemed to be issued or outstanding unless such Certificate is so executed. The Paying Agent/Registrar promptly shall cancel all paid Certificates of Obligation and Certificates of Obligation surrendered for transfer and exchange. No additional ordinances, orders, or resolutions need be passed or adopted by the governing body of the City or any other body or person so as to accomplish the foregoing transfer and exchange of any Certificate of Obligation or portion thereof, and the Paying Agent/Registrar shall provide for the printing,

execution, and delivery of the substitute Certificates of Obligation in the manner prescribed herein, and said Certificates of Obligation shall be of type composition printed on paper with lithographed or steel engraved borders of customary weight and strength. Pursuant to Chapter 1201, Texas Government Code, and particularly Subchapter D and Section 1201.067 thereof, the duty of transfer and exchange of Certificates of Obligation as aforesaid is hereby imposed upon the Paying Agent/Registrar, and, upon the execution of said Certificate, the transferred and exchanged Certificate of Obligation shall be valid, incontestable, and enforceable in the same manner and with the same effect as the Certificates of Obligation which initially were issued and delivered pursuant to this Ordinance, approved by the Attorney General, and registered by the Comptroller of Public Accounts.

*(b) Payment of Certificates of Obligation and Interest.* The City hereby further appoints the Paying Agent/Registrar to act as the paying agent for paying the principal of and interest on the Certificates of Obligation, all as provided in this Ordinance. The Paying Agent/ Registrar shall keep proper records of all payments made by the City and the Paying Agent/Registrar with respect to the Certificates of Obligation.

*(c) In General.* The Certificates of Obligation (i) shall be issued in fully registered form, without interest coupons, with the principal of and interest on such Certificates of Obligation to be payable only to the registered owners thereof, (ii) may be redeemed prior to their scheduled maturities (notice of which shall be given to the Paying Agent/Registrar by the City at least 50 days prior to any such redemption date), (iii) may be transferred and assigned, (iv) may be exchanged for other Certificates of Obligation, (v) shall have the characteristics, (vi) shall be signed, sealed, executed and authenticated, (vii) shall be payable as to principal and interest, and (viii) shall be administered and the Paying Agent/Registrar and the City shall have certain duties and responsibilities with respect to the Certificates of Obligation, all as provided, and in the manner and to the effect as required or indicated, in the FORM OF CERTIFICATE OF OBLIGATION set forth in this Ordinance. The Initial Certificate of Obligation is not required to be, and shall not be, authenticated by the Paying Agent/Registrar, but on each substitute Certificate of Obligation issued in exchange for the Initial Certificate of Obligation issued under this Ordinance the Paying Agent/Registrar shall execute the PAYING AGENT/REGISTRAR'S AUTHENTICATION CERTIFICATE, in the form set forth in the FORM OF CERTIFICATE OF OBLIGATION. In lieu of the executed Paying Agent/Registrar's Authentication Certificate described above, the Initial Certificate of Obligation delivered on the closing date (as further described in subparagraph (i) below) shall have attached thereto the Comptroller's Registration Certificate substantially in the form set forth in the FORM OF CERTIFICATE OF OBLIGATION below, manually executed by the Comptroller of Public Accounts of the State of Texas or by her duly authorized agent, which certificate shall be evidence that the Initial Certificate of Obligation has been duly approved by the Attorney General of the State of Texas and that it is a valid and binding obligation of the City, and has been registered by the Comptroller.

*(d) Substitute Paying Agent/Registrar.* The City covenants with the registered owners of the Certificates of Obligation that at all times while the Certificates of Obligation are outstanding

the City will provide a competent and legally qualified bank, trust company, financial institution, or other entity to act as and perform the services of Paying Agent/Registrar for the Certificates of Obligation under this Ordinance, and that the Paying Agent/Registrar will be one entity and shall be an entity registered with the Securities and Exchange Commission. The City reserves the right to, and may, at its option, change the Paying Agent/Registrar upon not less than 120 days written notice to the Paying Agent/Registrar, to be effective not later than 60 days prior to the next principal or interest payment date after such notice. In the event that the entity at any time acting as Paying Agent/Registrar (or its successor by merger, acquisition, or other method) should resign or otherwise cease to act as such, the City covenants that promptly it will appoint a competent and legally qualified bank, trust company, financial institution, or other agency to act as Paying Agent/Registrar under this Ordinance. Upon any change in the Paying Agent/Registrar, the previous Paying Agent/Registrar promptly shall transfer and deliver the Registration Books (or a copy thereof), along with all other pertinent books and records relating to the Certificates of Obligation, to the new Paying Agent/Registrar designated and appointed by the City. Upon any change in the Paying Agent/Registrar, the City promptly will cause a written notice thereof to be sent by the new Paying Agent/Registrar to each registered owner of the Certificates of Obligation, by United States mail, first-class postage prepaid, which notice also shall give the address of the new Paying Agent/Registrar. By accepting the position and performing as such, each Paying Agent/Registrar shall be deemed to have agreed to the provisions of this Ordinance, and a certified copy of this Ordinance shall be delivered to each Paying Agent/Registrar.

(e) Book-Entry Only System for Certificates of Obligation. The Certificates of Obligation issued in exchange for the Certificates of Obligation initially issued to the purchaser specified in Section Sixteen herein shall be initially issued in the form of a separate single fully registered Certificate of Obligation for each of the maturities thereof. Upon initial issuance, the ownership of each such Certificate of Obligation shall be registered in the name of Cede & Co., as nominee of The Depository Trust Company of New York ("**DTC**"), and except as provided in subsection (i) hereof, all of the outstanding Certificates of Obligation shall be registered in the name of Cede & Co., as nominee of DTC.

With respect to Certificates of Obligation registered in the name of Cede & Co., as nominee of DTC, the City and the Paying Agent/Registrar shall have no responsibility or obligation to any securities brokers and dealers, banks, trust companies, clearing corporations and certain other organizations on whose behalf DTC was created ("**DTC Participant**") to hold securities to facilitate the clearance and settlement of securities transaction among DTC Participants or to any person on behalf of whom such a DTC Participant holds an interest in the Certificates of Obligation. Without limiting the immediately preceding sentence, the City and the Paying Agent/Registrar shall have no responsibility or obligation with respect to (i) the accuracy of the records of DTC, Cede & Co. or any DTC Participant with respect to any ownership interest in the Certificates of Obligation, (ii) the delivery to any DTC Participant or any other person, other than a registered owner of the Certificates of Obligation, as shown on the Registration Books, of any notice with respect to the Certificates of Obligation, or (iii) the payment to any DTC Participant or any other person, other than a registered owner of

Certificates of Obligation, as shown in the Registration Books of any amount with respect to principal of or interest on the Certificates of Obligation. Notwithstanding any other provision of this Ordinance to the contrary, the City and the Paying Agent/Registrar shall be entitled to treat and consider the person in whose name each Certificate of Obligation is registered in the Registration Books as the absolute owner of such Certificate of Obligation for the purpose of payment of principal and interest with respect to such Certificate of Obligation, for the purpose of registering transfers with respect to such Certificate of Obligation, and for all other purposes whatsoever. The Paying Agent/Registrar shall pay all principal of and interest on the Certificates of Obligation only to or upon the order of the registered owners, as shown in the Registration Books as provided in this Ordinance, or their respective attorneys duly authorized in writing, and all such payments shall be valid and effective to fully satisfy and discharge the City's obligations with respect to payment of principal of and interest on the Certificates of Obligation to the extent of the sum or sums so paid. No person other than a registered owner, as shown in the Registration Books, shall receive a Certificate of Obligation certificate evidencing the obligation of the City to make payments of principal and interest pursuant to this Ordinance. Upon delivery by DTC to the Paying Agent/Registrar of written notice to the effect that DTC has determined to substitute a new nominee in place of Cede & Co., and subject to the provisions in this Ordinance with respect to interest checks being mailed to the registered owner at the close of business on the Record Date, the words "Cede & Co." in this Ordinance shall refer to such new nominee of DTC.

(f) *Successor Securities Depository; Transfers Outside Book-Entry Only Systems.* In the event that the City determines that DTC is incapable of discharging its responsibilities described herein and in the representation letter of the City to DTC or that it is in the best interest of the beneficial owners of the Certificates of Obligation that they be able to obtain certificated Certificates of Obligation, the City shall (i) appoint a successor securities depository, qualified to act as such under Section 17(a) of the Securities and Exchange Act of 1934, as amended, notify DTC and DTC Participants of the appointment of such successor securities depository and transfer one or more separate Certificates of Obligation to such successor securities depository or (ii) notify DTC and DTC Participants of the availability through DTC of Certificates of Obligation and transfer one or more separate Certificates of Obligation to DTC Participants having Certificates of Obligation credited to their DTC accounts. In such event, the Certificates of Obligation shall no longer be restricted to being registered in the Registration Books in the name of Cede & Co., as nominee of DTC, but may be registered in the name of the successor securities depository, or its nominee, or in whatever name or names registered owners transferring or exchanging Certificates of Obligation shall designate, in accordance with the provisions of this Ordinance.

(g) *Payments to Cede & Co.* Notwithstanding any other provision of this Ordinance to the contrary, so long as any Certificate of Obligation is registered in the name of Cede & Co., as nominee for DTC, all payments with respect to principal of and interest on such Certificate of Obligation and all notices with respect to such Certificate of Obligation shall be made and given, respectively, in the manner provided in the representation letter of the City to DTC.

(h) DTC Letter of Representations. The officers of the City are herein authorized for and on behalf of the City and as officers of the City to enter into one or more Letters of Representations with DTC establishing the book-entry only system with respect to the Certificates of Obligation.

(i) Delivery of Initial Certificate of Obligation. On the closing date, one Initial Certificate of Obligation representing the entire principal amount of the respective series of Certificates of Obligation, payable in stated installments to the initial registered owner named in Section Sixteen of this Ordinance or its designee, executed by manual or facsimile signature of the Mayor or Mayor Pro-Tem and City Secretary of the City, approved by the Attorney General of Texas, and registered and manually signed by the Comptroller of Public Accounts of the State of Texas, will be delivered to the initial purchaser or its designee. Upon payment for the Initial Certificate of Obligation, the Paying Agent/Registrar shall cancel the Initial Certificate of Obligation and deliver to the initial registered owner or its designee one registered definitive Certificate of Obligation for each year of maturity of the Certificates of Obligation, in the aggregate principal amount of all of the Certificates of Obligation for such maturity.

**SECTION FIVE. FORM OF CERTIFICATE OF OBLIGATION.** The form of the Certificates of Obligation, including the form of Paying Agent/Registrar's Authentication Certificate, the form of Assignment, and the form of Registration Certificate of the Comptroller of Public Accounts of the State of Texas (to be attached only to the Certificates of Obligation initially issued and delivered pursuant to this Ordinance), shall be, respectively, substantially as follows, with such appropriate variations, omissions, or insertions as are permitted or required by this Ordinance.

**FORM OF CERTIFICATE OF OBLIGATION**

R-\_\_ UNITED

STATES

OF

AMERICA  
PRINCIPAL  
AMOUNT  
\$ \_\_\_\_\_

STATE OF TEXAS

COUNTY OF KERR

CITY OF KERRVILLE, TEXAS

COMBINATION TAX AND REVENUE CERTIFICATES OF OBLIGATION

SERIES 2011

INTEREST RATE	MATURITY DATE	DATE OF SERIES	CUSIP NO.
____%	August 15, 20__	April 15, 2011	492422 ____

**REGISTERED OWNER:**

**PRINCIPAL AMOUNT:**

*ON THE MATURITY DATE* specified above, the *CITY OF KERRVILLE, TEXAS* (the "*City*"), being a political subdivision and home-rule municipality of the State of Texas, hereby promises to pay to the Registered Owner specified above, or registered assigns (hereinafter called the "*Registered Owner*"), the Principal Amount specified above, and to pay interest thereon (calculated on the basis of a 360-day year of twelve 30-day months) from the date of initial delivery of the series of which this Certificate of Obligation is a part (as shown on the records of the Paying Agent/Registrar identified below) at the Interest Rate per annum specified above, payable on August 15, 2011, and semiannually on each February 15 and August 15 thereafter to the Maturity Date specified above, or the date of redemption prior to maturity; except that if this Certificate of Obligation is required to be authenticated and the date of its authentication is later than the first Record Date (hereinafter defined), such Principal Amount shall bear interest from the interest payment date next preceding the date of authentication, unless such date of authentication is after any Record Date but on or before the next following interest payment date, in which case such principal amount shall bear interest from such next following interest payment date; provided, however, that if on the date of authentication hereof the interest on the Certificate of Obligation or Certificates of Obligation, if any, for which this Certificate of Obligation is being exchanged is due but has not been paid, then this Certificate of Obligation shall bear interest from the date to which such interest has been paid in full.

*THE PRINCIPAL OF AND INTEREST ON* this Certificate of Obligation are payable in lawful money of the United States of America, without exchange or collection charges. The principal of this Certificate of Obligation shall be paid to the Registered Owner hereof upon presentation and surrender of this Certificate of Obligation at maturity or upon the date fixed for redemption prior to maturity, at the designated corporate trust or commercial banking office

(currently located in Houston, Texas) of **BOKF, NA dba BANK OF TEXAS**, which is the "**Paying Agent/Registrar**" for this Certificate of Obligation. The payment of interest on this Certificate of Obligation shall be made by the Paying Agent/Registrar to the Registered Owner hereof on each interest payment date by check, dated as of such interest payment date, drawn by the Paying Agent/Registrar on, and payable solely from, funds of the City required by the Ordinance authorizing the issuance of this Certificate of Obligation (the "**Ordinance**") to be on deposit with the Paying Agent/Registrar for such purpose as hereinafter provided; and such check shall be sent by the Paying Agent/Registrar by United States mail, first-class postage prepaid, on each such interest payment date, to the Registered Owner hereof, at its address as it appeared on the last business day of the month next preceding each such date (the "**Record Date**") on the Registration Books kept by the Paying Agent/Registrar, as hereinafter described. In the event of a non-payment of interest on a scheduled payment date, and for 30 days thereafter, a new record date for such interest payment (a "**Special Record Date**") will be established by the Paying Agent/Registrar if and when funds for the payment of such interest have been received from the City. Notice of the Special Record Date and of the scheduled payment date of the past due interest (the "**Special Payment Date**" which shall be 15 days after the Special Record Date) shall be sent at least five business days prior to the Special Record Date by United States mail, first class, postage prepaid, to the address of each Registered Owner appearing on the Registration Books of the Paying Agent/Registrar at the close of business on the last business day next preceding the date of mailing of such notice. Any accrued interest due upon the redemption of this Certificate of Obligation prior to maturity as provided herein shall be paid to the Registered Owner upon presentation and surrender of this Certificate of Obligation for redemption and payment at the designated corporate trust office of the Paying Agent/Registrar (unless the redemption date is a regularly scheduled interest payment date, in which case accrued interest on such redeemed Certificates of Obligation shall be payable in the regular manner described above). The City covenants with the Registered Owner of this Certificate of Obligation that on or before each principal payment date, interest payment date and accrued interest payment date for this Certificate of Obligation it will make available to the Paying Agent/Registrar, from the "Interest and Sinking Fund" created by the Ordinance, the amounts required to provide for the payment, in immediately available funds, of all principal of and interest on the Certificates of Obligation, when due.

**IF THE DATE** for the payment of the principal of or interest on this Certificate of Obligation shall be a Saturday, Sunday, legal holiday, or day on which banking institutions in the city where the Paying Agent/Registrar is located are authorized by law or executive order to close, or the United States Postal Service is not open for business, then the date for such payment shall be the next succeeding day which is not such a Saturday, Sunday, legal holiday, or day on which banking institutions are authorized to close, or the United States Postal Service is not open for business; and payment on such date shall have the same force and effect as if made on the original date payment was due.

**THIS CERTIFICATE OF OBLIGATION** is one of a series of Certificates of Obligation dated as of April 15, 2011, authorized in accordance with the Constitution and laws of the State of Texas in the aggregate principal amount of \$ \_\_\_\_\_ **FOR THE PURPOSE OF**

**PAYING, IN WHOLE OR IN PART, CONTRACTUAL OBLIGATIONS TO BE INCURRED TO ACQUIRE, CONSTRUCT AND EQUIP EXTENSIONS AND IMPROVEMENTS TO THE CITY'S WATERWORKS AND SEWER SYSTEM AND TO PAY COSTS OF ISSUANCE.**

ON AUGUST 15, 20\_\_, or on any date thereafter, the Certificates of Obligation of this Series maturing on and after August 15, 20\_\_, may be redeemed prior to their scheduled maturities, at the option of the City, with funds derived from any available and lawful source, as a whole, or in part (provided that a portion of a Certificate of Obligation may be redeemed only in an integral multiple of \$5,000), at the redemption price of the principal amount of Certificates of Obligation called for redemption, plus accrued interest thereon to the date fixed for redemption. The City shall determine the maturity or maturities, and the principal amount of Certificates of Obligation within each maturity, to be redeemed. If less than all Certificates of Obligation of a maturity are to be redeemed, the particular Certificates of Obligation to be redeemed shall be selected by the Paying Agent/Registrar at random and by lot.

**ADDITIONALLY, THE CERTIFICATES OF OBLIGATION MATURING** on August 15 in the years 20\_\_, 20\_\_, and 20\_\_ (collectively, the "*Term Certificates*") are subject to mandatory redemption prior to maturity in part by lot, at a price equal to the principal amount thereof plus accrued interest to the date of redemption, on the dates and in the respective principal amounts shown below:

TERM CERTIFICATES MATURING AUGUST 15, 20__		TERM CERTIFICATES MATURING AUGUST 15, 20__	
Mandatory Redemption Date	Redemption Amount	Mandatory Redemption Date	Redemption Amount
August 15, 20__	\$ _____	August 15, 20__	\$ _____
August 15, 20__ (maturity)	_____	August 15, 20__ (maturity)	_____

TERM CERTIFICATES MATURING AUGUST 15, 20__	
Mandatory Redemption Date	Redemption Amount
August 15, 20__	\$ _____
August 15, 20__ (maturity)	_____

The principal amount of the Term Certificates required to be redeemed pursuant to the operation of such mandatory redemption requirements may be reduced, at the option of the City, by the principal amount of any such Term Certificates which, prior to the date of the mailing of notice of such mandatory redemption, (i) shall have been acquired by the City and delivered to the Paying Agent/Registrar for cancellation, (ii) shall have been purchased and canceled by the Paying Agent/Registrar at the request of the City, or (iii) shall have been redeemed pursuant to the optional redemption provisions described in the preceding paragraph and not theretofore credited against a mandatory redemption requirement.

*AT LEAST 30 DAYS* prior to the date fixed for any redemption of Certificates of Obligation or portions thereof prior to maturity, a written notice of such redemption shall be sent by the Paying Agent/Registrar by United States mail, first-class postage prepaid to the Registered Owner of each Certificate of Obligation to be redeemed at its address as it appeared on the Registration Books maintained by the Paying Agent/Registrar on the day such notice of redemption is mailed. Any notice of redemption so mailed shall be conclusively presumed to have been duly given irrespective of whether received by the Registered Owner. The notice may state (1) that it is conditioned upon the deposit of moneys, in an amount equal to the amount necessary to effect the redemption, with the Paying Agent/Registrar no later than the redemption date, or (2) that the City retains the right to rescind such notice at any time prior to the scheduled redemption date if the City delivers a certificate of an authorized representative to the Paying Agent/Registrar instructing the Paying Agent/Registrar to rescind the redemption notice, and such notice and optional redemption shall be of no effect if such moneys are not so deposited or if such notice is so rescinded. By the date fixed for any such redemption, due provision shall be made with the Paying Agent/Registrar for the payment of the required redemption price for the Certificates of Obligation or portions thereof which are to be so redeemed. If such written notice of redemption is mailed (and not rescinded), and if due provision for such payment is made, all as provided above, the Certificates of Obligation or portions thereof which are to be so redeemed thereby automatically shall be treated as redeemed prior to their scheduled maturities, and they shall not bear interest after the date fixed for redemption, and they shall not be regarded as being outstanding except for the right of the Registered Owner to receive the redemption price from the Paying Agent/Registrar out of the funds provided for such payment. If a portion of any Certificate of Obligation shall be redeemed a substitute Certificate of Obligation or Certificates of Obligation having the same maturity date, bearing interest at the same rate, in any denomination or denominations in any integral multiple of \$5,000, at the written request of the Registered Owner, and in an aggregate principal amount equal to the unredeemed portion thereof, will be issued to the Registered Owner upon the surrender thereof for cancellation, at the expense of the City, all as provided in the Ordinance.

*ALL CERTIFICATES OF OBLIGATION OF THIS SERIES* are issuable solely as fully registered Certificates of Obligation, without interest coupons, in the denomination of any integral multiple of \$5,000. As provided in the Ordinance, this Certificate of Obligation, may, at the request of the Registered Owner or the assignee or assignees hereof, be assigned, transferred and exchanged for a like aggregate principal amount of fully registered Certificates of Obligation, without interest coupons, payable to the appropriate Registered Owner, assignee or

assignees, as the case may be, having the same denomination or denominations in any integral multiple of \$5,000 as requested in writing by the appropriate Registered Owner, assignee or assignees, as the case may be, upon surrender of this Certificate of Obligation to the Paying Agent/Registrar for cancellation, all in accordance with the form and procedures set forth in the Ordinance. Among other requirements for such assignment and transfer, this Certificate of Obligation must be presented and surrendered to the Paying Agent/Registrar, together with proper instruments of assignment, in form and with guarantee of signatures satisfactory to the Paying Agent/Registrar, evidencing assignment of this Certificate of Obligation or any portion or portions hereof in any integral multiple of \$5,000 to the assignee or assignees in whose name or names this Certificate of Obligation or any such portion or portions hereof is or are to be registered. The form of Assignment printed or endorsed on this Certificate of Obligation may be executed by the Registered Owner to evidence the assignment hereof, but such method is not exclusive, and other instruments of assignment satisfactory to the Paying Agent/Registrar may be used to evidence the assignment of this Certificate of Obligation or any portion or portions hereof from time to time by the Registered Owner. The Paying Agent/Registrar's reasonable standard or customary fees and charges for transferring and exchanging any Certificate of Obligation or portion thereof shall be paid by the City, but any taxes or governmental charges required to be paid with respect thereto shall be paid by the one requesting such assignment, transfer or exchange as a condition precedent to the exercise of such privilege. The Paying Agent/Registrar shall not be required to make any such transfer or exchange during the period commencing with the close of business on any Record Date and ending with the opening of business on the next following principal or interest payment date.

**WHENEVER THE BENEFICIAL OWNERSHIP** of this Certificate of Obligation is determined by a book entry at a securities depository for the Certificates of Obligation, the foregoing requirements of holding, delivering or transferring this Certificate of Obligation shall be modified to require the appropriate person or entity to meet the requirements of the securities depository as to registering or transferring the book entry to produce the same effect.

**IN THE EVENT** any Paying Agent/Registrar for the Certificates of Obligation is changed by the City, resigns, or otherwise ceases to act as such, the City has covenanted in the Ordinance that it promptly will appoint a competent and legally qualified substitute therefor, and cause written notice thereof to be mailed to the Registered Owners of the Certificates of Obligation.

**IT IS HEREBY** certified, recited, and covenanted that this Certificate of Obligation has been duly and validly authorized, issued, and delivered; that all acts, conditions, and things required or proper to be performed, exist, and be done precedent to or in the authorization, issuance, and delivery of this Certificate of Obligation have been performed, existed, and been done in accordance with law; that this Certificate of Obligation is a general obligation of the City, issued on the full faith and credit thereof; and that ad valorem taxes sufficient to provide for the payment of the interest on and principal of this Certificate of Obligation, as such interest comes due, and as such principal matures, have been levied and ordered to be levied against all taxable property in the City, and have been pledged for such payment, within the limits

prescribed by law and that this Certificate of Obligation is additionally secured by a lien on and pledge of Surplus Revenues received by the City from the ownership and operation of the City's Waterworks and Sewer System, all as provided in the Ordinance authorizing the Certificates of Obligation.

*THE CITY* also has reserved the right to amend the Ordinance as provided therein, and under some (but not all) circumstances amendments thereto must be approved by the registered owners of a majority in aggregate principal amount of the outstanding Certificates of Obligation.

*BY BECOMING* the Registered Owner of this Certificate of Obligation, the Registered Owner thereby acknowledges all of the terms and provisions of the Ordinance, agrees to be bound by such terms and provisions, acknowledges that the Ordinance is duly recorded and available for inspection in the official minutes and records of the governing body of the City, and agrees that the terms and provisions of this Certificate of Obligation and the Ordinance constitute a contract between each Registered Owner hereof and the City.

*IN WITNESS WHEREOF*, the City has caused this Certificate of Obligation to be signed with the manual or facsimile signature of the Mayor or Mayor Pro-Tem of the City, and countersigned with the manual or facsimile signature of the City Secretary of the City, and the official seal of the City has been duly impressed, or placed in facsimile, on this Certificate of Obligation.

Countersigned:

\_\_\_\_\_  
(facsimile signature)  
City Secretary, City of Kerrville, Texas

\_\_\_\_\_  
(facsimile signature)  
Mayor [Pro-Tem], City of Kerrville, Texas

(CITY SEAL)

**FORM OF REGISTRATION CERTIFICATE  
OF THE COMPTROLLER OF PUBLIC ACCOUNTS:**

**COMPTROLLER'S REGISTRATION CERTIFICATE: REGISTER NO. \_\_\_\_\_**

I hereby certify that this Certificate of Obligation has been examined, certified as to validity, and approved by the Attorney General of the State of Texas, and that this Certificate of Obligation has been registered by the Comptroller of Public Accounts of the State of Texas.

Witness my signature and seal this

(COMPTROLLER'S SEAL)

\_\_\_\_\_  
Comptroller of Public Accounts  
of the State of Texas

*[The remainder of this page intentionally left blank]*

**FORM OF PAYING AGENT/REGISTRAR'S AUTHENTICATION CERTIFICATE**

**PAYING AGENT/REGISTRAR'S AUTHENTICATION CERTIFICATE**

*(To be executed if this Certificate of Obligation is not accompanied by an executed Registration Certificate of the Comptroller of Public Accounts of the State of Texas)*

It is hereby certified that this Certificate of Obligation has been issued under the provisions of the Ordinance described in the text of this Certificate of Obligation; and that this Certificate of Obligation has been issued in exchange for a certificate of obligation or certificates of obligation, or a portion of a certificate of obligation or certificates of obligation of a series which originally was approved by the Attorney General of the State of Texas and registered by the Comptroller of Public Accounts of the State of Texas.

Dated

**BOKF, NA dba BANK OF TEXAS**  
Houston, Texas  
Paying Agent/Registrar

By \_\_\_\_\_  
Authorized Representative

*[The remainder of this page intentionally left blank]*

DR

**FORM OF ASSIGNMENT:**

**ASSIGNMENT**

**FOR VALUE RECEIVED**, the undersigned Registered Owner of this Certificate of Obligation, or duly authorized representative or attorney thereof, hereby sells, assigns and transfers this Certificate of Obligation and all rights hereunder unto

\_\_\_\_\_

\_\_\_\_\_/\_\_\_\_\_/

(Assignee's Social Security or  
Taxpayer Identification Number)

(Please print or typewrite Assignee's name and address,  
including zip code)

and hereby irrevocably constitutes and appoints \_\_\_\_\_  
attorney to transfer the registration of this Certificate of Obligation on the Paying  
Agent/Registrar's Registration Books with full power of substitution in the premises.

Dated: \_\_\_\_\_

Signature Guaranteed:

\_\_\_\_\_  
NOTICE: Signature(s) must be guaranteed by a member firm of the New York Stock Exchange  
or a commercial bank or trust company.

NOTICE: The signature above must correspond with the name of the Registered Owner as it appears upon the front of this Certificate of Obligation in every particular, without alteration or enlargement or any change whatsoever.

**INITIAL CERTIFICATE OF OBLIGATION INSERTIONS**

The Initial Certificate of Obligation shall be in the form set forth above except that:

- (A) Immediately under the name of the Certificate of Obligation, the headings "INTEREST RATE" and "MATURITY DATE" shall be completed with the words "As shown below" and "CUSIP NO. \_\_\_\_\_" shall be deleted.
- (B) The first paragraph shall be deleted and the following shall be inserted:

**"ON THE RESPECTIVE MATURITY DATES** specified below, the **CITY OF KERRVILLE, TEXAS** (the "**City**"), being a political subdivision and municipal corporation of the State of Texas, hereby promises to pay to the Registered Owner specified above, or registered assigns (hereinafter called the "**Registered Owner**"), the respective Principal Installments specified below, and to pay interest thereon (calculated on the basis of a 360-day year composed of twelve 30-day months) from the date of initial delivery of the series of which this Certificate of Obligation is a part at the respective Interest Rates per annum specified below, payable on August 15, 2011, and semiannually on each February 15 and August 15 thereafter to the respective Maturity Dates specified below, or the date of redemption prior to maturity. The respective Maturity Dates, Principal Installments and Interest Rates for this Certificate of Obligation are set forth in the following schedule:

MATURITY DATE (AUGUST 15)	PRINCIPAL INSTALLMENT (\$)	INTEREST RATE (%)	MATURITY DATE (AUGUST 15)	PRINCIPAL INSTALLMENT (\$)	INTEREST RATE (%)

*[Insert principal and interest information from Sections Two and Three above]*"

- (C) The Initial Certificate of Obligation shall be numbered "T-1."

**SECTION SIX. INTEREST AND SINKING FUND; TAX LEVY.** A special Interest

and Sinking Fund for the Certificates of Obligation (the "*Interest and Sinking Fund*") is hereby created solely for the benefit of the Certificates of Obligation, and the Interest and Sinking Fund shall be established and maintained by the City at an official depository bank of the City. The Interest and Sinking Fund shall be kept separate and apart from all other funds and accounts of the City, and shall be used only for paying the interest on and principal of the Certificates of Obligation. All ad valorem taxes levied and collected for and on account of the Certificates of Obligation shall be deposited, as collected, to the credit of the Interest and Sinking Fund. During each year while any of the Certificates of Obligation or interest thereon are outstanding and unpaid, the City shall compute and ascertain a rate and amount of ad valorem tax which, together with "Surplus Revenues" with respect to the Certificates of Obligation (as described in Section Sevenbelow) budgeted to pay principal and interest coming due during such fiscal year, will be sufficient to raise and produce the money required to pay the interest on the Certificates of Obligation as such interest comes due, and to provide and maintain a sinking fund adequate to pay the principal of its Certificates of Obligation as such principal matures (but never less than 2% of the original principal amount of the Certificates of Obligation as a sinking fund each year); and said tax shall be based on the latest approved tax rolls of the City, with full allowance being made for tax delinquencies and the cost of tax collection. Said rate and amount of ad valorem tax is hereby levied, and is hereby ordered to be levied, against all taxable property in the City for each year while any of the Certificates of Obligation or interest thereon are outstanding and unpaid; and said tax shall be assessed and collected each such year and deposited to the credit of the respective Interest and Sinking Fund. Said ad valorem taxes sufficient to provide for the payment of the interest on and principal of the Certificates of Obligation, as such interest comes due and such principal matures, are hereby pledged for such payment, within the limit prescribed by law.

**SECTION SEVEN. SURPLUS REVENUES.** Pursuant to Section 271.052, Texas Local Government Code, as amended, and Chapter 1502, Texas Government Code, as amended, the Certificates of Obligation additionally shall be payable from and secured by surplus revenues derived by the City from the City's Waterworks and Sewer System remaining after (a) payment of all amounts constituting operation and maintenance expenses of said Waterworks and Sewer System, and (b) payment of all debt service, reserve, and other requirements and amounts required to be paid under all ordinances heretofore or hereafter authorizing (i) all bonds and (ii) all other obligations not on a parity with the Certificates of Obligation, which are payable from and secured by any Waterworks and Sewer System revenues, and (c) payment of all amounts payable from any Waterworks and Sewer System revenues pursuant to contracts heretofore or hereafter entered into by the City in accordance with law (the "*Surplus Revenues*"). If for any reason the City fails to deposit ad valorem taxes levied pursuant to Section Six hereof to the credit of the Interest and Sinking Fund in an amount sufficient to pay, when due, the principal of and interest on the Certificates of Obligations, then Surplus Revenues may be deposited to the credit of the Interest and Sinking Fund and used to pay such principal and/or interest. The City reserves, and shall have, the right to issue bonds and other obligations not on a parity with the Certificates of Obligation, and to enter into contracts, in accordance with applicable laws, to be payable from and secured by any Waterworks and Sewer System revenues.

**SECTION EIGHT. CONSTRUCTION FUND.** There is hereby created and established in the depository of the City, a fund to be called the *City of Kerrville, Texas Combination Tax and Revenue Certificates of Obligation (Series 2011) Construction Fund* (herein called the "**Construction Fund**"). Proceeds from the sale and delivery of the Certificates of Obligation (other than proceeds representing accrued interest on the Certificates of Obligation and any premium on the Certificates of Obligation that is not used by the City to pay costs of issuance in accordance with the provisions of Section 1201.042(d), Texas Government Code, as amended, which shall be deposited in the Interest and Sinking Fund) shall be deposited in the Construction Fund. Money in the Construction Fund shall be subject to disbursements by the City for payment of all costs incurred in carrying out the purpose for which the Certificates of Obligation are issued, including but not limited to costs for construction, engineering, architecture, financing, financial consultants and legal services related to the project being financed with proceeds of the Certificates of Obligation and the issuance of the Certificates of Obligation. All funds remaining on deposit in the Construction Fund upon completion of the projects being financed with the proceeds from the Certificates of Obligation, if any, shall be transferred to the Interest and Sinking Fund.

**SECTION NINE. INVESTMENTS.** Funds on deposit in the Interest and Sinking Fund and the Construction Fund shall be secured by the depository bank of the City in the manner and to the extent required by law to secure other public funds of the City and may be invested from time to time in any investment authorized by applicable law, including but not limited to the Public Funds Investment Act (Chapter 2256, Texas Government Code), and the City's investment policy adopted in accordance with the provisions of the Public Funds Investment Act; provided, however, that investments purchased for and held in the Interest and Sinking Fund shall have a final maturity no later than the next principal or interest payment date for which such funds are required, and investments purchased for and held in the Construction Fund shall have a final maturity of not later than the date the City reasonably expects the funds from such investments will be required to pay costs of the projects for which the Certificates of Obligation were issued. Income and profits from such investments shall be deposited in the respective Fund which holds such investments; however, any such income and profits from investments in the Construction Fund may be withdrawn by the City and deposited in the Interest and Sinking Fund to pay all or a portion of the interest next coming due on the Certificates of Obligation. It is further provided, however, that any interest earnings on Certificate of Obligation proceeds which are required to be rebated to the United States of America pursuant to Section Fourteen hereof in order to prevent the Certificates of Obligation from being arbitrage bonds shall be so rebated and not considered as interest earnings for the purposes of this Section.

**SECTION TEN. EMPOWERED.** The City Manager and Director of Finance are hereby ordered to do any and all things necessary to accomplish the transfer of monies to the Interest and Sinking Fund of this issue in ample time to pay such items of principal and interest.

**SECTION ELEVEN. DEFEASANCE OF THE CERTIFICATES OF OBLIGATION.** *(a) Defeasance.* Any Certificate of Obligation and the interest thereon shall be deemed to be paid, retired and no longer outstanding (a "**Defeased Certificate of Obligation**")

within the meaning of this Ordinance, except to the extent provided in subsection (d) of this Section, when payment of the principal of such Certificate of Obligation, plus interest thereon to the due date (whether such due date be by reason of maturity or otherwise) either (i) shall have been made or caused to be made in accordance with the terms thereof, or (ii) shall have been provided for on or before such due date by irrevocably depositing with or making available to the Paying Agent/Registrar in accordance with an escrow agreement or other instrument (the "*Future Escrow Agreement*") for such payment (1) lawful money of the United States of America sufficient to make such payment and/or (2) Defeasance Securities that mature as to principal and interest in such amounts and at such times as will insure the availability, without reinvestment, of sufficient money to provide for such payment, and when proper arrangements have been made by the City with the Paying Agent/Registrar for the payment of its services until all Defeased Certificates of Obligation shall have become due and payable. At such time as a Certificate of Obligation shall be deemed to be a Defeased Certificate of Obligation hereunder, as aforesaid, such Certificate of Obligation and the interest thereon shall no longer be secured by, payable from, or entitled to the benefits of, the ad valorem taxes or revenues herein levied and pledged as provided in this Ordinance, and such principal and interest shall be payable solely from such money or Defeasance Securities. Notwithstanding any other provision of this Ordinance to the contrary, it is hereby provided that any determination not to redeem Defeased Certificates of Obligation that is made in conjunction with the payment arrangements specified in subsection (a)(i) or (ii) of this Section shall not be irrevocable, provided that: (1) in the proceedings providing for such payment arrangements, the City expressly reserves the right to call the Defeased Certificates of Obligation for redemption; (2) gives notice of the reservation of that right to the owners of the Defeased Certificates of Obligation immediately following the making of the payment arrangements; and (3) directs that notice of the reservation be included in any redemption notices that it authorizes.

(b) *Investment of Funds in Defeasance Securities.* Any moneys so deposited with the Paying Agent/Registrar may at the written direction of the City be invested in Defeasance Securities, maturing in the amounts and times as hereinbefore set forth, and all income from such Defeasance Securities received by the Paying Agent/Registrar that is not required for the payment of the Certificates of Obligation and interest thereon, with respect to which such money has been so deposited, shall be turned over to the City, or deposited as directed in writing by the City. Any Future Escrow Agreement pursuant to which the money and/or Defeasance Securities are held for the payment of Defeased Certificates of Obligation may contain provisions permitting the investment or reinvestment of such moneys in Defeasance Securities or the substitution of other Defeasance Securities upon the satisfaction of the requirements specified in subsection (a)(i) or (ii) of this Section. All income from such Defeasance Securities received by the Paying Agent/Registrar which is not required for the payment of the Defeased Certificates of Obligation, with respect to which such money has been so deposited, shall be remitted to the City or deposited as directed in writing by the City.

(c) *Definition of Defeasance Securities.* The term "*Defeasance Securities*" means (i) direct, noncallable obligations of the United States of America, including obligations that are unconditionally guaranteed by the United States of America, (ii) noncallable obligations of an

agency or instrumentality of the United States of America, including obligations that are unconditionally guaranteed or insured by the agency or instrumentality and that, on the date of the purchase thereof are rated as to investment quality by a nationally recognized investment rating firm not less than AAA or its equivalent, (iii) noncallable obligations of a state or an agency or a county, municipality, or other political subdivision of a state that have been refunded and that, on the date on the date the governing body of the City adopts or approves the proceedings authorizing the financial arrangements are rated as to investment quality by a nationally recognized investment rating firm not less than AAA or its equivalent, and (iv) any other then authorized securities or obligations under applicable state law that may be used to defease obligations such as the Certificates of Obligation.

(d) Duties of Paying Agent/Registrar. Until all Defeased Certificates of Obligation shall have become due and payable, the Paying Agent/Registrar shall perform the services of Paying Agent/Registrar for such Defeased Certificates of Obligation the same as if they had not been defeased, and the City shall make proper arrangements to provide and pay for such services as required by this Ordinance.

(e) Selection of Certificates of Obligation to be Defeased. In the event that the City elects to defease less than all of the principal amount of Certificates of Obligation of a maturity, the Paying Agent/Registrar shall select, or cause to be selected, such amount of Certificates of Obligation by such random method as it deems fair and appropriate.

**SECTION TWELVE. DAMAGED, MUTILATED, LOST, STOLEN, OR DESTROYED CERTIFICATES OF OBLIGATION.** (a) Replacement Certificates of Obligation. In the event any outstanding Certificate of Obligation is damaged, mutilated, lost, stolen, or destroyed, the Paying Agent/Registrar shall cause to be printed, executed, and delivered, a new certificate of obligation of the same principal amount, maturity, and interest rate, as the damaged, mutilated, lost, stolen, or destroyed Certificate of Obligation, in replacement for such Certificate of Obligation in the manner hereinafter provided.

(b) Application for Replacement Certificates of Obligation. Application for replacement of damaged, mutilated, lost, stolen, or destroyed Certificates of Obligation shall be made by the registered owner thereof to the Paying Agent/Registrar. In every case of loss, theft, or destruction of a Certificate of Obligation, the registered owner applying for a replacement certificate of obligation shall furnish to the City and to the Paying Agent/Registrar such security or indemnity as may be required by them to save each of them harmless from any loss or damage with respect thereto. Also, in every case of loss, theft, or destruction of a Certificate of Obligation, the registered owner shall furnish to the City and to the Paying Agent/Registrar evidence to their satisfaction of the loss, theft, or destruction of such Certificate of Obligation, as the case may be. In every case of damage or mutilation of a Certificate of Obligation, the registered owner shall surrender to the Paying Agent/Registrar for cancellation the Certificate of Obligation so damaged or mutilated.

(c) No Default Occurred. Notwithstanding the foregoing provisions of this Section, in

the event any such Certificate of Obligation shall have matured, and no default has occurred which is then continuing in the payment of the principal of, redemption premium, if any, or interest on the Certificate of Obligation, the City may authorize the payment of the same (without surrender thereof except in the case of a damaged or mutilated Certificate of Obligation) instead of issuing a replacement Certificate of Obligation, provided security or indemnity is furnished as above provided in this Section.

(d) Charge for Issuing Replacement Certificates of Obligation. Prior to the issuance of any replacement certificate of obligation, the Paying Agent/Registrar shall charge the registered owner of such Certificate of Obligation with all legal, printing, and other expenses in connection therewith. Every replacement certificate of obligation issued pursuant to the provisions of this Section by virtue of the fact that any Certificate of Obligation is lost, stolen, or destroyed shall constitute a contractual obligation of the City whether or not the lost, stolen, or destroyed Certificate of Obligation shall be found at any time, or be enforceable by anyone, and shall be entitled to all the benefits of this Ordinance equally and proportionately with any and all other Certificates of Obligation duly issued under this Ordinance.

(e) Authority for Issuing Replacement Certificates of Obligation. In accordance with Chapter 1201, Texas Government Code, as amended, this Section of this Ordinance shall constitute authority for the issuance of any such replacement certificate of obligation without necessity of further action by the governing body of the City or any other body or person, and the duty of the replacement of such certificates of obligations is hereby authorized and imposed upon the Paying Agent/Registrar, and the Paying Agent/Registrar shall authenticate and deliver such Certificates of Obligation in the form and manner and with the effect, as provided in Section Four(a) of this Ordinance for Certificates of Obligation issued in exchange for other Certificates of Obligation.

**SECTION THIRTEEN. CUSTODY, APPROVAL, AND REGISTRATION OF THE CERTIFICATES OF OBLIGATION; BOND COUNSEL'S OPINION, BOND INSURANCE, AND CUSIP NUMBERS.** The Mayor or Mayor Pro-Tem of the City is hereby authorized to have control of the Certificates of Obligation initially issued and delivered hereunder and all necessary records and proceedings pertaining to the Certificates of Obligation pending their delivery and their investigation, examination, and approval by the Attorney General of the State of Texas, and their registration by the Comptroller of Public Accounts of the State of Texas. Upon registration of the Certificates of Obligation said Comptroller of Public Accounts (or a deputy designated in writing to act for said Comptroller) shall manually sign the Comptroller's Registration Certificate attached to such Certificates of Obligation, and the seal of said Comptroller shall be impressed, or placed in facsimile, on such Certificate. The approving legal opinion of the City's Bond Counsel (with an appropriate certificate pertaining thereto executed by facsimile signature of the City Secretary of the City), a statement regarding the issuance of a municipal bond insurance policy to secure payment of debt service on the Certificates of Obligation, if any, and the assigned CUSIP numbers may, at the option of the City, be printed on the Certificates of Obligation issued and delivered under this Ordinance, but neither shall have any legal effect, and shall be solely for the convenience and information of the registered owners of the Certificates of Obligation.

**SECTION FOURTEEN. COVENANTS REGARDING TAX-EXEMPTION OF INTEREST ON THE CERTIFICATES OF OBLIGATION.** (a) *Covenants.* The City covenants to take any action necessary to assure, or refrain from any action which would adversely affect, the treatment of the Certificates of Obligation as obligations described in section 103 of the Internal Revenue Code of 1986, as amended (the "*Code*"), the interest on which is not includable in the "gross income" of the holder for purposes of federal income taxation. In furtherance thereof, the City covenants as follows:

(1) to take any action to assure that no more than 10 percent of the proceeds of the Certificates of Obligation or the projects financed therewith (less amounts deposited to a reserve fund, if any) are used for any "private business use," as defined in section 141(b)(6) of the Code or, if more than 10 percent of the proceeds of the Certificates of Obligation or the projects financed therewith are so used, such amounts, whether or not received by the City, with respect to such private business use, do not, under the terms of this Ordinance or any underlying arrangement, directly or indirectly, secure or provide for the payment of more than 10 percent of the debt service on the Certificates of Obligation, in contravention of section 141(b)(2) of the Code;

(2) to take any action to assure that in the event that the "private business use" described in subsection (1) hereof exceeds 5 percent of the proceeds of the Certificates of Obligation or the projects financed therewith (less amounts deposited into a reserve fund, if any) then the amount in excess of 5 percent is used for a "private business use" which is "related" and not "disproportionate," within the meaning of section 141(b)(3) of the Code, to the governmental use;

(3) to take any action to assure that no amount which is greater than the lesser of \$5,000,000, or 5 percent of the proceeds of the Certificates of Obligation (less amounts deposited into a reserve fund, if any) is directly or indirectly used to finance loans to persons, other than state or local governmental units, in contravention of section 141(c) of the Code;

(4) to refrain from taking any action which would otherwise result in the Certificates of Obligation being treated as "private activity bonds" within the meaning of section 141(b) of the Code;

(5) to refrain from taking any action that would result in the Certificates of Obligation being "federally guaranteed" within the meaning of section 149(b) of the Code;

(6) to refrain from using any portion of the proceeds of the Certificates of Obligation, directly or indirectly, to acquire or to replace funds which were used, directly or indirectly, to acquire investment property (as defined in section 148(b)(2) of the Code) which produces a materially higher yield over the term of the Certificates of Obligation, other than investment property acquired with --

(A) proceeds of the Certificates of Obligation invested for a reasonable temporary period of three years or less until such proceeds are needed for the purpose for which the Certificates of Obligation are issued,

(B) amounts invested in a bona fide debt service fund, within the meaning of section 1.148-1(b) of the Treasury Regulations, and

(C) amounts deposited in any reasonably required reserve or replacement fund to the extent such amounts do not exceed 10 percent of the proceeds of the Certificates of Obligation;

(7) to otherwise restrict the use of the proceeds of the Certificates of Obligation or amounts treated as proceeds of the Certificates of Obligation, as may be necessary, so that the Certificates of Obligation do not otherwise contravene the requirements of section 148 of the Code (relating to arbitrage) and, to the extent applicable, section 149(d) of the Code (relating to advance refundings); and

(8) to pay to the United States of America at least once during each five-year period (beginning on the date of delivery of the Certificates of Obligation) an amount that is at least equal to 90 percent of the "Excess Earnings," within the meaning of section 148(f) of the Code and to pay to the United States of America, not later than 60 days after the Certificates of Obligation have been paid in full, 100 percent of the amount then required to be paid as a result of Excess Earnings under section 148(f) of the Code.

(b) Rebate Fund. In order to facilitate compliance with the above covenant (8), a

"*Rebate Fund*" is hereby established by the City for the sole benefit of the United States of America, and such fund shall not be subject to the claim of any other person, including without limitation the holders. The Rebate Fund is established for the additional purpose of compliance with section 148 of the Code.

(c) *Proceeds*. The City understands that the term "proceeds" includes "disposition proceeds" as defined in the Treasury Regulations. It is the understanding of the City that the covenants contained herein are intended to assure compliance with the Code and any regulations or rulings promulgated by the U.S. Department of the Treasury pursuant thereto. In the event that regulations or rulings are hereafter promulgated which modify or expand provisions of the Code, as applicable to the Certificates of Obligation, the City will not be required to comply with any covenant contained herein to the extent that such failure to comply, in the opinion of nationally recognized bond counsel, will not adversely affect the exemption from federal income taxation of interest on the Certificates of Obligation under section 103 of the Code. In the event that regulations or rulings are hereafter promulgated which impose additional requirements which are applicable to the Certificates of Obligation, the City agrees to comply with the additional requirements to the extent necessary, in the opinion of nationally recognized bond counsel, to preserve the exemption from federal income taxation of interest on the Certificates of Obligation under section 103 of the Code. In furtherance of such intention, the City hereby authorizes and directs the Mayor, the City Manager or the Director of Finance of the City to execute any documents, certificates or reports required by the Code and to make such elections, on behalf of the City, which may be permitted by the Code as are consistent with the purpose for the issuance of the Certificates of Obligation.

(d) *Allocation of, and Limitation on, Expenditures for the Project*. The City covenants to account for the expenditure of sale proceeds and investment earnings to be used for the purposes described in Section One of this Ordinance (collectively referred to herein as the "*Project*") on its books and records in accordance with the requirements of the Internal Revenue Code. The City recognizes that in order for the proceeds to be considered used for the reimbursement of costs, the proceeds must be allocated to expenditures within 18 months of the later of the date that (1) the expenditure is made, or (2) the Project is completed; but in no event later than three years after the date on which the original expenditure is paid. The foregoing notwithstanding, the City recognizes that in order for proceeds to be expended under the Internal Revenue Code, the sale proceeds or investment earnings must be expended no more than 60 days after the earlier of (1) the fifth anniversary of the delivery of the Certificates of Obligation, or (2) the date the Certificates of Obligation are retired. The City agrees to obtain the advice of nationally-recognized bond counsel if such expenditure fails to comply with the foregoing to assure that such expenditure will not adversely affect the tax-exempt status of the Certificates of Obligation. For purposes hereof, the City shall not be obligated to comply with this covenant if it obtains an opinion that such failure to comply will not adversely affect the excludability for federal income tax purposes from gross income of the interest.

(e) *Disposition of Project*. The City covenants that the property constituting the projects financed or refinanced with the proceeds of the Certificates of Obligation will not be sold or

otherwise disposed in a transaction resulting in the receipt by the City of cash or other compensation, unless the City obtains an opinion of nationally-recognized bond counsel that such sale or other disposition will not adversely affect the tax-exempt status of the Certificates of Obligation. For purposes of the foregoing, the portion of the property comprising personal property and disposed in the ordinary course shall not be treated as a transaction resulting in the receipt of cash or other compensation. For purposes hereof, the City shall not be obligated to comply with this covenant if it obtains an opinion that such failure to comply will not adversely affect the excludability for federal income tax purposes from gross income of the interest.

(f) Designation as Qualified Tax-Exempt Obligations. The City hereby designates the Certificates of Obligation as "qualified tax-exempt obligations" as defined in section 265(b)(3) of the Code. In furtherance of such designation, the City represents, covenants and warrants the following: (i) that during the calendar year in which the Certificates of Obligation are issued, the City (including any subordinate entities) has not designated nor will designate obligations, which when aggregated with the Certificates of Obligation, will result in more than \$10,000,000 of "qualified tax-exempt obligations" being issued; (ii) that the City reasonably anticipates that the amount of tax-exempt obligations issued, during the calendar year in which the Certificates of Obligation are issued, by the City (or any subordinate entities) will not exceed \$10,000,000; and (iii) that the City will take such action or refrain from such action as necessary, and as more particularly set forth in this Section, in order that the Certificates of Obligation will not be considered "private activity bonds" within the meaning of section 141 of the Code.

#### **SECTION FIFTEEN. CONTINUING DISCLOSURE UNDERTAKING.**

(a) Definitions. As used in this Section, the following terms have the meanings ascribed to such terms below:

"**EMMA**" means the Electronic Municipal Market Access system being established by the MSRB.

"**MSRB**" means the Municipal Securities Rulemaking Board.

"**Rule**" means SEC Rule 15c2-12, as amended from time to time.

"**SEC**" means the United States Securities and Exchange Commission.

(b) Annual Reports. The City shall provide annually to the MSRB through EMMA within six months after the end of each fiscal year ending in or after 2011, financial information and operating data with respect to the City of the general type included in the final Official Statement authorized by this Ordinance being the information described in **Exhibit B** hereto. Any financial statements so to be provided shall be (1) prepared in accordance with the accounting principles described in **Exhibit B** hereto, or such other accounting principles as the City may be required to employ from time to time pursuant to state law or regulation, and (2) audited, if the City commissions an audit of such statements and the audit is completed within

the period during which they must be provided. If the audit of such financial statements is not complete within such period, then the City shall provide (1) unaudited financial statements for such fiscal year within such six month period, and (2) audited financial statements for the applicable fiscal year to the MSRB through EMMA when and if the audit report on such statements become available.

If the City changes its fiscal year, it will notify the MSRB through EMMA of the date of the new fiscal year end prior to the next date by which the City otherwise would be required to provide financial information and operating data pursuant to this paragraph (b).

The financial information and operating data to be provided pursuant to this paragraph (b) may be set forth in full in one or more documents or may be included by specific reference to any document (including an official statement or other offering document, if it is available from the MSRB) that theretofore has been provided to the MSRB through EMMA or filed with the SEC.

(c) Event Notices.

(i) The City shall notify the MSRB through EMMA in an electronic format as prescribed by the MSRB, in a timely manner (but not in excess of ten business days after the occurrence of the event) of any of the following events with respect to the Certificates of Obligation, if such event is material within the meaning of the federal securities laws:

1. Non-payment related defaults;
2. Modifications to rights of holders;
3. Redemption calls;
4. Release, substitution, or sale of property securing repayment of the Certificates of Obligation;
5. The consummation of a merger, consolidation, or acquisition involving an obligated person or the sale of all or substantially all of the assets of the obligated person, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms; and
6. Appointment of a successor or additional trustee or the change of name of a trustee.

(ii) The City shall notify the MSRB through EMMA in an electronic format as prescribed by the MSRB, in a timely manner (but not in excess of ten business days after

the occurrence of the event) of any of the following events with respect to the Certificates of Obligation, without regard to whether such event is considered material within the meaning of the federal securities laws:

1. Principal and interest payment delinquencies;
2. Unscheduled draws on debt service reserves reflecting financial difficulties;
3. Unscheduled draws on credit enhancements reflecting financial difficulties;
4. Substitution of credit or liquidity providers, or their failure to perform;
5. Adverse tax opinions or the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax-exempt status of the Certificates of Obligation, or other events affecting the tax-exempt status of the Certificates of Obligation;
6. Tender offers;
7. Defeasances;
8. Rating changes; and
9. Bankruptcy, insolvency, receivership or similar event of an obligated person.

(iii) The City shall notify the MSRB through EMMA, in a timely manner, of any failure by the City to provide financial information or operating data in accordance with subsection (b) of this Section by the time required by such subsection.

(d) *Limitations, Disclaimers, and Amendments.* The City shall be obligated to observe and perform the covenants specified in this Section for so long as, but only for so long as, the City remains an "obligated person" with respect to the Certificates of Obligation within the meaning of the Rule, except that the City in any event will give notice of any deposit made in accordance with Section 11 of this Ordinance that causes Certificates of Obligation no longer to be outstanding.

The provisions of this Section are for the sole benefit of the holders and beneficial owners of the Certificates of Obligation, and nothing in this Section, express or implied, shall give any benefit or any legal or equitable right, remedy, or claim hereunder to any other person. The City undertakes to provide only the financial information, operating data, financial statements, and notices which it has expressly agreed to provide pursuant to this Section and

does not hereby undertake to provide any other information that may be relevant or material to a complete presentation of the City's financial results, condition, or prospects or hereby undertake to update any information provided in accordance with this Section or otherwise, except as expressly provided herein. The City does not make any representation or warranty concerning such information or its usefulness to a decision to invest in or sell Certificates of Obligation at any future date.

UNDER NO CIRCUMSTANCES SHALL THE CITY BE LIABLE TO THE HOLDER OR BENEFICIAL OWNER OF ANY CERTIFICATE OF OBLIGATION OR ANY OTHER PERSON, IN CONTRACT OR TORT, FOR DAMAGES RESULTING IN WHOLE OR IN PART FROM ANY BREACH BY THE CITY, WHETHER NEGLIGENT OR WITHOUT FAULT ON ITS PART, OF ANY COVENANT SPECIFIED IN THIS SECTION, BUT EVERY RIGHT AND REMEDY OF ANY SUCH PERSON, IN CONTRACT OR TORT, FOR OR ON ACCOUNT OF ANY SUCH BREACH SHALL BE LIMITED TO AN ACTION FOR MANDAMUS OR SPECIFIC PERFORMANCE.

No default by the City in observing or performing its obligations under this Section shall comprise a breach of or default under this Ordinance for purposes of any other provision of this Ordinance.

Nothing in this Section is intended or shall act to disclaim, waive, or otherwise limit the duties of the City under federal and state securities laws.

The provisions of this Section may be amended by the City from time to time to adapt to changed circumstances that arise from a change in legal requirements, a change in law, or a change in the identity, nature, status, or type of operations of the City, but only if (1) the provisions of this Section, as so amended, would have permitted an underwriter to purchase or sell Certificates of Obligation in the primary offering of the Certificates of Obligation in compliance with the Rule, taking into account any amendments or interpretations of the Rule since such offering as well as such changed circumstances and (2) either (a) the holders of a majority in aggregate principal amount (or any greater amount required by any other provision of this Ordinance that authorizes such an amendment) of the outstanding Certificates of Obligation consent to such amendment or (b) a person that is unaffiliated with the City (such as nationally recognized bond counsel) determined that such amendment will not materially impair the interest of the holders and beneficial owners of the Certificates of Obligation. The City may also amend or repeal the provisions of this continuing disclosure agreement if the SEC amends or repeals the applicable provision of the Rule or a court of final jurisdiction enters judgment that such provisions of the Rule are invalid, but only if and to the extent that the provisions of this sentence would not prevent an underwriter from lawfully purchasing or selling Certificates of Obligation in the primary offering of the Certificates of Obligation. If the City so amends the provisions of this Section, it shall include with any amended financial information or operating data next provided in accordance with paragraph (b) of this Section an explanation, in narrative form, of the reason for the amendment and of the impact of any change in the type of financial information or operating data so provided.

**SECTION SIXTEEN. SALE AND DELIVERY OF THE CERTIFICATES OF OBLIGATION.** The Certificates of Obligation are hereby initially sold and shall be delivered to **SOUTHWEST SECURITIES, INC.**, as representative of the initial purchasers of the Certificates of Obligation (the "*Underwriters*"), at a price of \$\_\_\_\_\_ (which amount is equal to par, plus/less a net original issue premium/discount of \$\_\_\_\_\_, and less Underwriters' discount of \$\_\_\_\_\_), and no accrued interest, all pursuant to the terms and provisions of a Purchase Contract in substantially the form attached hereto as **Exhibit C** which the Mayor or Mayor Pro-Tem of the City is hereby authorized to execute and deliver, and which the City Secretary is hereby authorized to attest. The City will deliver to the Underwriters an Initial Certificate of Obligation in the aggregate principal amount of \$\_\_\_\_\_ payable in principal installments on the dates and in the principal amounts shown in Section Two hereof, and bearing interest at the rates for each respective maturity as shown in Section Three hereof. The Initial Certificate of Obligation shall be registered in the name of **SOUTHWEST SECURITIES, INC.**

**SECTION SEVENTEEN. APPROVAL OF OFFICIAL STATEMENT.** The City hereby approves the form and content of the Official Statement relating to the Certificates of Obligation and any addenda, supplement, or amendment thereto, and approves the distribution of the Official Statement in the reoffering of the Certificates of Obligation by the Underwriters in final form, with such changes therein or additions thereto as the officer executing the same may deem advisable, such determination to be conclusively evidenced by his execution thereof. The distribution and use of the Preliminary Official Statement for the Certificates of Obligation, dated April 19, 2011, prior to the date hereof is hereby ratified and confirmed. The City Council finds and determines that the Preliminary Official Statement and the Official Statement were and are "deemed final" as of each of their respective dates within the meaning, and for the purpose, of Rule 15c2-12 promulgated under authority granted by the Federal Securities and Exchange Act of 1934.

**SECTION EIGHTEEN. AUTHORITY FOR OFFICERS TO EXECUTE DOCUMENTS AND APPROVE CHANGES.** The Mayor, Mayor Pro-Tem, City Secretary, City Manager and Director of Finance of the City, and all other officers, employees, and agents of the City, and each of them, shall be and they are hereby expressly authorized, empowered, and directed from time to time and at any time to do and perform all such acts and things and to execute, acknowledge, and deliver in the name and under the corporate seal and on behalf of the City all such instruments, whether or not herein mentioned, as may be necessary or desirable in order to carry out the terms and provisions of this Ordinance, the Certificates of Obligation, the sale of the Certificates of Obligation, the Official Statement, the Purchase Contract, and the Paying Agent/Registrar Agreement. In addition, prior to the initial delivery of the Certificates of Obligation, the Mayor, Mayor Pro-Tem, City Secretary, City Manager, Director of Finance, the City Attorney and Bond Counsel are hereby authorized and directed to approve any technical changes or correction to this Ordinance or to any of the instruments authorized and approved by this Ordinance necessary in order to (i) correct any ambiguity or mistake or properly or more completely document the transactions contemplated and approved by this Ordinance and as described in the Official Statement, (ii) obtain a rating from any of the national bond rating agencies or satisfy any requirements of the provider of a municipal bond insurance policy, if any, or (iii) obtain the approval of the Certificates of Obligation by the Attorney General's office. In case any officer whose signature shall appear on any Certificate of Obligation shall cease to be such officer before the delivery of such Certificate of Obligation, such signature shall nevertheless be valid and sufficient for all purposes the same as if such officer had remained in office until such delivery. The Director of Finance of the City is further authorized to pay to the Attorney General of Texas prior to the delivery of the Certificates of Obligation, for the Attorney General's review of the transcript of proceedings related to the Certificates of Obligation, the amount required pursuant to Section 1202.004, Texas Government Code, as amended.

**SECTION NINETEEN. ORDINANCE A CONTRACT; AMENDMENTS.** This Ordinance shall constitute a contract with the Registered Owners of the Certificates of Obligation, binding on the City and its successors and assigns, and shall not be amended or repealed by the City as long as any Certificate of Obligation remains outstanding except as permitted in this Section. The City may, without the consent of or notice to any Registered Owners, amend, change, or modify this Ordinance as may be required (i) by the provisions hereof, (ii) for the purpose of curing any ambiguity, inconsistency, or formal defect or omission herein, or (iii) in connection with any other change which is not to the prejudice of the Registered Owners. The City may, with the written consent of the Registered Owners of a majority in aggregate principal amount of the Certificates of Obligation then outstanding affected thereby, amend, change, modify, or rescind any provisions of this Ordinance; provided that without the consent of all of the Registered Owners affected, no such amendment, change, modification, or rescission shall (i) extend the time or times of payment of the principal of and interest on the Certificates of Obligation, reduce the principal amount thereof or the rate of interest thereon, (ii) give any preference to any Certificate of Obligation over any other Certificate of Obligation, (iii) extend any waiver of default to subsequent defaults, or (iv) reduce the aggregate principal amount of Certificates of Obligation required for consent to any such amendment, change, modification, or rescission. Whenever the City shall desire to make any

amendment or addition to or rescission of this Ordinance requiring consent of the Registered Owners, the City shall cause notice of the amendment, addition, or rescission to be sent by first class mail, postage prepaid, to the Registered Owners at the respective addresses shown on the Registration Books. Whenever at any time within one year after the date of the giving of such notice, the City shall receive an instrument or instruments in writing executed by the Registered Owners of a majority in aggregate principal amount of the Certificates of Obligation then outstanding affected by any such amendment, addition, or rescission requiring the consent of the Registered Owners, which instrument or instruments shall refer to the proposed amendment, addition, or rescission described in such notice and shall specifically consent to and approve the adoption thereof in substantially the form of the copy thereof referred to in such notice, thereupon, but not otherwise, the City may adopt such amendment, addition, or rescission in substantially such form, except as herein provided. No Registered Owner may thereafter object to the adoption of such amendment, addition, or rescission, or to any of the provisions thereof, and such amendment, addition, or rescission shall be fully effective for all purposes.

**SECTION TWENTY. SECURITY INTEREST.** Chapter 1208, Texas Government Code, applies to the issuance of the Certificates of Obligation and the pledge of the ad valorem taxes and Surplus Revenues granted by the City under Sections Six and Seven of this Ordinance, and is therefore valid, effective, and perfected. If Texas law is amended at any time while the Certificates of Obligation are outstanding and unpaid such that the pledge of the ad valorem taxes or Surplus Revenues granted by the City under Sections Six and Seven of this Ordinance is to be subject to the filing requirements of Chapter 9, Texas Business & Commerce Code, then in order to preserve to the registered owners of the Certificates of Obligation the perfection of the security interest in said pledge, the City agrees to take such measures as it determines are reasonable and necessary under Texas law to comply with the applicable provisions of Chapter 9, Texas Business & Commerce Code, and enable a filing to perfect the security interest in said pledge to occur.

**SECTION TWENTY- ONE. REMEDIES IN EVENT OF DEFAULT.** In addition to all the rights and remedies provided by the laws of the State of Texas, it is specifically covenanted and agreed particularly that in the event the City (i) defaults in the payment of the principal, premium, if any, or interest on the Certificates of Obligation, (ii) defaults in the deposits and credits required to be made to the Interest and Sinking Fund, or (iii) defaults in the observance or performance of any other of the covenants, conditions or obligations set forth in this Ordinance and the continuation thereof for 30 days after the City has received written notice of such defaults, the Holders of any of the Certificates of Obligation shall be entitled to seek a writ of mandamus issued by a court of proper jurisdiction compelling and requiring the governing body of the City and other officers of the City to observe and perform any covenant, condition or obligation prescribed in this Ordinance.

No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver of any such default or acquiescence therein, and every such right and power may be exercised from time to time and as often as may be deemed expedient. The specific remedy herein provided shall be cumulative of all other existing remedies, and the specification of such remedy shall not be deemed to be exclusive.

**SECTION TWENTY-TWO. INTERESTED PARTIES.** Nothing in this Ordinance expressed or implied is intended or shall be construed to confer upon, or to give to, any person or entity, other than the City, the Underwriters and the registered owners of the Certificates of Obligation, any right, remedy or claim under or by reason of this Ordinance or any covenant, condition or stipulation hereof, and all covenants, stipulations, promises and agreements in this Ordinance contained by and on behalf of the City shall be for the sole and exclusive benefit of the City, the Underwriters and the registered owners of the Certificates of Obligation.

**SECTION TWENTY-THREE. INCORPORATION OF RECITALS.** The City hereby finds that the statements set forth in the recitals of this Ordinance are true and correct, and the City hereby incorporates such recitals as a part of this Ordinance.

**SECTION TWENTY-FOUR. SEVERABILITY.** If any provision of this Ordinance or the application thereof to any circumstance shall be held to be invalid, the remainder of this Ordinance and the application thereof to other circumstances shall nevertheless be valid, and this governing body hereby declares that this Ordinance would have been enacted without such invalid provision.

**SECTION TWENTY-FIVE. EFFECTIVE DATE.** Pursuant to the provisions of Section 1201.028, Texas Government Code, this Ordinance shall become effective immediately after its adoption by the City Council.

*[The remainder of this page left blank intentionally.]*

PASSED AND APPROVED ON this the \_\_\_\_\_ day of \_\_\_\_\_, A.D., 2011.

ATTEST:

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

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

APPROVED AS TO FORM:

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

DRAFT

**EXHIBIT A**

**FORM OF PAYING AGENT/REGISTRAR AGREEMENT**

THE PAYING AGENT/REGISTRAR AGREEMENT IS OMITTED AT THIS POINT  
AS IT APPEARS IN EXECUTED FORM ELSEWHERE IN THIS TRANSCRIPT.

DRAFT

**EXHIBIT B**

**FORM OF PURCHASE CONTRACT**

THE PURCHASE CONTRACT IS OMITTED AT THIS POINT AS IT APPEARS IN EXECUTED FORM ELSEWHERE IN THIS TRANSCRIPT.

DRAFT

## EXHIBIT C

### DESCRIPTION OF ANNUAL FINANCIAL INFORMATION

The following information is referred to in Section Fifteen of this Ordinance.

#### **Annual Financial Statements and Operating Data**

The financial information and operating data with respect to the City to be provided annually in accordance with such Section are as specified (and included in the Appendix or under the headings of the Official Statement referred to) below:

1. The annual audited financial statements of the City or the unaudited financial statements of the City in the event audited financial statements are not completed within six months after the end of any fiscal year.
2. All quantitative financial information and operating data with respect to the City of the general type included in the Official Statement under Tables 1 through 6 and 8 through 15.

#### **Accounting Principles**

The accounting principles referred to in such Section are the accounting principles described in the notes to the financial statements referred to in par [To come from Insurer, if any]

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

- 8A. Waiver to subdivision ordinance requirement for sidewalks on access streets serving Hill Country Home Opportunity subdivision on Pinto Trail.

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

---

**SUBJECT:** Waiver Request: Pinto Trail Subdivision – Consider a request for a waiver to the Subdivision Regulations, Article 10-IV-4, Development Procedures, Section A, Minimum Development Improvements; sidewalks, for the Pinto Trail Subdivision. (File No. 2011-12)

**FOR AGENDA OF:** April 26, 2011

**DATE SUBMITTED:** April 15, 2011

**SUBMITTED BY:** Gordon Browning 

**CLEARANCES:** Kevin Coleman 

**EXHIBITS:** Location Map, Applicant's Request

**AGENDA MAILED TO:**

**APPROVED FOR SUBMITTAL BY CITY MANAGER:** 

---

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

**PAYMENT TO BE MADE TO:**

**REVIEWED BY THE FINANCE DIRECTOR:**

---

**SUMMARY STATEMENT**

Procedure:

The process for requesting, hearing and the deposition of waiver requests are detailed in Article 10-IV-4, Section B of the Subdivision Regulations, see attached, Exhibit B.

The City Council, following a recommendation from the Planning and Zoning Commission, may waive the full application of the required improvements, where because of the nature of the development, lot size, topography, distance from the City, remoteness, the improvements required would be impractical at the time of platting to install and/or maintain. Final approval for waivers must be authorized by an affirmative vote of a majority of the City Council.

Request:

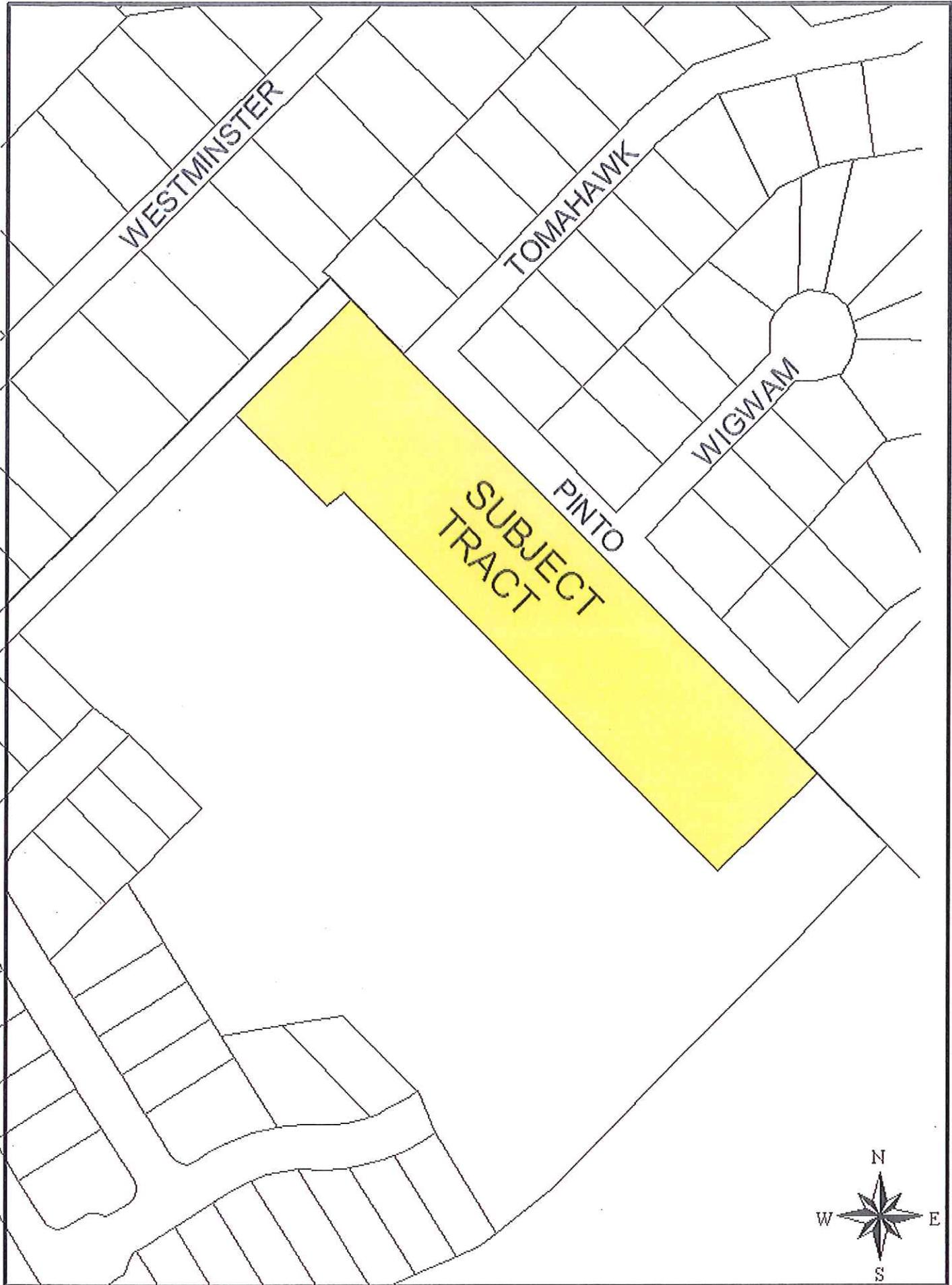
The Hill Country Home Opportunity Council, Inc., is developing an eleven (11) lot single family development located on the south side of Pinto Trail between Tomahawk Trail and Bow Lane. The development proposes three (3) short, 125-foot, "Marginal Access Streets" serving a maximum of four (4) lots each. The applicant's request is to waive the sidewalks along the marginal access streets is based on the design of the project, with all three public access streets having only two lots on both sides and designating the front of each lot a fire lane, they believe the streets

themselves will be safe for pedestrians to walk from the further lots to the sidewalks on Pinto Trail.

The Planning and Zoning Commission approved the preliminary plat for this development, with conditions, at their April 21, 2011 meeting and recommended approval of the waiver as requested.

### **RECOMMENDED ACTION**

1. Open the discussion on the request, and
2. Render a decision.



CITY OF KERRVILLE, TEXAS  
RESOLUTION NO. 036-2010

A RESOLUTION 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

WHEREAS, the City Planning and Zoning Commission and the Governing Body of the City of Kerrville, Texas, in compliance with the City Charter and state law, with reference to the approval of a development site plan for a duplex development located in Residential Cluster "RC" Zoning District under Title 11, Chapter 1 of the Code of Ordinances of the City of Kerrville, Texas, and the official zoning map adopted thereby, have given the requisite notices by United States mail, publication and otherwise; and after holding due hearings and affording a full and fair hearing to all of the property owners generally, and particularly to those interested persons situated in the affected area and in the vicinity thereof, the Governing Body of the City of Kerrville, Texas, finds that the health, safety and general welfare will be best served by approving a second amendment to the development site plan for the property described in Section One hereof; and

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

SECTION ONE. In accordance with Art. 11-1-10(c)(2) of the Code of Ordinances of the City of Kerrville, Texas, the Development Site Plan, attached hereto and incorporated herein by reference as Exhibit A, is approved with respect to the development of an approximate 2.25 acre tract of land out of the Samuel Wallace Survey No. 114, Abstract No. 348, Kerr County, Texas, said property being more particularly described in that certain application for approval of an amendment to the Development Site Plan for "Songbird Ridge," approved by the City of Kerrville Planning and Zoning Commission on September 18, 2008. The approval of this amendment to the Development Site Plan authorizes a change in use for the property described above from dwelling, duplex to dwelling, single family detached.

SECTION TWO. The approval of the Development Site Plan attached hereto as Exhibit A amends Resolutions 010-2008 and 096-2008. Should a conflict arise between the Development Site Plan approved herein and the previously approved resolutions, the Development Site Plan approved by this Resolution prevails.

PASSED AND APPROVED ON this the 12<sup>th</sup> day of October, A.D., 2010.

ATTEST:

Brenda G. Craig  
Brenda G. Craig, City Secretary

David Wampler  
David Wampler, Mayor

APPROVED AS TO FORM:

Michael C. Hayes  
Michael C. Hayes, City Attorney

Approved by City Council  
Date: Oct 12, 2010  
Volume \_\_\_\_\_ Page \_\_\_\_\_





3-1-2011

City of Kerrville  
800 Junction Hwy.  
Kerrville, Texas 78028

To whom it may concern:

The Hill Country Home Opportunity Council is in the process of developing eleven lots on a 2.25 acre parcel off of Pinto Trail. The way the lots are configured we will be installing three small public access streets that will accommodate up to four driveways each with the houses facing each small road. With the roads not being a through street for any other vehicles and having a sidewalk constructed on the nearby Pinto Trail drive, the Hill Country Home Opportunity Council would like to ask the City of Kerrville for a waiver of sidewalks to front the newly developed roads.

With all three public access streets only have two lots on both side and designating the front of each lot a fire lane, we believe the streets themselves will be safe for pedestrians to walk from the further lots to the sidewalks on Pinto Trail.

The Hill Country Home Opportunity Council understands that the preliminary plat can be submitted assuming the waiver, and pending Council review, the final plat will be adjusted accordingly.

Sincerely,

A handwritten signature in blue ink, appearing to read "Parker Harrison", with a long horizontal flourish extending to the right.

Parker Harrison

EXHIBIT A

PHONE 830 895 0735

FAX 830 895 0911

EMAIL [hchoc@windstream.net](mailto:hchoc@windstream.net)

ADDRESS P.O. Box 293071 Kerrville, TX 78029

(2) Streetlights easements of five (5) feet in width (2 1/2 feet on each side of lot line) shall be provided for the purpose of service wire installment, when necessary for service.

k. Utility Placement. All utilities shall be placed underground or if the Developer so elects, they may be placed overhead if located within service drives, alleys, or rear lot easements.

#### SECTION (B) WAIVERS.

The City Planning Commission may recommend to City Council a waiver or the tempering of the full application of the required improvements, where because of the nature of the development, lot size, topography, distance from the City, remoteness, the improvements required would be impractical at the time of platting to install and/or maintain. Provisions for required improvements to occur following recording in the form of deed restrictions should accompany all waiver requests. All requests for improvement waivers shall be submitted in writing to the City Planning Commission and shall be accompanied with the following information;

1. Statement of intended development,
2. Statement justifying the requested waiver,
3. The nature of the waiver (ex., request for reduction of sidewalks from both sides of street to on
4. Plan identification of the waiver.

Final approval for waivers must be authorized by an affirmative vote of majority of the City Council.

#### SECTION (C) DEVELOPMENT COSTS

1. Developer. The developer shall, at developer's expense, construct all improvements – both on site and off site – required by this ordinance and, water pumping stations, sewage lift stations, bridges, major drainage structures, and other improvements required to service the development proposed. All streets, utilities, and improvements within the City Limits shall become the property of the City of Kerrville upon completion and acceptance. The developer, at developer's expense, shall extend all water mains, sewer lines, other utilities and streets to the outer boundaries of the subdivision for future use beyond the subdivision.
2. City. Except as otherwise provided herein, where the City requires improvements of a cost greater than that required for the subdivision itself, then the City shall pay any additional cost thereof.



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

- 8B. Presentation and acceptance of the FY10 Comprehensive Annual Financial Report (CAFR).

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

---

**SUBJECT:** Presentation and Council Acceptance of the FY 2010 City of Kerrville Comprehensive Annual Financial Report

**FOR AGENDA OF:** April 26, 2011      **DATE SUBMITTED:** April 14, 2011

**SUBMITTED BY:** Mike Erwin,      **CLEARANCES:** Todd Parton,  
Director of Finance                      City Manager

**EXHIBITS:** Separate Attachment - Audit

**AGENDA MAILED TO:**

**APPROVED FOR SUBMITTAL BY CITY MANAGER:** 

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

**PAYMENT TO BE MADE TO:**  
**REVIEWED BY THE FINANCE DIRECTOR:**

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**SUMMARY STATEMENT**

The FY 2010 City of Kerrville Comprehensive Annual Financial Report will be presented at the meeting. The City engaged the audit firm of Rutledge, Crain, and Company, P.C. in Arlington to perform the annual audit and to prepare the financial report.

The Director of Finance will provide a brief overview of the audit findings and the audit committee recommendation.

**RECOMMENDED ACTION**

The Director of Finance recommends Council's acceptance of the FY 2010 City of Kerrville Comprehensive Annual Financial Report.

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

- 8C. Request to change hours of operation at the library during renovation.

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

**SUBJECT:** Request to change hours of operation at the temporary location of the Butt Holdsworth Memorial Library during the renovation

**FOR AGENDA OF:** April 26, 2011

**DATE SUBMITTED:** April 20, 2011

**SUBMITTED BY:** Daniel C. Schwartz  
Library Director

**CLEARANCES:** Kim Meismer   
Director of General Operations

**EXHIBITS:**

**AGENDA MAILED TO:**

**APPROVED FOR SUBMITTAL BY CITY MANAGER:** 

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

**PAYMENT TO BE MADE TO:**

**REVIEWED BY THE FINANCE DEPARTMENT:**

**SUMMARY STATEMENT**

On January 25, 2011, City Council approved the proposed library renovation plans. The renovation will begin very soon. During the renovation, the library will temporarily operate out of the History Center located on the library campus.

Since the History Center is a much smaller facility, operations will need to be reduced and some of the staff will need to be placed at other city facilities. Currently, the library operates seven (7) days per week for a total of 54 hours. We would like to change the total hours of operation to 40 hours per week and close the library on Sunday and Monday. Attached is a detailed spreadsheet showing the hours of operation each day and the staff members work hours and locations. If approved, the reduction of hours and staff changes will be effective in mid-May 2011.

The Library Advisory Board approved the plan at their April 19, 2011 meeting.

**RECOMMENDED ACTION**

The Library Advisory Board and library staff recommend approval of the reduction of operating hours and re-distribution of library employees during the renovation of the Butt Holdsworth Memorial Library.

**Butt-Holdsworth Memorial Library  
Staffing & Hours of Operation During Renovation**

<b>Employee Name</b>	<b>Location</b>	<b>Sunday CLOSED</b>	<b>Monday CLOSED</b>	<b>Tuesday 10am – 6pm</b>	<b>Wednesday 10am – 6pm</b>	<b>Thursday Noon – 8pm</b>	<b>Friday 10am – 6pm</b>	<b>Saturday 10am – 6pm</b>
Library Director	History Center	Off	History Center	History Center	History Center	History Center	History Center	Flexible
Librarian II, Patron Services	History Center	Off	Off	History Center 9:15 – 6:15	History Center 9:15 – 6:15	History Center 11:15 – 8:15	History Center 9:15 – 6:15	History Center 9:15 – 6:15
Librarian II, Circulation Services	History Center	Off	Off	History Center 9:15 – 6:15	History Center 9:15 – 6:15	History Center 11:15 – 8:15	History Center 9:15 – 6:15	History Center 9:15 – 6:15
Library Clerk	History Center	Off	Off	History Center 9:15 – 6:15	History Center 9:15 – 6:15	History Center 11:15 – 8:15	History Center 9:15 – 6:15	History Center 9:15 – 6:15
Library Assistant	History Center	Off	Off	History Center 9:15 – 6:15	History Center 9:15 – 6:15	History Center 11:15 – 8:15	History Center 9:15 – 6:15	History Center 9:15 – 6:15
Library Technician	History Center	Off	History Center 8am-5pm	History Center 8am-5pm	History Center 8am – 5pm	History Center 8am – 5pm	History Center 8am – 5pm	Off
Library Clerk (PT 15 hrs)	History Center	Off	History Center 8am – 4:30pm	Off	Off	History Center 8am – 4:30pm	Off	Off
Library Shelver (PT 9 hrs)	History Center	Off	History Center 8am – 12:30	Off	Off	History Center 8am – 12:30	Off	Off
Librarian II, Technical Services	History Center & City Hall	Off	History Center 8am – 5pm	City Hall 8am – 5pm	City Hall 8am – 5pm	City Hall 8am – 5pm	City Hall 8am – 5pm	Off
Reference Librarian	KSP	Off	KSP 8am – 5pm	KSP 8am – 5pm	KSP & Callioux 8am – 5pm	KSP 8am – 5pm	KSP 8am – 5pm	Off
Library Clerk	KSP	Off	KSP 8:30 – 5:30	KSP 8:30 – 5:30	KSP 8:30 – 5:30	KSP 8:30 – 5:30	KSP 8:30 – 5:30	Off
Library Clerk	*Human Resources	Off	HR 8am-5pm	HR 8am – 5pm	HR 8am – 5pm	HR 8am – 5pm	HR 8am – 5pm	Off

\*The Human Resources Clerk will be assigned to Municipal Court during the Library renovation since she is already trained.  
The Library Clerk will be assigned to Human Resources to fill that vacancy.

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

- 8D. Interlocal agreements between Kerr County and the City of Kerrville for joint operations.

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

---

**SUBJECT:** Discussion and consideration of interlocal agreements between the City of Kerrville and Kerr County for joint operations.

**FOR AGENDA OF:** April 26, 2011      **DATE SUBMITTED:** April 20, 2011

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

**EXHIBITS:** 1. City of Kerrville Interlocal Agreement Offer (April 13, 2011)  
2. Draft Interlocal Agreements (April 15, 2011)

**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>\$0</b>	<b>\$0</b>	<b>\$0</b>	

**PAYMENT TO BE MADE TO:**

**REVIEWED BY THE FINANCE DIRECTOR:**

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**SUMMARY STATEMENT**

On Wednesday, April 13, 2011, staff submitted a revised proposal to the county pursuant to City Council direction. This was updated from the proposal originally submitted to the county on February 15, 2011. The April 13 updated provided for reductions to airport and library allocations.

Since the submittal of the April 13 offer, the Commissioners Court has appointed Judge Pat Tinley and Commissioner Johnathon Letz as representatives to negotiate revised agreements with representatives of the Kerrville City Council. The Commission also voted to initiate mediation in the event that discussions fail. There has been no timeline established by the commission regarding negotiations.

Of primary concern to the Commission are the increased costs for fire and emergency medical services (EMS). Staff has calculated the cost per capita for Kerrville residents and cost per capita for Kerr County residents located beyond the city limits.

For FY2011 (current fiscal year) per capita cost for residents within the City of Kerrville is \$169.54 and is \$17.29 for Kerr County residents beyond the City of Kerrville. The proposed agreement would change the per capita cost to \$148.67 for city residents and to \$35.96 for non-city residents.

**RECOMMENDED ACTION**

Staff recommends that the City Council discuss the agreement proposal, provide direction to City staff regarding the offer of mediation, and consider appointing two City Council representatives to negotiate with the county's negotiating team.

**Exhibit 1**  
**City of Kerrville Interlocal Agreement Offer (April 13, 2011)**



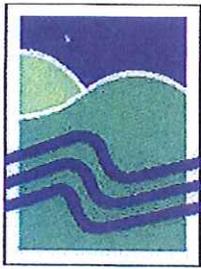
**City of Kerrville**  
Office of the City Manager  
800 Junction Highway  
Kerrville, Texas 78028-2215  
830.792.8305(O)  
830.792.3850 (F)

## *Receipt of Hand-Delivery*

*Letter to Judge Tinley regarding City/County interlocal discussion information.*

*County Judge, Pat Tinley  
c/o Jody Grinstead  
700 Main St.  
Kerrville, TX 78028*

*Jody Grinstead 4/14/11*  
\_\_\_\_\_  
Signature and Date



# CITY OF KERRVILLE

MAYOR AND CITY COUNCIL

800 Junction Highway  
Kerrville, Texas 78028  
830-257-8000 / [www.kerrvilletx.gov](http://www.kerrvilletx.gov)

---

April 13, 2011

Honorable Pat Tinley  
County Judge  
Kerr County  
700 Main Street  
Kerrville, Texas 78028

Dear Judge Tinley,

Attached is a formal proposal which outlines the terms for revised agreements for various services provided by the City and/or County. This proposal is being submitted to the Commissioners Court at the direction of the City Council. It provides for some revisions to the formal proposal submitted to the Commissioners Court dated February 16, 2011, and provides for reductions in the proposed allocations for the Library and for the Airport with a total reduction in cost to the County of approximately \$72,500. This outline of services is intended as a basis to negotiate revised agreements. Agreements are being prepared by City staff that reflects this proposal and those draft agreements will be provided to your office by 5 p.m., Friday, April 15, 2011.

The City Council has scheduled a budget workshop for 8:30 a.m. on May 4, 2011, and should negotiations for revised agreements for Fire, EMS, Library, Animal Control, and Airport operations fail to be concluded prior to this budget workshop, the City Council will begin preparing a budget for FY2012 that does not extend fire and EMS services beyond the City limits in addition to other appropriate budget amendments.

Please know that the City Council remains willing to discuss how fire and EMS services may be provided beyond the Kerrville City limits where the County's financial contribution adequately covers the cost to provide those services. In addition, the City Council remains very interested in negotiating how animal control services may be provided by the County within the Kerrville City limits.

Please find enclosed three attachments. Attachment A contains an outline of joint services. Attachment B contains a cost distribution. Attachment C contains library activity report.

We look forward to successful negotiations and agreements that will meet the operational and financial needs of both parties.

Sincerely,

A handwritten signature in blue ink, appearing to read 'David Wampler', written in a cursive style.

David Wampler  
Mayor

Cc: Kerrville City Council



# CITY OF KERRVILLE

MAYOR AND CITY COUNCIL

800 Junction Highway

Kerrville, Texas 78028

830-257-8000 / www.kerrvilletx.gov

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## Attachment A OUTLINE OF PROPOSED SERVICES

April 13, 2011

Proposal for Joint Operations between the City of Kerrville and Kerr County (Anticipates a 5-Year Initial Funding Commitment)

### 1. Library

- a. Annual Operations Expenses
  - i. Split Evenly between City and County
  - ii. Annual Allocation
    - 1. \$375,000 Each for Total of \$750,000
    - 2. Annual Escalator Benchmarked to CPI After First Year of Funding
  - iii. Excludes Capital Expenditures, Major Building Maintenance and Depreciation
- b. Library Facilities
  - i. City Maintains Ownership of Building and Land
  - ii. City Bears Responsibility for Major Building Maintenance, Capital Improvements, and Depreciation
  - iii. Library to Meet Minimum Requirements Specified in Texas Administrative Code, Title 13, Part 1, Chapter 1, Subchapter C
- c. Library Staff
  - i. Employees of the City of Kerrville
- d. Operations
  - i. Library to Remain Open in a Manner Consistent with Programming Established in the Approved Budget
  - ii. Current Programming to Remain
  - iii. Add Youth Services and Increase Staff with a Youth Services Librarian

**Recap:**      **Total Annual Operating Expenses = \$750,000**  
                 **Annual Expenses Split 50/50 = \$375,000 Each to City and County**  
                 **Annual Expense Escalator benchmarked to CPI after First Year**  
                 **Hours of Operation to Remain Consistent**

### 2. Airport

- a. Annual Operations Expenses
  - i. Split Evenly Between City and County
  - ii. Annual Allocation
    - 1. \$165,000 Each for Total of \$330,000
    - 2. Annual Escalator Benchmarked to CPI After First Year of Funding
- b. Capital Improvements

- i. Split Evenly Between City and County
- ii. Funding Provided After Bids Received
- iii. Capital Improvements Limited to a CIP Approved Annually by both the City and the County
- iv. No Capital Improvements Exceeding \$5,000 Allowed without Prior Approval of Both the City and the County
- c. Airport Board
  - i. Existing Board Structure Maintained
  - ii. Current Management Contract Needs to be Evaluated and Amended w/the Following Specific Points Modified
    - 1. Current Terms of Agreement
      - a. Automatically Renewing Agreement (Annual Basis)
      - b. Termination For Cause
    - 2. Pricing of Agreement – Currently Contains No Provision for Charges for Services
  - iii. Gifts – No Gifts of Land or Facilities May be Provided by the Airport Board without Prior Approval of both the City and the County

**Recap: Total Contribution Toward Annual Operating Expenses = \$330,000**  
**Annual Expenses Split 50/50 = \$165,000 Each to City and County**  
**Annual Expense Escalator benchmarked to CPI after First Year**  
**Airport Board Amendments**  
**Capital Improvements**  
**Gifts**

- 3. Fire and Emergency Medical Services
  - a. Combination Services Covered Under a Single Agreement
  - b. Annual County Funding Commitment
    - i. Fire Services = \$500,000
    - ii. EMS = \$400,000
    - iii. Annual Escalator Benchmarked to CPI After First Year of Funding
  - c. Services Provided
    - i. Fire Operations
      - 1. First Responder Area is the Same Area Served by Kerrville Under the Former Contract (Original Kerrville South Volunteer Fire Department Service Area)
      - 2. Limited Mutual Aid Backup Provided to Kerr County Areas Located Beyond the First Responder Area
      - 3. Certified Fire Fighter Staffing w/Certified Equipment in First Responder Area
      - 4. Coverage Provided 24 Hours/Day and 7 Days/Week in First Responder Area
      - 5. County-Wide Emergency Management Services
      - 6. Emergency Rescue
        - a. Dive Team
        - b. Swift Water
        - c. Low Angle/High Angle Rope
        - d. Vehicle Recovery and Extrication
        - e. Body Recovery

- f. Evidence Recovery
- ii. Emergency Medical Services Operations
  - 1. ALS-MICU Level Services for Emergency and Non-Emergency Calls
  - 2. Coverage for Areas Currently Served
  - 3. Coverage Provided 24 Hours/Day and 7 Days/Week
  - 4. All Transfer Services in County
  - 5. Coordinate Kerr County First Responder Program
    - a. Administrative Services
    - b. Medical Director Services by Board Certified Emergency Medical Physician
- iii. Existing Levels of Service Maintained for Fire and EMS Operations
  - 1. Existing Manpower
  - 2. Existing Equipment
  - 3. Existing Protocols

**Recap: County Contribution Toward Fire Services = \$500,000**  
**County Contribution Toward EMS = \$400,000**  
**Annual Expense Escalator benchmarked to CPI after First Year**  
**Existing Levels of Service Maintained**

- 4. Animal Control
  - a. Annual Operations Expenses – Covered Fully by County
  - b. City Revise Codes to be Consistent with County Codes (Animal Control Staff Provides Direction)
  - c. All Cases Filed in County Courts
  - d. No Minimum Service Level Requirement within the City of Kerrville
  - e. All Revenues from Animal Control Operations go to County
    - i. Citations
    - ii. Animal Registrations
    - iii. All Other Revenue Sources

**Recap: County Provides Full Services**  
**County Provides Full Funding**  
**County Maintains All Revenues**  
**City Codes Amended to Provide Single Set of Standards**

**Attachment B  
Cost Distribution - 4-13-11**

Operation	Original Proposal (2/16/2011)			Revised Proposal (4/13/2011)			Original vs. Proposed
	City of Kerrville	Kerr County	Total	City of Kerrville	Kerr County	Total	
Public Safety	\$ 5,390,930.00	\$ 900,000.00	\$ 6,290,930.00	\$ 5,390,930.00	\$ 900,000.00	\$ 6,290,930.00	\$ -
Fire	\$ 3,315,598.00	\$ 500,000.00	\$ 3,815,598.00	\$ 3,315,598.00	\$ 500,000.00	\$ 3,815,598.00	\$ -
EMS	\$ 2,075,332.00	\$ 400,000.00	\$ 2,475,332.00	\$ 2,075,332.00	\$ 400,000.00	\$ 2,475,332.00	\$ -
Library	\$ 412,500.00	\$ 412,500.00	\$ 825,000.00	\$ 375,000.00	\$ 375,000.00	\$ 750,000.00	\$ (75,000.00)
Airport	\$ 200,000.00	\$ 200,000.00	\$ 400,000.00	\$ 165,000.00	\$ 165,000.00	\$ 330,000.00	\$ (70,000.00)
Animal Control	\$ -	\$ 368,190.00	\$ 368,190.00	\$ -	\$ 368,190.00	\$ 368,190.00	\$ -
<b>TOTAL</b>	<b>\$ 6,003,430.00</b>	<b>\$ 1,880,690.00</b>	<b>\$ 7,884,120.00</b>	<b>\$ 5,930,930.00</b>	<b>\$ 1,808,190.00</b>	<b>\$ 7,739,120.00</b>	<b>\$ (145,000.00)</b>

Attachment C

Butt-Holdsworth Memorial Library (BHML)

Statistics By Fiscal Year as of March 29, 2011

Statistics	FY05	FY06	FY07	FY08	FY09	FY10	FY11 to date
Circulation of Library Materials	186,131	183,232	175,520	176,866	183,606	168,816	59,861
Reference Transactions	24,105	27,680	25,912	31,721	28,052	24,564	9,379
Gate Count	169,104	170,566	165,167	167,548	161,458	160,401	62,345
Internet/Electronic Resource Use	47,209	48,025	48,951	53,913	51,972	49,316	18,840
Born to Read Program Started FY09	0	0	0	0	65	390	140
Summer Program Participants	1,837	1,987	1,380	1,664	3,187	3,249	N/A

NOTE: "FY11 to date" column includes circulation statistics from Galaxy from the time period 10/01/2010 – 1/23/2011.

**Exhibit 2**  
**Draft Interlocal Agreements (April 15, 2011)**

**AGREEMENT BETWEEN KERR COUNTY, TEXAS AND CITY OF KERRVILLE,  
TEXAS REGARDING PROVISION OF ANIMAL CONTROL SERVICES**

WHEREAS, Texas Health and Safety Code §826.016 authorizes governing body of a municipality and the commissioners court of a county enter into contracts with public entities to carry out the activities required or authorized under Chapter 826 of the Texas Health and Safety Code; and

WHEREAS, in order to preserve taxpayer funded resources through elimination of duplication, the Commissioners Court of Kerr County, Texas (County) and the City Council of the City of Kerrville, Texas (City) in the enforcement of the Rabies Control Act and related City and County regulations promulgated pursuant to the authority of the Rabies Control Act and other State laws, the Commissioners Court of Kerr County, Texas (County) and the City Council of the City of Kerrville, Texas (City), find it to be in the public interest that the County be responsible for the enforcement off animal control regulations within the City and County;

NOW, THEREFORE, in consideration of the recitals set forth above and covenants expressed herein, and in accordance with Texas Health and Safety Code §826.016 ~~and the Interlocal Cooperation act~~, the City and County execute an Agreement pursuant to Interlocal Cooperation Act (TEXAS GOVERNMENT CODE §791.001) whereby the County agrees to operate an animal control facility for the mutual benefit of City and County, and the City and County hereby agree as follows:

1. Purpose: The intent of this Agreement is to establish the terms and conditions between City and County whereby County agrees, at no cost to City, to enforce animal control laws and regulations within City's incorporated limits to the extent County does not already possess exclusive jurisdiction for enforcement, including but not limited to, enforcement of:
  - a. The Rabies Control Act, as amended;
  - b. Chapter 822 of the Texas Health and Safety Code, related to dangerous dogs, and other applicable state statutes of animals and animal diseases.

~~Nothing herein shall obligate the County to shall enforce City animal control ordinance provisions which have been approved by the County as part of this Agreement and which the City adopted or amended in consultation with the County's Animal Control.~~

2. Enforcement of Zoning Regulations Excluded: This Agreement does not require or authorize the County to enforce any provision of the zoning regulations for the City of Kerrville, Texas related to the use and development of property within the City's incorporated limits.

3. Initial Term: The initial term of this Agreement shall begin October 1, 2011 and end September 30, 2012, subject to earlier termination as provided herein.

Comment [MCH1]: 10 year term, consistent with other agreements?

4. Annual Extensions: This Agreement shall be automatically renewed without action by any party hereto, for successive periods of one year each, commencing on October 1, 2012, and each year thereafter, up to five successive years; unless notice of cancellation is given by either party in writing to the other party not later than ninety (90) days prior to the cancellation of the next renewal term. The scope of services may not be changed during any fiscal year unless mutually agreed to in writing between the parties.

5. Service: County agrees to provide the following services:

a. Staff: County agrees to provide:

- i. Emergency call-out related to Rabies Control Act during all times other than weekday business hours;
- ii. Call response to City and County residents' complaints within a reasonable time period.

b. Facility: County shall furnish a Facility sufficient to meet State of Texas requirements and provide the services stated herein.

c. Operation: County shall operate and maintain the Facility in compliance with State statutes, rules and regulations. Such operation shall include:

- i. The Facility shall be open to the public for the delivery of animals five (5) days per week during normal business hours.
- ii. The Facility operator shall be on call outside of business hours in order to take emergency cases related to the Rabies Control Act or at law enforcement request, and if necessary, open the Facility to the public for such cases.
- iii. County shall provide routine daily care of animals at the Facility including weekends and holidays.
- iv. County shall provide adequate segregated quarters at the Facility for the quarantining of animal bite cases and other

emergency cases, as provided by State law and City and county ordinances

- v. County shall render euthanasia services pursuant to State law, and such that the Facility will be operated in an uncrowded manner. County will dispose of euthanized animals pursuant to State statutes.
  - vi. County will accept for holding at the Facility stray dogs and cats from the public and from ~~City and County~~ animal control officers and City employees and officials.
  - vii. County will manage the reclamation of animals by their owners and the adoption of unclaimed animals by the public.
  - viii. County will not be responsible for collection of dead animals from street rights-of-way within the City.
- d. Facility Fees: Fees charged those persons registering, reclaiming, or adopting an animal shall be determined pursuant and subject to the budget approval process provided by State statute.
6. Cooperation: City agrees to immediately notify Kerr County Animal Control of any animal bite cases. Kerrville Police Department agrees to fully cooperate with Kerr County Animal Control in the enforcement of animal control laws and regulations within City's incorporated limits.
7. Consideration: City agrees for County to retain all revenue generated from the issuance and collecting for animal licenses, fees and court costs from citations issued under this Agreement, and any and all other sums generated by the County through its provision of animal control services.
8. City Animal Control Revenues: During the term of this Agreement and any extension thereof:
- a. County shall be responsible for issuing and collecting for animal licenses for those animals whose owners reside within the City limits and shall retain the revenue derived there from. Said revenues shall remain with the County.
  - ii. County animal control officers shall file all Class "C" misdemeanors related to violation of animal control regulations, as defined in Section 1 of this Agreement, in the Justice of the Peace court for the precinct where the violation occurred including violations that occur within the City limits of Kerrville. All fee and court cost revenue shall remain with the County.

- b. County shall maintain confidentiality of certain information in dog and cat registry pursuant to Texas Health and Safety Code Chapter 826.
9. Appointment of Local Rabies Control Authority: During the term of this Agreement, City agrees that the person appointed by the County to serve as the Local Rabies Control Authority shall be the Kerr County Animal Control Director for purposes of the Rabies Control Act.
10. Default:
- a. In the event of default by County in the performance of its obligations hereunder, and County fails to cure such default within thirty (30) days after receipt of written notice from City, City, at its option, and without prejudice to any other remedy City may have for County's breach of this Agreement, may terminate this Agreement not earlier than thirty (30) days after delivering written notice of termination to County.
11. Independent Operations: In the performance of its obligations hereunder, County has the exclusive right to supervise, manage, control, and direct its employees in the performance of the services hereunder. City shall look to County for results only and shall not have the right to direct the County or any of its officers or employees in the performance of such services or as to the manner, means, or methods in which the services are performed except as herein expressly provided.
12. No Assignment: This Agreement shall be binding upon parties hereto; provided, however, that neither the City nor the County shall assign, sublet, or transfer their interest in this Agreement without the prior written consent of the other.
13. Applicable Law: This Agreement has been made in and shall be construed in accordance with the laws of the State of Texas. Venue shall be in Kerr County, Texas.
14. Notice: Notice to City provided herein shall be sufficient if sent by first class mail, postage prepaid to:

City Manager's Office  
City of Kerrville  
800 Junction Highway  
Kerrville, TX 78028

and notices to County, if sent by first class mail, postage prepaid addressed to:

County Judge  
Kerr County Courthouse

700 Main Street  
Kerrville, TX 78028

Or to such other addresses as the parties designate to each other in writing.

15. This Agreement is subject to the Texas Public Information Act

SIGNED AND AGREED on the dates indicated by the parties below.

CITY OF KERRVILLE, TEXAS

COUNTY OF KERR, TEXAS

By: \_\_\_\_\_  
David Wampler, Mayor

By: \_\_\_\_\_  
Pat Tinley, County Judge

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

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

ATTEST:

ATTEST:

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

\_\_\_\_\_  
Jannett Pieper, Kerr County Clerk

APPROVED AS TO FORM:

APPROVED AS TO FORM:

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

\_\_\_\_\_  
Robert Henneke, County Attorney

INTERLOCAL AGREEMENT FOR  
FIREFIGHTING AND EMERGENCY MEDICAL SERVICES BETWEEN THE CITY OF  
KERRVILLE, TEXAS AND KERR COUNTY, TEXAS

AGREEMENT

This Interlocal Agreement for Firefighting and Emergency Medical Services between the CITY OF KERRVILLE, Texas, ("City") and KERR COUNTY, Texas, shall be effective as of October 1, 2011 ("Effective Date").

WITNESSED:

City shall provide firefighting and emergency medical services for the use and benefit of the citizens of Kerr County, Texas, to specified unincorporated areas of Kerr County, under the following terms and conditions, to-wit:

**SECTION ONE. Firefighting Services.**

A. **1<sup>st</sup> Response Area:** It is understood that for the Kerrville South area, also known as the Kerrville Fire 1<sup>st</sup> Response Area, the City shall be considered the "first responder" fire department for all types of fire department related emergencies and shall respond initially with 1 (one) engine and/or a brush truck, and/or a rescue truck with their respective personnel, as the City deems appropriate.

**B. Responses into the County:**

1. *Firefighting:* For areas outside the City limits and the Kerrville Fire 1<sup>st</sup> Response Area, in the event of a request for service for any type of fire, including structural, grass/brush, and vehicle, and the volunteer fire department for that jurisdiction ("VFD") has not responded to that request within four minutes, the Sheriff's Department dispatch may request that the City respond initially with 1 (one) engine, and/or a brush truck, and/or a rescue truck with their respective personnel, as the City deems appropriate. Otherwise, City shall not be obligated to respond unless called for assistance by the VFD. The engine shall have three personnel and equipment needed to fight a structure fire. If needed, City's brush truck may respond to assist. In the event City receives a call for service from someone other than the VFD, City shall relay the call to the appropriate fire department in the County.
2. *Other Emergencies:* For all other non-fire types of emergencies including vehicle accidents, water and other types of rescues and searches, drowning, fuel spills, malicious and accidental false alarms, and smoke instigated responses (not actual fires), the City shall respond at the request of the VFD initially with 1 (one) engine, and/or a brush truck, and/or a rescue truck with their respective personnel, as the City deems appropriate. City shall respond to and assist with fire investigations as a courtesy to the Sheriff's Department, the Department of Public Safety, or the Texas Rangers in their determination of arson and the causes of fire.

**SECTION TWO. Emergency Medical Services.**

- A. **EMS.** City agrees to furnish emergency medical services (“EMS”) to the unincorporated areas of Kerr County. In addition, the City will continue its management of the Kerr County First Responder Program. For purposes of this Agreement, EMS shall include both responding to calls for emergency medical assistance and providing medical transportation services. The amount and type of equipment and number of personnel actually furnished by the City in response to any emergency call shall be determined solely by City and its duly appointed agents, officers, directors, employees or subcontractors. It is understood and agreed that City will give priority to calls within its own jurisdictional boundaries; however, City will use their best effort to make a timely response to each request for services within the Service Area.
- B. **First Responder Program.** For the purposes of this Agreement, “Management of the County First Responder Program” shall mean and include the following services: The City shall manage the operations of the First Responder Program by maintaining, ordering, storing and restocking equipment and supplies; request and manage the budget expenditures, in addition to grant writing and proposals to obtain non-budgeted equipment; assist personnel by managing and/or administering the medical continuing education program, and ensure the compliance with the EMS Medical Protocols and EMS Standard Operating Guidelines. The EMS Coordinator shall also be the Infection Control Officer, HIPAA Privacy Officer and representative to the Medical Director and Fire Department Personnel.
- C. **Response Times.** City shall make reasonable efforts to maintain emergency response times for the unincorporated areas of Kerr County at an average of twelve (12) minutes for all calls. The City shall make reasonable efforts to provide at least two (2) ambulances manned 24 hours per day 365 days per year capable of responding to City and County calls for service. The ambulances shall be staffed in accordance with the City’s EMS Medical Protocols and EMS Standard Operating Guidelines. City shall continuously monitor its compliance with this provision. However, such response times may be waived in times of natural disasters or other catastrophic events which limits or renders performance standards substantially impossible.
- D. **EMS Vehicles.** City shall maintain its EMS vehicles in accordance with the Texas Department of State Health Services EMS provider rules and regulations at all times, and shall provide patient care supplies, medical equipment, vehicle maintenance and regular equipment and vehicle inspections, calibrations and checks as determined by City to be appropriate.
- E. **Medical Director.** The provision of EMS under this Agreement shall be directed, supported and supervised by a licensed physician who shall be designated by City as its Medical Director for EMS.
- F. **Reports.** City shall provide quarterly run reports to County regarding the number of EMS responses made into the unincorporated areas of the County. Such report shall be a summary of the response codes obtained from “Emergency Response Report” provided as part of the

EMS software used by the City. County may request additional reports as needed as long as the information sought does not impinge on required patient confidentiality, violate federal or state law, and County pays the cost of producing such additional reports.

**G. Additional Services.** In carrying out EMS, City shall provide vehicle extrication, additional personnel, and establishment of landing zones for helicopter services as needed and as determined by the incident commander. In furtherance of meeting its obligations under this Agreement, City may enter into such contracts and interlocal agreements with local governmental entities and/or private companies as they deem necessary or appropriate to provide the services and coverage required.

**H. Patient and Third-party Billing.** City, including any and all of its agents and subcontractors operating hereunder, shall be entitled, in their sole discretion, to separately charge the patient/customer for their services based on the prices set by the City. Prices charged shall be based upon a number of factors, including location of the call, level of service provided, type of care rendered, supplies used, personnel used, and other mitigating or contributing factors to include cost of Medicare disallowance, cost of collection, and other related costs. Any and all costs provided for herein shall survive the expiration of this Agreement.

**SECTION THREE. County's Costs.** County shall pay the City \$500,000.00 for the City's firefighting services and \$400,000.00 for emergency medical services. The County shall make each of these payments to the City on or before February 1 for each year of this Agreement.

**SECTION FOUR.** Following the first year of this Agreement, the costs to be paid by the County shall increase each year of the Agreement by adding an inflationary adjustment which shall be equal to the greater of 2% or the inflation increase as defined by the Consumers Price Index for All Urban Consumers, as published by the U.S. Department of Labor, Bureau of Labor Statistics or its successor (C.P.I.). If publication of the C.P.I. is discontinued, any similar index published and recognized by the financial community, as a substitute for the C.P.I. shall be used in its place.

**SECTION FIVE. Term.** This Agreement shall remain in effect from year to year, but may be terminated as of September 30, 2016, or any subsequent year, by either party giving one-hundred eighty (180) days written notice thereof.

**SECTION SIX. Liability.** Pursuant to Section 791.006 of the Texas Government Code, County hereby accepts, and in so doing releases City from, responsibility for civil liability that arises from the furnishing or obtaining services under this Agreement. To the extent authorized by law, County agrees to indemnify and hold harmless City for any damages or injuries to any person, or the property of such person, which damage or injuries result from answering or performing fire calls outside the City.

**SECTION SEVEN. City's Right to Terminate.** It is understood and agreed that should City's fire insurance rate be jeopardized in any manner as a result of answering fire calls outside City's limits, City shall have the right to terminate this Agreement upon giving sixty (60) days written notice hereof.

**SECTION EIGHT. City Discretion in Providing Services.** The parties understand and agree that City's primary fire fighting responsibilities are in the City and at the site of the greatest emergency;

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therefore, City reserves the reasonable discretion to delay or fail to respond, or to pull away from any call, whether in City or out, in order to respond adequately to an in-City report, or to other emergencies of the greatest degree, as solely determined by City.

**SECTION NINE. City's Control.** It is expressly understood that in the performance of the obligations taken under this Agreement, City is an independent contractor with the sole right to supervise, manage, control and direct the provision of its employees and agents. Further, County shall look to the City for performance only and shall have no right at any time to direct or supervise the City, its agents, officers, directors, employees or subcontractors. Nothing in this Agreement shall constitute or be construed to create a partnership or a joint venture by and among the parties.

**SECTION TEN. Compliance with Law.** City shall observe and comply with all federal, state, and local laws, rules, ordinances, and regulations in providing services under this Agreement.

**SECTION ELEVEN. Miscellaneous.**

- A. For purposes of this Agreement, all notices required hereunder shall be delivered to the following addresses of the respective parties via hand delivery or first class, prepaid mail:

For the City of Kerrville:

City of Kerrville  
c/o City Manager  
800 Junction Highway  
Kerrville, TX 78028

with copy to: City of Kerrville  
c/o Fire Chief  
87 Coronado  
Kerrville, TX 78028

For the County:

Kerr County  
c/o County Judge  
Kerr County Courthouse  
700 Main Street  
Kerrville, TX 78028

- B. This Agreement supersedes all written or oral representations of the parties as to the content, obligations or performance of the provision of emergency medical services by City to County. Any modification to this Agreement shall be of no force or effect unless in writing and signed by both parties. Each party hereto certifies that the covenants and obligations stated in this Agreement constitute the duly authorized act and agreement of the respective entity and that the persons affixing their signatures below have obtained all requisite approvals for the execution of this Agreement.
- C. The validity of the Agreement and any of its terms or provisions as well as the rights and duties of the parties, shall be governed by the laws of the State of Texas. Exclusive venue for any action concerning this Agreement shall be in Kerr County, Texas.
- D. Neither party may assign any right under this Agreement, and any purported assignment will be null and void and a breach of the Agreement.

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- E. Notwithstanding any provision to the contrary, it is agreed that none of the obligations contained within this Agreement shall run to or be enforceable by any party other than a party to this Agreement.
- F. In the event either party pursues litigation in order to enforce the provisions of this Agreement, the prevailing party shall be entitled to recover its reasonable attorney's fees, in addition to any and all other remedies, costs and damages permitted by law.

EXECUTED this the \_\_\_\_\_ day of \_\_\_\_\_, A.D., 2011.

CITY OF KERRVILLE, TEXAS

COUNTY OF KERR, TEXAS

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

\_\_\_\_\_  
Pat Tinley, County Judge

ATTEST

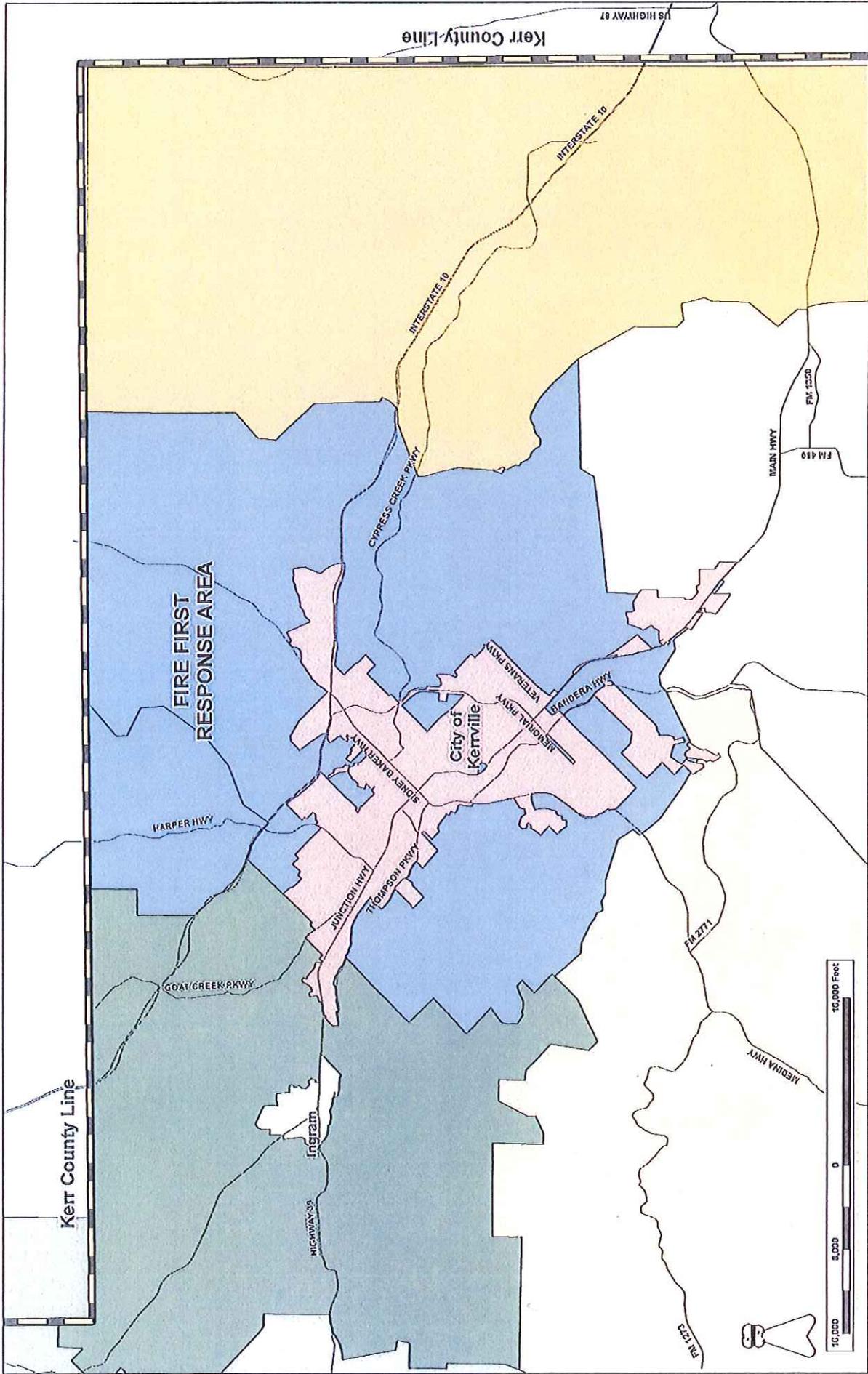
ATTEST

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

\_\_\_\_\_  
Jannett Pieper, County Clerk

APPROVED AS TO FORM

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

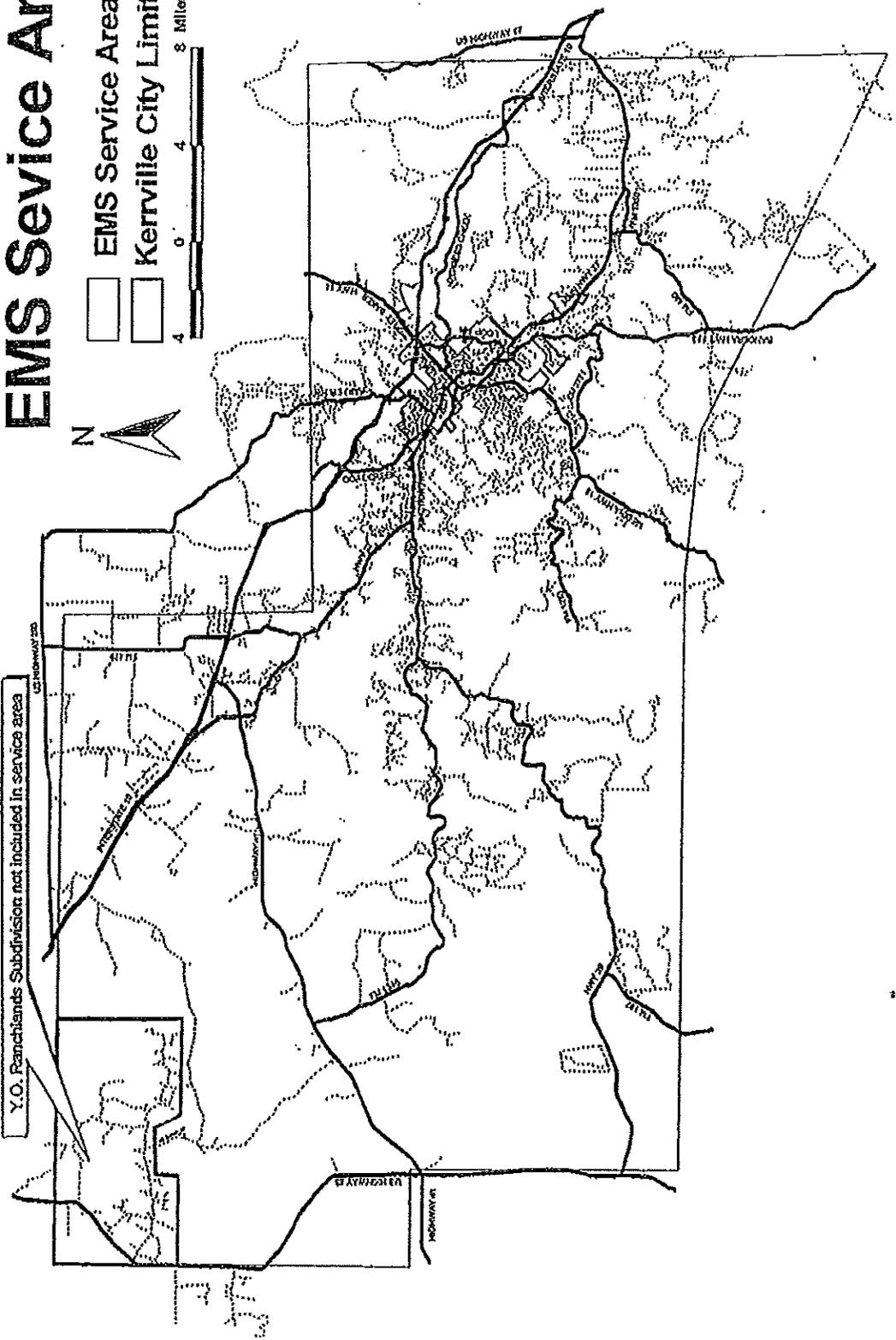


# EMS Service Area

-  EMS Service Area
-  Kerrville City Limits



Y.O. Ranchlands Subdivision not included in service area



4

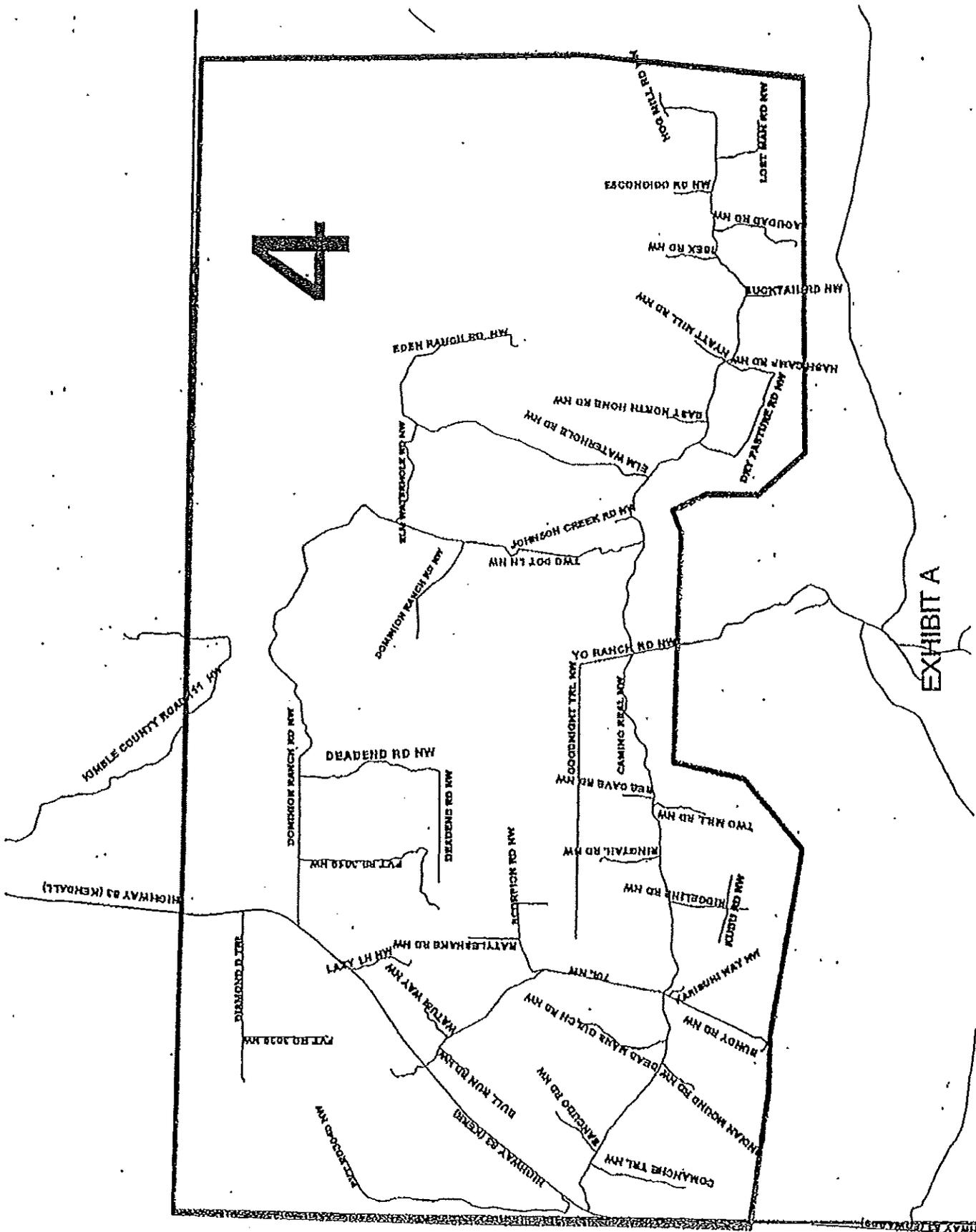


EXHIBIT A

**INTERLOCAL AGREEMENT FOR LIBRARY SERVICES BETWEEN CITY OF  
KERRVILLE, TEXAS, AND KERR COUNTY, TEXAS**

**THIS AGREEMENT**, by and between the City of Kerrville, Texas (“City”) and Kerr County (“County”), also referred to individually as “Party,” or collectively as “Parties”, is entered into on the \_\_\_\_ day of \_\_\_\_\_, 2011.

**WHEREAS**, City owns and administers the Butt-Holdsworth Memorial Library (“Library”); and

**WHEREAS**, the Library provides services to all Kerr County residents including those who reside within the City;

**NOW THEREFORE**, for and in consideration of the premises and the mutual benefits, covenants, promises and agreements hereinafter set forth, City and County agree:

1. City assumes the function of a County free library system in accordance with Section 323.011, Texas Local Government Code.
2. Management, ownership, and control of the Library and its employees, resources, and equipment shall remain vested in and/or remain the sole responsibility of the City.
3. The Library shall maintain accreditation in accordance with the Texas Administrative Code, Title 13, Part 1, Chapter 1, Subchapter C with services based on a Kerr County population estimate of 48,381.
4. The Library Advisory Board shall remain in existence and it shall continue to provide oversight of Library operations.
5. Term:
  - a. The term of this Agreement shall be from October 1, 2011 through September 30, 2016 (“Initial Term”). This Agreement shall remain in full force and effect through its Initial Term, unless terminated pursuant to Section 6, below.
  - b. The Parties agree that this Agreement shall renew automatically for one-year periods following the Initial Term subject to the payment adjustment provisions of Section 7 below unless either Party provides written notice to the other Party no later than March 1 of its intention not to renew this Agreement, which such termination will not

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become effective until the end of the City's current fiscal year (September 30). All terms and covenants of this Agreement shall apply to any renewal period.

### 6. Termination:

- a. Based upon budgetary constraints, either City or County may terminate this Agreement by providing written notice to the other Party not later than March 1 of any year. Any such termination will not be effective until the end of the City's current fiscal year (September 30).
- b. This Agreement may be terminated for cause, provided that in the event of the breach, the non-breaching Party shall give written notice to the breaching Party specifically stating the provision of this Agreement alleged to have been breached and the factual basis underlying the alleged breach. Within thirty (30) days after receipt of notice, the breaching Party shall: i) cure said breach; or ii) contest the alleged breach. Failure to cure the breach or contest the alleged breach within this thirty (30) day period shall be deemed a material breach of this Agreement and shall authorize the non-breaching Party to unilaterally terminate this Agreement, upon delivery of written notice of termination via certified mail or personal delivery, to the breaching Party. Termination shall be effective upon receipt of said notice.
- c. This Agreement may be terminated at any time by mutual agreement of the Parties.

### 7. Payment by County:

- a. In exchange and consideration for the City's provision of Library services under this Agreement during the Initial Term, County agrees to pay City \$375,000.00 for the first year of this Agreement. Such costs include costs relating to personnel, supplies, training, equipment, building operations, as well as other related expenses. Such costs do not include expenditures for capital improvements, major building maintenance, or depreciation.
- b. For each year following the first year of this Agreement, the Parties agree that, in exchange for the City's provision of services under this Agreement, the County shall increase its payment by adding an inflationary adjustment which shall be equal to the greater of 2% or the inflation increase as defined by the Consumer Price Index for All Urban Consumers, as published by the U.S. Department of Labor, Bureau of Labor Statistics (CPI) or its successor. This provision shall also apply to any annual extensions of this Agreement beyond the Initial Period.
- c. Payment for the Initial Term shall be due and payable on or before February 1 with subsequent payments being due on or before February 1 for each year that the Agreement continues.

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8. Payment by City: The City shall annually fund the Library at or above the annual payment made by the County for each fiscal year. In addition, the City shall be responsible for capital improvements, major building maintenance, and depreciation.
9. Library Budget:
  - a. City shall develop and submit an annual budget for Library operations ("Library Budget") to the County.
  - b. City shall submit its Library Budget to the County not later than July 1 of each year.
10. The City shall operate the Library and the hours that it is open to the public in a manner consistent with programming established in the approved budget. The City may change the standard operating hours from time to time for holidays, building renovations/construction, weather conditions, or other unforeseen situations. The City intends to add programming for youth services and to hire a Youth Services Librarian
11. This Agreement shall be binding upon Parties hereto; provide, however, that neither the City nor the County shall assign, sublet, or transfer their interest in this Agreement without the prior written consent of the other.
12. This Agreement has been made in and shall be construed in accordance with the laws of the State of Texas. Venue shall be in Kerr County, Texas.
13. Notice to City provided herein shall be sufficient if sent by first class mail, postage prepaid to:

City Manager's Office  
City of Kerrville  
800 Junction Highway  
Kerrville, TX 78028

And notice to County, if sent by first class mail, postage prepaid addressed to:

County Judge  
Kerr County Courthouse  
700 Main Street, Ste. 101  
Kerrville, TX 78028

Or to such other addresses as the Parties may designate to each other in writing.

APPROVED AND ADOPTED by the City Council for the City of Kerrville on the \_\_\_\_ day of \_\_\_\_\_ 2011; and by Commissioners Court of Kerr County, State of Texas, on the \_\_\_\_ day of \_\_\_\_\_ 2011.

**CoK Draft 4/15/11**

CITY OF KERRVILLE, TEXAS

COUNTY OF KERR, TEXAS

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

\_\_\_\_\_  
Pat Tinley, County Judge

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

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

ATTEST:

ATTEST:

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

\_\_\_\_\_  
Jannett Pieper, County Clerk

**INTERLOCAL AGREEMENT FOR THE CONTINUED EXISTENCE OF A  
JOINT AIRPORT BOARD TO PROVIDE MANAGEMENT  
OF KERRVILLE/KERR COUNTY AIRPORT**

This Joint Action Agreement ("Agreement"), pursuant to Chapter 22 of the Texas Transportation Code, is entered into between Kerr County, Texas ("County") and the City of Kerrville, Texas ("City"), also referred to individually as "Party", or collectively as "Parties", on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

WHEREAS, County and City jointly own the real property upon which is located the Kerrville/Kerr County Airport, sometimes referred to as Louis Schreiner Field ("Airport"); and,

WHEREAS, County and City have previously, by their actions, jointly managed said Airport under Tex. Rev. Civ. Stat. Ann. Art. 46d, Municipal Airport Act, the statutory predecessor to Chapter 22 of the Texas Transportation Code ("Code"); and

WHEREAS, County and City find that it is in the best interests of the citizens of County and City for the Airport to continue to be managed by a Joint Airport Board pursuant to the Code; and

WHEREAS, County and City are desirous of the continuous operation of the Airport in an effective manner; and

WHEREAS, County and City now reconstitute and reorganize the Joint Airport Board to reflect the terms of this Agreement;

NOW, THEREFORE, in consideration of these promises, covenants, and agreements, the Parties agree as follows:

1. **Duration of Agreement:** This Agreement shall be effective on the date it is fully executed by the Parties, and shall terminate on September 30, 2014. Thereafter, this Agreement shall automatically be renewed for five year terms, unless terminated as provided for below.

Deleted: 2011

2. **Proportionate Interest in Airport Property:** Each Party owns an equal, undivided interest in the real property and assets located within the bounds of the Airport, more particularly described in Exhibit A, and as that property description may be expanded or developed, and in the buildings, improvements, and other fixtures located on the property. Title to all Airport property shall remain jointly vested in the County and City.

3. **Joint Airport Board:** The Parties affirm the creation and continued existence of the Joint Airport Board ("Board"). The Board is reconstituted and shall consist and operate as follows:

(a) **Membership.** The Board shall be comprised of five members. The approval by each Party is required to constitute an appointment to the Board. ~~The current Board~~

Deleted: and

members as of September 30, 2011, are hereby reappointed by the Parties to serve the remainder of their Term of Office left as of September 30, 2011.

(b) Term of Office. Each Board member shall be appointed for a two year term and shall continue to serve in this capacity until their successor is appointed and is duly qualified. Upon the death of any member or should any member resign or for any reason become unable to serve, a replacement shall be appointed in the same manner as provided below to fill the vacancy for the unexpired term.

(c) Oath and Bond. Following appointment, each Board member shall qualify for office by taking the required oath of office before the County Judge.

(d) Appointment. The process for appointment by action of each Party shall be as designated below:

1) The Board shall recommend persons to the County and City for consideration of appointment. The Board shall submit the names of such persons to each Party at least 60 days prior to the end of the particular place's term. In the event that a candidate recommended by the Board is not appointed by either Party, the Board shall recommend an alternative candidate. In the event that this second candidate is not appointed by either Party, the Board shall select another candidate who will be automatically appointed to the Board without the approval of the Parties.

2) It is deemed desirable that all Board members possess and will contribute a balance of expertise in business, financial, aviation, or management training and experience. Appointments shall be made on or before June 1 of each year.

3) Replacement of members shall be in the same manner and under the same qualification as described above with such replacement being appointed to fulfill only that portion of the remaining term.

4) Any Board member may be removed by a majority vote of each Party, for any reason. In addition, the Board may recommend to the County and City that a Board member be removed.

5) Board members shall be eligible for reappointment.

(e) Officers: The Board shall appoint a President and Vice President who shall be selected from the Board's membership. If the Board appoints a Treasurer, the Treasurer shall execute a bond in an amount determined by the Board, with a corporate surety authorized to do business in the State of Texas and conditioned upon the faithful performance of the treasurer's duties. In addition, the Board shall appoint a secretary who shall record the minutes of the Board meetings. The term for each position shall be for two years.

~~Deleted:~~ shall be subject to

~~Deleted:~~ reappointment

~~Deleted:~~ without Board recommendation as it is the intent of this Agreement to reconstitute and reorganize the Board. Following the appointments and/or any reappointments to the Board, each Board member shall be assigned at random to hold one of the five places that comprise the Board

~~Deleted:~~ Following the execution of this Agreement, the terms of those Board members who are serving in Places 1, 3, or 5 shall expire on June 1, 2010. The terms for those Board members appointed to Places 2 and 4 shall expire on June 1, 2011.

(f) Compensation: Service on the Board is without compensation. However, each Board member is entitled to reimbursement for necessary expenses incurred in the performance of his/her duties as a Board member, subject to a written Board policy regarding the reimbursement of expenses, which has been approved by each Party.

(g) Authority, Powers and Duties: The Board shall have the following authority, powers and duties:

1) The Board may exercise on behalf of the Parties any power possessed by either Party and those specifically provided by the Code, including the power to lease property and facilities, and to buy and sell goods as an incident to the operation of the Airport. However, the Board is not authorized to impose a property tax, sell bonds, or otherwise enter into other debt instruments, dispose of Airport property, or exercise the power of eminent domain without the prior written consent of each Party.

2) The Board, following the prior written consent of each Party, has the authority to apply for and to execute grant funding agreements.

3) The Board may improve, equip, maintain, operate, manage, regulate, protect, and police the Airport.

4) The Board may realign, alter, acquire, abandon, or close a portion of a roadway or alleyway without a showing of paramount importance if the portions to be realigned, altered, abandoned, or closed are in the geographical boundaries of the Airport at the time of or after the realignment, alteration, acquisition, abandonment, or closing.

5) The Board shall have the responsibility and be in charge of the property, improvements, and other assets of the Airport and shall be in charge of the disbursement of Airport funds for Airport purposes. The Board shall also cause records to be kept of any and all revenues and disbursements.

6) ~~The Board shall maintain a fund for the purpose of depositing all revenues of the Airport, including each Party's share of the operating costs. This fund shall be kept and managed by the Board and shall be established at a bank with a branch in Kerr County. Federal, state, or other contributions or loans and the revenue obtained from the operation of the Airport shall be deposited to the credit of the joint fund.~~

~~Deleted: Within 30 days following the execution of this Agreement and the appointment(s) and/or reappointment(s) of Board members by the Parties, t~~  
~~Deleted: establish~~  
~~Deleted: to be maintained~~

7) The Board shall have an audit of the financial affairs of the Board and its operation of the Airport conducted each year by an independent accountant and shall furnish the audit to each Party no later than December 1 of each year.

8) The Board shall ensure that all records regarding the operation of the Airport are maintained, retained, and made available for public review in accordance with the Texas Public Information Act. All records shall be maintained at the Airport.

9) The Board shall hire and employ an Airport Manager ("Manager") and such other employees as are necessary for the operation of the Airport. The Manager shall be hired as soon as possible after execution of this Agreement.

10) The Board, through its Manager and any other employees, shall be responsible for the day-to-day management of the Airport. Toward that end, the Board is authorized to enter into service contracts with other public or private entities.

11) The Board may adopt resolutions, rules, and orders for the operation of the Airport.

12) The Board may lease Airport property and may adopt fees and rental rates with respect to the use of Airport services or use of Airport property. Such fees and rates should be, to the extent possible, included within the Board Budget.

13) The Parties acknowledge that the Airport property is within the City's limits and is subject to the City's regulations and that land adjacent to the Airport but outside the City limits is subject to the adoption, administration, and enforcement by either a County or Joint Airport Zoning Board of airport hazard area and compatible land use zoning. However, the Board shall monitor and consider appropriate zoning for the Airport and the immediately surrounding areas whose use may impact Airport operations.

14) The Board shall adopt policies and procedures for the purchase of goods and services and for the accounting of the Airport's finances, each in accordance with state law.

15) The Board may insure itself, its contractors and subcontractors against liability arising from the operation of the Airport for damages to the person or property of others, workers' compensation, and officers' and employees' liability. The insurance may consist of self-insurance and/or purchased insurance.

16) The Board shall comply with the Code and other state laws and local laws in all respects.

(h) Meetings: The Board shall meet on dates and times as agreed upon by the Board, which schedule may be changed from time to time; however in no event shall the Board meet less frequently than once per calendar quarter. The President of the Board or any two Board members shall have the authority to call a meeting. All such meetings of the

**Deleted:** The newly reconstituted Board shall meet within 15 days following the execution of this Agreement and the appointment(s) and/or reappointment(s) of Board members by the Parties. Thereafter, t

Board shall be held in accordance with the Texas Open Meetings Act and three members of the Board shall constitute a quorum of the Board. The Board shall make its own rules of order, by-laws, set the time and place for regular meetings, and shall keep minutes of its meetings.

(i) Fiscal year. The Board shall observe a fiscal year that begins each October 1 and ends September 30.

(j) Reporting. The Board shall provide quarterly written reports to each Party regarding the operations of the Airport and its finances.

(k) Litigation. The Board shall not enter into litigation of any kind without prior approval from the Parties. However, the Board may provide an appropriate response to a lawsuit or claim filed against it in an effort to protect its rights and defenses prior to any approval from the Parties.

4. Board Budget: The Board is responsible for the operations and needs of the Airport and shall develop and approve a budget for Airport operations ("Board Budget"). The Board Budget shall consist of the following parts: 1) maintenance and operations; and 2) capital improvements. For purposes of this Agreement, "capital improvements" are defined as a project that will result in a physical object with a value of \$25,000 or more. The Board shall submit and present the Board Budget to the County and the City for approval. Should either Party not approve the Board Budget, the previous year's Board Budget shall be automatically adopted for the upcoming year.

(a) Submission Required. The Board shall submit the Board Budget to both Parties not later than June 30<sup>th</sup> of each year for Parties' consideration no later than September 30 of each year.

(b) Content and Format. The Board Budget shall substantially conform to the format and line item content as specified and depicted in Exhibit B.

(c) Excess Spending Prohibited. Without the prior written approval of each Party, the Board shall not spend nor incur obligations which at any time will exceed the total amount of the Board Budget adopted by the County and City for that fiscal year.

(d) Airport Revenues. The Board shall only use revenues generated by operation of the Airport for Airport purposes.

(e) Board Budget Calculation. The Board shall determine the Board Budget as follows:

(1) Total of all revenues, not including contributions from the Parties, less total expenses, which shall include all grant matches.

(2) Where a negative sum occurs, the Board shall seek contributions from the Parties as provided below.

5. **County and City Funding:** To assure the objective of the continuation of efficient Airport operations, each Party is obligated to the other Party to contribute funds as follows:

(a) **Maintenance and Operations.** Subject to the authority of each party to terminate the Agreement at the end of any fiscal year, the County and City shall each fund one-half (1/2) of all the costs related to the maintenance and operations part of the Board Budget.

(b) **Capital Improvements.** The County and City shall be equally responsible for expenses directly resulting from the part of the Board Budget regarding capital improvements.

(c) **Schedule of Payments.** Pursuant to the Board Budget and the amount of each Party's contributions, each Party shall forward 12 equal monthly payments to the Board in the amount of 1/12<sup>th</sup> of their total contribution on or before the 15<sup>th</sup> day of each month.

6. **Amendment:** This Agreement may only be amended by written agreement of the Parties.

7. **Termination of Agreement Prior to Expiration:** This Agreement may be terminated by either Party to become effective at the end of the current fiscal year. To effectuate the termination, the Party seeking termination must provide written notice to the other Party at least 90 days prior to the end of the fiscal year.

8. **Notices:** Any notice required or permitted to be given pursuant to this Agreement or under the laws of this state shall be given in writing and may be given via the United States Postal Service, certified mail, or commercial courier service, addressed to the applicable Party at the address set forth below:

City: City of Kerrville  
Attention: City Manager  
800 Junction Highway  
Kerrville, TX 78028

County: Kerr County, Texas  
Attention: County Judge  
Kerr County Courthouse  
700 Main Street  
Kerrville, TX 78028

Board: Joint Airport Board

~~Deleted: for Fiscal Years 2009 through 2011.~~

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~~Deleted: over the next three fiscal years (2009, 2010, 2011) in the following percentages.†~~

	FY 09	FY 10	FY 11†
County	50%	75%	100%
City	50%	25%	0%

~~† The Parties have determined the amount of the FY 2009 Board Budget and these values reflect that amount.†~~

~~County's Responsibility for Maintenance and Operations Costs for Fiscal Year 2012 and beyond. The County shall continue to fund all of the costs related to the maintenance and operations part of the Board Budget for Fiscal Year 2012 and beyond. The City shall not fund any of the maintenance and operations part of the Board Budget and will continue to maintain its 50% ownership interest in the Airport.~~

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Attention: Airport Manager  
Kerrville/Kerr County Airport  
1875 Airport Loop Road  
Kerrville, TX 78028

9. **Governing Law and Venue:** This Agreement and all of the transactions contemplated herein shall be governed by and construed in accordance with the laws of the State of Texas. Venue for any cause of action shall be in a court of competent jurisdiction in Kerr County, Texas.

10. **Severability:** If any provision of this Agreement is invalid or unenforceable, this Agreement shall be considered severable as to such provision, and the remainder of this Agreement shall remain valid and binding as though such invalid or unenforceable provision was not included.

11. **Captions:** Section headings are inserted herein only as a matter of convenience and for reference, and in no way defines, limits, or describes the scope or intent to any provision.

12. **Use of Language:** Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular shall be held to include the plural, unless the context otherwise requires.

13. **Entire Agreement:** This Agreement embodies the entire agreement between the Parties, and supersedes all prior agreements and understandings, whether written or oral, and all contemporaneous oral agreements and understandings relating to the subject matter. This Agreement shall not be amended, discharged or extended, except by written instrument executed by the Parties. The Parties agree that no representations or warranties shall be binding upon either Party unless expressed in writing in the Agreement.

14. **Multiple Counterparts:** This Agreement may be executed in multiple counterparts, each of which constitutes an original.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be legally executed this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

CITY OF KERRVILLE

COUNTY OF KERR, TEXAS

By: \_\_\_\_\_  
David Wampler, Mayor

By: \_\_\_\_\_  
Pat Tinley, County Judge

ATTEST:

ATTEST:

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

\_\_\_\_\_  
Jannett Pieper, County Clerk

APPROVED AS TO FORM:

APPROVED AS TO FORM:

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

\_\_\_\_\_  
Robert Henneke, County Attorney

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

8E. Renaming of the Kerrville water impoundment to Sunset Lake.

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

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**SUBJECT:** Consideration and possible action regarding the renaming of the Kerrville water impoundment

**FOR AGENDA OF:** 4/26/11

**DATE SUBMITTED:** 4/19/11

**SUBMITTED BY:** Charlie Hastings *CH*  
Public Works Director

**CLEARANCES:** Todd Parton  
City Manager

**EXHIBITS:**

**AGENDA MAILED TO:**

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

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

**PAYMENT TO BE MADE TO:**

**REVIEWED BY THE FINANCE DIRECTOR:**

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**SUMMARY STATEMENT**

Councilmember Gross has suggested that the Kerrville water impoundment, also known as UGRA Lake, be renamed to Sunset Lake.

**RECOMMENDED ACTION**

This item is for consideration and possible action.

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

- 8F. Approve prioritized list of roadway projects in Kerr County for final submission to the Alamo Regional Rural Planning Organization.

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

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**SUBJECT:** Update on Alamo Regional Rural Planning Organization (ARRPO) transportation list

**FOR AGENDA OF:** 4/26/11

**DATE SUBMITTED:** 4/15/11

**SUBMITTED BY:** Charlie Hastings *CH*  
Director of Public Works

**CLEARANCES:** Todd Parton  
City Manager

**EXHIBITS:** ARRPO Kerr County/Kerrville Roadway Priorities

**AGENDA MAILED TO:**

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

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

**PAYMENT TO BE MADE TO:**

**REVIEWED BY THE FINANCE DIRECTOR:**

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**SUMMARY STATEMENT**

Last year council authorized staff to submit a list and map of thoroughfare needs to the Alamo Regional Rural Planning Organization (ARRPO) to be considered for coordinated and proactive transportation planning. Mayor Wampler, Councilmember Motheral, Todd Parton, Charlie Hastings, Judge Tinley and Commissioner Letz met on April 15, 2011 to blend and reprioritize the top five projects from each entity. The result was the following list of projects, listed in priority, for submittal by Kerr County to TxDOT and ARRPO:

- 1.) SH 27 expand from 2 to 4 lanes from Kerrville to the Kerr County Line, including intersection improvements at Airport Loop Road
- 2.) SH 16 from Gillespie County Line to SH 27 widen to provide passing lanes
- 3.) FM 1341 from Loop 534 to I-10 rehab and widen narrow roadway
- 4.) I-10 from FM 783 to SH 16, reconstruct ramp, new frontage roads, and intersection
- 5.) Loop 534 Bridge from SH 173 to SH 27 expand from 2 to 4 lanes

**RECOMMENDED ACTION**

Staff recommends that council approve the attached list of ARRPO Kerr County/Kerrville Roadway Priorities and authorize the City Manager to forward this list to the Kerr County Judge for final submittal to TxDOT and ARRPO.

Gillespie County

Kerr County

Kerr County

2) SH 16

3) FM 1341

1) SH 27

4) I-10

5) Loop 534 Bridge

SH 16

FM 1341

LOOP 534

SH 27

10

10

ARRPO

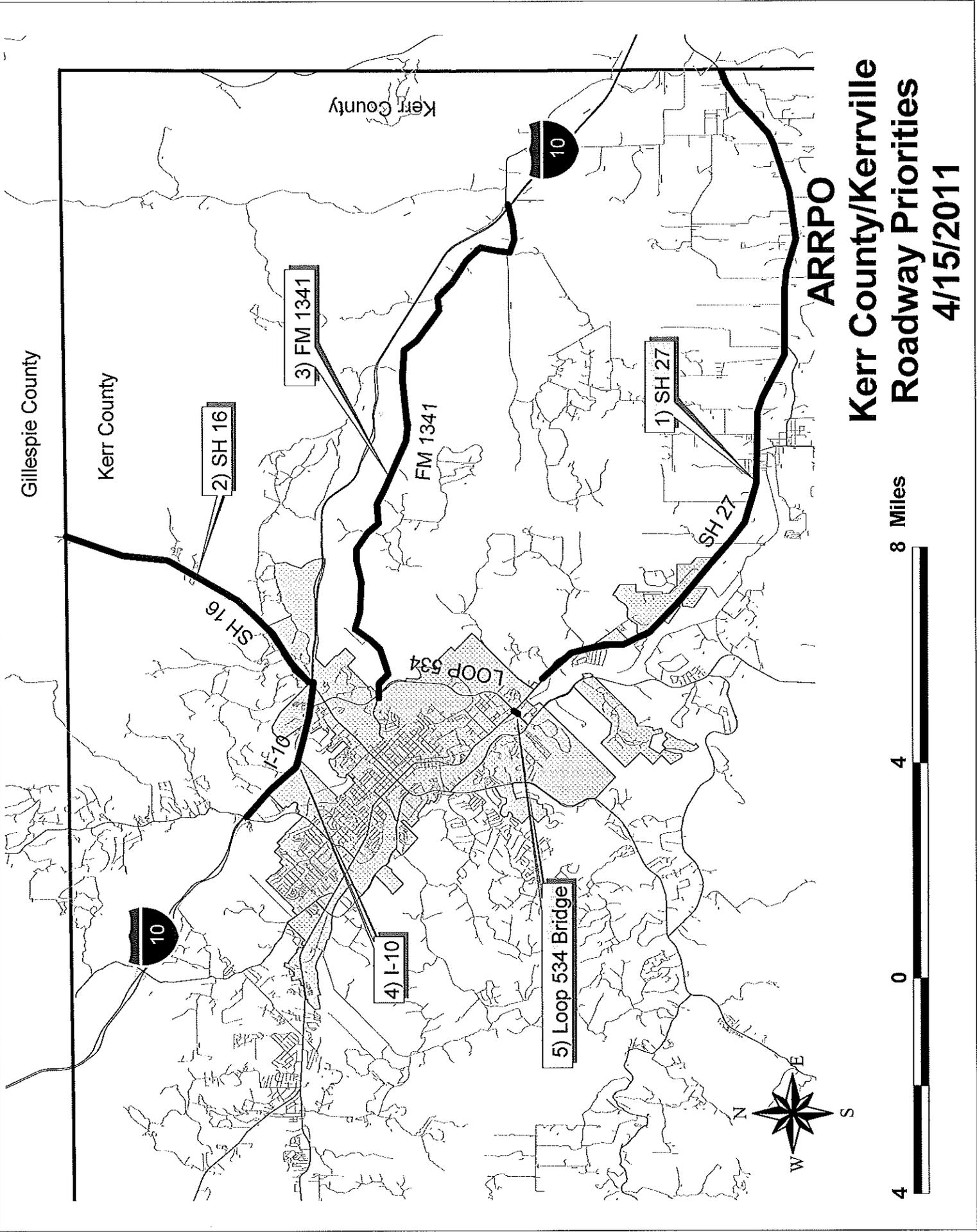
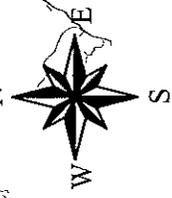
# Kerr County/Kerrville Roadway Priorities 4/15/2011

8 Miles

4

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

- 8G. Update regarding Lower Colorado River Authority Transmission Services Corporation (LCRA-TSC) application for the proposed McCamey D to Kendall to Gillespie CREZ project PUC Docket No. 38354; City of Kerrville, Kerrville Public Utility Board, and City of Junction v. PUC, Cause No. D-1-GV-000324, in the 98th District Court of Travis County.



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

9A. Economic update.



CITY OF KERRVILLE  
ECONOMIC UPDATE AS OF April 20, 2011

	Current Month	Previous Month	1 Year Ago	Trend	Current Month
<b>National</b>					
Unemployment	8.80%	8.90%	9.70%	↓	April
Consumer Confidence	63.4	72	52.3	↓	March
1 year T-Bills	0.22%	0.22%	0.41%	↑	4/20/11

<b>State</b>					
Monthly Unemployment	8.10%	8.20%	8.30%	↓	March
Monthly Sales Tax	\$1,603.8m	\$1,749.5m	\$1,458.9m	↑	March

<b>Local</b>					
Monthly Unemployment (Kerr Co.)	6.30%	6.40%	6.20%	↓	March
Median Listing Price	\$210,000	\$199,000	\$210,000	↑	4/1/11
Monthly Sales Tax	\$315,508	\$339,554	\$320,921	↓	April
Monthly EIC Tax	\$157,729	\$169,754	\$160,461	↓	April
Monthly HOT	\$49,664	\$40,576	\$44,031	↑	March

	FY11 Budget	FY11 as of 03/31/2011	FY11 % Received	FY10 as of 03/31/2010	FY10 % Received
<b>General Fund</b>					
Tax Revenue	\$14,647,100	\$10,976,938	74.94%	\$10,642,293	70.69%
Property Tax	\$8,240,000	\$7,855,977	95.34%	\$7,743,496	91.44%
Sales Tax	\$4,500,000	\$2,334,695	51.88%	\$2,220,426	48.02%
Permits & Fees	\$402,450	\$168,905	41.97%	\$168,952	45.57%
Intergovernmental	\$707,013	\$367,000	51.91%	\$316,149	45.48%
Service Revenues	\$2,578,260	\$1,217,799	47.23%	\$1,485,524	44.86%
Grant Revenue	\$10,000	\$17,515	175.15%	\$10,525	105.25%
Fines & Forfeitures	\$477,710	\$301,105	63.03%	\$253,922	50.33%
Interest & Misc.	\$235,372	\$205,468	87.30%	\$300,227	65.24%
Transfers In	\$1,000,000	\$500,000	50.00%	\$721,951	57.26%
<b>Total General Fund</b>	<b>\$20,057,905</b>	<b>\$13,754,731</b>	<b>68.58%</b>	<b>\$13,899,543</b>	<b>64.15%</b>
<b>Total General Fund Expenditures</b>	<b>\$20,057,905</b>	<b>\$9,583,280</b>	<b>47.78%</b>	<b>\$10,644,578</b>	<b>47.41%</b>
<b>Water/Sewer Fund</b>					
Water Sales	\$4,400,000	\$2,273,767	51.68%	\$1,896,027	6.29%
Sewer Sales	\$3,760,000	\$1,739,046	46.25%	\$1,852,693	7.17%
Other Revenue	\$782,124	\$450,050	57.54%	\$422,245	63.07%
<b>Total Water &amp; Sewer Fund</b>	<b>\$8,942,124</b>	<b>\$4,462,864</b>	<b>49.91%</b>	<b>\$4,170,966</b>	<b>43.31%</b>
<b>Total W&amp;S Fund Expenditures</b>	<b>\$9,242,124</b>	<b>\$4,612,550</b>	<b>49.91%</b>	<b>\$4,086,593</b>	<b>43.13%</b>