

AGENDA FOR REGULAR MEETING

KERRVILLE CITY COUNCIL

TUESDAY, FEBRUARY 14, 2012, 6:00 P.M.

CITY HALL COUNCIL CHAMBERS

800 JUNCTION HIGHWAY, KERRVILLE, TEXAS

KERRVILLE CITY COUNCIL AGENDA
REGULAR MEETING, TUESDAY, FEBRUARY 14, 2012, 6:00 P.M.
CITY HALL COUNCIL CHAMBERS
800 JUNCTION HIGHWAY, KERRVILLE, TEXAS

CALL TO ORDER

INVOCATION offered by Eldon Sheffer, Director of Church Relations at Schreiner University.

PLEDGE OF ALLEGIANCE TO THE FLAG led by Jerry Lane, of the Military Officers Association of America.

1. VISITORS/CITIZENS FORUM:

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

2. CONSENT AGENDA:

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

- 2A. Minutes of the regular city council meeting of January 10, 2012. (staff)
- 2B. Economic development grant agreement between Fox Tank, Inc. and the City of Kerrville, Texas Economic Improvement Corporation for construction of a new facility in the amount of \$600,000.00. (staff)
- 2C. Economic development Incentive Agreement between Fox Tank, Inc. and the City of Kerrville, pursuant to Chapter 380, Texas Local Government Code. (staff)
- 2D. Estoppel and consent agreement regarding airport lease between Joseph L. Kennedy Enterprises, LTD, and the Kerrville-Kerr County Airport Board. (staff)
- 2E. Purchase of a backhoe from ASCO Equipment in the amount of \$92,566.18. (staff)

The facility is wheelchair accessible and accessible parking spaces are available. Requests for accommodations or interpretive services must be made 48 hours prior to this event. Please contact the City Secretary's Office at 830-257-8000 for further information.

I do hereby certify that this notice of meeting was posted on the bulletin board at the city hall of the city of Kerrville, Texas, and said notice was posted on the following date and time: February 10, 2012 at 4:00 p.m. and remained posted continuously for at least 72 hours preceding the scheduled time of the meeting.

Brenda Craig
City Secretary, City of Kerrville, Texas

2F. Amend the professional services agreement with Peter Lewis Architect + Associates, PLLC for design of the city hall facility and renovation of adjacent administrative space in an additional amount not to exceed \$25,000.00 for a total contract amount not to exceed \$227,250.00. (staff)

2G. Project funding agreement between the Kerrville Public Utility Board and the City of Kerrville, Texas Economic Improvement Corporation (downtown Kerrville utility line removal and undergrounding). (staff)

2H. Request from Hill Country Telephone Cooperative for license agreement for the installation of wireless access points on city-owned water towers. (staff)

2I. Request recycled asphalt product from the Texas Department of Transportation (TxDOT). (staff)

3. ORDINANCE, SECOND READING:

3A. An ordinance enacting a moratorium on the acceptance of applications and the issuance of permits for the installation of electronic and traveling lighted message signs within the City and its extraterritorial jurisdiction for a period of ninety (90) days; providing an effective date; containing a savings and severability clause; and providing other matters relating to the subject. (staff)

4. ORDINANCE, FIRST AND ONLY READING:

4A. Ordinance authorizing the issuance, sale and delivery of \$_____ in aggregate principal amount of "City of Kerrville, Texas Combination Tax and Revenue Certificates of Obligation, Series 2012"; 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, an official statement and all other instruments and procedures related thereto. (staff)

5. CONSIDERATION AND POSSIBLE ACTION:

5A. Hear request for action from Elizabeth Bigelow regarding helicopter incident at Comanche Trace. (Elizabeth Bigelow)

5B. A resolution suspending the March 6, 2012, effective date of Atmos Energy Corp., Mid-Tex Division ("Atmos Mid-Tex") requested rate change to permit the city time to study the request and to establish reasonable rates; approving cooperation with Atmos Cities Steering Committee ("ACSC") and other cities in the Atmos Mid-Tex service area to hire legal and consulting services and to negotiate

The facility is wheelchair accessible and accessible parking spaces are available. Requests for accommodations or interpretive services must be made 48 hours prior to this event. Please contact the City Secretary's Office at 830-257-8000 for further information.

I do hereby certify that this notice of meeting was posted on the bulletin board at the city hall of the city of Kerrville, Texas, and said notice was posted on the following date and time: February 10, 2012 at 4:00 p.m. and remained posted continuously for at least 72 hours preceding the scheduled time of the meeting.

Brenda Craig
City Secretary, City of Kerrville, Texas

with the company and direct any necessary litigation and appeals; requiring reimbursement of cities' rate case expenses; finding that the meeting at which this resolution is passed is open to the public as required by law; requiring notice of this resolution to the company and ACSC's legal counsel. (staff)

5C. Approval of pavement management system projects for FY12. (staff)

6. INFORMATION AND DISCUSSION:

6A. Water resources report. (staff)

6B. Budget and economic update. (staff)

7. ITEMS FOR FUTURE AGENDAS

8. ANNOUNCEMENTS OF COMMUNITY INTEREST:

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

9. EXECUTIVE SESSION:

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

Section 551.071 and 551.087:

Discuss or deliberate regarding commercial or financial information that the City Council has received from a business prospect that the Council seeks to have locate, stay, or expand in the City and with which the governmental body is conducting economic development negotiations; or to deliberate the offer of a financial or other incentive to such business prospect.

10. ACTION ON ITEMS DISCUSSED IN EXECUTIVE SESSION

11. ADJOURNMENT.

The facility is wheelchair accessible and accessible parking spaces are available. Requests for accommodations or interpretive services must be made 48 hours prior to this event. Please contact the City Secretary's Office at 830-257-8000 for further information.

I do hereby certify that this notice of meeting was posted on the bulletin board at the city hall of the city of Kerrville, Texas, and said notice was posted on the following date and time: February 10, 2012 at 4:00 p.m. and remained posted continuously for at least 72 hours preceding the scheduled time of the meeting.

Brenda Craig
City Secretary, City of Kerrville, Texas

Agenda Item:

2A. Minutes of the regular city council meeting of January 10, 2012. (staff)

CITY COUNCIL MINUTES
REGULAR MEETING

KERRVILLE, TEXAS
JANUARY 10, 2012

On January 10, 2012, 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 Patty Edwards, Unity Church of the Hill Country, followed by the Pledge of Allegiance led by Corporal Clayton Baldwin, Medic, United States Army, having recently served in Afghanistan.

COUNCILMEMBERS PRESENT:

David Wampler	Mayor
Gene Allen	Mayor Pro Tem
Carson Conklin	Councilmember
T. Scott Gross	Councilmember
Stacie Keeble	Councilmember

COUNCILMEMBER ABSENT: None

CITY EXECUTIVE STAFF PRESENT:

Todd Parton	City Manager
Mike Hayes	City Attorney
Brenda G. Craig	City Secretary
Kristine Ondrias	Assistant City Manager
Travis Cochrane	Director of Information Technology
Mike Erwin	Director of Finance
Charlie Hastings	Director of Public Works
Kim Meisner	Director of General Operations
Mindy Wendele	Director of Business Programs
Robert Ojeda	Fire Chief
John Young	Police Chief
Jeff Finley	Director of Building Services

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

1. VISITORS/CITIZENS FORUM: No one spoke.

1A. Mr. Conklin was selected by the Mardi Gras on Main Committee to be a member of the Royal Court for the Mardi Gras event on February 21.

2. PRESENTATIONS:

2A. Presentation of Certificate of Achievement for Excellence in Financial Reporting Award from the Government Finance Officers Association. Mr. Parton presented the award to the finance department staff and noted the city had received the award for 27 consecutive years: Sandra Yarbrough, Sai Vongchampa, Kathy Schneider, Vanessa Silva, and Trina Rodriguez.

3. CONSENT AGENDA:

Mr. Allen moved for approval of item 3A; Mr. Conklin seconded the motion and it passed 5-0:

3A. Approval of the minutes of the regular city council meeting held December 13, 2011; and two special city council meetings held December 14, 2011.

END OF CONSENT AGENDA

4. CONSIDERATION AND POSSIBLE ACTION:

4A. Resolution No. 01-2012 authorizing publication of notice of intention to issue certificates of obligation in the amount not to exceed \$10,000,000 for the purpose of financing parks and trail system improvements and water and sewer system improvements.

Mr. Erwin noted the council issued \$3.5 million debt for river trail and park system improvements in December; this resolution would authorize staff to proceed with the second issuance of \$3.5 million. In addition, staff proposed issuing approximately \$6.3 million for water and sewer system capital projects, for a total 2012 issuance of approximately \$10 million. Approval of the resolution would authorize staff to proceed, and the sale of bonds would be considered by the council at the February 14, 2012 meeting.

Mr. Gross moved for approval of Resolution No. 01-2012; Mr. Allen seconded the motion and it passed 5-0.

4B. Set time, date and place for a workshop to discuss the FY2013 budget.

Mr. Parton proposed a workshop to begin the process of planning the FY13 budget. The consensus of the council was to schedule the workshop on January 31, 2012, at the Salvation Army Kroc Center.

4C. Direction to staff on proposed amendments to the sign ordinance.

Mr. Finley reviewed the problems with the existing ordinance, in particular, difficulty with enforcement and conflicting provisions, and noted a committee had been established to review the existing ordinance and to recommend changes. He presented the results of two surveys prepared by the city and the chamber. He reviewed the committee's and staff's recommended changes and noted the committee felt it had completed its task, but would participate in discussions regarding the rewrite of the ordinance if requested to do so. He recommended council consider placing a moratorium on issuing sign permits until completion of the sign ordinance amendments.

The consensus of the council was to instruct staff to prepare a draft ordinance based on input received from the sign committee, chamber, community, and the council. Staff should invite the chamber to be involved in the rewrite, and Mayor Wampler encouraged the community to be involved in the process. Further, the consensus of the council was to place a moratorium on issuing sign permits until the sign ordinance could be completed.

Mr. Hayes noted a moratorium could be established by ordinance, which would require two readings.

4D. Support of the Kerrville Area Chamber of Commerce's Kerr Fest 2012 scheduled for August 10 and 11, 2012.

Ms. Wendele noted the chamber of commerce requested the city support Kerr Fest 2012 by providing in kind services, i.e. public safety and EMS equipment and personnel for the event, estimated to cost \$3,100.

The following persons spoke:

1. Traci Carlson, Kerrville Area Chamber of Commerce President, encouraged the city's support of the event.
2. Denny Foster, event organizer, noted plans for Kerr Fest 2012 included a carnival, dance, team roping, and arts and crafts booths.

Mr. Conklin moved that the city allocate resources and approve the request for \$3,100 for in kind services as proposed; the motion was seconded by Mr. Gross and passed 5-0.

5. INFORMATION AND DISCUSSION:

5A. Water resources report.

Mr. Hastings noted the state water master had allowed the city to begin removing water from the river and staff was treating and injecting water into the ASR wells. The city currently had 620 million gallons in ASR. The river flow was currently at 60 cfs; average flow was 120 cfs.

5B. Budget and economic update.

Mr. Erwin noted sales tax was up 4% above same month last year. He reported as of December 31, 2011, general fund expenditures were at \$4,686,774 and water/sewer fund expenditures at \$2,149,486.

6. BOARD APPOINTMENTS:

6A. Appointment(s) to the zoning board of adjustment. Mr. Conklin moved to appoint Linda Stilwell as a regular board member with term to expire September 30, 2013; Mr. Allen seconded the motion and it passed 5-0.

Mr. Gross moved to appoint Paul Zohlen and Bob Waller as alternate members with terms to expire September 30, 2012 and September 30, 2013, respectively. Ms. Keeble seconded the motion and it passed 5-0.

6B. Appointments to the planning and zoning commission. Item was deferred to executive session.

7. ITEMS FOR FUTURE AGENDAS: None stated.

8. ANNOUNCEMENTS OF COMMUNITY INTEREST:

8A. Ms. Keeble announced the Polar Bear Challenge netted over \$22,000 for Partners in Ministry. Carolyn Lipscomb noted Ms. Keeble won the Best Costume Award.

9. EXECUTIVE SESSION:

Mr. Gross moved for the city council to go into executive closed session under Sections 551.071 (consultation with attorney), 551.074 (personnel matters), and 551.087 (deliberation regarding economic development negotiations) of the Texas Government Code; the motion was seconded by Mr. Allen and passed 5-0 to discuss the following matters:

Section 551.071 and 551.087:

- Discuss or deliberate regarding commercial or financial information that the City Council has received from a business prospect that the Council seeks to have locate, stay, or expand in the City and with which the governmental body is conducting economic development negotiations; or to deliberate the offer of a financial or other incentive to such business prospect.

Section 551.074:

- Appointments to the planning and zoning commission.

At 6:53 p.m. the regular meeting recessed and council went into executive closed session at 6:58 p.m. At 7:33 p.m. the executive closed session recessed and council returned to open session at 7:33 p.m. Mayor Wampler announced that no action had been taken in executive session.

10. ACTION ON ITEMS DISCUSSED IN EXECUTIVE SESSION:

6B. Appointments to the planning and zoning commission. Mr. Conklin moved to reappoint Harold Buell and David Watterson as regular board members, and Chastan McRae as the alternate board member; all with terms to expire January 1, 2014. Mr. Allen seconded the motion and it passed 5-0

11. ADJOURNMENT. The meeting adjourned at 7:34 p.m.

APPROVED: _____

David Wampler, Mayor

ATTEST:

Brenda G. Craig, City Secretary

Agenda Item:

2B. Economic development grant agreement between Fox Tank, Inc. and the City of Kerrville, Texas Economic Improvement Corporation for construction of a new facility in the amount of \$600,000.00. (staff)

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

SUBJECT: Funding agreement with Fox Tank Company and the City of Kerrville, Texas Economic Improvement Corporation for the construction of a new facility in the amount of \$600,000.00

FOR AGENDA OF: February 14, 2012 **DATE SUBMITTED:** February 1, 2012

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

EXHIBITS: Funding Agreement

AGENDA MAILED TO:

APPROVED FOR SUBMITTAL BY CITY MANAGER:

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

PAYMENT TO BE MADE TO:

REVIEWED BY THE FINANCE DIRECTOR:

SUMMARY STATEMENT

The Kerrville Economic Improvement Corporation (EIC) received an application from the Fox Tank Company requesting financial assistance for the construction of a new commercial building.

The proposed project would construct approximately 11,000 square feet of new commercial space and result in the addition of at least 60 new jobs with minimum salaries of \$15 per hour. Pro formas for this prospect indicate that the direct financial impact from this project has the potential to repay the community investment within 10 years.

The EIC held a public hearing regarding this proposal at its January 23, 2012, meeting. The public hearing was conducted and the funding agreement between the Economic Improvement Corporation and Fox Tank Company was approved by the EIC for an allocation of \$600,000 toward the project. City Council is now scheduled to consider this funding request and the related funding agreement.

RECOMMENDED ACTION

The EIC approved this application and no one spoke in favor or opposition of this request on January 23, 2012. Staff recommends approval of this funding agreement provided that any legal issues identified by the city attorney are satisfactorily addressed prior to execution.

FINAL DRAFT 2/9/12

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

This Agreement entered into by and between FOX TANK, INCORPORATED a Texas corporation ("Fox"), acting herein by and through its duly authorized Vice President, R. Nathan Fox ("Fox Officer"), and the CITY OF KERRVILLE, TEXAS, ECONOMIC IMPROVEMENT CORPORATION ("EIC"), a Texas nonprofit corporation established pursuant to Section 4B of Tex. Rev. Civ. Stat. Art. 5190.6 (otherwise known as the Development Corporation Act of 1979 and now codified in Chapters 501, 502, and 505 of the Texas Local Government Code) (hereafter referred to as "the Act"), acting by and through its duly authorized President, Gregg Appel.

WITNESSETH:

WHEREAS, EIC was formed to administer the sales and use tax approved by the citizens of Kerrville, Texas, in May 1995 and collected for projects including but not limited to:

Land, buildings, equipment, facilities, expenditures, targeted infrastructure, and improvements that are for the creation or retention of primary jobs, as that term is defined by the Act, and found by the EIC to be required or suitable for the development, retention, or expansion of manufacturing and industrial facilities as provided by Section 501.101 of the Act; and

WHEREAS, pursuant to the Act, the EIC is authorized to provide funding relating to the construction of projects which the EIC finds to be encompassed within the definition of "Projects" as that word is defined by Chapters 501 and 505 of the Act; and

WHEREAS, Fox is a manufacturer of production equipment in the oil and gas industry, including oilfield storage tanks and other specialty oilfield production products; and

WHEREAS, Fox is seeking to expand its manufacturing capabilities through the purchase of land and the construction of a facility to be located within Kerrville; and

WHEREAS, Fox has applied for a grant from EIC, as well as economic incentives from both Kerr County and the City of Kerrville for funding necessary to purchase land and to build a new facility; and

WHEREAS, EIC has determined that such a grant complies with the Act and is in keeping with the mission of EIC and *City of Kerrville Economic Improvement Corporation 4B Sales Tax Funding Request Guidelines and Procedures* in that it will help develop, retain, and expand a manufacturing facility and a business enterprise and create and retain primary jobs; and

WHEREAS, EIC finds that it will be in the public interest to enter into an agreement with Fox to provide sales tax revenues collected pursuant to the Act ("4B Revenues") to Fox for its cost in acquiring land necessary for the construction of a new manufacturing facility; and

WHEREAS, on January 23, 2012, in a meeting that was open to the public in accordance with the Texas Open Meetings Act, EIC held a public hearing pursuant to Section 505.159 of the Act related to the proposed expenditure of 4B Revenues for the purposes provided above;

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

**ARTICLE I.
EIC'S OBLIGATIONS**

- A. EIC hereby grants to Fox Six Hundred Thousand and No/100 Dollars (\$600,000.00) ("Grant") for costs relating to the design and construction of a new manufacturing facility to be generally located across from the Kerrville-Kerr County Airport and along Highway 27 ("Project"), which approximate ten (10) acre site is depicted in the attached **Exhibit A** (the "Property"). The EIC has derived said grant from the assignment of the amount of \$10,000.00 for each employee that Fox is required to employ at the Project, as further specified in Article II.
- B. Subject to the terms and conditions set forth in Article II, EIC will provide the Grant to Fox as follows:
- (1) EIC shall pay Fox Three Hundred Thousand and No/100 Dollars (\$300,000.00) at the time that the City of Kerrville issues Fox a building permit for the Project.
- (2) EIC shall pay Fox Three Hundred Thousand and No/100 Dollars (\$300,000.00) at the time that the City of Kerrville issues Fox a certificate of occupancy for the Project.
- C. Payments made by EIC to Fox from 4B Revenues shall be limited to the payments of "costs" as defined by the Act and as specified above for the Project.
- D. In no event shall the total amount of the Grant exceed Six Hundred Thousand and No/100 Dollars (\$600,000.00).

**ARTICLE II.
FOX'S OBLIGATIONS**

- A. Fox shall keep and maintain complete and accurate records relating to its costs of designing and constructing the Project and employment information, separate and identifiable from its other records, for three (3) years following the termination of this Agreement. EIC and its representatives shall be entitled to inspect the records during the term of this Agreement and for three (3) years thereafter, upon reasonable notice. Fox's failure to comply with this provision shall constitute a breach of the Agreement.

- B. Fox agrees that no later than February 14, 2012, it shall petition the City Council of the City of Kerrville in writing to annex the Property into the corporate limits of the City in accordance with state law (*see* Section 43.028, Texas Local Government Code). Failure to submit an administratively complete petition for annexation of the entire Property by this date shall constitute a breach of this Agreement by Fox and shall terminate the obligation of EIC to make any additional payments of the Grant.
- C. Prior to and following annexation of the Property, Fox will comply with all applicable development regulations of the City of Kerrville, to include building codes, subdivision regulations, and zoning, in its development and construction of the Project. Fox's failure to comply with this provision shall constitute a breach of this Agreement.
- D. Once the Project is complete and in operation, Fox shall begin hiring employees for work at the Project. Fox shall comply with each of the following terms with respect to its employment at the Project, such terms to be collectively referred to herein as the "Employment Requirements":
- (1) the minimum level of employment shall be at least sixty (60) employees;
 - (2) Sixty percent (60%) of Fox employees shall reside and continue to reside within Kerr County during their employment;
 - (3) each employee shall be paid a minimum wage equal to at least \$15.00 per hour; and
 - (4) each employee shall be full-time and paid for at least forty (40) hours of work per week, with the exception of where an employee is on some form of leave.
- E. Each month, Fox shall submit written evidence including a sworn statement from the Fox Officer confirming the Employment Requirements to the EIC for review and verification. The failure by Fox to provide this information to EIC shall constitute a breach of this Agreement.
- F. Should Fox fail to comply with the Employment Requirements, Fox, as a penalty, shall provide a refund to the EIC equal to \$1000.00 for each employee that fails to meet such Employment Requirements. For example, where Fox employs only fifty (50) employees, a penalty of \$10,000.00 would be assessed against Fox. Fox shall pay the refund as soon as commercially practicable after the receipt of a written demand by EIC, but in no event later than thirty (30) days from the receipt of such demand. Failure to reimburse EIC within thirty (30) days of Fox's receipt of such demand shall constitute a breach of this Agreement.
- G. Should Fox breach this Agreement as specified herein, Fox shall pay and refund the EIC the appropriate amount specified below, which is dependent upon the length of time that this Agreement has been in existence, with each year to be considered as a calendar year from the Effective Date:
- (1) Year 1 = \$600,000.00
 - (2) Year 2 = \$540,000.00

- (3) Year 3 = \$480,000.00
- (4) Year 4 = \$420,000.00
- (5) Year 5 = \$360,000.00
- (6) Year 6 = \$300,000.00
- (7) Year 7 = \$240,000.00
- (8) Year 8 = \$180,000.00
- (9) Year 9 = \$120,000.00
- (10) Year 10 = \$60,000.00

Fox shall provide any such refund to EIC within thirty (30) days of written demand from EIC and following refund, and thereafter this Agreement shall terminate and Fox will have no further obligation under this Agreement.

- H. Fox shall only be liable to EIC up to the actual amount of the Grant and shall not be liable to EIC for any other actual or consequential damages, direct or indirect, interest, attorney fees, or cost of court for any act of default by Fox under the terms of this Agreement.

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

- A. A sale of all or any of the assets of Fox shall not release Fox from its duties and responsibilities to EIC under the terms of this Agreement and shall not result in the assignment of this Agreement by such acquiring entity without prior written consent from EIC, which will not be unreasonably withheld; provided, that the Fox's proposed successor shall have the financial condition to fully satisfy Fox's duties and responsibilities hereunder and agrees to assume Fox's responsibilities under this Agreement. EIC may, in its sole discretion, reasonably determine whether such proposed successor's financial condition is satisfactory.
- B. In the event of any proposed merger or other consolidation of Fox with any third party not affiliated with Fox, Fox shall at least thirty (30) days prior to any such merger or consolidation provide EIC with information and assurance reasonably acceptable to EIC regarding: (1) the surviving entity's assumption and satisfaction of the Fox's obligations hereunder and (2) the financial condition of the surviving entity upon such merger or other consolidation to demonstrate that the surviving entity shall have the financial condition to fully satisfy Fox's duties and responsibilities hereunder. Failure to provide such information shall be considered a breach of this Agreement.
- C. Notwithstanding anything in this Agreement to the contrary, it is expressly understood and agreed that EIC shall have no rights to approve or disapprove any sale or merger transaction of any kind involving Fox. In the event of any sale or merger involving Fox or its affiliates, the surviving entity shall assume Fox's obligations and rights hereunder and be entitled to any and all benefits to be received pursuant to this Agreement.

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

- A. Fox represents and warrants as of the date hereof:
- (1) Fox is a Texas corporation existing in good standing and authorized to do business in the State of Texas;
 - (2) Execution of this Agreement has been duly authorized by Fox and this Agreement is not in contravention of Fox's corporate charter, or any agreement or instrument to which Fox is a party or by which it may be bound as of the date hereof;
 - (3) No litigation or governmental proceeding is pending, or, to the knowledge of Fox Officer, threatened against or affecting Fox, which may result in a material adverse change in Fox's business, properties, or operations sufficient to jeopardize Fox's legal existence or for-profit viability; and
 - (4) No written application, written statement, or correspondence submitted by Fox to EIC in connection with this Agreement, or in connection with any transaction contemplated hereby, to the knowledge of Fox Officer, contains any untrue statement of a material fact or fails to state any material fact necessary to keep the statements contained therein from being misleading.
- B. Except as expressly set forth in this Article IV, Fox makes no other representation or warranty of any kind in connection with or related to the provisions of this Agreement.

**ARTICLE V.
EIC'S REPRESENTATIONS AND WARRANTIES**

- A. EIC represents and warrants as of the date hereof:
- (1) EIC, to the best of the knowledge of its Board of Directors, is legally authorized to enter into this Agreement by virtue of the statute under which it is governed and by the authorities and powers vested in it as a corporation duly and properly organized under the Act;
 - (2) Execution of this Agreement has been duly authorized by EIC;
 - (3) No litigation or governmental proceeding is pending, or, to the knowledge of any of EIC's officers, threatened against or affecting EIC, which may result in EIC's inability to meet its obligations under this Agreement; and
 - (4) EIC has no reasonable basis for believing that it has or will have incurred debts beyond its ability to pay as such debts mature, including but not limited to the obligations set forth in this Agreement.

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

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

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

- A. Fox becomes insolvent. "Insolvent" is defined to mean one either has ceased to pay its debts in the ordinary course of business or cannot pay its debts as they become due, or is insolvent within the meaning of the federal bankruptcy law.
- B. The appointment of a receiver of Fox, or of all or any substantial part of the Property, and the failure of such receiver to be discharged within sixty (60) days thereafter.
- C. The adjudication of Fox as bankrupt.
- D. The filing by Fox of a petition to be adjudged as bankrupt, or a petition or answer seeking reorganization or admitting the material allegations of a petition filed against it in any bankruptcy or reorganization proceeding.

Should any of these conditions not be cured by Fox within a period of three (3) months, EIC may, at its option, with written notice to Fox, terminate this Agreement and Fox shall have no further obligations hereunder.

**ARTICLE VII.
REMEDIES**

- A. Except as otherwise provided in this Agreement, in the event of any default in or breach of this Agreement, by any party hereto, or any successor to such party, such defaulting or breaching party (or successor) shall upon written notice from the other, proceed immediately to cure or remedy such default or breach, and, in any event, within sixty (60) days after receipt of such notice. In the event that remedial action is not taken or not diligently pursued and the default or breach shall not be cured or remedied within a reasonable time (but in no event later than ninety (90) days from the date of notification of such breach), the aggrieved party may institute such proceedings as may be necessary or desirable in its opinion to cure and remedy such default or breach, including but not limited to, seeking specific performance and/or injunctive relief, enforcement by mandamus or by the appointment of a receiver in equity with power to charge and collect rents, purchase price payments, and loan payments and to apply the revenues from the project in accordance with this Agreement, as required by the Act.

- B. Upon breach of this Agreement by either party and the failure to cure as permitted by this Article VII, the non-breaching party shall have the sole right and discretion to either terminate this Agreement and/or pursue any and all remedies which may be provided by law and this Agreement. Each party acknowledges and agrees that no party hereunder shall be entitled to recover any amounts in excess of the Grant contracted for under this Agreement.
- C. Any delay by any party in instituting or prosecuting any actions or proceedings or otherwise asserting its rights shall not, so long as the breach or default by another party shall be continuing, operate as a waiver of such rights or to deprive it of or limit such rights in any way; nor shall any waiver in fact be made by any party with respect to any specific default by any other party except to the extent specifically waived in writing.

**ARTICLE VIII.
GENERAL PROVISIONS**

- A. Severability. The provisions of this Agreement are severable, and if for any reason a provision of this Agreement is determined to be invalid by a court having competent jurisdiction over the subject matter of the invalid provision, the invalidity shall not affect other provisions that can be given effect without the invalid provision. Further, in lieu of such illegal, invalid or unenforceable provision, there shall be added automatically as a part of this Agreement, a provision as similar in its terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.
- B. Amendment. This Agreement may be amended only by written amendment signed by both parties.
- C. Venue. All payments made pursuant to this Agreement and other obligations performed under this Agreement shall be made or performed in Kerrville, Kerr County, Texas. Venue shall lie in Kerr County, Texas; and this Agreement shall be governed by and construed in accordance with the laws of the State of Texas without respect to the conflict of laws rules thereof.
- D. Notices. All notices given with respect to this Agreement shall be in writing and shall be deemed to have been properly given for all purposes (i) if sent by a nationally recognized overnight carrier for next business day delivery, on the first business day following deposit of such notice with such carrier unless such carrier confirms such notice was not delivered, then on the day such carrier actually delivers such notice, or (ii) if personally delivered, on the actual date of delivery, or (iii) if sent by certified U.S. Mail, return receipt requested postage prepaid, on the fifth business day following the date of mailing, or (iv) if sent by facsimile, then on the actual date of delivery (as evidenced by a facsimile confirmation) provided that a copy of the facsimile and confirmation is also sent by regular U.S. Mail, addressed as follows:
 - 1. For EIC
President – Gregg Appel
City of Kerrville, Texas, Economic Improvement Corporation
800 Junction Highway

Kerrville, Texas 78028
Facsimile: (830) 792-3850

With a copy to:
Mindy Wendele
Director of Business Programs
City of Kerrville
800 Junction Highways
Kerrville, Texas 78028
Facsimile: (830) 792-3850
Email: mindy.wendele@kerrvilletx.gov

2. For Fox
R. Nathan Fox
Vice President
Fox Tank Company
South Texas
104 Hwy. 87
P.O. Box 658
Comfort, TX 78013
Facsimile: (830) 995-5022
Email: nathan@foxtankcompany.com

- E. Assignment. This Agreement shall be binding upon the parties hereto and their successors and assigns. Except as set forth in Article III, this Agreement may not be assigned by either party without the specific prior written consent of the other, which consent will not be unreasonably withheld. In the event that a party consents to any valid assignment of this Agreement by the other party hereto, the assigning party shall be relieved of any and all obligations and liabilities on the part of such assigning party under this Agreement. Fox may, without written consent of EIC, assign this Agreement to any entity controlled and 100% owned by Fox or by the parent, subsidiary, or affiliate of Fox provided the entity assumes all of Fox's obligations and liabilities under this Agreement; agrees to comply with all provisions of this Agreement; has the legal, managerial, technical, and financial ability to properly perform and discharge such obligations and liabilities; and such abilities are each at least as great as those of Fox and Fox provides a written guarantee of such assignee's performance in a form reasonably acceptable to EIC. EIC shall be advised in writing of such assignment and of the entity's qualifications at least sixty (60) days before such assignment occurs.
- F. Parties In Interest. Nothing in this Agreement shall entitle any party other than Fox or EIC to any claim, cause of action, remedy or right of any kind except as expressly provided in Article IV.
- G. Term. The term of this Agreement (the "Term") shall commence on February 15, 2012 (the "Effective Date"), and shall terminate on February 14, 2022; (ii) when terminated by mutual agreement of the parties; (iii) when terminated pursuant to Article VIII, Paragraph B; (iv) when terminated pursuant to Article VII; (v) at Fox's sole and absolute discretion, upon

Fox's return of all Grant funding to EIC that it has received under this Agreement; (vi) upon Fox's repayment of all monies that are demanded by EIC and are in fact required to be repaid by Fox under Article III; or, (vii) upon a termination of this Agreement by EIC pursuant to Article VII. Upon termination of this Agreement as specified herein, all rights, duties and obligations of any kind under this Agreement shall automatically expire and terminate and be of no other force and effect.

- H. Interpretation. Each party has had the opportunity to be represented by counsel of its choice in negotiating this Agreement. This Agreement shall therefore be deemed to have been negotiated and prepared at the joint request, direction, and construction of the parties, at arms length, with the advice and participation of counsel, and will be interpreted in accordance with its terms without favor to any party.
- I. No Joint Venture. Nothing contained in this Agreement is intended by the parties to create a partnership or joint venture between the parties.
- J. Survival of Terms. All rights, duties, liabilities and obligations accrued prior to termination shall survive termination.
- K. Entire Agreement. This Agreement represents the entire agreement of the parties with respect to the subject matter hereof.

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

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

FOX TANK, INC.

Kenneth Early, Vice President

By: _____
Printed Name: _____
Its: _____

ATTEST:

Brenda Craig, Recording Secretary

APPROVED AS TO FORM:

Michael C. Hayes, Attorney for EIC

Agenda Item:

2C. Economic development Incentive Agreement between Fox Tank, Inc. and the City of Kerrville, pursuant to Chapter 380, Texas Local Government Code.
(staff)

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

SUBJECT: Approval of a Chapter 380 Economic Development Agreement between City of Kerrville, Texas and Fox Tank, Inc.

FOR AGENDA OF: February 14, 2012 **DATE SUBMITTED:** February 9, 2012

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

EXHIBITS: 380 Agreement

AGENDA MAILED TO:

APPROVED FOR SUBMITTAL BY CITY MANAGER: 

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

PAYMENT TO BE MADE TO:

REVIEWED BY THE FINANCE DIRECTOR:

SUMMARY STATEMENT

Fox Tank Company is proposing to construct a new commercial facility in the City of Kerrville. This project requires the acquisition of 10 acres to construct approximately 11,000 square feet of space for manufacturing, assembly and office uses. Fox Tank will keep a minimum of 60 employees on staff at a minimum hourly range of \$15 per hour. The selected site is located on State Hwy. 27 E across from the Kerrville-Kerr County Airport.

This 380 Agreement will provide a reimbursement of net sales tax revenues to a maximum amount of \$150,000 to cover Fox Tank's land purchase expense. It also provides for the waiver of building permit and development fees.

The sales tax reimbursement agreement is structured such that 100% of the sales taxes generated over a two-year period would be reimbursed to the less of \$150,000 or 2/3 of the actual purchase price of the site. There is no liability to the community should actual net sales tax revenues are less than the maximum value specified.

Pursuant to the agreement, should Fox Tank fail to perform its obligations within 3 years from the effective of the agreement it will not realize the specified incentives.

RECOMMENDED ACTION

Staff recommends approval of this funding agreement provided that any legal issues identified by the city attorney are satisfactorily addressed prior to execution.

FINAL DRAFT 02/10/12

THIS CHAPTER 380 ECONOMIC DEVELOPMENT AGREEMENT (this "Agreement") is made as of this _____ day of _____, 2012 (the "Effective Date") by and between City of Kerrville, Texas (the "City"), a municipal corporation and home-rule city of the State of Texas, and Fox Tank, Inc., a Texas Corporation ("Fox"). The City and Fox may be referred to herein from time to time as a "Party" or collectively as the "Parties".

WITNESSETH:

WHEREAS, the development and expansion of commerce and the diversification of the economy within the State of Texas and the City is paramount to the City's continued economic development; and

WHEREAS, Fox is a manufacturer of production equipment in the oil and gas industry, including oilfield storage tanks and other specialty oilfield production products; and

WHEREAS, Fox is seeking to expand its manufacturing capabilities through the purchase of land and the construction of a facility to be located within Kerrville; and

WHEREAS, Fox has applied for a grant from the City of Kerrville, Texas, Economic Improvement Corporation as well as economic development incentives from both Kerr County and the City for funding necessary to purchase land and to build a new facility; and

WHEREAS, the City is authorized by the provisions of Article III, Section 52-a of the Texas Constitution and Section 380.001 of the Texas Local Government Code (the "Code") to provide grants of public money to promote local economic development and to stimulate business and commercial activity within the City; and

NOW THEREFORE, in consideration of the foregoing and the mutual agreements, covenants and payments herein and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

I. DEFINITIONS

1.1 As used in this Agreement, the following terms shall have the meanings indicated unless a different meaning is specifically provided herein or the context otherwise requires:

"Governmental Authority" means any Federal, state, or local governmental entity, authority or agency, court, tribunal, regulatory commission or other body, whether legislative, judicial or executive, or a combination thereof, and any arbitrator to whom a dispute has been presented under Governmental Rule or by agreement of the parties with an interest in such dispute.

"Governmental Rules" means any statute, law, treaty, rule, code, ordinance, regulation, permit, interpretation, certificate or order of any Governmental Authority, or any judgment,

decision, decree, injunction, writ, order or like action of any court, arbitrator or other Governmental Authority.

“**Maximum Reimbursement Amount**” means the lesser of \$150,000.00 or the amount equal to two-thirds (2/3) of the purchase price of the Property as paid by Fox over the Term of this Agreement.

“**Property**” means the real property consisting of approximately ten (10) acres generally located across from the Kerrville-Kerr County Airport and along Highway 27, which is depicted in the attached **Exhibit A**.

“**Retained Sales Tax Revenue(s)**” means 100% of the amount of sales and use tax generated by Fox on the Property and collected by or for the City net of all fees and remitted to the City by the State Comptroller, pursuant to Chapter 321 of the Texas Tax Code, not to exceed the Maximum Reimbursement Amount in the aggregate, commencing from the first payment received from the State Comptroller and continuing through the Term of this Agreement.

“**State Comptroller**” shall mean the Comptroller of Public Accounts for the State of Texas, or such other agency responsible for collecting sales and use taxes within the State of Texas and remitting them to the City.

1.2 Singular and Plural: Words used herein in the singular, where the context so permits, also includes the plural and vice versa, unless otherwise specified.

II. GENERAL PROVISIONS

2.1 **Recitals.** The recitals to this Agreement are incorporated herein for all purposes.

2.2 **Purpose.** The specific purpose of this Agreement, pursuant to the terms provided herein, is for the City to reimburse net sales tax revenues to Fox which were previously paid by Fox. This action will be a significant contribution toward a broader purpose to stimulate and encourage business and commercial activity within the City, to create more job opportunities, build the sales and property tax base and promote a partnership relationship with the private sector businesses that will bring additional employment projects into the City.

III. REPRESENTATIONS AND WARRANTIES

3.1 **Representations of Fox.** Fox hereby makes the following representations, warranties and covenants to the City as of the Effective Date unless another date is expressly stated to apply:

3.1.1 **Existence.** Fox is a private corporation duly organized and existing under the laws of the State of Texas.

3.1.2 **Power and Authority.** The execution, delivery and performance by Fox of this Agreement have been duly authorized by all necessary action and will not violate the organizational documents of Fox or result in the breach of or constitute a default under any loan or credit agreement, or other material agreement to which Fox is a party or by

which Fox or its material assets may be bound or affected. The execution of this Agreement by Fox does not require any consent or approval that has not been obtained, including without limitation the consent or approval of any Governmental Authority.

3.1.3 No Legal Bar. To the best of its knowledge, the execution and delivery of this Agreement and the performance of its obligations hereunder by Fox will not conflict with any provision of any law, regulation or Governmental Rules to which Fox is subject or conflict with, or result in a breach of, or constitute a default under any of the terms, conditions or provisions of any agreement or instrument to which Fox is a party or by which it is bound or any order or decree applicable to Fox.

3.1.4 Litigation. There are no legal actions or proceedings pending or, to the knowledge of Fox, threatened against Fox which, if adversely determined, would materially and adversely affect the ability of Fox to fulfill its obligations under this Agreement or the financial condition, business or prospects of Fox.

3.1.5 Enforceable Obligations. Assuming (i) due authorization, execution and delivery by each Party hereto and thereto, (ii) the enforceability of the Agreement and the actions of Fox, this Agreement, each document executed by Fox pursuant hereto and all obligations of Fox hereunder and thereunder are enforceable against Fox in accordance with their terms, except as such enforcement may be limited by bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditor's rights generally and by general equity principles, regardless of whether such enforcement is considered in a proceeding in equity or at law.

3.2 Representations of the City. City hereby makes the following representations, warranties and covenants to Fox as of the Effective Date unless another date is expressly stated to apply:

3.2.1 Existence. City is a home rule municipality of the State of Texas located in the County of Kerr, Texas and has all requisite power and authority to enter into this Agreement.

3.2.2 Authorization. The execution, delivery and performance by City of this Agreement have been duly authorized by all necessary action and will not violate the organizational documents of City or result in the breach of or constitute a default under any loan or credit agreement, or other material agreement to which City is a party or by which City or its material assets may be bound or affected. The execution of this Agreement by City does not require any consent or approval that has not been obtained, including without limitation the consent or approval of any Governmental Authority.

3.2.3 Enforceable Obligations. Assuming due authorization, execution and delivery by each signatory Party hereto and thereto, this Agreement, all documents executed by City pursuant hereto and all obligations of City hereunder and thereunder are enforceable against City in accordance with their terms, except as such enforcement may be limited by bankruptcy, insolvency, reorganization or other similar laws affecting the

enforcement of creditor's rights generally and by general equity principles (regardless of whether such enforcement is considered in a proceeding in equity or at law).

3.2.4 No Legal Bar. To the best of its knowledge, the execution and delivery of this Agreement and the performance of its obligations hereunder by City will not conflict with any provision of any law, regulation or Governmental Rules to which City is subject or conflict with, or result in a breach of, or constitute a default under any of the terms, conditions or provisions of any agreement or instrument to which is a party or by which it is bound or any order or decree applicable to City.

IV. FOX COMMITMENTS

4.1 **Conditions for Receipt of Net Retained Sales Tax Revenues**. In consideration of City agreeing to pay Fox the Net Retained Sales Tax Revenues in accordance with the terms, provisions, and conditions of this Agreement, Fox agrees to the following, which are not obligations of Fox, but are conditions that must be fulfilled in order to receive the Net Retained Sales Tax Revenues (collectively, the "Fox Conditions"):

4.1.1 Operational Condition. Fox shall operate a manufacturing and sales facility on the Property during the Term of this Agreement utilizing not less than 100,000 square feet of space and open for business each and every day, except weekends and holidays, and subject only to (i) events of Force Majeure, and (ii) periods of closing for repair or restoration following casualty and condemnation ("Operation Condition"). On or before January 1 of each year the Agreement is in effect, the Fox Officer shall provide the City a sworn statement that Fox is and has been in compliance with the Operation Condition for the preceding calendar year. The sworn statement shall constitute the sole information upon which the City may rely to determine Fox's compliance with the Operation Condition for the subject year.

4.2 Sales Tax Disclosure. For each calendar year during the Term of this Agreement, Fox agrees to provide a release (in a form similar to that attached as **Exhibit B**) to the City that will allow the State Comptroller to release information to the City that documents the amount of Retained and Net Retained Sales Tax Revenues collected by the State Comptroller for the City (the "Sales Tax Disclosure"). The City and Fox shall rely on the Sales Tax Disclosure as accurate and definitive for purposes of this Agreement and City shall have no right to review or audit records of Fox. The City shall not be required to pay Tenant the Reimbursement Amount under Article V until such time that Fox provides the required release and the State Comptroller provides the Sales Tax Disclosure.

V. CITY COMMITMENTS

5.1 Reimbursement Account. The City agrees upon the Effective Date of this Agreement to create a special liability account in the General Fund (the "Reimbursement Account") for the purpose of paying Fox. Following the Effective Date of this Agreement, the City shall deposit the Net Retained Sales Tax Revenues into the Reimbursement Account pursuant to this Agreement. The Reimbursement Account shall

always remain unencumbered by the City and segregated from all other City accounts. Such funds are held in trust by the City for Fox to be used in accordance with the terms hereof as long as Fox is in compliance with this Agreement.

5.2 City Commitments.

5.2.1. Calculation of Reimbursement Amount; Deposit of Net Retained Sales Tax Revenues. For the period commencing from the first payment received from the State Comptroller and for each month thereafter during the Term of this Agreement, the City shall determine the amount of the Net Retained Sales Tax Revenues received by the City from the State Comptroller in cooperation with Fox and the State Comptroller. The Parties acknowledge that the City may not receive sufficient information from the State Comptroller to determine the Retained Sales Tax Revenues until forty-five (45) or more days after the end of the month. Based upon the monthly calculation by City of the Reimbursement Amount, the City hereby agrees to deposit the Net Retained Sales Tax Revenues due to Fox in the Reimbursement Account within thirty (30) business days following receipt from the State Comptroller.

5.2.2. Confidential Information. The City hereby designates this Agreement as a Revenue Sharing Agreement, thereby entitling the City to request sales tax information from the State Comptroller, pursuant to section 321.3022, Texas Tax Code, as amended, and to share such information with the City Council. Unless determined otherwise by the Texas Attorney General in writing, any information received relating to the Retained Sales Tax Revenues shall be considered confidential proprietary financial information not subject to release to the public. The City shall seek a written opinion from the Texas Attorney General, raising any applicable exception to release, prior to any release to a third-party under the Texas Public Information Act.

5.2.3. Maintenance of Records. The City shall maintain complete books and records showing deposits to and disbursements from the Reimbursement Account, which books and records shall be deemed complete if kept in accordance with generally accepted accounting principles as applied to Texas municipalities. Such books and records shall be available for examination by the duly authorized officers or agents of the Tenant during normal business hours upon request made not less than five business days prior to the date of such examination. The City shall maintain such books and records throughout the Term of this Agreement and store the same for four years thereafter. Tenant shall, upon not less than five (5) business days prior written notice, have the right to review and audit such books and records.

5.2.4. Payment of Reimbursement Amounts. Beginning on the first day of the first month that follows the Effective Date and continuing each month throughout the Term of this Agreement, the City shall pay the Reimbursement Amount due to Fox within forty-five (45) days following the end of the month for which Net Retained Sales Tax Revenues are collected by the City and deposited into the Reimbursement Account, pursuant to this Agreement (the "City Commitment"). The City Commitment is an unconditional obligation of payment by the City, but solely from the Reimbursement

Account, if the Property generates the Net Retained Sales Tax Revenue. Such payments are not subject to any reduction, whether offset or otherwise.

5.2.5. Maximum Cumulative Payment Limit. During the Term of this Agreement, City shall not pay Reimbursement Amounts to Tenant that cumulatively exceed the Maximum Reimbursement Amount.

5.2.6 Waiver of Building Fees. City shall waive all development and building fees applicable to construction activities which will occur on the Property. Such fees include building, electrical, plumbing, mechanical, platting, and zoning fees. The waiver of fees shall apply only to applications filed by Fox and for the development and construction occurring on the Property. The waiver of the various fees listed above shall not be construed as waiving any requirements for obtaining the various permits and inspections required by the Code of Ordinances of the City, or any other applicable federal, state, or local law, nor shall it be construed as granting any waivers or variances with respect to any development regulations of the City.

VI. TERM

6.1 The term of this Agreement is for three (3) years ("Term") from the Effective Date of this Agreement.

This Agreement shall terminate upon:

- a. The expiration of the Term of this Agreement, if Fox fails to begin operations, including the collection of sales tax; or
- b. Two years from the time that Fox begins collecting sales tax; or
- c. Upon the receipt of the Maximum Reimbursement Amount by Fox in accordance with this Agreement.

Upon receipt of the Maximum Reimbursement Amount by Fox in accordance with this Agreement, the City's obligation to maintain the Reimbursement Account and pay the Reimbursement Amount shall terminate. Upon termination of this Agreement, the Parties' obligations hereunder shall terminate, whether or not the Maximum Reimbursement Amount has been paid.

VII. DEFAULT

7.1 The occurrence of any of the following shall be an "Event of Default" by Fox or a "Fox Default":

7.1.1 The failure of Fox to substantially perform or substantially observe any of the obligations, covenants or agreements to be performed or observed by the Fox under this Agreement and the continuation of such failure for a period of thirty (30) days after notice from the City of such failure;

7.1.2 The breach by Fox of any of its representations hereunder; and

7.1.3 If Fox files a voluntary petition in bankruptcy or insolvency or for reorganization or arrangement under the Bankruptcy Code of the United States ("Bankruptcy Code") or under any insolvency act of any state, or voluntarily takes advantage of any such law or act by answer or otherwise or is dissolved or admits its bankruptcy or insolvency or an inability to satisfy its creditors or makes a general assignment for the benefit of creditors; or if all or substantially all of the assets of Fox are attached, seized, subjected to a writ or distress warrant or are levied upon, or come in to the possession of any receiver, trustee, custodian, or assignee for the benefit of creditors, and such proceeding or action is not vacated, stayed, dismissed, set aside or otherwise remedied within ninety (90) days after the occurrence thereof; or if this Agreement shall be assigned by Fox in a manner prohibited by this Agreement.

7.1.4 Upon the occurrence of an Event of Default hereunder, and after the expiration of any applicable cure period, the City may terminate this Agreement and seek such remedies as may be available at law or in equity.

7.1.5 The City shall be entitled to seek injunctive relief prohibiting or mandating action by Fox, including specific performance, in accordance with this Agreement, or declaratory relief with respect to any matter under this Agreement. The parties hereby agree and irrevocably stipulate that (i) the rights of the parties to injunctive relief pursuant to this Agreement shall not constitute a "claim" pursuant to section 101(5) of the Bankruptcy Code and shall not be subject to discharge or restraint of any nature in any bankruptcy proceeding, and (ii) this Agreement is not an "executory contract" as contemplated by section 365 of the Bankruptcy Code.

VIII. INDEMNIFICATION

8.1 FOX COVENANTS AND AGREES TO FULLY INDEMNIFY AND HOLD HARMLESS, THE CITY (AND THE ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS, AND REPRESENTATIVES THEREOF), INDIVIDUALLY OR COLLECTIVELY, FROM AND AGAINST ANY AND ALL COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, PROCEEDINGS, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND SUITS OF ANY KIND AND NATURE, INCLUDING BUT NOT LIMITED TO, PERSONAL INJURY OR DEATH AND PROPERTY DAMAGE, MADE UPON THE CITY, DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM OR RELATED TO FOX'S BREACH OF THIS AGREEMENT OR ANY ACTIVITIES UNDER THIS AGREEMENT, INCLUDING ANY SUCH ACTS OR OMISSIONS OF FOX, ANY AGENT, OFFICER, DIRECTOR, REPRESENTATIVE, EMPLOYEE, CONSULTANT OR SUBCONSULTANTS, OR CONTRACTORS OR SUBCONTRACTORS OF FOX, AND THEIR RESPECTIVE OFFICERS, AGENTS, EMPLOYEES, DIRECTORS AND REPRESENTATIVES WHILE IN THE EXERCISE OR PERFORMANCE OF THE RIGHTS OR DUTIES UNDER THIS AGREEMENT, ALL WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY AND , UNDER TEXAS LAW AND WITHOUT

WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW. THE PROVISIONS OF THIS INDEMNIFICATION ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY. FOX SHALL PROMPTLY ADVISE THE CITY IN WRITING OF ANY CLAIM OR DEMAND AGAINST THE CITY KNOWN TO FOX RELATED TO OR ARISING OUT OF FOX'S ACTIVITIES UNDER THIS AGREEMENT AND SHALL SEE TO THE INVESTIGATION AND DEFENSE OF SUCH CLAIM OR DEMAND AT FOX'S COST TO THE EXTENT REQUIRED UNDER THE INDEMNITY IN THIS SECTION. THE CITY HAS THE RIGHT, AT ITS OPTION AND AT ITS OWN EXPENSE, TO PARTICIPATE IN SUCH DEFENSE WITHOUT RELIEVING FOX OF ANY OF ITS OBLIGATIONS UNDER THIS PARAGRAPH.

8.1.1 FOX FURTHER AGREES TO DEFEND, AT ITS OWN EXPENSE, AND ON BEHALF OF THE CITY AND IN THE NAME OF THE CITY, ANY CLAIM OR LITIGATION BROUGHT AGAINST THE CITY AND ITS ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS AND REPRESENTATIVES, FOR WHICH THIS INDEMNITY SHALL APPLY, AS SET FORTH ABOVE. FOX'S OBLIGATIONS UNDER THIS SUBSECTION SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

8.1.2 Upon the assertion of any claim or litigation requiring indemnification pursuant to this Article, Fox shall assume and take exclusive control of the defense, negotiation, and/or settlement of such claim; provided, however, that if the representation of all parties by Fox would be inappropriate due to actual or potential conflicts of interest between them, then Fox shall not assume such defense. In the event of a conflict of interest or dispute, the City and its respective officials and employees shall have the right to select counsel, with the reasonable cost of such counsel paid by Fox. The parties acknowledge that, with respect to claims for which insurance is available, the rights of the parties to select counsel for the defense of such claims shall be subject to such approval rights as the insurance company providing coverage may have.

IX. NON-WAIVER

9.1 Any provision of this Agreement may be amended or waived if done in writing and signed by the City.

9.2 No course of dealing on the part of the City and Fox nor any failure or delay by the City and Fox in exercising any right, power, or privilege under this Agreement shall operate as a waiver of any right, power or privilege owing under this Agreement.

X. CHANGES AND AMENDMENTS

10.1 Except when the terms of this Agreement expressly provide otherwise, any alterations, additions, or deletions to the terms hereof shall be by amendment in writing executed by the City and Fox.

XI. LEGAL AUTHORITY

11.1 The signers of this Agreement, represent, warrant, assure and guarantee that they have full legal authority to execute this Agreement on behalf of the City and Fox, respectively, and to bind the City, and Fox to all of the terms, conditions, provisions and obligations herein contained.

XII. VENUE AND GOVERNING LAW

12.1 THIS CONTRACT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS.

12.2 ANY LEGAL ACTION OR PROCEEDING BROUGHT OR MAINTAINED, DIRECTLY OR INDIRECTLY, AS A RESULT OF THIS CONTRACT SHALL BE HEARD AND DETERMINED IN BEXAR COUNTY, TEXAS.

XIII. NOTICE

13.1 Any notice sent under this Agreement (except as otherwise expressly required) must be written and mailed with sufficient postage, sent by certified mail, return receipt requested, or delivered personally to an officer of the receiving party at the following addresses:

1. For City:
City Manager
800 Junction Highway
Kerrville, Texas 78028
Facsimile: (830) 792-3850

With a copy to:
Mindy Wendele
Director of Business Programs
City of Kerrville
800 Junction Highways
Kerrville, Texas 78028
Facsimile: (830) 792-3850
Email: mindy.wendele@kerrvilletx.gov

2. For Fox:
R. Nathan Fox
Vice President
Fox Tank Company
South Texas
104 Hwy. 87
P.O. Box 658
Comfort, TX 78013
Facsimile: (830) 995-5022
Email: nathan@foxtankcompany.com

13.2 Each party may change its address by written notice in accordance with this Article. Any communication delivered by facsimile transmission shall be deemed delivered when receipt of such transmission is acknowledged. Any communication so delivered in person shall be deemed received when receipted for or actually received by an officer of the party to whom the communication is properly addressed.

XIV. SURVIVAL

14.1 Each and every indemnification obligation, warranty, representation, covenant and agreement of City and Fox contained herein shall survive the execution, delivery and termination of this Agreement for a period of two (2) years from and after the date of termination of this Agreement, and shall not be merged into any document executed and delivered, but shall expressly survive and be binding thereafter on City and Fox, respectively.

XV. COUNTERPARTS

15.1 This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all such counterparts together shall constitute one and the same instrument.

CITY OF KERRVILLE, TEXAS

FOX TANK, INC.

Todd Parton, City Manager

By: _____
Printed Name: _____
Its: _____

ATTEST:

Brenda Craig, City Secretary

APPROVED AS TO FORM:

Michael C. Hayes, City Attorney

Agenda Item:

2D. Estoppel and consent agreement regarding airport lease between Joseph L. Kennedy Enterprises, LTD, and the Kerrville-Kerr County Airport Board. (staff)

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

SUBJECT: Estoppel and consent agreement regarding airport lease between Joseph L. Kennedy Enterprises, LTD, and the Kerrville-Kerr County Airport Board.

FOR AGENDA OF: Feb. 14, 2012

DATE SUBMITTED: Feb. 3, 2012

SUBMITTED BY: Todd Parton
City Manager

CLEARANCES:

EXHIBITS: Draft Estoppel and Consent Agreement; letter from HCSB clarifying notice

AGENDA MAILED TO:

APPROVED FOR SUBMITTAL BY CITY MANAGER: 

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

PAYMENT TO BE MADE TO:

REVIEWED BY THE FINANCE DEPARTMENT:

SUMMARY STATEMENT

Joseph L. Kennedy Enterprises, LTD, is pursuing a loan with Hill Country State Bank (HCSB). HCSB is requiring that Joseph L. Kennedy Enterprises, LTD, pledge the value and rights it enjoys under its lease agreement with the Kerrville-Kerr County Airport Board as collateral for the loan. The lease is a property interest that can be and will be collateralized. This estoppel and consent agreement states that the rights and privileges granted to Joseph L. Kennedy Enterprises, LTD, pursuant to its Airport lease would be transferred to HCSB in the event of a default.

These agreements are normal protocol and its approval would be consistent with past city actions (i.e. Mooney).

RECOMMENDED ACTION

It is recommended that the City Council authorize the Mayor to execute an estoppel and consent agreement for Joseph L. Kennedy, LTD, under the condition that the City Attorney is satisfied that all legal issues have been addressed prior to its execution.

WALLACE, JACKSON & LOHMEYER, PC

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

820 MAIN ST., Suite 100

KERRVILLE, TEXAS 78028-5300

Telephone (830) 896-3811

Telecopier (830) 257-6119

Edgar A. Wallace, Of Counsel

David L. Jackson,
Board Certified Residential, Commercial
and Farm & Ranch Real Estate

Fred Lohmeyer
Board Certified in Estate Planning and
Probate Law

J. Stuart Lohmeyer

January 18, 2012

Honorable Pat Tinley
Kerr County Judge
700 Main Street
Kerrville, Texas 78028

HAND DELIVERED

Mr. Todd Parton
City Manager
City of Kerrville
800 Junction Highway
Kerrville, Texas 78028

HAND DELIVERED

Re: Joseph L. Kennedy Enterprises, Ltd.

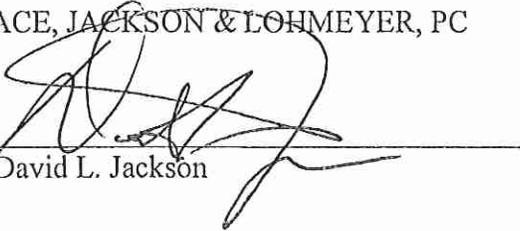
Gentlemen:

Enclosed are counterparts of Estoppel and Consent Agreement in connection with Lease at the Airport by Joseph L. Kennedy Enterprises, Ltd. to be signed. Please call my office when it is signed and we will pick it up.

Very truly yours,

WALLACE, JACKSON & LOHMEYER, PC

BY:


David L. Jackson

DLJ/kr

Enclosure – As stated above

cc: Mike Hayes
City Attorney
City of Kerrville
800 Junction Highway
Kerrville, Texas 78028

HAND DELIVERED


ESTOPPEL AND CONSENT AGREEMENT

THIS AGREEMENT is made and entered into by and between JOSEPH L. KENNEDY ENTERPRISES, LTD., a Texas limited partnership ("Tenant"), and HCSB, a state banking association ("Lender"), and KERRVILLE-KERR COUNTY AIRPORT BOARD ("Landlord") under the Lease ("Lease"), attached hereto and made a part hereof for all purposes;

WITNESSETH:

A. Tenant is executing or has executed and delivered certain promissory notes (the "Notes") in the original principal amount of \$200,000.00 and \$75,000.00 payable to Lender, which Notes are secured by certain Deeds of Trust and other security documents (the "Security Documents") covering the Lease and leasehold estate created thereunder, executed and delivered by Tenant for the benefit of Lender, recorded or to be recorded in the Official Public Records of Kerr County, Texas as security for the payment of the Notes; and

B. Landlord has agreed to consent to the Security Documents upon and subject to the conditions hereinafter stated.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS, that Tenant, Landlord and Lender, each in consideration of the agreements hereinafter set forth, the sufficiency of which are hereby acknowledged and confessed, do hereby covenant, stipulate, agree and declare as follows:

1. Landlord does hereby consent to and approve the Security Documents and agrees and declares that the Lease, the leasehold estate created thereby and all of Tenant's rights and privileges thereunder are and shall be subject to the Security Documents, regardless of how often or in what manner the Notes and Security Documents, or any part thereof, may be renewed, rearranged or extended.

2. A. So long as Tenant is not in default (beyond any periods given under the Lease to Tenant to cure such default) in (i) the payment of any monetary obligation under the Lease, or (ii) the performance of any of the other terms, covenants or conditions with which Tenant is obligated to comply pursuant to the Lease, Tenant's possession under the Lease and Tenant's rights and privileges thereunder shall not be diminished or interfered with by Lender, and accordingly, Tenant's occupancy shall not be disturbed by Lender during the term of the Lease, except in accordance with the terms of the Lease and Security Documents.

B. If Lender succeeds to the interest of Tenant in and to the Lease, the leasehold estate created thereby or under the Lease, the Lease and all terms therein, and the rights of Tenant thereunder, shall continue in full force and effect and shall not be altered, terminated or disturbed, and Landlord shall be bound to Lender (and its successors) under all of the terms, covenants and conditions of the Lease for the balance of the lease term thereof with the same force and effect as if Lender were the tenant under the Lease.

C. If Lender shall (a) succeed to the interests of Tenant in and to the Lease or

under the Lease, or (b) enter into possession of the premises under the Lease, Lender shall be bound to the Landlord under all of the terms, covenants and conditions of the Lease, and Tenant shall, from and after Lender's succession to the interests of Tenant in and to the Lease or under the Lease or entry into possession of said premises, as the case may be, have the same remedies against Lender as tenant for the breach of any provision contained in the Lease that Landlord might have had under the Lease against Tenant if Lender had not succeeded to the interests of Tenant in and to the Lease or under the Lease or entered into possession of said premises, as the case may be; provided further, however, that Lender shall not be:

- (i) liable for any acts or omissions of any prior tenant (including, but not limited to, Tenant);
- (ii) subject to any offsets, deductions or defenses which Landlord might have arising out of acts or omissions of any prior tenant (including, but not limited to, Tenant); nor
- (iii) bound by any agreement or modification of the Lease made after the date hereof without Lender's approval.

Additionally, in the event of Lender's (a) succession to the Lease or under the Lease, or (b) entry into possession of said premises, Landlord shall be bound to Lender under all of the terms, covenants and conditions of the Lease, and Lender shall, from and after Lender's succession to the Lease or entry into possession, as the case may be, have the same rights and remedies against Landlord for the breach of any provision contained in the Lease that Tenant might have had under the Lease against Landlord if Lender had not succeeded to the Lease or under the Lease or entered into possession, as the case may be.

D. The covenants hereunder shall be binding upon any person other than Lender who may acquire the interest of Landlord in the Lease as a result of foreclosure or any other proceeding(s) to enforce the rights of Lender or any sale, assignment or transfer of the Lease after Lender has acquired the interest in the Lease all of which are hereby permitted and approved by Landlord.

E. Landlord agrees it shall furnish to Lender copies of all notices which Landlord is given under the Lease, notify Lender of any default under the Lease and permit Lender such time as may be reasonably necessary to cure such default prior to proceeding to exercise any of the rights or remedies under the Lease, including termination of the Lease.

F. Landlord agrees that no modification, release, termination or waiver of or under the Lease shall be entered into without the prior written consent of Lender.

3. Any notice or demand given hereunder by any party shall be deemed to have been given and received (i) when actually received by the party to whom addressed, if delivered in person, or (ii) when a letter containing such notice, certified or registered, with postage prepaid,

addressed to such party is deposited in the United States mails. The addresses of the parties hereto are as set forth below, or such other addresses as the parties hereto shall advise the other party by certified or registered letter.

4. The parties hereto agree to execute and deliver such further instruments as may be reasonably requested from time to time by the other party hereto as necessary or appropriate to fully carry out the intent and purpose hereof. Landlord agrees, at any time and from time to time, as requested by Lender upon not less than 10 days notice to execute and deliver without cost or expense to Lender an estoppel certificate which shall certify, and Landlord hereby certifies to Lender as of this date, that the Lease is unmodified and in full force and effect (or if there have been modifications that the Lease is in full force and effect as modified and stating the modifications), all rental and other sums have been paid, and there is no default under the Lease; it being intended and understood that this estoppel certificate and any subsequent requested estoppel certificate may be relied upon by Lender and other persons with whom Lender may be dealing.

5. This instrument is binding upon and shall inure to the benefit of the heirs, executors, administrators, successors and assigns of each of the parties hereto.

EXECUTED on this the ____ day of _____, 2012 in multiple counterparts, and all such counterparts when taken together will constitute one fully executed original Agreement.

TENANT:

LENDER:

JOSEPH L. KENNEDY ENTERPRISES, LTD.,
a Texas limited partnership

HCSB, a state banking association

BY: JLK MANAGEMENT, L.L.C., a
Texas limited liability company,
General Partner

By: _____
Name: _____
Title: _____

By: _____
Joseph L. Kennedy, Jr.
President

Address:

Address:

1875 Airport Loop Rd.
Kerrville, Texas 78028

1145 Junction Highway
Kerrville, Texas 78028

LANDLORD:

THE KERRVILLE-KERR COUNTY
AIRPORT BOARD

BY: _____
Name: _____
Title: _____

APPROVED:

CITY OF KERRVILLE

COUNTY OF KERR, TEXAS

BY: _____
David Wampler, Mayor

BY: _____
Pat Tinley, County Judge

ATTEST:

Brenda G. Craig, City Clerk

Jannett Pieper, County Clerk

APPROVED AS TO FORM:

APPROVED AS TO FORM:

Michael C. Hayes, City Attorney

Robert Henneke, County Attorney

THE STATE OF TEXAS §

COUNTY OF KERR §

This instrument was acknowledged before me this ____ day of _____,
20__, by JOSEPH L. KENNEDY, JR., President, of JLK MANAGEMENT, L.L.C., a Texas
limited liability company, General Partner of JOSEPH L. KENNEDY ENTERPRISES, LTD., a
Texas limited partnership.

Notary Public, State of Texas

THE STATE OF TEXAS §

COUNTY OF KERR §

This instrument was acknowledged before me this ____ day of _____, 20__, by _____, _____ of HCSB, a state banking association, on behalf of said association.

Notary Public, State of Texas

THE STATE OF TEXAS §

COUNTY OF KERR §

This instrument was acknowledged before me this ____ day of _____, 20__, by _____, _____ of THE KERRVILLE-KERR COUNTY AIRPORT BOARD, on behalf of THE KERRVILLE-KERR COUNTY AIRPORT BOARD.

Notary Public, State of Texas

THE STATE OF TEXAS §

COUNTY OF KERR §

This instrument was acknowledged before me on this ____ day of _____, 20__, by DAVID WAMPLER, Mayor of the CITY OF KERRVILLE, TEXAS, on behalf of said CITY OF KERRVILLE, TEXAS.

Notary Public, State of Texas

THE STATE OF TEXAS §

COUNTY OF KERR §

This instrument was acknowledged before me on ___ day of _____,
20___, by PAT TINLEY, County Judge for COUNTY OF KERR, TEXAS, on behalf of said
COUNTY OF KERR, TEXAS.

Notary Public, State of Texas

COMMERCIAL LEASE AGREEMENT
AMONG
THE KERRVILLE-KERR COUNTY AIRPORT BOARD, THE CITY OF KERRVILLE,
TEXAS, THE COUNTY OF KERR, TEXAS
AND
JOSEPH L. KENNEDY ENTERPRISES, LTD., A TEXAS LIMITED PARTNERSHIP

THIS LEASE AGREEMENT, made this ^{5th} ~~June~~ ^{Sept. 8} day of ~~June~~, 2003, by and among the Kerrville-Kerr County Airport Board, governing board of the Kerrville-Kerr County Airport pursuant to the Texas Municipal Airport Act, Tex. Transportation Code Chapter 22, hereinafter called the "Board"; the City of Kerrville, Texas, a home rule municipal corporation, hereinafter called "City"; and the County of Kerr, Texas, a political subdivision of the State of Texas, hereinafter called "County," City and County being the record owners of the herein-described real property (Board, City and County sometimes collectively referred to as "Lessor"), and Joseph L. Kennedy Enterprises, Ltd., a Texas limited partnership, whose principal offices are located in Kerrville, Texas, hereinafter referred to as "Lessee".

RECITALS

WHEREAS, the Lessor owns and operates the Kerrville-Kerr County Municipal Airport, located in the City of Kerrville, Texas, hereinafter referred to as "Airport", and;

WHEREAS, Lessee desires to lease certain Lessor-owned land at the Airport to construct certain improvements and to engage in certain aeronautical-related services to be provided to the public as hereinafter permitted; and

NOW, THEREFORE, for and in consideration of the covenants and conditions herein stated, Lessor and Lessee agree as follows:

ARTICLE 1.
GRANT OF LEASE

1.01 Leased Premises: Lessor agrees to lease to Lessee certain property owned by Lessor located at the Airport and being more particularly described as Lots 9 and 10, and a 0.253 acre portion of Lot 11, as shown on the map recorded in Volume 6, Page 331 of the Real Property Records of Kerr County and as indicated on the Leased Premises Map and Exhibit A as attached hereto, together with all improvements thereon and fixtures attached thereto, hereinafter being referred to as the "Leased Premises." Lessee shall construct the improvements on the Southern portion of Lot 9 and within sixty days of the completion of the construction by Lessee of the hangar and related facilities on the Leased Premises, and issuance of a certificate of occupancy by the City, Lessee shall, at Lessee's sole cost and expense, have the Leased Premises surveyed ("Survey") and shall have this survey recorded among the official property records of Kerr County, Texas. Within 30 days from the date of the completion of the survey, Lessee shall release the North portion of the Leased Premises not occupied by said hangar, related facilities and paving from this Lease. Based upon such survey, Lessor and Lessee shall enter into an amendment of this Lease specifying the legal description of the Leased Premises and the rent shall be adjusted based upon the Survey as provided for in Article 3.

1.02 Release of Improvements: Lessee agrees to transfer ownership of the improvements on Lot 10, specifically the building known as the "blue hangar," on June 30, 2015, to Lessor, and further agrees to timely execute any and all documents necessary to accomplish transfer of ownership of the building to Lessor.

1.03 Easements: This Agreement shall be subject to such easements, rights-of-way, drill sites, or other rights or reservations affecting the Leased Premises which are of record or are clearly visible as of the date of this Agreement.

ARTICLE 2.
TERM OF AGREEMENT

OR
Sept. 2.01 Lease Term: This Agreement shall commence at 12:01 a.m. on *Sept. 5th* June 5, 2003, and terminate at midnight on June 5, 2033, ("the Lease Term") unless terminated earlier pursuant to the provisions of this Agreement.

2.02 Optional Extension of Lease Term: Deleted.

2.03 Holdover of Lessee: If Lessee holds over or remains in possession of the Leased Premises after the termination of this Agreement in the absence of a new lease agreement between the Lessor and Lessee, such continuation beyond the date of termination, or the collection or acceptance of rent, fees and/or other charges by the Lessor, shall not be construed as a renewal or extension of this Agreement, but shall be construed solely as creating a tenancy at will and not for any other term whatsoever. During the term of such tenancy at will, Lessee shall pay to Lessor the fees and charges herein reserved, and Lessee shall be bound by and comply with all the relevant provisions of this Agreement. The Lessor may terminate the tenancy at will by giving Lessee thirty (30) days written notice thereof.

ARTICLE 3.
RENT

3.01 Amount of Base Rent: Lessee agrees to pay to Lessor rent for the Leased Premises \$.10 per square foot per year for the period commencing on the date hereof until and including June 30, 2005, at which time the base rent shall be recalculated and adjusted annually according to the Consumer Price Index as defined under Section 3.02 of this Lease, below. The total rent due by Lessee during this initial period will be modified as follows: within ninety (90) days after the issuance of the certificate of occupancy for the newly constructed improvements described in Article 5 and Section 1.01 hereof, and recordation of the survey as required in those sections, the rent due will be adjusted to reflect the change in square footage, if any, resulting from the survey and release of part of Lot 9. The total rent due shall also be adjusted on June 30, 2010, in that the base rent shall continue to be \$.10 per square foot per year (as adjusted), but the total rent due shall be increased by \$500.00 per month to account for rental value of the improvements existing on Lot 10 on that date. As further consideration for the rental value of the improvements existing on Lot 10, the total rent due shall be increased by \$250.00 per year, with said increases occurring on June 30 of 2011, 2012, 2013, and 2014. The rental value for the improvements existing on Lot 10 on June 30, 2015 shall then be determined by using the base rental rate of \$1,800.00 for the improvements on Lot 10 as of the date of execution hereof, as that amount may be increased or decreased by changes in the Consumer Price Index during the intervening period, using the same methodology specified in 3.02, below.

3.02 Adjustment of Rent During Lease Term: During the Lease Term, the rent price per square foot to be paid by Lessee shall be increased or decreased on each anniversary of the effective date of this Agreement in accordance with changes in the Consumer Price Index for all Urban Consumers (Southern Urban Area) (the "Consumer Price Index") as promulgated by the Bureau of Labor Statistics of the United States Department of Labor, which Consumer Price Index for January 2003 is 175.1 (the "Base Index") using the year 1984 as a base of 100. The Base Rent to be paid during the term of this Agreement shall bear the same ratio to the Consumer Price Index for the month of January preceding the date of the rent adjustment, as the original "\$.10 per square foot per year" bears to the Base Index. In no event, however, shall the rent due be less than \$.10 per square foot per year. In the event the Consumer Price Index ceases to incorporate a significant number of items, or if a substantial change is made in the method of establishing such Consumer Price Index, then the Consumer Price Index shall be adjusted to the figure that would have resulted had no change occurred in the manner of computing such Consumer Price Index. In the event such Consumer Price Index (or a successor or substitute index) is not available, a reliable governmental or other nonpartisan publication, evaluating the information thereto for use in determining the Consumer Price Index, shall be used in lieu of such Consumer Price Index.

3.03 Deleted

3.04 Deleted

3.05 Deleted

3.06 Delivery of Rent: All payments required of Lessee by this Agreement shall be made on a monthly basis, and shall be delivered by mail, or in person, to the Office of the Director of Public Works, City of Kerrville, Texas, 800 Junction Highway, Kerrville, Texas 78028, or to such other location as specified in writing by the Lessor from time to time, no later than the first day of each calendar month of the Lease Term for which the payment is due, unless such due date falls on a Saturday, Sunday, or legal holiday, in which case such rent shall be due on the first City business day following the date such payment is due. The monthly rent for the initial term shall be \$983.45 per month.

3.07 Delinquent Rent Payments: In the event that payments to the Lessor for rent or other fees or charges are not received by the Lessor on or before the tenth day following the due date, Lessee shall pay a late rental charge of Two Percent (2.0%) of the rent amount due for that month. All rent and other payments which are past due more than thirty (30) days shall accrue simple interest at the rate of eighteen percent (18.0%) annually or (b) the maximum percentage rate allowed by law, whichever is less. Notwithstanding anything to the contrary in this Section 3.07, if at the time performance of the provisions set forth in this Section 3.07 becomes due the interest to be paid in accordance with this Section 3.07 exceeds the limits on the payment of interest established by law, then the amount of interest to be paid shall be reduced to the maximum limit allowed by law; furthermore, if, from any circumstances, Lessor should ever receive as interest an amount that would exceed the highest lawful rate, the amount that would be excessive interest shall be applied to the payment of rent owing pursuant to the provisions of this Lease Agreement and not to the payment of interest.

3.08 Application of Amounts Received: Payments received shall be applied in the following order: (1) interest accrued for late payments, (2) late rental charges, (3) past due rent, beginning with the oldest amount due, (4) other past due amounts, (5) rent currently due, and (6) other amounts currently due.

3.09 Other Charges: Nothing herein shall be deemed to relieve Lessee and its tenants, sublessees, patrons, invitees and others from Airport use charges, including fuel flowage fees paid on fuel purchased by Lessee, as are levied generally by the Lessor directly upon the operation of aircraft, or from automobile parking permit fees for parking areas that are not included within the Leased Premises, or from security fees.

ARTICLE 4, USE OF LEASED PREMISES

4.01 Permitted Uses: Lessee shall be permitted to use the Leased Premises for the purpose of conducting for-profit commercial aeronautical services or activities consisting of any or all of the following operations and no others:

See Addendum attached hereto and made a part hereof for all purposes.

Such other uses as may be permitted in writing by the Lessor.

4.02 Prohibited Uses: Lessee agrees at all times to comply with the following:

A. Lessee shall at no time use, or permit the use of, the Leased Premises in a manner that is contrary to applicable federal, state, county or city laws, orders, ordinances, rules, or regulations, which shall include, but not be limited to, applicable Federal Aviation Administration rules and regulations and applicable regulations for the use of the Airport as may from time to time be promulgated by the Lessor;

B. Lessee shall not permit any permanent, unshielded light or illumination source to cause glare as viewed from any street, adjacent properties or operating aircraft;

C. Lessee shall not cause or permit the burial or storage above ground on the Leased Premises of any hazardous waste or materials, as defined by federal or state law, except in accordance with applicable federal, state, county or city laws, orders, ordinances, regulations and rules, as may be adopted or amended from time to time;

D. Lessee shall not cause or permit any use or activity on the Leased Premises that would create a hazardous condition for aircraft operating at the Airport;

E. Lessee shall not allow the Leased Premises to be used for parking of motor vehicles, motorcycles, or motor driven equipment by anyone other than customers, employees, or contractors of Lessee except as may be authorized by the Director of Public Works, with all such parking being limited to areas designated by Lessor for such parking. Lessee shall not be in default for the improper parking of vehicles over which neither Lessee nor any of its subtenants, customers, employees, or contractors have any control;

F. Lessee shall not allow scheduled airline passenger operations to be conducted on the Leased Premises.

G. Lessee shall not permit aircraft to access the Leased Premises from outside the Airport property such that such access would constitute a "through the fence" operation prohibited by contracts between Lessor and the State of Texas or the United States of America.

4.03 Compliance with Minimum Standards: All activities conducted upon the Leased Premises, whether by Lessee or its officers, employees, contractors, or agents, shall be in substantial conformance with Title 3, Chapter V, of the Code of Ordinances of the City of Kerrville, Texas, "Airport Rules, Regulations, and Minimum Standards", as such regulations exist or may be duly amended from time to time by the Lessor to the extent that such regulations apply to Lessee's operations.

4.04 Non-exclusive Uses: Lessee understands and acknowledges that, as to that part of the Airport not included within the Leased Premises, the allowable uses permitted herein are on a non-exclusive basis with respect to other potential providers of aeronautical services at the Airport.

ARTICLE 5.
OBLIGATIONS OF LESSEE WITH REGARD TO
CONSTRUCTION OF IMPROVEMENTS

5.01 Application for Building Permit: Upon execution hereof, Lessee shall make application for a building permit ("Permit") with the appropriate governmental agency on or before 90 days from date hereof for the construction of the facilities necessary to carry out the purposes described in Section 4.01 above, and shall pursue issuance of such Permit with reasonable diligence. Lessor agrees to cooperate with Lessee in obtaining such Permit. Such facilities to be constructed shall include a hangar on the southwestern-most portion of Lot 9 and a self-baling depot.

5.02 Approval of Construction Plans: Not later than 90 days after commencement of the Lease Term and prior to any construction, alteration, or changes to the Leased Premises, Lessee shall submit to the City's Airport Manager scaled plans and specifications of such construction, and a site use plan with all drainage and utility services as existing or proposed indicated thereon. Lessee is solely responsible for ascertaining the requirements of any and all, federal, state, or local government agencies with regard to permit and application procedures necessary to obtain final approvals and building permits prior to beginning any construction on the Leased Premises. Lessee shall not commence any construction until it has received prior written approval from the Airport Manager and until the Lessee or the Lessor or both have received the necessary approvals from the Federal Aviation Administration, the City's Building Official, and

such other governmental authorities as are necessary for the type of construction contemplated. In those instances in which the Lessor is required to make application for construction or alteration of the Airport due to the Lessor being the

holder of the Airport Operating Certificate, the Lessor agrees to promptly and diligently make and prosecute such applications. Once necessary approvals and permit(s) have been obtained, Lessee shall, not later than 180 days after issuance of approval and permit(s), solely and entirely at Lessee's cost, risk and expense, commence to construct, build and erect the Improvements in accordance with the final construction plans and specifications hereinabove mentioned.

5.03 Completion Requirements for Self-Fueling Depot: Lessee agrees to complete installation and establish operation of the self-fueling depot within 180 days from the date hereof.

5.04 Approval of Plans Not Assurance of Design Quality: The approval by the Director of Public Works or anyone else acting on behalf of Lessor of any plans and specifications applies only to the conformity of such plans to the general architectural and operational plan for the Leased Premises and the Airport. The approval of the Director of Public Works does not constitute approval of the quality of the architectural or engineering work performed. Neither Lessor nor the Director of Public Works assumes any liability or responsibility for the architectural or engineering design or for any defect in any building or improvement constructed from the plans or specifications. Construction of any contemplated improvements shall be in accordance with the plans presented to and approved by the Director of Public Works. All construction work shall be subject to inspection by a representative employed by the Lessor or an inspector from the City's Planning and Development Services Department, or both, to determine that such work conforms to the plans and specifications approved by the Lessor.

5.05 Contractor's Insurance; Bonds: At any time construction activities are undertaken on the Leased Premises, Lessee shall require that its contractor or contractors keep in force insurance issued by a responsible insurance company or companies authorized to conduct business in the State of Texas insuring the improvements during construction under Completed Builder's All Risk Insurance, including fire, extended coverage, vandalism and malicious mischief, in an amount equal to the full insurable value of such construction as the same progresses in order to insure continuity of construction and ultimate completion despite damage or destruction suffered during the course thereof. Furthermore, Lessee shall require all contractors performing construction work on the Leased Premises to provide payment and performance bonds issued by a responsible bonding company or companies authorized to conduct business in the State of Texas for the full amount of the cost of the construction to be performed on forms which are in compliance with Chapter 2253 of the Texas Government Code, as amended. The foregoing shall be made a part of any contract between Lessee and its contractor or contractors. In the event Lessee does any construction work itself, it shall comply with the all-risk insurance provisions hereof.

5.06 Compliance With Building Codes and Federal Standards: All improvements made to the Leased Premises by Lessee shall comply with all applicable City Building Codes and Federal standards for construction of airport improvements in effect at the time construction commences as well as all other applicable federal aviation regulations, if any.

5.07 Encumbrance of Leasehold Estate: Lessee may encumber its leasehold interest in the Leased Premises by deed of trust, mortgage, security agreement or other security interest without the prior written consent of the Lessor as set forth in the Addendum attached hereto.

5.08 Ownership of Buildings, Improvements and Fixtures: Any and all buildings, improvements (including, but not limited to all aprons, taxiways and roadways), additions, alterations, and fixtures existing on the Commencement Date or constructed or placed on any part of the Leased Premises during the Lease Term by Lessor or Lessee, shall be considered part of the real property of the Leased Premises, shall remain on the Leased Premises, and shall not be removed by Lessee or any sublessee without the written consent of Lessor. Except as otherwise provided in this Lease or an Addendum hereto, improvements, additions, alterations, and fixtures on the Leased Premises shall become the sole property of Lessor upon termination of this Agreement without compensation to Lessee, it being understood and agreed by Lessee that the transfer of title to the Lessor of the buildings and improvements located on the Leased Premises at the end of the Lease Term is additional consideration for this Agreement. Notwithstanding the above, Lessee shall have the

right at any time during Lessee's occupancy of the Leased Premises, or within a reasonable time thereafter, to remove any and all furniture, machinery, equipment, or other trade fixtures, owned or placed by

Lessee, in, under, or on the Leased Premises; provided, however, prior to the termination of the Lease Term, Lessee shall repair any damage to any buildings or improvements on the Leased Premises resulting from their removal. Any such personal property items or trade fixtures which are not removed within sixty (60) days after the termination date of this Agreement shall become the property of Lessor as of that date.

5.09 Failure to Construct Improvements: Lessor shall have the right, exercisable at its sole option, to terminate this Lease Agreement if:

A. Lessee fails to commence construction of the improvements required to conduct Lessee's operations on the Leased Premises on or before the 180th day after commencement of the Lease Term; or

B. after construction of the required improvements has commenced, Lessee fails to complete construction of the improvements on or before the second anniversary of commencement of construction.

5.10 Availability of Sanitary Sewer: Lessee understands and acknowledges that the Leased Premises is not served with sanitary sewer service as of the commencement of the Lease Term. Lessee shall be solely responsible for installing and maintaining at Lessee's cost an on-site sewage facility that complies with all applicable state and local regulations with sufficient capacity to provide sanitary sewer disposal for Lessee. If City extends a sanitary sewer collection main adjacent to the Leased Premises, Lessee agrees it will construct a sanitary sewer service line to connect to the sanitary sewer collection main not later than 180 days after receiving written notification from Lessor that the sanitary sewer collection main is complete and ready to receive waste. If Lessee has constructed its facilities and is operational at the time of the extension of sanitary sewer service to the Leased Premises, Lessee shall not be required to pay a capital recovery fee to the City as otherwise required by ordinance upon connection to City's sanitary sewer system.

5.11 Discharge to Sanitary Sewer, Pre-treatment: Lessee shall at no time discharge or allow the discharge of any substance into City's sanitary sewer system that is otherwise prohibited by federal, state, or local law, ordinance, or regulation. In the event that pre-treatment of waste is required prior to the discharge into the City's sanitary sewer system of waste generated from the Leased Premises, Lessee must construct such pre-treatment facility at its sole expense in compliance with applicable federal, state, and local laws and regulations.

ARTICLE 6.

REPAIRS, MAINTENANCE AND RESTORATION

6.01 Maintenance by Lessor: Lessor shall, at Lessor's sole expense, keep in good repair, condition and appearance the taxiways and roadways which have been or may be constructed by Lessor. Lessor shall commence required repairs as soon as reasonably practicable after receiving written notice from Lessee thereof.

6.02 Maintenance by Lessee: Lessee shall, at Lessee's sole expense, keep the Leased Premises and all improvements of any kind, which may be existing at the commencement of the Lease Term or erected, installed, or made thereon by Lessee after commencement of the Lease Term, not required herein to be maintained by Lessor in good repair, condition and appearance. Lessor shall be the sole judge of the quality of Lessee's maintenance; provided, however, Lessor shall not unreasonably withhold acceptance of said repairs or maintenance. Upon written notice by Lessor to Lessee, Lessee shall be required to perform such reasonable maintenance under this Section 6.02 as Lessor considers necessary. If Lessee does not undertake such maintenance within ten (10) days after receipt of written notice, Lessor shall have the right to enter on the Leased Premises and perform the necessary maintenance, the cost of which shall be borne by Lessee. Subject to the provisions of Section 5.07, on the last day of the Lease

Term, or on any sooner termination, Lessee shall surrender the Leased Premises to Lessor in the same condition as received and clean and free of debris, except for fire and casualty damages or ordinary wear and tear.

6.03 Trash and Waste Removal: Lessee agrees to cause to be removed from the Leased Premises, at its own expense, all waste, garbage and rubbish, and agrees not to deposit same on the Leased Premises except temporarily in waste or garbage containers provided by Lessee at Lessee's expense. Lessee further agrees that Lessee will store all parts, supplies, and other materials on the interior of buildings located on the Leased Premises, provided, however, that any parts or supplies which must be kept outside because of volatility of the supply item or the size of the part will be kept out of view of the public traveling on public rights of way or other surrounding tenants by installation of fencing or other means of screening approved by the Airport Manager.

ARTICLE 7 ACCESS TO AND USE OF AIRPORT

7.01 Access to Airport: Lessor shall maintain all roads on the Airport giving access to the Leased Premises in good and adequate condition for use by cars and trucks and shall maintain free and uninterrupted access to the Leased Premises over said roads at all times; provided, however, Lessor shall not be in default of this Agreement if access is interrupted for any of the reasons set forth in Section 16.03, below.

7.02 Right to Use Airport: Lessee and Lessee's officers, employees, agents, contractors, invitees, and guests shall have the right to use that part of the Airport and its facilities not included within the Leased Premises in common with others authorized to do so. Such use shall be subject to any and all applicable federal, state or local laws, ordinances, statutes, rules, regulations, or orders of any governmental authority, lawfully exercising jurisdiction over the Airport or the activities and business operations of Lessee, including any limitations, restrictions or prohibitions affecting the aviation activities or operations of Lessee.

7.03 Vehicle Operations on the Airfield: No vehicles of Lessee, its officers, employees, agents, contractors, invitees, and guests will be operated on, or cross, the runways of the Airport except pursuant to the Airport Rules and Regulations.

7.04 Airport Certification Rules and Regulations: Lessee shall comply with such rules that pertain to its operation on the Airport under the Airport Certifications Rules of Federal Aviation Regulations Part 139, as amended [14 CFR Part 139, as amended], to the extent such regulations are applicable to the operation of the Airport.

7.05 Airport Security Rules and Regulations: Lessee, its officers, employees, agents, contractors, invitees, and guests shall comply with all federal and local Airport Security Regulations adopted by the Lessor as such rules and regulations exist or may hereafter be amended. LESSEE AGREES TO INDEMNIFY AND HOLD HARMLESS THE LESSOR, ITS OFFICERS AND EMPLOYEES, from any charges, fines or penalties that may be assessed or levied by the FAA or the Texas Department of Transportation by reason of the NEGLIGENT OR INTENTIONAL FAILURE OF LESSEE, ITS OFFICERS, EMPLOYEES, AGENTS, CONTRACTORS, INVITEES, AND GUESTS to comply with such Airport Security Regulations.

7.06 14 C.F.R. Part 77 Requirements: Lessee agrees to comply with the notification and review requirements set forth in Part 77 of the Federal Aviation Regulations [14 CFR Part 77] in the event any future structure, antenna or building is planned for the Leased Premises, or in the event of any planned modification of any present or future building, antenna or structure located on the Leased Premises.

7.07 Control of Structures: Lessee shall not erect nor permit the erection of any structure or object, nor permit the growth of any tree on the Leased Premises which highest point is above a mean sea level elevation established by the FAA and Lessor as a height limitation on such structures or objects. Lessor reserves the right to enter upon the Leased Premises and to remove the offending structure or object and cut the offending tree at Lessee's expense.

7.08 Aerial Approaches: Lessor reserves the right to take any action it considers necessary to protect the aerial approaches of the Airport against obstruction together with the right to prevent Lessee from erecting or permitting to be

erected any building or other structure on or adjacent to the Airport which, in the opinion of the Lessor, would limit the usefulness of the Airport or constitute a hazard to aircraft.

7.09 Right of Overflight: There is hereby reserved to the Lessor, for the use and benefit of the public, a right of flight for the passage of aircraft above the surface of the Leased Premises, together with the right to cause in said airspace such noise as may be inherent in the operation of aircraft, now known or hereafter used for navigation of or flight in the air, using said airspace for landing at, taking off from or operating on the Airport.

ARTICLE 8. INSURANCE

8.01 Lessee's Minimum Insurance Amounts: Lessee shall obtain and maintain continuously in effect at all times during the Lease Term, at Lessee's sole expense, at least the following minimum insurance with a carrier or carriers licensed to do business in the State of Texas and satisfactory to the Lessor.

A. Commercial General Liability Insurance against claims for bodily injury, death, or property damage occurring on, in or about the Leased Premises, or any other portion of the Airport, in at least the amount of \$1,000,000.00 per individual, \$2,000,000.00 per occurrence and \$1,000,000.00 with respect to property damage. In the event that the Texas Torts Claims Act, as amended (Tex. Civ. Prac. & Rem. Code §101.001, et seq.) or its successor statute, is amended to increase the amount of liability of municipalities for acts described in said Act above the levels set forth in this Section 8.01.A, Lessee agrees to increase the amount of insurance coverage required by this Section 8.01.A. to an amount sufficient to provide coverage to the level of potential liability per occurrence under said Act; and

B. Automobile Liability Coverage on all motor vehicles owned and/or operated by Lessee or its employees on the Leased Premises or other Airport property in amounts of not less than \$500,000.00 combined single limit or equivalent; provided, however, separate automobile coverage shall not be required if such coverage is provided under Lessee's comprehensive general liability policy.

C. Property and Casualty Insurance on improvements constructed on the property, whether owned by Lessee or Lessor, insuring against loss or damage to improvements due to fire, lightning and all other perils included in standard extended coverage policies, and vandalism and malicious mischief, all in amounts of not less than ninety percent (90%) of replacement value;

D. If required pursuant to Article 3-V-10(a.) (2) of the Code of Ordinances of the City of Kerrville or its successor ordinance, Hangarkeeper's Liability coverage in the minimum amount of \$1,000,000.00 per occurrence unless similar coverage exists under the required general liability policy;

E. Environmental Liability Coverage in the amount of not less than \$1,000,000.00 per occurrence.

8.02 Lessee's Coverage Primary: All insurance herein required shall apply as primary and not in excess of or contributing with other insurance which the Lessee may carry. Insurance provided pursuant to Section 8.01 shall name the Lessor as an additional insured or loss payee as the case may be. The comprehensive general liability policy as provided in paragraph 8.01.A. shall provide contractual liability coverage sufficiently broad so as to include the liability assumed by Lessee in the indemnity and hold harmless provisions included in Article 9 of this Agreement.

8.03 Contents of General Liability Policy: Lessee's Comprehensive General Liability policy shall protect the Lessor and Lessee against any and all liability to any person or persons whose property damage or personal injury arises out of or is in connection with the occupation, use, or condition of the Leased Premises or resulting from any injury or

damage occurring on or about the roads, driveways or other public areas of the Leased Premises used by Lessee, its officers, employees, agents, contractors, invitees, and guests at the Airport, whether or not such damage or injury is the result of negligence of the Lessee or its officers, employees, agents, contractors, invitees, and guests.

8.04 Cancellation; Certificates of Insurance: Lessee's insurance as required by this Agreement shall not be subject to cancellation or material alteration until at least thirty (30) days written notice has been provided to the Lessor. Lessee shall furnish to the Lessor, annually, Certificates of Insurance showing Lessor as an additional insured and evidencing that all of the herein stated requirements have been met.

8.05 Lessor's Right to Purchase Insurance: In the event such insurance as required by Section 8.01, above, shall lapse, the Lessor reserves the right to obtain such insurance at Lessee's expense. Upon demand from Lessor, Lessee shall reimburse Lessor for the full amount of the premium paid on Lessee's behalf.

ARTICLE 9 INDEMNITY

9.01 Generally: LESSEE AGREES TO INDEMNIFY, DEFEND, AND HOLD HARMLESS THE CITY, COUNTY, AND THEIR RESPECTIVE OFFICERS, EMPLOYEES AND AGENTS from and against any and all loss, damage, liability, claims, demands, costs, charges, expenses and causes of action including all costs of defense thereof (and including reasonable attorney fees) of whatsoever character which the Lessor may incur, sustain, or be subjected to on account of loss, damage to property and loss thereof and for bodily injury to or death of any persons (including but not limited to the property, employees, customers, contractors, agents, invitees and licensees of each party hereto) ARISING OUT OF THE CONDUCT OR OPERATIONS, NEGLIGENCE OR OTHERWISE, OF LESSEE, ITS DIRECTORS, OFFICERS, EMPLOYEES, SUBLESSEES, CONTRACTORS, SUBCONTRACTORS OR AGENTS on the Leased Premises. The Lessor will give Lessee prompt notice of any claim made or suit instituted which in any way affects or might affect the Lessor. Similarly, Lessee will accord the Lessor the same notice and rights.

9.02 Environmental Matters: LESSEE AGREES TO INDEMNIFY, DEFEND, AND HOLD HARMLESS CITY, COUNTY, AND THEIR RESPECTIVE OFFICERS, EMPLOYEES, AND AGENTS from and against any loss, costs, damages, claims, assessments, fines, and/or penalties (including reasonable attorney's fees) (together referred to as "Losses") which may be incurred by or levied against ANY OF THOSE HEREIN INDEMNIFIED BY ANY THIRD PARTY, INCLUDING BUT NOT LIMITED TO THE U.S. ENVIRONMENTAL PROTECTION AGENCY OR THE TEXAS NATURAL RESOURCES CONSERVATION COMMISSION OR THEIR SUCCESSOR AGENCIES as the result of Lessee's construction, operation, or maintenance of any aircraft painting and refinishing facility on the Leased Premises. As used in this Section 9.02, the term Losses shall include, but not be limited to, any losses, costs, damages, claims, assessments, fines or penalties, including but not limited to cost of remediation, resulting from the contamination of any soil, water, or air by hazardous materials discharged by Lessee, or by Lessee's officers, employees, agents, sublessees, invitees, licensees, guests, trespassers, or contractors, either intentionally or negligently, into the soil, water, or air.

ARTICLE 10. UTILITIES

Lessee shall be solely responsible for the payment of all electric, telephone, water, refuse, natural gas and other public utility services used on the Leased Premises.

ARTICLE 11. SIGNS

11.01 Consent Required: Except with the prior written consent of the Airport Manager, which shall not be unreasonably withheld, Lessee shall not erect, maintain or display any signs or any advertising at, or on, the exterior part

of structures on the Leased Premises, or inside any buildings located on the Leased Premises so as to be visible through the window or exterior doors thereof.

11.02 Removal on Termination: Upon the termination of this Agreement, Lessee shall remove, obliterate or paint out, as the Lessor may direct, any and all signs and advertising on the Leased Premises or elsewhere at the Airport, and in connection therewith shall restore the Leased Premises to the same condition as prior to the placement of any such signs or advertising. In the event that there is a failure by Lessee to so remove, obliterate or paint out each and every sign or advertising and so to restore the Leased Premises, the Lessor may, at its option, perform the necessary work at the expense of Lessee, and the charge therefor shall be paid by Lessee to the Lessor on demand. In certain circumstances, the Lessor may elect to allow specific signs to remain at the termination of this Agreement. Such signs shall be identified and agreed upon mutually, in writing, by Lessee and Lessor.

ARTICLE 12. ASSIGNMENT AND SUBLEASING

12.01 Assignment by Lessee: At no time shall Lessee sublease any portion of the Leased Premises or assign its interests or obligations in this Lease Agreement without the written consent of Lessor. Any such assignment or attempted assignment without Lessor's consent to same shall be void.

12.02 Assignment by Lessor: Lessor may transfer and assign this Agreement to any successor in interest of Lessor to whom the Airport may be sold or assigned; provided that the successor in interest shall execute and deliver to Lessor, with copy to Lessee, an instrument assuming the lawful obligations of Lessor under this Agreement.

ARTICLE 13. TAX LIENS

Lessee shall be solely responsible for the collection and payment of all applicable federal, state, and local taxes, including, but not limited to, sales, use, fuel, amusement, or excise tax required to be collected and paid over by Lessee to the appropriate taxing authority. Furthermore, Lessee shall be responsible for the payment of any applicable ad valorem taxes and any taxes on Lessee's personal property located on the Leased Premises. Lessee shall at no time permit the foreclosure of any tax liens to Lessee's leasehold interest in the Leased Premises or the buildings, fixtures, or other improvements located on the Leased Premises. The Lessor shall have the right to pay such taxes due after Lessee's refusal to pay such taxes, and upon demand Lessee shall reimburse the Lessor for the amount of taxes paid plus any penalties, interests, and attorney's fees incurred, subject to Lessee's right to challenge the validity of such taxes in whole or in part. In the event that Lessee is successful in any challenge regarding the payment of any tax, the Lessor shall be subrogated to any recovery obtained by Lessee to the extent of the amount of taxes, interests, penalties, and attorneys fees previously paid by the Lessor and not already reimbursed by Lessee.

ARTICLE 14. DEFAULT AND REMEDIES

14.01 Default by Lessee: The following shall be deemed to be events of default by Lessee under this Agreement:

- A. Lessee shall fail to pay when due any installment of rent or any other payment required pursuant to this Agreement;
- B. Lessee shall abandon any substantial portion of the Leased Premises;

C. Lessee or any guarantor of Lessee's obligations hereunder shall file a petition or be adjudged bankrupt or insolvent under any applicable federal or state bankruptcy or insolvency law or admit that it cannot meet its financial obligations as they become due, or a receiver or trustee shall be appointed for all or substantially all of the assets of Lessee or any guarantor of Lessee's obligations hereunder;

D. Lessee or any guarantor of Lessee's obligations hereunder shall make a transfer in fraud of creditors or shall make an assignment for the benefit of creditors;

E. Lessee shall do or permit to be done any act that results in a lien being filed against the Leased Premises;

F. The liquidation, termination, dissolution of Lessee or any guarantor of Lessee's obligations hereunder; or

G. Lessee shall be in noncompliance with any other term, provision or covenant of this Agreement, other than those specified in subparts A. through F. above.

14.02 Termination Upon Lessee's Default: Except for an event of default resulting from the filing of a petition in bankruptcy, if an event of default by Lessee shall continue for ten (10) days after service of notice of such event of default by Lessor to Lessee, Lessor may give notice of its election to terminate this Agreement, and thirty (30) days after service of such notice of election to terminate, this Agreement shall cease and terminate as if the day of Lessor's election were the day originally fixed for termination of this Agreement. Such election to terminate by Lessor shall not be construed as a waiver of any claim it may have against the Lessee consistent with such termination. If, however, the event of default is of such nature that it cannot reasonably be remedied within ten (10) days after receipt of notice by Lessee, and if the Lessee shall have commenced curing such event of default within ten (10) days after receipt of such notice, and shall continuously and diligently proceed in good faith to cure such event of default, then the period for curing the event of default shall be extended for such length of time as is reasonably necessary to cure the event of default. Furthermore, if the event of default is the result of Lessee filing a petition in bankruptcy, then termination shall not occur unless the trustee in bankruptcy has failed to ratify this lease within sixty (60) days following the date of filing of the petition in bankruptcy.

14.03 Abandonment of Business by Lessee: Lessee further agrees that the abandonment for a period of thirty (30) days by Lessee of the conduct of its business activities at the Airport shall terminate Lessee's rights under this Agreement. By so terminating this Agreement, Lessor does not waive any other claim or rights against Lessee. For the purposes of this paragraph, the term "abandonment" shall mean the failure of Lessee to be open for business on the Leased Premises except in the case of war, strike, catastrophe or causes beyond Lessee's control.

14.04 No Remedy Exclusive: No remedy herein conferred upon or reserved to the Lessor or Lessee is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or hereafter existing under law or in equity. 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 thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Lessor and Lessee to exercise any remedy reserved to it in this section, it shall not be necessary to give any notice, other than such notice as may be herein expressly required.

14.05 No Waiver of Breach: Lessor's failure or delay in declaring the existence of an event of default by Lessee shall not be construed as a waiver thereof, nor shall it be construed so as to waive or to lessen the right of the Lessor to insist upon the performance by Lessee of any term, covenant or condition hereof, or to exercise any rights given it on account of any such event of default. A waiver of any particular event of default shall not be deemed to be a waiver of the same, similar of any other subsequent event of default.

14.06 Expeditious Action. Notwithstanding any provision as to notice in this Agreement herein contained, if in Lessor's reasonable judgment the continuance of any event of default by Lessee for the full period of the notice to cure the event of default will jeopardize the operation of the Airport or the rights of the Lessor or the other Airport tenants, Lessor may, without notice, elect to perform those acts in respect to which Lessee is in default. Lessee shall reimburse Lessor for any reasonable and necessary costs incurred by the Lessor pursuant to this Section 14.06.

14.07 Default in Rent Payment: Notwithstanding anything to the contrary above, if there should be any default in the payment by Lessee of any rents, fees or charges due to Lessor as provided herein, the Lessor may give Lessee a ten (10) day written notice to pay all sums then due or cease operations, and if such payment is not made within such ten (10) day period or such longer time as Lessor may set forth, Lessee's rights under the Agreement shall terminate. By so terminating this Agreement, the Lessor does not waive any other claim or rights against Lessee. However, if such monetary default consists only of underpayment of a disputed and unliquidated sum, under \$1,000.00, the termination of this Agreement may be forestalled by tender of the liquidated sum and deposit of the amount in controversy in escrow.

ARTICLE 15. TERMINATION BY LESSEE

Except for the payment by Lessee to Lessor of rents or other amounts past due or accrued but not yet due, Lessee shall have the right to terminate this Agreement in its entirety, and all rights and obligations ensuing there from immediately upon the occurrence of the following:

- A. The issuance of any order, rule or regulation of the Federal Aviation Administration, or its successor Federal Agency, or other competent government authority, Federal or State, or the issuance and execution of any judicial process by any court of competent jurisdiction, materially restricting for a period of at least sixty (60) days, the use of the Airport for aeronautical purposes; provided that none of the foregoing is due to any fault of Lessee; or
- B. The material restriction of the Lessor's operation of the Airport by action of the Federal Government, or any department or agency thereof, under its wartime or emergency powers, and the continuance thereof for a period of not less than sixty (60) days; provided however, that without prejudice to the rights of Lessee to terminate as above provided, the Lessor and Lessee may mutually agree to adjust fees and charges; or
- C. Material restriction of the operation of the Airport arising from Lessor's failure to maintain and keep in repair the landing area of the Airport.

If Lessee terminates this Lease for any of the reasons set forth in this Article 15, Lessor shall promptly repay Lessee any rent previously paid by Lessee attributable to the period following the date of such termination.

ARTICLE 16. MISCELLANEOUS PROVISIONS

16.01 Damages: LESSEE HEREBY RELEASES CITY, COUNTY, AND THEIR RESPECTIVE OFFICERS, EMPLOYEES, AGENTS AND CONTRACTORS FROM LIABILITY TO LESSEE FOR ANY DAMAGE TO THE PERSONAL PROPERTY OF LESSEE including its aircraft, caused by the act of negligence of any of those hereby released or any other user of the Airport, the bursting, leaking or running of any cistern, water closet, waste pipe, tank, water, gas, steam or sewer pipe, or oil and/or gas pipelines in, above, upon or about the Leased Premises, the Airport, or any part thereof, any heating, gas or electrical device, or vehicle, or any flooding or other weather related casualty.

The parties may change the representative or address for delivery of notices from time to time by sending written notices to the other party. All notices shall be in writing and effective only upon actual receipt.

16.09 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.

16.10 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 were not included herein.

16.11 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 herein.

16.12 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.

16.13 Counterparts: This Agreement may be executed in multiple counterparts, each of which shall be deemed as original, and all of which constitute but one and the same instrument.

16.14 Development of the Airport: Future development, changes, alterations, modifications or improvement to the Airport shall be at the sole discretion of the Lessor, subject only to such notification to Lessee that the Federal Aviation Administration may dictate. The Lessor will strive not to hinder the Lessee's operations in carrying out the provisions of this paragraph.

16.15 Relocation of Facilities: In the event Lessor requires any portion of the Leased Premises for expansion or development of the Airport, Lessor reserves, at its sole expense, the right, on six (6) months' notice, to relocate Lessee to substantially similar facilities at another generally comparable site located on the Airport. Lessor reserves the right to retake minor unimproved portions of the Leased Premises, such as will not substantially interfere with the Lessee's improvements or operations, without compensation to the Lessee, provided that the rent shall be abated as to that portion of the Leased Premises which is taken back by Lessor.

16.16 Subordination to State or Federal Agreements: This Agreement shall be subordinate to the provisions and requirements of any existing or future agreement between the Lessor and the United States or the Lessor and the State of Texas, relative to the development, operation or maintenance of the Airport.

16.17 No Exclusivity on Aeronautical Services: Nothing herein contained shall be construed to grant or authorize the granting of the exclusive right to provide aeronautical services to the public as prohibited by Section 308(a) of the Federal Aviation Act of 1958, as amended.

16.18 Discrimination Prohibited: The Lessee, for itself, its officers, legal representatives, successors-in-interest and assigns, as a part of the consideration hereof, agrees (1) that no person on any grounds including race, color, sex, national origin, veteran status or disability shall be excluded from participation in, denied the benefits of or be otherwise subjected to discrimination in the use of the Leased Premises; (2) that in the construction of any improvements on, over or under the Leased Premises and the furnishing of services thereon, no person on the grounds of race, sex, color, national origin, or disability shall be excluded from participation in, denied the benefits of or otherwise be subjected to discrimination; (3) that the Lessee shall use the Leased Premises and the Airport in compliance with all other requirements imposed by, or pursuant to, Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said regulations may be amended. In the event of breach of any of the above nondiscrimination covenants, the Lessor shall give notice of the alleged breach and state with particularity the basis of, and the facts on which, the alleged breach has occurred. Lessee shall have at least thirty (30) days in which to cure said alleged breach by eliminating/ceasing any such breach, or such additional period as

may be reasonable and necessary to complete the same. If such alleged breach is not so cured by eliminating/ceasing any such breach within such period, Lessor may upon written notice to Lessee terminate this Agreement.

16.19 Entire Agreement: This Agreement embodies the entire agreement between the Lessor and Lessee, and supersedes all prior agreements and understandings, whether written or oral, and all contemporaneous oral agreements and understandings relating to the subject matter hereof. This Agreement shall not be changed, modified, discharged or extended, except by written instrument duly executed by Lessor and Lessee. The parties agree that no representations or warranties shall be binding upon either party unless expressed in writing in the aforesaid Agreement.

SEE ADDENDUM ATTACHED HERETO AND INCORPORATED HEREIN FOR ALL PURPOSES.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be legally executed in duplicate this 5th day of September, 2003.

LESSOR:

KERRVILLE KERR COUNTY AIRPORT BOARD

By: John Davis
John Davis, Chair, Airport Board

LESSEE:

JOSEPH L. KENNEDY ENTERPRISES, LTD.,
a Texas limited partnership

By: JLK MANAGEMENT, L.L.C., a Texas limited liability company

By: Joseph L. Kennedy, Jr.
Joseph L. Kennedy, Jr., President

APPROVED:

CITY OF KERRVILLE

By: Stephan P. Fine
Stephan P. Fine, Mayor

COUNTY OF KERR, TEXAS

By: Pat Timley
Pat Timley, County Judge



ATTEST:

Brenda G. Craig
Brenda G. Craig, City Clerk

Janett Pieper
Janett Pieper, County Clerk

APPROVED AS TO FORM:

Michael C. Hayes
Michael C. Hayes, City Attorney

APPROVED AS TO FORM:

David M. Mitley
David M. Mitley, County Attorney

THE STATE OF TEXAS §

COUNTY OF KERR §

This instrument was acknowledged before me on this 17th day of June, 2003 by Dr. John Davis, Chair, Kerrville-Kerr County Airport Board, for the KERRVILLE-KERR COUNTY AIRPORT BOARD, on behalf of said BOARD.

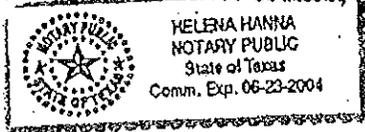


Patricia A. Reinhart
Notary Public, State of Texas

THE STATE OF TEXAS §

COUNTY OF KERR §

This instrument was acknowledged before me on this 13th day of JUNE, 2003 by PAT TINLEY, County Judge for ~~COUNTY OF KERR~~ TEXAS, on behalf of said COUNTY OF KERR, TEXAS.

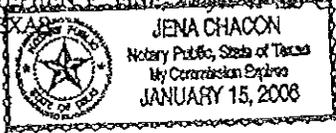


Helena Hanna
Notary Public, State of Texas

THE STATE OF TEXAS §

COUNTY OF KERR §

This instrument was acknowledged before me on this 18th day of June, 2003 by ~~STEPHEN P. FINE, Mayor of the~~ CITY OF KERRVILLE, TEXAS, on behalf of said CITY OF KERRVILLE, TEXAS.



Jena Chacon
Notary Public, State of Texas

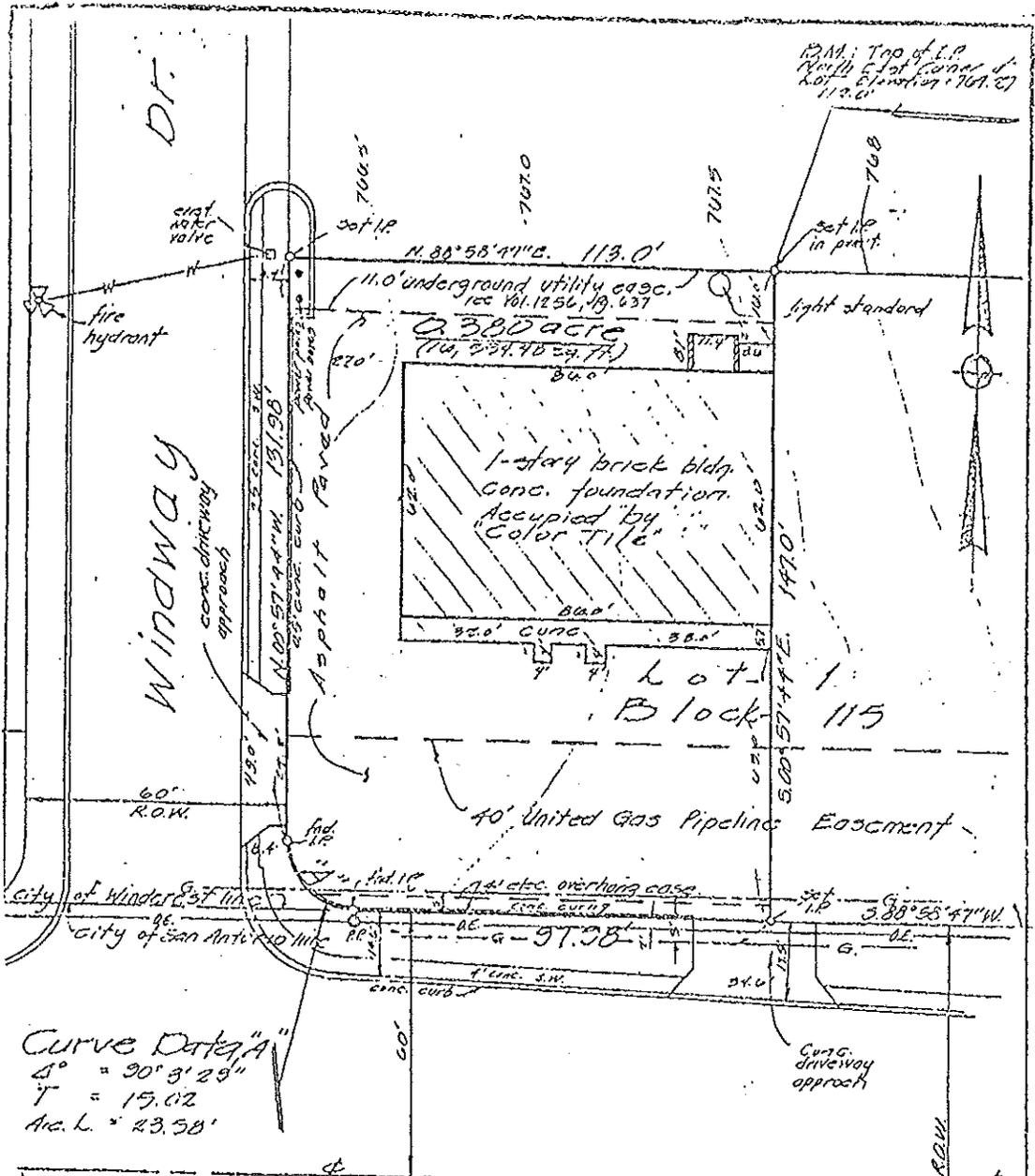
THE STATE OF TEXAS §

COUNTY OF KERR §

This instrument was acknowledged before me on this 5 day of September, 2003 by JOSEPH L. KENNEDY, JR., President of JLK MANAGEMENT, L.L.C., a Texas limited liability company, General Partner of JOSEPH L. KENNEDY ENTERPRISES, LTD., a Texas limited partnership, on behalf of said partnership.



Jena Chacon
Notary Public, State of Texas



Curve Data "A"
 $\Delta = 30^{\circ} 3' 28''$
 $T = 15.02$
 $Arc. L. = 23.58'$

Walzem Rd. (F.M. 1976)

SCALE 1" = 50'

PLAT OF SURVEY

A. 0.380 acre tract out of
 LOT 1 BLK 115 C.B.

SUB'D. Windcrest Unit-24

VOL. 7500 PG. 232

'Color Tile' Bldg.
 City of
 Windcrest, BEXAR CO.
 TEXAS

Reference



STATE OF TEXAS

VICTOR SEGUIN
 SURVEYING & MAPPING CO.
 P.O. BOX 17241 (0-26-3471)
 SAN ANTONIO, TEXAS 78217

I HEREBY CERTIFY THAT THE ABOVE PLAT IS TRUE AND CORRECT ACCORDING TO AN ACTUAL SURVEY MADE ON THE GROUND UNDER MY SUPERVISION AND THAT THERE ARE NO VISIBLE EASEMENTS OR ENCROACHMENTS OF BUILDINGS ON ADJOINING PROPERTY AND THAT ALL BUILDINGS ARE WHOLLY LOCATED ON THIS PROPERTY EXCEPT AS SHOWN ABOVE

This 27 day of July, 1972 A.D.

Victor Seguin

Field Book Page Job No. 1776

6201 Wazem, LLC
 Financial Analysis
 Rent Roll
 As of 11/14/11

Tenant	Pro Rata Share	Rent Rate	Lease Commencement	Lease Expiration	Term (Yrs)	Annual Rent (\$)	Current Annual Rent	Next Rent Increase	Other Tenant pays directly to Landlord (LLC)	Improvement Allowance Total	Prepaid Rent	Security Deposit	Options to Renew	Notes
Compad Disc Exchange, Inc.	100.00%	11/1/2002	10/1/2012	5		\$62,840.00		11/1/12 (if lease renewal option is exercised)	CAR: Tenant pays directly to Landlord (LLC) KVALC: 100% Property Taxes: 11.15 100% reimbursed (amounts are escrowed with LL) Insurance: Tenant pays directly	None	None	\$5,000.00	1 term for 3 years with annual base rent fixed at about be 598,277.00	Option to extend: Tenant to deliver notice to LL at least 9 months in advance but no more than 1 year in advance

HCSB, a state banking association
1145 Junction Highway
Kerrville, Texas 78028

February 2, 2012

Kerrville-Kerr County Airport Board
and City of Kerrville
and County of Kerr, Texas
800 Junction Hwy.
Kerrville, Texas 78028

Re: Estoppel and Consent Agreement by and between Joseph L. Kennedy Enterprises,
Ltd., as Tenant, HCSB, a state banking association, as Lender, and Kerrville-Kerr
County Airport Board, as Landlord

Ladies and Gentlemen:

In reference to paragraph 1 of the above-described Estoppel and Consent Agreement, the undersigned Lender, hereby agrees to notify you if any time the Notes and Security Documents therein referenced are "rearranged" (except changes in the terms of the Notes such as rate and maturity) and no "rearrangement" shall alter or modify the Lease (therein defined) without your prior written consent.

Very truly yours,

HCSB, a state banking association

BY: *J Hammack*

Name: Justin Hammack

Title: Vice President

Agenda Item:

2E. Purchase of a backhoe from ASCO Equipment in the amount of \$92,566.18.
(staff)



CONTRACT PRICING WORKSHEET
For Standard Equipment Purchases

Contract No.:

EM06-11

Date Prepared:

11/14/2011

This Worksheet is prepared by Contractor and given to End User. If a PO is issued, both documents MUST be faxed to H-GAC @ 713-993-4548. Therefore please type or print legibly.

Buying Agency:	City of Kerrville	Contractor:	ASCO Equipment
Contact Person:	Shannon Flowers	Prepared By:	Ross Loewe
Phone:	830-258-1131	Phone:	210-333-8000
Fax:	830-792-6644	Fax:	210-333-6137
Email:	Shannon.Flowers@KerrvilleTx.gov	Email:	rloewe@ascoeq.com

Product Code:	05J	Description:	Case 580 SuperN Wide Track 4 wheel drive
---------------	-----	--------------	--

A. Product Item Base Unit Price Per Contractor's H-GAC Contract: \$58,734.18

B. Published Options - Itemize below - Attach additional sheet if necessary - Include Option Code in description if applicable
(Note: Published Options are options which were submitted and priced in Contractor's bid.)

Description	Cost	Description	Cost
Powershift S-Type Transmission	included	Extendahoe	\$3,615.30
Ride Control	\$729.00	Heavy Front Counterweight	\$245.70
Tool Box	\$99.90	Switchable Pilot Controls w/ Powerlift	\$1,385.10
24" backhoe bucket	\$775.00	Flip Over Stabilizer Pads	\$475.20
		93" wide, long lip, 1.3 cu yd loader bucket	\$1,479.60
		2 door cab w/ heater and a/c	\$5,564.70
		Deluxe Cab Package	\$761.40
		Radio	\$135.00
		Deluxe Air Suspension Seat	\$245.70
		Subtotal From Additional Sheet(s):	
		Subtotal B:	\$15,511.60

C. Unpublished Options - Itemize below - Attach additional sheet if necessary
(Note: Unpublished options are items which were not submitted and priced in Contractor's bid.)

Description	Cost	Description	Cost
24" V-bottom rock bucket	\$1,575.00		
Hydraulic Thumb Kit	\$2,800.00		
Upgrade to 4-in-1 front loader bucket	\$3,720.40		
Front auxillary Hydraulic kit	\$3,875.00		
Bi-directional auxillary hydraulic backhoe kit	\$5,650.00		
		Subtotal From Additional Sheet(s):	
		Subtotal C:	\$17,620.40

Check: Total cost of Unpublished Options (C) cannot exceed 25% of the total of the Base Unit Price plus Published Options (A+B). For this transaction the percentage is: 24%

D. Total Cost before any other applicable Charges, Trade-Ins, Allowances, Discounts, Etc. (A+B+C)

Quantity Ordered:	1	X Subtotal of A + B + C:	\$91,866.18	=	Subtotal D:	\$91,866.18
-------------------	---	--------------------------	-------------	---	-------------	-------------

E. Trade-Ins / Special Discounts / Other Allowances / Freight / Installation / Miscellaneous Charges

Description	Cost	Description	Cost
Factory Freight	\$1,500.00		
Delivery to City of Kerrville	\$200.00		
One time courtesy discount	-\$1,000.00		
		Subtotal E:	\$700.00

Delivery Date: 60-90 Days **F. Total Purchase Price (D+E):** \$92,566.18

Agenda Item:

2F. Amend the professional services agreement with Peter Lewis Architect + Associates, PLLC for design of the city hall facility and renovation of adjacent administrative space in an additional amount not to exceed \$25,000.00 for a total contract amount not to exceed \$227,250.00. (staff)

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

SUBJECT: Authorize the City Manager to amend the Professional Services Agreement with Peter Lewis Architect + Associates, PLLC for design of the City Hall facility and renovation of adjacent administrative space in an additional amount not to exceed \$25,000.00 for a total contract amount not to exceed \$227,250.00.

FOR AGENDA OF: February 14, 2012 **DATE SUBMITTED:** January 27, 2012

SUBMITTED BY: Kristine Ondrias *KO* **CLEARANCES:** Todd Parton, City Manager
Assistant City Manager

EXHIBITS: Professional Services Agreement Amendment #1

AGENDA MAILED TO:

APPROVED FOR SUBMITTAL BY CITY MANAGER: *MP*

Expenditure	Current Balance	Amount	Account
Required:	in Account:	Budgeted:	Number:
\$25,000.00	\$2,928,432.28	\$3,119,233.36	G88, 70-09010

PAYMENT TO BE MADE TO:

REVIEWED BY THE DIRECTOR OF FINANCE: *JAE*

SUMMARY STATEMENT

At the March 22, 2011 meeting, the City Council authorized the City Manager to enter into a Professional Services Agreement with Peter Lewis Architect + Associates, PLLC for the design of the City Hall facility and renovation of adjacent administrative space in an amount not to exceed \$202,250.00.

On December 13, 2011, the City Council authorized the City Manager to execute a construction contract with Huser Construction for the City Hall facility and renovation of adjacent administrative space.

Since the project came in under budget and had a contingency to execute additional upgrades, staff has asked the architect to provide additional design services such as the covered walkway between the clock tower and the staff entrance for City Hall, the addition of building security systems and office design changes.

RECOMMENDED ACTION

Authorize the City Manager to amend the Professional Services Agreement with Peter Lewis Architect + Associates, PLLC for design of the City Hall facility and renovation of adjacent administrative space in an additional amount not to exceed \$25,000.00 for a total contract amount not to exceed \$227,250.00.



PETER LEWIS
ARCHITECT + ASSOCIATES

January 18, 2012

Kristine Ondrias, Assistant City Manager
City of Kerrville
800 Junction Highway
Kerrville, TX 78028

RE: Kerrville City Hall: Additional Services
Kerrville, Texas

Dear Kristine:

Thank you for the continuing opportunity to be of service to the City of Kerrville in support of the new Kerrville City Hall.

Based on discussions to date we expect to be asked to provide additional design services, on an as needed basis, to be funded by the project contingency. Please allow the following to document our understanding of Scope, Services and Fees.

I. Work Scope

- A. Miscellaneous upgrades and enhancements
- B. Owner generated Scope Changes.

II. Scope of Services

- A. Meet with Assistant City Manager and City staff, as required
- B. Meet with Huser Construction Company, Inc. representative(s), as required
- C. Construction Document Services (DD/CD)
 - 1. Architectural
 - 2. Structural Engineering
 - 3. Mechanical/Electrical/Plumbing
 - 4. Interior Design
- D. Prepare Proposal Request(s)

III. Fee Budget

- A. Additional Services will be provided on an hourly basis to a Guaranteed Maximum Fee, for all Services, of 10% (Ten percent) of Construction Cost, unless otherwise authorized by the City of Kerrville. For the purposes of this Agreement, total Construction Cost, for all changes shall not exceed \$250,000, unless authorized by the City of Kerrville.

Guaranteed Maximum Fee \$ 25,000

IV. Reimbursable Expenses

Reimbursable expenses will be billed at a multiple of 1.15 times cost (invoice): reproduction of documents, shipping and mailing expenses, long distance telephone and fax, and out-of-town Project related mileage will be billed at current Standard Rate.

Estimated Reimbursable Expenses \$ 2,000.00

pwl

V. Hourly Fee Schedule

Principal/Overall Project Manager	\$ 135.00/Hr.
Project Architect	\$ 110.00/Hr.
Professional Intern	\$ 75.00/Hr.
Project Technician	\$ 60.00/Hr.
Admin./Clerical	\$ 35.00/Hr.

This Professional Design Services Proposal generally describes the Services to be provided and their associated Fees. If we are in agreement on both of these items, please indicate so by signing and returning a copy of this Proposal. Please call me, if you have any questions.

We look forward to getting started!

Very truly yours,



Peter W. Lewis, Architect
Principal

Accepted for City of Kerrville

Date

Agenda Item:

2G. Project funding agreement between the Kerrville Public Utility Board and the City of Kerrville, Texas Economic Improvement Corporation (downtown Kerrville utility line removal and undergrounding). (staff)

FINAL DRAFT 2/9/12

PROJECT FUNDING AGREEMENT BETWEEN THE KERRVILLE PUBLIC UTILITY BOARD AND THE CITY OF KERRVILLE, TEXAS, ECONOMIC IMPROVEMENT CORPORATION (DOWNTOWN KERRVILLE UTILITY LINE REMOVAL AND UNDERGROUNDING)

THIS PROJECT FUNDING AGREEMENT is entered into this _____ day of _____, 2012, by and between the Kerrville Public Utility Board (“KPUB”), a Texas municipally owned utility, and the City of Kerrville, Texas Economic Improvement Corporation (“Corporation”), a Texas non-profit corporation established by the City of Kerrville, Texas, pursuant to Section 4B of Tex. Rev. Civ. Stat. Art. 5190.6 and now codified in Chapters 501, 502, and 505 of the Texas Local Government Code (otherwise known as the Development Corporation Act of 1979 and hereafter called “the Act”).

WITNESSETH:

WHEREAS, pursuant to Chapter 505 of the Act, Corporation is authorized to undertake, or to provide funding to others to undertake, projects which the Corporation finds to be encompassed by the definition of “projects”, as that word is defined in Chapters 501 and 505 of the Act; and

WHEREAS, EIC was formed to administer the sales and use tax approved by the citizens of Kerrville, Texas, in May 1995 and collected for projects, as defined, including:

Expenditures that are found by the Corporation to be required or suitable for infrastructure necessary to promote or develop new or expanded business enterprises, such as electric utilities and related improvements and telecommunications and Internet improvements as is contemplated by Section 501.103 of the Act; and

WHEREAS, KPUB, at the request of multiple downtown business owners, proposes to create, manage, and oversee a project that removes, relocates, and/or undergrounds various public utilities and service connections (the “KPUB Project”); and

WHEREAS, the KPUB Project, which is more specifically referred to as “Downtown Kerrville Utility Line Removal and Undergrounding Project”, will, by the removal, relocation, and/or undergrounding of various above-ground utility lines and ancillary facilities, mainly consisting of electric poles, transformers, and service connections, reduce the impact that such lines and facilities have on properties such that the area around commercial buildings in the downtown area will expand for alternative uses, which will give rise to the possible expansion and/or remodeling of either the buildings or their uses, create additional space for the installation of public facilities to access the river and adjacent public park, and improve the aesthetics in the downtown area; and

WHEREAS, the KPUB Project will allow for the development of new and expanded businesses for properties along and adjacent to Water Street and the Guadalupe River within the downtown area; and

WHEREAS, Corporation finds that the construction of the KPUB Project as described generally above constitutes a “project” as defined by the Act; and

WHEREAS, Corporation finds that it will be in the public interest to enter into this Agreement with KPUB to provide sales tax revenues collected pursuant to the Act (“4B Revenues”) to KPUB for costs related to the KPUB Project; and

WHEREAS, on January 23, 2012, in a meeting that was open to the public in accordance with the Texas Open Meetings Act, Corporation held a public hearing pursuant to Section 501.072 of the Act related to the proposed expenditure of 4B Revenues for the City Project;

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

1. **"KPUB Project" Defined:** When used in this Agreement, the phrase "KPUB Project" shall mean the project summary as described in **Exhibit A** attached hereto and included herein for all purposes. Following completion of the KPUB Project, KPUB will undertake the "add-on work" for the KPUB Project, as specified in **Exhibit A**, but only where enough funding remains to complete all of the additional work. Said descriptions of the KPUB Project and its add-on shall not be substantively altered in any respect without the prior approval of the Corporation.
2. **Agreement to Fund KPUB Project:** Corporation agrees to provide to KPUB an amount up to and not to exceed \$300,000.00 in 4B Revenues to be used for the design, bidding, construction, installation, and the possibility of contingencies of the KPUB Project from the Sales Tax Improvement Fund (Fund 40).
3. **Eligible Costs:** Payments made by KPUB from 4B Revenues as authorized by Section 2, above, shall be limited to the payment of "costs" as defined in the Act. In addition, payments made by KPUB shall be limited to the actual amount of the payment draws submitted by the selected contractor(s) and/or the actual costs to KPUB related to the KPUB Project.
4. **Applicable Law:** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas. The Agreement is entered into and fully performable within Kerr County, Texas. Accordingly, venue for any cause of action arising pursuant to this Agreement shall be proper only in Kerr County, Texas.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in the year and as of the date indicated.

KERRVILLE PUBLIC UTILITY BOARD

CITY OF KERRVILLE, TEXAS ECONOMIC
IMPROVEMENT CORPORATION

By: _____
Tracy McCuan, General Manager/CEO

By: _____
Gregg Appel, President

ATTEST:

ATTEST:

_____, Secretary

Rex Boyland, Secretary for the Corporation

APPROVED AS TO FORM:

Michael C. Hayes, City Attorney

**PROJECT FUNDING AGREEMENT BETWEEN THE KERRVILLE
PUBLIC UTILITY BOARD AND THE CITY OF KERRVILLE, TEXAS,
ECONOMIC IMPROVEMENT CORPORATION (DOWNTOWN
KERRVILLE UTILITY LINE REMOVAL AND UNDERGROUNDING)**

EXHIBIT A

Utility Conduit Installation Details:

Construction Locations (Also See Attached Sketch "Sidney Baker/Water St Overhead to Underground")

1. Existing KPUB sectionalizer cabinet at the southeast corner of Sidney Baker and Main St.
2. Existing KPUB riser pole on Sidney Baker.
3. Edge of pavement behind Pampell's on East side of Sidney Baker.
4. New KPUB Transformer at Arcadia Bldg.
5. Existing Windstream pole, to be replaced with KPUB riser pole (or install padmount transformer in close proximity to riser location if customers agree to provide easements), on West side of Sidney Baker across from Location 3.

Conduit Installation Details (all lengths are approximate) (Bonds \$7,619.00)

1. From location 1 to location 2, approximately 330 feet: (\$42,741.00)
 - Install four 3" conduits for KPUB (1320' of 3" conduit)
 - Install one 2" conduit for HCTC (330' of 2" conduit)
2. From location 2 to location 3, approximately 280 feet: (\$96,848.00)
 - Install four 3" conduits for KPUB (1120' of 3" conduit)
 - Install one 2" conduit for HCTC (280' of 2" conduit)
 - Intercept existing TWC conduits & install two 3" conduits for Time Warner (560' of 3" conduit)
3. From location 3 to location 4, approximately 150 feet: (\$21,000.00)
 - Install ten 3" conduits for KPUB (1500' of 3" conduit)
 - Install two 2" conduit for HCTC (300' of 2" conduit)
 - Connect one 3" conduit to existing & install two 3" conduits for Time Warner (300' of 3" conduit)
 - Install two 3" conduits for Windstream (300' of 3" conduit)
4. From location 3 to location 5, approximately 85 feet: (\$30,898.00)

- Install six 3" conduits for KPUB (510' of 3" conduit)
- Install one 2" conduit for HCTC (85' of 2" conduit)
- Install two 3" conduits for Time Warner (170' of 3" conduit)
- Install two 3" conduits for Windstream (170' of 3" conduit)

Funding Agreement does not include the installation of customer services including conduit, service conductor, connections and related materials.

KPUB Facilities (\$29,874)

Removal

- 3 each—30 foot wood poles
- 6 each—45 foot wood poles (removal of wood poles requires customer to convert attached service to underground; if service is not removed, poles will be topped).
- 5 each—overhead service conductors (removal of service conductors requires customer to convert attached service to underground).
- All overhead transformers (removal of overhead transformers generally requires attached customers to convert attached service to underground).

Installation

- 4500 feet of underground primary cable.
- Padmount transformer behind Arcadia.
- Pole to replace existing Windstream pole and riser to feed overhead line and transformer behind Grape Juice (or install transformer in close proximity to riser location if customers agree to provide easements).

Hill Country Telephone Cooperative

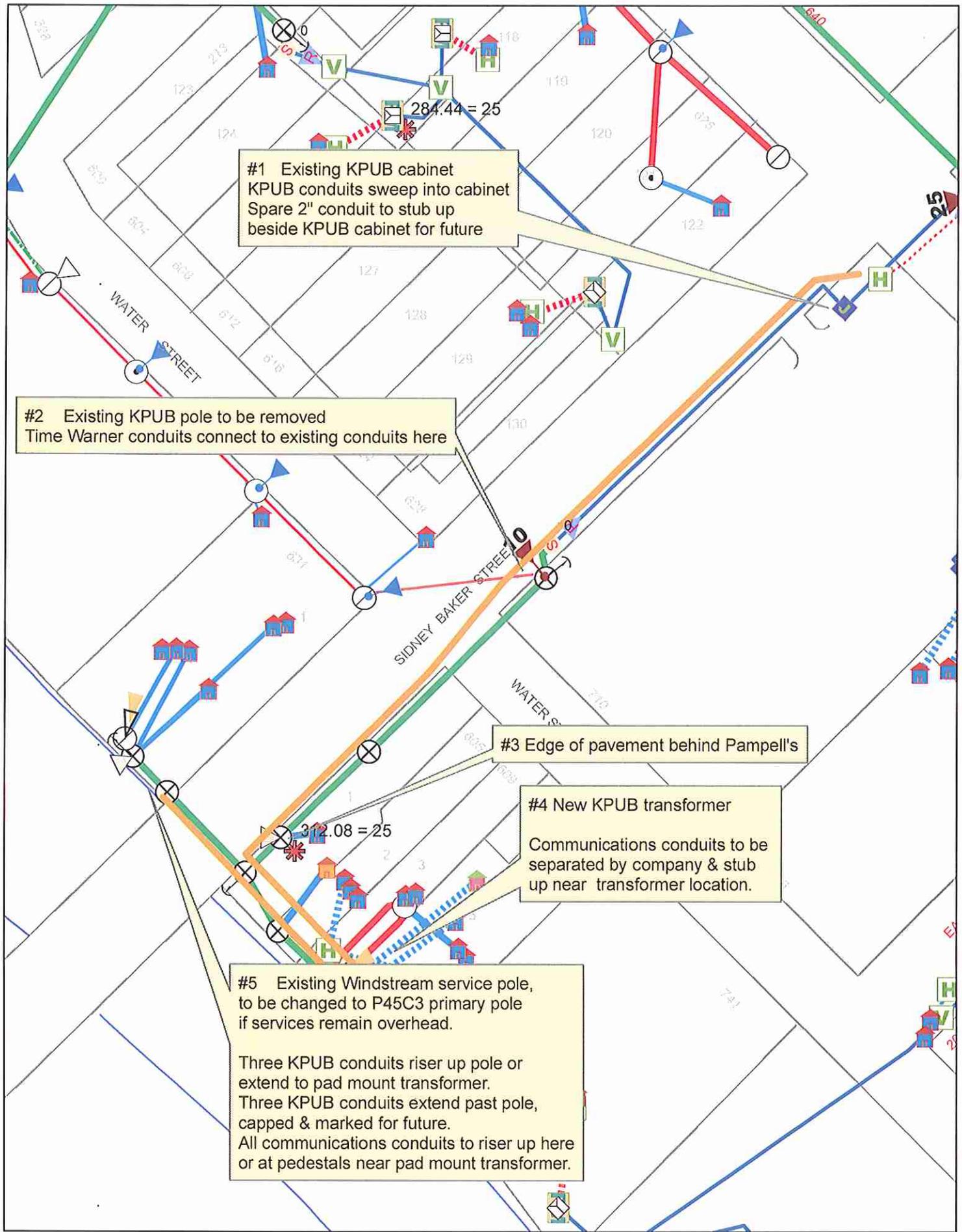
As described in quote dated 12/23/2011 (1300 feet of BFO 24 Fiber Optic Cable, \$9,005.65).

Time Warner

As described in quote dated 12/1/2011 (relocate 500 feet of overhead facilities into customer provided conduit, \$15,944.00).

Windstream

As described in quote dated 11/14/2011 (\$5,888.43).



#1 Existing KPUB cabinet
 KPUB conduits sweep into cabinet
 Spare 2" conduit to stub up
 beside KPUB cabinet for future

#2 Existing KPUB pole to be removed
 Time Warner conduits connect to existing conduits here

#3 Edge of pavement behind Pampell's

#4 New KPUB transformer
 Communications conduits to be
 separated by company & stub
 up near transformer location.

#5 Existing Windstream service pole,
 to be changed to P45C3 primary pole
 if services remain overhead.
 Three KPUB conduits riser up pole or
 extend to pad mount transformer.
 Three KPUB conduits extend past pole,
 capped & marked for future.
 All communications conduits to riser up here
 or at pedestals near pad mount transformer.



Sidney Baker/Water St Overhead to Underground

Scale: 1" = 100'	NTS	Date: 02/06/2012
Drawn By: BOB	Drawing / WO: 3201763	Sheet: 1

Agenda Item:

2H. Request from Hill Country Telephone Cooperative for license agreement for the installation of wireless access points on city-owned water towers. (staff)

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

SUBJECT: Request from Hill Country Telephone Cooperative for lease agreement for installation of wireless access point on city-owned water towers

FOR AGENDA OF: February 14, 2012 **DATE SUBMITTED:** January 31, 2012

SUBMITTED BY: Travis Cochrane^K **CLEARANCES:** Kim Meisner^{KM}
Director of Information Technology Director of General Operations

EXHIBITS: Lease Agreement

AGENDA MAILED TO:

APPROVED FOR SUBMITTAL BY CITY MANAGER: 

Expenditure Required:	Current Balance in Account:	Amount Budgeted:	Account Number:
----------------------------------	--	-----------------------------	----------------------------

PAYMENT TO BE MADE TO:

REVIEWED BY THE FINANCE DIRECTOR:

SUMMARY STATEMENT

On April 12, 2005, the City of Kerrville entered into a multi-year agreement with OMNI Multimedia Network International, LLC (OMNI) where the city provided exclusive access to city property for certain wireless frequencies and in return the city received wireless video services from OMNI. This agreement was modified on November 23, 2010 when OMNI was purchased by West Central Wireless (WCW) effectively ending WCW's exclusive rights to wireless frequencies on December 31, 2011.

In December of 2011, Hill Country Telephone Cooperative (HCTC) approached the city about leasing space on two city owned water towers to install wireless access points. City staff has met with HCTC over the past several weeks to ensure HCTC's proposed equipment and its installation will not affect the strength or integrity of the City's water towers and to ensure the terms provide adequate compensation to the City considering the access requested.

The initial term of the agreement is five (5) years with two optional extensions. HCTC will install four (4) wireless access points on both the Methodist Encampment water tower and the Ridgewood water tower. In return, the city will receive \$129.95 per month per water tank leased by HCTC. This equates to \$3,118.80 annually.

RECOMMENDED ACTION

The Director of Information Technology recommends approval of the resolution granting the City Manager authority to sign the agreement with HCTC.

**LEASE AGREEMENT (WATER TANKS)
BETWEEN CITY OF KERRVILLE AND HILL COUNTRY
TELECOMMUNICATIONS, LLC**

This non-exclusive Lease Agreement ("Agreement") is made by and between the CITY OF KERRVILLE, TEXAS, a home rule municipal corporation ("CITY") and Hill Country Telecommunications, LLC, a Texas Limited Liability Company ("HCT"). CITY and HCT are at times collectively referred to herein as the "Parties" or individually as the "Party." The Parties enter into this Agreement for the use of certain premises and/or facilities according to the following terms and conditions:

WITNESSETH:

WHEREAS, CITY desires to lease to HCT the right to use several CITY-owned elevated water storage tanks for the purpose of attaching and installing thereto, and operating and maintaining antennas;

WHEREAS, CITY owns the premises and facilities described below and desires to allow HCT to enter and utilize designated areas of the premises and facilities;

NOW THEREFORE, in consideration of the terms and conditions hereinafter set forth, the Parties agree as follows:

1. Location of Sites and Site Plan.

- 1.1 *Location.* The premises where the elevated water storage tanks are located (hereinafter collectively referred to as the "Site(s)"), to be provided by CITY are listed and identified at **Exhibit A**. Pursuant to this Agreement, HCT may install equipment, fixtures, antennas, cables, and wiring ("Improvements") as shall be specifically identified, described and depicted in the site plan at **Exhibit B** ("Site Plan") at each Site. The Site Plan shall depict the typical layout and approved Improvements at each Site.
- 1.2 *Site Plan.* HCT's performance under this Agreement shall be in strict compliance with all approved Site Plans, which must contain the site improvements as well as the location and type of all equipment owned or leased by HCT. The Parties shall take great care in locating the placement of all such equipment in order to anticipate and avoid future issues which might require the immediate removal or alteration of the equipment. If HCT's installation, construction, maintenance and operation of the Improvements fails to comply with any Site Plan, at any time, as determined by CITY, then CITY shall have the right to terminate this Agreement upon notice to HCT and opportunity to cure as provided under Section 6.3 herein. Any and all proposed modifications to the Site Plans must be approved in writing by CITY before HCT may make any changes to any Site. Approval of such modifications is within the sole discretion of CITY, but shall not be unreasonably withheld. All Site Plans should be submitted for approval to the City's contact listed in 19.2.

2. **Improvements.**

CITY agrees to allow the installment of the Improvements at each Site, in accordance with the terms of this Agreement and the approved Site Plan respective thereto. HCT's use shall be non-exclusive and shall be for the purpose of the installation, construction, operation, repair, maintenance, altering, inspecting or removing its Improvements, for the transmission, reception, and operation of a communications system and uses incidental thereto ("HCT's Use"). During the time period that this Agreement is in effect, HCT shall retain title to its Improvements. However, following the termination of this Agreement for any reason other than where (a) HCT is unable to obtain all necessary governmental approvals, other than from CITY, which are required for HCT's Use; or (b) where changes in laws or regulations prevent HCT's Use, all Improvements constructed or installed by HCT that have been physically attached to CITY property as fixtures such as welded mounts or towers, shall automatically and immediately become the property of CITY and shall not be removed, altered or replaced by HCT. Notwithstanding the foregoing, antennas, cables, and wiring which can be removed from water storage tanks by unbolting or unscrewing such facilities from mounts or brackets or similar configurations (the "Removable Facilities"), may be removed by HCT within thirty (30) days of the termination of the use of the applicable Site. Following any such termination and transfer of title from HCT to CITY, HCT shall remain responsible for any existing purchase money security interests, promissory notes or any other contractual agreements in and to said Improvements.

3. **Term.**

- 3.1 **Initial Term.** This Agreement shall be for an initial term of five (5) years, commencing on the Effective Date. The Effective Date shall be the date that this Agreement has been executed by both Parties. However, this Agreement may be terminated by either Party if HCT is unable to obtain all necessary government approvals for HCT's Use.
- 3.2. **Renewal Option.** HCT is granted the option to renew this Agreement for two (2) additional two (2) year terms, after the initial term expires. HCT must give written notice of a decision to exercise this option to CITY no less than ninety (90) days prior to the expiration of the then current term. All terms and covenants of this Agreement shall apply to all extension periods, subject to amendment, if any, by the mutual agreement of the Parties, in writing and signed by both Parties.
- 3.3 **Holding Over.** At the expiration of all of the extension periods provided herein, unless renewed or superseded, this Agreement shall thereafter continue from month to month under the terms and conditions set forth herein, and it may thereafter be terminated by either Party upon at least thirty (30) days written notice to the other Party.

4. **Primary Function of Each Site.** The Parties understand and agree that the primary function of each Site makes up an integral and significant part of the CITY's public water system; thus, the interests of HCT are at all times superseded by the public health, safety

and welfare of CITY's citizens and customers. In the event that the City Council or the City Manager declares a public emergency or, if there exists a threat to the continuation of public water system service that would detrimentally impact public health, safety and welfare and such public emergency or threat arises out of or is in any manner impacted by the existence of HCT's Improvements upon an applicable Site, HCT shall immediately remove its Improvements which have created the problems (the "Impairing Improvements"), or make appropriate modifications to the Impairing Improvements, if practicable, in order to address problems created by its Improvements upon the particular Site. In the event that HCT is not able to immediately respond, CITY may remove the Improvements without incurring any liability for damages of any type. All costs of removal and reattachment of the Improvements shall be borne by HCT and CITY shall not be responsible for any damages related thereto.

5. **Access.**

HCT shall have the non-exclusive right to access the Sites at any time, but must provide prior notice to CITY's contact listed in 19.2. CITY staff, at its discretion, may elect to accompany HCT at a Site. If CITY staff is required to be present at a Site during HCT's access (a) before 8 AM or after 5 PM during any day that CITY is open for business; (b) at any time on a Saturday or Sunday or (c) at any time on a CITY recognized holiday, then HCT agrees to reimburse CITY for the actual cost of any CITY staff involvement necessary for this access, unless such access is requested by the CITY for the purpose of servicing equipment that is negatively impacting the provision of services to the CITY as required by this Agreement. The Parties shall provide each other with twenty-four (24) hour emergency contact information, which shall include information and procedures to be utilized during non-work days, weekends and holidays.

6. **Event of Default.**

The occurrence of one or more of the following events shall constitute an "Event of Default" hereunder by HCT:

- 6.1 *Failure to Pay Rent.* The failure by HCT to make any payment of rent to CITY as provided herein, as and when due, where such failure shall continue for twenty (20) days from the payment due date.
- 6.2 *Failure to Comply with Terms.* The failure by HCT to observe or perform any of the covenants or provisions as required by this Agreement, other than as required in Section 6.1 where such failure continues for a period of thirty (30) days after written notice thereof is received by HCT from CITY; provided, however, that it shall not be deemed an Event of Default by HCT where HCT commences to cure such failure within said thirty (30) day period and thereafter diligently acts to cure such Event of Default.
- 6.3 *Termination of Business.* In the event HCT (a) terminates or suspends its business; (b) becomes subject, either voluntarily or involuntarily, to any

bankruptcy or insolvency proceeding under federal or state law; (c) becomes insolvent or subject to direct control by a trustee, receiver or similar authority; or (d) has wound up or liquidated, voluntarily or otherwise.

7. Termination.

7.1 *Following Event of Default.* If there occurs an Event of Default by HCT, in addition to any other remedies available to CITY at law or in equity, CITY shall have the option to terminate this Agreement and all rights of HCT hereunder. Following HCT's receipt of CITY's written notice of termination which identifies the effective date of termination, HCT's non-exclusive right to possession and use of the Sites, or Improvements which have been physically attached to CITY property as fixtures such as welded mounts or towers, but excluding Removable Facilities, shall cease and all obligations of CITY and HCT shall cease except as to HCT's liability as herein provided and HCT's right to remove the Removable Facilities within thirty (30) days of such termination..

7.2 *Mutual Agreement.* Following the initial term, this Agreement may be terminated for convenience at any time by either Party giving one hundred eighty (180) days written notice to the other.

8. Security Deposit.

No security deposit shall be required of HCT by the CITY.

9. CITY's Right of Entry onto Sites.

CITY or CITY's employees, agents or contractors may enter upon the Site(s) at any time for any purpose. If maintenance or repair work is required which will require HCT to alter, remove or relocate its Improvements, CITY agrees to provide HCT with reasonable notice prior to commencing such work to allow HCT to take appropriate action with respect to its Improvements. Decisions as to the extent to which HCT will be required to alter, relocate or remove such Improvements shall be within the sole discretion of CITY. If, however, in the sole discretion of CITY, repair or maintenance requires immediate action on the part of CITY, CITY will take reasonable efforts to notify HCT but may enter the Sites without first notifying HCT and take such action as is required, including but not limited to altering, relocating or removing any and all of HCT's Improvements. In no event shall CITY be liable for any expenses associated with its entry and its alteration, relocation or removal of Improvements or for lost or anticipated profits. If CITY must alter, relocate or remove any Improvements to perform repairs or maintenance and is unable to first notify HCT, CITY will first power down or turn off the antennas.

10. Use and Condition of Sites.

- 10.1 *Assignment/Sublet.* HCT's use of the Sites is to be for the installation, construction, operation and maintenance of the Improvements, in strict compliance with the Agreement and the Site Plans. HCT may not sublet to or license others to use the Sites or HCT's Improvements without the prior written consent of CITY. Any such attempt by HCT shall be without effect and CITY may immediately terminate this Agreement following written notice thereof to HCT.
- 10.2 *Maintenance/Replacement.* HCT shall be solely responsible for the maintenance, repair and safety of its Improvements and shall keep them in good repair and condition during the initial term and any renewals. HCT may update, maintain, repair or replace the Improvements located upon the Sites from time to time by submitting to CITY an accurate and updated Site Plan and any supplemental materials as may be requested by CITY for CITY's evaluation and written approval. CITY agrees that such approval will not be unreasonably withheld, conditioned or delayed. HCT shall maintain current and accurate Site Plans on file with CITY for the entire term of this Agreement and all renewals thereof.
- 10.3 *Hazardous Materials.* HCT represents and warrants that its use of the Sites will not generate any hazardous substance or hazardous radiation, and it will not store or dispose on the Sites nor transport to or over the Sites any hazardous substance. Provided, however, that HCT may store acid storage batteries on the Sites as necessary for use in the event of a power outage. **HCT FURTHER AGREES TO RELEASE, DEFEND, INDEMNIFY, AND HOLD CITY, ITS OFFICERS, OFFICIALS, AGENTS, SERVANTS AND EMPLOYEES, HARMLESS FROM AND AGAINST ANY DAMAGE, LOSS, OR EXPENSE OR LIABILITY RESULTING FROM THE GENERATING, RELEASING, STORAGE OR DISPOSAL OF SUCH HAZARDOUS SUBSTANCES INCLUDING ALL ATTORNEYS, FEES, COSTS AND PENALTIES INCURRED AS A RESULT THEREOF.** "Hazardous substance" shall be interpreted broadly to mean any substance or material defined or designated as hazardous or toxic waste, hazardous or toxic material, hazardous or toxic or radioactive substance, or other similar term by any federal, state or local environmental law, regulation or rule presently in effect or promulgated in the future, as such laws, regulations or rules may be amended from time to time; and it shall be interpreted to include, but not be limited to, any substance which after release into the environment will or may reasonably be anticipated to cause sickness, death, or disease, including diesel and propane fuel.

11. HCT's Rental Payments.

11.1 *Rent.* In consideration for HCT's use of the Site(s), HCT shall pay CITY at the rate of one hundred twenty-nine dollars and ninety-five cents (\$129.95) per Site and per month. Rent shall be due upon the Effective Date of this Agreement. Thereafter payment shall be due within five (5) days of the first (1st) day of each month. Payments should include "Tower Rental" in the memo line and should be sent to CITY's contact as listed in 20.2.

11.2 *Yearly Price Increase.* Following the first year of this Agreement, the rent to be paid by HCT shall increase each year of the Agreement by adding an inflationary adjustment which shall equal the greater of 3% 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 (CPI). If publication of the CPI is discontinued, any similar index published and recognized by the financial community, as a substitute for the CPI shall be used in its place.

12. Damages to Property.

HCT shall promptly notify CITY of any and all damages resulting from, arising out of, or caused to the Site(s) and CITY property surrounding the Site(s), including but not limited to structural damage, electrical damage, and damage to fencing, irrigation systems or landscaping by HCT's operations or by HCT, its officers, agents, employees or invitees. HCT shall be solely responsible for the costs and the repair of all such damages and such repairs and/or replacements shall be completed in a timely manner acceptable to CITY. CITY shall not be responsible for vandalism of or theft to any of HCT's Improvements.

13. Interference.

13.1 *Testing.* Prior to installation of any Improvements on the Sites, HCT shall conduct testing of its Improvements to check whether any interference exists to CITY or any other party who is authorized to use the Sites. If such conflict occurs, HCT shall take all steps necessary to resolve the conflict to the reasonable satisfaction of CITY. If the conflict cannot be remedied to the reasonable satisfaction of CITY, CITY may terminate this Agreement upon thirty (30) days written notice to HCT.

13.2 *Interference.* HCT shall not cause electrical, radio or intermodulation interference to CITY or to any other authorized party who is using the Sites prior to or at the time of HCT's installation of its Improvements. Should such interference occur, HCT will promptly take all steps necessary to correct such interference within forty-eight (48) hours notice of the problem and, if such interference cannot be eliminated within such time, HCT shall suspend operations (transmissions) at any such Site while the interference problems are studied and a means to eliminate the problem is found. Any such method for correction of an interference problem

must be acceptable to both CITY and HCT. If the interference cannot be eliminated, HCT shall cease its operations, remove all Improvements from the Site(s), and this Agreement shall be either terminated or amended.

13.3 *Additional Agreements.* CITY will not allow any other party to use the Site(s) without including in an agreement for such use a provision stating that the party's use will not in any way adversely affect or interfere with HCT's signal operation or its communication system. Specifically, CITY shall include the provisions found within this Section 13. Further, any agreements with third parties will state that prior to installation of improvements, such third parties shall be required to perform interference testing of its equipment and the equipment of HCT to check for frequency or other interference conflicts between third-party equipment and HCT's equipment. In the event that the third party's equipment causes interference to HCT's equipment, HCT shall seek recourse with the third party during the first forty-eight (48) hours following notice. If such interference cannot be eliminated within such timeframe, CITY shall cause the third party to suspend its operations (transmissions) at any such Site until the interference problems are studied and a means to eliminate the problem is found. In the event that HCT experiences interference caused by a third party, HCT agrees that it shall seek recourse solely from such third party. No compensation shall be due from CITY for damages, including but not limited to, lost or anticipated profits.

13.4 *Burden on HCT.* HCT shall have the sole burden of, and be responsible for all costs associated with, alleging and proving that another user of the Sites is causing significant interference, as well as for otherwise enforcing HCT's rights under this Agreement. CITY shall not be responsible for the costs associated with the resolution of any dispute between users of the Sites, or enforcement of any of HCT's rights under this Agreement.

14. Utility Easements and Utility Cost.

HCT shall be responsible for any and all costs associated with electrical and telephone hookup, maintenance and service to the Improvements at the Site(s) beyond what currently exists at each Site. CITY shall provide and pay for monthly electricity used to power all Improvements.

15. Taxes.

HCT agrees to reimburse CITY for all taxes which are assessed against CITY due to the Improvements. Provided, however, CITY shall use its best efforts to provide notification of any taxes for which HCT is to be charged so that HCT will have the opportunity to contest the valuation and/or assessment of such taxes. Upon request, CITY shall provide to HCT any documents evidencing calculation of the taxes attributable to the Improvements.

16. Liability, Release and Indemnification.

16.1 *Compliance with Laws and Indemnification.* HCT SHALL AT ALL TIMES COMPLY WITH ALL FEDERAL, STATE AND LOCAL LAWS RELATING TO THE INSTALLATION, MAINTENANCE, HEIGHT, LOCATION, USE, OPERATION AND REMOVAL OF THE IMPROVEMENTS AUTHORIZED HEREIN, AND SHALL FULLY INDEMNIFY CITY AGAINST ANY LOSS, DAMAGE, COSTS OR EXPENSES WHICH MAY BE SUSTAINED OR INCURRED BY CITY AS A RESULT OF HCT'S INSTALLATION, OPERATION OR REMOVAL OF THE IMPROVEMENTS, EXCEPT WHERE CAUSED IN WHOLE OR IN PART BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF CITY, ITS OFFICIALS, AGENTS, REPRESENTATIVES OR EMPLOYEES.

HCT AGREES AND IS BOUND TO INDEMNIFY, DEFEND AND HOLD CITY WHOLE AND HARMLESS AGAINST ANY AND ALL CLAIMS FOR ANY LOSS OR DAMAGES THAT MAY ARISE OUT OF THE USE, MAINTENANCE AND OCCUPANCY OF THE IMPROVEMENTS ON THE SITE(S), EXCEPT WHERE CAUSED IN WHOLE OR IN PART BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF CITY, ITS OFFICIALS, AGENTS, REPRESENTATIVES OR EMPLOYEES.

HCT AGREES THAT HCT SHALL INDEMNIFY, DEFEND, RELEASE, ACQUIT, AND HOLD FREE AND HARMLESS CITY, ITS OFFICIALS, AGENTS, REPRESENTATIVES AND EMPLOYEES FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, CAUSES OF ACTION, LIABILITIES, LOSSES AND DAMAGE, WHETHER ASSERTED BY HCT, ITS AGENTS, REPRESENTATIVES OR EMPLOYEES, OR ANY THIRD PARTY WHICH IN ANY WAY RELATES TO OR ARISES FROM THE IMPROVEMENTS OR THE INSTALLATION OR MAINTENANCE THEREOF, OR FROM HCT'S ENTRY ONTO AND UTILIZATION OF THE SITES AND FACILITIES, INCLUDING CLAIMS OR CAUSE OF ACTION ALLEGING THAT LOSS, INJURY OR DAMAGE

WERE CAUSED IN WHOLE OR IN PART BY THE CITY'S NEGLIGENCE.

- 16.2 *Prospective indemnification.* Any and all indemnity provided for herein shall survive the expiration of this Agreement as long as any liability could be asserted.
- 16.3 *Assumption of Conditions.* HCT undertakes and assumes for its officers, agents, employees, servants, affiliates, contractors, subcontractors and invitees all risk of dangerous conditions, if any, on or about the Sites.

17. Insurance.

HCT shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension or renewal thereof, at HCT's sole expense, liability insurance and workers' compensation insurance, and a certificate of insurance shall be submitted to and approved by CITY prior to the Effective Date of this Agreement. The required insurance shall provide a minimum of \$1,000,000.00 single occurrence coverage for bodily injury, including death, and a minimum of \$1,000,000.00 single occurrence coverage for property damage. CITY shall be named as an additional insured under said policies. Coverage shall be maintained with insurers and under forms of policies satisfactory to CITY and with insurers licensed to do business in Texas. A copy of the insurance certificate and any renewal certificates should be submitted to the CITY's contact as listed in 19.2

18. Condition of Sites.

- 18.1 *CITY's Maintenance.* CITY shall maintain the Sites in compliance with applicable statutes, regulations and rules and in a manner which will not interfere with HCT's reasonable use of the Sites.
- 18.2 *HCT's Maintenance.* HCT shall maintain the Sites in a neat, orderly and aesthetically acceptable condition. As such, each Site shall be kept free of debris and anything reasonably determined to be of a dangerous, noxious, or offensive nature or which would create a hazard or undue vibration, heat, noise or interference. HCT shall periodically remove any waste, garbage or refuse that it generates on the Sites.
- 18.3 *Vacation of Site(s).* Upon vacation of any Site, HCT shall surrender the Site in substantially the same condition as received, except for ordinary wear and tear, as determined by CITY. If, as determined by CITY, the Site are not surrendered in satisfactory condition, HCT shall be liable to CITY for an amount representing the actual cost to restore the Site to substantially the same condition as received.
- 18.4 *Removal of Improvements.* HCT shall have sole responsibility for the maintenance, repair, and security of its Improvements, and shall keep same in good repair and condition during the term and all renewals of this Agreement.

18.5 *Notice of Repair Work.* In the event CITY undertakes painting, construction, or other alterations at a Site(s), HCT shall take reasonable measures at HCT's cost to cover all of the Improvements and protect such from paint and debris fallout which may occur during the painting, construction, or alteration process. CITY shall not be responsible for any damages or costs incurred by HCT due to the actions or omissions of any third party upon the Site(s). CITY shall provide at least fifteen (15) days written notice to HCT prior to CITY undertaking such painting, construction or other alterations.

18.6 *Acceptance of Site(s).* By entering into this Agreement, HCT accepts each Site as is and in the condition existing as of the Effective Date. CITY MAKES NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE CONDITION OF ANY OF THE SITES AND CITY SHALL NOT BE LIABLE FOR ANY LATENT OR PATENT DEFECT IN THE SITES. CITY AGREES TO NOTIFY HCT OF THE EXISTENCE OF ANY LATENT DEFECTS OF WHICH THE CITY HAS KNOWLEDGE.

19. Notice.

19.1 *By Telephone.* Each Party agrees to provide the other with a telephone number through which that Party may contact a representative of the other on a twenty-four (24) hour, seven (7) days a week basis.

19.2 *In writing.* All notices to the Parties shall be in writing and shall be deemed to have been given or made when delivered in person; mailed by certified or registered U.S. mail, return receipt requested, postage prepaid; or, express mailed to the respective representatives for the Parties as designated below:

CITY:
Director of Information Technology/
Director of Public Works
City of Kerrville
800 Junction Highway
Kerrville, TX 78028

HCT:

Ingram, TX 78025

20. Marking and Lighting Requirements.

HCT acknowledges that it shall be responsible for compliance with all tower or building marker and lighting requirements which may be required by the Federal Aviation Administration or the Federal Communication Commission in conjunction with HCT's installation and maintenance of Improvements, as well as any expenses, fees or fines associated with compliance or non-compliance, due to HCT's installation or maintenance of Improvements, and if HCT does not cure the conditions of non-compliance within the time frame allowed by the citing agency, CITY may terminate this Agreement upon five (5) days written notice to HCT.

21. Miscellaneous.

- 21.1 *Modifications.* HCT's performance and operations under this Agreement and all CITY approved modifications to the Sites shall at all times comply with the terms of this Agreement, all applicable federal, state and local laws and ordinances and all amendments thereto.
- 21.2 *Entire Agreement.* This Agreement and each Exhibit attached hereto and incorporated herein constitute the entire agreement between the Parties with respect to the subject matter covered in this Agreement. There is no other collateral oral or written agreement between the Parties that in any manner relates to the subject matter of this Agreement.
- 21.3 *Capacity.* Both HCT and CITY hereby acknowledge and affirm that they have full capacity and authority to grant all rights and assume all obligations they have granted and assumed under this Agreement and agree, upon request, to deliver to the other Party a resolution or similar document to that effect.
- 21.4 *Governing Law.* The validity of this 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.
- 21.5 *Amendment.* This Agreement may only be amended by mutual written agreement signed by the Parties.
- 21.6 *Legal Construction; Severability.* In the event that any one or more of the provisions contained in the Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect the other provisions, and the Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in it.
- 21.7 *No waiver.* No right or remedy granted herein or reserved to the Parties is exclusive of any right or remedy herein by law or equity provided or permitted; but each shall be cumulative of every right or remedy given hereunder. No covenant or condition of this Agreement may be waived without consent of the Parties. It is further agreed that one (1) or more instances of forbearance by CITY in the exercise of its rights herein shall in no way constitute a waiver thereof.
- 21.8 *Independent Contractor.* HCT covenants and agrees that HCT is an independent contractor and not an officer, agent, servant or employee of CITY; that HCT shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors,

subcontractors and consultants. Nothing herein shall be construed as creating a partnership or joint enterprise between CITY and HCT.

21.9 *Successors and Assigns.* CITY and HCT each bind themselves, their successors, executors, administrators and assigns to the other Party to this Agreement. Except as to any Party controlling, controlled by or in common control with HCT, neither CITY nor HCT shall assign, sublet, subcontract or transfer any interest in this Agreement without the written consent of the other Party. In the event HCT assigns or transfers its interest to a controlling, controlled or common control entity, HCT shall notify CITY in writing prior to such assignment or transfer. No assignment, delegation of duties or subcontract under this Agreement will be effective without the written consent of CITY except as otherwise provided herein. HCT shall not assign sublet, subcontract, transfer or allow the use of any interest in any Site(s) or any use of HCT's Improvements, including but not limited to equipment, lines, channels or frequencies, on any Site(s) without the prior written consent of CITY. CITY's consent may be conditioned upon HCT successfully obtaining contracts from such third parties wherein those parties agree to directly compensate CITY for all benefits incurred by the use of a Site(s).

21.10 *Applicable Laws.*

- a. This Agreement is entered into subject to the charter and ordinances of CITY as they may be amended from time to time, and is subject to and is to be construed, governed and enforced under all applicable federal and state laws. HCT shall make any and all reports required in accordance with federal, state or local law, including but not limited to proper reporting to the Internal Revenue Service as required in accordance with HCT's income.
- b. HCT shall at all times comply with all laws and ordinances and all rules and regulations of municipal, state and federal government authorities relating to the installation, maintenance, height, location, use, operation, and removal of the Improvements, authorized herein.

22. Cumulative Remedies.

All rights, options, and remedies of any Party contained in this Agreement or otherwise shall be construed and held to be cumulative, and no one of them shall be exclusive of the other, and either Party shall have the right to pursue any one or all of such remedies or any other remedy or relief which may be provided by law, whether or not stated in this Agreement.

23. Contract Interpretation.

Both Parties have participated fully in the review and revision of this Agreement and each Party has had the opportunity to acquire their own legal counsel for such review.

Any rule of construction to the effect that ambiguities are to be resolved against the drafting Party shall not apply to the interpretation of this Agreement.

24. Reasonableness.

Notwithstanding any language to the contrary contained herein, wherever the approval or consent of CITY or HCT is required herein, such approval or consent shall not be unreasonably withheld, conditioned or delayed.

25. Quiet Enjoyment.

CITY covenants and agrees with HCT that upon HCT paying Rent and performing its obligations and covenants herein, HCT may peacefully and quietly enjoy the Site(s).

26. CITY's Name. HCT is prohibited from using CITY's name, logo, mark or any other identifying symbol as a business reference, in advertising or sales promotion, or in any publicity matter without CITY's prior written consent.

27. Time of the Essence. Time is of the essence of each and every provision of this Agreement.

28. Captions. The captions of the various Sections of this Agreement are for convenience only and do not necessarily define, limit, describe or construe the contents of such Sections.

EXECUTED on the _____ day of _____, 2012.

**CITY:
CITY OF KERRVILLE, TEXAS**

**HCT:
Hill Country Telecommunications, LLC**

BY: Todd Parton, City Manager

BY: _____
Name: _____
Title: _____

ATTEST:

Brenda G. Craig, City Secretary

APPROVED AS TO FORM:



Michael C. Hayes, City Attorney

STATE OF TEXAS
COUNTY OF KERR

§
§

This instrument was acknowledged before me on the ____ day of _____, 2012, by _____ of Hill Country Telecommunications, LLC, a Texas Limited Liability Company, on behalf of said company.

Notary Public, State of Texas

STATE OF TEXAS
COUNTY OF KERR

§
§

This instrument was acknowledged before me on the ____ day of _____, 2012, by Todd Parton, as City Manager of the City of Kerrville, Texas, a home-rule municipal corporation, on behalf of said corporation.

Notary Public, State of Texas

Agenda Item:

21. Request recycled asphalt product from the Texas Department of Transportation (TxDOT). (staff)

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

SUBJECT: Authorize Mayor to request recycled asphalt product from the Texas Department of Transportation (TxDOT)

FOR AGENDA OF: 2/14/12

DATE SUBMITTED: 2/3/12

SUBMITTED BY: Kim Greenman
Street and Solid Waste Manager

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

EXHIBITS: Letter requesting recycled asphalt product from TxDOT

AGENDA MAILED TO:

APPROVED FOR SUBMITTAL BY CITY MANAGER: *W*

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

PAYMENT TO BE MADE TO:

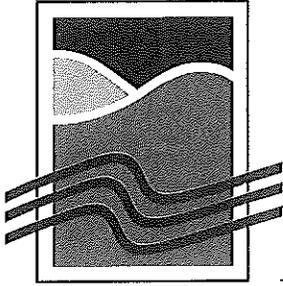
REVIEWED BY THE FINANCE DIRECTOR:

SUMMARY STATEMENT

Reconstruction of State Highway 27 includes milling and replacing the existing asphalt surface. The milled asphalt, also known as recycled asphalt product (RAP), is currently being stockpiled by the Texas Department of Transportation (TxDOT) at the intersection of Goat Creek Road and I-10. TxDOT is willing to transfer ownership of 500 cubic yards of the RAP to the City of Kerrville. Attached is a letter that must be signed by the Mayor to make the transaction possible. The RAP would be hauled and used by the Kerrville Street Division for various pavement construction projects thus saving tax dollars that would normally be spent on pavement base materials.

RECOMMENDED ACTION

The Director of Public Works recommends that Council authorize the Mayor to execute a letter requesting recycled asphalt product from the Texas Department of Transportation.



CITY OF KERRVILLE
MAYOR AND CITY COUNCIL
800 Junction Highway
Kerrville, Texas 78028
830-257-8000 / www.kerrvilletx.gov

February 14, 2012

Mr. Troy Witt
Texas Department of Transportation
1832 N. Sidney Baker
Kerrville, TX 78028

Re: TxDOT Recycled Asphalt Product

Dear Mr. Witt,

The City of Kerrville requests the ownership of 500 cubic yards of recycled asphalt product (stockpiled at the corner of IH 10 and RM 1338) be granted from the Texas Department of Transportation to the City of Kerrville.

If you have any questions or if I can be of further assistance please do not hesitate to call Charlie Hastings, Director of Public Works, at 830-258-1220.

David Wampler
Mayor, City of Kerrville

Agenda Item:

3A. An ordinance enacting a moratorium on the acceptance of applications and the issuance of permits for the installation of electronic and traveling lighted message signs within the City and its extraterritorial jurisdiction for a period of ninety (90) days; providing an effective date; containing a savings and severability clause; and providing other matters relating to the subject. (staff)

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

SUBJECT: A moratorium on the acceptance of applications and the issuance of permits for the installation of electronic and traveling message signs within the City and its Extraterritorial Jurisdiction.

FOR AGENDA OF: February 14, 2012 **DATE SUBMITTED:** January 30, 2012

SUBMITTED BY: Jeff Finley

CLEARANCES: Kristine Ondrias



EXHIBITS:

AGENDA MAILED TO:

APPROVED FOR SUBMITTAL BY CITY MANAGER:



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

PAYMENT TO BE MADE TO:

REVIEWED BY THE DIRECTOR OF FINANCE:

SUMMARY STATEMENT

An ordinance to enact a moratorium on new electronic and traveling message signs within the City and the ETJ, for 90 days or until a new sign ordinance is enacted, whichever happens first. This will allow time to enact the new provisions to the sign ordinance without having new signs built that would be non-conforming to the new ordinance.

A city may use a moratorium to allow it time to conduct research, confer with experts, solicit input from the regulated community, public feedback, prepare new sign regulations, and structure the administrative process and possibly timelines. The U.S. Supreme Court has upheld the use of local government moratoriums. Moratoriums should:

- Clearly articulate a legitimate public purpose(s) that is being served by the moratorium, such as here, some analysis of emerging technologies with respect to electronic and traveling lighted message signs.
- Specifically define the sign-related activities that are covered by the sign moratorium.
- Ensure that the sign moratorium is not discriminatory and is adopted in good faith.
- Ensure the temporary nature of the sign moratorium by expressly stating a termination date or duration.
- Moratoriums should be as brief as possible and only last as long as reasonably necessary.

With a 90 day moratorium, staff's schedule to bring a new sign ordinance to the City

Council would be:

1ST Reading: April 10, 2012

2ND Reading: April 24, 2012

RECOMMENDED ACTION

Pass the ordinance establishing a moratorium on new electronic and traveling message signs.

CITY OF KERRVILLE, TEXAS
ORDINANCE NO. 2012-_____

AN ORDINANCE ENACTING A MORATORIUM ON THE ACCEPTANCE OF APPLICATIONS AND THE ISSUANCE OF PERMITS FOR THE INSTALLATION OF ELECTRONIC AND TRAVELING LIGHTED MESSAGE SIGNS WITHIN THE CITY AND ITS EXTRATERRITORIAL JURISDICTION FOR A PERIOD OF NINETY (90) DAYS; PROVIDING AN EFFECTIVE DATE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; AND PROVIDING OTHER MATTERS RELATING TO THE SUBJECT

WHEREAS, the City Council recognizes the need to protect the balance of land uses within the City and its extraterritorial jurisdiction and the health, safety, and welfare of the citizens of the City; and

WHEREAS, the City Council seeks to ensure that land development and construction occurs in a safe, orderly, and healthful pattern and seeks through its development regulations to promote the health, safety, morals, and general welfare of the municipality; and

WHEREAS, the City Council has determined that the City's current sign regulations, found within Chapter 6, Article II of the City's Code of Ordinances ("Sign Code"), do not adequately address electronic or traveling lighted message signs as those terms are defined by the Sign Code; and

WHEREAS, due in part to rapidly changing technology, the City Council has also determined that electronic and traveling lighted message signs are potentially inconsistent with the Sign Code, the City's goals and interests, and at times could be considered unduly distracting and confusing to motorists and pedestrians thereby creating traffic hazards and reducing the effectiveness of the signs; and

WHEREAS, in recent months, City staff brought together several representatives of the commercial sign industry along with several interested citizens, including a member of the City's Planning and Zoning Commission, so that this ad hoc committee could consider electronic and traveling lighted message signs, the new technology, and ways that such signs could be compatible with the community's interests; and

WHEREAS, based upon this committee's report and recommended regulations, the City Council believes that the Sign Code requires review to determine to what extent such signs should be allowed and regulated within the City and its extraterritorial jurisdiction; and

WHEREAS, in order to conduct such a review, the City Council believes it is necessary and reasonable for the City to enact a moratorium on the application for and installation of electronic and traveling lighted message signs for a period of ninety (90) days; and

WHEREAS, the Director of Building Services and other City staff will undertake a review of the Sign Code and the committee's report and proposed regulations; and

WHEREAS, no applications for the construction or installation of either an electronic or traveling lighted message sign have been submitted to the City and are currently awaiting the issuance of a permit; and

WHEREAS, the City Council finds that it is in the public interest to preserve the status quo by neither accepting applications or issuing permits for electronic or traveling lighted message signs to be located within the City or its extraterritorial jurisdiction pending the adoption of amendments to the Sign Code;

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

SECTION ONE. From and after the effective date of this Ordinance, which will occur upon adoption after second reading, the City will not accept any applications or issue any permits for electronic and/or traveling lighted message signs, as those terms are defined with the Sign Code. This prohibition is effective for a period of ninety (90) days from the date indicated below that this Ordinance was approved upon second and final reading. Such moratorium period shall automatically expire ninety (90) days from the final passage of this Ordinance or upon final passage by City Council of an ordinance amending Chapter 6, Article II of the City Code, whichever occurs first.

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

SECTION THREE. 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 City 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.

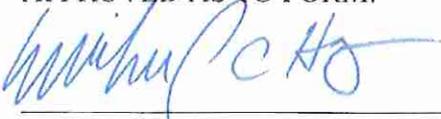
SECTION FOUR. This Ordinance shall become effective immediately upon final passage.

PASSED AND APPROVED ON FIRST READING, this the _____ day of _____, A.D., 2012.

PASSED AND APPROVED ON SECOND AND FINAL READING, this the
_____ day of _____, A.D., 2012.

David Wampler, Mayor

APPROVED AS TO FORM:



Michael C. Hayes, City Attorney

ATTEST:

Brenda G. Craig, City Secretary

Agenda Item:

4A. Ordinance authorizing the issuance, sale and delivery of \$_____ in aggregate principal amount of "City of Kerrville, Texas Combination Tax and Revenue Certificates of Obligation, Series 2012"; 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, an official statement and all other instruments and procedures related thereto. (staff)

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

SUBJECT: ORDINANCE AUTHORIZING THE ISSUANCE, SALE AND DELIVERY OF APPROXIMATELY \$10,000,000 IN AGGREGATE PRINCIPAL AMOUNT OF "CITY OF KERRVILLE, TEXAS COMBINATION TAX AND REVENUE CERTIFICATES OF OBLIGATION, SERIES 2012"; 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, AN OFFICIAL STATEMENT AND ALL OTHER INSTRUMENTS AND PROCEDURES RELATED THERETO

FOR AGENDA OF: February 14, 2012 **DATE SUBMITTED:** February 2, 2012

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

EXHIBITS: Preliminary Ordinance, Updated ordinance and agreements will be completed after the February 14, 2012 pricing and will be provided upon request.

APPROVED FOR SUBMITTAL BY CITY MANAGER: 

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

PAYMENT TO BE MADE TO:

REVIEWED BY THE DIRECTOR OR FINANCE:

SUMMARY STATEMENT

The FY 12 budget includes CIP projects for the City's parks and trail system. These funds will specifically be used for the City's proposed trail system along the Guadalupe River and for improvements to Louise Hays Park, for a total debt issuance of \$7,000,000. \$3,500,000 of the \$7,000,000 was issued in December and this issuance is for the remaining \$3,500,000. The Kerrville Economic Improvement Corporation has entered into an agreement with the City to pay the debt service through 4B sales tax.

The FY 12 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.

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 and lead to lower borrowing costs.

RECOMMENDED ACTION

Approve first and only reading of the ordinance authorizing issuance of 2012 Certificates of Obligation in the amount of up to \$10,000,000.

ORDINANCE NO. 2012-__

ORDINANCE AUTHORIZING THE ISSUANCE, SALE AND DELIVERY OF \$ _____ IN AGGREGATE PRINCIPAL AMOUNT OF "CITY OF KERRVILLE, TEXAS COMBINATION TAX AND REVENUE CERTIFICATES OF OBLIGATION, SERIES 2012"; 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, AN OFFICIAL STATEMENT AND ALL OTHER INSTRUMENTS AND PROCEDURES RELATED THERETO

DATE OF APPROVAL: FEBRUARY 14, 2012

TABLE OF CONTENTS

Recitals	1
Section 1. AMOUNT AND PURPOSE OF THE CERTIFICATES OF OBLIGATION...	3
Section 2. DESIGNATION, DATE, DENOMINATIONS, NUMBERS, AND MATURITIES OF CERTIFICATES OF OBLIGATION	3
Section 3. INTEREST	4
Section 4. CHARACTERISTICS OF THE CERTIFICATES OF OBLIGATION; APPROVAL OF PAYING AGENT/REGISTRAR AGREEMENT	4
Section 5. FORM OF CERTIFICATE OF OBLIGATION	8
Section 6. INTEREST AND SINKING FUND; TAX LEVY; SECURITY INTEREST...	17
Section 7. SURPLUS REVENUES	18
Section 8. CONSTRUCTION FUND	18
Section 9. INVESTMENTS	19
Section 10. EMPOWERED	19
Section 11. DEFEASANCE OF THE CERTIFICATES OF OBLIGATION.....	19
Section 12. DAMAGED, MUTILATED, LOST, STOLEN, OR DESTROYED CERTIFICATES OF OBLIGATION.....	21
Section 13. CUSTODY, APPROVAL, AND REGISTRATION OF THE CERTIFICATES OF OBLIGATION; BOND COUNSEL'S OPINION, BOND INSURANCE, AND CUSIP NUMBERS.....	22
Section 14. COVENANTS REGARDING TAX-EXEMPTION OF INTEREST ON THE CERTIFICATES OF OBLIGATION	22
Section 15. CONTINUING DISCLOSURE UNDERTAKING	25
Section 16. SALE AND DELIVERY OF THE CERTIFICATES OF OBLIGATION	28
Section 17. APPROVAL OF OFFICIAL STATEMENT	29

Section 18.	AUTHORITY FOR OFFICERS TO EXECUTE DOCUMENTS AND APPROVE CHANGES	29
Section 19.	ORDINANCE A CONTRACT; AMENDMENTS	29
Section 20.	REMEDIES IN EVENT OF DEFAULT	30
Section 21.	APPROPRIATION TO PAY INTEREST	30
Section 22.	INTERESTED PARTIES	31
Section 23.	INCORPORATION OF RECITALS	31
Section 24.	SEVERABILITY	31
Section 25.	EFFECTIVE DATE.....	31
SIGNATURES		
	PAYING AGENT/REGISTRAR AGREEMENT	Exhibit A
	DESCRIPTION OF ANNUAL FINANCIAL INFORMATION.....	Exhibit B
	WRITTEN PROCEDURES RELATING TO CONTINUING COMPLIANCE WITH FEDERAL TAX COVENANTS	Exhibit C

ORDINANCE NO. 2012-__

ORDINANCE AUTHORIZING THE ISSUANCE, SALE AND DELIVERY OF \$_____ IN AGGREGATE PRINCIPAL AMOUNT OF "CITY OF KERRVILLE, TEXAS COMBINATION TAX AND REVENUE CERTIFICATES OF OBLIGATION, SERIES 2012"; 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, AN OFFICIAL STATEMENT AND ALL OTHER INSTRUMENTS AND PROCEDURES RELATED THERETO

THE STATE OF TEXAS
COUNTY OF KERR
CITY OF KERRVILLE

§
§
§

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 10, 2008; and

WHEREAS, the City Council of the City hereby determines that it is necessary and desirable to acquire, construct, and equip renovations and improvements to the City's parks and trails system (the "*Parks and Trails Project*") and to acquire, construct and equip extensions and improvements to the City's waterworks and sewer system (the "*Waterworks and Sewer System Project*," and collectively with the Parks and Trails Project, the "*Projects*"); and

WHEREAS, the City Council of the City intends to finance the Projects 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 January 10, 2012, 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 January 15, 2012, and January 22, 2012; 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, in 1995, the City created the **CITY OF KERRVILLE, TEXAS ECONOMIC IMPROVEMENT CORPORATION** (the "**EIC**") pursuant to Section 4B of the Development Corporation Act of 1979 (then Article 5190.6, Texas Vernon's Civil Statutes, as amended, now codified in Chapters 501, 502 and 505 of the Texas Local Government Code and referred to collectively herein as the "**Act**"); and

WHEREAS, pursuant to Chapter 505 of the Act, the EIC is authorized to construct, or to provide funding to construct, projects which the EIC finds to be encompassed by the definition of "Projects", as that word is defined in Chapters 501 and 505 of the Act; and

WHEREAS, in May 1995, the citizens of the City, voting at an election, approved a proposition (the "**Proposition**") authorizing the levy of a one-half of one percent (24) sales and use tax upon the receipts at retail of taxable items, pursuant to the Act (the "**4B Sales Tax**") to undertake projects, as defined, including but not limited to:

Expenditures required or suitable for projects related to recreational or community facilities, including land, buildings, equipment, facilities, and improvements found by the board of directors to be required or suitable for use for professional and amateur sports, including children's sports, athletic, entertainment, tourist, and public park purposes and events, including amphitheatres, parks and park facilities, open space improvements, and related automobile parking facilities, related area transportation facilities, and related roads, streets, and water and sewer facilities, and other related improvements that enhance any of the items described herein; and

WHEREAS, on November 21, 2011, in a meeting that was open to the public in accordance with the Texas Open Meetings Act, the Board of Directors of the EIC held a public hearing pursuant to Section 501.072 of the Act related to the proposed expenditure of the 4B Sales Tax for the Parks and Trails Project; and

WHEREAS, on December 13, 2011, the City Council of the City and the Board of Directors of the EIC approved a **PROJECT FUNDING AGREEMENT BETWEEN THE CITY OF KERRVILLE, TEXAS, ECONOMIC IMPROVEMENT CORPORATION AND THE CITY OF KERRVILLE, TEXAS (PARKS AND TRAIL SYSTEM IMPROVEMENT PROJECT)** pursuant to which the EIC has committed to provide to the City from the receipts of the 4B Sales Tax amounts equal to the principal of and interest on the obligations issued by the City to finance the Parks and Trails Project (i.e., a portion of the certificates of obligation authorized to be issued pursuant to this Ordinance together with all of the City's outstanding "Series 2011A 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 2 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 \$ _____ ***FOR THE PURPOSE OF PAYING, IN WHOLE OR IN PART, CONTRACTUAL OBLIGATIONS TO BE INCURRED TO ACQUIRE, CONSTRUCT, AND EQUIP RENOVATIONS AND IMPROVEMENTS TO THE CITY'S PARKS AND TRAILS SYSTEM, 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 1 of this Ordinance shall be designated: **CITY OF KERRVILLE, TEXAS COMBINATION TAX AND REVENUE CERTIFICATES OF OBLIGATION, SERIES 2012**, and initially there shall be issued, sold and delivered hereunder one fully registered certificate of obligation, without interest coupons, dated February 1, 2012, in the aggregate principal amount of \$ _____, 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 16 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:

<u>YEAR OF MATURITY</u>	<u>PRINCIPAL AMOUNT (\$)</u>	<u>YEAR OF MATURITY</u>	<u>PRINCIPAL AMOUNT (\$)</u>	<u>YEAR OF MATURITY</u>	<u>PRINCIPAL AMOUNT (\$)</u>
2013		2020		2027	
2014		2021		2028	
2015		2022		2029	
2016		2023		2030	
2017		2024		2031	
2018		2025			
2019		2026			

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:

<u>YEAR OF MATURITY</u>	<u>INTEREST RATE (%)</u>	<u>YEAR OF MATURITY</u>	<u>INTEREST RATE (%)</u>	<u>YEAR OF MATURITY</u>	<u>INTEREST RATE (%)</u>
2013		2020		2027	
2014		2021		2028	
2015		2022		2029	
2016		2023		2030	
2017		2024		2031	
2018		2025			
2019		2026			

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 16 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 16 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.

[The remainder of this page intentionally left blank]

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 February 1, 2012, 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 RENOVATIONS AND IMPROVEMENTS TO THE CITY'S PARKS AND TRAILS SYSTEM, 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, 2020, or on any date thereafter, the Certificates of Obligation of this Series maturing on and after August 15, 2021, 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 with respect to an optional redemption of Certificates of Obligation 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]

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, 2012, 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 (FEB. 15)	PRINCIPAL INSTALLMENT (\$)	INTEREST RATE (%)	MATURITY DATE (FEB. 15)	PRINCIPAL INSTALLMENT (\$)	INTEREST RATE (%)

[Insert principal and interest information from Sections 2 and 3 above]"

(C) The Initial Certificate of Obligation shall be numbered "T-1."

SECTION SIX. INTEREST AND SINKING FUND; TAX LEVY; SECURITY INTEREST.

(a) *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 7 below) 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.

(b) 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 6(a) and 7 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 6(a) and 7 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 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 6 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 2012) 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 14 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 4(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 1 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 Project 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) Written Procedures. Unless superseded by another action of the City, to ensure compliance with the covenants contained herein regarding private business use, remedial actions, arbitrage and rebate, the City Council hereby adopts and establishes the instructions attached hereto as *Exhibit B* as the City's written procedures.

(g) 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 2012, 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 C* hereto. Any financial statements so to be provided shall be (1) prepared in accordance with the accounting principles described in *Exhibit C* 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 5701BTEB) 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 _____ for cash for the par value thereof, plus a net original issue premium of \$ _____, and no accrued interest. The Certificates of Obligation initially shall be registered in the name of _____. It is hereby officially found, determined, and declared that said purchaser is the highest bidder for the Certificates of Obligation as a result of invitations for competitive bids. It is further officially found, determined, and declared that the Certificates of Obligation have been sold at public sale to the bidder offering the lowest interest cost, after receiving sealed bids pursuant to an Official Notice of Sale and Bidding Instructions and the Preliminary Official Statement, dated February 7, 2012, prepared and distributed in connection with the sale of the Certificates of Obligation. In satisfaction of Section 1201.022(a)(3), Texas Government Code, and upon consultation with the City's Financial Advisor, the City Council hereby determines that the final terms of the Certificates of Obligation as set forth in this Ordinance and resulting from the receipt of such competitive bids are in the City's best interests.

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 February 7, 2012, 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. 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-ONE. APPROPRIATION TO PAY INTEREST. The City Council hereby finds that there are sufficient funds available to pay the interest on the Certificates coming due on August 15, 2012, and hereby directs the City Manager and the Director of Finance to transfer on or before such date available funds to the Interest and Sinking Fund in an amount sufficient to pay the interest coming due on such date.

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 BY THE CITY COUNCIL OF THE CITY OF
KERRVILLE, TEXAS AT A REGULAR MEETING ON THE 14TH DAY OF FEBRUARY,
2012, AT WHICH MEETING A QUORUM WAS PRESENT.**

ATTEST:

Brenda G. Craig, City Secretary

David Wampler, Mayor

APPROVED AS TO FORM:

Michael C. Hayes, City Attorney

(CITY SEAL)

** ** * * *

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.

EXHIBIT B

WRITTEN PROCEDURES RELATING TO CONTINUING COMPLIANCE WITH FEDERAL TAX COVENANTS

A. Arbitrage. With respect to the investment and expenditure of the proceeds of the Certificates, the City's chief financial officer (the "*Responsible Person*"), which currently is the City's Director of Finance, will:

- (i) instruct the appropriate person or persons that the construction, renovation or acquisition of the facilities must proceed with due diligence and that binding contracts for the expenditure of at least 5% of the proceeds of the Certificates will be entered into within six (6) months of the date of delivery of the Certificates (the "*Issue Date*");
- (ii) monitor that at least 85% of the proceeds of the Certificates to be used for the construction, renovation or acquisition of any facilities are expended within three (3) years of the Issue Date;
- (iii) restrict the yield of the investments to the yield on the Certificates after three (3) years of the Issue Date;
- (iv) monitor all amounts deposited into a sinking fund or funds (e.g., the Interest and Sinking Fund), to assure that the maximum amount invested at a yield higher than the yield on the Certificates does not exceed an amount equal to the debt service on the Certificates in the succeeding 12 month period plus a carryover amount equal to one-twelfth of the principal and interest payable on the Certificates for the immediately preceding 12-month period;
- (v) ensure that no more than 50% of the proceeds of the Certificates are invested in an investment with a guaranteed yield for 4 years or more;
- (vi) maintain any official action of the City (such as a reimbursement resolution) stating its intent to reimburse with the proceeds of the Certificates any amount expended prior to the Issue Date for the acquisition, renovation or construction of the facilities;
- (vii) ensure that the applicable information return (e.g., IRS Form 8038-G, 8038-GC, or any successor forms) is timely filed with the IRS; and
- (viii) assure that, unless excepted from rebate and yield restriction under section 148(f) of the Code, excess investment earnings are computed and paid to the U.S. government at such time and in such manner as directed by the IRS (A) at least every 5 years after the Issue Date and (B) within 30 days after the date the Certificates are retired.

B. Private Business Use. With respect to the use of the facilities financed or refinanced with the proceeds of the Certificates the Responsible Person will:

- (i) monitor the date on which the facilities are substantially complete and available to be used for the purpose intended;
- (ii) monitor whether, at any time the Certificates are outstanding, any person, other than the City, the employees of the City, the agents of the City or members of the general public has any contractual right (such as a lease, purchase, management or other service agreement) with respect to any portion of the facilities;
- (iii) monitor whether, at any time the Certificates are outstanding, any person, other than the City, the employees of the City, the agents of the City or members of the general public has a right to use the output of the facilities (e.g., water, gas, electricity);
- (iv) monitor whether, at any time the Certificates are outstanding, any person, other than the City, the employees of the City, the agents of the City or members of the general public has a right to use the facilities to conduct or to direct the conduct of research;
- (v) determine whether, at any time the Certificates are outstanding, any person, other than the City, has a naming right for the facilities or any other contractual right granting an intangible benefit;
- (vi) determine whether, at any time the Certificates are outstanding, the facilities are sold or otherwise disposed of; and
- (vii) take such action as is necessary to remediate any failure to maintain compliance with the covenants contained in the Ordinance related to the public use of the facilities.

C. Record Retention. The Responsible Person will maintain or cause to be maintained all records relating to the investment and expenditure of the proceeds of the Certificates and the use of the facilities financed or refinanced thereby for a period ending three (3) years after the complete extinguishment of the Certificates. If any portion of the Certificates is refunded with the proceeds of another series of tax-exempt obligations, such records shall be maintained until the three (3) years after the refunding obligations are completely extinguished. Such records can be maintained in paper or electronic format.

D. Responsible Person. The Responsible Person shall receive appropriate training regarding the City's accounting system, contract intake system, facilities management and other systems necessary to track the investment and expenditure of the proceeds and the use of the facilities financed or refinanced with the proceeds of the Certificates. The foregoing notwithstanding, the Responsible Person is authorized and instructed to retain such experienced advisors and agents as may be necessary to carry out the purposes of these instructions.

EXHIBIT C

DESCRIPTION OF ANNUAL FINANCIAL INFORMATION

The following information is referred to in Section 15 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 paragraph 1 above.

Agenda Item:

5A. Hear request for action from Elizabeth Bigelow regarding helicopter incident at Comanche Trace. (Elizabeth Bigelow)

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

SUBJECT OF REQUEST:

AGENDA DATE: February 14, 2012

DATE SUBMITTED: Feb.0,2012

REQUESTED/SUBMITTED BY: Elizabeth K. Bigelow

PHONE: 830 895
1579

ORGANIZATION REPRESENTING:

MAILING ADDRESS: P O Box 293999, Kerrville, Tx. 78029
3705 Club View Court, Kerrville, Tx. 78028

EMAIL ADDRESS: liz.bigelow2@yahoo.com

EXHIBITS/INFORMATION: Memo to FAA , Operations Supervisor, San Antonio Texas.

APPROVED FOR SUBMITTAL BY CITY MANAGER: 

WILL THIS ITEM REQUIRE CITY COUNCIL TO AUTHORIZE THE
EXPENDITURE OF CITY FUNDS? YES: _____ NO: ___x_

IF YES, STATE AMOUNT REQUESTED: \$ ___none_____

DESCRIPTION OF REQUEST

Attached is a copy of my memorandum dated this date to the FAA District Office San Antonio, Texas. This regards a helicopter incident that occurred in the City of Kerrville City Limits in the subdivision of Comanche Trace on Monday, February 6, 2012. The memorandum is self explanatory. The FAA has advised Me to pursue this with the City of Kerrville, as I had first called the City of Kerrville and was told that the City of Kerrville does not have height or any regulations regarding helicopters etc in subdivisions of Kerrville. The FAA has the tail number of the aircraft and wants the City of Kerrville to become regulated or to be able to submit information to its residents in this regard. The city of Kerrville can contact Mr. Brian Fricker an ASI Safety Inspector of the FAA in San Antonio at 210 308 3300 ext 380.

A very dangerous situation occurred in a subdivision and the City of Kerrville Should have knowledge to respond or alert residents of these types of occurances.

Submitted by Elizabeth K. Bigelow, resident and personal property owner of Comanche Trace, within the City of Kerrville City Limits.

RECOMMENDED COUNCIL ACTION

VIA FAX : 1 210 308 3399

MEMORANDUM

ATTENTION: OPERATIONS SUPERVISOR
FAA DISTRICT OFFICE
SAN ANTONIO, TEXAS

FROM: ELIZABETH K. BIGELOW
3705 CLUB VIEW COURT
KERRVILLE, TEXAS 78028
830 895 1579

REGARDING: HELICOPTER INCIDENT
MONDAY, FEBRUARY 6, 2012

DATE: FEBRUARY 9, 2012

AN INCIDENT OCCURRED SOMETIME MID MORNING ON MONDAY, FEBRUARY 6, 2012, IN OUR SUBDIVISION, COMANCHE TRACE. (THIS SUBDIVISION IS WITHIN THE CITY LIMITS OF KERRVILLE, TEXAS 78028 WITH PRIVATELY OWNED PROPERTIES.)

A PILOT IN SMALL HELICOPTER FLEW OVER MY HOME (MY PRIVATE, PERSONALLY OWNED RESIDENCE). THE CRAFT WAS FLYING AT AN ESTIMATE OF ABOUT 6 TO 10 FEET ABOVE MY THE ROOF, IF NOT LOWER. IT WAS SO CLOSE THAT I THOUGHT MY HOME WAS GOING TO BE HIT.

THE PILOT OF THIS HELICOPTER WAS FLYING JUST ABOVE GROUND LEVEL IN MY BACK YARD AND FLEW INTO THE VACANT LOT BELOW ME AT AN ALTITUDE SO LOW THAT I FEARED HE WOULD HIT A TREE LIMB AND CRASH. THE PILOT WAS FLYING VERY FAST AND MAKING VERY QUICK TURN MANEUVERS TO FLUSH OUT WILDLIFE TO HERD THEM INTO A PRE EXISTING TEMPORARY FENCED AREA THAT HAD BEEN PREPARED WITHIN OUR SUBDIVISION... TO HAVE THE ANIMALS REMOVED. (AT THE TIME THIS WAS HAPPENING I DID NOT KNOW ABOUT THE FENCING...THE PERSON THAT ANSWERED THE PHONE IN THE OFFICE OF OUR SUBDIVISION TOLD ME THEY WERE JUST MOVING THE ANIMALS TO THE BACK OF THE SUBDIVISION.)

THIS SAME FLIGHT OCCURRED SEVERAL TIMES OVER MY HOME THAT SAME MORNING. THE PILOT CONTINUED FLYING OVER, IN AND AROUND OUR SUBDIVISION FOR WHAT SEEMED TO BE A WHILE. HE CONTINUED TO FLY THE SAME MANEUVERS OVER MANY OTHER PRIVATELY OWNED PROPERTIES. THIS INCIDENT WAS EXTREMELY ALARMING. THERE WAS NO NOTICE GIVEN TO RESIDENTS OF AN EVENT OF THIS NATURE BY NEITHER COMANCHE TRACE NOR THE CITY OF KERRVILLE.

THE SHOCK, HIGH SPEED, AND QUICK TURNS LEFT NO TIME TO IDENTIFY THE TAIL NUMBER OF THE HELICOPTER. THE HELICOPTER WAS FAIRLY SMALL AND WAS A COLOR OF LIGHT BEIGE OR CREAM. IT IS MY UNDERSTANDING AFTERWARD THE HELICOPTER WAS SEEN BEING LOADED ONTO A TRAILER CLOSE TO THE SALES OFFICE OF COMANCHE TRACE.

I ALSO CONTACTED THE CITY OF KERRVILLE AND WAS TOLD I WILL HAVE TO SCHEDULE TO MEET WITH THE CITY COUNCIL, AS THEY HAVE NEVER HAD THIS HAPPEN AND AS FAR AS THEY KNOW NO REGULATIONS EXIST. ON THE MORNING OF FEBRUARY 6TH I SPOKE WITH THE AIRPORT MANAGER AND HE STATED TO ME THAT HE DID NOT KNOW OF HEIGHT OR REGULATIONS FOR HELICOPTERS. THIS IS SHOCKING TO FIND THE CITY OF KERRVILLE NOR DOES THE KERRVILLE AIRPORT MANAGER KNOW REGULATIONS IN THIS REGARD.

IT WOULD BE MOST APPRECIATED IF YOU COULD INTERVENE. THIS WAS NOT A CATASTROPHIC EVENT, HOWEVER IT COULD HAVE BEEN. IT WAS EXTREMELY ALARMING AND DANGEROUS. I ONLY THINK OF HELICOPTERS HERDING CATTLE OR ANIMALS SOMEWHERE ON OPEN RANGE LIKE THE KING RANCH OR WILD HORSES IN AN OPEN RANGE NOT IN PROXIMITY OF HOMES AND OTHER PERSONAL PROPERTY, PLUS THE HARM TO INDIVIDUALS, CHILDREN AND PETS.

THANK YOU

Agenda Item:

5B. A resolution suspending the March 6, 2012, effective date of Atmos Energy Corp., Mid-Tex Division ("Atmos Mid-Tex") requested rate change to permit the city time to study the request and to establish reasonable rates; approving cooperation with Atmos Cities Steering Committee ("ACSC") and other cities in the Atmos Mid-Tex service area to hire legal and consulting services and to negotiate with the company and direct any necessary litigation and appeals; requiring reimbursement of cities' rate case expenses; finding that the meeting at which this resolution is passed is open to the public as required by law; requiring notice of this resolution to the company and ACSC's legal counsel. (staff)

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

SUBJECT: Suspension of request of Atmos for rate change.

FOR AGENDA OF: Feb. 14, 2012 **DATE SUBMITTED:** Feb. 7, 2012

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

EXHIBITS: Resolution, Frequently Asked Questions Information Sheet, List of ACSC cities, Atmos Energy Mid-Tex Division *Executive Summary Rate Case Filing January 2012*

AGENDA MAILED TO:

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

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

PAYMENT TO BE MADE TO:

REVIEWED BY THE FINANCE DEPARTMENT:

SUMMARY STATEMENT

The City, along with approximately 153 other cities served by Atmos Energy Corp., Mid-Tex Division ("Atmos Mid-Tex" or "Company"), is a member of the Atmos Cities Steering Committee ("ACSC" or "Steering Committee"). On or about January 31, 2012, Atmos Mid-Tex filed with the City a Statement of Intent to increase its gas utility rates within the City.

Background

In 2003, TXU Gas filed a statewide rate case which became known at the Railroad Commission of Texas ("RRC") as Gas Utilities Docket ("GUD") No. 9400. That same year the Texas Legislature passed legislation referred to as the Gas Reliability Infrastructure Program ("GRIP") which authorized annual piecemeal rate reviews that Texas courts have concluded significantly restrict city jurisdiction, participation, and input. Shortly after GUD No. 9400 was decided in 2004, Atmos Energy purchased TXU Gas and created what is known as Atmos Energy Corp., Mid-Tex Division. The City is within the Atmos Mid-Tex Division.

Atmos Mid-Tex filed four GRIP cases before filing a traditional rate case in September, 2007. As part of a Settlement Agreement with Atmos over the 2007 rate case, ACSC and Atmos created a substitute process for annual piecemeal GRIP cases. That substitute process was called a Rate Review Mechanism ("RRM") and was intended as an expedited but comprehensive rate review that included a number of fixed values and constraints. The RRM was intended as a three-year

experiment. Last year, it was extended for a fourth year with some slight modifications to the original formulas. ACSC negotiated with Atmos in the final quarter of last year to further extend the RRM process, but no agreement was reached. Atmos has expressed a desire to reach a settlement of the January 31, 2012 filing that includes a revised RRM process.

Attached are frequently asked questions (“FAQs”) on ACSC and the RRM ratemaking process.

Discussion and Purpose

Atmos Mid-Tex filed a Statement of Intent on January 31, 2012, seeking to increase system-wide base rates (which exclude the cost of gas) by approximately \$49 million or 11.94%. However, the Company is requesting an increase of 13.6%, excluding gas costs, for its residential customers. Additionally, the application would change the way that rates are collected, by increasing the residential fixed-monthly (or customer) charge from \$7.50 to \$18.00 and decreasing the consumption charge from \$0.25 per 100 cubic feet (“ccf”) to \$0.07 per ccf.

The law provides that a rate request made by a gas utility cannot become effective until at least 35 days following the filing of the application to change rates. Atmos has proposed an effective date of March 6, 2012. The law permits the City to suspend the rate change for 90 days after the date the rate change would otherwise be effective. If the City fails to take some action regarding the filing before the effective date, Atmos’ rate request is deemed administratively approved.

The purpose of this Resolution is to extend the effective date of Atmos Mid-Tex’s proposed rate increase to give the City time to review the rate-filing package. The Resolution suspends the March 6, 2012 effective date of the Company’s rate increase for the maximum period permitted by law to allow the City, working with the ACSC, to evaluate the filing, determine whether the filing complies with law, and if lawful, to determine what further strategy to pursue, including settlement and ultimately to approve reasonable rates.

Explanation of “Be It Resolved Paragraphs”

SECTION ONE. The City is authorized to suspend the rate change for 90 days after the date that the rate change would otherwise be effective so long as the City has a legitimate purpose. Time to study and investigate the application is always a legitimate purpose. Please note that the Resolution refers to the suspension period as the “maximum period allowed by law” rather than ending by a specific date. This is because the Company controls the effective date and can extend its effective date and, therefore, extend the deadline for final City action to increase the time that the City retains jurisdiction (for example, if necessary to reach settlement on the case). If the suspension period is not otherwise extended by the Company, the City must take final action on Atmos Mid-Tex’s request to raise rates by June 4, 2012.

SECTION TWO. This provision recognizes the City’s membership in ACSC and authorizes the City to participate with other similarly situated cities served by Atmos Mid-Tex in order to more efficiently represent the interests of the City and its citizens.

SECTION THREE. By law, the Company must reimburse the cities for their reasonable rate case expenses. Legal counsel and consultants approved by ACSC will present their invoices to the City of Arlington which will then seek reimbursement from Atmos Mid-Tex. The City will not incur liability for payment of rate case expenses by adopting this Resolution.

SECTION FOUR. This section merely recites that the Resolution was passed at a meeting that was open to the public and that the consideration of the Resolution was properly noticed.

SECTION FIVE. This section provides that both Atmos Mid-Tex's designated representative and counsel for ACSC will be notified of the City's action by sending a copy of the approved and signed Resolution to certain designated individuals.

Conclusion

The City's action to suspend the rate increase recognizes and facilitates the exercise of City jurisdiction. Atmos Mid-Tex agrees that cities should have an opportunity to resolve the rate request with the Company before jurisdiction attaches at the RRC and, therefore, supports the ACSC suspension efforts. Denial of the request, as opposed to suspension, could trigger RRC jurisdiction through an appellate process that would likely lead to litigation which ACSC hopes to avoid.

RECOMMENDED ACTION

Adoption of Resolution suspending effective date of Atmos Mid-Tex rate increase, January 2012 filing.

**CITY OF KERRVILLE, TEXAS
RESOLUTION NO. _____-2012**

A RESOLUTION SUSPENDING THE MARCH 6, 2012, EFFECTIVE DATE OF ATMOS ENERGY CORP., MID-TEX DIVISION (“ATMOS MID-TEX”) REQUESTED RATE CHANGE TO PERMIT THE CITY TIME TO STUDY THE REQUEST AND TO ESTABLISH REASONABLE RATES; APPROVING COOPERATION WITH ATMOS CITIES STEERING COMMITTEE (“ACSC”) AND OTHER CITIES IN THE ATMOS MID-TEX SERVICE AREA TO HIRE LEGAL AND CONSULTING SERVICES AND TO NEGOTIATE WITH THE COMPANY AND DIRECT ANY NECESSARY LITIGATION AND APPEALS; REQUIRING REIMBURSEMENT OF CITIES’ RATE CASE EXPENSES; FINDING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED IS OPEN TO THE PUBLIC AS REQUIRED BY LAW; REQUIRING NOTICE OF THIS RESOLUTION TO THE COMPANY AND ACSC’S LEGAL COUNSEL

WHEREAS, on or about January 31, 2012, Atmos Energy Corp., Mid-Tex Division (“Atmos Mid-Tex” or “Company”), pursuant to Gas Utility Regulatory Act § 104.102 filed with the City of Kerrville (“City”) a Statement of Intent to change gas rates in all municipalities exercising original jurisdiction within its Mid-Tex Division service area, effective March 6, 2012; and

WHEREAS, the City is a regulatory authority under the Gas Utility Regulatory Act (“GURA”) and under Chapter 104, §104.001 et seq. of GURA has exclusive original jurisdiction over Atmos Mid-Tex’s rates, operations, and services within the City; and

WHEREAS, in order to maximize the efficient use of resources and expertise, it is reasonable for the City to maintain its involvement in the Atmos Cities Steering Committee (“ACSC”) and to cooperate with the more than 150 similarly situated city members of ACSC and other city participants in conducting a review of the Company’s application and to hire and direct legal counsel and consultants and to prepare a common response and to negotiate with the Company and direct any necessary litigation; and

WHEREAS, Atmos Mid-Tex proposed March 6, 2012, as the effective date for its requested increase in rates; and

WHEREAS, it is not possible for the City to complete its review of Atmos Mid-Tex’s filing by March 6, 2012; and

WHEREAS, the City will need an adequate amount of time to review and evaluate Atmos Mid-Tex's rate application to enable the City to adopt a final decision as a local regulatory authority with regard to Atmos Mid-Tex's requested rate increase; and

WHEREAS, the Gas Utility Regulatory Act § 104.107 grants local regulatory authorities the right to suspend the effective date of proposed rate changes for ninety (90) days; and

WHEREAS, the Gas Utility Regulatory Act § 103.022 provides that costs incurred by Cities in ratemaking activities are to be reimbursed by the regulated utility.

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

SECTION ONE. That the March 6, 2012, effective date of the rate request submitted by Atmos Mid-Tex on January 31, 2012, be suspended for the maximum period allowed by law to permit adequate time to review the proposed changes and to establish reasonable rates.

SECTION TWO. That the City is authorized to cooperate with ACSC and its member cities in the Mid-Tex service area and under the direction of the ACSC Executive Committee to hire and direct legal counsel and consultants, negotiate with the Company, make recommendations to the City regarding reasonable rates, and to direct any necessary administrative proceedings or court litigation associated with an appeal of a rate ordinance and the rate case filed with the City or Railroad Commission.

SECTION THREE. That the City's reasonable rate case expenses shall be reimbursed by Atmos.

SECTION FOUR. That it is hereby officially found and determined that the meeting at which this Resolution is passed is open to the public as required by law and the public notice of the time, place, and purpose of said meeting was given as required.

SECTION FIVE. A copy of this Resolution shall be sent to Atmos, care of David Park, Vice President Rates & Regulatory Affairs, at Atmos Energy Corporation, Mid-Tex Division, 5420 LBJ Freeway, Suite 1862, Dallas, Texas 75240, and to Geoffrey Gay, General Counsel to ACSC, at Lloyd Gosselink Rochelle & Townsend, P.C., P.O. Box 1725, Austin, Texas 78767-1725.

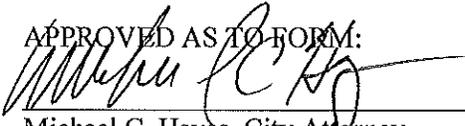
PASSED AND APPROVED this _____ day of _____, 2012.

David Wampler, Mayor

ATTEST:

Brenda Craig, City Secretary

APPROVED AS TO FORM:



Michael C. Hayes, City Attorney

ACSC Cities (154 Total)

Abilene	Fate	Palestine
Addison	Flower Mound	Pantego
Allen	Forest Hill	Paris
Alvarado	Fort Worth	Parker
Angus	Frisco	Pecan Hill
Anna	Frost	Plano
Argyle	Gainesville	Ponder
Arlington	Garland	Pottsboro
Bedford	Garrett	Prosper
Bellmead	Grand Prairie	Quitman
Benbrook	Grapevine	Red Oak
Beverly Hills	Haltom City	Reno (Parker County)
Blossom	Harker Heights	Richardson
Blue Ridge	Haskell	Richland
Bowie	Haslet	Richland Hills
Boyd	Hewitt	River Oaks
Bridgeport	Highland Park	Roanoke
Brownwood	Highland Village	Robinson
Buffalo	Honey Grove	Rockwall
Burkburnett	Hurst	Roscoe
Burleson	Iowa Park	Rowlett
Caddo Mills	Irving	Royse City
Carrollton	Justin	Sachse
Cedar Hill	Kaufman	Saginaw
Celeste	Keene	Seagoville
Celina	Keller	Sherman
Cisco	Kemp	Snyder
Cleburne	Kennedale	Southlake
Clyde	Kerrville	Springtown
College Station	Killeen	Stamford
Colleyville	Krum	Stephenville
Colorado City	Lakeside	Sulphur Springs
Comanche	Lake Worth	Sweetwater
Coolidge	Lancaster	Temple
Coppell	Lewisville	Terrell
Corinth	Lincoln Park	The Colony
Corral City	Little Elm	Trophy Club
Crandall	Lorena	Tyler
Crowley	Madisonville	University Park
Dalworthington Gardens	Malakoff	Venus
Denison	Mansfield	Vernon
DeSoto	McKinney	Waco
Duncanville	Melissa	Watauga
Eastland	Mesquite	Waxahachie
Edgecliff Village	Midlothian	Westlake
Emory	Murphy	Whitesboro
Ennis	Newark	White Settlement
Euless	Nocona	Wichita Falls
Everman	North Richland Hills	Woodway
Fairview	Northlake	Wylie
Farmers Branch	Oak Leaf	
Farmersville	Ovilla	

FREQUENTLY ASKED QUESTIONS REGARDING ACSC AND THE RRM RATEMAKING PROCESS

What is the Role of Cities in Ratemaking?

Cities have historically exercised original jurisdiction over the level of gas rates charged within their boundaries. Generally, gas distribution utilities have filed rate cases at the city level and only gone to the Railroad Commission of Texas (“RRC”) with an appeal of city action or if they cannot reach a settlement with cities. If a utility and cities reach an agreement, the utility may then file a case at the RRC to implement the same rates approved by cities in areas outside municipal boundaries.

Once a case is at the RRC, the Commission Staff generally expects cities to intervene and do most of the discovery, sponsor opposing witnesses, and do most of the cross-examination and briefing. There is no consumer advocate at the RRC. If cities do not participate in hearings at the RRC, the request of a regulated utility is likely to be rubber-stamped.

What is the background to the creation of the Atmos Cities’ Steering Committee?

The Atmos pipeline and distribution systems were built, owned and operated by Lone Star Gas (“LSG”) which maintained over 200 rate jurisdictions until it sold its assets to Texas Utilities (“TXU”) in the late 1990’s. That meant that many cities had their own unique distribution rates and that individual cities had to process rate cases at the local level. LSG-Pipeline served all 200-plus distribution systems and pipeline rates were set by the RRC.

From the early 1980’s through the late 1990’s, LSG filed no pipeline or system-wide rate case at the RRC. When LSG was finally brought before the RRC to show cause why its rates should not be reduced, approximately 80 cities intervened and created an *ad hoc* group known as the Steering Committee of Cities Served by Lone Star.

TXU purchased the LSG assets in the late 1990’s and immediately commenced consolidating 200-plus ratemaking jurisdictions into regions. As regional cases were filed, cities within each region created an *ad hoc* committee to form a common strategy and negotiating position. Once TXU had aggregated the cities into five or six jurisdictions, each with a different rate, Texas Utilities Gas Company filed a system-wide case to bring all of the old LSG territory under one common rate. The different city regional committees then united and formed the Allied Coalition of Cities (“ACC”). While the gas utility assets were owned and controlled by TXU, the Steering Committee transformed itself from an *ad hoc* group that came together only in response to rate filings by the utility into a permanent standing committee.

In Gas Utilities Docket (“GUD”) No. 9400 in 2004, TXU’s request for a \$61.6 million system-wide increase was aggressively opposed by ACC. The Company received only a \$2.01 million increase. Unhappy with that result, TXU decided that owning a gas system was neither as fun nor as profitable as the deregulated electric system, and they sold the system to Atmos Energy Corporation (“Atmos” or “Company”). ACC was then transformed into the Steering

Committee of Cities Served by Atmos and then renamed Atmos Cities Steering Committee to obtain an easy to remember acronym, "ACSC".

What is the Atmos Cities Steering Committee?

ACSC is a coalition of 154 cities that unite in common purpose to address gas utility rate and franchise issues related to Atmos Energy Corporation. Its objectives are to: (1) ensure that gas utility rates charged to cities and their residents are fair and reasonable; (2) maintain reasonable franchise fee revenues for cities; (3) protect cities' original jurisdiction over rates and services; (4) be a voice for consumers where no state agency assumes such a role; and (5) promote sound ratemaking policy in the public interest.

Cities join the permanent standing committee by passing a resolution and agreeing to support the work of ACSC through modest occasional *per capita* assessments which support ongoing administrative and legislative advocacy and all expenses where cities are not entitled to reimbursement. Each member city designates a representative to ACSC. Member representatives may volunteer to serve on the ACSC Executive Committee or Settlement Committee. The Executive Committee sets policy, hires legal counsel and consultants, directs litigation, establishes a legislative agenda, sets assessments on members as needed and meets quarterly with Atmos executives. The Settlement Committee is directly involved in negotiating resolution of contested matters with Atmos executives.

The list of current members is attached.

What is the benefit of membership in ACSC?

One hundred fifty-four cities speaking as one voice is much more effective in advocacy before the Railroad Commission and legislature than any one city or multiple small groups of cities.

The legislature has given gas utilities a right to an annual increase in rates. Resources (both financial and human) of individual cities are conserved by membership in ACSC. Additionally, membership enhances institutional memory of ratemaking issues, public policy debates, and right-of-way and franchise fee battles.

What has ACSC accomplished recently?

Going into the legislative session, ACSC in December 2010 released a 48-page report, "Natural Gas Consumers and the Texas Railroad Commission." More than 200 television, newspaper and radio news sites posted information on and a link to the report which may be found on ACSC's website, TexasGasConsumers.org.

Earlier in 2010, ACSC representatives visited on several occasions with the Sunset Commission Staff, and several ACSC recommendations for reform were included in the Sunset Commission Report on the Railroad Commission, delivered to the legislature's Sunset Committee prior to public hearings on the agency. Several ACSC member representatives testified before the legislature regarding reforms needed at the Railroad Commission.

During the most recent legislative session, lobbying efforts by ACSC were critical in killing two gas utility bills that would have undermined traditional regulation, deprived cities of certain rights, and led to even greater rate increases.

ACSC has resolved a major issue involving franchise fees. Atmos unilaterally, without notice, ceased inclusion of franchise fees in the calculations of gross receipts regardless of whether specific franchises included such payments. Several cities were willing to pursue the matter through litigation. However, counsel for ACSC was able to negotiate a resolution that allowed each member city to determine whether it desired an increase in franchise fee payments based on inclusion of franchise fees in the calculation of gross receipts. If a city opted for inclusion of fee-on-fee revenues, it had the further option of retroactive payments back to the point in time that Atmos decided to curtail fee-on-fee payments. Each member had these options regardless of the wording of the then valid franchise agreement. This resolution spared significant litigation costs and anxiety and was only possible because of the clout of the ACSC membership.

One of the most significant accomplishments of ACSC occurred in 2007 via a settlement of the then pending system-wide rate case. Approximately 50 ACSC city representatives showed up in Arlington for a meeting with Atmos executives who were shocked at the vocal opposition to Atmos practices, the unfairness of annual Gas Reliability Infrastructure Program ("GRIP") rate filings that precluded city and citizen review, and the Company's lack of coordination with cities. That meeting led to the creation of the Rate Review Mechanism ("RRM") process and greater ongoing communication between the Company and ACSC.

In 2010, ongoing communications between ACSC and the Company led to a workable solution to the need to replace steel service lines in a manner that accommodated city needs to control their rights-of-way, while moderating the rate impact and focusing first on the riskiest service lines based on leak repair histories. This compromise precluded a more onerous (from a city and consumer perspective) program threatened by the RRC.

What is a RRM case?

The concept of a RRM proceeding emerged as a three-year experimental substitute for GRIP cases as part of the settlement of Atmos Mid-Tex's 2007 system-wide rate case. In 2003, the Texas Legislature added Section 104.301, Interim Adjustment for Changes in Investment, to the Gas Utility Regulatory Act. While not identified as such in the law, § 104.301 was referred to as the Gas Reliability Infrastructure Program or GRIP. The GRIP adjustments allowed gas companies to recover changes to invested capital without a review of whether increased revenues or declining expenses offset the invested capital costs. Both Atmos Pipeline and Atmos Mid-Tex filed GRIP cases as soon as the RRC adopted rules to implement the interim adjustments. As explained below, it quickly became apparent that the GRIP adjustments were terrible public policy.

As an alternative to GRIP, ACSC entered into a negotiated agreement with Atmos in 2007 to establish the RRM process. Unlike GRIP, the RRM provided for an annual review of all portions of Mid-Tex's cost of service. It fixed an authorized rate of return on equity for the three-year period at 9.6% (which was less than what the RRC would have authorized) and set

caps on the extent to which expenses or investments could increase from one year to the next. More importantly, it allowed cities to make a comprehensive evaluation of all aspects of the utility business—investment, operation and maintenance expenses and revenues—unlike GRIP which only allows consideration of changes to invested capital.

Why is RRM superior to GRIP?

The GRIP cases are one-sided guarantees of a rubber-stamp of the utility’s rate request. ACSC attempted to participate in the first two GRIP proceedings filed by both Atmos Pipeline and Atmos Mid-Tex at the RRC. Not only were cities’ motions to intervene denied, but also, ACSC’s comments were ignored. At the city level, ACSC consultants determined that Atmos was not only including items such as artwork, chairs, computers and meals in interim rate adjustments that were allegedly intended to promote pipeline safety, but also the Company was over-earning its previously authorized rate of return. ACSC attacked the Commission’s rule in court because it denied city participation, denied a hearing on a contested matter, and denied cities’ recovery of any expenses associated with resisting GRIP rate increases. The courts have not been helpful to cities and the Texas Supreme Court has affirmed the denial of cities’ right to participate in GRIP cases at the RRC.

Cities have contended that GRIP is terrible public policy since it authorizes what would from a history of public interest regulation be regarded as unlawful—piecemeal ratemaking. GRIP allows rates to increase if the utility’s invested capital net of depreciation increases year-over-year. An increase in rates is mandated under GRIP if investment increases, even if increasing revenues and declining expenses more than offset the costs associated with increased investment.

The RRM process negotiated by ACSC solves the piecemeal ratemaking problem by providing for a comprehensive review of Atmos’ expenses and revenues. Furthermore, RRM benefits ACSC by: (1) allowing cities participation that would be denied under GRIP; (2) allowing cities to recover, at utility shareholder expense, all their ratemaking costs; and (3) avoiding both litigation and RRC jurisdiction.

The legislature has functionally authorized annual increases in gas utility rates through the GRIP process. Since consumers are otherwise stuck with annual rate increases, it is better to have cities participating in the comprehensive RRM process than unable to participate in a piecemeal process.

What has been the history of the RRM efforts?

In 2010, ACSC, in settling the third RRM proceeding, agreed to a slight modification and extension of the process. A settlement of the fourth annual RRM is now pending before ACSC members. The results of the four RRM proceedings are as follows:

RRM Filing	Year	Atmos Request	ACSC Settlement
#1	2008	\$33.5 million	\$20 million
#2	2009	\$20.2 million	\$2.6 million
#3	2010	\$70.2 million	\$27 million
#4	2011	\$15.7 million	\$6.6 million

These results are better for cities and consumers than would have been authorized by the RRC under the GRIP process.

What is the future of the RRM process?

The settlement of the fourth RRM filing anticipated ACSC and Atmos working between August and December to refine the RRM process. A settlement perpetuating the RRM process was not reached by the end of 2011 which has led to the filing of the January 31, 2012 traditional rate case. Discussions regarding the future of the RRM process will continue as we attempt to resolve the rate case by settlement.

If you have other questions please contact me at (512) 322-5875 and/or ggay@lglawfirm.com.

Geoffrey Gay
ACSC, General Counsel

Atmos Energy – Mid-Tex Division
Executive Summary
Rate Case Filing
January 2012

Summary

- Each city has original jurisdiction over the rates charged to customers within their municipal boundaries.
- On January 31, 2012, the Mid-Tex Division of Atmos Energy filed a rate case with 441 cities.
 - The average residential customer bill using 4.4 Mcf will increase \$2.70 or 5.57% per month.
 - The average commercial customer bill using 34.2 Mcf will increase \$5.35 or 2.22% per month.
- Atmos Energy is asking all cities to pass a *suspension* resolution to extend the effective period of the proposed rates to allow for negotiation of a settlement.
 - This will extend the effective date 90 days from March 6, 2012 to June 4, 2012
- Notice will be run in newspapers of general circulation in every county served by the Mid-Tex division for four consecutive weeks beginning in early February.

Background

- For the past 4 years, Mid-Tex has had an annual Rate Review Mechanism (RRM) in place to review and, as necessary, adjust the Company's rates.
 - This has been a successful collaborative process with the Cities for reviewing and adjusting the Company's rates each year and the cost has not been passed on to customers.
- It has been the desire of the coalition groups that a more comprehensive review of the Company's rates be conducted periodically.
- This rate case provides for such a review with the intention of establishing new rates and allowing the RRM process to continue in the future.

Agenda Item:

5C. Approval of pavement management system projects for FY12. (staff)

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

SUBJECT: Approval of pavement management system projects for FY12

FOR AGENDA OF: 2/14/12

DATE SUBMITTED: 2/3/12

SUBMITTED BY: Charlie Hastings *CH* **CLEARANCES:** Todd Parton
Public Works Director City Manager

EXHIBITS: 2012 Proposed Street Rehab Map

AGENDA MAILED TO:

APPROVED FOR SUBMITTAL BY CITY MANAGER: *TP*

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

PAYMENT TO BE MADE TO:

REVIEWED BY THE FINANCE DIRECTOR:

SUMMARY STATEMENT

Kerrville's Pavement Management System, adopted in 2004, utilizes the Asphalt Institute Pavement Rating System (Information Series No. 169) to determine, in an objective and systematic way, street rehabilitation needs. A schedule is then developed based on construction logistics, budgetary constraints, and coordination with other planned construction projects. The following streets are targeted for rehabilitation in the summer of 2012 beginning as early as May, and are shown in the attached map:

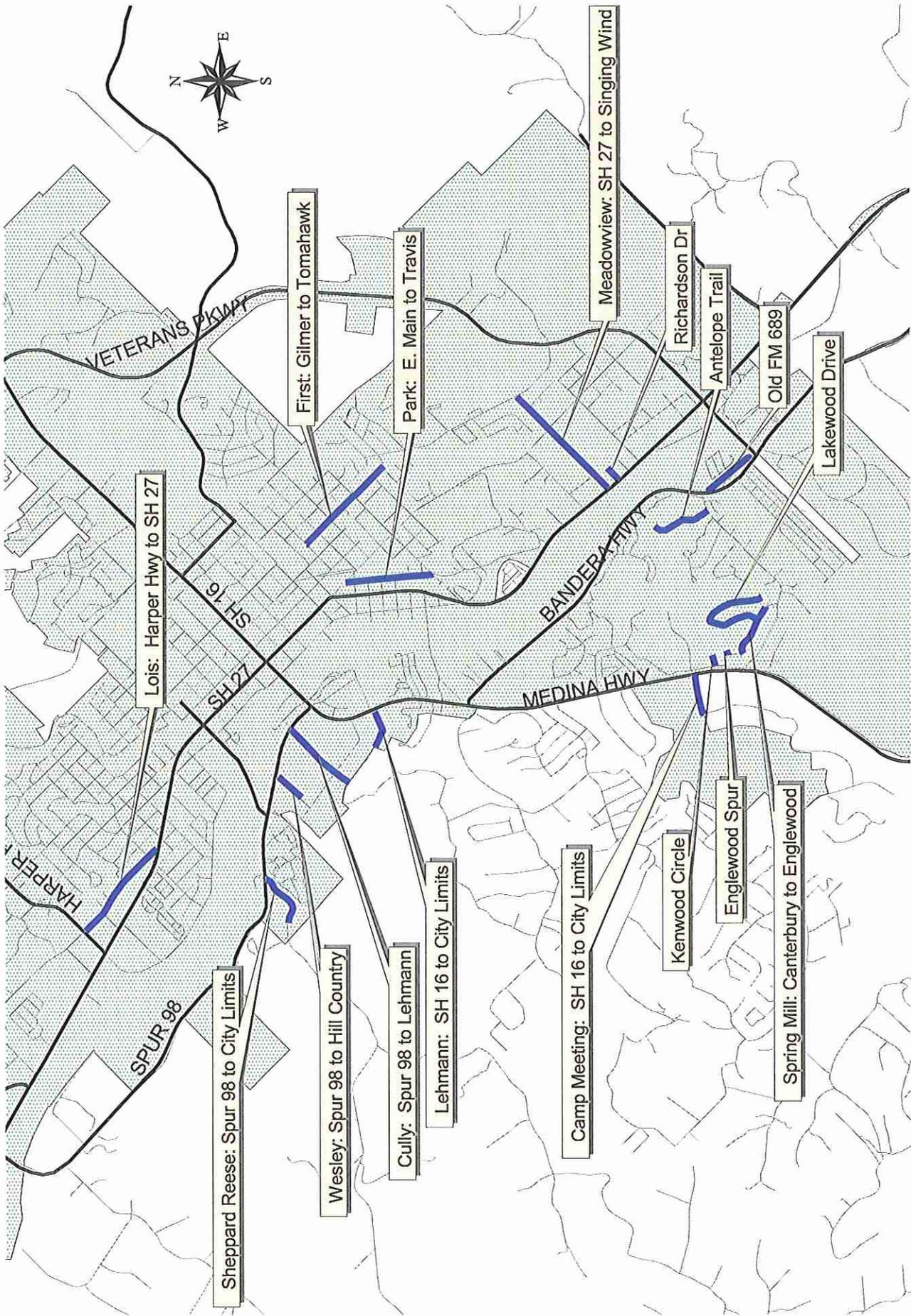
- Lois Street – Harper Highway to SH 27
- Sheppard Reese Road – Spur 98 to City Limits
- Wesley Drive – Spur 98 to Hill Country Drive
- Cully Drive – Spur 98 to Lehmann
- Lehmann Drive – SH 16 to City Limits
- Camp Meeting – SH 16 to City Limits
- Kenwood Circle
- Englewood Spur
- Spring Mill Drive – Canterbury to Englewood

- Lakewood Drive
- Antelope Trail
- Old FM 689
- Richardson Drive
- Meadowview Lane – SH 27 to Singing Wind
- Park Street – East Main to Travis
- First Street – Gilmer to Tomahawk

Once approved by Council, this list of streets targeted for rehabilitation in 2012 will be forwarded to franchise utility companies to allow them 90 days to relocate buried utilities that are in conflict with the proposed construction activities.

RECOMMENDED ACTION

The Director of Public Works recommends that council approve the list of streets targeted for rehabilitation in 2012 as listed herein.



Kerrville Pavement Management System 2012 Proposed Street Rehab



Agenda Item:

6A. Water resources report. (staff)

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

SUBJECT: Water Resources Report

FOR AGENDA OF: 2/14/12

DATE SUBMITTED: 2/3/12

SUBMITTED BY: Charlie Hastings *CAH*
Public Works Director

CLEARANCES: Todd Parton
City Manager

EXHIBITS:

AGENDA MAILED TO:

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

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

PAYMENT TO BE MADE TO:

REVIEWED BY THE FINANCE DIRECTOR:

SUMMARY STATEMENT

Staff will present an update on the water supply and availability as it relates to the drought.

RECOMMENDED ACTION

Information and discussion.

Agenda Item:

6B. Budget and economic update. (staff)

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

SUBJECT: Kerrville Budget/Economic Update

FOR AGENDA OF: February 14, 2012 **DATE SUBMITTED:** February 2, 2012

SUBMITTED BY: Mike Erwin 
Director of Finance

CLEARANCES: Todd Parton
City Manager

EXHIBITS: Economic Update
AGENDA MAILED TO:

APPROVED FOR SUBMITTAL BY CITY MANAGER: 

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

PAYMENT TO BE MADE TO:

REVIEWED BY THE DIRECTOR OR FINANCE:

SUMMARY STATEMENT

The City of Kerrville staff will present and update Council on a biweekly basis as to the status of the City's budget and current economic trends affecting the City.

RECOMMENDED ACTION

No action required information purposes only.

