

**AGENDA FOR REGULAR MEETING**

**CITY OF KERRVILLE, TEXAS**

**ECONOMIC IMPROVEMENT CORPORATION**

**MONDAY, August 27, 2012, 4:00 P.M.**

**KERRVILLE CITY HALL COUNCIL CHAMBERS**

**800 JUNCTION HIGHWAY, KERRVILLE, TEXAS**

**AGENDA FOR REGULAR MEETING OF THE  
CITY OF KERRVILLE, TEXAS  
ECONOMIC IMPROVEMENT CORPORATION  
MONDAY, AUGUST 27, 2012, 4:00 P.M.  
KERRVILLE CITY HALL COUNCIL CHAMBERS  
800 JUNCTION HIGHWAY, KERRVILLE, TEXAS**

**CALL TO ORDER**

**INVOCATION**

**1. VISITORS/CITIZENS FORUM:**

Any citizen with business not scheduled on the agenda may speak to the corporation. No deliberation or action can be taken on these items because the Open Meetings Act requires an item be posted on an agenda 72 hours before the meeting. Visitors are asked to limit their presentation to three minutes.

**2. APPROVAL OF THE MINUTES:**

2A. Minutes of the regular meeting held July 16, 2012.

**3. MONTHLY REPORTS:**

3A. Monthly financials for July 2012. (Erwin)

3B. Capital projects update. (Wendele)

Harper Highway Project Phase II

Commercial Improvement Program

Hill Country Shooting Center

Hill Country Home Opportunity

**4. PUBLIC HEARING AND POSSIBLE ACTION:**

4A. Funding Agreement with Hill Country District Junior Livestock Show Association for a multi-use facility and exhibition center. (Wendele)

**5. CONSIDERATION AND POSSIBLE ACTION:**

5A. Consider and approve Fiscal Year 2013 Budget. (Erwin)

5B. Consider and approve Administrative Services Contract (Erwin)

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The facility is wheelchair accessible and accessible parking spaces are available. Requests for accommodations or interpretive services must be made 48 hours prior to this event. Please contact the City Secretary's Office at 830-258-1117 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: August 24, 2012, at 4:00 p.m. and remained posted continuously for at least 72 hours preceding the scheduled time of the meeting.

Cheryl Brown

Deputy City Secretary, City of Kerrville, Texas

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- 5C. Consider and approve a contract between the Economic Improvement Corporation and the Kerrville Economic Development Corporation. (Parton).
- 5D. Provide an update on the quality of life projects for the golf course, soccer improvements, downtown wireless and discuss the Economic Development Strategy (Parton)
- 5E. Update regarding Economic Development Grant Agreement between Nature Blinds, LLC and the City of Kerrville, Texas Economic Development Corporation (Parton)
- 5F. Review of EIC Funding Agreements for Performance and Clawbacks. (Rickert)
- 5G. Consider and approve EIC Investment Policy. (Erwin)
- 5H. Discussion for direction to City staff regarding the Airport Commerce Park. (Parton)

**6. INFORMATION AND DISCUSSION:**

- 6A. Update regarding Hill Country Shooting Sports Center (Burch)
- 6B. Update regarding River Trail and Parks projects. (Rickert)
- 6C. Update on Kerrville Economic Development Corporation (Titus)
- 6D. Update regarding "Go" Team activities. (Wendele)

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Cheryl Brown  
Deputy City Secretary, City of Kerrville, Texas

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**7. EXECUTIVE SESSION:**

The Economic Improvement Corporation Board of Directors 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 matter:

551.087

4A. Funding Agreement with Hill Country District Junior Livestock Show Association for a multi-use facility and exhibition center. (Wendele)

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

**9. ADJOURNMENT**

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Cheryl Brown  
Deputy City Secretary, City of Kerrville, Texas

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## **Agenda Item:**

2A. Minutes of the regular meeting held July 16, 2012.

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

**July 16, 2012**

On Monday, July 16, 2012, the meeting of the directors of the City of Kerrville, Texas Economic Improvement Corporation, was called to order at 4:02 p.m. by Kenneth Early, Vice-President, in the City Hall Council Chambers, 800 Junction Highway, Kerrville, Texas. David Wampler, President, arrived at 4:05 p.m.

**Members Present:**

David Wampler, President  
Kenneth Early, Vice President  
Rex Boyland, Secretary  
Gary Cochrane  
Larry Howard  
Stacie Keeble  
Polly Rickert

**Members Absent:**

**City Executive Staff Present:**

Todd Parton, City Manager  
Mike Hayes, City Attorney  
Cheryl Brown, Administrative Assistant to the City Secretary  
Kristine Ondrias, Assistant City Manager  
Mike Erwin, Director of Finance  
Mindy Wendele, Director of Business Programs  
Malcolm Matthews, Director of Parks and Recreation  
Travis Cochrane, IT Director  
Keith Magnell, Technical Support Analyst  
Kimberly Meisner, Director of General Operations

**Visitors Present:** Visitor list available in the City Secretary's Office for the required retention period.

**INVOCATION:** Given by Vice-President Kenneth Early.

1. **VISITORS/CITIZENS FORUM:** No one spoke.

2. **APPROVAL OF THE MINUTES:**

2A. Minutes of the joint meeting with City Council held June 12, 2012, and the regular meeting held on June 18, 2012. Mr. Howard moved for approval of the minutes of June 12 and June 18, 2012; Ms. Rickert seconded the motion and it passed 7-0.

3. **MONTHLY REPORTS:**

3A. Monthly financials for June 2012. Mr. Erwin reported: \$195,775 received in Sales tax revenue in June. There was also \$608 in interest revenue and \$76,513 refund from the airport/Kerr County. Total expenditures were

\$50,425. The ending cash balance as of June 30, 2012 was \$2,100,670. The sales tax revenue collected in June 2012 was greater than June, 2012.

Mr. Howard moved to approve the monthly financial report. Mr. Boyland seconded, and the motion passed 7-0.

3B. Capital Projects Update: Ms. Wendele reported:

Harper Highway Project Phase II: The contractor would begin in two weeks.

Commercial Improvement Program: There was some discussion regarding discontinuing this program, but no decision was reached.

Hill Country Shooting Center: Project was almost completed.

Hill Country Home Opportunity: There was nothing new to report.

#### **4. PUBLIC HEARING AND POSSIBLE ACTION:**

4A. Nature Blinds, LLC's request for funding agreement for business expansion project in the amount of \$730,000: Mr. Wampler opened the public hearing at 4:10 p.m. and the following persons spoke:

1. Amos Barton spoke in favor of Nature Blinds, LLC, stating that he had visited their facility, and believed they would be of benefit to the City of Kerrville.

2. Dennis Deering, Store Manager of Lowe's, stated that Lowe's sold the blinds, and he hoped the EIC would approve the funding agreement.

3. Robert Naman asked the EIC if the money requested from Nature Blinds, LLC was a loan or a gift. Mr. Wampler replied that it was a funding request for creation of jobs, not a loan.

4. Max Greiner, local artist and President of the Coming King Association, stated that he believed the people in charge of Nature Blinds, LLC were good people, and that Kerrville was a good place for their business.

5. Kevin LaFavers from Sherwin Williams spoke in support of Nature Blinds, LLC.

Mr. Wampler read an email from Barbara Burton, stating her concerns for the environmental impact of the materials that Nature Blinds, LLC used in the construction of their products.

David Carpenter, warehouse manager for Nature Blinds, LLC stated he had been in contact with TECQ and several other environmental groups. He stated their product was made of basically soy-based compounds, and it had no volatile organic compounds. There are no requirements by TECQ or any other environmental group that he spoke with regarding filters in the materials they use in their products; it is very similar to the Styrofoam packing.

The public hearing was closed by Mr. Wampler at 4:34 p.m.

The EIC discussed:

The sales tax impact from the Nature Blinds, LLC. Projects and the suitability of their new building for Nature Blinds, LLC. Ms. Wendele noted that Nature Blinds, LLC's use of the building was a lesser use than the previous occupant, and therefore the certificate of occupancy was issued.

The proposed funding agreement was consistent with EIC's direction to staff at the previous meeting.

Mr. Howard moved to defer further discussion of the funding agreement for Nature Blinds, LLC to Executive Session; Rex Boyland seconded, and the motion passed 7-0.

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

### **5A. Consider and approval of Fiscal Year 2013 Budget.**

Mr. Erwin reported on the Fiscal Year 2013 proposed budget. After discussion of the various line items, Mr. Boyland moved to postpone the budget, and have a sub-committee work with City staff on the budget, and report back to the EIC at the August, 2012 meeting. Ms. Rickert seconded the motion, and it passed 7-0. Members appointed to the subcommittee were Mr. Boyland, Mr. Wampler and Mr. Howard.

### **5B. Presentation and funding request from Hill Country District Junior Livestock Association for improvements to Kerr County Ag Barn.**

Ms. Wendele asked the EIC to consider the "Go" Team's recommendation of a two-phase agreement: 1.) \$250,000 payment to the HCDJLA to purchase new equipment to remain at Kerr County, but owned by the HCDJLA. 2.) A matching grant of the HCDJLA's fund raising events, up to \$250,000.

Bob Reeves and Brian Compton, representing Hill Country Junior Livestock Show, presented information regarding the HCDJLA and their activities.

### **5C. Proposed Project Updates:**

- **Downtown Wi-Fi:** Travis Cochrane, IT Director for the City, outlined three options for Wi-Fi coverage areas downtown. Mr. Early moved to instruct staff to prepare a request for proposal, and advertise for bids for the three options, and report bid results to EIC. Mr. Boyland seconded and it passed 7-0.

- **Golf Course pavilion and parking:** Ms. Ondrias presented the architect design proposal for the pavilion concepts, at an approximate cost of \$271,000, and noted additional costs for re-shoring the retaining wall of the clubhouse next to the proposed pavilion. Ms. Ondrias presented the proposal for improvements to the parking lot at the golf course, at a projected cost of \$337,141. The issue was tabled to later in this meeting.

- **Soccer fields improvements:** Mr. Matthews presented the proposal for improvements to the soccer fields; items 1-8 at an approximate cost of \$477,000; items 9-12 at \$209,000.

### **5D. Review of EIC Funding Agreements for Performance and Clawbacks:** Ms. Wendele stated that there were only two active funding agreements with performance

measures, James Avery and Fox Tank, and there were no current funding agreements with clawbacks. Ms. Wendele stated she would review the Kroc Center agreement for any performance measures.

Mr. Early moved to direct staff to do a quarterly report for the EIC regarding all current funding agreements, and any performance or clawback measures, and how the funding recipient was meeting those requirements. Larry Howard seconded, and the motion passed 7-0.

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

### **6A. Update regarding River Trail Project**

Mr. Matthews reported that work was proceeding on the River Trail project. Package A was one-third completed and planning for the other packages was progressing.

### **6B. Update from the Kerrville Economic Development Corporation (KEDC)**

Mr. Barnett, President of the KEDC, stated they are looking at several new projects, and he would report on the projects in his annual report to the EIC in September. Mr. Barnett introduced Jonas Titas, the new executive director of KEDC.

### **6C. Update regarding "Go" Team activities.**

Ms. Wendele reported that she had no new information.

**6D. Proposal to merge Kerrville Economic Development Corporation (KEDC) and the Kerrville Convention and Visitors Bureau (KCVB).** Mr. Wampler noted there had been some discussion regarding joining KEDC and the KCVB. Mr. Barnett stated he had asked Mr. Titas to research other cities that had joined their EDC and CVB, and that they would report their findings to the EIC and City Council.

## **7. EXECUTIVE SESSION:**

Mr. Boyland moved that the Economic Improvement Corporation go into executive closed session under Section 551.071 (consultation with attorney) and Section 551.087 (deliberation regarding real property); Mr. Cochrane seconded the motion, and it passed 7-0 to discuss the following matters:

### **Sections 551.071 and 551.087:**

- Nature Blinds, LLC's request for funding agreement for business expansion project in the amount of \$730,000.00; and
- Funding request from Hill Country District Junior Livestock Association for improvements to Kerr County Ag Barn.

At 6:30 p.m. the regular meeting recessed and the EIC went into executive closed session at 6:32 p.m. At 7:56 p.m. the executive closed session recessed and the Board returned to open session at 7:56 p.m.

Mr. Wampler announced that no action had been taken in executive closed session.

**5C. Proposed Property Updates:**

Mr. Howard moved to approve the items as follows: Proceed on the golf course pavilion and parking lot proposals, and items 1-8 of the soccer fields improvement project. The installation of Wi-Fi in the downtown area was deferred until after the bids were received and evaluated by staff. Mr. Cochrane seconded the motion and it passed 6-1 with Members Wampler, Howard, Early, Boyland and Rickert voting in favor of the motion, and Ms. Keeble voting against the motion.

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

Nature Blinds LLC: Mr. Howard moved to direct staff to prepare a funding agreement to Nature Blinds, LLC up to \$100,000 per year as a rebate of one-half of the 4B sales tax they generated for the previous year for a seven year period, with a total cap of \$500,000. Ms. Rickert seconded the motion and it passed 6-1 with Members Wampler, Howard, Early, Cochrane, Keeble and Rickert voting in favor of the motion and Member Boyland voting against the motion.

Hill Country District Junior Livestock Association for Improvements to Kerr County Ag Barn: Ms. Rickert moved to direct staff to prepare a funding agreement for improvements to the Kerr County Ag Barn either reimburse or direct pay to the vendor(s) 50% of the actual cost of equipment, defined as those items in the final agreement; subject to the completion and occupancy of the building, up to \$150,000. The EIC would defer Phase II of the HCJLA project to a later date. Mr. Howard seconded the motion, and it passed 7-0.

**9. ADJOURNMENT**

Mr. Boyland moved to adjourn, Mr. Howard seconded the motion, it passed 7-0; the meeting was adjourned at 8:22 p.m.

APPROVED: \_\_\_\_\_, 2012

\_\_\_\_\_  
David Wampler, President

ATTEST:

\_\_\_\_\_  
Cheryl Brown  
Recording Secretary

## **Agenda Item:**

3A. Monthly financials for July 2012. (Erwin)

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

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**SUBJECT:** EIC Financials

**FOR AGENDA OF:** August 27, 2012    **DATE SUBMITTED:** August 15, 2012

**SUBMITTED BY:** Mike Erwin *ME*    **CLEARANCES:**  
Director of Finance

**EXHIBITS:** Monthly Financials

**AGENDA MAILED TO:**

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

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

**PAYMENT TO BE MADE TO:**

**REVIEWED BY THE DIRECTOR OR FINANCE:**

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**SUMMARY STATEMENT**

The City of Kerrville staff will present and update the EIC on a monthly basis as to the status of the EIC's financial position.

**RECOMMENDED ACTION**

Recommend acceptance of the financials.

CITY OF KERRVILLE  
Economic Improvement Corporation  
Sales Tax Improvement Fund

<b>Cash Balance as of July 1, 2012</b>		<b>\$ 2,275,670</b>
Deposits:		
Sales Tax	\$ 210,758	
Interest Revenue	\$ 496	
	\$ 211,254	
Expenses:		
Office Supplies		
Public Notice	\$ -	
Administrative Service Fee	\$ 8,333	
Special Services - Category 1	\$ 50,150	
Special Services - Category 2		
Transfer for Debt Service - 1999	\$ 42,083	
Transfer for Debt Service - 2012	\$ 30,000	
Total Expenses	\$ 130,567	
Revenues Over (Under) Expenditures		\$ 80,688
<b>Ending Cash Balance as of July 31, 2012</b>		<b>\$ 2,356,359</b>
<b>Assigned Fund Balance - Park Improvements</b>		<b>\$ 200,000</b>
<b>Ending Cash Balance Available as of July 31, 2012</b>		<b>\$ 2,156,359</b>

City of Kerrville  
Economic Improvement Corporation  
Sales Tax Improvement Fund - Revenue and Expense Statement  
For the month ending July 31, 2012

	Annual Budget	Current Period	Y-T-D Actual	% of Budget	Budget Balance
<b>BEGINNING CASH BALANCE</b>	\$ 3,148,386	\$ 3,148,386	\$ 3,148,386		
<b>REVENUE:</b>					
Sales and Use Tax	\$ 2,433,897	\$ 210,758	\$ 2,102,836	86.40%	\$ 331,061
Interest	\$ 7,377	\$ 496	\$ 7,282	98.72%	\$ 95
Refund Airport/Kerr County			\$ 76,513		\$ (76,513)
Transfer In			\$ 319,214		\$ (319,214)
<b>TOTAL REVENUE</b>	<b>\$ 2,441,274</b>	<b>\$ 211,254</b>	<b>\$ 2,505,845</b>	<b>102.64%</b>	<b>\$ 331,156</b>

	Annual Budget	Current Period	Y-T-D Actual & Encumbrance	% of Budget	Budget Balance
<b>EXPENDITURES:</b>					
<b>Administrative</b>					
Advertising	\$ 100		\$ 120	-	\$ (20)
Transfer to Debt Service Fund	\$ 595,000	\$ 42,083	\$ 420,833	70.73%	\$ 174,167
Transfer to Debt Service Fund - River Trail		\$ 30,000	\$ 30,000		\$ (30,000)
Economic Development Governing Body	\$ 175,000	\$ -	\$ 175,000	100.00%	\$ -
Annual Disclosure Fee	\$ 3,400		\$ -		\$ 3,400
Administrative Services Fee	\$ 100,000	\$ 8,333	\$ 83,333	83.33%	\$ 16,667
<b>Total Administrative</b>	<b>\$ 873,500</b>	<b>\$ 80,417</b>	<b>\$ 709,287</b>	<b>81.20%</b>	<b>\$ 164,213</b>
<b>Category I - Business Development</b>					
Hill Country Shooting Center			\$ -	100.00%	\$ -
Commercial Improve Pilot Program	\$ 50,000	\$ 50,000	\$ 50,000	100.00%	\$ -
Fox Tank	\$ 600,000		\$ 300,000		\$ 300,000
Downtown Underground Utilities	\$ 300,000				\$ 300,000
USDA			\$ 1,138,436		\$ (1,138,436)
Unspecified	\$ 777,725	\$ 150	\$ 150	0.02%	\$ 777,575
<b>Total Category I</b>	<b>\$ 1,727,725</b>	<b>\$ 50,150</b>	<b>\$ 1,488,586</b>	<b>100.00%</b>	<b>\$ 239,139</b>
<b>Category II - Quality of Life</b>					
Schreiner University Project	\$ -	\$ -			\$ -
Hill Country Home Opportunity Program	\$ -		\$ 100,000	100.00%	\$ (100,000)
River Trail	\$ 250,000	\$ 25,000	\$ 200,000		\$ 50,000
Category II Unspecified	\$ -			0.00%	\$ -
<b>Total Category II</b>	<b>\$ 250,000</b>	<b>\$ 25,000</b>	<b>\$ 300,000</b>	<b>120.00%</b>	<b>\$ (50,000)</b>
<b>Category III - Public Infrastructure</b>					
Harper Hwy Extension	\$ 1,000,000		\$ 1,000,000	100.00%	\$ -
<b>Total Category III</b>	<b>\$ 1,000,000</b>	<b>\$ -</b>	<b>\$ 1,000,000</b>	<b>100.00%</b>	<b>\$ -</b>
<b>Contingency</b>	\$ -				\$ -
<b>TOTAL EXPENDITURES</b>	<b>\$ 3,851,225</b>	<b>\$ 155,567</b>	<b>\$ 3,497,873</b>	<b>90.82%</b>	<b>\$ 353,352</b>
<b>NET REVENUES TO EXPENDITURES</b>	<b>\$ (1,409,950)</b>	<b>\$ 55,688</b>	<b>\$ (992,027)</b>		
<b>ENDING CASH BALANCE: July 31, 2012</b>	<b>Budget</b>		<b>Actual</b>		
	\$ 1,738,435		\$ 2,156,359		

	Pro Forma				
	2012	2013	2014	2015	2016
<b>Beginning Cash Balance</b>	\$ 1,909,950	\$ 500,000	\$ 2,188,596	\$ 4,031,046	\$ 5,935,496
<b>Revenue</b>					
Sales Tax	\$ 2,433,897	\$ 2,458,236	\$ 2,482,818	\$ 2,507,647	\$ 2,532,723
Interest	\$ 7,377	\$ 7,746	\$ 8,133	\$ 8,540	\$ 8,967
<b>Total Revenue</b>	<b>\$ 2,441,275</b>	<b>\$ 2,465,982</b>	<b>\$ 2,490,951</b>	<b>\$ 2,516,186</b>	<b>\$ 2,541,690</b>
<b>Expense</b>					
Special Services	\$ 3,500	\$ 3,500	\$ 3,500	\$ 3,500	\$ 3,500
Promo (ED Gov)	\$ 175,000	\$ -	\$ -	\$ -	\$ 175,000
Administrative Services-City	\$ 100,000	\$ 100,000	\$ 100,000	\$ 100,000	\$ 100,000
Commercial Improvement Program	\$ -	\$ -	\$ -	\$ -	\$ -
Other/Unspecified	\$ 2,977,725	\$ -	\$ -	\$ -	\$ -
Debt Service Transfer	\$ 595,000	\$ 673,886	\$ 545,001	\$ 508,236	\$ 511,386
<b>Total Expenditure</b>	<b>\$ 3,851,225</b>	<b>\$ 777,386</b>	<b>\$ 648,501</b>	<b>\$ 611,736</b>	<b>\$ 789,886</b>
<b>Revenue over Expense</b>	<b>\$ (1,409,950)</b>	<b>\$ 1,688,596</b>	<b>\$ 1,842,450</b>	<b>\$ 1,904,450</b>	<b>\$ 1,751,804</b>
	\$ -				
<b>Ending Cash Balance</b>	<b>\$ 500,000</b>	<b>\$ 2,188,596</b>	<b>\$ 4,031,046</b>	<b>\$ 5,935,496</b>	<b>\$ 7,687,300</b>

CITY OF KERRVILLE  
Economic Improvement Corporation  
Sales Tax Debt Service Fund

<b>Cash Balance as of July 1, 2012</b>		<b>\$ 317,392</b>
Revenues:		
Transfer from Sales Tax Improvements Fund	<u>\$ 42,083</u>	
Total Deposits	\$ 42,083	
Expenses:		
Paying Agent Fee		
Bond Principal		
Bond Interest		
Total Expenses	<u>\$ -</u>	
Revenues Over (Under) Expenditures:		<u>\$ 42,083</u>
<b>Ending Cash Balance as of July 31, 2012</b>		<b><u><u>\$ 359,475</u></u></b>

CITY OF KERRVILLE  
Economic Improvement Corporation  
Sales Tax Debt Service Fund  
Revenue and Expense Statement  
For the month ending July 31, 2012

	Annual Budget	Current Period	Y-T-D Actual	% of Budget	Budget Balance
<b>BEGINNING CASH BALANCE</b>	\$ 416,738		\$ 416,738		
<b>REVENUE:</b>					
Transfer from Sales Tax Improvement Fund	\$ 505,000	\$ 42,083	\$ 420,833	83.33%	\$ 84,167
Return of Equity - Park Lane Extension	\$ -			100.00%	\$ -
<b>TOTAL REVENUE</b>	\$ 505,000	\$ 42,083	\$ 420,833	83.33%	\$ 84,167
	Annual Budget	Current Period	Y-T-D Actual	% of Budget	Budget Balance
<b>EXPENDITURES:</b>					
Series 1999 Sales Tax Bond Debt Service	\$ 445,000	\$ 445,000	\$ 445,000	100%	\$ -
Series 1999 Sales Tax Bond Interest Expense	\$ 54,066	\$ 32,095	\$ 32,095	59%	\$ 21,971
Paying Agent Fees	\$ 1,000	\$ 1,000	\$ 1,000	100%	\$ -
First Southwest Continuing Disclosure Fee	\$ -	\$ -	\$ -	-	\$ -
<b>TOTAL EXPENDITURES</b>	\$ 500,066	\$ 478,095	\$ 478,095	95.61%	\$ 21,971
<b>ENDING CASH BALANCE: July 31, 2012</b>	Budget \$ 421,672		Actual \$ 359,475		

	Pro Forma				
	2012	2013	2014	2015	2016
<b>Beginning Cash Balance</b>	\$ 416,738	\$ 455,949	\$ 541,431	\$ 500,000	\$ 500,000
Revenue					
Transfer from Sales Tax Improvement Fund	\$ 595,000	\$ 673,886	\$ 545,001	\$ 508,236	\$ 511,386
<b>Total Revenue</b>	\$ 595,000	\$ 673,886	\$ 545,001	\$ 508,236	\$ 511,386
Expenditures:					
Series 1999 Sales Tax Bond Debt Principal	\$ 445,000	\$ 465,000	\$ 485,000	\$ -	\$ -
Series 1999 Sales Tax Bond Debt Interest	\$ 54,066	\$ 33,248	\$ 11,276	\$ -	\$ -
Paying Agent Fees	\$ 1,000	\$ 1,000	\$ 1,000	\$ 1,000	\$ 1,000
Series 2011 Sales Tax Bond Debt Principal	\$ -	\$ -	\$ -	\$ 165,000	\$ 170,000
Series 2011 Sales Tax Bond Debt Interest	\$ 55,723	\$ 89,156	\$ 89,156	\$ 87,506	\$ 84,156
Series 2012 Sales Tax Bond Debt Principal	\$ -	\$ -	\$ -	\$ 175,000	\$ 180,000
Series 2012 Sales Tax Bond Debt Interest	\$ 33,442	\$ 79,730	\$ 79,730	\$ 79,730	\$ 76,230
<b>Total Expenditure</b>	\$ 555,789	\$ 588,404	\$ 586,432	\$ 508,236	\$ 511,386
Revenue over expenditures	\$ 39,211	\$ 85,482	\$ (41,431)	\$ (0)	\$ (0)
<b>Ending Cash Balance</b>	\$ 455,949	\$ 541,431	\$ 500,000	\$ 500,000	\$ 500,000

CITY OF KERRVILLE  
 Economic Improvement Corporation  
 SALES TAX REVENUE ANALYSIS

	Actual FY 2009	Actual FY 2010	Actual FY 2011	Approved FY 2012	Actual FY 2012	Difference Projected vs Actual	% of Projected Variance
October	\$ 195,050	\$ 179,735	\$ 184,602	\$ 185,699	\$ 219,934	\$ 34,235	18.44%
November	\$ 218,565	\$ 188,879	\$ 207,677	\$ 210,299	\$ 203,379	\$ (6,920)	-3.29%
December	\$ 202,043	\$ 170,981	\$ 169,550	\$ 186,298	\$ 208,227	\$ 21,929	11.77%
January	\$ 190,881	\$ 170,645	\$ 195,030	\$ 185,731	\$ 204,051	\$ 18,320	9.86%
February	\$ 239,208	\$ 236,837	\$ 241,320	\$ 253,548	\$ 264,744	\$ 11,196	4.42%
March	\$ 200,569	\$ 163,136	\$ 169,754	\$ 180,444	\$ 186,812	\$ 6,368	3.53%
April	\$ 259,861	\$ 160,461	\$ 157,729	\$ 179,456	\$ 185,835	\$ 6,379	3.55%
May	\$ 228,262	\$ 203,235	\$ 234,742	\$ 232,308	\$ 223,320	\$ (8,988)	-3.87%
June	\$ 181,835	\$ 182,429	\$ 186,441	\$ 190,251	\$ 195,775	\$ 5,524	2.90%
July	\$ 183,253	\$ 179,622	\$ 190,696	\$ 191,233	\$ 210,758	\$ 19,525	10.21%
August	\$ 219,318	\$ 221,711	\$ 238,491	\$ 233,705			
September	\$ 189,718	\$ 186,321	\$ 179,133	\$ 204,924			
<b>Total</b>	<b>\$ 2,508,562</b>	<b>\$ 2,243,991</b>	<b>\$ 2,355,166</b>	<b>\$ 2,433,897</b>	<b>\$ 2,102,836</b>	<b>\$ 107,569</b>	<b>5.39%</b>

CITY OF KERRVILLE  
Economic Improvement Corporation  
EIC Capital Projects Fund

<b>Cash Balance as of July 1, 2012</b>		<b>\$ 1,128,719</b>
Revenues:		
Transfer In	\$ 50,000	
Total Revenues/Transfer In	<u>\$ 50,000</u>	
Expenses:		
Services		
Special Services		
Harper Road Utilities - Phase 2		
Hill Country Shooting Cener	<u>\$ -</u>	
Total Expenses	\$ -	
Revenue Over (Under) Expenditures		<u>\$ 50,000</u>
<b>Ending Cash Balance as of July 31, 2012</b>		<b><u><u>\$ 1,178,719</u></u></b>

**CITY OF KEARVILLE**  
**Economic Improvement Corporation**  
**Sales Tax Improvement Capital Projects Fund**  
**Project Status Summary**  
**For the month ending June 30, 2012**

YEAR(S) FUNDED	PROJECTS	Funding Agreement	Agreement Commitment	EIC Funded To Date	Non-EIC Funding	Total Funded	Project Expenses to Date	Project Balance	EIC Future Allocation Balance
2009/10	Hill Country Home Opportunity	FA 2010-02	\$ 250,000	\$ 250,000		\$ 250,000	\$ 236,535	\$ 13,465	-
2009/10	Commercial Improvement Program		\$ 100,000	\$ 100,000		\$ 100,000	\$ 20,000	\$ 80,000	-
2010/11	Commercial Improvement Program		\$ 50,000	\$ 50,000		\$ 100,000	-	\$ 100,000	-
2010/11	Hill Country Shooting Center	FA 2010-03	\$ 494,838	\$ 494,838		\$ 494,838	\$ 489,121	\$ 5,712	-
	Harper Hwy Utility Ext Phase 2		\$ 1,000,000	\$ 1,000,000		\$ 1,000,000	\$ 20,458	\$ 979,542	-
<b>TOTALS</b>			\$ 1,894,838	\$ 1,894,838		\$ 1,944,838	\$ 766,114	\$ 1,178,719	-

Cash Balance on 7/31/2012      \$ 1,178,719

Fund 70 - General Capital Improvement Projects - supported by EIC									
YEAR(S) FUNDED	PROJECTS	Funding Agreement	Agreement Commitment	Total Funded	Project Expenses to Date	Project Balance	EIC Future Allocation Balance		
2011-12	River Trail	C2011-76	\$ 6,000,000	\$ 6,000,000	\$ 9,408	\$ 5,990,592	-		
2011-12	Louise Hays Park Improvements	C2011-76	\$ 2,000,000	\$ 1,149,745	-	\$ 1,149,745	-		
<b>TOTALS</b>			\$ 8,000,000	\$ 7,149,745	\$ 9,408	\$ 7,140,337	-		

FY12	October	November	December	January	February	March	April	May	June	July	August	September	Totals
Beginning Balance	\$3,148,386	\$2,180,026	\$2,158,554	\$2,192,258	\$2,071,522	\$2,011,463	\$1,873,909	\$1,435,522	\$1,903,198	\$2,100,670	\$2,156,441	\$2,290,076	\$3,148,386
Revenue													
Sales Tax	\$219,934	\$203,379	\$208,227	\$204,051	\$264,744	\$186,812	\$185,835	\$223,320	\$195,775	\$210,758	\$238,491	\$179,133	\$2,520,460
Interest	\$586	\$586	\$915	\$650	\$636	\$1,050	\$1,194	\$559	\$608	\$580	\$580	\$580	\$8,525
Closed Projects								\$319,214	\$76,513				\$395,727
sub-total	\$220,521	\$203,965	\$209,142	\$204,701	\$265,380	\$187,863	\$187,029	\$543,093	\$272,896	\$211,338	\$239,071	\$179,713	\$6,073,098
Expenses													
Office Supplies	\$8								\$8				\$16
Services	\$20	\$20	\$22	\$20	\$22					\$150	\$20		\$3,544
Public Notice													
Admin Service Fee	\$8,333	\$8,333	\$8,333	\$8,333	\$8,333	\$8,333	\$8,333	\$8,333	\$8,333	\$8,333	\$8,333	\$8,333	\$100,000
KEDC		\$175,000											\$175,000
Transfer for Debt Service	\$42,083	\$42,083	\$42,083	\$42,083	\$42,083	\$42,083	\$42,083	\$42,083	\$42,083	\$42,083	\$42,083	\$42,083	\$505,000
Transfer for New Debt								\$30,000	\$30,000	\$30,000			\$90,000
Capital Improvement Program									\$50,000				\$50,000
KEDF/USDA Land	\$1,138,436												\$1,138,436
Unspecified Projects												777725	
Business Development													
Quality of Life													
Public Infrastructure													
Downtown Wireless													
Golf Course Pavilion													
Golf Course Parking Lot													
HCDJLS													
Transfer for Trails			\$25,000	\$25,000	\$25,000	\$25,000	\$25,000	\$25,000	\$25,000	\$25,000	\$25,000	\$25,000	\$250,000
ED Set Aside													
Revolving Loan													
Hill Country Home Opportunity Council		\$100,000											\$100,000
Fox Tank							\$300,000						\$300,000
Utility Downtown													\$300,000
Harper Hwy				\$250,000	\$250,000	\$250,000	\$250,000						\$1,000,000
Contingency													
sub-total	\$1,188,880	\$225,436	\$175,439	\$325,436	\$325,439	\$325,417	\$625,417	\$75,417	\$75,425	\$155,567	\$105,437	\$708,687	\$4,311,996
revenue over/(under) expenditures	-\$968,360	-\$21,472	\$33,703	-\$120,735	-\$60,059	-\$137,554	-\$438,387	\$467,677	\$197,472	\$55,771	\$133,634	-\$528,974	
Available Fund Balance	\$2,180,026	\$2,158,554	\$2,192,258	\$2,071,522	\$2,011,463	\$1,873,909	\$1,435,522	\$1,903,198	\$2,100,670	\$2,156,441	\$2,290,076	\$1,761,102	\$1,761,102

FY13	October	November	December	January	February	March	April	May	June	July	August	September	Totals
Beginning Balance	\$1,761,102	\$1,182,763	\$917,497	\$656,894	\$392,274	\$457,824	\$448,393	\$438,023	\$463,718	\$462,911	\$476,520	\$516,811	\$1,761,102
Revenue													
Sales Tax	\$211,605	\$195,676	\$200,340	\$196,323	\$254,717	\$179,737	\$178,797	\$214,862	\$188,361	\$202,776	\$229,459	\$172,348	\$2,520,460
Interest	\$417	\$417	\$417	\$417	\$417	\$417	\$417	\$417	\$417	\$417	\$417	\$417	\$8,525
Closed Projects													\$395,727
sub-total	\$212,021	\$196,093	\$200,757	\$196,739	\$255,134	\$180,154	\$179,213	\$215,279	\$188,777	\$203,192	\$229,875	\$172,765	\$6,073,098
Expenses													
Office Supplies	\$500												\$500
Services	\$3,500												\$3,500
Public Notice													
Admin Service Fee	\$8,333	\$8,333	\$8,333	\$8,333	\$8,333	\$8,333	\$8,333	\$8,333	\$8,333	\$8,333	\$8,333	\$8,333	\$100,000
KEDC	\$175,000												\$175,000
Transfer for Debt Service	\$42,083	\$42,083	\$42,083	\$42,083	\$42,083	\$42,083	\$42,083	\$42,083	\$42,083	\$42,083	\$42,083	\$42,083	\$505,000
Transfer for New Debt	\$14,167	\$14,167	\$14,167	\$14,167	\$14,167	\$14,167	\$14,167	\$14,167	\$14,167	\$14,167	\$14,167	\$14,167	\$90,000
Unspecified Projects													
Business Development	\$94,740	\$94,740	\$94,740	\$94,740									\$373,960
Quality of Life													
Public Infrastructure	\$41,667	\$41,667	\$41,667	\$41,667	\$41,667	\$41,667	\$41,667	\$41,667	\$41,667	\$41,667	\$41,667	\$41,667	\$333,333
Downtown Wireless	\$25,000	\$25,000	\$25,000	\$25,000									\$100,000
Golf Course Pavilion	\$67,750	\$67,750	\$67,750	\$67,750									\$271,000
Golf Course Parking Lot	\$84,285	\$84,285	\$84,285	\$84,285									\$337,140
HCDJLS	\$150,000												\$150,000
Transfer for Trails	\$25,000	\$25,000	\$25,000	\$25,000	\$25,000	\$25,000	\$25,000	\$25,000	\$25,000	\$25,000	\$25,000	\$25,000	\$250,000
ED Set Aside	\$41,667	\$41,667	\$41,667	\$41,667	\$11,667	\$41,667	\$41,667	\$41,667	\$41,667	\$41,667	\$41,667	\$41,667	\$333,333
Revolving Loan	\$16,667	\$16,667	\$16,667	\$16,667	\$16,667	\$16,667	\$16,667	\$16,667	\$16,667	\$16,667	\$16,667	\$16,667	\$133,333
Contingency													
sub-total	\$790,360	\$461,360	\$461,360	\$461,360	\$189,584	\$189,584	\$189,584	\$189,584	\$189,584	\$189,584	\$189,584	\$189,584	\$4,311,996
revenue over/(under) expenditures	-\$578,338	-\$265,267	-\$260,602	-\$264,620	\$65,550	-\$9,430	-\$10,371	\$25,695	-\$807	\$13,608	\$40,291	-\$16,811	
Available Fund Balance	\$1,182,763	\$917,497	\$656,894	\$392,274	\$457,824	\$448,393	\$438,023	\$463,718	\$462,911	\$476,520	\$516,811	\$500,000	\$1,182,763

## **Agenda Item:**

3B. Report on Capital Projects Update (Wendele)

**TO BE CONSIDERED BY THE  
ECOMONIC IMPROVEMENT CORPORATION,  
CITY OF KERRVILLE, TEXAS**

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**SUBJECT:** Capitol Project Update

**FOR AGENDA OF:** August 27, 2012

**DATE SUBMITTED:** August 22, 2012

**SUBMITTED BY:** Mindy N. Wendele    **CLEARANCES:**  
Director of Business Programs

**EXHIBITS:**

**AGENDA MAILED TO:**

**APPROVED FOR SUBMITTAL BY CITY MANAGER:** 

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

**PAYMENT TO BE MADE TO:**

**REVIEWED BY THE FINANCE DIRECTOR:**

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**SUMMARY STATEMENT**

Attached is the August 2012 capital projects update.

**RECOMMENDED ACTION**

# EIC Status Report Harper Highway Utility Extension Phase Two

## SCOPE

- Phase Two Projects consists of the construction of approximately 4,600 linear feet of 12" water main & appurtenances from the North end of Old Harper Road; thence west along the south line of Interstate I-10 R.O.W. to Harper Road (RM 783); thence south along both the east & west side of RM 783 to its intersection with Old Harper Road; thence, east along Old Harper Road to its intersection with Town Creek Road; installation of 12" wastewater main from the North end of Old Harper Road; thence west along the south line of Interstate I-10 R.O.W. to the West side of Harper Road (RM 783); thence south along the west line of RM 783 to a property owned by the Kerrville Bible Church; and installation of 12" wastewater main from the intersection of Old Harper Road and Town Creek Road; thence Southwest along Old Harper Road to the west side of Harper Road (RM 783); thence North along the west line of RM 783 to the property North of the Northpoint Investors, LTD. property. In all, the sanitary sewer for this Phase 2 project includes approximately 3,000 linear feet of wastewater main & appurtenances.

## Status

Construction contract was awarded to Qro Mex Construction at May 22, 2012 City Council meeting. Construction is currently in progress with approximately 930 L.F. of sanitary sewer line complete in place, from Old Harper Road northward toward the TxDOT right of way at Harper Highway. Construction is proceeding well with no issues at this time.

PHASING	Action Item	Schedule (Status)	Task/Issues	Comments/Risks
Easement Acquisition or Property Agreements	6 easements to CoK completed through Legal and executed by property owner	Complete		
	<del>1</del> easement (Howard) in negotiation	Complete		
	Approval from TxDOT for construction approval within Control of Access area in TxDOT right of way received.	Approved	TxDOT final approval of permits	
Misc. Reports/Permits	TxDOT Permits	Approved	General construction permits for construction within TxDOT right of way	
Design	<del>under contract</del> HDR Engineering	Complete		
Construction Drawings	final plans/specs/costs/ documents	completed 4/2012	all project elements	
Bidding/Contracts Construction	Construction contract awarded to Qro Mex Construction 5/22/12 build project /Under Construction	start June 2012; complete Nov. 2012	contract prep	

FUNDING - BUDGET	Allocation	Expended - Encumbered	Balance	Cost Est. for Package	Needed to Complete Package
EIC funding (FA2008-013)	\$1,000,000	\$19,915.06	\$980,084.94	Construction \$580,000 Materials Testing \$38,000	

<b>SCOPE</b>	Project to fund the improvements to buildings in the commercial corridors in a maximum grant amount of 10k. Project guidelines attached.
<b>Amenities</b>	

<b>PHASING</b>	<b>Action Item</b>	<b>Schedule (Status)</b>	<b>Task/Issues</b>	<b>Comments/Risks</b>
Projects	Hewitt Engineering	Completed		
	San Saba Cap Company	Completed		
No applications this month				
<b>FUNDING - BUDGET</b>	<b>Allocation</b>	<b>Expended - Encumbered</b>	<b>Project Balance</b>	
	\$100,000.00	\$20,000.00	\$80,000.00	Funding reallocation is a part of the FY13 budget combining the two fiscal years.

<b>SCOPE</b>	Project to fund the improvements to buildings in the commercial corridors in a maximum grant amount of \$10,000. Project guidelines attached.
<b>Amenities</b>	

<b>PHASING</b>	<b>Action Item</b>	<b>Schedule (Status)</b>	<b>Task/Issues</b>	<b>Comments/Risks</b>
No projects applications				
<b>FUNDING - BUDGET</b>	<b>Allocation</b>	<b>Expended - Encumbered</b>	<b>Project Balance</b>	
	\$50,000.00	\$0	\$50,000.00	Funding reallocation is a part of the FY13 budget combining the two fiscal years.

<b>SCOPE</b>	Hill Country Shooting Center project to complete the Air Hall Shooting Building.
<b>Amenities</b>	Building finishes equipment including the HVAC and water/waste water.

<b>PHASING</b>	<b>Action Item</b>	<b>Schedule (Status)</b>	<b>Task/Issues</b>	<b>Comments/Risks</b>
Building finish out		To be completed summer 2012		Paving complete
				Well completed
<b>FUNDING - BUDGET</b>	<b>Allocation</b>	<b>Expended - Encumbered</b>	<b>Project Balance</b>	
FA 2010-03	\$494,838.00	\$367,422.00	\$90,154.00	Received final invoices; ready for close out. Jack Burch will brief the Board.

<b>SCOPE</b>	Project to fund the engineering, design and infrastructure of Pinto Trail Subdivision – an affordable housing project.
<b>Amenities</b>	Eleven home sites made ready for construction.

<b>PHASING</b>	<b>Action Item</b>	<b>Schedule (Status)</b>	<b>Task/Issues</b>	<b>Comments/Risks</b>
<b>Project</b>	Preliminary Plat	Completed		
	Waivers/Variations	Completed		
	Engineering/Design	Completed		
	Infrastructure Improvements	In process	Final acceptance pending	Water, Wastewater, Private Streets
<b>FUNDING - BUDGET</b>	Final Plat	To be completed after Infrastructure Improvements	Administrative approval	
	<b>Allocation</b>	<b>Expended - Encumbered</b>	<b>Project Balance</b>	
	\$250,000.00	\$236,535.00	\$13,465.00	HCHOC needs to secure a maintenance bond. Once the maintenance bond is obtained, this item will go back on PNZ for final plat.

## **Agenda Item:**

4A. Funding Agreement with Hill Country District Junior Livestock Show Association for a multi-use facility and exhibition center. (Wendele)

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

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**SUBJECT:** Funding agreement with the Hill Country District Junior Livestock Association and the City of Kerrville, Texas Economic Improvement Corporation for the purchase of equipment to be used in Kerr County not to exceed \$150,000.00

**FOR AGENDA OF:** August 27, 2012      **DATE SUBMITTED:** August 22, 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:** 

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

**PAYMENT TO BE MADE TO:**

**REVIEWED BY THE FINANCE DIRECTOR:**

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**SUMMARY STATEMENT**

Officials from the Hill Country District Junior Livestock Show Association (HCDJLA) have submitted an application for funding of \$750,000 for their multi-use facility and exhibition center improvement project. The application is complete and has been reviewed by the 'Go' Team.

The project consists of two phases. Phase one is the building of a 48,000 square foot fully enclosed multi-use building and Phase two will be a 22,000 square foot exhibition center. Their request also includes funding for equipment.

The EIC Board members voted to direct staff to draft a funding agreement for up to \$150,000 to purchase equipment to be used in Kerr County. The EIC funds would be used as a match to an existing grant obtained by HCDJLA.

**RECOMMENDED ACTION**

Approve agreement.

# D R A F T 8/13/12

## ECONOMIC DEVELOPMENT GRANT AGREEMENT BETWEEN HILL COUNTRY DISTRICT JUNIOR LIVESTOCK SHOW ASSOCIATION AND THE CITY OF KERRVILLE, TEXAS ECONOMIC IMPROVEMENT CORPORATION

This Agreement entered into by and between HILL COUNTRY DISTRICT JUNIOR LIVESTOCK SHOW ASSOCIATION, INC., a Texas nonprofit corporation ("HCDJLSA"), acting herein by and through its duly authorized President, Bob Reeves ("HCDJLSA 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, David Wampler.

### WITNESSETH:

**WHEREAS**, EIC was formed to administer a sales and use tax approved by the citizens of Kerrville, Texas, in May 1995 and collected for economic development projects; and

**WHEREAS**, pursuant to the Act, the EIC is authorized to provide funding relating to 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, including:

*Equipment and improvements found by the EIC to be required or suitable for use for professional and amateur sports, including children's sports, athletic, entertainment, tourist, and events, including stadiums, auditoriums, parks and park facilities, exhibition facilities, and related store, restaurant, and concessions and other related improvements that enhance any of the items described by Section 505.152 of the Act;*  
and

**WHEREAS**, HCDJLSA has a current lease with Kerr County that authorizes HCDJLSA to use the Hill Country Youth Exhibition Center ("Exhibition Center") for specific time periods; and

**WHEREAS**, under the lease, which continues through 2032, HCDJLSA has the right to use the Exhibition Center for various purposes, including hosting its annual Hill Country District Junior Livestock Show; and

**WHEREAS**, HCDJLSA is partnering with Kerr County and private foundations in a project to improve and upgrade the Exhibition Center and to add a multi-use facility; and

**WHEREAS**, the project is separated into two phases, with the first phase consisting of the building of a 48,000 square foot fully enclosed metal building; and

# DRAFT 8/13/12

**WHEREAS**, HCDJLSA has applied for a grant from EIC for funding to purchase equipment and amenities for the first phase of the project, to include new pens, arena bleachers, and an announcer's stand; 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 enhance the "quality of life" within the community; and

**WHEREAS**, EIC finds that it will be in the public interest to enter into an agreement with HCDJLSA to provide sales tax revenues collected pursuant to the Act ("4B Revenues") to HCDJLSA for its cost in purchasing equipment and other amenities for placement and use within the Exhibition Center; and

**WHEREAS**, on August 20, 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, HCDJLSA and the EIC agree as follows:

## **ARTICLE I. EIC'S OBLIGATIONS**

- A. EIC hereby grants to HCDJLSA One Hundred Fifty Thousand and No/100 Dollars (\$150,000.00) ("Grant") for costs relating to the purchase of equipment and other amenities (collectively referred to herein as "Equipment") related to the remodeling, reconstruction, and improvements to the Exhibition Center. The specific items approved for purchase by the HCDJLSA are listed on the attachment included as **Exhibit A**.
- B. Subject to the terms and conditions set forth in Article II, the Grant will be provided to HCDJLSA by EIC and EIC shall administer the Grant on a reimbursable basis. Prior to any payment from EIC, HCDJLSA must first submit written evidence of costs, such as invoices, receipts, and bills of sale for review and approval. Following each submission and verification thereof, which may include on-site inspections to confirm purchase and installation, EIC shall then reimburse HCDJLSA for the cost.
- C. Payments made by EIC to HCDJLSA from 4B Revenues will be limited to the payments of "costs" as defined by the Act and as specified above for the Project.

# DRAFT 8/13/12

- D. In no event will the total amount of the Grant exceed One Hundred Fifty Thousand and No/100 Dollars (\$150,000.00).

## ARTICLE II. HCDJLSA'S OBLIGATIONS

- A. HCDJLSA must make its purchases of the equipment on or before January 1, 2013. Failure to make such purchases by this date will terminate the obligation of EIC to make any additional payments of the Grant.
- B. HCDJLSA must maintain ownership of all of the items and equipment purchased with the Grant and must not remove, or allow anyone else to remove, any of the items and equipment from Kerr County.
- C. HCDJLSA must keep and maintain complete and accurate records relating to the costs of the items and equipment, 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.
- D. Following the initial payment from EIC to HCDJLSA, HCDJLSA shall make written quarterly reports to EIC, or before the last day of each calendar quarter. Said reports, at a minimum, must include information on the status of the construction and remodeling project and the estimated opening for public use of the Exhibit Center.
- E. HCDJLSA will only be liable to EIC for the actual amount of the Grant to be conveyed to HCDJLSA and will 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 HCDJLSA under the terms of this Agreement.

## ARTICLE III. SALE OF PROJECT, MERGER OR CONSOLIDATION OF HCDJLSA

- A. A sale of all or any of the assets of HCDJLSA will not release HCDJLSA 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 HCDJLSA's proposed successor shall have the financial condition to fully satisfy HCDJLSA's duties and responsibilities hereunder and agrees to assume HCDJLSA's responsibilities under this Agreement. EIC may, in its sole discretion, reasonably determine whether such proposed successor's financial condition is satisfactory.

# DRAFT 8/13/12

- B. In the event of any proposed merger or other consolidation of HCDJLSA with any third party not affiliated with HCDJLSA, HCDJLSA 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 HCDJLSA's obligations hereunder and (2) the financial condition of the surviving entity upon such merger or other consolidation to demonstrate that the surviving entity has the financial condition to fully satisfy HCDJLSA's duties and responsibilities hereunder. Failure to provide such information may 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 HCDJLSA. In the event of any sale or merger involving HCDJLSA or its affiliates, the surviving entity shall assume HCDJLSA's obligations and rights hereunder and be entitled to any and all benefits to be received pursuant to this Agreement.

## ARTICLE IV. HCDJLSA'S REPRESENTATIONS AND WARRANTIES

- A. HCDJLSA represents and warrants as of the date hereof:
- (1) HCDJLSA is a Texas limited liability company existing in good standing and authorized to do business in the State of Texas;
  - (2) Execution of this Agreement has been duly authorized by HCDJLSA and this Agreement is not in contravention of HCDJLSA's governing authority or any agreement or instrument to which HCDJLSA 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 HCDJLSA Officer, threatened against or affecting HCDJLSA, which may result in a material adverse change in HCDJLSA's business, properties, or operations sufficient to jeopardize HCDJLSA's legal existence or for-profit viability; and
  - (4) No written application, written statement, or correspondence submitted by HCDJLSA to EIC in connection with this Agreement, or in connection with any transaction contemplated hereby, to the knowledge of HCDJLSA 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, HCDJLSA makes no other representation or warranty of any kind in connection with or related to the provisions of this Agreement.

# DRAFT 8/13/12

## 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

- A. Under any of the following conditions EIC may, at its option, after fifteen (15) days written notice to HCDJLSA, suspend its further performance under this Agreement until such time as HCDJLSA shall have cured the condition(s) and so notified EIC, in writing, that the condition(s) have been cured:
- (1) HCDJLSA 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.
  - (2) The appointment of a receiver of HCDJLSA, or of all or any substantial part of the Property, and the failure of such receiver to be discharged within sixty (60) days thereafter.
  - (3) The adjudication of HCDJLSA as bankrupt.

# DRAFT 8/13/12

(4) The filing by HCDJLSA 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.

- B. Should any of these conditions not be cured by HCDJLSA within ninety (90) days, HCDJLSA will be considered to have breached this Agreement and EIC may, at its option, with written notice to HCDJLSA, terminate this Agreement and HCDJLSA shall be obligated to refund the EIC the full amount of any Grant funding received from the EIC.

## 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 party, 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.
- 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 HCDJLSA is not entitled to recover any amounts in excess of the Grant contracted for under this Agreement and that EIC, pursuant to a breach and failure to cure by HCDJLSA in accordance with this Agreement, is entitled to recover attorney fees, collection costs, and any other costs due to its pursuit of repayment and remedies under this Agreement.
- C. Any delay by any party in instituting or prosecuting any actions or proceedings or otherwise asserting its rights will not, so long as the breach or default by another party is continuing, operate as a waiver of such rights or to deprive it of or limit such rights in any way; nor will 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.

# DRAFT 8/13/12

## 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 will 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 will lie in Kerr County, Texas; and this Agreement is 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 must be in writing and will 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:

For EIC  
President – David Wampler  
City of Kerrville, Texas, Economic Improvement Corporation  
800 Junction Highway  
Kerrville, Texas 78028  
Facsimile: (830) 792-3850

*With a copy to:*  
Mindy Wendele

**Exhibit A**  
**List of Equipment**  
for Hill Country District Junior Livestock Association  
As a Part of the Application Dated July 2, 2012

Pens  
Arena Fencing  
Gates  
Bleachers  
Announcers Stand  
Electronic Scales  
Large Fans

<b>TOTAL ESTIMATED EXPENSE:</b>	<b>\$ 294,584.70</b>
<b>EIC CONTRIBUTION TOWARD ESTIMATED EXPENSE:</b>	<b>\$ 150,000.00</b>

## **Agenda Item:**

5A. Consider and approval of Fiscal Year 2013 Budget. (Erwin)

TO BE CONSIDERED BY THE EIC  
CITY OF KERRVILLE, TEXAS

SUBJECT: EIC FY 2013 Budget

FOR AGENDA OF: August 27, 2012    DATE SUBMITTED: August 20, 2012

SUBMITTED BY: Mike Erwin *ME*    CLEARANCES:  
Director of Finance

EXHIBITS: FY 2013 Proposed Budget

AGENDA MAILED TO:

APPROVED FOR SUBMITTAL BY CITY MANAGER: *ME*

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

PAYMENT TO BE MADE TO:

REVIEWED BY THE DIRECTOR OR FINANCE:

SUMMARY STATEMENT

The City of Kerrville staff will present the EIC's FY 2013 Proposed Budget.

RECOMMENDED ACTION

Approval of FY 2013 Proposed Budget.

	FY12		FY13	FY13 Revised After July Meeting	City Revisions	City Revisions	City Revisions	City Revisions	City Revisions	City Revisions
	Annual Budget	Amended Budget	Proposed Budget	Proposed Budget	FY13 Proposed Budget	FY14	FY15	FY16	FY17	FY18
<b>BEGINNING CASH BALANCE</b>	\$3,148,386	\$3,148,386	\$500,000	\$1,741,170	\$1,741,171	\$500,000	\$500,000	\$500,000	\$500,000	\$500,000
USDA Land		-\$1,138,436								
Hill Country Home Opportunity Council		-\$100,000								
<b>Fund Balance</b>	\$3,148,386	\$1,909,950	\$500,000	\$1,761,102	\$1,761,102	\$500,000	\$500,000	\$500,000	\$500,000	\$500,000
<b>REVENUE:</b>										
Sales and Use Tax	\$2,275,000	\$2,433,897	\$2,425,000	\$2,425,000	\$2,425,000	\$2,425,000	\$2,425,000	\$2,425,000	\$2,425,000	\$2,425,000
Interest	\$5,240	\$7,377	\$5,000	\$5,000	\$5,000	\$5,000	\$5,000	\$5,000	\$5,000	\$5,000
Transfer In		\$0								
<b>TOTAL REVENUE</b>	\$2,280,240	\$2,441,275	\$2,430,000	\$2,430,000	\$2,430,000	\$2,430,000	\$2,430,000	\$2,430,000	\$2,430,000	\$2,430,000
<b>EXPENDITURES:</b>										
<b>Administrative</b>										
Advertising/Supplies	\$0	\$100	\$500	\$500	\$500	\$500	\$500	\$500	\$500	\$500
Transfer to Debt Service Fund	\$505,000	\$505,000	\$505,000	\$505,000	\$505,000	\$255,000	\$0	\$0	\$0	\$0
Transfer to General Fund Debt Service		\$90,000	\$170,000	\$170,000	\$170,000	\$170,000	\$512,000	\$512,000	\$512,000	\$512,000
Economic Development Governing Body	\$225,000	\$175,000	\$175,000	\$175,000	\$175,000	\$175,000	\$175,000	\$175,000	\$175,000	\$175,000
Annual Disclosure Fee	\$3,500	\$3,400	\$3,500	\$3,500	\$3,500	\$3,500	\$3,500	\$3,500	\$3,500	\$3,500
Administrative Services Fee	\$100,000	\$100,000	\$100,000	\$100,000	\$100,000	\$100,000	\$100,000	\$100,000	\$100,000	\$100,000
<b>Total Administrative</b>	\$833,500	\$873,500	\$954,000	\$954,000	\$954,000	\$704,000	\$791,000	\$791,000	\$791,000	\$791,000
<b>Category I - Business Development</b>										
Hill Country Shooting Center										
Commercial Improve Pilot Program	\$50,000	\$50,000								
Fox Tank		\$600,000								
Downtown Underground Utilities		\$300,000								
USDA		\$0								
Revolving Loan Fund					\$200,000	\$100,000		\$100,000		
ED Set Aside					\$500,000	\$100,000		\$100,000	\$100,000	\$100,000
Unspecified	\$800,000	\$777,725	\$338,000	\$338,000	\$378,961	\$226,000	\$539,000	\$439,000	\$539,000	\$539,000
<b>Total Category I</b>	\$850,000	\$1,727,725	\$338,000	\$338,000	\$1,078,961	\$426,000	\$639,000	\$639,000	\$639,000	\$639,000
<b>Category II - Quality of Life</b>										
Schreiner University Project	\$0									
Hill Country Home Opportunity Program	\$0									
Trails		\$250,000	\$300,000	\$300,000	\$300,000	\$300,000	\$150,000			
Downtown Wireless				\$100,000	\$100,000					
Golf Course Pavillon				\$271,000	\$271,000					
Golf Course Parking Lot				\$337,141	\$337,141					
Soccer Improvements				\$477,000		\$500,000				
HCDJLS				\$150,000	\$150,000					
Unspecified	\$45,750	\$0					\$350,000	\$500,000	\$500,000	\$500,000
<b>Total Category II</b>	\$45,750	\$250,000	\$300,000	\$1,635,141	\$1,158,141	\$800,000	\$500,000	\$500,000	\$500,000	\$500,000
<b>Category III - Public Infrastructure</b>										
Unspecified			\$338,000	\$338,000	\$500,000	\$500,000	\$500,000	\$500,000	\$500,000	\$500,000
Harper Hwy	\$45,750	\$1,000,000								
<b>Total Category III</b>	\$45,750	\$1,000,000	\$338,000	\$338,000	\$500,000	\$500,000	\$500,000	\$500,000	\$500,000	\$500,000
<b>Contingency</b>	\$500,000	\$0	\$500,000	\$500,000						
<b>TOTAL EXPENDITURES</b>	\$2,275,000	\$3,851,225	\$2,430,000	\$3,765,141	\$3,691,102	\$2,430,000	\$2,430,000	\$2,430,000	\$2,430,000	\$2,430,000
<b>NET REVENUES TO EXPENDITURES</b>	\$5,240	-\$1,409,950	\$0	-\$1,335,141	-\$1,261,102	\$0	\$0	\$0	\$0	\$0
<b>FUND BALANCE</b>	\$3,153,626	\$500,000	\$500,000	\$425,961	\$500,000	\$500,000	\$500,000	\$500,000	\$500,000	\$500,000

## **Agenda Item:**

5B. Consider and approve Administrative Services Contract. (Erwin)

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

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**SUBJECT:** EIC Administrative Services Contract

**FOR AGENDA OF:** August 27, 2012    **DATE SUBMITTED:** August 15, 2012

**SUBMITTED BY:** Mike Erwin *ME*    **CLEARANCES:**  
Director of Finance

**EXHIBITS:** Administrative Services Contract

**AGENDA MAILED TO:**

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

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

**PAYMENT TO BE MADE TO:**

**REVIEWED BY THE DIRECTOR OR FINANCE:**

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**SUMMARY STATEMENT**

The City of Kerrville staff will present the EIC Administrative Services Contract.

**RECOMMENDED ACTION**

Recommend acceptance of the Contract.

**ADMINISTRATIVE SERVICES CONTRACT BETWEEN CITY OF KERRVILLE, TEXAS AND  
CITY OF KERRVILLE, TEXAS ECONOMIC IMPROVEMENT CORPORATION**

THIS CONTRACT is entered into and effective as of the 1st day of October 2012, by and between the City of Kerrville, Texas, ("City") and the City of Kerrville, Texas Economic Improvement Corporation ("EIC") for and in consideration of the following promises and conditions:

**ARTICLE I**  
**SERVICES PROVIDED BY CITY**

City agrees to provide the following services to the EIC subject to the limitations and conditions set forth below:

1. Engineering and Project Management Services: City agrees to provide engineering services, including, but not limited to, design, bid, and construction phases for EIC projects; provided, however, for projects which will require an expenditure of more than \$25,000.00 for construction, specialized engineering services and administration, or supervision and/or coordination of contracts between the EIC and consulting engineers, prior approval of the City Manager shall be required before commencement of such services. City further agrees to provide the necessary labor and overhead to conduct project management services for all projects, which are authorized by the EIC to be funded in whole or in part by sales tax revenues generated pursuant to the authority of Chapters 501, 502, and 505 of the Texas Local Government Code, as amended.
2. Legal Services: City agrees the City Attorney will be the legal advisor of, and attorney for, the EIC, which representation will include review of documents, contracts, and other instruments as to form and legality, and conduct of legal research and, if requested, issuance of legal memoranda or opinions. In the provision of legal services by the City Attorney, the City Attorney shall provide such services only if the provision of legal services to the EIC does not unreasonably impair his ability to provide legal services to the City. Furthermore, in the event the City Attorney determines that a legal or ethical conflict exists between the City and the EIC, the EIC agrees that the City Attorney may continue to represent the City on such matter notwithstanding such conflict provided the City Attorney has made reasonable disclosure of the conflict to the president of the EIC. Notwithstanding this paragraph, EIC shall at all times retain the right to hire counsel of its own choice at EIC expense.
3. Financial Services: City agrees to provide accounting AND banking and investment services, including, but not limited to, accounts receivable, accounts payable, investments, record keeping, and financial reporting and AN audit OF all funds. THE CITY WILL PROVIDE A REPORT AT EACH REGULAR MONTHLY MEETING OF THE EIC, SUCH REPORT TO include a statement of revenues and expenditures for all funds and a cash flow analysis on a form approved by the EIC.
4. Administrative Services: City agrees to provide the services of the City Manager TO INCLUDE secretarial and other clerical services, including, taking minutes and preparation of resolutions and correspondence related to the operation of the EIC. The City Manager or designee WILL engage with the EIC in a manner comparable to the role identified BY ARTICLE/SECTION \_\_\_\_ OF the City Charter.
5. Investment Officer: The City's DIRECTOR OF FINANCE WILL serve as the EIC's investment officer in accordance with the EIC'S Investment Policy, SAID POLICY PREVIOUSLY APPROVED BY THE EIC.

6. Regulatory FINANCIAL Reporting: The CITY'S Director of Finance SHALL PREPARE all FINANCIAL reports required by state and federal regulatory agencies.
7. Annual Audit: The CITY'S Director of Finance shall INCLUDE THE EIC'S financial information AS part of the CITY'S Comprehensive Annual Financial Report (CAFR).
8. Project Reports: The City Manager or designee shall PROVIDE a report AT EACH REGULAR MONTHLY MEETING OF THE EIC on all ONGOING projects which ARE SUBJECT TO A funding agreement WITH THE EIC. THESE reports shall include but ARE not limited to, verification that performance criteria ARE BEING met, status of each project, and estimated completion of each project.
9. Staff Reports: The City Manager or designee shall PREPARE A REPORT ON EACH APPLICATION FOR EIC FUNDS, SUCH REPORT to include but IS not limited to, the following information:
  - a. Complete Application
  - b. Financial Impact Analysis
    - i. Total Payroll
    - ii. Payroll Multiplier
    - iii. Sales and Tax (SALES AND AD VALOREM) Generation
  - c. Return on Investment Analysis
    - i. Property Tax – City, County and KISD
    - ii. Sales tax – City, County and KISD
    - iii. Payroll Multiplier
    - iv. Timeline by which return is realized
  - d. Feasibility Analysis
    - i. Land – Size, Zoning, Platting, BUILDING/FIRE CODES
    - ii. Building – Size, Building, Condition
    - iii. Infrastructure – Water, Wastewater, Streets, Drainage, Electricity, Public Safety
10. Prospect Support Services: The City Manager or designee shall ensure that the following support services AS PROVIDED BY CITY STAFF are provided to the EIC in the review and processing of applications FOR EIC FUNDS:
  - a. Receive applications
  - b. Evaluate applications for completeness
  - c. Determine eligibility
  - d. Facilitate submission before the EIC
  - e. Provide technical evaluation pursuant to SECTION 9, ABOVE
  - f. Provide recommendations to the Board
  - g. Coordinate with other aligned agencies/entities
  - h. Identify appropriate incentives and programs

**ARTICLE II**  
**COMPENSATION**

In consideration of the provision by City to EIC of the services described in Article I, above, EIC agrees to pay to City the sum of \$100,000.00. It is agreed by the parties hereto that the compensation described in this Article II is equal to the reasonable value of the services anticipated to be provided by City

to the EIC. City shall deduct the payment required hereunder upon receipt of said sales tax revenues from the Comptroller of Public Accounts for the State of Texas.

**ARTICLE III**  
**TERM**

The Term of this Contract shall commence on October 1, 2012, and end on September 30, 2013, subject to earlier termination as herein provided, and extension by agreement of the parties hereto.

**ARTICLE IV**  
**TERMINATION**

This Contract may be terminated by the City or EIC for any reason, with or without cause, not earlier than thirty (30) days prior to delivery to the non-terminating party of a written notice of termination. EIC agrees to pay City the reasonable cost of services rendered by City up to the date of termination.

**ARTICLE V**  
**GOVERNING LAW**

This Contract shall be governed by and construed in accordance with the laws of the State of Texas.

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

CITY OF KERRVILLE, TEXAS

CITY OF KERRVILLE, TEXAS ECONOMIC  
IMPROVEMENT CORPORATION

By: \_\_\_\_\_  
Jeffrey Todd Parton, City Manager

By: \_\_\_\_\_  
David Wampler, President

ATTEST:

ATTEST:

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

\_\_\_\_\_  
Rex Boyland, Secretary-Treasurer

APPROVED AS TO FORM:

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

popular vote under the provisions of this Article may be repealed or amended at any time in response to a referendum petition or by submission as provided by Section 5.16 below.

**Section 5.16. Voluntary Submission of Legislation by the City Council.**

The City Council, upon its own motion and by the affirmative vote of a majority of the full membership of the Council, may submit to popular vote at an election for adoption or rejection any proposed ordinance or resolution or measure, or may submit for repeal any existing ordinance, or resolution, or measure, in the same manner and with the same force and effect as provided in this Article for submission of initiative and referendum petitions, and may, at its discretion, call for an election for this purpose on an authorized uniform election date as provided by state law.

**Section 5.17. Publicity for Ordinances Submitted to Voters.**

The City Secretary, at least fifteen (15) days before any election at which any ordinance is to be submitted to the voters, shall have printed in a newspaper of general circulation published in the City the caption of all ordinances submitted. The full text of all ordinances shall be made available for public review in the office of the City Secretary, at the City's library, and linked on the City's website. The text of every ordinance shall also be displayed at the polling place in such election; but the validity of an ordinance approved by the electors shall not be questioned because of errors or irregularities in publication or display.

**ARTICLE VI. ADMINISTRATIVE SERVICE**

**Section 6.01. City Manager.**

The Council shall appoint an officer whose title shall be City Manager and who shall be chief executive and the head of the administrative branch of the City government. By letter filed with the City Secretary, the Manager shall designate, subject to approval of the Council, a qualified City administrative officer to exercise the powers and perform the duties of manager during periods of his temporary absence or disability. The Council may annul such designation at any time and appoint another officer for the City to serve until the Manager shall return from his absence or until his disability shall cease. The Manager shall receive such compensation as may be fixed by the City Council.

**Section 6.02. Qualifications.**

The City Manager shall be chosen by the Council solely on the basis of his executive and administrative qualifications with special reference to his actual experience in, or his knowledge of, accepted practice in respect to the duties of his office as hereinafter outlined. At the time of his appointment, he need not be a resident of the City or state, but during his tenure of office he shall reside within the City. No person elected to membership on the Council shall, subsequent to such election, be eligible for appointment as City Manager until one year has elapsed following the expiration of the term for which he was elected.

### **Section 6.03. Term and Removal.**

The City Manager shall hold his office subject to the provisions set forth below, at the will and pleasure of the City Council. A majority of the members of the City Council may remove the City Manager, except that no City Manager who has been in the service of the City for more than one year prior to a regular City election shall be removed within sixty (60) days subsequent to such election except by a four-fifths vote of the members of the City Council. If removed at any time after he has served six months, the City Manager may demand a hearing at a public meeting of the City Council prior to the date on which his final removal shall take effect, but pending and during such hearing the City Council may suspend him from office. The action of the City Council in suspending or removing the City Manager shall be final, since it is the intention of this Charter to vest all authority and fix all responsibility for any such suspension or removal wholly in the City Council.

### **Section 6.04. General Powers and Duties of the Manager.**

The City Manager shall be the chief executive officer of the City, responsible to the Council for the management of all City affairs placed in the manager's charge by or under this Charter. The City Manager shall:

- a. Appoint and suspend or remove all City employees and appointive administrative officers provided for by or under this Charter, except as otherwise provided by law or this Charter. The City Manager may authorize any administrative officer subject to the manager's direction and supervision to exercise these powers with respect to subordinates in that officer's department, office, or agency;
- b. Direct and supervise the administration of all departments, offices and agencies of the City, except as otherwise provided by this Charter or by law;
- c. Attend all City Council meetings. The City Manager shall have the right to take part in discussion but shall not vote;
- d. See that all laws, provisions of this Charter and acts of the City Council, subject to enforcement by the City Manager or by officers subject to the manager's direction and supervision, are faithfully executed;
- e. Prepare and submit the annual budget and capital program to the City Council, and implement the final budget approved by Council to achieve the goals of the City;
- f. Submit to the City Council and make available to the public a complete report on the finances and administrative activities of the City as of the end of each fiscal year;
- g. Make such other reports as the City Council may require concerning operations;

- h. Keep the City Council fully advised as to the financial condition and future needs of the City;
- i. Make recommendations to the City Council concerning the affairs of the City and facilitate the work of the City Council in developing policy;
- j. Provide staff support services for the Mayor and Councilmembers;
- k. Assist the Council to develop long-term goals for the City and strategies to implement these goals;
- l. Encourage and provide staff support for regional and intergovernmental cooperation;
- m. Promote partnerships among Council, staff, and citizens in developing public policy and building a sense of community; and
- n. Perform such other duties as are specified in this Charter or may be required by the City Council.

**Section 6.05. Council not to Interfere in Appointments or Removals.**

Neither the Council nor any of its committees or members shall direct or request the appointment of any person to, or his removal from, office by the City Manager or any of his subordinates; or, except as is or may be otherwise provided under the terms of this Charter, in any manner take part in the appointment or removal of officers and employees in the administrative service of the City. Except for the purpose of inquiry, the Council and its members shall deal with the administrative service solely through the Manager, and neither the Council nor any member thereof shall give orders to any subordinate of the City Manager either publicly or privately. Any violation of the provisions of this section by a member of the Council shall subject him to whatever discipline the remaining members of the Council may under the terms of Section 3.04 see fit to impose upon him.

**Section 6.06. Right of Manager and Other Officers in Council.**

The City Manager, and such department heads and other officers of the City may be designated by vote of the Council, shall be entitled to seats in the Council except at executive meetings, but shall have no vote therein. The Manager shall have the right to take part in the discussion of all matters coming before the Council, and such department heads and other officers who by designation of the Council are entitled to seats in the Council, shall be entitled to take part in all discussions of the Council relating to their respective departments and offices.

### **Section 6.07. Administrative Departments.**

The City Manager shall have the responsibility to organize the various departments within the City as may be needed to fulfill the requirements and needs of the City, subject to the approval of the City Council.

### **Section 6.08. Investigations by Council or Manager.**

The Council or the Manager shall have power to inquire into the conduct of any department, office or officer of the City, and to make investigations as to municipal affairs, and for that purpose only, the Council or the Manager may subpoena witnesses, administer oaths, and compel the production of books, papers, and other evidence, and it shall be the duty of the City Manager to designate a police officer to serve such subpoena.

## **ARTICLE VII. CITY ATTORNEY**

### **Section 7.01. City Attorney-Qualifications.**

The City Council shall appoint a City Attorney from recommendations of the City Manager, or by any member of the City Council. The City Attorney shall receive for his services such compensation as may be determined by the City Council.

The City Attorney shall be in charge of all legal questions as may arise within the City, or by members of the City Council. The City Attorney shall be a qualified attorney who is duly licensed to practice law in the State of Texas. The City Attorney shall be the chief legal advisor of and attorney for the City and all departments and officers thereof in matters relating to their official powers and duties. It shall be the City Attorney's duty either personally or by such assistants as the City Attorney may delegate, to perform all services incident to the legal matters of the City. The City Attorney will attend such City Council meetings as needed when requested; to give advice in writing when so requested by the Council or City Manager, or by a department head when needed to clarify positions or actions. The City Attorney will act as legal counsel, or defend or prosecute as the case may be, all offenses against the law as defined by ordinances, or other laws of the City or state, as may be required. The City Attorney will review all contracts, bonds and other instruments in writing in which the City is concerned, and endorse on each his approval of the form and correctness thereof, and perform such other duties of a legal nature as maybe determined by the City Council. In addition to the duties imposed upon the City Attorney by this Charter or required of the City Attorney by ordinance or resolution of the City Council, the City Attorney shall perform any duties imposed upon the legal officers of the Municipal Court when or if needed. The City Attorney shall have authority to appoint one or more assistants, subject to approval of the City Council. The performance of the City Attorney and assistants shall be reviewed annually by the City Council, and their reappointment or dismissal shall be made at that time. The City Attorney and his assistants, may be removed at any time by majority vote of the City Council. Notwithstanding the above provisions, the City Council may engage special legal counsel to represent the City of Kerrville in any specific matter or for the

## **Agenda Item:**

5C. Consider and approve a contract between the Economic Improvement Corporation and the Kerrville Economic Development Corporation. (Parton)



**ECONOMIC DEVELOPMENT GRANT AGREEMENT BETWEEN KERRVILLE  
ECONOMIC DEVELOPMENT CORPORATION (KEDC) AND THE CITY OF  
KERRVILLE, TEXAS ECONOMIC IMPROVEMENT CORPORATION**

This Agreement entered into by and between **KERRVILLE ECONOMIC DEVELOPMENT CORPORATION** ("KEDC"), a Texas nonprofit corporation, acting herein by and through its duly authorized officer, Don Barnett ("KEDC President"), 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**, the EIC was formed to administer the sales and use tax approved by the citizens of Kerrville, Texas, in May 1995 and collected for projects to enhance economic development and/or the quality of life within the Kerrville area; and

**WHEREAS**, pursuant to the Act, the EIC is authorized to provide funding for promotional expenses, such expenses which are used to advertise or publicize the City for the purpose of developing new and expanded business enterprises; and

**WHEREAS**, KEDC is a private entity whose purpose is to support and promote the retention, expansion, and attraction of business entities in Kerr County in a manner that complements the efforts of its economic development partners and enhances the quality of life for residents of Kerrville and surrounding areas; and

**WHEREAS**, KEDC has applied for funding from the EIC for marketing to expand and increase its efforts toward the promotion of economic development in the Kerrville area; and

**WHEREAS**, the EIC finds that the formation of the KEDC was intended to promote and develop new or expanded business enterprises and to foster the creation or retention of "primary jobs," as that term is defined by the Act; and

**WHEREAS**, Section 505.102 of the Act provides that a Type B corporation may contract with another private corporation to (1) carry out an industrial development program or objective; or (2) assist with the development or operation of an economic development program or objective consistent with the purposes and duties specified by the Act; and

**WHEREAS**, pursuant to Section 505.103 of the Act, the EIC is limited to spending not more than 10 percent of its current annual revenues for promotional expenses in any given year; 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 enhance business development and/or the "quality of life" within the community; and

*Funding Agreement  
2012-02*

**WHEREAS**, EIC finds that it will be in the public interest to enter into an agreement with KEDC to provide sales tax revenues collected pursuant to the Act ("4B Revenues") to KEDC for costs related to marketing expenses for economic development; and

**WHEREAS**, on July 18, 2011, 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, KEDC and EIC agree as follows:

**ARTICLE I.  
EIC'S OBLIGATIONS**

- A. The EIC hereby grants One Hundred Seventy-Five Thousand and No/100 Dollars (\$175,000.00) ("Grant") to KEDC for KEDC's costs directly related to: i) carrying out an industrial development program or objective; and/or, ii) assisting with the development or operation of an economic development program or objective consistent with the purposes and duties specified by the Act as proposed by KEDC. Such activities are collectively referred to herein as "Economic Development."
- B. In no event shall the total amount of the Grant exceed One Hundred Seventy-Five Thousand and No/100 Dollars (\$175,000.00).
- C. KEDC specifically agrees that EIC shall only be liable to KEDC for the actual amount of the Grant to be conveyed to KEDC and shall not be liable to KEDC for any other actual or consequential damages, direct or indirect, interest, attorney fees, or costs of court for any act of default by EIC under the terms of this Agreement.

**ARTICLE II.  
KEDC'S OBLIGATIONS**

- A. Pursuant to the purposes for which the Grant was awarded and in strict accordance with Section 505.102 of the Texas Local Government Code, KEDC shall use the Grant for only those costs directly resulting from its Economic Development. Toward this end, KEDC will conduct Economic Development pursuant to its adopted "mission" and "objectives" as specified in **Exhibit A**. In addition, in fulfilling its obligations under this Agreement, KEDC shall comply fully with its "Performance Measures" pursuant to the document of the same name and dated July 29, 2010. KEDC may not change its mission, objectives, or Performance Measures without providing prior written notice to EIC.
- B. KEDC shall hire and employ sufficient professional personnel to perform its Economic Development obligations, including but not limited to, a Director of Development ("Director").
- C. KEDC shall maintain complete and accurate records relating to the costs and expenditures made for Economic Development as specified in **Exhibit A**. KEDC shall maintain such

records separate and identifiable from its other records and 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.

- D. KEDC, either through its Director or another representative, must appear at each regular meeting of the EIC or make a presentation regarding its Economic Development pursuant to a regularly posted agenda item, which may include meeting with the EIC in executive session pursuant to II.E., below. Where appropriate, the Director or KEDC representative will provide written documentation to support the presentation. The regular meeting is scheduled for the third Monday of each month and where neither the Director nor KEDC's representative is able to attend this meeting, the Director must provide prior, written notice to the EIC of this absence.
- E. KEDC understands that the EIC may, in accordance with state law, vote to deliberate certain matters in executive session including, but not limited to: i) where the public discussion of the subject would have a detrimental effect on the EIC's negotiating position; ii) where the subject concerns commercial or financial information that the EIC has received from a business prospect that the EIC is seeking to have locate, stay, or expand within the Kerrville area and with which the EIC is conducting economic development negotiations; and/or iii) to deliberate the offer of a financial or other incentive to a business prospect. Toward this end and with an understanding of KEDC's performance of its Economic Development obligations, the EIC may believe that the presence of the Director in executive session is necessary for deliberation and that the Director's interest is not adverse to the EIC's interests. However, at any time where the Director believes that his interests may be adverse to the EIC's interests, the Director will immediately notify the EIC of this issue, the specifics thereof, and will not take part in the executive session.
- F. KEDC shall only be liable to EIC for the actual amount of the Grant to be conveyed to KEDC 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 KEDC under the terms of this Agreement.

**ARTICLE III.  
KEDC'S REPRESENTATIONS AND WARRANTIES**

- A. KEDC represents and warrants as of the date hereof:
  - (1) KEDC is a Texas nonprofit 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 KEDC and this Agreement is not in contravention of KEDC's corporate charter, or any agreement or instrument to which KEDC 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 KEDC Officer, threatened against or affecting KEDC, which may result in a material

adverse change in KEDC's business, properties or operations sufficient to jeopardize KEDC's legal existence; and

- (4) No written application, written statement or correspondence delivered by KEDC to EIC in connection with this Agreement, or in connection with any transaction contemplated hereby, to the knowledge of KEDC 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, KEDC makes no other representation or warranty of any kind in connection with or related to the provisions of this Agreement.

**ARTICLE IV.  
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 V.  
MAJOR FORCES PREVENTING KEDC FROM CARRYING  
OUT ITS OBLIGATIONS UNDER THIS AGREEMENT**

If, by reason of force majeure, such as fire, flood, windstorm, drought, or other act of God, act of war, act of terrorism, labor strike, or economic downturn affecting KEDC, KEDC is reasonably unable to fulfill its obligations under this Agreement, KEDC shall use reasonable and diligent efforts to rectify the situation to allow it to perform its obligations specified herein with all due haste. In the event that the situation cannot be rectified within six (6) months after the occurrence of the force majeure, either party may terminate this Agreement by providing thirty (30) days advance written notice to the other without further liability hereunder. To the extent that KEDC

has not expended funds from the Grant, KEDC shall immediately, but in any event within ten (10) days, return such funding to the EIC.

**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 KEDC, suspend its further performance under this Agreement until such time as KEDC shall have cured the condition(s) and so notified EIC, in writing, that the condition(s) have been cured:

- A. The KEDC 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 KEDC, or of all or any substantial part of its property, and the failure of such receiver to be discharged within sixty (60) days thereafter.
- C. The adjudication of KEDC as bankrupt.
- D. The filing by KEDC 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 KEDC within a period of three (3) months EIC may, at its option, with written notice to KEDC, terminate this Agreement and the KEDC 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 VIII, the non-breaching party shall have the sole right and discretion to either terminate this Agreement 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 and that no party hereunder shall be liable to the other party for any other actual or consequential damages for any act of default by such party under the terms of 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. EIC

President  
City of Kerrville, Texas, Economic Improvement Corporation  
800 Junction Highway  
Kerrville, Texas 78028  
Facsimile: (830) 792-3850  
*With a copy to:*  
Director of Business Programs  
City of Kerrville  
800 Junction Highways  
Kerrville, Texas 78028  
Facsimile: (830) 792-3850

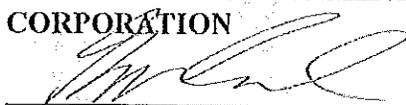
2. KEDC  
1700 Sydney Baker South  
Kerrville, Texas 78028  
Facsimile: (830) 995-2169

- E. Assignment. This Agreement shall be binding upon the parties hereto and their successors and assigns. 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. KEDC may, without written consent of EIC, assign this Agreement to any entity controlled and 100 percent owned by KEDC or by the parent, subsidiary or affiliate of KEDC provided the entity assumes all of KEDC'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 KEDC and KEDC 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 KEDC or EIC to any claim, cause of action, remedy or right of any kind except as expressly provided in Article III.
- G. Term. The term of this Agreement (the "Term") shall commence on March 20, 2012 (the "Effective Date"), and shall terminate on the earlier of: (i) September 30, 2012, or when the requirements set forth in this Agreement are completed; (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 KEDC's sole and absolute discretion, upon KEDC's return of all Grant funding to EIC that it has received under this Agreement; or, (vi) upon KEDC's repayment of all monies that are demanded by EIC. 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.

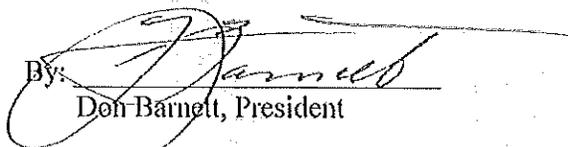
- H. Interpretation. Each party has had the opportunity to be represented by counsel of its choice in negotiating this Agreement. This Agreement shall therefore be deemed to have been negotiated and prepared at the joint request, direction, and construction of the parties, at arms length, with the advice and participation of counsel, and will be interpreted in accordance with its terms without favor to any party.
- I. Indemnity. IT IS UNDERSTOOD AND AGREED BETWEEN THE PARTIES THAT KEDC, IN PERFORMING ITS OBLIGATIONS HEREUNDER, IS ACTING INDEPENDENTLY, AND EIC ASSUMES NO RESPONSIBILITY OR LIABILITY IN CONNECTION THEREWITH TO KEDC. KEDC AGREES TO INDEMNIFY AND HOLD HARMLESS EIC, ITS OFFICERS AND AGENTS, AGAINST ANY AND ALL CLAIMS, LAWSUITS, JUDGMENTS, COSTS AND EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE OR OTHER HARM FOR WHICH RECOVERY OF DAMAGES IS SOUGHT, SUFFERED BY ANY PERSON OR PERSONS THAT MAY ARISE OUT OF OR BE OCCASIONED BY KEDC'S BREACH OF ANY OF THE TERMS OR PROVISIONS OF THIS AGREEMENT OR BY ANY NEGLIGENT ACT OR OMISSION OF KEDC, ITS OFFICER, AGENTS, ASSOCIATES OR EMPLOYEES, IN THE PERFORMANCE OF THIS AGREEMENT; AND NOTHING HEREIN SHALL BE CONSTRUED AS A WAIVER OF ANY GOVERNMENTAL IMMUNITY AVAILABLE TO EIC UNDER TEXAS LAW.
- J. No Joint Venture. Nothing contained in this Agreement is intended by the parties to create a partnership or joint venture between the parties.
- K. Survival of Terms. All rights, duties, liabilities and obligations accrued prior to termination shall survive termination.
- L. 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 Kerrville Economic Development Corporation, acting through its duly authorized official.

CITY OF KERRVILLE, TEXAS  
ECONOMIC IMPROVEMENT  
CORPORATION

  
Gregg Appel, President

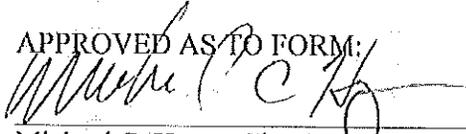
KERRVILLE ECONOMIC  
DEVELOPMENT CORPORATION

By:   
Don Barnett, President

ATTEST:

  
Rex Boyland, Secretary to the Corporation

APPROVED AS TO FORM:



Michael C. Hayes, City Attorney

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## EXHIBIT A

### MISSION

Provide a comprehensive economic development strategy that generates significant and sustainable value for residents of Kerr County. By coordinating the efforts of the County and the municipalities, the regional economy can grow by retaining and expanding existing employers and by relocating new employers to Kerr County, through creating "A Natural Environment for Business."

### OBJECTIVES

- Leverage County/Municipal resources and financial position to support job creation and retention through the efforts of highly experienced staff.
- Expand the capacity of Ken County to compete with other regions by developing programs/initiatives that support the growth and development of the private sector, including Business Retention and Expansion.
- Develop and implement a comprehensive marketing/communication strategy aimed at branding and positioning the county as one of America's best places to do business.
- Facilitate the development of economic development projects by structuring deals that fully leverage public investment (land, bonds, grants) with private capital, and yield a reasonable return on investment (tax base, job creation, and business creation) to local taxpayers over the long term.
- Function as the central point of communication for job development, retention and expansion progress and strategy among local municipalities, regional economic development, civic and non-profit community organizations.

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

5D. Provide an update on the quality of life projects for the Golf Course, Soccer improvements, downtown wireless and discuss the Economic Development Strategy.(Parton)



Of specific interest to the City Council is how these projects fit within the economic objectives of the community as well as taking the time to determine how funding them will affect the 4B cash flow. These projects are being evaluated within the context of the Economic Development Strategy that was adopted in 2011. Construction of the river trail, improvements to Louise Hays Park and the extension of water and wastewater utilities along Harper Highway were key components of the Economic Development Strategy's initial phases. A copy of the Economic Development Strategy is attached to this report.

Another priority project specified within the Economic Development Strategy is downtown streetscape enhancements. Kerrville's Main Street Board has been discussing this project and is expected to forward its recommendations to the City Council within the next 60 days. Peter Lewis Architects has prepared a proposal to conduct the planning and design work for this project. The proposal provides for a planning process that includes the EIC Board. The planning document would include a capital plan to implement the project in phases. A draft copy of the proposal is attached.

Major elements of the Economic Development Strategic plan that are being implemented are:

1. River trail construction,
2. Louise Hays Park improvements,
3. Harper Highway utility construction,
4. Downtown streetscape planning,
5. Incentive package for a hotel/conference center,
6. Completion of a psychographic analysis to identify appropriate retail market segments,
7. Creation of new community events (Kerrville's 4<sup>th</sup> on the River, Shakespeare in the Park, Kerr Fest), and
8. Wayfinding signage.

If approved, EIC's draft budget will implement additional elements of the Economic Development Strategy:

1. Revolving loan fund to assist with expansion of local business,
2. Economic development war chest to provide case contributions for business recruitment and expansion, and
3. Funds to assist with additional quality of life projects to enhance Kerrville's quality of place, and
4. Funds to assist with additional capital improvements to create excess capacity for commercial growth.

#### **RECOMMENDED ACTION**

City staff recommends that the EIC Board and the City Council schedule routine workshops to identify and prioritize matters of mutual interest.

**Exhibit 1**

**Economic Development Strategy**



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

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**Economic Development Strategy**  
**FINAL - 3/18/2011**

This document outlines a comprehensive vision to provide guidance for the near-term utilization of 4B Economic Development Sales Tax resources. 4B funds provide a stable source of economic development capital that may be employed for both short-term and long-term programming and initiatives. In order that these funds are used to the maximum benefit and desire of the community it is important to understand both the comprehensive vision established by the citizens and the markets/industries that are appropriate for Kerrville and Kerr County.

The use of 4B funds for near-term projects is proposed within the context of a long-term strategy that employs the use of multiple funding resources and the coordinated efforts of the community's economic development partners. Allocating resources, especially to fund capital improvements, must be made in a manner that invests Kerrville's limited resources in a way that ensures the community achieves its vision.

Kerrville has engaged in significant efforts to refine its vision and prepare an implementation plan over the past several years. The tangible results of these efforts are the Kerrville Comprehensive Plan, Kerrville Water and Wastewater Master Plan, and the Kerrville/Kerr County Economic Development Strategic Plan. These three documents provide the foundation by which the City Council contemplates the allocation and utilization of the community's financial resources including the use of 4B funds. In fact, the City Council has created a set of goals that are evaluated annually as they initiate the budget process in an effort to ensure that incremental annual decisions remain consistent with the long-term view of the community.

This document contains several exhibits. These exhibits include excerpts from portions of the Kerrville Comprehensive Plan and the Kerrville/Kerr County Economic Development Strategic Plan 2008 that pertain to community development in addition to the Kerrville City Council Goals and the Kerrville 5-Year Capital Improvements Program.

**FOUNDATION FOR THE ECONOMIC DEVELOPMENT STRATEGY**

The ultimate objective is to achieve Kerrville's official vision pursuant to official planning documents adopted by the Kerrville City Council. Contained in the Kerrville Comprehensive Plan is the following vision statement:

***Kerrville, the Heart of the Texas Hill Country, preserves its unique environment and natural resources while promoting economic growth, quality of life and opportunities for all residents.***

By recognizing this vision statement and reviewing the common themes within the planning documents several strategic components have been established – Scope of Place, Quality of Place, and

Core Infrastructure. These three components combine to define the community in a very real way and to establish a functional means by which to realize the community vision.

## SCOPE OF PLACE

The scope of place is a functional vision of the community that contemplates a practical application of the community's stated goals and objectives. It contemplates how the community would actually function and the types and intensities of uses and activities that would be appropriate to Kerrville. The official goal and policy statements of the City provide the basis for discerning Kerrville's "scope of place."

Three primary themes emerge that establish the "scope of place." These common themes are the Guadalupe River, the natural environment, and the quaintness/small town atmosphere of the community. When considered in tandem, these three factors clearly delineate the type of city that Kerrville's citizens expect. A review of the targeted sectors outlined in the EDSP is consistent with this "scope of place."

Implementation strategies of the three elements of "scope of place" are:

1. Guadalupe River
  - a. Investment in additional recreational amenities
  - b. Development as a commercial and retail corridor
  - c. Further enhance the river as a destination place for tourism
2. Natural Environment
  - a. Preserve those elements of the natural environment that make the community special
  - b. Maintain Kerrville as a physically attractive place by ensuring that development is compatible with the natural environment
  - c. Maintain Kerrville's brand as a desirable place to visit
3. Quaintness/Small Town Atmosphere
  - a. Increase commercial activity in the central business district
    - i. Attract additional appropriate retail and commercial prospects
    - ii. Construct additional streetscape enhancements
    - iii. Provide way finding and signage to direct visitors to points of interest
  - b. Protect historically significant and unique structures
  - c. Facilitate reuse of existing historically significant and unique structures
  - d. Enhance Kerrville's reputation as a place to be for local residents and for tourists
    - i. Create additional local shopping and retail opportunities unique to the community
    - ii. Hold additional local special events that help to increase tourism during non-peak tourism periods
      1. 4<sup>th</sup> of July
      2. Local music concerts/events – i.e. spring concert series
      3. Competitive events
        - a. Triathlons
        - b. Road races
        - c. Bicycle races
        - d. Rowing events
        - e. Fishing tournaments

- iii. Improve public amenities and gathering places
      - 1. Butt-Holdsworth Memorial Library Renovations
      - 2. Louise Hays Park improvements
      - 3. River trail development
- 4. Business
  - a. Retention and Growth of the local business sectors
    - i. Identify strongest sectors of the existing business community
    - ii. Develop incentive programs to help targeted local businesses grow and expand markets beyond the city limits
    - iii. Improve programming to assist small, local entrepreneurs to flourish and grow
  - b. Expansion into new markets or underserved markets
    - i. Identify ideal opportunities for growth of local business
    - ii. Actively develop and implement a strategy to recruit the target markets specified in the EDSP
  - c. Downtown
    - i. Invigorate activity within the central business district through actively pursuing appropriate types of businesses
    - ii. Increase commercial opportunities for established businesses within the downtown area through appropriate events, business assistance programs and marketing
    - iii. Enhance the sustainability for emerging businesses within the downtown area through appropriate events, business assistance programs and marketing
  - d. Develop Kerrville as regional commercial hub
    - i. IH-10 corridor
    - ii. Junction Highway corridor
    - iii. SH-27 corridor
    - iv. SH-16 corridor
    - v. Harper Highway corridor

## QUALITY OF PLACE

Quality of place may be defined as the degree to which a community is attractive to a wide range of residents. It is based on the concept that change and diversity bring significant benefits to the community. Communities striving to improve their quality of place are working to provide options for current residents and well as for prospective residents.

For rural communities like Kerrville who are struggling to retain people and businesses, adopting a philosophy of quality of place will be critical to long-term economic competitiveness. Kerrville must be poised to attract a talented and qualified work force. To do so, Kerrville must invest in amenities that will make it more attractive to new residents than its other competitors. Items that are typically considered important quality of place factors are a diversity of choices in employment housing, entertainment, culture, recreation, and retail.

Implementation strategies for “quality of place” are:

- 1. Conserve natural resources and open spaces
  - a. Preserve more substantial portions of the Guadalupe River corridor

- i. Acquire property along the north and south sides of the Guadalupe River for open spaces, greenbelts and trail development
    - ii. Develop standards for riverfront development
  - b. Use natural waterways to provide water-oriented recreation opportunities
    - i. Increase public access to the Guadalupe River through recreation easements and boat ramps
    - ii. Develop a coordinated system of access points along the Guadalupe River
    - iii. Develop trails along the main stem of the Guadalupe River and its major tributaries
  - c. Preserve environmentally sensitive areas
    - i. Identify and preserve environmentally sensitive areas along the Guadalupe River as public open space and recreation areas
    - ii. Protect identified areas through conservation easements, density bonuses or fee simple purchase
    - iii. Use development incentives to preserve areas as either open spaces or as park dedications
  - d. Increase opportunities for tourism related activities and opportunities oriented around the Guadalupe River
    - i. Acquire additional land along the Guadalupe River that will serve local residents as well as tourists
    - ii. Develop additional recreational amenities along UGRA Lake
    - iii. Link the Kerrville River Trail with the central business district
    - iv. Provide nature trails and birding along the Guadalupe River
    - v. Provide opportunities for fishing and boating along the Guadalupe River
- 2. Develop a pedestrian and bicycle network
  - a. Utilize the Guadalupe River corridor for parks and recreation amenities and as a link between major attractions
    - i. Develop trail segments and related improvements along the river
    - ii. Create incentives for developments adjacent to the river to dedicate easements for public recreational use
    - iii. Develop access sites and improve existing amenities to meet ADA requirements
    - iv. Amend the existing easement along UGRA Lake to facilitate recreational uses and river corridor development
- 3. Culture
  - a. Butt-Holdsworth Memorial Library renovation and expansion
  - b. Public art program in downtown
  - c. Maximize use of the Cailloux Theatre for high-profile regional events

## CORE INFRASTRUCTURE

The ability to accommodate or sustain development is entirely contingent upon Kerrville's ability to provide a dependable supply of water and treat wastewater. Planned water and wastewater projects comprise more than \$37 million of Kerrville's 5-Year Capital Improvements Program. Major enhancements to Kerrville's water supply and water distribution systems are nearing completion. The city has now initiated major enhancements to the core wastewater system.

- 1. Water Supply
  - a. Increase capacity to serve a population of 35,000

- b. Develop multiple supplies to ensure dependability through all drought conditions
    - i. Acquire run-of-river rights as they are identified and become available
    - ii. Increase ASR capabilities
    - iii. Drill additional ground water wells
  - c. Use effluent and re-use water to enhance raw water supplies
    - i. Divert effluent prior to discharge in the Guadalupe River to supplement ground water and surface water supplies
    - ii. Encourage residential and commercial development to utilize rain water catchment and other similar measures for non-potable water usage in order to preserve existing raw water supplies
2. Water System
- a. Increase capacity to serve a population of 35,000
  - b. Increase total water supply to ensure fire protection is met
    - i. 1,500 GPM along commercial corridors
    - ii. 1,000 GPM in residential areas
  - c. Expand the system in targeted areas where development is to be encouraged
    - i. Harper Highway
    - ii. Junction Highway
    - iii. IH-10
    - iv. SH-27
3. Wastewater System
- a. Increase capacity to serve a population of 35,000
  - b. Expand the system in targeted areas where development is to be encouraged
    - i. Harper Highway
    - ii. Junction Highway
    - iii. IH-10
    - iv. SH-27

## FINDINGS

Reviews of these founding documents create a clear picture of what the community aspires to be. All the resources of the community must be fully maximized and the efforts of all of the economic development partners must be effectively coordinated in order to achieve the stated goals and objectives. In order to achieve the items listed here it will take the combined efforts and resources of all Kerrville's economic development partners.

Kerrville's economic development strategy should be scheduled to accommodate short-term, medium-term, and long-term objectives. Short-term objectives should be within the next 3 to 5 years, medium-term objectives should be within the next 5 to 10 years, and long-term objectives should be beyond 10 years.

Short-term projects are:

- 1. Business Growth
  - a. Water and wastewater utilities
    - i. Expand water supply
      - 1. Construct new ground water wells
      - 2. Construct 2 new ASR wells

3. Acquire run-of-river rights
4. Expand the wastewater treatment plant
- ii. Upgrade wastewater utility system
  1. Increase core wastewater system capacity to meet ultimate demand
- b. Water and wastewater utility extensions to Harper Highway and IH-10
- c. Small business assistance
  - i. Façade upgrade program
  - ii. Advertising for downtown businesses
  - iii. Expansion assistance
- d. Engage in recruitment of target markets as specified by the EDSP
  - i. High-end lodging
  - ii. Destination retail
  - iii. Entertainment
  - iv. Recreational facilities
2. River Trail Development
  - a. Kerrville River Trail Phase 1 – River Nature Center to Louise Hays Park
  - b. Louise Hays Park Improvements
3. Downtown Streetscape Enhancements
  - a. Water Street Enhancements
    - i. Sidewalk reconstruction
    - ii. Landscaping enhancements
    - iii. Street furniture
  - b. Wayfinding signage
  - c. Downtown gateway monumentation

#### 4B SALES TAX REVENUES USED TO ACHIEVE SHORT-TERM OBJECTIVES

4B sales tax revenues provide initial capital to achieve some core components of the community's community development effort. However, these revenues comprise only a small portion of the funding needed to achieve the community's ultimate vision. It is imperative that these funds be utilized to their maximum and that they are used to achieve an appropriate mixture of immediate and long-term needs.

It is recommended that no more than 50% of 4B revenues to debt service that exceeds 10 years. The 50% benchmark is to be calculated by averaging the gross 4B sales tax revenues over the previous 10-year period. This policy will provide a means to accommodate larger-scale projects while preserving a substantial amount of operating capital each year.

With these financial limitations and the existing debt service obligations of the EIC, no more than \$500,000 of existing 4B sales tax revenues should be used to leverage debt that exceeds 10 years. EIC's existing debt matures in 2014 and this will free up approximately \$500,000 of the existing 4B revenues. This will allow the EIC Board to consider additional economic development programs and strategies beyond 2014 and provide additional capacity for long-term debt.

4B funds may be used to issue debt or provide direct cash allocations for the following program which would be consistent with the ultimate vision and the community's near term strategies:

**Proposed EIC Funding for Near-Term Projects**

<b>Project</b>	<b>Amount</b>	<b>Funding Source</b>
<b>Downtown</b>		
Streetscape Enhancements	\$1,000,000	2011 CO
River Trail Phase 1	\$2,000,000	2011 CO
Louise Hays Park Improvements	\$1,000,000	2011 CO
<b>2011 CO Sub-Total</b>	<b>\$4,000,000</b>	<b>2011 CO</b>
<b>Utility Improvements</b>		
Harper Highway	\$1,200,000	Cash
<b>GRAND TOTAL</b>	<b>\$5,200,000</b>	<b>All Sources</b>

To secure \$4 million in working capital it is estimated that debt service would be approximately \$300,000 for a 20-year term. The additional debt service of \$300,000 would leave an estimated \$1 million in unallocated sales tax revenues each year based upon current annual operating expenses, including the debt service obligation that fully matures in 2014. This assumes annual sales tax revenues of \$2.2 million which is the average income level for the past 10 fiscal years.

**Exhibit A**  
**Kerrville Comprehensive Plan 2002 (Updated 2008) (Excerpt)**

KERRVILLE COMPREHENSIVE PLAN – Those goals and objectives contained within the Plan that provide direct guidance on the allocation of resources related to community development are listed here. These goals were the foundation by which Kerrville’s 5-Year Capital Improvements Plan was created.

Link 3 – Land Use

- Goal 3.1 Promote growth in appropriate areas so as to guide future development in a well-managed and fiscally responsible manner.
- Goal 3.3 Maintain and improve parks and recreational areas.
- Goal 3.4 Make the Guadalupe River a focus of Kerrville.

Link 4 – Transportation

- Goal 4.1 Improve citywide transportation mobility through key thoroughfare system improvements.
- Goal 4.2 Identify long-term transportation improvements.
- Goal 4.4 Promote and enhance pedestrian and bicycle routes.
- Goal 4.5 Provide for and enhance the long-term development of the Louis Schreiner Municipal Airport as a viable transportation and economic resource.

Link 5 – Utilities

- Goal 5.1 Expand the water system capacity to meet projected 2020 demands.
- Goal 5.2 Improve water distribution, wastewater collection and storm drainage systems to eliminate problem areas and improve system efficiencies.
- Goal 5.5 Expand the use of recycled water and develop systems for its maximum benefit.

Link 6 – Communications Technology

- Goal 6.5 Promote use of communications technology to enhance the economic vitality of Kerrville.
- Goal 6.6 Facilitate the creation of an advanced communications network infrastructure for Kerrville citizens, businesses and industries.

Link 7 – Central City

- Goal 7.1 Preserve, protect and enhance the natural amenities, visual identity and relationship of the Guadalupe River with Central City.
- Goal 7.2 Develop Central City with a cohesive identity that is built upon maintaining and appreciating the strengths of its various areas.
- Goal 7.3 Preserve and enhance the historical and cultural resources of the Central City area.
- Goal 7.4 Enhance physical, economic and social characteristics the Central City to attract more residents and visitors of Kerrville, making Central City the activity center and focal point of the community.
- Goal 7.6 Establish mechanisms for moving goals and objectives for Central City from vision to reality.

Link 8 – Parks and Recreation

- Goal 8.1 Conserve natural resources and open spaces through park and recreation land acquisition, open space preservation and environmentally sensitive planning.

- Goal 8.3 Develop a pedestrian and bicycle network of sidewalks, trails and bikeways which connect neighborhoods to parks, schools, shopping centers, public buildings, open spaces and other destinations.
- Goal 8.4 Provide and fund a diverse blend of parks and recreation opportunities to adequately accommodate the current and future needs of Kerrville's residents.

#### Link 9 – Corridor Design

- Goal 9.1 Preserve and protect the Guadalupe River Corridor in a manner that maintains the environmental and aesthetic integrity of the corridor while enhancing its value as a pathway and recreational resource.
- Goal 9.3 Ensure that Kerrville's major corridors and gateways provide an impression of attractiveness, cohesion and pride in the community that is distinctive to Kerrville.
- Goal 9.4 Create corridors that are inviting to pedestrians and other modes of transportation beyond the automobile.

#### Link 10 – Economic Development

- Goal 10.1 Recruit, expand and retain businesses and industries that are environmentally friendly and pay an above average wage.
- Goal 10.2 Improve the quality of the present and future labor supply in Kerrville.
- Goal 10.3 Ensure that a variety of housing opportunities is available to existing and future residents of Kerrville.
- Goal 10.4 Enhance tourism opportunities by building upon natural amenities and recreation opportunities, expanding cultural and historical tourism, and increasing the community's ability to host conferences and conventions.
- Goal 10.5 Encourage development of a diverse economy in the Central City area that is driven by market demand and provided by economic incentives.
- Goal 10.6 Develop the tools, projects and programs necessary to position Kerrville as a hub for business and industry that utilizes its resources and quality of life to be competitive in the global marketplace.

#### Link 11 – Public Facilities

- Goal 11.3 Support growth and expansion of the Butt-Holdsworth Memorial Library and its efforts in providing educational and information services to residents.

**Exhibit B**  
**Kerrville/Kerr County Economic Development Strategic Plan 2008 (Excerpt)**

KERRVILLE/KERR COUNTY ECONOMIC DEVELOPMENT STRATEGIC PLAN 2008 (EDSP) – Kerrville and Kerr County collaborated to create the EDSP in 2008. The EDSP has established priorities for local economic development efforts; analyzed the community's strengths, opportunities, weaknesses and threats; and outlined the near-term and long-term targeted sectors appropriate to the community.

EDSP Priorities

- Priority 1 Focus on a select group of target industries that offer the best prospects for recruitment.
- Priority 2 Adopt incentive policy guidelines that are competitive with other regions while protecting the tax base.
- Priority 3 Ensure that economic opportunity and advancement are available to all Kerrville/Kerr County residents by growing the middle class.
- Priority 4 Enact a coordinated economic development marketing campaign that increases awareness and perception of the community to the outside world.
- Priority 5 Implement the strategies in such a way that maximum flexibility and accountability are maintained.

SWOT

**Strengths**

- |                            |                                 |
|----------------------------|---------------------------------|
| Scenic Natural Environment | Local Healthcare                |
| Retiree Community          | Arts/Culture                    |
| Tourism Industry           | Proximity to San Antonio/Austin |
| Positive Brand Awareness   | Airport and University          |

**Weaknesses**

- |                                   |                             |
|-----------------------------------|-----------------------------|
| Availability of Qualified Workers | Lack of Affordable Housing  |
| Cost of Living                    | Shortage of Skilled Workers |
| Few Major Employers               | Retail Leakage              |

**Opportunities**

- |                                    |                                      |
|------------------------------------|--------------------------------------|
| Expand Retail/Recreational Options | Downtown Development District        |
| Target 'Legacy' Businesses         | Market to Tourists, Texas Developers |
| Entrepreneurship                   | Workforce Training                   |

**Threats**

- |                                    |   |
|------------------------------------|---|
| Downtown Vacancies, Inactivity     | Workforce Limits Industry Recruitment   |
| Growing Gap in Housing Costs/Wages | Better Jobs/Wages in Neighboring Metros |

Targeted Sectors

<u>Sector</u>	<u>Short Term</u>	<u>Long Term</u>	<u>Niches</u>	<u>Local Assets</u>
Professional Training	X	X	X	X
<i>Corporate/Management</i>				
<i>Aircraft</i>				
Legacy Production			X	X
<i>Aircraft Related</i>				
<i>Jewelry Related</i>				
<i>Plastics</i>				
<i>Specialty Food Processing</i>				
Tourism Related	X	X	X	X
<i>High-end Lodging</i>				
<i>Destination Retail</i>				
<i>Entertainment</i>				
<i>Recreational Sports Facilities</i>				
Advanced Building Practices	X	X	X	X
<i>Water/Wastewater</i>				
<i>Materials/Energy Systems</i>				
Life Science		X	X	X
<i>Physicians/Nursing</i>				
<i>Laboratory-Based Testing</i>				
<i>Local Population Based</i>				

**Exhibit C**  
**City Council Goals**

CITY COUNCIL GOALS – City Council evaluates and reaffirms the following goals each year as it initiates the annual budget process. These goals link directly back to the City’s major planning documents and help to ensure that incremental budgetary decisions remain consistent with the overall vision for the City.

- Understand the citizens’ needs and wants.
- Deliver quality municipal and public safety services in a cost effective manner.
- Be good stewards of public resources through strategic planning.
- Plan, maintain, and upgrade infrastructure.
- Promote desirable growth of business, recreational, and cultural assets.
- Encourage intelligent development through reasonable, responsible, and forward thinking ordinances and streamlined procedures.
- Engage in beneficial relations with other governmental agencies.

**Exhibit D  
5-Year CIP**

**Five Year Capital Improvement Plan FY 2011-2015**  
**Projects By Funding Source**

**Funding Source: General Fund**

	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	Future Funding	TOTAL
Safe Routes to School Program	\$60,000	\$0	\$0	\$0	\$0	\$0	\$60,000
Callioux Center ADA Compliance Repairs	\$50,000	\$200,000	\$0	\$0	\$0	\$0	\$250,000
Airport RAMP Grants	\$25,000	\$25,000	\$25,000	\$25,000	\$25,000	\$0	\$125,000
Olympic Pool Repair and Renovation Phase I	\$0	\$40,000	\$0	\$0	\$0	\$0	\$40,000
Station 4 - 911 Ambulance	\$0	\$236,500	\$0	\$0	\$0	\$0	\$236,500
Thoroughfare Plan Update	\$0	\$30,000	\$70,000	\$50,000	\$0	\$0	\$150,000
Louise Hays Park Renovations	\$0	\$0	\$25,000	\$0	\$0	\$0	\$25,000
Scott Schreiner Golf Course Parking Lot Improvements	\$0	\$0	\$0	\$120,000	\$0	\$0	\$120,000
<b>TOTAL</b>	<b>\$135,000</b>	<b>\$531,500</b>	<b>\$120,000</b>	<b>\$195,000</b>	<b>\$25,000</b>	<b>\$0</b>	<b>\$1,006,500</b>

**Impact on General Fund Operation**

	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	Future Funding	TOTAL
Safe Routes to School Program	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Callioux Center ADA Compliance Repairs	\$20,000	\$20,000	\$0	\$0	\$0	\$0	\$40,000
Airport RAMP Grants	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Olympic Pool Repair and Renovation Phase I	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Station 4 - 911 Ambulance	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Thoroughfare Plan Update	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Louise Hays Park Renovations	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Scott Schreiner Golf Course Parking Lot Improvements	\$0	\$0	\$0	\$10,000	\$0	\$0	\$10,000
<b>TOTAL</b>	<b>\$20,000</b>	<b>\$20,000</b>	<b>\$0</b>	<b>\$10,000</b>	<b>\$0</b>	<b>\$0</b>	<b>\$50,000</b>

**Funding Source: Water/Sewer**

	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	Future Funding	TOTAL
WWTP Paving for Building	\$50,000	\$0	\$0	\$0	\$0	\$0	\$50,000
Water Supply Acquisition	\$50,000	\$50,000	\$50,000	\$50,000	\$0	\$0	\$200,000
Water System Leak Detection Program	\$0	\$50,000	\$50,000	\$50,000	\$50,000	\$0	\$200,000
G Street Lift Station Decommission	\$0	\$0	\$70,000	\$0	\$0	\$0	\$70,000
Remote Well Field Analysis	\$0	\$0	\$0	\$0	\$0	\$200,000	\$200,000
Water Production Maintenance Building	\$0	\$0	\$0	\$0	\$0	\$700,000	\$700,000
<b>TOTAL</b>	<b>\$100,000</b>	<b>\$100,000</b>	<b>\$170,000</b>	<b>\$100,000</b>	<b>\$50,000</b>	<b>\$900,000</b>	<b>\$1,420,000</b>

**Impact on Water/Sewer Operations**

	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	Future Funding	TOTAL
WWTP Paving for Building	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Water Supply Acquisition	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Water System Leak Detection Program	\$0	\$0	\$0	\$0	\$0	\$0	\$0
G Street Lift Station Decommission	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Remote Well Field Analysis	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Water Production Maintenance Building	\$0	\$0	\$0	\$0	\$0	\$10,000	\$10,000
<b>TOTAL</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$10,000</b>	<b>\$10,000</b>

**Funding Source: General Fund Debt**

	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	Future Funding	TOTAL
Aerial Platform Ladder Truck Replacement	\$0	\$1,300,000	\$0	\$0	\$0	\$0	\$1,300,000
Arcadia Loop Cut-Off	\$0	\$327,000	\$0	\$0	\$0	\$0	\$327,000
Remedial Drainage Program	\$0	\$1,000,000	\$0	\$0	\$0	\$0	\$1,000,000
Sample Park	\$0	\$100,000	\$0	\$0	\$0	\$0	\$100,000
Schultz Park Renovation	\$0	\$100,000	\$0	\$0	\$0	\$0	\$100,000
Singing Winds Park	\$0	\$200,000	\$0	\$0	\$0	\$0	\$200,000
Westland Park	\$0	\$100,000	\$0	\$0	\$0	\$0	\$100,000
Street Reconstruction	\$0	\$1,500,000	\$1,500,000	\$1,500,000	\$1,500,000	\$0	\$6,000,000
Relocate Central Fire Station/Admin Offices	\$0	\$0	\$4,205,000	\$0	\$0	\$0	\$4,205,000
Fire Station #5	\$0	\$0	\$0	\$0	\$0	\$1,871,000	\$1,871,000
G-Street Bridge over Quinlan Creek	\$0	\$0	\$0	\$0	\$0	\$2,245,000	\$2,245,000
Olympic Pool Complex Renovation Phase II	\$0	\$0	\$0	\$0	\$0	\$500,000	\$500,000
Spur 100 Extension Phase I	\$0	\$0	\$0	\$0	\$0	\$5,000,000	\$5,000,000
<b>TOTAL</b>	<b>\$0</b>	<b>\$4,627,000</b>	<b>\$5,705,000</b>	<b>\$1,500,000</b>	<b>\$1,500,000</b>	<b>\$9,616,000</b>	<b>\$22,948,000</b>

**Impact on General Fund Operation**

	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	Future Funding	TOTAL
Aerial Platform Ladder Truck Replacement	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Arcadia Loop Cut-Off	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Remedial Drainage Program	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Sample Park	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Schultz Park Renovation	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Singing Winds Park	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Westland Park	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Street Reconstruction	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Relocate Central Fire Station/Admin Offices	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Fire Station #5	\$0	\$0	\$0	\$0	\$0	\$10,000	\$10,000
G-Street Bridge over Quinlan Creek	\$0	\$0	\$0	\$0	\$0	\$20,000	\$20,000
Olympic Pool Complex Renovation Phase II	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Spur 100 Extension Phase I	\$0	\$0	\$0	\$0	\$0	\$20,000	\$20,000
<b>TOTAL</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$50,000</b>	<b>\$50,000</b>

**Funding Source: Water/Sewer Debt**

	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	Future Funding	TOTAL
Birkdale Lift Station & New Force Main	\$4,866,000	\$0	\$0	\$0	\$0	\$0	\$4,866,000
Force Main Co-mingle Box at WWTP	\$305,000	\$0	\$0	\$0	\$0	\$0	\$305,000
G Street 24"/27" Interceptor	\$308,000	\$2,052,000	\$0	\$0	\$0	\$0	\$2,360,000
I/I Evaluation, Rehabilitation and Replacement - Engineering	\$100,000	\$100,000	\$0	\$0	\$0	\$0	\$200,000
I/I Evaluation, Rehabilitation and Replacement Construction	\$600,000	\$600,000	\$600,000	\$0	\$0	\$0	\$1,800,000
WTP Clearwell Improvements	\$0	\$2,760,000	\$0	\$0	\$0	\$0	\$2,760,000
New Jefferson Lift Station & New Force Main to G Street Interceptors	\$0	\$644,500	\$4,290,000	\$0	\$0	\$0	\$4,934,500
Knapp Lift Station Expansion	\$0	\$0	\$349,000	\$2,324,000	\$0	\$0	\$2,673,000
12" Water Line from Meadowview Well	\$0	\$0	\$0	\$828,000	\$0	\$0	\$828,000
Leslie Drive Water Main Loop around Benson	\$0	\$0	\$0	\$542,000	\$0	\$0	\$542,000
New Legion Basin 24" Interceptor	\$0	\$0	\$0	\$899,500	\$0	\$0	\$899,500
Quinlan Basin 15" Interceptor	\$0	\$0	\$0	\$1,163,000	\$0	\$0	\$1,163,000
Reconstruction of Road Surface at Wastewater Treatment Plant	\$0	\$0	\$0	\$450,000	\$0	\$0	\$450,000
12 Inch Line Crossing Guadalupe River	\$0	\$0	\$0	\$110,000	\$731,000	\$0	\$841,000
Lois Pump Station Expansion	\$0	\$0	\$0	\$45,000	\$300,000	\$0	\$345,000
Redirect Broadway Force Main	\$0	\$0	\$0	\$48,000	\$317,000	\$0	\$365,000
River Hill Pressure Plane Improvements	\$0	\$0	\$0	\$188,503	\$1,256,688	\$0	\$1,445,191
SH 173 Force Main Extension	\$0	\$0	\$0	\$46,000	\$306,000	\$0	\$352,000
Stadium Pump Station Expansion	\$0	\$0	\$0	\$75,000	\$480,000	\$0	\$555,000
Spur 98 Water Line (WTP to Spur 98 Bridge)	\$0	\$0	\$0	\$0	\$88,000	\$700,000	\$788,000
Guadalupe Plaza Lift Station Elimination	\$0	\$0	\$0	\$0	\$0	\$145,000	\$145,000
Jefferson Basin 12" and 15" Interceptor	\$0	\$0	\$0	\$0	\$0	\$979,000	\$979,000
UTC Building	\$0	\$0	\$0	\$0	\$0	\$750,000	\$750,000
Wastewater Treatment Aquifer Replenishment	\$0	\$0	\$0	\$0	\$0	\$6,825,000	\$6,825,000
Water Plant Addition Phase II (IMGD)	\$0	\$0	\$0	\$0	\$0	\$239,000	\$239,000
<b>TOTAL</b>	<b>\$6,179,000</b>	<b>\$6,157,400</b>	<b>\$5,239,000</b>	<b>\$6,719,003</b>	<b>\$3,478,688</b>	<b>\$9,638,000</b>	<b>\$37,411,091</b>

**Impact on Water/Sewer Operation**

	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	Future Funding	TOTAL
Birkdale Lift Station & New Force Main	\$20,000	\$20,000	\$20,000	\$20,000	\$20,000	\$20,000	\$120,000
Force Main Co-mingle Box at WWTP	\$0	\$0	\$0	\$0	\$0	\$0	\$0
G Street 24"/27" Interceptor	\$0	\$5,000	\$5,000	\$5,000	\$5,000	\$5,000	\$25,000
I/I Evaluation, Rehabilitation and Replacement - Engineering	\$0	\$0	\$0	\$0	\$0	\$0	\$0
I/I Evaluation, Rehabilitation and Replacement Construction	\$0	\$0	\$0	\$0	\$0	\$0	\$0
WTP Clearwell Improvements	\$0	\$0	\$0	\$0	\$0	\$0	\$0
New Jefferson Lift Station & New Force Main to G Street Interceptors	\$0	\$0	\$10,000	\$10,000	\$10,000	\$10,000	\$40,000
Knapp Lift Station Expansion	\$0	\$0	\$0	\$10,000	\$10,000	\$10,000	\$30,000
12" Water Line from Meadowview Well	\$0	\$0	\$0	\$5,000	\$5,000	\$5,000	\$15,000
Leslie Drive Water Main Loop around Benson	\$0	\$0	\$0	\$0	\$0	\$0	\$0
New Legion Basin 24" Interceptor	\$0	\$0	\$0	\$5,000	\$5,000	\$5,000	\$15,000
Quinlan Basin 15" Interceptor	\$0	\$0	\$0	\$5,000	\$5,000	\$5,000	\$15,000
Reconstruction of Road Surface at Wastewater Treatment Plant	\$0	\$0	\$0	\$20,000	\$0	\$0	\$20,000
12 Inch Line Crossing Guadalupe River	\$0	\$0	\$0	\$0	\$5,000	\$5,000	\$10,000
Lois Pump Station Expansion	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Redirect Broadway Force Main	\$0	\$0	\$0	\$0	\$0	\$0	\$0
River Hill Pressure Plane Improvements	\$0	\$0	\$0	\$0	\$10,000	\$10,000	\$20,000
SH 173 Force Main Extension	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Stadium Pump Station Expansion	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Spur 98 Water Line (WTP to Spur 98 Bridge)	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Guadalupe Plaza Lift Station Elimination	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Jefferson Basin 12" and 15" Interceptor	\$0	\$0	\$0	\$0	\$0	\$0	\$0
UTC Building	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Wastewater Treatment Aquifer Replenishment	\$0	\$0	\$0	\$0	\$0	\$10,000	\$10,000
Water Plant Addition Phase II (IMGD)	\$0	\$0	\$0	\$0	\$0	\$0	\$0
<b>TOTAL</b>	<b>\$20,000</b>	<b>\$25,000</b>	<b>\$35,000</b>	<b>\$80,000</b>	<b>\$75,000</b>	<b>\$85,000</b>	<b>\$320,000</b>

**Funding Source: Other**

	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	Future Funding	TOTAL
Butt-Holdsworth Memorial Library Renovation / Expansion	\$0	\$1,000,000	\$0	\$0	\$0	\$0	\$1,000,000
River Trail II & III	\$0	\$0	\$0	\$0	\$0	\$4,200,000	\$4,200,000
Spur 100 Extension Phase I	\$0	\$0	\$0	\$0	\$0	\$5,000,000	\$5,000,000
<b>TOTAL</b>	<b>\$0</b>	<b>\$1,000,000</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$9,200,000</b>	<b>\$10,200,000</b>

**Impact on General Fund and/or W/S Operations**

	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	Future Funding	TOTAL
Butt-Holdsworth Memorial Library Renovation / Expansion	\$0	\$0	\$0	\$0	\$0	\$0	\$0
River Trail II & III	\$0	\$0	\$0	\$0	\$0	\$10,000	\$10,000
Spur 100 Extension Phase I	\$0	\$0	\$0	\$0	\$0	\$20,000	\$20,000
<b>TOTAL</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$30,000</b>	<b>\$30,000</b>

**Exhibit 2**  
**Draft Proposal**



PETER LEWIS  
ARCHITECT + ASSOCIATES

August 22, 2012

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

RE: Downtown Streetscape Enhancement Master Plan  
Kerrville, Texas

Dear Kristine:

Thank you for the opportunity to assist the City of Kerrville in the development of a Downtown Streetscape Enhancement Master Plan. The purpose of the Master Plan is to support and reinforce the goals of the Kerrville Comprehensive Plan, adopted July 9, 2002.

- Goal 7.1: Preserve, protect and enhance the natural amenities, visual identity and relationship of the Guadalupe River with Central Business District
- Goal 7.2: Develop Central Business District as the integrated core of Kerrville with a cohesive identity that is built upon maintaining and appreciating the strengths of its various character areas.
- Goal 7.3: Preserve and enhance the historical and cultural resources of the Central Business District.
- Goal 7.4: Enhance physical, economic and social characteristics of the Central Business District to create a unique destination for residents and visitors of Kerrville, making the Central Business District the activity center and focal point of the community.

Based upon our discussions to date and the outline provided by Todd Parton, City Manager, dated July 31, 2012, please allow the following to document our understanding of Scope, Services and Fee.

**I. Work Scope**

- A. Define the Project
  - 1. Streetscape
    - a. Softscape
    - b. Hardscape
    - c. Amenities
  - 2. Thematic Consistency
    - a. Water Street/Peterson Plaza standards
  - 3. Project Limits
- B. Create the Plan
  - 1. Concept Piece/Design
    - a. Design Drawings
    - b. Project Phasing
    - c. Project Budgets by Phase
  - 2. Implementation, coordinate with:
    - a. Kerrville Main Street Advisory Board (KMSAB)
    - b. Economic Improvement Corporation (EIC)
    - c. Historic Downtown Business Alliance (HDBA)

**II. Scope of Services**

- A. As-built survey and documentation
  - 1. Using electronic database, in AutoCAD 2013 format, of City base maps, document existing streetscape plans within Central Business District and near southside of the Guadalupe River (Louise Hays Park, HEB Shopping Center, River Hills Mall)
  - 2. Inventory/document existing Streetscape elements
  
- B. Master Plan Services
  - 1. Meet with Assistant City Manager, KMSAB and City staff, as required.
  - 2. Meet with EIC representative(s) and present to EIC, as required
  - 3. Meet with HDBA representative(s), as required
  - 4. Present to City Council
  - 5. Streetscape Plans
  - 6. Streetscape Images
  - 7. Phasing Plan
  - 8. Prepare Project Budgets by Phase

**II. Fixed Fee**

Our services will be provided for a Fixed Fee by Phase.

A. As-built survey and documentation	\$ 11,500.00
B. Master Plan Services	\$ 23,500.00

**III. 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, Consultants not included above. Project related mileage will be billed at current Standard Rate.

Estimated Reimbursable Expenses	\$ 2,500.00
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**IV. Additional Services, if requested and approved in writing, will be provided on an Hourly basis according to our 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

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Accepted for City of Kerrville

Date

**Agenda Item:**

5E. Update regarding Economic Development Grant Agreement between Nature Blinds, LLC and the City of Kerrville, Texas Economic Development Corporation (Parton)



# DRAFT 8/22/12

**ECONOMIC DEVELOPMENT GRANT AGREEMENT**  
**BETWEEN NATURE BLINDS, LLC AND**  
**THE CITY OF KERRVILLE, TEXAS ECONOMIC IMPROVEMENT CORPORATION**

This Agreement entered into by and between NATURE BLINDS, L.L.C., a Texas limited liability company ("Nature Blinds"), acting herein by and through its duly authorized President, Jason Hardy ("Nature Blinds 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, David Wampler.

**WITNESSETH:**

**WHEREAS**, EIC was formed to administer a sales and use tax approved by the citizens of Kerrville, Texas, in May 1995 and collected for economic development projects; and

**WHEREAS**, pursuant to the Act, the EIC is authorized to provide funding relating to 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, including:

*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, distribution centers, and/or small warehouse facilities capable of serving as decentralized storage and distribution centers, as provided by Section 501.101 of the Act; and land, buildings, equipment, facilities, and improvements found by the EIC to promote or develop new or expanded business enterprises that create or retain primary jobs, including project that the EIC determines promotes or develops new or expanded business enterprises that create or retain primary jobs, as provided by Section 505.155 of the Act; and*

**WHEREAS**, Nature Blinds is a developer and manufacturer of hunting blinds, accessories thereof, and related products; and

**WHEREAS**, Nature Blinds is seeking to expand its manufacturing and production capabilities through the hiring of employees and the purchase of additional equipment at its facility located within Kerrville; and

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**WHEREAS**, Nature Blinds recently purchased a 48,494 square foot building located at 2800 Blacksmith Lane (the "Facility") to accommodate its growing business; and

**WHEREAS**, Nature Blinds currently has 29 employees, but plans to hire 73 additional employees within the next two years; and

**WHEREAS**, Nature Blinds has applied for a grant from EIC for funding necessary to expand its operations in order to increase development and production; 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 Nature Blinds to provide sales tax revenues collected pursuant to the Act ("4B Revenues") to Nature Blinds for its cost in hiring additional employees and the purchase of additional equipment; and

**WHEREAS**, on July 16, 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, Nature Blinds and the EIC agree as follows:

## ARTICLE I. EIC'S OBLIGATIONS

- A. EIC hereby grants to Nature Blinds funds up to a maximum amount of Five Hundred Thousand and No/100 Dollars (\$500,000.00) ("Grant") in 4B Revenues for costs relating to the hiring of employees and the purchase of additional equipment ("Project"). The Grant reflects an estimated amount of one-half (1/2) of the 4B Revenues resulting from sales by Nature Blinds for the term of this Agreement.
- B. Subject to the terms and conditions set forth in Article II, EIC will provide a portion of the Grant to Nature Blinds as follows:
  - (1) On or before July 15 of each year of this Agreement, EIC shall pay Nature Blinds an amount equal to one-half (1/2) of the 4B Revenues generated by Nature Blinds for the previous year, such amount not to exceed One Hundred Thousand and No/100 Dollars (\$100,000.00) for any one year.

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- (2) The EIC will derive this yearly payment from information provided to it by the Texas Comptroller of Public Accounts.
- C. Payments made by EIC to Nature Blinds from 4B Revenues will be limited to the payments of “costs” as defined by the Act and as specified above for the Project.
- D. In no event will the total amount of the Grant exceed Five Hundred Thousand and No/100 Dollars (\$500,000.00).

### **ARTICLE II. NATURE BLIND’S OBLIGATIONS**

- A. Prior to receiving any payment from EIC, Nature Blinds shall comply with all applicable development regulations of the City of Kerrville, to include building codes, subdivision regulations, and zoning, in its development, construction, opening, and operation of the Facility. Nature Blinds’ failure to comply with this provision will constitute a breach of this Agreement.
- B. Nature Blinds shall keep and maintain complete and accurate records relating to its sales, which is separate and identifiable from its other records and available 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 to Nature Blinds. Nature Blinds’ failure to comply with this provision will constitute a breach of the Agreement.

### **ARTICLE III. SALE OF PROJECT, MERGER OR CONSOLIDATION OF NATURE BLINDS**

- A. A sale of all or any of the assets of Nature Blinds will not release Nature Blinds 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 Nature Blinds’ proposed successor shall have the financial condition to fully satisfy Nature Blinds’ duties and responsibilities hereunder and agrees to assume Nature Blinds’ 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 Nature Blinds with any third party not affiliated with Nature Blinds, Nature Blinds 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 Nature Blinds’ 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

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the financial condition to fully satisfy Nature Blinds' 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 Nature Blinds. In the event of any sale or merger involving Nature Blinds or its affiliates, the surviving entity shall assume Nature Blinds' obligations and rights hereunder and be entitled to any and all benefits to be received pursuant to this Agreement.

### **ARTICLE IV. NATURE BLINDS' REPRESENTATIONS AND WARRANTIES**

- A. Nature Blinds represents and warrants as of the date hereof:

(1) Nature Blinds is a Texas limited liability company existing in good standing and authorized to do business in the State of Texas;

(2) Execution of this Agreement has been duly authorized by Nature Blinds and this Agreement is not in contravention of Nature Blinds' governing authority or any agreement or instrument to which Nature Blinds 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 Nature Blinds Officer, threatened against or affecting Nature Blinds, which may result in a material adverse change in Nature Blinds' business, properties, or operations sufficient to jeopardize Nature Blinds' legal existence or for-profit viability; and

(4) No written application, written statement, or correspondence submitted by Nature Blinds to EIC in connection with this Agreement, or in connection with any transaction contemplated hereby, to the knowledge of Nature Blinds 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, Nature Blinds 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:

## **DRAFT 8/22/12**

- (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**

- A. Under any of the following conditions EIC may, at its option, after fifteen (15) days written notice to Nature Blinds, suspend its further performance under this Agreement until such time as Nature Blinds shall have cured the condition(s) and so notified EIC, in writing, that the condition(s) have been cured:
- (1) Nature Blinds 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.
  - (2) The appointment of a receiver of Nature Blinds, or of all or any substantial part of the Property, and the failure of such receiver to be discharged within sixty (60) days thereafter.
  - (3) The adjudication of Nature Blinds as bankrupt.
  - (4) The filing by Nature Blinds 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.
- B. Should any of these conditions not be cured by Nature Blinds within ninety (90) days, Nature Blinds will be considered to have breached this Agreement and EIC may, at its option, with written notice to Nature Blinds, terminate this Agreement and Nature Blinds shall be obligated to refund the EIC the full amount of any Grant funding received from the EIC.

**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 party, 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.
- 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 Nature Blinds is not entitled to recover any amounts in excess of the Grant contracted for under this Agreement and that EIC, pursuant to a breach and failure to cure by Nature Blinds in accordance with this Agreement, is entitled to recover attorney fees, collection costs, and any other costs due to its pursuit of repayment and remedies under this Agreement.
- C. Any delay by any party in instituting or prosecuting any actions or proceedings or otherwise asserting its rights will not, so long as the breach or default by another party is continuing, operate as a waiver of such rights or to deprive it of or limit such rights in any way; nor will 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 will 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.

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- 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 will lie in Kerr County, Texas; and this Agreement is 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 must be in writing and will 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:

For EIC  
President – David Wampler  
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](mailto:mindy.wendele@kerrvilletx.gov)

For Nature Blinds, LLC  
Jason Hardy  
President  
Nature Blinds, LLC  
1905 Junction Highway, Suite A  
Kerrville, Texas 78028-9579  
Email: \_\_\_\_\_

- E. Assignment. This Agreement is 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

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- 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 will be relieved of any and all obligations and liabilities on the part of such assigning party under this Agreement. Nature Blinds may, without written consent of EIC, assign this Agreement to any entity controlled and 100% owned by Nature Blinds or by the parent, subsidiary, or affiliate of Nature Blinds provided the entity assumes all of Nature Blinds' 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 Nature Blind and Nature Blind 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 Nature Blinds or EIC to any claim, cause of action, remedy or right of any.
- G. Term. The term of this Agreement (the "Term") will commence on July 25, 2012 (the "Effective Date"), and shall terminate on the earlier occurrence of: (i) July 24, 2019; (ii) where EIC has made payments to Nature Blinds which combined equal the amount of the Grant; iii) when terminated by mutual agreement of the parties; (iv) when terminated pursuant to Article VII; (v) at Nature Blinds' sole and absolute discretion upon Nature Blinds' return of all Grant funding to EIC that it has received under this Agreement; or (vi) upon Nature Blinds' repayment of all monies that are demanded by EIC and are in fact required to be repaid by Nature Blinds under Article III. Upon termination of this Agreement, 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 will 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 will survive termination.
- K. Entire Agreement. This Agreement represents the entire agreement of the parties with respect to the subject matter hereof.

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**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 Nature Blinds, L.L.C., acting through its duly authorized official.

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

**NATURE BLINDS, L.L.C.**

\_\_\_\_\_  
David Wampler, President  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Cheryl Brown, Recording Secretary

APPROVED AS TO FORM:

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

## **Agenda Item:**

5F. Review of EIC Funding Agreements for Performance and Clawbacks.  
(Rickert)

**TO BE CONSIDERED BY THE  
ECOMONIC IMPROVEMENT CORPORATION,  
CITY OF KERRVILLE, TEXAS**

---

**SUBJECT:** Review of funding agreements for performance and clawbacks

**FOR AGENDA OF:** August 27, 2012 **DATE SUBMITTED:** August 22, 2012

**SUBMITTED BY:** Mindy N. Wendele **CLEARANCES:**  
Director of Business Programs

**EXHIBITS:** List of projects; active funding agreements

**AGENDA MAILED TO:**

**APPROVED FOR SUBMITTAL BY CITY MANAGER:** 

---

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

**PAYMENT TO BE MADE TO:**

**REVIEWED BY THE FINANCE DIRECTOR:**

---

**SUMMARY STATEMENT**

At the July meeting EIC, staff was asked to provide a list of funding agreements for all projects to review for performance and clawback compliance. Two lists are attached highlighting all EIC projects and active funding agreements.

**RECOMMENDED ACTION**

For information and discussion.

Active Project Funding Agreements  
August 27, 2012

<u>Project</u>	<u>Amount</u>	<u>Performance Criteria</u>
Hill Country Shooting Sports Center	\$500,000.00	Reimbursement, \$100,000 if project not completed
Hill Country Home Opportunity Council (2)	250,000.00	Reimbursement, \$100,000 if project not completed
Harper Highway Phase 2	1,000,000.00	
Downtown Utility Improvements	300,000.00	
Fox Tank Company	600,000.00	
Parks and River Trail Improvements	6,000,000.00	Job creation/retention - 60 jobs/10 years
<u>Pending</u>		
Nature Blinds, LLC	500,000.00	based on sales NTE \$100,000 per year
<u>Anticipated</u>		
Hill Country District Livestock Association	NTE 150,000.00	Reimbursement, \$100,000 if project not completed

## **Agenda Item:**

5G. Consider & approve EIC Investment Policy. (Erwin)

TO BE CONSIDERED BY THE EIC  
CITY OF KERRVILLE, TEXAS

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**SUBJECT:** EIC Investment Policy

**FOR AGENDA OF:** August 27, 2012    **DATE SUBMITTED:** August 15, 2012

**SUBMITTED BY:** Mike Erwin *ME*    **CLEARANCES:**  
Director of Finance

**EXHIBITS:** Investment Policy

**AGENDA MAILED TO:**

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

---

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

**PAYMENT TO BE MADE TO:**

**REVIEWED BY THE DIRECTOR OR FINANCE:**

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**SUMMARY STATEMENT**

The City of Kerrville staff will present and update the EIC Investment Policy.

**RECOMMENDED ACTION**

Recommend acceptance of the Policy.

**Economic Improvement Corporation**

**City of Kerrville, Texas  
Investment Policy**

Adopted August ~~2011~~2012

**1. General Policy**

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

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

**2. Scope**

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

**3. Goals and Objectives**

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

**a. Safety**

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

**b. Liquidity**

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

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

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

**c. Diversification**

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

**d. Yield**

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

**4. Investment Strategy**

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

**5. Investment Officers**

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

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

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

#### **Training**

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

#### **6. Standard of Care**

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

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

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

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

#### **7. Standard of Ethics**

Investment Officer(s) shall act as custodians of the public trust and shall refrain from any transaction that might involve a conflict of interest or the appearance of a conflict of interest, or any activity that might otherwise discourage public confidence. Investment Office(s) shall refrain from personal business activity that could conflict with proper execution of the investment program or that could impair their ability to make impartial investment decisions.

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

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

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

### Broker/Dealers

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

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

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

Broker/dealers shall provide timely trade documentation and confirmations.

### Certification

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

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

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

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

### Investment Pools

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Investment pools shall be required to furnish to the investment officer an information statement in accordance with the Act. An investment pool shall invest the funds it receives from entities in authorized investments permitted by the Public Funds Investment Act.

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Investment pools must be continuously rated no lower than AAA or AAA-m or at an equivalent rating by at least one nationally recognized rating service or no lower than investment grade by at least one nationally recognized rating service with a weighted average maturity no greater than 90 days.

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Any investment pool that does not meet the requirements of one that is created to function as a money market mutual fund must maintain a maximum average dollar weighted maturity that does not exceed 365 days (or 366 days in the case of a leap year) and must provide a fixed interest rate and a fixed maturity term for each pool position.

### Investment Advisor (Investment Manager)

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

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

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

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

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

### 9. Authorized Investments

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

a. Obligations of the United States Government, its agencies and instrumentalities, excluding mortgage backed securities, with a stated final maturity not to exceed two (2) years.

b. ~~Obligations of the State of Texas, its agencies or political subdivisions, excluding mortgage backed securities, with a stated final maturity not to exceed two (2) years.~~

c. Fully collateralized or insured certificates of deposit from banks or credit unions doing business in Texas with a final stated maturity not to exceed **eighteen (18)** months. Certificates of deposit shall be:

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1. guaranteed or insured by the Federal Deposit Insurance Corporation or its successor or the National Credit Union Share Insurance Fund or its successor, or
2. secured by obligations as defined by this Policy, and
3. governed by a written Depository Agreement that complies with federal and state regulations for properly securing a pledged security interest.

~~FDIC insured certificates of deposit from banks doing business in Texas with a final stated maturity not to exceed twelve (12) months. Certificates of deposit shall be guaranteed or insured by the Federal Deposit Insurance Corporation or its successor.~~

~~d. Share certificates of credit unions doing business in Texas and insured by the National Credit Union Share Insurance Fund or its successor and not to exceed twelve (12) months to maturity.~~

~~Commercial paper rated A1/P1 or its equivalent by two (2) nationally recognized rating agencies and with a final stated maturity not to exceed one hundred eighty five (185) days from the date of issuance.~~

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

f. Constant-dollar, AAA-rated Texas Local Government Investment Pools, approved by resolution of the Board and conforming in every respect to the Act.

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

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

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

i. ~~FDIC insured *brokered certificates of deposit* securities purchased from a broker or a bank in Texas, delivered versus payment to the City's safekeeping agent, not to exceed one year to maturity. Before purchase, the Investment Officer or Adviser must verify the FDIC status of the bank on [www.2fdic.gov/idasp/main\\_bankfind.asp](http://www.2fdic.gov/idasp/main_bankfind.asp) to assure that the bank is FDIC insured.~~

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~~j. State and municipal obligations of any state rated not less than AA by two nationally recognized rating agencies and with a stated maturity not to exceed two years.~~

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

Percentage of Portfolio (Maximum)

U.S. Treasury Obligations	80%
U.S. Government Agencies and Instrumentalities	100%
Local Government Investment Pool	100%
Fully Collateralized Certificates of Deposit	50%
Fully Collateralized Repurchase Agreements	
Money Market Mutual Funds	20%
State and municipal Obligations	<del>20</del> 25%

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

**Delivery versus Payment**

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

**Competitive Bidding**

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

**10. Collateralization**

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

**Repurchase Agreement- Owned Collateral**

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

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

The laws of the State, this Policy, and prudent treasury management require that all securities be settled on a delivery versus payment basis and be held in safekeeping by an

independent third party financial institution approved through the Administrative Services Contract. EIC, through the contract shall contract with its banking services depository or another financial institution(s) as Custodian for the safekeeping of any securities owned. The designated Custodian will be responsible for the clearing and safekeeping of all security trades and will provide a monthly report of holdings. All securities held by the Custodian on behalf of the EIC shall be evidenced by a safekeeping receipt.

## 12. Internal Control

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

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

### Cash Flow Forecasting

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

### Monitoring Credit Rating

The Investment Officer or investment adviser shall monitor, on no less than a weekly basis, the credit rating on all authorized investments in the portfolio based upon independent information from a nationally recognized rating agency. If any security falls below the minimum rating required by Policy, the Investment Officer shall notify the City Manager of the loss of rating, conditions affecting the rating and possible loss of principal with liquidation options available, within two weeks after the loss of the required rating.

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### Monitoring FDIC Coverage

The Investment Officer or Investment Adviser shall monitor, on no less than a weekly basis, the status and ownership of all banks issuing brokered CDs owned by the City based upon information from the FDIC. If any bank has been acquired or merged with another bank in which brokered CDs are owned, the Investment Officer shall immediately liquidate any brokered CD which places the City above the FDIC insurance level.

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### **13. Reporting**

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

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

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

### **14. Depositories**

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

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

### **15. Policies and Strategy Review**

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

APPENDIX A  
CERTIFICATION OF BROKER/DEALER

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

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

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

Firm:

\_\_\_\_\_  
Signature

Name:

Title:

Date:

APPENDIX B  
APPROVED BROKER/DEALERS

RECOMMENDED LIST

City of Kerrville, Texas EIC  
Authorized Broker/Dealer List

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Adopted May 22, 2012

The authorized broker/dealer list for the City of Kerrville EIC is shown below. Each of these firms, and the individual covering the account, are sent the current Investment Policy. In accordance with the Public Funds Investment Act (TX Gov't Code 2256.005(k)) before any broker/dealer transacts business with the City it will have had to certify in writing to a review of the City's Policy and have certified that procedures are in place to assure compliance with that Policy.

The City's Policy establishes specific criteria for the brokers and requires that the Board approve the list of broker/dealers annually. Patterson & Associates maintains the brokerage compliance files for the City.

When any material changes are made to the Investment Policy the new Policy is sent out for re- certification.

Barclays  
Cantella & Co.  
Morgan Stanley  
Mizuho Securities  
Stifel Nicolaus  
Vining Sparks  
Wells Fargo Securities (Money Market Mutual Funds only)

APPENDIX C  
INVESTMENT STRATEGY  
2011

**Sales Tax Improvement Fund**

All authorized investments permitted.

**Sales Tax Debt Service Fund**

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

**Capital Projects Fund**

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

## **Agenda Item:**

5H. Discussion for direction to City staff regarding the Airport Commerce Park.  
(Parton)



any parts of the development agreement. Only those amendments that would help make the balance of this project more economically viable should be considered.

### **RECOMMENDED ACTION**

City staff recommends that the EIC Board review the Airport Commerce Park Development Agreement to determine if it should be adjusted. Specific components to be reviewed would be the triggers for the initiation of subsequent phases and the performance requirements established through the planned development.

**Exhibit 1**

**Airport Commerce Park  
Development Agreement**

## AIRPORT COMMERCE PARK DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT ("Agreement") is made and entered into as of the 25 day of September, 2001, by and among Kerrville Airport Commerce Park, Ltd., a Texas Limited Partnership, ("Developer") by and through its Managing General Partner, RB Colvin, LLC, , whose offices are located at P.O. Box 785, Hunt, Texas, 78024, , the City of Kerrville, ("City"), a Texas home rule municipal corporation whose offices are located at 800 Junction Highway, Kerrville, Texas 78028, and the City of Kerrville, Texas Economic Improvement Corporation ("EIC"), a Texas non-profit corporation established by City in accordance with Section 4B of the Development Corporation Act of 1979 (Tex. Rev. Civ. Stat. art. 5190.6, hereafter called "the Act") whose offices are located at 800 Junction Highway, Kerrville, Texas 78028, and Richard B. Colvin and Nancy W. Colvin, (collectively hereafter referred to as "the Colvins") whose address is P.O. Box 785, Hunt, Texas 78024.

### RECITALS

WHEREAS, Developer owns an approximately 75.73 acre tract of land ("Property") in Kerr County, Texas, which is more particularly described in Exhibit "A", attached hereto and incorporated herein by reference; and

WHEREAS, Developer desires to develop the Property as a commercial business park; and has requested that City and EIC construct, at the expense of EIC and/or City, certain extensions of water and sanitary sewer mains to the Property; and

WHEREAS, City and EIC desire to fund and construct a portion of the requested water and sewer main extensions in consideration of Developer's agreement to, among other things, request annexation of the Property and to develop the Property in accordance with an agreed schedule subject to certain development standards; and

WHEREAS, the Colvins, either separately or as community property, own an approximately 14.19 acre tract of land immediately west of the Property, ("the Colvin Property") which is more particularly described in Exhibit "B", attached hereto and incorporated herein by reference; and

WHEREAS, the Colvin Property will benefit from the extension of water and sanitary sewer services to the Property along the Colvin Property's frontage adjacent to State Highway 27; and

WHEREAS, as limited partners of Developer, the Colvins have a direct interest in Developer succeeding in the development of the Property; and

WHEREAS, City, EIC, and Developer find it to be to their mutual advantage to enter into this Development Agreement (the "Agreement") regarding certain construction and development issues related to the Property; and

WHEREAS, the Colvins find it to be in their interest to join in this Agreement solely for the purposes set forth in Subsections C., E., G., and H. of Section III of this Agreement;

NOW, THEREFORE, in consideration of the covenants, conditions, and promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Developer, City, EIC, and the Colvins hereby agree as follows:

*Resolution No. 043-2003  
Resolution No. 064-2002*

Approved by City Council  
Date: Sept 25, 2001  
Volume 35 Page 9  
*Resolution No. 135-2001*

I. **DEFINITIONS**

Unless the context indicates otherwise, the following words and phrases as used in this Agreement shall have the following meanings:

- A. **Agricultural Purposes:** The use of land for:
1. grazing and incidental sale of livestock; and/or
  2. production, storage, and/or sale of hay and/or silage.
- B. **City Improvements:** This phrase shall collectively include the following public improvements that upon completion, shall be owned, operated, and maintained by City:
1. an extension of a water line of not less than twelve inches (12.0") in diameter with appurtenances along the frontage of the Colvin Property at State Highway 27, to the most northwesterly corner of the Property, and
  2. an extension of sanitary sewer collection main of not less than eight inches (8.0") in diameter with appurtenances along the frontage of the Colvin Property at State Highway 27, to the most northwesterly corner of the Property.
- C. **Colvin Property:** The land described in Exhibit "B," attached hereto.
- D. **Commission:** The City of Kerrville, Texas, Planning and Zoning Commission.
- E. **Phase I:** The portion of the Property located with frontage adjacent to State Highway 27 and described in a final plat approved by the Commission that contains an area equal to or greater than fifteen (15) acres, excluding any area dedicated for public or private streets or alleys, utility easements, or drainage easements or basins that is the first area of the Property developed.
- F. **Property:** The land described in Exhibit "A," attached hereto.
- G. **Public Improvement Specifications:** That certain document titled ***Standard Specifications for Subdivision Construction*** dated March 22, 1996, which has been published and adopted by the City Engineer (a copy of which has been provided to Developer and which Developer acknowledges receipt) for the design and/or construction of streets, sidewalks, curb and gutter, water distribution system, sanitary sewer collection system, storm water drainage facilities, and other public improvements constructed in accordance with the development of the Property, whether or not required by the Subdivision Regulations.
- H. **Subdivision Regulations:** Article 10, Chapter IV of the Code of Ordinances of the City of Kerrville, Texas, as amended, and such other ordinances previously or in the future adopted by City relating to the subdivision of property located as follows:
1. Within City's incorporated limits; and/or

2. Within City's extraterritorial jurisdiction as determined by Tex. Loc. Govt. Code §42.021, as amended.

I. **Zoning Code:** Article 11, Chapter I of the Code of Ordinances of the City of Kerrville, Texas, as amended, or its successor ordinance(s).

II. **REGULATIONS APPLYING TO DEVELOPMENT**

A. **Uniformity of Requirements:** City and Developer understand and agree that the development of the Property and the rules and regulations governing it are subject to the provisions of Chapter 245 of the Texas Local Government Code in effect on the date of this Agreement, except to the extent otherwise set forth in this Agreement. In the event of the repeal of Chapter 245 of the Texas Local Government Code without its replacement by a substantially similar statute, the parties agree that the development of the Property and the regulations applicable thereto shall continue to be determined as if Chapter 245 of the Texas Local Government Code had not been repealed. For the purpose of enforcement of Texas Local Government Code §§245.001, et.seq., as between the Developer and the City, the effective date of this Agreement shall be determinative of the applicable orders, regulations, ordinances, rules, expiration dates, or other properly adopted requirements applicable to the development of the Property. This section, however, shall not be governing or determinative as to the rules governing permit applications submitted by the Developer to third parties. For purposes of this Agreement, the parties understand and agree that the grant of a variance or waiver with respect to the development of any part of the Property does not constitute an order, rule, or regulation that controls or establishes a precedent for the development of any other portion of the Property.

B. **Regulations Applicable to Unplatted Property:** Notwithstanding the provisions of Section II.A., above, or Chapter 245 of the Texas Local Government Code, Developer agrees that any portion of the Property that:

1. has not been subdivided pursuant to a final plat approved on or before the 20<sup>th</sup> anniversary of the effective date of this Agreement; or
2. is not described within an application for a preliminary plat filed before the 20<sup>th</sup> anniversary of the effective date of this Agreement, which application is pending consideration by the Commission on or after the 20<sup>th</sup> anniversary of the effective date of this Agreement; or
3. is not described in an approval preliminary plat which has not terminated on or before the 20<sup>th</sup> anniversary of the effective date of this Agreement;

shall be developed in accordance with the version of the Subdivision Regulations and Public Improvement Specifications in effect at the time of the filing of a preliminary plat application (or, in the case of a minor plat, a final plat application) for said property.

C. **Regulations Applicable to Pending Preliminary Plat Applications:** Property described in a preliminary plat application which is filed for a portion of the Property on or before the 20<sup>th</sup> anniversary of the effective date of this Agreement

which is pending on said date shall be treated as unplatted property for purposes of Section B, above, if:

1. the preliminary plat application is denied; or
2. the preliminary plat application is approved, but then terminates as described in Section D., below.

Consequently, the Subdivision Regulations and Public Improvement Specifications in effect on the date of application shall apply to any subsequent application for the development of said portion of the Property.

- D. **Termination of Preliminary Plat:** Developer agrees that a preliminary plat for any portion of the Property shall terminate if an application for a final plat of that portion of the Property has not been filed and/or approval of a final plat has not been obtained for said portion of the Property on or before the deadlines set forth in Sections IV.B. and IV.D., below, which date shall in no case be earlier than one year after the date of the Commission's approval of the preliminary plat
- E. **Update of Public Improvement Specifications:** City and Developer agree that City may modify, supplement, and amend the Public Improvement Specifications during the term of this Agreement to make them consistent with generally accepted standards imposed by governmental entities on the construction of public improvements. City and Developer further agree that such modifications, supplements, and amendments shall apply only to those portions of the Property for which a preliminary plat application is filed after the date of adoption of said modifications, supplements, and amendments. For the purpose of this section, the term "filed" shall mean that an original application, properly signed as required by the Subdivision Regulations, and accompanied by all required drawings, checklists, and other documents, has been received by the Planning and Development Services Department, and all required application fees have been paid.
- F. **Development Regulations Prior to Annexation:** Upon execution of this Agreement, Developer agrees to develop the Property in accordance with the land use and development regulations set forth in Exhibit "C," attached hereto and incorporated herein by reference.
- G. **Creation of Planned Development District:** Developer and City acknowledge and understand that at the time of execution of this Agreement, no part of the Property is located within the City's incorporated limits and must be annexed in advance of or concurrent with development and that the zoning of any portion of the Property annexed will be established concurrent with annexation. Developer further understands and acknowledges that any attempt by City to agree by contract to any particular zoning regulations for the Property is unenforceable as a matter of state law; however, City acknowledges and agrees that Developer's desire to create a planned commercial development with a mix of compatible land uses subject to the land use and development conditions set forth in Exhibit "C," hereto, is in the best interest of the City. Consequently, Developer agrees not to object if City adopts an ordinance that imposes land use and development regulations substantially as set forth in Exhibit "C," hereto.

III. **CONSTRUCTION OF CITY IMPROVEMENTS**

- A. **Generally:** City and Developer agree that it is in the best interest of both City and Developer that City's water distribution system and wastewater collection system be extended to serve the Property. In consideration of and subject to the various agreements made by Developer, the Colvins, and EIC herein, City agrees to design and construct the City Improvements.
- B. **EIC Funding:** EIC agrees that City is hereby authorized to make payments for the cost of designing, bidding, and constructing the City Improvements from the EIC Contingency Fund (Fund 41) in an amount not to exceed \$500,000.00. EIC further agrees that City may reimburse itself from the funds authorized by this Agreement for costs related to the City Improvements that have been incurred and paid by City prior to the date of this Agreement.
- C. **Developer Participation:** Developer and the Colvins agree to reimburse EIC, as Developer's and the Colvins' agreed share of the cost for the City Improvements, the sum of ONE HUNDRED THOUSAND AND NO/100 DOLLARS (\$100,000.00) (the "Developer Participation"). The Developer Participation will be a non-interest bearing obligation and will be payable as follows:
1. Upon the close of the sale or lease of all or any portion of the Property, Developer will pay EIC an amount equal to the number of acres and portions of acres in the tract sold or leased multiplied by \$2,000.00.
  2. Upon the close of the sale or lease of all or any portion of the Colvin Property, the Colvins will pay EIC an amount equal to the number of acres and portions of acres in the tract sold or leased multiplied by \$1,000.00.
  3. For purpose of Section III.C.2., the phrase "lease" does not include any lease for Agricultural Purposes.
  4. Payment to EIC shall be made at the time of closing of the sale or lease of the portion of the Property or Colvin Property in question. Developer shall pay the unpaid balance of the Developer Participation upon the 20<sup>th</sup> anniversary date of the execution of this Agreement. For purpose of this paragraph, the "closing" on a lease shall be deemed to have occurred upon execution of the lease agreement and delivery of possession of the leased premises to the lessee.
  5. Payment of the Developer Participation will be secured by first lien Deed of Trust on the Property and a second lien Deed of Trust on the Colvin Property, the provisions of which shall be substantially as set forth in Exhibits "D" and "E"; attached hereto and incorporated herein by reference.
  6. The entire unpaid balance of the Developer Participation, including both principal and accrued interest, if any, shall, at the option of EIC, become immediately due and payable if the Developer or the Colvins fail to make payment of the amounts due under this Section III.C. as and when same becomes payable in accordance with the provisions hereof, or default shall

be made in the performance or observance of any covenant, condition, provision or agreement contained in the Deeds of Trust, and any such failure or default shall not be cured within twenty (20) days after written notice thereof from EIC to the Developer and the Colvins.

7. Amounts not paid more than thirty (30) days after delivery of written notice to Developer and the Colvins of the past due status of said amount shall accrue interest at the rate of ten percent (10.0%) per year until paid.

**D. Construction Schedule:** City agrees to design, bid, and award a contract for construction of the City Improvements not later than 180 days after delivery to City of an irrevocable letter of credit in favor of EIC in an amount not less than \$180,000.00 that contains at least the following provisions:

1. The letter of credit shall provide that the issuing financial institution will honor on sight, and pay to EIC upon presentation at the financial institution, drafts drawn by EIC on said account in the amount of the letter of credit when accompanied by an affidavit from the City Manager of the City of Kerrville, Texas, or other authorized representative of the City of Kerrville, Texas, stating that Developer, its successors or assigns, has not complied with the development schedule set forth in Section IV.B., below.
2. The term of the letter of credit shall end not earlier than twenty-four (24) months after the date of this Agreement;
3. EIC shall not be authorized to draw on the letter of credit if City fails to complete construction of the City Improvements.

City further agrees to require its contractors to use best efforts, subject to force majeure, to complete construction of the City Improvements within two hundred twenty (220) days after award of the contract and issuance of the notice to proceed. Notwithstanding the provisions of Section III.A., above, if Developer fails to comply with the deadline set forth in Section IV.B., below, and EIC draws on the letter of credit as authorized above, neither City nor EIC shall be obligated to reimburse Developer for the costs of constructing the City Improvements if Developer eventually completes development of Phase I. If the Developer completes the development of Phase I as required by Section IV.B, below, EIC agrees to return the above-described letter of credit to the issuing financial institution for cancellation not later than five (5) City business days after final acceptance by City of Phase I and receipt of written request from Developer.

**E. Cooperation of Developer:** City agrees that it will use reasonable efforts to design the City Improvements to be located in the right of way of State Highway 27; however, Developer and the Colvins understand and acknowledge that best engineering design practices and criteria and/or the inability of the City to obtain the consent of the State of Texas to use the State's right-of-way for the location of the City Improvements may require the City Improvements be located on portions of the Property and/or the Colvin Property. Subject to the above and Section II.F., below, Developer and the Colvins agree that the design of the City Improvements, including, but not limited to, the location of the City Improvements, shall at all times be solely determined by City. Developer and the

Colvins agree to cooperate with City in the construction of the City Improvements by:

1. dedicating to City, without charge to the City and not later than thirty (30) days after written request from City, such permanent utility easements as may be reasonably required for the construction, reconstruction, repair, replacement, maintenance and operation of the City Improvements, including, but not limited to, sites for any related sanitary sewer lift stations on the Property, the Colvin Property, or any other property for which the Developer and/or the Colvins presently own and have the legal right and ability to grant to City such property interests;
2. assisting City in obtaining any required subordination agreements from lienholders on the Property or the Colvin Property wherein any such liens shall become subordinated to the utility easements dedicated to the City;
3. providing such temporary construction easements and temporary materials storage sites as may be reasonably requested for use during construction of the City Improvements; and
4. directing Developer's and/or Colvin's contractors to cooperate and coordinate with the City's contractors during construction in order to avoid delays.

**F. Design and Capacity:** Based on detailed information of projected potable water and wastewater service demands for development of the Property provided to City by Developer or its consulting engineers, City will use its best efforts to design, construct, operate, and maintain the City Improvements in such a manner as to provide potable water and wastewater collection services consistent with the anticipated demand. Developer and City further agree that:

1. Developer does not by this Agreement intend that City be obligated to design and construct at City expense any water or wastewater transmission mains other than the City Improvements;
2. Developer hereby releases City from any liability for any inadequacies in potable water or wastewater capacity resulting from a design of the City Improvements based solely on the demand calculations provided to City by Developer if the actual post-development peak demands exceed the amount set forth in the demand calculation provided by the Developer to the City;
3. At no time does City by execution of this Agreement waive any defenses or immunities available to City against claims or lawsuits for the temporary inability to provide water and wastewater services when such failure results from the damage or failure of one or more components of the City's water treatment, water distribution, wastewater collection, and/or wastewater treatment systems;
4. City shall be obligated to provide at least the same level of water and wastewater service to the Property that is generally provided to City's other water and wastewater customers and that is otherwise required by federal or state law or regulation;

5. In the event City authorizes the connection of water distribution or wastewater collection systems constructed in areas not located within the Property to water distribution or wastewater transmission mains serving the Property such that additional water supply capacity required by properties outside the Property or additional flows of wastewater originating from outside the Property accelerate the need to increase the capacity in said transmission mains in order to provide adequate capacity to serve the Property, Developer will not be responsible for providing the necessary upgrades unless Developer is also developing the other property.

G. **Exclusive Agreement for Water and Wastewater Service:** As additional consideration for City's agreement to construct the City Improvements, Developer and the Colvins grant to City the sole and exclusive right to provide potable water and wastewater services to the Property and the Colvin Property. Upon the written request of Developer or the Colvins, City may, at its sole discretion, waive its right to serve specific areas with water and or wastewater services in favor of another service provider. Furthermore, the exclusive service agreement set forth in this section shall not be construed as prohibiting Developer from granting easements or rights-of-ways to other water or wastewater service providers for the location of transmission mains constructed to service areas outside the Property. Notwithstanding anything to the contrary herein, this Section III.G. shall not be construed as:

1. prohibiting the Colvins from using water from sources other than the City for Agricultural Purposes on the Colvin Property; or
2. requiring City to provide potable water to the Colvins for Agricultural Purposes.

H. **Use of Existing Wells Limited:** City and EIC agree that the groundwater well(s) located and operated on the Property as of the effective date of this Agreement may be used for the purposes of (1) providing potable water to existing buildings located on the property presently owned by the Colvins located adjacent to the Property and to the Colvin Property; (2) watering livestock; and (3) uses related to the operation of the gravel business presently located on the property now owned by the Colvins located adjacent to the Property and the Colvin Property. Further, any such groundwater well(s) may be replaced, provided that the replacement well(s) are used for the same purposes and shall not be located on the Property or the Colvin Property. Except as otherwise provided in this Section III.H., the Developer and the Colvins agree that no groundwater well(s) existing on the Property, the Colvin Property, or on any other property at the time of execution of this Agreement, or any groundwater wells constructed in the future regardless of location, may be used to provide water service for any purpose to the Property or the Colvin Property. This Section III.H. is limited to the issue of the provision of water to the Property and the Colvin Property by means of ground water well(s). This Section III.H. shall never be construed to prohibit the Colvins from diverting State waters from the Guadalupe River by any lawful means, including, but not limited to, one or more wells drilled in such a manner as to produce only water determined to be State water as defined under the Texas Water Code, for the purpose of irrigating the Colvin Property; however, this Section III.H. shall also never be construed as limiting the exclusive right of

City to provide potable water service to the Property and the Colvin Property as set forth in Section III.G., above.

**IV. ADDITIONAL CONSIDERATION FROM DEVELOPER AND COLVINS**

- A. Development to Occur In Phases:** The parties hereto acknowledge, understand, and agree that the Property may be developed in different phases with differing areas. Each phase to be developed must contain an area equal to or greater than fifteen (15) acres, excluding any area dedicated for public or private streets or alleys, utility easements, or drainage easements or basins; provided, however, if after all previous phases have been developed there remains an undeveloped parcel of less than 15 acres in area, said parcel may be developed as a single phase without Developer being in default of this Agreement.
- B. Development Schedule for Phase I:** Subject to delays due to Force Majeure as provided in Section VII.P. of this Agreement, not later than the latter of twelve (12) months after the date of the completion of the City Improvements or eighteen (18) months after the execution of this Agreement, Developer agrees to complete development of Phase I to the extent necessary to provide fully developed lots for sale, which development shall include, but not be limited to:
1. seeking and obtaining approval of final plats comprising the area of Phase I;
  2. completing construction of, and obtaining City final acceptance of, all public improvements required by the Subdivision Regulations or this Agreement to be constructed by Developer with respect to the development of Phase I, including, but not limited to, all internal water mains and related appurtenances, sanitary sewer mains and any required lift stations and related appurtenances, storm sewers or other drainage facilities, streets, and alleys;
  3. completing construction and/or installation of all other utilities with respect to Phase I including, but not limited to, natural gas (if any), electricity, and telephone;
  4. installing all necessary street lighting;
  5. completing construction of the entrance sign to the Property that is described in the land use and development regulations set forth in Exhibit "C", hereto.
- C. Failure to Meet Phase I Deadline; Liquidated Damages:** Developer understands and acknowledges that EIC's finding that the construction of the City Improvements constitutes a "Project" as defined by the Act is based on Developer's agreement to complete Phase I within the time required by Section IV.B., above. Developer and EIC agree that just compensation for the harm that would be caused to EIC by Developer's failure to complete Phase I within the time required by Section IV.B., above, cannot be accurately estimated or would be very difficult to accurately estimate and that the amount of the letter of credit described in Section III.D. is a reasonable forecast of just compensation to EIC

for the harm that would be caused by Developer's failure to comply with Section IV.B., above, and not a penalty. Consequently, Developer agrees that if Developer fails to comply with the deadline set forth in this Section IV.B., EIC shall have the right at its sole option and without recourse from Developer to present for payment the letter of credit described in Section III.D., above, as EIC's sole and exclusive remedy for default of this section.

**D. Development of Subsequent Phases; Schedule:** Subject to delays due to Force Majeure as provided in Section VII.P. of this Agreement, Developer agrees to develop all subsequent phases of the Property in accordance with the following schedule:

1. If the area of the Property to be developed in the next subsequent phase is included within the boundaries of a previously approved preliminary plat, then:
  - a. not later than ninety (90) days after the date Developer closes on the sale and/or lease of the area of any phase of the Property (including Phase I and any subsequent phase) that brings the total area sold or leased in that phase equal to seventy-five percent (75%) of the area of said phase, Developer shall submit an application for final plat of the next phase of the Property to be developed; and
  - b. not later than twelve (12) months after obtaining approval of the final plat for such subsequent phase, Developer agrees to complete development of said phase to the extent necessary to provide fully developed lots for sale or lease to the same extent required for Phase I as set forth in Section IV.B., above.
2. If the area of the Property to be developed in the next subsequent phase is not included within the boundaries of a previously approved preliminary plat, then:
  - a. not later than forty-five (45) days after the date Developer closes on the sale and/or lease of the area of any phase of the Property (including Phase I and any subsequent phase) that brings the total area sold or leased in that phase equal to seventy-five percent (75%) of the area of said phase, Developer shall submit and diligently prosecute an application for a preliminary plat of the Property to be included in the next phase to be developed; and
  - b. not later than thirty (30) days after obtaining approval of the preliminary plat for the portion of the Property included within the next phase to be developed, submit and diligently prosecute an application for a final plat for said Property; and
  - c. not later than twelve (12) months after obtaining approval of the final plat for such subsequent phase, Developer agrees to complete development of said phase to the extent necessary to provide fully developed lots for sale or lease to the same extent required for Phase I as set forth in Section IV.B., above.

- E. **Failure to Meet Subsequent Phase Deadlines; Acceleration of Reimbursement:** If Developer fails to comply with the deadlines for the development of any subsequent phase of the Property, EIC shall have the right to accelerate the payment of the remaining balance to be paid by Developer to EIC pursuant to Section III.C.
- F. **Drilling of Wells on Property to be Prohibited:** Developer and the Colvins agree to place a restrictive covenant on the Property and the Colvin Property, respectively, prohibiting the drilling of water wells on the Property and the Colvin Property and provide the City the right as a third party beneficiary to enforce said covenant, the text of which restrictive covenant shall be substantially as set forth in Exhibit "F", attached hereto and incorporated herein by reference.

V. **ANNEXATION**

- A. **Generally:** Developer, the Colvins, and City agree that it is the interest of both parties that the Property and the Colvin Property be annexed into the City's incorporated limits and developed subject to applicable city ordinances and this Agreement.
- B. **Request to Include Property in Extraterritorial Jurisdiction:** In accordance with Tex. Loc. Govt. Code §-42.022(b), Developer and the Colvins hereby request that those portions of the Property and Colvin Property, respectively, that are contiguous to but not presently located within City's extraterritorial jurisdiction as defined by Tex. Loc. Govt. Code §42.021 be included within the City's extraterritorial jurisdiction. Effective upon execution of this Agreement by the parties, City will be deemed to have approved Developer's and the Colvins' request, and the Property shall be included in City's extraterritorial jurisdiction.
- C. **Requests for Annexation:** For purposes of Tex. Loc. Govt. Code §§43.052(h), 43.054(b), and 43.0545(c)(2), City, Developer, and the Colvins agree that the execution of this Agreement shall constitute a request by Developer and the Colvins for annexation of the Property and the Colvin Property.
- D. **Effect of Annexation on Existing Structures and Other Facilities:** To the extent buildings (including, but not limited to, barns, houses, and animal stalls), structures, septic systems, plumbing systems, electrical systems, and mechanical systems at the time of annexation are not in compliance with existing City ordinances adopting standardized codes, City agrees and acknowledges that Developer shall not be required to bring such buildings, structures and systems into compliance with such codes upon annexation; provided, however, City may require Developer or Developer's successor in interest to bring such buildings, structures, or systems into compliance with applicable City ordinances to the extent required therein if:
1. an application for a remodel or renovation of such building(s) or structure(s) is(are) made subsequent to annexation; or
  2. a change in use of the building or structure is made after annexation such that modifications in the building, structure or system are mandated by City ordinance; or

3. the building or structure is determined to be unsafe and a public nuisance in accordance with Article 7, Chapter VII of the Code of Ordinances of the City of Kerrville, Texas, relating to the abatement of unsafe and dilapidated buildings.

**E. Water and Wastewater Services For Areas Not Annexed:** If City completes construction of the City Improvements prior to City annexing the Property, City agrees to provide water and wastewater services to the Property in the same manner as if the Property were annexed, including the assessment of the rates charged to water and wastewater customers located within the City's incorporated limits, but only if Developer has:

1. obtained approval of the final plat for Phase I;
2. completed construction of the water distribution and wastewater collection system for Phase I such that the systems have been inspected and finally accepted by the City and are ready to connect to the City's existing water and wastewater systems; and
3. not intentionally taken any action which Developer knew or had reason to know would result in a delay in annexation.

## **VI. TERM/TERMINATION/SURVIVAL/DEFAULT**

**A. Term of Agreement:** Except for the provisions of Article IV regarding the terms established therein and provisions the survival of which are specified in this Agreement, this Agreement shall be in effect as to all provisions for a term of twenty (20) years from the date of execution by parties. The term of this Agreement:

1. shall be subject to earlier termination as provided in this Article VI; or
2. may be amended, extended, or terminated by mutual written agreement of the parties.

**B. Rights and Remedies.** Except for the failure to comply with a deadline that can be objectively determined pursuant to the provisions of this Agreement, failure by either party to perform or otherwise act in accordance with any term or provision of this Agreement for a period of thirty (30) days (the "Cure Period") after written notice thereof from the other party, shall constitute a default under this Agreement; provided, however, that if the failure is such that more than thirty (30) days would reasonably be required to perform such action or comply with any term or provision hereof, then such party shall have such additional time as may be necessary to perform or comply so long as such party commences performance or compliance within said 30-day period and diligently proceeds to complete such performance or fulfill such obligation. Such notice shall specify the nature of the alleged default and the manner in which said default may be satisfactorily cured, if possible. In the event such default is not cured within the Cure Period, the non-defaulting party shall have all rights and remedies which may be available at law or in equity, including without limitation the right to

specifically enforce any term or provision hereof and/or the right to institute an action for damages, mandamus, specific performance.

VII. **ADDITIONAL PROVISIONS.**

- A. **Amendments:** This Agreement may be modified or amended only by the written agreement of the parties hereto.
- B. **Entire Agreement:** This Agreement contains the complete and entire agreement between the parties respecting the matters addressed herein, and supersedes all prior negotiations, agreements, representations, resolutions and understandings, if any, by and/or between the parties respecting such matters.
- C. **Notices:** Except as may be otherwise specifically provided in this Agreement, all notices required or permitted hereunder shall be in writing as follows:

If to Developer:

Mr. Richard Colvin, President  
RB Colvin, LLC, Managing General Partner  
P.O. Box 785  
Hunt, Texas, 78024

If to Colvins:

Richard B. and Nancy W. Colvin  
P.O. Box 785  
Hunt, Texas 78024

If to the City or EIC:

City Manager  
City of Kerrville, Texas  
800 Junction Highway  
Kerrville, Texas 78028

- D. **Savings and Severability:** Any clause, sentence, provision, paragraph or article of this Agreement held by a court of competent jurisdiction to be invalid, illegal or ineffective shall not impair, invalidate or nullify the remainder of this Agreement, but the effect thereof shall be confined to the clause, sentence, provision, paragraph or article so held to be invalid, illegal or ineffective.
- E. **Applicable Law:** This Agreement shall be construed under and in accordance with the laws of the State of Texas and all obligations of the parties hereunder are deemed to have been performed in Kerr County, Texas.
- F. **Warranty of Title:** Developer and the Colvins warrant and represent that they own the Property and the Colvin Property, respectively, and have the legal capacity and authority to enter into this Agreement and to convey to City the various interests in real and personal property described herein.

- G. **Agreement Binding on Successors:** This Agreement and all covenants, rights, benefits and privileges hereunder, shall be binding upon and shall inure to the benefit of the parties hereto and their heirs, executors, successors and assigns.
- H. **Non-Waiver:** Neither this Agreement nor any provisions hereof may be waived, modified, amended, discharged or terminated except by an instrument in writing signed by the party against which the enforcement of such waiver, modification, amendment, discharge or termination is sought, and then only to the extent set forth in such instrument.
- I. **Warranty of Capacity:** Each individual and entity executing this Agreement hereby represents and warrants that he, she or it has the capacity set forth on the signature pages hereof with full power and authority to bind the party on whose behalf he, she or it is executing this Agreement to the terms hereof.
- J. **Time of the Essence; Method of Delivering Notice:** Time is of the essence in the performance of and compliance with each of the provisions and conditions of this Agreement. Any communication, notice of demand of any kind whatsoever which either party may be required or may desire to give to or serve upon the other shall be in writing and delivered by personal service (including express or courier service), by electronic communication, whether by telex, telegram or telecopy (if confirmed in writing set by registered or certified mail, postage prepaid, return receipt requested) or by registered or certified mail, postage prepaid, return receipt requested, addressed as set forth in Section VII.C., above.
- K. **Change of Address; Notice Deemed Delivered:** Any party may change its address for notice by written notice given to the other in the manner provided herein. Any such communication, notice or demand shall be deemed to have been given or served on the date personally served, if by personal service, on the date of confirmed dispatch, if by electronic communication, or five (5) calendar days (exclusive of City holidays) after being placed in the U.S. Mail, if properly addressed and mailed in accordance with Section VII.J., above. "City holidays" shall be those days declared by the City Council to be a non-working city holiday in accordance with City's personnel policies.
- L. **Mediation of Disputes:** In the event of any dispute under this Agreement as to any matter, term, provision, right or covenant herein contained, the meaning of any term or provision, the breach of or default under any provision or covenant of this Agreement, and/or the enforcement of and under any provisions, rights or covenants of this Agreement, the parties agree to attempt to resolve such dispute and conflict by mediation within forty-five (45) days after written notice thereof is given by a party to the other party utilizing a third party neutral agreed upon by the parties or if no agreement is reached as to such third party neutral then such neutral shall be appointed by a District Judge sitting in Kerr County, Texas, upon any party's motion or request. The mediation shall be held in Kerrville, Kerr County, Texas.
- M. **Execution of Multiple Counterparts:** This Agreement may be executed in any number or counterparts, each of which shall be deemed an original, but all of which when taken together shall constitute one and the same instrument. The signature page of any counterpart may be detached without impairing the legal effect of the signature(s) thereon provided each signature page is attached to

any other counterpart identical thereto except having additional signature pages executed by other parties to this Agreement attached thereto.

- N. **Additional Instruments:** The parties agree to execute such other instruments and to do such further acts as may be reasonably necessary to carry out the provisions of this Agreement:
- O. **Incorporation of Exhibits:** All exhibits attached to this Agreement are incorporated by reference and expressly made part of this Agreement as if copied verbatim.
- P. **Force Majeure:** If by reason of Force Majeure any party hereto shall be rendered unable wholly or in part to carry out its obligations under this Agreement, then if such party shall give notice and full particulars of such Force Majeure in writing to the other party within a reasonable time after occurrence of the event or cause relied on, the obligation of the party giving such notice, so far as it is affected by such Force Majeure, shall be suspended during the continuance of the inability then claimed, but for no longer period, and any such party shall endeavor to remove or overcome such inability with all reasonable dispatch. The term "Force Majeure" as used herein shall mean acts of God, strikes, lockouts, or other industrial disturbances, acts of public enemy, order of any kind of the Government or the courts of the United States or the State of Texas, or any Civil or military authority insurrection or on account of any other causes not reasonably within the control of the party claiming such inability. Notwithstanding anything to the contrary herein, the failure to negotiate and execute a contract with any party necessary for Developer to comply with the provisions of Sections IV.B or IV.D. shall not constitute a Force Majeure as defined by this Section VII.P.
- Q. **Warranty and Authority:** EIC and City represent and warrant to the Developer and the Colvins, their heirs, successors and assigns, that this Agreement has been duly adopted and that this Agreement is within the scope of the EIC's and City's authority and the provisions of its charter and Subdivision Regulations, and further that the EIC and City are duly authorized and empowered to enter into this Agreement. The Developer and Colvins represent and warrant to the EIC and City that they have the requisite authority to enter into this Agreement.
- R. **EIC Representations and Findings:** EIC hereby represents and finds:
1. Pursuant to Section 4B of the Act, EIC is authorized to construct, or to provide funding to City to construct, projects which EIC finds to be encompassed by the definition of "Projects", as that word is defined in Section 2 and Section 4B of the Act; and
  2. EIC finds that construction of the City Improvements will, among other things, encourage an increase in the availability of property for commercial development within the City, encourage an increase in the commercial tax base of the City, allow for the expansion of existing businesses and encourage and attract new business to the City; and

3. EIC finds that the City Improvements will be of benefit to the residents of the City and is within the meaning of the word "project" as defined by the Act; and
  4. On August 27, 2001, 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 4B(n) of the Act related to the proposed expenditure of 4B Revenues for the City Improvements.
- S. **Assignment:** Developer may assign any part or all of Developer's rights, duties, and obligations set forth in this Agreement upon satisfaction of the following conditions:
1. Developer must provide City written notice of Developer's intent to assign this Agreement or any portion thereof not later than sixty (60) days prior to the effective date of the Assignment; and
  2. The assignee must expressly accept in writing all rights, duties, and obligations of performance of the Developer required by this Agreement as to that portion assigned to the assignee; and
  3. City shall not be required to release Developer as the primary actor with respect to default of this Agreement after its assignment by Developer, notwithstanding the assignee's assumption of Developer's duties and obligations; and
  4. Such assignment must be made expressly subject to the terms and provisions of this Agreement.
- T. **Memorandum of Agreement:** The parties hereto agree to execute and file in the Official Records of Kerr County, Texas, a memorandum of agreement containing the provisions substantially as set forth in Exhibit "G," attached hereto and incorporated herein by reference.
- U. **Attorney's Fees:** If any party retains an attorney to enforce this Agreement by means of litigation, the party prevailing in litigation will be entitled to recover reasonable attorney's fees, costs of court, and other costs. With respect to attorneys employed by the City, attorney's fees may be awarded whether or not the prosecution or defense of such action is conducted by attorneys that are not employees of the City or attorneys employed in the City's Legal Department, or both.

EXECUTED in duplicate the day and year first above written.

City Of Kerrville, Texas

BY: \_\_\_\_\_

Stephen P. Fine, Mayor

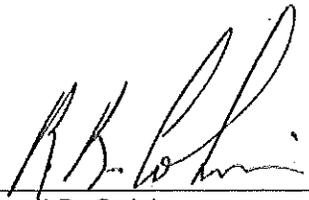
Kerrville Airport Commerce Park, Ltd.

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

Richard B. Colvin, President, RB Colvin LLC, Managing General Partner of Kerrville Airport Commerce Park, Ltd.

ATTEST:

  
Sheila L. Brand, City Clerk

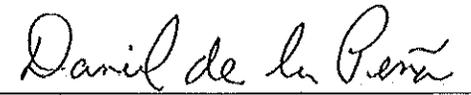
  
Richard B. Colvin

City Of Kerrville, Texas Economic  
Improvement Corporation

By:   
John E. Sample, President

  
Nancy W. Colvin

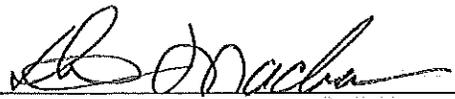
ATTEST:

  
Daniel de la Peña, Secretary-Treasurer

APPROVED AS TO FORM:

  
Kevin B. Laughlin, City Attorney

APPROVED AS TO FORM:

  
Dwaine Machann,  
Wallace, Jackson, Machann &  
Williams, Attorneys for Developer  
and the Colvins

# AIRPORT COMMERCE PARK DEVELOPMENT AGREEMENT

## INDEX TO EXHIBITS

Exhibit "A"	Legal Description of the Property
Exhibit "B"	Legal Description of the Colvin Property
Exhibit "C"	Development Regulations for Property
Exhibit "D"	Deed of Trust from Kerrville Airport Commerce Park, Ltd. to Kevin B. Laughlin, Trustee
Exhibit "E"	Deed of Trust from Richard B. Colvin and wife, Nancy B. Colvin, to Kevin B. Laughlin, Trustee
Exhibit "F"	Groundwater Well Drilling Restriction on the Property and the Colvin Property
Exhibit "G"	Memorandum of Development Agreement

**Exhibit 2**

**Kerrville Airport Commerce Park  
Deed Restrictions**

**KERRVILLE AIRPORT COMMERCE PARK  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

This Declaration of Covenants, Conditions, and Restrictions is made by KERRVILLE AIRPORT COMMERCE PARK, LTD., a Texas limited partnership ("Declarant").

**Recitals**

1. Declarant is the owner of all that certain 75.73 acres of land (the "Property") located in Kerr County, Texas, described in Exhibit "A" attached hereto.
2. The Property constitutes a Planned Development District in accordance with Article 11-I-15 of the Code of Ordinances of the City of Kerrville.
3. A portion of the Property herein ("Phase I") has been platted as Phase I of Kerrville Airport Commerce Park, as shown on plat recorded in Volume 7, Page 220, Plat Records of Kerr County, Texas.
4. The remainder of the Property (herein, the "Remainder Property") is unplatted acreage as of the date hereof.
5. Declarant has devised a general plan of development for Phase I of the Property, which plan of development will benefit Phase I, the Lots to be developed within Phase I and Declarant and each successive owner of an interest in Phase I.
6. Declarant desires to restrict Phase I and such additions to the Development as may hereafter be made, according to these covenants, conditions, and restrictions in furtherance of this general development plan.

NOW, THEREFORE, it is declared that Phase I of the Property, and such additions to the Development as may hereafter be made, shall be held, sold, and conveyed subject to the following restrictions, covenants, and conditions.

**ARTICLE I**

**Definitions**

**Association:** An incorporated association consisting of all Owners, which shall have the duty of maintaining the Common Area described in this Declaration. Each Owner shall become a member of the Association contemporaneously with acquiring a Lot, without any further documentation of any kind.

**Board:** The Board of Directors of the Association.

FILED FOR RECORD  
at 1:57 ..... o'clock ..... M

JUL 15 2003

JANNETT PIEPER  
Clerk ~~County~~ ~~County~~ Kerr County, Texas  
Deputy

25-5-1

**Common Area:** The landscaped entry area(s) to the Development from State Highway 27, including monument sign(s) therein, and such areas of the Development, if any, that may be set aside by Developer for park or greenbelt areas, such as walking trails, park benches, and the like.

**Conversion Date:** The date when the entire Property has been subjected to approved subdivision plat filed of record and seventy-five percent (75%) of the platted Lots have been sold by Developer.

**Developer:** Means Declarant and its successors and assigns designated by written instrument as successor Declarant hereunder.

**Development:** The property known as Kerrville Airport Commerce Park, consisting of Phase 1 only as of the date hereof, and to include such additions to the Development from the Remainder Property as may be made pursuant hereto.

**Lot:** Each parcel of land within the Development which has been platted as a separate lot pursuant to subdivision plat filed of record.

**Owner:** The record owner (including Developer), whether one or more persons or entities, of the fee simple title to any Lot which is a part of the Development or other land within the Remainder Property, including contract sellers, but excluding those holding title merely as security for the performance of an obligation.

**Planned Development District Regulations:** The use and development regulations set forth in City of Kerrville, Texas, Annexation Ordinance Number 2001-23 passed and approved on the 27th day of November, 2001, by the City of Kerrville, describing property to be annexed, adopting a service plan of the annexed territory, establishing zoning for the Property and creation of a Planned Development District for the Property in accordance with the Code of Ordinances of the City of Kerrville, Texas, a copy of which Ordinance is attached hereto as Exhibit "B" and made a part hereof for all purposes.

**ARTICLE 2**

**Architectural Control**

Developer shall designate and appoint (from time to time ) an Architectural Control Committee ("Committee") consisting of not less than three persons, which shall serve at the pleasure of the Developer. After the Conversion Date, the Committee shall serve at the pleasure of the Board of the Association. The initial Members of the Committee are:

Richard B. Colvin	Nancy W. Colvin	Greg F. Walsh, III
P. O. Box 785	P. O. Box 785	225 Fluor Daniel Drive, # 11110
Hunt, Texas 78024	Hunt, Texas 78024	Sugar Land, Texas 77479

The Committee must review and approve in writing all of the following projects in the Development:

- (i) Any building, fence, wall, sign, or other structure constructed or placed therein;
- (ii) Any exterior addition, change, or alteration in any building, fence, wall, sign, or other structure; and
- (iii) Any landscaping of any Lot or Lots.

To obtain approval for any project, an Owner must submit an application to the Committee showing the plans and specifications for the proposed project. Such plans and specifications shall detail the nature, shape, height, materials, colors, and location of the proposed project.

The Committee shall review applications in order to (1) ensure conformity of the proposal with these covenants, conditions, and restrictions and (2) ensure harmony of external design in relation to surrounding structures and topography. An application can be rejected for providing insufficient information. The Committee shall have broad, discretionary authority to interpret and apply these standards. In rejecting an application, the Committee should detail the reasons for rejection and suggest how the applicant could remedy the deficiencies.

If the Committee fails either to approve or reject an application within sixty (60) days after submission, then Committee approval shall not be required, and the applicant shall be deemed to have fully complied with this Article.

### ARTICLE 3

#### Planned Development District Regulations

Phase I of the Property, and such additions to the Development as may be made pursuant hereto, shall be used and developed in accordance the Planned Development District Regulations attached hereto and made a part hereof for all purposes. No other uses are permitted. The Planned Development District Regulations may be amended from time to time as set forth in Section 7.4 of this Declaration; PROVIDED THAT no such amendment to the Planned Development District Regulations is effective until adopted by Ordinance of the City of Kerrville, Texas.

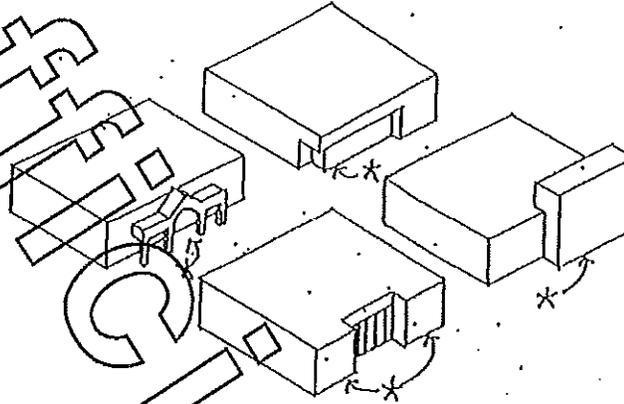
The grant of a variance or a waiver with respect to the development of any part of Phase I or any additions to the Development will not constitute an order, rule, or regulation that controls or establishes a precedent for the development for any other portion of the Development.

ARTICLE 4

Additional Development Regulations

4.1 "Big Box" Building Design. Buildings that contain of 25,000 sf. or more of space and 18' or more in eave height will have no less than thirty percent (30%) of the total area of their primary façade offset a minimum of four feet (4') (either in front or recessed from) the remainder of the primary façade. See Figure 1.

FIGURE 1



4.2 Loading and Unloading Areas.

A. No Lots adjacent to State Highway 27 are permitted to have a loading dock or service bay door on any building wall that faces State Highway 27.

B. All parking, loading, and maneuvering of trucks will be conducted off-street on private property.

4.3 Parking and Loading Area Surfaces. All required parking areas, as well as truck parking, loading and maneuvering areas, are required to be on paved concrete, asphalt or other similar impervious surface. Parking spaces shall be permanently and clearly identified by stripes, buttons, tiles, curbs, barriers or other approved methods.

4.4 New Construction. All buildings and other structures shall be of new construction and shall have concrete foundations.

4.5 Roof Materials. Corrugated metal roofing and cedar shake roofing is prohibited.

4.6 Roof Color. Roof color will be architecturally compatible with building color.

4.7 Landscaping. All required landscape areas will have fully automated underground irrigation systems, and each Owner shall maintain the landscaping areas within the Owner's property. Landscaping will be completed within ninety (90) days after completion of the first building on a Lot. In no case will large areas of uncovered soils exist in front of the main building structure.

4.8 Glare and Illumination.

A. Any illumination will be operated so as not to produce glare or direct illumination across the adjacent property line from a visible source of illumination of such intensity as to create a nuisance or distract from the use or enjoyment of adjacent property.

B. All outside lights will be made up of a light source and reflector so selected that acting together the light beam is controlled and not directed across any adjacent property line above a height of three feet (3') at a maximum intensity of 0.5 foot candles.

4.9 Maintenance. All improvements and landscaping shall be maintained in a clean and neat manner, and no junk, trash or rubbish will be allowed to accumulate on any Lot.

4.10 Highway 27 Building Setback. No building or other structure on any lot, including porches, roofs or other protrusions from said structure, shall be built or allowed to be closer than sixty (60) feet from the right-of-way of State Highway 27.

4.11 Nuisance. No business or activity shall create or omit offensive odors or otherwise constitute a nuisance to surrounding properties and owners thereof.

4.12 Waste Disposal. All toxic or environmentally hazardous material shall be disposed of offsite or otherwise in accordance with all laws and regulations of any governmental authority.

4.13 Open Burning. No open burning of trash, garbage, wood, leaves, paper or any other substances is permitted, except only for burning of trees and brush incidental to the clearing of land.

4.14 No Manufactured Homes, Etc. No manufactured home, modular home, mobile home, trailer house, tent or shack shall be placed, erected or permitted to remain on the Property, nor shall any structure of a temporary character be placed or allowed to be left on the Property except for temporary construction offices or construction office trailers. Manufactured homes, modular homes, mobile homes and trailer houses, irrespective of whether or not the axles and/or wheels have been removed from same, and irrespective of whether or not such manufactured home, modular home, mobile home or trailer house has been permanently attached to the land, or set upon a concrete foundation or any other kind of foundation, are specifically prohibited.

Notwithstanding anything contained in the foregoing paragraph, the same shall not be construed to prohibit any business involved in the manufacturing and/or assembly of any such manufactured home, modular home, mobile home, trailer house or similar product.

ARTICLE 5

Association

5.1 Duties. The Association shall be obligated to maintain, operate and improve the Common Area and personal property and improvements thereon and perform activities related thereto. The Association also shall have the authority to take such action and institute such proceedings as the Board may determine to be necessary or desirable to enforce the covenants and restrictions contained herein. Failure of the Association to institute any such action or proceeding shall not give rise to any claim or cause of action against the Association or its Board or any Owner, it being expressly provided that any such actions and proceedings are discretionary with the Board.

5.2 Voting Rights. The Association shall have two classes of voting membership:

Class A. Except as provided under "Class B" below, each Owner shall be a Class A member. Each Class A member shall be entitled to one vote for each Lot in which he holds the full fee interest. When the full fee interest in any Lot is held by more than one person or entity, all such persons or entities shall be members, and the vote for such Lot shall be exercised as they among themselves determine or, in the absence of any such determination, by a majority of such persons or entities, but in no event shall more than one vote be cast with respect to any Lot nor shall fractional votes be cast.

Class B. The Class B member(s) shall be Developer. The Class B member(s) shall be entitled to the greater of: (A) four (4) votes for each Lot in which such member(s) holds the full fee interest, or (B) one (1) vote for each acre of land within the Remainder Property that has not been subjected to recorded subdivision plat, provided that the Class B membership shall cease upon the Conversion Date.

5.3 Title to the Common Area. On or prior to the Conversion Date, Declarant will convey fee simple title to the Common Area and the improvements thereon to the Association.

5.4 Maintenance Assessments.

A. Creation. The Declarant, for each Lot within the Development hereby covenants, and each Owner of any Lot by acceptance of a Deed therefor, whether or not it shall be so expressed in any such Deed or other conveyance, shall be deemed to covenant to pay to the Association: (1) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be fixed, established, and collected from time to time as hereinafter provided. The annual and special assessments (together with interest thereon and costs of collection thereof, including attorneys' fees, as hereinafter provided), shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such

assessment, together with such interest, costs, and attorneys' fees also shall be the personal obligation of the Owner of such property at the time when the assessment fell due.

B. Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the improvement, maintenance and preservation of the Common Area; insurance for the personal property and improvements on the Common Area; liability insurance covering the Common Area and all damage and injury caused by the negligence of the Association; utilities; and payment of fees to accountants, attorneys and other parties providing professional and/or other services to the Association. The annual assessment shall include a reserve for maintenance, repairs and replacement of those elements that must be replaced on a periodic basis, which reserve may not be utilized by the Association for general operating expenses.

C. Special Assessments. In addition to the annual assessments, the Association, acting through its Board, may levy in any assessment year a special assessment, applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction or unexpected repair or replacement of improvements on the Common Area or costs and expenses incurred or to be incurred by the Association to enforce these covenants and restrictions. Special assessments will be due on the date specified by the Board.

D. Uniform Rate of Assessment. Both annual and special assessments shall be fixed at a uniform rate for all Lots regardless of location, and shall commence and be due in accordance with the provisions of Section 5.3 E heretofore.

E. Commencement of Annual Assessments; Due Dates. As to each Lot, the annual assessment shall commence on January 1 of the calendar year following the date that such Lot is created by recorded subdivision plat. The annual assessment shall be due and payable by each Owner to the Association in annual installments, in advance, on January 1 of each calendar year.

The Association, acting through its Board, shall fix the amount of the annual assessment in advance of each assessment year, which shall be the calendar year. Written notice of the annual assessment shall be sent as soon as is practicable to every Owner subject thereto.

F. Subordination of the Lien to Mortgages. The lien of the assessments shall be subordinate to the lien of any mortgage or mortgages granted by the Owner of any Lot to secure the payment of monies advanced and used for the purpose of purchasing and/or improving such Lot.

G. Exempt Property. The following property subject to this Declaration shall be exempt from the assessments created herein:

- (a) All properties dedicated to and accepted by a local public authority; and
- (b) The Common Area.

The Remainder Property shall not be subject to this Declaration until such land or part thereof is annexed as an addition to the Development, as herein provided.

5.5 Board of Directors of the Association. The affairs of the Association shall be managed by the Board of the Association. The initial Board (and any replacement Directors) shall be appointed by Developer until the Conversion Date. After the Conversion Date, the members of the Association shall elect a new Board of Directors.

5.6 Reimbursement by the Association. In the event that the Declarant bears any cost and expense, on behalf of the Association, incident to and necessary to effectuate the performance and discharge by the Association of its duties, obligations and responsibilities hereunder, then Declarant shall be reimbursed the full amount of the expense incurred, upon demand by Declarant after the Association shall have collected sufficient annual assessments from the Owners with which to reimburse Declarant therefor.

ARTICLE 6

Enforcement

If the Owners of any Lot, or their heirs, executors, administrators, successors, assigns or tenants shall violate or attempt to violate any of the restrictions and/or covenants set forth in this Declaration, it shall be lawful for the Association, the Developer or any Owner to prosecute any proceedings against the person or persons violating or attempting to violate any such restrictions and/or covenants. The failure of the Owner or tenant to perform its obligations hereunder will result in irreparable damage to the Association, the Developer and other Owners of Lots in the Development, and the breach of any provision of this Declaration may not only give rise to an action for damages, but such provisions also are specifically enforceable by injunctive action in any court of competent jurisdiction. In the event an enforcement action is instituted and the enforcing party prevails, then in addition to the remedies specified above, court costs, attorneys fees and all other costs and expenses of litigation shall be recoverable against the violator.

Enforcement shall be by proceedings at law or in equity against any person or persons violating or attempting to violate any covenant to restrain the violation and/or to recover damages.

ARTICLE 7

Annexation of Remainder Property

Declarant hereby declares that it presently contemplates that at a future time the properties subject to this Declaration may be expanded (but Declarant does not hereby obligate itself to do so) by bringing the Remainder Property within the scheme of this Declaration.

Declarant shall have the right, at any time and from time to time within twenty-five (25) years from the date hereof, and without the consent of the Association, its Board of Directors, any mortgagee, or any other Owner, to bring within the scheme of this Declaration, in one or more future stages or additions of the Development, said Remainder Property; it being the intention of this instrument that such additional properties may be annexed during such period at the sole discretion of Declarant, without the consent of any other party whatsoever.

All such additions hereunder shall be developed in a manner similar to the development of Phase I of the Property in accordance with a general plan of development under which (i) the development regulations and architectural standards applicable to Phase I will be continued in such annexed properties, and (ii) the Lots within the annexed properties will become subject to assessment in the same manner as then prevailing for the property within the Development.

The additions authorized under this Article shall be made by filing of record a Supplementary Declaration(s) of Covenants, Conditions and Restrictions with respect to the additional property which shall (i) extend the scheme of the covenants and restrictions of this Declaration to such property, (ii) describe the Lots and Common Area within the annexed properties, (iii) provide that each Owner of a Lot within the annexed properties shall be a member of the Association and entitled to voting rights of an Owner as herein provided, (iv) subject such Lots within the annexed properties to the assessments herein provided, and (v) contain such other terms and provisions as Declarant may deem advisable to effectuate such annexation.

Declarant further reserves the right, at any time and from time to time, without requesting or receiving the consent of the Association, its Board of Directors, any Owner or any mortgagee, to plat, amend the recorded plat, modify, alter or otherwise change the legal or other status or configuration of the property to be annexed, to grant easements, and to otherwise take such action as may be deemed necessary by Declarant to satisfactorily effect the provisions hereof. Upon the recordation of a Supplementary Declaration in compliance with the provisions of this Article 7 adding additional property, this Declaration shall further apply to and affect all of the property described in this Declaration and the property described in any such Supplemental Declaration, and shall also bind all Owners of any such part of such property with the same effect as if the property described in the Supplemental Declaration were originally subject to and described in this Declaration.

This Declaration, including but not limited to this Article 7, does not create any interest in or with respect to the Remainder Property, and this Declaration shall not affect in any manner all or any part of such Remainder Property unless and until a Supplementary Declaration is filed with respect thereto in accordance with this Article 7.

Any improvements situated on any such additions to the Development at the time such property is annexed into and made a part of the Development may continue to be used and operated as a non-conforming use without being in violation of this Declaration so long as such use is permitted as a non-conforming use under the Ordinances of the City of Kerville.

## ARTICLE 8

### General Provisions

8.1 Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provision, and all other provisions shall remain in full force and effect.

8.2 These restrictions, covenants, and conditions are for the purpose of protecting the value and desirability of Phase 1 and such additions to the Development as may be made pursuant hereto. Consequently, the restrictions, covenants and conditions shall run with the real property and shall be binding on all parties having any right, title or interest in the Development and their heirs, successors, and assigns. These covenants, conditions, and restrictions shall be for the benefit of the Development, each Lot, and each Owner.

8.3 The covenants, conditions, and restrictions of this Declaration shall be effective for a term of twenty (20) years from the date this Declaration is recorded, after which period the covenants, conditions, and restrictions shall be automatically extended for successive period of ten (10) years subject to termination by an instrument approved by Owners entitled to cast two thirds (2/3) of the total votes of the Association, subject to the provisions of section 8.4 below.

8.4 The covenants, conditions, and restrictions of this Declaration may be amended by an instrument approved by Owners entitled to cast two-thirds (2/3) of the total votes of the Association. Neither any amendment nor any termination shall be effective until recorded in the Official Public Records of Kerr County, Texas. Termination or amendment of the Planned Development District Regulations also requires adoption by Ordinance of the City of Kerrville, Texas.

8.5 This Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan of development.

This Declaration is executed this 14<sup>th</sup> day of July, 2003.

KERRVILLE AIRPORT COMMERCE PARK, LTD.

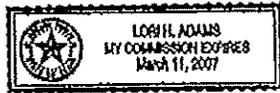
BY: R. B. COLVIN LLC, Managing General Partner

By: Richard B. Colvin  
RICHARD B. COLVIN, President

THE STATE OF TEXAS §

COUNTY OF KERR §

This instrument was acknowledged before me on this 14<sup>th</sup> day of July, 2003, by RICHARD B. COLVIN, President of R. B. COLVIN, LLC, General Partner of KERRVILLE AIRPORT COMMERCE PARK, LTD., a Texas limited partnership, on behalf of said limited partnership.



Lorill Adams  
Notary Public, State of Texas

## EXHIBIT "A"

FIELD NOTES DESCRIPTION FOR 75.73 ACRES OF LAND OUT OF THE J. W. COLVIN, III AND CITY SOUTH MANAGEMENT CORP. LAND ALONG STATE HIGHWAY NO. 27 IN KERR COUNTY, TEXAS

Being all of a certain tract or parcel of land containing 75.73 acres, more or less, out of O. V. Robinson Survey No. 44, Abstract No. 282 in Kerr County, Texas; comprising 4.25 acres out of a certain 141.38 acre tract conveyed from Farm Credit Bank of Texas to J. W. Colvin, III by a Special Warranty Deed with Vendor's Lien executed the 2<sup>nd</sup> day of November, 1995 and recorded in Volume 822 at Page 638 of the Real Property Records of Kerr County, Texas, 66.48 acres out of a certain 186.99 acre tract conveyed from Farm Credit Bank of Texas to City South Management Corp. by a Special Warranty Deed with Vendor's Lien executed the 2<sup>nd</sup> day of November, 1995 and recorded in Volume 822 at Page 620 of the Real Property Records of Kerr County, Texas, and 5.00 acres out of a certain 10.00 acre tract heretofore conveyed out of said 141.38 and 186.99 acre tracts from Richard B. Colvin, et ux to Chapman Building Systems, Inc. by a Warranty Deed with Vendor's Lien executed the 15<sup>th</sup> day of December, 2000 and recorded in Volume 1099 at Page 413 of the Real Property Records of Kerr County, Texas; and being more particularly described by metes and bounds as follows:

BEGINNING at a ½" iron stake set in a fence, the northeast line of said 186.99 acre tract and southwest right-of-way line of State Highway No. 27 for the northeast corner of the herein described tract; which point bears: 60.00 ft. N.52°14'07"W, from a fence cornerpost, the east corner of 186.99 acre tract; and, approximately, 2907 ft. North and 2023 ft. East from the southwest corner of Survey No. 44;

THENCE, upon, over and across said 186.99 acre tract: S.37°46'39"W., 140.62 ft. to a set ½" iron stake; S.00°29'25"W., 1083.27 ft. to a set ½" iron stake; and S.00°58'59"E., 544.18 ft. to a ½" iron stake set for the southeast corner of the herein described tract;

THENCE, continuing upon, over and across said 186.99 acre tract: S.89°01'01"W., 141.24 ft. to a set ½" iron stake; N.53°26'54"W., at 847.97 ft. passing a fence anglepost, then continuing along a fence for a total distance of 2004.53 ft. to a fence anglepost; N.41°48'05"W., along a fence at 67.42 ft. passing the common line between said 186.99 and 141.38 acre tracts, then continuing upon, over and across said 141.38 acre tract for a total distance of 166.79 ft. to a fence anglepost, and N.35°23'42"W., continuing along a fence upon, over and across 141.38 acre tract 141.03 ft. to a fence anglepost for the southwest corner of the herein described tract;

THENCE, continuing upon, over and across said 141.38 acre tract N.17°41'45"E., 551.86 ft. to a ½" iron stake found for the southwest corner of said 10.00 acre tract;

THENCE, continuing upon, over and across said 141.38 acre tract with the west line of said 10.00 acre tract N.00°56'43"W., 479.47 ft. to a ½" iron stake set for a westerly corner of the herein described tract;

THENCE, upon, over and across said 10.00 acre tract and continuing upon, over and across said 141.38 acre tract N.89°03'06"E., at 266.76 ft. passing the said common line between 141.38 and 186.99 acre tracts, then continuing upon, over and across said 186.99 acre tract for a total distance of 351.18 ft. to a 1/2" iron stake set in the east line of 10.00 acre tract for a reentrant corner of the herein described tract;

THENCE, with the said east line of 10.00 acre tract continuing upon, over and across said 186.99 acre tract N.00°56'54"W., 479.55 ft. to a 1/2" iron stake found in a fence, the said northeast line of 186.99 acre tract and southwest right-of-way line of State Highway No. 27 for the northwest corner of the herein described tract and northeast corner of 10.00 acre tract,

THENCE, along or near said fence with the northeast line of 186.99 acre tract and southwest right-of-way line of State Highway No. 27, S.52°14'07"E., 1931.68 ft. to the PLACE OF BEGINNING.

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

Date Surveyed: June 22, 2001  
Dated this 19<sup>th</sup> day of July, 2001

Lee C. Voelkel  
Registered Professional Land  
Surveyor No. 3909

Provision herein which restricts the sale, rental or use of the described property because of color or race is hereby declared null and void under Federal Law, THE STATE OF TEXAS, COUNTY OF KERR.

I hereby certify that this instrument was FILED in the Public Sequence on the date and at the time stamped hereon by me and was duly RECORDED in the Official Public Records of Real Property of Kerr County, Texas on

JUL 16 2003



*Janice Ripper*  
COUNTY CLERK, KERR COUNTY, TEXAS

RECORD *Real Property*  
VOL. 1283 pg. 794  
RECORDING DATE

JUL 16 2003



*Janice Ripper*  
COUNTY CLERK, KERR COUNTY, TEXAS

Filed by and return to  
Dwayne Machann  
222 Sidney Baker South  
Suite 436  
Kerrville, Texas 78028 • 54983  
(830) 895-5500

**Exhibit 3**  
**Ordinance No. 2001-23**

**CITY OF KERRVILLE, TEXAS**  
**ORDINANCE NO. 2001-23**

AN ORDINANCE ANNEXING AN APPROXIMATELY 75.73 ACRE TRACT OUT OF THE O.V. ROBINSON SURVEY NO. 44, ABSTRACT NO.282 ADJACENT TO THE CORPORATE LIMITS OF THE CITY OF KERRVILLE, TEXAS; DESCRIBING THE TERRITORY TO BE ANNEXED; ADOPTING A SERVICE PLAN FOR THE TERRITORY ANNEXED; AND ESTABLISHING THE ZONING FOR THE AREA ANNEXED

WHEREAS, pursuant to Tex. Loc. Govt. Code §43.052(h)(2), the owner of the property described in Section One, below, has petitioned that said property be annexed into the corporate limits of the City of Kerrville, Texas; and

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

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

SECTION ONE. That the following described property is hereby annexed and incorporated into the corporate limits of the City of Kerrville, Texas, for all legal purposes:

Being all of a certain tract or parcel of land containing 75.73 acres, more or less, out of O. V. Robinson Survey No. 44, Abstract No. 282 in Kerr County, Texas; comprising 4.25 acres out of a certain 141.38 acre tract conveyed from Farm Credit Bank of Texas to J. W. Colvin, III by a Special Warranty Deed with Vendor's Lien executed the 2<sup>nd</sup> day of November, 1995 and recorded in Volume 822 at Page 638 of the Real Property Records of Kerr County, Texas, 66.48 acres out of a certain 186.99 acre tract conveyed from Farm Credit Bank of Texas to City South Management Corp. by a Special Warranty Deed with Vendor's Lien executed the 2<sup>nd</sup> day of November, 1995 and recorded in Volume 822 at Page 620 of the Real Property Records of Kerr County, Texas, and 5.00 acres out of a certain 10.00 acre tract heretofore conveyed out of said 141.38 and 186.99 acre tracts from Richard B. Colvin, et ux to Chapman Building Systems, Inc. by a Warranty Deed with Vendor's Lien executed the 15<sup>th</sup> day of December, 2000 and recorded in Volume 1099 at Page 413 of the Real Property Records of Kerr County, Texas; and being more particularly described by metes and bounds as follows:

BEGINNING at a ½" iron stake set in a fence, the northeast line of said 186.99 acre tract and southwest right-of-way line of State Highway No. 27 for the northeast corner of the herein described tract; which point bears: 60.00 ft. N.52°14'07"W. from a fence cornerpost, the east corner of 186.99 acre tract; and, approximately, 2907 ft. North and 2023 ft. East from the southwest corner of Survey No. 44;

THENCE, upon, over and across said 186.99 acre tract: S.37°46'39"W., 140.62 ft. to a set ½" iron stake; S.00°29'25"W., 1083.37 ft. to a set ½" iron stake; and S.00°58'59"E., 544.18 ft. to a ½" iron stake set for the southeast corner of the herein described tract;

Approved by City Council  
Date: November 27 2001  
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2001-23

THENCE, continuing upon, over and across said 186.99 acre tract: S.89°01'01"W., 141.24 ft. to a set ½" iron stake; N.53°25'54"W., at 847.97 ft. passing a fence anglepost, then continuing along a fence for a total distance of 2004.53 ft. to a fence anglepost; N.41°48'05"W., along a fence at 67.42 ft. passing the common line between said 186.99 and 141.38 acre tracts, then continuing upon, over and across said 141.38 acre tract for a total distance of 166.79 ft. to a fence anglepost, and N.35°23'42"W., continuing along a fence upon, over and across 141.38 acre tract 141.03 ft. to a fence anglepost for the southwest corner of the herein described tract;

THENCE, continuing upon, over and across said 141.38 acre tract N.17°41'45"E., 551.86 ft. to a ½" iron stake found for the southwest corner of said 10.00 acre tract;

THENCE, continuing upon, over and across said 141.38 acre tract with the west line of said 10.00 acre tract N.00°56'43"W., 479.47 ft. to a ½" iron stake set for a westerly corner of the herein described tract;

THENCE, upon, over and across said 10.00 acre tract and continuing upon, over and across said 141.38 acre tract N.89°03'06"E., at 266.76 ft. passing the said common line between 141.38 and 186.99 acre tracts, then continuing upon, over and across said 186.99 acre tract for a total distance of 351.18 ft. to a ½" iron stake set in the east line of 10.00 acre tract for a reentrant corner of the herein described tract;

THENCE, with the said east line of 10.00 acre tract continuing upon, over and across said 186.99 acre tract N.00°56'54"W., 479.55 ft. to a ½" iron stake found in a fence, the said northeast line of 186.99 acre tract and southwest right-of-way line of State Highway No. 27 for the northwest corner of the herein described tract and northeast corner of 10.00 acre tract;

THENCE, along or near said fence with the northeast line of 186.99 acre tract and southwest right-of-way line of State Highway No. 27, S.52°14'07"E., 1931.68 ft. to the PLACE OF BEGINNING.

All property corners are as stated (Bearing basis = True north based on GPS observations).

(hereafter called "the Property").

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

SECTION THREE. That upon the adoption of this ordinance, the Property shall be and constitutes a Planned Development District in accordance with Article 11-I-15 of the Code of Ordinances of the City of Kerrville, Texas, which, in addition to the regulations set forth in the Title 11, Chapter I of the Code of Ordinance, shall be subject to the following use and development regulations:

- A. **Site Plan:** The development of the Property shall conform in all respects to the site plan(s) attached hereto as Exhibit "B" and incorporated herein by reference.

**B. Uses Permitted by Right:** The Property may be developed with the following uses as a matter of right:

1. Agricultural Services, but only those uses described in Art. 11-I-3(a.)(4)(i) and (iii)
2. Blue printing and photo copying services
3. Building cleaning services
4. Building Construction, General
5. Building Construction, Specialist
6. Cablevision, radio and television stations
7. Commercial art, photography, and graphics (but not including retail portrait studios)
8. Commercial testing laboratories
9. Day care centers, but only if operated in association with and ancillary to another business permitted by this Ordinance to be operating on the Property. Such day care center must: (1) be located on the property of the associated business and (2) have no less than eighty percent (80%) of the children enrolled in the center consist of children of the owners, officers, or employees of the associated business.
10. Disinfecting and exterminating services
11. Employment agencies
12. Equipment Sales/Repair/Storage (Heavy), which business may also include the rental of tools, equipment, and other goods as a related and ancillary use
13. Gunsmith and locksmith shops
14. Health or fitness studios/salons and massage therapy, but only if:
  - a. it is located and operated ancillary to a hotel or motel located on the Property and providing services primarily to the guests of said hotel or motel; or
  - b. it is operated in association with and ancillary to another business permitted by this Ordinance to be operating on the Property; provided, such facility is located on the property of the associated business and have no less than 80% of the members consist of officers, employees, directors, or shareholders of the associated business, or members of their respective families.

15. Hospital Services
16. Hotel/Motel (limited to one hotel or motel located within five hundred (500) feet of the southern pavement line of State Highway 27)
17. Job and Vocational Training Centers
18. Kennels with a maximum boarding capacity of less than twelve (12) animals
19. Laundry services (commercial and industrial services only)
20. Maintenance and Service Facilities
21. Manufacturing, Custom
22. Mini-storage
23. Newspapers
24. Pet services
25. Photo finishing laboratories, but not including stand-alone retail photo processing businesses where retail customers can deliver film for processing and pick-up processed photographs
26. Postal services
27. Protective services, non-governmental
28. Recreation, Commercial (but only those uses defined as Indoor Sports and Recreation or Outdoor Sport and Recreation, but excluding outdoor shooting ranges of any type)
29. Refrigeration/air conditioning service and repair
30. Restaurant, General (limited to one restaurant located within five hundred (500) feet of southern pavement line of State Highway 27)
31. Reupholstery and furniture repair
32. Safety Services
33. Schools primarily engaged in instructional or informational classes related to art, dance, gymnastics, cheerleading, trampoline and tumbling, or martial arts

34. Sign painting and outdoor advertising services
35. Swimming pool and cleaning and maintenance
36. Telecommunications Distribution Location
37. Telecommunication Servicing Center
38. Telephone and electric company offices (excluding storage and maintenance yards, but including telecommunication serving centers)
39. Transportation Terminal, including bus terminals and motor freight transportation businesses
40. Utility Services, Local
41. Vehicle Maintenance and Repair, but not including the uses defined as Vehicle Sales/Services – New and Vehicle Sales/Services-Used, except to the extent allowed by Subsection B.44, below.
42. Warehousing and Distribution, and/or Moving and Storage Businesses
43. Welding shops, not elsewhere classified as a manufacturing or industry
44. Businesses primarily engaged in the rental of automobiles, light trucks, sport utility vehicles, and passenger vans not exceeding a capacity of fifteen (15) passengers; provided that no more than one such business shall be located on the Property
45. Businesses primarily engaged in the manufacture, processing, and packing of dairy products.
46. Businesses primarily engaged in the canning of fruits and vegetables.
47. Businesses primarily engaged in preparing foods from previously milled grain products, including the preparation of breakfast foods, the mixing of flours, and the manufacture of bakery products
48. Businesses primarily engaged in the manufacture of sugar, candy, and other confectionery products
49. Businesses primarily engaged in the manufacture of butter, margarine, cooking oils, etc., from previously processed animal and vegetable oils
50. Businesses primarily engaged in the manufacture, bottling, and canning of beverages

51. Businesses primarily engaged in the manufacture of tobacco products
52. Businesses primarily engaged in the preparation, manufacture, cutting, sewing, and finishing of textile mill products
53. Businesses primarily engaged in the cutting and manufacture of lumber and wood products, including the construction of wood buildings or arches, trusses, etc., in a construction facility for sale and transport to another site for placement on a lot for use
54. Businesses primarily engaged in the manufacture of furniture and fixtures for residential or business use
55. Businesses primarily engaged in the manufacture of paper and paperboard products
56. Businesses primarily engaged in the manufacture or processing of drugs in pharmaceutical preparations for human or veterinary use
57. Businesses primarily engaged in the manufacture of tires, footwear, bottles, hoses, etc., from rubber, from primary plastic products, etc
58. Businesses primarily engaged in the manufacture of leather products such as shoes, luggage, etc.
59. Businesses primarily engaged in the manufacture of glass, stone, clay, and concrete products (but not a concrete batch plant).
60. Businesses primarily engaged in the manufacture of metal products, such as metal cans, hand tools, wire products, general hardware, and weapons but not weapons ammunition
61. Businesses primarily engaged in the manufacture of machinery and equipment, such as farm machinery, construction equipment, power and machine tools, engines, etc
62. Businesses primarily engaged in the manufacture of office, computing, and accounting machines, and businesses primarily engaged in the manufacture of refrigeration and service machinery
63. Businesses primarily engaged in the manufacture of electrical and electronic machinery, equipment, and supplies
64. Businesses primarily engaged in the manufacturing of transportation equipment, including motor vehicles

65. Businesses primarily engaged in the manufacture of laboratory, scientific and measuring equipment, of watches, clocks, jewelry, musical instruments, signs, toys, and other products
66. General contractors (with contractor yards greater than five (5) acres in size) for the following:
  - a. Residential dwellings
  - b. Commercial buildings and structures
  - c. Industrial buildings and structures
  - d. Highway and street construction
  - e. Water, sewer, pipeline construction
  - f. Earth moving, drainage, land reclamation
  - g. Bridges, tunnels

**C. Ancillary Sales and Services:** A portion of the Property that is used and developed for a purpose permitted under Subsection B, above, that by definition does not otherwise allow the use of said tract for the on-premises sale of goods and/or services can be used for the on-premises sale of goods and/or services subject to the following restrictions:

1. Such sales must be conducted in association with and ancillary to the primary use of the tract otherwise permitted by this Ordinance:
2. The goods sold must be goods that are:
  - a. manufactured or produced by the associated business on the Property; or
  - b. in the case of a warehouse and distribution center, kept on the property of the associated business for purpose of distribution to other locations; or
  - c. directly related to the use, maintenance, or repair of the goods manufactured or produced by the associated business on the Property;
3. If services are provided, such services must be:

- a. directly related to the operation, repair, or maintenance of goods manufactured, produced, or repaired by the associated business on the Property; or
  - b. be the same type of services generally provided to customers who can obtain the services without being personally on the premises (e.g. a business that conducts bulk photographic film processing for other businesses who ship such film from off-premises sites can also provide similar film processing services for walk-in customers).
4. Such sales must be conducted within the Main Building located on the property of the associated business; provided, however, this subparagraph shall not be construed as prohibiting customers from being allowed into the areas of the business, including accessory buildings, where the production, manufacturing, or repair of goods is occurring or where the finished or repaired goods that are produced, manufactured, or repaired on the Property by the associated business are being stored;
  5. The area of the Main Building where such sales occur shall not exceed the lesser of:
    - a. ten percent (10%) of the floor area of the Main Building; or
    - b. 2000 square feet;

provided, however, such sales area may at all times be equal to at least 500 square feet. For purposes of this Paragraph 5, office areas located in the Main Building where customers generally are not invited for the purpose of conducting sales shall not be included in the area calculations.

**D. Uses Requiring Conditional Use Permit:**

The following uses may be allowed if a conditional use permit is sought and obtained pursuant to Art. 11-I-13 of the Code of Ordinances:

1. Taxidermy business that:
  - a. does not conduct on-site evisceration and processing of animal carcasses; or
  - b. whose on-site evisceration and processing operations have been determined by the Planning and Zoning Commission to not have a heavier impact on surrounding properties than other uses permitted to be developed on the Property.

In no case may a conditional use permit authorize any storage, processing, or preservation of carcasses and/or hides, or the storage of chemicals to be conducted outside of a building.

2. Businesses engaged in the manufacture and packaging of meat products from previously slaughtered animals, including beef, poultry, pork, seafood, etc., and other materials, including, but not limited to, the cooking, smoking, raw-boning, canning, freezing, and dehydrating of the product.
3. Businesses primarily engaged in the manufacture, cooking, roasting, and canning of other food products, such as coffee, spaghetti, etc., except seafood.
4. Day care centers, but only if no fewer than 80% of the children enrolled in the center consist of children of the owners, officers or employees of businesses located on the Property.

**E. Lot Regulations – Generally:** All lots developed on the Property must comply with the following regulations:

1. **Minimum Lot Size:** No lot shall contain an area of less than one-half acre.
2. **Development Mix:** The Property must be developed so that no more than thirty percent (30%) of the net acreage of the portions of the Property for which final plats have been approved shall consist of lots with an area of less than one acre.

**F. Lot Regulations - One Acre and Larger:** Design and development of lots with an area equal to or exceeding one acre shall be subject to the following regulations:

1. **Lot Width:** The width of the lot must be as follows:
  - a. If the lot is not pie shaped, the width must be equal to or greater than one hundred fifty feet (150.0') measured horizontally along the street frontage of the lot.
  - b. If the lot is pie-shaped and fronting on the closed end of a cul-de-sac, or fronting on a partial cul-de-sac, the width must be equal to or greater than one hundred feet (100.0') measured along the arc of the street frontage of the lot.
2. **Lot Depth:** The depth of each lot shall be equal to or greater than two hundred feet (200.0') measured from the front property line to the rear property line.
3. **Minimum Front Yard:** The minimum front yard setback distance shall be as follows:
  - a. As shown in Figure 1, not less than fifty-one feet (51.0') feet; provided the front yard area is constructed with:
    - i. A drive aisle not less than twenty-five feet (25.0') wide measured from the back of the curb; and
    - ii. Single-loaded parking not less than nineteen feet (19.0') deep; and

- iii. A landscape edge parallel to the right-of-way or the public way minimum not less than seven feet (7.0') wide; or
  - b. As shown in Figure 2, not less than thirty-two feet (32.0'); provided the front yard area is constructed with:
    - i. a drive aisle not less than twenty-five feet wide (25.0') measured from the back of the curb;
    - ii. no parking; and
    - iii. a landscape edge parallel to the right-of-way or the public way not less than seven feet (7.0') wide; or
  - c. As shown in Figure 3, not less than twenty feet (20.0'); provided the front yard setback is constructed with:
    - i. No parking or drive aisles located between the building face and the street; and
    - ii. A landscape edge parallel to the right-of-way or the public way not less than seven feet (7.0') deep.
- 4. **Side Yard Setback:** The side yard setback shall be not less than ten feet (10.0').
- 5. **Rear Yard Setback:** The rear yard setback shall be not less than fifteen feet (15.0').
- G. **Lot Regulations – Less than One Acre:** Design and development of lots with an area of less than one acre must comply with the following regulations:
  - 1. **Lot Width:** The width of the lot must be as follows:
    - a. If the lot is not pie shaped, the width must be equal to or greater than seventy-five feet (75.0') measured horizontally along the street frontage.
    - b. If the lot is pie-shaped and fronting on the closed end of a cul-de-sac, or fronting on a partial cul-de-sac, the width must be equal to or greater than fifty feet (50.0') measured along the arc of the street frontage.
  - 2. **Lot Depth:** The depth of each lot shall be equal to or greater than one hundred feet (100.0') measured from the front property line to the rear property line.
  - 3. **Front Yard Setback:** The front yard setback shall be not less than twenty feet (20.0').

4. **Side Yard Setback:** The side yard setback shall be not less than ten feet (10.0').
  5. **Rear Yard Setback:** The rear yard setback shall be not less than fifteen feet (15.0').
  6. **Minimum Landscape Edge:** A landscape edge not less than seven feet (7.0') wide must be constructed in the front yard area parallel to the street.
- H. Maximum Building Height:** Subject to further restrictions as may be imposed as the result of Subsection I., below, no building, tower, antennae, sign, light stanchion, or other structure shall exceed forty-five feet (45.0') in height measured from the average street level adjacent to the lot(s) on which said structure is being constructed; provided, however, the maximum height for parking structures shall not exceed three levels above grade measured from the adjacent street.
- I. Obstructions to Air Traffic:** Notwithstanding any provision of this Ordinance to the contrary, at no time shall the highest point of any building, tower, antennae, sign, light stanchion, or other structure constructed or installed on the Property exceed the maximum height allowed by Federal, State, or local law, regulation, or ordinance, including, but not limited to, regulations promulgated pursuant to Title 49, United States Code §44718, as amended, such that such building or structure would constitute an obstruction to air traffic at the Kerrville/Kerr County Municipal Airport. Prior to issuance of a building permit for any building or structure to be constructed on the Property, the City Building Official, in consultation with the Director of Public Works or his designee, may withhold issuance of a building permit until approval is obtained from the Federal Aviation Administration or its successor agency that the proposed building or structure will not constitute an obstruction to air traffic.
- J. Parking Requirements:** Except to the extent this ordinance expressly states to the contrary, Development of the Property shall at all times comply with the then current parking regulations of the City.
- K. Landscaping:** The development of the Property shall include the following minimum landscaping requirements:
1. Landscape areas not less than seven feet (7.0') deep from the front property line must be constructed in all front yard areas adjacent to the public right-of-way.
  2. Each required landscaping area must consist of at least decorative landscape mulch, xeriscape ground cover, shrubs and trees.
  3. One hardwood or evergreen tree must be planted along each public street developed within the Property on centers not exceeding fifty (50) linear feet.
  4. With respect to each building site developed within the Property, one hardwood or evergreen tree must be planted on the interior of the lot(s) constituting the building for every twenty (20) off-street parking spaces to be constructed on said lot(s).

5. At the time of planting, planting materials planted on the Property must be on the list of recommended plants set forth in the most recent edition of *Recommended Plants for the Kerrville Area* published by the City.
6. The landscaping for the entrances to the Property from State Highway 27 shall conform in all respects to the landscape plan(s) attached hereto as **Exhibit "B"** and incorporated herein by reference.

**L. Signs:** The Property may be developed with only the following signs:

1. Except as set forth in Paragraph 4, below, monument signs shall be allowed as follows:
  - a. No more than one sign per lot is allowed;
  - b. The sign must be located in the landscaped area of the front yard adjacent to the public street; provided, however, at no time shall the location of the sign create a visual obstruction to vehicular traffic entering and leaving the lot;
  - c. The height of the sign may not exceed eight feet (8.0') above the adjacent street level; and
  - d. Each sign face shall not exceed an area of thirty-two (32) square feet.
2. Wall signs shall be allowed; provided, however, the total area of all wall signs located on each building elevation (inclusive of the face of any wall extending from the face of a building) may not exceed fifteen percent (15%) of the total area of the building elevation.
3. One monument sign shall be allowed at each entrance to the Property along State Highway 27, but in no case more than two such signs are allowed, each sign being subject to the following:
  - a. The sign shall not exceed a height of fifteen (15) feet measured from the adjacent street level;
  - b. The sign face shall not exceed an area of ninety (90) square feet;
  - c. The signs may not be internally illuminated; provided, however, such lighting must be designed and in such a manner that it does not constitute a hazard to air traffic arriving or departing the Kerrville/Kerr County Municipal Airport;
  - d. Copy on the sign shall consist of raised cut symbols, and
  - e. The sign must be anchored by a masonry base that extends vertically from the base of the anchor to the bottom of the sign copy area.

4. If a multi-unit building containing three or more units for the purpose of locating multiple owners or multiple tenants therein is developed within the Property, monument-type signs that can accommodate the identification of multiple tenants/owners may be located on the lot(s) on which said multi-unit building and its related parking areas are constructed, provided said monument signs comply with the following:
  - a. The signs must be located in the landscaped area of the front yard adjacent to the public street; provided, however, at no time shall the location of the sign(s) create a visual obstruction to vehicular traffic entering and leaving the lot;
  - b. The height of the sign may not exceed twelve feet (12.0') above the adjacent street level;
  - c. Each sign face, exclusive of the frame of the sign, shall not exceed an area of 120 square feet;
  - d. The width of the sign shall not exceed twelve feet (12.0'); and
  - e. There shall be not less than sixty feet (60.0') between the multi-tenant sign authorized by this Paragraph 4, and any other monument sign, regardless of whether said other sign is a single tenant/owner or multi-tenant/owner sign.

**M. Building Exteriors:** The buildings constructed on each lot must comply with the following minimum standards regarding exterior wall design and construction:

1. **Main Building:** The elevations of the building constructed closest to the front yard setback line (hereafter referred to as the "Main Building") must be designed and built as follows:
  - a. **Front Elevations:** Not less than fifty percent (50%) of any building face that faces the front yard setback (hereafter referred to as the "Front Elevation") shall consist of masonry and/or glass. If the Main Building is also constructed with offsets and projections facing the front yard setback, the visible facing walls of such offsets and projections must be constructed with materials similar to the Main Building as shown in Figures 4a and 4b.
  - b. **Side Elevations:** The intersecting walls with Front Elevation (hereafter referred to as "Side Elevation Walls") shall be designed and constructed as follows:
    - i. Not less than the lesser of twenty-four feet (24.0') or twenty-five percent (25%) of the length of each Side Elevation Wall must be constructed of masonry materials at the same height as the masonry placed on the Front Elevation as illustrated in Figure 4.

- ii. The materials on the remaining portion of said Side Elevation Walls must be substantially similar to the design and color of the Front Elevation as illustrated in Figure 4.
    - iii. Side Elevation Walls screened from view with a screening fence or landscape as described in Subsection Q.2., below, and as illustrated in Figure 4e shall not be required to comply with Subsection M.1.b.i, above.
  - 2. **Accessory Buildings:** The elevations of the building(s) constructed on a lot within the Property other than a Main Building must be designed and built as follows:
    - a. **Front Elevations:** Not less than fifty percent (50%) of the Front Elevation shall consist of masonry and/or glass, unless the Front Elevation of said building is screened from view with a screening fence, wall, or hedge that conforms to Subsection Q., below, as illustrated in Figures 4c, 4d, and 4e.
    - b. **Side and Rear Elevations:** All elevations other than the front elevation may be constructed with any exterior treatment authorized by City building and fire regulations.
  - 3. **Use of Metal Siding:** Metal siding may be used on those portions of the exterior walls of any building that are not otherwise required to consist of masonry materials or glass; provided, however, the colors on metal siding must be factory applied and blend with the design and color of the elevations facing the front yard setback.
  - 4. **"Masonry" Defined:** For purpose of this Ordinance, "masonry" and "masonry materials" are defined as that form of construction composed of:
    - a. Stone, brick, concrete, hollow clay tile, concrete block or tile, fiber cement material or other similar building units or materials or combination of these materials laid up unit by unit, set in mortar or otherwise fastened to the building exterior;
    - b. Brick veneer; and
    - c. Exterior plasters, as described in the City of Kerrville Building Code.
- N. **Driveways:** The number, separation, width, and vehicle storage of driveways within the Property that provide ingress and egress from lots within the Property to a public street shall be as follows:
- 1. **Number:** The maximum number of driveways per lot shall be as follows:
    - a. If the frontage of the lot is less than two hundred feet (200.0') wide, only one driveway is allowed.

- b. If the frontage of the lot is equal to or greater than two hundred (200) feet-wide, only one driveway for each one hundred fifty (150) feet of lot frontage plus one additional driveway is allowed.
2. **Separation:** Driveways within the Property must have the following minimum separations:
- a. If the lot is one (1) acre or larger in area, the driveways must be separated by a distance equal to or greater than one hundred feet (100.0') measured from the centerline of each driveway.
  - b. If the lot is less than one (1) acre in area, the driveways must be separated by a distance equal to or greater than fifty feet (50.0') measured from the centerline of each driveway.
3. **Widths and Turning Radii:** The maximum width and minimum turning radii of driveways shall be as set forth in Figures 5 and 6.
4. **Storage:** Vehicle storage between the public street and the near side of the first intersecting interior aisle of the driveway shall be as follows:
- a. If there are fifty (50) or fewer off-street parking spaces constructed within the front yard area of the lot, the vehicle storage area shall be not less than twenty feet (20.0').
  - b. If there are more than fifty (50) off-street parking spaces constructed within the front yard area of the lot, the storage area shall be not less than fifty-two feet (52.0').
- O. Loading and Unloading Areas:** The full length of loading and unloading areas that can be seen from the public street view facing the Front Elevation of the lot in question shall be screened in accordance with Subsection Q. below.
- P. Outdoor storage and display areas:** Outdoor storage and display of materials, supplies, inventory and equipment on lots developed within the Property shall be subject to the following conditions:
- 1. Except as set forth in paragraph 4 of this Subsection P, all materials, supplies, inventory and equipment placed on the exterior of the building must be screened from the public street view facing the Front Elevation of the lot in question.
  - 2. No materials, supplies, inventory and equipment may be kept or stored:
    - a. within any front, side, or rear yard setback;

- b. within any required parking spaces, fire lanes, circulation aisles, or customer pick-up lanes;
  - c. within any area that creates a visibility obstruction or otherwise interferes with pedestrian or vehicular circulation; or
  - d. on any roof structure.
3. Fertilizers, chemicals, bulk soil and mulch, petroleum products, and materials classified as hazardous materials that are kept on the exterior of any building must be stored in such a manner that storm water cannot directly or indirectly come in contact with such products or materials while being stored.
4. Notwithstanding anything to the contrary in paragraphs 1 through 3, above:
- a. Materials, supplies, inventory and equipment may be stored and displayed on the exterior of the building without screening, but only if said materials, supplies, inventory or equipment are placed in an area not more than five feet from the building face on which the main customer entrance is located; and does not exceed four feet in height.
  - b. Parked self-propelled motor vehicles or trailers shall not constitute outdoor storage so long as such vehicles or trailers are not:
    - i. motor vehicles or trailers that are staged, parked or stored as part of the operation of a collision, towing, auto storage, mini-warehouse, auto repair or wrecker services business; or
    - ii. part of the inventory of the business that is available for wholesale or retail purchase.
  - c. Vehicles and equipment in the inventory of a company operating a business pursuant to Subsections B.12., and B.44, above, may be located such that they are visible from the view facing the Front Elevation without being screened, but only so long as such vehicles and equipment:
    - i. are not in need of, or undergoing, repair in order to make them operational and available for sale or rent; or
    - ii. have not received body damage other than that which is generally considered to be normal wear and tear.

**Q. Screening Regulations:** Whenever this ordinance requires screening to be installed, such screening shall be in accordance with the following specifications:

1. Such screening must be not less than six feet in height and shall be one of the following constructions:
  - a. masonry materials similar in design to the main building; or
  - b. chain link or ornamental fencing behind a landscape screen or masonry treatment; or
  - c. a solid, evergreen shrub landscape screen without a fence or wall.
2. Evergreen shrubs used for a landscaped screen must be placed to create at least a six-foot tall solid screen not later than two (2) years after installation and must be maintained in a healthy, growing condition.
3. Screening may not be constructed of wood fencing or chain link with slats.
4. No screening fence or wall (other than a landscape hedge) may exceed eight feet (8.0') in height.

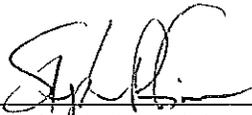
**R. Rooftop Mechanical Equipment:** Rooftop mechanical equipment must be screened from view such that it cannot be seen from ground level when standing on the immediately adjacent properties. Roof top equipment should be placed in a linear grid configuration except for building code required vents or flues.

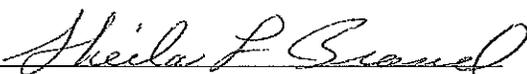
SECTION FOUR. Appendix 1, containing Figures 1, 2, 3, 4, 4a, 4b, 4c, 4d, 4e, 5, and 6, attached to this Ordinance is hereby incorporated herein by reference and made a part of this Ordinance as if set forth in full herein.

PASSED AND APPROVED ON FIRST READING, this the 13 day of November, 2001.

PASSED AND APPROVED ON SECOND AND FINAL READING, this the 27 day of November, 2001.

ATTEST:

  
 \_\_\_\_\_  
 Stephen P. Fine, Mayor

  
 \_\_\_\_\_  
 Sheila L. Brand, City Clerk

APPROVED AS TO FORM:

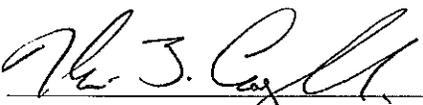
  
 \_\_\_\_\_  
 Kevin B. Laughlin, City Attorney

EXHIBIT "A"

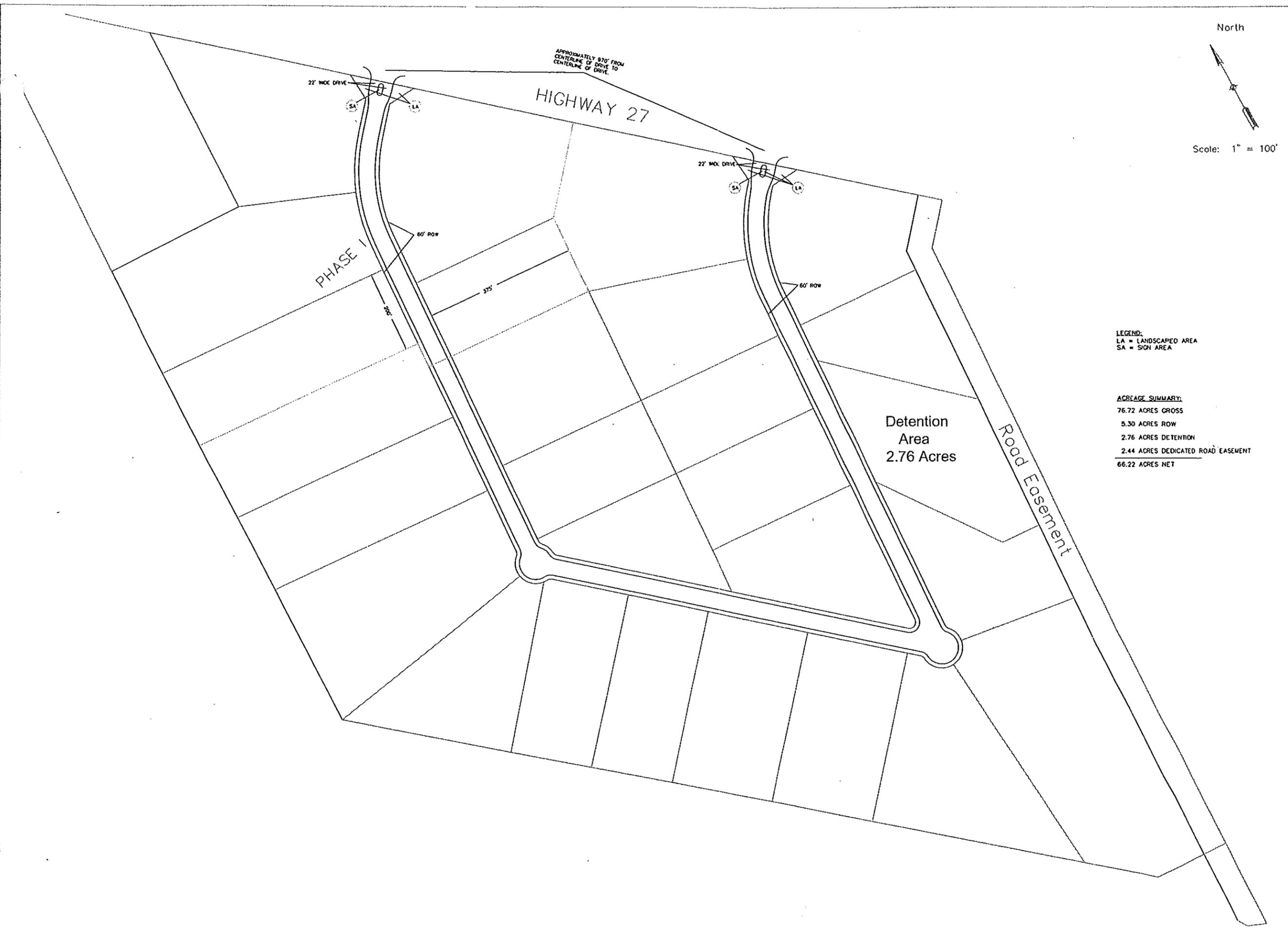
ANNEXATION SERVICE PLAN  
AIRPORT COMMERCE PARK

SERVICE	DETAILS OF SERVICE PROVIDED	TIMETABLE
Animal Control	The provisions of animal control services shall be in effect following annexation of the property.	Immediately following annexation
Code Enforcement	The provisions of Code Enforcement services, including the application and enforcement of building, electrical, plumbing, and other related code requirements adopted by the City of Kerrville shall be made immediately to the area upon annexation. The preparation of a zoning plan shall serve as a basis for the zoning of land following annexation. The adoption of the zoning plan shall be in accordance with the procedures of the City of Kerrville's Zoning Ordinance.	Immediately following annexation, zoning to be concurrent with annexation
Fire Protection and Suppression	Fire protection and suppression personnel and equipment from the Kerrville Fire Department will be provided to the area as needed.	Immediately following annexation
Fire Prevention	The services of the City of Kerrville Fire Marshall shall be provided to the area.	Immediately following annexation.
Library	Residents of the area will continue to be entitled to utilize all City of Kerrville Library facilities.	Immediately following annexation.
Parks and Recreation	City of Kerrville Parks and Recreation services will continue to be available to the area residents.	Immediately following annexation
Police Protection	Police protection personnel and equipment shall be provided to the area immediately upon annexation. Police enforcement and protection services shall be provided through regular patrol activities.	Immediately following annexation
Public Services - Street Department	Public streets not maintained by the Texas Department of Transportation within the area shall be maintained by the City of Kerrville.	Immediately following annexation

ANNEXATION SERVICE PLAN (CONTINUED)

SERVICE	DETAILS OF SERVICE PROVIDED	TIMETABLE
Sanitation (Refuse Collection)	Refuse collection shall be available to residents of the annexed area at the same costs and procedures as required of city residents and businesses.	Immediately following annexation
Traffic Engineering	Traffic control devices and street markers shall be installed where deemed necessary by the city street department, except as provided by the Texas Department of Transportation.	Immediately following annexation
Utilities (Water Distribution and Wastewater Collection)	Extension of utilities to the property shall be in accordance with the City of Kerrville's Subdivision Ordinance and per agreement among the City and owners of the property annexed dated September 25, 2001. Extension of utilities within the property shall be in accordance with the City of Kerrville's Subdivision Ordinance.	As the property develops

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LEGEND:  
 LA = LANDSCAPED AREA  
 SA = SIGN AREA

ACREAGE SUMMARY:  
 76.72 ACRES GROSS  
 5.30 ACRES ROW  
 2.76 ACRES DETENTION  
 2.44 ACRES DEDICATED ROAD EASEMENT  
 66.22 ACRES NET

AIRPORT COMMERCE PARK SITE PLAN For AIRPORT COMMERCE PARK Kerrville, Texas		Drawing Scale: 1" = 100' Plot Scale: 1" = 1' File No: mp10n.dwg Plot Date: 09/10/01	Rev. By Date Description
HARVEY ENGINEERING CONSULTING ENGINEERS ENGINEERING LAND SURVEYORS 121 PECAN STREET • P. O. BOX 1802 BOERNE, TEXAS, 78006 CIVIL • ENVIRONMENTAL • STRUCTURAL		Sheet 1 of 1	Job No. 0110

# Exhibit B

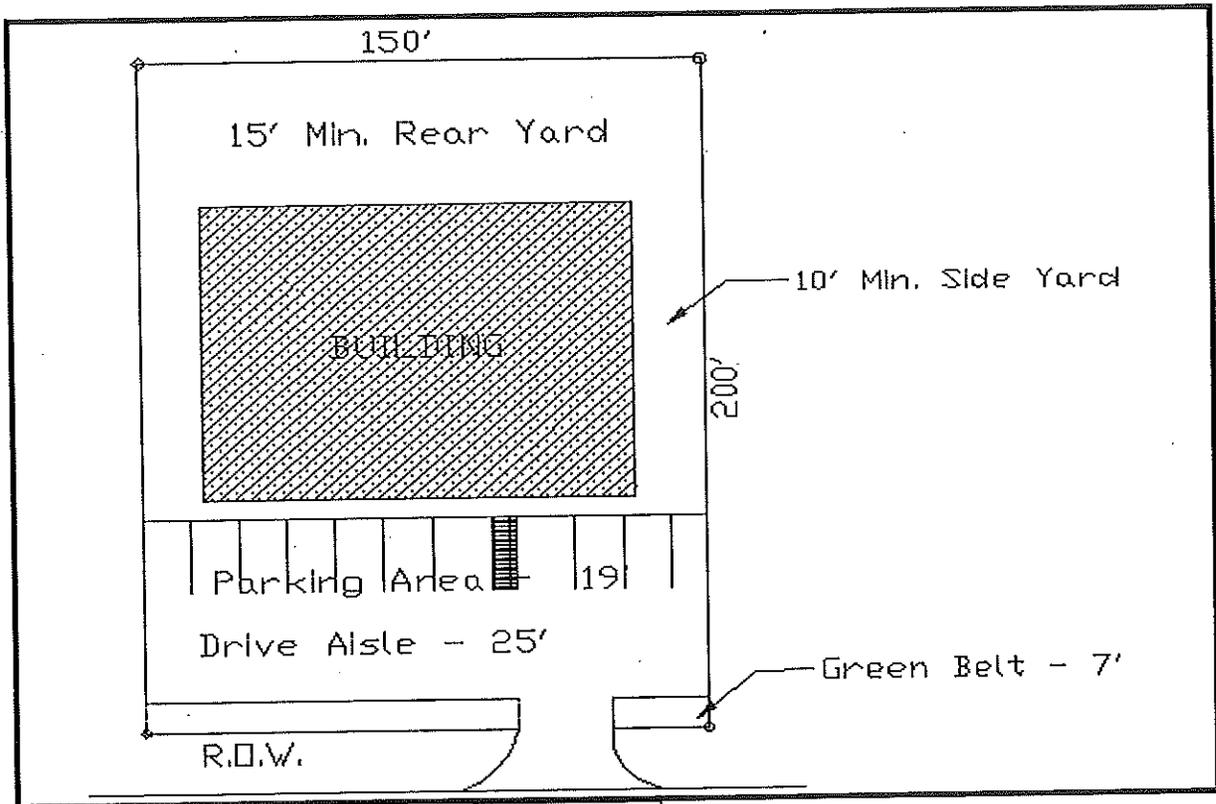


Figure 1

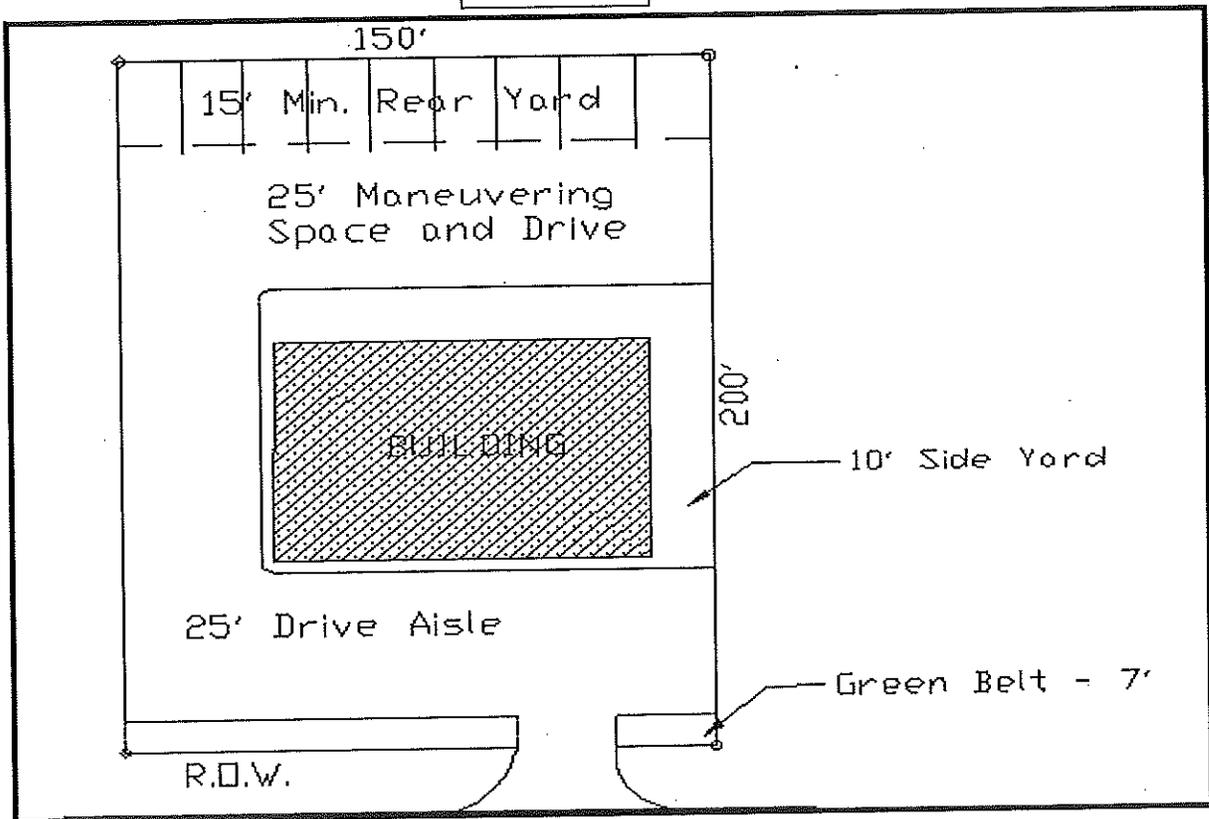


Figure 2

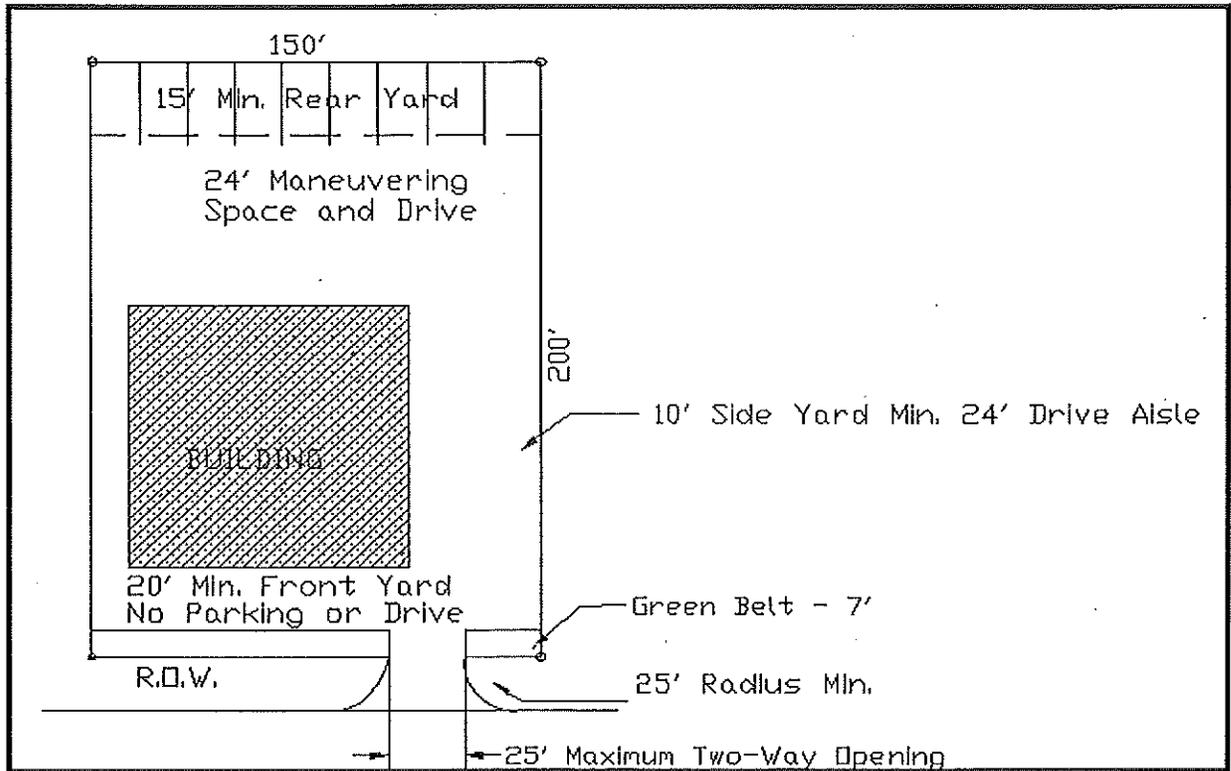


Figure 3

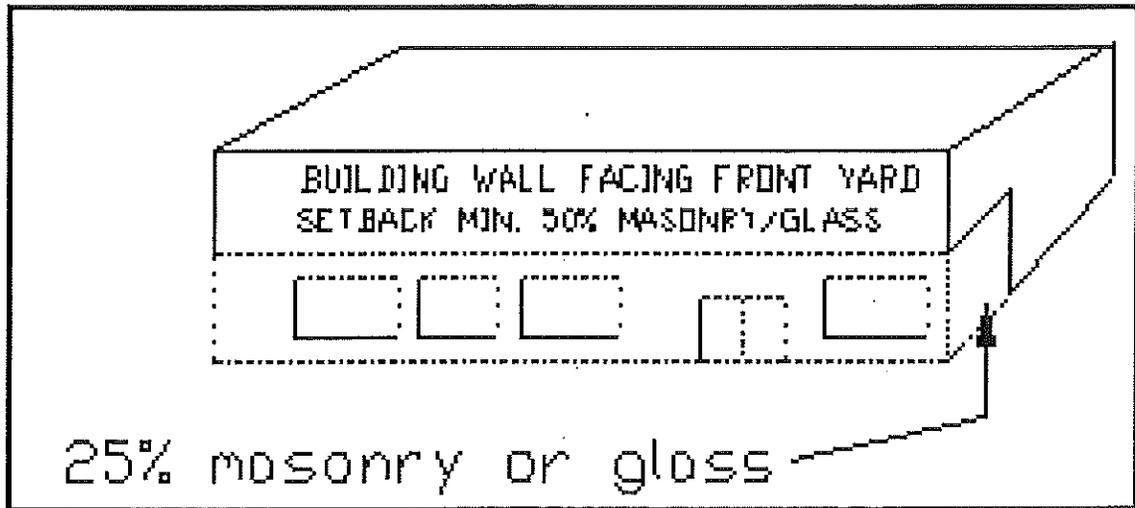


Figure 4

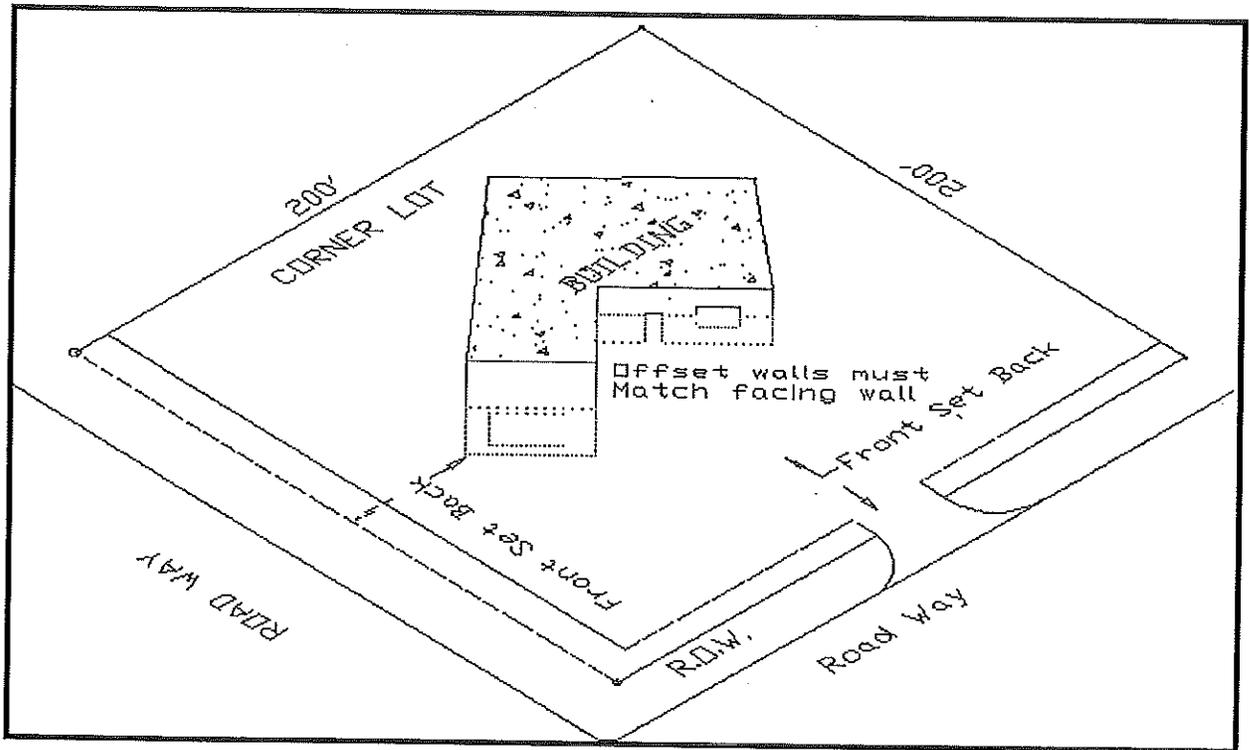


Figure 4a

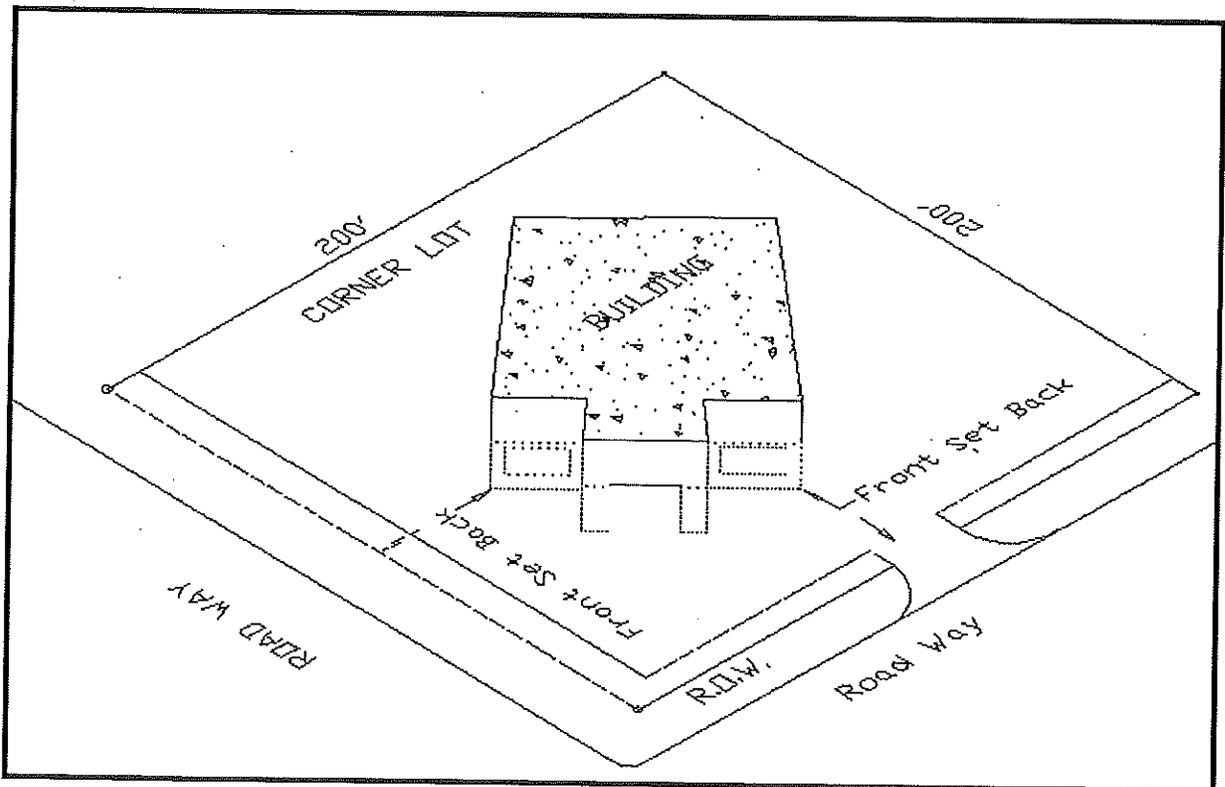


Figure 4b

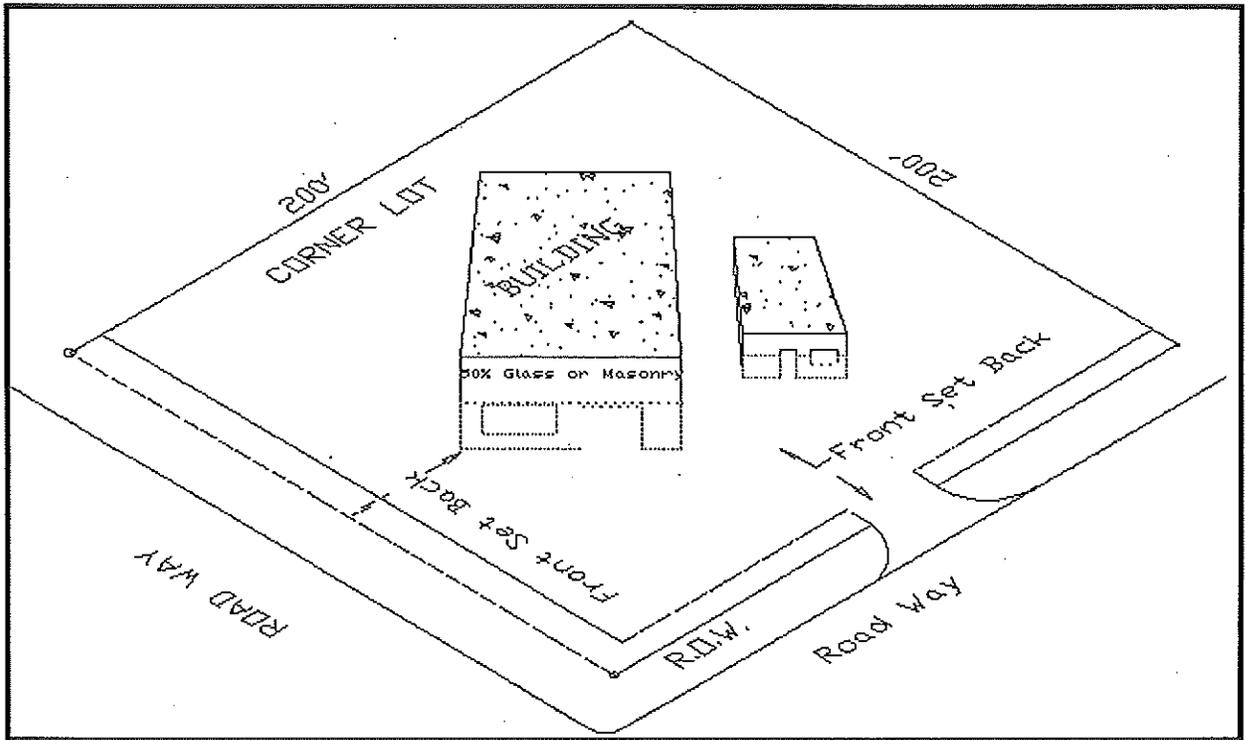


Figure 4c

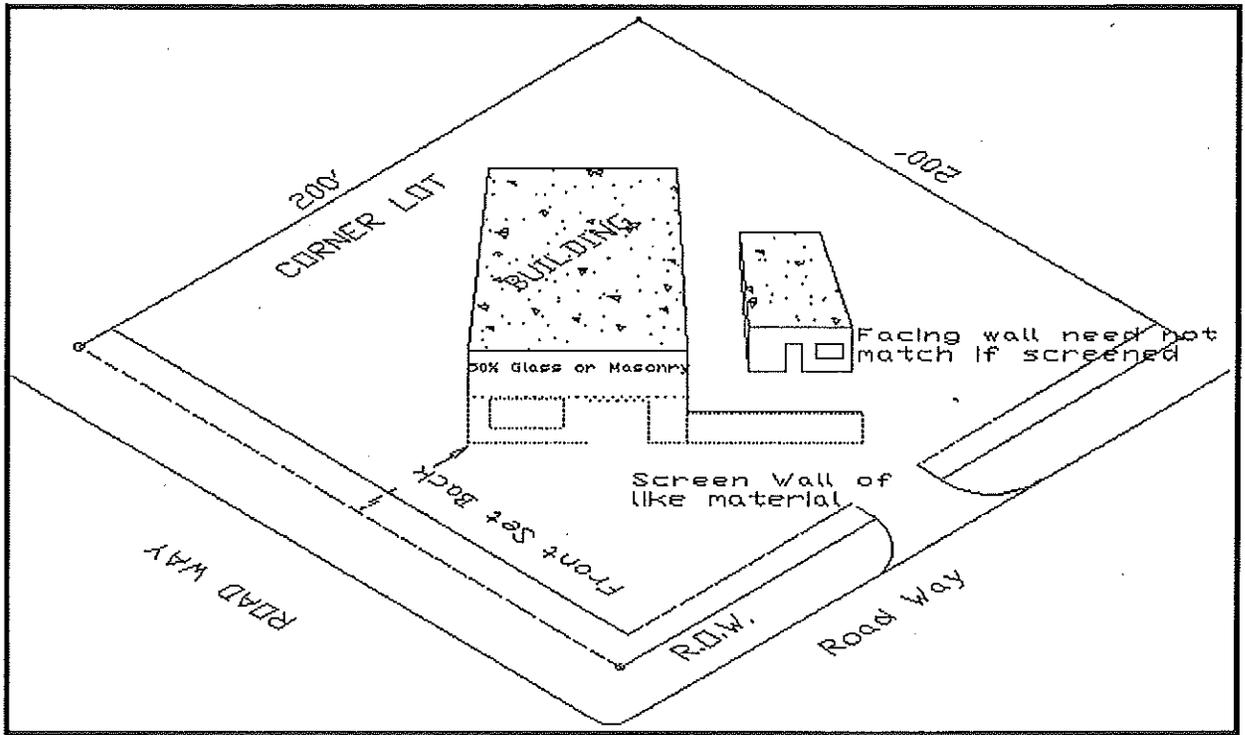


Figure 4d

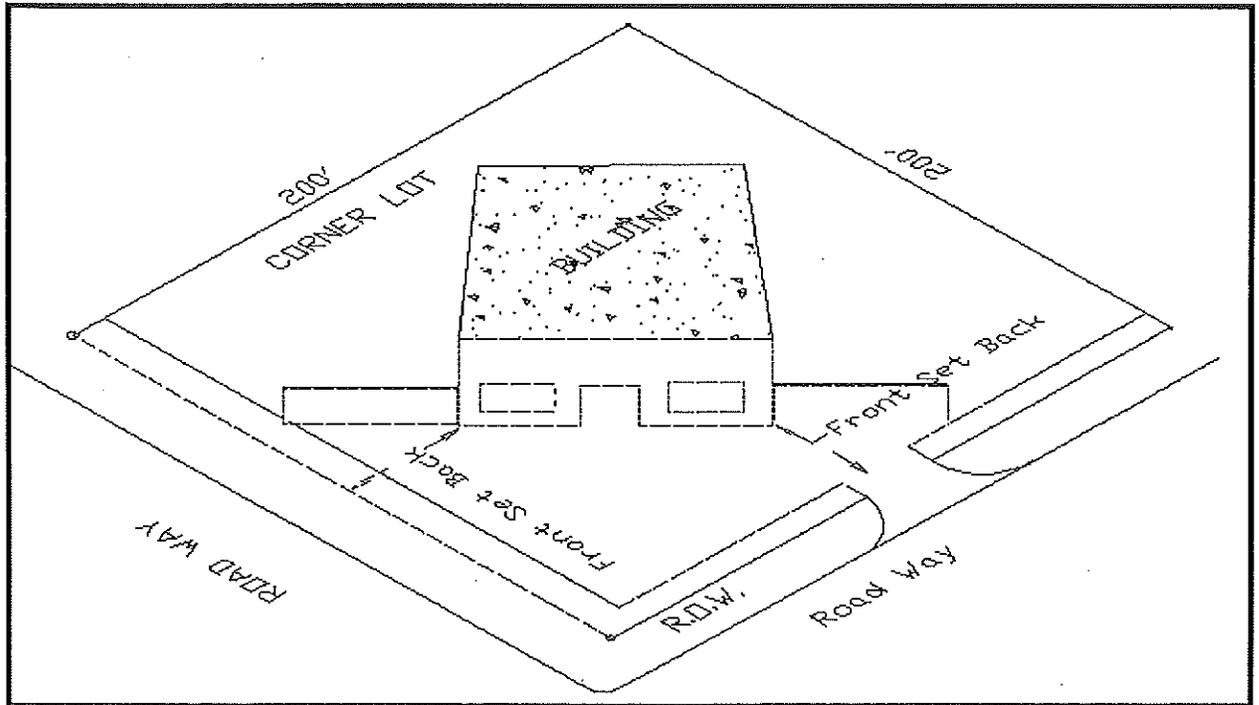


Figure 4e

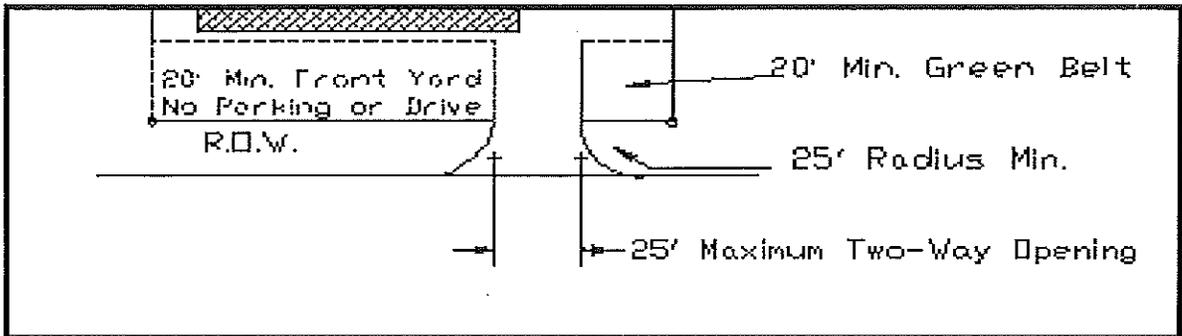


Figure 5

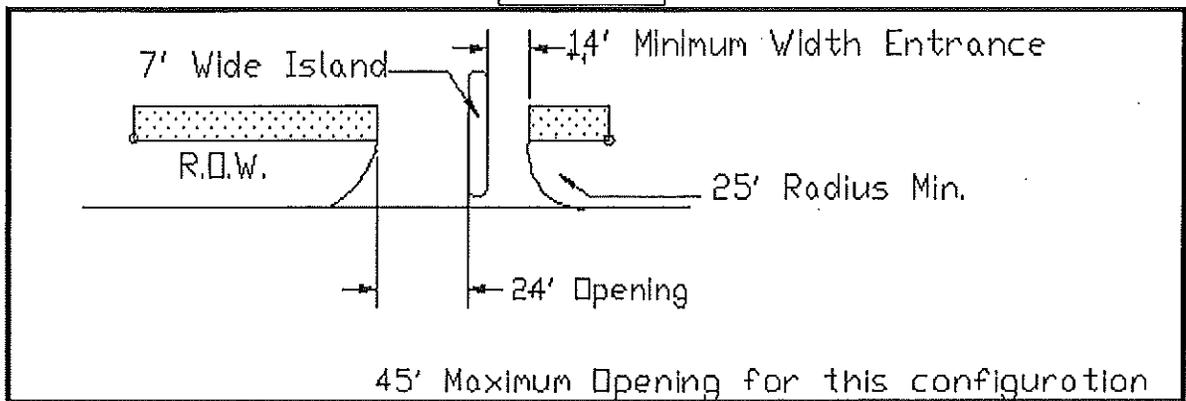
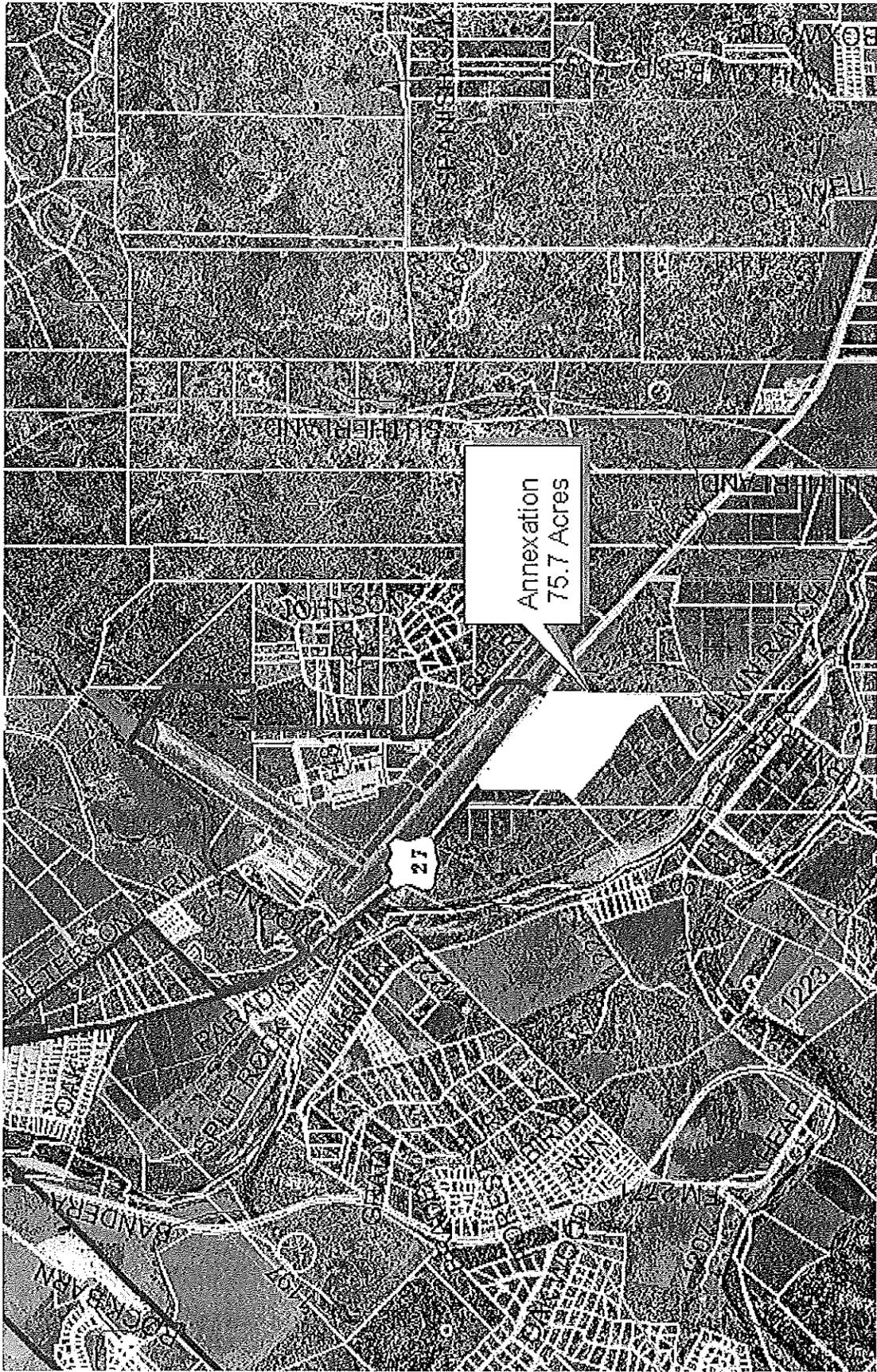


Figure 6



## **Agenda Item:**

6A. Update regarding Hill Country Shooting Sports Center. (Burch)

THIS AGENDA ITEM DOES NOT HAVE AN AGENDA BILL

## **Agenda Item:**

6B. Update regarding River Trail and Parks projects. (Rickert)

**TO BE CONSIDERED BY THE  
ECOMONIC IMPROVEMENT CORPORATION,  
CITY OF KERRVILLE, TEXAS**

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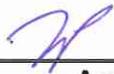
**SUBJECT:** EIC Monthly Report

**FOR AGENDA OF:** August 20, 2012 **DATE SUBMITTED:** August 14, 2012

**SUBMITTED BY:** Malcolm Matthews **CLEARANCES:** Kristine Ondrias

**EXHIBITS:** Monthly Report

**AGENDA MAILED TO:**

**APPROVED FOR SUBMITTAL BY CITY MANAGER:** 

---

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

**PAYMENT TO BE MADE TO:**

**REVIEWED BY THE FINANCE DIRECTOR:**

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**SUMMARY STATEMENT**

EIC Monthly Report on the River Trail and the Louise Hays and Lehmann & Monroe Parks projects.

**RECOMMENDED ACTION**

No action required.

# Monthly Status Report

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## River Trail Project

August 20, 2012

4B Funds

\$6,000,000 (River Trail)

\$2,000,000 (Louise Hays and Lehmann & Monroe Parks Renovation)

# Status Report Kerrville River Trail

## Package A

### SCOPE

Package A extends from a new trailhead at the Riverside Nature Center parking lot, along the west property line of the RNC, down to the river's edge, under the Lemos St. Bridge, construction of a trail bridge across the river, through Tranquility Island, to the west end of the parking area in Louise Hays Park. The 10' wide trail will be constructed of concrete, except for the segment that runs along the RNC western property line. Total trail length: 0.6 miles

### Amenities

Trailheads with lighting, observation areas, seating areas, trail bridge, drainage, and signage. [Note: additional amenities, such as trail entries, kiosks, and interpretive signage, will be added, once designed.]

PHASING	Action Item	Schedule (Status)	Task/Issues	Comments/Risks
Recreation easements or Property Agreements	easement to CoK from RNC	(complete)	RNC to provide easement to City	requires RNC approval
	lease renewal to RNC of CoK property	(complete)	City to provide lease to RNC	requires City Council approval
	approval from TxDOT and GLO for use of state property	(complete)	TxDOT approval of plans and Const./Maint. Agreement	SA office approval; include in MMA
Property Survey	construction easements, if needed	NA	NA	NA
Misc. Reports/Permits	M&B and Topo surveys	(complete)	identify property boundary and grades	
	LOMR	submit 10/31/12	flood level impact, if any	submission to FEMA
	TPWD (land & water permit)	(complete)	coffer dam - bridge construction review	review by TPWD
Design	USACE	(complete)	involves jurisdictional waters of the US	no USACE individual permit required
	contract - Hewitt Engineering			
Routing	location of trail	(complete)	define gradients and layout (complete)	
	schematic plans; prelim. costs	50% review - 12/2/11 (complete)	all project elements	
		75% review - 1/13/12 (complete)	all project elements	
Construction Drawings	final plans/specs/costs/ documents	90% review - 2/20/12 (complete)	all project elements	
		(complete)	all project elements	
Bidding/Contracts	secure contractor	Bid March 2012; award May 2012 to Westar Construction	bid process, contract prep	project delay, bid cost, permit approvals, etc.
Construction	build project	began May 2012; 50% complete; completion in Oct. 2012	sequencing of work	typical delays/field alterations; considering adding amenities to project

FUNDING - BUDGET		Allocation	Expended - Encumbered	Balance	Cost Est. for Package	Needed to Complete Package
G.O. bonds (2002) Park Dedication Funds	\$500,000 <u>25,000</u> \$525,000	2002 bonds \$147,112 [includes completion of the River Trail Master Plan and survey work]	\$377,888	Construction bid: \$667,427 plus 10% contingency \$735,000	2002 bonds \$377,888 2011 bonds \$357,112 (includes contingency)	
COs (4B)	\$357,112					

## Package B and Parks Project

## Status Report Kerrville River Trail

### SCOPE

Package B and Parks Project connects to Package A at the west end of the Louise Hays Park parking lot, through Louise Hays Park and Lehmann & Monroe Park, to G St. r.o.w. The 10' wide trail will be constructed of concrete. This Package will be coordinated with the Jefferson Wastewater Project and Water transmission Line Project, both slated for completion in the first half of 2013. This Package will include the entire scope of work for the Louise Hays Park/Lehmann & Monroe Park Project, as funded by 4B. Total trail length: 1 mile

### Amenities

Trail - trailheads with lighting, observation areas, seating areas, bridging, drainage, signage, trail entries, kiosks, and interpretive signage.  
Parks - park amenities, amphitheater/stage, playground/sprayground, picnic areas, group pavilion upgrades, river access, restrooms, parking, lighting, utilities, landscaping, and signage.

PHASING	Action Item	Schedule (Status)	Task/Issues	Comments/Risks
Recreation easements or Property Agreements	easements to CoK from property owners	complete by 1/31/13	CoK to secure easements from property owners; title work and surveys	requires property owner approval, purchase, or other
	construction easements, if needed	complete by 1/31/13 (partially complete)	determine need by 11/30/12	requires property owner approval
Property Survey	M&B and Topo surveys		identify property boundary and grades	
	LOMR		flood impact, if any	may require submittal to FEMA
Misc. Reports/Permits	TPWD (land & water permit)		if needed	review by TPWD
	GLO (state property use)	12/1/12, if needed	routing preference	approval by State, if needed
Design	-Trail Routing Options/Cost agreement - Half team	complete	define route options w/ costs	complete June; prior to final design contract
	-Final Design Contract - Half Team	complete by 10/31/12	all remaining design phases	requires Council approval
Preliminary Design	schematic plan with amenities; prelim. costs	50% review - (partially complete) 75% review - 90% review -	all project elements all project elements all project elements	coord. with utilities projects
	final plans/specs/costs/ documents	complete by early 2013	all project elements	project delay assoc. with approvals
Construction Drawings Bidding/Contracts	secure contractor	mid 2013	bid process, contract prep	project delay, bid cost, etc.
	build project	late 2013	sequencing of work	typical delays/field alterations

FUNDING - BUDGET	Allocation	Expended - Encumbered	Balance	Cost Est. for Package	Needed to Complete Package
COs (4B) [will include LHP/LMP Project 4B funding]					

## Status Report Kerrville River Trail

## Package C and D

### SCOPE

Package C and D extends from a new trailhead at the Knapp Crossing Boat Ramp parking lot, runs adjacent to the river, ties into the Guadalupe St. r.o.w.(Package D) extends to Guadalupe Park and connects to Package A (Package C). The 10' wide trail will be constructed of concrete. TBD - this package's design/construction expected to be integrated with private sector improvements. Total trail length: 1.6 miles

### Amenities

Trailheads with lighting, observation areas, seating areas, trail bridge, drainage, signage, trail entries, kiosks, interpretive signage, and private improvement interface.

PHASING	Action Item	Schedule (Status)	Task/Issues	Comments/Risks
Recreation easements or Property Agreements	easement to CoK from property owners	TBD	CoK to secure easements from property owners	requires property owner approval, purchase, or other; may require KSH property
	construction easements, if needed	TBD	TBD	requires property owner approval
Property Survey	M&B and Topo surveys	(partially complete)	identify property boundary and grades	
Misc. Reports/Permits	LOMR		flood impact, if any	may require submittal to FEMA
	TPWD (land & water permit)		If needed	review by TPWD
Design	TBD	(partially complete)		waiting for private development
	location of trail	(partially complete)	define gradients and layout	" " " "
Preliminary Design	schematic plan with amenities; prelim. costs	50% review -	all project elements	" " " "
		75% review -	all project elements	" " " "
		90% review -	all project elements	" " " "
Construction Drawings Bidding/Contracts	final plans/specs/costs/ documents	TBD	all project elements	" " " "
	secure contractor	TBD	bid process, contract prep	" " " "
Construction	build project	TBD	sequencing of work	" " " "

FUNDING - BUDGET	Allocation	Expended - Encumbered	Balance	Cost Est. for Package	Needed to Complete Package
COs (4B)					

# Status Report Kerrville River Trail

## Package E

### SCOPE

Package E extends from west terminus of trail on Junction Hwy along the river's edge, connect to a new trailhead at the Cypress Boat Ramp parking lot, to the trailhead at the Knapp Crossing trailhead. The 10' wide trail will be constructed of concrete. *Total trail length: up to 1 mile*

### Amenities

Trailheads with lighting, observation areas, seating areas, trail bridge, drainage, signage, trail entries, kiosks, and interpretive signage.

PHASING	Action Item	Schedule (Status)	Task/Issues	Comments/Risks
Recreation easements or Property Agreements	easement to CoK from property owners	TBD	CoK to secure easements from property owners	requires property owner approval, purchase, or other
Property Survey	construction easements, if needed	TBD	TBD	requires property owner approval
Misc. Reports/Permits	M&B and Topo surveys	(partially complete)	identify property boundary and grades	
	LOMR		flood impact, if any	may require submittal to FEMA
	TPWD (land & water permit)		if needed	review by TPWD
Design	TBD			waiting for private development
Preliminary Design	schematic plan with amenities; prelim. costs	50% review – (partially complete) 75% review – 90% review –	all project elements all project elements all project elements	" " "
Construction Drawings	final plans/specs/costs/ documents	TBD	all project elements	" " "
Bidding/Contracts	secure contractor	TBD	bid process, contract prep	" " "
Construction	build project	TBD	sequencing of work	" " "

FUNDING - BUDGET	Allocation	Expended - Encumbered	Balance	Cost Est. for Package	Needed to Complete Package
COs (4B)					

# Status Report Kerrville River Trail

## Package F

**SCOPE**  
**Package F** extends from G St. (Package B terminus) along the river to near Kerrville Schreiner Park. The 10' wide trail will be constructed of concrete. Consultant team scope will include design details/criteria used throughout the River Trail Project, including Package A. Total trail length: up to 1.9 miles  
**Amenities**  
 Trailheads with lighting, observation areas, seating areas, trail bridge, drainage, signage, trail entries, kiosks, and interpretive signage.

PHASING	Action Item	Schedule (Status)	Task/Issues	Comments/Risks
Recreation easements or Property Agreements	easement to CoK from property owners	complete by 1/31/13	CoK to secure easements from property owners	requires property owner approval, purchase, or other
Property Survey	construction easements, if needed	complete by 1/31/13	determine need by 1.1/30/12	requires property owner approval
Misc. Reports/Permits	M&B and Topo surveys	begin M&B 8/15/12	identify property boundary and grades	coord. w/ utilities projects
	LOMR		flood impact, if any	may require submittal to FEMA
	TPWD (land & water permit)		if needed	
Design	-Trail Confirmation/ Cost agreement - Terra Design Group (TDG) team	complete	define route options w/ costs	complete June; prior to final design contract
Preliminary Design	-Final Design Contract – TDG Team	negotiate by 10/31/12	all remaining design phases	requires Council approval
	schematic plans with amenities; prelim. costs	50% review – 75% review – 90% review –	all project elements all project elements all project elements	coord. with utilities projects
Construction Drawings	final plans/specs/costs/ documents	complete by early 2013	all project elements	project delay assoc. with approvals
Bidding/Contracts	secure contractor	mid 2013	bid process, contract prep	project delay, bid cost, etc.
Construction	build project	late 2013	sequencing of work	typical delays/field alterations

FUNDING - BUDGET	Allocation	Expended - Encumbered	Balance	Cost Est. for Package	Needed to Complete Package
COs (4B)					

## **Other Services to be Evaluated**

Required reporting and permitting may dictate additional professional services or consolidation of services assigned to the design teams. These include, but are not limited to, the following.

1. Floodplain/Floodway Impact, Hydraulic Analysis, Section 404 – Clean Water Act submittals (Corps of Engineers), and Flood Insurance Rate Map/ Letter of Map Revision preparation and submittal (CoK, FEMA) may be best completed by one firm in order to comprehensively address the issues and data collection/reporting. This could avoid multiple submittals (costs) and reduce mistakes and need for resubmittals. We will make a determination on this approach in the near future.
2. Archeological and Environmental Surveys and Section 404 review will need to be completed in areas where sensitive site conditions are probable. We anticipate now extreme findings in the initial surveys/reports; however, if further study is required by state or federal agencies, those services will require amendments to the consultant contracts.
3. TDLR permitting for ADA compliance, CoK building permits, Texas Historical Commission plan review, any other city or state agency submittals, will best be submitted by each of the design teams at the time of plan completion. This keeps regulation compliance with the design teams.

## **Agenda Item:**

6C. Update on Kerrville Economic Development Corporation. (Jonas Titas)

THIS AGENDA ITEM DOES NOT HAVE AN AGENDA BILL.

## **Agenda Item:**

6D. Update regarding "Go" Team activities. (Wendele)

**TO BE CONSIDERED BY THE  
ECOMONIC IMPROVEMENT CORPORATION,  
CITY OF KERRVILLE, TEXAS**

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**SUBJECT:** 'Go' Team Update – August 2012

**FOR AGENDA OF:** August 27, 2012    **DATE SUBMITTED:** August 22, 2012

**SUBMITTED BY:** Mindy N. Wendele    **CLEARANCES:**  
Director of Business Programs

**EXHIBITS:**

**AGENDA MAILED TO:**

**APPROVED FOR SUBMITTAL BY CITY MANAGER:** 

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

**PAYMENT TO BE MADE TO:**

**REVIEWED BY THE FINANCE DIRECTOR:**

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**SUMMARY STATEMENT**

'Go' Team members have not met since the last EIC meeting and no applications have been submitted.

**RECOMMENDED ACTION**

For discussion.