

AGENDA FOR REGULAR MEETING

KERRVILLE CITY COUNCIL

TUESDAY, JANUARY 22, 2013, 6:00 P.M.

KERRVILLE CITY HALL COUNCIL CHAMBERS

701 MAIN STREET, KERRVILLE, TEXAS

KERRVILLE CITY COUNCIL AGENDA
REGULAR MEETING, TUESDAY, JANUARY 22, 2013, 6:00 P.M.
CITY HALL COUNCIL CHAMBERS
701 MAIN STREET, KERRVILLE, TEXAS

CALL TO ORDER

INVOCATION offered by Lieutenant Phon Kamphouthasak with the Salvation Army.

PLEDGE OF ALLEGIANCE TO THE FLAG led by Cadet Captain Romeo Garza, of the Tivy High School Junior Reserve Officer Training Corps.

Those in attendance may stand if they wish.

1. VISITORS/CITIZENS FORUM:

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

2. RECOGNITION AND COMMENDATIONS

2A. Recognition of Citizens Police Academy Alumni Association. (Councilmember Conklin)

3. CONSENT AGENDA:

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

3A. Approval of minutes of the regular meeting held on October 23, 2012, the special meeting held on November 13, 2012, and the regular meeting held on November 13, 2012. (staff)

3B. Purchase of a 120H Caterpillar Motor Grader in the amount of \$104,956.62 for Public Works, Street Division. (staff)

The facility is wheelchair accessible and accessible parking spaces are available. Requests for accommodations or interpretive services must be made 48 hours prior to this event. Please contact the City Secretary's Office at 830-258-1117 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, January 18, 2013 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

3C. A Resolution changing the regular meeting time of the City Council scheduled for February 12, 2013. (staff)

3D. Professional Services Agreement with Freese & Nichols, Inc. to perform a Water System Master Plan update and provide a Master Plan for the Water Treatment Plant in an amount not to exceed \$166,500.00. (staff)

END OF CONSENT AGENDA

4. ORDINANCE, FIRST AND ONLY READING:

4A. An Ordinance authorizing the issuance, sale and delivery of up to \$10,000,000 in aggregate principal amount of "City of Kerrville, Texas Combination Tax and Revenue Certificates of Obligation, Series 2013"; securing the payment thereof by authorizing the levy of an annual ad valorem tax and a pledge of certain surplus revenues of the City's waterworks and sewer system; and approving and authorizing the execution of a paying agent/registrar agreement, an official statement and all other instruments and procedures related thereto. (staff)

5. ORDINANCES, SECOND AND FINAL READING:

5A. An Ordinance amending Chapter 66, "Library," of the Code of Ordinances of the City of Kerrville, Texas; by amending Article II "Library Advisory Board" to change the composition and qualifications of the Library Advisory Board; containing a cumulative clause; containing a savings and severability clause; and providing other matters relating to this subject. (staff)

5B. An Ordinance amending Chapter 102 "Traffic and Vehicles," Article II "Administration; Enforcement" of the Code of Ordinances of the City of Kerrville, Texas by amending Sections 102-35 and 102-36 to increase the penalty for parking violations; adopting a new Section 102-37 to establish presumptions applicable to the adjudication of parking citations; containing a cumulative clause; containing a savings and severability clause; providing for an effective date; ordering publication; and providing other matters related thereto. (staff)

6. PUBLIC HEARING AND ORDINANCE, FIRST READING:

6A. An Ordinance amending Article 10-IV-1 of the City of Kerrville Subdivision Code, commonly referred to as the City's "Subdivision Regulations", by amending Section 10-IV-1(B)(2)(D) of said regulations to address nonconforming lots; containing a cumulative clause; containing a savings and severability clause; providing for an effective date; ordering publication; and providing other matters related thereto. (staff)

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Cheryl Brown
Deputy City Secretary, City of Kerrville, Texas

7. ORDINANCE, FIRST READING:

7A. An Ordinance amending the budget for Fiscal Year 2013 to account for various changes to the City's operational budgets, donation to the City's Library, and closing out and supplementing capital improvement projects. (staff)

8. CONSIDERATION AND POSSIBLE ACTION:

8A. A Resolution adopting the City of Kerrville Utility Master Plan. (staff)

8B. Request by citizen to review the City's Sign Code, Chapter 6, Article II of the Code of Ordinances. (John Miller)

8C. City's acquisition of easements with respect to the Jefferson Street Lift Station Project, G Street Sewer Project, and the River Trail. (staff)

8D. Project funding agreement between the City of Kerrville, Texas Economic Improvement Corporation and the City of Kerrville, Texas for downtown streetscape design. (staff)

8E. Economic development grant agreement between Kerr Economic Development Corporation (KEDC) and the City of Kerrville, Texas Economic Improvement Corporation. (staff)

8F. Interview team for board appointment process to include council liaison member. (Councilmember Conklin)

9. INFORMATION AND DISCUSSION

9A. Report on downtown parking strategy. (staff)

9B. Report of Kerrville Economic Development Corporation activities. (staff)

9C. Budget/Economic Update. (staff)

9D. Beautification Committee Endorsement of Republic Services Good Stewards Project. (staff)

10. BOARD APPOINTMENTS:

10A. Appointment of a member of the Kerrville City Council to the Kerrville Citizen Police Academy Alumni Association Board of Directors. (staff)

The facility is wheelchair accessible and accessible parking spaces are available. Requests for accommodations or interpretive services must be made 48 hours prior to this event. Please contact the City Secretary's Office at 830-258-1117 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, January 18, 2013 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

10B. Appointments to the Main Street advisory board. (staff)

10C. Appointments to the planning and zoning commission. (staff)

11. ITEMS FOR FUTURE AGENDAS

12. ANNOUNCEMENTS OF COMMUNITY INTEREST:

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

13. EXECUTIVE SESSION:

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

Section 551.074:

- Appointments to the planning and zoning commission.

Sections 551.071 and 551.072:

- Discuss the purchase, exchange, lease, sale, or value of real property, the public discussion of which would not be in the best interests of the city's bargaining position with third parties, regarding property interests related to the following public works projects:

- Jefferson Street lift station
- G Street sewer project
- River trail.

14. ACTION ON ITEMS DISCUSSED IN EXECUTIVE SESSION

15. ADJOURNMENT.

The facility is wheelchair accessible and accessible parking spaces are available. Requests for accommodations or interpretive services must be made 48 hours prior to this event. Please contact the City Secretary's Office at 830-258-1117 for further information.

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Cheryl Brown
Deputy City Secretary, City of Kerrville, Texas

Agenda Item:

2A. Recognition of Citizens Police Academy Alumni Association.
(Councilmember Conklin)

Agenda Item:

3A. Approval of minutes of the regular meeting held on October 23, 2012, the special meeting held on November 13, 2012, and the regular meeting held on November 13, 2012. (staff)

CITY COUNCIL MINUTES
REGULAR MEETING

KERRVILLE, TEXAS
OCTOBER 23, 2012

On October 23, 2012, the Kerrville City Council meeting was called to order by Mayor Pratt at 6:00 p.m., in the city hall council chambers at 701 Main Street. The invocation was offered by Pastor James Wilson, of the Kerrville Christian Center Church, followed by the Pledge of Allegiance led by members of the Kerrville Fire Department.

COUNCILMEMBERS PRESENT:

Jack Pratt	Mayor
Stacie Keeble	Mayor Pro Tem
Gene Allen	Councilmember
Carson Conklin	Councilmember
Justin MacDonald	Councilmember

COUNCILMEMBER ABSENT: None

CITY EXECUTIVE STAFF PRESENT:

Todd Parton	City Manager
Mike Hayes	City Attorney
Kristine Ondrias	Assistant City Manager
Brenda G. Craig	City Secretary
Charvy Tork	Director of Information Technology Systems
Mike Erwin	Director of Finance
John Young	Police Chief
Kim Meismer	Director of General Operations
Eric Maloney	EMS Coordinator
Malcolm Matthews	Parks and Recreation Director
Misty Kothe	Main Street Manager

VISITORS PRESENT: List on file in city secretary's office for the required retention period.

1. VISITORS/CITIZENS FORUM No one spoke.

2. PRESENTATIONS AND RECOGNITIONS

2A. A proclamation declaring October 31, 2013, as Sudie Burditt Day in recognition of her service to the community as Executive Director of the Kerrville Convention and Visitors Bureau. (Mayor Pratt)
Item was deferred to a future meeting.

3. CONSENT AGENDA:

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

3A. Resolution No. 39-2012 supporting Kerr County Soil and Water Conservation District's funding application to the Texas State Soil and Water

Conservation Board for the Headwaters Upper Guadalupe River water supply enhancement project.

3B. Purchase of four (4) new vehicles for the police department at a total amount of \$123,656.00.

END OF CONSENT AGENDA

4. CONSIDERATION AND POSSIBLE ACTION:

4A. Funding agreement between the City of Kerrville, Texas, and the City of Kerrville, Texas Economic Improvement Corporation for Schreiner Golf Course improvements in the amount of \$608,141.

Mr. Parton noted EIC approved the agreement on October 15 that would provide funding for the Schreiner Golf Course improvements project, including: parking lot reconstruction, realignment of Country Club Drive, and construction of a pavilion. It is anticipated that the improvements will increase attendance and tournaments. Engineering and design would be done in-house, and if approved by council, funds would be available mid-December.

Ms. Keeble moved to approve the funding agreement; the motion was seconded by Mr. Conklin and passed 5-0.

4B. Discuss increasing the fines for parking violations.

Mr. Parton noted previous discussion with council to increase the fine from \$5 to \$50 per violation for parking violations. The purpose of the parking limit was to encourage turnover. The increase was supported by the downtown business alliance and the main street advisory board. If passed, the parking fine would apply throughout the city.

Mr. MacDonald moved to instruct staff to prepare an ordinance to increase the fine for parking violations from \$5 to \$50 as presented; Mr. Conklin seconded the motion and it passed 5-0.

4C. Request by Kerrville Convention and Visitors Bureau, Inc. (CVB) to negotiate a new eight (8) year agreement for convention and tourism promotion services.

Mr. Parton noted the current agreement would expire September 30, 2013. CVB requested an eight year contract to expire September 30, 2021. Mr. Parton reviewed several issues of concern, e.g. reporting, performance, marketing effectiveness, sales initiatives, funding, etc. He requested authorization to negotiate a multi-year contract for council's consideration at a future meeting. He noted CVB's reasons for requesting a multi-year contract, i.e. publications give better rates for multi-year contracts, equipment maintenance and building lease were multi-year agreements.

Council discussed the following:

- Most city contracts are for three or five years.
- The funding (\$750,000) was a significant amount of tax dollars.
- Need to develop benchmarks to evaluate performance.

- Council terms are two years; concern that a multi-year agreement would be binding to future councils.
- Issues could be brought up during the annual review; may want to change reporting process.

Mr. Allen moved to authorize the city manager to negotiate a draft agreement with CVB staff; Mr. Conklin seconded the motion and it passed 5-0.

4D. Nomination of projects to the Texas Department of Transportation (TxDOT) for federal funding as part of the 2012 Transportation Enhancement Program (TEP).

Mr. Parton noted TxDOT was accepting nominations for projects; staff reviewed projects that were "project ready" and the only project that would qualify was the river trail. He stated several concerns for accepting funding through TEP:

- Project management was by TxDOT. The city would be required to relinquish its funds to TxDOT and TxDOT would charge an 11% fee to administer the project. The city would lose the ability to manage the project and hold cost down, as the state would have authority to issue change orders and exceed project cost. Mr. Parton cited Holdsworth Drive as a project managed by TxDOT, and a decade after completion TxDOT said the city owed several hundred thousand dollars due to change orders they had issued. Also, the city still had not received final accounting from TxDOT for the safe routes to schools sidewalk project.
- The project would have to meet state and federal requirements that could drive up the cost and delay the project, i.e. architectural and environmental studies.
- The project was a "reimbursable" project, that is, the city pays the cost upfront and the state would reimburse eligible expenses.
- The city's bond covenants state specific time requirements for completion, 36 months; questioned whether the project could be completed within that time, particularly if state and federal requirements had to be met, i.e. environmental studies.
- Phase I environmental studies were not eligible reimbursement expenses; the grant could cost the city more than it would receive.
- Reporting and tracking requirements of the grant would require significant staff time to service the grant.

Mr. Hastings noted that in addition to the staff time to make application, the grant could cost the city more than the amount it would receive; the grant was only 80% reimbursable, and TxDOT would charge an 11% administrative fee to manage the contract. The city would not know for six months whether it received the grant.

Council noted the following:

- Applying for the grant would put the river trail on hold for six months, and the city may not receive the grant.
- The city and EIC were already committed to the project and time line through the bond covenants.
- The deadline for submission was November 16 and no other projects were "project ready."

The following person spoke:

1. Carolyn Lipscomb suggested the city consider submitting a project that would fund the construction of sidewalks on Harper Road from Holdsworth Drive to Jackson Road to connect with existing sidewalks.

Mr. Parton noted there would be calls for projects in the future and staff would request that the city be allowed to manage the project, which TxDOT may approve on a case by case basis.

No action was taken by the council.

5. INFORMATION AND DISCUSSION

5A. Kerrville Triathlon Festival post-event review.

Ms. Kothe reported the event held September 29-30 had 1,307 participants with 91% of the athletes from outside of Kerr and Gillespie counties. Over 350 volunteers assisted in the event, 28 vendors participated, and the economic benefit to the community was estimated at \$750,000-\$1 million. The next Triathlon was scheduled for September 27-29, 2013.

Council also discussed the following:

- Better working relationship and coordination with the downtown business owners this year.
- Better communication and advertising with the community this year.
- One complaint was received from a citizen who had to wait for athletes to pass at an intersection; however, council felt the economic impact outweighed such small inconveniences.

5B. Playhouse 2000 (P2K) third quarter financial report.

Ms. Keeble reported revenue of \$120,700 for the third quarter, including ticket sales and foundation grants; and expenses of \$109,400. P2K was excited about making a profit and was developing a new marketing strategy for continued economic success. She reviewed upcoming events.

5C. Report on Kerr Economic Development Corporation activities.

Mr. Conklin reported that KEDC was involved in the following:

- Possibility of developing a wine trail.
- Fox Tank was nearing completion of the construction of the new building; currently operating in the building to the east; had fulfilled employment objectives; looking at possibility of constructing another building on the same site for further expansion.
- Shifting budget priorities from marketing and advertising to focusing more on direct contact with prospects.

5D. Budget and economic update. Mr. Erwin noted the unemployment rate dropped in August; however the number of employed persons also dropped. Sales tax continue to improve; retail sales per capita for Kerr County in 2011 was

\$10,266; in 2010 it was \$11,132; despite the drop in spending per capita, sales tax continued to increase; he attributed the increase to new business development and sales, e.g. Fox Tank and James Avery Craftsman. Staff was closing out the fiscal year and auditors would begin the audit soon.

5E. River trail and Louise Hays Park project update.

Mr. Matthews noted that construction for Phase A was 80% complete; he anticipated dedication before Thanksgiving or in mid-December. The next phase of the project would be to coordinate the utility construction project through Louise Hays Park (LHP). Easement documents for about 15 properties had been provided to the affected property owners. Leadership Kerr County selected river trail landscaping for their project.

Ms. Ondrias noted the utility construction project would be bid in November, and she anticipated bid award would be in January. Council agreed to a special meeting in December if needed in order for the project to proceed timely.

Mr. Matthews noted the utility construction project and river trail would make LHP inaccessible for about 18 months. Staff was working with the public to find other locations for events that were generally held in LHP. The July 4 event will not be held in LHP in 2013; however, there is a possibility that the fireworks display only could be set off in an isolated area of LHP, but not to open the park to traffic.

Council discussed the possibility of opening Kerrville Schreiner Park free to the public while LHP was closed. Staff will look at this possibility, and some events will be moved to KSP.

6. ITEMS FOR FUTURE AGENDAS

- Reschedule proclamation for Sudie Burditt Day (Item 2A)
- Discuss setting policies for time management, i.e. require support of two councilmembers to place an item on the agenda or request staff to spend time on a matter that had not been approved by city council; concern that projects on council's priority list were being delayed in order for staff to work on other projects. Mr. Hayes noted this could be addressed in the council's procedural rules.

7. ANNOUNCEMENTS OF COMMUNITY INTEREST:

- Kerrville Public Utility Board awarded a \$1,500 grant to the Doyle Community Center.

9. EXECUTIVE SESSION:

Mr. Conklin moved for the city council to go into executive closed session under Section 551.074 of the Texas Government Code; the motion was seconded by Ms. Keeble and passed 5-0 to discuss the following matters:

Section 551.074:

- Annual review of city attorney.
- Annual review of city manager.

At 7:19 p.m. the regular meeting recessed and council went into executive closed session at 7:21 p.m. At 9:47 the executive closed session recessed and council returned to open session at 9:47 p.m. The mayor announced that no action had been taken in executive session.

9. ACTION ON ITEMS DISCUSSED IN EXECUTIVE SESSION

Mr. Conklin moved to direct staff to amend the city manager's employment agreement Section 3A to reflect 12 months instead of 90 days, and Section 9 to reflect this year's approved budget. Mr. Allen seconded the motion and it passed 5-0.

ADJOURNMENT. The meeting adjourned at 9:48 p.m.

APPROVED: _____

Jack Pratt, Jr., Mayor

ATTEST:

Brenda G. Craig, City Secretary

CITY COUNCIL MINUTES
SPECIAL MEETING

KERRVILLE, TEXAS
NOVEMBER 13, 2012

On November 13, 2012, the Kerrville City Council special meeting was called to order by Mayor Pratt at 4:00 p.m. in the city hall council chambers, 701 Main Street.

COUNCILMEMBERS PRESENT:

Jack Pratt	Mayor
Stacie Keeble	Mayor Pro Tem
Carson Conklin	Councilmember
Justin MacDonald	Councilmember
Gene Allen	Councilmember (arrived at 4:25 p.m.)

COUNCILMEMBER ABSENT: None

CITY EXECUTIVE STAFF PRESENT:

Todd Parton	City Manager
Mike Hayes	City Attorney
Kristine Ondrias	Assistant City Manager
Cheryl Brown	Deputy City Secretary
Charvy Tork	Director of Information Technology Systems
Mike Erwin	Director of Finance
Robert Ojeda	Fire Chief
John Young	Police Chief
Kim Meismer	Director of General Operations
Jason Lutz	City Planner

VISITORS PRESENT: List on file in city secretary's office for the required retention period.

DISCUSSION OF REGULATION OF GROUP HOMES IN THE CITY OF KERRVILLE

Mr. Parton noted four issues previously discussed regarding group homes:

1. What type of home was considered a group home?
2. What density restrictions on the number of residents?
3. What permit process should be required?
4. What inspection process would be best?

The following citizens spoke:

1. Robert Duncan stated he had a group home for nine years and there were very specific restrictions for his residents and they had good relationships with his neighbors. Mr. Duncan said he lived in a group home when he was trying to get sober and he wanted to help others. Each of his three group homes had a live-in manager.
2. Gracie McCutcheon said she did not believe that group homes should be allowed in residential areas.

3. Nikki Saurage said she owned two non-profit group homes and her residents were referred to her from treatment centers. She did not want the city to require any permitting or licensing, as she was already a non-profit home, and she would not be able to afford additional fees.
4. Cody Leicht said he operated a group home with approximately 29 residents outside of the city; he also had a second group home with 12 residents. He opined that the Fair Housing Act restricted the city as to what it could and could not do regarding group homes.
5. Grace Matuska said she operated a group home for women for five years. She understood the city's desire to require permits for group homes and asked to be allowed to work with staff on the permitting process. She asked what her property was zoned; Mr. Conklin said her neighborhood was zoned R-1, single family residential, which was the most restrictive zone. Ms. Matuska stated she would probably not be able to afford an annual fee of \$1,000 for a group home permit.
6. Becky Badd said she managed a group home and an annual fee of \$1,000 would put a strain on the smaller houses, which sometimes struggled to pay the electric bill.
7. Ed Skillern stated that he had no idea that there was a group home in his neighborhood, and that the Riverhill subdivision had specific restrictions for single family dwellings, including covenants and deed restrictions. Mr. MacDonald stated that Mr. Skillern should present his findings to the homeowners' association, and that the city would not have any jurisdiction in that matter.
8. Cheryl Arteburn said she owned the House of Hope, a non-profit group home in Riverhill, and she would be moving in February.
9. Joe David Chavez said he managed a group home and he agreed that the group home industry in the city needed better governance.
10. Janet Robinson said she lived in her home for 31 years, and she did not want a business in her residential neighborhood. She asked the meaning of R-1 zoning. Mr. Hayes explained that zoning did not restrict these types of homes as they were providing services to disabled people, which by definition included recovering addicts.
11. Luis Calavera said he owned twelve acres with two group homes and he opined that his residents were having a positive effect on his neighborhood.
12. Carolyn Lipscomb stated she agreed with permitting group homes and requiring inspections for fire and health safety.

The consensus of the council was to use Mr. Hayes' draft ordinance as a starting point and continue to work on finalizing the ordinance, taking the public comments into consideration.

ADJOURNMENT. The meeting adjourned at 5:51 p.m.

APPROVED: _____

Jack Pratt, Jr., Mayor

ATTEST:

Cheryl Brown, Deputy City Secretary

CITY COUNCIL MINUTES
REGULAR MEETING

KERRVILLE, TEXAS
NOVEMBER 13, 2012

On November 13, 2012, the Kerrville City Council meeting was called to order by Mayor Pratt in the city hall council chambers at 701 Main Street at 6:12 p.m. The invocation was offered by Charlie Hastings, followed by the Pledge of Allegiance led by Russ Holmer of the Military Officers Association of America.

COUNCILMEMBERS PRESENT:

Jack Pratt	Mayor
Stacie Keeble	Mayor Pro Tem
Gene Allen	Councilmember
Carson Conklin	Councilmember
Justin MacDonald	Councilmember

COUNCILMEMBER ABSENT: None

CITY EXECUTIVE STAFF PRESENT:

Todd Parton	City Manager
Mike Hayes	City Attorney
Kristine Ondrias	Assistant City Manager
Cheryl Brown	Deputy City Secretary
Charvy Tork	Director of Information Technology Systems
Mike Erwin	Director of Finance
Robert Ojeda	Fire Chief
John Young	Police Chief
Charlie Hastings	Director of Public Works
Kim Meismer	Director of General Operations
Jason Lutz	City Planner
Eric Maloney	EMS Coordinator

VISITORS PRESENT: List on file in city secretary's office for the required retention period.

1. VISITORS/CITIZENS FORUM The following person spoke:

1A. Stacy Stavinoha with Kerrville Public School Foundation, organizers of the "Duck Race" in Louise Hays Park noted she received a letter from the city stating the park would be closed during the time their event was to take place. She stated she had reserved the park for the event, and was dismayed that she was going to have to find another venue. Mr. Parton stated that the park closure was due to the utility expansion and river trail construction, which would create safety hazards for the public. Council discussed other possible options and asked staff to work with Ms. Stavinoha to try to find a solution.

2. PRESENTATIONS AND RECOGNITIONS:

Mr. Pratt read the Proclamation declaring November 14, 2012 as Sudie Burditt Day in recognition of her service to the community as Executive Director of the Kerrville Convention and Visitors Bureau. Mr. Pratt recessed the meeting at 6:25 p.m. to allow persons time to congratulate Ms. Burditt. The meeting reconvened at 6:34 p.m.

3. CONSENT AGENDA:

Ms. Keeble requested that item 3C be removed from the consent agenda.

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

3A. Minutes of the City Council special meeting held October 4, 2012.

3B. Approval of a Patron Conduct Policy and Public Internet Use Policy for the Butt-Holdsworth Memorial Library.

END OF CONSENT AGENDA

3C. Resolution No. 40-2012 to create the City of Kerrville Beautification Advisory Committee.

Mrs. Keeble moved for approval of Resolution 40-2012; Mr. Allen seconded the motion and it passed 5-0.

4. ORDINANCES FIRST READING:

4A. An Ordinance amending Chapter 102 "Traffic and Vehicles," Article II "Administration; Enforcement" of the Code of Ordinances of the City of Kerrville, Texas; by amending sections 102-35 and 102-36 to increase the penalty for parking violations; adopting a new section 102-37 to establish presumptions applicable to the adjudication of parking citation; containing a cumulative clause; containing a savings and severability clause; providing for an effective date; ordering publication; and providing other matters related thereto. Mayor Pratt read the ordinance by title only.

The consensus of the Council was to postpone further discussion of this ordinance until the January 8, 2013 meeting. Mr. Parton stated that the Main Street Advisory Board was working on a presentation for the January 22, 2013 Council meeting for an overall long term parking strategy in the downtown area.

4B. An Ordinance amending Chapter 1 "General Provisions," of the Code of Ordinances of the City of Kerrville, Texas; by deleting Sections 1-7 and 1-8 and adopting a new Section 1-7 as a general penalty provision to clarify the application of penalties and to provide that a culpable mental state is not necessary for prosecution under certain circumstances; containing a cumulative clause; containing a savings and severability clause; providing for an effective date; ordering publication; and providing other matters related thereto.

Mayor Pratt read the Ordinance by title only.

Mr. Hayes cited state law as it pertained to a culpable mental state. He noted that in order to comply with state law, the proposed ordinance specifies a culpable mental state of recklessness for all violations where possible punishment exceeds \$500 and it dispenses with the requirement for any violation where the punishment is less than \$500.

Mr. Conklin moved for approval of the ordinance on first reading; Mr. Allen seconded and the motion passed 5-0.

5. PUBLIC HEARING AND ORDINANCE, SECOND READING:

5A. Public hearing and Ordinance No. 2012-13, creating a "Planned Development District" for an approximate 4.241 acres consisting of tracts 1 and 2, Texas National Guard Armory Board in the Samuel Wallace Survey No. 113, Abstract No. 761, within the City of Kerrville, Kerr County Texas, and more commonly known as 411 Meadow View Lane; adopting a phased concept plan and conditions related to the development of said district to include a phased development schedule; containing a cumulative clause; containing a savings and severability clause; establishing a penalty or fine not to exceed \$2,000 for each day of violation of any provision hereof; and ordering publication.

Mayor Pratt read the Ordinance by title only.

Mr. Lutz stated that the first reading of the Ordinance was on October 9, 2012, and that he had received no correspondence regarding the Ordinance.

Mayor Pratt opened the public hearing at 7:00 p.m. No one spoke and Mayor Pratt closed the public hearing at 7:00 p.m.

Mr. Allen moved to approve Ordinance No. 2012-13; Mr. Conklin seconded and the motion passed 5-0.

6. CONSIDERATION AND POSSIBLE ACTION:

6A. Request by the Texas Lions Camp for the donation of the Riverhill standpipe (water storage) that is designated to be decommissioned.

Mr. Hastings stated the reasons the standpipe was no longer needed by the City, and was scheduled for demolition and sale of the scrap metal would not cover the cost of demolition.

Mr. Steve Mabry with the Texas Lions Camp stated that the TLC would have the standpipe inspected, dismantled and reconstructed on their property at their cost.

Ms. Keeble filed a conflict of interest form and recused herself, stating the standpipe was located on her property.

Mr. Allen moved to allow the Texas Lions Camp to have the standpipe inspected to see if it would meet their needs. Mr. Conklin seconded, and the motion passed 4-0-1, with members Allen, Conklin, MacDonald and Pratt voting in favor of the motion; no one voted against the motion; and Ms. Keeble abstained.

6B. Update and direction to city staff regarding the Interlocal Agreement for

Library Services between the City of Kerrville, Texas and Kerr County.

Mr. Parton discussed efforts to communicate with the county regarding the use of the Butt-Holdsworth Memorial Library by county residents, given the County's default of the interlocal agreement for library funding. Mr. Parton presented options for payment, i.e. annual membership or a fee-for-use in the form of day passes to be made available to residents living outside the city who wished to use the city library. Mr. Parton stated that the demand by the county residents represented approximately 40% of the library patronage. He recommended that the council consider an annual membership for county residents. Council also discussed the following:

- The necessity of establishing a fee for library patrons who live outside the city was to cover the shortfall of the county Interlocal agreement.
- The city could apply to the Cailloux Foundation for a grant to cover the cost of library services for county residents.
- The city should not continue to subsidize services for county residents at a cost to the city taxpayer; the council's responsibility was to the city citizens.

Council directed staff to send notices to library card-holders who live outside the city limits, telling them that their cards would no longer be valid, and that they will be required to reapply and pay a fee for a library card for the Butt-Holdsworth Memorial Library.

6C. Establishing a policy requiring a minimum of two City Council members to place an item on an agenda.

Ms. Keeble proposed a change in the procedural rules that would require a minimum of two councilmembers to place an item on the council's agenda. The impetus for the change was better management of council and staff time. Council discussed the potential of "walking quorums".

The following person spoke:

1. Bruce Strake opined that agenda bills should be submitted by citizens directly to the city manager and not to a councilmember. When a citizen contacted a councilmember about a matter, the councilmember should direct them to the city manager.

Mrs. Keeble moved to establish a policy requiring two councilmembers' agreement to place an item on a council agenda. Mr. Allen seconded the motion; the motion failed 2-3 with members Keeble and Allen voting in favor of the motion and members Conklin, MacDonald, and Pratt voting against the motion.

7. INFORMATION AND DISCUSSION

7A. Economic update.

Mr. Erwin reported that the auditors would conduct their audit during the next two weeks.

7B. Water resources report.

Mr. Hastings noted the city was still in a severe drought; aquifer storage level

was slightly over 700 million gallons.

7C. Staff report on the third and fourth quarter departmental performance measures for Fiscal Year 2012.

Mr. Erwin reported on the third and fourth quarter departmental performance measures for Fiscal Year 2012.

8. BOARD APPOINTMENTS:

8A. Appointment to the Library Advisory Board.

Mr. MacDonald moved to re-appoint Judy Carr, with a term to expire November 22, 2014. Mr. Allen seconded the motion and it passed 5-0.

8B. Appointment to the Kerrville-Kerr County Joint Airport Board.

Mr. Allen moved to appoint Kirk Griffin, with a term to expire June 1, 2014. Mr. MacDonald seconded the motion and it passed 5-0.

9. ITEMS FOR FUTURE AGENDAS: None

10. ANNOUNCEMENTS OF COMMUNITY INTEREST:

- Appreciation was stated to all community members who served and honored the veterans through various means.
- Discussed "Movember," which raises awareness for men's health.
- Recognized Mayor Pratt on his birthday.
- "Polar Bear Plunge," to benefit Baptist Children and Family Services would be held on New Year's Day.

11: EXECUTIVE SESSION:

At 7:58 p.m., Mr. MacDonald moved for the city council to go into executive closed session under Sections 551.071, and 551.072 of the Texas Government Code; the motion was seconded by Mr. Conklin and passed 5-0 to discuss the following matters:

Section 551.071 and 551.072:

- Discuss the purchase, exchange, lease, sale, or value of real property, the public discussion of which would not be in the best interests of the city's bargaining position with third parties, regarding property interests related to the following public works projects:
 - Jefferson Street lift station;
 - G Street sewer project; and
 - the River Trail project.

At 7:58 p.m. p.m. the regular meeting recessed and council went into executive closed session at 8:05 p.m. At 8:25 p.m. the executive closed session recessed and council returned to open session at 8:25 p.m.

The mayor announced that no action had been taken in executive session.

12. ACTION ON ITEM DISCUSSED IN EXECUTIVE SESSION

ADJOURNMENT. The meeting adjourned at 8:25 p.m.

APPROVED: _____

Jack Pratt, Jr., Mayor

ATTEST:

Cheryl Brown, Deputy City Secretary

Agenda Item:

3B. Purchase of a 120H Caterpillar Motor Grader in the amount of \$104,956.62 for Public Works, Street Division. (staff)

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

SUBJECT: Authorize City Manager to Purchase a 120H Caterpillar Motorgrader in the amount of \$104,956.62 for the Street Division of Public Works.

FOR AGENDA OF: January 22, 2013

DATE SUBMITTED: January 10, 2013

SUBMITTED BY: Kim Greenman **CLEARANCES:** Charlie Hastings, P.E. *CH*
Street and Solid Waste Manager Public Works Director

EXHIBITS: Lease Renewal Agreement

AGENDA MAILED TO:

APPROVED FOR SUBMITTAL BY CITY MANAGER: *JP*

Expenditure Required:	Current Balance in Account: \$104,956.62	Amount Budgeted: \$106,635.00	Account Number: 01-861-504
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PAYMENT TO BE MADE TO: Holt Caterpillar

REVIEWED BY THE FINANCE DIRECTOR:

SUMMARY STATEMENT

The Street Division entered into a five year lease agreement with Holt Caterpillar for the use of a 2007 120H Motorgrader with an option to purchase at the end of the lease. In February 2012 the five year lease agreement was completed, however, the Street Division elected to continue lease payments 12 months to acquire funds for the final buy out of \$104,956.62 (associated taxes included) in February 2013. One additional lease payment of \$1,678.07 is due before this final buy out payment and is accounted for in the current balance above. The motorgrader is in excellent condition with very low operating hours and is used for our Street Maintenance and Road Reconstruction Programs. It is a key component to our work. The cost of a new Caterpillar Motorgrader is approximately \$235,000.

RECOMMENDED ACTION

The Public Works Director recommends that City Council authorize the City Manager to purchase a 120H Caterpillar Motorgrader in the amount of \$104,956.62 from Holt Cat Sales.

LEASE RENEWAL AGREEMENT

This agreement, dated as of January 25, 2012, is between the City of Kerrville, TX ("Lessee") and Caterpillar Financial Services Corporation ("Lessor").

Whereas, Lessee and Lessor have entered into a Long Term Rental Agreement dated as of February 5, 2007 (the "Lease"), pursuant to which Lessor has leased the following equipment ("Unit") to Lessee:

Contract #	Equipment	Serial Number
001-0451911-000	120HNA Motor Grader	CAF00997

Whereas, Caterpillar Financial Services Corporation is the owner of and holds the title to Unit;

Whereas, the Lease has expired or will expire on February 5, 2012, and the Lessee wishes to renew the Lease for an additional term of 12 months for above noted Unit.

Lessor in consideration of the forgoing agrees to extend the Lease term with respect to the Unit for 12 months with rentals due in 12 monthly installments of \$1,678.07 each (plus applicable taxes), with the first monthly rental due on March 5, 2012.

Lessee agrees and acknowledges that this renewal will be treated as an extension of the terms and agreements set forth in the original Lease and will abide by those terms and conditions.

Lessee, at its expense, agrees to provide the same insurance coverage on the Unit as originally outlined in the Lease covering both physical damage and public liability insurance. In no event will this coverage provide less than \$1,000,000.00 for combined coverage for bodily injury and property damage per Unit, as well as the actual replacement value for physical damage to each unit.

The Unit(s) will be operated an estimated total number hours per year as set forth below.

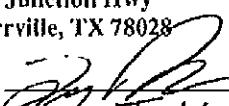
Description of Unit	Maximum Yearly Usage	Hourly Overage Charge
120HNA Motor Grader	500 hours	\$33.00

In addition to the Lessor's other rights hereunder and not in lieu thereof, Lessee shall pay Lessor an Hourly Overage Charge (as set forth above) for each hour in excess of the Maximum Yearly Usage.

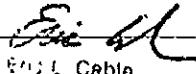
Lessee agrees and acknowledges that upon expiration of the renewal term, the Unit will be returned to the Lessor as provided for in the Lease. Should Lessee elect to purchase the equipment upon expiration of this renewal term, the purchase price for the Unit will be equal to the then "CAT Value Option" amount of \$103,092.62 (plus associated taxes)..

IN WITNESS WHEREOF, the parties hereby have duly executed this Agreement.

City of Kerrville, TX
800 Junction Hwy
Kerrville, TX 78028

BY: 
Name (PRINT) Todd Parton
Title: City Manager
Date: 1/24/12

Caterpillar Financial Services Corporation
2120 WEST END AVENUE
NASHVILLE, TN 37203

BY: 
Name (PRINT) Eric Cable
Title: Implementation Manager
Date: 1/25/12

Agenda Item:

3C. A Resolution changing the regular meeting time of the City Council
scheduled for February 12, 2013. (staff)

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

SUBJECT: A RESOLUTION AUTHORIZING THE CHANGE OF START TIME FOR THE FEBRUARY 12, 2013 CITY COUNCIL MEETING, TO BEGIN AT 5:00 PM TO ACCOMMODATE THE KERRVILLE MAIN STREET EVENT OF MARDI GRAS ON MAIN.

FOR AGENDA OF: January 22, 2013 **DATE SUBMITTED:** January 9, 2013

SUBMITTED BY: Misty Kothe **CLEARANCES:** Todd Parton
Main Street Manager City Manager

EXHIBITS: Resolution

AGENDA MAILED TO:

APPROVED FOR SUBMITTAL BY CITY MANAGER: *WP*

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

PAYMENT TO BE MADE TO:

REVIEWED BY THE FINANCE DIRECTOR:

SUMMARY STATEMENT

Kerrville Main Street is hosting the 9th Annual Mardi Gras on Main February 12, 2013, from 6:00 – 9:00 p.m. at the Y.O. Ranch Hotel and Conference Center. This is the largest event of Kerrville Main Street and the largest fundraiser for the Public Art Project.

To make concessions so that the council and other city staff are able to support and attend the event, a resolution is required to change the time the City Council meeting on February 12, 2013 begins from 6:00 p.m. to 5:00 p.m.

RECOMMENDED ACTION

Approve resolution

**CITY OF KERRVILLE, TEXAS
RESOLUTION NO. ____-2013**

**A RESOLUTION CHANGING THE REGULAR MEETING
TIME OF THE CITY COUNCIL SCHEDULED FOR
FEBRUARY 12, 2013**

WHEREAS, Section 2-31 of the Code of Ordinances for the City of Kerrville provides that City Council meetings are to be held the second and fourth Tuesdays of each month at 6:00 p.m.; and

WHEREAS, Section 2-31 also provides the City Council may, by majority vote at a regular meeting, change the days or times of meetings as circumstances may necessitate;

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

The regular meeting of the City Council scheduled for February 12, 2013, will begin at 5:00 p.m.

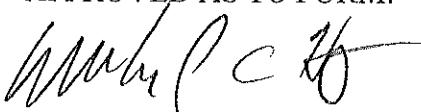
PASSED AND APPROVED ON this _____ day of _____ A.D., 2013.

Jack Pratt, Jr., Mayor

ATTEST:

Brenda G. Craig, City Secretary

APPROVED AS TO FORM:



Michael C. Hayes, City Attorney

Agenda Item:

3D. Council authorization for the City Manager to enter into a Professional Services Agreement with Freese & Nichols, Inc. to perform a Water System Master Plan update and provide a Master Plan for the Water Treatment Plant in an amount not to exceed \$166,500.00. (staff)

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

SUBJECT: Council authorization for the City Manager to enter into a Professional Services Agreement with Freese & Nichols, Inc. to perform a Water System Master Plan update and provide a Master Plan for the Water Treatment Plant in an amount not to exceed \$166,500.00.

FOR AGENDA OF: January 22, 2013 DATE SUBMITTED: January 17, 2013

EXHIBITS: Professional Services Agreement

AGENDA MAILED TO:

APPROVED FOR SUBMITTAL BY CITY MANAGER:

Expenditure Required:	Current Balance in Account:	Amount Budgeted:	Account Number:
\$166,500.00	\$53,846.86	\$200,000.00	W94
	\$55,000.00**	\$55,000.00**	W94**
	<u>\$70,000.00</u>	\$70,000.00	THM Study in CIP
	\$178,846.86**		

** Subject to 2nd reading of budget amendment on February 12, 2013.

PAYMENT TO BE MADE TO:

REVIEWED BY THE DIRECTOR OF FINANCE:

SUMMARY STATEMENT

In 2007, the City of Kerrville contracted with Freese & Nichols, Inc. to provide a Water / Wastewater System Master Plan. The master plan was completed in 2008 and has served as the City's plan for infrastructure improvements through the Capital Improvements Program. This master plan did not evaluate the water treatment system facility or contemplate water treatment plant needed improvements for future growth of the city.

Staff is recommending entering into a professional services agreement with Freese & Nichols, Inc. to update the existing Water System Master Plan as well as develop a Water Treatment Plant Master Plan. As part of the Master Plan process, the following tasks will be completed:

Task A: Model Update and Dynamic Calibration

Task B: Water Demand Projections

Task C: THM Reduction Study and CIP

Task D: Hydraulic Analyses and Capacity CIP Update

Task E: Water Treatment Plant Condition Assessment and Capacity Evaluation

Task F: Master Plan Report and Council Presentations

Task G: Model Training for staff

Throughout the above tasks/processes, staff will update the City Council of the progress as well as seek necessary input. Freese & Nichols, Inc. will prepare a draft master plan report approximately nine to twelve months from notice to proceed.

RECOMMENDED ACTION

Staff recommends the City Council authorize the City Manager to enter into a Professional Services Agreement with Freese & Nichols, Inc. to perform a Water System Master Plan update and provide a Master Plan for the Water Treatment Plant in an amount not to exceed \$166,500.00.

Professional Engineering Services Agreement

Between

Freese and Nichols, Inc., and City of Kerrville

THIS AGREEMENT is made as of this _____ day of _____, 2013, between the CITY OF KERRVILLE, a Texas home rule municipality with principal offices at 701 Main Street, Kerrville, Texas, 78028, hereinafter referred to as "CLIENT", and Freese and Nichols, Inc., with its offices located at 4040 Broadway, Suite 600, San Antonio, Texas 78209, hereinafter referred to as "ENGINEER", for the performance of professional engineering services in consideration of the following terms, conditions, and agreements:

PART I. SERVICES

ENGINEER shall perform all work described in the proposal attached hereto as **Exhibit A**.

- A. ENGINEER shall be responsible for the professional quality, technical accuracy, timely completion, and the coordination of all designs, drawings, specifications, reports, and other services furnished by ENGINEER under this Agreement, ENGINEER shall, without additional compensation, correct or revise any errors, omissions or other deficiencies in his designs, drawings, specifications, reports and others services.
- B. ENGINEER hereby agrees to comply with all Federal, State, and Local laws and ordinances applicable to the work or services under this Agreement.
- C. ENGINEER shall hold periodic conferences with CLIENT or CLIENT's representatives to the end that the project as developed shall have the full benefit of CLIENT's experience and knowledge and be consistent with CLIENT's objectives for this project.
- D. ENGINEER shall periodically report project status to CLIENT as is appropriate to keep CLIENT informed regarding project progress.
- E. ENGINEER shall perform all services under this Agreement in a manner which is consistent with generally accepted standards of professional engineering practice.

PART II. CLIENT'S RESPONSIBILITIES

- A. CLIENT shall provide all criteria and full information as to CLIENT's requirements for the Project; designate a person to act with authority on CLIENT's behalf in respect of all aspects of the Project; examine and respond promptly to ENGINEER's submissions; and give prompt written notice to ENGINEER whenever CLIENT observes or otherwise becomes aware of any defect in ENGINEER's submissions.

B. CLIENT shall also do the following and pay all costs incident thereto:

Furnish to ENGINEER, upon ENGINEER's notification that data is required, core borings, probings and subsurface explorations, hydrographic surveys, laboratory tests and inspections of samples, materials and equipment and similar data; appropriate professional interpretations of all of the foregoing; environmental assessment and impact statements; geologic assessments, environmental impact studies, and endangered species studies; and any other information previously made available to CLIENT, which may be required by ENGINEER; all of which ENGINEER may rely upon as accurate in performing ENGINEER's services provided, however, ENGINEER shall not be entitled to rely on any inaccuracy or incompleteness of information or services provided by CLIENT or at CLIENT's direction if a professional engineer using generally accepted engineering practices and procedures would have discovered such inaccuracy or incompleteness without reviewing any other data other than the document or information provided.

Guarantee access to and make all provisions for ENGINEER to enter upon public and private property.

Provide such legal, accounting, independent cost estimating and insurance counseling services as may be required for the Project, any auditing service required in respect of contractor(s)' applications for payment, and any inspection services to determine if contractor(s) are performing the work legally.

C. CLIENT shall pay all non-labor costs incident to obtaining bids or proposals from contractor(s).

PART III. WORK ORDER AMENDMENTS

- A. CLIENT may at any time, by written Work Order, make changes relating to services to be performed. If such changes cause an increase or decrease in ENGINEER's cost of, or time required for, performance of any services, an agreeable equitable adjustment shall be made and reflected in a properly executed Work Order. ENGINEER must assert any claim for adjustment under this clause in writing within thirty (30) calendar days from the date of receipt by ENGINEER of the notification of change, unless CLIENT grants a further period of time before the date of final payment under this Agreement.
- B. No services for which additional compensation will be charged by ENGINEER shall be furnished without a properly executed Work Order signed by CLIENT.
- C. In the event that there are modifications and/or additions to regulatory requirements relating to the services to be performed under this Agreement after the date of execution of this Agreement, the increased or decreased cost of performance of the services provided in this Agreement and subsequent Work Orders shall be reflected in an appropriate Work Order.

PART IV. COMPENSATION

CLIENT agrees to pay ENGINEER for Professional Services in accordance with the descriptions, definitions, terms and conditions as set forth in **Exhibit A**.

PART V. PAYMENTS

ENGINEER will invoice CLIENT in accordance with the terms and conditions as set forth in **Exhibit A**. CLIENT agrees to promptly pay ENGINEER at its office located at 4055 International Plaza, Suite 200, Fort Worth, Texas 76109, the full amount of each such invoice upon receipt. In no event shall ENGINEER's failure to invoice constitute a default under the terms and conditions of this Agreement.

PART VI. INSURANCE

ENGINEER shall procure and maintain the following types and limits of insurance for the duration of this Agreement:

<u>Type of Insurance</u>	<u>Minimum Limits of Liability</u>
Workers' Compensation	Statutory
Employer's Liability	\$250,000.00
Commercial General Injury/Property Damage	Liability-Personal \$1,000,000.00 combined single limit per occurrence
Automobile Liability	\$1,000,000.00 combined single limit per occurrence – Hired car, owned and non-owned autos
Professional Liability	\$1,000,000 per claim

The commercial general liability insurance required above will include contractual liability coverage. The commercial general liability and automobile liability policies shall be endorsed to name the CLIENT as an additional insured, and all policies shall be endorsed to show a waiver of subrogation in favor of CLIENT. ENGINEER shall direct that a certificate of insurance be delivered to CLIENT before any services are performed pursuant to this Agreement. Such certification of insurance shall provide for not less than thirty (30) days written notice to CLIENT prior to cancellation or material modification by endorsement of any insurance referenced therein and shall indicate that all required coverage and endorsements are in effect.

PART VII. TERMINATION

A. CONDITIONS OF TERMINATION

This Agreement and/or Work Order(s) may be terminated without cause at any time prior to completion of ENGINEER's services, either by CLIENT or by ENGINEER, upon written notice to the other at the address of record. Upon receipt of written notice from CLIENT to discontinue work, ENGINEER shall

discontinue work under this Agreement immediately. In the event CLIENT terminates the Agreement based on CLIENT's reasonable opinion ENGINEER has failed or refused to prosecute the work efficiently, promptly, or with diligence, ENGINEER shall have fifteen (15) business days, from the receipt of written notification by CLIENT, to cure such failure to perform in accordance with the terms of the Agreement.

B. ACTIONS ON TERMINATION

Upon any termination, ENGINEER shall: (1) promptly discontinue all Services affected (unless a termination notice from CLIENT directs otherwise); and (2) upon full payment for services, deliver or otherwise make available to CLIENT all documents, data, drawings, specifications, reports, estimates, summaries, and such other information and materials as may have been accumulated by ENGINEER in performing this Agreement, whether completed or in process.

C. COMPENSATION PAYABLE ON TERMINATION

On termination, by either CLIENT or ENGINEER, CLIENT shall pay ENGINEER with respect to all contracted services rendered and expenses incurred before termination an amount fixed by applying the ENGINEER's Standard hourly rates, in force at the time of termination, to all services performed to date, in addition to termination settlement costs ENGINEER reasonably incurs relating to commitments which had become firm before the termination; however, in no case shall CLIENT be required to pay ENGINEER more than the amount set forth in this Agreement.

PART VIII. MISCELLANEOUS

A. REUSE OF DOCUMENTS

All documents, including Drawings and Specifications prepared or furnished by ENGINEER pursuant to this Agreement, are instruments of service with respect to the PROJECT, are the property of both CLIENT and ENGINEER, and may be used by both CLIENT and ENGINEER, as they deem necessary in their reasonable discretion. Either CLIENT or ENGINEER may retain copies, reproduce copies, and disseminate copies of said Instruments of Service as are reasonably necessary for the construction and on-going maintenance of the Project. Not later than 90 days after substantial completion, ENGINEER shall deliver to CLIENT one (1) set of Record Drawings in CADD format incorporating all Addenda and Change Orders and consisting of one set of compact disks; provided, however, ENGINEER reserves the right to remove all indicia of ownership and/or involvement from the disc/magnetic tape provided to CLIENT. The original CADD data will be retained by ENGINEER. CLIENT hereby releases and holds harmless ENGINEER from any claims, losses, or liability resulting from CLIENT's use of the Instruments of Service in a manner not authorized on this project by this Agreement. Any reuse without written verification or adaptation by ENGINEER, for the specific purposes intended will

be at CLIENT's sole risk and without liability or legal exposure to ENGINEER. Any such verification or adaptation by ENGINEER will entitle ENGINEER to further compensation at rates to be agreed upon by CLIENT and ENGINEER.

B. OPINION OF COST

Since ENGINEER has no control over the cost of labor, materials, equipment or services furnished by others, or over the contractor(s)' method of determining prices, or over competitive bidding or market conditions, ENGINEER's opinions of probable Project Cost and Construction Cost are to be made on the basis of ENGINEER's experience and qualifications and represent ENGINEER's best judgment as an experienced and qualified professional engineer, familiar with the construction industry; but ENGINEER cannot and does not warrant or guarantee ENGINEER's opinions of cost as an "actual" cost and if an "actual" "Construction Cost" is required, and/or desired, then, construction bids should be obtained by CLIENT from appropriate sources. Opinions of cost may be supplied to applicable municipalities for bonding purposes and no representations, warranties, or guarantees are rendered hereby to any other person or entity. Opinions of cost for presentation to any mortgagee or lending institution will only be prepared by ENGINEER at CLIENT's specific request. Preparation of such may involve substantial additional cost to CLIENT and ENGINEER cannot and does not warrant or guarantee such opinion of cost as an "Actual" cost.

C. TRENCH SAFETY DESIGN

ENGINEER shall not perform any service for design of Trench Safety Systems and/or Trench Excavation Safety during construction and said services are specifically excluded from the provision of this Agreement.

D. LATE PAYMENT

If CLIENT fails to make any payment due ENGINEER for services and expenses in accordance with Part VI herein, within thirty (30) calendar days from the date of ENGINEER's invoice, thereafter the amounts due ENGINEER shall include a charge at the rate of 1.50 % per month, calculated from the date of the invoice, and in addition, ENGINEER may, after giving ten (10) business days written notice to CLIENT, suspend services under this Agreement until ENGINEER has been paid in full all amounts due for services and expenses.

E. ATTORNEY'S FEES

In the event ENGINEER's invoices for services are given to an attorney for collection, or if suit is brought for collection, or if they are collected through probate, bankruptcy, or other judicial proceeding , then CLIENT shall pay ENGINEER all costs of collection, including the maximum attorney's fees allowed by Law and court costs, in addition to other amounts due.

F. PERIOD OF SERVICE

ENGINEER shall diligently pursue completion of services in accordance with the timely completion specified in **Exhibit A** and shall promptly inform CLIENT of any anticipated delay. ENGINEER shall not be liable or responsible for any delays caused by circumstances beyond ENGINEER's control.

G. CONSTRUCTION OBSERVATION

During the Construction Phase, ENGINEER shall make visits to the site at intervals appropriate to the various stages of construction to observe as an experienced and qualified design professional the progress and quality of the executed work of contractor(s) and to determine in general if such work is proceeding in accordance with ENGINEER's design, drawings, specifications, and other instructions.

ENGINEER shall not be responsible for the means, methods, techniques, sequences or procedures of construction selected by contractor(s) or the safety precautions and programs incident to the work of contractor(s).

H. SALES AND USE TAXES

Not applicable. CLIENT is a tax-exempt entity. CLIENT will provide ENGINEER with a current copy of CLIENT's tax-exempt certificate.

I. SUCCESSORS AND ASSIGNS

CLIENT and ENGINEER each binds himself, and his partners, successors, executors, administrators, and assigns to partners, successors, executors, administrators, in respect to all covenants of this Agreement. Neither CLIENT nor ENGINEER shall assign, sublet, or transfer their interest in this Agreement without written consent of the other. Nothing herein shall be construed as giving any rights or benefits hereunder to anyone other than CLIENT or ENGINEER.

J. CONTROLLING LAW; VENUE

This Agreement is to be governed by and construed in accordance with the laws of the State of Texas. Venue for any disputes between CLIENT and ENGINEER arising from or related to this Agreement shall be in Kerr County, Texas.

K. SEVERABILITY AND WAIVER

In the event any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions shall continue to be valid and binding upon the parties. One or more waivers by either party of any provision, term, condition or covenant shall not be construed as a waiver of a subsequent breach of the same by the other party.

L. EXTENT OF AGREEMENT

This Agreement, including **Exhibit A**, and any and all amendments, modifications, and supplements duly executed by the parties in accordance with this Agreement, govern and supersede any and all inconsistent or contradictory terms, prior oral or written representations or understandings, conditions or provisions set forth in any purchase orders, requisition, request for proposal, authorization of services, notice to proceed or other form or document issued by CLIENT with respect to the project or ENGINEER's services.

M. AMENDMENTS

The parties agree that no change or modification to this Agreement, or any attachments hereto, shall have any force or effect unless the change is reduced to writing, dated, and made a part of this Agreement. The execution of the change shall be authorized and signed in the same manner as this Agreement. No one has authority to make variations in, or additions to the terms of this Agreement on behalf of ENGINEER other than the undersigned Principal, and then only in writing.

Executed on this _____ day of _____, 2013.

CITY OF KERRVILLE

FREESE & NICHOLS, INC.

BY: _____

Jeffrey Todd Parton
City Manager

BY: _____

Name

Title

ATTEST:

Brenda G. Craig, City Secretary

APPROVED AS TO FORM:



Michael C. Hayes

City Attorney

**City of Kerrville
Water Master Plan Update
SCOPE OF SERVICES**

EXHIBIT "A"

A. Model Update and Dynamic Calibration (\$18,600)

- A1. Project Kick-Off Meeting: Freese and Nichols, Inc. (FNI) will conduct the project kick-off meeting via conference call with the City to review scope, project team, and schedule. Data items needed for the project will also be discussed such as, available SCADA records and metered billing data. This meeting will also be used to discuss fire flow requirements with the City and identify up to five focus areas for improving fire flow capabilities.
- A2. Data Collection: FNI will compile information from the City including GIS files, utility billing data, and SCADA records for use in the water model update.
- A3. Update Existing Water Demand Allocation: FNI will utilize data from the City's billing system database to allocate existing demands throughout the service area. The data will consist of metered usage fields for active customer accounts. The meters will be spatially located in GIS so that the associated water usage can be assigned the appropriate model node. An average day demand and a maximum day demand allocation will be conducted.
- A4. Develop Diurnal Demand Curves for Each Pressure Plane: FNI will utilize the SCADA data and operator logs to develop diurnal demand curves representing existing 24-hour water usage patterns within each pressure plane.
- A5. Conduct Pressure Testing: FNI will identify locations for field testing based on model calibration needs and areas of concern from City. Sixteen pressure recorders will be furnished by FNI. Procedures for field testing will be prepared showing proposed location of testing, duration of testing, required SCADA data during testing period, and assistance from water utility department.
- A6. Conduct EPS Model Calibration: FNI will conduct a 24-hour extended period simulation model calibration by adjusting c-factors, peaking factors, diurnal curves, and demand distribution until modeling results match the field pressure measurements and pump/tank operation. FNI will provide comparison graphs and mapping to document model calibration results. The fluoride tracing will also be used to make adjustments to the model based on water age results.

B. Water Demand Projections (\$10,300)

- B1. Utilize Recent Population Projections and Land Use Assumptions: FNI will utilize the recent population projections and land use assumptions developed as part of the Wastewater Master Plan update for use in projecting water demands. Planning years will correspond to the same planning years used in the Wastewater Master Plan update and will include 5-year, 10-year, and 20-year conditions.
- B2. Review Historical Water Usage: FNI will obtain and evaluate historical water usage data to develop trends and calculate peaking factors. This data will be used to determine expected per-capita water usage for future projections.

- B3. Develop and Distribute Water Demand Projections: FNI will develop water demand projections for 5-year, 10-year, and 20-year conditions using the land use assumptions and selected design criteria. FNI will distribute water demands throughout the service area based on the future population distribution.
- B4. Conference Call to Discuss Water Demand Projections: FNI will conduct a conference call meeting with the City to present assumptions, methodology, and results of the water demand projections.

C. THM Reduction Study and CIP (\$37,500)

- C1. Obtain Historical Water Quality Data: FNI will obtain sampling data from the City from the last five years showing THM and chlorine residual levels throughout the distribution system. Available data regarding raw and finished water TOC will also be obtained. FNI will review the data to evaluate any seasonal or locational trends.
- C2. Conduct Field Testing: FNI will develop a field sampling plan for collecting THM data. Two rounds of sampling will be conducted and tested. FNI will provide the sampling protocol and the City will be responsible for collecting the samples and coordinating with the testing laboratory. Laboratory costs are not included in this scope. It is anticipated that finished water from the surface water treatment plant will be sampled for two rounds of testing for TTHM at regular intervals consisting of at least 6 data points each to develop a TTHM formation potential curve.
- C3. Evaluate Surface Water Treatment Process: FNI will conduct a site visit of the City's surface water treatment plant. FNI will evaluate the existing water treatment process and discuss history of disinfection byproduct (DBP) results and management strategies with City staff.
- C4. Conduct Water Age Modeling: FNI will conduct water age modeling under existing operations to document the current typical water age within the distribution system. Modified operations and/or capital improvements will be developed to help reduce water age. Mapping and graphs will be prepared to document the analyses.
- C5. Evaluate Alternatives for THM Reduction: FNI will investigate various strategies for reducing THMs. Operational and/or treatment modifications which are expected to reduce formation of DBPs will be recommended. Recommendations will include a general discussion of benefits and disadvantages of the alternative strategies. Planning level cost estimates will be developed for conceptual improvements and will be included in the water system capital improvements plan (CIP).
- C6. Conference Call to Discuss Results of the THM Evaluation: FNI will conduct a conference call to discuss the results of the THM evaluation.

D. Hydraulic Analyses and Capacity CIP Update (\$20,300)

- D1. Perform Modeling of Existing Water System: FNI will conduct extended period simulation (EPS) modeling of the existing water system for maximum day operating conditions to determine capacity and deficiencies within the existing water system.

D2. Utilize 20-year Model to Determine Sizing of Water System Improvements: Determine sizing of water system transmission, elevated and ground storage, and pumping facilities needed to serve 20-year demands throughout each pressure plane service area using the EPS model analyses under maximum day demand conditions.

D3. Conference Call with the City to Review Water System Improvement Alternatives: FNI will conduct a conference call with the City to discuss future water system improvement options for 20-year conditions.

D4. Utilize 5-year and 10-year Water System Model to Determine Phasing of Improvements: FNI will use interim 5-year and 10-year EPS model runs to determine phasing of water system improvements. System improvements will include transmission, storage, pumping and distribution system related needs. Recommendations for maintenance such as tank painting will also be evaluated.

D5. Develop Draft Capital Improvement Plan (CIP) Costs, Schedule, and Mapping: Develop costs for each proposed project in Year 2012 dollars including engineering and contingencies. Large scale citywide maps will be produced showing proposed projects and recommended in-service dates of proposed projects.

D6. Meet with City to Review Draft Capital Improvement Plan: Meet with City to discuss draft CIP, project phasing and analyze alternative completion dates as necessary.

D7. City Council Presentation #1: FNI will present results of the Capacity CIP and the THM Reduction CIP to City Council.

E. Water Treatment Plant Condition Assessment and Capacity Evaluation (\$43,500)

E1. Develop Facility Prioritization Scoring System: In consultation with City staff, FNI will develop prioritization scoring criteria. Scoring for the condition of facilities based on several criteria such as material, age, capacity, history of repairs, criticality, etc., will be used to prioritize projects. The criteria may include issues with electrical, mechanical, structural, safety, etc.

E2. Conduct WTP Site Visits: FNI will conduct a one day site visit with City staff to collect data on existing facilities, evaluating the various components. Condition scores will be assigned based on observations during the site visit.

E3. Perform WTP Process Unit Criticality Scoring: In consultation with City staff, FNI will evaluate the criticality of major process units and principal equipment by assessing the capacity provided, impact to permit requirements, system redundancy and ease/speed of replacement among other factors. FNI will assign a criticality score to each process unit.

E4. Prioritize WTP Rehabilitation Projects: FNI will utilize scoring system to prioritize rehabilitation projects. FNI will provide phasing of improvements and outline of a potential schedule and cost for rehabilitation and/or replacement of aging facilities and reasons to implement rehabilitation or replacement. System renewal costs will be calculated and summarized based on the prioritized rehabilitation projects. Rehabilitation projects will be combined with new construction projects in the CIP.

E5. Develop Hydraulic Model of Existing WTP: FNI will develop a hydraulic model of the existing treatment plant. The model will be used to evaluate plant hydraulics for future conditions including process modifications.

E6. Evaluate WTP Process Capacity: FNI will evaluate the process capacity of the existing treatment plant based on TCEQ criteria and currently accepted engineering design principles.

E7. Evaluate Regulatory Compliance: FNI will evaluate compliance with existing regulations including TCEQ Chapter 290 for the plant. FNI will identify possible regulatory requirements that might affect future permit requirements.

E8. WTP Capacity and Condition Assessment Meeting: FNI will attend a meeting with City staff to review the results of the condition assessments, the rehabilitation prioritization, the plant capacity analysis, and to brainstorm alternatives for expanding treatment capacity.

E9. City Council Presentation #2: FNI will present results of the Water Treatment Plan Condition Assessment and Capacity Evaluation to City Council.

F. Master Plan Report and Council Presentations (\$25,300)

F1. Prepare Draft Master Plan Report: FNI will prepare a Master Plan Report summarizing the water model update, water demand projections, hydraulic analyses, fire flow evaluation, and THM reduction. The three associated capital improvements plans (1-Growth, 2-Fire Flow, 3-THM Reduction) will be included in the report as well. An electronic PDF file and five hard copies of the Draft Report will be submitted to the City for review.

F2. Conference Call with City to Review Draft Master Plan Report: FNI will conduct a conference call with City to discuss the Draft Master Plan Report. Comments will be solicited and incorporated into the Final Master Plan Report.

F3. Finalize Master Plan Report: FNI will revise the report based on City's comments and submit 10 final hard copies and one electronic copy in PDF format of the Master Plan Report to the City.

F4. City Council Presentation #3: FNI will present the Water Master Plan report to City Council. FNI will be available to answer questions and discuss content.

G. Model Training (\$11,000)

G1. Prepare Model Training Material: FNI will prepare model training presentation material and load City of Kerrville water and wastewater models on FNI owned computers for use during training. FNI will coordinate with Innovyze to install temporary training licenses for up to six (6) people on FNI owned computers for use in model training.

G2. Wastewater Model Training: FNI will conduct one day of training on H2OMap Sewer software with the use of the City's wastewater model. The training will include instructions on setting up, running, and modifying the model as well as viewing results.

G3. Water Model Training: FNI will conduct one day of training on H2OMap Water software with the use of the City's water model. The training will include instructions on setting up, running, and modifying the model as well as viewing results.

G4. Follow-up Coordination: FNI will provide up to eight (8) hours of follow-up coordination after the model training to answer questions and provide additional instruction if necessary.

SUMMARY OF WATER MASTER PLAN UPDATE FEE

Task A - Model Update and Dynamic Calibration	\$18,600
Task B - Water Demand Projections	\$10,300
Task C – THM Reduction Study and CIP	\$37,500
Task D - Hydraulic Analyses and Capacity CIP Update	\$20,300
Task E - Water Treatment Plant Condition Assessment and Capacity Evaluation	\$43,500
Task F - Master Plan Report and Council Presentations	\$25,300
Task G - Model Training	<u>\$11,000</u>
	TOTAL
	\$166,500

Agenda Item:

4A. An Ordinance authorizing the issuance, sale and delivery of up to \$10,000,000 in aggregate principal amount of "City of Kerrville, Texas Combination Tax and Revenue Certificates of Obligation, Series 2013"; securing the payment thereof by authorizing the levy of an annual ad valorem tax and a pledge of certain surplus revenues of the City's waterworks and sewer system; and approving and authorizing the execution of a paying agent/registrar agreement, an official statement and all other instruments and procedures related thereto. (staff)

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

SUBJECT: ORDINANCE AUTHORIZING THE ISSUANCE, SALE AND DELIVERY OF APPROXIMATELY \$10,000,000 IN AGGREGATE PRINCIPAL AMOUNT OF "CITY OF KERRVILLE, TEXAS COMBINATION TAX AND REVENUE CERTIFICATES OF OBLIGATION, SERIES 2013"; SECURING THE PAYMENT THEREOF BY AUTHORIZING THE LEVY OF AN ANNUAL AD VALOREM TAX AND A PLEDGE OF CERTAIN SURPLUS REVENUES OF THE CITY'S WATERWORKS AND SEWER SYSTEM; AND APPROVING AND AUTHORIZING THE EXECUTION OF A PAYING AGENT/REGISTRAR AGREEMENT, AN OFFICIAL STATEMENT AND ALL OTHER INSTRUMENTS AND PROCEDURES RELATED THERETO

FOR AGENDA OF: January 22, 2013 DATE SUBMITTED: January 9, 2013

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

EXHIBITS: Preliminary Ordinance, Updated ordinance and agreements will be completed after the January 22, 2013 pricing and will be provided upon request.

APPROVED FOR SUBMITTAL BY CITY MANAGER:

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

PAYMENT TO BE MADE TO:

REVIEWED BY THE DIRECTOR OR FINANCE:

SUMMARY STATEMENT

The FY 13 budget includes CIP projects funded by Certificates of Obligation (COs). While COs are backed by the full faith and credit of the City, the water/wastewater debt that will be issued for these projects will be funded with revenue from the water/wastewater fund which is dedicated to these specific purposes. The debt will be used to acquire, construct and equip extensions and/or improvements to the City's water and wastewater systems and to pay the costs associated with issuance of the Certificates.

Because it is less than \$10,000,000, this issue will be bank qualified which should make it more attractive to banks because of the tax benefits associated with this type of issue and lead to lower borrowing costs.

RECOMMENDED ACTION

Approve first and only reading of the ordinance authorizing issuance of 2013 Certificates of Obligation in the amount of up to \$10,000,000.

ORDINANCE NO. 2013-__

**ORDINANCE AUTHORIZING THE ISSUANCE, SALE AND DELIVERY OF
\$ _____ IN AGGREGATE PRINCIPAL AMOUNT OF "CITY OF
KERRVILLE, TEXAS COMBINATION TAX AND REVENUE
CERTIFICATES OF OBLIGATION, SERIES 2013"; SECURING THE
PAYMENT THEREOF BY AUTHORIZING THE LEVY OF AN ANNUAL
AD VALOREM TAX AND A PLEDGE OF CERTAIN SURPLUS REVENUES
OF THE CITY'S WATERWORKS AND SEWER SYSTEM; AND
APPROVING AND AUTHORIZING THE EXECUTION OF A PAYING
AGENT/REGISTRAR AGREEMENT, AN OFFICIAL STATEMENT, AND
ALL OTHER INSTRUMENTS AND PROCEDURES RELATED THERETO**

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

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

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

WHEREAS, on December 11, 2012, the City Council adopted a resolution authorizing and directing the City Secretary to give notice of intention to issue Certificates of Obligation; and

WHEREAS, said notice has been duly published in the *Kerrville Daily Times*, which is a newspaper of general circulation in the City in its issues of December 14, 2012, and December 21, 2012; and

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

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

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

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

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

SECTION TWO. DESIGNATION, DATE, DENOMINATIONS, NUMBERS, AND MATURITIES OF THE CERTIFICATES OF OBLIGATION. Each certificate of obligation issued pursuant to and for the purpose described in Section One of this Ordinance shall be designated: **CITY OF KERRVILLE, TEXAS COMBINATION TAX AND REVENUE CERTIFICATES OF OBLIGATION, SERIES 2013**, and initially there shall be issued, sold, and delivered hereunder one fully registered certificate of obligation, without interest coupons, dated January 15, 2013, in the aggregate principal amount of \$ _____, numbered T-1 (the "*Initial Certificate of Obligation*"), with certificates of obligation issued in replacement thereof being in the denomination of \$5,000 or any integral multiple thereof and numbered consecutively from R-1 upward, all payable to the initial registered owner thereof (with the Initial Certificate of Obligation being payable to the initial purchaser designated in Section Sixteen hereof), or to the registered assignee or assignees of said certificates of obligation or any portion or portions thereof (in each case, the "*Registered Owner*"), and the certificates of obligation shall mature and be payable serially on *August 15* in each of the years and in the principal amounts, respectively, as set forth in the following schedule:

<u>YEAR OF MATURITY</u>	<u>PRINCIPAL AMOUNT (\$)</u>	<u>YEAR OF MATURITY</u>	<u>PRINCIPAL AMOUNT (\$)</u>	<u>YEAR OF MATURITY</u>	<u>PRINCIPAL AMOUNT (\$)</u>
2014		2021		2028	
2015		2022		2029	
2016		2023		2030	
2017		2024		2031	
2018		2025		2032	
2019		2026		2033	
2020		2027			

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

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

<u>YEAR OF MATURITY</u>	<u>INTEREST RATE (%)</u>	<u>YEAR OF MATURITY</u>	<u>INTEREST RATE (%)</u>	<u>YEAR OF MATURITY</u>	<u>INTEREST RATE (%)</u>
2014		2021		2028	
2015		2022		2029	
2016		2023		2030	
2017		2024		2031	
2018		2025		2032	
2019		2026		2033	
2020		2027			

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

SECTION FOUR. CHARACTERISTICS OF THE CERTIFICATES OF OBLIGATION; APPROVAL OF PAYING AGENT/REGISTRAR AGREEMENT.

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

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

Except as provided in (c) below, an authorized representative of the Paying Agent/Registrar shall, before the delivery of any such Certificate of Obligation, date and manually sign the Paying Agent/Registrar’s Authentication Certificate, and no such Certificate of Obligation shall be deemed to be issued or outstanding unless such Certificate is so executed. The Paying Agent/Registrar promptly shall cancel all paid Certificates of Obligation and Certificates of Obligation surrendered for transfer and exchange. No additional ordinances, orders, or resolutions need be passed or adopted by the governing body of the City or any other body or person so as to accomplish the foregoing transfer and exchange of any Certificate of Obligation or portion thereof, and the Paying Agent/Registrar shall provide for the printing, execution, and delivery of the substitute Certificates of Obligation in the manner prescribed herein, and said Certificates of Obligation shall be of type composition printed on paper with lithographed or steel engraved borders of customary weight and

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

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

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

(d) *Substitute Paying Agent/Registrar.* The City covenants with the registered owners of the Certificates of Obligation that at all times while the Certificates of Obligation are outstanding the City will provide a competent and legally qualified bank, trust company, financial institution, or other entity to act as and perform the services of Paying Agent/Registrar for the Certificates of Obligation under this Ordinance, and that the Paying Agent/Registrar will be one entity and shall be an entity registered with the Securities and Exchange Commission. The City reserves the right to, and may, at its option, change the Paying Agent/Registrar upon not less than 120 days written notice

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

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

With respect to Certificates of Obligation registered in the name of Cede & Co., as nominee of DTC, the City and the Paying Agent/Registrar shall have no responsibility or obligation to any securities brokers and dealers, banks, trust companies, clearing corporations and certain other organizations on whose behalf DTC was created (“**DTC Participant**”) to hold securities to facilitate the clearance and settlement of securities transaction among DTC Participants or to any person on behalf of whom such a DTC Participant holds an interest in the Certificates of Obligation. Without limiting the immediately preceding sentence, the City and the Paying Agent/Registrar shall have no responsibility or obligation with respect to (i) the accuracy of the records of DTC, Cede & Co. or any DTC Participant with respect to any ownership interest in the Certificates of Obligation, (ii) the delivery to any DTC Participant or any other person, other than a registered owner of the Certificates of Obligation, as shown on the Registration Books, of any notice with respect to the Certificates of Obligation, or (iii) the payment to any DTC Participant or any other person, other than a registered owner of Certificates of Obligation, as shown in the Registration Books of any amount with respect to principal of or interest on the Certificates of Obligation. Notwithstanding any other provision of this Ordinance to the contrary, the City and the Paying Agent/Registrar shall be entitled to treat and consider the person in whose name each Certificate of Obligation is registered in the Registration Books as the absolute owner of such Certificate of Obligation for the purpose of payment of principal and interest with respect to such Certificate of Obligation, for the purpose of registering transfers with respect to such Certificate of Obligation, and for all other purposes whatsoever. The Paying Agent/Registrar shall pay all principal of and interest on the Certificates of Obligation only to

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

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

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

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

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

Paying Agent/Registrar shall cancel the Initial Certificate of Obligation and deliver to the initial registered owner or its designee one registered definitive Certificate of Obligation for each year of maturity of the Certificates of Obligation, in the aggregate principal amount of all of the Certificates of Obligation for such maturity.

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

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FORM OF CERTIFICATE OF OBLIGATION

R- PRINCIPAL
AMOUNT
UNITED STATES OF AMERICA \$ _____
STATE OF TEXAS
COUNTY OF KERR
CITY OF KERRVILLE, TEXAS
**COMBINATION TAX AND REVENUE CERTIFICATES OF OBLIGATION
SERIES 2013**

INTEREST RATE	MATURITY DATE	DATE OF SERIES	CUSIP NO.
_____ %	August 15, 20_____	January 15, 2013	492422 _____

REGISTERED OWNER:

PRINCIPAL AMOUNT: **DOLLARS**

ON THE MATURITY DATE specified above, the **CITY OF KERRVILLE, TEXAS** (the “**City**”), being a political subdivision and home-rule municipality of the State of Texas, hereby promises to pay to the Registered Owner specified above, or registered assigns (hereinafter called the “**Registered Owner**”), the Principal Amount specified above, and to pay interest thereon (calculated on the basis of a 360-day year of twelve 30-day months) from January 15, 2013 at the Interest Rate per annum specified above, payable on February 15, 2014, and semiannually on each February 15 and August 15 thereafter to the Maturity Date specified above, or the date of redemption prior to maturity; except that if this Certificate of Obligation is required to be authenticated and the date of its authentication is later than the first Record Date (hereinafter defined), such Principal Amount shall bear interest from the interest payment date next preceding the date of authentication, unless such date of authentication is after any Record Date but on or before the next following interest payment date, in which case such principal amount shall bear interest from such next following interest payment date; provided, however, that if on the date of authentication hereof the interest on the Certificate of Obligation or Certificates of Obligation, if any, for which this Certificate of Obligation is being exchanged is due but has not been paid, then this Certificate of Obligation shall bear interest from the date to which such interest has been paid in full.

THE PRINCIPAL OF AND INTEREST ON this Certificate of Obligation are payable in lawful money of the United States of America, without exchange or collection charges. The principal of this Certificate of Obligation shall be paid to the Registered Owner hereof upon presentation and surrender of this Certificate of Obligation at maturity or upon the date fixed for redemption prior to maturity, at the designated corporate trust or commercial banking office (currently located in Houston, Texas) of **U.S. BANK NATIONAL ASSOCIATION**, which is the “**Paying Agent/Registrar**” for this Certificate of Obligation. The payment of interest on this Certificate of Obligation shall be made by the Paying Agent/Registrar to the Registered Owner hereof on each interest payment date by check, dated as of such interest payment date, drawn by the Paying Agent/Registrar on, and payable solely from, funds of the City required by the Ordinance authorizing the issuance of this Certificate

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

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

THIS CERTIFICATE OF OBLIGATION is one of a series of Certificates of Obligation dated as of January 15, 2013, authorized in accordance with the Constitution and laws of the State of Texas in the aggregate principal amount of \$ _____ ***FOR THE PURPOSE OF PAYING, IN WHOLE OR IN PART, CONTRACTUAL OBLIGATIONS TO BE INCURRED TO ACQUIRE, CONSTRUCT AND EQUIP EXTENSIONS AND IMPROVEMENTS TO THE CITY'S WATERWORKS AND SEWER SYSTEM, TO PAY ALL OR A PORTION OF THE LEGAL, FISCAL AND ENGINEERING FEES IN CONNECTION THEREWITH, AND TO PAY COSTS OF ISSUANCE.***

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

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

TERM CERTIFICATES MATURING AUGUST 15, 20 <u> </u>		TERM CERTIFICATES MATURING AUGUST 15, 20 <u> </u>	
Mandatory Redemption Date	Redemption Amount	Mandatory Redemption Date	Redemption Amount
August 15, 20 <u> </u>	\$ <u> </u>	August 15, 20 <u> </u>	\$ <u> </u>
August 15, 20 <small>(maturity)</small>		August 15, 20 <small>(maturity)</small>	
TERM CERTIFICATES MATURING AUGUST 15, 20 <u> </u>		TERM CERTIFICATES MATURING AUGUST 15, 20 <u> </u>	
Mandatory Redemption Date	Redemption Amount	Mandatory Redemption Date	Redemption Amount
August 15, 20 <u> </u>	\$ <u> </u>	August 15, 20 <u> </u>	\$ <u> </u>
August 15, 20 <small>(maturity)</small>		August 15, 20 <small>(maturity)</small>	

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

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

ALL CERTIFICATES OF OBLIGATION OF THIS SERIES are issuable solely as fully registered Certificates of Obligation, without interest coupons, in the denomination of any integral multiple of \$5,000. As provided in the Ordinance, this Certificate of Obligation, may, at the request of the Registered Owner or the assignee or assignees hereof, be assigned, transferred and exchanged for a like aggregate principal amount of fully registered Certificates of Obligation, without interest coupons, payable to the appropriate Registered Owner, assignee or assignees, as the case may be, having the same denomination or denominations in any integral multiple of \$5,000 as requested in writing by the appropriate Registered Owner, assignee or assignees, as the case may be, upon surrender of this Certificate of Obligation to the Paying Agent/Registrar for cancellation, all in accordance with the form and procedures set forth in the Ordinance. Among other requirements for such assignment and transfer, this Certificate of Obligation must be presented and surrendered to the Paying Agent/Registrar, together with proper instruments of assignment, in form and with guarantee of signatures satisfactory to the Paying Agent/Registrar, evidencing assignment of this Certificate of Obligation or any portion or portions hereof in any integral multiple of \$5,000 to the assignee or assignees in whose name or names this Certificate of Obligation or any such portion or portions hereof is or are to be registered. The form of Assignment printed or endorsed on this Certificate of

Obligation may be executed by the Registered Owner to evidence the assignment hereof, but such method is not exclusive, and other instruments of assignment satisfactory to the Paying Agent/Registrar may be used to evidence the assignment of this Certificate of Obligation or any portion or portions hereof from time to time by the Registered Owner. The Paying Agent/Registrar's reasonable standard or customary fees and charges for transferring and exchanging any Certificate of Obligation or portion thereof shall be paid by the City, but any taxes or governmental charges required to be paid with respect thereto shall be paid by the one requesting such assignment, transfer or exchange as a condition precedent to the exercise of such privilege. The Paying Agent/Registrar shall not be required to make any such transfer or exchange during the period commencing with the close of business on any Record Date and ending with the opening of business on the next following principal or interest payment date.

WHENEVER THE BENEFICIAL OWNERSHIP of this Certificate of Obligation is determined by a book entry at a securities depository for the Certificates of Obligation, the foregoing requirements of holding, delivering or transferring this Certificate of Obligation shall be modified to require the appropriate person or entity to meet the requirements of the securities depository as to registering or transferring the book entry to produce the same effect.

IN THE EVENT any Paying Agent/Registrar for the Certificates of Obligation is changed by the City, resigns, or otherwise ceases to act as such, the City has covenanted in the Ordinance that it promptly will appoint a competent and legally qualified substitute therefor, and cause written notice thereof to be mailed to the Registered Owners of the Certificates of Obligation.

IT IS HEREBY certified, recited, and covenanted that this Certificate of Obligation has been duly and validly authorized, issued, and delivered; that all acts, conditions, and things required or proper to be performed, exist, and be done precedent to or in the authorization, issuance, and delivery of this Certificate of Obligation have been performed, existed, and been done in accordance with law; that this Certificate of Obligation is a general obligation of the City, issued on the full faith and credit thereof; and that ad valorem taxes sufficient to provide for the payment of the interest on and principal of this Certificate of Obligation, as such interest comes due, and as such principal matures, have been levied and ordered to be levied against all taxable property in the City, and have been pledged for such payment, within the limits prescribed by law and that this Certificate of Obligation is additionally secured by a lien on and pledge of Surplus Revenues received by the City from the ownership and operation of the City's Waterworks and Sewer System, all as provided in the Ordinance authorizing the Certificates of Obligation.

THE CITY also has reserved the right to amend the Ordinance as provided therein, and under some (but not all) circumstances amendments thereto must be approved by the registered owners of a majority in aggregate principal amount of the outstanding Certificates of Obligation.

BY BECOMING the Registered Owner of this Certificate of Obligation, the Registered Owner thereby acknowledges all of the terms and provisions of the Ordinance, agrees to be bound by such terms and provisions, acknowledges that the Ordinance is duly recorded and available for inspection in the official minutes and records of the governing body of the City, and agrees that the

terms and provisions of this Certificate of Obligation and the Ordinance constitute a contract between each Registered Owner hereof and the City.

IN WITNESS WHEREOF, the City has caused this Certificate of Obligation to be signed with the manual or facsimile signature of the Mayor or Mayor Pro-Tem of the City, and counter-signed with the manual or facsimile signature of the City Secretary of the City, and the official seal of the City has been duly impressed, or placed in facsimile, on this Certificate of Obligation.

Countersigned:

(facsimile signature)
City Secretary, City of Kerrville, Texas

(facsimile signature)
Mayor [Pro-Tem], City of Kerrville, Texas

(CITY SEAL)

FORM OF REGISTRATION CERTIFICATE
OF THE COMPTROLLER OF PUBLIC ACCOUNTS:

COMPTROLLER'S REGISTRATION CERTIFICATE: REGISTER NO. _____

I hereby certify that this Certificate of Obligation has been examined, certified as to validity, and approved by the Attorney General of the State of Texas, and that this Certificate of Obligation has been registered by the Comptroller of Public Accounts of the State of Texas.

Witness my signature and seal this

(COMPTROLLER'S SEAL)

Comptroller of Public Accounts
of the State of Texas

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FORM OF PAYING AGENT/REGISTRAR'S AUTHENTICATION CERTIFICATE

PAYING AGENT/REGISTRAR'S AUTHENTICATION CERTIFICATE

(To be executed if this Certificate of Obligation is not accompanied by an executed Registration Certificate of the Comptroller of Public Accounts of the State of Texas)

It is hereby certified that this Certificate of Obligation has been issued under the provisions of the Ordinance described in the text of this Certificate of Obligation; and that this Certificate of Obligation has been issued in exchange for a certificate of obligation or certificates of obligation, or a portion of a certificate of obligation or certificates of obligation of a series which originally was approved by the Attorney General of the State of Texas and registered by the Comptroller of Public Accounts of the State of Texas.

Dated

U.S. BANK NATIONAL ASSOCIATION
Houston, Texas
Paying Agent/Registrar

By _____

Authorized Representative

FORM OF ASSIGNMENT:

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned Registered Owner of this Certificate of Obligation, or duly authorized representative or attorney thereof, hereby sells, assigns and transfers this Certificate of Obligation and all rights hereunder unto _____

_____/_____/_____

(Assignee's Social Security or
Taxpayer Identification Number)

(Please print or typewrite Assignee's name and address,
including zip code)

and hereby irrevocably constitutes and appoints _____
attorney to transfer the registration of this Certificate of Obligation on the Paying Agent/Registrar's
Registration Books with full power of substitution in the premises.

Dated: _____

Signature Guaranteed:

NOTICE: Signature(s) must be guaranteed by
a member firm of the New York Stock
Exchange or a commercial bank or trust
company.

NOTICE: The signature above must
correspond with the name of the Registered
Owner as it appears upon the front of this
Certificate of Obligation in every particular,
without alteration or enlargement or any
change whatsoever.

INITIAL CERTIFICATE OF OBLIGATION INSERTIONS

The Initial Certificate of Obligation shall be in the form set forth above except that:

- (A) Immediately under the name of the Certificate of Obligation, the headings "INTEREST RATE" and "MATURITY DATE" shall be completed with the words "As shown below" and "CUSIP NO. _____" shall be deleted.
- (B) The first paragraph shall be deleted and the following shall be inserted:

"ON THE RESPECTIVE MATURITY DATES specified below, the **CITY OF KERRVILLE, TEXAS** (the "**City**"), being a political subdivision and municipal corporation of the State of Texas, hereby promises to pay to the Registered Owner specified above, or registered assigns (hereinafter called the "**Registered Owner**"), the respective Principal Installments specified below, and to pay interest thereon (calculated on the basis of a 360-day year composed of twelve 30-day months) from January 15, 2013 at the respective Interest Rates per annum specified below, payable on February 15, 2014, and semiannually on each February 15 and August 15 thereafter to the respective Maturity Dates specified below, or the date of redemption prior to maturity. The respective Maturity Dates, Principal Installments, and Interest Rates for this Certificate of Obligation are set forth in the following schedule:

MATURITY DATE (AUGUST 15)	PRINCIPAL INSTALLMENT (\$)	INTEREST RATE (%)	MATURITY DATE (AUGUST 15)	PRINCIPAL INSTALLMENT (\$)	INTEREST RATE (%)

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

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

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

(a) Interest and Sinking Fund, Tax Levy. A special Interest and Sinking Fund for the Certificates of Obligation (the "**Interest and Sinking Fund**") is hereby created solely for the benefit of the Certificates of Obligation, and the Interest and Sinking Fund shall be established and maintained by the City at an official depository bank of the City. The Interest and Sinking Fund shall be kept separate and apart from all other funds and accounts of the City, and shall be used only for paying the interest on and principal of the Certificates of Obligation. All ad valorem taxes levied and collected for and on account of the Certificates of Obligation shall be deposited, as collected, to the credit of the Interest and Sinking Fund. During each year while any of the Certificates of Obligation

or interest thereon are outstanding and unpaid, the City shall compute and ascertain a rate and amount of ad valorem tax which, together with "Surplus Revenues" with respect to the Certificates of Obligation (as described in Section Seven below) budgeted to pay principal and interest coming due during such fiscal year, will be sufficient to raise and produce the money required to pay the interest on the Certificates of Obligation as such interest comes due, and to provide and maintain a sinking fund adequate to pay the principal of its Certificates of Obligation as such principal matures (but never less than 2% of the original principal amount of the Certificates of Obligation as a sinking fund each year); and said tax shall be based on the latest approved tax rolls of the City, with full allowance being made for tax delinquencies and the cost of tax collection. Said rate and amount of ad valorem tax is hereby levied, and is hereby ordered to be levied, against all taxable property in the City for each year while any of the Certificates of Obligation or interest thereon are outstanding and unpaid; and said tax shall be assessed and collected each such year and deposited to the credit of the respective Interest and Sinking Fund. Said ad valorem taxes sufficient to provide for the payment of the interest on and principal of the Certificates of Obligation, as such interest comes due and such principal matures, are hereby pledged for such payment, within the limit prescribed by law.

(b) *Security Interest.* Chapter 1208, Texas Government Code, applies to the issuance of the Certificates of Obligation and the pledge of the ad valorem taxes and Surplus Revenues granted by the City under Sections Six(a) and Seven of this Ordinance, and is therefore valid, effective, and perfected. If Texas law is amended at any time while the Certificates of Obligation are outstanding and unpaid such that the pledge of the ad valorem taxes or Surplus Revenues granted by the City under Sections Six(a) and Seven of this Ordinance is to be subject to the filing requirements of Chapter 9, Texas Business & Commerce Code, then in order to preserve to the registered owners of the Certificates of Obligation the perfection of the security interest in said pledge, the City agrees to take such measures as it determines are reasonable and necessary under Texas law to comply with the applicable provisions of Chapter 9, Texas Business & Commerce Code, and enable a filing to perfect the security interest in said pledge to occur.

SECTION SEVEN. SURPLUS REVENUES. Pursuant to Section 271.052, Texas Local Government Code, as amended, and Chapter 1502, Texas Government Code, as amended, the Certificates of Obligation additionally shall be payable from and secured by surplus revenues derived by the City from the City's Waterworks and Sewer System remaining after (a) payment of all amounts constituting operation and maintenance expenses of said Waterworks and Sewer System, and (b) payment of all debt service, reserve, and other requirements and amounts required to be paid under all ordinances heretofore or hereafter authorizing (i) all bonds and (ii) all other obligations not on a parity with the Certificates of Obligation, which are payable from and secured by any Waterworks and Sewer System revenues, and (c) payment of all amounts payable from any Waterworks and Sewer System revenues pursuant to contracts heretofore or hereafter entered into by the City in accordance with law (the "*Surplus Revenues*"). If for any reason the City fails to deposit ad valorem taxes levied pursuant to Section Six hereof to the credit of the Interest and Sinking Fund in an amount sufficient to pay, when due, the principal of and interest on the Certificates of Obligations, then Surplus Revenues may be deposited to the credit of the Interest and Sinking Fund and used to pay such principal and/or interest. The City reserves, and shall have, the right to issue bonds and other obligations not on a parity with the Certificates of Obligation, and to enter into

contracts, in accordance with applicable laws, to be payable from and secured by any Waterworks and Sewer System revenues.

SECTION EIGHT. CONSTRUCTION FUND. There is hereby created and established in the depository of the City, a fund to be called the *City of Kerrville, Texas Combination Tax and Revenue Certificates of Obligation (Series 2013) Construction Fund* (herein called the “**Construction Fund**”). Proceeds from the sale and delivery of the Certificates of Obligation (other than proceeds representing accrued interest on the Certificates of Obligation, if any, and any premium on the Certificates of Obligation that is not used by the City to pay costs of issuance or costs related to the purpose for which the Certificates of Obligation have been issued in accordance with the provisions of Section 1201.042(d)(3) and (4), Texas Government Code, as amended, which shall be deposited in the Interest and Sinking Fund) shall be deposited in the Construction Fund. Money in the Construction Fund shall be subject to disbursements by the City for payment of all costs incurred in carrying out the purpose for which the Certificates of Obligation are issued, including but not limited to costs for construction, engineering, architecture, financing, financial consultants and legal services related to the project being financed with proceeds of the Certificates of Obligation and the issuance of the Certificates of Obligation. All funds remaining on deposit in the Construction Fund upon completion of the projects being financed with the proceeds from the Certificates of Obligation, if any, shall be transferred to the Interest and Sinking Fund.

SECTION NINE. INVESTMENTS. Funds on deposit in the Interest and Sinking Fund and the Construction Fund shall be secured by the depository bank of the City in the manner and to the extent required by law to secure other public funds of the City and may be invested from time to time in any investment authorized by applicable law, including but not limited to the Public Funds Investment Act (Chapter 2256, Texas Government Code), and the City’s investment policy adopted in accordance with the provisions of the Public Funds Investment Act; provided, however, that investments purchased for and held in the Interest and Sinking Fund shall have a final maturity no later than the next principal or interest payment date for which such funds are required, and investments purchased for and held in the Construction Fund shall have a final maturity of not later than the date the City reasonably expects the funds from such investments will be required to pay costs of the projects for which the Certificates of Obligation were issued. Income and profits from such investments shall be deposited in the respective Fund which holds such investments; however, any such income and profits from investments in the Construction Fund may be withdrawn by the City and deposited in the Interest and Sinking Fund to pay all or a portion of the interest next coming due on the Certificates of Obligation. It is further provided, however, that any interest earnings on Certificate of Obligation proceeds which are required to be rebated to the United States of America pursuant to Section Fourteen hereof in order to prevent the Certificates of Obligation from being arbitrage bonds shall be so rebated and not considered as interest earnings for the purposes of this Section.

SECTION TEN. EMPOWERED. The City Manager and Director of Finance are hereby ordered to do any and all things necessary to accomplish the transfer of monies to the Interest and Sinking Fund of this issue in ample time to pay such items of principal and interest.

SECTION ELEVEN. DEFEASANCE OF THE CERTIFICATES OF OBLIGATION.

(a) Defeasance. Any Certificate of Obligation and the interest thereon shall be deemed to be paid, retired and no longer outstanding (a “*Defeased Certificate of Obligation*”) within the meaning of this Ordinance, except to the extent provided in subsection (d) of this Section, when payment of the principal of such Certificate of Obligation, plus interest thereon to the due date (whether such due date be by reason of maturity or otherwise) either (i) shall have been made or caused to be made in accordance with the terms thereof, or (ii) shall have been provided for on or before such due date by irrevocably depositing with or making available to the Paying Agent/Registrar in accordance with an escrow agreement or other instrument (the “*Future Escrow Agreement*”) for such payment (1) lawful money of the United States of America sufficient to make such payment and/or (2) Defeasance Securities that mature as to principal and interest in such amounts and at such times as will insure the availability, without reinvestment, of sufficient money to provide for such payment, and when proper arrangements have been made by the City with the Paying Agent/Registrar for the payment of its services until all Defeased Certificates of Obligation shall have become due and payable. At such time as a Certificate of Obligation shall be deemed to be a Defeased Certificate of Obligation hereunder, as aforesaid, such Certificate of Obligation and the interest thereon shall no longer be secured by, payable from, or entitled to the benefits of, the ad valorem taxes or revenues herein levied and pledged as provided in this Ordinance, and such principal and interest shall be payable solely from such money or Defeasance Securities. Notwithstanding any other provision of this Ordinance to the contrary, it is hereby provided that any determination not to redeem Defeased Certificates of Obligation that is made in conjunction with the payment arrangements specified in subsection (a)(i) or (ii) of this Section shall not be irrevocable, provided that: (1) in the proceedings providing for such payment arrangements, the City expressly reserves the right to call the Defeased Certificates of Obligation for redemption; (2) gives notice of the reservation of that right to the owners of the Defeased Certificates of Obligation immediately following the making of the payment arrangements; and (3) directs that notice of the reservation be included in any redemption notices that it authorizes.

(b) Investment of Funds in Defeasance Securities. Any moneys so deposited with the Paying Agent/Registrar may at the written direction of the City be invested in Defeasance Securities, maturing in the amounts and times as hereinbefore set forth, and all income from such Defeasance Securities received by the Paying Agent/Registrar that is not required for the payment of the Certificates of Obligation and interest thereon, with respect to which such money has been so deposited, shall be turned over to the City, or deposited as directed in writing by the City. Any Future Escrow Agreement pursuant to which the money and/or Defeasance Securities are held for the payment of Defeased Certificates of Obligation may contain provisions permitting the investment or reinvestment of such moneys in Defeasance Securities or the substitution of other Defeasance Securities upon the satisfaction of the requirements specified in subsection (a)(i) or (ii) of this Section. All income from such Defeasance Securities received by the Paying Agent/Registrar which is not required for the payment of the Defeased Certificates of Obligation, with respect to which such money has been so deposited, shall be remitted to the City or deposited as directed in writing by the City.

(c) *Definition of Defeasance Securities.* The term “**Defeasance Securities**” means (i) direct, noncallable obligations of the United States of America, including obligations that are unconditionally guaranteed by the United States of America, (ii) noncallable obligations of an agency or instrumentality of the United States of America, including obligations that are unconditionally guaranteed or insured by the agency or instrumentality and that, on the date of the purchase thereof are rated as to investment quality by a nationally recognized investment rating firm not less than AAA or its equivalent, (iii) noncallable obligations of a state or an agency or a county, municipality, or other political subdivision of a state that have been refunded and that, on the date on the date the governing body of the City adopts or approves the proceedings authorizing the financial arrangements are rated as to investment quality by a nationally recognized investment rating firm not less than AAA or its equivalent, and (iv) any other then authorized securities or obligations under applicable state law that may be used to defease obligations such as the Certificates of Obligation.

(d) *Duties of Paying Agent/Registrar.* Until all Defeased Certificates of Obligation shall have become due and payable, the Paying Agent/Registrar shall perform the services of Paying Agent/Registrar for such Defeased Certificates of Obligation the same as if they had not been defeased, and the City shall make proper arrangements to provide and pay for such services as required by this Ordinance.

(e) *Selection of Certificates of Obligation to be Defeased.* In the event that the City elects to defease less than all of the principal amount of Certificates of Obligation of a maturity, the Paying Agent/Registrar shall select, or cause to be selected, such amount of Certificates of Obligation by such random method as it deems fair and appropriate.

SECTION TWELVE. DAMAGED, MUTILATED, LOST, STOLEN, OR DESTROYED CERTIFICATES OF OBLIGATION.

(a) *Replacement Certificates of Obligation.* In the event any outstanding Certificate of Obligation is damaged, mutilated, lost, stolen, or destroyed, the Paying Agent/Registrar shall cause to be printed, executed, and delivered, a new certificate of obligation of the same principal amount, maturity, and interest rate, as the damaged, mutilated, lost, stolen, or destroyed Certificate of Obligation, in replacement for such Certificate of Obligation in the manner hereinafter provided.

(b) *Application for Replacement Certificates of Obligation.* Application for replacement of damaged, mutilated, lost, stolen, or destroyed Certificates of Obligation shall be made by the registered owner thereof to the Paying Agent/Registrar. In every case of loss, theft, or destruction of a Certificate of Obligation, the registered owner applying for a replacement certificate of obligation shall furnish to the City and to the Paying Agent/Registrar such security or indemnity as may be required by them to save each of them harmless from any loss or damage with respect thereto. Also, in every case of loss, theft, or destruction of a Certificate of Obligation, the registered owner shall furnish to the City and to the Paying Agent/Registrar evidence to their satisfaction of the loss, theft, or destruction of such Certificate of Obligation, as the case may be. In every case of damage or mutilation of a Certificate of Obligation, the registered owner shall surrender to the Paying Agent/Registrar for cancellation the Certificate of Obligation so damaged or mutilated.

(c) No Default Occurred. Notwithstanding the foregoing provisions of this Section, in the event any such Certificate of Obligation shall have matured, and no default has occurred which is then continuing in the payment of the principal of, redemption premium, if any, or interest on the Certificate of Obligation, the City may authorize the payment of the same (without surrender thereof except in the case of a damaged or mutilated Certificate of Obligation) instead of issuing a replacement Certificate of Obligation, provided security or indemnity is furnished as above provided in this Section.

(d) Charge for Issuing Replacement Certificates of Obligation. Prior to the issuance of any replacement certificate of obligation, the Paying Agent/Registrar shall charge the registered owner of such Certificate of Obligation with all legal, printing, and other expenses in connection therewith. Every replacement certificate of obligation issued pursuant to the provisions of this Section by virtue of the fact that any Certificate of Obligation is lost, stolen, or destroyed shall constitute a contractual obligation of the City whether or not the lost, stolen, or destroyed Certificate of Obligation shall be found at any time, or be enforceable by anyone, and shall be entitled to all the benefits of this Ordinance equally and proportionately with any and all other Certificates of Obligation duly issued under this Ordinance.

(e) Authority for Issuing Replacement Certificates of Obligation. In accordance with Chapter 1201, Texas Government Code, as amended, this Section of this Ordinance shall constitute authority for the issuance of any such replacement certificate of obligation without necessity of further action by the governing body of the City or any other body or person, and the duty of the replacement of such certificates of obligations is hereby authorized and imposed upon the Paying Agent/Registrar, and the Paying Agent/Registrar shall authenticate and deliver such Certificates of Obligation in the form and manner and with the effect, as provided in Section Four(a) of this Ordinance for Certificates of Obligation issued in exchange for other Certificates of Obligation.

SECTION THIRTEEN. CUSTODY, APPROVAL, AND REGISTRATION OF THE CERTIFICATES OF OBLIGATION; BOND COUNSEL'S OPINION, BOND INSURANCE, AND CUSIP NUMBERS. The Mayor or Mayor Pro-Tem of the City is hereby authorized to have control of the Certificates of Obligation initially issued and delivered hereunder and all necessary records and proceedings pertaining to the Certificates of Obligation pending their delivery and their investigation, examination, and approval by the Attorney General of the State of Texas, and their registration by the Comptroller of Public Accounts of the State of Texas. Upon registration of the Certificates of Obligation said Comptroller of Public Accounts (or a deputy designated in writing to act for said Comptroller) shall manually sign the Comptroller's Registration Certificate attached to such Certificates of Obligation, and the seal of said Comptroller shall be impressed, or placed in facsimile, on such Certificate. The approving legal opinion of the City's Bond Counsel (with an appropriate certificate pertaining thereto executed by facsimile signature of the City Secretary of the City), a statement regarding the issuance of a municipal bond insurance policy to secure payment of debt service on the Certificates of Obligation, if any, and the assigned CUSIP numbers may, at the option of the City, be printed on the Certificates of Obligation issued and delivered under this Ordinance, but neither shall have any legal effect, and shall be solely for the convenience and information of the registered owners of the Certificates of Obligation.

SECTION FOURTEEN. COVENANTS REGARDING TAX-EXEMPTION OF INTEREST ON THE CERTIFICATES OF OBLIGATION.

(a) Covenants. The City covenants to take any action necessary to assure, or refrain from any action which would adversely affect, the treatment of the Certificates of Obligation as obligations described in section 103 of the Internal Revenue Code of 1986, as amended (the “*Code*”), the interest on which is not includable in the “gross income” of the holder for purposes of federal income taxation. In furtherance thereof, the City covenants as follows:

- (1) to take any action to assure that no more than 10 percent of the proceeds of the Certificates of Obligation or the projects financed therewith (less amounts deposited to a reserve fund, if any) are used for any “private business use,” as defined in section 141(b)(6) of the Code or, if more than 10 percent of the proceeds of the Certificates of Obligation or the projects financed therewith are so used, such amounts, whether or not received by the City, with respect to such private business use, do not, under the terms of this Ordinance or any underlying arrangement, directly or indirectly, secure or provide for the payment of more than 10 percent of the debt service on the Certificates of Obligation, in contravention of section 141(b)(2) of the Code;
- (2) to take any action to assure that in the event that the “private business use” described in subsection (1) hereof exceeds 5 percent of the proceeds of the Certificates of Obligation or the projects financed therewith (less amounts deposited into a reserve fund, if any) then the amount in excess of 5 percent is used for a “private business use” which is “related” and not “disproportionate,” within the meaning of section 141(b)(3) of the Code, to the governmental use;
- (3) to take any action to assure that no amount which is greater than the lesser of \$5,000,000, or 5 percent of the proceeds of the Certificates of Obligation (less amounts deposited into a reserve fund, if any) is directly or indirectly used to finance loans to persons, other than state or local governmental units, in contravention of section 141(c) of the Code;
- (4) to refrain from taking any action which would otherwise result in the Certificates of Obligation being treated as “private activity bonds” within the meaning of section 141(b) of the Code;
- (5) to refrain from taking any action that would result in the Certificates of Obligation being “federally guaranteed” within the meaning of section 149(b) of the Code;
- (6) to refrain from using any portion of the proceeds of the Certificates of Obligation, directly or indirectly, to acquire or to replace funds which were used, directly or indirectly, to acquire investment property (as defined in section 148(b)(2) of the Code) which produces a materially higher yield over the term of the Certificates of Obligation, other than investment property acquired with:

- (A) proceeds of the Certificates of Obligation invested for a reasonable temporary period of three years or less until such proceeds are needed for the purpose for which the Certificates of Obligation are issued,
- (B) amounts invested in a bona fide debt service fund, within the meaning of section 1.148-1(b) of the Treasury Regulations, and
- (C) amounts deposited in any reasonably required reserve or replacement fund to the extent such amounts do not exceed 10 percent of the proceeds of the Certificates of Obligation;

(7) to otherwise restrict the use of the proceeds of the Certificates of Obligation or amounts treated as proceeds of the Certificates of Obligation, as may be necessary, so that the Certificates of Obligation do not otherwise contravene the requirements of section 148 of the Code (relating to arbitrage) and, to the extent applicable, section 149(d) of the Code (relating to advance refundings); and

(8) to pay to the United States of America at least once during each five-year period (beginning on the date of delivery of the Certificates of Obligation) an amount that is at least equal to 90 percent of the "Excess Earnings," within the meaning of section 148(f) of the Code and to pay to the United States of America, not later than 60 days after the Certificates of Obligation have been paid in full, 100 percent of the amount then required to be paid as a result of Excess Earnings under section 148(f) of the Code.

(b) Rebate Fund. In order to facilitate compliance with the above covenant (8), a "**Rebate Fund**" is hereby established by the City for the sole benefit of the United States of America, and such fund shall not be subject to the claim of any other person, including without limitation the holders. The Rebate Fund is established for the additional purpose of compliance with section 148 of the Code.

(c) Proceeds. The City understands that the term "proceeds" includes "disposition proceeds" as defined in the Treasury Regulations. It is the understanding of the City that the covenants contained herein are intended to assure compliance with the Code and any regulations or rulings promulgated by the U.S. Department of the Treasury pursuant thereto. In the event that regulations or rulings are hereafter promulgated which modify or expand provisions of the Code, as applicable to the Certificates of Obligation, the City will not be required to comply with any covenant contained herein to the extent that such failure to comply, in the opinion of nationally recognized bond counsel, will not adversely affect the exemption from federal income taxation of interest on the Certificates of Obligation under section 103 of the Code. In the event that regulations or rulings are hereafter promulgated which impose additional requirements which are applicable to the Certificates of Obligation, the City agrees to comply with the additional requirements to the extent necessary, in the opinion of nationally recognized bond counsel, to preserve the exemption from federal income taxation of interest on the Certificates of Obligation under section 103 of the Code. In furtherance of such intention, the City hereby authorizes and directs the Mayor, the City Manager or the Director of Finance of the City to execute any documents, certificates or reports required by the Code and to

make such elections, on behalf of the City, which may be permitted by the Code as are consistent with the purpose for the issuance of the Certificates of Obligation.

(d) Allocation of, and Limitation on, Expenditures for the Project. The City covenants to account for the expenditure of sale proceeds and investment earnings to be used for the purposes described in Section One of this Ordinance (collectively referred to herein as the “*Project*”) on its books and records in accordance with the requirements of the Internal Revenue Code. The City recognizes that in order for the proceeds to be considered used for the reimbursement of costs, the proceeds must be allocated to expenditures within 18 months of the later of the date that (1) the expenditure is made, or (2) the Project is completed; but in no event later than three years after the date on which the original expenditure is paid. The foregoing notwithstanding, the City recognizes that in order for proceeds to be expended under the Internal Revenue Code, the sale proceeds or investment earnings must be expended no more than 60 days after the earlier of (1) the fifth anniversary of the delivery of the Certificates of Obligation, or (2) the date the Certificates of Obligation are retired. The City agrees to obtain the advice of nationally-recognized bond counsel if such expenditure fails to comply with the foregoing to assure that such expenditure will not adversely affect the tax-exempt status of the Certificates of Obligation. For purposes hereof, the City shall not be obligated to comply with this covenant if it obtains an opinion that such failure to comply will not adversely affect the excludability for federal income tax purposes from gross income of the interest.

(e) Disposition of Project. The City covenants that the property constituting the Project financed or refinanced with the proceeds of the Certificates of Obligation will not be sold or otherwise disposed in a transaction resulting in the receipt by the City of cash or other compensation, unless the City obtains an opinion of nationally-recognized bond counsel that such sale or other disposition will not adversely affect the tax-exempt status of the Certificates of Obligation. For purposes of the foregoing, the portion of the property comprising personal property and disposed in the ordinary course shall not be treated as a transaction resulting in the receipt of cash or other compensation. For purposes hereof, the City shall not be obligated to comply with this covenant if it obtains an opinion that such failure to comply will not adversely affect the excludability for federal income tax purposes from gross income of the interest.

(f) Written Procedures. Unless superseded by another action of the City, to ensure compliance with the covenants contained herein regarding private business use, remedial actions, arbitrage and rebate, the City Council hereby adopts and establishes the instructions attached hereto as *Exhibit B* as the City’s written procedures.

(g) Designation as Qualified Tax-Exempt Obligations. The City hereby designates the Certificates of Obligation as “qualified tax-exempt obligations” (as defined in section 265(b)(3) of the Code), conditioned upon the purchaser identified in Section Fifteen hereof certifying that the aggregate initial offering price of the Certificates of Obligation to the public (excluding any accrued interest) is no greater than \$10 million (or such other amount permitted by such section 265 of the Code). Assuming such condition is met, and in furtherance of such designation, the City represents, covenants and warrants the following: (i) that during the calendar year in which the Certificates of Obligation are issued, the City (including any subordinate entities) has not designated nor will

designate obligations, which when aggregated with the Certificates of Obligation, will result in more than \$10,000,000 of “qualified tax-exempt obligations” (or such other amount permitted by such section 265 of the Code) being issued; (ii) that the City reasonably anticipates that the amount of tax-exempt obligations issued, during the calendar year in which the Certificates of Obligation are issued, by the City (or any subordinate entities) will not exceed \$10,000,000 (or such other amount permitted by such section 265 of the Code); and (iii) that the City will take such action or refrain from such action as necessary, and as more particularly set forth in this Section, in order that the Certificates of Obligation will not be considered “private activity bonds” within the meaning of section 141 of the Code.

SECTION FIFTEEN. CONTINUING DISCLOSURE UNDERTAKING.

(a) Definitions. As used in this Section, the following terms have the meanings ascribed to such terms below:

“**EMMA**” means the Electronic Municipal Market Access system being established by the MSRB.

“**MSRB**” means the Municipal Securities Rulemaking Board.

“**Rule**” means SEC Rule 15c2-12, as amended from time to time.

“**SEC**” means the United States Securities and Exchange Commission.

(b) Annual Reports. The City shall provide annually to the MSRB through EMMA within six months after the end of each fiscal year ending in or after 2014, financial information and operating data with respect to the City of the general type included in the final Official Statement authorized by this Ordinance being the information described in **Exhibit C** hereto. Any financial statements so to be provided shall be (1) prepared in accordance with the accounting principles described in **Exhibit C** hereto, or such other accounting principles as the City may be required to employ from time to time pursuant to state law or regulation, and (2) audited, if the City commissions an audit of such statements and the audit is completed within the period during which they must be provided. If the audit of such financial statements is not complete within such period, then the City shall provide (1) unaudited financial statements for such fiscal year within such six month period, and (2) audited financial statements for the applicable fiscal year to the MSRB through EMMA when and if the audit report on such statements become available.

If the City changes its fiscal year, it will notify the MSRB through EMMA of the date of the new fiscal year end prior to the next date by which the City otherwise would be required to provide financial information and operating data pursuant to this paragraph (b).

The financial information and operating data to be provided pursuant to this paragraph (b) may be set forth in full in one or more documents or may be included by specific reference to any document (including an official statement or other offering document, if it is available from the MSRB) that theretofore has been provided to the MSRB through EMMA or filed with the SEC.

(c) Event Notices.

(i) The City shall notify the MSRB through EMMA in an electronic format as prescribed by the MSRB, in a timely manner (but not in excess of ten business days after the occurrence of the event) of any of the following events with respect to the Certificates of Obligation, if such event is material within the meaning of the federal securities laws:

1. Non-payment related defaults;
2. Modifications to rights of holders;
3. Redemption calls;
4. Release, substitution, or sale of property securing repayment of the Certificates of Obligation;
5. The consummation of a merger, consolidation, or acquisition involving an obligated person or the sale of all or substantially all of the assets of the obligated person, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms; and
6. Appointment of a successor or additional trustee or the change of name of a trustee.

(ii) The City shall notify the MSRB through EMMA in an electronic format as prescribed by the MSRB, in a timely manner (but not in excess of ten business days after the occurrence of the event) of any of the following events with respect to the Certificates of Obligation, without regard to whether such event is considered material within the meaning of the federal securities laws:

1. Principal and interest payment delinquencies;
2. Unscheduled draws on debt service reserves reflecting financial difficulties;
3. Unscheduled draws on credit enhancements reflecting financial difficulties;
4. Substitution of credit or liquidity providers, or their failure to perform;
5. Adverse tax opinions or the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701BTEB) or other material notices or determinations with respect to

the tax-exempt status of the Certificates of Obligation, or other events affecting the tax-exempt status of the Certificates of Obligation;

6. Tender offers;
7. Defeasances;
8. Rating changes; and
9. Bankruptcy, insolvency, receivership or similar event of an obligated person.

(iii) The City shall notify the MSRB through EMMA, in a timely manner, of any failure by the City to provide financial information or operating data in accordance with subsection (b) of this Section by the time required by such subsection.

(d) *Limitations, Disclaimers, and Amendments.* The City shall be obligated to observe and perform the covenants specified in this Section for so long as, but only for so long as, the City remains an “obligated person” with respect to the Certificates of Obligation within the meaning of the Rule, except that the City in any event will give notice of any deposit made in accordance with Section Eleven of this Ordinance that causes Certificates of Obligation no longer to be outstanding.

The provisions of this Section are for the sole benefit of the holders and beneficial owners of the Certificates of Obligation, and nothing in this Section, express or implied, shall give any benefit or any legal or equitable right, remedy, or claim hereunder to any other person. The City undertakes to provide only the financial information, operating data, financial statements, and notices which it has expressly agreed to provide pursuant to this Section and does not hereby undertake to provide any other information that may be relevant or material to a complete presentation of the City’s financial results, condition, or prospects or hereby undertake to update any information provided in accordance with this Section or otherwise, except as expressly provided herein. The City does not make any representation or warranty concerning such information or its usefulness to a decision to invest in or sell Certificates of Obligation at any future date.

UNDER NO CIRCUMSTANCES SHALL THE CITY BE LIABLE TO THE HOLDER OR BENEFICIAL OWNER OF ANY CERTIFICATE OF OBLIGATION OR ANY OTHER PERSON, IN CONTRACT OR TORT, FOR DAMAGES RESULTING IN WHOLE OR IN PART FROM ANY BREACH BY THE CITY, WHETHER NEGLIGENT OR WITHOUT FAULT ON ITS PART, OF ANY COVENANT SPECIFIED IN THIS SECTION, BUT EVERY RIGHT AND REMEDY OF ANY SUCH PERSON, IN CONTRACT OR TORT, FOR OR ON ACCOUNT OF ANY SUCH BREACH SHALL BE LIMITED TO AN ACTION FOR MANDAMUS OR SPECIFIC PERFORMANCE.

No default by the City in observing or performing its obligations under this Section shall comprise a breach of or default under this Ordinance for purposes of any other provision of this Ordinance.

Nothing in this Section is intended or shall act to disclaim, waive, or otherwise limit the duties of the City under federal and state securities laws.

The provisions of this Section may be amended by the City from time to time to adapt to changed circumstances that arise from a change in legal requirements, a change in law, or a change in the identity, nature, status, or type of operations of the City, but only if (1) the provisions of this Section, as so amended, would have permitted an underwriter to purchase or sell Certificates of Obligation in the primary offering of the Certificates of Obligation in compliance with the Rule, taking into account any amendments or interpretations of the Rule since such offering as well as such changed circumstances and (2) either (a) the holders of a majority in aggregate principal amount (or any greater amount required by any other provision of this Ordinance that authorizes such an amendment) of the outstanding Certificates of Obligation consent to such amendment or (b) a person that is unaffiliated with the City (such as nationally recognized bond counsel) determined that such amendment will not materially impair the interest of the holders and beneficial owners of the Certificates of Obligation. The City may also amend or repeal the provisions of this continuing disclosure agreement if the SEC amends or repeals the applicable provision of the Rule or a court of final jurisdiction enters judgment that such provisions of the Rule are invalid, but only if and to the extent that the provisions of this sentence would not prevent an underwriter from lawfully purchasing or selling Certificates of Obligation in the primary offering of the Certificates of Obligation. If the City so amends the provisions of this Section, it shall include with any amended financial information or operating data next provided in accordance with paragraph (b) of this Section an explanation, in narrative form, of the reason for the amendment and of the impact of any change in the type of financial information or operating data so provided.

SECTION SIXTEEN. SALE AND DELIVERY OF THE CERTIFICATES OF OBLIGATION. The Certificates of Obligation are hereby initially sold and shall be delivered to _____ for cash at a purchase price to \$ _____ (which amount is equal to the par value thereof, plus/less a net original issue premium/discount of \$ _____, and less a discount retained by the purchaser of \$ _____), plus accrued interest from January 15, 2013 to the date of initial delivery thereof. The Certificates of Obligation initially shall be registered in the name of _____. It is hereby officially found, determined, and declared that said purchaser is the highest bidder for the Certificates of Obligation as a result of invitations for competitive bids. It is further officially found, determined, and declared that the Certificates of Obligation have been sold at public sale to the bidder offering the lowest interest cost, after receiving sealed bids pursuant to an Official Notice of Sale and Bidding Instructions and the Preliminary Official Statement, dated January 16, 2013, prepared and distributed in connection with the sale of the Certificates of Obligation. In satisfaction of Section 1201.022(a)(3), Texas Government Code, and upon consultation with the City's Financial Advisor, the City Council hereby determines that the final terms of the Certificates of Obligation as set forth in this Ordinance and resulting from the receipt of such competitive bids are in the City's best interests.

SECTION SEVENTEEN. APPROVAL OF OFFICIAL STATEMENT. The City hereby approves the form and content of the Official Statement relating to the Certificates of Obligation and any addenda, supplement, or amendment thereto, and approves the distribution of the Official Statement in the reoffering of the Certificates of Obligation by the Underwriters in final

form, with such changes therein or additions thereto as the officer executing the same may deem advisable, such determination to be conclusively evidenced by his execution thereof. The distribution and use of the Preliminary Official Statement for the Certificates of Obligation, dated February 7, 2013, prior to the date hereof is hereby ratified and confirmed. The City Council finds and determines that the Preliminary Official Statement and the Official Statement were and are "deemed final" as of each of their respective dates within the meaning, and for the purpose, of Rule 15c2-12 promulgated under authority granted by the Federal Securities and Exchange Act of 1934.

SECTION EIGHTEEN. AUTHORITY FOR OFFICERS TO EXECUTE DOCUMENTS AND APPROVE CHANGES. The Mayor, Mayor Pro-Tem, City Secretary, City Manager and Director of Finance of the City, and all other officers, employees, and agents of the City, and each of them, shall be and they are hereby expressly authorized, empowered, and directed from time to time and at any time to do and perform all such acts and things and to execute, acknowledge, and deliver in the name and under the corporate seal and on behalf of the City all such instruments, whether or not herein mentioned, as may be necessary or desirable in order to carry out the terms and provisions of this Ordinance, the Certificates of Obligation, the sale of the Certificates of Obligation, the Official Statement, the Purchase Contract, and the Paying Agent/Registrar Agreement. In addition, prior to the initial delivery of the Certificates of Obligation, the Mayor, Mayor Pro-Tem, City Secretary, City Manager, Director of Finance, City Attorney, and Bond Counsel are hereby authorized and directed to approve any technical changes or correction to this Ordinance or to any of the instruments authorized and approved by this Ordinance necessary in order to (i) correct any ambiguity or mistake or properly or more completely document the transactions contemplated and approved by this Ordinance and as described in the Official Statement, (ii) obtain a rating from any of the national bond rating agencies or satisfy any requirements of the provider of a municipal bond insurance policy, if any, or (iii) obtain the approval of the Certificates of Obligation by the Attorney General's office. In case any officer whose signature shall appear on any Certificate of Obligation shall cease to be such officer before the delivery of such Certificate of Obligation, such signature shall nevertheless be valid and sufficient for all purposes the same as if such officer had remained in office until such delivery. The Director of Finance of the City is further authorized to pay to the Attorney General of Texas prior to the delivery of the Certificates of Obligation, for the Attorney General's review of the transcript of proceedings related to the Certificates of Obligation, the amount required pursuant to Section 1202.004, Texas Government Code, as amended.

SECTION NINETEEN. ORDINANCE A CONTRACT; AMENDMENTS. This Ordinance shall constitute a contract with the Registered Owners of the Certificates of Obligation, binding on the City and its successors and assigns, and shall not be amended or repealed by the City as long as any Certificate of Obligation remains outstanding except as permitted in this Section. The City may, without the consent of or notice to any Registered Owners, amend, change, or modify this Ordinance as may be required (i) by the provisions hereof, (ii) for the purpose of curing any ambiguity, inconsistency, or formal defect or omission herein, or (iii) in connection with any other change which is not to the prejudice of the Registered Owners. The City may, with the written consent of the Registered Owners of a majority in aggregate principal amount of the Certificates of Obligation then outstanding affected thereby, amend, change, modify, or rescind any provisions of this Ordinance; provided that without the consent of all of the Registered Owners affected, no such amendment, change, modification, or rescission shall (i) extend the time or times of payment of the

principal of and interest on the Certificates of Obligation, reduce the principal amount thereof or the rate of interest thereon, (ii) give any preference to any Certificate of Obligation over any other Certificate of Obligation, (iii) extend any waiver of default to subsequent defaults, or (iv) reduce the aggregate principal amount of Certificates of Obligation required for consent to any such amendment, change, modification, or rescission. Whenever the City shall desire to make any amendment or addition to or rescission of this Ordinance requiring consent of the Registered Owners, the City shall cause notice of the amendment, addition, or rescission to be sent by first class mail, postage prepaid, to the Registered Owners at the respective addresses shown on the Registration Books. Whenever at any time within one year after the date of the giving of such notice, the City shall receive an instrument or instruments in writing executed by the Registered Owners of a majority in aggregate principal amount of the Certificates of Obligation then outstanding affected by any such amendment, addition, or rescission requiring the consent of the Registered Owners, which instrument or instruments shall refer to the proposed amendment, addition, or rescission described in such notice and shall specifically consent to and approve the adoption thereof in substantially the form of the copy thereof referred to in such notice, thereupon, but not otherwise, the City may adopt such amendment, addition, or rescission in substantially such form, except as herein provided. No Registered Owner may thereafter object to the adoption of such amendment, addition, or rescission, or to any of the provisions thereof, and such amendment, addition, or rescission shall be fully effective for all purposes.

SECTION TWENTY. REMEDIES IN EVENT OF DEFAULT. In addition to all the rights and remedies provided by the laws of the State of Texas, it is specifically covenanted and agreed particularly that in the event the City (i) defaults in the payment of the principal, premium, if any, or interest on the Certificates of Obligation, (ii) defaults in the deposits and credits required to be made to the Interest and Sinking Fund, or (iii) defaults in the observance or performance of any other of the covenants, conditions or obligations set forth in this Ordinance and the continuation thereof for 30 days after the City has received written notice of such defaults, the Holders of any of the Certificates of Obligation shall be entitled to seek a writ of mandamus issued by a court of proper jurisdiction compelling and requiring the governing body of the City and other officers of the City to observe and perform any covenant, condition or obligation prescribed in this Ordinance.

No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver of any such default or acquiescence therein, and every such right and power may be exercised from time to time and as often as may be deemed expedient. The specific remedy herein provided shall be cumulative of all other existing remedies, and the specification of such remedy shall not be deemed to be exclusive.

SECTION TWENTY-ONE. INTERESTED PARTIES. Nothing in this Ordinance expressed or implied is intended or shall be construed to confer upon, or to give to, any person or entity, other than the City, the Underwriters and the registered owners of the Certificates of Obligation, any right, remedy or claim under or by reason of this Ordinance or any covenant, condition or stipulation hereof, and all covenants, stipulations, promises and agreements in this Ordinance contained by and on behalf of the City shall be for the sole and exclusive benefit of the City, the Underwriters and the registered owners of the Certificates of Obligation.

SECTION TWENTY-TWO. INCORPORATION OF RECITALS. The City hereby finds that the statements set forth in the recitals of this Ordinance are true and correct, and the City hereby incorporates such recitals as a part of this Ordinance.

SECTION TWENTY-THREE. SEVERABILITY. If any provision of this Ordinance or the application thereof to any circumstance shall be held to be invalid, the remainder of this Ordinance and the application thereof to other circumstances shall nevertheless be valid, and this governing body hereby declares that this Ordinance would have been enacted without such invalid provision.

SECTION TWENTY-FOUR. EFFECTIVE DATE. Pursuant to the provisions of Section 1201.028, Texas Government Code, this Ordinance shall become effective immediately after its adoption by the City Council.

[The remainder of this page left blank intentionally.]

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF KERRVILLE, TEXAS AT A REGULAR MEETING ON THE 22ND DAY OF JANUARY, 2013, AT WHICH MEETING A QUORUM WAS PRESENT.

ATTEST:

Brenda G. Craig, City Secretary

Jack Pratt, Jr., Mayor

APPROVED AS TO FORM:

Michael C. Hayes, City Attorney

(CITY SEAL)

** ** ** ** **

[SIGNATURE PAGE TO ORDINANCE AUTHORIZING THE ISSUANCE OF CITY OF KERRVILLE, TEXAS
COMBINATION TAX AND REVENUE CERTIFICATES OF OBLIGATION, SERIES 2013]

EXHIBIT A

FORM OF PAYING AGENT/REGISTRAR AGREEMENT

THE PAYING AGENT/REGISTRAR AGREEMENT IS OMITTED AT THIS POINT
AS IT APPEARS IN EXECUTED FORM ELSEWHERE IN THIS TRANSCRIPT.

EXHIBIT B

WRITTEN PROCEDURES RELATING TO CONTINUING COMPLIANCE WITH FEDERAL TAX COVENANTS

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

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

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

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

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

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

EXHIBIT C

DESCRIPTION OF ANNUAL FINANCIAL INFORMATION

The following information is referred to in Section Fifteen of this Ordinance.

Annual Financial Statements and Operating Data

The financial information and operating data with respect to the City to be provided annually in accordance with such Section are as specified (and included in the Appendix or under the headings of the Official Statement referred to) below:

1. The annual audited financial statements of the City or the unaudited financial statements of the City in the event audited financial statements are not completed within six months after the end of any fiscal year.
2. All quantitative financial information and operating data with respect to the City of the general type included in the Official Statement under Tables 1 through 6 and 8 through 15.

Accounting Principles

The accounting principles referred to in such Section are the accounting principles described in the notes to the financial statements referred to in paragraph 1 above.

Agenda Item:

5A. An Ordinance amending Chapter 66, "Library," of the Code of Ordinances of the City of Kerrville, Texas; by amending Article II "Library Advisory Board" to change the composition and qualifications of the Library Advisory Board; containing a cumulative clause; containing a savings and severability clause; and providing other matters relating to this subject. (staff)

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

SUBJECT: Consideration of the Second Reading of the Revisions to the Code of Ordinances, Chapter 66, "Library," Article II "Library Advisory Board" and Article III "Library Regulations"

FOR AGENDA OF: January 22, 2013 DATE SUBMITTED: January 11, 2013

EXHIBITS: Chapter 66, "Library," Article II and Article III
Revised Article II, "Library Advisory Board Ordinance"
Revised Article III, "Library Regulations Ordinance"

AGENDA MAILED TO:

APPROVED FOR SUBMITTAL BY CITY MANAGER:

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

PAYMENT TO BE MADE TO:

REVIEWED BY THE FINANCE DEPARTMENT

SUMMARY STATEMENT

ORDINANCE SECOND READING -

As Kerr County will not be funding the Butt-Holdsworth Memorial Library and with the addition of electronic devices to the collection, regulations regarding the Library Advisory Board and Library Regulations need to be adopted.

Article II – Library Advisory Board

The Library Advisory Board (LAB) currently consists of four members appointed by City Council and one member appointed by the Friends of the Butt-Holdsworth Memorial Library, with the stipulation that all members reside in Kerr County.

As of November 1, 2012, the County has decided not to fund the Butt-Holdsworth Memorial Library. As the County will not be participating in the operation of the Butt-Holdsworth Memorial Library, it is recommended the qualifications for appointment be revised to stipulate all members must be an active library card holder in good standing.

In addition, the Ex-Officio appointments will be amended to remove the County Commissioner's position on the Library Advisory Board.

Article III – Library Regulations

In March 2012 the Library incorporated electronic devices into the collection and began lending the devices to patrons. Some patrons have failed to return the devices to the Library. It is recommended to include the phrase "electronic devices" in Section 66-39 subsection (b) Violation of Lending Privileges and subsection (c) Failure to Return Books.

RECOMMENDED ACTION

Staff recommends City Council approve the recommended changes to the Code of Ordinances, Chapter 66, "Library."

ARTICLE I. IN GENERAL

Secs. 66-1—66-30. Reserved.

ARTICLE II. LIBRARY ADVISORY BOARD*

Sec. 66-31. Definitions.

The following terms shall have the meanings as follows:

Board means the library advisory board.

City means the City of Kerrville, Texas.

Commissioners court means the governing body of Kerr County, Texas.

Council means the governing body of the City of Kerrville, Texas.

County means Kerr County, Texas.

Library means the Butt-Holdsworth Memorial Library.

Procedural rules means the Procedural Rules for Kerrville City Boards as adopted by City Council.

(Ord. No. 2010-05, § 1, 3-9-2010)

Sec. 66-32. Creation.

A library advisory board has been created to be composed of five members.

(Ord. No. 2010-05, § 1, 3-9-2010)

Sec. 66-33. Duties and responsibilities of the board.

The board shall constitute an advisory board to the council. The board shall have authority to hold meetings within the city and to consider and make recommendations to the council from time to time on any and all matters pertaining to the library. All recommendations made by the board to the council shall be by a majority vote of the

*Editor's note—Ord. No. 2010-05, § 1, adopted March 9, 2010, amended former Art. II, §§ 66-31—66-34, in its entirety to read as herein set out. Former Art. II pertained to the same subject matter and derived from Ord. No. 2005-19, adopted Nov. 22, 2005.

Cross references—Administration, ch. 2; boards and commissions, § 2-91 et seq.

total membership of the board. Three voting members shall constitute a quorum for the transaction of all matters considered by the board. The board shall adhere to the procedural rules, which the city secretary shall provide to each board member at the time that he or she gives an oath of office.

Sec. 66-34. Composition of and appointment to the board; ex-officio members; terms; vacancies; absences, officers, compensation; meetings.

(a) *Composition.* The board shall be composed of five members with appointments to be made as follows:

- (1) Council shall appoint four members; and
- (2) The Friends of the Butt-Holdsworth Memorial Library shall appoint one of its members.

(b) *Ex officio members.* Ex officio members of the board shall consist of a member of the council, a member of the commissioners court, a member of the Kerrville Genealogical Society, and the library director. Such ex officio members shall serve without voting privileges and may act in an advisory capacity to the board.

(c) *Terms.* All board appointments shall serve two-year terms. No board member shall serve more than two consecutive two-year terms on the board without having at least one full year off of the board between terms. A majority of the members' terms shall expire in even-numbered years with the remaining members' terms expiring in odd-numbered years.

(d) *Vacancies.* When a vacancy occurs by means other than the expiration of the term of a board member, the entity responsible for making the appointment, either the council, commissioners court, or Friends of the Butt-Holdsworth Memorial Library, shall appoint a person to fill the vacancy for the remainder of the unexpired term.

(e) *Absences.* Members shall be subject to the attendance requirements established by the procedural rules.

(f) *Officers.* From its regular members, the board shall appoint a chair and vice-chair. The library director, or designee, shall act as secre-

tary. It shall be the duty of the chair to preside at all meetings of the board and the secretary shall keep a record of all the proceedings of the board.

(g) *Compensation.* Service on the board is without compensation.

(h) *Meetings.* The board shall meet on dates and times as agreed upon by the board members, which schedule may be changed from time to time. All such meetings of the board shall be held in accordance with the Texas Open Meetings Act.

(i) *Qualifications.* Each board member shall be a resident of Kerr County.
(Ord. No. 2010-05, § 1, 3-9-2010; Ord. No. 2011-16, § 1, 8-9-2011)

Secs. 66-35—66-38. Reserved.

ARTICLE III. LIBRARY REGULATIONS

Sec. 66-39. Generally.

(a) *Definitions.* The following words, terms and phrases, when used in this section, shall have the meaning ascribed to them in this subsection, except where the context clearly indicates a different meaning:

Director means the director or librarian of the Butt-Holdsworth Memorial Library.

Public library means the Butt-Holdsworth Memorial Library, and any branch libraries or mobile library unit.

(b) *Violation of lending privileges.* Every person who shall take from the public library any book, pamphlet, periodical, paper, print of a painting, film, phonograph record, magnetic tape, or other property, except in accordance with the rules of such library, is in violation of this section.

(c) *Failure to return books.* Every person who shall take or borrow from the public library any book, pamphlet, periodical, paper, print of a painting, film, phonograph record, magnetic tape, or other property, and fail to return such material within two weeks from the date of mailing a notice to the person's address, is in violation of this section.

(d) *Suspension of library privileges.* If a person is determined by the director to be in violation of this section, all of the person's library privileges, including borrowing privileges and the privileges of being on the library premises, may be suspended by the director.

(e) *Appeal of suspension.* If a person's library privileges are suspended by the director pursuant to subsection (e) of this section, the person may appeal the director's ruling to the board within 30 days of such ruling. Thereafter, such person may appeal the decision of the board to the city council by giving written notice of such appeal to the city clerk within 30 days of the board's decision.

(f) *Civil liability.* Each person who is in violation of this section, or who fails to return books or property (for whatever reason) or returns defaced or damaged books or property (however caused) shall be liable for the replacement cost of such books and property, reasonable attorneys' fees, and court costs. Acts of third persons, impossibility of performance, or other force majeure shall be no defense to civil liability.

(g) *Criminal liability.* Each person who is in violation of this section shall be guilty of a misdemeanor and, upon conviction therefor, shall be subject to the penalty provided in section 1-7. Except, however, it shall be a defense to criminal liability, if the defendant can prove, beyond a reasonable doubt, that the violation was the result of acts of third persons, impossibility of performance, or other force majeure.

(h) *Notice.* Before a person shall be liable (civil or criminal) under this section, the person shall be given 15 days' written notice of violation. Such notice shall state the amount of restitution or damages claimed, and payment thereof within 15 days shall absolve such person from liability under this section for that particular violation. Such notice shall be given by mailing the notice to the person's last known mailing address.

(i) *Separate violations.* A violation as to each book or item of library property constitutes a separate violation of this section.
(Ord. No. 84-58, 1-8-1985; Ord. No. 87-61, 1-12-1988; Code 1968, art. 2-V-8(a)—(c), (e)—(j))

CITY OF KERRVILLE, TEXAS
ORDINANCE NO. 2013-_____

**AN ORDINANCE AMENDING CHAPTER 66, "LIBRARY,"
OF THE CODE OF ORDINANCES OF THE CITY OF
KERRVILLE, TEXAS, BY AMENDING ARTICLE II
"LIBRARY ADVISORY BOARD" TO CHANGE THE
COMPOSITION AND QUALIFICATIONS OF THE
LIBRARY ADVISORY BOARD; CONTAINING A
CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND
SEVERABILITY CLAUSE; AND PROVIDING OTHER
MATTERS RELATING TO THIS SUBJECT**

WHEREAS, the City of Kerrville, Texas ("City"), owns and administers the Butt-Holdsworth Memorial Library ("Library"); and

WHEREAS, the City Council previously established a Library Advisory Board ("LAB") for the purpose of advising and making recommendations to the City Council on matters pertaining to the Library; and

WHEREAS, the LAB is currently made up of five (5) members who are appointed by City Council, and each member must reside within Kerr County; and

WHEREAS, the LAB now recommends that City Council amend the ordinance regarding the qualifications of the LAB such that each member must maintain a library card in good standing; and

WHEREAS, the City Council of the City of Kerrville, Texas, finds it to be in the public interest to amend Chapter 66, Article II of the Code of Ordinances of the City of Kerrville to revise the LAB as provided above;

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

SECTION ONE. Section 66-34 of Chapter 66 "Library," Article II "Library Advisory Board" of the Code of Ordinance of the City of Kerrville, Texas, is amended by adding the language that is underlined (added) and deleting the language that is bracketed and stricken ([deleted]) as follows:

"Sec. 66-34. Composition of and appointment to the Board; ex-officio members; terms; vacancies; absences, officers, compensation; meetings.

:

(b) *Ex officio members.* Ex officio members of the Board shall consist of a member of the Council, [a member of the commissioners court,] a member of the Kerrville

Genealogical Society, and the Library Director. Such ex official members shall serve without voting privileges and may act in an advisory capacity to the Board.

(i) *Qualifications.* Each Board member ~~[shall be a resident of Kerr County]~~ must maintain a library card in good standing."

SECTION TWO. Section 66-39 of Chapter 66 "Library," Article III "Library Regulations" of the Code of Ordinance of the City of Kerrville, Texas, is amended by adding the language that is underlined (added) and deleting the language that is bracketed and stricken (~~[deleted]~~) as follows:

"Sec. 66-39. Generally.

(b) *Violation of lending privileges.* Every person who shall take from the public library any book, pamphlet, periodical, paper, print of a painting, film, phonograph record, magnetic tape, electronic device, or other property, except in accordance with the rules of such library, is in violation of this section.

(c) *Failure to return [books] items.* Every person who ~~[shall]~~ takes or borrows from the public library any book, pamphlet, periodical, paper, print of a painting, film, phonograph record, magnetic tape, electronic device, or other property, and fails to return such material within two weeks from the date of mailing a notice to the person's address, is in violation of this section."

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

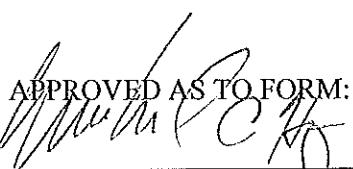
SECTION FOUR. The provisions of this Ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances inconsistent with or in conflict with any of the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

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

PASSED AND APPROVED ON FIRST READING, this the 8th day of January, 2013.

PASSED AND APPROVED ON SECOND AND FINAL READING, this the _____ day of
_____, 2013.

Jack Pratt, Jr., Mayor

APPROVED AS TO FORM:


Michael C. Hayes, City Attorney

ATTEST:

Brenda G. Craig, City Secretary

Agenda Item:

5B. An Ordinance amending Chapter 102 "Traffic and Vehicles," Article II "Administration; Enforcement" of the Code of Ordinances of the City of Kerrville, Texas by amending Sections 102-35 and 102-36 to increase the penalty for parking violations; adopting a new Section 102-37 to establish presumptions applicable to the adjudication of parking citations; containing a cumulative clause; containing a savings and severability clause; providing for an effective date; ordering publication; and providing other matters related thereto. (staff)

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

SUBJECT: Ordinance amendment to increase the fines for violation of the City of Kerrville parking regulations

FOR AGENDA OF: Jan. 22, 2013 **DATE SUBMITTED:** Jan. 17, 2013

SUBMITTED BY: Todd Parton,
City Manager

CLEARANCES: Mike Hayes
City Attorney

EXHIBITS: Ordinance

AGENDA MAILED TO:

APPROVED FOR SUBMITTAL BY CITY MANAGER: *TP*

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

PAYMENT TO BE MADE TO:

REVIEWED BY THE DIRECTOR OF FINANCE:

SUMMARY STATEMENT

Attached is an ordinance presented for second reading to increase the city's fine for parking violations from \$5 to \$25.

This fine will be applicable to all parking violations throughout the City of Kerrville. The ordinance also contains a provision to double the fine for those who fail to appear in municipal court or fail to pay the fine prior to their municipal court appearance date. Furthermore, the ordinance contains provisions for the issuance of an arrest warrant for those who fail to address a parking ticket.

RECOMMENDED ACTION

Staff recommends that the City Council adopt the ordinance to increase parking fines from \$5 to \$25.

CITY OF KERRVILLE, TEXAS
ORDINANCE NO. 2012-__

AN ORDINANCE AMENDING CHAPTER 102 "TRAFFIC AND VEHICLES," ARTICLE II "ADMINISTRATION; ENFORCEMENT" OF THE CODE OF ORDINANCES OF THE CITY OF KERRVILLE, TEXAS; BY AMENDING SECTIONS 102-35 AND 102-36 TO INCREASE THE PENALTY FOR PARKING VIOLATIONS; ADOPTING A NEW SECTION 102-37 TO ESTABLISH PRESUMPTIONS APPLICABLE TO THE ADJUDICATION OF PARKING CITATIONS; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR AN EFFECTIVE DATE; ORDERING PUBLICATION; AND PROVIDING OTHER MATTERS RELATED THERETO

WHEREAS, Chapter 102 of the Code of Ordinances ("Code") for the City of Kerrville, Texas ("City"), establishes the enforcement process for violations of the City's parking regulations; and

WHEREAS, due to concerns expressed by downtown property and business owners about parking and the enforcement process, the City Council believes it necessary to amend Chapter 102 to address those concerns; and

WHEREAS, Council finds it to be in the public interest to amend Sections 102-35 and 102-36 of the Code and to adopt a new section, Section 102-37, which establishes a presumption applicable to the adjudication of parking citations;

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

SECTION ONE. Chapter 102 "Traffic and Vehicles," Article II "Administration and Enforcement" of the Code of Ordinances of the City of Kerrville, Texas, is amended by amending Section 102-35 by adding the language that is underlined (added) and deleting the language that is stricken and bracketed ([~~deleted~~]) to provide as follows:

"Sec. 102-35. Parking fines, court costs, and procedures for collection.

(a) A person, or other legal entity, violating any of the provisions of state law or this chapter regarding stopping, standing, or parking of a vehicle shall [~~have 14 days to~~] pay a fine to the City on or before their first court appearance date in the following amounts or otherwise to enter an appearance in municipal court:

(1) For parking offenses specifically set forth in the state transportation code or where a fine is not otherwise set forth in this section, the fine shall be in accordance with Section 1-7;

(2) For parking offenses arising from parking in a parking space for a period of time longer than the posted time limit, the fine shall be [\$5.00] \$25.00 per violation;

(b) If a person fails to pay the fine or enter an appearance in municipal court for parking offenses described in subsection (a)(2) of this section [within the stated 14 days] on or before their first court appearance date, then the fine thereafter shall be doubled for each violation, and the clerk of the municipal court shall send to the owner of the motor vehicle, at his last known address, a letter informing him of the violation and giving him notice that he must either pay the fine within ten days of the notice of the letter, or return a notice in writing to the clerk promising to appear on a trial date.

(c) If a person requests a trial date, the clerk shall promptly notify him by mail of such trial date.

(d) If the person fails to respond to the ten-day notice letter or fails to appear on the trial date, then he shall be found guilty of the offense and a fine of [\$5.00] \$25.00 shall be assessed against such person. In addition, if the fine so assessed remains unpaid after an additional ten days, a complaint may be filed and an arrest warrant may be issued for such person."

SECTION TWO. Chapter 102 "Traffic and Vehicles," Article II "Administration and Enforcement" of the Code of Ordinances of the City of Kerrville, Texas, is amended by amending Section 102-36 by adding the language that is underlined (added) and deleting the language that is stricken and bracketed ([deleted]) to provide as follows:

"Sec. 102-36. Owner liable for illegal parking.

In any prosecution charging a violation of any regulation covering the standing or parking of a vehicle, the registered owner of a vehicle shall be liable for the parking violation, proof that the particular vehicle described in the notice or ticket was parked in violation of any such regulation, together with proof that the defendant was at the time of such parking a registered owner of such a vehicle, shall render the registered owner liable for the fines and court costs set forth in this chapter. This provision for liability of the owner shall in no way affect the owner's rights to obtain indemnity for all such amounts from any person who actually parked such vehicle in violation of this chapter."

SECTION THREE. Chapter 102 "Traffic and Vehicles," Article II "Administration and Enforcement" of the Code of Ordinances of the City of Kerrville, Texas, is amended by adding a new Section 102-35 as indicated by the language that is underlined (added) to provide as follows:

"Sec. 102-37. Presumption.

In a court proceeding to adjudicate a parking citation:

- (a) It is presumed that the registered owner of the vehicle is the person who stopped, stood, or parked the vehicle at the time and place of the parking violation; and
- (b) The Texas Department of Transportation's computer-generated record of the registered vehicle owner is *prima facie* evidence of the contents of the record."

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

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

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

SECTION SEVEN. Pursuant to Texas Local Government Code §52.013(a) and Section 3.07 of the City's Charter, the City Secretary is hereby authorized and directed to publish the descriptive caption of this Ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

PASSED AND APPROVED ON FIRST READING, this 8th day of January,
2012

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


APPROVED AS TO FORM:
Michael C. Hayes, City Attorney

Jack Pratt, Jr., Mayor

ATTEST:

Brenda G. Craig, City Secretary

Agenda Item:

6A. An Ordinance amending Article 10-IV-1 of the City of Kerrville Subdivision Code, commonly referred to as the City's "Subdivision Regulations", by amending Section 10-IV-1(B)(2)(D) of said regulations to address nonconforming lots; containing a cumulative clause; containing a savings and severability clause; providing for an effective date; ordering publication; and providing other matters related thereto. (staff)

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

SUBJECT: Public Hearing & First Reading of an Ordinance amending the City of Kerrville's Subdivision Ordinance Proposed amendments to Art. 10-IV-1 (B)(2)(d) of the City of Kerrville's Subdivision Ordinance concerning properties exempted from the city's plat requirements. Proposed amendments to Art. 10-IV-7 Forms, of the City of Kerrville's Subdivision Ordinance concerning signature blocks required on plats for recording.

FOR AGENDA OF: January 22, 2013 **DATE SUBMITTED:** January 11, 2013

SUBMITTED BY: Jason Lutz *X* **CLEARANCES:** Kristine Ondrias *XJ*

EXHIBITS: Ordinance

AGENDA MAILED TO:

APPROVED FOR SUBMITTAL BY CITY MANAGER:

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

PAYMENT TO BE MADE TO:

REVIEWED BY THE DIRECTOR OF FINANCE:

SUMMARY STATEMENT

Summary:

The following amendments are being proposed in order to update information found on recorded plats and address issues of existing non-conforming lots found in the City of Kerrville.

Art. 10-IV-7 Forms, of the City of Kerrville's Subdivision Ordinance provides documentation for the proper verbiage for signatures found on recorded plats. These signature blocks have been modified to update the information and signatures to more accurately reflect existing staff and department structure. Staff is seeking to replace, in its entirety, Art. 10-IV-7 with the verbiage found in the ordinance provided.

Art. 10-IV-1 (B)(2)(d) of the City of Kerrville's Subdivision Ordinance addresses the requirements for properties that are exempted from the City of Kerrville's plat requirements. Currently any property subdivided prior to January 1, 1981 and does not meet the city's current regulations regarding lot requirements is required to replat the property, unless they meet certain criteria.

January 1, 1981 represents the cutoff date for non-conforming lots, with the intent that all lots platted after this date shall conform to the City of Kerrville's regulations. However, several lots throughout the city have been identified as non-conforming. Due to the fact that these lots were platted after January 1, 1981, the lots are not eligible for exemption to the city's plat requirements. This has caused the denial of building permits as some lots do not have the ability to be replatted. Land owners do have the ability to seek a variance, but this method is not only costly and time consuming, but there are no guarantees that a variance may be granted.

Staff is recommending a change to the stated date of January 1, 1981 to the date that these changes would be adopted by council, after a public hearing and two ordinance readings (tentative for Feb. 12, 2013).

This change would allow those properties affected to begin development procedures without having to go through the variance process. This change will not remove any platting requirements that may be triggered during the development process, and any lots that do not meet the stated criteria for exemptions to the plat requirements will still be required to go through the platting process.

The Planning and Zoning Commission approved the amendments by a vote of 3-0, at their regularly scheduled meeting on January 3, 2013. During the public hearing portion of the meeting no citizens spoke on the issue.

RECOMMENDED ACTION

1. Open the public hearing and receive comments.
2. Approve the amendments as presented.

CITY OF KERRVILLE, TEXAS
ORDINANCE NO. 2013-____

AN ORDINANCE AMENDING ARTICLE 10-IV-1 OF THE CITY OF KERRVILLE SUBDIVISION CODE, COMMONLY REFERRED TO AS THE CITY'S "SUBDIVISION REGULATIONS", BY AMENDING SECTION 10-IV-1(B)(2)(D) OF SAID REGULATIONS TO ADDRESS NONCONFORMING LOTS; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR AN EFFECTIVE DATE; ORDERING PUBLICATION; AND PROVIDING OTHER MATTERS RELATED THERETO

WHEREAS, the City Council of the City of Kerrville, Texas, pursuant to its authority as a home-rule municipality and Chapter 212 of the Texas Local Government Code, previously adopted regulations applicable to the subdivision of land and establishing the platting process ("Subdivision Regulations") in order to promote the health, safety, and general welfare of the City and its safe, orderly, and healthful development; and

WHEREAS, City staff recommends amending the Subdivision Regulations with respect to nonconforming lots; and

WHEREAS, Section 10-IV-1(B)(2)(d) of the Subdivision Regulations addresses the requirements for lots that are exempt from the City's platting requirements; and

WHEREAS, under the existing Subdivision Regulations, any property subdivided prior to January 1, 1981, but which does not meet the regulations regarding lot requirements, requires a replat unless certain criteria is met; and

WHEREAS, this date, January 1, 1981, represents the cutoff date for nonconforming lots, with the intent that all property subdivided after this date must comply with the Subdivision Regulations with respect to platting and lot requirements; and

WHEREAS, multiple lots throughout the City remain nonconforming even though they were platted after January 1, 1981; and

WHEREAS, these nonconforming lots are not currently eligible for an exemption from the Subdivision Regulations, which at times has meant that building permits are denied until the lot is properly replatted; and

WHEREAS, property owners currently have the authority to seek a variance under the Subdivision Regulations, but City staff recognizes that this process is both time consuming and costly and does not always afford the owner the desired outcome; and

WHEREAS, City staff recommends amending the Subdivision Regulations by changing the date and thereby exempting nonconforming lots from the regulations based upon existing criteria; and

WHEREAS, this amendment will authorize those nonconforming lots that meet certain criteria to begin the development process without having to seek a variance under the Subdivision Regulations; and

WHEREAS, this amendment will not remove all requirements under the Subdivision Regulations that may be triggered during the development process, such as public improvement requirements, and any nonconforming lot that does not meet the stated criteria for exemptions to the platting requirements must go through the replatting process; and

WHEREAS, the Kerrville Planning and Zoning Commission recommended approval of this amendment to the Subdivision Regulations after a public hearing on the matter held on January 4, 2013, at which time all persons had an opportunity to be heard; and

WHEREAS, pursuant to Texas Local Government Code §212.002, notice has been given to all persons by publication in the official newspaper and otherwise, of a hearing to be held before the City Council on January 22, 2013, to consider amendments to Article 10-IV-1, commonly referred to as the City's subdivision regulations; and

WHEREAS, such public hearing was held in the Council Chambers beginning at approximately 6:00 p.m. on January 22, 2013, as advertised;

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

SECTION ONE. Section 10-IV-1(B)(2)(d) of the City's Subdivision Ordinance is amended by adding the language that is underlined (added) and deleting the language that is bracketed and stricken ([deleted]) as follows:

"Art. 10-IV-1(B) PLATS

.

.

· (2) .

.

.

d. Any property subdivided prior to [January 1, 1984] February 12, 2012, provided that each part of the subdivided property was adequately served by the following after the subdivision:

(1) Streets constructed and previously accepted for maintenance by the City or County, whichever is applicable;

- (2) Water improvements as currently required by this or other applicable ordinances;
- (3) Sanitary sewer or individual on-site sewage disposal system as currently required by this or other ordinances;
- (4) Storm drainage facilities as currently required by this or other applicable ordinances, and;
- (5) Easements or rights-of-way as may be currently required by this or other applicable ordinance for the installation of any of the above stated improvements;"

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

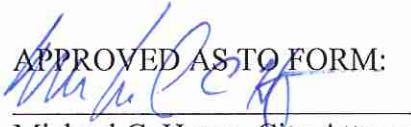
SECTION THREE. If any section, subsection, sentence, clause, or phrase of this Ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this Ordinance. The City Council of the City of Kerrville, Texas, declares that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

SECTION FOUR. Pursuant to Texas Local Government Code §52.013(a) and Section 3.07 of the City's Charter, the City Secretary is hereby authorized and directed to publish the descriptive caption of this Ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

PASSED AND APPROVED ON FIRST READING, this _____ day of _____, 2013.

PASSED AND APPROVED ON SECOND AND FINAL READING, this _____ day of _____, 2013.

Jack Pratt, Jr., Mayor

APPROVED AS TO FORM:


Michael C. Hayes, City Attorney

ATTEST:

Brenda G. Craig, City Secretary

Agenda Item:

7A. An Ordinance amending the budget for Fiscal Year 2013 to account for various changes to the City's operational budgets, donation to the City's Library, and closing out and supplementing capital improvement projects. (staff)

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

SUBJECT: First reading of an ordinance amending the FY2013 Budget

FOR AGENDA OF: January 22, 2013 **DATE SUBMITTED:** January 11, 2012

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

EXHIBITS: Ordinance Amending FY2013 Budget
Attachment A – detailing changes

AGENDA MAILED TO:

APPROVED FOR SUBMITTAL BY CITY MANAGER:

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

PAYMENT TO BE MADE TO:

REVIEWED BY THE FINANCE DEPARTMENT:

SUMMARY STATEMENT

The attached ordinance provides for the first amendment to the FY2013 budget. The budget amendment includes the following:

Operational Budgets

City Administration

Merge the Business Programs and Main Street Departments into the City Administration Department. The budgets were established in the FY2013 Approved Budget and the merger should occur through an amendment of the Budget.

IT

Funding for a new copier in City Hall. The FY2013 Approved Budget had \$300,000 more in revenue than expenditures, so the additional \$7,800 is covered.

Municipal Court

Use of Court Technology funds for purchase of notification software to contact defendants of their court appearances and scanners for records. The Court Technology fee will be added to the General Fund's revenue to pay for these items.

General Operations

Increase to Buildings and Maintenance line item for demolition and additional costs related to the old and new City Hall. The FY2013 Approved Budget had \$300,000 more in revenue than expenditures, so the additional \$200,000 is covered.

Water & Sewer Non-Departmental

Transfer of funds to the EIC. Closure of an old project necessitates moving the funds back to the EIC.

Police Special Programs

Use of existing fund balance for purchase of SOU body armor.

Library Memorial Fund

Recognition of donation from the Robert E. Lee Trust. The funds will be moved to Capital Improvements Projects fund for the second phase of the Library renovation.

Landfill Fund

Increase in expenditures related to the operation of the Recycling Center. The Approved FY2013 revenues will cover the additional expenditures.

History Center Fund Fund

After receiving prior approval from the Trust, the City will use fund balance to provide maintenance and repair work on the History Center Building.

Capital Improvement Projects

Governmental IP

Recognition of donation from Robert E. Lee Trust via the Library Memorial Fund, for use in Phase II of the Library Renovation.

Recognition of donation from the Peterson Foundation for lighting in the downtown parking garage.

Water and Sewer IP

Closure of three projects:

W78 – I & I Construction 2009, (\$62,165.15)

W80 – WTP Improvements – Clearwell, (\$34,529.20)

W82 – Production Well – Methodist Enc., (\$232,358.23)

Additional Funding to three projects:

W94 – W/WW Master Plan, \$55,000

W65 – Water Supply Acquisition, \$20,000

W93 – Transmission Line - \$225,000

RECOMMENDED ACTION

It is recommended that the City Council approve the first reading of an ordinance amending the FY2013 budget and authorize city staff to make all necessary entries and adjustments to reflect the attached changes.

**CITY OF KERRVILLE, TEXAS
ORDINANCE NO. 2013-_____**

**AN ORDINANCE AMENDING THE BUDGET FOR FISCAL YEAR 2013 TO
ACCOUNT FOR VARIOUS CHANGES TO THE CITY'S OPERATIONAL
BUDGETS, SUPPLEMENTAL APPROPRIATIONS, AND CLOSING OUT
AND SUPPLEMENTING CAPITAL IMPROVEMENT PROJECTS**

WHEREAS, Ordinance No. 2012-11, dated September 25, 2012, adopted the Fiscal Year 2013 Budget; and

WHEREAS, the City Council of the City of Kerrville, Texas, finds that amending the City's Fiscal Year 2013 Budget is in the best interest of the citizens of the City of Kerrville;

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

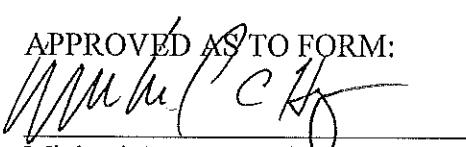
In accordance with Section 8.07 of the City Charter, the Official Budget for Fiscal Year 2013 is amended as set forth in **Exhibit A**.

PASSED AND APPROVED ON FIRST READING, this the _____ day of
_____, A.D., 2013.

PASSED AND APPROVED ON SECOND AND FINAL READING, this the _____ day
of _____, A.D., 2013.

Jack Pratt, Jr., Mayor

APPROVED AS TO FORM:



Michael C. Hayes, City Attorney

ATTEST:

Brenda G. Craig, City Secretary

January 2013 Budget Amendment - Attachment A

<u>Fund</u>	<u>Fund Name</u>	<u>Dept</u>	<u>Line Item Code</u>	<u>Line Item Name</u>	<u>Reason</u>	<u>Amount</u>
1	General Fund	City Administration	Expenditures	Various	Combine Business Programs and Main Street into City Administration	\$218,618.00
		Business Programs	Expenditures	Various		-\$28,000.00
		Main Street	Expenditures	Various		-\$190,618.00
1	General Fund	IT	Expenditures	01-807-205	Office Equipment	Increase for New Copier
1	General Fund	Muni Court	Revenue	01-6628	McCourt Tech Software	Court Tech purchase
			Expenditures	01-809-112	Office Equipment	Notification Module
			Expenditures	01-809-205		Scanners
1	General Fund	General Operations	Expenditures	01-870-202	Building & Maintenance	Demolition and additional costs related to old and new City Hall
2	Water & Sewer Fund	Non-Departmental	Expenditures	02-800-940	Transfer to EIC	Transfer Out
7	Police Special Programs	Police	Expenditures	07-802-102	Equipment	Use of Fund Balance to purchase SOU Body Armor
15	Library Memorial Fund	Library Renovation Phase II	Revenue	15-6915	Donations	Donation from Robert E Lee Trust - to be put towards Library Renovation Project G35 - Library Renovation 70-11001
15	Library Memorial Fund	Library Renovation Phase II	Expenditures	15-800-970	Transfers Out - Governmental IP Fund	Donation from Robert E Lee Trust - to be put towards Library Renovation Project G35 - Library Renovation 70-11001
25	Landfill	Solid Waste	Expenditures	25-800-306	Special Services	Temp Help
				25-800-306	Special Services	TCEQ Fees
				25-800-206	Repairs to Instruments & Apparatus	Bailey Repairs
				25-800-306	Special Services	Solid Waste Master Plan
68	History Center	Library	Expenditures	68-800-502	Buildings & Structures	Use of Fund Balance for History Center Repairs
70	Governmental IP Fund	G95	Revenue	70-7015	Transfers in - Library Memorial Fund	Donation from Robert E Lee Trust - to be put towards Library Renovation Project G35 - Library Renovation 70-11002
70	Governmental IP Fund	G95	Expenditures	70-800-502	Library Renovation Phase II	Donation from Robert E Lee Trust - to be put towards Library Renovation Project G35 - Library Renovation 70-11002
70	Governmental IP	G88	Revenue	70-6503	Peterson Donation	Recognition of Peterson Grant
		G88	Expenditures	70-09010	Admin Facilities - City Hall	Increase Project Funding for Garage Lighting
71	Water & Sewer IP	W78				Close Project
71	Water & Sewer IP	W80				Close Project
71	Water & Sewer IP	W82				Close Project
71	Water & Sewer IP	W94				W/WW Master Plan
71	Water & Sewer IP	W65				Water Supply Acquisition
71	Water & Sewer IP	W93				Transmission Line

Agenda Item:

8A. A Resolution adopting the City of Kerrville Utility Master Plan. (staff)

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

SUBJECT: A resolution adopting the Wastewater Master Plan Update prepared by Freese and Nichols, Inc.

FOR AGENDA OF: January 22, 2013 DATE SUBMITTED: January 10, 2013

EXHIBITS: Resolution
Wastewater Master Plan on file in the City Secretary's Office

AGENDA MAILED TO:

APPROVED FOR SUBMITTAL BY CITY MANAGER:

Expenditure Required:	Current Balance in Account:	Amount Budgeted:	Account Number:
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PAYMENT TO BE MADE TO:

REVIEWED BY THE DIRECTOR OF FINANCE:

SUMMARY STATEMENT

In November 2011, the City of Kerrville contracted with Freese & Nichols, Inc. to provide an update to the Wastewater System Master Plan. This process included updating the City's land assumptions and projections for the 20 year conditions, updating the collection system model, assessment of the Wastewater Treatment Plant for condition and capacity, assessment of the collection system for future capacity and provided an integrated Capital Improvement Plan for both the plant and the collection system.

The document provided to the City Council is a compilation of information presented and approved by the City Council throughout the various workshops. This document, if approved, will serve to guide staff for future CIP projects and infrastructure needs.

RECOMMENDED ACTION

Staff recommends the City Council approve a resolution adopting the Wastewater Master Plan as presented.

CITY OF KERRVILLE, TEXAS
RESOLUTION NO. -2012

**A RESOLUTION ADOPTING THE CITY OF KERRVILLE UTILITY
MASTER PLAN**

WHEREAS, over the past several months, City staff has gathered and analyzed data regarding the City's existing wastewater systems and, with the help of a consultant, has compiled such information into conclusions and recommendations as part of process intended to update the City's Wastewater System Master Plan (the "Plan"); and

WHEREAS, the process included updating the City's land use assumptions and projects for 20 year conditions, updating the collection system model, and assessing the City's Wastewater Treatment Plant ("WWTP") under its current and future conditions and capacity; and

WHEREAS, the study also included preparing an integrated Capital Improvement Plan ("CIP") for both the WWTP and the collection system; and

WHEREAS, the resulting update to the Plan incorporates information that staff previously presented to City Council during workshops to review these issues; and

WHEREAS, the Plan, if approved, will serve to guide staff for future infrastructure needs and CIP projects; and

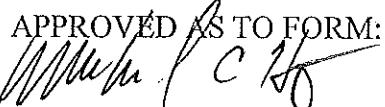
WHEREAS, the City Council of the City of Kerrville, Texas, finds it in the public interest to adopt amendments to the Plan as presented;

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

The City Council approves and adopts an update to the *City of Kerrville Wastewater System Master Plan*, dated June 23, 2008, the provisions of which plan are as set forth in the document on file in the office of the City Secretary.

PASSED AND APPROVED ON this _____ day of _____, A.D., 2013.

Jack Pratt, Jr., Mayor

APPROVED AS TO FORM:


Michael C. Hayes, City Attorney

ATTEST:

Brenda G. Craig, City Secretary

Agenda Item:

8B. Request by citizen to review the City's Sign Code, Chapter 6, Article II of the Code of Ordinances. (John Miller)

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

SUBJECT OF REQUEST: City of Kerrville Sign Code

AGENDA DATE: 1-22-13 DATE SUBMITTED: 1-08-13

REQUESTED/SUBMITTED BY: John Miller PHONE: 830-257-8266-101

ORGANIZATION REPRESENTING: John W. Miller, Jr. Co. Inc.

MAILING ADDRESS: 620 Main St Kerrville 78028

EMAIL ADDRESS: jmwilmer@nationalcarsales.net

EXHIBITS/INFORMATION:

APPROVED FOR SUBMITTAL BY CITY MANAGER: Y

WILL THIS ITEM REQUIRE CITY COUNCIL TO AUTHORIZE THE

EXPENDITURE OF CITY FUNDS? YES: _____ NO: ✓

IF YES, STATE AMOUNT REQUESTED: \$ _____

DESCRIPTION OF REQUEST

To review City of Kerrville Sign Code:
Ordinance No. 2012-05 Page 2

Downtown Core

The provision that includes "The street borders include properties on both sides of the street"

RECOMMENDED COUNCIL ACTION

Agenda Item:

- 8C. City's acquisition of easements with respect to the Jefferson Street Lift Station Project, G Street Sewer Project, and the River Trail. (staff)

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

SUBJECT: Update on Utility Projects and River Trail Project Easement Acquisition

FOR AGENDA OF: January 22, 2013 DATE SUBMITTED: January 17, 2013

EXHIBITS:

AGENDA MAILED TO:

APPROVED FOR SUBMITTAL BY CITY MANAGER:

Expenditure Required:	Current Balance in Account:	Amount Budgeted:	Account Number:
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PAYMENT TO BE MADE TO:

REVIEWED BY THE DIRECTOR OF FINANCE:

SUMMARY STATEMENT

Staff will give City Council an update on easement acquisitions for the following projects:

- G St Wastewater Main
- Jefferson Lift Station and Wastewater Gravity Main Phase 1
- River Trail

This item is also listed for executive session.

RECOMMENDED ACTION

City Council direction pursuant to executive session discussion.

Agenda Item:

8D. Project funding agreement between the City of Kerrville, Texas Economic Improvement Corporation and the City of Kerrville, Texas for downtown streetscape design. (staff)

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

SUBJECT: Funding agreement between the City of Kerrville, Texas Economic Improvement Corporation and the City of Kerrville, Texas for downtown streetscape design

FOR AGENDA OF: January 22, 2013 **DATE SUBMITTED:** January 16, 2013

SUBMITTED BY: Todd Parton,
City Manager

CLEARANCES:

EXHIBITS: Draft Funding Agreement

AGENDA MAILED TO:

APPROVED FOR SUBMITTAL BY CITY MANAGER:

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

PAYMENT TO BE MADE TO:

REVIEWED BY THE DIRECTOR OF FINANCE:

SUMMARY STATEMENT

At its meeting of December 17, 2012, the EIC board held a public hearing for the project funding agreement between the City of Kerrville Economic Improvement Corporation and the City of Kerrville for the downtown streetscape enhancements. The funding agreement would provide for the completion of work as defined in the proposal submitted to the City of Kerrville by Peter Lewis Architects + Associates to include the professional fees for the design and development of a Downtown Streetscape Master Plan. This proposal is attached to the funding agreement as Exhibit A. The amount of funding would not exceed \$35,100.

There were no comments from the public and the board passed the motion to approve the funding agreement.

RECOMMENDED ACTION

City staff recommends the consideration and approval of this funding agreement as presented.

**PROJECT FUNDING AGREEMENT BETWEEN THE CITY OF KERRVILLE,
TEXAS, ECONOMIC IMPROVEMENT CORPORATION AND THE CITY OF
KERRVILLE, TEXAS (DOWNTOWN STREETSCAPE DESIGN)**

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

WITNESSETH:

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

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

Projects related to a) expenditures that are found by the EIC to be required or suitable for infrastructure necessary to promote or develop new or expanded business enterprises, limited to streets and roads, water and sewer utilities, electric utilities, or gas utilities, drainage, site improvements, and related improvements; and b) recreational or community facilities to include land, buildings, equipment, facilities, and improvements required or suitable for use for tourist and public park purposes, including parks and park facilities, open space improvements, and related concession and automobile parking facilities, related area transportation facilities, and related roads, streets, and other related improvements that enhance any of these items as provided for by Sections 505.103 and 505.152 of the Act; and

WHEREAS, City proposes to enter into a contract with a professional architect to design and develop a Downtown Streetscape Master Plan (the "Project"); and

WHEREAS, the Project will support and reinforce the goals of the Kerrville Comprehensive Plan to include preserving, protecting, and enhancing the visual identify and relationship of the Guadalupe River with the Central Business District and enhancing the physical, economic, social characteristics of this area to create a unique destination for residents and visitors of Kerrville, thereby making this area the activity center and focal point of the community; and

WHEREAS, the EIC finds that the Project as described generally above constitutes a "project" as defined by the Act; and

WHEREAS, the EIC finds that the Project is required or suitable for infrastructure necessary to promote or develop new or expanded business enterprises; and

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

WHEREAS, on December 17, 2012, in a meeting that was open to the public in accordance with the Texas Open Meetings Act, the EIC held a public hearing pursuant to Section 501.072 of the Act related to the proposed expenditure of 4B Revenues for the Project;

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

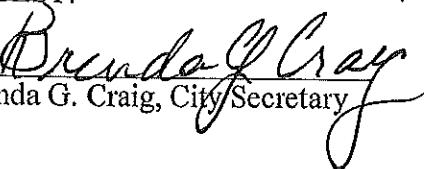
1. **“Project” Defined:** When used in this Agreement, the phrase “Project” means the project summary as described in Exhibit A attached hereto and included herein for all purposes. City shall not substantively alter the description of the Project in any respect without the prior approval of the EIC.
2. **Agreement to Fund Project:** the EIC agrees to provide City an amount up to and not to exceed \$35,100.00 in 4B Revenues to be used for the Project. City is authorized to make payments for the herein described purposes directly from the Sales Tax Improvement Fund (Fund 40) or by making a transfer of 4B Revenues from the Sales Tax Improvement Fund (Fund 40) to one or more funds described in the City’s approved budget. The City shall limit transfers to the actual amount of the payment draws submitted by architect related to the Project.
3. **Eligible Costs:** Payments made by City from 4B Revenues as authorized by Section 2, above, are limited to the payment of “costs” as defined in the Act.
4. **Applicable Law:** This Agreement is governed by and construed in accordance with the laws of the State of Texas. The Agreement is entered into and fully performable within Kerr County, Texas. Accordingly, venue for any cause of action arising pursuant to this Agreement is proper only in Kerr County, Texas.

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

CITY OF KERRVILLE, TEXAS

By: 
Jack Pratt, Jr., Mayor

ATTEST:


Brenda G. Craig, City Secretary

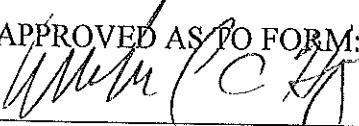
CITY OF KERRVILLE, TEXAS ECONOMIC
IMPROVEMENT CORPORATION

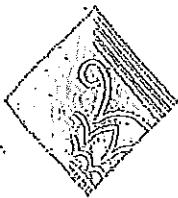
By: 
David Wampler, President

ATTEST:


Rex Boyland, Secretary for the EIC

APPROVED AS TO FORM:


Michael C. Hayes, City Attorney



PETER LEWIS
ARCHITECT + ASSOCIATES

EXHIBIT A

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)

pwl

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

Accepted for City of Kerrville

Date

Agenda Item:

8E. Economic development grant agreement between Kerr Economic Development Corporation (KEDC) and the City of Kerrville, Texas Economic Improvement Corporation. (staff)

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

SUBJECT: Grant agreement between the Kerrville Economic Development Corporation and the City of Kerrville Economic Improvement Corporation

FOR AGENDA OF: January 22, 2013 **DATE SUBMITTED:** January 16, 2013

EXHIBITS: Grant agreement between the Kerrville Economic Development Corporation and the City of Kerrville Economic Improvement Corporation

AGENDA MAILED TO:

APPROVED FOR SUBMITTAL BY CITY MANAGER:

Expenditure Required: \$	Current Balance in Account: \$	Amount Budgeted: \$	Account Number:
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PAYMENT TO BE MADE TO:

REVIEWED BY THE DIRECTOR OF FINANCE:

SUMMARY STATEMENT

Attached is a final draft of the grant agreement between the KEDC and the EIC. This agreement was approved at the December EIC meeting and has been finalized through negotiations of both entities.

KEDC funding is provided from FY2013 through FY2015. The allocation for FY2013 is \$127,000, with the maximum amount for the remaining two fiscal years being \$175,000.

RECOMMENDED ACTION

City staff recommends the consideration and approval of this agreement as presented.

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, David Wampler.

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 ("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

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 November 19, 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, KEDC and EIC agree as follows:

ARTICLE I. **EIC'S OBLIGATIONS**

- A. Subject to terms found elsewhere in this Agreement, EIC hereby grants KEDC funding up to the following annual amounts during the term of this Agreement.
 - (1) EIC will pay KEDC \$127,000.00 for the initial period of this Agreement, said period to begin on January 25, 2013, and end on September 30, 2013. EIC will make a full payment in this amount to KEDC on or before January 25, 2013.
 - (2) KEDC, subject to Sections 1.C and 1.D., is eligible to receive an amount up to \$175,000.00 for each of the remaining two years of this Agreement, said time periods to run from October 1 through September 30 of the following year.
- B. EIC's payments to KEDC are solely intended for KEDC's costs directly related to: i) carrying out an industrial development program or objective as more specifically described in Section II., below; and ii) assisting with the development and operation of an economic development program or objective consistent with the purposes and duties specified by the Act. Such activities are collectively referred to herein as “Economic Development.”
- C. Payments to be made by EIC to KEDC for the second and third year of this Agreement are subject to the following:
 - (1) EIC's appropriation of funds for such payments in the budget year for which they are paid. Any payment made by EIC to KEDC must be made solely from the annual budgeting and appropriations of EIC. In the event that EIC does not appropriate funds in any fiscal year for payments under this Agreement, EIC will not be liable to KEDC for any such or future payments and KEDC will have the right to terminate this Agreement; and
 - (2) EIC's annual review, consideration, and approval of KEDC's fulfillment of its obligations, as specified within ARTICLE II.
- D. Where EIC determines that a yearly payment should be made to KEDC, EIC shall make said yearly payment in full on or before October 1 of that year.

- E. In no event shall the total amount of the Grant from EIC to KEDC exceed Four Hundred Seventy-Seven Thousand and No/100 Dollars (\$477,000.00).
- F. 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", "objectives", and "target markets" 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, and which is attached as **Exhibit B**. 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 C**. 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 III, 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 IV, 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 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 VII, 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
701 Main Street
Kerrville, Texas 78028
Facsimile: (830) 792-3850

With a copy to:

City Manager
City of Kerrville
701 Main Street
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 VII.
- G. Term. The term of this Agreement (the "Term") shall commence on November 1, 2012 (the "Effective Date"), and shall terminate on the earlier of: (i) September 30, 2015; (ii) when terminated by mutual agreement of the parties; (iii) when terminated pursuant to Article VII; (iv) at KEDC's sole and absolute discretion but only upon and subject to KEDC's return of all Grant funding to EIC that it has received under this Agreement; or, (v) 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**

David Wampler, President

**KERRVILLE ECONOMIC
DEVELOPMENT CORPORATION**

By: _____
Don Barnett, President

ATTEST:

Rex Boyland
Rex Boyland, Secretary to the Corporation

APPROVED AS TO FORM:

Michael C. Hayes
Michael C. Hayes, City Attorney

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.

Performance Measures

KEDC will take serious steps toward creating and implementing a comprehensive system of measure identification, collection, and tabulation. Although measures are well constructed and informative, the absence of clearly stated organizational objectives hinders any attempt to fully evaluate the appropriateness of those measures.

Therefore, a structure for a measurement system structure is required on the following principles:

- KEDC will have clearly defined objectives to give internal direction and accommodate internal and external reporting;
- Each of KEDC's programs will be directly responsible for contributing to the achievement of at least one of KEDC's objectives;
- Economic Development programs will be coordinated and seek to achieve common objectives;
- Positive economic impacts on the citizens of Kerrville are the ultimate outcomes of KEDC's efforts.

KEDC will have a structure that contains the following objectives and supporting recommendations:

Objective #1: Establish a clear vision of KEDC's objectives and update them annually

- Establish specific measurable objectives for KEDC's accomplishment.
- Create performance measures based on the newly established objectives. KEDC should put its progress into the context of the competition by comparing Kerrville Areas results to other selected cities when possible.

Objective #2: Link program-level measures and organizational measures more closely

- Establish a clear connection between the organizational objectives and the role each program plays in meeting them by developing program objectives that support the KEDC objectives in a hierarchical fashion.
- To the extent possible, gear measures for individual programs to the objectives.

Objective #3: Marry community development to economic development by basing the system on geographic areas

- To the extent allowed by individual funding sources, focus the objectives of both community and economic development programs, when necessary, on assisting and promoting development in Kerr County.
- Introduce Geographic Information System (GIS) technology into the Organization's measurement system.

Objective #4: Improve public reporting of objectives and rates of success

- Establish an internal reporting system.
- Submit one report semi-annually that includes a summary of each of KEDC's objectives and measured results (both successes and failures).
- Integrate measures into formal budget documents.

Objective #5: Integrate performance measurement into the management culture of KEDC.

- Make performance measures part of the resource allocation decision-making process.
- Focus attention on the role of program management in creating results.

In addition to analysis of the organizational measurement system, program results should collectively add-up to create KEDC outcomes that are required to achieve KEDC's overall mission.

- Programs often do not clearly define program objectives, especially within the context of the Organization's overall objectives.
- A number of programs pursue such broad goals that it is difficult to define success and probably impossible to achieve those goals within the context of the program.
- Many programs share similar or complementary goals, suggesting that these efforts are duplicative and do not make the most efficient use of available resources.
- Data collected can be utilized to measure progress once objectives are established. However, additional measures may be needed to measure new objectives in selected programs.
- Program objectives and measures should directly support the organization's priorities. Recommendations made for the organizational system should

translate into reorganization, and in some cases, a rethinking of program objectives.

- Surveys can provide most of the prospective data needed to measure many of the economic development programs; however, specific programs will require additional data essential to the management of their program. Those questions should be added to a survey or an additional survey conducted for longer-term projects.
- Many programs rely on local service providers but do not monitor or encourage them to work towards Organizational objectives. Additional steps may need to be taken to oversee the efficiency and the effectiveness of those providers.
- Program objectives should eventually include quantification of targets. Considerable value and accountability is achieved by semi-annually stating not only the object of expected accomplishment, but the quantity and timeframe as well.

Draft set of indicators

Employment

Employment

- Proportion of people of working age in employment

Unemployment

- Proportion of the working population who are unemployed
- Proportion of unemployed people claiming benefit who have been out of work for more than one year
- Percentage of population that is functionally unemployable

Local Jobs

- Total number of local jobs by sector
- Proportion of these that are full time
- Annual change in number of local jobs

Earnings and Skills

Earnings

- Average annual earnings for full-time employees
 - full-time males; and
 - full-time females

Workforce Skills

- Proportion of adults with (i) literacy and (ii) numeracy skills at or above level 1
- Proportion of population of working age qualified to level 2 or equivalent
- Proportion of population of working age qualified to level 3 or equivalent

Economic Vitality

Economic Activity

- GDP per head of local population
- Trend growth in GDP per head of local population (compared to trend growth in regional GDP per head)
- Gross value added (GVA) per hour in the locality

Business Growth

- Total number of VAT registered businesses in the area per 1,000 population
- Percentage change in number of VAT registered business in the area over the year

Housing Prices and

Affordability

- Average property price
- Average property price/average earnings

Business confidence

- Previously developed land that is unused or may be available for redevelopment as a % of the Kerrville and Kerr County land area.
- Satisfaction with the local area as a business location (Chamber of Commerce survey)

Demography and Deprivation

Population

- Total number of people living in the Kerrville and Kerr County area categorized by gender, age bands and ethnicity
- Population density
- Percentage change in total population by age bands

Household Poverty

- Percentage of children under 16 living in low-income households
- Percentage of population of working age who are claiming key benefits

Deprivation

- Proportion of the population in the Kerrville area who live in low income area that rank within:
 - the most deprived 10% in Texas
 - the most deprived 20% in Texas

Downtown Areas and Tourism

Downtown Area

- Pedestrian footfall in the downtown area (revitalization - usage survey)
- User satisfaction with downtown area (survey)

Downtown Area Revitalization - Activity

- Number of ground floor units not being used as a proportion of the total number of ground floor businesses
- Number of charity shops as a percentage of the total number of ground floor businesses
- Prime retail rent per square foot
- Shopping center yield

Tourism

- Day visitors per annum
- Bed nights per annum
- Average spend per visitor

Workforce Development and Employability

Workforce Development

- Proportion of employees and self-employed that have received job-related training in the last 13 weeks

Employability

- Unemployed people in employment and/or education after registering on New Deal and other vocational and basic skills training and employment programs in the last:
 - six months, and
 - twelve months

Investment

Business Investment

- Total number of 'inward investment' enquiries dealt with per annum
- Number and value of re-locations and re-investments annually as a result of 'inward investment'
- Number of jobs created and safeguarded from firms moving to re-investing or re-locating within the area following 'inward investment' enquiries
- Cost per job created and safeguarded through 'inward investment'

Land and premises Development

- Value of investment in land and premises brought forward for development in the area
- Brownfield land reclaimed as a percentage of all land made available for industrial, commercial and leisure purposes
- Net cost per hectare of land brought forward for development

Business and Social Enterprise Support

Business Support

- Number of new business start-ups supported in the local area
- Proportion of startups which are located in localities identified in the 20% most deprived in Texas
- Average cost of local authority business support per new business start up supported.
- User satisfaction with business start-up support
- Number of jobs created and safeguarded in units and managed business units and managed workspace for workspace economic development purposes
- Survival rates of businesses in managed workspace (i.e. after two years)
- Cost (i) per job supported, (ii) per m² of floor space (i.e. subsidy provided)
- Number of business support enquiries for other advice and information received per annum
- Cost per business support enquiry dealt with

- Number of jobs created or safeguarded by each type of business support
- Cost per job for each type of business support

Community Enterprise

- Jobs created by support to community and the social economy enterprise
- Income generated by community enterprise
- Cost per job through community enterprise support

EXHIBIT C

KEDC Budget FY 12/13

	FY 11/12	FY 12/13	Delta
Expenses To Support Business Attraction, Retention and Expansion			
Business Expenses			
Business Recruitment	15,000.00	15,000.00	0.00%
Econ Impact Reports	2,250.00	-	New Line Item
Retention & Expansion	2,000.00	-	New Line Item
Lobbying/DC/Austin	6,000.00	3,000.00	-50.00%
Travel & Meetings			
Conferences, Meetings			
ICSC Conference	4,500.00	-	New Line Item
BIO Conference	4,450.00	-	-100.00%
Texas One Business Recruitment Missions	-	12,000.00	-100.00%
Texas EDC Meetings	-	1,500.00	New Line Item
Meals & Entertainment	3,000.00	5,000.00	66.67%
Travel	2,000.00	5,000.00	150.00%
Research			
Marketing			
Design (Brochures, Publications)	10,000.00	15,000.00	50.00%
Public Relations	-	2,500.00	New Line Item
Phase II Website	10,250.00	-	-100.00%
Recruitment Booth	5,260.00	-	-100.00%
Social Media	6,250.00	-	-100.00%
Texas Real Estate Ad	5,787.00	-	-100.00%
Site Selection Magazine	12,250.00	-	-100.00%
San Antonio Business Journal	7,060.00	-	-100.00%
Website	3,000.00	1,800.00	-40.00%
Total Business Expenses	<u>94,807.00</u>	<u>78,050.00</u>	<u>-17.67%</u>
Contract Services			
Accounting Fees	3,000.00	3,000.00	0.00%
Legal Fees	2,500.00	2,000.00	-20.00%
Total Contract Services	<u>6,500.00</u>	<u>5,000.00</u>	<u>-9.09%</u>
Operations			
Contingencies	5,000.00	10,000.00	100.00%
Dues & Subscriptions	2,500.00	2,497.00	-0.12%
IT Support Services	1,000.00	2,000.00	100.00%
New Software/Hardware	1,500.00	2,000.00	33.33%
Office Lease	7,200.00	9,600.00	33.33%
Building Signage	-	220.00	New Line Item
Postage	2,500.00	500.00	-80.00%
Printing	2,500.00	500.00	-80.00%
Supplies	1,500.00	1,500.00	0.00%
Telephone, Internet	2,500.00	2,500.00	0.00%
Training	1,000.00	1,200.00	20.00%
Total Operations	<u>27,200.00</u>	<u>32,517.00</u>	<u>19.55%</u>
Other Types of Expenses			
Insurance - Liability, D and O	<u>2,000.00</u>	<u>2,000.00</u>	<u>0.00%</u>
Total Other Types of Expenses	<u>2,000.00</u>	<u>2,000.00</u>	<u>0.00%</u>
Payroll Expenses			
Health Insurance	6,000.00	7,656.00	27.60%
Payroll Taxes	12,000.00	12,000.00	0.00%
Retirement	4,500.00	3,274.80	-27.23%
Salaries	126,500.00	109,160.00	-13.71%
Bonus board descretion	10,120.00	14,332.80	41.63%
Vehicle Allowance - Director	6,000.00	4,800.00	-20.00%
Workers Compensation	500.00	500.00	0.00%
Payroll Expenses - Other	-	-	-
Total Payroll Expenses	<u>166,620.00</u>	<u>151,723.60</u>	<u>-8.39%</u>
Total Expenses	<u>295,127.00</u>	<u>289,290.60</u>	<u>-8.75%</u>
Retain/Reserve	2010 85,000.00		
	2011 40,000.00		
Support by Shareholders			
Support			
City of Kerrville	20,000.00	14,500.00	-27.50%
EIC	175,000.00	127,000.00	-27.43%
Kerr County	20,000.00	14,500.00	-27.50%
KPUB	20,000.00	14,500.00	-27.50%
Total Support	<u>235,000.00</u>	<u>170,500.00</u>	<u>-27.45%</u>

Agenda Item:

8F. Interview team for board appointment process to include council liaison member. (Councilmember Conklin)

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

SUBJECT: Interview team for board appointment process to include council liaison member.

FOR AGENDA OF: January 22, 2013 **DATE SUBMITTED:** January 16, 2013

SUBMITTED BY: Carson Conklin, **CLEARANCES:**
City Councilmember, Place 1

EXHIBITS:

AGENDA MAILED TO:

APPROVED FOR SUBMITTAL BY CITY MANAGER: *JP*

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

PAYMENT TO BE MADE TO:

REVIEWED BY THE DIRECTOR OF FINANCE:

SUMMARY STATEMENT

The current interview team process for the city board and commission appointments does not include the councilmember liaison assigned to the respective board or commission.

RECOMMENDED ACTION

Assign the councilmember liaison to the interview team for their respective board / commission.

Agenda Item:

9A. Report on downtown parking strategy. (staff)

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

SUBJECT: DOWNTOWN PARKING COMMITTEE- STRATEGY REPORT

FOR AGENDA OF: January 22, 2013 **DATE SUBMITTED:** January 9, 2013

SUBMITTED BY: Misty Kothe **CLEARANCES:** Todd Parton
Main Street Manager City Manager

EXHIBITS: Downtown Parking Committee Report

AGENDA MAILED TO:

APPROVED FOR SUBMITTAL BY CITY MANAGER:

Expenditure Required: \$	Current Balance in Account: \$	Amount Budgeted: \$	Account Number:
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PAYMENT TO BE MADE TO:

APPROVED FOR SUBMITTAL BY DIRECTOR OF ADMINISTRATIVE SERVICES:

SUMMARY STATEMENT

A committee comprised of members of the Kerrville Main Street Advisory Board, Kerrville Historic Downtown Alliance, and the Main Street Manager was tasked to investigate the parking in downtown Kerrville. The group was asked to research parking problems, identify opportunities, and then develop a report for the short-term while considering the long-term issues of Downtown Parking.

The committee spoke to the merchants, visited with citizens and customers, researched available parking, and took some initial proactive measures to correct any small issues. Their findings lend to a perceived problem, many times exacerbated by employees at the businesses. To combat this, personal visits were conducted, an official letter from the City Manager is planned, and will be combined with education and marketing efforts to continue indefinitely.

As for long-term, the group felt a database of existing buildings, their business(es) and empty spaces, coupled with a count of parking spaces and possible required spaces for any new ventures should be completed in the future and kept current. This would help the education and marketing efforts stay ahead of any possible issues. In addition, the committee is prepared to discuss future parking needs (next 1-3 years).

RECOMMENDED ACTION

Accept report and provide direction to staff to work with Main Street to implement recommendations in plan.



Downtown Parking Committee Report

January 22, 2013

A special committee was formed to investigate and present recommendations for current and future downtown parking challenges. This committee was made up of members of the Kerrville Main Street Advisory Board (Scott Rain and Aaron Yates), the Kerrville Historic Downtown Business Alliance (Keri Wilt, Traci Carlson and Dr. William Rector), and City of Kerrville staff (Misty Kothe).

Our geographical area of concern is a four and one-half block area including the parking garage; Peterson Plaza and surrounding block; Kerr County Courthouse and surrounding block; the two blocks bounded by Jefferson Street, Earl Garrett, Water Street, and Washington Street; and the immediately adjacent businesses and parking areas.

In order to determine the issues currently and potential issues, the committee spoke with downtown business owners, customers, city staff, board members of KMSAB and HDBA. Additionally, members of the committee did some observation downtown as well as research such as parking counts. The following were determined as the short- and long-term issues:

Short-term Issues:

1. **Perceived Parking Shortages:** Business owners and customers feel that there is a shortage of parking spaces available in the historic downtown sector.
2. **Employee Parking:** A concern that shop owners and their employees choose to park in public, on-street parking spots, leaving fewer slots available for consumers. Many business owners believe that this behavior contributes to the parking shortage.
3. **Lack of Enforcement of Parking Regulations:** A concern that the existing parking time limits and regulations are not being enforced, exacerbating the problem of the parking shortage because drivers unfairly and unlawfully occupy these spaces for long periods of time, thus reducing the number of spaces available.
4. **Parking Citation Fines:** Assuming that enforcement were to begin, a concern that the current fine of \$5.00 is too low to deter potential violators from parking illegally. Also, a concern that the proposed increase to \$50.00 is too high and may be a deterrent to keep shoppers, diners, and consumers away from downtown, thus adversely affecting downtown commerce.
5. **Parking Hours:** A concern that the current (unenforced) time limit of two hours is too brief to allow customers to shop, dine, and seek recreation in the downtown business district.
6. **Awareness:** A belief that the general public, visitors, business owners, and employees serving downtown businesses are unaware of the various parking options available in addition to the on-street parking. This lack of awareness of other parking options may cause customers to avoid downtown shops, and may cause employees to park in the on-street spaces.

Long-term Issues:

1. **Ensuring Future Access:** The committee feels that we must not only address the current issues listed above, but we must also continue to provide for adequate parking as the downtown district develops and reaches full occupancy. There are many vacancies in the area that could become occupied in the future, and we wish to develop strategic plans to ensure future parking availability for that increased traffic and usage.
2. **Potential Changing Use:** Some downtown parking areas are “quasi-public,” meaning that they are being used by the general public at this time, but the property owners could disallow public parking at some point in the future. Specifically, areas such as the Peterson Plaza parking lot and the former Bank of America parking lot. The committee believes that strategies should be in place to address the challenges that may arise should the public’s ability to access those lots change.
3. **Education and Awareness:** The public needs to be continuously educated about the various parking options available to them now and in the future. Clear and visible signage, maps, brochures, and other marketing material should be made available to visitors and business owners as parking opportunities change so that customers and employees are aware of the laws and regulations, changing public access, and other issues affecting the parking situation downtown.

Recommendations:

1. **Create an education program for owners (both building and business) and employees.** With employees in downtown being easily identified offenders, the committee has already done preliminary action on this recommendation by creating several programs with personal contact. The contact, with a leave behind for owners and employees, stressed the importance of on-street parking, as well as encouraged use of the parking garage for employee parking (and even customers in some case). With one visit in many cases, we have begun to see changes in parking habits of employees in several businesses. An official letter from the City Manager inviting all to utilize the parking garage is also a planned education piece.
2. **Create an education program for local citizens.** Most local citizens are still unsure of parking in the parking garage, whether because of poor lighting, possible cost, or lack of knowledge of availability. Through hosting events in downtown, all with marketing pieces including reminders to park in the garage and use the bridge across, citizens continue to become more aware of the parking opportunity at the garage and hopefully utilize it more often.
3. **Increase parking citation fines.** Raise the parking fine to \$25.00 for violations.
4. **Increase parking time limit.** Assuming increased enforcement for the fines, increase the time limit in downtown from 2 hours to 3 hours. Average dining time in downtown is one and one-half hours, which only leaves 45 minutes for shopping. These limits are only applicable Monday through Friday, 8:00 a.m. – 5:00 p.m. (as they are currently).
5. **Create a marketing program.** A comprehensive marketing plan should be created that would include advertising in various guides, magazines, newspapers, and websites. Funds would have to be allocated to create, manage, and purchase those marketing opportunities. Other marketing and education pieces need to be the inclusion of parking (i.e. parking garage) in wayfinding signs that are currently being designed and new signs in downtown which designate the type of parking (free, customer, time restricted, employee, etc.).
6. **Create an exclusive employee parking lot in downtown.** With the possibility of a large number of parking spaces that could become private/business allocated parking, in addition to potential new buildings and/or business in downtown, more employee parking is needed in order to keep

as many customer parking opportunities as possible. Several sites exist that could house a parking lot or even a small (two-story) parking garage that would be exclusively for downtown employees and business owners.

7. **Remain proactive with progress and advancement coming to downtown.** With the addition of the River Trail, new businesses, and possible new/renovated use buildings, we all must be proactive to identify increased activity and demand before new, larger problems arise. By keeping tabs through Main Street, Historic Downtown Business Alliance, and the new Downtown Vision Team, we hope to ward off any major parking issues in the future in Downtown Kerrville.

Agenda Item:

9B. Report of Kerrville Economic Development Corporation activities. (staff)

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

SUBJECT: Update on Kerrville Economic Development Corporation (KEDC) activities.

FOR AGENDA OF: January 22, 2013 **DATE SUBMITTED:** January 11, 2013

EXHIBITS: None

AGENDA MAILED TO:

APPROVED FOR SUBMITTAL BY CITY MANAGER:

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

PAYMENT TO BE MADE TO:

REVIEWED BY THE FINANCE DIRECTOR:

SUMMARY STATEMENT

Councilmember Conklin is the City Council representative to the Kerrville Economic Development Corporation (KEDC) Board of Directors. One of the functions of each board member is to provide an update on KEDC activities, programs and initiatives. In accordance with his board duties and responsibilities, Councilmember Conklin will brief the City Council regarding KEDC matters.

RECOMMENDED ACTION

This is a routine report and no action will be required.

Agenda Item:

9C. Budget/Economic Update. (staff)

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

SUBJECT: Kerrville Budget/Economic Update

FOR AGENDA OF: January 22, 2013 **DATE SUBMITTED:** January 9, 2013

SUBMITTED BY: Mike Erwin
Director of Finance

CLEARANCES: Todd Parton
City Manager

EXHIBITS: Economic Update

AGENDA MAILED TO:

APPROVED FOR SUBMITTAL BY CITY MANAGER: *JP*

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

RECOMMENDED ACTION

No action required information purposes only.

CITY OF KERRVILLE
ECONOMIC UPDATE AS OF JANUARY 15, 2013

	Current Month	Previous Month	1 Year Ago	Trend	Current Month
National					
Unemployment	7.80%	7.70%	8.50%	↔	December
Consumer Confidence	65.1	71.5	64.8	↓	December
1 year T-Bills	0.14%	0.13%	0.10%	↔	1/14/13
State					
Monthly Unemployment	5.80%	6.20%	7.20%	↓	November
Monthly Sales Tax	\$2,165.9m	\$2,339.2m	\$1,980.2m	↑	December
Local					
Monthly Unemployment (Kerr Co.)	4.90%	5.20%	5.80%	↓	November
Median Listing Price	\$162,900	\$163,000	\$197,000	↓	12/16/12
Monthly Sales Tax	\$433,770	\$409,616	\$408,121	↑	January
Monthly EIC Tax	\$216,885	\$204,782	\$204,051	↑	December
Monthly HOT	\$66,095	\$92,527	\$62,372	↑	November
	FY13 Budget	FY13 as of 12/31/2012	FY13 % Received	FY12 as of 12/31/2011	FY12 % Received
General Fund					
Tax Revenue	\$14,939,900	\$4,474,106	29.95%	\$5,230,753	36.07%
Property Tax	\$8,050,000	\$2,899,863	36.02%	\$3,678,593	46.56%
Sales Tax	\$4,885,000	\$1,283,021	26.26%	\$1,263,232	27.76%
Permits & Fees	\$324,975	\$89,250	27.46%	\$87,478	27.00%
Intergovernmental	\$1,191,000	\$325,075	27.29%	\$514,606	43.87%
Service Revenues	\$2,411,860	\$667,707	27.68%	\$573,958	22.32%
Grant Revenue	\$29,500	\$4,800	16.27%	\$12,559	47.39%
Fines & Forfeitures	\$506,618	\$103,761	20.48%	\$100,196	20.52%
Interest & Misc.	\$240,850	\$51,580	21.42%	\$43,545	11.44%
Transfers In	\$1,250,000	\$312,500	25.00%	\$312,500	24.65%
Total General Fund	\$20,894,703	\$6,028,780	28.85%	\$6,875,594	33.16%
Total General Fund Expenditures	\$20,594,703	\$4,803,259	23.32%	\$4,844,161	23.81%
Water/Sewer Fund					
Water Sales	\$4,500,000	\$1,295,931	28.80%	\$1,020,712	23.17%
Sewer Sales	\$3,800,000	\$878,222	23.11%	\$932,282	24.89%
Other Revenue	\$725,500	\$187,454	25.84%	\$198,199	26.96%
Total Water & Sewer Fund	\$9,025,500	\$2,361,607	26.17%	\$2,151,192	24.21%
Total W&S Fund Expenditures	\$8,851,239	\$1,926,001	21.76%	\$3,734,969	35.36%

Agenda Item:

9D. Beautification Committee Endorsement of Republic Services Good Stewards Project. (staff)

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

SUBJECT: Beautification Committee Endorsement of Republic Services Good Stewards Project

FOR AGENDA OF: January 22, 2013 **DATE SUBMITTED:** January 16, 2013

SUBMITTED BY: Jack Pratt, **CLEARANCES:**
Mayor

EXHIBITS: Republic Services Good Stewards Project List

AGENDA MAILED TO:

APPROVED FOR SUBMITTAL BY CITY MANAGER: *JP*

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

PAYMENT TO BE MADE TO:

REVIEWED BY THE DIRECTOR OF FINANCE:

SUMMARY STATEMENT

At its meeting of January 10, 2013, the Beautification Advisory Board approved the motion to endorse the Good Stewards Project list as presented by Republic Services.

Republic Services plans to coordinate and hold quarterly cleanups in 2013 for three mile stretches of Hwy 27 (May), Holdsworth Drive (August), and Hwy 173 / Bandera Hwy (December).

RECOMMENDED ACTION

This is for informational purposes only. No action required.



3315 Loop 534
Kerrville, Texas 78028
830-200-9078
Sjones4@publicservices.com
www.facebook.com/kerrgarb
www.twitter.com/kerrgarb

Kerrville Good Stewards Project

Project to be annual

Event

Every 4 months

- May 2013
Hwy 27
3 Mile Stretch
20 Volunteers

- August 2013
Holdsworth drive
3 Mile Stretch
20 Volunteers

- December 2013
Hwy 173 Bandera Hwy
3 Mile Stretch
20 Volunteers

Agenda Item:

10A. Appointment of a member of the Kerrville City Council to the Kerrville Citizen Police Academy Alumni Association Board of Directors. (staff)

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

SUBJECT: Appointment of a member to the Kerrville Citizen Police Academy Alumni Association Board of Directors

FOR AGENDA OF: January 22, 2013

DATE SUBMITTED: January 11, 2013

SUBMITTED BY: John Young
Chief of Police

CLEARANCES: Todd Parton
City Manager

EXHIBITS:

AGENDA MAILED TO:

APPROVED FOR SUBMITTAL BY CITY MANAGER: *JP*

Expenditure Required:	Current Balance in Account:	Amount Budgeted:	Account Number:
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PAYMENT TO BE MADE TO:

REVIEWED BY THE DIRECTOR OF FINANCE:

SUMMARY STATEMENT

The Kerrville Citizen Police Academy Alumni Association (KCPAAA) is a non-profit organization comprised of Kerrville Citizen Police Academy (KCPA) graduates. As citizen ambassadors to the Kerrville Police Department, they are committed to assisting the department with volunteer activities and special needs. The KCPAAA functions as a support group to the department and is a liaison to the community for the department.

On December 13, 2011, the City Council approved a resolution to add the KCPAAA to the City's Liability insurance coverage and the Board of Director's to the City's Errors & Omissions coverage provided by the Texas Municipal League (TML).

One of the requirements by TML to add a non-profit corporation to a municipality's coverage is to appoint an individual to the corporation's board of directors or have a member of the governing board serving on the corporation board with voting rights.

Board of Directors member Mr. Guy Bason recently submitted his resignation and is no longer able to serve in this capacity.

Mr. Bill Cafferty, Board President, has recommended the following individual who has graduated from the KCPA and who is willing to serve on the Board be appointed to a three (3) year term.

1. City Council member Justin MacDonald

RECOMMENDED ACTION

Staff recommends that City Council appoint Councilmember Justin MacDonald to the KCPAAA Board of Directors.

Agenda Item:

10B. Appointments to the Main Street advisory board. (staff)

**BUSINESS OF THE CITY COUNCIL
CITY OF KERRVILLE, TEXAS**

SUBJECT: Appointments to the Main Street Advisory Board

FOR AGENDA OF: January 22, 2013 **DATE SUBMITTED:** January 16, 2013

SUBMITTED BY: Brenda Craig **CLEARANCES:**
City Secretary

EXHIBITS: Board List

AGENDA MAILED TO:

APPROVED FOR SUBMITTAL BY CITY MANAGER: 

SUMMARY STATEMENT

Consider appointments to the following board:

Main Street Advisory Board: Five terms to expire on January 31, 2013: Shelby Braswell, Lee Fry, Rich Schneider, Scott Rain, and Aaron Yates.

RECOMMENDED ACTION

Consider appointments.

MAIN STREET ADVISORY BOARD

	<u>Telephone</u>	<u>Orig. Appt.</u>	<u>Re-Appt. Date</u>	<u>Exp. Date</u>
RAIN, SCOTT Chairman 106 Bowie	459-1156 (H) 257-8588	01-25-11		01-31-13
SCHNEIDER, RICH Vice Chairman 312 Valley Drive	370-4876 (H) 257-7373 (O)	01-25-11		01-31-13
BRASWELL, SHELBY 260 Thompson Dr. #3	896-4100 (O) 377-5509 (H)	03-13-12		01-31-13
CLANTON, TAMMI 3340 Loop 534	792-7456 (O) 459-5752 (H)	01-24-12		01-31-14
COBBS, STAN 521 Guadalupe St. #1202	895-8771 (O) 895-8771 (H)	01-24-12		01-31-14
FRY, LEE 120 Victoria Drive	367-7109 (H)	01-27-09	01-25-11	01-31-13
MARTIN, DAVID 1717 Foothills Dr.	895-1313 (O) 895-1857 (H)	05-08-12		01-31-14
WILSON, CAROLINE 220 Riverhill Club Ln. #13	512-787-7964 (H)	09-11-12		01-31-14
YATES, AARON 317 Sidney Baker, #400	830-214-7635 (O) 377-9058 (H)	03-13-12		01-31-13

COUNCIL LIAISON:

Gene Allen
2106 Vista Ridge Dr.
1221 JunctionHwy

CITY STAFF:

Misty Kothe
Main Street Manager
715 Water Street

Powers and Duties: To encourage participation in the Main Street Revitalization Program; to establish goals and priorities for the Main Street Program; to review design appropriateness for the purpose of participation in the main street low-interest loan program and incentive grant projects; and to advise and support the main street program manager.

Term of Office: Two years with a maximum of two full successive terms (Bylaws)

Quorum: Five members

Number of Members: Nine

Absences: Any member who miss three consecutive meetings may be replaced (Bylaws)

Meeting Time & Place: Third Thursday at 12:00 p.m., 701 Main Street

Established by: Resolution No. 1994-133

Revised: October 24, 2012

Agenda Item:

10C. Appointments to the planning and zoning commission. (staff)

**BUSINESS OF THE CITY COUNCIL
CITY OF KERRVILLE, TEXAS**

SUBJECT: Appointments to the Planning and Zoning Commission

FOR AGENDA OF: January 22, 2013 **DATE SUBMITTED:** January 16, 2013

SUBMITTED BY: Brenda G. Craig **CLEARANCES:**
City Secretary

EXHIBITS: Planning and Zoning Commission Board List

APPROVED FOR SUBMITTAL BY CITY MANAGER: 

SUMMARY STATEMENT

Consider appointments to the following board:

Planning and Zoning Commission: Three regular member terms, and one alternate member term due to expire January 1, 2013: James Kessler, Beck Gipson, John "Bart" Stevens and alternate Michael Sigerman.

RECOMMENDED ACTION

Consider appointments.

PLANNING AND ZONING COMMISSION

	<u>Telephone</u>	<u>Orig. Appt.</u>	<u>Re-Appt. Date</u>	<u>Exp. Date</u>
KESSLER, JAMES Chairperson 131 Homestead	895-7831 (H)	04-12-05	12-14-10	01-01-13
BUELL, HAROLD 1214 Jack Dr.	896-0114 (O) 895-2444 (H)	01-09-07	01-10-12	01-01-14
GIPSON, T. BECK 118 Bent Oak P.O. Box 271754	896-4106 (O) 739-2961 (C)	05-22-12		01-01-13
STEVENS, JOHN "BART" 822 Lamar Street	895-2021 (O) 512-350-0863 (H)	07-05-12		01-01-13
WATTERSON, DAVID 177 Phoenix Dr.	634-3300 (O) 377-6400 (C)	01-12-10	01-10-12	01-01-14

ALTERNATES:

McRAE, CHASTAN 705 Leland St.	377-3710 (C)	09-28-10	01-10-12	01-01-14
SIGERMAN, MICHAEL 154 Wharton Rd.	305-498-1602 (C) 895-7765 (H)	01-12-10	01-11-11	01-01-13

COUNCIL LIAISON:

JUSTICE LIAISON
Justin MacDonald 257-5323 (O)
2951 Fall Creek Road

CITY STAFF:

Jason Lutz
Senior Planner

Qualifications: At least four of the regular members shall be residents and eligible voters of the city; one regular member may reside in the city's extraterritorial jurisdiction (ETJ) and must be an eligible voter of Kerr County. At least one alternate member shall be a resident and eligible voter of the city; one alternate member may reside in the city's extraterritorial jurisdiction (ETJ) and must be an eligible voter of Kerr County.

Powers and Duties:

1. Shall formulate and recommend to the city council for adoption a Comprehensive Plan for the orderly growth and development of the city and its environs. On a yearly basis the commission shall review and if necessary recommend such changes in the plan as it finds will facilitate the movement of people and goods, and the health, recreation, safety and general welfare of the citizens of the city.
2. Shall formulate a zoning plan (ordinance) as may be deemed best to carry out the goals of the Comprehensive Plan; hold public hearings and make recommendations to the city council relating to the creation, amendment, and implementation of zoning regulations and districts as provided in state law.

3. Shall exercise all powers of a commission as to approval or disapproval of plans, plats, or replats as set out by state law and the city's subdivision regulations.
4. Shall initiate for consideration at public hearings, proposals for the original zoning of annexed areas or for the change of zoning district boundaries on an area wide basis.
5. Shall consider and take appropriate action, upon written request, variances as prescribed to the city's subdivision and sign regulations.
6. Shall from time to time recommend such changes to the subdivision regulations, sign regulations, and any other ordinance the city council assigns to their review that will facilitate the general health, safety and welfare of the citizens of the city.

Term of Office:	Two years. No regular member shall serve more than three consecutive full terms on the Commission without having at least one full year off the Commission between terms.
Quorum:	Three (may include an alternate member but only where substitution for and acting as a regular member)
Number of Members:	Five regular members and two alternates.
Meeting Time & Place:	First and third Thursdays, 4:30 p.m., City Hall
Absences:	Any member who is absent from twenty-five percent (25%) of the board's regular meetings during any twelve (12) month period, or who is absent from any three (3) consecutive regular meetings, shall be considered for removal by the city council. The staff member has the responsibility of reporting a member's non-attendance to the city council in writing, and the city secretary shall notify the board member in writing that their non-attendance has been reported to the city council. However, a member whose absences are directly related to a medical or family emergency may seek consideration from the board upon which they serve to qualify such absences as excused.
Established by:	Minutes of 12-18-44 Council meeting; amended by Ordinance Nos. 1979-37, 1987-24, and 2008-24 (which deleted from Code of Ordinances book Chapter 82 – Article II – Sections 82-31 through 82-36 and rolled into Zoning Code which is not codified)
Revised:	May 23, 2012