

AGENDA FOR REGULAR MEETING

KERRVILLE CITY COUNCIL

TUESDAY, OCTOBER 10, 2017, 6:00 P.M.

KERRVILLE CITY HALL COUNCIL CHAMBERS

701 MAIN STREET, KERRVILLE, TEXAS

KERRVILLE CITY COUNCIL AGENDA
REGULAR MEETING, TUESDAY, OCTOBER 10, 2017, 6:00 P.M.
CITY HALL COUNCIL CHAMBERS
701 MAIN STREET, KERRVILLE, TEXAS

CALL TO ORDER

INVOCATION OFFERED BY COUNCILMEMBER VINCENT VOELKEL

PLEDGE OF ALLEGIANCE TO THE FLAG

1. ANNOUNCEMENTS OF COMMUNITY INTEREST:

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

2. 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.

3. CONSENT AGENDA:

These items are considered routine and can be approved in one motion unless a Councilmember asks for separate consideration of an item. It is recommended that the 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. Purchase and remount of Type I ambulance from Buyboard Quote #292B-BuyBoard, awarded to Frazer Ambulance Company through their licensed dealer, Mac Haik Dodge Chrysler Jeep; in an amount not to exceed \$138,975. (staff)

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

I do hereby certify that this notice of meeting was posted on the bulletin board at the City Hall of the City of Kerrville, Texas, and said notice was posted on the following date and time: October 6, 2017 at 2:00 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

3B. Request for a letter of invitation to the US Special Operations Command to conduct Realistic Military Training within the City of Kerrville for joint military exercise, scheduled between March 1, 2018 – May 1, 2018. (staff)

3C. Resolution No. 41-2017 cancelling the regular council meetings scheduled for November 28 and December 26, 2017. (staff)

END OF CONSENT AGENDA

4. ORDINANCE, FIRST READING:

4A. Ordinance No. 2017-20, amending the budget for Fiscal Year 2017 to account for the transfer of funds between different funds as previously authorized by City Council, to account for the proceeds from the sale of the former City Hall property, and to make other amendments as provided herein. (staff)

5. PUBLIC HEARINGS:

5A. Annexation and into the incorporated limits, and applying a Zoning Classification of District 26-E, for an approximate 7.95 acre tract out of land adjacent to the incorporated limits which is out of the F. Rodriguez Survey No. 72, Abstract No. 280, Kerr County, Texas, located at 5263 Highway 27 (File No. 2017-51). (staff)

5B. Public Hearing and first reading of Ordinance No. 2017-19, a zoning change to amend Ordinance No. 2004-15, which created a “Planned Development District” for an approximate five hundred thirty-six acre tract of land out of the Walter Fosgate Survey Number 120, within the City of Kerrville, Kerr County, Texas; and generally located southeast of the intersection of Farm to Market Road 783 (Harper Highway) and Interstate 10; said amendment to adjust the authorized uses between two defined areas within said district, said areas located adjacent to and north of Holdsworth Drive. (staff)

6. CONSIDERATION AND POSSIBLE ACTION:

6A. Amendment to agreement 2016-95 with the Kerrville Convention and Visitors Bureau for use of HOT funds for promoting the arts advertising committee to add an additional arts group member. (staff)

6B. Non-exclusive license agreement with the Dietert Center for parking and trailhead for the river trail. (staff)

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

I do hereby certify that this notice of meeting was posted on the bulletin board at the City Hall of the City of Kerrville, Texas, and said notice was posted on the following date and time: October 6, 2017 at 2:00 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

7. CITY MANAGER'S REPORT

9. ITEMS FOR FUTURE AGENDAS

10. EXECUTIVE SESSION:

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/officers), 551.076 (deliberation regarding security devices), and 551.087 (deliberation regarding economic development negotiations) of Chapter 551 of the Texas Government Code.

10A. Performance Review of City Attorney.

11. ACTION ON ITEMS DISCUSSED IN EXECUTIVE SESSION, IF ANY

ADJOURNMENT.

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

I do hereby certify that this notice of meeting was posted on the bulletin board at the City Hall of the City of Kerrville, Texas, and said notice was posted on the following date and time: October 6, 2017 at 2:00 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

Agenda Item:

3A. Purchase and remount of Type I ambulance from Buyboard Quote #292B-BuyBoard, awarded to Frazer Ambulance Company through their licensed dealer, Mac Haik Dodge Chrysler Jeep; in an amount not to exceed \$138,975. (staff)

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

SUBJECT: Purchase and remount of Type I ambulance from Buyboard Quote #292B-BuyBoard, awarded to Frazer Ambulance Company through their licensed dealer, Mac Haik Dodge Chrysler Jeep; in an amount not to exceed \$138,975

FOR AGENDA OF: October 10, 2017 **DATE SUBMITTED:** September 29, 2017

SUBMITTED BY: Dannie Smith,
Fire Chief

CLEARANCES: Mark McDaniel,
City Manager

EXHIBITS: Frazer-Buyboard Quote #292B-BuyBoard

AGENDA MAILED TO:

APPROVED FOR SUBMITTAL BY CITY MANAGER: *Edith*

Expenditure	Current Balance	Amount	Account
Required: \$138,975	in Account: \$1,089,000	Budgeted: \$138,975	Number: 18-1800-5200

PAYMENT TO BE MADE TO: MAC HAIK DODGE CHRYSLER JEEP
REVIEWED BY THE FINANCE DIRECTOR:

SUMMARY STATEMENT

The Fire Chief is requesting authorization from the City Council to award a contract for the purchase of a 2017 Dodge Ram 4500 6.7 diesel chassis and module remount of a Type 1 Ambulance from BuyBoard Quote #292B-BuyBoard. This contract was awarded to Frazer Ambulance Company through their licensed dealer, Mac Haik Dodge Chrysler Jeep. By contracting through BuyBoard, we will be able to purchase an ambulance using their bid price. Such agreements are allowable under State Law. The purchase of this ambulance is scheduled in the 7-year vehicle replacement plan.

One (1) 2017 Dodge 4500 Chassis and refurbished 14' Module-----\$138,975

The required funds were approved by the City Council on September 26, 2017 and are available in the FY2017/2018 Budget.

RECOMMENDED ACTION

Authorize the City Manager to purchase a 2017 Dodge Ram 4500 6.7 diesel chassis and module remount of a Type 1 Ambulance from Mac Haik Dodge Chrysler Jeep at a price not to exceed \$138,975.



September 29, 2017

Eric Maloney
Division Chief - EMS Coordinator
Kerrville Fire Department
Email: eric.maloney@kerrvilletx.gov

Quote #292B-BuyBoard

Chief Maloney,

Below is itemized pricing for BuyBoard contract Ambulance #492-15:

Item 1 - Remount of Type I 14' Frazer Conversion on Dodge Ram 4500 Diesel DRW Cab/Chassis	\$ 68,000.00
<u>Published Options</u>	
1 . Heat shielding	\$ 1,500.00
2 . Liquid Spring suspension system	\$ 10,000.00
3 . (x48) Exterior compartment and/or structure modification (each)	\$ 24,000.00
4 . (x16) Interior compartment/cabinet modification (each)	\$ 8,000.00
5 . New Lambda power supply	\$ 1,500.00
6 . Onan 5.5kW generator as spare or retrofit	\$ 5,500.00
7 . Striping and lettering - \$2600	\$ 2,600.00
8 . Conspicuity on the entire rear of the module including the doors in a chevron pattern	\$ 1,500.00
9 . Black Ranch Hand grille guard/full replacement bumper with wrap-arounds for Dodge Ram 3500/4500	\$ 1,300.00
10 . Air conditioner/heat pump as spare or retrofit	\$ 5,500.00
11 . Complete new top floor and sub floor in patient module	\$ 3,100.00
12 . Retrofit powder coated laydown oxygen box	\$ 450.00
13 . New treadbrite at front corners, wheel wells and rear	\$ 900.00
14 . (x3) Replace left, right or center rear bumper section (each)	\$ 900.00
15 . Chrome nerf bars	\$ 450.00
16 . Buell dual 10" & 12" air horns	\$ 800.00
17 . Air horn compressor	\$ 800.00
18 . Engel 15 qt refrigerator	\$ 900.00
19 . Shore power ignition kill switch	\$ 225.00
20 . Replace rear entry door grabbers	\$ 50.00
21 . Armrests on the console	\$ 200.00
	\$ 70,175.00
Base Price	\$ 68,000.00
Published Options	\$ 70,175.00
	Subtotal \$ 138,175.00
Buyboard fee	\$ 800.00
	Total \$ 138,975.00

Terms and Conditions

- 1 . All pricing is F.O.B. Houston.
- 2 . Per TMVCC we are quoting this through our licensed franchise dealer, Mac Haik Dodge Chrysler Jeep.

3 . Please make your purchase order out to Mac Haik Dodge Chrysler Jeep (11000 North Freeway, Houston, TX 77037). Please email a copy of your purchase order and this quote to Adam Fischer at sales@frazerbilt.com.

Thank you for the opportunity to quote this job. If you have any questions please call me at 888-372-9371.

Best Regards,

Kasey Gillum

Kasey Gillum
Sales Team Leader
Frazer, Ltd.

Agenda Item:

3B. Request for a letter of invitation to the US Special Operations Command to conduct Realistic Military Training within the City of Kerrville for joint military exercise, scheduled between March 1, 2018 – May 1, 2018. (staff)

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

SUBJECT: Consider a request and issue a letter of invitation to the US Special Operations Command to conduct Realistic Military Training (RMT) within the City of Kerrville for joint military exercise, scheduled between March 1, 2018 – May 1, 2018.

FOR AGENDA OF: October 10, 2017 **DATE SUBMITTED:** September 29, 2017

SUBMITTED BY: Chief David J. Knight *DK* **CLEARANCES:** Mark McDaniel, City Manager

EXHIBITS:

AGENDA MAILED TO:

APPROVED FOR SUBMITTAL BY CITY MANAGER: *EAG*

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

PAYMENT TO BE MADE TO:

REVIEWED BY THE FINANCE DIRECTOR:

SUMMARY STATEMENT

The United States Army Special Operations Command is requesting to conduct military training within the jurisdiction of the City of Kerrville. The training will take place from March 1st to May 1st, 2018. The Chief of Police has received a briefing on the training by the Army. This training has not been performed within the city limits of Kerrville but has been conducted in numerous other cities and counties within the state over the past several years. US Army Special Operations Command was provided a letter of support executed by the County Judge and the Kerr County Commissioners for exercises to be conducted in Kerr County in 2018.

RECOMMENDED ACTION

The City Council of the City of Kerrville fully supports the US military training exercise to take place within the city limits during the period of March 1 through May 1, 2018 and that the City Mayor is hereby authorized to extend a letter of invitation to the United States Special Operations Command expressing support for this training exercise that will enhance the techniques and tactics necessary to defend the United States interests around the globe and that the Chief of Police is directed to support and coordinate this exercise through the Kerrville Police Department.

Agenda Item:

3C. Resolution No. 41-2017 cancelling the regular council meetings scheduled for November 28 and December 26, 2017. (staff)

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

SUBJECT: Resolution No.41-2017 canceling the November 28, and December 26, 2017 regular city council meetings

FOR AGENDA OF: October 10, 2017 **DATE SUBMITTED:** September 29, 2017

SUBMITTED BY: Brenda Craig
City Secretary

CLEARANCES: Mark McDaniel
City Manager

EXHIBITS: Resolution No. 41-2017

AGENDA MAILED TO:

APPROVED FOR SUBMITTAL BY CITY MANAGER: *E. Craig*

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

PAYMENT TO BE MADE TO:

REVIEWED BY THE FINANCE DIRECTOR:

SUMMARY STATEMENT

The proposed resolution cancels the November 28 and December 26, 2017 regular city council meetings due to the holidays.

RECOMMENDED ACTION

Staff recommends approval of Resolution No. 41-2017 canceling the November 28 and December 26, 2017 regular city council meetings.

**CITY OF KERRVILLE, TEXAS
RESOLUTION NO. 41-2017**

**A RESOLUTION CANCELING THE REGULAR MEETINGS
OF THE CITY COUNCIL SCHEDULED FOR NOVEMBER 28,
2017 AND DECEMBER 26, 2017**

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; 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 meetings of the City Council scheduled for November 28, 2017 (Tuesday after Thanksgiving Holiday), and December 26, 2017 (Tuesday after Christmas Holiday) are hereby canceled.

PASSED AND APPROVED ON this the _____ day of _____ A.D., 2017.

Bonnie White, Mayor

ATTEST:

Brenda G. Craig, City Secretary

APPROVED AS TO FORM:



Michael C. Hayes, City Attorney

Agenda Item:

4A. Ordinance No. 2017-20, amending the budget for Fiscal Year 2017 to account for the transfer of funds between different funds as previously authorized by City Council, to account for the proceeds from the sale of the former City Hall property, and to make other amendments as provided herein. (staff)

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

SUBJECT: First reading of an ordinance amending the FY2017 Budget

FOR AGENDA OF: October 10, 2017

DATE SUBMITTED: September 29, 2017

SUBMITTED BY: Sandra Yarbrough *SY* **CLEARANCES:** Mark McDaniel
Director of Finance City Manager

EXHIBITS: Ordinance Amending FY2017 Budget
Attachment A – detailing changes

AGENDA MAILED TO:

APPROVED FOR SUBMITTAL BY CITY MANAGER: *E.G.H.*

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

PAYMENT TO BE MADE TO:

REVIEWED BY THE FINANCE DEPARTMENT:

SUMMARY STATEMENT

The attached ordinance provides for the year end amendments to the FY2017 budget. There are ten (10) transactions included in this amendment as shown on Attachment A.

1. Included in the motion to adopt the FY2018 budget was the proposal to amend the FY2017 budget by transferring \$68,300 from the General Fund to the General Asset Replacement Fund for the purchase of equipment as proposed in the FY2018 Sports Complex Department budget.
2. Included in the motion to adopt the FY2018 budget was the proposal to amend the FY2017 budget by transferring \$75,000 from the General Fund to the General CIP Fund for the comprehensive plan project in the FY2018 Budget.
3. Amend the General CIP Fund to record proceeds (\$641,640.05) from the sale of city property at 800 Junction Hwy. to be allocated by the City Council to a project or projects at a future date.
4. Amend the Main Street Fund to record the purchase and installation (\$16,614.32) of "Lupe the Bass" through a multi-year fundraising effort through Main Street activities.
5. Amend the Insurance Reserve Fund to record reimbursement (\$206,797.48) and expenses (\$151,954) associated with damages to roofs and equipment from the hail storm in 2016. More repairs are pending.
6. Amend the General Asset Replacement Fund to record proceeds from asset disposal proceeds (\$34,472.02) and purchase of vehicles (\$63,668.24) replaced due to accidents.

7. Amend the Water and Sewer Asset Replacement Fund to record proceeds from asset disposal proceeds (\$32,898.04) and purchase of vehicles (\$67,502.87) replaced due to accidents.
8. Amend the Police Special Revenue Fund to record various seizures awarded by court judgements as revenue that were initiated by Kerrville Police Department, and record expenses as allowed by Chapter 59 penal code. Could not determine related expense until seizures were awarded, which provided funding.
9. Amend the Grant Fund to record JAG Grant expense as stated in grant documents. Reimbursement of expense will be received in FY2018 and recorded as revenue.
10. Amendment to Police-Special Programs Fund to record various seizures awarded by court judgements as revenue that was initiated by Kerrville Police Department and record expenses as allowed by Chapter 59 penal code but cannot determine related expense until seizures are awarded which provided funding. This fund will be closed as recommended by our independent audit firm.

RECOMMENDED ACTION

It is recommended that the City Council approve the first reading of the ordinance amending the FY2017 budget and authorize city staff to make all necessary entries and adjustments to reflect the these changes.

**CITY OF KERRVILLE, TEXAS
ORDINANCE NO. 2017-20**

**AN ORDINANCE AMENDING THE BUDGET FOR FISCAL YEAR 2017 TO
ACCOUNT FOR THE TRANSFER OF FUNDS BETWEEN DIFFERENT
FUNDS AS PREVIOUSLY AUTHORIZED BY CITY COUNCIL, TO
ACCOUNT FOR THE PROCEEDS FROM THE SALE OF THE FORMER
CITY HALL PROPERTY, AND TO MAKE OTHER AMENDMENTS AS
PROVIDED HEREIN**

WHEREAS, Ordinance No. 2016-15 dated September 27, 2016, adopted the Fiscal Year 2017 Budget for the City of Kerrville, Texas; and

WHEREAS, the City Council finds that amending the City's Fiscal Year 2017 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 2017 is amended as set forth in **Attachment A**.

**PASSED AND APPROVED ON FIRST READING, this the _____ day of
_____, A.D., 2017.**

**PASSED AND APPROVED ON SECOND AND FINAL READING, this the _____
day of _____, A.D., 2017.**

Bonnie White, Mayor

APPROVED AS TO FORM:



Michael C. Hayes, City Attorney

ATTEST:

Brenda G. Craig, City Secretary

Budget Amendment - Schedule A

Item #	Fund	Account Number	Line Item Description	Amount
1	General Fund	01-0100-9018	Transfer Out	\$68,300.00
	General Asset Replacement Fund	18-7001	Transfer In	\$68,300.00
			<i>Transfer estimated excess fund balance at 9-30-17 to Asset Replacement Fund for purchase in FY2018 budget:</i>	
			<i>Kubota 606 Tractor - \$37,200</i>	
			<i>Aeravator attachment \$11,100</i>	
			<i>Entry gates - soccer fields at complex - \$10,000</i>	
			<i>Entry gates - baseball fields at complex - \$10,000</i>	
2	General Fund	01-0100-9070	Transfer Out	\$75,000.00
	General CIP Fund	70-7001	Transfer In	\$75,000.00
			<i>Transfer estimated excess fund balance at 9-30-17 to General Capital Fund for Comprehensive Plan in FY2018</i>	
			The two above transactions reduce expense in the FY2018 Proposed Budget by \$143,300 and increase expense in the FY2017 Budget as proposed during the FY2018 budget adoption process on 9-26-17.	
3	General CIP Fund	70-6901	Asset Disposal Proceeds	\$641,640.05
			<i>Record proceeds from sale of city property at 800 Junction Hwy.</i>	
4	Main Street Fund	94-9400-5100	Buildings and Structures	\$16,614.32
			<i>"Lupe the Bass" structure and installation - was a multi year project revenue from prior fiscal years were accumulated to cover expense.</i>	
5	Insurance Reserve Fund	90-6921	Reimbursement - Building/Structures	\$206,797.48
	Insurance Reserve Fund	90-9000-2000	Building and Structure Maintenance	\$151,954.00
			<i>Insurance reimbursements from hail storms in 2016 and related repairs more repairs are pending to be completed in 2017 and 2018.</i>	
6	General Asset Replacement Fund	18-6901	Asset Disposal Proceeds	\$34,472.02
	General Asset Replacement Fund	18-1800-5200	Vehicles	\$63,668.24
			<i>Record proceeds from insurance and/or surplus sales through GovDeals and expenses to replace vehicles taken out of service due to accidents and/or reliability.</i>	
7	W/S Asset Replacement Fund	19-6901	Asset Disposal Proceeds	\$32,898.04
	W/S Asset Replacement Fund	19-1900-5200	Vehicles	\$67,502.87
			<i>Record proceeds from insurance and/or surplus sales through GovDeals and expenses to replace vehicles taken out of service due to accidents and/or reliability.</i>	
8	Police Special Revenue Fund	13-6912	Cash Seizures Awarded	\$9,835.00
	Police Special Revenue Fund	13-6999	Miscellaneous Revenue	\$10,361.05
	Police Special Revenue Fund	13-7007	Transfer In	\$7,264.90

Budget Amendment - Schedule A

Item #	Fund	Account Number	Line Item Description	Amount
	Police Special Revenue Fund	13-1300-1111	Software	\$9,209.15
	Police Special Revenue Fund	13-1300-4990	Other Charges	\$5,000.00
	Police Special Revenue Fund	13-1301-1100	Tools and Equipment	\$4,900.00
	Police Special Revenue Fund	13-1303-4940	Shared Seizure Awards	\$2,978.49
			<i>Record revenues and expenses per Chapter 59 penal code and LEOSE funding</i>	
9	Grant Fund	85-8513-5320		\$92,102.00
			<i>Expenses approved in the Edward Byrne Memorial Justice Grant (JAG) Program</i>	
			<i>with reimbursement being received in FY2018</i>	
10	Police- Special Programs Fund	07-0700-111	Software	\$6,976.39
	Police- Special Programs Fund	07-0700-4940	Shared Seizure Awardd	\$536.50
	Police- Special Programs Fund	07-0700-4990	Other Charges	\$365.00
			<i>Record revenues and expenses per Chapter 59 penal code and LEOSE funding</i>	

Agenda Item:

5A. Annexation and Zoning Classification for an approximate 7.95 acre tract out of land adjacent to the incorporated limits which is out of the F. Rodriguez Survey No. 72, Abstract No. 280, Kerr County, Texas, located at 5263 Highway 27.
(staff)

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

SUBJECT: FIRST PUBLIC HEARING OF AN ANNEXATION INTO THE INCORPORATED LIMITS, AND APPLYING A ZONING CLASSIFICATION OF DISTRICT 26-E, FOR AN APPROXIMATELY 7.95 ACRE TRACT OF LAND ADJACENT TO THE INCORPORATED LIMITS WHICH IS OUT OF THE F. RODRIGUEZ SURVEY NO. 72, ABSTRACT NO. 280, KERR COUNTY TEXAS, LOCATED AT 5263 HWY 27. (FILE NO. 2017-051)

FOR AGENDA OF: October 10, 2017

DATE SUBMITTED: October 2, 2017

SUBMITTED BY: Sabine Kuenzel
Ex. Dir. of Dev. Ser.

CLEARANCES: Mark McDaniel
City Manager

EXHIBITS: Planning and Zoning Commission staff report; Draft Service Plan

AGENDA MAILED TO:

APPROVED FOR SUBMITTAL BY CITY MANAGER: *E. A. H.*

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

PAYMENT TO BE MADE TO:

REVIEWED BY THE DIRECTOR OF FINANCE:

SUMMARY STATEMENT

This is this first of two public hearing to institute proceedings annexing phase two of the Fox Tank property. This annexation will complete the company's obligation under its economic incentive agreement with the City of Kerrville.

The Planning and Zoning Commission conducted a public hearing on this item at the September 7, 2017 regular meeting and recommended that the Council annex the subject tract and recommended a zoning designation of District 26-E. The City Council is scheduled to hold its second public hearing on October 24, 2017. Per Texas statutory requirements, no Council action is to be taken until the first reading, scheduled for November 14. Second reading is scheduled to occur on December 12, 2017.

RECOMMENDED ACTION

Hold first public hearing.



City of Kerrville Planning Department Report

To: Planning & Zoning Commission
Agenda Item: 3A
Planning File #: 2017-051
Hearing Date: September 7, 2017
Representative: Voelkel Land Surveying, Lee Voelkel
Location: 5263 Hwy. 27
Total Acreage: 7.95 acres

Proposal

A request to annex into its incorporated limits and recommendation for a zoning classification of District 26-E, for an approximately 7.95 acre tract of land adjacent to the incorporated limits which is out of the F. Rodriguez Survey No. 72, Abstract No. 280, Kerr County Texas, located at 5263 Hwy 27

Procedural Requirements

The application was published in The Hill Country Community Journal, an official newspaper of general circulation on August 23, 2017. Notices were sent to property owners within two hundred (200) feet of the subject property on August 28, 2017. Additionally, notice of this meeting was posted at city hall and on the city's internet website on September 1, 2017 in accordance with Section 551.043(a) of the Texas Government Code.

Background

This item comes before the Commission because the applicant has petitioned annexation into the corporate limits of the City of Kerrville. Fox Tank Company is the sole owner of an approximate 7.95 acre tract of land located adjacent to the incorporated limits of the City of Kerrville. The property is presently vacant and without residents or on which fewer than three qualified voters reside.

The nearest existing developments to the subject property include 26-E, GR (Guadalupe River District), and AD (Airport District). The purpose of the 26-E district is to be developed as industrial. Both heavy and limited industrial uses are listed as permitted, though other uses primarily intended to compliment the industrial uses are also allowed. The GR district is designed to allow the development of business-type uses compatible with the riverside environment in areas contiguous with or in close proximity to the Guadalupe River which are not otherwise included in other zoning districts. The AD district encompasses the area of the Kerrville-Kerr County Municipal Airport and is designed to allow for uses associated with and compatible to the operation of a municipal general

aviation airport.

Transportation

Thoroughfare: Highway 27 is a major arterial, with adequate capacity to absorb any impact from development of the subject property.

Proposed Changes: No changes proposed to the roadways at this time

Analysis

1. Consistency with Comprehensive Plan:

The 26-E district is consistent with the City's intended plan for land uses within the area.

2. Adverse Impacts on Neighboring Lands:

None identified at this time.

3. Suitability as Presently Zoned:

The tract would be more suitable to be zoned 26-E upon annexation, rather than an interim zoning classification.

4. Health, Safety and Welfare:

Staff has identified no likely adverse effects on public infrastructure.

5. Size of Tract:

An approximately 7.95 acre tract of land that will likely develop in conjunction with the existing Fox Tank property.

6. Other Factors:

None identified.

Proceedings

Hold a public hearing and make a recommendation to Council regarding the zoning of 26-E.

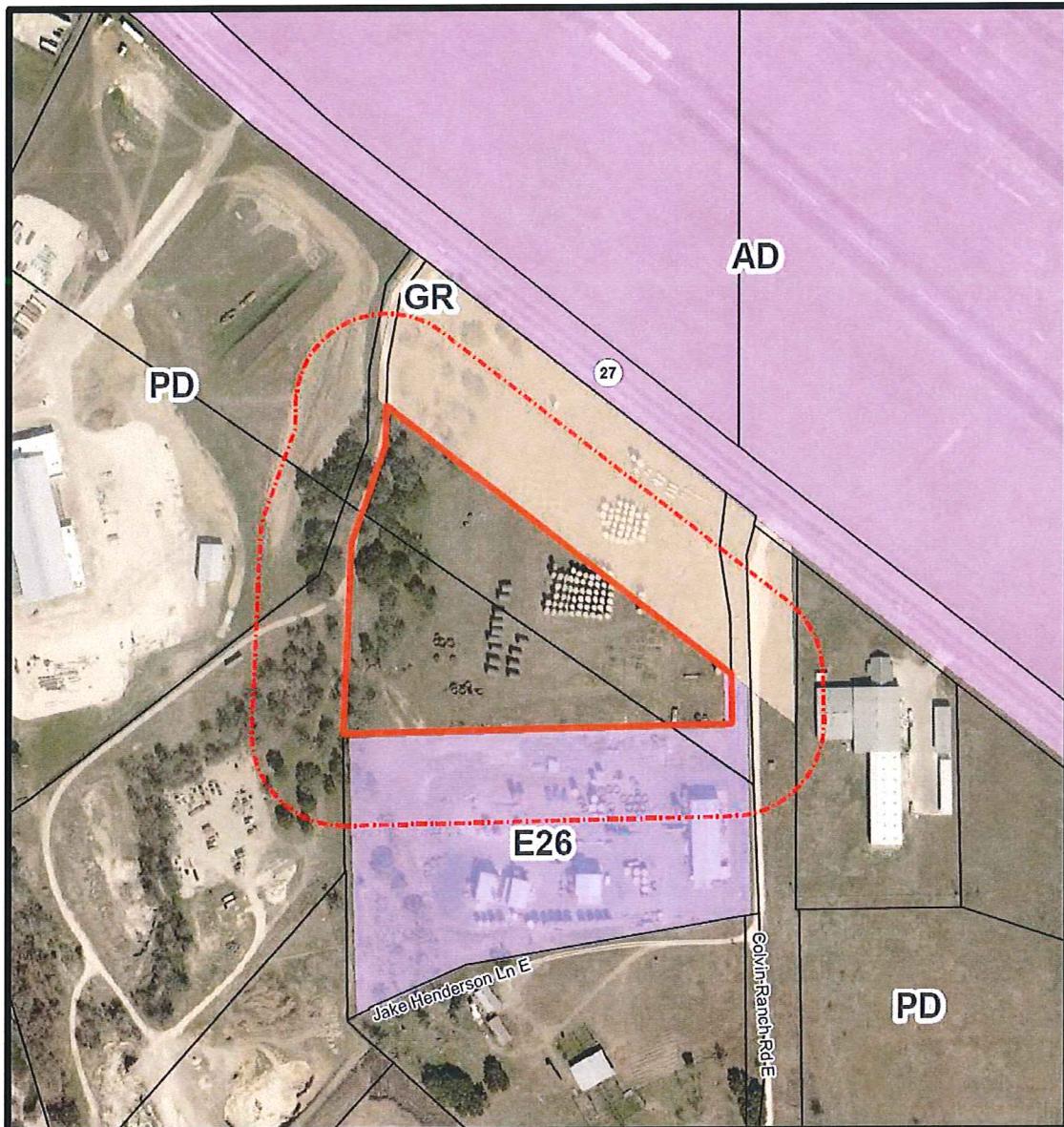
Staff Recommendation:

Approval

Attachments:

Exhibit A Location Map
Exhibit B Annexation Application Plat
Exhibit C Permitted Use List – District 26-E

Exhibit A Location Map



Location Map

Case # 2017-051

Location:

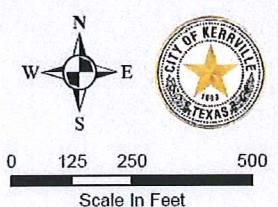
Address: 5263 Highway 27
Property ID: 533684, 533685

Property ID: 533684, 533685

Legend

Legend

200' Notification Area
Subject Properties



This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only approximate relative locations.

Exhibit B Annexation Application Plat

Exhibit C Permitted Use List – District 26-E

LAND USES	26
Agricultural - General	P
Agricultural Service	P
Bed and Breakfast	
Building Construction, General	
Building Construction, Specialist	P
Business Services I	P
Business Services II	P
Cocktail Lounge	P
Detention Facilities	
Dwelling , Single Family, Detached	
Manufactured Home or Manufactured Housing	
Dwelling, Multiple Family	C
Dwelling, Single Family with apartment	
Dwelling, RC District Uses (with plat)	
Education, Secondary and College	C
Education, Primary	C
Equipment Sales/Repair/Storage (Heavy)	P
Fuel Sales	P
Funeral Services	
Institutional and Public Use Facilities	
Life Care Development	
Manufacturing, Custom	P
Manufacturing and Industrial, Heavy	P
Manufacturing and Industrial, Limited	P
Manufactured Housing Sales	
Personal Services I	P
Personal Services II	P
Personal Services-Limited	P
Professional Offices	P
Restaurant, General	P
Restaurant, Limited	P
Retail Trade – I	P
Retail Trade – II	
Retail Trade – III	
Retail Trade – Limited	
Tourist/Visitor & Recreation Service	P
Transportation Terminal (Bus/Aviation)	P
Vehicle Maintenance and Repair	P
Vehicle Sales/Service-Used	C
Vehicle Sales/Services – New	P
Warehousing & Distribution	P

**ANNEXATION SERVICE PLAN
PHASE 2 FOX TANK PROPERTY**

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

SERVICE	DETAILS OF SERVICE PROVIDED	TIMETABLE
Sanitation (Refuse Collection)	Refuse collection shall be available to the annexed area at the same costs and procedures as required of City businesses.	Immediately following annexation
Traffic Engineering	Where required, traffic control devices and street markers shall be installed where deemed necessary by the City's Public Works department, except as provided by the Texas Department of Transportation.	Immediately following annexation
Utilities (Water Distribution and Wastewater Collection)	Extension of utilities shall be in accordance with the City's Subdivision Ordinance	Subject to the provisions of any and all agreements as the property develops.

Agenda Item:

5B. Public Hearing and first reading of Ordinance No. 2017-19, a zoning change to amend Ordinance No. 2004-15, which created a "Planned Development District" for an approximate five hundred thirty-six acre tract of land out of the Walter Fosgate Survey Number 120, within the City of Kerrville, Kerr County, Texas; and generally located southeast of the intersection of Farm to Market Road 783 (Harper Highway) and Interstate 10; said amendment to adjust the authorized uses between two defined areas within said district, said areas located adjacent to and north of Holdsworth Drive. (staff)

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

SUBJECT: PUBLIC HEARING, CONSIDERATION, AND FIRST READING OF A ZONING CHANGE TO AMEND AN EXISTING PLANNED DEVELOPMENT DISTRICT (PDD) FOR A TRACT OF LAND CONSISTING OF 26.64 ACRES LOCATED ON THE NORTHERN INTERSECTION OF HOLDSWORTH DRIVE AND CAILLOUX BOULEVARD, FURTHER DESCRIBED AS LAND OUT OF THE WALTER FOSGATE SURVEY 120 ABSTRACT NO. 138, KERR COUNTY, TEXAS, AND BEING A PORTION OF THE REMAINING PORTION OF THAT CERTAIN CALLED 303.959 ACRE TRACT RECORDED IN DOCUMENT NO. 14-05748, OFFICIAL PUBLIC RECORDS OF KERR COUNTY, TEXAS. (FILE NO. 2017-057)

FOR AGENDA OF: October 10, 2017

DATE SUBMITTED: October 2, 2017

SUBMITTED BY: Sabine Kuenzel
Ex. Dir. of Dev. Ser.

CLEARANCES: Mark McDaniel
City Manager

EXHIBITS: Location map; Draft of Ordinance No. 2017-19

AGENDA MAILED TO:

APPROVED FOR SUBMITTAL BY CITY MANAGER: *E.G.H.*

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

PAYMENT TO BE MADE TO:

REVIEWED BY THE DIRECTOR OF FINANCE:

SUMMARY STATEMENT

This Planned Development District (PDD) amendments comes before the City Council because the property owner is requesting to extend fuel services and hotel uses to the range of existing commercial uses that were originally approved on each site in 2004 to better market the property. These two uses are currently included to parts of the existing PDD, and are simply being requested to also be utilized on the tracts in question. Attached is a detailed written report of the item, which was considered by the Planning and Zoning Commission on August 17, 2017.

The Commission also held its required public hearing on the item, and several members of the community spoke, citing concerns over issues related to the recent and ongoing construction of the Kerrville Sports Complex, including impacts to drainage, wildlife displacement, dust, and trash.

The Commission's deliberation of the request focused on the comparison of the existing permitted use list, and concluded that adding the hotel and fuel service uses, would have

marginal impact to other potential scenarios under the existing zoning.

RECOMMENDED ACTION

Staff and the Planning and Zoning Commission recommend approval of the First Reading of Ordinance No. 2017-19



City of Kerrville Planning Department Report

To: Planning & Zoning Commission
Agenda Item: 3A
Planning File #: 2017-057
Hearing Date: August 17, 2017
Representative: The Cailloux Foundation
Location: Northern intersection of Holdsworth Dr. and Cailloux Blvd
Total Acreage: 26.64 acres

Background

This item comes before the Commission because the applicant proposes to add fuel station as a permitted use to the site on the northwest corner of Holdsworth Dr. and Cailloux Blvd, and hotel/motel as a permitted use to the northeast corner. The proposal would keep the underlying PD in place.

Upon annexation in 2004, the property was zoned Planned Development District (PD-04-15). The subject property was part of a larger 214 acre tract, whose plan showed:

- Commercial uses to the south of Holdsworth Dr.
- Commercial to the north of Holdsworth Dr.
- Multifamily residential north of Holdsworth west of Town Creek
 - Single family residential in six phases beyond the commercial frontage between it and Interstate 10

With the rezoning of the original 214 acres in 2004, the City of Kerrville in essence applied its land use policy. This land use scheme changed in 2015 when the City approved the Sports Complex project.

The subject property was labeled as Area 1C to the east of Cailloux Blvd. and Area 4C to the west of the intersection with Holdsworth. Areas 1C and 4C were shown as future commercial sites on the approved PD concept plan.

Current Land Uses: The majority of the original 214 acres is in the final phases of construction as the City of Kerrville Sports Complex with baseball fields to the north of Holdsworth and soccer fields to the south.

The nearest existing development to the subject property is single family detached residential, lying a substantial distance from the boundaries of this land.

Transportation

Thoroughfare: Holdsworth is a major arterial, with adequate capacity to absorb any impact from development of the subject property

Proposed Changes: No changes proposed to the roadways at this time

Analysis

1. Consistency with Comprehensive Plan:

The property's land use designation was determined with the PD zoning in 2004 for the subject property, and includes a broad list of permitted uses (see attached use schedule). The request would add fuel stations as a permitted use to site 1C and hotel/motel use to site 4C. These two changes are the primary land use policy decisions before the Commission.

2. Adverse Impacts on Neighboring Lands:

The proposed additions to the permitted uses for Areas 1C and 4C appear to be aligned with the City's emerging vision for the area. The public hearing will give the Planning and Zoning Commission an opportunity to hear and weigh any opposing arguments regarding potential negative impacts.

3. Suitability as Presently Zoned:

Both the existing and proposed zoning districts are suitable for the subject property and will allow for uses that will be consistent with the developing land uses currently under construction in the vicinity.

4. Health, Safety and Welfare:

Staff has identified no likely adverse effects on public infrastructure. The distance to the nearest residential areas provide adequate buffering.

5. Size of Tract:

The proposed tract exceeds the minimum tract requirements for PD zoning.

6. Other Factors:

None identified.

Proceedings

Hold a public hearing and make a recommendation to Council.

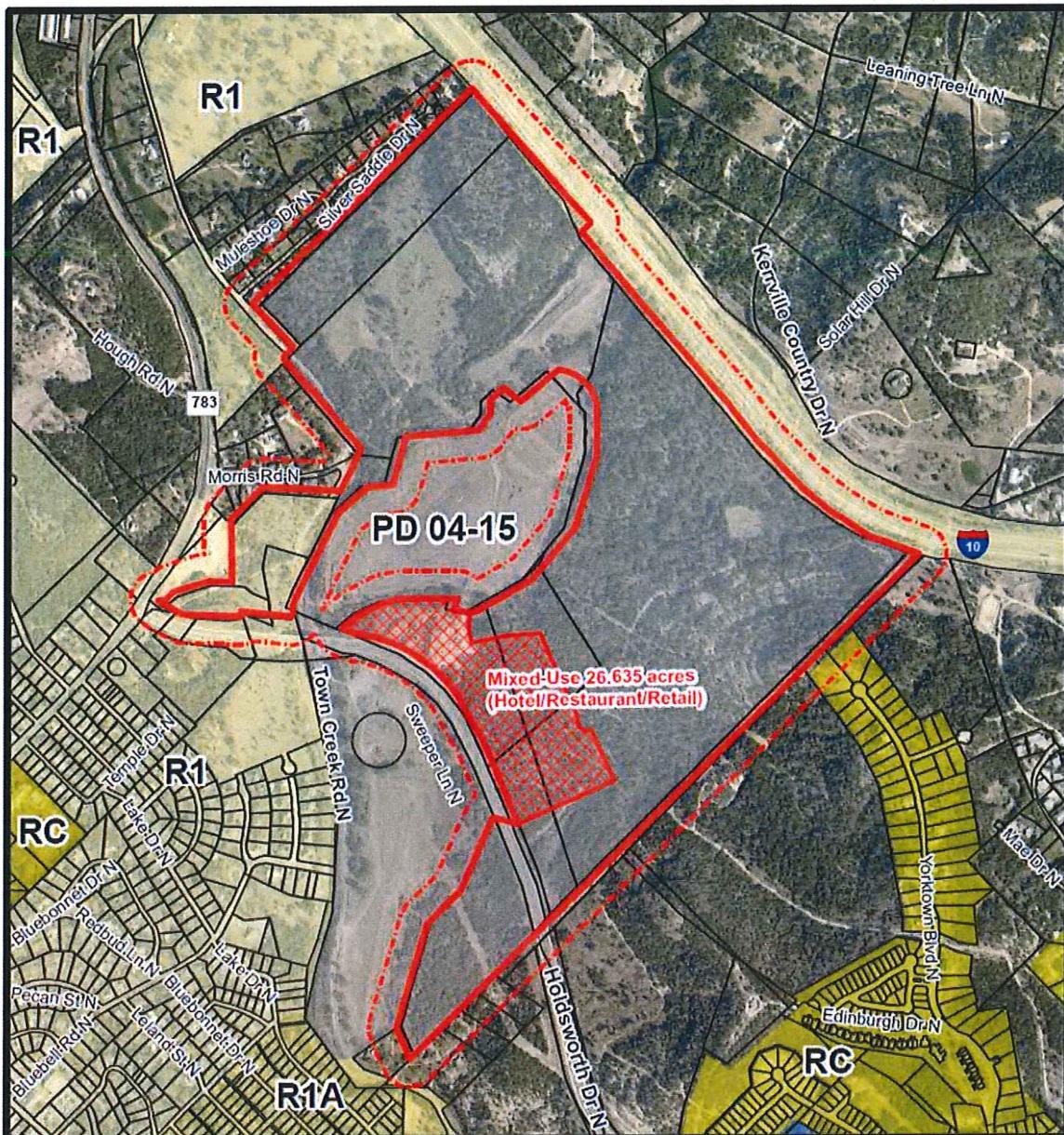
Staff Recommendation:

Approval

Attachments:

Exhibit A Location Map
Exhibit B PD Application Map
Exhibit C PD 04-15 Property
Exhibit D PD 04-15 Concept plan
Exhibit E PD 04-15 Permitted Use List

Exhibit A Location Map



Location Map

Case # 2017-057

Location:
Holdsworth Dr &
Cailloux Blvd

Legend

PDD Amendment Area
200' Notification Area
Subject Properties
Current Zoning
Requested Zoning

TEXT
(TEXT)



0 250 500 1,000
Scale In Feet

This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only approximate relative locations.

Exhibit B PD Application Map

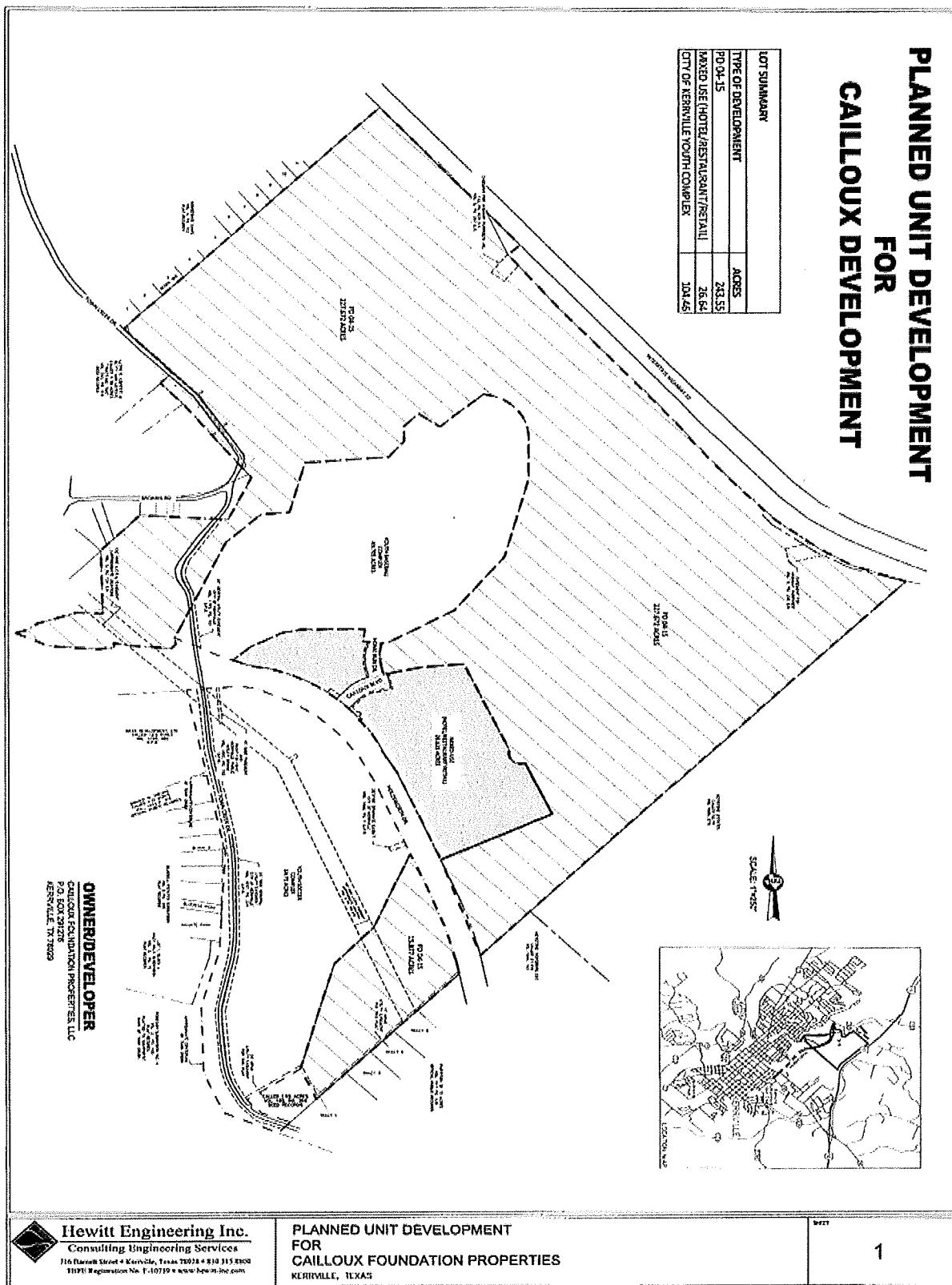


Exhibit C PD 04-15 Property

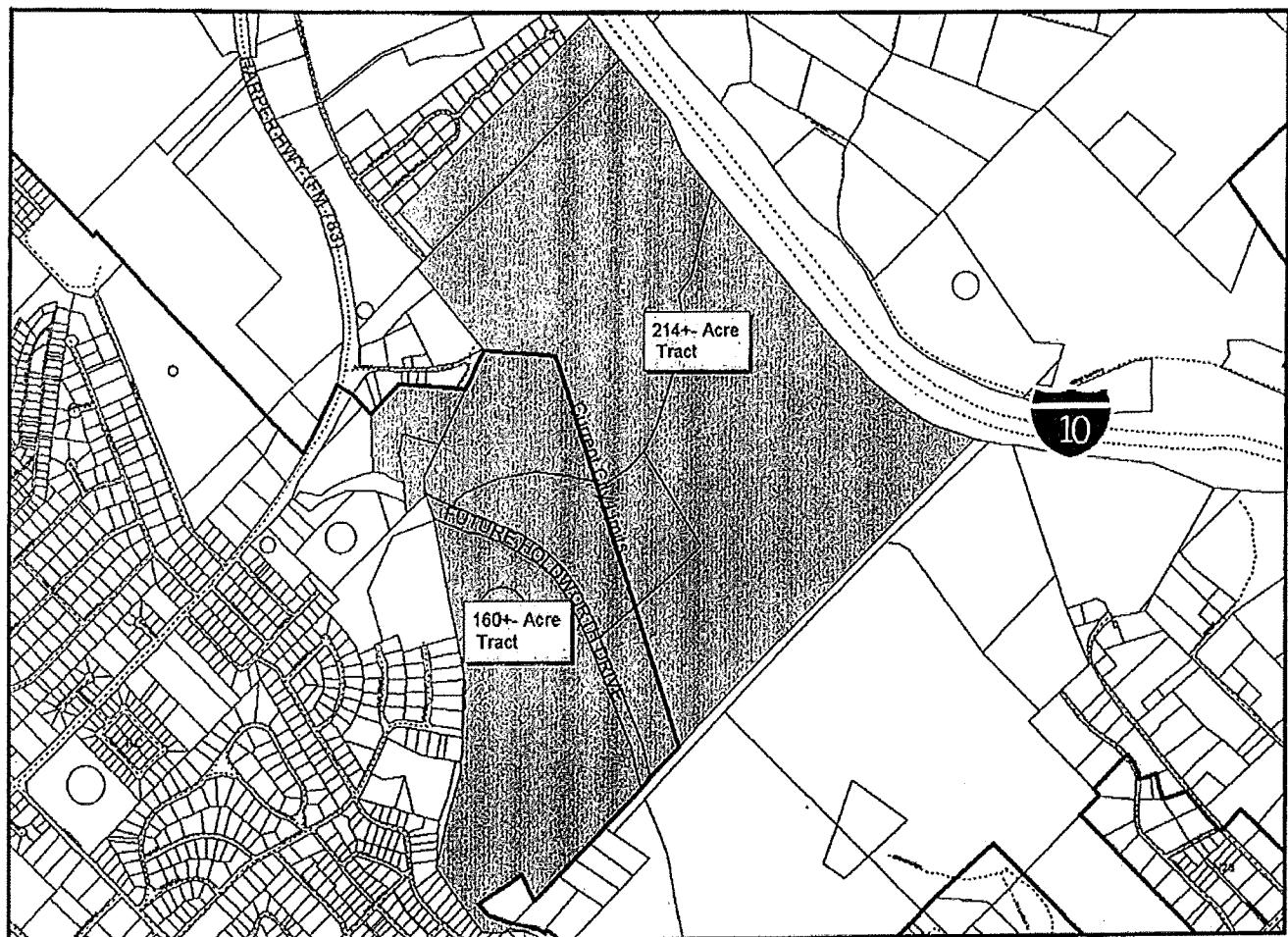


Exhibit D PD 04-15 Concept Plan



Exhibit E PD 04-15 Permitted Use List

LAND USES	AREA				
	1C	2C	3C	4C	5C
I. Business Services I					
(i) bicycle repair shops;	P	P	P	P	
(ii) cablevision, radio, and television stations;	P	P	P	P	
(iii) camera repair shops;	P	P	P	P	
(iv) commercial art, photography, art and graphics;	P	P	P	P	
(v) employment agencies;	P	P	P	P	
(vi) gunsmith and locksmith shops;	P	P	P	P	
(vii) job and vocational training centers;	P	P	P	P	
(viii) musical instrument, radio and television repair;	P	P	P	P	
(ix) postal services;	P	P	P	P	
(x) re-upholstery and furniture repair;	P	P	P	P	

(xi)	telephone and electric company offices (excluding storage and maintenance yards, but including telecommunications serving centers).	P	P	P	P
2. Business Services II					
(i)	appliance sales or repair, used;	C	P	P	P
(ii)	blue printing and photo copying services;	P	P	P	P
(iii)	building cleaning services;	P	P	P	P
(iv)	car washes;	C	C	P	P
(v)	commercial testing laboratories; (not exceeding 5,000 sf in floor area)	C	C	P	C
(vi)	disinfecting and exterminating services;	P	P	P	P
(vii)	laundry/dry cleaning services	P	P	P	P
(viii)	funeral service and crematories;			C	
(ix)	newspapers (printing);	P	P	P	P
(x)	photo finishing retail centers or as part of another allowed use	P	P	P	P
(xi)	protective services, non-governmental;	P	P	P	P
(xii)	refrigeration/air conditioning service and repair;	C	C	P	C
(xiii)	sign painting and outdoor advertising services;	P	P	P	P
(xiv)	swimming pool cleaning and maintenance.	C	C	P	C
3. Cocktail Lounge					
4. Day Care Services (General)					
(i)	overnight lodging of children not related by adoption or blood to the owner of the facility;	P	P		P
(ii)	medical treatment;	P	P		P
(iii)	counseling;	P	P		P
(iv)	rehabilitative services; or	C	P		C
(v)	elementary or secondary education.	P	P		P
5. Education, Primary: But not in conjunction with any use of alcohol sales.					
6. Education, Secondary and College: But not in conjunction with any use of alcohol sales.					
7. Food Sales:					
8. Fuel Sales: with restricted locations outlined in ordinance					
9. Group Medical Care Facility:					
10. Hospital Services:					
11. Hotel; Motel:					
12. Life Care Development:					

(i)	independent living in single family units;				C
(ii)	apartment living;				C
(iii)	congregate living with common meals and/or community facilities for social events;				C
(iv)	community recreation;				C
(v)	convalescent services;				C
(vi)	guidance services;				C
(vii)	hospital services;				C
(viii)	residential care services;				C
(ix)	offices associated with the sales, rental, and organization of the community;				C
(x)	personal services and personal improvement services.				C
13. Manufacturing, Custom:		P	P	P	P
14. Medical Offices:		P	P	P	P
15. Personal Care Facility:					C
16. Personal Services I:					
(i)	beauty parlors and/or barber shops	P	P	P	P
(ii)	health or fitness studios/salons and massage therapy;	P	P	P	P
(iii)	pet services;	P	P	P	P
(iv)	portrait photography studios;	P	P	P	P
(v)	repair services of personal items such as shoes, watches, and jewelry;	P	P	P	P
(vi)	schools primarily engaged in instructional or informational classes related to art, dance, gymnastics, cheerleading, trampoline and tumbling, or martial arts;	P	P	P	P
(vii)	seamstress and/or tailor shops.	P	P	P	P
17. Personal Services II:					
(i)	guidance services;	P	P	P	P
(ii)	kennels with a maximum boarding capacity of less than twelve (12) animals only as part of a retail business related to providing pet products;	C	C	P	C
(iii)	self service laundromats;	P	P	P	P
(iv)	veterinary services with no external kennels or external boarding of pets.	P	P	P	P
(v)	mini-storage: <i>see provisions in ordinance</i>		P	P	P
18. Professional Office: (Including Financial Institutions)		P	P	P	P

19. Recreation, Commercial and/or Public:					
(i)	indoor sports and recreation are uses conducted within an enclosed building, including, but not limited to, bowling alleys, billiard parlors, ice and roller skating rinks, racket sports, and swim clubs, weight training centers and related educational programs;	C	P	P	P
(ii)	indoor recreation are predominantly uses conducted within an enclosed building involving spectators, including, but not limited to, motion picture theaters, meeting halls, and similar uses.	C	C	C	C
20. Restaurant, General: including drive-through		P	P	P	P
21. Restaurant, Limited:		P	P	P	P
22. Retail Trade - Limited:					
(i)	hardware, paint, glass, and wallpaper stores;	P	P	P	P
(ii)	lawn and garden supply, nurseries and landscaping;	P	P	P	P
(iii)	department, variety and general merchandise stores;	P	P	P	P
(iv)	food sales;	P	P	P	P
(v)	specialty clothing and shoe stores;	P	P	P	P
(vi)	furniture, floor covering, upholstery and curtain stores.	P	P	P	P
(vii)	sales of new household appliances;	P	P	P	P
(viii)	drug stores;	P	P	P	P
(ix)	sporting goods stores;	P	P	P	P
(x)	toy, gift and novelty shops;	P	P	P	P
(xi)	stationery stores;	P	P	P	P
(xii)	book sales;	P	P	P	P
(xiii)	camera and photographic supply;	P	P	P	P
(xiv)	luggage and leather goods sales;	P	P	P	P
(xv)	sewing, needlework establishments;	P	P	P	P
(xvi)	mail order and direct sale establishments;	P	P	P	P
(xvii)	tobacco products sale;	P	P	P	P
(xviii)	florists;	P	P	P	P
(xix)	sale of new auto parts.	P	P	P	P
23. Retail Trade I:					
(i)	all businesses defined as Retail Trade, Limited;	P	P	P	
(ii)	sales or rental of new or use merchandise, except used appliances, automobiles or any other vehicles.	P	P	P	
(iii)	alcoholic beverage sales for off-premises consumption.	C		C	
24. Retail Trade II:		P		P	
25. Retail Trade III: see provisions in ordinance		C		C	
26. Vehicle Maintenance and Repair: restricted locations outlined in ordinance.			P	P	
27. Vehicle Sales/Services - New: restricted locations outlined in ordinance.				P	
28. Dwelling - Two-Family and/or Multiple Family					P

CITY OF KERRVILLE, TEXAS
ORDINANCE NO. 2017-19

**AN ORDINANCE AMENDING ORDINANCE NO. 2004-15 WHICH
CREATED A “PLANNED DEVELOPMENT DISTRICT” FOR AN
APPROXIMATE FIVE HUNDRED THIRTY-SIX ACRE TRACT OF LAND
OUT OF THE WALTER FOSGATE SURVEY NUMBER 120, WITHIN THE
CITY OF KERRVILLE, KERR COUNTY, TEXAS; AND GENERALLY
LOCATED SOUTHEAST OF THE INTERSECTION OF FARM TO
MARKET ROAD 783 (HARPER HIGHWAY) AND INTERSTATE 10; SAID
AMENDMENT TO ADJUST THE AUTHORIZED USES BETWEEN TWO
DEFINED AREAS WITHIN SAID DISTRICT, SAID AREAS LOCATED
ADJACENT TO AND NORTH OF HOLDSWORTH DRIVE**

WHEREAS, on June 8, 2004, the City Council of the City of Kerrville, Texas, approved Ordinance No. 2004-15 to in part, create a “Planned Development District” (“PDD”) on an approximate 536 acre tract of land out of the Walter Fosgate Survey Number 120, within the City of Kerrville, Kerr County, Texas, and generally located southeast of the intersection of FM 783 (Harper Highway) and Interstate 10 (the “Property”), which authorized a mixed-use development and use on 11 areas of the Property as defined and further specified by Ordinance 2004-15; and

WHEREAS, the owner of a portion of the Property has requested to amend the PDD by changing the authorized uses between two of the areas, which combined contain approximately 26.64 acres as depicted on the map attached as **Exhibit A**, to allow the use of “fuel sales” as a permitted use to the area on the northwest corner of the intersection of Holdsworth Drive and Cailloux Boulevard and “hotel/motel” to the types of permitted uses on the area to the northeast corner of said intersection; and

WHEREAS, other than this change, the PDD would remain in place and unchanged;

WHEREAS, the City Council of the City of Kerrville, Texas, finds it to be in the public interest to amend Ordinance 2004-15 as described herein;

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

SECTION ONE. Ordinance No. 2004-15 is amended by adding the language that is underlined (added) and deleting the language that is bracketed and stricken (~~deleted~~) as follows:

“C. Commercial Area Development Regulations: Areas 1C, 2C, 3C, 4C and 5C (sometimes collectively referred to herein as “the Commercial Areas”) shall be developed in accordance with the following regulations:

⋮

5. Permitted and Conditional Uses: The uses that are permitted as a matter of right or permitted upon issuance of a conditional use permit in the Commercial Areas are indicated by the letters “P” and “C”, respectively, in the following table:

:

LAND USES	AREA				
	1C	2C	3C	4C	5C

8. Fuel Sales: with restricted locations outlined in ordinance	P	P		P	
---	---	---	--	---	--

11. Hotel; Motel:	P	P	P	P	P
--------------------------	---	---	---	---	---

SECTION TWO. Except as amended by this Ordinance, the provisions of Ordinance No. 2004-15 shall remain in full force and effect.

SECTION THREE. 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, including Ordinance No. 2004-15, are hereby expressly repealed to the extent of any such inconsistency or conflict.

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

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

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

PASSED AND APPROVED ON FIRST READING, this the _____ day of _____, A.D., 2017.

PASSED AND APPROVED ON SECOND AND FINAL READING, this the _____ day of _____, A.D., 2017.

Bonnie White, Mayor

ATTEST:

Brenda G. Craig, City Secretary

APPROVED AS TO FORM

Michael C. Hayes, City Attorney

Agenda Item:

6A. Amendment to agreement 2016-95 with the Kerrville Convention and Visitors Bureau for use of HOT funds for promoting the arts advertising committee to add an additional arts group member. (staff)

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

SUBJECT: Amend Agreement 2016-95 between the City of Kerrville and the Kerrville Convention and Visitors Bureau, Inc. for use of hotel occupancy tax funds for promoting the Arts Advertising Committee by increased funding in the amount \$10,000 and adding an additional "Arts Group" member.

FOR AGENDA OF: October 10, 2017 *DR* **DATE SUBMITTED:** September 28, 2017

SUBMITTED BY: Sandra Yarbrough
Director of Finance

CLEARANCES: Mark McDaniel
City Manager

EXHIBITS: Agreement with Kerrville CVB

APPROVED FOR SUBMITTAL BY CITY MANAGER: *SDH*

Expenditure Required:	Current Balance in Account:	Amount Budgeted:	Account Number:
\$10,000	\$50,000	\$50,000	20-2000-4990

APPROVED FOR SUBMITTAL BY DIRECTOR OF FINANCE:

SUMMARY STATEMENT

The purpose and intent of the Arts Advertising Committee was approved during the FY2011-12 budget process by City Council. The Kerrville Convention and Visitors Bureau (KCVB) will receive and administer the budgeted funds to advertise and promote Kerr County arts and cultural events throughout Texas in accordance with the KCVB marketing plan.

This is a request to amend Agreement #2016-95 between City of Kerrville, Texas and the Kerrville Convention & Visitors Bureau, Inc. for the use of hotel occupancy tax funds for promoting the Arts Advertising Committee referred to as the "Arts Group". This amendment would add The Coming King Sculpture Prayer Gardens as an additional member of the "Arts Group" and increase the annual funding in the amount of \$10,000.

In consideration of KCVB fulfilling the requirements specified below in support of the Committee and its purposes, funding will be allocated and approved in the FY2017-18 budget and in the amount of sixty thousand and no/100 dollars (\$60,000.00). During the term of this Agreement, such funds will come from the City's receipt of hotel occupancy tax revenues. Funding will be disbursed quarterly to KCVB.

KCVB must coordinate the Committee and host at least 10 committee meetings during the term of the Agreement. KCVB must use the funding that it receives from the City under this Agreement for the sole purpose of advertising in state-wide magazines and newspapers such as Texas Highways, Texas Monthly, AAA Journey, and the Texas

Events Calendar regarding exhibits, performances, and events at or held by the Kerr Arts & Cultural Center, Playhouse 2000, Kerrville Festival of the Arts, Kerrville Folk Festival, Kerr County Fair, Kerrville Wine and Music Festival, Hill County Arts Foundation, Kathleen C. Cailloux City Center for the Performing Arts, Riverside Nature Center, Symphony of the Hills, Kerrville Chalk Festival, Museum of Western Art, and The Coming King Sculpture Prayer Gardens, collectively referred to herein as the "Arts Group".

RECOMMENDED ACTION

Staff recommends Agreement #2016-95 be amended as described and that the City Council authorize the City Manager to enter into the agreement with Kerrville's Convention and Visitors Bureau.

**FIRST AMENDMENT TO AGREEMENT BETWEEN THE
CITY OF KERRVILLE, TEXAS AND THE KERRVILLE
CONVENTION & VISITORS BUREAU, INC. FOR USE OF
HOTEL OCCUPANCY TAX FUNDS FOR PROMOTING
THE ARTS ADVERTISING COMMITTEE**

This *First Amendment to Agreement between the City of Kerrville, Texas and the Kerrville Convention & Visitors Bureau, Inc. for Use of Hotel Occupancy Tax Funds for Promoting the Arts Advertising Committee* is dated this ____ day of October, 2017.

RECITALS

WHEREAS, City of Kerrville, Texas (“City”) and the Kerrville Convention & Visitors Bureau, Inc. (“CVB”) previously entered into the *Agreement between the City of Kerrville, Texas and the Kerrville Convention & Visitors Bureau, Inc. for Use of Hotel Occupancy Tax Funds for Promoting the Arts Advertising Committee* (the Agreement”), copy of which is attached as **Exhibit A** and incorporated herein by reference, whereby the parties have worked toward the encouragement, promotion, improvement, and application of the arts, including instrumental and vocal music, dance, drama, folk art, creative writing, architecture, design and allied fields, painting, sculpture, photography, graphic and craft arts, motion pictures, radio, television, tape and sound recording, and other arts related to the presentation, performance, execution, and exhibition of these major art forms, pursuant to Chapter 351 of the Texas Tax Code; and

WHEREAS, per the Agreement, the CVB created an Arts Advertising Committee, whose purpose and intent was to provide advice as to how and where to provide funding to promote Kerr County arts and cultural events throughout Texas in accordance with the CVB marketing plan; and

WHEREAS, CVB will continue to administer the funding designated for the purposes of the Arts Advertising Committee; and

NOW, THEREFORE, in consideration of the covenants and conditions stated herein, and in consideration of the mutual benefits that will accrue to each of the parties hereof, as well as to the citizens of the City of Kerrville, Texas, the parties have agreed and do hereby agree as follows:

SECTION ONE. Article I of the Agreement is amended by adding the language that is underlined (added) and deleting the language that is bracketed and stricken (~~deleted~~) as follows:

“ARTICLE I

A. In consideration of CVB promoting the City of Kerrville and fulfilling the requirements specified below in support of the Committee and its purposes, the City will pay CVB the sum of SIXTY [FIFTY] THOUSAND AND NO/100 DOLLARS (\$60,000.00 ~~\$50,000.00~~) during the term of this Agreement, such funds to come from the City’s receipt of hotel occupancy tax revenues.”

SECTION TWO. Article III of the Agreement is amended by adding the language that is underlined (added) and deleting the language that is bracketed and stricken (~~deleted~~) as follows:

“ARTICLE III

A. CVB must use the funding that it receives from City under this Agreement for the sole purpose of advertising in state-wide magazines and newspapers such as *Texas Highways*, *Texas Monthly*, *AAA Journey*, and the *Texas Events Calendar* regarding exhibits, performances, and events such as those held by or at the Kerr Arts & Cultural Center, Playhouse 2000, Kerrville Festival of the Arts, Kerrville Folk Festival, Kerr County Fair, Kerrville Wine and Music Festival, Hill County Arts Foundation, Kathleen C. Cailloux City Center for the Performing Arts, Riverside Nature Center, Symphony of the Hills, Kerrville Chalk Festival, ~~[and the]~~ Museum of Western Art, and the Coming King Sculpture Prayer Garden, collectively referred to herein as the “Arts Group”.”

SECTION THREE. Except to the extent the Agreement is amended pursuant to Sections One and Two, above, the provisions of the Agreement remain unchanged and in full force and effect.

SIGNED this _____ day of _____, 2017.

CITY OF KERRVILLE, TEXAS

KERRVILLE CONVENTION & VISITORS BUREAU, INC.

By _____
Mark L. McDaniel, City Manager

Charlie McIlvain, President/CEO

ATTEST:

Brenda G. Craig, City Secretary

APPROVED AS TO FORM:



Michael C. Hayes, City Attorney

AGREEMENT BETWEEN THE CITY OF KERRVILLE,
TEXAS AND THE KERRVILLE CONVENTION &
VISITORS BUREAU, INC. FOR USE OF HOTEL
OCCUPANCY TAX FUNDS FOR PROMOTING THE ARTS
ADVERTISING COMMITTEE

THIS AGREEMENT ("Agreement") made and entered into this 13th day of December, 2016, between the City of Kerrville, Texas, a home rule municipal corporation ("City"), and the Kerrville Convention & Visitors Bureau, Inc. ("CVB").

WITNESSETH:

WHEREAS, City levies a tax within the City and its extraterritorial jurisdiction upon the occupancy of any room or space furnished by any hotel, motel, or other lodging facility as defined by Chapter 351 of the Texas Tax Code, and disperses the proceeds of said tax to various organizations for their use in accordance with Chapter 351; and

WHEREAS, City and CVB have entered into an existing agreement whereby CVB agreed to undertake activities for the promotion of tourism and the convention and hotel industry through advertising and conducting promotional programs to attract tourists and convention delegates to Kerrville, all in accordance with the CVB marketing plan presented to the City Council for each fiscal year; and

WHEREAS, the parties now wish to enter into this Agreement whereby the parties work toward the encouragement, promotion, improvement, and application of the arts, including instrumental and vocal music, dance, drama, folk art, creative writing, architecture, design and allied fields, painting, sculpture, photography, graphic and craft arts, motion pictures, radio, television, tape and sound recording, and other arts related to the presentation, performance, execution, and exhibition of these major art forms, pursuant to Chapter 351 of the Texas Tax Code; and

WHEREAS, toward that purpose, City will pay monies from its receipt of the hotel occupancy tax revenues to CVB; and

WHEREAS, pursuant to its receipt of such funding, CVB will advertise and promote Kerr County arts and cultural events throughout Texas in accordance with the CVB marketing plan; and

WHEREAS, it is the desire of the parties hereto to continue to combine their efforts for the purpose of attracting tourists to the City so as to promote tourism and the hotel industry in the City; and

WHEREAS, during this year's budget process, the City Council was advised of the purpose and intent of the Arts Advertising Committee ("Committee") and the use of hotel occupancy tax revenues to advertise and promote the arts in Kerr County; and

WHEREAS, CVB will administer the funding designated for the purposes of the Committee; and

NOW, THEREFORE, in consideration of the covenants and conditions stated herein, and in consideration of the mutual benefits that will accrue to each of the parties hereof, as well as to the citizens of the City of Kerrville, Texas, the parties have agreed and do hereby agree as follows:

ARTICLE I

A. In consideration of CVB promoting the City of Kerrville and fulfilling the requirements specified below in support of the Committee and its purposes, the City will pay CVB the sum of FIFTY THOUSAND AND NO/100 DOLLARS (\$50,000.00) during the term of this Agreement, such funds to come from the City's receipt of hotel occupancy tax revenues.

B. The City will pay CVB the amount specified in I.A., above, in four, equal quarterly payments, with such payments to be made by the City on or before November 10, February 10, May 10, and August 10.

ARTICLE II

CVB understands that the funds paid to CVB by the City are derived from tax revenues collected under the City's hotel occupancy tax ordinance and that the City has estimated the tax revenues to be collected during the term of this Agreement in its budget. CVB further understands, acknowledges, and agrees that if the tax revenues actually collected by the City are less than the estimated tax revenues to be collected during the City's fiscal year, City will be under no obligation to pay CVB for the full amount set forth in Article I, above, but instead, the City may reduce any one or all of the quarterly payments based upon the City's good faith estimate of present and future tax revenue.

ARTICLE III

A. CVB must use the funding that it receives from City under this Agreement for the sole purpose of advertising in state-wide magazines and newspapers such as *Texas Highways*, *Texas Monthly*, *AAA Journey*, and the *Texas Events Calendar* regarding exhibits, performances, and events such as those held by or at the Kerr Arts & Cultural Center, Playhouse 2000, Kerrville Festival of the Arts, Kerrville Folk Festival, Kerr County Fair, Kerrville Wine and Music Festival, Hill County Arts Foundation, Kathleen C. Cailloux City Center for the Performing Arts, Riverside Nature Center, Symphony of the Hills, Kerrville Chalk Festival, and the Museum of Western Art, collectively referred to herein as the "Arts Group".

B. CVB must coordinate the Committee to include representatives from each member of the Arts Group.

C. CVB will host at least 10 monthly meetings during the term of this Agreement for the Committee. Toward that end, CVB will prepare the meeting agendas and send out meeting notices to the Committee, the Arts Group, and the City. The meeting will be open to the public, which the meeting agenda and notice will note.

D. CVB will sign advance insertion orders with magazines and newspapers; prepare layout of advertisements; seek approval from each Committee member that is advertising for a specific exhibit, performance, or event; and submit the advertisements and required payment for publication.

E. Upon a request from City, CVB shall provide a written report and full documentation to the City showing the advertisements and expenditures it has made or will make pursuant to this Agreement and that the funds provided by City pursuant to this Agreement were used only for the purposes authorized by this Agreement. CVB must maintain books of account with correct entries of all expenditures that are made according to the terms of this Agreement and of funds allocated from other sources. Any and all books of account of CVB must be at all times open to the inspection of the City or any of its officers or duly authorized agents. Upon such inspection, the City or its officers or agents must be afforded the opportunity on premises to make photographic copies of any and all documentation of books of account, including statements of account relating to the disposition of funds provided by the City under this Agreement and funds allocated from other sources. CVB must maintain these books of account in Kerr County for a period of three (3) years following the expiration of the term of this Agreement. Notwithstanding Article I, above, City will be under no obligation to make any payment to CVB if the reports required by this Article III have not been delivered to City.

ARTICLE IV

The term of this Agreement is for a period beginning on December 14, 2016, and ending September 30, 2018, unless this Agreement shall have been sooner terminated or extended in accordance with other provisions contained herein. This Agreement may be extended for two additional three (3)-year terms as follows. Should either party fail to notify the other in writing by September 30 of the year immediately preceding the last year of the existing Agreement term of the desire to terminate the Agreement at the end of the term, the Agreement shall automatically renew.

ARTICLE V

This Agreement does not create any joint venture, partnership, or agency relationship between City and CVB, it being the intent of the parties that CVB must at all times be and operate hereunder as an independent contractor. CVB will have exclusive control of and the exclusive right to control the details of the work to be performed hereunder and all personnel performing same and will be solely responsible for the acts and omissions of its officers, members, agents, servants, employees, subcontractors, program participants, volunteers, licensees, and invitees. In no event shall any person participating in or performing any of

CVB's duties or responsibilities hereunder be considered an officer, agent, servant, or employee of the City.

ARTICLE VI

In the event of any default by CVB hereunder, including the use of the funds provided herein for purposes other than those stated herein, City may cease all future payments hereunder and terminate this Agreement. In addition, CVB must, at City's request, refund to City funds that are not spent in accordance with this Agreement and any unspent and unobligated funds previously paid to CVB.

ARTICLE VII

CVB agrees to assume and does hereby assume all responsibility and liability for the services it performs under this Agreement. **CVB COVENANTS AND AGREES TO INDEMNIFY, DEFEND, AND HOLD HARMLESS THE CITY AND ALL ITS OFFICERS, AGENTS, AND EMPLOYEES** from all suits, actions, claims, and expenses of any character, including attorney's fees, brought for or incurred on account of any injuries or damages, whether real or asserted, sustained by any person or property by or in consequence of any intentional or negligent act, omission, or conduct of CVB, its officers, employees, agents, or servants.

ARTICLE VIII

This Agreement may be amended by the mutual agreement of the parties hereto in writing to be attached to and incorporated into this Agreement.

ARTICLE IX

CVB must adhere to all local, state, and federal laws and regulations that may affect its actions made pursuant to this Agreement, and must maintain in effect during the term of this Agreement any and all federal, state and local licenses and permits, which may be required of CVB generally.

ARTICLE X

CVB may not assign this Agreement without the prior written consent of the City Manager.

ARTICLE XI

The waiver by City of any breach of any term, condition, or covenant herein contained will not be deemed a waiver of any subsequent breach of the same, or any other term, condition, or covenant.

ARTICLE XII

The obligations of the parties to this Agreement are performable in Kerr County, Texas, and if legal action is necessary to enforce same, exclusive venue will lie in Kerr County, Texas.

ARTICLE XIII

This Agreement will be governed by and construed in accordance with the laws and court decisions of the State of Texas.

ARTICLE XIV

This Agreement may be executed in any number of counterparts, each of which will be deemed an original and constitute the same instrument.

ARTICLE XV

Neither City nor CVB will be required to perform any term, condition or covenant in this Agreement so long as such performance is delayed or prevented by force majeure, which will mean acts of God, civil riots, floods, and any other cause not reasonably within the control of City or CVB except as herein provided, and which by the exercise of due diligence City or CVB is unable, wholly or in part, to prevent or overcome.

ARTICLE XVI

This Agreement embodies the complete agreement of the parties hereto, superseding all oral or written previous and contemporary agreements between the parties, which relate to matters in this Agreement.

IN WITNESS THEREOF, the parties hereto, acting under authority of their governing body and board of directors, have caused this Agreement to be duly executed in two counterparts, each of which will constitute an original.

(signatures begin on following page)

CITY OF KERRVILLE, TEXAS

By Don Davis
Don Davis, Interim City Manager

KERRVILLE CONVENTION &
VISITORS BUREAU, INC.

Charlie McIlvain
Charlie McIlvain, President/CEO

ATTEST:

Brenda G. Craig
Brenda G. Craig, City Secretary

APPROVED AS TO FORM:

Michael C. Hayes
Michael C. Hayes, City Attorney

Agenda Item:

6B. Non-exclusive license agreement with the Dietert Center for parking and trailhead for the river trail. (staff)

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

SUBJECT: Authorize a non-exclusive license agreement with the Dietert Center for parking and trailhead for the River Trail

FOR AGENDA OF: October 10, 2017 **DATE SUBMITTED:** October 2, 2017

SUBMITTED BY: E.A. Hoppe
Dep. City Manager

CLEARANCES: Mark McDaniel
City Manager

EXHIBITS: License Agreement
License Agreement area and trailhead improvements on Dietert property
River Trail-West easement and Sidewalk easement on Dietert property
River Trail-West route location

AGENDA MAILED TO:

APPROVED FOR SUBMITTAL BY CITY MANAGER:

Expenditure Required:	Current Balance in Account: \$0	Amount Budgeted: \$0	Account Number: N/A
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PAYMENT TO BE MADE TO:

REVIEWED BY THE DIRECTOR OF FINANCE:

SUMMARY STATEMENT

The City of Kerrville and the Dietert Center, 451 Guadalupe St., have worked closely on the development of the River Trail project since the inception of the Dietert Center in 2004. At that time, the Dietert Center committed to dedicating an easement to the City for the future River Trail, with the decision to defer the easement location until the eventual route and details of the trail on the property was determined.

To construct the next segment of the trail (River Trail-West), there have been several actions completed to address the requirements on the Dietert Center property, to include:

1. River Trail-West routing location and trailhead/parking design on the Dietert property.
2. Recreation Easement on the Dietert property, reflecting the final trail route. (All of the other sixteen (16) easements and properties have been finalized for construction of the River Trail-West segment).
3. Sidewalk Easement on the west Dietert Center property line connecting Guadalupe St. to the River Trail and other City property.
4. Negotiation of the non-exclusive License Agreement of Dietert property for the trailhead and related public parking, which requires City Council approval.

The City is in need of parking and a River Trail access (trailhead) at the Dietert Center location. Since the River Trail-West segment, based on construction projections, will utilize most of the remaining balance of River Trail Project funding, any development of the trail west of the Dietert Center is not within the current funding allocation. This places more need on having public parking and trailhead access at the Dietert Center, which will act as the west-most terminus of the River Trail for the foreseeable future.

The License Agreement for the City to use Dietert Center property needs to be approved by the City Council. (The trail route, surveys, trailhead/parking design, and easement documents have been completed). The license is utilized to establish working business points between the Dietert Center, as grantor, and the City of Kerrville, as grantee. The Dietert Center board of directors has unanimously supported the River Trail and use of their property for the trail, trailhead, and public parking for the trail. They desire to have access to the trail and intend to program activities on the trail/facilities. Their major requests in granting the License Agreement to the City are:

- Dietert Center parking lot, once reconstructed by the City for Americans with Disabilities Act (ADA) access on the south end of the west parking lot, will be available for trail users during daylight hours; such use shall be signed and enforced by City.
- City to regularly remove trash and litter from the licensed area.
- City's constructed trailhead/plaza, ADA parking, drinking fountain, trash receptacles, landscaping, water and electrical/lighting, and other improvements within the licensed area to be maintained and repaired by City.
- Dietert Center programs will be allowed to use all improvements within the licensed area at no cost; Dietert Center to inform City of any regularly scheduled activities and any special events by the Dietert Center.
- City to pay all costs associated with water service installation and usage within the licensed area; Dietert Center to allow electrical connection to the center's electric panel and pay for all monthly costs for the security lighting and outlet at the plaza through their electric meter. City to be responsible for all repair and replacement of water and electrical connections, service lines, and fixtures within the licensed area.
- Dietert Center will allow trail users to utilize their restrooms on the west side of the building; City to provide Dietert Center the paper products for that restroom.
- During ADA parking space reconstruction of the south end of the west parking lot, Dietert will allow City to temporarily reroute center patrons around the affected area/construction.
- As needed, Dietert Center and City to determine repair to the parking surface on the south end of the west parking lot. City to make needed repair within the licensed area.
- City to be able to utilize a reasonable area outside of the licensed area during construction or major repair, but shall not interfere with the operation of the center.

These license agreement terms are similar to the existing license agreement terms for the trailhead at the Riverside Nature Center, which also allows the City to use its parking and restrooms by trail users. The project plans for construction of the river trail are complete and ready to bid. The construction contract award is anticipated for the City Council meeting in November, with construction completion in the summer of 2018.

RECOMMENDED ACTION

Authorize the City Manager to execute a non-exclusive license agreement with the Dietert Center for parking and trailhead for the River Trail.

**NON-EXCLUSIVE LICENSE AGREEMENT BETWEEN
DIETERT CENTER AND CITY OF KERRVILLE, TEXAS**

This Non-Exclusive License Agreement (“License”) is made and entered into by and between the **DIETERT CENTER** (“DC”), and the **CITY OF KERRVILLE, TEXAS**, (“CITY”) as follows:

1. **Grant of Non-Exclusive License.** In consideration of and subject to the terms, provisions, and covenants herein contained, DC hereby grants to CITY a non-exclusive license to use DC’s parking lot and other areas specified herein, located at 451 Guadalupe Street in the City of Kerrville, Kerr County, Texas (“Licensed Premises”), a map of which is attached hereto and made a part of this License as **Exhibit A**, for parking and public access to the CITY’s River Trail.
2. **Term.** The initial term of this License shall be effective as of October 1, 2017 and end September 30, 2018, subject to earlier termination as provided herein.
3. **Annual Extensions.** This License shall renew for successive one-year periods, commencing on October 1, 2018, and each year thereafter. Such renewal shall be automatic and without the action of any party unless notice of termination is given by either party in writing to the other party, as provided herein.
4. **Termination Election.** DC and CITY each shall have the right, either with or without cause and at any time, to terminate this License upon not less than one year (365 days) prior written notice to the other party. Upon such termination, DC and CITY shall be relieved of all further obligations hereunder except only for obligations accruing prior to the effective date of termination.
5. **Use.** CITY’s use of the Licensed Premises shall comply with the following:
 - a. CITY and users of the River Trail shall use the Licensed Premises thereon for parking cars and to access and utilize the River Trail and trailhead during daylight hours and for no other purposes unless provided herein;
 - b. CITY shall provide and install signage on the Licensed Premises at each DC parking lot, with such signage directing River Trail users to the southern end of DC’s west parking lot and providing notice of the restriction of parking to daylight hours only. The parties shall both agree to the design, wording, and location(s) of the signage, which consent not to be unreasonably withheld. City shall not install, place or use any signage without the prior written consent of the DC.
 - c. CITY shall routinely and periodically inspect the Licensed Premises, in an effort to ensure that it is safe for the intended use;

- d. CITY shall provide the same level of supervision, signage for rules, and enforcement on the Licensed Premises as the CITY provides for the River Trail;
- e. CITY's use of the Licensed Premises shall be subject to DC's right to restrict parking on the Licensed Premises during events at DC. DC will have right to preempt parking rights licensed hereunder in order to provide adequate parking for anticipated DC events. Following written notice from DC, CITY shall take reasonable measures in an effort to ensure that CITY and users of the River Trail abide by such restrictions during times of restricted use, including the posting of advance notices on the CITY's website providing information about use of the Licensed Premises; DC shall provide CITY notice of any restriction and schedule within ten (10) working days of subject events;
- f. CITY shall obtain written approval from DC at least ten (10) working days in advance of any CITY-organized or approved event on the Licensed Premises.
- g. CITY shall take reasonable measures in an effort to ensure that the CITY and users of the River Trail abide by all traffic and parking signs and periodic restrictions on use as required by DC;
- h. As specified and depicted on **Exhibit A**, CITY shall construct walkways and a gathering area, to include landscaping; installation of a drinking water fountain, benches, lighting, and trash receptacles; extension and the installation of water and electric service lines; and marking disabled parking spaces within the Licensed Premises;
- i. CITY shall keep DC fully updated as to CITY's construction activities and schedule within the Licensed Premises;
- j. CITY may reroute DC guests away from the Licensed Premises during CITY's construction activities and use a reasonable amount of area beyond the Licensed Premises during this time period, provided that this does not interfere with DC's use of its property;
- k. CITY shall be responsible for regular trash removal from the Licensed Premises, to include all trash receptacles and the immediately surrounding area, to include the sidewalk along the west end of the parking lot, all of which is intended to keep the immediate surroundings safe and attractive to DC's patrons, employees, and tenants;

6. **DC's Contributions.**

- a. DC shall allow CITY to connect to and extend electrical service from DC's electrical service panel and meter to the Licensed Premises. Thereafter, DC shall pay the monthly charge for such electrical service;

- b. DC shall allow River Trail users access to DC's first floor west-most restrooms and water fountain during the hours that DC is open. In consideration of this use, CITY shall provide all paper products and soap needed to stock DC's first floor west-most restrooms.

7. **CITY's Construction of Trailhead.** CITY shall construct a trailhead as depicted on **Exhibit A**. In addition, CITY, in accordance with applicable drainage design standards, shall design and install a drainage structure(s) from DC's parking lot under or through the River Trail as necessary to protect DC's parking lot from standing water and protect the property between said parking lot and the River Trail from erosion due to water runoff. During construction, CITY will be able to use a reasonable area outside of the Licensed Premises, but shall not interfere with the operation of DC. During City's reconstruction of parking space on the south end of the west parking lot pursuant to meet accessibility requirements, DC will allow CITY to temporarily reroute DC patrons around the affected area under construction.

8. **Parking Lot Maintenance.** City shall periodically inspect DC's west parking lot and coordinate this inspection with DC. City has the responsibility of repairing this parking lot surface within the Licensed Premises when required. CITY shall then coordinate any such repair with DC. Any damage specifically caused by River Trail users to a parking lot outside of the Licensed Premises will be the responsibility of the CITY, and CITY shall repair such damage following notice and coordination with DC.

9. **City's Responsibility for Costs.** CITY shall be responsible for all costs associated with water service installation to and within the Licensed Premises, for the drinking water fountain and landscape irrigation for the trailhead and River Trail on the Licensed Premises. CITY will have a water meter installed for said water service and shall be solely responsible for all monthly water charges. CITY shall be responsible for all costs associated with electrical service installation, with the exception of the monthly service charge.

10. **City's Duty to Maintain.** CITY shall maintain, repair, and replace all improvements it installs and constructs within the Licensed Premises, including water and electrical connections, service lines, and fixtures.

11. **Insurance.** CITY will include the Licensed Premises in its liability insurance coverage at a level consistent with other CITY properties. CITY will provide DC proof of coverage annually upon request.

12. **Liability.** It is agreed, acknowledged and stipulated by DC and CITY, by acceptance hereof, that CITY assumes all risk for, and shall be liable and responsible for, all claims, obligations, and liabilities arising from the CITY's or public's use **of** the Licensed Premises for accessing the River Trail or other authorized uses of other property of DC.

13. **Alterations and Improvements.** Except as otherwise provided herein, CITY shall not make any alterations, additions, or improvements to the Licensed Premises, without the

prior written approval of DC, such approval not to be unreasonably withheld or delayed. If authorized, all permanent improvements shall become the property of the DC.

14. **Access.** DC shall have access to and the use of the Licensed Premises at all times for any purpose.
15. **Termination for Safety Violation or Unlawful Use.** CITY shall not use or occupy nor permit the Licensed Premises or any part thereof to be used or occupied by the CITY and users of the River Trail for any unlawful purpose, or for any purpose or in any manner which is in violation of any present or future governmental laws or regulations. CITY shall comply with all laws, ordinances, orders, jurisdiction thereof relating to the use, condition, or occupancy of the Licensed Premises. Notwithstanding any other provision of this License, any violation of this provision, or a gross violation of any safety-related provision herein, CITY will cease operations and public access immediately to the affected area and take corrective action.
16. **DISCLAIMER OF WARRANTIES.** THIS LICENSE IS SUBJECT TO RECORDED EASEMENTS AND IS PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.
17. **Assignment or Sublicense.** Neither party shall assign this License or in any respect assign or sublicense the Licensed Premises or any of its rights hereunder, in whole or in part, without the express prior written consent of the other party, which consent may not be unreasonably withheld.
18. **Casualty.** In the event of property damage caused by CITY or a user(s) of the River Trail, CITY will endeavor to restore all damages within thirty (30) days of such damage and/or written notice from DC. The CITY may make a claim under its insurance policies, which may delay the repair time. Any delays caused by insurance will adjust the repair period accordingly.
19. **Performance by DC.** If CITY fails to perform any of its obligations after the cure period as specified in Section 18 above, DC, following written notice to CITY, may perform, at its option, any such obligation and CITY shall pay DC, upon demand, all costs and expenses incurred by DC.
20. **No Other Relationship.** This License constitutes the entire agreement between DC and CITY with respect to the Licensed Premises. Nothing contained herein shall be construed to create any principal/agent, employer/employee, joint venture, partnership, or other relationship or arrangement between DC and CITY.
21. **Default.** If either party hereto shall fail to perform any obligation of such party as herein set forth, and such failure shall continue for a period of thirty (30) days after written notice of default, except for any CITY's insurance obligations as specified above, the

nondefaulting party has the right, at such party's option, and in addition to any other remedies available at law or in equity, to terminate this License by notice to the party in default. The failure of either party to declare any default immediately upon the occurrence thereof or delay in taking any action in connection therewith shall not waive such default, but such party shall have the right to declare any such default at any time and take such action as might be authorized hereunder or that may be available at law or in equity.

22. **Notice.** Any notice or document required or permitted to be delivered hereunder shall be deemed to be delivered, whether or not actually received, when deposited in the United States mail, postage prepaid, or certified mail, return receipt requested, addressed to the parties hereto at their respective addresses as set forth below or at such other address as they have heretofore specified by written notice delivered in accordance with the terms hereof:

DC: DIETERT CENTER
Attention: Executive Director
451 Guadalupe Street
Kerrville, TX 78028

CITY: CITY OF KERRVILLE
Attention: City Manager or designee
City Hall, 701 Main Street
Kerrville, TX 78028

23. **Warrant of Capacity.** Each individual and entity executing this License hereby represents and warrants that he, she, or it has the capacity set forth on the signature page hereof with full power and authority to bind the party on whose behalf he, she, or it is executing this License to the terms hereof.
24. **Approval Authority.** In this License, wherever an act requires approval by or consent of the CITY such approval or consent may be obtained from the City Manager or designee. In this License, wherever an act requires approval by or consent of the DC such approval or consent may be obtained from the DC President or designee.
25. **Governing Law and Enforcement.** This License shall be governed by the laws of the State of Texas and shall be performable in Kerr County. Venue for any dispute arising between the parties to this License shall be in Kerr County, Texas.
26. **Attorney's Fees.** In the event any party brings or pursues any right, remedy and/or proceeding regarding or relating to this License and/or enforcement of or for any default under this License, the party substantially prevailing shall recover and be paid all reasonable attorney's fees, costs and expenses incurred by that party substantially prevailing from and by the party not substantially prevailing who shall pay such fees, costs and expenses.

27. **Responsibility**. CITY and DC are responsible for its guests and invitees on the Licensed Premises.
28. **No Title**. This License shall not vest any title to the CITY and shall not be any public dedication.
29. **No Recording**. This License shall not be recorded in the deed records of Kerr County, Texas.
30. **Negotiation to Sell or Lease Property**. Where DC decides to pursue the sale or lease of its property or the Licensed Premises, DC shall provide written notice to the CITY of such decision and negotiations within a reasonable period.

SIGNED and agreed by the authorized representatives of DC and CITY on the dates indicated below.

DIETERT CENTER

By: 
D. Lytle Wood, President
Date: October 3, 2017

CITY OF KERRVILLE

By: _____
Mark McDaniel, City Manager
Date: _____

ATTEST:

Brenda G. Craig, City Secretary

APPROVED AS TO CONTENT:

Ashlea Boyle, Director of Parks
and Recreation

APPROVED AS TO FORM:

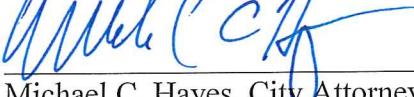

Michael C. Hayes, City Attorney

Exhibit A

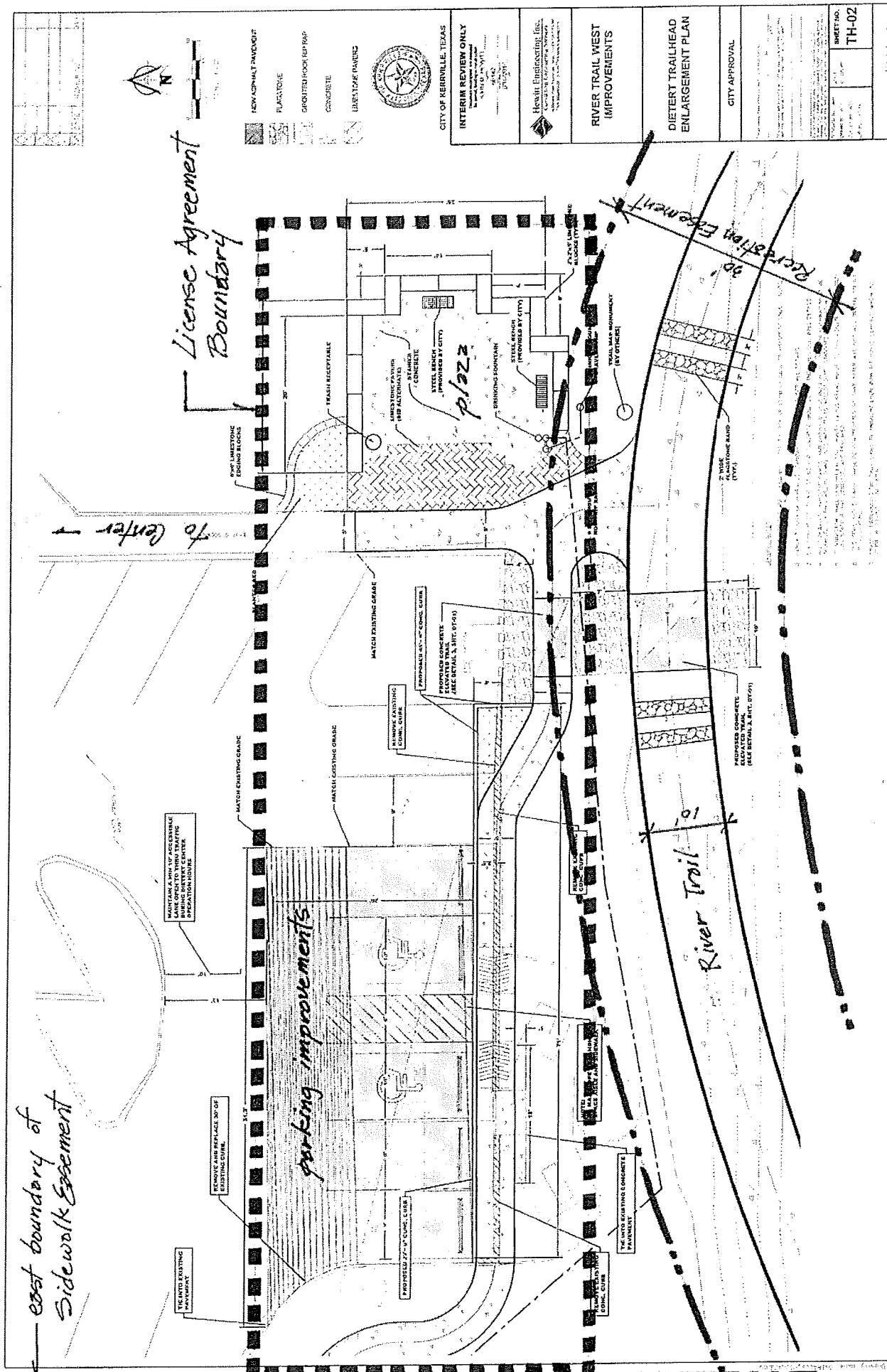


Exhibit B

